



APPEAL

File No. 3/02/011

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: 24 Spindrift Avenue, Coolum Beach.

Nature of Appeal

An 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 a preliminary approval for building work (a siting concession required to enable the construction of a combined garage and carport within the front six metre setback) on a property described as Lot 135 RP 89248, Property No. 11584, situated at 24 Spindrift Avenue, Coolum Beach.

Date and Place of Hearing: 10.00 am on 14 February 2002
at 24 Spindrift Avenue, Coolum Beach.

Tribunal: Geoff Cornish

Present: Applicant
Richard Prout – Maroochy Shire Council
Andrew Cooksley – Maroochy Shire Council

Decision

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby set aside the decision appealed against and grant a siting concession to enable a single garage to be erected to within 4.5 metres of the road boundary of the property described as Lot 135 RP 89248 situated at 24 Spindrift Avenue, Coolum Beach, subject to the following conditions:-

1. The garage shall be accessed only from the eastern (right hand) end.
2. Landscaping shall be provided between the garage and the road frontage in accordance with the requirements of the Council's published landscaping policy.
3. An Operational Works access permit is obtained, in accordance with the requirements of Maroochy Plan 2000, to enable a development approval for building work to be approved.

Background

An application was made to Council for a preliminary approval for building work to enable a combined garage and carport to be constructed within the front boundary setback of the property. Maroochy Plan 2000 makes reference to the siting of garages and carports in Code 4 of the Plan. It calls up the siting provisions of Part 3 of the Standard Building Regulation 1993 (SBR), with the exception of the provisions of Section 37, as being acceptable measures for any assessment of compliance with the Plan requirements for such a building. This application was refused and that decision has been appealed.

There are, however, questions as to the jurisdiction of a Building & Development Tribunal to determine such an appeal and this matter is addressed as follows.

- a) The development approval applied for was for building work.
- b) Building work is a matter under the Integrated Planning Act that relates to the Building Act 1975.
- c) Section 4.2.7 of the Integrated Planning Act prescribes the rights of appeal to a Tribunal and limits those rights to only that part of a development application assessed against the Building Act 1975.
- d) Maroochy Plan 2000 states that the provisions of the Standard Building Regulation (SBR) will apply as “acceptable measures” where relevant in the Council’s “Code for Residential Development and Use”, except for the provisions in section 37.
- e) Section 48 sets out the process for assessing an application to vary the provisions of division 2 of Part 3 of the SBR.
- f) The assessment carried out by Maroochy Shire Council was against the “acceptable measures” listed in section 48(3) of the SBR.
- g) The Tribunal’s jurisdiction is limited to a review of the Council’s assessment of the original application against those “acceptable measures”, and excludes any consideration of matters involving impact assessment under Maroochy Plan 2000.
- h) As the development application was for building work and the siting assessment was made against provisions of the Building Act 1975 called up in the Plan, the jurisdiction of the Tribunal to hear the matter is as defined in section 4.2.7(2)(a) of the Integrated Planning Act.

I am therefore of the view that this Tribunal has jurisdiction to conduct the hearing of this appeal.

Material Considered

1. Plan submitted to Maroochy Shire Council with initial application requesting a concession for the siting of a combined garage and carport.
2. Letter from Maroochy Shire Council to the applicant, dated 8 January 2002, refusing the application and setting out the reasons for refusal.
3. Appeal form and attachments dated 29 January 2002.
4. Verbal submission by the applicant to the Tribunal dated 14 February 2002.
5. Verbal submission by Maroochy Shire Council to the Tribunal dated 14 February 2002.
6. Codes for Residential Development and Use extracted from Maroochy Plan 2000.

7. Standard Building Regulation 1993.
8. Building Act 1975
9. Integrated Planning Act 1997

Findings of Fact

I made the following findings of fact:-

1. The initial application for preliminary approval was made on the basis that the applicant was not aware as to the extent of his entitlement to a concession. The applicant did, however, have regard to other similar existing structures in the area.
2. The clear intention of the Council was to draw the siting provisions of the Standard Building Regulation into Maroochy Plan 2000 as “alternative siting requirements” and to define “acceptable measures” for an assessment of siting compliance in its “Code for Residential Development and Use”.
3. Assessment of any siting concession application should proceed in accordance with the provisions of the “alternative siting requirements” in the above Code.
4. The on-site vehicle parking requirements of this Code have been met.
5. There are alternative locations on the site for the provision of covered car accommodation that would not require the granting of a concession.
6. The provisions of section 48 included in the Code may be used to determine how the application of division 2 of Part 3 of the SBR may be varied.
7. Maroochy Council is in the process of amending the Planning Scheme provisions that would enable a garage, in certain circumstances, to be erected to within 4.5 metres of the road boundary of such a property without the granting of a concession by Council. Conditions would apply.
8. Consequently, a garage of reduced width, but in the applicant’s preferred location and opening to the east as per the original application, would be capable of complying with these provisions. It would require the provision of landscaping between it and the road frontage in accordance with the Council’s landscaping policy and, at the current time, the obtaining of an Operational Works Permit for the construction of access from the road to the garage.
9. The amendments to the Plan address the issues of section 48 of the SBR in establishing a new setback standard in the Plan. These draft amendments should be the basis for an approval.
10. The Tribunal has jurisdiction to hear the appeal.

Reasons for the Decision

An assessment of the facts and the submissions of the parties leads me to the following conclusions.

1. Alternative locations exist on this level, rectangular site, for the provision of covered car accommodation. None of these was the preferred option of the applicant.
2. The proposed amendments to Maroochy Plan 2000, expected to be implemented in April 2002, would enable a garage to be constructed to within 4.5 metres of the road boundary of this property, subject to certain conditions, as an “as of right” entitlement. The applicant’s initial request was for a combined garage and carport extending to within 3.8 metres of the road boundary. The restriction of a 4.5 metre setback would enable a 5.3 metre wide garage to be constructed in this location.
3. The applicant accepted that such a provision would enable him to erect a larger than normal single garage in his preferred location at the front of his dwelling, accessed from the eastern end, with a window facing the street. It would also enable him, at the time of his proposed future house extensions, to construct a carport towards the rear of his property in lieu of that included in his initial application to Council. This entitlement would be “as of right”.
4. The applicant indicated this would satisfy his requirements. Council agreed this would satisfy the alternative siting provisions of the amended Maroochy Plan 2000.
5. Compliance is required, however, with the Council’s landscaping policy in terms of the treatment of the area between the garage and the road frontage. The applicant indicated his acceptance of this provision as a condition of approval.
6. Further, Council advised that, until the Plan is formally approved and implemented, an application for Operational Works approval is required to construct the driveway to the garage. This approval must be in place before a development approval for the construction of the garage can be given. The alternative for the applicant is to await the implementation of the changes to the Plan before seeking a development approval for building works.
7. Under these circumstances there is no need to make a detailed assessment of compliance with the provisions of section 48(3) of the SBR.
8. An amended decision can therefore be given that, including conditions to cover the need for landscaping and operational works, will reflect the proposed changes to Maroochy Plan 2000. This will also give effect to the immediate needs of the applicant.

G.S.Cornish
Building and Development
Tribunal Referee
Date: 21 February 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:

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