



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3-06-100

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: *Withheld* – “the subject site”.

Applicants: *Withheld*

Nature of Appeal

An appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997*, against the decision by Brisbane City Council, not to approve a siting variation for a roof, over an existing *balcony* that is also a *carport*.

The proposed roof, over the existing *balcony* and *carport*, is to be situated within the 6m, road setback, on land described as Lot “*withheld*”, and located at “the subject site”.

Date and Place of Hearing: 9.00 am, Friday the 9th March 2007
on site at “the subject site”.

Tribunal: Debbie Johnson

Present: “withheld” - Applicants
Alister Marr - Private Building Certifier
Colin Neilsen – Brisbane City Council
Daniel Oliver - Brisbane City Council

Decision

The decision of the Brisbane City Council to refuse the siting variation for a roof over an existing *balcony* and *carport*, as contained in their Decision Notice, dated 12th October 2006, is **set aside**.

The siting for the proposed roof may be erected over the existing *balcony* and *carport* as proposed.

The street setback, may be varied from 6.0m to 2.5m, as measured to the outer most projection of the roof, in line with the setback of the existing *balcony* and *carport*, providing both the *balcony* and the *carport* under it, remain open and unscreened in any way.

Background

The applicants purchased this property and built their home at “the subject site” in 1977. The site was affordable and suitably located to raise their family.

In 1998, after seeking approval for a *carport* to be erected within the 6m street setback, the applicants were encouraged to apply for a *balcony* instead of the carport. The proposed timber *balcony* with a *carport* under was granted a siting variation and subsequent building approval by Brisbane City Council. The *balcony* was erected as approved and sits 2.5m from the street frontage.

In 2006, Building Certifier Alister Marr was engaged by the applicants to provide a building approval to erect a roof over the *balcony*. The proposed roof required an additional approval for a siting variation as the new works are to be sited within the 6m street setback.

The siting variation application, made to Brisbane City Council on the 1st of September 2006 was subsequently refused.

Material Considered

1. The approved, architectural working drawings for building works undertaken at, “the subject site”;
2. Form 10 – Building and Development Tribunals Appeal Notice;
3. A written submission to the tribunal from the applicants documenting their thoughts and concerns in relation to the proposed siting of a roof over their existing *balcony* with *carport* under;
4. Verbal representations, at the hearing, by the applicants,
5. Verbal representations, at the hearing, by Alister Marr;
6. Verbal representations at the hearing, from Colin Neilsen and Daniel Oliver of the Brisbane City Council;
7. Written endorsements from the adjoining property owners;
8. The *Standard Building Regulation 1993*; and
9. Part 12 of the Queensland Development Code (QDC).

Findings of Fact

The following points are considered as findings of fact:

1. The existing house has been built for almost 30 years. The existing *balcony* with a *carport* under was built with all necessary approvals nine years ago
2. The *balcony* with a *carport* under, as it currently sits, has not been the cause for complaint by others.
3. The erection of the existing *balcony* with a *carport* under has not led to any other applications of a similar nature along this street despite the structure having been erected nine years ago.

4. The *balcony* as built would be more functional with roof cover.
5. The subject site is regular in shape with little or no fall over the site.
6. Siting for Class 10 buildings and structures, is determined by the Queensland Development Code (QDC), Part 12, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Element 1 of the QDC Part 12- Design and Siting of Buildings and Structures, states:

A1 (a) For a dwelling, *garage* or a *carport* the minimum *road setback* is-

- (i) 6m;
- (ii) where there are existing dwellings on both adjoining *lots* and at least one of the dwellings is *setback* from the road between 3m and 6m, and the difference between their *road setbacks* is-
 - (A) not more than 2m- a distance between the two dwellings; or
 - (B) more than 2m- the average of the *road setbacks* of the adjacent dwellings.

Under Definitions in the QDC:

a *balcony* means any external platform, attached to and accessed from a *building* and 1 metre or more above adjacent finished ground;

a *carport* means a class 10a building, other than a *garage*, providing covered vehicular parking;

an *open carport* means a *carport* with-

- (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another *building* or a side or rear allotment boundary; and
- (b) not less than one-third or its perimeter open.

7. The existing structures are therefore best described as a *balcony* over an '*open carport*' as defined in the QDC.

8. The Performance Criteria, P1, of Element 1- Design and Siting of Buildings and Structures states:

The location of a *building* or *structure* facilitates an acceptable streetscape, appropriate for-

- (a) the bulk of the *building* or *structure*;
- (b) the road boundary *setbacks* of neighbouring buildings or *structure*;
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

Reasons for the Decision

1. The existing *balcony* with *open carport under* was approved nine years ago. At this time, it was determined that a siting variation was appropriate. Since this time there have been no recorded complaints from residents. Supporting, written endorsements from adjoining residents indicates that the proposed roof over the *balcony* provides an acceptable streetscape to those most affected by this decision.

2. The proposed roof will have minimal additional impact on the bulk of the existing structures. The *balcony* and the *open carport* under it have been in existence for many years. These structures are already part of the streetscape that currently provides the amenity enjoyed by all residents in the street.
3. The adjoining property owners are satisfied that their own outlook will not be compromised by the proposed roofline.
4. I can find no reason to assume that the proposed roof over the existing *balcony* will cause any nuisance or safety issue.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 30th March 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
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