



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. Insert No. 3-05-086

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 SBR05/0144) in relation to a metal framed and roofed Class 10a carport within the road boundary setback of 4.5m on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 9.30am on Tuesday, 31 January 2006.
At Maroochy Shire Council Chambers,
L5, Maroochy on First Avenue, Maroochydore.

Tribunal: Gregory Schonfelder

Present: *withheld* – Applicant/Occupier
withheld – Owner
John Dunn – Maroochy Shire Council
Neil Messinbird - Maroochy Shire Council

Decision:

I determine that the decision of the Maroochy Shire Council to refuse the approval (Application No.SBR05/0144) for the siting of a Class 10a Carport within the 6.0m road boundary setback is **set aside** and approval is granted for the siting of a double carport **subject to the following conditions:**

1. The proposed carport shall be moved to the west so that it is located at setback of 1.1m from the east boundary of the lot to the supporting structure (posts) and shall have an internal width between the posts of 5.5m. This setback from the east boundary should be adequately landscaped to minimise the impact of the building and fence on the streetscape.
2. The roof overhang (eaves) of the carport if required is to be similar encroachment into the setback to those on the dwelling.
3. The existing stairway and landing which provides access to the dwelling shall be modified (posts removed and the structure cantilevered or otherwise supported) so that a vehicle can be parked in this space and clear height in this area of the carport is at least 2.0m.
4. The existing landing to the front door of the dwelling may be extended if required across the front of the dwelling/carport to the east wall of the dwelling subject to a privacy screen being installed to this east end.
5. The posts of the carport closest to the road boundary shall be setback to allow the sliding gate to be installed and to preclude the fitting of a garage door to the carport.

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 proposed carport is compatible to the existing dwelling and streetscape as can be seen in the photograph provided.
- There are several similar structures in the surrounding area, within the front setback and similar design (curved roof).
- There are many high security type fences in the surrounding area and the horizontal custom orb is compatible and used in several designs.
- There is a need for extra secure off street car parking as *withheld* Street is subject to bad “hoonish” behaviour after dark. There have been several instances of damage to vehicles including broken aerials and emblems removed.
- There is also a requirement for more off street car parking as the property is within the 40km school zone so when the school children are dropped off or picked up on school days parking outside the property is at a premium.

- As the property has a 10m frontage there is no space available for vehicular parking on either side of the dwelling.
- Currently there is parking for only 2 vehicles and a toolbox trailer however there are 3 vehicles and a sailing dinghy on the property.
- It is proposed to house the trailer under the house for security purposes with the dinghy and classic car and have the 2 main vehicles under the carport.
- The carport varies in height from 2.8m down to 1.8m and is not visually implosive on to the street.
- The house faces south so this structure has no effect on neighbours in regard to views and vistas, overshadowing or privacy.
- No neighbour letter can be obtained regarding this proposed structure.
- It is proposed to continue the 2.0m as of right front fence and include an automatic sliding gate of similar height. This will obscure the carport from the street and therefore lessen the impact on the streetscape and provide much needed privacy.

The Council's reasons for refusing the application are:

- Code 4.1 – Code for Development of Detached Houses, Element (1), P1 Buildings and structures must not cause significant loss of amenity to adjacent land and dwellings having regard to: overshadowing, privacy and overlooking, views and vistas, building character and appearance, and building massing and scale as seen from adjoining properties, and P2.1 Buildings and structures must be sited to contribute positively to the streetscape, maximise community safety and preserve the amenity of adjoining land/dwellings having regard to the following: views and vistas, building characters and appearance, casual surveillance.
- Advice from Councils' Urban designers is that this development is inappropriate within the front setback of residential lots.
- Council has considered the application to be for a single carport because of the dimensions indicated on the submitted drawings.
- Council has great concerns regarding the positioning of buildings and structure in the front corner of lots which do not allow for landscaping along the common (side) boundary, allow for streetscapes of garage doors, and increase the bulk effect along the streetscape. In assessing this application the Council officer considered the zero setback from the road boundary is in conflict with the setback performance criteria and the acceptable solution of 4.5m for the Residential precinct.
- When considering these structures the preference is that the structural supports towards the road boundary are setback at least 1.0m to avoid the fitting of a garage door/s at a later stage.

- Council considers that there is a distinctive and consistent setback of the buildings from the road frontage within the local environment and the proposed location of the carport will likely generate adverse amenity impacts on the local environment.
- Precedent is a major factor why Council does not support the applicant's proposal. The approval of these proposals results in an eroding of the areas amenity and ultimately the intent of the Code for Residential Development and Use within the Maroochy Plan 2000.

Material Considered

1. Siting Variation Advice from the Maroochy Shire Council dated 22 November 2005 to refuse the application for (Application No SBR05/0144) for the siting of a carport within the road frontage setback.
2. Appeal (Form 10) dated 22 November 2005 and accompanying notes and photographs from the applicant.
3. Extract from the Maroochy Shire Council Planning Scheme for Residential Development and Use.
4. The *Standard Building Regulation 1993*.
5. The *Integrated Planning Act 1997*.

Findings of Fact

1. On the drawing 140905.01 submitted, the existing dwelling is situated on a 507m² lot with a 10.08m road frontage to *withheld* Street, and is sited at a setback distance of 5.67m (to the wall) from this road boundary. The side setbacks (to the wall) are stated as 1.1m to the east and 1.3m to the west. It is an elevated dwelling with storage and vehicular parking on the lower level.
2. The proposal as submitted was for a new metal frame and roofed carport sited with a **zero** setback from the side boundary (east) and **zero** setback from the road boundary (south). The elevation of the carport shows a height of 2.88m on the west side sloping down to 1.8m on the east side which is on the lot boundary. The depth of the carport is 5.67m along the lot boundary (east) but only 4.7m along the west side because of the steps and landing on the dwelling encroach into this proposed area.
3. The proposal would house vehicles currently parked on the existing driveway (in the open) and in the street.
4. The surrounding properties are similar in size, development types, landscaping and appear from the submitted documentation to have similar setbacks to the dwelling from the road boundary.
5. The road frontage currently has a 1.80m high corrugated metal fence situated in the middle of the lot which is approximately 4.0m in length. The proposal is to continue the

fence to the west boundary of the lot and install a sliding gate of similar material and height across the new driveway. In the photo make up of the proposal this gate was shown as only approximately 1.2m high but the intent was to be the same height as the existing fence.

6. The acceptable solution of the Maroochy Shire Council, Residential Development and Use Code for Residential Precincts for carports is 4.5m.
7. The Queensland Development Code, Part 12, Section A8(a)(i)(B) states for a double covered parking space the dimensions are 5.0m long by 5.5m wide

Reasons for the Decision

To site the carport away from the east boundary would allow for adequate landscaping to this area and this would break up and minimise the impact on the streetscape

The increase to the width of the carport and change to allow a full car-parking bay to the west side provides a better outcome with a structure which is now more adaptable and consistent with standard dimensions for parking spaces.

The building is to be constructed of a light type of construction and is low on the east side which will minimise the effect of having a building within the front setback.

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, lightweight structure. It also appears there is no restriction on the width of crossing for this narrow block which would allow this proposal to be approved.

The problem of precedent needs to be considered and the Planning Scheme may need further amendment if the object is to minimise or restrict development within the road boundary setback.

Some aspects of this decision were negotiated during the hearing and it was pleasing that this outcome could be achieved with input from both sides.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 28 February 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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