

## Legislation Details (With Text)

<b>File #:</b>	21-1065	<b>Name:</b>	
<b>Type:</b>	Report	<b>Status:</b>	Individual Item Ready
<b>File created:</b>	10/11/2021	<b>In control:</b>	Board of Adjustment
<b>On agenda:</b>	10/28/2021	<b>Final action:</b>	
<b>Title:</b>	ZB21-0009 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(2)(iii) to allow a proposed dwelling to encroach up to 10 feet into the required 15-foot corner side setback in the "C-3" Commercial District, addressed at 394 Kessler Street.		

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Aerial Map, 2. Application, 3. Proposed Site Plan, 4. Notification Packet, 5. Sec. 3.3-9 C-3 Commercial District, 6. Pictures of Subject Property

Date	Ver.	Action By	Action	Result
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Presenter/Contact  
*Applicant: Michael Leal*  
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### **SUBJECT:**

ZB21-0009 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(2)(iii) to allow a proposed dwelling to encroach up to 10 feet into the required 15-foot corner side setback in the "C-3" Commercial District, addressed at 394 Kessler Street.

### **BACKGROUND / RATIONALE:**

**Case #:** ZB21-0009

**Applicant:** Michael Leal  
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**Staff Contact:** Maddison O'Kelley  
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The subject property is located on the corner of Kessler Street and Sanger Avenue, in a residential neighborhood that is west of the Guadalupe River and north of Elliot Knox Boulevard. The property is zoned "C-3" Commercial District and is approximately 150 feet in depth and 60 feet in width, totaling 9,000 square feet in area. The lot width is approximately 10 feet less than the minimum 70-foot width required for residential corner lots in the "C-3" district, however the code includes allowances for lots that do not meet the minimum width, provided that *"such lot was in separate ownership prior to September 25, 1967, this requirement shall not prohibit the erection of a one-family dwelling"*. The front property line is along Kessler Street and the corner side property line is along Sanger Avenue.

Due to the required setbacks within the “C-3” district, the buildable area is 40 feet wide by 105 feet deep (4,200 square feet in area).

The property is currently vacant, and the applicant is proposing to either move an existing home onto the lot or construct a new single-family dwelling. The applicant is requesting a variance to allow the proposed dwelling to encroach 10 feet into the 15-foot corner side setback. If the variance is approved, the structure would be set back 5 feet from the corner side property line along Sanger Avenue. The portion of Sanger Avenue adjacent to the subject property is only improved for approximately 63 feet of the subject property with the remaining length of approximately 80 feet unimproved.

The applicant’s application references a request to allow a front setback encroachment of 10 feet. Section 5.21-3 of the Zoning Ordinance states where lots on the same side of the street between two intersecting streets are developed with varying front yard depths and no plat has been filed showing a setback line, the front setback shall be determined by the planning director. Staff was able to administratively approve a setback determination of 13 feet and 9 inches for the front setback of the subject property per Section 5.21-3. Due to the age of the neighborhood, setbacks vary and most do not meet current ordinance requirements. The front setback of the homes along the south side of Kessler Street between Kuehler Avenue and Sanger Avenue is an average of approximately 13 feet 9 inches. Staff has made the applicant aware of the setback determination; as this was addressed administratively, the variance to allow a front setback encroachment is no longer a part of the requested action by the ZBA. Because no other building or property is located on the block of Sanger Avenue that the subject property is located on, staff is not able to make a determination for the corner -side setback, thus consideration of this corner side variance is referred to the ZBA for consideration.

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 property is at the corner of Kessler Street and Sanger Avenue and is a corner lot that is subject to the 15-foot required corner side setback for residential properties. The applicant states that Sanger Avenue is an unused, dead-end street and as a result, the subject property functions similarly to an interior lot where the corner-side setback is not needed to maintain adequate sight-distance. Staff notes the lot is approximately 10 feet narrower than the minimum lot width of 70 feet for corner lots in the “C-3” district and less than 50% of Sanger Avenue adjacent to the subject property is improved. There are no vehicular access points on this segment of Sanger Avenue and the extension of Sanger Avenue is not likely.) **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 to maximize the buildable area of the lot while also remaining consistent with other properties in the neighborhood. Staff notes that, although the increased setback can create be more challenging to design a structure that can accommodate the width of the buildable area, the substantial property right to use the property for a residential dwelling is not removed due to the corner-side setback requirement.) **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 the

variance should not be detrimental to public health, safety or welfare and that the 15-foot corner side setback is not needed to maintain sight distance for vehicles since Sanger Avenue is a dead end. Staff acknowledges that the impact to the surrounding area is likely minimal and that the terminus of Sanger Avenue is unimproved.) **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 believes the variance should not prevent orderly use of other land within the area. Staff notes all neighboring properties and subsequent structures will still be required to comply with zoning ordinance standards for any new construction.) **and**
- 5) That an undue hardship exists;** (The applicant cites the location of Sanger Avenue as a hardship by technically classifying the lot as a corner lot, even though it functions as an interior lot. The applicant further states the neighbor to the south of the subject property has replatted their property in such a way that does not allow the applicant to acquire the adjacent right-of-way to provide for a larger buildable area and remove the constraints created by the development standards in the district. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential corner lots within the neighborhood.) **and**
- 6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the zoning ordinance. Staff acknowledges the purpose of the corner-side setback requirement is to ensure adequate sight-distance for passing vehicles and to maintain the line of sight for building by creating a standardized setback. In this circumstance, the sight-distance and building setback line are not relevant to the subject property's development due to the lack of vehicular activity this portion of Sanger Avenue adjacent the subject property.)

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:**

9,000 square feet in area  
150 feet in depth  
60 feet in width

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

No

##### **Surrounding Zoning and Land Use:**

North - Across Kessler Street, C-3 / Single Family Dwellings  
South - C-3 / Single Family Dwelling  
East - Across Sanger Avenue, C-3 / Multifamily Apartments  
West - C-3/ Single family Dwellings

##### **Notification**

Public hearing notices were sent to 13 owners of property within 200 feet. Staff has received no

responses in favor or in objection.

**Attachments:**

1. Aerial Map
2. Application
3. Proposed Site Plan
4. Pictures of Subject Property and Sanger Avenue
5. Notification Packet
6. Sec. 3.3-9 "C-3" Commercial District