



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3/04/003

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 6 Borden Street, Sherwood

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 setback requirements for a garage and storage shed to a dwelling on land described as Lot 2 on RP No. 229863 and situated at 6 Borden Street, Sherwood.

Date and Place of Hearing: 12.00pm on Wednesday, 28 January, 2004
at the office of the Department of Local Government and Planning,
Level 25 Mineral house, 41 George Street, Brisbane.

Tribunal: Georgina J Rogers

Present: Mr Tony Jansen – Design and Drafting representative
Mr Joe McCormack – Brisbane City Council representative

Decision

The decision of the Brisbane City Council as contained in its letter dated 5 January 2004 (Reference: DRS/BLD/A02-1251142) refusing the relaxation of the road boundary clearance to 0.200m sought for the construction of a new garage to the Borden Street frontage of the dwelling of the site is set aside and the decision is **replaced with conditions**:-

1. A new open carport be constructed 0.500m to the outermost projection of the alignment fronting Borden Street;
2. The proposed storage shed is to be setback minimum 3.000m to its outermost projection of the alignment fronting Borden Street;

Background

The site is located at 6 Borden Street, Sherwood. A site visit was not available, however some photographs were provided to identify the existing dwelling.

Material Considered

1. Appeal documentation included drawings indicating the proposed garage and storage shed within the Borden Street boundary setback;
2. Verbal and photographic submission by the applicant giving reasons for construction of the garage and storage shed within the Borden Street boundary setback area;
3. Correspondence from the Council dated 5 January 2004, refusing the request to permit construction of the garage and storage shed within the Borden Street road boundary setback requirements;
4. Verbal submissions 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;
5. The Standard Building Regulation 1993; and
6. The Queensland Development Code, Part 12.

Findings of Fact

I made the following findings of fact:

1. The original application was lodged with the Brisbane City Council and was assessed under the SBR. The correspondence from the Brisbane City Council dated 5 January 2004 (Reference: DRS/BLD/A02-1251142) was headed "Request For Assessment Under Section 48 Standard Building Regulation (1993)". The SBR was amended to the Queensland Development Code on 14 November 2003 and this application has been reassessed under the QDC, Part 12.
2. The applicant advised that the garage was to be located perpendicular to the driveway to allow cars to turn on site and leave the site in a forward direction as house was one from the corner of a busy road and on road traffic was aggressive.
3. He advised that a carport would be an acceptable solution as long as it could be secured with an open garage door. It was the intention to secure the side and rear of the site through this structure to allow security for children living on site.
4. A 1.800m high fence exists along the alignment fronting Borden Street.
5. The site has a single road frontage being Borden Street. Vehicle access has been nominated from Borden Street.
6. No topographical site details were available.

7. The provision of storage adjacent to the proposed carport was desirable, as it would be integrated within the overall design, rather than be a storage shed provided randomly at a later stage.
8. The QDC, Part 12 sets out Performance Criteria P1 - P8 in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application and that the development does not **unduly** conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

1. the bulk of the building or structure

The proposed structure is a single storey carport and storage shed located to the front of the site fronting Borden Street which would have a front boundary setback of 0.200m.

In accordance with the discussions a 0.500m setback to the open carport and 3.000m setback to the storage shed will minimize any implied bulk in the streetscape.

2. the road boundary setbacks of neighbouring buildings or structure

Generally the adjoining properties are setback approximately 6.000m from Borden Street however as no site visit was available this was not verified.

3. the outlook and view of neighbouring residents

The outlook from the adjoining neighbours will not be impeded because of the topography of the site and surrounding area.

4. nuisance and safety of public

The development would not cause any nuisance or increased safety issues to the public.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

No habitable rooms would be created with this application, as the carport is to be an open structure and the storage shed is not for use as a habitable room.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The minimum 0.500m road boundary clearance to the carport and 3.000m setback to the storage shed fronting Borden Street will have no impact on the existing natural light and ventilation of the adjoining allotments.

P3 Adequate open space is provided for recreation, service facilities and landscaping–

The minimum 0.500m road boundary clearance to the carport and 3.000m setback to the storage shed fronting Borden Street will permit the provision of landscaping within this area and adjacent to the Borden Street frontage.

An area for landscaping and outdoor recreation has been allowed for in the north-easterly area of the site. This provides an excellent private area for outdoor recreation, landscaping and buffer between the northern and eastern dwellings.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The proposed structure will not overshadow the adjoining lots due to its height and location.

(b) obstruct the outlook from adjoining lots

The minimum 0.500m road boundary clearance to the carport and 3.000m setback to the storage shed fronting Borden Street will not obstruct the outlook from adjoining lots. The carport is located away from the side boundary alignment and is of single storey height.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The minimum 0.500m road boundary clearance to the carport and 3.000m setback to the storage shed fronting Borden Street will have minimal impact upon the privacy of the adjoining allotments to the north and east.

P6 The location of a building or structure facilitates normal building maintenance–

The setbacks shown provide adequate access for normal building maintenance.

P7 The size and location of structures on corner sites provide for adequate sight lines–

The site is not a corner site, therefore the existing sight lines would not be affected by the proposed development.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing as provision is being made for on-site carparking.

(b) the availability of on-street parking

These setbacks to the carport have been allowed to provide visible carparking on site for visitors.

(c) the desirability of on-street parking in respect to the streetscape

On-street car parking is currently available and will not be affected by the proposed development.

(d) the residents likelihood to have or need a vehicle

The proposed development includes the provision for minimum two on-site carparks.

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

Reasons for the Decision

QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.

In assessing the criteria from this part of the Code in relation to the proposed use of the structure, its relationship to the existing dwelling on site and the adjoining neighbourhood, the Tribunal found that there was grounds to vary the road boundary setbacks to allow the carport to be located within a minimum of the southern alignment fronting Borden Street.

An assessment of QDC, Part 12, did not identify any valid reason for refusing the proposed amended construction application for a minimum 0.500m road boundary clearance to the outermost project of the proposed carport fronting Borden and 3.000m minimum setback to the proposed storage shed.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 16 February 2004

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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