



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3-06-061

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

Site Address: *Withheld* – “the subject site”

Applicant: *Withheld*

Nature of Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* to refuse a development application (Preliminary Approval for Building Works) to vary the siting provisions of the Caloundra City Planning Scheme, Code 8.5 – Detached Houses Code (Application No BDD - 03328) for the location of:

A Class 1a Verandah attached to the existing dwelling; and
A Class 10a Shade Sail within the relevant road boundary setbacks at “the subject site”.

Date and Place of Hearing: 2.00pm on Friday, 1 September 2006.
On site at “the subject site”.

Tribunal: Gregory Schonfelder

Present: Applicant / Owner
Builder
Robbie Pockock - Caloundra City Council
Ian Simpson - Caloundra City Council

Decision

I determine that the requirements of the Decision Notice by Caloundra City Council in relation to a Development Application to partially approve (Application No. BDD-03328) the siting of a Class 1a Verandah within the 6.0m road boundary setback and to refuse the siting of a Class 10a Shade Sail within the 4.4m road boundary setback are **set aside** and approval is granted for verandah and shade sail **subject to the following conditions**:

- The proposed verandah can be sited with a 2.0m setback to the outermost projection from the road boundary, subject to the roof line being changed to either hip on the north end with the same roof pitch as the house (the plans currently show a gable) or a skillion from the house so that the pitching plate at the north end is similar to that of the existing dwelling. This setback from the north boundary should be adequately landscaped to minimise the impact of the building and fence on the streetscape.
- The proposed shade sail as shown on the amended plan with a size of approximately 6.0 x 6.0m with a setback from the road boundary 2.4m in lieu of 4.4m.
- The posts of the shade sail closest to the road boundary shall be kept as low as possible to minimise the impact on the streetscape and adjoining properties.
- Conditions 2-6 (inclusive) of Caloundra City Council's decision notice are still to apply.

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 verandah:

- The proposed verandah with a 3.0m setback will dramatically reduce the intended use and overall functionality of this area. Many of the photographs submitted show the minimal effect both proposed structures will have on the adjoining properties and the streetscape.
- The proposed verandah to be constructed on the northern end of the dwelling results in this wall being able to be opened up to afford light and ventilation yet provide adequate protection from the weather. This area is adjacent to the main living areas of the dwelling.
- To reduce the setback to 3.0m from the road boundary will reduce the depth of the verandah to 3.5m which will not provide adequate roof form to protect from the weather and will seriously limit the use and practicality of this area. An appropriate size to allow a functional outdoor area is required.
- A solid fence is to be constructed along the northern boundary which will soften and screen this outdoor area from the adjoining property and the street. The area between the fence and the verandah is to be landscaped to provide additional screening.

The shade sail:

- The size, scale and position of the proposed shade sail would ensure that there will be no adverse impacts on the existing or likely built form or streetscape.
- The existing streetscape and other near by streets consists of low-density residential dwellings and multi-unit residential developments. The majority of residential dwellings in the immediate area are setback 6.0 metres from the front alignment, however there are many open-ended or enclosed car accommodation structures attached to dwellings within the 6.0 metre setback. Many of these structures incorporate solid masonry walls, tiled or colorbond roofing and double garage doors or gates on the front alignment.
- The proposed shade sail will not cause an overcrowding of the street because the design and construction is lightweight, small scale and unobtrusive in appearance.
- It will have no impact on the outlook from adjoining or nearby properties because all the sides are open ended and there are no significant structural components.
- The proposed shade sail ensures the main bedroom receives necessary protection from the sun and provides vehicle cover. (Now for 2 vehicles with the amended plan)
- The proposal is complementary to the existing built form and streetscape appearance within the area and there or will be no negative impacts generated by its introduction.
- If the proposed 2.0m of right front fence to be constructed at the northern end of the property is extended and includes a gate of similar height, it will obscure the shade sail from the street and therefore lessen the impact on the streetscape and provide much needed privacy.

The Council's representatives responded to their refusal in that:

- The site is a 551 square metre corner allotment located at “the subject site” and is within a Low Density Residential Precinct as per the Caloundra City Plan 2004. The site is not affected by any Council sewer mains or easements and is generally not constrained in any way.
- At the time of the application assessment the following structures were noted on the site. A dwelling centrally located on the allotment approximately 20 years old and setback approximately 6m from “withheld” Street road frontage and approximately 5.6m from “withheld” Street road frontage.
- The applicant applied to Council on 19 April 2006 requesting a boundary relaxation for a shade sail with a road boundary setback of about 3.351m from “withheld” Street and a verandah with a road boundary setback of 1.5m from “withheld” Street road boundary.

General comments with reference to the application were:

- The applicable codes for assessment were Queensland Development Code (QDC), Part 12 and the Caloundra City Plan 2004, detached Housing Code. As per the QDC, Part 12 the minimum road boundary setbacks for this property were 6m from “withheld” Street and 4.4m from “withheld” Street.

- As per Specific Outcome 010 (Parking and Access) Code 8.5 Detached Housing Code of the Caloundra City Plan 2004, the applicant is required to provide 2 off street parking spaces, one of which must have the ability to be covered, i.e. at the 6m setback. The property is complying with this provision as the property has a complying garage with a setback from the road boundary of at least 6m.
- The structures within “withheld” Street and “withheld” Street are generally complying with the above codes with the exception of a few carports in the neighbourhood that were approved prior to the commencement of the above codes and Council’s resolution on amenity and aesthetics.

Specific comments relating to the proposed verandah were:

- The QDC, Part 12 allows for reduced road boundary setbacks where the lot has an average depth of less than 24m. As the allotment has an average width of approximately 19m and would be deemed to comply with this code for a nominated road boundary setback from “withheld” Street of approximately 4.4m and a road boundary setback from “withheld” Street of 6.0m. The proposed setback of 1.5m from “withheld” Street was assessed by Council as being substantially non-complying with this code and a setback distance of 3.0m was deemed to provide adequate space for the proposed verandah whilst still being a substantial relaxation under this code.

Specific comments relating to the proposed shade sail were:

- The development does not comply with QDC, Part 12 in that: The proposed structure will be inconsistent with the existing and proposed street scape. The proposed structure will detract the outlook from the surrounding properties. The proposed structure will exceed the 9.0m limit of the acceptable solution. The proposed structure will cause an overcrowding of the street frontage. The allotment has complying off street car parking in accordance with the QDC, Part 12 and the Caloundra City Plan.

Material Considered

1. Decision Notice from Caloundra City Council dated 6 June 2006 partially approve an development application for preliminary Building Works (Application No BDD-03328) for the siting of a verandah and a shade sail within the respective road frontage setbacks;
2. Building and Development Tribunals Appeal Notice - Form 10 - dated 8 June 2006 and accompanying notes (by Builder) and photographs from the applicant;
3. Adjoining Owners comments on the proposal to site the buildings within the road boundary setbacks;
4. Plans of the proposed building work stamped by the Caloundra City Council showing the partial approval;
5. Amended plans supplied by the applicant to the Registrar of the Tribunal after discussions

which related to the siting and size of the shade sail;

6. On site inspection of the proposal and tour of the neighbouring properties
7. The *Standard Building Regulation 1993*; and
8. The *Integrated Planning Act 1997*.

Findings of Fact

1. On the drawings 06118 – 1-3 submitted the existing dwelling is situated on a 553m² corner lot with the long road boundary to “withheld” Street. The required road boundary setbacks are 6.0m to “withheld” Street and 4.4m to “withheld” Street.
2. The proposal as submitted was for a new verandah to the northern end of the existing dwelling with a 1.5m setback which was amended by Council to 3.0m from road boundary. It was also proposed to construct a Class 1a Garage attached to the dwelling along the south boundary for a distance of 7.5m. The existing attached garage was to be converted to another bedroom and in front of this area of the existing dwelling and the new garage a shade sail was to be erected which also extended along the allotment boundary.
3. The existing dwelling is approximately 20 years old and 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. There are a few carports which may have been built prior to the new planning scheme or have not been built with the relevant approvals.
4. The proposed verandah would allow a north facing outdoor entertainment area which is adjacent to the main living areas of the dwelling.
5. The shade sail would protect two vehicles, which are currently parked in the existing driveway and on the street, from the weather.

Reasons for the Decision

Verandah

The increase in size will make this outdoor living area more useable and still allow an adequate landscaping area to the north which will have a screening affect from to the street.

Lowering of the roof line also lessens the impact on the street and adjoining properties. With this change the size of the original proposal is nearly achieved but with a better outcome.

During the onsite inspection the owner was proposing to lower the roof line to be below the existing gable ends so to avoid the costly relocation of the electricity supply. With a change to a hip end or skillion the effect on the streetscape is minimised.

Shade sail

The increase to the width of the shade sail to allow a double car-parking bay provides a better outcome

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

The ability for a front fence to be constructed up to a height of 2.0m without restriction negates, in this case, the impact of an open light weight structure.

The orientation of the southern boundary of the allotment makes the siting of the buildings difficult but the position of the vehicle parking in front of the current building line provides a better outcome than along the allotment boundary.

Some views will be lost through the building but these are affected whenever there are vehicles housed and with the reduction of the roof line will have the effect of minimising the dominance of the building on the streetscape.

The character and appearance of the building will be enhanced with the proposed alterations and this will blend in with the surrounding properties of which many have undergone extensive refurbishment.

Casual surveillance of the street is not inhibited from adjoining properties by the siting of these buildings.



Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 3 October 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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