



REPORT TO MUNICIPAL PLANNING TRIBUNAL

Case ID	70444403
Case officer	LEH
Case officer phone number	021 444 9543
Office	Southern
Report date	2 May 2019

ITEM NO **MPTSW34/05/19**

WARD 71: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: ERF 441 BERGVLIET, 6 FAIR WAY

1 EXECUTIVE SUMMARY

Property description	Erf 441 Bergvliet
Property address	6 Fair Way
Site extent	881m²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house, carport, pool.
Overlay zone applicable	None
Submission date	6 February 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Carport 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 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. A land use application to regularise the carport extension has not yet been submitted.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as Annexure C and may be summarised as follows:

- The owner purchased the property in 2015 and only recently discovered that the as-built carport deviates from the approved plans.
- Previous plans indicate the carport being 6m x 6.6m in extent and setback 3m from the street. The carport was extended by 2.575m to be setback 0m from the street. The carport is less than 2.8m in height. This contravenes the title deed condition and the MPBL.
- The owner could not have been aware of the deviation from the plans when purchasing the property.
- The owner wishes to regularise the building work.
- The owner has shown integrity in wishing to regularise the building work despite his not having been involved in the contravention.
- On account of the owner's conduct above, a reduced penalty is requested.

5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorized building work relates to the extension of an approved carport. The carport extension contravenes building line setbacks from the street, with the building work setback 0m in lieu of 5m from Fair Way. This is in contravention of Item 22(f)(iii) of the Development Management Scheme (DMS).
- 5.2 The carport extension also contravenes Condition C.3(d) of the title deed in that the carport is setback 0m in lieu of 4.72m from Fair Way. As the condition was imposed in terms of the Townships Ordinance No 33 of 1934 the carport extension is also a contravention of the MPBL.
- 5.3 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 conducted.
- 5.4 The value of the building work in contravention of the MPBL is based on the table of values attached to the Standard Operating Procedure for Administrative Penalties as follows:

$$R1330.00 \times 16.7m^2 = R22\,211.00$$
- 5.5 The maximum administrative penalty that can be charged is 100% of R22 211,00.
- 5.6 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by Section 129(8) of the MPBL, 2015:

a) The nature, duration, gravity and extent of the contravention

Nature – The nature of the contravention relates to the unauthorized extension to the approved carport.

Duration – From the City's aerial photography it is clear that the carport extension was built sometime in 2002/2003. The duration of the contravention is thus long.

Gravity – The gravity is not particularly serious considering the nature and extent of the contravention, although it is aggravated by the contravention of a title deed restriction.

Extent – At 16,7m², the extent of the contravention is small.

b) The conduct of the person involved in the contravention

The building work took place prior to the current owner purchasing the property. This has been confirmed by the current owner in an affidavit (see Annexure D) as well as from Council's aerial photography.

c) Whether the unlawful conduct was stopped

No. The building work is complete.

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

According to the applicant, the current owner has not previously contravened the By-Law or any other planning law.

- 5.7 In view of the abovementioned considerations, and particularly the conduct of the current owner, this Department recommends that an administrative penalty of R0 be imposed.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The unauthorized building work relates to the extension of a carport that contravenes Item 22(i)(iii) of the Development Management Scheme as well as Condition C.3(d) of the title deed.
- 6.2 The building work was conducted by the previous owner.

7. RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R0 be determined in terms of Section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 441 Bergvliet, in respect of the carport extension as per the plan drawn by Beauvida Architecture etc., drawing number 1812_1_01 Revision 1, dated 3 February 2019.

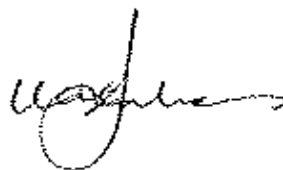
ANNEXURES

Annexure A	Locality plan
Annexure B	Site Development Plan
Annexure C	Applicant's motivation
Annexure D	Affidavit from current owner
Annexure E	Title deed

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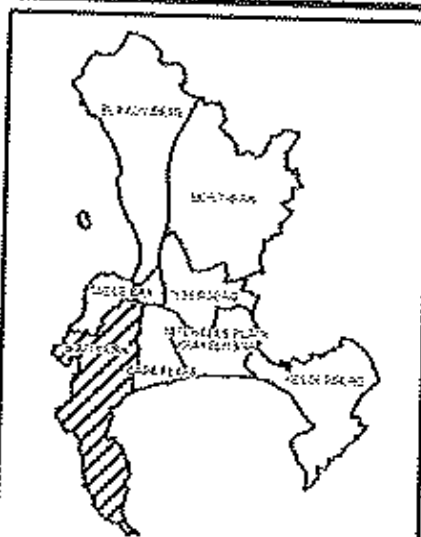
Section Head
Name: P Hoffa
Phone: 021 444 7724
Date: 2019-05-02



District Manager
Name: O Gonsalves
Phone: 021 444 7720
Date: 2019-05-02



Overview



Erf: 441

Allocation: BERGVLIET

Ward: 71

District: SOUTHERN

Suburb: BERGVLIET

Sub Council: Subcouncil 20



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Notices Served

Petition
Signatory

Support
Received

Objections
Received



Generated by:

Date: Thursday, 02 May 2019

File Reference:

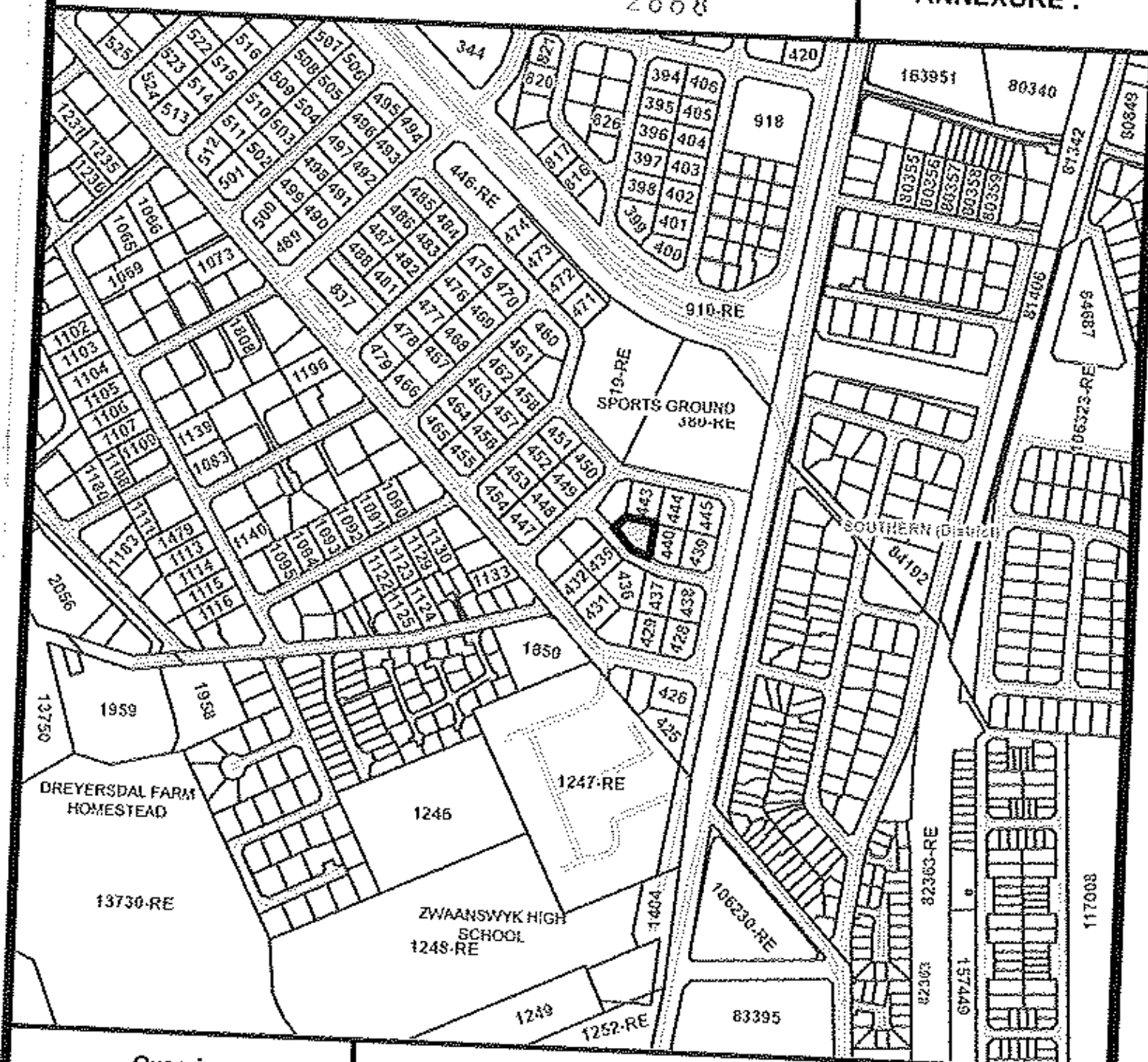


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STAD KAAPSTAD

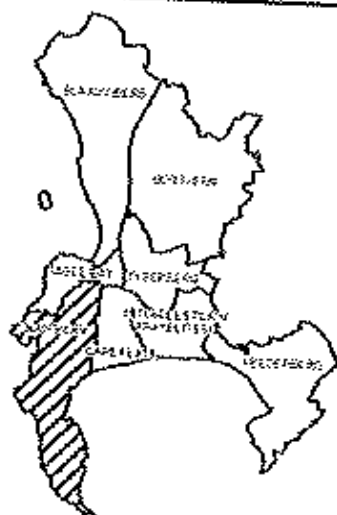
Making sense of our world's together

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ANNEXURE :



Overview



Er: 441

Aliment: BERGVLIET

Ward: 71

District SOUTHERN

Suburb: BERGVLIE

Sub Council: Subcouncil 20



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CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Wolfgang Iser, *Die Akt des Lesens*, Frankfurt 1972.

ANNEXURE 6

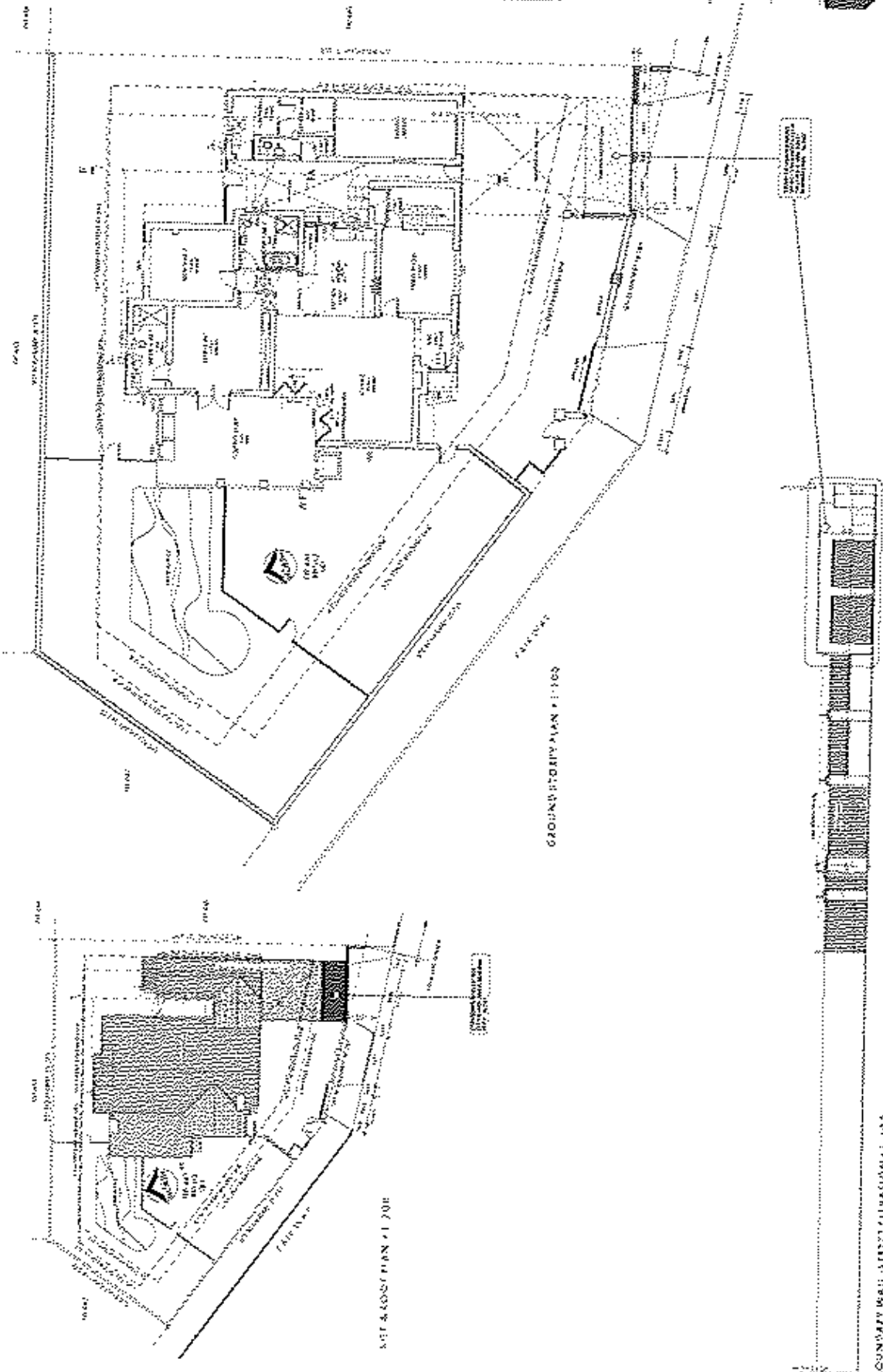
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NO.	REMARKS
1	1. The proposed building is situated on a plot of land measuring 100' x 100'.
2	2. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
3	3. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
4	4. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
5	5. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
6	6. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
7	7. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
8	8. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
9	9. The building is proposed to be constructed on a plot of land measuring 100' x 100'.
10	10. The building is proposed to be constructed on a plot of land measuring 100' x 100'.



1. The proposed building is situated on a plot of land measuring 100' x 100'.



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BEAUVIDA

51 Harbour Rd, Ross Bay
7975, Cape Town
E: beauvida@gmail.com
M: 023 425 6151

3 February 2018

Dept Planning & Building Development Management
City of Cape Town
3 Victoria Road
Plumstead 7801

Dear Sir,

**MOTIVATION TO REDUCE ADMINISTRATIVE PENALTY FOR UNLAWFUL BUILDING WORK:
ERF 441 | 6 FAIR WAY, BERGVLIET**

On behalf of my client, Robert Alexander Bernalzeder, we wish to motivate for a reduction in the administrative penalty due in terms of section 42(r) of the MPBL for unlawful building work.

My client purchased the properties in 2015 and only recently became aware that the as-built carport/garage does not conform to the approved building plans. Previous approved plans show a carport 6m x 6.6m, 2.674m high set back 3m from the street. The existing car port was extended 2.575m to a 0m setback from the road and is 2.8m high. This contravenes the both the title deed & MPBL setbacks. My client could not have foreseen this issue when purchasing the properties and now wishes to ensure that the unlawful structure obtains municipal approval.

My client has displayed integrity in wishing to ensure that his property has legal approval, in spite of this not being of his own making. We thus request the City to consider a reduction in the administrative penalty due for this infringement.

Yours faithfully,



Shilo Shaw Hope

AFFIDAVIT IN RESPECT OF APPLICATION FOR ADMINISTRATIVE PENALTY
IN TERMS OF THE CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015: ERF
441 BERGVLIET, 6 FAIR WAY

REF: 70444403

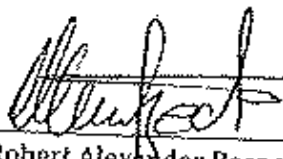
I, the undersigned,

ROBERT ALEXANDER BERNATZEDER

Do hereby make oath and say that:

1. I am an adult male with South African identity number 8211265186085 and I currently reside at 6 Fair Way (Erf 441), Bergvliet, Cape Town, Western Cape.
2. I confirm I purchased the abovementioned property with the illegal building work already constructed and had no involvement whatsoever with the unauthorised building work.

DATED AT CAPE TOWN THIS 16th DAY of APRIL 2019


Robert Alexander Bernatzeder

1. I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

a. Do you know and understand the contents of the declaration?

ANSWER: YES

b. Do you have any objection to taking the prescribed oath?

ANSWER: NO

c. Do you consider the prescribed oath to be binding on your conscience?

ANSWER: YES

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed before me and the deponent's signature was placed thereon in my presence.

SOUTH AFRICAN POLICE SERVICES
KIRSTENHOF
15 APR 2019
MIC
SWID. AFRIKAANSE POLISIEDIENS

1920274-1
B. BOCO

COMMISSIONER OF OATHS

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8002672856801

ALEXIS KLOPPERS
5 Henkie Weber Street
Paparoma
7500

Prepared by me

Alexis Kloppers
CONVEYANCER
Alexis Valentinus Kloppers

Particulars		
Particulars	Amount	Office Use
Purchase price/Value	2 900 000,00	1400,00
Mortgage capital loan		
Person for exemption		Exempt if D.
	Cat.	Section Act

VERBIND		MORTGAGED	
VRI FOR R. 2 000 000,00			
B	000024348 / 2015	REGISTRAR OF DEEDS	
	01 SEP 2015		

DATA / CAPTURE
2015-09-03
PUNELELA MAMATA

T 000048695 / 2015

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

JACQUES ETIENNE STEYL

appeared before me, Registrar of Deeds at Cape Town, the said appearer being duly authorised thereto by a Power of Attorney signed at Cape Town on 15 July 2015 and granted to him by

DAVID JOHN COLLY
Identity Number 550708 5009 08 1
Married out of community of property

DATA / VERIFY
04 SEP 2015
ZANDILE TSHABANGU

And the appraiser declared that his said principal had on 23 May 2015 truly and legally sold and that he, the said Appraiser, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of

ROBERT ALEXANDER BERNATZEDER
Identity Number 821126 5186 08 5
Married out of community of property

his Heirs, Executors, Trustees or Assigns, in full and free property

ERF 441 BERGVLIET
In the City of Cape Town
CAPE DIVISION, WESTERN CAPE PROVINCE

IN EXTENT 881 (Eight Hundred and Eighty One) Square metres

FIRST TRANSFERRED by Deed of Transfer T18333/1952 with Diagram S.G.
No. 2607/1950 relating thereto and **HELD BY** Deed of Transfer T64888/1996;

- A. **SUBJECT** to the conditions referred to in Certificate of Uniform Title T8782/1952.
- B. **NOT SUBJECT** to Condition B on pages 2 and 3 of Deed of Transfer T64888/1996 by virtue of Section 53 of the Mining Titles Registration Amendment Act 24 of 2003.
- C. **SUBJECT** to the following conditions contained in Deed of Transfer T18333/1952, imposed by the Administrator when approving of the Township, namely:

Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No. 401 dated 17th October 1935, and in the memorandum which accompanied the said regulations.



1. The owner of this erf shall without compensation be obliged to allow electricity and water mains and the sewage and drainage including stormwater of any other erf or erven within or without this subdivision to be conveyed across this erf, if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
2. No septic tank shall be erected on this erf.
3. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition, should at any time be suspended or relaxed, he may authorise the necessary suspension by relaxation subject to compliance with such conditions as he may impose:-
 - a) it shall not be subdivided;
 - b) it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith;
 - c) not more than half the area thereof shall be built upon;
 - d) no building or structure nor any portion thereof except boundary walls and fences, shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common

to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3,05 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf.

D. SUBJECT FURTHER to the following conditions contained in Deed of Transfer T18333/1952, imposed by the Divisional Council of the Cape with the approval of the Administrator in favour of itself and its successors-in-title as owners of the remainder of the said Township by Certificate of Uniform Title T8782/1952, namely:-

1.

2.

10. The buyer shall not have the right to open, or allow to cause to be opened and carried on thereon, any canteen, hotel, restaurant or any other place for the sale of wine, beer or spirituous liquor, or any shop or business place whatsoever.

11. The buyer or any tenant or occupier of the property shall not do or suffer to be done on such property anything which in the opinion of the Council is noisome, injurious or objectionable, or a public or private nuisance or a source of damage or disturbance to the owners, tenants or occupiers of other properties in the neighbourhood of the said property. Private gardens and allotments shall be kept in such a state as not to be a nuisance or annoyance to persons using the neighbourhood or to neighbours. If any buyer, tenant or occupier of

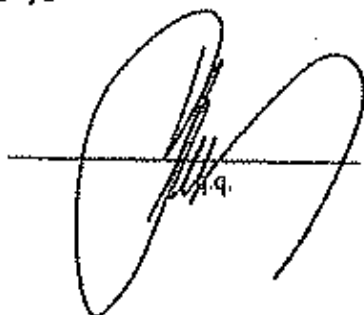
the said property shall by act or omission commit a breach of this clause, the Council may give him or them notice to make good such breach within a time specified in such notice or upon his or their failure so to do the Council or any person authorised by the Council may enter upon the property and take such steps to abate such nuisance as he may deem fit and may recover the cost involved in so doing from the person upon whom such notice has been served.

12. The buyer shall not without the consent in writing of the Council use the said property or any buildings erected or to be placed thereon for the purpose of advertising or display or permit to be displayed thereon any advertisement. Such consent if given, may be withdrawn by the Council at any time in which event the buyer shall remove or discontinue the use of such advertisement.
13. The foregoing provisions are imposed for the benefit of an may be enforced by the Council or any owner of any property within the Bergvliet Township originally registered in the name of the Council.
14. The conditions herein contained shall be in addition to the conditions imposed by the Adminsitrator on all plots with the Bergvliet Township when giving approval to such Township in terms of the provisions of Ordinance No. 33 of 1934.
15. Should the buyer at any time commit a breach of any of the conditions of this agreement, the provisions of clause 7 shall apply and the Council may at its option invoke such provisions.
16. No building of any kind shall be erected on the said property without the written approval of the Council and no poultry shall be kept on the premises without the Council's consent.


WHEREFORE the said Appearer, renouncing all right and title which the said David John Colly, married as aforesaid, heretofore had to the premises, did in consequence also acknowledge him to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said Robert Alexander Bernatzeder, married as aforesaid, his Heirs, Executors, Trustees or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R2 900 000,00 (Two Million Nine Hundred Thousand Rand).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the Registrar of Deeds at Cape Town on 1 SEPTEMBER 2015.



In my presence



REGISTRAR OF DEEDS

