
JURISDICTION : TOWN PLANNING APPEAL TRIBUNAL

CITATION : ANTONAS and CITY OF STIRLING
[2003] WATPAT 15

CORAM : MR E A MCKINNON

HEARD : 23 MAY 2003

DELIVERED : 13 JUNE 2003

FILE NO/S : APP 182 of 2002

BETWEEN : PETER STANLEY ANTONAS AND BRUNA
ALPINA ANTONAS
Appellants

AND

CITY OF STIRLING
Respondent

Catchwords:

Residential Design Codes - Setback - Garage - Costs

Legislation:

Nil

Result:

Appeal allowed subject to conditions and refused Appellants' application for an order as to costs.

Category: B

Representation:

Counsel:

Appellants	:	Mr P Antonas
Respondent	:	Mr M Whitbread

Solicitors:

Appellants	:	In person
Respondent	:	As Agent

Case(s) referred to in decision(s):

Nil

Case(s) also cited:

MR E A MCKINNON:

- 1 This appeal arises from the conditions set by the City of Stirling for the erection of a Garage on Lot 1377 (HN 19) Learoyd Street, Mount Lawley (“**property**”).
- 2 The appeal was heard in accordance with the Town Planning Appeal Tribunal Rules 2003, Part 3 – Conduct of Class 1 Appeals. In the first instance the conduct of the appeal followed the traditional line of a mediation with the intention of proceeding to a more formal hearing if needed. It was acknowledged by Mr Whitbread for the respondent that he did not have authority to amend any of the conditions the subject of the appeal.
- 3 Documentation to support the appeal included:
 - (a) Notice of Appeal dated 23 December 2002, including annexures.
 - (b) Statement by Respondent dated 5 March 2003 including annexures but importantly one entitled ‘Grounds of Appeal’ by the Appellants’ solicitors, Hardy Bowen dated 12 February 2003.
 - (c) Statement of Evidence of Peter Stanley Antonas dated 9 May 2003 including 15 annexures.
- 4 The property is zoned Residential R12.5 under the City of Stirling District Planning Scheme.
- 5 The property is situated within the Mount Lawley Heritage Protection Area as defined in Schedule 4 of the Scheme.
- 6 The property is listed in the City’s Municipal Inventory.

Background to Appeal

- 7 On 8 August 2002 the Appellants lodged a Building License Application with the City seeking a Building License for the construction of a four car garage on the property.
- 8 Following consideration by Council officers, which included contact with the neighbours, an amended set of building plans were prepared for Council’s consideration.

- 9 The Plan relevant to the issues was identified as “Antonias’ Residence, part site plan, date May 2002, revision date Nov 02 ”, and included as addendum number 4 in the Appellants’ statement.
- 10 The amended plans were approved by Council on 12 November 2002 subject to:
- (a) A minimum setback of 3.0 m from Thongsbridge Street.
 - (b) A minimum setback of 1.5 m from the common side boundary.
 - (c) No encroachment into the 6.0 m visual truncation.
- 11 The above three (3) conditions were the subject of the appeal.
- 12 The Respondent objected to the jurisdiction of the Town Planning Appeals Tribunal, indicating that, because no application for planning approval had been made, no right of appeal could arise.
- 13 By agreement between the parties a fresh application for Planning Approval was lodged with the Respondent. Subsequently, an approval to commence development was given on 10 April 2003 which included the following conditions:
- “Condition 1: The proposed development to be setback a minimum 1.5 m from the common side boundary
 - Condition 2: No portion of the building to intrude into the 6 m building truncation.
 - Condition 3: The owner undertakes to treat any reflective surfaces to reduce glare if such adversely affects the amenity of the locality.
 - Condition 4: The plans to be submitted for a Building Licence being in accordance with this approval.
 - Condition 5: All piping and ducting to be effectively concealed. Any exposed pipes to be painted in a colour that will harmonise with the building.

- Condition 6: The design, materials and colours of the new development harmonising with those of the existing development.
- Condition 7: The proposed development is to be setback a minimum 3 m from Thongsbridge Street.
- Condition 8: Compliance with the provisions of the Building Code of Australia.”

14 In reaching its decision the Council relied upon:

- (a) The general provisions of their Town Planning Scheme.
- (b) A document entitled ‘The Mount Lawley Protection Area’.
- (c) The R Codes.
- (d) Council Policies:
 - (i) Policy WI01 425 – Setbacks – Street Frontage.
 - (ii) Policy N101 431 – Carports and Garages.

15 It was agreed by the parties that the amended plan dated November 2002 and the conditions 1, 2 and 7 of the 10 April 2003 decision reflected the subject of the appeal. It was also agreed by the Appellants that conditions 1, 3, 4, 5, 6 and 8 had been complied with or were acceptable.

16 Condition 2 and 7 therefore remained to be resolved.

The Hearing

17 The parties agreed that the amended plans:

- (a) Reduced the bulk of the building by lowering the height by 0.5 of a metre, the width by 0.5 of a metre and truncated the gabled roof, and therefore was not an issue.
- (b) The front setback distance had been increased from approximately 1.8 metres to 3metres on the right hand side of the building to conform (as seen from the street) to Council’s minimum setback distance although it was noted that the setback distance on the left hand side

would be less than 3 metres due to the road boundary not being at right angles to the side boundary.

- (c) The building did not encroach into the 4.5 metre visual truncation area.

- 18 To assist the interpretation of Policy W101 425 'Setbacks and Street Frontage' a Policy Summary has been prepared by the City of Stirling and was included as addendum 10 of the Appellants' statement of evidence. It was noted that encroachment into the 6.0 visual truncation area but not into the 4.5 area was subject to Council and adjoining owners comments.
- 19 It was agreed by the parties that there would be no substantive impairment to visual and safety issues for users of the adjoining lot if the truncation was reduced from 6.0 metres to 4.5 metres providing the 3 metre setback was maintained.
- 20 It was maintained by the Appellants that if the building was to be further setback to comply with the 6.0 metre visual truncation area (a distance of approximately 1.5 metres) then the area at the rear of the garage would be adversely affected for family recreational purposes.
- 21 It was agreed by the parties that no further evidence was required.

Decision

- 22 The issue devolved to increasing the setback from 3 metres to approximately 4.5 metres on the right hand side of the building to maintain free space within the 6 metre visual truncation area and losing a similar amount of space at the rear of the lot which was planned for family recreational purposes.
- 23 The Residential Design Codes provide:
- (a) Table 1, General Site Requirements, page 111, for a single house the setback on a secondary street be 2 metres; and
 - (b) Figure 1, Street Setbacks, page 113 that areas behind the prescribed street setback area can be used as compensation if space within the setback area is used.
- 24 It is considered that the Appellants, in amending the plans the subject of the 10 April approval:

- (a) provided for the Council requirements as to the side setback of 1.5 metres,
- (b) effectively provided for the Council requirements for the front setback of 3metres, and,
- (c) by excluding any building from the 4.5 metre building truncation, satisfactorily dealt with all safety issues.

25 The appeal is therefore upheld.

26 Council's approval dated 10 April 2003 is therefore amended by:

- (a) Condition 2 to be amended to:

“No portion of the building to intrude into the 4.5 metre building truncation”.

- (b) Condition 7 to be amended to:

“The proposed development is to be setback a distance from Thongsbridge Street to maintain at least 3 metres on the right hand side of the building” as seen from the street.”

27 The Appellants in receiving the decision requested that costs be awarded.

28 This is effectively a no cost jurisdiction. The presumption in those terms appears in section 65(1) *Town Planning Development Act 1928*. There are, however, limited circumstances in which an order for costs may be made. Those are limited to:

“Where in the opinion of the Tribunal a party has behaved unreasonably, vexatiously or frivolously in relation to the appeal, the Tribunal may order that the party pay such costs as the Tribunal thinks fit to any party who has not so behaved”: section 65(2).

29 It is the opinion of the Tribunal that such is not the case.

30 The request is refused.