



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70413471
CASE OFFICER	Foren Benting / Natalie Molife
CASE OFFICER PHONE NO	021 444 1043/ 021 444 7948
DISTRICT	Northern (08)
REPORT DATE	16 August 2019

ITEM NO **MPTNE18/09/19**

WARD 07: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF: 6778, 1 WOODBUSH WAY, NORTHPINE, BRACKENFELL

1 EXECUTIVE SUMMARY

Property description	Erf 6778, Brackenfell
Property address	1 Woodbush Way, Northpine
Site extent	249m ²
Current zoning	<ul style="list-style-type: none"> General Residential Zone 1 (GR1). The provisions of item 39 is applicable to the subject site. This portion of the Northpine Residential Area was approved outside of a group housing scheme. The land uses and development parameters of the SR1 zone may therefore be applied.
Current land use	Day care (ECD) & dwelling house
Overlay zone applicable	None
Submission date	07/08/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised day care (ECD)
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	No

yes, an administrative penalty may not be applied for.	
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 847

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- Erf 6778, Brackenfell is currently located within a well-established residential area known as Northpine Garden Cities.
- The surrounding land uses are predominantly for residential purposes and consist of low to medium density developments (i.e. townhouses, flats and dwelling houses).
- The unauthorised ECD currently cares for 48 children aged between 1-5 years and is operated from the existing entertainment area, bedroom and living room (see Site Layout Plan attached as Annexure B).
- No public complaints were lodged against the activity.
- Enforcement has not served any compliance or cease notice.
- The applicant has submitted a separate application for consent use to authorise the unlawful activity (Case ref 70360808).
- The administrative penalty under consideration must firstly be determined and paid before a desirable decision can be taken in respect of the actual land use.

4 SUMMARY OF APPLICANT'S MOTIVATION

- The applicant desires to rectify the unlawful land use.
- All staff members are qualified and have obtained the necessary training.
- The applicant is aware of the parking shortage however; most parents reside within walking distance from the day care and do not own vehicles. No negative traffic related impacts are thus foreseen.
- Permission was granted by the City to utilise the nearest public park for outdoor playing (proof has been provided).
- The day care has been operating for 5 years within the existing dwelling.
- The existing staff will lose their jobs should the operation cease.
- The day care is serving a viable community need.
- Operating times are from 06:00 – to 18:00.
- The ECD has a structured menu and activity program.
- The operator was never advised to cease the operation but rather to equip employees.

- The applicant has made contact with several City officials to enquire the process, in order to regularise the activity.

848

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised use is in contravention of the Development Management Scheme.
- 5.3 In terms of section 129(7)(b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

5.3.1 Administrative Penalty: Calculation

Unauthorised land use:

$$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2\text{)}} \times \text{Total Unlawful Area (m}^2\text{)} = R$$

$$\frac{R900\,000.00}{249\text{ (m}^2\text{)}} \times 100.5\text{ (m}^2\text{)} = R363\,253.01$$

LAND USE		0.5%	1%	1.5%	2%	3%	5%	7%	10%	15%	20%
Current Municipal Value (R)	R 900 000.00										
Size of total property (m²)	249										
Area contravening MPBL(m²)	100.5										
Penalty value and scale (R)	R 363 253.01	R 1 816.27	R 3 632.53	R 5 448.80	R 7 265.06	R 10 897.59	R 18 162.65	R 25 427.71	R 36 325.30	R 54 487.95	R 72 650.60

An amount which is not more than 100% of **R 363 253.01** may be imposed as an administrative penalty.

- 5.3.2 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 unauthorised ECD accommodating 48 children contravenes the primary and additional land use rights prescribed within the DMS.
- A place of instruction (day care) is permitted with Council's Consent as outlined under the SR1 zone.
- A permanent departure for parking will be triggered due to the scale of the facility (>35 children is considered to be a large scale facility as per the ECD policy,2013).

Duration:

- The duration for the unauthorised activity is approximately 5 years, as motivated by the applicant.
- There is no concrete evidence confirming that the unlawful activity has been in operation longer than the above duration.

Gravity:

- The main purpose of the unlawful activity is to care for a maximum of 48 children.
- The operation serves a positive function within the existing residential community.
- The proposed land use is compatible with the surrounding land uses.
- As per enforcement records, no public complaints have been received and no notice has been served to cease the activity.
- As evident from the attached plan, the children are cared for within enclosed structures. Outside playing does not occur on site due to the limited space available on-site. The applicant has provided a permission letter confirming that the children may play on the public open space in close proximity to the subject site.
- There is no heritage or any other overlay zone that is being contravened.
- There is no concrete evidence that the activity poses any negative health, safety, fire or any other hazard.
- The above confirms that the gravity is a mitigating factor.

Extent:

- The unlawful activity is being operated from the existing entertainment area, bedroom and living room.
- The total footprint of the unauthorised ECD measures 100.5m² in extent.
- Approximately 42% of the site is currently utilised for the unlawful activity.

b) The conduct of the person involved in the contravention

- The owner has granted full access to the land use inspector to view the property and to take photographs.
- No public complaints have been received.
- The applicant made effort to approach the municipality, to discuss the intent and procedure in order to regularise the activity.

c) Whether the unlawful conduct was stopped

- The unlawful use has been in operation for 5 years without interruption.
- Although the continuation of the use is considered to be an aggravating factor when determining the penalty, cessation of the operation would have led to the loss of income for the operator and staff members.

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

- No land use notice served. There is no evidence that the owner was involved in a previous contravention.
- The operator of the unlawful activity is assumed to be good conduct as he/she immediately sought to regularise the unlawful activity.

5.3 Having considered the mitigating and aggravating factors mentioned above, this office is of the opinion that an administrative penalty fee be imposed of **R600.00** to the total value of the **unauthorised land use**.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

1. The nature of the contravention is consistent with the property's zoning.
2. The gravity of the unauthorised use contains more mitigating than aggravating factors w.r.t being no public nuisance but rather a positive social benefit to the community.
3. Although the duration of the land use is 5 years, the unlawful activity was in operation without any complaints. It can be assumed that the day care has been managed in an orderly manner.
4. There is no heritage or any other overlay zone that is being contravened.
5. There is no concrete evidence that the activity poses any negative health, safety, fire or any other hazard.
6. There is no evidence that the owner was involved in any previous contravention.
7. In further mitigation, the applicant has been cooperative throughout the process.


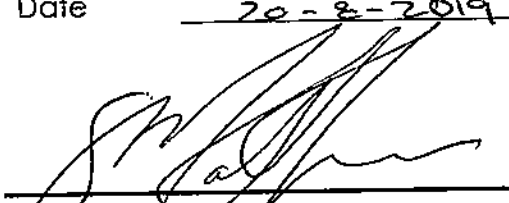
6 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R600.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 6778, Kraaifontein.

ANNEXURES

Annexure A	Locality Plans – Regional (A1) and Local (A2)
Annexure B	Site layout plan
Annexure C	Applicant's motivation
Annexure D	Property information

	
Section Head : Land Use Management	Comment
Name <u>S. van der Merwe</u>	
Tel no <u>021 444 1044</u>	
Date <u>20-8-2019</u>	
	
District Manager	Comment
Name <u>S. Matthysen</u>	
Tel no <u>021 664 1061</u>	
Date <u>21 August 2019</u>	

Annexure A

ANNEXURE : A1

District:

Suburb:

Sub Council:

Support
Received

Petition
Signatory



Objections
Received



Date:

File Reference:



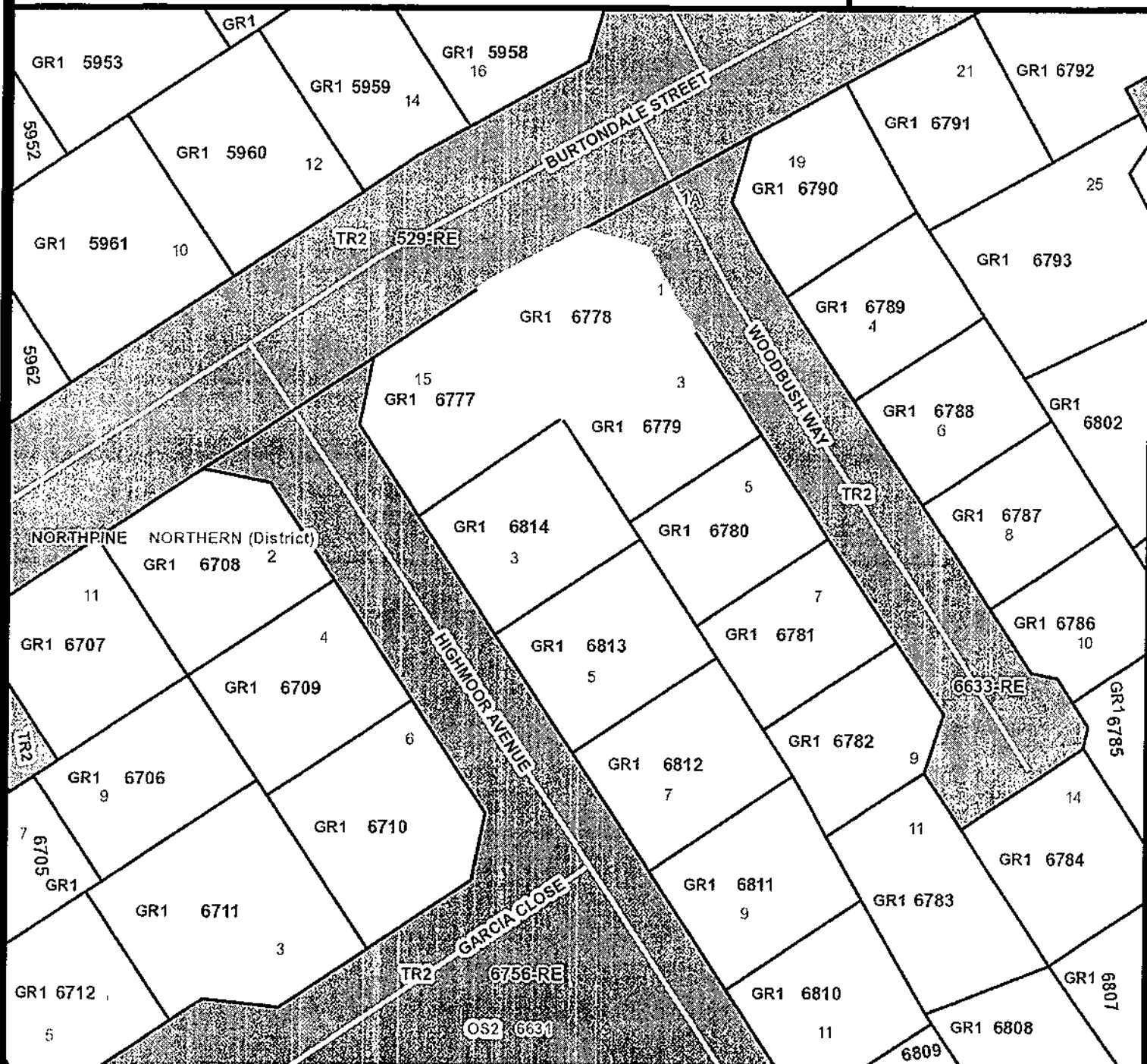
CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

862

ANNEXURE : A2



Overview

Erf:

District:

Allotment:

Suburb:

Ward:

Sub Council:



1:600

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date:

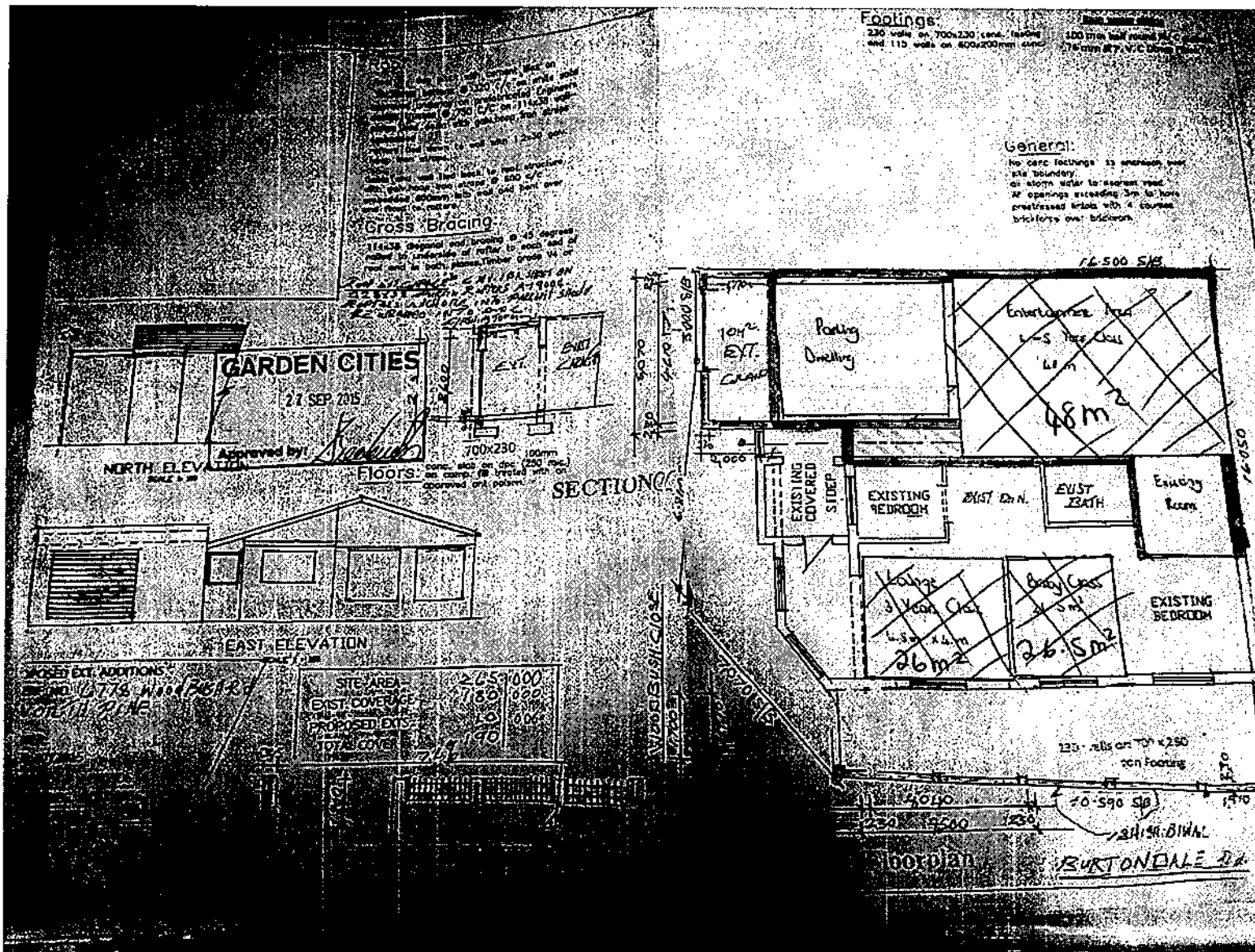
File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Annexure B



☒ Total floor area for illegal
land use (ECD)
 $= 100.5 \text{ m}^2$

Annexure C

5Cnr Wood bush Way and
Burtondale
Northpine
BRACKENFELL
7560



866

E-mail: misslwrc1@gmail.com
Cell: 079 920 9336

26 March 2019

To whom it may concern

LETTER OF MOTIVATION WITH REGARD TO REGISTRATION OF CRÈSHE CASE NR -70360808

This letter is directed to, to assist with the processing of my application, with which I have been struggling with for years. I have applied for registration and zoning for my Day-care Centre since 2013, without any success. The fact that I am constantly contacting the municipality and requesting a meeting with an employee to advise on the matter, shows that I am honestly doing everything in my ability and power to go about this the right way.

a) The nature, duration, gravity, and extent of the contravention:

I have applied for registration from the beginning when I started with 4 children. I am not sure why my registration process is taking so long. I do understand the fact that the parking seems to be a problem, but up until now, I have not once had a problem caused, due to the parents making use of the parking on my property. Most of the neighbours are working during the day, and the rest of them do not own vehicles, thus, there is no congestion that is occurring at any time.

I am aware of the fact that once you have 6 or more children in your care, you need to apply for registration and zoning. This is the reason why I applied when I had 4 children, when I saw the possibility for growth. Unfortunately, after a long period of waiting and receiving no feedback, I decided to complete another application, which resulted in two case numbers (70360808 and 70273351) at the municipality. The current case ID that is relevant to my application is 70360808

At the moment I have 48 children between ages 1-5 years in my care. I use 3 spaces in my home and the size of each space –Room- Babies -3m x3 meters, Lounge - 3years -6.5m x4m and Entertainment room 4-5 – 48 meters. We have 5 babies, 4-5 years -30 and 3 years -13. I have decided to use my house because it's a save space and there is more ventilation.

There is space for 4 parking bays in front of the facility. I was told that this is the only aspect preventing me from registration. I would appreciate assistance from the municipality in this regard. I find it quite disturbing that after so much trouble, submission of documentation, enrolment of training courses and purchasing of pre-school theme manuals that this could result in the children being left with no supervision and education. Staff members could lose their jobs, since my business is also creating job opportunity.

There is 22 children that comes with prams and walks because most of the children lives at Scottsdale Rental Estate. We have 8 children who comes by taxi and my staff lives walking distance from work.

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

I assist the families at my centre when need be, and would therefore, appreciate it if the Municipality would consider my application favourably and also look at ways to assist me in this regard. Assistance especially with regard to the parking issue will be much appreciated.

I also consulted with the Municipal Ward Councillor in our area, asking for advice. I mentioned factors such as the open land next to my property, which was not used for the past 20 years, by the Council. I enquired if there is a possibility to rent or buy this land, if it is needed for approval of my registration. After a meeting with one of the employees at the municipality earlier this month. I was told that I will be liable for an administrative penalty, of which I am willing to pay, should this advance my application.

The crèche will operate from 06:30am – 18:00pm and we will supply breakfast and lunch. The parents will be liable to pack a snack, which preferably consists of yoghurt, sandwich, chips or juice.

We were never advised to stop the functioning of the crèche, instead we were advised to equip the staff in all aspects and also ensure that all necessary qualifications are obtained. Hence, all the teachers are qualified and have completed and attended courses from Learn2Live. There is a teacher who has level 2 First Aid Training in each class. The teachers are therefore, capable of presenting educational training and well planned programmes on a daily basis.

c) Whether the unlawful conduct was stopped:

The crèche is still functioning on a daily basis. We wish to obtain your approval and consent, as this is a place of learning, safe haven and nurturing to many children. It is evident that where advice is given, we make work of the matter at hand, to immediately improve the matter of concern. Taking into consideration the play area, we were informed that we can make use of the nearby park for an outdoor play area. We consulted with the authorities, after which we received written consent to make use of the park. We also work closely with the Neighbourhood Watch and Security Services, ensuring the safety and well-being of our children and staff. We were also advised to consult with Garden Cities, and received feedback from them, stating that the matter is in the hands of the Municipal Council. And that they do not have any grievances or contradiction with regard to our application at this stage. Several attempts were made, with regard to the application, endless visits to the Council offices in order to gain clarity, advice and assistance that could help us to obtain a zoning certificate and a successful registration.

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

According to records and personal knowledge, it is evident that when I initially started my Centre, I made contact with the authorities to put my process in action, in order to get legal consent and confirmation to run my centre. I have sent my staff and myself for First Aid Training, Fire Training and programming courses.

I hope that on submission of this motivational letter and accompanying documents, that my application will be successful and that I will have the necessary support and assistance that is needed in order to obtain the approval and consent that is required.

I trust that you will receive this letter in good spirit.

868

Regards

Mrs. Lawrence

LAWRENCE DAY-CARE

SECTION G: FURTHER APPLICATION DETAIL

Nature of departure / amendment / approval required:

869

<input checked="" type="checkbox"/>	Building line encroachment				
	Street	<input type="text"/>	From	<input type="text"/> m	To <input type="text"/> m
	Street	<input type="text"/>	From	<input type="text"/> m	To <input type="text"/> m
	Common	<input type="text"/>	From	<input type="text"/> m	To <input type="text"/> m
	Common	<input type="text"/>	From	<input type="text"/> m	To <input type="text"/> m
	Common	<input type="text"/>	From	<input type="text"/> m	To <input type="text"/> m
<input checked="" type="checkbox"/>	Exceeding permissible site coverage		From	<input type="text"/> %	To <input type="text"/> %
<input checked="" type="checkbox"/>	Exceeding maximum permitted floor area		From	<input type="text"/> m ²	To <input type="text"/> m ²
<input checked="" type="checkbox"/>	Exceeding maximum permitted floor factor		From	<input type="text"/>	To <input type="text"/>
<input checked="" type="checkbox"/>	Exceeding height restriction / permissible no. of storeys		From	<input type="text"/> m/st	To <input type="text"/> m/st
<input checked="" type="checkbox"/>	Exceeding height restriction related to wallplate		From	<input type="text"/> m	To <input type="text"/> m
<input checked="" type="checkbox"/>	Relaxation of window and door placement setback requirement		From	<input type="text"/> m	To <input type="text"/> m
<input checked="" type="checkbox"/>	Relaxation of on-site parking / loading bay requirements		From	<input type="text"/> bays	To <input type="text"/> bays
<input checked="" type="checkbox"/>	Erection of second / additional dwelling unit	<input type="text"/>			
<input checked="" type="checkbox"/>	Work in Heritage Protection Overlay Zone (please specify)	<input type="text"/>			
<input checked="" type="checkbox"/>	Other (please specify)	<input type="text"/>			
<input checked="" type="checkbox"/>	Administrative penalty	<input type="text"/>			

Additional description of departures / amendments / approval required (if necessary)

SECTION H: ADMINISTRATIVE PENALTY

The following is required for an application for the determination of an administrative penalty made in terms of section 42 (r) of the MPBL. Give a description of the land use or building work / structure(s) that are in contravention on the property.

Provide the extent(s) in m² of the property used for the unlawful use activity, and unlawful building work / structure(s) that contravene the MPBL. (Indicate extent(s) on a building plan / map / plan / diagram)

Describe the duration of the contravention(s).

Has the unlawful activity ceased? ☒ If yes, provide date when ceased

Has the owner / person previously contravened the MPBL, or a previous Planning Law? ☒ If yes, please provide more details below.

Provide the municipal valuation of the erf.

R

State your determination of the value of the building work / structure(s) and engineering work unlawfully carried out, that is in contravention of the MPBL.

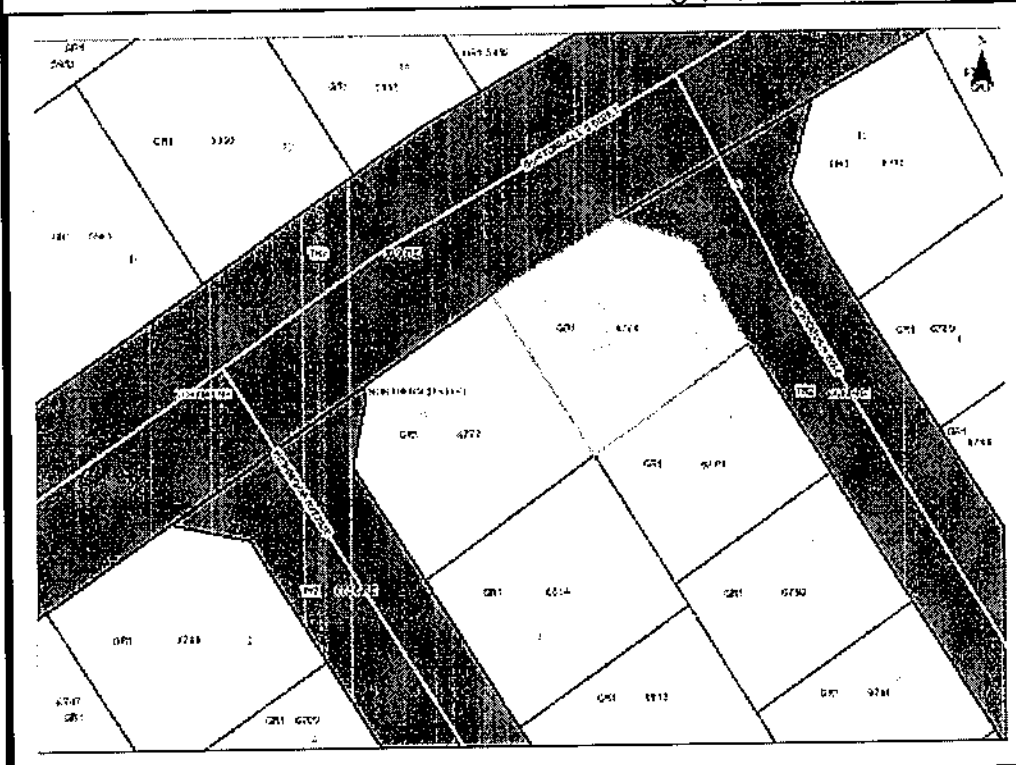
R

Note: Provide supporting documentation for your determination.

Annexure D

City of Cape Town

871



Use age Code	A01
Use age	One dwelling residential
Area (Calculated)	249.31 m2
Total Value	900000
Valuation Year	20190701
Approval Date	0000-00-00
Registered Date	1996-09-30
Purchase Date	1996-05-12
Purchase Price	111000,0
Title Deed Number	T75375/1996
Business Partner Nr	1002108633
Owner Title	Mrs.
Owner Name	LAWRENCE LAWRENCE MARIA ELIZABETH LAWRENCE
Owner First Name	LAWRENCE MARIA ELIZABETH
Language	EN
Owner Postal Address	1 WOODBUSH CRESCENT NORTH PINE 7560
ID Number	6408050257087(SA Identity Doc, expired)
Rate payer Name	LAWRENCE LAWRENCE
Rate payer Street Address	WOODBUSH WEG 1 NORTH PINE ZA
Rate payer Postal Address	1 WOODBUSH WEG NORTH PINE 7560
key	470314
Physical Address	1 WOODBUSH WAY, NORTH PINE
Erf No	6778