

# Community forum on 53<sup>rd</sup> Street Development and Zoning

convened by Hyde Park-Kenwood Community Conference

May 6, 2013, 6:30 p.m. at United Church of Hyde Park

By Gary Ossewaarde

HPKCC President Anita Hollins welcomed attendees.

Jack Spicer introduced the speakers who would walk us through the processes of zoning and planned development and what to keep in mind when looking at proposed changes to the street and our neighborhood:

Tim Barton, with the Chicago Zoning Department during the rezoning process 2002-04, Adam Kingsley, Zoning Attorney who has worked with the city and Hyde Park neighbors, John Norquist, President, Congress for the New Urbanism and former Milwaukee mayor.

**Tim Barton** noted that zoning before 2004 consisted of an unwieldy 1957 general ordinance and at least 20 ordinances covering special circumstances or topics. The 2004 ordinance was streamlined but created an added layer- the basic use designations such as B-1, B-2...\* and a set of -1, -2 up through -5 added on allowing increasingly dense FARs (floor area ratios). In addition, there are special categories with their own sets of conditions that govern what effects character—for example, 53<sup>rd</sup> Street from Lake Park to Kenwood became in 2004 a “Pedestrian Street,” as are 5 others in the city—generally having low to mid-rise, with parking (which is not required) in back. With the new zoning was to come remapping- but only a few snippets have been remapped, such as pedestrian streets, transit-oriented districts, remapping in the 49<sup>th</sup> ward, and down-zoning with lock-in in south East Hyde Park to prevent a set of high rises. Zoning is an aldermanic prerogative, and second it’s an enormously complicated process.

\*B-1 is houses small businesses, no liquor, B-2 residential of right on the ground floor (to remedy neighborhood shopping districts that went bust), B-3 is for strip malls like Kimbark, B-4 – B-5 allow increasingly heavy and potentially nuisance uses.

The pedestrian street zoning ends at Kenwood because west of there, things are contradictory to the bent of the designation:

discouraging auto-oriented uses – (i.e. the current gas station and car wash)

parking in the back (Dorchester Commons was approved long before the days of Ped. Strs.),

minimum of driveways and curb cuts,

windows along the sidewalk- at least 50%,

entrances to businesses are on the sidewalk. Clarke’s is an example that fits the designation.

Barton said Planned Developments are “basically their own zoning ordinances.” Allowed retail in this one would be 3,000-20,000 sq. ft. – certainly no WalMart sized big box.

**To remember going forward- most of the zoning on 53<sup>rd</sup> is c1957 fitting what was already there. The neighborhood needs to decide whether it still wants that pattern or wants in some way to move away from it—i.e. the scale and size it’s comfortable with-as a whole and for individual elements such as larger businesses that could add vitality. He suggested that one thing to focus on no matter the scale is the pedestrian-friendly elements, especially the windows.**

**Adam Kingsley** focused on **the re-zoning process**. His experience includes with Motor Row south of the Loop and in the Law Department defending the city against zoning challenges. He also worked with the Woodlawn Ave. neighbors on the University of Chicago's PD43. He noted that in the old days the McMobil site was a C3-B2 designation. Again, the prefix part tells "what uses", that after the dash is "how much or large." Sites and heights can be configured different ways—a designation that allows a FAR of 1 could give a maximum one-floor building covering the whole site or say a 4-story building on a quarter of the site. A B-5 -5 generally permits a five-story building on the whole site, 10 stories on half the site. The site is currently -2. The only -5 (which is what the developer is asking) on the street is Harper Court office building, which was rezoned then made PD. The key questions are what are the surrounding classifications and the surrounding developments.—does what is proposed fit these? He said the surrounding developments are 1-4 story with a couple exceptions- therefore, what is proposed is "out of character."

**How do you get to a 13 story building covering most of the site? 1) Up-zone to the maximum then 2) create a Planned Development. A PD is an set of exceptions to the "most recent" zoning (Code 17-8-9)- hence the up-zoning first.** A planned development is desired by developers because it allows many (although not unlimited) exceptions including to FAR, coverage, and height though not entirely without regard to the underlying zoning or the surrounding structures –the exceptions are limited by the underlying zoning **and must take into account the character of the quarter-mile surrounding** (Code 17-8-100(?)). Also, a PD has to have a certain size, economic justification, amenities, accommodations to the surrounding area, and evidence of being a product of planning. Having open green space adjacent or near gives benefit of the doubt to higher or bigger than surrounding buildings.

**The steps- but bear in mind "Aldermanic Prerogative" in zoning. The alderman is the action point, and the Commission and City Council "almost always" defer to his or her wish.**

Application

Notice to residences and businesses within 250 feet

Department of Housing and Development review

Chicago Plan Commission

City Council Committee on Zoning

Full Council

**Court challenge.** A challenge can only be filed against an act of the City- so after City Council approval of the PD. There is 90 days to file. De novo review applies – the plaintiff does not go to the Planning Council but to Circuit Court in Chancery, without a jury. There is strong deference to the action approved by City Council- burden of proof is on the plaintiff. The test is what is called the "La Salle Factors" after a famous case:

Is the action/plan arbitrary and capricious?- contrary to a definition of the neighborhood, surrounding classifications, and surrounding development.

What is the affect on property values? – benefits v. negative impacts, has the land been vacant long, is it based on and conform to previous planning in the area?

After the arguments are set forth, expert witnesses are called by both sides, including architects, traffic engineers, environmental engineers.

A challenge to a PD is seldom successful. What could be claimed with some prospect is that the change is out of or disrupts the scale and character of the present structures and zoning and street. Also, remember that once a new structure is built, it changes the character and could become the nose under the tent for the next development.

**John Norquist** talked about forces propelling the scale and height of the development- largely federal policies. He prefaced this by noting that studies such as from the Center for Neighborhood Technology note that people want to live in either suburban settings or the old-fashioned strips of 2-4 story buildings that mix housing and commercial, but the actual suburbs have more air pollution due to the driving and gridlock. Density and dense development can be good, especially if it's by transit, and need not be high. An example of a successful dense and developing neighborhood with the old fashioned low-rises and transit-orientation is Wicker Park—and nothing there is going up high although the powers there are friendly to developers at least to a point. Toronto, D.C., Rotterdam, and Paris were also cited. Norquist thinks the federal way of warring on congestion that started in the 1920s mainly through retail and residential separation, for traffic total grade separation, and huge highways is short-sighted. We should focus on distribution of traffic, not speed.

Specifically, the origin of regulations that push towards height in mixed development was the idea of separating commercial from residential use- into different areas. This fit into growing patterns of racial and income segregation enforced by covenants. In the Housing Act, there were restrictions on how much commercial (profitability) there could be in residential buildings, and vice versa, tied into FAR, and banks came to enforce these when it came to financing- not just for mortgages and FHA eligibility but for construction loans. FHA provides underwriting for many mixed-use construction projects. So now buildings have to be high and include a lot of housing both to avoid the caps and so get financing and to have the desired commercial. This works for areas already dense and in demand like lakefronts, but forces change of character in areas built up low-rise. Some of these rules may change in the next year or so, such as increasing a key ratio from 25% to 35% commercial or eliminating it if the site is deemed properly zoned. The hope is that such changes would free up many neighborhoods for redevelopment without changing or disrupting the scale.

Meanwhile, he recommended doing a plan for the area that would allow for large development, perhaps using decreasing height along a slope from transit nodes out at least a half mile.

**Questions** (questions in bold)

**Could the University avoid these factors driving toward height, but isn't height seems necessary to accommodate affordable units?** Making the FAR 75% housing is needed to get governments and banks to approve. (Rest not addressed.)

**The downtown rental market is booming, how could that apply here?**

**Do tall buildings inevitably aggravate congestion?** The key is context--what the neighborhood is like and how it works, and whether the new development is consistent with these or works against them. The test should be whether there is net gain.