



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-07-056

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.7 of the *Integrated Planning Act 1997* against the decision of the Toowoomba City Council to refuse an application for siting variation for a proposed carport located 0.5m from the front boundary and 0.3m from the eastern side boundary, on “the subject site”.

Date and Place of Hearing: 11.00am Friday 12th October 2007
at “the subject site”

Tribunal: Peter Matthews – Chairperson
Debbie Johnson – General Referee

Present: Applicant / Owner
Bob Orr – Toowoomba City Council Representative
Ross Ford – Toowoomba City Council Representative

Decision

The decision by Toowoomba City Council to refuse an application for siting variation for a proposed carport located 0.5m from the front boundary and 0.3m from the eastern side boundary, as contained in its written notice dated 29 August 2007, is **upheld**.

Background

The applicants purchased their home in July 2006 with a view to renovating and extending the home, which appears to be a circa 1940 chamferboard home. They submitted a siting variation to the Toowoomba City Council for a carport to be erected 0.5m from the front boundary and 0.3m from the eastern side boundary.

The Toowoomba City Council's representative, Bob Orr, refused the application due to the following reasons:

1. A 3.6m wide driveway to the rear of the property is shown on Drawing No. A3.832.1 which negates Council's ability to grant approval for a carport within six metres of the street boundary as access and alternative siting are available on the property under the provisions of Part 12 of the Queensland Development Code; and
2. The location of the proposed carport will:
 - a. Obstruct the natural light to the adjoining property, and
 - b. Create a high visual impact on the streetscape because of the bulk and height of the building; and
 - c. Obstruct the outlook and views of the adjoining property; and
3. The location of the structure does not meet the performance criteria of Part 12 P1 of the Queensland Development Code and an acceptable solution is available under Part 12 A1 (C) for alternate siting.

Material Considered

- 'Form 10 – Notice of Appeal' lodged with the Building and Development Tribunals on 28 September 2007 with accompanying documentation;
- Toowoomba City Council's Refusal notice for a Siting Variation, dated 29 August 2007;
- The applicants, in their grounds of appeal submitted with their application, outlined the need for the carport in that location and argued against Toowoomba City Council's reasons for refusing the siting variation;
- Bob Orr, Toowoomba City Council representative, provided further information to the Tribunal outlining their concerns relating to the application and the reasons for refusal;
- Verbal submissions made by the applicant at the hearing;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- Part 12 of the Queensland Development Code (QDC); and
- E-mail from applicant of 15 October 2007 to the Registrar of Tribunal regarding an existing sewer line and neighbouring properties.

Findings of Fact

The site is a generously sized low density rectangular shaped lot of 1019.8m² with a frontage of 20.27m. It is faced south on *withheld* one lot back from *withheld* and in close proximity to *withheld*.

The existing property has a large colorbond® steel garage to the rear of the property with three roller doors with current access to the street around an existing roofed structure. The applicant advised that they are planning to demolish this structure for access to the rear garage via a driveway as shown on site plan A3.832.1.

There is a solid rendered masonry fence approximately 600mm high along most of the *withheld* frontage. The masonry fencing stops short of the Eastern corner containing gates for access to the rear of the property. There is a gentle slope across the site from east to west.

Currently there is approximately 7.5m setback on the eastern side of the home to the side boundary providing a more than generous driveway access to the rear garage. However, there is a future extension planned for the home which will reduce the driveway access to 3.6m as per site plan A3.832.1 provided by the applicant.

The applicant noted that the existing garage is used for storage and hobbies including two vehicles which will be driven down the driveway on an irregular basis. The applicants currently park their vehicles on the road rather than on the property. The applicant argued that the safety of his children would be adversely affected if the carport was not located to the front of the property and they were required to drive beyond a 6m setback. There is currently no internal fencing on the site with only approximately 600mm high fencing to the front boundary.

There are three properties on the southern side (opposite side) of *withheld* that have existing carports located in close proximity to the front boundary. Bob Orr has subsequently advised on 16 October 2007 that *withheld* was approved on 23 June 2005 due to having no alternate siting position to the rear of the property. *Withheld* was approved on 26 November 2003 also as no alternate siting position existed at the time of the approval. The third was approved prior to the current legislation.

There are no existing carports located close to the front boundary on the northern side (same side) of *withheld*. The majority of existing properties on *withheld* have their car accommodation to the rear of the properties behind the homes with attractive gardens to the front providing a very pleasant streetscape.

The applicant pointed out the existence of a sewer main as shown on site plan A3.832.1 in an e-mail to the Tribunal Registrar on 15 October 2007. The sewer main is located almost to the rear of the home travelling east-west. Toowoomba City Council representative, Bob Orr, confirmed on 16 October 2007 that a light weight structure such as a carport can in fact be built over an existing sewer main therefore poses no difficulty in siting the carport in numerous locations to the rear of the property.

Siting for Class 10 buildings and structures is determined by Part 12 of the Queensland Development Code (QDC), to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Legislative definitions and requirements that are applicable to this structure are:

“**Carport** means a class 10a building, other than a garage, providing covered vehicular parking.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p2)

“**Garage** means an enclosed class 10a building, providing covered vehicular parking.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p3)

“**Road boundary clearance** for a building or *structure* on a lot means the shortest distance measured horizontally from the outermost projection of the building or structure to the vertical of the boundary of the lot adjacent to the road’.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p4)

“**Setback** means for a building or structure other than a swimming pool, the shortest distance measured horizontally from the outermost projection of the building or structure to the vertical projection of the boundary or the lot’.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p4)

“**Structure** includes a wall or fence and anything fixed to, or projecting from, a building, wall, fence or other structure.” (Building Act 1975, Reprint 5c 7/12/2006, schedule 2, p179)

“For a dwelling, garage or a carport the minimum **road setback** is 6.0m;” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (a), p6)

“For **structures** the **minimum road setbacks** are as for A1 (a) (b) and (c) except for screens / fences not more than 2.0m high.” (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (d), p8)

The **Performance Criteria** of buildings and structures under the QDC Part 12 P1 is as follows:

“The location of a building or structure facilitates an acceptable streetscape, appropriate for –

- the bulk of the building or structure; and
- the road boundary setbacks of neighbouring buildings or structure; and
- the outlook and views of neighbouring residents; and
- nuisance and safety to the public.”

(QDC, Part 12-Design & Siting Standard for Single Detached Housing, P1, p6)

Reasons for the Decision

There is an existing garage on the site which the current owners are using as a garage with a proposed driveway for vehicular access as per Drawing A3.832.1.

There are numerous locations on the site that an additional carport could be located that comply with the QDC as an acceptable solution, along with the installation of appropriate fencing to provide a safe and secure environment for children.

The relevant performance criteria within the QDC stipulate that structures facilitate an acceptable streetscape appropriate for the bulk of the structure with consideration for the outlook or views from neighbouring sites.

There are no carports located in close proximity to the boundary on the northern side of *withheld* which would alter the streetscape if the carport was erected in the proposed location.

The majority of existing properties on *withheld* have their car accommodation to the rear of the properties behind the homes with attractive gardens to the front, providing a very pleasant streetscape.

Although the adjoining owners have provided their support for the carport it would be more in keeping with the streetscape to accommodate vehicles to the side or rear of the property.

Peter Matthews
Building and Development Tribunal Chairperson
Date: 17 October 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:

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