



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 3-04-054B

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 11 Regents Court, Upper Caboolture

Applicant:

Nature of Appeal

The appeal is against the decision of the Caboolture Shire Council not to grant a siting relaxation for a proposed garage to be constructed on land described as Lot 103 on RP 895674, and situated at 11 Regents Court, Upper Caboolture.

Council considers that under:-

- 1 Council's Amenity and Aesthetics policy, the building or structure, when built, will be in extreme conflict with the character of the proposed buildings neighbourhood; and
- 2 Section A1 (c) of the Queensland Development Code (QDC) there is an alternative location on the site for the proposed garage other than within the Front Boundary setback, which would be in compliance with A1(c)(ii) of the QDC.

NOTES :- The decision on each issue is considered separately by different Tribunals. Both hearings were held at the same time and date.

- 1 The decision on the siting issue is considered and responded to in this determination.
 - 2 The decision on the amenity and aesthetics issue is considered separately and a copy of that Tribunal decision is attached.
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Date and Place of Hearing: 9.00am Friday 20 August 2004.
Inspection of the site and hearing at
11 Regents Court, Upper Caboolture.

Tribunal: Mr L F Blumkie Tribunal

Present: Applicant
Owner
Observer
Caboolture Shire Council representative
Mr L Blumkie Tribunal
Mr Phil Breeze Observer
Mr John Rauber Observer

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, **changes the decision** of the Caboolture Shire Council, dated 13 July 2004 and grants a relaxation to allow the proposed carport (in lieu of the proposed garage) to be erected within the 6m street setback, subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

Background

Application was made on 7 July 2004, for a relaxation to erect a 6m x 6m garage within the road boundary clearance.

Council refused the application on the 13 July 2004.

The applicant lodged an appeal with the Registrar on the 4 August 2004.

Material Considered

In coming to a decision, consideration was given to the following material: -

- 1 Drawings accompanying the appeal.
- 2 Copy of the Decision Notice dated 13 July 2004.
- 3 Copy of the Appeal Notice dated 4 August 2004.
- 4 Verbal submissions from the applicant
- 5 Verbal submissions from the owner
- 6 Verbal submissions from the observer
- 7 Verbal submissions from the Caboolture Shire Council representatives.
- 8 The Standard Building Regulation 1993 (SBR)
- 9 The Integrated Planning Act 1997.
- 10 The Queensland Development Code (QDC)
- 11 An inspection of the neighbourhood

Findings of Fact

A Standard Building Regulation 1993 (SBR)

The SBR calls up the Queensland Development Code (QDC). Part 12 of the Code establishes Performance Criteria and Acceptable Solutions for the design and siting of buildings and structures on lots 450m² and over.

B Site

The site is developed with an existing class 1 building. The proposed garage, the subject of the appeal, when marked out on the site as shown on the site plan, blocked vehicular access to the existing single garage. The owner was not aware of this fact, and confirmed this was not acceptable.

The site falls from the rear to the front (about 2m) and from the left to the right (about 1.5m) and has 2 Council sewers (including manholes) running parallel to the right hand boundary and about 1m away from the boundary.

C Development in the neighbourhood.

An inspection of the neighbourhood indicated the majority of properties were developed with Class 1 buildings. There were numerous examples of colourbond garages, the majority of which were on corner allotments, and none appeared to be within 6m of the front road boundary clearance.

Reasons for the Decision

After consideration of a number of alternative options for additional car accommodation, the owner (after acknowledging a garage would not be workable), agreed a carport within the 6 front boundary clearance was the most satisfactory alternative solution.

The Council representative also agreed that a carport within the 6m street setback, taking into account the existing conditions on site, was an acceptable alternative.

The siting of the proposed carport was considered against the performance criteria established in the Queensland Development Code. The opinion of the Tribunal, in satisfying the performance criteria, is documented as follows:-

P1 The Location of a building or structure facilitates an acceptable streetscape appropriate for (a) the bulk of the building or structure;

The proposed double carport with the following conditions applied:

- 1 Starting at the front wall of the Class 1 dwelling and 6m towards the street;
- 2 Slightly offset from the existing driveway to allow the front left hand corner post to be clear of the existing driveway;
- 3 6m to 6.5m wide to allow suitable access to the existing garage with a car parked in the carport on the right hand side;

- 4 4 galvanised steel support posts powder coated;
- 5 The 2 front posts to have a brick base to match the existing brick base to the columns in the front entrance;
- 6 Flat roof aligning with the existing fascia and gutter of the existing house, and with a slight fall to the front;
- 7 Stormwater connected to the street channel in accordance with Council requirements;
- 8 Colour scheme to match the existing house fascia and gutter;
- 9 Colourbond roof sheeting (cream or equivalent);
- 10 Lattice on the sides if required.

created an acceptable streetscape within the existing neighbourhood.

Taking into account the overall shape, size, height and color scheme of the proposal, the bulk of the carport would be in keeping with the existing streetscape.

(b) The road boundary setbacks of neighbouring buildings or structure:

The location of the allotment being adjacent to a public reserve and in a cul-de-sac assisted in determining that the proposal was in keeping with setbacks of neighbouring buildings.

(c) The outlook and views of neighbouring residents

The proposed carport would not affect the outlook and views of neighbouring residents.

(d) Nuisance and safety to the public.

The proposed carport would not create a nuisance or be a safety hazard for the public.

P2 Buildings and structures-

(a) provide adequate daylight and ventilation to habitable rooms;

The proposed carport would allow adequate daylight and ventilation to habitable rooms.

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

The proposed carport would have no effect to light and ventilation to habitable rooms of buildings on adjoining lots.

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

The proposed carport allows for more than adequate space for recreation, service facilities and landscaping.

P4 The height of a building is not to unduly

(a) overshadow adjoining houses;

The proposed carport does not overshadow adjoining houses.

(b) *obstruct the outlook from adjoining lots.*

The proposed carport does not obstruct the outlook from adjoining lots.

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

The proposed carport would not interfere with visual privacy for neighbours.

P6 *The location of a building or structure facilitates normal building maintenance.*

The proposed carport would not interfere with normal building maintenance.

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

The proposed carport would allow for more than adequate site lines.

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

(a) *the availability for public transport; and*

(b) *the availability of on-street parking; and*

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

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

The proposed carport does not interfere with on site parking.

In the opinion of the Tribunal, after taking into account the particular circumstances of the site, it is possible to justify the location of the carport within the 6m street setback as established under performance criteria and acceptable solutions of the Queensland Development Code.

Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision of the Caboolture Shire Council, dated 13 July 2004 and grants a relaxation to allow the proposed carport (in lieu of the proposed garage) to be erected within the 6m street setback, subject to the conditions established in the Amenity and Aesthetics Tribunal decision. (refer attached).

This decision needs to be read in conjunction with the separate Tribunal decision on the affect the carport has on the amenity of the building's neighbourhood. (copy attached).

Leo F Blumkie
Building and Development
Tribunal
Date: 26 August 2004

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
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