

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Brisbane City Council

Site Address: 12 Regina Street, Stones Corner.

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 construction of a carport and extension in a position observing a clearance of (a) 3.58 metres from the road boundary alignment, in lieu of the prescribed 6.0 metres building line, (b) 1.95 metres from the side boundary alignment, in lieu of the prescribed 2.0 metres building line and (c) 0.95 metres from the side boundary alignment, in lieu of the prescribed 2.0 metres building line. The carport and extension is proposed to be constructed on land described as Lot 2 on RP No. 110210 and situated at 12 Regina Street, Stones Corner.

Date and Place of Hearing: 2:30 pm on Friday 1 August 2003 at 12 Regina Street, Stones Corner.

Tribunal: B J Williamson

Present:	B J Williamson	Tribunal Referee
	Owner	
	M Dawson	Brisbane City Council

Decision:

The decision of the Brisbane City Council in its letter dated 17 June 2003 (Reference: DRS/BLD/A02-1223569) not to grant approval to vary the siting requirements for the construction of a carport and extension in a position observing a clearance of (a) 3.58 metres from the road boundary alignment, in lieu of the prescribed 6.0 metres building line, (b) 1.95 metres from the side boundary alignment, in lieu of 2.0 metres building line and (c) 0.95 metres from the side boundary alignment, in lieu of the prescribed 2.0 metres building line **is changed** to allow the erection of the extension subject to the following conditions:

- (a) The front stairs is not to be fully enclosed or roofed and is to observe a clearance of 0.95 metres from the SW side boundary alignment and is to observe a clearance of 3.58 metres from the road boundary alignment; and
- (b) The rear verandah is to observe a clearance of 1.95 metres from the SW side boundary alignment; and
- (c) The side verandah on the NE side of the dwelling is to have:
 - 1) a privacy screen system between the verandah balustrade and the verandah roof plate on the NE elevation of the side verandah; and
 - 2) the opening spaces between the 1 metre high verandah balustrade and the verandah roof plate on the NW and SE ends of the side verandah are to remain unenclosed; and
 - 3) any external enclosure (if provided) on the ground level area under the side verandah shall be lattice like work or grille enclosure having openings constituting not less 50% of the covered area of the side verandah and the openings in the lattice work or grille enclosures are not to be closed by the storage of equipment and the like; and
 - 4) a clearance of 1.55 metres from the NE side boundary alignment is to be observed.

Background:

The existing two storey dwelling (on a 17.1 metre wide allotment) is being renovated. In order to provide additional accommodation the ground level garage is to be converted for other accommodation purposes, two carports are to be erected on the site, the front stairs is to be relocated because of the location of one of the carports and a verandah is to be erected on the NE and the SE sides of the dwelling. The appeal items are (1) the 0.95 metres boundary clearance from the SW side boundary alignment and 3.58 metres boundary clearance from the road boundary alignment for the relocated front stairs, (2) the 1.95 metres boundary clearance from the SW side boundary alignment for the verandah extension at the rear of the dwelling and (3) the 0.95 metres boundary clearance from the NE side boundary alignment for the verandah extension at the side of the dwelling. There was no request for boundary relaxation for the carports.

Material Considered

1. Copy of proposed additions and alterations drawings (sheets 1 to 4 of job no. 031197 dated Feb. 2003).
2. Copy of Siting Variation (Relaxation) Application No 1223569 together with Part 2 the neighbour's statement and Part 3 assessment.
3. Copy of letter dated 17 June 2003 from the Brisbane City Council.
4. Copy of Form 10 – Building and Development Tribunals Appeal Notice
5. Verbal submission at the hearing by the representative of Brisbane City Council outlining the reasons stated on the Council's letter.
6. Verbal submission at the hearing by the owner outlining the reasons for the extensions as proposed.
7. Verbal discussion with the owner on 1 August 2003 after the hearing.
8. Verbal discussion on 4 August 2003 with the representative of Brisbane City Council concerning comments by the owner after the hearing.
9. Verbal discussions on 18 & 21 August 2003 with the owner.

Finding of Fact

I made the following findings of fact:

1. The existing dwelling is being renovated and enlarged to provide additional accommodation that the owner requires.
2. The proposed additions, the two carports and the existing dwelling extensively cover the front half of the site.
3. In order to improve the accommodation in the dwelling there is merit in the provision of a verandah.
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 has a 17.1 metre wide frontage and is 40.234 metres deep and slopes from the rear to the front. The adjoining allotments are both larger with a block of units on each adjoining allotment.
 - *The nature of any proposed building or structure on the allotment.*
There is an existing 2 storey dwelling on the site. The proposed building work involves:
 1. 14.2 metre long 3 metre wide verandah at the rear of the dwelling.
 2. 7.2 metre long 3.9 metre wide verandah on the NE side of the dwelling.
 3. Relocation of the front stairs.
 4. Construction of 2 carports (which are not part of this appeal).

- *The nature of any existing or proposed buildings or structures on adjoining allotments.*
On the western adjoining allotment is a brick two storey block of units.
On the eastern adjoining allotment is a brick four storey block of units.
 - *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 two (2) road frontages.
 - *Any other matter considered relevant.*
The eastern side verandah in the **position proposed** could present a fire risk to any future building work in the open space of the eastern adjoining allotment.
5. 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.*
The proposed side verandah 0.95 metres from the eastern side boundary at certain times of the day will restrict some natural light to part of the adjoining eastern allotment. The other extensions will not obstruct natural light and ventilation to any of the adjoining allotments.
 - *Interfere with the privacy of an adjoining allotment.*
The proposed verandah 0.95 metres from the eastern side boundary will interfere to some extent with the privacy of the adjoining eastern allotment.
 - *Restrict the areas of the allotment suitable for landscaping.*
Although the proposed additions will limit landscape work in the front half of the site, there is ample room the rear of the allotment for landscaping.
 - *Obstruct the outlook from adjoining allotments.*
The proposed additions will not unduly obstruct the outlook from the adjoining allotments.
 - *Overcrowd the allotment*
The Council considered that the proposed extensions together with the existing dwelling would overcrowd the front half of the allotment. There is some merit in this concern.
 - *Restrict off-street parking for the allotment.*
The proposed extensions (which include the construction of two carports) will not restrict off-street parking.
 - *Obstruct access for normal building maintenance.*
The extensions as proposed will not obstruct access for normal building maintenance.
6. As it was indicated that the body corporate for both block of units supported the proposal, no discussions were held with these body corporates.

Reasons for the Decision:

1. An assessment of Section 48.(3) & (4), identified the following concerns:
 - Some natural light problem with the side verandah 0.95 metres from eastern side boundary;
 - Some overcrowding of the front half of the allotment;
 - Some reduction in space for landscaping in the front half of the site;
 - Some privacy concern for the eastern adjoining allotment; and

- Fire safety concern for future building work on the eastern adjoining allotment if the eastern verandah was to be erected 0.95 metres from the boundary.
2. Being aware of the above concerns and taking all other factors into consideration there were grounds for some boundary relaxations.
 3. The front stairs is to be relocated with a western boundary clearance of 0.95 metres to enable the construction of the carport in front of the dwelling. Provided the stairs are not fully enclosed and not roofed, it would not obstruct the outlook from the adjacent block of units and will not present a fire risk to the adjoining allotment. Regarding privacy, the relocated stairs will not significantly change the situation that currently exists with the open front verandah. The new stairs will be approximately the same distance from the road boundary alignment as the existing stairs and, therefore, the requested 3.58 metres clearance from the road boundary alignment was considered a reasonable request.
 4. The rear verandah side boundary clearance of 1950 mm is the same as the boundary clearance between the existing wall of the dwelling and the western boundary and therefore is a reasonable proposal.
 5. In theory the additional accommodation can be achieved by extending the verandah at the rear of the dwelling. However, with a SE orientation the rear verandah would be undesirable at certain times of the year (especially during winter). A verandah on the NE side of the dwelling would provide better all year round acceptable climatic living conditions. Furthermore, the owner advised on 18 August 2003 that the space below the side verandah was needed for the storage on the site of a trailer and equipment to avoid objections from neighbours regarding unsightly storage of these items on the site. To enable trailers of various widths to be accommodated under the verandah, it was argued that the width of the space under the verandah should be the same as the carport in front of verandah. This was considered to be reasonable.
 6. The 3.3 metre wide side verandah would result in a side boundary clearance of 1.55 metres in lieu of the normal 2 metre building line. By requiring the side verandah to be basically an open verandah the fire load on the verandah would be low and in the event of a fire on the verandah, the heat would be dissipated quickly to the open air by the openings at the NW and SE ends of the verandah so that high fire temperatures would not be achieved on the verandah. Regarding the fire load of possible equipment stored below the verandah, this would be similar to that in a normal enclosed garage. By restricting the external enclosures under the side verandah to use only open lattice work or grille enclosure system, will quickly dissipate the heat from a fire in this area to the open area and thereby minimise a fire under the verandah achieving a high temperature. Because of these open ventilation requirements for the side verandah and the space below the verandah, I am of the view that the 1.55 side clearance will provide adequate fire safety to the adjoining allotment.
 7. The provision of a privacy screen system between the verandah balustrade and the verandah roof plate on the NE elevation of the side verandah will provide an acceptable level of privacy for the adjacent eastern property.
 8. By reducing the width of the side verandah from the requested width of 3.9 metres to 3.3 metres:
 - will remove the natural light problem for the adjoining eastern allotment;
 - will result in building work that does not **unduly** overcrowd the front half of the allotment (the original scheme layout presented an overcrowding problem in the front half of the site); and
 - will also increase the area for landscaping in the front half of the site.

B J Williamson
Building and Development
Tribunal Referee
Date: 25 August 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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 04 03: Facsimile (07) 3237 1248