



APPEAL
Integrated Planning Act 1997

File No. 3-03-001

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Redland Shire Council

Site Address: 2 Kriskyle Place, Thornlands.

Nature of Appeal:

Appeal under Section 4.2.9 of the Integrated Planning Act 1997, against the decision of the Redland Shire Council to impose a condition on a Development Application Decision Notice (Application Reference No: BD 120479) for the erection of a roofed patio, granting a relaxation of the road frontage setback to not less than 4.5 metres to the outer most projection, in lieu of the relaxation requested on land described as Lot 179 SP 148415 and situated at 2 Kriskyle Place, Thornlands.

Date and Place of Hearing: 10:00 am, Thursday 9 January 2003
at 2 Kriskyle Place, Thornlands.

Tribunal: B J Williamson

Present: Owner
J Hollyman Redland Shire Council

Decision

The decision of the Redland Shire Council to impose a condition on a Development Application Decision Notice (Application Reference No: BD 120479) for the erection of a roofed patio granting a relaxation of the road frontage setback to not less than 4.5 metres from Clifford Perske Street to the outer most projection of the building is **changed** to allow the erection of a roofed patio whose outer most projection is not to extend more than 3.0 metres from the existing external wall of the dwelling facing Clifford Perske Street, Thornlands.

Background

The existing dwelling is located on an allotment bounded by 3 streets. The allotment is about 1.8 metres above Clifford Perske St and access to the site is from Kerder St. The proposal is to erect a roofed patio on the Clifford Perske Street side of the dwelling. The Redland Shire Council agreed to the erection of this patio provided that the road boundary clearance from Clifford Perske Street was not less than 4.5 metres. This gave a patio width of about 1.2 metres, which was significantly less than that required by the owner.

Material Considered

1. Plan showing the owner's request for a 3.6 metre wide roofed patio measured from the eaves of the building, which would require a road boundary clearance of 1.7 metres from Clifford Perske Street.
2. Plan based on the suggestion of the Council officer giving a 1.2 metre wide roofed patio that extended around another side of the dwelling and gave a boundary clearance of 4.6 metres to Clifford Perske Street.
3. Verbal submission by the representative of Redland Shire Council stated that when the dwelling was erected, the site was allowed a 4.0 metre boundary setback from Kerder Street, 4.84 metre boundary setback from Kriskyle Place and 5.86 metre boundary setback from Clifford Perske Street. He also pointed out that when the site inspection was made regarding the 4.5 metre setback for the roofed patio, the 1.8 metre high fence to Clifford Perske Street frontage was not erected and that he was not aware that an inground pool was to be constructed on the corner section of the site facing Clifford Perske St and Kriskyle Place.
4. Verbal submission made by the owner indicating that the roofed patio was required for a shaded play area for his children, a shaded area where the parents could supervise the children in the swimming pool, provide weather protection for a door and be used as an outdoor entertainment area.
5. The owner and the Council officer stated that no third party had a standing in the matter.
6. Standard Building Regulation 1993.
7. Form 10 – Building and Development Tribunals Appeal Notice dated 2 January 2003.

Findings of Fact

I made the following findings of fact:

1. A 1.2 metre wide patio was not wide enough to encourage the parents to stay under the roofed patio to supervise the children in the adjacent swimming pool. After considering a number of options a 3.0 metre wide roofed patio was agreed on site as a suitable width by the owner and the representative of the Redland Shire Council. This would give a road boundary clearance of approximately 2.86 metres from Clifford Perske Street.
2. Under Section 48 of the Standard Building Regulation 1993 the local government may vary the application of division 2 – boundary clearances.
3. 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 3 street frontages. It is level with Kerder St., approximately 1.8 metres higher than Clifford Perske St. and a sloping height to Kriskyle Place. The owner has erected a 1.8 metre high timber fence on top of the retaining wall to Clifford Perske St. and also on a section of the Kriskyle Place frontage and as a dividing fence with the adjoining owner. The adjoining allotment is an average allotment for the estate.
 - *The nature of any proposed building or structure on the allotment.*
The proposed construction is a roofed patio that is open on 3 sides and attached to the existing dwelling.
 - *The nature of any existing or proposed buildings or structures on adjoining allotments.*
On the northern adjoining allotment (which is the only adjoining allotment) is a new unoccupied dwelling that extends closer to Clifford Perske Street boundary than the dwelling under consideration.
 - *Whether the allotment is a corner allotment.*
The allotment is a corner allotment with 3 street frontages.
 - *Whether the allotment has 2 road frontages.*
The allotment has three (3) road frontages but because of road cuttings access is only from Kerder St.
 - *Any other matter considered relevant.*
The erection of the 1.8 metre high timber fence on top of the retaining wall on Clifford Perske St. frontage would hide the major part of the roofed patio from the street provided the roofed patio did not come too close to the boundary fence. The appearance of the roofed patio from the street was a concern to the Council before the fence was erected.
6. 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 roofed patio open on three sides will not obstruct the natural light or ventilation of the one adjoining allotment.
 - *Interfere with the privacy of an adjoining allotment.*
The roofed patio will not affect the privacy of the one adjoining allotment.
 - *Restrict the areas of the allotment suitable for landscaping.*
The roofed patio will not unduly restrict landscaping on the site. There is ample remaining area on the site for landscaping.
 - *Obstruct the outlook from adjoining allotments.*
The outlook from the adjacent existing vacant house is partly obstructed by the 1.8 metre high timber fence between the properties. It is considered that the roofed patio would not unduly obstruct the outlook from the adjoining allotment.

- *Overcrowd the allotment*
The proposed roofed patio will not overcrowd the allotment.
 - *Restrict off-street parking for the allotment.*
Off-street parking is provided on the site. The area for the roofed patio could not be used for off-street parking because of the 1.8 metre retaining wall on the Clifford Perske St frontage.
 - *Obstruct access for normal building maintenance.*
The 3.0 metre wide roofed patio will not obstruct access for normal building maintenance.
7. Based on the above facts it is considered that the appeal is proven subject to a modified width for the roofed patio.

Reasons for the Decision

1. An assessment of Section 48.(3) & (4), did not identify any valid reason for refusing an increased road boundary relaxation from Clifford Perske St.
2. It was agreed on site by all parties to the meeting when all the facts were made known to them, that a 3.0 metre wide roofed patio measured from the existing wall of the dwelling would be acceptable in this case. The main reason for this agreement was the need to provide a suitable shaded area that would encourage adults to stay to supervise children in the adjacent pool.
3. The resulting boundary clearance of the shaded patio from Clifford Perske St will not be less than that approved for a house on a narrow allotment further down the street.

B J Williamson
Building and Development
Tribunal Referee
Date: 13 January 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
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