CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

- 5754

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70485252
CASE OFFICER	Y Jafta
CASE OFFICER PHONE NO	021 444 9536
DISTRICT	Southern
REPORT DATE	24 February 2020

ITEM NO MPTSW45/03/20

WARD 71: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 5234 CONSTANTIA, 6 SEVEN SLEEPERS ROAD

1 EXECUTIVE SUMMARY

Property description	Erf 5234 Constantia
Property address	6 Seven Sleepers Road
Site extent	857m²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house & Early Childhood Development (ECD) Centre
Overlay zone applicable	None
Submission date	2 December 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	An ECD Centre with 25 children is operating on the property without approval.
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 penalty may not be applied for.	No
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

3.1 an application for consent and departures (relating to common boundary setbacks and parking) to permit the operation of an ECD Centre on the subject property was submitted on 5 February 2019. It was discovered at the additional information stage that the ECD Centre was already operational, necessitating the submission of this administrative penalty application. The main application has not yet been advertised.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The owner was under the impression that the approvals for the ECD Centre were already in place.
- The ECD Centre has been operating for 8 years.
- The owner has not previously contravened the MPBL.
- The operator and the family reside on the property.
- The ECD Centre accommodates a total of 25 children.
- The operation hours are from 07h30 to 17h30.
- The ECD Centre offers a safe environment.

5 ASSESSMENT OF APPLICATION

5.1 The unauthorised operation of the ECD Centre is in contravention of Items 21(c), 47(e) and 137 of the Development Management Scheme (DMS). An ECD Centre is only permitted with consent in terms of Item 21(c) in Single Residential Zone 1. The portions of the ECD Centre which contravene Item 47(e) are located 0m in lieu of 5m from the northern common boundary(sand-pit), 3m in lieu of 5m from the southern common boundary and 3m in lieu of 5m from the northern common boundary. The operation of the ECD Centre also contravenes Item 137 in relation to parking (0 in lieu of 3 parking bays) and no on-site stop-and-drop.

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

5.3 The municipal value of the property is R2 856 000.00 (see Annexure D).

5.4 Effectively, the entire property is being used for the unauthorised use. Thus an amount which is not more than 100% of *R2 856 000.00* may be imposed as an 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 unauthorised land use relates to an ECD Centre which is permitted with consent in Single Residential Zone 1.

Duration - According to the applicant, the contravention for 8 years. The duration of the contravention is thus long.

Gravity – The gravity of the contravention is serious considering that it relates to the care of children. Without the land use approval, approval from Fire Services and Environmental Health cannot be obtained.

Extent – The entire extent of the property is being used for the ECD centre. The extent of contravention is thus large.

b) **The conduct of the person involved in the contravention**

The operator claims to have been under the impression that the approvals to operate the ECD Centre were in place. This explanation is difficult to accept. Clearly an approval was never issued and the operator never had sight of any approval. Given that the activity involves the care of the children, such assumption that an approval was in place (if indeed correct) could be regarded as negligent. The conduct of the operator cannot be condoned.

c) **Whether the unlawful conduct was stopped**

The unlawful conduct has not been stopped.

d) **Whether a person involved in the contravention has previously contravened by this By-Law or any other planning law**

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

5.6 In view of the abovementioned considerations, an administrative penalty of R5000.00 is recommended.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

6.1 The unauthorised early childhood development centre is in contravention of Items 21(c) and 47(e) and 137 of the Development Management Scheme.

6.2 The duration of the contravention is long.

6.3 The gravity of the contravention is serious considering that it relates to the care of children. Without the land use approval, approval from Fire Services and Environmental Health cannot be obtained.

6.4 The extent of contravention is large.

6.5 The operator claims to have been under the impression that the approvals to operate the ECD Centre were in place. This explanation is difficult to accept. Clearly an approval was never issued and the operator never had sight of any approval. Given that the activity involves the care of the children, such assumption that an approval was in place (if indeed correct) could be regarded as negligent. The conduct of the operator cannot be condoned.

6.6 The unlawful conduct has not been stopped.

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

7 RECOMMENDATION

In view of the above, it is recommended that:

a) An administrative penalty in the amount of R5 000.00 be approved in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 5234 Constantia, for the Early Childhood Development Centre in accordance with plan LUM/16/5234.

ANNEXURES

Annexure A	Locality plan
Annexure B	Site development plan LUM/16/5234
Annexure C	Applicant's motivation
Annexure D	Municipal valuation

Section Head : Land Use Management

Name P Hofia

Tel no 021 444 7724

Date 2020-02-24

Comment

District Manager

Name U Gonsalves

Tel no 021 444 7720

Date 2020-02-25

Comment

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP

3758

ANNEXURE :

TR2
4798
SR1 5332
SR1 5331
SR1 5330
SR1 5230
SR1 5231
SR1 5232
SR1 4863
SR1
TR2 5899-RE
STERLIG ROAD
SR1 5357
SR1 5356
SR1
SR1 5238
SR1 5237
SR1 5236
SR1 5235
SR1 5234
SR1 5233
SR1 4868
SR1 4867
SR1 4866
SR1 4865
SR1 4864
TR2 4687-RE
TR2 4687-RE
SUMMER PLACE
SR14900
SR1 4901
TR2 5229-RE
SEVEN SLEEPERS ROAD
KIRSTENHOF
SOUTHERN (District)

Overview

Erf: 154215

Allotment: CAPE TOWN

Ward: 72

District: SOUTHERN

Suburb: STEENBERG

Sub Council: Subcouncil 20

1:681

Notices Served	●	Support Received	✓
Petition Signatory	■	Objections Received	✱

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Date: Thursday, 13 February 2020

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CITY OF CAPE TOWN
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PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP

3759

ANNEXURE :

Overview

Erf: 154215

Allotment: CAPE TOWN

Ward: 72

District: SOUTHERN

Suburb: STEENBERG

Sub Council: Subcouncil 20

N	Notices Served	●	Support Received	✓
1:2 725	Petition Signatory	■	Objections Received	✱

Generated by:

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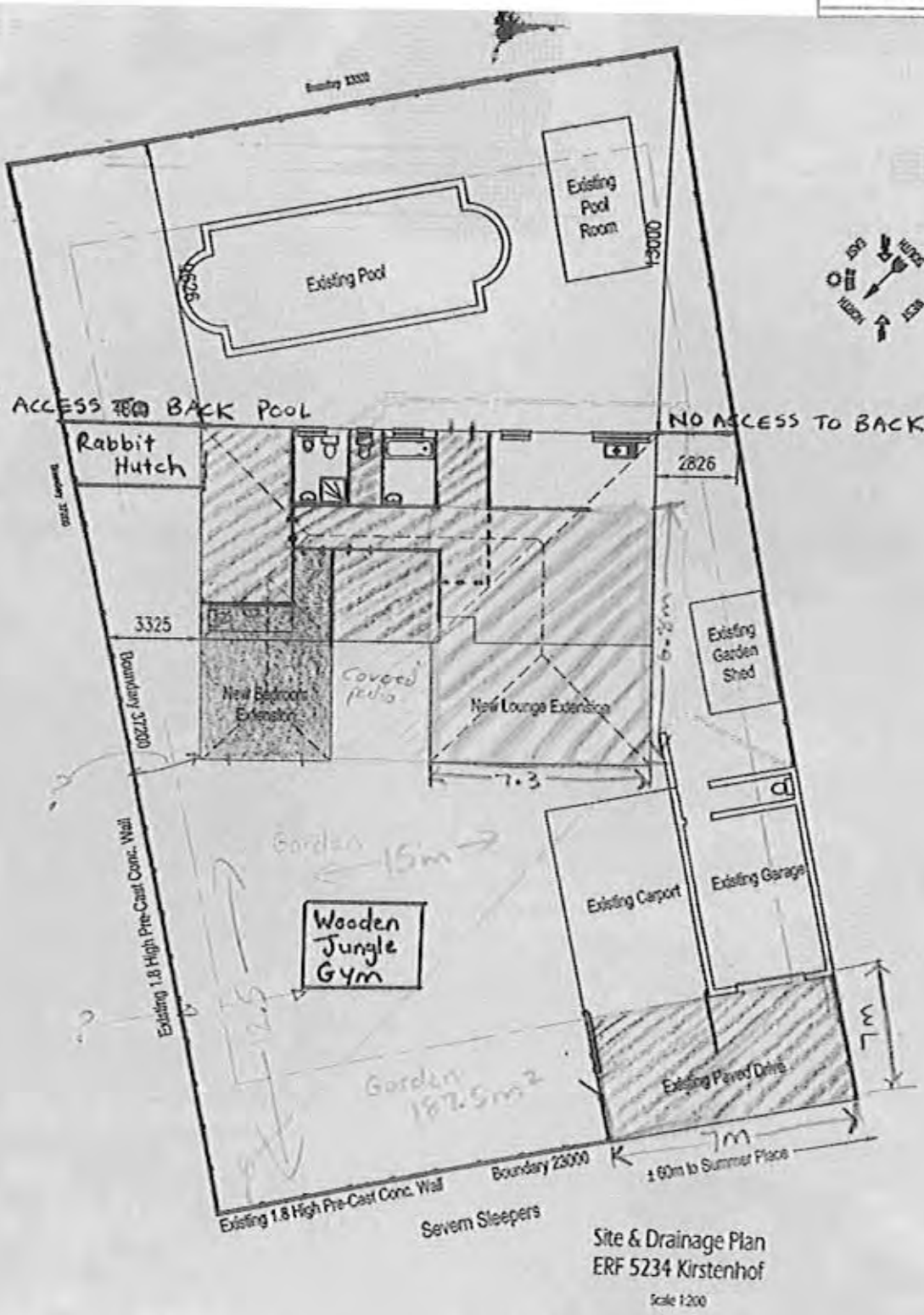
ANNEXURE



Site & Drainage Plan
ERF 5234 Kirstenhof
Scale 1:200

Square meterage = (69m²) + (6m²) + (16m²) = 91m²
Indoor square meterage = 69m²
Outdoor square meterage = 187.5m²
solid purple = creche only ; Purple stripes = family + creche.

WM/16/5234

ANNEXURE

MOTIVATIONAL REPORT

FOR FUZZY BUNNIES ECD

19.11.2019

I have been running my very successful and reputable daycare for going on 8 years now. I have recently realised that my paperwork concerning the registration of my daycare never reached its destination. Therefore I am starting the proses again of applying for my landuse management certificate and my crèche registration certificate.

Fuzzy Bunnies has become a popular household name amongst the residents of the Tokai and Kirstenhof community. We are spoken about with great respect and admiration. All this is due to the hard work and love that we have put into building an incredible bridging school in which each child can develop to their full potential through play and fun whilst preparing them for the integration into "big school".

We at Fuzzy Bunnies have created a safe, loving and homely environment.

Our 25 children are extremely well taken care of by 5 passionate adults all with paediatric first aid certificates. We provide two nutritious meals, fruit, tea and lots of snacks. Our more than spacious home and garden provide a perfect learning environment in which each child ranging from ages 3 months to 5 years is stimulated with many age appropriate and interesting activities. We have more than sufficient parking for parents dropping and collecting their children. We operate from 7:30am to 5:30pm every week day. We close for a month over the festive season to ensure my partner, staff and I are all well rested for the new year.

Our swimming pool is securely covered and our home, garden and rabbit enclosure are always kept well maintained to avoid any unnecessary accidents.

My partner and I are extremely passionate about Fuzzy Bunnies and the children we teach and take care of. Please could you assist us in getting our registration certificate finalised.

Thank you so much in advance for your assistance. Looking forward to hearing from you.

Bellow I motivate my application in terms of the Early Childhood Development Land Use Policy:

1.1. Consideration of criteria in terms of Section 99 of the MPBL:

1.1.1. Compliance with the requirements of the MPBL

- The proposal complies with the general requirements of the MPBL.

- The ECD Centre has been operational for 8 years already and has not proved to be a detriment to the character of its local area. An administrative penalty has been applied for.

1.1.2. Compliance or consistence with the municipal spatial development framework.

- The ECD provides an essential service to the community and it complies with the MSDF and southern district plan. The proposal is consistent with the MSDF.

1.1.3. Consideration in terms of Section 99(3) of the desirability of the following criteria:

a. Socio-economic impact: Approval of the proposal will have a positive impact with regard to the provision of an important social service and its creation / retention of employment opportunities.

- The facility has 6 employees, cleaning staff, carers and teachers.

b. Compatibility with surrounding uses:

- The area in which the property is located is predominantly residential. A place of instruction is seen as a complimentary use in a residential area, particularly for small scale facilities.
- The scale of the ECD Centre is small.
- The operator and family of the ECD centre reside on the property.
- The building will retain its residential character and can easily revert to being solely a dwelling house should the ECD Centre no longer operate.
- The ECD has been operational for 8 years and has had little to no noise complaints.

c. Impact on external engineering services: The proposal will not have a negative impact on external engineering services.

d. Impact on safety, health and well-being of the surrounding community: The proposal will not negatively impact on the safety, health and well-being of the surrounding community.

e. Impact on biophysical environment: The site is already developed and is not environmentally sensitive. There will be no negative impact on the biophysical environment.

f. Impact on heritage: The property is not within any Heritage Protection Overlay Zone. There will be no heritage impact.

g. Traffic impacts, parking, access and other transport related considerations:

- The proposed stop and drop departure to provide access.
- The allocated 4 parking bays have proved little negative impact on the neighbours.

- The subject property is located close to public transport.

h. Conditions that can mitigate an adverse impact of the proposed land use:

- The ECD will comply with whatever conditions are imposed.

1.2. **Consideration of criteria in terms of Section 99(2):**

1.2.1. Any applicable spatial development framework.

- The proposal complies with the Municipal Spatial Development Framework.
- The proposal complies with the Southern District Plan.

1.2.2. Applicable policy or strategy approved by the City to guide decision making.

- The proposal supports the Economic Growth Strategy and the Social Development Strategy.
- This application has been assessed in terms of Council's Early Childhood Development Land Use Policy which identifies a framework for the assessment of ECD centres. In terms of this policy, the ECD centre is classified as a small-scale ECD centre (as it accommodates less than 35 children). The proposal complies with this policy.

1.2.4. Impact on existing rights:

- The proposal will not have significant impact on existing rights.
- The setbacks applied for in relation to the building are as a result of the reclassification of portions of the existing dwelling house to that of the place of instruction. They will not result in additional building work.

1.2.5. Other considerations prescribed in relevant national or provincial legislation.

- The proposal complies with the principles set out in Section 59of the Land Use Planning Act and Section 7 of the Spatial Planning and Land Use Management.

SECTION F: MOTIVATION TO SECTION 129(8) OF THE MUNICIPAL PLANNING BY-LAW

Give a description of the land use or structure(s) / building work that are in contravention on the property.

ECD Centre operational

Provide the extent(s) in m² of the property used for the unlawful use activity, and unlawful building work / structure(s) that contravene the MPBL. (Indicate extent(s) on a building plan / map / plan / diagram)

860 m²

Provide explanatory motivation addressing the circumstances in which the land use or structure(s) / building work has occurred.

I was under the impression my accountant had sorted it out

Describe the duration of the contravention(s)

8 years

Has the unlawful activity ceased? [ ] [✓] If yes, provide the date when the activity ceased

Has the owner / person previously contravened the MPBL, or a previous Planning Law? [ ] [✓] If yes, please provide more details below.

Provide the municipal valuation of the erf R 3000000

State and provide supporting documentation for your determination of the value of the unauthorised building work / structures or land use that is in contravention of the MPBL. R

SECTION G: DECLARATION

I/we hereby wish to confirm the following:

1. That the information contained in this application form and accompanying documentation is complete and correct.
2. That I/we am/are properly authorised to make this application on behalf of the owner and (where applicable) that copies of such full relevant powers of attorney are attached hereto.*
3. That where an agent is indeed appointed to submit this application on the owner's behalf, it is accepted that correspondence and formal notification as required in terms of Planning law will only be sent to such consultant / agent and that the owner will regularly consult with the agent / consultant in this regard.
4. That this submission includes all necessary planning applications required to enable the development proposed herein. I/we specifically confirm that I/we have read the relevant title deed(s) or the attached conveyancer certificate. I/we confirm that there are no restrictive conditions which impact on the this application, or alternatively where there are applications for the removal / amendment / suspension of these or consent required in terms of a title deed condition, form part of the submission.
5. I/we am/are aware that by lodging an application, the information in the application and obtained during the process may be made available to the public.
6. That where the proposal involves existing building work erected and / or used in contravention of the development management scheme, that I/we have consulted with the Section Head: Land Use Management for the applicable area to ensure the correct application in terms of Planning law is being made. I/we confirm that I/we have not been served with a demolition directive in terms of section 128 (1)(b)(i) of the MPBL on the property.
7. That, as owner / applicant / developer, I am/we are aware of the state of existing bulk services provision and infrastructure availability in the subject area and any development contributions that might be payable in respect of the development proposed herein (if applicable).
8. The email address and cell number provided on this form is to be used by the City to communicate when there is correspondence relating to the application(s) for my attention that will be available through e-Services. If my email address or cell number changes I/we will notify the Corporate Call Centre on 0860 103 089 to update my/our business partner details.

* If the application is made by a person other than the registered owner(s) (e.g. an agent / consultant) the requirements in terms of section 71(1)(b) of the MPBL must be adhered to.

Registered owner's signature | Date 28/11/2019

Full name and surname: Lisa Ann Barnes

Registered owner's signature | Date

Full name and surname: Gareth Charles Barnes

Applicant / Agent's signature | Date

Full name and surname

ANNEXURE

Rates for 2019/2020 Financial Year

Rate-in-the-rand: 0.00555

Rates Relief: R 300,000.00

Property Reference	SPM007597500000
Property Type	RES
Erf/Farm Number	5234
Physical Address	6 SEVEN SLEEPERS KIRSTENHOF
Total Extent	857.0000
Existing Use	A01
Allotment Area	CONSTANTIA
Rating Category	RESIDENTIAL

Value of Property	R 2,856,000.00
Residential Exclusion	R 300,000.00
Rateable Value	R 2,556,000.00
Estimated Annual Rates	R 14 185,80
Estimated Monthly Rates	R 1 182,15