



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 03-06-096

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

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 Preliminary Approval for Building Works – code assessable garage and dwelling extensions - on land described as “*withheld*” and situated at “the subject site”.

Date and Place of Hearing: 10:30am on Thursday 30th November 2006
at “the subject site”
Tribunal: Mr Chris Schomburgk
Present: “*withheld*” – applicant;
“*withheld*” – architect for the applicant;
“*withheld*” – town planner for the applicant;
Mr John Dunn - Maroochy Shire Council Representative.

Decision

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 10th October 2006, to refuse an application for siting variation for a garage and dwelling extensions, is **confirmed** and **the application is refused**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- A written statement provided by the applicant at the hearing;
- A further written statement provided by the applicant after the hearing;
- A written statement provided by Maroochy Water Services after the hearing;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- Council's Decision Notice dated 23rd October 2006;
- The Queensland Development Code; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises "*withheld*" and is located at "the subject site". The site contains an older, but well maintained, high-set dwelling house. The site is relatively steep, sloping upwards away from the road. Balconies and decks on the existing house achieve good views to the east to the ocean.
- The house was designed and built with no covered car accommodation. A concrete driveway runs from "*withheld*" Crescent and turns parallel to the front boundary to an uncovered concrete slab parking area in front of the house, within the 6m setback area. This parking area accommodates only one car at present.
- The proposal seeks to undertake major renovations to the house and to include a double garage accessed straight off "*withheld*" Crescent, avoiding the current semi-circular driveway. The new garage is to be effectively at or about the current street level and is to have a grassed and planted roof for landscape and aesthetic purposes. The garage is to have a zero setback from the street boundary.
- The site is somewhat complicated by the existence of a sewer line that runs parallel to the street and approximately 1.5m inside the front boundary, with a manhole just outside both the northern and southern end of the subject property. The option of relocating or building over this sewer line was the subject of much debate at the hearing. However, after the hearing, Maroochy Water Services, a business unit of the Council responsible for water and sewerage infrastructure, provided the Tribunal with formal advice that it would not support the re-alignment of the sewer line.
- The Council's refusal is based on Code 4.1 of the Planning Scheme – Detached Dwellings, and in particular Element 1, Performance Criteria P2(b) and P5 which provide that:

P2 Buildings and structures are sited to contribute positively to the streetscape, maximize community safety, and maintain the amenity of adjacent land and dwellings by having regard to the following:

- (a) ...*
- (b) building character and appearance*
- (c)*

P5 Buildings and structures are sited to ensure that utility services are protected from physical damage and ongoing necessary access for the relevant authority is maintained.

- P2 above sets out three “tests” for a proposal such as this.
- It must “contribute positively to the streetscape”. In this case, the streetscape is a very mixed character with some quite old houses and others quite new or newly renovated. It was not disputed that the proposal would be an improvement to the current character of the site, and thereby to the streetscape.
- Secondly, the proposal must “maximise community safety”. While there remains some debate about the extent to which the proposal would “maximise” community safety, the removal of a difficult driveway would go some way towards this objective.
- Thirdly, the proposal must “maintain the amenity of adjacent land and dwellings by having regard to ... the building character and appearance”. It seemed to be generally accepted at the hearing that the proposal was well designed and would add to (and thus maintain) the amenity of the adjacent land and dwellings.
- On these three tests (P2), it is likely that the proposal would succeed.
- P5 raises entirely different issues. The later advice from Maroochy Water Services is that the re-alignment of the sewer line is not likely to be approved. I note that such a re-alignment requires a separate approval process. Indeed, a site inspection suggests that any re-alignment would be problematic due to the terrain and the need to maintain levels for efficient operation of a sewer line. On this test, it seems that the proposal is unlikely to succeed.
- At the hearing, options for a compromise were discussed. All options necessarily would require the garage to be setback at least beyond the sewer line, which would probably mean pushing lower levels of the proposed extension further into the allotment (ie: into the proposed lower levels of the house). Given the likely substance of any such changes, it is not appropriate to apply conditions to an approval of the proposal as lodged, as the conditions would almost certainly require major changes to the overall design, at least at the lower levels.

Based on my assessment of these facts, it is my decision that **Council’s decision** to refuse the Application for siting variation – carport and patio - is **confirmed** and **the application is refused**.

Reasons for the Decision

- The fact that the existing house has no covered car accommodation is not a valid reason to allow the siting relaxation sought here.
- While matters of design, streetscape and amenity may be able to be satisfactorily resolved, the more tangible issue of the sewer line does not appear to be able to be resolved in the current design.
- The need to ensure that utility services are protected and able to be maintained is an important responsibility of a local government, even if it is managed by a business unit.
- There is no obvious compromise that would allow the current proposal, or some amendment to it, to satisfy the provisions of P5 of the relevant Code.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 13th December 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:

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