



May 16, 2013

File(s): CCS-13-01

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on May 14, 2013.

Applicant(s): PKII Milwaukie Marketplace LLC / Kimco Realty
Location(s): 10840 SE Oak St
Tax Lot(s): 1S1E36AC 12000
Application Type(s): Community Shopping Commercial
Decision: Approved, with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- 19.308 Community Shopping Commercial Zone C-CS
- 19.1006 Type III Review

Neighborhood(s): Business Industrial, Ardenwald-Johnson Creek, Hector-Campbell, Historic Milwaukie, Lake Road

This notice is issued in accordance with Milwaukie Municipal Code Section 19.1006 Type III Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Kari Svanstrom, Associate Planner, at 503-786-7653 or svanstromk@ci.milwaukie.or.us, if you wish to view this case file.

Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council. The period during which an appeal can be filed expires on the date shown below. This decision becomes final on the date below if no appeal is filed during the appeal period.

Appeal period closes: 5:00 p.m., May 31, 2013

Appeals of Planning Commission decisions must follow the procedures of Milwaukie Municipal Code Section 19.1010 Appeals. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@ci.milwaukie.or.us.

Findings in Support of Approval

1. The applicant, PKII Milwaukie Marketplace, LLC, has applied for approval to consider a taekwondo studio as a 'similar and compatible use' at 10840 SE Oak Street in the Milwaukie Marketplace. This site is in the Community Shopping Commercial C-CS Zone. The land use application file number is CCS-13-01.
2. The applicant is seeking land use approval for determination that a taekwondo studio is a similar and compatible use to uses permitted outright in the C-CS Zone. This would allow the studio to locate in the shopping center. See Attachment 3, applicant's materials for details. The proposed tenant wishes to operate a taekwondo studio that will offer classes and private instruction in martial arts and sell associated goods such as uniforms and training equipment.
3. The Milwaukie Marketplace is a planned shopping center of approximately 208,926 gross leasable square feet that was developed in the late 1980's. The proposed use would occupy 2,900 sq ft space on Parcel 8 of the shopping center.
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.308 Community Shopping Commercial Zone
 - MMC 19.1006 Type III Review
5. The application has been processed and public notice provided in accordance with MMC Section 19.1006.3 Type III Public Notice. A public hearing was held on May 14, 2013, as required by law.
6. MMC 19.201 Definitions
 - a. "Taekwondo studio" and "martial arts studio" are not defined in the Milwaukie Municipal Code. Per MMC 19.201, words not specifically defined in the MMC are intended to be interpreted with the meaning they have in common usage. Merriam Webster's Dictionary defines "tae kwon do" as

"a Korean art of unarmed self-defense characterized especially by the extensive use of kicks"

Merriam Webster's Dictionary defines "martial arts" as

"any of several arts of combat and self defense (as karate and judo) that are widely practiced as sport"

Merriam Webster's dictionary defines "studio" as

"a place for the study of an art (as dancing, singing, or acting)"

The Planning Commission finds that a taekwondo is a type of martial arts, and a studio is a place where arts, in this case martial arts, are studied and taught.
 - b. MMC 19.201 defines a "commercial school" as a place where instruction is given to pupils in arts, crafts, trades, or other occupational skills, and operated as a commercial enterprise as distinguished from schools endowed or supported by taxation.
 - (a) The martial arts studio use is described by the applicant as a school that provides both classes and private lessons in the art of taekwondo.
 - (b) The proposed "martial arts studio" is a private commercial enterprise that will give instruction to pupils in the martial arts, and not an endowed or tax-

supported school. Therefore, it meets the definition of a “commercial school.”

- (c) A “trade school” is included by name as a type of “commercial school” as defined by MMC 19.201.

The Planning Commission finds that a “martial arts studio” can be defined as a “commercial school.”

7. MMC 19.308 Community Shopping Commercial Zone C-CS

- a. MMC 19.308.1 Uses outlines the permitted uses in the C-CS zone.

MMC 19.308.1.B.6 allows “trade schools” as a permitted use with the limitation that not more than 15% of the floor space in the zone can be office, clinic, or trade school use.

As both a “trade school” and a “martial arts studio” are types of “commercial schools”, school” use of the listed uses in MMC 19.308.1.

- b. MMC 19.308.1.B.7 authorizes the Planning Commission to determine that a use not listed as permitted in the C-CS Zone is similar and compatible, thus allowing the use in the zone. There are no formal criteria outlined in the MMC for a determination by the Planning Commission. However, MMC 19.903.4.B.1 outlines criteria for a Planning Director determination of “similar use.”

The Planning Commission finds that approval criteria for ‘similar and compatible use’ in MMC 19.903.4.B.1 Similar Use are appropriate criteria to use for this determination.

8. MMC 19.903.4.B.1 Similar Use

MMC 19.903.4.B.1 outlines the following criteria for Director determinations of similar use:

- a. The proposed use and uses that are allowed outright are comparable with respect to the characteristics described below.

(1) Hours of operation

The proposed hours of operation for this use are between the hours of 10 a.m. and 8 p.m., six days a week. These hours of operation are compatible with the other uses in the shopping center. The office uses generally have fewer open hours while the retail stores have slightly more hours than the proposed use.

The medical office tenants generally have business hours of 8 a.m. to 5 p.m. Monday through Friday, some with Saturday morning hours. The specialty retail stores have seven day a week hours, several of which have open hours of 9 a.m. to 8 or 9 p.m. (JoAnn Fabrics, Dollar Tree, Payless Shoes). The UPS Store, a personal/business service use in the shopping center, has fewer hours, with 8:30 a.m. to 7 p.m. Mondays to Fridays and 10 a.m. to 4 p.m. on Saturdays (closed Sundays). A couple of businesses have more extensive hours, including the Albertson’s grocery store (6 a.m. to midnight) and a 24-hour drug store (Rite Aid).

The Planning Commission finds that this standard is met.

- (2) Generation of off-site impacts such as noise, lighting glare, dust, and odors.

No off-site impacts related to noise, glare, dust, or odors are anticipated.

The Planning Commission finds that this standard is met.

(3) Employment and customer characteristics.

The use is anticipated to employ 2-3 people, and have approximately 10 people per class and six classes per day. The applicant describes the client characteristics as families, children, teens, and adults of all ages. The use is described by the applicant as a school that provides both classes and private lessons and retail sales to the public.

The applicant has stated that the use is complimentary to other business in the shopping center as it provides a place where parents can shop while their children are in classes at the taekwondo studio.

The Planning Commission finds that this standard is met.

- b. The proposed use is consistent with the stated purpose, if available, of the zone under consideration.

There is no stated purpose for this zone in the MMC.

The Planning Commission finds that this standard is not applicable.

- c. The base zone of the property where the use is proposed is reasonably similar to other zones where the proposed use is allowed outright.

A martial arts studio is not specifically mentioned in any zones in the MMC. This use is allowed in three other commercial zones, the Residential-Office-Commercial Zone ROC and the Downtown Storefront DS and Downtown Commercial DC Zones. The ROC Zone is adjacent to Milwaukie Marketplace to the north across Railroad Avenue.

The Planning Commission finds that this standard is met.

- d. The proposed use is consistent with the goals and policies of the Comprehensive Plan regarding the appropriate locations within the City for the proposed use.

The Milwaukie Comprehensive Plan states the following relevant goals and policies regarding the Community Shopping Center land use area:

- (1) The Milwaukie Comprehensive Plan states the purpose of the Community Shopping Center is "To provide for the weekly and comparison goods shopping needs of the City's and surrounding areas' residents."

The use provides services that include instructional classes and private lessons on a daily basis as well as retail items for sale. The applicant has stated that the classes are complementary to the shopping center as parents will shop at the center while their children are in classes. As classes tend to be on a weekly basis, this supports the weekly shopping needs of the area.

The Planning Commission finds that this standard is met.

Based on the above standards and findings, the Planning Commission finds that a "martial arts studio" is similar and compatible to the "trade school" use as listed in MMC 19.308.1.B.6 in the Community Shopping Commercial C-CS Zone.

9. MMC 19.308.1.B.6

MMC 19.308.1.B.6 allows offices, clinics, or trade schools, "provided that no more than 15% of the total floor space of the center is devoted to such uses."

There are four businesses that fall into the “office, clinic, or trade school” category in the C-CS zone, which currently totals 17,815 square feet, or 8.5% of the total floor space of the zone (see Exhibit A). The addition of the martial arts studio as proposed will increase this to 20,715 square feet, or 9.9%, which is below the 15% limit on these uses:

11080 SE Oak St (dentist office)	3,388 sq ft
11082 SE Oak St (dentist office)	3,832 sq ft
11084 SE Oak St (professional medical)	2,623 sq ft
11086 SE Oak St (ophthalmology clinic)	7,972 sq ft
<u>10840 SE Oak St (martial arts studio)</u>	<u>2,900 sq ft</u>
Total sq ft	20,715 sq ft or 9.9% of total sq ft

The Planning Commission finds that this standard is met.

10. The application was referred to the following departments and agencies on April 17, 2013:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Milwaukie City Attorney
- Clackamas County Fire District #1
- Ardenwald-Johnson Creek, Hector-Campbell, Historic Milwaukie, and Lake Road Neighborhood District Association Chairpersons and Land Use Committees

The application was referred to the following departments and agencies on April 18, 2013:

- North Clackamas Chamber of Commerce

The comments received are summarized as follows:

- **Paul Hawkins, Land Use Committee, Lake Road NDA:** I think a Taekwondo studio is an acceptable business for the Milwaukie Marketplace.

Conditions of Approval

1. Per MMC 19.308.1.B.6, not more than 15% of the total floor space of the center shall be devoted to offices, clinics, or trade school uses. The Planning Commission has found that a martial arts studio is a type of school and falls within this category. The C-CS zone shall include martial arts studios in the limitations set by MMC 19.308.1.B.6.
2. The “martial arts studio” use shall be in a manner substantially similar to what has been proposed and approved through this land use action, including the proposed activities and services.

Other requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various point in the development and permitting process.

1. A building permit is required for the proposed project. Prior to commencing this project, the applicant is required to obtain building permit approval from the City.
2. A Certificate of Occupancy is required for the proposed use. Applicant shall obtain a Certificate of Occupancy prior to opening to the public.

3. Any signs on-site must comply with the standards of MMC 14.16.040 Commercial Zone Sign District. Permanent or daily display signs require sign permits.



Stephen C. Butler, FAICP
Planning Director

cc: Applicant
Planning Commission
Steve Butler, Planning Director/Interim Community Development Director
Jason Rice, Engineering Manager
Brad Albert, Civil Engineer
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist
Mike Boumann and Shawn Olson, CCFD#1
NDA(s): Ardenwald-Johnson Creek, Hector-Campbell, Historic Milwaukie, Lake Road
Interested Persons
File(s): CCS-13-01, Address File