



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3/06/113

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maroochy Shire Council

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

Applicant: *Withheld*

Nature of Appeal:

This is an appeal under s 4.2.9 of the *Integrated Planning Act 1997 (IPA)* against the decision of the Maroochy Shire Council to refuse a 2006 development application for Preliminary Approval for Building Work at “the subject site” for a non-impervious sail structure located within 6m of the front street boundary of the site. The application was lodged, by letter dated 17 November 2006, by Suncoast Building Approvals on behalf of the appellants. The application being appealed against is herein referred to as **the 2006 development application**.

Date and Place of Hearing: Tuesday 30 January 2007, commencing at 10am, at “the subject site”.

Tribunal: Mr Paul R Smith

Present: “*withheld*” – representing the appellants
Mr John Dunn – Senior Building Certifier, Maroochy Shire Council; and
Mr Neil Messinbird – Building Certifier, Maroochy Shire Council.

Decision:

The decision of the Maroochy Shire Council, as contained in its written Decision Notice dated 28 November 2006, to refuse the 2006 development application is **set aside** and the application is instead approved.

Material Considered

The material considered in arriving at this decision comprises:

- Oral submissions made by the representatives at the hearing;
- The 2006 development application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;
- Council’s Decision Notice dated 28 November 2006;
- IPA; and
- Letters of support from neighbours and the manufacturer of the shade structure.

Findings

I make the following findings:

- The 2006 development application seeks preliminary approval for a non-impervious sail to cover two existing carparking spaces located at the front of the allotment.
- The sail structure has been built.
- The sail structure is assessable building work under IPA and, because of its location within 6m of the road alignment, preliminary approval is required from Maroochy Shire Council under its planning scheme.
- The sail is of non-impervious material and is supported on:
 - a) two steel columns erected on or close to the front street boundary of the allotment;
 - b) two additional columns within the site; and
 - c) the front of the existing house (see the 2006 development application for details).
- There are no walls.
- The existing house has been renovated. A previously enclosed garage was converted into a bedroom. As part of that renovation two uncovered carparking spaces were approved to be located within 6m of the road alignment.
- The previous development application to renovate the existing house included no cover to the carparking spaces. I am satisfied from the oral submissions made at the hearing that the applicants believed the covering of the carparking spaces would not have then been approved principally because of the location of a sewer main that runs under the carparking spaces. Maroochy Water Services has since raised no objections to the erection of the sail structure.
- The development application now under appeal is to erect the existing sail structure.
- “The subject site” is a pleasant, quiet, hilly residential street with predominately 1980 type brick and timber houses. The houses in the immediate area may be described as pleasant houses with no significant architectural merit.
- The subject renovated house also has no significant architectural merit but is well designed and presents an attractive addition to the local streetscape. When viewed from the street, the house, sails and landscaping would be best described, as a whole, as one of the “best houses in the street”.
- The applicant provided letters of support from the neighbour most likely to be affected and a letter of support from the manufacturer of the sails.
- An inspection of the immediate locality reveals that there are other structures built within the front boundary setback, as is proposed here. However the Council representatives advised that none of the other structures have the required approval from Council.
- Under Council’s planning scheme the subject site is located within Precinct 3 of Planning Area 6 which provides for predominately one and two storey detached single family dwellings of residential scale and character.
- Council refused the subject application on the basis of non-compliance with **Performance Criteria P2 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) *...*
- At the hearing, the Council representatives noted:
 - a) the existing house previously had covered carparking complying with the acceptable

- measures in the code prior to its recent renovation;
- b) two uncovered off-street carparking spaces were then approved;
 - c) the owners then, in effect, made a choice to have either covered or uncovered carparking;
 - d) the relevant code provides the acceptable measure is to generally maintain a 6m setback from the road alignment.

Reasons for the Decision

- Performance Criteria P2 of Code 4.1 relevantly provides that structures are to be sited to:
 - a) Contribute positively to the streetscape;
 - b) Maintain the amenity of adjoining land and dwellings,by having regard to:
 - a) views and vistas; and
 - b) building character and appearance.
- Each case must be considered on its merits when assessing compliance with the performance requirements of the code taking into account such things as the character of the other buildings in the street, the topography of the site and the adjoining sites.
- I have formed the opinion that the sail structures are of a colour (green and cream) and design (two overlapping sails) that, in association with the renovated house, contribute positively to the streetscape.
- I am also of the opinion that because of the topography of the site and the adjoining area the amenity of adjoining land and dwellings is not adversely affected by the erection of the sails.
- I have reviewed the planning scheme as a whole and have found no other provisions that should be given regard to in assessing and deciding the application.

Notes

- The Tribunal complements all representatives at the hearing for their candid, respectful and helpful submissions.
- The Tribunal, on appeal, interprets Council's planning scheme, including the relevant codes in an ordinary common sense way. In this case the performance criteria in the code are, for present purposes, limited to assessing the contribution the sails have to the streetscape and the impact the sails have on the amenity of adjoining land and dwellings. If Council wished to have additional criteria considered it could have done so when drafting the code.

Paul Smith
Building and Development Tribunal General Referee
Date: 9 February 2007

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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