

Code Amendment Justification Statement re Ambulatory Surgical Facilities

Applicant: CCDV Holdings, LLC
Date: January 25, 2024

A. Introduction and Summary of Request

CCDV Holdings, LLC (“Applicant”), through undersigned counsel, hereby submits this application to amend the City of Pompano Beach Zoning Code (“Code”) to more reasonably accommodate the establishment of new surgery centers along the City’s major business corridors. More specifically, this application seeks to amend Section 155.4209.B.3.a of the Code to allow for ambulatory surgical facilities on properties located within 500 feet of residentially zoned properties, provided the property is zoned B-3, the surgery center obtains special exception approval and is under 5,000 square feet. Currently, the Code categorically prohibits surgery centers from locating within 500 feet of single family or two-family zoning districts, regardless of size of the facility or type of operation. This code amendment should be approved because surgery centers are different from other specialty medical facilities, do not have negative impacts on residential areas, can provide critical, cost-effective healthcare services to the Pompano Beach community, and residential neighbors of the facility in question broadly support the proposed use¹.

The precise language of the proposed code amendment is provided below with red/underlined text:

155.4209. INSTITUTIONAL: HEALTH CARE USES

B. Specialty Medical Facility

3. Standards

A specialty medical facility shall comply with the following standards:

- a. Separation from Residential Uses. The facility, other than an ambulatory surgical facility less than 5,000 sq ft gfa, shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.
- b. Overnight Treatment. Overnight treatment is prohibited.
- c. Hours of Operations. The facility shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.

¹ Please see enclosed letters of support from neighbors of the facility.

B. Background

Dane C. Pohlman, D.O., owns and operates Pohlman Pain Associates, an interventional pain medicine, physical medicine & rehabilitation clinic with locations in Coral Springs and Delray Beach. Dr. Pohlman's medical specialty has evolved dramatically over the past decade with the growing demand for options outside of opioid medication or large surgeries to treat smaller musculoskeletal, nerve, and other orthopedic conditions. Ambulatory surgical facilities provide quick and efficient access to minimally invasive outpatient procedures to treat a variety of orthopedic conditions and help patients address various nerve, muscle, and orthopedic issues without resort to pain medications. To the Applicant's knowledge, there is not a similar facility in Pompano Beach or the surrounding area.

In light of there not being an option for this critical healthcare service in the area, Applicant, an entity affiliated with Pohlman Pain Associates, purchased an existing, vacant office building at 1347 East Sample Road with the intent to open a medical office and small surgical center. Unfortunately, Applicant discovered after purchasing the property that the Code only permits ambulatory surgical centers in business zoning districts if they obtain special exception approval and are over 500 feet from residentially zoned areas. In this case, the office building is less than 500 feet from residential areas. Applicant applied to the Zoning Board of Appeals for the special exception and the variance from the 500-foot separation requirement. At the hearing, the ZBA approved the special exception and expressed their support for the use and understanding of the need. However, the Board denied the variance as simply not meeting the requirements for a variance. Therefore, Applicant is pursuing this amendment to the Code.

C. Benefits of Ambulatory Surgical Facilities

Ambulatory Surgical Facilities, known commonly as Ambulatory Surgery Centers or ASCs, are modern free-standing, outpatient health care facilities focused on providing same-day surgical care, including diagnostic and preventive procedures. ASCs are designed to help patients receive quality care outside of the traditional hospital setting.

ASCs have been a popular alternative to inpatient hospital settings. Over the last decade, the number of surgical procedures performed in ASCs has increased significantly as ASCs performed nearly 60% of outpatient procedures in 2019, compared to 48% in 2010². Common types of ambulatory surgical procedures include, but are not limited to, cataract surgery, tonsillectomy, hernia repair, upper GI endoscopy and biopsy, colonoscopy, lumbar/sacral injections, arthroscopic surgery for joint repair, and some cosmetic surgeries.

The below examines benefits that ASCs may offer a community.

Cost-Effective

2 <https://finance.yahoo.com/news/ambulatory-surgical-center-market-expected-154000848.html>

ASCs are generally less expensive than hospital surgical procedures, making them a cost-effective option³. This is in part because outpatient procedures generally result in reduced procedure time and do not require additional costs associated with overnight hospital stays such as ward charges, meals, nursing care, and some supplies. Outpatient procedures performed in an ASC can cost between one half and two-thirds less than the same procedure being performed in the hospital.

Convenient and Efficient

ASCs offer patients the convenience of scheduling same-day surgeries, making it easier for them to fit the procedure into their busy schedules. ASCs are typically more efficient from a process perspective than traditional hospitals, with shorter wait times, less paperwork, and streamlined procedures. In an ASC, it takes far less time to prepare an operating room than in a traditional hospital setting. This allows physicians to treat more patients than they could in a hospital in the same amount of time.

High-Quality Care

Excellent outcomes are associated with ASCs. Like hospitals, ASCs must comply with a wide range of laws, rules and regulations. A 2015 report found that the opening of an ASC in a health care market successfully offloaded surgery from the hospital without compromising quality, i.e. resulted in a decline in hospital-based outpatient surgery without increasing mortality or admission⁴.

Additionally, some ASCs focus on one type of procedure, allowing them to be equipped with specialized, state-of-the-art technology and extremely qualified personnel that deliver high-quality care to patients for specific procedures.

Positive Impacts on Surrounding Areas and Neighborhoods

Research indicates ASCs do not adversely impact neighboring properties or areas. They have standard business hours without late night hours, operate their facilities entirely indoors, and bring high paying jobs for doctors, nurses, and staff. ASCs generate an average amount of waste and are required by law to dispose of medical waste with a licensed waste disposal company. Based on code research of other cities in the area, it is apparent ASCs do not negatively affect residential areas. For example, Fort Lauderdale, Deerfield Beach, Coconut Creek, and Coral Springs liberally permit ASCs in business-zoned areas, regardless of proximity to residential areas.

D. Code Criteria Justification

³ <https://www.ascassociation.org/asca/about-ascs/savings/overview>

⁴ Hollenbeck BK, Dunn RL, Suskind AM, Strobe SA, Zhang Y, Hollingsworth JM. Ambulatory Surgery Centers and Their Intended Effects on Outpatient Surgery. Health Serv Res. 2015 Oct;50(5):1491-507. doi: 10.1111/1475-6773.12278. Epub 2015 Jan 22. PMID: 25645136; PMCID: PMC4600358.

The Applicant hereby requests a text amendment to Zoning Code (“Code”) Section 155.4209.B.3.a regarding the specific use regulations of specialty medical facilities to alter the distance separation requirement to allow for ASCs of less than 5,000 square feet of gross floor area to be located within 500 feet from single-family and two-family zoning districts within the City of Pompano Beach (“City”). Per Section 155.2402.C of the Code, in determining whether to adopt or deny the proposed amendment, the City Commission shall weigh the relevance of and consider whether and the extent to which the proposed amendment addresses the following review criteria. Each of the criteria are listed below in **bold** with Applicant’s justification below each in *italics*.

1. Is consistent with the comprehensive plan;

The proposed text amendment is consistent with the following goals, policies, and objectives of the City’s Comprehensive Plan.

Future Land Use Element Policy 01.01.12

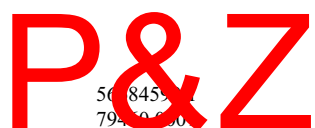
The City’s Future Land Use Map will be in conformance with the County’s Land Use Plan and will implement the County’s regional vision including provision of essential public services and facilities, enhanced sustainability and livability and give priority to protecting public beach access sites.

The proposed text amendment will allow for an essential modern medical use to be located closer to the communities they serve, while limiting the size of the use to lessen any impacts and maintain compatibility with the areas they are permitted in. Allowing for ASC uses of a limited size closer to single-family and two-family zoning districts will provide the community with efficient access to minimally invasive outpatient procedures to treat a variety of orthopedic conditions.

Future Land Use Element Policy 01.03.06

Consider density and intensity revisions with an emphasis on minimal negative impacts to existing residential areas, particularly single-family areas.

The text amendment as proposed is consistent with this policy by imposing a limitation on the size of the specific ASC use it intends to allow nearby single-family and two-family residential areas. Based on the proposed size limitation of the use and the Applicant’s experience operating similar facilities, the proposed use will have minor impacts on public facilities. The ASC use would not impact surrounding properties with any odors, noises, glare, or vibration impacts associated with refuse collection, service delivery, parking and loading, signs, or lighting. The proposed use also will not generate more traffic than the other office and retail uses located in similar areas. Furthermore, operations within ASCs occur indoors, and the machinery does not create loud noises or odors. ASCs of the proposed size would also not generate a significant amount of garbage or waste. Additionally, sites within the B-3 district will continue to be required



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to comply with development standards outlined in Article 5 of the City's Land Development Regulations, which include, but are not limited to, setback, screening, exterior lighting, landscaping, and design standards.

Future Land Use Element Policy 01.03.08

Establish criteria to protect residential areas and other land uses that are adjacent to industrial and commercial areas from excessive, odors, traffic and parking impacts.

Similar to the above, the proposed text amendment is consistent with and furthers the intent of this policy by establishing a regulation for the size of the specific ASC use it intends to allow. The ASC use would not impact surrounding properties with any odors, noises, glare, or vibration impacts associated with refuse collection, service delivery, parking and loading, signs, or lighting. Operations within ASCs occur indoors, and the machinery does not create loud noises or odors. The proposed use will not generate more traffic than the other office and retail uses located in similar areas. ASCs of the proposed size would also not generate a significant amount of garbage or waste.

Future Land Use Element Policy 01.04.03

Except for schools, regional and community facilities shall be located close to major traffic corridors and mass transit routes adequate to carry the volume of traffic generated by such facilities.

Approval of the proposed text amendment application would be consistent with this policy by allowing for a specific and essential medical use of a limited size to be located in more areas within the City along major traffic corridors. Many areas where the City's zoning and land use designations permit ASCs are located along major roads which are adjacent to or nearby residential uses. Additionally, while this policy references the amount of traffic associated with such facilities, the proposed text amendment would only allow ASCs of a very limited size, which would limit traffic impacts. For example, based on the Applicant's experience, this size of ASC would be anticipated to treat approximately 30 people per day, with limited traffic.

2. Does not conflict with any provision of this Code or the Code of Ordinances;

The proposed text amendment does not conflict with the Code and is written in a way to further the intent of the specific use regulations associated with specialty medical facility uses. The Code defines a specialty medical facility as "...a facility, regardless of size, offering specialized treatment and services including, but not limited to, ambulatory surgical facilities, dialysis centers, substance abuse treatment facilities, outpatient rehabilitation facilities, birthing facilities, and urgent care facilities (not including a 24-hour urgent care facility). This use also includes medical or dental offices which are larger than 5,000 sq ft gfa." The Code also requires for specialty medical facilities to comply with the following regulations:

- a. *Separation from Residential Uses. The facility shall be at least 500 feet from a Single Family (RS) or Two-Family (RD) Zoning District.*
- b. *Overnight Treatment. Overnight treatment is prohibited.*
- c. *Hours of Operations. The facility shall not offer treatment or similar services between the hours of 10:00 p.m. and 7:00 a.m.*

These requirements are intended to keep the large range of medical uses within the specialty medical facility use classification from being located too close to residential neighborhoods where some may have significant impacts. The amendment proposes to only allow for a very limited size of ASC to be located within the residential separation requirement. Other specialty medical facilities will still be required to comply with the distance separation, and all specialty medical facilities will continue to be required to prohibit overnight treatment and have specific hours of operations.

3. Is required by changed conditions;

The first ASC opened in 1970, and the number of ambulatory surgical centers grew to 5,400 in 2015⁵. While the number of these types of facilities continues to grow, the Applicant's medical practice has continued to evolve. Over the last decade, the Applicant has seen an increased demand for options outside of opioid medication or large surgeries to treat smaller musculoskeletal and other orthopedic conditions. ASCs provide quick and efficient access to minimally invasive outpatient procedures to treat a variety of orthopedic conditions. Outpatient and preventative procedures that used to be hospital-based can now be achieved in much smaller facilities that have minimal impacts on the community.

4. Addresses a demonstrated community need;

As mentioned above, the Applicant has seen an increased demand for treatment options other than opioid medication or large surgeries for a variety of orthopedic conditions. While the City's specialty medical facility definition includes the ASC use, it contemplates this and other uses "...regardless of size...". ASCs do not require the type of space that other specialty medical facilities may need and do not have the same impacts that other medical uses within the specialty medical facility category may have.

The proposed text amendment will allow for an essential modern medical use to be located closer to the communities they serve, while imposing a limit on the size of the facilities to lessen any impacts and maintain compatibility with the areas they are permitted in. Allowing for smaller ASC uses to be located closer to single-family and two-family zoning districts will provide local communities with efficient access to minimally invasive outpatient procedures to treat a variety of orthopedic conditions.

⁵ <https://www.ascassociation.org/50yearsofascstimeline>

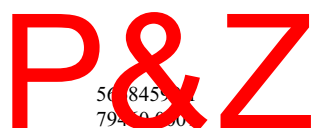
5. Is consistent with the purpose and intent of the zoning districts in this Code, or would improve compatibility among uses and would ensure efficient development within the city;

Specialty medical facilities are permitted within the City's B-4, I-1, OIP, CF, PCD, LAC, and PD-I zoning districts, and they are permitted with special exception approval within the B-3 zoning district. The proposed amendment would not change the zoning districts where the uses are currently permitted. Of the health care uses with specific use regulations in the Code, specialty medical facilities, urgent care facilities, specialty hospitals, and general hospitals all include separation from residential requirements, while medical offices, medical or dental labs, and nursing home facilities are not required to be separated from residential zoning districts. The intent of the Code is to separate higher intensity and larger health care uses that may have significant impacts on the surrounding area to be separated from residential uses. The proposed amendment is consistent with this intent and would only allow an ASC of a very limited size to be located closer to residential uses. Additionally, while medical offices are not required to be separated from residential uses, when medical offices are greater than 5,000 sq. ft. of gross floor area, they are considered specialty medical facilities per the Code and are required to be separated from residential uses. The size limitation of less than 5,000 sq. ft. of gross floor area proposed in the code amendment is compatible with the other health care use regulations and will ensure efficient and consistent development within the City.

6. Would result in a logical and orderly development pattern; and

The proposed amendment is consistent with the logic and orderly development pattern created by the regulations associated with health care uses. The amendment would allow for only ASCs of a limited size to be located closer to single-family and two-family residential zoning districts, where other health care uses such as medical offices, medical or dental labs, and nursing home facilities are also permitted. The language of the proposed amendment imposes a very limited size restriction on any ASCs that would be located within the residential separation regulation, which would maintain consistency with development in the City by not allowing higher intensity health care uses to be located too closely to residential uses.

Additionally, several other municipalities within Broward County permit high intensity health care uses within their business districts. For example, the City of Fort Lauderdale permits medical clinics and hospitals as of right in all of its business zoning districts. The City of Coral Springs permits medical clinics up to 20,000 sq. ft. in all of its business zoning districts. The City of Deerfield Beach permits medical clinics and medical offices in all of its business zoning districts. The City of Pembroke Pines permits medical offices and clinics as of right in all business districts, PCDs and PMUDs. The City of Coconut Creek also permits ASCs in its B-3 and B-4 zoning districts. The City's specific use regulations associated with health care uses are generally consistent with this, as most



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health care uses in the City are either permitted by right or by special exception within the B-3 or B-4 zoning districts. The proposed text amendment would not change this, and only proposes to allow for a lower impact type of a specialty medical facility of a limited size to be able to be developed in areas where the City's zoning and land use regulations permit such a use.

7. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

By limiting the size of the ASCs that the text amendment proposes to allow closer to residential uses, the approval would not result in significant adverse impacts to the local areas where they may be permitted. ASCs of the proposed size would also not generate a significant amount of garbage or waste. Based on the proposed size limitation of the use and the Applicant's experience operating similar facilities, the proposed use will have minor impacts on public facilities. Operations within ASCs occur indoors, and the machinery does not create loud noises or odors that might impact surrounding properties. The proposed use also will not generate more traffic than the other office and retail uses located in similar areas.

Based on the foregoing, Applicant respectfully requests approval of the proposed code amendment.

Respectfully submitted,



Matthew H. Scott, Esq.
For the Firm