



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL
Integrated Planning Act 1997

File No. 3/07/052

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 siting concession necessary for the erection of a double garage within the prescribed road boundary setback on “the subject site”.

Date and Place of Hearing: 10.00am Monday 24 September, 2007
at “the subject site”

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

Present: Geoff Cornish – Tribunal Chair
Robin King-Cullen – Tribunal Member
Applicant and owner’s representative
Stephen Tucker – Maroochy Shire Council Representative

Decision

The decision of the Maroochy Shire Council, as contained in its written Decision Notice dated 30 August 2007, to refuse an application for relaxation of the front boundary setback **is confirmed**.

Background

The matter concerns the refusal of an application, made to Maroochy Shire Council, for a siting concession necessary to enable a dwelling to be extended towards the road boundary of this property, thus allowing for the construction of a double garage.

The existing dwelling already contains a space that was originally approved and constructed as a single garage. That space has been converted at some time in the past to habitable space, apparently without the necessary approval. This space is capable of being reconverted to a single garage. The site also contains a detached single carport.

Material Considered

1. Copy of the 12 February 2007 application made to Maroochy Shire Council for a siting variation;
2. Copy of the Decision Notice dated 30 August 2007 issued by Maroochy Shire Council to the applicant stating that the application had been refused;
3. Form 10 – Building and Development Tribunals Appeal Notice, dated 11 September 2007, against the decision of Council and setting out the grounds of the appeal;
4. Verbal submissions made by the applicant at the hearing on 24 September 2007 setting out why he believed the appeal should be allowed;
5. Letters of support for the proposed garage extension. Letters were received from the neighbours at *withheld*, the neighbours at *withheld*, the doctor for the applicant's client and from the local member of State Parliament.
6. Verbal submission made by Steven Tucker of Maroochy Shire Council at the hearing setting out why the application had been refused and why the appeal should not be allowed;
7. Copy of extracts from Maroochy Plan 2000 setting out the desirable planning outcomes for the Buderim precinct, together with a copy of the plan's Code for the Development of Detached Houses and Display Homes;
8. The *Building Act 1975*; and
9. The *Integrated Planning Act 1997*.

Findings of Fact

The Tribunal made the following findings of fact:

1. The existing dwelling is positioned on the southern half of a gently sloping westwards facing allotment of rectangular shape. The northern half of the allotment contains a single carport, while the remainder of the area is open landscaped lawn and garden.
2. The previously existing single garage at the front of the dwelling has been converted to habitable space and does not open directly into the interior of the dwelling. Maroochy Shire Council has no record of any approval having been given for this conversion;
3. The proposed double garage will not open directly into the interior of the dwelling;

4. There is adequate area on site for the construction of a new double garage that does not intrude into any road, side or rear boundary setbacks.

Reasons for the Decision

1. The existing dwelling contains a space that was approved as a single garage and that has been converted to habitable use without the necessary approval. This space is capable of being restored for use as a garage;
2. In place of the former garage, covered car parking for one vehicle has been provided on site by the erection of a single carport detached from the dwelling;
3. The site currently provides 3 car parking spaces on the allotment, with only one of those being a covered car space. Maroochy Plan 2000 requires a minimum of 2 on site car parking spaces. It does not require that any of those spaces be covered;
4. The letters of support from the doctor and the local member of parliament are based on the client's need for secure car parking and access to the dwelling. They do not express any need for a double garage in lieu of the space originally provided in the dwelling as a complying single garage. The proposed double garage would have the same access to the dwelling as the converted single garage;
5. The original single garage, at 3.8 metres wide, exceeds the minimum standard width for a single garage. It also exceeds the width set out in the Australian Standard as being required for a person with a disability;
6. The shape, size and slope of the allotment do not restrict the placement of any alternatively covered car parking to the front of the existing dwelling. In fact, the allotment contains sufficient vacant area for the erection of a complying double garage that does not intrude into any of the prescribed road, side or rear boundary setbacks. Erection of such a garage could include provision for secure access to the dwelling;
7. The locality in which the dwelling exists consists of relatively large allotments with dwellings all appearing to be set back a minimum of 6 metres from the road boundary. Approval for a reduced road boundary setback, in this instance, would be inconsistent with the explicit stated aims contained in Maroochy Plan 2000 for maintaining the existing character of this particular area of Buderim.
8. The applicant has not demonstrated compliance with the Performance Standards contained in performance criteria P2 of the Maroochy Shire Council Planning Scheme Code for Detached Houses and Display Homes to justify a reduced road boundary setback.

Geoff Cornish
Building and Development Tribunal Chairperson
Date: 27 September 2007

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 ground:

- (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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