



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3-04-010

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Noosa Shire Council

Site Address: 8 Doolan Court, Noosaville

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Noosa Shire Council to refuse an application for relaxation of the front boundary setback on land described as Lot 4 on RP 816885 and situated at 8 Doolan Court, Noosaville.

Date and Place of Hearing: 11.00am on Thursday 26th February, 2004
at level 18, 41 George St Brisbane

Tribunal: Mr Chris Schomburgk

Present: Mr Geoff Cornish – Noosa Shire Council Representative
Applicants

Decision:

The decision of the Noosa Shire Council as contained in its written Decision Notice dated 22nd January 2004, to refuse an application for relaxation of the front boundary setback is **confirmed**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans;
- The relevant provisions of the Town Planning Scheme for Noosa Shire – in particular section 8.10;
- The Standard Building Regulation 1993;
- Verbal submission from the Applicants and Council's Representative;
- Exhibits tabled at the hearing by the parties:
 1. Site plans
 2. Proposal plans
 3. Letters from adjoining neighbours

4. Colour photographs from Council

5. Statement from applicants

- A video of the site and locality prepared and provided by the appellants;
- Council's Decision Notice dated 13 January 2004; and
- The Integrated Planning Act 1997.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot 4 on RP 816885, with frontage to Doolan Court of approximately 22.56 metres.
- Easements for sewerage exist along the western side and the rear of the allotment.
- The site contains a single detached dwelling, one storey in height. An original single garage under the main roof has been modified and now forms a habitable room, being a study. This construction has apparently occurred without building approval. As a result, the house has no covered car accommodation.
- The site is relatively flat. There are no topographic constraints to conventional car accommodation on the site.
- The Council's Planning Scheme provides, at section 8.10.2, that no "*covered vehicle accommodation structure*" shall be constructed "*within 6 metres of any road boundary.*" However, section 8.10.3 provides for discretion in this respect, having regard to:
 - a. *the existing or proposed future development in the area;*
 - b. *the existing or proposed amenity of the area;*
 - c. *the distance between any constructed road and the proposed building;*
 - d. *the distance between any existing buildings on other sites and the proposed building;*
and
 - e. *the location of any existing vegetation which will buffer the proposed building.*
- The subject site is located within an established residential area of Noosaville. I am advised that there are no other approved front boundary relaxations within the immediate locality (approximately 160 lots).
- The existing development in the area is relatively homogenous, being single detached houses, all set back from the road. The amenity is similarly consistent, comprising good quality housing in a neat, relatively quiet suburb.
- The Council representative advised that it is Council's practice (but not written policy) to not approve relaxation of set backs for car accommodation where an owner has enclosed existing (original) car spaces for habitable rooms. That "practice" has not been translated into planning scheme policy.
- The proposed carport would be visible from the southern end of the Doolan Court cul-de-sac, which contains approximately 40 dwellings, because of the horizontal alignment of the road with a curve near the subject site. It will be less visible from the eastern end of Doolan Court due to the established trees along the footpaths.
- The proposal, although not clear from the plans provided, is for an open carport with brick pillars matching the existing house and a tiled roof, also matching the existing house. A gable end would be visible from the street, potentially matching the existing gable at the western end of the house.
- The applicants have considered a "sail" structure instead of a solid carport, but they believe a sail would "cheapen" the appearance of the street.
- A triangular section of the carport depicted on the proposal plans, connecting from the carport to the main building, is no longer desired by the applicants.

- The 6 metre setback is intended to allow for overflow car parking off the street. If this approval were granted, any overflow carparking would need to use the road reserve.

Based on my assessment of these facts, it is my decision that the appeal is dismissed and Council's decision to refuse the relaxation is confirmed.

Reasons for the Decision

- The site is in an area of relatively "pristine" residential uses.
- There are no other approved front boundary relaxations in the vicinity.
- There are no special topographic or other site constraints that necessitate a relaxation.
- Unlawful conversion of existing car accommodation cannot be considered justification for additional car accommodation.
- The proposed carport would be most visible from the eastern end of Doolan Court, comprising approximately 40 dwellings.
- The existence of other relaxations in other parts of the Shire is not considered sufficient justification for an approval on this site.
- The Planning Scheme sets out criteria for the relaxation of the front setback distance. The subject proposal does not satisfy those criteria.

Chris Schomburgk
Building and Development Tribunal Referee
Date: 1st March 2004

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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