



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

1392

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70454869
CASE OFFICER	Gamedullah Carr/Karen Patten
CASE OFFICER PHONE NO	021 684 4345
DISTRICT	Cape Flats
REPORT DATE	2019-05-27

ITEM NO **MPTSW48/06/19**

WARD 42: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 163, SHERWOOD PARK, NO 43 FIRST AVENUE

1 EXECUTIVE SUMMARY

Property description	Erf 163, Sherwood Park
Property address	43 First Avenue
Site extent	496m ²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house + Second dwelling
Overlay zone applicable	None
Submission date	2019-05-07
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Building work: Unauthorised carport extension and verandah
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	No

work which required the owner or other person to apply for the determination of an administrative penalty?	1393
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

- 3.1 Erf 163 is zoned Single Residential 1. The property currently houses an approved main dwelling, second dwelling and tandem carport.
- 3.2 A portion of the carport and a portion of the verandah contravene the Development Management Scheme (DMS). The carport requires a departure of 0.0m in lieu of 3m from the northern common building line and the verandah requires a departure of 0.0m in lieu of 3.0m from the southern common building line.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as Annexure C and may be summarized as follows:

- The owner states that he resides in a high crime area and has been the victim of unknown people taking advantage of the easy access to his property for either the purpose of stealing or hiding from gangsters. This has placed him and his family at risk of becoming potential victims of these serious crimes. To protect himself and his family, he decided to restrict access to his property by securing it.
- The owner also apologizes for not following the City's guidelines.
- The applicant acknowledges the administrative penalty and wishes to rectify the unauthorized building work.
- A Mr. George; a neighbour and a member of the neighbourhood watch witnessed potential burglars and gangsters walking on the boundary walls viewing residents' properties and scouting the next target in the area.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, a portion of the carport and the veranda are in contravention of the 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.

5.2.1 Administrative Penalty Calculations

Portion of the Carport: $R1330 \times 25.5 \text{ m}^2 = R33915$

Verandah: $R1020 \times 12.6 \text{ m}^2 = R12852$ 394

Total = R46 767

An amount which is not more than 100% of R46 767 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 carport extension and verandah are both single storey structures. The carport extension is located behind the existing tandem carport. The verandah is located on the side of the dwelling house. The structures are in line with the existing structures and neatly finished.

Duration: According to the applicant, the verandah was built in 2017. The aerial photographs on GIS confirm this. Although the applicant states that the carport was built in 2015, it appears on the aerial photographs as far back as 2012. These are both considered to be of a long duration.

Gravity: The structures are lightweight, single storey structures and as such, are unlikely to threaten the health, safety and well-being of the surrounding property owners. Therefore, the gravity is not severe.

Extent: The total extent of the contravention is 38.1m².

b) The conduct of the person involved in the contravention

According to the owner, the unauthorized building work was required to protect himself and his family from being a victim of serious crimes in a high crime area. The owner further apologizes and has submitting plans to rectify the situation.

c) Whether the unlawful conduct was stopped

The unauthorized work has already been completed.

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

There is no evidence to suggest that the owner of the property previously contravened this By-Law or any other previous planning law.

In view of the above mentioned considerations this department recommends that an administrative penalty equal to **R300** be imposed.

6 REASONS FOR DECISION

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Reasons for the recommended decision may be summarized as follows:

- 6.1 A portion of carport and the verandah contravene the Development Management Scheme.
- 6.2 The contravention is of a long duration.
- 6.3 The contravention is of a low gravity and medium in extent.
- 6.4 As far as can be ascertained, the owner has not previously contravened this By-Law or any other planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R300** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of the unauthorised building work on Erf 163 Sherwood Park, in accordance with Plan Drawing No: S.K.26/02 as reflected on the plan drawn by S. Davids from INTZ Designs dated 26 February 2019.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Plan reflecting unauthorized building work
Annexure C	Applicant's motivation



Section Head: Land Use Management

Comment

Name A McCann

Tel no 021 6844341

Date 28 May 2019

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District Manager

Name Chad Newman

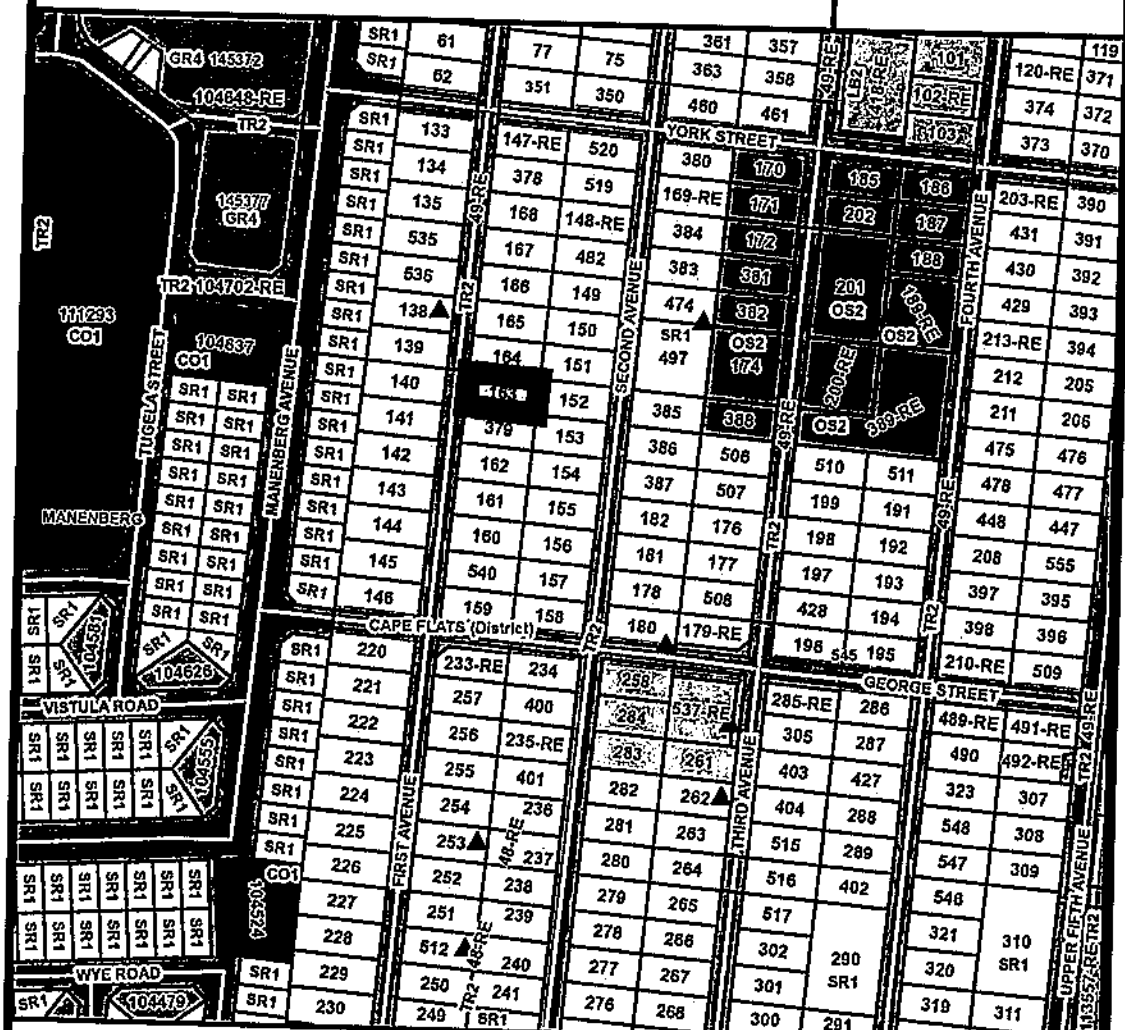
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Tel no 021 684 4310

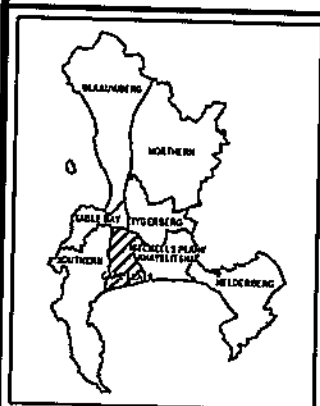
Date 29 May 2019

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE :



Overview



Erf: 163

Allotment: SHERWOOD PARK

Ward: 42

District: CAPE FLATS

Suburb: MANENBERG

Sub Council: Subcouncil 14



1:2 400

Notices Served

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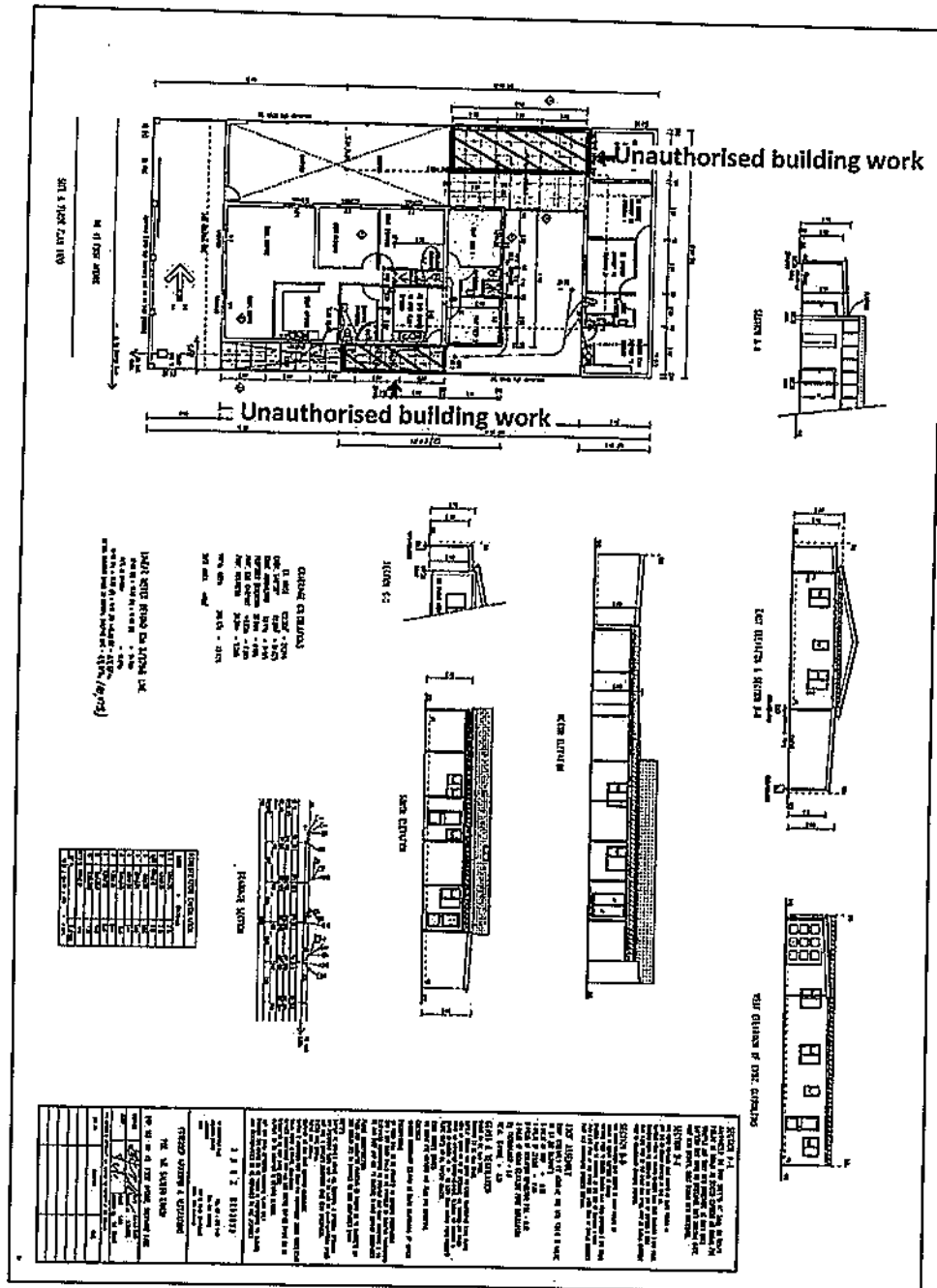
Date: Monday, 27 May 2019

File Reference: Erf 163 Sherwood Park

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ANNEXURE B: PLAN REFLECTING UNAUTHORISED BUILDING WORK



ANNEXURE C: APPLICANT'S MOTIVATION

43 First Avenue
 Sherwood Park
 7764
 16 April 2019

Ledger House
 Corner Aden Avenue and George street
 Athlone
 7764

Re: Extension of carport and veranda construction on erf. 163.

Dear Sir/Madam

I the undersigned Mr M Saliegh Kamish would like to explain my reasoning for my carport and veranda at the said residence. I reside in area that is well known for its high crime rate (e.g. break-ins and regular turf and gang wars). I personally have been a victim of unknown people that took advantage of the easy access to my property for either purpose of stealing or hiding (from enemy gangsters). This obviously puts me and my family at risk of becoming potential victims of these serious crimes. To protect myself and my family from this heinous crimes. I decided to restrict the access to my property from these irresponsible criminal elements.

My intention was also not to be a nuisance towards my neighbours or to degrade the neighbourly area in terms of aesthetical values.

I do sincere apologise for not following the cities guidelines and I hope that my actions for doing what I did will not unnecessarily bring myself into disfavour with the council, especially in terms of penalties

My intensions were purely and sincerely motivated by a genuine safety concern for my family and personal belongings.

Yours sincerely
 Mr MS Kamish

SHEIKH
 ISMAIL ISAACS
 COMMISSIONER OF OATHS
 MARRIAGE OFFICER
 BD NO. IM00008

[Signature] 21/04/2019

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I, Mr M I George currently residing at corner of First avenue and York Street, living in a double storey home and I can constantly witness potential burglars and gangsters walking on boundary walls viewing residents properties and scouting the next target in the area.

I am also a member of the area neighbourhood watch advising residence to secure their properties from possible intruders.

Mr M I George

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083 281 0691