

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/991

<u>Applicant</u>	Ms. Yim Sze Tung Amanda
<u>Premises</u>	Unit K, 7/F, Valiant Industrial Centre, Nos. 2-12 Au Pui Wan Street, Fo Tan, Sha Tin, New Territories
<u>Floor Area</u>	About 109.7m ²
<u>Lease</u>	(a) STTL Nos. 62, 63 and 64 (New Grant Nos. 11288, 11289 and 11291) (b) to be expired on 30.6.2047 (c) restricted to industrial and/or godown purposes, excluding offensive trades
<u>Plan</u>	Approved Sha Tin Outline Zoning Plan (OZP) No. S/ST/34
<u>Zoning</u>	“Industrial” (“I”)
<u>Application</u>	Place of Recreation, Sports or Culture (Yoga Studio)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Place of Recreation, Sports or Culture (Yoga Studio)’ use. According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture’ is a Column 2 use in “I” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 The Premises, with a total floor area of about 109.7m², is located on the 7th floor of Valiant Industrial Centre abutting Au Pui Wan Street and Wo Liu Hang Road. There is no previous application for the Premises. The subject yoga studio under application is currently operating without valid planning permission.
- 1.3 According to the submission, the subject yoga studio at the Premises is mainly for providing on-site yoga classes and storage uses. The opening hour is from 5 p.m. to 9 p.m. daily. There will be two classes per day and the number of visiting members to the yoga studio is around 1-9 per class.

- 1.4 In support of the application, the applicant submitted the application form with attachments on 12.10.2020 (**Appendix I**); and further information (FI) clarifying the background information of the subject yoga studio on 24.11.2020 (**Appendix Ia**).
- 1.5 The floor plan and layout plan submitted by the applicant are shown in **Drawing A-1** and **Drawing A-2** respectively.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 10 of the application form and FI submitted by the applicant at **Appendix I** and **Appendix Ia**. They can be summarized as follows:

- (a) the Premises serves as a yoga studio to conduct on-site yoga classes for the elderlies, teenagers, and charitable organisations, store yoga-related equipment, record online tutorial videos, and process daily documentation;
- (b) the opening hour of the subject yoga studio is from 5 p.m. to 9 p.m. daily. There will be two classes arranged per day and the number of visiting members to the yoga studio is around 1-9 per class; and
- (c) the applied use can provide a recreational space for nearby workers and residents to exercise, and bring positive impact to the community.

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is not a “current land owner” but has complied with the requirements as set out in the ‘Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance’ (TPB PG-No. 31A) by obtaining owner’s consent. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Town Planning Board Guidelines**

- 4.1 Town Planning Board Guidelines for Use/Development within “Industrial” Zone (TPB PG-No. 25D), which was revised and promulgated in September 2007, is relevant to this application. For a commercial use in an industrial building, relevant planning assessment criteria are summarized as follows:
 - (a) it should be demonstrated that there is a genuine need for the proposed use under application and no suitable alternative accommodation can be found in the vicinity. The location and scale of the proposed use should be justified on operational grounds;
 - (b) there should be an adequate provision of parking and loading/unloading facilities within the site in accordance with the Hong Kong Planning Standards and Guidelines and to the satisfaction of the Transport Department. The inclusion and operation of the proposed commercial use should not

adversely affect the traffic conditions in the local road network;

- (c) the Fire Services Department (FSD) should be satisfied on the risks likely to arise or increase from the proposed use under application. In all cases, separate means of escape should be available for the commercial portion; and
- (d) because of fire safety consideration, only activities that do not attract a large number of visiting members of the public to the premises due to the direct provision of customer services or goods will be permitted.

5. Previous Application

There is no previous planning application at the Premises.

6. Similar Application

6.1 There is one similar application (No. A/ST/835) for ‘Place of Recreation, Sports or Culture’ use within the same “I” zone on the Sha Tin OZP (**Appendix II**).

6.2 Application No. A/ST/835 for proposed ‘Place of Recreation, Sports or Culture (Fitness, Dance and Thai-Boxing Centre)’ use has a total floor area of about 265m² at Unit A, G/F of Unison Industrial Centre at 27 – 31 Au Pui Wan Street in Fo Tan. It was rejected by the Committee on 21.2.2014 on the grounds that the proposed development was not compatible with the existing uses in the subject industrial building; it was considered unacceptable from the fire safety point of view; and the approval of the application would set an undesirable precedent for other similar applications which was unacceptable from the fire safety point of view. Subsequent review for the application was rejected by the Board on the same grounds on 20.6.2014.

7. The Premises and Its Surrounding Areas (Plans A-1 to A-4c)

7.1 The Premises is:

- (a) located at the eastern corner of 7/F of Valiant Industrial Centre; and
- (b) being used as a yoga studio without valid planning permission.

7.2 The subject industrial building is :

- (a) a 14-storey industrial building bounded by Au Pui Wan Street, Min Fong Street and Wo Liu Hang Road. Car parking spaces are provided on ground and lower ground floors of the building with vehicular access from Min Fong Street; and
- (b) currently occupied by the following uses on various floors:

Level	Current Major Uses
LG/F	Car park, photocopy shop, godowns, vehicle repair workshops, convenient store, real estate agencies ⁺ , restaurants [#] , fast food shops [*] , canteens, money exchanges [@] , offices, pet supplies store [#] , florist [^] , locked and vacant premises
G/F	Car park, real estate agency [^] , pet supplies store [#] , laundry, locked and vacant premises
1/F – 6/F and 8/F – 12/F	Offices, godowns, workshops, showroom [#] , locked and vacant premises
7/F (Plan A-3)	Application Premises , office, workshop, storage, and locked premises

There is no record of planning approval granted for such use.

* The planning approval for such use has expired for two fast food shops

+ The planning approval for such use has expired for one real estate agency.

~ There is no record of planning approval granted for one real estate agency.

@ There is no record of planning approval granted for one money exchange.

^ The planning approval for such use has expired.

7.3 The surrounding areas have the following characteristics:

- (a) Fo Tan is an established industrial area with high-rise industrial buildings;
- (b) MTR Fo Tan Station is located about 300m from the subject industrial building; and
- (c) a centrally located commercial centre (Shatin Galleria) is about 300m from the Premises. Shatin Galleria is zoned “Commercial” (“C”) on the approved Sha Tin OZP No. S/ST/34 (**Plan A-1**) and is the only “C” zone in the vicinity.

8. Planning Intention

The planning intention of “I” zone is intended primarily for general industrial uses to ensure an adequate supply of industrial floor space to meet demand from production-oriented industries. Information technology and telecommunications industries and office related to industrial use are always permitted in this zone.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/Shatin, Lands Department (DLO/ST, LandsD):

- (a) the Premises is situated on the 7th Floor of Valiant Industrial Centre erected on Sha Tin Town Lot Nos. 62, 63 and 64 and are governed under New Grant Nos. 11288, 11289 and 11291 (“the New Grants”). Under the New Grants, the lots shall not be used for any purpose other than industrial or godown purposes or both, excluding offensive trade; and
- (b) the current proposal to use the subject Premises as ‘Place of Recreation, Sports or Cultural (Yoga Studio)’ is not permitted under the New Grants. Should the application be approved by the Board, owner of the Premises is required to apply for a waiver from LandsD to effect the proposal. Such application, if received, will be considered by LandsD acting in its capacity as the landlord at its sole discretion and there is no guarantee that the waiver application for the proposal will be approved. In the event the wavier is approved, it would be subject to such terms and conditions including, inter alia, payment of waiver fee and administrative fee as may be imposed by LandsD at its sole discretion.

Fire Safety Aspect

9.1.2 Comments of the Director of Fire Services (D of FS):

- the application is not supported from fire safety point of view as the applied use will attract visiting members of the general public to stay in the Premises; their unpreparedness in facing the potential risks inside and outside industrial buildings and their unfamiliarity with the situation in case of emergency, rendering their escape materially much more difficult.

Building Matters

9.1.3 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) the applied use should comply with the requirements under the Buildings Ordinance. For instance, the studio should be separated from the adjoining workshops by fire barriers with Fire Resistance Rating of 120 minutes and should not result in the discharge value of existing staircases being exceeded;
- (b) if the applied use results in more than 30 persons in accordance with the Code of Practice for Fire Safety in Buildings 2011, 2 numbers of exit doors should be provided and such doors should open in the direction of exit;
- (c) adequate access facilities for persons with disability should be provided. Building (Planning) Regulation 72 and Design Manual: Barrier Free Access 2008 are relevant; and
- (d) the applicant is also advised to engage an authorised person to ensure the proposed change of use comply with the Buildings Ordinance and

allied regulations, and to co-ordinate the buildings works, if any.

9.2 The following Government departments have no objection to/no comment on the application:

- (a) Commissioner for Transport; and
- (b) District Officer (Sha Tin), Home Affairs Department.

10. Public Comment Received During Statutory Publication Period

On 23.10.2020, the application was published for public inspection. During the statutory public inspection period, no comment was received.

11. Planning Considerations and Assessments

11.1 The planning intention of the “I” zone is to reserve land primarily for general industrial uses to ensure an adequate supply of industrial floor space to meet demand from production-oriented industries. The application involves a change of use to ‘Place of Recreation, Sports or Culture’ for a unit at the 7/F of an existing industrial building, which may be permitted on application to the Board based on individual merits and the planning assessment criteria set out in the TPB PG-No. 25D.

11.2 The subject industrial building and the surrounding areas are predominately used for industrial purposes, including warehouses, workshops, storage and vehicle repairing workshop. The proposed ‘Place of Recreation, Sports or Culture (Yoga Studio)’ use at the Premises is considered not compatible with the said industrial uses, in particular the industrial uses at the subject industrial building.

11.3 According to TPB-PG No. 25D, because of fire safety consideration, only activities that do not attract a large number of visiting members of the public to the premises due to the direct provision of customer services or goods will be permitted. D of FS does not support the application from fire safety point of view as the applied use under application will attract visiting members of the general public to stay in the Premises. The public’s unpreparedness in facing the potential risks inside and outside industrial buildings and their unfamiliarity with the situation in case of emergency render their escape materially much more difficult. In this regard, the applied use for place of recreation, sports or culture (yoga studio) is not in line with TPB-PG No. 25D as FSD was not satisfied on the risks likely to arise or increase from the applied use under application.

11.4 There is one similar planning application (No. A/ST/835) for proposed ‘Place of Recreation, Sports or Culture (Fitness, Dance and Thai-Boxing Centre)’ use within an industrial building in the same “I” zone of Fo Tan. It was rejected by the Board on review in 2014 mainly due to concerns over fire safety and land use compatibility with the existing uses in the same building. The circumstances of the current application are similar to this rejected application.

11.5 No public comment was received during the statutory public inspection period.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) the applied use is not compatible with the existing uses in the subject industrial building which are predominately industrial in nature; and
- (b) the application does not comply with the Town Planning Board Guidelines No. 25D in that the Director of Fire Services does not satisfy on the risks likely to arise or increase from the applied use under application. The development is considered unacceptable from the fire safety point of view.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 5 years until 4.12.2025 in order not to jeopardize the long term use of the Premises for industrial uses. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission and implementation of fire safety measures within 6 months from the date of approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.6.2021; and
- (b) if the above planning condition is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix III**.

13. Decision Sought

13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of permission should expire.

14. Attachments

Appendix I

Application form received on 12.10.2020

Appendix Ia	FI received on 24.11.2020
Appendix II	Similar application
Appendix III	Advisory clauses
Drawing A-1	Floor Plan
Drawing A-2	Layout Plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Floor Plan
Plans A-4a to A-4c	Site photos

**PLANNING DEPARTMENT
DECEMBER 2020**