



MOTIVATIONAL MEMORANDUM: REMOVAL OF TITLE RESTRICTIONS ERF 217 MONTGOMERY PARK



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MOTIVATIONAL MEMORANDUM: REMOVAL OF TITLE RESTRICTIONS

ERF 217 MONTGOMERY PARK

On behalf of

LINDSAY ANN RUSSELL

KiPD

Compiled by:

Title	Position	Date
SASKIA COLE	PROFESSIONAL TOWN PLANNER	20 May 2019
KGABO MAKGATHO	JUNIOR TOWN PLANNER	16 May 2019

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1 INTRODUCTION

The purpose of this memorandum is to support the application for the removal of title conditions 2.(a) to 2.(m) from Title Deed T39025/2010 with regards to Erf 217 Montgomery Park.

All pertinent information is included in this memorandum.

2 SITE CONTEXT

2.1 OWNERSHIP PARTICULARS

The property is registered at the Deeds office as follows:

Property details	Registered owner	Title deed no	Extent (m ²)
Erf 217 Montgomery	Lindsay Ann Russell	T39025/2010	744 m ²

2.2 LOCALITY

Montgomery Park is located in the north western parts of the City of Johannesburg, west of the Emmarentia, Greenside area and south of the Northcliff area. The site is located on at no 87 Langenhoven Street, Montgomery Park, as indicated below:





2.3 MORTGAGE BOND

There is no mortgage bond registered against this property

2.4 EXISTING ZONING AND DEVELOPMENT CONTROLS

In terms of the City of Johannesburg Land Use Scheme, 2018, the property is zoned as follows:

Zoning	Residential 1
Height	Height Zone A – 3 storeys
Coverage	50% (1-2 storeys) 40% (3 storeys)
Floor Area Ratio	1.2
Building Lines	3m from the street boundary

2.5 EXISTING AND SURROUNDING LAND USE

There is currently a single residential dwelling house on the property. The site is surrounded by predominantly single residential dwelling units and two public open space to the east and one to the west of the site. The plan below indicates the land uses of the surrounding properties:



3 APPLICATION INTENT

Condition 2.(m) in the aforesaid title deed, T39025/2010 prohibits encroachment into a building line of 6.10m from the street boundary. A section of the house on this property has been constructed over this street building line. Although the City of Johannesburg Land Use Scheme, 2018 allows for building line of 3.0m on "Residential 1" properties, condition 2.(m) still takes precedence until it is formally removed. The house complies with the 3m building line.

It is thus necessary to remove particularly this title restriction from the title deeds to allow for approval of the building plans for the house.

Application is however being made to remove all title restrictions from the title deeds which deal with matters already being enforced by the Land Use Scheme. Having these conditions in the title deed as well the Scheme is found to be superfluous.

4 REMOVAL OF TITLE RESTRICTION

Application is hereby made to remove title conditions 2.(a) to 2.(m) from Title Deed T39025/2010.

The conditions are mostly outdated and newer legislation is in place to control the various components, thus nullifying the necessity of mentioning them in the title deed. The conditions and reasons for their requested removal are detailed below:

Title Deed T39025/2010

Conditions to be removed		Comment	Legislation
No.	Content		
2. (a)	The applicant and any other person or body of persons so authorised, in writing, by the Administrator shall for the purpose of securing the enforcement of these conditions and any other conditions referred to in Section 56 bis of Ordinance No.11 of 1931 have the right and power at all reasonable times to enter into and upon the erf for the purpose of such	The City of Johannesburg has taken over the role of Administrator and access to property for inspection is enforced by the Municipal Planning By-Law, 2016.	Municipal Planning By-Law 2016, section 63.

	inspection or inquiry as may be necessary to be made for the abovementioned purposes;		
2.(b)	Neither the owner nor any other person shall have the right (save and except to prepare the erf for building purposes) to excavate therefrom any material without the written consent of the local authority;	The excavation of material from an erf is prohibited in terms of the Land Use Scheme, except to prepare the erf for building.	City of Johannesburg Land Use Scheme, 2018, Clause 14(1)(a)
2.(c)	The elevation treatment of all buildings shall conform to good architecture so as not to interfere with the amenities of the neighbourhood;	The elevational treatment of buildings is included in the town planning scheme.	City of Johannesburg Land Use Scheme, 2018, Clause 51(2)
2.(d)	No animals as defined in the Local Authorities Pounds Regulations framed under the Local Government Ordinance No. 17 of 1939 shall be kept on the erf.	The municipal public health by-laws prohibit the keeping of animals, besides approved pets, in a proclaimed township.	City of Johannesburg Public Health By-Laws, Section 118(3)
2.(e)	No wood and/or iron building or buildings of unburnt clay brick shall be erected on the erf.	Modern architecture may allow for the use of these materials as long as the building is structurally sound and conforms to building standards.	National Building Regulations and Building Standards, 1977
2.(f)	Where in the opinion of Local Authority it is impracticable for stormwater to be drained from higher lying erven direct to a public street, the owner of a erf shall be obliged to accept and/or permit the passage over the erf of such stormwater.	Conditions regarding the acceptance of stormwater from a higher lying property are included in the town planning scheme.	City of Johannesburg Land Use Scheme, 2018, Clause 14(2).

	<p>Provided that the owner of any higher lying erven, the stormwater from which is discharged over any lower lying erf, shall be liable to pay a proportionate share of the cost of any pipeline, or drain which the owner of such lower lying erf may find necessary to lay or construct for the purpose of conducting the water so discharged over the erf and provided further that in the event of a dispute between the parties as to the nature or the position of the pipeline or drain, or the allocation of the cost, the matter shall be referred to the Administrator or his nominee whose decision shall be final.</p>		
2.(g)	<p>Neither the owner nor any other person shall have the right to make or permit to be made upon the erf for any purpose whatsoever, any bricks, tiles or earthenware pipes or other articles of a like nature;</p>	<p>The use of land is governed by the town planning scheme.</p>	<p>City of Johannesburg Land Use Scheme, 2018, Clause 14(1)(c)</p>
2.(i)	<p>If the erf is fenced or otherwise enclosed, the fencing or other enclosing device shall be erected and maintained to the satisfaction of the Local Authority;</p>	<p>Conditions with regards to fencing and enclosing property are included in the town planning scheme.</p>	<p>City of Johannesburg Land Use Scheme, 2018, Clause 14(6)</p>
2.(j)	<p>The erf shall be used for the erection of a dwelling house only provided that, with the consent of the Administrator after reference to the Board and the Local Authority, a place of public worship or a place of</p>	<p>The use of land is governed by the town planning scheme in place by the municipality and changes to the use</p>	<p>City of Johannesburg Land Use Scheme, 2018, Clause 14(10)</p>

	instruction, social hall, institution or special buildings appertaining to a residential area may be erected on the erf, provided further that the Local Authority may permit such other buildings as may be provided for in an approved Town Planning Scheme under which the consent of the Local Authority is required.	must be made in terms of the municipal planning by-laws.	
2.(k)	Not more than one dwelling one dwelling house together with such outbuildings as are ordinarily required to be used in connection therewith shall be erected on the erf, except in special circumstances and then only with the consent, in writing, of the Administrator (or body or person designated by him for the purpose) who may prescribe such further conditions as he may deem necessary;	Density and additional dwellings are governed by the town planning scheme.	City of Johannesburg Land Use Scheme, 2018, Clause 21 & 27
2.(l)	The dwelling house exclusive of buildings to be erected on the erf shall be of the value of not less than R3 000,00;	The amount of R3000 is superfluous at this point in time due to inflation over many years.	n/a
2.(m)	Buildings, including outbuildings, hereafter erected on the erf shall be located not less than 6.10 metres from the boundary thereof abutting on a street, provided that the Local Authority may if it thinks fit permit the erection of buildings in front of the building line, in the case of erf abutting on two or more streets if	Building lines and the erection of buildings within the building line is governed by the town planning scheme.	City of Johannesburg Land Use Scheme, 2018, Clause 34.

	<p>compliance with the building line would interfere with the reasonable development of the site;</p>		
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5 MOTIVATION

Before town planning schemes were introduced in South Africa it was necessary to have certain conditions stipulated in law in order for municipalities to be able to enforce them. Conditions that referred to land use and building restrictions were inserted into the title deeds of erven through the conditions of establishment in the township establishment processes.

With the introduction of town planning schemes into municipalities, many conditions that had in the past been administrated by title deeds, were inserted into, and thereafter governed and enforced by the town planning scheme, or land use scheme, being a more modern term.

Over time, municipalities have also brought out municipal by-laws to deal with some of the other conditions which were previously placed in title deeds, for example the keeping of animals.

It is not necessary to have two legislative tools dealing with exactly the same development restrictions and law. As the new 2018 land use scheme, as approved by the City of Johannesburg, allows for flexibility in land use rights, with the consent of the municipality, it is in the land owners interest to remove restrictive conditions from their title deed which does not allow for such flexibility.

The main aim of this application is to remove the title restriction which refers to a 6.1m building line along boundaries abutting onto streets in Montgomery Park. Clause 34(3) of the City of Johannesburg Land Use Management Scheme, 2018 allows for the development of garages and carports related to single dwelling units within the stipulated building line for that erf, with the approval of building plans. No relaxation of the building line is required. The title condition is thus in contradiction to the land use scheme and as thus application is made to remove this, and other conditions from the title deed to allow for flexibility in development of the erf.

6 REGIONAL SPATIAL DEVELOPMENT FRAMEWORK

The subject site is located within Region B, Sub Area 5 of the City of Johannesburg regional Spatial Development Framework, 2010/2011. One of the development objectives for this sub-area is to retain the existing residential character and densities of the sub area. As the intension is to retain the single dwelling unit, and not amend the land use, the residential character and densities of the neighbourhood will be retained. We are of the opinion that the application is not in contravention to the RSDF.

7 RECOMMENDATION

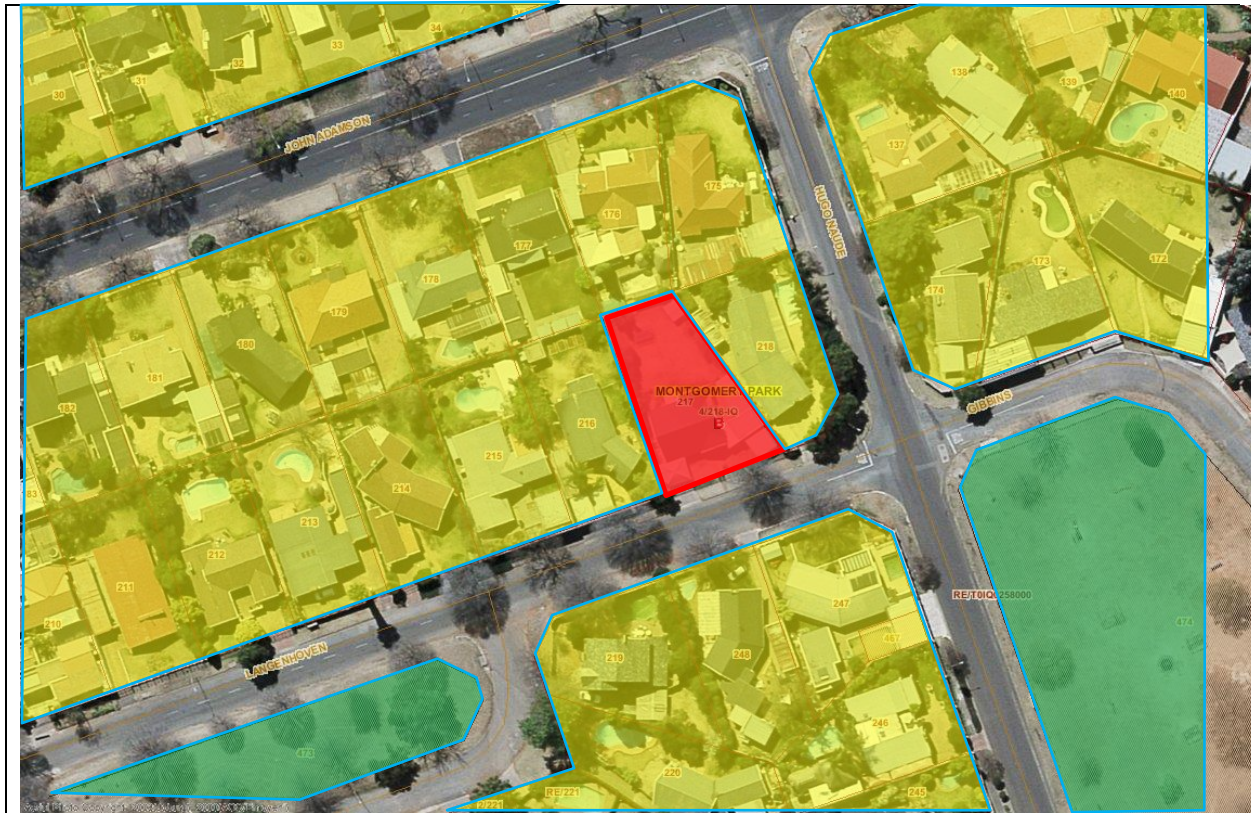
The approval of the application would allow the land owner flexibility in the development of the site and allow for adherence to the new land use scheme as approved by the City of Johannesburg.




We therefore recommend that the application be approved.

ANNEXURE 1: LOCALITY PLAN



ANNEXURE 2: LAND USE PLAN



	The Site
	Park
	Single residential units

ANNEXURE 3: ZONING MAP

