



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-07-003

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 “the subject site”.

Date and Place of Hearing: 3.00pm, Tuesday the 6th February 2007
at the offices of, the Department of Local Government,
Planning, Sport and Recreation, 41 George Street, Brisbane.

Tribunal: Debbie Johnson

Present: Applicant / Owner
Robert Dix - Brisbane City Council Representative

Decision

The decision of the Brisbane City Council to refuse the siting variation for an *open carport*, as contained in their Decision Notice, dated 6th December 2006, is **set aside** and **the open carport is approved subject to the following conditions:**

1. The siting for the proposed open carport may be adjacent to the Eastern boundary; and
2. The street setback may be varied from 6.0m to 3.0m, as measured to the outer most projection of the structure.

This decision confirms an agreement reached at the tribunal hearing, between the applicant and Robert Dix of the Brisbane City Council.

Background

The applicants specifically purchased this property at “the subject site” as the site offers their young family a large yard. They have invested time and money into renovating and building in, under the existing older style home, originally built around 1915.

The main living areas in the dwelling, face the rear, or Southern boundary as well as the side, or Eastern boundary. For safety and aesthetic reasons, the couple are therefore very keen to keep these areas free from the carport or driveway areas.

The original house has a feature external stair that contributes to the streetscape. The stair is to be renovated and reinstated to the front side of the dwelling. The position of this stair further impacts on the siting options for the proposed *open carport*.

On 30th November 2006, *withheld*, an architect engaged by the applicants, lodged the siting application, pertaining to the *open carport*, with the Brisbane City Council. On the 8th September 2006, architectural plans, prepared by *withheld*, were approved for the renovation and extensions of the existing dwelling. Although the proposed *open carport* was indicated on these plans, it was not included in the building approval granted by *withheld*, of Approvals and Advice Pty Ltd, 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.

On the 6th December 2006, the Brisbane City Council refused the application for a siting variation.

The applicants lodged an appeal with the Registrar on 8th January, 2007.

Material Considered

1. The approved, architectural working drawings for building works undertaken at, *withheld*;
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. Recent photographs of the renovated home, provided by both the applicant and the Brisbane City Council, at the hearing;
5. Verbal representations, at the hearing, by the applicant;
6. Verbal representations, at the hearing by Robert Dix of the Brisbane City Council;
7. Written consent from an the adjoining property owners;
8. The *Standard Building Regulation 1993*; and
9. 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 almost completely restored, although the feature external stairs have not been installed at this time.

2. The subject site falls towards the street, with a 10% fall. Vehicular access onto the allotment, is most appropriately positioned from the lowest point, being the South Eastern 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 or 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 Robert Dix's inspection of the subject site, prior to attending the tribunal hearing, he determined that an *open carport* could be appropriately sited at 3m from the street frontage, adjacent to the Eastern or side boundary.

2. For safety and nuisance reasons a street setback of 3m was agreed to by the applicant. 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 recreational uses at the side and rear of the site, the appropriate siting of the *open carport* is within the 6m setback adjacent to the Northern boundary.

Debbie Johnson
Building and Development
Tribunal Referee
Date: 5th March 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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