



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70493621
CASE OFFICER	J Solomons
CASE OFFICER PHONE NO	021 6844387
DISTRICT	Cape Flats
REPORT DATE	16/03/2020

ITEM NO MPT50/05/20

APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 103101, 22 JOANNNE ROAD, LANSLOWNE

1. EXECUTIVE SUMMARY

Property description	Erf 103101, Lansdowne
Property address	22 Joanne Road
Site extent	495.66m ²
Current zoning	Single Residential zone 1
Current land use	Dwelling house
Overlay zone applicable	No
Submission date	16/03/2020
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	There is an unauthorised second dwelling and veranda on the subject property.
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?	Yes

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 The unauthorised building work measures 50m² in extent and is intended to be used as a second dwelling **(see Annexure B)**.
- 3.2 An administrative penalty is required because item 22 of the Development Management Scheme (DMS) is being contravened as a portion of the unauthorised second dwelling and veranda, has been erected closer than 3.0m to the common boundaries. The DMS requires all structures erected along the common boundaries, after the first 12m from the street boundary on a property measuring between 350m² and 650m² in extent to have a setback of 3.0m from the common boundaries. Additionally, additions are permitted at 0.0m for 60% along the common boundary and 3.0m for the rest. Consequently, an administrative penalty application has been submitted.

4 SUMMARY OF APPLICANT'S MOTIVATION

The owner's motivation **(see Annexure C)** may be summarised as follows:

- The owner asserts that the additions have been erected prior to purchasing the property in November 2019.
- There are no other unlawful structures erected on the subject property.
- The owner has not previously contravened the By-law.

5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for the unauthorized building work on the property which is in contravention of item 22 of the Development Management Scheme.
- 5.2 In terms of section 129(7)(a) of the By-law an administrative penalty for contravening building work may not be more than 100% of the value the building work unlawfully carried out.

5.2.2 Unauthorised building work

**R1.020.00 (as provided in the spreadsheet) x Total unlawful area (13m²) =
R13 260 (veranda)**

**R5 620.00 (as provided in the spreadsheet) x Total unlawful area (37m²) =
R207 940 (second dwelling)**

An amount which is not more than R221 200 may be imposed as an 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 relates to the second dwelling and veranda on the subject property which have been erected without the appropriate building plan approval. No complaints have been received with regards to the erection of the aforementioned additions.

Duration – The owners of the subject property indicated that the additions have been erected by the previous owner and therefore cannot confirm its duration. The city's valuation document also confirms the date of registration to be 15 November 2019 (see Annexure D). The City's viewer confirms the structure's erection by February of 2018, 2 years ago, ie prior to registration with the new owner.

Gravity – The construction of the additions cannot be said to pose any adverse safety, fire or health hazards.

Extent – The extent of the contravention amounts to a total of $\pm 50\text{m}^2$, which is approximately 13% of the total property size.

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

The current owner only applied for the administrative penalty when instructed by the planning department, this after trying to regularise the unauthorised building work.

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

The unauthorised building work is complete.

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

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

- 5.4 In view of the aforementioned considerations in terms of section 129(8) this department recommends that an **R0** administrative penalty be charged for the unauthorised building work.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The previous owners have constructed the unauthorised additions
- 6.2 The unauthorised additions contravenes the DMS.
- 6.3 The applicant took the necessary steps to rectify the contravention.

- 6.4 As far as can be ascertained, the owner of the property has not previously contravened the Municipal Planning By-Law, 2015 or any other planning law.
- 6.5 The extent of the unauthorised building work is medium.

7 RECOMMENDATION

In view of the above, it is recommended:

That an administrative penalty in the amount of **R0** for the unauthorised building work in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 on erf 03101 Lansdowne **be approved** in terms of section 98(b)i of the City of Cape Town Municipal Planning By-Law, 2015.

ANNEXURES

Annexure A	Locality plan
Annexure B	Motivation
Annexure C	Plan of contravention
Annexure D	Date of registration



For Section Head : Land Use Management

Name A McCann

Tel no 021 6844341

Date 24 March 2020





District Manager

Chad Newman

021 684 4310

Annexure A – Locality Plans

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :	
Overview 1:2 683	Erf:	District:	
	Allotment:	Suburb:	
	Ward:	Sub Council:	
	<input type="checkbox"/> Notices Served	<input checked="" type="checkbox"/> Support Received	<input checked="" type="checkbox"/>
	<input type="checkbox"/> Petition Signatory	<input checked="" type="checkbox"/> Objections Received	<input checked="" type="checkbox"/>
Generated by:		 CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD <i>Making progress possible. Together.</i>	
Date: Monday, 16 March 2020			
File Reference:			

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :	
Overview	Erf:		District:
	Allotment:		Suburb:
	Ward:		Sub Council:
	 1:335	Notices Served	Support Received
	Petition Signatory	Objections Received	
Generated by:		 CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD <small>Making progress possible. Together.</small>	
Date: Monday, 16 March 2020			
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Annexure B – Motivation

Motivation

Property
22 Joanne Road
Yorkshire Estate
Lansdowne
Erf 103101
19 February 2020

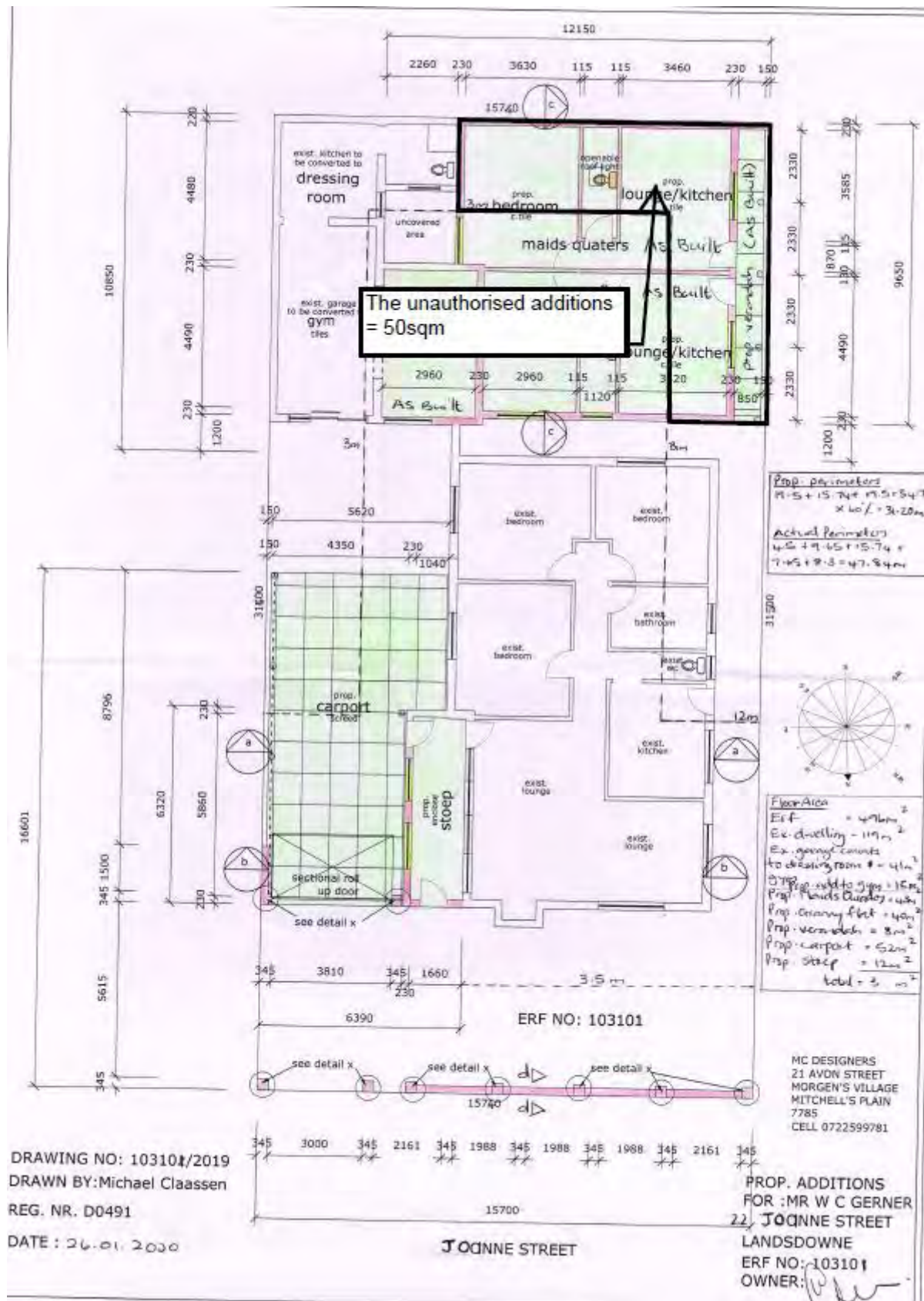
Unauthorised structures (Second Dwelling and Maids Quarters) were on the property when the new owner (Wayde Clyde Gerner) purchased the property on 15 November 2019.

The Conduct of the person involved in the contravention is unknown.

The second dwelling and maids quarters has been built and there has been no other unlawful building works.

The new owner has not previously contravened this By-Law or a previous planning law.

Annexure C – Plan of Contravention



Annexure D – Date of registration

Usage Code	A02
Usage	Two dwelling residential
Area (Calculated)	495.66 m2
Total Value	1230000
Valuation Year	20190701
Approval Date	0000-00-00
Registered Date	2019-11-15
Purchase Date	2019-04-16
Purchase Price	1580000,0
Title Deed Number	T48915/2019
Business Partner Nr	1002809661
Owner Title	Mr.
Owner Name	WADE GERNER
Owner First Name	WADE
Language	EN
Owner Postal Address	3 MIDDLETON CLOSE MITCHELLS PLAIN 7785
ID Number	8508135086084(SA Identity Doc, expired)
Rate payer Name	WADE GERNER
Rate payer Street Address	MIDDLETON CLOSE 3 MITCHELLS PLAIN ZA
Rate payer Postal Address	3 MIDDLETON CLOSE MITCHELLS PLAIN 7785
key	71323
Physical Address	22 JOANNE ROAD, LANSDOWNE
Erf No	103101