



APPEAL
Integrated Planning Act 1997

File No. 3-04-024

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: 4-6 Skyline Court, Eight Mile Plains.

Nature of Appeal

Appeal under Section 21 of the *Standard Building Regulation 1993* against the decision of Brisbane City Council NOT to grant a set back variation for a proposed covered verandah to be erected on land described as Lot 130 SP 153397 Parish of Yeerongpilly and situated at 4-6 Skyline Court, Eight Mile Plains.

Date and Place of Hearing: 9.30am. Thursday, 6th. May, 2004.
4-6 Skyline Court, Eight Mile Plains.

Tribunal: Peter John Nelson

Present: Applicant
Mr. Lawrie Areil – Draftsman
Mr. Robert Hayter – Carpenter/Supervisor

and later outside the residence at 10.00am -
Chris Diggles – representing Brisbane City Council

Decision:

The decision of the Brisbane City Council as contained in its letter of refusal dated 6th. April, 2004 is **SET ASIDE**, and the following decision replaces the decision set aside :-

The position of the covered verandah as shown on the plans submitted with the appeal showing a set back of 200mm. to the rear boundary, is **APPROVED** subject to the following conditions :-

- a. The gully pits agreed to be supplied and installed into the stormwater drains of the next door neighbours property are completed at a time when requested to be fitted by the neighbour.
- b. The set back off the western boundary shall remain as shown at 200mm. min. to outermost

projection.

- c. The back of the fence and verandah wall to the western boundary of the covered verandah is to be painted and finished in the same colours as the existing house at the cost of the appellant.

Background

The Council was asked to investigate the downpipes of the applicant's property that serviced this covered verandah because they were emptying rainwater directly into the neighbour's property. When the Council Inspector saw the problem he was instantly aware that the applicant had infringed on the boundary set-back regulations. The applicant was informed that he had infringed and would have to reconstruct the covered verandah in accordance with the approved and stamped plans. The approved plans showed that the last 1500mm. of the verandah had a pergola over the verandah only. The applicant made an application to Council for a boundary relaxation but was refused.

Material Considered

1. Appeal documentation.
2. Plan sheets 1, 2, 4, 5 & 7 prepared by Lawrie Ariel not dated or numbered.
3. Verbal submission from Brisbane City Council officers.
4. Verbal submissions from the appellant, his draftsman and carpenter/supervisor.
5. Statement from the neighbour's dated 31-3-2004.
6. On site inspection.
7. The Queensland Development Code.

Findings of Fact

I made the following findings of fact:-

1. Lot 130 has a large two-storey residence erected on the site. The recreation area is on the western side.
2. The shape of the land follows the curvature of the turn around of the cul-de-sac of Skyline Court.
3. The offending rear covered verandah is already constructed to a very high standard with substantial water features in place.
4. The offending water downpipes had been relocated to inside the applicant's boundary and were linked by stormwater pipe to the existing stormwater system of the residence.
5. The set back relaxation requested only affects about 4 meters of the boundary; the rest of the set back is considerably in excess of the requirements.
6. The original application was lodged with Brisbane City Council during the month of March, 2004, as a *Siting Variation (Relaxation) Application* form issued by Brisbane City Council. The *Neighbours Statement* was completed and signed on 31-3-2004, and was assessed under *The Standard Building Regulation 1993 – section 20*. On the 14th. November, 2003 the *Standard Building Regulation 1993* was amended to adopt the *Queensland Development Code*. This appeal has been re-assessed under Part 12 of the *Queensland Development Code*, which allows variation to set back requirements under certain conditions. In this case the Performance Criteria have been assessed taking into account the enhanced amenity of the verandah area and the way it relates to the proposed residence as well as the adjoining neighbour's outlook.

Reasons for the Decision

1. The neighbour has agreed to the existing structure remaining unaltered providing the stormwater issues are addressed. The downpipes servicing the roofed area have been relocated so as to be unobtrusive to the neighbour and are now linked to the applicant's stormwater system.
2. The offending roof area is 4 meters in length and does not overshadow or otherwise impinge on the adjoining property.
3. The applicant has agreed to supply and fit two gully pits in the neighbour's yard, at the direction of the neighbour's plumber, at the time requested by the neighbour.
4. To bring the covered verandah into line with existing set back requirements would mean the removal of three rows of tiles, relocating the guttering etc. and then probably covering the exposed battens with shade cloth or similar to cut down the western sun. This 'remedy' would make the covered verandah unusable to the applicant during rainy days, and would be an eyesore to the neighbours. The way the verandah has been finished is to a high standard and is pleasing to the eye from both viewing points.

PETER JOHN NELSON
Building and Development Tribunal
Date: 18th. May, 2004.

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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