



APPEAL
Integrated Planning Act 1997

File No. 3-06-011

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire 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 Caboolture Shire Council in relation to not granting an approval for the siting of a proposed new garage with roof deck to be located within the prescribed boundary setback from the front boundary, on land described as “the subject site”.

Date and Place of Hearing: 10.00 am on Friday, 24 February, 2006
On site at “the subject site” and subsequently at the office of the Caboolture Shire Council, Caboolture.

Tribunal: Georgina J Rogers

Present: Owner
Mr Phil Breeze – Tribunal
Mr Stephen Tucker – Tribunal
Mr Chris Harris – Caboolture Shire Council representative

Decision

The decision of the Caboolture Shire Council as contained in its letter dated 22 December 2005 (Reference: BRX-2005-755 (CH:pmc)) refusing the application to construct a garage with roof deck over, within the prescribed front boundary setback of the site is **set aside** and **is replaced with the following decision:**

The garage may be constructed within the prescribed front boundary setback subject to the following conditions:-

1. The proposed garage is to be constructed with a 5.000m setback from the *withheld* front road boundary alignment in lieu of the required 6.000m setback;
2. The roof deck is to be setback 6.000m from the front road boundary alignment.

Background

The meeting was held on site and photographic evidence of similar structures were provided by the applicant. The opportunity was taken to view a similar, complying, structure within the neighbourhood. This was done in the company of tribunal members, the applicant and Council representative.

The site appeared to be regular in shape. The site originally had substantial fall with contours provided indicating a cross fall in the front road boundary alignment in excess of 2.000m. The fall from the house finished floor level to the front alignment, where the proposed garage is to be located is approximately 3.000m. The existing dwelling, garage and swimming pool have been constructed on the high side of the site which falls substantially to the *withheld* road frontage. The existing garage is at the same finished floor level at the dwelling and is accessed via an extremely steep driveway.

There is no available space at the dwelling level to provide an additional on site garage as it would require substantial land fill and an even steeper driveway to that already provided as the site falls away at this point.

There is sufficient area within the site to provide an additional carport with roof over at road level, however the applicant's preference is for a secure garage with roof deck over. A similar roof deck over a garage was shown to the tribunal by the applicant. The concept would be quite acceptable as long as the edge of the roof deck was kept back within the front boundary road setback, being 6.000m. The garage could be constructed to within 5.000m from the *withheld* front road boundary alignment as this would be able to provide the facility for vehicles to temporarily park in front of the garage doors, while still being on the street edge.

The applicant advised this was unacceptable as it would impact on the existing pool area. From the plans provided and on site scrutiny it would appear that this could still be achievable.

Material Considered

1. Form 10 – Building and Development Tribunals Appeal Notice;
2. Appeal documentation including drawings indicating the location of the proposed new garage and roof deck and the existing driveway, garage and dwelling in relation to the *withheld* front road boundary alignment;
3. Site plan, plans and elevations of the proposed new garage;
4. Photographic submission by applicant showing location of proposed garage location;
5. Verbal submission by the applicant and reasons for provision of proposed garage with roof deck to be located within the *withheld* front road boundary alignment;
6. Correspondence from the Caboolture Shire Council dated 22 December 2005, not granting approval for the siting of the garage with roof within the required front road boundary setback;

7. Verbal submissions by the representative of the Caboolture Shire Council outlining the Council's assessment of the application;
8. The *Standard Building Regulation 1993*; and
9. The Queensland Development Code (QDC), Part 12.

Findings of Fact

I made the following findings of fact:

1. The Caboolture Shire Council wrote to the applicant on 22 December 2005 (Reference: BRX-2005-755 (CH:pmc)) not allowing the relaxation for the proposed new garage with roof deck over to be constructed within 6.000m to the *withheld* front road boundary alignment.
2. An on site visit was undertaken and the plans provided showed the location of the proposed new garage with roof deck. The following was able to be determined:-
 - The site is regular in shape and has a site area of approximately 783sq.m.
 - The site faces *withheld* to the south and has a frontage of approximately 27m.
 - The site consists of one lot and the existing dwelling has been constructed parallel to the southern road boundary alignment.
3. The site from the front of the dwelling to the street has a fall varying between approx. 1-3.000m. Access to the existing garage is via a steep, single driveway.
4. The plans indicate that the proposed garage and roof deck would be setback 3.000m from the *withheld* front road boundary alignment and 2.000m from the eastern side boundary alignment. The applicant advised that it would be a double lock up garage with possible storage in one side and have a new additional 6.000m wide driveway access from the road. An existing light pole is located directly in front of the western car bay and the driveway, should it have been full width, would need to be constructed to miss it.
5. The neighbourhood is recently constructed, generally brick veneer with tile roofs. Generally the existing residential dwellings appear to be minimum 6.000m from the front road boundary alignments. The area is relatively hilly and the roads predominantly meander and in the case of this site it is setback one from a corner lot and the proposed driveway would be close to the curve in the road.

Reasons for the Decision

1. Part 12 of the QDC, sets out Performance Criteria (P1-P8) 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 garage and roof deck is proposed to be setback 3.000m from the front road boundary alignment and 2.000m from the side boundary alignment.

The location of the garage is adjacent to an existing street light pole which could reduce manoeuvrability into the carparking area. The overall height of the proposed garage with roof deck would be similar to that of a carport with roof, however the bulk of the building would become dominant when enclosed as a garage.

The proposed garage with roof deck within the road boundary alignment setback is not consistent with the surrounding neighbourhood.

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

The proposed garage with roof deck within the 6.000m front road boundary setback is inconsistent with existing road boundary setbacks within the surrounding neighbourhood. To introduce the reduced setback for the site would appear to be uncharacteristic and could have a negative impact on the existing neighbourhood.

(c) the outlook and view of neighbouring residents

No feedback was received from the adjoining neighbours. Generally within the neighbourhood where the sites are steep there has been significant terracing and landscaping, including fencing of the sites. The neighbouring residents may not have their outlook and view significantly impacted by the proposed new garage and roof deck as generally their sites are landscaped and fenced creating minimal outlook and internal privacy.

(d) nuisance and safety of public

The proposed new garage would not appear to cause any nuisance or increased safety issues to the public as they would be located within the existing property.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of the proposed garage and roof deck 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 garage and roof deck would have minimal impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided.

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

The location of the proposed garage and roof deck could potentially increase the extent of usable open space provided for recreation, service facilities and landscaping for the dwelling, however there has been allowance for these spaces throughout the site.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The proposed garage and roof deck would not appear to unduly overshadow the adjoining houses, as it would be located at road level. The shadows from the proposed garage will predominantly fall to the south across the adjoining road boundary alignment.

(b) obstruct the outlook from adjoining lots

The proposed garage and roof deck may impact upon the outlook of the adjoining allotments as it is proposed to be constructed within the 6.000m road boundary alignment.

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

The proposed garage with roof deck would overlook the adjoining neighbour and therefore may affect the privacy of the neighbourhood.

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

The proposed garage with roof deck would not impact on the access for normal building maintenance onto the site as access is able to be via the existing driveway.

P7 The size and location of structures on corner sites provide for adequate sight lines–

This site is located adjacent to the curve of the street corner and therefore could impact upon sight lines of others. The location of the proposed garage within the required 6.000m front road boundary alignment as opposed to an open carport could reduce on site traffic vision.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing, as provision has been made for significant on-site carparking.

(b) the availability of on-street parking

The availability of on-street parking while reduced with the additional garaging for cars would be further benefited by the ability for visitors to park in front of the garage should be need arise. The nature of the neighbourhood would not require significant on-street carparking generally.

(c) the desirability of on-street parking in respect to the streetscape

On-street car parking would be reduced but not significantly affected by the proposed development.

(d) the residents likelihood to have or need a vehicle

The proposed development would allow for the provision for two additional on-site carparks.

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 vary 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 garage with roof deck advised to be setback 6.000m from the *withheld* front road boundary alignment, the Tribunal found that there were insufficient grounds to allow for the proposed garage with roof deck to constructed in the location shown, setback 3.000m from the *withheld* front road boundary alignment.
5. An assessment of Part 12 of the QDC did not identify any valid reason for allowing the application for the proposed garage with roof deck to constructed in the location shown, setback 3.000m from the *withheld* front road boundary alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 24 March 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
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