



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning
Sport and Recreation

APPEAL

File

No.3-05-051

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 carport within 6M of the road boundary, on property described as Lot *withheld*, situated at “the subject site”.

Date and Place of Hearing: 1.30 pm, Tuesday the 11th October 2005
at “the subject site”.

Tribunal: Debbie Johnson

Present: The Applicant, *withheld*
Caloundra City Council, Mr Richard Prout.

Decision

The decision of the Caloundra City Council to refuse an application for siting concessions for a carport, Application No BDD-02882, as contained in its written notice dated 22nd July 2005, is set aside and the application to locate a carport by ‘Coastal Patios’ within the 6M street setback from *withheld* Crescent is approved.

Background

An application for a siting variation to build an attached carport, within the 6M setback from the road boundary, was lodged with Caloundra City Council under Section 20 of the Standard Building Regulation, by ‘Coastal Patios’, C/- Stuart Building Certification.

The Caloundra City Council refused the application in writing on the 22nd July 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 12, Design and Siting Standards for Single Detached Housing on Lots 450sq/m and over, of the Queensland Development Code; and
 - e. The proposed carport can be located on the site in accordance with the above code.
2. The aesthetic of the building, if built in the form shown in the application, would be in extreme conflict with the character of the buildings neighbourhood.
3. There are no sufficient or substantial reasons for Council to grant a siting modification for this proposal.

The existing residence at “the subject site” was originally built with a double garage. One side of the garage has been separated from the other and converted into a bedroom. There is a masonry fence along the street frontage of *withheld* Crescent that has just been erected. The fence allows for an opening to suit the existing driveway.

Material Considered

1. Written advice from Caloundra City Council, dated 22nd July 2005, refusing the application made to them by ‘Coastal Patios’ C/- of Stuart Building Certification, under Section 20 of the Standard Building Regulation.
2. Written submission from the applicant to the Registrar, Building Codes Queensland.
3. Photographs of the existing development at “the subject site” and other photographs taken by the applicant of (9) nine other carports in the immediate vicinity of the subject site that have been erected within the street setback.
4. Photographs and written information from Gary Curtis of ‘Coastal Patios’, indicating the design of the carport proposed for “the subject site”.
5. Verbal submission on site, by *applicant* and on the phone with Gary Curtis, from ‘Coastal Patios’.
6. Verbal Submission on site, by Richard Prout of Caloundra City Council.
7. The Standard Building Regulation 1993.
8. Part 12 of the Queensland Development Code.
9. Integrated Planning Act 1997.
10. Caloundra City Council Circular dated 22nd September 2003, relating to the application of amenity and aesthetics provisions on certain development applications.

Findings of Fact

The following points are considered as findings of fact:

1. The proposed extensions are in keeping with the original building’s architecture and many of the buildings from the same era in the neighbouring vicinity.
2. There is an existing, masonry garden wall at the front of the property that will partially conceal the proposed carport.
3. 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.

4. 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 carport would be partially concealed from view by the existing masonry garden wall. Therefore there is no increased bulk of the building’s appearance from the street.
2. The proposed carport design is integrated with the original building design, and similar to many already built in the same vicinity.
3. The outlook from adjoining and neighbouring residents will not be affected by the proposed structure as the roof line is low, with a minimal roof pitch.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 21st 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
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