



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3/07/021

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council

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

Applicant: *withheld*

Nature of Appeal

The appeal is against the decision of the Toowoomba City Council not to grant a siting variation for a proposed roofed pergola/barbecue area on land described as “the subject site”.

Council considers that:-

1. The proposed location and height of the structure at 2.8m does not facilitate an acceptable streetscape; and
 2. The proposed location of the Class 1a structure adjacent to the *withheld* property boundary does not meet the performance criteria of Part 12-P1 of the Queensland Development Code and the outlook and views of neighbouring residents; and
 3. Alternative siting is available on the property.
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Date and Place of Hearing: 10.30 am Tuesday 3 April 2007
At Toowoomba City Council Chambers
An inspection of the site was carried out as part of the hearing.

Tribunal: Mr L F Blumkie Tribunal

Present: Applicant
Owner
Mr R Orr Toowoomba City Council representative
Ms Debbie Lawson Toowoomba City Council observer
Mr L Blumkie Tribunal

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the decision of the Toowoomba City Council, dated 26 February 2007 and allows a siting variation for a Class 10a carport adjacent to the *withheld* property boundary subject to the following conditions:-

1. The combined space has 2 car spaces available measuring a minimum of 5m x 3m each with suitable access available for the parking of 2 cars at all times.
2. The roof of the existing carport is extended with a skillion roof approximately 4m in length and approximately 3.2m in width.
3. The barge board and barge mould of the existing carport is extended in line with the existing carport roof and remains approximately 350mm setback from the *withheld* property boundary.
4. The western end of the extension has an appropriate fascia beam set at a maximum height of 2m above the existing concrete slab.
5. The tops of the rafters of the extended roof are in line with, and checked into the top of the beam mentioned under condition 4.
6. The three existing steel posts adjacent to *withheld* are retained.
7. The two internal steel posts on the southern side are to be removed to achieve a minimum of 3m clearance to allow an appropriate vehicular turning access for the parking of the second vehicle.
8. The *withheld* elevation of the extension is enclosed with a maximum of 50% solid material in line with the existing posts.
9. The extension is painted in a colour scheme to match the existing carport and house.
10. The roof gutter to the extension is connected to the existing stormwater drainage system.

Background

The site is a corner allotment located on the corner of *withheld* and *withheld*, Toowoomba. The Council representative advised that Council considered *withheld* as the principal street frontage.

The site is developed with an existing class 1a house and class 10a carport.

Approval was given in 2003 to convert the existing car accommodation into a master bedroom and to erect a carport within the *withheld* setback.

An application for a siting variation of a proposed "Roofed Pergola/Barbecue area" was refused by Council on the 26 February 2007.

After discussion with Council Officers regarding the application, the applicant and owner changed the use of the proposed area from a roofed barbecue area to a carport.

An appeal was lodged with the Registrar on the 26 March 2007. The appeal documentation indicated the application was for a variation of the setback from *withheld* boundary for a proposed carport extension.

Material Considered

In coming to a decision, consideration was given to the following material: -

1. Drawings and photographs accompanying the application.

2. Copy of the Council Decisions dated 26 February 2007
3. Copy of the Appeal Notice dated 26 March 2007.
4. Verbal submissions from the applicant and the owner
5. Verbal submissions from the Toowoomba City Council representative.
6. Copy of the plan showing the modifications approved in 2003.
7. The *Building Regulation 2006*.
8. The *Integrated Planning Act 1997*.
9. The Queensland Development Code (QDC).
10. Building Code of Australia (BCA).
11. Inspection of the site.

Findings of Fact

A Building Code of Australia Volume 2 (BCA)

Part 1.3 of the BCA classifies buildings.

A Class 10a is defined as a non-habitable building being a private garage, carport, shed or the like; etc

B Standard Building Regulation 1993 (SBR) - Building Regulation 2006 (BR)

The existing class10a carport approved in 2003 within the *withheld* setback was, at that time, an 'as of right' approval under *Standard Building Regulation 1993*.

The SBR siting requirements were amended some time after April 2003 at which time the new requirements became Part 12 of the QDC. Part 12 of the Code establishes Performance Criteria and Acceptable Solutions for the design and siting of buildings and structures on lots 450m² and over.

C Queensland Development Code (QDC)

The QDC defines carport as "a class 10a building, other than a garage, providing covered vehicular parking.

The QDC Part 12, "acceptable solutions", states that the minimum area required for a single covered parking space is 5m x 3m wide.

D Site

The site is a corner allotment developed with an existing class 1 building, carport, landscaping and a 1.8m high partly open fence to the *withheld* frontage.

The site has a gentle slope towards the *withheld* frontage.

An inspection of the site indicated it was possible, with some minor modifications to the proposal, to achieve 2 covered parking spaces each measuring a minimum of 5m x 3m.

E Existing Car accommodation

The existing carport is not adequate in width for acceptable parking of 2 vehicles and also providing suitable covered access to the dwelling for wet weather use.

Reasons for the Decision

In my opinion the existing carport is inadequate in width to provide suitable parking for 2 vehicles and maintain acceptable covered access to the dwelling.

The proposal, with minor modifications, can achieve parking spaces for two vehicles which meets the minimum 5m x 3m space requirements established in the QDC.

Relocating existing internal posts would allow adequate turning space for the second vehicle under the proposed extension.

The proposal needs to be considered under the performance criteria established under the QDC.

The Tribunal's consideration of the performance criteria is documented as follows:-

P1 The Location of a building or structure facilitates an acceptable streetscape appropriate for-

(a) the bulk of the building or structure;

The modified proposal creates an acceptable streetscape. The skillion roof extension of the existing carport, when limited in height to 2m at the western end and with matching materials and colour scheme to the existing house and carport, has limited impact on the streetscape.

(b) the road boundary setbacks of neighbouring buildings or structure

The existing carport separates the modified proposal from the adjoining property, hence the proposal has no impact on the neighbouring property.

(c) the outlook and views of neighbouring residents

The proposed extension has no detrimental affect on the outlook and views of neighbouring residents.

(d) Nuisance and safety to the public

The structure does not create a nuisance nor is it a safety hazard for the public. Traffic sight visibility lines are not affected.

P2 Buildings and structures-

(a) provide adequate daylight and ventilation to habital rooms;

The proposed structure allows adequate daylight and ventilation to habital rooms.

(b) Allow adequate light and ventilation to habital rooms of buildings on adjoining lots.

The proposed structure has no effect to light and ventilation to habital rooms of buildings on adjoining lots.

P3 Adequate open space is provided for recreation, service facilities and landscaping.

The proposed structure allows for more than adequate space for recreation, service facilities and landscaping.

P4 The height of a building is not to unduly

(a) overshadow adjoining houses;

The proposed structure does not overshadow adjoining houses.

(b) Obstruct the outlook from adjoining lots.

The proposed structure does not obstruct the outlook from adjoining lots.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours.

The proposed structure, combined with the 50% enclosure to *withheld* and with the existing 1.8m high boundary fence, provides adequate visual privacy for neighbours.

P6 The location of a building or structure facilitates normal building maintenance.

The proposed structure allows for normal building maintenance.

P7 The size and location of structures on corner sites provide for adequate sight lines.

The proposed structure allows for more than adequate sight lines.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residences and visitors, appropriate for-

(a) the availability for public transport; and

(b) the availability of on-street parking; and

(c) the desirability of on-street parking in respect to the streetscape; and

(d) the residents likelihood to have or need a vehicle.

With the modifications to the proposal adequate parking is available for 2 vehicles. Street parking is also available.

In the opinion of the Tribunal, the modified proposed structure satisfies the performance criteria and acceptable solutions of the QDC.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, **changes** the decision of the Toowoomba City Council, dated 26 February 2007 an allows a siting variation for a Class 10a carport adjacent to the *withheld* property boundary **subject to the following conditions:-**

1. The combined space provided has 2 car spaces available measuring a minimum of 5m x 3m each with suitable access available for the parking of 2 cars at all times.
2. The roof of the existing carport is extended with a skillion roof approximately 4m in length and approximately 3.2m in width.
3. The barge board and barge mould of the existing carport is extended in line with the existing carport and remains approximately 350mm setback from the *withheld* property boundary.
4. The western end of the extension has an appropriate fascia beam set at a maximum height of 2m above the existing concrete slab.
5. The tops of the rafters of the extended roof are in line with, and checked into the top of the beam mentioned under condition 4.
6. The three existing steel posts adjacent to *withheld* are retained.
7. The two internal steel posts on the southern side are removed to achieve a minimum of 3m clearance and allow an appropriate vehicular turning access for the parking of the second vehicle.
8. The *withheld* elevation of the extension is enclosed with a maximum of 50% solid material on the line of the existing posts.
9. The extension is painted in a colour scheme to match the existing carport and house.
10. The roof gutter to the extension is connected to the existing stormwater drainage system.

Leo F Blumkie
Building and Development
Tribunal
Date: 10 April 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
Department of Local Government, Planning, Sport & Recreation
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