

Comp Plan: Level 6

Planned Unit Development (PUD)-126D involves a 10.24-acre parcel located one-quarter mile west of Elm Place (161st E. Avenue), north of Tucson Street (121st Street). Applicant is requesting a major amendment to PUD-126 to allow a medical marijuana dispensary to be located on the property. The dispensary, which is under construction, is presently located close to the middle of the Broken Arrow Plaza Shopping Center. The property has been platted as a part of Lot 2, Block 1, Waterloo Way.

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

PUD-126 was approved by the City Council on February 19, 2001, subject to the property being platted. The property was platted as Waterloo Way with the plat being recorded in Tulsa County on August 15, 2002. According to the design statement for PUD-126, "The concept for the Planned Unit Development of Waterloo Way is to provide for a shopping center with two anchor stores (a Wal-Mart Supercenter as one of the anchors) and outparcels for franchise commercial development." The uses permitted were limited to those allowed in the C-2 (Planned Shopping Center District). In 2008, the Zoning Ordinance was updated, and the C-2 district became CG (Commercial General).

PUD-126A, a major amendment to PUD-126, was approved by the City Council on March 7, 2005. With PUD-126A, the development regulations of PUD 126 remained in effect as approved by the City Council, except that on Lot 3, Block 1 of Waterloo Way, an automobile carwash (both full service and self-service) was allowed.

PUD-126B, a request for a minor amendment to PUD-126 regarding freestanding signs was approved by the Planning Commission on November 29, 2007, subject to the following conditions:

1. As per the existing Wal-Mart sign, the proposed sign shall be limited to 25 feet in height.
2. The proposed sign shall be located more than 90 feet from the existing Wal-Mart sign. Location of sign shall be reviewed and approved by the Development Services Department.
3. Any other free-standing signs on Lot 3 shall be limited to 14 feet in height and 100 square feet.
4. All the other conditional associated with PUD 126 shall remain in effect.

PUD-126C, a request for a major amendment to PUD-126 to allow a medical marijuana dispensary as a permitted use, was reviewed and denied by the City Council on January 21, 2020. PUD-126D is similar to PUD-126C, except PUD-126D states, "If the Out Parcel does not have a building permit issued within thirty-six (36) months from the date of approval of this Major Amendment, the additional principal use of Medical Marijuana Dispensary and accessory uses thereto, as provided for herein, shall expire and shall no longer be permitted within PUD 126."

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 CG (Commercial General) 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 City of Broken Arrow records, a permit for a tenant finish for the space at 6440 S. Elm Place was issued on December 12, 2019, for Canna Land. At the time PUD 126 was approved in 2005, 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 CG district. For the applicant to be able to obtain 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 126 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-126 to allow a medical marijuana dispensary to be a permitted use in PUD-126D. They have stipulated that if the out parcel on the south part of the property associated with PUD-126D does not have a building permit issued within 36 months from the date of approval of this PUD, the additional principal use of Medical Marijuana Dispensary and accessory uses thereto shall expire and shall no longer be permitted within PUD-126. The “out parcel” is presently not a separate lot, but is part of the overall Broken Arrow Plaza property.

On March 20, 2020, Staff visited the site and observed seven dumpsters on the west side of the shopping center that were not screened. The site plan for Broken Arrow Plaza was reviewed and approved by the Planning Commission on October 26, 2006, subject to a list of conditions. One of the conditions was “Show dumpster location on revised site plan. Dumpster shall be screened with an opaque fence that is higher than the proposed dumpster, six foot minimum. Height of proposed fence around dumpster shall be shown on revised site plan.” Section 5.2.D.2.b of the Zoning Ordinance also states, “Each refuse collection receptacle shall be screened from view on all sides by a durable sight-obscuring enclosure consisting of an opaque fence or wall of between six feet (6’) and eight feet (8’) in height.”

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-126/CG	Wal-Mart and a bank
East	Level 6	PUD-126/CG	Reserve area for storm water drainage
South	Levels 6 and 4	PUD-126A/CH and A-1	Car wash and undeveloped
West	Levels 6 and 3	PUD-126/CG and PUD-220B/RM	Driveway for Wal-Mart and apartment complex

The property associated with PUD-126D is designated as Level 6 in the Comprehensive Plan. The existing CG 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, infra structure and land use compatibility.

In Staff's opinion, PUD-126D continues to satisfy items 1 and 4 of Section 6.4.A of the Zoning Ordinance. When PUD-126 was approved by the City Council in 2001, some of the concerns expressed were about landscaping, parking lot lighting, sign controls, and traffic congestion. A 25-foot wide landscape area was required along Elm Place and a 15-foot wide landscape area was required along the frontage road. The percentage of landscaping was increased from 5 percent to 10 percent. One freestanding sign is 25 feet in height with a two-column support and a planter box. (PUD-126B later allowed an additional free-standing sign of 25 feet in height, and required all other signs to be limited to 14 feet in height and contain no more than 100 square feet.) Landscape islands were required in the parking lots. While the light poles on Lots 1 and 2 were allowed to be 42 feet in height, the light poles on all the other lots were limited to 16 feet in height. In addition, while the property was located in Level 6 of the Comprehensive Plan, the uses allowed was restricted to those allowed in the C-2 district. PUD-126D keeps the same conditions that were approved previously with PUD-126 and PUD-126B, but adds as a permitted use a medical marijuana dispensary, which is allowed in the CG district. It further stipulates that the existing undeveloped area on the south end of the property will have a building permit issued within three years. If this fails to occur, the Medical Marijuana Dispensary use shall expire and shall no longer be permitted within PUD 126. Development of the "out parcel" promotes continued development in south Broken Arrow. Therefore, PUD-126, PUD-126B, and PUD-126D 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. In addition, they encourage integrated and unified design and function of the various uses comprising the planned unit development.

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 no schools were observed 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-126D
- Vantage Points Aerial
- November 19, 2019, Oklahoma Supreme Court ruling
- Statement of concern from Richland property owners regarding PUD-126
- Approved site plan for Broken Arrow Plaza
- Picture of east side of 6440 S. Elm Place
- Pictures of dumpsters on west side of building
- Waterloo Way recorded plat
- PUD-126 and PUD-126B

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 CG (Commercial General) district. When PUD 126D was approved on February 19, 2001, medical marijuana was not recognized as a legal use and a dispensary for such use was not included in PUD-126. To change any permitted uses in a PUD requires a major amendment to the PUD. PUD-126D addresses this unique condition and requests that a medical marijuana dispensary be allowed as a permitted use on the property.

With PUD-126D, applicant has stipulated that if the out parcel on the south part of the property does not have a building permit issued within 36 months from the date of approval of this PUD, the additional principal use of Medical Marijuana Dispensary and accessory uses thereto shall expire and shall no longer be permitted within PUD-126. Development of the out parcel adds value to the PUD.

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-126D be approved, subject to screening fences being installed in accordance with the Zoning Ordinance around all dumpsters (existing and future) prior to the any permits being issued for a medical marijuana dispensary. Since the property has already been platted, Staff recommends that platting be waived.

Reviewed by: Jill Ferenc

Approved by: Larry R. Curtis

BDM