

WHALE ROCK HEIGHTS HOMEOWNERS' ASSOCIATION

BUILDING REGULATIONS

NOTE:

**TO BE READ TOGETHER WITH THE WHALE
ROCK HEIGHTS HOMEOWNERS' ASSOCIATION
"ARCHITECTURAL REGULATIONS"**

and

**RULE 6 OF THE WHALE ROCK HEIGHTS
HOMEOWNERS' ASSOCIATION
"CONDUCT RULES"**

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THE WHALE ROCK HEIGHTS PRIVATE ESTATE HOMEOWNERS' ASSOCIATION

BUILDING REGULATIONS

1. INTRODUCTION

- 1.1 These Building Regulations must be read together with clause 9 of the Constitution and the Architectural Guidelines.
- 1.2 In respect of the development or redevelopment of an erf or additions or alterations, the approval of the Trustees is required before a building plan may be submitted to the Municipality for its consideration.
- 1.3 As set out in the Constitution, the Whale Rock Heights Private Estate is an upmarket development and as such the Trustees in their consideration of a building plan will take this into account.
- 1.4 The primary aim of these Regulations is to ensure that all building activity in the Estate occurs with the least possible disruption to residents.
- 1.5 In the event of any uncertainty, residents and/or their contractors are most welcome to contact the Managing Agent.

2. INTERPRETATION AND FOUNDING PROVISIONS

- 2.1 In these Rules unless inconsistent with or otherwise indicated by the context:-
 - 2.1.1 **“Constitution”** means the Constitution of The Whale Rock Heights Homeowners' Association.
 - 2.1.2 **“Regulation”** means these Building Regulations.
 - 2.1.3 **“The Estate”** means The Whale Rock Heights Private Estate as defined in the Constitution.
 - 2.1.4 **“The Whale Rock Heights Homeowners' Association”** means The Whale Rock Heights Homeowners' Association as established in terms of clause 2 of the Constitution of the Association, and **“Association”** will carry a corresponding meaning.
 - 2.1.5 **“Trustees”** means the Trustees of the Association appointed as defined in the Constitution.

- 2.2 Words and phrases in these Regulations will bear the corresponding meaning to that ascribed thereto in the Constitution and the Rules.
- 2.3 A reference to National Building Regulations in these Regulations will include the applicable Standards as prescribed by:
- 2.3.1 the National Building Regulations and Building Standards Act, 1977 (Act No 103 of 1977);
 - 2.3.2 Regulations issued in terms of the Act;
 - 2.3.3 The South African Bureau of Standards Code of Practice for the Application of the National Building Regulations; and
 - 2.3.4 The South African Bureau of Standards included and referred to in the Act, Regulations and Code of Practice.
- 2.4 Where the National Building Regulations provide for a power or function for a National, Provincial or Local Authority such power or function, as the case may be, may be exercised by the Trustees or such person appointed by them. The fees and disbursements of a person appointed by the Trustees to perform a power or function as aforesaid will be for the account of the owner who conducts building work in the Estate.
- 2.5 It is the responsibility of the owner who applies to conduct building work to ensure that only builders and artisans who are properly qualified, affiliated and insured are employed for building and related work. Notwithstanding any contractual or other legal relationship between an owner and a building contractor or other person conducting any work of whatsoever nature on behalf of an owner, the owner will be and remain liable to the Association for anything done or not done in contravention of the National Building Regulations and these Regulations. An owner who contracts with a building contractor for building work on an erf in the Estate shall ensure that strict compliance with these Regulations are included and form part of the stipulations of the contract between such owner and such building contractor and any sub-contractor.
- 2.6 The Trustees have the right to, if any directive issued by them or any Regulation is breached by any owner/resident/contractor, suspend any building work. Whenever building work is suspended by the Trustees in terms of this Regulation it may only commence again once the Trustees have confirmed that the breach has been remedied to their satisfaction. Any loss suffered due to building work being suspended will be for the account of the owner/resident/contractor as the case may be and no liability whatsoever will accrue to the Association or the Trustees.
- 2.7 Only pre-approved building contractors are allowed to work in the Estate (owner-builders are not permitted). Application form see Annexure “**A**”.

- 2.8 No single building contractor (on the Whale Rock Heights Approved List of Building Contractors) may at any one time have more than two contracts (houses) under construction.
- 2.9 Any building contractor wishing to exceed this number is to make application to the Board of Trustees for an exemption. The decision will be largely based on the approved Contractor providing sufficient evidence, to the satisfaction of the Board of Trustees, of there being adequate full-time qualified supervision for each contract.
- 2.10 Should a building contractor currently have more than two contracts in progress he will of course be permitted to conclude such contracts and thereafter, subject to the exemption set out in Regulation 2.9 above revert to a maximum of two contracts running concurrently.

3. APPROVAL TO BUILD

- 3.1 No building work for which a building plan is required in terms of the National Building Regulations may commence before the building plan to authorise the building work has been approved by or on behalf of the Trustees and the Municipality. In this regard it is recorded that the Municipality will not consider a building plan before it has been approved by or on behalf of the Trustees.
- 3.2 When an application for building work such as erection or re-erection of a dwelling house or any other building on an erf is contemplated by an owner, the procedures as prescribed in the Architectural Guidelines for Plan Submission must be followed.
- 3.3 These Regulations will be applicable to all building work conducted by and on behalf of an owner on an erf in the Estate, including but not limited to the erection of a dwelling house, outbuilding, any minor building work, and the erection of anything on the erf that will disturb the natural condition of the soil thereof or will excite the run-off of rain or storm water.
- 3.4 Where an owner wishes to conduct building work as defined in Regulation 3.3 on an erf for which a building plan is not required, such owner must notify the Trustees through the Managing Agent of such intended building work. The Trustees will then issue a directive as to what extent, if any, these Regulations and/or the Architectural Guidelines will be applicable to building work in terms of this Regulation 3.4.
- 3.5 It is and remains the duty of an owner to enquire from the Trustees through the Managing Agent whether and to what extent approval or a directive is required in respect of any building work in the Estate and a penalty/fine will be imposed by the Trustees if any building work is conducted without such approval or directive first being obtained.

4. DEPOSIT TO BE PAID BEFORE BUILDING WORK COMMENCES

- 4.1 After an owner has obtained the required authorisation or directive to build in the Estate in accordance with Regulation 3, and before building work is commenced, such owner must provide the Trustees through the Office of the Managing Agent, copies of all documentation and building plans recording such approval.
- 4.2 Upon receipt of the documents pertaining to the building work, the Trustees shall determine the amount of deposit to be paid by or on behalf of the owner for the purposes of these Regulations. No building work may commence before the amount required as a deposit has been paid into the Homeowners Association's bank account. It is recorded that at the date of the issuing of these Regulations the amount of deposit payable in respect of the erection of a dwelling house is R50 000,00 (Fifty Thousand Rand).
- 4.3 A deposit paid in respect of building work shall, in the discretion of the Trustees, be utilized for payment defraying:
- 4.3.1 any damage to a road, kerb, plants on a pavement and/or private property or property that vest in the Association, caused by or resulting from the conduct, neglect or failure of a building contractor, any sub-contractor or any of their employees, regardless of whether such damage was caused intentionally, negligently or blameless;
 - 4.3.2 any damage as in the previous sub-Regulation that in any manner whatsoever relates to or can directly or indirectly be attributed to the building work and the delivery, storage or/and removal of any material used for or in relation to the building work;
 - 4.3.3 any expenses incurred by the Trustees in the performance of their powers, functions and duties in terms of these regulations, including but not limited to the appointment of professional persons to inspect, manage and control the building work to ensure compliance with these Regulations;
 - 4.3.4 any levy, penalty, or fine payable in terms of these Regulations.
 - 4.3.5 payment for the completion, alteration, and/or rectifying in any manner of building work where the owner fails and/or neglects to effect such completion, alteration, and/or rectifying in such manner and within such period as directed by the Trustees.
- 4.4 Whenever, in the sole discretion of the Trustees, a deposit is or becomes inadequate to pay or secure any liability in terms of these Regulations, the Trustees shall direct that the owner pay such further amount as they determine as a deposit. Should the owner fail to pay such amount, the Trustees shall be

entitled to levy such amount from the owner as if it is a levy, due and payable, in accordance with the Constitution of The Whale Rock Heights Homeowners Association.

- 4.5 An owner requiring the repayment of a deposit or so much thereof as remains after payment of all monies due in terms of this Regulation, must present the Trustees or a person designated by them with such documentary proof as they may require that the building work has been properly executed to the satisfaction of the appropriate authority, including proof that an occupancy certificate has been issued if applicable. Upon notification by an owner that building work has been duly completed, the Trustees or a person designated by them will first conduct a final inspection of the building work and only if they are, in their sole discretion, satisfied that the building work has been properly completed, the site reinstated and all stipulations of these Regulations complied with, will they repay the deposit or such portion thereof as remains.
- 4.6 It is recorded that on completion of building work and before a building deposit is refunded to an owner the amount of R5 000,00, or such increased amount as from time to time is determined by the Trustees, will be deducted from such deposit as a Road Usage Levy.

5. SITE PREPARATIONS

- 5.1 No building work may commence before the site preparations as prescribed by the National Building Regulations and required by the Municipality have been completed to the satisfaction of the Trustees.
- 5.2 In addition to the requirement in Regulation 5.1, the Trustees will only consent to the commencement of building work by issuing a Commencement Certificate after:
- 5.2.1 The approved building contractor and owner have signed these Regulations and Code of Conduct documents.
- 5.2.2 A standard builder's board has been erected. Builder's board to be either 1.2 x 1.2 m high or 1.8 x 1.2 m high, and must be erected on the boundary facing the street. No suppliers' or subcontractors' boards are permitted. All building boards must be approved by the Estate Architect. The builder's' board must be removed not later than 1 month after completion of building.
- 5.2.3 a fence of such dimensions and consisting of such material as required by the Trustees has been erected around the building site. This fence may not be removed before the final inspection and approval by the Trustees of the building work in accordance with Regulation 4.5.

- 5.2.4 the area to be covered by the building work has been properly cleared of all vegetable matter and debris, and any unstable soil conditions has been stabilized.
 - 5.2.5 satisfactory measures have been taken to control and dispose of rain and storm water from the site to a place designated or structure erected for the receipt of such water. Where the building work necessitates the preparation or erection of storm water disposal areas or drainage works, such must be completed before building work commences.
 - 5.2.6 water and electricity metres have been installed to provide the site with water and electricity. Connections of electricity to the electricity supply and/or connections of water to the water supply of the Estate may only be made by the Estate Electrician and/or the Estate Plumber appointed by the Trustees and all enquiries about this must be directed to the Managing Agent.
 - 5.2.7 protective measures have been taken to protect the road and curbing and any other structures, property, plants and trees adjacent to the building site.
 - 5.2.8 provision has been made on the site for the receipt and storage of building materials, tools and equipment. A builder's shed may only be placed on the site with the permission and subject to the directions of the Trustees.
 - 5.2.9 Sanitary facilities, including a chemical closet erected on the site for the use of all persons employed in connection with the building work.
- 5.3 Only after conditions in Regulations 5.1 and 5.2 have been complied with may the owner/contractor apply to the Trustees through the Managing Agents for a Commencement Certificate to commence with building. A penalty of R10 000,00 or such higher amount as from time to time determined by the Trustees will be imposed if building is started before a Commencement Certificate has been issued.

6. EXCAVATIONS AND SITING OF BUILDING ON ERF

- 6.1 No excavation on an erf may take place before the boundary pegs of the erf have been clearly marked by a professional land-surveyor and all excavations on the erf must at all times only be done within the boundaries of the erf.
- 6.2 Once excavations on an erf have been made to the level on which construction of buildings will take place and before construction may continue, the siting of the building on the erf must be clearly marked and a professional land-surveyor must issue a certificate confirming the following:

- 6.2.1 that the buildings have been correctly sited on the erf in accordance with the approved building plans;
 - 6.2.2 that these buildings as sited on the erf do not encroach over any building lines;
 - 6.2.3 that the levels of the buildings sited on the erf are such that should building work take place in accordance with the approved building plans, such buildings will not encroach over the height thereof indicated on the approved building plans.
- 6.3 The certificate in terms of Rule 6.2 must be provided to the Estate Architect through the Managing Agents for a report by him or her to the Trustees.
- 6.4 Should the report by the Estate Architect indicate likely deviations from the approved building plans, the Trustee may take such action and issue such directives as in their opinion are necessary or desirable to ensure that the buildings to be constructed will conform with the approved building plans; alternatively that new building plans must be submitted and approved before construction continues.
- 6.5 A directive in accordance with Regulation 6.4 may include that building work be suspended until a deviation has been rectified, to the satisfaction of the Trustees.

7. HEIGHT RESTRICTIONS

- 7.1 The height restriction of buildings in the Whale Rock Heights Private Estate will be in accordance with the applicable Zoning Scheme and indicated on approved building plans.
- 7.2 Should a building or roof thereof encroach above the applicable height restriction, owners are forewarned that they will be required to demolish such part or parts of the building and roof that encroach above the height restriction and no application to deviate from the height restriction requirements will be entertained by either the Trustees or the Association in a General Meeting. To avoid encroachment of a building above the height restriction it is strongly recommended that owners in all instances and not only where this is required in terms of the Architectural Guidelines, employ the services of a professional land surveyor to confirm concrete slab heights as building progresses, to ensure that it correlates with approved building plans.
- 7.3 It shall be compulsory for a professional land surveyor to issue a certificate confirming the height of the building upon completion, and this certificate must be presented to the Trustees together with the documentation required in accordance with Regulation 4.5.

- 7.4 No infilling above natural ground level of an erf may take place for the purpose of constructing thereon any building or part of a building in a manner that will cause such construction to encroach above the height restriction.

8. CONTROL OF DUST, NOISE AND NUISANCE

- 8.1 All reasonable steps must be taken to, at all times during building operations:
- 8.1.1 Limit the amount of dust arising from the building work and related activities. In dry or windy conditions the site is to be watered to prevent dust and sand creating a nuisance on other properties. Temporary sand heaps are to be covered by shade cloth.
 - 8.1.2 Carry on building activities, operate machinery, tools and in any other way create noise that does not unreasonably disturb or interfere with the amenity and enjoyment of the Whale Rock Heights Private Estate.
 - 8.1.3 Refrain from creating a nuisance to the occupants of The Whale Rock Heights Private Estate, and in particular restrict all building work related activities and all personnel employed in connection with the building work, to the site. All persons employed in connection with the building work must be conveyed to and from the site by vehicle and may not enter or leave The Whale Rock Heights Private Estate or otherwise walk around in the Estate by foot.
- 8.2 Building work may only be conducted as follows:
- 8.2.1 after 7:30 and before 17:00 Monday to Friday; and
 - 8.2.2 no building work may be conducted on a Saturday, Sunday or Public Holiday and during the Statutory Builders Holidays period every year.
- 8.3 In exceptional circumstances an owner may in writing apply to the Trustees for a deviation from the stipulations of Regulation 8.2, who may in their sole discretion, allow such deviation subject to such conditions as they may deem fit.

9. CLEANLINESS OF BUILDING SITES

- 9.1 All building sites shall at all times be kept clean and in a hygienic condition. No building site may be polluted by any rubbish, toxic substance or combustible waste material. All building rubble and refuse must be collected in appropriate receptacles and must be removed on a weekly basis. Where building rubble is required for infilling it must be stored off-site outside the Estate and only brought back into the Estate when used for infilling.

- 9.2 All sanitary facilities and cooking and eating areas of employees must be kept clean and hygienic at all times. Sanitary facilities must be serviced on a regular basis and sanitised in such a way that obnoxious stench of the facilities is at all times prevented.
- 9.3 All materials off-loaded onto the pavement or anywhere outside the fence of the building site must, within 24 hours, be moved onto the building site inside the fence.
- 9.4 The pavements and area outside the fence of the building site must, at all times, be kept clean and in a hygienic condition.
- 9.5 Sand and rubble washed onto the road must be removed immediately.
- 9.6 Should the Trustees be of opinion that this Regulation is contravened, they may issue a fine and direct that all building work must be suspended until the situation is rectified, and/or have the situation rectified and the expenses deducted from the building deposit.

10. SECURITY

- 10.1 The owner of an erf on which building work is conducted is responsible to take such steps and measures as may in the circumstances be necessary to ensure that the security of The Whale Rock Heights Private Estate is not in any way compromised due to the building work. To this effect a suitable competent and responsible person or persons must be appointed by the owner or building contractor to oversee the building work, ensure compliance with these Regulations, and in particular be responsible for security.
- 10.2 Should the Trustees be of opinion that any building work poses a threat to or compromise the security of the Whale Rock Heights Private Estate, they may order that the building work be suspended and such steps as they may direct be taken to ensure the security of the Estate. Building work may not again be commenced with before the directions of the Trustees have been complied with.
- 10.3 It will be the responsibility of the person or persons appointed in accordance with Regulation 10.1 to ensure that:
 - 10.3.1 comprehensive written records are kept of all employees involved in the building work and provide such records to the Trustees on request.
 - 10.3.2 ensure that all persons to whom access is provided to The Whale Rock Heights Private Estate for any purpose relating to the building work, including deliveries and collections, are controlled and accompanied to ensure that the security of The Whale Rock Heights Private Estate is not compromised. Deliveries to and collections from building sites may only take place during normal building hours.

- 10.3.3 all employees involved in the building work remain within the confines of the site during working hours, including any breaks during such hours, and leave The Whale Rock Heights Private Estate at the end of the working hours. No employees may remain on The Whale Rock Heights Private Estate after normal working hours.

11. INSPECTIONS

- 11.1 The Trustees or a person appointed by them may by appointment with the owner or building contractor enter a building site and any building or a part of a building being erected thereon with a view to inspecting such site and/or building in order to determine whether the National Building Regulations, directions of the Local Authority, these Regulations and/or a directive issued in terms of these Regulations by the Trustees is complied with. The owner, building contractor or sub-contractor and any employee of such person shall extend the Trustees or a person appointed by them all assistance during such inspection, including but not limited to, pointing out boundaries and demarcations, opening for inspections any inspection chamber, inspection eye, manhole or any other installation and providing such information as may reasonably be required for inspection purposes.
- 11.2 Should the Trustees or a person appointed by them be of opinion that the provisions of the National Building Regulations, directions of the Local Authority, these Building Regulations and/or a directive issued in terms of these Regulations by the Trustees is not being complied with, or the building work or any part thereof is dangerous or is showing signs of becoming dangerous to life or property, a notice may be issued by the Trustees to alter, secure or demolish such building work or part thereof as set out in the Notice.
- 11.3 Should it in the opinion of the Trustees be necessary or required, a directive in terms of Regulation 11.2 may require that building work is suspended until the notice has been complied with.

12. CONTRAVENTION OF BUILDING REGULATIONS

- 12.1 Whenever a contravention of these Building Regulations occurs which in the opinion of the Trustees do not necessitate the suspension and/or termination of building work, the Trustees shall be entitled to issue a penalty/fine. Should the penalty/fine stipulated by the Trustees not be paid within the period so stipulated, it must be deducted from the deposit paid in respect of the building work and if such deposit is not sufficient, be debited to the levy account of the owner. The maximum penalty/fine issued in terms of this regulation is the amount of R20 000,00.

- 12.2 Should a building contractor or sub-contractor, in the opinion of the Trustees, wilfully persist in the contravention of these Regulations or otherwise disregard the Regulations, the written or oral directives by or on behalf of the Trustees, or commits an act or conduct that seriously endangers or disturbs the peace in the Estate, the Trustees shall notify the owner thereof and shall require the owner to take such steps as may be necessary to terminate the contract with the building contractor, and evict the building contractor from The Whale Rock Heights Private Estate.
- 12.3 Whenever a notice in terms of Regulation 12.2 is issued by the Trustees the party in respect of which the notice is issued may be denied entry into the Estate. Where such a party is the holder of a Builder's Approved Certificate, such Certificate may be withdrawn.

13. BUILDING COMPLETION

- 13.1 It is required that building work and site rehabilitation be completed within 10 (ten) months after site preparations have commenced.
- 13.2 Should an owner, due to exceptional circumstances, foresee that building work and site rehabilitation cannot be completed within 10 (ten) months, such owner must apply to the Trustees for an extension of time. Should the Trustees be satisfied that due to exceptional circumstances and no fault of the owner it is reasonable to extend the time wherein building work and site rehabilitation must be completed, they may in their sole discretion grant an extension for such period as they may determine. A decision by the Trustees in terms of this Regulation 13 shall be final and binding and no more than one extension of time may be granted in terms hereof.
- 13.3 An owner who fails to complete building work and site rehabilitation within the period in Regulation 13.1 or any further extension granted in terms of Regulation 13.2 will be liable to pay a penalty equal to 2 (two) times the monthly levy, every month, until the building work and site rehabilitation has been completed to the satisfaction of the Trustees or a person appointed by them. A penalty payable by an owner in terms of this Regulation will be deemed to be a levy due by an owner to the Association.
- 13.4 A certificate signed by or on behalf of the Trustees stating the amount or amounts due by an owner to the Association in terms of Regulation 13.3 will be sufficient proof thereof.
- 13.5 In addition to the penalty payable in terms of Regulation 13.3, the Trustees shall, after discussion with the owner, be entitled to take such steps against an owner who fails to completed building work as required by this Regulation 13 as they deem appropriate to either finish or demolish the building work and rehabilitate the site at the cost and expense of the owner.

14. OCCUPATION

The HOA will not allow occupation until an occupation certificate has been obtained from the Municipality and a completion/clearance certificate has been issued by the Estate Architect. This must be copied and presented to both the Managing Agent and the Estate Manager.

15. LEGAL ACTION

Should it become necessary for the Trustees to institute legal action against an owner for the enforcement of these Regulations, such owner will be liable for the legal costs of The Whale Rock Heights Private Estate Homeowners Association on the scale of attorney and client.

16. AMENDMENT OF THE BUILDING REGULATONS

The Trustees may amend or add to the Building Regulations from time to time as they may deem appropriate.

CONTACT DETAILS:

Security: Otto Olivier (Plett Security): 076 061 1379
Plett Property Management (Managing Agents): 044 533 2700

Contractor's Signature

Date

Owner's Signature

Date

ANNEXURE “A”
WHALE ROCK HEIGHTS HOMEOWNERS’
ASSOCIATION
APPLICATION FOR APPROVAL AS A
BUILDING CONTRACTOR

1. Applicants Name and Legal Entity i.e. Sole Proprietorship, Partnership, Close Corporation, Pty Ltd:

2. Applicants contact details:

3. Have you done any previous work in Whale Rock Heights Estate:

4. Provide details of the last three houses constructed and contact details of present owners:

5. Trade Credit Report –
Provide details of two of your hardware suppliers:

6. Provide copies of your NHBRC registration certificate:
