

**City of Minneapolis**  
**Request for Committee Action**

**To:** Zoning & Planning  
**Date:** 3/3/2016  
**From:** Community Planning & Economic Development  
**Prepared by:** Kimberly Holien, Senior Planner  
**Presented by:** Kimberly Holien, Senior Planner  
**File type:** Action  
**Subcategory:** Land Use Application

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**Subject:**

Variance appeal: Moxy Uptown, 1121 W Lake St and 3005 Emerson Ave S.

**Description:**

Denying an appeal submitted by Philip Qualy, et al, regarding the City Planning Commission decision to approve several applications for a new six-story hotel with 123 rooms at 1121 W Lake Street and 3005 Emerson Avenue S. The appeal specifically relates to the decision of the City Planning Commission to approve a conditional use permit to increase height in the C3A district from 4 stories or 56 feet to 6 stories, 72.5 feet, a variance to increase the maximum floor area ratio from 2.7 to 3.78, a variance to reduce the east rear yard setback requirement from 15 feet to zero, and a variance of the minimum loading requirement.

**Previous Actions:**

On February 8, 2016, the City Planning Commission a conditional use permit to increase height in the C3A district from 4 stories or 56 feet to 6 stories, 72.5 feet, a variance to increase the maximum floor area ratio from 2.7 to 3.78, a variance to reduce the east rear yard setback requirement from 15 feet to zero, and a variance of the minimum loading requirement (BZZ-7544) for a new six-story hotel with 123 rooms at 1121 W Lake Street and 3005 Emerson Avenue S.

As part of the City Planning Commission review, the following actions were also taken:

**4. Moxy Uptown, 1121 W Lake Street and 3005 Emerson Avenue S, Ward 10**  
**Staff report by Kimberly Holien, BZZ-7544.**

**A. Rezoning.**

Action: Approved the application for a rezoning from the C2, Neighborhood Corridor Commercial zoning district to the C3A, Community Activity Center zoning district, retaining the PO, Pedestrian Oriented Overlay district.

**Aye:** Bender, Kronzer, Magrino, Rockwell, and Slack

**Nay:** Gagnon, Luepke-Pier, and Vreeland

**Absent:** Gisselman

**B. Conditional use permit to increase the maximum permitted height in the C3A district.**

Action: Approved the application for a conditional use permit to increase height in the C3A district from 4 stories or 56 feet to 6 stories, 72.5 feet, subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the

use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within two years of approval.

2. The massing of the building shall be as shown in the plans, with the building stepping down to five stories on the south side.
3. The deck spaces on the south side of the sixth floor shall be removed.

**Aye:** Bender, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

**Nay:** Gagnon

**Absent:** Gisselman

**C. Variance to exceed the maximum floor area ratio in the C3A district.**

Action: Approved the application for a variance to increase the maximum floor area ratio from 2.7 to 3.78.

**Aye:** Bender, Gagnon, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

**Absent:** Gisselman

**D. Variance to reduce the front yard setback along Emerson Avenue S.**

Action: Denied the application for a variance of the front yard setback requirement along Emerson Avenue S from 15 feet to zero.

**Aye:** Bender, Gagnon, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

**Absent:** Gisselman

**E. Variance to reduce the east rear yard setback.**

Action: Approved the application for a variance of the east rear yard setback requirement from 15 feet to zero, subject to the following condition:

1. The building shall step back 1.5 feet on the north end as shown in the plans to provide sightlines where the alley intersects with W Lake St.

**Aye:** Bender, Gagnon, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

**Absent:** Gisselman

**F. Variance to reduce the minimum loading requirement.**

Action: Approved the application for a variance to reduce the minimum loading requirement from one large space to zero.

**Aye:** Bender, Gagnon, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

**Absent:** Gisselman

**G. Site plan review.**

Action: **Approved** the application for site plan for a new hotel with 123 rooms, subject to the following conditions:

1. All site improvements shall be completed by February 8, 2018, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. CPED Staff shall review and approve the final site, elevation, landscaping and lighting plans before building permits may be issued.
3. The plant materials, and installation and maintenance of the plant materials, shall comply with sections 530.200 and 530.210 of the zoning code.
4. Windows shall be added on the south side of the office space, facing the parking lot, in compliance with Section 530.120 of the zoning code.
5. The building shall maintain a 15-foot front yard setback for the south 25 feet of the property.
6. Signage shall be installed that directs exiting vehicles to turn north at the alley.

7. The use shall maintain a contract with a properly licensed valet provider for parking stalls within 800 feet of the principal entrance.

**Aye:** Bender, Gagnon, Kronzer, Luepke-Pier, Magrino, Rockwell, Slack and Vreeland

**Absent:** Gisselman

**Ward/Neighborhood/Address:**

Ward 10

CARAG

1121 W Lake Street and 3005 Emerson Avenue S

**Background/Analysis:**

The appellants, Phillip Qualy, Mr. and Mrs. Dwayne Cody, Joan Marks, William H. Davis, Mr. and Mrs. Clark Olson, Justus Gibson, Nazeera Mohammad-Gibson, Mr. and Mrs. Steve Nowicki, Fred and Bryce Keen, Kay Graham, Nick Mozena, and Vince Underwood have appealed the decision of the City Planning Commission decision to approve a conditional use permit to increase height in the C3A district from 4 stories or 56 feet to 6 stories, 72.5 feet, a variance to increase the maximum floor area ratio from 2.7 to 3.78, a variance to reduce the east rear yard setback requirement from 15 feet to zero, and a variance of the minimum loading requirement for a new six-story hotel with 123 rooms at 1121 W Lake Street and 3005 Emerson Avenue S.

In the appeal statement the appellants object to the approval of the conditional use permit for height, asserting a conflict with the Uptown Small Area Plan. The appeal statement also states that the proposed height of six-stories would not be in keeping with the scale and character of surrounding uses, as the buildings south of the site are primarily single-family homes.

Regarding the floor area ratio variance, the statement of reasons for appeal asserts a lack of practical difficulties unique to the property that prevents the project from complying with the maximum floor area ratio requirement of 2.7. The appellant also states that the proposed floor area ratio is not a reasonable use of the property and it would alter the character of the single-family neighborhood to the south. This portion of the appeal statement also asserts that the floor area ratio would conflict with the Uptown Small Area Plan.

For the rear yard setback variance, the appeal statement again asserts that no practical difficulties exist in complying with the setback requirements. The appeal statement also notes that the proposed building placement would be unreasonable and pose a traffic safety issue for vehicles exiting the alley on to Lake Street.

The final application that is part of the appeal is a variance to reduce the minimum loading requirement from one large space to zero. The appellants cite the lack of practical difficulties and potential off-site impacts that may result from the absence of a designated loading zone on-site as reasons for why this variance should not be approved.

While rezonings are not eligible for appeal, the appellants also detail their objection to the rezoning from C2 to C3A. The full statement of appeal is attached for review.

End of 60/120-Day Decision Period: On January 25, 2016, staff sent a letter to the applicant extending the decision period for an additional 60 days, to April 29, 2016.

**Financial Review:**

No financial impact.

**Attachments:**

1. Appellant's Statement
2. Meeting Minutes

### 3. CPED Staff Report and Attachments



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February 18, 2016

Council Member Lisa Bender, Chair  
Zoning and Planning Committee  
Minneapolis City Council  
350 South 5th Street, Room 307  
Minneapolis, MN 55415

Dear Council Member Bender and Members of the Zoning and Planning Committee:

This letter is submitted in opposition to the Planning Commission's recommendation that the City Council approve rezoning of the properties located at 1121 West Lake Street and 3005 Emerson Avenue South (the "Property") from C2 to C3A for the Moxy Uptown hotel project ("Project").

This letter is also the Statement of Reasons for the Appeal of Phillip Qualy from the Planning Commission's approval of a conditional use permit ("CUP") to increase the height of the Project and the approval of three of the four variances requested for the Project. Ten co-Appellants joining Mr. Qualy's appeal are identified on Exhibit A. In addition to these co-Appellants, we note that 470 people have signed an online petition opposed to the Project in this location.

#### Background

The issue raised by the request for rezoning (and the appeal of the CUP and variance approvals) is not whether there should be a hotel in Uptown. The Uptown Small Area Plan ("USAP") calls for hotels in Uptown. And the Appellants support a hotel in Uptown—so long as it is in a location consistent with the USAP. But that's not what the developer proposes. Instead, the developer has proposed a hotel for a location south of Lake Street, where the USAP specifically prohibits hotels, rather than in the high density Activity Center at the core of Uptown, where hotels are specifically allowed.

Consequently, in order to grant the requested zoning change, CUP and variances, the City Council must disregard the USAP provisions which specifically direct where a hotel can be located (within the Activity Center) and where it cannot (adjacent to residential neighborhoods). Such action was warned against in the Plan itself:

*As important as it is for Uptown to grow, it cannot do so in a sustainable manner without simultaneously stabilizing the edges of existing neighborhoods . . . (p. 46)*

*The Plan carefully manages the edges of new growth such that transitions to the neighborhoods are predictable. Areas north of the greenway and south of Lake Street will be carefully designed to preserve the valuable residential qualities of the adjacent neighborhoods. (p. 47)*

The USAP was adopted in February 2008 and subsequently incorporated into the City's Comprehensive Plan after a fifteen-month long community involvement process. Many of the Appellants participated in this process. They accepted the compromises that were incorporated into the USAP when it was adopted as the City's comprehensive planning document for the Uptown area. These Appellants have since invested in their properties and their neighborhood in reliance on this duly-adopted plan. Disregarding the USAP is not only a violation of state law and the City zoning ordinance as explained subsequently, it is a breach of trust with the neighbors, businesses and community associations which worked so hard to develop the USAP. It sends a clear message to Uptown--and to neighborhoods throughout the City--that all of the work residents and business owners put into planning for their neighborhoods is only as good as the next development proposal that the decision makers on top view favorably. Growth in Uptown--and elsewhere in the City--must be orderly and predictable or it will not be sustainable.

### Rezoning

The developer requests the Property be re-zoned from the C2, Neighborhood Commercial Corridor Zoning District, to the C3A, Community Activity Center Zoning District. Section 525.280(1) of the Minneapolis Zoning Ordinance requires that a rezoning be consistent with the applicable policies of the Comprehensive Plan. This requirement also appears in Minnesota Statutes, Section 473.865, Subd. 2, which provides that a City shall not adopt any official control (including a rezoning) which is in conflict with its Comprehensive Plan.

The Minneapolis Comprehensive Plan incorporated the USAP following its adoption by the City Council in February 2008. The USAP designates a specific area surrounding the Hennepin Avenue/Lake Street intersection as the Uptown "Activity Center" and provides that:

The Core of Uptown should remain at Hennepin Avenue and Lake Street. The Activity Center should be mixed-use, containing entertainment, hotels, restaurants, shopping, and destination uses, as well as (local and national) retailers on the ground floor of all buildings. (Emphasis added.)

Restaurants are permitted in the Urban Village (south sub-area) but other evening uses such as nightclubs and hotels should be located in the Activity Center. (Emphasis added.)

The Property, which is located at Lake Street and Emerson Avenue South, is not within the Activity Center designated in the USAP. Rezoning the Property from C2, Neighborhood Commercial Corridor, to C3A, Community Activity Center, is in direct conflict with the USAP, because:

1. The USAP identifies the boundaries of the Activity Center. The Property is NOT within those boundaries. Rezoning a Property not within the designated Activity Center to the "Activity Center" Zoning District is in direct conflict with the USAP and, therefore, inconsistent with the Comprehensive Plan.
2. The USAP specifically designates the Activity Center for higher activity uses including hotels. The Property is NOT within the Activity Center. Allowing a hotel outside of the Activity Center is in direct conflict with the USAP and therefore inconsistent with the Comprehensive Plan.

These direct conflicts between the proposed rezoning and the adopted Comprehensive Plan cannot be explained away or excused because the Property is currently underutilized or because expanding the Activity Center to the east (in a non-contiguous manner) is perceived as a good idea. The hard fact is: The lawfully-adopted Comprehensive Plan in effect at this time does not provide for expanding the Activity Center to the east and does not allow hotels on the Property. Perhaps this should be changed, but it needs to be changed by following the statutorily-required process for amending the Comprehensive Plan. This process would start by updating the USAP. Until that is accomplished, USAP and the City's Comprehensive Plan must not be disregarded on an ad hoc basis in response to development proposals.

In dealing with the legal requirement that the proposed zoning change must be consistent with the comprehensive plan, the Staff Report recites a number of general policies from the City's Comprehensive Plan purportedly supporting the proposition that the USAP does not mean what it says when it designates an Activity Center and then specifically states that hotels must be located within the boundaries of that Activity Center. But the hard fact remains: Rezoning a property that is not within the Activity Center to the C3A, Community Activity Center Zoning District, is in direct conflict with USAP. Therefore, a rezoning to the Community Activity Center Zone is not consistent with the Comprehensive Plan as required by section 525.280 of the City ordinance.

Section 525.280 sets forth four additional findings to be made before a rezoning is approved. None of these are met, as follows:

- (2) *Whether the amendment is in the public interest and is not solely for the interest of a single property owner.*

The public interest is served by following the planning documents adopted through the statutorily-required process with extensive public participation. The public interest is not served by spot zoning a single property outside of the

Activity Center for a use that is allowed only within the Activity Center. This rezoning is solely for the benefit of the property owner/proposed developer, who can likely purchase this property for considerably less than an appropriately-zoned property located within the Activity Center.

- (3) *Whether the existing uses of property and the zoning classification of property within the general area of the property in question are compatible with the proposed zoning classification, where the amendment is to change the zoning classification of particular property.*

The Property is located on the south side of Lake Street. The area south of Lake Street is predominantly single-family residential. Rezoning the Property from Neighborhood Commercial Corridor to allow Activity Center uses is not compatible with the single-family homes to the south, particularly where a Conditional Use Permit for increased height and variances for increased density, even beyond that allowed in the C3A Zoning District, are requested. Additionally, the proposed re-zoning defeats the intention of the USAP to buffer the areas to the south of Lake Street from the higher-density development foreseen for the Activity Center.

- (4) *Whether there are reasonable uses of the property in question permitted under the existing zoning classification, where the amendment is to change the zoning classification of particular property.*

As the Staff Report itself notes, the existing C2 zoning of the Property allows for reasonable use of the Property. Allowable uses in the C2 Zone include restaurants and most retail uses. This criteria does not ask if increasing the development intensity of the Property is advisable, it asks only if the existing zoning is reasonable. It is.

- (5) *Whether there has been a change in the character or trend of development in the general area of the property in question, which has taken place since such property was placed in its present zoning classification, where the amendment is to change the zoning classification of particular property.*

Uptown has developed considerably since the USAP was adopted and the current zoning classifications put in place. However, development has proceeded in conformance with the USAP. The fact a plan was adopted and development proceeded consistently with that plan does NOT justify ignoring the plan. It speaks, instead, to the merits of the plan. Approval of the proposed building at 1300 West Lake Street is not relevant. That building would be located on the north side of Lake Street in the area between the Greenway and Lake Street that the USAP identifies for more intense development. Furthermore, that project does not include a use (hotel) designated in the USAP for inclusion only in the

Activity Center. The 1300 Lake Street building is no justification for expanding the Activity Center two blocks to the east and jumping across to the south side of Lake Street with a use that is designated for inclusion in the Activity Center.

In sum, the proposed rezoning of the Property is inconsistent with the City's adopted Comprehensive Plan and meets none of the criteria set forth in the City Zoning Ordinance for approval of a rezoning. The Appellants request that the rezoning be denied.

#### Appeal from Conditional Use Permit for Height

In addition to requesting the Property be rezoned to allow a use that is not allowed outside of the Activity Center, the Project also requests a Conditional Use Permit to allow a 50% increase in the number of stories allowed (from four to six stories). Once again, this request is in direct conflict with the USAP, which allows a maximum height of four stories on the south side of Lake Street. And, once again, reciting general policy statements from the Comprehensive Plan does not overcome the fact that the proposed height of six stories is in direct conflict with the USAP's four story limitation. The suggestion in the Staff Report that a four-story building on the Property would have an equivalent impact on the single-family neighborhood as the proposed six-story building is ridiculous. A six-story building on the Property will have a dramatically increased impact on the single-family residential properties to the south.

The Zoning Ordinance also requires that the scale and character of surrounding uses be considered in determining whether to approve a Conditional Use Permit for increased height. The uses to the south of the Property are predominantly two-story single-family homes. A six-story hotel is clearly out of character with these adjacent uses. The hotel belongs in the Activity Center.

#### Floor Area Ratio Variance

The maximum floor area ratio presently allowed on the Property is 1.7. The maximum floor area ratio in the C3A District is 2.7. The developer has requested a floor area ratio of 3.78 for the Project. This is over a 100% increase from the density contemplated in the USAP for the Property and from the maximum floor area ratio allowed under the current C2 zoning. Such a radical departure from the planned density should only be approved under extraordinary circumstances. This is not such a situation.

The Zoning Ordinance requires that a variance not be granted unless there are practical difficulties complying with the standard, the variance is in keeping with the spirit and intent of the Ordinance and the Comprehensive Plan, and the variance will not alter the essential character of the locality or be detrimental to the health, safety and welfare of the general public. None of these findings can be made in support of a variance to allow more than twice the density on this Property from that which is currently allowed.

There are no practical difficulties with the Property. It is a flat, rectangular piece of

property. The only difficulty is that the developer wants approval of a Project which is more than double the amount of square footage allowed. There is nothing unique about this Property. The fact that the Property is “near” an Activity Center with larger buildings does not make this Property unique or create any practical difficulties. The Property is not in the Activity Center. If development is allowed in violation of existing development standards on any property near an Activity Center, there are no rules anymore. The USAP is meaningless. “Practical difficulties” typically involve unique situations regarding the configuration of a property or similar factors. The fact that the Property is located outside of the area where higher density is allowed is neither unique nor a practical difficulty, and in no way supports the approval of any floor area ratio variance, let alone one which would more than double the currently-allowed floor area ratio on the Property.

Additionally, increasing the density on the Property to the extent requested is not a reasonable use of the Property and will alter the character of the single-family area to the south. Approval of a FAR variance on the north side of Lake Street is not relevant. The USAP calls for increased density in the area between the Greenway and Lake Street. It also calls for less density on the south side of Lake Street as a buffer to the single-family homes. The USAP does not allow higher density south of Lake Street because to do so would be unreasonable and detrimental to the residential properties to the south.

#### Variance for Rear Yard Setback

Practical difficulties do not exist in complying with the rear yard setback. Virtually every property in the City has an alley to the rear. If having an alley is a basis for approval of a zero setback, there is nothing left of the alley setback requirement.

It would also be unreasonable and a safety threat to the general public to allow this zero setback. A zero setback would create a very dangerous situation for cars entering the alley from the hotel and, in particular, for cars exiting the alley onto Lake Street. With the building right up against the alley, there would be virtually no way for a car pulling onto Lake Street to see if there were pedestrians or vehicle traffic approaching.

#### Variance from Loading Requirements

Finally, Appellants appeal the approval of a variance to eliminate the requirement of a loading dock for the hotel. While the developer may not agree with the requirement for a loading dock, the fact that there is a requirement is not alone a practical difficulty. The Ordinance requires the loading dock. This requirement should not be varied unless there is a reason for doing so, other than that the developer simply doesn't want a loading dock.

Eliminating the requirement for a loading dock also is unreasonable and impacts public safety because without a loading dock deliveries will inevitably be made from public rights-of-way, including Lake Street, Emerson Avenue and the alley. All three of which are public rights-of-way used by the general public, including the Appellants who live south of the Property. The

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request for a variance of the loading dock requirement confirms that this Project is simply too much development on too small of a site in the wrong location.

As desirable as it may be to have a hotel in the Uptown area, that hotel should go in the area designated in the Uptown Small Area Plan for hotels – the Activity Center. The proposal to put a hotel at Emerson and Lake, outside the Activity Center, is simply too much development in the wrong location. The Appellants therefore request that the City Council not rezone this Property in violation of the Comprehensive Plan and not grant the Conditional Use Permit and variances requested to over-develop this very small piece of property located immediately adjacent to single-family homes.

Very truly yours,

GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.

By   
Thomas L. Johnson *wwr*

TLJ/wwr

cc: Council Member Andrew Johnson, Vice-Chair of Zoning and Planning Committee  
Council Member Kevin Reich  
Council President Barbara Johnson  
Council Member Abdi Warsame  
Council Member Lisa Goodman  
Kimberly Holien, Senior City Planner

**Exhibit "A"**

**Planning Commission Appeal, 1121 West Lake Street and 3005 Emerson Avenue South, BZZ Number 7544, Co-Appellants:**

- 1) Mr. and Mrs. Dwayne Cody, 3024 Emerson Ave. South, Minneapolis MN 55408.
  
- 2) Ms. Joan Marks, 3020 Emerson, Avenue South, Minneapolis, MN 55408.
  
- 3) Mr. William H. Davis, 3025 Emerson Avenue South, Minneapolis, MN 55408.
  
- 4) Mr. and Mrs. Clark Olson, 3029 Emerson Ave. South, Minneapolis MN 55408.
  
- 5) Mr. Justus Gibson and Ms. Nazeera Mohammad-Gibson,  
3033 Emerson Avenue South Minneapolis, MN 55408.
  
- 6) Mr. and Mrs. Steve Nowicki, 3040 Dupont Avenue South Mpls 55408.
  
- 7) Mr. Fred and Bryce Keen , 3036 Dupont Avenue South, Minneapolis, MN 55408.
  
- 8) Ms. Kay Graham, 3037 Emerson Avenue South, Minneapolis, MN 55408.
  
- 9) Mr. Nick Mozena, 3022 Emerson Avenue South, Minneapolis, MN 55408.
  
- 10) Mr. Vince Underwood, 3032 Emerson Avenue South, Minneapolis, MN 55408.

**Thank you.**