



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3/06/068

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: *Withheld* – “the subject site”

Applicant: *Withheld*

Nature of Appeal

Appeal under Section 4.3.11 of the Integrated Planning Act 1997 against the decision of the Caboolture Shire Council in relation to the refusal of a development application and appeal against an enforcement notice for the construction of a gazebo without a development permit having been issued where the siting of the existing gazebo is located within the prescribed boundary setbacks from the front and side boundary, on land described as “the subject site”.

Date and Place of Hearing: 2.00 pm on Wednesday, 16 August, 2006
On site at “the subject site”.

Tribunal: Georgina J Rogers

Present: Applicant – (Owner)
Applicant – (Owner)
Mr Chris Harris – Caboolture Shire Council representative

Decision

The decision of the Caboolture Shire Council as contained in its Enforcement Notice letter dated 3 July 2006 (Reference: EF158586 (CH:pm)) advising the applicant to remove or relocate the structure, being the existing gazebo, and obtain a development permit for the building work is **set aside and is replaced with the following decision:**

A development permit is to be obtained for the re-erection of the existing gazebo structure within the prescribed front and side boundary setbacks subject to the following conditions:-

1. The existing gazebo is to be reconstructed to have a minimum 0.500m setback to the outermost projections from the front road boundary alignment in lieu of the required 6.000m setback;
2. the existing gazebo is to be reconstructed to have a minimum 0.050m setback to the outermost projections from the park, side boundary alignment in lieu of the required 1.500m setback;
3. three sides of the structure are to remain open with the exception of boundary fencing which is to have a maximum height of 1.800m above the natural ground level of the property;
4. the roof is not to overhang the required setbacks as noted 1 & 2.

Background

The meeting was held on site with the applicant and the Local Authority representative present. The opportunity was taken to view the neighbourhood prior to the meeting.

The site is irregular in shape with the frontage being approximately 31.350m and facing west. The northern frontage to the left of the site adjoins the neighbouring property and has a length of approximately 35.360m. The eastern alignment adjoins a rear neighbouring property and has a length of approximately 6.000m. The fourth alignment is skewed and faces south-east and open parkland and has a length of approximately 39.069m.

The property adjoins open parkland and faces the T-intersection and it is in the location fronting this intersection that the gazebo has been constructed. Due to the open space of the parkland adjacent to the site, the structure is readily visible.

The existing gazebo has been constructed back approximately 2.5m from the corner of the site fronting the T-intersection. The triangular piece of land is at parkland level and has been landscaped. The fence, which forms part of the gazebo and faces the T-intersection is approximately 1.8m above the ground level of the site on which the existing dwelling and pool are located and is similar in ground level height to the adjoining neighbour to the north.

Material Considered

1. Appeal documentation including drawings indicating the location of the existing gazebo in relation to the front road and side boundary alignments;
2. Site plan, plans and elevations of the existing gazebo;
3. Aerial photograph of the existing site prior to the construction of the gazebo;
4. Written correspondence from adjoining neighbours in support of the existing gazebo in its current location;
5. Verbal submission by the applicant and reasons for location of the existing gazebo being located within the front road and side boundary alignments;
6. Various correspondence from the Caboolture Shire Council from September 2005 addressing the issue of unapproved building and plumbing work having been carried out on site, being the gazebo located within the required front road and side boundary setbacks;
7. Verbal submissions by the representative of the Caboolture Shire Council outlining the

Council's assessment of the application;

8. *The Standard Building Regulation 1993.*

Findings of Fact

I made the following findings of fact:

Various correspondence was available including:

1. **8 September 2005** – Caboolture Shire Council issued a Notice to Show Cause why the said Council should not issue and serve an Enforcement Notice;
 2. **26 September 2005** – Caboolture Shire Council granted an extension of time until 19 December 2005 for the lodgement of the Amenity and Aesthetics and Development Approval application for the gazebo;
 3. **31 October 2005** - Boundary Relaxation Request by applicant;
 4. **14 November 2005** - applications requested by Caboolture Shire Council for illegal plumbing works;
 5. **16 November 2005** – Caboolture Shire Council refused the above relaxation on the grounds of ‘alternate and suitable locations’ and ‘location ... does not facilitate an acceptable streetscape’;
 6. **26 April 2006** – request by Caboolture Shire Council for the relocation or removal of the pool pump room (gazebo) and that a Building Development Permit is required to be obtained. An additional request that the applicant make a Plumbing Development Permit for alterations to the drainage;
1. An on site visit was undertaken and plans provided showing the location of the existing gazebo. The following was able to be determined. The site is irregular in shape and has a site area of approximately 680sq.m. The site faces to the west and has a road frontage of approximately 31.350m and open parkland frontage to the south-east of approximately 39.069m. The site consists of one lot and the existing dwelling has been constructed parallel to the northern side boundary alignment.
 2. The site is generally flat and consistent with the driveway to the north of the property. The footpath falls to the south across the frontage.
 3. The plans indicate that the existing gazebo is setback 2.500m from corner of the site which adjoins the open parkland and also fronts the T-intersection of “withheld” and “withheld”, which is the immediate streetscape to the property. The gazebo appears to abut the front road boundary alignment.
 4. The neighbourhood is recently constructed, generally brick veneer with tile roofs. Generally the existing residential dwellings appear to be minimum 6.000m from the front road boundary alignments; however this is an unusual site due to its shape and additional frontage to open parkland and T-intersection. The area is gently undulating and the roads predominantly meander as it customary with contemporary subdivisional layouts.

Reasons for the Decision

The following determinations have been made.

1. *The refusal or refusal in part of the development application* from the Caboolture Shire Council of the application made by the applicant is upheld as the appeal time has elapsed prior to the tribunal appeal being lodged.
2. *The appeal against an enforcement notice* from the Caboolture Shire Council is able to be reviewed by the tribunal as it is within the available appeal period time frame.
3. *The appeal about swimming pool fencing* has not been addressed by either party anywhere else during this tribunal either through applicant or notice and therefore is not addressed under this tribunal.
4. *Unapproved plumbing works* has been raised by the Caboolture Shire Council and is outside the jurisdiction of this tribunal beyond reference to it being resolved by both parties.

With the Enforcement notice being upheld the applicant is required to make an application for a Development Permit. In resolving this application the following findings have been addressed for locating the gazebo within the required front road and side boundary setbacks.

1. Part 12 of the QDC, sets out Performance Criteria (P1-P8) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

From the site visit and plans provided the existing gazebo is setback 2.500m from the intersection of the front road boundary and side parkland boundary alignments. The overall height of the existing gazebo is similar to that of a carport with roof, however the sides have been enclosed above the existing fence and therefore the bulk of the building has become dominant.

The setting back of the gazebo from the front road boundary alignment and removal of infill panels above the existing fenceline would help reduce the bulk of the structure.

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

The existing gazebo which is constructed within the 6.000m front road boundary setback is inconsistent with existing front road boundary setbacks within the surrounding neighbourhood. However similar structures are appearing within the neighbourhood.

(c) the outlook and view of neighbouring residents

The adjoining neighbours have provided written evidence of their support of the existing structure. The neighbouring residents would not appear to have their outlook and view significantly impacted by the existing garage.

(d) nuisance and safety of public

The gazebo would not appear to cause any nuisance nor increased safety issues to the public as is located within the existing property.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of existing gazebo has minimal impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling, based on the evidence provided.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The location of the existing gazebo has no impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided.

P3 Adequate open space is provided for recreation, service facilities and landscaping–

The location of the existing gazebo allows full benefit of usable open space provided for recreation on the property, service facilities and landscaping for the dwelling. It would be difficult to successfully relocate the gazebo into an effective location relative to the existing pool.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The existing gazebo does not overshadow the adjoining houses, as it located furthest away from adjoining properties. The shadows from the existing gazebo fall to the south across the adjoining on site landscaping of the property.

(b) obstruct the outlook from adjoining lots

The existing gazebo may impact upon the outlook of the adjoining allotments as it is constructed within the 6.000m road boundary alignment. However, the adjoining neighbours have demonstrated an acceptance of the structure through their supporting correspondence.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The existing gazebo does not overlook the adjoining neighbourhood or parkland and therefore would not affect the privacy of the neighbourhood nor adjoining parkland.

P6 The location of a building or structure facilitates normal building maintenance–

The existing gazebo does not impact on the access for normal building maintenance onto the site as access is via the existing driveway.

P7 The size and location of structures on corner sites provide for adequate sight lines–

This site is located adjacent to but back from the T-intersection of “withheld” and “withheld” however it does not appear to impact upon sight lines of others including vehicles.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents

and visitors, appropriate for–

(a) *the availability of public transport*

The availability of public transport is not relevant to this hearing, as provision has been made for significant on-site carparking.

(b) *the availability of on-street parking*

The availability of on-street carparking is not relevant to this hearing, as provision has been made for significant on-site carparking.

(c) *the desirability of on-street parking in respect to the streetscape*

On-street car parking would be affected by the proposed development.

(d) *the residents likelihood to have or need a vehicle*

The need for a vehicle is not relevant to this hearing, as provision has been made for significant on-site carparking.

5. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
6. In assessing the criteria from this part of the Code in relation to the existing gazebo located within the front road boundary setback of 6.000m, the Tribunal found that there were sufficient grounds to allow for the reconstructed within the location shown with an allowable reduced setback to 0.500m from the front road boundary alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 10 October 2006

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
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