

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of the University of Vermont)
Medical Center for a Conceptual CON)
For Planning and Design of an Outpatient) GMCB-015-21con
Surgery Center)
_____)

STATEMENT OF DECISION

Introduction

In this Decision we review the application of the University of Vermont Medical Center (UVMMC or “the Applicant”) for a Conceptual Development Phase Certificate of Need (Conceptual CON) to spend up to \$4.96 million to plan for the development of an outpatient surgery center.

For the reasons set forth below, we approve the application and issue the Applicant a Conceptual CON, subject to the conditions set forth therein.

Procedural Background

On July 16, 2021, UVMMC filed a Conceptual CON application and request for expedited review under 18 V.S.A. § 9434(c) and 18 V.S.A. § 9440(c)(5)(A). The Board granted UVMMC’s request for expedited review on July 28, 2021, pursuant to GMCB Rule 4.000, § 4.304.1(d). The Board requested that UVMMC provide additional information on July 28, 2021. UVMMC provided the requested information on August 3, 2021. The Board closed the application on September 3, 2021. On September 15, 2021, the Vermont Federation of Nurses and Health Professionals (VFNHP) submitted a request to intervene in the proceedings as an interested party or, in the alternative, for amicus curiae status. On September 15, 2021, UVMMC filed an opposition to VFNHP’s request. The Board denied VFNHP’s request on September 20, 2021.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(8) and 18 V.S.A. § 9434(c).

Findings of Fact

1. UVMMC operates an outpatient surgical facility at its Fanny Allen campus in Colchester, Vermont, that includes five operating rooms (ORs) and two procedure rooms (PRs). UVMMC seeks a Conceptual CON to spend up to \$4.96 million on planning, design, and permitting work to develop an outpatient surgery center that will at least replace this facility. *See* Letter of Intent.

2. In addition to planning for the replacement of its Fanny Allen facility, UVMMC’s work under the Conceptual CON will include evaluating the need for additional capacity to accommodate growth in demand for outpatient surgeries due to the changing demographics in the service area and a trend toward moving more, and more complex, cases from an inpatient setting to an outpatient setting. Application (App.), 2.

3. While the size, design, cost, and scope of UVMMC’s proposed outpatient surgery facility have not been determined yet, UVMMC expects the project will cost more than \$30 million. App., 1, 3. Further planning work is required to consider options, conduct appropriate studies, obtain input from key stakeholders, develop designs, determine costs, secure permits, and prepare a definitive CON application. App., 3.

4. As described further in the application, the proposed work under the Conceptual CON will include architectural design and planning; land use impact studies; permitting; surveying; geotechnical studies; code compliance evaluation; LEED certification; commissioning; pre-construction services; cost estimating; building envelope design; wayfinding (design and integration of signs, directional devices, and systems to enable patients and visitors to navigate buildings, facilities, roads, and parking areas); equipment planning; and materials management. App., 3 – 4. UVMMC’s activities under the Conceptual CON will focus in part on a staffing plan, which will be detailed in the CON application for the new facility. *See UVMMC’s Opposition to VFNHP’s Request to Intervene or for Amicus Curiae Status*, 2.

5. The following table breaks down UVMMC’s projected expenses under the Conceptual CON:

Outpatient Surgery Center Planning Expenses Through Permitting and Bid Documents	
Costs	\$
Design Fees (Architectural, Engineering, Other Related Design Services)	3,290,905
Other Consultant Fees	1,160,161
Permitting Fees	263,917
Fees to hold option to purchase Mountain ViewBusiness Park Lot 6 through January 1, 2023	105,000
Associated Operating Expenses	137,500
Total	4,957,483

App., Table 1.

6. The costs of UVMMC’s work under the Conceptual CON are included in the hospital’s operating and capital budgets and are reasonable and necessary based on UVMMC’s experience with other substantial construction projects. App., 3.

7. UVMMC expects to propose siting its outpatient surgery center in the Mountain View Business Park in South Burlington, Vermont. UVMMC has established an outpatient campus at this location, which currently includes outpatient cardiology, endocrinology, orthopedics and rehabilitation, pain management, physical therapy, and radiology clinics, and may include outpatient dermatology and ophthalmology clinics in the future. App. 2 – 3. UVMMC expects to submit a CON application for the outpatient surgery center project approximately eight to ten months after its Conceptual CON application is approved. Response to Q001.

8. UVMMC rents the outpatient operating and procedure rooms at its Fanny Allen campus under a lease that expires on September 30, 2026. Replacement of the Fanny Allen surgical facility has been part of UVMMC's Facilities Master Plan for some time and has been part of the multi-year financial plans UVMMC has included as part of the Board's hospital budget review process since its FY20 budget submission. App., 1.

9. On November 17, 2020, UVMMC was forced to close its Fanny Allen facility due to air quality deficiencies. *See* Letter of Intent. While UVMMC is working to address these deficiencies and at least partially reopen the facility in the near term, the closure has increased the urgency of the need to develop plans for replacement. *See id.*; *see also* App., 2.

10. UVMMC's facilities are outdated, undersized, and cannot be effectively renovated. Advanced procedures transitioning to the outpatient environment require larger operating rooms (ORs) with in-OR imaging and advanced air handling to minimize infection risk. Due to the age and footprint of the Fanny Allen building, it cannot be renovated to increase OR square footage or incorporate the mechanical equipment needed to support increased air flow. App., 15. The preoperative and postoperative spaces also need to be expanded and redesigned to support a higher throughput of cases, to more efficiently provide patients with ready access to procedural care, and to provide a more patient and family centered experience. The replacement facility will also be designed to increase clinical team efficiency so patient access can be maintained in a challenging health care labor market. App., 2.

11. If UVMMC is successful in remediating the indoor air quality deficiencies that resulted in the closure of the Fanny Allen facilities in November 2020, it intends to reopen some or all of the facility on an interim basis until a replacement facility is completed. App., 2.

12. To deal with the loss of the Fanny Allen facilities, UVMMC opened evening and weekend ORs and partnered with Central Vermont Medical Center and Porter Medical Center to increase patient access for surgical procedures. While this helped maintain access for urgent and emergent care at UVMMC and has helped manage non-urgent procedural backlogs to some degree, patient backlogs continue to grow. App., 2.

13. The project does not include or comprise the purchase or lease of health care information technology. App., 1, n.2.

Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). An applicant bears the burden of establishing that a CON should be granted. GMCB Rule 4.000, § 4.302.3.

Conclusions of Law

UVMMC's development of an outpatient surgery center is anticipated to cost more than \$30 million. Findings of Fact (Findings), ¶ 3. Thus, UVMMC must secure a Conceptual CON to make expenditures for architectural services, engineering design services, and other planning services in connection with the project. 18 V.S.A. § 9434(c).

The Board will grant a Conceptual CON if it finds that 1) the cost of the proposed planning activities is reasonable and the applicant can afford such cost; 2) the project appears to meet an identifiable, existing or reasonably anticipated need which is appropriate for the applicant to provide; 3) if the project includes or comprises the purchase or lease of health care information technology, the project is consistent with the most current Vermont Health Information Technology Plan. GMCB Rule 4.000, § 4.206.4.

I.

UVMMC has established that the cost of the proposed planning activities is reasonable and affordable for the hospital.

The total cost of the planning activities under the Conceptual CON is projected to be \$4.96 million, the majority of which – approximately \$3.29 million – will be for architectural, engineering, and other related design services. Findings, ¶ 5. These costs are included in UVMMC's operating and capital budgets and are reasonable and necessary based on the hospital's experience with other substantial construction projects. Findings, ¶ 6.

II.

UVMMC has also demonstrated that the project appears to meet an identifiable, existing or reasonably anticipated need which is appropriate for the applicant to provide.

UVMMC's Fanny Allen facility cannot currently be used due to air quality deficiencies. Findings, ¶ 9. UVMMC is working to address these deficiencies and at least partially reopen the facility. *Id.* However, the facility is outdated, undersized, and cannot be effectively renovated, for example, to incorporate equipment that will accommodate advanced procedures that are transitioning to the outpatient environment or to support a higher throughput of cases. *See* Findings, ¶ 10. Replacement of the facility has been part of UVMMC's Facilities Master Plan for some time. Findings, ¶ 8.

In addition to replacement of the Fanny Allen facilities, UVMMC will evaluate under the Conceptual CON the need for additional capacity to accommodate growth in demand for outpatient surgeries due to the changing demographics in the service area and a trend toward moving more, and more complex, cases from an inpatient setting to an outpatient setting. Findings, ¶ 2. The

Board has significant concerns relating to staffing the new facility, particularly if it is intended to add capacity, and requires UVMMC to include staffing considerations in its planning activities, including projections related to staffing needs. UVMMC must consult with VFNHP, which has expressed concerns regarding inadequate staffing, prior to finalizing a staffing plan.

III.

The project does not include or comprise the purchase or lease of health care information technology and thus the third criterion is inapplicable. *See Findings, ¶ 13.*

Conclusion

Based on the above, we conclude that UVMMC has satisfied the requirements for a Conceptual CON. We therefore approve the application and issue a Conceptual CON, subject to the conditions outlined therein.

Dated: September 20, 2021 at Montpelier, Vermont.

s/ Kevin Mullin, Chair)
)
s/ Jessica Holmes)
)
s/ Robin Lunge)
)
s/ Tom Pelham)
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s/ Maureen Usifer)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

Filed: September 20, 2021

Attest: Jean Stetter, Administrative Services Director