



**VILLAGE OF ESTERO
ZONING
STAFF REPORT**

PROJECT NAME: 9863 BAY MEADOW
CASE TYPE: ADMINISTRATIVE VARIANCE
CASE NUMBER: ADD2020-E001
PLANNING AND ZONING BOARD DATE: JANUARY 21, 2020

REQUEST

The applicant is requesting an administrative variance for a reduction of both (east and west) side yard setbacks from the required 5 feet to 2.5 feet for the east side yard and 2.3 for the west sideyard for an existing pool enclosure and deck located at 9863 Bay Meadow, Shadow Wood at the Brooks.

APPLICATION SUMMARY

Applicant: Amber R. Mondock, Esq. (representing the owners), Mary Louise Heberle and Richard Heberle Living Trust

Request: Administrative variance from Section 34-268 (a) (1) (f) of the Land Development Code (LDC) for buildings and structures that are not compliant with current setback regulations and can be proven to be permitted.

Location: The property is located at 9863 Bay Meadow. The applicant indicates the STRAP number for the property is 10-47-25-E2-1200A.0370.

PROJECT HISTORY

The property was originally rezoned from Agricultural AG-2 to Mixed Planned Development (MPD) by Lee County Resolution Z-97-037 and amended by Resolution Z-99-076 in 1999.

STAFF ANALYSIS

The homeowners, Carol A. Nativi and Paul A. Nativi, recently purchased this single family home from the Mary Louise Heberle and Richard Heberle Living Trust. During the closing process, it was found that the survey prepared by Target Surveying, LLC (dated December 12, 2019) showed an encroachment of the permitted pool enclosure and pool deck into the west and east side setback. The survey denotes 2.5 foot side setback for the east side and a 2.3 side setback for the west whereas 5 feet is required by the development regulations as found in Resolution Z-99-076.

An administrative variance has been requested for a reduction of both side setbacks for the accessory structure (pool screen) and pool deck from the required 5 feet to 2.5 feet on the east side and to 2.3 feet on the west side.

Research of Lee County Records indicates that the pool enclosure and decking was properly permitted and was issued the Pool Enclosure Permit #POL2001-00081.

Section 34-268 (a)(1)(f) of the Land Development Code allows for buildings or structures that are not in compliance with current setback regulations and that can be proven to have been properly permitted to be considered for an administrative variance.

Section 34-268(b) requires the administrative variance to meet the following criteria:

- 1) *There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question;*
- 2) *The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to the property; and*
- 3) *The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

A survey prepared by Target Surveying, LLC showed a 2.5 foot encroachment of the permitted pool enclosure and pool deck on the east side and a 2.7 foot encroachment on the west side.

The reduction from 5 feet to 2.5 feet for the east and a 2.3 west side setbacks is the minimum variance that will relieve the applicant of the burden caused by the application of the regulation in question to the property because the structure and decking is already constructed.

Prior to the sale of the property, Carol Nativi and Paul Nativi obtained a letter, signed by the Association President Mr. John R. Woolsey providing a consent to encroachment from the Shadow Wood Community Association. (Copy of the letter is attached.)

STAFF RECOMMENDATION

Because the accessory structure exists and was permitted, staff recommends approval with the following conditions:

1. The variance is limited to the existing accessory structure, (pool enclosure and pool deck) as shown on the Boundary Survey prepared by Target Surveying, LLC. dated December 12, 2019.
2. The terms and conditions of the current zoning resolution for The Brooks at Bonita Springs remain in full force and effect, with the exception of this requested setback reduction.

ATTACHMENTS

- A. Letter of Consent to Encroach from Shadow Wood Community Association.