



REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO **MPTSW39/05/19**

CASE ID		2018-034		
CASE OFFICER		M Sonkot		
CASE OFFICER PHONE NO		021 444 9341		
DISTRICT		Southern		
REPORT DATE		2019-04-24		
INTERVIEW REQUESTED	APPLICANT	YES	NO	✓
	OBJECTOR(S)			

**WARD 69: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 15489 FISH HOEK, 10 CAPRI DRIVE, SUNNYDALE**

**1 EXECUTIVE SUMMARY**

Property description	Erf 15489 Fish Hoek
Property address	10 Capri Drive, Sunnydale
Site extent	982m²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house
Overlay zone applicable	Noordhoek Local Area Overlay Zone
Submission date	2018-12-19
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes. The family /braai room, change in windows and a 1.5m high pre-cast boundary wall is unauthorised
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 On 2018-12-19 an application for a departure relating to the unauthorised family / braai room was submitted. This application is being assessed simultaneously with the current application.

#### 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The unauthorized building work was done by a previous owner.
- The family room addition is  $\pm 35\text{m}^2$ , however, only  $\pm 25\text{m}^2$  is built within the 3m common boundary building line.
- The construction dates as well as the construction duration is unknown.
- The unlawful conduct was never stopped by the building inspector and no complaint has been received.
- The current owner of the property has never contravened this By-Law or any other planning laws.

#### 5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorised family / braai room contravenes Item 22 of the Development Management Scheme (DMS) as it is located within 3m from a common boundary. Although the unauthorized building work amounts to  $35\text{m}^2$ , only  $25\text{m}^2$  contravenes the MPBL.
- 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 For pragmatic reasons and due to the recommendation of a R0 administrative penalty, the maximum value of an administrative penalty has not been determined.
- 5.4 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 unauthorized building work relates to a family / braai room that is located within the 3m common boundary building line.  
*Duration* – Aerial photographs show that the covered area was constructed more than 10 years ago. The duration of the contravention is thus long.  
*Gravity* – The gravity of the contravention is not serious. The contravention relates to a ground floor extension with a low roof.  
*Extent* – At  $25\text{m}^2$ , the extent of the building work that contravenes the DMS is moderate.
- b) **The conduct of the person involved in the contravention**  
According to the applicant, the unauthorised building work was erected by the previous owner. This has been verified by means of aerial photography.
- 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 of the property has not previously contravened this By-law or any other planning law.

- 5.5 In view of the abovementioned considerations, and in particular the conduct of the current owner, this Department recommends that an administrative penalty of R0 be charged.

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The unauthorised building work has been built in contravention of Item 22 of the Development Management Scheme.
- 6.2 The current owner bought the property with the unauthorised work already constructed.

## 5 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R0 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 15489 Fish Hoek with regard to the unauthorised covered area and windows in accordance with the plan drawn by Meuson Designs with drawing number 23191, dated 03-12-2018.

## ANNEXURES

Annexure A	Locality Plan
Annexure B	Site Development Plan
Annexure C	Applicant's motivation
Annexure D	Title deed



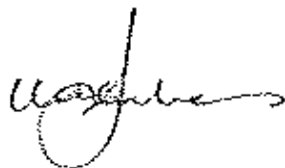
### Section Head : Land Use Management

Name Pierre Hoffa

Tel no 021 444 7724

Date 2019-04-24

Comment



### District Manager

Name Ossie Gonsalves

Tel no 021 444 7720

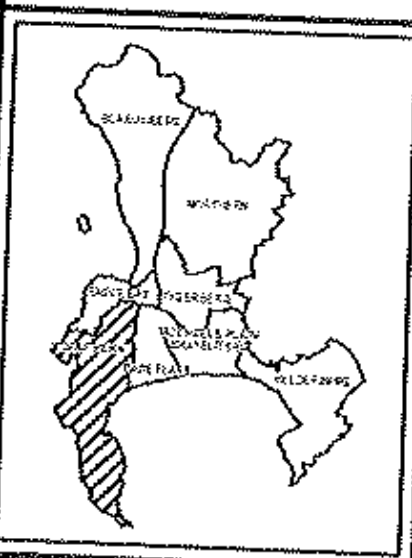
Date 2019-04-25

Comment

## 2996

**ANNEXURE : A1**

## Overview



Erf. 15459

Assignment: FISH HOOK

Word: 69

District: SOUTHERN

Suburb: SUNNYDALE

Sub Counters: Subcounters 19



1:1 263

## Notices Served



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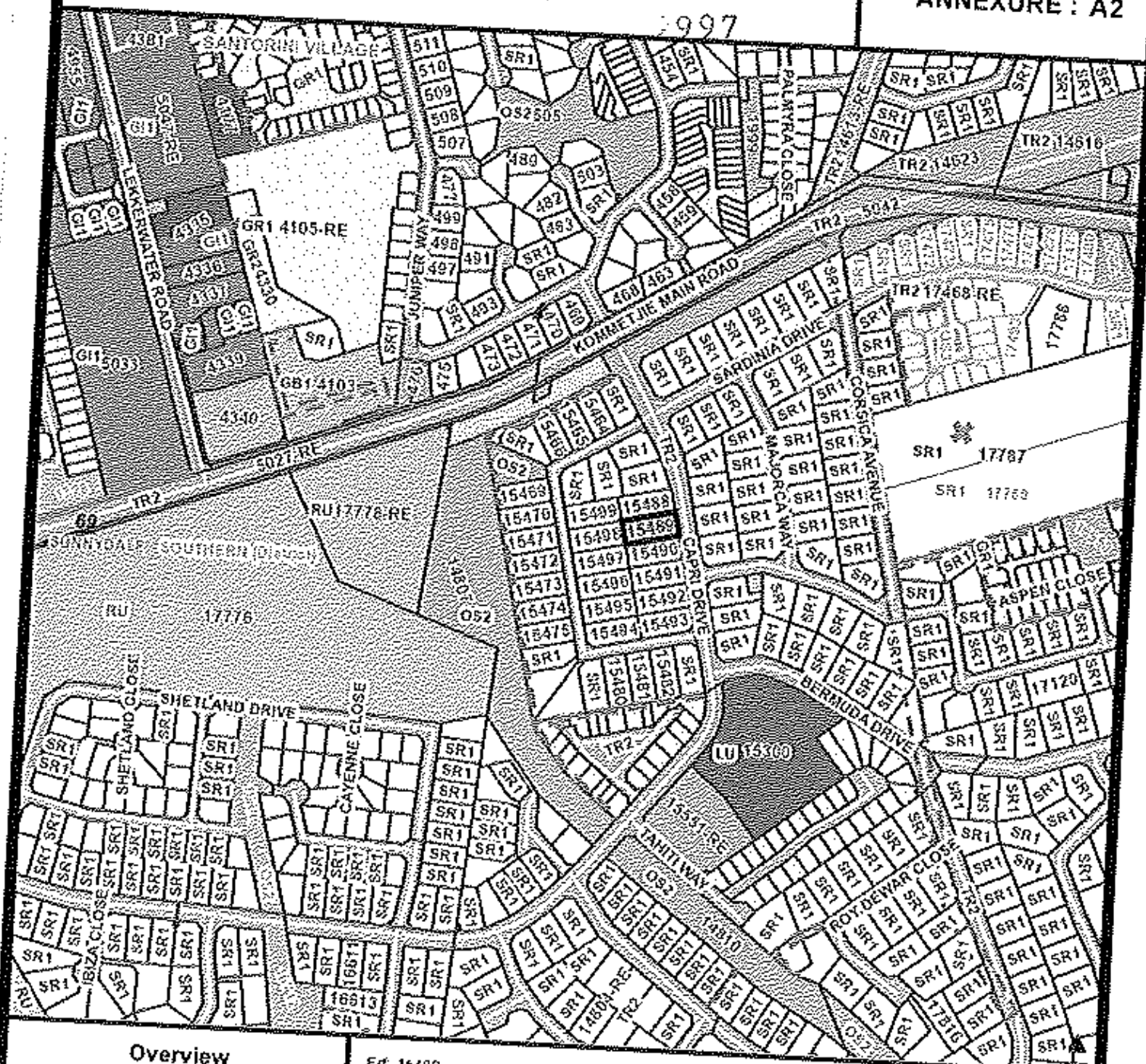


CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

$$W(\tilde{c})_{\tilde{c}}^{\tilde{c}} \text{ is a } W(\tilde{c})_{\tilde{c}}^{\tilde{c}} \text{ subalgebra, } \tilde{c} \in \mathfrak{g}.$$

# PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE : A2



## Overview

Erf: 15489

Abolment: FISH HOEK

Ward: 69

District: SOUTHERN

Suburb: SUNNYDALE

Sub Council: Subcouncil 18



1:4 800

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Date: 24 April 2019

File Reference:



CITY OF CAPE TOWN  
ISIKEKO SASEKAPA  
STAD KAAPSTAD

Making progress together









ph. 021-741518

**Meuson designs**

architectural • engineering  
consultant

2999

ANNEXURE C

p o box 328  
constantia 7848  
7 van breda ave  
constantia 7800

## MOTIVATION

10<sup>th</sup> December 2018.

RE: Motivation in terms of Section 129(8) of the MPBL, for unauthorised work at 10 Capri Drive, Erf 15489 Sunnydale (Fish Hoek) – owner J.J. & C. Russell.

On behalf of our clients Mr & Mrs. Russell, and with reference to our building plans – number 2317/1, dated 03<sup>rd</sup> December 2018 – I hereby give you some background information...

Our clients Justin Russell (SA ID number 811129 5144 08 0), and Chevaun Russell (SA ID number 840503 0059 08 6) are the owners of 10 Capri drive Erf 15489 Sunnydale, (Fish Hoek), and they purchased this property in early 2017.

The unauthorised work that was done to the dwelling was done by one of the previous owners.

Namely...

- 1). New family/braai room which is 35 square metres in total, of which 25 square metres is over the 3,0 metre North common side space.
- 2). The roof was changed from a gable type of roof to a hipped type of roof (during the initial construction of the dwelling).
- 3). The house was initially specified with Winblock type windows, but these were changed on site to normal/conventional timber windows (during the initial construction of the dwelling).
- 4). A 1,5 metre high pre cast street boundary fence was built at the time of the initial construction but this was never reflected on the plans.

Our clients initially attempted to rectify this unauthorised work with the assistance of their attorneys (see previous application, case number 70369514), but the appointed architect/draughtsman abandoned the application without any notice.

Eventually, our clients were advised by their attorneys to engage with new architects, and they contacted our office to instruct us to proceed with the immediate legalisation of this previously unauthorised work.

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This property is zoned SR1 and is 982 square metres in extent.

The family room addition is 35 square metres in total, but 25 square metres is over the 3,0 metre North common side space – which is a regulation departure, item 22(d).

The conduct of the previous owner/owners is unknown.

The cost of this conversion is unknown, but we can roughly work on R 10 000-00 per square metre (including finishes) – today's rates.

The construction dates as well as the construction duration for this is unknown.

This unlawful conduct was never stopped by the building inspector and no known complaints were ever received.

A notice was never issued to the client by the building inspector (and as far as I know, the building inspector is unaware of this unauthorised work).

Our clients have never contravened this By-Law or any other By-Law.

We have attached a City of Cape Town 2015 Municipal Valuation for this property. This valuation is R 1 700 000 - but the sale price in 2017 was R 2 300 000.

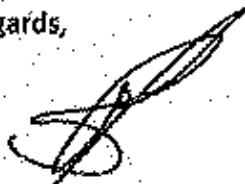
We have attached the original previous approved plan for information purposes.

We have attached some photographs for information purposes.

We have attached the BDM previous application LUM application notice.

We await your feedback...

Regards,



Sean Meuwese.

c/o Meuson Associates.

021 794 5518.

082 294 2948.



1083

Grayvensteins  
Parc du Cap  
1st Floor, Building No. 3  
Mispel Road  
Bellville  
7535

Fee schedule		
	Amount	Rate
Purchase price/Value	R 2 300 000.00	R 1200.00
Mortgage capital amount	R 2 300 000.00	R 1200.00
Transfer fee	R 1200.00	R 1200.00
Other		

ANNEXURE D

3001

Prepared by me

CONVEYANCER  
EMILE GREYVENSTEIN  
JACORINE ALIDA BOOYENS

VERBIND	MORTGAGED
VIR FOR R 1 500 000.00	
000005501/2017	
27 FEB 2017	



T00011494/2017

## DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

HENNO NOTHNAGEL

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at CAPE TOWN on 19 JANUARY 2017 granted to him by

1. MARK STEVEN ARENDSE  
Identity Number 631126 5141 08 0  
Unmarried
2. SELINA ROSEMARIE ARENDSE  
Identity Number 670528 0103 08 4  
Unmarried



3002

And the appearer declared that his said principal had, on 25 November 2016, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

1. **JUSTIN JOHN RUSSELL**  
Identity Number 811129 5144 08 0  
Married out of community of property
2. **CHEVAUN RUSSELL**  
Identity Number 840503 0059 08 8  
Married out of community of property

their Heirs, Executors, Administrators or Assigns, in full and free property

**ERF 15489 FISH HOEK,  
IN THE CITY OF CAPE TOWN  
CAPE DIVISION  
PROVINCE OF THE WESTERN CAPE**

**IN EXTENT 982 (NINE HUNDRED AND EIGHTY TWO) Square metres**

**FIRST TRANSFERRED** by Deed of Transfer Number T17297/1992 with General Plan No. 12080 relating thereto and **HELD BY** Deed of Transfer Number T17298/1992.

- A. **SUBJECT** to such conditions as are referred to in Deed of Transfer No T13051/1928.
- B. **SUBJECT FURTHER** to the following endorsement on Deed of Transfer No T3795/1969 which endorsement dated 14 September 1982 reads as follows:

**\*Remainder Para2**

By Deed of Transfer No T33930/1982 the remainder of farm 953 measuring 199,6188 Ha held hereunder is subject to the following conditions imposed by the Administrator in terms of Section 9 of Ordinance 33 of 1934 when approving the subdivision of Farm 953:

1. The owner of this erf shall without compensation, be obliged to allow gas mains, electricity, telephones and television cable and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or erven to be conveyed across this erf, if deemed necessary by the Local Authority and in such manner and position as may from time to time be reasonably required. This shall include the right to access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.
2. The owner of this erf shall be obliged, without compensation, to receive such material or permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the Local Authority."

WHEREFORE the said Appearer, renouncing all rights and title which the said

1. MARK STEVEN ARENDSE, Unmarried
2. SELENA ROSEMARIE ARENDSE, Unmarried

heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

1. JUSTIN JOHN RUSSELL, Married as aforesaid
2. CHEVAUN RUSSELL, Married as aforesaid

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R2 300 000,00 (TWO MILLION THREE HUNDRED THOUSAND RAND).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 27 FEB 2017

In my presence

REGISTRAR OF DEEDS