

Alliance of Delray Residential Associations, Inc.

10290 West Atlantic Avenue #480504
Delray Beach, FL 33448
Phone: 561.495.4694
www.allianceofdelray.com



- *Serving more than 100 Communities between the Everglades and the Ocean in south Palm Beach County.*
- *Working Toward Sustainable Development*
- *Applying Resilience Thinking to Our Natural Resources*

July 19, 2021
Palm Beach County Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, FL 33401
Re: Zoning Application for Legent MUPD APP PDD/CA-2020-02083

Dear Commissioners:

The Alliance of Delray Residential Associations is greatly concerned with the proposed orthopedic specialty hospital in the Agricultural Reserve. Attached is the Alliance's March 10, 2021 letter rebutting the Applicant's Justification Statement and providing a compelling argument to deny the application on zoning merits and the Alliance's July 6, 2021 letter requesting answers to questions for which we have received information addressing the concerns.

Florida Statute 395.003(8)(b) clearly states that a hospital may not be licensed if the hospital restricts its medical and surgical services to primarily or exclusively orthopedic specialties. See Exhibit I. Since the Applicant has clearly stated that the procedures performed at the facility will only be orthopedic and spinal, the facility will not qualify for licensure from the State of Florida for a hospital. Further, since the Applicant clearly stated that a number of physicians have a financial interest in the hospital, pursuant to the Federal Stark Law, physician self-referral will prohibit the facility from collecting from Medicare or Medicaid. See Exhibit II.

This information supports the Alliance's assertion that this proposed facility will not benefit the farm workers, residents, and future residents of the Agricultural Reserve and most certainly will not benefit the senior communities of western Delray Beach where most of the residents are medicare and/or Medicaid patients.

The Alliance trusts that our County Commissioners would never knowingly vote to approve an application for a facility that could not possibly obtain a license to function as the applicant is stating that it will be functioning. Further, our County Commissioners would never approve an application for a facility that would not benefit the senior citizens of the community who would require the services of a facility as described by the applicant. Please consider these facts when you address this agenda item and vote to deny the application.

Sincerely,

Bob Schulbaum

Bob Schulbaum, President
(561)715-1927

Cc: Mayor Kerner; Vice Mayor Weinroth; Commissioners Bernard, Weiss, McKinlay, Marino, Sachs; County Administrator Baker; Asst. Admin. Rutter; PZB Exec. Dir. Bulkeley; PZB Dep. Dir. Carroll; Zoning Dir. MacGillis; Dep. Zoning Dir. Hernandez; County Attorneys Nieman, Banks, & Stone

OFFICERS AND DIRECTORS OF THE ALLIANCE:

Robert Schulbaum, *President*

Lori Vinikoor, *Executive Vice President*

Norma Arnold, *Vice President* Allen Hamlin, *Vice President*

Arnold Katz, *Vice President* Ken Markowitz, *Vice President*

Evelyn Spielholz, *Secretary* Deborah Borenstein, *Treasurer*

Directors: Rob Cuskaden Paul Finkelstein Carol Klausner Phyllis Levine Susan Zuckerman

Assistants to the President: Rose DeSanto John Gentithes Rhoda Greifer Joel Vinikoor

Legal Counsel: Joshua Gerstin

Exhibit I

Fl. St. 395.003 Licensure; denial, suspension, and revocation.—

(8) A hospital may not be licensed or relicensed if:

(b) The hospital restricts its medical and surgical services to primarily or exclusively cardiac, orthopedic, surgical, or oncology specialties.

Exhibit II

Physician Self-Referral Law [42 U.S.C. § 1395nn]

The Physician Self-Referral Law, commonly referred to as the Stark law, prohibits physicians from referring patients to receive "designated health services" (including inpatient and outpatient hospital services) payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. Financial relationships include both ownership/investment interests and compensation arrangements.

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March 10, 2021

Palm Beach County Board of County Commissioners
301 N. Olive Avenue Ste. 1201
West Palm Beach, Florida 33401

Re: Request for Denial of Zoning & Class A Conditional Use Application for
Legent MUPD APP PDD/CA-2020-02083

Dear Commissioners:

The Alliance of Delray strongly opposes the above referenced Legent Delray Beach MUPD application. The proposed rezoning from CG/AGR to MUPD and request for Class A Conditional Use for a hospital represents a significant departure from the current Agricultural Reserve Objective and Policies in the Comprehensive Plan that were reaffirmed by the Board of County Commissioners in 2016. Further, the application does not comply with the ULDC for the Agricultural Reserve and fails to meet the standards required in ULDC Article 2.B.7.B.2

a. Consistency with the Plan: *This project is not consistent with the Comprehensive Plan.*

"The Master Plan, and subsequently adopted policies in the Plan, specifically limit commercial development to uses which serve the needs of the farm worker community, existing and future residents in order to discourage commercial in the Tier from exceeding local demand, thereby drawing customers from outside the Tier".

The proposed micro hospital with specialty elective procedures will have a regional draw that far exceeds the local demand of the farm worker community, existing and future residents.

"All commercial and mixed use Planned Developments are intended to provide one or more uses in a manner that is compatible with the scale and character of the surrounding residential uses and designed to promote a sense of place. The commercial and mixed use Planned Developments provide uses that can include shopping, entertainment, business, services, employment, cultural, civic, schools, places of worship, government services, and/or housing opportunities in a manner that increases a sense of community by creating a stronger pedestrian orientation through design, placement and organization of buildings connected to a common public space, while dispersing parking and respecting and maintaining the character of the surrounding area. The commercial and mixed use Planned Developments are intended to provide neighborhood and community serving scaled uses. Regional and large-scale big-box uses are not permitted"

The proposed project does not increase a sense of community or strong pedestrian orientation nor does it provide neighborhood and community serving scaled uses. This is a big-box large-scale medical facility which would not promote a sense of place.

b. Consistency with the Code: *This project is in conflict with the purpose and intent of the Code.*

"The project must demonstrate that it exceeds minimum requirements in the ULDC and in the event of a conflict between the project's development standards or design guidelines and the existing ULDC requirements, the more restrictive requirement shall prevail."

The existing commercial site is limited to a .10 FAR. With the zoning change to MUPD, a .20 FAR would be allowed. The applicant is attempting to develop a project containing a .35 FAR thereby exceeding the ULDC guidelines.

c. Compatibility with Surrounding Uses: *The proposed use is not compatible with the uses and character of the Agricultural Reserve Tier.*

The relative proximity of the proposed hospital to the Bethesda West Hospital which exists in the same Agricultural Tier will not allow both institutions to co-exist in a stable fashion over time. The proposed hospital project would directly or indirectly negatively impact the existing hospital. Further, the needs of the farm workers and residents and future residents are already met with a saturation of new medical emergency clinics along the Atlantic Avenue and Boynton Beach Boulevard corridors and the Mission Medical Center in Our Lady Queen of Peace and Caridad Center.

The proposed change in zoning would not further the Goals, Objectives, and Policies of the Plan.

d. Design Minimizes Adverse Impact: *The design is in contravention to established criteria in the Agricultural Reserve Tier.*

“Commercial and mixed uses in the Agricultural Tier shall be located central to the Tier and designed at a neighborhood or community scale in order to be limited to serving the needs of the farm worker community, existing residents, and future residents of the Tier.”

The urban/suburban design and form of the proposed use is not at a neighborhood or community scale and will have an adverse effect on the community lifestyle in the Agricultural Reserve Tier. The visual impact and intensity of the proposed project is in contravention to the Objective to “limiting uses to agriculture and conservation with residential development restricted to low densities and non-residential development limited to uses serving the needs of farmworkers and residents of the Tier.”

e. Design Minimizes Environmental Impact: *This project design would negatively impact the environment.*

The Subject Property did not require preserve land and currently has an approved square footage of 86,744 square feet without preserving or enhancing agriculture and adding to the carbon footprint in the Agricultural Reserve.

The proposed rezoning and development would increase the intensity by 28 % to 120,000 square feet of space thereby stressing the natural resources and sensitive environment of the Agricultural Reserve without giving back to the tier with preserve land.

f. Development Patterns: *The application does not present a logical, orderly, or timely development pattern.*

The development patterns of the Atlantic Avenue corridor include the Delray Marketplace and a mix of residential, neighborhood commercial including restaurants. The industrial land is beginning to be developed with services that benefit the local residents including repair shops and storage, several gas stations, dental and urgent care centers. There is already a hospital serving the Agricultural Reserve minutes away on Boynton Beach Blvd. and 441. Further, the Delray Medical Center, a Trauma 1 hospital, is also minutes away and is well equipped to address all surgical, especially orthopedic, needs.

The proposed rezoning and Class A Conditional Use applications are illogical and not timely; the applicant is too late to propose a hospital in an area already abundantly served by the medical and surgical facilities existing in the Agricultural Reserve and Urban Suburban Tiers.

g. Adequate Public Facilities: *The application does not meet the criteria for adequate public facilities.*

The delay in widening of Atlantic Avenue from Lyons Road to State Road 7/441 is of great concern to the residents of the Agricultural Reserve and further justifies a denial of rezoning for more commercial intensity at this time. Further, the existing CRALLS at the Turnpike and Atlantic Avenue and the delay in widening of the Avenue from east of Lyons to Jog Road until the end of the decade are overwhelming motorists. The rezoning is inappropriate at this time.

h. Changed Conditions or Circumstances: *There are no changed site conditions or circumstances that could justify a zoning change.*

“Subsequent to the completion of the Master Plan (dated October 2000), the Tier has largely been developed as anticipated and the home of 25,000 residents. Most recently, the Agricultural Reserve was the subject of a year-long “Roundtable” process directed by the Board of County Commissioners (BCC) to consider changes to policies in the Tier.”

Staff states that the Tier has largely been developed as anticipated and a few policy changes were made. The subject site benefitted from the changes following the "Roundtable" process to obtain a Commercial designation on the entire 11.15 acre parcel with an approved square footage of 86,744. Raising the FAR above which would be allowed in an MUPD and square footage to 120,000 is a vast departure from the policies of the Tier and should not be considered.

The applicant has not provided an adequate justification for a rezoning to MUPD to allow a hospital with a .35 FAR greater than is allowed in an MUPD in the Agricultural Reserve. Nor has the applicant demonstrated that the current zoning is inappropriate.

Please deny this application.

Thank you.

Sincerely,

Bob Schulbaum

Bob Schulbaum, President

Recipients: Mayor D. Kerner, Vice Mayor R. Weinroth, Commissioners M. Sachs, M. McKinlay, M. Bernard, G. Weiss, & M. Marino, PBC Admin. V. Baker, Assistant Administrator P. Rutter, PZB Exec. Dir. Bulkeley, Deputy PZB Director W. Carroll, Zoning Dir. J. MacGillis

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July 6, 2021

The Honorable Maria Sachs
Palm Beach County Board of County Commissioners
West Palm Beach, FL 33401

Re: Zoning Application for Legent MUPD APP PDD/CA-2020-02083

Dear Commissioner Sachs:

The Zoning Commission's July 1, 2021 vote to approve Legent's Application for a hospital and Emergency Room is of great concern to the Alliance of Delray. This is a new type of facility that was created pursuant to recent state law changes and reminiscent of when the free-standing Emergency Rooms began to emerge. However, there is a big difference between this new proposed Emergency Room and the ones currently built and that is that the free-standing Emergency Rooms that exist today are affiliated with major medical centers and are an extension of their Emergency Departments. The Legent representatives at the Zoning Commission stated that they did not want to run a full service emergency room but it is required by the State of Florida since they are proposing a hospital. Further, they stated that they would send any patients brought by emergency services that they could not manage, such as a "kidney" problem, to one of the other area hospitals. This would present a delay in treatment for our constituents.

Since there is no longer the requirement for a Certificate of Need (CON), a completely new facility is emerging and that is the "micro hospital" or "limited use hospital." There will likely be more applications for these types of facilities representing various specialties. It would be appropriate to include this new type of facility in the Unified Land Development Code (ULDC). Example: Amendment to Art. 4 Chap. B Sec. 4.C.12.(re-number uses to place after "Hospital") "Limited Service Hospital."

The Alliance is committed to protecting our Membership and understands that the new legislation places the burden and responsibility of approving new hospitals on our County Government. How can we assure our constituents that they will continue to receive the quality care in County-approved hospitals that they currently receive from our local hospitals which were previously approved by the State of Florida CON process; in particular, emergency care and access to healthcare for those patients with limited health insurance resources?

The Alliance asks the Board of County Commissioners to address the following questions before considering approval of these limited service hospitals.

- I am 94 years old and use oxygen to assist in my breathing. If I drive myself to this hospital while in respiratory distress, would I be treated in the emergency room?
- Could I expect this emergency room to be open 24/7?
- How many emergency room beds will there be in the facility?
- If I need critical care after arriving, how will I receive that?
- If I have Medicare and/or Medicaid would that be accepted?

- If my only method of payment comes from the Health Care District (HCD) would I be accepted for treatment?
- If I were unable to pay would you still treat me?
- If I were to arrive at the emergency room requiring critical orthopedic medical treatment would I be treated or transferred to another hospital?
- Are there any transfer agreements with the local full service hospitals if I require additional acute care?
- Are there other specialty physicians on staff at this facility, i.e. E.R., Cardio, Gastro, cancer that can treat concurrent conditions that I might arrive to the emergency room with?
- If I call 911/Fire Rescue for an emergency for one of my medical conditions, do they know that this is a limited service hospital emergency room?
- What are the operational details that Fire Rescue would follow to determine if I should be treated at this limited service emergency room or at Bethesda, Delray Medical Center, or other full service hospital?
- How is the public going to know that the emergency room has limited services?
- If a patient mistakenly arrives at this hospital with a medical emergency that is not treated there, how would this be addressed?
- Has the HCD been contacted by the applicant?
- Has PBC Fire Rescue been contacted by the applicant?
- Regarding this facility proposed for the Agricultural Reserve, will the emergency room be prepared to provide services to farm workers?
- Regarding this facility in the Agricultural Reserve, will emergency room services include treatment for pesticide poisoning, chemical burns and other farm-related accidents?

The Alliance would like assurance that Palm Beach County residents receive the required actual medical treatment for emergency medical conditions pursuant to Florida Statute 395.041 (Florida's version of the Federal Emergency Treatment and Labor Act or "anti-dumping" law). Therefore, it would be of benefit to the public for these questions to be addressed for this and any future limited service hospital. If quality data exists for other hospitals that the parent corporation controls, that information should be processed as well and taken into account when considering approval of these emerging healthcare facility options.

Thank you for all the work you and your fellow commissioners do for Palm Beach County. Due to my advanced age and physical condition I am unable to attend public meetings, therefore Executive Vice President Dr. Lori Vinikoor will be attending the July 22, 2021 Zoning meeting.

Sincerely,

Bob Schulbaum

Bob Schulbaum, President
(561)715-1927

Cc: Mayor Kerner; Vice Mayor Weinroth; Commissioners Bernard, Weiss, McKinlay, Marino; County Administrator Baker; Asst. Admin. Rutter; PZB Exec. Dir. Bulkeley; Zoning Dir. MacGillis; Health Care District CEO Davis; Fire Rescue Chief Duren; Fl. Dept. of Health Officer Dr. Alonso

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