



PLANNING COMMISSION EXCERPT MINUTES

Monday, November 17, 2008
7:00 p.m.
701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers

CALL TO ORDER – 7:03 p.m.

ROLL CALL – Bressler, Ferrick, Kadvany, Keith, O'Malley (Vice chair), Pagee, Riggs (Chair)

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

D. STUDY ITEMS

1. [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. ***Continued from the meeting of November 3, 2008.***

Chair Riggs asked that speakers limit their comments to three minutes. He noted that the Commission had spent many hours on this project, and encouraged the public to stay for the Commission's discussion. He asked if staff had additional comments.

Development Services Manager Murphy said that a piece of correspondence from Ms. Peggy Lo, the property manager of the Quadrus project on Sand Hill Road, had been distributed to the Commission at the dais.

Chair Riggs said the Commission at the end of detailed discussion on November 5, 2007 had voted to send its recommendation to the Council with a request to have a joint session of the Council and Commission so that the Commission might explain the reasoning that went into its recommendation. He noted that the Council did not desire a joint session. He said that Mayor Cohen then asked the Planning Commission Chair and Vice chair to meet with Council

Member Fergusson and him. He said subsequently the Mayor requested that the Commission's recommendation discussion be summarized into two pages with review by the Chair, Vice Chair and Council Member Fergusson. He said the summary was circulated. He noted that the Commission had dedicated much effort to the consideration of gross floor area calculation including looking at how it was calculated in 14 other cities in the bay area.

Chair Riggs asked if there was public comment.

Ms. Peggy Lo, property manager for the Quadrus project on Sand Hill Road, said she supported option A, which incorporated the Commission's ideas and protected existing projects such as Quadrus. She said that there was 4,600 square feet left on the Quadrus property which at some point they would like to develop but which might be jeopardized dependent upon what the City decided. She asked for consideration for older projects that already existed.

Mr. Morris Brown, Menlo Park, said there were new members on the Commission and that should be taken into account. He said he thought Option A was totally contrary to what the Council had wanted to happen at the Planning Commission. He said the Council wanted a literal interpretation of Floor Area Ratio (FAR). He said Option A codified a "give away" of FAR. He said he supported in general Option B. He said if individual Commissioners dissented they should write their own dissenting statements to the Council.

Mr. John Tarlton, Menlo Business Park, said that Option A comported more closely in its interpretation of gross floor area (GFA) and FAR than Option B with his own experience in property management, and with how 12 other cities in the bay area calculated GFA, and the interpretation of GFA under the Uniform and International Building Code. He said the amount of time the City had spent on this issue worried him because it was regulating in the rear view mirror because of a couple of projects that were already beyond such regulation. He encouraged an end to the discussion as the City had much more pressing issues to address.

Chair Riggs said there had been references to Option A and Option B and he had forgotten to make introductory remarks. He said Option A was a summary of the Commission's actions from November 2007 with clarifying language regarding the grandfathering which would cover Quadrus. He said Option B was a statement of the current code that was the historic problem that Council asked the Commission to clarify. Development Services Manager Murphy said he agreed with Chair Riggs description of Option A, but he would describe Option B somewhat differently. He said Option B basically was what staff had drafted for the Commission's review in October 2007 with some modifications for clarification. He said that this did not mean that the Commission would want to recommend two options.

Chair Riggs said that Option B had not been developed by the Commission, but was presented as a context structure to give an alternative to the Quadrus solution. Commissioner Bressler said Option B was staff's attempt to resolve the will of the City Council and was what had been used by staff for the last year to make gross floor calculations. Development Services Manager Murphy said Option B was put forward because that was what staff thought a Commissioner had requested to create a context for Option A. Chair Riggs said regarding the information provided for the November 3, 2008

meeting that he found it unfamiliar, unrequested, and confusing. He said that this did not extend understanding of the Commission's actions in November 2007. He said Option B was not crafted by the Planning Commission. He suggested that the Commission focus on the work done by the Commission, which he believed was represented in Option A. He said that paragraph D in Option A was added in response to the Commission's request to staff on how to handle Quadrus. Development Services Manager Murphy said it should not be simplified to only include Quadrus. He said changes to the zoning ordinance created a potential for a number of properties to be made nonconforming, which impacted those properties' ability to refinance. He said they were trying to deal with this proactively. Chair Riggs said he had not meant to place minor importance on impacts to properties because of changes to the zoning ordinance.

Chair Riggs said a speaker stated that the charge made by the Council to the Planning Commission was to confirm the literal interpretation of the existing code. Development Services Manager Murphy suggested looking at the City Council minutes of May 8, 2007. Chair Riggs read the approved motion of the City Council: *To direct staff to refer definition of 16.04.325 (Gross Floor Area) of the municipal code to the Planning Commission to develop a recommendation on clarifications to the definition with consideration of items that in staff, Planning Commission, and the City Attorney's opinion would be categorically exempt from environmental review if included in the definition. The staff report will include a list of possible exemptions for consideration, and those considerations are likely or not to be considered exempt.* Chair Riggs said that this information was found on circle page D.4 of the October 8, 2007 staff report to the Commission. Chair Riggs said there was then a motion to clarify that projects in planning application before January 1, 2007 would be exempt and there was a clarifying motion that all existing buildings would not become nonconforming as a result of the new definition. He said all three of those motions by the Council were approved.

Mr. David Speer, Menlo Park, said this was a very important issue, the calculation of FAR, as it dealt with mass, scale, parking requirements, traffic studies and possible CEQA processes. He strongly urged the new Commissioners to consider Option B which he thought was what the Council directed staff to produce. He said it was most clear for staff and builders. He said Option A was ambiguous, and that in Option B, staff served the Council's direction. He urged the Commission to consider Option B.

Commissioner Keith said it seemed that Mr. Speer thought the Council had directed staff to develop the definition of GFA. Mr. Speer said that it sounded to him that the Council directed staff to develop a definition for FAR that was clear. Commissioner Keith said it seemed that the direction from the Council was for the staff to refer the definition of GFA to the Planning Commission to develop a recommendation. Mr. Speer said that staff had prepared the definition because they were directed by the Council. Commissioner Keith said she read it to say that staff would refer definition of GFA to the Planning Commission to develop a recommendation.

Commissioner Ferrick said it was helpful to compare Option A and Option B in attachment C to the staff report. She said perhaps the Commission could look at Option A with possible inclusion of elements from Option B. She suggested clarifying what "building official" referred to. She said in Option A, subsection C, number 4, there was a discussion about building

mechanical equipment which looked like a critical distinction to make. She said finally to discuss how to deal with historical practices and perhaps using something to describe intended historical practices. She said the two options were not entirely different.

Chair Riggs said Option A was what the Commission had developed as a recommendation to Council with the addition of paragraph D. He said that if they were to open up discussion again that it should be done using the minutes of the previous meetings. He suggested continuing the item. Commissioner Ferrick said she did not want to put something forth that would die at Council.

Commissioner Kadvany said he saw three things happening. The first was to provide something to Council so they might take their next step. He said as part of that was a good representation of the good work the Commission had done in November 2007. He said lastly was a recommendation.

Chair Riggs said the Commission had ended discussion and voted to send their recommendation to the Council. He asked if Commissioner Kadvany wanted to start over on a recommendation. Commissioner Kadvany said he did not. He indicated that the clarification requested was a partial piece of the overall zoning ordinance and could not really evaluate FAR in all of its implications for different zoning districts. He said what Commissioner Ferrick had said resonated with him as it would be helpful to look at a couple of perspectives and he thought that might provide the same benefit for the Council. Chair Riggs said that the Commission had crafted one well-worked out recommendation and did not want to make multiple recommendations. He said the Commission had only asked for a paragraph to deal with historical practices. He said paragraph D met what the Commission wanted. He said their intention was to create a recommendation that could have been voted on without additional changes. He said the summary was helpful. Commissioner Kadvany said in the summary under the test for impact that there had not been a bullet for building bulk. Chair Riggs said that the test was just for two broad issues.

Commissioner Bressler said he thought Option A would be contentious should it go forth to the Council. He said that C.1 allowed for a lot of interpretation and wiggle-room for developers. Commissioner Kadvany said it was strange to have a definition within a section. Commissioner Bressler said he did not like paragraph D because of what happened at 64 Willow Road which was called a remodel but was a total deconstruction. Chair Riggs said that remodel had been redefined elsewhere. Commissioner Bressler said there were not much differences between Options A and B under A, B, and C. He said C.1 allowed too much leeway. He said Option B under A, B and C was clearer and was most close to what staff was doing to calculate FAR. He said they had to make this less ambiguous, and he would not vote for Option A.

Commissioner Pagee said the Council asked the Commission to make the document clearer and in her opinion Option A made it less clear. She said Option B makes it much clearer. Chair Riggs said that Option B was not vetted by the Commission. Commissioner Pagee said the items in Option B were discussed by the Commission. She said the vote on Option A was a majority vote but it was not unanimous on particular items. She said the Commission could send Option A to the Council, or they could look at some of the items in

Option B. She said they should look at the differences between the two options and vote on those.

Chair Riggs said it was 11:30 p.m. and he would not look at these items without first reviewing all of the record related to this. He said if they would like to rework the document that it was appropriate to take a vote. He said they then had to decide when they would like to do this proposed consideration.

Commissioner Bressler said staff had been using a definition of FAR over the last year since certain building fiascos and that seemed to work. He thought the Commission could just call it done as it stood. Commissioner Ferrick said there was not much different between the two options, and she did not think it would take hours to discuss. She said that they could vote on the two options. Chair Riggs said that it was optimistic to think they could do that tonight.

Commissioner O'Malley said he would not vote for either option tonight. He said he thought they needed to start from scratch. Chair Riggs asked if Commissioner O'Malley would not confirm the Commissioner's standing recommendation. Commissioner O'Malley said he would vote on that if the motion was made. Chair Riggs said that the Commission did need to decide on whether to include paragraph D.

Commissioner Bressler said his problem with D was that there needed to be a definition of a remodel. Chair Riggs said what the Commission resolved previously was all of the elements of a recommendation to Council. He said however they realized that Council might want to make one or more changes to the recommendation. He said the Commission had validated enough exemptions to the calculation of square footage so there would not be significant difference in FAR for existing buildings. He said they asked staff to prepare wording in the instance that the Council started changing exemptions so that properties such as Quadrus were protected.

Development Services Manager Murphy said the policy for Commission meetings was to end at 11:30 p.m. but with a vote the Commission could continue. He said however that this was a study session and the Commission could not vote to move a recommendation to the Council at this time.

Chair Riggs asked staff to describe what clarification was needed. Development Services Manager Murphy said that in C.1 and C.4 staff needed clarification on the caps the Commission wanted and that there might need to be refinement of certain terms such as gross floor area ratio. He said regarding paragraph D that there would be no definition that would cover all existing buildings without making some nonconforming. Chair Riggs said the problem with all zoning regulation was that if the language was simple that it did not capture all scenarios but that trying to capture all scenarios made the zoning ordinance too complex.

Commissioner Kadvany said he disagreed with what Chair Riggs said and that he thought the Commission should look at what was right to develop, however complex it might prove. He said there were staff notes in the October 8, 2007 report which suggested looking at simple clarification now and then in the future look at a multi-stepped process in which to address different issues such as parking, traffic, BMR, zoning districts and incentives.

Commissioner Ferrick said she thought the handling of existing buildings in Option B was preferable. Chair Riggs said it was more specific. He asked if it was the original recommendation developed by staff. Development Services Manager Murphy said it was with a few modifications.

Chair Riggs said the Commission needed to decide if it wanted to move ahead with what the Commission had decided upon a year ago or whether the Commission wanted to develop a different recommendation. He said they needed to look at the two methods for addressing historical buildings. He proposed that the Commission could designate a subcommittee to look at that and bring a recommendation back to the Council.

Commissioner Ferrick said she would support a subcommittee to do that. Chair Riggs moved to create a subcommittee to prepare a recommendation to the Commission on how to handle existing buildings and potential non-conformity because of change to the GFA calculation. Commissioner Ferrick seconded the motion.

Commissioner Kadvany asked if the goal was to present one option to Council. Chair Riggs said the Commission in its discussion had resolved to present one recommendation to the Council.

Commissioner Bressler moved to have the Planning Commission review and compare the two versions of a draft Zoning Ordinance Amendment at a public hearing on December 8, 2008 and create a single version of an Amendment as a final recommendation to the City Council. Commissioner Pagee seconded the motion.

Commissioner O'Malley asked if there was going to be more information provided. Commissioner Bressler said only in terms of the Commissioners' perspectives.

Commissioner Ferrick volunteered to serve on a subcommittee to look at Paragraph D and options.

Commission Action: M/S Bressler/Pagee to have the Planning Commission review and compare two versions of a draft Zoning Ordinance Amendment at a public hearing on December 8, 2008, and create a single version of an Amendment as a final recommendation to the City Council.

Motion carried 3-2-2 with Commissioners O'Malley and Riggs opposed and Commissioners Kadvany and Keith abstaining. (The two versions of the Amendment were attached to the staff report and are labeled as Option A, which generally represents the Amendment recommended by the Planning Commission on November 5, 2007, and Option B, which generally represents the Amendment presented by staff to the Planning Commission on October 8, 2007).

Development Services Manager Murphy asked if the meeting would be a public hearing. Commissioner Bressler said the intention was to finalize a recommendation to Council.

Commission Action: M/S Riggs/Ferrick to create a subcommittee to review the language in Options A and B addressing nonconforming buildings with respect to gross floor area.

Motion carried 5-0-2 with Commissioners Kadvany and Keith abstaining.

Commission Action: M/S Riggs/Pagee to nominate Commissioners Ferrick, Keith and Pagee to serve as the subcommittee.

Motion carried 5-0-2 with Commissioners Kadvany and Keith abstaining.

ADJOURNMENT

The meeting adjourned at 12:06 a.m.

Staff Liaison: Deanna Chow, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on December 15, 2008.