



APPEAL
Integrated Planning Act 1997

File No. 3/02/023

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Pine Rivers Shire Council
Site Address: 24 Garfield Terrace, Everton Hills

Nature of Appeal

Appeal under section 21 of the Standard Building Regulation 1993, against the decision of the Pine Rivers Shire Council not to grant a relaxation of the road boundary setback requirements for the erection of a new dwelling on land described as Lot 7 on SP No. 139963 Parish of Bunya and situated at 24 Garfield Terrace, Everton Hills.

Date and Place of Hearing: 10.00 am on Wednesday 5 June 2002
at 24 Garfield Terrace, Everton Hills.

Tribunal: Georgina J Rogers

Present: Applicants
Mr Russell Ward – Building Certifier, Pine Rivers Shire Council
Mr John Rauber – Observer, Pine Rivers Shire Council

Decision

The decision of the Pine Rivers Shire Council as contained in its letter dated 22 March 2002 (Reference: 2002-105/RELAX RW:sc) refusing the relaxation of the road boundary clearance of 4.000m sought for the construction of a new dwelling setback in lieu of the prescribed 6.000m is set aside and the following decision replaces the decision set aside:-

A reduced setback distance to 4.5m to the outermost projection of the new dwelling from the road boundary clearance, is **approved**.

Background

The site is currently vacant and it is proposed to construct a new single storey dwelling within the road boundary setback. Conditions over the site due to the existence of a 4.000m wide stormwater easement restrict the area available for construction of a lowset dwelling.

Material Considered

1. Appeal documentation including drawings detailing the proposed new dwelling and the siting requirements sought by the applicant.
2. Drawings and documentation of the stormwater easement being full length of the northern alignment, from both the applicant and Local Authority and specific construction constraints which substantially limit the actual land able to be built upon.
3. Verbal submission by the applicant of medical reasons why a two storey dwelling could not be built to accommodate their requirements and fit within the reduced building area.
4. Correspondence from the Council dated 22 March 2002 refusing the request to permit construction in lieu of the required road boundary clearance of 6.000m.
5. Correspondence from the applicant dated 24 May 2002 appealing the Council's decision not to grant the construction permit.
6. Verbal submission by the representative of the Pine Rivers Shire Council outlining the Council's assessment of the application and giving its reasons for refusal of the construction permit sought. The Council also confirmed its agreement to the amended setback in view of the site constraints.
7. Verbal submission from the applicants and confirmation of their agreement to the amended setback in view of the site constraints.

Findings of Fact

I made the following findings of fact:

1. The vacant site at 24 Garfield Terrace is on the lower side of the road, falling from south (road frontage) to north. Inside the northern alignment of the site is a stormwater easement greater than 4.000m wide and directly adjacent to this is a natural watercourse. Signs within the immediate locality of this lot indicate that it is a flood zone. Council have constraints, which do not enable any filling or construction over this easement. The site is generally rectangular in shape, being 790 m² which includes the 104 m² stormwater easement.
2. The new dwellings constructed within the immediate vicinity appear to be constructed with the required road boundary setbacks, with allowable exception of some carports.
3. The neighbourhood consists of a mix of lot sizes and one and two storey dwellings.
4. Under section 48 of the Standard Building Regulation 1993, the local government may vary the application of Division 2 – boundary clearances.

5. In assessing the application of section 48.(3) of the Standard Building Regulation 1993, the local government was required by that regulation to consider the following points:

(a) *the levels, depth, shape or conditions of the allotment and adjoining allotments*

The allotment and adjoining allotments are of varying size and shape. The allotment is adjacent to a flood zone and there is a 4.000m stormwater easement along the northern (rear) boundary. This reduces the available area for construction of a lowset dwelling within standard boundary setback requirements.

(b) *the nature of any proposed building or structure on the allotment*

The structure to which the application is relevant proposed to be a lowset dwelling to be sited within the 6.000m road boundary setback requirements. The garage is to be setback 4.500m to the outermost projection, being the eaves. The rest of the dwelling is setback a further 155mm from the road boundary, which in addition veers slightly away from the building footprint, therefore the setback to the living areas of the building would be greater than 4.500m to the outermost projection.

(c) *the nature of any existing or proposed buildings or structures on adjoining allotments*

There are a variety of new dwellings being constructed within the immediate neighbourhood, however not all vacant land has been constructed on.

(d) *whether the allotment is a corner allotment.*

The allotment is not a corner allotment.

(e) *whether the allotment has 2 road frontages.*

The allotment has only one (1) road frontage.

(f) *any other matter considered relevant*

Letters of approval from the adjoining owners for the proposed structure were considered.

Discussion in relation to the existing stormwater easement and its specific requirements and the requirement for a lowset dwelling by the applicants.

6. In assessing the application of Section 48.(4) of the Standard Building Regulation 1993, the local government must be satisfied that the amended proposed road boundary clearance on the allotment would not unduly –

- *Obstruct the natural light or ventilation of any adjoining allotment.*

The 4.5m road boundary clearance to the outermost projection being the retained roof overhang will not obstruct the natural light or ventilation of the adjoining allotment.

- *Interfere with the privacy of an adjoining allotment.*

The 4.5m road boundary clearance will not interfere with the privacy of the adjoining allotment.

- *Restrict the areas of the allotment suitable for landscaping.*

The 4.5m road boundary clearance will not unduly restrict the areas of the allotment suitable for landscaping.

- *Obstruct the outlook from adjoining allotments.*

The 4.5m road boundary clearance will not unduly obstruct the outlook from adjoining allotments, as the adjoining dwellings are located away from the proposed structure.

- *Overcrowd the allotment.*

The proposed 4.5m road boundary clearance will not overcrowd the allotment.

- *Restrict off-street parking for the allotment.*

Off-street parking will not be affected by the proposed 4.5m road boundary clearance.

7. Based on the above facts it is considered the appeal is proven.

Reasons for the Decision

1. The proposed location of the new dwelling is constrained by the additional conditions over the site, namely stormwater easement, and therefore subject to the consideration for construction within the 6.000m road boundary clearance.

2. An assessment of Section 48.(3) and (4), did not identify any valid reason for refusing the amended construction application.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 26 June 2002

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:

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