



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3/03/067

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council.

Site Address: 28 Christa Way, Benowa.

Nature of Appeal

An appeal under Section 4.2.11 of the Integrated Planning Act 1997, against the decision of the Gold Coast City Council to refuse an application to change an existing approval for a road boundary setback relaxation for a proposed new carport erected on land described as Lot 44 on Registered Plan 856696 and situated at 28 Christa way, Benowa.

Correspondence from the Council dated 13 October 2003 refused Preliminary Building Application No 23/19078.

The letter referred to “the application for preliminary building work to permit a minimum building setback of zero metres to the outermost projection for an open carport within the road property boundary setback.”

Application No 23/19078 did not seek such preliminary approval. It was a request to change an existing approval.

Council’s letter would appear to rescind previous preliminary approval and development permit for a minimum building setback of .150 metres to the outermost projection for an open carport within the road front property boundary setback. There are no provisions in the Integrated Planning Act allowing Council to rescind a valid development approval and valid development permit for building work. The previous approvals remain valid.

Council’s letter should have addressed the request to change an existing approval.

The Tribunal has viewed Council’s letter of 13 October 2003 as a refusal of the request to change an existing approval and has proceeded on that basis in order to resolve the matter.

Date and Place of Hearing: The hearing commenced at 2.00 pm, on Friday December 5, 2003.
At the office of the Department of Local Government and Planning,
Level 25 Mineral House, 41 George Street, Brisbane.

Tribunal: Bert Dean.

Present: Mr.Jake Storey, Coordinator Planning Code Assessment &
Compliance. Representing Gold Coast City Council

Mr. Greg Voukelatos, representing the owner.
Mr. Peter Demetre, owner.

Decision

It is the decision of the Tribunal that the Council's decision to refuse the application for a change to an existing approval for road boundary setback relaxation is set aside.

Further, it is the decision of the Tribunal that the applicant's request for approval for a change to the existing approval is approved (i.e. the carport in its existing as constructed form), subject to a condition requiring minor cosmetic changes to the finish of the gable sheeting.

The already constructed gable end of the carport is to have moulding or battening or other similar suitable decorative items added to the satisfaction of the Council. This is considered a reasonable requirement to minimize any potential to dominate. Council may also require particular painting of panels to assist in this regard.

Background

The applicant applied to the Council for approval to construct a new open carport within the six-metre front boundary setback distance. The original drawings proposed a hip end to the roof at the roadway end of the carport.

The Council approved the original proposal subject to reasonable conditions.

Gold Coast Building Certification Group issued a development permit to carry out the work as approved.

During construction the owner preferred a gable end to the carport roof rather than the approved hip end. The builder contacted Council seeking its opinion on the chances of approval of the change. The builder was advised to submit a formal application for approval to the change.

An application requesting a change to the existing approval was lodged, however the building work proceeded to completion without waiting for a formal reply to the application for a change to the original approval.

Council refused the application for a change to the existing approval, giving the reason "*the development dominates the streetscape and results in excessive overcrowding of the road front boundary.*"

Material Considered

1. Appeal documentation lodged by the applicants, including architectural drawings by Metra Design and Drafting described as Job No 0321 numbered sheets 1, 2, 3 and 4. These drawings showed generally the construction of the proposed carport and siting in relation to the property boundaries. The drawings also showed conversion of existing floor space to a rumpus room.
The appeal documents included an un-dated letter from the builder Mr. Greg Voukelatos supporting the appeal.
2. Photographs supplied by the appellant showing the subject carport, together with nine similar existing developments in the building's neighbourhood.
3. Correspondence from Gold Coast City Council dated 11 April 2003 giving preliminary approval to the development application for the carport.
4. Decision notice dated 12 May 2003, from Gold coast Certification Group for Building Application No 23/05496. This permit approved the conversion of the existing garage to a

habitable room and construction of a new carport.

5. Application form 2, "request to change an existing approval", together with amended drawings showing change from hip end roof to gable end roof. This application was dated 1 Sept 2003 and carries reference number 23/19078 A.

- 6 Correspondence from the Council dated 13 October 2003 refusing Preliminary Building Application No 23/19078.

The letter referred to "the application for preliminary building work to permit a minimum building setback of zero metres to the outermost projection for an open carport within the road property boundary setback."

Application No 23/19078 did not seek such preliminary approval. It was a request to change an existing approval.

Council's letter would appear to rescind previous preliminary approval and development permit for a minimum setback of .150 metres to the outermost projection for an open carport within the road front property boundary setback. There are no provisions in the Integrated Planning Act allowing Council to unilaterally rescind a valid development permit for building work. The previous approvals remain valid.

Council's letter should have addressed the request to change an existing approval.

The Tribunal has viewed Council's letter of 13 October 2003 as a refusal of the request to change an existing approval and has proceeded on that basis in order to resolve the matter

7. Verbal submissions from the applicant and owner supporting the application for a change to an existing approval.
8. Verbal submissions from the Gold Coast City Council outlining the Councils' assessment of the application.
9. Photographs of examples of similarly constructed carports abutting front property boundaries or having front boundary set back distances less than 6.0m were noted. Inspection of the development site, other development in the area, adjoining property and adjoining roadway circumstances was **not** carried out.

Findings of Fact

I made the following findings of fact

1. The carport at 28 Christa Way has been substantially completed, having a gable end to its street elevation. It has minor variations from the amended drawing submitted.
2. There are at least nine examples of similarly constructed carports in the neighbourhood.
3. In assessing the application of Section 48 of the Standard Building Regulation 1993, the Local Government is required to consider the following matters:

(a) the levels, depth, shape or conditions of the allotment and adjoining allotments

The allotment does not present any special circumstances in relation to this criteria.

(b) the nature of any proposed buildings or structures on the allotment

There are precedents for relaxed front boundary setbacks and similarly constructed carports in the area. The carport is wholly within the 6.000m road boundary clearance. Setback distances from the side boundaries comply with standard requirements.

The location, extent and nature of the carport are such that the garage will not have an unduly negative impact in the area.

(c) the nature of any existing or proposed buildings or structures on adjoining allotments

There are existing carport buildings and structures on allotments in the neighbourhood providing precedent, which supports approval of the proposed, reduced front boundary setback, and gable end roof construction. Approval of the development at the setback proposed and having a gable end roof configuration does not result in the finished structure being in extreme conflict with the nature of similar development in the area. It is considered the carport is consistent with precedent in the area and the nature of other structures in the area.

(d) whether the allotment is a corner allotment

This is not a corner allotment.

(e) whether the allotment has two road frontages

This allotment has only one road frontage.

(f) any other matters it considers relevant

The Councils' reason for refusal did not indicate that it had considered any particular matters under this criteria.

4. Under Section 48 (4) of the Standard Building Regulation the Local Government must also be satisfied that a relaxation would not unduly: --

(a) obstruct natural light or ventilation of an adjoining allotment

The proposed change to the existing approval for this development would not give rise to any such obstruction.

(b) interfere with the privacy of an adjoining allotment

The proposed change to the existing approval would not interfere with privacy of any adjoining allotment.

(c) restrict the areas of the allotment suitable for landscaping

The proposed change to the existing approval would not restrict areas suitable for landscaping.

(d) obstruct outlook from adjoining allotments

The change to the existing approval would not unduly obstruct outlook from adjoining allotments.

(e) overcrowd the allotment

Council considers the carport within the normal front setback, having a gable end roof rather than the previously approved hip end dominates the streetscape and results in excessive

overcrowding of the road front boundary of the allotment.

The Tribunal is inclined to the view that when compared to the photographs of other existing similar carports in the neighbourhood, the carport does not unduly overcrowd the road boundary, nor does it unduly dominate the streetscape.

Again, to refuse the request for change to the original approval after comparison with existing examples would not be consistent with previous approval granted by Council in the neighbourhood.

(f) restrict off Street parking for the allotment

The change to the existing approval will not restrict off street parking for the allotment.

(g) obstruct access for normal building maintenance

Access for normal building maintenance would not be restricted as a result of approval of the request to change the existing approval.

Reasons for the Decision

The as-constructed development satisfies all the requirements of Section 48 of the Standard Building Regulation. It will not have adverse impact on amenity in the area due to gable end roof construction rather than hip end construction.

Significant precedent in the neighbourhood supports granting the request to change the previous approval and allow gable end roof configuration.

It is therefore the decision of the Tribunal to set aside Council's decision to refuse the request to change an existing approval.

Further, it is the decision of the Tribunal that the application for approval for a change to the existing approval is approved (approving the carports existing as-constructed form) subject to a condition requiring minor cosmetic changes to the finish of the roof gable end sheeting.

The already constructed gable end of the carport is to have moulding or battening or other similar suitable decorative items added to the satisfaction of the Council. Council may also require particular paint panels to assist in this regard. This is considered a reasonable requirement to minimize any potential to dominate.

The developer is required to have drawings prepared and approved by Council to ensure compliance with the Council's desire to have some decorative treatment of the gable end to reduce what Council describes as potential to dominate. The treatment is to be completed to Council satisfaction within thirty business days of Council approval of the cosmetic changes proposed.

Bert Dean
Building and Development
Tribunal Referee
Date: December 15 2003

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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