



Planning Commission Staff Report

November 12, 2008
Item 6.c.

- SUBJECT:** PCUP-229
- APPLICANT:** Tri-Valley Martial Arts Academy / John Pfund
- PROPERTY OWNER:** Big Valley L.P. / Jack Balch
- PURPOSE:** Application for a conditional use permit to allow the operation of the following: (1) a martial arts/childcare facility, Monday through Friday, from 11:30 a.m. to 6:15 p.m.; (2) full-time childcare program camps during school breaks and holidays; and (3) evening martial arts classes, Monday through Friday, from 6:45 p.m. to 9:00 p.m.
- GENERAL PLAN:** General and Limited Industrial
- ZONING:** PUD-I (Planned Unit Development-Industrial) District
- LOCATION:** 1262 Quarry Lane, Suite A (Valley Business Park)
- ATTACHMENTS:**
1. Exhibit B, Draft Conditions of Approval
 2. Exhibit A, Written Narrative with appendixes, Floor Plan, and Site Plans, dated "Received July 17, 2008"
 3. Exhibit C, Location and Noticing Maps
 4. Exhibit D, "Pumpkin Orange Book" of Questions and Responses
 5. Exhibit E, "Blue Book" of Attachments
 6. Exhibit F, Attendance Sheet
 7. Exhibit G, Facility Evaluation Report

BACKGROUND

In September 2007, the applicant applied for a Conditional Use Permit (CUP) for a martial arts facility which would (1) include up to 20 students ages 5 to 12 years and an additional 10 students 16 years and older, Monday through Friday between the hours of 11:30 a.m. and 9:00 p.m.; and (2) provide (a) child transportation to the academy from

elementary and middle schools, (b) an afternoon program for children between the hours of 11:30 a.m. and 6:15 p.m., (c) an area for homework activities, (d) after-school martial arts-related games and activities, (e) seasonal camps, and (f) care and supervision from 9:00 a.m. to 6:15 p.m. on school holidays, two weeks during the school winter break, and ten weeks during the school summer break.

On February 13, 2008, the Planning Commission held a public hearing to review the subject application. After hearing staff's presentation and taking public testimony, the Commission denied without prejudice the use permit by a 5-to-0 vote. The Commission felt that the appellant's use appeared to be more of a childcare facility and that a State childcare license would be appropriate for this business. The Commission agreed that the use would be compatible with surrounding uses within Valley Business Park and that the appellant had tried to modify his use to address staff's initial concerns. However, the Commission felt that the current business operation would be detrimental to the public health, safety, and welfare because children could freely come and go from the facility. Although the parents would sign waivers designed to exempt the use from State licensing requirements, allowing grade school (and younger) children to come and go freely is not consistent with the City's sign-in/out policy for these types of uses. The Planning Commission disagreed with staff and believed they could make the findings related to appropriate use with the subject zoning district and compliance with applicable provisions of the zoning ordinance. Given the proposed scope of operations; the Planning Commission could not make Use Permit Finding Number 2.

The applicant disagreed with the Commission's decision and appealed to the City Council. On May 6, 2008, the Council supported the Planning Commission's decision and denied the applicant's appeal, thereby upholding the Planning Commission's denial of the application.

The applicant has since revised his application and the operations of his business to address the City's concerns. The applicant has also been working with the Department of Social Services Child Care Licensing Division (CCLD) in securing a childcare license for the subject use. CCLD has determined that the applicant has most of the education requirements necessary for him to be an administrator/director of a childcare facility. Once the applicant has completed the outstanding requirements, he will be able to hold a childcare license.

The project was scheduled to be presented before the Planning Commission at the August 13 and 28 and September 10 and 24, 2008 meetings; however, staff received an increasing number of questions from Commission members after publication of the August 13 staff report. Staff requested that the project be continue in order to address the questions, which entailed receiving clarifying information from the Department of Social Services-Child Care Licensing Division. Staff has provided the questions with responses

as Attachment D and the previously provided “Blue Book” of attachments in Attachment E.

The subject matter of the questions relate to many topics including, but not limited to, Mr. Pfund’s past operations, in Dublin, the State Child Care licensing process and requirements, the adequacy of the facility for the proposed use, and the type of occupancy the proposed use would be under in the Building Code. As a result of the research performed by staff to address these questions, three additional conditions of approval have been added to staff’s August 13 recommendation (see conditions 7-9).

SITE DESCRIPTION

Valley Business Park, approximately 69 acres in size, is located south of Valley Avenue and east of Santa Rita Road, including Serpentine Lane and Quarry Lane. It is zoned PUD-I (Planned Unit Development – Industrial) and has a mix of uses that include professional and medical offices, light manufacturing and industrial uses, and other uses, such as religious institutions, recreational facilities, tutoring facilities, and private schools.

Partial Aerial View of Valley Business Park



The subject site is an approximately 28,815-square-foot parcel located on the west side of Quarry Lane. There is one main entrance to the site from Quarry Lane and two additional access entrances behind the building located at 1032 Serpentine Lane. The existing single-story building is approximately 9,936 square feet in floor area and

contains four tenant suites with 29 parking spaces shared between the tenant spaces. Tri-Valley Martial Arts Academy proposes to occupy an approximately 2,895-square-foot suite of the existing building, as indicated on the site and floor plan of Exhibit A. Each suite has individual exterior doors that act as direct access to the suites; the glass doors act as the main entrances, and the doors in the rear of the suites are for employee entrances. The subject suite also has a roll-up door which will be open and then fenced in order to meet the State requirements for the children to receive fresh air and sunlight. Staff has confirmed with the State that having the roll-up door open and fenced off will satisfy this requirement; pending an inspection by a Child Care Licensing representative. There are no interior or common hallways providing interior access to the individual units.

1268 Quarry Lane, Suite A



With the exception of the music academy, located at 1258 Quarry Lane, Suite H, the uses in the remaining tenant spaces of the subject building and the adjacent building at 1258 Quarry Lane are office/warehouse and wholesale distribution.

PROJECT DESCRIPTION

The subject tenant suite contains a large open space for the martial arts/activity area, a separate break/study room, a front office waiting room, bathrooms, and a quiet/isolation room. The quiet room will only be used for children that are ill and waiting for their parent/guardian to pick them up from the facility. Pictures of these areas can be found in Exhibit A.

Based on the applicant's narrative (Exhibit A), the following summarizes the facilities proposed operations: (1) the operation of a martial arts/childcare facility for up to 20 children ages 5 to 12 years, Monday through Friday from 11:40 a.m. to 6:15 p.m.; (2) care and supervision from 8:30 a.m. to 6:15 p.m. on school holidays, two weeks during the school winter break, one week during the spring break, and ten weeks during the school summer break; (3) transportation of children would be provided from elementary and middle schools to the facility; except during the seasonal camps; and (4) martial arts classes for up to 20 students ages 13 and above, Monday through Friday from 6:45 p.m. to 9:00 p.m. Staffing at the facility will consist of one site director (the applicant), one teacher, and one teacher's aide; however, the applicant will be the only instructor on-site during the evening class.

In order to meet the requirements of Child Care Licensing for fresh air and sunlight, the applicant will open the roll up door and place a four-foot tall mesh fence as a blockade to prevent children from leaving the facility without the applicant's knowledge. During the seasonal camps and non-school days, the children will be taken off-site to various parks within the City. The children will also participate in field trips at least three times per week to a variety of children oriented businesses, such as Boomers and SuperFranks, and taken to the Aquatic Center for swimming one to two times per week during the summer camp session.

The following outlines each of the programs activities:

- **After School Program Transportation (grades K-6):** The applicant will provide two vehicles, a 14-passenger van and a 8-passenger Dodge Durango, that go to elementary and middle schools in Pleasanton and Dublin to pick up children and take them to the facility. The applicant and/or his staff will sign in each child upon arriving to the facility. The pick-up times will begin at 11:40 a.m. for kindergartners and 2:30 p.m. for all other children in the program. In order to transport these students, the applicant is not required to hold an additional class license from the DMV. The drivers also hold medical clearance cards and they maintain commercial automobile insurance in the same amount as required by the drivers of children in the Pleasanton School District.
- **Kindergarten Program:** Kindergarteners will arrive at the facility at approximately 12:15 p.m. and will be escorted in from the van and/or Dodge Durango. After putting on their uniforms, the children are then given a break where they can eat lunch, do homework, play, or relax. After the break, the students participate in various martial arts games and activities. This portion of the program typically runs from 1:00 p.m. to 2:50 p.m. Upon finishing this session the students are given another break where they can play on the gymnastic equipment or relax in the break area until the elementary students arrive. During this break, one of the employee's will picks-up the remaining children from

elementary/middle schools. The applicant will assist in picking up the remaining children, if necessary, which would require taking those participating in the Kindergarten program with him. Once the elementary school children are brought to the facility, the kindergarteners participate with them in group games and activities for the remainder of the day. Upon ending the program at 5:30 p.m., the children are allowed to change out of their uniforms and play, relax, or do homework until their parents pick them up and sign them out of the facility between 5:30 and 6:15 p.m.

- **Elementary/Middle School Program:** Like the kindergarten students, the elementary/ middle school students are escorted into the facility and signed in when they arrive around 3:30 p.m. After playing, relaxing, having a snack, or doing their homework, the two groups of students (kindergarteners and elementary/middle school students) jointly participate in martial arts games, activities, self-defense, tumbling, and gymnastics. After completing this portion of the program, the students participate in quiet activities from 5:30 p.m. to 6:15 p.m. while waiting for their parents/guardian to pick them up.
- **Program Camps:** During the last week in December through the first week in January and beginning the third week in June through the end of August, the applicant proposes to run an all-day camp that will include martial arts classes and related activities. All day camps will also be provided during school breaks (e.g., spring break) and Holidays. Per the applicant, the children that attend these camps are the same students that attend the after school programs, therefore, there will be no more than 20 students on-site at any given time. The camps will also include taking the children on field trips to a variety of children oriented businesses and taken swimming 1 to 2 times per week during the summer camp session. Staff notes that that applicant will need to receive a permit from the Parks and Community Services Department prior to taking the children to local parks. Please see Exhibit A (Schedule during the Winter and Summer Camps) for specific daily activities.
- **Adult Program:** This program will be held Monday through Fridays 6:45 to 9:00 p.m. with up to 20 students (13 years and older) anticipated to attend this class. The applicant has stated that the adults participating in this program will not have their children attending the facility too; therefore it is unlikely that a child will be at the facility later than 6:15 p.m. The applicant will be the only instructor/employee on site during this time. The class begins with a 30-minute warm up followed by martial arts activities. There will not be multiple adult sessions being held during the proposed times.

Please see Exhibit A for additional information regarding the various programs and activity times.

ANALYSIS

Conditional uses are uses that, by their nature, require individual review to ensure that impacts associated with the use will be minimal. Conditional use permits may be subject to appropriate conditions to ensure that any potential adverse impacts associated with the use will be mitigated. The following is staff's analysis of the proposed use.

Land Use

One of the primary concerns in reviewing a conditional use permit application is the effect of the proposed use on surrounding uses. The Land Use Element of the General Plan designates the subject property as "General and Limited Industrial". The current PUD zoning for the Valley Business Park permits land uses such as offices, printing shops, laboratories, and light manufacturing, and requires conditional use permit (CUP) approval for uses such as gymnasiums and health clubs, indoor recreational sports facilities, trade schools, daycare centers, and schools/instructional businesses. The proposed use would be similar to "indoor recreational sports facilities", "instructional business", and "daycare". As a result, a CUP is required.

Although the majority of the businesses in Valley Business Park are office/warehouse uses, in recent years, educational, recreational, and daycare oriented businesses have also located in the Business Park. These uses include tutoring centers, dance studios, daycare, music facilities, the Pleasanton Playhouse, and a cheerleading and gymnastic training facility, all of which were businesses required to secure conditional use permits to be located in the Valley Business Park. The proposed use would be similar to these uses.

When the proposed use is a daycare or instructional/recreational, staff evaluates how that use integrates into surrounding uses. Staff is cautious about adjacent uses, knowing that although the existing business neighbors may not have an issue, future tenants may. This Business Park is designed for industrial uses, and on several occasions, tenants have questioned whether having uses geared to children in such close proximity to construction, manufacturing and other industrial uses is a good idea. In staff's evaluation, this daycare and martial arts program is compatible with the other uses in the Valley Business Park.

One Commissioner has questioned whether the site is appropriate for the proposed use due to some of the activity in the business park, e.g., the use of forklifts, and odor related to a lacquering process that occurs in a nearby business suite. (See questions 68 and 95 in Exhibit D). Staff has concluded that the forklift activity in the business park does not pose a hazard to the program participants as it does not occur within the subject space. Staff has also concluded that the smell from the lacquering activity (which Code

Enforcement staff has confirmed occurs approximately five times per month) should be addressed by the ventilation system of the facility that does the lacquering. Staff has added a condition of approval that requires parents/guardians of each minor to sign a acknowledgment that they are aware of the occasional lacquering activity in the nearby suite at 1262 Quarry Lane, Suite C.

Outdoor Play Area

As described above, the State has approved the proposed facility with an alternative approach to their requirements for an outdoor play area. State staff concluded that the facility as proposed offered ample opportunity for exercise through the facilities martial arts program, and provides for sunlight and fresh air by way of the opportunity to open the rear roll up door. Please see Exhibit G for the State's evaluation report. Planning Division staff agrees with their conclusion for this particular facility. While approval of Child Care centers without outdoor play area is not common, the City has approved such a facility at 7106 Johnson Drive.

Parking

The subject site provides 29 shared parking spaces for the existing 9,936 square-foot building. The three other tenants of the building utilize 20 of those spaces. The applicant will be transporting the children to the facility with their parents/guardians picking them up in the evening; therefore, the applicant will only need to utilize four of the nine parking spaces that are remaining on-site (one for the van and three for the two employees and the applicant).

The applicant anticipates 20 students for the evening class. Section 18.88.030(E)(2) of the Pleasanton Municipal Code (PMC) requires one parking space for each two students aged 16 and older. Accordingly, the facility would need 10 parking spaces for 20 students. With two of the parking spaces utilized by the applicants Dodge Durango and the passenger van that remains on site, this leaves six parking spaces for the evening class. Given that the surrounding businesses will be closed during the evening class, it is unlikely that parking will be impacted, thus, staff is of the opinion that the parking will not be an issue for those attending the night class.

Circulation

Since the applicant will be picking up the students and bringing them back to the facility, circulation during drop-off time for the children's program should not be an issue. However, the proposed suite is located at the end of the building where there is only one way in and out for parking and ingress/egress. If all of the parking spaces are utilized in front of the building and a parent is picking up a child, or dropping a child off during the camp sessions, staff is concerned that circulation may be an issue. The applicant,

however, feels that circulation is adequate because he says the parents pick-up and drop-off the children at staggered times and only stay long enough to drop-off/pick-up and sign the child in/out. Staff has added a recommended condition of approval that addresses circulation should it become an issue.

Noise

The subject site is in an industrial area, and a certain amount of noise is expected. Immediately outside, with the roll up door open, the noise level from the proposed use would be able to adhere to the 75-dBA noise requirement of the Pleasanton Municipal Code (PMC). Based on the proposal, staff considers the use to be a somewhat quiet use. When the children are participating in activities (e.g. dodge ball, tug-of-war, etc) and on their breaks the noise level may be more frequent and audible with the level of excitement. With the roll up door open it is unlikely that the noise will be an excess of the PMC but could likely be more of a nuisance to the adjoining tenant(s).

Tenant Improvements

No tenant improvements are currently proposed with this application. Any tenant improvements would be subject to the review and approval of the Building and Safety Division and the Fire Department. Changes to the exterior of the building would not be allowed without prior approval from the Planning Division.

Building Occupancy

The proposed day care use would typically be considered an E occupancy under the 2007 California Building Code (2007 CBC). Such an occupancy would require the installation of a two-hour fire rated wall between the subject and adjoining tenant space or would require addressing the occupancy separation by other methods such as by providing a supplemental fire sprinkler system.

Signage

At the time that staff conducted a site visit, signage did not exist for the tenant suite. If the applicant wishes to add signage, the proposed signage must adhere to the Valley Business Park's sign program and is subject to review and approval by the Business Association and the Planning Division prior to installation.

PUBLIC NOTICE

Notice of this application was sent to all property owners and occupants within 1,000 feet of the subject property. At the time this report was prepared, staff had not received any comments or concerns.

VALLEY BUSINESS PARK OWNERS' ASSOCIATION

Staff has yet to receive verbal or written input from Valley Business Park Owners' Association regarding its position of the proposed use at this location. The applicant has verbally stated to staff that the Business Park no longer provides such letters. Staff notes that action on this application can be given by the Planning Commission without approval from the Valley Business Park Owners' Association since the City does not enforce CC&R's.

COMMUNITY CARE LICENSING DIVISION

Staff has been working with the State Department of Social Services-Community Care Licensing Division (CCLD) to assess whether the martial arts facility requires State licensing. Based on the information proved in Exhibit A, Tri-Valley Martial Arts Academy is required to secure licensing with CCLD. Staff has confirmed with Susan Boswell, Licensing Program Manager, that the applicant is in the process of obtaining a child care license and the applicant has stated that he believes that he will satisfy the requirements of CCLD and receive his childcare license no later than August. The teacher/employee to children ratio shall be determined by the Department of Social Services to ensure adequate supervision is provided. Staff has added a condition of approval that the applicant shall provide staff with a copy of the childcare license.

FINDINGS

The Planning Commission needs to make the following findings prior to granting the conditional use permit for the proposed business:

- 1. 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.**

Objectives of the Zoning Ordinance include: fostering a harmonious, convenient, workable relationship among land uses; protecting existing land use from inharmonious influences and harmful intrusions; and ensuring that public and private lands ultimately

are used for the purposes which are most appropriate and beneficial to the City as a whole. The subject building is located in Valley Business Park, which is located in a Planned Unit Development - Industrial (PUD-I) District, and is intended to provide sites for industrial uses, neighborhood and support commercial uses, and office uses. The proposed childcare/martial arts facility would provide child related martial arts services and supervision of children ages 5-12 and martial arts lessons to students 13 and older during the evening. The City has allowed similar uses to be located in industrial and office areas. Staff is not aware that any of these instructional or childcare-oriented businesses has created any impacts on surrounding businesses. Similar to other requests, in staff's opinion, the Tri-Valley Martial Arts Academy is compatible with surrounding uses.

For the reasons stated above, staff believes that this finding can be made as the application is currently proposed.

2. 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.

The children will be signed in by the applicant and signed out by the parents during the after school programs. During the seasonal camps, the parents will be responsible for escorting children into the facility and signing them in and out upon picking them up. Although the roll up door will be open, the applicant will use a mesh fence to prevent the children from being able to “wander” out of the facility. The applicant has a specialized marital arts liability insurance policy, will install and maintain recorded video surveillance of the interior areas (excluding bathroom areas), and will install “screamer” alarms on the back door to ensure that the students do not leave the site without the applicant or employees knowledge. For these reasons, staff believes this finding can be made.

3. The proposed conditional use will comply with each of the applicable provisions of the Zoning Ordinance.

The industrial zoning of the subject site permits the establishment of “recreational” and daycare facilities and similar uses which are subject to conditional use permit approval. Staff feels that the recommended conditions of approval will help to continue integrating 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 facility would comply with all applicable provisions of the Zoning Ordinance. Therefore, staff believes this finding can be made.

ENVIRONMENTAL ASSESSMENT

Existing facilities consisting of the operation, permitting, licensing, or minor alteration of structures involving no expansion of use beyond that existing are categorically exempt (Section 15303, Class 1) from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

CONCLUSION

Staff believes that the required use permit findings for the proposed use can be met if the project is approved as conditioned. Conditions of approval have been included which will ensure that the safety and general welfare of those attending the facility are met and that the surrounding area is maintained in an appropriate manner. The facility would be complementary to the existing businesses and tenants in Valley Business Park. The applicant is working with Child Care Licensing and has modified his operations to address the City's concerns. Therefore, staff is of the opinion that the business would be providing a beneficial service to the community by providing a place for children to have a safe and fun indoor activity daycare center.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve PCUP-229 by taking the following actions:

1. Make the required conditional use permit findings as listed in the staff report; and
2. Approve PCUP-229 subject to the conditions listed in Exhibit B.

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