

1. Discussion Objective:

Work Session Date: November 18, 2013

To discuss Elevated Pools policy.

2. Submitter of Information:

- Council
- Town Staff (Walter Fluegel, Community Development Director)
- Town Attorney

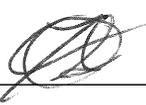
3. Estimated Time for this item:

25 minutes

5. Background:

Town Council has requested a discussion, regarding the issue of elevated pools. Accordingly, Staff has attached the following documents to assist Town Council in that discussion:

- Exhibit A-August 5, 2013 Town Council Agenda Material on request for Policy Interpretation from Staff.
- Exhibit B- Draft Interim Ordinance regarding Elevated Pools for November 12, 2013 LPA Agenda
- Exhibit C- October 21, 2013 Town Council Resolution declaring Zoning In Progress regarding Elevated Pools

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

1. Discussion Objective:

Work Session Date: August 5, 2013

Request for policy interpretation of LDC Sec. 34-638(d)(3)3, as it relates to setbacks for elevated pools.

2. Submitter of Information:

- Council
- Town Staff - Community Development
- Town Attorney

3. Estimated Time for this item:

30 Minutes

5. Background:

Town Staff recently received building permit applications for construction of new single-family homes with pools along the canals on Palermo Circle. Due to Base Flood Elevation requirements imposed by FEMA, the permits have included requests for elevated swimming pools, to allow direct access from the elevated first habitable floor to the pool deck. The elevation of these pools has created concern within the neighborhood, and as a result, Staff is seeking Council's guidance and direction concerning the relevant code sections. Further, due to the level of redevelopment activity in the neighborhood and the potential for more building permit applications with elevated pools/decks, Staff believes the issue needs Council's immediate discussion.

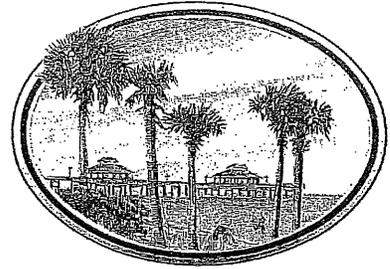
Recommended action:

Staff recommends that Town Council direct Staff to prepare an ordinance to modify the current code language in LDC Section 34-638(d)(3) to eliminate any ambiguity. Staff suggests three options for regulating elevated pools and decks, for Council's consideration:

1. Do not allow any elevated pools/decks (over 42 inches in height) in the rear yard setback of 25' from a canal;
2. Allow elevated pools, regardless of elevated height, to be setback 5' from a canal; or
3. Allow pools/decks (elevated up to 42 inches in height) to be setback 5' from a canal and allow pools/decks (elevated between 42 inches and 10 feet) to be setback 10' from a canal.

Attachments: Memorandum from Walter Fluegel, Community Development Director

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						



Memorandum

To: Mayor and Council

Through: Terry Stewart, Town Manager

From: Walter Fluegel, Community Development Director

CC: Marilyn Miller, Town Attorney

Leslee Chapman, Zoning Coordinator

Ken Miller, Building Safety Services Coordinator

Date: June 14, 2013

Re: Request for Interpretation of LDC Sec. 34-638 (d)(3)3., as it relates to setbacks for elevated pools

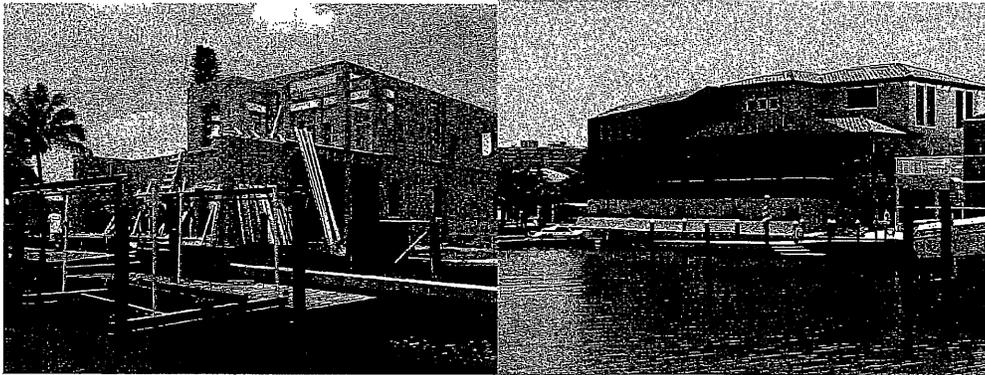
Town Staff recently received building permit applications for construction of new single-family homes with pools along the canals on Palermo Circle. Due the base flood elevation requirements imposed by FEMA, the permits have included requests for elevated swimming pools, in order to allow direct access from the elevated first habitable floor to the pool deck. The elevation of these pools has created some concern within the neighborhood, and as a result, Staff is seeking your guidance and direction concerning the relevant code sections. Further, due the level of redevelopment activity in the neighborhood and the potential for more building permit applications with elevated pools/decks, Staff believes the issue needs Council's immediate consideration.

Land Development Code Requirements:

In its simplest form, the question is whether elevated pools have to or should have to comply with the principal structure setback of 25', or does the 5' accessory structure setback for pools/decks apply. The reason this has become a problematic issue, is due to the FEMA requirements that principal structures must be elevated above Base Flood Elevation (BFE). In the Palermo Circle neighborhood, Base Flood Elevation can range anywhere from 10 to 13 feet. In a normal single family home (i.e. a home not required to be elevated to such height), it is normal and customary for the pool

and deck to be at the same floor level as the first habitable floor of the home, so that the resident is able to walk out their back door to the pool deck without having to step up or down to the pool and deck.

In the instance of a home elevated 10 to 13 feet above adjacent grade, the recent residential home permit applications on Palermo Circle have included requests for the pool and deck to be elevated to the same height as the first habitable floor of the elevated home with a 5 foot setback from the canal, as depicted in the pictures below.



In Staff's opinion, Town Code does not include any height limitation on an elevated pool/deck. If, however, Town Code is interpreted to require an elevated pool to meet the principal structure setback of 25 feet, it would diminish the buildable square footage of either the pool and deck area or the home. Another alternative is that the home would have to be elevated, while the pool would be at the ground level, as depicted in the picture below.



Town Land Development Code Section 34-638(d)(3) establishes exceptions for certain water body setbacks, as follows:

34-638(d)(3) Water body setbacks.

c. Exceptions for certain accessory structures.

Certain accessory buildings and structures may be permitted closer to a body of water as follows:

1. Fences and walls. See division 17 of this article.

2. Shoreline structures. See § 34-1863 and ch. 26.

*3. Nonroofed structures. **Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:***

-a-Five feet from a seawalled canal or seawalled natural body of water;

-b-Ten feet from a nonseawalled artificial body of water; or

-c-Twenty-five feet from a nonseawalled natural body of water; whichever is greater.

Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.

Community Development Department Staff and the Town Attorney have reviewed and discussed this language in depth and determined that, as long as the pool and deck are not attached to the principal structure, an elevated pool would meet the exception allowing a five foot setback from a seawalled canal. Further, it was determined that the strictest legal interpretation of the 3½ feet above grade to the top of the enclosure would be applicable to any fence, railing or wall on the pool deck, which would be a minimum safety code requirement for enclosing the pool and the opacity requirement was meant to apply to screen enclosures surrounding the pool.

Additional Planning Analysis/Considerations:

In considering whether elevated pools should be allowed a 5 foot setback from the canal, it could be argued that allowing such a minimum setback would interfere with view corridors along the water. However, we believe it is relevant to consider that boathouses are allowed a 0 foot setback. Further, sheds and garages are allowed in rear yards with a canal setback of 10 feet. Also, landscaping is allowed with a 0 foot setback. Above-ground pools, some of which may be as high as 5 feet, are allowed

with a 5 foot setback. Accordingly, it is difficult to argue the sanctity of the setback based upon the view corridor analogy.

Additionally, Staff believes that consideration should be given to the Town's efforts to foster compliance with FEMA standards and encouraging redevelopment that complies with FEMA's elevation requirements. It could be argued that onerous setbacks on elevated pools or discouraging elevated pools, especially in areas with relatively small lots, could serve as a disincentive to elevation.

Requested Action:

Pursuant to Land Development Code Section 34-265 (2), *"Interpretations which, in the opinion of the director, involve policy or legislative intent issues shall be placed on the agenda of the town council for its consideration (see Sec. 34-90)."* Further, pursuant to Land Development Code Section 34-90, *"Town Council may hear and decide applications for interpretations of this code as provided in Section 34-265. Such applications shall not require a public hearing or recommendation from the local planning agency...."*

Recommended Action:

Staff recommends that Town Council direct Staff to prepare an ordinance to modify the current code language in LDC Section 34-638(d)(3) to eliminate any ambiguity. Staff suggests three options for regulating elevated pools and decks, for Council's consideration:

1. Do not allow any elevated pools/decks (over 42 inches in height) in the rear yard setback of 25' from a canal;
2. Allow elevated pools, regardless of elevated height, to be setback 5' from a canal; or,
3. Allow pools/decks (elevated up 42 inches) to be setback 5' from a canal and allow pools/decks (elevated between 42 inches and 10 feet) to be setback 10' from a canal.

Town of Fort Myers Beach
ORDINANCE NO. 13-

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34, Article IV, Division 2, Section 34-1173 of the Town of Fort Myers Beach Land Development Code is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strikethroughs~~. Existing language being retained is shown without underlining or ~~strikethrough~~.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Alan Mandel, Mayor
Joe Kosinski, Vice Mayor
Dan Andre

Bob Raymond
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this
_____ day of _____, 2013.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: _____
Michelle D. Mayher, Town Clerk

BY: _____
Alan Mandel, Mayor

Approved as to legal sufficiency by:

Fowler White Boggs, Town Attorney

EXHIBIT "A"

Sec. 34-1173. Development regulations.

(a) Unless specifically indicated to the contrary, accessory uses and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

- (1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.
- (2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. Exceptions are as follows:
 - a. Fences or walls when in compliance with division 17 of this article.
 - b. Seawalls or retaining walls (see § 26-43(a)).
 - c. Docks accessory to residential uses (see § 26-43(a)). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

(b) *Attachment to principal building.* Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

(c) *Height.* Accessory structures shall comply with the height limitations for principal structures, provided, however, that in no event shall an accessory structure exceed the height of a principal structure located on the same lot or parcel. For swimming pools, whether the swimming pool is attached to the principal structure as part of the principal structure or is a freestanding accessory structure, the height of the swimming pool and swimming pool deck shall be no higher than the height of the crown of the adjacent roadway.

RESOLUTION OF THE TOWN COUNCIL OF THE
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 13-26

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACKNOWLEDGING THAT THE DEPARTMENT OF COMMUNITY DEVELOPMENT, AT THE DIRECTION OF TOWN COUNCIL, IS DEVELOPING PROPOSED LAND USE REGULATIONS RELATING TO THE PROHIBITION OF ELEVATED SWIMMING POOLS AND THAT SUCH PROPOSED ORDINANCE IS BEING DRAFTED AND WILL BE PROMPTLY SUBMITTED TO THE TOWN LOCAL PLANNING AGENCY (LPA) FOR ITS CONSIDERATION AND RECOMMENDATION; DIRECTING THAT THE LPA PROVIDE RECOMMENDATIONS, AFTER ITS DUE CONSIDERATION, WITH REGARD TO SUCH PROPOSED LAND USE AND DEVELOPMENT REGULATIONS; DECLARING THAT THE DEVELOPMENT OF SUCH REGULATIONS AND THE ZONING PROCESS RELATED THERETO CONSTITUTES "ZONING IN PROGRESS;" DIRECTING THAT PERMITS FOR ELEVATED SWIMMING POOLS NOT BE ISSUED UNTIL THE "ZONING IN PROGRESS" HAS BEEN COMPLETED BY FINAL CONSIDERATION OF SUCH PROPOSED LAND USE AND DEVELOPMENT REGULATIONS BY TOWN COUNCIL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council has directed that the Department of Community Development develop proposed land use regulations addressing the regulation or prohibition of elevated swimming pools; and

WHEREAS, the Department of Community Development is in the process of preparing a proposed Ordinance addressing elevated swimming pools; and

WHEREAS, the proposed ordinance will be considered by the Town's LPA as required by the Town's land development code; and

WHEREAS, no final consideration or decision can be made by the Town Council except through the legally required and publicly advertised zoning consideration process; and

WHEREAS, the Town Council finds that the issuance of any permits for the construction of elevated swimming pools during this "zoning in progress" is detrimental to the best interests of the citizens of the Town of Fort Myers Beach.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Town Council hereby determines that it is appropriate and in the best interest of the citizens of the Town of Fort Myers Beach to study, consider and development land use regulation to address and/or prohibit the construction of elevated swimming pools within the Town of Fort Myers Beach. Until such time as the Town Council has an opportunity to consider the proposed land use regulations and the recommendations of staff and the LPA, the issuance of building permits for the construction of elevated swimming pools shall be prohibited.

Section 2. The Town Council hereby declares that the process currently in effect with regard to the development and consideration of land use regulations relating to elevated swimming pools constitutes "zoning in progress."

Section 3. In the event that any person or entity is denied a Development Order, Building Permit or other Town approval as a direct result of the prohibition set forth above, such person or entity may appeal such denial to Town Council. The fee for such appeal is hereby waived. For any appeal that is filed, the City Council shall consider same in a properly noticed meeting and, after due consideration, may authorize the approval of a building permit for an elevated pool upon a finding that such approval is not contrary to the long term goals of this Resolution and is not disadvantageous to the health, safety and welfare of the general public.

Section 4. It is the Town Council's position that this "zoning in progress" constitutes a priority and the timely preparation and processing of proposed land use regulations relating to elevated swimming pools shall be considered a priority by Town Staff and the LPA.

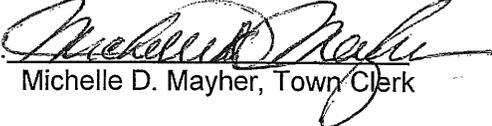
Section 5. Effective Date. This resolution is effective immediately upon adoption.

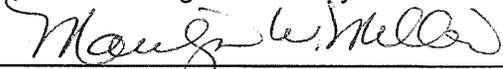
The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Andre and seconded by Council Member List and upon being put to a vote, the result was as follows:

Alan Mandel, Mayor	aye
Joe Kosinski, Vice Mayor	aye
Jo List, Councilmember	aye
Dan Andre, Councilmember	aye
Bob Raymond, Councilmember	aye

DULY PASSED AND ADOPTED THIS 21st DAY OF OCTOBER, 2013, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Alan Mandel, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:
By: 
Fowler White Boggs, PA