



1083

REPORT TO MUNICIPAL PLANNING TRIBUNAL

MPTNE18/12/19

CASE ID	70481842				
CASE OFFICER	Amber Lewack				
CASE OFFICER PHONE NO	021 444 1045				
DISTRICT	Northern				
REPORT DATE	November 2019				
INTERVIEW REQUESTED	APPLICANT	YES		NO	✓
	OBJECTOR(S)				✓

ITEM NO

WARD 112: APPLICATION FOR DETERMINATION OF ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 978, DURBANVILLE, 36 VAN DER WESTHUIZEN AVENUE

1 EXECUTIVE SUMMARY

Property description	Erf 978, Durbanville
Property address	36 Van Der Westhuizen Avenue, Durbanville
Site extent	1 648 m ²
Current zoning	Single Residential Zone 1 (SR1)
Current land use	Unauthorized Early Childhood Development (ECD) Centre on residential property
Overlay zone applicable	n/a
Submission date	30/10/2019
Subject to PHRA / SAHRA	n/a
Any unauthorized land use / building work?	Yes, the operation of an unauthorized Early Childhood Development (ECD) Centre on the residential property. The Playroom (Wendy house) encroaching the Street building line and a portion of converted entertainment room to main classroom encroaching the common building line.
Has owner applied for the determination of an administrative penalty	Yes
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative	No

penalty may not be applied for.	1084
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work, which required the owner, or other person to apply for the determination of an administrative penalty?	No

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

The property is located in a low to medium density residential area of Durbanville with dwelling units set on relatively large size plots. As can be seen on Annexure A, the subject property and many of the other surrounding properties are zoned Single Residential Zone 1 and General Residential Zone 1. The property is 1648m² in extent and developed with a dwelling house. Furthermore, vehicular and pedestrian access is from Van Der Westhuizen Avenue.

The owner submitted an application for the determination of an administrative penalty as well as a separate consent use application to legalize the contravention.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as **Annexure C** and may be summarised as follows:

- The ECD was established eight (8) years ago consisting of six (6) children which is compliant.
- The management was flooded with requests from the community to increase the number of children to approximately 35 children.
- Owner submitted an application for the determination of an administrative penalty to rectify contravention as well as a separate consent use application to legalize the contravention.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the current use of the property as an Early Childhood Development (ECD) Centre contravenes Item 21 of the Development Management Scheme (DMS). In terms of the DMS, an ECD is deemed a Place of Instruction and requires a consent use application in terms of the Single Residential Zone 1 development parameters. Although the property is still used for residential purposes, the land use contravention calculation will be based upon the total municipal value of the property.

Unauthorised building work has been done on the property as shown on the plan attached as Annexure B. This relates to the Wendy house (Play/class room) on the property, with that said, a portion of the converted entertainment room now used as the main classroom falls within the 5m common boundary building line and therefore also needs to be calculated as it is utilized for the ECD centre. The administrative penalty is required for the total area used for the Early Childhood Development (ECD) Centre in contravention of the MPBL as well as building work contravening the 5m Street and Common building lines required for a place of instruction.

- 5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.
- 5.3 In terms of section 129(7) (b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

5.4 Administrative Penalty: Calculation

5.4.1 Building work:

<u>Value of building work:</u>	R7 020.00/m ²
Wendy House & Portion of Main classroom	

Area of contravention:

Wendy House encroaching the 5m Street building line	17.34m ²
Portion of Main classroom within 5m common boundary	18m ²

Calculations:

Wendy House	R7 020/m ² x 17.34m ²
	R121 726.80

Portion of Main classroom	R7 020/m ² x 18m ²
	R126 360.00

Total Cost	R248 086.80
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5.4.2 Land Use:

Value of property	R3 460 000.00
Area of property	1 648m ²

<u>Area of contravention:</u>	384.72m ²
(ECD)	

Calculation:	R3 460 000 ÷ 1 648m ²
	R2 099.50 x 384.72m ²

Total land use contravention	R 807 725.24
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$$7020 \text{ m}^2 \times 17.34(\text{m}^2) = \text{R}121\,726.80$$

$$\text{Value per m}^2 \times \text{Total Unlawful area building work (m}^2) = \text{R}$$

			0.5%	1 %	3 %	5 %	10 %	15 %
Area contravening MPBL	Total area of Wendy House (m ²)	17.34						
	Value of building work	7020						
Value of the building work as per BDM (unit price) @ R7020m ²								
		R121 726.80	R608.63	R1 217.27	R3 651.80	R6 086.34	R12 172.68	R18 259.02

$$7020 \text{ m}^2 \times 18(\text{m}^2) = \text{R}126\,360.00$$

$$\text{Value per m}^2 \times \text{Total Unlawful building work (m}^2) = \text{R}$$

			0.5	1 %	3 %	5 %	10 %	15 %
Area contravening MPBL	Total area of Wendy House (m ²)	18						
	Value of building work	7020						
Value of the building work as per BDM (unit price) @ R7020m ²								
		R126 360.00	R631.80	R1 263.60	R3 790.80	R6 318	R12 636	R18 954

$$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2)} \times \text{Total Unlawful Area of Land Use (m}^2) = \text{R}$$

$$\frac{\text{R } 3\,460\,000.00}{1648 \text{ (m}^2)} \times 384.72 \text{ (m}^2)$$

Land Use		0.5%	1 %	3 %	5 %	10 %	15 %
Total Municipal Value (R)	R3 460 000.00						
Size of total property (m ²)	1648						
Area of contravening MPBL (m ²)	384.72						
Penalty value and scale (R)	R807 725.24	R4 038.63	R8 077.25	R24 231.76	R40 386.26	R80 772.52	R121 158.79

An amount which is not more than 100% of value of the property R 3 460 000.00 may be imposed as administrative penalty.

- 5.5 The following factors need to be considered when determining an appropriate administrative penalty as contemplated by Section 129(8) of the By-law:

(a) The nature, duration, gravity and extent of the contravention:

Nature – The nature of the land use contravention relates to an Early Childhood Development (ECD) Centre, which requires consent use in Single Residential Zone 1. There are currently 35 children attending the ECD and therefore is considered to be a small scale ECD Centre. An ECD on a Single Residential Zone 1 property is subject to development parameters. In this instance, the building lines are encroached.

Duration – The applicant states that the ECD was established in 2012, eight (8) years ago and consisted of six (6) children. It must be noted that the number of children increased to 35 children over the past 8 years. The duration of the contravention is long.

Gravity – The unauthorised ECD does not pose any safety, fire, or health hazard nor does it constitute a negative impact on the character of the area.

Extent – The extent of the unlawful building work encroaching the Street building line is 17.34m² and 18m² from the common boundary building line. The extent of the unlawful land use (ECD) is 384.72m² for the entire preschool area, which is relatively small in comparison with the size of the property that is 1648m² in extent.

(b) The conduct of the person involved in the contravention:

The current owner is responsible for the contravention. The owner knew that they could operate a home childcare facility of no more than six (6) children on the property. However, due to increasing demands from the community, and over time, the ECD increased significantly to 35 children. It is important to note that the owner submitted building plans for approval, but did not include the Wendy house (playroom) encroaching the 5m street building line. Nor did the owner motivate the use of the Wendy house although it was indicated as a playroom on the plans and therefore cannot be condoned.

(c) Whether the unlawful conduct was stopped:

The building work is existing and the ECD is operational.

(d) Whether the person who was involved in the contravention has previously contravened this By-Law or a previous Planning law:

As far as can be ascertained, the owner has not previously contravened this By-Law or any other planning law.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The current owner is responsible for the unauthorised use and building line encroachments.
- 6.2 There is no evidence that the owner of the subject property has previously contravened the MPBL or a previous planning law.
- 6.3 The nature, duration, gravity and extent of the contravention is not serious.
- 6.4 The owner is acting in good faith by attempting to rectify the situation.
- 6.5 The owner did not take initiative to consult the Development Management office to ensure that the necessary approvals are in place.
- 6.6 1% of the total land use contravention is being imposed in order to rectify the unauthorised use on Erf 978, Durbanville based on the time the owner took to come forward and rectify this contravention.

7 RECOMMENDATION

In view of the above, it is recommended:

- (a) That an administrative penalty in the amount of **R3 000** for unauthorised land use (ECD centre) and **R600** for the unauthorised building work, be determined in terms of Section 98(b) of the City of Cape Town Municipal Planning By-Law, 2015 in respect of the unauthorised land use and building work on Erf 978, 36 Van Der Westhuizen Avenue, Durbanville.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Site Development Plan
Annexure C	Motivation


Section Head : Land Use Management

Name Sean Van Rensburg

Tel no 021 444 1044

Date 22-11-2019


District Manager

Name Susanna Matthysen

Tel no 021 444 1061

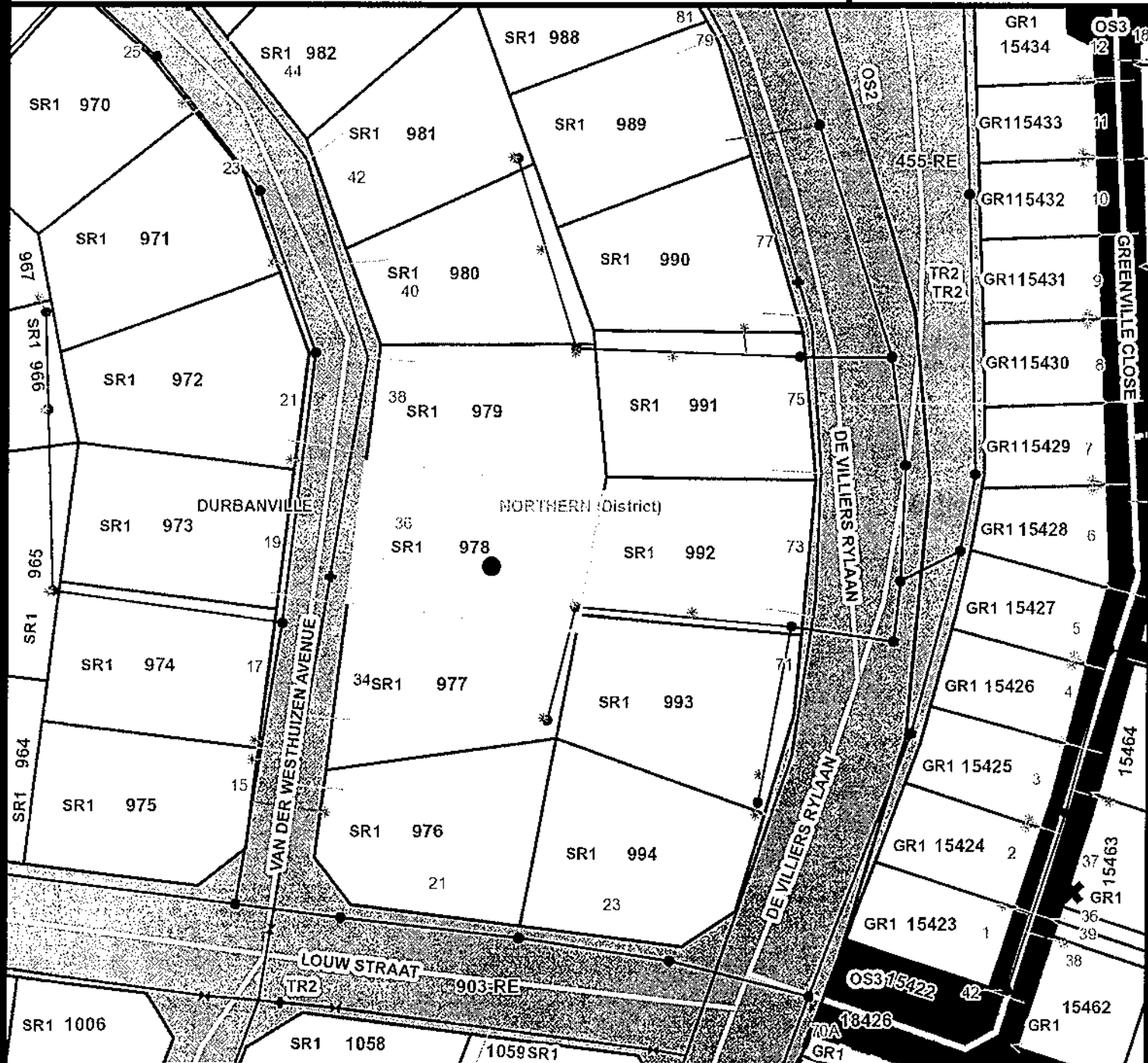
Date 22 November 2019

Annexure A

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

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ANNEXURE :



Overview

Erf:

District:

Allotment:

Suburb:

Ward:

Sub Council:



1:1 290

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date: 18 November 2019

File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Annexure B

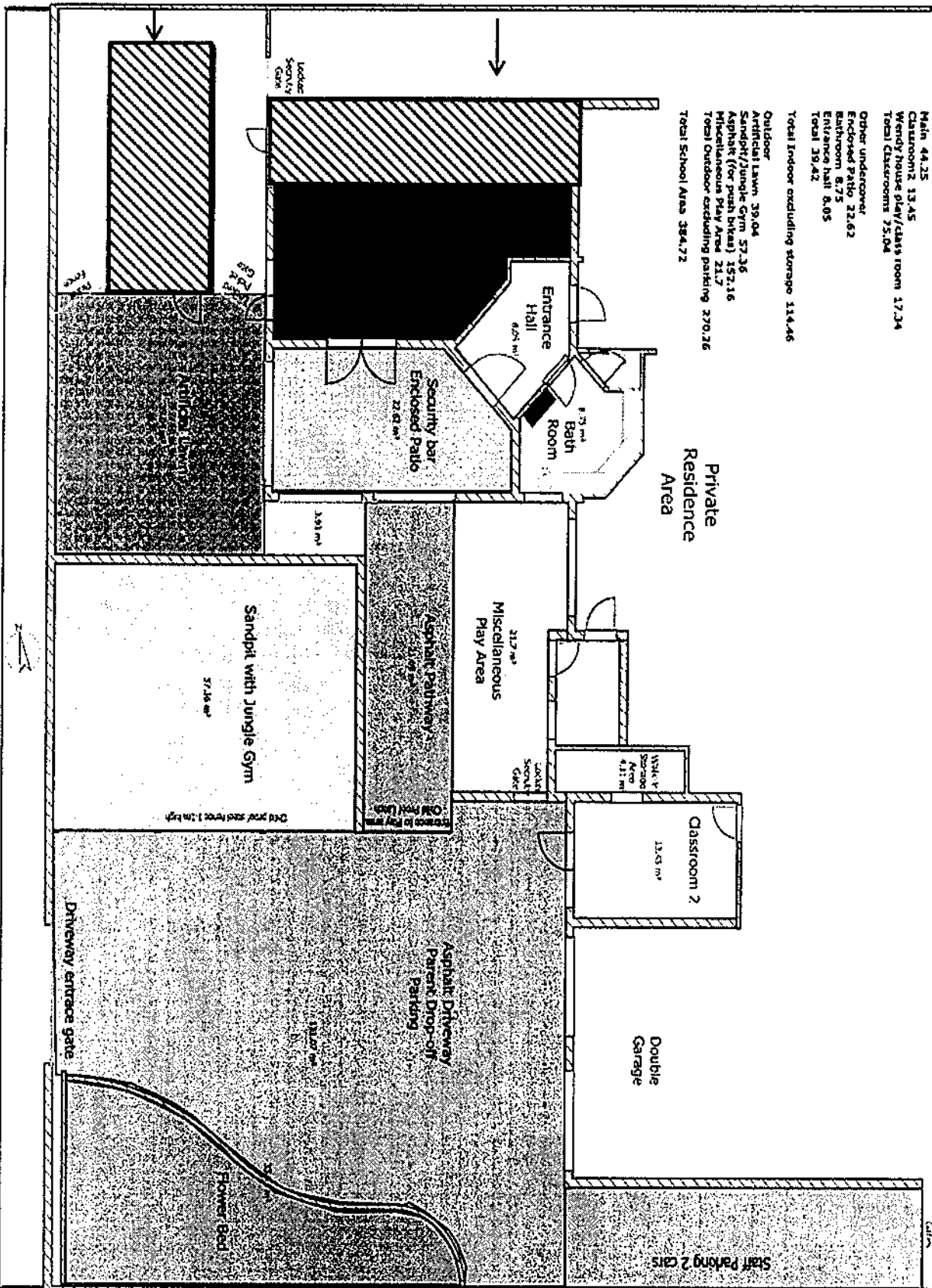
School Area Sq Metres
 Classrooms
 Main 44.25
 Classroom 2 13.45
 Wendy House play/class room 17.34
 Total Classrooms 75.04

Other undercover
 Enclosed Patio 22.62
 Bathroom 8.75
 Entrance hall 8.05
 Total 39.42

Total Indoor excluding storage 114.46

Outdoor
 Artificial Lawn 39.04
 Sandpit/Jungle Gym 57.36
 Asphalt (for push bikes) 152.16
 Miscellaneous Play Area 21.7
 Total Outdoor excluding parking 270.26
 Total School Area 384.72

Private
 Residence
 Area



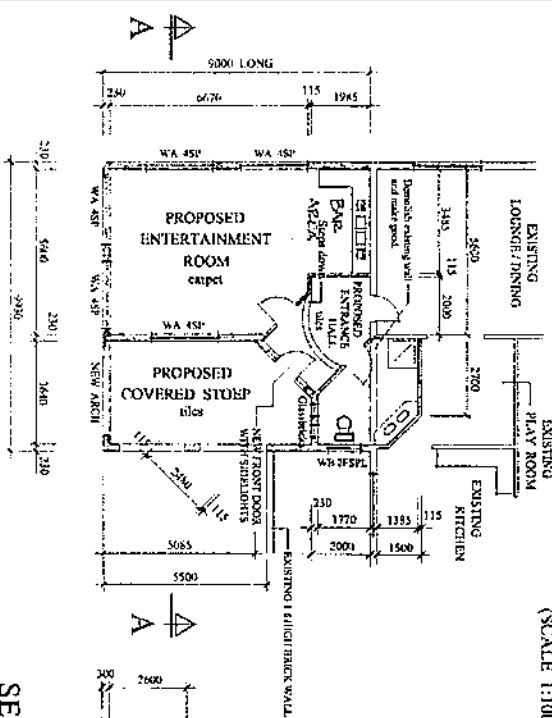
Building work in
 Contravention of
 the 5m Common
 building line

Building work in
 Contravention of
 the 5m Street
 building line

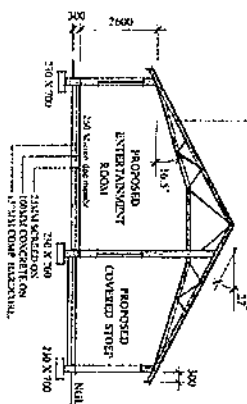
[illegible]

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FLOOR PLAN
(SCALE 1:100)

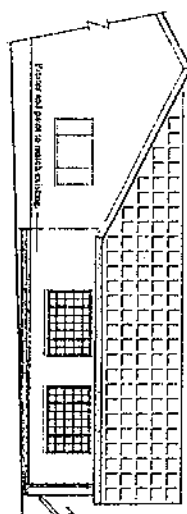


SECTION A-A
(SCALE 1:100)

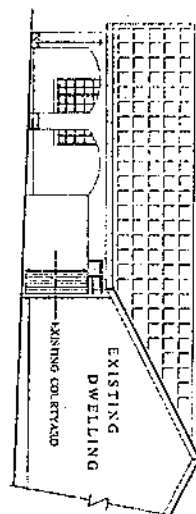


CEMENT TILES ON JOISTING BATTENS AT 10 C/C ON DAKSEL.
TRIPLY OR FIVE MADE GAG NAUT THUSSES AT 10 CM C/C
FALLES TIED DOWN TO WALL ON FLIGHT WALL PLATES WITH
10 X 1 1/2 IN GALV. HOOT-IRON STRIPS EMBEDED INTO BRICKS
IN EXISTING WORK. FLOOR MADE OF POLY.

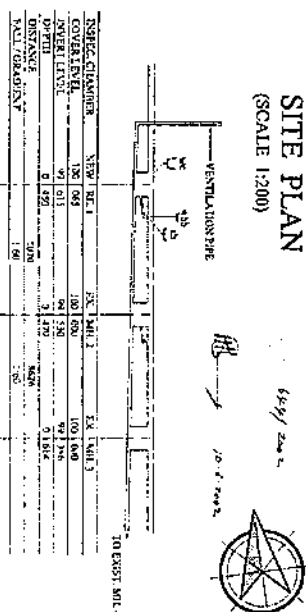
NORTH ELEVATION
(SCALE 1:100)



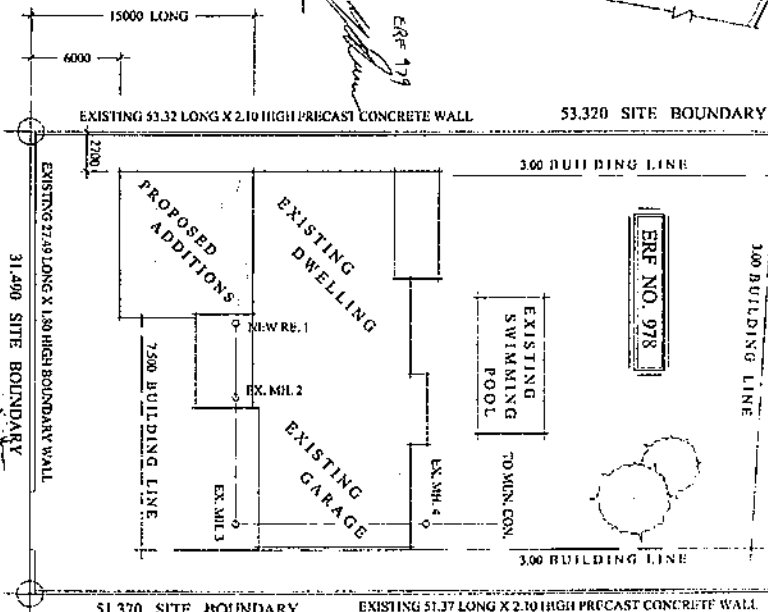
SOUTH ELEVATION
(SCALE 1:100)



SITE PLAN
(SCALE 1:200)



DRAINAGE LAYOUT



GENERAL NOTES

- [illegible]

FOUNDATIONS

15'x24' WALLS	230 X 60000	STAMP FOR INLAYERS
20'x24' WALLS	230 X 60000	STAMP FOR INLAYERS
24'x24' WALLS	230 X 60000	STAMP FOR INLAYERS

CONCRETE SLAB

DOORS / WINDOWS
ALL WINDOWS AND DOORS ARE CATALOGUED BY ALL BUILDERS. WE HAVE A LARGE STOCK OF ALL TYPES OF DOORS AND WINDOWS. WE CAN ALSO SUPPLY AND FIT ALL TYPES OF DOORS AND WINDOWS. WE CAN ALSO SUPPLY AND FIT ALL TYPES OF DOORS AND WINDOWS.

LOOK FLAMES WITH YOU

RAINWATER GOODS
PROVIDE FOR LEAKY PVC TUBES AND TANK DOWNPIPS.
PROVIDE FOR 1800 LONG RAIN WATER TUNNELS TO DRAIN
AWAY FROM DWELLING.
COTTAGES BUILT TO 23' X 32' X 5.5' 145-24 INHABITS.
ROOF FOR 224 X 1200 X 5 A.F. STAINLESS STEEL FINISH TO ENDS

KEY TAKEAWAYS

[illegible]

AREA CALCULATIONS

• AREA OF SITE	168.0mg
• AREA OF EXISTING STRUCTURES	324.94sqm
• AREA OF PROPOSED ADDITIONS	89.37sqm
• AREA OF TOTAL COVERAGE	414.35sq
• PERCENTAGE COVERAGE	25.14%

PROJECT :

PROPOSED ADDITIONS TO OR SHOULD BE DELETED FROM THE
NO. 36 VAN DER WEGEN STR. VALMAY PARK
DEARBORN, MI.

OWNER :

SCALE :	1:00	1:30	AS SHOWN
DATE :	APRIL 2002	CHECKED :	25/4/02
DRAWN : A.T.WILLIAMS VIZ 3024 001 003 7232 046 00			

Annexure C



Little Explorers Early Education Centre
36 van der Westhuizen Street
DURBANVILLE, 7550
Vanessa Reid: Owner and Principal
Cell Number: 083 384 0914
Jeanne Assante: Vice Principal
Cell Number: 079 574 2523
E-mail address: vanessa@littleexplorers.co.za
Website: www.littleexplorers.co.za

1 October 2019

Dear Sir/Madam,

RE: REQUEST FOR YOUR CONSIDERATION OF LENIENCY ON PENALTIES FOR OPERATING A PRESCHOOL FROM OUR RESIDENTIAL PROPERTY WITHOUT APPROVAL.

I hereby wish to appeal to the planning division of the City of Cape Town, and seek your mercy please, when formulating the penalty which will be levied against my husband and I for operating my home-based preschool from our residential property without receiving prior approval to do so. For quite some time, I initially only had 6 kiddies in my care and as the demand for preschool care in our area increased, I slowly started taking more children into my care and employed staff at a 1:6 Teacher to child ratio ensuring that each and every child's care, early education and safety were always of the utmost importance.

I accept and take full responsibility for my transgressions, but I plead with you to please take cognisance of the attached letter which outlines our motivation, and aspects of our situation.

We have finally managed to compile all the mandatory documents required from ourselves to apply for the continuation/approval of the Preschool which we are submitting at the same time as this letter and the Administrative Penalty Application Form. Our challenge in submitting these documents in a timelier manner has been the Site Plan, which has been a difficult and challenging process with a Site Plan not being available from the planning offices and hence my husband having to resolve the problem for our submission.

The following documents form part of our submission which we trust is in order, per the list which was given to us at the Kraaifontein offices when we were first issued with the compliance notice by Ms Natalie Molifie, and thereafter immediately approached the Kraaifontein offices for assistance in this process.

- Land Use Form
- A detailed site plan outlining the inside and outside area which is currently being utilised for the preschool.
- Copy of approved building plan for the main structure
- Copy of our latest Municipal Account – in my husband's name: Douglas Jack Reid
- Copy of our Title Deed
- Copy of motivation letter requesting continuation/approval to continue operating the Preschool.
- The School Prospectus which outlines:
The Fee Schedule, The School Programme, School Hours, Daily Routine and Disciplinary Code together with various other policies and procedures followed by Little Explorers.
- Staff Compliment and their particulars
- Bi-weekly school menu

We have been issued with a deadline for 4 November by Ms Molifie and to thereby prove that we are taking progressive action and or submitting all our documents to the City of Cape Town, and we hereby request the possibility please of a reference number, or something, that we can submit to Ms Molifie to show that are intentions are genuine in all aspects of this entire process. We did send a communication through to Ms Molifie on 11 October to request an extension on this date, but we have been informed via a reply on the same date that we need to provide proof of the application before any extension will be granted.

We thank you most sincerely for your assistance in this regard and will await further instructions for yourselves.

Kind regards,



Vanessa Reid (Mrs)
660529 0160 084
Little Explorers



Douglas Reid
620430 5040 083
Husband