



City of Apache Junction

Development Services Department



PLANNING AND ZONING COMMISSION NEW BUSINESS ITEM STAFF REPORT

DATE: October 24, 2017

CASE NUMBER: CUP-4-17

REQUEST: A Conditional Use Permit (CUP) amendment to allow the construction of a permanent building at an existing medical marijuana cultivation and infusion facility.

PROPERTY OWNER: MBD Holdings LLC C/O David House

APPLICANTS: Perpetual Healthcare Inc., represented by Lindsay Schube and Nick Sobraske of Gammage & Burnham PLC

LOCATION: The subject site is located at 1575 E. 18th Avenue, on the southwest corner of S. Tomahawk Road and E. 18th Avenue (Assessor parcel #102-07-215 & 216A).

**GENERAL PLAN/
ZONING DESIGNATION:** Designated "Medium Density Residential"; zoned B-5 (Industrial).

SURROUNDING USES:

NORTH: Vacant industrial lots (zoned B-5);

SOUTH: Palm Springs Mobile Homes Subdivision (zoned RS-7M);

EAST: Bel Agave Subdivision (zoned RS-5/PD);

WEST: Industrial business (zoned B-5).

BACKGROUND

The Palm Springs Unit 6 Industrial Subdivision, in which the subject site is located, was platted in 1966, 12 years before the city's incorporation. The existing buildings currently

housing the cultivation and infusion kitchen facility were constructed in 1981 and 1985, according to Assessor records. The west building, identified as Building 1 on the attached site plan and the ramada on the south end of the lot were constructed first; and the east building, identified as Building 2, was the later addition. As of June 2014, the new zoning on the property is B-5 (Industrial), which was formerly the CI-1 zone (Light Industry and Warehouse Zone). The old CI-1 zoning was in place when the City incorporated.

On May 27, 2014, pursuant to case CUP-2-14, the Planning and Zoning Commission approved Resolution No. CUP-2-14 (see attached), approving a conditional use permit for a medical marijuana cultivation and infusion kitchen facility at 1575 E. 18th Avenue. Nature's Wonder dispensary had partnered with Capital Care Connections LLC, as applicants for the CUP, represented by attorney, Mike Curley. Nature's Wonder personnel were going to operate the facility and Capital Care Connections was their management company. To refresh the Commissioners' memories, the facility is a cultivation site (where medical marijuana plants are grown) and an infusion site, where other products such as candies, beverages, edibles, lotions, etc. are produced, containing the active ingredients of medical marijuana. The facility is not a dispensary and no medical marijuana patients or anyone else (except authorized medical marijuana agents associated with the facility) are allowed to access the site. The products produced at the facility serve licensed medical marijuana dispensaries only.

After the CUP was approved, proper permits were pulled by Capital Care Connections for remodeling and eventually construction was approved. Nature's Wonder and Capital Care Connections LLC went separate ways and a new operator of the facility (Perpetual Healthcare Inc.) installed "mobile-minis" on the property without city knowledge or permits of approval. The request for temporary mobile units and the change of operator required an amendment to the CUP, as a temporary means of gaining compliance.

On December 15, 2015 pursuant to case CUP-2-15, the Planning and Zoning Commission approved Resolution No. CUP-2-15 (see attached), approving an amendment to the conditional use permit to allow cargo containers and mobile minis to be used as temporary storage, work space for an office, trim room, dry storage, break-room, lab, bottling room, and walk in refrigerator. The approval of the temporary units has an

expiration date of 24 months from the effective date of Resolution No. CUP-2-15 (December 15, 2015). The approved resolution also noted any expansion or addition of buildings requires a CUP amendment and upon any future CUP approval sewer system connection shall be required.

The owner of the subject site was and continues to be David House. He rents the property to the operators of the medical marijuana cultivation and infusion kitchen facility. Perpetual Healthcare Inc. is still the license holder and operator of the facility. They are managed by New Horizons Services LLC. The primary benefitting dispensary, also operated by Perpetual Healthcare Inc., is located in Phoenix, Arizona.

PROPOSAL DESCRIPTION

Pursuant to the conditions set forth in Resolution No. CUP-2-15, Perpetual Healthcare Inc. is requesting to amend the approved conditional use permit to follow the conditions set forth and construct a permanent structure, remove the mobile mini units, and connect the property to sewer.

The existing Ramada at the south of the property will be removed and the temporary "mobile-minis" will be used during the construction period but will be removed upon completion of the third building. If the CUP amendment is approved, then the applicant will proceed with the necessary building permits and inspections for the new building as well as connect to sewer which is available along Tomahawk Road. The facility will also be subject to inspections and approvals from the Arizona Department of Health Services, Medical Marijuana Division.

The proposed building will be 30' X 76'6" in size and located in the southwest corner of the property (see site plan attached). The building will be used for cultivation and dry storage, be a total of 14'6" tall with a stucco finish and an architectural bump-out strip across the top of the building. An addition of five (5) more parking spaces are proposed including one (1) ADA parking space. The proposed additional building does not affect on-site retention requirements.

PLANNING STAFF ANALYSIS AND FINDINGS

CUP-2-14 was originally approved to allow for the use of the medical marijuana cultivation and infusion facility at the subject site. When the CUP was amended and approved in 2015 under CUP-2-15 it allowed temporary mobile-mini and storage units and updated current ownership and operator information, and kept the previous conditions of CUP-2-14 still in full force and effect. This second amendment is following the conditions of CUP-2-15 which outlined an expiration date for the mobile mini units.

The construction of a permanent building with architectural details will improve the site that currently holds multiple mobile-mini units and a pre-existing ramada will be removed. The property, which is still currently on septic, will also be required to connect to sewer. The applicant has completed the requirements of the conditions stated in Resolution No. CUP-2-15 on time and there have not been any code cases on the property. Staff sees the construction of a permanent building as an improvement to the property and a new building with architectural details will be an upgrade to the industrial area.

Possible conditions of approval:

The conditions of approval for the amended CUP will restate most of the current conditions of Resolution No. CUP-2-15. Conditions addressing the mobile-mini units will be removed. Updated language similar to the recently approved second medical marijuana dispensary will be used for any change to owners, operators, or board members of the facility management. Some possible additional conditions are stated below and for discussion:

1. Upon approval of the CUP, a building permit will be required and applied for with Development Services for building #3 within 120 days of the effective date of approval for Resolution No. CUP-4-17, the applicant will have a maximum of two (2) years from the effective date of Resolution No. CUP-4-17 to obtain a certificate of occupancy. The building permit shall require electrical, plumbing, odor control filters and dark sky compliant outdoor lighting. Any lighting proposed on the south side of the building shall follow dark sky regulations for light glare onto adjacent residentially-zoned properties.

2. The applicant shall provide a site plan detailing what mobile mini units will be used during construction of the permanent building, and relocation if necessary. Relocation, including changes to utilities for the units will be subject to applicable building permits.
3. The new building will have architectural details as depicted on the plans submitted with the CUP, have a stucco finish, and be painted desert neutral colors.
4. The applicant shall work with Superstition Mountain Community Facilities District #1 and/or adjacent property owners to connect to sewer as part of the building permit requirements.
5. Any future expansions or additional buildings will require an amendment to the CUP and be subject to applicable zoning, building, and engineering code requirements.
6. Should ownership of the dispensary change at any time after approval of the CUP, the new owners shall operate the dispensary subject to the exact same conditions of approval, including the provision of all new ownership, operator and medical marijuana agent information (and updates) to the city's police department.
7. If changes in the members, directors and officers occur, Perpetual Healthcare Inc. shall keep the planning division informed of said changes. If at any time during the operation of the cultivation and infusion facility, the managing member of the LLC or a majority of the members, directors or officers changes, a CUP amendment shall be required.

The city's zoning ordinance, Section 1-16-12(D)(3) (attached), is the section that lists the criteria or findings for conditional use permits in general. The CUP criteria which the commission should consider in evaluating any CUP request and staff's commentary on said criteria (in grey tone) relative to this request, for the commission's discussion and consideration are as follows:

Findings. A CUP may be granted upon a finding by the commission that the use covered by the permit, the manner of its conduct, and any structure involved will not be detrimental to persons

residing or working in the area, to adjacent property, to the neighborhood, or to the public welfare in general. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant.

In arriving at the above determination, the commission shall consider but not be limited to the following factors:

- a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use. (The site is located along a road used primarily for access to industrial properties. The site has all necessary services and will be connected to sewer. Public access and improvements are not required. The use is existing and the proposed building will not affect roadways, parking, facilities or services).
- b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat, or glare. (The facility uses filtration devices to keep odors from escaping. When odor complaints have been made, city staff has inspected the property. There have not been any odor complaints over the last year. Staff will request that odor control devices be installed on the new building to further mitigate possible odor issues).
- c) Contribution to the deterioration of the neighborhood or the negative impact of neighborhood property values. (Staff expects no negative impact to the neighborhood with the addition of a permanent building).
- d) Compatibility with surrounding uses and structures. (Uses to the north and west are zoned industrial and should not be negatively affected. Properties to the south and east are single-family subdivisions, the industrial area has existed prior to city incorporation. The cultivation and infusion facility is permitted with a conditional use permit on an industrially zoned property).
- e) Conformance with the General Plan and City policies. (The General Plan designates the area as Medium Density Residential, but the industrial area has existed prior to city incorporation and the general plan. The use appears to comply with the criteria for a CUP as well as the criteria for a medical marijuana cultivation and infusion facility).

- f) Screening and buffering of uses. *(The current site is developed and has a six (6) foot high wall surrounding the property with a gated entrance and security).*
- g) Unique nature of the property, use and/or development's physical characteristics. *(The property is not in a major flood zone, it was developed in and the early 80's and does not have on-site retention).*

PUBLIC NOTIFICATION

The CUP case has been advertised for the Planning and Zoning Public Hearing of November 14, 2017, and letters were mailed to all property owners within 300 feet of the site on October 23rd. Staff will advise the Commissioners of any comments received. No comments from private citizens have been received by Planning Staff as of the drafting of this work session staff report.

P&Z PUBLIC HEARING ON NOVEMBER 14TH:

Tonight's item is for discussion purposes only, to introduce the item to the Commissioners and to give the Commissioners the chance to ask any initial questions or express any concerns. At the Commission public hearing on November 14, staff will present an updated staff report, with recommended conditions for the Commission to consider.



Prepared by Stephanie Bubenheim
Assistant Planner

Attachments:

- Exhibit #1 - CUP-4-17 Application
- Exhibit #2 - CUP-4-17 Narrative
- Exhibit #3 - CUP-4-17 Aerial Map
- Exhibit #4 - CUP-4-17 Zoning Map
- Exhibit #5 - Existing Site Plan
- Exhibit #6 - Proposed Site Plan
- Exhibit #7 - Proposed Floor Plan
- Exhibit #8 - Proposed Elevation
- Exhibit #9 - Resolution No. CUP-2-15
- Exhibit #10 - Resolution No. CUP-2-14
- Exhibit #11 - Approval to Operate Certificate
- Exhibit #12 - Apache Junction City Code Section 1-6-12
- Exhibit #13 - Apache Junction City Code Section 1-16-12

CITY OF APACHE JUNCTION
CONDITIONAL USE PERMIT APPLICATION FORM

Owner/Agent Information:

Name: Gammage & Burnham, PLC c/o Lindsay Schube Telephone: (602) 256-4471

Address: 2 North Central Avenue, 15th Floor, Phoenix, Arizona 85004

Property Information:

Zoning Classification

Current: B-5, CUP for MM Cultivation and Infusion

Requested: New CUP for MM Cultivation and Infusion.

Property Size: +/- 0.52 ☒ acres ☐ square feet County Tax Assessor Parcel #: 102-07-215 and -216A

Legal Description of Property (found on County Tax Bill Notices): _____

See attached Legal Description.

Address/Location of Property (if different from Owner Address, above): _____

1575 East 18th Avenue

List all improvements to Property: See attached Narrative.

Structures/Use of Adjacent Properties: See attached Narrative.

North: _____

South: _____

East: _____

West: _____

Reason for Conditional Use Permit Request: See attached Narrative.

FOR OFFICE USE ONLY

Case No: CUP-4-17

Date Filed: 6/14/17

Receipt No: 44661

Fee Amount: \$ 800 + \$500 = \$1300

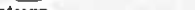
Application Received By: Stephanie Bubenheim

RECEIVED

JUN 14 2017

(1) We certify that:

I/We have read the application instructions and have truthfully completed this application. I/We understand that this Permit is conditional upon time requirements, that the filing and investigation fee is non-refundable, and that the City has the option of either approval or denial of this request following conduct of a Public Hearing.


Signature

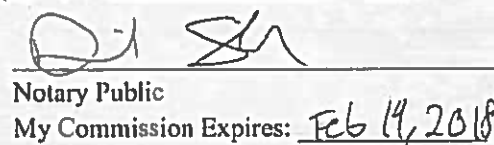
480-330-8858
Telephone
Signature *D. L. Hulse*

Telephone _____

Signature _____

Telephone _____

The foregoing instrument was acknowledged before me this 9 day of June, 2017.



July 20, 2017

Ms. Stephanie Bubenheim
City of Apache Junction
Planning and Zoning Division
300 East Superstition Boulevard
Apache Junction, Arizona 85119

Re: Property Owner Acknowledgement and Authorization for a Medical Marijuana
Cultivation and Infusion Facility

To Whom It May Concern:

MBD Holdings, LLC ("MBD") is the owner of the approximate .52 acres generally located at the southwest corner of 18th Avenue and Tomahawk Road, also known as Pinal County Assessor Parcel Numbers 102-07-216A and -2150 ("Property"). MBD acknowledges that the Property is entitled for and operated as a medical marijuana cultivation and infusion facility. MBD also acknowledges and authorizes Perpetual Healthcare, Inc. and Gammage & Burnham, PLC to file, process and represent at meetings and/or public hearings entitlement or other applications necessary to expand the existing cultivation and infusion facility on the Property.

MBD Holdings, LLC

By David A. House
DAVID A HOUSE
Its Managing Member

CONDITIONAL USE PERMIT

1575 EAST 18th AVENUE

PINAL COUNTY ASSESSOR PARCEL NUMBERS 102-07-215 and -216A

NARRATIVE

JUNE 14, 2017

INTRODUCTION

This Conditional Use Permit application ("Application") is being submitted on behalf of Perpetual Healthcare Inc. ("Perpetual"). Perpetual currently operates a State of Arizona ("State") licensed, non-profit medical marijuana cultivation and infusion facility at 1575 East 18th Avenue ("Property") within an existing industrial area. The Property is zoned B-5 (Industrial). The property to the north is vacant and is zoned B-5 for industrial uses; the property to the east across Tomahawk Road is vacant and is zoned RS-GR for low density single-family residential; the property to the south is an existing mobile home park zoned RS-7M; and the properties to the west and northwest are existing industrial uses zoned B-5. This application ("Application") requests a new Conditional Use Permit (CUP) to allow for a medical marijuana cultivation and infusion facility within a new approximately 2,400 square-foot permanent building on the Property.

HISTORY

In May 2014, the Apache Junction Planning and Zoning Commission approved case CUP-2-14 (Resolution No. CUP-2-14) for Nature's Wonder Inc. and Capital Care Connections LLC ("CCC"), who partnered to operate a medical marijuana cultivation and infusion facility in the existing buildings on the Property under Perpetual's medical marijuana license (Perpetual currently operates a State licensed medical marijuana dispensary in the City of Phoenix). Then in May 2015, CCC breached its operating contract with Perpetual. Perpetual also learned that CCC failed to pay utilities, vendors, falsified financial documents, etc. and installed "mobile minis" on the Property. Perpetual immediately launched an investigation.

Shortly thereafter in August 2015, the Arizona Department of Health Services ("DHS") and Apache Junction Staff determined that the mobile minis were being used as work spaces. Apache Junction Staff further determined that the use of the mobile minis was considered an expansion of the medical marijuana cultivation and infusion facility approved in CUP-2-14, and that a Conditional Use Permit amendment was required. On August 21, 2015, Perpetual severed its agreement with CCC and replaced all of CCC's directors, managers, and members.

In September 2015, Perpetual filed a Conditional Use Permit amendment (CUP-2-15) to allow for the medical marijuana cultivation and infusion facility, including the use of the mobile minis, to bring the Property into compliance. On December 8, 2015, the Planning and Zoning Commission approved CUP-2-15 (Resolution No. CUP-2-15), subject to conditions.

REQUEST

CUP-2-15 approval condition no. 16 states:

The use of the cargo containers and mobile minis as temporary storage and work spaces for an office and trim room, dry storage and break-room, lab, bottling room, and walk-in refrigerator, shall be allowed for a maximum of 24-months from the effective date [December 15, 2015] of Planning and Zoning Commission Resolution No. CUP-2-15. Within 18-months of said effective date, the operators of the Facility shall apply for another CUP amendment to construct permanent storage facilities and/or additional buildings to suit the needs and operations of the Facility, as well as additional time for the use of the storage containers and mobile minis during construction of the permanent buildings.

In accordance with this approval condition and Section 1-16-12(D) of the Apache Junction Zoning Ordinance, this Application requests approval of a new Conditional Use Permit to allow for a medical marijuana cultivation and infusion facility within a new approximately 2,400 square-foot permanent building as shown on the Site Plan. Perpetual does not anticipate that the approval of this CUP and the construction of the new building will generate the need for additional employees to be on the

Property. Additionally, this Application requests to allow for the continued use of the cargo containers and mobile minis as temporary storage and work spaces for an office and trim room, dry storage and break-room, lab, bottling room, and walk-in refrigerator for twelve (12) months from the effective date of this Application to allow for the review, permitting and construction of the new permanent building as shown on the Temporary Site Plan. The use of the cargo containers and mobile minis shall cease on or before December 15, 2017 (24-months from the effective date of CUP-2-15 as required by CUP approval condition no. 16).

In accordance with Section 1-16-12(D)(3), a CUP may be granted upon a finding by the Planning and Zoning Commission that the use, the manner of its conduct, and any structure involved will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood, or the public welfare in general, including the following factors:

- (a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use.

Response: The adjacent roadways, off-street parking, public facilities and services are adequate to accommodate this Application. The approval of this Application and the proposed new building will not detrimentally impact or require improvements to adjacent roadways, off-street parking, public facilities and services. The Property is zoned B-5, which permits industrial uses, such as manufacturing, distribution, warehousing, and certain retail and service uses. These uses, which importantly are permitted by-right on the Property, are more intense than this Application and the proposed new building.

- (b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare.

Response: This Application will not cause a significant increase in the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare. The already approved medical marijuana cultivation and infusion facility in CUP-2-14 and CUP-2-15 involves the growing, processing, trimming, drying, etc. of cannabis. Since these approvals, there has been no significant increase in the emission of odor, dust, gas, noise, lighting, vibration, heat or glare. The proposed medical marijuana cultivation

and infusion facility is nearly identical to the existing use of the Property approved in CUP-2-14 and CUP-2-15, thus will not cause a significant increase in the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare. It is also important to recognize, the proposed medical marijuana cultivation and infusion facility will operate within a new enclosed building, which will result in no dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding ambient conditions being emitted.

- (c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values.

Response: This Application will not contribute in a measurable way to the deterioration of the neighborhood or the lowering of property values. Perpetual will ensure the safe operation of the proposed medical marijuana cultivation and infusion facility, as well as the existing operating medical marijuana cultivation and infusion facility on the Property, by complying with all applicable security requirements set forth by the State, DHS and City.

As stated above, the Planning and Zoning Commission previously approved CUP-2-14 and CUP-2-15 for a medical marijuana cultivation and infusion facility on the Property. Since these approvals, there has been no measurable deterioration of the neighborhood or contribution to the lowering of property values. The proposed medical marijuana cultivation and infusion facility is nearly identical to the existing use on the Property approved in CUP-2-14 and CUP-2-15, thus will have no negative impacts on the neighborhood or contribute to the lowering of property values.

Furthermore, the approval of this Application will allow Perpetual to operate the proposed medical marijuana cultivation and infusion facility in compliance with all applicable laws of the City of Apache Junction.

(d) Compatibility with surrounding uses and structures.

Response: This Application is compatible with the surrounding uses and structures. The Property is located within an area zoned B-5. Surrounding properties to the north, northwest and west include industrial uses. The proposed medical marijuana cultivation and infusion facility is similar in intensity to, if not less intense than, the surrounding land uses within the industrial area.

Additionally, Perpetual currently operates a medical marijuana cultivation and infusion facility on the Property. The existing medical marijuana cultivation and infusion facility has operated with no significant impacts on the mobile home park to the south. The proposed medical marijuana cultivation and infusion facility is nearly identical to the existing use on the Property approved in CUP-2-14 and CUP-2-15.

(e) Conformance with the General Plan and city policies.

Response: The 2010 Apache Junction General Plan designates the Property as Medium Density Residential land use. However, the Property is zoned B-5 for industrial uses. The proposed medical marijuana cultivation and infusion facility is a conditionally permitted use in the B-5 zoning district and is nearly identical to the existing use of the Property.

(f) Screening and buffering of uses.

Response: No screening or buffering is proposed or required as part of this Application. The proposed medical marijuana cultivation and infusion facility will be located entirely within the proposed new building.

(g) Unique nature of the property, use and/or development's physical constraints.

Response: Apache Junction's Zoning Ordinance requires that a medical marijuana cultivation and infusion facility be located on property zoned B-1 through B-5 and that such property be located more than: 1,320-feet from another medical marijuana use; 750-feet from a school, day care center, place of worship, or drug/alcohol rehabilitation facility; and (3)

750-feet from other sensitive land uses as determined by the Zoning Administrator. Because of the zoning and separation requirements and development patterns around properties zoned B-1 through B-5, there are few properties that qualify for medical marijuana uses.

Perpetual currently operates a State licensed, non-profit medical marijuana cultivation and infusion facility on the Property. Perpetual sees this as an opportunity to concentrate its operation to a single property. The proposed CUP is compatible with and will have minimal impact, if any, on the other existing industrial and other uses in the area, including the already approved conditional use permits (CUP-2-14 and CUP-2-15) for the medical marijuana cultivation and infusion facility on the Property. Perpetual will ensure the safe operation of the proposed medical marijuana cultivation and infusion facility, as well as the already approved facility on the Property, by complying with the security requirements set forth by the State and DHS.

Finally, the Planning and Zoning Commission has approved CUP-2-14 and CUP-2-15 on the Property; thereby finding that this medical marijuana use will not be detrimental to persons residing or working the area, to adjacent property, to the neighborhood, or the public welfare in general.



City of Apache Junction

Aerial Exhibit

CUP-4-17

LEGEND

- Subject Site
- Parcel

DISCLAIMER: This exhibit was produced without benefit of a field survey and is not intended to represent a survey document of any kind. Distances shown hereon are approximate. Parcel lines shown hereon are approximate and may not reflect the exact position or alignment of parcel lines, roadway center lines, or easement lines.



July 24, 2017

0 25 50 75 100 200 Feet



City of Apache Junction Zoning Exhibit CUP-4-17

LEGEND

- Subject Site
- Parcel

Zoning

- B-5
- RS-7M
- RS-5/PD
- RS-GR

DISCLAIMER: This exhibit was produced without benefit of a field survey and is not intended to represent a survey document of any kind. Distances shown hereon are approximate. Parcel lines shown hereon are approximate and may not reflect the exact position or alignment of parcel lines, roadway center lines, or easement lines.



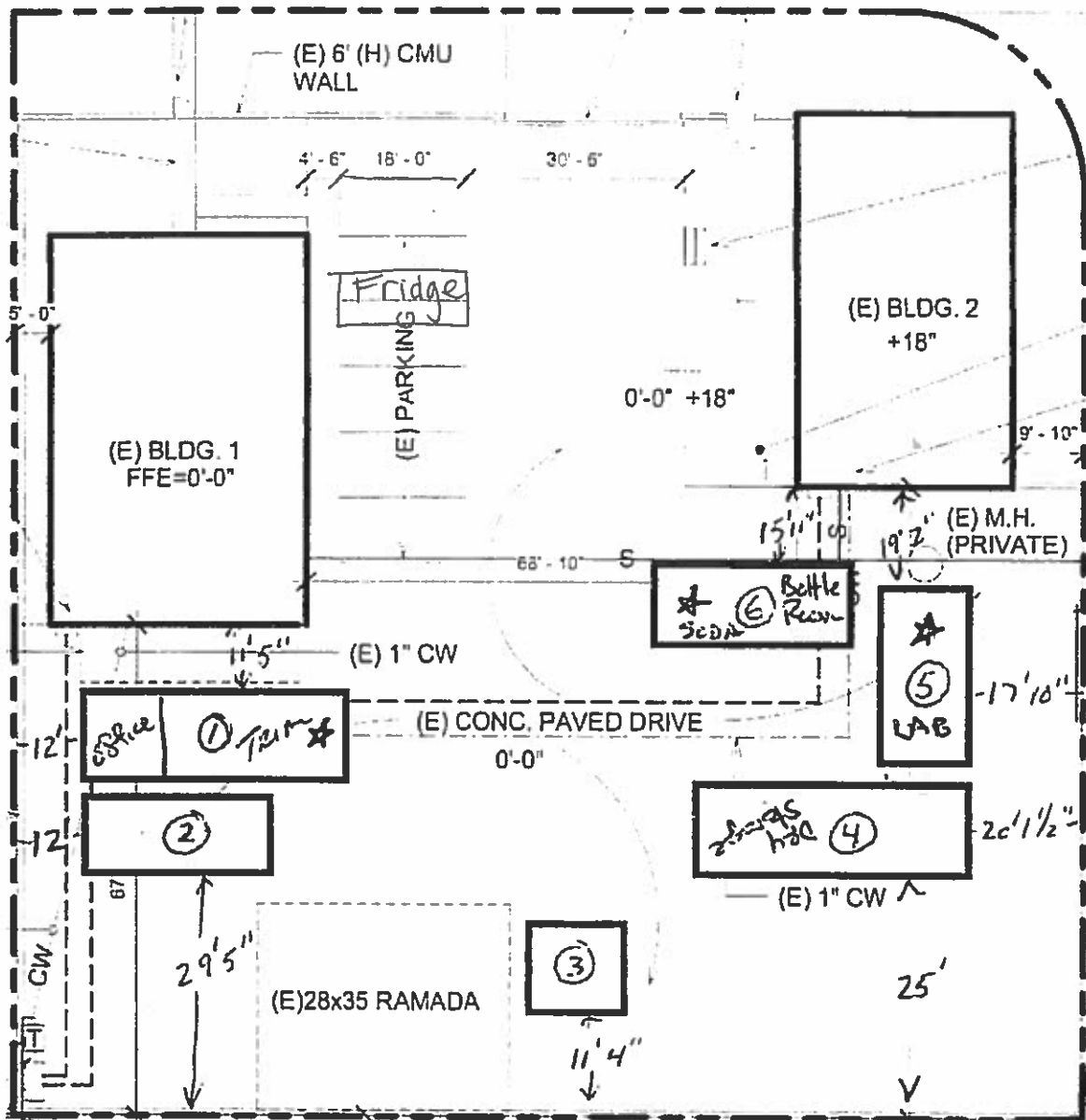
July 24, 2017

0 25 50 75 100 200 Feet

Created By Joseph Kilner

PREVIOUS SITE PLAN

⑥



Information for Connex Box Permit for Perpetual Healthcare/Capital Care Connection. 1575 East 18th Ave Apache Junction Arizona.

- * Container #1 - 8'x40' - TRIM/OFFICE ROOM
- Container #2 - 8'x21'
- Container #3 - 8'x10'
- Container #4 - 8'x40'
- * Container #5 - 10'x30' - LAB
- * Container #6 - 8'x20' - SODA Bottle Room

[illegible]

SEALS AND SIGNATURES

NOT FOR
CONSTRUCTION

OWNERSHIP OF DOCUMENTS

DRAWINGS AND SPECIFICATIONS AS INSTRUMENTS OF SERVICE ARE AND SHALL REMAIN THE PROPERTY OF THE ARCHITECT WHETHER THE PROJECT FOR WHICH THEY WERE PREPARED IS EXECUTED OR NOT. THEY ARE NOT TO BE USED ON OTHER PROJECTS OR EXTENSIONS TO THIS PROJECT EXCEPT BY AGREEMENT IN WRITING AND WITH APPROPRIATE COMPENSATION TO KONTEXTURE, L.L.C.

DRAWING TITLE

ELEVATIONS

09.26.2017

DATE _____ D.I. _____

DRAWN BY D.I.

CHECKED BY _____

SCA	1/4"=1'-0"
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PROJECT NUMBER

A3.0

DRAWING NUMBER



PLANNING AND ZONING COMMISSION
RESOLUTION NO. CUP-2-15

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING CASE NO. CUP-2-15, A CONDITIONAL USE PERMIT AMENDMENT, AMENDING PLANNING AND ZONING COMMISSION RESOLUTION NO. CUP-2-14 TO ALLOW PERPETUAL HEALTHCARE INC., REPRESENTED BY LINDSAY SCHUBE OF GAMMAGE AND BURNHAM, TO EXPAND THEIR NON-PROFIT MEDICAL MARIJUANA CULTIVATION AND INFUSION KITCHEN FACILITY ON A PROPERTY OWNED BY DAVID A. HOUSE AT 1575 E. 18TH AVENUE.

WHEREAS, on or about May 27, 2014, the City of Apache Junction Planning and Zoning Commission approved case CUP-2-14, Planning and Zoning Commission Resolution No. CUP-2-14 ("Reso. #CUP-2-14"), a Conditional Use Permit request from Nature's Wonder Inc. and Capital Care Connections LLC (applicants), represented by Michael J. Curley of Earl, Curley and Lagarde, P.C., to operate a non-profit medical marijuana cultivation site and infusion kitchen facility (the "Facility") in existing buildings located at 1575 E. 18th Avenue; and which property is legally described as:

Lots 43, 44 and 45, Palm Springs Unit Six, according to Book 13 of Maps, Page 48, Records of Pinal County, Arizona (also known as Pinal County Assessor Parcels #102-07-215 and 102-07-216A); and

WHEREAS, since May 27, 2014, both Nature's Wonder Inc. (around November of 2014) and later Capital Care Connections LLC became disassociated from said facility, although the remodeling work on the buildings was permitted to and performed by Capital Care Connections; and

WHEREAS, on or about August 17, 2015, City staff was informed by the Arizona Department of Health Services that "mobile minis" had been added at the facility and queried if the City had approved the use of said mobile minis; and

WHEREAS, in late August 2015, City staff met with the new operators of the facility, Perpetual Healthcare Inc., and informed their representatives that the use of cargo containers

required an administrative use permit and the use of mobile minis as additional work spaces was considered an expansion of the facility, according to the conditions of approval of Reso. #CUP-2-14 and thus required the processing and approval of a conditional use permit amendment; and

WHEREAS, Perpetual Healthcare Inc., the new properly licensed operator of the facility wishes to comply with all conditions of approval and bring the property into compliance with Reso. #CUP-2-14; and

WHEREAS, all conditions of approval of Reso. #CUP-2-14 are still in full force and effect, except as otherwise modified or amended by this new resolution.

NOW THEREFORE, BE IT RESOLVED by the Planning and Zoning Commission of the City of Apache Junction, Arizona, that a CUP amendment is hereby approved, allowing Perpetual Healthcare Inc. to operate and expand the non-profit medical marijuana cultivation and infusion kitchen Facility on the property owned by David A. House at 1575 E. 18th Avenue, with temporary mobile minis (or office trailers), as described in the plans, narrative and other materials submitted with case CUP-2-15, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 2 Zoning Ordinance, Article 1-6 Supplemental Regulations, Section 1-6-12 Medical Marijuana. The conditions of approval of Reso. #CUP-2-14 are hereby restated, modified and/or amended as follows:

- 1) The owners/operators of the non-profit medical marijuana cultivation and infusion kitchen Facility shall obtain all necessary approvals from the Arizona Department of Health Services ("ADHS") and the Pinal County Health Department prior to beginning medical marijuana cultivation and infusion kitchen operations, including inside the temporary mobile minis and the walk-in refrigerator.
- 2) The owners/operators of the Facility shall obtain and keep a City business license at all times during the operation of the medical marijuana cultivation and infusion kitchen operations.

- 3) Upon final approval from the ADHS to operate the Facility, a copy of said final approval letter shall be provided to the Planning Division and the Apache Junction Police Department ("AJPD") for the purpose of record keeping.
- 4) All non-profit medical marijuana agents associated with the Facility shall register with the AJPD for the purpose of background checks and record keeping (including but not limited to, owners, employees, directors, board members, etc.).
- 5) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, signage, odor control, security or other property improvements which require permits, including for the use of temporary mobile minis (in accordance with the submitted plans and narrative received for CUP-2-14 and CUP-2-15), prior to beginning Facility operations including inside the mobile minis.
- 6) No other non-profit medical marijuana cultivation, infusion or dispensary facilities shall be established in the Apache Junction city limits by Nature's Wonder Inc., Capital Care Connections LLC, Perpetual Healthcare Inc. or any other entity, without first applying through the city's CUP process.
- 7) The Facility shall not offer or allow the following: outdoor seating/break areas for anyone other than employees and agents of the Facility; on-site consumption of medical marijuana; loitering in or around the premises; the sale of any products from the Facility.
- 8) Signage on the building shall conform to the city's Sign Code for industrial zoned properties. The marijuana leaf symbol shall not appear on any signs visible from outside the Facility. The existing artwork on the building may remain, but the name "A&H Contracting" shall be removed from the building (and the façade repaired afterward) to avoid any confusion.

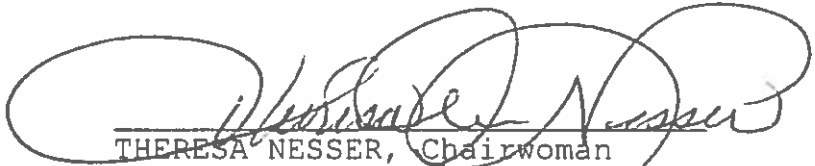
- 9) The buildings housing the Facility, including the use of the mobile minis, shall not be allowed any expansions, unless a new CUP or CUP amendment application is processed and approved by the City first.
- 10) Perpetual Healthcare Inc. shall keep and neatly maintain all landscape improvements along the property's 18th Avenue and Tomahawk Road frontages, in accordance with the city's Landscape and Screening Requirements.
- 11) All screening, fencing and security improvements on the property shall be kept in good condition and repair at all times.
- 12) The Applicants shall continue to operate the Facility in accordance with the submitted drawings and narrative documents submitted with CUP-2-14 and as otherwise amended herein by CUP-2-15, or else the CUP shall be subject to revocation by the Planning and Zoning Commission.
- 13) The operators of the Facility shall cooperate with local police officials insofar as personnel updates, providing copies of agent registration cards, unannounced inspections by law enforcement officials at any time the Facility is occupied and/or operating, emergency contact information, alarm permit and other items for the reasonable, transparent and safe operation of the Facility.
- 14) The operators of the Facility shall provide for parking accommodations (number, design and layout of parking spaces) as depicted in the site plans submitted as part of the CUP-2-14 and CUP-2-15 applications.
- 15) The operators of the Facility shall work with City staff to provide for high resolution security cameras at the Facility, including in and around the mobile minis and walk-in refrigerator.
- 16) The use of the cargo containers and mobile minis as temporary storage and work spaces for an office and

trim room, dry storage and break-room, lab, bottling room, and walk-in refrigerator, shall be allowed for a maximum of 24 months from the effective date of Planning and Zoning Commission Resolution No. CUP-2-15. Within 18-months of said effective date, the operators of the Facility shall apply for another CUP amendment to construct permanent storage facilities and/or additional buildings to suit the needs and operations of the Facility, as well as additional time for the use of the storage containers and mobile minis during construction of the permanent buildings.

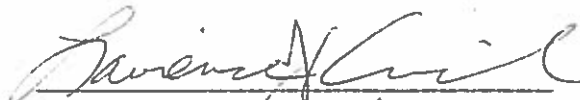
- 17) If septic system failure occurs at the site and if there is sewer service available, the Facility shall be required to connect to the sewer system. Sewer system connection shall be required as part of any future CUP approval for permanent expansion. The owners and operators of the Facility shall work with the Sewer District to tie in to the sewer system, including the provision of any pre-treatment equipment or infrastructure which may be required.
- 18) Perpetual Healthcare Inc. shall provide to the city's Planning Division a copy of their articles of incorporation, including the names of the directors and officers. As changes in directors and officers occur, Perpetual Healthcare shall keep the Planning Division informed of said changes. If at any time during the operation of the Facility, a majority of the directors and officers changes, a CUP amendment shall be required.
- 19) The Planning and Zoning Commission shall reserve the right to reconsider or overturn the Applicant's CUP approval, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-2-14 and CUP-2-15 permit approvals.

PASSED AND ADOPTED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS 8TH DAY OF DECEMBER, 2015.

SIGNED AND ATTESTED TO THIS 15TH DAY OF DECEMBER, 2015.


THERESA NESSER, Chairwoman
Planning and Zoning Commission

ATTEST:


LARRY KIRCH 12-15-15 
Development Services Director

APPROVED AS TO FORM:

 12.9.15

RICHARD J. STERN
City Attorney

PLANNING AND ZONING COMMISSION
RESOLUTION NO. CUP-2-14

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING A CONDITIONAL USE PERMIT, CASE NO. CUP-2-14, TO ALLOW NATURE'S WONDER INC. AND CAPITAL CARE CONNECTIONS LLC, REPRESENTED BY MICHAEL J. CURLEY OF EARL, CURLEY AND LAGARDE, P.C., TO OPERATE A NON-PROFIT MEDICAL MARIJUANA CULTIVATION AND INFUSION KITCHEN FACILITY ON A PROPERTY OWNED BY DAVID A. HOUSE AT 1575 E. 18TH AVENUE.

WHEREAS, on or about March 13, 2014, a Conditional Use Permit ("CUP") application was submitted to the City of Apache Junction by David A. House (property owner), Nature's Wonder Inc. and Capital Care Connections LLC (applicants), represented by Michael J. Curley of Earl, Curley and Lagarde, P.C., requesting approval to operate a non-profit medical marijuana cultivation site and infusion kitchen facility (the "Facility") in existing buildings located at 1575 E. 18th Avenue; and which property is legally described as:

Lots 43, 44 and 45, Palm Springs Unit Six, according to Book 13 of Maps, Page 48, Records of Pinal County, Arizona (also known as Pinal County Assessor Parcels #102-07-215 and 102-07-216A); and

WHEREAS, on May 13, 2014, the City of Apache Junction Planning and Zoning Commission held a Work Session meeting to discuss case CUP-2-14 with Planning Staff and raised several questions about the proposed Facility, including questions about odor control equipment, packaging of infused products, truth in labeling of infused products, what happens to excess inventory and other questions; and

WHEREAS, on May 27, 2014, the Planning and Zoning Commission held a Public Hearing on case CUP-2-14, wherein the Commissioners heard the staff evaluation and recommendations pertaining to the case, the Applicant's response to the Commission's questions from the earlier Work Session, as well as new questions, and where public input was heard; and

WHEREAS, on May 27, 2014, after: 1) receiving satisfactory responses to the questions raised on May 13 and responses to the questions raised at the public hearing; 2) hearing and considering all of the facts presented, including reviewing the land use criteria relevant to the granting of a CUP for a medical marijuana use; and 3) hearing testimony and concerns from the public, applicants and staff, the Planning and Zoning Commission voted 5-2 in favor of case CUP-2-14, with conditions.

NOW THEREFORE, BE IT RESOLVED by the Planning and Zoning Commission of the City of Apache Junction, Arizona, that a CUP is hereby approved, allowing Nature's Wonder Inc. and Capital Care Connections LLC, to operate a non-profit medical marijuana cultivation and infusion kitchen Facility on a property owned by David A. House, as described in the plans, narrative and other materials submitted with case CUP-2-14, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 2 Zoning Ordinance, Article 1-6 General Provisions and Exceptions, Section 1-6-1 Conditional Use Permits, subject to the following conditions:

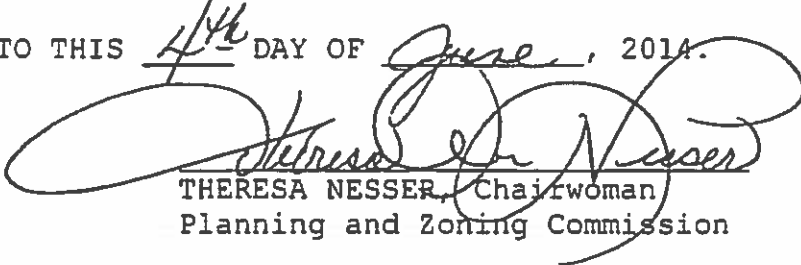
- 1) The owners/operators of the non-profit medical marijuana cultivation and infusion kitchen Facility shall obtain all necessary approvals from the Arizona Department of Health Services ("ADHS") and the Pinal County Health Department prior to beginning medical marijuana cultivation and infusion kitchen operations.
- 2) The owners/operators of the Facility shall obtain a City business license prior to beginning medical marijuana cultivation and infusion kitchen operations.
- 3) Upon final approval from the ADHS to operate the Facility, a copy of said final approval letter shall be provided to the Planning Division and the Apache Junction Police Department ("AJPD") for the purpose of record keeping.
- 4) All non-profit medical marijuana agents associated with the Facility shall register with the AJPD for the purpose of background checks and record keeping (including but not limited to, owners, employees, directors, board members, etc.).

- 5) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, signage, security or other property improvements which require permits (in accordance with the submitted plans and narrative received for CUP-2-14), prior to beginning Facility operations.
- 6) No other non-profit medical marijuana cultivation, infusion or dispensary facilities shall be established in the Apache Junction city limits by Nature's Wonder Inc. and/or Care Capital Connections LLC, or any other entity, without first applying through the city's CUP process.
- 7) The Facility shall not offer or allow the following: outdoor seating/break areas for anyone other than employees and agents of the Facility; on-site consumption of medical marijuana; loitering in or around the premises; the sale of any products from the Facility.
- 8) Signage on the building shall conform to the city's Sign Code for industrial zoned properties. The marijuana leaf symbol shall not appear on any signs visible from outside the Facility. The existing artwork on the building may remain, but the name "A&H Contracting" shall be removed from the building (and the façade repaired afterward) to avoid any confusion.
- 9) The buildings housing the Facility shall not be allowed any expansions, unless a new CUP or CUP amendment application is processed and approved by the City first.
- 10) Nature's Wonder Inc./Care Capital Connections LLC, shall hire a landscape architect or landscape professional to work with Planning Staff to design, install and complete landscape improvements where needed along the property's 18th Avenue and Tomahawk Road frontages, in accordance with the city's Landscape and Screening Requirements.

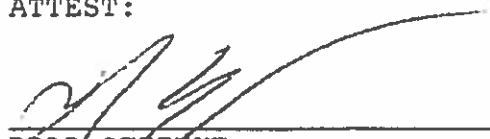
- 11) The dilapidated 5' chain link fence on the west property boundary shall be replaced with a new 6-foot-high block wall.
- 12) The Applicants shall develop and begin operating the Facility in accordance with the submitted drawings and narrative documents within 12 months of the granting of CUP-2-14, or within the timeframe prescribed by the ADHS, whichever is sooner, or else the CUP shall become void.
- 13) The operators of the Facility shall cooperate with local police officials insofar as personnel updates, providing copies of agent registration cards, unannounced inspections by law enforcement officials at any time the Facility is occupied and/or operating, emergency contact information, alarm permit and other items for the reasonable, transparent and safe operation of the Facility.
- 14) The operators of the Facility shall provide for parking accommodations (number, design and layout of parking spaces) as depicted in the site plan submitted as part of the CUP-2-14 application.
- 15) The operators of the Facility shall work with City staff to provide for high resolution security cameras at the Facility.
- 16) The Planning and Zoning Commission shall reserve the right to reconsider or overturn the Applicant's CUP approval, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-2-14 permit approval.

PASSED AND ADOPTED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS 27TH DAY OF MAY, 2014.

SIGNED AND ATTESTED TO THIS 4th DAY OF June, 2014.


THERESA NESSER, Chairwoman
Planning and Zoning Commission

ATTEST:



BRAD STEINKE
Development Services Director

APPROVED AS TO FORM:

 6.4.14

RICHARD J. STERN
City Attorney



ARIZONA DEPARTMENT
OF HEALTH SERVICES

Cultivation Site

Perpetual Healthcare, Inc.

1575 E 18th Ave, Apache Junction, Arizona 85119

APPROVAL TO OPERATE

THIS CERTIFICATE IS NOT TRANSFERABLE

Registration Certificate Identification Number: 00000033DCCK00134006

Effective Date: August 8, 2017

Expiration Date: August 7, 2018

This cultivation site has been approved to cultivate medical marijuana at this location for the above named dispensary located at 4244 W Dunlap Rd, Ste., 1, Phoenix, Arizona 85051.

A Certificate for Approval to Operate a dispensary and, if applicable, a dispensary's cultivation site, issued by the Arizona Department of Health Services pursuant to A.R.S. Title 36, Chapter 28.1 and A.C.C. Title 9, Chapter 17 does not protect the holder from legal action by local, city, state, or federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana. The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical Marijuana Act ("Act"), A.R.S. Title 36, Chapter 28.1 and A.A.C. Title 9, Chapter 17. Any failure to comply with the Act may result in revocation of the Registration Certificate issued by the Arizona Department of Health Services, and possible arrest, prosecution, imprisonment, and fines for violation of state drug laws. The State of Arizona, including but not limited to the employees of the Arizona Department of Health Services, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical marijuana.

Recommended By: Carla Berg

Bureau Chief Special Licensing

Issued By: Colby Bower

Assistant Director

BSL-001 Rev. 06/16

CITY OF APACHE JUNCTION MEDICAL MARIJUANA REGULATIONS
AMENDED ON 3-7-17 (ORDINANCE NO. 1444)

1-6-12 MEDICAL MARIJUANA

- A. **Permit Required.** A CUP shall be required for the establishment of nonprofit medical marijuana facilities, including dispensaries, cultivation facilities, and infusion facilities. The requirements of this section, for the establishment of a nonprofit medical marijuana use, may also be accomplished through a planned development ("PD") rezoning process or PD major amendment process.
- B. **Number of Facilities Allowed in City.** The total number of nonprofit medical marijuana dispensaries, cultivation facilities, and infusion facilities shall be as allowed by state statute for the Apache Junction Community Health Analysis Area ("CHAA"). (See A.R.S. Title 36, Chapter 28.1 Arizona Medical Marijuana Act, for definitions and statutes pertaining to medical marijuana.)
- C. **Allowed Zoning Districts.**
- 1) Location of nonprofit medical marijuana dispensaries shall be allowed in the city's B-1, B-2, B-4 and B-5 zoning districts.
 - 2) Location of a cultivation facility and/or a stand-alone nonprofit medical marijuana infusion facility which serves one or more nonprofit medical marijuana dispensaries shall be limited to the city's B-5 zoning district.
 - 3) An existing medical marijuana facility that has received a conditional use permit approval from the city prior to the effective date of this ordinance, shall be allowed to continue operating at the approved location, regardless of any newly defined spacing requirements; and as long as said operation remains in strict accordance with the conditions of approval of said facility, or as may otherwise be approved by a CUP amendment or renewal.
- D. **Facility Security.** Medical marijuana dispensaries, cultivation facilities, and infusion facilities shall be located in an enclosed locked facility, such as a permanent secure building and not in a cargo container, RV, trailer, or motor vehicle. If a green house is used as a cultivation facility, reasonable measures shall be taken to obscure the visibility of the marijuana plants from outside the building.
- E. **Applications.** A CUP application for medical marijuana dispensaries, cultivation facilities or infusion facilities shall include all the information required on the CUP application form and the following supplemental information:
1. Signature and consent on the application form by the property owner of record that he or she is aware the property will be used for medical marijuana dispensing, cultivating or infusion.

2. A copy of the preliminary approval from the State Department of Health Services ("DHS"), such as a registration certificate, for the nonprofit medical marijuana dispensary, nonprofit medical marijuana dispensary off-site cultivation facility or stand-alone nonprofit medical marijuana infusion facility, and a written assurance that all nonprofit medical marijuana dispensary agents associated with the approved facility shall register with the Apache Junction Police Department upon final approval to operate from DHS, as well as a copy of said final approval document.
3. Application and all applicable fees paid as required by Apache Junction City Code, Volume I; Chapter 8, Business, and the Apache Junction City Tax Code as amended.
4. A detailed site plan and floor plan for the facility prepared in accordance with Section 1-16-9, and narrative explaining the operation of the facility and hours of operation.

F. Conditions of Approval. The conditions of approval which may be considered by the planning and zoning commission in evaluating these requests include the following:

1. Required Spacing Requirements:

- a. A minimum of 1,320 feet between another dispensary, cultivation facility or infusion facility, as measured from nearest building wall to nearest building wall.
- b. A minimum of 750 feet between a dispensary, cultivation facility or infusion facility and any public or private education institution, library, public park, commercial-zoned day care facility, free-standing church, or drug and/or alcohol rehabilitation center, as measured from nearest building wall of the business to the nearest building wall of the protected use.

2. Operating Requirements:

- a. Drive-through pickup windows shall not be allowed. Delivery service shall be allowed as per state statute.
- b. Outdoor seating areas at dispensaries, cultivation facilities or infusion facilities shall not be allowed.
- c. A medical marijuana facility shall submit a security plan containing the following information:
 - i) Proof that any cultivation and storage of medical marijuana will take place in an "enclosed, locked facility" equipped with locks or other security devices that permit access only by persons authorized to enter pursuant to state and local law.

- ii) A floor plan that details the security measures required by state law, including an on-site alarm system, video surveillance devices and a single secure entrance.
 - iii) Additional protections, if any, against medical marijuana diversion and theft.
 - iv) Provide and update as needed a current list of all persons who are authorized to access the dispensary, off-site cultivation site or infusion facility.
- d. On-site consumption of medical marijuana at a dispensary, cultivation facility or infusion facility shall not be allowed.
- e. Dispensaries selling marijuana related products such as pipes, water pipes, rolling paper, screens, vaporizers, mills, concealing devices, etc., shall be restricted to selling only to patients displaying the required Arizona Department of Health Services medical marijuana card and to be used only in conjunction with a physician's certification or recommendation. Cookbooks and educational materials are excepted from this provision.
- f. The size of facility in terms of square footage, building height or other factors shall be consistent with the character of existing or planned surrounding development.
- g. Signage that will be visible from the exterior of the facility may be approved by the city if all sign code regulations have been met. The use of the marijuana leaf symbol shall not be allowed on any exterior signage.
- 3. **Other Conditions.** The planning and zoning commission may deem it necessary to apply other conditions to conserve and promote the public health, safety, convenience and general welfare, including:
 - a. Compliance with all city-adopted zoning, landscaping, engineering, building, design guidelines, overlay district and/or planned development district requirements.
 - b. The commission shall reserve the right to revoke a CUP for noncompliance with any condition prescribed as part of the permit approval or if the use is demonstrated to be a nuisance or hazard to the neighborhood or community.
 - c. Hours of operation will be addressed through the CUP process.
- 4. **Patient Home Cultivation.** In the event that a qualifying patient residing in the city lives 25 miles or farther from a dispensary, said individual or his or her designated caregiver may cultivate no more than 12 marijuana plants at the place of primary residence (including a manufactured home or a recreational vehicle) of the qualifying patient, with owner's permission, without need to apply for a CUP.

However, said individual or his or her designated caregiver shall apply the same types of precautions as above for security, use, documentation and must advise the chief of police of his or her intent to cultivate marijuana at home. At such time as a dispensary is located within 25 miles from the qualifying patient's home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation, among other possible local, state and federal law violations. Any change in residence location shall be reported to the chief of police within 30 days.

5. Caregiver Home Cultivation. In the event that a designated caregiver whose residence is in the city limits is cultivating marijuana for the qualifying patient or patients in his or her care, and whose qualifying patient or patients in his or her care live 25 miles or farther from a dispensary, said designated caregiver may cultivate no more than 12 marijuana plants per patient at the place of primary residency of the designated caregiver (including a manufactured home or a recreational vehicle), with homeowner's permission, without need to apply for a CUP. However, said designated caregiver shall apply the same types of precautions as above for security, use, documentation and must advise the chief of police of his or her intent to cultivate marijuana at home for the benefit of his or her qualifying patient or patients. At such time as a dispensary is located within 25 miles from the designated caregiver's home, all cultivation of marijuana plants in the home must cease or shall be considered a zoning violation, among other possible local, state and federal law violations. Any change in residence location shall be reported to the chief of police within 30 days.

4. Any legal lot or parcel of land duly recorded in the County Recorder's Office prior to the effective date of this Ordinance and having an area, width, depth, or street frontage less than that required in the Zoning District regulations in which such lot or parcel is situated, shall be deemed to be a lot and may be used as a building site, provided that all other regulations for the City zoning district shall apply.
5. Building setbacks established by County overlay zoning or special use permit for existing residential developments shall be enforced. Conventional residential developments without county overlay zoning or special use permit shall have setbacks as specified in the City's zoning ordinance.

1-16-11 AMENDMENTS TO THE GENERAL PLAN

- A. Submittal and Approval Process. Proposed amendments to the General Plan shall comply with the amendment process and requirements established in the most current version of the Apache Junction General Plan, or any subsequent update to the Plan.

1-16-12 CONDITIONAL USE PERMITS, ADMINISTRATIVE USE PERMITS AND BUILDING PERMITS

- A. Authorization and Applicability. It shall be unlawful to erect, construct, reconstruct, alter or change the structure, land and/or use of any property within the City without first obtaining the required building permit, administrative use permit, and/or conditional use permit from the Development Services Department.
- B. Building Permits. The City of Apache Junction Building Official and the City's adopted building codes establish the requirements and procedures for building permits.
- C. Administrative Use Permits. An Administrative Use Permit ("AUP") may be approved by the Zoning Administrator following review of the application and a finding that the use and/or structure complies with specific standards specified for such use and/or structure in the Zoning Code. Uses and/or structures requiring approval of an AUP, along with permit approval criteria, are identified in Tables 5-1 and 5-3.
- D. Conditional Use Permits. Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but which require individual Planning and Zoning Commission review and Conditional Use Permit ("CUP") approval of their location, design, operation and configuration along with the imposition of conditions in order to ensure the appropriateness of the use at a particular location. Uses requiring a CUP are identified in Tables 5-1 and 5-3. The CUP application and process requirements are as follows:

1. CUP Application. An application for a CUP shall be filed with the Development Services Department in accordance with the "*City of Apache Junction Conditional Use Permit Application Checklist*" available at the Development Services Department.
2. CUP Public Hearing and Notice. The Commission shall hold a public hearing on any proposed CUP or CUP amendment, and provide the following notice. The failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the Commission or Council.
 - a. Newspaper Publication. Notice of the time, date and place of the hearing, including a general description of the matter to be considered and a general description of the area affected, shall be published in a newspaper of general circulation that is published or circulated in the community. The publication notice shall be at least 15 calendar days before the hearing, and shall be published as required by A.R.S. § 9-462.04, as amended.
 - b. Property Posting. The notice of public hearing shall be posted by the applicant in accordance with the instructions provided in the application form.
 - c. Mailing Notice. The City shall notice by first class mail each real property owner, as shown on the last assessment of the property, within three hundred feet of the property subject to the CUP proposal.
3. Findings. A CUP may be granted upon a finding by the Commission that the use covered by the permit, the manner of its conduct, and any structure involved will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood, or to the public welfare in general. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant.

In arriving at the above determination, the Commission shall consider but not be limited to the following factors:

- a. Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use;
- b. Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare;
- c. Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values;

- d. Compatibility with surrounding uses and structures;
 - e. Conformance with the General Plan and City policies;
 - f. Screening and buffering of uses; and
 - g. Unique nature of the property, use and/or development's physical characteristics.
4. CUP Modification of Dimensional Zoning Standards. When a proposed development exhibits unique characteristics related to land, topography, architectural style, scale, historical interest or other distinguishing feature that necessitates a measure of regulatory relief, CUP modification of certain dimensional zoning standards may be approved by the Commission in accordance with the findings described above in Section 1-16-12(D)(3). The following dimensional zoning standards may be subject to this type of modification:
- a. Accessory Dwelling Units. Accessory dwelling unit size and height standards required in Section 1-6-19 of this Ordinance may be modified.
 - b. Accessory Structures. Accessory structure size, height, design and setback standards required in Section 1-6-5 may be modified.
 - c. Landscaping. Landscaping size, type, amount and location standards required in Article 1-8 may be modified.
 - d. Signs. Sign size, type, amount and location standards required in Article 1-11 may be modified.
5. Expiration. CUPs granted by the Commission shall be void if the use is not commenced within 12 months of the approval date or within the time stipulated by the Commission.
6. Revocation. An approved CUP may be revoked by the Commission following public hearing and a finding that there has been material noncompliance with any condition prescribed in the permit and/or the use generates a demonstrated public safety, health or welfare concern.
7. Appeal and City Council Review. The approval or denial of a CUP by the Commission shall be final unless, within 20 calendar days from the date of the Commission's decision, the applicant or any persons aggrieved by the decision appeals the decision to the Council. The appeal shall be in writing, filed with the Development Services Department, and shall indicate how the Commission was in error. The appeal shall

be accompanied by a fee equal to 50% of the original filing fee. The appeal shall require a Council public hearing and notification provided in the same manner as required for the Planning and Zoning Commission hearing. The Council, at its public hearing, shall uphold, modify or overrule the decision of the Commission. The decision of the Council shall be final.

1-16-13 DEVELOPMENT AGREEMENTS

- A. **Intent and Purpose.** A development agreement is a contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval and that the development will not be subject to subsequent changes in regulations. Development agreements must also benefit the local jurisdiction with sufficient legal consideration. The City may include conditions (mitigation measures) that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement may clarify how the project will be phased, the required timing of public improvements, the developer's contribution toward funding system-wide community improvements, economic incentives and other conditions. The agreement can also facilitate enforcement of requirements, since it is a contract that details the obligations of the developer and City.
- B. **Applicability.** The use of development agreements will be based on a case by case determination by City staff.
- C. **Administrative Responsibility.** The City department responsible for administering development agreements will be assigned on a case by case basis. If the development agreement is focused on economic development incentives, the Economic Development Division will be responsible for administering the agreement. If, however, the development agreement is focused on land use, infrastructure and zoning requirements, the Development Services Department's Planning Division will be responsible for administering the agreement.
- D. **Legal Review.** In all cases, the City Attorney shall be responsible for legal review and modification of the development agreement prior to City Council consideration.
- E. **City Council Approval Required.** The City Council has the final authority in approving or denying development agreements. Development agreements shall be presented to the Council for consideration at a public hearing.