



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 03-07-017

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 the Maroochy Shire Council to refuse an application for Preliminary Approval for Building Works on land described as “the subject site”.

Date and Place of Hearing: 8:00am on Friday 23rd March 2007
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: Mr John Hill – certifier for the applicant;
Applicant
Mr Steve Tucker – Maroochy Shire Council
Mr Brian Benporath - Maroochy Shire Council

Decision:

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 26th February 2007, to refuse an application for boundary setback relaxation, is **confirmed** and **the application is refused**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council, in particular the Code for the Development of Detached Houses and Display Homes;

- Council’s Decision Notice dated 26th February 2007;
- The Queensland Development Code;
- The Building Code of Australia Volume 2; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises *withheld* and is located at “the subject site”. The site is presently vacant and is part of an emerging residential estate (*withheld*). There are a number of new homes under construction in the immediate vicinity, including one adjacent to the subject site on the southern side.
- The subject site is located on a corner block at the intersection of *withheld* and *withheld*. This intersection is controlled by a large roundabout, which explains the larger corner truncations for this allotment.
- The allotment slopes gently downwards from east to west, and is currently cleared of all vegetation. The ground level of the allotment is approximately 1m to 1.5m above the road levels, although some cut and fill was likely to be required to achieve a level building pad.
- The subject application seeks approval for a large, two-storey home on this corner allotment. The applicants explained that this was to be a display home and thus they wanted to present the home in its best possible light. The applicant proposed a setback to the corner truncation of only 3.591m to the outermost projection, a side boundary setback of 1.5m, and setbacks to *withheld* and *withheld* street frontages of 4.5m and 6.464m respectively.
- The estate has a covenant requiring a minimum rear setback of 4.5m. Minimum front boundary (in this case *withheld*) setbacks were to be 4.5m. The relevant Code in the Maroochy Planning Scheme also provides that the minimum setback is 4.5m for the ground level storey and 6m for any level above the ground storey level. The subject proposal seeks a relaxation of the front setbacks for the second storey. Council’s concern was with regard to the setback to the corner truncation.
- The Council’s refusal is based on its Code for Detached Dwellings, and in particular Element 1, Performance Criteria P2 which provides that:

Buildings and structures are sited to contribute positively to the streetscape, maximise community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

 - (a) ...
 - (b) *building character and appearance*
 - (c) ...
 - (d) ...
- While the estate is very new and homes are only just being built, it is not practical to rely on the “existing” built form character, as there is none. However, it seems fair to note that the houses being built in the vicinity of the subject site were modern, large homes, mostly single storey, but with a number of two-storey homes also under construction. The proposed house was in keeping with the likely future character.

- The Council officers in attendance explained that the proposed house could fit onto the site by minor adjustments to side and/or rear boundary setbacks and would comply with the relevant Code provisions.
- The applicant's certifier explained that the applicants did not want to move the house on the site to comply, as he saw no need to do so. This was to be a standard model display home, and the idea of a reduced (or zero) side setback was not preferred in order to show the house in its best possible configuration. They also did not want to amend the design of the house to comply while still retaining the existing setbacks to the side and rear.
- The upper storey comprised, in the offending corner, a bedroom and balcony. The applicant's certifier explained that the balcony was open on three sides and thus would not offend the visual character of the site.

Based on my assessment of these facts, it is my decision that **Council's decision** to refuse the Application for relaxation of boundary setbacks is **confirmed** and **the application is refused**.

Reasons for the Decision

- The proposed house can be moved around on the subject site to comply with the required setbacks. This could include moving it closer to the southern sided boundary (Council would allow a zero setback, but this was not essential to achieve compliance) and/or moving it closer to the rear boundary (which again was not essential to achieve compliance).
- The applicant's desire to keep the house in its usual location on an allotment (and to not relocate water tanks and gas bottles) is not sufficient justification for the relaxations sought.
- The site's location on a corner with a large roundabout means that particular care should be taken to ensure maximisation of safety, not just minimum compliance. The relevant Performance Criterion in the Code requires, *inter alia*, buildings to "*contribute positively to the streetscape*" and to "*maximise community safety*". Given the topography of the location and the likely future traffic at the roundabout, it is important to maximise visibility for oncoming traffic in all directions. In my opinion, the proposed relaxations of setbacks do not achieve this maximisation.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 28th March 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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