



APPEAL
Integrated Planning Act 1997

File No. 3/02/006

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council
Site Address: 12 Sunpointe Street, Maroochydore

Nature of Appeal

An appeal under Section 21 of the Standard Building Regulation 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 carport within the front six metre setback) on a property described as Lot 122 RP 202286, Property No. 21741, situated at 12 Sunpointe Street, Maroochydore.

Date and Place of Hearing: 10.00 am on 31 January 2002
at Maroochy Shire Council Chambers
Cnr Curry and Bury Streets, Nambour

Tribunal: Geoff Cornish

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

Decision

The decision of Maroochy Shire Council to refuse an application for preliminary approval for building works, Application No. PBA01/0498 on Lot 122 RP 202286 situated at 12 Sunpointe Street, Maroochydore, is **confirmed**.

Background

An application was made to a private certifier for a development approval for building work to enable a double carport to be constructed within the front boundary setback of the property. As

Maroochy Plan 2000 makes reference to carports in such circumstances, the matter was one requiring the private certifier to seek the advice of the Local Government under the provisions of Section 20 of the Standard Building Regulation. An application was therefore made to Maroochy Shire Council. This application was refused and that decision has been appealed.

The advice given by Maroochy Shire Council to the applicants was that appeal rights existed under the Integrated Planning Act. It is my view that the appeal, as stated above, should more correctly have been made under Section 21 of the Standard Building Regulation as the initial application for building work approval was made to a private certifier. Both the Council and the applicants accepted this view. The appeal was heard on this basis.

There are, however, questions as to the jurisdiction of a Building and 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. In so doing, Council has set out to reject “necessary or expedient” as being grounds for approval.
- e) Maroochy Shire Council has not prescribed any alternative “acceptable measures” for an assessment under section 37.
- f) Section 37 forms part of division 2 of Part 3 of the SBR.
- g) Section 48 sets out the process for assessing an application to vary the provisions of division 2 of Part 3 of the SBR.
- h) In the absence of any prescribed “acceptable measures” for section 37, the method available for an assessment is that set out in section 48 of the SBR.
- i) The assessment carried out by Maroochy Shire Council was against the “acceptable measures” listed in section 48 of the SBR.
- j) 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.
- k) 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. Application from Coastal Building Certifications to Maroochy Shire Council dated 1 November 2001, requesting a concession for the siting of a carport.
2. Letter from Maroochy Shire Council to the applicants, c/- Coastal Building Certifications and dated 10 December 2001, refusing the application and setting out the reasons for refusal.

3. Letter from Coastal Building Certifications to the applicants, dated 18 December 2001, advising of the refusal and recommending the lodgement of an appeal.
4. Appeal form and attachments dated 9 January 2002.
5. Letter from Coastal Building Certifications to the Registrar of Building & Development Tribunals, dated 11 January 2002, supporting the appeal application.
6. Codes for Residential Development and Use extracted from Maroochy Plan 2000.
7. Letter from Maroochy Shire Council to the Tribunal, dated 31 January 2002, stating that the existing carports at other nearby residences do not have Council's approval to be sited in the front six metre setback.
8. Standard Building Regulation 1993.
9. Building Act 1975.
10. Integrated Planning Act 1997.

Findings of Fact

I made the following findings of fact:-

1. The initial application for development approval was made to a private certifier.
2. The private certifier made application to Council for advice on the matter under the provisions of the Standard Building Regulation, having regard for the provisions of Maroochy Plan 2000.
3. 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".
4. Assessment of any siting concession application should proceed in accordance with the provisions of the "alternative siting requirements" in the above Code.
5. The on-site vehicle parking requirements of this Code have been met.
6. No acceptable measures have been defined in the Code for carports in the front six metre setback.
7. In the absence of "acceptable measures" relating to SBR section 37 matters, 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.
8. The Tribunal has jurisdiction to hear the appeal.

Reasons for the Decision

An assessment of the application in terms of section 48 of the SBR shows that:-

a) *The levels, depth, shape or conditions of the allotment and adjoining allotments.*

The allotment is level, of a rectangular shape and is of a size consistent with other urban allotments in the area. The allotment does, however, have a sewer running parallel to, and approximately one metre in from, the western side boundary of the property. The sewer is not contained within a gazetted easement. The western wall of the existing dwelling is located 6 metres from the western side boundary of the allotment. A garden shed containing pool equipment is located between the western end of the dwelling and the side boundary. This is a self-assessable structure and can be relocated as required. Council is prepared to consider the locating of a carport of the type sought over their sewer, provided the footings are offset from the sewer and portion of the floor of the carport is constructed of removable pavers in case of a need for future access to the sewer.

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

The proposed carport is to be constructed between the dwelling and the road boundary of the property and would increase the covered on-site car parking to three spaces. This dwelling is on a corner allotment and has already been granted a reduced setback from both road frontages. The construction of the carport in the proposed location would result in the carport extending to within 0.3 metres of the road boundary of the allotment. The existence of other similar carports in the general vicinity was cited as justification for approval. These have been investigated and have been shown to exist without Council's knowledge or approval. An alternative location exists on the allotment for the siting of a carport if additional covered carparking is required. That alternative location does not require the granting of a siting concession and retains consistency with the existing neighbourhood approvals reflected in the objectives of Maroochy Plan 2000.

c) *The nature of any existing or proposed buildings or structures on adjoining allotments.*

The adjoining allotments contain dwellings complying with the standard setback requirements. There are no precedents for this application on adjoining allotments and no proposals for similar structures.

d) *Whether the allotment is a corner allotment.*

As previously stated this is a corner allotment and concessions have already been applied to the siting of the dwelling with respect to both road frontages.

e) *Whether the allotment has 2 road frontages.*

As this is a corner allotment it has two road frontages.

f) *Any other matter considered relevant.*

In considering matters under the provisions of section 48(3) of the SBR, consistency with the objectives of Maroochy Plan 2000 should be sought where possible. As "necessary" and "expedient" have been removed from the grounds for assessment, the additional cost to be borne by the applicants in relocating the pool equipment shed is not a factor that can be taken into account in the assessment.

In considering the matters under section 48(3) above I am satisfied that the structure, in either the proposed or alternative location, would not

- obstruct the natural light or ventilation of an adjoining allotment,
- interfere with the privacy of an adjoining allotment,
- restrict the areas of the allotment suitable for landscaping,
- obstruct the outlook from adjoining allotments,

- overcrowd the allotment,
- restrict off-street parking, or
- obstruct access for normal building maintenance.

As an alternative location exists on site, it is not appropriate that the requested siting concession be granted.

G.S.Cornish
Building and Development
Tribunal Referee
Date: 12 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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
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