



REPORT TO: MUNICIPAL PLANNING TRIBUNAL

CASE ID	70534725
CASE OFFICER	N Floris
CASE OFFICER PHONE NO	021 444 9540
DISTRICT	Khayelitsha / Mitchells Plain
REPORT DATE	February 2021

ITEM NO MPTSE130221

WARD 75: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 7111 WELTEVREDEN VALLEY, 23 LORDS AVENUE, RONDEVLEI PARK

1 EXECUTIVE SUMMARY

Property description	Erf 7111 Weltevreden Valley
Property address	23 Lords Avenue, Rondevlei Park
Site extent	356m ²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	26/01/2021
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised building work in the form of a second 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?	None

- The second dwelling was installed after the property was purchased.
- The proposal has no socio-economic impact.
- Numerous similar designs exist in the area.
- The proposal will enhance and improve value of the dwellings in the area.
- The proposal will not have a negative impact on safety and health, heritage and the biophysical environment.
- Sufficient parking is allocated.

5 ASSESSMENT OF APPLICATION

- 5.1 A portion of the unauthorized second dwelling is in contravention of Item 22(d) of the Development Management Scheme (DMS) relating to the 3.5m 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 22.5m².
- 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 applicant indicated on the application form that the value of unauthorized building work amounts to **R35 000.00**. (Note the applicant has provided no proof of this cost.) Given that the table of values attached to the Standard Operating Procedure of Administrative Penalties does not provide the cost for dwellings built with Nutec material, for pragmatic reasons, the value as per the applicant is accepted for the purpose of determining the maximum administrative that can be imposed.
- 5.4 An amount not exceeding a 100% of R35 000.00 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 second dwelling, which are ordinarily permitted in Single Residential Zone 1.

Duration – According to the applicant, the unauthorized second dwelling was constructed in February 2020. The duration of the contravention is moderate (+- 1 year).

Gravity – The gravity of the contravention is not overly serious, particularly given that the second dwelling is permitted as an additional use right in terms of Single Residential Zone 1, is small (smaller than the maximum extent of the domestic staff quarters), and is at ground storey. However, there are no approved building plans for the structure and it is located within the street building line which negatively affects the streetscape.

Extent – The extent of contravention at 22.5m² (i.e. 6.3%) is fairly small.

b) The conduct of the person involved in the contravention

The applicant has not provided a proper explanation of why the contravention occurred. Given that the owner is aware that building plan is required as per the owner's building plan application (see Paragraph 3.2 above), the owner clearly had some knowledge that a Council process was required.

The conduct of the owner cannot be condoned

c) Whether the unlawful conduct was stopped

The unauthorized second dwelling 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 **R1000.00** 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 second dwelling, which is ordinarily permitted in Single Residential Zone 1 and which is commonly found within the wider area.
- 6.2 The duration of the contravention is moderate (1 year).
- 6.3 At 22.5m² (6.3%), the extent of the contraventions is fairly small in relation to the size of the property however given the location of the structure on the corner site, it is considered to negatively affect the streetscape.
- 6.4 The conduct of the owner cannot be condoned.
- 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 **R1000.00** 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
Annexure E	Building plan

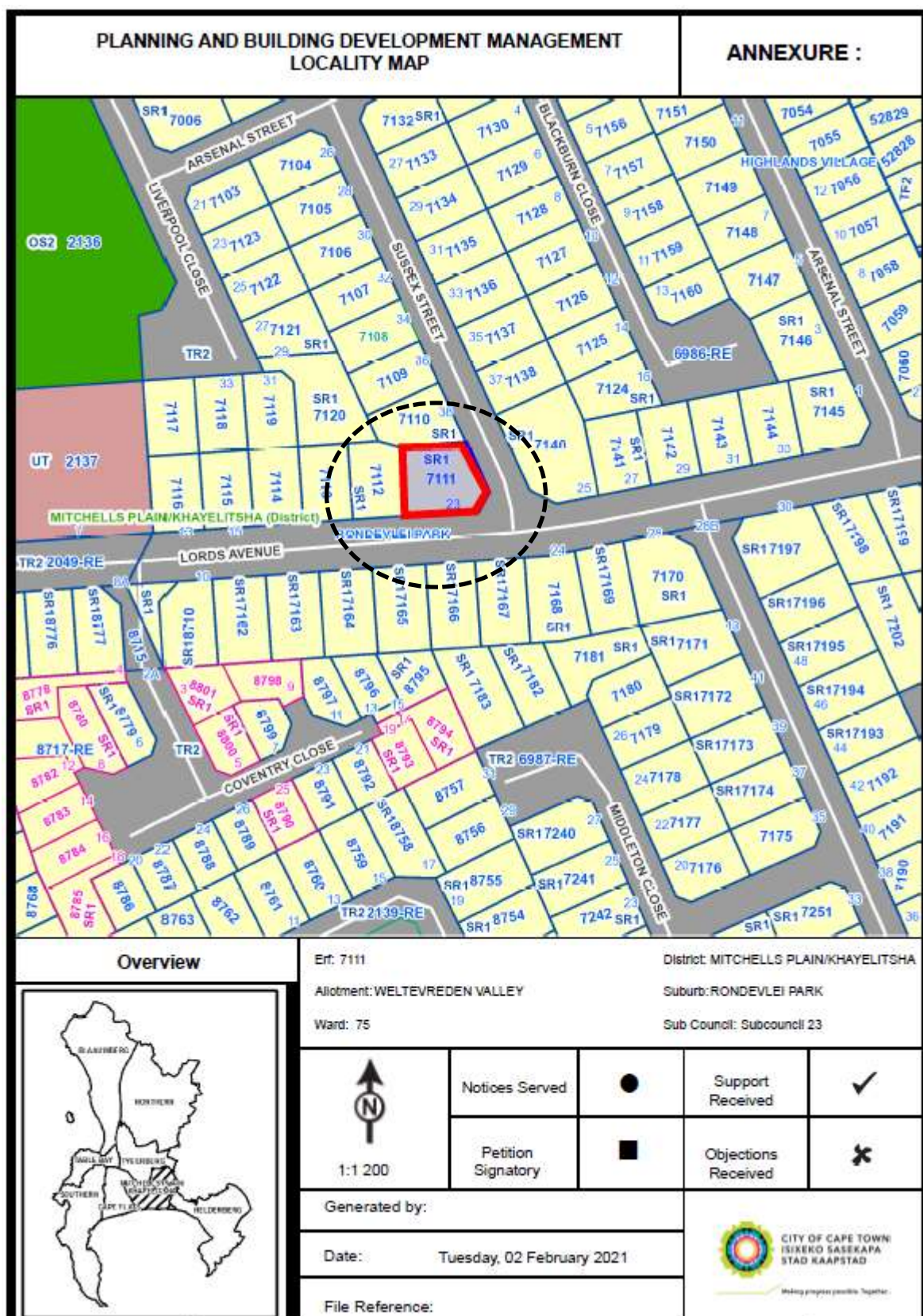
Section Head: Land Use Management

Name	<u>Danette de Klerk</u>	Comment
Tel no	<u>079 286 9219</u>	
Date	<u>5 February 2021</u>	

District Manager

Name	<u>Margot Muller</u>	Comment
Tel no	<u>021 360 1132</u>	None
Date	<u>09 February 2021</u>	

ANNEXURE A: LOCALITY PLAN



ANNEXURE C : MOTIVATION

Z. DAVIS (PROF. ARCH. TECH.)

REG. NO. TD 532

Date: 14 December 2020

13 BROADWAY CIRCLE

BROADWAY CIRCLE

WESTDALE

MITCHELL'S PLAIN

TEL: 021 371 9620

CEL: 0828520524

ERf 7111, 40 Sussex Road, Rondevlei, Mitchell's Plain**Motivation Admin Penalty.**

Dear Sir/ Madam/ to whom it may concern

The application is for a Second dwelling which is a NUTEC and timber structure erected to house the owner's parents. Due to the structure being purchased, no prior plan was submitted as the installation occurred immediately after payment.

Impact on surrounds as per by law 99 (3) :-

Economic impact : No economic impact will be made due to the proposal.

Social Impact : As a private dwelling, no social impact is expected.

Compatibility with Surrounds: The design is not alien to the area and numerous examples of this structure exists.

Surrounding Community: Surrounding dwellings will be enhanced and value improved by the proposal.

Impact on safety/Health : No negative impact will be possible.

Impact on Heritage : None is envisioned

Impact on biophysical environment : None is envisioned

Impact on Traffic , parking, access of vehicles and transport: The design is for private use only and sufficient parking has been allocated for.

Imposition of conditions as negative implication on the proposal : The proposal is for private use, no conditional approval is necessary nor desired.



Thank You

Z. Davis

(Pr.Arch.Tech.)

SECTION F: MOTIVATION TO SECTION 129(8) OF THE MUNICIPAL PLANNING BY-LAW

Give a description of the land use or structure(s) / building work that are in contravention on the property.

2ND DWELLING IN THE FORM OF A NUCRETE
STRUCTURE

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)

36m²

Provide explanatory motivation addressing the circumstances in which the land use or structure(s) / building work has occurred.

Structure purchased and imposed on erf.

Describe the duration of the contravention(s).

Installed February 2020

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

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 650 000 - 00

State and provide supporting documentation for your determination of the value of the unauthorised building work / structures or land use that is in contravention of the MPBL.

R 32 000 - 00

SECTION G: DECLARATION

ANNEXURE D: PROPERTY VALUATION

Usage Code	A01
Usage	One dwelling residential
Area (Calculated)	355.44 m2
Total Value	711000
Valuation Year	20190701
Approval Date	0000-00-00
Registered Date	2015-08-07
Purchase Date	2015-04-28
Purchase Price	495000,0
Title Deed Number	T43896/2015
Business Partner Nr	1002445363
Owner Title	MS.
Owner Name	FALWAH HENDRICKS
Owner First Name	FALWAH
Language	EN
Owner Postal Address	40 SUSSEX ROAD RONDEVLEI PARK 7785
ID Number	8503200187081(SA Identity Doc, expired)
Rate payer Name	FALWAH HENDRICKS
Rate payer Street Address	SUSSEX ROAD 40 RONDEVLEI PARK ZA
Rate payer Postal Address	40 SUSSEX ROAD RONDEVLEI PARK 7785
key	417139
Physical Address	23 LORDS AVENUE, RONDEVLEI PARK
Erf No	7111

ANNEXURE E: BUILDING PLAN

