

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 52 Buna Street Chermside

Nature of Appeal

Appeal under section 21 of the Standard Building Regulation 1993, against the decision of the Brisbane City Council not to grant a specified relaxation of the front boundary set back requirements for the erection of additions to the existing dwelling on land described as lot 155 on RP 68788 and situated at 52 Buna Street, Chermside.

Date and Place of Hearing: 10.00 am on Friday 20 July 2001 at 52 Buna Street Chermside

Tribunal: Bert Dean

Present:

Bert Dean	Tribunal Referee
The Applicant & Applicant's Representative	
Mr Trevor Anger	Brisbane City Council
Mr Luke Gilliland	Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter dated 15 June 2001 (Reference: DRS/BLD/A01-1128964) refusing the relaxation of the front boundary clearance sought, but approving a relaxation for a front boundary clearance of 4.000m to the outermost projection (deck) and 3.600m (to the stairs) in lieu of the prescribed 6.000m, and also granting relaxation to 1.500m (deck) on the western side boundary in lieu of the prescribed 2.000m, is **confirmed**.

Approval of alternative reduced setback distances contained in Council's letter of 15 June remains valid.

Material Considered

1. Appeal documentation including drawings detailing the proposed additions to the existing dwelling and the siting relaxations sought by the applicant.

2. Correspondence from the Council dated 15 June 2001 refusing the request for relaxation and granting an alternative relaxation.
3. Correspondence from the owner dated 2 July 2001 to Brisbane City Council appealing the Council's decision not to grant the relaxation sought.
4. Verbal submissions by the representative of the Brisbane City Council outlining the Council's assessment of the application and giving its reasons for refusal of the relaxation sought. The Council also confirmed its agreement to the alternative relaxation offered in its letter dated 15 June 2001.
5. Verbal submissions from the applicant.

Findings of Fact

I made the following findings of fact:

1. The dwelling at 52 Buna Street is constructed with a road boundary setback of 6.000m. Existing side and rear boundary clearances comply with current setback requirements.
2. Other dwellings in the immediate vicinity are constructed with front boundary setback distances similar to the subject dwelling.
3. A new dwelling recently constructed in the area has been constructed in compliance with current setback requirements.
4. Under section 48 of the Standard Building Regulation 1993 (SBR), the local government may vary the application of Division 2 – boundary clearances.
5. In assessing the application of section 48.(3) of the SBR, the local government was required by that regulation to consider the following points:

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

The allotment and adjoining allotments are of similar size and shape. The proposed location in regard to the Buna Street frontage raises the need to consider the Council's objectives and requirements in relation to residential development in the area.

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

The structure to which the application is relevant is a roofed deck abutting the existing building and having a total height above ground to the soffit level of approximately 6.000m. The structure has no special features that might support the request for relaxation of the Buna Street setback to only 2.000m. It does in fact have features that mitigate against the proposed relaxation and these matters are considered under the relevant criteria listed below.

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

There are no existing or proposed buildings or structures on adjoining allotments that would support approval of the proposed reduced setback. A recently constructed new dwelling in Binkar Street has been constructed at complying setback distances.

Approval of the proposed development at the setback requested would result in the finished building being in extreme conflict with the nature of existing dwellings on adjoining allotments.

(d) Whether the allotment is a corner allotment

This is not a matter applying in this instance.

(e) Whether the allotment has 2 road frontages

This is not a matter applying in this instance.

(f) any other matter considered relevant

The issues of precedent and aesthetics as they relate to maintaining the open character of the City's residential areas were considered by the Council.

The height and bulk of the proposal, at the reduced setback does tower over the streetscape, and thus overcrowds the allotment. The proposal is incompatible with the generally open amenity of the area.

6. Under section 48.(4) of the SBR, the local government must also be satisfied that a relaxation would not unduly:-

(a) obstruct the natural light or ventilation of any adjoining allotment

The proposed structure would not unduly obstruct light or ventilation of any adjoining allotment.

(b) interfere with the privacy of an adjoining allotment

The proposed structure will not interfere with privacy of any adjoining allotment.

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

The additions at the proposed reduced setback will reduce the area in the front of the site suitable for landscaping. To provide off street parking for two vehicles, and to provide access to the stairs, a very large area between the proposed building work and the front and side property boundaries would have to be paved. The opportunity to soften the impact of any proposed setback relaxation with landscaping is lost due to the reduced area available, and the need for such an extent of paving.

(d) obstruct the outlook from adjoining allotments

Approval of the development having the height proposed and at the setback requested would result in the dwelling on the eastern side having its outlook towards the southwest (i.e. towards the city) restricted to an unreasonable degree.

(e) overcrowd the allotment

The height and bulk of the proposal, at the reduced setback does tower over the streetscape, and overcrowds the allotment.

(f) restrict off-street parking for the allotment

Access for off-street parking is from Buna Street at the front of the property. The drawings provide only one space for vehicle parking under the deck. The space is narrow and would be difficult to use. It is considered the reduced setback proposed does lead to restricted off street parking.

(g) obstruct access for normal building maintenance

The proposed structure will not obstruct access for normal building maintenance.

7. Taking into consideration all the relevant facts and circumstances, including the matters required to be considered under sections 48(3) and 48(4) of the SBR, the Tribunal has concluded that the proposed relaxation of the standard setback provisions is not appropriate in relation to the proposed development.

It is therefore the conclusion of the Tribunal that the decision of the Brisbane City Council to refuse the proposed reduced front setback as contained in its letter dated 15 June 2001 is appropriate, and is **confirmed**

The alternative setback offered by the Council in its letter has not been the subject of the appeal by the owner, and entitles the owner to proceed with planning the development at that setback should she so desire.

Reasons for the Decision

1. The building work as proposed does not sufficiently satisfy the matters required to be considered under sections 48(3) and 48(4) of the SBR, before the local government may vary the application of Division 2 (boundary distances) of Part 3 (Siting Requirements) of the regulation.
2. The owner has not appealed against the alternative reduced setback distances for which approval was given in Council's letter of 15 June 2001. The Council's representatives confirmed during the hearing that planning for construction at those reduced setbacks is approved.

Bert Dean
Building and Development
Tribunal Referee
Date: 25 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 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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