



APPEAL
Integrated Planning Act 1997

File No. 3/03/051

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 1 Gwandalan Street, Eight Mile Plains

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 relaxation of the road setback requirements for the erection of a carport on land described as Lot 19 on RP No. 199568 and situated at 1 Gwandalan Street, Eight Mile Plains.

Date and Place of Hearing: 9.00 am on Monday, 6 October, 2003
at the office of the Department of Local Government and Planning,
Level 25, Mineral House, 41 George Street, Brisbane.

Tribunal: Georgina J Rogers

Present: Mr Chris Diggles – Brisbane City Council representative
Ms S Burghe – observer, Building and Development Tribunals

Decision

The decision of the Brisbane City Council as contained in its letter dated 27 August 2003 (Reference: DRS/BLD/A03-1233186) refusing the application for the carport/garage to be located within the road boundary clearance of 200mm in lieu of the prescribed 6.000m road boundary clearance is set aside and the following decision replaces the decision set aside:-

The roofed carport may be located within the reduced road setback distance from Malbon Street to 200mm to the outermost projection and it is required that the carport remain open on three sides with the roller door fronting Malbon Street to be provided with a gate type door which does not open out over the footpath and the existing garage is not to be converted into living area, is **approved**.

Background

The site consists of an existing dwelling and by view of the photographs provided the carport exists. It would appear from the photos provided that the existing carport is existing and that the main intent of the application is for it to be re-roofed and secured. From the plans and information provided it was unclear whether the carport had an existing approval.

Material Considered

1. Appeal documentation including drawings of the existing building detailing the proposed new roof to the existing carport/garage, which is located within the Malbon Street road boundary setback and the siting requirements sought by the applicant.
2. Written submission and photographs by the applicant and reasons for location of the carport within the Malbon Street road boundary setback area.
3. Correspondence from the Council dated 27 August 2003, refusing the request to permit construction of a carport/garage within the required road boundary setback, in lieu of the required road boundary clearance of 6.000m.
4. Verbal submissions by the representatives of the Brisbane City Council outlining the Council's assessment of the application and giving its reasons for refusal of the construction permit sought.

Findings of Fact

I made the following findings of fact:

1. The site at 1 Gwandalan Street, Eight Mile Plains has two road frontages being Gwandalan Street to the west, which is the longest side of the site and Malbon Street to the south, being the shortest side of the site. Both streets provide direct vehicle access to the site.
2. The site is rectangular in shape, and the dwelling is setback between 6.000 and 3.800m along the road boundary fronting Gwandalan Street. The carport is located to the road boundary setback fronting Malbon Street.
3. Photographs provided showed similar carports located within the required 6.000m road boundary clearance and stated as being within the general neighbourhood.
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 is regular in size and shape. The allotment is rectangular in shape and implies the ability to be accessed directly from both Gwandalan and Malbon Streets. However, the photographs show that the site is surround by a approximately 1.800m high

face brick fence.

The site does not impose any irregularities, which would create difficulty in extending the existing dwelling within the standard SBR setbacks.

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

The structure to which the application is relevant is a roofed carport attached to the existing dwelling. The setback from the southern alignment is proposed to be 200mm to the Malbon Street road alignment.

It appears that it is proposed to replace the existing flat roof on the carport with a gable roof. This roof is similar to the roof pitch of the existing dwelling. The Malbon Street entrance to the carport is currently secured. It is proposed to secure this with a roller door. This door would be required to comply with the definition of a gate, and therefore could not open out onto the footpath area.

The carport would not be able to be enclosed on more than three sides; therefore the carport cannot be enclosed as a garage. The top of the fence on the southern alignment is not permitted to be infilled.

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

As no site visit was requested, the nature of the adjoining buildings was unable to be assessed adequately. Photographic evidence provided by the owner indicates that the neighbourhood is generally a mix of newer one and two storey, masonry dwellings.

(d) whether the allotment is a corner allotment.

The allotment is a corner allotment fronting both Gwandalan and Malbon Streets. The corner is 90 degree and visibility is not diminished by the location of the carport.

(e) whether the allotment has 2 road frontages.

The allotment has two (2) road frontages. Vehicle access appears to be temporarily obstructed from Gwandalan Street by an existing 1.800m high brick fence and the carport is located between the existing garage and the Malbon Street road boundary.

(f) any other matter considered relevant

The location of the carport does not appear to impact significantly upon the existing dwelling and neighbourhood.

6. In assessing the application of Section 48.(4) of the Standard Building Regulation 1993, the local government must be satisfied that the amended proposed road boundary clearance on the allotment would not unduly –

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

The 200mm road boundary clearance to the outermost projection of the roofed carport fronting Malbon Street and as it is to the south of the site, it will have minimal impact on the existing natural light and ventilation of the adjoining allotments or existing dwelling. The proposed roof structure is being changed from a low pitched flat roof to a pitched gable roof.

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

The 200mm road boundary clearance to the outermost projection of the roofed carport fronting

Malbon Street will not impact upon the privacy of the adjoining allotments due to the existing 1.800m brick fence, which appears to surround this site.

The roofed carport will not overlook the adjoining eastern property as it remains at ground level.

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

The 200mm road boundary clearance to the outermost projection of the roofed carport fronting Malbon Street will not unduly restrict the areas of the allotment suitable for landscaping. The carport is constructed over the existing driveway.

A substantial area will remain available for landscaping adjacent to the street frontages.

- *Obstruct the outlook from adjoining allotments.*

The 200mm road boundary clearance to the outermost projection of the roofed carport fronting Malbon Street will not impact upon the outlook from adjoining allotments.

- *Overcrowd the allotment.*

The 200mm road boundary setback to the roofed carport fronting Malbon Street will not overcrowd the allotment.

With these building works, site cover will remain below 50%. There would appear to be no opportunity for additional extensions to be undertaken to the remainder of the existing dwelling as it appears to be constructed to the boundary setbacks.

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

Off-street parking will be affected by the proposed 200mm road boundary clearance, however as there is provision of a double garage on site in addition to the roofed carport carparking has been adequately provided for. Approval would not be given to remove the existing garage doors from the garage to convert the garage into a living area as this would impact on the off-street parking provisions.

The area available for carparking off-street will not change with the proposed construction.

7. Based on the above facts it is considered the appeal is proven.

Reasons for the Decision

An assessment of Section 48.(3) and (4), did not identify any valid reason for supporting the proposed construction application for an unroofed deck front Henzell Street.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 5 November 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
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