



## Planning Commission Staff Report

October 29, 2008  
Item 6.a.

- SUBJECT:** PCUP-231
- APPLICANT:** Amy Cheng, Tong Shing LLC
- PROPERTY OWNER:** Amador Associates
- PURPOSE:** Application for conditional use permit approval to operate a tutorial school for preschool through 12<sup>th</sup> grade students from an existing building.
- LOCATION:** 4460 Black Avenue, Suites C and D
- ZONING:** Zoning for the property is “O” (Office) District.
- ATTACHMENTS:**
1. Exhibit “A,” Site Plan, Floor Plan, and Details of Operation
  2. Exhibit “B,” Recommended Conditions of Approval
  3. Exhibit “C,” Location Map
  4. Exhibit “D,” Aerial Photograph of Site and Surrounding Area
  5. Exhibit “E,” Public Noticing Map

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### I. BACKGROUND

Tong Shing LLC, comprised of Wakaba Learning Center, Mindbridge Learning Center, Best Friends Enrichment Center, and East Bay Art Academy, is a tutorial school that has operated at 4466 Black Avenue, Suites C and K-1, for approximately two years. The applicant’s current location was previously occupied by Carden West School, which had obtained a conditional use permit for its operation. The applicant has been operating under the conditional use permit that had been granted to Carden West School.

The applicant currently operates from two non-contiguous suites at 4466 Black Avenue. The applicant wishes to relocate to the adjacent office building at 4460 Black Avenue, where two contiguous suites are available. Tutorial schools with more than 20 students at any one time are conditionally allowed uses in the Office District, the zoning of the 4460 Black Avenue site. Because the conditional use permit for the applicant’s current location is not transferable to another location, the applicant has applied for a conditional use permit.

## II. SITE DESCRIPTION

The tutorial school is proposed to be located in one of the four multi-tenant office buildings that comprise the Black Avenue Professional Office complex located at 4450, 4456, 4460, and 4466 Black Avenue. The subject office building, 4460 Black Avenue, is located on an approximately one-acre parcel located approximately 270-feet south of Black Avenue (please see the Location Map and Aerial Photograph, Exhibits “C” and “D”). The existing, 11,970-square-foot, one-story building is currently occupied by general and medical office uses and massage therapists. Two driveways on Black Avenue lead to a 54-space paved parking lot around the building.

### Adjacent Properties

The subject property is located immediately south of the 4466 Black Avenue office building. Further north, across Black Avenue, are single-family homes and Amador Valley Community Park containing the Dolores Bengtson Aquatic Center, Cultural Arts Center, Amador Recreation Center, and Gingerbread Preschool. Lynnewood United Methodist Church and two office buildings are located to the east of the subject property. Quarry Lane School operates a private school from the Lynnewood Church property. Amador Valley High School’s athletic fields are located to the south of the subject property. Single-family residences are located to the west on Loganberry Way and Gatetree Circle.

## III. PROPOSED PROJECT

The applicant is proposing to occupy two adjacent tenant spaces (Suites C and D) totaling approximately 1,685 square feet. Suites C and D are located on the eastern side of the building. The applicant would utilize the existing rooms in the suites. The proposed business would have a reception/waiting area, seven classrooms, two storage rooms, and an “Open Area” that would be used for individual and small group tutoring when needed and for some of the music classes (music classes would also be taught in Room 7). A series of common bathrooms are located inside the building that are shared by groupings of the tenants. The applicant’s suites are connected to each other via a corridor leading to one of the common bathroom areas. The applicant would share two unisex bathrooms with a massage therapist in the adjacent suite (Suite I). Each bathroom contains one toilet and sink. A sink is also located in the corridor outside of the restrooms. No interior or exterior building modifications are proposed by the applicant.

The proposed tutoring school would offer a preschool program and after school supplementary education and educational assistance to school-age students (kindergarten through 12<sup>th</sup> grade) in a small group atmosphere. The activities and hours of operation of the four learning centers are noted below:

- **Mindbridge Learning Center:** Tutoring classes for preschool-age children covering study skills, speed reading, phonics, mental math, Gifted and Talented Education (GATE), and

chess and bridge games. Hours of operation would be 8:30 a.m. to 11:20 a.m., Monday-Friday and 10:00 a.m. to 11:30 a.m. Saturdays.

- **Wakaba Learning Center:** Japanese language, culture, origami, abacus, meditation, flower arrangement, and art and crafts classes for preschool-age children and after school kindergarten students. Hours of operation would be 11:35 a.m. to 2:45 p.m., Monday-Friday (with dismissal times at 2:30 and 2:45 pm) and 3:00 p.m. to 4:00 p.m. Saturdays.
- **Best Friends Enrichment Center:** After-school tutoring classes for school-age children covering Chinese language, culture, history, abacus, english, math, and science. Hours of operation would be 3:30 p.m. to 6:30 p.m., Monday-Friday and 1:00 p.m. to 2:00 p.m. Saturdays.
- **East Bay Art Academy:** Chinese brush, Chinese calligraphy, Chinese songs and music, water painting, oil painting, and drawing classes for school-age students. Hours of operation would be 7:15 p.m. to 8:45 p.m., Monday-Friday and 9:15 a.m. to 12:15 p.m. and 1:15 p.m. to 6:15 p.m. Sundays.

There would be a maximum of 56 students, eight teachers, and two assistants present at one time. Students would attend 30-minute, 45-minute, one-hour, or one-and-one-half-hour long tutoring sessions in small classrooms of up to eight students with one instructor. Students could attend multiple classes, but would be limited to a maximum of 12 hours per week if under four years and nine months of age and could not exceed 16 hours per week if older than four years nine months. Although most parents drop off and pick up their children, parents do have the option of waiting in the lobby area of the school while their children are in a tutoring session. Children are also picked up from public schools in three, seven-passenger mini-vans that are driven by the applicant and two teachers. Two of the mini-vans are the employees' personal vehicles and the other mini-van is a company vehicle that would be stored on the site. There are also two tutoring school teachers that would meet students at the end of school at the nearby Alisal and Walnut Grove Elementary Schools and walk the students to the tutoring school.

Please see the attached floor plan and written narrative for additional information on the proposed use.

#### **IV. ANALYSIS**

Conditional uses are those uses which, by their nature require special consideration so that they may be located properly with respect to the objectives of the Municipal Code and with respect to their effects on surrounding properties. In order to achieve these purposes, the Planning Commission is empowered to approve, conditionally approve, or deny applications for use permits.

## **Land Use**

The subject property is zoned Office (O) District. Tutorial schools are conditionally permitted uses in the Office District. The applicant has applied for a conditional use permit, as required for schools in the O District. Therefore, if the use permit were granted, the tutorial school would be consistent with the applicable land use regulations.

One of the primary concerns in reviewing a conditional use permit application is the effect of a proposed use on surrounding uses. As stated earlier, surrounding uses include single-family residences, offices, a church with private school, high-school athletic fields, and a City park with community facilities. Staff does not expect that the proposed use would create any adverse impacts on the surrounding uses. The applicant's existing business in the adjacent office building has been operating for the past two years without any apparent adverse impacts on the surrounding businesses or residents since no complaints have been reported to the City. Furthermore, the use would be located on the east side of the building and would be operated entirely indoors, reducing potential noise impacts on the residential uses to the west. Therefore, staff believes that the business' relocation to the adjacent office property to be appropriate.

Should future problems arise, the City would have the ability to bring the application back to the Planning Commission for mitigation, or possible revocation, if necessary. Based on past experience with similar uses, staff feels that this would be unlikely. In addition, staff has included conditions of approval that will ensure that the surrounding uses are not impacted due to noise, parking, traffic, or other objectionable influences. Therefore, from a land use perspective, staff finds the use to be acceptable on the subject property, as conditioned.

## **Noise**

The Black Avenue Professional Offices complex is adjacent to single-family homes to the west. The subject building is separated from these residences by a sidewalk, a single row of parking spaces, a 25-foot drive aisle, a 10-foot wide planter with landscaping, and a six-foot tall wood fence on the shared property line. The proposed use would be located in two suites on the east side of the building and would not have an opening facing the residents.

The proposed use would be operated entirely indoors. The applicant has indicated that noise levels should be minimal since the business provides indoor course instruction and doesn't include indoor or outdoor play. The applicant also indicated that the 8:1 teacher to student ratio allows teachers to control the noise levels of students. The applicant would also advise parents to drop-off and pick-up students from the parking spaces on the east side of the building in front of the business. Music classes, consisting of children singing along to a CD or piano, would be conducted in Room 7 and the "Open Area" from 7:15 p.m. to 8:45 p.m. on weekdays, with an occasional half-hour on weekday mornings or afternoons during school hours, and 3:00 p.m. to 4:30 p.m. on Sundays. The applicant has indicated that music volumes would be kept low. The

applicant also indicated that she will check with the adjacent tenants to make sure the music volumes are acceptable.

Based on the applicant's description of the classroom instruction and the separation of the proposed suites from the adjacent residences, staff believes that it is unlikely that the noise generated during class instruction would impact the nearby residences or tenants. Furthermore, staff has never received a noise complaint against the school's current operation from the surrounding tenants or residential neighbors. Recommended conditions of approval require that the exterior doors remain closed when not being used for ingress/egress purposes and that the applicant inform all students not to loiter or make loud noises outside the building before or after classes. Staff has also included a "standard" use permit condition of approval on the project that allows the City to review the project again to add mitigating conditions should any future complaints regarding noise levels occur. Such conditions could include modifying the hours of operation, relocating the music lessons to another classroom, installing soundproofing panels in the ceiling and walls of the tenant space, reducing the number of students, etc.

### **Parking**

The 4466 Black Avenue office building has a 54-space parking lot for the 11,970 square foot building (parking ratio of one space per 222 square feet of floor area). A parking agreement was recorded that allows all parking spaces in the four building Black Avenue Professional Office complex to be shared equally. The three other office buildings have a total of 89 parking spaces that could be used by the tutoring facility (54 spaces at 4466 Black Avenue, 21 spaces at 4456 Black Avenue, and 14 spaces at 4450 Black Avenue). A parking agreement was also established which allows the Black Avenue Professional Office tenants and customers to park in the 35-space parking lot at the south end of the Lynnewood United Methodist Church site from 6:00 a.m. to 7:00 p.m., Monday through Saturday. In sum, a total of 178 parking spaces are available for the Black Avenue Professional Office complex.

Based on the parking ratio of one space per 222 square feet of floor area, the subject tenant space would be allotted 8 parking spaces; however, there are no assigned parking spaces in this development. The Municipal Code requires that school uses of this type need to provide one parking space for each employee and one space for each four students in grade 10 or above. The proposed facility would have a maximum of 10 employees (8 teachers and 2 assistants) and the applicant believes there could be up to 40 students in grade 10 or higher at one time. Thus, a total of 20 parking spaces would be needed for the facility per the Municipal Code (10 parking spaces for the employees and 10 parking spaces for students).

Staff notes that the Municipal Code parking requirement does not directly address parking demand during drop-off/pick-up times, which would be the most impacted time from a parking standpoint. Staff believes that there would be adequate parking for drop-off/pick-up given that arrival and departure of cars is staggered throughout the day and that the parents are only parked in the spaces for a short time. Carpooling of siblings and/or neighbors is common and would

further reduce parking demand. The applicant would also reduce parking demand by picking up some of the students from public schools in three mini-vans and by walking some of the students to the facility from Alisal and Walnut Grove Elementary Schools. Although one of the mini-vans would be stored on the site, occupying a parking space, staff believes the benefits of reduced City wide traffic and the net reduction in parking demand would more than compensate for the use of one parking space.

The proposed use would operate on Sundays and after 7:00 pm on weekdays, when Lynnewood Church's 35-space parking lot could not be used per the parking agreement. However, most of the other tenants in the office complex would not be open at these times and there should be plenty of parking for the proposed use during these times.

To assess the current parking availability, staff conducted parking surveys on Friday, October 17, 2008, from 2:20 p.m. to 3:30 p.m. and Monday, October 20, 2008, from 8:20 a.m. to 8:40 a.m. During the Friday afternoon period, the parking lot at 4460 Black Avenue had between 33 to 38 spaces available and the rear church lot and the three other office building parking lots at 4450, 4456, and 4466 Black Avenue had between 84 to 91 spaces available. During the Monday morning period, the parking lot at 4460 Black Avenue had between 37 to 39 spaces available and the rear church lot and the three other office building parking lots at 4450, 4456, and 4466 Black Avenue had between 79 to 87 spaces available.

Based on the above parking analysis and parking surveys, staff believes that there would be adequate parking to accommodate the proposed tutorial school. However, should parking problems occur in the future, staff has included a "standard" condition of approval that allows the Community Development Director to refer the use permit back to the Planning Commission for possible mitigation measures.

### **Traffic/Circulation**

Access to the site is via Black Avenue, which is easily accessible from Santa Rita Road, a main thoroughfare in the City. Black Avenue is a two-lane neighborhood collector street. Residences and Walnut Grove School front Black Avenue to the west of the subject site. In April 2008, Black Avenue had roughly 6,500 cars a day east of Hopyard Road and roughly 8,150 cars a day west of Santa Rita Road, which is higher than desired for a neighborhood collector street in the City. The higher traffic volume is primarily a result of the traffic generated by the post office, nearby public schools, Amador Valley Community Park, Cedarwood Lane offices, Black Avenue Professional Office complex, and traffic going between Hopyard Road and Santa Rita Road. While the applicant's use would not responsible for most of the existing traffic on Black Avenue, it would contribute a small share. The applicant would reduce traffic from the site by picking up some of the students from public schools in three mini-vans and by walking some of the students to the facility from nearby elementary schools. Also, with the previous use permit for the Carden West School at 4466 Black Avenue, a condition of approval required that a handout be regularly distributed to the parents of the school children encouraging them to

carpool and to travel to and from the school via Santa Rita Road and not use Black Avenue west of the school site. This condition was also applicable to the applicant's business when it located in Carden West School's former location at 4466 Black Avenue and the applicant has been distributing a handout to parents in conformance with the condition. Since staff believes this condition would still be helpful to reduce some of the traffic west of the school where residences front the street, it has been included in the draft conditions of approval for the subject application. As proposed and conditioned, staff believes that the use would not create traffic impacts on the surrounding area.

### **Business Operation**

The Planning Commission has been recently conditioning similar uses to require parents or supervising adults to escort students 12 years and younger into and out of facilities and to sign these students in and out. This requirement has mitigated the concerns that the Planning Commission has expressed when considering such facility uses that are located in business parks or other areas where there is a high parking and traffic circulation use. Staff has begun incorporating this condition as a standard condition of approval and it has been included in the draft conditions for the subject project. Staff notified the applicant of this condition and she had no objection to it.

The applicant would share two unisex bathrooms with the adjacent tenant in Suite I. Since the restroom is shared with another tenant, staff believes that the younger students should be accompanied by an adult school employee to and from the restroom. Staff has recommended that students 12 years and younger be accompanied by an employee to and from the restroom, which is the age threshold established by the Commission for requiring parents to walk their children to and from the facility. A condition of approval has been included to address this item.

### **State Licensing**

According to the State Community Care Licensing Division, the applicant's use is exempt from the requirement to obtain State licensing as long as children under the age of four years and nine months (considered preschool-age children) do not attend sessions that total more than 12 hours per week for each child and are 12 weeks or less in duration (although children may be enrolled in back-to-back sessions as long as they are re-enrolled at the end of a 12 week session). For children over the age of four years and nine months (considered school-age children), the licensing exemption requires that children not attend sessions that total 16 hours or more per week for each child and are 12 weeks or less in duration (although children may be enrolled in back-to-back sessions as long as they are re-enrolled at the end of a 12 week session). Furthermore, the sessions for school-age children cannot occur during normal school hours. The applicant intends to stay within these parameters to remain exempt from obtaining State licensing.

## **Building Code**

Based on the submitted floor plan, the City Building and Safety Division has indicated that the applicant's suites would not require modifications such as new bathrooms, additional exit doors, etc. to change the occupancy from an office space to an educational facility. The Building Code would require that a drinking fountain be provided inside the tenant space, which appears could be added to the existing sink located outside of the restrooms (although the applicant could locate the drinking fountain at another location in the tenant space). A condition of approval requires the applicant to comply with all applicable Fire and Building Codes prior to occupancy.

## **V. PUBLIC NOTICE**

Notices regarding the proposed conditional use permit application and related public hearing were mailed to property owners and tenants within 1,000 ft. of the subject property. At the time this report was written, staff had not received any comments from the surrounding property owners or tenants.

## **VI. FINDINGS**

The Commission needs to make the following findings prior to the granting of a use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.**

Some of the objectives of the zoning ordinance are to: foster a harmonious, convenient, workable relationship among land uses, protect existing land uses from inharmonious influences and harmful intrusions, and to insure that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, staff feels the proposed tutoring school would be consistent with these objectives. The tutoring school's current operation in the adjacent office building has been compatible with the surrounding neighborhood and staff believes that the relocation to the subject site should also be. The anticipated number of employees and students will not generate any unusual demands on existing parking for the building or the surrounding properties.

The subject property is zoned "O" (Office) District. One purpose of the Office Zoning District is to establish and maintain in portions of the city the high standards of site planning, architecture and landscape design sought by many business and professional offices. Another purpose is to protect offices from the noise, disturbance, traffic hazards, safety hazards, and other objectionable influences incidental to certain commercial uses. As proposed, the tutorial school will not alter the exterior of the office building so as to detract from its architectural features. In addition, the tutorial school will not interfere



with surrounding uses' ability to operate. The City has allowed similar teaching uses to be located in office areas. Staff is not aware that any of these teaching-oriented businesses have created any impacts on surrounding tenants and staff believes the proposed use will similarly not create impacts on the adjacent uses located within the office building. The applicant can also be required to mitigate future nuisances as a result of the proposed use. In summary, staff feels this finding can be made.

**B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.**

Tutoring schools are a common use in Pleasanton. For the past two years, Tong Shing LLC has been a "good neighbor" to the surrounding tenants and residences since no complaints have been reported to the City. Sufficient parking, adequate separation from the residential neighborhoods, maintenance of noise levels, and safety and security within the premises have been provided or conditioned. The drive aisles around the building are designed per City standards to provide safe ingress and egress into and out of the site. The applicant would be required to receive all Building and Safety Division permits for any tenant improvements. Conditions have been included that would require the applicants to mitigate any future nuisances as a result of the proposed use. Therefore, staff feels this finding can be made.

**C. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.**

Chapter 18.124 of the Municipal Code states that, because of their unusual characteristics, conditional uses require special consideration so that they may be located properly with respect to their effects on surrounding properties. The site's Office zoning conditionally permits the establishment of tutorial schools. Staff feels that the recommended conditions of approval will help to integrate the proposed use without detrimentally affecting the surrounding properties and the City in general. As with any use permit, this use can be suspended or revoked if the conditions are not met. As conditioned, the tutoring school would comply with all applicable provisions of the Zoning Ordinance. Therefore, staff believes this finding can be made.

## **VII. ENVIRONMENTAL ASSESSMENT**

Projects of this nature are categorically exempt (Section 15301, Existing Facilities, Class 1, and Section 15303, New Construction or Conversion of Small Structures, Class 3) from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

## **VIII. CONCLUSION**

For the past two years, Tong Shing LLC has been a “good neighbor” to its surrounding tenants and residences and has provided a service to the community by providing a place for students to receive supplemental instructional and/or educational assistance. Staff believes that with the recommended conditions of approval the relocation of the use to 4460 Black Avenue can be accommodated without creating adverse impacts on the adjacent properties or tenants, and is acceptable. Conditions of approval have been included which will ensure that the safety and general welfare of the surrounding area is maintained.

## **IX. STAFF RECOMMENDATION**

Staff recommends that the Commission approve Case PCUP-231 by taking the following actions:

- 1) Make the conditional use findings as listed in the staff report; and
- 2) Approve Case PCUP-231 subject to the conditions listed in Exhibit B.

*For comments or questions concerning this project, please call: Steve Otto, Associate Planner (phone: 931-5608 or email: sotto@ci.pleasanton.ca.us)*

## **EXHIBIT B**

### **Recommended Conditions of Approval Case PCUP-231 Tong Shing LLC**

1. The location and operation of the proposed use shall conform substantially to Exhibit A (dated "Received" October 13, October 14, and October 21, 2008), on file with the Planning Division, except as modified by these conditions. Minor changes to the approved operation and schedule may be approved by the Director of Community Development if determined to be in substantial conformance with the approved use permit.
2. The school capacity shall be limited to a maximum of 56 students present at any one time.
3. If additional hours of operation or activities beyond that proposed in the applicant's written narrative, dated "Received" October 13, October 14, and October 21, 2008, on file with the Planning Division, are desired, prior City review and approval is required. The Director of Community Development may approve the modification or refer the matter to the Planning Commission if judged to be substantial.
4. If operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, or other factors, at the discretion on the Director of Community Development, this conditional use permit may be submitted to the Planning Commission for their subsequent review at a public hearing. If necessary, the Commission may modify or add conditions of approval to mitigate such impacts, or may revoke said conditional use permit. Possible mitigation measures can include, but are not limited to: modifying the hours of operation, reducing the number of students or classes, relocating the music lessons to another classroom, installing soundproofing panels in the ceiling and walls of the tenant space, or other measures deemed necessary by the Planning Commission.
5. Students 12 years and younger shall be escorted into and out of the facility and signed in and out by a parent or supervising adult.
6. Students 12 years and younger shall be escorted to and from the restrooms by an adult staff member of the tutorial school.
7. The doors of the business shall remain closed when not being used for ingress/egress purposes.

8. The applicant shall inform all students not to loiter or make loud noises outside the building before or after classes.
9. In the future, should the Pleasanton School District change the dismissal times for the public schools, the Director of Community Development/Planning Manager may modify the dismissal times of Wakaba Learning Center to help alleviate nearby traffic congestion.
10. The applicant shall regularly distribute a handout to the parents/guardians of the school children encouraging them to carpool and to travel to and from the school via Santa Rita Road and not use Black Avenue west of the school site.
11. Prior to occupancy, the applicant shall obtain any applicable State licensing for the use.
12. The applicant shall place dirty diapers in an air-tight plastic bag disposal system (e.g., Diaper Genie® or equivalent) before depositing the diapers into the common trash bin.
13. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.
14. Unless otherwise approved by the Chief Building Official, a drinking fountain shall be installed inside of the subject tenant space prior to occupancy. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
15. Prior to occupancy, the applicant shall contact the Building and Safety Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City permits prior to commencement of any work.
16. The applicant shall obtain City design review approval prior to the commencement of construction of any modifications to the existing site, landscaping, and/or exterior of the building.
17. No signage is approved as part of this application. Prior to installation of any signs, the applicant shall obtain sign design review approval from the Planning Division.
18. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Zoning Ordinance for grand openings.