

## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70511163				
CASE OFFICER	Jevon Jacobs				
CASE OFFICER PHONE NO	021 444 7514				
DISTRICT	TYGERBERG				
REPORT DATE	20 August 2020				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO MPTNE21/09/2020

### APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 17753, PAROW, 17 MARINA CRESCENT, NORTHGATE.

#### 1 EXECUTIVE SUMMARY

Property description	Erf 17753, Parow.
Property address	17 Marina Crescent, Northgate.
Site extent	720m <sup>2</sup>
Current zoning	Single Residential 1 (SR1).
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	30 July 2020
Subject to PHRA / SAHRA	None.
Any unauthorised land use / building work?	Unauthorised building works in the form of a covered braai area along the western common boundary encroaching the 3m building line setback.
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

Erf 17753, Parow is currently zoned as Single Residential 1 (SR1) with an extent of 720m<sup>2</sup> and is developed for single dwelling purposes in Northgate, Parow. Surrounding properties are zoned for similar purposes. Refer to Figure 1 below.



Figure 1: Surrounding land uses

The contravention involves unauthorised building works prior to building plan approval, which is contradictory to Section 22(d) of the Development Management Scheme (DMS) with regards to building line setbacks. The building works consists of an existing covered braai area encroaching the western 3m common boundary building line setback.

This contravenes Item 22(d) of the City of Cape Town Development Management Scheme. Hence the call for the application for the determination of an Administrative Penalty in terms of Item 129 of the MPBL, 2015.

#### 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- A covered braai area was attached to the side of the dwelling house without necessary planning or building plan approvals.
- Construction was completed approximately one year ago in 2019.
- The gravity of unlawful building works is minimal as it has no adverse impacts on neighbors.
- The owner did not intentionally contravene the MPBL or any other planning legislation as they were under the impression such is not required for the building works.
- Construction was completed before any notices to cease building works were issued.
- The owner has never previously contravened the MPBL or any other planning by-law.

## 5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the building works is in contravention of the Development Management Scheme (DMS).
- 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.

### **Administrative Penalty: Calculation**

- 5.2.1 Unauthorised building work

$$\text{Value per m}^2 \text{ (R1 340.00)} \times \text{Total Unlawful area (52.77m}^2\text{)} = \text{R70 711.80}$$

An amount which is not more than 100% of R70 711.80 may be imposed as administrative penalty

- 5.3 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 contravention involves unlawful building works in the form of a covered braai area along the western common boundary encroaching the 3m building line setback. This is unauthorised building works prior to LUM or building plan approval and is contradictory to Section 22(d) of the Development Management Scheme (DMS) with regards to building line setbacks.

*Duration* – The applicant motivates that the unauthorised building additions were completed in 2019. However, the City's aerial imagery (dated February 2015) indicates that the contravening building works have been in existence since 2015. This is contradictory to what the applicant declares. Therefore, the unlawful building works has been in existence for approximately 5 years as opposed to the declared 1 year. (See photographic imagery below)



#### 2015 Aerial Imagery

*Gravity* – The gravity of the unauthorised building works is of a minor nature as it is not considered a habitable space, of reasonable size and located away from the streetscape.

*Extent* – The total extent of the contravening unauthorised building works is approximately 52.77m<sup>2</sup> and considered as minor in comparison with the size of the property.

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

The relevant owner now wishes to rectify the unlawful building works.

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

The unlawful building works is still in existence.

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

Other than the building works contravention under discussion in this report, there is no evidence that the owner has previously contravened the provisions of the MPBL or any other planning legislation.

- 5.4 Given the nature, reasonable extent, long duration of the land use contravention and minor gravity of the contravention, an administrative penalty amount of R2 500.00 is considered appropriate.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- 6.1 The contravention is of a limited size in comparison with the size of the property.
- 6.2 The duration of the contravention is considered long.
- 6.3 The gravity of the contravention is minor as the structure is not of a habitable nature, of reasonable size and located away from the streetscape.
- 6.4 The applicant did not provide the correct information with regards to the duration of the contravention.
- 6.5 There is no evidence that the owner has previously contravened the MPBL or any other planning law and has conscientiously applied for the determination of an Administrative Penalty in terms of Item 42(r) of the MPBL, 2015.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

- a) an administrative penalty in the amount of R2 500,00 **be determined** in terms of Item 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 17753, Parow in accordance with Annexure B.

## ANNEXURES

Annexure A Locality Plan  
 Annexure B Building plan  
 Annexure C Applicant's motivation




---

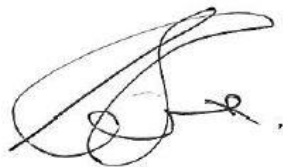
### Section Head : Land Use Management

Name Tess Kotze

Tel no 021 444 7506

Date 14 August 2020

Comment




---

### District Manager

Name Dewaldt Smit

Tel no 021 44 7840

Date 20 August 2020

Comment

# **Annexure A Locality Plan**

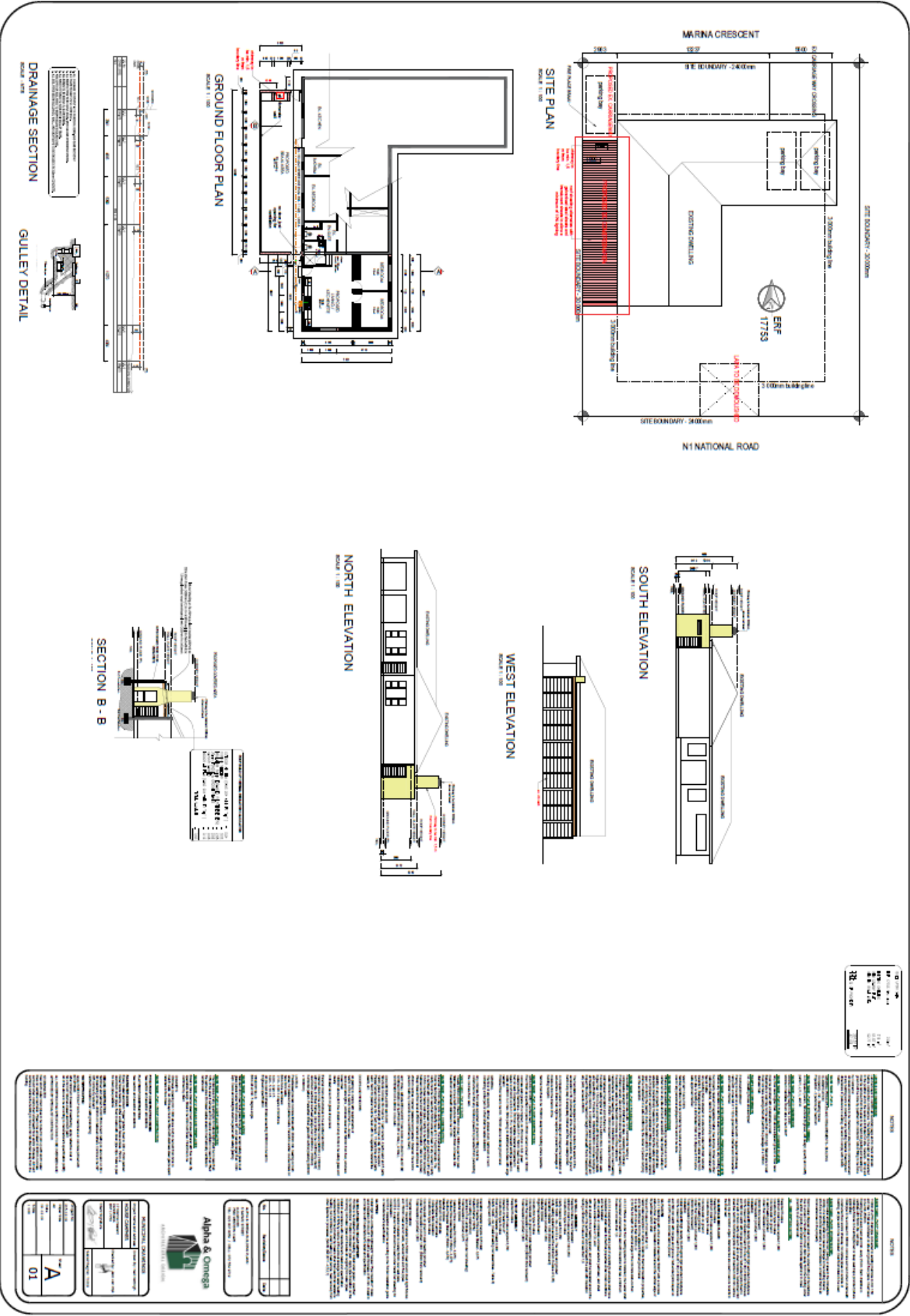


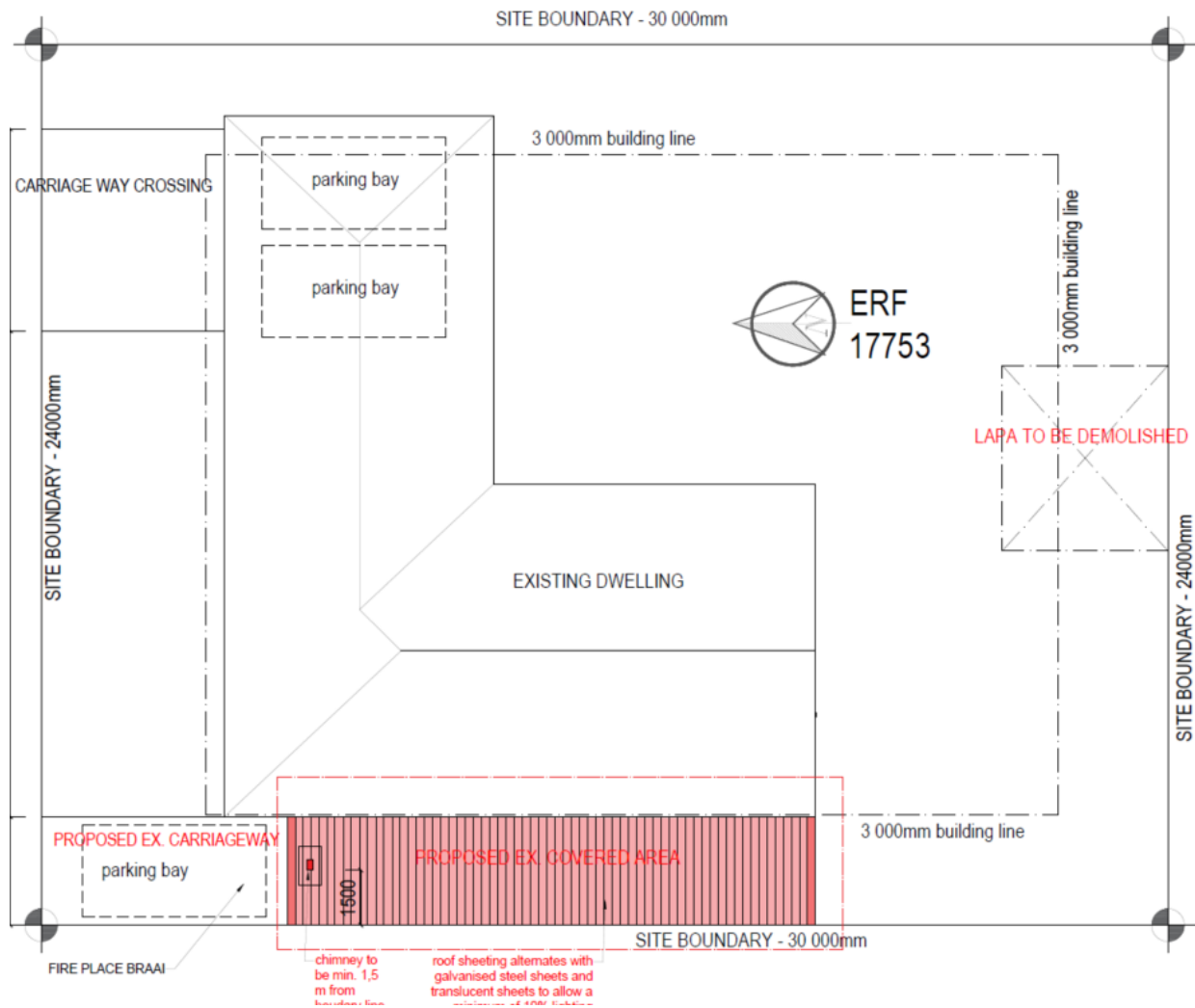


# **Annexure B**

## **Building plan**







# **Annexure C**

## **Applicant's motivation**

**To: City of Cape Town**

**Date: 27 07 2020**

### **Motivation Letter**

**Address:**

17 MARINA CRESCENT PANORAMA

**ERF No:**

17753

**Introduction statement:**

To Whom it May Concern.

I would like to motivate to minimise the penalty for this adm. penalty application.

**The nature, duration, gravity and the extent of contravention**

A braai room / covered area was attached to the side of the house without planning.

It was done about a year ago.

This gravity of this structure is minimal and has had no impact on the neighbours.

The braai room covers an area of 42sqm.

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

The person involved did not intentionally want to contravene. They did not know they needed planning for such a structure.

**Whether the unlawful conduct was stopped, and**

The unlawful conduct has been completed long before there was any stoppages requested.

**Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.**

The client has never contravened this by law before or any other by-law for that matter.

**Motivation:**

Based on the above, it would be highly appreciated if the penalty be waived or or minimised due to that fact that the client did not know that they were in contravention.

Yours sincerely.

Name of agent/owner: Neil Hattingh (agent)

Signature: \_\_\_\_\_

