



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE COMMITTEE ROOM: CORPORATE SERVICES ON WEDNESDAY, 12 FEBRUARY 2025 AT 14:00

PRESENT

Internal members:

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

External members:

Ms C Havenga
Mr C Rabie

Other officials:

Director: Development Service, Ms J S Krieger
Senior Manager: Development Management, Mr A M Zaayman
Senior Town and Regional Planner, Mr A J Burger
Town and Regional Planner and GIS, Mr H Olivier
Town and Regional Planner, Ms A de Jager
Manager: Secretariat and Record Services (secretary)

1. OPENING

The chairperson opened the meeting and welcomed members.

2. APOLOGY

No apologies were received.

3. DECLARATION OF INTEREST

RESOLVED that cognisance be taken that no declarations of interest were received.

4. MINUTES

4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 20 NOVEMBER 2024

RESOLUTION

(proposed by Ms M S Terblanche, seconded by Mr C Rabie)

That the minutes of a Municipal Planning Tribunal Meeting held on 20 November 2024 are approved and signed by the chairperson.

5. MATTERS ARISING FROM MINUTES

None.

6. MATTERS FOR CONSIDERATION

6.1 PROPOSED SUBDIVISION OF ERF 2706, YZERFONTEIN AND APPLICATION FOR EXEMPTION FROM THE REGISTRATION OF A SERVITUDE (15/3/6-14, 15/3/13-14) (WARD 5)

Ms A de Jager, as author of the item, explained that the application entails the subdivision of the property into smaller portions to be more effectively developed or reserved. The property is earmarked for several land uses, such as secondary business nodes, various densities residential development, health services, leisure facilities, industrial development, conservation and activity streets and corridors.

Ms de Jager confirmed that the objectors concerns were regarding the preservation of the exiting right of way servitude and that the latter is not affected by the application as it may not be cancelled or deregistered without adhering to the appropriate land use processes, public participation and other necessary legal requirements

RESOLUTION

- A. The application for the subdivision of Erf 2706, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), subject to the conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 2706, Yzerfontein (213,0786 ha in extent), be subdivided into six (6) portions, as presented in the application and on Subdivision Plan YZE/13559/IV, as follows:
 - (i) Portion A of 56.6 ha in extent;
 - (ii) Portion B of 4.3 ha in extent,
 - (iii) Portion C of 32.7 ha in extent;
 - (iv) Portion D of 8.1 ha in extent;
 - (v) Portion E 60.6 ha in extent; and
 - (vi) Portion F (0.3 ha) leaving no Remainder;
 - (b) The General Plan be submitted to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (i) the municipality's decision to approve the subdivision;
 - (ii) the conditions of approval imposed in terms of Section 76; and
 - (iii) the approved subdivision plan;
 - (c) Copies of said diagrams be made available to the Municipality for record keeping purposes;
 - (d) Portion F be transferred by the owner/developer to the Western Cape Department of Infrastructure: Road Planning, in accordance with their letter, referenced 16/9/6/1-26/162, dated 2 September 2024;
 - (e) The legal certificate which authorises transfer of the subdivided portions in terms of Section 38 of By-Law will not be issued unless all the relevant conditions have been complied with;
- B. The registration of an 8m wide right-of-way servitude over the newly subdivided portion D of Erf 1706, Yzerfontein, as depicted on Subdivision and Servitude Plan YZE/13575/IV, dated July 2024, complies with the requirements of Section 34 of Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020) and is thus exempted from approval from Swartland Municipality;
- C. **GENERAL**
- (a) Cognisance be taken of the fact that Servitude 1259/81 is registered as figure hjkmnp in Title Deed 19549/2024 and may not be cancelled or deregistered without adhering to the appropriate land use processes, public participation and other necessary legal requirements;
 - (b) The approval is valid for a period of 5 years, in terms of Section 76(2) of the By-Law, from the date of decision. Should an appeal be lodged, the 5 year validity period starts from the date of outcome of the decision against the appeal. All conditions of approval be implemented before the new land use comes into operation/or the occupancy certificate be issued and failing to do so will cause the approval to lapse. Should all conditions of approval be met within the 5 year period, the land use becomes permanent and the approval period will no longer be applicable;

6.1/C...

- (c) The applicant/objector be informed of the right to appeal against the decision of the Municipal Planning Tribunal in terms of Section 89 of the By-Law. Appeals be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, within 21 days of notification of decision. An appeal is to comply with Section 90 of the By-Law and is to be accompanied by a fee of R5 000,00 in order to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed;
- D. The application be supported for the following reasons:
 - (a) The application for subdivision is regarded as densification which is supported by the SDF and PSDF;
 - (b) Future, detailed development plans will be subject to legal processes and public participation, and environmental issues will be addressed when applicable;
 - (c) The application complies with Section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
 - (d) The proposed subdivision will not negatively affect the character of the neighbourhood, as it is directed by the spatial proposals of the SDF;
 - (e) Smaller land portions will be more manageable to develop and a larger variety of opportunities may become available for a wider section of the community;
 - (f) All land portions will be subject to the relevant environmental processes and public participation requirements upon rezoning and detailed development stage;
 - (g) The subdivision is exempted from Act 70 of 1970;
 - (h) The proposed servitude complies with the requirements of Section 34 of the By-Law and is exempted from application;
 - (i) The right-of-way servitude no. 1259/81 is registered as figure hjkmnp in Title Deed 19549/2024 and is a real right. The development proposal does not include the cancellation of this existing right-of-way servitude known as the "Strandkombuis Pad" and many of the objections lodged are thus unfounded;
 - (j) Should the applicant/owner in future wish to cancel the right-of-way servitude over the Strandkombuis Road, additional land use applications, public participation processes and other legal procedures will be required;
 - (k) The rights, health and safety of surrounding property owners will not be negatively affected by the development proposal.

6.2 PROPOSED SUBDIVISION AND DEPARTURE ON ERF 195, KALBASKRAAL (15/3/6-6) (WARD 7)

The author, Mr A J Burger, gave background to the application for the subdivision of Erf 195, Kalbaskraal. Mr Burger confirmed that the zoning will remain Residential Zone 5 to be consistent with the character of that specific part of Kalbaskraal which accommodates larger residential properties also used for agricultural purposes.

RESOLUTION

- A. The application for the subdivision of Erf 195, Kalbaskraal be approved in terms of Section 75 of the By-Law, subject to the following conditions:
 - A1 TOWN PLANNING AND BUILDING CONTROL**
 - (a) Erf 195, Kalbaskraal (7920 m² in extent), be subdivided as follows:
 - (i) remainder (1300 m² in extent),
 - (ii) portion A (1018 m² in extent),
 - (iii) portion B (1018 m² in extent),
 - (iv) portion C (1575 m² in extent),
 - (v) portion D (1002 m² in extent),
 - (vi) portion E (1002 m² in extent) and
 - (vii) portion F (1004 m² in extent);
 - (b) The legal certificate which authorises transfer of the subdivided portions in terms of Section 38 of the By-Law will not be issued unless all the relevant conditions have been complied with;

A2 WATER

- (a) Each subdivided portion be provided with a separate connection. This condition is applicable at building plan stage;
- (b) The water network be expanded in order to provide the subdivided portions with water connections. The owner/developer appoints an engineer appropriately registered in terms of the provisions of Act 46 of 2000 to design the water network extension. The design be submitted to the Director: Civil Engineering Services for approval after which the construction be done under the supervision of the engineer;
- (c) The costs for the expansion of the water network are deductible from the development charges for water distribution;

A3 SEWERAGE

- (a) Each subdivided portion be provided with a separate conservancy tank. Each conservancy tank has a minimum capacity of 8,000 liters and be accessible to the service truck from the street. The condition be part of the building plan, submitted for consideration and approval;

A4 DEVELOPMENT CHARGES

- (a) The owner/developer be responsible for a development charge of R35 984,65 per newly created erf toward the bulk supply of regional water, at clearance stage. The amount is payable to the Swartland Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/249-176-9210);
- (b) The owner/developer be responsible for the development charge of R20 213,55 per newly created erf towards bulk water reticulation, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/249-174-9210);
- (c) The owner/developer be responsible for the development charge of R8 642,25 per newly created erf towards sewerage, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/240-184-9210);
- (d) The owner/developer is responsible for the development charge of R9 369,05 per newly created erf towards the wastewater treatment works, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/240-183-9210);
- (e) The owner/developer is responsible for the development charge of R24 389,20 per newly created erf towards roads and storm water, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/247-188-9210);
- (f) The Council resolution of May 2024 makes provision for a 55% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2024/2025 and can be revised thereafter;

- B. The application for the departure of development parameters on the remainder Erf 195, Kalbaskraal be approved in terms of Section 70 of the By-Law, as follows:

B1 TOWN PLANNING AND BUILDING CONTROL

- (a) Departure of the 6 m side building line (northern boundary) to 1,5 m;

C. GENERAL

- (a) The approval does not exempt the applicant from adherence to all other legal procedures, applications and/or approvals related to the intended land use, as required by provincial, state, parastatal and other statutory bodies;
- (b) The approval is valid for a period of 5 years, in terms of Section 76(2) of the By-Law from date of decision. Should an appeal be lodged, the 5 year validity period starts from the date of outcome of the decision against the appeal;
- (c) All conditions of approval be implemented before the new land uses come into operation and failing to do so the approval will lapse. Should all conditions of approval be met within the 5 year period, the land use becomes permanent, and the approval period will no longer be applicable;

- (d) The applicant/objectors be informed of the right to appeal against the decision of the Municipal Planning Tribunal in terms of Section 89 of the By-Law. Appeals be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, within 21 days of notification of the decision. An appeal is to comply with Section 90 of the By-Law and be accompanied by a fee of R5000,00 to be valid. Appeals that are received late and/or do not comply with the requirements, will be considered invalid and will not be processed;

D. The application be supported for the following reasons:

- (a) The proposed subdivision supports LUPA and SPLUMA;
- (b) The proposed development effectively caters for future residential needs in new housing opportunities;
- (c) The optimal use of services leads to more affordable infrastructure provision;
- (d) The proposed subdivision will limit urban sprawl within the Kalbaskraal area;
- (e) The development is consistent with the Swartland SDF by promoting residential integration;
- (f) The development also supports the SDF by promoting densification within the existing urban area;
- (g) The zoning of the property will remain unchanged;
- (h) The proposal will not have an adverse impact on the character of the area;
- (i) There are no physical restrictions on the property that will negatively affect the proposed use;
- (j) The development also promotes compactness within existing urban areas.

6.3 PROPOSED CONSENT USE ON ERF 10733, MALMESBURY (15/3/10-8) (WARD 10)

Mr H Olivier, as author, explained that the application is made for a consent use on Erf 10733, Malmesbury to accommodate a double dwelling house on the subject property.

A double dwelling is permitted as a consent use under the Residential Zone 1 zoning and previous applications for same within the Glen Lily development was approved and supported by the Owners' Association.

RESOLUTION

- A. The application for consent use on Erf 10733, Malmesbury, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), be approved, subject to the conditions:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use authorises a double dwelling house, as presented in the application;
- (b) The double dwelling adheres to the applicable development parameters;
- (c) Building plans be submitted to the Senior Manager: Development Management for consideration and approval;

A2 WATER

- (a) The existing water connection be used and no additional connections be provided;

A3 SEWERAGE

- (a) The existing sewer connection be used and no additional connections be provided;

A4 DEVELOPMENT CHARGES

- (a) The development charge towards the supply of regional bulk water amounts to R11 514,95 and is for the account of the owner/developer at building plan stage. The amount is due to the Swartland Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b)/...

- (b) The development charge towards bulk water reticulation amounts to R6 468,75 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The development charge towards sewerage amounts to R4 022,70 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/240-184-9210);
- (d) The development charge towards wastewater treatment amounts to R4 360,80 and is for the account of the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/240-183-9210);
- (e) The development charge towards streets amounts to R12 654,60 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter. (mSCOA 9/249-188-9210);
- (f) The development charge towards electricity amounts to R5 658,36 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/253-164-9210);
- (g) The Council resolution of May 2024 makes provision for a 55% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2024/2025 and may be revised thereafter;

B. GENERAL

- (a) The approval does not exempt the applicant from adherence to all other legal procedures, applications and/or approvals related to the intended land use, as required by provincial, state, parastatal and other statutory bodies;
- (b) Should it be determined necessary to expand or relocate any of the engineering services to provide the development with connections, said expansion and/or relocation will be for the cost of the owner/developer;
- (c) The approval is valid for a period of 5 years, in terms of Section 76(2) of the By-Law from date of decision. Should an appeal be lodged, the 5-year validity period starts from the date of outcome of the decision against the appeal;
- (d) All conditions of approval be implemented before the new land uses come into operation/or occupancy certificate be issued and failing to do so the approval will lapse. Should all conditions of approval be met within the 5-year period, the land use becomes permanent, and the approval period will no longer be applicable;
- (e) The applicant/objectors be informed of the right to appeal against the decision of the Municipal Planning Tribunal in terms of Section 89 of the By-Law. Appeals be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, within 21 days of notification of the decision. An appeal is to comply with Section 90 of the By-Law and be accompanied by a fee of R5000,00 to be valid. Appeals that are received late and/or do not comply with the requirements, will be considered invalid and will not be processed;

C. The application be supported for the following reasons:

- (a) The proposed second dwelling is a residential use and is therefore consistent with the proposals of the MSDF;
- (b) A double dwelling is accommodated as a consent use under Residential Zone 1 of the Development Management Scheme and there are no restrictions registered against the title deed of the property or contained in the design guideline of the Estate prohibiting the proposal;
- (c) The development proposal supports the optimal utilisation of the property;
- (d) The second dwelling provides in a need for a larger variety of housing opportunities to the wider population;
- (e) The development proposal will not negatively impact on the character of the Glen Lily Estate or the larger Malmesbury.

6.4 APPLICATION FOR THE REMOVAL OF RESTRICTIVE TITLE CONDITIONS ON ERF 486, RIEBEEK KASTEEL (15/3/5-11) (WARD 12)

Mr H Olivier, as author, explained the application for the removal of restrictive conditions on Erf 486, Riebeek Kasteel regarding usage of the property, coverage and building lines.

Mr Olivier confirmed that the subject property is 1131 m² in extent and should the design be amended to comply with the coverage restriction, the applicant can still accommodate the dwelling within a footprint of 376 m².

The total removal of the restrictions is therefore not deemed desirable.

RESOLUTION

A. The application for the removal of restrictive conditions 1.B.5, 1.B.6(c), 1.B.6(d), II.(B).5. II.(B)6(c) and II.B.6(d) of Title Deed T35731/2021 on Erf 486, Riebeek Kasteel be refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

B. GENERAL

The applicant/objectors be informed of the right to appeal against the decision of the Municipal Planning Tribunal in terms of Section 89 of the By-Law. Appeals be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, within 21 days of notification of the decision. An appeal is to comply with Section 90 of the By-Law and be accompanied by a fee of R5000,00 to be valid. Appeals that are received late and/or do not comply with the requirements, will be considered invalid and will not be processed.

C. The application be refused for the following reasons:

- (a) The restrictive title deed conditions apply to a particular township and are more specific / unique, regardless of the zoning. The municipality cannot regard the restrictive conditions in a title deed as outdated / invalid.
- (b) The restrictions were clearly registered against the title deeds of the specific township / extension in order to preserve the character of the neighbourhood. The removal of the restrictions will not contribute positively to the street scape or character of the area.
- (c) The owners' right to apply for the removal of the restrictions is acknowledged, however the application needs to be motivated including the confirmation and evaluation of the potential negative impact on the affected properties. The restrictions are registered for the benefit of all owners in the township protecting their rights.
- (d) The total removal of rights for insufficient reason is equal to the arbitrary removal of such rights which the Swartland Municipal Planning Tribunal already refused in a number of cases. This case is no exception as the applicants need can easily be accommodated consistent with the restrictions if the design is amended.
- (e) The property is 1131m² in extent, should the design be amended to comply with the coverage restriction, the applicant can still accommodate a dwelling with a footprint of 376m². Sufficient space therefore exist on the property, with no other physical restrictions prohibiting development, to accommodate the clients need.
- (f) Swartland Municipality can only evaluate what is presented in the application and the proposal includes a one-bedroom dwelling with outbuildings. A one-bedroom dwelling can surely be accommodated within the 376m² restriction.
- (g) The total removal of the restrictions is deemed undesirable.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**