



1173

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70462590			
CASE OFFICER	Jevon Jacobs			
CASE OFFICER PHONE NO	021 444 7514			
DISTRICT	TYGERBERG			
REPORT DATE	18 July 2019			
INTERVIEW REQUESTED	APPLICANT	YES	NO	X
	OBJECTOR(S)			X

ITEM NO **MPTNE17/08/19**

APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 14479, GOODWOOD, 17 SHER STREET, BALVENIE

1 EXECUTIVE SUMMARY

Property description	Erf 14479, Goodwood
Property address	17 Sher Street, Balvenie
Site extent	277.57m ²
Current zoning	Single Residential 1 (SR1)
Current land use	Dwelling house
Overlay zone applicable	None.

Submission date	19 June 2019
Subject to PHRA / SAHRA	None.
Any unauthorised land use / building work?	Unauthorised carport to the east within the 3m common boundary building line.
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

1174

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

Erf 14479, Goodwood is currently zoned as Single Residential 1 (SR1). However, the property has unauthorised building work (carport) within the 3m eastern common boundary building line.

The owner unlawfully built the carport prior to any building plan submission with full knowledge that this would result in an application for the determination of an administrative penalty. Therefore, this carport contravenes the MPBL of 2015 as per section 39(1) and 42 of the Development Management Scheme (DMS).

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 carport was built to cover the space between the dwelling unit and eastern property boundary for security purposes and to avoid flooding of the open area.
- The structure was only finished by the 1st December 2018.
- The owner was aware of procedures to submit a building plan prior to construction, but ran out of funds. The owner was fully aware that this would result in an application for the determination of an administrative penalty.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised building work is in contravention of the Development Management Scheme.
- 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

$$\text{Value per m}^2 \text{ (R1 330)} \times \text{Total Unlawful area (32.07m}^2\text{)} = \text{R42 653.10}$$

An amount which is not more than 100% of 42 653.10 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 owner erected a carport without submitting a building plan to the City for approval. A 32.07m² portion of the carport exceeds the building line.

Duration – The motivation provided by the applicant/owner indicates that construction ended 01 December 2018. However, according to the City of Cape Town's aerial imagery, the carport was already erected by January 2017.

Gravity – The carport is considered to be of a reasonable scale and only a portion exceeds to building lines. The gravity of the contravention is, therefore, considered to be low.

Extent – The total extent of the carport is 55.2m², whereas 32.07m² exceeds the common boundary building line. The extent of the contravention is relatively small in comparison with the size of the property.

b) The conduct of the person involved in the contravention

The property owner only submitted the relevant application after the unauthorised carport was already in existence for approximately 2 and a half years.

c) Whether the unlawful conduct was stopped

The carport has been in existence for approximately 2 and a half years.

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

As far as it can be ascertained, the owner of the subject property has not previously contravened this By-Law or any other planning law.

- 5.4 Given the limited scale and minor adversities of the contravention, a 1% penalty is considered appropriate.

6 REASONS FOR DECISION

1176

Reasons for the recommended decision may be summarised as follows:

- The contravention has been in existence for at least 2 and a half years.
- The extent of the contravention is of a minor scale.
- As far as it can be ascertained, the owner has not previously contravened this By-Law or any other planning law.
- The gravity of the contravention is considered to be low.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R426.53** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of 14479, Goodwood in accordance with plan no 0045/14479.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Site development plan
Annexure C	Applicant's motivation

MLan

1177

**Section Head : Land Use
Management**

Comment

Name T.R. KOTZE
Tel no 021 444 7506
Date 18.07.2019

[Signature]

District Manager

Name Donaldt Smit
Tel no 021 444 7840
Date 22/07/2019.

Comment

Annexure

A

The map displays a grid of lots with the following details:

- Central Road:** SHER STREET (TR2 16636-RE)
- Vertical Road:** TYGERBERG (District)
- Shaded Lots (Subject Strata):**
 - Lot 3 (SR1 14447)
 - Lot 4 (SR1 14452)
 - Lot 5 (SR1 14448)
 - Lot 6 (SR1 14451)
 - Lot 7 (SR1 14473)
 - Lot 8 (SR1 14471)
 - Lot 9 (SR1 14472)
 - Lot 10 (SR1 14485)
 - Lot 11 (SR1 14482)
 - Lot 12 (SR1 14481)
 - Lot 13 (SR1 14480)
 - Lot 14 (SR1 14479)
 - Lot 15 (SR1 14478)
 - Lot 16 (SR1 14477)
 - Lot 17 (SR1 14476)
 - Lot 18 (SR1 14469)
 - Lot 19 (SR1 14468)
 - Lot 20 (SR1 14505)
 - Lot 21 (SR1 14506)
 - Lot 22 (SR1 14507)
 - Lot 23 (SR1 14508)
 - Lot 24 (SR1 14509)
 - Lot 25 (SR1 14510)
 - Lot 26 (SR1 14511)
 - Lot 27 (SR1 14512)
 - Lot 28 (SR1 14513)
 - Lot 29 (SR1 14514)
- Other Lots:**
 - Lot 1 (SR1 14475)
 - Lot 2 (SR1 14474)
 - Lot 3 (SR1 14475)
 - Lot 4 (SR1 14476)
 - Lot 5 (SR1 14477)
 - Lot 6 (SR1 14478)
 - Lot 7 (SR1 14479)
 - Lot 8 (SR1 14480)
 - Lot 9 (SR1 14481)
 - Lot 10 (SR1 14482)
 - Lot 11 (SR1 14483)
 - Lot 12 (SR1 14484)
 - Lot 13 (SR1 14485)
 - Lot 14 (SR1 14486)
 - Lot 15 (SR1 14487)
 - Lot 16 (SR1 14488)
 - Lot 17 (SR1 14489)
 - Lot 18 (SR1 14490)
 - Lot 19 (SR1 14491)
 - Lot 20 (SR1 14492)
 - Lot 21 (SR1 14493)
 - Lot 22 (SR1 14494)
 - Lot 23 (SR1 14495)
 - Lot 24 (SR1 14496)
 - Lot 25 (SR1 14497)
 - Lot 26 (SR1 14498)
 - Lot 27 (SR1 14499)
 - Lot 28 (SR1 14500)
 - Lot 29 (SR1 14501)
 - Lot 30 (SR1 14502)
 - Lot 31 (SR1 14503)
 - Lot 32 (SR1 14504)

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Annexure

B

ROOF-CARPORT & VERANDA

UBR Galv. roof sheets nailed to 76x50 purlins @1000mm & 571mm c/c nailed to 50x152 rafters @ 1000 c/c(S5) @ 3° pitch fix to existing wall and 50x238 beam with truss hange supported by 76Ø carport post

WALLS - BOUNDARY

WALLS - BOUNDARY
230mm External walls build with R.O.K bricks, plaster & painted both sides with brickforce every 3rd course with dnr proof plastic under brick work

CONCRETE FOOTING

CONCRETE FOOTING
100x230mm Strip foundation footing and 85x85x230 pad foundation for
pillars

NOTE!

All dimensions & levels to be check before any work starts
No work to project beyond boundary line
All hot water pipes to be insulated with material having R-Value of 1.0
Any windows or doors in excess of 1m² or 500mm above finish floor level to be safety glass

SITE AREA - 278m²

-127m2

- 10m²

- 4m²

5552

- 15m²

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
84

Project:

PROPOSED BOUNDARY WALL, CARPORT AND
VERANDA ON ERF 14479 SHER WAY, ELSIES RIVER,
FOR MRS F EVANS

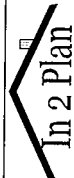
Owner Sign: _____ Date: _____

12 April 2019

scale: 1:100 & 1:50 DWG. No. 0045/14479

wn By: ANDRE HARMSE

COUNCIL SUBMISSION



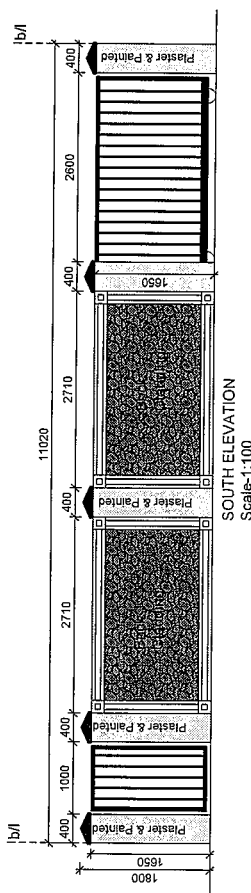
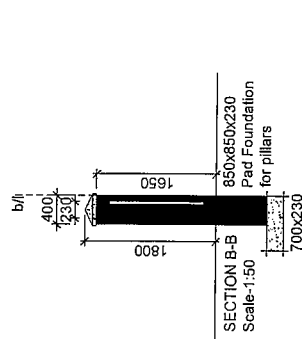
Architectural Drafting Practice (PTY)LTD

andréharmse

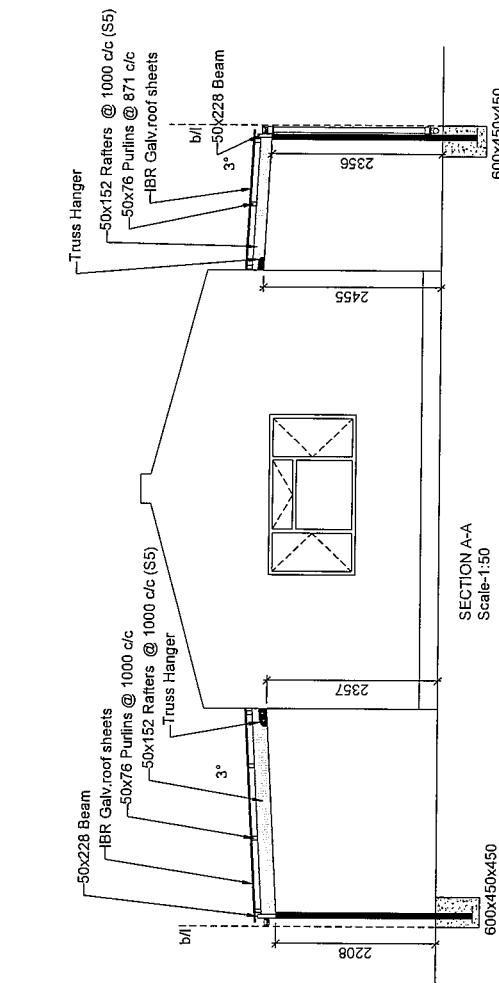
15 Albany Street Ravensmead 7493

Ph/Fax:(021) 9317740 - Cell: 079 8786 367

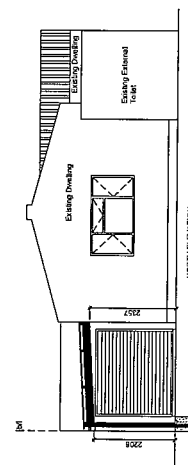
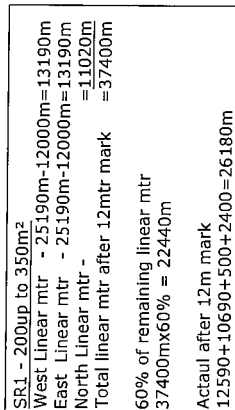
Email:andre.harmse@live.co.za



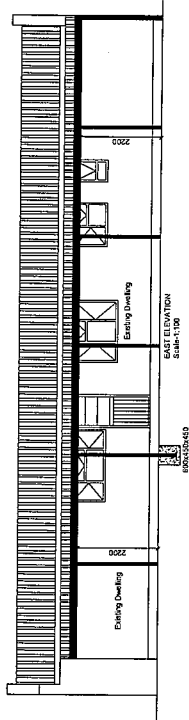
SOUTH ELEVATION
Scale-1:100



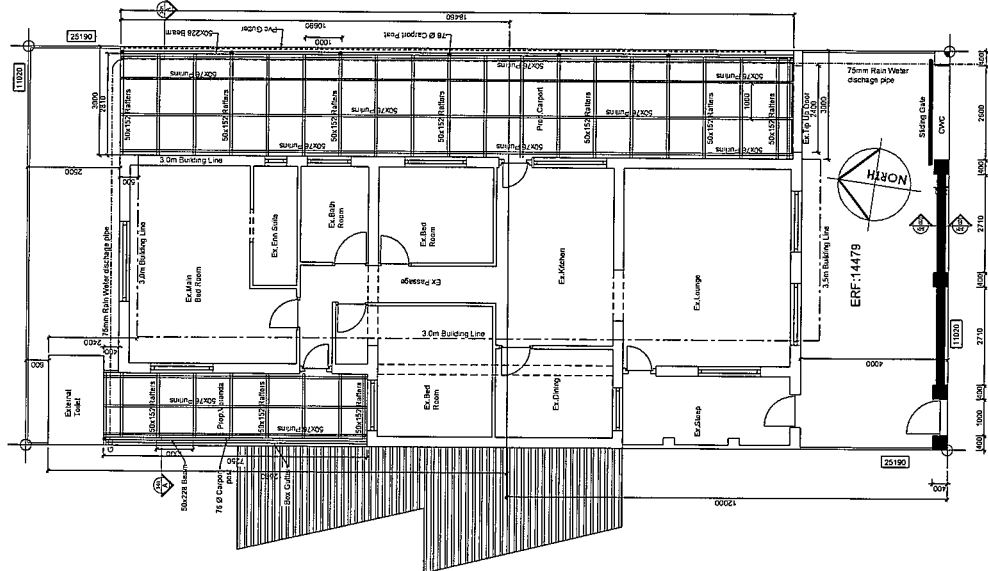
SECTION A-A
Scale-1:50



NORTH ELEVATION
Scale: 1:100



EAST ELEVATION



SITE & FLOOR PLAN
SCALE - 1:100
SHER WAY

Annexure

C

Property description: 14479, Elsie's River

Property address: 17 Sher Street 1183

Application components / description: - Determination of administrative penalty as per section 129(8)

And permanent departure to allow for a relaxation

Of the common boundary building lines

From 3,0m to 0.00m on west and east elevation

And 3.0m to 2.50m on north building line to allow

Construction of carport and veranda

Site extent: 278 m²

Current zoning: Single Residential 1

Description of the area / surrounding land uses

- 1.1. The property is located at 17 Sher Street, Elsie's River. The property is zoned for Single Residential SR1 purposes and is surrounded by Single Residential zoned properties. The property is located in close proximity of.

Property description

- 1.2. The property measures 278m² and is developed with a single residence that is currently utilized for residential purposes.

Proposed development

The carport is so positioned that it don't look like an add-on structure and that it is not visible from street and the boundary wall is there for protection because there is too much break ins.

The positioning of the carport and veranda is triggering a departure of building line as follow: Common building line from 3.0m to 0.00m and 3.0m to 2.50m and the reason for this is that the owner can park enough cars under it and to use it as entertainment area and also the vehicles can stand behind boundary wall for security.

The veranda is there to cover the open space from rain so that I don't let water stand at that point.

Refer to the City of Cape Town By-law Section 129(8) the following points are relevant to the determination of an administrative penalty

When determining an appropriate administrative penalty, the Municipal Planning Tribunal must consider at least the following factors –

- (a) the nature, duration, gravity and extent of the contravention;
 - My client Mrs Evans build a carport on the east side of her property without plans because the area that they stay in there is always house break in and her place was a target, the size of the structure is to accommodate 3 cars and use it for entertainment and to hang laundry overnight and during the day and the veranda on west boundary is there to cover that area from rain because normally in winter time the back yard is flooded with water and also for protection against break ins.
 - The structure was started a year ago and only ended 01 December 2018 and
 - My client was aware that she need to submit a building plan and could not submit the Plan because he ran out of funds and that he will have to submit a plan ASAP and will have to pay a penalty.

- (b) the conduct of the person involved in the contravention;
 - My client Mrs Evans is the owner of the property and would like council to consider Being fair when working out the penalty amount.
- (c) whether the unlawful conduct was stopped; and
 - The construction was finish in Dec 2018 and it was stopped
- (d) Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.
 - As to my knowledge and my clients response after ask the above question his Answer was no" this was my first time"