



City of Broken Arrow

Request for Action

File #: 20-1180, **Version:** 1

Broken Arrow City Council
Meeting of: 10-06-2020

Title:

Consideration, discussion and possible approval of PUD-50E (Planned Unit Development), Sparky McGee Medicine in Brentwood Center, 0.53 acres, PUD-50D/CG to PUD-50E/CG, located south of Washington Street (91st Street), west of Aspen Avenue (145th East Avenue)

Background:

Planned Unit Development (PUD)-50E involves a 0.53-acre parcel located south of Washington Street (91st Street), west of Aspen Avenue (145th E. Avenue). Applicant is requesting a major amendment to PUD-50D to allow a medical marijuana dispensary facility to be located on the property. The property has been platted as Lot 5, Block 1, Brentwood Center.

PUD-50 was approved by the City Council on April 16, 1984. The underlying C-2 zoning on the property had been previously approved by the City Council on October 3, 1977, with BAZ-619. In 2008, when the Zoning Ordinance was updated, the C-2 designation was changed to CG. For Lot 5, Block 1, PUD-50 stated that the uses permitted were those allowed in the C-2 district. At the time PUD-50 was approved, medical marijuana dispensary was not recognized as a permitted use in the C-2 district.

PUD-50D, a request for a minor amendment on the same property associated with PUD-50E, was approved by the Planning Commission on October 8, 2015. With PUD-50D, the parking and landscaping requirements were modified. The parking was changed to one space per 300 square feet of office and one space per 1,000 square feet of warehouse. And, instead of Bradford Pear trees that were specified with PUD-50, evergreen trees were allowed. The spacing of the evergreen trees along the west boundary remained as per PUD-50 with the trees planted 25 feet on center.

On September 18, 2018, the City Council approved Ordinance 3540 that established regulations for retail medical marijuana dispensaries. "Medical Marijuana, Retail Sales", which allows dispensaries, was recognized as a permitted use in the CG (Commercial General) 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, Sparky McGee is a medical marijuana dispensary that opened in September 2019. They acknowledged that they currently serve over 1,000 patients each month.

Today, the City of Broken Arrow Zoning Ordinance recognizes that “Medical Marijuana, Retail Sales” is a permitted use in the CG district. For the applicant to be able to renew their medical marijuana license, they must receive acknowledgement from the local jurisdiction that the medical marijuana dispensary facility is in compliance with the Zoning Ordinance. Therefore, for Staff to acknowledge that the zoning complies, “Medical Marijuana, Retail Sales” must be recognized as a permitted use. Since PUD 50 did not acknowledge Medical Marijuana, Retail Sale 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-50D to allow “Medical Marijuana, Retail Sales” to be a permitted use in PUD-50E. This is the only change being requested to PUD-50D.

The property associated with PUD-50E is designated as Level 4 in the Comprehensive Plan. The existing CG underlying zoning, which allows Medical Marijuana, Retail Sales, is in accordance with the Comprehensive Plan in Level 4.

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-50E continues to satisfy item 1 of Section 6.4.A of the Zoning Ordinance. All the other provisions approved by the City Council in 1984 remain, as well as PUD-50D that was approved by the Planning Commission in 2015.

According to the Zoning Ordinance, medical marijuana dispensaries are not allowed within 1,000 feet of schools. 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 1,000 feet of the proposed dispensary.

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

PUD-50E was reviewed by the Planning Commission on September 10, 2020. No comments were received during the Public Hearing session on this item. Staff had recommended that PUD-50E be approved as requested and that platting be waived. After reviewing the information presented in the Staff report and information provided by the applicant, the Planning Commission recommended approval (4-0) of PUD-50E as per Staff recommendation

Cost: \$0

Funding Source: None

Requested By: Larry R. Curtis, Community Development Director

Approved By: City Manager's Office

Attachments: Published Planning Commission Staff report
Case map
Aerial photo
Comp Plan
Design Statement for PUD-50E
Design Statement for PUD-50
November 19, 2019, Oklahoma Supreme Court ruling
Brentwood Center plat

Recommendation:
Approve PUD-50E as per Staff recommendation.