



APPEAL
Integrated Planning Act 1997

File No. 3-06-035

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

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

Nature of Appeal

Appeal under Section 22 of the *Building Act 1975* against the Hervey Bay City Council for refusing an application for variation in respect to a proposed carport within 6 metres of the road boundary.

Date and Place of Hearing: No hearing took place.

The appeal was considered after written submissions were received from both the Applicant and Hervey Bay City Council.

Tribunal: Raymond W Rooney

Decision

Taking into consideration the relevant facts and circumstances, the Tribunal **sets aside** the Hervey Bay City Council’s refusal in its letter dated 2 March 2006, and the Tribunal **decides** that:-

The carport may be sited within the 6 metre road boundary setback subject to the following conditions:-

- a) The roof be a flat pitch with a gutter height as an extension of veranda gutter on the North East side of the house;
- b) The roof be supported by a post and beam structure of either timber or steel;
- c) The space between the posts facing the street be either left open or be battened using horizontal timbers not more than 75mm wide, spaced not closer than 30mm apart;
- d) The rear and entry of the carport to remain open and to have no doors or shutters; and
- e) To be generally as indicated in Appendix ‘A’.

Background

The applicant sought Council's approval to erect a carport at the front of the existing dwelling. Part of the carport would be within 6 metres of the road boundary, the 'deemed to satisfy' setback requirement for buildings.

Council refused the application on the grounds that the location does not facilitate an acceptable streetscape, appropriate for – The road boundary setbacks of neighbouring buildings.

Material Considered

1. Form 10 – Building and Development Tribunal, Appeal Notice dated 10 March 2006 with attachments;
2. The applicants letter dated 7 April 2006 supporting the application with 7 photographs and explanation;
3. The applicants letter of response to Council's written submission dated 10 March 2006;
4. Hervey Bay City Council's letter dated 2 March 2006 refusing the "Application for Variation";
5. Hervey Bay City Council's written submission dated 10 March 2006 setting out reasons why the application was refused and with Attachment 1 – an aerial photo indicating building setbacks in the street;
6. The *Building Act 1975*, referencing the *Standard Building Regulation 1993*, referencing the Queensland Development Code.

It is noted that Hervey Bay City Council did not respond on the Applicant's written submission made available to them.

Findings of Fact

1. There are no buildings in *withheld* within the 6 metre road boundary clearance as indicated in Attachment 1 of Council's submission dated 10 March 2006.
2. Council only permits open carports to be built forward of the 6 metre minimum road setback if they satisfy acceptable solutions clauses A1 (i) and (ii) of Part 12 of the Queensland Development Code (QDC).
3. The proposal does not satisfy an "open carport" as defined by the QDC as a third of its perimeter is not open.

Reasons for the Decision

1. The *Standard Building Regulation 1993* (SBR) requires that building work must comply with each part of the Queensland Development Code (QDC) mentioned in Schedule 13 to the extent the part applies to the work.
2. Schedule 13 of the SBR nominates Part 12 – Design and Siting Standards for single detached housing on Lots 450m² and over, in Table 2: Local Government.
3. Part 12 of the QDC is a performance based code giving the performance criteria to be met and acceptable solutions as "deemed-to-satisfy" the requirements.

4. The performance criteria may also be satisfied by other than the deemed-to-satisfy solutions listed. Alternative solutions would be acceptable provided the intent of the performance criteria is met.
5. The performance criteria P1 for buildings and structures aims to promote an acceptable streetscape and considers it's bulk, setback in relation to neighbours, outlook of neighbours, and nuisance and safety to the public.
6. Acceptable solution A1 (c) relates specifically to "open carports", and allow them to be within 6 metre road setback if the total length of perimeter walls and supports within the 6 metre is not more than 15% of the total perimeter length within the 6 metre setback. However, this only applies if there is no alternative on-site location for the carport with vehicular access.
7. In this instance, the proposal exceeded the 15% rule outlined in 6 and as a result was too bulky. The proposed height of the carport adds bulk to the structure. It is my opinion that, the carport as proposed would not satisfy P1 (a) of Part 12 of the QDC. Although the poinciana trees would soften the impact of the carport on the streetscape, they are outside the control of the owners and could not be relied upon as a permanent feature.
8. Council's alternative location on the 4.4 metre wide space adjacent to the veranda, is not considered appropriate because –
 - (a) that side of the house is designed for outdoor living as a extension of the veranda, and is the most desirable aspect for this purpose; and
 - (b) A well established poinciana tree would need to be removed in order to gain direct street access.
9. There is no other suitable alternative location on the site for a carport.
10. The applicant, in her response to Council's submission, seeks advice on what is acceptable. Consequently, Appendix A was prepared to indicate to the owner a structure that, in my opinion, has appropriate bulk for an acceptable streetscape. The **Decision** sets down the conditions that must be met to allow the siting proposed
11. There has been no indication by Council that the outlook and views of neighbours will be adversely affected.
12. The location of the carport will not impact on the nuisance and safety of the public.
13. I am of the opinion that the carport as described in the "Conditions" of the Decision satisfies the performance criteria P1 of Part 12 of the Queensland Development Code.

Mr Ray Rooney
Building and Development
Tribunal Referee
Date: 4/05/2006

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