

**REPORT TO MUNICIPAL PLANNING TRIBUNAL**

CASE ID	70502285				
CASE OFFICER	M. Wansbury				
CASE OFFICER PHONE NO	021 4444 630				
DISTRICT	HELDERBERG				
REPORT DATE	April 2020				
INTERVIEW REQUESTED	APPLICANT	YES		NO	x
	OBJECTOR(S)				x

**ITEM NO MPT24/05/20**

**APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 2535, SOMERSET WEST AT 15 OATLANDS ROAD**

**1 EXECUTIVE SUMMARY**

Property description	Erf 2535, Somerset West
Property address	15 Oatlands Road, Somerset West
Site extent	980m <sup>2</sup>
Current zoning	Single Residential Zone 1 (SR1)
Current land use	Residential
Overlay zone applicable	None
Submission date	23/04/2020
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, the storage shed encroaching the 3.0m common building line 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

Erf 2535 (hereafter referred to as the subject property) is located in an established residential neighbourhood known as Martinville, in Somerset West. The subject property is zoned for Single Residential 1 purposes, measures approximately 980m<sup>2</sup> in extent and is improved with a single storey dwelling house and associated outbuildings. Access is taken from Oatlands Road.

The administrative penalty is required only for a portion of building work (storage shed) located 0m in lieu of 3.0m from the common building line. This has been built in contravention of the MPBL and contravenes Item 121(1) of the Development Management Scheme (DMS). In terms of Item 121(1), storage sheds not exceeding 5m<sup>2</sup> in area and 2.5m in height measured from existing ground level, is permitted within the common building line. The proposed storage shed measures ±15m<sup>2</sup> in extent and therefore triggers a departure from the DMS for the relaxation of the 3.0m common building line (adjacent to erven 2534 and 2536) to 0m.

The application for permanent departure to regularise the unlawful structure will be dealt with under delegated authority once the determination of the administrative penalty has been concluded.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The current owner is responsible for the unlawful building work.
- The storage structure was constructed in November 2015 without building plan approval.
- The reason the storage shed was erected was because the dwelling was being renovated and additional storage space was required at the time.
- It was meant to be a temporary structure.
- The intention is to rectify the unlawful building work, hence the application at hand.

## 5 ASSESSMENT OF APPLICATION

5.1 The unauthorized building work is in contravention of the Development Management Scheme in the following manner:

5.1.1 Contravention of the 3.0m common building line to 0m in order to formalize the storage shed.

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 The area of the unauthorised building work that contravenes the Municipal Planning By-Law is 14m<sup>2</sup>.

### 5.4 Administrative Penalty: Calculation

Unauthorise building work (storage shed):

$$\text{Value per m}^2 \text{ (R2 280.00)} \times \text{Total Unlawful area (14m}^2\text{)} = \text{R31 920.00}$$

An amount which is not more than 100% of R31 920.00 may be imposed as administrative penalty

5.5 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 relates to a 14m<sup>2</sup> portion of the storage shed that encroaches the 3.0m common building line.

**Duration:** According to the applicant, the storage shed was constructed in 2015. This has been verified from aerial imagery.

**Gravity:** The contravention does not pose a threat in terms of safety, fire, health and or any other hazard. The unlawful building is partially screened by an existing boundary wall and vegetation thus mitigating potential negative impacts.

**Extent:** The total extent of the contravention is 14m<sup>2</sup>, which is not that significant in relation to the main dwelling and surrounding dwellings.

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

The current owner has admitted to the transgression and wishes to formalise the unauthorised building work by submitting the relevant application. The current owner thereby showed willingness by initiating the process to regularise all unlawful building work on the subject property.

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

The unlawful conduct has not been stopped and the building work is complete.

**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 ascertain, the current owner has not previously contravened this by-Law or any other planning law.

**6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- 6.1 The current owner is responsible for the contravention.
- 6.2 Although the unauthorized use contravenes the Development Management Scheme, its impact is minimal.
- 6.3 The duration of the contravention is significant ( $\pm$  5 years).
- 6.4 The gravity of the structure is minimal since it is ancillary to the main dwelling unit and pose no health and safety risk.

**7 RECOMMENDATION**

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R300.00** in respect of the unauthorised storage shed be determined in terms of Section 98(b) of the City of Cape Town Municipal Planning By-Law, 2015 concerning Erf 2535, Somerset West.

**ANNEXURES**

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




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**Section Head : Land Use  
Management**

Name      Jeanine Williams

Tel no      021 444 4623

Date      14/5/2020

Comment




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**District Manager**

Name      Daan Visser

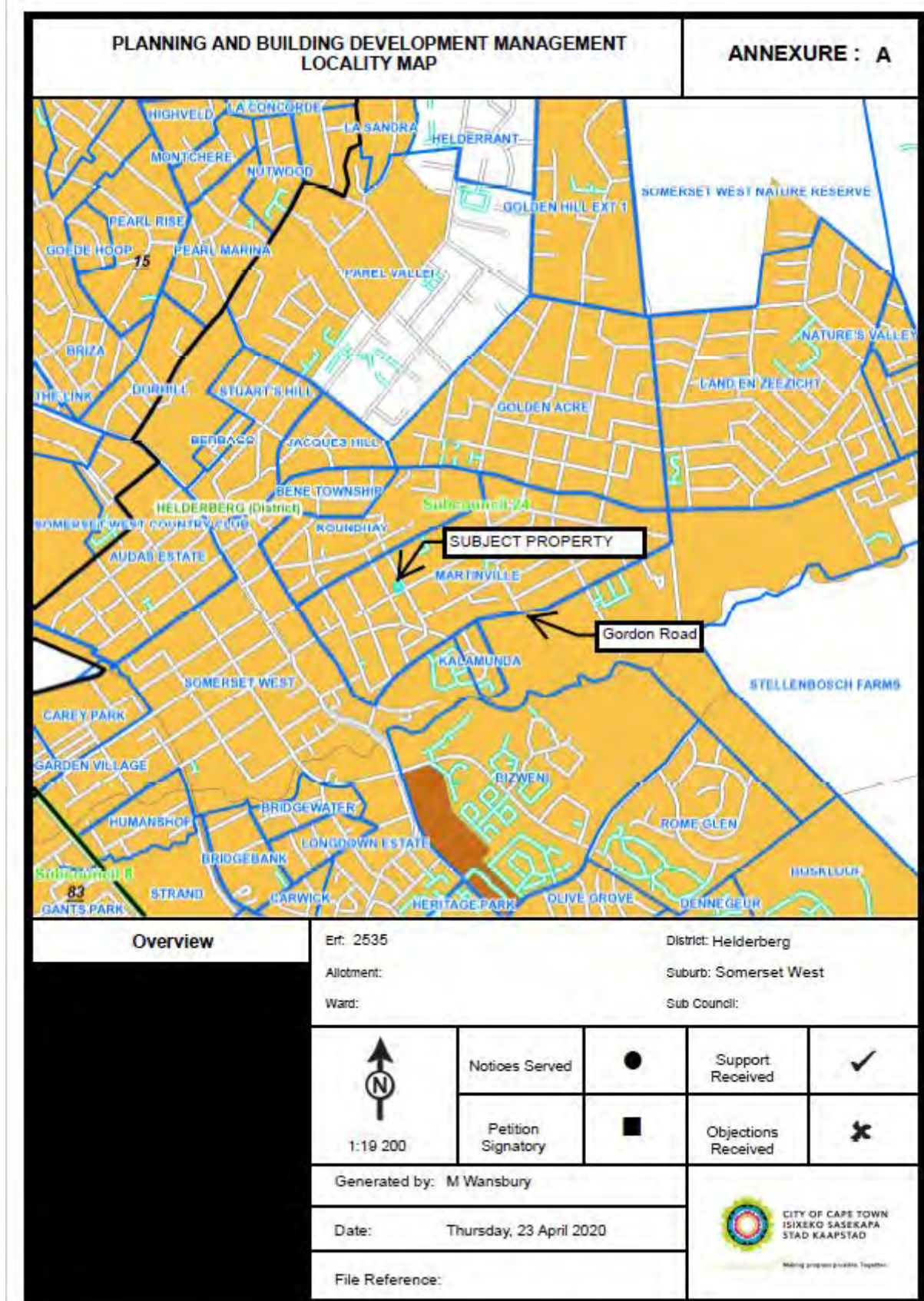
Tel no      083 652 8186

Date      14/5/2020

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# Annexure

## A



# Annexure

## B



**house  
ridgway**  
alterations & additions  
approval | signage

**THE PLAN CO**  
ARCHITECTURAL DESIGNERS  
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info@thepan.co.nz  
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# Annexure C

City of Cape Town – Helderberg Municipality  
Land Use Management Department  
1<sup>st</sup> Floor, Helderberg Municipality Building  
Cnr. Andries Pretorius & Victoria Streets  
Somerset West

**To Whom It May Concern:**

Date: 27 March 2020

ERF: 2535  
STREET: 15 Oatlands Road  
SUBURB: Somerset west

MOTIVATION

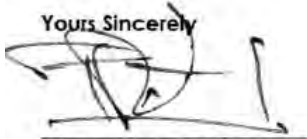
The addition of storage is encroaching the 1.524m title deed building lines and we would like to have the building lines relaxed from 1.524m – 0m.

The storage structure exist without plan approval and was constructed 2015 November roughly and it took 9 months to complete. The storage was added without plan approval because the dwelling was being renovated and we had no storage space in the house at the time. We had a problem with building materials constantly being stolen out of the yard and needed a secure place to keep it. The house was renovated over time and so a secure storage was needed as. This was meant to be a temporary structure whereby the structure could be removed and the area there thereafter utilized for a washing line.

This addition to the home is increasing the value of the property and is not affecting the neighbors negatively with regards to sunlight, views and access.

Trust you will find this order

Yours Sincerely



Marilyn & Patrick Ridgway

