



PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION
MEETING OF NOVEMBER 5, 2007
AGENDA ITEM D3

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.

BACKGROUND

On October 8, 2007, the Planning Commission reviewed a Draft Zoning Ordinance Amendment prepared by staff based on City Council direction on May 8, 2007. The Commission held a public hearing and received comments from six members of the public. The Commission made comments regarding recommended changes to the draft ordinance. The Commission voted 6-0 (with Commissioner O'Malley absent at the time of the vote) for staff to return with a modified Draft Zoning Ordinance Amendment per the Commission's direction.

Two of the members of the public that spoke at the October 8, 2007 meeting were representatives from Quadrus, an office complex located on Sand Hill Road. The issues raised by the Quadrus representatives related to a 300 square foot balcony enclosure is being handled through a separate process which is scheduled for the City Council meeting of November 6, 2007.

ANALYSIS

The revised draft ordinance amendment is provided as Attachments A and B. Attachment A is a redline version of the draft ordinance showing staff's attempt to convert the Commission's direction into ordinance language. Attachment B is a clean version of the revised draft ordinance. The changes to the draft ordinance are summarized below.

Gross Floor Area Definition

- Relocates the minimum six foot, six inch floor to ceiling height to a new exclusion created for unusable and unoccupiable areas. [16.04.325(A) and 16.04.325(C)(1)]
- Relocates the elevator shaft and stairwell listing from inclusions to exclusions and establishes that these features count once toward floor area and not on each level of a multi-story building. [16.04.325(B)(6) and [16.04.325(C)(5)] This modification is consistent with historical practices.
- Creates an exclusion for areas that are not designed as useable or occupiable space as determined by the Building Official. [16.04.325(C)(1)] Given the challenges of establishing definitive requirements that meet the overall objective, this provision outlines the characteristics of areas that are typically unusable and occupiable.
- Describes the covered porch and balcony exclusion in a different way. [16.04.325(C)(3)] The language in the original draft ordinance was unclear and needed improvement. The Commission discussed options for improving the language and ultimately recommended wording that would have required that 20 percent of the perimeter walls of a covered balcony or porch would need to be open. Staff reviewed this proposed language and determined that it may be better to take another approach at describing the intended requirement. Staff is recommending refocusing on one end of a porch or balcony and then requiring at least one end be open except for columns or posts and protective walls or railings. The vertical opening of a typical porch or balcony is 8 feet (96 inches) in height. The minimum protective wall or railing height is 44 inches. Staff believes the proposed language in the revised draft ordinance is consistent with the Commission's intent.
- Creates an exclusion for noise generating equipment such as mechanical equipment and backup power generators. [16.04.325(C)(4)] The exclusion is consistent with historical practices, creates an incentive to design buildings that minimize potential noise impacts to adjacent properties, and are typically considered non-occupiable portions of a building.

Mezzanine Definition

- Modifies the definition of a mezzanine to be more consistent with the building code definition. [16.04.469]

Nonconforming Provisions

- Eliminates the building permit submittal deadline and focuses on whether or not the discretionary planning permit is still valid. [16.80.110(a)(3)] This change eliminates a potentially unintended consequence for projects to attempt to rush to submit building permit applications before they are ready.
- Adds an exemption for modifications to a building to comply with disabled access requirements. [16.80.110(d)] Such an exemption would enable an elevator to be added to the exterior of a building.
- Eliminates the requirement that a building would need to be built after 1986, the year floor area ratio requirements were adopted, to be eligible for the certification process. [16.80.110(e)] This change recognizes the fact that decisions on building design made after 1986 could have been made based on how gross floor area was being calculated in buildings that existed on the same property prior to 1986.
- Extends the timeframe for a property owner to apply for an exemption certificate from one year to five years. [16.80.110(e)(2)] Staff believes that the certification process is meant to document what has happened in the past and as the timeframe is extended, it is less and less likely that the institutional memory will be available to piece together the overall record. In lieu of extending the timeframe from one year to five years, staff would recommend an additional one year for a total of two years plus an additional notice one year after the effective date of the ordinance. Staff did not make these recommended changes to the draft ordinance, but did highlight the provisions in question.

CEQA – ENVIRONMENTAL REVIEW

The Planning Commission indicated that it believed 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.

RECOMMENDED MEETING REVIEW PROCESS

1. Staff presentation of the revised Zoning Ordinance amendment.
2. Planning Commission questions of staff for general clarifications to the benefit of the public.
3. Public hearing.
4. Planning Commission follow up questions of staff.
5. Planning Commission discussion.
6. Planning Commission recommendation to the City Council on the CEQA finding and draft ordinance.

Justin Murphy
Development Services Manager
Report Author

Arlinda Heineck
Community Development Director

PUBLIC NOTIFICATION

Public notification for this item at the meeting of November 5, 2007 consisted of publishing a legal notice in the local newspaper. 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 Ordinance Amendment, dated November 5, 2007 – Redlined version
- B. Draft Ordinance Amendment, dated November 5, 2007 – Clean version

v:\staffrpt\pc\2007\110507 - gross floor area - 2nd meeting.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; and Chapter 16.80, Nonconforming Uses and Structures.

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 where the floor to ceiling height is greater than 6 feet 6 inches 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;
 - (2) Mezzanines;
 - (3) Attics;
 - (4) Equipment and utility areas, such as mechanical equipment, electrical panels, meters, controllers, switch boxes;
 - (5) Storage areas; and
 - ~~(6)~~ Elevator shafts and stairwells; and
 - ~~(7)~~ (6) Bay windows and similar projections or cantilevered areas.
- 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 not designed as useable or occupiable space as determined by the Building Official. Such spaces typically have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches; unfinished walls, floors and ceilings; limited access; unconditioned air (i.e., the air is neither heated or cooled); no windows or skylights; and no electricity.
 - ~~(1)~~ (2) 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;
 - (3) Covered porches and covered balconies provided that at least one end is open for more than 60% of the exterior surface area 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;

(4) Areas of a building dedicated to the enclosure of noise generating equipment, such as mechanical equipment and backup power generators, provided that the area is not designed for occupancy other than to allow for the operation and service of said equipment as determined by the Building Official.

(5) Elevator shafts and stairwells on all floors except for one floor (i.e., elevator shafts and stairwells count once)

(3)(6) Vent shafts, such as mechanical air ducts and chimneys; and

(4)(7) Trash and recycling enclosures.

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 floor ~~between main floors~~ of a building placed within a room. All portions of the mezzanine shall be open and unobstructed to the room in which they are located, except for columns or posts not more than 12 inches in width and protective walls or railings not more than 44 inches in height.

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 that submitted~~ a discretionary planning review approval was submitted prior to January 1, 2007, ~~and that submit a complete building permit application prior to the later of January 1, 2008 or six months from final approval of the discretionary planning review approval~~ 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) Notwithstanding the foregoing, 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 follows provide in this subsection (e). If a building was built after November 25, 1986 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 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 on a property 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 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.
 - (2) The property owner shall have one year five years from the effective date of the Ordinance to submit a request in writing to the Community Development Director. 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 Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property. The Director's

determination should be based on whether on 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 Certification and associated exemptions become null and void upon demolition of the existing building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area.

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 ___, 2007.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of ___, 2007, by the following vote:

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

ATTEST:

APPROVED:

Silvia M. Vonderlinden
City Clerk

Mayor, City of Menlo Park

ATTACHMENT B

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; and Chapter 16.80, Nonconforming Uses and Structures.

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;
 - (2) Mezzanines;
 - (3) Attics;
 - (4) Equipment and utility areas, such as, electrical panels, meters, controllers, switch boxes;
 - (5) Storage areas; and
 - (6) Bay windows and similar projections or cantilevered areas.
- 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 not designed as useable or occupiable space as determined by the Building Official. Such spaces typically have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches; unfinished walls, floors and ceilings; limited access; unconditioned air (i.e., the air is neither heated or cooled); no windows or skylights; and no electricity.
 - (2) 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;
 - (3) 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;
 - (4) Areas of a building dedicated to the enclosure of noise generating equipment, such as mechanical equipment and backup power generators, provided that the area is not designed for occupancy other than to allow

for the operation and service of said equipment as determined by the Building Official.

- (5) Elevator shafts and stairwells on all floors except for one floor (i.e., elevator shafts and stairwells count once)
- (6) Vent shafts, such as mechanical air ducts and chimneys; and
- (7) Trash and recycling enclosures.

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 floor of a building placed within a room. All portions of the mezzanine shall be open and unobstructed to the room in which they are located, except for columns or posts not more than 12 inches in width and protective walls or railings not more than 44 inches in height.

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) Notwithstanding the foregoing, 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 provide 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 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 on a property 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 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.
 - (2) The property owner shall have **five years** from the effective date of the Ordinance to submit a request in writing to the Community Development Director. 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 Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property. The Director's determination should be based on whether on 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 Certification and associated exemptions become null and void upon demolition of the existing building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area.

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 ____, 2007.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of ____, 2007, by the following vote:

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

ATTEST:

APPROVED:

Silvia M. Vonderlinden
City Clerk

Mayor, City of Menlo Park