



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**
Sport and Recreation

APPEAL

File

No.3-05-056

Insert No.

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council

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

Applicant: *withheld*

Nature of Appeal

An appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Caloundra City Council to refuse a siting concession. The application for a siting variation, being required to build a garage within 6M of the road boundary, on property described as Lot *withheld*, situated at “the subject site”.

Date and Place of Hearing: 3.00 pm, Tuesday the 11th October 2005
at “the subject site”.

Tribunal: Debbie Johnson

Present: The Applicant’s Architect, Mr Paul Braithwaite
The Applicant’s Private Certifier, Mr John Hill
Caloundra City Council, Mr Richard Prout.

Decision

The decision of the Caloundra City Council to refuse an application for siting concessions for an attached garage, Application No BDD-02930, as contained in its written notice dated 18th August 2005, is set aside and the application is approved, in accordance with architectural drawings by Ken Down Architects, Dwg No2147 SD00 Rev A, SD01 Rev B and SD04 Rev A.

Background

An application for a siting variation to build an attached garage, within the 6M setback from the road boundary, was lodged with Caloundra City Council under Section 20 of the Standard Building Regulation, by Suncoast Building Approvals.

The Caloundra City Council refused the application in writing on the 18th August 2005, stating-

1. The Development does not comply with the Performance Criteria 1 of Part 12, Design and Siting Standards for Single Detached Housing on a Lot 450 sq/m and over, of the Queensland Development Code for the following:
 - a. The proposed structure will be inconsistent with the existing and proposed streetscape;
 - b. The proposed structure will detract the outlook from the surrounding properties;
 - c. The proposed structure will cause an over development of the site and an overcrowding of the street frontage;
 - d. The allotment has complying off street car parking in accordance with Acceptable Solution A8 of Part 121, Design and Siting Standards for Single Detached Housing on Lots 450sq/m and over, of the Queensland Development Code; and
 - e. The proposed garage can be located on the site in accordance with the above code.
2. There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal.

The existing residence at “the subject site” is quite unique, being designed by Frank Raadschelder Architecture in November 1994. It was subsequently constructed for the current owners, *withheld*. Ken Down Architects were commissioned to design an extension for the residence that would preserve the architecture of the home, providing them with additional living area. Paul Braithwaite from Ken Down Architects, worked on the original building design whilst employed at Frank Raadaschelder Architecture in 1994.

Material Considered

1. Written advice from Caloundra City Council, dated 18th August 2005, refusing the application made to them by Suncoast Building Approval under Section 20 of the Standard Building Regulation.
2. Written submission from Paul Braithwaite, of Ken Down Architects to the Registrar, Building Codes Queensland.
3. Written submission in support of the application, by the adjoining property owners, *withheld* and *withheld*, who will reside at *withheld*.
4. Architectural drawings as submitted, drawn by Ken Down Architects.
5. Photographs of the existing development at “the subject site”.
6. Verbal submission, by Paul Braithwaite of Ken Down Architects and John Hill of Suncoast Building Approvals.
7. Verbal Submission by Richard Prout of Caloundra City Council.
8. The Standard Building Regulation 1993.
9. Part 12 of the Queensland Development Code.
10. Integrated Planning Act 1997.

Findings of Fact

The following points are considered as findings of fact:

1. The property owners most affected by the proposed development have written a letter of support.
2. The existing building design is unique and the residence is orientated on the site such that it

sits at a 45 degree angle to the street frontage.

3. The proposed extensions are in keeping with the original building's architecture.
4. There is an existing curved, masonry garden wall and mature landscape at the front of the property that will partially conceal the proposed garage.
5. The proposed garage will allow more landscaping across the frontage of the existing residence therefore enhancing the amenity of the residence when viewed from the street.
6. Section 20 and Section 34 of the Standard Building Regulation allows for council to vary any part of the Queensland Development Code Part 12 in this particular case the 6M setback from the road or street boundary.
7. Performance Criteria P1 of Part 12 of the Queensland Development Code stipulates Buildings and Structures

The location of a building or structure facilitates an acceptable streetscape appropriate for-

- (a) the bulk of the building or structure; and
- (b) the road boundary setbacks of neighbouring buildings or structure; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

Reasons for the Decision

1. A site visit to "the subject site" clearly demonstrated that the proposed garage would be partially concealed from view by the existing mature landscape and masonry garden wall.
2. The proposed garage design is integrated seamlessly with the original building design.
3. The relocation of the garage from its existing position within the building, to that of the proposed position, will allow for more landscaping, further screening the built form from the street.
4. The only neighbour adjacent to the site has provided a letter of support for the garage as it has been proposed in this application.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 10th November 2005

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
Building Codes Queensland
Department of Local Government and Planning
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