



APPEAL
Integrated Planning Act 1997

File No. 3-07-059

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Concurrence Agency: Brisbane City Council
Assessment Manager: Australian Building Codes Certification
Site Address: *withheld*—"the subject site"
Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.7 (2) (b) of the *Integrated Planning Act 1997* against the decision of the Brisbane City Council acting as a concurrence agency, pursuant to Section 9 (a), Schedule 2, Table 1 of the *Integrated Planning Regulation 1998*, to refuse an application for a street alignment setback relaxation to the road frontage to the subject site, for the purposes of erecting a carport.

Date and Place of Hearing: 10.00 am Friday 19 October 2007
at Brisbane City Council West Regional Office
46 – 56 Coonan Street, Indooroopilly.

Tribunal: Dennis Leadbetter Chairperson
Present: Applicant
Joe McCormack Brisbane City Council Representative
Chris Savory Brisbane City Council Representative
Dennis Leadbetter Tribunal

Decision

The decision of the Brisbane City Council, acting as a concurrence agency, as contained in its letter dated 13 June 2007 not to grant a siting variation to the street alignment is **changed** to allow the following:-

- *“The proposed carport may be erected to the position indicated on the site plan provided with the appeal documentation, with 2000 mm setback to the northern alignment and 400 mm minimum set back to the western alignment (street alignment), measured to the outermost projection”.*

Background

The existing dwelling on the site incorporates a double vehicle accommodation, however, the owners require additional vehicle accommodation and are desirous of having that undercover.

The requirements of the Queensland Development Code (QDC) Part 12, under performance criteria P8 require the provision of *sufficient space on site for carparking to satisfy the projected needs of residents and visitors, appropriate for-*

- (a) the availability of 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 QDC provides as an acceptable solution the provision of at least 2 vehicle parking spaces on site, but does not place an upper limit on the amount of parking that is provided.

The QDC also provides for the reduction of the 6 metre minimum road setback for **open carports** where:-

- (ii) there is no alternative on-site location for the garage or carport that*
 - (A) complies with A(i)(a); and*
 - (B) will allow vehicular access having a minimum width of 2.5 metres; and*
 - (C) has a maximum gradient of 1:5.*

While there is access to the southern side of the house that meets the above requirements, there is no space available to construct a suitable carport, due to existing structures and a swimming pool.

Material Considered

1. "Form 10 – Notice of Appeal" and grounds of appeal contained therein;
2. "Form 18 – Notice of Election" provided to the Registrar on 16 October 2007;
3. Drawings and photographs submitted with the appeal;
4. Letter from Brisbane City Council (Reference No. 119/88/872-FP110-1867616) dated June 13 2007, not to grant a siting variation;
5. Verbal submissions from the applicant;
6. Verbal submissions from the Brisbane City Council's representatives;
7. The Queensland Development Code (QDC) Part 12;
8. The *Integrated Planning Act 1997*; and
9. The *Integrated Planning Regulation 1998*.

Reason for the Decision

Part 12 of the QDC provides **Performance Criteria** and an **Acceptable Solution**, but allows the local government to vary the application of siting requirements to take account of alternative solutions.

In assessing the criteria from this part of the Code the Tribunal considered the nature and use of the proposed structure, its siting on this allotment and also the developments existing and possible on adjoining sites.

The Tribunal considers the reduced road alignment setback would have minimal impact on the adjoining allotments, because of the carport's small footprint and low elevation.

The Tribunal also considers the structure proposed, which is in sympathy with the existing dwelling, will not be detrimental to the streetscape.

The Tribunal found there were reasonable grounds to vary the street alignment setback to allow the carport to be constructed to within 0.4 metres of the street alignment, measured to the outer most projection.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

Building and Development Tribunal Referee

Date: 24 October 2007

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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