



APPEAL
Integrated Planning Act 1997

File No. 3-02-048

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: 27 Ringara Street Manly West

Nature of Appeal

Appeal under Section 21 Standard Building Regulation 1993 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 and Entry Vestibule to a detached house on land described as Lot 57 RP 114514 and situated at 27 Ringara Street, Manly West.

Date and Place of Hearing: 1.00 pm on Tuesday 10 December, 2002
At 27 Ringara Street, Manly West

Tribunal: Dennis Leadbetter Referee

Present: Owners
Eric Cohen Applicant's representative
Mark Dawson Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter dated 7 November, 2002, reference DRS/BLD/A02-1197529, to grant approval to permit the erection of extensions and alterations to a detached house within the side alignment setbacks is **confirmed**.

The decision of the Brisbane City Council as contained in its letter dated 7 November, 2002, reference DRS/BLD/A02-1197529, not to grant approval to permit the erection of extensions and alterations to a detached house within the front alignment setbacks is **set aside**.

The Garage and Entry Vestibule may be erected within the road boundary setback with set backs to

the road alignment as follows:

Garage:

A minimum alignment setback of 3.500 metres to the outer most projection and 4.000 metres to the wall shall apply.

Entry Vestibule:

A minimum alignment setback of 4.000 metres to the outer most projection and 5.000 metres to the wall shall apply.

Background

The application was for permission to alter and erect additions to an existing double story detached house, including a double car Garage, part of which was within the 6 metre road boundary clearance, and an Entry Vestibule within the 6 metre road boundary clearance.

The Brisbane City Council had refused the application on the grounds it would restrict the areas suitable for landscaping

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 and Entry Vestibule;
- 4 Verbal submissions by the owners, Mr Eric Cohen, architect for the applicant and owners, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Mark Dawson, Brisbane City Council, explaining the reasons why the application should not be granted; and
- 6 The Standard Building Regulation 1993

Findings of Fact

I made the following findings of fact:

1. The detached dwelling is of two storeys, of brick construction to the lower level and timber framed and chamferboard cladding to the upper storey with a hip roof. The dwelling contains a single car space under the dwelling.
2. The area intended to be developed for a double garage would not be available for landscaping as it provides access to the current garage.
3. There is a significant area of the site remaining to the street frontage available for landscaping.
4. The site and surrounding areas slope to the east, and the site has been cut approximately 1 metre, thus reducing the evident height of any proposed structure in relation to natural ground lines.

5. The adjoining site to the west has a carport erected to the street boundary.
6. The site and surrounding properties have views to the east to Moreton Bay, and the proposed development, because of the topography and siting would not interfere with neighbouring views.
7. The proposed extension would provide some aesthetic interest to the existing “box like” structure, and would enhance the street appeal by providing varying depths and interest to the streetscape.
8. The adjoining owners have no objection to the development.
9. 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 fall to the east, and are of generous proportions. Buildings on both adjoining allotments generally comply with the siting requirements under Division 2 of the SBR, and the property to the west has a carport built within the front alignment setback.

b. *The nature of any proposed building or structure on the allotment.*
The allotment currently has a modest detached high set dwelling, consisting of a brick base and weather board clad timber upper storey.

c. *The nature of any existing or proposed building or structure on the adjoining allotments.*
The surrounding residences are detached, double storey, generally of larger size, and present multifaceted facades to the streetscape.

d. *Whether the allotment is a corner allotment.*
The allotment is not a corner allotment.

e. *Whether the allotment has 2 road frontages.*
The allotment had only one road frontage.

f. *Any other matter considered relevant.*
The proposal is to provide additional living space and two car accommodation principally within the existing foot print of the existing detached dwelling.

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

10. 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 and Entry Vestibule extension is on the north west corner of the site, and because of the topography and existing landscaping, which will remain, 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 and Entry Vestibule 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 will only be minimally reduced by the Garage and Entry Vestibule as a substantial portion of the area is currently used to access the existing garage, however there are other substantial areas of the site to the street alignment available for landscaping.

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

The proposed Garage, being limited to approximately 3.0 meters in height, and having cognisance of the topography, would not obstruct the outlook from the adjoining property.

e. *Overcrowd the allotment.*

The existing structure, and the proposed Garage covers only a small area of the site.

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 and Entry Vestibule 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 and Entry Vestibule to be constructed within the 6 metre road boundary set back as nominated in the decision.

Dennis Leadbetter

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

Building and Development

Tribunal Referee

Date: 18 December, 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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