



**CITY OF OAKLAND**  
**APPEAL FORM**  
**FOR DECISION TO PLANNING COMMISSION, CITY**  
**COUNCIL OR HEARING OFFICER**

**PROJECT INFORMATION**

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Case No. of Appealed Project: PLN22189

Project Address of Appealed Project: 5315 College Ave.

Assigned Case Planner/City Staff: Neil Gray

**APPELLANT INFORMATION:**

Printed Name: John Allen Phone Number: (510) 421-0084

Mailing Address: 5299 College Avenue, Suite D Alternate Contact Number: \_\_\_\_\_

City/Zip Code Oakland 94618 Representing: \_\_\_\_\_

Email: thelastace@hotmail.com

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**An appeal is hereby submitted on:**

- AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

**YOU MUST INDICATE ALL THAT APPLY:**

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) Failure to support findings re: Noise and Traffic Impacts as required by CEQA

**Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:**

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- Other (please specify) See attachment

*(Continued on reverse)*

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)**       Granting an application to:      **OR**     Denying an application to:

**YOU MUST INDICATE ALL THAT APPLY:**

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) \_\_\_\_\_

**FOR ANY APPEAL:** An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

**You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court.** However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

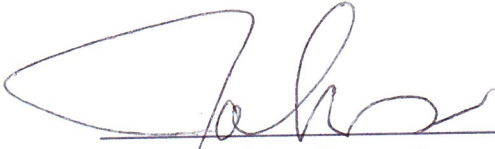
**The appeal is based on the following:** *(Attach additional sheets as needed.)*

See attachment for basis of appeal

**Supporting Evidence or Documents Attached.** *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.*

(Continued on reverse)

(Continued)



Signature of Appellant or Representative of  
Appealing Organization

10/20/23  
Date

**TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE**

APPEAL FEE: \$ \_\_\_\_\_

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

**Below For Staff Use Only**

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

### **This Appeal is Based on the Following Erroneous Determinations and Findings of City Staff**

1. Non-Compliance with state laws and regulations, in violation of Paragraph 3 of Conditions of Approval. A childcare center of the character and size proposed is required to be licensed under California law, and meet regulations specified in Title 22 of the California Administrative Code. The proposed childcare center cannot comply with the Cal. Code Regs. Title 22 Sections 101238.2 and 101238.3, which require that licensed childcare must have at least 35 square feet of indoor space and 75 square feet of outdoor activity per child, based on total licensed capacity. For 48 children, the total outdoor square footage required would be 3600, which covers nearly the entire square footage of the proposed property.
  - a. In finding 2 under Section 17.134.050 – General Use Permit Criteria the city states “The development will have ample room at the site for playground space...” without citation to how ample outdoor space is determined. The City states there is ample playground space with no justification for doing so.
2. Environmental Determination – State code sections allowing for CEQA exemption do not apply to this project. An EIR must be performed to evaluate the environmental impacts of the project.
  - a. Section 15301 allows for a CEQA exemption for minor alterations to existing facilities. This project is not a minor alteration to an existing facility. Applicant’s design review shows that new construction will add 2,270 square feet to square footage of the buildings, which represents a 93.5% increase in usable square footage. In addition, the City acknowledges that the use of the facility will change significantly from a quiet office building to an active childcare facility. In addition to an entirely new floor, new square footage and insulation is being added to every floor of the buildings. The layout of the each of the floors will be converted from individual office use to a more open floor plan to accommodate children and staff. The proposal cannot be considered a minor alteration due to the significant changes in size, layout, and use of the buildings.
  - b. Section 15183 allows a CEQA Exemption for Projects Consistent with a Community Plan, General Plan, or Zoning. However, the exemption specifically applies to projects “for which an EIR was certified that do not require additional environmental review.” Based on information presented, we have not received materials that would suggest that an EIR was certified for this project. This CEQA exemption seeks to avoid repetitive environmental reviews. However, no formal environmental review was conducted for major alternations and a novel use of a buildings in the neighborhood in which this project is located. An EIR is critical to understand the effects of the project on noise, traffic, and parking in the neighborhood.
  - c. Cal. Public Resources Code Section 21151(a) specifically requires an EIR when a proposed project “may have a significant effect on the environment.” *Stanislaus Audubon Society, Inc. v. Stanislaus County* (1995) 33 Cal.App.4<sup>th</sup> 144, 151 states that where substantial evidence in the record supports a “fair argument” the project may have significant environmental effect, an EIR is required even if other substantial evidence indicates there will not be such an effect.
  - d. Cal. Code Regs Title 14 Section 15382 defines a “significant effect” under CEQA as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project,” which includes a project’s effects on... ambient noise.

3. The City cites Oakland Planning Code Section 17.33.030 to support building use for Limited Child Care Activity.
  - a. Oakland Planning Code Section 17.10.150 specifically notes that Limited Child-Care Civic Activities includes the provision of day-care services for fourteen (14) or fewer children... When the project was originally presented, childcare was to be offered to six children in the home. The project has now greatly exceeded what is actually permitted in the CN-1 Zone.
  - b. CN-1 Zone permits Limited Child-Care Activities, with the caveat that the activities are only permitted upon the granting of a Conditional Use Permit when located on the ground floor of a street fronting.
4. City staff notes that in accordance with Section 17.134.050, the location, size, design, and operating characteristics of the proposed development will be compatible with and not adversely affect the livability or the appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to... the harmful effect, if any upon the desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to other relevant impacts of development.
  - a. A childcare center serving 48 children will present a major disruption to existing neighboring uses, which includes the tenancy of approximately 40 psychotherapists who have offered mental health services for decades from the abutting buildings. These professionals offer an essential service to the community, and require a calm, controlled, and quiet environment for their clients.
  - b. The traffic analysis has not been made available to us, and we reserve the right to review and comment on such a study. The proposed project seeks to serve 48 children, without offering any staff parking and only two pick-up and drop-off street parking spaces. During rush hour when caregivers need to drop off their children, it is unlikely that there will not be issues of congestion, illegal parking, and danger to children who must cross the street to get to school. The proposed crossing guard is being asked simultaneously to direct traffic, prevent illegal parking, and escort children across a very busy intersection.
  - c. The neighborhood is currently relatively quiet, filled with small commercial stores and office buildings. A noise and vibration study to determine the disturbance that will be generated by 48 children must be conducted, particularly in light of the long-standing use of psychotherapy offices in the buildings next door. There is insufficient evidence to show that the sound-rated partitions will be sufficient to keep noise at a manageable level, and the landscaping is unlikely to prevent the noise of children outside of the buildings. Findings of City staff do not appear to take into account the scale of the project.
  - d. The neighboring buildings currently hold an easement on the property for emergency egress, which will be negatively impacted by construction and the proposed change in elevation of the buildings. The project will interfere with the use of an existing and critical easement, and the applicant may threaten to attempt to extinguish the easement again.

5. Per Section 17.33.030 for Additional CUP Criteria for the CN-1 Zone, City staff notes that the proposed project will not detract from the character desired for the area.
  - a. Here, City staff specifically note the significant change in the character of the buildings use, from its inception as a home to its recent use as a relatively quiet office buildings. City staff notes that the current proposal is economically favorable based on increased activity through a large childcare center, but does not sufficiently address the nuisance and negative externalities of such a project.