



REPORT TO: MUNICIPAL PLANNING TRIBUNAL

CASE ID	70535630
CASE OFFICER	N Floris
CASE OFFICER PHONE NO	021 444 9540
DISTRICT	Khayelitsha / Mitchells Plain
REPORT DATE	February 2021

ITEM NO MPTSE140221

WARD 76: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 15207 MITCHELLS PLAIN, 14 DUINEBESSIE STREET, LENTEGEUR

1 EXECUTIVE SUMMARY

Property description	Erf 15207 Mitchells Plain
Property address	14 Duinebessie Street, Lentegeur
Site extent	201m ²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	04/02/2021
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised building work in the form of a veranda and a garage.
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?	None

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 Erf 15207 Mitchells Plain (hereafter known as the subject property) is located in an area that can be described as a medium density, residential area. The subject property measures 201m² in extent (**see Annexure A**) and is zoned Single Residential Zone 1, as are most of the surrounding properties with the exception of Remainder Erf 17113, which is zoned Open Space 2 (**see Annexure A**).
- 3.2 The land use application relating to the departure to regularise the unauthorised building work of the veranda has not yet been submitted.
- 3.3 It must be noted that although both the garage and the veranda are unauthorised, the garage is not in contravention of the MPBL.

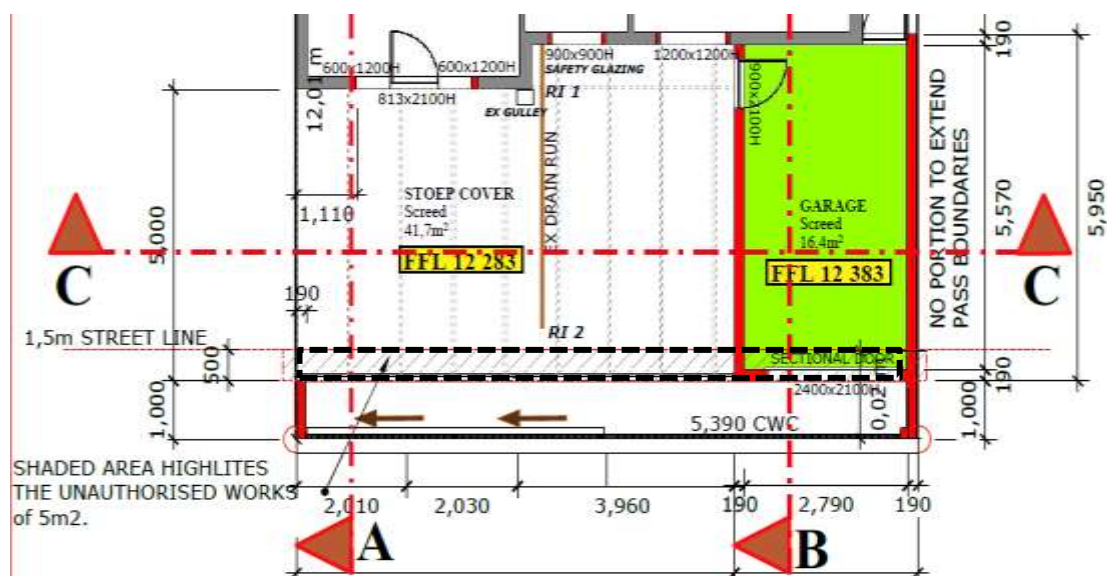
4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The owner was advised that the building plan was expected to be submitted after the structures were completed.
- The owner anticipated that the proposal would be supported.
- The nature of the contravention is considered minor.
- The owner has shown respect to the MPBL with the submission of this application.
- The owner has not previously contravened the MPBL.
- The contravention occurred in June 2009.
- No complaints were received from the surrounding neighbours.
- No notice was served by a building inspector.
- The extent of the contravention is 5m².

5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for a portion of the unauthorized veranda that is in contravention of Item 22(d) of the Development Management Scheme (DMS) relating to the 1.5m street building line setback. Only a portion of this, being located within the street setback, is in contravention of Item 22(d) of the DMS. This amounts to ±4m².



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 The calculation of value of unauthorized building work has been based on the table of values in the Standard Operating Procedure for Administrative Penalties.

Value per m² (R1020.00) x total unlawful area (4m²) = R4080.00

5.4 An amount not exceeding 100% of R4080.00 may therefore be imposed as an administrative penalty.

5.5 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 a portion of the veranda, which are ordinarily permitted in Single Residential Zone 1.

Duration – According to the applicant, the construction occurred after June 2009. The duration of the contravention is thus long.

Gravity – The gravity of the contravention is not serious. A veranda on or close to the street boundaries are not uncommon in this area. It must be noted that should the property have been 1m² in extent less (i.e. properties with erven sizes of 200m² and less have a 1m street building

line setback in Single Residential Zone 1), then no contravention of the MPBL would be applicable.

Extent – The extent of contravention at $\pm 4\text{m}^2$ (2%) is very small.

b) The conduct of the person involved in the contravention

According to the applicant, the owner was aware that a building plan was needed, but thought that it could be submitted after the building work had been completed. This appears to be disingenuous as the owner took close to 12 years to submit this application and has still not submitted the required rectification departure application.

The conduct of the owner cannot be condoned

c) Whether the unlawful conduct was stopped

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

d) 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 owners have not previously contravened this By-Law or any other planning law.

5.6 In view of the abovementioned considerations in terms of Section 129(8) of the MPBL, this Department recommends that an administrative penalty of **R300.00** be imposed.

6 REASONS FOR DECISION

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

- 6.1 The nature of the contravention relates to a portion of a veranda, which is ordinarily permitted in Single Residential Zone 1.
- 6.2 The duration of the contravention, since 2009, is very long.
- 6.3 The gravity of the contravention is not overly serious. A veranda on or close to the street boundaries are not uncommon in this area.
- 6.4 At $\pm 4\text{m}^2$, the extent of the contraventions is very small.
- 6.5 The conduct of the owner cannot be condoned.
- 6.6 As far as can be ascertained, the owner of the property has not previously contravened this By-law or any other planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R300.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 7111 Weltevreden Valley, in relation to the unauthorised second dwelling

ANNEXURES

Annexure A	Locality plan
Annexure B	Contravention plan
Annexure C	Motivation
Annexure D	Property Valuation



Section Head: Land Use Management

Name Danette de Klerk

Tel no 0792869219

Date 5 February 2021

Comment



District Manager

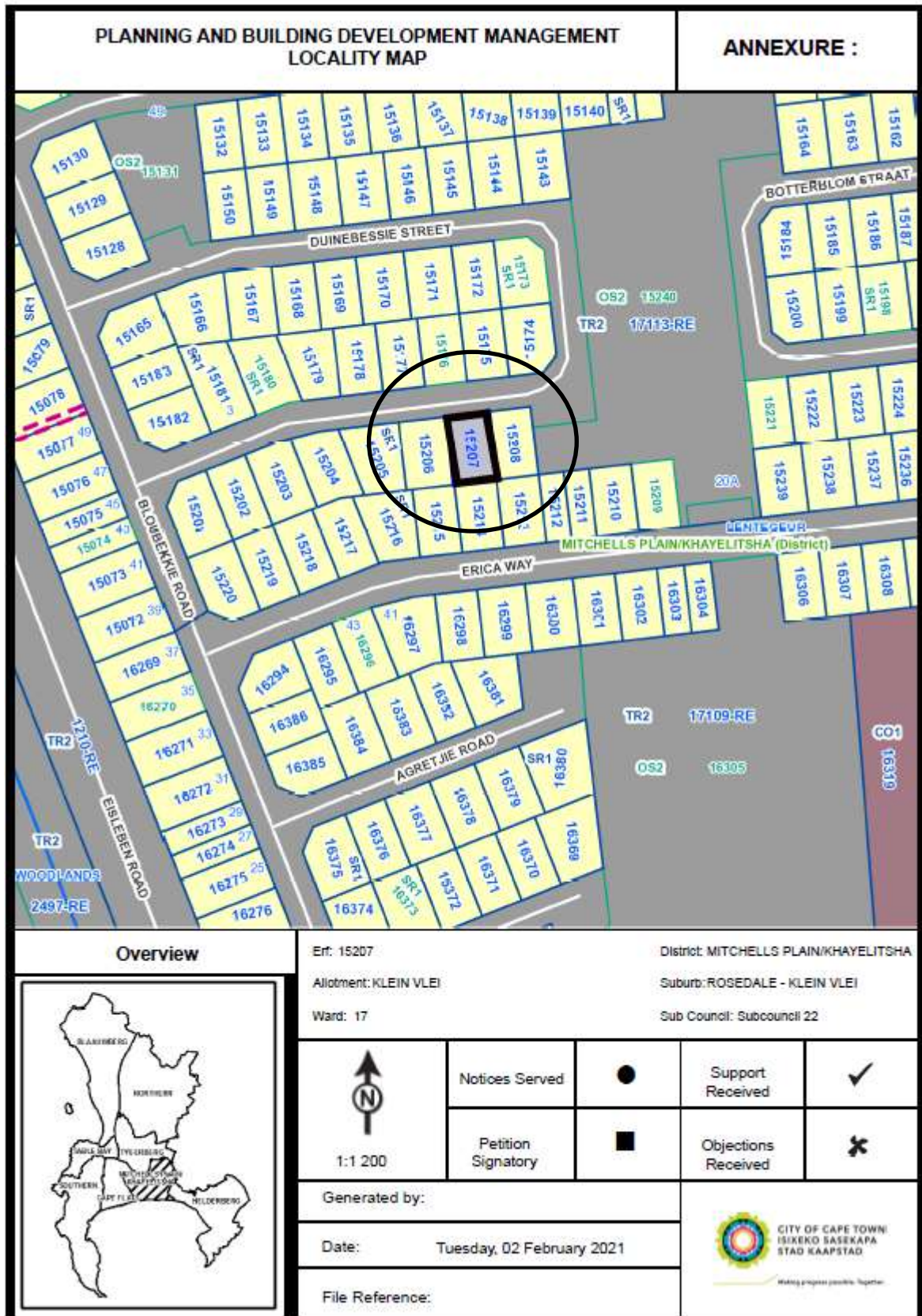
Name Margot Muller

Tel no 021 360 1132

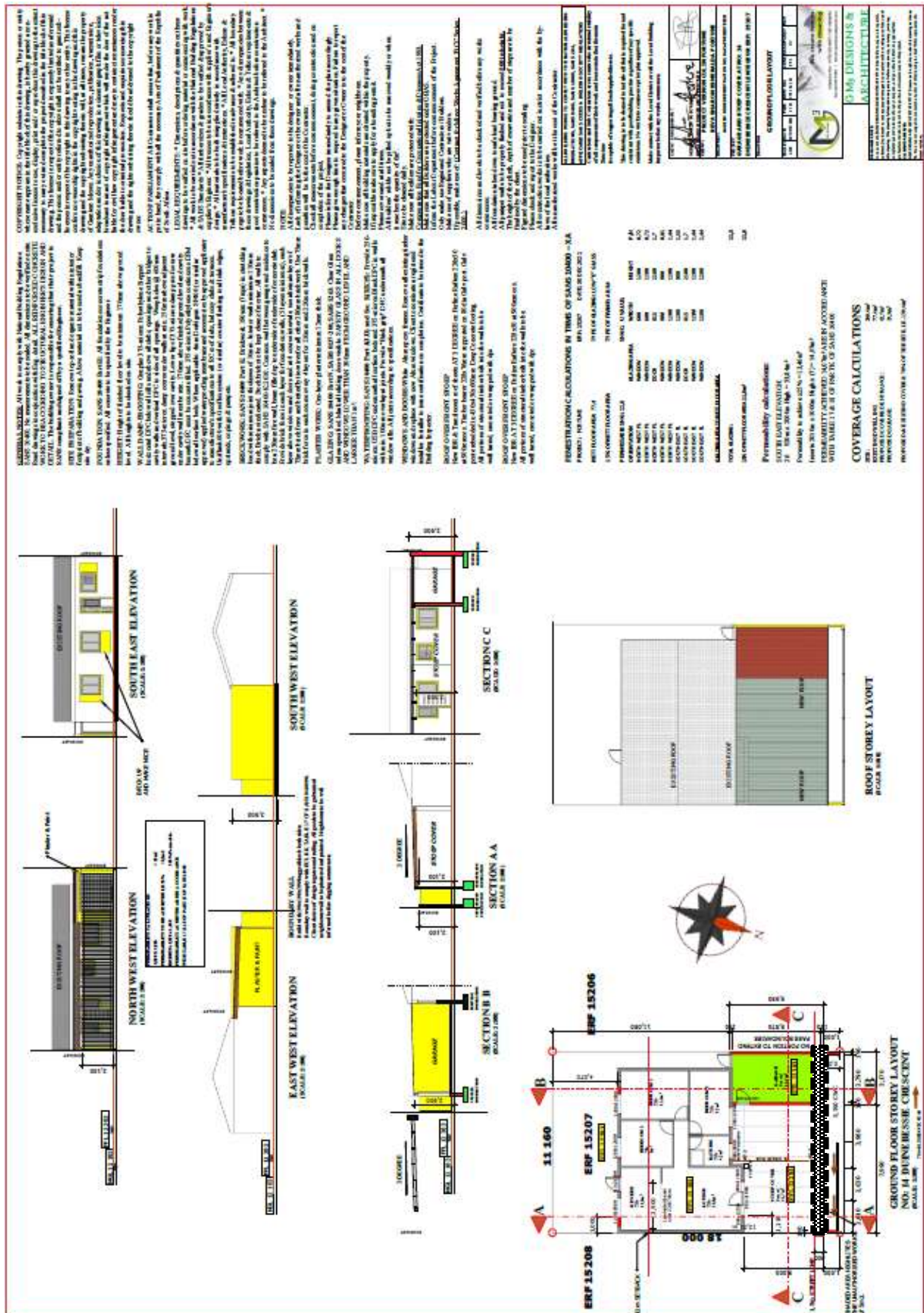
Date 7 February 2021

Comment

ANNEXURE A : LOCALITY PLAN



ANNEXURE B : CONTRAVENTION PLAN



ANNEXURE C : MOTIVATION**LETTER OF MOTIVATION**

DATE: 30TH JANUARY 2021

DEAR SIR / MADAM

Section 129(8) of the MPBL states that: 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:

1. **Nature:**

The owner undertook the Building of the Structure via a Builder and himself. Plans was supposed to be submitted when the Structure was completed was advised to the Client. The Owner stayed on the Property while the Construction of the Stoep Enclosure & Garage was undertaken.

The owner anticipated that the Stoep Enclosure & Garage would be supported given the location of the Property on a SR1 zone where Stoep Enclosure & Garage and carports all form part of some of the dwellings in the area.

The Owner then proceeded with the Stoep Enclosure & Garage as per the plans submitted.

The Nature of the contravention is considered to be of a minor contravention.

The extend of the non-compliance unauthorised works resulted following the upgrade of the property for Shade etc is in fact of a minor contravention.

The owner of the Property has shown all due respect for the MPBL in that he now applies for a PA Application.

The owner has not previously contravened the MPBL or a previous planning law.

Duration:

The duration occurred in and around 06th June 2009. The unlawful conduct has ceased and no further works undertaken to date.

The works was undertaken within 4 weeks.

Gravity:

No official complaint was received from the surrounding property neighbours' owners with regards to the unauthorised Stoep Enclosure & Garage. It should however be noted that the entire Property are being used as a SR 1 zone and no other unlawful activities or unauthorised works are to be found on the Property.

No Notice to Comply was issued to the Owner by the Local Building Inspector.

2. **Extend:**

5m².

North West Elevation as clearly highlighted on the Building plans.

CoCT favourable attention and approval will be appreciated. We are sure in addition to CoCT approval that our Proposal will add value to the area in addition.

Regards

Mr Vernon Colin Fortune and Reva Sharon Esmeralda Fortune

Two handwritten signatures in black ink. The first signature on the left is more stylized and cursive, while the second signature on the right is more legible and appears to read 'Reva'.

0763058073

ANNEXURE D: PROPERTY VALUATION

Usage Code	A01
Usage	One dwelling residential
Area (Calculated)	200.82 m2
Total Value	482000
Valuation Year	20190701
Approval Date	0000-00-00
Registered Date	2007-06-12
Purchase Date	2007-04-10
Purchase Price	290000,0
Title Deed Number	T44347/2007
Business Partner Nr	1001628923
Owner Title	MS.
Owner Name	VERNON FORTUNEREVA SHARON ESMERALDA FORTUNE
Owner First Name	VERNONREVA SHARON ESMERALDA
Language	EN
Owner Postal Address	6 AMANDA CLOSE TAFELSIG 7785
ID Number	6404230117085(SA Identity Doc, expired)
Rate payer Name	VERNON FORTUNE
Rate payer Street Address	DUINEBESSIE 14 MITCHELLS PLAIN ZA
Rate payer Postal Address	14 DUINEBESSIE MITCHELLS PLAIN 7785
key	145939
Physical Address	14 DUINEBESSIE STREET, LENTEGEUR
Erf No	15207