



Building and Development Tribunals
Queensland Government

Department of **Local Government, Planning,
Sport and Recreation**

APPEAL

File No. Insert No. 3-05-014

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast 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 Gold Coast City Council to refuse the application for preliminary building work approval for the erection of a carport with a minimum road front property boundary setback of 0m to the outer most projection from *withheld* Avenue.

Date and Place of Hearing: 3.00pm on Monday 21 March 2005.
On site at “the subject site”.

Tribunal: Gregory Schonfelder

Present: *withheld* - Applicants
Ezio Di Girolamo - Gold Coast City Council representative
Roger Sharpe – Gold Coast City Council representative

Decision

I determine that the decision to refuse the application for preliminary building work issued by the Gold Coast City Council dated 14 February 2005 at “the subject site” is **set aside** and approval is granted for:-

The siting of a Class 10a Carport within the 6.0m standard road boundary setback observing a position of approximately 0m to the outer most projection from the road boundary.

Subject to:

- (i) A Development Approval being obtained for the Class 10a Carport and associated work, which converted the existing garage into a habitable area.
- (ii) The garage door to be fitted to the carport shall be 50% transparent.

Background

The applicant's explained their original application to Council for a siting variation and the basis for their appeal in that:

- Council has taken an excessive time to assess the application.
- They brought Council's attention to the constructed carport and sought meeting to resolve the issue.
- Letters of support from adjoining neighbours were provided.
- Materials used and colours employed tie the new structure into the existing dwelling which complement the street scape.
- A 2.0m high fence has been constructed on the road boundary and is articulated to provide some relief and areas for landscaping which enhances the streetscape.
- Photographs of other examples of carports exist in similar situations in the surrounding area.. Also there are many instances in the surrounding area of solid fences built along the road boundaries.
- Width of the carport was chosen to match the existing dwelling.
- An eave was constructed on the front of the carport to provide a similar façade to the house which also allowed the piers to be set back from the boundary.

The Council's representative in their response stated:

- The carport has been constructed unlawfully without Council approval.
- The unlawfully constructed carport dominates the street frontage (PC3 of the Detached Dwelling Specific Development Codes).
- The unlawfully constructed carport has an adverse effect on the neighbourhood by way of building bulk (PC3 of the Detached Dwelling Specific Development Codes).
- The unlawful construction of the non-compliant carport is not considered appropriate justification for its approval.
- Other approvals do not set a precedent for future approvals.
- Council would not approve the carport as built.
- Construction more like a garage.
- Unlawful conversion of existing garage to a habitable area
- Most of the examples provide by the applicants of garages/carport which are within the 6.0m road boundary setback have not had Council approval for their siting.

Material Considered

1. Document: Copy of letter regarding application for siting variation
From: *withheld*.
To: Gold Coast City Council
Dated: 1 March 2004
Detail: Letter in support of application for siting variation which included plans and photographs.
2. Document: Copy of Neighbours Letters
From: Owners of 6 & 8 *withheld*.
To: N/A
Dated: 16 February 2004
Detail: Letters support application for siting variation for the carport to be sited in front of the existing dwelling which was included with the application.
3. Document: Copy of Photographs
From: Applicant.
To: Registrar, Building and Development Tribunal
Dated: N/A
Detail: Photographs showing the streetscape both before and after the construction of the carport.
4. Document: Copy of Decision Notice
From: Gold Coast City Council.
To: Applicants for siting variation for *withheld*.
Dated: 13 March 2003
Detail: Example of a Council Decision for a siting variation for a similar carport in the neighbourhood.
5. Document: Copy of Information Request Letter
From: Gold Coast City Council
To: Applicant
Dated: 24 May 2004
Detail: The Council has requested further information to accompany the application which included, reducing the width of the carport, dimensions to the site plan showing setbacks and all existing buildings.
6. Document: Copy of letter
From: *withheld*
To: Gold Coast City Council
Dated: 2 July 2004
Detail: Response to information request, which provided amended plans with dimensions as requested.
7. Document: Copy of Letter
From: *withheld*
To: Gold Coast City Council (Mr N Tzannes)
Dated: 13 January 2005
Detail: Requesting a meeting with Council Officers and advising that the Carport was already built.

8. Document: Copy of Letter
From: Gold Coast City Council (M Hulse)
To: *withheld*
Dated: 25 January 2005
Detail: Letter stated that unlawful building works had taken place.
9. Document: Copy of Letter
From: *withheld*
To: Cr S Douglas (Gold Coast City Council)
Dated: 3 February 2005
Detail: Seeking support from the Councillor regarding this issue.
10. Document: Copy of Decision Notice
From: Gold Coast City Council (M Hulse)
To: *withheld*
Dated: 14 February 2005
Detail: Refusal of application for Preliminary Building Work with reasons given
11. Document: Copy of Extract
From: Applicant
To: Registrar, Building and Development Tribunal
Dated: N/A
Detail: GCCC Planning Scheme Part 7, Specific Development Codes, Detached Dwellings.
12. Document: Copy of Extract
From: Applicant
To: Registrar, Building and Development Tribunal
Dated: N/A
Detail: GCCC, Website Details, stating eaves should not be included in calculation of site coverage.
13. Document: Copy of Letter
From: *withheld*
To: Gold Coast City Council (M Hulse)
Dated: 1 March 2005
Detail: Requesting right of appeal
14. Document: Copy of Letter
From: *withheld*
To: Registrar, Building and Development Tribunal
Dated: 9 March 2005
Detail: The applicants have set out the basis for their appeal against the Councils Decision Notice to refuse the application for a siting variation.
15. Document: Copy of Application – Form 10
From: *withheld*
To: Registrar, Building and Development Tribunal
Dated: 10 March 2005
Detail: Application to appeal GCCC Decision to refuse siting variation

16 The Standard Building Regulation 1993.

17. The Integrated Planning Act 1997.

Findings of Fact

1. The appeal hearing was conducted on site and the carport, dwelling and their relation to the streetscape were noted.
2. The house and attached garage on the subject property is similar in size to the adjoining dwellings and some of these have solid masonry screen fences and carports on the frontages.
3. *withheld* Street/*withheld* Court are no through roads with little traffic.
4. The area has some houses which are undergoing upgrades which include rendering, high front fences and improved landscaping.
5. The construction of the carport and the conversion of the existing garage have been undertaken without a valid Building Approval and Council siting variation.
6. There have not been any compliance notices issued pursuant to the Building Act for the building work by the Council or the Private Building Certifier.
7. The carport has a solid garage door on the street alignment.
8. Materials used and colours employed on the new structure are the same as the existing dwelling.

Reasons for the Decision

The carport:

- Is located and designed to aesthetically complement the main dwelling. This is displayed in the materials used, roof construction, and design.
- Does not dominate the street frontage. The fence, lynch gate and landscaping areas soften the effect of the carport and with the garage door changed to be 50% transparent would assist to reduce the bulk of the building, and allows closer setbacks to be approved with out giving the impression of overcrowding the street and the individual allotment.
- Has a minimal adverse effect on the amenity, likely amenity and character of the neighbourhood. There is sufficient variation to setbacks, materials used, roof lines and facade relief to provide a complimentary and varied streetscape.

- The Council has not provided adequate reasons why the proposal would not meet the performance criteria of the GCCC Detached Dwelling Specific Development Code.
- The tribunal's decision in this case to allow the building to remain does not condone the practice of illegal building work and subsequent applications to formalise the situation.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 29 April 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.

Enquires

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
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