



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-06-078

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 a Development Application – Preliminary Approval for Building Works (variation to the siting provisions) of the Maroochy Shire Town Planning Scheme (Application No PBA06/0228) for the location of:

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

Date and Place of Hearing: 2.00pm on Thursday 24 August 2006.
On site at “the subject site”

Tribunal: Gregory Schonfelder

Present: Applicant / Owner
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 extension within the 6.0m Bando Street (road boundary) setback is **set aside** and approval is granted **subject to the following conditions:**

- The proposed extension to the garage shall be located at 3.0m to the road boundary in lieu of the prescribed 6.0m.
- The proposed roof structure shall be changed so that it forms a hip end to lower the roof line to the streetscape.
- The proposed external garage wall containing two doors, which is facing the street shall have the same height as the existing garage. The roof pitch shall be the same as the existing building.
- The proposed roof and wall cladding shall be the same material and colour of the existing garage.
- This setback from the west boundary and east side of the garage extension including the driveway should be adequately landscaped to minimise the impact of the building on the streetscape. Subject to the approval of the Maroochy Shire Council increased planting on the road reserve near the entrance to the property can assist the screening of this building.

Background

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

The existing garage is 6.0m from the fence line and the proposal is to extend this out only 3.0m so that it would be 3.0m from the road boundary.

The extension is required to accommodate two vehicles and a large 5.0m aluminium boat.

The site is a small block with no access to the back yard. The building can not be repositioned to the rear as it would interfere with the existing water tank, pergola and living area. In the near future it is proposed to construct a swimming pool in this area at the back of the garage. The position of the swimming pool is restricted by the location of the sewerage line. (On site this was identified as the house connection drain).

There is no neighbour on the garage side (west) of the property only an easement and a drain. The garage is on the right side of the house at the end of a cul-de-sac therefore there is no obstruction to anyone's views (see submitted photos).

The style of the garage will not change in anyway and will look as it does only 3.0m longer. Also it does not provide any security for the vehicles and especially the boat.

The extension proposed to the building being an existing structure when changed it will not greatly increased impact on the streetscape and neighbourhood.

Additional landscaping is proposed to be introduced to soften and screen the building from the streetscape and neighbouring properties.

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

This property consists of a single storey dwelling and garage on an allotment having a frontage of 18.105m a depth of 30.175m and an area 546.32m².

The existing garage has a setback of 6.0m, which is in accordance with Council's Town Planning Scheme requirements.

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 building in its current form does not dominate the streetscape.

"*withheld*" is one of four streets that are cul de sac streets connected by "*withheld*" Street to the east and blocked off by an open drain and drainage easement to the west. These four streets and "*withheld*" Street have all buildings well setback and landscaped front gardens. The built streetscape does not dominate the streetscape. (There are two exemptions to this being one carport opposite the subject property (demolished prior to the day of the appeal) and one in the street behind. Both structures were built without approval.

The intention of the Planning Scheme requiring 6.0m setback from the frontage is to allow for car parking in front of the garage without the cars protruding onto the road reserve and also to prevent the buildings and garage doors dominating the street.

All properties in this locality are small less than 600m² blocks. It is very easy for these lots to rapidly become overbuilt as people try to cram more and more into them to the detriment of the area.

The streetscape appeal of this street in the Pacific Paradise 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 22 July 2006 to refuse the application for (Application No PBA06/0228) for the siting of a Garage within the 6.0m road frontage setback;
2. Form 10 – Building and Development Tribunal Appeal Notice dated 31 July 2006 and accompanying notes, copies of plans, copies of neighbours comments on the application from Street No.'s 3, 4, 5 & 6 , and photographs from the applicant;
3. Inspection of the property during Site Visit;
4. Written submission from Maroochy Shire Council;

5. *The Standard Building Regulation 1993*; and
6. *The Integrated Planning Act 1997*.

Findings of Fact

During the site inspection it was noted that the dwelling and garage were setback from the road boundary at least 6.0m and the side setback to the garage was 2.0m from the western boundary. There is a double vehicle concrete apron in front of the garage providing off street car parking. This double driveway extends out onto the road reserve at least 3.0m and then joins the asphalt driveway, which at that point is also 6.0m wide.

The area along the easement drain and the end of the cul-de-sac is heavily landscaped and this forms a natural barrier which separates properties on the east side on the drain to those on the west.

The proposal as submitted was for the extension to the existing Class 10a Garage and to relocate the existing external wall with two roller doors 3.0m closer to the road boundary maintaining the existing 2.0m setback from the west boundary.

The elevation to the street of the existing garage shows a gable end and it was proposed to relocate this existing wall.

The proposal would allow the existing vehicles and boat to be housed securely where as currently they cannot fit in the existing garage.

The majority of surrounding properties are similar in size, development types, landscaping and appear to have similar setbacks to the dwellings from the road boundary.

The road reserve adjacent to the existing building is deeper than the balance of the street as shown in the submitted photographs and during the site visit. The actual road surface stops before the east boundary of the property and vehicular access is provided by a narrow asphalt driveway serving the two properties at the end of the cul-de-sac.

The existing garage and buildings in the vicinity are raised to be above the estimated flood level and this level of fill is noticeable from the west side of the property where the retaining walls are evident.

The existing gable end of the garage if brought forward may impact on the streetscape and surrounding area.

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 removal of the gable end from the proposed extension and the introduction of a hip roof lessens the impact on the streetscape and although the encroachment into the road boundary setback will have some effect it will not produce a negative contribution to the streetscape and amenity of the adjacent area.

Some views may be lost down the street towards to easement but with the reduction of the roofline it will have the effect of minimising the dominance of the building on the streetscape.

Casual surveillance of the street is not inhibited by this extension as the property only borders a residential property to the east. 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 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.

The introduction of appropriate landscaping will minimise the effect of the building on the streetscape and immediate area.

The location of the property in this case where the road pavement does not extend to the full extent of the cul-de-sac and the landscaping of the easement creates a screening effect to the proposed extension of the garage and will not greatly affect the building character and appearance of the locality.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 11 September 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.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government, Planning, Sport and Recreation
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248