



APPEAL
Integrated Planning Act 1997

File No. 3-06-057

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under Section 20 of the *Building Act 1975* against the Brisbane City Council to issue a decision in its letter dated 5 June 2006, refusing a siting variation application in relation to a dwelling situated at “the subject site”.

The Tribunal will address the siting issues only.

Date and Place of Hearing: 10.00am, Wednesday 12th July 2006 at “the subject site”

Tribunal: Raymond W Rooney

Present: Owners / Applicants
J. McCormack – Brisbane City Council
Owner of adjoining Lot

Decision

Taking into consideration the relevant facts and circumstances, the Tribunal **sets aside** the Brisbane City Council’s decision in its letter dated 5 June 2006 refusing a siting variation application **and the Tribunal decides that:-**

The building satisfies the Performance Requirements under Part 12 - Design and Siting Standard for Single Detached Housing – on Lots over 450m² of the Queensland Development Code (QDC).

Subject to the following conditions:-

- (i) **The wall adjoining the boundary being maintenance free;**
- (ii) **No rainwater from the building be discharged on adjoining property; and**
- (iii) **No part of the building used for habitable purposes.**

Background

The applicants and the owner of the adjoining property are in dispute regarding the re-establishing of a common side boundary wall demolished after February 2005.

The applicants sought approval from Brisbane City Council to erect a garage/store building within the side boundary clearances nominated under the “acceptable solutions” of Part 12 of the Queensland Development Code.

In considering the application for this siting variation the Brisbane City Council requested the applicants obtain the neighbour’s approval. The neighbour declines to agree to the proposal.

After considering matters it considered relevant, Council refused the application.

Material Considered

1. Form 10 – Building and Development Tribunal, Appeal Notice dated 26 June 2006 with attached documents regarding Siting Variation Relaxation Application and photos of existing site conditions;
2. Plans – Job No. 05-040 – sheets 1 and 2 as submitted to Council for a relaxation of siting requirements;
3. Brisbane City Council’s letter dated 5 June 2006 refusing the relaxation referred to in 2;
4. The neighbour’s written submission to Brisbane City Council detailing his concerns regarding the proposal;
5. Verbal submissions by the representative of Brisbane City Council, the applicants and the owner of the adjoining property – *withheld*;
6. The *Building Act 1975*, referencing the *Standard Building Regulation 1993*, referencing the Queensland Development Code.

Findings of Fact

1. Council advised by letter dated 5 June 2006 that the Siting Variation be refused because “the bulk of the garage could impact on the amenity of residents on adjoining lots”.
2. The area of the site is 1686 square metres with a 22.36m street frontage facing north east.
3. The South-east side boundary clearances are not in accordance with the Acceptable Solutions under A2 of the Part 12 – Queensland Development Code (QDC).
4. In respect to the siting requirements Brisbane City Plan calls up the Standard Building Regulation which references the QDC as the applicable code.

Reasons for the Decision

1. The *Standard Building Regulation 1993* (SBR) requires that building work must comply with each part of the Queensland Development Code (QDC) mentioned in Schedule 13 to the extent the part applies to the work.

2. Schedule 13 of the SBR nominates Part 12 – Design and Siting Standards for single detached housing on Lots over 450m², in Table 2: Local Government.
3. Part 12 of the QDC is a performance based code giving the performance criteria to be met and acceptable solutions as “deemed-to-satisfy” the requirements.
4. The performance criteria may also be satisfied by other than the deemed-to-satisfy solutions listed. Alternative solutions would be acceptable provided the intent of the performance criteria is met.
5. In this instance, the performance criteria for Class 10a buildings satisfies the performance requirements P1 as the minimum road setback is in accordance with the acceptable solutions A1. Hence, the outlook and views of neighbouring residents are satisfied.
6. The performance requirements P2, Building and Structures in respect to side and rear boundary clearances are:-
 - (a) provide adequate daylight and ventilation to habitable rooms;
 - (b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots; and
 - (c) do not adversely impact on the amenity and privacy of residents on adjoining lots.
7. The garage and store building is a class 10a building. The wall on or near the boundary would not be considered a dividing fence. The acceptable solution under A2(d) allows a class 10a building to be within the side and rear boundary clearances nominated in A2 (a) and (b) where (i), (ii) and (iii) are met – viz:-

- (i) The height of a part within the boundary clearance is not more than 4.5m and has a ‘mean height’ of not more than 3.5m.

The proposal satisfies this criteria.

- (ii) The total length of all buildings or parts, of any class within the boundary clearance is not more than 9m along any one boundary.

The proposal does not satisfy this criteria.

However, I am of the opinion that the performance criteria under P2 (a) and (b) would be satisfied. That is, for P2 (b) adequate light and ventilation to habitable rooms of buildings on adjoining lots would be allowed, given the area of the land (1575m²) is approximately 3.5 times the area of a lot (450m²) where 9m is the acceptable solution. Additionally, the length of the side boundary (approximately 70m) far exceeds that of a 450m² lot, allowing more flexibility in meeting the performance requirement.

If the adjoining lot (No.74) was subdivided in accordance with Development Approval by Council, the performance Criteria would be satisfied as the building would adjoin the easement on the “battle-axe” block.

- (iii) The 10a building or part within the boundary clearance are located no closer than 1.5m to a required window in a habitable room of an adjoining dwelling.

The adjoining lot is currently vacant. Any future dwelling would be required to be a minimum 1.5m from the side boundary.

The proposal would satisfy this criteria.

8. Performance requirement P2 (c) is an additional requirement introduced with regard to siting of swimming pools near side boundaries. A2 (e) is the corresponding acceptable solution.

Notwithstanding, I am of the view that the garage/store building proposed will not adversely impact on the amenity of adjoining residents for same reasons as those given regarding adequate daylight and ventilation. That is, the area of the adjoining lot and the length of the side boundary is far in excess of a 450m² block, thus allowing greater flexibility in land use without detriment to a neighbours amenity. The privacy of adjoining neighbours would be improved.

9. Council advises that the proposal is not in conflict with Planning requirements.

Mr Ray Rooney
Building and Development
Tribunal Referee
Date: 19 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:

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