



COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 21, 2009
Staff Report #: 09-058

Agenda Item #: D-3

CONSENT CALENDAR: Waiver of Reading of an Ordinance and Adoption of an Ordinance Amending the Zoning Ordinance Definition of Gross Floor Area and Related Provisions

RECOMMENDATION

Staff recommends that the City Council:

1. Waive full reading of an ordinance amending the Zoning Ordinance definition of gross floor area and related provisions; and
2. Adopt an ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code Amending Chapter 16.04, Definitions, including Section 16.04.325 Gross floor area, Section, 16.04.315 Floor area ratio, and adding Section 16.04.469 Mezzanine; and Chapter 16.80, Nonconforming Uses and Structures, 16.80.110 Exemption from gross floor area definition clarification (Attachment A).

BACKGROUND

At its April 14, 2009 meeting, the City Council made a finding that the ordinance was exempt from the California Environmental Quality Act and introduced an ordinance amending the Zoning Ordinance definition of gross floor area and related provisions (3-2, with Council members Boyle and Cohen opposed). The motion to introduce the ordinance included two changes to the ordinance as follows:

- In 16.04.325(B)(7), delete “on the first floor only” from the reference to elevator shafts and stairwells; and
- In 16.04.325(C)(1), reduce the maximum exclusion allowance for non-useable or non-occupiable space from 5% to 3%.

In addition, the Council directed that staff prepare a report for the Planning Commission and City Council on the implementation of the ordinance amendment twelve (12) months after its effective date, with particular attention to data on the “grandfathering” provisions of the ordinance and the percentage allowance for non-useable or non-occupiable space.

ANALYSIS

Staff has prepared the final version of the ordinance amendment (Attachment A) that incorporates the change directed by the Council at the April 14, 2009 meeting. If the Council takes action to adopt the ordinance amendment, the new definition of gross floor area and related provisions will become effective 30 days later, or on May 21, 2009.

IMPACT ON CITY RESOURCES

As a result of the proposed Zoning Ordinance Amendment, no substantial impacts to City resources are anticipated.

POLICY ISSUES

The draft Zoning Ordinance Amendment is intended to clarify the existing ordinance and it is not intended to have a noticeable impact on what can be built on a property.

ENVIRONMENTAL REVIEW

On April 14, 2009, the Council made a finding that the ordinance amendment to clarify the definition of gross floor area is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility of significant environmental effects occurring as a result of the adoption of the ordinance amendment.

Justin Murphy
Development Services Manager
Report Author

Arlinda Heineck
Community Development Director

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the City has maintained a project page for the proposal, which is available at the following address: http://www.menlopark.org/projects/comdev_gfa.htm. This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated.

ATTACHMENTS

- A. Ordinance No. 963 of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code Amending Chapter 16.04, Definitions, including Section 16.04.325 Gross floor area, Section, 16.04.315 Floor area ratio, and adding Section 16.04.469 Mezzanine; and Chapter 16.80, Nonconforming Uses and Structures, 16.80.110 Exemption from gross floor area definition clarification.

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ATTACHMENT A

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ORDINANCE NO. 963

An Ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code, Amending Chapter 16.04, Definitions, including Section, 16.04.315 Floor area ratio, Section 16.04.325 Gross floor area, and Adding Section 16.04.469 Mezzanine; and Amending Chapter 16.80, Nonconforming Uses and Structures, including Adding Section 16.80.110 Exemption from gross floor area definition clarification.

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1. The following sections of Title 16, Zoning, Chapter 16.04, Definitions, of the Menlo Park Municipal Code are hereby amended to read as follows:

16.04.315 Floor area ratio. "Floor area ratio" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the maximum permitted ratio of the total square footage of the gross floor area of all buildings on a lot to the square footage of the lot.

16.04.325 Gross floor area.

- (A) "Gross floor area" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the sum of the horizontal areas of all floors within the surrounding solid walls of a building covered by a roof measured to the outside surfaces of exterior walls or portions thereof subject to the clarifications in subsections (B), (C) and (D).
- (B) Gross floor area includes the following features of a building that meet the criteria of subsection (A) unless otherwise excluded in subsection (C):
- (1) Areas of a basement with a floor to ceiling height of six feet, six inches or greater;
 - (2) Mezzanines, including equipment platforms and storage platforms, but excluding vertical shelving units and catwalks;
 - (3) Areas of an attic with a floor to ceiling height of six feet, six inches or greater;
 - (4) Equipment and utility areas containing mechanical equipment, electrical panels, meters, controllers, switch boxes;
 - (5) Storage areas;
 - (6) Bay windows and similar projections or cantilevered areas; and
 - (7) Elevator shafts and stairwells.
- (C) Gross floor area excludes the following features of a building that meet the criteria of subsection (A):

- (1) Areas of a building or buildings that are designed as non-useable or non-occupiable space with unfinished walls, floors and ceilings, not to exceed 3% of the maximum allowed gross floor area of the lot. To qualify for this exclusion, such spaces must have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches; limited access (i.e., the absence of the necessary physical space to provide a building-code-compliant stair or door); unconditioned air (i.e., the air is neither heated nor cooled); no windows or skylights; and no electricity. This exclusion may include areas of a building that would otherwise exceed the 1% maximum limitation as defined in subsection (C)(2).
 - (2) Areas of a building or buildings dedicated to the enclosure of noise generating equipment, such as building mechanical equipment and generators, not to exceed 1% of the maximum allowed gross floor area of the lot. This exclusion applies to equipment utilized for the operation of the building systems and does not apply to equipment utilized in connection with a business operating within a building;
 - (3) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;
 - (4) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;
 - (5) Vent shafts, such as building mechanical air ducts and chimneys; and
 - (6) Enclosures solely for trash and recycling.
- (D) In cases where the gross floor area of an existing building, as previously determined in a project specific approval by the City of Menlo Park made prior to the enactment of this subsection (D) and on file with the City of Menlo Park, is greater than the gross floor area of an existing building would be determined to be when measured pursuant to subsections (A) through (C) of this section 16.04.325, the previously determined gross floor area shall be the "Gross floor area" for purposes of this section 16.04.325, and therefore are considered conforming. Section 16.80.110 provides a process for considering expansions of an existing building or additional construction on sites with existing buildings in cases where the gross floor area of an existing building or buildings is greater when measured pursuant to the subsections (A) through (C). The City shall consider Gross Floor Area Exemption Certificates issued in compliance with subsection 16.80.110(e) when determining the remaining gross floor area on a lot that could be used for proposals to enlarge an existing building or to construct an additional building on the same lot as an existing building. This subsection (D) shall not apply to properties annexed to the City of Menlo Park after May 21, 2009.

SECTION 2. Title 16, Zoning, Chapter 16.04, Definitions, of the Menlo Park Municipal Code is hereby amended to add the following section:

16.04.469 Mezzanine. “Mezzanine” means an intermediate level or levels between the floor and ceiling of any story designed for occupancy or other use. For purposes of this definition, mezzanine includes equipment platforms (i.e., an elevated platform used exclusively for mechanical systems or industrial process equipment) and storage platforms, but does not include vertical shelving units nor catwalks (i.e., a narrow elevated walkway used exclusively to access part of a building that would otherwise be difficult to reach).

SECTION 3. Title 16, Zoning, Chapter 16.80, Nonconforming Uses and Structures, of the Menlo Park Municipal Code is hereby amended to add the following section:

16.80.110 Exemption from gross floor area definition clarification.

- (a) The following buildings shall be exempt from the Gross Floor Area Definition Clarification in Ordinance No. 963, provided that this exemption shall not apply to an increase in the gross floor area of a building by an addition or expansion of the building unless such addition or expansion was constructed or approved prior to said date:
 - (1) All buildings in existence as of the date of adoption of the Gross Floor Area Definition Clarification on April 21, 2009;
 - (2) Buildings that did not require discretionary planning review approval for which a building permit application was submitted prior to May 8, 2007; and
 - (3) Buildings for which an application for a discretionary planning review approval was submitted prior to January 1, 2007, provided the project receives all necessary discretionary approvals and the approval(s) does not expire prior to submittal of a building permit application.
- (b) No building exempt under subsection (a) of this section shall be subject to amortization by reason of a building which is nonconforming due to the Gross Floor Area Definition Clarification specified in subsection (a) of this section.
- (c) Any building exempt under subsection (a) of this section may be restored to its condition at the time of destruction if the building is destroyed by fire, explosion, or other catastrophe, but such restoration shall comply with:
 - (1) The building codes in effect at the time of restoration; and
 - (2) The requirements of section 16.80.040 with respect to nonconformities other than a nonconformity created as a result of the Gross Floor Area Definition Clarification specified in subsection (a) of this section.
- (d) Except as provided in this subsection, any building exempt under subsection (a) of this section may undergo interior and/or exterior improvements to the building if there is no increase in the gross floor area unless the increase in gross floor area is mandated to comply with required disabled access improvements and then only to the extent reasonably required to comply with such access requirements.

- (e) Regardless of what is set forth in subsections (a) through (d), the square footage of a building exempt under subsection (a) of this section shall be considered in determining whether a nonexempt building or expansion of any building shall be permitted on the site occupied by the exempt building, except as provided in this subsection (e). If a building was built prior to the effective date of the Gross Floor Area Definition Clarification or received the necessary approvals to be exempt under subsection (a)(2) or (a)(3) of this section and the building's gross floor area is greater than what it would be when measured pursuant to the Gross Floor Area Definition Clarification, the property owner may apply for a Gross Floor Area Exemption Certification to identify the gross floor area of a building that may be excluded from future calculations subject to the certification process outlined below. Upon receipt of a Gross Floor Area Exemption Certification, the gross floor area identified in the Certification shall be excluded from future calculations of gross floor area for purposes of considering construction of new buildings or expansion of existing buildings on the property covered by the Certification, except as otherwise provided in this subsection (e).
- (1) Within 30 days of the effective date of the Ordinance, the City shall inform property owners of this Gross Floor Area Exemption Certification process by mailing of notice, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City. In addition, the City shall mail a second notice one year from the effective date of the Ordinance.
 - (2) The property owner shall have two (2) years from the effective date of the Ordinance to submit a request in writing to the Community Development Director for a Gross Floor Area Exemption Certification. The request shall include site plans, floor plans, cross sections and elevations of all buildings in question.
 - (3) The Community Development Director shall have 30 days to review an application to determine its completeness. Upon determining the submittal complete, the Community Development Director shall have 30 days to issue a Gross Floor Area Exemption Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property on a per building basis. The Director's determination should be based on whether or not the building as it exists as of the effective date of this ordinance is consistent with plans previously approved by the City.
 - (4) The decision of the Community Development Director may be appealed to the Planning Commission pursuant to section 16.82.450.
 - (5) The Gross Floor Area Exemption Certification and associated exemptions become null and void upon demolition of the applicable building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area of the applicable building.

SECTION 4. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the fourteenth day of April, 2009.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the twenty-first day of April, 2009, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

APPROVED:

Heyward G. Robinson
Mayor, City of Menlo Park

ATTEST:

Margaret S. Roberts, MMC
City Clerk