



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70456574			
CASE OFFICER	Liza Volkwyn			
CASE OFFICER PHONE NO	021 684 4387			
DISTRICT	Cape Flats			
REPORT DATE	18 June 2019			
INTERVIEW REQUESTED	APPLICANT OBJECTOR(S)	YES		NO

ITEM NO **MPTSW13/07/19**

**WARD 63: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 441, OTTERY, 11 BARBETTE WEG, OTTERY**

**1 EXECUTIVE SUMMARY**

Property description	Erf 441, Ottery
Property address	11 Barbette Weg, Ottery
Site extent	480,61m <sup>2</sup>
Current zoning	Single Residential 1
Current land use	Dwelling house (main dwelling and second dwelling)
Overlay zone applicable	None

Submission date	16 May 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised garage extension
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	No

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?	166
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## **2 DECISION AUTHORITY**

For decision by the Municipal Planning Tribunal.

## **3 BACKGROUND / SITE HISTORY**

Erf 441, Ottery ("the property") is zoned Single Residential 1 in terms of the Development Management Scheme ("DMS"). The property is developed with an existing dwelling unit, a second dwelling and a garage. An unauthorised garage extension has been erected on the property in contravention of Item 22 of the DMS: it exists within 3,0m of the common boundary building lines in excess of the total remaining linear distance of buildings permitted in this area (i.e. 44,16m (84%) in lieu of 31,7m (60%).

A permanent departure application has been submitted to regularise the contravention of the DMS.

## **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 unauthorised garage extension was erected 2 years ago at a cost of R111000.00.
- The unauthorised extension is setback 0,0m from the eastern common boundary.
- The garage was extended to accommodate company vehicles.
- The owners are attempting to rectify the contravention.
- A reduced admin penalty is requested.
- The contravention does not affect the streetscape.

## **5 ASSESSMENT OF APPLICATION**

- 5.1 As indicated above, the unauthorized building work is in contravention of the Development Management Scheme.
- 5.2 In terms of section 129(7)(a) of the By-Law, 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.

5.2.1 Unauthorised building work

**Value per m<sup>2</sup> (as provided in the spreadsheet) × Total Unlawful area (m<sup>2</sup>) = R**

**Value / m<sup>2</sup> = R1330.00**

**Total unlawful area (m<sup>2</sup>) = 18,5m<sup>2</sup>**

**R = R24605**

An amount which is not more than 100% of R24605 may be imposed as 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** – An unauthorised garage extension has been erected within the 3,0m eastern common boundary building line up to 0,0m in excess of the remaining linear distance of buildings permitted within the common boundary building line (84% in lieu of 60%).

**Duration** – According to the applicant, the garage extension was erected 2 years ago. The City's aerial photographs show that the extension was a complete structure by January 2016.

**Gravity** – The contravention of the 3,0m common boundary building line is not considered to threaten the health, safety and wellbeing of the surrounding community although the building work is unauthorised.

**Extent** – The contravening portion has an extent of ±18,5m<sup>2</sup>.

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

According to the applicant's written motivation, there was a measure of willful engagement in the unlawful activity.

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

The garage extension is a complete structure.

**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 property owner has not contravened the MPBL or another planning law in the past.

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- 5.4 Given the medium extent of the contravention, its medium duration, low gravity and the conduct of the person involved in the contravention, it is recommended that an administrative penalty to the value of R500 be charged.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- 6.1. An unauthorised garage extension contravenes the Development Management Scheme.
- 6.2. The extent of the contravention is medium and the duration is medium term.
- 6.3. The gravity of the contravention is low.
- 6.4. There was a measure of willful engagement in the unlawful activity, but the owners have submitted an application to rectify the contravention.

## **7 RECOMMENDATION**

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R500 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 441, Ottery.

## **ANNEXURES**

Annexure A	Locality Plan
Annexure B	Building plan
Annexure C	Applicant's motivation

A McCann

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**Section Head : Land Use  
Management**

Comment

Name A McCann

Tel no 021 684 4341

Date 2 July 2019

Chad Neuman

**District Manager**

Comment

Name Chad Neuman

Tel no 021 684 4310

Date 02/07/2019

**ANNEXURE :**



**Sub Council: Subcouncil 18**



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## Notices Served

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### Petition Signatory



### Objections Received



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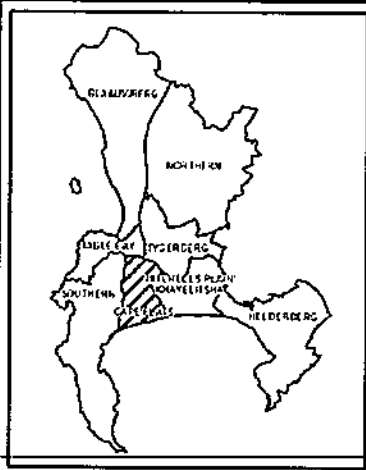
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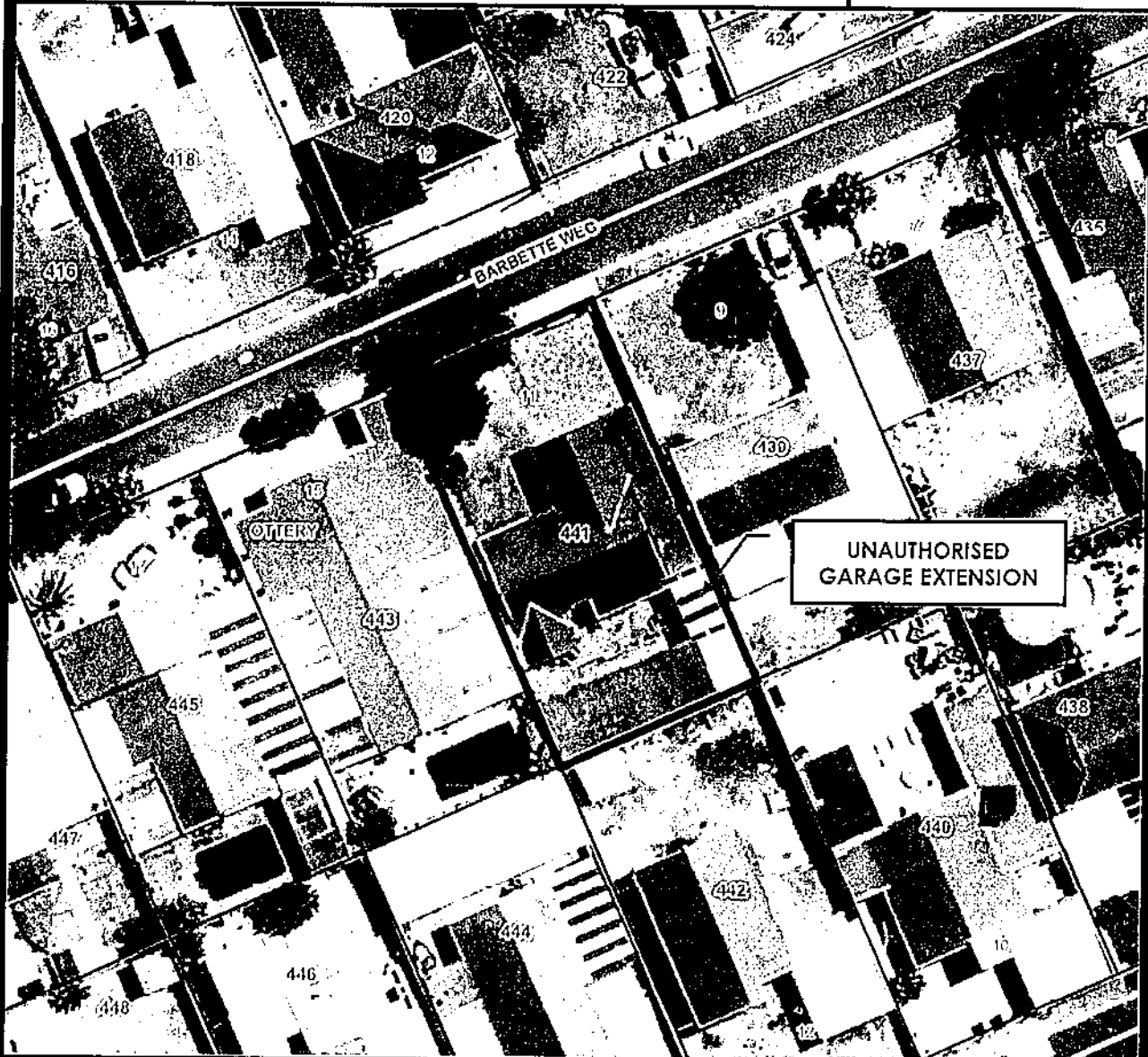
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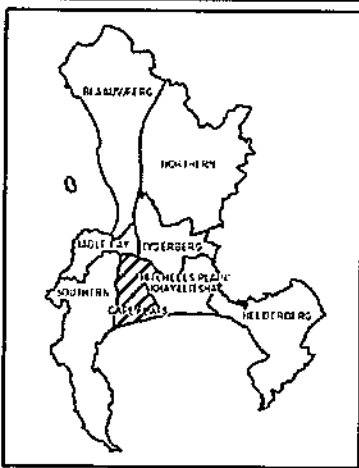


PLANNING AND BUILDING DEVELOPMENT MANAGEMENT  
LOCALITY MAP

ANNEXURE :



Overview



Erf. 441

Abtment: OTTERY

Ward: 63

District: CAPE FLATS

Suburb: OTTERY

Sub Council: Subcouncil 18



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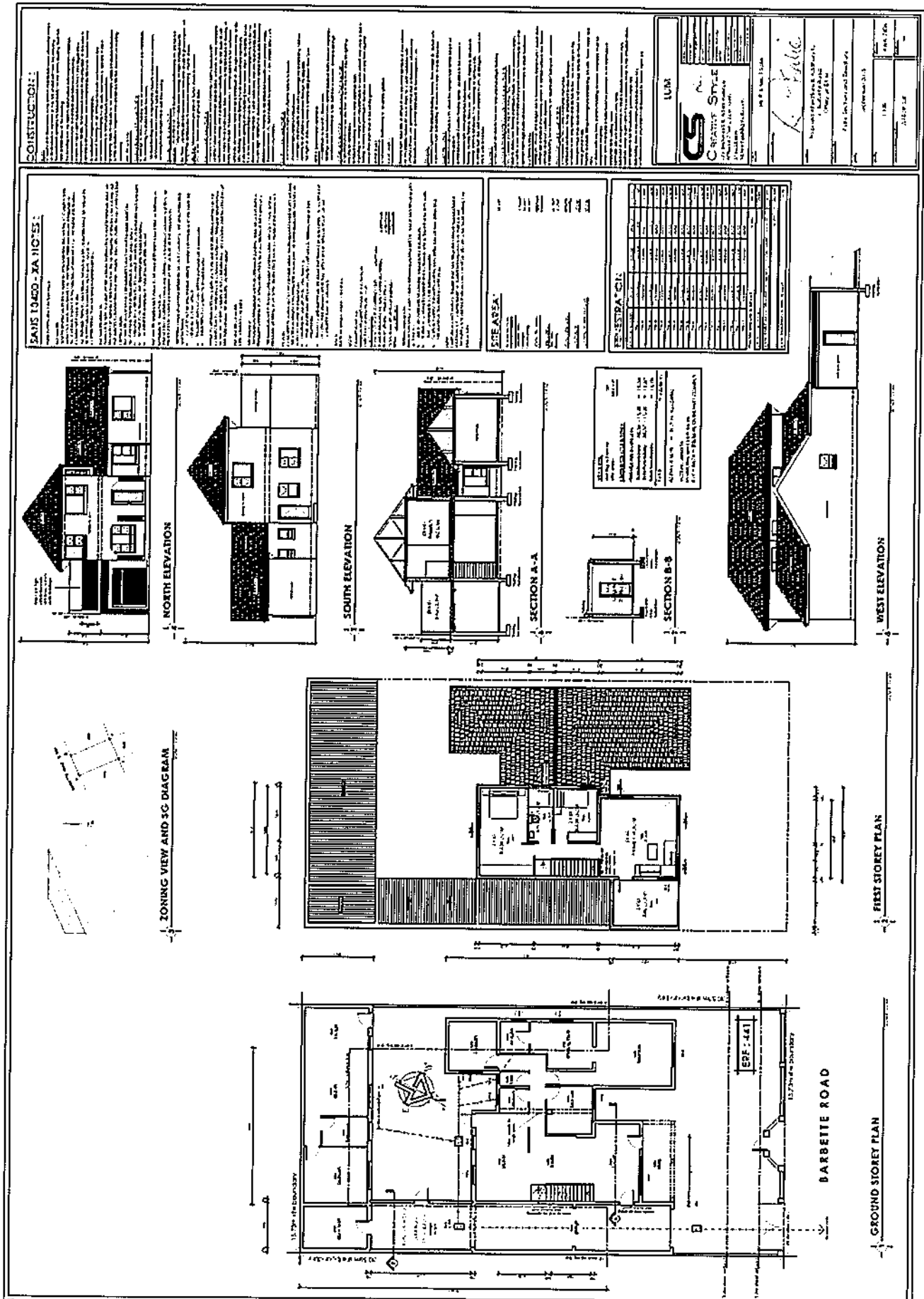
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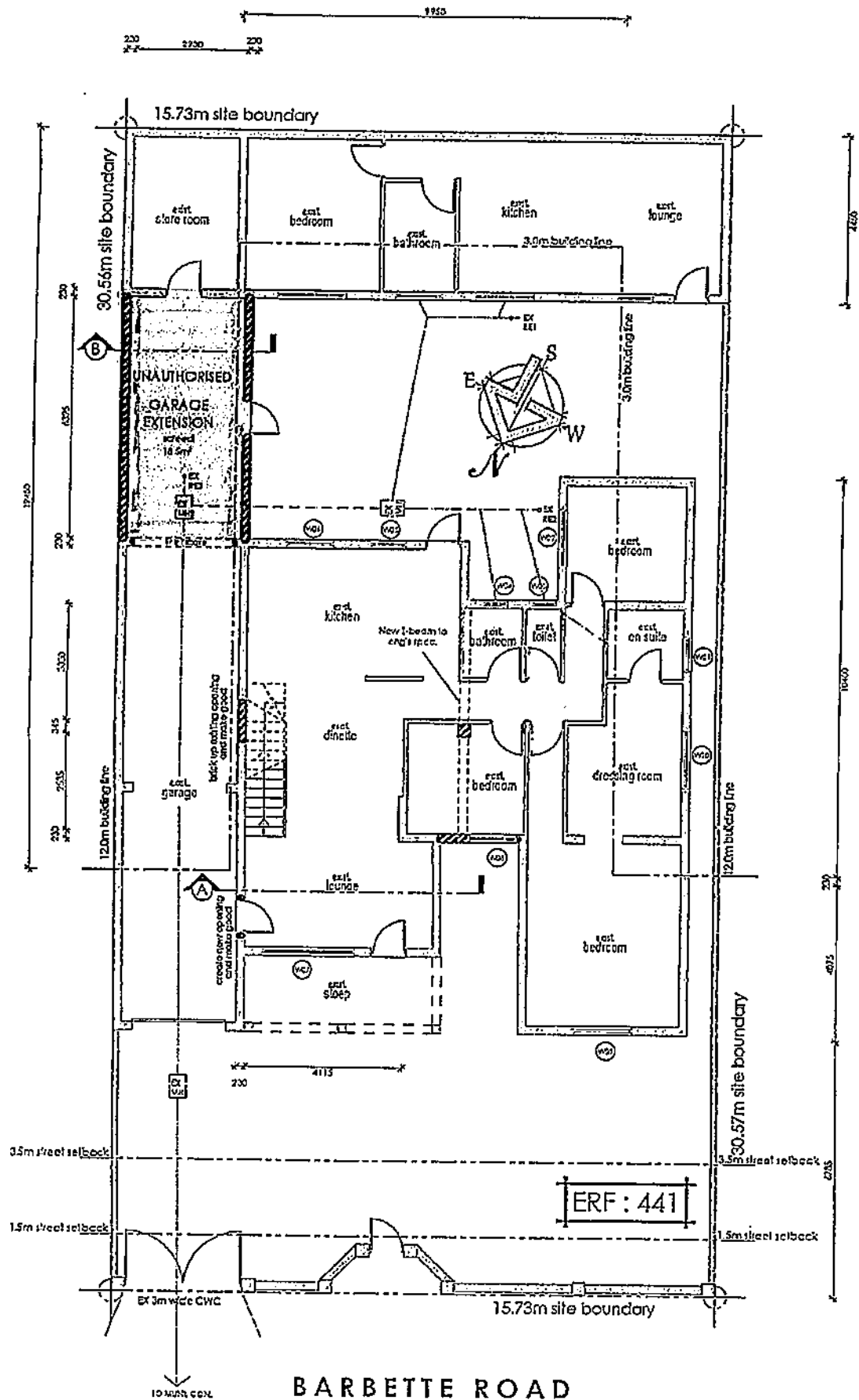


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ANNEXURE C: APPLICANT'S MOTIVATION
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MOTIVATION

07.05.2019

Owner: Mr. R Salie & Mrs. F Jaffer

Erf 441

No.11 BARBETTE ROAD OTTERY

To whom it may concern

The garage extension was erected about ±2 years ago without an approved building plan, the cost of the garage extension cost ±R111000.00. The garage extension is setback 0.0m from the East boundary.

Due to the fact that that the existing garage was insufficient and we were allocated company vehicles. We built the garage extension without approved building plan.

We are trying to correct our actions by submitting build plans for consent for approval of garage extension.

We have tried to meet the requirements and would appreciate a reduction in the administrative penalty.

The alterations do not affect the streetscape negatively.

Thanking you

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