



APPEAL
Integrated Planning Act 1997

File No. 3/02/003

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: 43 Paramount Circuit, McDowall

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 specified relaxation of the road boundary setback requirements for the erection of a garage to the existing dwelling on land described as Lot 337 on RP 809306 and situated at 43 Paramount Circuit, McDowall.

Date and Place of Hearing: 10.00 am on Wednesday 23 January 2002
at 43 Paramount Circuit, McDowall

Tribunal: Georgina J Rogers

Present: Applicant
Mr Luke Gilliland – Development Officer in Building North,
Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter dated 20 December 2001 (Reference: DRS/BLD/A01-1155706) refusing the relaxation of the road boundary clearance of 0.4m sought for the construction of a retaining wall and garage in lieu of the prescribed 6.000m is set aside and the following decision replaces the decision set aside:-

A reduced setback distance to 1.5m from the road boundary clearance and modification of the garage to a carport, to be constructed in accordance with the requirements of the Building Act 1975, is **approved**.

Background

The existing dwelling is a lowset brick veneer construction built on the high side of the road in Paramount Circuit. The modification of the proposed garage to a carport in accordance with the

Standard Building Regulation 1993, is consistent with similar structures within the neighbourhood. The neighbourhood is generally hilly and retaining walls are consistent within the area.

Material Considered

1. Appeal documentation including drawings detailing the proposed additions to the existing dwelling and the siting requirements sought by the applicant.
2. Correspondence from the Council dated 20 December 2001 refusing the request to permit construction in lieu of the required road boundary clearance of 6.000m.
3. Correspondence and photographic evidence from the owner dated 23 January 2002 appealing the Council's decision not to grant the construction permit.
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. The Council also confirmed its agreement to the alternative type of building construction proposed, being a carport in lieu of a garage.
5. Verbal submission from the applicant and confirmation of his agreement to the alternative type of building construction proposed, being a carport in lieu of a garage.

Findings of Fact

I made the following findings of fact:

1. The dwelling at 43 Paramount Circuit is constructed with a road boundary setback in excess of 6.000m.
2. Other dwellings in the immediate vicinity are constructed with road boundary setback distances similar to the subject dwelling.
3. Carports built after the dwellings in the immediate vicinity comply with the definitions of a carport within the Standard Building Regulation 1993, and have been built within the 6.000m setback area.
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 size and shape. The proposed location in regard to the Paramount Circuit frontage raises the need to consider the Council's objectives and requirements in relation to residential development in the area.

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

The structure to which the application is relevant is a fully enclosed garage and associated retaining walls to be constructed within the 6.000m road boundary setback requirements. The structure to remain unenclosed by walls and setback 1.5m from the road boundary setback complies with the description of a carport and is therefore allowable within the 6.000m road boundary setback. The retaining walls are consistent with the area and are permitted without relaxation.

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

There are a number of similar carport structures and retaining walls on adjoining allotments that would support approval of the construction of a carport within the 6.000m road boundary setback.

(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.

The Brisbane City Council officer and the applicant discussed the requirements to change the garage to comply with the requirements to construct a carport and it was agreed to amend the application to meet this requirement.

6. In assessment the application of Section 48.(4) of the Standard Building Regulation 1993, the local government must be satisfied that the amended proposal to a carport on the allotment would not unduly –

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

The 1.5m road boundary clearance to the front support columns will not obstruct the natural light or ventilation of the adjoining allotment.

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

The 1.5m road boundary clearance to the front support columns will not interfere with the privacy of the adjoining allotment.

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

The 1.5m road boundary clearance 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 1.5m 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 structure will not overcrowd the allotment.

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

Off-street parking will not be affected by the proposed structure.

7. Based on the above facts it is considered 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 construction within the 6.000m road boundary clearance.
2. 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 February 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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