



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 3-07-049

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Brisbane City Council not to approve a siting variation for a detached dwelling. The application for a siting concession was required to allow a two storey residence to be built within 6.0m of the street boundary on “the subject site”.

Date and Place of Hearing: 2.00 pm Friday 14 September 2007
at Level 10 Forestry House,
160 Mary Street, Brisbane.

Tribunal: Debbie Johnson – Chairperson

Present: Applicant / Owner
Mark Dawson – Brisbane City Council Representative
Chris Savory – Brisbane City Council Representative

Decision

The decision by Brisbane City Council as a Concurrence Agency to refuse the siting variation request for a detached dwelling to be built within the 6.0m street setback, as contained in its written notice to The Certification Professionals dated 3 September 2007, is **set aside** and the road boundary clearance to *withheld* is varied to 4.5m. This variation is to apply for an overall length of 6.330mm to accommodate a roofline with a 450mm overhang to the Balcony and Entry Porch area as proposed.

Background

The applicant contracted with Plantation Homes, a division of Henley Properties (Qld) Pty Ltd, to build a detached dwelling on “the subject site”.

The proposed two storey residence features a covered Balcony and Entry Porch that sits approximately 2m forward of the main residential structure. The applicant felt a siting variation was desirable to maximise the recreational area available at the rear of the site, particularly as they wish to build a pool in the future. The proposed residence has been designed to interact with outdoor living areas to the rear of the site. The front of the site, offers a potential outlook over a park reserve to the Northwest.

The applicant’s agent, Henley Properties (Qld) Pty Ltd, lodged a development application for a building works with The Certification Professionals who referred the application to the Brisbane City Council as a concurrence agency. The proposed residence required an approval for a siting variation to allow it to be built, in part, within the 6m street setback.

Brisbane City Council issued a Concurrence Agency Response refusing the application, by written notice to The Certification Professionals on 3 September 2007. Consequently, The Certification Professionals issued a Decision Notice to Henley (Qld) Pty Ltd on 6 September 2007, advising that the application for a siting variation had been refused by the Brisbane City Council.

Material Considered

- ‘Form 10 – Notice of Appeal’ lodged with the Building and Development Tribunals on 3 September 2007;
- Brisbane City Council’s Concurrence Agency Response dated 3 September 2007;
- The Certification Professionals Decision Notice dated 6 September 2007;
- The applicant’s grounds for appeal submitted with his application. The applicant has outlined his arguments against Brisbane City Council’s reasons for refusal;
- Chris Savory and Mark Dawson, as Brisbane City Council’s representatives, provided further information to the Tribunal outlining their concerns relating to the application and the reasons for refusal;
- Verbal submissions made by the applicant at the hearing;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- Part 12 of the Queensland Development Code (QDC).

Findings of Fact

The site is 608 sq/m with a 19m frontage and essentially rectangular in shape. The natural surface level has a cross fall of approximately 1.5 m across the site. This slope has already been addressed through the construction of stone retainment walls along the rear and side boundaries.

Withheld is not a through road and services fourteen allotments including the subject site. The street is unusual in that it 'snakes' between allotments and a large park reserve. There are six allotments that would be deemed corner sites and one that is a 'battleaxe' with minimal access to the street. Council representatives indicated that two sites to the rear of "the subject site" have been granted siting variations for the street setback due to existing services at the rear of their respective sites.

"The subject site" faces North and looks over the park reserve. There are neighbouring allotments along the Eastern, Southern and the Western boundaries. Adjoining property owners on both sides of "the subject site" have submitted written letters of support for the applicant's siting variation.

Siting for Class 10 buildings and structures is determined by Part 12 of the QDC, to the extent that the planning scheme does not identify or state alternative provisions for boundary clearances.

Legislative definitions and requirements that are applicable to this structure are:

"Road boundary clearance for a building or structure on a lot means the shortest distance measured horizontally from the outermost projection of the building or structure to the vertical of the boundary of the lot adjacent to the road'." (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p4)

"Setback means for a building or structure other than a swimming pool, the shortest distance measured horizontally from the outermost projection of the building or structure to the vertical projection of the boundary or the lot'." (QDC, Part 12-Design & Siting Standard for Single Detached Housing, p4)

"Structure includes a wall or fence and anything fixed to, or projecting from, a building, wall, fence or other structure." (*Building Act 1975*, Reprint 5c 7/12/2006, schedule 2, p179)

"For a dwelling, garage or a carport the minimum **road setback** is 6.0m;" (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (a), p6)

"For a **corner lot**, the minimum **road setbacks** are as for A1 (a) (i); (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (b), p7)

"For **structures** the **minimum road setbacks** are as for A1 (a) (b) and (c) except for screens / fences not more than 2.0m high." (QDC, Part 12-Design & Siting Standard for Single Detached Housing, A1 (d), p8)

The **Performance Criteria** of buildings and structures under the QDC Part 12 P1 is as follows:

"The location of a building or structure facilitates an acceptable streetscape, appropriate for –

- the bulk of the building or structure; and
- the road boundary setbacks of neighbouring buildings or structure; and
- the outlook and views of neighbouring residents; and
- nuisance and safety to the public."

(QDC, Part 12-Design & Siting Standard for Single Detached Housing, P1, p6)

Reasons for the Decision

With the high proportion of 'corner' or irregular lots, due to site shape or the presence of services, there may be up to eight out of the fourteen allotments in *withheld* requiring siting variations.

Effectively the relaxation of the street setback on “the subject site” will not be out of character with the surrounding dwellings, due to the proportion of sites that will have varied their setback.

The two adjoining property owners most affected by this proposal have submitted letters of support for the application. Each of these owners has had their own dwellings designed and approved for construction, therefore, they would be fully aware of the potential impacts on their own sites.

The relevant performance criteria within the QDC stipulate that structures facilitate an acceptable streetscape appropriate for the bulk of the structure with consideration for the outlook or views from neighbouring sites.

In this instance, the proposed variation to the street setback will not impact negatively on views or outlook from adjoining properties and there has been no nuisance or safety issues identified as a result of the structure being located within the road boundary setback. The relaxed setback will be in keeping with the majority of those dwellings in the immediate vicinity.

Debbie Johnson
Building and Development Tribunal Chair
Date: 24 September 2007

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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