



APPEAL
Integrated Planning Act 1997

File No. 3/02/047

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: 30 Wilclarke Street, Upper Mt Gravatt

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 relaxation of the road boundary setback requirements for the erection of an addition to a dwelling on land described as Lot 29 on RP No. 82274 and situated at 30 Wilclarke Street, Upper Mt Gravatt.

Date and Place of Hearing: 9.30 am on Wednesday 27 November 2002
at 30 Wilclarke Street, Upper Mt Gravatt.

Tribunal: Georgina J Rogers

Present: Applicant
Mr Mark Dawson – Brisbane City Council
Mr Mark Cullinan – Building Certifier

Decision

The decision of the Brisbane City Council as contained in its letter dated 6 November 2002 (Reference: DRS:BLD:A02-1197866) refusing the relaxation of the road boundary clearance to 3.000m sought for the construction of an addition of a deck with pergola to the front of the dwelling setback in lieu of the prescribed 6.000m is set aside and the following decision replaces the decision set aside:-

A reduced setback distance to 4.0m to the outermost projection of the addition of the deck with pergola to the front of the dwelling from the road boundary clearance, is **approved**.

Background

The site has an existing dwelling in the process of being raised and renovated extensively. These renovations include additional external front and rear decks. It is proposed to construct the front deck with unroofed pergola within the road boundary setback.

Material Considered

1. Appeal documentation including drawings detailing the proposed front deck and unroofed pergola and the siting requirements sought by the applicant.
2. Verbal submission by the applicant and reasons for construction of an unroofed pergola in the front boundary setback area.
3. Correspondence from the Council dated 6 November 2002 refusing the request to permit construction in lieu of the required road boundary clearance of 6.000m.
4. Verbal submission by the representative of the Brisbane City Council outlining the Council's assessment of the application and giving its reasons for refusal of the construction permit sought. The Council also confirmed its agreement to the amended setback.
5. Verbal submission from the applicants and confirmation of their agreement to the amended setback.
6. Signed letters from the adjoining neighbours and adjacent neighbour across the street, stating that they had no objection to the proposal, after viewing the plans submitted to Council for approval.

Findings of Fact

I made the following findings of fact:

1. The site at 30 Wilclarke Street, Upper Mt Gravatt is on the lower side of the road, falling from west (road frontage) to east. The site is generally rectangular in shape.
2. The dwellings constructed within the immediate vicinity appear to be generally of timber construction of mid-1900s construction. These dwellings generally are setback in accordance with the 6.000m requirement, with the exception of a small number.
3. The neighbourhood consists of a mix of lot sizes and one and two storey dwellings.
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 1993, 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, regular size and shape. The

allotment is rectangular in shape and is accessed directly from Wilclarke Street. Vehicle access is along the southern alignment of the dwelling to rear carparking.

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

The structure to which the application is relevant is proposed to be a single level deck with unroofed pergola over, to be sited within the 6.000m road boundary setback.

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

The neighbourhood consists of older, timber dwellings, with the occasional renovation being undertaken.

(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 has only one (1) road frontage.

(f) any other matter considered relevant

Letters of approval from the adjoining owners for the proposed structure were considered.

6. In assessing the application of Section 48.(4) of the Standard Building Regulation 1993, the local government must be satisfied that the amended proposed road boundary clearance on the allotment would not unduly –

- *Obstruct the natural light or ventilation of any adjoining allotment.*

The 4.0m road boundary clearance to the outermost projection of the deck and associated unroofed pergola will not obstruct the natural light or ventilation of the adjoining allotments.

- *Interfere with the privacy of an adjoining allotment.*

The 4.0m road boundary clearance will not interfere with the privacy of the adjoining allotments.

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

The 4.0m road boundary clearance will not unduly restrict the areas of the allotment suitable for landscaping.

- *Obstruct the outlook from adjoining allotments.*

The 4.0m road boundary clearance will not unduly obstruct the outlook from adjoining allotments, as the adjoining dwellings are located away from the proposed structure.

- *Overcrowd the allotment.*

The proposed 4.0m road boundary clearance will not overcrowd the allotment.

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

Off-street parking will not be affected by the proposed 4.0m road boundary clearance.

7. Based on the above facts it is considered the appeal is proven.

Reasons for the Decision

An assessment of Section 48.(3) and (4), did not identify any valid reason for refusing the amended construction application.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 5 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:

The Registrar of Building and Development Tribunals
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