

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Redland Shire Council

Site Address: 67 Masthead Drive, Cleveland

Nature of Appeal

Appeal under section 4.2.9. of the Integrated Planning Act 1997 against the decision of the Redland Shire Council not to vary the application of Division 2 – Boundary clearances, as provided for under section 48 of the *Standard Building Regulation 1993* (SBR) for a single detached house on land described as Lot 315, SL 12247, Vol 17150022, and situated at 67 Masthead Drive , Cleveland.

Date and Place of Hearing: 10.30 am on 23 August 2001
at 67 Masthead Drive, Cleveland

Tribunal: R W Rooney

Present:

R W Rooney	-	Tribunal Referee
M Ryan	-	Redland Shire Council
The Applicant		
S Bartley	-	Private Certifier
J Bentham	-	Designer

Additional Interview: The Tribunal interviewed the owners of 69 Masthead Drive, Cleveland at approximately 11.30 am on 23 August 2001.

Decision

The decision of the Redland Shire Council by letter dated 19 July 2001 (Reference No 113392) refusing the relaxation of boundary clearances for the house **is set aside** and approval is given for-

- (i) the wall constructed as an extension of the front façade, subject to the provision of additional voids adjacent to the boundary, generally as indicated in attachment 1; and
- (ii) the wall along the boundary, subject to the height being reduced approximately 225mm (3 brick courses).

Material Considered

1. "Approved for Construction" drawings dated 24 March 2001.
2. Application drawings submitted to Redland Shire Council, identifying the extent of the relaxation sought.
3. Owners letter dated 20 August 2001, to Mr Bartley of Bartley Burns, building surveyors acting as private certifiers for the project.
4. Bartley Burns letter dated 21 August 2001 to the Registrar, appealing the Council decision.
5. Verbal submission by Mr Ryan of Redland Shire Council, clarifying the reasons for refusal.
6. Verbal submission by Mr Bartley, Mr Bentham and Mr Anderson expanding on the reasons the relaxation should be given.
7. Verbal submission by the adjoining neighbour, expanding on reasons why a relaxation for the wall as built should not be given.
8. The Standard Building Regulation 1993.

Findings of Fact

I made the following findings of fact:

1. Part of the wall as an extension to the front façade of the building is constructed within the side boundary clearances prescribed under Part 3- Siting Requirements, section 38 of the SBR. This is not in accordance with the approved plans.
2. The return wall adjacent to the side boundary exceeds the height prescribed under section 42(a) of the SBR.
3. There are no local laws prescribing alternative siting provisions under section 45 of the SBR.
4. Under section 48 of the SBR, a local government may vary how division 2 applies to the application after considering under section 48(3), the following points-
 - (a) *The levels, depth, shape or conditions of the allotment and adjoining allotments.*
The allotment and the adjoining allotment are approximately at the same level. Buildings on both allotments generally comply with the siting requirements under division 2 of the SBR.
 - (b) *The nature of any proposed building or structure on the allotment.*
A two-storey house has been constructed on the site.

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

A brick house, single storey at the perimeter with bedroom accommodation within the roof space at the highest part.

(d) *Whether the allotment is a corner lot.*

The allotment is not a corner allotment.

(e) *Whether the allotment has 2 road frontages.*

The allotment has only one (1) road frontage.

(f) *Any other matter considered relevant.*

There are no other relevant matters to consider.

- 5 In varying the siting requirements, the local government must be satisfied that a 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 house is located in accordance with the minimum prescribed boundary clearances. Only portion of the wing wall, that part up to 4.5m high and less than 1.5m from the side boundary, is within the allowable setback. The wall is on the north-eastern side of the adjoining property and does not unduly affect the natural light or ventilation. The wall will reduce the late afternoon sunlight. The condition to provide additional voids in the wall will further diminish any effect.

(b) *Interfere with the privacy of an adjoining owner.*

That part of the wall within the prescribed boundary clearance will not interfere with the privacy of the adjoining owner.

(c) *Restrict the areas of the allotment suitable for landscaping.*

Approval of the application for a siting relaxation would not restrict the areas of the allotment for landscaping.

(d) *Obstruct the outlook from the adjoining property.*

The wall does not unduly obstruct the outlook from the adjoining property. There is some obstruction to the open sky from the south-western side of the adjoining property, which accommodates a laundry, workshop, and a bath room. The principal outlook is towards the canal at the rear of the property.

(e) *Overcrowd the allotment*

The house is within the allowable site coverage and generally complies with the siting provisions of the SBR. The provision of additional voids in the wall will diminish any visual effect of overcrowding.

(f) *Restrict off-street parking for the allotment.*

The wall will not affect off-street parking.

(g) Obstruct access for normal building maintenance.

The wall will not affect access for normal building maintenance. An opening in the wall allows access to the side of the house and the wall is cement rendered masonry, that may be painted from the property.

Reasons for the Decision

An assessment of section 48(3) and (4) of the SBR indicated that, subject to the conditions imposed, the siting requirements under section 2 of the SBR may be varied.

R W Rooney
Building and Development
Tribunal Referee
Date 29 August 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:

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 0403: Facsimile (07) 32371248