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RZECZYPOSPOLITEJ POLSKIEJ

KRAJOWA RADA IZBY ARCHITEKTÓW RP

Warsaw, 24th November 2014

Ref. No. 364/KRIA/2014/w

**Joao Santa-Rita**
**President**
**Ordem Dos Arquitectos (OA)**
**Travessa do Carvalho, 23, P - 1249-003 Lisboa**
**Portugal**

*Dear President,*

The National Board of the Chamber of Polish Architects would like to bring forward a proposal of mutual consultations on important problems relating to the profession of architect. One of them, which we would like to raise as the first one, is the matter of ensuring correct spatial relationship between residential buildings and the adjacent plots owned by a separate entity.

The impact between the premises can be harmonious or detrimental to the local order. It can also be a source of conflict (between the neighbours). In some situations, buildings may exert undue influence over the adjacent plots by e.g. reducing the solar access and natural lighting. They may also disturb the peace and quiet of the inhabitants. These issues should be governed by law regulations specifying the **permissible level of impact** on adjacent plots, including those still undeveloped. These regulations should also provide for **consequences** of such an impact.

The issues described above are not covered by the European Directives and each of the European countries solves the problem differently. The laws in force in Poland do not contain explicit regulations in this respect. This situation is one of the causes of difficult disputes between the investors and the owners of the plots located nearby the planned investments. The National Board of the Chamber of Polish Architects, meaning to provide architects with possibilities to perform work without causing conflicts between neighbours, took actions aimed at reforming the laws so that the relations between neighbours could be governed reasonably in the future. **In the course of the works on the proposal of the new law, we would like to benefit from the experience of your organization.**

Since each exchange of information is useful, the National Board of the Chamber of Polish Architects attaches description of the procedures currently applicable in Poland regarding the matters related to determination of the minimum distances between buildings and the boundaries of the adjacent plots located in residential areas – **and at the same time asks you to provide analogous description of the procedures that are in force in Portugal** together with present law regulations and local cultural conditions.

*Yours sincerely,*

Piotr Gadomski, Architekt IARP

Vice-President of the National Board of the Chamber of Polish Architects

Sent to:
1) Recipient (letter + appendix);
2) To file.

00-193 Warszawa, ul. Stawki 2A Tel.: +48 22 827 85 14, Tel./Fax +48 22 827 62 42
NIP: 525-22-28-219 Regon 017466395 Konto: PKO BP SA X O/W-wa Nr 10 1020 1013 0000 0102 0003 2359

Appendix to the letter ref. 364/KRIA/2014 of 24th November 2014.
containing description of the basic procedures applicable in Poland
**determining the minimum distance between buildings and site boundaries in residential areas**

The most important Polish legal act governing the investment process is the Act of 7 July 1994 Building Law.
Article 3 (20) of this act introduces the concept of "**impact zone of a building structure**", which is defined as "an area delimited in the surroundings of the building structure pursuant to separate provisions which introduce limitations to the development of this area". Other regulations are distributed across various legal acts. You can find them in both ordinances governing technical issues and the Polish civil code.

The basic ordinance governing technical issues is the ordinance of 12 April 2002 on the technical conditions to be fulfilled by buildings and their locations. Especially relevant are: §12, §13, §60.

- §12 introduces the general principle for positioning the buildings at least 4m from the plot boundary for walls with window and door openings and 3 m from the plot boundary for walls without such openings. **The provision establishes the distance from the plot boundary to be 3 or 4 metres – regardless of the height of the building.**

- §13 introduces the requirement of providing natural light in rooms intended for use by people. **The provision specifies that the planned building must be separated from the existing buildings at the "obscuring distance" which is directly the height of the neighbouring buildings.** This leads to a situation in which the proposed buildings must be moved away from the edge of the plot to maintain a distance higher than 4m although the obscuring buildings (the ones built earlier) are situated at a 4-metre distance from the boundary.

- §60 introduces the requirement of providing appropriate sunlight period, which for residential rooms is generally 3 hours – between 7 AM and 5 PM. The provision provides for limitation of such requirements for multi-room flats and downtown complementary development. In many situations, the provision imposes the necessity of moving the proposed buildings further away than 4 m from the plot boundary although the neighbouring buildings (the ones built earlier) are situated 4 m away from the boundary.

The principle introduced in §12 for positioning buildings 3m or 4m away from the plot boundary proves useful for low-height buildings. However construction of higher buildings 3m or 4 metres away from the boundary leads to unduly negative impact on the adjacent plot, often limiting considerably its use, including its future development (the neighbour must move their building to maintain the higher-than-4-metres distance from the boundary, so that the buildings erected on the other side of the boundary and 4 metres away from it have sufficient amount of solar access and daylight within the scope specified by §13 and §60).
The investor who is the first to develop their plot has much more freedom despite both parcels being subject to the same legal regulations. The investor who is second to construct a building must adapt to the existing situation. The non-symmetrical rights of the neighbouring investors evoke a sense of injustice and insecurity and are deeply unethical.
This situation leads to conflicts and results in bringing the matters to administrative courts, where unpredictable judgements are passed due to vagueness of some of the legal regulations in force. The state of affairs, so unfavourable to architects, needs to be changed by a reform of the law.

**Below we quote §12, §13, §60** of the ordinance of 12 April 2002 on the technical conditions to be fulfilled by buildings and their locations – **in their original wording**. The paragraphs 271-273 specifying the fire safety requirements for positioning of buildings which are referred to in § 12 are not discussed in this analysis, as they apply to easily objectivised criteria and do not raise any doubts.

**§ 12.**(16) 1. If no other requirements follow from provisions of §13, §60 and §271-273 and other separate provisions specifying the permissible distances between structures and buildings, the building on a building plot must be situated at a distance to the neighbouring building plot that is no smaller than:
1) 4 metres – for a building with a wall with window/door openings facing the site boundary
2) 3 metres – for a building with a wall without window/door openings facing the site boundary

2. The building in the case referred to in Art 1 (2) may be situated at a distance of 1.5m from the boundary or directly at the boundary, if a local master plan or an outline planning permission specifies so.

3. In single-family housing, taking into consideration separate provisions and those contained in §13, §60 and §271-273, it is permitted to:

1) situate the building so that the wall without window and door openings is located on the boundary line with adjacent building plot or at a distance smaller than the one specified in Art 1 (2) but not less than 1.5m for a building plot of a width less than 16m
2) situate the building on the boundary line with adjacent building plot, if its wall is aligned with the wall of an existing building located on the adjacent plot or with a wall of a proposed building for which there is a granted planning permission issued, providing that the part of the building located within the 3m wide strip running along that boundary has a length and height that are not greater than those of the existing or proposed building located on the adjacent building plot,
3) extension of the existing building situated at a distance smaller than the one specified in Article 1 from the boundary with adjacent building plot, if its existing size is maintained within the 3m wide strip running along that boundary, as well as superstructure of a building that is situated in such a way by no more than one storey, however there may not be any door or window openings in that wall if it is located at a distance less than 4m from the site boundary,
4) situate a utility building or a garage with a length below 5.5m and height below 3m on the boundary line with adjacent building plot or at a distance not less than 1.5m for a wall without window and door openings.

4. Location of the building on a building plot in a way referred to in Articles 2 and 3 causes the adjacent plot to be incorporated in the impact area as per Article 20 of the Act of 7 July 1994 - Building Law.

5. The distance from the boundary with adjacent building plot may not be smaller than:

1) 1.5 m to eaves, cornice, balcony or entrance canopy as well as to such parts of the building as gallery, terrace, external stairs, ramp or loading platform
2) 4 m to a window opening that faces the boundary and is located in the roof or the roof plane

6. A livestock or utility building, taking into consideration separate regulations and those contained in §13, §60 and §271-273, may not be placed with its wall with window or door openings at a distance less than 8 m from the wall of the existing residential building, collective presence building, public building or a building for which there is a granted planning permission issued, subject to the provisions of Article 3 (4), located on the adjacent building plot

7. The distance from the boundary with adjacent building plot to the underground part of the building and an underground occupancy-type structure that are located entirely under the level of the surrounding terrain is not specified.

**§ 13.** [(17)] 1. The distance between the building with rooms intended for use by people and other objects should enable natural lighting for these rooms – which shall be deemed to be fulfilled when:

1) between the edges of a 60° angle drawn in the ho rizontal plane, with the vertex located in the inner face of the wall at the axis of the window of the obscured room, there is no obscuring part of the same building or another obscuring object at a distance smaller than:
   (a) the obscuring height - for obscuring objects with the height up to 35m,
   (a) 35m - for obscuring objects with the height over 35m,
2) the requirements specified in §57 and §60 are maintained.

2. The obscuring height referred to in Article 1 (1) is measured from the bottom edge of the lowest-situated windows of the obscured building to the level of the highest overshadowing edge of the obscuring object or its obscuring part.

3. It is allowed to locate an obscuring object such as a mast, chimney, tower or other structure without limitation of its height but with obscuring width no greater than 3m, measured parallel to the plane of the window, at a distance no smaller than 10m from a window of the obscured room

4. The distances referred to in Article 1 (1) may be reduced by no more than half in the downtown development.

**§ 60.** 1. Rooms designed to accommodate children in a nursery, a kindergarten or a school, with the exception of chemical, physics and art class rooms, should have the sunlight period of at least 3 hours provided on the equinoxes (March 21 and September 21) between $8^{oo}$ AM - $4^{oo}$ PM, while habitable rooms - between $7^{oo}$ AM and $5^{oo}$ PM.

2. In a multi-room flat it is allowed to limit the requirements determined in Article 1 to at least one room while in the downtown infill buildings it is allowed to reduce the required sunlight period to 1.5 hours, and with regard to a studio apartment in such a development no required sunlight period is specified.