



APPEAL
Integrated Planning Act 1997

File No. 3/02/041

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 6 David Street, Bardon. Q. 4065.

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 a garage and terrace on land described as Lot 1 RP57146 and situated at 6 David Street, BARDON Q. 4065.

Date and Place of Hearing: 10.00am. Thursday 31 October, 2002.

Tribunal: Peter John Nelson

Present: Simon Hughes – Applicant
Owners
Joe McCormack – Brisbane City Council
Neighbour (No. 10 David Ave.)

Decision

The decision of the Brisbane City Council as contained in its letter dated 24th. September, 2002 (Reference DRS/BLD/AO2-1190478 JM/WH) allowing relaxation of the road setback to permit the erection of a garage, but refuse permission to erect a terrace over the proposed garage, is **set aside**, and the following decision replaces the decision set aside:-

A reduced setback distance (as agreed by both parties) of 2300mm. from the outermost projection of the new garage from the road boundary, including a terraced area as shown on the plans supplied by Hughes Built Environments (Architects) of The Gap – labelled Exhibits 1, 2 & 3. is **approved**. Subject to the following conditions:-

- a. The plans are strictly adhered to without variation to the street frontage areas.
- b. The terrace area that is constructed from the existing building alignment towards the street boundary is **never to be roofed or in any way enclosed** by the existing, or subsequent owners, without the written approval of the Brisbane City Council.

Background

The area is well developed with most homes being constructed in the 50's. The allotment slopes left to right and the front of the residence faces east. The existing street is very narrow and there is a large Council controlled park with sporting facilities opposite, providing a pleasant outlook with cooling summer breezes from the east. Access to the site is constricted and council has taken this into account in granting the relaxation to 2.3mtrs.

Material Considered

1. Appeal documentation including Council's correspondence labelled exhibit 4.
2. Photographs labelled exhibits 5,6,7,8 & 9.
3. Architect's drawings labelled exhibits 1,2 & 3.
4. Letters from neighbours labelled 10,11 & 12.
5. Verbal submissions from the Architect, the Owners and the neighbour.
6. Surrounding residences, setbacks and local amenity.

Findings of Fact

I made the following findings of fact;

1. The design prepared by the architect was in keeping with the style of the existing residences.
2. The Council had agreed to a setback of 2.3mtrs. for the proposed garage.
3. The Council's concern that at a later date the area from the existing building alignment towards the street would be roofed and eventually enclosed. I have included in the decision, conditions to alleviate this concern.
4. The Council has the discretion to vary the building alignment under Section 48 of the Standard Building Regulation 1993.
5. The architect has displayed a duty of care in designing a very livable area that takes into account the livable nature of the area with outlook and prevailing summer breezes.
6. The neighbour's enthusiastic support for the proposal.

Reasons for the Decision

1. Council's only concern was that the terrace would eventually be used as an additional enclosed living space. Such a future development would encroach in an unacceptable way on the streetscape of the area. I agree with this concern, and have taken steps in the decision to prevent this happening.
2. Council and the appellant and the owners had agreed to the setback relaxation of 2.3mtrs.
3. The proposed development was in keeping with the ambience of the area and took advantage of the aspect and summer breezes. This is the type of 'livable design' encouraged by the Council in its 'livable Brisbane' town planning endeavours.
4. The enthusiastic support of the adjoining neighbours.

PETER JOHN NELSON
Building and Development
Tribunal Referee
Date: 11th. November, 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
Building Codes Queensland
Department of Local Government and Planning
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