



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500166191

**Erf 193, 35 Tulbagh Street,
Monte Vista, Goodwood**

Development Management

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APPLICATION INTERMS OF SECTION 42(b), (G)&42(j)IN TERMS OF THE MUNICIPAL PLANNING BY- LAW, 2015.

ERF:193, 35 Tulbagh street, Montevista, Goodwood

29 July 2026

CLIENT:

APPLICANT:



ARCHITECTURAL & DRAUGHTING SERVICES

1. BACKGROUND

The subject property, Erf 193, Goodwood, is developed with an existing main dwelling and an existing supplementary dwelling unit. The proposal seeks to convert the existing supplementary dwelling unit into a second dwelling, propose a supplementary dwelling unit for domestic accommodation, and residential improvements, which include the garage extension, entertainment area and swimming pool. The proposal therefore represents a modest intensification of residential use that remains compatible with the character of the surrounding neighbourhood.

The property is subject to restrictive title deed conditions contained in Deed of Transfer which were imposed during the establishment of the Monte Vista Township under the former Townships Ordinance. These historic restrictions no longer reflect the current planning framework applicable to the property and unnecessarily limit the reasonable use and development of the erf. In particular, the following restrictive conditions affect the proposal.

- **Condition B(b)** restricts the property to **one dwelling house** together with such outbuildings as are ordinarily required for use therewith.
- **Condition B(c)** limits the building coverage to **one-third of the area of the erf**.
- **Condition B(d)** prohibits any building or structure, other than boundary walls and fences, from being erected **closer than 15 feet (4.57 m) to the street boundary or within 5 feet (1.52 m) of a common boundary**.

The proposed development will result in two dwelling houses being accommodated on the property together with a supplementary dwelling unit. The total building coverage will be approximately **266.57 m²**, which exceeds the one-third title deed restriction by approximately **6.57 m²**. Furthermore, certain existing and proposed structures are affected by the historic building line restriction contained in Condition B(d).

Accordingly, application is made in terms of:

- **Section 42(g)** of the City of Cape Town Municipal Planning By-law, 2015, for the **removal of restrictive title deed conditions B(b), B(c) and B(d)**.
- **Section 42(j)** for the **deletion of the restrictive conditions imposed under the former Townships Ordinance**.
- **Section 42(b)** for a **Permanent Departure** to permit a reduced common boundary building line setback of **1.5 metres in lieu of the required 3.0 metres**, to accommodate the proposed second dwelling and supplementary dwelling unit in terms of the Development Management Scheme.

The removal of these restrictive conditions is necessary because the historic title deed controls duplicate and conflict with the City's current planning framework, which regulates development through the Municipal Planning By-law and the Development Management Scheme (DMS). Once removed, future development on the property will be regulated by the City's contemporary planning controls rather than outdated township establishment restrictions.

It is respectfully submitted that the proposed removal of the restrictive conditions, together with the requested permanent departure, is reasonable, desirable and consistent with sound planning principles, as it facilitates the orderly development of the property without detracting from the residential character or amenity of the surrounding neighbourhood.

2. CONTEXT & SURROUNDING AREA

Erf 193, Goodwood is situated at 35 Tulbagh Street within a well-established residential neighbourhood characterised predominantly by single dwelling houses and second dwellings developed on medium to large residential erven. The area exhibits a stable residential character with a mixture of original dwellings and incremental residential improvements that have occurred over time in response to changing household needs and contemporary development patterns. The subject property measures approximately 771 m² and is developed with an existing main dwelling and an existing supplementary dwelling unit. The proposal does not introduce a new land use but rather seeks to develop with additions that are compatible with the surrounding areas.

The surrounding area is well serviced by existing municipal infrastructure and benefits from proximity to public transport routes, educational facilities, places of worship, commercial services and recreational amenities. The property is therefore appropriately located within the existing urban fabric and is capable of accommodating the proposed residential development without placing undue pressure on public services or infrastructure. The proposed development remains consistent with the residential character of the area and does not introduce any activities that would generate excessive traffic, noise, visual intrusion or other impacts typically associated with non-residential land uses. The proposal therefore represents an appropriate and contextually responsive form of residential intensification within an established urban environment.

3. SERVITUDES

There are no servitudes registered on the property that affect the development or require amendment.

[illegible]

5. MOTIVATION FOR THE REMOVAL OF RESTRICTIVE CONDITIONS AND PERMANENT DEPARTURE

5.1 Summary of Applications

Application is made in terms of Sections 42(g) and 42(j) of the City of Cape Town Municipal Planning By-law, 2015, for the removal and deletion of the following restrictive title deed conditions contained in Deed of Transfer T000068970/2025.

- **Condition B(b):** That only one dwelling, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.
- **Condition B(c):** That not more than one-third the area of this erf be built upon.
- **Condition B(d):** That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 15 feet to the street line which forms a boundary of this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf.

The application further includes a Permanent Departure in terms of Section 42(b) of the Municipal Planning By-law to permit a reduced common boundary building line setback of 1.5 metres in lieu of the prescribed 3.0 metres in terms of the Development Management Scheme (DMS).

The removal of Condition B(d) is required because the historic title deed building lines cannot simply be relaxed and therefore no longer provide an appropriate mechanism for regulating development. Once removed, development will instead be regulated by the City's contemporary building line provisions contained in the Development Management Scheme, with the necessary departure being considered on its own planning merits.

5.2 Why the Restrictive Conditions are Obsolete

The restrictive conditions were imposed during the establishment of the Monte Vista Township under the former Townships Ordinance, when residential development was controlled primarily through title deed restrictions. Since that time, the City of Cape Town has adopted a comprehensive statutory planning framework comprising the Municipal Planning By-law, the Development Management Scheme (DMS), the Municipal Spatial Development Framework (MSDF) and the Tygerberg District Plan. These contemporary planning instruments regulate:

- land use rights.
- density.
- building coverage.
- building lines and setbacks.

- height.
- parking.
- development impacts.
- compatibility with surrounding land uses.

The continued application of the historic restrictive conditions duplicates these modern planning controls and unnecessarily limits the reasonable development potential of the property. The City's planning framework already provides comprehensive mechanisms to assess development proposals on their individual merits while protecting neighbouring properties and the character of established residential areas. The restrictive conditions are therefore no longer necessary to achieve sound planning outcomes and should be removed so that the property can be regulated solely in terms of the current statutory planning framework.

5.3 Removal of Condition B(b) – Restriction to One Dwelling

Condition B(b) restricts the property to a single dwelling house together with ancillary outbuildings. This restriction reflects historical suburban planning principles that pre-date the current Development Management Scheme. The DMS now recognises that appropriately designed second dwellings form an accepted component of Residential 1 (R1) development, provided that development standards relating to building lines, height, coverage, parking and amenity are satisfied.

The proposal seeks to convert the existing supplementary dwelling into a lawful second dwelling while retaining a supplementary dwelling unit on the property. The proposal remains entirely residential in nature and does not introduce commercial activities or a level of development inconsistent with the surrounding neighbourhood. Given the size of the erf (771 m²), the existing development pattern in Monte Vista, and the availability of municipal services, the proposed residential development represents an appropriate and efficient use of urban land. The continued retention of Condition B(b) would unnecessarily restrict development that is otherwise capable of being appropriately regulated under the City's current planning framework.

5.4 Removal of Condition B(c) – One-Third Coverage Restriction

Condition B(c) limits development on the property to one-third of the erf area. The proposed building coverage is approximately 266.57 m², representing only a minor exceedance of approximately 6.57 m² above the historic restriction. Despite this limited exceedance

- substantial private open space is retained.
- the residential character of the property is maintained.
- adequate outdoor amenity areas remain available.
- the proposal does not result in overdevelopment.

- the development remains compatible with surrounding residential properties.

Modern planning controls contained within the Development Management Scheme provide a far more comprehensive method of assessing building coverage than historic title deed restrictions. The DMS considers the overall planning context, site design, amenity impacts and compatibility with surrounding development rather than relying solely on a fixed numerical limitation imposed many decades ago. Accordingly, Condition B(c) no longer serves a meaningful planning purpose and its removal is considered reasonable and desirable.

5.5 Removal of Condition B(d) – Historic Building Line Restriction

Condition B(d) establishes historic street and common boundary building lines of 15 feet and 5 feet respectively. These historic setbacks pre-date the City's current Development Management Scheme, which now regulates building lines according to zoning, erf size and planning context. The existing development and the proposed additions are more appropriately assessed against the current DMS building line provisions rather than historic title deed restrictions.

The removal of Condition B(d) will not eliminate building line controls. Instead, it will allow the property to be regulated by the Development Management Scheme, with the required Permanent Departure being considered separately in terms of Section 42(b). This approach provides a more appropriate and transparent planning assessment while ensuring that neighbouring amenity, privacy, streetscape character and urban design objectives remain protected.

5.6 Motivation for the Permanent Departure

Application is made in terms of Section 42(b) of the Municipal Planning By-law for a Permanent Departure to permit a reduced common boundary building line setback of 1.5 metres in lieu of the required 3.0 metres. The departure relates to existing residential development and is limited in extent. The proposed encroachment

- does not create unacceptable visual bulk;
- does not materially reduce neighbouring privacy;
- will not result in unreasonable overshadowing;
- maintains the residential character of the neighbourhood; and
- does not prejudice the reasonable use and enjoyment of adjoining properties.

The departure is therefore considered site-specific, minor in nature and consistent with the objectives of the Development Management Scheme.

5.7 Alignment with Planning Policy

The proposal is consistent with the objectives of the:

- Municipal Spatial Development Framework (MSDF) by promoting efficient use of existing urban land and supporting incremental residential investment.
- Tygerberg District Plan, which encourages appropriate residential intensification within established neighbourhoods where existing infrastructure is available.
- Development Management Scheme (Residential 1 Zone), which provides a contemporary framework for regulating second dwellings, supplementary dwelling units, building lines and residential development standards.

The proposal therefore aligns with the City's current planning policy and replaces outdated title deed controls with modern statutory planning mechanisms.

6. LUPA SECTION 39(5) ASSESSMENT

Section 39(5) of the Land Use Planning Act requires consideration of the effect of removing restrictive title deed conditions.

(a) Financial or personal benefit to the holder of the restrictive rights

The restrictive conditions were imposed during the establishment of the Monte Vista Township and no longer provide any identifiable financial or personal benefit to surrounding property owners. The protection of neighbouring amenity is now achieved through the City's Development Management Scheme, Municipal Planning By-law and associated planning policies.

(b) Benefit to the Applicant

The removal of Conditions **B(b)**, **B(c)** and **B(d)** will allow the property to be developed in accordance with the City's current planning framework by:

- permitting the lawful establishment of a second dwelling.
- accommodating the proposed supplementary dwelling unit.
- regularising the existing residential improvements.
- allowing development to be assessed under the Development Management Scheme rather than outdated title deed restrictions.
- enabling the reasonable and efficient use of a well-located residential property.

(c) Social benefit of retaining the restrictive conditions

The restrictive conditions no longer provide a meaningful planning purpose. They duplicate development controls already contained within the Development Management Scheme and unnecessarily restrict reasonable residential development. Retaining the conditions would not provide any additional public benefit beyond that already secured through the City's current statutory planning framework.

(d) Social benefit of removing the restrictive conditions

The removal of the restrictive conditions will:

- promote efficient utilisation of existing urban land.
- facilitate appropriate residential investment.
- encourage the maintenance and upgrading of existing housing stock;
- support incremental residential intensification consistent with municipal planning policy.
- allow development to be regulated through contemporary planning legislation.

(e) Extent of rights removed

The application seeks the removal of **Conditions B(b), B(c) and B(d)** only. All remaining title deed conditions will remain applicable where relevant.

7. SPLUMA SECTION 47 – PUBLIC INTEREST

Section 47 of the Spatial Planning and Land Use Management Act requires consideration of whether the removal of restrictive conditions serves the public interest.

The proposal is considered to be in the public interest because it:

- promotes efficient and sustainable use of existing urban land;
- supports the objectives of spatial justice and spatial sustainability;
- enables appropriate residential development within an established urban area already served by municipal infrastructure;
- replaces outdated title deed controls with the City's contemporary planning framework;
- does not prejudice the rights of adjoining property owners; and
- contributes to the continued improvement and investment in an established residential neighbourhood.

The proposal is therefore consistent with the principles and objectives of SPLUMA.

8. ASSESSMENT OF DESIRABILITY IN TERMS OF SECTION 99(3) OF THE MUNICIPAL PLANNING BY-LAW, 2015

(a) Socio-economic Impact

The proposal will make a positive contribution to the local economy through construction-related employment during implementation. The improvement of the property will contribute to the continued maintenance of the residential neighbourhood while making more efficient use of existing urban land and municipal infrastructure. aligned with the City's strategic objectives of promoting economic growth, poverty alleviation, and job creation, as contained in the Integrated Development Plan (IDP) and the Municipal Spatial Development Framework (MSDF). By stimulating local economic activity, supporting small-scale contractors, and enabling property owners to improve their homes in a manner consistent with the surrounding context, the application contributes towards a more resilient and sustain able urban economy

(b) Compatibility with Surrounding Uses

The property is situated within an established Residential 1 neighbourhood characterised by single dwellings, second dwellings and residential improvements of varying ages and sizes. The proposed development remains entirely residential in nature and will not introduce any commercial or industrial activities. The proposal has been designed to remain compatible with the surrounding residential character and will not result in unacceptable:

- visual intrusion.
- overlooking.
- loss of privacy.
- overshadowing.
- noise generation.
- adverse streetscape impacts.

The development is therefore considered compatible with surrounding land uses.

(c) Impact on External Engineering Services

The property is fully serviced by existing municipal water, sewer, stormwater and electricity infrastructure. The proposal represents a modest increase in residential development within an established urban area. Any engineering requirements identified during the application process can be addressed through standard conditions of approval and, where applicable, Development Charges in accordance with the City's policies. No unacceptable impact on external engineering services is anticipated.

(d) Impact on Health, Safety and Well-being

The proposal remains residential in nature and will not introduce activities that would adversely affect the health, safety or well-being of the surrounding community. Appropriate access, servicing and municipal development standards will continue to apply through the building plan approval process.

(e) Impact on Heritage

The property is not situated within a Heritage Protection Overlay Zone, and no known heritage resources will be affected by the proposal. No heritage impacts are anticipated.

(f) Impact on the Biophysical Environment

The property is located within a fully developed urban area. No environmentally sensitive areas, indigenous vegetation, wetlands or watercourses will be affected by the proposal. Accordingly, no adverse impacts on the biophysical environment are anticipated.

(g) Mitigation of Potential Impacts

Any potential impacts associated with the proposal are minor and can be adequately addressed through compliance with the Development Management Scheme, municipal engineering requirements and conditions of approval. No significant adverse planning impacts have been identified.

(h) Impact on Existing Rights

The proposal will not unreasonably interfere with the rights of adjoining property owners. Development will remain subject to the City's building regulations, Development Management Scheme and any conditions imposed through the land use approval process.

(i) Impact on Adjacent Properties

The proposal has been designed to respect the existing residential character of the neighbourhood. The scale, form and layout of the development will not materially affect neighbouring properties or diminish the residential amenity of the surrounding area.

9. CONCLUSION

The removal of Restrictive Condition B(d) does not remove development control from the property. Once the restrictive condition has been removed, the property will continue to be regulated by the Development Management Scheme, which provides contemporary controls relating to building lines, coverage, height, land use and development intensity. The accompanying application for a permanent departure in terms of

section 42(b) therefore relates solely to the Development Management Scheme building line and not to the historic title deed restriction. The proposal consequently ensures that the property will be regulated through the City's modern planning framework rather than outdated township establishment conditions.

The proposed removal of restrictive title deed Conditions **B(b), B(c) and B(d)**, together with the requested Permanent Departure, is considered reasonable, Desirable, consistent with sound planning principles, compatible with the surrounding residential character, aligned with the Municipal Planning By-law, the Development Management Scheme, the Municipal Spatial Development Framework, the Tygerberg District Plan, SPLUMA and the Land Use Planning Act, supportive of the efficient use of well-located urban land.

The proposal will not adversely affect neighbouring properties, municipal services, public safety, heritage resources or the environment. The application satisfies the relevant considerations contained in:

- **Section 42(b)** – Permanent Departure.
- **Section 42(g)** – Removal of Restrictive Conditions.
- **Section 42(j)** – Deletion of Restrictive Conditions imposed under the Townships Ordinance.
- **Section 99 of the Municipal Planning By-law, 2015.**
- **Section 39(5) of the Land Use Planning Act.**
- **Section 47 of the Spatial Planning and Land Use Management Act.**

Accordingly, it is respectfully submitted that the application is desirable from a planning perspective and that approval is warranted, subject to any reasonable conditions the City may consider appropriate.

Regards

Architectural & Droughting Service

Clive C.M