



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO **MPTSW40/11/19**

CASE ID	70474649
CASE OFFICER	N Floris (G Soeker)
CASE OFFICER PHONE NO	021 444 9540
DISTRICT	Southern District
REPORT DATE	25/10/2019

WARD 73: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 540 BERGVLIET, 5 VINE ROAD

1 EXECUTIVE SUMMARY

Property description	Erf 540 Bergvliet
Property address	5 Vine Road
Site extent	999m ²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	16/09/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised building work in the form of a verandah and wooden shed.
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

- 3.1 A land use application was submitted on 15/03/2019. It was incomplete and not continued with.
- 3.2 The property was transferred onto the ownership of the current owners on 01/04/2019.
- 3.3 An administrative penalty application was submitted on 05/07/2019. It was incomplete and was refused on 10/09/2019 as the applicant failed to provide the required outstanding information.
- 3.4 An application for a departure and title deed relaxation was submitted on 08/07/2019. It was incomplete and was refused on 10/09/2019 as the applicant failed to provide the required outstanding information.
- 3.5 An application for a departure and title deed relaxation was submitted on 07/10/2019. It was incomplete and the outstanding information has still not been provided. The application still needs to be advertised.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The unauthorized building work was done by a previous owner, she found out about the unauthorized building work when she was in the process of selling the property. The unauthorized building work was constructed by her late husband who was misled into believing that it would not be necessary to obtain a Council approval.
- The previous owner submitted an application but as the sale agreement did not require approvals and the responsibility fell on the new owners, the application was withdrawn.
- The unauthorized building work constitutes a 46m² covered verandah and a 16m² garden storage shed.
- The unauthorized structures were erected in 2010.
- Neither the previous owner nor the current owners have been involved in a contravention of the MPBL or any other planning law. The previous owner took steps to rectify the unauthorized building work when she became aware of the unauthorized building work and the new owners have since taken over responsibility of the approval.

5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for the building work that has been built in contravention of the MPBL. A portion of the verandah contravenes the 3m common boundary building line as prescribed in Item 22(d) of the Development Management Scheme (DMS). A portion

of the verandah and garden shed contravene the 3.15m rear and 1.57m lateral setbacks prescribed in the title deed (see Annexure D). As this condition was imposed in terms of the Townships Ordinance No 33 of 1934 the contravention is technically a contravention of the MPBL.

- 5.2 In terms of section 129(7)(a) of the MPBL, 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.
- 5.3 Given that a R0 administrative penalty is recommended, and for pragmatic reasons, the maximum value of the administrative penalty has not been calculated.
- 5.4 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 portions of a verandah and garden shed that are ordinarily permitted in Single Residential Zone 1.

Duration – According to the applicant, the unauthorized structures were constructed in 2010. The duration of the contravention is thus long.

Gravity – The gravity of the contravention is not serious. The buildings are both at ground storey and are of low height. However, the gravity is aggravated by the fact that the title deed conditions are being contravened.

Extent – The extent of contravention is relatively small.

The conduct of the person involved in the contravention

According to the applicant the unauthorized building work was done by a previous owner. The current owners have provided an affidavit to this effect (see Annexure E). This has been confirmed from aerial photography which shows that The verandah was erected around 2010 and the shed was erected around 2001.

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

The unauthorized veranda and shed is fully constructed and therefore the unlawful conduct has not been stopped.

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

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

- 5.5 In view of the abovementioned considerations, and in particular the fact that the current owner bought the property with the unauthorized

building work already erected, this Department recommends that an administrative penalty of R0 be imposed.

6 REASONS FOR DECISION

The reason for the recommended decision may be summarized as follows:

- 6.1 The current owner bought the property with the unauthorized building work already erected.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R0** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 540 Bergvliet, in relation to the unauthorised building work shown on the plan with the drawing number 19.04_03 Revision B, drawn by Stage 5 Architects dated 21/08/2019.

ANNEXURES

Annexure A	Locality plan
Annexure B	Site development plan
Annexure C	Motivation
Annexure D	Title deed
Annexure E	Affidavit from current owners



Section Head : Land Use Management

Name P Hoffa

Tel no 021 444 7724

Date 2019-10-25

Comment



District Manager

Name U Gonsalves

Tel no 021 444 7720

Date 2019-10-25

Comment

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

2496

ANNEXURE : A



Overview

Erf: 540

District: SOUTHERN

Allotment: BERGVLIET

Suburb: BERGVLIET

Ward: 73

Sub Council: Subcouncil 20



1:2 672

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date: Wednesday, October 9, 2019

File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

House Westwood: As Built Documentation

Date: 21 August 2019
Our Ref: 05 LUM Motivation
Client: Jeremy & Deborah Westwood

Project: ERF 540
5 Vine Road
Bergvliet

Zoning: SR1

LUM Motivation

To Whom it may concern,

South Peninsula

Please consider the attached application for alterations to ERF 540 Bergvliet.

As built, previously unapproved, verandah and garden shed are presented for consideration. The verandah extends to the boundary on the north east edge of the property.

BACKGROUND:

The previous owner of ERF 540 Bergvliet, Mary Munro, became aware of unlawful building work on her property during the process of selling the property to the current owners Jeremy & Deborah Westwood. The previously unapproved work was constructed by her late husband under the advisement of a building contractor who was either unaware of the building regulations or intentionally misled Mr Munro to believe that building plans would not need to be submitted for the work. Stage 5 Architects were originally approached by Mrs Munro to apply for approval of the structures. A submission was made on her behalf, with case number 70446117. A sale agreement was reached despite the need for the approval and responsibility for the approval has since shifted to the new owners with Stage 5 Architects remaining as their agents. We subsequently withdrew our previous application.

DETERMINATION OF ADMINISTRATIVE PENALTY:

1. Nature and Duration of the contravention:

Unapproved buildings on ERF 540 Bergvliet constitute 46m² of covered verandah and a 16m² garden storage shed. Construction involved roofing a section of previously approved, walled, uncovered verandah and the installation of a prefabricated wendy house. The structures have been unapproved since 2010. The unlawful structures are currently still standing. Permission from council is requested to authorise the previously unapproved work.

2. Conduct of the people involved:

Neither Mary Munro nor Jeremy & Deborah Westwood have previously been involved in a contravention of the MPBL of previously planning law. After being made aware of the unlawful building work, Mrs Munro took steps to apply for approval of the structures and Mr and Mrs Westwood have since taken over responsibility for the approval.

We ask that the above be considered when determining an appropriate administrative penalty for the contravention.

2499

PERMANENT DEPARTURE AND RELAXATION OF RESTRICTIVE CONDITIONS:

1. Socio-Economic Impact

No negative impact is foreseen. Incremental upgrades to existing housing in the neighbourhood will have a positive impact on the suburb overall and will add to the property value of neighbouring home owners.

2. Compatibility with Surrounding Uses

The scale and use of the proposed alterations are very similar to the existing, and in keeping with the surrounding urban environment. The boundary edge of the verandah is of a solid construction with a brick wall obscuring any overlooking views of the neighbouring property. The total height of the structure is 2 990 from the base level to the top of the wall, and should have no negative impact on the neighbouring property.

3. Impact on the External Engineering Services

The additions do not contain any additional plumbing or other services.

4. Impact on Safety, Health and Wellbeing of the Surrounding Community

No proposed activity or element of the proposed construction shall negatively affect the safety, health or wellbeing of the surrounding community.

5. Impact on Heritage

The building is not older than 60 years and does not fall within a HPOZ.

The restrictive title deeds are no longer necessary given the over riding requirements of the MPBL.

6. Impact on the Biophysical Environment

No negative impact is foreseen. No trees or vegetation are to be affected by the proposal, and no additional hard paving is proposed.

7. Traffic Impacts, Parking, Access and Other Transport Considerations

No change to the carriageway crossing of position and number of bays is proposed, and the structures are sufficiently far from the street that they have no impact.

CONCLUSION:

In light of the above, please consider granting the following departure:

- Relaxation of the North East common boundary line from 3.0m to 0m.
- Relaxation of Title Deed condition 3 (d) of deed of transfer no 20485 as referred to in section C of title deed number T41442/1980, i.e. Relaxation of North East common boundary deed set back from 1.57m to 0m.

We hope that you will consider the application favourably and look forward to your feedback.

Yours Sincerely



James Page

274**ANNEXURE D**

Gunstons Inc t/a Gunstons Attorneys
 Block F, The Terraces
 Steenberg Office Park
 Tel: 021 702 7763

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Prepared by me

[Signature]
 CONVEYANCER
 TRACEY-LEE STEELE

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 3,275,000.00	R. 1,588.00
Reason for exemption	Category Exemption	Exemption i t o. Sec/Reg Act/Proc

DATA / CAPTURE
 02 APR 2019
 LITHA MADAMA

DATA / VERIFY
 01 APR 2019
 DIPONTSENG LEEUW

T 000012520/2019

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

DRISKE OLIVIER

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer
 being duly authorised thereto by a Power of Attorney granted to him/her by

MARY STELA MUNRO
Identity Number 390728 0100 08 5
Unmarried

which said Power of Attorney was signed at Tokai on 21 February 2019

[Signature]

Lexis® Convey 17.0.5.5

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And the appearer declared that his/her said principal had, on 25 January 2019, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

2501

1. **DEBORAH LEIGH WESTWOOD**
Identity Number 891017 0061 08 2
Married out of community of property
2. **JEREMY PAUL WESTWOOD**
Identity Number 870524 5122 08 6
Married out of community of property

their Heirs, Executors, Administrators or Assigns in full and free property

ERF 540 BERGVLIET, IN THE CITY OF CAPE TOWN, CAPE DIVISION,
WESTERN CAPE PROVINCE

IN EXTENT 999 (NINE HUNDRED AND NINETY NINE) Square metres

FIRST TRANSFERRED by Deed of Transfer Number T20485/1952 with diagram No. 2704/1950 annexed thereto and held by Deed of Transfer Number T41442/1980.

- A. SUBJECT to the conditions referred to in Deed of Transfer No. T 2151/1956 dated 22nd February 1956.
- B.
- C. SUBJECT to the following conditions imposed in Deed of Transfer No. 20485 dated 12th December 1952, imposed by the Administrator when approving the Township and reading as follows:-

"Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No. 401 dated 17 October 1935, and in the memorandum which accompanied the said regulations".

1. The owner of this erf shall without compensation be obliged to allow electricity and water mains and the sewage and drainage including stormwater of any other erf or erven within or without this subdivision to be conveyed across this erf, if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf, at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
2. No septic tank shall be erected on this erf.
3. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such conditions as he may impose.

- (a) it shall not be subdivided;
- (b) it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith;
- (c) not more than half the area thereof shall be built upon;
- (d) no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority, an outbuilding not exceeding 3,15 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf.

D. SUBJECT to the following conditions numbered 7, and 10 to 16 inclusive as contained in the annexure marked "C" to said Deed of Transfer No. 20485/1952, which said conditions were imposed by the Divisional Council of the Cape with the approval of the Administrator in favour of itself and its successors in title as owners of the remainder of the said Township by Certificate of Uniform Title No. 8782 dated 6th June 1952, and reading as set out below:-

7. If by error or inadvertence or as a result of misrepresentation or otherwise howsoever the Council shall enter into a Deed of Sale with a Buyer who in terms of Clauses ---, ---, and ---, would not be entitled to own a plot, such sale shall be null and void and the Council shall incur no liability to any Buyer under such Deed of Sale except the liability to refund to him any amounts paid by him to the Council in terms of such Deed of Sale.

If in pursuance of any such Deed of Sale transfer of the property shall have been passed to the Buyer thereunder he shall be bound to deliver to the Council on demand his Deed of Transfer of such property and to retransfer the said property to the Council.

All costs incurred by the Council in connection with such Deed of Sale and the said property and buildings shall be payable by the Buyer and shall be deducted from any amount to be refunded to such Buyer in terms hereof. This clause will serve to constitute the Council or its substitute as the duly appointed attorneys and agents of such Buyer for the purpose of re-transferring the property to the Council and of signing any declaration or granting any Power of Attorney to pass transfer or executing any Deed of Transfer in connection therewith.

10. The Buyer shall not have the right to open, or allow or cause to be opened and carried on thereon, any canteen, hotel, restaurant, or any other place for the sale of wine, beer or spirituous liquor, or any shop or business place whatsoever.
11. The Buyer or any tenant or occupier of the property shall not do or suffer to be done on such property anything which in the opinion of the Council is noisome, injurious or objectionable, or a public or private nuisance or a source of damage or disturbance to the owners, tenants or occupiers of

OK

other properties in the neighbourhood of the said property. Private gardens and allotments shall be kept in such a state as not to be a nuisance or annoyance to persons using the neighbourhood or to neighbours. If any Buyer, tenant or occupier of the said property shall by act or omission commit a breach of this clause, the Council may give him or them notice to make good such breach within a time specified in such notice or upon his or their failure so to do the Council or any person authorised by the Council may enter upon the property and take such steps to abate such nuisance as he may deem fit and may recover the cost involved in so doing from the person upon whom such notice has been served.

12. The Buyer shall not without the consent in writing of the Council use the said property or any buildings erected or to be placed thereon, for the purpose of advertising or display or permit to be displayed thereon any advertisement. Such consent if given, may be withdrawn by the Council at any time in which event the Buyer shall remove or discontinue the use of such advertisement.
13. The foregoing provisions are imposed for the benefit of and may be enforced by the Council or any owner of any property within the Bergvliet Township originally registered in the name of the Council.
14. The conditions herein contained shall be in addition to the conditions imposed by the Administrator on all plots within the Bergvliet Township when giving approval to such Township in terms of the provisions of Ordinance No. 33 of 1934.
15. Should the Buyer at any time commit a breach of any of the conditions of this Agreement the provisions of Clause 7 shall apply and the Council may at its option invoke such provisions.
16. No buildings of any kind shall be erected on the said property without the written approval of the Council and no poultry shall be kept on the premises without the Council's consent.

WHEREFORE the said Appearer, renouncing all rights and title which the said

2504

MARY STELA MUNRO, Unmarried

heretofore had to the premises, did in consequence also acknowledge her to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

1. **DEBORAH LEIGH WESTWOOD, Married as aforesaid**
2. **JEREMY PAUL WESTWOOD, Married as aforesaid**

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R3 275 000,00 (THREE MILLION TWO HUNDRED AND SEVENTY FIVE THOUSAND RAND).

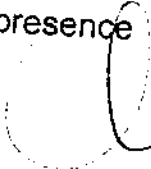
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on

01 APR 2019

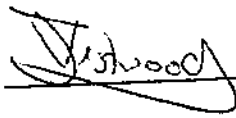

q.q.

In my presence

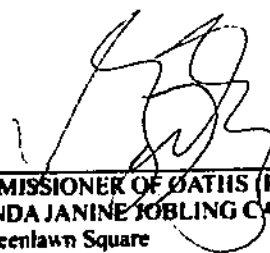

REGISTRAR OF DEEDS

2505

I Jeremy Paul Westwood (ID number 8705245122086) and Deborah Leigh Westwood (ID number 8910170051082) took ownership of ERF 540 Bergvliet, commonly known as 5 Vine Road, in April 2019. It has been brought to our attention that there is unauthorised building work on the property. The unauthorised structures, namely a covered verandah and garden storage shed were constructed by a previous owner without our involvement. We have undertaken to gain approval from the City of Cape Town for these structures.

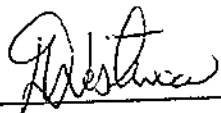


Jeremy Westwood



03/09/2019

COMMISSIONER OF MATHS (RSA)
BRENDA JANINE JOBLING CA(SA)
24 Greenlawn Square
Claremont
7708



Deborah Westwood