



**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3/03/034**

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## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Brisbane City Council

**Site Address:** 37 Halleys Crescent, Bridgeman Downs

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### **Nature of Appeal**

The appeal made under section 21 of the Standard Building Regulation 1993 (SBR) is against the decision of the Brisbane City Council not to vary the application of Division 2 – Boundary clearances as provided for under Section 48 of the SBR, to permit the siting of a proposed garage attached to an existing dwelling on land described as Lot 435 on RP No. 853503 at 37 Halleys Crescent, Bridgeman Downs.

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**Date and Place of Hearing:** 10 am on Monday 16 June 2003 at 37 Halleys Crescent, Bridgeman Downs.

**Tribunal:** Michael N Harris

**Present:**

Michael N Harris	Tribunal Referee
William Driml Owner	Applicant and representative for the owners
Luke Gilliland	Representative for the Brisbane City Council
Brett Austin	Brisbane City Council
Frank Van Hest	Builder

### **Decision**

The decision of the Brisbane City Council as contained in its letter dated 3 June 2003 (File Ref: DRS/BLD/A03-1217637) not to grant approval to vary the siting requirements for a garage in a position observing a clearance of 3.64 metres to the outermost projection from the road boundary alignment in lieu of observing the prescribed 6 metre building line and with a total length of building on the boundary of 11 metres in lieu of the prescribed 9 metres, is **set aside**.

The application of Division 2 – Boundary clearances as provided for under Section 48 of the SBR, is varied to permit the siting of a proposed garage at the boundary clearances shown previously and on the submitted application documents. Council is required to resume its processing of the application for a development permit and approve the proposed building work. All other aspects of the development must comply with the relevant legislation.

### **Background**

The existing detached dwelling which already provides vehicle accommodation, is situated on the allotment with an in-ground swimming pool at the rear. There is sufficient space at the eastern side of the allotment to cater for an additional building. Owing to the need to provide extra vehicle accommodation, the owners propose to attach a new garage to the existing dwelling at a road boundary clearance of 3.64 metres to the outermost projection from the (Halleys Crescent) boundary alignment and a side boundary clearance of 600 mm from the external wall to the eastern side boundary. The building extends 11 metres on the side boundary.

The Brisbane City Council had refused the application on the grounds that the siting of the proposed garage at the above road boundary clearance would overcrowd the front of the property. Council's representative advised at the hearing that Council was not overly concerned about the building extending 11 metres on the side boundary in lieu of the prescribed 9 metres.

### **Material Considered**

The following material was considered:

1. Original Form 1 Development Application – Parts A and B.
2. Siting Variation (Relaxation) Application – Part 1 Application Form.
3. Working drawings (5 sheets) depicting the existing dwelling and the proposed garage.
4. Adjoining property owners' statements that they have no objection to the erection of the proposed garage adjacent to their properties.
5. Brisbane City Council's letter dated 3 June 2003 regarding its decision not to grant approval for the proposed garage to be sited at the boundary clearances shown on the submitted application documents.
6. Siting Variation (Relaxation) Application – Part 3 Assessment.
7. Standard Building Regulation 1993.

### **Findings of Fact**

I made the following findings of fact:

1. Alternative arrangements for the siting of the proposed garage were considered. Council's recommendation that it be located further back on the site to provide a greater setback distance from the road boundary, would have caused the blocking off of a window on the eastern wall of the existing dwelling. Further, an examination of the adjoining allotments at Halleys Crescent found that the road boundary clearance for the building at No 33 was approximately 1 metre further back than the proposed garage and for the building at No 41 it was on an equivalent line.
2. Under Section 48 of the SBR the local government may vary the application of Division 2 – Boundary clearances.

3. In assessing the application of Section 48 (3) of the SBR, the local government was required to consider the following criteria:

- *The levels, depth, shape or conditions of the allotment and adjoining allotments*

The 900 sq metre allotment has an approximate frontage width of 25 metres and provides sufficient space for the siting of the garage as proposed. Adjoining allotments are of similar depth and shape.

- *The nature of any proposed building or structure on the allotment*

The garage to which the application is relevant is proposed to be attached to the side of the existing dwelling at the previously mentioned boundary clearances.

- *The nature of any existing or proposed buildings or structures on adjoining allotments*

On the adjoining allotment adjacent to the proposed garage is a single storey building which is higher, due to a retaining wall erected on the side boundary.

- *Whether the allotment is a corner allotment*

The allotment is not a corner allotment.

- *Whether the allotment has 2 road frontages*

The allotment does not have 2 road frontages.

- *Any other matter it considers relevant*

Council's representative was concerned that if the garage was allowed in the location proposed, it would overcrowd the front of the allotment. He also believed a precedent would be created in the street for future similar development.

4. In assessing the application of Section 48 (4) of the SBR, the local government must be satisfied that the garage built on the allotment in the way proposed, would not unduly:

- *Obstruct the natural light or ventilation of an adjoining allotment*

The proposed garage will not cause any obstruction of natural light or ventilation to any adjoining allotments. The proposed garage is sited lower than the single storey building nearby on the adjoining allotment and the roof pitches away from the boundary thus maintaining adequate light and ventilation to the adjoining allotment.

- *Interfere with the privacy of an adjoining allotment*

The siting of the proposed garage at the reduced boundary clearances will have nil impact on the privacy of any adjoining allotment.

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

The reduced boundary clearances for the proposed garage will have nil impact on the area of the allotment suitable for landscaping.

- *Obstruct the outlook from adjoining allotments*

As the proposed garage is sited lower than the nearby adjoining allotment the outlook from this allotment is not obstructed. Nor is the outlook obstructed from any other allotment.

- *Overcrowd the allotment*

The increased area of the proposed garage together with the existing dwelling will not overcrowd the allotment, as the site cover will remain below 50%.

- *Restrict off-street parking for the allotment*

Off-street parking will have been satisfied by the addition of the proposed garage and the vehicle accommodation already provided by the existing dwelling.

- *Obstruct access for normal building maintenance*

There is sufficient space allowed between the external wall of the proposed garage and the adjacent side boundary to allow access for normal building maintenance.

**Reasons for the Decision**

The proposed garage located at a road boundary clearance of 3.64 metres and a side boundary clearance of 600 mm with a total length on the boundary of 11 metres, is deemed not to pose any adverse impact on the subject allotment or any adjoining allotments.

I consider all the requirements of Section 48 (4) of the SBR to have been satisfied and that a variation of the application of Division 2 must be permitted to allow the siting of the proposed garage at the boundary clearances shown on the submitted application documents.

I do not agree with the Council's decision to refuse the application on the grounds that it would overcrowd the front of the property. The combined area of the garage and the existing dwelling amounts to a site coverage of 43% which is acceptable under the provisions of the SBR.

If the garage is allowed to be sited in its proposed location, a precedent would not be created in the street for future similar development. Any development applications for the siting of such buildings inside the prescribed boundary clearances must be individually assessed for compliance under the relevant terms and conditions of the SBR.

In making this decision, I have also taken into account the fact that the adjoining neighbours have no objection to the proposed development.

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**Michael N Harris**  
**Building and Development**  
**Tribunal Referee**  
**Date: 18 June 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:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
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