

PARKVIEW RESIDENTS' ASSOCIATION

DETAILED GUIDELINES FOR RESIDENTS WHO WISH TO DEVELOP, RENOVATE OR ALTER THEIR PROPERTIES

1. Introduction

- 1.1 Parkview is one of the older townships in Johannesburg and this, together with its unique atmosphere, gives it a special character that the City Council and the residents of the area have over the years sought to retain.
- 1.2 Any proposed developments in the suburb, which would include alterations, extensions or demolitions, and rebuilding of structures or changing the usage of properties in Parkview, are subject to a number of controls and safeguards established and enforced by the local, provincial and national authorities.
- 1.3 Residents may have either deliberately or unknowingly transgressed the provisions of one or more of these controls and as a consequence suffered unnecessary anxiety, delays and/or cancellation of building programmes as a result.
- 1.4 This document has been adapted by the **Parkview Residents' Association (PRA)** from a document developed by the Westcliff Residents' Association to assist residents to avoid unnecessary pitfalls should they decide at any time to embark upon the development or improvement of their property. It seeks to explain the various laws and bodies that govern new development of a property, or a change of its usage.
- 1.5 Whilst most architects, town planners, and estate agents should be conversant with the applicable laws and controls for any development in Parkview, recent experience has shown that even these professionals are not always aware of all aspects of these requirements (and sometimes are aware of them, but ignore them). This document is intended to be a helpful checklist to be discussed with professional advisers in order to ensure that any development or application complies with the required processes.

2. The Legal, Regulatory and Policy Framework

Property Specific

2.1 **Title Deeds.** The restrictive conditions contained in the title deeds for your property limit usage and your rights and are enforceable by all other property owners in the township. Typically the conditions prohibit the use of erven for establishments that sell liquor or for shops and other places of business; only allow for one dwelling house (with the necessary outbuildings) to be erected on an erf; prohibit subdivision; set building lines; insist on the erection of a neat and proper fence; and allow that the owner of any other erf in the township be entitled to insist on the enforcement of such title deeds. Where a condition of the title deeds is in conflict with the proposed use of a property, application would have to be made for the removal or amendment of such title deeds. This is, however, an onerous process and has no guarantee of success.

Local Government Legislation

2.2 **The Johannesburg Town Planning Scheme 1979 (*the Scheme*)** imposes a set of regulations on each property, which will in turn control any development of that property. These regulations include land use zonings (both primary rights and consent uses) and density zonings (number of dwellings which may be built on a property). Land use and density in turn determine floor area, coverage, building lines, parking provisions etc. Primary rights are the main rights of the property. Consent rights are those rights which may be granted only after application to the **Johannesburg City Council (*Council*)** and allowing neighbours and other residents a chance to object or comment on the application. Consent rights can be withdrawn if the property owner does not comply with the conditions imposed when the consent is granted.

Provincial Government Legislation

2.3 **The Gauteng Removal of Restrictions Act, 1996**, is a legal mechanism that enables application to be made to amend, suspend or remove title deed conditions. Such application would be made where title deed conditions are in

conflict with the Scheme or with a proposed amendment to or consent in terms of the Scheme.

- 2.4 **The Town Planning and Townships Ordinance, 1986**, is the legal mechanism through which town planning schemes are established and amended. Any amendment to the Scheme (rezoning) would need to be undertaken in terms of this Ordinance, unless it is accompanied by a simultaneous removal of restrictive conditions of title in which case it would be submitted in terms of the Gauteng Removal of Restrictions Act, 1996.

National Government Legislation

- 2.5 **The National Heritage Resources Act, 1999, (NHRA)** principally protects all heritage. It provides that no structure may be altered or demolished if it is older than 60 years, without a permit from the local heritage authority. Contravention of this Act is a criminal offence. The South African Heritage Resources Authority (SAHRA) has been established under the auspices of the NHRA.
- 2.6 **The National Building Regulations and Building Standards Act, (No 103 of 1977), including local by-laws (Building Control)** defines the system whereby the Council approves building plans and monitors building operations and controls the usage of pavements; The National Building Regulations stipulate that no person may erect, alter, add to, or convert any building without the prior approval of the Council.
- 2.7 **The Development Facilitation Act, 1995, (DFA)** was designed as a short-cut legal mechanism primarily to expedite the establishment and development of less formal areas. It has, however, been used by developers to shortcut other more formal processes. In September 2009, the Supreme Court of Appeal ruled that no DFA tribunal may consider an application for the alteration of land use in a municipal area.

Development Policy

- 2.8 **The Regional Spatial Development Framework (the RSDF)** is a land use management policy plan which is promulgated yearly. It sets out the broad Council strategy for managing development in the City for the year. Of particular

relevance to Parkview are the land use tables, which govern the development objectives for a particular area, prescribe interventions (actions required to achieve development objectives, with details provided in the supporting guidelines) and impose guidelines against which applications for a change in land usage are assessed. Parkview falls within Region B Sub Area 9.

The development objectives of Sub Area 9 are to retain and enhance the residential character and amenity, to contain the current extent of the Tyrone Neighbourhood Node (Parkview), to enhance the mobility functions of arterials and enhance nodal development, and to enhance and conserve natural open spaces, well managed parks and other natural areas.

The interventions include supporting residential densification between Lower Park Drive and Dundalk Avenue, defining the Tyrone Neighbourhood Node as well as the buffer areas on the north and south sides of the node, non support of non-residential uses outside of designated areas, specific controls over development of the Parkview ridge area and application of **Johannesburg Metropolitan Open Space System (JMOSS)** in relation to the open space system.

- 2.9 **An Environmental Control Area (ECA)** in terms of the RSDF, provides for specific controls in environmentally sensitive areas. The ridge area in the south section of Parkview is one such area. A notable requirement is to produce a **Site Development Plan (SDP)** for any building work.;
- 2.10 **The JMOSS** is the Council's policy for open spaces, in which the Westcliff ridge is specifically identified within the whole Johannesburg system, part of which falls in Parkview. Zoo Lake and the George Hay Park would also be protected under this policy. JMOSS sets the environmental policy for protecting ridges and rivers;
- 2.11 **The Parkview Residents Association (PRA) Vision Document** is the vision for the future development of Parkview as developed in 2008 by the PRA following an extensive community participation process with landowners and traders in Parkview, and approved in a general, public meeting by the members of the PRA.
- 2.12 Following the approval of the PRA Vision document, **the Parkview Precinct Plan** was prepared by the PRA. The aim of the document is to interpret broader policies and provide finer-grain detail regarding the dynamics within Parkview and

Greenside East. The Precinct Plan provides clear guidelines for the development of Parkview and Greenside East at a micro scale. The Parkview Precinct Plan was approved by the Council in 2011 and forms an integral part of the RSDF.

- 2.13 The PRA is working on a **Heritage List**, identifying properties within Parkview and Greenside East that have heritage value and are worthy of conservation. Buildings will be graded from A to C depending on merit. The list is being prepared with the assistance of the **Johannesburg Heritage Foundation (JHF)**. Similar lists exist for Parktown and Westcliff and are recognised by Council through the RSDF and by the **Provincial Heritage Resources Authority – Gauteng (PHRA-G)**. The fact that a building is not on the list does not mean that the NHRA does not apply – this Act is universally applicable to all buildings older than 60 years of age.

3. **Monitoring and Decision Making Bodies**

There are a number of bodies that Parkview residents may encounter from time to time, all of which interact with one another in the implementation of the above regulatory framework. Some of these are-

Neighbourhood

- 3.1 **The PRA** is an unincorporated voluntary association not for gain, comprising of residents of Parkview who pay their annual membership fee. It has a constitution and its committee is elected annually. It seeks to maintain the unique character of Parkview and uphold the interests of residents. Its views are taken into account by Council as part of the consultative framework for local government and fed into the RSDF annually. It will object to applications it considers inappropriate and seeks to engage with residents and developers to seek the best long term solutions for the suburb and all its residents.
- 3.2 The residents of Westcliff, Parktown and Parkview and the JHF have established a **Joint Plans Committee (JPC)** to keep a watch on developments in these suburbs. The focus of the JPC is particularly on heritage matters, town planning issues and environmental considerations. The JPC aims to assist residents,

developers, architects and town planners and will always seek to provide constructive input and suggestions.

The JPC enjoys an ad hoc status with both the Council and PHRAG and as such its views carry some weight with those two authorities.

The JPC meets every fortnight and examines proposals put before it. After engaging with applicants on all the relevant issues, it concludes its work in successful matters by issuing a 'No Objection' finding which significantly enhances the application's chances of obtaining approval of plans by PHRA-G and the Council.

3.3 **Safe Parkview** is the local security initiative implemented as a partnership between residents and the PRA. This group seeks to ensure that your builders and contractors comply with sound security practices during your building operations. It cooperates with the Community Policing Forum and the Parkview Police Station and proactively patrols and monitors the suburb through their security contractor 24-7.

3.4 **The JHF** is a voluntary association which campaigns for the preservation of heritage, educates the public about our local history and generally acts to prevent the destruction of old buildings that are worthy of preservation.

Local Government

3.5 **The PHRAG** is the local heritage authority responsible for upholding the NHRA and for granting permits to alter structures older than 60 years of age. It reports to SAHRA.

3.6 **The Council** acts through its various branches of local government with its headquarters in the Metro centre in Braamfontein, and community liaison through the people centres. An important link with Council is the Ward Councillor for Ward 87, currently Councillor Amanda Forsythe (aforsythe@mweb.co.za).

3.7 **The Planning Committee** is the first body appointed by the Council where delegation has been given to officials of the Council to take decisions related to planning matters. Such applications would include consents, rezonings, removal of restrictive conditions of title or establishment of townships. The officials serving

on the planning committee are primarily planners assisted by technical and legal experts. It meets on a regular basis primarily to consider applications where objections have been received and thus give objectors the chance to be heard in respect of a particular matter. This is the body that will decide in the first instance if you can, inter alia, subdivide or rezone.

3.8 **The Townships Appeal Board** is the body that will hear appeals of decisions of a Planning Committee if any applicant or objector decides to take such decision on appeal.

4. **Procedure to be followed when contemplating development of your property**

The following steps are the recommended route that you should follow when contemplating development of your property. They will take you through various checks in a logical, sequential manner to ensure that you are well aware of the technicalities and constraints inherent in the development of property in the Parkview and Greenside East area.

4.1 **Title Deeds**

4.1.1 Ensure that any proposals you may have comply with the conditions of the Title Deeds of your property. The Title Deeds are a rigid and powerful constraint in determining how you may use your property. Any resident in Parkview may seek to enforce the conditions of your Title Deeds upon you, and it would be prudent to comply with them.

4.1.2 Fellow residents may choose to overlook or condone non-compliance, especially if such non-compliance is of a temporary, minor or technical nature and does not cause them any nuisance. The condoning of non-compliance could be withdrawn at any time and any risk arising out of such withdrawal rests with the owner or resident that is not in compliance. It is probably best to discuss the matter with your neighbours and the PRA. Examples of this may be a granny flat, or a small work from home office. However, where

application is to be made to the Council for a town planning matter, the Council is obliged to enforce all title deed restrictions.

- 4.1.3 A formal variation to your title deed can only be achieved by application to court or through an application process to the Council in terms of the Gauteng Removal of Restrictions Act. This latter process requires a process of advertising and notice to interested persons. You will probably require the services of a town planner. You will generally need to follow this route when you want to sub-divide, build more than one residence on a property or use the property for a business.
- 4.1.4 The Johannesburg City Council and, if necessary, a Planning Committee may amend a condition of your Title Deed should they agree that such amendment is generally in compliance with the relevant Town Planning Scheme and the RSDF.
- 4.1.5 Your neighbours and the PRA may object, in which case the matter will be referred to the Planning Committee for a hearing. If contested, the application for amendment may be the subject of lengthy hearings, administrative procedures and even litigation, which could delay your proposals, possibly for years.
- 4.1.6 Many town planners consider title deed restrictions to be outdated and advise their clients to apply for their complete removal. This is not supported by the PRA and the residents of Parkview. The PRA will always oppose the shotgun approach of removal of conditions of title but will support amendments to conditions that are strictly necessary to permit an acceptable Town Planning Scheme amendment or consent use to be granted. Failure of your town planner to adhere to this will result in unnecessary delays and costs and the matter could be taken on appeal to the Townships Appeal Board.
- 4.1.7 If you intend buying a house in Parkview or already own property in the area and intend to run a B&B or guesthouse, operate your business from the property, or sub-divide, you would be well-advised to take professional legal and planning advice, rather than only to rely on the advice of a seller or seller's agent. The town planning procedure may need to include the

amendment of title deeds conditions and this can be long and costly if the usage is contrary to the regulatory framework set out above.

4.2 **Town Planning Scheme**

4.2.1 Where the use of a property or the number of dwellings on a property is to change beyond that allowed in the Scheme, application has to be made to amend the Scheme for that property. Such changes may include changing the density zoning from one dwelling per erf to one dwelling per 1000m² in order to facilitate subdivision; changing the use zoning from Residential 1 to Residential 3 in order to facilitate the construction of apartments or townhouses, application for consent for a subsidiary dwelling unit (granny flat); or application for consent / rezoning for a medium or large scale home office. However, where such rezoning of the Scheme or consent in terms of the Scheme, is contrary to the title deeds of the property, such application would have to include a further application to remove or amend the title deed conditions. Generally most erven in Parkview are zoned Residential 1, one dwelling per erf, and any changes to these zonings would require an application to amend the Scheme.

4.2.2 Where such application is within the above regulatory framework and is not contrary to the Parkview Precinct Plan, it will generally not result in objections. Applications for these approvals may have a significant impact on your rates bill. For example, where you have any form of consent use for business purposes your rates will double. You should therefore consider very carefully whether you wish to go this route.

4.2.3 It is advisable to consult at an early stage with the PRA and your neighbours regarding their attitude to any application you may wish to make. You should ensure that the application complies with the Parkview Precinct Plan and the RSDF. If it is not, then it is likely that it will be opposed.

4.3 **Building Plans and Alterations**

4.3.1 All plans for new developments and alterations have to be submitted to the Council for approval. Your architect will advise you on the format for successful submissions, in compliance with Building Control provisions.

- 4.3.2 The Council is not legally required to keep previously approved plans. If an owner tries to get approval for plans where there are no previously approved plans, the Council considers it a new submission and the new energy requirements would then need to apply to the whole house (and not just the new addition) and most houses would not comply with those regulations. There may be exceptions to this re-submission requirement but it is at the discretion of the Council.
- 4.3.3 The bond holder needs to be notified of any intended alterations to be made to the property.
- 4.3.4 Undertaking any alterations on your property without Council approval, can make you vulnerable on a number of fronts, not least with your insurance company. Before you buy a property, it is advisable to ensure that there are approved plans for all the structures on the property.
- 4.3.5 If your property is in the part of Parkview (the ridge area in the south) that is classified as an Environmental Control Area you will be required to submit a Site Development Plan (SDP). An SDP should contain details of all aspects of the property, the location of adjacent properties, contours and vegetation. It should specify drainage of storm water and contain all elevations of the buildings, both existing and proposed. The JPC suggests that you submit your plans and SDP (where applicable) to it for assessment and advice before submission to Council.

4.4 **Neighbours**

- 4.4.1 Where an application for consent is for a property next to any Residential 1,2,3 or 4 properties, all such contiguous neighbours must be sent registered letters about the application.
- 4.4.2 If your planned alterations will impact on your neighbours' properties, either with respect to their privacy or the value of their properties, it is likely that the Council will require their approval for your plans before Council approval is granted. However, there appear to be no hard and fast rules regarding when that approval will be sought. In cases where it is alleged that you are infringing on neighbours' Constitutional Rights (for instance, to privacy), this could have

very significant consequences for you. The best advice is to act with generosity and caution – remember that you will be living in close proximity to your neighbours for some time.

4.4.3 If you are asked to sign plans by your neighbour and are unsure or feel pressurised, you are invited to contact a committee member of the PRA.

4.5 **Heritage**

4.5.1 As with most of Parkview, your home is likely to be older than 60 years of age. This means you will have to comply with the NHRA and first submit an application to PHRA-G for a permit to alter or demolish an existing structure. This will require research on the historical or heritage significance of your home.

4.5.2 Application requirements for PHRA-G as well as the procedures and application form can be found on the PRA website and downloaded.

4.5.3 The JPC will advise you on various aspects of your proposal. Your architect will guide you on what may or may not be permissible. PHRA-G will invariably require that the PRA through the JPC stamp your plans before they will consider your application. Generally where you have consulted with the JPC, the process becomes a great deal easier as the JPC has a close working relationship with PHRA-G

4.5.4 Once approval from PHRA-G is granted, the plans should then be submitted to the Council for approval. Failure to obtain the relevant permission from PHRAG could result in unnecessary costs and delays and is a criminal offence.

4.6 **Test the Water**

4.6.1 Once you have gone through all the above detailed checks then it is strongly recommended that you submit any proposals for development of your property to the JPC in the first instance. This is an excellent way of 'testing the water'. The advice, support or concerns of this knowledgeable committee of residents will give you a clear, early indication of the extent to which your proposals are

compliant with the constraints mentioned above and consequently the likelihood of them being successful. Whilst the process may sound formidable, the JPC aims to assist and not to prohibit.

- 4.6.2 Should you require advice you are invited to contact a committee member of the PRA.

5. **Building Operations**

Once you commence with building operations, you will have to deal with all the stresses and strains of this process. The PRA, its residents and Safe Parkview will take an active interest in your building site. You will save yourself and the neighbourhood considerable hardship if you observe the following-

5.1 **Stop orders**

Please do not start before you have all permissions. A stop order from PHRA-G or the building inspectors is costly and unpleasant and will be sought in the case of any illegal activities.

5.2 **Building hours**

The National Building Regulations limits the days and hours during which construction work that would disturb the amenity of the neighbourhood, can be carried out. Please instruct your builders to abide by these.

5.3 **Pavements**

The pavements belong to the Council and all the residents. You need a permit to use the pavement for building material and rubble. Generally these are of a limited duration. The PRA will be more vigilant than in the past in ensuring that your operations have the least possible impact on our public spaces. Please co-operate as far as possible and instruct your builders to respect our neighbourhood

Residents should not do any building work on the pavements. Any such work required to give access to garages or driveways is done by the Council. This is to ensure that pedestrians are able to freely use the pavements, and the Council can

access any services below the pavements. Approval from Council is required for all structures on your property including garages and carports.

5.4 **Trees on the Sidewalk**

Trees on the sidewalk are not to be removed without the permission of the Council.

5.5 **Large trees on your property**

It is most desirable that wherever possible large, well established trees on private property are to be retained to ensure that the treed ambiance of the neighbourhood is retained.

5.6 **Security**

This is an aspect that you will be requested to observe and commit to. You should liaise with Safe Parkview, who will advise you of specific requirements for your contractors and builders. These requirements are aimed at enabling Safe Parkview to monitor your site and prevent any increase in crime that may be associated with building activities. In particular, you should anticipate the following requirements-

- 5.6.1 Contractors and sub-contractors should be registered with the **South African Building Contractors Association (SABCA)**.
- 5.6.2 Contractors should ensure that their staff are in possession of proper forms of identification and where appropriate, should have conducted relevant background checks on their staff;
- 5.6.3 Contractors should be encouraged to collect and drop off their staff at the site and ensure that their staff remains on the site during work hours.
- 5.6.4 Owners may be requested to grant permission for the neighbourhood's security contractor to enter the site from time to time for random inspections and checking of identity documents and/or work permits and passports; and

- 5.6.5 Owners are requested to make every effort to secure the building site from the street. In particular while building activity ceases at night and over weekends or holidays; and
- 5.6.6 Owners are advised to ensure there is security personnel living on site. In the event of the house alarm being compromised, subscription to the Safe Parkview cell phone panic is advised.
- 5.5.7 If a property is vacant for any reason (either through change of owner or a rezoning), the property must be secured and maintained to prevent sites from getting overgrown and inhabited by squatters and criminals.

The above measures are not intended to be unduly restrictive but enable the suburb to maintain a pro-active approach to security, in the interests of all residents.

Best wishes and may your proposals achieve what you hope for. These guidelines aim to assist you as well as maintain a harmonious suburb that is a pleasure for all its residents to live in.

Parkview Residents' Association

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