

**NORMAN PLANNING COMMISSION
REGULAR SESSION MINUTES**

JUNE 11, 2020

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session via Video Conference and in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 11th day of June, 2020. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Chair Lark Zink called the meeting to order at 6:30 p.m.

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Item No. 1, being:

ROLL CALL

MEMBERS PRESENT
via Video Conference

Matthew Peacock
Erin Williford
Nouman Jan
Tom Knotts
Lark Zink
Erica Bird
Dave Boeck
Sandy Bahan
Steven McDaniel

MEMBERS ABSENT

None

A quorum was present.

STAFF MEMBERS PRESENT
(in person, unless otherwise noted)

Jane Hudson, Director, Planning &
Community Development
Roné Tromble, Recording Secretary
Lora Hoggatt, Planner II
Janay Greenlee, Planner II
Ken Danner, Subdivision Development
Manager
Todd McLellan, Development Engineer
Bryce Holland, Multimedia Specialist
Beth Muckala, Asst. City Attorney (video)

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Ms. Hudson announced that people present in Council Chambers who wish to speak on any item will need to go into the room next door when they are called on to the computer set up for that purpose.

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Item No. 6, being:

O-1920-61 – JORDAN FAYAK REQUESTS SPECIAL USE FOR “ONE AND ONLY ONE OF THE SPECIFIC USES PERMITTED IN THE M-1, RESTRICTED INDUSTRIAL DISTRICT ...”, SPECIFICALLY “(G) MEDICAL MARIJUANA PROCESSOR (ANY TIER, EXCEPT THAT TIER I AND TIER II WILL NOT BE ALLOWED TO HAVE ON-SITE SALES), AS ALLOWED BY STATE LAW” IN THE A-2, RURAL AGRICULTURAL DISTRICT, FOR PROPERTY LOCATED AT 4520 E. FRANKLIN ROAD.

ITEMS SUBMITTED FOR THE RECORD:

1. Location Map
2. Staff Report
3. Site Plan
4. Pre-Development Summary

PRESENTATION BY STAFF:

1. Lora Hoggatt reviewed the staff report, a copy of which is filed with the minutes. We received protests within the notification radius which equal about 14%.

PRESENTATION BY THE APPLICANT:

1. Gunner Joyce, Rieger Law Group, representing the applicants (via video conference) – This is the location, just like Lora said; we're at Franklin Road and this 48th Avenue N.E. I'll take you through here. The aerial of the property. Just like Lora said, there is an existing house right now, and the applicants are in the process of building an accessory building, which is permissible as a matter of right in the current zoning. There are a couple ponds out here that won't be affected by the accessory building. It's also worth noting that the north portion up here is floodway and it will not be affected by the planned uses here. Walk you through a little bit of the site. Just like I said, the current zoning is A-2, Rural Agricultural. As a matter of right allowable use is medical marijuana commercial growing, and also allowable use is accessory buildings. Just like Lora said, that's underway right now. The City has issued a building permit for this warehouse, so it's important to note, not to get confused here – when we were at Pre-Development, and some of the questions we received were asking about the warehouse and medical marijuana growing. So, just to make it clear, it's not part of this special use request. Again, the City has approved the building permit for the warehouse. If processing is approved it will go in a portion of the warehouse, and that will require submission of an add/alt additional alteration permit to the warehouse to where the City will look at any additional changes that are required for processing in the building. Then again also medical marijuana uses are allowable on the property today as a matter of right.

Move forward and talk specifically on what this request is. It's only medical marijuana processing. Just like Lora read off, it's requesting all three tiers. There's Tier I and Tier II and Tier III, except that we're striking out the ability to sell on-site to end users, as Tier I and Tier II do allow. So we will not have that. It's processing, like we said, it'll be entirely indoors in a portion of this warehouse. Again, no commercial storefront. This is not a dispensary and processors are not allowed to make sales, especially Tier III like we're requesting here to end users directly – to consumers. There's no change to the underlying zoning; the property will continue to remain A-2. They will have a special use, but all special uses are tied specifically, one, to a site plan, but then also to the applicant, to the property owner. In order to move forward if they ever sell this, there's a process that the buyer would have to go through through the City to keep that special use. So it is specific to the property.

We did receive, like Lora said, protest letters. We got them on Wednesday – yesterday. So working with the applicant, we've decided to place conditions of approval on this request. This goes forward, a little bit like a PUD where we are placing these specific restrictions on the request as it moves forward, and these restrictions stay on the use for as long as that special use is in place. So the conditions we're placing are hours of operation. We've heard concerns about traffic, concerns about noise late at night, so we're placing a restriction from 8:00 a.m. to 8:00 p.m. for the processing activities. There's also been concerns about – I'll jump here for a

second – we've heard concerns that there's two driveways in close proximity to each other, if you can see my pointer up here. This is the subject tract's driveway, and then just to the west is another driveway. Apparently there is confusion that happens frequently, so the applicant is committing to putting fencing or landscape buffers in between those driveways to help designate, and then also there's been concerns about potential visibility of the building and so applicant is placing a restriction to install fencing and landscaping around the warehouse to the south here. Additionally, there were concerns about light spillover, so the applicant is committing to complying with the Norman Commercial Outdoor Lighting ordinance, which you guys are probably familiar with that, but it requires full cutoff outdoor lighting fixtures to ensure that the outdoor lights focus on the property and don't spill over to the neighboring properties. Again, with the potential confusion of driveways, the applicant will be installing enhanced property identification measures. I want to be specifically clear here – it's not a request for any commercial signage, not going to be advertising the business. It's just increased property numbers or large mailbox out on Franklin Road so that it's clear which driveway belongs to this property. Additionally, a requirement that the applicant is putting on itself – it's not required in the zoning ordinance – for processing is the carbon filtration system. This is some of the latest and greatest technology for marijuana uses to fight and combat smell of the product, so they are by themselves putting this restriction on themselves to have a carbon filtration system in the warehouse. Then, finally, just to address some of the concerns that have been stated about crime and some crime that could happen in the area, the applicant is committing to additional security measures, so a central alarm system that notifies local police; self-locking/self-closing doors in the warehouse; full video surveillance; and access to the warehouse is limited to employees only, so no customers, no guests – employee only access. We feel that, through the use of these six conditions that will move forward, we've adequately addressed the concerns we have received in the protest letters. That's all we have and I'm happy to answer any questions.

2. Ms. Bahan – How close are you to the school?

Mr. Joyce – I don't know the exact distance. I know that there's a requirement from the OMMA that they have to be a certain distance away from the school; in order to get the license they have to be outside that. We do have – I should have mentioned this at the beginning – an additional representative of the applicant, Justin Williams with Oberman Legal Group, is assisting the applicant on medical marijuana specifically – the medical marijuana industry. So, Justin, if you know the answer that or the restrictions – distance restrictions, jump on in.

Justin Williams, an attorney representing the applicants (via video conference), for the business that's going to be operating the actual cannabis cultivation facility on this property – I believe that there was a protest letter that specifically mandated or set forth the representation that the school was within 1,000 feet. I think that if we were to measure on Google Maps or any other distancing website, you'd note that it's approximately 800 to 1,000 feet away between the corner of this building to the very corner of that intersection of Franklin Road – 2610, I believe. But under Oklahoma law, the proximity requirements concerning a school only apply to medical marijuana dispensaries which have consumer sales to the end user. That restriction does not apply to medical marijuana growers or processors. As medical marijuana cultivation is already permitted as a matter of right on this property, there's going to be no requirement with the State Department of Health to demonstrate a proximity distance from the school that's on that intersection. If I could add one further quick point of clarification, just to support the presentation. One thing that Mr. Joyce did not specifically mention concerns the need for the processing license for this operation, this business. Under existing Oklahoma law, the definition of medical marijuana processing is incredibly broad. It essentially means any transformation of the cannabis flower that is grown in a cultivation space at all. That includes breaking it up into smaller pieces. Many medical marijuana cultivators will desire to sell cigarettes – pre-rolled cigarettes out of their product. That's a very popular product line. Any cultivation facility that has the ability to require – is required obtain a medical marijuana processing license from the State Department of Health to allow it to produce even medical marijuana cigarettes. Absent

that processing license, and absent this special use permit, this applicant wouldn't be able to offer up product lines that are as simple as broken up medical marijuana that it is permitted by right to grow on site. It is specifically part of the application that we are – while seeking the Tier I, Tier II, and Tier III permit – or the use of any applicable tier, the applicant anticipates utilizing only the pre-rolled cigarettes and then solventless extraction. Any request by the applicant at a later date to utilize chemical extraction for its processing would have to go through the City again. I know there are a lot of neighbors who expressed some concerns through the protest letters – I think two in particular – concerning any safety fear associated with the processing of the medical marijuana flower. That is not something that would be subjected to any unilateral determination by the applicant. They would still have to go to the City of Norman, have Fire inspections, building inspections, and receive the additional add/alt permit that Mr. Joyce had already discussed prior to being able to engage in any of that activity. I believe that the conditions that are put on the approval, none of which are required of them to grow marijuana itself, alleviate any concerns related to not only the processing the marijuana, but the cultivation of marijuana itself, something that the applicant isn't required to do. For that reason, we would respectfully request that Commissioners vote an approval of this application.

3. Mr. Jan – It says on the document that you guys will be using the carbon filters. Do you know which one – a particular model will be used? Because I know with these facilities odor is definitely an issue.

Mr. Joyce – I don't think they've got a specific model in mind yet. I think they will get there – go through this process to get approved then pick out the equipment to use and then that's when they'd go back to the City with the additional alteration permit and the equipment would then be reviewed by City staff for the building permit and then City staff would recommend any additional changes to the warehouse in order to have that equipment in the warehouse.

Mr. Williams – Yeah, to follow up – the applicant is utilizing a consultant to identify the proper construction and design of the cultivation facility that's permitted as a matter of right. I believe that that consultant would advise on the ideal chemical filtration system.

4. Mr. Peacock – The fence that is planned to be installed – is that going to be a wood stockade fence, or would that be more of a security fence?

Mr. Joyce – The applicant would like to look at different options before they commit to one. They've talked about shrubbery, specifically the fencing around the west driveways – potentially hedges, maybe evergreen trees to form kind of a natural buffer along the driveways. But if that doesn't work – it is kind of tight – they might be looking at a wood fence. Around the warehouse, the plan is probably a security fence inside – not inside the warehouse – but warehouse and then, as you go farther out, a security fence and then as you go farther out behind that they're thinking landscaping again to really protect the visibility of that warehouse and for security reasons.

5. Ms. Muckala – I just wanted to clarify one thing. I noticed that, in our agenda, the requested action by applicant is for medical marijuana processor, any tier. In our ordinance and under State law, there has been no legal distinction between extraction and non-extraction when it comes to processors. Our tiers didn't necessarily make that distinction. So any special uses that are actually to be limited to non-extraction activities need to state so as a special condition to the special use. I just wanted to clarify that, because this applicant, the way it's worded, if approved that way, would be for a full processor special use, which would include extraction. So that would need to be added as a special condition of the special use.

AUDIENCE PARTICIPATION:

1. Jim Hamilton, 4200 Crickett Lane – I live on 40 acres with my wife at 4200 Crickett Lane here in Norman. That property is immediately to the south of the subject property. We have lived there, invested sums of money, and for 40 years extensive amounts of effort to improve our

property and make it an enjoyable place to live. What the applicant is seeking to do is, in my opinion, destroy much of that ambiance of having a property zoned agricultural by installing a processing facility to extract pure marijuana which is then in a state to be sold to the public through whatever kind of facility. Now that is a pretty significant change in the use of that property. And I will tell you, first of all, that you need to understand how the property lies. The subject property and my property is in a creek bottom area. The terrain rises to the east and to the west probably 25-30 feet and forms a bowl with trees on either side on the east and west side. Now that provides a convenient conduit for odors, noise, lights – anything directly south to my property. I can sit on my front porch, which is about 500 feet away from this facility and see the facility. Now part of the enjoyment of living in a remote area in east Norman is to be able to enjoy the peace and quiet. Now the applicant has suggested that he will confine the activities to 8:00 in the morning to 8:00 in the evening. He's not suggested that that will only be Monday through Friday; it's seven days a week. I work. My wife works and when we get home at 4:00 or 5:00 in the evening, our time to enjoy the property is from 4:00 or 5:00 until we have to go inside. So virtually, from what the applicant says, they're going to destroy the enjoyment of our property by installing this processing facility. Now you also need to understand that this facility not only will impact our enjoyment of property, but will have a very, very significant impact on the value of the property. We've lived there 40 years. We don't have any intentions of moving at this time, but you're creating a situation that's going to be intolerable. I have provided some public comments and would encourage you to read those comments. Thank you.

2. Tom Myers, 4610 East Franklin Road (via video conference) – Our concern is the area that it's in and the appropriateness of it being in this area. This is not a normal 10-acre area, as is prescribed by the State ordinance – or the City ordinances. There are many smaller plots along here. My property is three and a half acres and our property is part of the border with that property. There is another property of two acres which borders that property and there are several others along the street on 48th and Franklin that are even smaller. So it's a higher populated area than most of this type of area. Within this area, we raised our six children and we have one of my children is hoping to be in this area also and raise his children there. In addition to that, in addition to the school, there is also a church which is even closer to the property – it goes along the other side of Franklin Road just east of 48th. So I'm just questioning the appropriateness of this being in this particular area – this particular neighborhood. This is more like a community than it is a rural area. So I think that needs to be considered – the children that also walk along the street on their way to school. That's our main concern. Thank you.

3. Ivan Moore, 4500 48th Avenue N.E. – Our property backs up to the applicants'. My parents bought that property in 1958 and so several generations live there. My main concern is, number one, a smell. I've done some research and there are ongoing lawsuits in other states right now over smells from marijuana processing. I know that's going to be a concern. My second concern is I've got five grandkids and we have a trail that goes through those woods that back up to the property there. I've read articles that they don't understand yet the impact of the by-product of this smell on kids. So that concerns me. I don't want my grandkids to be impacted by something 20 years from now that they didn't know was going to impact them. That concerns me. And, of course, all the other things I'm sure that will be mentioned. I do have concerns about crime and all of those things. But my main concern really is for my grandkids and my wife and myself, that we don't lose the quality of our life and the property values. Every study that I've read, and from Colorado to California, property values have decreased when a processor comes into your area. So those are just some of my concerns. Like I said earlier at the other meeting we had, I have nothing against these young guys. I think they must have an entrepreneurial spirit about them. I just don't want my family to lose the quality of life, and I understand we live in a free country and all that, but I do have concerns, like I said, about smells and something happening to my kids years down the road because they had to smell that. That's pretty much all I have to say.

4. Pam Bode, 4550 48th Avenue N.E. – I have many oppositions to this proposal. Some of the ones that have already been mentioned: property value decreasing, crime increasing, the safety, about the smell and the environmental concerns, impacts potentially on children. For the crime aspect, if someone is going to attempt to break into their facility or do damage, they're certainly not going to drive up the applicant's wide open driveway and make themselves known. They're going to access it from adjacent properties, such as mine. Mine backs right up to the property. Then a few things that I wanted to point out. The fact that we do have the school, we do have the church there. This type of facility is not child or church friendly. According to the OMMA website, there are 105 licensed growers in Norman -- just Norman alone; 47 of those is in the 73026 zip code. I don't feel that we really need another one. Then some other things, points of interest. According to the OMMA website an owner has to be 25 years of age, and I don't think either of those applicants are. Then here's my biggest concern. The applicant's background, specifically in December of 2017 charged with a DWI, transporting of an open container, resulted in a deferred sentence with 6 months probation back in June of '18. Then in November of '18, while still on probation, was charged with a DWI, carrying a firearm while under the influence of a controlled substance, that resulted in a deferred sentence for 5 years probation as of June of 2019. So they're still on probation for that. I feel given all those facts, to give someone who has this history a medical marijuana grower license is adding fuel to the fire. And that's really all of my comments. Thank you.

5. Mr. Joyce – Just real briefly, we'd just like to note again that this is a minor allowance additional to what's allowed as a matter of right. Growing is allowed as a matter of right on this property. The warehouse accessory building is allowed as a matter of right on this property. Processing is going to go in one small portion of that already allowed building. I think we've adequately addressed, to the best of our ability, the concerns we received in these special conditions we're placing on this application moving forward. Again, those six special conditions that we've placed on this are not required if the applicant goes forward with just growing. So this is something that – the processing portion is a minor addition, but comes with six substantial increases to the overall use of the property, in our opinion. Justin, if you want to jump in for some comments before we ...

6. Mr. Williams – Yes, thank you. I take issue in part with the reference, with all due respect, to the protestors that this activity is not child or church friendly, and to make a personal attack concerning a prior matter with the applicant. This is a matter which is permitted by right, and I think that there is a connotation with medical marijuana right now that is leading a majority of the protests that is not applicable to the specific matter before the Commission today, which is whether this special use permit ought to be applied. There will be the development of a structure on the site for the cultivation of medical marijuana. That structure will comply with all applicable laws and regulations. It will be subjected to yearly inspections from the City of Norman and has, and will continue to be utilizing legal counsel to ensure that it is preparing itself to be a great neighbor in this community. The special conditions we have placed on this application each address every single one of the safety concerns and the smell concerns and everything else that would be present under the permitted use and wouldn't be required of the applicant if it were to decide to open up this new business and exercise the entrepreneurial spirit referenced by one of the protestors. In a whole, the failure to approve this application will only lead to, perhaps, even additional concern by any of the protestors of the same exact criticisms they have of this special use permit. These special conditions that have been set forth and proposed by us are going to alleviate concerns that everyone of these protestors seems to share, which is namely not in my back yard. Not medical marijuana. That is going to be present, undoubtedly, but we're going to do everything we possibly can to make sure that this business is ran properly and in compliance with the law and in a manner that doesn't interfere with anyone's enjoyment of their property. Thank you all.

DISCUSSION AND ACTION BY THE PLANNING COMMISSION:

Dave Boeck moved to recommend adoption of Ordinance No. O-1920-61 to City Council. Erin Williford seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

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| YEAS | Matthew Peacock, Erin Williford, Tom Knotts, Lark Zink, Steven McDaniel |
| NAYES | Nouman Jan, Dave Boeck, Sandy Bahan |
| MEMBERS ABSENT | None |
| ABSTAIN | Erica Bird |

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1920-61 to City Council, passed by a vote of 5-3, with 1 abstention.

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