



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 3/07/045

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 Maroochy Shire Council to refuse a siting concession necessary for the erection of a double carport within the prescribed road boundary setback on "the subject site".

Date and Place of Hearing: 11.00am Wednesday 5 September 2007
at "the subject site"

Tribunal: Geoff Cornish – Tribunal Chair
Robin King-Cullen – Tribunal Member

Present: Geoff Cornish – Tribunal Chair
Robin King-Cullen – Tribunal Member
Applicants / Owners
John Dunn – Maroochy Shire Council Representative

Decision

The decision of the Maroochy Shire Council, as contained in its written Decision Notice dated 26 July 2007, to refuse an application for relaxation of the front boundary setback, is **set aside** and **the application is approved** subject to the following conditions:

- 1. The outermost point of the fascia of the proposed carport is to be no closer than 1.0 metre from the front boundary alignment.*
- 2. The outermost supports of the roof structure shall be no closer than 1.6 metres from the front boundary alignment.*
- 3. The roof of the proposed carport is to be sited a minimum of 1.5 metres from the western side boundary of the property.*

4. *The carport shall not exceed 6.0 metres in width.*
5. *The carport shall have a skillion roof sloping towards the street and a maximum height of 2.4 metres at the outermost projection adjacent to the road boundary. The pitch of the carport roof shall match that of the roof of the dwelling.*
6. *The sides and front of the carport are to remain unenclosed by doors or walls, but any proposed fence constructed along the front boundary alignment may contain a gate in front of the carport.*
7. *Suitable landscaping shall be provided between the carport and the western side boundary, and also within the road reserve adjacent to both sides of the new driveway, to provide screening of the structure and to minimise its impact upon the streetscape.*
8. *The existing driveway is to be removed at the time of construction of the driveway to the new carport.*

Background

The matter concerns the refusal of an application made to Maroochy Shire Council for a siting concession necessary to enable a new double carport to be erected within the space between the existing dwelling and the road boundary of this property.

The application was made on the basis of this being considered to be the most appropriate space on the allotment for this replacement car parking requirement, the inadequacy of the existing covered car parking provision on site, the steepness of the existing driveway at the eastern side of the dwelling, together with the existence of several other similar structures on properties in the immediate vicinity.

Material Considered

1. Copy of the 6 July 2007 application made to Maroochy Shire Council for a siting variation;
2. Letter dated 26 July 2007 from Maroochy Shire Council to the applicants stating that the application for a siting variation had been refused;
3. Form 10 – Building and Development Tribunals Appeal Notice and attachments, dated 10 August 2007, against the decision of Council and setting out the grounds of the appeal;
4. Verbal submissions made by the applicants on 5 September 2007 setting out why they believed the appeal should be allowed;
5. Letter of support for the proposed carport received from the neighbours at *withheld*, being the persons most affected by the proposed location of the carport;
6. Verbal submission made by John Dunn of Maroochy Shire Council setting out why the application had been refused and why the appeal should not be allowed in its present form;
7. Copy of the Code for the Development of Detached Houses and Display Homes contained in Maroochy Plan 2000;
8. The *Building Act 1975*;

9. The Queensland Development Code Part 12; and

10. The *Integrated Planning Act 1997*.

Findings of Fact

The Tribunal made the following findings of fact:

1. The existing dwelling has 2 tandem covered car parking spaces contained within and behind the lower storey of the dwelling.
2. The dwelling is situated on the lower side of the street and access to the existing car parking space is via a very steep driveway.
3. Utilisation of this driveway results in problems with under car clearances at the top of the driveway and safety considerations when exiting to the street as, due to the driveway's steepness, this must be done at speed in order to avoid stalling of a vehicle on the steep grade. To exit the driveway, in this fashion, requires the initial parking of the vehicle to have been undertaken by reversing the vehicle down the driveway. This action, in itself, is unsafe and unsatisfactory. The alternative of backing up the driveway would result in the driver having no view of persons or vehicles on the street and would create greater public danger.
4. There is insufficient distance between the existing dwelling and either side boundary for any new covered double car parking facility to be provided behind the standard setback from the road boundary.
5. The steepness of the allotment at each side of the dwelling is such that access to the rear of the property is not practical due to grade considerations.
6. The immediately affected next door neighbours to the west of the proposed carport have provided their written support for the applicants' proposal.
7. Other similarly sited carports exist within the vicinity due to the steepness of the land in this area.

Reasons for the Decision

1. The existing driveway, due to its steepness, is an unsatisfactory and undesirable means of obtaining access to off-street parking for any vehicle. The attendant risks associated with backing either up or down such a driveway include the real risk of losing control of a vehicle in the process, particularly in times of wet weather.
2. Due to the existing driveway's steepness, it is not appropriate to park any visitor's vehicle on the driveway.
3. The proposed general location of the carport is the most appropriate position for any alternative covered on site car accommodation and could also provide covered access to the front door of the dwelling.

4. Car parking on the street is very limited due to the road width and the number of access driveways. It is desirable that all possible vehicles be parked within property boundaries.
5. The reasons given by Maroochy Council for their refusal of the application cited issues of contributing positively to the streetscape, maximising public safety and preserving the amenity of adjoining properties. The conditions attached to the decision of this Tribunal address these issues, as detailed below.
6. Code 4.1 of the “Codes for Residential Development and Use” contained within Maroochy Plan 2000 covers the development of detached houses and sets out specific performance criteria. A positive contribution to the streetscape can be achieved together with the preservation of the amenity of the adjoining properties. To do this it is proposed that the carport have a skillion roof of the same pitch as the roof of the dwelling and slope towards the street. The height of the carport roof at its closest point to the street is to be kept to a minimum. In this way the proposed carport will blend with the existing character of the dwelling.
7. A further criterion of Code 4.1 is that driveway locations should not be hazardous to persons or vehicles using the roadway. The existing car parking arrangements cannot be modified to comply with the Planning Scheme and cannot meet the owners’ requirements. Continued use of the existing driveway is a potential hazard to the public and other vehicles. A carport in approximately the proposed location, however, would address the safety issues.
8. A minor change to the carport location would allow for additional landscaping to be provided. Landscaping between the carport and the adjoining neighbour will maintain that neighbour’s amenity. Landscaping on the road reserve adjacent to the carport will preserve the streetscape.
9. It is reasonable and relevant to condition the approval so that the existing driveway must be removed at the time any new driveway is constructed. This addresses the planning scheme provision limiting driveways to one per property. This may, however, be considered by the owners to be undesirable. In that event there would need to be a separate application made to the local authority for the retention of the driveway. That application would need to be dealt with on its own merits.

Geoff Cornish
Building and Development
Tribunal Chair
Date: 10 September 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:

The Registrar of Building and Development Tribunals
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