

Board of Adjustment Motion Sheet

May 11, 2015 B of A meeting

Agenda Item F-1

"Dormers" & "Projections"
& "Attic Exemptions"

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 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.

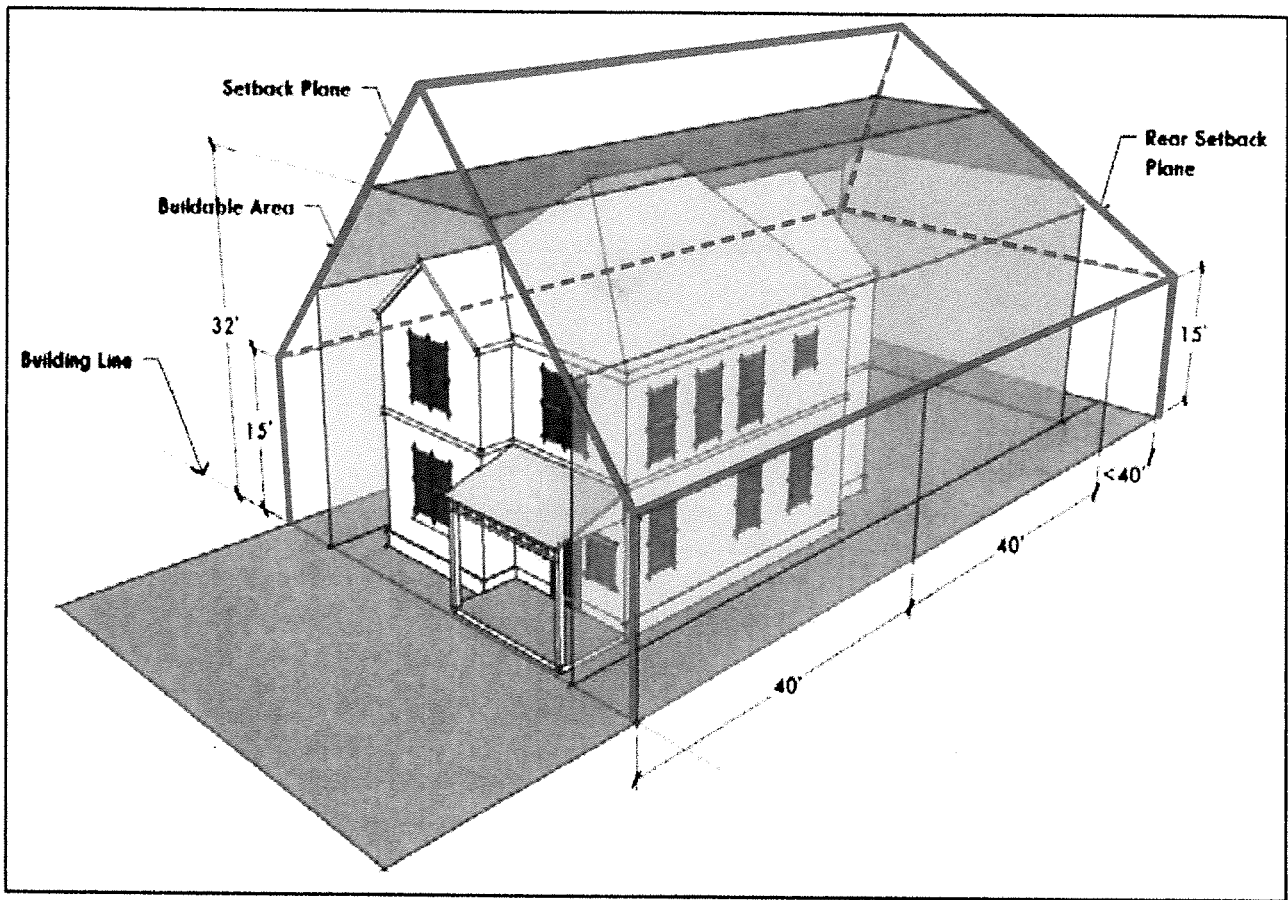


Figure 10: Buildable Area (Combination of Yard Setbacks, Maximum Height Limit, and Setback Planes)

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).

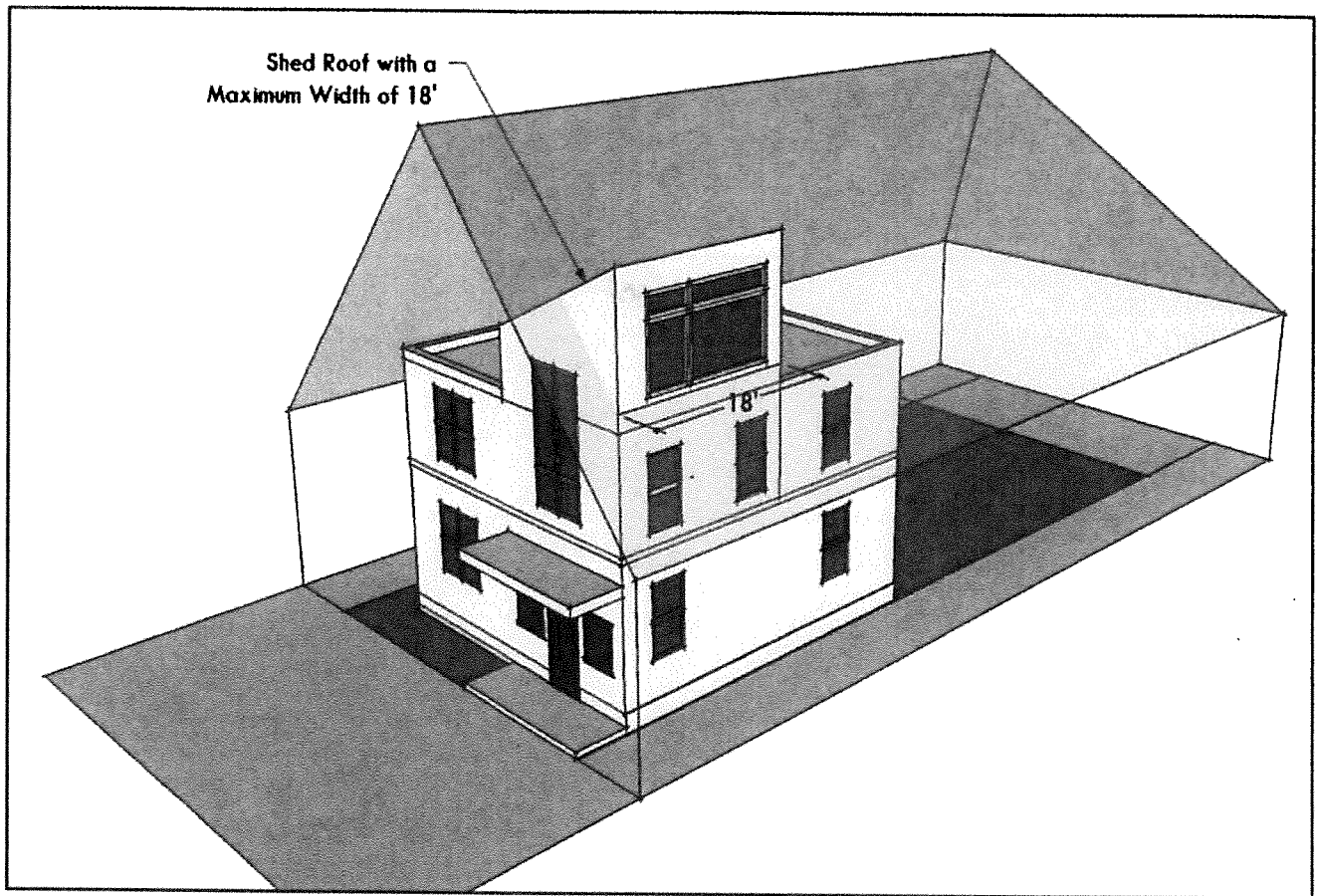


Figure 14: 18-foot Exception for Shed Roof

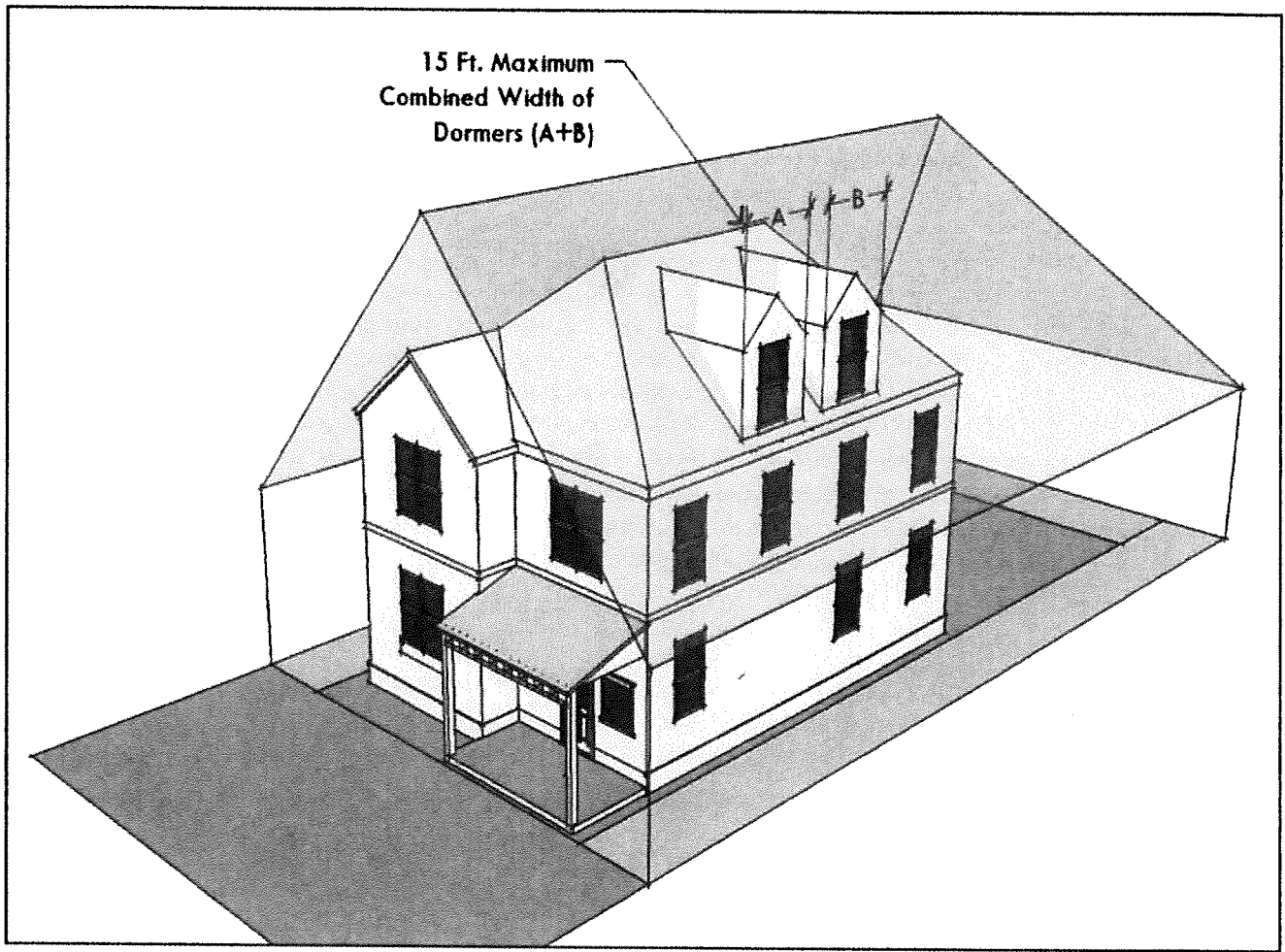


Figure 15: Dormer Exception (Gable or Shed)

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.

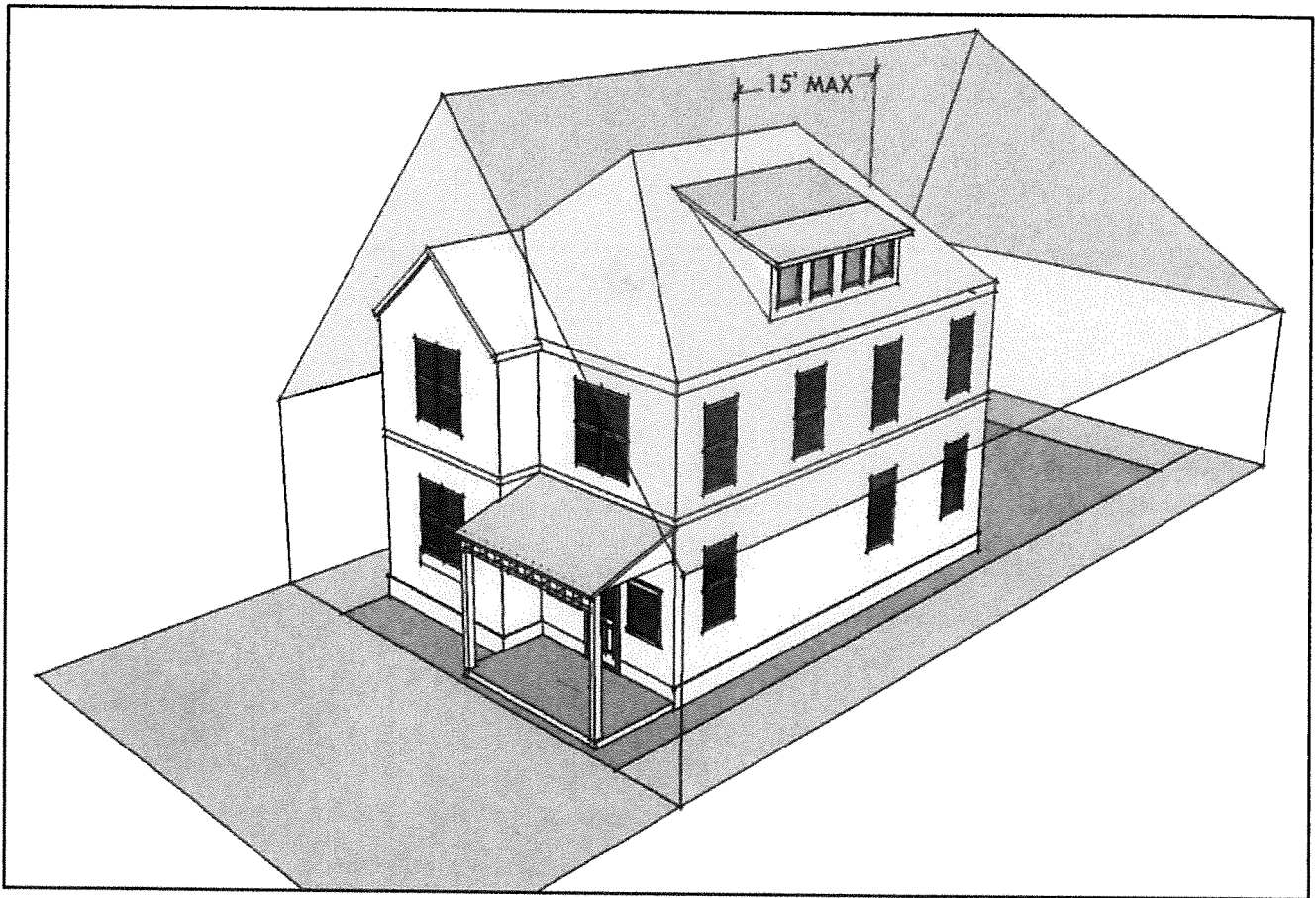


Figure 16: Dormer Exception (Gable or Shed)

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.

