



STATE OF ILLINOIS  
**HEALTH FACILITIES AND SERVICES REVIEW BOARD**

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 • FAX: (217) 785-4111

<b>DOCKET ITEM NUMBER:</b> E-01	<b>BOARD MEETING:</b> October 26, 2021	<b>PROJECT NUMBER:</b> 19-057
<b>BUSINESS ITEM:</b> Declaratory Ruling Request		
<b>REQUESTING ENTITY:</b> OSF Saint Francis Medical Center Comprehensive Cancer Center		

**STATE BOARD STAFF REPORT**  
**DECLARATORY RULING REQUEST**

**I. Request for Declaratory Ruling**

OSF Saint Francis Medical Center, Peoria [the Permit Holder] has submitted a request for a declaratory ruling from the State Board. The Permit Holder is asking if an increase in the total gross square footage above 5% of the total approved gross square footage invalidates the permit and would require the submittal of a new Application for Permit. The Permit Holder is requesting a ruling from the State Board.

**II. Issue**

OSF Saint Francis Medical Center was approved to establish a comprehensive care center in 477,000 gross square footage (“GSF”) of space at a cost of \$237,063,813 [Permit #19-057]. The Permit Holder notified the State Board the project’s total gross square footage would be increasing to 552,335 GSF an increase of 75,335 GSF or approximately 16% above the approved permit amount. In this case 73% [54,580 GSF] of the increase in gross square footage is due to an increase in the parking garage structure.

A parking garage structure is specifically identified in statute as a non-clinical area and is not subject to State Board Review. According to the permit holder the parking garage structure was included in the project’s total gross square footage because the project was being constructed under one contract. Additionally, the Permit Holder stated at the time of submittal of the Application for Permit and approval of the certificate of need application the gross square footage was based on a conceptional design. According to the Permit Holder when the architectural team began drafting the preliminary drawings for the Comprehensive Cancer Center, it identified certain non-clinical areas, that were not included in the certification of need application. The permit holder believes this increase in the gross square footage does not require State Board approval. At this time the permit holder believes the increase in the gross square footage would not result in an increase in the total project costs.

TABLE ONE						
Summary of Changes to Cost Space Chart						
	Original Permit	Revised	Original Permit GSF	Revised Permit GSF	Difference GSF	% Difference
Total Reviewable	\$86,495,666	\$86,495,666	50,454	48,670	-1,784	-3.54%
Total Non-Reviewable	\$150,568,299	\$150,568,299	426,546	503,665	+77,119	18.08%
Total	\$237,063,965	\$237,063,965	477,000	552,335	+75,335	15.79%

### III. Discussion

The determination of what is considered clinical (reviewable) and non-clinical (non-reviewable) are made by the Applicant upon submittal of the Application for Permit. The State Board Alteration rules do not distinguish between clinical [reviewable] and nonclinical [non-reviewable] space. The Permit Holder argues that the alteration rules are only applicable to clinical or reviewable space and not non-clinical or non-reviewable space. However, when the State Board approves a project the entire cost of the project and the total gross square footage is submitted to the Department of Public Health for licensure approval. The Department does not distinguish between clinical (reviewable) and non-clinical space (non-reviewable).

State Board alteration rules require permit holders to report **all** alterations to the State Board before executing the alteration. Some proposed alterations require State Board approval, and some are prohibited. Proposed alterations that are not cited under these two categories require only written notification to State Board prior to execution.

State Board Alteration Rules prohibit an alteration that increases the project's gross square footage **that exceeds 5% of the project's approved gross square footage**, unless that increase is required or mandated by local, State or federal building or life safety requirements that were not in effect at the time of permit issuance. [77 ILAC 1130.750 (c) (2)].

The Illinois Health Facilities Planning Act states project alterations shall not increase the total approved permit amount by more than the limit set forth under the Board's rules (20 ILCS 3960/5).

*Non-clinical Service Area" means an area for the benefit of the patients, visitors, staff or employees of a health care facility and not directly related to the diagnosis, treatment, or rehabilitation of persons receiving services from the health care facility. "Non-clinical service areas" include, but are not limited to, chapels; gift shops; newsstands; computer systems; tunnels, walkways, and elevators; telephone systems; projects to comply with life safety codes; educational facilities; student housing; patient, employee, staff, and visitor dining areas; administration and volunteer offices; modernization of structural components (such as roof replacement and masonry work); boiler repair or replacement;*

*vehicle maintenance and storage facilities; **parking facilities**; mechanical systems for heating, ventilation, and air conditioning; loading docks; and repair or replacement of carpeting, tile, wall coverings, window coverings or treatments, or furniture. Solely for the purpose of this definition, "non-clinical service area" does not include health and fitness centers. [20 ILCS 3960/3].*

**IV. Possible State Board Action**

1. The State Board can accept the Permit Holder's explanation and determine an Alteration to the Permit is not needed and the proposed increase in gross square footage only needed to be reported to the State Board.
2. The State Board can accept the Permit Holder's explanation and allow the Alteration of Permit to be reviewed and approved by the State Board. At this time, an Alteration to the Permit has not been submitted.
3. The State Board can determine the increase in gross square footage invalidates the permit and requires the Permit Holder to resubmit the Application for Permit which would require a halt in construction of the Comprehensive Cancer Center and an additional fee of \$100,000.

**State Board Staff Notes:** A Declaratory Ruling applies to the circumstance or project stated in the declaratory ruling request and the State Board's decision does not apply to any other circumstance or project.

**TABLE TWO**  
**Revised Cost Space Chart**

Reviewable	Reviewable Costs				Reviewable Gross Square Footage			
	Original	Revised	Difference	% Difference	Original	Revised	Difference	% Difference
Infusion	\$19,222,973	\$19,222,973	0	0.00%	11,213	10,754	-459	-4.09%
Multi-Disciplinary	\$9,236,902	\$9,236,902	0	0.00%	5,388	5,167	-221	-4.10%
Imaging	\$11,156,971	\$11,156,971	0	0.00%	6,508	6,509	1	0.02%
Lab/Blood Draw	\$2,732,669	\$2,732,669	0	0.00%	1,594	1,594	0	0.00%
Proton & Brach.	\$44,146,151	\$44,146,151	0	0.00%	25,751	24,646	-1,105	-4.29%
<b>Total Reviewable</b>	<b>\$86,495,666</b>	<b>\$86,495,666</b>	<b>0</b>	<b>0.00%</b>	<b>50,454</b>	<b>48,670</b>	<b>-1,784</b>	<b>-3.54%</b>
Non-Reviewable	Non-Reviewable Costs				Non-Reviewable Gross Square Footage			
Infusion	\$3,485,104	\$2,684,657	-\$800,447	-22.97%	9,873	9,468	-405	-4.10%
Multi-Disciplinary	\$2,737,111	\$2,108,483	-\$628,628	-22.97%	7,754	7,436	-318	-4.10%
Cancer Conferences	\$1,937,581	\$1,556,409	-\$381,172	-19.67%	5,489	5,489	0	0.00%
P/A Support	\$4,352,762	\$3,496,746	-\$856,016	-19.67%	12,331	12,332	1	0.01%
Imaging	\$2,541,553	\$2,041,848	-\$499,705	-19.66%	7,200	7,201	1	0.01%
Proton/Brachytherapy	\$4,834,245	\$3,716,498	-\$1,117,747	-23.12%	13,695	13,107	-588	-4.29%
Shared Services	\$1,192,059	\$916,436	-\$275,623	-23.12%	3,377	3,232	-145	-4.29%
Physician Offices (Shell)	\$11,860,580	\$8,843,944	-\$3,016,636	-25.43%	33,600	31,190	-2,410	-7.17%
Research (Shell)	\$11,860,580	\$8,832,602	-\$3,027,978	-25.53%	33,600	31,150	-2,450	-7.29%
Contingency	\$927,667	\$0	-\$927,667	-100.00%	2,627	0	-2,627	100.00%
Parking Deck	\$104,839,057	\$103,690,726	-\$1,148,331	-1.10%	297,000	351,580	54,580	18.38%
Penthouse	\$0	\$4,827,449	\$4,827,449	100.00%	0	17,025	17,025	100.00%
Bridge	\$0	\$2,300,000	\$2,300,000	100.00%	0	2,260	2,260	100.00%
Tunnel	\$0	\$3,400,000	\$3,400,000	100.00%	0	4,605	4,605	100.00%
Tunnel Mezzanine	\$0	\$1,711,228	\$1,711,228	100.00%	0	6,035	6,035	100.00%
Egress Mezzanine	\$0	\$440,921	\$440,921	100.00%	0	1,555	1,555	100.00%
<b>Total Non-Reviewable</b>	<b>\$150,567,947</b>	<b>\$150,567,947</b>	<b>\$0</b>	<b>0.00%</b>	<b>426,546</b>	<b>503,665</b>	<b>77,119</b>	<b>18.08%</b>
<b>Total</b>	<b>\$237,063,613</b>	<b>\$237,063,613</b>	<b>\$0</b>	<b>0.00%</b>	<b>477,000</b>	<b>552,335</b>	<b>75,335</b>	<b>15.79%</b>

## **Applicable Rules**

A. 77 Ill. Adm. Code 1130.810 (Declaratory Rulings) states:

“The State Board shall render determinations on various matters relating to permits and the applicability of the statute and regulations. Requests for determination shall be made in writing . . . The following matters shall be subject to declaratory rulings by the State Board:

- I. reviewability of a proposed transaction.
- II. corrections to the facility inventories utilized by the State Board.
- III. recognition that a particular service was in existence prior to permit requirements.
- IV. amount of fees required.
- V. project classification as substantive or non-substantive; and
- VI. applicability of rules.

### **Section 1130.750 - Alteration of Post-Permit Projects**

a) Applicability

- 1) Permit holders shall report all alterations to HFSRB before executing the alteration. Some proposed alterations require HFSRB approval and some are prohibited. Proposed alterations that are not cited under these two categories require only written notification to HFSRB prior to execution.
- 2) Any change after the permit is issued may constitute an alteration. Permit holders shall report all alterations to HFSRB before the alteration is executed.
- 3) The alteration requirements are applicable only to projects with open permits (approved projects that are not yet completed).
- 4) Alteration provisions are valid only for the projects defined and approved in the permit.
- 5) A project with a permit can be altered any time between the date of permit issuance and project completion.

- 6) All alterations requiring HFSRB action shall be reviewed and approved on a cumulative basis. More than one alteration can be reviewed and approved during the life of a project; however, the limits on alterations shall be applied cumulatively for a single permit.
- b) Limits on Allowable Alterations Requiring HFSRB Approval  
The cumulative effect of alterations to a project shall not exceed the following:
- 1) a change in the approved number of beds or stations, provided that the change would not independently require a permit or exemption from HFSRB.
  - 2) abandonment of an approved category of service established under the permit.
  - 3) any increase in the square footage of the project up to 5% of the approved gross square footage.
  - 4) any decrease in square footage greater than 5% of the project.
  - 5) any increase in the cost of the project not to exceed 7% of the total project cost. This alteration may exceed the capital expenditure minimum in place when the permit was issued, provided that it does not exceed 7% of the total project cost.
  - 6) any increase in the amount of funds to be borrowed for those permit holders that have not documented a bond rating of "A-" or better from Fitch's or Standard and Poor's rating agencies, or A3 or better from Moody's (the rating shall be affirmed within the latest 18 month period prior to the submittal of the application).
- c) Prohibited Alterations  
Notwithstanding the provisions of subsection (b), the following alterations are not allowed and, if incurred, invalidate the permit:
- 1) an increase in the total project cost that exceeds 7% of the permit amount.
  - 2) an increase in the project's gross square footage that exceeds 5% of the project's approved gross square footage, unless that increase is required or mandated by local, State or federal building or life safety requirements that were not in effect at the time of permit issuance;
  - 3) any other change in the project's scope or funding that would independently require a CON permit or exemption.

d) Alteration Procedures

1) Written Notification

- A) The permit holder shall notify HFSRB in writing of any alteration to a project. The notice shall include a description of the alteration and related costs (if any) and shall address all applicable review criteria related to the alteration if the alteration requires HFSRB approval. HFSRB staff shall review the alteration request for compliance with the review criteria and submit its findings to HFSRB. If additional information is needed by HFSRB staff to perform a review of the request, the permit holder shall be notified.
- B) All alteration requests shall be submitted to the State Board in writing on 8½" by 11" paper.
- C) All alteration requests shall be submitted within the allowable time frames established in subsection (a)(1) and shall be sent only by any recognized overnight courier or personal delivery service.
- D) Alteration requests submitted by email or fax will not be accepted.

2) Compliance with 77 Ill. Adm. Code 1110 and 1120

A request for alteration reviewed by HFSRB is subject to the provisions of 77 Ill. Adm. Code 1110 and 1120 that are applicable to the individual project. The components and any other proposed alterations to a project that would, when taken as a separate component, require a permit under the Act shall not be subject to review under this Section but shall require a new application for a permit.

3) HFSRB Staff Review

HFSRB staff shall review the alteration request for compliance with the review criteria and prepare a report of its findings for HFSRB review. HFSRB will notify the permit holder if additional information is needed to review the request.

4) Board Review and Action

A) The alteration request, HFSRB staff findings, and all related documentation shall be sent to the Chairman if:

- i) staff review determines that the alteration request is in conformance with all HFSRB criteria; and

- ii) this is the first alteration request for the project.
  - B) The Chairman, acting on behalf of HFSRB, shall approve or deny the request or refer the request to the full Board for consideration and action. Other conditions under which the alteration request shall be referred to the full Board for consideration and action are as follows:
    - i) the request is not in conformance with all HFSRB criteria;  
or
    - ii) the request is not the first one for an alteration concerning the project in question.
  - C) The number of affirmative votes required for approval of an alteration request is specified in the Act. The approval or denial of a request for alteration constitutes HFSRB's final administrative decision.
- 5) **Inventory and Permit Amount Adjustments**  
Upon approving a request for alteration, HFSRB will revise the permit to reflect the alteration and shall adjust all inventories accordingly. If a permit holder reduces the scope or size of the project, the permit amount shall be reduced accordingly.
- 6) **Notification of Decision to Applicant**  
HFSRB staff shall submit to the permit holder that submitted a request for an alteration a written notice of HFSRB's decision.
- 7) **Applicable Penalties**  
Any alteration undertaken without prior HFSRB notice or notice and approval (when required) shall be considered a violation of the Act and/or subsection (a)(1) of this Section and shall subject the permit or exemption holder to fines, permit revocation, and the penalties and sanctions mandated in the Act (see 20 ILCS 3960/14.1) and in Section 1130.790.

(Source: Amended at 40 Ill. Reg. 14647, effective October 14, 2016)





150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606 • (312) 819-1900

September 28, 2021

Anne M. Cooper  
312.873.3606  
312.276.4317 Fax  
acooper@polsinelli.com

Via Email

Ms. Debra Savage  
Chair  
Illinois Health Facilities & Services Review  
Board  
525 West Jefferson Street, 2nd Floor  
Springfield, Illinois 62761

**Re: OSF Saint Francis Medical Center Comprehensive Cancer Center -  
Project No. 19-057 (the "Project")  
Request for Declaratory Ruling**

Dear Ms. Savage:

This office represents OSF HealthCare System d/b/a OSF Saint Francis Medical Center ("OSF"). In that capacity, this letter serves as a request for a declaratory ruling regarding the Project. No. 19-057 to confirm that OSF may include 77,119 gross square feet of non-clinical space for a total of 552,335 gross square feet (increased primarily due to a change in the parking garage) in the Project to be under the same construction contract as the regulated clinical portions of the Project. The Project's scope is described in the Project's CON application and reflected in the Project's staff report of the Illinois Health Facilities and Services Review Board ("HFSRB").

By way of background, on February 25, 2020, the HFSRB approved OSF's application to establish a comprehensive cancer center on the Peoria campus of OSF Saint Francis Medical Center (the "CCC"). The Project has proceeded with due diligence with excavation of the site, installation of new sanitary sewer and water lines on the future Missouri Avenue extension, installation of the auger cast piles for the proton vault foundation, and drafting of the architectural plans underway. As development plans proceeded, there were some planned non-clinical areas that were noted to be discrepant from the original plan for the Project. Based on that, we initiated communications with HFSRB staff to confirm that the changes that OSF identified as alterations, were not subject to review or approval due to the fact that all of the changes were non-clinical and non-clinical elements of a health care facility development or modernization are not regulated by the HFSRB.

[polsinelli.com](http://polsinelli.com)

Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York  
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California

80039766.2

Ms. Debra Savage  
September 28, 2021  
Page 2

As noted in those communications with HFSRB staff, the square footage determination for the certificate of need application was based on a conceptional design. When the architectural team began drafting the preliminary drawings for the CCC, it identified certain non-clinical areas, i.e., speed ramps for the parking structure to aid in traffic flow for the CCC and the building penthouse which will house mechanical equipment for the building that were not included in the certification of need application. Speed ramps reduce parking garage congestion and are typically used when the garage's site does not allow for enough vertical climb without exceeding the recommended slope in a parking/driving aisle. Importantly, there are no anticipated changes to the costs of the Project at this time.

This declaratory request is necessary to confirm our interpretation that under the HFSRB's rules, a permit holder is only required to obtain HFSRB approval if it plans to alter the *clinical square footage* of a project.<sup>1</sup> As a general matter, the HFSRB rules are clear that non-clinical areas of a health care facility are not subject to review.<sup>2</sup> Clinical areas are subject to the State Board standards and fall within the State Board's purview.<sup>3</sup> ***Importantly, there are no limits or standards for non-clinical/non-reviewable spaces under the State Board's rules.***<sup>4</sup> Therefore, a permit holder should report changes in non-clinical/non-reviewable areas that are included in a Project, but we believe an increase in such areas requires only notice and not approval and is not restricted by a percentage of the overall square footage. For your information, the table on the following page indicates the planned changes in non-clinical square footage which, as you can see, are not clinical spaces in any way. These areas are an increase in the parking deck due to the speed ramps mentioned above, a mezzanine pedestrian tunnel, egress at the mezzanine level, the penthouse mentioned above and a pedestrian bridge. As these areas are not subject to HFSRB review, there should be no limits on square footage increases to these spaces. We also note that while these areas do support the CCC on the campus, most of them are technically not architecturally or programmatically interrelated to the CCC.

---

<sup>1</sup> 77 Ill. Admin. Code § 1130.750(b)(3).

<sup>2</sup> See Project No. 19-057 (OSF Saint Francis Medical Center Comprehensive Cancer Center) State Board Report, 7 (Feb. 25, 2020) acknowledging CCC non-reviewable areas including parking deck and public areas; and 77 Ill. Admin. Code § 1110.120(b) only requiring documentation for clinical service areas that do not conform with the HFSRB size standards; 77 Ill. Admin. Code § 1110.Appendix B establishing size standards solely for clinical service areas.

<sup>3</sup> 77 Ill. Admin. Code § 1110.120(a)(1)

<sup>4</sup> 77 Ill. Admin. Code § 1110.Appendix B



Ms. Debra Savage  
 September 28, 2021  
 Page 3

Dept. / Area	Cost	Reported in CON Application	Revised	Change
<b>CLINICAL</b>				
Infusion	\$19,222,973	11,213	10,754	-459
Multi-Disciplinary	\$9,236,902	5,388	5,167	-221
Imaging	\$11,156,971	6,508	6,509	1
Lab/Blood Draw	\$2,732,669	1,594	1,594	0
Proton & Brachytherapy	\$44,146,151	24,703	24,646	-57
<b>Total Clinical</b>	<b>\$86,495,666</b>	<b>49,406</b>	<b>48,670</b>	<b>-736</b>
<b>NON REVIEWABLE</b>				
Infusion	\$2,684,657	9,873	9,468	-405
Multi-Disciplinary	\$2,108,483	7,754	7,436	-318
Cancer Conferences	\$1,556,409	5,489	5,489	0
Public/Amenities/Support	\$3,496,746	12,331	12,332	1
Imaging	\$2,041,848	7,200	7,201	1
Proton & Brachytherapy	\$3,716,498	13,695	13,107	-588
Shared Services	\$916,436	3,377	3,232	-145
Physician Offices (Shell)	\$8,843,944	33,600	31,190	-2,410
Research (Shell)	\$8,832,602	33,600	31,150	-2,450
Contingency	\$0	2,627	0	-2,627
Parking Deck	\$103,690,726	297,000	351,580	54,580
Penthouse	\$4,827,449		17,025	17,025
Bridge	\$2,300,000		2,260	2,260
Tunnel	\$3,400,000		4,605	4,605
Tunnel Mezzanine	\$1,711,228		6,035	6,035
Egress Mezzanine	\$440,921		1,555	1,555
<b>Total Non-Reviewable</b>	<b>\$150,567,947</b>	<b>426,546</b>	<b>503,665</b>	<b>77,119</b>
<b>TOTAL</b>	<b>\$237,063,613</b>	<b>475,952</b>	<b>552,335</b>	<b>76,383</b>

Given the non-clinical nature of the additional square footage, we respectfully request the HFSRB permit OSF to increase the total square footage of the CCC to 552,335 gross square feet.

Ms. Debra Savage  
September 28, 2021  
Page 4

Thank you for your consideration of OSF's request to add non-clinical square feet to the CCC. If you have any questions or need any further information, please feel free contact me.

Sincerely,



Anne M. Cooper

cc: Ms. April Simmons  
Ms. Courtney Avery  
Mr. Mark Hohulin