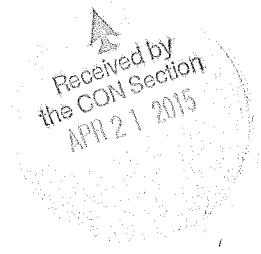


April 10, 2015



Ms. Martha Frisone, Chief
Certification of Need Section
Division of Health Service Regulations
DHHS
809 Ruggles Drive
Raleigh, NC 27603

RE: Public Written Comments
CON ID# E-011009-15 BMA Burke County

The attached Public Written Comments are forwarded for consideration by the CON Project Analyst conducting the respective review. If you have questions regarding these comments, please feel free to contact me.

Respectfully,

A handwritten signature in cursive that reads "William E. Lee".

William E. Lee
Co-Owner SLH Properties, LLC
P.O. Box 3026
Morganton, NC 28680
828-337-9723 (cell)

Public Written Comments
CON Project# E-011009-15
BMA of Burke County
Prepared and Submitted by William Lee
Co-Owner SLH Properties, LLC

Received by
the CON Section
APR 21 2015

Bio Medical Applications of North Carolina, Inc. has filed a Certificate of Need (CON) application seeking to relocate the entire BMA Burke County dialysis facility and add up to six (6) dialysis stations for a total of 31 dialysis stations upon completion of the project. The BMA capital expenditure for this project will be \$2,830,729.

The BMA of Burke County, Inc. CON Application contains factual inaccuracies and does not meet or conform to CON review criteria as explained below:

CON Review Criteria 131 E-183

(a)(4) Where alternative methods of meeting the needs for the proposed program exist, the applicant should demonstrate that the least costly or most effective alternative has been proposed.

(a)(12) Applicants involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons.

In the BMA of Burke County, March 16, 2015 CON application, they stated that "BMA of North Carolina truly doesn't have another alternative" (i.e. building a new expanded facility). This is factually inaccurate and building a new expanded facility does not represent the least costly or most effective alternative as required by the CON review criteria.

Previously in September, 2014, BMA of Burke County had filed a CON Application to build a new and expanded facility of 28 dialysis stations to replace this same facility at 145 West Parker Rd, Morganton, NC. This Application was withdrawn before consideration but in this Application, relevant pages are enclosed, it states that they had "two primary reasons for building a new facility (a) the lease on the existing space is expiring and continuing in place is not an option. The current property cannot be expanded. BMA has a need to add dialysis capacity. This is the appropriate time to apply to relocate the facility. (b) Loss of the lease space notwithstanding the existing location does not have sufficient space for the addition of additional stations..." (p32)

In my Public Written Comments submitted at that time, I stated that both of these primary reasons were based on factual inaccuracies. Namely, that their lease at the time in fact had two 5 year options to renew and that the existing location could in fact be expanded to accommodate at a minimum the requested three additional dialysis stations. Enclosed is a letter that was included with prior written

comments from SLH Properties LLC to Mr. Jim Whichard, Director of Operations, BMA Burke County, reminding Mr. Whichard that during a prior phone call that Mr. Whichard had been informed that the current facility could be expanded and that SLH Properties LLC would appreciate the opportunity to work with BMA of Burke County to provide a suitable expansion. Also, included was a letter from the SLH Properties, LLC architect, Mr. Robert Salsbury AIA, confirming that the current BMA of Burke County Dialysis facility could be sufficiently expanded to meet the expansion needs of BMA of Burke County.

As you can see from the enclosed October 2, 2014 SLH Properties architect letter, there is additional land capacity to expand the current facility for six or more additional dialysis stations and could almost double the size of the current facility to 14000 sq. ft. if necessary. This would allow for the expansion/addition of other dialysis activities (e.g. training for home dialysis patients, additional space for peritoneal dialysis training, support space, etc.). This could be accomplished at a much less cost than building a new 13000 sq. foot facility as proposed at \$2,830,729. In fact it would appear that with the addition of no more than three thousand (3,000) sq. ft. at an estimated cost of \$450,000 - \$600,000, the expanded existing facility could accommodate six additional dialysis stations, home and peritoneal dialysis, training facilities, offices for dietician and social worker as well as a new conference room and support space.

In the current application the primary reason for building a new facility/relocation is "physical plant limitations" (p. 33). With expansion of the existing facility alternative available at a much lower cost than building a new dialysis facility, CON review criteria 131E-183(a)(4) and (a)(12) are not conformed to or met in building a new facility. In addition, the current location is more accessible being very near to exit 105 I-40 and current location is very near the local hospital emergency department should the need arise. Enclosed are google map views of the current facility and location.

The lease of the current space expires Jan 31, 2017 but does offer a multiyear renewal option and we are more than willing to expand lease renewal options further for them. In the request for expedited review by BMA of Burke County, the lease expiration was mentioned but not that a renewal option is available.

For these reasons described above, SLH Properties, LLC respectfully requests that the referenced E-011009-15 CON application be denied. To date, BMA of Burke County has not responded to our offer to work with them to design a suitable less costly expansion of the current facility.

Enclosures:

- Pages from prior CON Application Project E-010330-14 BMA of Burke County
- William Lee's Public Written Comments to CON Project E-010330-14 of BMA of Burke County with attachments
- Google maps of current location 145 West Parker Rd, Morganton, NC

Cc: Bernetta Thorne-Williams
NC Dept. of HHS
Project Analyst-CON Section



**FRESENIUS
MEDICAL CARE**

September 15, 2014



Ms. Martha Frisone, Chief
Certificate of Need Section
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, North Carolina 27603

Re: Notice of Intent to file a Certificate of Need Application / Bio-Medical Applications of North Carolina, Inc. d/b/a BMA of Burke County / Relocate the entire dialysis facility and add three dialysis stations for a facility total of 28 stations upon completion of the project / Burke County

Dear Ms. Frisone:

The purpose of this letter is to notify you that Bio. Medical Applications of North Carolina, Inc. is filing a Certificate of Need Application seeking to relocate the entire BMA Burke County dialysis facility and add three dialysis stations for a total of 28 dialysis stations upon completion of the project.

The BMA capital expenditure for this project will be \$2,585,560.

The application is being filed on September 15, 2014.

If you have any questions, or if I can be of further assistance, please call me.

Sincerely,

Jim Swann
Director of Operations, Certificate of Need

3. **If an existing facility proposes to relocate some of its certified dialysis stations,**
 - (a) **demonstrate the necessity for relocation of stations, such as, physical inadequacy of existing facility or geographic accessibility of services;**
 - (b) **demonstrate that the number of stations to be relocated are needed by the projected number of patients to be served at the new location;**
 - (c) **demonstrate that the needs of the dialysis patients continuing to utilize the existing facility will be adequately met with the number of stations remaining at the existing facility; and**
 - (d) **document that the stations to be relocated are needed at the proposed site as opposed to another area of the county.**

Not applicable. This is an application to relocate the entire BMA Burke County dialysis facility and add three dialysis stations via Facility Need Methodology.

4. **If an existing facility proposes to replace the facility within the same county by relocating all stations document the need for replacing the facility. If the replacement facility will be located in another area of the county, document the need for a dialysis facility in the proposed new location.**

BMA is proposing to relocate and expand the existing BMA Burke County dialysis facility. The sites chosen as primary and secondary sites are within 3 miles of the existing location. There are two primary reasons for this application.



- a. The lease on the existing space is expiring and continuing in place is not an option. The current property can not be expanded. BMA has need to add dialysis capacity. Thus, this is the appropriate time to apply to relocate the facility.



- b. Loss of the leased space notwithstanding, the existing location does not offer sufficient space for the addition of additional stations. The Facility Need Methodology allows BMA to apply for three additional stations. Utilization of the facility clearly warrants additional stations. BMA must relocate in order to expand capacity.

5. **If an existing facility is applying to relocate dialysis stations to another county,**
 - a) **demonstrate that the proposal will not result in a deficit in the number of dialysis stations in the county that will be losing stations as a result of the proposed project, as reflected in the most recent Semiannual Dialysis Report.**
 - b) **demonstrate that the proposal will not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Semiannual Dialysis Report.**

Not applicable. This is an application to relocate the entire BMA Burke County dialysis facility and add three dialysis stations via Facility Need Methodology.

6. **In the case of a reduction or elimination of a service, including the relocation of a facility or a service, demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.**

Not applicable. This is an application to relocate the entire BMA Burke County dialysis facility and add three dialysis stations via Facility Need Methodology.

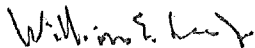
October 3, 2014

Ms. Martha Frisone, Chief
Certification of Need Section
Division of Health Service Regulations
DHHS
809 Ruggles Drive
Raleigh, NC 27603

RE: Public Written Comments
CON ID# E-010330-14 BMA Burke County

The attached Public Written Comments are forwarded for consideration by the CON Project Analyst conducting the respective review. If you have questions regarding these comments, please feel free to contact me.

Respectfully,



William E. Lee
Co-Owner SLH Properties, LLC
P.O. Box 3026
Morganton, NC 28680

Public Written Comments
CON Project# E-010330-14
BMA of Burke County
Prepared and Submitted by William Lee
Co-Owner SLH Properties, LLC

Bio Medical Applications of North Carolina, Inc. has filed a Certificate of Need application seeking to relocate the entire BMA Burke County dialysis facility and add three (3) dialysis stations for a total of 28 dialysis stations upon completion of the project. The BMA capital expenditure for this project will be \$2,585,500.

The BMA of Burke County, Inc. CON Application contains factual inaccuracies and does not meet or conform to CON review criteria as explained below:

CON Review Criteria 131 E-183

(a)(4) Where alternative methods of meeting the needs for the proposed program exist, the applicant should demonstrate that the least costly or most effective alternative has been proposed.

(a)(12) Applicants involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons.

In the BMA of Burke County CON application, they stated that there are "two primary reasons for this application. (a) The lease on the existing space is expiring and continuing in place is not an option. The current property cannot be expanded. BMA has a need to add dialysis capacity. Thus, this is the appropriate time to apply to relocate the facility. (b) Loss of the lease space notwithstanding, the existing location does not have sufficient space for the addition of additional stations..."

These two primary reasons for facility relocation are based on factual inaccuracies, namely,

1. The BMA of Burke County Lease does not expire until 2/15 and the lease offers two 5 year renewal options.
2. The existing location can be expanded to accommodate at a minimum the requested 3 additional dialysis stations.

Enclosed is a letter from Kim Smith, Co-Owner of SLH Properties, LLC to Mr. Jim Whichard, Director of Operations, BMA of Burke County reminding Mr. Whichard that MS Smith during a Sept 22, 2014 phone call expressed that the BMA of Burke County, can be expanded and that SLH Properties LLC would in fact appreciate the opportunity to work with BMA of Burke County to provide a suitable expansion.

Enclosed is a letter from the SLH Properties, LLC Architect confirming that the current BMA of Burke County dialysis facility, in fact can be sufficiently expanded to meet the expansion needs of BMA of Burke County at much less cost than the \$2,585,560 for construction of a new facility.

With expansion of the existing facility alternative available at a much lower cost than relocating the entire dialysis facility, CON review criteria 131 E-183 (a)(4) & (a) (12) are not conformed to or met relocating the entire facility.

With the two primary reasons for BMA of Burke County asking to relocate the facility resolved, SLH Properties, LLC welcomes the opportunity to work with BMA of Burke County to address their existing facility expansion needs at a significantly lower capital cost than relocating the entire facility.

Summary

For the reasons described above, SLH Properties, LLC respectfully requests that the referenced CON application be denied.

Enclosures:

- Oct. 1, 2014 letter by Kim Smith to Jim Whichard BMA of Burke County
- Letter of Robert Salisbury, Architect, SLH Properties, LLC

Cc: Julie Halatek
NC Dept of HHS
Project Analyst-CON Section

Mrs. Kim Ervin Smith
SLH Properties, LLC
PO Box 3026
Morganton, NC 28680

Mr. Jim Whichard, Director of Operations Hickory Area for Fresenius Medical Care
BMA of Burke County
145 West Parker Road
Morganton, NC 28655

October 1, 2014

Dear Jim,

My partner and I have reviewed the Certificate of Need that Fresenius filed on Sept 15, 2014 with the State of NC regarding the proposed relocation of your Morganton facility.

As the owners of the current facility referenced in your Certificate of Need, we are compelled to address factual inaccuracies in the "two primary reasons" that are given as justification for the CON application. In order to explain our perspective, we will also be providing written comments to the CON application.

1. "The lease on the existing space is expiring and continuing in that space is not an option. The current property can not be expanded."
2. "...the existing location does not offer sufficient space for the addition of additional stations....BMA must relocate in order to expand capacity."

The current lease that is in effect for the current Morganton location expires on February 2015. The lease has (2) 5 year options to renew. Not only is there an option to renew, but there is a willingness on the part of your current lessor to renew the lease.

In addition, the statement about an inability to expand the current property is inaccurate. On December 13, 2013, SLH Properties purchased property at 151 West Parker Road, adjacent to the current facility at 145 West Parker Road. The reason for this purchase was to be able to allow for future expansion of medical offices or to add additional parking should the need arise.

Only after contacting you by phone on August 22 to inquire why Fresenius was requesting an 18 month lease extension in lieu of the 5 year option set forth in the lease, did we learn of the desire to increase the Morganton facility size to 14,000-15,000 square feet. As you may recall, you told me that you had assumed that there was no way to expand the facility. As a result, this "reason" cited in the CON application is based on an assumption rather than

on fact. Not only is SLH Properties capable of expanding the existing facility, but we would appreciate the opportunity to work with Fresenius to provide a suitable expansion.

The CON application states that the expansion would be cost effective, but it is my belief that Fresenius has neither proposed nor explored the least costly or most effective alternative to relocating the facility. That reasonable alternative would be to expand Fresenius' current facility in order to meet the dialysis needs of the residents of Burke County.

While I have an interest in Fresenius continuing to operate its current location, I am also a lifelong resident of Morganton and a healthcare professional (physical therapist). As such, I have a strong interest in the provision of quality health services in this community, and in their provision in a reasonable and cost effective way. Should Fresenius choose to change its present course and explore the option of expanding its existing facility, SLH Properties will be happy work with them.

Sincerely,



Kim Ervin Smith, Co-owner and Manager
SLH Properties, LLC

cc: Jim Swann, Director of Operations, Certificate of Need
John Keller, OakPoint Advisors, LLC



Robert B. Salsbury Architect, P.A.
ARCHITECT • PLANNER

36 H. H. Glenn Street Morganton, North Carolina 28650 Ph: 828.337.7794 rbsalsbury@earthlink.net

October 2, 2014

Mrs. Kim Smith
P.O. Box 3026
Morganton, NC 28655

REF: Building at 145 West Parker Road – Dialysis Clinic

Dear Kim:

I talked with Lee Anderson, the Morganton planning and zoning official, concerning the existing building and property at 145 West Parker Rd. which houses the dialysis clinic. The setbacks for that property are 20 foot front and rear setbacks and 10 foot side setbacks.

The original 6,430 sq. ft. dialysis clinic had 16 treatment stations. The addition we made in 2004 added 1,080 sq. ft. with 10 additional treatment stations.

The available property that you have for expansion of this facility is a little over 2.6 acres. Adding an additional three treatment stations could be accomplished with minimum impact to the existing facility or site. As a matter of fact, an additional 1,080 sq. ft. addition similar to the previous addition would almost make more sense architecturally. With increased numbers of treatment stations, the water treatment and mechanical area could be doubled if required. These additions could be made and still maintain the vehicular access around the building as it currently exists.

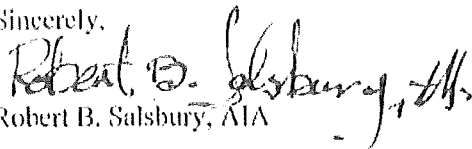
If additional offices and staff areas are needed, there would be several options for expansion. With the property that you have available, the dialysis facility could be expanded to 14,000+ square feet and still have appropriate circulation and adequate parking.

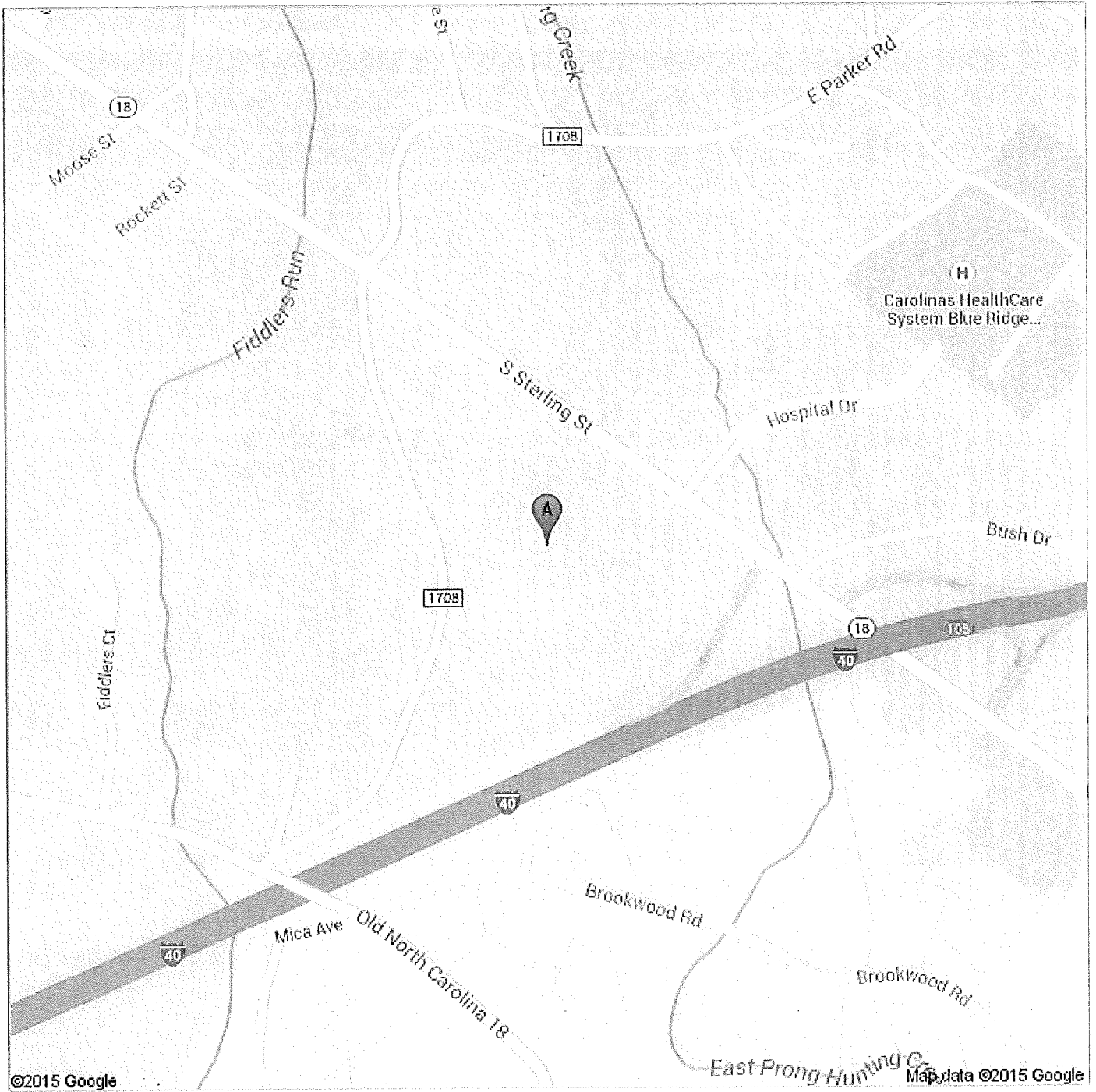
I would think that it would be more cost-effective to expand the current facility than to build a new facility because so much of the specialized infrastructure (plumbing, water treatment, electrical) is already available. I would estimate that a new 14,000+ sq. ft. facility would cost somewhere between \$180 and \$200 per square foot if constructed today. This budget number would exclude the cost of property and site development. Expansion to the existing facility would probably be in the neighborhood of \$140 to \$160 per square foot.

I know you contacted me back on August 22, 2014 to talk about possible expansion to this facility. Expansion here is certainly feasible, but we would need to develop a concise program to meet the needs of the tenant before developing any conceptual expansion plans.

Please don't hesitate to give me a call if you want to discuss this project further. I'll look forward to working with you on another project.

Sincerely,


Robert B. Salsbury, AIA



A. **Fresenius Medical Care Burke County**
145 West Parker Road, Morganton, NC
(828) 439-8489

