



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 03-07-020

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 the Maroochy Shire Council to refuse an application for Preliminary Approval for Building Works on land described as “the subject site”.

Date and Place of Hearing: 8:30am on Tuesday 27th March 2007
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: Applicants;
Mr Andrew Stewart - certifier for the applicants
Applicants’ architect
Applicants’ builder
Mr Steve Tucker - Maroochy Shire Council
Mr Fred Vicary - Maroochy Shire Council

Decision:

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 2nd March 2007, to refuse an application for boundary setback relaxation, is **set aside** and **the application is approved, subject to the following condition:**

- 1. The building shall be constructed in accordance with the plans lodged with the application, referred to as *withheld* - Drawing Numbers A-01 to A-14 inclusive, Issue D, dated July 2006.**

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- Letters of support from the two adjoining landowners received after the decision
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council, in particular the Code for the Development of Detached Houses and Display Homes and the Code for Development on Steep or Unstable Land;
- Council's Decision Notice dated 2nd March 2007;
- The Queensland Development Code;
- The Building Code of Australia Volume 2; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises *withheld* and is located at "the subject site". The site presently contains a large home over three levels plus a separate double garage off the rear lane. The house and garage are proposed to be renovated. The subject site is very steep, such that vehicular access is not obtainable from the *withheld* frontage but rather from a Laneway at the rear (western side) of the site. The site slopes steeply down from west to east, and affords spectacular views to the coast, predominantly in a south easterly direction, but also to the north east.
- Other homes in the locality are similarly designed and sited to take advantage of these views. Because of the topography, the adjoining house to the north is slightly higher than the subject house, while the adjoining house/s to the south are much lower.
- The planned renovations include converting the existing double garage off the rear lane into an open carport, but adding a double garage behind (east of) that carport on that same level. The plans also include a new "bedroom level" below that garage level, as well as extensions to the split-level living areas at a level further below. It is also proposed that the existing stairs adjacent to the existing garage (and located right on the northern boundary) be relocated such that access to those stairs is through the open carport, by shifting them further east and away from the northern boundary.
- Because of the slope of the land, building setbacks are required to comply with a 45 degree setback requirement for higher parts of the building, as shown in Figure 4-4.1(g) of the Code for Development on Steep or Unstable Land. The subject proposal has a number of minor encroachments into the setback areas defined by that Figure. It is relevant, however, that some of those encroachments already exist.
- The Council's refusal is based on its Code for Detached Houses, and in particular Element 8, Performance Criteria P2 which provides that:

Buildings and other structures are designed and sited to minimise adverse impacts on amenity of neighbouring sites having regard to:

- (a) *Natural light and ventilation*
- (b) *Views and outlook*
- (c) *Privacy.*

- At the hearing, the Council officers explained that their primary concerns were the impact on neighbours views and privacy, especially the neighbours to the immediate north. On the inspection, however, a letter of conditional support from that neighbour was provided and inspection reveals that the windows in the adjoining house potentially affected were bathrooms, a stairwell and one bedroom. No living area windows were likely to be affected.
- It was also noted at the inspection that any impacts to views would be caused by a complying proposal, and that the relaxations sought in this application did not exacerbate those impacts.
- The encroachments of relevance in this appeal included a small roof overhang, a section of the garage stairs referred to above, a portion of a roof over an open deck, and a portion of the bedroom/s walls. Diagrams were helpfully prepared by the architect showing the location and extent of these encroachments, which were agreed on site to be relatively minor. It is evident that the majority of the proposed building will comply and that, for the most part, the areas of the upper level/s that do not comply are similar to, or better than, the existing construction.
- Notwithstanding this, Council's concerns are legitimately held that the proposed building should not impinge on light and ventilation, views and outlook, or privacy - both for residents of the adjoining properties as well as for the residents of the subject site.

Based on my assessment of these facts, it is my decision that **Council's decision** to refuse the Application for relaxation of boundary setbacks is **set aside** and **the application is approved, subject to the following condition:**

1. **The building shall be constructed in accordance with the plans lodged with the application, referred to as *withheld* - Drawing Numbers A -01 to A-14 inclusive, Issue D, dated July 2006.**

Reasons for the Decision

- The proposed renovations will improve the character of this locality by upgrading the visual appearance of the house, in line with other homes in the vicinity.
- The design of the proposed renovations is such that the proposed encroachments into the side boundary setbacks will not, in my opinion, cause any detrimental impacts to natural light and ventilation, views and outlook or privacy for either the residents of the subject house or its neighbours.
- Any impacts caused by these minor encroachments will not exacerbate the situation that would be created by a complying building, so that, if I am wrong and there are impacts caused by this proposal, they are not caused by the proposed encroachments.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 28th March 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:

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