



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-077

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 Building Works – siting variation - on land situated at “the subject site”.

Date and Place of Hearing: 8:30am on Friday 8th September 2006
“the subject site”

Tribunal: Mr Chris Schomburgk

Present: Applicants;
Mr John Dunn – Maroochy Shire Council; and
Mr Kevin Vicary – Maroochy Shire Council.

Decision:

The decision of the Maroochy Shire Council as contained in its written Decision Notice dated 10th July 2006, to refuse an application for relaxation of the boundary setback, 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 Council at the hearing;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- The Queensland Development Code (“QDC”);
- Council’s Decision Notice dated 10th July 2006; and
- The Integrated Planning Act 1997.

Findings of Fact

I make the following findings of fact:

- The site is located at “the subject site”.
- The subject application seeks approval for a carport at the front of the allotment, to be built to the front (street) boundary and to within 750mm of the northern side boundary. The carport is to provide cover for an existing paved carparking area. The property presently has no formal covered car accommodation.
- Tanah Street East is a dead end street, leading to a public carpark for the beach access. This carpark can be heavily trafficked at peak times – usually weekends and public holidays. The road is a bitumen carriageway, but there is no kerb or channel or formal footpath in this locality.
- The subject site contains a house that started life as a holiday beach house but which has been substantially renovated and upgraded in recent years, mostly by the applicants who have owned the house for approximately 2 years.
- The house has been redeveloped in a Balinese style with substantial internal tropical landscaping, water features, and thatched roofed, open sided, gazebo and pergola structures. It was pointed out at the hearing that Balinese housing does not allow for covered car accommodation. However, the owners have determined that there is a need to have the car parking area covered, to provide protection from the sun and rain.
- It was accepted at the hearing that the renovated house and landscaping presents as an attractive addition to the local streetscape.
- The existing parking area has been paved and accommodates two cars, side by side. This parking area is separated from the living areas (indoor and outdoor) of the house by a high wall. The original house design, and the more recent renovations, have not allowed for covered car accommodation that complies with the Council’s requirements or the Acceptable Measures of the QDC.
- The applicant did not provide a letter of support from the neighbour most likely to be affected – the neighbour to the north.
- An inspection of the immediate locality reveals that there are no other carport or garage structures built within the usual front boundary setback, as is proposed here.
- There are presently no obvious alternatives on the site to accommodate complying carparking, but this is partly as a result of the recent renovations that apparently ignored this as a design requirement.
- While the proposed carport is proposed to be open sided and with no front gate or roll-a-door, it nevertheless proposes a structure built partly right up to the front boundary, in an area where there are currently no other similar encroachments into this front setback area.
- Council has refused the subject application on the basis of alleged non-compliance with **Performance Criteria P2.1 and P2.2 of Element (1) of Planning Scheme Code 4.1**. Those Criteria provide that:
 - *Buildings and 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) ...
 - *An adequate area suitable for landscaping must be provided for at the front of a lot.*
- Given the absence of other structures built to the front boundary in the immediate locality, the proposed carport is likely to be seen as “out of character” with the locality.
- At the hearing, the Council sketched a compromise that would reduce the size of the carport by a small degree, and would be setback from the street boundary for part of its width. It also moved the carport to 1.5m from the northern boundary, thereby reducing the effective width of

the carport to approximately 5.5m. However, the Council officers acknowledged that this was not their preferred position as it would still have some impact on the streetscape of the locality. The applicants advised verbally that they may be prepared to accept the compromise.

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 application is refused.**

Reasons for the Decision

- The recent renovations to the house and grounds, while no doubt attractive in their own right, have not considered the need to provide complying car accommodation.
- The proposed carport, while proposed as an open sided and open fronted structure, will be out of character with the surrounding locality, especially given that there are no other structures that extend into the front setback area, let alone built up the street boundary.
- The proposal would effectively deny the opportunity for frontage landscaping as is common with most other homes in the locality, and as intended by the relevant Performance Criterion of the relevant Planning Scheme Code.
- The proposal is unlikely to affect the views and vistas enjoyed by other properties in the locality, but will affect the character and appearance of that locality.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 10th September 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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