



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 03-05-085**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Maroochy Shire Council

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

**Applicant:** *withheld*

**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 Building Works – siting variation - on land described as Lot *withheld* and situated at “the subject site”.

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**Date and Place of Hearing:** 9:30am on Wednesday 1<sup>st</sup> February 2006  
at “the subject site”

**Tribunal:** Mr Chris Schomburgk

**Present:** *withheld* – applicant;  
Mr Michael Bowcock – private certifier, for the applicant;  
Mr Neil Messinbird – Maroochy Shire Council; and  
Mr Brian Benporath – Maroochy Shire Council.

**Decision:**

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 3<sup>rd</sup> November 2005, to refuse an application for relaxation of the boundary setback, is **confirmed** and **the appeal is dismissed**.

**Material Considered**

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- Additional material provided by the applicant – letters from neighbours, including the adjacent property (No. 22), the property directly across the road (21) and another nearby resident, are all supportive of the application;
- A written statement provided by the Council, together with aerial photography (dated 2003) of the subject site;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;

- Council’s Decision Notice dated 3<sup>rd</sup> November 2005; and
- The *Integrated Planning Act 1997*.

### **Findings of Fact**

I make the following findings of fact:

- The site comprises Lot *withheld* and is located at “the subject site”. The site is on the corner of *withheld* Avenue, but has no vehicular access to that street.
- Vehicular access is obtained from *withheld* St. This access provides for a double garage under the house, as well as a constructed boat port in the north west corner of the site.
- The subject application is to provide a roof over an existing walled area in the south west corner of the site. A brick wall has been erected, apparently many years ago, in this location. That wall is approximately 1.5 to 1.8m in height (due to the slightly sloping nature of the site). The application included a survey plan showing that the wall is approximately 2cm inside the southern boundary and 9cm inside the western boundary.
- The wall is three sided, and creates a “U” shaped enclosure that is approximately 5.6m wide and 6.3m deep, and is open at the northern end. The southern (street) end is a solid blank wall.
- The applicant seeks to extend the depth of the enclosure by about 1.9m (to 8.2m) and cover the area with a steel roof. The roof has already been constructed and is of solid steel construction set approximately 0.5m above the wall, leaving a gap between the top of the wall and the roof.
- The road frontage of the site in front of the wall has been planted with shrubs such that the wall is partly screened from view by passers-by.
- It was evident on the site inspection that the enclosure is not intended for car accommodation. Rather, it was being used for the storage of building materials (lengths of timber etc). The owner/applicant is involved in the building industry. Use of this enclosure for cars would be extremely difficult given the turning circles required to enter the enclosure from the internal driveway.
- It was revealed during the hearing that a sewer line runs through the property along the western boundary. The Council officers indicated that it was likely to be approximately 1.2 to 1.5 metres inside and parallel to the western boundary. This means that it will be beneath the enclosure. A sewer manhole exists in the vicinity of the boat-port, in the north western corner of the site.
- Council requires separate approval for a structure to be built over a sewer line, and I was informed that no such approval has been given (nor had any application been made by the applicant at the date of the hearing). I was subsequently advised by letter that the applicant has since sought this approval from Maroochy Water, but that the matter has not yet (at the time of writing this decision) been decided.
- The applicant provided photographs of other structures built within the front boundary setback of other properties in the local area. All of these were for carports or garages, and I was informed by the Council officers that at least three of those shown were unlawful, and Council had commenced proceedings against those owners.
- The Council has refused the subject application on the basis of alleged non-compliance with **Performance Criterion P2.1 of Element (1) of the Code for Development of Detached Houses**. That Criterion provides that:
  - Buildings and other 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:*
    - a) *Views and vistas;*
    - b) *Building character and appearance;*
    - c) *Casual surveillance*

- The Planning Scheme allows some relaxation of boundary setbacks for carports or garages in certain circumstances. The subject structure is not intended for car accommodation and it would be difficult for it to be used for that purpose, given the nature of the site and the existing buildings. There is already adequate car accommodation on site, as well as a large boat port.
- While the roof structure does not significantly affect views or vistas from surrounding properties, it does present as a relatively solid structure not intended for car accommodation, due to the blank wall along the street boundary. There are no other such solid structures with blank walls to the street frontage in the locality.

Based on my assessment of these facts, it is my decision that **the appeal is dismissed**. **Council's decision** to refuse the Application for Building Works - siting variation - is **confirmed** and **the appeal is dismissed**.

#### **Reasons for the Decision**

- The proposed structure is not intended for car accommodation, and it would be difficult, practically, for it to be used for that purpose. It is currently being used for the storage of building materials. The structure has no direct access from the street.
- The structure is built over an existing sewer line and no approval has been obtained from the relevant authority for building over a sewer line. To allow this appeal at this time could prejudice the decision-making of the approving authority for that application (Maroochy Water). It is not appropriate for this Tribunal to grant an approval for a structure that is subject to a further approval from a separate authority.
- The existing wall is a lawful structure, but that does not justify constructing a roof over that wall to create an enclosed structure so close to the front (and side) boundary.
- While landscaping in the road reserve could no doubt "soften" the visual impact of this structure from the street, that is not sufficient reason to allow a structure in such close proximity to the street (or side) boundary.
- The structure is not in keeping with the predominant character and appearance of buildings in the locality.

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**Chris Schomburgk**  
**Building and Development Tribunal General Referee**  
**Date: 6th 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.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
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