



APPEAL

File No. 3-05-021

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 20 of the *Building Act 1975* against the decision of the Brisbane City Council to refuse the application under Section 20 of the *Standard Building Regulation 1993* to vary the siting requirements of a new carport to be located on land described as Lot *withheld*, and situated at “the subject site”.

Date and Place of Hearing: 9.30 am on Tuesday, 10 May 2005
At “the subject site”

Tribunal: R. Rooney

Present: Applicant (ADRO Garages & Sheds)
withheld - Owner
Mr R Rooney – Tribunal Referee

Decision

1. The Tribunal **sets aside** the Brisbane City Council decision contained in its letter dated 2 March 2005 (Reference: DRS/BLD/A04-1296354) refusing the application to vary the siting requirements of the Queensland Development Code – Part 12 for a carport on land situated at “the subject site”

and **decides** that – the carport siting proposed (DBRBC No. 5789/1) be approved, subject to:

- (a) Repositioning the roof against the existing building to increase the road boundary clearance to approximately 4.5metres; and
- (b) The overall height not exceeding 3.3metres from the driveway; and
- (c) The sides remaining unenclosed with no door to the front; and
- (d) The existing 1.8metre high front fence and gates remaining in place.

Background

The application is for the construction of a new double carport to be constructed in the area between the existing dwelling and the road boundary alignment in a manner which has minimal impact on the existing dwelling, usable recreational area on site, and the amenity of the adjoining neighbours.

The Council did not grant the request to vary the siting requirements of the Queensland Development Code (QDC) Part 12 as the proposed structure would:

- *Not facilitate an acceptable streetscape appropriate for bulk/road boundary setbacks. Outlook and views of neighbouring residents/nuisance and safety to the public;*
- *Not allow adequate open space for recreation, service facilities and landscaping;*
- *Not allow adequate visual privacy for neighbours;*
- *Not adequately facilitate normal building maintenance.*

Council advised that there are alternative provisions on the site that will comply with the QDC and Council policy regarding carports within the 6m building line.

The owners obtained from both immediate neighbours a Siting Variation Part 2 – Neighbour's statement not objecting to the proposed siting of the carport.

The owners contend the "alternative" site suggested by Council is not a suitable one and therefore not an alternative just because of its physical size, because:

- i. Trees and shrubs would need to be removed;
- ii. A new driveway and kerb and channel modifications would be necessary
- iii. Fencing and gates would need to be relocated
- iv. It would inhibit access to the front door generally and make it impractical for wheel chair access.
- v. It would put undue risk on persons entering the house, especially the owners two under 5 year olds, from vehicular movement.
- vi. It would not be out of character with the neighbour, being 27 similar situations within a 20 minute walk of this property.

Material Considered

1. Council letter dated 2 March 2005, not granting a request to vary the siting requirements of the Queensland Development Code – Part 12 for the siting of a carport.
2. Appeal documentation including drawings indicating the location of the proposed new double carport in relation to the existing dwelling and adjoining neighbour;
3. Site plan, plans and elevations of the proposed new double carport;
4. Form 10 – Building and Development Tribunal Appeal Notice dated 21 March 2005 from the applicant and the attached letter from the owners outlining the grounds for the appeal addressing the reasons for Council's refusal.
5. Owners further submission addressing the application with reference to the Queensland Development Code – Part 12.
6. Verbal submissions by the applicant and owner giving reasons for construction of the double carport within the 6m of the road boundary alignment.

7. Copy of Neighbours statements expressing no objection that a relaxation be given to the new double carport in the indicated location at the front of the site.
8. Verbal submissions by the representative of the Brisbane City Council outlining the Council's assessment of the application;
9. The *Standard Building Regulation 1993*; and
10. The Queensland Development Code, Part 12.

Findings of Fact

I made the following findings of fact:

1. The Brisbane City Council (letter 2 March 2005) did not grant approval to vary the siting requirements of the Queensland Development Code – Part 12 in respect to a double open carport as indicated on Drawing (DBRBC No. 5789/1) on “the subject site”
2. The proposed carport is an “open carport” as defined in Part 12 of the QDC.
3. Drawing (DBRBC No.5789/1) indicates 6m clearance from the existing house to the road boundary and 6.2m to the South Eastern side boundary. An on-site check indicates these distances as 6.5m and 7.1m approximately respectively.

Reasons for the Decision

1. The *Standard Building Regulation 1993*, under the *Building Act 1975*, contains under Part 3 – Section 34 Design and siting standards for single detached housing and includes under subsection 1 (b) class 10 buildings and structures located on the same allotment as a single detached class 1 building.

Subsection (3) nominates the provisions of QDC apply unless there are alternate provisions in a planning scheme about boundary clearance and site coverage.

QDC – Part 12 – Design and siting standard for single detached housing – on lots 450m² and over is applicable in this instance.

2. Where not in accordance with the nominated “acceptable solution” local governments (Councils) must assess alternate “acceptable solutions” to determine whether the Performance criteria will be satisfied.
3. QDC – Part 12 defines an open carport and sets out Performance criteria P1 to P7 and corresponding acceptable solutions under Element 1 – Design and Siting of Buildings and Structures. By definition carports and open carports are class 10a buildings.
4. The Performance Criteria are:

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

(a) the bulk of the building or structure

The proposed new carport is not significant in size nor height as plans indicated that it is proposed to be approximately 6.0m x 6.0m footprint with a height to the underside of the end truss to be approximately 2.4m.

The proposed carport is to be constructed so as not to dominate the road boundary alignment or the adjoining neighbours' property. The structure has a low pitch (10°) roof and will not present a dominant building bulk to the existing streetscape.

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

For open carports the acceptable solution under A1(c) allows the minimum road setback to be less than generally required under A1(a) if –

- i. the aggregate perimeter dimension of walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the carport within the same setback; and
- ii. there is no alternative on-site location for a garage or carport that –
 - (a) complies with A1(a); and
 - (b) will allow vehicular access having a minimum width of 2.5m; and
 - (c) has a maximum gradient of 1 in 5.

With respect to A1 (c) (i), this acceptable solution will be satisfied as the carport will only be 1.5m within the 6m setback and the structure is supported on 150 19 steel tubular columns with no solid walls or screens.

With respect to A1 (c) (ii), although the carport being 6m wide to outside fascia channel, could physically be located between the side boundary fence and the house, I do not consider this location as an alternative to the proposed siting because –

1. Privacy between the adjoining neighbours would be compromised by the removal of screen planting along the boundary.
2. Access to the front door approximately mid-way along the side of the house would be restricted. This would be more restrictive and dangerous where the casement windows to a Bedroom at the lower level are open for natural light and ventilation. It would be undesirable to walk through the carport to access to frontdoor .
3. The proximity of the carport to the above Bedroom windows may adversely affect the natural light and ventilation to these habitable rooms.
4. The proximity of the carport to the path leading to the front door would increase the potential for accidents, especially the young children living on the property.
5. As a swimming pool occupies the backyard there is no other “alternative” site to locate the carport.

(c) the outlook and view of neighbouring residents

The outlook and view from the adjoining neighbours and residents should not be unduly affected by the construction of the new carport in this location.

(d) nuisance and safety of public

The proposed new carport will not cause any nuisance or increased safety issues to the public as it is proposed to be located over the existing driveway and on-site parking space.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of the proposed new carport will have minimal impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling.

The “alternative” siting location between the house and side boundary, as suggested by Council may adversely affect the natural light and ventilation to habitable rooms.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The location of the proposed new carport will have no impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings.

The relevant parts of A2 will be satisfied.

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

The location of the proposed new carport will have no impact on the extent of open space provided for recreation, service facilities and landscaping for the dwelling as these have been established elsewhere on the site.

The “alternative” siting location would restrict the open space available for recreation and landscaping. Currently there is landscaping along the side boundary and against the house adjacent to the path leading to the front door. The “alternative” site would necessitate the removal of this landscaping. It would also occupy the desirable space used for family recreational activities.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The proposed new carport will not overshadow the adjoining houses, as it is located approximately mid way along the street frontage and has a maximum height of approximately 3.1m at the ridge line.

(b) obstruct the outlook from adjoining lots

The proposed new carport will have no impact upon the outlook of the adjoining allotments.

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

The proposed new carport will not affect the privacy of the neighbours. It will be located mid way between the adjoining neighbours giving a minimum side boundary clearance of approximately 7.5m.

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

The proposed new carport facilitates normal building maintenance.

P7 The size and location of structures on corner sites provide for adequate sight lines–
This site is located away from the street corner and therefore will not impact upon corner sight lines.

5. I am of the opinion that the proposed siting of the open carport subject to the conditions of the Decision satisfies the Performance Criteria of the Queensland Development Code – Part 12.

Ray Rooney
Building and Development
Tribunal Referee
Date:

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
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248