



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70478292
CASE OFFICER	A Lewack
CASE OFFICER PHONE NO	021 444 1045
DISTRICT	Northern
REPORT DATE	23 October 2019

ITEM NO **MPTNE24/11/19**

WARD 103: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 10642, 11 JACANA CRESCENT, LANGEBOEG RIDGE, KRAAIFONTEIN.

1 EXECUTIVE SUMMARY

Property description	Erf 10642, Kraaifontein
Property address	11 Jacana Crescent, Langeboeg Ridge
Site extent	386m ²
Current zoning	General Residential 1 : (GR1)
Current land use	Dwelling house
Overlay zone applicable	No
Submission date	23 October 2019
Subject to PHRA / SAHRA	n/a
Any unauthorised land use / building work?	Yes. Unauthorised single garage and entertainment room.
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, the applicant was advised by the case officer for the application for an amendment of the approved site development plan (Case 70441954) to submit an administrative penalty application as the garage and entertainment room already existed.

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

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3 BACKGROUND / SITE HISTORY

The subject property is located on the corner of Jacana Crescent and Robyn Road (See Annexure A). The property is currently zoned General Residential 1 (GR1) and measures 386m² in extent. The property is located in the vicinity of properties comprising of a similar uses, such as General Residential 2 and Single Residential 1, zonings catering for residential uses.

No notice was served to the owner, however the owner was advised by the case officer of (Case ID: 70441954) for the application for an amendment of the approved Site Development Plan to submit an application for the administrative penalty as the proposed structures was already built.

4 SUMMARY OF APPLICANT'S MOTIVATION

The property owner's motivation is attached as Annexure C and may be summarised as follow:

- The purpose of the construction was to give the owner more comfort in terms of his property.
- The owner was unaware that his builder had not submitted all the relevant building plans, before commencing with the building work.
- Building work will add value to owner's property, which will subsequently raise the value of the surrounding properties.
- Additions are compatible with surrounding properties.
- There is no impact on engineering services, health, safety and wellbeing of the surrounding properties.
- No impact on parking, owner is only adding to existing driveway.

5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorized building work is in contravention of the Development Management Scheme, because an application for the amendment of the approved site development plan was required prior to the construction of the additional structures.

The owner did submit an application for an amendment of the approved SDP to permit the alterations and additions to the existing dwelling, however the owner started making alterations to the existing dwelling house without land use and building plan approvals.

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 Unauthorized building work

- Single garage total floor coverage- 24.78m²
- Entertainment room floor coverage- 34.78m²

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$$\text{Value per m}^2 \times \text{Total Unlawful area (m}^2\text{)} = R$$

$$R7\,740 \times 59.56(\text{m}^2) = R\,461\,025.36$$

			1%	3%	5%	10%	15%
Area contravening MPBL	Single garage and entertainment room(m ²)	59.564					
	Value of building work (R)	7 740					
Value of the building work as per BDM (unit price)		R461 025.36	R 4 610.25	R 13 830.76	R23 051.27	R46 102.54	R69 153.80

An amount which is not more than 100% 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 land use contravention relates to residential structures built without municipal approval, which included the addition of a single garage and an entertainment room to the existing dwelling. However, the nature of the contravening land use does not detract from the aesthetic and residential character of the area.

Duration:

The applicant states in his application form that the unauthorized building work has been in existence for 36 months (3 years).

According to the City Map Viewer, the structures was erected between 2015 and 2016, which can be considered a long enough period in which the owner had sufficient time to regularize the unlawful structure.

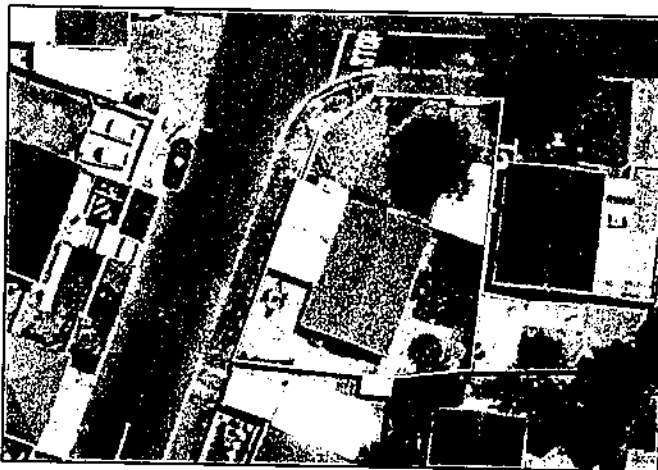


Figure 2: Image from February 2015

Extent:

The actual extent of the contravention (59.56m²) is relatively small when considering the size of the property (386m²).

Gravity:

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The gravity of the proposal is considered to be significant, when considering the comments received by Asset Management and Maintenance with regards to the position of the proposed (existing) entertainment room, which poses a safety risk for vehicles driving along Robyn Road.

Also with regards to the impact on the existing services, comments received from the Water and Sanitation Department, stating that a pressurized municipal water main outside the western erf boundary line on Robyn Street is heavily impacted with the entertainment room that is erected 0m onto the street building line along the western erf boundary.

b) The conduct of the person involved in the contravention

The motivation provided confirms that the current owner is responsible for the unlawful erection of the entertainment room and single garage.

c) Whether the unlawful conduct was stopped

No, the unlawful structure is already built and utilized by the owner.

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

There is no evidence of the owner being involved in previous contraventions of the By-Law.

- 5.4 In view of the aforementioned considerations in terms of section 129(8) and the recent amendments to section 129 this department recommends that an amount of **R 13 830** administrative penalty be applicable.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- The current owner is responsible for the unauthorized building work.
- The actual extent of the contravention which is (59.56m²) is relatively small when considering the size of the property (386m²), however
- The gravity of the contravention is significant due to the safety risk the entertainment room poses onto the street and municipal services.
- Duration is relatively low by approximately 3 years.
- The nature of use relates to the residential character of the area.

7 RECOMMENDATION

In view of the above, it is recommended:

- a) That an administrative penalty in the amount of **R 13 830.00** for the unauthorized building work, be determined in terms of section 98 (b) of the City of Cape Town Municipal Planning By-Law, 2015 in respect of ERF 10642, 11 Jacana Crescent, Langeberg Ridge, Kraaifontein.

ANNEXURES

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



Section Head : Land Use Management

Comment

Name Sean Van Rensburg

Tel no 021 444 1044

Date 24-10-2019



District Manager

Name Susanna Matthysen

Tel no 021 444 1061

Date 24-10-2019

Comment

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Annexure A

LOCALITY MAP

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ANNEXURE :



Overview

Erf:

District:

Allotment:

Suburb:

Ward:

Sub Council:



1:600

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date:

22 October 2019

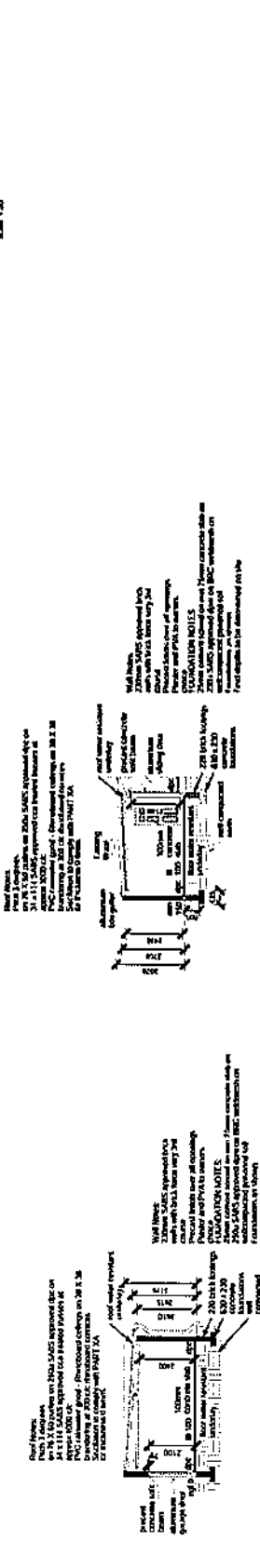


CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Annexure

B

FLOOR PLAN, SITE PLAN, ELEVATIONS
 AND SECTIONS



	Area of Window	Shading Device	Total	Heat Area	Fenestration percentage
1. Single type	1.00 Sqm	0.00 Sqm	1.00 Sqm	1.00 Sqm	10.0%
2. Double type	1.00 Sqm	0.50 Sqm	1.50 Sqm	1.00 Sqm	6.7%
3. Triple type	1.00 Sqm	1.00 Sqm	2.00 Sqm	1.00 Sqm	5.0%

Annexure C

City of Capetown
Development Management

Property Address: 11 Jacana Road, Langeberg Ridge

An application to pay an admin penalty is hereby submitted. The Client was unaware that the builder had not handed in the relevant building plans. The structures were built and the Client wishes to apply for approval.

The addition to my existing dwelling will add value to my property which will subsequently raise the value of the surrounding properties. The addition is compatible with the surrounding properties. The addition serves to add to the current function of my home. There is no impact on any engineering services nor on the safety, health and wellbeing of the surrounding properties.

The extension to my dwelling does not affect any parking access as I am only adding to the current driveway entrance to my property. There is no negative impact on the parking access to any of the surrounding properties. There is no adverse impact on land use and since the property is not a heritage site, there is no impact.



Mr + Mrs Barlow
08/10/2015