



APPEAL
Integrated Planning Act 1997

File No. 3/03/044

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council.
Site Address: 9 Alexander Street Aroona
Applicant: K Smith, c/o Suncoast Building Approvals,

Nature of Appeal

An appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Caloundra City Council to refuse an application for a road boundary setback relaxation for a proposed new dwelling to be erected on land described as Lot 121 RP 140775 and situated at 9 Alexander Street Aroona.

Date and Place of Hearing: The hearing commenced at 2.25 pm, on Wednesday August 13 2003, on site at 9 Alexander Street Aroona.

Tribunal: Bert Dean.

Present: Mr. Stewart Magill, Building certifier of Suncoast Building Approvals representing the owners.
Mr. Robbie Pocock, Principal Building Surveyor, Caloundra City Council.
Owners.

Decision

The Councils' decision to refuse the application for road boundary setback relaxation is **confirmed**. It is confirmed that a front boundary setback of 6.00m to the outermost projection of the proposed new dwelling is required.

Background

The applicant applied to the Council for approval to construct a new dwelling incorporating an enclosed garage in the dwelling, at 9 Alexander Street Aroona. The application sought a relaxation to site the dwelling at a front boundary setback of 4.0m in lieu of the normally required setback of 6.0m.

The proposal included a request for a relaxation of the normal maximum height permitted for the dwelling. The application for height relaxation is not a matter controlled by the Building Act and is therefore not dealt with by this decision.

Council refused the application for boundary setback relaxation, advising-

- (a) The proposed garage will unduly overcrowd the front of the allotment.
- (b) The garage if constructed would not be in keeping with the neighbourhood as the existing dwellings are located six (6) metres from the front boundary.
- (c) Sufficient reasons addressing Section 48 of the Standard Building Regulation have not been provided.

The owners on each side of the proposed development provided written advice that they had viewed the plans for the proposed building work and raised no objection. A letter from each adjoining side owner accompanied the appeal documentation.

Material Considered

1. Appeal documentation lodged by the applicants, including architectural drawings numbered 256500A3 detail of survey; Plan No CAL 127/02R sheets 2, 3 and 4. In addition to other details these drawings showed the siting of the proposed dwelling and garage in relation to the property boundaries. It is noted that the development application documentation did not provide sufficient detail in relation to vehicle and pedestrian access at the front of the allotment.
2. Correspondence from the Council dated 16th May 2003 (2 letters), and 2nd July 2003 refusing the application for relaxation, giving reasons and advising the applicants of appeal provisions.
3. Verbal submissions from the applicant and owners supporting the proposed development.
4. Verbal submissions from the representative of Caloundra City Council outlining the Council's assessment of the application. The representative advised that just prior to the hearing and during the hearing, the site circumstances, nature of adjoining property, and the nature of the relaxation sought had been re-evaluated. The Council maintained its objection to the proposal and could not establish good, sufficient or legitimate reasons to favorably determine the application.
5. Inspection of the development site, other development in the area, adjoining property and adjoining roadway circumstances. The facts and circumstances of traffic in the area, in relation to the proposal were also considered.

6. Correspondence from the adjoining neighbors on the Northern and Southern side advising they had viewed the plans for the proposed building work and had no objections whatsoever to the proposal.
7. Letter dated 6th May 2003 from Sunshine Coast Inspection Services supporting the application for relaxation.
8. Letter dated 28 July from Suncoast Building Approvals to the Registrar supporting the application for relaxation.

Findings of Fact

I made the following findings of fact-

1. The allotment at 9 Alexander Street has a generally even fall towards the rear, as shown on the drawing submitted. Filling will be required to provide driveway access to the enclosed garage incorporated in the front of the dwelling. Detail of the extent of the fill has not been shown on the drawings.
2. Construction of an enclosed garage at the reduced setback would provide undesirable restrictions on off street parking. It would lead to vehicles parked on site but not garaged, projecting beyond the property boundary.
3. No examples of dwellings fronting Alexander Street having front boundary set back distances less than 6.0m were noted.
4. In assessing the application of Section 48 of the Standard Building Regulation 1993, the Local Government is required to consider the following matters:

(a) the levels, depth, shape or conditions of the allotment and adjoining allotments

The allotment and adjoining allotments are of similar size and are generally of similar gradient. There are no extraordinary circumstances associated with this site to support the relaxation sought. The proposed reduced front setback would introduce detrimental effects in relation to off street parking.

Because of the curve in the roadway outside the site and the gradients of the Alexander Street roadway special attention will be needed to ensure safety for vehicles entering and exiting the site, even at the required 6.0m setback.

(b) the nature of any proposed buildings or structures on the allotment

There are no precedents for relaxed front boundary setbacks in the area. The proposed dwelling and garage has a significant area within the 6.000m setback. Requirements for setback from the side boundary comply with standard requirements.

The location, extent and nature of the proposed dwelling and garage are such that the garage will have negative impact in the area.

(c) the nature of any existing or proposed buildings or structures on adjoining allotments

There are buildings and structures on allotments fronting Alexandra Street. None of these provides precedent, which would support approval of the proposed reduced front boundary setback. Approval of the development at the setback proposed would result in the finished structure being in extreme conflict with the nature of similar development in the area. It is considered the 2.0m relaxation does introduce significant precedent in the area.

(d) whether the allotment is a corner allotment

This is not a corner allotment.

(e) whether the allotment has two road frontages

This allotment has only one road frontage.

(f) any other matters it considers relevant

The Council's decision notice did not indicate that it had considered any particular matters under this criteria. However the Council's representative noted during the on-site hearing that the reduced setback would unduly restrict off street parking for the development.

Council is concerned that the 4.0m setback would most likely result in vehicles parking in the property driveway projecting onto the footpath.

5. Under Section 48 (4) of the Standard Building Regulation the Local Government must also be satisfied that a relaxation would not unduly: --

(a) obstruct natural light or ventilation of an adjoining allotment

The proposed relaxation sought for this development would not give rise to any such obstruction.

(b) interfere with the privacy of an adjoining allotment

The proposed setback relaxation would not interfere with privacy of any adjoining allotment.

(c) restrict the areas of the allotment suitable for landscaping

The proposed relaxation would not restrict areas suitable for landscaping.

(d) obstruct outlook from adjoining allotments

The relaxation sought would not unduly obstruct outlook from adjoining allotments. Greater than minimum side setback distance has assisted in ensuring minimum obstruction.

(e) overcrowd the allotment

The proposed enclosed garage within the normal front setback would overcrowd the front boundary of the allotment.

(f) restrict off street parking for the allotment

The proposed reduced front boundary setback for development will restrict off street parking for the allotment. The proposed reduced front setback is likely to result in vehicles not garaged, projecting onto the footpath

(g) obstruct access for normal building maintenance

Access for normal building maintenance would not be restricted as a result of the proposed relaxation of front set back distance.

Reasons for the Decision

There are no extraordinary circumstances in relation to the site, which would warrant granting of the request for relaxation. Compliance with the standard setback distance will not result in the development being unduly difficult or expensive. It is considered that a reduced setback would produce significant difficulty with off street parking, and increase the hazards associated with vehicles entering and leaving the site.

The proposed development, incorporating a front boundary setback relaxation of 2.0m does not satisfy all the requirements of Section 48 of the Standard Building Regulation. It will have adverse impact on amenity in the area by its tendency to crowd the front property boundary and its restriction of off street parking on the site. Significant precedent would be created by approval of the request. Because of the curve in the roadway outside the site and the gradients of the Alexander Street roadway, even at the required 6.0m setback special attention will be necessary to ensure safety for vehicles entering and exiting the site.

It is therefore the decision of the Tribunal that Council's decision to refuse the application for boundary setback relaxation is confirmed.

The developer is required to have the drawings amended to show compliance with the required front setback of 6.0m in lieu of the 4.0m shown in the current drawings.

Bert Dean
Building and Development
Tribunal Referee
Date: 20 August 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
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
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