



APPEAL
Integrated Planning Act 1997

File No. 3-06-080

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City 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 Brisbane City Council in refusing an application for an alignment setback relaxation to “*withheld*” Street, on land situated at “the subject site”.

Date and Place of Hearing: 10.00 am on Wednesday 30 August, 2006
At “the subject site”.

Tribunal: Dennis Leadbetter Referee
Present: Owner
Owner’s representative
Stephen Cuthbert Brisbane City Council
Doug Lindenberg Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter dated 25 July, 2006, reference DRS/BLD/A0, not to grant a siting variation to the Street alignment is **set aside**.

- The extension to the dwelling may be erected to within 2.7 metres to the Street alignment, measured to the outermost projection.

Background

The existing dwelling would have been built around the late 1930’s, and is in a neighbourhood of similar aged structures. The dwelling is located on a corner site, with “*withheld*” Avenue as its primary street frontage. The dwelling is located in an area covered by the Brisbane City Council’s *Residential Design - Character Code* and a *Demolition Control Precinct*.

An application was made to Brisbane City Council for *Development Approval for Extension to House in Demolition Control Precinct*, and on March 8, 2006, Brisbane City Council issued an approval for the following:

- Carrying out building work – Preliminary Approval
- Material Change of Use – Development Permit.

The *General Planning Requirements* of that approval include the following conditions:

- Carry out the approved development generally in accordance with the approved drawing(s) and/or documents
- Complete all building work associated with this development approval, including work required by any of the following conditions. Such building work is to be carried out generally in accordance with the approved plans, drawing(s), and/or documents and, where the building work is assessable development, in accordance with a current development permit.

The *Architectural Requirements* state:

- Provide materials and finishes in accordance with the following:
 - Chamferboards, weatherboards, cladding or fibreboard for external walling materials and detailing where noted on drawings; and
 - Metal Roof (sic) sheeting where noted on drawings.

On 25 July, 2006, Brisbane City Council issued a refusal to an application for an alignment relaxation to the “*withheld*” Street, on the grounds that positioning the proposed extensions in a position observing a 2.5 metre (setback) to the outermost projection from “*withheld*” Street would:

- not facilitate an acceptable streetscape appropriate for, the bulk of the building or structure and the road boundary setbacks of neighbouring buildings or structures.

Council indicated that they *would consider a setback of 4.5 metres to the outermost projection as in keeping with the setback of adjoining properties.*

Material Considered

1. Appeal notice and grounds of appeal contained therein;
2. Drawings submitted with the appeal;
3. Decision Notice under Section 3.5.15 of the Integrated Planning Act from the Brisbane City Council dated March 8, 2006, granting approval for the *Carrying out of Building Work – Preliminary Approval* and *Material Change of Use – Development Approval*.
4. Letter from Brisbane City Council dated July 25, 2006, reference DRS/BLD/A0, not to grant a siting variation.
5. Brisbane City Plan 2000 Volume 1, Chapter 5 pages 147 to 153 – *Residential Design Character Code*.
6. Verbal submissions from the owner’s representative;

7. Verbal submissions from the Brisbane City Council's representatives;
8. The Standard Building Regulation 1993; and
9. The Queensland Development Code (QDC) Part 12.

Finding of Fact

I made the following findings of fact:

1. The site is a corner site, with the angle formed by the two streets being an acute angle (approximately 60 degrees). The existing dwelling is set parallel to the "withheld" Street frontage, resulting in a large and open area to the intersection of the two streets.
2. The site and surrounding area is predominantly flat.
3. The existing dwelling is elevated approximately 1.8 metres above ground level and is enclosed under with battening.
4. The existing dwelling has a combination of pitched roof and gables, and presents a double gable, multi faceted façade with window hoods to the primary frontage. These elements being the very features that provide the character typical of dwellings of this era and the significant character of the local area's environment.
5. The QDC Part 12 *Performance Criteria PI* 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

(b) For a corner lot, the minimum road setbacks are –

(i) as for A1(a)(i); or

(ii) where the *lot* has an average depth of 24 m or less –

(A) the *nominated road frontage* as in **Table A1**; and

(B) for the other *road frontage* – as for A1(a)(i); and

(C) no *building* or *structure* over 2m high is built within a 9 m by 9 m truncation at the corner of the 2 *road frontages*.

6. 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. | <ul style="list-style-type: none">a. The proposed structure is an elevated structure, continuing the main hip roof structure to the main portion of the structure, which is set back approximately 5.5 metres, and a smaller extension with a lowered gable extending to 2.75 metres, both measured to the outer most projection. This concept is in total sympathy with the existing structure's form. It also provides significantly larger open spaces to the north east corner of the site, reducing the obstruction to the adjoining neighbour's views, and open feel of the neighbourhood.b. The projected portion of the proposal is nominally 3600 wide, and approximately 4.5 metres high to the eaves level.c. The outlook from the adjoining neighbours will not be impeded because of the stepped layout, leaving the large open area to the north west corner of the site, and the acute angle to the street corner provides a |
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		significant open area to the north west, maintaining the open space character of the neighbourhood
		d. The development would not cause any nuisance or increase safety issues to the public.
P2	Buildings and <i>structures</i> -	
	a. Provide adequate daylight and ventilation to <i>habitable</i> rooms; and	a. The proposed extension will not impede the natural light to this or adjoining structures, because of alignment setbacks and orientation.
	b. Allow adequate light and ventilation to <i>habitable</i> rooms of buildings on adjoining <i>lots</i> .	b. The proposed extension will not impede the natural ventilation to this or adjoining structures, because of alignment setbacks and orientation.
P3	Adequate open space is provided for recreational, service facilities and landscaping.	The design provides significant areas available for recreation and landscaping.
P4	The <i>height</i> of a <i>building</i> is not to unduly-	
	a. Overshadow adjoining houses; and	a. The proposed structure will not overshadow the adjoining lots because of the site orientation.
	b. Obstruct the outlook from adjoining lots	b. The proposed structure will not obstruct the outlook, because of the large open areas adjacent to the adjoining properties and the large area of open space to the street corner.
P5	Buildings are sited and designed to provide adequate visual privacy for neighbours.	The proposed design enhances the visual privacy between this lot and the adjoining lots.
P6	The location of a <i>building</i> or <i>structure</i> facilitates normal <i>building</i> maintenance.	The setbacks shown provide more than adequate access for normal building maintenance.
P7	The size and location of <i>structures</i> on corner sites provides for adequate sight lines.	The site is a corner site, and the position of the proposed extension provides adequate sight lines at the intersection. No part of the structure enters the 9 metre x 9 metre truncation as provided under part A1(b)(ii) (C) of the QDC Part 12, as an acceptable solution
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	There is existing covered car parking for one vehicle attached to the dwelling, and there is additional space on site for additional parking if required.

- 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.

Reason for the Decision

Part 12 of the QDC provides **Performance Criteria** and an **Acceptable Solution**, 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 developments existing and possible on adjoining sites, and after considering the minimal impact the reduced northern road alignment setback would have on the adjoining allotments, because of its small width and lowered height, the Tribunal found that there was reasonable grounds to vary the Street alignment setback to allow the extension to the detached dwelling to be constructed to within 2.7 metres of the Street alignment boundary, measured to the outer most projection. These setbacks will result in the structure falling outside the required 9 metre x 9 metre corner truncation as indicated in Figure 3 QDC and in accordance with the acceptable solution **A1(b)(ii)(C)**.

General Tribunal Comments

It is the Tribunal's opinion that a second application for the alignment setback relaxation is an unnecessary duplication, and should be integrated within the Character Code assessment. Any Character Assessment, to be considered other than tokenistic towards the maintenance of the character of our older suburbs, must consider all such matters, and any approval should include such relaxations as part of that assessment and approval. The Brisbane City Plan clearly indicates that the purpose of the Code and assessments of applications against the Code is to *reflect or strengthen pre-1946 housing character through compatible form, scale, materials and detailing*. It also indicates that *The sense of scale of a street can be diminished if buildings are introduced that significantly exceed the surrounding building height, present large unarticulated facades to the street, or interrupt the rhythm of stepping roof lines in a sloping street*.

The Plan also indicates that *The character of the older suburbs is influenced by elements such as eaves, sunhoods, verandahs, lattice screens and batten panels that cast shadows and provide three-dimensional effects*.

It also states *The traditional character of a street can be diminished by styles that do not incorporate shade-forming elements and that present large flat façade to the street. These styles also have poor environmental qualities*.

The alternative siting option, of 4.5 metres from "withheld" Street alignment, suggested within the Brisbane City Council's refusal of alignment relaxation, would result in the presentation of a large flat (and higher) façade to the street, detracting from the overall character of the neighbourhood.

The suggestion at the Tribunal Hearing from the Brisbane City Council representatives that any Character Assessment only considered the materials for the walls and roofs, and did not include assessment of alignment setbacks, overall compatibility of any changes to the original structure and to that of the neighbouring environment in terms of shape, window and door openings, roof lines, etc, and the impact any alteration may have on the neighbouring properties, including sight lines, light and ventilation, open space concepts and the like, could only be described as a less than genuine interest in maintaining and enhancing the character of such areas.

Dennis Leadbetter

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

Building and Development

Tribunal Referee

Date: 5 September 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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