



PLANNING APPEAL APPLICATION TO CITY COUNCIL

City Clerk's Office | 835 East 14th Street, San Leandro, CA 94577 | (510) 577-3367

MUST BE SUBMITTED IN PERSON

General Information + Appeal Timing

Decisions of the Board of Zoning Adjustments, Planning Commission, or the Site Development Sub-Commission may be appealed to City Council and are filed with the City Clerk's Office.

This appeal application must be submitted within fifteen (15) calendar days of the decision, and within ten (10) calendar days of a Tentative Map approval. If the appeal period ends on a weekend or holiday, the time limit shall be extended to the next working day.

Appeal Application + Fees

Bring the following items to the City Clerk's Office:

- 1. Signed and completed Appeal Application (front side.)
2. Signed and completed Agreement for Payment of Appeal Fees (back side.)
3. Check payable to City of San Leandro or credit card (2.5% fee) to pay \$2,500-\$5,000 planning deposit (check with a Planner.)
4. Check payable to City of San Leandro or credit card (2.5% fee) to pay the separate \$534 city clerk fee

OFFICIAL USE ONLY

APPEAL RECEIVED

By: AM/EP
Date: 3/16/2018
DEPOSIT PAID (attach copy of receipt) \$5300.00
FEE PAID (attach copy of receipt) \$534.00
CC: [x] Planning [x] CAO

I wish to appeal the decision of the:

- [x] Board of Zoning Adjustments
[x] Planning Commission
[x] Site Development Sub-Commission

Project Address

2756 Alvarado, San Leandro, CA

Project # PLN 17 - 00200

Date of Action March 1, 2018

- [x] Approved
[x] Denied

Reasons for Appeal - List all grounds relied upon in making this appeal. (Attach additional sheets if necessary)

SEE ATTACHED

COMM. DEVEL. DEPT.
MAR 16 2018
SAN LEANDRO RECEIVED

APPELLANT INFORMATION

Print Full Name

Paceline Investors, LLC

- [x] Applicant
[x] Concerned Resident
[x] Concerned Business Owner
[x] Other:

Mailing Address

595 Market Street, Suite 2525

Phone #

510-499-9013

Address

San Leandro CA 94105
City State Zip

Email

english@pacelineinvestors.com

Handwritten signature of appellant

Signature of Appellant

Handwritten date: 3/16/2018

Date



AGREEMENT FOR PAYMENT OF PLANNING APPEAL FEES

835 East 14th Street, San Leandro, CA 94577 | (510) 577-3325 | planner@sanleandro.org

Project Address 2756 Alvarado	Assessor's Parcel # 077B-0800-014-00
<small>Address</small> San Leandro CA 94577 <small>City State Zip</small>	
Project # PLN 17 - 0020	Date of Action March 1, 2018 <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied

APPELLANT INFORMATION

Print Full Name Paceline Investors, LLC	
Mailing Address 595 Market Street, Suite 2525	Phone # 510-499-9013
<small>Address</small> San Francisco CA 94105 <small>City State Zip</small>	Email english@pacelineinvestors.com

I (We) hereby agree to pay all direct costs as listed in the City's adopted fee schedule for the review and processing of application(s) for the subject project, at such time as requested by the Community Development Director. Direct costs include, but are not limited to, hourly personnel charges plus a factor of 3.38 for benefits and administrative overhead; legal fees; communications via telephone or written correspondence with the appellant, property owner, architect, engineer, etc.; analysis and preparation of staff reports and findings; and attendance at public hearings. If applicable, I (we) also hereby agree to pay all contract costs for preparation of an environmental document in compliance with the California Environmental Quality Act.

A deposit is required along with this form. Future payments are due and payable within 30 days. At the completion of the appeal process, any unused balance will be returned to the appellant. Interest will accrue on all costs unpaid 30 days after billing at the maximum legal rate and the City is entitled to recover its costs, including attorney's fees, in collecting unpaid accounts. Delinquent accounts may be sent to a collection agency.

Furthermore, I (we) hereby agree to hold the City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any State or Federal Court challenging the City's actions with respect to my (our) project.

[Handwritten Signature]
Signature of Appellant

COMM. DEVEL. DEPT.
MAR 16 2018
SAN LEANDRO RECEIVED

3/16/2018
Date

STAFF COMMENTS

[Multiple horizontal lines for staff comments]



March 16, 2018

Applicant:

Paceline Investors LLC
595 Market Street, Suite 2525
San Francisco, CA 94517

Owner:

IPT Alvarado Commerce Center LP
4675 MacArthur Court, Suite 625
Newport Beach, California 92660

Subject: 2756 Alvarado Reasons for Appeal – Conditional of Approval – Section II, Bullet B

Dear San Leandro City Council,

On March 1, 2018 the San Leandro Board of Zoning Adjustments (BZA) approved two separate planning actions in response to the Applicant/Owner's proposed industrial project at 2756 Alvarado. The BZA approved adopting 1) an Initial Study-Mitigated Negative Declaration studying the impacts of the proposed project, and 2) approved the Conditional Use Permit and Site Plan Review, which included staff's Findings and recommended Conditions of Approval. We respectfully thank the BZA for its approval actions. We are submitting this limited Appeal to the San Leandro City Council of one specific Conditional Use Permit (CUP) Condition of Approval – Section II, bullet point B (the Restricted Use COA). We appreciate Staff's confirmation to us that the sole issue before the Council on appeal is its consideration of the Restricted Use COA, since this appeal is not questioning the BZA's CEQA determination, the Site Plan Approval or any other aspect of the BZA actions.

The Restricted Use COA in question initially states that the CUP approves the use of Warehouse Storage Facilities and Warehouse/Retail Distribution Facilities, but it then unfortunately added the following:

The site shall not be primarily warehouse storage or warehouse wholesale and retail distribution uses. Warehouse storage or warehouse wholesale and retail distribution uses that are accessory to other industrial uses are permitted. Any other conditionally permitted uses shall require approval of an amended Conditional Use Permit, as identified in the San Leandro Zoning Code.

The basis for our limited appeal of the Restricted Use COA is that it is inconsistent with the Applicant's application, which sought an ongoing, non-tenant specific Conditional Use Permit (Ongoing CUP) to allow warehouse storage and warehouse distribution on site, and fundamentally compromises our willingness to proceed with plans to redevelop the property. We submit the following points for City Council's consideration:

1. **The Restricted Use COA Was Presented As a Compromise vs Current Code, However it Effectively Changes Warehouse-Storage and Warehouse-Wholesale/Retail Distribution To A Prohibited Use** – The current Zoning Code Section 2-706 IG Distribution lists permitted uses as “#1 – Accessory Uses, when in conjunction with a permitted use.” This is effectively the same as Staff's proposed language which states “*Warehouse storage or warehouse wholesale and retail distribution uses that are accessory to other industrial uses are permitted.*” We think that there was some confusion in the BZA Staff Report and presented at the hearing. Our request for an Ongoing CUP appeared to make sense to a number of BZA members, however they were advised by staff that the Restrictive Use COA was more permissive than the City's zoning ordinance. Instead of being a compromise, the Restricted Use COA re-states existing code, and then later goes beyond the City's existing General Plan or zoning by stating “*The site shall not be primarily warehouse storage or warehouse wholesale and retail distribution uses.*” The Council has not adopted a new zoning ordinance to prohibit these industrial uses so the Restricted Use COA was understandably somewhat confusing as presented to the BZA. If left unchanged, this appealed condition will have effectively converted warehouse storage and warehouse wholesale and retail distribution uses from Conditionally Permitted Uses to a Prohibited Use, as defined by San Leandro code by actions of the BZA and staff alone. This Restricted Use COA is not a compromise and should be rejected as unfair and in conflict with your Council's current codes.
2. **The Restricted Use COA is Inconsistent With The Uses Granted to Two Similar Industrial Projects Approved by BZA Between the Adoption of the City's General Plan in Fall 2016 and March 2018** – The BZA has approved two other industrial projects during 2017, 2000 Marina Boulevard and 100 Halcyon Way. Both projects applied for and received an Ongoing CUP that approved warehouse-storage and warehouse-wholesale / retail distribution uses generally (i.e. not tied to a specific tenant). We asked for the same condition in our project application. At the BZA hearing on March 1, 2018 staff was asked for the reason for the reason staff had supported the Ongoing CUP for the other two projects and not 2756 Alvarado, and provided the following answers:

- a. The developer/owner of 100 Halcyon (former Kraft site) received the Ongoing CUP, however “is not looking to do those uses”.
- b. 2000 Marina Blvd ended up going to a permitted use.
- c. Each project is analyzed individually (no points of comparison provided)
- d. Re-iterated numerous complaints from residents about recently completed projects.

To point c. above, we would fully expect that each project be analyzed on a case-by-case basis. This comparative analysis was not presented by staff, and based on 2756 Alvarado’s location, likeliest path of travel of traffic to and from the site, and building configuration, we feel an objective analysis would merit a different conclusion.

Both owners of 2000 Marina Blvd and 100 Halcyon represented to the BZA at their approval hearings that if not granted a blanket CUP, their projects would become harder to lease, and therefore harder to obtain equity and/or debt construction financing. We are in the same position and are not willing to invest the money to demolish and redevelop the property if placed at a competitive disadvantage.

3. **The Appealed Restricted Use COA limitations to “Accessory Uses” is not supported by the IS-MND prepared by Rincon –**

We support the BZA decision to adopt the IS-MND and this CEQA decision is not part of this appeal. The City has undertaken extensive review of the environmental impacts of the project, and we agree with the traffic section of the City’s own IS-MND finding that all potential traffic impacts either fall under either “No Impact” or “Less Than Significant Impacts”. The IS-MND studied both Warehousing and Advanced Manufacturing uses and found that Advanced Manufacturing has significantly higher general traffic and truck specific traffic, yet in either case fell below actionable thresholds requiring mitigation. Specific mention was made in staff’s presentation of potential truck traffic, from the project Southbound on Alvarado and into the Floresta Gardens neighborhood, and its negative impact on the surrounding residential areas. Omitted were the following facts:

- a. The proposed industrial project is replacing an existing industrial building, so the traffic analysis is looking at the incremental increase in traffic, not the overall number of trips, since to do so would fail to account for traffic generated by the existing uses.
- b. Specifically, Figure 9 of the traffic study prepared by TJKM forecast 5% of trips to/from the project would occur South of the Project along Alvarado. This amounts to 20 trips per day for standard industrial warehouse uses, and 37 trips

for advanced manufacturing. Of these total trips, TJKM forecasts truck traffic would comprise 20%, which means the City's environmental conclusions of "No Impact" or "Less Than Significant Impact" are based on projected daily truck trips rates of between 4 and 8 along Alvarado Southbound.

- c. The main artery through the Floresta Gardens neighborhood, Fremont Ave, is bounded on both sides by sound walls which mitigate the impact of vehicle traffic of any sort on the surrounding residential neighborhood. Additional traffic control measures are in place to prevent or discourage non-local traffic from passing through residential areas.
- d. The Applicant has previously reported to staff that Applicant's own trip analysis shows that the optimal routing for vehicle traffic ultimately heading either (a) Southbound on I-880, or (b) Eastbound on I-580, is to head North along Alvarado, and then connecting to I-880 via Marina Blvd.

4. **IPT Would like to Correct and Clarify Factual Inaccuracies Presented at the BZA Hearing Which May Have Led to some Confusion About the Use Impact To The City Of The Applicant's Alternative Plan**

- We purchased the property with the intent to re-lease the existing buildings, for which warehouse-storage and warehouse-retail/wholesale distribution are permitted uses under the City's zoning code. Specifically, Warehouse-Storage and Warehouse-Retail/Wholesale Distribution are *Permitted Uses for existing buildings unless expanded by more than 10,000 square feet*. When asked at the BZA hearing, staff informed members of the BZA that an existing building over 10,000 square feet requires a CUP for these uses. This is not correct. Based on our clear reading of the City codes, if we don't expand the buildings by 10,000 square feet or build an entirely new structure tenants that fall under warehouse-storage and warehouse retail/wholesale distribution can occupy the building as of right, not subject to a CUP.

5. **The Proposed Project Addresses The City's Desire to Attract Companies That Bring Higher Skilled and Higher Paying Jobs to San Leandro** – We have proposed to develop an industrial facility that appeals to a broad sector of the industrial market, which includes, Manufacturing, Advanced Manufacturing, Food & Beverage, Distribution and Fulfillment users, and many others. Owners cannot make the market, however building design ultimately has an impact on which users will be most likely to lease the building. By building a structure with a relatively low dock-door ratio (lower than any recently approved spec industrial project), by building parking that exceeds code (other spec industrial projects requested variances for a lower parking ratio, ours exceeds it), by providing high corporate image and employee amenities, and by building in high power supply, we are increasing the likelihood that the building will be leased to a tenant that both the City and we will find highly desirable, both in the near term and through future generations of occupancy.

The existing building has a much lower likelihood of attracting high paying or skilled jobs due to its outdated functionality, and if re-leased, will likely not do so in the future. One of the remaining current tenants, Mr. Plastics, reinforced this fact with the applicant when speaking of his experiences with the previous owner and the inadequate power supply available within the building. We feel it our obligation to point out that the City's best chance of attracting high skilled and high paying jobs is to grant this appeal in order to create the conditions which support the companies that generate these jobs.

- 6. Applicant Proposed Compromise** – At the March 1, 2018 BZA hearing IPT proposed a compromise to further mitigate the City's concerns with allowing Warehouse-Storage and Warehouse-Wholesale/Retail Distribution as permitted uses under a blanket CUP. Applicant proposed that the Restricted Use COA be amended to restrict the broader range of uses for a period of six (6) months following issuance of a temporary certificate of occupancy (shell completion). This would allow the Applicant an initial period to market the project exclusively to permitted uses, and, if, despite the current low vacancy and high demand for industrial space generally, Applicant is unable to attract a tenant that falls into a permitted use category, then the broader language afforded to the 2000 Marina Blvd and 100 Halcyon Way project would apply. For reference, below is the language approved by BZA for 2000 Marina Blvd and 100 Halcyon Way (in blue), and following is the suggested compromise language for 2756 Alvarado (in green).

This Conditional Use Permit approves the use of Warehouse-Storage Facilities; Warehouse-Wholesale/Retail Distribution Facilities; Vehicle/Equipment Repair, General; Vehicle/Equipment Repair, Limited; and Vehicle/Heavy Equipment Rentals on the subject property, as defined by the City of San Leandro Zoning Code. Any other conditionally permitted uses shall require prior approval of amended Conditional Use Permit, as identified in the San Leandro Zoning Code.

This Conditional Use Permit approves the use of Warehouse-Storage Facilities; Warehouse-Wholesale/Retail Distribution Facilities as defined by the City of San Leandro Zoning Code. Any other conditionally permitted uses shall require prior approval of an amended Conditional Use Permit, as identified in the San Leandro Zoning Code. However, during the first six (6) months following City's issuance of a Temporary Certificate of Completion for the shell building, Warehouse-Wholesale/Retail Distribution uses shall require prior approval of an amended Conditional Use Permit, as identified in the San Leandro Zoning Code.

Many institutional owners avoid the risk of developing buildings that carry use restrictions on distribution or fulfillment centers, the reason being that this segment makes up a meaningful portion of the overall demand for industrial buildings. The likelihood a building will be leased to a particular tenant or category of tenant is influenced by overall market demand for space, and the relative utility of the building for that tenant's business. User demand from any particular segment of the industrial market is subject to many other conditions that are outside of the Owner's control, and the best way to mitigate this risk is to build a facility that is as broadly appealing as possible, and let the market determine the highest and best use. Experienced

developers and owners follow this discipline, as do the financial institutions that provide construction financing for new speculative projects.

We want to re-iterate our desire to build a project that the Owners and City will both be proud of and represents a win-win for all stakeholders. We feel that we have addressed the City's concerns about high skilled and high wage job creation and potential truck traffic impacts by designing a building that increases the likelihood of a manufacturing, advanced manufacturing, food & beverage, or other permitted use occupying the building. The proposed project will not only help support the City's efforts to attract and retain companies that bring high skilled and paying jobs, but will also create construction, engineering and design jobs that will allow city residents with those professions to work on a project in their community.

We appreciate the City Council's consideration of our limited appeal. We urge you to grant this appeal, however if you deny it we respectfully request that the Council confirm in the record that it is made without prejudice, consistent with your Zoning code Section 5-2812.

Sincerely,

A handwritten signature in blue ink, appearing to be 'M. Z. A.', is written below the word 'Sincerely,'.