

## BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

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**Assessment Manager:** Caboolture Shire Council

**Site Address:** 56 Findlay Street Burpengary – Lot 144 RP 221828

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### Nature of Appeal

Appeal under section 4.2.9 of the Integrated Planning Act 1997, against the decision by Caboolture Shire Council not to permit the erection of a garage as an extension to the existing residence within the road boundary clearance, at the above mentioned address.

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**Date and Place of Hearing:** 56 Findlay Street Burpengary  
12.15pm Tuesday 21<sup>st</sup> August 2001.

**Tribunal:** Mrs Debbie Johnson

**Present:** Mr Chris Harris, Caboolture Shire Council  
The applicants.

### Decision

The decision of the Caboolture Shire Council as contained in its written notice dated 25<sup>th</sup> June 2001, not to permit the erection of a garage within the 6m setback to Findlay Street, is *set aside*. The garage may be constructed within the street setback to Findlay Street, subject to the following conditions:

- a) the minimum setback from Findlay Street to the outermost projection of the garage roof is to be at 4500mm;
- b) the variation of the building line applies only to the structure being an attached garage, as proposed, on the Site Plan titled OPTION A, and illustrated by photographic impression.

### Material Considered

- Submissions were made in person and in writing by the appellants.
- Submissions were made in person and in writing by Mr Chris Harris from the Caboolture Shire Council.
- Adjoining property owners on Lot 145 submitted a written consent for the proposed building works.

- A photograph of the existing residence at 56 Findlay Street, and a photographic impression of the residence with the proposed garage attached.
- The registered plan pertaining to the site and the proposed site layout.

### **Findings of Fact**

The existing residence was granted a building approval by the Caboolture Shire Council in 1995. The original application indicated future car accommodation to the rear of the site behind the residence. The site has an approximate fall of 500mm from the Southern to the Northern boundary. The site is reasonably regular and rectangular in shape being approximately 20.0 x 47.75m in length, however the street frontage is truncated on the South Western corner. It is bounded to the West by a sealed access road for the cricket grounds located directly to the North of the site. Findlay Street is to the South and there is one residential neighbour on the Eastern boundary. The access road has been in existence prior to the residence being built on lot 144. Although this access road is shown on the registered plan as part of the large allotment used for cricket, its use and appearance is that of a two lane bitumen sealed road. This being the case, lot 144 is acting as a corner allotment.

The site inspection provided more information regarding the proposal. This information was not presented clearly in the original application to the Caboolture Shire Council. Significantly the shape of the street alignment being truncated means the 6M street setback is not achieved on the South Western corner of the proposed garage only. Due to the varying width of the nature strip this encroachment would have a negligible impact on the street amenity.

There is no other covered car accommodation on the site.

### **The Standard Building Regulation 1993**

#### **Section 36 - Road boundary clearance**

Stipulates all buildings and structures to which this part applies (being class 1 and 10) must have at least a 6m road boundary clearance. See reference to **Section 48** below.

#### **Section 48 - Local government may vary the provisions of division 2**

(3) The local government may consider following:-

*a) the levels, depth, shape or conditions of the allotment and the adjoining allotments*

The conditions on this allotment being; the street frontage is irregular and truncated, whilst the nature strip is widened to compensate.

*b) the nature of any proposed building or structure on the allotment*

The nature of the extensions being an attached garage, no other car accommodation is on site. The proposed garage would not protrude past the building line of the adjoining residence on lot 145.

*c) the nature of any existing or proposed buildings or structures on adjoining allotments*

The adjoining allotment has a single storey residence sited 1.5M from the adjoining boundary to the roof line. The owner occupants of this site have provided a written submission supporting the application.

*d) whether the allotment is a corner allotment*

The subject site is essentially a corner allotment due to the access road for the cricket grounds at the rear of the subject site.

*e) whether the allotment has two road frontages*

The site fronts Findlay Street and abuts the sealed two way vehicle access to the sports grounds at the rear of the site.

*f) any other matter it considers relevant*

The owners of lot 145 Findlay Street have provided a written submission in support of the appellant's application.

(4) The local government must be satisfied that the building or structure built on the allotment in the way proposed would not unduly:-

*a) obstruct the natural light or ventilation of an adjoining allotment*

The structure being proposed will not obstruct the natural light or ventilation of the residence at lot 145 Findlay Street.

*b) interfere with the privacy of an adjoining allotment*

The structure being proposed will not interfere with the privacy of the residence at lot 145 Findlay Street.

*c) restrict the areas of the allotment suitable for landscaping*

The subject site is well landscaped with the gardens being mature.

*d) obstruct the outlook from adjoining allotments*

The proposed structure will not obstruct the outlook from lot 145 Findlay Street.

*e) overcrowd the allotment*

The frontage is irregular. The street setback from the existing residence and the proposed garage will be variable, and largely in excess of 6M.

*f) obstruct access for normal building maintenance.*

There is no reason to determine that building maintenance would be affected.

The Tribunal finds the proposal to construct an attached garage as proposed within the 6m road boundary clearance is proven to comply with the relevant matters listed in section 48.(3).and (4).

## **Reasons for the Decision**

Section 48.(3) and (4). of the Standard Building Regulation allow for the local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation, the Tribunal found reasonable grounds for varying the street setback to Findlay Street.

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**DEBBIE JOHNSON**  
**Building and Development**  
**Tribunal Referee**  
**Date: 3 September 2001**

## **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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