



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-05-090

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Brisbane City Council to refuse an application for Building Works – siting variation - on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 10:00am on Wednesday 8th February 2006
at Level 18, 41 George St, Brisbane

Tribunal: Mr Chris Schomburgk

Present: *withheld*– applicant;
Mr Matt Tricarico – Brisbane City Council.

Decision:

The decision of the Brisbane City Council as contained in its written Decision Notice dated 25th November 2005, to refuse an application for relaxation of the boundary setback, is **set aside** and **the application is approved subject to conditions.**

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans and documentation;
- The relevant provisions of the Town Planning Scheme for Brisbane City Council;
- Council’s Decision Notice dated 25th November 2005;
- The *Queensland Development Code*; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot *withheld* and is located at “the subject site”.
- The site currently contains a dwelling house which is proposed to be renovated and extended. The site slopes relatively steeply downwards away from the street.
- Vehicular access is obtained via a short steep driveway to an existing garage. That garage is proposed to be converted into habitable rooms as part of the renovations. The applicant seeks to construct a new garage effectively along the front (street) boundary, with an at-grade driveway from the kerb.
- The application also seeks approval for a deck at the rear of the house to be located on the site’s western boundary.
- The adjoining property to the west is located approximately 4 metres from the front boundary and 4 metres from the side boundary.
- The Council has refused the subject application on the basis that the proposed siting would:
 - *Not facilitate an acceptable streetscape appropriate for bulk / road boundary setbacks / outlook and views of neighbouring residence / nuisance and safety to the public;*
 - *Unduly overshadow adjoining houses / obstruct the outlook from adjoining lots*
 - *Not adequately facilitate normal building maintenance*
 - *Not meet the performance and acceptable solutions of Part 12, Queensland Development Code.*
- At the hearing the parties were prepared to discuss various options for a compromise.
- It was agreed between the parties that the rear deck was not a major concern, provided some privacy screening was included, particularly along the western boundary.
- The proposed garage was proposed to have solid block walls with a “panel lift” door. The solid nature of the structure so close to the boundary was of concern to the Council, for the reasons stated in their Decision Notice.
- At the hearing, a number of options to amend the garage were discussed. Council was prepared to consider a more “open” looking structure, provided some side setback was achieved for at least part of the structure’s side wall, to enable maintenance and access.
- The proposed roof of the structure was also discussed. The overall height and bulky appearance of the front of the structure was of concern to Council, as a result of the roof sloping away from the street. Council’s preference was for a roof draining to the street, as opposed to the roof as proposed. However, Council was prepared to consider a revision that included some on-site stormwater storage (tank) under the house.
- The applicant was prepared to accept some compromise to achieve car accommodation closer to the front, and Council accepted the benefits in terms of safety of having the car accommodation at grade or close to it, as opposed to the current steep driveway.

Based on my assessment of these facts, it is my decision that **the appeal is upheld**. Council’s **decision** to refuse the Application for Building Works - siting variation - is **set aside** and **the application is approved, subject to conditions**.

Reasons for the Decision

- The rear deck can be modified with the addition of privacy screening to achieve a satisfactory outcome.

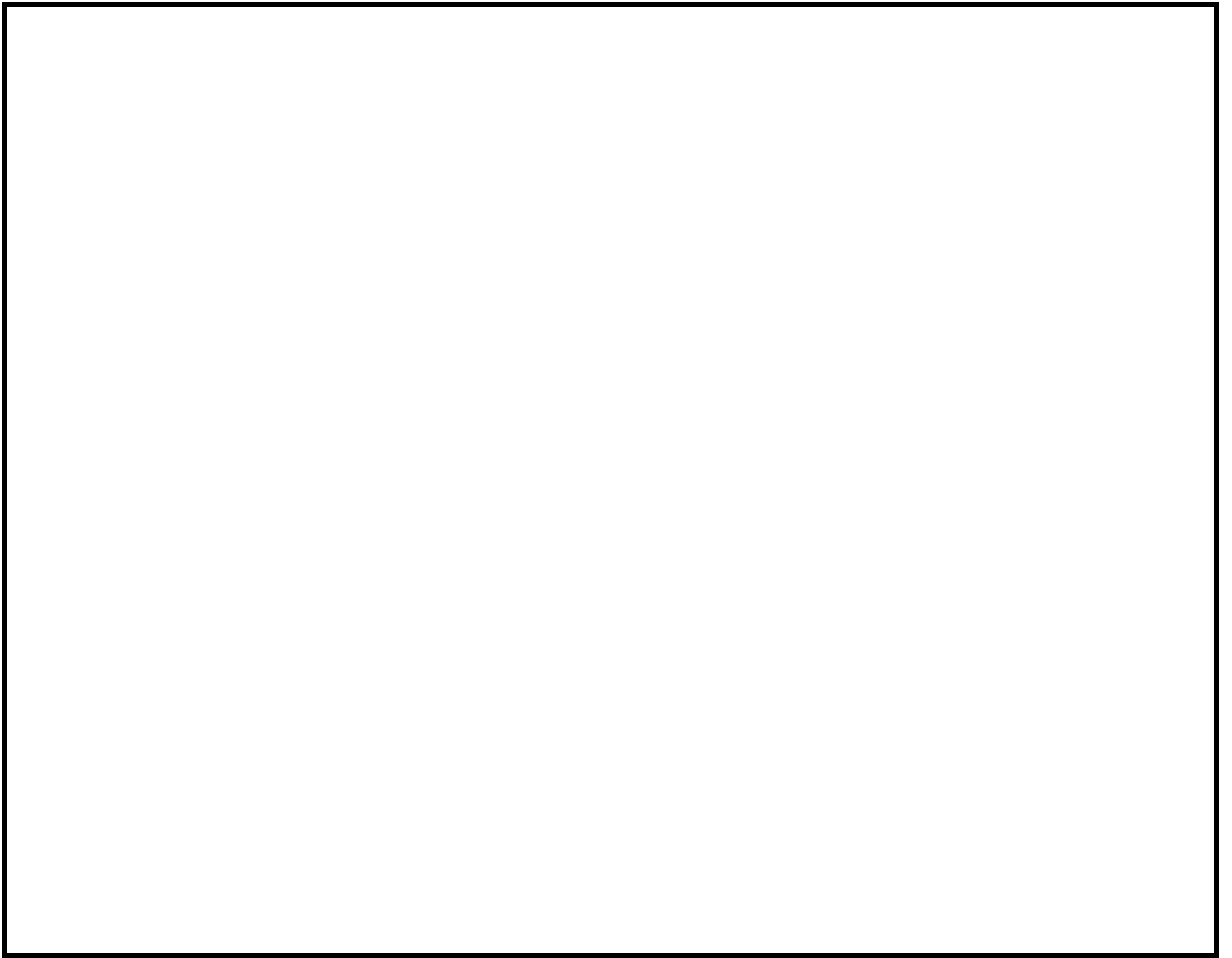
- If modified as per the attached conditions, the carport structure would not present as a bulky structure and would not have any significant impact on the streetscape.
- The proposal, if modified as per the attached conditions, would not impact on the views, light or breezes of the surrounding properties.
- The proposal, if modified as per the attached conditions, would offer sufficient side access to the structure to enable access and maintenance.

Conditions of Approval

The proposal plans by *withheld* dated September 2005 and referred to as drawing numbers 3905/1-7/1, to 3905/7 -7/1 inclusive, must include the following conditions before they can be approved:

1. The proposed rear deck is to be fitted with privacy screening along the western side. That screening is to achieve a minimum of 50% solid screen (eg: by lattice or vertical or horizontal battens).
2. The proposed carport is to be open on all sides and the front, but may include screening to achieve a maximum of 50% solid screen (eg: by lattice or vertical or horizontal battens). The front door of the carport is to achieve the same degree of screening.
3. The proposed carport is to be set back from the side boundary at least 500mm for at least 75% of that carport side length, to enable access for maintenance.
4. If the roof is to slope downwards away from the street, an on-site stormwater tank is to be provided with a minimum capacity of 8,000 litres.
5. The maximum height of the carport at the street frontage is to be 2.5m above the existing ground level of the driveway at the street frontage.
6. If a carport door is provided, it must not be hinged opening out into the road reserve. A tilt-up or sliding door is acceptable, provided it complies with condition 2 above.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 21st February 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:

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