



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-107

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 - on land described as Lot “*withheld*” and situated at “the subject site”.

Date and Place of Hearing: 8:00am on Tuesday 23 January 2007
at “the subject site”

Tribunal: Mr Chris Schomburgk

Present: “*Withheld*” – applicant;
Mr John Dunn – Maroochy Shire Council;
Mr Scott Rushton – Building Certifier

Decision:

The decision of the Maroochy Shire Council as contained in its written Concurrence Agency response dated 27 September 2006, to direct the refusal of an application for Building Works (siting variation), is **set aside** and **the application is approved, subject to conditions**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Maroochy Shire Council;

- The Council’s Concurrence Agency response dated 27 September 2006;
- The Certifier’s Decision Notice dated 28 October 2006;
- The Building Code of Australia Volume 2;
- The *Building Act 1975*;
- The *Building Regulation 2006*; 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 contains an older style, low set dwelling house, with no formal covered car parking area provided. The locality comprises a mix of housing, with a number of older style houses having been, or in the process of being, renovated.
- The subject application seeks approval for a double garage to be located abutting the front (street) and eastern side boundaries. The garage is to have a double width front panel door and an opening rear door to allow drive-through access to the rear of the site.
- The Council was a concurrence agency for the application and directed the certifier to refuse the application based on the following provisions of the Planning Scheme Code for Detached Housing, Element 1, :

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) *Casual surveillance.*

- At the hearing, the Council officers explained their concerns about an enclosed garage (as proposed) but agreed that an open carport was likely to be acceptable subject to siting amendments, including a side entry to the carport. The applicant explained that he was concerned about the loss of garden area at the front of the site. Inspection reveals that the garden was in need of some improvement in any event.
- At the hearing, potential compromise solutions were discussed. These included relocating the structure elsewhere on the site – either to within (but no closer than) 1.5m of the eastern side boundary or the western side boundary.
- While it is fair to say that the suggested compromise/s were not the applicant’s preferred outcome, he was however prepared to accept a compromise if it meant obtaining an approval. It was agreed between the parties that a location for a carport (not garage) that was no closer than 1.2m from the front boundary and 1.5m from the western boundary would be acceptable. The structure would be an “open carport” as defined in the QDC and would have a side entry (that is, not straight from the street).

Based on my assessment of these facts, it is my decision that **Council’s decision** to direct a refusal of the Application for siting variation for a garage is **set aside** and **the application is approved, subject**

to conditions, being:

- (i) The proposed structure is to be an “open carport” as defined in the QDC, in particular being predominantly open-sided. Entry to the carport for vehicles shall be from the side (that is, parallel to the street) rather than directly off (that is, at right angles to) the street.
- (ii) The carport shall be located generally in the north-western corner of the site. No part of the carport shall be closer to the front boundary than 1.2m and no closer to the western side boundary than 1.5m.
- (iii) The setbacks to the front and side boundaries are to be landscaped with endemic plant species to create a vegetated buffer to those boundaries.
- (iv) The revised plans complying with these conditions are to be approved by the Maroochy Shire Council prior to issuing any Development Permit for Building Works.

Reasons for the Decision

- The amended siting as agreed between the parties on site will not, in my opinion, detract from views and vistas experienced in the locality, will not detract from the building character and appearance of the locality, and will not detract from casual surveillance from or of the existing dwelling.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 2 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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