



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO **MPTSW07/01/18**

**APPLICATION FOR A DEPARTURE IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: REMAINDER ERF 42840, CAPE TOWN AT CRAWFORD, 54 FOURTH AVENUE, RONDEBOSCH EAST**

Case ID	70298630
Case Officer	Mark Colison
Case Officer phone number	021 684 4343
District	Cape Flats
Ward	60
Ward Councillor	Mark Kleinschmidt
Report date	2017-12-22
Interview requested	To be completed by MPT support office
	Applicant
	Objector(s)

**1. EXECUTIVE SUMMARY**

Property description	Remainder Erf 42840 Cape Town at Crawford				
Property address	54 Fourth Avenue, Rondebosch East				
Application components / description	<ul style="list-style-type: none"> <li>A departure, as set out in Annexure A, relating to the height and setback on the southern common boundary to permit additions to an existing dwelling house, as per the Site Development Plan attached as <b>Annexure C</b>.</li> </ul>				
Site extent	496m <sup>2</sup>				
Current zoning	Single Residential 1				
Current land use	Dwelling House				
Overlay zone applicable	None				
PHRA or SAHRA heritage	None				
Public participation outcome summary	1 objection One late objection has also been received.				
<b>Recommended decision</b>					
Approval	✓	Refusal		Approval in part & Refusal in part	

**2. BACKGROUND FACTS**

2.1 The application was advertised by means of registered notices to interested and affected parties. It must also be noted that the application involves two departures on the southern common boundary (i.e. in terms of height and distance from the boundary) but these cover the same area on the property and thus only either 1 of the 2 applies and is necessary. In this instance, this Department is applying the height departure on the southern common boundary.

- 2.3 The building work already exists. As a result of this, an Administrative Penalty process was followed and the Administrative Penalty, as determined by the Municipal Planning Tribunal, has been paid.

### 3. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation of the proposed development (see [Annexure D](#)) may be summarised as follows:

- The owners of the abovementioned site wish to create a secure and safe dwelling to accommodate their present as well as their future, lifestyle and needs.
- The dwelling itself is positioned well within the 3,5m street building line and therefore has very little impact if any, on the streetscape.
- On the southern boundary where the addition is positioned at 1,5m instead of 3,0m away from the common boundary, the only potential overlooking feature is a frosted bathroom window and the balcony which is screened by means of a brick wall.

### 4. PUBLIC PARTICIPATION

	Applicable	Dates / Comments	
Advertising	Notice in the media (s81)	N/A	
	Notice to a person (s82)	✓	2016-11-10
	Notice to Community organization (s83)	N/A	
	Notice to Ward Councillor (s83)	N/A	
	Notice of no objection (s84)	✓	2016-11-10
	Notice to Provincial Government (s86)	N/A	
	Notice to an Organ of State (s87)	N/A	
	Public meeting	None	
	On-site display	N/A	
Outcome	Objections	✓	1
	Objection petition	None	
	Support / No objection	N/A	
	Comments	None	
	Ward Councillor response	N/A	

#### Summary of objections received

An objection was received from the owners of Erf 42841 Cape Town at 56 Fourth Avenue, Rondebosch East (see [Annexure E](#)), which can be summarized as follows :

- No objection to the applicant building to 6.5m along the southern boundary at 3m from the boundary. We do object to construction at 1.5m from the boundary.
- The erven in Fourth Avenue are small (approx. 495m<sup>2</sup> each) and a 6.5m high house is a very high structure and a house built too close to the boundary encroaches on the sense of space, spatial ambience, and privacy of the adjoining property.
- It is highly likely that the market value of 56 Fourth Avenue is negatively impacted upon as the house will be boxed in on its 'southern boundary'.

- If the application is approved, the Trustees will have a legal and fiduciary responsibility to institute a case against the City of Cape Town for value destruction and loss incurred.

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A further objection, received after the closing date for comments and objections was received from the owner of Erf 42837 at 51 Fourth Avenue Rondebosch East, which relates primarily to the invasion of privacy during construction and the alleged removal of a tree from the Municipal verge. A recent site inspection has however revealed that the tree, which is evident on the City's photography prior to the commencement of construction, still exists on the verge. It is also noted that no construction workers occupy the site as construction has been completed and it is therefore assumed that the matters raised by the objector have now been addressed. A copy of the correspondence in this regard is attached hereto as **Annexure E1**.

### **Summary of applicant's response to public participation**

The applicant's response to the objection received (see **Annexure F**) may be summarised as follows:

- The objector states that the proposal will negatively affect the neighbouring property due to lack of privacy and light. This statement is refuted as the first floor extension matches several similar proposals in the area that have been approved by the City and which have shown to have little, if any, impact on the neighbours.
- The next basis for objection is based on the objector's perception that the current proposal creates a sense of being "boxed in". Again, this contention is refuted. The existing architecture is reproduced on the proposed upper levels and the proposed building line relaxations are a direct result of the proposal following the footprint of the existing structure. It is the applicant's contention that the development is of a lesser aesthetic impact than setting the upper floors back to comply with these restrictions. It must also be pointed out that the deviation from what is prescribed in terms of height is of a really negligible nature, and compliance with the prescribed regulations will so minimally reduce the impact, that the "perceived impact" will remain unchanged.
- It is the applicant's view that the objection received is unsubstantiated and bears little relevance to the proposal at hand and should be set aside. Other affected property owners have no objection to the proposal and because the proposal involves negligible deviations from what is prescribed, the impact of the proposal is extremely similar to the impact of a proposal which adheres to the prescribed restrictions.

## **5. BACKGROUND TO PROPOSAL**

### **Description of the area / surrounding land uses**

- 5.1 The subject property is located along Fourth Avenue in Rondebosch East, to the north of Kromboom Road and west of the Cape Flats railway line. The property is currently developed with a dwelling house and garage. The garage is located on the northern common boundary and both the dwelling and the garage are set back in excess of 3.5m from the street boundary of

the property. The immediate and broader surrounding area is characterised by single residential structures of a fairly high standard and varying architectural styles. Several double storey structures which have been fairly recently renovated exist in the area. Roads are of standard residential width and the area is well treed with non-motorised transport infrastructure along the major streets in the area.

#### **Property description**

- 5.2 The subject property measures 496m<sup>2</sup> and is developed with a large double storey dwelling house which includes the unauthorized additions which are the subject of this application.

#### **Proposed development**

- 5.3 The proposal involves the addition of a first floor dwelling extension 1,5m away from the subject property's southern boundary along the footprint of the existing dwelling house on the property, at a height of 6.5m (Refer to **Annexure C**). It is noted that the extension is completely inter-leading with the main dwelling and therefore no additional dwelling unit is proposed or created as a result of this proposal.
- 5.4 The proposal requires departures, as set out in **Annexure A**, relating to the height and setback from the southern common boundary of the property.

## **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 application complies with the basic requirements of the MPBL.

##### 6.1.2 Compliance or consistence with the municipal spatial development framework:

N/A

##### 6.1.3 Consideration in terms of Section 99(3) of the desirability of the following criteria:

- For the reasons given in Section 6.2.4 below this Department is of the opinion that the proposal is desirable.

##### 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

None applicable to this application.

## 6.2.2 Relevant criteria contemplated in the DMS

N/A

## 6.2.3 Applicable policy approved by the City to guide decision making

- None 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:

Alterations and additions such as the subject of this application are an enhancement to a property and therefore generally increase the value of the property. Often such improvements also results in an increase in the value of surrounding properties as well.

b. Compatibility with surrounding uses:

The proposed use is residential in nature and is compatible with the surrounding area. The proposal will have very little impact on the streetscape and allows for improved amenities and aesthetics of the dwelling and as such fits in with the built form in the surrounding residential area. The double storey nature of the dwelling is completely in character with the development trends in the area where older single storey dwelling units have largely been renovated into modern larger double storey dwelling units.

c. Impact on the external engineering services:

The proposal will not have any impact on engineering services.

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

The proposal will not impact on the area in terms of safety, health and wellbeing. The objections relates directly to the first floor addition being 1.5m from the southern common erf boundary which is only a departure as a result of the height thereof. However, only 2.5m of the height of the addition along the southern common boundary contravenes the DMS. Furthermore, a single bathroom window is positioned along this side of the structure at first floor level and given that this window is fitted with opaque/frosted glass, it is this Department's opinion that the relevant objector's privacy will not be significantly compromised.

e. Impact on heritage:

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There will be no impact on heritage.

f. Impact on the biophysical environment:

The proposal will have no impact on the biophysical environment. The site is not environmentally sensitive.

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

The proposal will have no impact on traffic impacts, parking, access or other transport related considerations.

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

The applicant states that the only window located on the southern side of the first floor is fitted with opaque glass and notwithstanding the fact that this has been implemented, a condition in this regard, has been imposed. No further mitigating conditions are deemed necessary.

6.2.5 The proposal will not impact significantly on existing rights:

- The setback and height departures are minor in nature.
- It must be noted that the addition follows the footprint of the existing dwelling and the potential impact of having the building setback and built to the full extent of what is permitted in terms of the DMS would have a far greater impact on the surrounding area than what is herein proposed.
- Furthermore, both the subject property and the objector's property are less than 650m<sup>2</sup> which, in terms of the DMS permits buildings and structures to be setback up to 0m onto the common boundaries, up to a maximum height of 10m to the top of the roof for the first 12m perpendicular to the street. The DMS also allows for development up to 0m along the common boundaries, at a maximum height of 4m, for 60% of the remaining linear distance. In this case, the permitted development at 4m in height could span the entire length beyond 12m of the southern common boundary of the applicant which is the northern common boundary of the objector to the south. The impact of this potential exercising of the existing development rights could therefore result in a far greater impact than what is currently proposed.

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

**6.3 Regarding the objections:**

It is noted that the objector refers to the property being boxed in on the 'Southern' boundary and it assumed that the reference should be associated with the objector's northern boundary. It is also noted that due to the shape

of the objectors house, only a small portion of the objectors property is affected by the proposal and as further argued above, the impact of the proposal on the objector's property is in fact negligible when compared to the development potential which exists under the rights currently enjoyed in terms of the City of Cape Town's Development Management Scheme.

## 7 REASONS FOR DECISION

- 7.1 Reasons for the recommended decision for **approval** relating to the application for Departures may be summarised as follows:
- 7.1.1 The setback at 1,5m and height of 6,5m within the 3m common boundary setback only applies to a relatively minor area and will not significantly and negatively affect the streetscape or any neighbouring properties.
  - 7.1.2 The additions are architecturally compatible with the existing dwelling and the surrounding area.
  - 7.1.3 The proposal does not constitute a major, negative visual impact in relation to the abutting properties nor the broader neighbouring area.
  - 7.1.4 The proposed addition is complementary to the existing dwelling and surrounding properties in terms of roof structure and architectural theme.
  - 7.1.5 The southern boundary treatment is not considered excessive considering the structure's height, window positioning, its extent and its impacts on the abutting properties in terms of overlooking and overshadowing.

## 8 RECOMMENDATION

In view of the above, it is recommended that:

- 8.1 The application for departures for Erf 42840 Cape Town at Crawford, as contained in **Annexure A**, attached hereto, **be approved** in terms of Section 98(b) of the Municipal Planning By-Law, 2015.

## ANNEXURES

Annexure A	Departures approved and Conditions Imposed
Annexure B-B1	Regional Locality plan & Public Participation map
Annexure C	Site Development Plan/Building Plan
Annexure D	Applicant's Motivation
Annexure E & E1	Objections received and Late Objection
Annexure F	Applicant's response to objections received
Annexure G	List of relevant parties



**for Section Head : Land Use Management**

Name M Muller  
 Tel no 021 684 4310  
 Date 29 December 2017



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**District Manager**

Name M Muller

Tel no 021 684 4310

Date 29 December 2017

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# Annexure A

In this annexure:

"City" means the City of Cape Town

"The owner" means the registered owner of the property

"The property" means **Remainder Erf 42840 Cape Town at Crawford**

"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

**CASE ID:** 70298630

**1. DEPARTURES FROM THE DEVELOPMENT MANAGEMENT SCHEME APPROVED IN TERMS OF SECTION 98 (B) OF THE MUNICIPAL PLANNING BY-LAW, 2015:**

**Note : The departures hereby approved are linked to the plan no. 42840/1, drawn by Mark van Breda and dated 01/03/2016, attached hereto as Annexure C.**

- 1.1 Item 22(c): To permit the portion of the first floor addition, after the first 12m perpendicular to the street, to be at a height of 6,5m in lieu of 4m from the southern common boundary in accordance with plan no. 42840/1, drawn by Mark van Breda and dated 01/03/2016, attached hereto as **Annexure C**.

**2. CONDITIONS IMPOSED IN TERMS OF SECTION 100 OF THE CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015.**

**Planning and Building Development**

- 2.1 The window on the first floor, along the southern side of the first floor addition, must be fitted with opaque glass panes.

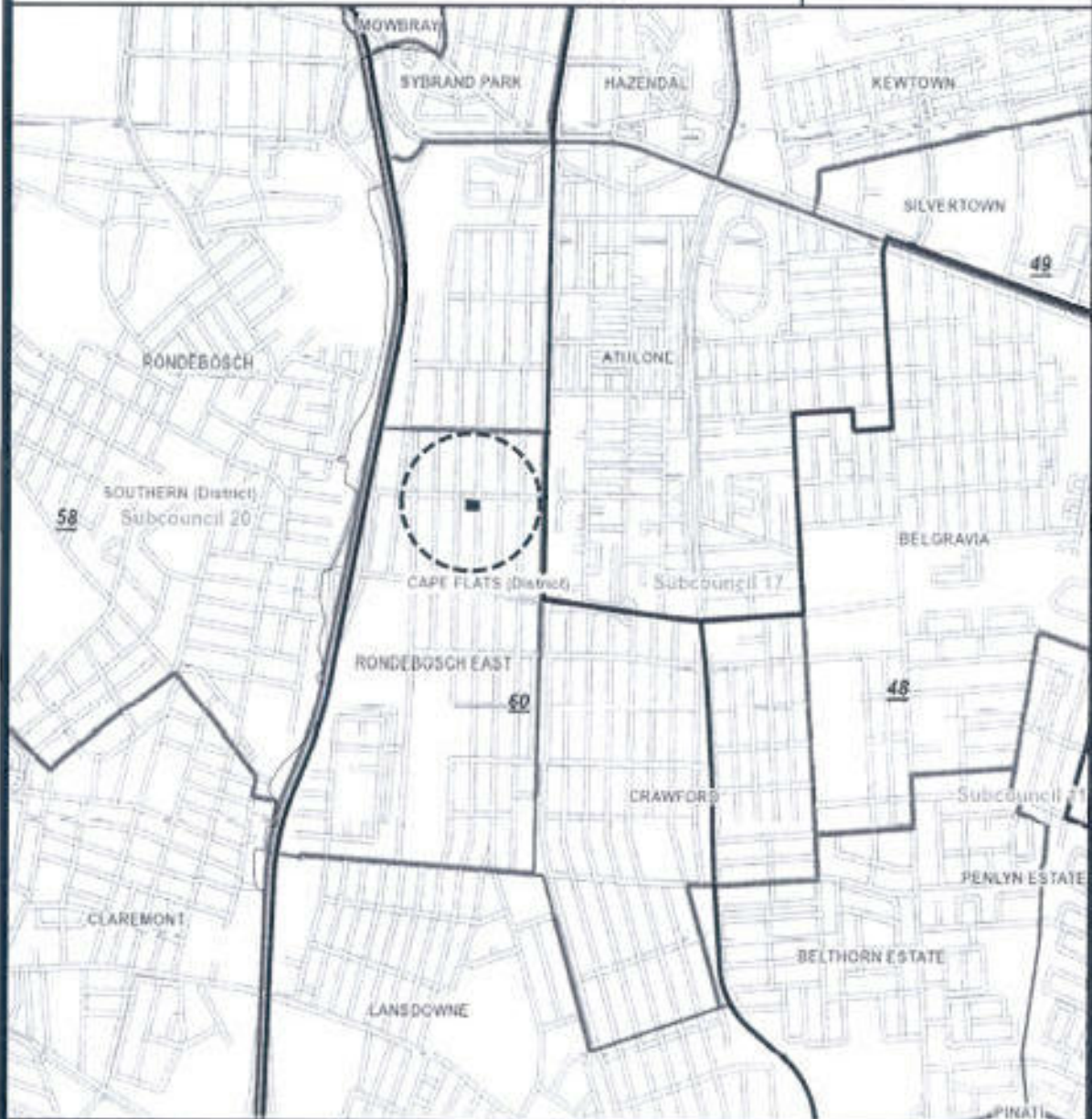
# Annexure

## B & B1

Regional Locality Plan &  
Public Participation Map

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT  
LOCALITY MAP

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Overview



Erf. 42840-RE

District: CAPE FLATS

Allotment: CAPE TOWN

Suburb: RONDEBOSCH EAST

Ward: 60

Sub Council: Subcouncil 17



1:19 200

Notices Served



Support Received



Petition Signatory



Objections Received



Generated by: M Collison

Date: 31 August 2017

File Reference: 70362259



CITY OF CAPE TOWN  
ISIKHO SASEKAPA  
IYAD KAAPSTAD

Metropolitan Executive Council



# Annexure C

## Site Layout Plan





# Annexure D

## Applicant's Motivation

Planning and Building Development Management  
LAND USE MANAGEMENT APPLICATION

ERF 42840

54 4<sup>th</sup> Avenue

RONDEBOSCH EAST

**R.E. MOTIVATIONAL LETTER FOR THE PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING DWELLING, ON ERF 42840, 54 4<sup>th</sup> AVENUE, RONDEBOSCH EAST.**

Dear Sir/Madam

The owners of the above mention site, wishes to do the alterations and additions to the existing dwelling to create, a secure, safe dwelling to accommodate their present as well as their future life style and needs.

The dwelling itself, is well within the 3,5m Street building line therefore it will have very little impact if any, on the street scape. On the South boundary where, the building will be 1500mm instead of 3000mm away from the Common Boundary the only overlooking feature there will be a Bathroom window, the Balcony will be well screened by means of a brick wall.

# Annexure E

## Objections Received

Dear CTC & Craig

Pse be informed that I was abroad and only returned to SA on 3 Aug. Yr letter dated 5 July 2016 was collected at the Post Office at the 1<sup>st</sup> available opportunity on Sat 6 Aug, thus I am writing to u asap.

The application above seeks a permanent departure and relaxation on erf 42840 on 2 grounds as specified in yr letter and the drawings provided in yr letter.

Pse note, I am writing to u as a lay person and thus my use of the correct legal words may not be complete. However, I am sure the meaning of our objection will be clear.

- The applicant wish to build his house to a height of 6.5m along the southern boundary, instead of the allowed 4m.
- The applicant wish to build 1.5m away from the southern boundary as opposed to the City's rules of 3m.

Comments and Objection by the Nuria Jakoet Trust - We will allow the applicant to build to 6.5m along the southern boundary BUT this must be built 3m from the boundary. We do NOT give permission for the relaxation of the 1.5m from the boundary application.

Reason for objection- As the City will know, the erven in 4<sup>th</sup> ave is small ( approx. 495 sq m each ). A 6.5m high house is a very high structure and if such a house is built to close to the boundary, it will greatly encroach on the sense of space, spatial ambience, and privacy of the adjoining neighbour ( viz 56, 4<sup>th</sup> ave ). In fact, it is highly likely that the market value of 56, 4<sup>th</sup> Ave will be negatively impacted as the house will be 'boxed ' in on its southern boundary.

Should this materialise, the Trustees will have a legal and fiduciary responsibility to institute a case against the CTC for value destruction and loss incurred.

Should u require any further information or if the Trusts need to complete any further forms to register this objection, pse do not hesitate to e-mail me on this address.

I am available today to see Mr Craig Theron at your Athlone district office today, if required. Pse call me on 0832001317 if I must visit yr Athlone offices for any further clarifications.

# Annexure E1

Late Objection Received

**Mark Collison**

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**From:** Ashley Van Der Berg <ashleyv@icon.co.za>  
**Sent:** 14 December 2016 09:20 AM  
**To:** Craig Theron  
**Cc:** Adele McCann; Mark Collison; margot.miller@capetown.gov.za  
**Subject:** RE: case ID 70298630

Dear Craig

I missed the 12<sup>th</sup> of December deadline as I was out of the country with my family with limited internet access. I have contacted an advocate and my local councillor for advice on the matter I have complained about. I really do not know my rites are but intend to work within the parameters of the law.

The owners are not working within the law here. They are now slab height and workers looking directly into my room. This is a privacy issue more than anything else and I urge you to deal with this matter. They need to make changes to their front so that my privacy is protected. I invite you to my house to view what I am talking about .

They also have a tree on council land that I believe might be removed because it is directly in front of their gate and door. How will this be handled.

I object to all the proposed diversions of the deed due to my privacy being infringed upon. I will only agree with permission if my concerns are addressed.

I have proof of my flight details if needed to verify me being out of the country at the time of having to submit my objections.

Regards

Ashley

**From:** Ashley Van Der Berg [<mailto:ashleyv@icon.co.za>]  
**Sent:** 22 November 2016 09:18 PM  
**To:** [Craig.Theron@capetown.gov.za](mailto:Craig.Theron@capetown.gov.za)  
**Subject:** FW: case ID 70298630

**From:** Ashley Van Der Berg [<mailto:ashleyv@icon.co.za>]  
**Sent:** 22 November 2016 09:17 PM  
**To:** 'craig.Theron@capetown.gov.za'  
**Subject:** case ID 70298630

Dear Sir

Today I collected your letter sent to me on the 10<sup>th</sup> November 2016 regarding the application for erf 42840 54 4<sup>th</sup> avenue Rondebosch east. I am very confused as I was under the understanding the plans were not yet approved. However the owner builder is already slab height. How is this possible. I find this unacceptable as I have just completed and your inspector signed off my house opposite a few months ago. I followed all the laws and permissions.

I urgently request you send out your inspector to inspect and stop this work. Clearly they building without approved plans.

# Annexure F

Applicant's Response to  
Objection Received

Planning and Building Development Management  
LAND USE MANAGEMENT APPLICATION

ERF 42840

54 4th Avenue  
RONDEBOSCH EAST

**R.E. RESPONSE TO OBJECTIONS RECEIVED FOR THE PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING DWELLING, ON ERF 42840, 54 4TH AVENUE, RONDEBOSCH EAST.**

The objectors' states that the proposal will negatively affect the neighbouring property due to lack of privacy and light. This statement is refuted as the first floor extension matches several similar proposals in the area that have been approved by the City and which have shown to have little, if any, impact on the neighbours.

The next objection is based on the objectors' perception that the structure creates a sense of being "boxed in". Again, this is refuted. The existing architecture is reproduced on the proposed upper level and the proposed building line relaxations are a direct result of the proposal following the footprint of the existing structure. This way results in the development being a lesser aesthetic impact than setting the upper floors back to comply with the building line restrictions. I must also point out that the departure from what is required in terms of height is of a really small margin, and to comply with the required regulations will so minimally reduce the impact, that the objector's view of the impact will remain unchanged.

It is our view that the objection received does not make sense as there is no evidence produced and has little relevance to what is being proposed and should be set aside. The other neighbours and property owners have no objection to the additions and because the proposal involves a small deviation from what is required, the impact of the double storey is extremely similar to the impact of a building which adheres to the required restrictions.

# Annexure G

## List of Relevant Parties

## LIST OF RELEVANT PARTIES

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### Applicant

Mr F Dawood  
54 Fourth Avenue  
Rondebosch East  
7780

Attention: F Dawood

### Objectors

1. Fatima Jakoet ( representative trustee for the Nuria jakoet Trust (Erf 42841)  
56 Fourth Avenue  
RONDEBOSCH EAST  
7780

Attention : F Jakoet  
0832001317  
[fatimajakoet@mweb.co.za](mailto:fatimajakoet@mweb.co.za)