



## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70468035			
CASE OFFICER	Zwelendinga Mfeya			
CASE OFFICER PHONE NO	021 444 7511			
REPORT WRITER	Darrel Stevens			
DISTRICT	Tygerberg			
REPORT DATE	30 January 2020			
INTERVIEW REQUESTED	APPLICANT OBJECTOR(S)	YES		NO

ITEM NO **MPTNE15/03/20**

**APPLICATION FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 21484, PAROW, 61 KEURBOOM CRESCENT, PLATTEKLOOF II**

### 1 EXECUTIVE SUMMARY

Property description	21484, Parow
Property address	61 Keurboom Crescent, Plattekloof II
Site extent	1 160 m <sup>2</sup>
Current zoning	Single Residential 1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	15 October 2019
Subject to PHRA / SAHRA	None
Any unauthorised land use / building work?	Yes, braai / entertainment room and garage with a store.
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	No

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?	386
--	-----

## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

The subject property is zoned for Single Residential (SR1) purposes and based on the property size has a 4,5m street building line, 3m common boundary building line and a height limitation of 9m.

The unauthorised entertainment room encroaches the entire street building line with the double garage as well as store encroaching the 3m common boundary building line. The unauthorised garage and storeroom however conforms to the stipulated development parameters for SR1 zoned properties. In addition to the application for determination of an administrative penalty, an application for permanent departure was also submitted for the existing entertainment room.

## 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 structures were built approximately 4 – 5 years ago by the owner who was under the impression that the builder will obtain the relevant approvals.
- The entertainment room measures 62m<sup>2</sup> in extent and the double garage and store area measures 46m<sup>2</sup>.
- The owner is now considering new extensions to the existing residence and upon further investigation, it was brought to his attention that there were never approvals issued for the above mentioned structures. The owner now wants to regularize the existing unauthorised structures as soon as possible.
- There have been no complaints from abutting owners and the owner has never contravened any planning law before.

## 5 ASSESSMENT OF APPLICATION

387

- 5.1 As indicated above, the unauthorized building work (entertainment room) 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. Noting that only the entertainment area is considered a departure from the prescribed building lines, as the double garage and store is considered as outbuildings, which is allowed within this space as per the DMS. The area of the entertainment room that encroaches the building lines measures approximately 30m<sup>2</sup> in extent.

### **Administrative Penalty: Calculation**

#### 5.2.1 Unauthorised building work

$$\text{Value per m}^2 \text{ (R 2 650)} \times \text{Total Unlawful area (30 m}^2\text{)} = \text{R79 500.00}$$

An amount which is not more than 100% of R79 500.00 may be imposed as administrative penalty.

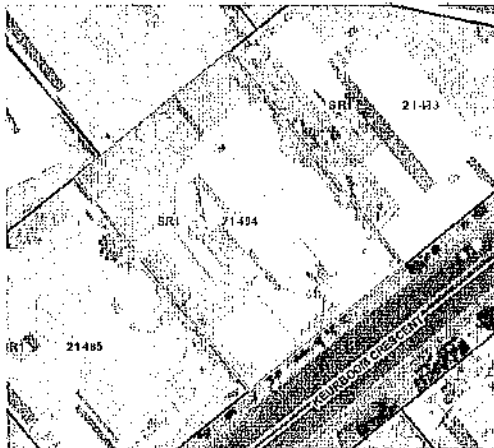
- 5.3 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

#### **a) The nature, duration, gravity and extent of the contravention**

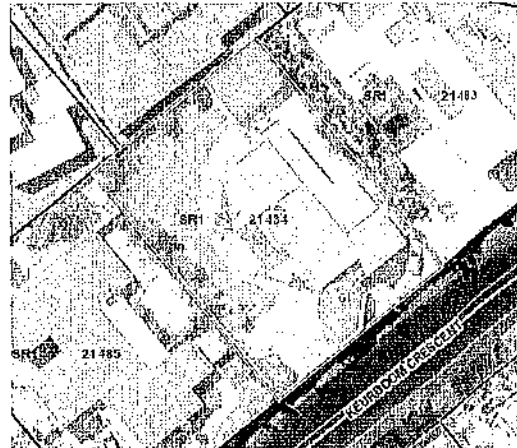
*Nature and extent:* As mentioned there is a street building line encroachment for the entertainment room, which encroachment measures ±30m<sup>2</sup> in extent. The extent of the contravention is regarded as small scale considering the significant size of the property. According to Council's record there has been no complaints received relating to these unauthorized structures since construction thereof.

*Duration:* According to the applicant's motivation, the structure was constructed more or less 5 years ago and this is confirmed via Council's aerial photography of February 2015. The contravention has therefore been in existence for a long period.

*Gravity:* The gravity of the contravention is regarded to be of a mild nature with the structure being visible from the street, although not directly impacting on any adjoining neighbours.



December 2013



February 2015

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

No notice was served on the owner and the unauthorised nature of the extensions only came to light with the owner pursuing additional extensions. The owner then instructed the applicant to submit the relevant regularization application for said structures.

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

No, as the owner was not served with any cease works notice at the time of construction.

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

According to Council's records, the owner has not contravened any planning legislation before.

- 5.4 Based on the above information the owner completed the unauthorised building work 5 years ago and only submitted this application for administrative penalty after he was informed that the structures have not been approved by Council before. The scale of the unauthorized structures is considered minor in nature in comparison with the size of the property with minimal impact on abutting properties as it only encroaches the street building line. Therefore, considering the scale of the unauthorised building work, duration of such contravention and the conduct of the owner it is recommended that an administrative penalty fee of R4 000 be determined.

## 6 REASONS FOR DECISION

389

Reasons for the recommended decision may be summarised as follows:

- 6.1 The unauthorised building work has been in existence for a long period.
- 6.2 There is no evidence that the owner has previously convened the MPBL or any other planning legislation.
- 6.3 When the unauthorised nature of the structures was brought under the attention of the owner, an application to regularize such contravention was submitted.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R4 000.00** be **determined** in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of erf 21484, Parow in accordance with plan attached as Annexure B.

## ANNEXURES

Annexure A Locality Plan  
Annexure B building plan  
Annexure C Applicant's motivation / representations



### Section Head : Land Use Management

Name T.R. Kotze

Tel no 021 444 7506

Date 04.02.2020

Comment

### District Manager

Name



Tel no

021 444 7840

Date

6/2/2020

Comment

**ANNEXURE A**

Locality Plan / Public participation map

## 391

**Making progress possible. Together.**

**ANNEXURE B**

**Building Plan**





**ANNEXURE C**

**Applicant's motivation**

395

**rtj consulting**

(2004/053906/23)

technical planner (B/8162/2011)  
prof. architectural technologist (T 1134)

**rob twentyman jones**

P.O.Box 12143, N1 City, 7463  
tel/fax : 021-5598189  
cell : 073-1621104  
email : rtjconsal@telkomisa.net

10<sup>th</sup> October 2019

The Development Management Department  
Land Use Division – Parow

**Attention : J. vd Bijl and Z Mfeya**

Dear Sir/Madam,

### **Erf 21484 Plattekloof Exrtension 2 – Administrative Penalty application**

Submission has been made to the City of Cape Town for the rectification of unapproved building work that has been carried out on the abovementioned property. The following information in terms of **Section 129 (8) of the Municipal Planning By-Law, 2015** :

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

**In reply** : The owner of the property has informed me that the unapproved structures were built approximately 4 to 5 years ago (estimate). He was informed by his builder at that time – that he (the builder) would submit the plans for approval and that everything would be accepted and approved. At that stage – the area was under the control of the Parow administration and prior to the amended Zoning Regulations of the entire City of Cape Town area that became part of the By-Law in 2015.

His neighbours (still living next door) have never complained or objected to the structures being built, their views towards the Table Bay area have never been affected and no building inspector has ever served the owner with papers to stop the building process.

The two structures can be described as follows :

- A braai room/entertainment area in the front of the property within the 3,5m street building line. Area of 62,41m<sup>2</sup>
- A double garage and small workshop area at the rear of the property within the lateral and rear 3,0m building lines. Area of 45,81m<sup>2</sup>
- Freestanding braai on patio of 1,23m<sup>2</sup>

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

**In reply** : The owner of the property contacted me (Rtj Consulting) to obtain some thoughts about possible future extensions and/or building ideas for his house. When scrutinising the existing plans which the owner had picked up from the Municipality, it was discovered that the plans for the 2 extensions were never submitted or approved by the original Parow Municipality and/or the City of Cape Town. The owner wants to get this rectified quickly.

(c) "whether the unlawful conduct was stopped"

396

**In reply :** The unlawful activities were never stopped. No letter or notification was ever received from either the Parow Municipality or the City of Cape Town to request a halt to the building work. The neighbours never complained at all – if they had complained, then the relevant authority would have investigated and stopped the process.

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

**In reply :** The present owner has never contravened any planning law or been involved in any illegal building activities at all. In his defence – he does not understand many of the legal building processes and requested my (Rtj Consulting) opinion for the future envisaged work. He was led to believe – by his original builder – that the plans had been drawn up as part of the original building contract and that they had been submitted to the relevant authority for approval. At no stage during the process, did he ever consider that the structures he was having constructed on his property were illegal and that the plans were not approved.

**The owner, of his own accord, has initiated this application for the administrative penalties** after I (Rtj Consulting) informed him of the process and mentioned that he might not get a rates clearance or final transfer if a possible sale was to take place.

The above information has been submitted in reply to a further request for information from the City of Cape Town. We respectfully request that the process is finalised as soon as possible so that the owner can finalise his future plans for the property.

Please do not hesitate to contact me should you require any further information.

Kind regards



**Rob Twentyman Jones**  
**Rtj Consulting cc.**  
**0731621104**