



APPEAL
Integrated Planning Act 1997

File No. 3-05-029

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caloundra City Council
Site Address: *withheld* – “the subject site”
Applicant: *withheld*

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Caloundra City Council to refuse an application for relaxation of siting requirements on land described as Lot *withheld* and situated at “the subject site” to allow an open carport to be built within the 6 metre front boundary setback.

Date and Place of Hearing: 10:00 am on Thursday, 23 June 2005
at “the subject site”

Tribunal: Clay Anderson

Present: Applicant
Applicant’s Representative
Caloundra City Council Representative

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision of the Caloundra City Council to refuse an application for relaxation of the front boundary setback as contained in its written Decision Notice dated 5 May 2005 and grants a relaxation to allow the proposed open carport to be erected within the 6m street setback, subject to the following conditions:

- (a) The roof pitch of the carport is to be low profile, at a pitch to match and compliment the existing garage roof when viewed from the street.
- (b) The semi-impervious sail roof of the open carport is to be a colour that is complimentary to the colour scheme of the dwelling and in muted tones so that it is not in extreme conflict with the character of the building’s neighbourhood.
- (c) Structural posts and face beam to be painted in colours to match the existing dwelling and in

muted tones so that it is not in extreme conflict with the character of the building's neighbourhood.

Background

The applicant, considering he had no alternative location for parking his small caravan other than the double driveway in front of the existing garage, made an application to Caloundra City Council for preliminary approval to site an open carport to provide shelter to the caravan in the same location.

Council refused the application on 5 May 2005 for the following reasons:

1. The proposed structure will be inconsistent with the existing and proposed streetscape;
2. The proposed structure will detract the outlook from surrounding properties;
3. The proposed structure will cause an overdevelopment of the site and an overcrowding of the street frontage;
4. The siting dwelling has complying off street parking in accordance with the requirements of the Queensland Development Code;
5. There are alternatively (sic) location onsite namely along the northern side of the allotment where a carport can be erected in accordance with the above Code.

Material Considered

The material considered in arriving at this decision comprises:

- The appeal application and supporting plans;
- QDC Part 12 Design and Siting Standards for Single Detached Housing – on Lots 450m2 and Over.
- Verbal submissions from the Applicants and Council's Representatives;
- A written submission from the Applicant's representative;
- Council's Decision Notice dated 5 May 2005;
- My own inspection of the site and neighbourhood; and
- Signed statements from adjoining neighbours providing support.

Findings of Fact

1. The site is 744 m² being irregular in shape with a frontage of 11.82 m widening out at the rear to 25.96 m where the allotment abuts a natural canal.
2. The contemporary brick and tile dwelling built circa 1980 has been orientated at the widest part of the allotment to take advantage of the canal aspect as has most of the other dwellings in the area.
3. Vehicle accommodation exists onsite in the form of an attached double garage, set back 6 m from the front boundary with 2 off-street parking bays in the form of the double driveway accessed by a 6 m wide crossover at the kerb.
4. The estate the allotment exists in can be described as having a mixture of one and two storey contemporary style detached dwellings built since 1980.
5. There are a number of existing open carports in the street, although the streetscape character must be described as having predominately 6 m setbacks. There are a large number of 4wd's, caravans and boats parked in driveways along the street road frontage.
6. The predominant design of dwelling within the street is car accommodation towards the front, with bedrooms and living rooms toward the rear facing the canal.

7. The neighbours immediately north, south and opposite the site have provided a written statement indicating that they have no objection to the construction as proposed.
8. I accept the applicant's account that the northern adjoining neighbour would prefer the carport not be built to the side boundary immediately adjacent to his bedroom.
9. Caloundra City Council's planning scheme does not call up alternative siting provisions that are applicable to this site.
10. Caloundra City Council have made a declaration under section 50 of the *Standard Building Regulation 1993* about amenity and aesthetics for carports within 1.5 m of a side boundary that is applicable to this application. However, in the interests of simplifying the appeal process for the applicant have generously waived the requirement in this case.

Reasons for the Decision

Siting of open carports for this allotment is assessed against the QDC Part 12 Design and Siting Standards for Single Detached Housing – on Lots 450m² and Over, where in this case the applicable Acceptable Solution is A1(c), which states:

- For *open carports*, the minimum *road setback* may be less than required by A(i)(a) if –
- (i) the aggregate perimeter dimension of 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.

Having assessed the proposed plans and performed an inspection of the site I am satisfied that the carport as proposed would comply with clause (c)(i) above relating to total perimeter dimensions of supports; and there is an alternative on-site location for the carport that would comply with paragraphs (A), (B) and (C) above. This being the case, and as another location is proposed, it is necessary to make an assessment of the proposed carport against the applicable Performance Criteria of the QDC to determine if the proposal meets those criteria and can therefore subsequently be approved in its proposed location as opposed to the alternative on-site location.

Caloundra City Council has assessed the application for siting variation against the QDC and concede that the carport complies with all other Performance Criteria other than P1, which 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.

Therefore, in making my determination I only find it necessary to make an assessment against the abovementioned Performance Criteria (P1) as follows:

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

- (a) the bulk of the *building* or *structure*.

The structure is an open carport with two slender metal columns and face beam presented to the

street, attached at the rear to the house via a pole plate arrangement and roofed with a flexible, semi permeable shade cloth having a low profile and pitched to match the existing garage roof. The garage and dwelling beyond will be fully visible through the carport as it is not proposed to attach a garage door. The overall carport height will be less than that of the garage. As such the carport presents minimal bulk to the street and meets this criterion.

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

Road boundary setbacks of neighbouring buildings are generally set back at 6 m from the road boundary immediately adjacent to this property. The street does have several carports built to the road boundary within easy walking distance and the streetscape is generally characterized by boats, caravans, trailers and vehicles parking within the front boundary setback. The adjoining property to the south has a very large boat parked immediately adjacent to the proposed carport. It is considered that the open carport in the location proposed provides an acceptable streetscape appropriate for and consistent with other carports and garages within the street. This criterion is met.

(c) the outlook and views of neighbouring residents

There are no views or vistas at the street to speak of in this geographic location. The predominant design of dwellings within the street is car accommodation towards the front, with bedrooms and living rooms toward the rear facing the canal in order to facilitate outlook and views of the canal at the rear of the dwellings. The neighbours immediately north, south and opposite the site have provided a written statement indicating that they have no objection to the construction as proposed, so this would also indicate that outlook and views are not at issue. This criterion has been met.

(d) nuisance and safety to the public.

The carport is proposed to be set back off the sewer line 2.1 m running approximately parallel to the boundary and setback from the road boundary .6 m and as such will not present a nuisance and be unsafe to the public using the footpath. This criterion has been met.

For completeness, I will deal with each of Caloundra City Council's reasons for refusal as outlined in its decision notice of 5 May 2005.

1. The proposed structure will be inconsistent with the existing and proposed streetscape;

As previously stated, the street does have several carports built to the road boundary within easy walking distance and the streetscape is generally characterized by boats, caravans, trailers and vehicles parking within the front boundary setback. And therefore it is considered that the open carport in the location proposed provides an acceptable streetscape appropriate for and consistent with other carports and garages within the street.

2. The proposed structure will detract the outlook from surrounding properties;

The predominant design of dwellings within the street is car accommodation towards the front, with bedrooms and living rooms toward the rear facing the canal in order to facilitate outlook and views of the canal at the rear of the dwellings. The neighbours immediately north, south and opposite the site have provided a written statement indicating that they have no objection to the construction as proposed, so this would also indicate that outlook and views are not at issue.

3. The proposed structure will cause an overdevelopment of the site and an overcrowding of the street frontage;

The site cover at 45% is consistent with Performance Criteria P3 and its acceptable Solution A3 in that the combined site cover of all structures does not exceed 50% of the lot area. The open carport in the location proposed represents a covered area equivalent to a single carport and covers one half of the garage area in plan view and one half of the garage in elevation so as not to overcrowd the street frontage and leave open space suitable for landscaping.

4. The siting dwelling has complying off street parking in accordance with the requirements of the Queensland Development Code;

The carport is open and does not interfere with existing carparking spaces but merely provides cover to one in so doing Performance Criteria P8 providing for sufficient space for on-site carparking to satisfy the projected needs of residents and visitors is satisfied.

5. There are alternatively (sic) location onsite namely along the northern side of the allotment where a carport can be erected in accordance with the above Code.

The only alternative on-site location for the carport is considered to be unacceptable because if the carport were to be built in that location suitable access to the front door would be inhibited, several large trees and existing landscaping gardens would need to be removed reducing the area for suitable screening landscaping, and additional concreting to widen and extend the driveway would further reduce the opportunity to provide screening landscaping.

Therefore, in the opinion of the Tribunal, after taking into account the particular circumstances of the site, it is possible to justify the location of the carport within the 6m 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, changes the decision of the Caloundra City Council, dated 5 May 2005 and grants a relaxation to allow the proposed open carport to be erected within the 6m street setback., subject to the following conditions:

- (d) The roof pitch of the carport is to be low profile, at a pitch to match and compliment the existing garage roof beyond when viewed from the street.
- (e) The semi-impervious sail roof of the open carport is to be a colour that is complimentary to the colour scheme of the dwelling and in muted tones so that it is not in extreme conflict with the character of the building's neighbourhood.
- (f) Structural posts and face beam to be painted in colours to match the existing dwelling and in muted tones so that it is not in extreme conflict with the character of the building's neighbourhood.

Clay Anderson
Building and Development
Tribunal Referee
Date: 24 June 2005

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