



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3-03-060

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 53 Heath Street, East Brisbane

Nature of Appeal

The appeal is against the decision of the Brisbane City Council under Section 48 of the Standard Building Regulation to vary the siting requirements of a carport with conditions. Granted conditions being:

- Two grill type doors to the street frontage in a position observing 0.0 metre road boundary clearance
 - Two garage doors are to be 2.75 metres maximum width for each with the balance of the opening to be battened to 50% coverage
 - Garage doors are not to open over the property's road boundary
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Date and Place of Hearing: 3 pm on Thursday, 6 November 2003 at 53 Heath Street, East Brisbane

Tribunal: Chris Harris

Present: Doug Fraser (Applicant)
Larry Porter (Private Certifier)
Gerard Mullins (Owner)
Graham Kidd (Representative of Owner)

Decision

The decision of Brisbane City Council dated 29 September 2003, to approve the application for a variation with conditions, under Section 48 of the Standard Building Regulation 1993, is **set aside** and is replaced by the following decision –

That appeal has been granted to vary the siting requirements of an enclosed carport in a position observing 0.0 metres road boundary clearance subject to the following condition: -

The garage doors fitted to the street frontage shall be automated and shall not open over the property's road boundary.

Material Considered

Letter from the applicant
Application and plans submitted to BCC for variation
Privately Certified approved plan
BCC decision dated 29 September 2003

Applicant's Submission

The applicant was concerned that grille type doors would not be aesthetically in keeping with the neighbouring properties and would impose a security risk. The battening of the smaller section would make that part of the carport ineffective for the purpose of a carport.

Brisbane City Council's Submission

Council's representative suggested that he thought the construction was more akin to a garage. Although Council in principal had no objection to the proposal, they wanted the grille type doors so as to maintain an "open" appearance.

Finding of Fact:-

On 3 March 2003, a Private Certifier issued a decision notice approving building works, which included the construction of a carport, with grille type doors, which was located adjacent to the front road boundary.

On 14 May 2003, the Private Certifier approved an amended plan of the carport showing the enclosure of the carport with palings, effectively fully enclosing the carport for which a siting variation under Section 48 of the Standard Building Regulation should have been sought.

On 21 August 2003, an application for a relaxation was made to the Council. The application showed palings to the side of the enclosure and the provision of doors to the front.

Reasoning

On 29 September 2003, Brisbane City Council approved the application with two grill type garage doors.

A condition that the two doors were to have a maximum width of 2.75 m each with the additional area at the front to be battened to 50% coverage was imposed.

Brisbane City Council's decision showed that in principal they did not object to the carport being enclosed, effectively becoming a garage.

The restriction width of the two doors coincided with an earlier decision by Council to approve a vehicular crossover for TWO driveways at a maximum width of 2.75 m each.

However, to impose a condition restricting the width of opening on the carport/garage frontage based upon the crossover permit width would be unreasonable as two driveways could effectively service the larger opening and the smaller opening.

It was considered that the restriction to two grille type doors would also impose an unreasonable condition in the fact that panel lift doors have been fitted and approved to several similar constructions within the neighbourhood.

Consideration must also be taken to ensure that access to the carport/garage did not severely affect the health and safety of both pedestrians and local traffic.

Therefore, it was determined that the conditions relating to grille type doors and battening to enclose the smaller section at the front be **set aside** and replaced with the following: -

The garage doors fitted to the street frontage shall be automated and shall not open over the property's alignment to the road boundary.

Chris Harris
Building and Development
Tribunal Referee
Date: 15 December 2003

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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