



APPEAL
Integrated Planning Act 1997

File No. 3-03-039

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Redland Shire Council

Site Address: 2 Blaxland Street (cnr. Wentworth Drive), Capalaba

Nature of Appeal

Appeal under Section 4.2.9. of the Integrated Planning Act 1997 against the decision of the Redland Shire Council to refuse an application for a Preliminary Development Permit for a covered patio adjacent to a pool to a detached house on land described as Lot 1 RP 125291 and situated at 2 Blaxland Street, Capalaba.

Date and Place of Hearing: 10.00 am on Thursday 24 July, 2003
At 2 Blaxland Street, Capalaba

Tribunal: Dennis Leadbetter Referee

Present: Owners
Mike Ryan Redland Shire Council

Decision

The decision of the Redland Shire Council as contained in its decision notice dated 6 June, 2003, reference BD122662, not to grant approval to permit the erection of a covered patio to a detached house within the road alignment setbacks is **set aside**.

The covered patio may be erected within the Blaxland Street road boundary setback to within 3 metres of the alignment to the outer most projection.

Background

The application was for permission to erect a covered patio to the eastern side of an existing double

story detached house within the 6 metre road boundary clearance.

The Redland Shire Council had refused the application on the grounds the proposed extension was a class 1 structure and did not comply with the requirements of the SBR section 36

Material Considered

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Redland Shire Council;
- 3 Letter from Redland Shire Council not to approve the covered patio;
- 4 Verbal submissions by the owners, explaining the reasons why the relaxation should be granted;
- 5 Verbal submission by Mr Mike Ryan, Redland Shire Council, explaining the reasons why the application should not be granted;
- 6 An agreement between the parties of an acceptable solution; and
- 7 The Standard Building Regulation 1993

Findings of Fact

I made the following findings of fact:

1. The detached dwelling is of two storeys, with a hip roof. The dwelling has a swimming pool located to the south east corner of the site adjacent to the proposed covered patio.
2. The area is intended to be used as a covered shelter adjacent to the pool and as outdoor covered entertaining area.
3. The area currently is fenced with a high colorbond metal fence.
4. The site and surrounding areas slope to the north, and the site has been cut approximately 1.5 metre at the southern side around the pool area, and the area concerned is approximately at natural ground level.
5. The proposed extension would provide some aesthetic interest to the existing “box like” structure, and would enhance the street appeal by providing varying depths and interest to the streetscape.
6. The adjoining owners have no objection to the development and Redland Shire Council have copies of those letters.
7. Under Section 48 of the SBR, a local government may vary how Division 2 applies to the application after considering under Section 48(3), the following points:-

- a. *The level, depth, shape or condition of the allotment and adjoining allotments.*

The allotment and the adjoining allotments fall to the north, and are of generous proportions. Buildings on adjoining allotments generally comply with the siting requirements under Division 2 of the SBR. The property opposite is in the process of erecting a carport to the street alignment

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

The allotment currently has a modest detached high set dwelling, consisting of a fc clad base and chamfer board clad timber upper storey.

c. *The nature of any existing or proposed building or structure on the adjoining allotments.*

The surrounding residences are detached, both single and double storey, generally of similar size, and present multifaceted facades to the streetscape.

d. *Whether the allotment is a corner allotment.*

The allotment is a corner allotment and the proposal is to the secondary street.

e. *Whether the allotment has 2 road frontages.*

The allotment has two road frontage.

f. *Any other matter considered relevant.*

The proposal is to provide a covered area adjacent to the pool for supervision of children in the pool and for covered barbecue and entertaining area.

The relationship of a redesigned proposed structure to the existing structures and streetscape would be sympathetic.

11. In varying the siting requirements, the local government must be satisfied that a building or structure, built on the allotment in the way proposed, would not **unduly** –

a. *Obstruct the natural light and ventilation of an adjoining allotment.*

The proposed covered patio extension is on the east side of the site, and because of the topography and existing landscaping, which will remain, will have no impact on natural light or ventilation to the adjoining allotments.

b. *Interfere with the privacy of an adjoining owner.*

The proposed covered patio will not impact on the privacy of adjoining owners.

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

The area of the site to the streetscape for landscaping will not be reduced by the covered patio as the area is currently used as a barbecue area and is hard landscaped, however there are other substantial areas of the site to the street alignment available for landscaping.

d. *Obstruct the outlook from the adjoining property.*

The proposed covered patio, being limited to approximately 2.7 meters in height, and having cognisance of the topography, would not obstruct the outlook from the adjoining property.

e. *Overcrowd the allotment.*

The existing structure, and the proposed covered patio covers only a small area of the site.

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

The proposal will not reduce or impact on available off street parking.

g. *Obstruct access for normal building maintenance.*

The development will not impact on access for maintenance as there is adequate access and space for maintenance operations.

Reasons for the Decision

Sections 48 (3) and (4) of the SBR allows for local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and use of the proposed structure and existing structures and their siting on the adjoining allotments, and the limited impact the covered patio would have on the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the road alignment setback to allow a covered patio to be constructed within the 6 metre road boundary set back as nominated in the decision.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip Proj. Man. QUT; METM UQ

Building and Development

Tribunal Referee

Date: 29 July, 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
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248