



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70449323				
CASE OFFICER	BABAY				
CASE OFFICER PHONE NO	021 444 7512				
DISTRICT	FYGERSBERG				
REPORT DATE	18/04/2019				
INTERVIEW REQUESTED	APPLICANT	YES		NO	✓
	OBJECTOR(S)				

ITEM NO **MPTNE28/05/19**

APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 7650, BELLVILLE, 3 DE LANGE STREET

1 EXECUTIVE SUMMARY

Property description	7650, BELLVILLE
Property address	3 De Lange Street, Bellville CBD
Site extent	714 m ²
Current zoning	Single Residential 1 (SR1)
Current land use/ building work	The applicant has erected unauthorised structures (105m ²) and is operating a business from the premises without Council's approval.
Overlay zone applicable	No

Submission date	14 March 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	
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.	204
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?	Yes, 7 February 2018

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

The property is zoned Single Residential 1 (SR1) with the primary use permitted for residential purposes only in terms of the Cape Town Development Management Scheme. The property has been used for business for the past 2 years. The applicant has submitted an application for rezoning, which can only be considered once the application for determination of an administrative penalty is finalised.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The applicant alleged that he was wrongly advised by a family member that no Council approval is required for the unauthorized structure and use.
- All existing structures have been previously approved by Council beside three shaded areas and the conversion of the carport into a conference room.
- The unauthorized structures and uses have been in operation for the past two years.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorized use and building work is in contravention of the Development Management Scheme.

- 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.

And

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.

Administrative Penalty: Calculation

5.2.1 Unauthorised building work

$$\text{Value per m}^2 \text{ (R 4500)} \times \text{Total Unlawful area (105m}^2\text{)} = \text{R472 500}$$

An amount which is not more than 100% of R472 500 may be imposed as administrative penalty

5.2.2 Unauthorised land use

$$\frac{\text{Total Municipal Value of property (1 800 000)}}{\text{Total area of property (714m}^2\text{)}} \times \text{Total Unlawful Area (483m}^2\text{)} = \text{R1 217 647}$$

An amount which is not more than 100% of R1 217 647 may be imposed as an 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 entire property has been utilized for business purposes, such as a hair dresser, cellphone shop, coffee shop and conference room. The unauthorized uses are not permitted as a primary or consent use right in a SRI zoning, hence the applicant applied for a rezoning.

Duration - the unauthorized use and structures on the property has been in operation for 2 years.

Extent - the property measures 714m² in extent and is developed with a main dwelling house (converted into a cellphone shop, coffee shop and a hair dresser), carport (converted to a conference room), garage (store room), and three sheds. All the structures on the property, which is 483m² in extent, have been utilized for unauthorized business uses. The extent of the unauthorized structures is 105m².

b) The conduct of the person involved in the contravention

The owner of the property concerned is involved in the contravention.

c) Whether the unlawful conduct was stopped

No, the unauthorized land use is still operating from the property.

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

This office has evidence of other contraventions of Municipal Planning By-Law and National Building Regulation and Building Standards Act No 103 of 1977 on another 2 properties. The owner was served with notice on the 30 May 2018 for the unauthorized building work on Erf 5478, Bellville. Notice was also served on 4 June 2018 for unauthorized use (church) on Erf 5477, Bellville.

- 5.4 The owner built structures of 105m² in extent in addition to the existing residential dwelling and for the past 2 years is utilizing all the current structures on the property for business purposes without Council's approval. Currently there are limited on-site parking bays for the proposed uses. Although the property is located within the Bellville CBD where mixed use development is encouraged, the unauthorised use with limited parking bays will have a negative impact on the safety of the customers and pedestrians.

In view of the abovementioned considerations, this office recommends that an administrative penalty equal to 5% (R60 882) of the value of the property used for the unlawful activity be charged.

With regard to the unauthorized structure of 105m² in extent, this office recommends that an administrative penalty equal to 3% (R14 175) of the value of the unauthorized building work be charged.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

1. The extent of the unauthorized activity is considered excessive, as the entire property is utilized for business purposes.
2. Given limited on-site parking and the current access arrangement, the unauthorised activity and structures are likely to impact negatively on traffic and pedestrian safety in the area.

3. The applicant has been operating for business from the property 2 years claiming he was misled by his relative.
4. The owner has a record of previous contraventions of the By-Law.

6 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of R60 882.00 **be determined** for the unauthorized uses in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 7650, Bellville, in accordance with site plan attached as Annexure B.
- b) An administrative penalty in the amount of R14 175.00 **be determined** for the unauthorized building work (105m²) in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 7650, Bellville.

ANNEXURES

Annexure A Locality Plan
 Annexure B Site development plan
 Annexure C Applicant's motivation

MTL

Section Head : Land Use Management

Name T.R. Kotze
 Tel no 021 444 7806
 Date 25.04.2019

Comment

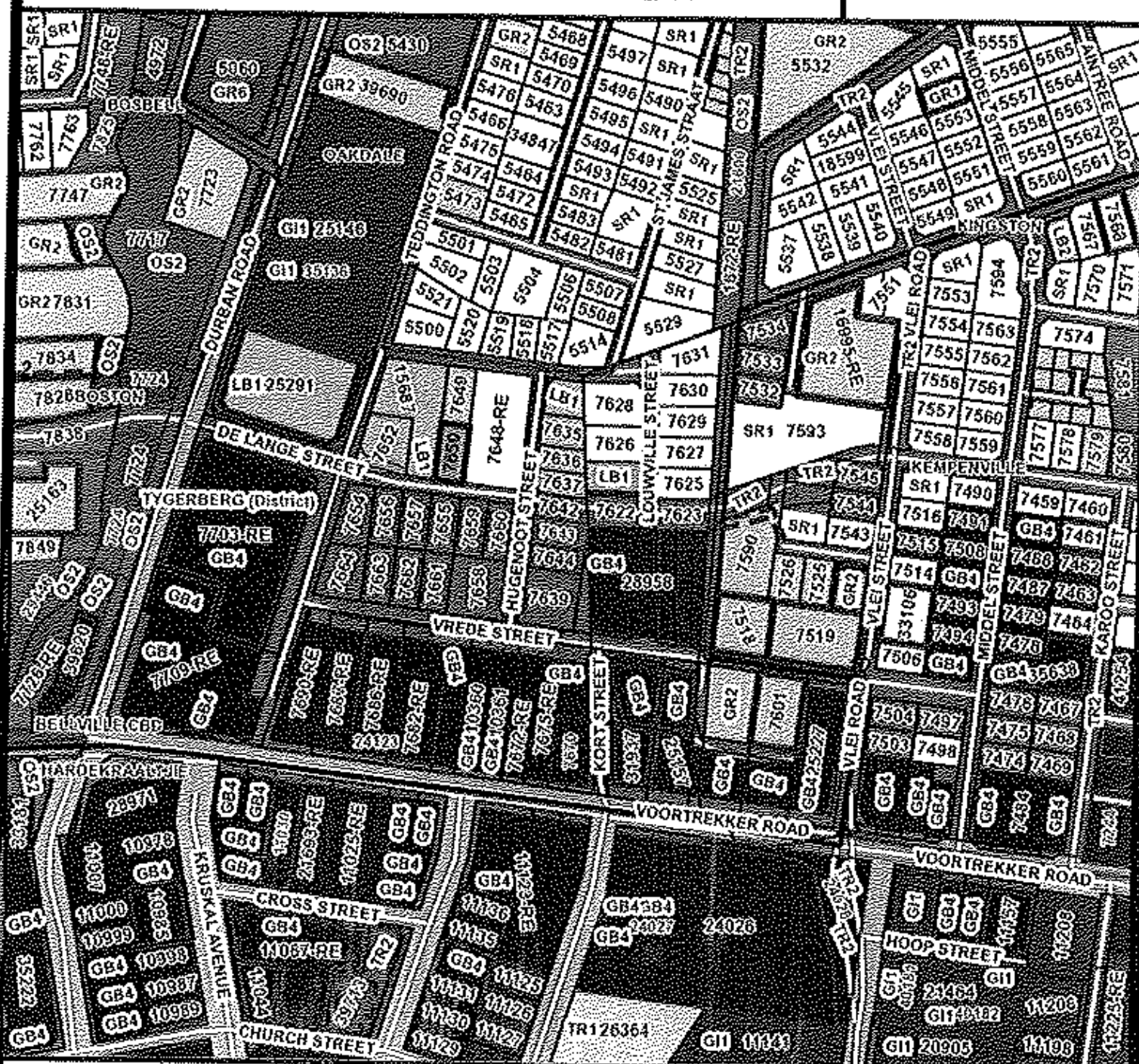
District Manager

Name D. Smit
 Tel no 021 444 7840
 Date 26/04/2019.

Comment

Annexure

A



Overview



Erf. 7650

Abolment: BELLVILLE

Ward: 2

District: TYGERBERG

Suburb: BELLVILLE CBD

Sub Council: Subcouncil 6



1:3 742

Notices Served



Support
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Petition
Signatory



Objections
Received



Generated by: B Abay

Date: Thursday, April 18, 2019

File Reference: 70449323



CITY OF CAPE TOWN
ISIIXENKO SASEKAPA
STAD KAAPSTAD

... Making progress possible together.

Annexure B

Annexure C

CITY OF CAPE TOWN
PAROW CIVIC
TOWN PLANNING DPT

213

ERF 7650
DE LANGE STREET
BELLVILLE

RE: Application for development penalties in terms of section 129.

We would like to apply for development penalties to legalize a conference room, offices in the existing structure and three newly built sheds without building plans.

I was wrongly advised by my family about not needing any approval from the City Of Cape Town as I purchased the building whilst I was in Ethiopia. I have been in a different line of trade so I have not much knowledge in property businesses hence putting all my trust in the family as they are contractors and engineers.

The new structures and illegal businesses operating on the property have been in full operational for the past two years

I am not a serial offender to this matter. This is my first time and definitely the last to get involved in these illegal activities. However we have not yet received any negative publicity or comments from the surrounding neighbors.

Besides the three shades on site and the conversion of the carport into a conference room all the structures on site have been previously approved by the City Of Cape Town.

I will accept the penalties to be issued by the City and vow not to be on the side wrong side of the law from now on.

Your utmost favorable response will be greatly appreciated regarding this matter.

Regards

Mr Farmo