



APPEAL
Integrated Planning Act 1997

File No. 03-06-059

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: *withheld*-"the subject site"
Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.29 of the *Integrated Planning Act 1997* against the decision of the Brisbane City Council to approve an application for Building Works – siting variation – subject to conditions, on land described as "the subject site".

Date and Place of Hearing: 10:00am on Tuesday 4th July 2006
at the offices of the Building and Development Tribunal, George St, Brisbane

Tribunal: Mr Chris Schomburgk

Present: Applicant;
Architect for the applicant;
Mr Michael Bell – Brisbane City Council;
Mr Greg Kranz – Brisbane City Council.

Decision:

The decision of the Brisbane City Council as contained in its written Decision Notice dated 19th June 2006, to refuse an application for relaxation of the boundary setback subject to conditions, is **set aside** and the **application is approved, subject to conditions as follows:**

- 1. The building shall be set back a minimum of 4.0metres from the fascia board to the front (street) boundary and a minimum of 2.12metres from the fascia board to the rear boundary.*
- 2. The building shall be constructed in accordance with Plan No WD03 Revision B dated 4 July 2006 prepared by Archiscape Design.*

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 – Building and Development Tribunals Appeal Notice and supporting plans and documentation, including amended plans provided after the hearing;
- Letters of support from two residents of the immediate locality;
- The relevant provisions of the 2000 Town Planning Scheme for Brisbane City Council;
- Council’s Decision Notice dated 19th June 2006;
- The relevant provisions of the Queensland Development Code; and
- *The Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises *withheld* and is located at “the subject site”.
- The allotment is unusual in that it is a wide but shallow allotment. The frontage width is 30.35m but the depth is only 19.45m. This shallow depth results in the need for a wider house than normal and has given rise to the application to relax the setback for the front and rear boundaries. The site is bounded on one side by a pathway, with standard-shaped allotments on the other side and at the rear.
- *Withheld* is part of a relatively new subdivision, for which there are estate covenants requiring houses to have a minimum floor area of 250m². The proposed house complies with that minimum area, and it is proposed to be contained within only one level.
- Photographic evidence was provided showing that some other homes in the estate had achieved front boundary relaxations to approximately 4.5metres. The applicant has applied for that extent of relaxation.
- However, it emerged at the hearing (which was held in the offices of the Tribunal, not on site) that the house had already been commenced and the footings and part of the front wall were in fact closer to the front boundary than applied for. As a result, a survey of the site was commissioned to determine the exact dimensions. I was provided with a copy of that survey a few days after the hearing.
- The applicant has obtained the written approval to the proposed relaxation from two of the immediate neighbours.
- The Council advised that they had not been provided with details of the estate covenants, nor letters of support from the neighbours, nor photographs of other houses in the locality. This lack of supporting information was partly to blame for the Council’s refusal.
- At the hearing, the Council officers helpfully offered a number of suggestions that would appease, to a large degree, their concerns. These included amendments to the design of the front of the house to achieve a lesser visual impact when viewed from the street.
- As a result, I was provided with amended plans from the applicant’s architect after the hearing, addressing these suggestions.

Based on my assessment of these facts and the amended plans provided to me, it is my decision that **the appeal against Council’s decision** to approve the Application for Building Works - siting variation - is **upheld and the application is approved, subject to Conditions as follows:**

1. *The building shall be set back a minimum of 4.0metres from the front fascia board to the front (street) boundary, and a minimum of 2.12metres from the rear fascia board to the rear boundary.*
2. *The building shall be constructed in accordance with Plan No WD03 Revision B dated 4 July 2006 prepared by Archiscape Design.*

Reasons for the Decision

- The proposal, as amended by the Conditions of the approval and the amended plans, will not detract from the amenity or character of the streetscape.
- The proposal, as amended, will satisfy the relevant Performance Criteria of the Queensland Development Code.
- While the construction of part of the building prior to obtaining approval for the relaxation of boundary setbacks cannot be condoned, the location of the building and the design changes now proposed are such as to not cause any significant detriment to the character or amenity of the streetscape in this locality.
- The relatively unique shape of the subject allotment – especially its shallow depth – means that some degree of relaxation would have been anticipated for this site. Doing so does not create any undesirable precedent, given that most other lots in the locality are of a conventional shape – that is, they are deeper than they are wide.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 19th July 2006

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
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