

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 27 Spencer Ave, Deception Bay

Nature of Appeal: Appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Caboolture Shire Council not to grant a relaxation of the boundary clearances for the erection of a dwelling on land described as Lot 410 on RP No. 892439 and situated at 27 Spencer Ave, Deception Bay.

Date and Place of Hearing: 10:00 am on Tuesday 3 July 2001 at 29 Spencer Ave, Deception Bay.

Tribunal: B J Williamson

Present: B J Williamson Tribunal Referee
Applicant's Representative
C Harris Caboolture Shire Council

Decision:

The decision of the Caboolture Shire Council in its letter dated 15 May 2001 (Reference: B-AO-1439, B-AO-1438, B-AO-1942 (CH:ldw)) refusing the relaxation of boundary clearances **is set aside** and a side boundary clearance of 1.37 metres to the western boundary and a road boundary clearance of 5.47 metres are approved for the dwelling situated at 27 Spencer Ave, Deception Bay.

Material Considered

1. Copy of the Caboolture Shire Council file for the dwellings at 25, 27 and 29 Spencer Ave, Deception Bay.
2. Verbal submission by the representative of Caboolture Shire Council outlining non-compliance boundary clearances on the three adjoining sites and how the council became aware of these problems after the three dwellings were erected.
3. Verbal submission by the applicant's representative who advised that his firm was not aware of the problems resulting from the actions of its builder until after the dwelling was constructed.

Finding of Fact

I made the following findings of fact:

1. The dwelling at 27 Spencer Ave, Deception Bay is constructed with a road boundary clearance of 5.47 metres and a western side boundary clearance that varies from 1.43 metres to 1.37 metres.
2. The road boundary clearance does not comply with Section 36 of the Standard Building Regulation 1993 and the western side boundary clearance does not comply with Section 38 of the Standard Building Regulation 1993. As there was an open carport on the eastern boundary, the council representative accepted the eastern boundary clearance as a complying boundary clearance.

3. If the dwelling had been set out in accordance with the approved plan, there would be no need for any relaxation for a boundary clearance.
4. Under Section 48 of the Standard Building Regulation 1993 the local government may vary the application of division 2 – boundary clearances.
5. In assessing the application of Section 48.(3) of the Standard Building Regulation, the local government was required to consider the following points:
 - *The levels, depth, shape or conditions of the allotment and adjoining allotments.*
The allotment and adjoining allotments are level. The boundaries of the allotment are at angles to suit a bend in the road.
 - *The nature of any proposed building or structure on the allotment.*
A normal suburban dwelling has been constructed on the site.
 - *The nature of any existing or proposed buildings or structures on adjoining allotments.*
On the eastern and the western adjoining allotments are the other two constructed dwellings.
 - *Whether the allotment is a corner allotment.*
The allotment is not a corner allotment.
 - *Whether the allotment has 2 road frontages.*
The allotment has only one (1) road frontage.
 - *Any other matter considered relevant.*
The council representative stated that the multiple boundary non-compliances encountered with the three (3) adjacent dwellings (Lot 409, Lot 410 and Lot 411) with all three dwellings constructed without any approved relaxation, should be taken into account and he reaffirmed the council's view that the requested boundary clearance relaxations should be refused.

As the three dwellings are on separate allotments, each one has to be considered as a separate case and only those items that affect that site should be considered. The multiple boundary non-compliance issue appears to be due to incorrect set out of the three dwellings. It is considered that the repetition of the problem is not a valid reason for refusing a boundary clearance relaxation on each site. I am of the view that the multiple non-compliance boundary clearances discovered on the three allotments should be referred instead to the appropriate authority with the power to investigate and to determine whether action should be taken against those responsible for the set out problems encountered on the three allotments.

6. In assessing the application of Section 48.(4), the local government must be satisfied that the dwelling on the allotment would not unduly-
 - *Obstruct the natural light or ventilation of any adjoining allotment.*
The 1.37 metres western boundary clearance will not obstruct the natural light or ventilation of the adjoining allotment.
 - *Interfere with the privacy of an adjoining allotment.*
The 1.37 metres western boundary clearance will not interfere with the privacy of the adjoining allotment.
 - *Restrict the areas of the allotment suitable for landscaping.*
The two requested boundary clearance relaxations will not unduly restrict the areas of the allotment suitable for landscaping.

- *Obstruct the outlook from adjoining allotments.*
The road boundary clearance relaxation will not unduly obstruct the outlook from adjoining allotments. Because the road is not parallel with the front boundary of the site, the non-compliance road boundary clearance is not immediately obvious.
 - *Overcrowd the allotment*
The dwelling as constructed does not overcrowd the allotment.
 - *Restrict off-street parking for the allotment.*
Off-street parking is not restricted as the dwelling has a carport.
 - *Obstruct access for normal building maintenance.*
The 1.37 metres western boundary clearance does not obstruct access for normal building maintenance.
7. There was no need to obtain the views of the owner of the western adjoining property as the applicant also controls that property.
8. Based on the above facts it is considered that the appeal is proven.

Reasons for the Decision:

1. As the three dwellings are on separate allotments, each dwelling has to be considered as a separate case taking into account only those items that affect that site.
2. The fact that multiple non-compliance boundary clearances occurred on the three adjoining properties and were only made known to the local government after the dwellings were constructed, is not a valid reason for refusing boundary clearance relaxations under Section 48.(3) & (4). (The number of non-compliance boundary clearances found by the local government with the three dwellings should be referred to the appropriate authority with the power to take action in this matter.)
3. An assessment of Section 48.(3) & (4), did not identify any valid reason for refusing the requested relaxations.
4. Although it is unlawful to carry out assessable development without all approvals, the Integrated Planning Act 1997 does not prohibit the granting of boundary clearance relaxations for existing developments.
5. Because of the limited extent of the non-compliance and since Section 48.(3) & (4) did not identify any problem with the requested boundary clearances, I am of the view that in this case, it would be unreasonable to refuse the requested boundary clearance relaxations. A refusal would result in undesirable and unjustifiable alterations to the existing dwelling.

B J Williamson
Building and Development
Tribunal Referee
Date: 11 July 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 grounds:

- (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 the notice of the Tribunal's decision is given to the party.

Enquires

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
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 04 03: Facsimile (07) 3237 1248