



APPEAL
Integrated Planning Act 1997

File No. 3/07/006

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council
Site Address: *withheld*-“the subject site”
Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Caloundra City Council in relation to not granting an approval for the siting of a proposed new open carport to be located within the prescribed 6.0m road boundary setback, on land described as “the subject site”.

Date and Place of Hearing: 2.00 pm on Thursday 25 January 2006
- “the subject site”

Tribunal: Georgina J Rogers - Chairperson
Chris Schomburgk - General Referee

Present: Owner
Applicants, Spanline Home Additions
Mr Richard Prout – Building Certifier, Caloundra City Council representative

Decision

The decision of the Caloundra City Council as contained in its letter dated 13 December 2006, (Reference: BDD-03633 / PROP16161) refusing the application to construct a proposed open carport, within the prescribed 6m setback from the road boundary alignment of the site is **set aside and is replaced with the following decision:**

The proposed new open carport may be constructed within the prescribed 6m setback from the road boundary alignment subject to the following conditions:

1. The proposed open carport is to be constructed a maximum width of 3m from the wall of the existing garage with no overhanging eaves and therefore encroaching minimally into the required 6m setback;
2. The maximum length of the proposed open carport is to be 6m;
3. The rear of the proposed open carport may be built in line with the existing rear garage wall along the boundary alignment;
4. The proposed open carport is not to be enclosed at any stage;
5. The construction is to colour match the existing building in relation to roof, gutters, eaves, downpipes and columns.
6. Existing vegetation between the proposed open carport and road boundary alignment be upgraded and maintained.

Background

The meeting was held on site. The opportunity was taken to view the development and character of the neighbourhood.

The site is irregular in shape. The existing dwelling has been constructed at an angle to the road boundary alignment. The site is at the end of a cul-de-sac and faces a canal. There is no reasonable opportunity on site to relocate the proposed open carport.

A similar carport has been constructed on the adjoining left site; however it appears to meet the requirement of a 6m setback from the road boundary.

Dense and high vegetation currently exists between the proposed new open carport and the adjoining road boundary and it is required that this vegetation be maintained. This will reduce the impact of the open carport construction within this location.

Material Considered

1. Appeal documentation including drawings indicating the location of the proposed new open carport and the existing dwelling in relation to the adjoining properties and road boundary alignment;
2. Site plan, plans and elevations of the proposed new open carport;
3. Aerial photographic submission by Caloundra City Council showing location of existing dwelling in relation to neighbourhood on canal;
4. Verbal submission by the applicant and reasons for provision of new open carport to be located within the setback to the road boundary alignment;
5. Correspondence from the Caloundra City Council dated 13 December 2006, not granting approval for the siting of the proposed new open carport within the 6m setback from the road boundary alignment;
6. Verbal submissions by the representative of the Caloundra City Council outlining the Council's assessment of the application;
7. The *Standard Building Regulation 1993*; and
8. The Queensland Development Code (QDC), Part 12.

Findings of Fact

I made the following findings of fact:

1. The Caloundra City Council wrote to the applicant on 13 December 2006, (Reference: BDD-03633 (PROP16161) not allowing the relaxation for the proposed new open carport to be constructed within 6m of the road boundary alignment.
2. An on site visit was undertaken and plans provided showing the location of the proposed new open carport, being an addition to the existing dwelling on site. The following was able to be determined. The site is irregular in shape and has a site area in excess of 600m². Vehicle access is via *withheld* to the south, a canal to the north and has a frontage of approximately 10m. The site consists of one lot and the existing dwelling has been constructed at an angle to the southern road boundary alignment.
3. The plans indicate that the proposed new open carport would be setback 3.8m from the road boundary alignment and abut from the western (left) side boundary alignment.
4. The neighbourhood has been constructed within the past 25 years and is well established. The dwellings are generally masonry construction with tile roofs. The majority of the existing residential dwellings appear to be minimum 6m from road boundary alignment. The area is flat and dwelling is located at the end of a cul-de-sac.
5. The Caloundra City Council provided aerial photographs of the canal neighbourhood; however these were not of sufficient detail to be able to determine setback distances from the road boundary alignment.
6. The Caloundra City Council provided a copy of their Caloundra City Plan 2004, Part 8. Under the Plan the preferred outcome for lots with a road frontage of less than 12m is for garages and carports not to comprise more than 50% of the width of the lot. The overall length of the carport is to be reduced from 7.2m to 6m. This also enables suitable turning access into the carport which would not have been able to be achieved with the proposed 7.2m length.
7. The carport width is to be reduced from the proposed 3.5m from the eaves to 3m from the existing garage wall. This provides a suitable usable width for a carport and increases the setback from the road boundary alignment at its closest point to approximately 4.5m, increasing in line with the building.

Reasons for the Decision

1. Part 12 of the QDC, sets out Performance Criteria (P1, P2, P3, P6) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:

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

(a) the bulk of the building or structure

From the plans provided the new open carport is proposed to be setback 3.8m from the front road boundary alignment and 0m from the western side boundary alignment. The location of the proposed new open carport is in line with the western wall of the existing dwelling garages. The overall height of the proposed new open carport is in line with the fascia of the existing dwelling.

The bulk of the building would not appear to increase in dominance or character when constructed in its proposed location and proposed amended design as it will blend in with the existing dwelling.

The proposed new open carport is to be constructed minimally within front road boundary alignment and does not appear to be inconsistent with the bulk of the surrounding neighbourhood.

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

The proposed new open carport will not have an adverse impact on the existing road boundary setbacks of the neighbouring buildings or structures. The applicant's representatives have provided evidence of a similar structure within the neighbourhood. A similar structure has been constructed on the adjoining property to the west of this site.

(c) the outlook and view of neighbouring residents

No feedback was received from the adjoining neighbours; however advice was given by the owner that there was no objection to the proposal by the adjoining neighbours. The immediate neighbourhood fronts *withheld* on one side with the main outdoor living areas of the adjoining properties fronting a canal which meanders through the neighbourhood. The impact of the neighbouring dwellings, outdoor recreation areas and structures has minimal impact on each other. Therefore the construction of an open carport within this location would have minimal impact on the neighbouring resident's outlook and view.

Significantly, the neighbourhood residences have been well developed and are landscaped and fenced between creating minimal affect on outlook and internal privacy.

(d) nuisance and safety of public

The proposed new open carport would not appear to cause any nuisance nor increased safety issues to the public as it is located within the existing property.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of the proposed new open carport would have minimal impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling, based on the evidence provided.

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

The location of the proposed new open carport would have minimal impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided. There is significant existing vegetation between the adjoining properties and high fencing between each adjoining property.

P3 Adequate open space is provided for recreation, service facilities and landscaping–
The location of the proposed new open carport would have minimal impact upon the usable open space provided for recreation, service facilities and landscaping for the dwelling. It would be a condition that the proposed new open carport could not be enclosed within the 6m required setback from the front road boundary alignment at any stage.

P6 The location of a building or structure facilitates normal building maintenance–
The proposed new open carport would not impact on the access for normal building maintenance onto the site as access is via the existing driveway and this will not be impeded nor encroached upon.

2. Based on the above facts it is considered the appeal is proven.
3. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to accept alternatives to the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the proposed new open carport to be constructed within the required 6m setback from the front road boundary alignment, the Tribunal found that there were grounds to allow for the addition of the new open carport in the location shown, with amendments to size.
5. An assessment of Part 12 of the QDC did not identify any valid reason for refusing the application for the addition of the proposed new open carport to be constructed with a maximum width of 3m front the existing garage wall and maximum length of 6m from the west (left) side boundary alignment and with a minimum, and increasing setback of 4.4m from the front road boundary setback

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 20 February 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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