

Street (61st Street), one-half mile west of Olive Avenue (129th E. Avenue). Applicant is requesting a major amendment to PUD-47 to allow a medical marijuana growing/cultivation facility to be located on the property. The property has been platted as Lot 17, Block 7, 6100 Center.

Due to Public Notice requirements, this item was continued from the May 14, 2020, Planning Commission meeting to the May 21, 2020, Planning Commission meeting. Zoning notice signs have been placed correctly on the property.

PUD-47 and BAZ-962 were approved by the City Council on April 16, 1984. PUD-47 stated that the uses permitted were those allowed in the I-1 district. At the time PUD-47 was approved, the growing of medical marijuana was not recognized as a permitted use in the I-1 district.

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 growing/cultivating facilities were recognized as a permitted use in the IL (Industrial Light) zoning 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, Innov8tive Technologies LLC is a new company that was formed in 2019. It's intended use is to grow (cultivate) medical marijuana inside the building at 2100 N. Yellowwood Avenue. Innov8tive Technologies is leasing 3,500 square feet of the 5,000 square foot building from R&K Building LLC, who is also a part owner of the company. The rest of the building is vacant. There are no windows in the warehouse facility and windows that are within the office area are covered in black out curtains.

Today, the City of Broken Arrow Zoning Ordinance recognizes that medical marijuana growing/cultivating is a permitted use in the IL district. For the applicant to be able to renew their medical marijuana license, they have to receive acknowledgement from the local jurisdiction that the growing/cultivation facility is in compliance with the Zoning Ordinance. Therefore, for Staff to acknowledge that the zoning is in compliance, medical marijuana growing/cultivation has to be recognized as a permitted use. Since PUD 47 did not acknowledge medical marijuana growing/cultivation 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-47 to allow medical marijuana growing/cultivation to be a permitted use in PUD-47G. This is the only change being requested to PUD-47.

The Board for the 6100 Center Property Owners Association was contacted about the requested modification to PUD 47, and none of the members expressed any concern.

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 6	PUD-47/IL	Light Industrial
East	Level 6	PUD-47-IL	Light Industrial
South	Level 6	PUD-47/IL	Light Industrial
West	Level 2	R-3	Melinda Park addition

The property associated with PUD-47G is designated as Level 6 in the Comprehensive Plan. The existing IL underlying zoning, which allows medical marijuana growing/cultivation, 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, infra structure and land use compatibility.

In Staff’s opinion, PUD-47G continues to satisfy item 1 of Section 6.4.A of the Zoning Ordinance. When PUD -47 was approved by the City Council in 1984, a height limitation of one story was placed on buildings within 150 feet of Melinda Park. In addition, buildings were required to setback at least 75 feet from the property line abutting the Melinda Park addition, along with a 40-foot wide landscape buffer. All these conditions remain. The only change being made is to allow the growing/cultivation of medical marijuana inside an enclosed building.

According to the Zoning Ordinance, no schools are allowed within a 1,000 feet of a medical marijuana growing/facility. 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 were no schools found within 1,000 feet of the proposed growing/cultivation facility.

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-47G
Design Statement for PUD-47
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 growing/cultivation is recognized as a permitted use in the IL (Industrial Light) district. When PUD 47 was approved in 1984, medical marijuana growing/cultivation was not recognized as a legal use and was not included as a permitted use in PUD-47. To change any permitted uses in a PUD requires a major amendment to the PUD. PUD-47G addresses this unique situation and requests that medical marijuana growing/cultivation 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-47G 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