



APPEAL
Integrated Planning Act 1997

File No. 03-05-027.

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

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

Applicant: *withheld*

Nature of Appeal

The appeal is against the decision of Gold Coast City Council to issue an Enforcement Notice for the building work on land described as Lot *withheld* and situated at “the subject site”.

Date and Place of Hearing: 10:00am, 24 May, 2005
at “the subject site”

Tribunal: Stanly Spyrou

Present: *withheld* – for the Applicant
Withheld - for the Applicant
Robert Clowes – Gold Coast City Council

Decision

The Enforcement Notice issued by Gold Coast City Council dated 21 April, 2005 (Reference PN155699/16/-(P1)) is **changed** as follows:

1. Item 2 concerning a retaining wall structure supporting a garden bed erected with the road reserve is deleted. Item 2 has been resolved separately to Gold Coast City Council’s satisfaction.
2. Item (b) is deleted. Action Item (b) relates to resolved Item 2.
3. Item (a) requiring the property owner to take certain action to refrain from committing the offence described in Item 1 of the Enforcement Notice is deleted. Item (a) is replaced with a new and more detailed action Item (a)
4. A new Item (a) is inserted and such new Item (a) is as follows:-
(a) *Refrain from committing the offence by ensuring the building work mentioned in item 1 above is (i) within seven (7) days from the date of receipt of the decision, made safe and structurally sound by providing temporary bracing, tie-down fixings and such other measures required to secure the structure during adverse weather conditions and to protect occupants and users of the subject*

property and those of neighbouring properties; and,
(ii) within twenty-eight (28) days from the date of receipt of the decision, undertake the following actions
(A) obtain a development permit for the subject building work and comply with the requirements of such development permit; and,
(B) remove the encroachment of the building work over the common boundary between the subject property and the adjoining property described as “withheld”; and,
(C) prevent roofwater and surface water run-off from discharging onto the adjoining properties; and,
(D) remove wall linings to the perimeter of the building work to result in an open structure. Perimeter wall linings located along the western side of the structures providing privacy screening between the subject property and the adjoining property described as Lot “withheld” and situated at “withheld” are exempted from this requirement; and,
(E) secure the wall linings required for privacy screening in item (D) above to ensure such linings do not represent a safety risk to occupants or visitors of the subject property or those of adjoining properties; and,
(F) provide fire separating construction at the following locations
(a) between the subject building work and the adjoining property; and,
(b) between the subject building work and the dwelling on the subject property.
(G) privacy screening material located on or within 900mm of the common boundary between the subject property and the property located at “withheld” is to be non-combustible.

5. Minimum setbacks for building work from the front property boundary and from the property boundary common with the property described as Lot *withheld* situated at *withheld* is reduced to 0mm in both locations.

Background

1. Further to inspection of the subject property by its officers, Gold Coast City Council formed the opinion that the subject building work had been constructed without a Development Approval and/or Building Permit having been obtained and Council further formed the opinion that the said building work is dangerous to persons in the proximity of the buildings and structures to the boundaries of the premises and to the dwelling situated on the premises and the nature of the building materials indicate that the fire separation requirements have not been complied with.
2. Gold Coast City Council issued an Enforcement Notice (reference PN155699/16/-(P1)) dated 21st April 2005 pursuant to Section 22(1) of the Building Act 1975 and Section 4.3.11 of the Integrated Planning Act 1997. The Enforcement Notice is concerning an enclosed and extended carport/garage, and roofed patio, buildings and structures on or close to the road frontage boundary and to the boundary of the premises situated at *withheld*, being assessable development have been erected without the required development permit for building work under the Integrated Planning Act 1997 and required approval for relaxation of boundary setbacks.
3. The Enforcement Notice requires the property owner to undertake certain actions within specified time frames in order for the building works to conform to the Integrated Planning Act 1997 and to ensure the building work is safe.
4. The property owner, *withheld*, appealed the decision of Gold Coast City Council to issue the Enforcement Notice on the grounds that “*the pergola, garage and carport was built 18 years ago with permit and relaxation from Albert Shire Council. Gold Coast City Council has no record regarding the property. Our copy of relevant documents have been lost*”.

Material Considered

- EXHIBIT 1 – Letter from adjoining property owner, *withheld* and attached photographs (Marked as exhibits 1/1 to 1/7 inclusive)
- EXHIBIT 2 – Form 10 – Building and Development Tribunals Appeal Notice dated 28/04/2005
- EXHIBIT 3 – Copy of approved building plans for a dwelling bearing approval number 3980/80
- EXHIBIT 4 – Copy of correspondence from Gold Coast City Council to applicants dated 24 May, 2005
- EXHIBIT 5 – Copy of Statutory Declaration from applicant dated 22 May, 2004
- EXHIBIT 6 – Submission to Building Tribunal by Robert Clowes dated 24 May, 2005
- EXHIBIT 7 – Copy of correspondence from applicant to Gold Coast City Council dated 1 September, 2003
- EXHIBIT 8 – Copy of Enforcement Notice dated 17 December, 2003 issued by Gold Coast City Council
- EXHIBIT 9 – Copy of Preliminary Approval for Building Work reference BA24/01961 issued by Gold Coast City Council dated 16 February, 2004
- EXHIBIT 10- Copy of Decision Notice Classes 1 & 10 reference number 24/01962 issued by Gold Coast Building Certification Group dated 27 February, 2004.
- EXHIBIT 11- Copy of approved plans for a proposed swimming pool reference number 88/7387 issued by Albert Shire Council dated 5 October, 1988
- EXHIBIT 12- Copy of Councillor Request/Inspection Results prepared by *withheld* dated 15 May, 2003
- EXHIBIT 13 – Facsimile transmission of copy of submission to Tribunal by *withheld* dated 22 May, 2005

Findings of Fact

1. The Enforcement Notice issued by Gold Coast City Council is a properly issued Notice.
2. The Form 10 Appeal lodged by *applicant* is a properly made Appeal.
3. *applicant* is the owner of the subject property.
4. The subject building work has been carried out during the mid to late 1980's.
5. Gold Coast City Council records do not contain a record of a relaxation of the minimum boundary setbacks for the building work.
6. A Building Permit was required for the subject building works at the time they were constructed. Gold Coast City Council Building Records do not contain a record of a building approval for the subject building work.
7. A relaxation of the minimum boundary setbacks was required at the time the building work was carried out.
8. *applicant* has not produced evidence of a Building Permit or a relaxation of the minimum building setbacks having been issued for the subject building work by Gold Coast City Council or by Albert Shire Council.
9. Additional building work is required to secure the building work.
10. Additional building work is required to provide fire separation between the subject building work and the dwelling and the adjoining property.
11. Under the Integrated Planning Act 1997, a suitably accredited building certifier can issue a Development Permit for Building Work for an existing structure.

Reasons for the Decision

1. Gold Coast City Council has not satisfactorily demonstrated that the best interests of the community would be served by requiring the subject building work to be removed.

2. Gold Coast City Council has not satisfactorily demonstrated that a relaxation of the minimum boundary setbacks for the subject building work should not be granted.
3. applicant has not satisfactorily demonstrated that a development approval and/or building permit has been issued for the subject building work.
4. The Tribunal has not been provided with evidence that a Development Approval and/or Building Permit for the subject building work may have been obtained but incorrectly recorded or lost by Gold Coast City Council or Albert Shire Council.
5. Obtaining a Development Approval and/or Building Permit for the subject building works would be in the best interests of the community.
6. The siting of the subject structures in relation to the property boundary abutting the road reserve and the property boundary abutting the adjoining property described as *withheld* was considered against the performance criteria established in the Queensland Development Code. The opinion of the Tribunal, in satisfying the performance criteria is that approving a reduced boundary setback for the subject building work of zero (0) mm in both locations would not have an adverse effect on the streetscape and the amenity of the neighbourhood.
7. Removing the wall linings to the perimeter of the structures will return the structures to their intended use as carport and open outdoor entertainment area and lessen the fire load from any materials stored in an enclosed structure.
8. Screening along the western side of the structures located on or near the common boundary between the subject property and the adjoining property would provide adequate privacy between the two properties.
9. Fire resisting construction at the intersection of the existing dwelling on the subject property and the eastern side of the subject building work would provide adequate fire separation between the structures.
10. An open outdoor entertainment and open carport structure with reduced capacity for permanent storage would provide adequate fire separation between the subject building work and the adjoining property. Fire separation is further enhanced through the use of non-combustible materials for privacy screening for that portion of the subject structures located on or within 900mm of the common boundary between the subject property and the adjoining property.

Stanly Spyrou
Building and Development
Tribunal Referee
Date: 24 June 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
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