



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON WEDNESDAY, 13 FEBRUARY 2019 AT 14:00 IN THE COMMITTEE ROOM: CORPORATE SERVICES

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:

Mr C Rabie
Mr W Steyn

Other officials:

Acting Director: Development Services, Mr A M Zaayman (advisor)
Manager: Secretariat and Records, Ms N Brand (secretariat)
Senior Town and Regional Planner, Mr A J Burger
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. APOLOGY

No apologies were received.

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 23 JANUARY 2019

RESOLVED

(proposed by Mr P A C Humphreys, seconded by Mr C Rabie)

That the minutes of a Municipal Planning Tribunal Meeting held on 23 January 2019 are approved and signed by the chairperson, subject to the correction of typo errors and the following amendments –

ITEM 6.1: PROPOSED REZONING, SUBDIVISION AND CLOSURE OF PUBLIC OPEN PLACE ON ERF 495 AND ERF 115, YZERFONTEIN (15/3/3-14, 15/3/6-14, 15/3/7-14, 15/3/12-14) (WARD 5)

E2 WATER – replacement of paragraph (b) and (c) with:

- (b) The water mains situated on Portion A of Erf 495 be moved outside the subdivided portion of the erf. To do this the developer must appoint an Engineer, appropriately registered in terms of Act 46 of 2000;

E5 LANDSCAPING – move paragraph F(b) under this heading

5. MATTERS ARISING FROM THE MINUTES OF 23 JANUARY 2019

None

6. MATTERS FOR CONSIDERATION

6.1 REMOVAL OF TITLE RESTRICTIONS AND DEPARTURE ERF 465, YZERFONTEIN (15/3/4-14, 15/3/5-14)

Mr H Olivier, as author of the item, mentioned that the owner of the property intends to develop a garage at street level which will result in building line restrictions being encroached in terms of the title deed and the relevant scheme regulations.

Mr Olivier mentioned that the property has a very steep slope which makes it impractical to access the existing garages and furthermore excavations and the erection of boundary walls as well as retaining walls have already been approved by Swartland Municipality.

Therefore, the purpose of the application is to amend such restrictions in order to enable the development of the garage.

RESOLUTION

- A. The application for the removal of condition E6(b) registered against title deed T55296/2017 of erf 465, Yzerfontein in terms of section 70 of the Swartland Municipality Land Use Planning By-Law (PG 7741 of 3 March 2017) be approved as an amendment for the condition to read as follows:

E6(b) no building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 3 metres of the rear boundary common to any adjoining erf, provided that it is done with the consent of the local authority.

The approval mentioned above is subject to the following conditions:

- (a) The applicant/owner applies to the Deeds Office to amend the title deed in order to indicate the removal of the restrictive conditions. The following minimum information must be provided to the Deeds Office in order to consider the application, namely:
- Copy of the approval by Swartland Municipality;
 - Original title deed, and
 - Copy of the notice which was placed by Swartland Municipality in the Provincial Gazette;
- (b) A copy of the amended title deed must be provided to Swartland Municipality for record purposes, prior to final consideration of building plans;

- B. The application for a departure on erf 465, Yzerfontein in terms of Section 70 of the Swartland Municipality Land Use Planning By-Law (PG 7741 of 3 March 2017) be approved in order to depart from the 4 m street building line and 1.5 m side building lines respectively to 0 m in order to accommodate a garage subject to the following conditions:

B1 TOWN PLANNING AND BUILDING CONTROL

- (a) The development proposal be amended to the satisfaction of the Director: Development Services in order for the architectural effect of the building line relaxation to be minimised to such an extent that the appearance of Lutie Katz Street is enhanced;
- (b) The applicant/owner must provide the garages with remote controlled motorized roll-up garage doors;

B2 WATER

- (a) The water meter still be accommodated within the property boundaries and should still be accessible notwithstanding the structures that extend from erf boundary to erf boundary;

B3 SEWERAGE

(a) The sewer tank's suction point is placed in such a way that it is accessible to the service truck from the street;

C. The application for the removal of restrictive title conditions E6(a), E6(b)(i) and E6(b)(ii) of the Deed of Transfer T55296/2017 be refused;

D. The application for a departure on erf 465, Yzerfontein in terms of Section 70 of the Swartland Municipality Land Use Planning By-Law (PG 7741 of 3 March 2017) be approved in order to accommodate a basement ceiling height that projects above the ground level on erf 465, Yzerfontein;

E. GENERAL

Please take note of the following:

(a) This approval is in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval must be complied with within the 5 year period and that failing to do so will result in this approval expiring;

(b) The applicant/objector is informed of the right to appeal against this decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;

F. The application is supported for the following reasons:

(a) Erf 465 has no heritage grading or any architectural design criteria applicable to the erf;

(b) The property has a very steep slope which makes it almost impossible to access the existing garages and furthermore excavations and the erection of boundary walls as well as retaining walls have already been approved by Swartland Municipality;

(c) Enough space exists between the property boundary and the curb of the road for vehicles to move in and out of the proposed garages without obstructing traffic;

(d) Since similar developments are present in the vicinity of the subject property, the character of the area will not be negatively affected by the proposed application;

(e) The scheme regulations make provision for the municipality to permit a garage over the building lines subject to certain conditions;

(f) The owners of the properties directly abutting erf 465 who are most affected by the proposal did not object;

(g) The application does not impact municipal engineering services;

(h) The application is not deemed to be in conflict with the development goals and principles of the MSDF;

(i) All other building work as approved, which has now already been built, complies with the requirements of the zoning scheme as well as the conditions imposed on the title deed.

(j) Seeing that it does not relate to what is being applied for there is not enough motivation to remove all the conditions pertaining to building lines and use.

(k) There is thus in this specific case enough merit for the Municipality to grant the proposed departures subject to conditions that will address the issue/concern of the appearance of Lutie Katz Street;

RESOLVED FURTHER

That the advisor, Mr A M Zaayman, be mandated to identify the need for a site inspection when items for the Municipal Planning Tribunal meeting are submitted in order to liaise with the members of the Municipal Planning Tribunal regarding the arrangements.

6.2 APPLICATION FOR CONSENT USE ON ERF 5535, MALMESBURY

The item is tabled by Mr A J Burger as author of the report. Background is given on the application for a consent use for offices on erf 5535, Malmesbury.

6.2/...

Mr Burger mentioned, with reference to the objections received and concerns raised regarding the traffic impact of the application, that the site development plan was amended as a collective approach to addressing the discussions held with the objectors.

However, the objectors maintained the objections submitted, hence the submission of the item to the Municipal Planning Tribunal.

RESOLUTION

A. The application for a consent use on erf 5535, Malmesbury is approved in terms of Section 70 of the Swartland Municipality Land Use Planning By-Law (PG 7741 of 3 March 2017), subject to the following conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use be restricted to office use;
- (b) Building plans be submitted to the Director: Development Services for consideration and approval;
- (c) The development proposal in respect of access, provision for taxi drop-off point, the provision of on-site parking and the on-site queuing area be developed prior to the offices goes in use;
- (d) The parking areas developed by the applicant be reserved for client use only and marked/identified accordingly;
- (e) No occupation certificate will be issued until all conditions have been met;

A2 WATER

- (a) The property makes use of the existing single water connection and that no additional connections will be provided;

A3 SEWERAGE

- (a) The property makes use of the existing single sewerage connection and that no additional connections will be provided;

A4 STREETS AND STORMWATER

- (a) The proposed parking layout is subject thereto that the final design does not encroach the maximum geometric slope and that sufficient space be left to provide equal level connections for accesses with the road;
- (b) The parking area, including sidewalks, which gives access to the parking areas be provided with a suitable permanent surface and stormwater be taken to the nearest municipal stormwater collection point;
- (c) The parking area, including accesses, kerb-works and stormwater be designed by an engineer registered in terms of the requirements of Act 46 of 2000. The design must be provided to the Department: Civil Engineering Services and the construction work must be done under the supervision of the engineer;
- (d) The speed hump in Munisipale Street be relocated for the cost of the applicant to the satisfaction of the Director: Civil Engineering Services.

B. GENERAL

Please take note of the following:

- (a) The basic refuse removal tariff be levied and that the levy be amended according to the amount of refuse removed;
- (b) The refuse be placed in refuse bags on the nearest municipal sidewalk on the morning of refuse removal.
- (c) This approval is in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval must be complied with within the 5 year period and that failing to do so will result in this approval expiring;
- (d) The applicant/objector is informed of the right to appeal against this decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;

C. The application is supported for the following reasons:

- (a) The land use of offices is compatible with the permissible land uses of the industrial zone 1 zoning;

6.2/...

- (b) The proposed office is consistent with the existing character of the surrounding area;
- (c) The proposed development complies with the provisions of the SDF;
- (d) The proposed development complies with all zoning parameters;
- (e) The proposed development is supported by the Department: Civil Engineering Services in relation to vehicle and pedestrian traffic and access to and from the property;
- (f) The application complies with the principles of LUPA and SPLUMA.

6.3 APPLICATION FOR REZONING AND CONSENT USE ON PORTION 48 OF THE FARM BROOD KRAAL, NO 154, DIVISION MALMESBURY (15/3/3-15; 15/3/10-15)

The author, Ms A de Jager, tabled the item.

After discussions the item is referred back and it is –

RESOLVED

- (a) That the application for rezoning and consent use on Portion 48 of the Farm Brood Kraal, No 154, Division Malmesbury cannot be considered due to an inadequate application and its accompanying evaluation by the Municipality;
- (b) That the following aspects be addressed by either the applicant in providing additional information to the Municipality, or by the Planning Division in the evaluation report to the Municipal Planning Tribunal, namely:

(1) Policy documents:

Section 3 of the PSDF 2014 lays down policy objectives that are relevant to the application. It is unclear how the following policies will be complied with:

- (i) Section 3.1.4: How will the Berg River as an inland water resource be protected with the anticipated usage as a recreational resource;
- (ii) Section 3.1.5: How will the development impact on the conservation of agricultural land;
- (iii) Section 3.1.7: How will the development impact on the protection of the cultural landscape and scenic assets;
- (iv) Section 3.2.3: How is the development appropriate in its rural context, given the residential density of 3,6 units per ha (excluding caravan stands) and that the development is partially intended for alienable housing ±7 km from Piketberg which may facilitate permanent occupation, what is the unique recreational resource that justifies a resort development at this location and how will the development be consistent with the draft Rural Development Guidelines brought out in terms of the PSDF;
- (v) Section 3.3.2: How will the sense of place be protected – refer to section 3.3.2.3 of the PSDF – “prevent settlement encroachment into agricultural areas, scenic landscapes and biodiversity priority areas, especially between settlements, and along coastal edges and river corridors”;

(2) Access

The subject property has no registered servitude access road from the public road over abutting Farm 148. In view of the owner of Farm 148 objecting to the application, the assumption cannot be made that the owner of Farm 148 will consent to the registration of a servitude right-of-way. Attention is also drawn to Western Cape High Court Case No 13234/12 which provided clarity that the existing usage of the access road may not be increased beyond the existing usage without the express permission of the affected land owner. The applicant must therefore provide an executable access proposal.

(3) Engineering Services/...

6.3(b)/...

(3) Engineering Services

The provision of services:

- (i) water
- (ii) electricity
- (iii) stormwater
- (iv) sewerage
- (v) refuse removal;

(4) Zoning Scheme

- (i) Compliance with the objectives of the Leisure Accommodation Zone and the Resort Zone as stated in the zoning scheme need to be motivated and assessed;
- (ii) The stipulations of Sections 9.1.1 and 9.3.1 of the zoning scheme have to be complied with (note the use of the word "shall" in various subsections);

(5) Site Development Plan (SDP)

- (i) The property boundary as demarcated on the SDP is incorrect. It should follow the middle of the river as per the SG diagram;
- (ii) The actual position of the caravan stands in relation to the property boundary need to be clarified accordingly;
- (iii) The areas of rezoning need to be demarcated;
- (iv) The SDP must comply with paragraph 12.6 of the Swartland Municipality Zoning Scheme and as defined in the scheme;

(6) Studies in terms of other legislation

- (i) In terms of Section 75(1)(f) of the Swartland Municipal Land Use Planning Bylaw the municipality must have regard to investigations carried out in terms of other relevant laws. The proposed development also requires the submission of a NID (and possibly a HIA) in terms of the Section 38 (1) of the National Heritage Resources Act 1999. The findings of such NID (or HIA) need therefore to be made available and assessed in considering the land use application as well;
- (ii) The aforementioned requirement will also apply to the studies required in terms of:
 - the National Water Act 1998 as mentioned in Part H of the Assessment Report;
 - NEMA requirements with regard to floodlines;
 - Other applicable NEMA regulations;
 - National Heritage Resources Act 1999, (Act 25 of 1999);
 - Visual Impact Assessment in terms of NEMA and NHR

(7) Matters referred to in terms of Section 42 of SPLUMA and Chapter VI of LUPA

- (i) The application is for a combination of alienable holiday housing, short term rental holiday accommodation as well as recreational and other facilities such as swimming pools, a conference facility, chapel, etc. that will serve both accommodation types. There will also be an agricultural component. How will such a combination of land uses and diverse ownerships be managed and serviced (internal access roads, removal of waste, internal distribution of water, etc.) in a sustainable and efficient manner? If an Owners Association is to be established, the farm will have to be subdivided into alienable housing units, a resort component and an agricultural component, which could impact on the sustainability of the farming component. If the holiday housing is to be alienated by a share block scheme an alternative management structure will have to be considered, but there is no indication how such a set up could function in a sustainable and efficient manner;

6.3(b)/...

- (ii) In terms of resilience the available alternative usage of buildings if the resort fails need to be addressed, particularly the alienable holiday housing. If the demand for such housing dwindles over time, or if proofs to be not economically sustainable for owners, what alternative usage will there be for these units apart from a residential usage outside the urban edge?
- (iii) What constitutes the unique environment, as stated by the applicant?
- (8) Desirability
 - (i) What distinguishes this farm from others to justify the location of a resort at this particular location? There are many other farms with a river frontage;
 - (ii) What recreational resource is available to support the development of a resort? If it is the river, what unique recreational activity can this particular stretch of the river provide and what impact will such activity have on the river?
 - (iii) Ascertain which bodies are responsible for the management of the river, as well as who will take responsibility for the environmental management of the river, should the application be approved;
 - (iv) Measures taken to prevent pollution of river.
 - (v) The residential units alone represent a residential density of 3,6 units per 10 ha, which is considered to be high for a rural development. How will the sense of place and rural landscape therefore be protected?
 - (vi) How will the revenue from the resort be used for the conservation of the Berg River biome, as motivated by the applicant, e.g. will the owner create a fund or a trust account or will he donate money to the rehabilitation programme of the Berg River?

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**