

**APPEAL**
*Integrated Planning Act 1997***BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

Assessment Manager: Maroochy Shire Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of Maroochy Shire Council to refuse a Preliminary Development Application for building works, namely the construction of a proposed double garage to be positioned within the prescribed road boundary setback on “the subject site”.

Date and Place of Hearing: 11.45 am Friday 18 January 2008 at “the subject site”

Tribunal: Geoff Cornish – Tribunal Chair
Robin King Cullen – Tribunal Member

Present: Applicants
Roy Saint – Saint Consulting Engineers
John Dunn – Maroochy Shire Council Representative
Sam Cunningham – Maroochy Shire Council Representative

Decision

In accordance with Section 4.2.34 (2) of the *Integrated Planning Act 1997*, the Tribunal **sets aside** the decision of Maroochy Shire Council and directs Council to grant a preliminary approval to enable a garage to be constructed with setbacks of 2.4 metres to the outermost projection and 3.0 metres to the western wall from the *withheld* road boundary of “the subject site”, subject to the following conditions:-

1. The maximum height of the building at any point shall not exceed 4.2 metres above the existing excavated bench level;
2. The existing landscaping between the proposed building and the road boundary of the property shall be augmented by extending similar plantings in a 2 metres wide band from their southern end to a point abutting the northern edge of the existing sealed driveway. This 2 metres wide band of plantings shall remain totally within the applicants’ property;
3. The eastern batter of the excavated bench is to be landscaped utilising local native plantings; and
4. The building materials to be utilised in the construction of the garage shall be of neutral colours consistent with those on the existing dwelling.

Background

The matter concerns the decision of Maroochy Shire Council to refuse an application for a siting variation to enable a double garage to be constructed in a location that is only 2.4 metres from the road boundary of “the subject site” to the outermost projection of the proposed building and 3 metres to its western wall.

The site has exposure to the adjacent main road and is visible from other lower locations on the eastern escarpment due to the topography of the area.

The site contains an existing dwelling containing a double garage, but the applicants have additional vehicles, including a camping trailer, for which enclosed housing is desired.

This requirement is for security and weather protection, in addition to a desire that these vehicles not be readily visible from the road. Their parking within an enclosed building would be seen as improving the general appearance of the subject site. The applicants also have a need for some workshop space that is not possible to provide within the existing garage.

Material Considered

1. Copy of the application dated 7 November 2007 to Maroochy Shire Council requesting approval for a siting variation;
2. Copy of the letter dated 15 November 2007 from Maroochy Shire Council to the applicants stating that the application had been refused;
3. ‘Form 10 – Notice of Appeal’ lodged with the Registrar on 14 December 2007;
4. Verbal submission made by the applicants and their consulting engineer on 18 January 2008 explaining the reasons for the appeal and setting out why the appeal should be allowed;
5. Verbal submissions made by Maroochy Shire Council Representatives at the hearing, setting out the reasons why the application was refused and why the appeal should not be upheld;
6. Copy of the ‘Code for the Development of Detached Houses and Display Homes’ contained in Maroochy Plan 2000;
7. The *Building Act 1975*;
8. The *Integrated Planning Act 1997*; and
9. The Building Code of Australia.

Findings of Fact

The Tribunal made the following findings of fact:

1. The site for the proposed garage has already been excavated and levelled to the north of the existing dwelling;
2. In the general vicinity of the proposed garage, the subject site falls steeply to the east from a point approximately 12 metres from the road boundary. The level portion of the site widens to the south, in the vicinity of the existing dwelling;
3. The existing dwelling is also located close to the road boundary and abuts the edge of the escarpment;
4. The only possible location for the construction of a new garage on the site is to the north of the existing dwelling;

5. The classification of the subject site as “Rural” under Maroochy Plan 2000 requires a nominal setback of 40 metres from the road boundary to any proposed building. This being the case, given the size of the allotment and its location on the edge of the escarpment, no building is capable of being constructed on the site without the granting of a variation to the setback from the road boundary; and
6. As the “buildable” portion of the site is very narrow and located close to the road boundary of the site, any building will have exposure both to the road and to areas to the east lower down on the escarpment.

Reasons for the Decision

1. The classification of the subject site as “Rural” is in conflict with its size and location in as much as there is very little of the site that can be utilised for buildings. This is because most of the site is located on the steep escarpment and all buildings must be located closer than 40 metres from the road boundary;
2. Given the size, shape and classification of the allotment, even if the allotment had all been at the one level, it would not have been possible to have constructed any building on the property without the granting of a concession to the setback from the road boundary;
3. It is possible to minimise the exposure of the proposed garage to the road by way of additional substantial plantings similar to those already installed by the applicants along the road boundary of their property;
4. A substantial reduction in the maximum height of the proposed structure, to no more than 4.2 metres above the existing finished excavated bench level, would significantly decrease the bulk and scale of the structure and its visual impact from the road and adjoining properties;
5. Additional plantings along the embankment on the eastern escarpment will reduce the visual effects of the structure on neighbours lower down on the escarpment to the east and to road users in that lower area as well;
6. A reduction in height of the garage can be achieved, consistent with the garaging requirements of the applicants, in one of two ways. Either the structure can remain with a gabled roof and have a reduced ceiling height and roof pitch or, if additional height is required on one side for an over-height vehicle, the gabled roof can be replaced by a skillion roof;
7. To aid in the minimisation of the garage’s impact on the road, it is proposed that neutral colours should be utilised similar to those of the existing dwelling;
8. It is considered that an approval can be conditioned to achieve an acceptable result; and
9. The locations of the western wall and any roof overhang should be specifically identified. The express intention of this is to require the main portion of the structure to remain at a minimum setback of 3.0 metres from the road boundary in the event that the final structure is proposed as not having any roof overhang on that western side.

Geoff Cornish
Building and Development Tribunal Chair
Date: 1 February 2008

Appeal Rights

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the grounds:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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