



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO

WARD 44: APPLICATION FOR PERMANENT DEPARTURES IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: ERF 40548, CAPE TOWN, 85 FIFTH STREET WELCOME ESTATE

MPTSW60/11/19

Case ID	70420020
Case Officer	YHUGO
Case Officer phone number	021 684 4349
District	CAPE FLATS
Ward	44
Ward Councillor	Anthony Moses
Report date	14/10/2019

1. **EXECUTIVE SUMMARY**

Property description	Erf 40548, Cape Town.
Property address	85 Fifth Avenue, Welcome Estate.
Application components / description	<ul style="list-style-type: none"> - Covered entrance/walkway setback 1.33m in lieu of 3.5m street building line (5th Street). - Garage façade (and carport) setback 0m in lieu of 1.5m street building line (5th Street). - Enclosed braai/patio area setback 0m in lieu of 3m common boundary building line (north) as a result of linear distance being exceeded.
Site extent	568m ²
Current zoning	Single Residential 1
Current land use	Dwelling house
Overlay zone applicable	N/A
PHRA or SAHRA heritage	N/A
Public participation outcome summary	1 objection received.
Recommended decision	
Approval	✓
Refusal	
Approval in part & Refusal in part	

2. BACKGROUND FACTS

- 2.1. An application for an administrative penalty for the subject property has already been processed and paid.

3. SUMMARY OF APPLICANT'S MOTIVATION

- 3.1. The applicant's motivation of the proposed development (**see Annexure D**) may be summarised as follows:
- The proposed development consists of a carport, patio, and covered walkways which will have no negative socio economic or social impacts.
 - The development is very small with the capital investment amounting to less than R100 000.
 - The garage/carport façade will be upgraded to such an extent whereby it will match the architectural style common in the area and to match the design of the existing house.
 - On-site parking will be provided and the existing carriageway crossing will be used.
 - The northern portion is to be used as an undercover play area.
 - Furthermore, secure parking is required for family members to park their cars and the best position for this is in front of the existing garage.

4. PUBLIC PARTICIPATION

		Applicable	Dates / Comments
Advertising	Notice in the media (s81)		
	Notice to a person (s82)	✓	22/03/2019
	Notice to Community organization (s83)		
	Notice to Ward Councillor (s83)	✓	22/03/2019
	Notice of no objection (s84)	✓	Submitted with Departure application
	Notice to Provincial Government (s86)		
	Notice to an Organ of State (s87)		
	Public meeting		
	On-site display		
Outcome	Objections	✓	1 objection received.
	Objection petition		
	Support / No objection		
	Comments		
	Ward Councillor response	✓	No

Summary of objections / comments/ support received

- 4.1. Objections / comments / support received in respect of the application (**see Annexure E**) may be summarised as follows:
- The objector states that he raised his concerns with the owners already.
 - The carport is fully constructed and the sheeting is overlapping onto the objector's property.
 - When it rains, all the water lands in the objector's yard.
 - The applicant/owner placed a gutter on the wall but it does not solve the issue of the roof sheeting that's still hanging over the boundary wall and into the objector's property.

- The objector concludes by asking if the applicant/owner could please correct this.

Summary of applicant's response to public participation

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

- Mr Daniels (building inspector) came to inspect the subject property and advised us to have a gutter installed, this was done almost immediately. The gutter that has been installed is still on our property - not on his.
- Mr Daniels said that there were no other problems since our roof sheets do not protrude onto our neighbour's property as he claims.
- We have however installed see-through sheets above the vibracrete fence, for our security.
- Mr Isak Storm does not even live on the property. He rents it out to several tenants.
- They have apparently complained of dampness, due to excess water, fact is Mr Storm's own carport has had several holes in for quite some time.
- His gutter is also clogged up and has grass & moss growing in it, preventing the water to run down his downpipe, which he recently repaired.
- It is still completely ineffective, due to the gutters still being dirty and the 5 or more big holes in his carport.
- On our side, we have two sets of gutters, regularly cleaned, so there is very little possibility of our water running onto his property if any.
- The improvements we are making to our premises also benefit all our neighbour's around us, and increase the value of their properties as well.
- I'm enclosing photographs taken a few days ago (on 14-08-2019), to prove what I've said regarding our well-constructed, neat-looking roof structure and his broken one and the fact that our roof does not protrude onto his property.

5. BACKGROUND TO PROPOSAL

Description of the area / surrounding land uses

5.1. Erf 40548, Cape Town ("the property") is located in the residential area of Welcome Estate which is located just east of Jakes Gerwel Drive, and Vangate Mall. The area is predominantly residential and is generally a low to middle-income area affected by perpetual crime and a certain overspill of gang violence from the nearby Heideveld Suburb.

Property description

5.2. The property is zoned Single Residential 1 ("SR1") in terms of the Development Management Scheme ("DMS") and is used as a dwelling house. The property is bounded by SR1 properties on its north, west, and southern common boundaries and access is taken via Fifth Street to the east.

Proposed development

- 5.3. The proposal involves an extension to the existing carport, thereby departing from the 1.5m street building line setback requirement with the carport being located at 0m onto the street. The proposal further involves a covered walkway/entrance setback 1.33m in lieu of the 3.5m street building line setback as well as an enclosed braai/patio area setback 0m in lieu of 3m on the northern common boundary building line. The rest of the proposal involves covered walkways which are zoning compliant.

6. PROPOSAL ASSESSMENT**Criteria for deciding application**

- 6.1. Consideration of criteria in terms of Section 99(1):
- 6.1.1. Compliance with the requirements of the MPBL
- The correct applications have been submitted in terms of the MPBL inclusive of an application for the determination of an administrative penalty which was finalised and paid.
 - There are no restrictive conditions in the title deed which could preclude the proposed development.
- 6.1.2. Compliance or consistence with the municipal spatial development framework:
- According to the Consolidated Spatial Plan Concept as cited in the Municipal Spatial Development Framework (MSDF, 2018), the subject property is located inside the Urban Inner Core wherein land use intensification is supported. The proposal is to extend onto the existing dwelling unit on the property which is not considered to be inconsistent with the Municipal Spatial Development Framework.
- 6.1.3. Consideration in terms of Section 99(3) of the desirability of the following criteria:
- a. Socio-economic impact
As the proposal is primarily to extend an existing dwelling unit in an existing residential area, it is not expected that the building line departures could create negative socio-economic impacts. Alterations and additions such as the proposed generally increase the value of the property by enabling the provision of extended living space and convenience for the property owner. Often such improvements, albeit this small, result in an increase in the value of surrounding properties as well. Approval of the proposal will also have a positive socio-economic impact through employment opportunities during construction phase (albeit small).
 - b. Compatibility with surrounding uses
The use of the property will remain residential which is in keeping with existing development in the broader area. The proposal fits in with the use and building form in the immediate residential area.

c. Impact on the external engineering services

As the proposal does not involve an increase in the number of dwelling units on the property, it is not expected that the building line departures would negatively affect external engineering services.

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

Broadly, it is not expected that the proposed building line departures would threaten the safety, health and wellbeing of the surrounding community. All structures are to be approved in terms of the National Building Regulations which ensures structural and fire safety. Further to note is the fact that no vehicular sight lines are obscured.

e. Impact on heritage

The property is not located within a heritage protection overlay zone. It is not considered that heritage resources will be negatively affected by the permanent departures for which application is made.

f. Impact on the biophysical environment

The property is located in an urban area which is not characterised by significant environmental features. It is not expected that the proposal will threaten the biophysical environment.

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

It is not expected that the proposal will create negative traffic, parking, access or other transport related impacts. Sufficient on-site parking exists and the existing carriageway crossing will be used to access the property. The proposal does not entail changes to access but rather increases on-site parking.

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

Refer to paragraph 6.2.4(h) below.

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

No.

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

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

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

- 6.2.1. Any applicable spatial development framework

Cape Flats District Plan (2012) ("District Plan")

The subject property is designated as Urban Development according to the District Plan. The proposed development of the property is consistent with the intent and purpose of urban development. The proposal is considered to be consistent with the District Plan.

6.2.2. Relevant criteria contemplated in the DMS

None applicable to this application.

6.2.3. Applicable policy or strategy approved by the City to guide decision making

Non applicable to this application.

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

a. Socio-economic impact

Refer to paragraph 6.1.3 (a) above. The proposal increases the living, garaging and entertainment areas on the property. The extensions are expected to enhance the residential amenity and capacity and therefore have a positive socio-economic impact.

b. Compatibility with surrounding uses

Refers to paragraph 6.1.3 (b) above. The proposal is entirely residential and is compatible with the surrounding land use and surrounding built form (of which there is no real distinct or defined style of architecture).

The scale, massing and height of the proposed is not out of keeping with the character of the area. Further to note is the fact that the proposal will not have a negative impact on the streetscape and will not impact on the character of the area as structures on or close to the street boundary are not uncommon in the area.

c. Impact on the external engineering services

Refer to paragraph 6.1.3 (c) above.

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

Refer to paragraph 6.1.3 (d) above. The proposal will not have a negative impact on the safety, health and wellbeing of the surrounding community.

e. Impact on heritage

Refer to paragraph 6.1.3 (e) above.

f. Impact on the biophysical environment

Refer to paragraph 6.1.3 (f) above.

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

Refer to paragraph 6.1.3 (g) above.

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

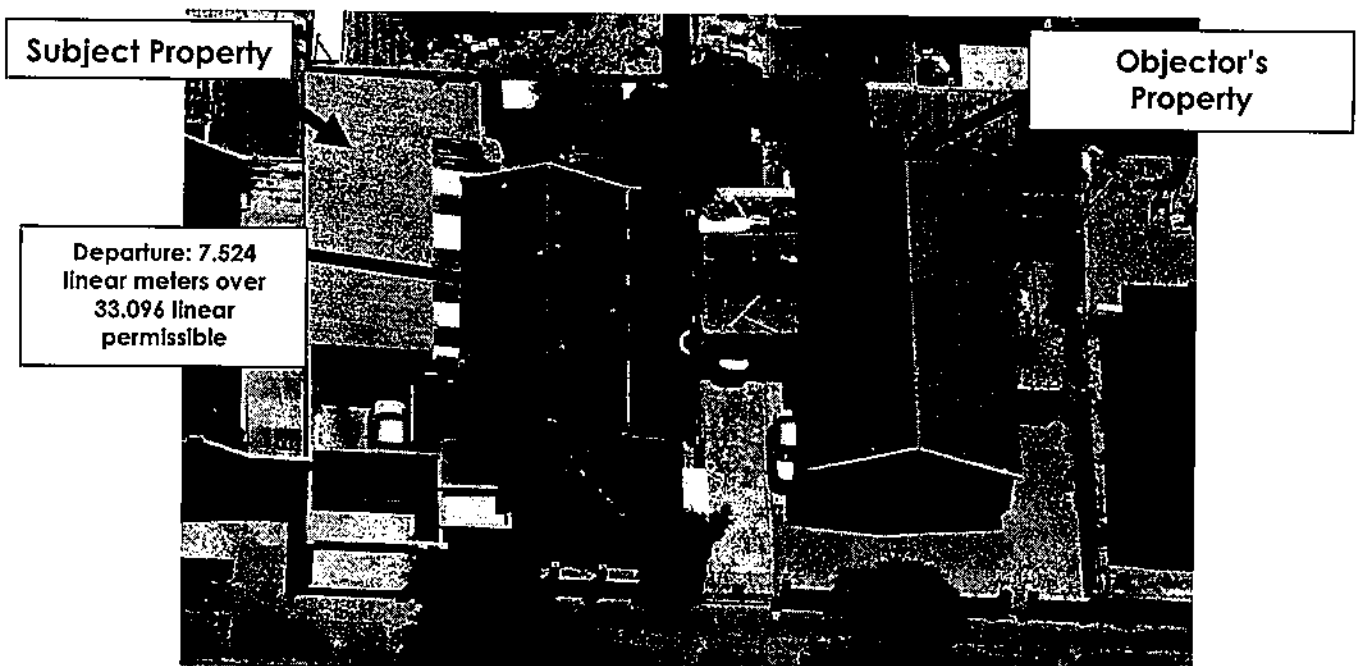
A condition which requires that development of the property shall be substantially in accordance with the building plan (**Annexure C**) will be imposed. This condition will also prohibit any roof sheets from protruding over and boundaries and water to run off from the applicant's property into the neighbours'.

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

It is not considered that the proposed street and common boundary building line departures will impede on the existing rights of surrounding properties.

The proposed departure is not considered to inhibit the objector or the rest of the abutting property owners from exercising their use rights as permitted by the Development Management Scheme.

The proposed enclosed braai area addition measures 18.62m in length along the 30.51m shared common boundary with the objector. Of this 18.62m, only 7.524 linear meters relates to the common boundary departure with the rest of the total length of the proposed building work on the common boundary being zoning compliant. The objector's carport/garage has been built at 0m on his Southern boundary, for almost the full length of the applicant's departure area. The impact of the proposal is therefore considered to be minor.



6.2.6 Other considerations prescribed in relevant national or provincial legislation:

- The proposal complies with the principles set out in Section 59 of the Land Use Planning Act (LUPA) and Section 7 of the Spatial Planning and Land Use Management Act (SPLUMA), particularly as it relates to the principles of

spatial sustainability, efficiency and good administration. The proposed development of an existing serviced site in a good location aligns with the aforementioned principles as they are contained in SPLUMA and LUPA for the reasons listed below;

1. The proposal satisfies the development principle of **spatial sustainability** (see section 7(b) of SPLUMA) as it promotes land development in a sustainable location without creating urban sprawl.
2. The proposal satisfies the development principle of **efficiency** (see section 7(c) of SPLUMA) as it entails the use of existing resources and infrastructure in extending the existing dwelling unit on the property.
3. The proposal satisfies the development principle of **good administration** (see section 7(e) of SPLUMA) as the application has been processed according to the procedures and timeframes set by the Municipal Planning By-Law.

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

Regarding the objection:

The objection is concerned with the construction aspects of the undercover braai area (referred to as a carport) which the objector has responded to. Mitigation measures relating to the objection received will be incorporated into Annexure A as a condition of approval, as discussed in 6.2.4(h) above.

The objector is located immediately north of the property and will not be impacted upon in terms of overshadowing from the single storey proposal.

7. REASONS FOR DECISION

- 7.1. Reasons for the recommended decision for **approval** relating to the application for the permanent departures may be summarised as follows:
 - 7.1.1. The proposal to extend the domestic living and amenity areas is not considered to detract from the residential character of the area.
 - 7.1.2. The street building line departures are relatively minor and will not significantly or negatively affect the streetscape or impact on vehicular sight lines.
 - 7.1.3. The proposal is consistent with the Cape Flats District Plan and the Municipal Spatial Development Framework because the extensions allow for intensification of land use in the Urban Inner Core.
 - 7.1.4. The proposal will not negatively impact existing infrastructure.
 - 7.1.5. There will be no negative heritage or traffic impact. There is sufficient space for the required parking on the property.

8. RECOMMENDATION

In view of the above, it is recommended that:

- 8.1. The application for permanent departures as set out in Annexure A on Erf 40548, Cape Town **be approved** in terms of Section 98(b) of the Municipal Planning By-law, 2015 subject to conditions contained in Annexure A.

ANNEXURES

Annexure A	Application details and approval conditions to be imposed
Annexure B	Locality plan / Public participation map
Annexure C	Building Plan
Annexure D	Applicant's motivation
Annexure E	Objections/comments/support received
Annexure F	Applicant's response to objections /comments/support received
Annexure G	List of Relevant Parties


Section Head: Land Use

Comment

Name A McCann

Tel no 021 684 4341

Date 4 November 2019


District Manager

Name Chad Newman

Comment

Tel no 021 684 4310

Date 4 November 2019

Annexure

A

Application details and approval conditions to be imposed

ANNEXURE A

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In this annexure:

"City" means the City of Cape Town

"The owner" means the registered owner of the property

"The property" means **Erf 40548, Cape Town**

"Bylaw" and "Development Management Scheme" has the meaning assigned thereto by the City of Cape Town Municipal Planning Bylaw, 2015 (as amended)

"Item" refers to the relevant section in the Development Management Scheme

"Dir: DM" means Director: Development Management or his/her delegatee.

CASE ID: 70420020

1. APPLICATIONS GRANTED IN TERMS OF SECTION 98 (b) OF THE BYLAW

1.1. Departures:

- 1.1 Item 22(d): To permit the covered walkway to be setback 1.33m in lieu of 3.5m from the street boundary (Fifth Street).
- 1.2 Item 22(d): To permit the enclosed braai/patio, after the first 12m from the street boundary, to be setback 0m in lieu of 3m from the northern common boundary.
- 1.3 Item 22(f)(ii): To permit a garage façade/carport to be 0m in lieu of 1.5m from the street boundary (Fifth Street).

2. CONDITIONS OF APPROVAL IMPOSED IN TERMS OF SECTION 100 OF THE BYLAW

- 2.1. Development of the property shall be substantially in accordance with Project number 2016-008, drawing number 100-001, Revision SK3 dated 30 May 2016 drawn by M. Ajam.
- 2.2. No roof sheets are to protrude into the property of any of the abutting property owners, inclusive of enclosures on the side of carports, verandas and patios.

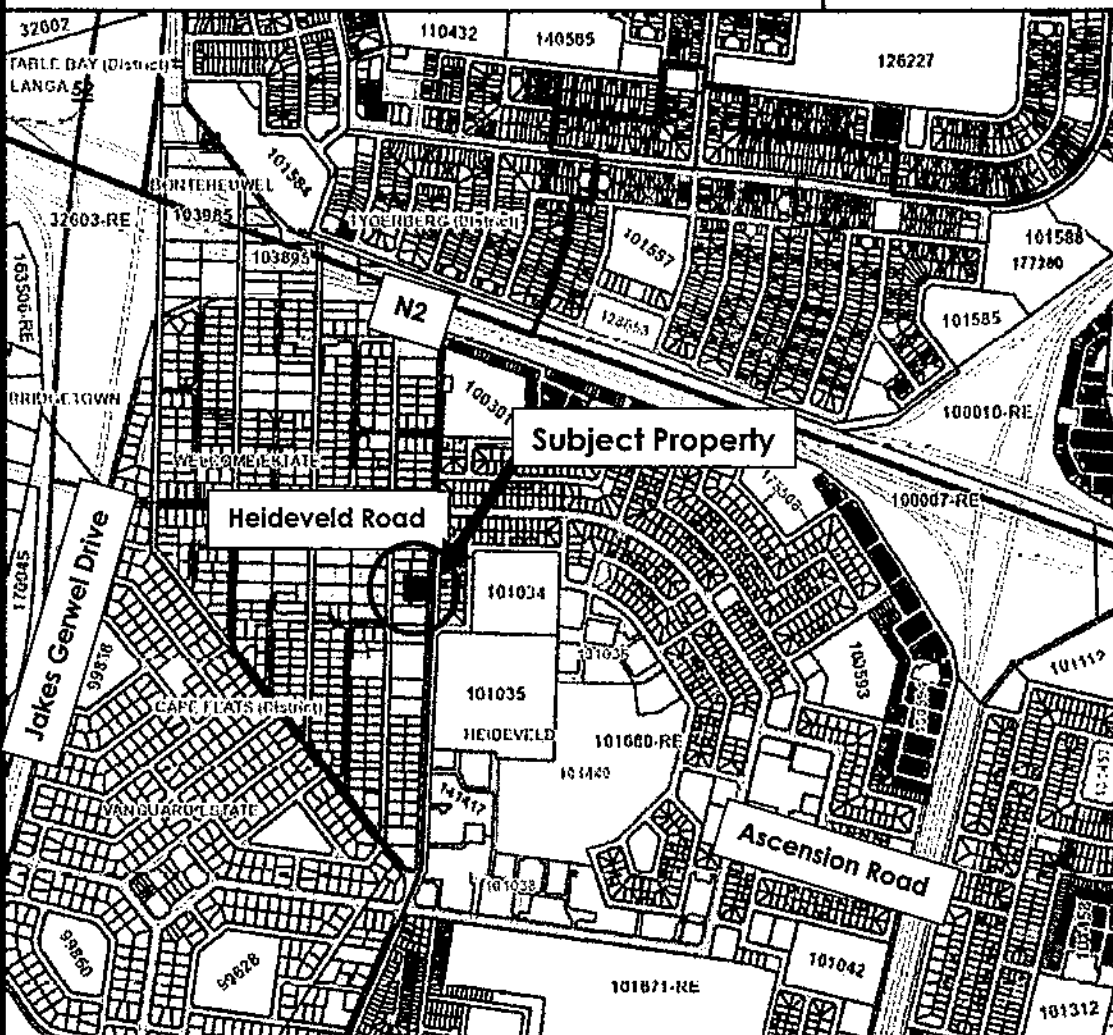



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Annexure

B

Locality plan / Public participation map

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :	
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>SR1 104142-RE</p> <p>SR1 104143-RE</p> <p>SR1 104316 ✓</p> <p>SR1 40547 CAPE FLATS (District)</p> <p>SR1 103849-RE</p> <p>SR1 104141 42</p> </div> <div style="width: 48%;"> <p>SR1 111525</p> <p>SR1 104898</p> <p>SR1 104144-RE</p> <p>SR1 40548 WELCOME ESTATE</p> <p>SR1 111082</p> </div> </div>	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>SR1 103331-RE</p> <p>SR1 103802-RE</p> </div> <div style="width: 48%;"> <p>SR1 101014</p> <p>SR1 167114 SR1 167115 SR1 167104</p> <p>SR1 101020 SR1 167107</p> <p>SR1 101020 SR1 167103</p> <p>SR1 167113 SR1 167112</p> <p>HEIDEVELD SR1 101027</p> <p>SR1 101026 SR1 101020</p> <p>SR1 101025 SR1 101021</p> <p>SR1 101024 SR1 101023</p> </div> </div>	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>SR1 103331-RE</p> <p>SR1 103802-RE</p> </div> <div style="width: 48%;"> <p>SR1 101014</p> <p>SR1 167114 SR1 167115 SR1 167104</p> <p>SR1 101020 SR1 167107</p> <p>SR1 101020 SR1 167103</p> <p>SR1 167113 SR1 167112</p> <p>HEIDEVELD SR1 101027</p> <p>SR1 101026 SR1 101020</p> <p>SR1 101025 SR1 101021</p> <p>SR1 101024 SR1 101023</p> </div> </div>	
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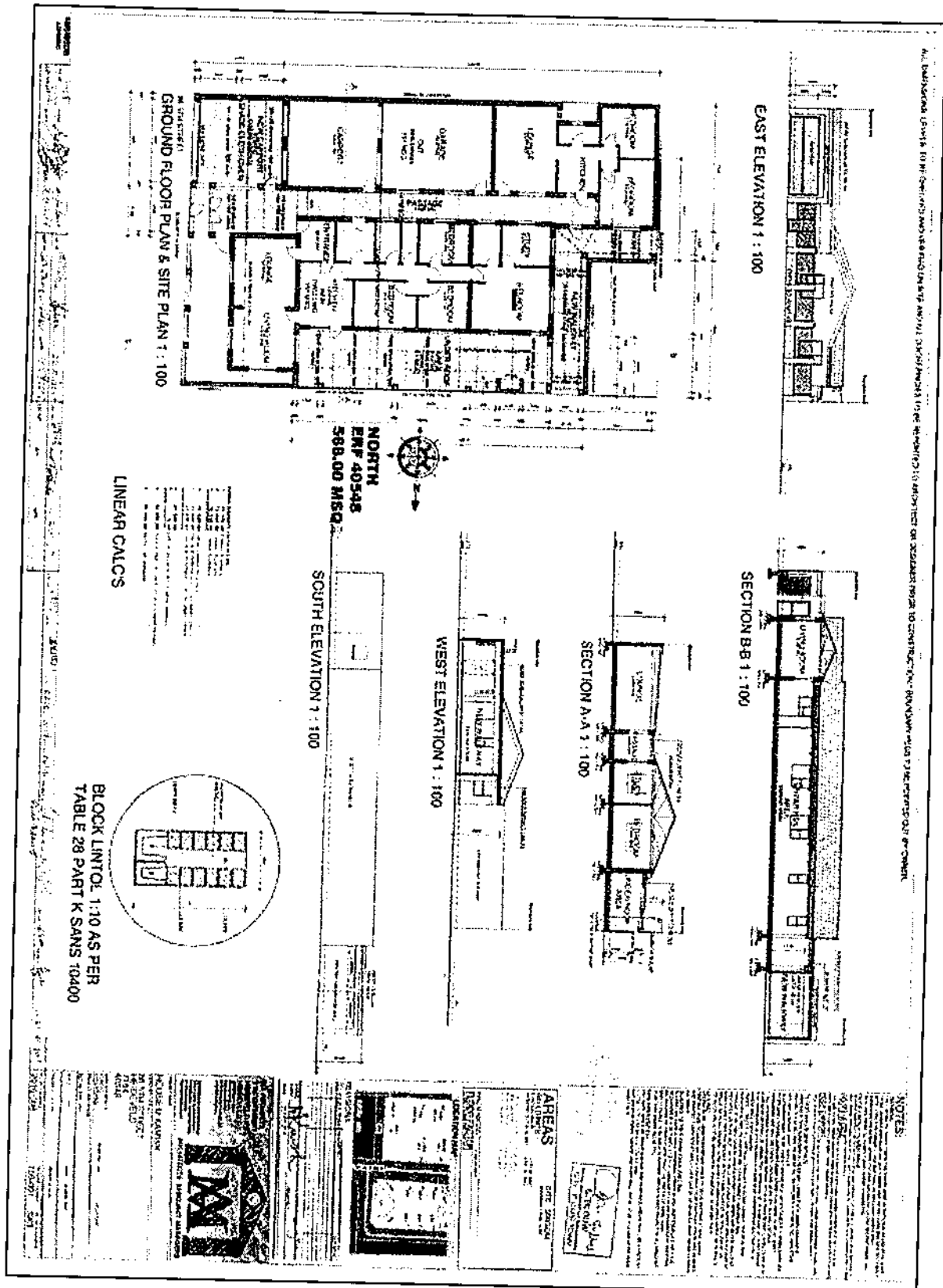
PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :								
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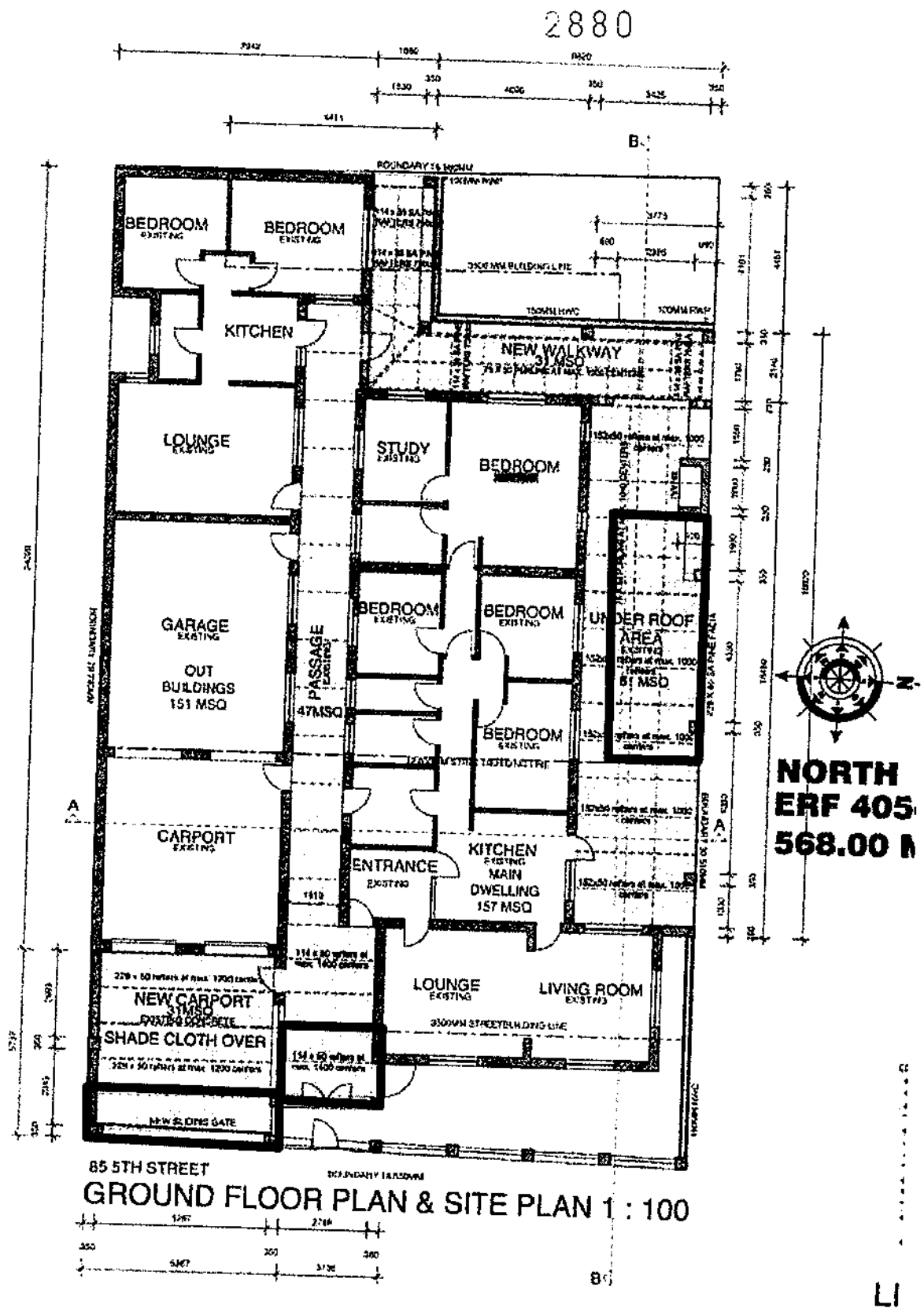
2878

Annexure

C

Building Plan





Annexure

D

Applicant's motivation

**LETTER OF MOTIVATION
CITY OF CAPE TOWN
TO WHOM IT MAY CONCERN**

(a) Economic impact and socio economic impact ?

THE DEVELOPEMENT IS A CARPORT, PATIO AND SOMEWALKWYS AND WILL HAVE NO NEGATIVE SOCIO ECONOMIC IMPACT.

(b) Social impact ?

THE DEVELOPEMENT IS A CARPORT, PATIO AND SOMEWALKWYS AND AND THUS WILL HAVE NO NEGATIVE SOCIAL IMPACT.

(c) Scale of the capital investment ?

THE DEVELOPEMENT IS VERY SMALL AND THE CAPITAL INVESTMENT WILL NOT BE MORE THAN R100 000.00

(d) Compatibility with surrounding areas ?

THE EXISTING HOUSE IS UNTOUCHED AND THE CARPORT FACADE IS UPGRADED TO MATCH WHAT IS COMMON IN THE AREA AND MATCHED TO EXISTING FACADE OF HOUSE.

(e) Impact no the external engineering services ?

NO NEGATIVE IMPACT ON EXTERNAL ENGINEERING SERVICES

(f) Impact on safety, health and well being of th surrounding community ?

NO NEGATIVE IMPACT

(g) Impact on Heritage ?

NO NEGATIVE IMPACT

(i) Impact on traffic, parking, access and other transport related matters ?


ON SITE PARKING WILL BE PROVIDED AND THE EXISTING CARRAIGEWAY CROSSING WILL BE USED.

(j) Whether the imposition of conditions can mitigate an adverse impact of the proposed landuse ?

N/A

Date :

11 AUGUST 2018

Signed :


MA PROJECTS ARCHITECTS AND PROJECT MANAGERS
Commercial Industrial Residential Model Building and Industrial Designers
Contact: Mustapha Ajam, Landline 2721 829 7102, Cell 2773 287563,
Email: Mustapha@ajam.co.za or Mustapha@maprojects.co.za



LETTER OF MOTIVATION

TO WHOM IT MAY CONCERN

Athlone Municipality

Dear Sir / Madam

I am writing regarding Property Erf 40548 Welcome Estate

My client would like to convert the open area on the northern side of the house to an outdoor undercover play area for the kids. There are existing garages on the property however 2 more secure parking bays are required for family members to park in and the only place is to provide a carport in front of the existing garage. This will also secure the house from the street. The new proposed undercover walkway allows for some shelter from the weather into the yard.

Thanking you

M. Ajam

Architects and Project Managers
Commercial Industrial Residential Model Building and Industrial Designers
Contact: Mustapha Ajam, Landline 2721 529 7102, Cell 2773 6204766, Email: Mustapha@ajam.co.za
Fax: 2786 273 2513 Fax: 2786 6554499 SMS: 0742742453

Annexure

E

Objections/comments/support received

2885



Nicole Storm
10 Orion Road
Surrey Estate
Erf 104144
ID No: 810512 5167 08 9

24 April 2019


TO WHOM IT MAY CONCERN

OBJECTION LETTER
ERF 40548, CASE ID 70420020 AT 85 FIFTH STREET, WELCOME ESTATE

Please note that I have raised my concern with the owners already. They built the carport and the sheeting is overlapping onto my property. When it rains, all the water lands in my yard. They have placed a gutter on the wall but it does not solve the issue of the roof sheeting that's still hanging over the boundary wall and into my property.

Could they please correct this?

Thanking you on behalf of my son Nicole Storm



Izak Storm (father)
ID No: 500901 5109 08 1

Annexure

F

Applicant's response to objections /comments/support received

2887

Yunus Hugo

From: Idrees Kamish <idreeskamish@gmail.com>
Sent: Monday, August 19, 2019 9:20 PM
To: Yunus Hugo
Subject: Re: Approval of Building Plans Case ID 70420020

Follow Up Flag: Follow up
Flag Status: Flagged

I'm resending the email due to the previous incorrect email address:

Approval of Building Plans Case ID 70420020





Idrees Kamish <idreeskamish@gmail.com>  14:33 (6 hours ago)

to yunus.hugo



On Mon, 19 Aug 2019 at 14:33, Idrees Kamish <idreeskamish@gmail.com> wrote:

Dear Mr Yunus Hugo

I'm writing in response to an email received from Mr Ajam (during May 2019) who was tasked with getting our building plans approved.

I know this response is very late since this matter was raised during May this year, but in my defence, I tried to get hold of Mr Ivor Daniels (see the attached email, who was the building inspector at the time when this issue was initially raised). I have recently found out that Mr Daniels is no longer with your department. Mr Ajam has also been quite ill the past few months, and that caused further delays.

At the time when Mr Izak Storm, the owner of the property next to us raised objections regarding water overflowing onto his property from our side, Mr Daniels came to inspect and advised us to have a gutter installed. This we did almost immediately. Mr Daniels said that there were no other problems since our roof sheets do not protrude onto our neighbours' property as he claims. The gutter that has been installed is still on our property - not on his. We have however installed see-through sheets above the vibracrete fence, for our security (which makes it much safer for them as well).

Our building plans have since been updated, but are still not passed, due to this objection. Mr Isak Storm does not even live on the property. He rents it out to several tenants.

They have apparently complained of dampness, due to excess water. The fact is Mr Storm's own carport has had several holes in for quite some time. His gutter is also clogged up and has grass & moss growing in it, preventing the water to run down his downpipe, which he recently repaired. It is still completely ineffective, due to the gutters still being dirty and the 5 or more big holes in his carport.

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On our side, we have two sets of gutters, which we regularly have cleaned. So there is very little possibility of our water running onto his property if any.

We would really love to have this issue resolved ASAP so that we can continue with further improvements for our comfort and SAFETY. During July we had several break-ins (3 in the space of 1 week!). This has now highlighted the need to complete our building projects, which include a new gate at our front entrance with a covered carport.

The fact is that the improvements we are making to our premises also benefit all our neighbours around us, and increase the value of their properties as well.

It is therefore sad that we are being punished just because our neighbour (who does not even live on his property is very stubborn and spiteful).

Please help us to have this matter resolved so that we can move on with our lives.

I'm enclosing photographs taken a few days ago (on 14-08-2019), to prove what I've said regarding our well-constructed, neat-looking roof structure and his broken one and the fact that our roof does not protrude onto his property as well as a copy of the email I sent to Mr Daniels on 25 May this year.

I would like to come to your office to find out how to get this matter finally resolved - which has been going on for several years now!

Thank you for your time and once again apologies for only getting back to you regarding this matter at this stage.

Idrees Kamish

2889

Annexure

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List of Relevant Parties

List of affected parties:

Applicant:

Mustapha Ajam

1 Betsy Court

Heideveld

7764

Email: mustapha@maproject.co.za

Email: mustapha@ajam.co.za

Tel: 073 287 5763 / 021 829 7102

2890

Owner:

Mogamat Idrees Kamish

85 Fifth Street

Welcome Estate

7764

Email: idreeskamish@gmail.com

Tel: 072 019 1949

Objector:

Nicole Storm (Nico Storm Trust)

10 Orion Road

Surrey Estate

7764