



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-010

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City 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 Caloundra City Council to refuse an application for Building Works – siting variation - on land described as "the subject site".

Date and Place of Hearing: 3:00pm on Thursday 14th February 2006
at "the subject site"

Tribunal: Mr Chris Schomburgk

Present: Mr Peter Soden – Builder (for the applicants);
Mr John Dillewaard – Architect (for the applicants)
Mr Richard Prout – Caloundra City Council

Decision:

The decision of the Caloundra City Council as contained in its written Decision Notice dated 3rd January 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;
- The relevant provisions of the Town Planning Scheme for Caloundra City Council;
- Council's Decision Notice dated 3rd January 2006;
- A written statement of reasons provided by the Council officer;
- 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”, and has an area of approximately 552 m².
- The site currently contains a two-storey dwelling house which is proposed to be renovated and extended. The site slopes quite steeply downwards at the rear of the site, from front to rear.
- The existing house was constructed in approximately 1985 and is set back approximately 4.76m from the street boundary, as was the norm for many houses in this locality built around that time. Since then, the minimum setback distance has changed and some newer houses in the locality are setback 6.0m or more.
- The applicant is undertaking a major renovation of the house. As part of that renovation, it is proposed to extend the existing garage towards the street by approximately 1.75m. This will allow a slightly longer garage and space for a storage area within the garage. The rear internal wall of the existing garage is proposed to remain in its current location.
- The upstairs rooms of the dwelling are to be extended towards the street as well, but only up the line of the existing garage. The architect explained on site that it was considered desirable to provide some articulation in the building in addition to the extra length of the garage, and that was part of the design purpose of seeking the relaxation. The proposed building would present as an attractive addition to the quality of the streetscape. Many other large houses in this locality have been renovated in recent years.
- The Council has refused the garage extension on the grounds that:
 1. *The Development does not comply with Performance Criteria 1 of Part 12 ... of the QDC for the following:*
 - a) *The proposed structures will be inconsistent with the existing and proposed streetscape;*
 - b) *The proposed structures will detract from the outlook from the surrounding properties;*
 2. *The existing dwelling and garage has a front boundary relaxation to 4.755 metres and any further relaxation would cause an over-development of the site and an overcrowding of the street frontage;*
 3. *there are no sufficient or substantial reasons for Council to grant a siting modification for this proposal; and*
 4. *The building, if built in the form shown in the application, will have an extreme adverse effect on the amenity or likely amenity of the building’s neighbourhood;*
- The renovations are proposed to include a block wall approximately 1.8m high along the front boundary, with the proposed garage to be recessed by the 3.0 metres as sought.
- The extra length required for the garage can be achieved by deleting the proposed storage area or moving the internal rear wall further back into the dwelling, or both. The ground floor of the proposed renovations is to include a small kitchenette in the family room on the other side of this internal wall.

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 proposed extension to the garage is to accommodate a new storage area and to provide extra space around the cars when parked. Alternatives exist within the site for these features.

- The dwelling is currently set back at a reduced distance compared with many other houses in the immediate vicinity. To allow this further reduction would create an undesirable precedent.
- The proposed setback (3.0m) is not sufficient length for cars to park in tandem off the street in the driveway.
- While the proposal would undoubtedly provide an attractive addition to the streetscape, there is no compelling reason to allow the further relaxation when alternatives exist within the site for the features sought. The articulation sought by the architect can be similarly achieved within the existing setback.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 20th February 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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