



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70640707
CASE OFFICER	SISANDA DWABYAO
CASE OFFICER PHONE NO	021 360 3220
DISTRICT	KHAYELITSHA/MITCHELLS PLAIN
REPORT DATE	MARCH 2023

ITEM NO MPTSE150323

WARD 35: APPLICATION FOR DETERMINATION OF ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 20482, PHILIPPI, 7 SIDWELL GAQAZELA, PHILIPPI

1 EXECUTIVE SUMMARY

Property description	Erf 20482, Philippi
Property address	7 Sidwell Gaqazela, Philippi
Site extent	58 m ²
Current zoning	Single Residential Subzone 2 (SR2)
Current land use	Residential
Overlay zone applicable	None
Submission date	16 February 2023
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, unauthorised building work (portions of the new dwelling)
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 (MPT).

3 BACKGROUND / SITE HISTORY

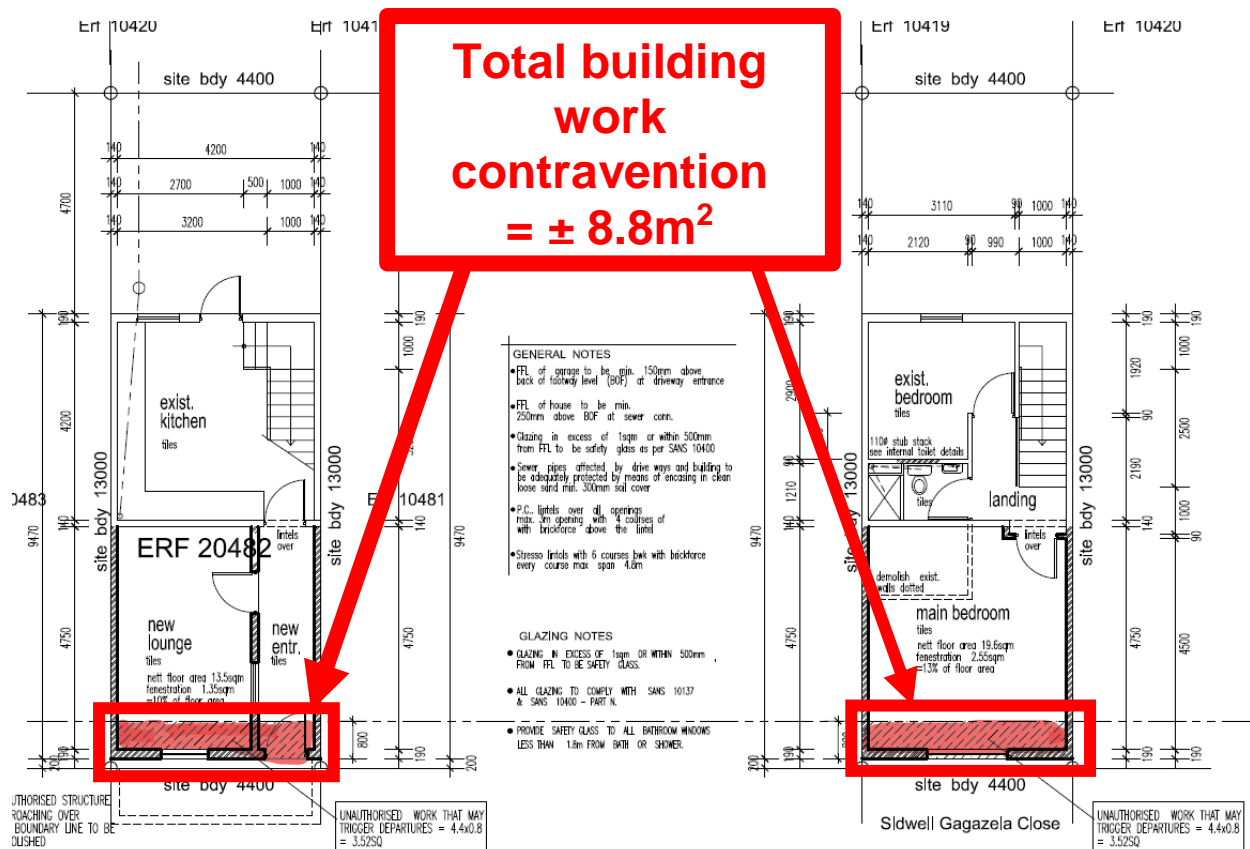
- 3.1 Erf 20482, Philippi (the subject property) is located in a medium density residential area. The property is developed with a double storey building which is used for residential purposes. The building was extended approximately 3 years ago and encroaches into the street building line.

In terms of Item 26 (a) of the Municipal Planning By-Law, a dwelling house is permitted as a primary use on SR2 zoned properties.

It should be noted that a portion of the double storey structure also encroaches onto the street reserve. The applicants have only indicated a 'structure to be demolished' at ground floor level on the plan. As such, neither the double storey extent of the portion of the building work encroaching onto the street, nor the full extent of this area, has been indicated.



Aerial view of the property



Extract of the contravention plan

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The nature of the contravention is unauthorised building work (portion of the unlawful double storey building within the 1m street building line).
- The duration of the unauthorised work is 3 years.
- Owner submitted the application, not having been served a notice.
- The owner is law-abiding citizen and has not contravened the By-Law prior to this contravention.

5 ASSESSMENT OF APPLICATION

- 5.1 A double storey building, 44m² in extent, was constructed without planning approval. Approximately 8.8m² of the said dwelling is in contravention of Item 27 (c) (i) of the Municipal Planning By-Law relating to building lines.

While a portion of the dwelling is in contravention of the applicable development parameters, the dwelling as such is permitted as of right in terms of the property's zoning.

- 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 on Staff Circular 011 of 2022 which contains calculations for Administrative Penalties. The contravention was calculated as follows:

$$8.8\text{m}^2 \times \text{R}6\,374.50 = \text{R}56\,095.60$$

- 5.5 An amount which is not more than 100% of R56 095.60 may therefore be imposed as an administrative penalty for unauthorised building work.
- 5.6 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 unauthorized building work (dwelling house extension), portions of which encroach into the street building line.

Duration –The structure appears to have been built around January 2020 and is slightly over 3 years old.

Gravity – The building work contravention is serious, as the double storey dwelling is for human habitation but has not been assessed in terms of safety and fire regulations. The gravity is furthermore aggravated by the fact that portions of the extension encroach within the street reserve.

Extent –The building work contravention measures approximately 8.8m² in extent (±15% of the site).

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

The owners of the property were not served with a notice. They submitted the application willingly, which shows that they are acting in good faith. However, a portion of the building has been constructed over the cadastral boundary – and the applicants failed to fully indicate this, or the extent thereof, on the submitted plan.

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

The unauthorized building work/ construction has ceased. The building work was completed and no additional construction is taking place.

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 owners of the subject property have not previously contravened this By-Law or any other planning law prior to this contravention.

- 5.9 In view of the abovementioned considerations, in terms of Section 129(8) of the MPBL, this Department recommends an administrative penalty of **R1 800** be imposed in relation to the building work.

6 REASONS FOR DECISION

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

- 6.1 The duration is long (± 3 years).
- 6.2 The gravity is serious, as the safety of people being accommodated in the double storey habitable structure, is potentially being put at risk.
- 6.3 The building work contravention size is small.
- 6.4 The conduct of the owners is questionable, as portions of the building have been constructed over the cadastral street boundary, and the applicant failed to fully indicate this on the submitted plan.
- 6.5 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 **R1 800** be determined in terms of Section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 20482, Philippi, in relation to the unauthorised building work.

8. 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 7 March 2023

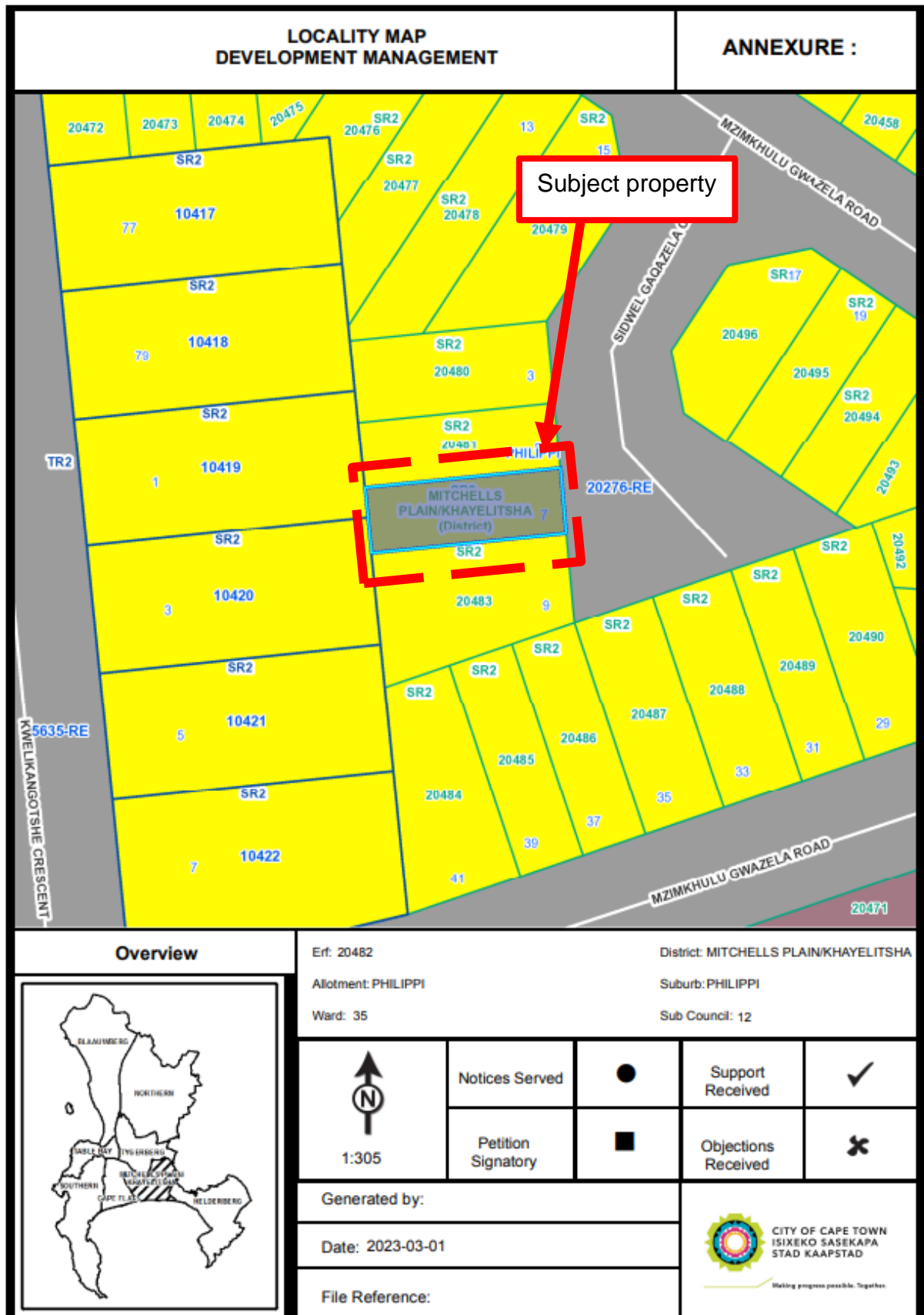
District Manager

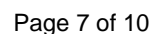
Margot Muller

021 360 1132

13 March 2023

ANNEXURE A LOCALITY PLAN





ANNEXURE C

MOTIVATION

<div style="border: 1px solid black; padding: 2px; display: inline-block;">ADMINISTRATIVE MOTIVATION</div>	PROPOSED ADDITIONS & ALTERATIONS ON ERF 20482 7 SIDWELL GAQAZELA STREET PHILIPPI 27TH JAN., 2023
ADMINISTRATIVE MOTIVATION TO SUPPORT UNAUTHORISED WORK ON ERF 20482, 7 SIDWELL GAQAZELA STREET, PHILIPPI	
<p>This is the Administrative Penalty Motivation as per criteria set out in Section 129(8) of the Municipal Planning By-Laws.</p> <p>BACKGROUND</p> <p>The property is located at no.7 Sidwell Gagazela Street, Philippi. The ERF number is 20482 and according to the available documentation it is 57.2square metres. It contains a double storey main dwelling unit. There is a lounge, kitchen & dine at ground storey and 3 bedrooms & bathroom at 1st storey as demonstrated on the plan.</p> <p>The original small house on the property was built in 1984, so definately it is less than 60 years old and hence do not fall under heritage /buildings of historical significance.</p> <p>The unauthorised work has been operating without written approval for 3 years. The total area of the unauthorised work is 44sqm. However the unauthorised work that may trigger departures = 3.52sqm @ ground floor + 3.52sqm @ 1st floor = 7.04sqm (SEE ATTACHED PENALTY DETERMINATION PLAN).</p> <p>The formal Building Plan Application & Land Use Application to authorise the structures has already been made. This application is for the determination of an Administrative Penalty.</p> <p>DESCRIPTION OF THE PROPERTY</p> <p>The subject property and location has been stated above. It is zoned Transport 2, in terms of Development Management Scheme and is surrounded by similar type of houses. The subject property is well maintained with a strong structural integrity. It has a cement tile roof which was also professionally done and all windows are aluminium which makes it aesthetically pleasing.</p> <p>CONSIDERATION OF CRITERIA IN ACCORDANCE WITH SECTION 129(8) OF THE MPBL</p> <p>A. NATURE, DURATION, EXTENT & GRAVITY OF CONTRAVENTION</p> <p><u>NATURE</u></p> <p>The nature of the contravention is the construction of the house additions prior to any written approval granted by the Local Authority.</p> <p><u>DURATION</u></p> <p>The unauthorised work has been operating without written approval for three years.</p> <p><u>EXTENT</u></p> <p>The total area of the unauthorised work is 44sqm for the house.</p> <p>The unauthorised extension was done in front of the original house @ ground and first floors.</p> <p>The unauthorised work that encroach 1m street building line and may trigger departures = 3.52sqm @ ground floor + 3.52sqm @ 1st floor = 7.04sqm (SEE ATTACHED PENALTY DETERMINATION PLAN).</p> <p>The total coverage is 73.4% of the site.</p>	

GRAVITY & DEFENCE OF THE CONTRAVENTION

The unauthorised work was carried out because of lack of planning knowledge about planning procedures and mis-information and therefore it is requested that he not be punished for it.

The owner is from Eastern Cape rural areas where construction happens without building plans and related planning approval processes.

The owner was unaware that he was required to submit a building plan prior to construction.

Advice from the family builder at that time also made him believe that the formal processes and related professionals were not enforced in the construction of houses in informal locations like Philippi.

He had requested for a loan which he got at that time and eventually it was being deducted from the monthly income. These deductions plus the other facts stated above pushed him to carry on with the construction as he thought that everything was in order.

The transgression poses no immediate safety, and health or privacy threat on surrounding community.

The owner has shown the willingness to rectify the transgression that is why at the moment he is involving the registered professionals to assist with the legalisation of the transgression.

The square metres of punishable unauthorised work is also very small, only about 7sqm.

The proposal will not result in any negative impact on the residential amenity.

The additional floor space does not result in a building that is out of scale with the surrounding buildings.

B. CONDUCT OF THE PERSON INVOLVED IN THE CONTRAVENTION

The owner is a law abiding citizen with a very good conduct within the community and had never bypassed the legislation before.

The owner is a religious person & his beliefs revolve around honesty, integrity, obedience & discipline.

He has made this application having NOT been served with a notice thereby showing his willingness to cooperate with City Council to rectify the unauthorised work.

He is trying his level best to comply with municipal regulations to have the structure legalised despite the financial challenges he and his family are facing, and despite the fact that he had no knowledge of planning processes when construction was done.

In terms of height, scale and design – the structures respect the existing built fabric of the surrounding and is compatible with the existing character of the area. The work done does not detract from the aesthetic value of the property and immediate surrounding.

C. WHETHER UNLAWFUL CONDUCT CEASED

The unauthorised structure is still existing because the owner and the family still lives in the house.

That is why this application has been made to legalize this structure.

D. WHETHER THE PERSON INVOLVED IN THE CONTRAVENTION HAS PREVIOUSLY CONTRAVENTED THIS BY-LAY OR ANY OTHER PLANNING LAW

There is no previous records that show that the owner has been involved in any Land Use contravention or any other planning law.

ANNEXURE D

PROPERTY VALUATION

Usage Code	
Usage	
Area	58.0000 M2
Total Value	
Valuation Year	
Approval Date	
Registered Date	
Purchase Date	
Purchase Price	
Title Deed Number	
Business Partner Nr	
Owner Title	
Owner Name	
Owner First Name	
Language	
Owner Postal Address	
ID Number	
Rate payer Name	CITY OF CAPE TOWN
Rate payer Street Address	MKHOMBE STREET 55288 KHAYELITSHA ZA
Rate payer Postal Address	55288 MKHOMBE STREET KHAYELITSHA 7784
key	1013657
Physical Address	7 SIDWEL GAQAZELA CLOSE, PHILIPPI
Erf No	20482