



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 3—09—081

Applicant / Appellant: Anthony and Theresa Irving

Assessment Manager / Respondent: Ian Mills of Regional Certification Group

Concurrence Agency: Townsville City Council (Council)
(if applicable)

Site Address: 13 Bel Air Avenue, Kirwan and described as Lot 340 on RP172363 — the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager, Regional Certification Group, dated 27 October 2009, to refuse a development application for a proposed structure (Carport) constructed within the required front boundary setback for the subject site. This refusal was based on a concurrence agency response from Council issued on 2 October 2009.

Date of hearing: 10:10am – Wednesday, 4 November 2009

Place of hearing: The subject site

Tribunal: Bruce Shephard – Chair

Present: Anthony Irving – Applicant / appellant and owner
Theresa Irving – Applicant / appellant and owner
Gwenda Piermont – Patio World (Builder)
Max Piermont – Patio World (Builder)
Denise Hinneberg – Council as concurrence agency
Melanie Percival - Council as concurrence agency

Decision:

The Tribunal, in accordance with section 4.2.34 of the IPA, **confirms** the decision appealed against and the appeal is **dismissed**.

NOTE: The decision held in this application is separate to any other applications which may be made over the property.

Background

The Tribunal conducted an on-site hearing and the opportunity was taken to view the development and character of the neighbourhood.

The neighbourhood is a low density residential area, well established with medium traffic volume and generally minimal vegetation. In the neighbourhood there are many examples of class 10 buildings (e.g. garages, car ports, sheds, etc) and structures within the front setbacks. Some of these structures have the relevant planning and building approval while others are lacking these approvals

The subject site is on the inside of a consistent bend with many dwellings either side. On the site is an existing single story, double garage, masonry block dwelling with render finish and tiled Dutch gable style roof. The house has been located to the western side boundary side of the lot, leaving a rear and side yard. The back yard has been recently built out with a pool and patio extension by the appellant.

The proposed double carport is to be located in front of the existing double garage within the front 6 metre setback. The construction style is a flat metal roof with the gutters, fascia, barge and rendered block posts to be finished in the same colour as the existing dwelling. The purpose of the double carport is to provide a single additional covered car park space for the second vehicle so half of the existing garage can be used for secure storage.

The following correspondence and documentation was reviewed and taken into consideration:-

- October 2004 – Building envelope plan 9566/13-110 Revision D
- 6th May 2009 – Plans for the carport by Patio World
- 2nd October 2009 – Concurrence agency response from Council.
- 5th October 2009 – Letter from Ian Mills (Certifier) to A & T Irving advising the appellants they will need to apply to TCC for approval.
- 20th October 2009 - Building and Development Tribunals appeal notice 10 and accompanying letter with photo.
- 27th October 2009 – Refusal Decision Notice Ian Mills (Certifier)
- Undated – Four letters of support from neighbours

Based on the above information provided it was determined that the proposed building was lodged for a concurrency agency response with the Council for the encroachment into the front setback. The matter was considered by Council and a concurrence agency response was issued to advise “that the development has been refused”. The building development application was subsequently refused, based on the concurrency agency advice.

The appellant appealed the decision of the assessment manager to the Building and Development Tribunals on 21 October 2009.

Material Considered

The material considered in arriving at this decision comprises:

1. “Form 10 – Notice of appeal” with attached letter and photo.
2. Decision notice from the assessment manager advising of the refusal of the building development application.
3. Correspondence from the Appellant dated 20 October 2009.
4. Plans for the proposed building by Patio World.

5. Correspondence from Council as the concurrence agency, dated 2 October 2009, refusing approval for the siting of the proposed building.
6. Inspection of the site on 4 November 2009.
7. Verbal submissions by the applicant / appellant and Patio World detailing their reasons for provision of the proposed building to be located within the required six metre front setback.
8. Verbal submissions by the Council outlining their reasons for the refusal of the application.
9. Building envelope plan 9566/13-110 Revision D.
10. *Building Act 1975*.
11. *Building Regulation 2006*.
12. IPA.
13. *Integrated Planning Regulation 1998*.
14. Queensland Development Code Mandatory Part 1.2 (QDC).

Findings of Fact

The Tribunal makes the following findings of fact:

1. As the proposed carport has an impervious roof and is partly enclosed by walls it is a building and not a structure.
2. The siting of buildings within the site is controlled by the building envelope plan 9566/13-110 Revision D. The proposed location for the carport is not compliant with the building envelope.
3. The concurrence agency application was lodged with Council and assessed against the acceptable solutions and performance criteria of the QDC. Subsequently advice to refuse the application was issued by Council.
4. The application was refused by Ian Mills based on the advice received by Council as concurrence agency.

Reasons for the Decision

All four letters of support refer to the *Standard Building Regulation 1993* which is a piece of legislation that was repealed over three years ago. All four letters refer to the *Queensland Development Code parts 11 and 12*, however, the relevant part of the QDC is now Mandatory Part. 1.2, as renumbered. Due to this issue the letters were not considered in the decision making process of this Tribunal.

While the proposed location for the double carport will not be in extreme conflict with the streetscape, it will have a negative effect on the streetscape while reducing the outlook of neighbouring properties.

The subject site has a second possible location in the eastern side yard (alternative location) where a building or structure could be installed in accordance with the current siting provisions that might accommodate the appellant's needs for security and general protection of their possessions. The existing double garage could accommodate the two cars allowing all weather access without the requirement for a second driveway and cross over.

A building or structure in the alternative location will not have a detrimental effect on the access to light and ventilation for both dwelling on the subject site and neighbour's dwelling. Both dwellings have large areas of wall, void of openings adjacent to the alternative location.

Bruce Shephard
Building and Development Tribunal Chair
Date: 13 November 2009

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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