



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-05-034

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Maryborough City Council
Site Address: *withheld* – “the subject site”
Applicant: *withheld*

Nature of Appeal

An appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Maryborough City Council not to approve a request to vary the siting requirements for a new dwelling (constructed off site and relocated to the site) in a position observing a road boundary setback to the outermost projection of 3350mm, and a side boundary setback of 1450 mm to the outermost projection in lieu of the prescribed minimum 6000 mm and 2000mm, as presently constructed on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 10.00 am, Thursday June 30 2005
at “the subject site”.

Tribunal: Bert Dean.

Present: *withheld*, Architect, representing the owners.
withheld, owners of the property.
Mr Joe Edwards , Building Certifier, Maryborough City Council.

Decision:

The Councils decision to refuse the application for a road boundary set back relaxation is set aside. It is the decision of the Tribunal to approve the location of the dwelling as shown on site plan drawing No 7, by J&A drafting, and as presently constructed.

This determination is not an approval to recommence building work. A development permit for building work must be obtained from a licensed building certifier or from Maryborough City Council before carrying out any further building work.

Background

The applicants applied to Council for relaxation of normal front and side boundary setback distances required by the Qld Development Code, to permit a new dwelling which had been delivered to, and established on site, to remain in its established position. Setback distance proposed was 3350 mm from the road boundary to the outermost projection. (4000 mm to the wall corner). The side boundary setback proposed was 1530 mm to the outermost projection, with 1950 mm to the wall. The building was positioned on site before planning approval, and before a development permit for building work had been issued.

Council refused the application for relaxation, advising the Council's decision was based on the following :-

1. No exceptional circumstances for the siting of the dwelling as designed are evident.
2. Does not comply with aspects of the performance criteria under the Queensland Development Code, particularly :-

Road boundary setbacks :-

- a) The bulk of the building or structure, and
- b) The road boundary setbacks of neighbouring buildings or structure.
- c) The outlook & views of neighbouring residents.

Side and rear boundary clearance :-

- a) Allow adequate light and ventilation to habitable rooms of building on adjoining lots.

The property on the North Western side has a single storey dwelling with a setback from the road boundary 12.0 m. at its closest point. The owners of both adjoining properties have made written submissions advising that they have no objections to the proposed reduced boundary setbacks.

Material Considered

- (1) Appeal documentation and accompanying photographs and letter of explanation of the grounds of appeal lodged by the applicants. The documentation included site plan drawing No 7 by J&A drafting, The drawings did not include the floor plan, and detail of construction of the dwelling.
- (2) A letter from the adjoining owner on the north eastern side advising there was no concern at the reduced front and side setbacks for the dwelling on the applicant's property as proposed in the application.
- (3) A letter from the owner of the property on the north western side advising there was no concern at the reduced front and side setbacks for the dwelling on the applicant's property as proposed in the application.
- (4) Verbal submissions from the Architect representing the owners.

- (5) Verbal representations from the owners,
- (6) Verbal submissions from the Council representative Mr Joe Edwards, explaining Council's assessment of the application and supporting Council's refusal of the application for siting relaxations.
- (7) The day following the onsite hearing the opportunity to make a written submission was extended to Transtate homes. Telephone contact with Transtate led to a verbal submission being made by the manager.
- (8) The Standard Building Regulation 1993 and Part 12 of the Queensland Development Code.
- (9) An inspection of the building, sewerage installation and the site was carried out in the company of those present.
- (10) Other existing dwellings in the neighbourhood were viewed from the road.

Findings of Fact

- (1) A new dwelling on the site has been completed to lock up stage. It is sited as shown on the site plan accompanying the objection documents and as submitted to Council with the request for siting relaxation.
- (2) A sewerage treatment plant including transpiration trenches has been installed and appears to be complete except for connection to the dwelling.
- (3) The building work, and the plumbing and drainage work had been carried out before approvals had been obtained.
- (4) An enclosed garage has been constructed on the site, and existed prior to positioning of the dwelling on site.
- (5) Maryborough City Council planning scheme does not contain alternative siting provisions for dwellings.
- (6) The provisions of the Queensland Development Code, Part 12 apply in the assessment of this application.
- (7) The dwelling will be accessed by way of stairs, which are located so that privacy of the closest adjoining dwelling will not be affected.
- (8) The end elevation of the subject dwelling closest to the adjoining dwelling on the north-western side has no window or door openings. The privacy of the closest dwelling will therefore not be reduced.
- (9) Allotments in this area are not rectangular. They are trapezoidal. This unusual shape tends to create "saw - tothing" in siting of development.

Reasons for decision

The proposed development, having a side setback of 1.350 m to the outermost projection, with 1.950 m to the wall and having a front boundary setback of 3.350 m to the outermost projection and with 4.00 m to the wall corner, will reasonably satisfy the requirements of the performance criteria of Part 12 Section P1 of the Queensland Development Code, given the existing circumstances of the development.

Although the reduced front setback results in a slight increase in the “sawtooth” effect, it is considered that an acceptable streetscape will be achieved. The reduction in side boundary setback is not considered significant, as it is only 50 mm less than the wall could be in the event of a gable end wall without roof overhang. and particularly as the end elevation has no openings.

The dwelling as located will not unduly:-

1. obstruct the natural light or ventilation on adjoining allotments; or
2. restrict the areas of the allotment suitable for landscaping; or
3. obstruct the outlook and views from adjoining allotments; or
4. overcrowd the allotment, or restrict off street parking for the allotment; or
5. obstruct access for normal building maintenance.
6. the building will not create a public nuisance nor will it affect safety of the public.

It is considered that to require complying siting arrangements would result in unnecessary additional expense and hardship to the owners, for little or no additional benefit to the streetscape.

It is therefore the decision of the Tribunal to approve the relaxation of the front and side boundary setback distances as presently constructed.

This determination is not an approval to commence building work A development permit for building work must be obtained from a licensed building certifier or from Maryborough City Council before carrying out further building work.

Bert Dean
Building and Development
Tribunal Referee
Date: 14 th July 200

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