

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 37 Rakeevan Road, Graceville.

Nature of Appeal: Appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Brisbane City Council not to grant relaxation of the road boundary clearance for the erection of an open carport on land described as Lot 7 on SP 131919, Parish of Oxley and situated at 37 Rakeevan Road, Graceville.

Date and Place of Hearing: 1.00 pm on Thursday, 30 August 2001 at 37 Rakeevan Road, Graceville.

Tribunal: G.J. Rogers

Present:	G.J. Rogers	Tribunal Referee
	Property Owner	
	Catherine Baudet	Ferrier Baudet Architects, Applicants Representative
	Scott Chaseline	Ferrier Baudet Architects, Applicants Representative
	Robert Dix	Development & Regulatory Services Brisbane City Council
	Shane Talty	Town Planner Brisbane City Council

Decision:

The decision of the Brisbane City Council in its letter dated 19 July 2001 (Reference: DRS/BLD/A01-1138940 RD:HJP) refusing the relaxation of boundary clearances **is set aside** and a road boundary clearance of 1.5 m to the columns of the open carport with additional overhang width permitted consistent with existing dwelling overhangs are approved for the open carport situated at 37 Rakeevan Road, Graceville.

Material Considered:

1. Copy of written appeal documentation and supporting photographs supplied by Ferrier Baudet Architects, applicant's representative.

2. Verbal submission by the applicant's representative who advised that the application was made for an open carport and every endeavour had been made to comply with the Building Regulation requirements.
3. Verbal submission by the property owner who advised that the open carport was intended to comply with Building Regulation requirements and designed to complement the existing dwelling and enhance the amenity of the surrounding neighbourhood.
4. Verbal submission by the representatives of the Brisbane City Council outlining non-compliance with the requirements of the Building Regulation in relation to an open carport in that it appeared to have more than one-third of the outer perimeter of the building enclosed and therefore was defined as a garage.

Findings of Fact:

I made the following findings of fact:

1. The open carport proposed for 37 Rakeevan Road, Graceville generally complies with the definition of open carport as opposed to garage.
2. Under Section 48 of the Standard Building Regulations 1993 the local government may vary the applicant of division 2 – boundary clearances.
3. 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 and adjoining allotments are substantially level. The boundaries of the allotment are at right angles to the road boundary alignment.
 - *The nature of any proposed building or structure on the allotment.*
A traditional timber, lowset suburban dwelling has been constructed on site. The proposed carport has been designed to reflect some of the traditional building elements of the existing dwelling through limited use of timber and treatment of gable ends and eaves.
 - *The nature of any existing or proposed buildings or structures on adjoining allotments.*
The surrounding neighbourhood is established with a mixture of low and highset timber dwellings varying in age. Generally the age of the surrounding dwellings is over 20 years old with no significant new dwellings being built in the immediate neighbourhood.
 - *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.
 - *Any other matter considered relevant.*
A letter of approval for the proposed open carport from the adjacent adjoining owner was

provided by the representatives on site and acknowledged as having been received by Council.

The discussions clarified the proposed structure complied with the Building Regulation requirement for an open carport and therefore the provision to enable the relaxation was agreed to by all present at the on site meeting.

4. In assessing the application of Section 48.(4) of the Standard Building Regulation, the local government must be satisfied that the open carport on the allotment would not unduly-
 - *Obstruct the natural light or ventilation of any adjoining allotment.*
The 1.5 metre road boundary clearance to the front support columns, allowing for an additional overhang consistent with the existing dwelling, will not obstruct the natural light or ventilation of the adjoining allotment.
 - *Interfere with the privacy of an adjoining allotment.*
The 1.5 metre road boundary clearance to the front support columns, allowing for an additional overhang consistent with the existing dwelling, will not interfere with the privacy of the adjoining allotment.
 - *Restrict the areas of the allotment suitable for landscaping.*
The requested road boundary clearance relaxation will not unduly restrict the areas of the allotment suitable for landscaping as the proposed carport is over the existing sealed driveway.
 - *Obstruct the outlook from adjoining allotments.*
The road boundary clearance relaxation will not unduly obstruct the outlook from adjoining allotments as the adjoining dwellings are located significantly away from the proposed open carport.
 - *Overcrowd the allotment.*
The proposed open carport will not overcrowd the allotment.
 - *Restrict off-street parking for the allotment.*
Off-street parking will not be affected by the proposed carport.
 - *Obstruct access for normal building maintenance.*
The 1.5 metre road boundary clearance does not obstruct access for normal building maintenance.
5. Based on the above facts it is considered that the appeal is proven.

Reasons for the Decision:

1. The proposed structure complies with the requirements for an open carport and is therefore subject to the consideration for relaxation for road boundary clearance.
2. An assessment of Section 48.(3) and (4), did not identify any valid reason for refusing the requested relaxation.

3. As the proposed structure generally complied with the requirements for an open carport and since Section 48.(3) & (4) did not identify any problem with the requested road boundary clearance, I am of the view that in this case, it would be unreasonable to refuse the requested road boundary clearance relaxation.

G.J. Rogers
Building and Development
Tribunal Referee
Date: 18 September 2001

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