



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID		70474221			
CASE OFFICER		Jevon Jacobs			
CASE OFFICER PHONE NO		021 444 7514			
DISTRICT		TYGERBERG			
REPORT DATE		15 October 2019			
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO **MPTNE19/11/19**

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 27155, BELLVILLE

1 EXECUTIVE SUMMARY

Property description	Erf 27155
Property address	94 TULBACH CRESCENT BELHAR EXT 21
Site extent	354m ²
Current zoning	Single Residential 1 (SR1)
Current land use	Dwelling House.
Overlay zone applicable	None.

Submission date	30 September 2019.
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Unauthorised building works for an as-built carport and veranda encroaching building line setbacks.
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 584

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

Erf 27155, Bellville is currently zoned as Single Residential 1 (SR1). However, the property has unauthorised building works (veranda and carport) encroaching the 3m common boundary building line setbacks.

The owner unlawfully built the veranda and carport prior to any building plan submission. Hence the application for the determination of an Administrative Penalty in terms of Item 129 of the MPBL, 2015. Therefore, this veranda and carport contravenes the MPBL of 2015 as per section 39(1) and 42 of the Development Management Scheme (DMS).

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The veranda was built to be used as storage for items to remain secure from the possibility of theft as well as to do laundry during winter months without being wasteful of electricity.
- The carport was built to accommodate 3 on-site parking bays as required by the residents of the property.
- Despite the unauthorised structures, Erf 27155, Bellville is still primarily being used for residential purposes.
- The owner was unaware of the need for approved building plans for the unauthorised veranda and carport.
- No further unauthorised building works have been performed since the construction of the veranda and carport.
- The owner has not previously contravened the MPBL, 2015 or any other planning law.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised building works is in contravention of the Development Management Scheme (DMS).
- 5.2 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

585

5.2.1 Unauthorised building work

$$\text{Value per m}^2 \text{ (R 1 020)} \times \text{Total Unlawful area (24.89m}^2\text{)} = \text{R 25 387, 80}$$

An amount which is not more than 100% of R 25 387,80 may be imposed as 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 involves unauthorised building works that encroach building line setbacks on the property. The unlawful building works include a veranda and carport.

Duration – As per the City's Geographic Information Systems (GIS) photographic information, dated February 2018, the unauthorised carport has been in existence since January 2016. This means that the carport has been in existence for approximately 3 years. Furthermore, the unauthorised veranda has been existing since January 2017 which means it has been in existence for approximately 2 years. The applicant, however, indicates that both structures have only been in existence since 2018.

Gravity – The unlawful building works, without the necessary approvals and checks being in place (such as compliance with safety and health requirements as well as National Building Regulations), present some concern. However these are structures normally associated with residential properties and similar to what have been erected on neighbouring properties. The gravity of the contravention is therefore regarded to be of a medium nature.

Extent – The unauthorised veranda encroaches a total of 20.01m² whereas the unauthorised carport has an encroachment of 4.88m². Therefore, the total extent of the unauthorised building works encroaching the building line setbacks is deemed to be 24.89m².

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

According to the applicant, the owner was unaware of the requirement to obtain building plan approval and Land Use Management (LUM) approval prior to the unlawful construction of structures.

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

The unauthorised building works are in existence.

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

Other than the contraventions under discussion in this report, there is no evidence that the owner has previously contravened the provisions of the MPBL or any other planning legislation.

- 5.4 Given the duration, relatively minor scale and impact of the unauthorised building works, an approximate guide of 3% administrative penalty is considered appropriate. This results in an administrative penalty amount of R 800,00.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- The nature of the contravention involves unauthorised building works which have been in existence for a duration longer than motivated by the applicant.
- The contravening building works have been in existence for at least 3 years.
- The extent of the building works contravention is of a minor scale in comparison to the size of the property.
- The applicant/owner is willing to rectify the unauthorised building works and was forthcoming with information on request.
- There is no evidence that the owner has previously contravened the MPBL or any other planning law and has conscientiously applied for the determination of an Administrative Penalty in terms of Item 42(r) of the MPBL, 2015.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R 800,00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 27155, Bellville in accordance with Annexure B.

ANNEXURES

Annexure A	Locality Plan	587
Annexure B	Building Plan	
Annexure C	Applicant's motivation	

JM Van

588

**Section Head : Land Use
Management**

Comment

Name T.E. Kotze

Tel no 021 444 7506

Date 15.10.2019



District Manager

Name J. Smit

Comment

Tel no 021 444 7840

Date 22/10/2019

Annexure A Locality Plan



Overview

Erf:

District:

Allotment:

Suburb:

Ward:

Sub Council:



1:1 200

Notices Served	●	Support Received	✓
Petition Signatory	■	Objections Received	✗

Generated by: J Jacobs

Date: Tuesday, October 8, 2019

File Reference: 70474221



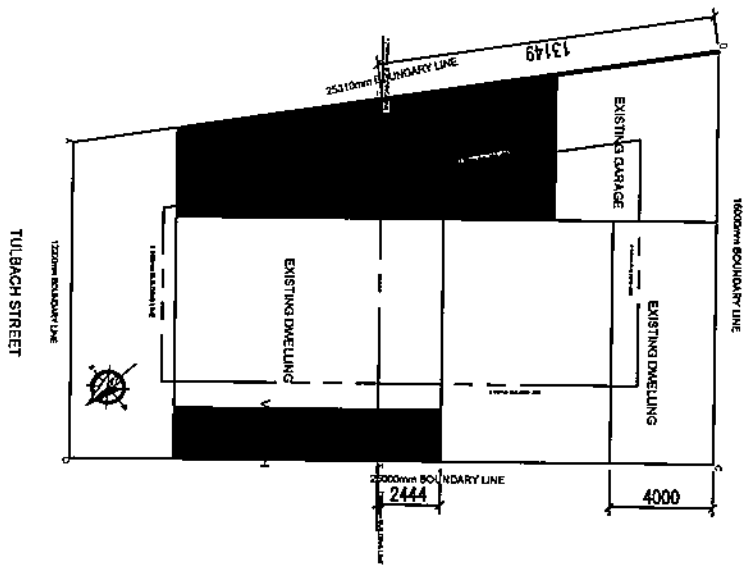
CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

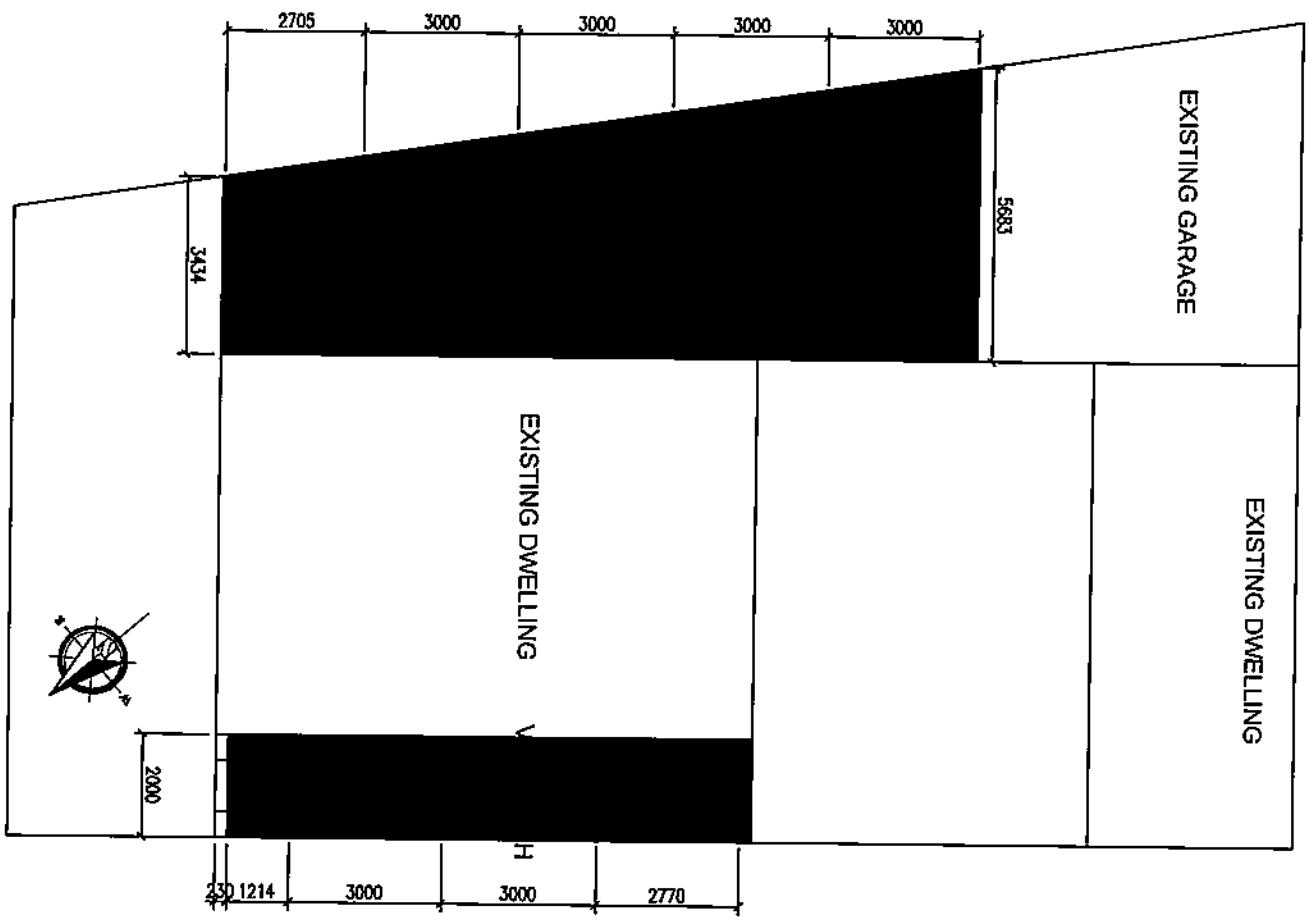
Annexure B Building Plan

Linear Calculations
 $(25.31m - 12m) + 16m + (25m - 12m) = 42.31m \times 50\% = 21.155m$
Actual Calculations
 $(25.31m - 12m) + (90.18m - (70.96m - 4.41m)) = 35.58m$
 84.11%

592



SITE PLAN
 1:200



FLOOR PLAN
 1:100

NOTES :

- 1. ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS.
- 2. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY.
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- 10. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY.

NO.	REVISION	DATE	BY
1	ISSUED FOR PERMIT	15/08/2011	CHITOVHORO
2	ISSUED FOR PERMIT	15/08/2011	CHITOVHORO
3	ISSUED FOR PERMIT	15/08/2011	CHITOVHORO

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HOUSE KAHN
 94 TULBACH CRESCENT
 BELHAR
 ERF 27155
ADDITIONS & ALTERATIONS
 SIGN: *[Signature]*

Annexure C

Applicant's motivation

Propertydescription: 27155, Belhar

Propertyaddress: 94 Tulbach Crescent Belhar

Application components/description: -
Permanent departure to allow for a relaxation

Of the common building lines from 3m
to 0m to allow Construction of
carports

Siteextent: 354 m²

Currentzoning: Single Residential1

Description of the area / surrounding land uses

- 1.1. The property is located at 94 Tulbach Crescent Belhar. The property is zoned for Single Residential SR1 purposes and is surrounded by Single Residential zoned properties. The property is located in close proximity of shops and close to the freeway.

Property description

- 1.2. The property measures 354m² and is developed with a single residence that is currently utilized for residential purpose.

Proposed development

- 1.3. The positioning of the carport on the property will be constructed to increase the value of the property in the area and to create shelter for the owner's vehicles and storage. The positioning of the carports is triggering a departure of building line as follow:
Common boundary building lines from 3m to 0m to permit Carports.

Section 129 of the City of Cape town municipal by-law (Admin Penalty)

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

The client built this carport to accommodate the 3 cars they have to try and stop the many break ins they already had and the veranda to store a few things that needed to be hidden from the public eye and to do laundry in winter.

The area of unauthorized building work encroaching the building line as shown on site plan is 24.89m² refer to site plan.

The duration of the carport and veranda built illegally from approximately 2018 until present which is about a year.

The carport and veranda contravening the building line poses no threat what so ever to safety, health or hazard to the surrounding property owners.

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

To our knowledge the owner was unaware at the time of contravention that approved plans were required before work can commenced.

c) Whether the unlawful conduct was stopped

To our knowledge the owner has no further unlawful construction taking place and the unauthorised construction work has stopped, any building work from here on will be started only once an approved plan has been submitted.

d) Whether the person involved in the contravention has previously contravened his By-law or a previous planning law.

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

I hope this will suffice in order to proceed further with the application.

regards