



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70490228				
CASE OFFICER	Jevon Jacobs				
CASE OFFICER PHONE NO	021 444 7514				
DISTRICT	TYGERBERG				
REPORT DATE	2 April 2020				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO MPT12/06/20

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 3885, GOODWOOD, 164 COOK STREET, VASCO ESTATE.

1 EXECUTIVE SUMMARY

Property description	Erf 3885, Goodwood
Property address	164 Cook Street, Vasco Estate
Site extent	495.65m ²
Current zoning	Single Residential 1.
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	15 January 2020
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Unauthorised garage extension exceeding 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 3885, Goodwood is currently zoned as Single Residential 1 (SR1). However, the property has an unauthorised garage exceeding the permissible 1,5m street building line setback.

The owners have unlawfully extended an approved carport and erected a garage façade on the street boundary prior to any building plan or Land Use Management Application approval. 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 duration of the unauthorised building works have been approximately 12 years.
- The carport was enclosed with a garage door façade as both access points need to be utilised.
- The owner is willing to rectify the unlawful building works.
- No notices from the City of Cape Town were served or received by the owner.
- The current owner has not previously contravened the Municipal Planning By-law, 2015 nor other planning legislation.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised building works 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

$$\text{Value per m}^2 \text{ (R7 060)} \times \text{Total Unlawful area (9.72m}^2\text{)} = \text{R68 623,20}$$

An amount which is not more than 100% of R68 623,20 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 work in the form of a garage extension on the street boundary of the property, exceeding the 1,5m street building line setback.

Duration – According to the applicant, the carport's building plan was approved in 2008. However, as per the City's aerial imagery (dated February 2018 and January 2019), the unlawful garage has been in existence since December 2012, which amounts to a total duration of approximately 8 years.

Gravity – The unlawful building works contravention is regarded to be of moderate gravity considering the potential impact on the streetscape. The current land use is also viewed as not potentially harmful to the safety, or well-being of the surrounding community, as there is currently an approved plan for the carport (refer to Annexure D) and as the structure does not include a habitable space.

Extent – The total extent of the unauthorised building works is 9.72m² which is regarded as small scale.

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

According to the motivational report, the owner of the property wishes to comply with all legislation and policy to rectify the unauthorised garage.

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

The unlawful structure has remained in existence.

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

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

- 5.4 Notwithstanding the long duration of the contravention, given the minor nature, extent and moderate gravity thereof, an administrative penalty in the 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 garage which has been in existence for the duration of approximately 8 years, as per Council aerial imagery (dated February 2018 and January 2019).
- The extent of the building works contravention is of a minor scale in comparison to the size of the property.
- The unlawful structures are, for the majority of its extent, visible from the street. The structure however does not include a habitable space and is in terms of gravity therefore regarded as moderate.
- The applicant/owner is willing to rectify the unauthorised building works and was forthcoming with information on request.
- 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 3885, Goodwood in accordance with Annexure B.

ANNEXURES

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



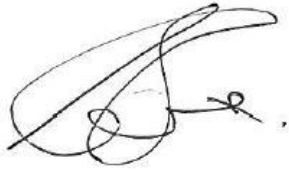
Section Head : Land Use Management

Name Tess Kotze

Tel no 021 444 7506

Date 2 April 2020

Comment



District ManagerName Dewaldt Smit

Comment

Tel no 021 444 7840Date 02 April 2020

Annexure A Locality Plan

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE : A



Overview

Erf:

District:

Allotment:

Suburb:

Ward:

Sub Council:



1:1 200

Notices Served

Support
ReceivedPetition
SignatoryObjections
Received

Generated by: J Jacobs

Date: Wednesday, 04 March 2020

File Reference: 70490228


 CITY OF CAPE TOWN
 ISIXEKO SASEKAPA
 STAD KAAPSTAD

Making progress possible. Together.

Annexure B

Building plan

Annexure C

Applicant's motivation

TO WHOM IT MAY CONCERNERF 3885 – 164 COOK STREET VASCO ESTATE - GOODWOODSECTION 129 PART (8)(a)THE NATURE OF THE CONTRAVENTION:

1.5m STREET BUILDING LINE GARAGE SETBACK ENCROACHED

THE DURATION OF THE CONTRAVENTION:

FROM APPROVAL OF BUILDING PLANS IN 2008 IT HAS BEEN EXACTLY 12 YEARS TO 2020

THE GRAVITY OF THE CONTRAVENTION:

CARPORT WITH OPEN FAÇADE WAS CLOSED WITH A GARAGE DOOR WHICH CONVERTED IT TO A GARAGE AS CARPORT MUST HAVE 2 SIDES OPEN

1.5m GARAGE SETBACK BUILDING LINE HAS BEEN ENCROACHED UP TO STREET BOUNDARY

THE EXTENT OF THE CONTRAVENTION:

1.5m x 6.48m = 9.72m²

(b)THE CONDUCT OF PERSON INVOLVED:

THE PERSON INVOLVED WHATS TO RECTIFY THE CONTRAVENTION

(c)WHETHER THE UNLAWFUL CONDUCT WAS STOPPED:

NO NOTICE WAS SERVED

(d)PERSON INVOLVED IN THIS BY-LAW PREVIOUSLY CONTRAVENTED:

THE PERSON INVOLVED HAS NOT PREVIOUSLY CONTRAVENTED THIS BY-LAW

Annexure D

Previously approved building plan

