



APPEAL
Integrated Planning Act 1997

File No. 3-02-033

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: 74 Harding Street, Hendra

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Brisbane City Council in varying the application of Division 2 – Boundary clearances, as provided for under Section 48 of the *Standard Building Regulation 1993* (SBR) for a Garage to a detached house on land described as Lot 245 RP 33728 and situated at 74 Harding Street, Hendra.

Date and Place of Hearing: 10.00 am on Wednesday 7 August 2002
At Level 25, Mineral House, 41 George Street, Brisbane

Tribunal: Dennis Leadbetter

Present: Peter Black - MBS Architects Applicant's representative
Luke Gilliland Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter dated 17 July, 2002, reference DRS/BLD/A021182761, not to grant approval to permit the erection of a Garage to a detached house within the road alignment setbacks is **set aside**. The Garage may be erected with a road boundary clearance of 0.0 metres to Harding Street, Hendra

Background

The application was for permission to erect a double car garage within the 6 metre road boundary clearance to an existing detached house.

The Brisbane City Council had refused the application on the grounds it would obstruct the outlook from the adjoining allotments and overcrowd the allotment.

There is an existing garage on the site located to the rear of the existing dwelling, which was accessed by traversing over portion of the adjoining allotment under a long standing agreement with the previous owner. The new owner has erected a fence on the alignment thus removing the access.

Material Considered

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Brisbane City Council;
- 3 Letter from Brisbane City Council not to approve the Garage;
- 4 Verbal submission by Mr Peter Black, architect for the applicant and owner, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Luke Gilliland, Brisbane City Council, agreeing that the application should have been approved;
- 6 The Standard Building Regulation 1993; and
- 7 Brisbane City Council Fact Sheet number 3, on Residential Development (including small lots).

Findings of Fact

I made the following findings of fact:

1. The site is a small lot having an area of 408 square metres and a frontage of approximately 11 metres.
2. The adjoining lots are of similar dimensions and area.
3. The houses in the area are of similar vintage (approx 1940's) and have minimal boundary clearances, not allowing vehicular access to the rear of the site within the site boundaries.
4. The previous access to the former garage at the rear of the site has been removed through the action of the new owner of the adjoining property (72 Harding Street) in erecting a fence on the alignment, preventing access by traversing over both properties.
5. The site and surrounding areas are flat.
6. There are several instances in the surrounding area where similar structures have been, and are currently being erected.
7. The views from neighbouring properties would not be impaired by the proposed structure, because of their internal layouts, and the existing high fences.
8. The site development is below 60% of the site area, which is allowed under the Brisbane City Council guidelines for small lots.

9. The council delegate to the Tribunal supported the development application acknowledging that there was no alternative siting option possible.

10. 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 level, depth, shape or condition of the allotment and adjoining allotments.*

The allotment and the adjoining allotments are predominantly flat, of small lot size and narrow frontage. Buildings on both adjoining 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.*

The allotment currently has a small detached low set dwelling and existing garage, similar to that of its neighbours.

c. *The nature of any existing or proposed building or structure on the adjoining allotments.*

The surrounding residences are detached, single storey, small cottages typical of the era of construction and include high fences of both solid and semi solid construction.

d. *Whether the allotment is a corner allotment.*

The allotment is not a corner allotment.

e. *Whether the allotment has 2 road frontage.*

The allotment had only one road frontage.

f. *Any other matter considered relevant.*

Provision for parking and garaging of motor vehicles was not a major consideration when the house was constructed. This situation is typical to the area, and provision for secure off street parking has been provided to many neighbouring properties by similar facilities to those proposed in this application.

The relationship of the proposed structure to the existing structures and streetscape is sympathetic.

11. 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 and ventilation of an adjoining allotment.*

The proposed Garage is on the south west corner of the site, and thus will have minimal impact on natural light or ventilation to the adjoining allotments.

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

The proposed Garage will not impact on the privacy of adjoining owners.

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

The area of the site to the streetscape for landscaping is limited and the garage will reduce this, however there are other areas of the site available for landscaping.

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

The proposed Garage, being limited to approximately 2.8 meters in height would not unduly

obstruct the outlook from the adjoining property significantly more than allowable fencing. The adjoining properties are fully fenced with 2 metre high fences, with significant solid panels; this would reduce outlook to a greater degree than the Garage. The outlook from the adjoining properties, because of the topographical characteristics of the surrounding area, the small lot sizes, and the house layouts is not further affected by the development.

e. *Overcrowd the allotment.*

The existing structure, and the Garage is within the allowable 60% site coverage for a small lot.

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

The proposal is to provide for greater off street parking than formerly available.

g. *Obstruct access for normal building maintenance.*

The development will not impact on access for maintenance as there is adequate access and space for maintenance operations.

Reasons for the Decision

Sections 48 (3) and (4) of the SBR allows for local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and use of the proposed structure and existing structures and their siting on the adjoining allotments, and the limited impact the Garage would have on the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the road alignment setback to allow the Garage to be constructed within the 6 metre road boundary set back.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip Proj. Man. QUT; METM UQ

Building and Development

Tribunal Referee

Date: 15 August 2002

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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