



CITY OF WAUKESHA

Administration

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Committee: Board of Zoning Appeals	Date: 3/15/2021
Item Number: ID#21-1746	Date: 3/15/2021
Submitted By: Maria Pandazi, City Planner	City Administrator Approval: Kevin Lahner, City Administrator
Finance Department Review: Bridget Souffrant, Finance Director	City Attorney's Office Review: Brian Running, City Attorney
Subject: The appeal of Molly and Mark Wissler from section 22.32(5)(b) and section 22.58(1)(b) of the zoning code. If granted the variance would allow for creation of a new lot at 709 N. Hartwell Ave. with a width of 60 feet, when a minimum lot width of 70 feet is required in the RM-3 zoning district, and would allow a new swimming pool to be located in the side yard at 713 N. Hartwell Ave. when accessory uses and detached accessory structures are permitted in the rear yard only.	

Details: 705, 709, and 713 N. Hartwell are zoned RM-3 Multi-family Residential. The minimum lot width in the RM-3 zoning district is 70 feet. However, all three properties have a width of 50 feet, as do most of the properties in the surrounding neighborhood. Since all three properties were platted before the current zoning ordinance was adopted they are all currently considered to be legal non-conforming.

In January of 2020 the duplex at 709 N. Hartwell was destroyed in a fire. Afterwards the owners of 713 N. Hartwell bought the property to use as an extension of their yard. Until the fire, 705 and 709 N. Hartwell shared a driveway, which was located entirely on the property of 709 N. Hartwell. The owners of 713 have submitted a Certified Survey Map combining the majority of 709 with their property, but they would like the southernmost ten feet of the property, which contains the driveway, to go to 705. However, adding ten feet to 705 N. Hartwell will bring its width to 60 feet, and since the Certified Survey Map will technically be creating new lots they will lose their legal non-conforming status.

At their February 24th meeting the Plan Commission recommended approval of the Certified Survey Map with the condition that either the applicants must receive a variance prior to the final Common Council approval, or if a variance is not granted they must adjust the lot lines so they are in compliance with the minimums. The Plan Commission granted an exception to section 23.06(7)(d), the minimum lot width in the Subdivision Ordinance, and to section 22.53(3)(e)(1), the minimum driveway setback in residential districts. However, only the Board of Zoning Appeals can grant a variance to section 22.32(5)(b).

The applicants have noted that their neighbors at 705 N. Hartwell will now be the primary users of the driveway, and that they have helped maintain it for many years even while it was shared. The driveway will have no use for the residents of 713 N. Hartwell, aside from access to a small concrete pad where the old garage was located. They have also noted that granting a variance will bring the lots closer to compliance than they are currently and will be if a variance is not granted.



Once the CSM has been recorded and the property combination is complete, the applicants would like to install a new above-ground pool in their new side yard. They have noted that both their existing rear yard and the rear yard of the new lot are very small, and it would be difficult if not impossible to fit a pool into them even under the best circumstances. As it is though, the existing garage is located near the center of the two rear yards, and a power line runs along the rear property line. Pools, including the surrounding deck structure, need to be set back at least ten feet from property lines and at least five feet from other accessory buildings, so the applicants believe these existing structures will make it impossible to locate a pool anywhere in the combined rear yard. They plan to add a fence at the front of the side yard, to screen the pool from the street and to limit access.

Neighbors at 620, 701, and 717 N. Hartwell provided letters of support for the variance, as did the owners of 705 N. Hartwell, who will be directly effected by it.

Options & Alternatives:

Financial Remarks:

Staff Recommendation:

If the applicant proves a hardship exists, the Board may consider granting a variance to allow 705 N. Hartwell Ave. to have a lot width of sixty feet and to allow an above-ground pool in the side yard at 713 N. Hartwell. The Board may want to consider these items as separate variances and take separate votes on them.