



APPEAL
Integrated Planning Act 1997

File No. 3-02-038

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 60 Tamaree Avenue, Wynnum.

Nature of Appeal:

Appeal under Section 4.2.9 of the Integrated Planning Act 1997, against the decision of the Brisbane City Council not to grant approval for the siting of a garage in a position observing a clearance of 1.0 metre from the road boundary alignment on land described as Lot 1 on RP No. 94636 and situated at 60 Tamaree Avenue, Wynnum.

Date and Place of Hearing: 9:00 am, Thursday 10 October 2002
at 41 George Street, Brisbane.

Tribunal: B J Williamson

Present: Owner
Owner's brother-in-law
T Anger - Brisbane City Council

Decision

The decision of the Brisbane City Council in its letter dated 4 September 2002 (Reference: DRS/BLD/A02-1187341) not to grant approval for the siting of a garage in a position observing a clearance of 1.0 metre from the road boundary alignment is **changed** to allow the erection of the garage at 60 Tamaree Avenue, Wynnum subject to the following conditions:

- (a) The northern wall of the garage is to be at least 1500 mm from the road boundary alignment and at least 50 mm from the eastern side boundary; and
- (b) The design and materials of the garage building (except the recess corner amendment to the store), are to be as shown on drawing W1 (project 020702) plotted on 31.07.02; and
- (c) Rainwater from the garage is to be sufficiently diverted so that it does not flow onto the adjoining eastern front and/or adjoining eastern rear properties; and

- (d) The eastern gutter of the garage is to be designed so that it will not require access to the adjoining allotment for its replacement and the eastern gutter is to be of sufficient size to prevent overflow from the gutter spilling onto the adjoining eastern allotment; and
- (e) The garage building is to have at least two (2) rainwater down pipes; and
- (f) The cement render to the concrete block wall is to be coloured and the approval of the adjoining eastern owner is to be obtained for the colour of the eastern wall of the garage; and
- (g) The 1500 mm space between the garage and the road boundary alignment is to be landscaped.

Background

While waiting for the decision of the Brisbane City Council, permission was given earlier for the construction of the footings because the building could be converted into an open carport, which is permitted to be within the 6 metre road boundary clearance. At the hearing the owner advised that construction work had stopped.

Material Considered

1. Photographs of the property.
2. A site inspection by the Tribunal referee was made of the surrounding area in the street a couple of days after the hearing.
3. Copy of garage plan with site plan amended showing the distance to the front alignment increased from 1.0 metre to 1.5 metres.
4. Letter dated 9 August 2001 from A Costin, the adjoining owner.
5. Two discussions were held with A Costin concerning aspects resulting from his letter.
6. Verbal submission by the representative of Brisbane City Council outlining the reasons why the siting of the garage as proposed was not approved after taking into account section 48 of the Standard Building Regulation 1993.
7. Verbal submission by the owner who advised that the property did not permit the location of a lock-up garage in any other position. The lockable garage was needed to protect his vehicles and equipment that could not be located in the existing 2 garages under the house.

Findings of Fact

I made the following findings of fact:

1. The footings of the building have been moved back from 1.0 metre to 1.5 metres from the front boundary. This new position has moved the garage closer to the house. In order to maintain a suitable access width to the stairs of the house, the rear store of the garage has been reduced in area.
2. Accommodated in the two garages under the house are a company car and a private car. The proposed enclosed garage is to accommodate an old car, a future utility, a jet ski and a store-workroom. Due to the width of the allotment the garage cannot be effectively located on another part of the site and the storeroom cannot be located under the house. The proposed garage will be 9 metres long and 6 metres wide.

3. In the street there are 2 houses with open carports within the 6 metre clearance from the front boundary but no enclosed garages are in the 6 metre clearance zone except in some other streets in the area.
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 has an average width frontage with a long depth. It has a gentle fall away from the road with the existing 2 storey house (with 2 garages under), set back about 11.8 metres from the front alignment. The adjoining allotments have a similar slope from the road.
 - *The nature of any proposed building or structure on the allotment.*

The proposed building is a lockable concrete block garage to accommodate two vehicles and a store. The roof will be a tiled Dutch gable roof. Because of the cut of the sloping ground for the concrete floor of the garage, the building will present a lower elevation to the road.
 - *The nature of any existing or proposed buildings or structures on adjoining allotments.*

On the eastern adjoining allotments (the side next to the garage) is an old style timber framed house on stumps and on the western adjoining allotment is an old style low set timber framed house.
 - *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. On both adjoining allotments is a dwelling and at the rear of the site is the Wynnum Golf Course.
 - *Any other matter considered relevant.*

The council representative stated that there was no enclosed garage on any other site in the street within the 6 metre clearance from the front road alignment. In addition he expressed concern about the effect of the garage on the sight lines from the adjoining eastern property and also expressed concern about the bulk of the building in the proposed location and its effect on the streetscape of the area.
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 garage will place part of the eastern adjoining allotment into shade in the late afternoon which is not a major problem. As the existing house is on stumps, the garage will not unduly affect natural light and ventilation to the eastern adjoining allotment.

- *Interfere with the privacy of an adjoining allotment.*
The garage blank wall on the boundary will not affect the privacy of the adjoining allotment.
 - *Restrict the areas of the allotment suitable for landscaping.*
Locating the garage as proposed will not unduly restrict landscaping on the site. The area between the garage and the road boundary alignment is to be landscaped. There will be also some landscape along the western alignment. South of the residence the deep site has been landscaped with an inground swimming pool.
 - *Obstruct the outlook from adjoining allotments.*
The outlook from the existing house on stumps on the eastern adjoining allotment will not be unduly obstructed. The Dutch gable roof will reduce any outlook obstruction. If in the future the house were to be replaced with a low set dwelling on the site, then the garage would obstruct the outlook. This was discussed with the adjoining owner who was not concerned because he considered any replacement house would be a two-storey dwelling.
 - *Overcrowd the allotment*
The allotment is a deep one and the existing dwelling plus the proposed garage would cover about 27% of the allotment.
 - *Restrict off-street parking for the allotment.*
The construction of the garage will not restrict off-street parking. It will help to reduce car parking in the street. On the site inspection day it was noticed that a significant number of vehicles are parked in the street which has a narrow paved carriageway.
 - *Obstruct access for normal building maintenance.*
The current adjoining eastern owner stated that he has no objection to allowing access to the building from his allotment. A future owner may not agree to this arrangement. The items that would require future maintenance are as follows:
 - ◆ The rendered concrete blockwall is a low maintenance item that may require recolouring in the future. It could be considered by the adjoining owner as a dividing fence and maintained as such; and
 - ◆ The item most likely to require maintenance is the eastern gutter of the garage. It is considered that this gutter could be assembled as one long unit fixed to the building at both ends so that when replacement is required it could slide out at one end and operation would not require access to the adjoining allotment.
7. Two discussions were held with the owner of the eastern adjoining property.
8. Based on the above facts it is considered that the appeal is proven.

Reasons for the Decision

1. An assessment of Section 48.(3) & (4), did not identify any valid reason for refusing the requested relaxation.

2. In this situation one is entitled to erect a structure with enclosing walls provided the walls are at least 6 metres from the road boundary and the remainder of the building within the 6 metre road boundary clearance then becomes an open carport. In addition the owner then can enclose the structure with a high fence. In comparing what is permitted and what is proposed from a **massing point of view**, the difference is minor.
3. With the use of a Dutch gable roof (which lowers the impact of the front of the garage), a lower concrete floor due to the cut and fill on the sloping site, a high front fence on the road boundary (the high concrete posts already exist) and since the site slopes away from the road the enclosed garage will not make a significant impact on the streetscape of the area.
4. As the decision was based on the design of the building as shown on the drawing submitted at the hearing, one of the conditions attached to the decision is to prevent further changes to the design of the building as the building has already been altered. The other conditions were added to cater for issues raised by the adjoining owner.

B J Williamson
Building and Development
Tribunal Referee
Date: 22.10.02

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