



To: Ramon Trias, Planning & Zoning Director

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Swimming Pool Setbacks for Coral Bay Section B

Date: July 3, 2019

This office has been asked to issue a determination regarding the required setbacks for swimming pools *without screens* under the Site Specific Zoning Regulations for Coral Bay Section B, Section A-26.E of the City's Zoning Code.

Of the 54 properties surveyed in the relevant area, 11 do not have swimming pools. Of the remaining 43, 24 have pools with a setback of less than 20 feet and 19 have pools with a setback of more than 20 feet (9 of which had building plans that included a screen enclosure).

The operative provision at issue is found in Appendix A, Section A-26 – Coral Bay Section B (E) of the Zoning Code, which states as follows:

Setback from canal, waterway, lack or bay. The minimum setback from waterway line, canal line or bay shore line, as platted shall be twenty-five (25) feet for main residence buildings and twenty (20) feet for screen patio and/or swimming pools on Lots 2 to 55, inclusive, all in Block 3, and all lots in Block 4.

The "and/or" language used in the section creates an ambiguity which this office has been asked to interpret. In doing so, it is important to look to Ordinance No. 1186, which initially set forth the Site Specific Zoning Regulations at issue and which states, in operative part, as follows:

"Section 6.02. SETBACK FROM WATERWAY OR BAY. On all building sites abutting upon a canal, waterway, or bay, the minimum setback from the waterway for all **buildings, or portions thereof [emphasis added]** designed or used for occupancy for residential or commercial purposes shall be 35 feet from the canal, waterway line or Bayshore line, as platted, except as follows:

* * *

3. In Coral Bay Section "B". The minimum setback from a waterline line, canal line or Bayshore line, as platted, shall be twenty-five (25') feet for main residence buildings and twenty (20') feet for screen patios and/or swimming pools on Lots 2 to 55, all in Block 3, and all lots in Block 4.

The language in the first part of 6.02 indicates that the setback restrictions set forth by the section were intended to apply to “buildings, or portions thereof.” The likely intent of this provision was to avoid structures near the waterway that would interfere with the ability of neighboring property owners to enjoy the waterway without visual obstruction. Logically then, the 20-foot setback would apply to screened-in pools, but not to pools that do not have a screen. In addition, it is important to note that pursuant to Section 5-108(D) of the Zoning Code, the general setback (outside of site specific regulations) for pools on lots abutting a canal, waterway, lake, bay, or golf course is 5 feet. Also, past practice is consistent with this interpretation as evidenced by the fact that at least 24 properties in the relevant area have pools with a setback of less than 20 feet.

Taking the language of the initial ordinance setting forth the site specific regulation, together with the City’s past practice in the relevant area, it is concluded that the 20-foot setback set forth in subsection (E) above, is intended for screened in pools and not for pools that do not have screens.

This opinion is issued pursuant to Sections 2-252(e)(1) and (8) of the City Code and Section 2-702 of the City’s Zoning Code.

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING SWIMMING POOL SETBACKS FOR CORAL BAY SECTION B

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Date: July 3, 2019

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From: [Ramos, Miriam](#)
To: [Paulk, Enga](#)
Subject: Opinion re. swimming pool setbacks
Date: Wednesday, July 3, 2019 9:54:08 AM
Attachments: [opinion - pool setbacks Coral Bay Sec B.docx](#)
[image003.png](#)

Enga, please publish and let me know once it is up.

Thanks,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

*Board Certified by the Florida Bar in
City, County, and Local Government Law*

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