



APPEAL
Integrated Planning Act 1997

File No. 3/06/052

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

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

Nature of Appeal

Appeal under Section 21 of the *Standard Building Regulation 1993* against the decision of the Caloundra City Council to refuse an application for a siting concession necessary for the erection of an open double carport within the prescribed road boundary setback on land described as “the subject site”.

Date and Place of Hearing: 10.00am, Tuesday 20 June 2006
Caloundra City Council Chambers

Tribunal: Geoff Cornish

Present: Owner’s Private Certifier & applicant
Owner’s builder
Richard Prout – Caloundra City Council
Ian Simpson – Caloundra City Council

Decision

In accordance with Section 4.2.34 [2] of the *Integrated Planning Act 1997*, I hereby **set aside** the decision of Caloundra City Council as contained in its written Decision Notice dated 12 May 2006 to refuse a siting variation for the erection of a double carport within 6.0 metres of the road boundary of the property. In its place I approve a siting variation to enable a double carport to be erected in front of the existing double garage and up to the road boundary of the property described as “the subject site”. The approval is subject to the current and any future property owners continuing to comply with the Queensland Development Code’s requirement for the provision of at least one on-site car parking space behind the road boundary setback as set out in P8 and A8 of Element 2 of Part 12 of the Code.

Background

The matter concerns the refusal of an application made to Caloundra City Council for a siting concession necessary to enable a new double carport to be erected within the space between the existing double garage and the road boundary of this property. The application was made on the basis of being the only available space on the allotment for this additional car parking requirement and the existence of several other similar structures on properties in the immediate vicinity.

Material Considered

1. Copy of the application made to Caloundra City Council on 24 April 2006 for a siting variation;
2. Letter dated 12 May 2006 from Caloundra City Council to the applicant stating that the application for a siting variation had been refused;
3. Form 10 – Building and Development Tribunals Appeal Notice and attachments, dated 19 May 2006, against the decision of Council to refuse the application and setting out the grounds of the appeal;
4. Verbal submissions made by the applicant on 20 June 2006 setting out why he believed the appeal should be allowed;
5. Verbal submissions made by Richard Prout of Caloundra City Council setting out why the application had been refused and why the appeal should not be allowed;
6. The *Building Act 1975*;
7. The *Standard Building Regulation 1993* (SBR);
8. The Queensland Development Code Part 12; and
9. The *Integrated Planning Act 1997*.

Findings of Fact

I made the following findings of fact:

1. The property in question is a corner allotment with an established dwelling and with no current access for a vehicle to the open area at the rear of the dwelling and garage.
2. The dwelling has an existing double garage that meets the minimum on-site car parking requirements of the Code and that is sited in accordance with the requirements of the Code.
3. The existing garage is currently utilised for the maintenance and storage of motor bikes and could be used for car parking at any time.
4. The owner currently parks his cars between the garage and the road in the location for which approval was requested for the erection of a carport.
5. The Code requires that that a minimum of 2 on-site car parking spaces be provided.
6. The Code does not require that any on-site car parking space be covered.
7. Caloundra City Council's circular "**Carports within Front Boundary Setbacks**", issued on 9 January 2006, sets out that Caloundra City Plan 2004 states that the following requirement must be met. "*At least 2 onsite car spaces are provided, one of which is capable of being covered by a structure that complies with this Code and the Standard Building Regulation 1993. The required parking space may be provided in tandem.*"

8. The site currently has 2 covered and 2 uncovered on-site car parking spaces. The structure over the covered car parking spaces complies with the requirements of Caloundra City Plan 2004.
9. The applicant is seeking permission to have all 4 on-site car parking spaces covered.
10. The Queensland Development Code states that an open carport may be sited within 6 metres of the road boundary of the property provided that certain criteria are met.
11. The siting provisions of the Code do not apply if there are alternative siting provisions for such structures set out in the Planning Scheme for the local government.
12. Caloundra City Plan 2004 does not contain any alternative siting provisions that would take precedence over those set out in the Code.
13. Caloundra City Council has a valid amenity and aesthetics resolution, made under Section 50(1) of the SBR, relating to such structures that are proposed to be erected within 6 metres of the road boundary and within 1.5 metres of the side boundary of a property. The carport in question is not captured by this resolution as it is not less than 1.5 metres from the side boundary of the property.

Reasons for the Decision

After assessing the facts and the submissions of both parties, I have reached the following conclusions:

1. The existing on-site car parking is double that of the requirements of the Code in respect of both covered and uncovered capacity.
2. The siting of the current on-site covered car parking meets the requirements of the Code.
3. The Code allows on-site uncovered car parking to be sited within 6 metres of the road boundary.
4. The Code allows covered car parking in the form of a carport to be sited within 6 metres of the road boundary where there is no alternative on-site location for the carport that is at least 6 metres from the road boundary.
5. The Code, as currently written, does not preclude the total width of the road frontage of an allotment being occupied by carports constructed within 6 metres of the road boundary of that property.
6. The Code sets out the siting provisions of the Regulation.
7. The Regulation places the onus upon the local government to determine, in accordance with Section 50(1), if there are locations where such structures are not acceptable on the grounds of amenity and aesthetics.
8. The siting of the proposed carport is not such that it is captured by the resolution of Council made under Section 50(1).

9. Alternatively a local government may include “*alternative siting provisions*” within its Planning Scheme.
10. Caloundra City Council has not included any alternative siting provisions within its Planning Scheme that would capture this structure.
11. The requirements of the Code and the Planning Scheme, with respect to the numbers and locations of on-site car parking spaces, are minimum requirements and the current and proposed provisions exceed these minimum requirements. Neither the Code nor the Planning Scheme places a maximum limit on the provision of on-site car parking, covered or uncovered, nor does either specifically detail how any additional on-site car parking over and above the minimum provision should be treated.
12. If the local government wishes to impose maximum limits and controls on on-site car parking, then it is necessary that this be done through a modification to the Planning Scheme.
13. The distance from the doors of the existing double garage to the road boundary of the property is 5.0 metres, which meets the minimum length requirement of the Code for a covered car parking space. As the garage and carport are to provide car parking spaces in tandem, it is reasonable to consider that the door recesses in the front of the garage be considered to form part of the carport, whether the doors are open or closed.
14. The Code dimensions, however, are applicable to car parking when the minimum provision is being made.
15. It could be argued that, where the minimum requirement is to be exceeded, these lengths may not apply. For example, a carport that was 3 metres wide and 9.5 metres in length would not be a non-complying structure simply because it failed to meet double the length requirement for a single carport, provided that the minimum on-site car parking provisions had still been met. That is to say that the second car parking space need not be fully covered.
16. The minimum requirement of the Code is for the provision of at least one on-site car parking space to be provided behind the 6 metre road boundary setback.
17. In view of the foregoing, with respect to the limitations of the Code, the Section 50(1) resolution and the Planning Scheme, I am of the opinion that this carport could have lawfully been approved by the certifier in its proposed location without any reference to Council.
18. However, were the existing on-site covered car parking spaces to be converted to another use by anyone at any time in the future, such that they could no longer be capable of being utilised for car parking, the on-site car parking provisions would no longer comply with the acceptable solutions set out in the Code which require at least one on-site car parking space to be behind the 6 metre setback. Such conversion would therefore not be lawful without the approval of a variation to the Code provisions.
19. It is therefore my opinion that it would not be competent for a certifier to approve of any such conversion of this space without reference to the local government for a variation of the siting provisions with respect to on-site car parking.

20. Given the existing environment of multiple similar carports on other properties in close proximity to the proposed structure, it is difficult to see how any amenity and aesthetics objection to the current proposal could have been sustained if the proposed structure had been captured by Council's Section 50(1) resolution. Also, given that the Council has expressed an expectation that many of those properties in the area will be redeveloped in the future, and several contain similar carports that Council might not want to see repeated, it appears that to achieve such an aim there is a need for the siting provisions of the Planning Scheme to be strengthened to ensure that future repetition does not occur.

G.S. Cornish
Building and Development
Tribunal Referee
Date: 4 July 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:

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