



APPEAL
Integrated Planning Act 1997

File No. 03-03-025

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council.

Site Address: 29 The Esplanade Toorbul.

Nature of Appeal

An appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Caboolture Shire Council to refuse an application for a road boundary setback relaxation for a proposed unroofed patio to be erected on land described as Lot 4 RP 108507 and situated at 29 The Esplanade, Toorbul.

Date and Place of Hearing: The hearing commenced at 11.15 am, on Wednesday May 14 2003, on site at 29 The Esplanade, Toorbul

Tribunal: Bert Dean.

Present: Mr. Alan Greet – Applicant representing the owners.
Mr. Chris Harris Caboolture Shire Council.

Decision

The Councils' decision to refuse the application for boundary setback relaxation is set aside. It is the decision of the Tribunal to grant approval in principle to the reduced front boundary setback shown in the application, that is, a front boundary setback of 5.00m to the outermost projection of the unroofed patio in lieu of the 6.0m normally required.

The Council is required to resume processing of the application for a development permit with the view to approving the building work at the boundary setback distances shown in the application.

Background

The applicant applied to the Council for approval to construct alterations and additions to the existing dwelling at 29 The Esplanade Toorbul. The proposal included an unroofed open deck on the front of the dwelling at a setback of 5.0m in lieu of the normally required 6.0m setback.

Council refused the application advising, "because in Council's opinion the patio roof could be adequately located on the property to meet the minimum setback requirements, it would be unsatisfactory for Council to grant relaxation in this case."

It should be noted that the development application documentation contained no information in support of, or explanation of the implied request for setback relaxation.

The adjoining owner on the eastern side provided written advice that they had viewed the plans for the proposed building work and raised no objection. This letter accompanied the appeal documentation. The applicant at the hearing again presented this letter.

It should be noted that Council was not provided with a copy of the letter with the original application to Council, it having been signed by the adjoining owner six days after the date of the Councils' letter of refusal.

Material Considered

1. Appeal documentation lodged by the applicants, including architectural drawings numbered 2208, WD-01 to WD -04. In addition to other details these drawings showed the siting of the proposed patio in relation to the existing dwelling and property boundaries.
2. Correspondence from the Council dated 25 March 2003 refusing the application for relaxation, giving reasons and advising the applicants of appeal provisions.
3. Verbal submissions from the applicants supporting the proposed development.
4. Verbal submissions from the representative of the Caboolture Shire Council outlining the Councils assessment of the application. The representative advised that just prior to the hearing and during the hearing, the site circumstances, nature of adjoining property, and the relatively minor nature of the relaxation sought had been re-evaluated. The Council now raised no objection to the proposal and would approve the relaxation sought.
5. Inspection of other development in the area, the development site, adjoining property and adjoining roadway, noting the facts and circumstances of other development in the area in relation to the proposal being considered.
6. Correspondence from the adjoining neighbour on the Eastern side advising they had viewed the plans for the proposed building work and had no objections whatsoever to the proposal.

Findings of Fact

I made the following findings of fact

1. The dwelling at 29 The Esplanade Toorbul is a single storey building having a road boundary set back of 6.00m.
2. Eastern side boundary setback is 4.5m as shown in the drawings. This area along the side of the dwelling is currently required to provide paved driveway access to the garage in the rear corner of the property.

3. Construction of an elevated patio over the driveway area would have an undesirable impact on the privacy of the adjoining neighbour.
4. The terrain in the area is generally flat with only relatively minor variations in natural ground level.
5. There are several examples of dwellings fronting The Esplanade having front boundary setback distances less than 6.0m
6. In assessing the application of Section 48 of the Standard Building Regulation 1993, the local government is required to consider the following matters:

(a) the levels, depth, shape or conditions of the allotment and adjoining allotments

The allotment and adjoining allotments are of similar size and are generally of regular shape. The proposed development does not introduce detrimental effects and does not require special actions in response to this criteria.

(b) the nature of any proposed buildings or structures on the allotment

There are precedents for relaxed front boundary setbacks in the area. The proposed patio has a relatively small area within the 6.000m setback and complies with requirements for setback from the side boundary.

The location, extent and nature of the proposed patio are such that it will have little or no negative impact in the area.

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

There are existing buildings and structures on allotments fronting The Esplanade, providing precedents supporting approval of the proposed reduced setback. Approval of the development at the setback proposed would not result in the finished structure being in extreme conflict with the nature of similar development in the area. It is considered the 1.0m relaxation does not provide significant additional precedent in the area.

There was no indication that buildings or structures on adjoining allotments are proposed.

(d) whether the allotment is a corner allotment

This is not a corner allotment.

(e) whether the allotment has two road frontages

This allotment has only one road frontage.

(f) any other matters it considers relevant

The Council's decision notice did not indicate that it had considered any particular matters under this criteria.

7. Under Section 48 (4) of the Standard Building Regulation the local government must also be satisfied that a relaxation would not unduly: --

(a) obstruct natural light or ventilation of an adjoining allotment

The proposed relaxation sought for this development does not give rise to any such obstruction.

(b) interfere with the privacy of an adjoining allotment

The proposed setback relaxation does not interfere with privacy of any adjoining allotment. Approval of the relaxation provides the opportunity to preserve existing privacy on an adjoining allotment.

(c) restrict the areas of the allotment suitable for landscaping

The proposed relaxation will not restrict areas suitable for landscaping.

(d) obstruct the outlook from adjoining allotments

The relaxation sought is of a minor nature and will not unduly obstruct outlook from adjoining allotments.

(e) overcrowd the allotment

The proposed patio within the normal front setback will not overcrowd the allotment.

(f) restrict off-street parking for the allotment

The proposed development will not restrict off street parking for the allotment.

(g) obstruct access for normal building maintenance

Access for normal building maintenance will not be restricted as a result of the proposed relaxation of front set back.

Reasons for the Decision

The proposed development, incorporating a front boundary setback relaxation of 1.0m satisfies all the requirements of Section 48 of the Standard Building Regulation. It will have no adverse impact on any adjoining allotment.

The Council's representative at the hearing advised that after sighting the letter of comments from the adjoining neighbour on the eastern side, and re-assessment of the circumstances of the site and adjoining property, the Council had no objection to approval of the request for the front boundary setback relaxation as shown in the drawings submitted for approval.

It is therefore the decision of the Tribunal that Councils' decision to refuse the application for boundary setback relaxation is set aside. It is the decision of the Tribunal to grant approval in principle to the reduced front boundary setback shown in the application, that is, a front boundary setback of 5.00m to the outermost projection of the unroofed patio in lieu of the 6.0m normally required.

The Council is required to resume processing of the application for a development permit with the view to approving the building work at the boundary setback distances shown in the application.

Bert Dean
Building and Development
Tribunal Referee
Date: 20 May 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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