



MEMORANDUM

DATE: April 6, 2009

TO: Planning Commission

FROM: Justin Murphy, Development Services Manager
Community Development Department

RE: **Agenda Item E1: Update on clarifications to the draft Zoning Ordinance Amendment regarding Gross Floor Area**

On January 12, 2009, the Planning Commission finalized its recommendation on a draft Zoning Ordinance Amendment regarding Gross Floor Area. In preparation for the upcoming City Council public hearing on this item on April 14, 2009, staff mailed notices to 2,390 owners of property zoned for commercial, industrial, or multi-family residential uses. The notice included a comparison of existing and proposed provisions of the Zoning Ordinance regarding Gross Floor Area.

Based on some questions received on the draft Zoning Ordinance Amendment, staff and the City Attorney have identified some potential ambiguities that could benefit from additional wording to provide greater clarity. The attached draft Zoning Ordinance Amendment shows some additional revisions that staff believes are consistent with the overall intent contained in the Commission's recommendation. If the Commission does not believe the changes are consistent with its intent, then this matter can be discussed at the meeting of April 6, 2009.

Attachments

A. Draft Zoning Ordinance Amendment, dated April 6, 2009

ATTACHMENT A

DRAFT ORDINANCE NO. ____

An Ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code, Amending Chapter 16.04, Definitions, including Section, 16.04.315 Floor area ratio, Section 16.04.325 Gross floor area, and Adding Section 16.04.469 Mezzanine; and Amending Chapter 16.80, Nonconforming Uses and Structures, including Adding Section 16.80.110 Exemption from gross floor area definition clarification.

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1. The following sections of Title 16, Zoning, Chapter 16.04, Definitions, of the Menlo Park Municipal Code are hereby amended to read as follows:

16.04.315 Floor area ratio. "Floor area ratio" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the maximum permitted ratio of the total square footage of the gross floor area of all buildings on a lot to the square footage of the lot.

16.04.325 Gross floor area.

- A) "Gross floor area" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the sum of the horizontal areas of all floors within the surrounding solid walls of a building covered by a roof measured to the outside surfaces of exterior walls or portions thereof subject to the clarifications in subsections (B) and (C).
- B) Gross floor area includes the following features of a building that meet the criteria of subsection (A):
- (1) Areas of a basement with a floor to ceiling height of six feet, six inches or greater;
 - (2) Mezzanines, including equipment platforms and storage platforms, but excluding vertical shelving units and catwalks;
 - (3) Areas of an attic with a floor to ceiling height of six feet, six inches or greater;
 - (4) Equipment and utility areas containing mechanical equipment, electrical panels, meters, controllers, switch boxes;
 - (5) Storage areas;
 - (6) Bay windows and similar projections or cantilevered areas; and
 - (7) Elevator shafts and stairwells on the first floor only.
- C) Gross floor area excludes the following features of a building that meet the criteria of subsection (A):
- (1) Areas of a building or buildings that are designed as non-useable or non-occupiable space with unfinished walls, floors and ceilings, not to exceed 5% of the maximum allowed gross floor area of the lot. To qualify for this exclusion, such spaces must have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches;

limited access (i.e., the absence of the necessary physical space to provide a building-code-compliant stair or door); unconditioned air (i.e., the air is neither heated or cooled); no windows or skylights; and no electricity.

This exclusion may include areas of a building that would otherwise exceed the 1% maximum limitation as defined in subsection (C)(2).

- (2) Areas of a building or buildings dedicated to the enclosure of noise generating equipment, such as building mechanical equipment and generators, not to exceed 1% of the maximum allowed gross floor area of the lot. This exclusion applies to equipment utilized for the operation of the building systems and does not apply to equipment utilized in connection with a business operating within a building;
 - (3) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;
 - (4) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;
 - (5) Vent shafts, such as building mechanical air ducts and chimneys; and
 - (6) Enclosures solely for trash and recycling.
- D) In cases where the gross floor area of an existing building, as previously determined in a project specific approval by the City of Menlo Park made prior to the enactment of this subsection (D) and on file with the City of Menlo Park, is greater than the gross floor area of an existing building would be determined to be when measured pursuant to subsections (A) through (C) of this subsection 16.04.325, the previously determined gross floor area shall be the "Gross floor area" for purposes of this Section 16.04.325, and therefore are considered conforming. Subsection 16.80.110 provides a process for considering expansions of an existing building or additional construction on sites with existing buildings in cases where the gross floor area of an existing building or buildings is greater when measured pursuant to the subsections (A) through (C). The City shall consider Gross Floor Area Exemption Certificates issued in compliance with subsection 16.80.110(e) when determining the remaining gross floor area on a lot that could be used for proposals to enlarge an existing building or to construct an additional building on the same lot as an existing building. This subsection (D) shall not apply to properties annexed to the City of Menlo Park after _____, 2009 [insert effective date of ordinance].

SECTION 2. Title 16, Zoning, Chapter 16.04, Definitions, of the Menlo Park Municipal Code is hereby amended to add the following section:

16.04.469 Mezzanine. "Mezzanine" means an intermediate level or levels between the floor and ceiling of any story designed for occupancy or other use. For purposes of this definition, mezzanine includes equipment platforms (i.e., an elevated platform used exclusively for mechanical systems or industrial process

equipment) and storage platforms, but does not include vertical shelving units nor catwalks (i.e., a narrow elevated walkway used exclusively to access part of a building that would otherwise be difficult to reach).

SECTION 3. Title 16, *Zoning*, Chapter 16.80, *Nonconforming Uses and Structures*, of the Menlo Park Municipal Code is hereby amended to add the following section:

16.80.110 Exemption from gross floor area definition clarification.

- (a) The following buildings shall be exempt from the Gross Floor Area definition clarification in Ordinance No. _____, provided that this exemption shall not apply to an increase in the gross floor area of a building by an addition or expansion of the building unless such addition or expansion was constructed or approved prior to said date:
 - (1) All buildings in existence as of the date of adoption of the Zoning Ordinance Amendment (Ordinance No. __) on _____;
 - (2) Buildings that did not require discretionary planning review approval for which a building permit application was submitted prior to May 8, 2007; and
 - (3) Buildings for which an application for a discretionary planning review approval was submitted prior to January 1, 2007, provided the project receives all necessary discretionary approvals and the approval(s) does not expire prior to submittal of a building permit application.
- (b) No building exempt under subsection (a) of this section shall be subject to amortization by reason of a building which is nonconforming due to the Gross Floor Area definition clarification specified in subsection (a) of this section.
- (c) Any building exempt under subsection (a) of this section may be restored to its condition at the time of destruction if the building is destroyed by fire, explosion, or other catastrophe, but such restoration shall comply with:
 - (1) The building codes in effect at the time of restoration; and
 - (2) The requirements of Section 16.80.040 with respect to nonconformities other than a nonconformity created as a result of the Gross Floor Area definition clarification specified in subsection (a) of this section.
- (d) Except as provided in this subsection, any building exempt under subsection (a) of this section may undergo interior and/or exterior improvements to the building if there is no increase in the gross floor area unless the increase in gross floor area is mandated to comply with required disabled access improvements and then only to the extent reasonably required to comply with such access requirements.
- (e) Regardless of what is set forth in subsections (a) through (d), the square footage of a building exempt under subsection (a) of this section shall be considered in determining whether a nonexempt building or expansion of any building shall be permitted on the site occupied by the exempt building, except as provided in this subsection (e). If a building was built prior to the effective date of this Zoning Ordinance Amendment (Ordinance No. _____) or received the necessary approvals to be exempt under subsection (a)(2) or

(a)(3) of this section and the building's gross floor area is greater than what it would be when measured pursuant to the Gross Floor Area definition clarification (Ordinance No. ____), the property owner may apply for a Gross Floor Area Exemption Certification to identify the gross floor area of a building that may be excluded from future calculations subject to the certification process outlined below. Upon receipt of a Gross Floor Area Exemption Certification, the gross floor area identified in the Certification shall be excluded from future calculations of gross floor area for purposes of considering construction of new buildings or expansion of existing buildings on the property covered by the Certification, except as otherwise provided in this subsection (e).

- (1) Within 30 days of the effective date of the Ordinance, the City shall inform property owners of this Gross Floor Area Exemption Certification process by mailing of notice, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City. In addition, the City shall mail a second notice one year from the effective date of the Ordinance.
- (2) The property owner shall have two (2) years from the effective date of the Ordinance to submit a request in writing to the Community Development Director for a Gross Floor Area Exemption Certification. The request shall include site plans, floor plans, cross sections and elevations of all buildings in question.
- (3) The Community Development Director shall have 30 days to review an application to determine its completeness. Upon determining the submittal complete, the Community Development Director shall have 30 days to issue a Gross Floor Area Exemption Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property on a per building basis. The Director's determination should be based on whether or not the building as it exists as of the effective date of this ordinance is consistent with plans previously approved by the City.
- (4) The decision of the Community Development Director may be appealed to the Planning Commission pursuant to section 16.82.450.
- (5) The Gross Floor Area Exemption Certification and associated exemptions become null and void upon demolition of the applicable building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area of the applicable building.

SECTION 4. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary

of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the ___ day of ____, 2009.

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

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

ATTEST:

APPROVED:

Margaret S. Roberts
City Clerk

Heyward G. Robinson
Mayor, City of Menlo Park