



# PLANNING COMMISSION EXCERPT MINUTES

Monday, December 8, 2008  
7:00 p.m.  
701 Laurel Street, Menlo Park, CA 94025  
Menlo Park City Council Chambers

---

**CALL TO ORDER** – 7:02 p.m.

**ROLL CALL** – Bressler (Absent), Ferrick, Kadvany, Keith, O'Malley (Vice chair), Pagee (Left at 10:20 p.m.), Riggs (Chair)

**INTRODUCTION OF STAFF** – Deanna Chow, Senior Planner (Absent); Megan Fisher, Associate Planner; Justin Murphy, Development Services Manager; Thomas Rogers, Associate Planner

## C. PUBLIC HEARING

2. [Zoning Ordinance Amendment /City of Menlo Park](#): Consideration of 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.

Staff Comment: Development Services Manager Murphy said that the meeting tonight provided the Planning Commission with the opportunity to provide a final recommendation to the City Council on a Zoning Ordinance Amendment (ZOA) regarding an update to the definition of Gross Floor Area (GFA). He said the staff report included two versions of a proposed ZOA and that the version "A" reflected the Commission's direction made at the public hearing of November 5, 2007 and version "B" was the proposed ZOA staff had recommended at the Commission meeting of October 8, 2007. He said the staff report highlighted the differences between the two proposed ZOAs, primarily related to whether three types of building features should be included or excluded from GFA calculations, and how potential nonconformities might be addressed. He said the staff report also identified the potential need to revisit the proposed definition for a mezzanine and for the Commission to weigh in on whether equipment platforms and/or storage platforms should be included or

excluded from GFA. He said that the Commission would need to consider within its deliberations making the finding for the recommended proposed ZOA that it was exempt from the California Environmental Quality Act (CEQA) because it could be seen with certainty that there was no possibility of significant environmental effects occurring as a result of the adoption of the ZOA. He said if the changes to the draft ZOA by the Commission were not extensive that staff was prepared to make those modifications and return to the Commission with a clean version on the consent calendar for the December 15, 2008 Commission meeting prior to forwarding the recommended ZOA to the City Council. He said staff recommended that the adopted ZOA be subject to a 12-month review with staff making a report at that time to the Commission and Council. He said since the printing of the staff report that two pieces of correspondence for the Commission had been received and distributed to them this evening. He said the first was from Mr. John Beltramo indicating his support of the proposed ZOA labeled Option A. He said the second was from Ms. Peggy Lo who indicated a preference for Option A and offered refinements to the language for both Option A and Option B.

Questions of Staff: Commissioner O'Malley said he had three questions about the staff report and needed clarification. He said in the first paragraph on page two it was stated "...with the understanding that staff would reserve the right to consider further refinements to present to the City Council, especially items that would affect the implementation." He said that was a very general statement and provided staff great leeway in what might be modified. Development Services Manager Murphy said that in the time between the Commission's hearing and the Council's meeting to hear this item, staff would be very clear as to what the Commission was recommending to the Council, but that staff reserved the right to identify additional information for the Council to consider in its deliberations. He said that was a general statement for any matter being recommended to the City Council by the Commission. He said the intent of the potential consent item on the December 15, 2008 agenda was to give the Commission the opportunity to see a clean version of the ZOA being recommended by the Commission. Commissioner O'Malley confirmed that staff might bring other things for the Council to consider as well as what the Commission recommended.

Commissioner O'Malley asked for clarification about the following language on page five: "Instead of language that identifies the maximum percent of a ratio, it may be better to state the cap as a percentage of either the maximum allowed gross floor area or the gross floor area of a particular building." Development Services Manager Murphy said that the main difference was whether it was five percent of the Floor Area Ratio (FAR) or five percent of the GFA. He said that rather than using a percent of a percent that they thought it would be better to do a percent of a number. Commissioner O'Malley asked if there would be the same result for both methods. Development Services Manager Murphy said that was correct but there was a difference between maximum allowed GFA and the GFA of a particular building. He said currently it stated maximum FAR so maximum GFA would be comparable to maximum FAR.

Commissioner O'Malley asked about page seven of the staff report related to making the determination about CEQA. He said that he thought in Option A the deliberations related to CEQA had already been made by the Commission and that Option A would not affect CEQA. Development Services Manager Murphy said Option B was attached to the October 7, 2007

staff report and staff had indicated they thought it would be exempt from CEQA. He said that staff had not indicated that Option A would be exempt from CEQA.

Commissioner Kadvany noted the example of a calculation on page 5 of the staff report under Option A. He asked what other determinations would be affected by that calculation such as Below Market Rate (BMR), traffic study, and parking. He asked with that sample calculation whether 10,000 square feet or 10,600 square feet would be used as the GFA. Development Services Manager Murphy said based on his understanding the 10,000 square feet would be the GFA and would be used. Commissioner Kadvany asked if there was a sense of the range of square footage based on other building sites and zones. Development Services Manager Murphy asked if that was in terms of the lot size in the different zones. Commissioner Kadvany asked how great the number could be. Development Services Manager Murphy said the Sun Microsystems campus was 1,000,000 square feet of GFA and that was probably the largest. He said FAR ranged from 25 percent up to 200 percent with most of the properties under 100 percent in the 40 to 75 percent range.

Chair Riggs asked that the public get speaker cards to the staff table by 7:30 p.m. noting he currently only had two speaker cards. Development Services Manager Murphy suggested that it might be beneficial for the subcommittee to report back to the Commission and public before the Commission took public comment.

Commissioner Ferrick said the subcommittee had met to discuss details of both Options A and B and to make recommendations for this evening's discussion. She said the base assignment was to look at Section D related to historical instances in Option A and in a different section in Option B. She said they looked at exemptions and the definition of historical practices, and prepared a draft report. She said on page one under B they added mechanical under item four.

Commissioner O'Malley said he thought the mission of the subcommittee was limited to addressing nonconformities that might result because of the change in definition of GFA. Commissioner Ferrick said in Option B that the discussion related to that issue fell under Section 3 and in Option A under Section D. Commissioner Pagee said the subcommittee had difficulties with both the definitions in how best to include those buildings with a historical background to what was acceptable as to potential buildout. She said they first reworded Section D under Option A to change the words historical practices to previous Menlo Park project specific approvals. She said they received comments from persons who knew they were looking at the issue who indicated that Development Services Manager Murphy had done considerable work on the issue in Option B. She said their intention was to combine the language from both options and they also looked at inclusions and exclusions. Commissioner Ferrick said that there was comment that the definition under Option D was lengthy but that it was really an outline of the process to be taken. Commissioner Pagee said it could be called out as the process to take. She said the Council's direction was to simplify and that this would show clearly what was included or excluded for new construction. Commissioner Ferrick said they replaced "historical practices" with "project-specific approvals" to minimize any need for interpretation.

Commissioner Pagee suggested identifying a building under Section D and using Section 3 for the process. Chair Riggs asked if the subcommittee was suggesting using both sections. Commissioner Ferrick said that was correct but the two could be combined in the same area of the ZOA. Chair Riggs said he thought the Commission was to look at working with one method or the other. Development Services Manager Murphy said that was correct but there were other possibilities. Commissioner Ferrick said that the section in Option A required more interpretation on staff's part whereas the section in Option B allowed for a process.

Public Comment: Mr. Brad Van Linge, Menlo Park, said he was a resident and part owner of the Wine Bank on Willow Road. He said the Wine Bank was a small business that opened in 2000. He said they had worked hard to grow the business and recently approached the Planning Division with plans to expand the business. He said they had put storage to a maximum height of 18 feet in a 24-28 foot clear warehouse building and they wanted to do that again. He said Planning Division staff had indicated that catwalks to reach the storage units would be included in the FAR calculation, but those had not previously been included. He said the second to last paragraph on page six of the staff report addressed catwalks and said that those used for equipment and storage were different than those used just for ladder purposes. He said the catwalks could not be occupied or used for seating. He said catwalks provided staff and customers a safe way to access wine being stored. He said this business was in the position to grow. He said if they were not allowed to install catwalks then a practical and safe way to grow their business was stopped. He asked that the Commission recommend to Council to direct staff to define a catwalk.

Commissioner Pagee asked Mr. Van Linge to describe the catwalks. Mr. Van Linge said the catwalks were hung from the storage positions or wine lockers and have a plywood floor with some having a post for additional security. He said that they were not attached to the building. Mr. Don Fox, Menlo Park, managing partner for the Wine Barn, said the wine lockers were created from free-standing, heavy duty shelving up to 18-feet high with cubbies about four foot wide and three feet deep. He said platforms were run at nine feet for catwalks that provided staff and customers access to the higher units. He said the space occupied by the catwalks was unusable square footage.

Mr. Sam Sinnott, Menlo Park, provided the Commission some documents related to a warehouse job he had worked on to convert a 22,000 square foot warehouse to house cars and wine storage with an office. He said they were looking at putting an eating area on a second floor in the future. He said that they wanted to put the offices in with the potential for a second floor. He said because of that staff concluded the area above the offices was mezzanine and counted as square footage. He said with that finding they would not be able to have a second floor. He said the area in question was not accessible. He requested that the definition for mezzanine be included in the ZOA so that staff was not forced to take a conservative stance similar to that taken with the catwalks. He said that the building code definition of a mezzanine was more specific than that proposed for the ZOA. He said he thought what was being proposed might negatively impact commercial development.

Commissioner Bressler asked Mr. Sinnott if a variance would be needed to add a second floor. Mr. Sinnott said that they would have to apply for a use permit.

Chair Riggs asked if it would be advantageous to have the planning code language more closely aligned with the building code language. Mr. Sinnott said he preferred more specifics, which was why he liked the building code as its specifics were based on regulations, which removed any need for interpretation.

Mr. David Speer, Menlo Park, said the purpose of the ZOA related to GFA was to manage the scale, bulk and mass of development. He said he thought Option B provided more ability to manage those things. He noted the example staff showed on page 5 related to Option A. He said with the exclusions there were 600 square feet that was excluded from GFA. He said that could potentially be space for three more persons working in the building and the need for parking which was an intensity for a project.

Commissioner Kadwany said that it seemed the intent in Option A was to capture space that did not contribute to intensity of a development. He asked what intensity experts measured. Mr. Speer said that to the extent exclusions were given for areas that could not be occupied than that extra allowable square footage could be space occupied with people, and that intensified the numbers.

Ms. Patti Fry, Menlo Park, said the subcommittee's report was not available prior to the meeting so it was not possible to comment on that. She said the purpose for the request from the Council was to make more explicit what was counted and what was not. She said that not counting things toward GFA made the calculation a Net, not a Gross, Floor Area determination. She said another way to handle exceptions was in how FAR was counted for a particular zoning area which she thought was more sensible. She said if Option A meant 6 percent more square footage that was not counted toward GFA then it was not possible to make a finding that this proposed ZOA was exempt from CEQA. She said there were large projects on the horizon similar to Sun Microsystems which would have the potential of much more square footage because of the 6 percent square feet that would not be counted. She said regarding historical practices that even if grandfathering were done there should be a date established. She said there had been acknowledgement that "creep" had occurred over the years as the result of interpretation of the rules. She said that she did not want to penalize anyone who had reasonable expectations but also did not want to reward someone with additional square footage that really was not intended. She said it would be helpful for the Council and the public to have the Commission's recommendation and rationale that was previously discussed as well as what came out of tonight's meeting.

Commissioner O'Malley said numerous members of the public had indicated that the Council's direction was to remove exclusions but he had not found that in the Council minutes. Ms. Fry said the minutes were not verbatim but it was her understanding that there was a direction to reduce creep because of interpretations. She said other cities excluded some things that the Commission was recommending including and counting such as stair wells.

Mr. Morris Brown, Menlo Park, said the minutes of the Council meeting did not reflect the intent of the Council. He said the Council at the time wanted literal interpretations of the rules and did not want lax rules. He said one big issue of the 1906 El Camino Real development was that a separate building for mechanical equipment was to be excluded to keep the

project under 10,000 square feet limit at which a traffic study would be required. He said that Council said the building would be counted and there would be a traffic study. He said Council wanted literal very strict interpretations of the rules which was why staff drew up an ordinance or Option B. He said that Option B should be recommended. He said he did not understand why the city would not count elevator shafts and stair wells on the second floor. He said spaces rented on the second floor would be charged for overhead for elevators, corridors and bathrooms. He said he did not think the subcommittee's revision of Option A was appropriate.

Chair Riggs said in Option B that basements were excluded, and asked Mr. Brown his opinion on that. Mr. Brown said that exclusion was historically done. He said if basements were counted that would impact the above ground space. He said that he would not recommend including basement in the GFA. He said parking structures underground should not count against the FAR.

Ms. Peggy Lo, Menlo Park, property manager for Quadrus, said she supported Option A. She said she could support Option B if there was a consideration of older projects as to how the GFA had been arrived at so that a project with remaining square footage based on previous project approvals could proceed to build. She said the Commission had put a lot of work into the consideration of a ZOA. She said that something had to do be done for older existing projects that had followed the rules to date.

Chair Riggs closed the public hearing.

Commission Comment: Chair Riggs said the Commission had a number of areas of discussion, including the nonconforming issue, staff's request for clarification of two issues, and Commissioners Bressler and Pagee request at the previous Commission meeting that the Commission review the entire proposed ZOA. He asked if staff had looked at the subcommittee's two wording options for nonconformity. Development Services Manager Murphy said the main thing for the Commission was to decide whether in Section 3 the proposed changes to the nonconforming uses and structure would be warranted. He said staff was comfortable with that wording. He said that the intent and purpose of also retaining Section D was if the Commission wanted additional clarifications or ways to point the reader to look at Section 3. He said staff could revise language to achieve that purpose.

Commissioner Ferrick noted other changes the subcommittee had made: Option B, Section 3, Item 5 originally said 50 percent of the existing GFA and they changed that to read 50 percent of the existing building structures as that was more specific. She said the other change was to remove a legalese sounding sentence that did not make sense. ( "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 provided in this subsection (e).)

Development Services Manager Murphy said the sentence established the main opportunity for expansion to buildings so he would have to consider the change. He said

“notwithstanding the foregoing” was used in other sections. Commissioner Ferrick said she just would like the first sentence of item e. to be clearer.

Commissioner O’Malley said that what the subcommittee had suggested was Section 3 to be the same as was written in Option B the last time except for the comment on 5 and removing the first sentence under “e.” Chair Riggs said that “notwithstanding the above” meant that even if it appeared to conflict with the previous paragraphs. Commissioner Keith said perhaps this language had to be looked at in the other sections. Commissioner Ferrick said that she thought the language should be clear to a lay person.

Chair Riggs asked for the subcommittee’s response to Ms. Lo’s suggestion to add a phrase that referred to FAR numbers recorded by the City of Menlo Park prior to the ordinance date. Commissioner Ferrick said that was addressed in Section D of Option A related to project specific approvals and including Section 3 from Option B would show a person how to accomplish. Commissioner Keith suggested adding Ms. Fry’s suggestion of the exact date of the project specific requirement. Chair Riggs asked if that would be in Section 110. Commissioner Keith noted that the subcommittee had replaced historical practices with project specific. Development Services Manager Murphy asked if the Commission wanted a date. Commissioner Ferrick said that would be the date of when the ZOA was adopted.

Commissioner Kadvany asked if this could be applicable to Option B as well. Chair Riggs said his understanding was that this could plug into Option B as well. Commissioner Ferrick said part of the nonconforming section came from Option A and part from Option B. Chair Riggs said that Option A’s attempt was to include it within the narrow definitions update whereas Option B included from Section 110 the definitions portions for nonconformities and not necessarily from nonconformities resulting from the definitions update. He questioned if approving the subcommittee’s work would apply to either version of the proposed ZOA. Commissioner Kadvany suggested that the subcommittee’s work could be approved and dependent on what was recommended that staff could clean up the language.

Commissioner Bressler moved to approve the slightly modified version of Section 3 as suggested by the subcommittee. He asked if staff understood the suggested change. Development Services Manager Murphy said staff did. He said they would rework the first sentence of subsection e in Section 3. He asked for clarification on item 5 where the subcommittee indicated 50 percent of the existing building structures rather than 50 percent of the existing GFA. Commissioner Pagee said their intent was to close a loop so that existing GFA was defined by existing buildings not what it was at buildout. Development Services Manager Murphy said he would like to keep GFA as that was measurable for staff. Commissioner Pagee said it would be the structure approved historical at that time as opposed to the potential for building based on historical approval. Commissioner Keith suggested using “existing building structures’ GFA.” Chair Riggs asked if it would be better to use “existing buildings’ approved area” in order to tie it to documentation. Development Services Manager Murphy said tying it to the approved had potential for greater consistency. Commissioner Ferrick said that tied it back to project specific. Chair Riggs said “approved” would mean summary to date.

Commissioner Bressler said that change was acceptable to him as the maker of the motion. Commissioner O'Malley said the motion only referred to Section 3 and not to Section D. Commissioner O'Malley said the subcommittee had done a rewrite of Section D as part of the definition of GFA, and both rewrites were presented as inclusive. Chair Riggs said he understood that staff would drop D if Option A were not used and otherwise both sections would be used. Commissioner Ferrick asked if it made more sense just to vote on Section 3. Commissioner O'Malley said he did not understand why the subcommittee had made two suggestions. Commissioner Keith said she would second the motion related to Section 3. She asked for clarification of the change suggested by Chair Riggs. Chair Riggs said it was existing building structures approved area. He asked staff if it should be approved GFA or approved area. Development Services Manager Murphy said his preference was approved GFA but he did not understand why both the words "building" and "structures" were needed. Chair Riggs said the intent was potentially that a minor building could be excluded from the calculation or that the GFA could be determined but not built out. He said it was the latter. In response to a question from Chair Riggs, Development Services Manager Murphy said there was maximum FAR from which comes gross GFA so there were "existing", what was "maximum" and what was potential. He said FAR could be the existing FAR while maximum FAR could be a different number. Chair Riggs asked if the term existing FAR was fairly consistent and meant built. Development Services Manager Murphy said the sentence could be ended with 50 percent of the existing GFA of the building. Commissioners Bressler and Keith as the maker of the motion and the second indicated the wording just presented was acceptable. Commissioner O'Malley confirmed that the motion was only on the rewording of Section 3. Chair Riggs confirmed that was correct.

Development Services Manager Murphy said in the subcommittee document on page 4, item numbered 2, it was stated that property owner shall have five years from effective date of this ordinance to submit a written request to the Community Development Director. He said originally staff had written one year, but when the Commission reviewed in October 2007, they had suggested five years. He said the staff report for the November 2007 meeting indicated that five years was too much time for staff to track approvals and suggested two years, but with an additional notification sent one year after adoption of the ZOA. Commissioner Pagee said two years and the additional noticing were fine with her. Commissioner Bressler said he was fine with that too. Commissioner Keith said that was acceptable. Commissioner Pagee asked how the notices would be sent out and if the mail would be certified. Development Services Manager Murphy said it would be a card or a letter and neither were contemplated to be certified. He said only one of the mailings if the Commission preferred could be certified. He would need to report to the Council on the costs of certified mailing. Commissioner Pagee said if the mailing was in an envelope that would be preferable than a sheet folded. Commissioner Ferrick asked about how many notices. Development Services Manager Murphy said that it would potentially be in the thousands. Commissioner Keith asked what types of mailings were sent certified. Development Services Manager Murphy said it was usually used on code enforcement. He said it would be easier to give notice to property owners rather than staff researching projects. Commissioner Pagee said that she would be comfortable with the notice being mailed in an envelope without certified mail. Commissioner Keith said she thought it should be certified mail. Development Services Manager Murphy said there would also be a notice on the public hearing sent for the City Council meeting. Commissioner Keith said she thought at least one

notice should be sent certified mail. Development Services Manager Murphy said there was one notice mailed for the Planning Commission hearing and there would be another mailed for the City council hearing. Commissioner Keith asked what staff's feeling was about a certified letter. Development Services Manager Murphy said he thought a notice for the City Council, and two additional notices were sufficient without a notice being sent certified mail.

Commission Action: M/S Bressler/Keith to approve the subcommittee's revision of Section 3 to include:

- Revision of 1<sup>st</sup> sentence under subset "e" for clarity to be accomplished by staff;
- Subset "e," 1: Within 30 days **and at one year** 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.
- Subset "e," 2: The property owner shall have ~~five~~ **two** years from the effective date of the Ordinance to submit a request in writing to the Community Development Director.
- Subset "e," "5" to end sentence with "existing building structures' approved GFA."

Motion carried 7-0.

Chair Riggs said if the Commission wanted to recommend Option A that the subcommittee had recommended changes to Section D that referred to Section 3 in Option B. Commissioner Keith moved to approve the subcommittee's changes to Section D. Commissioner Pagee seconded the motion. She said that wording was needed to tie this section to Option B, Section 3. Development Services Manager Murphy said he had to think about the relationship of the use permit section to this proposed change. He said he understood the intent to tie the two sections together.

Chair Riggs quoted Option A, Section D as revised by the subcommittee: "Determination of the Gross Floor Area for existing buildings shall be based on project specific approvals by the City of Menlo Park 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,...". He said he would strike the end "and therefore are considered conforming and are not subject to Chapter 16.80." He suggested saying "See also Chapter 16.80 Nonconforming uses" as a start to tying the two sections together. Development Services Manager Murphy said that was helpful for the first sentence but he thought there would need to be a change on a second sentence. Commissioner Ferrick said she was comfortable with Development Services Manager Murphy properly changing the language.

Commission Action: M/S Keith/Pagee to approve the changes recommended by the subcommittee in Option A, Section D and to direct staff to revise wording appropriately.

Motion carried 7-0.

Chair Riggs said staff would like the Commission to address the definition of mezzanine. Development Services Manager Murphy said subsection A was a basic definition of GFA, with a list of specific inclusions in B, exclusions in C and D as discussed. He said

basements, attics and mezzanines were listed as inclusions. He said basements and attics were defined but mezzanine was not. He said that there was a request for building codes to be tied into the definition of mezzanine and staff had added some codes. He said that on further reflection staff was now suggesting that mezzanine could be defined as it was in the building code definition and not include the building code requirements. He said other features similar to mezzanine were defined in the building code such as equipment and storage platforms. He said there were at least four categories to consider: catwalks and ladders leading to racked storage, storage platforms, equipment platforms and mezzanines. He said this topic was based on observations staff had heard over the past year and were important to bring to the Commission's attention.

Chair Riggs said he thought the Commission had concerns about creating exclusion for an equipment platform because the equipment might be removed. Development Services Manager Murphy said he recalled that discussion about air handling equipment for industrial process. He said staff does not think that an equipment platform meets the definition of a mezzanine so a determination was needed as to whether it was counted toward GFA. Chair Riggs asked if a project in the past five years with 10,000 square feet and 2,000 square foot mezzanine would be considered a 12,000 square foot project. Development Services Manager Murphy said there was an SRI project in 2002 that came before the Commission that was described as a non-habitable mezzanine and was for major air handling equipment for a clean room. He said staff had recommended the space not be counted, and the Commission at that time agreed.

Chair Riggs said in definitions that users would like cross-references and a mezzanine was a floor area in the building code as opposed to a platform that might be a grating or suspended floor. He asked if it would be best to define mezzanine in floor area to confirm that if it was accessible and usable floor area. He said he thought that was unaddressed. Development Services Manager Murphy said it was unaddressed and that was why they were defaulting to mezzanine being counted.

Commissioner Ferrick asked why staff recommended being more generic about mezzanine rather than more specific. Development Services Manager Murphy said the best example was in the Floor Area definition that referred to single-family basements and attics and how to measure floor to ceiling heights and their placements and how those would be counted toward floor area. He said there were attempts to do that with mezzanines and some building codes were built into the definition. He said mezzanine could be defined generally as in the building code and then all of the specifics of the building code added. He said the ordinance would have to evolve as building codes changed.

Chair Riggs said because there was no definition for a mezzanine it seemed appropriate to add one such as "Mezzanine means an intermediate floor of a building placed within a room." Commissioner Ferrick suggested adding "that meets the building code definition." Commissioner Keith said the building code definition - "an intermediate level or levels between the floor and ceiling of any story"- was appropriate. Chair Riggs said in some cases a mezzanine was just another floor space. He said he thought a mezzanine was a floor area unless proven otherwise. He said it was a floor area that was partially open to the floor below. He asked if "Mezzanine means an intermediate floor of a building open to the floor

below” addressed the issue. Development Services Manager Murphy said in terms of the basic definition of mezzanine but were catwalks and equipment platforms clarified there. Chair Riggs asked if catwalks and equipment platforms could be defined elsewhere. Development Services Manager Murphy said that was a possibility.

Commissioner Keith said she would like to suggest that although the Commission was asked to clarify mezzanine, catwalks, and equipment platforms that it had not previously discussed those elements, and therefore directed staff to create definitions. Development Services Manager Murphy said he was generally comfortable with using the building code definition for mezzanine. Chair Riggs said the specifics of the building code further clarified what was included in a mezzanine. Commissioner Ferrick suggested a generic definition with reference to specifics in the building code related to mezzanine.

Commissioner Bressler said that he did not think catwalks should be counted as GFA, and he thought that staff should define catwalks.

Commissioner Ferrick moved to adopt the building code definitions for mezzanine, catwalks, and equipment platforms. Chair Riggs seconded the motion. Development Services Manager Murphy said there was also a concept of a storage platform which was not defined in the building code. Chair Riggs asked if that classified as a mezzanine. Development Services Manager Murphy said that was how staff had been handling those features. He said an example was an applicant applying for an area to store objects above and when told it would be a mezzanine, the applicant would make changes so that it no longer would qualify as a mezzanine. He said an instance was using the roof on an office to store heavy materials. Commissioner Bressler said that should not be counted as GFA. Development Services Manager Murphy said another example was a platform similar to an equipment platform that was fixed to the ground and not integral to the building whatsoever. Chair Riggs said if one had a 5,000 square foot assembly building floor and storage was part of that operation that using a space above an office for that storage created more floor space. He said that definitions might be used in an unintended way. Commissioner Bressler said he agreed that not all of the scenarios could be captured in the definitions.

Commission Action: M/S Ferrick/Riggs to direct staff to define mezzanine, catwalks, equipment platforms, and storage platforms based on the building code definitions.

Motion carried 7-0.

Chair Riggs said Commissioners Bressler and Pagee had requested that the Commission compare the work of the Planning Commission in 2007 with the October 2007 staff report draft initial ZOA.

Commissioner Bressler said he would like to discuss Section 1, B), and noted that the first difference between the two proposed ZOAs was in (4) and mechanical equipment was in Option B but not in Option A under B). He said Option B included (6) Elevator shafts and stairwells and Option A did not. He said C) (1) in Option A indicated that areas of a building not designated as useable or occupiable space would be excluded but not to exceed 5 percent of the FAR. He said the conditions that typified such exemptions were such that

could be remedied later to be occupiable. Commissioner O'Malley said that the Commission in its previous discussion had indicated there should be a maximum percentage that could be excluded. He said there had since been some members of the public who were very vocal against that recommendation and he thought the Commission was now looking to give those persons' opinions more value than was warranted. Commissioner Pagee said she had been one of the Commissioners to suggest a limit as opposed to allowing this to pass with no limit. She said a percentage was suggested and that was part of a give and take to allow an ordinance amendment to go to the City Council. She said that the Commission had come to a concession for those opposed to this revision to place a limit. Commissioner O'Malley said the Commission had agreed that exclusions were necessary and then percentages were recommended. He said Commissioner Bressler suggested 3 percent, Commissioner Riggs suggested 5 percent, Commissioner Deziel suggested 6 to 8 percent, and Commissioner Pagee suggested 6 percent. He said that his concern was that the Commission had discussed this matter at length and come to a recommendation and now there were different members and the recommendation was going to be changed. He suggested this Commission develop an amendment and send that amendment and the one previously approved by the Commission to the Council.

Chair Riggs asked if the core of the review proposed by Commissioners Bressler and Pagee was for C.1 non usable space, elevators/stairs being excluded, and C.4 noise generating equipment. Commissioner Pagee said to look at the differences between Option A and Option B as otherwise the versions were the same

Commissioner Keith said in looking at the minutes of the October 2007 meeting she notice that there were the same speakers then as this evening. She said that they had talked about percentages at that time, and Commissioner Pagee had shared that an engineer had indicated that mechanical spaces and non-usable spaces would account for about 6 percent of a project's FAR, with 5 percent for mechanical rooms and emergency generators having about 1 percent. She said that 5 percent was a compromise.

Commissioner Kadvany asked for an example under C.1 to which this potential 5 percent applied. Commissioner Bressler said a closet, or a storage room that could be converted to an office at a later time. Commissioner Ferrick said there were a lot of buildings that might use unfinished brick. Chair Riggs said that an interesting façade or deepset windows as used for adobe style windows created dead space. He said it was allowing for architectural freedom. Commissioner Kadvany said that Ms. Fry had expressed concern that the percentage was something that would typically be used and through which developers might get significant square footage. Chair Riggs explained how in certain Bohannon projects mechanical was placed on an intermediate mechanical floor. Commissioner Kadvany said he would assume that the 5 percent was there to be used but it was framed negatively. He asked why an architect would want unusable space. Commissioner O'Malley said he thought that Commissioner Pagee had said that this was the norm for mechanical equipment. Commissioner Pagee said the Commission should not make a decision that was focused on one particular building. She said adding a percentage would add to the bulk and mass. Chair Riggs said it was 1 percent for mechanical or noise-generating equipment spaces. He said in one of his projects that he had to put equipment on the first floor because of the location of the building would not accommodate it on the roof or outside. He said he thought it was an error to challenge the mechanical equipment percentage. Commissioner Pagee said the zoning ordinance should address noise, and developers would build sound walls for

generators that produced too much noise. Chair Riggs said the threshold for the noise ordinance was low, and business would not accept a reduction in that threshold.

Commissioner Bressler said unfinished walls and floors in Option A, Section 1, C) (1) should be stricken. He suggested asking staff to define an unoccupiable space. He said he wanted an exclusion for catwalks. Commissioner O'Malley said he agreed that a definition of unoccupiable space should be included.

Commissioner Ferrick suggested moving elevator shafts and stairwells to (B) as included and then qualified. Development Services Manager Murphy said he thought that was a better location.

Development Service Manager Murphy said the main element of C) (1) was directed to the type of attic space that would not be counted. Commissioner Bressler said the intent should be clearer. Commissioner Kadvany said that graphical examples might be helpful, such as of mezzanines and equipment platforms. Chair Riggs suggested a heading to the ordinance indicating the amendment was to promote architectural variation and incentivize the enclosure of less attractive spaces. Development Services Manager Murphy said there was a dire need to update the entire zoning ordinance with a much greater emphasis on purposes, but he thought it would create controversy in this instance.

Commissioner Bressler suggested in C) (1) to call out attics and basements, strike out unfinished walls and floors, and define limited access. Development Services Manager Murphy said that related to the size of the opening to give access and the means of access. Chair Riggs said that he thought attics and basements would hit 90 percent of the potential scenarios.

Commissioner Keith moved to approve Option A C) (1) with following changes to remove unfinished walls and floors, add a definition of limited access, and include attics and basements. Chair Riggs suggested for the definition of limited access: "The absence of physical space to provide a legal stair or door." Development Services Manager Murphy said that if there were other features this exclusion might apply to those would probably come to light after 12-months review. Chair Riggs confirmed with staff that the use of the phrase "such as basement and attics" was appropriate. Commissioner Bressler seconded the motion. Commissioner Ferrick said she would like the word "typically" removed. Development Services Manager Murphy said that the "Building Official" would make the determination. Commissioner Kadvany suggested putting the language in the affirmative. Commissioner Keith said as the maker of the motion that staff could reframe the language in the affirmative. Commissioner Bressler agreed.

Commission Action: M/S Keith/Bressler to approve Option A C) with following changes:

- Reframe language in the affirmative
- Remove "unfinished walls and unfinished floors"
- Define "limited access"
- Add "such as attics and basements"

Motion carried 7-0.

Commissioner Bressler moved to approve Option A, Section 1, A, B, C) (2), (3), (4), (5), (6), and (7). Chair Riggs suggested that C) (5) be moved to B) (7) and be stated in the affirmative that it would be counted on the first floor only. Commissioner Bressler accepted that modification. Commissioner Ferrick said that there was going to be a clarification of C) (4).

Chair Riggs suggested discussing that after this motion. Commissioner Pagee seconded the motion

Commission Action: M/S Bressler/Pagee to approve Option A, Section 1, A), B) with the addition of Elevator Shafts and stairwells to be counted on the first floor only, C) (2), 3), (6), and (7).

Motion carried 7-0.

Chair Riggs said under C) (4) that it was preferable for those features to be enclosed within the building. Commissioner Pagee said there was the potential for creep with how this was written. She said a project could have utility rooms for each space which would create significant square footage. She said the items should be included square footage to keep the measurement simple and preventing the potential for a loophole. Commissioner Kadvanly said he agreed. He said there was a public benefit that the Council wanted to work into permits and he thought it was better to not give away everything at the front end. Chair Riggs said this exclusion was for aesthetics. Commissioner Keith said that most of the cities in which comparison was done included this in the GFA calculation. Commissioner Ferrick proposed adding mechanical equipment to B) (4). Commissioner Pagee said that not all equipment was noisy. Chair Riggs asked if C) (4) should just list generators and compressors. Commissioner Kadvanly said that "noise generating equipment" was a strange qualifier. Chair Riggs said if the Commission wanted to get compressors indoors that would control the noise better. Commissioner Pagee asked Development Services Manager Murphy if he could see a loophole in how C) (4) was written. He said his preference would be to include mechanical equipment in B) (4) and in C) (4) if it was only limited to compressors that should be listed rather than listing building mechanical equipment. He said building mechanical equipment might cause problems. Commissioner Pagee suggested using the language from Option B for B) (4). Commissioner Bressler suggested replacing "such as" with "containing." Commissioner Pagee suggested adding "such as compressors and generators in C) (4), and removing the reference to building mechanical equipment and emergency power generators and provided that the area is not designed for occupancy other than to allow for the operation and service of said equipment."

Commission Action: M/S Keith/Ferrick to use the language from Option B for Option A, B) (4) to read "Equipment and utility areas containing mechanical equipment, electrical panels, meters, controllers, switch boxes and to revise Option A, (C), (4) to read "Areas of a building dedicated to the enclosure of noise generating equipment such as compressors and generators not to exceed 1% of the Floor Area Ratio."

Motion carried 7-0.

Commission Action: Unanimous consent to add catwalks to Option A, Section 1, (C).

There was discussion about making a statement about purpose. Commissioner Kadvanly said he thought the revisions had addressed that.

Development Services Manager Murphy asked if equipment platforms should be included or excluded.

There was a consensus to revisit the equipment platforms after it was defined. Chair Riggs asked if the Commission wanted to hold off making a recommendation to forward to City Council. Development Services Manager Murphy said that it would not be a consent item.

He said he would like a straw poll for whether to include or exclude the equipment platform as GFA. Five Commissioners indicated it should be included.

Development Services Manager Murphy said he would use Option A as the source document and would use redline and strikethrough for changes. He asked also about making the finding for CEQA.

Commission Action: M/S Riggs/Bressler that Option A with changes proposed by the Commission was exempt from CEQA.

Motion carried 7-0.

## **ADJOURNMENT**

The meeting adjourned at 11:53 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on January 12, 2009.