



APPEAL
Integrated Planning Act 1997

File No. 3/04/025

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 2 Mars Street, Wilston

Applicant:

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Brisbane City Council in relation to a request to change a development approval, not to grant an approval for a portico in the location of 0.0m setback clearance from the outermost projection from the road (Macgregor Street) boundary alignment in lieu of the prescribed 4.0m road boundary setback, on land described as Lot 84 on RP No. 42843, Parish of Enogerra and situated at 2 Mars Street, Wilston.

Date and Place of Hearing: 10.00 am on Wednesday, 19 May, 2004
at the office of the Department of Local Government, Planning, Sport
and Recreation, Level 25, Mineral House, 41 George Street,
Brisbane.

Tribunal: Georgina J Rogers

Present: Owners
Brisbane City Council representative

Decision

The decision of the Brisbane City Council as contained in its letter dated 13 April 2004 (Reference: DRS/BLD/A04-1252855) refusing the relaxation of the road boundary clearance to 0.000m sought for the construction of a new portico to the Macgregor Street frontage of the dwelling of the site is set aside.

Background

The site is located on the corner of Mars and Macgregor Streets, Wilston. No site visit was undertaken. The site plan indicates that Mars Street is to the north of the site.

There is an existing dwelling on site, which has been recently enclosed underneath and the main entrance has been made directly to the lower ground level instead of to the upper level.. The dwelling is currently located 1.400m from the eastern alignment, being Macgregor Street. A new double carport has been approved and constructed to the south of the site and this carport has been setback 1.400m in line with the existing dwelling.

The proposed portico connects the eastern (Macgregor Street) entrance with the boundary alignment fence, providing weather protection to the entrance door and access from the street frontage. The portico is partially constructed and from the photographs presented it appears that the portico does not extend beyond the fence line.

Material Considered

1. Appeal documentation included drawings indicating the portico to be setback from the Macgregor Street alignment 0.000m and to connect to the existing dwelling which is setback 1.400m from the same alignment;
2. Drawing No. 1 of Job No. 1899, dated February 2003.
3. Verbal submission by the owner and reasons for construction of the portico setback 0.000m from the eastern boundary alignment being Macgregor Street.
4. Correspondence from the Brisbane City Council dated 13 April 2004, not granting approval for the siting of a portico 0.000m setback from the eastern boundary alignment, being Macgregor Street frontage, in lieu of the prescribed 4.000m;
5. Verbal submissions by the representative of the Brisbane City Council outlining the Council's assessment of the application;
6. The Standard Building Regulation 1993; and
7. The Queensland Development Code, Part 12.

Findings of Fact

I made the following findings of fact:

1. The owners had engaged a builder to undertake extension and renovation works on their dwelling at 2 Mars Street, Wilston.
2. The Brisbane City Council's wrote to the owner on 13 April 2004 (Reference: DRS/BLD/A04-1252855) not approving the siting requirements for a portico to have a road boundary (Macgregor Street) setback of 0.000m in lieu of the prescribed 4.000m. The existing dwelling is currently setback only 1.400m from the road boundary (Macgregor Street) alignment. Existing awnings at the first level, along the Macgregor Street frontage appear to extend out approximately 0.600m into the 1.400m setback to the wall alignment. It would therefore appear that the real existing setback to the outmost projections of the

dwelling along Macgregor Street is approximately 0.800m.

3. The SBR was amended and the Queensland Development Code commenced on 14 November 2003. This application has been assessed under the QDC, Part 12.
4. The site at 2 Mars Street, Wilston is a corner site with frontages to Mars Street (north) and Magregor Street (east) and is located on the south-western side of the corner.
5. From the plans provided it appears that the site falls from the north (Mars Street) to the south. The site is regular in shape with a 15.730m frontage to Mars Street and a 40.230m frontage to Macgregor Street. Vehicle and pedestrian access is provided from both street frontages.
6. The QDC, Part 12 sets out Performance Criteria P1-P8 in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application and that the development does not unduly conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

The portico appears to be have been designed and located to complement the existing dwelling and new boundary fence. The fence appears to be stepped down the site and the portico is level with the external footpath. A gable has been provided over the portico and this is similar is character to the gables on the existing dwelling.

The provision of the portico along the Macgregor Street frontage has added to the amenity of the existing dwelling and neighbourhood by breaking the long façade of the building. Existing awnings at the first level, along the Macgregor Street frontage duplicate the character of the portico.

(b) the road boundary setbacks of neighbouring buildings or structure

The owners provided photographic record of similar dwellings within the neighbourhood. While it is difficult to assess the setback distances it appears that generally the neighbourhood consists of similar character dwelling with carports or porticos connecting the existing dwelling with the road boundary fence alignment.

(c) the outlook and view of neighbouring residents

The outlook and view from the adjoining neighbours and residents should not be unduly affected by the construction of the portico in this location

The site is a corner site and the existing dwelling is located close to the eastern alignment. At the portico does not existing above the ground level, and extends out to the fence line approximately 0.800m more than the existing awnings, it is unlikely that the neighbourhood will be affected by any adverse impact.

(d) nuisance and safety of public

The development would not cause any nuisance or increased safety issues to the public as the portico does not extend beyond the existing boundary alignment and fenceline.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of the portico will have no impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling except to provide valuable weather protection to the entrance door and opening.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The location of the portico will have no impact on the extent of daylight and ventilation to habitable rooms of the neighbourhood dwellings as the portico connects between the existing dwelling and boundary alignment fronting Macgregor Street, which is on a corner allotment.

P3 Adequate open space is provided for recreation, service facilities and landscaping–

The location of the portico has no impact on the extent of open space provided for recreation, service facilities and landscaping for the dwelling as these have been allowed for in the southern area of the site. The areas to each side to the portico will be landscaped and therefore add to the amenity of the streetscape.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The portico will not overshadow the adjoining houses as it is located away from the neighbours and fronts Macgregor Street. In addition it does not extend above one storey and the existing dwelling is currently two storey.

(b) obstruct the outlook from adjoining lots

The portico will have minimal impact upon the outlook of the adjoining allotments.

The portico will not create any obvious visual obstructions to the neighbourhood, which would be over and above what is acceptable to this suburban allotment.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The portico does not affect the privacy of the neighbourhood.

P6 The location of a building or structure facilitates normal building maintenance–

The setbacks shown provide adequate access for normal building maintenance onto the site.

P7 The size and location of structures on corner sites provide for adequate sight lines–

The allotment is a corner lot and the construction of the portico in the location shown should not affect normal sight line requirements. The portico appears to be located well back from the corner of the site. Access to and from the site does not appear to be diminished by the location of the portico under discussion.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing as provision has been made for on-site carparking.

(b) *the availability of on-street parking*

The availability of on-street parking is not relevant to this hearing.

(c) *the desirability of on-street parking in respect to the streetscape*

On-street car parking will not be affected by the proposed development.

(d) *the residents likelihood to have or need a vehicle*

The proposed development includes the provision for minimum two on-site car parks.

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

Reasons for the Decision

QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.

In assessing the criteria from this part of the Code in relation to the proposed use of the structure, its relationship to the existing dwelling on site and the adjoining neighbourhood, the Tribunal found that there were grounds to vary the side boundary setback to allow for the location of the an portico in the location shown.

An assessment of QDC, Part 12, did not identify any valid reason for refusing the Change of Development Application for a portico setback minimum 0.000m from the road boundary (Macgregor Street) alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 16 June 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:

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