



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO

WARD 67: APPLICATION FOR DEPARTURES IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: ERF 284 PELIKAN PARK, 25 FINCH CRESCENT

MPTSW59/11/19

Case ID	70462334
Case Officer	Quanita Savahl
Case Officer phone number	021 684 4348
District	Cape Flats
Ward	67
Ward Councillor	Gerry Gordon
Report date	2019-10-31

1. EXECUTIVE SUMMARY

Property description	Erf 284 Pelikan Park
Property address	25 Finch Crescent
Application components / description	Departures relating to height and common boundary building lines
Site extent	220m ²
Current zoning	Single Residential 1
Current land use	Residential - Dwelling house
Overlay zone applicable	None
PHRA or SAHRA heritage	None
Public participation outcome summary	Notice to neighbours. 1 objection received
Recommended decision	
Approval	✓
Refusal	
Approval in part & Refusal in part	

2. BACKGROUND FACTS

An Administration Penalty was imposed by the Municipal Planning Tribunal for the unauthorised building work relating to the verandah.

3. SUMMARY OF APPLICANT'S MOTIVATION

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

- Peculiar shaped property.

- Verandah located at the rear and not visible to the street.
- Lack of space in small house.
- Safe and secure area needed for storage and hanging of laundry.
- Rear will be ventilated but secured with burglar bars.
- Second dwelling will be on top of house.

4. PUBLIC PARTICIPATION

		Applicable	Dates / Comments
Advertising	Notice in the media (s81)	N/A	
	Notice to a person (s82)	✓	25 July 2019
	Notice to Community organization (s83)	N/A	
	Notice to Ward Councillor (s83)	N/A	
	Notice of no objection (s84)	N/A	
	Notice to Provincial Government (s86)	N/A	
	Notice to an Organ of State (s87)	N/A	
	Public meeting	N/A	
	On-site display	N/A	
Outcome	Objections	✓	1 objection received
	Objection petition	N/A	
	Support / No objection	N/A	
	Comments	N/A	
	Ward Councillor response	N/A	

Summary of objection / comment received

- 4.1. Objections/ comment received in respect of the application (see Annexure E) may be summarised as follows:

- Small community with small properties close to each other.
- Privacy will be encroached upon by overlooking particularly onto the bathroom and toilet.
- Noise and grinding during building works.
- As a pensioner, noise and activities will disturb peace and security.
- Risk that building work will cause cracks as occurred elsewhere.
- Vacant land behind property leads to crime and the proposal will allow easier access due to proximity from all round the property.
- Sunlight will be restricted.

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:

- Property size limits using property to fullest extent.
- Solution is to build on top.
- Objector's bathroom window is on ground floor while proposed bathroom window will be 3m up.
- Only the small bathroom window will face the objector and comes with opaque glass.

- Opening section of the window will be 1,8m above the first floor eliminating overlooking.
- Both properties are located 2m away from the common boundaries.
- No building work after hours and weekends.
- Will not compromise cordial relationships with neighbours.
- Other pensioners have not objected.
- Objector must furnish proof from a registered structural engineer that the building work will cause cracks.
- The field did not result in an increase in crime.
- Double storey will not be in close proximity to any boundaries.
- Objector has high walls around his property.
- No negative effect on sunlight as objector's house is to the north.
- Objections are frivolous and not based on facts.

5. BACKGROUND TO PROPOSAL

Background

- 5.1. An Administration Penalty was imposed by the Municipal Planning Tribunal on 21 May 2019 for the amount of R500 relating to unauthorised covered verandah. The Administrative Penalty has since been paid.

Description of the area / surrounding land uses

- 5.2. The subject property is located in a mainly residential area with small to medium sized erven and correspondingly sized single storey, dwelling houses. Further north is a Place of Instruction (school) and further west is a Place of Worship (mosque). The property abuts a wide strip of open space. Strandfontein Road which is a public transport route and an important north-south link is located further east of the property.

Property description

- 5.3. The subject property consists of a single storey dwelling house with a verandah. The erf shape is irregular resembling a triangular shape.

Proposed development

- 5.4 The proposal is to build a second dwelling on top of the existing dwelling house. The covered verandah already exists and is unauthorised.
- 5.5 The Development Management Scheme (DMS) stipulates a height of 4m along the common boundary building lines after 12m from the street boundary. The following departures have been applied for:

Section 22(c) and (d) of the Development Management Scheme:

- To permit the height of the second dwelling to be 6,90m in lieu of 4m.
- To permit the second dwelling to be 1m in lieu 3m from the eastern common boundary building line.

- To permit the second dwelling to 2m in lieu of 3m from the northern common boundary building line.
- To permit the covered verandah to be 0m in lieu of 3m from the southern common boundary building line
- To permit the covered verandah to be 0m in lieu of 3m from the eastern common boundary building line.

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 requires Departures from the Development Management Scheme.
- The decision maker is the Municipal Planning Tribunal.
- Public Participation was correctly undertaken as per the requirements of the Notification Policy.
- An Administrative Penalty was imposed and has subsequently been paid.

6.1.2. Compliance or consistence with the municipal spatial development framework

Not applicable

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

The proposal is considered to be desirable for the reasons given in Section 6.2.4 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

The proposal complies with the urban development designation in the Cape Flats 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

Yes, Cape Town Densification Policy, 2012.

Cape Town Densification Policy, 2012

The departures will enable intensification of the built form on the site (which is located within the city's existing footprint) while still retaining usable open space on the property.

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

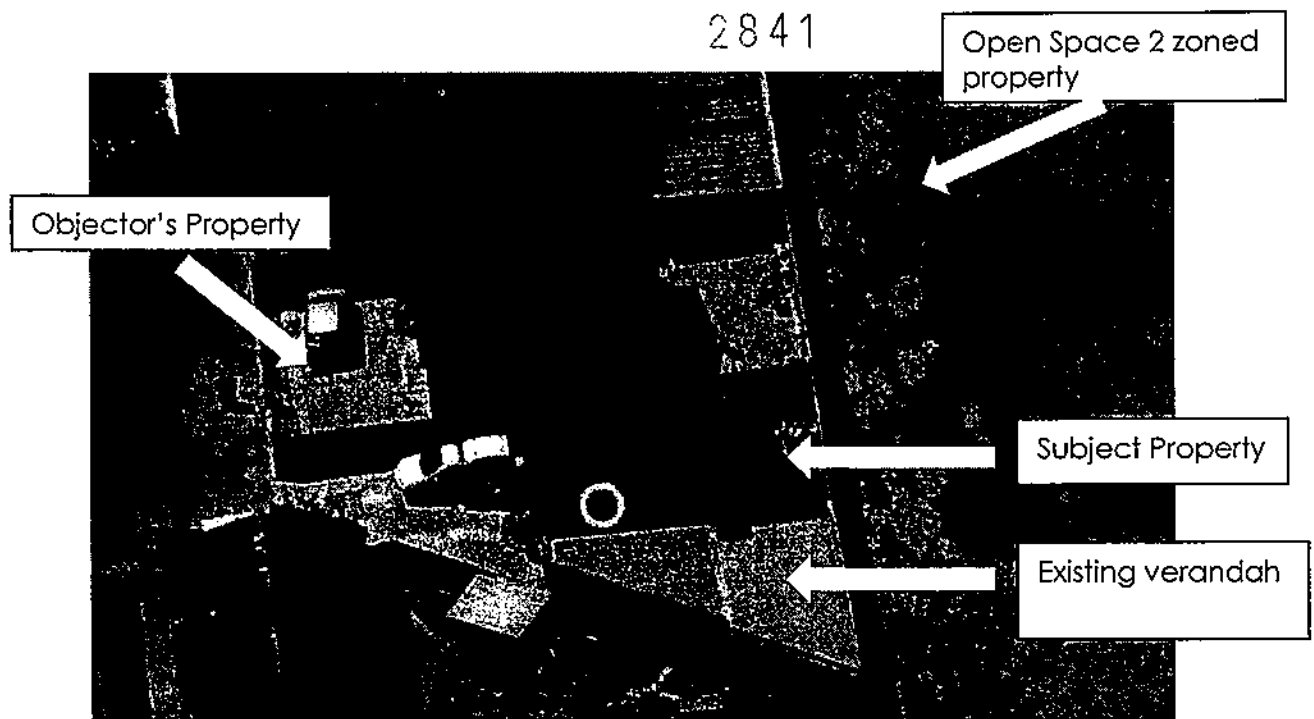
a. Socio -Economic impact

Alterations and additions such as proposed generally increase the value of the property by enabling the provision of additional residential accommodation and additional protection and storage space. Often such improvements result in an increase in the value of surrounding properties as well.

b. Compatibility with surrounding uses

Although there are very few existing double storey dwellings in the area, the proposal will not be out of keeping with the local land use and built form. The design will retain a pitched roof style as per the existing dwelling house as well as the surrounding area. The first floor extension follows the existing footprint and is therefore well setback from Finch Crescent. In addition, the first floor extension contains two windows, door and staircase which overlook the open space at the rear/east of the property thus providing surveillance onto this space and the abutting road. The small size and irregular shape of the subject property limits development at ground floor level.

The covered verandah, although large is located at ground floor at the rear and side of the property. It abuts the open space and no negative impact is envisaged on any neighbour.



c. Impact on the external engineering services

None. The proposed second dwelling is less than 60m² in size and no development charge is applicable.

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

The proposed second dwelling and verandah will not impact on 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.

e. Impact on heritage

None.

f. Impact on the biophysical environment

None.

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

None. No parking space will be affected by the proposal. A total of two parking bays are required. Given that the erf size is less than 350m² only one parking bay is required for the main dwelling. There is enough space on the subject property for the parking bay for the second dwelling.

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

None

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

None

6.2.6 Other considerations prescribed in relevant national or provincial legislation.

The proposal is considered to be aligned with both the SPLUMA and LUPA development principles, particularly as it relates to the principles of spatial sustainability, efficiency, spatial resilience and good administration for the following reasons:

- Promotion of land development in a sustainable location without creating urban sprawl.
- Optimisation of existing land resources and infrastructure.
- 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.

6.3 Regarding the objection:

6.3.1 The only window overlooking the objector's property will be a bathroom window and it will be setback 2m from the common boundary. This is further away than the permitted 1,5m for windows facing common boundaries as per the Development Management Scheme.

6.3.2 Only 17m² of the 57m² second dwelling necessitates the departures on the objectors side of subject property.

6.3.3 The objector's sunlight will not be impacted upon as the proposals are located to the south of the objector.

6.3.4 The proposed building on the first floor will follow the existing footprint and not be built closer to the boundary. Although the verandah will be against the eastern common boundary, this boundary is enclosed by a boundary wall which obscures the covered verandah.

6.3.5 The matter regarding noise during construction phase is a temporary situation and it is highly unlikely that building work will cause structural damage to the objector's property.

7 REASONS FOR DECISION

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7.1 Reasons for the recommended decision for **approval** relating to the application for the Departures may be summarised as follows:

- 7.1.1 The proposal will not affect the streetscape as the structures will be well set back from the street.
- 7.1.2 The first floor extension will overlook the open space to the East of the property thus providing surveillance onto this space and the abutting road.
- 7.1.3 The proposal will not impact significantly on existing amenity of the surrounding community nor of the objector in terms of overlooking or overshadowing. Only a bathroom window will face the objector's property which is located to the North of the subject site.
- 7.1.4 The departures will enable additional accommodation on the site thereby creating incremental densification in an area designated as urban development in the District Plan.
- 7.1.5 The covered verandah is to be located at the rear of the property which due to the irregular erf shape is the widest part of the property and therefore an efficient area to locate the verandah.

8. RECOMMENDATION

In view of the above, it is recommended that:

- 8.1 The application for departures for Erf 284 Pelikan Park, **be approved** in terms of Section 98 (b) of the Municipal Planning By-law, 2015 as per Annexure A.

ANNEXURES

Annexure A	Application details and Departures
Annexure B-B1	Regional and Locality/ Public Participation Maps
Annexure C-C1	Building Plan
Annexure D	Applicant's motivation
Annexure E	Objection/comment received
Annexure F	Applicant's response to objection /comment received
Annexure G	List of Relevant Parties

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A McCann

**For Section Head : Land Use
Management**

Name A McCann

Tel no 021 6844341

Date 4 November 2019

Comment

None



District Manager

Name Chad Newman

Tel no 021 684 4310

Date 4 November 2019

Comment

Annexure

A

Application details & Departures

ANNEXURE A

2846

In this annexure:

"City" means the City of Cape Town

"The owner" means the registered owner of the property

"The property" means **Erf 284 Pelikan Park, 25 Finch Crescent**

"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: 70462334

These departures are linked to the plan drawn by S. Ahmed Architectural & Interiors with drawing - Drwg AWD020219 and dated Feb 2019.

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

- 1.1 Item 22(c): To permit the second dwelling to be 6,90m in height in lieu of 4m on the northern common boundary building line.
- 1.2 Item 22(d): To permit the second dwelling to be 1m in lieu 3m from the eastern common boundary building line.
- 1.3 Item 22(d): To permit the second dwelling to 2m in lieu of 3m from the northern common boundary building line.
- 1.4 Item 22(d): To permit the verandah to be 0m in lieu of 3m from the southern common boundary building line.
- 1.5 Item 22(d): To permit the verandah to be 0m in lieu of 3m from the eastern common boundary building line.

Annexure

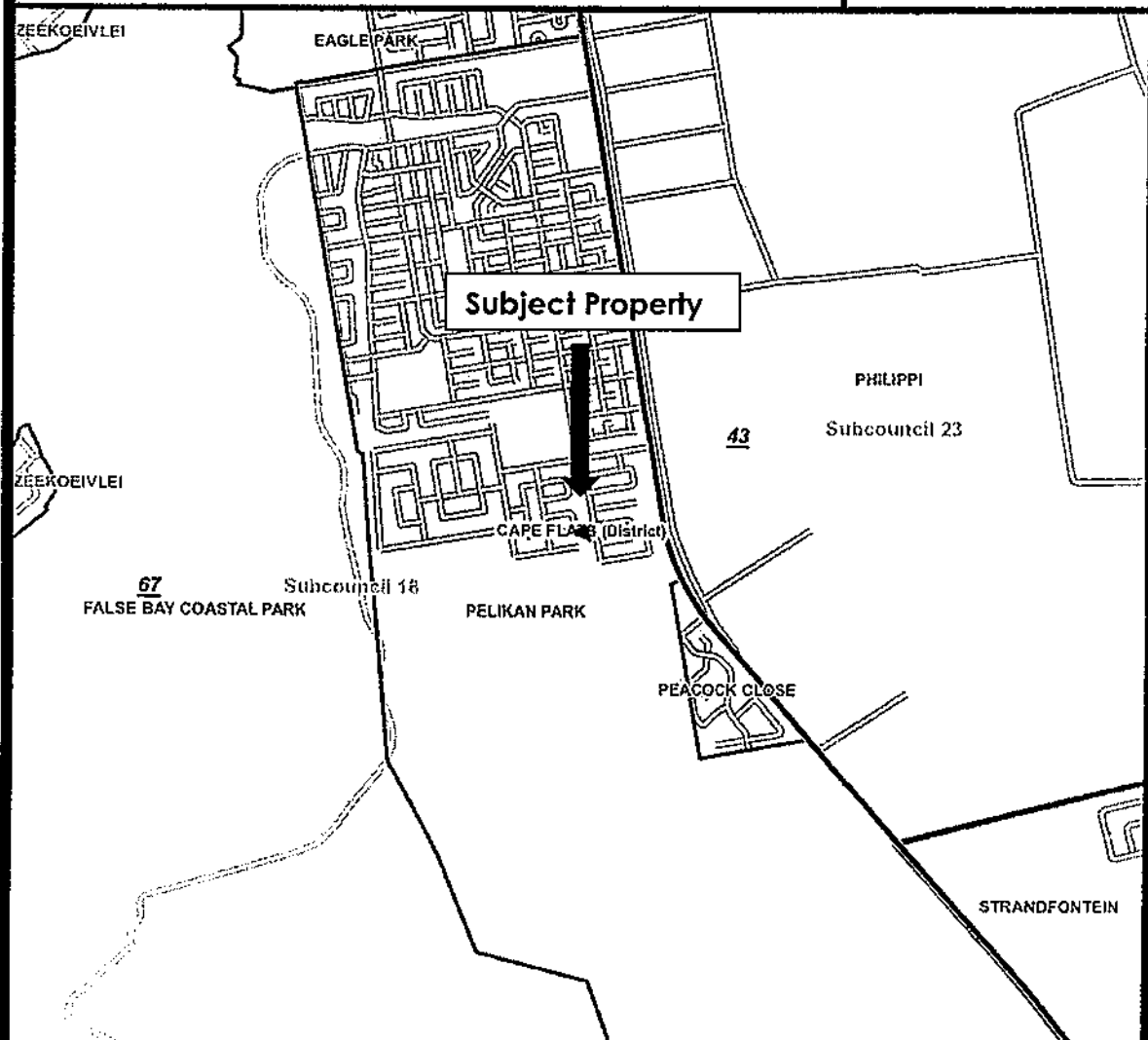
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Regional & Locality/Public participation maps

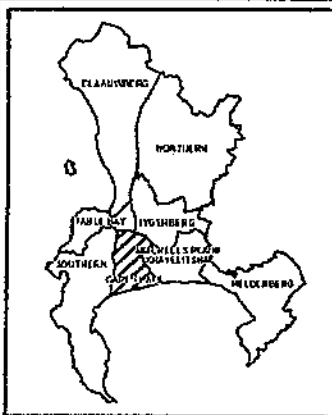
PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP

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ANNEXURE : B



Overview



Erf: 284

Allotment: PELIKAN PARK

Ward: 67

District: CAPE FLATS

Suburb: PELIKAN PARK

Sub Council: Subcouncil 18



1:16 000

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by: Q Savahl

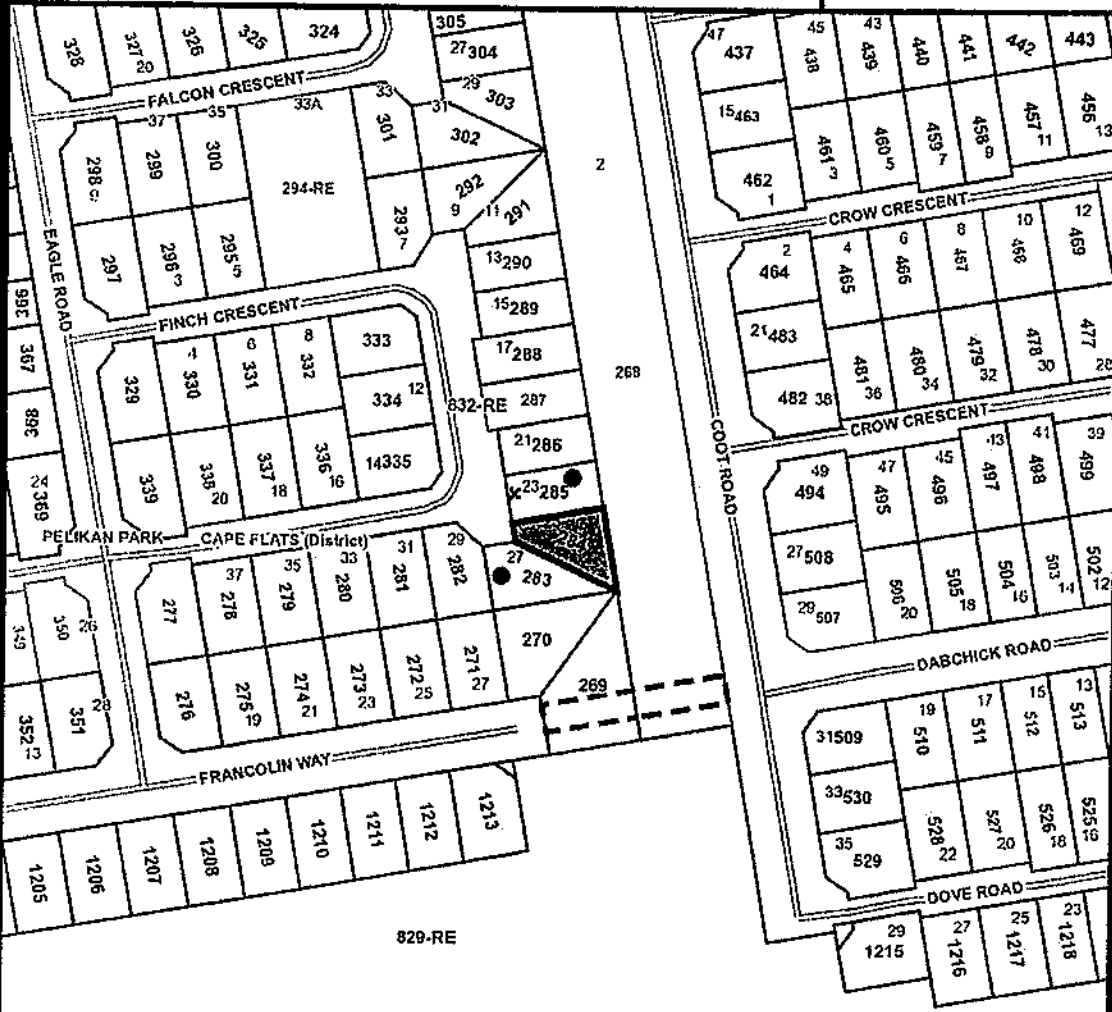
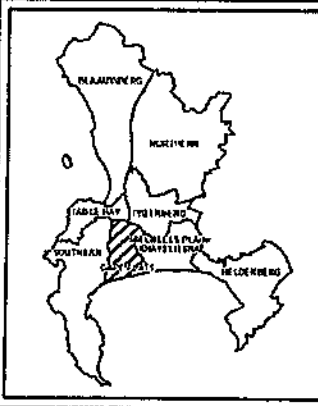


Date: 31 October 2019

File Reference: 70462334



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
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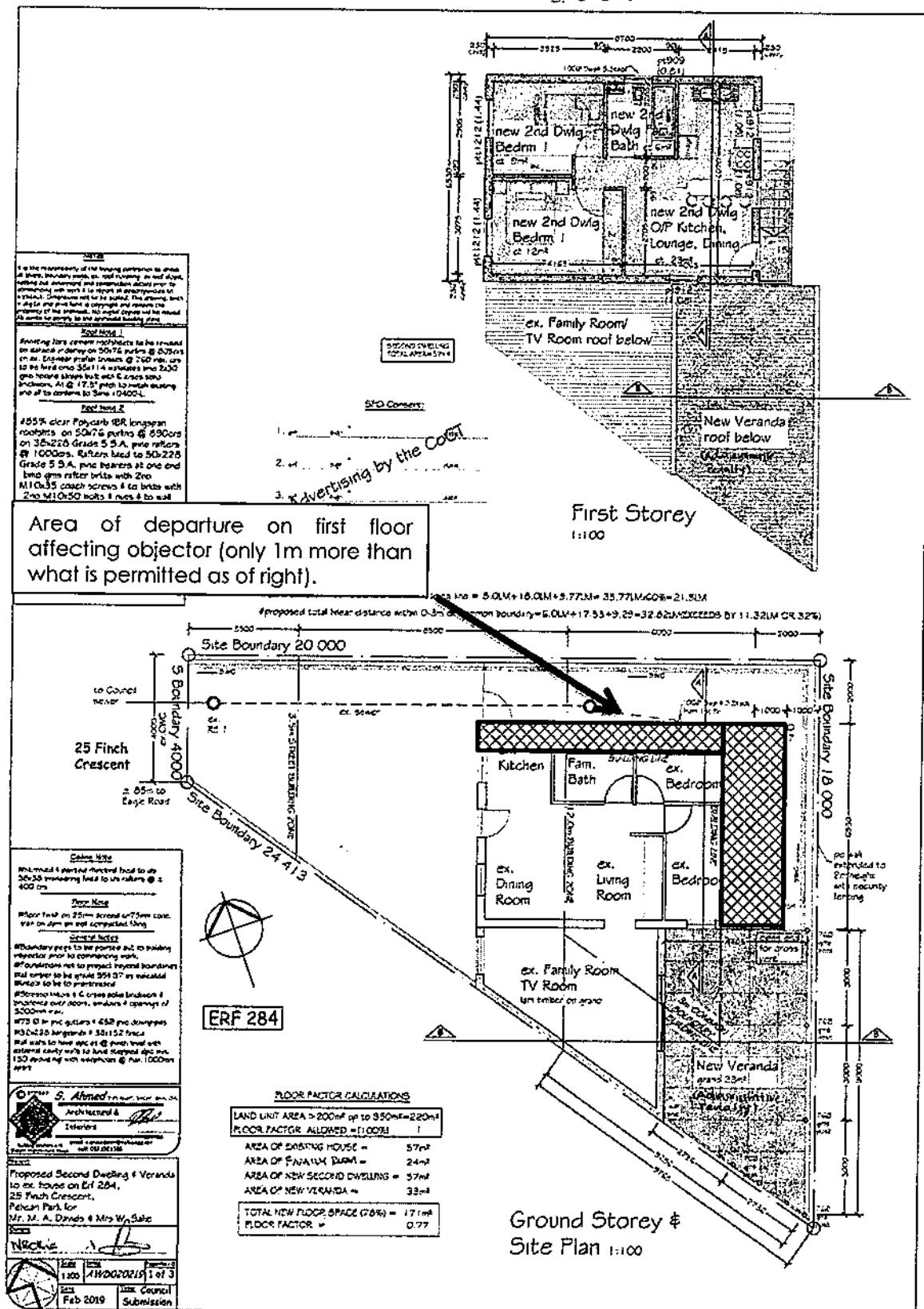
Working together for a better future

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE : B1									
		2849									
Overview		Erft: 284 Allotment: PELIKAN PARK Ward: 67									
		District: CAPE FLATS Suburb: PELIKAN PARK Sub Council: Subcouncil 18									
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Notices Served	●	Support Received	✓								
Petition Signatory	■	Objections Received	✗								
Generated by: Q Savahl		 CITY OF CAPE TOWN ISIIXEKO SASEKAPA STAD KAAPSTAD <small>Building progress & people together</small>									
Date: 31 October 2019											
File Reference: 70462334											

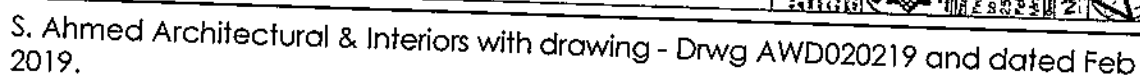
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Annexure C-C1 Building Plan

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S. Ahmed Architectural & Interiors with drawing - Drwg AWD020219 and dated Feb 2019.



Annexure D Applicant's Motivation

MOTIVATION

*Land Use Management
Building Survey Department
City of Cape Town*

*M.A. Davids & W. Salie
25 Finch Crescent
Pelican Park
Erf 28*

14/06/2019

Re: Veranda and second dwelling

Attention: To whom it may concern

We hereby request the Planning & Building Development Management department of the City of Cape Town- Athlone Office to allow us to build the proposal as submitted on plan on plan AWD020219 for this application.

The veranda is located at the rear of this peculiar shaped property and not visible to the streetscape. The lack of space in the small house required a safe and secure area to store the family bicycles and other household equipment as well as hanging the laundry in a secure area while we are at work during the day. The rear will be closed off with burglar bars to allow security as the property is adjacent to an open field but still allowing ventilation to the area. The AFP application was submitted and concluded as required to allow us to formalize the structure. This application will require the land use approval for both the veranda and the second dwelling. Both will be exceeding the common boundary linear coverage. The second dwelling is proposed on top of the existing house and will exceed the maximum height of 4m at a proposed height of 6.9m within the 3metre common boundary building line and beyond the 12meters street boundary setback. We have requested in the LUMS form that Council should advertise to the surrounding property owners for their consent and as required by the Permanent Departure Application according to section 42(b) of the MPBL 2015.

Thanking you in anticipation of your favourable response.

Your Sincerely

M.A. Davids & W. Salie

Annexure

E

Objection/comment
received

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M H ENUS
23 FINCH CRESCENT
PELIKAN PARK (erf 285)
7941

Your reference: 70462334

CITY OF CAPE TOWN

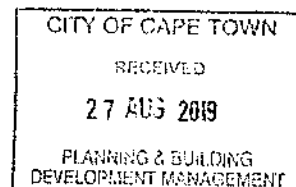
15th August 2019

Dear Sir/Madam

RE: APPLICATION FOR PERMANENT DEPARTURE: ERF 284 PELIKAN
PARK, 25 FINCH CRESCENT, PELIKAN PARK- 70462334

With reference to the above matter I hereby raise an objection to the proposed building for the following reasons:

1. Pelikan Park is a relatively small community with properties being relatively small and situated very close to one another.
2. The proposed building will encroach on my privacy as the said proposed building will overlook my property which is right next to me and in particular on the side of my bathroom and toilet.
3. Further as a double story will be built, the extensive building works will further prejudice me in that there will be continuous noise and grinding.
4. I am a pensioner and need my peace without having to be subjected to noise and activities that will disturb my peace and security.
5. There is a big risk that the said building works would affect my current building as was the situation in the adjacent new area where the activities related to building works caused cracks etcetera to adjacent properties.
6. I wish to stress that the land behind our property is vacant and often breeds to crime and house break-ins and the proposed building will further increase this risk as the extension to double story will cause the boundary to be in closer proximity to the boundary causing easier access.



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7. The proposed building structure also further lends to adverse security for my property as it allows for easier access to my property from both the front entrance as well as the back and both sides.
8. It will further deprive me from the sun as the height will cause a restriction for the sun shine onto my property.

Please consider the prejudice that I would suffer.

Yours faithfully

M H ENUS *M. H. Enus*
ERF 285
23 FINCH CRESCENT
PELIKAN PARK



Annexure

F

Applicant's response to
objection/comment

OUR RESPONSE TO THE OBJECTION
BY THE PROPERTY OWNER OF ERF 285 Pelikan Park

Planning & Building Development
 Management-City of Cape Town
 Athlone District-Cape Flats Region

Mr. A. & Mrs. W. Davids
 25 Finch Crescent
 Pelikan Park
 Erf 284

06/09/2019

Re: Application for Permanent Departure, CASE ID 70462334
Attention: Mr. Craig Theron

We herewith wish to respond to the objection from Mr. M. H. Enus dated 15 August 2019 and as received via email on the 6th of September, 2019 from the BDM department regarding the above application. Our response is to each item presented.

#Item 1: It is obvious that Pelikan Park is based on densified council housing which however affects every home owner in Pelikan Park and not only Mr. Enus. Also the size of our property limits the property owner to utilize the property to the fullest extent possible in order to fully accommodate their family. Especially given the exorbitant price of properties currently. The only obvious solution is to build on top of the existing footprint as in the case of our property.

#Item 2: The existing bathroom window of Mr. Enus will be located on the ground floor while the bathroom window of our double storey will be approximately 3m above. There will be no possibility that we will be able to see from 3m high into the Mr. Enus' bathroom below. Only the small bathroom window will be facing the objectors' property. In actual fact the bathroom window comes standard with opaque glass. The opening section of the window will be 1.8m above the first floor level thus eliminating overlooking onto Mr. Enus' property. Furthermore both of our properties are 2m away from the common boundary giving an effective distance of 4m between the houses.

#Item 3: Mr. Enus must refrain from claiming to be a victim. What about our rights to improve our property for the benefit of our family. Being a building contractor, we will be doing the building work our self. Mr. Enus can be rest assured that we won't be carrying out any building work after working hours and on weekends. We have been staying on this property for close to 20 years and we won't compromise our cordial relationships with our neighbours.

#Item 4: There are other pensioners staying in the surrounding properties and they never objected to our application. Mr. Enus unfortunately has a history of complaining to everything and anything to the detriment of his relationship with surrounding neighbours. This objection is not surprising as that was the reason that we requested Council to advertise to the surrounding owners.

#Item 5: Again unsubstantiated claims by Mr Enus of building work affecting his house. He uses the construction of houses in New Horizon, an area which is 1 km away as an unsubstantiated example. Once again he claims to be a victim when he states that houses developed cracks during the building process. I suggest that Mr. Enus must furnish proof from a registered structural engineer that the building work on our property will cause cracks in his house.

#Item 6: About 15 years ago we had petty crime in our area. The field behind our houses is overlooked by houses opposite. The field is utilized by the children in our area to play soccer after school and weekends. I, Mr. Davids serve as an active and executive member of the Pelikan Park Neighbourhood Watch and I refute the claims by Mr. Enus regarding the increase in crime due to the field. However it is the onus of every household in South Africa to identify and secure possible security breaches on their properties. This responsibility is not the Councils' nor the South African Police Service. The double storey is going to be built on the existing footprint and will not be extended towards any of the boundaries. So how can Mr. Enus state that the double storey will be in close proximity to the boundary?

#Item 7: Unfortunately Mr Enus keeps on ranting about security and easier excess to his property due to the double storey when there is a high precast wall on the common boundary between our houses. Mr. Enus has high precast walls on the rear boundary, north common boundary and a palisade fence in front.

Item 8: Mr. Enus' property is located north of our property meaning that the double storey will have no negative affect on the sunlight for his house from sunrise to sunset.

Furthermore and in conclusion when the list of reasons for the objection is properly analyzed then the result is obvious that they are frivolous and not based on facts but based on a personal vendetta and spitefulness towards his neighbours. This application required an Administration Penalty application which was concluded and all penalties paid. It is unfair and prejudicial for an individual to delay the legitimate efforts by us to comply with all requirements. The objector who has retired cannot be allowed to use this application to occupy himself by using this application to relieve his boredom. This application was submitted on the 09-07-2019 and went through a thorough process to ensure that all requirements are met to finalize the Permanent Departure Application.

This is exactly the reason why bottle necks are created in the DAMS system. We therefore strongly request that this application is finalized and cleared.

Thanking you in anticipation of your favourable response.

Mr. A. & Mrs. W. Davids

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List of relevant parties

List of relevant parties

Applicant

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S. Ahmed Architectural & Interiors
Samsodien Ahmed
12 Mossie Crescent
Pelikan Park
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021 396 2620 / 082 332 6388
s.ahmedarct@gmail.com

Objector

M H Enus
23 Finch Crescent
Pelikan Park
7941

Erf 285