

## Legislation Details (With Text)

<b>File #:</b>	21-60	<b>Name:</b>	
<b>Type:</b>	Report	<b>Status:</b>	Individual Item Ready
<b>File created:</b>	1/8/2021	<b>In control:</b>	Board of Adjustment
<b>On agenda:</b>	1/28/2021	<b>Final action:</b>	
<b>Title:</b>	Z-20-023 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(1)(v) to allow an existing commercial structure to encroach up to 15 feet into the required 20-foot residential setback, addressed at 177 E. Faust Street.		
<b>Sponsors:</b>			
<b>Indexes:</b>			
<b>Code sections:</b>			
<b>Attachments:</b>	1. Aerial Map, 2. Application, 3. Site Plan, 4. Photo, 5. Sec. 3.3-9 "C-3" Commercial District, 6. Sec. 2.3 Nonconforming uses and structures		

Date	Ver.	Action By	Action	Result
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Presenter/Contact  
*Applicant, HMT Engineering & Surveying*  
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**SUBJECT:**

Z-20-023 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(1)(v) to allow an existing commercial structure to encroach up to 15 feet into the required 20-foot residential setback, addressed at 177 E. Faust Street.

**BACKGROUND / RATIONALE:**

**Case #:** Z-20-023

**Applicant:** HMT Engineering & Surveying  
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The subject property is zoned "C-3" Commercial District and is located near the intersection of E. Faust Street and S. Seguin Avenue. The property is approximately 7,501 square feet with a lot depth of 150 feet and a lot width of 50 feet. The lot's width is approximately 10 feet less than the minimum 60-foot width required in the C-3 District, likely due to it being platted before that minimum width requirement was adopted.

There is currently an existing commercial structure on the property that was constructed in 1986 that is approximately 1,600 square feet. An adjacent property addressed at 165 E. Faust Street to the

west of the subject property is also zoned C-3, however, it is currently a residential land use. The C-3 district requires non-residential buildings that abut a one- or two-family use or zoning district to maintain a minimum 20-foot setback plus one foot for each foot of the commercial building's height over 20 feet from property line shared with the residential use. This is intended to ameliorate any negative impacts between the uses.

The subject structure does not exceed an overall height of 20 feet and therefore is required to meet the minimum 20-foot residential setback. However, the existing structure is currently set back approximately 5 feet from the side property line shared with the adjacent residential use. The subject structure was constructed prior to the adoption of the 20-foot residential setback requirement in 2006.

The applicant is requesting a variance to allow the existing structure to encroach up to 15 feet into this required 20-foot setback in order for the existing structure to be brought into compliance as a legally conforming building. The Zoning Ordinance states nonconforming structures shall not be added to or enlarged in any manner unless such addition and enlargements are made to conform to all the requirements of the district in which the building or structure is located. The intent for the applicant's request for the structure to be brought into compliance as a legally conforming structure is to allow the property owner to expand the structure's footprint in the future. Staff has not received details regarding the timeline or plans for the proposed expansions.

Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) ***That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;*** (The applicant states the building's current setback is approximately 5-6 feet from the property line. The applicant further states the entire block wherein the subject property is located is zoned commercial; however, the adjacent property is a residential use that required a 20-foot setback affecting the subject property. Staff acknowledges the commercial zoning of the neighborhood; the residential setback is intended to protect residential land uses from potential adverse effects of being located adjacent to commercial uses. Staff further acknowledges the provision requiring a residential setback was adopted after the existing commercial structure was built.) ***and***
- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary for the property owner to obtain permits for any future improvements to the property. Staff acknowledges the subject structure may not be enlarged or expanded due to its legal-nonconforming status; and the substantial property right to have a commercial use is not removed due to the residential setback requirement within the Zoning Ordinance.) ***and***
- 3) ***That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;*** (The applicant states there will be no detriment to the public's health, safety, or welfare if the variance is granted. Staff acknowledges the setback encroachment will likely have a minimal impact; the subject property must comply with all other development standards intended to protect adjacent residential uses from potential nuisances such as required lighting, noise, and buffering standards.) ***and***
- 4) ***Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;*** (The applicant states the variance should not prevent the orderly use of other land nor set an unusual precedent. Staff states the intent of the residential setback is to preserve the property right of

adjacent residences to use and enjoy their property. Furthermore, neighboring properties would still be required to comply with the residential setback requirement for any new commercial construction adjacent to property used or zoned for one- or two-family dwellings.)  
**and**

**5) That an undue hardship exists;** (The applicant states the building was existing in the current location at the time the current owner purchased the property. Staff acknowledges the allowable width of a commercial structure is limited due to the width of the lot and the residential setback from the adjacent property. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other commercial property adjacent to residential land uses; this is becoming a more mixed-use neighborhood, therefore impacts to surrounding residential properties and property owners should be considered when designing the form and scale of commercial construction, or when making improvements to existing structures.) **and**

**6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting the variance will be in harmony with the spirit and purposes of these regulations.)

Per Section 2.2-3 of the Zoning Ordinance, a variance shall not be granted to relieve a self-created or personal hardship, nor based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

**General Information:**

**Size:**

Approximately 7,501 square feet.

150-foot lot depth.

50-foot lot width.

**Variance Request Due to Notice of Violation:**

No.

**Surrounding Zoning and Land Use:**

North- "C-3" Commercial District/single family residential and commercial

South - Across E Faust Street, "C-3" Commercial District/ commercial

East - "C-3" Commercial District/ commercial

West - "C-3" Commercial District/ commercial

**Notification**

Public hearing notices were sent to 16 owners of property within 200 feet. Staff has not received any responses.

**Attachments**

1. Aerial Map
2. Application
3. Site Plan
4. Photos

5. Notification List and Map
6. Section 3.3-9 "C-3" Commercial District
7. Section 2.3 Nonconforming uses and structures