



APPEAL
Integrated Planning Act 1997

File No. 3/02/049

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council
Site Address: 4 Moorings Circuit, Mudjimba.

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 of a triple garage proposed to be constructed on land described as Lot 624 SP 147368, situated at 4 Moorings Circuit, Mudjimba.

Date and Place of Hearing: 11.00am on 11 December 2002
at Maroochy Shire Council, Cnr Currie & Bury Streets, Nambour.

Tribunal: Geoff Cornish

Present: Applicant
John Hill – Applicant’s Private Certifier
Steve Tucker – Maroochy Shire Council
Phil Smith – Maroochy Shire Council

Decision

In accordance with Section 4.2.34 [2] of the Integrated Planning Act 1997, I hereby set aside the decision appealed against and grant a preliminary approval for a dwelling with a triple garage to be erected on land described as Lot 624 SP 147368, situated at 4 Moorings Circuit, Mudjimba, subject to the following conditions:-

1. The third garage shall be relocated from the left hand side of the dwelling to a position adjacent to the dwelling’s main entrance.
2. The third garage shall be stepped back from the alignment of the double garage by a distance of 2.4 metres, being the equivalent of the width of the third garage door.
3. The step back between alignments is to be covered by a pergola extending from the alignment

- of the front of the third garage out to the line of the fascia of the double garage.
4. Mature landscaping, to the satisfaction of Maroochy Shire Council, shall be installed and maintained at the road frontage of the allotment to provide suitable screening of the third garage.

Background

The matter concerns an application made to Maroochy Shire Council for a Preliminary Approval in relation to a triple garage that the applicant wishes to construct on his property as part of a new dwelling. The designers of the dwelling did not perceive a problem with the alternative siting provisions of Maroochy Plan 2000 and the matter only came to attention when the private building certifier was engaged.

A subsequent application for the necessary approval was refused.

Maroochy Plan 2000 makes reference to the siting of dwellings and outbuildings in Code 4 of the Plan. Code 4 is entitled Codes for Residential Development and Use. The Plan contains alternative siting provisions to those contained in Part 3 of the Standard Building Regulation (SBR) as permitted by section 45 of the Regulation.

There are, however, questions as to the jurisdiction of a Building & Development Tribunal to determine such an appeal. This matter has been addressed previously by other Tribunals, but needs to be readdressed here in relation to the specifics of this particular case. This matter was addressed as follows:-

- a) The development approval applied for was for a Preliminary Approval.
- b) The Preliminary Approval relates to building work.
- c) Building work is a matter under the Integrated Planning Act that relates to the Building Act 1975.
- d) 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.
- e) Maroochy Plan 2000 contains alternative siting provisions to those contained in the Standard Building Regulation as permitted by section 45 of the Standard Building Regulation.
- f) Maroochy Plan 2000 also provides that, where alternative siting provisions are not contained in the scheme, the requirements of the Standard Building Regulation apply under the Building Act 1975.
- g) The assessment carried out by Maroochy Shire Council was consistent with an assessment against the provisions of Code 4 of the scheme that contains the alternative siting provisions.
- h) Section 46 of the Standard Building Regulation requires a local government, where there are alternative siting provisions in a local planning instrument and a development application has been made to a private certifier, to assess compliance with the performance provisions in the local planning instrument. The private certifier must not approve the application unless advice has been obtained under section 20 that the application complies.
- i) The Tribunal's jurisdiction is limited to a review of the Council's assessment of the application against those performance provisions as they relate to alternative siting provisions and excludes any consideration of other matters involving impact assessment under Maroochy Plan 2000.
- j) The specific issue under appeal is the provision in the Code that precludes a maximum aggregate width of garage doors facing a street exceeding 6.0 metres. This effectively prevents a triple garage being provided for cars to be parked in parallel as required by the applicant.

- k) What is in doubt is what part of the provisions contained in Code 4 of the scheme actually constitute the alternative siting provisions against which an assessment must be made under section 46 of the SBR, as these are the only provisions to which the appeal provisions of Section 4.2.7 of the Integrated Planning Act apply. Whether the width of garage doors is included in this scope is not clearly defined in the scheme.
- l) In the absence of any definition in Maroochy Plan 2000 as to what provisions of Code 4 do not constitute part of the alternative siting provisions prescribed under the scheme, and as the measure of garage door width is included under the acceptable measures for an assessment of the performance provisions for the siting of buildings and structures, I am of the view that the assessment is a matter within the scope of section 46 of the SBR.

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

In an attempt to achieve a resolution of the matter, the parties agreed that they would not appeal the determination of the Tribunal's jurisdiction to conduct this appeal.

It is suggested, however, that the matter of what actually is included in the scope of the alternative siting provisions, and what is excluded, be clarified in the interests of all parties concerned, both now and in the future.

Material Considered

1. Suncoast Building Approval's application of 20 November 2002 to Maroochy Shire Council requesting a Preliminary Approval for the dwelling.
2. Suncoast Building Approval's letter of 3 December 2002 to Maroochy Shire Council submitting a modification to the application of 20 November 2002.
3. Maroochy Shire Council's Decision Notice dated 3 December 2002 refusing the Preliminary Approval application.
4. Building and Development Tribunals Appeal Notice dated 4 December 2002 and accompanying letter of 5 December 2002 from Suncoast Building Approvals to the Registrar.
5. Verbal submissions by the applicant and his private certifier on 11 December 2002 setting out why the application should have been granted and the appeal should be allowed.
6. Verbal submissions by Steve Tucker and Phil Smith of Maroochy Shire Council on 11 December 2002 setting out Council's reasons for refusal.
7. Copy of Code 4 of Maroochy Plan 2000 being the Code for Residential Development and Use.
8. Standard Building Regulation 1993.
9. Building Act 1975.
10. Integrated Planning Act 1997.

Findings of Fact

I made the following findings of fact:

1. Maroochy Shire Council has prescribed alternative siting provisions to those set out in the SBR by exercising its rights under section 45 of the Regulation.
2. The alternative siting provisions are set out in Code 4 of Maroochy Plan 2000 entitled "Codes for Residential Development and Use".
3. A development application to which section 45 applies was made to a private certifier.
4. The application did not comply with the prescriptive siting requirements of Code 4 of Maroochy Plan 2000.
5. The applicant applied for assessment of the building work against the performance provisions of the Code.
6. The building work had not already been assessed for compliance with Code 4.
7. As required by section 46 of the Regulation, Maroochy Shire Council undertook an assessment of the application for compliance with the performance provisions of the Code.
8. The aggregate width of all garage doors facing the street totals 7.2 metres for this dwelling. This exceeds the allowable limit set out in the Code by 1.2 metres.
9. The application was refused because it did not comply with the Maroochy Plan 2000, Code 4.1 Code for Residential Development and Use, Element 1, Performance Criteria P2.1.
10. Performance Criteria P2.1 states, "Buildings and structures must be sited to contribute positively to the streetscape, maximise community safety, and preserve the amenity of adjacent land/dwellings by having regard to the following:
 - views and vistas,
 - building character and appearance, and
 - casual surveillance."
11. The parties agreed that it should be possible to design a dwelling that did not meet the stated acceptable measures set out in the Code yet still satisfied the performance criteria.
12. The Tribunal has jurisdiction to hear the appeal.

Reasons for the Decision

After assessing the facts and the submissions of the parties, I have reached the conclusion that, for this particular site, a variation to the setbacks for the separate portions of the garage, namely the double and single garage sections, could achieve a result that met Performance Criteria P2.1 subject to certain conditions being satisfied, in particular-

- If the third garage were relocated from the left hand side of the dwelling to a position adjacent to the dwelling's main entrance.

- If the third garage were stepped back from the alignment of the double garage by a distance of 2.4 metres, being the equivalent of the width of the third garage door.
- If the step back between alignments were covered by a pergola from the alignment of the front of the third garage out to the line of the fascia of the double garage.
- If mature landscaping were installed and maintained at the road frontage of the allotment to provide suitable screening of the third garage such that the appearance of the total width of all garage doors facing the street did not exceed 6.0 metres.

G.S.Cornish
Building and Development
Tribunal Referee
Date: 17 December 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:

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