

**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.

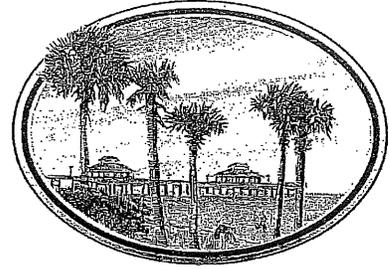
**Recommended action:**

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**

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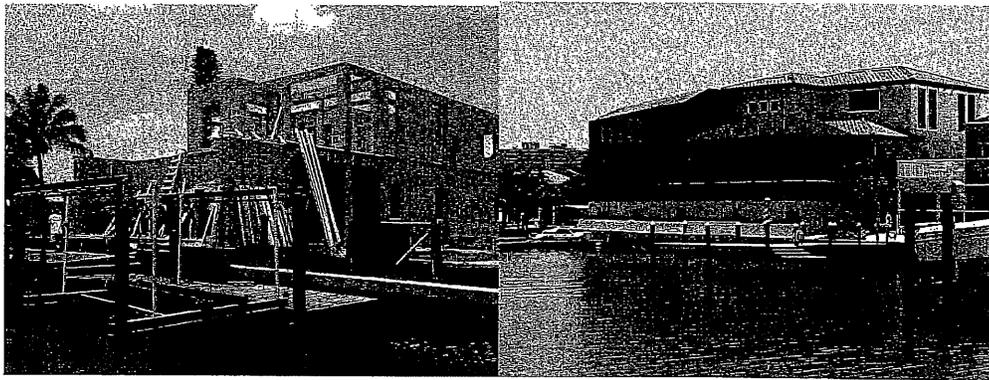
Town Staff recently received building permit applications for construction of new single-family homes with pools along the canals on Palermo Circle. Due the base flood elevation requirements imposed by FEMA, the permits have included requests for elevated swimming pools, in order to allow direct access 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:

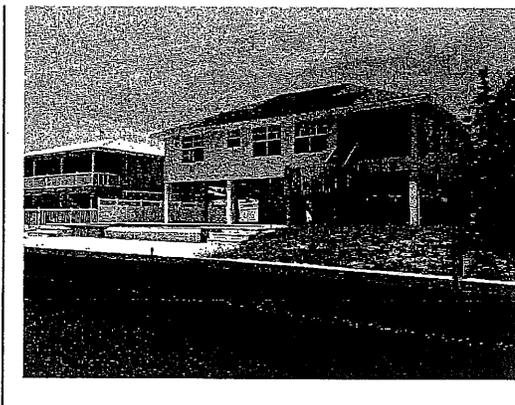
In its simplest form, the question is whether elevated pools have to or should have to comply with the principal structure setback of 25', or does the 5' accessory structure setback for pools/decks apply. The reason this has become a problematic issue, is due to the FEMA requirements that principal structures 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.