



PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION
MEETING OF JANUARY 12, 2009
AGENDA ITEM E1

APPLICATION: Zoning Ordinance Amendment Related to the Gross Floor Area Definition

APPLICANT: City of Menlo Park

PROPOSAL

The City of Menlo Park is proposing a Zoning Ordinance amendment to clarify the definition of Gross Floor Area to more specifically identify features of a building that are either included or excluded from the calculation. Gross floor area is used in calculating the floor area ratio (FAR) and parking requirements for developments in all zoning districts except for single-family and R-2 (Low Density Apartment) zoning districts. Floor area ratio equals the gross floor area of a building divided by the lot area and effectively regulates the size of a building. In addition, gross floor area is used in determining the applicability of requirements for below market rate (BMR) housing and the preparation of traffic studies. The clarifications to the definition will focus on new buildings and attempt to minimize impacts to existing buildings. The Zoning Ordinance Amendment will be exempt from the California Environmental Quality Act (CEQA) in that the changes are intended to have no potential to impact the environment.

ANALYSIS

At the December 15, 2008 Planning Commission meeting, the Commission considered two pieces of correspondence received after the printing of the staff report. One piece of correspondence was from John Beltramo and the other piece was from Robin Kennedy. Both pieces are included as Attachments C and D, respectively. The Commission then directed staff to make further refinements to the draft Zoning Ordinance Amendment by unanimous consent, with Commissioners Bressler and Pagee absent, as follows:

- Modify 16.04.325(C)(1) to differentiate attics and basements from other non-useable or non-occupiable areas;
- Modify 16.04.325(C)(4) to broaden the exclusion of noise generating mechanical equipment beyond compressors; and

- Modify 16.04.325(D) to eliminate a potential ambiguity regarding the timing of a project specific approval.

A clean version of the revised draft ordinance is included as Attachment A. A redline (~~strikeout~~ and underline) version is including as Attachment B. The changes to the draft ordinance are summarized below in the order in which the items appear in the attachments.

- 16.04.325(B)(1): A six foot, six inch floor to ceiling height was added as a qualifier for when basement space is included in gross floor area.
- 16.04.325(B)(3): A six foot, six inch floor to ceiling height was added as a qualifier for when attic space is included in gross floor area due to the insertion in (B)(1) and (B)(3) above.
- 16.04.325(C)(1): The reference to attics and basements was removed.
- 16.04.325(C)(2) [formerly (C)(4)]: The word “compressors” was changed back to “building mechanical equipment”. In addition, staff changed the location of this exclusion by inserting it after (C)(1) based on a suggestion by the Commission.

If the Planning Commission believes that Attachment A adequately captures the Commission’s intent as directed on December 15, 2008, then Commission can vote to forward the draft Zoning Ordinance Amendment as its recommendation to the City Council.

CEQA – ENVIRONMENTAL REVIEW

On December 8, 2008, the Planning Commission voted unanimously to recommend to the City Council that the ordinance amendment to clarify the definition of gross floor area would be 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 NOTIFICATION

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 prepared 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.

The Commission's action will be in the form of a recommendation to the City Council.

ATTACHMENTS

- A. Draft Zoning Ordinance Amendment – Clean version, dated January 12, 2009
- B. Draft Zoning Ordinance Amendment – Redline version, dated January 12, 2009
- C. Correspondence from John Beltramo, dated December 13, 2008
- D. Correspondence from Robin Kennedy, dated December 15, 2008

v:\staffrpt\pc\2009\011209 - gross floor area - final rec report.doc

ATTACHMENT A

**DRAFT
ORDINANCE NO. ____**

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.

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:

16.04.325 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) and (C).
- B) Gross floor area includes the following features of a building that meet the criteria of Subsection (A):
 - (1) Basements with a minimum floor to ceiling height in excess of six feet, six inches;
 - (2) Mezzanines, including equipment platforms and storage platforms, but excluding vertical shelving units and catwalks;
 - (3) Attics with a minimum floor to ceiling height in excess of six feet, six inches;
 - (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 on the first floor only.
- C) Gross floor area excludes the following features of a building that meet the criteria of Subsection (A):
 - (1) Areas of a building that are designed as non-useable or non-occupiable space with unfinished walls, floors and ceilings, not to exceed 5% of the maximum allowed gross floor area. 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 or cooled); no windows or skylights; and no electricity.
 - (2) Areas of a building 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. 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 subsection 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. Subsection 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 _____, 2009 [insert effective date of ordinance].

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.

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. _____, 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 Zoning Ordinance Amendment (Ordinance No. __) on _____;
 - (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 this Zoning Ordinance Amendment (Ordinance No. _____) 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 (Ordinance No. ____), 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 ___ day of ____, 2009.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of ____, 2009, by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

ATTEST:

APPROVED:

Margaret S. Roberts
City Clerk

Heyward G. Robinson
Mayor, City of Menlo Park

ATTACHMENT B

Please Note: This draft ordinance amendment uses redline (and underline) formatting to show the reader the extent of changes to the draft ordinance attached to the December 15, 2008 Planning Commission staff report with the exception that in 16.04.325(C), subsections (2), (3) and (4) have been renumbered.

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DRAFT ORDINANCE NO. ____

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.

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Deleted: such as attics and basements,

- (2) Areas of a building 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. 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;
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Deleted: compressors

Deleted: what it would

Deleted: determination of the Gross Floor Area for existing buildings shall be based on project specific approvals by the City of Menlo Park in use at the time of approval of the construction or alteration of a building based on the records on file with the City of Menlo Park

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- (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
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 - (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.
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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.

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INTRODUCED on the ___ day of ___, 2009.

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

AYES:	Council Members:
NOES:	Council Members:
ABSENT:	Council Members:
ABSTAIN:	Council Members:

ATTEST:

APPROVED:

Margaret S. Roberts
City Clerk

Heyward G. Robinson
Mayor, City of Menlo Park

Murphy, Justin I C

From: John Beltramo [johnb@beltramos.com]
Sent: Saturday, December 13, 2008 3:34 PM
To: _Planning Commission
Subject: Gross Floor Area Defn Hearing 12-15-08 (3rd correction)

Honorable Chairman, Commissioners and Staff,

I have reviewed the Staff Report for the December 12th hearing on the revised definition for Gross Floor Area. If you should decide to pull this item from the consent calendar, I respectfully suggest that you consider the following:

1. Amended exclusion Section 16.04.325 C)(1): I may be missing something, but because you did such a thorough job of defining non-usable area, I do not see any need to place the 5% cap on the amount of the exclusion, and it may cause serious problems. For example in a one story building the attic area may exceed 5% of the building. At a minimum the 5% ceiling should be removed. I really preferred the way this exclusion read in Option A as presented at the last Planning Commission hearing, because it allowed, for example, nooks and crannies of a basement area to be used for storage. It is a shame to waste such area and it is wrong to make it part of the gross floor area.
2. The amended Section 16.04.325 C(4): You deleted "building mechanical equipment" and replaced it with "compressors". Normally, HVAC units contain multiple components in addition to compressors, all of which create some noise - fans, economizers, heaters, etc. "Compressors" is too limiting - Possibly "primary HVAC" equipment is better or simply go back to "building mechanical equipment".
3. Regarding the certification provisions - these may be necessary to protect certain owners, but I am afraid that owners will need to be geniuses to be able to know if they need to certify. It will be even more difficult for the Staff to give examples to owners that cover all situations. I thought the simplicity of Option A as submitted last time was a good compromise.

Thank you.

John R. Beltramo
1540 El Camino Real
Menlo Park CA 94025-4199
Phone: 650 - 326-3230
Fax: 650 - 326-1109
Cell: 650 - 207-4141
Email: johnb@beltramos.com

12/15/08

(CI)

Murphy, Justin I C

From: Kennedy, Robin [RKennedy@manatt.com]
Sent: Monday, December 15, 2008 3:58 PM
To: Murphy, Justin I C; micha@stanford.edu
Cc: peggy.lo@lpmquadrus.com
Subject: Gross Floor Area Ordinance
Importance: High

Justin,

I write, urgently, in connection with the above-referenced matter. I have only just now had an opportunity to review the proposed new language to subsection D of Section 16.04.325 of the Menlo Park Zoning Code.

Specifically, as written, I believe this new language is ambiguous and that it does not fulfill the recommendation of the Subcommittee with respect to this subsection.

As it now reads, the language could be construed to mean that the "project specific approval by the City of Menlo Park" is the project specific approval that will occur in the future (e.g., when Quadrus wants to build out its 4500 square feet) -- and not the project specific approval that was in place before this new Ordinance was passed. I would recommend, as an alternative, the following:

"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 considered conforming."

I thank you in advance for your attention to this ambiguity, and ask that you share a copy of this communication with members of the Planning Commission at tonight's meeting.

Robin Kennedy

Robin B. Kennedy**manatt | phelps | phillips**

1001 Page Mill Road, Building 2

Palo Alto, California 94304

Telephone: (650) 812-1360 (direct dial)

Facsimile: (650) 213-0280 (direct fax)

Email: RKennedy@manatt.com

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12/15/08