



## Planning Commission Staff Report

February 13, 2008

Item 6.b.

- SUBJECT:** PCUP-200
- APPLICANT:** Tri-Valley Martial Arts Academy / John Pfund
- PROPERTY OWNERS:** Big Valley L.P. / Jack Balch
- PURPOSE:** Application for a conditional use permit to allow a martial arts academy which would (1) include up to 20 students ages 5 to 12 years, and an additional 10 students 16 years and older and 1 employee, 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, in an existing building.
- 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. Location Map
  2. Exhibit A: Written Narrative dated "Received September 26, 2007" (*previously provided to the Commission as Attachment 1 of the bound blue "Attachment" document*)
  3. Exhibit A.1: Written Narrative dated "Received January 4, 2008" (*previously provided to the Commission as Attachment 1 of the bound blue "Attachment" document*)
  4. Exhibit A.2: Written Narrative with appendixes, Floor Plan, and Site Plan dated "Received January 24, 2008" (*previously provided to the Commission as Attachment 1 of the bound blue "Attachment" document*)

5. Exhibit C: Staff Correspondence and Zoning Certificate *(previously provided to the Commission as Attachment 2 of the bound blue “Attachment” document)*
  6. Exhibit D: Applicant Correspondence *(previously provided to the Commission as Attachment 3 of the bound blue “Attachment” document)*
  7. Exhibit E: Attendance Sheet
  8. Exhibit F: Franchise Handout Information
  9. Exhibit G: Tri-Valley Martial Arts Academy Website Program Information
  10. Exhibit H: City of Dublin Reports, City Council Meeting Minutes, Written Narrative, and Staff Correspondence dated “Received November 19, 2007 City of Pleasanton Planning Department”
  11. Exhibit I: Public Correspondence
  12. Exhibit J: Community Care Licensing Correspondence *(previously provided to the Commission as Attachment 2 of the bound blue “Attachment” document)*
  13. Exhibit K: Child Care Centers General Licensing Requirements
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## **BACKGROUND**

On June 27, 2007, staff approved an “over the counter” Zoning Certificate for Tri-Valley Martial Arts Academy to operate a martial arts academy at 1262 Quarry Lane, Suite A. Staff did so in error. Although the City had recently amended the zoning code to allow certain recreational facilities to operate without a conditional use permit if they had no more than 20 students, this code amendment only applied to properties zoned Commercial, Office, or Industrial. (See PMC 18.44.090, 18.40.030, and 18.48.150)

Here, the Tri-Valley Martial Arts Academy (“Academy”) would be located in a Planned Unit Development (PUD) district and not in the Commercial, Office, or Industrial zones. The PUD regulations for the Valley Business Park require recreational sports facilities (and day cares) to obtain a conditional use permit.

When planning staff realized this error in July 2007, staff called the Academy on two occasions and left messages regarding the need for a conditional use permit; staff did not receive a return call.

On August 17, 2007, the City’s Code Enforcement Officer sent a letter to the Academy stating that the business needed to secure a conditional use permit (CUP) but would be allowed to continue to operate based on the information provided on the Zoning Certificate, so long as a completed conditional use permit application was received by September 1, 2007. Since the

Planning Department did not receive the application by the stated deadline, the City's Code Enforcement Officer sent a second letter on September 25, 2007 reminding the Academy that an application for a CUP was required. (See Exhibit C for staff correspondence.)

On September 28, 2007, John Pfund, owner of the Academy, submitted an application for a conditional use permit. Based on the application, it appeared that the scope of operations differed significantly from what was indicated on the application for the Zoning Certificate, and specifically the September 28 application stated that the maximum number of children and adults at any given time would be 30 rather than 20. On November 7, 2007 staff sent Mr. Pfund a letter stating that the business could continue to operate until such time as the CUP application is heard by the Planning Commission but that the Academy had to operate with not more than 20 students at any given time as stated in Pfund's initial application.

The conditional use permit application was scheduled for the Planning Commission hearing on December 12, 2007, with a recommendation for denial because staff could not make the use permit findings based on parking and circulation. The item was continued, however, at the applicant's request in order to discuss with staff how the applicant could revise the application to meet the parking and circulation requirements. On December 18, 2007, staff met with Mr. Pfund to discuss the applicant's written narrative. During this meeting, Mr. Pfund indicated that the written narrative that he had provided was inaccurate and that he would like to re-submit a revised narrative that more accurately portrayed the scope of his operations.

Although the Planning Department typically allows businesses to operate while applications are being processed, after meeting with the applicant, staff determined Mr. Pfund must cease operations until a conditional use permit was secured. This decision was based on: the degree of inconsistency between the information provided that gave rise to the (rescinded) Zoning Certificate and the information that was later submitted with the September 28 application; staff's initial recommendation to the Planning Commission that the use permit be denied; the discussions with the applicant regarding the revisions; and the initial determination by the State Department of Social Services Community Care Licensing Division that a child care license would be required. (See Exhibit C for staff's letter to the applicant dated December 26, 2007.)

Staff met with Mr. Pfund again on January 4, 2008, to discuss his concerns regarding staff's decision to have the Academy cease operations pending his receipt of the CUP. During this meeting, the applicant provided staff with an additional narrative explaining his proposed use and requested staff to reconsider the directive to cease operations. After the meeting concluded, the applicant submitted the second written narrative (Exhibit A.1) outlining modifications to the previous written narrative. Staff found the operations described in the new narrative to again be inconsistent with how the applicant described the proposed operations during January 4 meeting and inconsistent with the description of operations in prior conversations with staff. Accordingly, staff declined to allow the Academy to operate until such time that the Planning Commission could consider the application for a conditional use permit.

In response to staff's decision to have the Academy cease operations, the applicant sent staff a letter on January 14, 2008, in hopes of further clarifying the scope of operations. (See Exhibit D.) The applicant also met with Jerry Iserson, Planning and Community Development Director, on January 18, 2008, regarding his most recent narrative (Exhibit A.1). Based on the outcome of this meeting, the applicant decided to revise the narrative for a third time. The applicant modified the use to meet the parking and circulation requirements in an effort to accurately portray the proposed use. Therefore, the narrative provided to the Commission, dated "Received January 24, 2008" (Exhibit A.2) is the operative narrative for review and consideration by the Planning Commission.

At the request of the Planning Department, the City's Code Enforcement Officer conducted five visits to the location to ensure that the Academy was in compliance with the City's letters directing the Academy to cease operations. Based on the Code Enforcement Officer's observations, it appeared that on January 18, 2008, the applicant was operating the Academy. Mr. Pfund informed the Code Enforcement Officer that he had been holding a business meeting and was not engaging in martial arts classes. However, Mr. Pfund could not explain why three out of the four people who were inside carried gym bags as they exited the Academy. (See Exhibit C for the memo prepared by Code Enforcement for more detail.)

## SITE DESCRIPTION

Valley Business Park, approximately 69 acres in size, is located south of Valley Avenue, 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 25 parking spaces shared between the tenant spaces. Tri-Valley Martial Arts Academy proposes to occupy an approximately 2,889 square-foot suite of the existing building, as indicated on the site and floor plan of Exhibit A.2. 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; however it is unlikely that this will be used for employees or students. There are no interior or common hallways providing interior access to the individual units.



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**

Based on Mr. Pfund's third narrative (Exhibit A.2), verbal information from the applicant, and information found on the internet advertising the Academy, the following summarizes the Academy's proposed operations: (1) 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.; (2) transportation of children would be provided from elementary and middle schools to the Academy, (3) a program for children between the hours of 11:30 a.m. and 6:15 p.m. that includes martial arts-related games and activities and an area for homework ; (4) seasonal camps, and (5) 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. The applicant's

final narrative also states that the children would participate in 2 off-site field trips per week and occasional outings to Orloff Park while participating in the seasonal camps.

The subject tenant suite contains a large open space for the martial arts/activity area, a separate break/computer room, a front office waiting room, bathrooms, and a storage/office area. Pictures of these can be found in Exhibit A.2. As proposed in the applicant's final written narrative, the martial arts classes would include up to 20 students ages 5 to 12 and up to 10 students ages 16 and older. The children's program will operate Monday through Friday from 11:30 a.m. to 6:15 p.m. while the adult program (students 16 and older) will operate Monday and Thursday evenings from 6:45 p.m. to 9:00 p.m. and Tuesdays from 7:30 p.m. to 9:00 p.m. The following outlines each of the programs activities:

- **After School Program Transportation (ages 5-12):** The applicant will provide two onsite vehicles, a 14-passenger van and a 7-passenger Dodge Durango, that will go to local elementary and middle schools to pick up children and take them to the Academy. The applicant has provided pictures of the vehicles in Exhibit A.2 under appendix F. The pick-up times will begin at 11:30 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 and the applicant has also provided verification of vehicle registration in Exhibit A.2 under appendix G.
- **Kindergarten Program:** Kindergarteners will arrive at the Academy at approximately 12:15 p.m. and will be escorted into the Academy from the van and/or Dodge Durango. Upon entering the facility, the children are "checked in" on an attendance sheet that the applicant uses for accounting purposes, please see Exhibit E. After putting on their uniforms, the children are then given a 30-minute break where they can eat lunch (which they bring from home), do homework, play or relax. After the break, the students participate in various martial arts games and activities. The applicant has included book excerpts of martial arts games in Exhibit A.2 under appendix D. This portion of the program typically runs from 1:00 p.m. to 2:00 p.m. Upon finishing this session, the students are given another 30-minute break where they can play on the gymnastic equipment or relax in the break area. During this break, Mr. Pfund's one employee arrives to take over the program while Mr. Pfund prepares for the 2:30 p.m. pick-up of the remaining children from elementary/middle schools.

During the 2:30 p.m. to 3:30 p.m. portion of the program, the kindergarteners participate in an organized martial arts class where they practice leadership, agility, and balance by studying martial arts techniques. This is done by talking about the message of the month (e.g., character, integrity, and balance) and then giving them instructions on how they can apply these messages to their daily lives. The kindergarteners also participate in a self-defense segment and a martial arts tumbling and gymnastics segment during this hour. Upon finishing this session the other students are arriving and both groups are given a 30-minute break and snack time.

- **Elementary / Middle School Program:** Like the kindergarten students, the elementary / middle school students are escorted into the facility when they arrive around 3:30 p.m., when the kindergarten students are finishing one of their programs. These students are signed in and change into their uniforms. After playing, relaxing, having a snack, or doing their homework, the two groups of students (kindergarteners and elementary/middle school students) jointly participate for an hour and a half (4:00 p.m. to 5:30 p.m.) in martial arts games, activities, self-defense, tumbling, and gymnastics. This is a combined condensed version of the kindergarteners' two segment sessions; the 1:00 p.m. thru 2:00 p.m. and 2:30 thru 3:30 p.m. sessions.

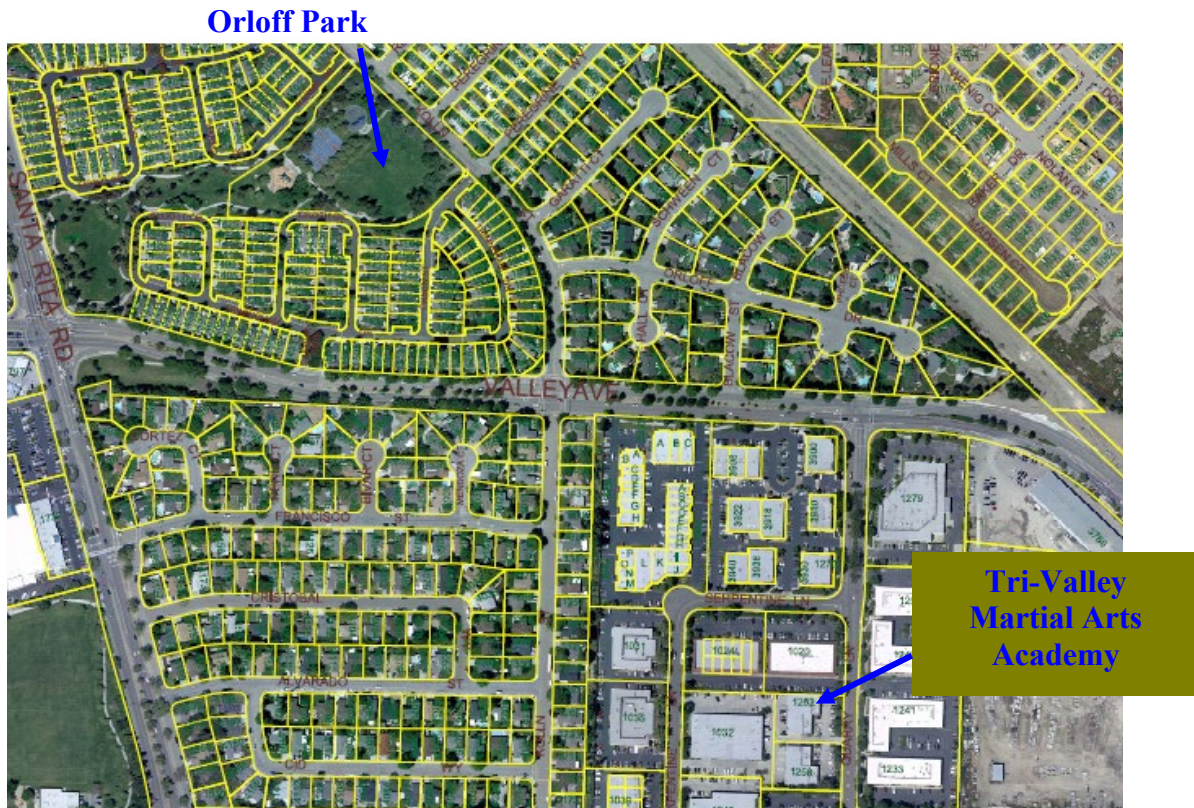
After completing this portion of the program, the students participate in quiet activities from 5:30 p.m. to 6:15 p.m. while waiting for their parents to pick them up. These activities include martial arts history quizzes and coloring pages; examples of these activities can be found in Exhibit A.2 under appendix I. As the students leave, their parents sign them out on the attendance sheet (Exhibit E).

- **Summer and Winter 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. The parents enroll their child for the camp classes on a week-to-week basis. Per Mr. Pfund, 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 two off-site field trips during the week. These trips are scheduled on Tuesdays and Thursdays from 1:30 p.m. to 4:00 p.m. The locations of these trips were not disclosed in the applicant's narrative. During the summer camp session, the applicant also proposes to occasionally take the children to Orloff Park. (See the picture after this section.) The children would participate in the same martial arts games and activities in the park that they do at the facility. Although it is not stated in the applicant's final narrative, staff assumes that the camps will run Monday through Friday only.

The students will be dropped off and signed in by their parents between 9:00 a.m. and 10:00 a.m. The applicant anticipates that the parents will stagger the drop off times. From 10:00 a.m. to 11:30 a.m. the students will participate in various martial arts games and activities, similar to the types of games and activities that are conducted during the after-school programs. After completing this session, the students are given a 30-minute break where they can play with equipment, relax in the break area, or eat a snack that they bring from home. The students then spend the next 15 minutes cleaning up from the break.

From 12:15 p.m. to 1:15 p.m. the students participate in another martial arts class, similar in nature to the morning session activities. Upon completing this session, the students

then take a break to eat the lunch they brought from home and play. This takes place from 1:30 to 2:45 p.m. and includes clean up. The students continue to partake in martial arts activities throughout the day, specifically from 2:45p.m. to 5:30 p.m., with a 30-minute break from 4:00 p.m. to 4:30 p.m. Upon completing the day's activities at 5:30 p.m., the children change out of their uniforms and participate in quiet martial arts activities, similar to the after school program, and wait for their parents to pick them up by 6:15 p.m.



- **Adult Program:** This program will be held on Monday and Thursday evenings from 6:45 to 9:00 p.m. and Tuesday evenings from 7:30 p.m. to 9:00 p.m. with a maximum of 10 persons (16 years and older) anticipated to attend these classes. The applicant has stated that the adults participating in this program will not have their children attending the Academy too; therefore it is unlikely that a child will be at the facility later than 6:15 p.m. Mr. Pfund will be the only instructor/employee on site during this time. The classes begin with a 30-minute warm up followed by martial arts activities. There will not be multiple adult sessions being held during the proposed times.

The applicant received a conditional use permit from the City of Dublin in 2003 for a similar type of use. Based on the City of Dublin's Planning Commission staff report and City Council meeting minutes, Exhibit H, the applicant was approved for a martial arts and youth center.



Staff notes that this is for informational purposes only and that each jurisdiction has varying codes, requirements, and processes.

## **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, day care centers, and schools/instructional businesses. The proposed use would be similar to "indoor recreational sports facilities", "instructional business", and, in staff's opinion, "day care". 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 and recreational oriented businesses have also located in the Business Park. These uses include tutoring centers, dance studios, day care, 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 educational, instructional or 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 martial arts and youth program is compatible with the other uses in the Valley Business Park with one exception (the ability of children to freely come and go from the facility) which is addressed in detail below.

### Parking

The subject site provides 25 shared parking spaces for the existing 9,936 square-foot building. The three other tenants of the building utilize 20 of the spaces. In order to determine how many parking spaces are required by the municipal code for this application, staff looked to Pleasanton Municipal Code (PMC) section 18.88.030(E)(2). Staff considers the martial arts studio similar

in nature to those uses listed in section 18.88.030(E)(2), i.e., business, professional trade, art, craft, music and dancing schools and colleges. Per the PMC, the parking ratio for such uses requires one parking space for each employee/instructor, including teachers and administrators, and one additional space for each two students sixteen years or older. Based on the three adjacent tenant uses in the subject building, which do not require conditional use permits, a total of 20 spaces would be required between the three of them; leaving the remaining 5 spaces for suite A (the Academy).

During the two scheduled pick-up times, there will be 20 students transported by the applicant from their schools to the site in the 14-passenger van and/or the 7-passenger Dodge Durango. Based on the parking ratio stated above, a total of 3 spaces would be needed for the children's program portion (two parking spaces for (Mr. Pfund and his instructor/employee) and an additional parking space for the 14-passenger van that will be kept on-site. Per the Code, there are enough spaces to accommodate the children's program.

The adult program contemplates 10 students. PMC section 18.88.030(E)(2) requires 1 parking space for each 2 students aged 16 and older. Accordingly, the Academy would need 5 parking spaces for 10 students. Because 2 of the parking spaces are utilized by the Dodge Durango and the passenger van that remains on site, this leaves only 3 parking spaces for adult students. Staff notes that the additional instructor/employee is only on site for the children's program and therefore is not a part of the adult class parking requirements. Therefore, the applicant would need to reduce the number of adult students to 6 (one space for each 2 students) in order to meet the parking requirements set forth in the municipal code.

Staff notes that there is off street parking along Quarry Lane. However the parking count for conditionally permitted uses is required to be onsite and therefore off-street parking cannot be counted towards meeting the parking requirements.

### 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. (See appendix O to Exhibit A.2 depicting the parking lot during evening hours).

### Noise

The subject site is in an industrial area, and a certain amount of noise is expected. For industrial properties, such as the subject property, the Pleasanton Municipal Code states:

No person shall produce or allow to be produced by any machine, animal, device, or combination of the same, on industrial property, a noise level in excess of seventy-five dBA at any point outside of the property plane.

Immediately outside, with the doors closed, the noise level from the proposed use would be able to adhere to the 75-dBA noise requirement of the Pleasanton Municipal Code.

The Pleasanton Municipal Code also states that a proposed conditional use must be in accord with the objectives of the Zoning Ordinance. One of those objectives is to “promote the stability of existing land uses that conform with the General Plan and to protect them from inharmonious influences and harmful intrusions.” As proposed, staff believes that noise from the Academy, including youth program activities, would not negatively impact future or existing uses located adjacent to the subject suite. All doors will remain closed during business hours, further limiting noise impacts from and to surrounding tenants and properties. Therefore, it is unlikely that the noise produced by the operations will be in excess of 75 dBA at any point outside of the property plane as prescribed by code (P.M.C. §9.040.50).

Based on the proposal, staff considers the use to be a quiet use as noise generated by the martial arts is mainly from bare feet stomping on the raised hardwood floors underlain with mats, punching and kicking pads, and letting out short shouts while practicing. Staff notes that when the children are on their breaks, the noise level may be more frequent and audible with the level of excitement. However, staff feels that this will not be an excess of the PMC noise requirement and would likely be more of a nuisance to the adjoining tenant(s) should this occur.

### 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 made without prior approval from the Planning Department.

### 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 Planning Director 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. However, following the notice sent out on in December when this was first scheduled for Commission consideration, staff was contacted by Brian Bowers, property owner of 1020

Serpentine Lane. Mr. Bowers stated that he was concerned that the use would create parking problems. While Mr. Bowers does not specifically object to the applicant's use, he feels that there may be a parking issue when parents are dropping off or picking up children.

Staff also received a letter from Gerald Hodnefield who operates at 1020 Serpentine Lane. Mr. Hodnefield stated that he does not object to the intent of the proposed use, however, he does feel that the use would create parking issues if the parents drop off or pick up their children during regular business hours. Based on the applicant's final narrative, Mr. Pfund met with Mr. Hodnefield to discuss his concerns. Mr. Pfund assured Mr. Hodnefield that the parents would only be on-site after regular business hours, when Mr. Hodnefield's business was closed. Mr. Hodnefield was concerned that the parents would be using his parking spaces if there weren't any available on the subject site. (See Exhibit I for Mr. Hodnefield's letter to staff and Exhibit A.2 for Mr. Pfund's recitation of his conversation with Mr. Hodnefield.)

On January 8, 2008 staff spoke with a parent of one of the children from Tri-Valley Martial Arts Academy wanting to know if she should seek alternative "daycare" and wanted to know if there were safety concerns since City staff was not in support of the approval of the application. Staff informed the parent that the applicant was working on a revised narrative to address staff's concerns regarding parking and circulation. On February 1, 2008 staff spoke with another parent that had similar concerns. The parent wanted to know if he should be looking for alternative daycare and wanted to know what the City's stance was regarding the application. Staff informed the parent that there were initial concerns with parking but the applicant was revising his narrative in hopes of addressing staff's concern.

The applicant has also provided letters of support from some parents and neighboring tenants, which can be found in Exhibit I, some of which are also duplicated in the applicant's narrative (Exhibit A.2) in (Appendix L to staff's Exhibit A.2).

## **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 provided a letter of support from the property owner/management company in lieu of a letter for the Valley Business Park Owners' Association. (See appendix M to staff's Exhibit A.2.) 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. However, it has been the policy to have a letter from such Owners' Associations indicating support or opposition to a proposed use before taking action. Staff has requested that the Owners' Association provide such a letter. The Association has readily provided such letters for other requests for use permits being processed in the Valley Business Park and staff is unsure why one has not been produced for this use. Notwithstanding that no letter has been received, staff believes the Planning Commission can and should proceed at this time.

## COMMUNITY CARE LICENSING DIVISION

Staff contacted the State Department of Social Services-Community Care Licensing Division (CCLD) to have it assess whether the Academy requires any State licensing. Based on the initial information provided by the applicant in September, a Licensing Program Manager with CCLD determined that a license issued by CCLD would be required because the program would be offered to “school age” children who would be at the facility for more than an hour and a half (1 ½) and attending the facility for more than 16 hours per week. (See Exhibit J for CCLD’s letter.) Also CCLD staff believed that the proposed scope of operations was more than martial arts classes and CCLD would consider this operation to be a childcare facility, given the amount of time the child is in the “care” of the Academy.

However, following additional information from Mr. Pfund, CCLD re-evaluated the Academy’s scope of operations and has determined that a license is not required. This determination from CCLD was based on an inspection by CCLD at the applicant’s previous location in Dublin and based on the fact that Mr. Pfund would have the parents sign a waiver. Specifically, this waiver would state that the Academy is not day care, that the Academy is not responsible for supervision and care of the child, and that the children are free to come and go from the facility. Please see Exhibit J for the CCLD’s letter of re-evaluation.

Per staff’s conversations with Diane Gorman, Licensing Program Manager with the Department of Social Services, the Department has “policy statements” that it follows. Here, the Department has a policy statement that exempts “drop-in recreational” facilities from state licensure as specified in Health & Safety Code Section 1596.792 and 1596.793. Specifically, the policy statement exempts facilities from licensure if the facility: does not provide care and supervision to children; the facility is a drop-in recreational program that children can enter and depart at will; children are not required to formally sign in/out (other than for accountability/membership); etc. Please see Exhibit K for CCLD’s child care licensing requirements.

Staff does not agree with the State’s determination that the Academy falls within the exemptions set forth in the policy statements. Specifically, the policy statement says that in order for the facility to be considered “drop-in” (and thus exempt), the children cannot be “assigned specific activities or placed in a structured program.” Although Mr. Pfund has identified segments of “free time” for the children to do homework, relax, etc., there are also segments where the children will be engaged in specific activities or in structured programs, e.g., martial arts classes. Notwithstanding staff’s disagreement with Department of Social Services, more fundamentally, staff cannot recommend that the Academy be permitted to have children come and go freely (as is required in order to be exempt from CCLD licensure.)

As part of his application, Mr. Pfund asks parents to sign a waiver. (See appendix A of staffs Exhibit A.2 for the full text of the waiver.) Staff has serious concerns about the waiver, particularly the following language:

“I understand that Tri-Valley Martial Arts Academy and the A+ Program is not a daycare ...I acknowledge that they [the Academy] is not responsible for supervision and care of my child/children after school or in summer camp. Furthermore, I authorize that my child/children are free to come and go from their facility and do not have to go to martial arts if they do not want to...”

Allowing children to come and go freely runs contrary conditions that the Planning Commission has routinely imposed on these uses which requires children under the age of 13 to be signed in and out from a facility. Even if the child were picked up and “signed in” by Mr. Pfund or his employee/instructor and picked up and “signed out” by a parent, the waiver nevertheless allows a child to be able to come and go freely. Moreover, the Academy contemplates young children, even kindergartners, and it is neither logical nor appropriate to allow them to be able to come and go freely from a facility that is “not responsible for the supervision and care” of children. Finally, the Academy is proposed in the middle of an industrial park, and not in a residential area. Children, some as young as kindergartners, could be at risk from motorists who would not necessarily expect to encounter such young people in the Business Park.

For all of these reasons, staff recommends that Mr. Pfund’s application be denied.

## **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 proposed martial arts school would provide instruction lessons to local children and adults along with providing other child related martial arts services. The City has allowed similar uses to be located in industrial and office areas. Staff is not aware that any of these teaching or child care-oriented businesses has created any impacts on surrounding businesses. Similar to other requests and in an effort to be consistent, it appears that the martial arts may be considered compatible with surrounding uses.

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. Given the scale of the operation, and its location, the proposed use would be compatible with surrounding uses.

However, there are problems with the current application as it relates to parking and circulation. The Academy will have 2 instructors including the owner/applicant, up to 20 children, and up to 10 adults. Staff believes that this use is not compatible with surrounding uses because of the lack of parking and circulation issues. Although this issue could be resolved, if the Academy reduced the maximum number of adult students to 6, that is not the application pending before the Commission.

For the reasons stated above, staff believes that this finding cannot 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.**

As stated above, allowing children to come and go freely is contradictory to the conditions that the Planning Commission has imposed on similar facilities that require children under the age of 13 to be signed in and out. Even if the child were picked up and “signed in” by Mr. Pfund or his employee/instructor and then picked up and “signed out” by a parent, the waiver nevertheless allows a child to be able to come and go freely. Children that will attend the Academy are very young, even kindergartners, and it is neither logical nor appropriate to allow them to be able to come and go freely or attend a facility that is “not responsible for the supervision and care” of children. Finally, the Academy is proposed in the middle of an industrial park, and not in a residential area. Motorists within the Business Park would not expect to encounter young people which could lead to an injury. For all of these reasons, staff believes this finding cannot be made as the application is currently proposed.

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

Given the degree of inconsistency between what was originally submitted (that led to the issuance of the Zoning Certificate, subsequently rescinded) and the information that was later submitted (e.g., multiple revisions of the scope of operations) and given that the applicant did not cease operations as directed by staff by December 31, 2007 (see Exhibit C for Code Enforcement’s letter directing that the applicant cease operations as of January 4, 2008), the proposed use is detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

Therefore, staff believes this finding cannot 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). Staff believes that the project meets the conditions of the Class 1. Therefore, no environmental document accompanies this report.

## **CONCLUSION**

Staff believes that the required use permit findings for this project cannot be met and therefore recommends denial of this project.

## **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission deny PCUP-200 based on the inability to make any and all of the conditional use permit findings.

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