



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70500098			
CASE OFFICER	Jevon Jacobs			
CASE OFFICER PHONE NO	021 444 7514			
DISTRICT	TYGERBERG			
REPORT DATE	7 April 2020			
INTERVIEW REQUESTED	APPLICANT	YES	NO	X
	OBJECTOR(S)			X

ITEM NO MPT26/06/20

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 21855, PAROW, 15 BOSBOK STREET, KLIPKOP.

1 EXECUTIVE SUMMARY

Property description	Erf 21855, Parow.
Property address	15 Bosbok Street, Klipkop.
Site extent	448m ²
Current zoning	Single Residential 1.
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	25 March 2020.
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Unauthorised carport encroaching the permissible 1,5m street building line setback.
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 21855, Parow is currently zoned as Single Residential 1 (SR1). However, the property has an unauthorised carport which encroaches the permissible 1,5m street building setback.

The owner(s) have unlawfully erected the carport prior to any building plan or Land Use Management Application approval(s). Hence the application for the determination of an Administrative Penalty in terms of Item 129 of the MPBL, 2015.

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 travels abroad often hence the additions to secure to the property.

5 ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorised building work 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.

Administrative Penalty: Calculation

5.2.1 Unauthorised building work

$$\text{Value per m}^2 \text{ (R1 340)} \times \text{Total Unlawful area (7.22m}^2\text{)} = \text{R9 674,80}$$

An amount which is not more than 100% of R9 674,80 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 - The contravention involves unauthorised building works in the form of a carport which encroaches the permissible 1,5m street building setback as per Section 22(f)(ii) of the Development Management Scheme, 2015.

Duration – The applicant motivates no completion date. However, as per Council aerial imagery resources, the encroaching carport has been erected since January 2017. This means that the unlawful structure has been in existence for approximately 3 years.

Gravity – Although the unauthorised carport is visible from the street, the portion thereof that contravenes the DMS is of a minor scale. The structure is also not of a habitable nature and the gravity of the contravention is therefore regarded as low.

Extent – The total extent of the contravening unauthorised building works is approximately 7.22m².

b) The conduct of the person involved in the contravention

According to the motivational report, the owner of the property sought to ensure and enhance the property's security. The owner now wishes to comply with all legislation and policy to rectify the unauthorised carport encroachment.

c) Whether the unlawful conduct was stopped

The unlawful structure remains in existence.

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

Other than the building works contravention under discussion in this report, there is no evidence that the owner has previously contravened the provisions of the MPBL or any other planning legislation.

- 5.4 Given the minor nature, extent and gravity, yet the conduct of the owner to disregard planning legislation for a period of approximately 3 years, an administrative penalty amount of R1 000 is considered appropriate.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- The nature of the contravention involves an unlawful carport encroaching the 1,5m street building line which has been in existence for a duration of approximately 3 years, per Council aerial imagery (back-dated January 2017).
- The extent of the unlawful building works is of relatively minor scale in comparison to the size of the property and does not affect a change in land use.
- The gravity of the contravention is also regarded as low considering the limited size of the contravention area and the fact that the structure is not of a habitable nature.
- The applicant/owner is willing to rectify the unauthorised building works but was not forthcoming with the correct information regarding the duration of the contravention.
- There is no evidence that the owner has previously contravened the MPBL or any other planning law and has conscientiously applied for the determination of an Administrative Penalty in terms of Item 42(r) of the MPBL, 2015.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R1 000,00 **be determined** in terms of Item 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 21855, Parow in accordance with Annexure B.

ANNEXURES

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



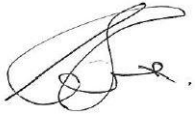
**Section Head : Land Use
Management**

 Name Tess Kotze

 Tel no 021 444 7506

 Date 7 April 2020

 Comment



District Manager

 Name Dewaldt Smit

 Tel no 021 444 7840

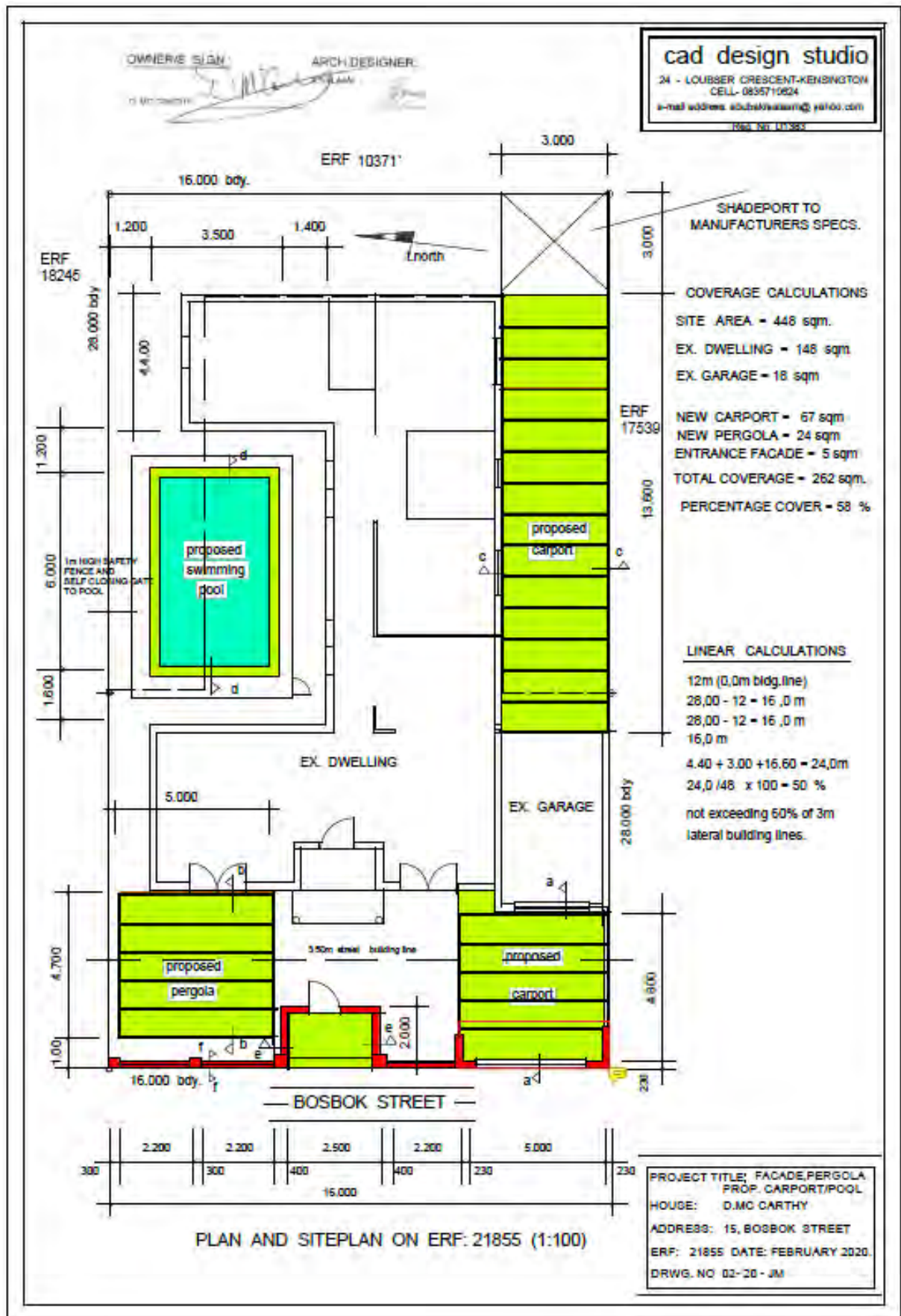
 Date 07 April 2020

 Comment

Annexure A Locality Plan

Annexure B

Building plan



Annexure C

Applicant's motivation

23 March 2020

To whom it may concern

I Doreen McCarthy, wish to advise that I travel a lot and most of the time out of the country.

My business normally puts me on the road and I often travel away from home which stand to the reasons why I have put measures in place to secure my family.

With the current spate of burglaries in our area I became paranoid hence the additions and alterations to my house number 15 Bosbok street Parow to prevent such incidents.

I trust that this information as per above still suffice and share light on my predicament.

Best Regards

Doreen McCarthy

A handwritten signature in dark ink, appearing to read 'Doreen McCarthy', with a stylized, cursive script.