

## APPLICATION WORKSHEET

<b>Appellant</b>	Name	Concerned Residents of Linden Hills
	Mailing Address Including City, State and Zip Code	% Constance Pepin 4031 Zenith Ave S Minneapolis, MN 55410
	Phone Number	612-922-1253
	Fax	
	Email	cpepin@bitstream.net

### NOTICE OF APPEAL

Choose one:

I, \_\_\_\_\_ (print name) do hereby file an exception to the Decision of the **Zoning Administrator** as provided for in Chapter 525.170;

I, \_\_\_\_\_ (print name) do hereby file an exception to the Decision of the **Board of Adjustment** as provided for in Chapter 525.180;

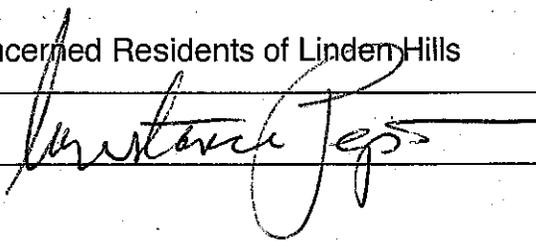
I, Constance Pepin (print name) do hereby file an exception to the Decision of the **City Planning Commission** as provided for in Chapter 525.180;

Project Name	43rd & Upton Mixed Use Development
Project Address	4264 Upton Ave S Minneapolis MN 55410
BZZ Number	BZZ-7283

Further, I do hereby request that I be given an opportunity to express my case before the Board of Adjustment or the proper committee of the City Council.

The action being appealed and the reasons for appealing the decision are attached and made a part of this notice of appeal.

Appellant's Name: Concerned Residents of Linden Hills

Appellant's Signature: 

Date: September 17, 2015

## STATEMENT OF REASON FOR APPEAL

A. Concerned Residents of Linden Hills appeal all final actions taken by the Planning Commission, at its meeting on September 8, 2015, regarding Land Use Applications submitted for the proposed project at 4264 Upton Ave S, BZZ-7283:

1. CONDITIONAL USE PERMIT to increase the height of the building from the permitted 3 stories/42 feet to 4 stories/55 feet, 11 inches.

The Planning Commission erred in its approval of this conditional use permit because the application failed to meet the required criteria of Section 525.340 for the proposed conditional use; and because the Applicant also failed to meet the criteria for a conditional use permit for increased height, as provided in Section 548.110.

These failures include, but are not limited to: the additional height is injurious to the adjacent properties, does not comply with the Linden Hills Small Area Plan or The Minneapolis Plan for Sustainable Growth (TMP), omits the heights of all “adjacent” buildings, negligently misstates heights of surrounding buildings beyond those adjacent, references an inaccurate shadow study, and misstates the legal standard for property usage rights.

2. VARIANCE to reduce the south interior side yard setback from 11 feet to 9 feet for the building wall on floors two through four; and a VARIANCE to reduce the west interior side yard setback from 11 feet to 6.5 to allow the second floor building wall and balconies on the third and fourth floors exceeding 50 square feet, 11 to 7.5 feet for the third and fourth floor building walls, and 12 feet to 10 feet for the building wall.

The Planning Commission erred in its approval of both variances because the Applicant failed to meet the requirements of Chapter 525.400.

The standard of practical difficulty required by law has not been met for either variance. The irregular shape of the building the staff report identifies as its “practical difficulty” is on the opposite side of the building for which the variance is requested. The side of the building that variance requests are for is not irregular at all, it is a regular 90-degree angle; therefore, no practical difficulty exists to build on that side.

### 3. SITE PLAN REVIEW

The Planning Commission erred in its approval of the site plan for this project, because the Applicant’s Site Plan: 1) fails to conform to all applicable standards of Chapter 530, Site Plan Review; and 2) fails to conform to all applicable regulations of the zoning ordinance and is not consistent with applicable policies of TMP and the applicable small area plan adopted by the city council.

B. Concerned Residents of Linden Hills appeal the approval of the conditional use permit on the basis that the Planning Commission’s approval of the CUP was premised on illegitimate changes to the Linden Hills Small Area Plan resulting from coercive undue influence exercised by CPED staff on the Steering Committee to cause them to agree to unnecessary and arbitrary changes to the Linden Hills Small Area Plan that were not required for the Plan to be in compliance with the Minneapolis Plan for Sustainable Growth.

The Planning Commission erred in its approval of a conditional use permit for increased height because its approval was based on language that was added to the Linden Hills Small Area Plan in breach of the contract between the Community Planning & Economic Development department and the Linden Hills Neighborhood Council.

CPED knowingly violated the protections of the state mandated TMP and of Due Process. The 3-story height limit for this C-1 zone is consistent with the directions of the TMP for density, which decision makers are legally compelled to follow. Yet knowing 3 stories is TMP compliant, CPED's actions, behind closed doors, to add 4-story height allowances, violated the direction of the TMP and the protections of Due Process which CPED owed the Linden Hills Neighborhood Council, with whom it contracted to produce the small area plan.

The Planning Commission's approval is potentially tainted by conflict of interest and/or unfair influence of Commissioners.

C. Concerned Residents of Linden Hills appeal the actions of the Planning Commission on the basis that the size, scale, and character of the Applicant's proposal are inconsistent with the traditional urban form, overall building height, floor-to-floor heights and character-defining features of the Linden Hills C-1 zoning district.

By approving a conditional use permit for increased height, variances for setbacks, and the site plan, the Planning Commission has blatantly ignored the Linden Hills Small Area Plan and the staff directive issued by the City Council to support and enhance the existing traditional urban form of Linden Hills and to ensure awareness of the priority for lower building heights for any future development projects in the Linden Hills business districts.

The City Council directed revisions to the draft plan in its adoption and "...further recommends that staff be directed to encourage overall building heights and floor-to-floor heights that reflect the adjacent architectural context and encourage buildings that are shorter than the current Zoning Code maximums for 3 and 4 story buildings (42 feet and 56 feet respectively) in the Linden Hills Small Area Plan. Adopted." <http://www.minneapolismn.gov/cped/projects/LindenHillsPlan>

A memo from Betsy Hodges (December 9, 2013) specifically stated that the allowance for three-to four-story buildings "will be required to meet the zoning requirements for maximum height."

By approving a conditional use permit for increased height, the Planning Commission has effectively rezoned this portion of the C-1 district to the more intensive C-2 commercial zoning classification, bypassing the much more thorough community and public hearing process required by a rezoning study. The C-1 Neighborhood Commercial zoning district is the only commercial zoning classification in the Minneapolis zoning code which does not allow a height of 56 feet of right. The effect of the Planning Commission's actions in this matter puts at risk all C-1 Neighborhood Commercial zoning districts throughout the City of Minneapolis.

The Appellant reserves the right to raise additional issues on appeal.



Constance Pepin, for Concerned Residents of Linden Hills

Date: September 17, 2015