



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. Insert No. 3-06-004

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

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

Applicant: *withheld*

Nature of Appeal

Appeal under section 21 of the Standard Building Regulation 1993 against the decision of the Gold Coast City Council to refuse an application for a preliminary Building Work Approval (Application No 2506906) for the siting of:

A metal clad garage/shed within the road boundary setback of 6.0m.

Date and Place of Hearing: 11.00am on Thursday, 19 January 2006.
On site at “the subject site”

Tribunal: Gregory Schonfelder

Present: Applicant
Roger Sharpe – GCCC
Rod Davie – GCCC
Casey Mitchell - GCCC

Decision

I determine that the requirements of the Decision Notice to refuse to grant preliminary Building; Work Approval (Application No.2506906) for the siting of a building [A minimum building setback of 3.0metres to the outermost project for a metal frame garage/shed (171m2) within the *withheld* (Primary Road) property setback be upheld.

Background

The applicant explained the basis for his original application to Council for a siting variation and the basis for their appeal in that:

- The proposed shed is to house the many vehicles currently parked in the open and stored off site in an expensive rented premise. The basis for the large size (both length and depth) was explained because of the nature of the vehicles to be stored and the special requirements which made standards size buildings unsuitable.
- The proposed shed would front onto and utilise the existing paved drive way running west to east from *withheld*. Some changes to the concrete kerbing are proposed and the site would be cut and filled to allow for a level floor. The door would be placed near the middle of the side of the shed which faced the driveway and access would be gained from driving in and turning left or right to park the required vehicles.
- The building would be constructed from colorbond to be in compatible colours to the existing buildings and the environment.
- The site especially the *withheld* frontage will be extensively landscaped with native vegetation to provide a pleasant outlook, and screen the proposed and existing buildings from the road frontage and would enhance the amenity of the area.
- Adjacent properties have encroachments within the setback required by Council
- The existing brick outbuilding is within the road boundary setback distance of 4.2m and shown on the site plan provided by the Council.
- The increased setback required by Council would result in an building which would not have the depth to house the vehicles and equipment.
- The buildings on site are all grouped along the eastern boundary of the site and except for part of the existing outbuilding are all setback a considerable distance from both road reserves and there is not other available flat area available to build this building.

The Council's representatives in their written response outlined:

- Council officers were concerned about the short time frame for notification of the hearing of this appeal.
- The 3.0m setback from the road boundary is in conflict with the setback performance criteria (PC2) and the acceptable solution of 6.0m for the Park Living Domain.
- The shed is a substantial size. It is located inappropriately close to the frontage of the site and will undermine the intention of the domain which is to preserve a semi rural character.
- There is a distinctive and consistent setback of the buildings from the road frontage within the local environment and the proposed location of the storage shed will likely generate adverse amenity impacts on the local environment.
- The existing building on site was approved within the setback at a earlier time and the other example close by at *withheld* has not had Council siting approval.
- As there is an existing shed/hobby room located within the front 6 metres of the site, Council is concerned that further structures will only serve to generate adverse amenity impacts when viewing the site with the unnecessary cumulation of building bulk in relation to the frontage. The proposed shed could not be considered compatible with the existing house or adjacent outbuildings on the site.
- Precedent is a major factor why Council does not support the applicant's proposal. The approval of these proposals results in an eroding of the semi rural amenity and ultimately the intent of the Park Living Domain within the Gold Coast Planning Scheme.

- Because the building exceeded 54m² in area, an application for an amenity and aesthetics approval was also required to be made to Council and that even if the decision of the siting application was overturned, Council would find it difficult to then approve a building of this size and construction type.

Material Considered

1. Decision Notice from the Gold Coast City Council dated 30 November 2005 to refuse the application for preliminary Building Approval, (Application No 2506906) for the siting of a shed/garage within the road frontage setback.
2. Appeal form dated 10 January 2006 and accompanying letter date 14 December 2005 from the applicant.
3. Letter dated 19 January 2006 from Gold Coast City Council (Roger Sharpe) outlining Councils reasons for their refusal.
4. Facsimile from the applicant showing an elevation of the shed/garage with proposed cut and fill marked.
5. Facsimile dated 19 January 2006 resent on 30 January 2006 from Gold Coast City Council which included the site plan and construction details of the building. These were submitted in the original application to Council.
6. The Standard Building Regulation 1993.
7. The Integrated Planning Act 1997.

Findings of Fact

1. The existing outbuilding which is at an approximate 45 degree angle to the road boundary (*withheld*) is sited at a setback distance of 4.2m which is within the current setback requirements for this property. (GCCC Park Living Domain Place Code, acceptable solution AS2 – All buildings are setback not less than 6.0m from the frontage)
2. The proposal as submitted was for a new metal frame and clad storage shed/garage with dimensions of 19m x 9m (171m²) with the longer side (19m) being at a 3.0m setback from *withheld*.
3. The proposal would house vehicles currently parked on the existing driveway (in the open) and stored off site in rented premises.
4. There is considerable development on the property comprising a dwelling, outbuilding, swimming pool, large paved driveway area and a location shown as a proposed area for parental accommodation, but these are mainly contained along the eastern boundary. The site slopes considerably east to west down to *withheld*, and is currently landscaped with lawn and established trees. Both roads are sealed and have formed kerbing.
5. The surrounding properties are similar in size, development types and landscaping.

6. The building would exceed 54m² in area, and an application for an amenity and aesthetics approval would still need to be made to Council and the officers have indicated that they would find it difficult to approve a building of this size and construction type located along the *withheld* frontage.
7. The acceptable solution of the Park Living Domain Code AS2 states that all buildings are to be setback not less than 6 metres from the frontage of the site. The Council in their Decision Notice have determined that *withheld* is the (Primary Road) property boundary.
8. The drawings submitted lack detail regarding:
 - Landscaping treatment especially to the *withheld*, road frontage
 - Accurate elevations showing extent of cut and fill and finished heights especially the effect on the streetscape of *withheld*.
 - A floor plan showing the type and nature of the vehicles to be stored
 - The future use of the paved areas between the dwelling and the existing outbuilding

Reasons for the Decision

The effect of the proposed building setback only 3.0m along the *withheld* boundary would have an adverse impact on the street scape and the amenity of the semi rural areas. The building in its proposed present form has a too larger bulk and length for the location and will dominate this area.

The proposal has not been presented with enough detail to adequately address the non complying issues and give due consideration to the justifications which should have been put forward

The building certifier who submitted the application to Council on behalf of the applicant should have provided better plans and shown with the accompanying submission how this proposal would meet the performance criteria of the development requirements for the Park Living Place Code.

The impact on the streetscape with an accurate (property line) elevation showing the relationship of the new building to the existing outbuilding would then have made the judgement of street scape impact and effect on the amenity of the street scape and adjoining areas more easily to determine.

The proposal to landscape the area behind the building facing the street should have been shown in more detail to determine the screening effect it could have on the development.

From a siting approach a reduced proposal may have been considered within the boundary setback but at a more similar distance to that of the existing outbuilding. The blank straight wall needs to be articulated or modified to possibly angle the building similar to the existing. The reduction in the overall height of the building could be considered by utilising a split level or two smaller sheds which would have less impact on the streetscape and provide a less bulky appearance. Better landscaping plans need to be provided to show how the shed can be screened from the street. The Building Certifier and applicant to work with the Council to negotiate an acceptable solution for this proposal.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 30 January 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.

Enquires

All correspondence should be addressed to:

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