



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3-06-112

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: *Withheld* – “the subject site”.

Applicant: *Withheld*

Nature of Appeal

An appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997*, against the decision by Brisbane City Council not to approve a siting variation for an *open carport*.

The *open carport* is proposed to be situated within the 6m, road setback, on land described as Lot “withheld”, located at “the subject site”.

Date and Place of Hearing: 3.00pm, Thursday the 25th January 2007
at the offices of, the Department of Local Government,
Planning, Sport and Recreation, 41 George Street, Brisbane.

Tribunal: Debbie Johnson

Present: “withheld” – Applicant
“withheld” - Applicant
Greg Kranz - Brisbane City Council
Kevin McLeish - Brisbane City Council.

Decision

The decision of the Brisbane City Council to refuse the siting variation for an *open carport*, as contained in their Decision Notice, dated 23rd November 2006, is **set aside**.

The siting for the proposed *open carport* may be varied from 6.0m to 3.0m from the street boundary alignment, as measured to the outer most projection of the structure.

This decision confirms an agreement reached at the tribunal hearing by the applicants, with Kevin McLeish and Greg Kranz of the Brisbane City Council.

Background

The applicants purchased this property at 79 Sackville Street, Greenslopes with an existing older style home already on the site. The site has development potential for increased density under the current Brisbane City Plan, due to its site area and zoning.

In 2006, Building Certification Consultants approved building works, which included relocation of the original house within the site and raising it, thus providing additional habitable area under the building.

Approved plans for these works were provided to the tribunal for reference purposes. The proposed *open carport* had been indicated on these drawings. The *open carport* was excluded from the building approval determined by Building Certification Consultants, as the proposed siting for the *open carport*, does not comply with the siting requirements as set out under the Queensland Development Code in Part 12.

Building Certification Consultants, on behalf of the applicants, subsequently referred the siting of the *open carport*, to the Brisbane City Council, for an approval. On the 23rd November 2006, the Brisbane City Council refused the application for a siting variation.

The applicants lodged an appeal with the Registrar on 20th December 2006.

Material Considered

1. The approved, architectural working drawings for building works undertaken at, “the subject site”;
2. Form 10 – Building and Development Tribunals Appeal Notice, a written submission to the tribunal from the applicants documenting their thoughts and concerns in relation to the proposed siting of a carport;
3. Photographs of the original home, prior to the recently approved building works;
4. Verbal representations at the hearing by the applicants;
5. Verbal representations, on site by Kevin McLeish and Greg Kranz of the Brisbane City Council;
6. The *Standard Building Regulation 1993*; and
7. Part 12 of the Queensland Development Code;

Findings of Fact

The following points are considered as findings of fact:

1. The existing house has been relocated slightly within the front half of the site, to facilitate future development options to maximize the site’s potential.
2. The subject site falls away from the street with a reasonable slope. Access onto the site, for a vehicle, is most appropriately positioned where proposed, being at the Western corner of the site.

3. Siting for Class 10 buildings and structures, is determined by the Queensland Development Code (QDC), Part 12, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Element 1 of the QDC Part 12- Design and Siting of Buildings and Structures, states:

A1 (a) For a dwelling, *garage* or a *carport* the minimum *road setback* is-

- (i) 6m;

A1 (c) For *open carports*, the minimum *road setback* may be less than required by A(i)(a) if-

- (i) the aggregate perimeter dimension of the walls, solid screens, and supports located within the setback does not exceed 15% of the total perimeter dimension (along the line of supports) of that part of the *carport* within the same *setback*; and
- (ii) There is no alternative on-site location for a *garage* or *carport* that-
 - (A) complies with A(i) (a); and
 - (B) will allow vehicular access having a minimum width of 2.5m; and
 - (C) has a maximum gradient of 1 in 5.

A1 (d) For *structures* the minimum *road setbacks* are as for A1(a),(b), and(c) except for-

- (iii) screens / fences not more than 2m high

Under Definitions in the QDC:

a *carport* is defined as a class 10a building, other than a garage, providing covered vehicular parking;

an *open carport* is defined as a *carport* with-

- (a) two sides or more open, and a side is also considered open where the roof covering adjacent to that side is not less than 500mm from another *building* or a side or rear allotment boundary; and
- (b) not less than one-third of its perimeter open

4. The proposed carport is therefore an '*open carport*' as defined in the QDC.

5. The QDC, does however, permit a screen or a fence up to 2m high within the road setback. The QDC makes no distinction about the placing of screens or fences within the road setback. The QDC does not qualify the properties of a screen or fence.

6. The Performance Criteria, P1, of Element 1- Design and Siting of Buildings and Structures states:

The location of a *building* or *structure* facilitates an acceptable streetscape, appropriate for-

- (a) the bulk of the *building* or *structure*; and
- (b) the road boundary *setbacks* of neighbouring buildings or *structure*; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

Reasons for the Decision

1. Following Kevin McLeish and Greg Kranz's inspection of the subject site, prior to attending the tribunal hearing, they concurred that the *open carport* could be appropriately sited alongside the southern boundary, in the general area proposed by the applicants.

2. For safety and nuisance reasons a street setback of 3m was agreed to. It was determined that this setback distance, would allow visitors or occupants to tandem park a vehicle between the *open carport* and the street, leaving sufficient footpath width so as not to force pedestrians out onto the street to get around.
3. Due to the topography of the site and likely future development at the rear of the site, which is supported by the Brisbane City Plan, the appropriate siting of the *open carport* is within the 6m setback adjacent to the southern boundary.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 15th February 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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