



APPEAL
Integrated Planning Act 1997

File No. 3-07-072

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Concurrence Agency: Brisbane City Council
Assessment Manager: The Certification Professionals
Site Address: *withheld* – ‘the subject site’
Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.7(2)(b) of the *Integrated Planning Act 1997* against the decision of The Certification Professionals, based on the response from Brisbane City Council acting as a concurrence agency, pursuant to Section 9(a), Schedule 2, Table 1 of the *Integrated Planning Regulation 1998* to refuse an application for a street alignment setback relaxation to the road frontage to the subject site, for the purposes of erecting a carport.

Date and Place of Hearing: 10.00 am Monday 3rd December 2007 at
the offices of Brisbane City Council, 960 Gympie Road,
Chermside.

Tribunal: Dennis Leadbetter Chairperson
Present: Owners / Applicants
Robert Dix Brisbane City Council

Decision

The decision of The Certification Professionals dated 22nd October 2007, based on the concurrence agency response from Brisbane City Council, not to grant a siting variation to the street alignment is **set aside** and **a carport may be erected on the subject site subject to the following conditions:-**

- **The proposed carport is to be erected to the south western side of the site, over the existing driveway area;**
- **The nominal width of the carport is 7 metres;**
- **The street alignment setback is 1.0 metre, measured to the outermost projection;**

- **The carport roof :-**
 - **Is to line with and be of the same pitch as the existing gable roof to the existing garage;**
 - **Is to reflect detailing, compatible with the existing gable to the dwelling; and**
 - **Be of compatible colour.**

Background

The existing dwelling is a single story slab on ground brick veneer structure with a tile roof. The existing dwelling on site incorporates a double garage, which the owners wish to convert to a dwelling space to accommodate their family needs. There is no suitable position to extend the dwelling and they require alternative car accommodation.

The dwelling is located to the western side of the allotment and the eastern side alignment setback which varies from 5.8 to 4.8 metres. This is insufficient to allow the positioning of a double car carport of reasonable dimensions (as indicated in A8(a)(B) of Part 12 QDC) within that side alignment setbacks, other than by a tandem configuration, which is undesirable from both a planning and functional viewpoint.

Available alternative positions on the site are restricted to the front alignment setback of the site, and require removal of reasonably mature vegetation, including street planting.

Positioning a carport in this location will also cover two of the three windows to the living room, reducing light and ventilation to that habitable room. The Tribunal considers that option not to provide an aesthetically or environmentally soundly based solution and would also result in a carport being only 1.4 metre from the street alignment.

Material Considered

1. 'Form 10 – Notice of Appeal' and grounds of appeal contained therein;
2. 'Form 18 – Notice of Election' provided to the Registrar 28 November 2007 from the Brisbane City Council;
3. Drawings and photographs submitted with the appeal application;
4. Letter from Brisbane City Council dated 16 July 2007, not to grant a siting variation;
5. Decision Notice, dated 22 October 2007, from The Certification Professionals;
6. Verbal submissions from the Owners/Applicants at the hearing;
7. Verbal submissions from the Brisbane City Council's representative at the hearing;
8. The *Integrated Planning Act 1997*;
9. The *Integrated Planning Regulation 1998*; and
10. Part 12 of the Queensland Development Code (QDC).

Reason for the Decision

Part 12 of the QDC provides **Performance Criteria** and an **Acceptable Solution**, but allows the local government to vary the application of siting requirements to take account of alternative solutions.

In assessing the criteria from this part of the Code the Tribunal considered the nature and use of the proposed structure and its siting on this allotment, and also the developments existing and possible on adjoining sites. The Tribunal considers the reduced road alignment setback would have minimal impact on the adjoining allotments, because of the carport's small footprint and low elevation. The Tribunal found that there were reasonable grounds to vary the street alignment setback to allow the carport to be constructed to the south western side of the subject site over the existing driveway and to within 1.0 metres of the street alignment, measured to the outer most projection.

Dennis Leadbetter
Dip.Arch. QUT, Grad.Dip.Proj.Man. QUT, METM UQ
Building and Development Tribunal Referee
4 December 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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
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