



REPORT TO MUNICIPAL PLANNING TRIBUNAL

919

CASE ID	70458354			
CASE OFFICER	Llewellyn Van Blerk			
CASE OFFICER PHONE NO	021 444 1042			
DISTRICT	Northern			
REPORT DATE	16 August 2019			
INTERVIEW REQUESTED	APPLICANT	YES	NO	✓
	OBJECTOR(S)			✓

ITEM NO **MPTNE21/09/19**

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 21121, BRACKENFELL

1 EXECUTIVE SUMMARY

Property description	Erf 21121, Brackenfell
Property address	1 Bordeaux Street, Burgundy, Brackenfell
Site extent	553.28m ²
Current zoning	Single Residential (SR 1)
Current land use	Dwelling house and second dwelling
Overlay zone applicable	No

Submission date	16/08/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Height of garage deviated from the approved plan.
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	No

other person to apply for the determination of an administrative penalty?	920
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

The Subject property is situated in the residential suburb of Burgundy. The burgundy township approval included the approval of special building lines. The building lines for the Single Residential erven are:

- Street building line 3.5m
- Lateral building line 1.5m
- Rear building line 3.0m

An application was submitted to deviate from these provisions to permit:

- The garage to be setback 0.0m in lieu of 1.5m from the lateral boundary.
- The second dwelling to be setback 1.0m in lieu of 3.5m from the street boundary.

Consent was obtained from the abutting property owners for the deviations and approval was subsequently granted.

However, the garage was constructed with a height of 3.4m, this exceeded the approved of the garage by 0.575m.

A complaint was submitted by abutting property owner (Erf 21159) indicating the height of the wall is not in accordance with the approved plan.

This application is therefore for the determination of an administrative penalty for the increased height of the garage.

4 SUMMARY OF APPLICANT'S MOTIVATION

- Building plans were submitted and approved
- The parapet wall height was raised due to unforeseen circumstances.
- The deviation is only 0.575m on the parapet wall of the garage.
- As built plans were submitted to rectify the deviations from the approved plan.
- The garage was approved and the additional height has little to no material impact.
- The applicant went through all the relevant steps get plan approved.

5 ASSESSMENT OF APPLICATION

- 5.1 In terms of section 129(7)(a) of the By-Law, ⁹²¹an administrative penalty for the unauthorised building work may not be more than 100% of the municipal valuation of the area that is used unlawfully.

Administrative Penalty: Calculation

5.1.1 Unauthorised building work -Garage with additional height

The maximum penalty for illegal building work:

- **Area of unauthorised building work:** 22.5m²
- **Value of building work per m² (as per Cost Table):** R5720
- **Calculation:** = 22.5m² x R5720
= R128895

1% of total value	3% of total value	5% of total value	10% of total value	20% of total value
R1288.95	R3866.85	R6444.75	R12889.5	R25779

- 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

The garage was approved in its current position. The as built height of the garage has however exceeded the approved height with 0.575m.

The garage in no way poses a threat to the safety, health or hazard to the surrounding property owners. Sight lines for vehicular turning are not obscured.

The extent of the contravention is small when considering the approval granted. The plan was finally approved 31/05/2019, therefore the duration of the contravention is relatively short.

b) The conduct of the person involved in the contravention

The applicant submitted this Administrative Penalty application. An additional building plan application was submitted to obtain approval for the increased height.

c) Whether the unlawful conduct was stopped

The construction of the unauthorized building work was completed prior to the submission of building plans.

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.

- 5.4 It is recommended that a R0 penalty be charged for the unauthorised building works.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The extent of the contravention is small as it only related to an increase in the height of the wall.
- 6.2 The applicant complied with the requirements for a submission of an Administrative Penalty application.
- 6.3 As far as can be ascertained, the owner of the property has not previously, other than this, contravened this By-Law or any other planning law.
- 6.4 The plan was finally approved 31/05/2019, therefore the duration of the contravention is relatively short.

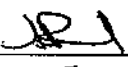
7 RECOMMENDATION

In view of the above, it is recommended that:

- a) 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 21121, Brackenfell

ANNEXURES

- Annexure A District Context and Locality Plan
- Annexure B Site map / building plan
- Annexure C Applicants Motivation



Section Head

Name: Sean van Rensburg

Tel no: 021 444 1044

Date: 16-8-2019



District Manager

Susan Matthysen

021 444 1061

21/08/2019

Annexure A

Locality plan

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

924

ANNEXURE :



Overview

Erf: 21121

District: NORTHERN

Allotment: BRACKENFELL (S)

Suburb: BURGUNDY

Ward: 8

Sub Council: Subcouncil 2



1:1 228

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date: Friday, 16 August 2019

File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Annexure B

Site development / Layout plan

NOTE:
FOR PREVIOUSLY APPROVED PLANS
FOR THIS PLAN, REFER TO
APPROVE NUMBER: 97547232
APPLICATION NO. 70161727 & ROOF
PLAN APPROVE NUMBER: 97555958.
APPLICATION NO. 70151795

FIN.

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THE CITY OF BOSTON
PROPOSED ALTS AND ADDS TO EXISTING DWELLING
ON ERF 2121, BORDEAUX ROAD
BRACKENTEN

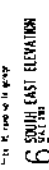
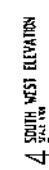
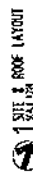
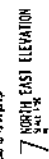
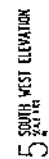
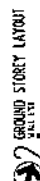
DANIELS PHILIPIDES ARCHITECTS

THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

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Annexure C

Applicant's motivation



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DANIELS PHILIPPIDES ARCHITECTS

1723mot01

1 August 2019

Dear Sir/Madam

RE: APPLICATION TO EXTEND THE HEIGHT OF THE GARAGE PARAPET WALL AND LATERAL BOUNDARY WALL TO ERF 21121, 1 BORDEAUX, BRACKENFELL.

We originally submitted building plans to the local authority to approve a granny flat for the parents of Mr and Mrs Adams. These plans were submitted in August 2017 and approved in December 2018. During this time frame we achieved the LUM's approval to add the second dwelling which included the necessary neighbour's consent. After submitting to BDM, it was noted that there is a high pressure water line very close to our boundary and the engineering department would not approve our application as the building was hard up on the site boundary. At this point we had to redesign the layout so that we had a 1m setback from the site boundary. We adhered to this requirement and adjusted our layout and got the necessary approvals.

We got started on site earlier this year and the work has been completed. While on site there were some changes as does commonly happen on site and I advised the client that we deal with these changes in the form of As-Built drawing submission. The one big change was the design of the roof over the granny flat. As we had off-set the building by a 1m, it made better sense to incorporate the new roof with the existing. These plans were submitted and approved accordingly. Further to this the Building Inspector notified us that the neighbor was concerned about the heights not being in accordance with the approved building plan. We noted that there was a height variation to the previously approved plans. I immediately notified the client and we submitted the building plans accordingly so that we are compliant and the approved building plans correspond with what has been built on site.

Please see below the motivation for these deviations in terms of Section 129(8) point A to D of the Municipal Planning By-Law:

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

The client wanted to build a granny flat for their aging parents. The concept is to create two separate spaces so that the two family units can function independently, but also provide a safe environment for the parents to co-exist with them knowing that the parents are safe. The new additions include a one-bedroom granny flat with a single garage attached. The single garage is accessed off Vredevel Road and is the common boundary to the neighbor who has objected.

During the construction phase the parapet height of the garage roof was raised due to unforeseen circumstances. When one looks at the street elevation, we have not raised the floor level of the garage and it is almost in line with pavement levels. When looking at the rear elevation of the garage, the normal allowances have been made to accommodate safe flashing to avoid water issues. The problem is that the ground level slopes from the street building line to the rear and this has caused the height variation. I have attached photos of this to demonstrate my explanation.

Prior to doing any building work the existing shared vibracrete the wall was 2.1m from the back corner to the neighbour's pedestrian side gate. From this point to the street boundary, it dropped to 1.8m. The new approved garage wall is 5960mm in length and takes up a large portion of the 1.8m vibracrete wall. The remaining balance was 3040mm. The balance of this wall was built in brick and finished in facebrick on the neighbour's side which was a request by the neighbour ahead of signing off our building plan application. This finish was also applied to the face of the garage / parapet wall. I also attach pictures to better describe my explanation above.

I would like to note that we are in the wrong by deviating by 500mm on the parapet wall and 300mm on the boundary wall, but I would like to note that the neighbour always knew that this was going to be a garage and the 500mm is insurmountable as this wall is nowhere near any of part of his bedroom / living areas and has no impact on light penetration to these rooms. The existing 2.1m high vibracrete which always existed has a bigger impact on the rooms that face this said wall.

DANIELS PHILIPPIDES ARCHITECTS

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

The contractor was given a set of approved drawings to which he built the granny flat and garage. While on site, the heights did not work out exactly as the approved drawings and to make sure that he maintained good building practice he allowed for the regulation heights and parapet depths to ensure that proper waterproofing can be done. I can confirm that the inside of the garage is not higher by 500mm to account for the height difference. This height difference was purely adjusted due to site conditions. So in light of the person involved in the contravention, I can note that this was done to adhere to good building practice and not for gain of a higher ceiling height in the garage to which the owner could possibly benefit. Further to note that with every course built, this adds additional cost to the owner, and it would not have made any financial sense to do this.

(c) Whether the unlawful conduct was stopped:

To my knowledge, there was a complaint by the neighbour after the wall had been built. When the building inspector notified myself and the owner about the deviation, we immediately submitted a building plan to rectify the height adjustment. Further to this I would like to note that there was a change done to the roof over the granny flat. It was originally approved as a flat roof and this was changed on site to a pitched roof, which tied in with the existing house as the client wanted to avoid the extension looking like an add on. We submitted the rider plans to council for this roof change which has been approved. This too shows the credibility of our client in trying to ensure that all building works are legal and approved.

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

The client has built a home previously and I can confirm that this has never happened previously. I would like to further note that my client has been more than neighbourly because his neighbour has gained a brand new lateral boundary wall in a face brick finish of which he was given the opportunity to choose and this has come at no cost to him. This facebrick wall was not only for the garage, but extended to his pedestrian gate so that the front finish of his house looked neat and complete and matched his existing home.

In light of the above I would like to note my absolute frustration as this has really wasted lots of time and money to my client squabbling over minor matters. I would like to re-iterate that my client would not like to have any illegal work on their property and went through the necessary steps to get the approvals. We proceeded with approved plans and immediately submitted rider plans so that we could be compliant. It is on this basis that I would appreciate it if you could waive any penalties as my client has not even used the premises for its use. I hope that this meets with your favourable approval.

Should you have any further queries, please do not hesitate to contact me on 021 421 0154 or 082 7748140.

Kind Regards,



Ruth Daniels

DANIELS PHILIPPIDES ARCHITECTS

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Neighbor's property

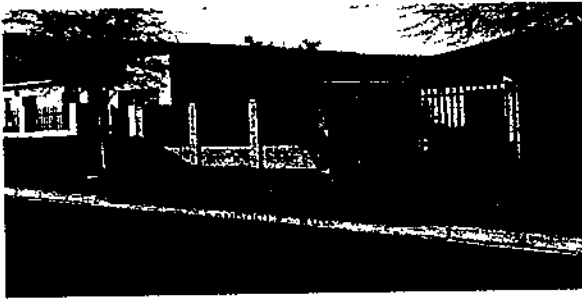


IMAGE SHOWING GARAGE PARAPET/ BOUNDARY WALL FROM NEIGHBOR'S VIEW POINT



IMAGE SHOWING GARAGE ENTRANCE FROM VREDEVELD ROAD

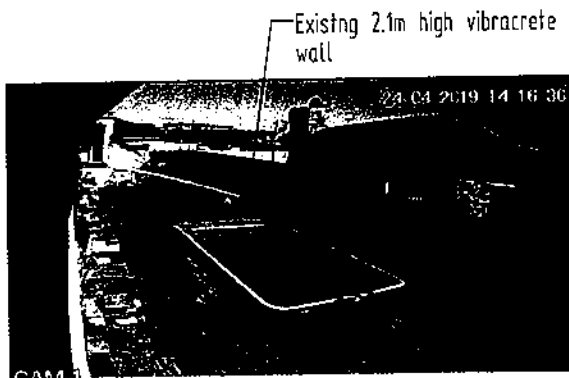


IMAGE SHOWING EXISTING 2.1m HIGH VIBRACRETE WALL

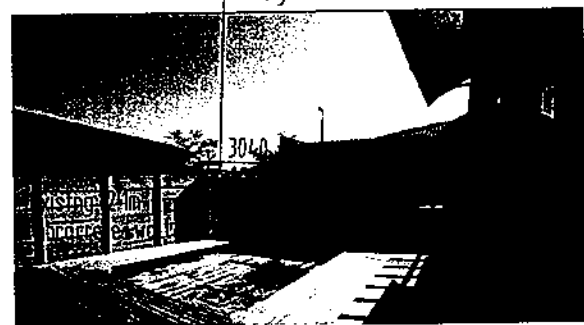


IMAGE SHOWING NEW 2.1m HIGH BOUNDARY BRICK WALL

