



## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID		70461778			
CASE OFFICER		B ABAY			
CASE OFFICER PHONE NO		021 444 7512			
DISTRICT		TYGERBERG			
REPORT DATE		15/07/2019			
INTERVIEW REQUESTED	APPLICANT	YES		NO	√
	OBJECTOR(S)				√

ITEM NO **MPTNE20/11/19**

**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 19806, PAROW, 28 HENNIE WINTERBACH STREET**

### 1 EXECUTIVE SUMMARY

Property description	19806, Parow
Property address	28 Hennie Winterbach Street, Panorama
Site extent	228 m <sup>2</sup>
Current zoning	General Residential 1 (GR1)
Current land use	Dwelling house
Overlay zone applicable	None.
Submission date	24 June 2019
Subject to PHRA / SAHRA	None
Any unauthorised land use / building work?	The owner of the property is operating an estate agents' office from the premises
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?	No

If yes, an administrative penalty may not be applied for.	597
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

## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

The property is zoned General Residential 1 with the primary use of the property permitted for residential purposes only in terms of the City of Cape Town Development Management Scheme (DMS). The property has been used for an estate agency for the past 7 years. The applicant motivates that the office use was initially not contravening the DMS and operated as a Home Occupation until an additional bedroom was also included in the office use. As a result, the total extent of the home occupation has increased to 37,7m<sup>2</sup> that now represents more than 25% of the floor space of the dwelling unit being a contravention of item 23(g) of the City of Cape Town Development Management Scheme.

In light of the above, the applicant argues that the contravening floor area is 11.5m<sup>2</sup> and therefore an administrative penalty is being applied for.

## 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 owner (Mr Simpson) runs a home occupation activity known as Finesse Properties on his premises. It has been operating for the past 7 years.
- Two full-time workers and Mr. Simpson's wife are currently employed in this business.
- In the beginning of this year, an additional bedroom was included to be part of this home occupation; as a result, the total floor area for his home occupation activity exceeded the allowed floor area for such uses.

- The owner was not aware of the 25% maximum floor area rule that is applicable in the Development Management Scheme.
- No complaints were received in seven years of operation.
- The residential character of the dwelling has been unaltered and has never been compromised and no impacts were experienced in terms of traffic, noise, scale, etc.

## 5 ASSESSMENT OF APPLICATION

- 5.1 As a result of a site investigation conducted, this office is not in agreement with the applicant that the business can be regarded as a Home Occupation and that the extent of the unauthorised land use is only limited to 11.5m<sup>2</sup>. The full extent of the business is therefore regarded as unauthorised. The property is zoned GR1 and the surrounding area is predominantly zoned SR1, with a few GR1 zoned properties located at the corner of Hennie Winterbach Street and Caledon Street.
- 5.2 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 Unauthorized land use

$$\frac{\text{Total Municipal Value of property (1 800 000)}}{\text{Total area of property (228m}^2\text{)}} \times \text{Total Unlawful Area (37,7m}^2\text{)} = 297\,631.57$$

An amount which is not more than 100% of R297 631.57 may be imposed as an administrative penalty.

The table below shows the penalty values per scales based on the calculations above.

Current Municipal Property value (R)	R1800000	0.5%	1%	2%	5%	10%
Total size of property (m <sup>2</sup> )	228m <sup>2</sup>					
Contravening area (m <sup>2</sup> )	37.7m <sup>2</sup>					
Penalty value and scale (R)	R 297 631.57	R1 488.16	R 4 762.1	R 5 952.63	R 14 881.58	R29 763.16

- 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 current unauthorised use involves an estate agency which is conducted by the property owner and his wife, together with two full-time employees. The activity can, however, not be regarded as a Home Occupation as there are clear contradictions between the motivation provided by the applicant and the findings of the on-site inspection that was conducted by the Case Officer accompanied by her Acting Section Head. During the site visit the owner of the property reported that the remaining bedroom used to be occupied by a student who does not reside on the premises any longer. This is in clear contradiction with the applicant's motivation and some of the conditions applicable to a Home Industry that include the requirement for the predominant use of the property to be for the living accommodation of a single family; and that the proprietor of the business shall reside on the premises.

**Duration** – According to the motivation, the owner has been operating the office (estate agency) for the last seven years as a home occupation, which is permitted as an additional use right in terms of the Cape Town Development Management Scheme. The owner subsequently expanded the home occupation's floor area by adding one existing bedroom. This resulted in exceeding the allowed area for home occupation. According to the applicant's motivation, the addition was made 6 months ago. Notwithstanding the motivation, it has become evident from the site inspection that the proprietor of the business does not reside on the property and therefore that the unauthorised use potentially involves all rooms currently involved with the conduct of the business.

**Gravity** – As the unauthorised use is of an office nature and contained within the existing residential structure, the gravity of the contravention is considered low.

**Extent** – the property measures 228m<sup>2</sup> in extent and is developed with a main dwelling house. In terms of the nature of the contravention discussed above, it is concluded that the full extent of the business of 37.7m<sup>2</sup> should be regarded as unauthorised as opposed to the 11.5m<sup>2</sup> motivated by the applicant.

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

The owner of the property concerned is involved in the contravention. Full access was granted by the owner to view the property and the applicant was forthcoming when information was requested. According

to the applicant, Mr Simpson (owner) was not aware of the 25% maximum floor area rule that is applicable in the Development Management Scheme.

During a site investigation, the owner mentioned that one room was previously rented out to a student, however that this room is now vacant. This is a clear contradiction to the applicant's motivation, as the proprietor of the business does not reside on the premises and as there is no residential component present at the property. Furthermore, the existing study room appears to be utilized as part of filing space for the office business.

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

No, the unlawful conduct is still operating from the property.

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

As far as can be determined, the owner of the property has not previously contravened the MPBL or any other planning law.

According to the applicant's motivation, the owner has been operating the estate agency business on his property for the last seven years and was not contravening any law until the extension of the business occurred in the beginning of 2019. However, the discrepancies found between information provided in the motivation and the on-site reality provides for uncertainty with regards to the accuracy and reliability of the motivation.

In view of the above mentioned considerations, this office recommends that an administrative penalty equal to approximately 5% (R 14 000.00) of the value of the portion of the property used for the unlawful activity be charged.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

1. There is a clear discrepancy between information provided in the motivation and the findings from the on-site inspection regarding the nature of the business as well as the extent and duration of the unauthorised use.
2. The unauthorised use is regarded to be in existence for a long period.

## **6 RECOMMENDATION**

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R14 000.00 **be determined** in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 19806, Parow in accordance with site plan attached as Annexure B.

## ANNEXURES

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



**Section Head : Land Use  
 Management**

Name TR Kotze

Tel no 021 444 7506

Date 14/10/2019

Comment



**District Manager**

Name

Tel no

Date

Comment

# PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

602

ANNEXURE : A



## Overview

Erf: 19806

District: TYGERBERG

Allotment: PAROW

Suburb: PANORAMA

Ward: 1

Sub Council: Subcouncil 3



1:1 200

Notices Served



Support  
Received



Petition  
Signatory



Objections  
Received



Generated by: B Abay

Date: Tuesday, July 23, 2019

File Reference: 70461778



CITY OF CAPE TOWN  
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STAD KAAPSTAD

Making progress possible. Together.





# APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF SECTION 42(r) OF THE MPBL

ON ERF 19806  
28 Hennie Winterbach Street, Panorama

OWNER:  
Willem Daniel Simpson

June 2019

## **1. Motivation**

My client purchased the property in question, namely Erf 19806, Parow Panorama in 2002 and therefore has owned his property for approximately 17 years. Mr Simpson is the current owner of a home occupation activity known as Finesse Properties, which he has established from home approximately 7 years ago. The home occupation activity consists of Mr Simpson, his wife and 2 full time workers which are involved in administration and selling of homes. The home occupation activity (Estate Agency) has grown in the last few years and in the beginning of this year Mr Simpson has extended the floor area of his home occupation by utilizing an additional bedroom from his premises. Unfortunately, my client was not aware of the 25% maximum floor area rule that is applicable in the Development Management Scheme. The scheme rules state 25% of the floor area or 50m<sup>2</sup>, maximum of which the lesser amount is applicable to a home occupation activity.

With the expansion of his home occupation Mr Simpson appointed my firm Dimitri Cristallides Town Planners to submit a regulation departure to allow the home occupation to exceed the 25% floor area rule which is 26,25m<sup>2</sup> to 37,7m<sup>2</sup> which is equivalent to 37,7% of the floor area. The floor area that exceeds the permissible 25% is 11,5m<sup>2</sup>, which relates to an additional bedroom. I enclose a copy of a site layout plan showing the existing home occupation activity with the existing sizes and areas demarcated for the home occupation and the residence. A copy of the approved building plan is also enclosed.

It is important to note that my client has never received any complaints and he gets on well with his immediate neighbours. The home occupation is of a very low-key nature with also a very small impact in terms of the scale, the noise etc. The residential character of the dwelling has been unaltered and has never been compromised. The changes are merely internal usage, which are not visible from the street. The property is located on a prominent road Hennie Winterbach which connects to the Panorama Hospital. An application was submitted to council to increase the floor area with the relevant departures, which is currently in the councils system. The application complies with all the desirability criteria and planning policies as listed in the Municipal Planning By-Law Section 99 (1, 2 & 3) of 2015. The primary use of the property remains residential and as stated earlier the home occupation activity is of a low-key, small-scale nature that is compatible with the residential area.

It is also pertinent to note that there is no illegal or unauthorized building work.

The owners have not contravened any previous legislation be it building work or zoning aspects, and have an impeccable track record.

## 2. Assessment

2.1 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by Section 129 (8) of the By-Law.

<b>Section 129(8)(a)</b>				
	Land Use		Building Work	
<b>Nature</b>	Yes		No	
<b>Comment</b>	Conversion of additional bedroom into home occupation.		No alterations to existing buildings	
<b>Duration</b>	6 months			
<b>Comment:</b>	An application for a departure was submitted to allow the increase in the home occupation in April 2019.			
<b>Extent</b>	37,7m <sup>2</sup> instead of 26,25m <sup>2</sup>		Internal conversion no alterations	
<b>Comment:</b>	With respect to land use, there is a contravention. With respect to the land use, contravention the area is approximately 11,5m <sup>2</sup>			
<b>Gravity</b>	Safety	Fire	Health	Other
	No	No	No	No/nuisance/noise
				None
<b>Comment:</b>	The gravity is not serious as the dwelling is legal.			
<b>Section 129(8)(b)</b>				
	Misleading		Forthcoming	
<b>Conduct</b>			X	
<b>Comment:</b>	My client was not aware that the home occupation was limited to 25% of the floor area. There was never any intention to mislead council.			
<b>Section 129(8)(c)</b>				
	Yes		No	Other
<b>Unlawful conduct ceased</b>			X	X
<b>Comment:</b>	The home occupation activity has been exceeded by the use of an additional bedroom			
<b>Section 129(8)(d)</b>				
			No	
<b>Previous contraventions</b>	None		X	
<b>Comment:</b>	My client has an impeccable conduct with no previous contraventions.			

### **3. PROPERTY SPECIFICS AND ANALYSIS**

Ownership	:	Willem Daniel Simpson
Registered Description	:	Erf 19806, City of Cape Town, Western Cape
Location	:	28 Hennie Winterbach Street Parow, Panorama
Extent	:	228m <sup>2</sup>
Zoning	:	General residential 1 (group housing)
Zoning scheme	:	Development Management Scheme
Site Characteristics	:	Site is improved by a dwelling and a garage
Applicant	:	D. Cristallides Town & Regional Planners
Title Deed Number	:	T008841/2002
Jurisdiction	:	Tygerberg District of the City of Cape Town

### **4. CONCLUSION**

4.1 My client applied to extend the floor area of his home occupation activity which required a regulation departure from the rules that stimulated that only 25% of the floor area or 50m<sup>2</sup>, whichever is the lesser applies. The dwelling is approximately 105m<sup>2</sup> in extend which means that the home occupation activity (Estate Agent office) cannot exceed 26,25m<sup>2</sup>. My client has increased the floor area to 37,7m<sup>2</sup> for the home occupation activity, which effectively means another bedroom of 11,5m<sup>2</sup> is being occupied. My client's home occupation activity consist of him and his wife and two full time workers, which is allowed. Very few clients visits his premises as an Estate agent Mr Simpson is mostly on the road.

4.2 The home occupation activity is a discreet very low-key and small-scale nature that has retained the residential character of the dwelling. There has never been a complaint from his immediate neighbours since he began his home occupation activity 7 years ago.

4.3 My client have had an exemplary conduct prior to this application. There has been no previous contraventions to this by-law or any planning laws.

4.4 In the light of the above circumstances we recommend that council impose minimum administrative penalty of R5000 in terms of Section 129 of MPBL if 2015 in respect of Erf 19806, 28 Hennie Winterbach Street.

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Total extent of House  
= 105m<sup>2</sup>

Bedroom 1	: 10m <sup>2</sup>
En-Suite	: 4.5m <sup>2</sup>
Study	: 11m <sup>2</sup>
Bathroom	: 4.5m <sup>2</sup>
Living	: 5m <sup>2</sup>
Kitchen	: 11m <sup>2</sup>
Panorag	: 10m <sup>2</sup>
Garage	: 10m <sup>2</sup>

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Hall/entrance Area: 67m<sup>2</sup>  
64%

Exit Office	: 11m <sup>2</sup>
Exit Office	: 11.7m <sup>2</sup>
Reception Area	: 15m <sup>2</sup>

Home Occupation : 37.7m<sup>2</sup>  
36.3%

Home occupation allowed:  
22.5% or more, whichever is the  
less; (20.25m<sup>2</sup>)

**D. CRISTALLIDES**  
TOWN & REGIONAL PLANNERS

155 BOWLING STREET  
DUNDEE  
SCOTLAND  
DD1 1WQ

Tel: 01753 597 1400  
Cell: 0800 304 3364  
E-mail: [dcris@btuk.com](mailto:dcris@btuk.com)

**PROJECT:**

**EPF 1980/6, 28 HENNIE  
WINTERBACH STREET,  
PANDRARA,  
PAROV**

**CLIENT:**

**MR. WILLEM SIMPSON**

NORTH



TO BE DISPLAYED IN A PROMINENT POSITION  
THIS SIGN SHALL BE PLACED IN THE FRONT OF THE  
PROPERTY IN THE VICINITY OF THE ENTRANCE

*[Signature]*

Architectural drawing of the interior of a building, showing a long hall with a large central staircase and several smaller rooms or alcoves along the sides. The drawing is oriented vertically on the page.



ALL DIMENSIONS AND LEVELS  
ON SITE BEFORE COMMENCEMENT  
PROJECT NUMBER:

Proposed new DWG  
Ert10806-Patras P  
Kline Homes-1ply1

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