



APPEAL
Integrated Planning Act 1997

File No. 3/03/006

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council
Site Address: 4 Pavilion Court, Mudjimba.

Nature of Appeal

Appeal under Section 20 of the Standard Building Regulation 1993, against the decision of Maroochy Shire Council not to grant a relaxation of the side boundary setback requirements on land described as Lot 58 SP131493 and situated at 4 Pavilion Court, Mudjimba. Q. 4564.

Date and Place of Hearing: 10.30am. Tuesday 11th. February, 2003.

Tribunal: Peter John Nelson
Present: Applicant
Richard Prout – Maroochy Shire Council
Phil Smith – Maroochy Shire Council

Decision

The decision of the Maroochy Shire Council as contained in its letter dated 23rd. December, 2002 (Ref. RPP:HMF:PBA02/0808), refusing permission for the relaxation of the side boundary setback, is **set aside**, and the following decision replaces the decision set aside:-

A reduced set- back side boundary distance of 1200mm. from the outermost projection of the first floor roof/awning as shown on the plans supplied by Anchor Mortlock Wooley (Architects), 6 pages in all but not dated or numbered but with Suncoast Building Approvals stamp thereon is **approved** subject to the following conditions:-

- a. The relaxation shall only be permitted over the first floor window openings as shown on the South Elevation drawing on sheet 5. The balance of the awning/roof overhang to be reduced to 2mtrs. as required by Maroochy Shire Council.

Background

During discussions with the parties certain alternatives were discussed and in some respects agreed. The house has been sited too close to the side boundary for the design to comply, and I believe this to be an error on the builder's part, as the approved drawings clearly show a minimum setback of 2mtrs be maintained.

Council argued that the roof/awning projection was in fact roof overhang and therefore must comply with minimum setback requirements. I do not entirely agree with this view and regard the awning/roof projection as an awning because of the way it has been set below the guttering of the main roof and is held in place by awning style cantilevered supports. As an awning under the Council's regulations a boundary setback distance of much less is permitted.

The residence to be erected to the South of this building has been designed, but plans have not been made available to me to consider the impact that the boundary relaxation might have on this residence. I must assume that Northern aspect will be sought for this residence and that some impact will occur to this residence.

Taking into account Council's concerns in regard to the adjoining residence and possible shadow casting and overcrowding, I therefore impose the condition that the relaxation is only granted over the Southern first floor windows. This allows for the awning/roof element, to remain in balance, and turn the corner off the front boundary around the side. This will maintain the balance of the design as intended by the architect.

Material Considered

1. Appeal documentation including Council's correspondence.
2. Photographs labelled exhibits C,D,E & F.
3. Letter from Suncoast Building Approvals labelled exhibit A.
4. Letter from Maroochy Shire Council dated 10th. February labelled exhibit B.
5. Verbal submissions by representatives of Maroochy Shire Council and the Appellant.
6. Surrounding residences and local amenity.

Findings of Fact

1. The design prepared by the architect was of a superior nature and in keeping with the tone of the immediate area.
2. The Council had agreed to a zero lot boundary on this boundary, for the garage of the residence.
3. The proposal may obstruct some light to the adjoining residence to be constructed, so I have conditioned the length of the relaxation to be only over the two first floor windows.
4. The Council has the discretion to vary the building setback under Section 48 of the Standard Building Regulations 1993.
5. The building could have been sited in such a way as to comply with Council's requirements, but has been set out incorrectly.
6. The slab and frame of the building is already constructed thus causing considerable hardship if moving the building was the only alternative.

Reasons for the Decision

1. I believe that the siting of the building in its present location was an unintentional error.
2. The design and balance of the building would be destroyed if the awning/roof element were cut off short on one side.
3. The setback is only needed for a short length of an awning/roof element at first floor roof level.
4. Council has agreed to a zero lot line for the garage on this same boundary.
5. I do not agree that the privacy of the adjoining residence will be compromised.
6. As this area is on the southern side of the building I do not agree that the landscaping of the area will be compromised.
7. I do not agree that the small infringement will overcrowd the allotment.

PETER JOHN NELSON
Building and Development
Tribunal Referee
Date: 25th. February, 2003.

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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Department of Local Government and Planning
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