



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3/06/024

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Livingstone Shire Council

Site Address: *withheld*-"the subject site"

Applicant: *withheld*

Nature of Appeal

The appeal is against the decision of the Livingstone Shire Council not to approve a request to vary the siting requirements for a proposed carport to be erected within 500mm setback from the *withheld* boundary as:-

"The submission was assessed against the Performance Criteria and Acceptable Solutions under Part 12 of the Queensland Development Code. The assessment determined as follows:-

Paragraph A1(c) of Acceptable Solutions provided in Part 12 of the QDC state:-

For open carports the minimum road setback may be less than A1(a) if there is no alternative on-site location for a garage or carport that complies with A1(a).

Paragraph A1(a) states that the minimum road setback for a dwelling, garage or a carport is.....6m.

An inspection of the site revealed:-

- *There is already a double garage in recent additions to the dwelling;*
- *There is room to drive up the side of the dwelling to provide an alternative location on the site for the carport and comply with the boundary setback requirements.*

Further, other boundary relaxations granted in the street allowed structures to be no closer than 4.5m from 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 Livingstone Shire Council.

Tribunal: Mr L F Blumkie

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, **changes** the decision of the Livingstone Shire Council, dated 25 January 2006 and grants a relaxation to allow a carport to be sited within the street (*withheld*) setback, **subject to the following conditions:-**

1. The existing double car accommodation being retained i.e. not be converted to habitable accommodation;
2. The carport to be reduced in length to 5.0 metres and be no more than 7.450 metres wide i.e. in line with the existing balcony as shown in the site plan application;
3. The car port to be sited a minimum of 1.5m from the *withheld* frontage;
4. The carport to have a flat (skillion) roof with minimum fall;
5. The carport maximum height to be no higher than the floor of the existing balcony;
6. The carport colour scheme, to match that of the existing house;
7. The carport to remain 100% open on the front and both sides;
8. The existing gutter cross over and kerb to be retained i.e. not be made any wider;
9. The existing footpath drive way to remain and if increased in width to be no wider than 4m except for a 1.5m truncation where it meets the front boundary on the right hand side;
10. The front area (ie from the existing house to the front street alignment on the right hand side) to be suitably landscaped; and
11. Stormwater drainage to be connected and discharged as directed by the Livingstone Shire Council.

Background

Application was made to the Livingstone Shire Council for a relaxation to erect a double carport within the street setback.

Additional covered car accommodation is required as two families reside in the double dwelling (Council approved 23 October 2003) and shelter is therefore required for four cars. The carport is required to protect vehicles from the elements.

The applicant provided numerous examples of other carports erected within the street setback. It is not known whether these examples received Council approval.

The applicant advised that adjoining owners have no objection to the proposal.

Council refused the application on the 25 January 2006.

Material Considered

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

1. Copy of the Decision Notice dated 25 January 2006;
2. Copy of the Appeal Notice dated 15 February 2006;
3. Written submissions and objections from the applicants including photographs;
4. Written submissions and objections from the Livingstone Shire Council including site plan and photographs;
5. The Queensland Development Code;
6. *Standard Building Regulation 1993* (SBR); and
7. The *Integrated Planning Act 199*.

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 a typical rectangular shaped block and is developed with an existing class 1 building which received an approval for an extension on 23 October 2003. This approval allowed a second dwelling (relatives dwelling) and also granted a relaxation to allow the front upper patio of the relatives dwelling to be 5m from the front boundary.

Services including water, electricity and waste disposal are located in the right hand side boundary setback - the only vehicular access to the rear of the property.

C Development in the neighbourhood

Photographs submitted of the other neighbourhood properties indicated that the majority were developed with Class 1 buildings and there were a number of examples of carports, with varying styles, erected within the minimum street setback.

Withheld footpath appears to be about 5m wide and on the subject property side, is currently an open mowed grass area with few trees and shrubs.

The opposite side footpath is different - it has a number of large palm trees close to the kerb line which does create the same open streetscape.

The front 6m setback on the adjoining blocks, from the photographs presented, is currently landscaped with tall trees and large shrubs. This thick landscaping reduces the open appearance of the developed properties, when viewed from the end of the street, even though the dwellings appear to be setback the 6m minimum.

Reasons for the Decision

In my opinion, it is reasonable for the applicant to be allowed to provide protection for motor cars from the elements.

Livingstone Shire Council granted approval to extend the existing residence to include a relative's apartment in October 2003. As two families reside on the property, and as most families nowadays have two cars, it would be normal to require covered parking for 4 cars.

With regard to the existing services between the house and the right hand side boundary, in my opinion, it would be unreasonable to require the applicant to alter the services to gain access for vehicles to the rear.

Hence, a carport to the rear of the property is not a viable option.

Typical family cars, including 4WD, are generally less than 5m in length, and as two lock up spaces are already provided, than the additional two spaces at 5m in length is in my opinion adequate.

This reduction in length of the carport (from 6m to 5m) would achieve a 1.5m setback from the *withheld* Boundary.

Considering this setback, together with the proposed flat roof (skillion - no higher than the floor of the existing balcony) and the landscaping (trees and large shrubs) on the adjoining properties into account, in my opinion, a modified carport would have limited impact on the existing streetscape.

With regard to the safety issue and the bus stop - locating a roof only (open carport) over the cars (which can be parked and have access - as of right) would have no effect on pedestrian safety.

It is recognized that it is an as-of-right to erect a 1.8mm high solid fence on the front boundary, which, in my opinion, would reduce visibility and create a far greater hazard for pedestrians than a roofed carport.

The existing driveway on the footpath, from the photographs provided, does not appear out of place, and the existing crossover and kerb would appear to be adequate for the current use. Hence, the existing cross over if required should only be increased to be a maximum of 4m wide except for a 1.5m truncation where the driveway meets the front boundary. This truncation would allow adequate turning for the second vehicle (assuming the site plan details provided are accurate).

The remaining space between the side boundary and the carport/driveway should be landscaped to match the existing landscaping and maintain the current streetscape.

The Tribunal considered the siting of the proposed carport 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 proposal, modified as follows:-

- a 1.5m setback from the front boundary;
- limited in height to be no higher than the existing floor of the balcony;
- a flat roof;
- colour scheme to match the house;
- landscaping between the driveway and the side boundary to match the existing;

would, in my opinion, facilitate an acceptable streetscape.

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

Taking into account the landscaping on the adjoining properties and the existing streetscape, the modified carport (as described above) would create an acceptable streetscape.

(c) *The outlook and views of neighbouring residents*

The modified carport would not have an unduly adverse effect on the outlook and views of neighbouring residents.

(d) *Nuisance and safety to the public.*

The carport would not create a nuisance or be a safety hazard for the public as, in my opinion, merely putting a roof over parked cars would not make any difference. If the carport were to be enclosed then the visibility would be reduced and it may be a safety hazard, hence it needs to remain open.

P2 *Buildings and structures-*

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

The proposed carport would have no effect on daylight and ventilation to existing 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 adequate space for recreation, service facilities and landscaping and in fact, maintains trailer access to the rear of the property.

P4 *The height of a building is not to unduly*

(a) *overshadow adjoining houses;*

The proposed carport does not unduly overshadow adjoining houses.

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

The proposed carport does not unduly 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 site is not a corner site.

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 is necessary to provide covered space for the residents' vehicles.

Existing car accommodation.

Acceptable solutions (c), as contained in Part 12 of the Queensland Development Code, allows a carport to be located within the 6 metre setback when there is no alternative on-site location for a garage or carport, that can be located beyond the 6 metre building line.

In this instance, the existing garage, being beyond the 6 metre building line, satisfies this criteria.

Hence, in my opinion, under the code it is necessary for the existing garages to be retained.

It should be noted that if the owners require additional habitable space then the existing car accommodation is unable to be used for this purpose.

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

Hence, The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, **changes** the decision of the Livingstone Shire Council, dated 25 January 2006 and grants a relaxation to allow a carport to be sited within the street (*withheld*) setback, **subject to the following conditions:-**

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6. The carport colour scheme, to match that of the existing house;
7. The carport to remain 100% open on the front and both sides;
8. The existing gutter cross over and kerb to be retained i.e. not be made any wider;
9. The existing footpath drive way to remain and if increased in width to be no wider than 4m except for a 1.5m truncation where it meets the front boundary on the right hand side;
10. The front area (ie from the existing house to the front street alignment on the right hand side) to be suitably landscaped;
11. Stormwater drainage to be connected and discharged as directed by the Livingstone Shire Council.

Leo F Blumkie
Building and Development
Tribunal
Date: 12 April 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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