



APPEAL

File No. 3-06-028

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under section 21 of the *Standard Building Regulation 1993* against the decision of the Maroochy Shire Council to refuse an application for a variation to the siting provisions of the Maroochy Shire Town Planning Scheme (Application No PBA06/0020) for the location of:

A metal roofed and cement fibre board clad Class 10a garage within the road boundary setback of 6.0m at “the subject site”.

Date and Place of Hearing: 9.30am on Wednesday, 29 March 2006 at “the subject site”

Tribunal: Gregory Schonfelder

Present: Applicant/Owner
Cr Ted Hungerford – Maroochy Shire Council
Brian Benporath – Maroochy Shire Council

Decision

I determine that the requirements of the Decision Notice to refuse the approval (Application No.PBA06/0020) for the siting of a Class 10a garage within the 6.0m, *withheld* road boundary setback are set aside and approval is granted subject to the following conditions:

- The proposed garages roof structure shall be changed so that it forms a gable with the ridge running north-west to south-east. The end walls shall be gable or alternatively hip ends could be employed to further lower the roof line. The external wall of the garage with the two doors which faces the street shall have a maximum height of 2.4m to the pitching plate and the roof pitch shall be the minimum for the existing custom orb which is (1:12). The roof can remain over the access stairway to the dwelling if required and approval for additional posts for this structure would be approved if necessary.

- The submitted drawings for the siting variation (drawing 26731.3 Des Skinner Design/Drafting/Construction) with the roof changed form part of this approval.
- Any changes to the original Building Approval for the carport shall be incorporated into the new approval for the proposed changes.
- This setback from the west boundary should be adequately landscaped to minimise the impact of the building on the streetscape.

Background

The applicant explained the basis for his original application to Council for a siting variation and the basis for their appeal in that:

- In the decision notice for the proposed garage (cladding the existing carport) the Council did not address the specific issues of this application and just used an extract of the performance criteria of the Planning Scheme as the grounds for refusal.
- The existing carport provides little if any protection from the weather and wildlife. Also it does not provide any security for the vehicles and especially the equipment both within the vehicles and stored within the structure. With the establishment of a new business there is now stored heavy and expensive equipment which is not possible to easily relocate elsewhere on the property because of the terrain.
- The building was previously surrounded and enveloped in vegetation but has been exposed with permitted removal of the trees and shrubs.
- The building, being an existing structure, when changed will not greatly increased impact on the streetscape and neighbourhood. The dwelling has been extensively renovated and it is proposed that with similar work, the garage can be made an asset to the area whereas the existing carport is in need of some work.
- The existing location is the preferred area for vehicular parking on site. To relocate the building to the southern boundary would impact on the neighbour, force the removal of considerable existing landscaped area and may have to be tandem parking to fit the alternative location.
- Additional landscaping is proposed to be introduced to soften and screen the building from the streetscape and neighbouring properties.
- Because of the nature of the road reserve adjacent to the property the existing building appears to be setback further from the lot boundary than the actual measurement.

The Council's representatives responded to their refusal in that:

- The carport on this property was built in 1998 pursuant to the legislation current at the time, being the Standard Building By-Laws, at a distance ranging from 1.624m to 3.28m from the front (road) boundary.

- These bylaws allowed a carport to be constructed within the 6.0m road setback subject to the building being open (not less than 10% of its perimeter being posts, supports etc).
- Because of the severe slope of the subject property the location of the open carport could be justified.
- The owner of the property proposes to enclose this existing building on the basis of security of vehicles and equipment which is associated with his new business.
- The intent of the Planning Scheme is to protect the streetscape and ensure that the built form does not dominate the streetscape and ensure that buildings contribute positively to the streetscape and preserve the amenity of the adjacent land dwellings by having regard to: views and vistas, building character and appearance and casual surveillance. The Council contends that the carport in its current form is allowing views and vistas to the horizon through the building. Also that this building is the only one in the immediate surrounding area within the 4.5m road boundary setback. The building appears a pleasing structure which blends into the background and does not dominate the streetscape.
- The proposal will shut the views and vistas which currently exist from the street and by being enclosed will stand out and dominate the streetscape.
- The streetscape appeal of the Buderim area is important in the consideration of reducing setbacks and the precedents which could be set which conflict with the intent of the Planning Scheme.

Material Considered

1. Siting Variation Advice from the Maroochy Shire Council dated 17 November 2006 to refuse the application for (Application No PBA06/0020) for the siting of a Garage within the road frontage setback.
2. Appeal (Form 10) dated 17 February 2006 and accompanying notes, siting variation application, copies of plans, copies of neighbours comments on the application, extract from RP Data Report on the property and photographs from the applicant.
3. Extract from the Maroochy Shire Council Planning Scheme for Residential Development and Use and written submission form Maroochy Shire Council.
4. The Standard Building Regulation 1993.
5. The Integrated Planning Act 1997.

Findings of Fact

1. The proposal as submitted was for cladding, fitting garage doors and the replacement of windows to the existing double carport with a 3.28m setback (north) and 1.624m setback (south) from the road boundary (west).

2. The elevation to the street of the existing carport shows a gable end with a skillion (lean to) attached. The drawings were not dimensioned but the building is approximately square with a floor area of 36.0 square metres.
3. The proposal would allow the existing vehicles and equipment to be housed securely where currently the carport is separate from the dwelling and at the road level.
4. The majority of surrounding properties are similar in size, development types and landscaping and appear to have similar setbacks to the dwellings from the road boundary, although this existing building (carport) is closer to the road boundary than other outbuildings within the immediate vicinity.
5. The road reserve adjacent to the existing building is deeper than the balance of the street as shown on the site plan submitted for the siting variation.
6. The acceptable solution of the Maroochy Shire Council, Residential Development and Use Code for Residential Precincts for garages is 6.0m.

Reasons for the Decision

The application of external cladding and the addition of garage doors to the existing carport will have some impact but will not produce a negative contribution to the streetscape and amenity of the adjacent area.

Some views will be lost through the building but these are affected whenever there are vehicles housed and with the reduction of the roof line will have the effect of minimising the dominance of the building on the streetscape.

The character and appearance of the building will be enhanced with the proposed alterations and this will blend in with the surrounding properties of which many have undergone extensive refurbishment.

Casual surveillance of the street is not inhibited from adjoining properties by the cladding of the existing structure and because the appurtenant dwelling is well below the street level this will not impact on this property at all. The secure ring of the vehicles and equipment in a garage rather than an open carport because of its location will be enhanced for the owner.

The ability for a front fence to be constructed up to a height of 2.0m without restriction negates the impact of in this case an open light weight structure.

The problem of precedent needs to be considered but each application should be considered on its merits and not provide an avenue to allow uncontrolled development within the road boundary setback.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 17 April 2006

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.

Enquires

All correspondence should be addressed to:

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