



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70478730
CASE OFFICER	A Lewack
CASE OFFICER PHONE NO	021 444 1045
DISTRICT	Northern
REPORT DATE	21 October 2019

ITEM NO

MPTNE25/11/19

WARD 21: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 25679 BELLVILLE, 11 SANDFORD STREET, BO OAKDALE

1 EXECUTIVE SUMMARY

Property description	Erf 25679
Property address	11 Sandford Street, Bo Oakdale
Site extent	1024m ²
Current zoning	Single Residential (SR1)
Current land use	Dwelling house
Overlay zone applicable	No

Submission date	2019-10-10
Subject to PHRA / SAHRA	N/A
Any unauthorised land use / building work?	Yes. Unauthorised second dwelling and patio.
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

3 BACKGROUND / SITE HISTORY

- 3.1 Erf 25679 is located in Sandford Street and adjacent to the N1 freeway. The subject property is zoned Single Residential 1 and measures 1024m² in extent. The property is developed with a dwelling house, second dwelling, domestic quarters, a carport and covered patio.

A land use application was submitted on the 10th of October 2019 by the owner for the determination of the administrative penalty and to get approval for all the illegal structures built.

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 purpose of the construction was to replace the existing unstable wooden structures with new ones.
- The owner was unaware that replacing the existing structures was illegal, as they already existed when he purchased the property.
- The other unauthorised building work includes a second dwelling as well as a domestic quarter.
- This is the owner's first contravention of the By-Law.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the building work contravenes with section 22(d) for the construction of the second dwelling and section 22(d) for the patio in terms of the Development Management Scheme (DMS). This relates to the 3metre building lines that are being encroached.

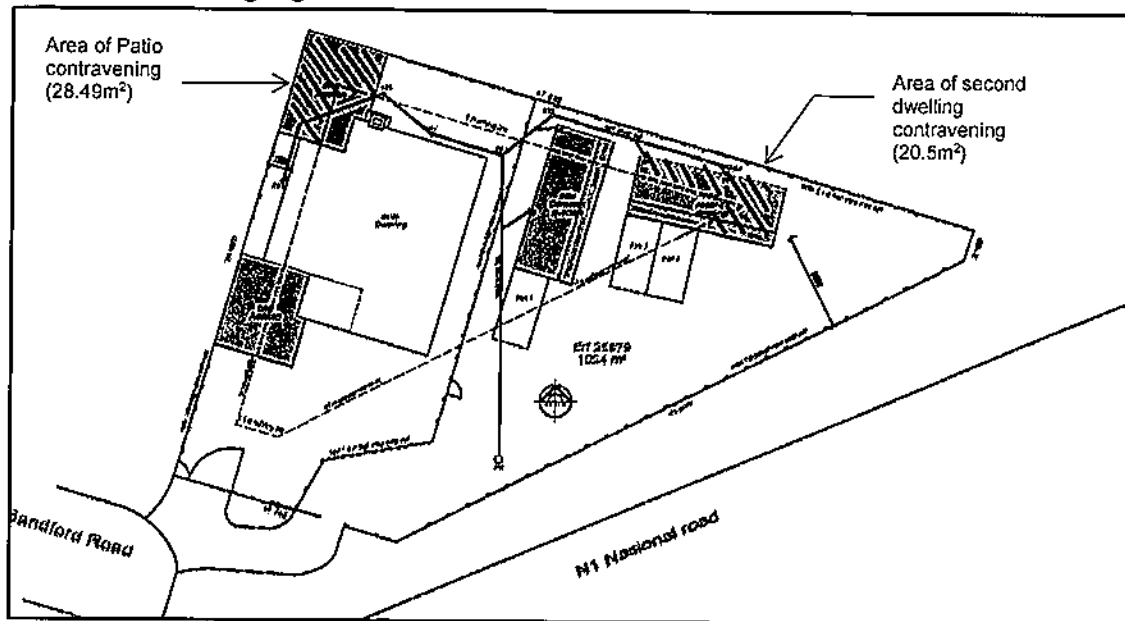
The administrative penalty will only be for the **second dwelling and patio**, the domestic quarter and carport will be excluded from the administrative penalty as they comply with the parameters of the SR1 zone. The Development Management Scheme (DMS) makes provision for an outbuilding (carport and covered patio) within the common boundary, and also includes a domestic quarter.

In terms of section 129(7) (a) of the By-Law, an administrative penalty for the unauthorised building work may not be more than 100% of the value of the building work unlawfully carried out.

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Administrative Penalty: Calculation

- 5.2 Note this amount has solely been determined on the extent of the area that contravenes the Development Management Scheme. The contravening area is highlighted below.



5.2.1 Unauthorised building work

$$\text{Value per m}^2 \times \text{Total Unlawful area of 2nd dwelling (m}^2\text{)} = R$$

$$R5\,720\text{ m}^2 \times 20.5(\text{m}^2) = R117\,260$$

			1%	3%	5%	10%	15%
Area contravening MPBL	Second dwelling (m²)	20.5					
	Value of building work (R)	5 720					
Value of the building work as per BDM (unit price)		R117 260.00	R 1 172.60	R 3 517.80	R 5 863.00	R 11 726.00	R 17 589.00

$$\text{Value per m}^2 \times \text{Total Unlawful area of Patio (m}^2\text{)} = R$$

$$R1\,330\text{ m}^2 \times 28.49(\text{m}^2) = R37\,891.70$$

			1%	3%	5%	10%	15%
Area contravening MPBL	Patio (m²)	28.49					
	Value of building work (R)	1 330					
Value of the building work as per BDM (unit price)		R37 891.70	R 378.92	R 1 136.75	R 1 894.59	R 3 789.17	R 5 683.76

An amount which is not more than 100% may be imposed as an 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 building work contravention relates to structures built without municipal approval, which includes a second dwelling and a patio to the existing dwelling. However, the nature of the contravening land use does not detract from the aesthetic and residential character of the area.

The structures are in contravention of Item 22 (d) of the Development Management Scheme within these setbacks, which relates to the 3metre building lines and approval has not been obtained to erect the structures.

Duration:

According to the applicant the unauthorised building work was undertaken 3 years ago, this was confirmed by City's records, see images below.

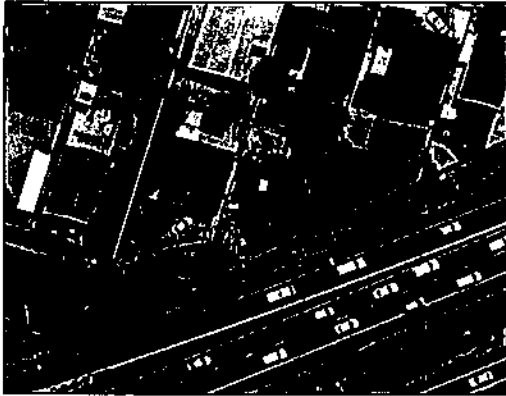


Figure 1: Image from January 2017



Figure 2: Image from February 2018

Extent:

The actual extent of the contravention (48.99m²) is relatively small when considering the size of the property (1024m²).

Gravity:

The gravity of the proposal is not considered to be significant, when considering the use of the structures will be for residential purposes that are ancillary to the use of the main dwelling unit.

b) The conduct of the person involved in the contravention

The applicant has submitted this application for administrative penalty to rectify the building work contravention, before any notice was served.

(c) Whether the unlawful conduct was stopped

The unauthorised building work was completed between January 2017 and February 2018.

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

There is no concrete evidence confirming that the owner of the property has previously contravened this By-Law or any other planning law.

- 5.4 In view of the above consideration, this department recommends an administrative penalty of **R4 654.00** be imposed.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- A land use application has been submitted in order to rectify the unlawful activity.
- The nature of the contravention is considered not to be serious as the renovations are compatible with the existing dwelling house in terms of architectural style and also compatible with the zoning of the subject property.
- The unlawful structures are regarded as ancillary to the main dwelling therefore the gravity of the contravention is marginal.
- The extent of the building work is relatively small in relation the overall extent of erf.
- As far as it 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) That an administrative penalty in the amount of **R4 654.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 25679, Bellville for the land use contravention and such penalty be approved in terms of section 98 (b) of the said By-Law.

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ANNEXURES

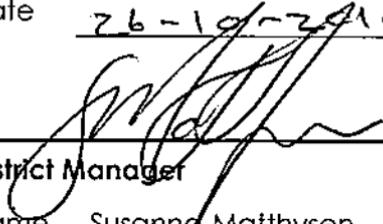
Annexure A Locality Plan
Annexure B Site development plan
Annexure C Applicant's motivation


Section Head : Land Use Management

Name Sean Van Rensburg

Tel no 021 444 1044

Date 26-10-2010


District Manager

Name Susanna Matthysen

Tel no 021 444 1061

Date 28/10/2010

Comment

Comment

Annexure

A

ANNEXURE :



Annexure

B

SPECIFICATIONS

[illegible]

- New Covered Patio's
A Carpet: 500 sq. m²
- New Domestic plant: 353 sq. m²
- New second dwelling: 31.2 m²

Now additions to
exist, dwelling of
Mr D & E Van Tonder
on of 25679
Sanford Street
Oakdale

25/07/19	03/09/2019
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[illegible]

1:500 Feet

100

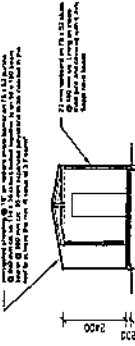
diverse

0-800-4-A-RENTAL is a free toll-free number in the U.S. and Canada.

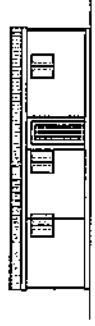
Riaan Millar
PO Box 7706 | Oak Beach, FL 33188

1404 918 200
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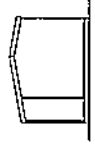
SECTION A-A



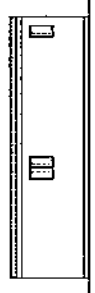
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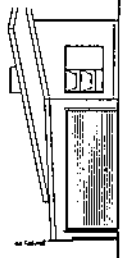
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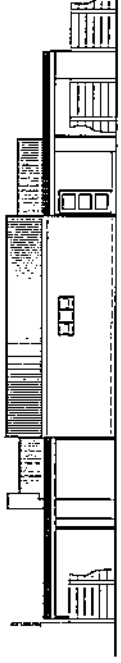
BACK



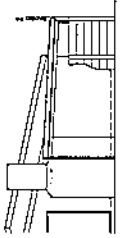
SOUTH



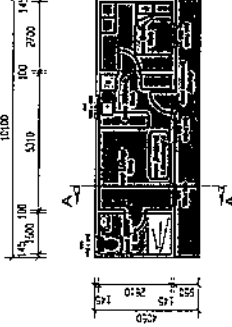
WEST



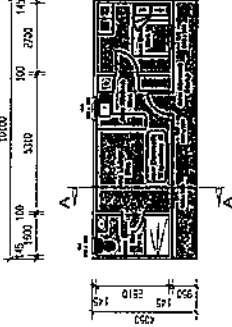
NORTH-



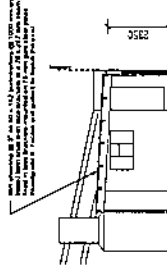
FLOOR PLAN FOR
2ND DWELLING



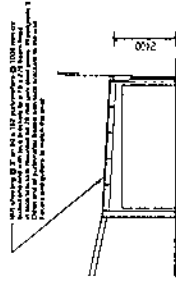
FLOOR PLAN FOR
DOMESTIC QUART.



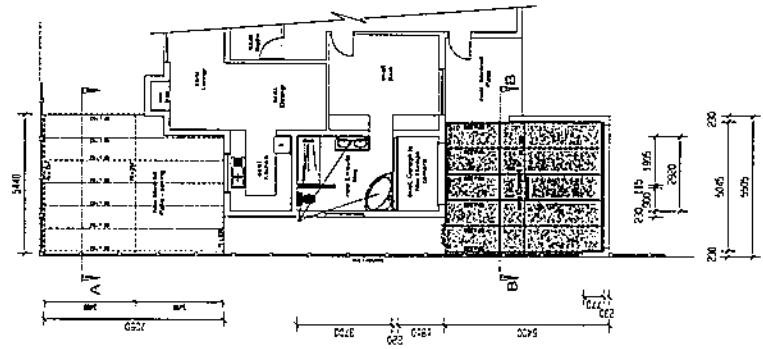
SECTION A-A



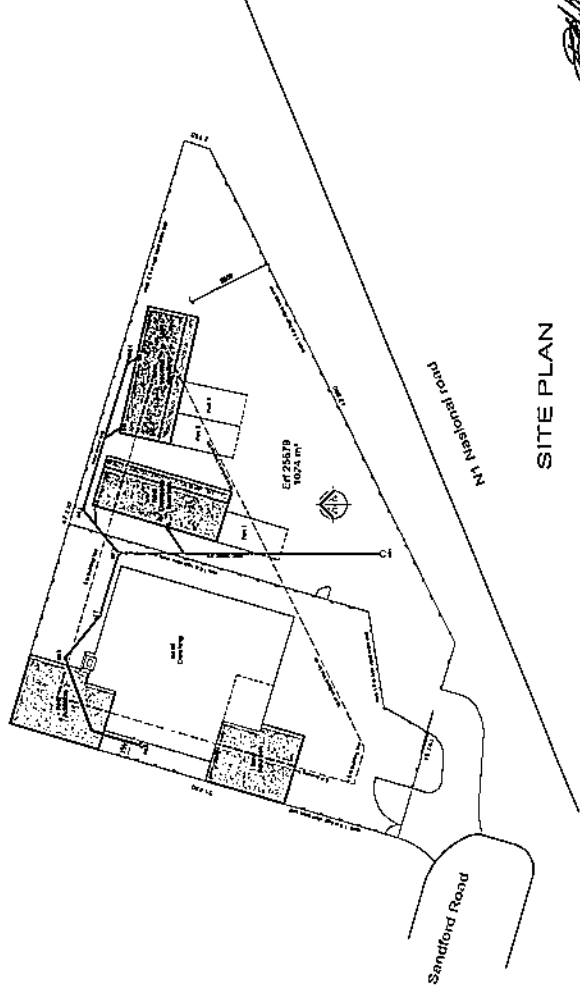
SECTION B-B



FLOOR PLAN



SITE PLAN



Edith
Singer

Annexure C

1530



Diverse Design
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Die Boord
7613
Tel: 082 415 9696
E-mail: riaan@m3.co.za

8 October 2019

The City of Cape Town
Att.: To whom it may concern

APPLICATION FOR ADMINISTRATIVE PENALTY FOR A SINGLE
RESIDENTIAL PROPERTY ON ERF 25679; 11 SANFORD STREET OAKDALE

When the owner purchased the property there were very unstable wooden structures on this part of the property which he then moved and replaced with the 2 new wooden structures

The owner did not realize that these structures he erected in the place of the old ones was illegal, until a friend informed him. He wanted to comply to the law and local regulations and immediately made work of getting approval.

This is the owner's first time offense of contravening this by law or any planning laws.

Taking into account that the contravention has a very low impact and that the owner is committed to fully comply and legalize the structure, we kindly request that the penalty please be kept to the minimum amount.

Kind Regards

Riaan Miller (Architect)