



**REPORT TO: MUNICIPAL PLANNING TRIBUNAL**  
**ITEM NO**

**WARD 22: APPLICATION FOR PERMANENT DEPARTURE IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015: ERF 26859, BELLVILLE (3 LAVENDER CRESCENT, BELHAR EXTENSION 17)**

**MPTNE18/05/19**

Case ID	70420439
Case Officer	Jacques Loots
Case Officer phone number	021 444 7508
District	Tygerberg
Ward	22
Ward Councilor	Clt. Johanna Marlow
Report date	23/04/2019
Interview requested	To be completed by MPI support office
	Applicant
	Objector(s)

**1. EXECUTIVE SUMMARY**

Property description	Erf 26859, Bellville
Property address	3 Lavender Crescent, Belhar Extension 17, Bellville
Application components / description	Permanent departure to allow the relaxation of the street- and common boundary building lines.
Site extent	509m <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	None.
<b>Recommended decision</b>	
Approval	✓
Refusal	
Approval in part & Refusal in part	

**2. BACKGROUND FACTS**

None

**3. SUMMARY OF APPLICANT'S MOTIVATION**

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

- The current dwelling will not be able to accommodate a second dwelling, which is required for the applicant's grandparents.
- The existing usage of the property will not be affected.
- The proposal should be complementary to the existing streetscape.
- The proposal is desirable in terms of all the applicable criteria listed in Section 99 of the MPBL, 2015.

#### 4. PUBLIC PARTICIPATION

		Applicable	Dates / Comments
Advertising	Notice in the media (s81)		
	Notice to a person (s82)	✓	13/09/2018 – 15/10/2018
	Notice to Community organization (s83)		
	Notice to Ward Councillor (s83)		
	Notice of no objection (s84)		
	Notice to Provincial Government (s86)		
	Notice to an Organ of State (s87)		
	Public meeting		
Outcome	On-site display		
	Objections	✓	One objection received from the owner of an abutting property.
	Objection petition		
	Support / No objection		
	Comments		
	Ward Councillor response		

##### Summary of objections received

4.1. Objections / comments / support received in respect of the application (see Annexure D) may be summarised as follows:

- The objector is concerned about the safety of the proposed second dwelling on top of the existing structure onto the common boundary. She believes that the existing structure already poses a major safety risk.
- The proposed building line encroachment will burden the objector's property and restricts her rights in favour of the applicant.
- Although not familiar with the City's policy, the objector is concerned about the City considering the construction of a dwelling onto a common boundary where the abutting property is negatively impacted on.
- The objector refers to the building line as being a servitude in favour of her property, which will be infringed upon by the proposal.

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

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

- The proposal is for building extension onto an existing structure against the objector's boundary for which consent was given by the previous owner (objector's late mother) and building plan approval granted by the City.
- The existing approved structure onto the boundary does not pose any safety risk for the objector or the applicant. It meets all the City's requirements and since the construction thereof in 1998, shows no signs of structural weakening or cracks.
- Although the objector provided no grounds for her safety concerns, the applicant is willing to approach an independent structural engineer to again do a foundation test.
- The applicant will show appreciation if more information pertaining to the limitation of the objector's rights can be tabled by her.
- There will be no negative impact on the objector's rights, including her privacy. Currently there is only a 2<sup>nd</sup> floor bathroom window on the objector's property that faces the boundary onto which the applicant intends to construct the double storey 2<sup>nd</sup> dwelling (without any windows/openings facing the objector's property).

**5. BACKGROUND TO PROPOSAL****5.1 Background**

None

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

The property forms part of Belhar (Extension 17) and is located within a predominant single residential area with Community 1 zoned properties in the immediate vicinity of the property, including a vacant Community 1 zoned property across the road.

**5.3 Property description**

The property is currently being utilized for single residential purposes, consisting of a single dwelling house and associated outbuildings, including a double garage.

**5.4 Proposed development**

The intention is to convert a portion of the double garage, as well as a new extension on-top of the garage for the purposes of a second dwelling. The

proposal also includes a new carport (with façade) and staff quarters. See site layout plan, attached as Annexure B.

The proposal requires the following departures:

- Relaxation of the 3,5m street building line to 2,2m in order to allow the double storey second dwelling and a carport with façade.
- Relaxation of the 3,5m street building line to 3,0m in order to permit the staff quarters.

## **6 PROPOSAL ASSESSMENT**

### **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 general requirements for such applications and was duly processed in accordance with the provisions of the MPBL, including the posting of registered notices to the owners of surrounding properties, as indicated on the location map attached as Annexure A.
- The application is referred to the MPT for a decision because of an objection received against it.
- No Admin Penalty is applicable.

#### **6.1.2 Compliance or consistence with the municipal spatial development framework.**

Not considered applicable to a permanent departure of such small scale.

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

The essence of the proposal is determined to be desirable in view of all the applicable desirability criteria in terms of Section 99(3) of the MPBL, namely, socio-economic impact, compatibility with surrounding uses, impact on external engineering services, impact on safety, health and wellbeing of the surrounding community, impact on heritage, impact on the biophysical environment and impact on traffic, parking, access and other transport related considerations.

The detail assessment of the proposal in accordance with the aforementioned criteria is done under section 6.2.4 of this report.

- 6.1.4 The approval of this application will not have the effect of granting the property the development rules of the next subzone within this zone.

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

**6.2 Consideration of criteria in terms of Section 99(2)**

**6.2.1 Any applicable spatial development framework**

Municipal Spatial Development Framework (MSDF)

Not applicable to a permanent departure of such small scale.

- 6.2.2 The proposal is considered to be consistent with the MPBL in that a permanent departure application has been made and does not amount to an invasion of intent.

- 6.2.3 Applicable policy approved by the City to guide decision making include discussion on IDP.

Not applicable to a permanent departure of such small scale.

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

**a. Socio-economic impact**

The proposal will result in a substantial improvement- and better usage of the property from a residential point of view, which should have a positive impact on property values in the area.

**b. Compatibility with surrounding uses**

The proposed residential related extensions are considered to be in keeping with the built form and general character of the surrounding area.

The visual impact of the proposed extension on top of the garage, resulting in the height of the existing wall on the common boundary being increased from ±5,0m to 6,7m, would be mitigated by the close proximity thereof to the double storey building on the adjoining property (objector's property). The bluntness of the wall will further be softened by means of the proposed plaster bands/shadow lines and gable, as well as the new 2<sup>nd</sup> floor window openings and facade facing the street.

**c. Impact on the external engineering services**

The proposal will have no impact on external engineering services.

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

The nature, extent and use of the proposed structures will not influence the general health, safety and wellbeing of the community and the standard building regulations will be applicable with the construction thereof. The wall on the boundary will therefore have to comply with relevant construction requirements and standards, which will also ensure safety with regard to the objector's abutting property. The objection regarding safety of the wall is therefore considered unfounded.

e. Impact on heritage

Not applicable

f. Impact on the biophysical environment

Not applicable

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

Sufficient on-site parking is provided via the existing carriageway crossing (previously approved to be closer than 10m from the street intersection) for both the main- and second dwelling. The proposal will not have any impact on the existing traffic conditions.

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)

Considering the fact that the applicant has a primary right to build a double storey structure with a height of 11m (to top of roof) onto the common boundary (excluding the 3.5m portion that falls within the street building line), the proposed 6.7m high double storey extension, to be 1.3 closer to the street boundary than generally permitted, should not essentially impact on the rights of the abutting owner (objector). The privacy of the objector will also not be affected in any way as no overlooking onto her private external spaces or into any of her windows will be possible. Furthermore, the minor encroachment of the street building line by the double storey structure to the east of

the objector's property will not result in the overshadowing of her property.

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

## 7 REASONS FOR DECISION

Reasons for the recommended decision for approval of the application for permanent departure may be summarised as follows:

- 7.1 The proposal will be of an appropriate scale and form that relates to the surrounding built form.
- 7.2 The proposal, which is to comply with all applicable health, safety and building regulations, will not have a negative impact on the safety, health and wellbeing of the surrounding residents.
- 7.3 The proposed building line encroachments are minor in nature and will not have any negative impact on the rights of surrounding owners.
- 7.4 The proposal is desirable in terms of all the applicable criteria listed in Section 99 of the MPBL, 2015.

## 8 RECOMMENDATION

In view of the above, it is recommended that:

- 8.1 The application for permanent departure in respect of erf 26859, Bellville **be approved** in terms of Section 98(b) of the Municipal Planning By-law, 2015, to permit the relaxation of the 3,5m street building line to 2,2m to allow a second dwelling and a carport (with façade), as well as the relaxation of the 3,5m street building line to 3,0m to permit staff quarters, in accordance with the site layout plan attached as Annexure A.

## ANNEXURES

Annexure A	Locality plan / Public participation map
Annexure B	Site Layout Plan
Annexure C	Applicant's motivation
Annexure D	Objection received
Annexure E	Applicant's response on objection
Annexure F	Photos

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Registered Planner

Name:

SACPLAN NO:



Section Head

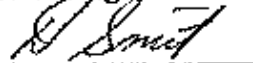
Name: T.R. Kotze

Tel no: 021 444 7806

Date: 25.04.2019



District Manager



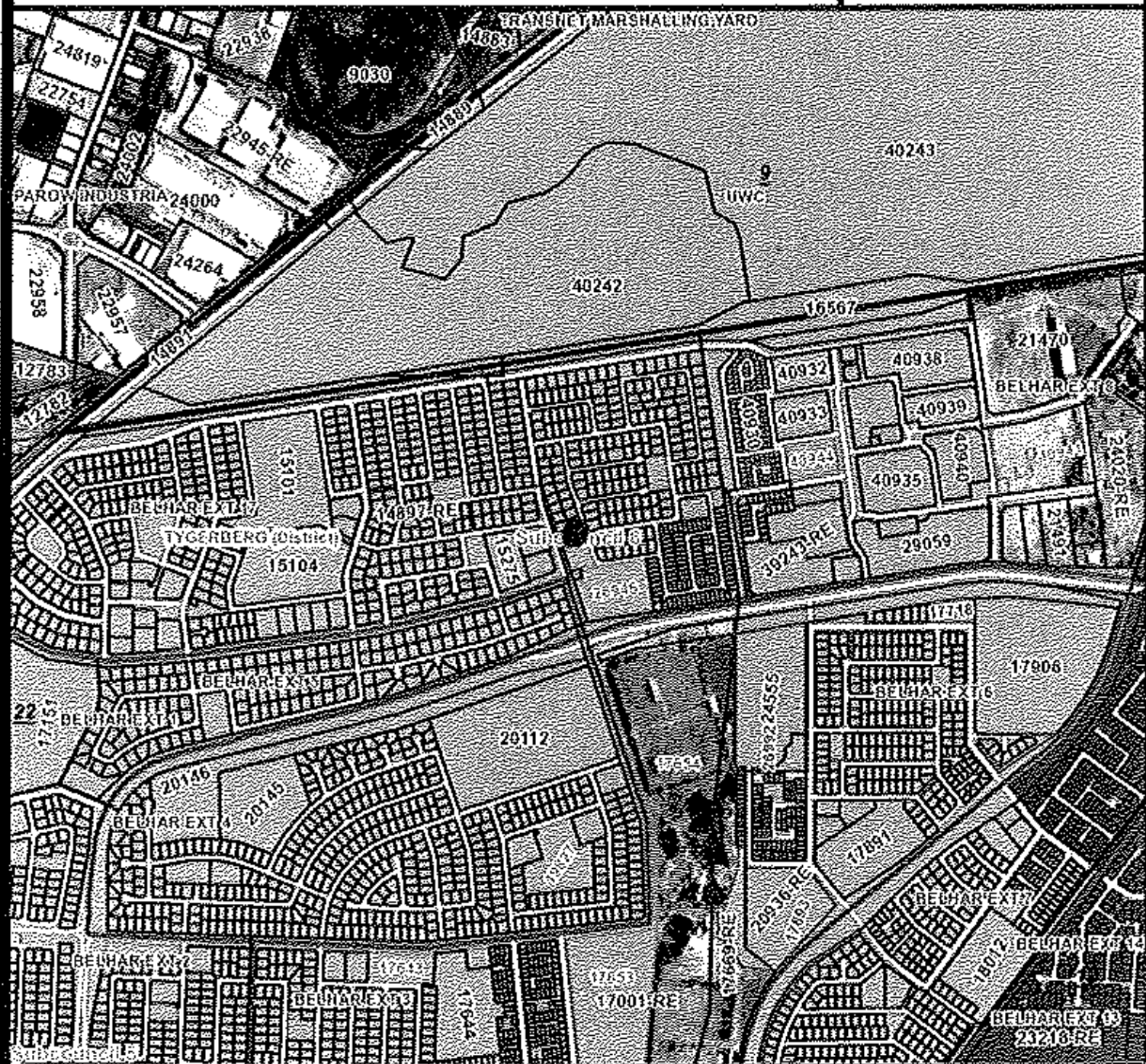
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26/04/2019.



**ANNEXURE A**

**ANNEXURE :**



Erf: 26859

District: TYGERBERG

A501ment: BELLEVILLE

Suburb: BELMAR EXT 17

Ward: 22

Sub Council: Subcouncil 6



1:11 868

## Notices Served

Support  
Received

## Petition Signatory



### Objections Received



Generated by:

Date: Thursday, April 11, 2019

**File Reference:**



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Waldspatzen und die Dörfer



# PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

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ANNEXURE :



## Overview

Erf: 26859

District: TYGERBERG

Allotment: BELLVILLE

Suburb: BELHAR EXT 17

Ward: 22

Sub Council: Subcouncil 6



1:1 559

Notices Served



Support  
Received



Petition  
Signatory



Objections  
Received



Generated by:

Date: Wednesday, August 22, 2018

File Reference:



CITY OF CAPE TOWN  
ISIKHOKO SASEKAPA  
STAD KAAPSTAD

Working programme provided by: Tygerberg



**ANNEXURE B**



**ANNEXURE C**

Local Authority  
CCC

29 April 2018

ERF 26859, Belhar

PROPOSED APPLICATION FOR : General Works

To whom it may concern

#### 1. INTRODUCTION

To build a proposed extension to the existing house on the Eastern part, building above the existing garage and a new carport on Erf 26859, 3 Lavender Crescent, Belhar, Ext 17.

#### 2. BACKGROUND

The property is zoned SR 1. The existing usage is not affected. Existing carriage way crossing is maintained.

#### 3. PRECEDENT

All houses in this area has a this semetry. The proposal should correspond with the rhythm of the streetscape.

#### 4. ALTERATION MOTIVATION

The current dwelling will not be able to accommodate the grandparents who are getting older and needs to stay with us for medical reasons. The extensions are to accommodate the families needs.

#### 5. CONCLUSION

We hope the motivation is clear and complete and the proposed application will meet with your approval.

Mnr L M Jonas and Mev Jonas  
3 Lavender Crescent  
Belhar  
7493



**MOTIVATION IN TERMS OF SECTION 99 OF MPBI**

Erf: 26859 Allotment Area BELHAR

Date: 08/04/19

Motivation according to section 99 (3) of the City of Cape Town  
By-law highlighting the need, desirability and impact of the proposal.

a) Economic / Socio-Economic Impact:

A local company will do the building, so doing provide employment to local people.

b) Social Impact:

The proposal was discussed with my immediate neighbors, most of whom are in favour of the proposal.

c) Scale of the Capital Investment:

The adolced building - work will increase the value of the property, increase the rate-able value of the property and that of the surrounding properties.

d) Compatibility with Surrounding Uses:

Similar building already undertaken in the immediate area. The proposed additions adds positively to the aesthetics of the property and the surrounding properties.

e) Impact on External Engineering Service:

N/A

f) Impact on Safety, Health and Wellbeing of the Surrounding Community:

N/A

g) Impact on Heritage:

N/A

h) Impact on Biophysical Environment:

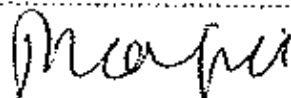
N/A

i) Transport related Impact:

No negative impact is made on the traffic - aspect. Parking for more than four vehicles is allowed for on the property.

j) Weather the Imposition of Conditions can Mitigate and Adverse Impact of the Proposed Land Use:

No negative impact on the land-use. The proposal is an extension of the existing land-use. It will also lead to a better use of the area on the property.



I. Majiet (Appointed Professional)



**ANNEXURE D**

**Estate of The Late F. Barendilla**

Contact person: Mrs. I Charnley

[irene.chnrley@smilecoms.com](mailto:irene.chnrley@smilecoms.com)

083 222 6363

083 212 5462

Development Management  
TDA Cape Town

Attention : Mr. J Loots  
Email : objections.tygerberg@capetown.gov.za

Dear Sir

**OBJECTION TO: PROPOSED PERMANENT DEPARTURE ERF 26859; BELVILLE – APPLICATION  
NUMBER: 70420439**

Your letter to the Estate of the late Air F. Barendilla refers:

This letter serves as an **OBJECTION** to the Proposed Permanent Departure on ERF 26859, property owned by ML & JS Jonas, 3 Lavender Crescent Belhar EXT 17.

The reason for my objection is:

- the double storey 2<sup>nd</sup> dwelling and new staff quarters will be on the boundary wall of ERF 26860 which is objected to. Already the garage of ERF 26859 is on the boundary which is a major safety concern
- approval will result in granting a limited real right in terms of which a burden is imposed on our ERF 26860 restricting the owner's rights, powers or liberties to a greater or lesser extent in favour of the owners of ERF 26859, which approval I am not willing to grant
- I am not familiar with policy, but am concerned that consideration is given by the City Council to a dwelling that is build on a boundary wall negatively impacting the property of another property owner. I am grateful for the opportunity to submit my objection

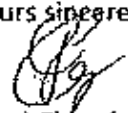
Address and Contact details:

- Mrs I Charnley: Contact by email on [irene.chnrley@smilecoms.com](mailto:irene.chnrley@smilecoms.com) or mobile number – 083 222 6363 or 083 212 5462

Interest in the Application:

- Mrs I Charnley is the daughter of the late Mrs F Barendilla and her sole heir apparent.

Yours sincerely

  
Mrs I Charnley

**Estate of The Late F. Barendilla**

Contact person: Mrs. I Charnley

[irene.chnrley@smilecoms.com](mailto:irene.chnrley@smilecoms.com)

083 222 6363

083 212 5462

Development Management  
TDA Cape Town

Attention : Mr. J Loots  
Email : [objections.tygerberg@capetown.gov.za](mailto:objections.tygerberg@capetown.gov.za)

Dear Sir

**OBJECTION TO: PROPOSED PERMANENT DEPARTURE ERF 26859; BELVILLE – APPLICATION  
NUMBER: 70420439**

Your letter to the Estate of the late Air F. Barendilla refers:

Further to our letter of **OBJECTION** to the Proposed Permanent Departure on ERF 26859,  
sent to you by email this morning, please find additional reason for my objection as follows.

The additional reason for my objection is:

- The approval will result in an infringement on the servitude of our property as well as non-compliance around security elements and municipal by-laws where applicable.

Yours sincerely



Mrs I Charnley

**ANNEXURE E**

MR. & MRS. L.M. JONAS  
3 LAVENDER CRESCENT  
BELHAR  
7493  
2019-02-12

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Development Management

TDA Cape Town

Attention: Mr Loots & Ms. Yonela Rasmanj

Email: [objections.tygerberg@capetown.gov.za](mailto:objections.tygerberg@capetown.gov.za)

Dear Sir/Madam

Re: Reply to Objection to Proposed Permanent Departure Erf 26859: Bellville  
Application 70420439

I HEREWITH RESPECTFULLY SUBMIT MY REPLY ON THE OBJECTIONS RAISED BY  
Ms. I CHARNLEY ON THE MATTER: ERF 26859 APPLICATION 70420439:

**Objection 1:**

It is my respectful submission that the structure that is about to be erected will be erected on an existing structure where permission to build on the boundary of the aforementioned property was granted by the late Ms. F. Barendilla by way of her signature as proof to those plans which further informs the fact that lawful permission was granted by the City for a building to be erected as stated.

Pertaining to the safety concern Ms. I. Charnley raises referring to the existing garage I find it quite strange that since the signing off of the erected building by an approved official mandated by the City to execute such action, only now the issue of safety is raised by the objector. Furthermore, I would like to submit due to the absence of any expert evidence, that can be submitted as proof that the existing garage wall poses a safety risk to the objector, it is my respectful submission that it poses no safety risk to either her or us as owners on which property such building exists. I further submit that the existing boundary wall as seen on the previous drawings, met all required specifications and was accordingly approved by an official who acted on behalf of the City. The existing boundary wall (3.5m) as being referred to by the objector shows for the years (1998 – 2019) since we moved into the property which was previously occupied/owned by Mr & Mrs. W. Erasmus no signs of collapse or cracks of any kind.

Please note that on 24 April 2018 (24/04/2018) Buddy Sydow Structural & Civil Engineers were appointed by us to assess and evaluate the safety and required prescriptions for such envisaged building to be erected. *(those assessments were submitted for the City's perusal and approval).*

However, although no prima facie evidence in support of any safety risk was submitted by Ms. I. Charnley I am more than willing to go the extra mile to approach an independent structural engineer to do a foundation test in order to have the strength of the concrete// foundation assessed for a second time.

#### **Objection 2**

With reference to the second objection of Mrs Charnley that her real right will be limited should the building renovations commence, I respectfully submit that appreciation will be shown if more information pertaining to her limitations can be tabled. Currently there exist on the upper level of her dwelling a bathroom window that faces' the side where an extension of the wall will be erected. It is my humble submission that the wall that I will be erected in no inconvenient manner will have an impact on her privacy as our envisaged building will have no windows facing her property. I attach hereto photos of the current properties to share more light on the situation. I further submit that the view of the window on the most southern side of the building will not be affected by the proposed envisaged renovations/ alterations. Rain water will run off into Erf. 26860 through proper and compliant specifications as laid down by the rules of compliance by the City of Cape Town.

#### **Objection 3**

Regarding the third objection of the objector it is my submission that should it be found that during the process and commencements of renovations none compliance with the set regulations are disregarded in any way, a certificate of occupancy will not be issued by the City and or relevant authorities. I further submit that during the different phases of progression of the project, regular visits from the building inspector of the City of Cape Town will be imminent where compliance will and can be enforced upon us.

#### **Objection 4**

Regarding the final objection of Mrs Charnley, in which she refers to an existing servitude that is registered against her property, I am not able to comment on this as details pertaining to the servitude has not being made known to me. However, in respect of it being made known I will be in a much better and prepared position to comment on this.

#### **Objection 5**

Furthermore, the objector also makes mention of non-compliance of security elements and municipal by-laws which I have no knowledge of infringement or none compliance off. these laws of. However, if she could clarify or identify which laws are not being complied with then I would be in position to respond to her concerns raised in this regard.

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In conclusion I wish to emphasise that I am more than willing to avail myself for an amicable solution that will benefit all parties involve to settle any disputes and also if both parties can be satisfied throughout.

I thank you in anticipation for your favourable consideration of my submissions tabled for approval.

Regards

*LMJonas*

Mr. & Mrs. L.M. Jonas

Date: 2019-02-12

**ANNEXURE F**



