



APPEAL

File No. 3-02-027

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

Site Address: 65 Broadsea Ave Maroochydore

Nature of Appeal

An appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Maroochy Shire Council to refuse an application being a preliminary approval for building work.

Application being a siting concession required to build a carport within the 6M setback, on property described as lot 191 RP 124204, situated at 65 Broadsea Ave Maroochydore.

Date and Place of Hearing: 10.30am, Friday 5th July 2002
at the office of Maroochy Shire Council,
cnr Currie & Bury Streets
Nambour

Tribunal: Debbie Johnson

Present: Applicant
Applicant's representative, Mr Zane Russell.
Mr Richard Prout, Maroochy Shire Council.

Decision

The decision of the Maroochy Shire Council to refuse an application for preliminary approval for building works, Application No PBA02/0310, as contained in its written notice dated 23rd May 2002, is set aside and replaced by the following decision.

The application for preliminary approval for building works (siting variation – Class 10a building) on Lot 191 RP 124204 situated at 65 Broadsea Ave Maroochydore is approved.

Building line to Buna Street maybe varied for the siting of an open carport to 3.4M as proposed on the Site Plan prepared by TITAN ENTERPRISES PTY LTD.

Background

An application was made to the Maroochy Shire Council for a development approval for building work to enable a double carport to be constructed within the front boundary setback of the property.

The applicant originally sought approval through a private certifier for a building approval to erect a Class 10a carport within the 6M street setback. This application required the private certifier to seek the advice of the local government under the provisions of Section 20 of the Standard Building Regulation. Application was therefore made to Maroochy Shire Council by the private certifier on 18th December 2001. This application was refused on the 2nd January 2002 and that decision was not appealed. The Applicant subsequently lodged a complaint to the Ombudsman, alleging an unreasonable refusal by the Council.

The Ombudsman replied to the Applicant on the 9th April 2002, advising the Applicant that Maroochy Shire Council would accept a second application for consideration. The Applicant lodged a new application with Maroochy Shire Council on 22nd April 2002. Different officers to those on the previous application reassessed the application. The applicant was advised on the 23rd May 2002 that his application was again refused and this decision has been appealed. The advice given by Maroochy Shire Council to the applicant was that the appeal rights existed under the Integrated Planning Act.

There are questions raised as to the jurisdiction of a Building and Development Tribunal to determine such an appeal and this matter is addressed as follows.

- a) The development approval applied for was for building work.
- b) Building work is a matter under the Integrated Planning Act that related to the Building Act 1975.
- c) Section 4.2.7 of the Integrated Planning Act prescribes the rights of appeal to a Tribunal and limits those rights to only that part of a development application assessed against the Building Act 1975 or a matter prescribed under a regulation.
- d) Maroochy Plan 2000 states that the provisions of the Standard Building Regulation will apply as “acceptable measures” where relevant in the Council’s “Code for Residential Development and Use”, except for the provisions in Section 37. In so doing, Council has set out to reject “necessary or expedient” as being grounds for approval. (Maroochy Plan 2000 has since been amended; amendments were effective 7th May 2002).
- e) Maroochy Shire Council has not prescribed any alternative “acceptable measures” for an assessment under section 37.
- f) Section 37 forms part of Division 2 of part 3 of the SBR.
- g) Section 48 sets out the process for assessing an application to vary the provisions of Division 2 of Part 3 of the SBR.
- h) In the absence of any prescribed “acceptable measures” for Section 37, the method available for an assessment is that set out in Section 48 of the SBR.
- i) The assessment carried out by the Maroochy Shire Council was against the “acceptable measures” listed in Section 48 of the SBR.
- j) The Tribunal’s decision is limited to a review of the Council’s assessment of the application against those “acceptable measures”, and excludes any consideration of matters involving assessment under the Maroochy Plan 2000.
- k) As the development application was for building work and the siting assessment was made against the provisions of the Building Act 1975 called up in the Maroochy Plan 2000, the jurisdiction of the Tribunal to hear the matter is as defined in Section 4.2.7(2)(a) of the

Integrated Planning Act.

I am therefore of the view that this Tribunal has jurisdiction to conduct the hearing of this appeal.

Material Considered

1. Photographs of the Applicant's residence at 65 Broadsea Ave, and of 12 other residences in the immediate vicinity that appear to have carports built within the 6M street setback.
2. Locality plan, indicating the position of all residences in the photographs submitted.
3. Written statements of support for the application, by adjoining property owners, specifically; the resident of 71 Broadsea Ave, opposite 65 Broadsea Ave, the residents of 30 Buna Street, diagonally opposite 65 Broadsea Ave, the residents at 35 Buna Street, beside 65 Broadsea Ave.
4. Letter from the Applicant, presented to the Tribunal at the hearing.
5. Letter from Richard Prout, Maroochy Shire Council, presented to the Tribunal at the hearing.
6. Appeal form and attachments dated 21th June 2002
7. Decision notices from Maroochy Shire Council to the Applicant dated 2nd January 2002 and 23rd May 2002.
8. Letter from the Ombudsman to the Applicant dated 9th April 2002.
9. Letter dated 18th December 2001, from Suncoast Building Approvals requesting a siting variation on behalf of the Applicant.
10. Plans, being structural drawings of the proposed carport, Registered Plan 124204 and Site Plans.
11. Letters from the Applicant requesting a siting variation, dated 5th February 2002 and 22nd April 2002.
12. Maroochy Plan 2000.
13. Standard Building Regulation 1993.
14. Building Act 1975.
15. Integrated Planning Act 1997.

Findings of Fact

- The existing residence at 65 Broadsea Ave is single storey and setback from Broadsea Ave 5.1M, and from Buna Street 5.7M.
- The residence has a double lockup garage within the perimeter of the residential structure. There is also a Class 10a structure, being a double lockup steel garage on the site adjacent to the residence.
- All structures existing and proposed are less than 4.5M high.
- The site area of 65 Broadsea Ave is 506 SQ/M.
- Maroochy Plan 2000 prescribes carports on corner allotments may be setback 4.5M from the street boundary.

The Standard Building Regulation 1993

Section 48 - Local Government may vary the provisions of division 2

(3) The local government may consider the following:-

- a) *the levels, depth, shape or conditions of the allotment or the adjoining allotments;*

The conditions on 65 Broadsea Ave and the adjoining allotments are not exceptional. All allotments are level and basically rectangular in shape. The maximum dimensions of the allotment is 30.175 x 20.117. There is no easement on the site.

- b) *the nature of any proposed building or structure on the allotment;*

The proposed structure is an open carport class 10a, being steel framed. The size of the carport proposed is 30 SQ/M, with a maximum height of 2.8M.

- c) *the nature of any existing or proposed buildings or structures on adjoining allotments;*

The existing building on the adjoining allotment in Buna Street is also a single storey residence which has no siting variation to Buna Street. This adjoining allotment is also a corner allotment.

- d) *whether the allotment is a corner allotment;*

65 Broadsea Ave is a corner allotment.

- e) *whether the allotment has two road frontages;*

The site does have two street frontages to Broadsea Ave and Buna Street.

- f) *any matter it considers relevant.*

The Maroochy Shire Council has adopted through their planning scheme, specific siting requirements for carports on corner allotments. These requirements came into affect on the 7th May 2002 before the decision notice was issued to the Applicant. The local government has given weight to their planning scheme, when determining their decision, in accordance with Section 3.5.6 of the Integrated Planning Act.

(4) The local government must be satisfied that the building or structure built on the allotment in the way proposed would not unduly:-

- a) *obstruct the natural light and ventilation of an adjoining allotment;*

The proposed carport would not obstruct any natural light or ventilation enjoyed by the residents on the adjoining allotments. The proposed siting of the carport is approximately 8M from the nearest side boundary.

- b) *interfere with the privacy of an adjoining allotment;*

The proposed carport would not interfere with the privacy of the dwelling on the adjoining allotment, for the siting of the proposed carport is approximately 8M from the nearest side boundary.

- c) *restrict the areas of the allotment suitable for landscaping;*

The available area for landscape at the frontage of the site would not be restricted. The concrete slab and driveway tracks that would be utilised for the carport have been in existence for some time. The residence is currently well established and landscaped.

d) obstruct the outlook from adjoining allotments;

The outlook from the only adjoining allotment will not be obstructed. The owners of the adjoining allotment, have provided a written letter in support of the carport. They have specifically stated that they do not have any concerns with their views being obstructed.

e) overcrowd the allotment;

It is felt that the proposed carport would not overcrowd the allotment. All structures are single storey. The existing double lockup steel garage is sited 10M from Buna Street. The setback from Broadsea is 5.1M. The open carport would be 3.4M from Buna Street.

f) restrict off street car parking

The car parking will be increased on site to 4 lockup car spaces, with the proposed carport providing cover for the Applicants caravan. Currently the caravan is on site, on an existing concrete slab, where the carport is proposed to be sited.

g) obstruct access for normal building maintenance

The proposal would not obstruct normal building maintenance; it is unlikely that access for maintenance will be affected.

Reasons for the Decision

Section 48.3 and 4 of the Standard Building Regulation 1993 allow for local government to vary the application of siting regulations. In assessing the criteria from this part of the legislation, the Tribunal did find reasonable grounds for the varying of the street setback to Buna Street.

The impact of the proposed carport, is considered to be acceptable to the adjoining allotment, and those positioned opposite 65 Broadsea Ave.

Neighbouring residents provided letters of support for the application; these were submitted by the Applicant to the Tribunal at the hearing. This information was not provided to Maroochy Shire Council in either of the two applications made by the applicant.

DEBBIE JOHNSON
Building and Development
Tribunal Referee
Date: 17th July 2002

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
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248