2927

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70147744
CASE OFFICER	N Flo's
CASE OFFICER PHONE NO.	021 444 9540
DISTRICT	Southern
REPORT DATE	06/05/2019

ITEM NO **MPTSW37/05/19**

WARD 62: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 797 CONSTANTIA, 9 BELLVUE AVENUE

1 EXECUTIVE SUMMARY

Property description	797 Constantia
Property address	9 Bellvue Avenue
Site extent	9105m²
Current zoning	Single Residential Zone 1
Current land use	Unauthorised hotel
Overlay zone applicable	Constantia – Tokai Local Area Overlay Zone
Submission date	07/03/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	The application relates to the operation of an unauthorised 12-bedroom hotel that includes a spar, 3 restaurants and events venue.
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?	• 3 notices were served on 31/07/2018, 17/09/2018 and 12/10/2018 by a building inspector. • 1 notice was served on 18/02/2019 by a property inspector.

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

3.1 The property contains an unauthorised hotel that includes 12 bedrooms, an entertainment area, conference room, spar facility, restaurants, gymnasium, 2 marquee tents and staff quarters, as per the Site Development Plan (SDP) attached as Annexure B. The hotel also caters for various events.

3.2 On 04/12/2017 a departure application to permit a floor space of 1 871,6m² in lieu of 1 500m² was approved by a delegated official. The application included additions to the existing dwelling house in the form of a third storey. After the approval, the owner converted the dwelling house into an unauthorised hotel.

3.3 On 16/01/2018 the applicant submitted an application for the determination of an administrative penalty relating to the unauthorised **guest house** with 12 guest suites on the property. The report to the MPT is attached as Annexure I. An administrative penalty of R10 000.00 was imposed by the MPT on 20/03/2018 (see Annexure G) and has been paid by the applicant. It must be noted that the applicant misled the owners of the property, the MPT members and Council with regards to the administrative penalty application, as the guest house was not in operation at the time of when the administrative penalty application was submitted and decided on. Even by the time that the MPT considered the main application as referred to in Paragraph 3.4 below, the guest house/hotel had not yet begun operation.

3.4 The applicant submitted an application to regularise the land use on 30/11/2017 (i.e. an application for deletion of restrictive title deed conditions, deletion of a condition of an existing approval in terms of the Township Ordinance No 33 of 1934, departure (to permit the maximum floor space to be 2000m² in lieu of 1500m²) and consent) to permit a 12 guest suite guest house. The application was tabled at the MPT meeting on 18/09/2018, where the application was referred back due to procedural flaws and the incorrect land use applied for (see Annexure G). (It became clear just before the MPT meeting that the use described in the applicant's motivation differed to what the owners actually intended and that new building work for the guest house had been constructed that did not form part of the application.) The application was subsequently withdrawn by the applicant on 29/11/2018. It is important to note that a number of objection were received for this application during advertising and to this day, the objectors are raising concerns relating to the unauthorised activity on the property.

3.5 The applicant resubmitted an administrative penalty application on 15/11/2018 and a land use application (similar application as per Paragraph 3.4 above). The applications were both factually incorrect and again procedurally flawed and as a result, the application was refused to be accepted. The applicant later withdrew both applications.

3.6 On 14/03/2019 an application to regularise the land use was submitted (i.e. to rezone the property from Single Residential Zone 1 to General Business Subzone GB2, to delete restrictive title deed conditions and delete a condition of an existing approval imposed in terms of the Townships Ordinance No 33 of 1934) in order to permit a hotel which will also include a

spar, restaurants and events venue. The application was incomplete and is currently in the additional information process.

3.7 The owner recently submitted a temporary land use departure (on 29/04/2019) to permit a market day event on the property. The event took place on the 01/05/2019 prior to any decision being made on the application. Prior to the submission of the application, the objector of the land use application that previously appeared before the MPT contacted Council to enquire if the event has approval as the owners has been advertising the event on social media and other media platforms a month in advance (see Annexure F).

3.8 3 notices were served on the owner for the unauthorized building work on 31/07/2018, 17/09/2018 and 12/10/2018 by a building inspector (see Annexure E). 1 notice was served on the owner for the unauthorised land use relating to the hotel on 18/02/2019 by a property inspector (see Annexure E). It is important to note that a court proceeding is still in process for 2 of the notices served relating to unauthorised building work and the other 2 notices have been handed over to Council's legal services which will follow the court process next.

3.9 It must also be noted that the applicant demolished an unauthorised glass structure on the property which was used in association with events and which was an issue when the application was tabled at the MPT on 18/09/2018.

3.10 Note that in terms of the DMS a hotel is defined as: "means a property used as a temporary residence for transient guest, where lodging and meals are provided, and may include:
a) a restaurant or restaurants;
b) conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel; and
c) premises which are licensed to sell alcoholic beverages for consumption on the property;
but does not include an off-sales facility, dwelling house or dwelling unit."

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- An application for the determination of an administrative penalty application was previously submitted, determined and has been paid.
- The administrative penalty was related to a 12 bedroom guesthouse.
- It transpired that the owner is now using the existing house as a hotel which includes unauthorised building work.
- The unauthorised building work commenced in November 2017.
- The unauthorised hotel commenced on 18/12/2018.
- The owner converted internal floor space into 3 restaurants and a spa which was not unauthorised building work.
- The use of 12 bedroom guest accommodation has not changed.
- The title deed conditions are infringed due to the conversion of the existing house into a hotel.
- The proposal requires a rezoning and removal of title deed conditions.

- Certain conditions contained in the title deed are unenforceable.
- No cost is involved for unauthorised building work relating to the existing house being converted to a hotel.
- Other unauthorised building work amounts to ± 300m² at a cost R2 100 000.00 based on internet estimates.
- The unauthorised building work has no adverse impact on the neighbours.
- The extent of the swimming pool is 33m² with an estimated cost of R120 000.00.
- The extent of the bedouin shade covers are 473m² with a cost of R324 953.58.
- The total cost of improvement made amounts to R2 544 953.58.
- Notices were served to cease operation and for unauthorised building work.
- The landowner is operating the guesthouse / hotel with integrity and has invested a large amount of money in the property.
- The guesthouse activity does not detract from the neighbourhood or cause any of the neighbours any harm.
- The unlawful conduct has not stopped.
- The owner has previously contravened the MPBL.
- Unauthorised activity commenced due to the 2018 Christmas festive season.
- The municipal valuation of the property is R14 900 000.00.

5 ASSESSMENT OF APPLICATION

5.1 The administrative penalty is required for the unauthorised building work and land use on the subject property. Item 21 of the Development Management Scheme (DMS) relating to land use is being contravened (a hotel, a spar, the 3 restaurants (comprising 600m²) and the events venue are not permitted uses in terms of Single Residential Zone 1). Items 22(b) and 22(d) of the DMS are also being contravened which relates floor space (3390m² in lieu of 1871.6m² of the previously approved floor space) and the 6m common boundary setback for the store rooms).

5.2 In addition, the use and structures on the property also contraventions conditions contained in title deed T87428/2005 (see Annexure D) which were imposed in terms of the Townships Ordinance No 33 of 1934. This is effectively a further contravention of the MPBL. The contravened conditions are:

- Condition C.4(b) – which restricts the use of the property to only 1 dwelling.
- Condition C.4(c) – which states "no buildings or structure or any portion thereof except boundary walls and fences shall be erected nearer than 9.45 metres to any boundary of this erf..." (i.e marque tent, swimming pool, staff rooms, store rooms and guard house are located within the setback distance of 9.45 metres).

5.3 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.

5.4 In terms of section 129(7)(b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

5.5 The municipal value of the property is R25 000 000.00 in terms of GV2015 (see Annexure H).

5.6 Effectively the entire property is being use in contravention of the MPBL and thus the amount that can be charged for the land use contravention is R25 000 000.00. (Note that the previous contravention imposed by the MPT related to a guest house, whereas the use is now a hotel with ancillary uses.)

5.7 The applicant has stated that the value of the unauthorised building work that contravenes the MPBL is R2 544 953.58. Although this figure has not been confirmed by a registered valuer or a quantity surveyor, as the list of building values attached to the Standard Operating Procedure for Administrative Penalties does not include all aspects of the contraventions, and for pragmatic reasons, the applicant's value is accepted for the purpose of determining the maximum administrative penalty that can be imposed.

5.8 An amount which is not more than 100% of R27 444 953.58 may be imposed as an administrative penalty.

5.9 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 nature of the contravention relates to the unauthorised building work and land uses relating to a hotel as detailed in Paragraphs 5.1 and 5.2 above.

Duration – According to the applicant the unauthorised building work commenced in November 2017 and the hotel began operation on 18/12/2018. Therefore, the duration of the building work is thus moderate and the duration of the land use contravention is short.

Gravity – The gravity of the contravention is serious given the scale of the hotel with the associated uses (including 3 restaurants, spar and events venue) and the fact that it also contravenes title deed conditions. This Department disagrees with the applicant's statement that the impact is low. The visual impact, impact on the biophysical environment (with most vegetation having been removed), and the traffic and parking issues are potentially very significant.

Extent – The extent of the land use contravention is large, given that the entire property is being used for the hotel and extent of building work contravention is also very large, as is clear from the SDPs.

b) The conduct of the person involved in the contravention

It should be noted that in the first administrative penalty application relating to the unauthorised guest house, this Department found that the owner has thus been deliberately and willfully engaged in the unlawful activity without land use approval. It was concluded that the owner's conduct could not be condoned.

After numerous meetings with this Department and after the previous application was referred back by MPT, the owner was well aware that the activity was in contravention of the MPBL. The owner, further continued to make unauthorised alterations to the property to include now a spar and restaurants which was not disclosed as part of the previous application. The owner also further hosts events (see Annexure F), which Council was only

made aware of by the surrounding property owners. The owner has not been forthcoming with regard to what is proposed for the property and at times submitted incorrect plans. Furthermore, only 1 application was submitted recently for an event which was just a few days prior to the event, thus giving Council no time to make a proper assessment or to advertise the application. This was despite the owner being well aware of the implications of the hosting of events.

It must be stressed that the applicant took ±6 months from the date of the MPT meeting that referred the application back to submit the correct administration penalty and land use application. The applicant has not been cooperative in submitting the correct application, and the correct application (albeit incomplete) was only submitted after a property inspector served a notice.

The owner also continues to market the hotel despite the activity having no approval from Council on different media platforms, which includes Facebook, the Constantia Bulletin and their website: www.purplerayn.co.za (see Annexure F).

It must also be noted that the applicant, being a regular planning applicant, misled Council and the MPT with regard to the first administrative penalty application, which was not required at the time for a contravention relating to land use and continued to provide incorrect information.

In this regard it must be noted that Section 78 of the MPBL states that:
(1) An applicant must ensure that –
(a) no misrepresentation is made to the City;
(b) the City is not misled;
(c) all information furnished to the City is accurate; and
(d) the application does not omit any relevant information.
(2) A person who contravenes subsections (1)(a) or (1)(b) is guilty an offence and upon conviction is liable to the penalties contemplated in Sections 133(2) and 133(3).

The conduct of both the applicant and the owner of the property cannot be condoned.

c) Whether the unlawful conduct was stopped
The unlawful conduct has not stopped.

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 owner of the property has not previously contravened this By-law or any other planning law.

5.10 In view of the abovementioned considerations, and particularly the conduct of the persons involved in the contravention, the gravity of the contravention, and the intention that, to some extent at least, administrative penalties are meant to serve as a deterrent, this Department recommends that an administrative penalty of R100 000.00 be imposed. (Note that this recommendation takes into account the administrative penalty of R10 000 already paid for a guest house.)

6 REASONS FOR DECISION

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Reasons for the recommended decision may be summarised as follows:

6.1 The hotel and building work contravene Items 21, 22(b) and 22(d) of the Development Management Scheme and conditions C.4(b) and C4(c) of title deed T87428/2005 that were imposed in terms of the Townships Ordinance 33 of 1934.

6.2 The duration of the building work is moderate and the duration of the land use contravention is short

6.3 The gravity of the contravention is serious given the scale of the hotel with the associated uses (including 3 restaurants, spar and events venue) and the fact that it also contravenes title deed conditions.

6.4 The extent of the land use contravention is large, given that the entire property is being used for the hotel and extent of building work contravention is also very large.

6.5 The unlawful conduct has not stopped.

6.6 The conduct of both the applicant and the owner of the property cannot be condoned and is unacceptable. They withheld key information and misled the City, which is an offence in terms of Section 78 of the MPBL. The owner is well aware of the zoning and title deed implications of the hotel and the contraventions are wilful.

6.7 As far as can be ascertained, the current owner 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 R100 000.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 797 Constantia regarding the unauthorised hotel and building work on the property as per the plans drawn by Barry M. Abrahams Architecture, numbered 8361.1, 8361.2, 8361.3 and 8361.4 all revision D, all dated February 2019.

ANNEXURES

Annexure A	Locality plan
Annexure B	Site Development Plan
Annexure C	Applicant's motivation
Annexure D	Title deed
Annexure E	Notices served
Annexure F	Advertising evidence
Annexure G	Previous MPT minutes
Annexure H	Municipal valuation
Annexure I	Previous administrative penalty report to MPT dated 05/03/2018

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Section Head : Land Use Management

Name P Hoffa

Tel no 021 444 7724

Date 2019-05-06

Comment

District Manager

Name U Gonsalves

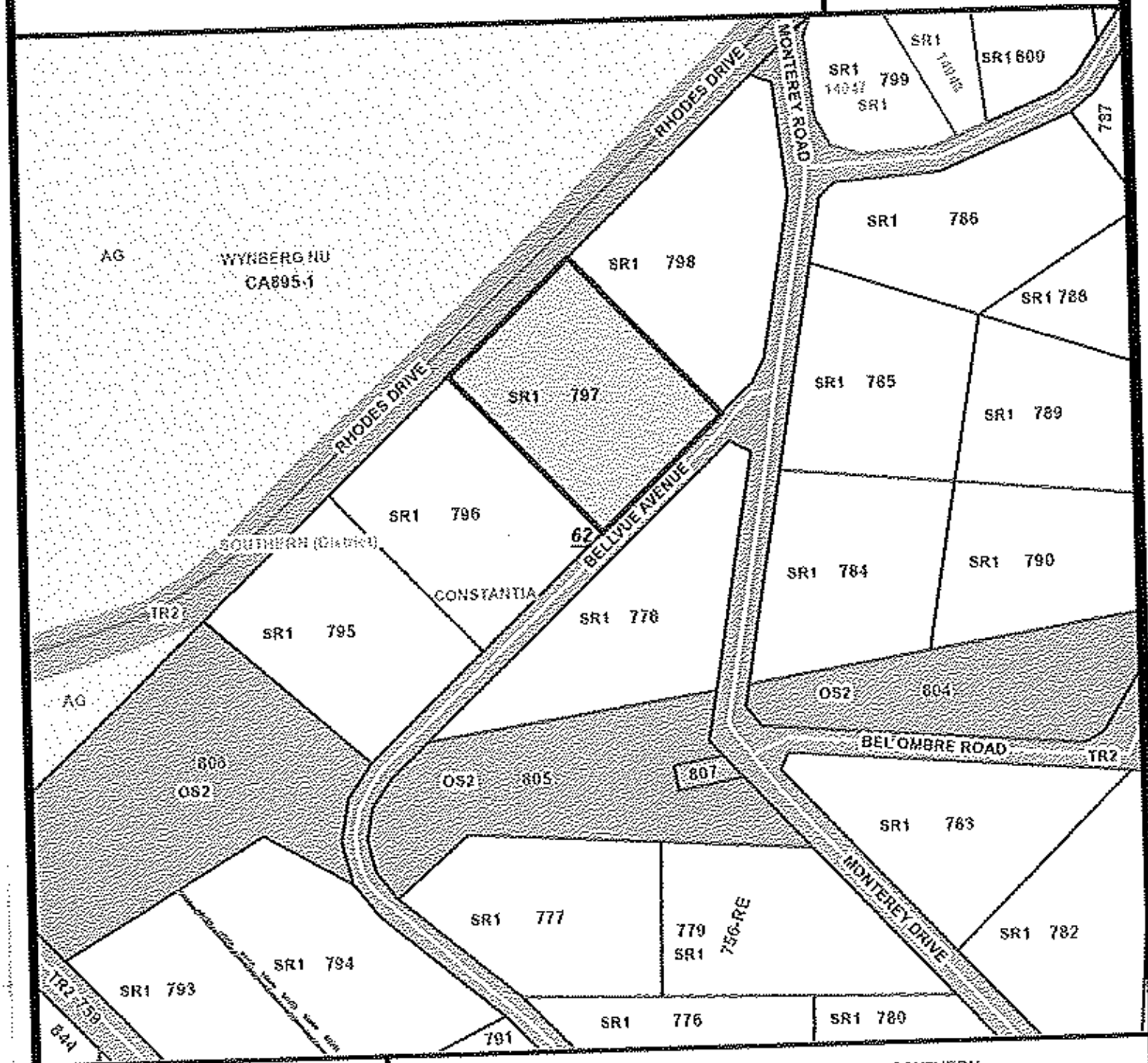
Tel no 021 444 7720

Date 2019-05-06

Comment

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP 2935

ANNEXURE : A



Overview

Erf: 797

Allotment: CONSTANTIA

Ward: 62

District: SOUTHERN

Suburb: CONSTANTIA

Sub Council: Subcouncil 20

N 1:2 791	Notices Served	●	Support Received	✓
	Petition Signatory	■	Objections Received	✗

Generated by:

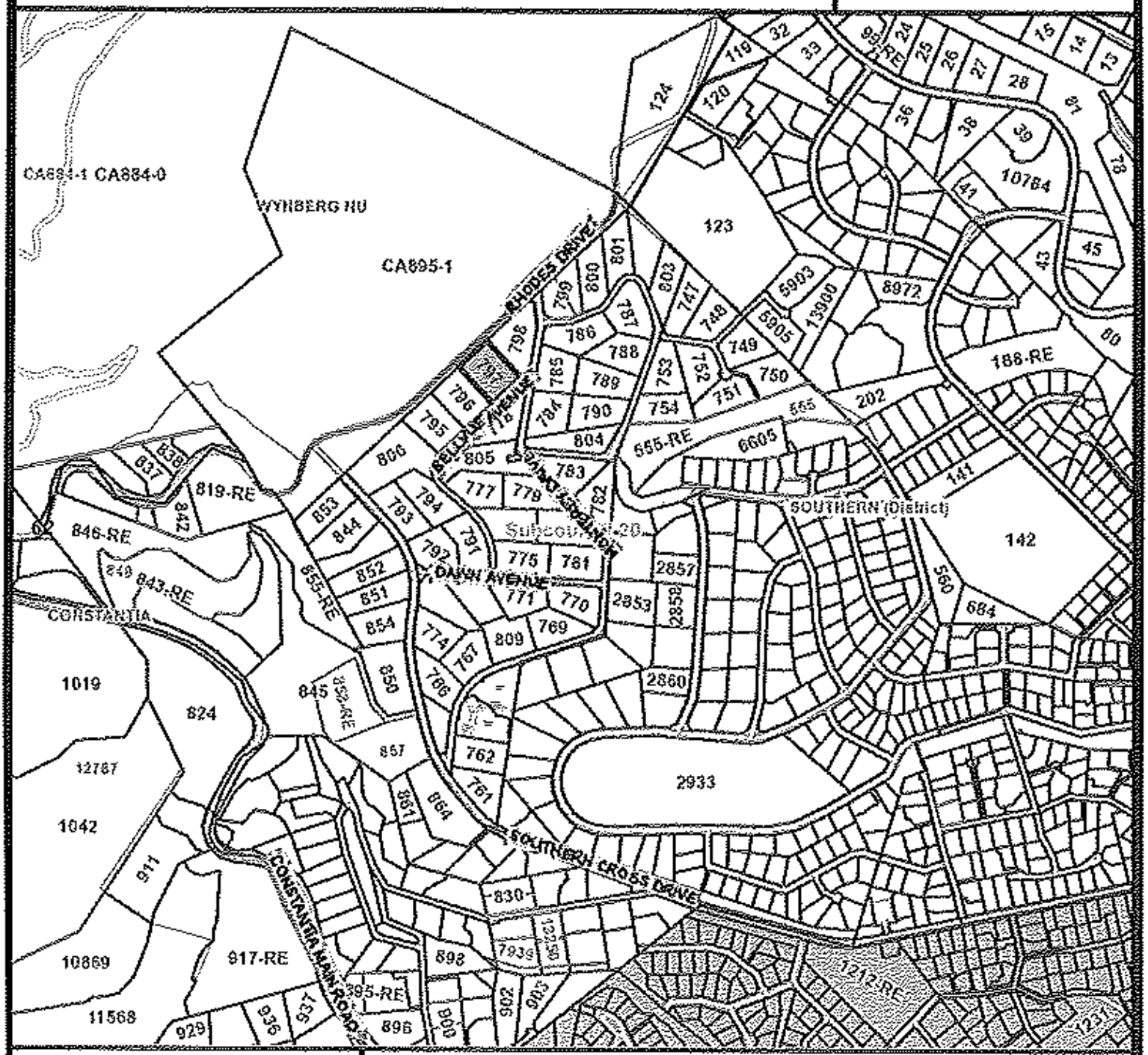
Date: Friday, May 3, 2019

File Reference:

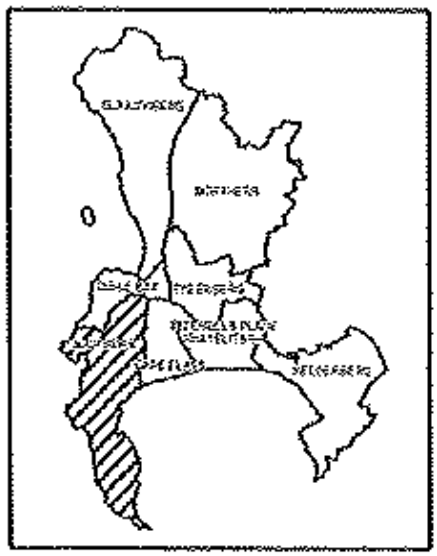
CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP 2936

ANNEXURE :



Overview



Erf: 797

Allotment: CONSTANTIA

Ward: 62

District: SOUTHERN

Suburb: CONSTANTIA

Sub Council: Subcouncil 20

1:12 448

Notices Served	●	Support Received	✓
Petition Signatory	■	Objections Received	✗

Generated by:

Date: Monday, May 6, 2019

File Reference:

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

ANNEXURE B

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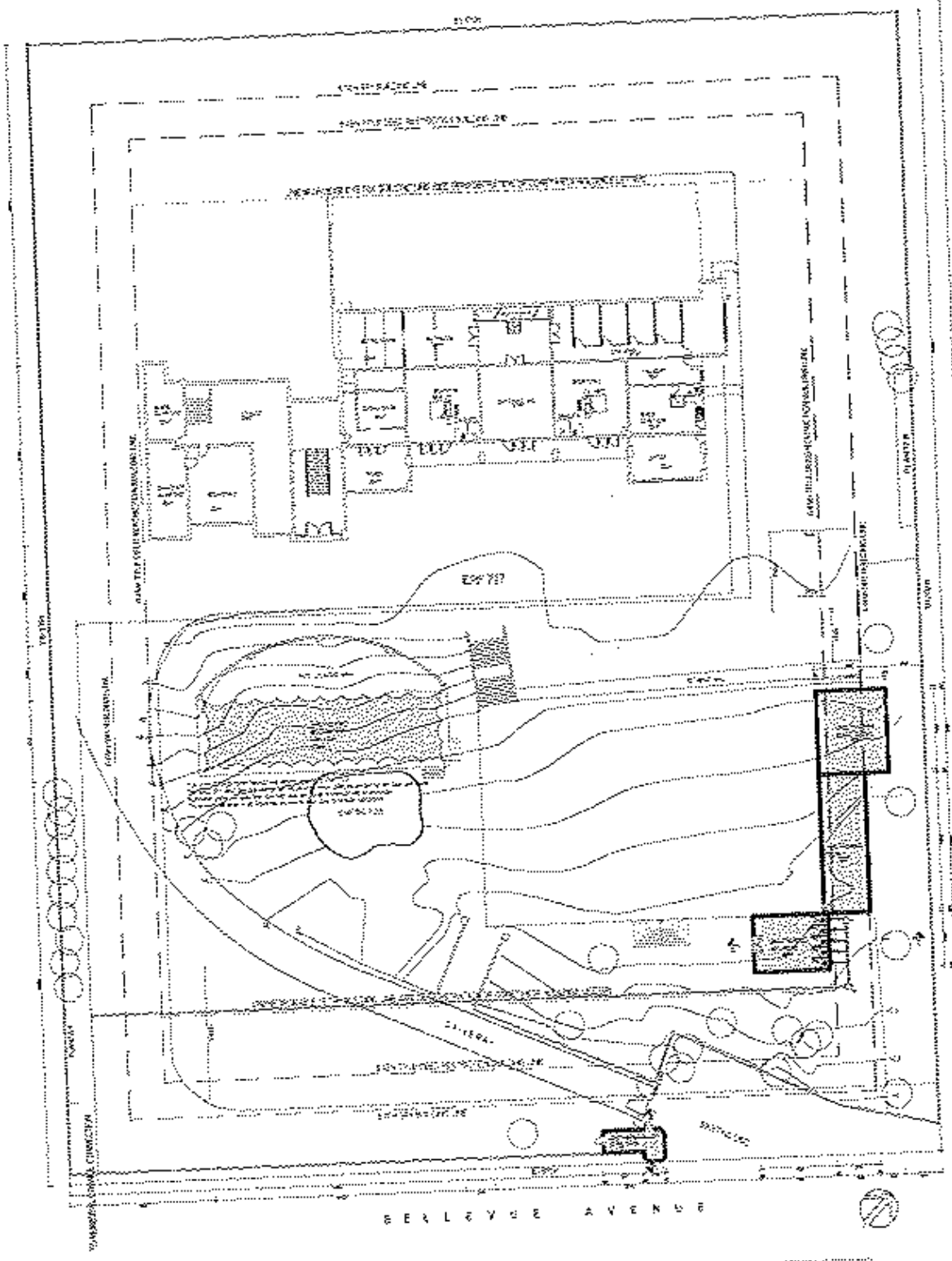
RHODES DRIVE



LOWER GROUND STOREY PLAN

Barry M. Abrahams
ARCHITECTURE

8361.1 D

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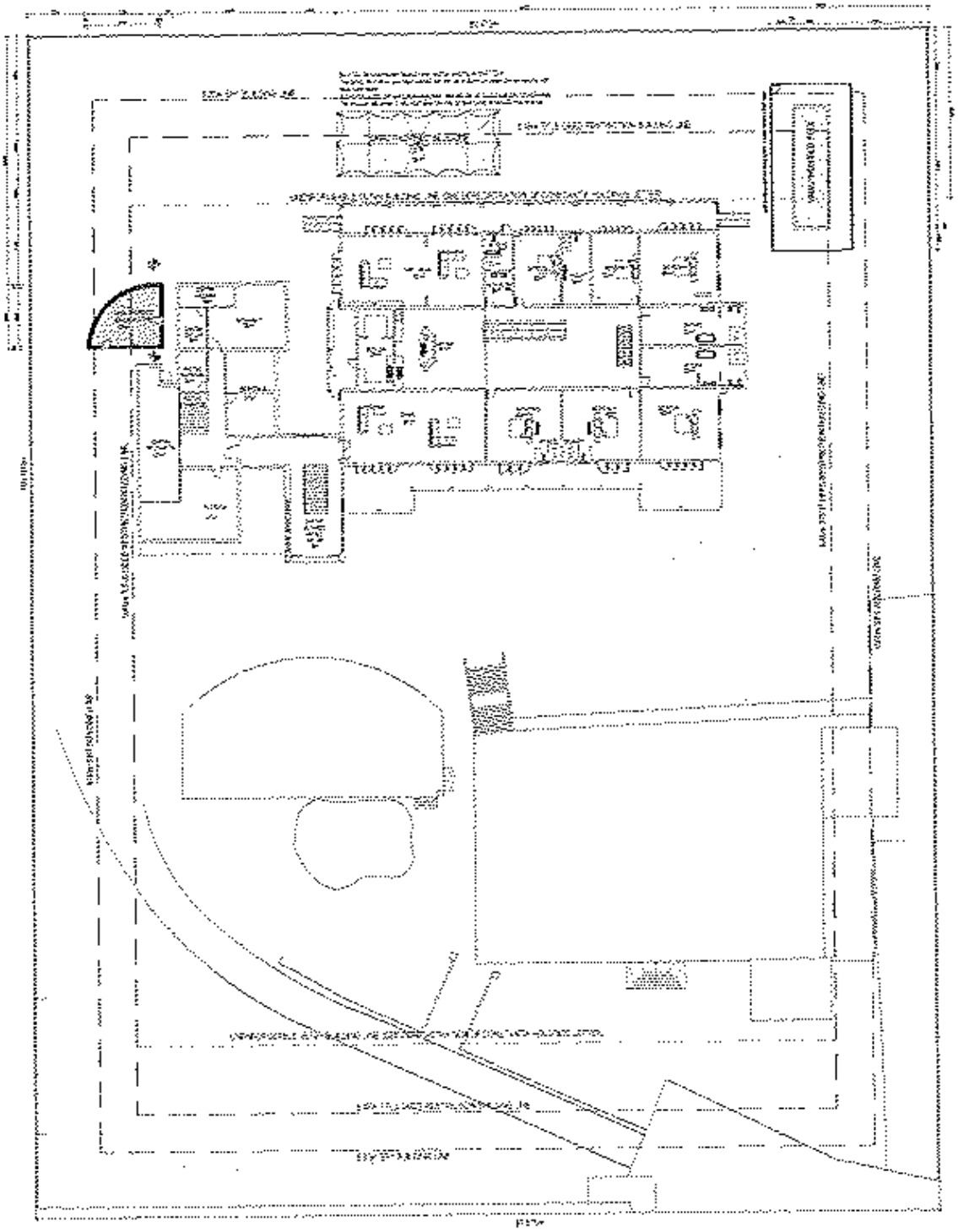
RHODES DRIVE



BELLEVUE AVENUE

GROUND STOREY PLAN

CONSTRUCTION SPECIFICATION

CONSTRUCTION SPECIFICATION

Barry M. Rosenberg
ARCHITECTURE

8361.2 D

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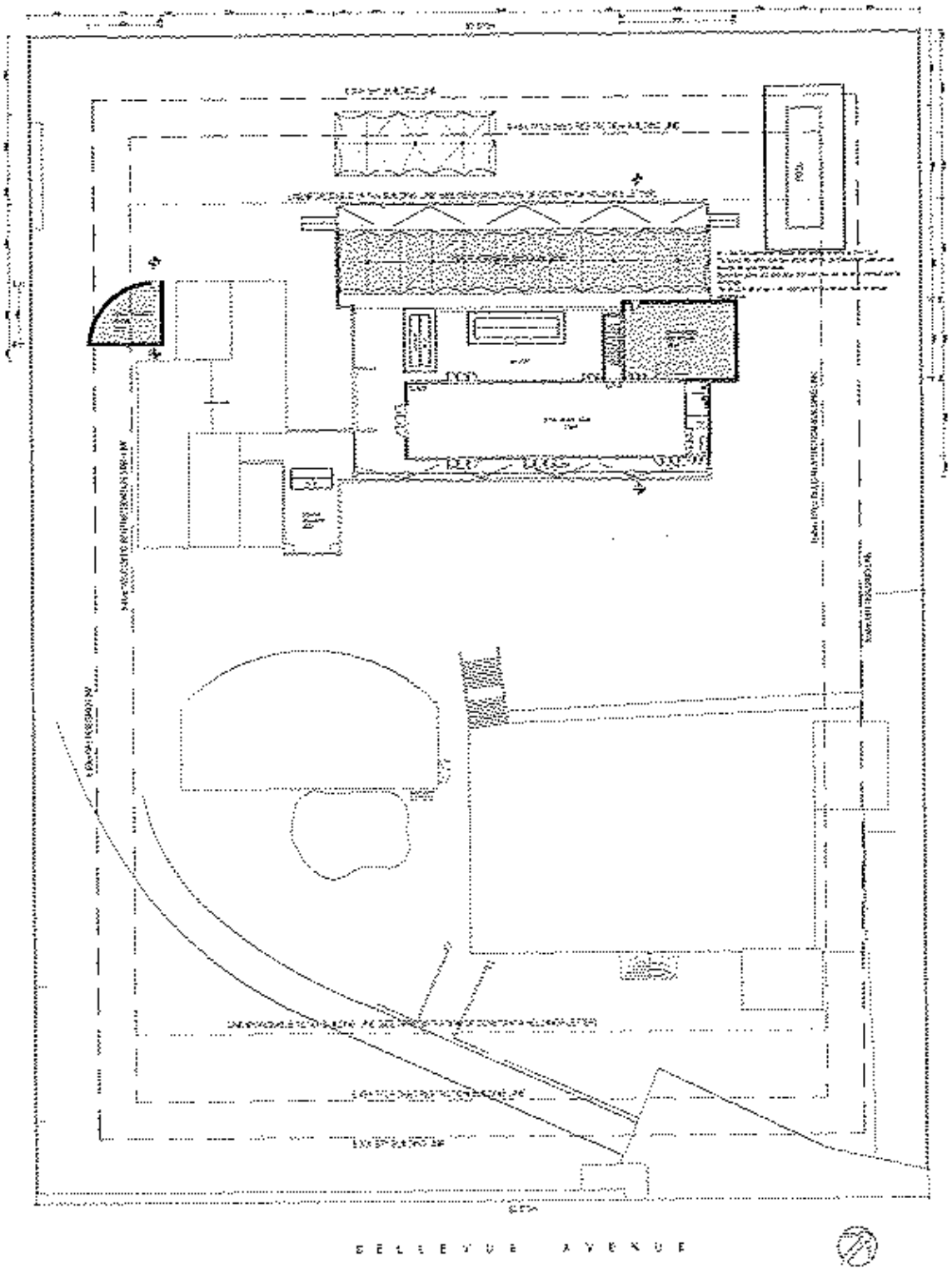
RHODES DRIVE



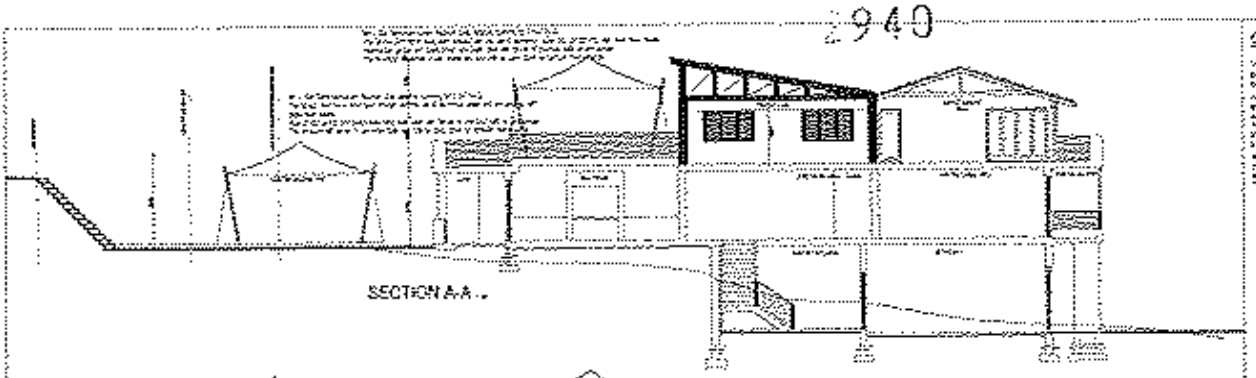
BELLEVUE AVENUE

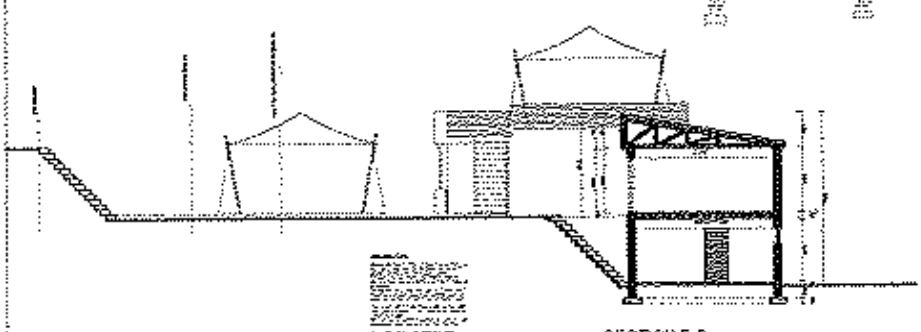
FIRST STOREY PLAN

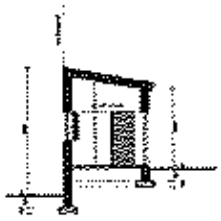
CONSTRUCTION SPECIFICATION

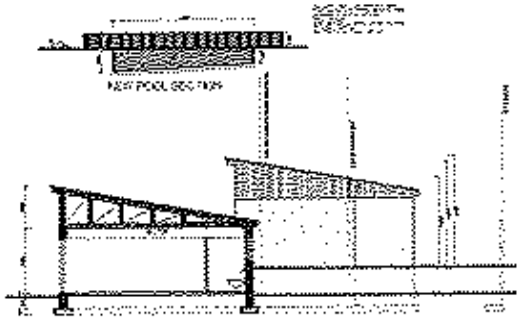
Gary H. Abrahams
ARCHITECTURE

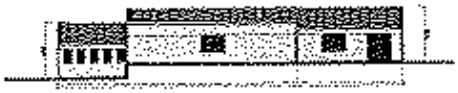
8361.3 D

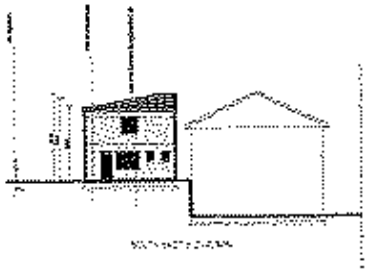


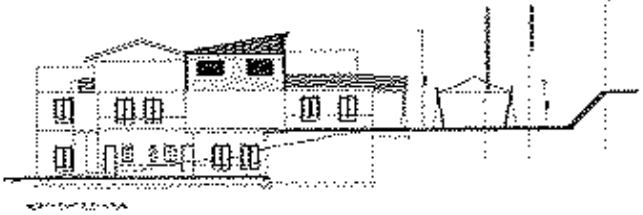


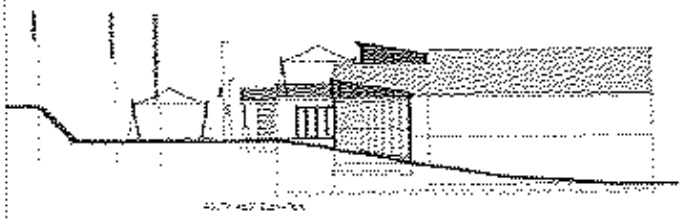












Harry M. Abrahams
ARCHITECTURE

8361.4 D

ANNEXURE C

PLAN AFRICA CONSULTING

Address: No. 14 Coetzenberg Road, Edgemead, 7441
Cell: 076 832 8005
Fax: 0862 603 701
E-mail: plan.africa.consulting@gmail.com

APPLICATION FOR DETERMINATION OF ADMINISTRATIVE PENALTY: PROPERTY SITUATED AT NO. 9 BELLEVUE AVENUE, CONSTANTIA, BEING ERF 797, CONSTANTIA: HOTEL USE AND UNAUTHORISED BUILDING WORK

APPLICATION/MOTIVATION: Application is hereby made for the determination of an administrative penalty in respect of Erf 797, Constantia, zoned Single Residential, with regard to the use of the existing house on the property as a hotel and with regard to unauthorized building work.

According to the enclosed hotel SDP the total floor of the existing house is 1306 sq. m's.

Application had previously been made for the determination of an administrative penalty for the use of the existing house for guesthouse purposes and the City of Cape Town then determined an administrative penalty, which was then paid on 20 April 2018.

Case number of previous admin penalty application is 70388510.

The admin penalty paid in respect of Case 70388510 was in respect of the use of the house as a 12 bedroom guesthouse.

It transpires that the landowner is now using the existing house as a hotel and that there is some unauthorized building work on the property.

According to the landowner, he commenced with the unauthorized building

work in November 2017 and he says he commenced with the unauthorized hotel use on 18 December 2018.

The landowner has converted some of the internal floor space of the existing house into three restaurants and a spa, which then triggered this application for the payment of an additional admin penalty.

No unauthorized building work was executed in order to achieve internal restaurant and spa space conversion.

The rest of the use of the house in terms of providing 12 bedroom guest accommodation has not changed.

According to the architect, the total floor area of the three restaurants is 600 sq. m's and the total floor area of the spa area is 281 sq. m's, resulting in a total area of floor space converted for restaurant and spa purposes to the extent of 881 sq. m's. The enclosed hotel SDP shows the three restaurants and the spa area.

In summary, the total floor area of the three restaurants and the spa area which places the use of the land in a hotel land use/ zoning category is 881 sq. m's.

No additional building work was executed to facilitate this internal space conversion.

The three restaurants and spa area were established within the existing space of the building, so there was no unauthorized building work executed in order to incorporate the three restaurants and spa area into the existing house.

This then caused a zoning infringement and a contravention of Title Condition C.4.(b) imposed in favour of the then Administrator

which restricts the use of the land to 'one dwelling' and 'outbuildings'.

This then triggers a rezoning of the property and a removal of restrictions. Title Conditions D.(i), D.(ii) and D.(iii) are defunct and unenforceable.

An ADMIN PENALTY therefore has to be determined for the 881 sq. m's of area occupied by the three restaurants and spa area.

An ADMIN PENALTY has already been paid in respect of the use of the existing house as a twelve-bedroom guesthouse - Paid on 20 April 2018

According to the architect, the extent of the total area of unauthorized building work comprising such things as stores, ablutions facilities, prep-kitchen and a guardhouse is 300 sq. m's.

Enclosed please find a draft building plan and an SDP showing the unauthorized building work comprising storerooms, ablution facilities, guardhouse and prep-kitchen.

According to the architect, the total extent of the area covered with unauthorized Bedouin Shade Covers is 473 sq. m's. Enclosed please find a draft building plan and an SDP showing the three unauthorized Bedouin Shade Covers.

The hotel use of the existing house contravenes the single residential zoning of the land and the landowner is in the process of submitting a rezoning application to regularize the hotel use of the property, which has been triggered by the introduction of the three restaurants and the spa area.

The hotel use of the property also contravenes Title Condition C.4.(b) imposed in favour of the then Administrator which restricts the use of the land to 'one dwelling' and 'outbuildings'.

Application to be made for the removal of this Title Deed Restriction.

The hotel use of the property also contravenes Title Conditions D.(i) and D.(ii) imposed in favour of Constantia Holdings (Pty) Ltd, which was deregistered on 1 December 1987, in accordance with enclosed Company Report, which effectively makes Title Conditions D(i) and D(ii) unenforceable and defunct, by virtue of the deregistration of the company.

The unauthorized building work, excluding the Bedouin Shade Covers, as pertaining to two unauthorized stores of 34 sq. m's each, the guardhouse and another two stores of 53 sq. m's and 49 sq. m's in extent, contravene the 9.45 meter title deed common boundary building line imposed by the then Administrator in terms of Title Deed Condition C.4.(c) and the 9.45 meter title deed common boundary building line imposed by Constantia Holdings (Pty) Ltd, in terms of Title Deed Condition D(iii).

However, as Constantia Holdings (Pty) Ltd was deregistered on 1 December 1987, in accordance with enclosed Company Report, Title Deed Condition D.(iii) is no longer enforceable.

The title deed common boundary building lines imposed by Constantia Holdings (Pty) Ltd is therefore defunct and unenforceable by virtue of the deregistration of the company.

A Bedouin Shade Cover located at the back of the property facing onto Rhodes Drive,

which covers an area of 90 sq. m's also encroaches upon the 9.45 meter title deed common boundary building line imposed by Constantia Holdings (Pty) Ltd.

The 9.45 meter title deed common boundary building line imposed by Constantia Holdings (Pty) Ltd is defunct and unenforceable by virtue of the deregistration of the company.

The Bedouin Shade Cover at the back of the property facing onto Rhodes Drive which covers an area of 90 sq. m's, furthermore also encroaches upon the 15.74 meter title deed street building line along Rhodes Drive imposed by Constantia Holdings (Pty) Ltd.

The 15.74 meter title deed street building line along Rhodes Drive imposed by Constantia Holdings (Pty) Ltd is also defunct and unenforceable by virtue of the deregistration of the company.

Building work comprising two unauthorized stores of 34 sq. m's each, the guardhouse and the other two stores 53 sq. m's and 49 sq. m's encroach upon Title Deed Condition C.4.(c). Total area 170 sq. m's.

Title Deed Condition C.4.(c) is registered in favour of the 'Controlling Authority' that is the then Divisional Council of the Cape, which thereby implication grants the City of Cape Town as the successor of the Divisional Council of the Cape, the authority to relax the applicable 9.45 meter title deed common boundary building lines, in order to accommodate the two unauthorized stores of 34 sq. m's each, the guardhouse and the other two stores 53 sq. m's and 49 sq. m's respectively.

In summary, the hotel use of the property contravenes the applicable zoning provi-

sions of the Planning By-law and Title Condition C.4.(b) imposed in favour of the then Administrator, which would then require the property to be rezoned and for Title Condition C.4.(b) to be removed.

The unauthorized building work, excluding the Bedouin Shade Covers, totaling an area of 170 sq. m's encroach upon Title Deed Condition C.4.(c) imposed by the then Administrator in favour of the Controlling Authority, which then grants the City of Cape Town the authority to relax these 9.45 meter title deed common boundary building lines.

From a land use point of view the use of the property contravenes the zoning stipulations of the property and Title Condition C.4.(b) imposed in favour of the then Administrator – Removal of restrictions required.

A total area of 170 sq. m's of unauthorized building work such as the stores and ablution facilities and the guardhouse encroaches upon Title Deed Condition C.4.(c) imposed by the then Administrator in favour of the Controlling Authority – Title deed building line relaxation by the City of Cape Town permitted.

The total floor area of the three restaurants is 600 sq. m's and the total floor area of the spa area is 281 sq. m's, resulting in a total area of floor space converted for restaurant and spa purposes to the extent of 881 sq. m's.

The enclosed hotel SDP shows the three restaurants and the spa area.

ADMIN PENALTY to be determined for the unauthorized usage of 881 sq. m's for restaurants and spa purposes.

The extent of the total area of unauthorized building work is 300 sq. m's.

Enclosed please find a draft building plan and an SDP showing the unauthorized building work comprising storerooms, ablution facilities, guardhouse and prep-kitchen.

ADMIN PENALTY to be determined for 300 sq. m's of unauthorized building work comprising such buildings as stores and ablution facilities.

Contravention of title deed building line imposed in terms of Title Condition C.4.(c) can be disposed of by City of Cape Town in the form of a title deed building line relaxation.

The extent of the total area covered with unauthorized Bedouin Shade Covers is 473 sq. m's.

Enclosed please find a draft building plan and an SDP showing the three unauthorized Bedouin Shade Covers.

ADMIN PENALTY to be determined for 473 sq. m's of area covered by unauthorized shade covers.

One of the Bedouin Shade Covers covering an area of 90 sq. m's contravenes title deed building line condition C.4.(c), which can be relaxed by City of Cape Town. Formal departure application to be submitted to the City of Cape Town in this regard.

Title Conditions D.(i), D.(ii) and D.(iii) are defunct and unenforceable due to the deregistration Constantia Holdings (Pty) Ltd.

VALUE/COSTING OF CONTRAVENTIONS:

GUESTHOUSE OPERATIONS:

Admin Penalty paid on paid on 20 April 2018 – Case number of previous admin penalty application is 70388510.

RESTAURANTS AND SPAS:

The conversion of internal space for operating three restaurants and spa area incorporating a total area of 881 sq. m's – No fixed structures needed to be altered and the conversion was done without costing the landowner anything.

Duration of contravention: The landowner commenced restaurant and spa operations on 18 December 2018.

Gravity of contravention: The restaurant and spa operations have had no adverse impact on the neighbours.

Extent of contravention: 881 sq. m's.

Cost of work required: No cost incurred to execute physical conversion of internal space – No building work done.

FIXED PROPERTY BUILDING WORK:

The total sq. meterage of all the unauthorized building work done amount to a total area of 300 sq. m's.

Internet research shows building costs in Cape Town to hover around R6500 and R7000 per sq. m at present.
The landowner states that the construction costs varied between R5,000 and R10,000 per sq. m because of the slope of the land.

So working on an average of R7,000 is considered to be reasonable.

So working with an estimated building cost of R7000-00 per sq. m, the total estimated cost of construction of the additional 300 sq. m's is R2,100,000-00 (R2.1-million).

Duration of contravention: The landowner commenced unauthorized building work in November 2017.

Gravity of contravention: The unauthorized building work has no adverse impact on the neighbours.

Extent of contravention: 300 sq. m's.

Cost of work required: R2,1-million.

SWIMMING POOL:

A swimming pool with a surface area of 33 sq. m's was built at the back of the property.

Estimated costs: R120,000-00.

Building work commenced during November 2017 without impacting negatively on neighbours.

BEDOUIN SHADE COVERS:

Total area of removable Bedouin Shade Covers is 473 sq. m's. Actual total costs invoiced for: R324,953-58.

Copies of invoices enclosed herewith re Bedouin Tent Covers. Invoice date 5 February 2018.
Removable structures – No negative impact on neighbours.

TOTAL COST OF IMPROVEMENTS MADE TO EXECUTE UNAUTHORISED WORK AND TO IMPLEMENT UNAUTHORISED RESTAURANT AND SPA USE: R2,544,953-58.

NOTICE TO CEASE:	Yes, Property Inspector of the City of Cape Town served notice upon landowner on 18 February 2019 to cease guesthouse/hotel operations. Admin penalty has been paid in respect of guesthouse operations. Case number of previous admin penalty application is 70388510. Admin penalty to be paid in respect of three restaurants and spa areas totaling 881 sq. m's. Application to be made for hotel rezoning. Notice has also been served on the land-owner for unauthorized building work.

TITLE CONDITIONS CONTRAVENED:

Title condition C.4.(b):

- Title condition C.4.(b) restricts use of property to 'ONE DWELLING ONLY'.
- Title condition C.4.(b) is contravened re the use of property for hotel purposes – Requires removal of restrictions – Separate application to be made to the City of Cape Town in this regard.

Title condition C.4.(c):

- Title condition C.4.(c) imposes a 9.45 METER COMMON BOUNDARY BUILDING LINE IMPOSED BY ADMINSTRATOR IN FAVOUR OF CONTROLLING AUTHORITY.
- Title condition C.4.(c) encroached upon by various outbuildings covering a total area of 170 sq. m's and incorporates buildings such as ablution facilities, storerooms and a guardhouse.
- A Bedouin Shade Cover at the back of the property, facing onto Rhodes Drive covering an area of 90 sq. m's also contravenes Title condition C.4.(c).
- Title condition C.4.(c) can be relaxed by the City of Cape Town as the City of Cape Town is the 'Controlling Authority'. A formal application will be submitted to the City of Cape Town in this regard for the

relaxation of the building line requirement set out in Title condition C.4.(c).

Title Conditions D.(i), D.(ii) and D.(iii):

- Title Conditions D.(i), D.(ii) and D.(iii) are defunct and unenforceable due to the deregistration Constantia Holdings (Pty) Ltd.

TP CONTRAVENTIONS:

LAND USE:

Operating a hotel without Council's consent. Requires the rezoning of the land, which application will be submitted to Council shortly.

Application was previously made for the determination of an administrative penalty in respect of the use of the existing house as a twelve bedroom guesthouse and the landowner was then invoiced by Council and the admin penalty was then paid accordingly – Refer to Case ID 70388510. Invoice paid on 20 April 2018 – Proof of payment enclosed.

The landowner has subsequently converted a total floor area of internal floor space in the extent of 881 sq. m's to incorporate three restaurants and a spa area.

Admin Penalty to be paid in respect of additional area of 881 sq. m's.

UNLAWFUL BUILDING WORK: The guardhouse with a floor area of 16 sq. m's encroaches upon 6.0 meter single residential building line. A formal application for building line relaxation to be made to the City of Cape Town.

CONDUCT OF PERSON INVOLVED IN CONTRAVENTION:

The landowner is operating the guesthouse/ hotel with integrity and he has invested a lot of money in developing the property to ensure that it is an asset to the community.

The guesthouse/hotel activity does not detract from the neighbourhood or cause any of the neighbours any harm.

There is a lot of road traffic noise emanating from Rhodes Drive which exceeds that of the ambient noise in the area, which makes any activities on the subject property and that of the neighbours inaudible to the surrounding area.

WHETHER UNLAWFUL CONDUCT WAS STOPPED:

No, the unlawful conduct has not stopped. The guesthouse/hotel activity has been in operation since 18 December 2018.

WHETHER PERSON INVOLVED HAS PREVIOUSLY CONTRAVENED THE LAW:

Yes, with regard to conversion of house into guesthouse (admin penalty paid) and unauthorized building work listed herein.

Refer to Case ID 70388510. Invoice paid on 20 April 2018 – Proof of payment enclosed.

MITIGATING FACTORS: The landowner decided to commence the operation of the guesthouse/hotel at an earlier date (December 2018) to ensure that the operation is up and running, in order to take advantage of the 2018/2019 Christmas tourist season.

MUNICIPAL VALUATION: The current municipal valuation of the property (land and buildings) is R14.9-million.

CONCLUSION: In the determination of the administrative penalty, it is recommended that Council take into consideration the above aspects and the fact that property is currently being utilized for its highest and best use, without harming the neighbours or detracting from the amenity of the area.

Formal application is in the process of being submitted to the City of Cape Town for the rezoning of the property for hotel purposes and the removal of the applicable title conditions and town planning departures.

Adriaan du Plessis van der Merwe
PLAN AFRICA CONSULTING
Date: 01 March 2019

CERTIFIED A TRUE COPY OF THE ORIGINAL WHICH WAS EXAMINED. 10/08

ANNEXURE D

1061

Du Toit Binedell Inc.
109A Plein Street
Cape Town
8001

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Prepared by me

CAROL JEAN WIGGETT
Commissioner of Oaths
Practising Attorney - RSA
15 Coleman Road
Newlands, Cape Town 7700

CONVEYANCER
KRIEL TL

FEE
R 95,00

ARTIKEL 5 WET 47 VAN 1937 — ARTICLE 5 ACT 47 OF 1937
VERBIND — MORTGAGED
B 71091/2003
VIR FOR R 1 800 000,00
BC 00081341/2005
01 NOV 2005
REGISTRATEUR/REGISTRAR

DATA CAPTURED
17 NOV 2005
DATA VERIFIED
24 NOV 2005
CONFIDENTIALITY

T00087428/2005

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT:

TERTIA LIZETTE KRIEL

appeared before me, Registrar of Deeds, at Cape Town, the said appearer being duly authorised thereto by a Power of Attorney granted to her by

The Trustees for the time being of THE CARIEM FAMILY TRUST No. T 217/93

which said Power of Attorney was signed at CAPE TOWN on 23 June 2005

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FOR ENDORSEMENTS SEE PAGE

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CERTIFIED COPY

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AND the Appearer declared that

WHEREAS the undermentioned immovable property is registered in the name of THE CARIEM FAMILY TRUST No. T 217/93;

AND WHEREAS in terms of clause 23 and 24 of the Trust Deed the trustees for the time being passed a resolution on 5 May 2005;

AND WHEREAS in terms of the resolution the undermentioned property vested in MOGAMAT FARIEG CARRIEM on 10 May 2005 without him having paid any monetary consideration;

NOW THEREFORE the said Appearer, in her capacity aforesaid, did, by these presents, cede and transfer in full and free property to and on behalf of:

MOGAMAT FARIEG CARRIEM
Identity Number 560321 5097 086
Married out of Community of Property

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

ERF 797 CONSTANTIA
CITY OF CAPE TOWN
CAPE DIVISION
WESTERN CAPE PROVINCE

IN EXTENT 9105 (NINE THOUSAND ONE HUNDRED AND FIVE) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer No. T 11726/1949 with Diagram No. 11266/48 relating thereto and held by Deed of Transfer No. T107281/1997

A. **SUBJECT** to the conditions referred to in the said Deed of Transfer No. T 11726/49.

B. **SUBJECT FURTHER** to and with the benefit of the following special conditions contained in Deed of Transfer No. T 4112/29:-

"1. The said lot HT shall have no right to nor be entitled to take any water from the furrow marked Servitude Farrow on the annexed diagram or from the stream from which the furrow is led out or the spring marked on the diagram in proximily to the intake of the furrow at any point at or above the intake of the furrow; and the owner for the time being of Lot HT shall not abstract from or interfere with any subterranean water feeding the said stream and furrow.

5. The said Lot HT shall not be divided or sold in areas of less than comma Four Nought Four Seven (,4047) hectares in extent without the consent of the owner for the time being of the present remaining extent of the farm Bel Ombre."

C. **SUBJECT FURTHER** to the following conditions imposed by the Administrator of the Province of the Cape of Good Hope under the provisions of the Townships Ordinance No 33 of 1934 when approving of the said Southern Cross Subdivided Estate as contained in Deed of Transfer No T 11726/1949:

1. 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 17 October 1935 and in the Memorandum which accompanies the said Regulations.

2. The owner of this erf shall be obliged without compensation to receive the material or permit excavation on the erf as may be required to allow use of the full width of the street and provide as safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the Local Authority.

3. The owner of this erf shall without compensation be obliged to allow the sewerage and drainage including stormwater of any other erf or erven 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.

4. This erf shall be subject to the following 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 my authorise the necessary suspension or relaxation 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) no buildings or structure or any portion thereof except boundary walls and fences shall be erected nearer than 9,45 metres to any boundary of this erf subject however to the further restriction imposed by the Controlling Authority as defined in Act 21 of 1940.

D. **SUBJECT FURTHER** to the following conditions contained in the said Deed of Transfer No T 11726/49 imposed by the Company for its benefit, the Company however reserving the right to sell other lots in the Estate free from any or all of such conditions or with modifications of such conditions:

   (i) Unless otherwise agreed to by the company in writing the said property shall be used for residential purposes only and save with such consent

no shop or hotel and no commercial or industrial business or advertising of any kind of trade or profession – except that of a general practitioner in the Medical Profession – shall be carried on thereon.

(ii) One dwelling together with such outbuildings as are ordinarily required to be used therewith shall be erected on the said property save with the consent in writing of the Company and in particular no building of the type commonly known as "flats" shall be erected on the said property.

(iii) Save with the consent of the Company in writing no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15,74 metres to any street line which forms a boundary of the said property and no such building or structure shall be situated within 9,45 metres of any boundary common to an adjoining lot. Provided however that should two or more contiguous lots on the Southern Cross Estate be registered in the name of the same owner and a Certificate of Consolidated Title is taken out in respect thereof the consolidated holding shall become one lot and all the conditions shall apply to it as being one lot.

(iv) No electric generating plant, windmill or wind-operated machinery shall be established on the said property without the written consent of the Company.

(v) No dwelling houses, outbuildings or other structures whether temporary or permanent shall be erected or commenced to be erected and no system of drainage or sewerage shall be installed or commenced to be installed and no road shall be laid down or commenced to be laid down on the said property save in accordance with plans which have been duly approved in writing by the Company and such approval may be refused or granted subject to such conditions as the Company may deem it advisable to impose.

To enable proper consideration te be given to the said plans and details the Company shall be entitled to have the same examined by its own architect the reasonable cost of which examinations to be borne by the Purchaser and to be deposited with the Company when the said plans are submitted.

In connection with the foregoing provisions of this clause the following procedure shall be adopted:

(a) Prior to the commencement of any such work as aforesaid the owner for the time being of the said property shall submit in duplicate to the Company a written application (in a form which may be obtained from the Company) together with such preliminary plans of the proposed erection installation of raid lay out of the nature recognised by the Cape Provincial Institute of Architects as " sketch plans" together with an assessment of the cost of erection.

Together with the sketch plans shall be siting plan and plans of the road scheme proposed on the said property and separate drainage and sewerage plans.

Upon approval of the said sketch plans either in the form as submitted or any such modified form as may be agreed upon one copy of such sketch plans duly signed as approved by the Company and

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countersigned by the Company's Architect shall be returned to the owner.

(b) Thereafter 1/8 scale working drawings in duplicate of the erections or works of the nature aforesaid shall be lodged with the Company and no such erection or work shall be commenced until the said plans or such modified plans as may be agreed upon have been returned to the owner duly signed as approved by the Company and countersigned by the Company's architect.

Whilst not in any way limiting or prejudicing the generality of the powers and discretions hereinafter conferred upon the Company regarding its right of approval or disapproval of plans submitted to it it is particularly recorded and recognised by the Purchaser that the approval of the Company to any plans is likely to be refused:

In the event of the estimated cost of erection of any residence with necessary outbuildings being less than R5 000,00.

In the event of the roofs of any buildings being constructed of any material other than thatch, shingles or tiles or slates of any type approved by the Company's architect.

In the event of any corrugated or sheet iron being used for any roofing or for fencing purposes or used in any other way than that approved by the Company's architect.

In the event of the nature and general style of any building including the height thereof or the materials of which they are constructed being such as not – in the opinion of the Company or the Company's architect – to harmonise with other buildings in the vicinity or with the nature of the scenery and the traditions of the Constantia countryside.

In the event of the plans not conforming to the sketch plans previously approved in terms of paragraph (a) above.

In the event of the plans not conforming to the Building Regulations for the time being of the Cape Town Municipality.

The Company through its officials or through its architect shall be entitled at all reasonable times during the progress of erection of work or installation of drainage to inspect such work to ensure the same being erected or installed in conformity with such plans as may be approved by the Company in terms of the aforegoing provisions of this Clause and there shall be no departure from or additions to the said plans without the consent of the Company's architect in writing.

The submission of plans required by this Clause shall be in addition to any submission that may be necessary from time to time to the Divisional Council of the Cape and/or any other Local Authority having jurisdiction.

The provisions of this clause shall apply also to any additions or alterations that may at any time be desired to be effected to any building or works on the said property.

(vi) It is acknowledged that the Company shall not be in any way liable for repairing or otherwise maintaining any road that may be constructed by it and this provision shall remain in force notwithstanding that the Company may in the interests of the owners or properties on the said Estate from time to time carry out any maintenance or repair work on any such road; and it is further acknowledged that the Company shall not be liable for any injury or other damage that may be sustained by the owner for the time being of the said property or by members of his family or servants as a result of any defects in any such road that may be constructed.

(viii) The Company shall have the right but shall not be obliged to cut and remove any fir or pine trees that may be on the property sold provided that such right is exercised within six (6) months from the date of execution of this Deed of Sale without being liable to pay any compensation to the Purchaser and within being liable to remove any stumps of trees so cut down this provision being primarily to ensure the view of owners of neighbouring lots not being obscured by trees on the property hereby sold.

The "Company" referred to in the above conditions is the CONSTANTIA HOLDINGS (PROPRIETARY) LIMITED.

E. **SUBJECT FURTHER** to the following special conditions contained in said Deed of Transfer No. T11726/49 imposed by the Constantia Holdings (Proprietary) Limited (Transferor therein) for it successors in title to any of the land held by the said Company under Certificate of Registered Title No. T2437/1949:

(i) The said property shall not be subdivided;

(ii) No night soil, refuse, rubbish, stopwater or other waste or offensive matter shall be allowed to accumulate on any portion of the said property;

(iii) The Purchaser undertakes to assist the Company in its efforts to eradicate Port Jackson Willow, Rooikrantz and Wattle trees from the Estate by not allowing any of these trees to flower on the property without the consent of the Company and to keep the property clear of such trees. If the Purchaser neglects so to keep the property clear the Company shall be entitled to give the Purchaser written notice requiring the Purchaser to cause such trees to be removed from the property within fourteen (14) days; failing compliance with such notice by the Purchaser the Company may through any of its employees or servants or agents enter upon the property and remove such trees and recover the cost of such removal from the Purchaser.

(v) It shall be obligatory on the owner of the said property to prevent water erosion on such property and in this connection it is recorded that the following are some of the precautions that should be observed to prevent erosion:

Preventing the said property being denuded of vegetation to an extent likely to cause or aggravate erosion.

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Preventing surface water collecting in one or a few channels causing the water to be discharged with force on to adjoining properties.

Ensuring cultivation and pathways conforming to contour lines.

Constructing such retaining walls and storm water channels as may be necessary.

WHEREFORE the said Appearer, renouncing all right and title which the said

The Trustees for the time being of THE CARIEM FAMILY TRUST No. T 217/93

heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by these presents, the said

MOGAMAT FARIEG CARRIEM, Married out of Community of Property

his Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the value of the property to be **R3 200 000.00 (THREE MILLION TWO 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 NOVEMBER 2005

q.q.

In my presence

REGISTRAR OF DEEDS

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CERTIFIED COPY

ANNEXURE E

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DEVELOPMENT MANAGEMENT

2962

TDA CAPE TOWN
The City of Cape Town's Transport and Urban Development Authority

Enquiries: Orlando Hector

Tel: 021 444 2641
Reference: 70418286

PERSON/REGISTERED OWNER OF PROPERTY	Mogamat Cariem		
ADDRESS	9 Bellvue Avenue Constantia 7806		
ID NO/REG NR	5603215097086	**DATE**	30 July 2018

NOTICE TO OBTAIN WRITTEN APPROVAL FOR THE UNAUTHORISED BUILDING WORK

An inspection conducted on 30 July 2018 revealed that you are in the process / have erected a building on Erf No. 797 at 9 BELLVUE AVENUE CONSTANTIA. The work being <u>Construction of new dwelling with complete 2nd storey not approved</u> in the area of the City of Cape Town (being the local authority in question) which is in contravention of Section 4(1) read with Section 4(4) of the National Building Regulations and Building Standards Act No 103 of 1977 (the Act), as no prior written approval for the erection of such building has been obtained from the said local authority.

In terms of Section 4(1) of the Act, no person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this said Act.

In terms of Section 4(4) of the Act, any person erecting any building in contravention of the provisions of Section 4(1) shall be guilty of an offence.

Acting under delegated powers, I hereby order you in terms of Regulation A25 (10) of the National Building Regulations promulgated under Section 17(1) of the said Act, to obtain written approval for the said unauthorised building work, **by submitting and having building plans approved within 60 days** from the date the recipient signed for this notice (see below).

FAILURE TO COMPLY WITH THIS NOTICE CONSTITUTES A CRIMINAL OFFENCE IN TERMS OF REGULATION A25(11) OF THE NATIONAL BUILDING REGULATIONS. The City of Cape Town may, without further notice, institute legal proceedings against you.

The submission of building plans in compliance with this notice does not place any obligation on the City of Cape Town to approve such building plans for the building work set out above. Should written approval not be granted, you will be required to either rectify or demolish the abovementioned unauthorised building work.

SIGNED: (Delegated Official)			**ADDRESS** (Where served)	9 BELLVUE AVENUE CONSTANTIA
SERVED:	**DATE:** 31-07-2018	**TIME:** 8:45		
SERVER:	**NAME:** Orlando Hector		**SIGN:**	
RECIPIENT:	**NAME:** Sara Carnem		**SIGN:**	

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DEVELOPMENT MANAGEMENT

2963

TDA
CAPE TOWN
The City of Cape Town's Transport and Urban Development Authority

Enquiries: O.Hector

Tel: 021 444 2641
Reference: 70425461

PERSON/REGISTERED OWNER OF PROPERTY	Mogamat Cariem		
ADDRESS	9 Bellvue Avenue Constantia 7806		
ID NO/REG NR	5603215097086	**DATE**	17 September 2018

NOTICE TO OBTAIN WRITTEN APPROVAL FOR THE UNAUTHORISED BUILDING WORK

An inspection conducted on 17 September 2018 revealed that you are in the process / have erected a building on Erf No. 797 at 9 BELLVUE AVENUE CONSTANTIA. The work being Tented structures x 2 & Steelframed structure & Outbuildings- used for functions in the area of the City of Cape Town (being the local authority in question) which is in contravention of Section 4(1) read with Section 4(4) of the National Building Regulations and Building Standards Act No 103 of 1977 (the Act), as no prior written approval for the erection of such building has been obtained from the said local authority.

In terms of Section 4(1) of the Act, no person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this said Act.

In terms of Section 4(4) of the Act, any person erecting any building in contravention of the provisions of Section 4(1) shall be guilty of an offence.

Acting under delegated powers, I hereby order you in terms of Regulation A25 (10) of the National Building Regulations promulgated under Section 17(1) of the said Act, to obtain written approval for the said unauthorised building work, **by submitting and having building plans approved within 60 days** from the date the recipient signed for this notice (see below).

FAILURE TO COMPLY WITH THIS NOTICE CONSTITUTES A CRIMINAL OFFENCE IN TERMS OF REGULATION A25(11) OF THE NATIONAL BUILDING REGULATIONS. The City of Cape Town may, without further notice, institute legal proceedings against you.

The submission of building plans in compliance with this notice does not place any obligation on the City of Cape Town to approve such building plans for the building work set out above. Should written approval not be granted, you will be required to either rectify or demolish the abovementioned unauthorised building work.

SIGNED: (Delegated Officer)			**ADDRESS** (Where served)	69 Bellvue Avenue Constantia
SERVED:	**DATE:**	17-09-2018	**TIME:** 11:30	
SERVER:	**NAME:**	Orlando	**SIGN:**	
RECIPIENT:	**NAME:**	Sara Carnem	**SIGN:**	

B × Lum Approval in Process as per Architect

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DEVELOPMENT MANAGEMENT

TDA CAPE TOWN
The City of Cape Town's Transport and Urban Development Authority

Enquiries: O. Hector

964

Tel: 021 444 2641
Reference: 70429395

PERSON/REGISTERED OWNER OF PROPERTY	Megamat Cariem		
ADDRESS	9 Bellvue Avenue Constantia 7806		
ID NO/REG NR	5603215097086	DATE	12 October 2018

NOTICE TO OBTAIN WRITTEN APPROVAL FOR THE UNAUTHORISED BUILDING WORK

An inspection conducted on 09 October 2018 revealed that you are in the process / have erected a building on Erf No. 797 at 9 BELLVUE AVENUE CONSTANTIA. The work being: **(1) Garages converted to Bedrooms; (2) Additional Kitchen on top level; (3) Storage facilities on Eastern corner of property; (4) Security Facility at entrance; (5) All other internal room layout changes to dwelling** - in the area of the City of Cape Town (being the local authority in question) which is in contravention of Section 4(1) read with Section 4(4) of the National Building Regulations and Building Standards Act No 103 of 1977 (the Act), as no prior written approval for the erection of such building has been obtained from the said local authority.

In terms of Section 4(1) of the Act, no person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this said Act.

In terms of Section 4(4) of the Act, any person erecting any building in contravention of the provisions of Section 4(1) shall be guilty of an offence.

Acting under delegated powers, I hereby order you in terms of Regulation A25 (10) of the National Building Regulations promulgated under Section 17(1) of the said Act, to obtain written approval for the said unauthorised building work, **by submitting and having building plans approved within 60 days** from the date the recipient signed for this notice (see below).
<< Insert text if required >>

FAILURE TO COMPLY WITH THIS NOTICE CONSTITUTES A CRIMINAL OFFENCE IN TERMS OF REGULATION A25(11) OF THE NATIONAL BUILDING REGULATIONS. The City of Cape Town may, without further notice, institute legal proceedings against you.

The submission of building plans in compliance with this notice does not place any obligation on the City of Cape Town to approve such building plans for the building work set out above. Should written approval not be granted, you will be required to either rectify or demolish the abovementioned unauthorised building work.

SIGNED: (Delegated Official)		O. Hector	ADDRESS (Inspectors)	09 Bellvue Avenue Constantia
SERVED:	DATE	12 October 2018 TIME: 11:40		
SERVER:	NAME	ORLANDO	SIGN	
RECIPIENT:	NAME	Mr. Cariem	SIGN	

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SPATIAL PLANNING AND ENVIRONMENT DIRECTORATE

Gamedullah Carr
PROPERTY INSPECTOR

T: 021 4449511 F: 0865760909
E: Gamedullah.carr@capetown.gov.za

2965

BLUM001

PERSONAL SERVICE / REGISTERED MAIL

Date: 18/02/2019
MOGAMAT CARREM
9 Bellvue Avenue
Constantia
7806

Criminal Prosecution

Dear Sir / Madam

COMPLIANCE NOTICE IN TERMS OF SECTION 126 OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015: ERF 797 CONSTANTIA, NO 9 BELLVUE AVENUE.

You are the registered owner/occupier of Erf 797 situated at No 9 Bellvue Avenue, Constantia.

An inspection carried out on 18th February 2019 indicated that you are/allowing the operation of a Guest House /Hotel from the abovementioned property.

The property is zoned Single Residential Zone1 in terms of the development management scheme which constitutes schedule 3 of the City of Cape Town Municipal Planning By-law, 2015 ("the By-Law"). A list of the uses that are permitted in terms of this zoning is attached as Annexure A.

The use of Operating a Guest House/Hotel is in contravention with Single Residential Zone1 of the property.

Section 35(2)/(3) of the By-Law provides that:

35(2) No person may use or develop land unless the use or development is permitted in terms of the zoning scheme or an approval is granted or deemed to have been granted in terms of this By-Law.

and/or

35(3) No person may contravene or fail to comply with a condition of approval imposed or deemed to have been imposed in terms of this By-Law.

In terms of section 133 of the By-Law, a person is guilty of an offence if the person-
(a) contravenes a -
(i) decision taken or a condition imposed or deemed to have been taken or imposed in terms of this By-Law;
(ii) provision of the development management scheme;
(iii) uses land in a manner other than permitted by the development management scheme;
(iv) compliance notice issued in terms of section 126; or
(v) directive issued in terms of section 128.

You are hereby instructed to cease the unlawful conduct and to comply with the provisions of the By-Law/ zoning of the property within 30 calendar days.

2966

In terms of section 133(2) of the By-Law, a person is liable to a fine of R800 000.00 or imprisonment not exceeding 20 years, or to both a fine and such imprisonment.

In terms of section 133(4) of the By-Law, an owner -

(a) who permits their land to be used, or fails to take reasonable steps to ensure that their land is not used in a manner which constitutes an offence in terms of this By-Law is guilty of an offence and upon conviction is liable to the penalties contemplated in subsection (2).

The City may, in the event of non-compliance with this notice, take one or more of the following measures –

(i) if relevant, take steps contemplated in section 127 to withdraw an approval for a temporary departure or an approval granted for a limited period of time;
(ii) take steps contemplated in section 128 to issue a directive in the terms specified in the notice;
(iii) apply in terms of section 129 for the determination of an administrative penalty;
(iv) apply to a competent court for appropriate relief including the costs of the application; and
(v) institute a criminal prosecution.

Note that in terms of section 130 of the By-Law, you may apply to the City for the necessary approval. In the event that such an application is not submitted to the City within 21days, the City may take on or more of the measures mentioned above.

If you apply for approval, you are still required to cease the unlawful conduct. You will also be required to apply for the determination of an administrative penalty in terms of section 129 of the By-Law.

Yours faithfully

G.Carr
for **DIRECTOR : PLANNING & BUILDING DEVELOPMENT MANAGEMENT**

If personal service:

Received by Moonyat Carrion I.D. 5603215097086

Signature

Capacity Owner/Operator

Date 18/02/2019

Served by Mr.G. Carr at No 9 Beukes Ave, Constantia

Signature

Capacity Property Inspector

Date 18/02/2019

ANNEXURE F

2967

WED, 1 MAY AT 10:00 - 16:00

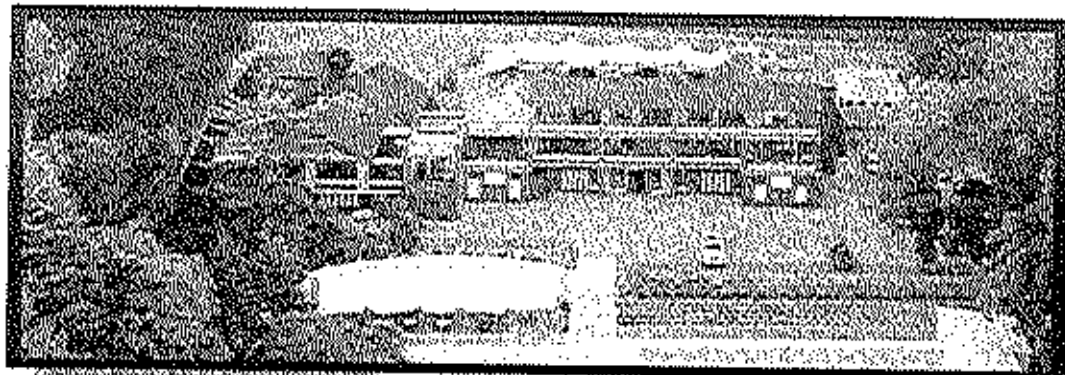
Constantia Local Market

Purple Rayn Boutique Guest House · Constantia

Interested | Going | Share | More

Public event by **Michaela de Araujo**

Purple Rayn Boutique Guest House



PURPLE RAYN BOUTIQUE GUEST HOUSE

9 Bellevue, Bel Ombre, Constantia

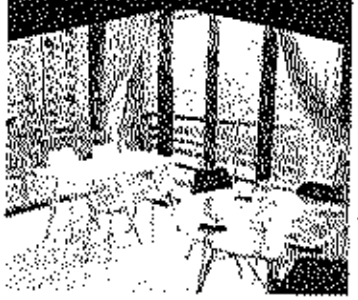
Menu available on www.purplerayn.co.za

OPERA CAFÉ

Trading times:

Monday - Sunday

8am - 3pm



R15 COFFEE

Tuesday to Friday in the Opera Café from 8am - 11am

R55 BUSINESS BREKKIE

Grilled chicken sausage, 2 eggs the way you like them & toast of your choice with coffee or tea

OPERA CAFE WINTER BUFFET R99pp

We will be offering a hearty winter buffet table in our cosy Opera Café at R99 per plate for the Month of May , daily from 12pm to 2pm. Expect roasted veg, hearty salads, quiche, flat breads, stews, pastas and many more winter favourites changing every day. Walk-ins welcome, bookings essential to secure a seat.

OPERA 3 COURSE WINTER DINNER MENU R295

Join us for a 3 course candle lit dinner in our cozy Opera Café, including a complimentary glass of red or white wine. Dishes will change each week but you can expect to see starters like hearty soups and cheese toasties, keto calamari with harissa aioli, chilli and coriander. Mains will include dishes like classic bouillabaisse with fresh linefish, crayfish, mussels, clams & garlic toast, slow braised beef cheek ragu on homemade gnocchi with gremolata & parmesan, chickpea & lentil cottage pie & steamed seasonal veg. To end the meal, you can expect some great winter favourites with a twist such as, banoffee bread & butter pudding with salted caramel & ginger ice cream or gooseberry malva pudding with amarula ice cream.

PHANTOM TASTING ROOM

Trading times:

Closed: Monday & Tuesday

Wed - Sat: 12pm - 9pm

Sunday: 12pm - 4pm

ALL DAY HALF PRICE SUSHI

On selected plates & platters, everyday

COMPLIMENTARY WINE PAIRING WITH YOUR MAIN MEAL

ROOFTOP THEATRE VENUE

Open for: Functions, Private dining, Small Weddings, events

DINNER DANCE

Join us on the last Saturday of every month for a 3 course dinner, dance experience you will never forget.... First dance to commence 29 April 2019. **Bookings essential**

WEDNESDAY 2 FOR 1 CHEFS SPECIAL

At the moment we do 241 steak and chips with live entertainment but we will change this up and inform you guys what might be the next "2 for 1" (this is currently in the Phantom)

Book with us at **Purple Rayn** | Tel: **021 110 0756**

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ANNEXURE G

Nasrudeen Floris 2970

From: Waldo Etzebeth
Sent: Friday, March 23, 2018 2:30 PM
To: Nasrudeen Floris
Subject: MPT resolved - MPTSW 60/3/2018

Good day,

The MPT at its meeting of 20/03/2018 resolved as follows:

Report Subject	WARD 62: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 797 CONSTANTIA, 9 BELLVUE AVENUE ID: 70388510 N FLORIS / P HOFFA
Meeting Date	20/03/2018
Date Sent	23/03/2018
Directorates	TRANSPORT & URBAN DEVELOPMENT AUTHORITY
Author	Nasrudeen Floris
Author Contact No	0214449540
Delegation Information	0(0)
Agenda Item No	MPTSW 60/3/2018
Preamble	
Resolution	Approved
Resolution Details	RESOLVED UNANIMOUSLY That an administrative penalty in the amount of R10 000.00 BE APPROVED in terms of Section 98 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 797 Constantia regarding the unauthorised 12 guest suite guest house. REASONS FOR DECISION: The MPT APPROVED the application for the reasons set out in the Planner's report. FOR INFORMATION: ACTION: N FLORIS / P HOFFA
How Resolved	Consensus

Regards,

MPT South Western

Nasrudeen Floris

From: Waldo Etzebeth
Sent: Friday, September 21, 2018 12:03 PM
To: Nasrudeen Floris
Subject: MPT resolved - MPTSW 7/9/2018

Good day,

The MPT at its meeting of 18/09/2018 resolved as follows:

Report Subject	WARD 62: APPLICATION FOR DELETION OF TITLE DEED CONDITIONS, DELETION OF A CONDITION OF A PREVIOUS APPROVAL, CONSENT AND DEPARTURE IN TERMS OF THE CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015: ERF 797 CONSTANTIA, 9 BELLVUE AVENUE ID: 70381806 N FLORIS / P HOFFA
Meeting Date	18/09/2018
Date Sent	21/09/2018
Directorates	TRANSPORT & URBAN DEVELOPMENT AUTHORITY
Author	Nasrudeen Floris
Author Contact No	0214449540
Delegation Information	0(0)
Agenda Item No	MPTSW 7/9/2018
Preamble	Mr. P Hoffa introduced the item. After extensive discussion with regard to procedural flaws within the application the MPTSW Panel agreed that the application BE REFERRED BACK FOR INFORMATION: ACTION: N FLORIS / P HOFFA
Resolution	Deferred
Resolution Details	Mr. P Hoffa introduced the item. After extensive discussion with regard to procedural flaws within the application the MPTSW Panel agreed that the application BE REFERRED BACK FOR INFORMATION: ACTION: N FLORIS / P HOFFA
How Resolved	Consensus

Regards,

MPT South Western

ANNEXURE H

Rates for 2018/2019 Financial Year

Residential Tariff: 0.007154

Non-Residential Tariff: 0.014308

Residential Exclusion: R 200,000.00

Property Reference	SPM002399700000
Property Type	RES
Erf/Farm Number	797
Physical Address	9 BELLVUE CONSTANTIA
Total Extent	9105.0000
Existing Use	A02
Allotment Area	CONSTANTIA
Rating Category	RESIDENTIAL

Value of Property	R 25,000,000.00
Residential Exclusion	R 200,000.00
Rateable Value	R 24,800,000.00
Estimated Annual Rates	R 177,419.20
Estimated Monthly Rates	R 14,784.93

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

ANNEXURE I

2973

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70658510
CASE OFFICER	N Floris
CASE OFFICER PHONE NO	021 4449640
DISTRICT	Southern
REPORT DATE	05/03/2018

ITEM NO

WARD 62: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 797 CONSTANTIA, 9 BELLVUE AVENUE

1 EXECUTIVE SUMMARY

Property description	797 Constantia
Property address	9 Bellvue Avenue
Site extent	9105m²
Current zoning	Single Residential Zone 1
Current land use	Unauthorised guest house
Overlay zone applicable	Constantia – Tokai Local Area Overlay Zone
Submission date	16/01/2018
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	The application relates to the operation of an unauthorised 12 bedroom guest house
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 The property contains an unauthorised guest house that includes 12 guest bedrooms, an entertainment area, conference room, gymnasium and a domestic staff quarters.

3.2 The applicant submitted an application to regularise the land use on 2017-11-30 (i.e. an application for deletion of restrictive title deed conditions, deletion of a condition of an existing approval in terms of the Township Ordinance No 33 of 1934, departure (to permit the maximum floor space to be 2000m² in lieu of 1500m²) and consent to permit a guest house. The application is currently in advertising and internal circulation process.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation with respect to the administrative penalty is attached as Annexure C and may be summarised as follows:

- The current municipal valuation of the property is R14.9million.
- The total extent of the house/premises used for guesthouse purposes is ± 2000m².
- The house has been constructed in accordance with the approved building plan for the property.
- The 12 bedroom guest house commenced on 15 January 2018, in order to accommodate overseas tourists and holiday makers visiting Cape Town.
- The guesthouse operation has had no adverse impact on the neighbours.
- The landowner is operating the guesthouse with integrity.
- The guesthouse activity does not detract from the neighbourhood or cause any of the neighbours any harm.
- The landowner has not previously contravened any town planning by-laws or a previous planning law.

5 ASSESSMENT OF APPLICATION

5.1 An administrative penalty is required because Item 21 of the Development Management Scheme (DMS) is being contravened (a guest house is a consent use in terms of Single Residential Zone 1) and for the contravention of condition C4(b) in title deed T87428/2005 which was imposed in terms of the Township's Ordinance No 33 of 1934 which restricts the use of the property to only 1 dwelling. The 12 suite guest house has no prior Council approval to operate on the property.

5.2 In terms of section 129(7)(b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

5.3 The municipal value of the property is R14 900 000.00 (see Annexure E).

5.4 Effectively the entire property is being use in contravention of the MPBL. Thus, an amount which is not more than 100% of R14 900 000.00 may be imposed as an administrative penalty.

5.5 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 nature of the contravention relates to the unauthorised guest house operating on the property which is a consent use in Single Residential Zone 1.

Duration – According to the applicant the guest house has been in operation of the contravention since January 2018. Therefore the duration of the contravention is short.

Gravity – The gravity of the contravention is relatively serious given the scale of the guest house and the fact that it also contravenes title deed conditions.

Extent – The extent of the contravention is large, given that the entire property is being used for the guest house.

b) The conduct of the person involved in the contravention

The activity has not ceased. The applicant admittedly states in the motivation that the land owner commenced the unauthorised guest house to take advantage of the end of year holiday season. The owner has thus been deliberately and willfully engaged in the unlawful activity without land use approval. Given that the owner recently undertook substantial renovations and additions to the building, it is unlikely that he/she decided at a late stage to start operating the guest house. The applicant has not explained why the owner only submitted the land use application for the guest house shortly before starting to operate. The conduct of the owner cannot be condoned.

c) Whether the unlawful conduct was stopped

The unlawful conduct has not stopped.

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 owner of the property has not previously contravened this By-Law or any other planning law.

5.6 In view of the abovementioned considerations, and the intention that administrative penalties, in part at least, serve as a deterrent, this Department recommends that an administrative penalty of R10 000.00 be imposed. This is consistent with administrative penalties for other guest houses. (Simply for comparative purposes, this equates to ±0.07% of the maximum value calculated in referred to 5.4 above.)

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

6.1 The land use contravenes Items 21 and 22 of the Development Management Scheme and condition C4(b) from title deed T87428/2005.

6.2 The duration of the contravention is short.

6.3 The gravity of the contravention is relatively serious.

6.4 The extent of the contravention is large.

6.5 The conduct of the owner cannot be condoned.

6.6 As far as can be ascertained, the owner of the property has not previously contravened this By-Law or any other planning law.

7 RECOMMENDATION

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In view of the above, it is recommended that:

a) That an administrative penalty in the amount of R10 000.00 be approved in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 797 Constantia regarding the unauthorised 12 guest suite guest house.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Site Development Plan
Annexure C	Applicant's motivation
Annexure D	Title deed
Annexure E	Municipal valuation

Section Head : Land Use Management

Name P Hoffa

Tel no 021 444 7724

Date 2018-03-05

Comment

District Manager

Name U Gonsalves

Tel no 021 444 7720

Date 2018-03-05

Comment