



# PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION  
MEETING OF DECEMBER 8, 2008  
AGENDA ITEM C2

**APPLICATION:** Zoning Ordinance Amendment Related to the Gross Floor Area Definition

**APPLICANT:** City of Menlo Park

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## PROPOSAL

The City of Menlo Park is proposing a Zoning Ordinance amendment to clarify the definition of Gross Floor Area to more specifically identify features of a building that are either included or excluded from the calculation. Gross floor area is used in calculating the floor area ratio (FAR) and parking requirements for developments in all zoning districts except for single-family and R-2 (Low Density Apartment) zoning districts. Floor area ratio equals the gross floor area of a building divided by the lot area and effectively regulates the size of a building. In addition, gross floor area is used in determining the applicability of requirements for below market rate (BMR) housing and the preparation of traffic studies. The clarifications to the definition will focus on new buildings and attempt to minimize impacts to existing buildings. The Zoning Ordinance Amendment will be exempt from the California Environmental Quality Act (CEQA) in that the changes are intended to have no potential to impact the environment.

## BACKGROUND

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

On November 5, 2007, the Planning Commission reviewed a revised Draft Zoning Ordinance Amendment. The Commission held a public hearing and received comments from three members of the public. The Commission made comments regarding recommended changes to the draft ordinance. Through two separate

motions, the Commission voted unanimously for staff to make modifications per the Commission's direction.

On August 11, 2008, the Planning Commission reviewed a written summary drafted by the Chair and Vice Chair of the Commission's November 5, 2007 recommendation. The Commission received comments from one member of the public. The Commission voted unanimously that the summary accurately reflected the deliberations.

On November 3, 2008, the Commission held a study session to ensure that staff accurately captured the Planning Commission's direction prior to holding a public hearing for the Commission to make a final recommendation to the City Council. Attached to the staff report were two versions of a Zoning Ordinance Amendment. One version, labeled as Option A, generally reflected the changes to the draft Ordinance based on the deliberations of the Commission on October 8, 2007 and November 5, 2007. The other version of the Zoning Ordinance Amendment, labeled as Option B, generally reflected the draft Ordinance staff presented to the Commission on October 8, 2007. Staff included a full ordinance (Option B) as a way of providing context for the alternative provisions in Option A for addressing the issue of nonconforming structures. The Commission voted to continue the study session to the meeting of November 17, 2008 with the goal of holding a public hearing on December 8, 2008; 5-2, with Commissioners O'Malley and Riggs opposed.

On November 17, 2008, the Commission voted 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; 3-2-2 (Commissioners O'Malley and Riggs opposed and Commissioners Kadvany and Keith abstaining). (The two versions of the Amendment were attached to the re-issued staff report for the November 17, 2008 meeting and were 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). The Commission also voted to 1) create a subcommittee to review the language in Options A and B addressing nonconforming buildings with respect to gross floor area and 2) nominate Commissioners Ferrick, Keith and Pagee to serve as the subcommittee; 5-0-2 (with Commissioners Kadvany and Keith abstaining on each vote).

The materials from these previous meetings are listed at the end of this report and are available for review at the City offices.

Once the Commission makes a final recommendation, the topic would be scheduled for City Council review sometime after the first of the year. After potentially holding a study session, the Council would conduct a public hearing to introduce the ordinance and a second meeting to adopt the ordinance.

If the Commission's changes to the draft ordinance amendment on December 8, 2008 are not extensive, staff is prepared to make the modifications and return to the Commission on December 15, 2008 with the revised ordinance for Commission review on the Consent Calendar 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.

## **ANALYSIS**

Two versions of the Draft Zoning Ordinance Amendment are included as Attachment A (Option A) and Attachment B (Option B). A side-by-side comparison of the two ordinances is included as Attachment C. (These three attachments have remained unchanged from the ones attached to the November 3, 2008 Planning Commission staff report). Option A reflects the Planning Commission's November 5, 2007 deliberations regarding additional exclusions and a simplified approach to potential nonconformities. Option B generally reflects the original draft Zoning Ordinance Amendment that staff presented to the Commission on October 8, 2007, while incorporating refinements to terminology. In Option A the reader will see the use of *italics and shading*, and it is meant to draw attention to the modifications to the November 5, 2007 draft. In Option B the reader will see the use of underline and shading, and it is meant to highlight some of the key differences with Option A.

The remainder of this staff report focuses on the differences between Option A and Option B, including items for which staff is seeking Commission clarification regarding the November 5, 2007 recommendations contained in Option A, and one item related to mezzanines, which staff has identified while revisiting the draft ordinances. Similar to other ordinance amendments, staff would recommend that the adopted ordinance amendment be subject to a 12-month review in which staff would report to the Planning Commission and City Council on the observed effects of the ordinance amendment and recommend further refinements if necessary.

### **Comparison of Option A and Option B in Terms of Inclusions and Exclusions**

The current definition of gross floor area is as follows:

**16.04.325 Gross floor area.** "Gross floor area" applies to R-3, commercial and industrial zoning districts and means the area within the surrounding walls of a building measured to the outside surfaces of exterior walls or portions thereof, exclusive of vent shafts, courts, covered parking, and other structured parking.

The basic framework of the "Floor Area" definition, which is used for determining the Floor Area Limit in single-family residential and R-2 zoning districts served as the inspiration for the updated gross floor area definition and is included as Attachment D for reference. Both of the proposed options expand the definition and include subsections A, B, and C, plus Option A introduces an additional subsection D. Subsection A is a basic explanation of what gross floor area is and there is no difference between Option A

and Option B in this subsection. Subsection B provides more specificity of features of a building that are **included** in gross floor area. Subsection C provides more specificity of features of a building that are **excluded** from gross floor area. Subsection D of Option A explains how previous determinations of gross floor area should be handled.

The following table summarizes the differences between Option A and Option B in terms of inclusions and exclusions.

<b>Item</b>	<b>Option A</b>	<b>Option B</b>
<i>Stairwells and Elevator Shafts</i>	Counts stairwells and elevator shafts once regardless of the number of levels in a building.	Counts stairwells and elevator shafts on every level.
<i>Non-Useable/Non-Occupiable Spaces</i>	Includes additional features of buildings which could be considered for exclusion from gross floor area, but establishes a maximum for the exclusions of 5%.	Includes a single exclusion based on minimum floor to ceiling height of six feet, six inches without a maximum for the amount of the exclusion.
<i>Equipment Areas</i>	Includes a specific exclusion for mechanical equipment associated with air handling systems for a building shell and emergency power generators due to the potential noise generating aspects of this equipment. The maximum amount of the exclusion would be capped at 1%.	Counts all equipment areas enclosed within a building and with a floor to ceiling height greater than six feet, six inches.

The basic question for the Commission to consider for each item is whether the approach in Option A is appropriate or whether the approach in Option B is appropriate. If the Commission believes that neither approach is appropriate, then the Commission could ask staff to provide additional options for consideration at the meeting.

If the Commission believes that the Option A is appropriate for non-useable/non-occupiable space and equipment areas, then staff would like to clarify whether the language in 16.04.325(C)(1) and 16.04.325(C)(4) in Option A accurately reflect the Commission’s intent in terms of the percentage of the maximum exclusion and how the exclusion would be calculated. Staff believes this clarification would best be achieved through an example such as the following. If the maximum FAR for a 25,000 square foot property is 40%, then the maximum building size would be 10,000 square feet. Subsection 16.04.325(C)(1) would allow a maximum exclusion of 5% for non-useable/non-occupiable space (500 square feet) and Subsection 16.04.325(C)(4) would allow a 1% exclusion for space dedicated to noise generating equipment (100 square feet) for a total possible exclusion of 600 square feet. This example and calculations are

summarized in the table below. Staff would like to confirm that these percentages and calculations reflect how the Commission intended the limitation to work.

Item		Square Feet
Lot Size		25,000
Gross Floor Area @ FAR of	40%	10,000
Non-Useable/Non-Occupiable Space Exclusion of	5%	500
Noise Generating Equipment Exclusion of	1%	100
Subtotal of Exclusions		600
<b>Total Building Size with Exclusions</b>		<b>10,600</b>

Instead of language that identifies the maximum percent of a ratio, it may be better to state the cap as a percentage of the either the maximum allowed gross floor area or the gross floor area of a particular building.

### Comparison of Option A and Option B in Terms of Nonconforming Provisions

Option B includes more detailed provisions addressing buildings that could potentially be rendered nonconforming due to the clarification of the gross floor area definition. Option B’s approach is modeled on two earlier changes to the Zoning Ordinance in which floor area ratio limitations were first adopted in 1986 and when floor area ratios were reduced for office uses in certain zoning districts in 1994. Option A includes a simplified approach to addressing 1) potential nonconformities and 2) situations where property owners pursued certain building designs between the period of 1986 and 2007 based on documented determinations by the City for excluding certain features of a building from the gross floor area.

On November 17, 2008, the Commission formed a subcommittee to review the two options and report back to the full commission. The recommendations of the subcommittee will be presented at the Planning Commission meeting on December 8, 2008.

### Additional Item for Clarification – Mezzanines and Equipment Platforms

As the Planning Commission finalizes its recommendation, staff would like to identify one other item which is consistent between Option A and Option B that warrants further consideration. Staff believes that it would be worthwhile to re-examine the proposed definition of a mezzanine. Mezzanine is currently not defined in the Zoning Ordinance. The proposed definition in Option A and Option B reads as follows:

**16.04.469 Mezzanine.** “Mezzanine” means an intermediate floor of a building placed within a room. All portions of the mezzanine shall be open and unobstructed to the room in which they are located, except for columns or posts

not more than 12 inches in width and protective walls or railings not more than 44 inches in height.

The second sentence of the definition reflects building code requirements, and not the basic building code definition which is as follows:

An intermediate level or levels between the floor and ceiling of any story.

Staff believes it would be better to exclude the building code requirements in the definition by deleting the second sentence and to keep the definition more generic, similar to the current Zoning Ordinance definitions of basement and attic, which are as follows:

**16.04.075 Attic.** "Attic" means a space in a building that is immediately above the top of the ceiling joist and immediately below the roof sheathing, including all roof framing.

**16.04.077 Basement.** "Basement" means the part of a building that is partly or wholly below grade.

Furthermore, staff believes that it would be helpful to clarify whether equipment platforms should be included or excluded from gross floor area. An equipment platform is defined in the building code as follows:

An unoccupied, elevated platform used exclusively for mechanical systems or industrial process equipment, including the associated elevated walkways, stairs, and ladders necessary to access the platform.

The presence of equipment platforms in Menlo Park is effectively limited to the M-2 (General Industrial) zoning district. Equipment platforms are often prefabricated and secured to the floor of a room with a high floor-to-ceiling height. An equipment platform could be viewed differently from a platform that is used exclusively for storage. In addition, a platform, whether for equipment or storage, could be viewed differently than a catwalk and ladder/stair system that provides access to storage racks. Staff believes that a catwalk and ladder/stair system that provides access to storage racks should not be counted toward gross floor area. The Planning Commission may wish to weigh in on whether equipment platforms and or storage platforms should be excluded from gross floor area.

## **CEQA – ENVIRONMENTAL REVIEW**

On October 8, 2007 and November 5, 2007, the Planning Commission indicated that it believed that the ordinance amendments being contemplated to clarify the definition of gross floor area would be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility of significant environmental effects

occurring as a result of the adoption of the ordinance amendment. When the Commission makes its final recommendation on the ordinance amendment, the Commission would need to revisit this determination.

## **RECOMMENDED MEETING REVIEW PROCESS**

1. Updates from staff.
2. Presentation by Commission Subcommittee.
3. Planning Commission questions of staff for general clarifications to the benefit of the public.
4. Public comment.
5. Planning Commission follow up questions of staff.
6. Planning Commission discussion and recommendation on the draft Zoning Ordinance Amendment and the CEQA determination.

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Justin Murphy  
Development Services Manager  
Report Author

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Arlinda Heineck  
Community Development Director

## **PUBLIC NOTIFICATION**

Public notification for this item consisted of publishing a legal notice in the local newspaper. In addition, the City has prepared a project page for the proposal, which is available at the following address: [http://www.menlopark.org/projects/comdev\\_gfa.htm](http://www.menlopark.org/projects/comdev_gfa.htm). This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated.

The Commission's action will be in the form of a recommendation to the City Council.

## **ATTACHMENTS**

- A. Draft Zoning Ordinance Amendment – Version A, dated November 3, 2008
- B. Draft Zoning Ordinance Amendment – Version B, dated November 3, 2008
- C. Comparison of Draft Zoning Ordinance Amendments, dated November 3, 2008
- D. Definitions of Floor Area and Floor Area Limit Used in Single-Family Residential and R-2 Zoning Districts

## **Background Material Distributed Previously and Available at City Offices**

### **October 8, 2007 Planning Commission Staff Report**

- A. Draft Ordinance Amendment, dated October 1, 2007
- B. City Council Staff Report, dated May 8, 2007
- C. Excerpts of Approved City Council Minutes of the Meeting of May 8, 2007
- D. Gross Floor Area and Floor Area Ratio Definition Comparisons with Other San Mateo and Santa Clara County Cities

### **Correspondence Distributed at the October 8, 2007 Planning Commission Meeting**

1. Letter from John Beltramo, Beltramos Investment Company, dated October 6, 2007
2. Memo from John Tarlton, Menlo Business Park LLC, dated October 8, 2007

### **Excerpts of the October 8, 2007 Planning Commission Meeting Minutes**

### **November 5, 2007 Planning Commission Staff Report**

- A. Draft Ordinance Amendment, dated November 5, 2007 – Redlined version
- B. Draft Ordinance Amendment, dated November 5, 2007 – Clean version

### **Correspondence Distributed at the November 5, 2007 Planning Commission Meeting**

1. Handout from Lou Deziel, Planning Commission, Entitled “GFA Exclusion Recommendations”

### **Excerpts of the November 5, 2007 Planning Commission Meeting Minutes**

### **Planning Commission 11/5/07 Recommendation for Defining Gross Floor Area, Adopted by the Planning Commission on August 11, 2008**

### **Correspondence Distributed at the August 11, 2008 Planning Commission Meeting**

1. Email from Patti Fry, dated August 10, 2008
2. Email from Elias Blawie, dated August 11, 2008

### **Excerpts of the August 11, 2008 Planning Commission Meeting Minutes**

### **November 3, 2008 Planning Commission Staff Report (reissued for November 17, 2008)**

- A. Draft Zoning Ordinance Amendment – Option A, dated November 3, 2008
- B. Draft Zoning Ordinance Amendment – Option B, dated November 3, 2008
- C. Comparison of Draft Zoning Ordinance Amendments, dated November 3, 2008

### **Correspondence Distributed at the November 17, 2008 Planning Commission Meeting**

1. Letter from Peggy Lo, Lo Property Management, dated November 10, 2008

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## ATTACHMENT A

The use of *italics and shading* is meant to draw attention to the modifications to the November 5, 2007 draft.

### **DRAFT – OPTION A ORDINANCE NO. \_\_\_\_**

#### **An Ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code Amending Chapter 16.04, Definitions; and Chapter 16.80, Nonconforming Uses and Structures.**

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

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

#### **16.04.325 Gross floor area.**

- A) "Gross floor area" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the sum of the horizontal areas of all floors within the surrounding solid walls of a building covered by a roof measured to the outside surfaces of exterior walls or portions thereof subject to the clarifications in Subsections (B) and (C).
- B) Gross floor area includes the following features of a building that meet the criteria of Subsection (A):
- (1) Basements;
  - (2) Mezzanines;
  - (3) Attics;
  - (4) Equipment and utility areas, such as, electrical panels, meters, controllers, switch boxes;
  - (5) Storage areas; and
  - (6) Bay windows and similar projections or cantilevered areas.
- C) Gross floor area excludes the following features of a building that meet the criteria of Subsection (A):
- (1) *Areas of a building that are not designed as useable or occupiable space as determined by the Building Official not to exceed 5% of the Floor Area Ratio. Such spaces typically have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches; unfinished walls, floors and ceilings; limited access; unconditioned air (i.e., the air is neither heated or cooled); no windows or skylights; and no electricity.*
  - (2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;
  - (3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;
  - (4) *Areas of a building dedicated to the enclosure of noise generating equipment, such as building mechanical equipment and emergency power*

*generators, provided that the area is not designed for occupancy other than to allow for the operation and service of said equipment as determined by the Building Official not to exceed 1% of the Floor Area Ratio.*

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

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

(7) Enclosures solely for trash and recycling.

*D) Determination of the Gross Floor Area for existing buildings shall be based on historical practices in use 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, and therefore are considered conforming and are not subject to Chapter 16.80 Nonconforming Uses and Structures as it relates to Floor Area Ratio regulations. Furthermore, through the use permit process, the Planning Commission may consider historical practices for determining gross floor area of an existing building 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.*

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

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

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

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

*Placeholder only – no modifications to Zoning Ordinance proposed*

**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:

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

ATTEST:

APPROVED:

\_\_\_\_\_  
Margaret S. Roberts  
City Clerk

\_\_\_\_\_  
Mayor, City of Menlo Park

## ATTACHMENT B

The use of underline and shading is meant to highlight some of the key differences with Option A.

### **DRAFT – OPTION B ORDINANCE NO. \_\_\_\_**

#### **An Ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code Amending Chapter 16.04, Definitions; and Chapter 16.80, Nonconforming Uses and Structures.**

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

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

#### **16.04.325 Gross floor area.**

- A) "Gross floor area" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the sum of the horizontal areas of all floors within the surrounding solid walls of a building covered by a roof measured to the outside surfaces of exterior walls or portions thereof subject to the clarifications in Subsections (B) and (C).
- B) Gross floor area includes the following features of a building that meet the criteria of Subsection (A):
- (1) Basements;
  - (2) Mezzanines;
  - (3) Attics;
  - (4) Equipment and utility areas, such as, mechanical equipment, electrical panels, meters, controllers, switch boxes;
  - (5) Storage areas;
  - (6) Elevator shafts and stairwells, and
  - (7) Bay windows and similar projections or cantilevered areas.
- C) Gross floor area excludes the following features of a building that meet the criteria of Subsection (A):
- (1) Areas of a building with a floor to ceiling height that is less than six feet, six inches.
  - (2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;
  - (3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;
  - (4) Vent shafts, such as building mechanical air ducts and chimneys; and
  - (5) Enclosures solely for trash and recycling.

**16.04.315 Floor area ratio.** "Floor area ratio" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the

maximum permitted ratio of the total square footage of the gross floor area of all buildings on a lot to the square footage of the lot.

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

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

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

**16.80.110 Exemption from gross floor area definition clarification.**

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

improvements and then only to the extent reasonably required to comply with such access requirements.

- (e) Notwithstanding the foregoing, the square footage of a building exempt under subsection (a) of this section shall be considered in determining whether a nonexempt building or expansion of any building shall be permitted on the site occupied by the exempt building, except as 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 when measured pursuant to the Gross Floor Area definition clarification (Ordinance No. \_\_\_\_ ), the property owner may apply for a Gross Floor Area Exemption Certification to identify the gross floor area on a property that may be excluded from future calculations subject to the certification process outlined below. Upon receipt of a Gross Floor Area Exemption Certification, the gross floor area identified in the Certification shall be excluded from future calculations of gross floor area for purposes of considering construction of new buildings or expansion of existing buildings on the property covered by the Certification, except as otherwise provided in this subsection (e).
- (1) Within 30 days of the effective date of the Ordinance, the City shall inform property owners by mailing of notice, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City.
  - (2) The property owner shall have five years from the effective date of the Ordinance to submit a request in writing to the Community Development Director. The request shall include site plans, floor plans, cross sections and elevations of all buildings in question.
  - (3) The Community Development Director shall have 30 days to review an application to determine its completeness. Upon determining the submittal complete, the Community Development Director shall have 30 days to issue a Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property. The Director's determination should be based on whether 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 Certification and associated exemptions become null and void upon demolition of the existing building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area.

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

**SECTION 5.** This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the \_\_ day of \_\_\_\_, 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:

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

ATTEST:

APPROVED:

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Margaret S. Roberts  
City Clerk

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Mayor, City of Menlo Park

**ATTACHMENT C**  
**Comparison of Two Options for Gross Floor Area Definition Zoning Ordinance Amendment**  
**11/03/08**

Item	Draft ZOA Option A	Draft ZOA Option B
<b>Gross Floor Area Definition Subsection A</b>	"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).	Same as Option A
<b>Gross Floor Area Definition Subsection B</b>	Gross floor area includes the following features of a building that meet the criteria of Subsection (A): (1) Basements; (2) Mezzanines; (3) Attics; (4) Equipment and utility areas, such as, electrical panels, meters, controllers, switch boxes; (5) Storage areas; and (6) Bay windows and similar projections or cantilevered areas.	Gross floor area includes the following features of a building that meet the criteria of Subsection (A): (1) Basements; (2) Mezzanines; (3) Attics; (4) Equipment and utility areas, such as, <b>mechanical equipment</b> , electrical panels, meters, controllers, switch boxes; (5) Storage areas; (6) <b>Elevator shafts and stairwells</b> , and (7) Bay windows and similar projections or cantilevered areas.
<b>Gross Floor Area Definition Subsection C</b>	Gross floor area excludes the following features of a building that meet the criteria of Subsection (A): <i>(1) Areas of a building that are not designed as useable or occupiable space as determined by the Building Official not to exceed 5% of the Floor Area Ratio. Such spaces typically have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches; unfinished walls, floors and ceilings; limited access; unconditioned air (i.e., the air is neither heated or cooled); no windows or skylights; and no electricity.</i>	Gross floor area excludes the following features of a building that meet the criteria of Subsection (A): <i>(1) Areas of a building with a floor to ceiling height that is less than six feet, six inches.</i> (2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures; (3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not

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	<p>(2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;</p> <p>(3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;</p> <p><i>(4) Areas of a building dedicated to the enclosure of noise generating equipment, such as building mechanical equipment and emergency power generators, provided that the area is not designed for occupancy other than to allow for the operation and service of said equipment as determined by the Building Official not to exceed 1% of the Floor Area Ratio.</i></p> <p>(5) Elevator shafts and stairwells on all floors except for one floor (i.e., elevator shafts and stairwells count once)</p> <p><i>(6) Vent shafts, such as building mechanical air ducts and chimneys; and</i></p> <p><i>(7) Enclosures solely for trash and recycling.</i></p>	<p>more than 44 inches in height;</p> <p>(4) Vent shafts, such as building mechanical air ducts and chimneys; and</p> <p>(5) Enclosures solely for trash and recycling.</p>
<b>Floor Area Ratio Definition</b>	<p>"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.</p>	<p>Same as Option A</p>
<b>Mezzanine Definition</b>	<p>"Mezzanine" means an intermediate floor of a building placed within a room. All portions of the mezzanine shall be open and unobstructed to the room in which they are located, except for columns or posts not more than 12 inches in width and protective walls or railings not more than 44 inches in height.</p>	<p>Same as Option A</p>

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<b>Historical Practices/ Nonconforming/ Gross Floor Area Definition Subsection D</b>	<p><i>Determination of the Gross Floor Area for existing buildings shall be based on historical practices in use 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, and therefore are considered conforming and are not subject to Chapter 16.80 Nonconforming Uses and Structures as it relates to Floor Area Ratio regulations. Furthermore, through the use permit process, the Planning Commission may consider historical practices for determining gross floor area of an existing building 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.</i></p>	<p><b>16.80.110 Exemption from gross floor area definition clarification.</b></p> <p>(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:</p> <ol style="list-style-type: none"> <li>(1) All buildings in existence as of the date of adoption of the Zoning Ordinance Amendment (Ordinance No. __) on _____;</li> <li>(2) Buildings that did not require discretionary planning review approval for which a building permit application was submitted prior to May 8, 2007; and</li> <li>(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.</li> </ol> <p>(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.</p> <p>(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:</p> <ol style="list-style-type: none"> <li>(1) The building codes in effect at the time of</li> </ol>

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		<p>restoration; and</p> <p>(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.</p> <p>(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.</p> <p>(e) Notwithstanding the foregoing, the square footage of a building exempt under subsection (a) of this section shall be considered in determining whether a nonexempt building or expansion of any building shall be permitted on the site occupied by the exempt building, except as 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 when measured pursuant to the Gross Floor Area definition clarification (Ordinance No. ___ ), the property owner may apply for a Gross Floor Area Exemption Certification to identify the gross floor area on a property that may be excluded from future calculations subject to the certification process outlined below. Upon receipt of a Gross Floor Area Exemption Certification, the gross floor</p>

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		<p>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).</p> <ol style="list-style-type: none"><li data-bbox="1339 394 1997 609">(1) Within 30 days of the effective date of the Ordinance, the City shall inform property owners by mailing of notice, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City.</li><li data-bbox="1339 613 1997 862">(2) The property owner shall have five years from the effective date of the Ordinance to submit a request in writing to the Community Development Director. The request shall include site plans, floor plans, cross sections and elevations of all buildings in question.</li><li data-bbox="1339 867 1997 1377">(3) The Community Development Director shall have 30 days to review an application to determine its completeness. Upon determining the submittal complete, the Community Development Director shall have 30 days to issue a Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property. The Director's determination should be based on whether or not the building as it exists as of the effective date of this ordinance is consistent with plans previously approved by the City.</li><li data-bbox="1339 1382 1997 1516">(4) The decision of the Community Development Director may be appealed to the Planning Commission pursuant to section 16.82.450.</li></ol>

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		(5) The Certification and associated exemptions become null and void upon demolition of the existing building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area.

**Legend:** The use of *italics and shading* is meant to draw attention to the modifications to the November 5, 2007 draft.

The use of underline and shading is meant to highlight some of the key differences with Option A.

## ATTACHMENT D

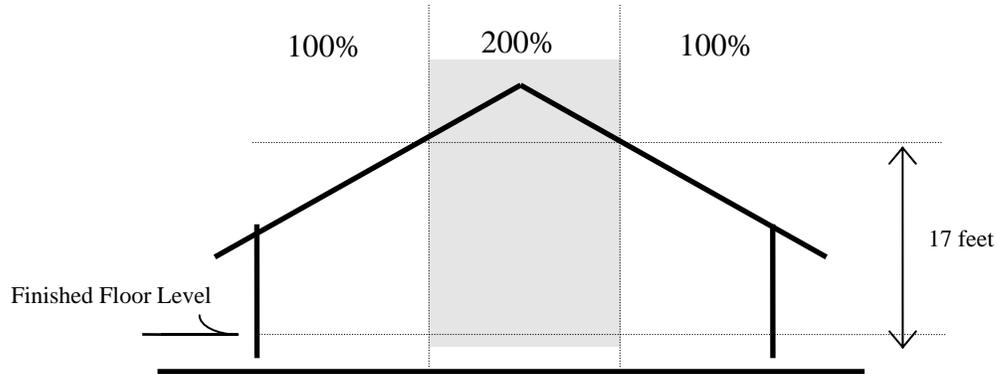
### DEFINITIONS OF FLOOR AREA AND FLOOR AREA LIMIT APPLICABLE TO SINGLE-FAMILY RESIDENTIAL AND R-2 ZONING DISTRICTS

#### 16.04.313 Floor area.

- (A) For all single-family residential and R-2 zoning districts, “floor area” means the total square footage of all stories of all structures with a solid roof that exceeds 6 feet in height above grade, as measured from the face of foundation. Floor area includes all covered parking, including garages and carports, and below grade parking.
- (B) Floor Area is measured as follows:
- (1) For single-story development in single-family residential and R-2 zoning districts, except R-1-U (LM), all floor area where the distance between the finished floor and the roof directly above it measures 17 feet or greater, shall be included at 200 percent floor area (*See Fig. 1*).
  - (2) For two-story development in single-family residential and R-2 zoning districts, except R-1-U (LM):
    - (a) Interior space that has a ceiling height greater than 12 feet from finished floor level, other than stairwells, shall be included at 200 percent floor area. This same area shall also be included at 100 percent toward the maximum allowed second floor square footage (*See Fig. 2*).
    - (b) Attic space where the distance between the top of the ceiling joist and the bottom of the roof sheathing measures 5 feet or more, shall be included at 100 percent floor area, but shall not be included as part of the second floor calculation of floor area (*See Fig. 2*). Attic space where the distance between the top of the ceiling joist and the bottom of the roof sheathing measures less than 5 feet shall be excluded from the floor area.
  - (3) For all development in the R-1-U (LM) zoning district, interior space that has a ceiling height greater than 12 feet from finished floor level to top of ceiling joist or roof framing shall be included at 200 percent floor area, with the following exceptions:
    - (a) Stairwells shall be included at 100 percent floor area;
    - (b) Interior ceiling heights greater than 12 feet for up to 20 percent of the proposed floor area of a single-story structure shall be counted at 100 percent floor area;
    - (c) Attic and other storage space located between the top of the ceiling joists and immediately below the roof sheathing and that does not include any of the following:
      - (i) finished floors, walls, or ceiling drywall coverings, (ii) access to the space from a permanent staircase or door, (iii) more than two lighting fixtures and one receptacle outlet, or (iv) heating and/or rough plumbing provided to the space shall be excluded from the calculation of floor area.
- (C) Floor Area shall exclude:
- (1) Basements under structures with a main floor level of 30 inches or less above grade in all single-family and R-2 zoning districts, with the exception of the R-1-U (LM) district where basement areas that extend beyond the footprint of the structure at grade and that do not provide code-mandated egress or exiting shall be included in the Floor Area;
  - (2) Garden structures, such as arbors and trellises with a semi-solid roof;
  - (3) Covered porches and patios structurally attached to the exterior of the main residences or detached accessory buildings, provided that one end is open and faces out from the structure;
  - (4) Bay window protrusions that do not provide foundation and that are no more than 7 feet in length;
  - (5) Chimneys and fireboxes or fireplaces; and
  - (6) Eave overhangs.
- (D) Grade is defined as the average of the highest and lowest points of the natural grade of the portion of the lot covered by the structure.

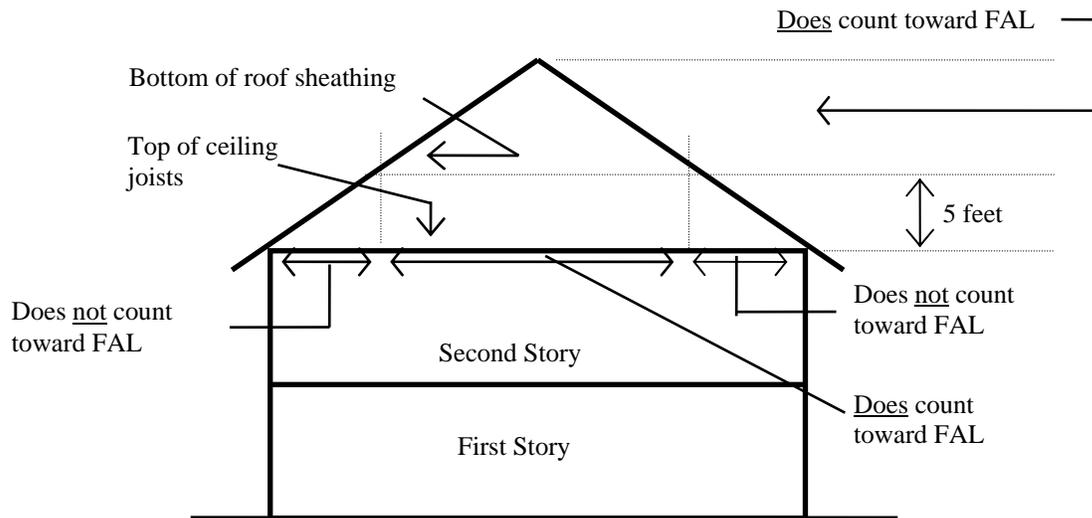
- (E) The main floor level of a split-level development is defined as the level with the largest floor area.
- (F) The finished floor level of the ground floor of any development shall be the lesser of the actual finished floor level or a point that is 18 inches above grade.

**Fig. 1--SINGLE STORY HOMES IN R-1 AND R-2 ZONING DISTRICTS, EXCEPT R-1-U (LM)**



**Fig. 1 -** All floor area where the distance between the finished floor level and the roof directly above it measures 17 feet or more, shall be counted at 200% floor area.

**Fig. 2--TWO-STORY HOMES IN R-1 AND R-2 ZONING DISTRICTS, EXCEPT R-1-U (LM)**



**Fig. 2 -** In two-story homes, the square footage of all attic space where the distance between the top of the ceiling joists and the bottom of the roof sheathing measures five feet or more, shall count as additional floor area.

**16.04.314 Floor area limit.** "Floor area limit" means the maximum permitted floor area for a property within the single-family residential or R-2 zoning districts. For the purpose of determining the floor area limit, neither the panhandle extension of a panhandle lot, nor a private driveway or access easement across another lot to a panhandle lot, shall be included as part of the panhandle or other lot.