



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70501584				
CASE OFFICER	Jevon Jacobs				
CASE OFFICER PHONE NO	021 444 7514				
DISTRICT	TYGERBERG				
REPORT DATE	1 May 2020				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO MPT78/05/20

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 18383, BELLVILLE, 16 BELMORE WAY, BELHAR EXT 1.

1 EXECUTIVE SUMMARY

Property description	Erf 18383, Bellville.
Property address	16 Belmore Way, Belhar Ext 1.
Site extent	96m ²
Current zoning	General Residential 1.
Current land use	Dwelling house .
Overlay zone applicable	None.

Submission date	15 April 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 18383, Bellville is currently zoned as General Residential 1 (GR1). However, the property has an unauthorised 28.0m² carport which exceeds the 5m street building line setback along Belmore Way.

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.

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 the 5m street building line setback.
- The carport was erected to ensure safety and security of the property and vehicles on-site.
- The unlawful building works were completed between September 2010 and October 2010, and is still in existence.
- The unauthorised carport poses no harm to the health and safety of surrounding neighbors and does not negatively affect surrounding land use rights.
- The owners seek to rectify the unlawful nature of the carport.
- The owners have not previously contravened the Municipal Planning By-law, 2015 or any other planning legislation.

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

$$\text{Value per m}^2 \text{ (R1 340.00)} \times \text{Total Unlawful area (28.0m}^2\text{)} = \text{R37 520.00}$$

An amount which is not more than 100% of R37 520.00 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 (north-western) street building line setback of 5m.

Duration – The applicant motivates that the unlawful carport was completed between September 2010 and October 2010. This is contradictory to the City of Cape Town's aerial imagery data which indicates the carport has been erected by March 2009. This means the unlawful carport has been in existence for approximately 11 years.

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 28.0m² 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 owners now wish to rectify and legalise the unauthorised structure(s). Therefore, the owners wish 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 and gravity, yet significant extent, as well as the duration of the contravention being approximately 11 years, an administrative penalty amount of R800.00 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 11 years, per Council aerial imagery (last 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 R800,00 **be determined** in terms of Item 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 18383, Bellville in accordance with Annexure B.

ANNEXURES

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



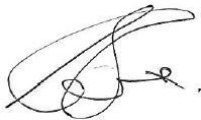
Section Head : Land Use Management

Comment

Name Tess Kotze

Tel no 021 444 7506

Date 29 April 2020



District Manager

Name Dewaldt Smit

Tel no 021 444 7840

Date 1 May 2020

Comment

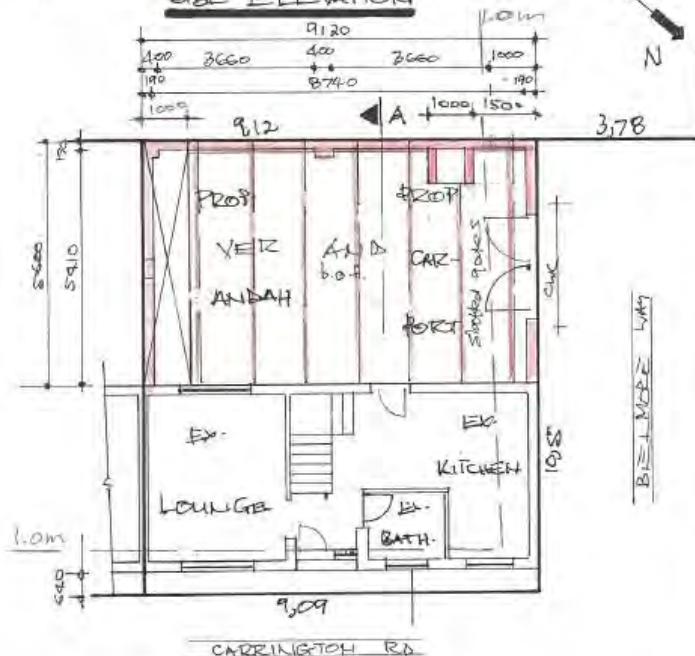
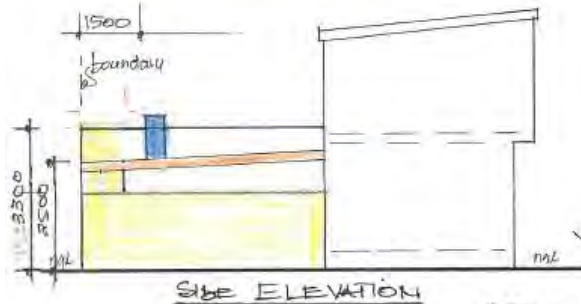
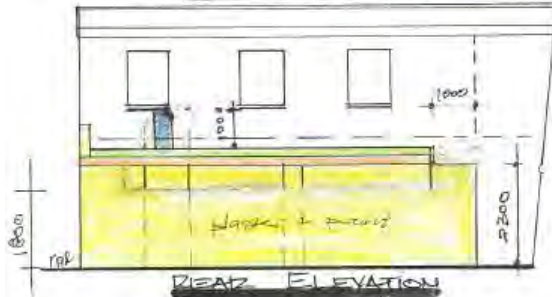
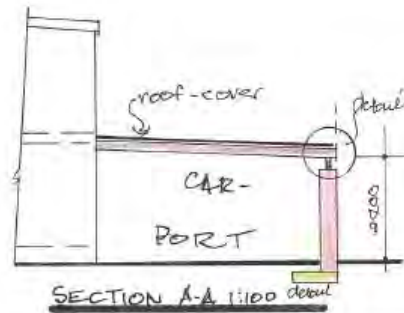
Annexure A Locality Plan

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 SASEKAPA STAD KAAPSTAD <small>Making progress possible. Together.</small>	
Date: Tuesday, 21 April 2020				
File Reference: 70501584				

Annexure B

Building plan

• roof-timber to comply to
SANS 10400 part 1 table 5



CONSTRUCTION:

85% clear polycarbonate sheeting @ 3° fall
on 70x53 durin's @ 400 c/c max. on 228x75
(V5) rafters @ 1200 c/c max. on 228x75 C/S
Beams fixed to 400x400 piers @ 2600 c/c max.
with 12m x 20mm Galf. Hoop-iron box deep
rafters fixed to house wall with tere-
brackets and 12mm Ø Rank-bolts
228x20 Barge-board
228x20 Fascia-boards
100 Ø PVC Guttering
65 Ø PVC down-pipes with choc

190 block-walls 1800 high on 70x230 conc.
footings
Front and rear walls to have m/c course
brick-force over
Parapet walls m/c 300 and max 500 above
finished roof-height
Pre-stressed conc. lintels over opening (door)
with m/c course brick-force over
Provide adequate flashing and counter-
flashing to all parapet walls
No footings or any portion of structure to
project beyond site-boundary

LINEAR DISTANCE CALCS:

TOTAL LINEAR DISTANCE: 19.62m

(-) Midline 24m : - 4.38m

CANNOT BE CALCULATED.

SCALES 1:100, 1:20	DATE 29.06.2019
SITE AREA 95m ²	NEW YORK N/L
PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING DWEL- LING ERF 18383 CARRINGTON ST. BELHAR FOR P.R. GOERGE	
drawn I. MAJLET 38 ARCTIC WAY BELHAR 7493 021-9522857 082-9657243	owner P.R. GOERGE 16 CARRINGTON ST BELHAR 084 910 8874
<i>Man</i>	<i>George Goerge</i>

COVERAGE:

Ex dwelling: 38.7m²

Prop. Verandah/
Car-port: 45.5m²

TOTAL COVER = 84.2m² : 88.6%

Bulk = $\frac{774m^2}{95m^2} = 0.81$

DRAW. NO. 059/2010

Annexure C

Applicant's motivation

Attention: Director Development Management
 Parow Administrative Building
 c/o Voortrekker Road and Tallent Street
 Parow
 7500

6 April 2020

RE- ERF 18383 BELLVILLE, ADMINISTRATIVE PENALTY

Herewith an application for the determination of an administrative penalty in terms of Item 42(r) of the Municipal Planning By-law, 2015:

(a) the nature, duration, gravity and extent of the contravention

Nature: The unauthorised carport was erected to secure the property and to provide a safe space for the parking of vehicles on site

Duration: The carport was constructed from September 2010 to October 2010.

Gravity: The gravity of the contravention can be considered negligible as it does not pose any danger in terms of fire, safety and health and does not negatively impact on the neighbouring property. The carport was only constructed for the purpose of securing the property.

Extent of contravention: The extent of the carport is 45.5m²

(b) the conduct of the person involved in the contravention

The owners of the property, Paul and Janet George, have submitted the application to regularise the unauthorised carport.

(c) whether the unlawful conduct was stopped

The unauthorised building work has stopped, i.e. it is complete.

(d) whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.

The owners of the property, Paul and Janet George, have not previously contravened this By-Law or any other planning law.

Kind regards

Paul and Janet George