



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70504268
CASE OFFICER	S. MBAMBO
CASE OFFICER PHONE NO	021 360 1265
DISTRICT	KHAYELITSHA/MITCHELLS PLAIN
REPORT DATE	OCTOBER 2020

ITEM NO MPTSE131020

APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 4229, 29 TURBAN CRESCENT, EERSTERIVIER

1 EXECUTIVE SUMMARY

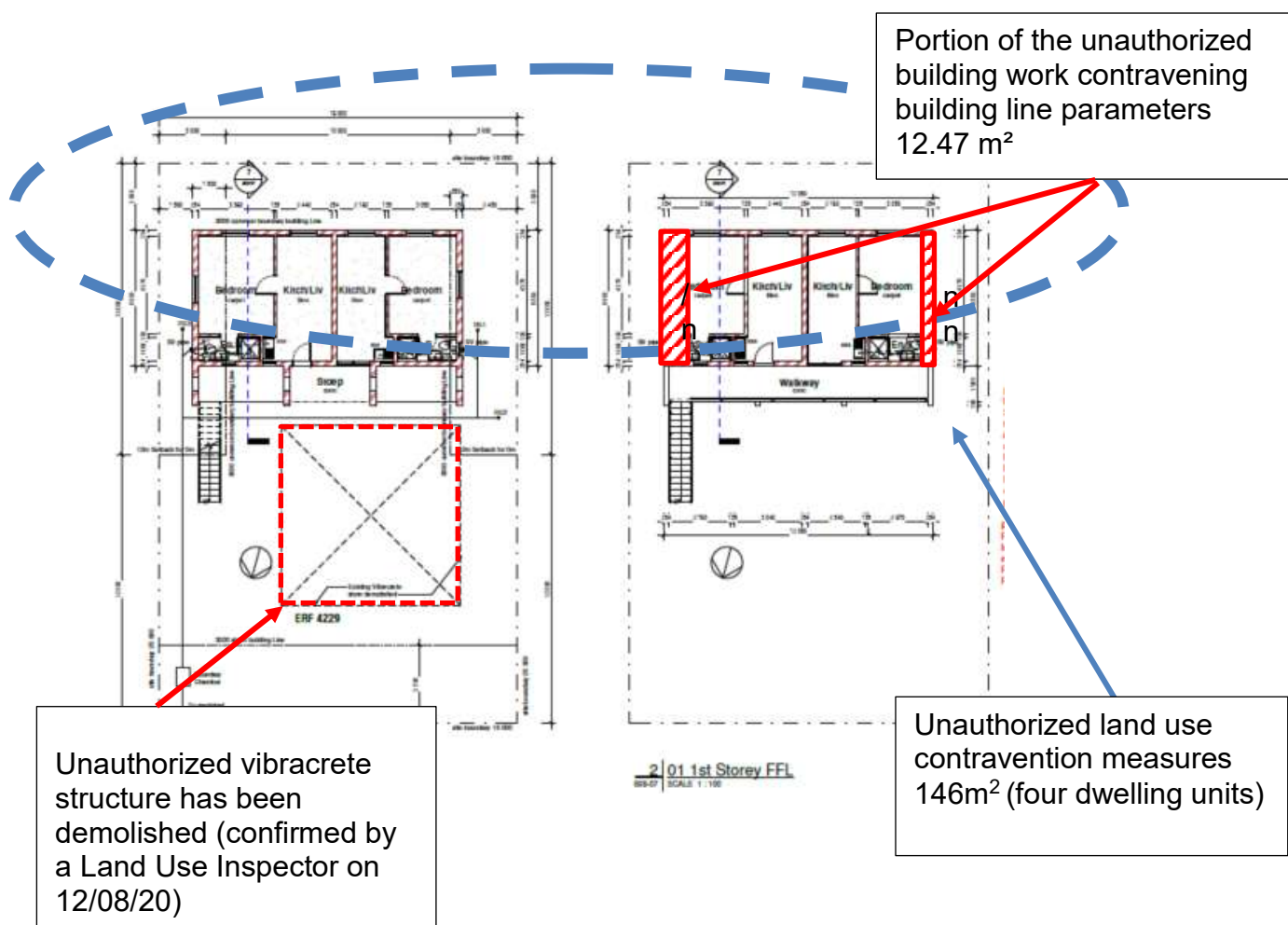
Property description	Erf 4229, Eersterivier
Property address	29 Turban Crescent
Site extent	399.92m ²
Current zoning	Single Residential 1 (SR1)
Current land use	Residential
Overlay zone applicable	None
Submission date	17/06/2020
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, unauthorized land use (four dwelling units)
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 Erf 4229, (hereafter known as the subject property) is zoned Single Residential 1 and measures 399.92m² in extent (**see Annexure A**). The dwelling units on the subject property measure 146 m² in extent (73m² on each floor) (**see Annexure B**). The immediate surrounding properties are predominantly zoned Single Residential 1, General Residential 1 and Open Spaces.
- 3.2 In order to regularize the unauthorized building work, on 17/02/2020, an application for the approval of a building plan was submitted on behalf of the registered owner. It should be noted that a vibracrete structure (being indicated in dotted lines on the submitted plans as 'to be demolished'), has already been demolished (as was confirmed by a recent site inspection carried out by a land use inspector (refer to Annexure F). This structure did not encroach any building lines.
- 3.3 An administrative penalty is required because Item 22(c) of the DMS is being contravened, as portions of the double-storey building (which is permitted within 3m from the boundary), exceed 3m in height. These portions measure a total of 12.47m².



- 3.4 An administrative penalty is furthermore required because Item 21 of the Development Management Scheme is being contravened. Four dwelling units (in the form of a block of flats) are not permitted in a Single Residential 1 zoned property. According to Item 21 of the Development Management Scheme, a main dwelling is permitted in terms of the provisions of the MPBL. A domestic staff quarters (not exceeding 50m² in extent) is also permitted within this zone. Both a second dwelling and a third dwelling are permitted as additional use rights in this zone, provided that they meet the requirements stipulated by Items 25A and 25B of the DMS. However, the four dwelling unit on this property are viewed as a block of flats, and are therefore unauthorized in this property.

4 SUMMARY OF APPLICANT'S MOTIVATION

The owner's motivation (**see Annexure C**) may be summarized as follows:

- The owner deviated from the previously approved plan because the family space requirements have changed.
- The owner delayed submission of the deviation plans until the building work is completed.
- The owner has taken the necessary steps to regularize by submitting an application for the approval of the building plan.
- The building work has been completed.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorized land use is in contravention of item 21 of the Development Management Scheme.
- 5.2 The building works are also in contravention of Item 22(c) of the DMS, as the height of the building (which is permitted within 3m from the common boundary), exceeds 4m.
- 5.3 In terms of section 129(7)(a) of the By-Law, an administrative penalty for the building work contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.
- 5.4 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

- 5.5.1 Unauthorized land use

$$\frac{\text{Property Value (R828 000)}}{\text{Site Extent (399.92m}^2\text{)}} \times \text{Contravention (146m}^2\text{)} = \text{R302 280.45}$$

An amount which is not more than 100% of **R302 208.45** may be imposed as an administrative penalty.

5.5.2 Unauthorized building work

$$\mathbf{R5\ 720.00 \times Total\ unlawful\ area(12.47m^2) = R71\ 329.26}$$

An amount which is not more than 100% of **R71 329.26** may be imposed as an administrative penalty.

5.6 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 land use contravention on the subject property is for four dwelling units built without complying with the requirements of item 21 of the Development Management Scheme. It should be noted that similar developments (i.e. two storey outbuildings containing multiple dwelling units in the form of second and third dwellings, and domestic quarters), are not wholly uncommon in the wider surrounding area, as extended families often require additional on-site accommodation (with own entrance). However, these four dwelling units have the same size and design and has the appearance of a block of flats.

Duration – The building work of the unauthorized dwelling units was undertaken approximately 5 years ago. Hence the duration since the unauthorized building work has been undertaken is considered as a significant time period.

Gravity – The gravity of the unauthorized land use is considered significant because the necessary building plan approvals were not obtained prior to the construction of the dwelling units. Therefore, the safety of the people residing on the subject property were put at risk.

Extent – The contravention comprises of four dwelling units. The four dwelling units measure 146m² in extent, and the site measures 399.92m². The contravention therefore occupies 36.50% of the total extent of the subject property. The extent of the land use contravention is therefore considered to be significant.

The extent of the building work contravention is approximately 12.47 m², which is approximately 3% of the site area.

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

The application for the approval of building plans and the administrative penalty application were submitted concurrently, subsequent to the owner becoming aware of the fact that the necessary approvals were required.

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

The unauthorized 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 ascertained, the owner of the subject property has not previously contravened this By-Law or any other planning law.

5.7 In view of the aforementioned considerations in terms of section 129(8), this department recommends that a **R6 000.00** administrative penalty be determined for the unauthorized land use.

5.8 In view of the aforementioned considerations in terms of section 129(8), this department recommends that a **R500.00** administrative penalty be determined for the unauthorized building works.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- 6.1 The extent of the land use contravention is considered to be significant.
- 6.2 The gravity of the land use contravention is considered to be significant.
- 6.3 The duration of the contravention is considered to be longstanding.
- 6.4 The extent of the unauthorized building works that triggers the departures is considered to be fairly small.
- 6.5 It must be noted that the double-storey structure is completed and habitable without any building plan approval to confirm the health and safety aspects.
- 6.6 Even though the applicant has taken the steps to regularize the unauthorised land use, this unauthorized building works is longstanding.
- 6.7 No record could be found of previous contraventions of the By-Law.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R6 000.00**, be approved in terms of section 98(b) of the City of Cape Town Municipal Planning By-

Law, 2015, in respect of the unauthorized land use on Erf 4229, Eersterivier.

- b) An administrative penalty in the amount of **R500.00**, be approved in terms of section 98(b) of the City of Cape Town Municipal Planning By-Law, 2015, in respect of the unauthorized building works on Erf 4229, Eersterivier.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Plan showing contravention area
Annexure C	Applicant's motivation
Annexure D	Municipal Valuation
Annexure E	GIS Viewer aerial photographs
Annexure F	Site Inspection photographs

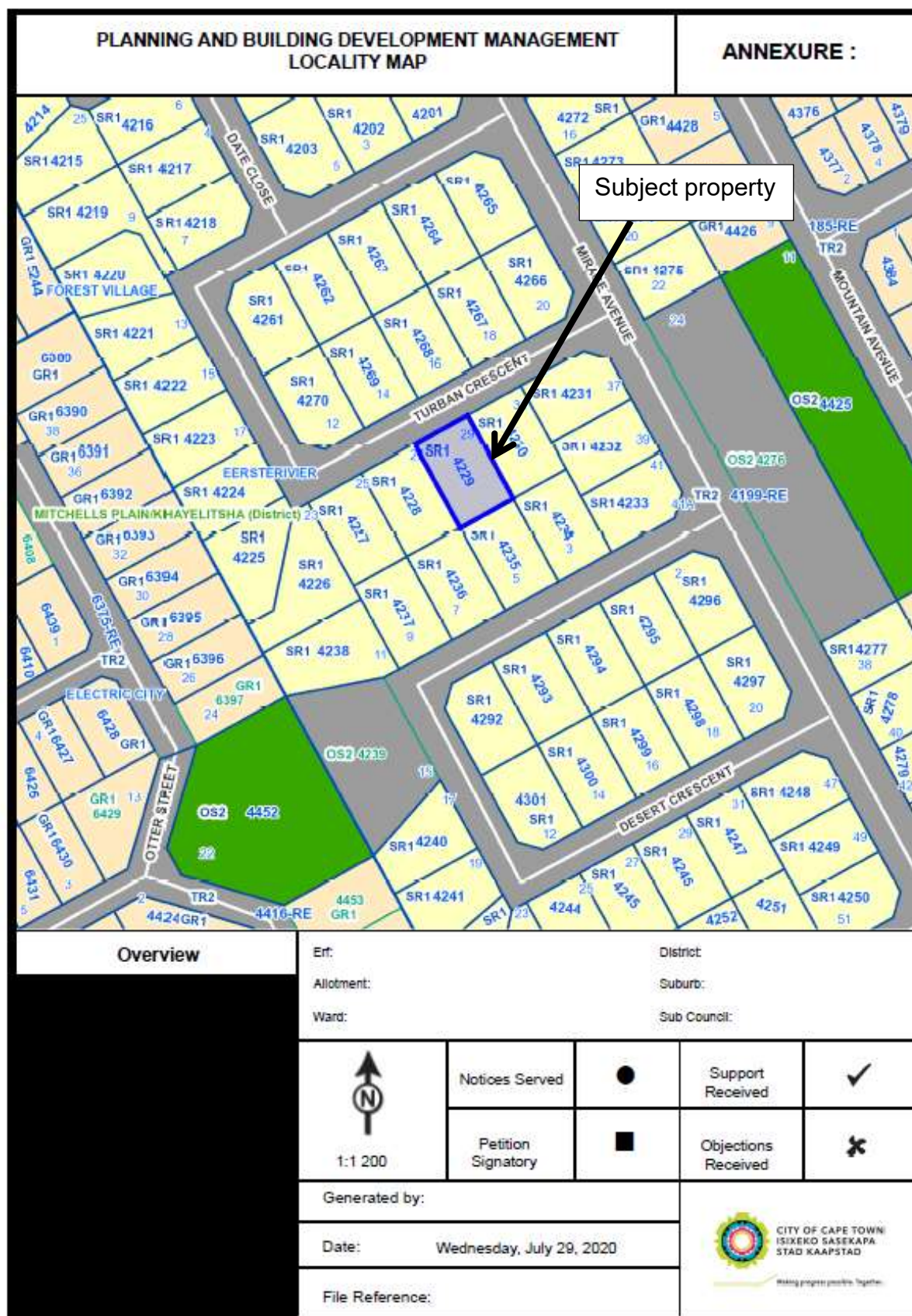
Section Head : Land Use Management

Name	Danette de Klerk
Tel no	079 286 9219
Date	8 October 2020

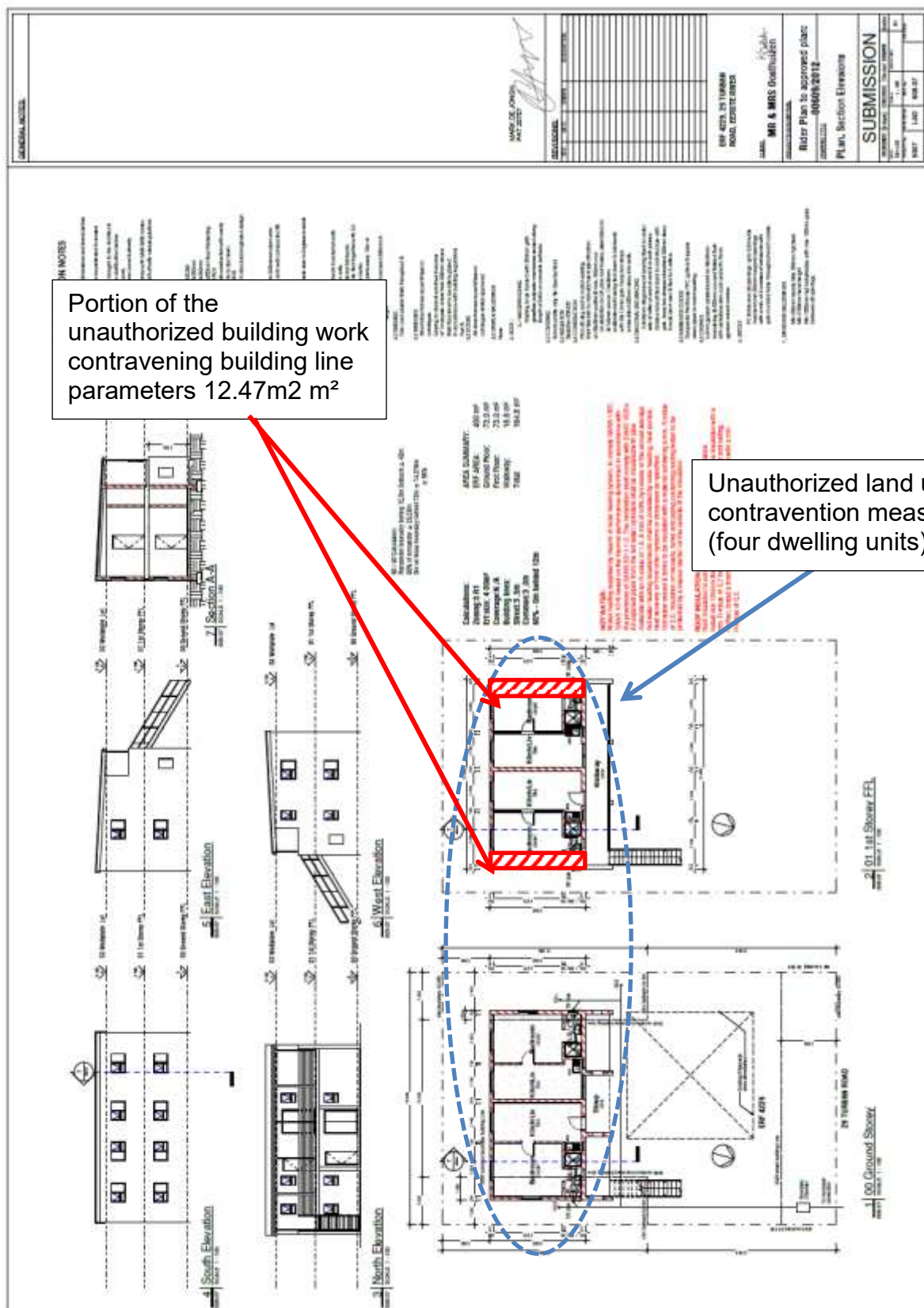
District Manager

Name	Margot Muller
Tel no	021 360 1132
Date	11 October 2020

ANNEXURE A: LOCALITY MAP



ANNEXURE B: PLAN SHOWING CONTRAVENTION AREA



ANNEXURE C: APPLICANT'S MOTIVATION

Mark de Jongh
architectural design

18 Robert Street, St Dumas, Kuilsriver, 7580, 074 722 6487

MOTIVATION LETTER

**ERF 4229, 29 TURBAN CRESCENT, EERSTE RIVER: CASE ID 70504268
ADMINISTRATIVE PENALTY**

TO WHOM IT MAY CONCERN

The homeowner deviated from the previously approved plans for reasons listed:

- The family's circumstances changed thus space requirements changed, which included the development to be made into separate quarters.
- The extent of the deviations does not contravene any other zoning/LUM regulations.
- Since the development is not entirely completed, it was the intension of the homeowner to delay the submission of the deviation plans until such time.
- Deviation plans are now in the process of being assessed.

Should you have any queries regarding the above mentioned do not hesitate to contact me.

Regards,

Mark de Jongh

ANNEXURE D: MUNICIPAL VALUATION

Property	Value
Usage Code	A01
Usage	One dwelling residential
Area (Calculated)	399.92 m2
Total Value	828000
Valuation Year	20190701
Approval Date	0000-00-00
Registered Date	2011-03-16
Purchase Date	2010-12-29
Purchase Price	90000,0
Title Deed Number	T13809/2011
Business Partner Nr	1002154000
Owner Title	Mrs.
Owner Name	PHILLIP OOSTHUIZEN KATRINA OOSTHUIZEN
Owner First Name	PHILLIP KATRINA
Language	EN
Owner Postal Address	29 TURBAN ROAD EERSTE RIVIER 7100
ID Number	6911090651086(SA Identity Doc, expired)
Rate payer Name	PHILLIP OOSTHUIZEN
Rate payer Street Address	MARKET STREET 144 PAROW VALLEY ZA
Rate payer Postal Address	144 MARKET STREET PAROW VALLEY 7500
key	510550
Physical Address	29 TURBAN CRESCENT, EERSTERIVIER
Erf No	4229

ANNEXURE E: PREVIOUS GIS VIEWER AERIAL PHOTOGRAPHS

ANNEXURE F: SITE INSPECTION PHOTOGRAPHS