



APPEAL
Integrated Planning Act 1997

File No. 3-02-013

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

Site Address: 2 Joan Street Golden Beach

Nature of Appeal

Appeal under section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Caloundra City Council to refuse an application for relaxation of the road boundary clearance for the construction of dwelling additions on land described as lot 31 on RP 96152 and situated at 2 Joan Street Golden Beach.

Date and Place of Hearing: 10.30am, Tuesday 26th February 2002
at 2 Joan Street Golden Beach

Tribunal: Debbie Johnson

Present: Applicants
Robbie Pocock and Andrew Stewart – Caloundra City Council

Decision

The decision of the Caloundra City Council as contained in its written notice dated 22nd January 2002 not to permit two storey additions within the road boundary clearance, is confirmed.

Background

The applicant's residence at 2 Joan Street Golden Beach is situated on one of only six allotments in the street. There are four corner allotments in Joan Street and No 2 sits between two corner allotments. Joan Street intersects the Golden Beach Esplanade, which runs adjacent to the waterway known as Pumicestone Passage. There is a very good view of the waterway from all the allotments in Joan Street. To the West, Joan Street intersects Anning Avenue. There are two residences in Anning Avenue that also have a good view of the water by looking down Joan Street.

Material Considered

Submissions were made in person and in writing by the applicant and his daughter. Submissions were made in person and in writing by Mr Robbie Pocock and Mr Andrew Stewart of Caloundra City Council. Adjoining property owners from 57 Anning Avenue submitted a letter of support for the proposal by the applicant. Concept drawings prepared by Golden Beach Design were submitted, these included Site Layout and Locality Plan, Floor Plans and Elevations.

Findings of Fact

The existing residence at 2 Joan Street is single storey and setback from Joan Street 5196mm. The adjacent property to the East has a 1500mm setback between their double garage and Joan Street. The garage is single storey and does not adjoin the two storey residence on the same allotment. This residence is approximately 9000mm from Joan Street. To the West the adjacent residence is two storey and is setback 4600mm from Joan Street. All the dwellings in the street are similar in that they were probably built around the same period of time. Both allotments either side of 2 Joan Street are corner allotments with their frontage being to the Esplanade and Anning Avenue respectively.

The existing western side boundary setback at 2 Joan Street is 1219mm. The existing building height along this boundary is less than 4500mm.

The Standard Building Regulation 1993

Section 48 - Local Government may vary the provisions of division 2

(3) The local government may consider the following:-

a) *the levels, depth, shape or conditions of the allotment or the adjoining allotments;*

The conditions on 2 Joan Street and the adjoining allotments are not exceptional. All allotments are level and basically rectangular in shape. The widths of the allotments are approximately 20M.

b) *the nature of any proposed building or structure on the allotment;*

The proposed additions are to provide an entire second storey over the existing single storey floor residence. The nature of the building within the road boundary clearance is a covered two storey verandah, reducing the existing building line to Joan Street by 1800mm.

c) *the nature of any existing or proposed buildings or structures on adjoining allotments;*

The existing buildings on the adjoining allotments have concessions approved, as they are both corner allotments. Their street frontage is not to Joan Street. Any further development proposed on these allotments, if within the road boundary clearance, will require a variation to be approved.

d) *whether the allotment is a corner allotment;*

The site is not a corner allotment.

e) *whether the allotment has two road frontages;*

The site does not have two street frontages.

f) any matter it considers relevant.

There is no relevant matter to be considered.

4 The local government must be satisfied that the building or structure built on the allotment in the way proposed would not unduly:-

a) obstruct the natural light and ventilation of an adjoining allotment;

The proposed covered verandah would sit 1200mm forward of the two storey dwelling on the adjoining site. Morning sun would be lost to this residence as a result of the proposed additions.

b) interfere with the privacy of an adjoining allotment;

The proposed additions would interfere with the privacy of the dwelling to the west of the site. The proposed living space on the first floor, will look onto the existing verandah and living spaces, of the residence adjoining.

c) restrict the areas of the allotment suitable for landscaping;

The available area for landscape at the frontage of the site would be restricted to a depth of 3400mm. A two storey building façade set back 3400mm would require an appropriate scale of landscaping to lessen the impact of the building from the street.

d) obstruct the outlook from adjoining allotments;

It is likely the proposed additions will obstruct the outlook from the dwelling to the west, and from the single storey residence in Anning Avenue that looks along Joan Street to the water.

e) overcrowd the allotment;

It is felt that the additions would overcrowd the allotment, particularly as it is a two storey structure.

f) restrict off street car parking

The car parking will not be affected on site.

g) obstruct access for normal building maintenance

The proposal would not obstruct normal building maintenance.

Reasons for the Decision

Section 48.3 and 4 of the Standard Building Regulation 1993 allow for local government to vary the application of siting regulations. In assessing the criteria from this part of the legislation, the tribunal did not find reasonable grounds for the varying of the street setback to Joan Street.

The impact of the proposed additions, being two storey, is considered to be unacceptable to adjoining allotments in regards to loss of privacy and views.

DEBBIE JOHNSON
Building and Development
Tribunal Referee
Date:4th March 2002

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:

The Registrar of Building and Development Tribunals
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