



APPEAL
Integrated Planning Act 1997

File No. 03-05-006

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Part 12 of the Queensland Development Code against the decision of the Brisbane City Council to refuse an application for relaxation of boundary setbacks on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 10:00am on Monday 21st February 2005
at “the subject site”

Tribunal: Mr Chris Schomburgk - referee
Mr Grant Wilson - referee

Present: *withheld* - owner;
Mr Bob Sternberg – private certifier;
Mr Dan Oliver – Brisbane City Council representative
Mr Greg Schonfelder – Brisbane City Council

Decision:

The decision of the Brisbane City Council as contained in its written Decision Notice dated 10th January 2005, to refuse an application for relaxation of the front and side boundary setback is **set aside in part (ground floor garage only)** and **the application is approved in part (ground floor garage only)**, otherwise **the decision is upheld**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- Additional material provided by the applicant and Council at the hearing;
- The relevant provisions of the Planning Scheme for Brisbane City Council – “City Plan”;

- The Queensland Development Code;
- Verbal submissions from the Applicant, his building certifier and the Council officers;
- Council's Decision Notice dated 10th January 2005; and
- The Integrated Planning Act 1997.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot *withheld*, with frontage to *withheld* street at *withheld*.
- The site comprises an older, single storey (from the street) house in average condition. We were advised that a carport was removed and replaced with the new structure (see below), but Council's photographic evidence does not support this. An aerial photo apparently dated 2001 seems to show a large tree in the front boundary setback where the new structure now sits.
- A structure has been erected on the north-eastern side of the existing house and encroaches within the Council's minimum setback from the *withheld* street frontage and from the northern side boundary. The structure has not received any Building Approval or relaxation of the boundary setbacks. We were advised that the building was commenced approximately 24 months ago (circa February 2003).
- Following receipt of Council's Enforcement Notice, the applicant has submitted an application for relaxation of the boundary setbacks (front and side). That application was refused and is the subject of this appeal.
- The building comprises a ground level double garage, a living room above, and an unroofed viewing tower over the living room. The ground level garage has a high ceiling (approximately 3.7m) while the living room has height of approximately 2.7m. The viewing tower has a balustrade comprised of rendered block supports and clear glass panels, and extends approximately 1.2m above the tower floor level.
- It was noted that the building has walls with no horizontal articulation and no eaves, and the windows and doors have no shades or overhangs. This creates the appearance of a high, straight-sided structure on all sides (except for the rear staircase).
- Because the building has already been constructed and the blockwork has been rendered, it is not possible to determine the structural soundness of the structure without more detailed (perhaps intrusive) investigation. Advice was produced from a consulting engineer that the structure looks, from the external inspection, to be satisfactory, but that much more detailed investigation would be required before the issue of any structural certification.
- The applicant stated that the height of the structure was based on a desire to obtain city views from a site that otherwise would not enjoy those views.
- The locality is one in which a number of older houses have been renovated or replaced with modern, high quality homes, many of which on the higher parts of the area and on the northern slopes, enjoy spectacular city views. Homes are generally of very high quality, with a high degree of landscaping and street appearance.
- The locality is steep in parts and has meant that some homes have required front boundary relaxation to achieve practical car accommodation. This applies particularly on the lower (northern) side of *withheld* St and *withheld* St which run generally east-west across the slope. The subject site, however, does not suffer the same degree of slope constraint, although it does slope downwards from street level to the rear of the property.
- On the site inspection, it was not possible to determine the precise degree of slope on the subject site, due to retaining walls and filling that has obviously occurred in the locality and on the subject and adjoining sites over the years.
- This fact will make an accurate assessment of natural ground level more difficult – a fact that may become relevant when one considers the height of the building and the requirement for it to

be no more than 8.5m above natural ground level at any point.

- The Council's refusal is based on a number of criteria including (in summary):
 - a) *Streetscape impacts*
 - b) *Light and ventilation to habitable rooms on site and on adjoining sites*
 - c) *Adequate open space for recreation, services and landscaping*
 - d) *Overshadowing and obstructing the outlook from adjoining lots*
 - e) *Adequate visual privacy for neighbours*
 - f) *Room for normal building maintenance*
 - g) *Provide for adequate sight lines* (NB: for corner lots – which this is not)
 - h) *Sufficient space for on-site car parking*
 - i) *Alternate locations for car accommodation are available that would satisfy the Queensland Development Code.*
- The Planning Scheme requires, for buildings higher than one storey, a “stepped” setback distance from side boundaries that increases as the building gets higher. In numerical terms that requirement is:
 - Up to 4.5m above natural ground level: 1.5m setback
 - From 4.5m to 7.5m above natural ground level: 2.0m
 - Above 7.5m above natural ground level: 2.5m
- The subject structure is shown as 1.35m from the northern side boundary for its entire height (refer plans drawn by *Wilfred Strating Design* that accompanied the application for relaxation). That is, at its point of least conflict, the building encroaches by 0.15m, and at its worst point encroaches by 1.15m.
- While the garage (ground floor) encroachment does not represent any major impacts to streetscape or to adjoining property (to the north), the second storey habitable room and viewing tower above have a greater impact.

Based on our assessment of these facts, it is my decision that **the appeal is allowed in part (ground floor garage only) subject to the following conditions:**

- 1) **The habitable room, viewing tower and stairs are to be removed.**
- 2) **The applicant is to provide to the Council a structural certificate from a registered professional engineer for the ground floor garage to demonstrate the structural soundness of the building as modified by these conditions.**
- 3) **The roof of the garage, after removal of the room and tower, is to be made good and designed and constructed to Council's satisfaction, without encroaching any further into the side boundary setback area.**
- 4) **The applicant is to provide written evidence from a licensed surveyor that the building as modified by these conditions is no higher than 8.5m above natural ground level at any point.**
- 5) **The applicant is to provide and maintain landscaping, including advanced trees or shrubs, to the balance of the front and side setback areas to Council's satisfaction prior to the issue of a Building Permit.**

Council's decision to refuse the siting application for a structure within the setback area is set aside and the application is approved in part (ground floor garage only) subject to these conditions, otherwise the application is refused.

Reasons for the Decision

- The building as a whole represents a major negative visual intrusion into the streetscape for this locality.

- The building design has not taken into consideration the impacts on streetscape and on adjoining properties – particular the property to the north – and creates the potential for overlooking onto that property.
- The building design has not considered the need for higher buildings to be stepped back from the side boundary as the height increases.
- The building has been constructed without the necessary structural compliance checking.
- Other options are available on the site for an additional habitable room and viewing tower, if considered necessary, that do not encroach into the setback areas for the front or side boundaries.
- The garage intrusion into the setback areas (front and rear) is not, of itself, so significant as to warrant refusal, but the building as a whole (with the habitable room and viewing tower) represents a significant intrusion.
- The habitable room and viewing tower of the subject building provide for inappropriate overlooking of the adjoining property and will impact on the privacy of that property.

Chris Schomburgk
Building and Development Tribunal General Referees
Date: 28th February 2005

Grant Wilson

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