



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

1045

REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO **MPTNE17/06/19**

WARD 2: APPLICATION FOR PERMANENT DEPARTURE IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015: ERF 9588, BELLVILLE, 33 CLEVELAND STREET, BOSTON

Case ID	70414636
Case Officer	MMFENGWANA
Case Officer phone number	021 444 7843
District	TYGERBERG
Ward	2
Ward Councillor	Cllr. L Van Der Walt
Report date	25/04/2019

1. EXECUTIVE SUMMARY

Property description	Erf No 9588, Bellville
Property address	33 Cleveland Street, Boston, Bellville
Application components / description	Relaxation of the common boundary building line from 3.0m to 1.6m, to permit the conversion of the existing garage into a second dwelling unit.
Site extent	1401m ²
Current zoning	Single Residential 1
Current land use	Dwelling house
Overlay zone applicable	None
PHRA or SAHRA heritage	None
Public participation outcome summary	One objection received from the abutting property owner.
Recommended decision	
Approval	✓
Refusal	
Approval in part & Refusal in part	

2. BACKGROUND FACTS

None

3. SUMMARY OF APPLICANT'S MOTIVATION 1046

a. The applicant's motivation of the proposed development (see **Annexure C**) may be summarised as follows:

- It is considered practical to utilize existing walls rather than building a new structure.
- The proposed alterations are complimentary to the existing aesthetics of the property.
- The adjoining property is hardly affected in terms of sunlight.
- No significant view is affected by the proposal.
- There are no windows overlooking the adjoining property except for the high level windows.

4. PUBLIC PARTICIPATION

		Applicable	Dates / Comments
Advertising	Notice in the media (s81)		
	Notice to a person (s82)		
	Notice to Community organization (s83)		
	Notice to Ward Councillor (s83)		
	Notice of no objection (s84)	✓	18/07/2018
	Notice to Provincial Government (s86)		
	Notice to an Organ of State (s87)		
	Public meeting		
	On-site display		
Outcome	Objections	✓	1 objection received
	Objection petition		
	Support / No objection		
	Comments		
	Ward Councillor response		

Summary of objections / comments/ support received

4.1 The objection received against the application (see **Annexure D**) may be summarised as follows:

- The height of the proposed second dwelling unit living area, will prevent winter sun to shine into the objector's kitchen area.
- The proposed conversion will further restrict availability of sunlight to the objector's back yard, thereby having an adverse impact on his ability to effectively utilize this space.

Summary of applicant's response to public participation

4.2 The applicant's response to objections received (see **Annexure E**) may be summarised as follows:

- The applicant has provided a shadow analysis and concludes that there is a limited difference between the existing scenario and future scenario with additions in place.

- There is an existing concrete floor in place and the demolition of this floor may result in structural damage and unnecessary expense. The utilization of the existing garage for the alterations is therefore considered most practical.
- The proposed windows in the living room of the second dwelling unit will be installed 2.8m above the floor and therefore not cause any invasion of privacy.
- There is a narrow portion of the proposed deck (800mm wide) next to the staircase that will be overlooking the objector's property. The applicant is willing to install screening to protect the privacy of the objector.

5 BACKGROUND TO PROPOSAL

Background

5.1 None

Description of the area / surrounding land uses

5.2 The subject property is located at 33 Cleveland Street, Boston, Bellville. It is zoned Single Residential: Conventional Housing (SR1) and is surrounded by similarly zoned properties as well as General Residential 2 and Community zoned uses. The topography of the site is low lying and flat.

Property description

5.3 The property contains a dwelling house and outbuildings.

Proposed development

5.4 An application is made to relax the common boundary building from 3.0m to 1.6m, to permit the conversion of the existing garage into a second dwelling unit. The current garage height is at 2.5m and the proposal involves the raising of the current wall and installation of high level windows at a height of 2.8m.

6 PROPOSAL ASSESSMENT

Criteria for deciding application

- 6.1 Consideration of criteria in terms of Section 99(1):
- 6.1.1 Compliance with the requirements of the MPBL
- The correct application type and all relevant applications have been applied for.
 - The application was duly advertised in accordance with the Notification Operational Policy for Land Use Development Applications.
 - All the processes and procedures have been correctly undertaken.
 - An administrative penalty is not required.
- 6.1.2 Compliance or consistence with the Municipal Spatial Development Framework (please see Section 6.2.4 of this report).

6.1.3 Consideration in terms of Section 99(3) of the desirability of the following criteria: (please see section 6.2.4 of this report for clarity and the extent of desirability).

6.1.4 Would approval of the application have the effect of granting the property the development rules of the next subzone within a zone?

No

I am satisfied that the decision making criteria in Section 99(1) have been complied with.

I am satisfied that the considerations in Section 99(3) have been assessed and that the proposed land use is desirable.

6.2 Consideration of criteria in terms of Section 99(2)

6.2.1 The subject property is identified for urban development in terms of the Tygerberg District Plan and the proposal is considered in line with this designation.

6.2.2 The proposal is generally consistent with the DMS and does not amount to an invasion of intent. Application is made for the relaxation of the 3.0m common boundary building line to 1.6m to allow for alterations to increase the current garage wall height in order to install high level windows.

The current roof of the garage will also be raised to be in line with the roof height of the existing residence. The proposed change in the use of the garage to a second dwelling unit is an acceptable trend for residential suburbs within the greater City of Cape Town in terms of development patterns and densification.

It is the opinion of this office that the proposed will not result in any negative impact on the abutting property taking into consideration that there are no overlooking features that would impact negatively on the privacy of the abutting property owner.

6.2.3 Applicable policy or strategy approved by the City to guide decision making
Not applicable.

6.2.4 Consideration in terms of Section 99(3) of the extent of desirability of the following criteria:

a. Socio-economic impact

- The proposal will have a positive socio-economic impact on the area with the provision of an additional residential opportunity.

b. Compatibility with surrounding uses

- The proposal is deemed to be compatible with the surrounding uses and additions in the area. The additions are of limited scale and residential nature that will fit in with the aesthetics of the existing residence.

- It is the opinion of this office that the proposal will not negatively affect adjoining neighbours in any way as there is a 3.1 distance between the proposed additions and the objector's residence. The proposed windows will be installed at a height of 2.8m thereby not having any impact on the privacy of the adjoining neighbour.
- The use of the property will remain residential and therefore deemed still compatible with the surrounding uses.

c. Impact on the external engineering services

- The proposal is regarded as small scale and thus will not have any detrimental impact to the external engineering services.

d. Impact on safety, health and wellbeing of the surrounding community

- No negative impact is expected on the safety, health and well-being of the surrounding community. The applicant demonstrated that the difference in impact on availability of sunlight for the neighbour's property between the existing structure and the proposed, is marginal.

e. Impact on heritage

- The proposal has no heritage implications

f. Impact on the biophysical environment

- The property is not environmentally sensitive and contains no distinguishing features.

g. Traffic impacts, parking, access and other transport related considerations

- The proposal will not have any negative impact on Traffic, parking provision or access within the immediate vicinity as existing carriage way crossings remain in place and as sufficient on-site parking is provided.

h. Conditions that can mitigate an adverse impact of the proposed land use

None

6.2.5 Impact on existing rights (other than the right to be protected against trade competition)

- The proposal will have no significant negative impact on the rights of the surrounding property owners.

6.2.6 Other considerations prescribed in relevant national or provincial legislation.

None

I am satisfied that the decision making criteria in Section 99(2) have been complied with.

7 REASONS FOR DECISION

7.1 Reasons for the recommended decision for **approval relating to the application for the permanent departure may be summarised as follows:**

7.1.1 The proposed addition will be of an appropriate scale and form that relates to the surrounding built form.

- 7.1.2 The proposed alterations will not result in any detrimental impact on abutting or surrounding properties in terms of overlooking or availability of sunlight.
- 7.1.3 The provision of on-site parking and access to the property complies with the provisions of the Development Management Scheme.

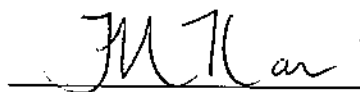
8 RECOMMENDATION

In view of the above, it is recommended that:

- 8.1 The application for permanent departure in respect of Erf 9588, Bellville to allow for the relaxation of the 3.0m common boundary building line to 1.6m for the conversion of the existing garage to a second dwelling unit **be approved** in terms in terms of Section 98(b) of the Municipal Planning By-law, 2015 in accordance with plan no: 100 drawn by Gary Ross Meade Architecture & Projects attached as Annexure B.

ANNEXURES

Annexure A	Locality plan / Public participation map
Annexure B	Site Layout plan
Annexure C	Applicant's motivation
Annexure D	Objections received
Annexure E	Applicant's response to objections received
Annexure F	Title deed



Section Head

Name: T.R. Kotze

Tel no: 021 444 7506

Date: 23.05.2019



District Manager

D. Smut

021 444 7840

27/05/2019.

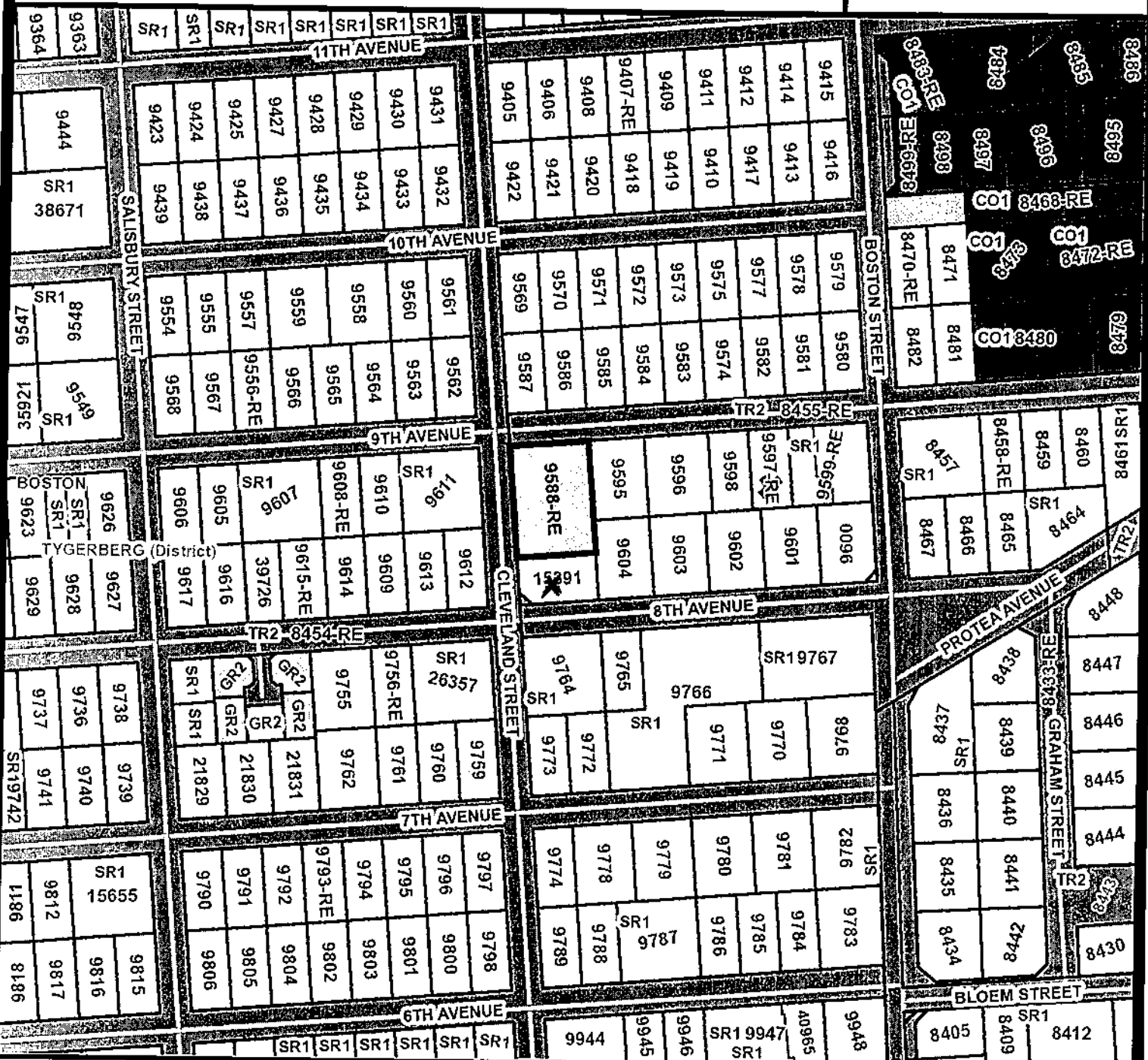
Annexure

A

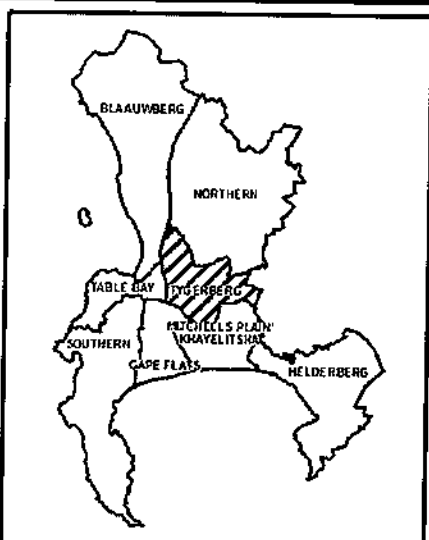
PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

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ANNEXURE : A



Overview



Erf: 9588-RE

Allotment: BELLVILLE

Ward: 2

District: TYGERBERG

Suburb: BOSTON

Sub Council: Subcouncil 6



1:2 260

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by: M. Mfengwana

Date: 25 April 2019

File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Annexure

B

1056

Annexure

C

1057



05 September 2018

RE: PROJECT – Alterations to ex dwelling on erf 9988 Boston

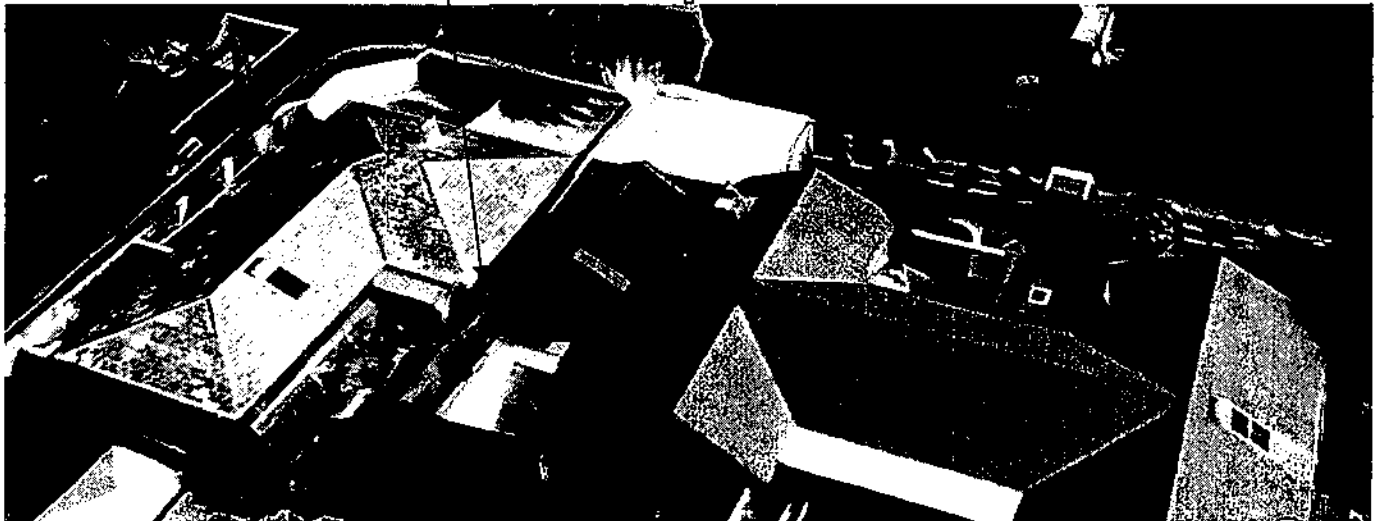
– Motivation for Building over building lines 1.6m in lieu of 3m.

My Client would like to convert his exiting garage into a second dwelling and in the process, he would like to raise the roof by about 800mm and turn it by 90 degrees to tie it into the ex. dwellings roof and so connect the two buildings. This results in the portion of the building on the 1.6m (existing garage wall) being higher than the original garage roof. ie: 2.2m higher at the apex and 350mm higher at the gutters.

The following are reasons he has put forward as to why he would like to have the proposed building over the building line.

1. The walls already exist, and it would not be practical (both in terms of practicality and finance) to demolish walls and set them further back.
2. The alteration is complimentary to the current aesthetics of the property.
3. The Neighbour is hardly affected in terms of sunlight. (were talking perhaps of about 25 to 40mins less sunlight to one small window at the rear of the property only.)
4. Similarly the view affected is the view of the sky when one stands up against the window. Once you are standing 800mm away from window the view is the same. (wall)

window in question

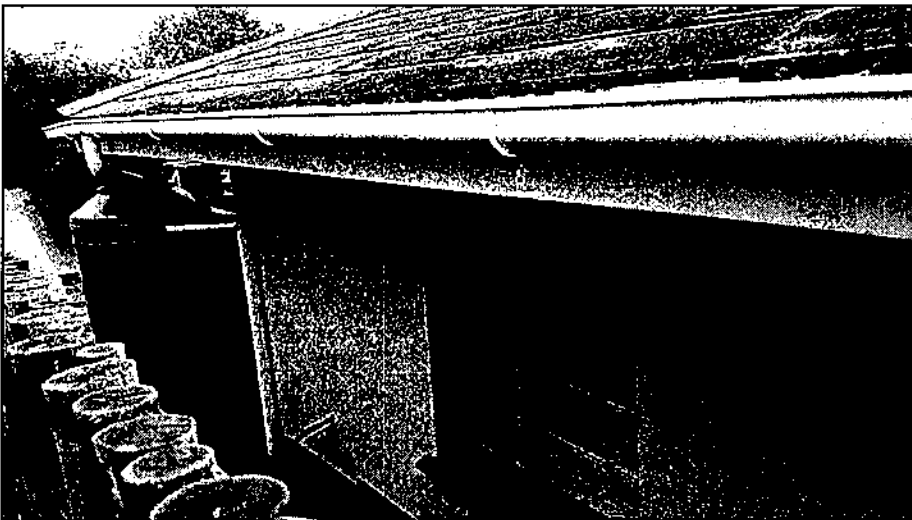


5. No windows overlooking the neighbour. (only high level windows with cill height 2800mm a.f.f.l.)

6. The proposed deck is effectively 3.28m from boundary (top of stairs). Small piece of deck over pool pump 800mm wide and 1.6m away from boundary – is screened from neighbour by boundary fence. But if needs be, can be further screened.



window in question behind



7. Please also see the attached responses to the neighbour's objections, which he (the neighbour) has seen and has not contested. He has however added an objection regarding his view from the scullery window, which I have mentioned in point 4 above.

8. I could provide all sorts of views and shadow diagrams negating the neighbour's objections but only seeing the situation first hand can one appreciate the futility of his objections.

9. Perhaps worth mentioning is that on the 3m building line there is a height restriction of 11m, if my client were to exercise this right the neighbour would be in a far worse situation with a an edifice 5m higher than proposed.

We trust the aforementioned is adequate motivation for the proposal.

Regards

GARY MEADE (psat)

Annexure

D

Mpho Mfengwana

From: Matt Stopka
Sent: 07 August 2018 04:08 PM 1060
To: Gary Meade
Cc: Deon van den Berg; Jacques Loots
Subject: FW: NEIGHBOUR Erf 15391 - M J Stopka (No. 19, 8th Ave Boston, Bellville)
Attachments: Objection - Erf 15391- MJ Stopka.pdf; Plans consent.pdf

Dear Gary,

Thank you for the attached building plans to considered whether I can support such building alterations at the Erf No. 9588.

My objections to the present building plans can be summarised as follows:

1. Due to the wall and roof height of the second dwelling living area, it will prevent the winter sun to shine on the kitchen area on Erf 15391. I suggest that the living area be lowered to the existing ground level.
2. Furthermore the fact that the second living area are so close to the boundary area (within 1.6 m) with a new deck and also windows facing to the southern area, it will encroach into the private area of Erf 15391. Therefore any person standing on the deck or standing in the doorway or looking out the window from the second dwelling, will be able to observe all activities in the kitchen and also in the back yard and braai area of Erf 15391.
3. Furthermore the current wooden slates on the boundary wall caused already shady patches which restricts the outside use of my back yard during winter . I had to move the washing line to enable the washing to dry in remaining sunny area of the back yard. Furthermore the winter sun light in the back yard is severely restricted by the wooden slates and subsequent outside use of the back yard for recreational activities, during winter. Therefore any encroaching building outside the 3m boundary line would further restrict the quality of life at Erf 15391.

I trust that the above explanation would explain the main reasons for the objection.

See attached signed letter to formally register my objection against the attached building plans.

Regards
 Matt Stopka

From: Gary Meade <thameades@telkomsa.net>
Sent: Monday, 06 August 2018 9:28 AM
To: Matt Stopka <Matt.Stopka@capetown.gov.za>
Cc: 'Deon van den Berg' <designfactor@kingsley.co.za>
Subject: FW: NEIGHBOUR

Hi Matt

Please find attached the drawings and the consent form for your perusal.

On the consent form you will find the purpose of the application.

The window sill height is actually even higher that I told you, it's a 2.8m high not 1.8m.

Deon the builder has put up a piece of timber with a nail in it indicating the height if the apex of the roof.

I look forward to hearing from you best regards

Gary Meade
 079 496 4433d

Annexure

E

1062

Dear Mr Stopka

24 08 2018

I am writing this appeal to you on behalf of my client Mr Juan Piek. Mr Piek has asked me to address each of your objections from a logical and unbiased point of view. I do understand that on witnessing the erecting of the façade of the proposed second dwelling, you assumed that your worst fears were being realised, and on reading your objections I sympathised with you, however on careful analysis with modelling software I do feel that your fears are largely unfounded. I ask that you go over the following points addressing your various objections to Mr Piek's proposed additions and hopefully reconsider your view.

1. Due to the wall and roof height of the second dwelling living area, it will prevent the winter sun to shine on the kitchen area on Erf 15391. I suggest that the living area be lowered to the existing ground level.

We have completed a comprehensive shadow analysis of the proposed build and compared it to the previous/existing scenario. Please see the diagrams below.

I have left off the wattle privacy screen for the purposes of this exercise.

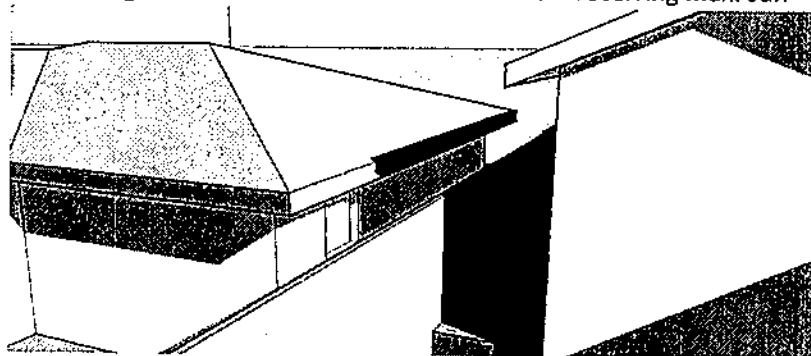
Also, I have used the worst case scenario (21 June) to be biased in your favour.

In the general analysis of the "existing" it appears that the scullery/kitchen window which is roughly 1mx1m receives good sunshine up until midday in winter with about top 1/3 of the surface permanently shaded by your overhanging eaves. By 12h40 in the afternoon the window is completely in shade.

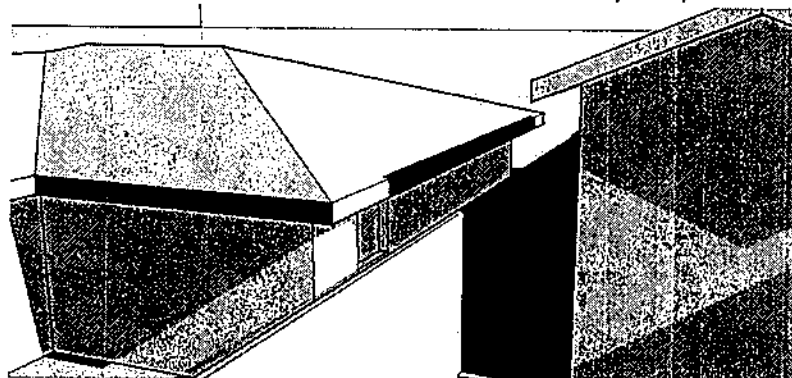
During the analysis of the proposed higher roof model the situation is very similar, but the window is completely in the shade 25 minutes sooner.

There is also a period in April and August where there is partial and diminishing exposure of this window to sunlight ie. On the lower 1/3 of the window, diminishing to nothing 40 minutes sooner in the proposed new addition.

Existing scenario 11h40 on 21 June – window receiving max. sun

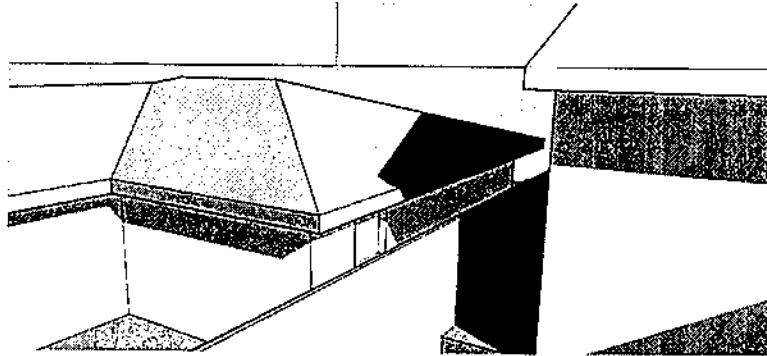


Existing scenario 12h40 on 21 June – window completely shaded

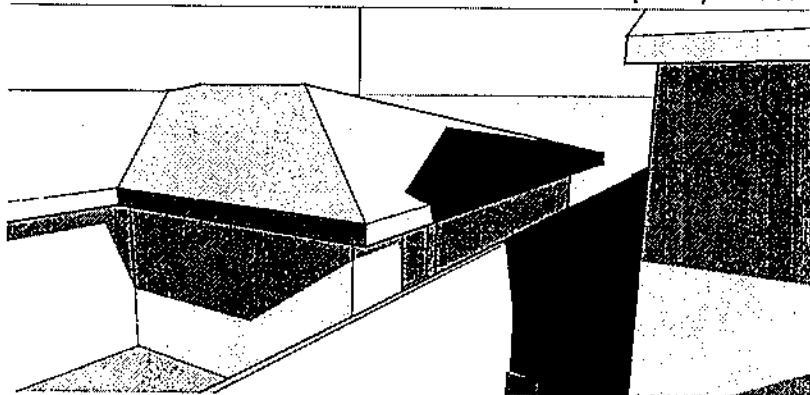


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Proposed scenario 11h20 on 21 June – window receiving max. sun



Proposed scenario 12h15 on 21 June – window completely shaded



Lowering living area which is on an existing floor would be hugely impractical for various reasons.

1. There is already an existing concrete floor in place.
2. Demolishing this floor may result in structural damage to the existing walls which would result in unnecessary expense and disruption.
3. Building a retaining wall between the garage and new floor would necessitate a large part of the carport floor being chopped up.
4. Part of the addition/alteration is interleading with the house and changing the level by that much would create headroom issues.

So, in summary huge effort and expense would need to be spent to achieve very little.

2. Furthermore the fact that the second living area are so close to the boundary area (within 1.6 m) with a new deck and also windows facing to the southern area, it will encroach into the private area of Erf 15391. Therefore any person standing on the deck or standing in the doorway or looking out the window from the second dwelling, will be able to observe all activities in the kitchen and also in the back yard and braai area of Erf 15391.

To Clarify; the existing building and thus the second dwelling is 1.6m from the boundary and not within 1.6m of the boundary

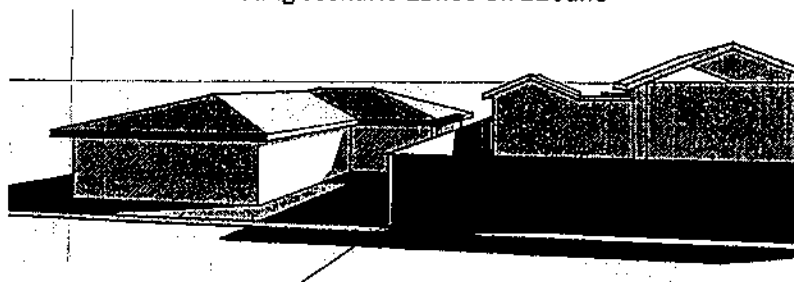
- Windows - As explained over the phone and by email, the cill height of these windows is 2.8m above the floor level (ie in the roof) there is no possible way anybody could look onto your property from them, so there is no worry here.
- Door - The door is 555mm beyond the 3m building line, so this is of no consequence.
- Deck - There is only a narrow portion of deck (800mm wide) next to the staircase up to the deck that would be overlooking your property. Under which the pool pump and filter will be housed. I am sure my client would be quite willing to erect a screen here to protect your privacy.

3. Furthermore the current wooden slates on the boundary wall caused already shady patches which restricts the outside use of my back yard during winter. I had to move the washing line to enable the washing to dry in remaining sunny area of the back yard. Furthermore the winter sun light in the back yard is severely restricted by the wooden slates and subsequent outside use of the back yard for recreational activities, during winter. Therefore any encroaching building outside the 3m boundary line would further restrict the quality of life at Erf 15391.

The study I have done shows that the alteration has very little impact on the shading of your yard – see diagrams below. The shading cast by the wattle fence, however, is another matter and beyond the scope of this issue. It is my understanding that the fence was erected to provide you with privacy and was a joint decision made between yourself and Mr Piek and paid for by him.

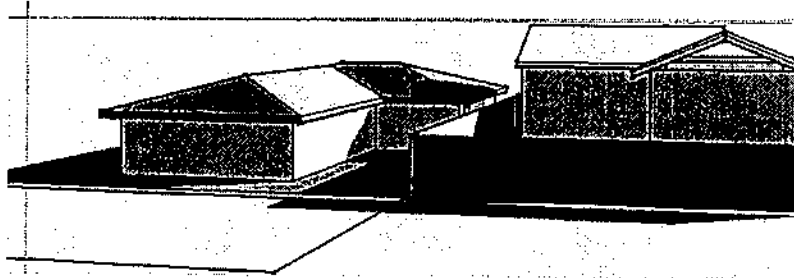
Shadows cast at various times for the existing and proposed cases.

Existing scenario 15h00 on 21 June

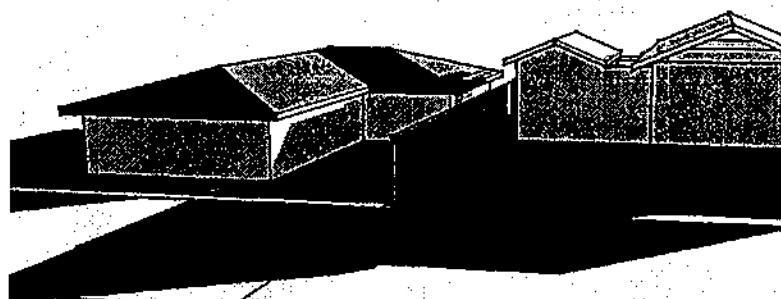


Proposed scenario 15h00 on 21 June

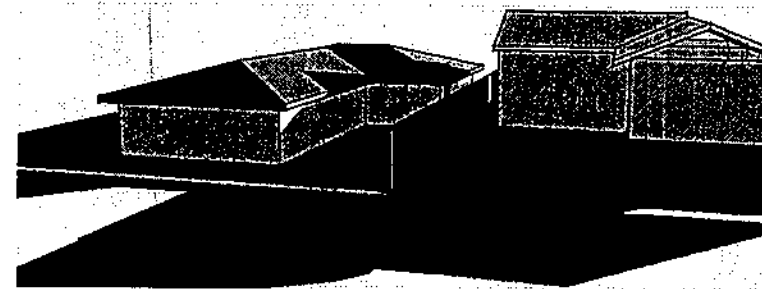
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Existing scenario 16h25 on 21 June



Proposed scenario 16h25 on 21 June



If you have any enquiries regarding the above do not hesitate to contact me, I am quite willing to provide you with more diagrams of shadows cast at other times of the year and times of the day.

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Annexure

F

2

FEE

R. 650-00



1093519 IDF

ANNEXURE F

SMIT KRUGER ING
POSBUS 13 en 33
DURBANVILLE
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Opgestel deur my

H. Zyl.
TRANSPORTBESORGER
VAN ZYL H L

VERBIND		MORTGAGED	
VIR FOR R. 1 500 000-00			
B	015131/11	<i>[Signature]</i>	
31 MAY 2011		REGISTRATEUR/REGISTRAR	

07 JUL 2011

OLIVIER YOUNG

TRANSPORTAKTE

T 028144/11

HIERBY WORD BEKEND GEMAAK DAT

~~PETRUS JOHANNES CILLIE~~
GABRIEL GIDEON CILLIE

voor my verskyn het, REGISTRATEUR VAN AKTES te Kaapstad, hy die genoemde
komparant synde behoorlik daartoe gemagtig deur 'n Volmag aan hom verleen deur

MARLENE LENET ROUX

Identiteitsnommer 430107 0123 08 6

Getroud buite gemeenskap van goed

04 JUL 2011

geteken te DURBANVILLE op 1 MAART 2011

En genoemde Komparant het verklaar dat sy prinsipaal, op 9 Oktober 2010, waarlik en wettiglik verkoop by Privaat ooreenkoms, en dat hy, in sy voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

1068

ANDRE JUAN PIEK

Identiteitsnommer 741202 5021 08 0

Ongetroud

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes in volkome en vrye eiendom,

**RESTANT VAN ERF 9588 BELLVILLE,
GELEE IN DIE STAD KAAPSTAD,
AFDELING KAAP, WES-KAAP PROVINSIE**

GROOT 1401 (EEN DUISEND VIER HONDERD EN EEN) Vierkante Meter

**EERSTE GETRANSPORTEER KRAGTENS AKTE VAN TRANSPORT NR.
T8942/1908 MET KAART AANGEHEG EN GEHOU KRAGTENS AKTE VAN
TRANSPORT NR T 028143/11**

①

- A. **ONDERHEWIG** aan die voorwaardes waarna verwys word in Transportakte Nr. T519 gedateer 25 Januarie 1940.
- B. **ONDERHEWIG VERDER** aan die volgende spesiale voorwaardes vervat in Transportakte No. T8942 gedateer 15 Desember 1908, naamlik:

- "2. That the transferors and their assigns shall have and retain the right to lay and maintain piping under and across the street or streets bounding or adjoining the land hereby conveyed for the purposes as also the right to supply water thereto and that no building shall at any time be erected on the said land within 1.57 metres of any street.
3. That save as to outbuildings bona fide relative thereto no house or residence costing less than R800,00 for its erection shall at any time be erected on any of the plots lying between the Main Road and Sixth Avenue of Boston Township, nor shall iron residence, stores or other buildings or erections whatsoever necessary out offices relative thereto alone excepted be at any time erected or put up on the land hereby conveyed."

GhostConvey 13.0.4.3

WESHALWE die komparant afstand doen van al die regte en titel wat

MARLENE LENET ROUX , Getroud soos vermeld

voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat sy geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde

ANDRE JUAN PIEK, Ongetroud

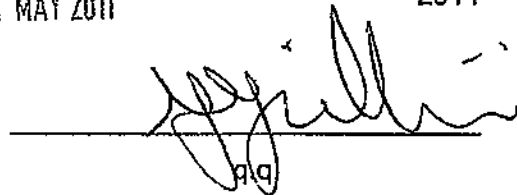
sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken hy dat die verkoopprijs die bedrag van **R1 500 000,00 (Een Miljoen Vyf Honderd Duisend Rand)** beloop.

TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die ampseël bekragtig het.

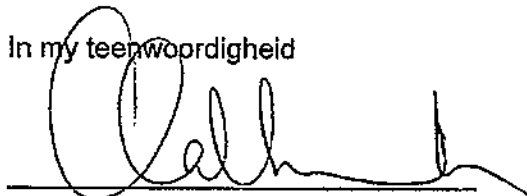
ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te Kaapstad op

31 MAY 2011

2011



In my teenwoordigheid



REGISTRATEUR VAN AKTES