
BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Brisbane City Council

Site Address: 18 Weekes Road, Carindale

Nature of Appeal: Appeal under Section 4.2.9 of the Integrated Planning Act 1997, against the decision of the Brisbane City Council not to grant approval to vary the siting requirements for the proposed construction of a garage in a position observing a road boundary clearance of 2015 mm on land described as Lot 632 on RP No. 175488 and situated at 18 Weeks Road, Carindale.

Date and Place of Hearing: 10:00 am on Thursday 27 March 2003 at 18 Weeks Road, Carindale.

Tribunal: B J Williamson

Present:

B J Williamson	Tribunal Referee
Owner	
S Medlin	Designer for building extension
T Anger	Brisbane City Council

Submission after Hearing: Letter dated 3 April 2003 together with additional drawings received on 8 April 2003.

Decision:

The decision of the Brisbane City Council in its letter dated 4 February 2003 (Reference: DRS/BLD/A03-1207202) not to grant approval to vary the siting requirements for the proposed construction of a garage in a position observing a road boundary clearance of 2015 mm **is changed** to allow the erection of the garage with a road boundary clearance of 2015 mm at 18 Weekes Road, Carindale as shown on drawing No. WD-01 subject to the following condition:

- (a) The eastern side of the garage is to be landscaped and the garage door is to be amended as shown on drawings attached to submission dated 3 April 2003.

Material Considered

1. Copy of garage drawings and site plan.
2. Written submission by applicants.
3. Report by Scott Medlin who designed the proposed garage.
4. Letter dated 16 January 2003 from the adjoining owner at 20 Weekes Road, Carindale.
5. Letter dated 16 January 2003 from the adjoining owners at 16 Weekes Road, Carindale.
6. Verbal submission by the representative of Brisbane City Council outlining the reasons stated on the Council's letter why the siting of the garage as proposed was not approved after taking into account section 48 of the Standard Building Regulation 1993.
7. Verbal submission by the owner and S Medlin who outlined the need for additional accommodation for the growing family, problems with the existing garage and why an extension to the east was not a suitable solution.
8. An inspection of the site areas involved.

9. Additional letter dated 3 April 2003 from the owner together with drawings showing the proposed landscape and amendments to the garage door.

Finding of Fact

I made the following findings of fact:

1. To retain the existing garage by providing the required accommodation at the northern side of house was not possible at ground level because of the existing in-ground swimming pool. Providing the accommodation at the upper level over the patio currently under construction would require major changes to the existing upper level bedrooms and the patio extension.
2. Extending the building on the eastern to provide the required accommodation and thereby retain the existing garage was considered. However, because of the location of the swimming pool the eastern side provides the main access to the rear of the site. Such an extension would restrict access along the eastern side and a preliminary assessment of the suggestion indicated that additional alterations would be required for the rooms behind the garage. In addition the eastern side is heavily landscaped and removal of this landscape would most likely result in the adjoining owner withdrawing the letter of support for the garage proposal.
3. In the street there are no similar garage precedents but further up the street there is a temporary canopy structure providing cover for a large boat which is located in front of a house.
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, 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 average allotments for the area with a noticeable fall to the road which has a wide footpath. The allotments in question are well landscaped without fences at the road boundary.
 - *The nature of any proposed building or structure on the allotment.*
The proposed construction is a lockable double garage extension to the house. It will be a timber framed structure sheeted with fibre cement cladding with a skillion roof hidden on 3 sides with a parapet wall.
 - *The nature of any existing or proposed buildings or structures on adjoining allotments.*
On the adjoining allotments are well presented dwellings on landscaped allotments.
 - *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.*
The council representative stated that his main concern was to retain the existing open streetscape of the area.
6. In assessing the application of Section 48.(4), the local government must be satisfied that the dwelling on the allotment would not unduly-
 - *Obstruct the natural light or ventilation of any adjoining allotment.*
Locating the garage in front of the dwelling will not obstruct natural light and ventilation to the nearest adjoining allotment on the eastern side.

- *Interfere with the privacy of an adjoining allotment.*
The garage located in front of the dwelling will not interfere with the privacy of the nearest adjoining allotment on the eastern side.
 - *Restrict the areas of the allotment suitable for landscaping.*
Locating the garage as proposed will not unduly restrict landscaping on the site. The area between the garage and the adjoining eastern allotment is to be landscaped. The remainder of the site is currently landscaped.
 - *Obstruct the outlook from adjoining allotments.*
The outlook from the existing dwelling on the adjoining eastern allotment will not be unduly obstructed as the single storey proposed garage extension will be 4800 mm from the eastern side boundary.
 - *Overcrowd the allotment*
The proposed garage extension together with the existing dwelling and patio currently under construction will not overcrowd the allotment.
 - *Restrict off-street parking for the allotment.*
The construction of the garage will not restrict off-street parking.
 - *Obstruct access for normal building maintenance.*
The extension as proposed will not obstruct access for normal building maintenance.
7. As letters of support for the proposal were received from both adjoining owners, no discussions were held with these adjoining owners. The land across the road is an undeveloped future education site owned by the Education Department.
8. Based on the above facts it is considered that the appeal is proven.

Reasons for the Decision:

1. An assessment of Section 48.(3) & (4), did not identify any valid reason for refusing the requested relaxation.
2. Legally the owner could have requested to erect a double carport and a high fence around the site. Such a solution would definitely adversely affect the streetscape of the area.
3. With no front fence, a wide footpath and landscaping extended on the eastern side of the garage together with the existing landscape in the front of the house, it will not be immediately apparent that the garage is only 2015 mm from the road boundary. The garage would appear to be part of the house. To reduce the impact of the large garage door in this position, the design of garage door has been amended. Under these conditions, I am of the view that the proposed garage extension will not adversely affect the streetscape of the area and therefore, it would be unreasonable to refuse the requested boundary clearance relaxation.

B J Williamson
Building and Development
Tribunal Referee
Date: 16 April 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 grounds:

- (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 the notice of the Tribunal's decision is given to the party.

Enquires

All correspondence should be addressed to:

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