



APPEAL
Integrated Planning Act 1997

File No. 3/03/005

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 93 Wadley Street, Macgregor

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 and side boundary setback requirements for the erection of an addition to a dwelling on land described as Lot 222 on RP No. 119348 and situated at 93 Wadley Street Macgregor.

Date and Place of Hearing: 11.00 am on Thursday, 6 February 2003
at 93 Wadley Street Macgregor.

Tribunal: Georgina J Rogers

Present: Applicants
Mr Trevor Anger – Brisbane City Council representative

Decision

The decision of the Brisbane City Council as contained in its letter dated 6 January 2003 (Reference: DRS/BLD/A02-1203067) refusing the relaxation of the road boundary clearance to 4.000m sought for the construction of an addition of a garage, entry and new associated staircase to the front of the dwelling setback in lieu of the prescribed 6.000m and side boundary clearance to 1.500m for additional 2 storey living areas is set aside and the following decision replaces the decision set aside:-

A reduced setback distance to 4.5m to the outermost projection of the addition of a garage, entry and associated staircase to the front of the dwelling from the road boundary clearance, and side boundary clearance to 1.800m for the second level for the living areas and subject to openings in the southern walls being reduced to minimal size and number, is **approved**.

Background

The site has an existing dwelling in the process of being raised and renovated extensively. These renovations include additional garage, entry and staircase and living areas to ground level and additional living areas to the second level. It is proposed to construct these additional areas within the road and side boundary setbacks.

Material Considered

1. Appeal documentation including drawings detailing the proposed garage, entry, staircase and living areas and the siting requirements sought by the applicant.
2. Verbal submission by the applicant and reasons for construction of the garage, entry, staircase and living areas within the front and side boundary setback areas.
3. Correspondence from the Council dated 6 January 2003 refusing the request to permit construction in lieu of the required road boundary clearance of 6.000m and side boundary clearance of 2.000 for the second level.
4. Verbal submission 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.
5. Verbal submission from the applicants and confirmation of their agreement to the amended setbacks.
6. Signed letters from the adjoining neighbour, stating that they had no objection to the proposal, after viewing the plans submitted to Council for approval.

Findings of Fact

I made the following findings of fact:

1. The site at 93 Wadley Street, Macgregor is on the lower side of the road, falling from the north-east to the south-west. The site is generally rectangular in shape.
2. The site is located on a corner lot and has a frontage to Wadley Street, requiring a relaxation in the road boundary setback requirements, and a frontage to Moorgate Street which appeared to comply with the minimum 6.000m setback requirement. There was no application made to build within the existing setback to Moorgate Street.
3. The dwellings constructed within the immediate vicinity appear to be generally of brick-veneer construction of late-1900s construction. These dwellings generally are setback in accordance with the 6.000m requirement.
4. The neighbourhood consists of a mix of one and two storey dwellings.
5. Under section 48 of the Standard Building Regulation 1993, the local government may vary the application of Division 2 – boundary clearances.

6. 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, regular size and shape. The allotment is rectangular in shape and is accessed directly from Wadley Street.

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

The structure to which the application is relevant is proposed to be a combination of one and two-storey construction attached to the existing dwelling. At the ground level the proposed garage, entry and staircase are to be sited within the 6.000m road boundary setback from Wadley Street. The additional living areas are to be constructed 1.500m from the southern side boundary.

At the second level the additional living area is an extension of the existing building closer to the southern alignment. As the site falls away to the south-west the height of the building, close to the southern alignment increases at the finished floor level remain the same. It was concluded that the height of the building adjacent to the southern alignment would not appear to exceed 8.500m. The openings in the southern wall of the new construction have been minimized to reduce overlooking of the adjoining property.

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

The neighbourhood consists of similar two-storey brick veneer dwelling. The adjoining neighbour to the south did not appear to have significant openings in the adjacent wall which could warrant overlooking of either property.

(d) whether the allotment is a corner allotment.

The allotment is a corner allotment fronting both Wadley and Moorgate Streets. The proposed additions do not impact upon the existing setback from Moorgate Street.

(e) whether the allotment has 2 road frontages.

The allotment has two (2) road frontages. Vehicle access has been limited, at this point in time to Wadley Street, where it is proposed to construct the additional garage.

(f) any other matter considered relevant

A letter of approval from the adjoining owners for the proposed structure were considered.

7. 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 4.500m road boundary clearance to the outermost projection of the proposed garage, entry and associated staircase will have minimal impact on the existing natural light and ventilation of the adjoining allotments. The garage extension adjacent to the southern alignment is setback from the adjoining side boundary alignment by 1.500m.

The 1.800m side boundary clearance to the outermost projection of the second level living areas will have minimal impact on the natural light or ventilation of the adjoining allotment to the

south.

This structure will not intrude into the required 6.000m road boundary clearance and it is proposed that the roof will be a hip roof at the side boundary, which further minimizes any impact upon light and ventilation to adjoining allotments.

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

The 4.500m road boundary clearance to the outermost projection of the proposed garage, entry and associate staircase will not obstruct the privacy of the adjoining allotment.

The 1.800m side boundary clearance to the outermost projection of the second level living areas will not obstruct the privacy of the adjoining allotments.

This will be achieved by reducing the number and size of openings located in the walls adjacent to the southern side boundary alignment.

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

The 4.500m road boundary clearance to the outermost projection of the proposed garage, entry and associate staircase will not unduly restrict the areas of the allotment suitable for landscaping.

The 1.800m side boundary clearance to the outermost projection of the second level living areas will not unduly restrict the areas of the allotment suitable for landscaping.

A substantial area will remain landscaped adjacent to the street frontages and the outdoor recreation area to the west will remain.

- *Obstruct the outlook from adjoining allotments.*

The 4.500m road boundary clearance to the outermost projection of the proposed garage, entry and associate staircase will not unduly obstruct the outlook from adjoining allotments, as the adjoining dwellings are located away from the proposed structures.

The 1.800m side boundary clearance to the outermost projection of the second level living areas will not unduly obstruct the outlook from adjoining allotments, as openings are minimized in size and height to avoid this happening.

The existing dwelling is currently two-storey. With the proposed extension being a combination of one and two-storey the outlook from the adjoining allotments should not change significantly and therefore not unduly obstruct their outlook.

- *Overcrowd the allotment.*

The proposed 4500m road and 1.500m side boundary clearances will not overcrowd the allotment.

With the increased building works site cover will remain below 50%.

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

Off-street parking will not be affected by the proposed 4.500m road boundary clearance.

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

construction.

8. 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 refusing the amended construction application.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 26 February 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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