



## PLANNING COMMISSION MINUTES

October 8, 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, Deziel (Vice chair), Keith (Chair), O'Malley (left at 10:47 p.m.), Pagee, Riggs

**INTRODUCTION OF STAFF** – Deanna Chow, Senior Planner; Justin Murphy, Development Services Manager

### A. PUBLIC COMMENTS

There were none.

### B. CONSENT

There were no consent items on the agenda.

### C. PUBLIC HEARING

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.

Staff Comment: Development Services Manager Murphy said on May 8, 2007, the City Council directed staff to pursue a Zoning Ordinance Amendment (ZOA) to clarify the definition of Gross Floor Area (GFA); the staff report and minutes for that meeting were

attached to the Commission's staff report. He said a ZOA required the recommendation and review of the Planning Commission for both the actual text of the ZOA and the associated CEQA findings. He said that the Commission's recommendation was then forwarded to the City Council for a public hearing. He said a date for that public hearing would be noticed once the Commission's recommendation was made.

Development Services Manager Murphy said the goal of the ZOA was to provide clarity for the definition of GFA, which currently was in the Zoning Ordinance, to be more explicit about features of a building that would be included or excluded. He said that GFA affects Floor Area Ratio (FAR) calculation, parking requirements, calculation of the Below Market Rate (BMR) housing fees for commercial projects, and thresholds for preparation of traffic studies. He said the proposed ZOA was attached as Attachment A and was comprised of five sections. He said the last two sections were standard language related to the applicability of the ZOA in terms of legal objections and posting the ordinance if adopted. Section 1 contained definitions that were currently in the Zoning Ordinance that would be amended through this proposed document, mainly the GFA. He said the proposal would include three major components listed as A, B, and C. Item A established the envelope of what would generally be included in GFA; B described features of a building and was even more explicit about things that would be included, noting that the GFA for some of these items had been subject to debate; and item C contained items that would be excluded from GFA. He said staff had tried to list all of the universal things in B and C that were subject to discussion but might not have listed every feature. He said the FAR definition revision was relatively minor and had to do with clarifying which zoning districts it applied to as the current definition was not quite accurate. Section 2 added a new definition related to mezzanine as that feature seemed to be similar to attics and basements. Section 3 related to nonconforming structures and as part of the Council's direction, staff was looking to not adversely impact projects that had been built or approved previously through a different definition of GFA as it was applied. Under this section, there were five components, A, B, C, D, E, and it was generally based on two other exemptions that were in the Zoning Ordinance currently. Item A listed three specific milestones for when a building could be exempt from the clarified definition of GFA; B related to amortization and that it would not be applicable; C related to restoration due to fire; D outlined what type of interior and exterior improvements could occur; and E was the more substantial portion of this section that would create an opportunity for existing buildings and sites with multiple building to pursue additional work on those buildings honoring historical decisions wherein a property owner made decisions to pursue certain means of constructing buildings or additions based on projects that were approved by the City, and attempted to establish a certification process so it would be clear for everyone what the baseline was, and which would make it easier as time went by to understand what allowances for development were left on a property.

Development Services Manager Murphy said staff had received some inquiries and correspondence about the proposed ZOA. Mr. John Beltramo had sent an e-mail that day and had brought hard copies tonight for the Commissioners. Mr. Beltramo addressed specifics of the ZOA as it related to a project of his that was approved by

the Council last year. Development Services Manager Murphy said that Mr. Beltramo was working on a vesting tentative map with a two-year timeframe. Due to some challenges he was facing with environmental remediation, the proposed ZOA as written would not honor the previous approval. Development Services Manager Murphy said Mr. Beltramo had suggested some language to allow his property to be incorporated with some of the exemptions. Development Services Manager Murphy said this was one of the instances wherein if the Commission would be clear about their intent and purpose that staff could work later with the City Attorney on the specific language.

Development Services Manager Murphy said the Commission also received another letter tonight from Mr. John Tarlton, Menlo Business Park, with additional comments on the ZOA.

Questions of Staff: Commissioner O'Malley asked how often the interpretation of the current definition of GFA had led to controversy, noting that it had only occurred once during his tenure. Development Services Manager Murphy said the calculation of the GFA for the 1906 El Camino Real (ECR) project was the only instance of this type of controversy that he was aware of. Commissioner O'Malley asked if anyone had looked at projects approved over the last three years to see what impact this new definition would have had on those. Development Services Manager Murphy said the majority of development in the City was single family residential, and commercial projects affected by GFA were considerably less. He said staff had not looked at prior projects. He noted that the Council's direction regarding the proposed ZOA was to not adversely affect projects that were built based on the existing definition of GFA and so a category of exemptions through certification to include those was being included in the proposed ZOA. He said those property owners through this public hearing and review were essentially being put on notice that they should come forward to the City if this proposed ZOA would affect their properties.

Commissioner Riggs asked about the Director's certification of exemption. He said it appeared for property owners with an existing site who wanted to plan future use of the sites that staff would review conformance building permit plans and an exemption would be granted if the building conformed to those. Development Services Manager Murphy said that staff would review what was on site against the historical approval by the City for the site and if those agreed staff would issue a certification of exemption showing GFA used on the site and remaining GFA.

Commissioner Riggs noted there was a cutoff of 1986 and asked if that was because records from that date on were better. Development Services Manager Murphy said while records since 1986 were more complete, the cut off date was based on when the City first established FAR and GFA in the Zoning Ordinance. He said it had come to staff's attention that this cut off date might be problematic for buildings that had certain features which existed prior to 1986 and for which the

applicant had excluded those from GFA and built certain additions based on that exclusion.

Commissioner Riggs said other communities used GFA as basis for ordinance triggers, but he thought it would make sense for the GFA to be used for volume-related triggers, noting the Commission's efforts to reduce mass and keep projects in scale with their environment. He said that parking and traffic generation related only to occupied areas. He said for a building that provided area that would normally be unoccupied such as hallways and atrium that it did not make sense that that space would affect trip generation.

Development Services Manager Murphy said they had looked at the definition of GFA for traffic studies in the Institute of Traffic Engineers manual and the definition of GFA used in it looked beyond just occupied space. He said the Commission might want to take into account some unique circumstances that might be justified in excluding or if trying to regulate from the building code might want to make a distinction between occupied and non-occupied space.

Commissioner Bims referred to Mr. Beltramo's letter and asked if staff had heard from Mr. Beltramo prior to the issuance of the staff report. Development Services Manager Murphy said Mr. Beltramo had contacted staff last week after the staff report went out and then followed up with specific correspondence.

Commissioner Bressler said there was also controversy over the calculation of GFA for the Derry Project and asked staff for comments. Development Services Manager Murphy said the 1906 ECR project was driving the proposed change to the definition of GFA. He said issues related to GFA for the Derry Project were informed by the issues of the 1906 ECR project in that regard and discussions Council was having about the definition of GFA.

Commissioner Bressler said he had heard that there were issues in how the GFA was calculated for the 64 Willow Road project. Development Services Manager Murphy pointed to Section 3 in the proposed ZOA that allowed for exemptions of all buildings in existence as of the date of adoption of the ZOA; for projects that would only need building approval; and for recent projects that were in the project pipeline with certain milestones to meet such as the applicant having submitted the application prior to January 1, 2007 and another of following through with application for building permit by a certain date. He said there was recognition made of the 64 Willow Road and Derry Projects that how GAF calculation was applied would have impact for those projects so Council wanted a way to honor historical calculation and then to desist from the calculation from a point forward.

Commissioner Deziel said he put a handout at the back table that he would be talking through; he wanted public members to know he had written it and would talk about it later; and he would welcome public comment on it.

Public Comment: Ms. Peggy Lo, property manager for the Quadrus Foundation on Sand Hill Road, said they wanted to be sure they understood the exemption language as it would affect their property. She said a letter from them was hand delivered on Monday to the City regarding their concerns that they have 4,900 square feet not yet developed and for which they had planned eight more buildings. She said their mechanical rooms could be 4,000 square feet per building which if included in GFA would use the entire 4,900 square feet available for the proposed development. She said they thought the exemption language in the ZOA was meant to apply to their property but it was problematic and unclear if it would apply. She said that they had enclosed two balconies of 300 square feet to date on a building and they had wanted to do a third. They submitted the application to do so, but it was rejected. She said it concerned her that one project was driving a change to the City's regulations for building when her company for 20 years had been building buildings as directed by staff under the existing Zoning Ordinance.

Commissioner Deziel asked what the status of her application was. Ms. Lo said they applied for the balcony enclosure building permit but it was rejected.

Commissioner Bims asked when they planned to apply for approval. She said they were ready to do the 300 square foot building application for the balcony and they wanted to use the remaining 4,600 square feet to expand space. She said the tenants they were going to give more space to has relocated to the hotel across the street because they could not wait for the proposed ZOA process to be completed.

Ms. Robin Kennedy, land use attorney with Manatt, Phelps, and Phillips in Palo Alto, said she represented the Kaiser Foundation, the property owners of the Quadrus site. She asked whether the Commission had received her letter of October 1 and if it was included in the packet. Development Services Manager Murphy said that he had a copy of the letter but it was addressed to the Mayor and had not been included in the Commission's packet. She said she was disappointed with that as she had addressed it as recommended by the City Attorney. She said she thought the language in the proposed ZOA was meant to provide Quadrus with an exemption, but the language in items A and E under Section 3 disqualified them as they had not had the building permit application submitted by May 8, 2007 and that half of the existing buildings were built in 1960, not after 1986. She said two of the balconies in the very same building had previously been enclosed by City approval, and yet their application for a third enclosure had not been accepted, specifically because of this process. She asked if the 1986 date could be removed or the date rolled back further to include the development on her client's properties. She urged the Commission to consider asking the City Attorney in subsection A related to specific exemptions that in the example of buildings with an excess amount of square footage identified to set an allowance for 5,000 square feet which limit would not produce mass or even traffic generation so that their project would fit within those limits. She said if they could not build the enclosed deck they would be in breach of their agreement with the tenant.

Mr. John Tarlton, Menlo Business Park, said the Commission had a memo which had largely been drafted by his company's architect, DES Architects. He said that Menlo Business Park was 900,000 square feet over 50 acres and largely tenanted with research and development. He said that what would be included or excluded in the GFA was very important to those tenants. He used an example of whether an interior equipment mezzanine was included in floor area or not and said that could make or break a deal. He said they would bring a conditional use permit application very soon to the Commission for a company called Lion Cells that produced lithium batteries for electric vehicles. He said the company needed a 3,000 square foot equipment mezzanine to house equipment that needed to be up off of the floor and if Menlo Business Park could not provide that space they would lose that business. He said that Menlo Business Park was designed and permitted in the early 1980s under the rules and interpretation of the rules at that time. He said the GFA was introduced in 1986 and he was not sure what had been used previously but he thought it had to be something similar to GFA. He said the Council was concerned about certain projects generating traffic and other things but it appeared for some property owners with this proposed ZOA that things like storage mezzanine and stairways might have cumulative impact and cause FAR reduction. He said he hoped those kind of mistakes could be avoided.

Mr. Morris Brown, Menlo Park, said the definition of GFA had come up because of a project near his home at 1906 ECR for which FAR was interpreted in a new way and implemented and that precluded the developer from having to do a traffic study and provide more parking. He said the square footage enjoyed by the Derry Project was considerable. He said he objected to Section E regarding the historical context of these interpretations of GFA and FAR. He said this liberal interpretation of GFA began with the Council that was elected in 2002. He said that under the "E" section, review should look at how square footage was counted in projects developed many years ago in regards to what counted toward GFA, such as utility rooms. He said they were counted in the past and then suddenly they were not. He questioned how stairwells first and second floor, and elevator shafts had been counted in the past. He asked if chimney structures and vent shafts were counted just above the roof line or throughout the entire structure. He said he did not understand the 6.5 foot high marker in the proposed definition of GFA and hoped the Commission would discuss that.

Mr. Elias Blawie, Menlo Park, said the staff report was not available on the City's website for tonight's meeting. He said the controversy about the interpretation of GFA became known with the 1906 ECR project as that caused a number of citizens to realize there was a pattern with this project and others such as the 64 Willow Road and the Derry Projects. He said the principles underneath GFA related to intensity of use and bulk. He said Commissioner Deziel's handout only looked at density and intensity and only captured a portion of the issues. He said the Council's discussion on this issue in May had had a much narrower focus than what was being presented tonight. He said that the discussion about incentives in Option 3 in the proposed ZOA did not get traction at all with the Council. He said the

Council's discussion centered on taking a more literal interpretation of the zoning ordinance and GFA and that square footage should measure everything within the walls and ceiling. He said a set of exceptions developed in recent years that had not been documented. He said the Council's discussion about grandfathering had a much narrower context than the proposed ZOA and after considerable debate the Council had indicated a cut off by the end of this year. He said the City should turn back to the original intent of the Zoning Ordinance, which had not included a set of exceptions. He said he did not have a lot of sympathy for people who built multi-building configurations contrary to what the literal words of the Ordinance said. He urged the Commission to take a narrower approach specific to the language in 16.04.325 "Gross floor area" as to whether this referred to the building shell or the finished construction and if it measured to the acoustic ceiling or the floor deck above. He said 16.80.110 of the proposed ZOA under subsection a.3, referred to a period of six months for exemptions after application for the building permit, but the Council wanted the cutoff by January 1, 2008. He said that section E should not even be included in the proposed ZOA and the City should follow the intent of the ordinance to protect for intensity of use and bulk.

Ms. Susan Eschweiler, DES Architects, requested that the Zoning Ordinance not be changed and it should remain as it has been for the last 20 years, saying the definitions had been clear as to what was needed for approvals. She said she was particularly concerned about tracking square footage, certification and the complexity of that as staff would need to administer this. She said if the Zoning Ordinance was changed, she would prefer that it was changed to match the building code as there were inconsistencies.

Commissioner Riggs said that exceptions to GFA were not in the ordinance but had been determined through discussion with staff, thus the new process proposed would be about the same as what had occurred previously.

Commissioner Deziel asked staff if the current practice was to not count anything what would be the disposition of elevator shafts and stairwells if no change was made to the ordinance. Development Services Manager Murphy said they would be counted both on the first and second floors. Commissioner Deziel asked how long the practice of counting of stairwells once had been. Development Services Manager Murphy said that at least for 10 years.

Chair Keith closed the public hearing.

Commission Comment: Commissioner Bressler said one of the speakers had their application rejected by staff before it came to the Commission. He said that Section 16.80.110.e was a way for variances to get before the Commission for review. Development Services Manager Murphy said that "e" would establish a baseline so there could be some additional gross floor area left and whatever level of approval would be used for a permit whether Commission approval was needed or if staff could approve.

Commissioner Bressler said there was a certain amount of discretion he would like the City to keep such as the equipment need mentioned by Mr. Tarlton. Development Services Manager Murphy said in terms of intent that it would be a different process to allow the Planning Commission on a case-by-case to calculate how GFA would be applied and the ZOA as currently set up did not give the Commission that discretion. Commissioner Bressler said that applications show variances from the zoning ordinance and it is easy for the Commission to review.

Chair Keith asked why the measurement of 6-foot 6-inches was chosen. Development Services Manager Murphy said that number was taken from the definition of GFA for traffic studies in the Institute of Traffic Engineers manual and it was less than the building code numbers. Chair Keith asked about the Council's direction to have exemptions stop by January 2007 and why staff extended that exemption period to six months from final approval. Development Services Manager Murphy said staff had received other direction from Council direction in regard to projects such as 1906 ECR for which the Council had established a certain way it would look at that; thus that project would have to be revised and come back to the Commission first. He said that would be very difficult to accomplish by January. He said that exemption would not apply to many other projects. Chair Keith asked how mezzanines would be treated related to Mr. Tarlton's comments. Development Services Manager Murphy said that in 2002, SRI had mezzanine equipment that was not counted as GFA which had been recorded in staff reports and was approved through the public hearing process. He said the space was no habitable so there was some precedence for excluding it from the GFA count. He said the guide for this proposed ZOA was that it was exempt from CEQA. He said that another amendment to address mezzanines would need at least a Negative Declaration to look at intensity and bulk impacts. Chair Keith said that one of the purposes of the proposed ZOA was to clarify things but she did not think this document accomplished that.

Commissioner Pagee said that square footage was defined for the application of taxes and the sale of property was based on square footage, indicating that there were different definitions of square footage. She asked when the Tarlton properties were developed if the literal definition of GFA was used and when Quadrus was first built how was GFA defined and if this then became policy. She said it seemed that mass was not impacted or increased with the enclosure of a balcony, but it did impact traffic patterns, increase pollution, affect the building envelope and impact the environment around that building. She said she was concerned with how to move forward on the proposed ZOA and help persons who had counted on interpretations in the past.

Commissioner Deziel asked staff to go through the exemption items and how long those had been honored and historically practiced. Development Services Manager Murphy said he was not comfortable doing that but he could do research and come back. He said speaking anecdotally that during his 10 years with the City that



basements had been included in GFA. He noted the Menlo Square Project 2002 included exclusions such as elevator lobbies, storage areas and exercise area, and that other projects such as SRI 2002 had excluded square footage for mezzanine mechanical equipment areas. He said attics were an area of ambiguity related to the minimum ceiling height as to whether to count as GFA or not; there often has been reference to the FAR definition for attics that was counted at five feet. He said equipment storage areas for mechanical equipment and also electrical panels and such had been excluded from GFA. He said that storage areas per se were included in GFA, but it had been excluded for specific projects and had to do with location and features of those storage areas. He said that at least for 10 years the practice had been for stairwells and elevator shafts to be applied to GFA for only one floor and not for multiple floors. He said that for residential projects, bay windows and other extrusions, had been excluded from GFA, based on the definition of GFA. He said that had to do with architectural benefits associated with these features. with those. He said regarding covered porches and balconies the language was trying to establish that at least one end has to be open for a certain amount; he was not aware of any closed porches and balconies included in GFA. He said vent shafts were in the ordinance and this ZOA was trying to define what that meant in terms of vent ducts and chimneys. He said covered trash and recycling enclosures tended to be separate structures, but if attached there had been exclusions for that.

Commissioner Deziel said he thought that vent shaft exclusion applied to all floor levels. Development Services Manager Murphy said that was so.

Commissioner Riggs said mechanical rooms had been excluded for longer than five years. Development Services Manager Murphy said that had been done prior to 2002. Commissioner Riggs said looking at the Council minutes he did not see a moratorium on planning approvals during this period of discussion and asked if this was a decision of the City Attorney so that 2480 Sand Hill was discouraged from applying. Development Services Manager Murphy said there was a difference between applying and what might be done for an application. The Council did direct the use of a stricter definition of the GFA. Commissioner Riggs said there was a direction in the minutes to study the definition of GFA, and to develop it to give to the Planning Commission for a recommendation. He said this was to include an exemption for existing buildings, exemption for application date, and exemptions for applications that were administrative and submitted by May 8. Development Services Manager Murphy said the Council at the 1906 ECR project hearing gave staff direction to handle GFA differently. He said that the question of milestones was more the purview of the Council, which was why staff thought the Quadrus' letter should be addressed to the Council.

Chair Keith confirmed with staff that the proposed ZOA was exempted from CEQA.

Commissioner Deziel said it should be clear that a change had already occurred and this proposed ZOA was to codify that change. He said the Council in its motion said the staff report should include a list of possible exemptions for consideration and

whether those were considered to be categorically exempt. He said in minutes of the May Council meeting, at least four members said they were not intending to interpret the request for clarification so narrowly as to eliminate all exemptions from GFA. He said a massive dislocation had already occurred in the commercial sector however with this new clarification; for instance, the Quadrus property was shut down because they were out of GFA. He said they should go back to the Council's intent, which was explicit, to go over examples of exclusions and recommend whether or not it should be categorically exempt from CEQA. He said he had a table that outlined this and suggested the Commission go through this. He said regarding elevator shafts that they were simply transport between floors and not increasing the use. He said allowing an elevator shaft would not increase the intensity and bulk, but offered a benefit to the City. He said the benefit was to allow persons who could not take stairs to access multi-floor spaces. He said bulk questions would be addressed with the discretionary and architectural control review. He asked if the Commission could find this exception as exempt from CEQA.

Chair Keith said that the things included met the CEQA exemption and suggested they review the items in the Ordinance. Development Services Manager Murphy said the standard staff would follow was on page 5 of the staff report regarding the certainty that there would be no possibility of significant environmental effects occurring as a result of the adoption of the ordinance amendment. He said if there was any potential for significant environmental effect then the Initial Study route would need to occur and then a determination of the applicability of a Negative Declaration or EIR. Chair Keith said it seemed the Council wanted to keep to the exemption from CEQA route. Development Services Manager Murphy said there was also an interest in understanding those aspects that would be beyond an exemption. Commissioner Deziel said the Council may have not wanted to do an EIR.

**Basements:** Commissioner O'Malley said it was presently included. General consensus to leave as stated.

**Mezzanine:** Commissioner Deziel said that they should look at mechanical rooms such as Quadrus who put mechanical rooms in spaces with the least impact to neighbors. He said that mezzanine should be excluded from GFA. Commissioner Riggs said the issue was whether or not the mezzanine was inhabitable and contributed to traffic load and other person-counted matters. He said it was like attics – was there light, air, power, and head height, and if there were, then the space could be occupied. He said if it was strictly for a mechanical equipment space then there was no need for natural light and windows, and might not even need a complete floor. He said the guidelines for administrative approval should look at light, air, power and head height and should apply to attics as well.

Commissioner Deziel said that if the room was dedicated to mechanical equipment there had to be light and power. Commissioner Riggs said that the plans submitted to building department would show this clearly. He said his intention would be for an

administrative review of the space but guidelines were needed as it could not be made completely objective. Chair Keith said that staff could work on the guidelines for whether the space could be occupied. Commissioner Bims said that there would have to be discretion allowed for staff. Commissioner Bressler said he would like the discretion called out in the documents the public received and should show what was exempted and why. Commissioner O'Malley said mechanical equipment spaces needed light and air conditioning but if the discretionary process was clear that would enable the Commission to consider it fully. Commissioner Deziel said the problem with 1906 ECR was that it had phones within a 50-foot space and that each office had a 30-foot mechanical room.

Chair Keith said that mezzanine would be included if it was a space that could be occupied and staff would develop the guidelines that would be shown in staff reports.

**Attics:** It was the Commission's consensus for a determination of whether the space could be occupied or not and staff would develop the guidelines that would be shown in staff reports.

**Equipment and utility areas, such as mechanical equipment, electrical panels, meters, controllers, switch boxes:** Development Services Manager Murphy said mechanical equipment had a longer history of being excluded. He said if the Commission viewed all of the different uses as the same as mechanical the list could stay together.

Commissioner Deziel said that categories 4 and 5 should be removed from "B" and added to "C," as the other categories described physical space and not the use, and should categories 4 and 5 should be shown as C.5 "mechanical."

Commissioner Pagee suggested looking at how other cities counted these items. Commissioner Deziel said Redwood City counted elevators and stairwells as square footage but in their zoning ordinance they do not have any FAR limits almost anywhere.

Commissioner Bressler said it was best to determine whether the space could be occupied or not.

Commissioner Riggs said architects look for consistency and clients look for consistency. He said changing the rules on a campus that has existed, was in process and business, should not happen unless the buildings were demolished. He said mechanical equipment was usually exempt for many jurisdictions because it was preferable to not have it on the roof. He said shafts were generally only counted once because it was usually on one floor and served no use for occupied space. He agreed with removing storage areas as an exemption.

Commissioner Deziel said that item 5 should perhaps stay and just remove item 4. He said if a bay window was cantilevered at the floor level it would count.

Development Services Manager Murphy said regarding storage areas that it was important to provide examples of things that are included. He said he understood the direction the Commission was headed related to whether the space could be occupied or not. He said regarding bay windows that those could be defined and differentiated as to whether the floor area extends out or it was just a window; as written it was being excluded. Chair Keith said it should be included if it went to the floor, and excluded if above floor. Commissioner Bressler said that the review process should look at that. Commissioner Deziel said some projects would go straight through the Building Department so that a definite height measurement would be desirable that triggered exclusion.

Commissioner Pagee suggested adding a C.5 that would state areas dedicated to be used solely as mechanical equipment rooms should be excluded from GFA and leave the list 1-7 under "B." Commissioner Deziel said to slightly generalize "C.5" so anything that made noise such as emergency generators which might be put outdoors would not be charged for square footage if the applicant chose to put those items inside. Commissioner Pagee thought that tenants would not want emergency generators in the interior. Commissioner Riggs said that emergency generators were not for daily use. Commissioner Pagee said that some generators were supplemental and used for stand-by. Commissioner Riggs said that generators could be inside the building. Commissioner Deziel said that if the generator was outside it only had to meet the noise rating, but if they were placed inside there would be no charge against square footage. Commissioner Bressler said that it all fell under whether the space could be occupied or not, such as a trash enclosure.

Chair Keith said Commissioner Pagee's suggested language was for a room dedicated to mechanical equipment. Commissioner Deziel suggested that C.5 read: "areas dedicated to noise generating equipment such as mechanical and emergency or standby generators." Commissioner Pagee said she could not see changing out a generator from inside a building. Commissioner Riggs said that it was done with Quadrus.

Chair Keith asked if B. (4) would remain as is. Commissioner Riggs asked if janitor closets would be included. It was Commission's consensus to leave as written, except to remove "mechanical equipment" that had been moved to C.5.

In response to an inquiry by Chair Keith, Development Services Manager Murphy said his preference would be to bring a revised document back to the Commission for which he had enough to do so. Chair Keith said that it would be better to finalize recommendations tonight. Development Services Manager Murphy confirmed that the Commission wanted B. (4) to remain except to excise "mechanical equipment" and add that as C.5 as previously stated by Commissioners Pagee and Deziel.

Commissioner Pagee said they were talking about the flexibility in the building and its occupancies and that a building could have a mechanical equipment room that in 10 years was later converted to an office and the building would not be in compliance. She said they needed to be clear about mechanical equipment that was needed. She said they were providing a core building with air conditioning with the flexibility to enclose the mechanical equipment inside, but it created loopholes for future use of the building's spaces.

Commissioner Deziel said that as long as mechanical equipment remained in a building it could be relocated within the building and use the same amount of square footage, but if they wanted to remove the mechanical equipment and use the space differently then that would be captured in the building permit process and the calculation of the square footage would be refreshed. Development Services Manager Murphy said it might be necessary to put processes in place to not allow certain permits to be issued until that topic had been reviewed.

Commissioner Riggs said that the mezzanine might be removed and converted over the weekend without permits, and if there was a building permit that could create an awkward situation in which the owner might have to remove part of their building if they no longer needed the mechanical room and had perhaps gone completely green. He said they were trying to solve the Menlo Business Park conflict and they were dealing in shell buildings. He suggested there might be a separate exclusion for tenant improvement applications that mezzanine or other floor area additions dedicated to mechanical equipment would not count toward GFA. Commissioner Bims said it sounded like he was tying the definition of GFA to the use permit for the building space. Commissioner Riggs said the definition was tied to the building shell and not to the tenant improvements. He said they were trying to generalize a solution for Menlo Business Park. Commissioner Bims said that it seemed the only way to regulate was through the use permit process. He asked if Commissioner Riggs was trying to keep nonconformity from happening. Commissioner Riggs said he was trying to allow for a mezzanine for mechanical equipment use to be excluded from GFA. Commissioner Bims said it sounded like this would be a trigger for a use permit if mechanical equipment was removed from a space that had been excluded from GFA. Commissioner Riggs said he would need to ask staff if that constituted a use permit process. Development Services Manager Murphy said it would depend upon whether the building was built to the maximum FAR, and if so, by effectively changing the use of the space from mechanical to non-mechanical this would make the building legally nonconforming related to FAR and it would depend on the extent of changes they were proposing with the next building permit as to whether it would trigger a use permit. He said once there was a potential to make a building considered nonconforming then there were potential impacts to the financing.

Commissioner Pagee said if the Zoning Ordinance was creating envelopes for occupancy then elevators were needed as well as staircases for emergency ingress/egress and that all of the other things could come and go and be counted toward GFA. She said related to Menlo Business Park wanting a mezzanine for

equipment that there should be a process for that with certain requirements for it to be excluded from GFA. She said she thought it needed to be kept simple with specifics.

Commissioner Deziel said keeping to C.5 as proposed was all that was needed as there would be a building with elevators and staircases and if those were removed then the owners would create new FAR and would need a building permit to do that. He said every building permit was reviewed from a planning perspective. He said if a tenant wanted to add space dedicated to mechanical equipment that would be fine, but if they wanted to use space for other use and remove the mechanical equipment they would need a building permit. Commissioner Bims said that some tenant improvements did not require building permits. Development Services Manager Murphy said it was based on the amount of modifications but that most would need a building permit. Commissioner Pagee said if a building had maxed out on FAR with a 500 square foot space of mechanical equipment then if they were to move the mechanical out of that space they would have gained 500 square feet of rentable space. Development Services Manager Murphy said in Section 16.80.030 related to a nonconforming structure that so long as there was not an increase in the nonconformity a permit was not needed. He said there was a question of what triggered the nonconformity and if that was they removed the equipment to put on the roof, there might not be a way for the City to require a permit to move the mechanical equipment onto the roof.

Chair Keith confirmed that Development Services Manager Murphy was clear on the Commission's intent related to B.4.

**Elevator Shafts and Stairwells:** Commissioner Riggs suggested that they only be counted on the first floor level. There was Commission consensus.

**Bay Windows and similar projections or cantilevered areas:** Commissioner Pagee suggested including within 18-inches from floor. Development Services Manager Murphy said they should look at other parameters such as protrusions too. Commissioner Pagee said that if it had a floor it should be counted toward GFA. Commissioner Riggs suggested leaving B.7 as written and to count a bay window whether sitting or standing in it. Chair Keith said she thought they were going to include bay windows unless it was some height off the ground and then it would be excluded from GFA. Development Services Manager Murphy said there were other dimensions needed or people would push the concept of a bay window to the maximum. He said there was not a definition for a bay window for commercial. Commissioner Deziel said he thought the protrusion for a commercial bay window should only be two or three feet. Commissioner Pagee said that bay windows could intrude into setbacks in a residential area. Development Services Manager Murphy said with the definition of GFA as it applied to multi-residential districts, R-3 and R-4, and commercial, there had been challenges with R-3 applications. The exclusion in floor area was bay window protrusions that did not provide foundation and were no longer than seven-feet. He said for commercial design he could see a 20 to 30 feet

width and he did not think that was what was being talked about. He said there was also a concept of maximum encroachment into a side yard and that could provide some parameters in all three dimensions. Chair Keith said she liked the idea of a bay window protrusion that did not provide foundation. Commissioner Deziel said he thought they could be allowed two feet clear interior and then 32-36 inches protrusion, and 12 feet long maximum for commercial. Commissioner Pagee said this was also R-3 and R-4 and asked them to consider an R-1 next to an R-3 with a 36-inch protrusion. Commissioner Riggs said that he thought they were creating a monster.

Chair Keith suggested they vote on what they wanted.

Commission Action: M/S Riggs/Keith to keep #7 under "B."

Motion carried 6-1 with Commissioner Deziel voting against.

**C.1:** Commission consensus to keep as written.

**C.2:** Commissioner Deziel asked what the 60% meant. Development Services Manager Murphy said that the outer face would need to be 60% open. He said they have had challenges with people wanting to make them more enclosed than what the intent was. He said the 60% was to have the maximum of that wall open. The Commission discussed designating that it would have be the larger of the open end walls. Development Services Manager Murphy asked if the Commission was concerned about the side walls and if those should be solid or not and if 60% worked. Commissioner Riggs suggested that it be 50% of the perimeter of balcony and porches remain open. Commissioner Bressler said that this should have drawings to illustrate this. Development Services Manager Murphy said it was something that could be proposed to the Council. Commissioner Deziel said at least 20% of the perimeter needed to be open. There was Commission consensus for 20% of the perimeter needed to be open.

**C.3:** Commissioner Riggs said that architects would not have problem with how this was written, but asked if there were any applicant issues with this. Development Services Manager Murphy said it was implied for each floor. Commissioner Pagee said the first floor should be counted, and she was not sure chimneys should be excluded as those were no longer needed for fireplaces. Commissioner Riggs said that chimneys were built from a flue for a gas-operated fireplace. Commissioner Deziel said he thought it was perfectly worded. Chair Keith asked if Development Services Manager Murphy had said vent shafts were excluded at each floor. Development Services Manager Murphy said that this was to better define vent shafts and that those were excluded on each floor but if they changed shape from floor to floor that would be looked at. There was Commission consensus to keep as written.

**C.4:** Commission consensus to keep as written.

Chair Keith noted that a C.5 had been added previously.

Commissioner Deziel said he had two proposals for a C.6 and C.7. The first had to do with two-story volume and it should only be counted once. He said for the Derry project that two-story and multi-story volume should only be counted once. Commissioner Pagee said this also would apply to R-3 and R-4. Commissioner Deziel said to consider excluding below ground storage in R- X-districts as there would not be any additional livable space and it would encourage underground parking. He said the below ground storage should be accessed from the garage only and offered as an example Menlo Square. Commissioner Bressler asked about vaulted ceilings and if the existing code counted double. Development Services Manager Murphy said that was available for commercial and was not counted double. The Commission did not express interest in the two ideas proposed by Commissioner Deziel.

**FAR:** There were no issues.

**Section 2 Mezzanine:** Commissioner Riggs said that one could build 17-foot floor to floor and insert floors in between that could be occupied. He said the building code for the purpose of mezzanine said it was one-third of the floor area it interrupted and was entirely open on one side so it was clearly a subset of the larger floor. Commissioner Deziel said that Mr. Tarlton had expressed a desire for it to fit the building code. Commissioner Riggs asked about the purpose of a mezzanine as it would be counted for GFA but should be distinguished from a floor. Development Services Manager Murphy said it could be reviewed for consistency with the building code and if it could be achieved without harm that would be fine.

**Section 3 Exemptions from GFA definition:** Commissioner Riggs noted this was discussed under A.3. Development Services Manager Murphy said this was where Mr. Beltramo was requesting a modification and there were a three ways to achieve this. Commissioner Pagee asked if there was a problem if they came back before the Commission prior to the expiration to reinstate. Development Services Manager Murphy said the project would come for an extension but if they came forward to the City in February which would be within their two-year approval they would have to do a revision to allow for the square footage shown on the plans. Commissioner Bressler said he did not like the Beltramo letter as it would change wording that might affect others; he said this exemption should not affect any other situation. Commissioner Deziel said looking at A.3 the issue was whether they submitted a plan for review by some date but the application for a building permit requirement was superfluous and should be dropped so as not to create a bottleneck in January. In response to Chair Keith, Commissioner Deziel said he agreed with the first option in Mr. Beltramo's letter. Commissioner Riggs asked if Mr. Beltramo applied to extend their planning review at the end of six months or if they applied for a revised design whether that would start the process all over. Development Services Manager Murphy said he thought it would need to essentially be the same design.



He said the language did not provide flexibility for reconfiguring the uses with the same floor area. Chair Keith asked if “and submit....” was deleted whether language was needed that projects submitted before January 1 needed to maintain the plan previously submitted. Development Services Manager Murphy said there needed to be some additional language provided that a project was approved and the approval did not expire prior to the building department submittal and to be consistent with the approval. Chair Keith said there just needed to be language that it was the same as what was considered during the discretionary review process. Development Services Manager Murphy said they would look at what had been approved and what had been submitted to make that consistent what has been approved.

**B.** Commissioner Riggs asked what amortization meant. Development Services Manager Murphy said it related to non-conforming uses and structures and the City has the authority through the ordinance to require those to cease to exist over a certain timeframe depending on their construction type. He said the City has never pursued amortization to his knowledge, but it has the potential to be onerous. There were no issues raised with “B.”

Commissioner O'Malley left the meeting.

**C.** Any building exempt.... Commissioner Riggs asked for an exemption for code-required ADA-required improvements. The Commission agreed with that.

**D.** No issues.

**E.** Chair Keith noted this related to the Quadrus property. Commissioner Riggs said that Quadrus would have to demonstrate their expectations. Development Services Manager Murphy said they would submit drawings and numbers and staff would compare that to historical record to come to agreement; there was an appeal process if they could not get agreement. Commissioner Deziel said there was nothing defined prior to 1986. Development Services Manager Murphy said the focus had been on activity since 1986, but this needed change to capture instances wherein a building existed prior to 1986 with floor area calculated in a certain way and certain assumptions made upon which the owners went forward with their development. He said this language should be changed if the goal was to accommodate people who made decisions from 1986 to 2007 in a certain way. It was Commission's consensus that staff would write new language.

**E.1** Commissioner Deziel said the timeframe was too tight for property owners to respond to this change to the zoning ordinance. He said the City through this ZOA was implying they have a legitimate claim. Commissioner Pagee suggested there needed to be a limit. Commissioner Deziel said it would be costly to do architectural drawings. Chair Keith said she thought it could be longer than a year but not much more for residents to respond. Commissioner Pagee suggested two years. Commissioner Riggs said that the changes might not seem important to property

owners at this time but in the future they might become important because of a future tenant's needs. He said one year was not enough but perhaps five years would be enough. .Commission consensus was for the 30-day notice to property owners of the change to the ordinance and for a 5-year time period for property owners to document exemption.

**3.** Community Director's Review. Commission had no issues with it.

**4.** Decision of Community Director's review appealed to Planning Commission. Chair Keith suggested that it should be appealed to the City Council. Development Services Manager Murphy said that others would prefer appealing to the Planning Commission. The Commission's consensus was to leave as written.

**5.** Commission had no issues with this.

Commission agreed with Sections 4 and 5.

**CEQA- Environmental Review:** Chair Keith said the standard was "... 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." She said with the changes recommended that this should be a finding analyzed by the City Attorney. Development Services Manager Murphy said the Planning Commission needed to comment on this. Commissioner Bressler said that the changes recommended did not create any possibility of significant environmental effects.

M/S Keith/Riggs to make the changes to the ordinance as directed and return to the October 22, 2007, meeting with revised ordinance; 6-0-1 with O'Malley absent from the vote.

## **D. REGULAR BUSINESS**

1. **Selection of Planning Commission Representatives to the El Camino Real/Downtown Vision Plan Consultant Review Committee.**

Commission Action: Planning Commission unanimously agreed to appoint Commissioners Bressler and Riggs who volunteered for the committee.

## **E. COMMISSION BUSINESS, REPORTS, AND ANNOUNCEMENTS**

1. Review of upcoming planning items on the City Council agenda.

Planner Chow reviewed upcoming planning items on the City Council agenda.

## **ADJOURNMENT**

The meeting was adjourned at 11:17 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on November 19, 2007.