

**BUILDING PLANS WEBINAR**  
**26<sup>TH</sup> OCTOBER 2023**

**1. When are building plans required?**

- Section 4(1) of the National Building Standards Act requires plans for “any building”.

**2. What exactly is a “building”?**

The Act defines a building as something that “includes any other structure” (without even telling us what the other” is!) and is therefore a very broad definition whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used in connection with the accommodation or convenience of human beings or animals (i.e. wendy houses);

- the manufacture, processing, storage, display or sale of any goods
- the rendering of any service
- the destruction or treatment of refuse or other waste materials
- the cultivation or growing of any plant or crop
- any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith
- any fuel pump or any tank used in connection therewith
- any part of a building
- any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, stormwater disposal, electricity supply or other similar service in respect of the building

**3. Are you ENTITLED to have plans approved?**

**Section 7** - If plans are submitted, they “shall” be approved unless the local authority feels that the improvements:

- a. Will disfigure the area
- b. Be unsightly or objectionable
- c. Will derogate from the value of adjoining properties (i.e. result in dropping surrounding values)

Does anyone have a “right to a view”? NO. If a building inspector cannot find fault with plans on the basis of (a – c) above (or maybe if there is a title deed condition which restricts it or if there is a by law which dictates how special planning is to be applied in any given municipality) then the plans “shall” (i.e. must) be approved.

As such, only if there are reasonable grounds to suspect, for example, that an improvement or structure will bring down the value of another property, may this be refused. Therefor there is no “right” to a view. There is only a right to not have the value of your property affected negatively, by improvements to properties around you.

#### 4. Must you ALWAYS have plans? What about MINOR WORKS?

- a. A building control officer may exempt an owner from submitting plans for minor works though.
- b. What is a minor work?

A minor building work is defined in the regulations as the erection of any—

- (i) poultry house not exceeding 10 m<sup>2</sup> in area
- (ii) aviary not exceeding 20 m<sup>2</sup> in area
- (iii) solid fuel store not exceeding 10 m<sup>2</sup> in area and 2 m in height
- (iv) tool shed not exceeding 10 m<sup>2</sup> in area
- (v) child's playhouse not exceeding 5 m<sup>2</sup> in area
- (vi) cycle shed not exceeding 5 m<sup>2</sup> in area
- (vii) greenhouse not exceeding 15 m<sup>2</sup> in area
- (viii) open-sided car, caravan or boat shelter or a carport where such shelter or carport does not exceed 40 m<sup>2</sup> in area
- (ix) any free-standing wall constructed of masonry, concrete, steel, aluminum or timber or any wire fence where such wall or fence does not exceed 1,8 m in height at any point above ground level and does not retain soil
- (x) any pergola
- (xi) private swimming-pool
- (xii) change room, not exceeding 10 m<sup>2</sup> in area, at a private swimming-pool
- (b) the replacement of a roof or part thereof with the same or similar material
- (c) the conversion of a door into a window or a window into a door without increasing the width of the opening
- (d) the making of an opening in a wall which does not affect the structural safety of the building concerned
- (e) the partitioning or the enlarging of any room by the erection or demolition of an internal wall if such erection or demolition does not affect the structural safety of the building concerned
- (f) the erection of any solar water heater not exceeding 6 m<sup>2</sup> in area on any roof or 12 m<sup>2</sup> when erected other than on any roof

#### What are the typical hurdles we see when people want to get building plans?

##### 1. Title deed restrictions

Many older properties in this area may have restrictive conditions entrenched in the property title deed, these can include:

- Building lines
- Coverage
- Single residence only
- Residential use
- And don't even think about mining clay or keeping pigs!
- Circumventing these conditions can be expensive and take a long time.

##### 2. Heritage buildings

Improvements to any residential properties older than 60 years would need approval by both Cape Town and Western Cape Heritage Departments, mostly this is straightforward but there are properties of Heritage significance which can be a bit more complicated.

Generally, and as long as the property is not of any significant HISTORICAL VALUE, alterations would be treated the same as any other property.

3. Building inspectors

- The plan approval process does not stop with the approval stamp on the plan.
- A plan once approved is valid for a start within 1 year, otherwise it lapses.

**WHEN DOES THE 1 YEAR ACTUALLY START TICKING?**

- It is the notification of commencement of actual building works, that ticks this box in the council system.

**BY WHEN MUST BUILDING WORKS BE COMPLETED?**

- Within a reasonable time.
- Neighbors who feel that enough time has passed may complain to a building inspector.
- Building inspectors may also out of their own follow up from time to time.

**OCUPANCY CERTIFICATES**

- What are these?
- How does one obtain them?
- Since when have these been around?
- Are these required for any alterations or improvements that required plans?

Anyone who uses or allows anyone else to use a building (excludes minor works) that was erected without an occupancy certificate is guilty of an offence and faces a R4000 fine or 12 months imprisonment (Section 14(4)(a) of the Act

Once a building is completed the local authority must upon request by an owner or interested person, issue an occupancy certificate if it is satisfied that it conforms with the plans and conditions imposed as part of the approval process, if any.

A little-known fact is that for ANY "building" works which requires plans, an occupancy certificate is required.

It does not mean that it must be capable of "occupation" - occupancy means the particular use or the type of use to which a building or portion thereof is normally used or intended to be used.

**5. How does one obtain an OC if the seller / council does not have a copy available? What does it all entail?**

- The obligation to keep record of approved building plans rests on the owner of the property. There is a misconception that Council has an obligation to keep record, but this is not accurate in law. The proof always rests with the owner.
- If there is no record available, the responsibility is on the owner to get approval. This typically entails getting an architect to document the building in its current condition and to submit a set of plans to Council for approval. The cost of this can greatly vary based on the complexity of the application and the building.

The following costs are typically applicable in terms of the application:

- Architects' fees
- Building Plan scrutiny fees (varies depending on size of building)
- Administrative penalty (can be up to 100% of the value of the unauthorized work in terms of the Municipal Planning By-Law)

- Cost of alterations / remedial work
- Cost of specialist consultants (Engineer for structural report, Electrician for compliance **Inspection, Plumber, etc.**)

**6. WHAT DOES THIS COST TO GET PLANS DRAWN UP?**

- Depending on the availability of the base information, the costs relating to documenting the building can be anything from about R10 000 upwards.
- Building plans fees range from a minimum of R570 for Minor Works up to between R4000 and R10 000 for an entire house. Commercial and Industrial properties can be substantially more as the fees are calculated on the size of the building.
- Administrative penalties entail a Land Use Management application and possibly a penalty of up to 100% of the value of the unauthorized work.

**7 WHAT ABOUT PLANS THAT ARE REQUIRED FOR EXISTING ALTERATIONS?**

**WILL COUNCIL LOOK AT THE PLANS BASED ON THE BUILDING REGULATIONS THAT EXISTED AT THAT TIME, OR THE PRESENT TIME?**

- Present time regulations will apply. Such as glazing or insulation. If the structure was built when these regulations did not exist – too bad, they will need to be brought up to regulations.

**8. WHAT ABOUT UNAUTHORISED BUILDING WORKS THAT EXIST AT THE TIME OF SALE. WHEN CAN THE SELLER BE PENALISED FOR HAVING UNLAWFUL IMPROVEMENTS?**

- Where the improvement requires an application for deviation from the building lines or land use policies, then a fine is imposed, but not just for any old illegal building works.

**9. SCENARIO – A garage was converted into a flat in a group housing scheme area. Council comes back and says it won't allow this.**

- WHAT ARE THE SOLUTIONS IF ANY?  
Convert it to a domestic quarter on the plans.

**10. Is it true that INTERNAL changes don't need plans?**

- Not correct ALL changes technically, need plans.
- Adding a single brick wall – you need to cast a small foundation, but many people believe they can just add a wall. This can cause subsidence.

**11. IS THERE ANYTHING THAT DOES NOT REQUIRE BUILDING PLANS?**

- Shade netting/port intended for protection for vehicles
- 3sq meter shed/wendy
- Wire fence (NOT palisade)
- Anything under 500mm in height
- HOA Rules
- LUM – ANYTHING that goes over building lines needs departure AND plans

## 12. WHAT IS THE CURRENT TURNAROUND TIME FOR PLANS IN AND AROUND CAPE TOWN?

- The process of obtaining approval for compliant building plans take between 2 and 3 months, minimum.
- Building plans are subject to two sets of legislation: The MPBL and NBR. The MPBL regulates things like height, building lines, parking provision, coverage, servitudes, use rights, zoning, etc.
- Building Regulations govern construction methods and standards and are geared towards creating safe, lasting building structures that are fit for purpose and do not pose a risk to users and the public.
- Land Use Management applications (for instance when building line departures are required) have statutory timeframes relating to public advertising, preparation of reports and assessments, set Council meetings, appeals periods, etc. These applications normally take between 4 and 8 months to conclude.

## 13. WHEN MUST ONE GET A NEIGHBOUR'S CONSENT

- When departures in terms of the MPBL is required, Council must consider the specific case and make a decision regarding advertising the departure to the neighbours or the general public. Depending on the nature of the departure Council may require one or more neighbours to formally consent.
- Neighbour's Consent is an advertising response required by the MPBL in relation to departures.

## 14. WHAT HAPPENS IF A NEIGHBOUR DOES NOT CONSENT? IS THIS A DEATH KNELL TO ONES INTENTIONS TO DEPART/REZONE?

No, neighbour not giving consent may not be the end of the world.

2 scenarios

1 is neighbour does not respond, doesn't give consent

2 is neighbour actually objects.

1, neighbour consent can be obtained by knocking on their door and asking them to sign copy of plan and a form that council will supply

Or

You can ask council to send out official notification by registered letter, in which case, if no response, then they assume consent and proceed after I think 21 working days.

This is often the best option from day 1.

2. A neighbour actually objects

The Land Use Management dept case officer would assess the application & objection, and make a recommendation, either to accept the objection and decline the application

Or

Find the objection not to be valid and recommend approval of the application

This recommendation would then go to a town council meeting, and the elected officials would make a decision

Letters would then be sent to applicant and objector advising decision, with info regarding an appeals process if either party wishes to take this further.

If either party takes this to appeal, both parties would have a chance to respond to the objection / provide further motivation / or elaborate, then this would generally be referred to Province for a final decision.

But, by the time you get to this part of the process, we are all getting to be old before it is finalised – takes some time to get to this point!

NB, all advice I give is based on my experience with CoCT. There may be different processes at other municipalities / provinces.

If an objection is received, 1<sup>st</sup> prize is to discuss the issues and see if some re design might address neighbours concerns if they are valid.

## **15. Reminder to agents - Current legal position around building plans**

- There is no legal requirement to guarantee that plans are in place or available - save in Mpumalanga and Limpopo because they have provincial SPLUMA legislation there that requires it. As for the Western Cape, it is not (as yet) a requirement.
- If a seller however KNOWS that a portion of his improvements are not on plan when he knows full well, that they SHOULD be, then, his failure to disclose this can be seen as a latent defect, and voetstoots may not necessarily protect him.
- If you as AGENT know, you must disclose this!
- ARE AGENTS SUPPOSED TO CHECK first whether a house is on plan? NO! But this is why you have the property condition report. If the seller is not sure, the buyer must ask himself whether he wants to make it a special condition.

**Thank you!**