



APPEAL
Integrated Planning Act 1997

File No. 3-07-047

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Concurrence Agency: Brisbane City Council
Certifier: Complete Building Certification
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 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 on Monday 17 September 2007
at “the subject site”

Tribunal: Dennis Leadbetter Referee
Present: Owner/Applicant
Robert Dix Brisbane City Council Representative
Dennis Leadbetter Referee

Decision

The decision of the Brisbane City Council, acting as a concurrence agency, as contained in its letter dated 18 July 2007, not to grant a siting variation to the street alignment is **set aside** and is **subject to the following conditions:**

- The proposed carport may be erected to the eastern side of the site with a street alignment setback of 2.0 metres, measured to the outermost projection.
- The carport to reflect detailing, compatible with the existing dwelling, to gable end facing the street.

Background

The existing dwelling on site would have been built around the mid 1940's and is in a neighbourhood of similar aged structures. The dwelling is located on two titles, where many of the surrounding are on a single title. The dwelling is located approximately centrally over the two titles and the side alignment setbacks are insufficient to allow the positioning of a double car carport of reasonable dimensions (as indicated in A8 (a) (B) of Part 12 QDC) within those side alignment setbacks.

Available alternative positions on the site are restricted to the rear of the site, and require negotiation around mature vegetation, placing a carport almost in the middle of the rear yard, or the removal of that vegetation to allow the carport to be constructed near the side alignment and allow reasonable usage of the available rear yard space. Neither option is considered to provide an environmentally soundly based solution.

Material Considered

1. Appeal notice Form 10 and grounds of appeal contained therein;
2. Form 18 – Notice of Election provided to the Registrar 11 September 2007
3. Drawings and photographs submitted with the appeal;
4. Letter from Brisbane City Council dated July 18 2007, not to grant a siting variation.
5. Verbal submission from the owner;
6. Verbal submissions from the Brisbane City Council's representatives;
7. The *Integrated Planning Act 1997*; and
8. The Queensland Development Code (QDC) Part 12.

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 eastern side of the subject site and to within 2.0 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

Date: 27 September 2006

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 and Planning, Sport and Recreation
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