



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70498097				
CASE OFFICER	Jevon Jacobs				
CASE OFFICER PHONE NO	021 444 7514				
DISTRICT	TYGERBERG				
REPORT DATE	1 April 2020				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO MPT29/06/20

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 35102, GOODWOOD, 6 YELLOWWOOD CRESCENT, GLENWOOD.

1 EXECUTIVE SUMMARY

Property description	Erf 35102, Goodwood.
Property address	6 Yellowwood Crescent, Glenwood.
Site extent	198m ²
Current zoning	General Residential 1.
Current land use	Dwelling house .
Overlay zone applicable	None.

Submission date	16 March 2020.
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Unauthorised carport exceeding the 5m street 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 35102, Goodwood is currently zoned as General Residential 1 (GR1). However, the property has an unauthorised 30.43m² carport which exceeds the 5m street building line setback.

The owners have unlawfully erected the carport prior to any building plan or Land Use Management Application approval. Hence the application for the determination of an Administrative Penalty in terms of Item 129 of the MPBL, 2015. The carport contravenes the MPBL of 2015 as per section 39(1) and 42 of the Development Management Scheme (DMS).

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 nature of the contravention is a carport encroaching building line setbacks amongst the street and lateral boundaries.
- The unlawful building works have been completed since March 2019 and does not, and did not affect any persons negatively.
- The owner only sought relevant building approvals once he was advised as to the correct procedures to follow.
- The unlawful building works is still in existence.
- The owner has not contravened the Municipal Planning By-law, 2015 or any other planning legislation before.

5 ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorised 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

$$\text{Value per m}^2 \text{ (R1 340)} \times \text{Total Unlawful area (30.43m}^2\text{)} = \text{R40 776,20}$$

An amount which is not more than 100% of R40 776, 20 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 unauthorised building works in the form of a carport which exceeds the (western) street building line setback of 5m.

Duration – The applicant motivates that the unlawful carport was completed in March 2019. This is verified by the City of Cape Town's aerial imagery resources (dated December 2019) indicating that the unlawful carport was already constructed. This means the unlawful carport has been in existence for approximately 1 year.

Gravity - The unlawful building works contravention is regarded to be of minor gravity considering the fact that it does not include construction of a habitable space.

Extent – The total extent of the unauthorised building works is approximately 30.43m² which is considered significant in relation to the size of the property.

b) The conduct of the person involved in the contravention

According to the motivational report, the owner of the property sought to obtain relevant approvals once he was advised on the proper procedures. Therefore, the owner wishes to comply with all legislation and policy to rectify the unauthorised carport.

c) Whether the unlawful conduct was stopped

The unlawful structure remains 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 work 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 minor nature, significant extent and minor gravity, as well as the duration of the contravention being approximately 1 year, an administrative penalty amount of R1 000 is considered appropriate.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- The nature of the contravention involves an unlawful carport which has been in existence for a duration of approximately 1 year, per Council aerial imagery (dated December 2019).
- The extent of the building works contravention is fairly significant considering the limited size of the property.
- The gravity of the contravention is considered minor as the structure does not include a habitable space.
- The applicant/owner is willing to rectify the unauthorised building works and was forthcoming with information on request.
- 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 R1 000,00 **be determined** in terms of Item 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 35102, Goodwood in accordance with Annexure B.

ANNEXURES

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



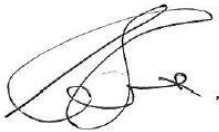
Section Head : Land Use Management

Name Tess Kotze

Tel no 021 444 7506

Date 1 April 2020

Comment



District Manager




Name Dewaldt Smit

Tel no 021 444 7840

Date 01 April 2020

Comment

Annexure A Locality Plan

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE : A	
			
Overview	Erf: _____		District: _____
	Allotment: _____		Suburb: _____
	Ward: _____		Sub Council: _____
	 1:600	Notices Served ●	Support Received ✓
	Petition Signatory ■	Objections Received ✗	
Generated by: J Jacobs		 CITY OF CAPE TOWN ISIXEKO SASAKAPA STAD KAAPSTAD <small>Making progress possible. Together.</small>	
Date: Wednesday, 18 March 2020			
File Reference: 70498097			

Annexure B

Building plan

Annexure C

Applicant's motivation

P.D. & A.E. NEL

ERF 35102

6 YELLOWWOOD CRESCENT

GLENWOOD , GOODWOOD

CELL : 0813615033

04/03/2020

CITY OF CAPE TOWN

Application for Determination of Administrative Penalty

In March 2019 , we erected a carport , not knowing that a plan was required.

FACTORS IN TERMS OF SECTION 129(8) OF THE "MBA" :

(a) Nature , duration , gravity & extent of the contravention :

Nature : Carport encroaching 5m street building line & 3m lat. b.line

Duration : from about March 2019 until current.

Gravity : the contravention does/did not affect anybody negatively.

Extent : 30,43 sqm Carport area encroaching building lines.

(b) Conduct of person involved in contravention :

On receiving advice to obtain plan approval , I started proceedings for the necessary plans to be submitted for approval.

(c) The unlawful conduct has not stopped.

(d) I never before contravened any By-Laws or Planning laws.

TRUST COUNCIL FINDS THIS IN ORDER.



P.D. & A.E. NEL

04/03/2020

DATE