

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet (INTERPRETATION)

DATE: Monday, May 11, 2015

CASE NUMBER: C15-2015-0038

___Y___ Jeff Jack – Chair - Motion to Affirm and Reverse a portion (see below)
___Y___ Michael Von Ohlen - 2nd the motion
___Y___ Melissa Whaley Hawthorne - Vice Chair
___Y___ Sallie Burchett
___-___ Ricardo De Camps – (out)
___Y___ Brian King
___Y___ Vincent Harding

APPLICANT: David Piper (Officer VP 2)

OWNER: Zilker Neighborhood Association

VARIANCE REQUESTED: The appellant has filed an application challenging the Planning and Review Department's staff memo stating Subchapter F, Article 3, Section 3.3.3 (C) "serves no purpose and is not interpretable".

Note: Subchapter F, Article 3, Section 3.3.3 (C), of the Land Development Code states:

"Porches, basements, and attics that meet the following requirements shall be excluded from the calculation of gross floor area:

C. A habitable portion of an attic, if:

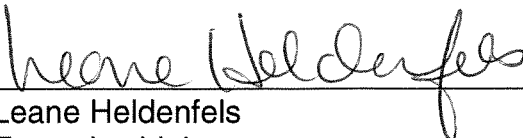
1. The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;
2. It is fully contained within the roof structure;
3. It has only one floor;
4. It does not extend beyond the footprint of the floors below;
5. It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and
6. 50% of more of the area has a ceiling height of 7 feet or less."


BOARD'S DECISION: The public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to May 11, 2015, Board Member Ricardo De Camps second on a 7-0 vote; POSTPONED TO MAY 11, 2015. MAY 11, 2015 The public hearing was closed on Board Member Jeff Jack motion to AFFIRM the Director's interpretation of Article 3.3.3.C 2 of the Subchapter F (McMansion) ordinance, as reflected in staff's memos of December 1, 2014, January 12, 2015 and April 1, 2015 that pertains to dormer's being "fully contained within the roof structure" with regard to the criteria for an attic exemption from the Gross Floor Area calculations with the stipulation that such dormers are contained within the horizontal area of the primary roof and to REVERSE the Director's interpretation of Article 3.3.3.C.5 of the Subchapter F (McMansion) ordinance, as reflected in staff's memos of December 1, 2014, January 12, 2015 and April 1,

2015 that pertain to dormers adding no additional mass to the structure in that the floor area of the portion of a dormer(s) that penetrates the McMansion "Tent" does not qualify for the attic exemption and such areas shall be included in the calculation of the Floor Area Ratio for the building, Board Member Michael Von Ohlen second on a 6-0 vote; AFFIRMED THE DIRECTOR'S INTERPRETATION OF ARTICLE 3.3.3.C 2 OF THE SUBCHAPTER F (MCMANSION) ORDINANCE, AS REFLECTED IN STAFF'S MEMOS OF DECEMBER 1, 2014, JANUARY 12, 2015 AND APRIL 1, 2015 THAT PERTAINS TO DORMER'S BEING "FULLY CONTAINED WITHIN THE ROOF STRUCTURE" WITH REGARD TO THE CRITERIA FOR AN ATTIC EXEMPTION FROM THE GROSS FLOOR AREA CALCULATIONS WITH THE STIPULATION THAT SUCH DORMERS ARE CONTAINED WITHIN THE HORIZONTAL AREA OF THE PRIMARY ROOF AND REVERSED THE DIRECTOR'S INTERPRETATION OF ARTICLE 3.3.3.C.5 OF THE SUBCHAPTER F (MCMANSION) ORDINANCE, AS REFLECTED IN STAFF'S MEMOS OF DECEMBER 1, 2014, JANUARY 12, 2015 AND APRIL 1, 2015 THAT PERTAIN TO DORMERS ADDING NO ADDITIONAL MASS TO THE STRUCTURE IN THAT THE FLOOR AREA OF THE PORTION OF A DORMER(S) THAT PENETRATES THE MCMANSION "TENT" DOES NOT QUALIFY FOR THE ATTIC EXEMPTION AND SUCH AREAS SHALL BE INCLUDED IN THE CALCULATION OF THE FLOOR AREA RATIO FOR THE BUILDING.

FINDING:

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: (Please see attachments)
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: (Please see attachments)
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: (Please see attachments)


Leane Heldenfels
Executive Liaison


Jeff Jack
Chairman

Board of Adjustment Motion Sheet

May 11, 2015 B of A meeting

Agenda Item F-1

Case C15-2015-038 David Piper for the Zilker Neighborhood Association

Board member's Motion

"I move to affirm the Director's interpretation of Article 3.3.3.C 2 of the Subchapter F (McMansion) ordinance, as reflected in staff's memos of December 1, 2014, January 12, 2015 and April 1, 2015 that pertains to dormer's being "fully contained within the roof structure" with regard to the criteria for an attic exemption from the Gross Floor Area calculations with the stipulation that such dormers are contained within the horizontal area of the primary roof.

"I also move to reverse the Director's interpretation of Article 3.3.3.C.5 of the Subchapter F (McMansion) ordinance, as reflected in staff's memos of December 1, 2014, January 12, 2015 and April 1, 2015 that pertain to dormers adding no additional mass to the structure in that the floor area of the portion of a dormer(s) that penetrates the McMansion "Tent" does not qualify for the attic exemption and such areas shall be included in the calculation of the Floor Area Ratio for the building.

Text related to this Interpretation

(1) To qualify for the "attic exemption" from the Gross Floor Area calculations under Section 3.3.3.C of Subchapter F, a habitable portion of an attic must meet each of the following requirements:

(C) A habitable portion of an attic if:

1. The roof above is not a flat or mansard roof and has a slope of 3 to 12 or greater
2. **It is fully contained within the roof structure**
3. It has only one floor
4. It does not extend beyond the foot print of the floor below
5. **It is the highest habitable portion of the building or a section of the building and adds no additional mass to the structure.**

Items 1, 3, and 4 are not in dispute and are not considered by this Boards action on items 2 and 5

Context of this Interpretations

The appellant, the Zilker Neighborhood Association, challenges staff's interpretation concerning dormers that are allowed by Subchapter F to extend beyond (penetrate) the McMansion "Tent" that the area under these dormers can be exempted from being included in the calculation of the building Floor Area Ratio. The Zilker Neighborhood Association contends that Section 3.3.3.C's provisions #2 and #5 prohibit dormers that are not "fully contained within the roof structure" and that "add additional massing" to the building should not be allowed to exclude the floor area within the dormer from the FAR calculations.

Findings

(C) 2 It is fully contained within the roof structure

This provision is problematic in that the words “contained” and “roof structure” are not defined in the code. The wording “roof structure” has had some clarification due to the Daniel Word memo dated July 29, 2008. This memo and the B of A support of the conclusion stated in this memo in a previous B of A interpretation case is instructive in making it clear that the “roof structure” means the primary roof structure of the building defined as starting at the intersection of the exterior wall and the ceiling structure of the second floor. Figures #1, #2 and #3 from this memo, see attached, show construction situations that define attic space below the roof structure that conforms to the provisions of the ordinance as being allowed to be excluded from the FAR calculations if they meet all other criteria. However figure #4 indicates a configuration where in the space below the roof where the roof has been raised by an additional wall section that is in line with the perimeter exterior wall below, is not considered to be “fully contained within the roof structure.”

This memo further states that such an attic area “would not qualify for exclusion from the calculation of gross floor area.” Therefore the floor area of a building section with these characteristics would not be excluded from the calculation of FAR.

We concur with this position as stated by staff in that a wall and roof configuration as illustrated in figure #4 is not fully contained within what would be the primary roof structure for a typical attic space. If such a configuration would be allowed it would raise the entire roof structure essentially resulting in a building having a third floor which is counter to the intent of the ordinance. While it is clear that such a wall/roof configuration is not compliant with the intent of the McMansion ordinance with regard to limiting the attic space available to be included in the exemption, it is not clear how this applies to dormers.

Dormers by their very nature extend higher than the surrounding roof areas. The typical definition of “dormer” (Webster’s New World, Third College Edition) states “ 1) a window set upright in a sloped roof, 2) the roofed projection in which this window is set. ” Many architectural reference manuals clearly indicate that a dormer (shed or gable) would extend above the adjacent primary roof structure, see attached graphic.

Therefore an interpretation of this provision wherein a dormer that rises vertically above the primary roof structure, similar to the situation illustrated in the Daniel Word memo figure 4,, would preclude any area under a dormer from being exempted from being included in the FAR calculations. However this conclusion rests entirely on the interpretation of “contained within” as applying to the vertical dimensionality of the dormer.

An alternative interpretation is that the dormer is contained within the horizontal area of the primary roof. So would it be possible for a dormer to be outside the horizontal area of a primary roof. Certainly a design could be formulated that extends the dormer past the exterior wall and roof areas, so there is possible an alternative interpretation of this provision as it applies to dormers. But this provision has to be assessed along with the issue of whether or not “additional mass” is added by the addition of a dormer with such a configuration as suggested by figure 4 of the Daniel Word memo. We will return to this issue after considering the issue of “ no additional mass to the structure”.

(C) 5 adds no additional mass to the structure

The McMansion ordinance relies on limiting the mass of new residential construction by two related concepts that are coupled together to limit the mass of a building. The first of these is the limitation of Floor Area Ratio to .4 habitable space for every one sf of site area, and FAR of .4 to 1. The second concept defines a "Tent" of space that if a building is built within this "tent" it has an acceptable massing as long as it also meets the FAR requirement. This tent is defined by a given height at the property lines (15') then an angled line (45 degrees) that intersects with the maximum height allowed (32 feet). This method of defining the "Tent" is applicable to the two sides and rear of the property. See attached Figure 10 from the code.

The ordinance recognizes that dormers of several types are an architectural feature common to many attic spaces. These dormers are allowed by the code to penetrate the "Tent" as illustrated in the attached figures 14, 15 and 16 from the code. So the question becomes, that while allowed by the code do they add additional mass to the building beyond what was intended by the code? If they do then they would not meet the requirement that they add no more additional mass to the building so that they would not qualify for the exemption.

The underlying question is if a building utilizes the maximum extent of the "Tent" as defined by the parameters noted above is it still in conformance with the code? See illustration T-1. The code itself is silent on this issue so it seems reasonable to assert that one could design a building that extended to the limits of the "Tent" and it would be in compliance so long as it met the FAR restriction. See illustration T-2. While such a design is probably not feasible due to other code provisions, such as not having a flat roof, a typical design such as illustrated in T-3 is certainly compliant with these parameters of the code.

If that were the case then a building that did not extend to the maximum limits of the "tent" but had dormers that were also within the "Tent" would also be under the maximum boundary for the mass of the building as allowed by the code..

Therefore if any design is proposed within the limitation of massing defined by the "Tent" and FAR acceptable? If the "tent" was intended to be the maximum limit to massing, given a building meeting all other requirements such as FAR, Building Coverage and Impervious Coverage I believe the correct interpretation is that any dormer that can be contained within the acceptable limits of massing defined by the "Tent" is not adding to the massing allowed by the "Tent". While such dormer will indeed add massing to a similar structure that does not have dormers, it is not adding massing above what the "tent" would allow so long as it also meets the FAR limitation. In which case any additional floor area of a dormer contained within the "Tent" that meets the other requirements for an attic exemption would be excluded from the calculation of FAR. Please see attached illustration "T-4".

And while dormers are clearly allowed to penetrate the "Tent" such a penetration has to be seen as exceeding the allowable massing defined by the "Tent" and as such the area within such a dormer should not be allowed to be exempted from the FAR calculation. By including such area in the FAR calculation it will balance out the massing by the limitation of the FAR that would then necessitate a reduction of habitable floor area in other areas of the building in order to maintain the .4 to 1 FAR ratio thus maintaining the intent of the ordinance. See illustration T-5

(C) 2 Impact of other dormer configurations

As for dormers with configurations similar to figure #4 in Daniel Words memo concerning whether or not they are “fully contained within the roof structure”, once again we have to defer to the McMansion ordinance use of the tent and FAR to describe the acceptable massing allowed. And that allowable massing is a variable due to the lot size and configuration. As illustration T-6 indicates a larger lot with a comparable larger “Tent” could have a dormer with an exterior wall/roof relationship like figure #4 of the Daniel Word memo, but still be within the limits of the “Tent” applicable to that property and so long as it met the FAR requirement.

Therefore to be consistent with the concept of the “Tent” setting the maximum massing boundary under which the attic floor area could be exempted from the FAR calculations, (assuming it met all other requirements) such a shed dormer would be allowed and it’s area would not be included in the FAR calculations. Therefore if the code wording “fully contained within the roof structure” applied only to the vertical aspects of the dormer such a dormer configuration would not be allowed to take the attic exemption. But since this configuration would be within the “tent” boundary for applicable lots, such dormers should be considered fully contained within the horizontal area of the primary roof structure for the purpose of determining the attic area that can be excluded from the FAR calculations.

This interpretation would be consistent with the McMansion concept of using both the “Tent” to define the boundary of acceptable massing and the Floor Area Ratio to limit the maximum allowable habitable space in residential buildings within the McMansion area.

Staff direction

This interpretation supersedes any conflicting interpretation previously issued by staff but does not impact any previously approved building permits.

This interpretation should be applicable to both dormers and to clerestories of residential buildings within the McMansion area.

Staff should prepare a memo including this interpretation and make it available to plan reviewers and the public.

The Board of Adjustment concludes that

- 1) There is reasonable doubt or difference of interpretation as to the specific intent of the habitable attic exemption under the Subchapter F, Article 3, Section 3.3.3.C (2) (5) of the land development code (McMansion); and
- 2) The resulting interpretation approved by the Board of Adjustment will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

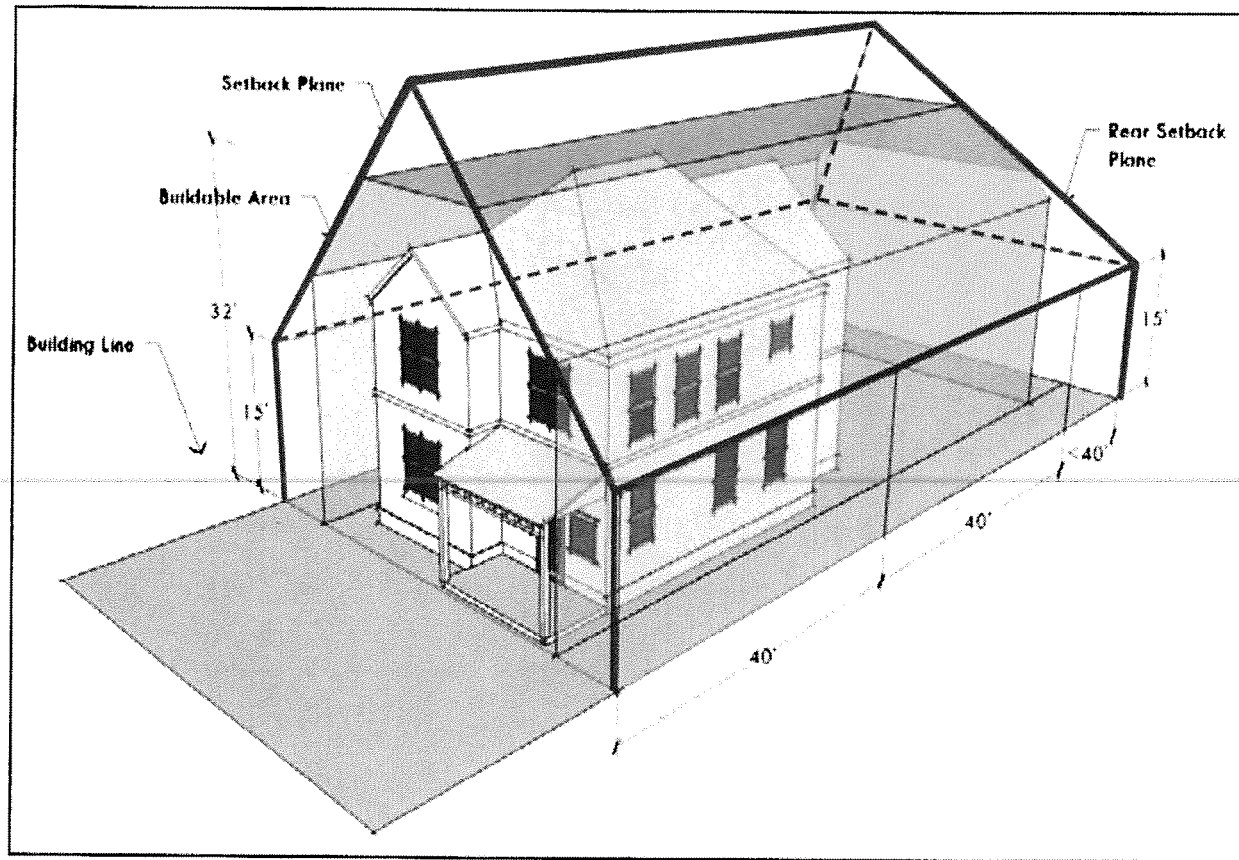


Figure 10: Buildable Area (Combination of Yard Setbacks, Maximum Height Limit, and Setback Planes)

The heavy blue line indicates the "tent" formed by the side and rear setback planes. The buildable area is the smallest area included within the front, side, and rear yard setbacks; maximum height limit; and the combined side and rear setback planes (shown here as the green area).

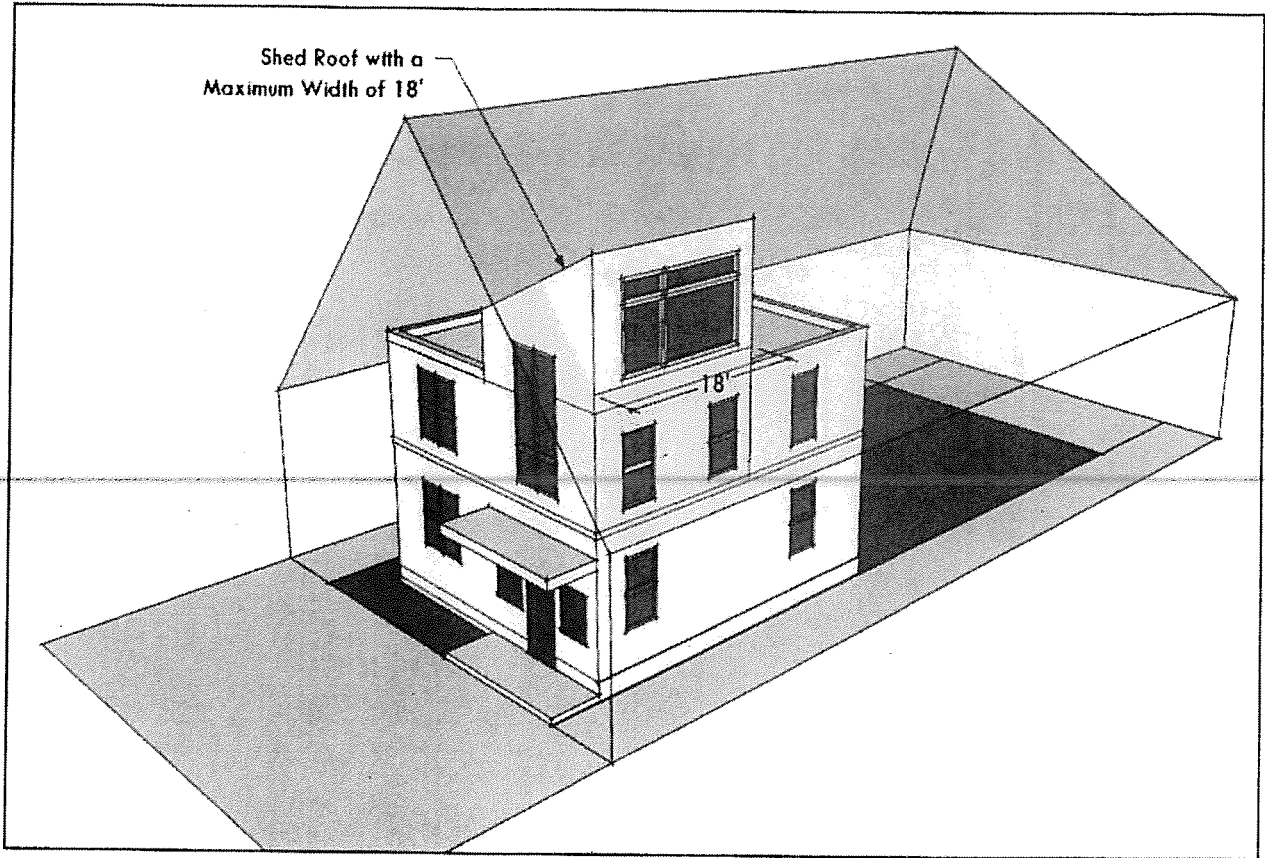


Figure 14: 18-foot Exception for Shed Roof

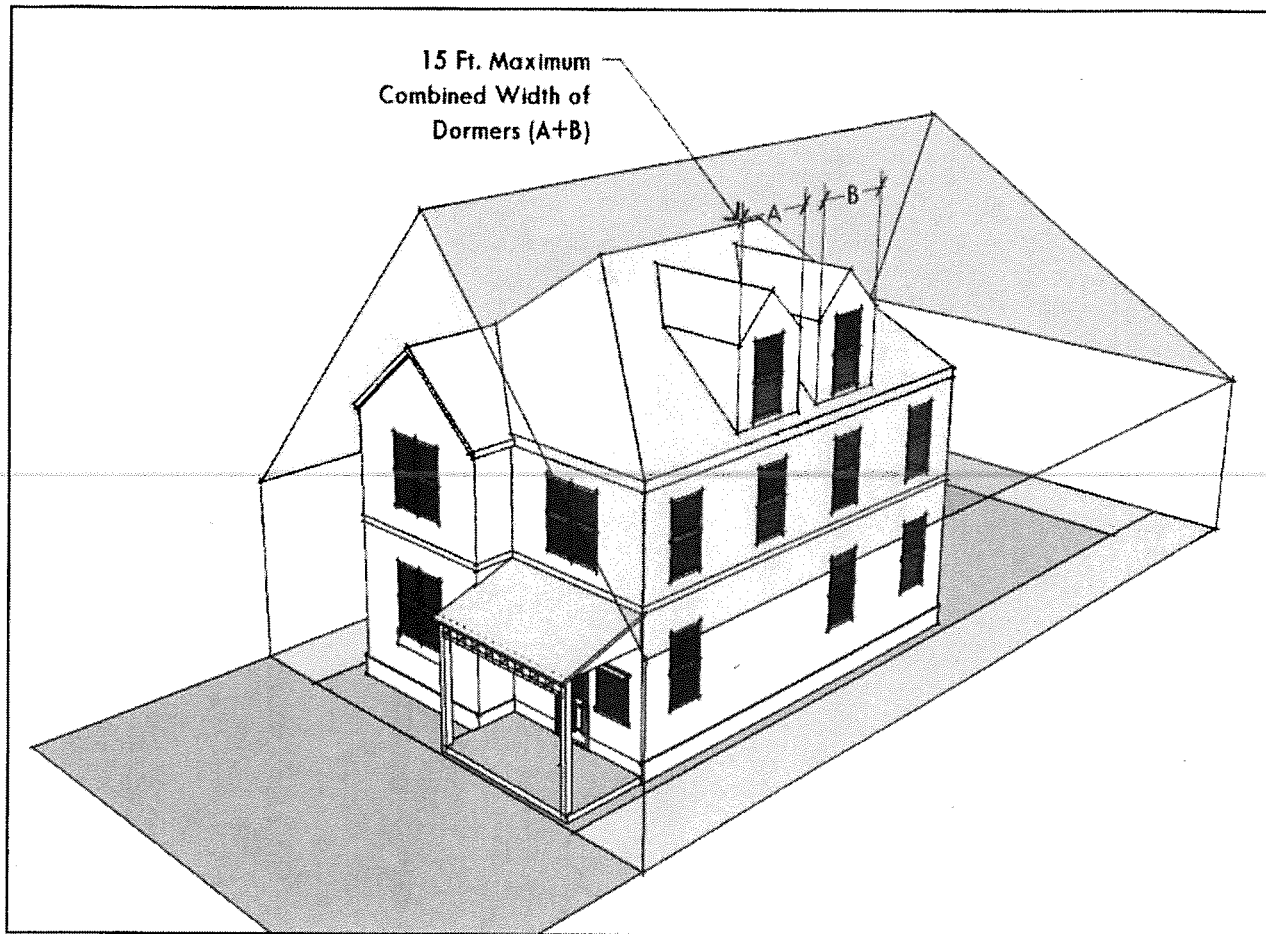


Figure 15: Dormer Exception (Gable or Shed)

One or more dormers with a combined width of 15 feet or less on each side of the roof may extend beyond the setback plane. The width of the dormer is measured at the point that it intersects the setback plane.

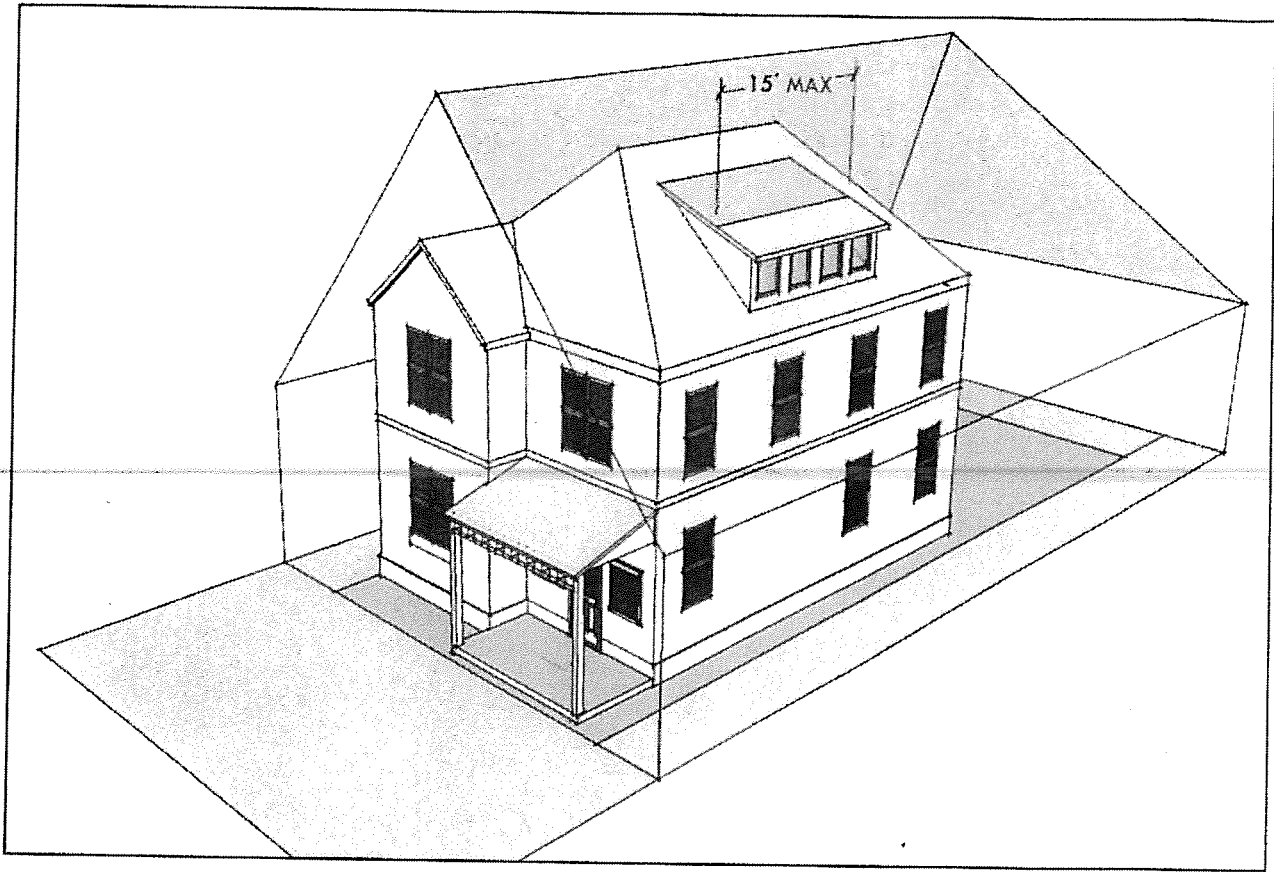
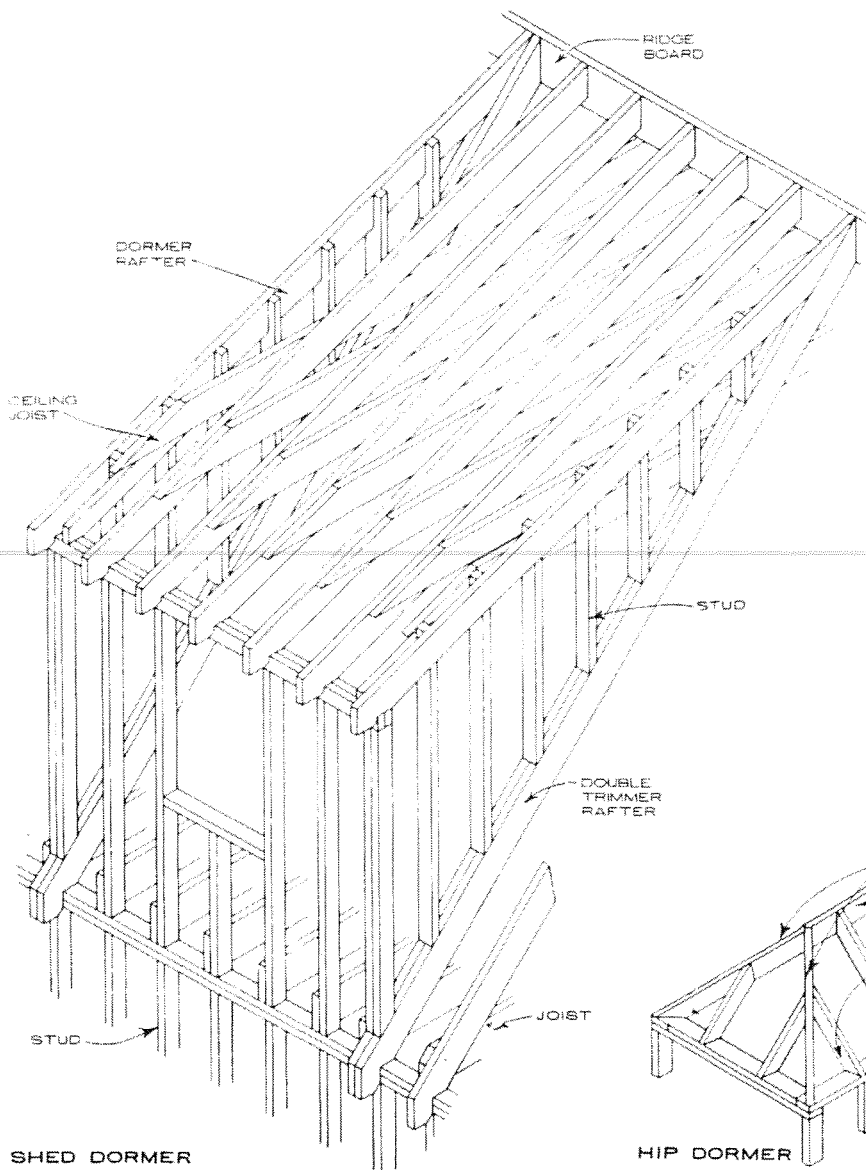
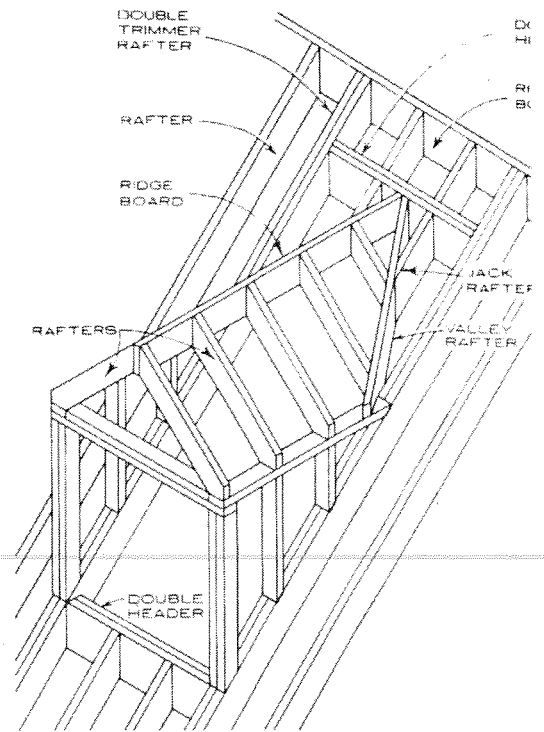


Figure 16: Dormer Exception (Gable or Shed)

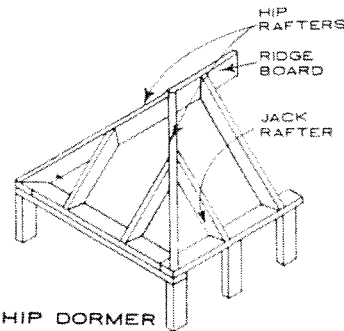
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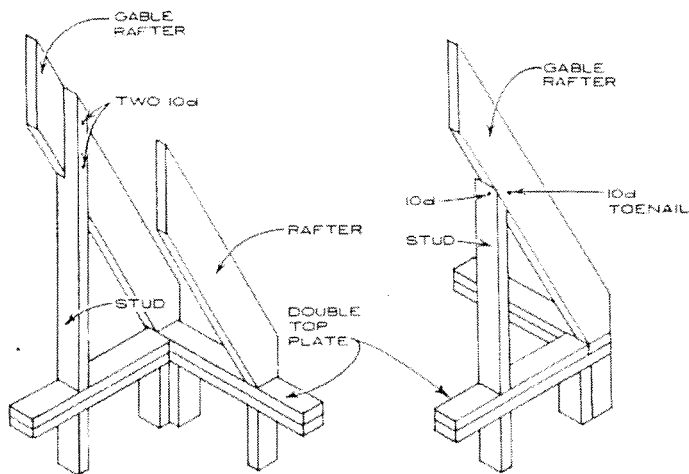
SHED DORMER



GABLE DORMER

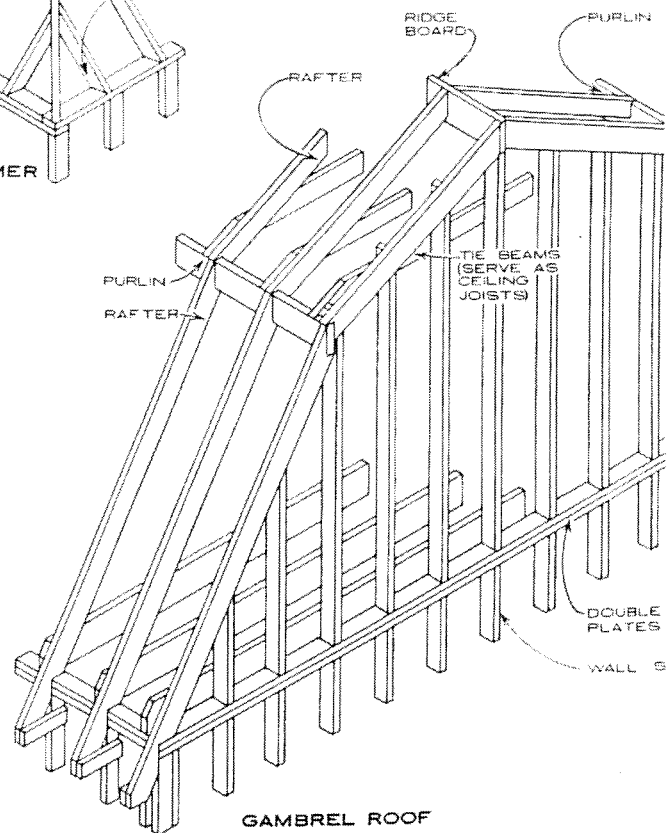


HIP DORMER



NOTCHED STUD GABLE END

BEVELED STUD GABLE END



GAMBREL ROOF



EL
15

MEMORANDUM

TO: American Institute of Architects- Austin

THRU: Residential Review Planners and Residential Inspectors

FROM: Daniel Word, Planner II, Residential Review Division
Watershed Protection and Development Review Department

DATE: July 29, 2008

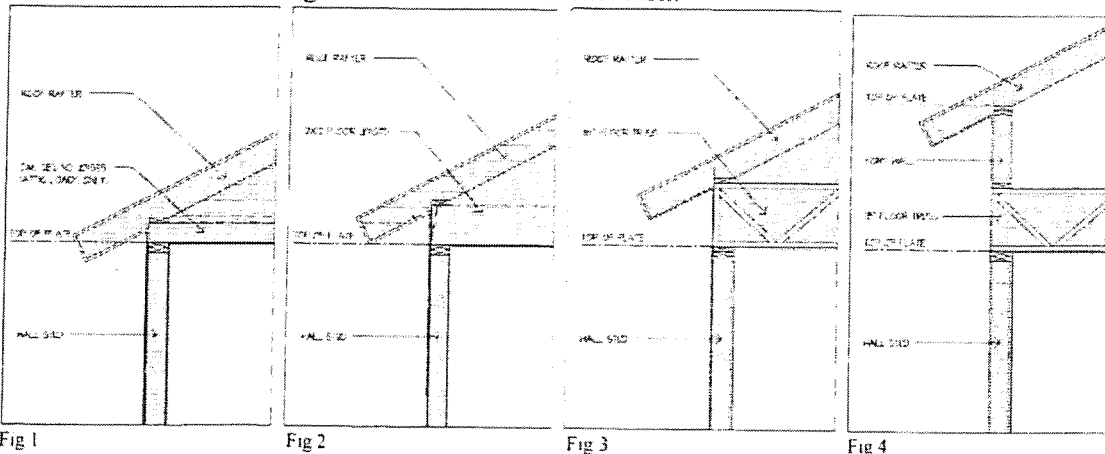
SUBJECT: Habitable Attics and Gross Floor Area

Section 3.3.3 (C) of Subchapter F, commonly referred to as the "McMansion" ordinance, allows for the exclusion of a habitable portion of an attic from the gross floor area measurement prescribed in the Land Development Code if:

1. The roof above is not a flat or mansard roof and has a slope of 3 to 12 or greater;
2. It is fully contained within the roof structure;
3. It has only one floor;
4. It does not extend beyond the footprint of the floors below;
5. It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and
6. Fifty percent or more of the area has a ceiling height of seven feet or less.

Under the second provision, the space must be "fully contained within the roof structure." For the purposes of implementing Subchapter F of the Land Development Code, this is interpreted to mean that the attic space is contained between the underside of the roof rafters and the top of the ceiling joists, floor joists, or floor truss, provided that the finished floor of the attic space does not drop below the height of the ceiling joists, floor joists, or floor truss at the intersection with the exterior walls. This is to prevent the floor surface within the attic space to be artificially lowered in order to gain additional ceiling height that would not otherwise be present.

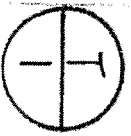
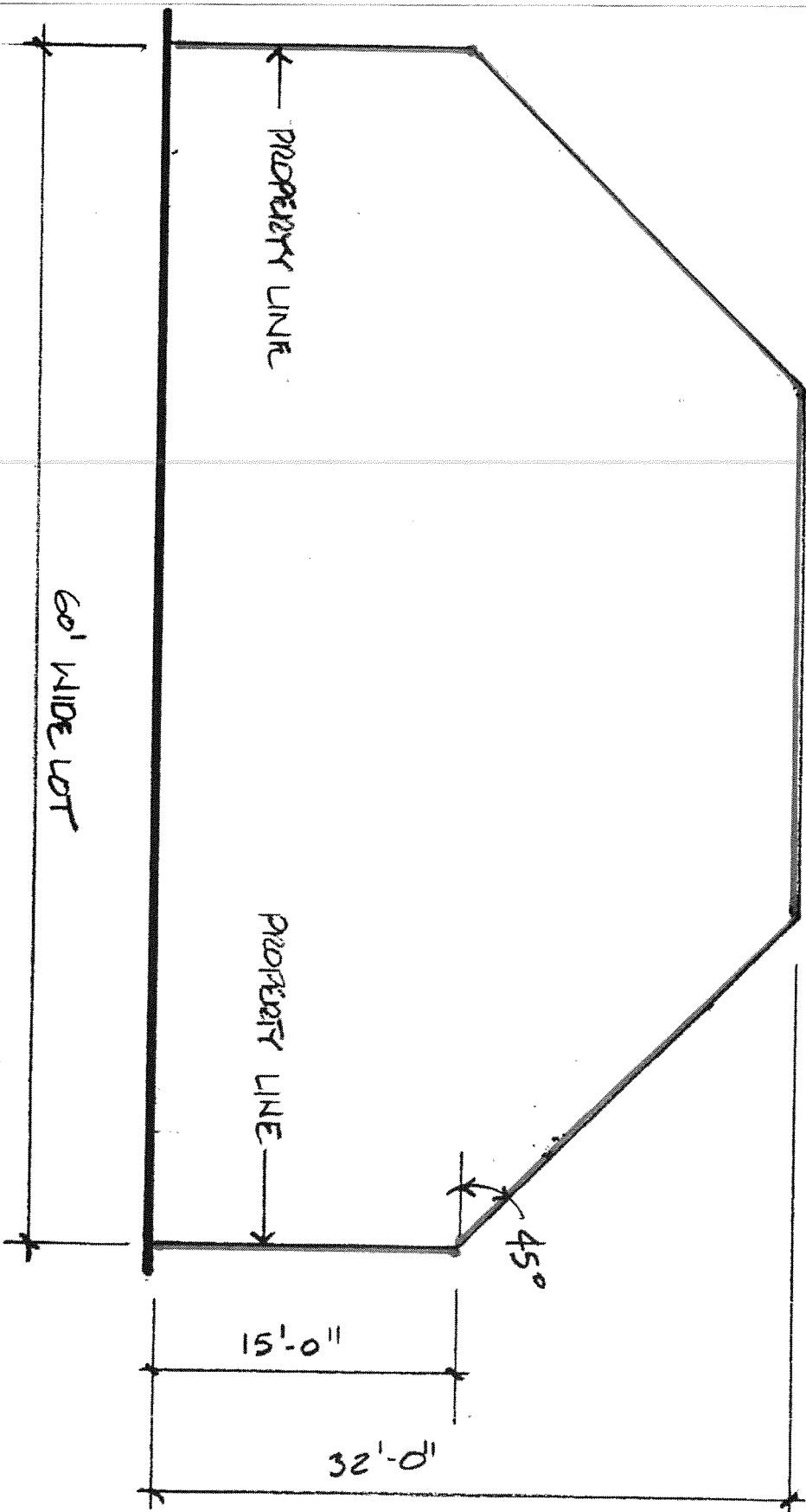
Please refer to the following sketches for further clarification:



Figures 1, 2, and 3 are examples of acceptable construction methods that would qualify as being "fully contained within the roof structure." Figure 4 is a sketch of an unacceptable construction method for the purpose of qualifying as being "fully contained within the roof structure." This attic area would not qualify for exclusion from the calculation of gross floor area.

McMAUSICH "TENT"

BOOK A CASE # C15-2015-0038

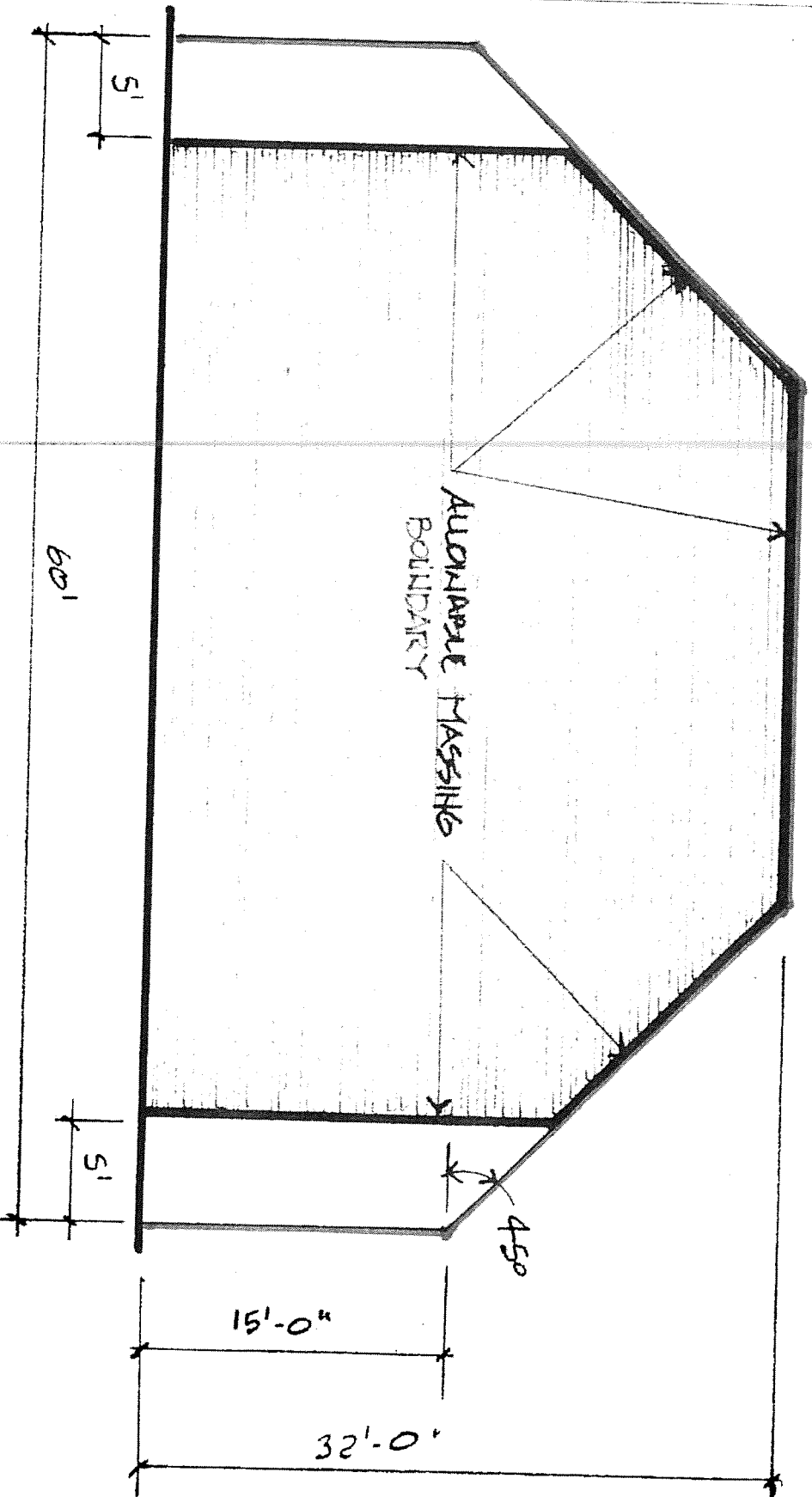


McMAUSICH "TENT" DEFINED
1/8" = 1'-0"

MAY 11, 2015

McMAKSION "TENT"

Per A case # C15-2015-0038



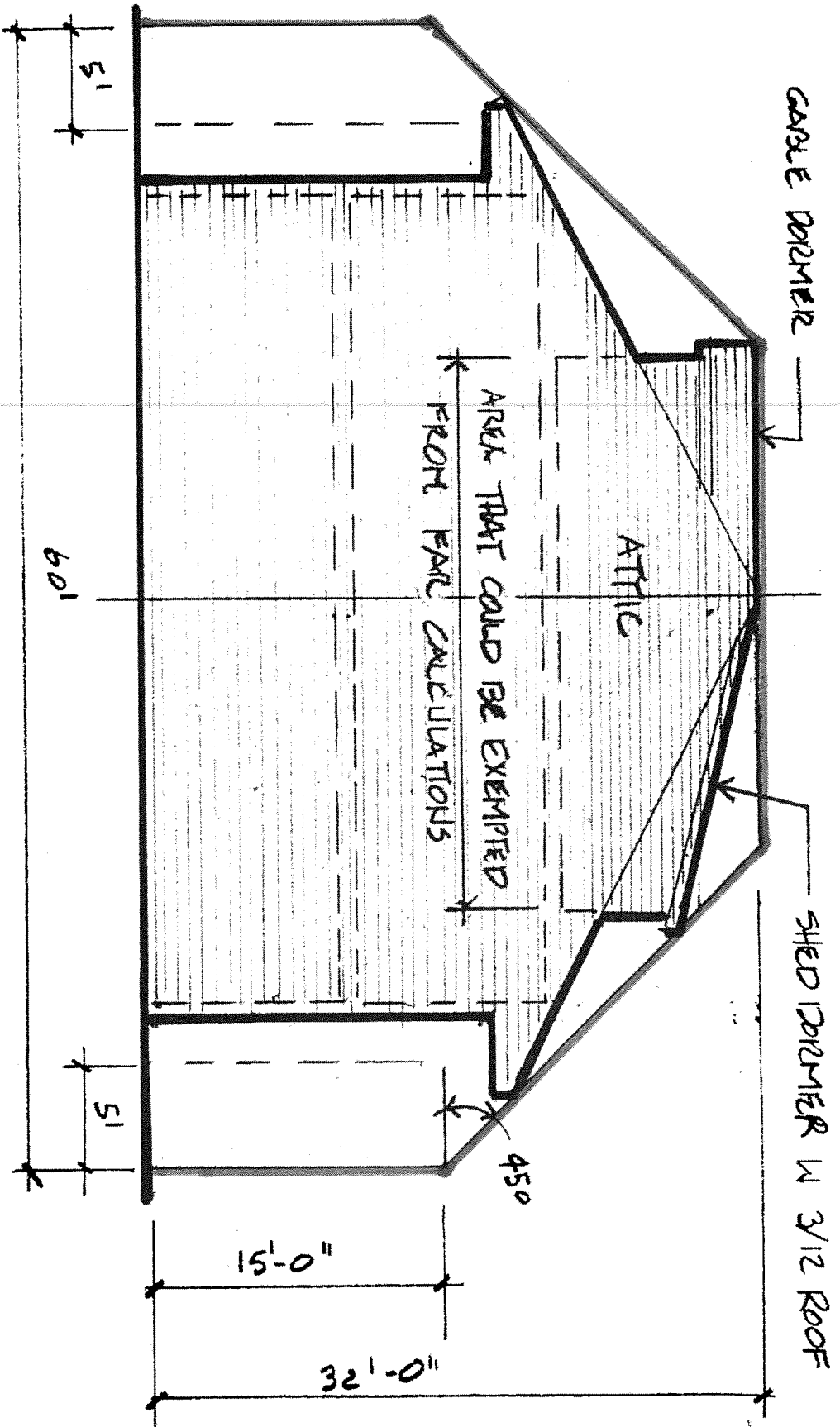
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BUILDABLE MASSING ALLOWED BY McMAKSION & SETBACKS
1/8" = 1'-0"

MAY 11, 2015

McMANSION "TENT"

B of A CASE # C15-2015-0038



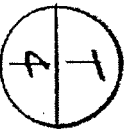
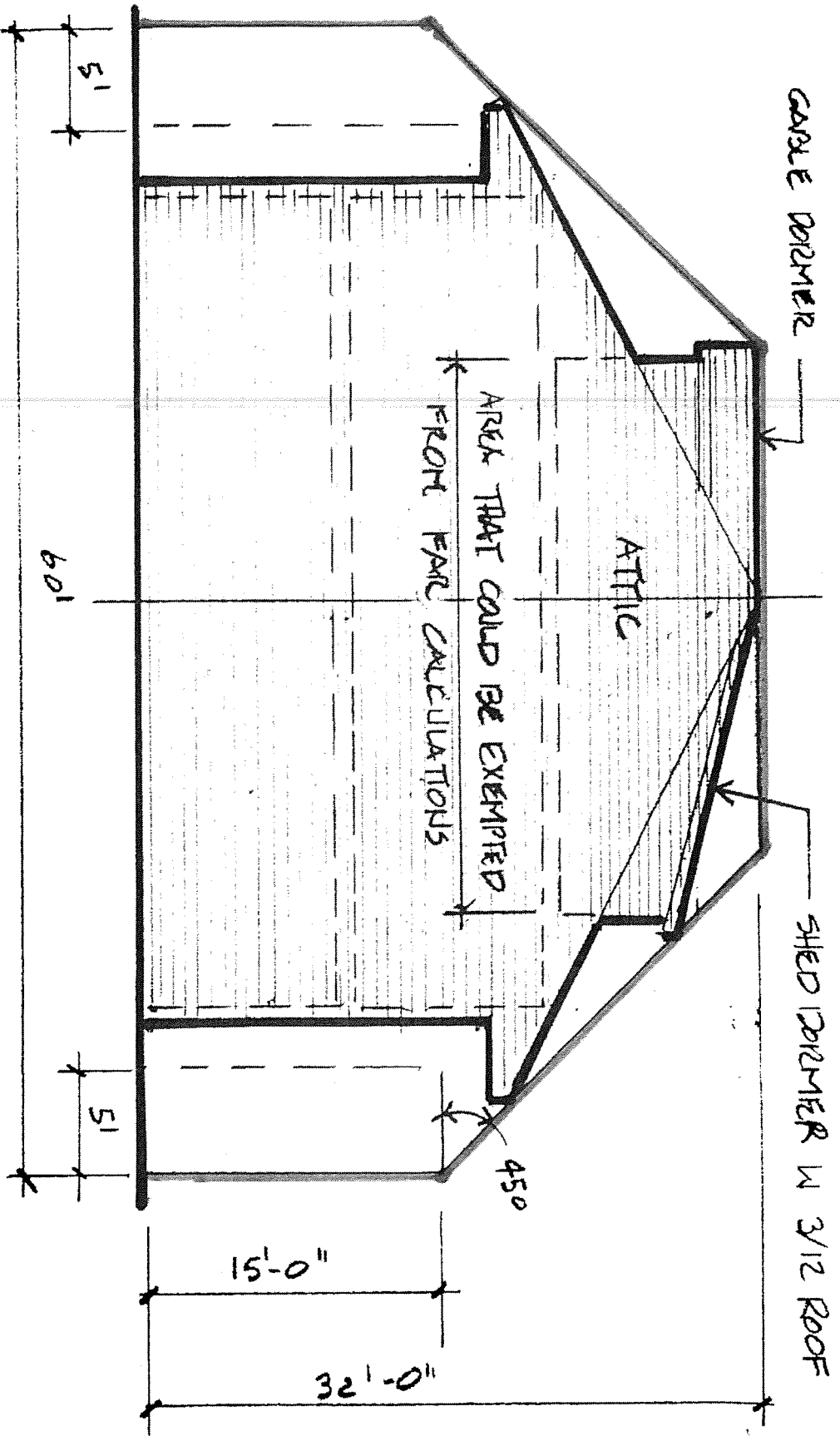
HOUSE WITH DORMERS COMPLIANT W/ McMANSION "TENT"

1/8" = 1'-0"

MAY 11 2015

McMANSION "TENT"

BOF A CASE # C15-2015-0038

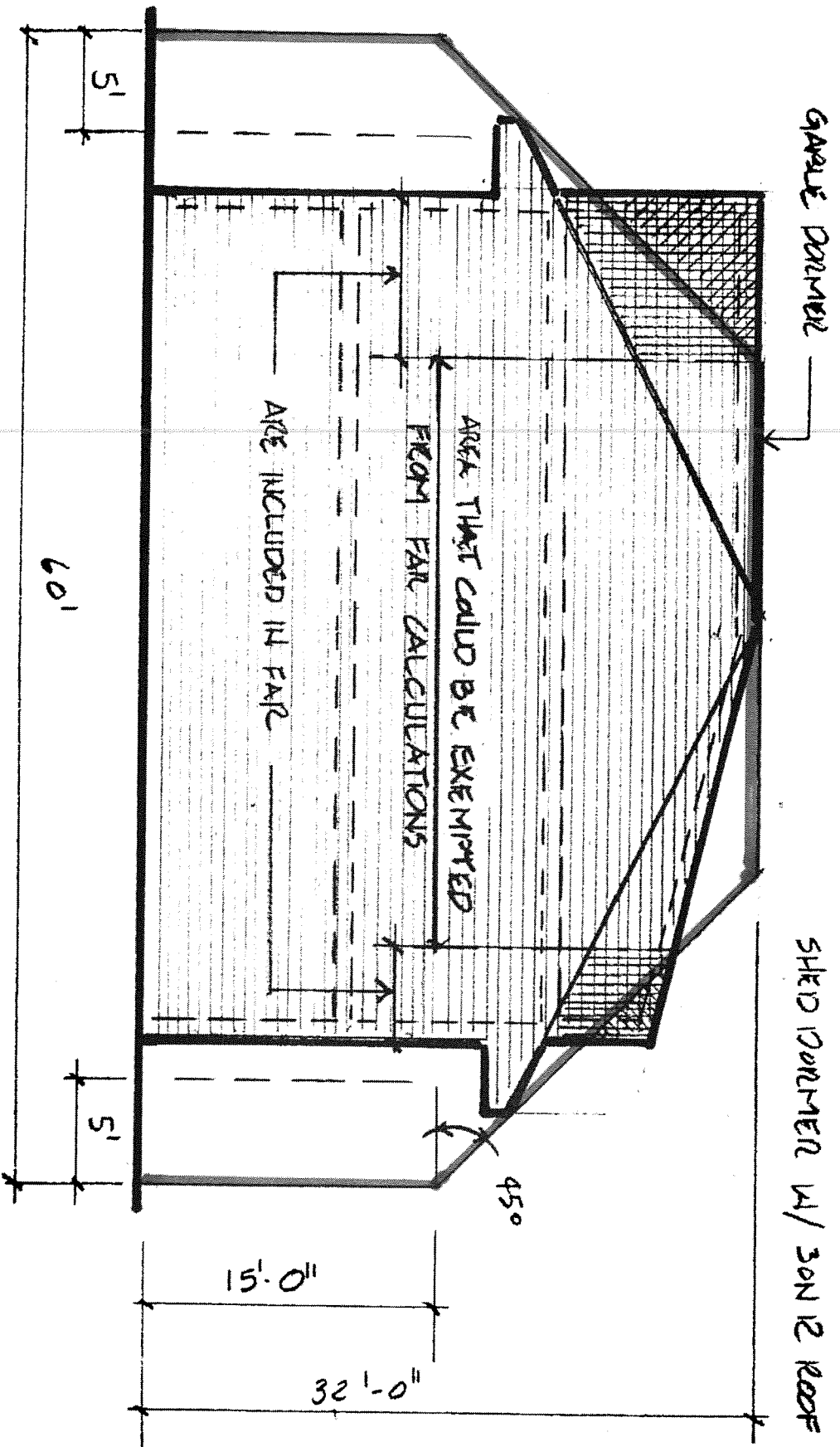


HOUSE WITH DORMERS COMPLIANT W/ McMANSION "TENT"

1/8" = 1'-0"

MAY 11 2015

McMANSION "TENT"
 DOF A CASE # C15-2015-0038

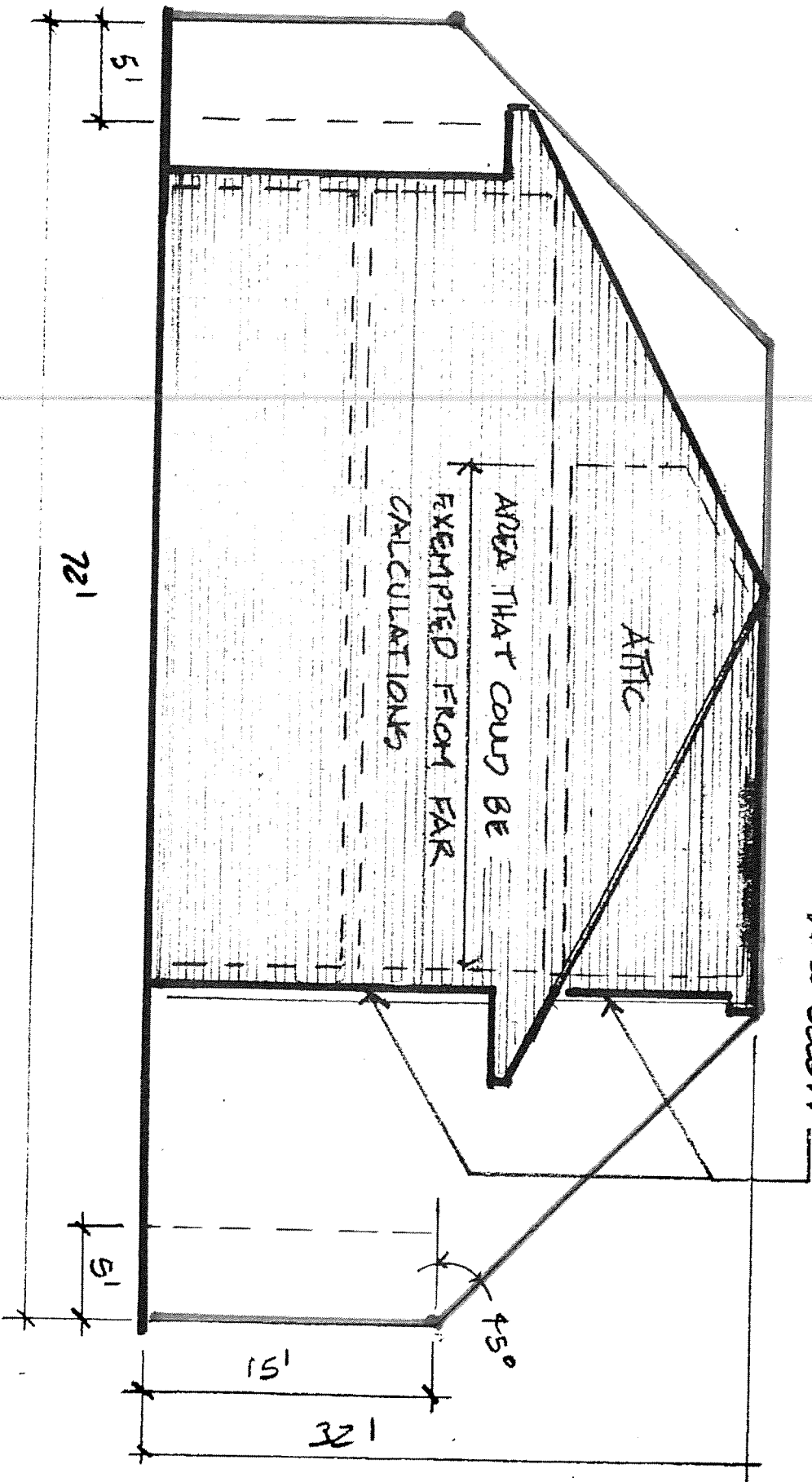


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HOUSE WITH NON-COMPLAINT DORMERS FOR FAR EXEMPTION
 1/3" = 1'-0"

MAY 11, 2015

GABLE DORMER W/ EXTERIOR
WALL @ EXTERIOR PERIMETER
WALL ELEVATION



①
6

HOUSE ON LARGE LOT W/ COMPLAINT DORMER @ EXT. PERIMETER
1/8" = 1'-0"

MAY 11, 2015

Heldenfels, Leane

From: Word, Daniel
Sent: Thursday, May 21, 2015 4:49 PM
To: Heldenfels, Leane
Cc: McDonald, John; Ramirez, Diana
Subject: reconsideration request

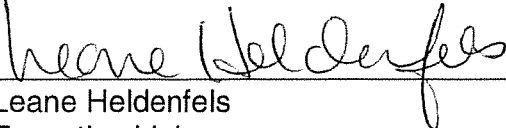
We would like to request reconsideration of the recent BOA interpretation from May 11th to seek clarification of the decision (C15-2015-0038) regarding attic dormers located outside of the "building tent" area.

Daniel Word
Planner Principal, Residential Review Division
Planning and Development Review, City of Austin
(512) 974-3341

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NOTE: All issues 1-6 must be met for the exclusion
FINDING: to be counted, as is current review practice.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: (Please see attachments)
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: (Please see attachments)
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Jeff Jack
Chairman

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Findings

(C) 2 It is fully contained within the roof structure

This provision is problematic in that the words “contained” and “roof structure” are not defined in the code. The wording “roof structure” has had some clarification due to the Daniel Word memo dated July 29, 2008. This memo and the B of A support of the conclusion stated in this memo in a previous B of A interpretation case is instructive in making it clear that the “roof structure” means the primary roof structure of the building defined as starting at the intersection of the exterior wall and the ceiling structure of the second floor. Figures #1, #2 and #3 from this memo, see attached, show construction situations that define attic space below the roof structure that conforms to the provisions of the ordinance as being allowed to be excluded from the FAR calculations if they meet all other criteria. However figure #4 indicates a configuration where in the space below the roof where the roof has been raised by an additional wall section that is in line with the perimeter exterior wall below, is not considered to be “fully contained within the roof structure.”

This memo further states that such an attic area “would not qualify for exclusion from the calculation of gross floor area.” Therefore the floor area of a building section with these characteristics would not be excluded from the calculation of FAR.

We concur with this position as stated by staff in that a wall and roof configuration as illustrated in figure #4 is not fully contained within what would be the primary roof structure for a typical attic space. If such a configuration would be allowed it would raise the entire roof structure essentially resulting in a building having a third floor which is counter to the intent of the ordinance. While it is clear that such a wall/roof configuration is not compliant with the intent of the McMansion ordinance with regard to limiting the attic space available to be included in the exemption, it is not clear how this applies to dormers.

Dormers by their very nature extend higher than the surrounding roof areas. The typical definition of “dormer” (Webster’s New World, Third College Edition) states “ 1) a window set upright in a sloped roof, 2) the roofed projection in which this window is set. ” Many architectural reference manuals clearly indicate that a dormer (shed or gable) would extend above the adjacent primary roof structure, see attached graphic.

Therefore an interpretation of this provision wherein a dormer that rises vertically above the primary roof structure, similar to the situation illustrated in the Daniel Word memo figure 4,, would preclude any area under a dormer from being exempted from being included in the FAR calculations. However this conclusion rests entirely on the interpretation of “contained within” as applying to the vertical dimensionality of the dormer.

An alternative interpretation is that the dormer is contained within the horizontal area of the primary roof. So would it be possible for a dormer to be outside the horizontal area of a primary roof. Certainly a design could be formulated that extends the dormer past the exterior wall and roof areas, so there is possible an alternative interpretation of this provision as it applies to dormers. But this provision has to be assessed along with the issue of whether or not “additional mass” is added by the addition of a dormer with such a configuration as suggested by figure 4 of the Daniel Word memo. We will return to this issue after considering the issue of “ no additional mass to the structure”.

(C) 5 adds no additional mass to the structure

The McMansion ordinance relies on limiting the mass of new residential construction by two related concepts that are coupled together to limit the mass of a building. The first of these is the limitation of Floor Area Ratio to .4 habitable space for every one sf of site area, and FAR of .4 to 1. The second concept defines a "Tent" of space that if a building is built within this "tent" it has an acceptable massing as long as it also meets the FAR requirement. This tent is defined by a given height at the property lines (15') then an angled line (45 degrees) that intersections with the maximum height allowed (32 feet). This method of defining the "Tent" is applicable to the two sides and rear of the property. See attached Figure 10 from the code.

The ordinance recognizes that dormers of several types are an architectural feature common to many attic spaces. These dormers are allowed by the code to penetrate the "Tent" as illustrated in the attached figures 14, 15 and 16 from the code. So the question becomes, that while allowed by the code do they add additional mass to the building beyond what was intended by the code? If they do then they would not meet the requirement that they add no more additional mass to the building so that they would not qualify for the exemption.

The underlying questions is if a building utilizes the maximum extend of the "Tent" as defined by the parameters noted above is it still in conformance with the code? See illustration T-1. The code itself is silent on this issue so it seems reasonable to assert that one could design a building that extended to the limits of the "Tent" and it would be in compliance so long as it met the FAR restriction. See illustration T-2. While such a design is probably not feasible due to other code provisions, such as not having a flat roof, a typical design such as illustrated in T-3 is certainly compliant with these parameters of the code.

If that were the case then a building that did not extend to the maximum limits of the "tent" but had dormers that were also within the "Tent" would also be under the maximum boundary for the mass of the building as allowed by the code..

Therefore if any design is proposed within the limitation of massing defined by the "Tent" and FAR acceptable? If the "tent" was intended to be the maximum limit to massing, given a building meeting all other requirements such as FAR, Building Coverage and Impervious Coverage I believe the correct interpretation is that any dormer that can be contained within the acceptable limits of massing defined by the "Tent" is not adding to the massing allowed by the "Tent". While such dormer will indeed add massing to a similar structure that does not have dormers, it is not adding massing above what the "tent" would allow so long as it also meets the FAR limitation. In which case any additional floor area of a dormer contained within the "Tent" that meets the other requirements for an attic exemption would be exclude from the calculation of FAR. Please see attached illustration "T-4".

And while dormers are clearly allowed to penetrate the "Tent" such a penetration has to be seen as exceeding the allowable massing defined by the "Tent" and as such the area within such a dormer should not be allowed to be exempted from the FAR calculation. By including such are in the FAR calculation it will balance out the massing by the limitation of the FAR that would then necessitate a reduction of habitable floor area in other areas of the building in order to maintain the .4 to 1 FAR ratio thus maintaining the intent of the ordinance. See illustration T-5

(C) 2. Impact of other dormer configurations

As for dormers with configurations similar to figure #4 in Daniel Words memo concerning whether or not they are “fully contained within the roof structure”, once again we have to defer to the McMansion ordinance use of the tent and FAR to describe the acceptable massing allowed. And that allowable massing is a variable due to the lot size and configuration. As illustration T-6 indicates a larger lot with a comparable larger “Tent” could have a dormer with an exterior wall/roof relationship like figure #4 of the Daniel Word memo, but still be within the limits of the “Tent” applicable to that property and so long as it met the FAR requirement.

Therefore to be consistent with the concept of the “Tent” setting the maximum massing boundary under which the attic floor area could be exempted from the FAR calculations, (assuming it met all other requirements) such a shed dormer would be allowed and it’s area would not be included in the FAR calculations. Therefore if the code wording “fully contained within the roof structure” applied only to the vertical aspects of the dormer such a dormer configuration would not be allowed to take the attic exemption. But since this configuration would be within the “tent” boundary for applicable lots, such dormers should be considered fully contained within the horizontal area of the primary roof structure for the purpose of determining the attic area that can be excluded from the FAR calculations.

This interpretation would be consistent with the McMansion concept of using both the “Tent” to define the boundary of acceptable massing and the Floor Area Ratio to limit the maximum allowable habitable space in residential buildings within the McMansion area.

Staff direction

This interpretation supersedes any conflicting interpretation previously issued by staff but does not impact any previously approved building permits.

This interpretation should be applicable to both dormers and to clerestories of residential buildings within the McMansion area.

Staff should prepare a memo including this interpretation and make it available to plan reviewers and the public.

The Board of Adjustment concludes that

- 1) There is reasonable doubt or difference of interpretation as to the specific intent of the habitable attic exemption under the Subchapter F, Article 3, Section 3.3.3.C (2) (5) of the land development code (McMansion); and
- 2) The resulting interpretation approved by the Board of Adjustment will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

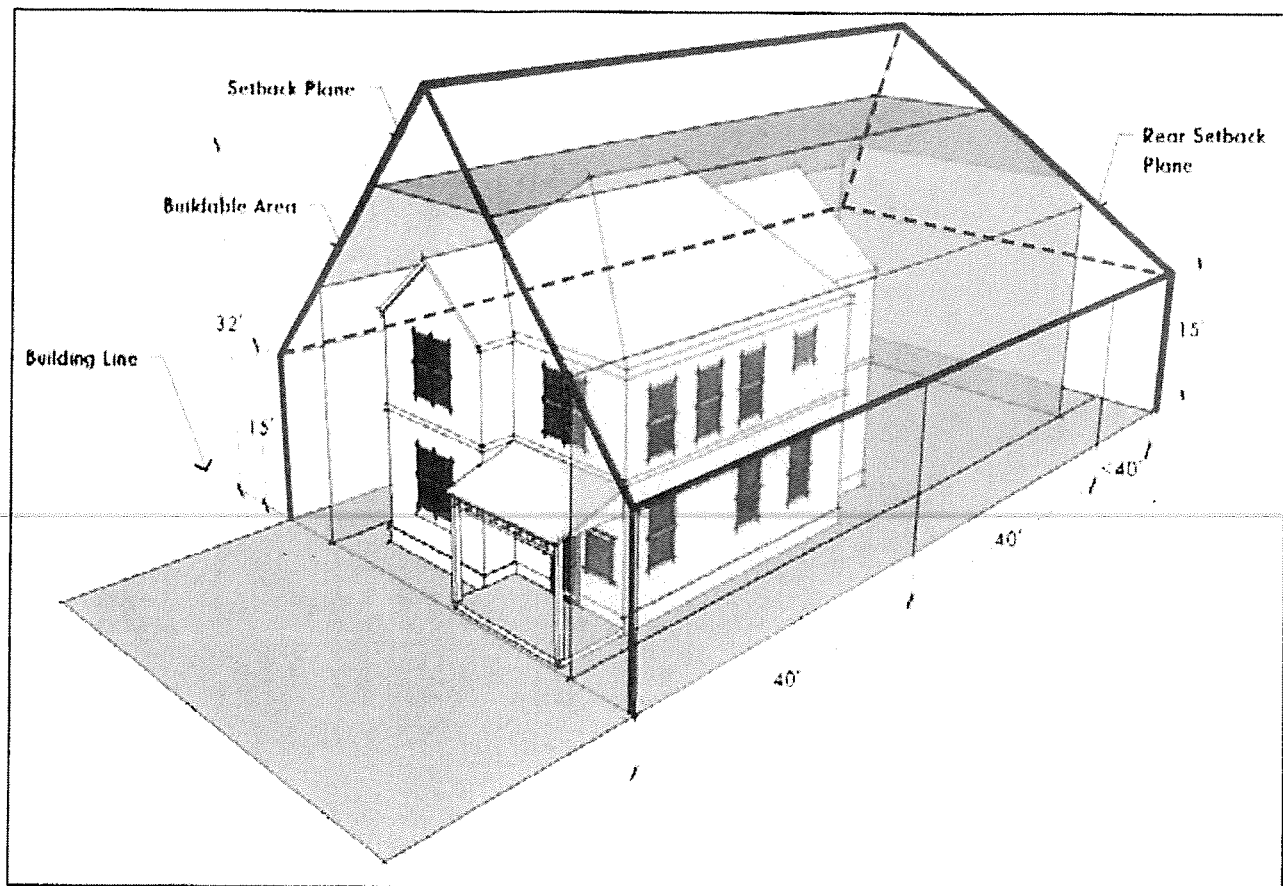


Figure 10: Buildable Area (Combination of Yard Setbacks, Maximum Height Limit, and Setback Planes)

The heavy blue line indicates the "tent" formed by the side and rear setback planes. The buildable area is the smallest area included within the front, side, and rear yard setbacks; maximum height limit; and the combined side and rear setback planes (shown here as the green area).

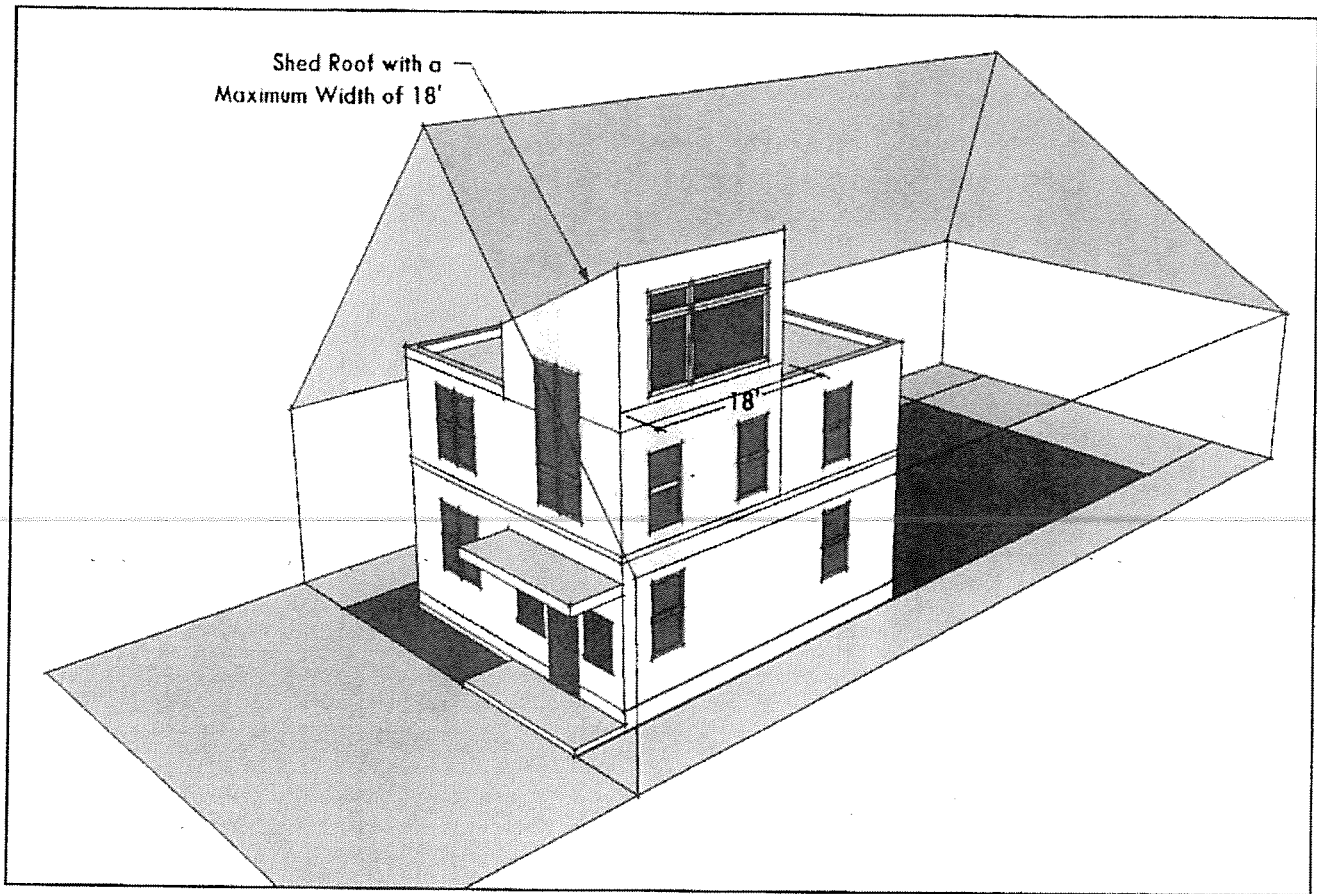


Figure 14: 18-foot Exception for Shed Roof

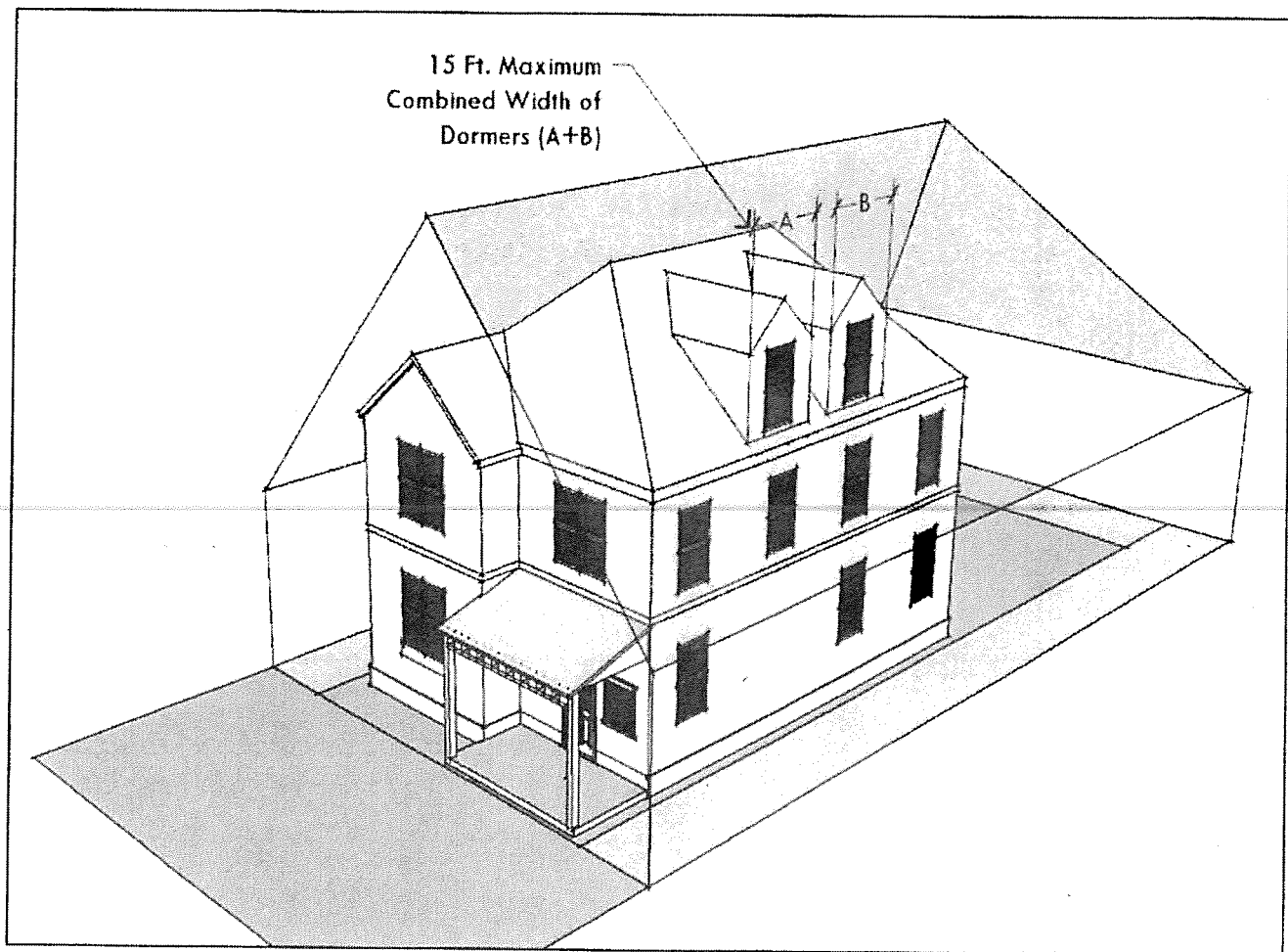


Figure 15: Dormer Exception (Gable or Shed)

One or more dormers with a combined width of 15 feet or less on each side of the roof may extend beyond the setback plane. The width of the dormer is measured at the point that it intersects the setback plane.

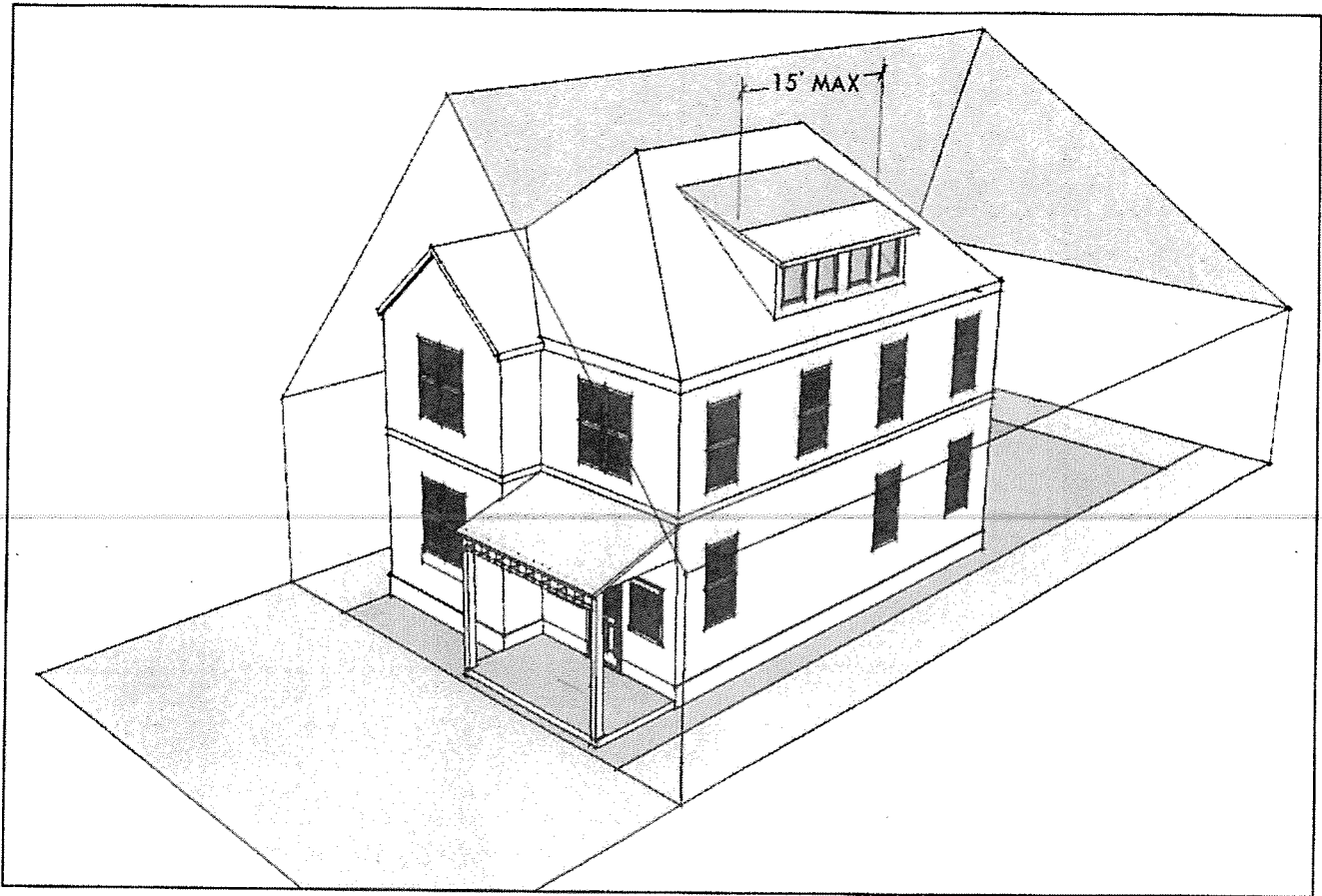
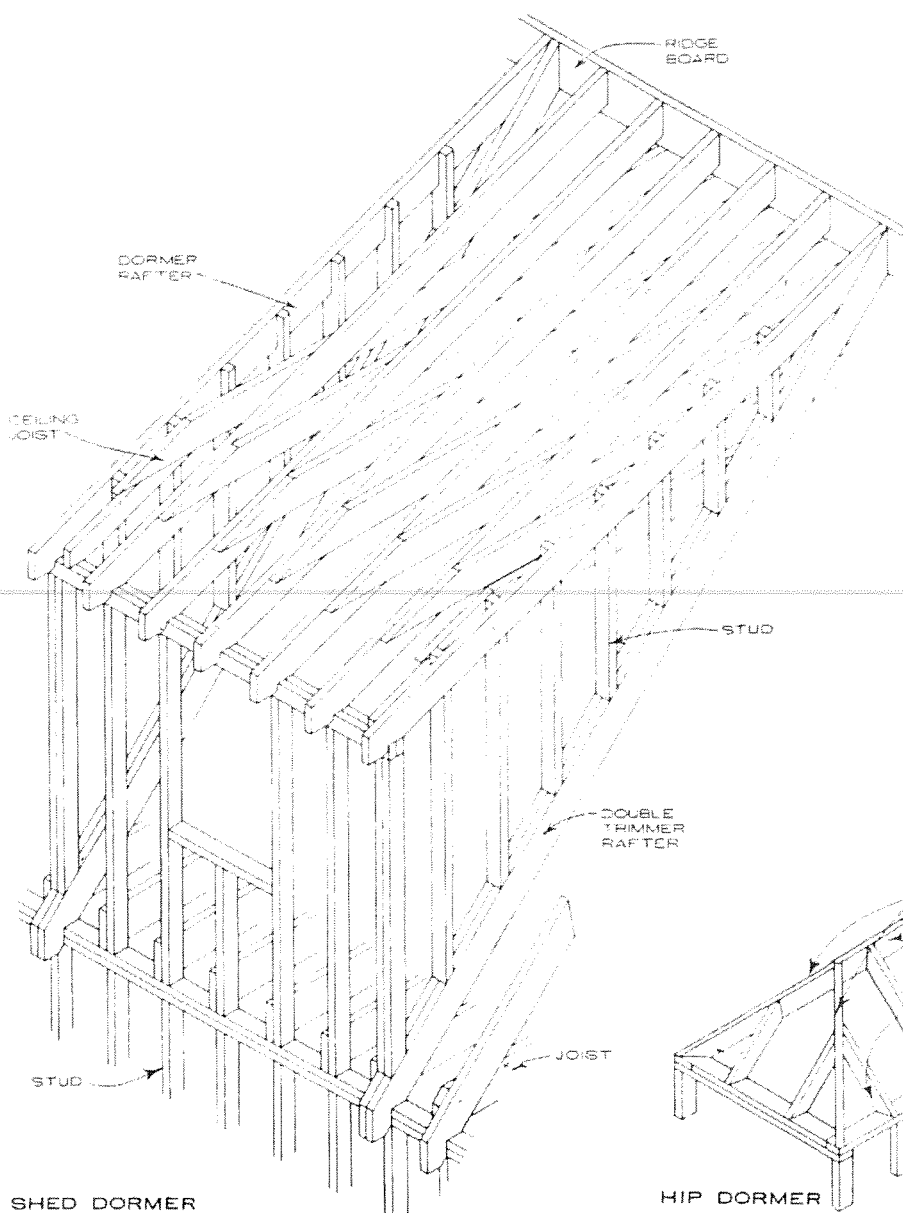
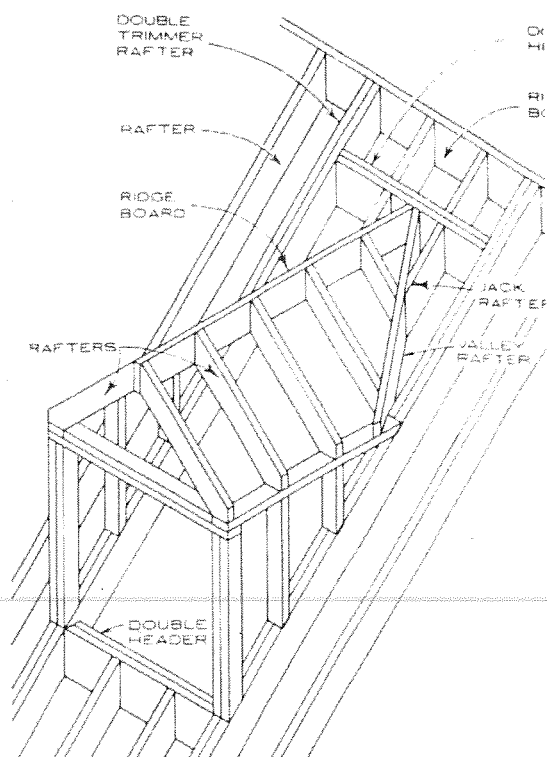


Figure 16: Dormer Exception (Gable or Shed)

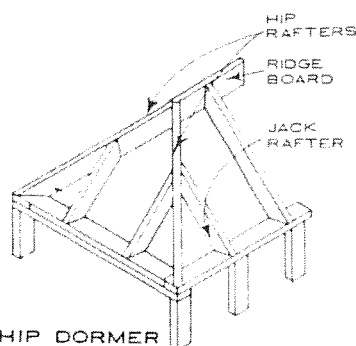
One or more dormers with a combined width of 15 feet or less on each side of the roof may extend beyond the setback plane. The width of the dormer is measured at the point that it intersects the setback plane.



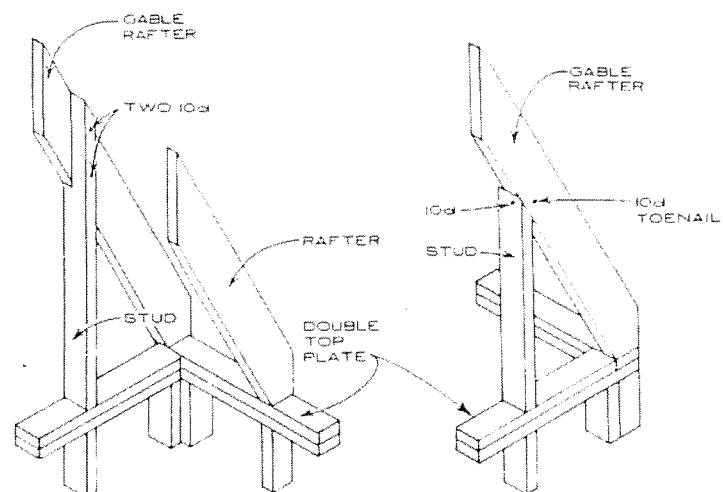
SHED DORMER



GABLE DORMER

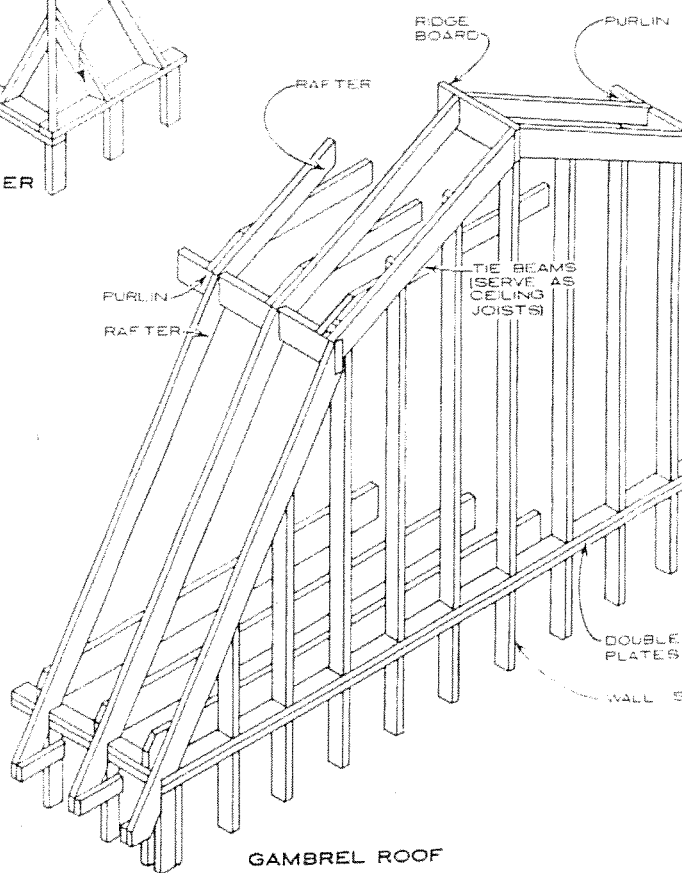


HIP DORMER



NOTCHED STUD
GABLE END

BEVELED STUD
GABLE END



GAMBREL ROOF

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet (INTERPRETATION)

DATE: Monday, April 13, 2015

CASE NUMBER: C15-2015-0038

☒ Y ☐ Jeff Jack - Chair
☒ Y ☐ Michael Von Ohlen
☒ Y ☐ Melissa Whaley Hawthorne - Vice Chair
☒ Y ☐ Sallie Burchett
☒ Y ☐ Ricardo De Camps
☐ - ☐ Brian King (OUT)
☐ - ☐ Vincent Harding (OUT)
☒ Y ☐ Will Schnier - Alternate
☒ Y ☐ Stuart Hampton - Alternate

APPLICANT: David Piper (Officer VP 2)

OWNER: Zilker Neighborhood Association

ADDRESS: NO ADDRESS

VARIANCE REQUESTED: The appellant has filed an application challenging the Planning and Review Department's staff memo stating Subchapter F, Article 3, Section 3.3.3 (C) "serves no purpose and is not interpretable".

Note: Subchapter F, Article 3, Section 3.3.3 (C), of the Land Development Code states:

"Porches, basements, and attics that meet the following requirements shall be excluded from the calculation of gross floor area:

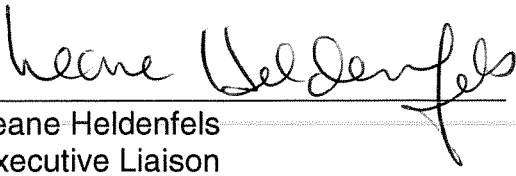
C. A habitable portion of an attic, if:

1. The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;
2. It is fully contained within the roof structure;
3. It has only one floor;
4. It does not extend beyond the footprint of the floors below;
5. It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and
6. 50% of more of the area has a ceiling height of 7 feet or less."

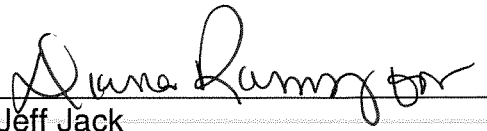
BOARD'S DECISION: The public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to May 11, 2015, Board Member Ricardo De Camps second on a 7-0 vote; POSTPONED TO MAY 11, 2015.

FINDING:

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:



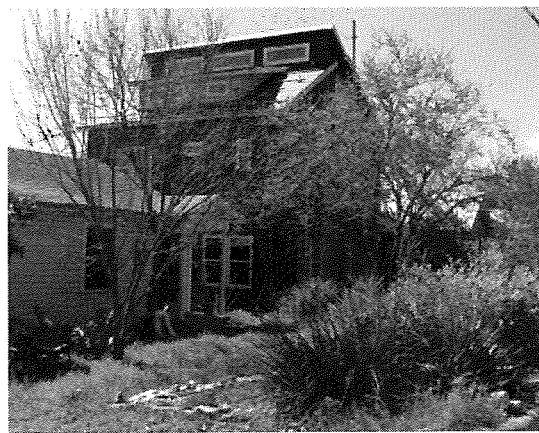
Leane Heldenfels
Executive Liaison



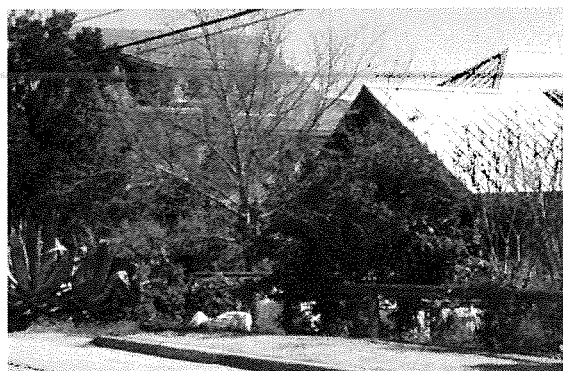
Jeff Jack
Chairman



Front



Left



Right



Back



To: Mr. Jeff Jack, Chair and
Members of the Board of Adjustment

From: John M. McDonald, Development Services Manager
Development Services Department

Date: April 1, 2015

Re: An Appeal Request of a Letter of Clarification
Case No. C15-2015-0038

Mr. David Piper has appealed a letter of clarification written on behalf of the Director of Development Services Department (formerly Planning and Development Review Department) to the Zilker Neighborhood Association (ZNA) in reference to allowing dormers as a part of a habitable attic exempt from gross floor area calculations under Section 3.3.3.(C).

This information is being provided in addition to the letter of clarification written on January 12, 2015 and to address additional information the department received at 3 pm on April 1, 2015 from the ZNA.

Further clarification of letter dated January 12, 2015

At this time I would like to further clarify staff's position on the phrase in Section 3.3.3.(C)(5), which states "and adds no additional mass to the structure." In the case of new construction no mass is present until a design of a structure is created to evaluate mass. Subchapter F simultaneously restricts gross floor area through establishing a maximum Floor-to-Area Ratio (FAR) for a proposed development and allows for certain areas of the proposed development to be exempt from the calculation of FAR. In the case of a dormer present in an exemptible attic space, additional mass cannot be included to an area exempt from the calculation of mass (FAR). This is the reason staff feels the phrase is not interpretable nor does it meet any logical evaluation parameters.

Staff responses to the document submitted by the ZNA labeled "Supplemental Material: Alternative interpretations of the McMansion attic exemption":

Alternative interpretation 1 – No comment.

Alternative interpretation 2 – The Residential Design and Compatibility Commission's (RDCC) purview is to consider modifications to the maximum floor-to-area ratio or maximum square footage of gross floor area. Unless a design exceeds the maximum

FAR by means of areas not exempt from gross floor area calculations, the RDCC does not have purview over a design that meets 3.3.3.(C) of Subchapter F. Staff has consistently worked with the RDCC and maintained open communications on matters of Subchapter F. See Attachment A but more specifically the communication from William Burkhart under "Fourth Response" dated March 25, 2015.

Alternative interpretation 3 – The height of a dormer above the designed slope of the main roof is limited by 3.4 Height of Subchapter F as outlined in the letter of clarification provided to the ZNA. This section of Subchapter F was written to specifically address dormers and place additional restrictions on a dormer's height and mass.

In closing, staff would like to inform the Board of Adjustment that it has been a practice of staff to include dormers in the area of an exemptible attic since inception of the Subchapter F ordinance, currently and following the 2008 Subchapter F rewrite.

If you have any questions, please contact me at 974-2728 or by e-mail at john.mcdonald@ci.austin.tx.us .

cc: J. Rodney Gonzales, Director, DSD
Greg Guernsey, AICP, Director, PZD
Carl D. Wren, P.E., Building Official, Assistant Director, DSD
Kathy Haught, Division Manager, DSD
Daniel Word, Planner Principal, DSD

brkartstudio
512-750-6580
william@brkartstudio.com

Attachment A

From: McDonald, John [<mailto:John.McDonald@austintexas.gov>]
Sent: Monday, March 23, 2015 5:00 PM
To: William
Cc: Word, Daniel
Subject: FW: 2015 Goodrich Avenue
Importance: High

Hi William,

Attached is the letter of clarification I provided to the Zilker Neighborhood Association on why dormers are allowed in the design of an attic exempt from Floor-to-Area (FAR) calculations. The Zilker Neighborhood Association has filed an appeal of my decision to allow dormers in an exemptible attic based on this letter to the Board of Adjustments on April 13th. Any input (especially at the meeting if possible) would be greatly appreciated.

Respectfully,
John M. McDonald
Development Services Manager
Residential Plan Review/PDRD
974-2728 – Office
john.mcdonald@austintexas.gov

From: McDonald, John
Sent: Monday, January 12, 2015 4:03 PM
To: Dave Piper
Cc: Wren, Carl; Roig, Jose G; Haught, Kathy; Word, Daniel; Hernandez, Tony [PDRD] (Tony.Hernandez@austintexas.gov)
Subject: 2015 Goodrich Avenue

Mr. Piper,

I have attached a letter of clarification that goes over the rationale for approving the original plan review at 2015 Goodrich Avenue. Please feel free to distribute to the other Zilker Neighborhood Association members that attended the December 29, 2014 meeting as I did not have their email addresses readily available.

Respectfully,
John M. McDonald
Development Services Manager
Residential Plan Review/PDRD
974-2728 – Office
john.mcdonald@austintexas.gov

Attachment A

McDonald, John

From: William <william@brkartstudio.com>
Sent: Wednesday, March 25, 2015 8:25 PM
To: McDonald, John
Cc: Word, Daniel
Subject: RE: 2015 Goodrich Avenue

Hi John,

The letter and it's explanation and the background documentation look fine to me; in addition to being on the McM task force itself, I was also on the re-write task force and that's all consistent. I had an exchange with David Piper - you weren't cc'd at the time on my own response but you're welcome to add that exchange to the back-up also - it's copied below and I'll forward it all you from the BC email site.

First response:

"David,

The attic exemption issue has been worked on by the RDCC extensively, but not specifically with respect to dormers other than shape and establishing overall building height. As you may know, there is also a ceiling height/area ratio requirement for an exemption and the city had been requiring building permit documents to very clearly illustrate compliance with that requirement - nevertheless, there can certainly be a problem; it would help if I had some photos to illustrate the issue, and a link to the permit documents - you can post them here and we can put the discussion on the agenda in December if it looks like there's a misinterpretation or another problem happening. I'm aware there is a potential loophole in the language wrt that area/height requirement and it might be that what you're seeing is exploiting that loophole.

William Burkhardt/Chair"

Second Response:

"David, I'll have a look at it and get back to you later toward evening - I'm crunched for time for the next few hours.

William"

Third Response:

"David,

You might have a case with the roof slope requirement of 3:12; those shed dormers are 1.5:12 - that might force a redesign, either to a steeper slope or to a different type of dormer and in either case that will affect the total exempt area design. An owner is allowed a 15' dormer projection into the setback plane on each side of the roof; dormers complying with the exception are considered part of the roof structure for the purpose of not adding to mass.

William"

Forth Response:

→ "What I'm saying is that an exempt attic can have dormers, that by definition a dormer is considered "contained within the roof structure". The dormer may or may not be exempt - in the case you have I wouldn't consider the dormer exempt - but it could be if the roof slope were 3:12, and it may or may not need the dormer tent ← exception, but the intent of the ordinance was to allow construction of a type and form previously seen on traditional houses - and those typically make use of dormers to achieve usable space which contained under a primary roof envelope.

William"

I might be travelling on the 13th but if not I'll make the BoA meeting.

William

William Burkhardt AIA

215-2015-0038
NO ROW/NO ADDRESS
NO TAX ROLL

**CITY OF AUSTIN APPLICATION TO BOARD
OF ADJUSTMENT INTERPRETATIONS
PART I: APPLICANT'S STATEMENT
(Please type)**

STREET ADDRESS: Not applicable

LEGAL DESCRIPTION: Subdivision – NA

Lot (s) NA

Block NA

Outlot NA

Division NA

ZONING DISTRICT: Subchapter F geographic designations.

I/WE Dave Piper on behalf of myself/ourselves as
authorized

Agent for Zilker Neighborhood Assn affirm that on

Day of Feb 1, 2015, hereby apply for an interpretation hearing before the Board of
Adjustment.

Planning and Development Review Department interpretation is:

Subchapter F, 3.3.3.C language that enumerates FAR exemptions "serves no purpose and is not

interpretable."

I feel the correct interpretation is:

Subchapter F, 3.3.3.C language that enumerates FAR exemptions serves a clear purpose, is explicit, and
interpretable.

NOTE: The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: _____

3.3.3.C. states that attics meeting the following requirements shall be excluded from the calculation of gross floor area: "...is fully contained within the roof structure" and "...adds no additional mass to the structure."

These two phrases are written in plain English with clear meaning, yet PDRD states they are not interpretable and serve no purpose.

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: _____

An appeal of use provisions would still allow design features that currently exist within the zoning area. The ZNA is not appealing the design criteria and appearance that Subchapter F allows, only how they apply to FAR calculations.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: _____

There are numerous existing houses in the zoning area that are already using ZNA's interpretation of the FAR attic exemption.

APPLICANT/AGGRIEVED PARTY CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Dave Piper Printed _____

Mailing Address 607 Jessie St

City, State & Zip Austin, TX 78704 Phone 512-916-9636

OWNER'S CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed NA Printed _____

Mailing Address NA

City, State & Zip NA Phone NA

Appeal of the City of Austin Administrative Decision on Interpretation and Clarification of Section 3.3.3(C) in Article 3 of Subchapter F

Background

In November 2014 the Zilker Neighborhood Association (ZNA) appealed the City's administrative decision to approve the plan review at 2015 Goodrich (2014-093888-PR) and requested an interpretation and definition of the following two terms used in Article 3 of the McMansion ordinance (Title 25-2 Subchapter F),

1. "fully contained within the roof structure" [as used in Section 3.3.3(C)(2)] and
 2. "adds no additional mass to the structure" [as used in Section 3.3.3(C)(5)],
- specifically in relation to the exclusion of "a habitable portion of an attic" from the floor-to-area ratio (FAR).

ZNA withdrew its appeal of the attic exemption for that particular administrative decision after Director Carl Wren agreed to provide a letter clarifying Staff's interpretation of those two terms and how they are applied in FAR calculations for all projects in the City, not just 2015 Goodrich. ZNA received an initial interpretation letter on January 12, 2015 (see Exhibit 4), and some additional information regarding the City staff's interpretation on January 22, 2015 (see Exhibit 5). ZNA has now had a chance to read and deliberate on the letter and background information, and we believe there is a fundamental issue with the attic FAR exemption that needs to be brought before the Board for resolution. We would like to emphasize that this is a request for a general Code interpretation not related to a specific project. City legal staff member Brent Lloyd specifically referred to this type of appeal/interpretation at the January 12, 2015, Board of Adjustment meeting (Item G1 Part 1- 57:21 to 57:41).

Code to be Interpreted

ZNA is therefore appealing the interpretation contained in the City Staff's letters of January 12 and 22, 2015. In the last paragraph of the first letter, the Staff concludes that this section of Code [i.e., Section 3.3.3(C)(2) and 3.3.3(C)(5)] "serves no purpose and is not interpretable," and hopes that it will be "rewritten or deleted" in the Code Next process. The ZNA Zoning Committee disagrees. Staff has presented evidence that this section of Code and the issues that we have specifically asked Staff to address were in fact thoroughly discussed in the 2008 McMansion Task Force deliberations, that a reasonable compromise was reached regarding the FAR exemptions, and that the City Council decided not to accept all of the recommendations to the wording in Sections 3.3.3(C)(2) and 3.3.3(C)(5). If the Staff wishes to remove this section of the Code, they need to do so through a Code amendment, not by arbitrarily ignoring the requirements of Section 3.3.3(C)(2) and 3.3.3(C)(5).

In ZNA's previous appearance before the Board and also in the many meetings we have had with Staff and building permit applicants, there has often been confusion concerning two articles of Subchapter F, the McMansion Ordinance. Article 2 addresses allowable designs of dormers, gables, and attics and their exterior dimensions pertaining to the "tent" setback. Article 3 addresses the FAR exemption for interior, habitable attic space that an applicant intends to finish out for human occupation.

ZNA has not appealed and is not now appealing Staff's interpretation of Article 2. We are not

opposed to dormers as a design feature of any roof structure. Yet, the Staff letter of January 12, 2015, continues to confuse the issue by focusing on "the practice of allowing dormers in a residential roof structure," as Development Services Manager John McDonald writes. Mr. McDonald's letter includes various tent diagrams illustrating allowable dormers. ZNA does not object to these dormer designs or the manner in which they have been approved under Article 2.

We are, however, concerned about the interpretation of the attic FAR exemption in Article 3 and the manner in which it has been used to allow the construction of larger, more massive houses, with interior, habitable gross floor area that exceeds the ordinance's FAR limit of 40%.

McMansion Revision Process 2008

In the process of revising the McMansion Ordinance in 2007-2008, a stakeholders group and Task Force, the Planning Commission, and City Staff had deliberations and made recommendations to the City Council about the attic FAR exemption. Mr. McDonald's Staff interpretation letter (January 12, 2015) states that the Staff researched documentation from that process and provides Attachment A (a portion of "Residential Development Regulations Task Force Recommendations") and Attachment B (a portion of "Additional Stakeholder Recommendations").

In Attachment A, Item #19, the Task Force recommendation is to "Allow an attic exemption if the structure meets all attic exemption requirements and revise number (5) in section 3.3.2.C [this section was later renumbered to 3.3.3.C] to read the highest habitable portion of the section of any structure with no usable space located above any portion of that section of the building." The Planning Commission also recommended these changes.

In Attachment B, Item #5, the Stakeholder recommendation is to "Clarify that 'contained within the roof structure' means that that roof structure is the roof framing. Further clarify that a dormer is allowed as long as the dormer protrudes from the roof's frame." The impact of the recommendation is described as "Amendment would clarify that roof structure is roof framing and that a dormer or protrusion out of the roof framing will not prevent the habitable attic space from being exempt from FAR." This is very similar to the issue that we are asking the Board of Adjustment to consider now. The Staff Recommendation is to not amend the Code, but provide a policy memo clarifying "contained within the roof structure." A draft memo was attached [ZNA has not yet located this draft.] The Task Force recommended a policy memo clarifying whether dormers are included when calculating the attic exemption "area with height 7' or less." [In his e-mail of January 22, 2015, Mr. McDonald says that no such memo was prepared. We understand, however, that a previous policy memo by Erica Eichert, dated April 4, 2007, does concern calculations of attic area less than 7 feet, in relation to the habitable space exemption. The memo figured in a Board of Adjustment decision on Jan. 9, 2012, Case C15-2011-0110 (see Exhibit 3 Attachment D). We have not yet seen the Eichert memo.] The Planning Commission supported the Staff and Task Force recommendations and no change to Code.

In Attachment B, Item #6, the stakeholder issue is identified as "Dormers are being constructed larger than anticipated and allowing taller habitable attic areas." Although Mr. McDonald's letter of January 12, 2015, appears to address this item, it only refers to irrelevant parts of the Code as evidence that dormers are allowed in the Code. Again, we are not opposed to dormers as a design feature of any roof structure. We instead recognize Item #6 as an attempt to regulate the size of dormers. The Task Force and Planning Commission both recommended the Code amendment.

Our contention all along has been that Staff is granting FAR exemptions well beyond the intent of the ordinance. The "Stakeholder" attachments and Task Force recommendations show that "larger than anticipated" dormers have always been an issue, and the intent of the Code amendments was to limit the size of dormers (not just to "allow" dormers), and ultimately to curb the abuse of FAR exemptions caused by converting third stories into attics.

City Council Adoption of Amendments

When the revised ordinance was adopted by City Council, the City Council rejected the Task Force and Planning Commission recommendations for Section 3.3.3(C)(5) and changed it from "It is the highest habitable portion of the building" (see Exhibit 1) to read "It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure" (see Exhibit 3 Attachment C). So, the City Council purposely added "adds no additional mass to the structure."

With respect to Section 3.3.3(C)(2), the City Council accepted the Staff, Task Force, and Planning Commission recommendations and made no changes to Section 3.3.3(C)(2). The final policy memo by Daniel Word dated July 29, 2008 (see Exhibit 2) was presumably the policy memo that was recommended by the Task Force.

It is obvious from the comments on Attachments A and B from the January 12, 2015, interpretation letter that there was a lot of concern and discussion about the attic FAR exemption. However, it appears that there are no official memos besides these notes. The City Council voted to approve the language that is now contained in Subchapter F. One would have to assume they knew what they were voting for. Specifically, they included the very plain English phrases of "adds no additional mass" and "fully contained within the roof structure" when referring to the attic exemption.

The recommendations in Attachments A and B may state an intent to change the meaning of these two plainly worded phrases, but there is no evidence that the Council intended to do so. Either they never received the memos and other documentation, if they ever existed, or they did receive them and perhaps other communication, and they still decided to craft the ordinance as they did, in spite of the recommendations to the contrary.

Either way, it is a slippery slope to speculate on what may or may not have been in the heads of City Council members in 2008. We ask that the Board of Adjustment simply take the language of the attic FAR exemption at face value as we believe the City Council intended and not allow exemptions for design features that otherwise add mass to an attic structure or are not fully contained within the roof structure of an attic. And again, ZNA has no opposition to the permitting of design features such as dormers as provided in Article 2, as long as those features are subject to the FAR limits in Article 3.

Conclusions

City Staff have concluded that the phrases "fully contained within the roof structure" and "adds no additional mass to the structure" as used in Section 3.3.3(C) have no meaning and are not interpretable. We disagree. We believe that they do have meaning, and we ask the Board of Adjustment to make an interpretation of exactly what they mean.

BACKUP EXHIBITS:

Exhibit 1 – Code language of Subchapter F, Article 3 as found on pages 24-26 in the document “Subchapter F: Residential Design and Compatibility Standards” approved by the City Council on September 28, 2006 based on the June 22, 2006 City Council ordinance and subsequent amendments

Exhibit 2 – 2008 Jan 29 policy memo “Habitable Attics and Gross Floor Area” by Daniel Word

Exhibit 3 – 2014 Dec 01 memo “Appeal of Building Permit Approval at 2015 Goodrich Avenue” from Daniel Word to the Board of Adjustment including attachments (A– 2015 Goodrich plans; B – ZNA Notice of Appeal; C – Section 3.3.3(C) of Title 25-2 Subchapter F; D – 2012 Jan 09 Board of Adjustment Motion Sheet on 3704 Bonnell Drive reversing the interpretation of the “habitable attic” exemption; and E – 2008 Jan 29 policy memo by Daniel Word)

Exhibit 4 – 2015 Jan 12 interpretation letter “Clarification of Section 3.3.3(C)(5) of Subchapter F for 2015 Goodrich Avenue” from John McDonald including attachments (A – “Residential Development Regulations Task Force Recommendations” and B – “Additional Stakeholder Recommendations”)

Exhibit 5 – 2015 Jan 22 email from John McDonald that states there is are no documents to support any of the communication described in the two Attachments A and B in John’s letter of clarification dated 2015 Jan 12.

EXHIBIT 1

ARTICLE 3: DEFINITIONS AND MEASUREMENT

3.1. BUILDABLE AREA

In this Subchapter, BUILDABLE AREA means the area in which development subject to this Subchapter may occur, and which is defined by the side and rear setback planes required by this Subchapter, together with the area defined by the front, side, and rear yard setbacks and the maximum height limit.

3.2. BUILDING LINE

In this Subchapter, BUILDING LINE means a line that is parallel to the front lot line and that intersects the principal residential structure at the point where the structure is closest to the front lot line, including any allowed projections into the front yard setback. See Figure 21.

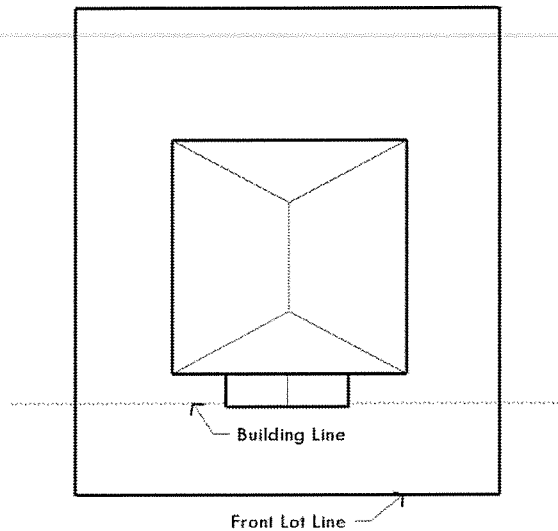


Figure 21: Building Line

3.3. GROSS FLOOR AREA

In this Subchapter, GROSS FLOOR AREA has the meaning assigned by Section 25-1-21(Definitions), with the following modifications:

3.3.1. The following shall be included in the calculation of gross floor area:

- A. The portion of a second or third story of a building that is covered by a roof, including a porch, portico, breezeway, passageway, or corridor;
- B. A mezzanine or loft; and
- C. The covered portion of a parking area, except for:
 - 1. Up to 450 square feet of:
 - a. A detached rear parking area that is separated from the principal structure by not less than 10 feet; or
 - b. A parking area that is open on two or more sides, if it does not have habitable space above it; and
 - 2. Up to 200 square feet of an attached parking area if it used to meet the minimum parking requirement.

3.3.2. The following shall be excluded from the calculation of gross floor area:

- A. A ground floor porch, including a screened porch;
- B. A habitable portion of a building that is below grade if:
 - 1. It does not extend beyond the first-story footprint; and
 - 2. The finished floor of the first story is not more than three feet above the average elevation at the intersections of the minimum front yard setback line and the side property lines; and
- C. A habitable portion of an attic, if:
 - 1. The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;
 - 2. It is fully contained within the roof structure;
 - 3. It has only one floor;
 - 4. It does not extend beyond the footprint of the floors below;
 - 5. It is the highest habitable portion of the building; and
 - 6. Fifty percent or more of the area has a ceiling height of seven feet or less.

3.3.3. An area with a ceiling height greater than 15 feet is counted twice.

3.4. HEIGHT

For purposes of this Subchapter, the HEIGHT of a building or setback plane shall be measured as follows:

- 3.4.1. Height shall be measured vertically from the average of the highest and lowest grades adjacent to the building to:
 - A. For a flat roof, the highest point of the coping;
 - B. For a mansard roof, the deck line;
 - C. For a pitched or hip roof, the average height of the highest gable; or
 - D. For other roof styles, the highest point of the building.
- 3.4.2. The grade used in the measurement of height for a building or setback plane shall be the lower of natural grade or finished grade, except height shall be measured from finished grade if:
 - A. The site's grade is modified to elevate it out of the 100-year floodplain; or
 - B. The site is located on the approximately 698.7 acres of land known as the Mueller Planned Unit Development, which was zoned as a planned unit development (PUD) district by Ordinance Number 040826-61.
- 3.4.3. For a stepped or terraced building, the height of each segment is determined individually.

- 3.4.4.** The height of a structure other than a building is measured vertically from the ground level immediately under the structure to the top of the structure. The height of a fence on top of a retaining wall is measured from the bottom of the retaining wall.
- 3.4.5.** A maximum height is limited by both number of feet and number of stores if both measurements are prescribed, regardless of whether the measurements are conjoined with “or” or “and.”

3.5. NATURAL GRADE

3.5.1. In this Subchapter, NATURAL GRADE is:

- A.** The grade of a site before it is modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural or landscape feature; or
- B.** For a site with a grade that was legally modified before October 1, 2006, the grade that existed on October 1, 2006.

- 3.5.2.** Natural grade is determined by reference to an on-ground survey, City-approved topographic map, or other information approved by the director. The director may require an applicant to provide a third-party report that shows the natural grade of a site.

EXHIBIT 2



MEMORANDUM

TO: American Institute of Architects- Austin

THRU: Residential Review Planners and Residential Inspectors

FROM: Daniel Word, Planner II, Residential Review Division
Watershed Protection and Development Review Department

DATE: July 29, 2008

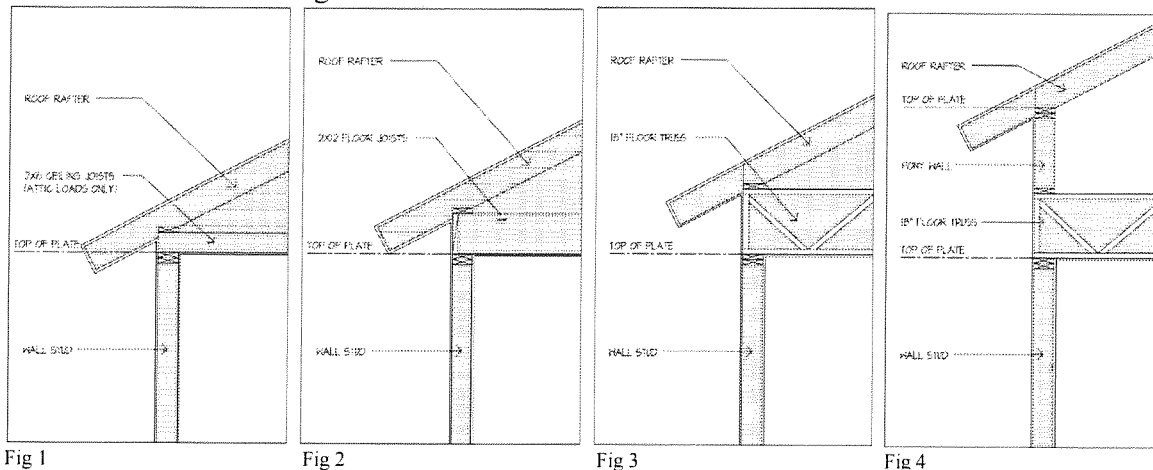
SUBJECT: Habitable Attics and Gross Floor Area

Section 3.3.3 (C) of Subchapter F, commonly referred to as the "McMansion" ordinance, allows for the exclusion of a habitable portion of an attic from the gross floor area measurement prescribed in the Land Development Code if:

1. The roof above is not a flat or mansard roof and has a slope of 3 to 12 or greater;
2. It is fully contained within the roof structure;
3. It has only one floor;
4. It does not extend beyond the footprint of the floors below;
5. It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and
6. Fifty percent or more of the area has a ceiling height of seven feet or less.

Under the second provision, the space must be "fully contained within the roof structure." For the purposes of implementing Subchapter F of the Land Development Code, this is interpreted to mean that the attic space is contained between the underside of the roof rafters and the top of the ceiling joists, floor joists, or floor truss, provided that the finished floor of the attic space does not drop below the height of the ceiling joists, floor joists, or floor truss at the intersection with the exterior walls. This is to prevent the floor surface within the attic space to be artificially lowered in order to gain additional ceiling height that would not otherwise be present.

Please refer to the following sketches for further clarification:



Figures 1, 2, and 3 are examples of acceptable construction methods that would qualify as being "fully contained within the roof structure." Figure 4 is a sketch of an unacceptable construction method for the purpose of qualifying as being "fully contained within the roof structure." This attic area would not qualify for exclusion from the calculation of gross floor area.

EXHIBIT 3



MEMORANDUM

TO: Board of Adjustment
FROM: Daniel Word, Planner Principal, Residential Review
DATE: December 1, 2014

SUBJECT: Appeal of Building Permit Approval at 2015 Goodrich Avenue

Timeline

An application was submitted to Residential Review on September 3, 2014 proposing to construct a new two-story single-family residence with a one-story detached garage. The construction plans (Attachment A) related to the permit application were approved on October 14, 2014 and the subsequent building permit was activated on October 16, 2014.

An appeal (Attachment B) of the building official's administrative decision to approve the permit request was received on October 20, 2014. A "meeting to resolve issues" was conducted on November 17, 2014 with representatives of the applicant, appellant and city staff present.

Arguments

The appeal raises four issues. However, the "meeting to resolve differences" was able to resolve three of the four issues. The remaining issue (identified as item #3 in the appeal) involves the application of the "attic exemption" outlined in Article 3.3.3.C of Title 25-2 Subchapter F (Attachment C), commonly known as the "McMansion" ordinance.

The "McMansion" ordinance allows for habitable attic spaces meeting the six criteria shown below to exempt the square footage from the floor-to-area ratio established by Subchapter F. The appeal focuses on the second and fifth criteria.

- C. *A habitable portion of an attic, if:*
 - 1. *The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;*
 - 2. *It is fully contained within the roof structure;*
 - 3. *It has only one floor;*
 - 4. *It does not extend beyond the footprint of the floors below;*
 - 5. *It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and*
 - 6. *Fifty percent or more of the area has a ceiling height of seven feet or less.*

The Board of Adjustment has previously heard an interpretation case (C15-2011-0110) regarding this section of the code (Attachment D). The final result of the case overturned the building official's approval and provided language that established which areas within an attic should be included in the calculation of the attic area and supported a staff memorandum (Attachment E) detailing the staff

interpretation of construction methods that would be accepted as being "fully contained within the roof structure".

Commentary

The essential question being presented with this case is whether or not the presence of dormers or clerestory windows located within an attic space would disqualify it from being exempted from the floor-to-area ratio under Article 3.3.3.C. The appellant makes an argument that dormers and clerestory windows are not "fully contained within the roof structure" and add "additional mass to the structure".

This particular section of the code, as with much of the "McMansion" ordinance, is vague and lacks clarity or definition of the terms used within the language. The provision that the attic space not add "additional mass" to the structure is particularly problematic from an administrative perspective, as it requires one to subjectively determine what the structure would otherwise look like without the proposed attic space being present on a structure that does not yet exist.

The staff memorandum previously recognized by the Board attempts only to address acceptable construction methods involving the connection of the roof structure to the exterior wall plate. It does not address the issue of whether dormers that project from the sloping roof surface violate the outlined criteria to exempt attic space. The prior interpretation made by the Board also does not address whether dormers or clerestory windows should be acceptable in connection with an exempted attic space.

Dormers are not an unusual feature on gable and hip roof designs, and may be present regardless of whether the attic space is being finished out. The typical function of a dormer is to create wall space for exterior windows, which provide for ventilation, light, and egress. Clerestory windows provide a similar function, providing for light and ventilation (if operable).

Recommendation

The issues to be resolved with this particular interpretation are very complex. Taking the strictest reading of the code, dormers and clerestory windows could be viewed as adding additional mass and as not being contained within the roof structure. However, since the inception of the ordinance in October 2006, staff has routinely allowed dormers to be included as part of the attic space when evaluating the applicability of the "attic exemption".

Eliminating the allowance for dormers and clerestory windows would complicate the usage of attic spaces for living purposes. If dormers cannot be used, then gable ends are the only area available to provide egress, which could restrict the internal layout of the space.

It is the staff opinion that disallowing dormers or clerestory windows will not eliminate disputes involving this section of the code, and eliminating dormers or clerestory windows would likely result in more elaborate roof designs. This, coupled with the eight years of prior precedent for allowing such features, leads staff to respectfully request the Board uphold the decision of the building official to approve the building permit for the subject property.

For your consideration,



Daniel Word

Principal Planner, Residential Review Division
Planning and Development Review Department

Attachment "A"

PROJECT:
2015 GOODRICH AVENUE
AUSTIN, TX 78704

LOT INFORMATION
ZONING: SF3
PROPERTY TAX ID: 100468
LOT AREA (ACAD): 6325.50 FT.

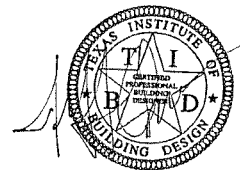
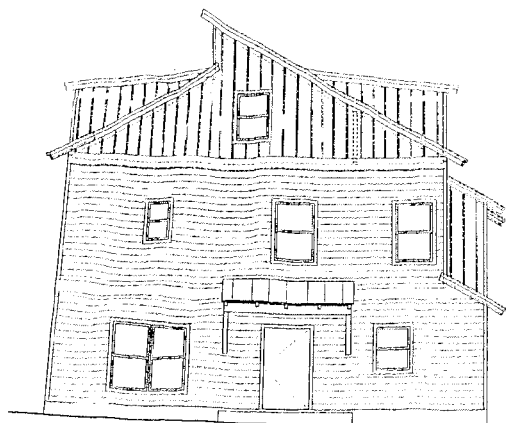
OWNERS:
South Austin Development Group, LLC
David Jones Vance Cobb
1813 Collier Street 803 Josephine Street
Austin, TX 78704 Austin, TX 78704
469-396-6409 512-550-2144

BUILDER:
OWNERS

DESIGNER:
JEFF OVERMAN
OVERMAN CUSTOM DESIGN
TEXAS INSTITUTE OF BUILDING DESIGN SEAL #452
11512 TRINITY HILL DRIVE
AUSTIN, TX 78753
512-627-0746

ENGINEER: TO BE DETERMINED
ELECTRICAL CONTRACTOR: TO BE DETERMINED
PLUMBING CONTRACTOR: TO BE DETERMINED
MECHANICAL CONTRACTOR: TO BE DETERMINED

SHEET NUMBER	
C1.0	COVER SHEET
C1.1	SITE PLAN
C1.2	TEXT AND
A1.1	HOUSE - 1 (HABITABLE) ATTIC PLANS
A1.2	HOUSE - 2
A2.1	HOUSE - 1 ELEVATIONS
A2.2	HOUSE - 1
A2.3	HOUSE - 1
A2.4	HOUSE - 1
A3.1	HOUSE - 1 ATTIC EXEMPTION PLAN
A4.1	STAIR NO. 1
A4.2	INTERIOR
A4.3	EXTERIOR
A5.1	VISIBILITY
E1.1	1ST FLOOR PLAN (HOUSE AND GARAGE)
E1.2	2ND FLOOR
AG1.1	GARAGE PLAN, ROOF PLAN AND ELEVATIONS



2015 GOODRICH AVENUE

Jeff Overman C750

11/15/12

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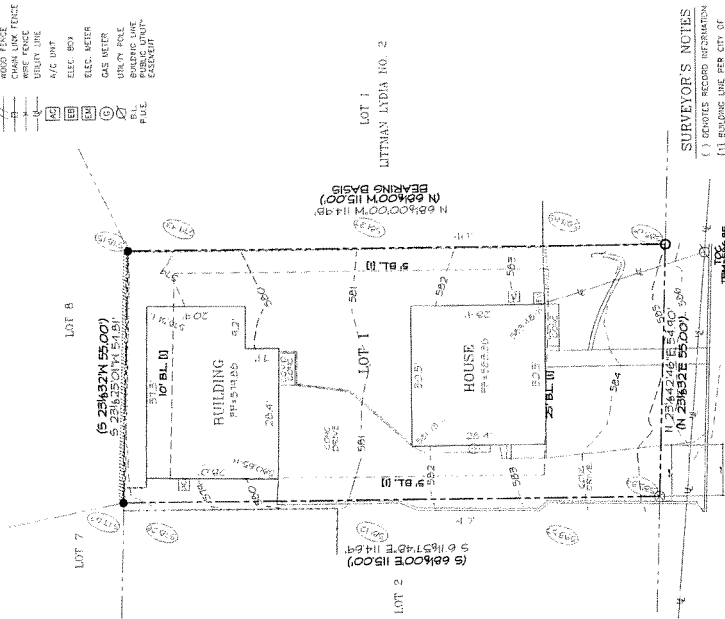
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SCALE 1"=20'

- LEGEND**
- IRON ROD PND
 - PIPE PND
 - X SET
 - WOOD FENCE
 - CHAIN LINK FENCE
 - CONCRETE FENCE
 - UTILITY LINE
 - A/C UNIT
 - ELEC. BOX
 - ELEC. METER
 - GAS METER
 - URON POLE
 - RADIOLINE
 - FLUE
 - CEILING FAN



ORIGINAL SURVEY
SCALE 1"=20.00' WITH PND ON 11/17/19

LOT 1
LITMAN LYDIA HO. 2

SURVEYOR'S NOTES

(1) LOCATE RECORD INFORMATION
(2) INCLUDING THE PER CITY OF
AUSTIN CURRENT ZONING ORDINANCE
AND ANY APPLICABLE
BUILDING REQUIREMENTS WHICH MAY
BE IMPOSED BY THE LOCAL
GOVERNMENT FOR HOME
OWNER'S ASSOCIATION.
THIS LOT IS SUBJECT TO ALL
EASEMENT RIGHTS AND/OR
EASEMENTS WHICH APPEAR ON
THE PLAT OF RECORD.
ALL POINTS DOES NOT MAKE OR
WARRANT ANY FLOOD ZONE
DETERMINATION.

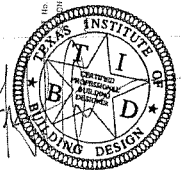
2015 GOODRICH AVENUE
(50' R.O.W.)

BOOK _____ **DATE** _____ **PLAT RECORD**
VOLUME _____ **OFFICIAL PUBLIC STATE OF** _____ **COUNTY** _____ **TEXAS**
REFERENCE _____ **DATE** _____ **FILE** _____

IMPORTANT NOTICE

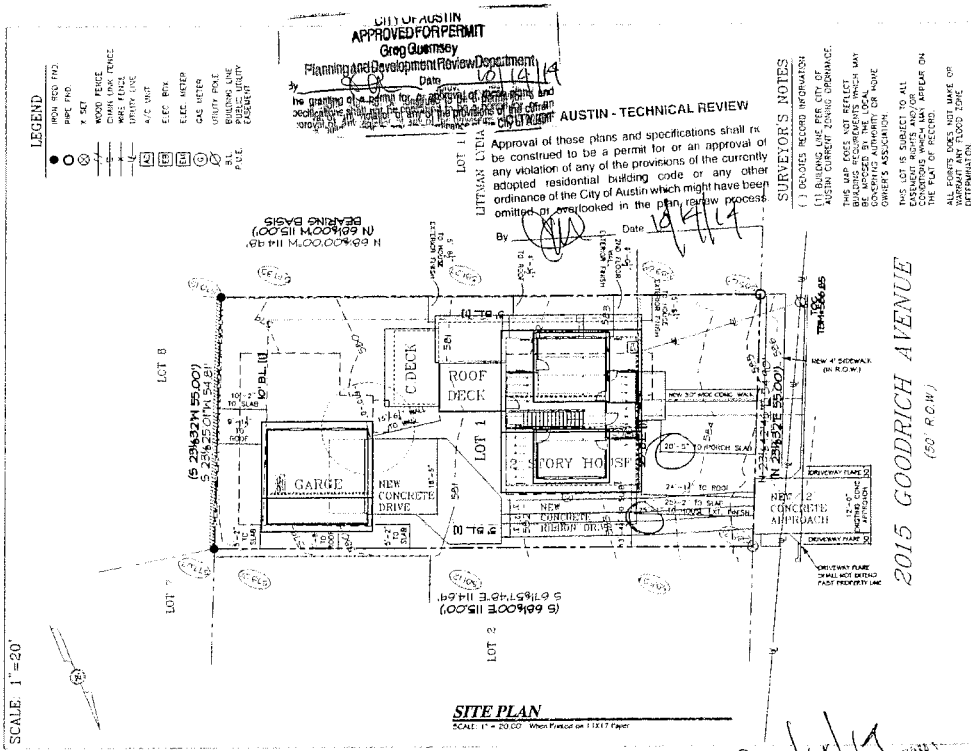
THIS SURVEY WAS PREPARED WITHOUT
ANY WARRANTY OR GUARANTEE OF
ACCURACY. THE SURVEYOR'S
ONLY LIABILITY IS TO THE
CLIENT. THE SURVEYOR'S
OFFICE IS NOT RESPONSIBLE FOR
ANY ERRORS OR OMISSIONS
ON THE RECORDED PLAT.

ALL POINTS SURVEYING
1714 FORTVIEW ROAD SUITE 200
AUSTIN, TX 78704
TEL: (512) 440-0100 FAX: (512) 440-0109



10/19/19
THANK YOU FOR THE INFORMATION

FILED	DATE	BY	SCALE
11/17/19	11/17/19	11/17/19	1"=20'



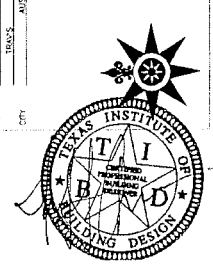
ALL POINTS SURVEYING
 1714 FORTVIEW ROAD - SUITE 200
 AUSTIN, TX 78704
 TELE (512) 440-0071 - FAX (512) 440-0099

IMPORTANT NOTICE

THE SURVEY WAS PREPARED WITHOUT THE ASSISTANCE OF ANY OTHER PROFESSIONAL ENGINEER OR SURVEYOR. THE SURVEYOR HAS NOT CONDUCTED A FIELD CHECK OF THE SURVEY. THE SURVEYOR HAS NOT CONDUCTED A FIELD CHECK OF THE SURVEY. THE SURVEYOR HAS NOT CONDUCTED A FIELD CHECK OF THE SURVEY.

SECTION / ACROSS
 Volume: _____ Page(s): _____
 Document No.: _____ Office No.: _____
 Date: 10/19/14

LOT 16
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 TOWNSHIP: _____
 COUNTY: TARRANT
 CITY: AUSTIN



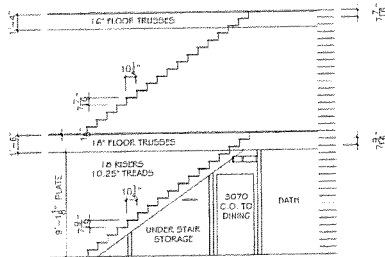
2015 GOODRICH AVENUE
AUSTIN, TX 78704

Overman Custom Design, Inc.

Sept. 24, 2014

1486-1123-2950

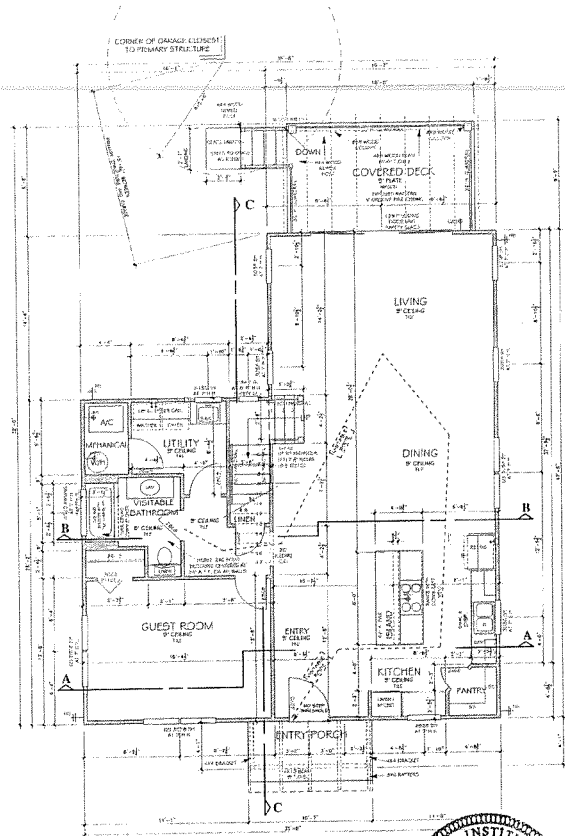
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SCHEMATIC STAIR SECTION

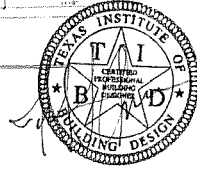
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2. EXISTING 10' RISE STAIRS TO BE REMOVED AND REPLACED WITH 10' RISE STAIRS.
3. EXISTING 10' RISE STAIRS TO BE REMOVED AND REPLACED WITH 10' RISE STAIRS.
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9. EXISTING 10' RISE STAIRS TO BE REMOVED AND REPLACED WITH 10' RISE STAIRS.
10. EXISTING 10' RISE STAIRS TO BE REMOVED AND REPLACED WITH 10' RISE STAIRS.



FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0" When Printed on 24x36 Paper
SCALE: 1/8" = 1'-0" When Printed on 11x17 Paper



10/14/14
REVISION: 10/14/14

2015 GOODRICH AVENUE
AUSTIN, TX 78704



THIS PLAN IS NOT TO BE REPRODUCED, COPIED, ADAPTED, OR USED TO BUILD MORE THAN ONE STRUCTURE.

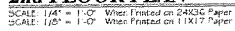
Sept. 24, 2014

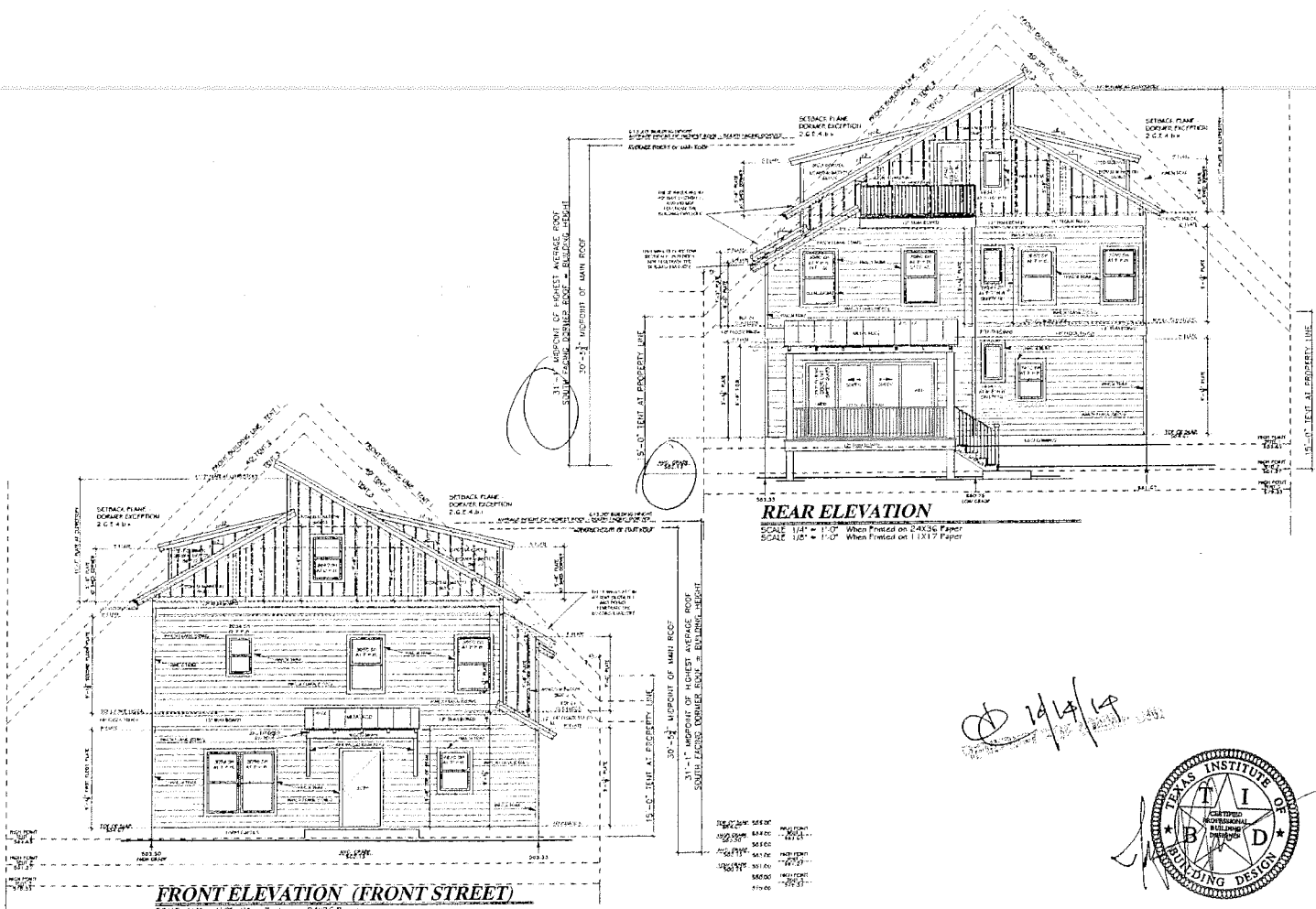
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09/24/2014

ALL RIGHTS RESERVED

AL1





2015 GOODRICH AVENUE
 AUSTIN, TX 78704



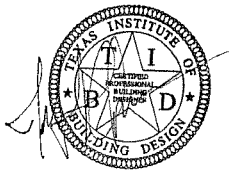
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 STRUCTURE.

DATE: Sept. 24, 2014

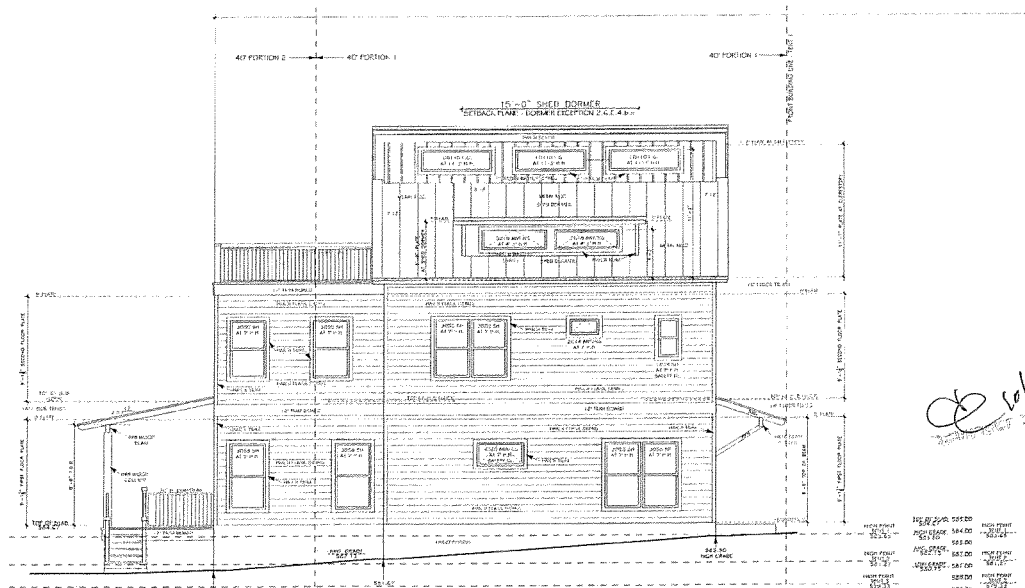
1406-1123-2950

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A2.1



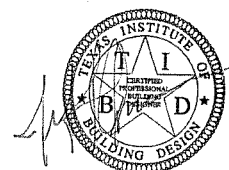
10/14/14



LEFT ELEVATION (SIDE STREET)

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SCALE: 1/8" = 1'-0" When Printed on 11x17 Paper

NO. 10/14/14
10/14/14

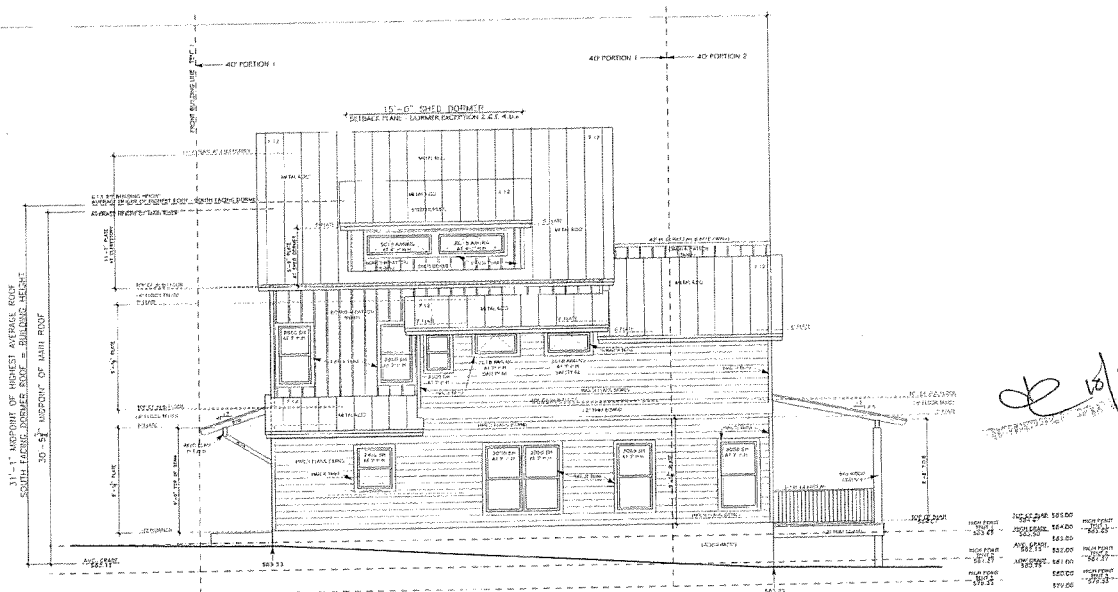


2015 GOODRICH AVENUE
AUSTIN, TX 78704

OvermanCustomDesign.Com
1012 Goodrich Ave. Suite 100
Austin, TX 78704
(512) 452-0075

Sept. 24, 2014

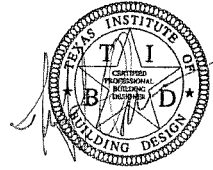
1406-1123-2958
15014 Jeffrey St. Gorman
Austin, Texas 78704
A2.2
DESIGN & CONSTRUCTION



RIGHT ELEVATION

SCALE: 1/4" = 1'-0" When Printed on 24X36 Paper
SCALE: 1/8" = 1'-0" When Printed on 18X17 Paper

10/14/14
10/14/14



2015 GOODRICH AVENUE
AUSTIN, TX 78704

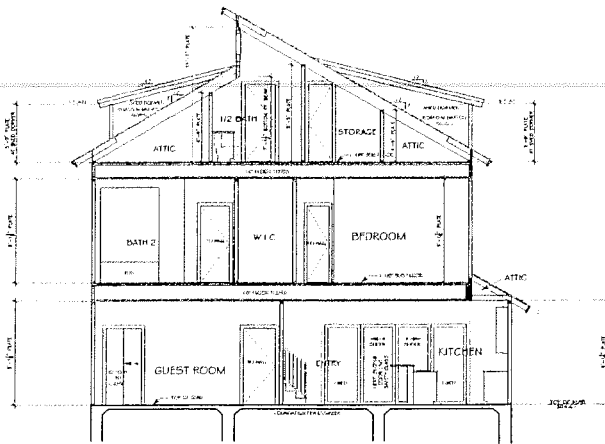
Architect: Overman Custom Design, Inc.
1486-1121-2950
1486-1121-2950
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THIS PLAN IS NOT TO BE REPRODUCED, COPIED, REPRODUCED, OR USED TO BE IN MORE THAN ONE STRUCTURE.

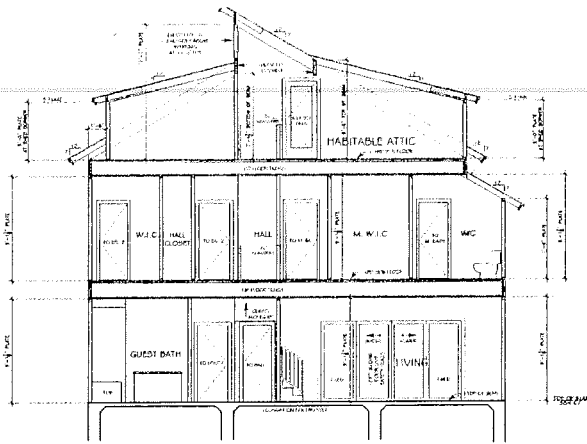
Sept. 24, 2014

1486-1121-2950
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1486-1121-2950

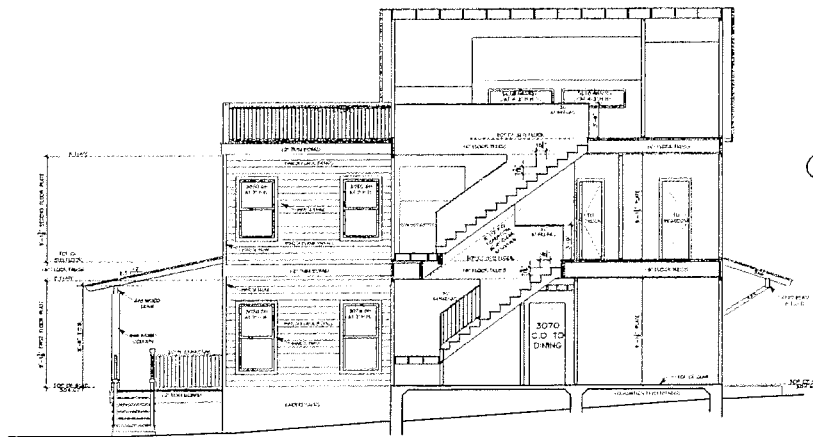
A2.3



A-A SECTION
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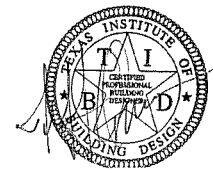


B-B SECTION
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C-C SECTION
 SCALE: 1/4" = 1'-0" When Printed on 24X36 Paper

Handwritten: 9/14/14



2015 GOODRICH AVENUE
 AUSTIN, TX 78704

OvermanCustomDesign.Com

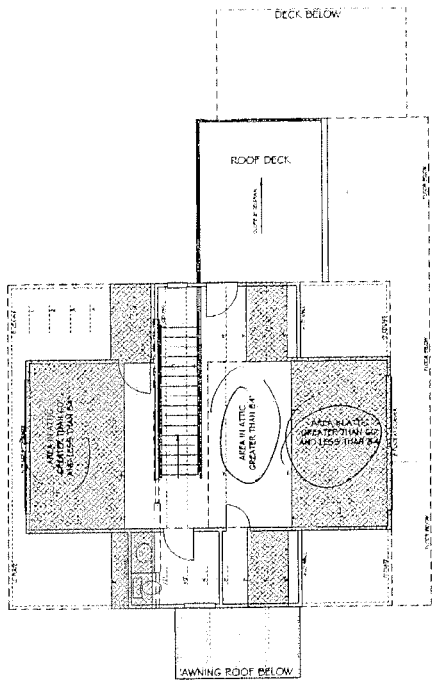
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Sept. 24, 2014

1486-1123-2950

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A2.4

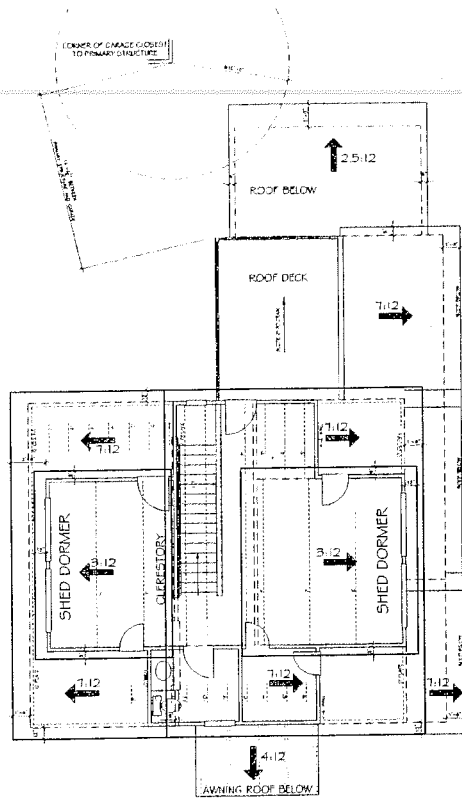


ATTIC AREA
 342 SQ.FT. = 60" TO 84"
 326 SQ.FT. = GREATER THAN 84"

ATTIC EXEMPTION PLAN

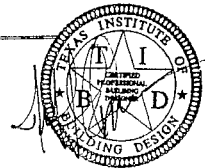
SCALE: 1/4" = 1'-0" When Printed on 24x36 Paper
 SCALE: 1/8" = 1'-0" When Printed on 11x17 Paper

E. 10/14/19
 10/14/19



ROOF PLAN

SCALE: 1/4" = 1'-0" When Printed on 24x36 Paper
 SCALE: 1/8" = 1'-0" When Printed on 11x17 Paper



2015 GOODRICH AVENUE
 AUSTIN, TX 78704

OvermanCustomDesign.Com
 1406-1123-2950
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Sept. 24, 2014

1406-1123-2950
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A3.1

Attachment "B"

NOTICE OF APPEAL INFORMATION

Austin City Code ARTICLE 7. APPEALS, VARIANCES, SPECIAL EXCEPTIONS, AND ADJUSTMENTS.

Division 1. Appeals

(see page 2 of 2 for appeal process)



Planning and Development Review Department

Address of Property in Question 2015 Goodrich Ave		Permit Number 2014-093888 PR
Appellant Filing Appeal Zilker Neighborhood Association	Relationship to Property subject property is within the neighborhood boundaries	
Appellant's status as Interested Party neighborhood association in which subject property is located		
Appellant Contact Information		Permit Holder Contact Information
Name Gardner Sumner, President, ZNA	Name S.Austin Dev.Group LLC (Vance Cobb)	
Street 1610 Treadwell Street	Street 802 Josephine St	
City Austin	State TX	Zip 78704
Telephone 512-468-6200	Telephone (512)550-2144	
E-Mail zoltan2@outlook.com	E-Mail vancecobb@gmail.com	
Date of Decision Being Appealed: 14 Oct 2014	Date Appeal is Filed: 20 Oct 2014	

Decision being appealed: (use additional paper as required)
issuance of building permit 2014-093888 PR for 2015 Goodrich Ave

Reason the appellant believes the decision does not comply with the requirements of the Land Development Code (Title 25)
The applicant has 1) failed to use the correct lot size, 2) failed to measure McMansion FAR to the outside surface of the exterior walls, 3) requested an attic exemption that does not comply with the requirements, and 4) incorrectly calculated impervious cover. As a result, the house does not comply with the McMansion ordinance which requires that the FAR not exceed 40% nor with the impervious cover ordinance which requires that the impervious cover not exceed 45%.
See attached details.

BELOW FOR CITY USE ONLY

Hearing Date:	Board or Commission:
Action on Appeal:	Date of Action

Form Bldg 101 Page 1 of 2

The applicant must complete page 2 of 2 and sign before this application of appeal is complete. The application will not be processed unless the applicant reads and signs page 2 of 2.

2015 Goodrich Ave (Permit Number 2014-093888 PR)

Reasons the Decision Does Not Comply with the Requirements of the Land Development Code:

- 1) The applicant is using a lot size of 6,325 sq ft to make impervious cover and McMansion FAR calculations. This is the lot size shown at the Travis County Appraisal District (TCAD). However, the applicant presented an actual survey conducted by All Points Surveying on 21 Jul 2014. The property lines shown on this survey calculate to 6,296.6 sf. The surveyed area should be used since the TCAD areas are notoriously inaccurate. This will result in a higher impervious cover and McMansion FAR percentage.
- 2) The architectural plans of the first and second floor (Drawings A1.1 and A1.2) appear to be drawn to the outer edge of the wood framing and not to the "outside surface of the exterior walls" demonstrated by the fact that the first floor plan dimensions (Drawing A1.1) match the foundation plan dimensions (Drawing S-1). Normally, the edge of the framing is aligned with the foundation edge. When sheathing and siding is added, this dimension can increase by an inch or more on all sides. Since the criteria for calculating the McMansion FAR is measurement to the "outside surface of the exterior walls", the McMansion FAR is not calculated correctly. If one assumes a ½" sheathing and ¾" siding, the first floor area is increased to 1,301.6 sf and the second floor area is increased to 1285.3 sf. This is an additional 33.8 sf that must be added to the McMansion FAR calculation.
- 3) The attic exemption from McMansion FAR requested by the applicant is not allowable under the McMansion ordinance. The attic exemption is allowable only if it meets certain conditions:

"3.3.3. Porches, basements, and attics that meet the following requirements shall be excluded from the calculation of gross floor area:

C. A habitable portion of an attic, if:

- 1. The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;*
- 2. It is fully contained within the roof structure;*
- 3. It has only one floor;*
- 4. It does not extend beyond the footprint of the floors below;*
- 5. It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and*
- 6. Fifty percent or more of the area has a ceiling height of seven feet or less."*

3.3.3.

Porches, basements, and attics that meet the following requirements shall be excluded from the calculation of gross floor area:

A.

A ground floor porch, including a screened porch, provided that:

1.

the porch is not accessible by automobile and is not connected to a driveway; and

2.

the exemption may not exceed 200 square feet if a porch has habitable space or a balcony above it.

B.

A habitable portion of a building that is below grade if:

1.

The habitable portion does not extend beyond the first-story footprint and is:

a.

Below natural or finished grade, whichever is lower; and

b.

Surrounded by natural grade for at least 50% of its perimeter wall area, if the habitable portion is required to be below natural grade under paragraph 1.a.

2.

The finished floor of the first story is not more than three feet above the average elevation at the intersections of the minimum front yard setback line and the side property lines.

C.

A habitable portion of an attic, if:

1.

The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;

2.

It is fully contained within the roof structure;

3.

It has only one floor;

4.

It does not extend beyond the footprint of the floors below;

5.

It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and

6.

Fifty percent or more of the area has a ceiling height of seven feet or less.

Board of Adjustment Motion Sheet

January 9, 2012 BOA Meeting

Case No. C15-2011-0110 Sarah Lynn Hill and John Deigh, 3704 Bonnell Drive

Boardmember's Motion:

"I move to reverse the Director's interpretation of the 'habitable attic' exemption under the McMansion ordinance, as reflected by staff's approval of the permit at 3704 Mount Bonnell Drive, and to replace it with the following interpretation. Staff should prepare a memo including this interpretation and make it available to reviewers and the public."

Text of Interpretation:

- (1) To qualify for the "attic exemption" from Gross Floor Area under Section 3.3.3.C of Subchapter F, a habitable portion of an attic must meet each of the following requirements:
 - (A) As measured in accordance with Subsection 3.3.4, fifty-percent (50%) or more of the exempted portion of the attic must have a height of less than 7 feet, but more than 5 feet.
 - (B) The exempted portion of an attic must be limited to rooms used for human occupation, including but not limited to spaces used for living, (sleeping, eating, or cooking and all bathrooms, toilet rooms, circulation spaces and laundry rooms), working (home office, studio), and recreation (entertainment, exercise).
 - (C) Consistent with the staff memo by Daniel Word, dated July 29, 2008, the exempted portion of the attic must be fully contained within the roof structure and cannot extend beyond the footprint of the floor below.
- (2) This interpretation supersedes any conflicting interpretation previously issued by staff, including but not limited to the memo of Erica Eichert dated April 4, 2007.

Findings:

After the Board concludes its deliberations and any amendments have been clearly noted, a boardmember should make the following findings before calling for a vote:

- (1) There is reasonable doubt or difference of interpretation as to the specific intent of the habitable attic exemption under the McMansion ordinance; and
- (2) The resulting interpretation approved by the Board will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

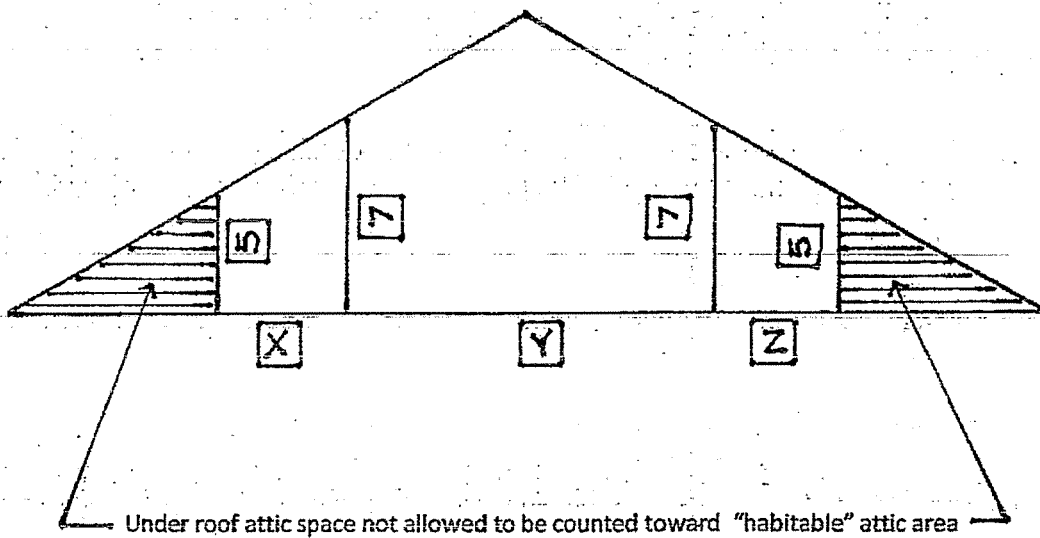
Board of Adjustment

January 9, 2012 Board Meeting

Case D-1 #C15-2011-0110 Sarah Lynn Hill and John Deigh, 3704 Bonnell Drive

Exhibit "A"

Modification of the diagram included in the memo of Erica Eichert, dated April 4, 2007





MEMORANDUM

TO: American Institute of Architects- Austin

THRU: Residential Review Planners and Residential Inspectors

FROM: Daniel Word, Planner II, Residential Review Division
Watershed Protection and Development Review Department

DATE: July 29, 2008

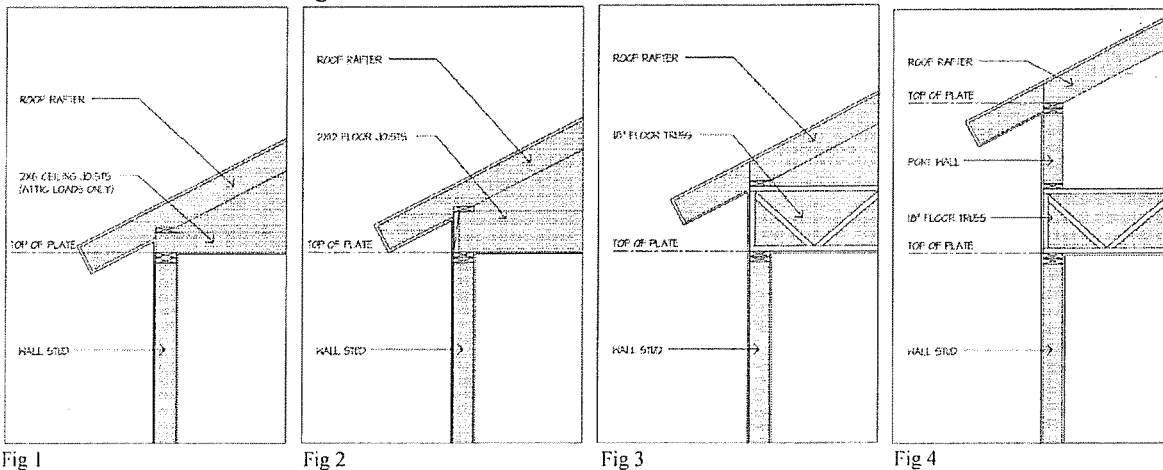
SUBJECT: Habitable Attics and Gross Floor Area

Section 3.3.3 (C) of Subchapter F, commonly referred to as the "McMansion" ordinance, allows for the exclusion of a habitable portion of an attic from the gross floor area measurement prescribed in the Land Development Code if:

1. The roof above is not a flat or mansard roof and has a slope of 3 to 12 or greater;
2. It is fully contained within the roof structure;
3. It has only one floor;
4. It does not extend beyond the footprint of the floors below;
5. It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and
6. Fifty percent or more of the area has a ceiling height of seven feet or less.

Under the second provision, the space must be "fully contained within the roof structure." For the purposes of implementing Subchapter F of the Land Development Code, this is interpreted to mean that the attic space is contained between the underside of the roof rafters and the top of the ceiling joists, floor joists, or floor truss, provided that the finished floor of the attic space does not drop below the height of the ceiling joists, floor joists, or floor truss at the intersection with the exterior walls. This is to prevent the floor surface within the attic space to be artificially lowered in order to gain additional ceiling height that would not otherwise be present.

Please refer to the following sketches for further clarification:



Figures 1, 2, and 3 are examples of acceptable construction methods that would qualify as being "fully contained within the roof structure." Figure 4 is a sketch of an unacceptable construction method for the purpose of qualifying as being "fully contained within the roof structure." This attic area would not qualify for exclusion from the calculation of gross floor area.

EXHIBIT 4



City of Austin

Planning and Development Review Department

505 Barton Springs Road, P.O. Box 1088

Austin, Texas 78767-1088

January 12, 2015

Mr. Dave Piper, Vice President
Zilker Neighborhood Association
Austin, Texas 78704

Subject: Clarification of Section 3.3.3(C)(5) of Subchapter F for 2015 Goodrich Avenue

Dear Mr. Piper:

In response to the Zilker Neighborhood Association's request for the approval of the original application at 2015 Goodrich Avenue, we are providing you a formal response.

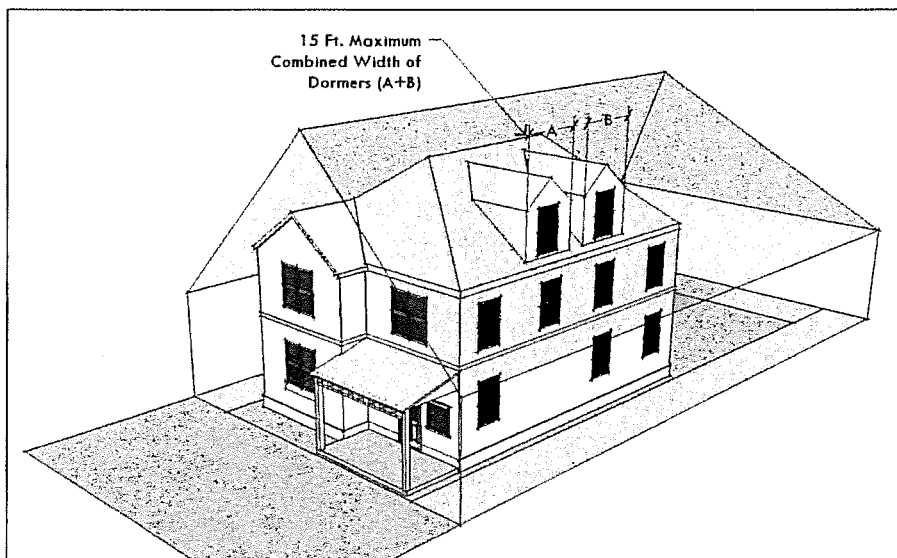
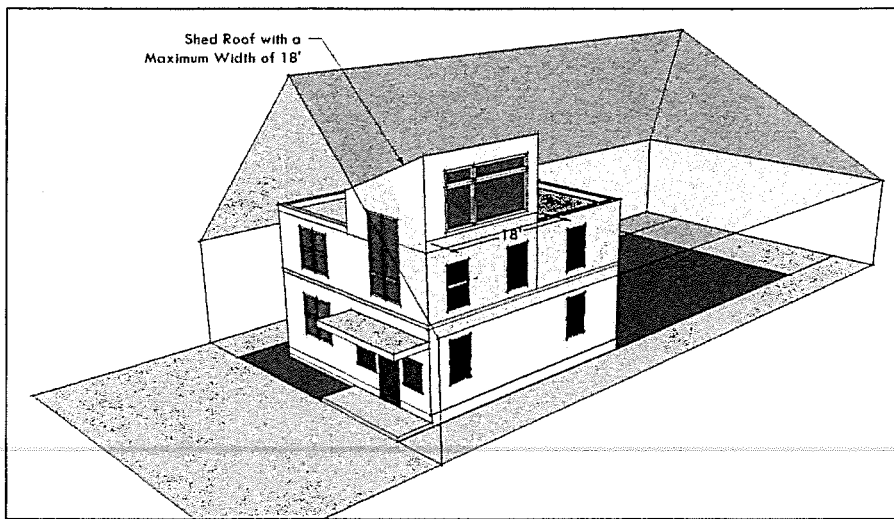
Examining the language of Subchapter F that speaks to adding additional mass to a structure (3.3.3.(C)(5)), one should first realize they are reading from a set of provisions that established parameters to exempt areas under a portion of roof structure or the entire roof of a residential structure from the calculation of mass. One of the main provisions for regulating mass under Subchapter F is limiting mass by establishing floor-to-area ratio of 40%; however, there are five separate areas that expand the definition of gross floor area in a manner as to exempt certain areas of a residential structure from the calculation of mass.

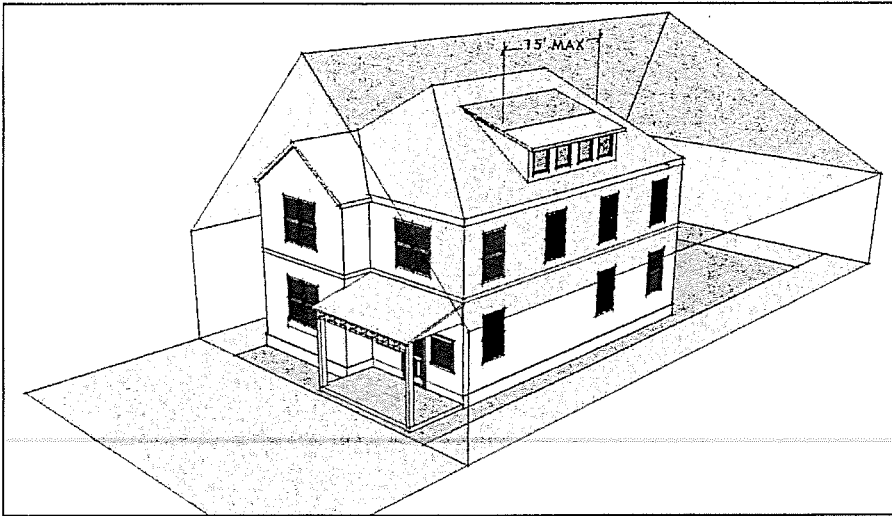
There are graphical figures and areas of Subchapter F that acknowledge dormers will be used in the design of a residential roof structure. The use of dormers is further codified with actual code language. Examples of supporting code language and graphical figures are provided below, respectively.

Note: § 3.4. - HEIGHT. For purposes of this Subchapter, the HEIGHT of a building or setback plane shall be measured as follows:

3.4.1. Height shall be measured vertically from the average of the highest and lowest grades adjacent to the building to:

- A. For a flat roof, the highest point of the coping;
- B. For a mansard roof, the deck line;
- C. For a pitched or hip roof, the gabled roof or dormer with the highest average height; or
- D. For other roof styles, the highest point of the building.



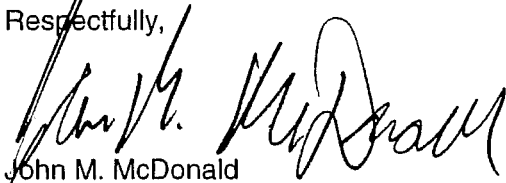


Staff researched documentation from the 2008 Subchapter F rewrite code amendment as it relates to stakeholder recommendations and found no recommendations to insert language into Section 3.3.3(C) stating “and adds no additional mass to the structure” in order to determine if attic space is exempt from the calculation of gross floor area (attachment A). Staff further feels dormers are acceptable in a roof structure as evidenced, and mentioned above, when limitations on height were further restricted to the average height of the dormer instead of the overall average height of the roof. This specifically acknowledges and addresses concerns over dormers as a part of the roof structure (attachment B).

Drawing on six years of past practice allowing dormers in both roof structures designed to be habitable and non-habitable, along with supporting documentation from the Subchapter F code rewrite, staff approved the residential application for 2015 Goodrich Avenue and the inclusion of dormers is the proposed habitable attic area.

This specific section and obscure phraseology of Subchapter F will be noted for the Code Next initiative, and will hopefully be rewritten or deleted as it serves no purpose and is not interpretable. We hope this letter clears up the questions your association has over the practice of allowing dormers in a residential roof structure.

Respectfully,


John M. McDonald

Development Services Manager

Cc: Carl Wren, Assistant Director, PDRD
Greg Guernsey, Director, PDRD
Kathy Haught, Division Manager, PDRD
Daniel Word, Planner Principal, PDRD

Attachment A

Residential Development Regulations Task Force Recommendations

#	Issue	Task Force Recommendation	Current Practice/Impact	Commission Recommendation
19	FAR EXEMPTIONS Attic Exemption: Currently, one of the criteria for the attic exemption states that the attic must be the highest habitable portion of the building. If an applicant is finishing out the highest part of a portion of a building, but not the highest portion of the entire structure, the applicant would not receive the attic exemption even though this would not add additional mass to the structure.	Allow an attic exemption if the structure meets all attic exemption requirements and revise number (5) in Section 3.3.2.C to read the highest habitable portion of the section of any structure with no useable space located directly above any portion of that section of the building.	Current code only allows exemption of an attic if that attic is the highest habitable portion of the entire structure. Amendment relaxes the criteria, recognizing that more than one attic area can exist on different sections of connected structures.	Planning Commission Recommended.
20	DEFINITIONS Wall Plate. Currently, this Subchapter does not include a definition for wall plate which is an issue if someone currently has an existing one story and wants to remodel to add a second story.	Include a definition for clarity – The wall plate is the lowest point of the existing first floor ceiling framing where it intersects the exterior wall.	Wall Plate is not currently defined. Staff defers to the architects to identify where the wall plate is located. Amendment would provide guidance to architects and designers as to where the wall plate is located.	Planning Commission Recommended, with staff's recommendation to include reference to applicable building code (IRC) terminology.
21	GROSS FLOOR AREA Currently is as the meaning assigned by Section 25-1-21 (Definitions), with some modifications. Because the definition of GFA is enclosed space with a height under 6', applicants are constructing space with a ceiling height of 5'11" which does not reduce the mass of the structure.	Revise the definition of GFA for purposes of this Subchapter to any area that is enclosed. This would remove the 6' height provision. <u>Updated recommendation 6/2/08:</u> The area of a structure may be exempted from gross floor area calculations if the enclosed area to be exempted has a height of 5 feet or less: <ul style="list-style-type: none"> Where the area to be exempted is measured from the outside surface of the exterior walls, and Where the height of the area to be exempted is measured from the finished floor elevation (FFE) of the floor area to be exempted to: <ul style="list-style-type: none"> The underside of the roof rafters, or The bottom of the top chord of the roof truss (e.g. underside of roof rafters or as defined in BCM. Height may not be measured to collar ties, ceiling joists or any type of furred down ceiling.) 	Current practice exempts from FAR any area identified as being less than 6 ft. Amendment would remove the 6 ft height provision, thereby including all interior space, regardless of height, towards the calculation of FAR. IRC currently prohibits space less than 5' in height to be habitable	Task Force Recommended with additional revision to add a new exemption for spaces that are less than 5 ft in height. (See "Updated recommendation as of 6/2/08" under Task Force recommendation column) Planning Commission Recommended

Attachment B

ADDITIONAL STAKEHOLDER RECOMMENDATIONS

#	Issue	Stakeholder Recommendation	Current Practice/Impact	Recommendation
5	Clarifying attic exemption. Attic requirement for "contained within the roof structure" needs clarification.	Clarify that "contained within the roof structure" means that that roof structure is the roof framing. Further clarify that a dormer is allowed as long as the dormer protrudes from the roof's frame.	Because the language is vague, staff has not been able to counter that roof structure is specific to roof framing. Amendment would clarify that roof structure is roof framing and that a dormer or protrusion out of the roof framing will not prevent the habitable attic space from being exempt from FAR.	<p>Staff Recommendation Instead of a code amendment, staff recommends a policy memo to clarify its interpretation of "contained within the roof structure" and amend the BCM to clarify the language as well. Draft memo attached.</p> <p>Task Force Recommends a policy memo with the additional clarification that when the attic exemption is applied, the space shall include dormers, gables, etc. when calculating the area with height 7' or less. Also recommends amending the Building Criteria Manual to reflect the clarification.</p> <p>Planning Commission Supports staff and Task Force recommendation, and no change to code.</p>
6	Consider dormers when calculating height. Dormers are being constructed larger than anticipated and allowing taller habitable attic areas.	Modify height to include the higher gabled roof line	For a pitched or hip roof, height is determined to the average height of the highest gable only. Amendment would allow height to be measured to "the gabled roof with the highest average height." This would include a dormer and be closer to "perceived or real" height of the structure.	<p>Task Force Recommended</p> <p>Planning Commission Recommended</p>
7	Expand RDCC Authority. In some cases, it is difficult to obtain a variance from compatibility or impervious cover requirements because a hardship may or may not exist, even when there is support for the variance.	Expand RDCC's authority to include the ability to grant modifications or waivers from commercial compatibility requirements and impervious cover restrictions. Give applicants the choice of being heard by the RDCC or the BOA. All appeals to the RDCC's decision should be considered by the Planning Commission. If the appeal is to an issue where RDCC and BOA share joint jurisdiction, then the appeal shall be considered by the City Council.	<p>Currently, the RDCC only has authority to review residential modification requests within the McMansion boundaries, subject to a complete waiver of sidewalk articulation requirements or a 25% increase of FAR or protrusions from the lot. Height, impervious cover, commercial compatibility, nonconforming uses, noncomplying status are considered by the BOA contingent upon a hardship of the lot. Appeals of the RDCC's decision are heard by the City Council.</p> <p>Amendment would grant the RDCC additional authority to consider: 1. Commercial compatibility for commercial projects 2. Requests for increases to impervious cover RDCC appeals would be heard by the Planning Commission instead of City Council. Where RDCC and BOA shared joint jurisdiction, appeals would be considered by City Council.</p>	<p>Planning Commission: <u>Action 5/13</u>. Referred back to Task Force.</p> <p>Staff: Neutral.</p> <p>RDCC would need to increase the number cases it considers on an agenda. Currently, RDCC considers 40 cases.</p> <p>Removed per direction from City Council.</p>

EXHIBIT 5

From: McDonald, John
Sent: Thursday, January 22, 2015 11:50 AM
To: Dave Piper
Cc: Wren, Carl ; Roig, Jose G ; Haught, Kathy ; Word, Daniel ; Hernandez, Tony [PDRD]
Subject: RE: 2015 Goodrich Avenue

Hi Mr. Piper,

I have attached the only memorandum that staff was directed to provide for Line 5 in the "Additional Stakeholder Recommendations." If a local amendment was passed for the City of Austin's Building Criteria Manual (BCM), I am not aware of it. No memorandum was prepared for counting dormers in the calculation of ceiling height less than 7' (in order to be exempt from the calculation of mass) because that is common practice currently in Residential Plan Review and no inconsistencies before I became the supervisor were brought to my attention (August 2008). It is possible and common that City Council does not have to accept all Planning Commission recommendations which could explain why some items were not more formally (memorandum, local amendment or simple clarification) addressed from the stakeholder or Planning Commission recommendations. I hope this answers your questions and let me know if it does not.

Respectfully,
John M. McDonald
Development Services Manager
Residential Plan Review/PDRD
974-2728 – Office
john.mcdonald@austintexas.gov

From: Dave Piper ~~[mailto:davepiper9856@att.net]~~
Sent: Wednesday, January 21, 2015 3:06 PM
To: McDonald, John
Cc: Wren, Carl; Roig, Jose G; Haught, Kathy; Word, Daniel; Hernandez, Tony [PDRD]
Subject: Re: 2015 Goodrich Avenue

John,

Line 5 of attachment B contains notes about a staff memo, a Planning Commission agreement that dormers and gables can qualify for the FAR exemption, and a BCM amendment. I'd like to see that memo, the BCM amendment, and any supporting documents that clarify line 5. Can you send them to me?

Sincerely,
Dave

Appeal of the City of Austin Administrative Decision on Interpretation and Clarification of Section 3.3.3(C) in Article 3 of Subchapter F

Case C15-2015-0038

Supplemental Material: Alternative interpretations of the McMansion attic exemption

Submitted by Lorraine Atherton, April 1, 2015, for Board of Adjustment hearing, April 13, 2015

City Staff have concluded that this section of code [i.e., Section 3.3.3(C)(2) and 3.3.3(C)(5)] "serves no purpose and is not interpretable" and hope that it will be "rewritten or deleted" in the Code Next process. The ZNA zoning committee has appealed that decision, citing evidence that this section of code and related issues were in fact thoroughly discussed in the 2008 McMansion Task Force deliberations and revised accordingly.

On Sept. 25, 2014, the Chair and Vice Chair of the Residential Design and Compatibility Commission (RDCC) wrote to the Mayor and City Council with the RDCC's "Recommendation regarding the future of the McMansion Ordinance." That report (attached at the end of this supplement) seems pertinent to the issues in this case. It describes the history and original intent of the ordinance, with a focus on the RDCC's role in developing and implementing the "new concepts" of FAR and TENT. It notes that "the revisions made in 2008 alleviated many issues with the rules in general" and that "the design community has become used to design within the constraints of the regulations." I believe that the RDCC report supports ZNA's position that this section of code does serve a purpose and can be interpreted. Three possible interpretations are presented here.

Alternative interpretation 1

The most obvious approach to interpreting this section of code would be to state the current practice, which apparently has been developed in consultation with the RDCC as intended by the City Council. That practice appears to be that TENT calculations, including dormers, determine the mass of the structure. If a builder applies to finish out an attic, the habitable area and FAR calculations are based on the roof structure and mass established by the TENT calculations. Under this interpretation, "fully contained within the roof structure" as used in Section 3.3.3(C)(2) and "adds no additional mass to the structure" as used in Section 3.3.3(C)(5) refer to the roof structure and mass established in the TENT calculations.

Alternative interpretation 2

Current practice, however, overlooks the original role of the RDCC, which was to exercise professional design judgment. As the RDCC report puts it, "the original intent was to allow projects slightly larger than allowed by the ordinance to be built so long as they exhibited noteworthy design, compatible in mass and scale with surrounding properties" as well as "to provide relief from regulations due to unintended consequences and/or unique development situations." Those design and compatibility questions generally arise from applications for FAR exemptions. The ordinance gives the RDCC the authority to adjust FAR up to 25%. Under this alternative interpretation, a questionable request for an attic exemption should be heard by the RDCC, which would determine whether the design was compatible in mass and scale with surrounding properties. Until the RDCC is dissolved, that exercise of design judgment cannot be assumed by the Development Review staff.

Alternative interpretation 3

The Board of Adjustment could define "fully contained" and "additional mass" based on Daniel Word's modification of the 2007 Eichert memo (see below), which shows the "under roof attic space not allowed to be counted toward 'habitable' attic area." The four diagrams on the next page illustrate how simple "above-roof" dormers of various sizes could relate to under-roof spaces that are clearly allowed to be counted as habitable attic area.

Diagram A Under this interpretation, the habitable attic areas shown in the modified Eichert diagram and in our diagram A are considered to be the maximum area that can be excluded from FAR, as they are clearly contained within the roof structure and do not add any additional mass.

Diagram B Dormers built above that habitable attic area would not affect the area's exemption from FAR; the habitable area under the roof structure would be exempt without the dormer. Other regulations restricting size and slope would likely prevent such a dormer from adding significant additional mass.

Diagrams C and D If a dormer extends beyond the under-roof habitable area, creating additional space above 5 feet high, the additional habitable area would not qualify for an FAR exemption. The additional attic space is not fully contained under the roof structure, and the additional habitable area adds mass to the structure. In the case of dormers that are allowed to extend into the TENT setbacks, as in diagram D, the additional mass is significant and clearly violates the original intent of the ordinance.

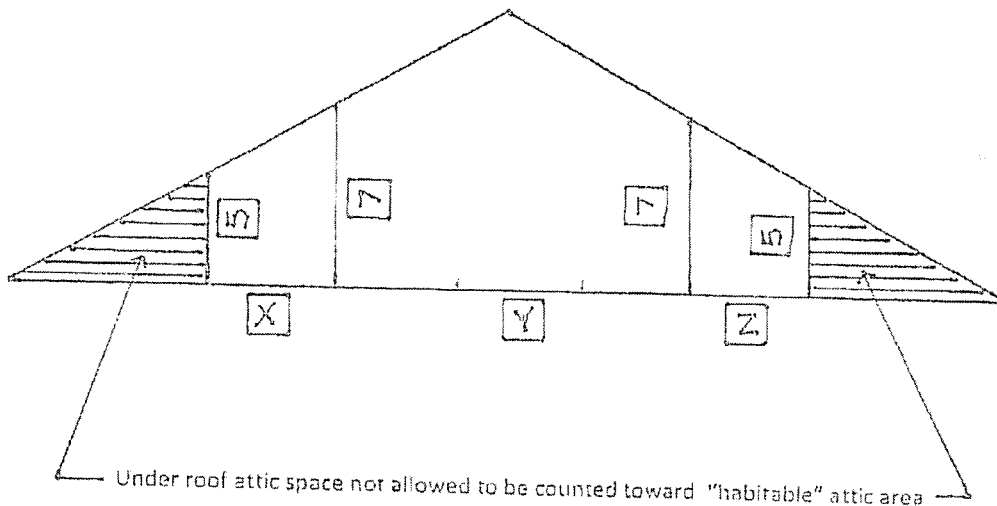
Board of Adjustment

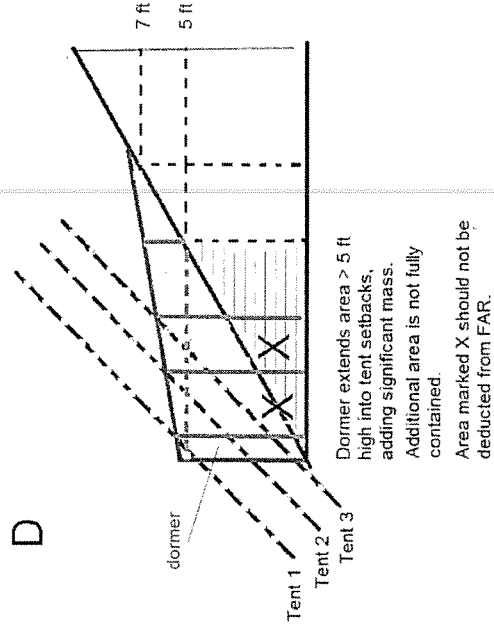
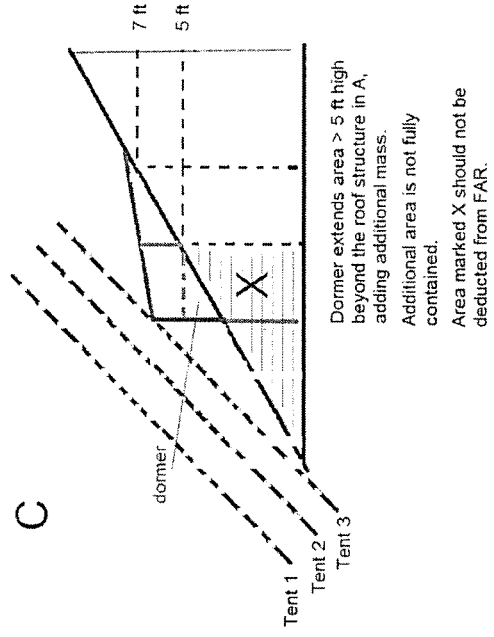
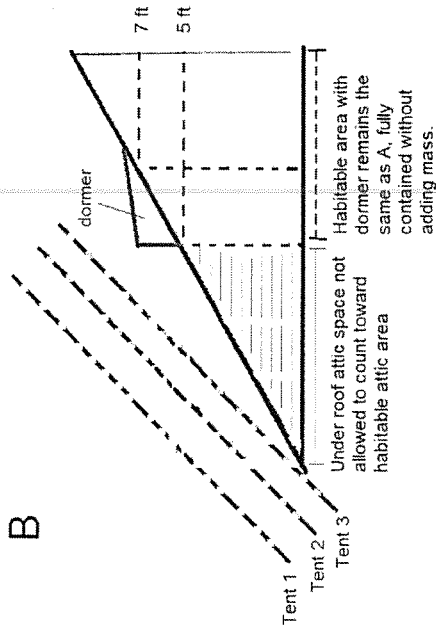
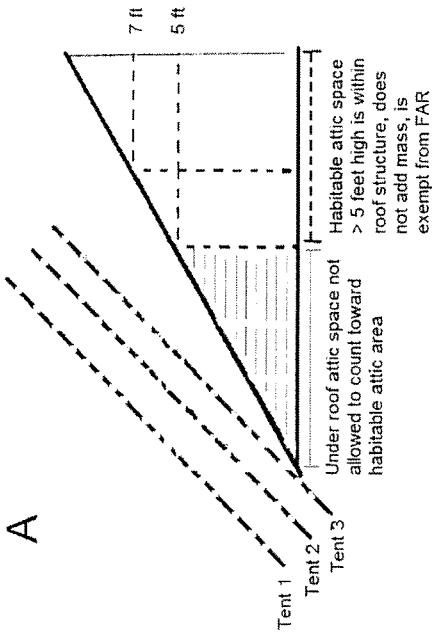
January 9, 2012 Board Meeting

Case D-1 #C15-2011-0110 Sarah Lynn Hill and John Deigh, 3704 Bonnell Drive

Exhibit "A"

Modification of the diagram included in the memo of Erica Eichert, dated April 4, 2007





September 25, 2014

Re: RDCC Recommendation regarding the future of the McMansion Ordinance

Mayor, Mayor Pro-Tem, and City Council,

As you all know, the McMansion effort was undertaken in 2006 to place limits on the mass and scale of single family development. At the time, the SF3 regulations permitted a building up to 35' tall and 5' from each side lot line, with no other limit to a building's size than impervious cover curtailing the size of the "box". After several months of intense work the City Council-appointed Citizens Task Force developed the McMansion Regulations. These were adopted as Subchapter F of the Land Development Code in June of 2006, with an implementation date of October 1, 2006. This time lag permitted the illustration of the code (by the City consultant, Clarion) and the opportunity for the City to train its permit staff. Since the regulations represented new concepts (FAR and TENT) to the residential permit parameters, the Council included a mandate that the ordinance would be revisited in 6 months, and also that a Commission would be established to provide relief from regulations due to unintended consequences of the new Ordinance, as well as being a vehicle to address unique development situations. The RDCC was originally established with 9 members, with the requirement that 5 of those members be 'design professionals'; the original intent was to allow projects slightly larger than allowed by the ordinance to be built so long as they exhibited noteworthy design, compatible in mass and scale with surrounding properties. To summarize:

MCMANSION:

- Undertaken in 2006 to place limits on the bulk of single family homes.
- At the time, SF3 regulations permitted a building up to 35' tall, 5' from each side lot line with no limit to bulk with the only limitations curtailing the size of the structure being impervious cover.
- McMansion Regulations adopted in June of 2006 with implementation date of October 1, 2006.
- Time lag allowed illustrations to be developed for the code.
- Also allowed opportunity for the city to train permit review staff.
- Council mandate that the code would be revisited in 6 months
- RDCC established to provide relief from regulations due to unintended consequences and/or unique development situations.

During the first year the RDCC saw up to 10 cases per meeting and dealt with various issues as the design community grappled with the new regulations, as these new rules occasionally clashed with existing building configurations. Per the City Council directive, the Task Force reconvened the next year to review implementation and revisit provisions of the ordinance that could be improved, or clarified, or eliminated. A productive process ensued, combining the experience of the Commission with staff review experience and additional, solicited, public input. Ultimately the reconvened Task Force recommended various, mostly minor, changes to the new code: to close already apparent loopholes and to alleviate minor issues that were arising often as a result of code language. This set of adjustments was approved by City Council and as a result Subchapter F was made much more workable. This set of changes, along with the design industry becoming more familiar with these new regulations, resulted both in a major reduction in the number of cases and requests for relief from the RDCC.

In 2008, the City changed the makeup of all Boards and Commissions reducing each to only 7 members. In addition, the requirement that the majority of the RDCC members were required to be designers was removed. This revision, in addition to use of the Board of Adjustment application as a prototype for appeal to the Commission, made our

waiver request appear to be based upon hardship, while it really was never meant to be, nor was our role to replace the Board of Adjustment for hardship cases. The design focus as rationale for latitude from the requirements of the ordinance was lost, especially for applicants who have been required to follow the BoA application. More than two years ago the RDCC requested that staff revise the application to better reflect the role of the RDCC per the LDC and to make the application process less onerous for all individuals; unfortunately, the rule-changing process extended over two years, and has only recently resulted in an application appropriate to the charge of the RDCC.

Finally, over the past years since the update of the ordinance, the number of cases seen by the RDCC on an annual basis has dropped significantly, to an average of under one per month. This lack of caseload indicates two things: 1) that the revisions made in 2008 alleviated many issues with the rules in general and, 2) that the design community has become used to design within the constraints of the regulations.

RDCC History:

- Established with 9 members with the requirement that 5 members be design professionals.
- Consistent with intent to provide allowance for projects that exhibited exemplary design.
- During the first months RDCC heard up to 10 cases per meeting.
- RDCC considered various issues as design community grappled with the new regulations.
- These new rules sometimes clashed with existing building configurations.
- The year following, Task Force reconvened to remedy aspects of the Ordinance which were deemed either onerous to comply or in need of clarification.
- Process combined experience of the RDCC with staff review experience and public input.
- Task Force recommended various minor changes to the Ordinance to close loopholes and to alleviate common issues.
- These changes resulted in a major reduction in the number of cases for RDCC.
- Application for RDCC Waiver request updated.
- The current caseload has dropped significantly; we feel this indicates two things:
 - The revisions made in 2008 alleviated undue hardship from the rules.
 - The design community's familiarity with the regulations.

In summary, we believe that the ordinance is fully functioning, subject to minor revisions which we would recommend in concert with city staff, and that it should be left relatively intact and remain as a part of the LDC rewrite. City staff can likely attest to the fact that the McMansion regulations are well-understood by the design community, and looking back at some of the buildings that triggered this effort in 2006, to lose this initiative and abandon the significant public involvement which resulted in it would reverse the great progress made to stabilize the quality of life and the affordability of Austin's central city neighborhoods.

To conclude, while the Ordinance itself should be maintained, we believe the continued existence of the RDCC is no longer necessary. Many of the few cases of the last two years have been the result of poor planning or hardship, and are of a nature that is more appropriately addressed by the Board of Adjustment. We wish to wholeheartedly support the continuation of the McMansion regulations, we also believe the RDCC could be dissolved at this point and City resources better applied elsewhere.

On this note, one significant downside to this action would be the loss of cooperation between residential permitting staff and a Commission with a residential focus. With a narrow mandate, such as the RDCC has, it cannot address the more pressing issues of livability of our neighborhoods - but we suggest it might be reinvented as a "Neighborhood Planning Commission" to address the planning process, codes and tools available and the new issues

that will arise as development competes with livability in our rapidly growing inner city. Current efforts to address code enforcement, overdevelopment, over-occupancy of single family buildings, and new neighborhood infill efforts all support the concept of establishing a Neighborhood Conservation Commission with a broader mission than RDCC size waivers.

CONCLUSION:

- The code is fully functioning subject to minor revisions recommended in concert with city staff and should be left intact as a part of the LDC revisions currently being undertaken.
- The need for the ordinance – a restraint on sheer size in a neighborhood context – is not the same as and should not be confused with densification; the effort, initiative, and the public involvement in making this code a reality have gone a long way to stabilize the character of Austin's central city neighborhoods.
- The McMansion regulations are well-understood by the design community.
- The Ordinance is essential to protect Austin's unique central city neighborhoods.
- It is a qualified success which has gone far to preserve the character of these neighborhoods while allowing a continued renewal consistent with Austin's larger objectives of sustainable growth and densification.
- We suggest the RDCC be dissolved before the end of 2014.
- As a result of the work of the commission over the last years, we find a need for and hereby recommend the creation of a "Neighborhood Conservation Commission" to address broader issues of densification and infill.

Finally, as the LDC effort progresses, we at the RDCC will endeavor to identify specific items that we believe will benefit from revision, and will convey those items to City Staff, to the Council and to the LDC team.

Please do not hesitate to contact us if there are any questions.

Respectfully,

William Burkhardt, AIA
Chair, RDCC

Karen McGraw, AIA
Vice Chair, RDCC