



**MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON WEDNESDAY, 18 APRIL 2018
AT 14:00 IN THE COMMITTEE ROOM: CORPORATE SERVICES**

PRESENT

Internal members:

Municipal Manager, Mr J J Scholtz
Director: Corporate Services, Ms M S Terblanche
Director: Protection Services, Mr P A C Humphreys

External members:

Mr C Rabie
Mr W Steyn

Other officials:

Sr Manager: Building Environment, Mr A M Zaayman (advisor)
Manager: Secretariat and Records, Ms N Brand (secretariat)
Director: Development Services, Mr J T Steenkamp
Town and Regional Planner and GIS Administrator, Mr H Olivier
Town and Regional Planner, Ms A de Jager

1. OPENING

The chairperson opened the meeting and welcomed all members.

2. ABSENCE OF LEAVE

The committee is complete.

3. DECLARATION OF INTEREST

RESOLVED that cognisance is taken that no declaration of interest was received.

4. MINUTES

4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 7 FEBRUARY 2018

RESOLVED

That the minutes of a Municipal Planning Tribunal Meeting held on 7 February 2018 are approved and signed by the chairperson.

5. MATTERS ARISING FROM THE MINUTES OF 7 FEBRUARY 2018

None

6. MATTERS FOR CONSIDERATION

6.1 PROPOSED CONSENT USE ON ERF 318, RIEBEEK KASTEEL (15/3/10-11) (WARD 12)

The author, Ms A de Jager, explained that the application property was rezoned from Residential Zone 1 to Business Zone 1 during 2012, and utilised as office space. Due to evolving economic trends, however, the current application now entails a consent use on Erf

318, Riebeek Kasteel ($\pm 1\ 327\text{m}^2$ in extent), in order to operate a residential building, consisting of 6 *en-suite* rooms, 12 parking bays and a refuse area.

The aim of the owner is to legalise the renting out of the rooms as self-catering tourist accommodation, in the form of a residential building.

UNANIMOUSLY RESOLVED

A. The application for a consent use of Erf 318, Riebeek Kasteel, be approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017), subject to the conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use is granted for the establishment of a residential building consisting of 6 en-suite bedrooms, as presented in the application;
- (b) A minimum of 12 on-site parking bays be provided, as presented in the application;
- (c) Parking bays be finished with a permanent, dust free material, being either concrete, tar or paving or any other material previously approved by the Director: Civil Engineering Services and that parking bays be clearly marked;
- (d) Building plans, indicating existing and amended structures on the property, as well as the internal and external use of space on the property, be submitted to the Director: Development Services, for consideration and approval;
- (e) A surveyed site plan with aerial photographs be completed by a professional land surveyor and included in the building plan application, clearly indicating that no property boundaries are exceeded in relation to the site diagram;
- (f) Application for the right to display an advertising sign be made to Director: Development Services for consideration and approval;
- (g) A trade licence be obtained from Swartland Municipality for the operation of the guest house;
- (h) The approval is valid for a period of 5 years in terms of section 76(2)(w) of the By-Law. All conditions of approval must be complied with within the 5 year period and failing to do so will result in this approval expiring;
- (i) The applicant/objector be informed of the right to appeal against this decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;
- (j) The approved land use may not be put into practise prior to all conditions of approval being met. Utilising the property for a residential building before said conditions have been met will be construed as an offence and the owner/developer will be legally responsible for fines issued by Swartland Municipality;

A2 WATER

- (a) The existing connection be utilised and that no additional connections will be provided;

A3 SEWERAGE

- (a) The existing connection be utilised and that no additional connections will be provided;

A4 REFUSE REMOVAL

- (a) The basic refuse removal tariff will be levied and in the case of a business, the amount will be amended in accordance with the amount of refuse generated;
- (b) Refuse be placed in refuse bags on the nearest municipal sidewalk on the morning of refuse removal;

A5 CAPITAL CONTRIBUTIONS

- (a) The owner/developer is responsible for the capital contribution of R7 556,50 for the bulk supply of regional water. This capital contribution is payable to Swartland Municipality at building plan stage. The amount is valid for the financial year of 2017/2018 and may be revised thereafter (vote no: 9/249-176-9210);
- (b) The fixed capital contribution of R11 305,38 be made to this municipality towards water reticulation, at building plan stage. This amount is valid for the 2017/2018 financial year and may be revised thereafter (vote no: 9/249-174-9210);

6.1/A5/...

- (c) The fixed capital contribution of R6 775,02 be made towards sewerage to this municipality at building plan stage. This amount is valid for the financial year of 2017/2018 and may be revised thereafter (vote no: 9/240-184-9210).
- (d) The fixed capital contribution of R7 182,00 be made towards waste water treatment works, to this municipality at building plan stage. This amount is valid for the financial year of 2017/2018 and may be revised thereafter (vote no: 9/240-183-9210).
- (e) The fixed capital contribution towards roads be made to this municipality to the amount of R8 140,00 at building plan stage. This amount is valid for the financial year of 2017/2018 and may be revised thereafter (vote no: 9/249-144-9210);
- (f) The fixed capital contribution towards stormwater be made to this municipality to the amount of R4 156,44 at building plan stage. This amount is valid for the financial year of 2017/2018 and may be revised thereafter (vote no: 9/248-144-9210);
- (g) Council's resolution dated May 2017 makes provision for a 40% rebate applicable on the capital contributions to Swartland Municipality. This rebate is valid for the 2017/2018 financial year and may be revised thereafter. The rebate is not applicable to point 5(a);

A6 GENERAL

- (a) Should the extension or upgrade of any existing services be deemed necessary to provide Erf 318 with services, it will be for the cost of the owner/developer;
- (b) Capital contributions are calculated according to the medium density category.

B. The application is supported for the following reasons:

- (a) The application complies with the land uses proposed for this area of Riebeeek Kasteel, as determined by the SDF;
- (b) The application property is situated along two activity streets;
- (c) This application promotes the provision of tourist infrastructure in Riebeeek Kasteel, as supported by the SDF and IDP;
- (d) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
- (e) The proposed consent use will not negatively affect the character of the neighbourhood, and is sensitive to the historic nature of its surroundings;
- (f) There is sufficient services capacity to accommodate the proposed land use;
- (g) The discord between the applicant and objector is private in nature and should not have bearing on the spatial implications of the proposed development. Furthermore, the consent does not necessarily imply that the rooms will be used as tourism accommodation and can also be used for permanent lodging;
- (h) All development parameters of the By-Law will be adhered to;
- (i) The illegal activities on the premises were not taken into account.

6.2 APPLICATION FOR REZONING, DEPARTURE AND CONSOLIDATION OF ERVEN 291 AND 1304, RIEBEEK KASTEEL (15/3/3-11, 15/3/4-11, 15/3/12-11) (WARD 12)

The item is tabled by Mr H Olivier – as author – and the extent of the development is emphasised. The proposed development entails the establishment of a restaurant within the existing building on the property as well as two shops and a total of four duplex flats.

Mr Olivier further explained the issue of restricted access to the property. The entrance is proposed from Main Road with the exit proposed over a servitude right of way over neighbouring property erf 203, Riebeeek Kasteel leading onto Fontein Street. The proposed exit has a significant negative impact on the development, given the fact that the owner of the property over which the servitude is registered is one of the objectors.

Mr Rabie complimented the author on the case law study that was done to determine the rights that are imposed by a servitude on the dominant tenement as well as the servient tenement.

Unanimously resolved/...

UNANIMOUSLY RESOLVED

- A. The application for the rezoning of erven 291 and 1304, Riebeek Kasteel from residential zone 1 to business zone 1, not be approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017).
- B. The application for the consolidation of erven 291 and 1304, Riebeek Kasteel in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017) be approved, subject thereto that the approval is valid for a period of 5 years in terms of section 76(2)(w) of the By-Law;
- C. The application for the departure in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017) not be approved.
- D. The application for the rezoning is not supported, because –
 - (a) The application is deemed to be undesirable due to the issue regarding access. The applicant did not provide any argument or proof that the use of the servitude road over erf 203 by the servient property will not increase the burden on the dominant property beyond the express or implied terms of the servitude. The fact that the owner of the dominant property, in terms of the right of way servitude over erf 203, objects to the proposed development as well as the fact that no agreement could have been made between the parties concerned, approving the application as proposed will be unreasonable. A right of way servitude is not a public road and can therefore not be used in such a manner. The current physical restriction due to the position of the existing building that does not allow for any alternative access does not contribute to the desirability of the application;
 - (b) The application of consolidation will not have a negative impact on surrounding property owners and can, therefore, be considered favourable should the applicant/developer wish to continue with the consolidation without rezoning.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**