



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

2341

REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO **MPTSW31/11/19**

CASE ID	70476895
CASE OFFICER	N Floris
CASE OFFICER PHONE NO	021 444 9540
DISTRICT	Southern
REPORT DATE	04/11/2019

WARD 58: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 64767 CAPE TOWN, 113 THIRD AVENUE, KENILWORTH

1. EXECUTIVE SUMMARY

Property description	Erf 64767 Cape Town
Property address	113 Third Avenue, Kenilworth
Site extent	781m ²
Current zoning	General Residential Subzone GR4
Current land use	Dwelling house and unauthorised second dwelling
Overlay zone applicable	None
Submission date	03/11/2018
Subject to PHRA / SAHRA	Yes
Any unauthorised land use / building work?	This application relates to the unauthorised building work on the subject property in a form the conversion of an outbuilding (storeroom) with additions into a second dwelling. There is also an unauthorised land use in the form of the use of the second dwelling.
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

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For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 The owner purchased the subject property from the owner's mother in 2015. The mother still resides on the property in the unauthorised outbuilding (storeroom) which according to the applicant is a domestic staff quarters (see Annexure B). It is important to note that a domestic staff quarters is defined in the Development Management Scheme as "an outbuilding which has a floor space of not more than 50 m², including sanitary and cooking facilities, and used for the accommodation of domestic staff employed at the dwelling house concerned". As the "domestic staff quarters" is not used to accommodate domestic staff, the building in question is actually being used as a second dwelling.
- 3.2 A building plan for additions and alterations to the dwelling house was submitted in June 2019 and was approved in July 2019 (see Annexure C). It is important to note that the outbuilding was indicated as a storeroom with no alterations, additions or conversions having been shown on the building plan.
- 3.3 It must also be noted that the outbuilding is connected to the main dwelling which is older than 60 years. Any alterations to the outbuilding requires a permit from Heritage Western Cape.
- 3.4 The required land use application to regularise the outbuilding into a second dwelling has not yet been submitted.

4 SUMMARY OF APPLICANT'S MOTIVATION

The owner's motivation (see Annexure D) may be summarised as follows:

- The owner was not responsible for the unauthorised building work.
- The owner's mother resides in the domestic staff quarters.
- The unauthorised building work includes converting the storeroom into a domestic staff quarters, additions of a bedroom and kitchen, and enlarging the toilet into a bathroom.
- The window and door contravenes the 3m common boundary building line.
- The property was purchased from the owner's mother in April 2015.
- The conversion of the storeroom occurred at the time of purchase.
- The current and previous owner are not aware of when the unauthorised building work took place.
- The property to the north is a historical 4.72m wide servitude.
- The contravention does not impact directly on any of the neighbouring properties.
- In May 2019 the owners discovered the unauthorised building work.
- No further building work has been done to the outbuilding.
- The owner has not previously contravened any planning laws.
- The owner has displayed integrity in ensuring the property has legal approval.
- The owner has inherited the contravention from a previous owner.

5 ASSESSMENT OF APPLICATION

2343

- 5.1 The administrative penalty is required for unauthorised building work relating to the conversion of the outbuilding (storeroom) into a second dwelling on the subject property which contravenes Items 22(d), 22(e) and 53(b) of the Development Management Scheme (DMS) relating to the 3m common boundary line setbacks, window and door 1.5m setbacks and that the second dwelling has not been constructed in a style that is similar to the architecture of the main dwelling house. Therefore, the entire second dwelling is in contravention of the MPBL.
- 5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.
- 5.3 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.
- 5.4 The applicant claims that the current owner was not involved in any of the unauthorised building work and the owner has provided an affidavit to this effect (see Annexure D). As the recommended administrative penalty is R0, and for pragmatic reasons, the cost of the unauthorised building work has not been calculated.
- 5.5 The municipal value of the property is R3 350 000.00, as per GV2018 (see Annexure F).
- 5.6 The calculation of the value of the land use contravention is as follows:
- $$\frac{R3\ 350\ 000}{781m^2} \times 34.8m^2 = R149\ 270.17$$
- 5.7 An amount which is not more than 100% of R149 270.17 may be imposed as an administrative penalty in relation to the unauthorised land use.
- 5.8 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 contravention relates to the unauthorised conversion of the storeroom and extensions thereto into a second dwelling.

Duration – According to the applicant's motivation the conversion of the second dwelling occurred at the time of when the current owner took ownership of the property in 2015. However, the owner also states that the owner is unaware of when the unauthorised building work took place. As it is difficult to prove what the actual commencement date is, this Department (i.e Development Management) accepts the applicant's 2015 timeframe as the commencement date. The duration of the contravention is thus long.

Gravity – The gravity of the contravention is not particularly serious, particularly given that the second dwelling is small (smaller than the maximum extent of the domestic staff quarters), is at the rear of the property (ie not readily visible from the street) and as a second dwelling is permitted as a primary right on a property zoned General Residential Subzone GR4.

Extent – At 34.8m², extent of the contravention is moderate.

b) The conduct of the person involved in the contravention

The owner and applicant provide contradictory statements. The first stating that the unauthorised building work occurred at the time of when the current owner purchased the property and the second, stating that both the current and previous owners were not aware when the unauthorised building work took place. The statements are misleading, given that the 2019 approved building plan (see Paragraph 3.2 above) which was drawn up by the same applicant in 2019 (4 years after the current owner purchased the property and started using the building as a second dwelling), indicates the outbuilding as an “existing store” and does not reflect the previous unauthorised extensions.

The conduct of the owner cannot be condoned.

c) Whether the unlawful conduct has stopped

The unlawful conduct has not stopped.

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

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

- 5.9 In view of the abovementioned considerations, this Department recommends that an administrative penalty of **R2 000.00** be imposed for the unauthorised land use and R0 for the unauthorised building work.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The administrative penalty is required for unauthorised building work and land use relating to a second dwelling which contravenes Items 22 and 53 of the Development Management Scheme.
- 6.2 At 34.8m², the extent of the contravention is moderate.
- 6.3 The duration of the contravention is long.
- 6.4 The gravity of the building work is not particularly serious, particularly given that the second dwelling is small (smaller than the maximum extent of the domestic staff quarters), is at the rear of the property (ie not readily visible from the street) and as a second dwelling is permitted a primary right in a property zoned General Residential Subzone GR4.
- 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 the Municipal Planning By-Law, 2015 or any other planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R2 000.00** be determined in terms of Section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of the unauthorised building work and land use on Erf 64767 Cape Town, as shown on the plan drawn by Louise van Riet with drawing numbers 1807_1-02 Rev 2, dated 28 October 2019.

ANNEXURES

Annexure A	Locality plan
Annexure B	Site Development Plan
Annexure C	Previously approved building plan
Annexure D	Applicant's motivation & sworn affidavit
Annexure E	Title deed
Annexure F	Municipal valuation


Section Head : Land Use Management

Comment

Name P Hoffa

Tel no 021 444 7724

Date 2019-11-04


District Manager

Name U Gonsalves

Comment

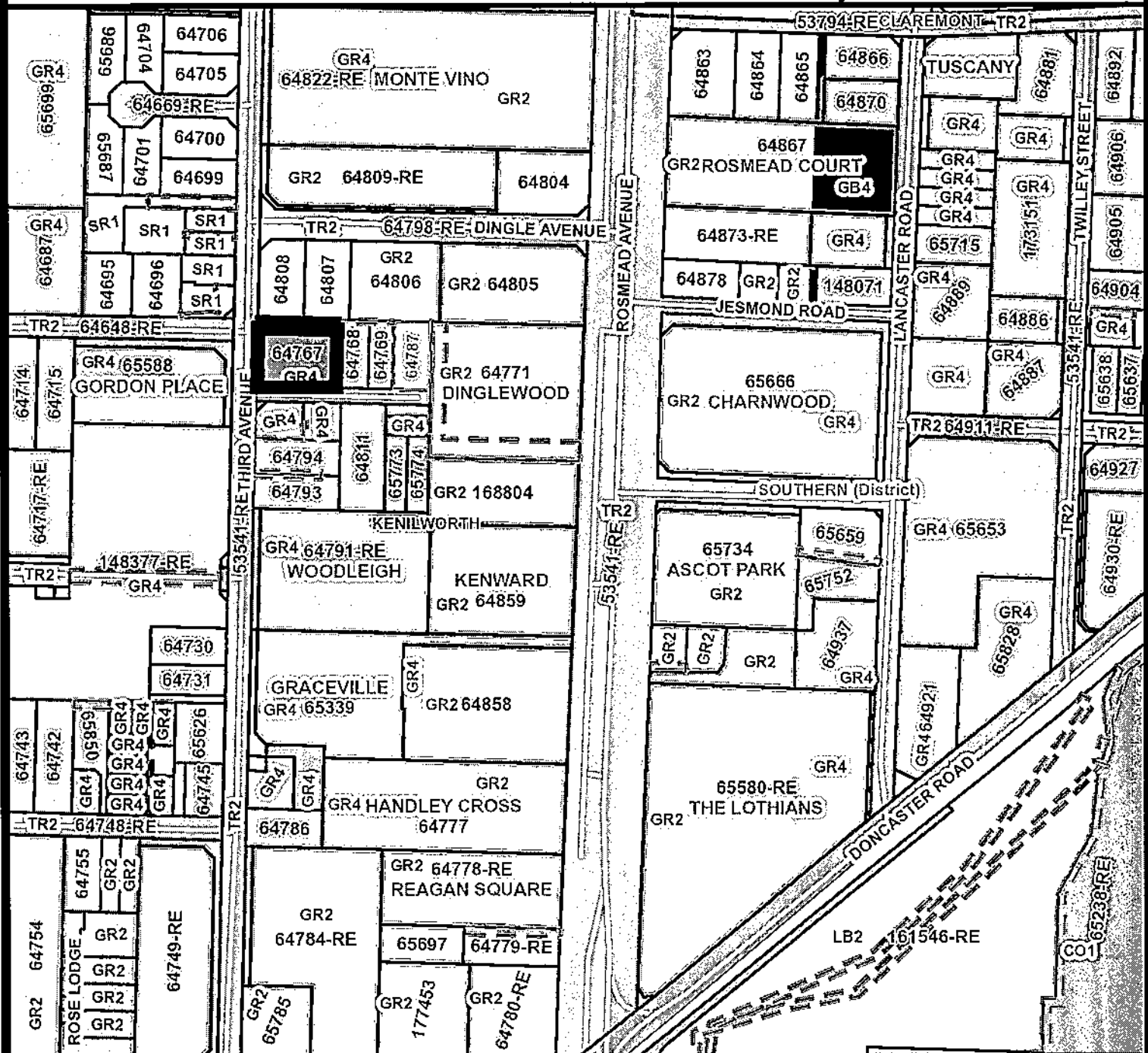
Tel no 021 444 7720

Date 2019-11-04

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE : A

2346



Overview

Erf: 64767

District: SOUTHERN

Allotment: CAPE TOWN

Suburb: KENILWORTH

Ward: 58

Sub Council: Subcouncil 20



1:2 400

Notices Served



Support
Received



Petition
Signatory



Objections
Received



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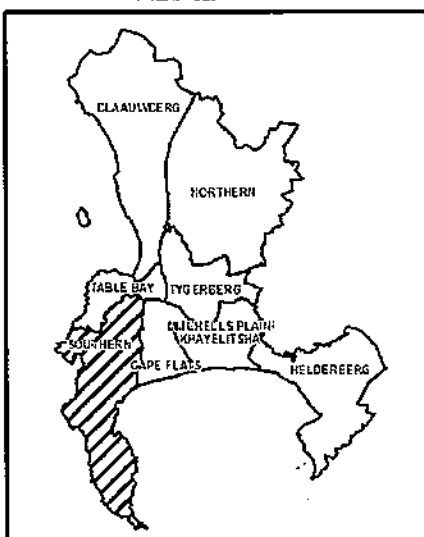
Date: Monday, October 28, 2019

File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.



2347



District: SOUTHERN

Allotment: CAPE TOWN

Suburb: KENILWORTH

Ward: 58

Sub Council: Subcouncil 20



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Notices Served

Support
Received

Petition Signatory



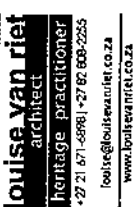
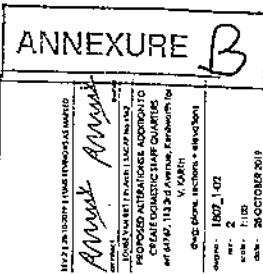
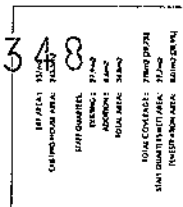
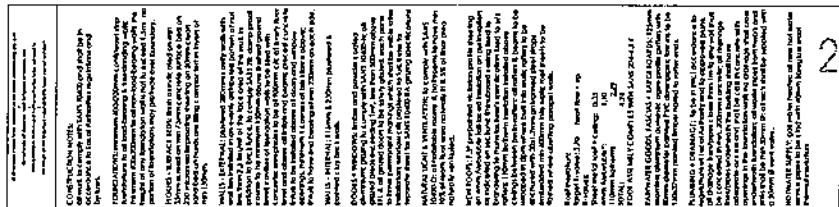
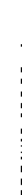
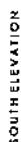
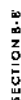
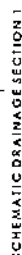
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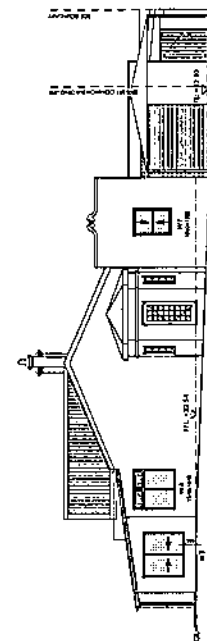
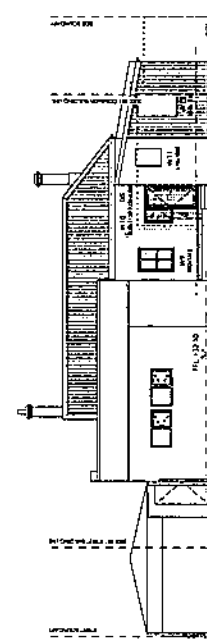
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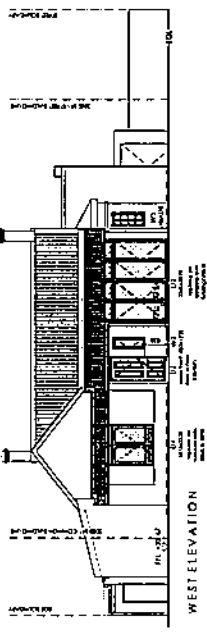
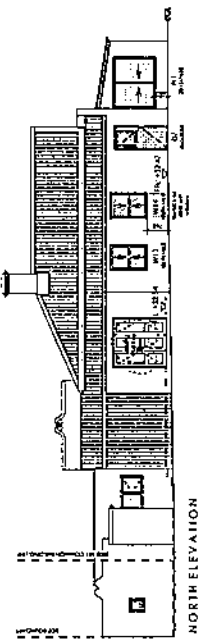
CITY OF VANCOUVER
DEPARTMENT OF PLANNING
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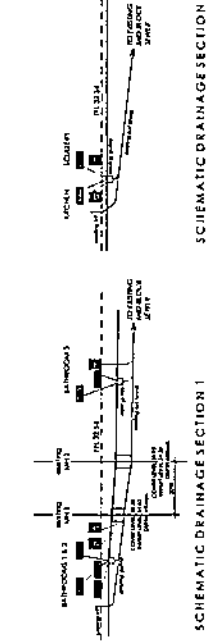
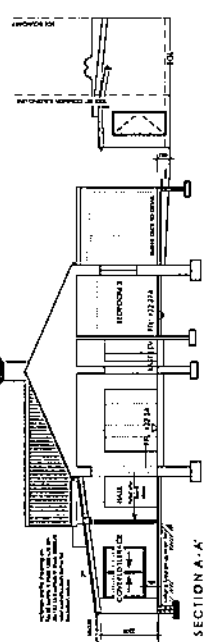
EAST ELEVATION

SOUTH ELEVATION



NORTH ELEVATION

WEST ELEVATION

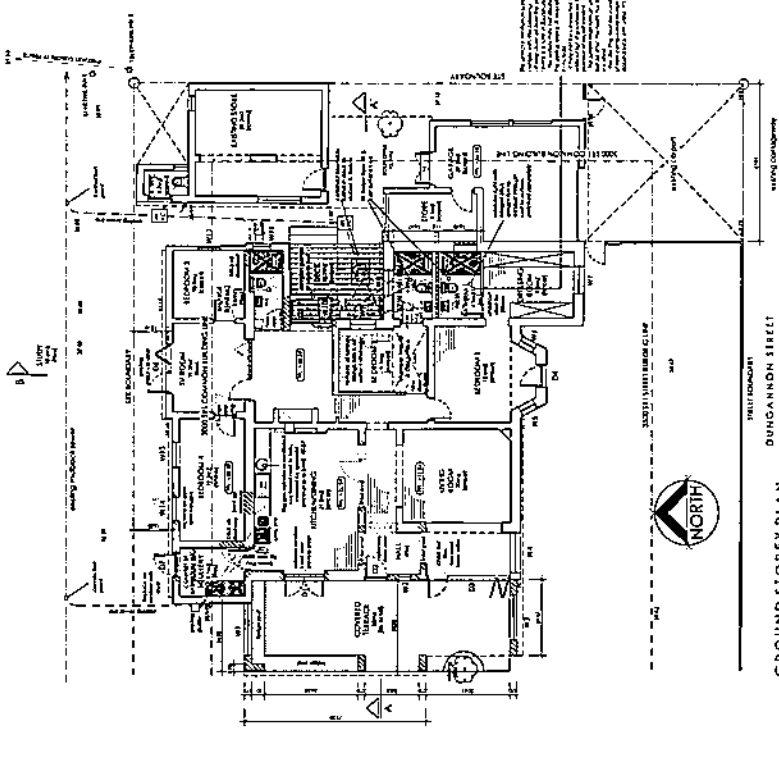
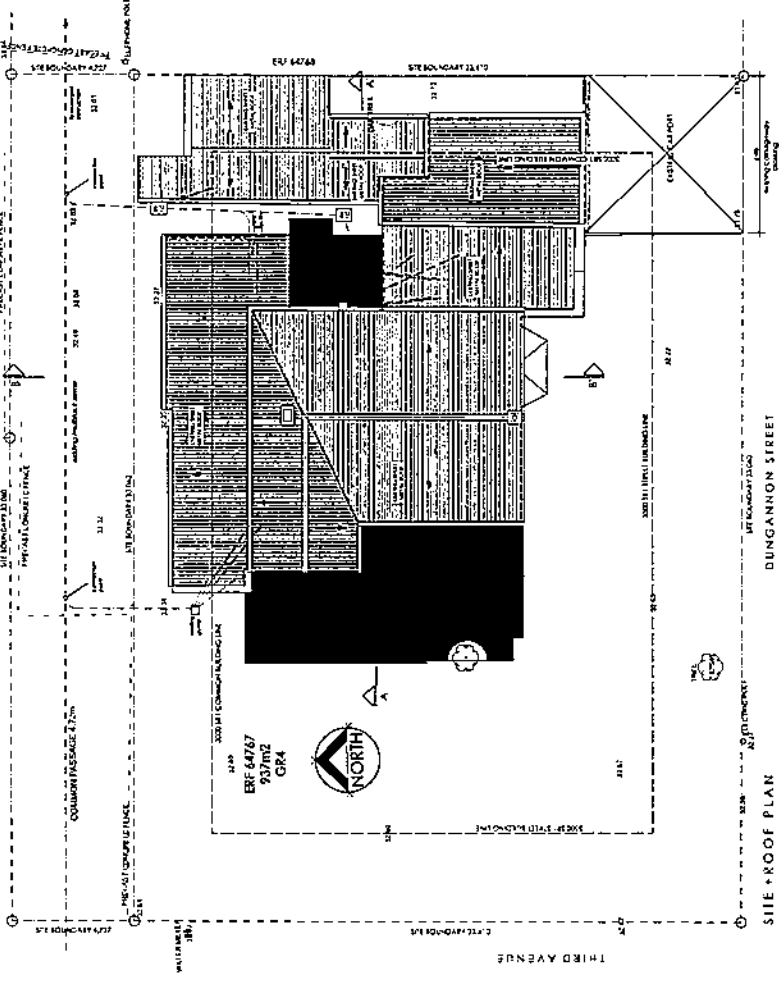


SECTION A-A

SCHEMATIC DRAINAGE SECTION 1

SCHEMATIC DRAINAGE SECTION 2

SCHEMATIC DRAINAGE SECTION 2



GROUND STOREY PLAN

GROUND STOREY PLAN

2349

ANNEXURE C

Amey Amey

LOUISE VAN RIE
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heritage practitioner
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www.louisvanrie.co.za

2349

ANNEXURE C

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louise@louisevanriet.co.zawww.louisevanriet.co.za

28 October 2019

Director : Development Management
City of Cape Town
3 Victoria Road
Plumstead 7801

Dear Sir/Madam

ADDITIONAL INFORMATION | CASE ID 70476895 | APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF THE MPBL (2015) | ERF 64767, 113 THIRD AVENUE, KENILWORTH

City of Cape Town letter dated 11 October 2019 requesting additional information refers.

A sworn affidavit from my client, Vanja Karth, is attached, stating that she was not responsible in any way for the unauthorised building work, and that the domestic staff quarters are currently being used to house her elderly mother.

The unauthorised building work comprises the conversion of the store room outbuilding into domestic staff quarters including an extension to create a bedroom, the enlargement of the existing toilet to create a bathroom and the inclusion of a kitchenette.

Contravention of the DMS comprises a window and door both located at 0m in lieu of 3m to the rear common boundary, installed as part of the unauthorised extension.

In determining as appropriate administrative penalty, the following factors should be considered:

(a) nature, duration and gravity of the contravention:

My client purchased the property from her elderly mother in April 2015;

The existing outbuilding had been converted into domestic staff quarters at the time of purchase including the authorised building works outlined above as well as the window and door that contravenes the DMS;

Neither my client or her mother are aware of when the unauthorised building work took place.

The adjacent property onto which the offending the window and door look is a historical passage 4,72m wide dating from 1902, and is common to the owner of Erf 64767 and the remaining adjoining properties; the contravention thus does not impact directly on any of the adjoining residential properties.

(b) conduct of the person involved in the contravention:

While preparing plans to alter the main house in May 2019, we obtained all previously approved plans from the City of Cape Town, where we discovered that the extension to the outbuilding was unauthorised and the two windows in contravention of the DMS.

My client requested us to assist in regularising the situation.

(c) No further building work has been done to the outbuilding;

(d) There have been no other or previous contraventions to the By-Laws or previous planning laws.

My client has displayed integrity in wishing to ensure that her property has legal approval, having inherited the problem from her elderly mother. We request the City to consider these factors in determining the administrative penalty due for this contravention.

Yours faithfully,



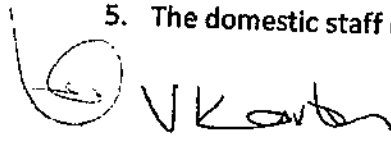
Louise van Riet

AFFIDAVIT

2351

I, Vanja Karth, an adult female of 47 years old, ID number 7111030234080, hereby swear under oath that:

1. The facts contained herein, save where indicated otherwise, are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
2. I am the legal owner of erf 64767, namely 113 Third Avenue Kenilworth, Cape Town.
3. I bought the house from my mother in 2015. When I purchased the house from her, the 'workshop' (as it has been when I was a child) had been converted into domestic staff quarters. I do not know when this conversion took place, and my mother cannot remember either.
4. I am not responsible in any way for the unauthorised building work.
5. The domestic staff quarters are now being used to house my elderly mother.

 Deponent

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

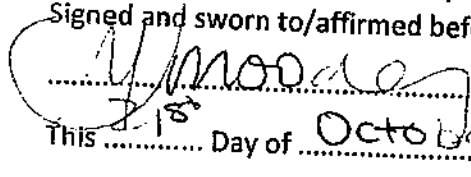
a. Do you know and understand the contents of the declaration/affidavit?
Answer: Yes

b. Do you have any objection in taking the prescribed oath/declaration?
Answer: Yes

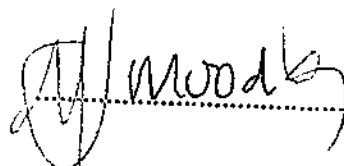
c. Do you consider the prescribed oath/declaration as binding on your conscience?
Answer: Yes

I have satisfied myself as to the identity of the deponent I certify that the deponent has acknowledged that he/she knows and understands the contents of the declaration. The above signature/mark of the deponent is affixed to the declaration/affidavit in my presence.

Signed and sworn to/affirmed before me at Rondebosch

 Y. S. Moodley
This 21st Day of October in the year 2019

Yellavarne Moodley
COMMISSIONER OF OATHS
Practising Attorney RSA
U.C.T. LAW CLINIC
Kramer Law School Building
Middle Campus
1 Stanley Road Rondebosch

 Signature of commissioner of oath

319

Du Plessis & Curran Attorneys
Unit 10b
Harfield Village Centre
48 Second Avenue
Claremont
7708

WIR ENDOSSEMENTE KYK BLADSY
FOR ENDORSEMENTS USE PAGE --

Prepared by me

Nicole Ann Du Plessis
CONVEYANCER
NICOLENE ANN DU PLESSIS

Fee endorsement		Office fee
	Amount	
Purchase price/Value	2 600 000,00	1100,00
Mortgage capital Amount	R.....	R.....
Reason for exemption	Col.....	Exempt 1.1.0 section.....Act.....

REGISTRAR OF DEEDS
CAPETOWN

IN DEED

B

VERBOD

MORTGAGED

DATA / CAPTURE
2015-04-28
PUMELELA MINAPATA

T000020293 / 2015

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

NICOLENE ANN DU PLESSIS

appeared before me, REGISTRAR OF DEEDS at Cape Town, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at CLAREMONT on 11 February 2015 granted to him by

JEANNETTE KARTH
Identity Number 470129 0107 084
Married out of community of property

DATA / VERIFY
2015-05-08
NGAPAI-LINEA

And the appearer declared that her said principal had, on 11 November 2014, truly and legally sold by Private Treaty, and that she, the said Appearer, in her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

VANJA KARTH
Identity Number 711103 0234 080
Unmarried

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

**ERF 64767 CAPE TOWN,
SITUATED IN CITY OF CAPE TOWN
DIVISION CAPE, PROVINCE OF WESTERN CAPE**

IN EXTENT 781 (SEVEN HUNDRED AND EIGHTY ONE) SQUARE METRES

**FIRST TRANSFERRED by Deed of Transfer No. T7626/1902 with Diagram
annexed thereto and held by Deed of Transfer No. T25832/1977**

SUBJECT to such conditions as are referred to in Deed of Transfer No. 7626 dated 28th July 1902, and to the following condition mentioned therein, namely:-

"That the passage of 4,72 metres as shown on the diagram above referred to shall be common to the present and future proprietors of the abovementioned property and to the present and future proprietors of the remaining extent of Block D".

15.2.2.3
15.2.2.3

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

JEANNETTE KARTH, Married as aforesaid

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

VANJA KARTH, Unmarried

her 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 purchase price to be the sum of R2 600 000,00 (TWO MILLION SIX 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

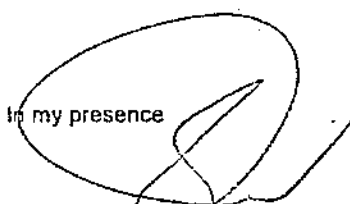
22 April

2015



q.q.

In my presence




REGISTRAR OF DEEDS

2355

- 4 -

VERBIND		MORTGAGED	
VIR FOR R <u>620 00000</u>			
B	000010439/2015		
2015-04-22		REGISTRATEUR/REGISTRAR	

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Certified a true copy of the original filed of record in this Registry in terms of	
Reg 66	
Deeds Registry Cape Town 04 SEP 2018	 Registrar of Deeds

2357

Rates for 2019/2020 Financial Year**Rate-in-the-rand: 0.00555****Rates Relief: R 300,000.00**

Property Reference	CCT011085400000
Property Type	RES
Erf/Farm Number	64767
Physical Address	113 THIRD KENILWORTH
Total Extent	781.0000
Existing Use	A01
Allotment Area	CAPE TOWN
Rating Category	RESIDENTIAL

Value of Property	R 3,350,000.00
Residential Exclusion	R 300,000.00
Rateable Value	R 3,050,000.00
Estimated Annual Rates	R 16 927,50
Estimated Monthly Rates	R 1 410,63