



APPEAL
Integrated Planning Act 1997

File No. 3-03-023

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council
Site Address: 70 Crestwood Avenue Morayfield

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Caboolture Shire Council not to vary the application of Division 2 – Boundary clearances, as provided for under Section 48 of the *Standard Building Regulation 1993* (SBR) for a carport to a detached house on land described as Lot 344 RP 854865 and situated at 70 Crestwood Avenue, Morayfield.

Date and Place of Hearing: 12 noon on Monday 14 April, 2003
At 70 Crestwood Avenue Morayfield

Tribunal: Dennis Leadbetter Referee

Present: Owners
Chris Harris Caboolture Shire Council

Decision

The decision of the Caboolture Shire Council as contained in its letter dated 18 March, 2003, reference BRX-2003-189 (CH:lb), not to grant approval to permit the erection of a carport to a detached house within the north eastern alignment setbacks is **set aside**.

The carport may be erected to within 1 metre to the outer most projection of the north eastern boundary.

Background

The application was for permission to erect a carport to a single story detached house, within the standard side alignment setback as provided under section 38 of the SBR, being 1.5 metres for a structure less than 4.5 metres high.

The Caboolture Shire Council had refused the application on the grounds it could adequately be located on the property to meet the minimum setback requirements

Material Considered

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Caboolture Shire Council;
- 3 Letter from Caboolture Shire Council not to approve the carport;
- 4 Verbal submissions by the owners, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Chris Harris, Caboolture Shire Council, explaining the reasons why the application should not be granted;
- 6 The Standard Building Regulation 1993, in particular sections 38, 41 and 48.

Findings of Fact

I made the following findings of fact:

1. The carport has already been erected, adjoining the original garage, which the local government representative advised was approved as a carport. This garage was erected to within approximately 550 mm of the alignment and is approximately 6 metres long
2. The total combined length of both the original garage and proposed carport is approximately 12 metres. This is in excess of the concessions provided for under section 41.
3. The site and surrounding areas are flat.
4. The existing dwelling to the adjoining site to the north east is approximately 2 metres from the alignment. Compliance with the provisions of s 41(d) would be met.
5. The site and surrounding properties don't have any views, because of the topography.
6. Under Section 48 of the SBR, a local government may vary how Division 2 applies to the application after considering under Section 48(3), the following points:-

a. *The levels, depth, shape or condition of the allotment and adjoining allotments.*

The allotment and the adjoining allotments are flat, and are of generous proportions. Buildings

on both adjoining allotments generally comply with the siting requirements under Division 2 of the SBR

b. *The nature of any proposed building or structure on the allotment.*

The allotment currently has a detached single storey brick dwelling, and a detached double garage.

c. *The nature of any existing or proposed building or structure on the adjoining allotments.*

The surrounding residences are detached, single storey, generally of similar proportion and siting.

d. *Whether the allotment is a corner allotment.*

The allotment is not a corner allotment.

e. *Whether the allotment has 2 road frontages.*

The allotment has only one road frontage.

f. *Any other matter considered relevant.*

The proposal is to provide additional covered vehicle accommodation.

7. In varying the siting requirements, the local government must be satisfied that a building or structure, built on the allotment in the way proposed, would not **unduly** –

a. *Obstruct the natural light and ventilation of an adjoining allotment.*

The proposed carport is on the north eastern side of the site, and will have no impact on natural light or ventilation to the adjoining allotments.

b. *Interfere with the privacy of an adjoining owner.*

The proposed carport would not impact on the privacy of adjoining owners, because of the existing 2 metre high boundary fence dividing the properties.

c. *Restrict the areas of the allotment suitable for landscaping.*

The development will not impact on the area of the site to the streetscape for landscaping.

d. *Obstruct the outlook from the adjoining property.*

The proposed carport, will not obstruct the outlook from the adjoining property to the north east because of the existing fence and the siting of the carport with the road setbacks of the main dwelling.

e. *Overcrowd the allotment.*

The proposed carport would have minimal impact on the current position and does not overcrowd the site.

f. *Restrict off-street parking for the allotment.*

The proposal has no impact on off street parking available, providing for 2 additional under cover spaces.

g. *Obstruct access for normal building maintenance.*

The development will not impact on access for maintenance as there is adequate access and

space for maintenance operations together with the fact the structure is open to the alignment facade.

Reasons for the Decision

Sections 48 (3) and (4) of the SBR allows for local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and use of the proposed structure and existing structures and their siting on the adjoining allotments, and the limited impact the carport would have on the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the side alignment setback to allow the carport to be constructed to within 1 metre to the outer most projection of the north eastern side alignment.

Dennis Leadbetter

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

Building and Development

Tribunal Referee

Date: 19 April 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:

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