
JURISDICTION : TOWN PLANNING APPEAL TRIBUNAL

CITATION : MARTIN and CITY OF SUBIACO
[2003] WATPAT 31

CORAM : MS B MOHARICH

HEARD : 30 JUNE 2003

DELIVERED : 31 JULY 2003

FILE NO/S : APP 181 of 2002

BETWEEN : CHERRY MARTIN
Appellant

AND

CITY OF SUBIACO
Respondent

Catchwords:

Carport - Application of Residential Design Codes - Safety issues

Legislation:

Nil

Result:

In relation to construction of:

- (a) a rear verandah, the appeal is allowed.
- (b) a carport to house a trailer, the appeal is dismissed.

Category: B

Representation:

Counsel:

Appellant	:	Ms C Martin
Respondent	:	Mr M Casselton

Solicitors:

Appellant	:	In person
Respondent	:	As Agent

Case(s) referred to in decision(s):

Nil

MS B MOHARICH:

- 1 This appeal is from the refusal of the Respondent to approve an application for development by the Appellant to make additions to her house at 27 Hilda Street, Shenton Park, in the City of Subiaco.

The Application

- 2 The application for development approval was lodged with the Respondent on 2 August 2002, and refused by the Council on 23 October 2002. The application requested approval of additions to the Appellant's house, consisting of:

- (a) The addition of a rear verandah on to the existing house; and
- (b) The addition of what was termed in the development application and the notice of appeal as a "trailer port".

- 3 The Respondent refused the development application for the following reasons:

- (a) Non-compliance with the Residential Design Codes ("**R Codes**") in relation to the minimum required percentage of open space (50%) on the site; and
- (b) Non-compliance with Town Planning Scheme No.4 in relation to minimum dimensions of car parking bays.

- 4 Prior to the hearing, the Respondent agreed to allow the rear verandah component of the application, and therefore, apart from a request from the parties for the Tribunal to make orders to allow this component of the development application, the rear verandah was not in issue at the hearing.

The Location

- 5 The Appellant's land is located at 27 Hilda Road, Shenton Park, on the north-western corner of the T-junction of Hilda Road and Cuthbert Street ("**subject site**"). From the evidence provided to the Tribunal, it would appear that Hilda Road is a wider, and slightly busier road than Cuthbert Street.
- 6 The subject site is zoned Residential R20 under the Respondent's Town Planning Scheme No.4 ("**Scheme**").

Characterisation of the Structure

7 In her witness statement Ms Martin states that the:

“purpose in building this structure is to provide weather protection for an 8` by 5` tandem trailer”.

8 The trailerport is proposed for the western end of the Cuthbert Street frontage of the subject site, and will be either attached or immediately adjacent to the southern wall of the dwelling on the Cuthbert Street boundary.

9 The trailerport is proposed to be 3.75 metres wide, and 4.86 metres in depth.

10 Notwithstanding the Appellant characterising the structure as a “trailer port”, the Respondent has assessed the application as a “carport” under its Scheme and related policies.

11 It is the Tribunal’s view that the Respondent’s characterisation is correct for a number of reasons.

12 As set out in greater detail below, the development must be assessed using the following planning documents:

- (a) The Scheme;
- (b) The Residential Design Codes; and
- (c) The Respondent’s Car Parking Policy.

13 The R Codes define a carport as:

“a roofed structure designed to accommodate one or more motor vehicles unenclosed except to the extent that it abuts a dwelling or a property boundary on one side, and being without a door unless that door is visually permeable.”

14 While a trailer may not be strictly a “motor vehicle”, it is an apparatus licensed for use on public streets, and therefore is of the nature of equipment likely to be stored in a carport.

15 In addition, the likelihood is that if constructed, the structure will be used as a carport, if not by the current owners, by future owners of the house. This is because the structure is to be accessed by a crossover, which would allow vehicles to leave the sealed street, cross the verge through an

opening in the kerbing and sealed crossover, and enter the proposed structure. Such a use of the structure is likely because the site does not provide any alternative off-street parking.

- 16 It is the Tribunal's view that the structure, coupled with the crossover, is capable of use as a carport, and should be characterised as such.

Legislative Framework

The Scheme

- 17 The Scheme governs the use and development of land within the City of Subiaco. Clause 39(3) of the Scheme provides:

“Unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the *Residential Planning Codes* is to conform to the provisions of those Codes”.

- 18 Clause 70(1) of the Scheme requires residential car parking to be provided in accordance with the requirements of the *Residential Planning Codes*.

The Residential Design Codes

- 19 The *Residential Planning Codes* were superseded in October 2002 by the R Codes. These R Codes set out the acceptable dimensions of car parking bays, and the preferred location of carports in relation to the primary and secondary street setback in residential areas.

Local Planning Policy

- 20 In addition, the Respondent's *Residential Car Parking Policy 3.8* (“**Policy**”) applies to the development of the subject site. The Policy is a planning policy adopted under clause 78 of the Scheme.
- 21 The Respondent is required, pursuant to clause 27(4)(b) of the Scheme, to have regard to planning policies in determining any application for development.
- 22 The Policy sets out the acceptable and unacceptable locations for on-site car parking in residential areas.

Respondent's Submissions

- 23 At the hearing, the Respondent made further submissions regarding the inappropriateness of the carport in its proposed location. These can be summarised as:
- (a) Non-compliance with the Policy with respect to the location of the carport within the primary street setback;
 - (b) The diminution of site-lines to the intersection which would be caused by the proposed carport; and
 - (c) Non-compliance with the R Codes with respect to minimum dimensions.

Non compliance with the Residential Car Parking Policy 3.8

- 24 The Respondent argues that the proposed carport does not comply with the Policy. The Policy sets a hierarchy of acceptable locations for car parking structures on residential blocks. The least preferred position is to locate the structure in front of the dwelling forward of the primary dwelling line.
- 25 Ms Griffiths, who gave evidence for the Respondent, contends that the Cuthbert Street frontage of the subject site is the primary street frontage, on the basis that the setback from Hilda Street is 1.7 metres, while the setback from Cuthbert Street is 4.86 metres.
- 26 However, Ms Martin, who has lived at 27 Hilda Street for a number of years was of a different opinion. She noted that:
- (a) The street address of the subject site is 27 Hilda Street;
 - (b) The main entrance to the dwelling and the front gate are located on the Hilda Street frontage;
 - (c) The longer boundary is the Hilda Street boundary; and
 - (d) Hilda Street is a noticeably busier and wider street.
- 27 On this basis, it was the Appellant's view that the primary street frontage is Hilda Street.
- 28 No photographs or plans of the streetscape were provided to the Tribunal to illustrate the two frontages of this corner lot.

- 29 The Tribunal is of the view on the evidence before it that the primary street frontage is Hilda Street and the secondary street frontage is Cuthbert Street.
- 30 The question therefore is, on the basis that Cuthbert Street is the secondary street, whether the carport complies with the Policy.
- 31 Under the Policy, the second most “acceptable” location for a carport is located off a secondary street behind the dwelling, not visible from the primary frontage of the dwelling. The proposed carport is clearly located on a secondary street, but will be adjacent to the dwelling, rather than being located behind the dwelling. However, the carport would be obscured to a large degree by a large street tree on the verge in the road reserve adjacent to the subject site’s Cuthbert Street frontage.
- 32 The Respondent contends that a more appropriate location for a carport would on the north-western end of the subject site, accessed via a crossover on the northern end of the Hilda Street frontage.
- 33 The Appellant expressed reluctance to this option, as it would require the removal of a large jarrah tree and palm tree, and would lead to the reduction of the private open space on the site.
- 34 It would appear that, notwithstanding the Respondent’s preferred location of the carport, that the Policy describes such a location (access to a carport from a primary street) only the third most acceptable option.
- 35 It is the Tribunal’s view that in relation to the Policy, the location of the proposed carport is acceptable.

Sight lines

- 36 Mr Foster, a civil engineer employed by the Respondent, gave evidence in relation to safety concerns with the proposed carport.
- 37 He was of the view that a carport at the proposed location would hinder the sightlines from Hilda Street into Cuthbert Street for drivers, thereby creating a safety hazard.
- 38 However, Mr Foster also noted in his witness statement that the “existing street tree reduces the sight clearance and makes this turn more difficult”. This “existing street tree” is located on the verge outside the Cuthbert Street frontage to the site, and near to where the proposed carport would be located.

- 39 No sightline diagrams were provided to the Tribunal, nor were any maps showing the traffic manoeuvres affected by the proposed carport.
- 40 The Tribunal takes the view that the proposed carport would not affect the sight clearance to the T-junction to any substantially greater degree than that of the existing, established street tree.

Dimensions of the car parking space

- 41 The R Codes set out the minimum dimensions of a car parking space, in Design Element 3.5.3. The R Codes require, in Acceptable Development Criteria 3.5.3 A3.2 that car parking spaces:
- (a) Be at least 2.4 metres wide, with an additional 0.3 metres for any side confined by a wall or fence; and
 - (b) Have an internal dimension of at least 5.4 metres in depth.
- 42 As noted previously, the proposed dimensions of the carport are 3.75 metres in width, and 4.86 metres in depth.
- 43 The depth of the proposed carport is 0.54 metres, or 10% short of the minimum requirement in the R Codes.
- 44 According to paragraph 1.5.2 of the R Codes, where a proposed development is unable to meet the Acceptable Development Criteria in the R Codes, it is necessary to test the proposal against the relevant Performance Criteria.
- 45 Performance Criteria 3.5.3 P3 requires:
- “Car parking facilities designed and located to be convenient, secure, safe in use and consistent with streetscape objectives”.
- 46 If a car parked in the carport, because of its inadequate depth, the car would overhang into the road reserve, and encroach on to the paved footpath.
- 47 It is difficult to see how this could be considered “safe in use”, in accordance with the Performance Criteria. Indeed, cars and towbars overhanging the street could cause damage to unsuspecting pedestrians, particularly at night time.

- 48 The Appellant has referred to other under-length carports along Cuthbert Street. While the dimensions of other carports add to the Appellant's argument, they cannot be determinative of the matter.
- 49 This is because the Respondent has noted that from its records, these carports were either constructed with approval prior to the commencement of the 1991 *Residential Planning Codes* (and hence prior to the imposition of minimum car parking dimensions) or have been constructed without the approval of the Respondent.
- 50 Ultimately, the Tribunal is required to determine the appeal on its merits in accordance with the legislative and policy framework, which clearly requires either compliance with minimum dimensions, or an assurance that the non-compliance will not have an adverse effect on safety.
- 51 It is the Tribunal's view that the issue of safety has not been made out.

Conclusion

- 52 In light of the non-compliance with the minimum length requirement for the carport, the potential for an adverse impact on pedestrian safety, and the ability to locate the carport elsewhere on the site, the Tribunal is of the view the appeal in so far as it relates to the carport should be dismissed.
- 53 The Tribunal therefore makes the following orders:
- (a) Insofar as the appeal relates to the construction of the rear verandah, the appeal is allowed.
 - (b) Insofar as the appeal relates to the construction of a carport to house a trailer, the appeal is dismissed.