



APPEAL
Integrated Planning Act 1997

File No. 3-05-020

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council
Site Address: *withheld* – “the subject site”
Applicant: *withheld*

Nature of Appeal

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Caboolture Shire Council in varying the application of Division 2 – Boundary clearances, as provided for under Part 12 of the *Queensland Development Code* (QDC), for a detached house on land described as Lot *withheld*, situated at “the subject site”.

Date and Place of Hearing: 11.00 am on Thursday 7 April, 2005
At “the subject site”

Tribunal:	Dennis Leadbetter	Referee
Present:	<i>applicant</i> Jeff Brewer	Owner DTS Group (Land Developer’s town planners and surveyors)
	Mr Trevor McLean	Building Certifier / applicant
	<i>Withheld</i>	Owner’s representative
	Wade Potter	Caboolture Shire Council
	Melanie Millar	Caboolture Shire Council

Decision

The decision of the Caboolture Shire Council as contained in its letter dated 7 March, 2005, reference BRX-2005-168, not to grant approval to permit the erection of a detached house within the 6 metre southern road alignment setback is **set aside**.

The detached house may be erected to within 3000 mm to the southern road alignment to the outer most projection.

Background

The application was for consent to build a single storey detached dwelling, to approximately 2.5 metres to the southern *withheld* Place road alignment to the garage and approximately 3 metres to the main house.

Council refused the application, stating the grounds for that refusal in their letter, to be:-

It is considered that because:-

- The location of the building or structure does not facilitate an acceptable streetscape appropriate for:-
 - The bulk of the building or structure; and
 - The road boundary set backs of neighbouring buildings or structures.

Material Considered

1. Appeal notice and grounds of appeal contained therein;
2. Drawings submitted to Caboolture Shire Council;
3. Letter from the Caboolture Shire Council not to grant approval;
4. Verbal submissions from applicant and owner explaining the reasons why the relaxation should be granted;
5. Verbal submissions from Mr Trevor McLean explaining the reasons why the relaxation should be granted;
6. Verbal submissions from Mr Wade Potter and Ms Melanie Millar, Caboolture Shire Council, explaining the reasons why the application should not be granted;
7. The Standard Building Regulation 1993;
8. The Queensland Development Code (QDC) Part 12; and
9. Additional information supplied by Mr Jeff Brewer representing the land estate developer in relation to the subdivisional approval and discussions and negotiations with Caboolture Shire Council and the Developer's intentions, specifically in relation to set backs within the estate.

Finding of Fact

I made the following findings of fact:

1. The estate is a new estate and no buildings have been erected as at the date of this hearing, other than the estate sales office. Approximately 3 blocks in the immediate area had been graded to form a building platform and remove vegetable matter in preparation of construction commencing.

2. From information supplied by the developer's representative, in discussions with council relevant to the subdivision approval, submissions were made to:-
 - Reduce the rear setback as a noise buffer to those sites abutting *withheld* Road from 6 metres to 3 metres;
 - Reducing alignment setbacks to the whole estate, having cognisance of the block dimensions and shape; and

Caboolture Shire Council agreed to the first relaxation but indicated they were unable to grant the second, and that relaxations would have to be made on a block by block basis by each individual owner. It is believed that Caboolture Shire Council considered that was not within the jurisdiction of the town planning approval process.

3. The area of the estate containing this site has a moderate fall to the south and east directions.
4. The estate is covered by extensive covenants imposed by the developer and I have assumed these were made known to and accepted by the Caboolture Shire Council, as they do impact on property development.
5. The road corridor is 14 metres wide.
6. That road is not a through road and has a culdasc with only 4 blocks beyond this site.
7. The QDC Part 12 *Performance Criteria P1* for road alignment setbacks, lists the following criteria to be considered:

The location of a *building* or *structure* facilitates an acceptable streetscape, appropriate for-

- (a) the bulk of the *building* or *structure*; and
- (b) the *road* boundary *setbacks* of neighbouring buildings or *structures*; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

and

As an *acceptable solution* of that criteria, acceptable solution **A1** sets that dimension-

- (a) for a dwelling, *garage* or a *carport* the *minimum road setback* is –
 - (i) 6 m; or
 - (ii) where there are existing dwellings on both adjoining *lots* and at least one of the dwellings is *setback* from the road between 3 m and 6m, and the difference between their *road setbacks* is-

(A) not more than 2m – a distance between the two dwellings; or

(B) more than 2m- the average of the *road setbacks* of the adjacent dwellings; and

8. Part 12 QDC, sets out *Performance Criteria P1 – P8* in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application and that the development **does not unduly conflict** with the intent of each of the *Performance Criteria*:-

PERFORMANCE CRITERIA

ASSESSMENT AGAINST CRITERIA

- | | |
|---|---|
| <p>P1 The location of a <i>building</i> or <i>structure</i> facilitates an acceptable streetscape, appropriate for-</p> <ul style="list-style-type: none">a. The bulk of the <i>building</i> or <i>structure</i>; andb. The <i>road</i> boundary <i>setbacks</i> of neighbouring buildings or <i>structures</i>; andc. The outlook and views of neighbouring residents; andd. Nuisance and safety to the public. <p>P2 Buildings and <i>structures</i>-</p> <ul style="list-style-type: none">a. Provide adequate daylight and ventilation to <i>habitable</i> rooms; andb. Allow adequate light and ventilation to <i>habitable</i> rooms of buildings on adjoining <i>lots</i>. <p>P3 Adequate open space is provided for recreational, service facilities and</p> | <ul style="list-style-type: none">a. The proposed structure is a single storey detached dwelling located 3 metres to the southern road alignment.b. The adjoining properties are vacant, but the land developer's intention was to establish a road frontage setback less than that prescribed within the QDC. Caboolture Shire Council, from information supplied by the land developer's representative at the tribunal, suggested that they were unable to establish such a provision as part of the town planning and land development approval process.c. The outlook from the adjoining neighbours will not be unduly impeded because of the topography of the site, being of only moderate fall, and the fact the garage could be constructed up to the western alignment.d. The development would not cause any nuisance or increase safety issues to the public. <ul style="list-style-type: none">a. The proposed setback would not unduly restrict the daylight or ventilation to any habitable room to the dwelling on this site, as the road reserve provides a 14 metre open space zone.b. The proposed development with the reduced road alignment setback will not change the daylight or ventilation to any of the adjoining properties, because of the road reserve buffer and site orientation. <p>The areas between the proposed development and the road alignment</p> |
|---|---|

landscaping.

would provide adequate space for suitable landscaping and maintenance operations, and the positioning of the house in the position indicated would provide a larger and more useful space to the northern side, adjacent to the living spaces to the proposed structure, thus enhancing the function of the house and maximising the optimisation of climatic factors because of orientation. It also provides a safer location for small children to play.

- P4** The *height* of a *building* is not to unduly-
- a. Overshadow adjoining houses; and
 - b. Obstruct the outlook from adjoining lots

- a. The proposed structure will not overshadow the adjoining lots because of the road reserve and the orientation.
- b. The proposed structure will not obstruct the outlook, because of the road reserve and general topography.

- P5** Buildings are sited and designed to provide adequate visual privacy for neighbours.

The building has been designed to maximise the visual privacy between this lot and the adjoining lots, and the installation of suitable landscaping will enhance that privacy.

- P6** The location of a *building* or *structure* facilitates normal *building* maintenance.

The setbacks shown provide more than adequate access for normal building maintenance.

- P7** The size and location of *structures* on corner sites provides for adequate sight lines.

The site is not a corner site.

- P8** Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for-
- a. The availability of public transport; and
 - b. The availability of on-street parking; and
 - c. The desirability of on-street parking in respect to the streetscape; and
 - d. The residents likelihood to have or need a vehicle.

The development will provide secure covered car for two vehicles within the dwelling. (It should be pointed out that parking of vehicles on the driveway is in breach of the developer's covenants.)

Reason for the Decision

Part 12 of the QDC provides **Performance Criteria** and some **Acceptable Solutions**, but allows the local government to vary the application of siting requirements to take account of alternative solutions. In assessing the criteria from this part of the Code and considering the nature and use of the proposed structure and its siting on this allotment and the potential development of adjoining sites, and after considering the minimal impact the reduced southern road alignment setback would have on the adjoining allotments, the Tribunal found that there was reasonable grounds to vary the southern road alignment setback to allow the detached dwelling to be constructed to within a minimum 3.0 metres of the southern road alignment, measured to the outer most projection.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

Building and Development

Tribunal Referee

Date: 8 April 2005

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