

CITY COUNCIL OVERSIGHT COMMITTEE MEETING
CONFERENCE ROOM – MUNICIPAL BUILDING
201 WEST GRAY
THURSDAY, NOVEMBER 14, 2019
4:00 P.M.

- 1. Review of Special Uses for Medical Marijuana Commercial Grower, Educational Facility, Processor, Storage Facility allowed in the Residential Estate Dwelling District, and A-2, Rural Agricultural District, from the M-1, Restricted Industrial District.**
- 2. Discussion regarding possible administrative approval of Medical Hardship Special Exception renewals, which are currently approved by the Board of Adjustment.**

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office memorandum

Date: November 14, 2019
To: Oversight – Council Committee
From: Jane Hudson, Director of Planning & Community Development
Subject: Possible Zoning Ordinance Amendments –
1. RE, Residential Estate Dwelling District, Special Use – M-1
2. Board of Adjustment – Medical Hardship, Special Exception

RE, Residential Estate Dwelling District, Special Use – M-1

Background

In mid-2018 staff presented to Council information on the recently adopted State Question 788, Medical Marijuana. The presentation by staff addressed Oklahoma state regulations as well as local and nation-wide municipal approaches to licensing and zoning of medical marijuana uses/businesses. For staff to properly implement the recent state regulations, amendments to the Zoning Ordinance were necessary. In December of 2018, City Council adopted Ordinance No. O-1819-17, adding medical marijuana uses to various zoning districts. Following the December 2018 amendments, additional state legislation was passed in the spring of 2019, thus requiring updates to the City Code. Ordinance No. O-1920-4 amended the Zoning Ordinance in August of 2019, placing new medical marijuana uses into zoning districts.

This section of the memo reviews the allowed uses in the M-1, Restricted Industrial District and Special Use requests to City Council in the RE, Residential Estate Dwelling District.

More specifically, in the M-1, Restricted Industrial District the following are currently permitted Medical Marijuana uses:

- Medical Marijuana Commercial Grower
- Medical Marijuana Education Facility
- Medical Marijuana Processor
- Medical Marijuana Storage Facility

Due to adoption of an ordinance in 1990, in the RE, Residential Estate Dwelling District an applicant has the option to request Special Use for “one and only one of the specific uses permitted in the M-1, Restricted Industrial District. If approved by Council, this language could potentially allow any of the above listed uses to be approved as Special Use in a residential district. This memorandum evaluates this language in the context of the remaining Zoning Ordinance and the purposes behind passage of this language in 1990.

History of 1990 Ordinance

At the July 24, 1990 City Council meeting, an amendment was proposed to the list of uses eligible for Conditional Use Permits in the A-2, Rural Agricultural District. The Council accepted the amendment, which adding M-1 permitted uses in the A-2, Rural Agricultural District as Conditional Use Permits. City Council then asked the Planning Commission to explore the feasibility of adding the same language to the RE, Residential Estate Dwellings District.

On September 13, 1990, the Principal Planner for the City of Norman presented to the Planning Commission possible amendments to the Zoning Ordinance to add this language in the RE, Residential Estate Dwelling District. The discussion outlined two positive aspects to the proposal as well as possible negative consequences. “First, applications to allow specific M-1 uses in the RE areas which have never developed, or have unimproved roads, may allow better utilization of land which was inappropriately zoned. Second, small “cottage industries” could occur as accessory uses to existing residential development, thus providing an inexpensive opportunity for entrepreneurs to get a start or carry on an avocation. The negative consequences of either of these proposals may result in the deterioration of the RE areas for residential purposes, thus making a bad situation worse. The Conditional Use Permit procedure, if properly utilized could serve to effectively control or limit any adverse impacts”. The Conditional Use Permit procedures can be an effective mechanism to insure that specific M-1 uses are required to be compatible with large lot residential areas.

On December 11, 1990 City Council adopted the amendment, adding language that allowed an RE applicant to seek a Conditional Use Permit to carry one “one and only one” permitted use from the M-1 zoning district.

In 1990, the uses listed under the section of Conditional Permit Use in the RE District were as follows:

- (a) Child Care Establishment.
- (b) Bed and Breakfast Establishment.
- (c) One and only one of the specific use permitted in the M-1, Restricted industrial District, except Section 428.1(2) (a), for which application is made.

In 1990, the uses listed in the M-1, Restricted Industrial District that would be eligible for Conditional Use Permit were as follows:

- (b) Fabrication or processing of the following products:
 - 1. Art and handicraft items
 - 2. Bakery goods
 - 3. Book binding and tooling
 - 4. Carpentry, custom woodworking, or custom furniture making
 - 5. Clothing and needlework from prepared material
 - 6. Dairy products
 - 7. Instruments; professional, scientific, controlling, musical or similar precision

8. Jewelry
 9. Optical Goods
 10. Printing and publishing
- (c) Laboratories; experimental, photo or motion picture, film or testing
 - (d) Market research
 - (e) Office buildings
 - (f) Systems development
 - (g) Trade schools and schools for vocational training

Per the 1990 Planning Commission discussion, the adopted Conditional Use Permit process opened a window of opportunity in those areas which could justify an individual manufacturing or light assembly type of utilization in their neighborhood, if there was no great concern or protest by their neighbors.

At that time, Conditional Use permits were reviewed annually to assure adjacent properties were not negatively impacted with the adjacent use. In 1995, City Council adopted Ordinance No. O-9596-11; this Ordinance removed Conditional Use Permit and Permissive Use on Review processes and established Special Use. Thus, Conditional Use Permits were transitioned to Special Use Permits and no longer required to be inspected on an annual basis. The standards and procedures remained the same, public notice hearing and allowance of additional conditions for each application but no longer required an annual review of the site.

Additionally, at the time of review and adoption of the Ordinance in 1990 placing the Conditional Use Permit for M-1 uses in the RE District, Medical Marijuana Commercial Grower, as allowed by state law was not part of the Conditional Use Permit allowance. This use was adopted effective December 11, 2018, as part of Ordinance No. O-1819-17.

Current Zoning Ordinance

Reviewing the Zoning Ordinance today, the uses permitted in the M-1, Restricted Industrial District that would be considered for Special Use, which is no longer subject to annual review, in the Residential Estates District are as follows:

- (b) Fabrication or processing of the following products:
 1. Art and handicraft items
 2. Bakery goods
 3. Book binding and tooling
 4. Carpentry, custom woodworking, or custom furniture making
 5. Clothing and needlework from prepared material
 6. Dairy products
 7. Instruments; professional, scientific, controlling, musical or similar precision
 8. Jewelry
 9. Optical Goods
 10. Printing and publishing

- (c) Laboratories; experimental, photo or motion picture, film or testing. For the purposes of this section, "Laboratories" includes Medical Marijuana Testing Laboratories, as allowed by state law, that fully comply with the provision.
- (d) Mail order house
- (e) Medical Marijuana Commercial Grower, as allowed by state law
- (f) Medical Marijuana Education Facility, as allowed by state law
- (g) Medical Marijuana Processor, as allowed by state law
- (h) Medical Marijuana Storage Facility
- (i) Market research
- (j) Office buildings
- (k) Systems development
- (l) Trade schools and schools for vocational training

The uses permitted in the RE, Residential Estates Dwelling District are as follows:

- (a) Detached one family dwelling
- (b) Family day care home
- (c) General purpose farm or garden
- (d) Type I mobile home
- (e) Accessory buildings and a guest house so long as it's not lived in permanently or rented and is secondary to the main dwelling and not a mobile home.

Special Uses in RE, Residential Estates Dwelling District are as follows:

- (a) Church, temple, or other place of worship
- (b) School offering general educational courses the same as ordinarily given in public schools and having no rooms regularly used for housing and sleeping
- (c) Publicly operated recreation or water supply
- (d) Municipal use, public buildings and public utility
- (e) Private recreation operated on a non-profit basis for residents of the subdivision or immediate area
- (f) Type I Bed and Breakfast Establishment
- (g) One and only one of the specific uses permitted in the M-1, Restricted Industrial District, except Section 428.1(2)(a), for which application is made
- (h) Tiny houses as regulated by Section 434.2 (b)

Special Uses can have specific conditions attached to the application to ensure the request is within the same intensity of surrounding uses. A granted Special Use would be regulated by the site plan and any specific conditions placed on the use; any changes to the site plan, requests for additions or new structures would be required to go before City Council for approval.

A Special Use request shall be reviewed and evaluated on the following criteria according to the Zoning Ordinance 22:434.1, Special Uses:

1. Conformance with applicable regulations and standards established by the Zoning Regulations.
2. Compatibility with existing or permitted uses on abutting sites, in terms of building height, bulk and scale, setbacks and open spaces, landscaping and site development, and access and circulation features.
3. Potentially unfavorable effects or impacts on other existing or permitted uses on abutting sites, to the extent such impacts exceed those which reasonably may result from use of the site by a permitted use. (NOTE: Throughout this Section, “Permitted Use” means any use authorized as a matter of right under the applicable zoning district.)
4. Modifications to the site plan which would result in increased compatibility, or would mitigate potentially unfavorable impacts, or would be necessary to conform to applicable regulations and standards and to protect the public health, safety, morals, and general welfare.
5. Safety and convenience of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed “Special Use” and other uses authorized and anticipated in the area, considering existing zoning and land uses in the area.
6. That any conditions applicable to approval are the minimum necessary to minimize potentially unfavorable impacts on nearby uses and to ensure compatibility of the proposed “Special Use” with existing or permitted uses in the surrounding area.

There is concern that allowing a Special Use of a Medical Marijuana, using the language adopted in 1990 when Conditional Uses were annually evaluated, is not consistent with the City Council’s determinations of Medical Marijuana zoning made in December 2018 and August 2019, where in both amendments, Council declined to place Medical Marijuana uses in the RE zoning district.

In the discussions with committees and Council preceding the adoption of Ordinance No. O-1819-17 regarding where the medical marijuana uses should be permitted, residential zones in general were not among the locations approved. As a result, Medical Marijuana Commercial Grower, Medical Marijuana Education Facility, Medical Marijuana Processor and Medical Marijuana Storage Facility uses were not included in the RE, Residential Estates Dwelling Districts.

An additional concern is the location and current nature of the RE developments. They are typically developed with private streets/roads. RE development are typically 2 acre lots with structures located closer together than what is typically found in the A-2, Rural Agricultural areas. Additionally, where an RE parcel already contains a home or is surrounded by homes, there are no longer indications that the parcel is “underutilized” so as to invoke the justifications underlying the 1990 amendment language. Thus, the

development of these parcels since 1990 indicates this language is no longer compatible with the underlying RE zoning district.

Based on the fact that medical marijuana uses were never discussed in Council Committee meetings, to be an allowed use or Special Use in any of the residential districts, staff proposes removing the language that allows a Special Use request in the RE, Residential Estate Dwelling District for “one and only one of the specific uses permitted in the M-1, Restricted Industrial District from the RE, Residential Estates Dwelling District.”

City staff notes that the A-2, Rural Agricultural District has the same allowance to request Special Use from one of the M-1, Restricted Industrial Uses; however, medical marijuana grower and medical marijuana education facility were made allowed uses in the A-2 District. The other two uses an applicant may request in the A-2 District by means of Special Use from the M-1 District are medical marijuana processor and medical marijuana storage facility. These facts seems to differentiate the treatment of this language between the A-2 and RE zoning districts; however City Staff does inquire as to whether City Council has a preference for restricting medical marijuana processor and medical marijuana storage facility in the A-2 District.

Item #2 - Board of Adjustment – Medical Hardship, Special Exception Process

Background

In early 2014, Planning staff had received several requests from citizens in the rural area of the City to allow for a second dwelling unit on certain properties, this allowance would allow for a family member to live on-site to help care for aging/ill parents or family members. Staff presented this information to Council Committee and Council adopted the following changes to Board of Adjustment responsibilities in Chapter 22 (Zoning Ordinance) — Special Exception - to allow for a second home for medical reasons in the rural area of the City.

*“To permit a mobile home to serve as a temporary second dwelling to relieve a medical hardship. The application must include a doctor’s statement indicating that the patient is in need of the care of his or her family. The mobile home must meet all City of Norman Building Code requirements and State of Oklahoma requirements for septic systems. The Exception can be approved for up to 3 years on any lot that is five acres or greater in the A-2 zoning district. The Exception can be renewed every 3 years by filing a new application. Once the need for the mobile home no longer exists, the mobile home must be removed.”
(O-1314-15)*

A request for Medical Hardship is sent to Board of Adjustment for review and approval. As noted, the Special Exception is approved for up to 3-years and then the request must be renewed.

Discussion between staff and the Board of Adjustment brought forward the request to allow staff to administratively approve the renewal of the Medical Hardship if the conditions have not changed. The applicant would still be required to provide the doctor's note and site plan but would not be required to pay the application fees, legal ad and certified ownership list. The application fees can add up to approximately \$500 or more depending on the cost of the certified ownership list and legal ad.

Staff proposes the amendment will allow staff to administratively approve two renewals, after two administrative renewals (two administrative approvals is equal to 6 years) the applicant is required to resubmit to the Board of Adjustment for approval.

cc: Beth Muckala, Assistant City Attorney II
Kathryn Walker, City Attorney
Brenda Hall, City Clerk
Darrel Pyle, City Manager