



# City of Broken Arrow

## Request for Action

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**File #: 20-282, Version: 1**

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### Broken Arrow Planning Commission

03-12-2020

**To:** Chairman and Commission Members  
**From:** Development Services Department

**Title:** Public hearing, consideration, and possible action regarding PUD-74B (Planned Unit Development), Aspen Square Center, 7.54 acres, PUD-74/CN/CH to PUD-74B/CN/CH, located north and east of the northeast corner of Washington Street (91<sup>st</sup> Street) and Aspen Avenue (145<sup>th</sup> E. Avenue)

**Background:**

**Applicant:** Tim Terral, Tulsa Engineering and Planning Associates  
**Owner:** Aspen Square Inc.  
**Developer:** Aspen Square Inc.  
**Engineer:** Tulsa Engineering and Planning Associates  
**Location:** North and east of the northeast corner of Washington Street (91st Street) and Aspen Avenue (145th E. Avenue)  
**Size of Tract** 7.54 acres  
**Present Zoning:** PUD-74/CN/CH  
**Proposed Zoning:** PUD-74B/CN/CH  
**Comp Plan:** Level 6

Planned Unit Development (PUD)-74B involves a 7.54 acre parcel located north and east of the northeast corner of Washington Street (91st Street) and Aspen Avenue (145<sup>th</sup> E. Avenue). Applicant is requesting a major amendment to PUD-74 to allow a medical marijuana dispensary to continue to be located on the property. The dispensary is presently located on the north end of the Aspen Square Shopping Center. The property has been platted as a part of Lot 2, Block 1, I.D.C. Center II.

PUD-74 was approved by the City Council on October 5, 1992, as part of an 8.8 acre commercial shopping center and mini-storage development. The north part of the property had an underlying zoning of C-5 (Highway and Recreational Commercial), while the south part of the property had an underlying zoning of C-3 (Neighborhood Convenience Shopping). Mini-storage units were constructed in the area zoned C-5, while a shopping center was built in the area zoned C-3. The underlying C-3 zoning was approved by the City Council in November 1971 as part of BAZ-299. In 2008, the Zoning Ordinance was updated, and the C-5 district became CH (Commercial Heavy) and the C-3 district became CN (Commercial Neighborhood).

On September 18, 2018, the City Council approved Ordinance 3540 that established regulations for retail medical marijuana dispensaries and medical marijuana commercial growing/cultivating facilities. Medical

marijuana dispensaries were recognized as a permitted use in the commercial zoning districts, including the CN (Commercial Neighborhood) district. On September 25, 2018, a lawsuit was filed asking the court to make a legal determination whether the City of Broken Arrow had any authority to zone or otherwise regulate medical marijuana businesses within city limits. The trial court agreed with the plaintiff and on October 17, 2018, issued a declaratory judgement finding, as a matter of law, that Oklahoma cities were precluded from adopting regulations, zoning overlays, fees, or other restriction relating to medical marijuana business activities. This decision was appealed by the City of Broken Arrow. The Oklahoma Legislature enacted laws that became effective August 30, 2019, that stated, "Municipalities may follow their standard planning and zoning procedures to determine if certain zones or districts would be appropriate for locating marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are cultivated, grown, processed, stored or manufactured." The plaintiff's lawsuit was dismissed by the Oklahoma Supreme Court on November 19, 2019. A complete copy of the Supreme Court ruling is attached with this Staff report.

According to the applicant, OKCM Medical Marijuana Dispensary has been located on the property since January 2019. At the time PUD 74 was approved in 1992, a medical marijuana dispensary was not identified as a permitted use. Today, the City of Broken Arrow Zoning Ordinance recognizes that a medical marijuana dispensary is a permitted use in the CN district. For the applicant to be able to renew their medical marijuana license, they have to receive acknowledgement from the local jurisdiction that the dispensary is in compliance with the Zoning Ordinance. Therefore, for Staff to acknowledge that the zoning is in compliance, medical marijuana dispensary has to be recognized as a permitted use. Since PUD 74 did not acknowledge a medical marijuana dispensary as a permitted use, the PUD must be modified. According to the Zoning Ordinance, to change the list of permitted uses in a PUD requires a major amendment to the PUD. As a result, applicant has submitted a request for a major amendment to PUD-74 to allow a medical marijuana dispensary to be a permitted use in PUD-74B.

#### SURROUNDING LAND USES/ZONING/COMPREHENSIVE PLAN

The surrounding properties contain the following uses, along with the following development guide and zoning designations:

Location	Development Guide	Zoning	Land Use
North	Level 2	R-3	Stacy Lynn Fifth Addition
East	Level 2	R-3	Stacy Lynn Fifth Addition
South	Level 4	PUD-75/CN/CH	Auto lube and office building
West	Levels 4 and 6	PUD-203/CN, CG, and CH	Pharmacy, fitness facility, and electrical/plumbing supply store

The property associated with PUD-74B is designated as Level 6 in the Comprehensive Plan. The existing CN underlying zoning, which allows medical marijuana dispensaries, is in accordance with the Comprehensive Plan in Level 6.

According to Section 6.4 of the Zoning Ordinance, the PUD provisions are established for one (1) or more of the following purposes:

1. To permit and encourage innovative land development while maintaining appropriate limitation on the character and intensity of use and assuring compatibility with adjoining and proximate properties.
2. To permit greater flexibility within the development to best utilize the physical features of the particular site in exchange for greater public benefits than would otherwise be achieved through development under this Ordinance.
3. To encourage the provision and preservation of meaningful open space.
4. To encourage integrated and unified design and function of the various uses comprising the planned unit development.
5. To encourage a more productive use of land consistent with the public objectives and standards of accessibility, safety, infrastructure and land use compatibility.

In Staff's opinion, PUD-74B continues to satisfy item 1 of Section 6.4.A of the Zoning Ordinance. When PUD -74 was approved by the City Council in 1992, there were concerns about screening fences, setbacks, buffering, lighting, security, and noise. The mini storage on the north end of the property has worked as good buffer between the residential area to the north and the shopping center. A large portion of the north part of the shopping center, close to where the dispensary is located, is presently vacant. This vacant space represents a significant amount of square footage in the shopping center. Keeping an existing business in the shopping center that generates sales tax revenue for the City of Broken Arrow helps to maintain the vitality of the shopping center and adds value to the PUD. In addition, keeping the existing Commercial Neighborhood uses maintains the appropriate limitation on the character and intensity of use on the property.

According to the Zoning Ordinance and State requirements, no schools are allowed within a 1,000 feet of the medical marijuana dispensary. A detailed survey will be conducted as part of any application for a medical marijuana license from the City of Broken Arrow. Staff did review aerial photographs and there are no schools within a 1,000 feet of the proposed dispensary.

Broken Arrow Code (Sec. 7-392(b)(5)) allows the city to impose reasonable terms and conditions on dispensaries to obtain compliance. Through this ordinance, the city has the authority to require that windows cannot be permanently covered. In addition, the city can require that blinds be open during standard business hours and can be closed after.

According to FEMA maps, none of the property is located in a 100-year floodplain area.

**Attachments:** Case map  
Aerial photo  
Comp Plan  
Design Statement for PUD-74B  
July 2019 Google Earth photo  
Staff report for PUD-74  
November 19, 2019, Oklahoma Supreme Court ruling

**Recommendation:**

On September 18, 2018, the City of Broken Arrow adopted regulations pertaining to medical marijuana facilities. Medical marijuana dispensaries were recognized as a permitted use in the CN (Commercial Neighborhood) district. When PUD 74 was approved on October 5, 1992, medical marijuana was not recognized as a legal use and a dispensary for such use was not included in PUD-74. To change any permitted uses in a PUD requires a major amendment to the PUD. PUD-74B addresses this unique situation and requests that a medical marijuana dispensary be allowed as a permitted use on the property.

Based upon the Comprehensive Plan, the location of the property, the unique conditions associated with the property, and the surrounding land uses, Staff recommends that PUD-74B be approved as requested. Since the property has already been platted, Staff recommends that platting be waived.

**Reviewed by: Jill Ferenc**

**Approved by: Larry R. Curtis**

BDM