



Building and Development Tribunals

Queensland Government

Department of **Local Government, Planning,
Sport and Recreation**

APPEAL

Integrated Planning Act 1997

File No. 03 -04 -051

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council
Site Address: 125 Leslie Street, Toowoomba

Applicant:

Nature of Appeal

An appeal under Section 21 of The Standard Building Regulation 1993, against the decision of the Toowoomba City Council to refuse an application for a road boundary setback relaxation for a proposed carport to be constructed on land described as Lot 5 RP844528 and situated at 125 Leslie Street Toowoomba.

Date and Place of Hearing: 11 AM, Wednesday 25 August 2004
at 125 Leslie Street Toowoomba.

Tribunal: Bert Dean.

Present: The applicants
Toowoomba City Council representative

Decision:

The Councils decision to refuse the application for a road boundary set back relaxation is set aside.

It is the decision of the Tribunal that the application for a relaxation of the front boundary setback distance is approved. The principle of locating the open carport in the position shown in the drawing submitted by the applicants is approved subject to the applicants obtaining a development permit for building work from a licensed building certifier or the Toowoomba City Council prior to commencing further building work on construction of the carport.

Background

The applicants applied to Council for relaxation of normal front boundary setback distance required by the Qld Development Code, to permit construction of an open carport between their dwelling and the property front boundary. Setback distance proposed varied from 3050mm at the closest point to 4850mm at the furthest point.

Construction of the carport had been commenced prior to obtaining a development permit for building work and prior to the application for a siting relaxation. Building work ceased at or about the time of lodging the application for siting relaxation.

The face width of the carport columns within the 6.0m setback exceeds the 15% of the perimeter set out in the acceptable solutions section of Part 12 Section 12 (c) of the Queensland Development Code.

Council refused the application for relaxation, advising its reasons as: -

- The siting of the carport on the corner will create a high visual impact on the streetscape, and
- The siting of the structure contravenes the provisions of Part 12 Section A1 (c) of the Queensland Development Code where there is vehicle access available having a width greater than 2.5 metres and a gradient less than 1 in 5.

The Council advised the following matters were considered in assessing the application: -

- the level, depth, shape and conditions of the allotment and adjoining allotments;
- the nature of any proposed building on the allotment; and
- the nature of any existing buildings on the adjoining allotments.

The proposed carport would be accessed by way of the existing footpath crossover and paved driveway into the property.

The applicants advise that the adjoining property on the Southern side has an open carport at a reduced front boundary setback similar to the applicant's proposal, and close to the common side boundary. This carport was constructed just prior to the commencement of the Queensland Development Code.

Material Considered

- (1) Appeal documentation and accompanying photographs and letter of explanation of the grounds for appeal lodged by the applicants. The documentation included architectural drawings numbered 04-0424.01, 04-0424.2, 04-0424.04. These drawings showed the siting, floor plan, section and elevations, and detail of construction of the carport.
- (2) A letter from the adjoining owner at No 1 Collier Street expressing support for the carport as proposed on the applicant's property.

- (3) A letter from the adjoining owner at 121 Leslie Street supporting the carport as proposed on the applicants property. The letter also expressed the owners concern at likely negative effects on the amenity of their property, of a carport close to the side boundary common to their property.
- (4) Verbal submissions from the applicants.
- (5) Verbal submissions from the Council representative explaining recent changes to siting legislation, the Councils objectives in relation to carports within the setback distances set by legislation, and Councils assessment of the application. The Council maintained its objection to the proposal and could not establish, reasons to favourably determine the application.
- (6) Council supplied an aerial view "Geoweb" map showing the subject allotment and the allotment adjoining its southern side boundary. (No 1 Collier Street).
- (7) The Standard Building Regulation 1993 and the Queensland Development Code and in particular Section 12 of the Code.
- (8) A "drive by" inspection of the property and others in the area was carried out.

Findings of Fact

- (1) The drawings show the proposed carport will have setback distances from the front boundary of 3050 mm at the closest point and increasing to 4800 mm due to the angle between to front line of the carport and the boundary.
- (2) The allotment has an area exceeding 450 M2
- (3) Toowoomba City Council planning scheme does not contain alternative siting provisions for carport structures.
- (4) The provisions of Queensland Development Code, Part 12 apply in the assessment of this application.
- (5) The proposed carport has been partly constructed and is accessed by way of an existing paved footpath crossover and driveway, used to gain access to the original enclosed garages within the dwelling.
- (6) The proposed carport will be constructed of materials matching those used in the dwelling. Roof sheeting profiles and colour will match those of the dwelling. The height of the carport will be significantly less than that of the dwelling.

Reasons for decision

The proposed development, incorporating a front boundary setback relaxation as proposed in the applicants' documents satisfies the requirements of the performance criteria of Part 12 Section P1 of the Queensland Development Code.

When considering whether alternative on-site location is available it is necessary to assess existing uses of those parts of the site, which might appear to offer an alternative location. The performance criteria of P1 must also be considered.

It is considered that to require changes to existing arrangements would result in unnecessary expense to the owners, for little or no additional benefit to the streetscape. An adjoining owner has already indicated in a written submission to the Tribunal, concern at the negative impact on their amenity of an alternative location.

It is the opinion of the Tribunal that there is not a suitable alternative on-site location.

The proposed location facilitates an acceptable streetscape and is appropriate for –

- a. the bulk of the building ;and
- b. the road boundary setbacks of neighbouring buildings ; and
- c. the outlook and views of neighbouring residents ; and
- d. does not unduly increase nuisance nor unduly affect safety to the public.

The face width of the clay brick columns (350mm each face) does not detrimentally affect the appearance of the carport and is consistent the form of the dwelling.

It is therefore the decision of the Tribunal that the application for a relaxation of the front boundary setback distance shown in the applicant's drawings is approved. The width of support columns is also approved. The principle of locating the open carport in the position shown in the drawing submitted by the applicants is approved subject to the applicants obtaining a development permit for building work from a licensed building certifier or the Toowoomba City Council. The permit is required prior to commencing further building work on construction of the carport.

It is required that the applicants lodge an application for a development permit for building work with the Toowoomba City Council or other licensed building certifier within thirty working days of the date of expiry of the period of appeal against this decision.

Inspection and assessment of the building work carried out prior to the issue of a development permit for building work is the responsibility of the building certifier appointed to issue the permit and certify compliance.

Bert Dean
Building and Development
Tribunal Referee
Date: 2 September 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
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248