



## PLANNING COMMISSION EXCERPTS

November 5, 2007

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

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**CALL TO ORDER** – 7:00 p.m.

**ROLL CALL** – Bims, Bressler (arrived 7:05 p.m.), Deziel (Vice chair), Keith (Chair), O'Malley, Pagee, Riggs (arrived 7:03 p.m.)

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

### **D. PUBLIC HEARING**

- 3. 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 this was the second public hearing on this item. The Commission previously considered the Zoning Ordinance Amendment (ZOA) at the October 8, 2007 meeting at which time the Commission directed changes to the draft ZOA. He said that the Commission and public had an opportunity this evening to comment on the revisions staff had made in response to that direction.

Questions of Staff: Commissioner Deziel discussed with the Chair whether he should ask his questions at this time or hold them until discussion, but noted that he

wanted the public to hear his concerns before their opportunity to comment. Chair Keith suggested he ask the questions. Commissioner Deziel said regarding bay windows whether in the R-4 zoning district if an apartment had a window that extended out from the kitchen, for example, would that space count against square footage. Development Services Manager Murphy clarified with Commissioner Deziel the height of the window that was extended and that it would be about 30 inches off the floor or above the sink and counter height. After drawing out the example window, Development Services Manager Murphy said that as the overall intent of the revised draft ZOA was to count space that was definitely usable, he did not think such a window would be included in the Gross Floor Area (GFA) calculation. Commissioner Deziel said such features would require staff interpretation. Development Services Manager Murphy said that after the adoption of the ZOA there would certainly be additional things that would need clarification and discretion, but there were things that could be successfully regulated. Commissioner Deziel said that such a feature would not then be considered a bay window. Development Services Manager Murphy said it would be a straight window with a projection.

Commissioner Deziel said most of his questions related to the nonconforming use section. He said the intent of Section 16.80.110 in the revised draft ZOA seemed an attempt to ensure that a certain grouping of buildings was not thrown into being nonconforming or into being amortized. He said the method of implementing that as now presented was to mirror the structure in the existing Zoning Ordinance (ZO) that provided exemptions for Floor Area Ratio (FAR) requirements which were adopted in 1986. He asked whether it was intentional that staff was trying to mirror the existing ZO. He said in 16.80.110 (a) that the first sentence talked about being exempt from this new proposed definition clarification, which would revert to the existing definition of GFA, which definition would not exist in this revised draft ZOA. Development Services Manager Murphy said that this section had a very strong parallel with the existing ZO as it was based off two exemptions that were built in previously in 16.80.080 and 16.80.090. He said this section was consistent with what the Commission considered previously and had not had much change since the October meeting. He said this meant that certain buildings were not nonconforming and would not be subject to amortization, thus there would be no cloud as related to financing. He said that did not necessarily require the GFA be defined as in the existing ZO if the property owner chose to do nothing with their building. He said in the instance a property owner chose to do something with the building there were other provisions. Commissioner Deziel asked whether the main difference between the existing nonconforming section and that now proposed was that the buildings built prior to 1986 now have this additional restriction in that if their property owners do more than 50 percent replacement then the exemption was lost. He said in the proposed ZOA the related section had no requirement for a 50 percent replacement limitation with the rest being similar to the existing so that nonconformity and amortization were avoided. Commissioner Riggs said the 50 percent replacement limitation was at the end of Section 3 on page A.4 under e.5. Development Services Manager Murphy said that what Commissioner Riggs

referred to was the way in which staff tried to deal with the parallel. Commissioner Pagee said the difference between 16.80.110.e.5. and 16.80.080d was that the removal or replacement on one or more occasions with a cumulative total of more than 50 percent of the GFA would lose the exemption and that was needed or a loophole was created. Commissioner Deziel said the way he read it was that under 16.80.110 these buildings were not subject to the 50 percent replacement loss of exemption so the loophole was the main path. He said however that certification with 50 percent replacement would become null and void under "5" on page A.4. He asked under 16.80.110.a if a property was exempt from the clarification of the GFA as written in the proposed draft ZOA how the GFA would be defined. He said this exemption language worked in the existing ZO because it was an initial condition in defining GFA. He said as this was defined then it was no longer an initial condition and using that structure to exempt certain buildings from the new definition was not functional as the old definition would be needed to define these exemptions. Development Services Manager Murphy said what the section was trying to achieve was that if the building met the current requirement of GFA there was no issue; if it did not meet the new definition and the property owners wanted to refinance or avoid amortization then they were protected. If however the property owners wanted to make changes they would have to look at specific provisions elsewhere in the revised draft ZOA. He said this gave property owners a way to pursue changes that would honor historical decisions and which were part of the record for the property. He said this format was used in 1986 when GFA was established and in 1994 when floor areas were reduced in the C.1, C.3 and C.4 zoning districts. Commissioner Deziel said he was looking for clarity as he thought the owners of buildings which met this exemption in the revised draft ZOA would be at a loss to figure out how their GFA was defined. He said if their properties could get through the certification process that would clarify their exemptions and be measured against the new GFA definition but anyone who did not apply for certification had protection but no definition for GFA. Commissioner Riggs said he thought this would act the same as a zoning change and that for property owners to find their definitions of GFA they would have to look at the codes prior to this clarification. Commissioner Deziel said his issue was that old codes were irrelevant and the City wanted to get rid of the old definition. Commissioner Riggs said the idea of grandfathering was to keep the ambiguous definition which was to the property owner's advantage and future projects would be on a surer footing. Deziel said he had a different take on the matter and would address it later.

Public Comment: Mr. Morris Brown, Menlo Park, said he did not think the revisions recommended by the Commission at their October 8 meeting were satisfactory. He asked whether the staff report that would go to Council would include the original draft ZOA before the Commission amended it as well as the historical material. He said there should be a clear and concise comparison done in a table among the FAR rules that would be in place with the Commission's revision, those as originally presented on October 8, and with those of other cities. He said Ms. Patti Fry had submitted a document like that at the October meeting and it had made a clear comparison of Menlo Park's proposed FAR rules with those of other cities.

Mr. Elias Blawie, Menlo Park, urged the Commission to consider Mr. Brown's idea related to a comparison with other cities' practices. He said the Commission should get more information as to the impact on the City's fees with these proposed changes, such as on impact fees, permit fees, BMR fees and other applicable fees. He said he did not agree with elevators and stairwells being excluded as those features export bulk to the neighborhoods. He said there was no attempt to make a relationship between stories and land coverage; he said there were opportunities to provide incentives to people that if they wanted to build additional stories they would not cover the lot as much. He said he did not think the mechanical equipment exemption should be handled this way as it would increase the development intensity; he said using conditions of approval should be continued. He said he did not agree with the exemption and certification as he saw the properties for which these would apply as having ill-gotten gains, which should not be protected. He said he thought the original ZO was clearer. He said this was liberalization relative to the statute on the books currently and it would institutionalize a definition that had been changing and occurred in the past. He said at a minimum this change should have had environmental impact review or the proposed draft ZOA should have environmental impact review.

Mr. David Speer, Menlo Park, said he wanted to second both what Mr. Brown and Mr. Blawie had said. He encouraged the Commission to make sure that the original ZOA was included with the report to the Council. He said the policies they were trying to change were misdirected. He said when GFA was being counted in a building and the owner was building things with unfinished walls and ceiling and unconditioned air, if this was not being counted by the City then the City was losing revenue. He said regarding CEQA process that if the City was putting a permanent fixture in the ZO that would liberalize the regulations that should have an environmental study.

Chair Keith closed the public hearing.

Commission Comment: Commissioner Bressler said if the point of the ZOA was to clarify regulations he thought 16.040.325.c which offered discretion on unfinished floors, ceilings and electrical was somewhat subjective and had the potential to be played with to the City's detriment. He said he would like to keep as much as possible to the clarified definition of GFA as otherwise there was more and more complicated judgments that involved discretion. He said the point made about the potential for the City to lose revenue through this ZOA was valid. He said the ZOA was very complicated and confusing regarding the grandfathering provisions which he thought defeated the purpose of the ZOA, especially as there were issues with allowing the tearing down of less than 50 percent of the building which became difficult to enforce. He said 60 Willow Road was called a remodel but was demolished to the ground. He said it was better to keep the ZOA as simple as possible and he would like the Commission's recommendation to support simplicity. He said a person renting a space in a commercial building paid for the square

footage including the elevators and stair wells to the space and by the City also assessing that as square footage then the City would be counting the heating and cooling load on that building. He said as part of the City's provision to be a Green City, the City needed to account for such things and the responsible tack to take was counting those spaces as square footage.

Commissioner Pagee asked the basis of the calculations for the City's construction and permits fees. Development Services Manager Murphy said that building permit fees were mostly calculated by valuation, a large portion of which was the square footage of a building. He said in the future permit fees might not be calculated off valuation. He said as it related to residential there were probably more standardized rules of thumb as per square foot calculation and not so much for commercial as it depended more on the specifics of the project. He said regarding construction street impact fees that those were based off valuation of which square footage was a part; but traffic impact fees and BMR fees were based off GFA.

Commissioner Riggs said he recalled from applications that electrical, plumbing and mechanical improvements used a different fee basis. Development Services Manager Murphy said it was based on the number of units per the subpermits and was under the current fee structure, but there were methods that could be based off square footage for those fees as well. Commissioner Riggs asked how the base number of valuation in terms of the square footage was determined. Development Services Manager Murphy said he believed that a certain publication established nationwide figures for value construction, which number was adjusted for the Bay area and then again adjusted for the Menlo Park area. He said the result was a reasonable number. He said there were multiple purposes and differences in what was calculated such as for nonconforming properties. Commissioner Riggs said he had found that the City accepted the applicants' valuation. He asked what was the valuation used by the City for traffic and street impact fees. Development Services Manager Murphy said that square footage was used to calculate traffic impact and BMR fees. He said that valuation was used for calculating building permit and construction street impact fees and indirectly used square footage. Commissioner Riggs said the two types of fees that might be impacted by a change in definition of square footage would be building department fees and planning fees. Development Services Manager Murphy said there was a relationship between increases in building square footage in that there would be an increase in fees based on square footage. Commissioner Deziel said the City Council sets the master fee schedule annually, which fees were meant to accomplish full cost recovery, and that changes would be adjusted annually. Development Services Manager Murphy said he did not think this was how the valuation was established however.

Commissioner Bressler said the proposed ZOA was making the process more complicated and that it was a separate issue about the need to adjust fees. Commissioner Bims said he agreed with Commissioner Bressler that a more easily understood ordinance would be better. Commissioner Pagee said she agreed and the more that explanation was made the further away from the intent the result was.

Chair Keith asked what the Commission wanted to do, and whether they wanted to go through each section to look at simplifying. Commissioner Pagee said doing so would just create more explanation. Commissioner Riggs said there was some question about whether the grandfathering was necessary beyond honoring applications that were currently submitted. He said the difference in square footage and possible impact to fees was nothing compared to changes to allowable lot coverage. He suggested perhaps the certification process should be removed and that only projects which had begun its application process under a previous set of rules should not be affected by this proposed change to GFA. Commissioner Deziel said that a property on Sand Hill Road either had 4,000 square feet to build or they had nothing with these changes, and while they had an application for a 200 square foot project, they did not have an application in for entire square footage. He said the difference with taking away elevator and stairwell exclusions meant that put many buildings in a state of not redeveloping, but if those exclusions were kept then certification was just a rounding and would simplify. Commissioner Riggs suggested looking at the exclusions.

Commissioner Pagee said that if a property owner had not taken advantage of the leniency of the interpretation as applied with that loophole to date then that loophole was now closed. She said it was important to define floor area so it was clear and that process had to occur as soon as possible. She said the City was trying to be accommodating and that might create more problems.

Commissioner Deziel said the issue with exclusions was not whether someone used them or would not get to use square footage on their land but related to what the City wanted to look like. He said one speaker mentioned incentives. He said one incentive with the exclusion of mechanical rooms from GFA calculation was the benefit provided in that these rooms would be sound insulated; if there was not exclusion then mechanical equipment would be placed on the roof with a requirement of a decibel rating of 50 db at the property line, but the decibel level would be much less with an internal mechanical room and that was a benefit to residents and tenants. He said if the City wanted fewer elevators that would impact the value of buildings in terms of amenities desired by tenants. He said if the intent of square footage was to regulate use intensity that it was better for the City to consider elevators as sidewalks between the floors for that use. He said there was data that more than half the cities that were compared excluded those items from square footage as well as stairwells. He said increasing square footage to include those items meant that the contractor's costs would be higher and that would make the building of structures even more expensive for Menlo Park. He said that there was room to cleanup 16.080.110a but it could be left if he could be made to understand how GFA would be defined. He said that section was needed to recognize grandfathering for serious financial considerations. He said If c.1 was too subjective then he was open to taking subjectivity out of it.

Commissioner Bressler said the purpose of the proposed ZOA was to define GFA calculation and was not about incentives. He said he wanted a simple calculation and did not want incentives as part of that. Commissioner Deziel said the only point of GFA was for it to be used from a zoning perspective for the calculation of FAR, which was the regulatory tool. He said it related to how much building the City wanted on a site, what the City would allow to be excluded and what to charge for that.

Commissioner Riggs said he looked at what would happen to design if these exclusions were not offered. He said if an architect was presented with spaces that were not usable or occupied but which would count toward square footage there would be unfortunate changes to design, such as the use of a flat roof rather than a pitch roof; or eliminating transitions that used void to create a more attractive design. He said if covered parking was part of floor area then there would be no covered parking; similarly if covered porches and balconies were considered part of the floor area, there would be more flat facades and less architectural interest. He said if the Council tried to mandate the provision of these features there would be opposition. He said if mechanical equipment or trash/recycling enclosures were not excluded from floor area, the equipment would be on the roof or in the yard, and property owners might use a plastic storage unit for the trash/recycling area. He said multi-story buildings needed elevators. He said if stairwells were included in square footage then there would only be fire stairs used in development. He said these areas did not make a big enough dent on how much the developer could build as their exclusion would offset the fact that the City did not want open stairs as typified with motels, or mechanical equipment on roofs and outdoors only, or seas of parking. He said he supported the exclusions listed in the draft revised ZOA.

Commissioner O'Malley said that he did not think the definition was all that complicated and was in fact adequate and he agreed with the comments by Commissioners Deziel and Riggs regarding the need for exclusions.

Commissioner Deziel said that it was green to upsize mechanical ventilation and when a certain amount was upsized this was given a point in the LEED process. He said ventilator shafts were excluded already but if it was eliminated that would run against providing good air quality in a building. Commissioner Pagee said that outside air was available through a ceiling plenum to a side wall louver. Commissioner Deziel said that would create a sound issue. Commissioner Pagee said it would not as it would be bringing air into the building. Commissioner Riggs said it would have an aesthetic issue, noting instances wherein he had been forced to do side vents for both residential and commercial buildings and people just did not like side vents.

Chair Keith said she would like an easy definition that was understandable. She said it was interesting to note the fees as they all wanted the City to receive what it needed and deserved. She agreed with keeping the exclusions. She agreed with Mr. Brown that the Council should get the original draft ZOA and the revised version

as well as the historical material. She said she had concerns about how far back they would allow grandfathering and staff had recommended two years and previously the Commission suggested five years. She said the Council should see both recommendations. She said on page A.3, Section E, in the fourth line "provide" should be corrected to read "provided" and that should be changed on the draft ordinance as well. She said regarding elevators and stairwells that she understood Mr. Blawie's concerns about exporting bulk to the community but she supported the exclusion as these features were desirable. She said that they had not clarified bay windows enough. Commissioner Deziel said it was an architectural feature and he could see a definition for a bay window that would be exempt or allow staff to interpret. Commissioner Pagee said bay windows added to the square footage and it was an advantage to have additional footprint that could be cantilevered at numerous points on a building. Chair Keith asked if the bay window was only counted if it had a foundation. Commissioner Pagee said that was how it had been interpreted. Commissioner Deziel said for exclusion a bay window should mean a window that was a minimum 18-inches off the ground, extended out for a maximum 18-inches and whose width was a maximum of six feet, and that provided about one foot deep in the interior which was just room enough for a bench and pillow. Commissioner Pagee said if the framing member did not extend to the floor and the part cantilevered was above the floor as long as the floor joists did not extend beyond the face of the building it would not count as square footage. Chair Keith said that might be an easy way to describe square footage exclusion for a bay window. Commissioner Riggs said Mr. Blawie talked about institutionalizing "creep" that could occur with bay windows over the years. He said to clarify what they meant by floor as he thought 18-inches above the floor was a good rule for the bottom of the bay in the interior. Chair Keith said she preferred Commissioner Pagee's description. Commissioner Deziel said it had to be above the floor and at some maximum depth. Commissioner Riggs said bay windows had to be limited but it would complicate matters if there had to be such a specific definition of a bay window for exclusion. Development Services Manager Murphy said for bay windows there was the potential to be more specific and part of that depended on the overall intent and philosophy. He said he agreed that they would not want the feature to have floor and he would be more comfortable with a minimum 18-inches off the floor and maximum widths otherwise there would be a design to take advantage of the ambiguity. .

Commissioner Pagee asked about the intent for the exclusion of mechanical rooms and said they needed to be identified as rooms permanently required for the provision of ventilation, or would this include product development rooms. She said the exclusion referred to noise-generating equipment and asked whether that applied to the tenant's business needs or the property owner's requirement to provide ventilation. She said if the space was used by the tenant and later a change occurred to use that space otherwise then the building would be over the limit for GFA. She said if it was simple and clear to consider square footage as everything up to the walls of a building, but with an exclusion such as this a loophole was being created. She said that if the mechanical equipment was placed outside at a later

time this would give the building more square footage. Commissioner Bressler said that Commissioner Riggs's comments were valid regarding design restrictions that would occur if certain spaces were not excluded from GFA, but he was concerned that there was no limit to the amount of the excluded space. He suggested that no more than three percent of the buildings FAR would be exempted for a mechanical room. Commissioner O'Malley said he agreed that there had to be a limit. Commissioner Deziel said that Commissioner Pagee's comment on mechanical rooms was well observed. He said that the noise generating equipment rooms could be further defined, and if in the future the equipment was moved to the roof then that space should no longer be exempted, and if that meant they would exceed GFA any building permit should be denied that tried to use that square footage. He said it sounded fine to have a cap. Commissioner Riggs said he understood with C.4 that they had discarded an attempt by a constituent to have an elevated platform with mechanical equipment for testing excluded. He said this exclusion should be limited to those buildings that have internal mechanical systems. He said the proposed ZOA now read "provided that the area was not designed for occupancy." He suggested adding "or not convertible for." He said that did not mean it was physically possible to convert the room to usable space, rather that conversion would not be allowed. He said they might want to limit the amount of building space that might be excluded for mechanical equipment rooms at perhaps five percent. Commissioner Deziel said an engineer had indicated six to eight percent was a norm.

Commissioner Riggs said he thought the Commission had not excluded electrical and phone closets. Commissioner Deziel said C.1 was a new recommendation from staff regarding the exclusion of those. Development Services Manager Murphy said this change was based on direction from the Commission to exclude space that could not be occupied. Commissioner Riggs indicated he recalled that direction. He said that perhaps up to five percent of a building FAR might be excluded for those areas of a building dedicated to the enclosure of noise-generating equipment such as building mechanical equipment and backup power generators provided the area was not designed or convertible for occupancy. Commissioner Deziel asked whether it should be up to five percent of GFA or FAR. Commissioner Bressler said it should just be FAR. He said the exclusions in .325.c.1 were pretty loose and there should be an overall exemption from the exclusions except for parking. Commissioner O'Malley agreed that there should be a total percentage allowable. Commissioner Deziel said they might delete deleted c.1 or consider it separately, noting that parking and covered porches were desirable exclusions; also they would want to exclude vent shafts and trash/recycling enclosures. He said that they were really discussing number 1 and 4 listed as exclusions. Commissioner Bressler said he did not want to give a free pass to people to build bulk. Commissioner Riggs said they were dealing with market generating forces and asked whether a person would build a 1,200 square foot stairway rather than an 800-foot stairway because of the attendant increase in cost. He thought the market forces would limit that increase in size. Commissioner Bressler said perhaps market forces would limit but in case they did not he would prefer to have something in the ordinance to prevent big open

spaces in a building. Commissioner Riggs said his concern with three different percentage limits was that people would then try to build to the limits of each. He said if they tried to limit other exclusions, people might build the trash/recycling areas much bigger and use those structures for additional purposes. He said placing a limit on how much square footage might be excluded for elevator shafts and stair wells; a limit on mechanical equipment rooms and limits on unfinished spaces and trash enclosures would make the ordinance more complicated.

Chair Keith said previously the Commission had information for other cities and asked if staff had seen limits in other cities on the issues the Commission was discussing. Commissioner Deziel said he had read the ones related to elevators and stair wells and there was divergence. He said the City of San Mateo defined the same as was proposed in the ZOA and counted stair wells and elevator shafts only once but the town of Los Altos counted the space at every level and perhaps coincidentally they tended to have one-story buildings. Chair Keith asked about trash enclosures. She asked if any other city applied percentages. Commissioner Riggs said they did not. Commissioner Deziel said the trash enclosures should be required to look like trash enclosures. Commissioner Pagee said trash enclosures would need to have an opening to allow a free flow of air; she said they should also address how to encourage commercial properties to recycle. Commissioner Riggs suggested changing the language to add the word "solely;" thus, the exclusion would read "enclosures solely for trash and recycling." Chair Keith confirmed that staff had noted this suggested change to the language. She asked if they wanted a percentage limit on item c.5. Commissioner Riggs suggested designating items c.1 and c.4 as 1.a and 1.b respectively and add language in the title to allow up to five percent of the FAR for those exclusions combined. Commissioner Pagee asked if that was up to five percent total. Commissioner Riggs said he was not entirely for doing this as a ceiling height less than six inches would allow attic spaces; he said they would be putting a limit on two unrelated things. He said that attic spaces might potentially take up a lot of area if someone wanted to use something other than a flat roof. He said people had grown accustomed to expecting residential roofs on commercial buildings. He said if there was no c.1 then they would not use these types of roofs as their use would mean 2,000 square foot of attic counting against FAR. Commissioner Pagee said developers were limited as to the height of a building and wanted as much square footage as possible on the usable floor spaces. She said they could use a Mansard-style roof for the architectural detail. Commissioner Riggs said unless the three sections of roof were at an extreme angle the floor of the triangle would be floor space and developer would be disinclined to use that space, but it would count towards FAR. He said setbacks and void spaces were used to design detail so this would create a design restriction. He said they needed to restrict bulk. He said that bulk was not made with a sloped roof as it would hardly be seen from the street and the attic would practically be invisible. Commissioner Deziel said under 325.a that it had to be a floor and he did not think a triangle of flat space under a Mansard-style roof qualified as a floor. Development Services Manager Murphy looked for a definition of floor. Commissioner Riggs said it was an exemption if it had a ceiling height less than six-foot six-inches. He said a

floor was a continuous surface that could be stood or walked upon. Commissioner Bressler said that a percentage would make things concrete as it was simple. Chair Keith said it had been suggested that people would then build to the maximum allowed by exemptions. Commissioner Riggs said people wanted more residential architecture for commercial buildings and that would be pushed away if there was no attic space. Commissioner Deziel said that perhaps c.1 should be removed. Chair Keith noted a suggestion to rename c.1 and c.4 as 1.a. and 1.b and then allow up to five percent of the building's FAR for those spaces. Commissioner O'Malley said he supported the use of a percentage but he was not sure what the right percentage was. Commissioner Pagee said a comment made by an engineer on a familiar project was that mechanical spaces and non-used spaces would equal about six percent FAR on a project, five percent of which would be for mechanical rooms. Commissioner Riggs said only a minority of projects would have an emergency generator need, but to put the restriction on mechanical equipment space and emergency generator space meant that for normal size projects there would not be enough space for the generator. Commissioner Deziel suggested giving one percent of FAR for use to house a standby generator internally. Commissioner Pagee said they were talking about office space. Commissioner Deziel suggested instead to allow one percent of the FAR for the housing of emergency generators. Commissioner Pagee noted that the allowance would only be for emergency generators and not standby generators as the latter were driven by tenant need and could be placed outside. Chair Keith said that one percent of the FAR could be allowed for emergency generator space. This concluded the Commission's discussion of c.4.

The Commission considered c.5 regarding elevator shafts and stair wells. She asked whether they should place a limit. Commissioner Deziel said he would prefer no limit although there was a possibility of creating a wrap around stairway in a commercial building. He said for a residential project that any amount of space in the stairway would be fine. Commissioner Deziel asked how the stair well would be defined for a semi-circular stairway adjacent to a 400 foot entry. Development Services Manager Murphy said the stair well was the step between the railings that would be counted and confirmed that it would not exclude the lobby area leading to the stairway from FAR. Commissioner Bressler said in a four-story lobby that the stair well would only be counted on the first floor. He said he would like a volumetric restriction and if there was a big open area that should be counted. Commissioner Deziel asked staff to confirm whether the stair way was counted only on the first floor. Development Services Manager Murphy said there was no restriction in the existing ordinance nor proposed in this ZOA and stairwells were counted once. Commissioner Bressler said the footprint and height restrictions controlled this now. Development Services Manager Murphy said it was the overarching height. Commissioner Riggs said his conclusion was that a stairwell was a small factor in a grand stairway as there had always been the multi-storied lobby. He said they might not be able to control bulk by controlling the public space but the market forces would control this space. He said otherwise builders would have the option to create a doughnut-shaped building such as was demolished at 178 Linfield Drive that had

an atrium in the middle. Commissioner Bressler said there was no point on putting a percentage limitation on the elevator shafts and stairwells exclusions.

Related to c.6, Commissioner Deziel asked whether “building” should be inserted before “mechanical.” This met the Commission’s approval. Chair Keith noted that they had already changed c.7 to read “solely for trash/recycling enclosures.”

Chair Keith said no one had brought up anything related to 315 and 469 and confirmed there were no comments. She suggested they consider 110 regarding exemptions from the GFA definition clarification. She said this was where Commissioner Deziel had asked if a property was exempt how the GFA was defined. Development Services Manager Murphy said he did not think anything needed to be done unless someone could describe a situation in which a need would occur. Commissioner Riggs asked if there was a nonconforming clause for commercial. Development Services Manager Murphy said if things could be simplified he would like that but this was an exemption from the nonconforming requirements. Commissioner Deziel said that would make a difference for him as it said that it was an exemption from GFA definition clarification. Development Services Manager Murphy said it was the exemption from the change to the municipal code that created a definition that would create nonconformity in the calculating of GFA and not for other parameters of nonconformity. Commissioner Deziel asked if it was clearer to say exemption from nonconformity with respect to GFA. Development Services Manager Murphy said that he would need to consult with Legal Counsel. Commissioner Deziel said that 110 should be folded into the existing exemption section 80 and if a building was built before 1986 it was exempt and would not be amortized, and if a building was built after 1986 and built or permitted by May 17, 2007 then the main difference was the 50 percent replacement and that properties would not lose their exemption with a 50 percent replacement by working through a certification process. He said after 1986 there were two types of buildings, one of which would be made nonconforming with this GFA definition and those that would be conforming to the definition clarification. He said those made nonconforming could do the certificate makeup in which case they received a rationale for conformity under the new GFA definition. He said in a second scenario that if they did not do the certification process that they would not be found to be nonconforming in relation to GFA and the City would not amortize them, but in all other respects they would be subject to the new definition of GFA. He proposed that in section 80 there be two outlines with text for buildings built before 1986 and text for buildings built or permitted after 1986 and before May 17, 2007.

Commissioner Riggs said he could see the logic of two timelines, but suggested that if they were dealing with a down zoning of an area to reduce maximum allowable height for an example, then existing buildings would become nonconforming if they did not meet that height maximum and all future buildings would have to meet the new regulations. He asked if they needed a lengthy description or if the properties should just be considered nonconforming if they did not meet the clarified definition

of GFA. He asked if 16.80.110 could just apply to amortization and all properties that did not meet the new definition of GFA would be nonconforming.

Commissioner Bressler said that if an owner wanted to remodel a building and it was nonconforming because of this then the property owner should be allowed to bring a request for a use permit forward to the Commission.

Commissioner Deziel said that if they sent their recommendation to Council with a simplified 110 and the Council chose to remove the exclusions that would create a problem. He said that they really did not want to create nonconformity for commercial owners as it was a big problem for them. He suggested a motion to recommend that all exclusions be kept; for 110 to be simplified and to provide a remedial step for anyone who claimed to have been made nonconforming by adoption of the ZOA. He said that nonconformity would probably require a variance rather than a use permit. He said that 110 would need more information if the exclusions were to be removed. He said 110 should be included within 80. He said that 80 and 90 did not have a language construct whereby a building was exempt from the event that changed the GFA definition. He said it would leave the uncodified stuff in the ordinance uncodified

Commissioner Riggs said they would need to write in the previously uncodified GFA definition but practiced GFA, so that all miscellaneous spaces were exempt if a person wanted to go for certification. He said he did not think it was necessary or deserved. Commissioner Deziel said 90 outlined this but the issue before them was that the calculation of GFA had been fuzzy and that could not be defined. He suggested saying that the City was changing the definition of GFA and including these exclusions, and this might make one or two properties non-conforming, in which instance the Community Services Director could make a determination that the building was built after 1986 and now determined to be nonconforming based on definition of GFA adopted May 17, 2007 and allow them to apply for a variance.

Chair Keith asked staff to comment. Development Services Manager Murphy said it would be best if staff and Legal Counsel could look at the ordinance and some other things, including the nonconforming uses chapter, in a more comprehensive fashion. He said that every time something was modified in an ordinance there was a lot of interest from the property owners. He said he was happy to support the simplicity and make rules and move on but that was not always the reality. He said that the use permit process could be used for an application that had been made nonconforming as to the GFA calculation. He said that if they wanted to simplify the draft revised ZOA that they would need to schedule another public hearing for the Planning Commission for its review and receipt of public comment.

Commissioner Deziel said if the Council was not on board with the exclusions than a Section 110 would be needed. Chair Keith suggested requesting a joint study session with the Council. Commissioner Deziel moved to accept the changes outlined for Section 1 and 2 as proposed by staff, and ask staff under Section 3 to

provide two options for 110. One option would eliminate the reference to the exemption from the GFA definition clarification and the other would be a complete rewrite of 110 so that any property owner whose building was made nonconforming by this clarified definition of GFA might apply for a use permit based on a stipulated hardship; recommend using the simpler approach if all the exclusions were kept and if less than those exclusions were kept that 110 be revised; invite Council to a joint session to work through the merits of both approaches. Commissioner Pagee seconded the motion. Commissioner Riggs offered a friendly amendment to start the motion with a recommendation for a joint session with the Council.

Commissioner Deziel said the motion would begin that the Commission was recommending choices in the draft revised ZOA and requesting a joint session with Council to discuss the choices as developed by the Commission. Development Services Manager Murphy said the sequencing would be dependent upon Council's decision about a joint session; in the instance that they did not want to hold the session then a public hearing would be scheduled for the Planning Commission.

Commissioner Bressler suggested simplifying the motion to request a joint session and to recommend some changes. Chair Keith asked if they did a simple revision of 110 or eliminated 110 whether a public hearing would be needed. Development Services Manager Murphy said it would be needed and could be a joint session with the Council or a public hearing before the Commission.

Commissioner Deziel withdrew his motion.

Commission Action: M/S Deziel/Riggs to accept staff's recommendation for Section 1, 2, 4, and 5 and with the changes proposed by the Commission.

Motion carried 7-0.

Commissioner Deziel suggested that staff bring back Section 3 and the revision to 110 to the Planning Commission. Development Services Manager Murphy said he thought it would be best if the Commission were to consider the proposed ZOA at another public hearing and then request a joint session with Council.

The Commission and staff discussed potential changes to Section 3. Commissioner Bressler thought that the GFA definition clarification should be the de facto code for GFA calculation for all buildings built since 1986 and built or permitted before May 17, 2007. Commissioner Deziel said that might not make any of the projects built in that time period nonconforming because of this ZOA and 110 would be essentially eliminated. Development Services Manager Murphy said there were definitely projects approved by Council such as Menlo Square that would not comply with this definition. Commissioner Riggs suggested in 110 that the exemption from the new GFA definition would be those projects built after 1986 and built or permitted before May 17, 2007 that were approved on a project by project basis, and that approval would stand, subject to applying for certification.

Commissioner Bressler said the Council had established these exemptions and he did not know how making this change would impact constituents. Chair Keith asked if this could be presented as yet another approach to 110. Development Services Manager Murphy said it would address part of the issues but did not necessarily address people who made decisions on certain buildings such as the Quadrus property. He said it would be included in staff's responses when this item was brought back before the Commission.

Commissioner Deziel moved to request that staff come back with alternative forms of Section 3 that simplified including the use permit approach to deal with the nonconformity created and basically declaring no nonconformities on the principle that every project had a definition for GFA when it was considered. Development Services Manager Murphy said that there was also a possibility to go along the lines of Commissioner Bressler's suggestion that the GFA definition clarification should be the de facto code for GFA calculation for all buildings built since 1986 and built or permitted before May 17, 2007.

Commission Action: M/S Deziel/Keith to request staff to bring back two options for section 3, including a simplified version of 110 as proposed by the Commission to a future Commission meeting.

Motion carried 7-0.

Commissioner Deziel moved for staff to have a definition for bay window to consider that would be excluded. Commissioner Pagee seconded the motion.

Commissioner Riggs pointed out that b.6 included bay windows and similar projections and cantilevered areas which he thought meant unenclosed balconies which were in conflict with the later covered porches and balconies. He said he was prepared to abandon bay windows.

Commissioner Pagee withdrew her second and the motion died for the lack of a second.

## **ADJOURNMENT**

The meeting adjourned at 11:40 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on December 17, 2007, 2007.