



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON WEDNESDAY, 9 OCTOBER 2019 AT 15:00 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:

Senior Manager: Building Environment, Mr A M Zaayman (advisor)
Manager: Secretariat and Records, Ms N Brand (secretariat)
Director: Development Services, Ms J S Krieger
Snr 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.

2. APOLOGY

No apology was 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 14 AUGUST 2019

RESOLVED

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

That the minutes of a Municipal Planning Tribunal Meeting held on 14 August 2019 are approved and signed by the chairperson.

5. MATTERS ARISING FROM THE MINUTES OF 14 AUGUST 2019

None.

6. MATTERS FOR CONSIDERATION

[The chairperson arranged for item 6.3 to be discussed firstly to accommodate the members of the public who are affected by the application. The chairperson allowed the members of the public to introduce themselves to the Municipal Planning Tribunal.]

6.3/...

6.3 APPLICATION FOR DEPARTURE ON ERF 4488, MALMESBURY (15/3/4-8) (WARD 8)

The chairperson mentioned that Mr Meintjies requested to make a representation at the meeting. The chairperson established the rules for the submission by Mr Meintjies and mentioned, in the light of natural justice, that Mr Meintjies are not allowed to submit any new information apart from that already submitted with the objection.

Mr Meintjies confirmed that after the application was studied, together with the comments from other objectors, the representation is based on new information in order to obtain clarity on certain matters, e.g. why no EIA was needed.

Mr H Olivier, the author of the report, confirmed that notice was given to affected members of the public in accordance with the Swartland Municipality: Municipal Land Use Planning By-Law as well as requirements of LUPA (Western Cape Land Use Planning Act, 2014). Mr Olivier also confirmed, at the request of Mr Meintjies, that the notice stated that a copy of the application is available during office hours.

The chairperson explained that Mr Meintjies and any other person whose rights are affected by the decision of the Municipal Planning Tribunal may lodge an appeal to the Appeal Authority (consisting of members of the Executive Mayoral Committee).

Mr Olivier tabled the report and emphasised the following:

- (1) A transmission tower is currently a primary right under Community Zone 2 zoning;
- (2) Findings from the World Health Organisation (refer to Annexure C) is that there is no convincing scientific evidence that emissions from cellular base stations and wireless networks cause adverse health effects;
- (3) No factual evidence was provided by objectors regarding the negative impact on property value as a result of the erection of the transmission tower;
- (4) The number of comments and the petition received is an indication that the public participation process can be deemed adequate;
- (5) Co-location is a strategy where various mobile network operators share telecommunication infrastructure. To ensure optimal coverage, cellular stations should ideally not be more than 500m to 800m apart and the application site is ideally situated to provide optimal cellular network coverage, taking into account the location of existing towers in Malmesbury;
- (6) Building plans be submitted for the erection of the transmission tower and base station, also when additional antennas are applied for.

RESOLVED UNANIMOUSLY

A The application for a departure on Erf 4488, Malmesbury in terms of Section 70 of the Swartland Municipality Land Use Planning By-Law (PG 7741 of 3 March 2017) be approved, subject to the conditions below:

A1 Town Planning/ Building Control

- (a) The departure entails the relaxation of the 6 m height restriction to a maximum of 20 m;
- (b) The transmission tower be erected in the form of a tree which fits in with the vegetation of the surrounding area;
- (c) A brick wall, designed to fit in with the look of the existing church on the property, 2,4m in height be erected around the base station in order to screen the equipment containers from the public/street view;
- (d) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (e) Application for the erection of advertising signs for the service providers be made to the Senior Manager: Built Environment for consideration and approval;
- (f) Should it be proven that there are negative health effects from base stations (in accordance with specific guidelines), and after independent testing, and this base station falls outside of those guidelines, the applicant will need to ensure compliance or if not possible, the tower must be decommissioned, at the expense of the applicant;

B GENERAL

- (a) The 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.

C The application is supported for the following reasons:

- (a) The proposed transmission tower is a primary right under Community Zone 2;
- (b) The application is regarded as being consistent with the SDF;
- (c) No substantial proof can be provided that surrounding property values will be affected negatively by the approval of the application for departure;
- (d) The proposed transmission tower provides the broader community of Malmesbury with better access to the telecommunication networks;
- (e) The transmission tower is proposed on the property where it will have the least visual impact on the surrounding area. The tower is also proposed as a monopole tower, disguised as a tree, in an effort to make it less visually intrusive;
- (f) The visual impact of a 25 m high tower is regarded as severe and unnecessary. The tower is therefore restricted to 20 m being similar to that of what was considered and approved in the residential area;
- (g) The transmission tower is not proven to pose a health risk.

6.1 PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURES ON ERF 469, YZERFONTEIN (15/3/4-14; 15/3/5-14) (WARD 5)

The author, Ms A de Jager, tabled the report and explained that building plans were approved in August 2016 for the renovation of the existing dwelling house on Erf 469, Yzerfontein. However, the owner made amendments to the building during construction, which resulted in unauthorised building works.

The purpose of the application is to legalise the building works on Erf 469, Yzerfontein including an application for departures of building lines, permissible coverage and to allow for two storeys to encroach on the northern building line.

RESOLUTION

- A** The application for departure on Erf 469, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017), in order to encroach on the northern lateral building line;
- B** The application for departure on Erf 469, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017), in order to increase the maximum permissible coverage;
- C** The application for departure from Section 12.1.1(c) of the By-Law, on Erf 469, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017), in order to allow for two storeys to encroach on the northern building line;
- D** Approvals A. B. and C. above are subject to the conditions that:

D1 TOWN PLANNING AND BUILDING CONTROL

- (a) The building line departure is granted on the northern property boundary of Erf 469, to reduce the lateral building line from 1,5m to 0,76m;
- (b) The building line departure is restricted to the 6,5m that accommodates hobby room and balcony on the upper ground level and bedroom 5 on the lower ground level, as presented in the application;
- (c) Two storeys be allowed to encroach on the northern building line, restricted to the portion discussed in paragraph (b) above;
- (d) The maximum coverage of 50% be increased to 50,4%, in order to accommodate the proposed dwelling, as presented in the application;

6.1/D...

- (e) Building plans be submitted to the Senior Manager: Building Environment for consideration and approval;
- (f) No openings, window or doors be permitted closer than 1m from the property boundary;
- (g) The height restrictions pertaining to the maximum roof height of the dwelling, remain *en force*, as presented in the application;

E The application for the removal of title deed restrictions on Erf 469, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017), in order to remove restrictive conditions D.6.(b), D.6.(b)(i) and D.6.(b)(ii), from Title Deed T39667/2016, subject to the conditions that:

- (a) Conditions D.6.(b), D.6.(b)(i) and D.6.(b)(ii), that read as follows:

"6.(a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator and the Local Authority, approve, provided that if the erf is included within the area of a Town Planning Scheme the local authority may permit such other buildings as are permitted by the Scheme subject to the conditions and restrictions stipulate by the Scheme.

(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 5 metres to the street line which forms a boundary to this erf, nor within 3 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf provided that with the consent of the local authority:-

- (i) An outbuilding used solely for the housing of motor vehicles and not exceeding 3 metres in height, measured from the ground floor of the building to the wall-plate thereof, may be erected within such side and rear spaces and any other outbuilding of the same height may be erected within the rear space and side space for a distance of 12 metres measured from the rear boundary of the erf, provided that in the case of a corner erf, the distance of 12 metres shall be measured from the point furthest from the streets abutting the erf;*
- (ii) an outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary"*

be completely removed from Title Deed T39667/2016;

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

F GENERAL

- (a) The approval is, in terms of section 76(2)(w) of the By-Law valid for a period of 5 years;
- (b) As the unauthorised construction of the dwelling has already been completed, all conditions of approval must be complied with within a period of 3 months from approval and failing to do so will result in the approval expiring;

6.1/F...

- (c) The applicant/objector is informed of the right to appeal against this decision of the Municipal Planning Tribunal, within 21 days of this notice, in terms of section 89(2) of the By-Law;

G The application is supported for the following reasons:

- (a) Application for departure is a mechanism provided for by the By-Law, in order to deviate from the required development parameters. The impact of the departures have been evaluated and deemed to have a minimal impact on the surrounding area with regards to views, safety, access, privacy and health concerns;
- (b) The departures will have no impact on the residential character of the area, as the land use will remain unchanged;
- (c) The departure is considered desirable within the spatial context;
- (d) The title deed restrictions pertain to development parameters on the property. These will be managed by the By-Law, once the restrictions have been removed from Title Deed T39667/2016.

6.2 APPLICATION FOR REZONING, SUBDIVISION, PHASING AND CONSENT USE ON ERF 4401, DARLING (15/3/3-3; 15/3/6-3; 15/3/10-3) (WARD 6)

Mr A J Burger, the author, confirmed that it is the intention of the owner of Erf 4401, Darling to develop a mixed use residential estate, named Darling Green Estate.

After a discussion, specifically on the accommodation of Erf 4403 in the development which is not the property of the applicant, e.g. clarity on access routes, membership of owners' association, etc. it is –

RESOLVED

That the item be referred back to the applicant to deal with erf 4403 within the development.

[6.3 See above.]

6.4 APPLICATION FOR CONSENT USE ON ERF 9392, MALMESBURY (15/3/10-8) (WARD 10)

The author, Mr H Olivier, explained that the owner of the property intends to use the existing study in the house to give extra mathematics classes to learners.

RESOLUTION

A The application for consent use on Erf 9392, Malmesbury in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-law (PG 7741 of 3 March 2017), be approved, subject to the following conditions:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use be restricted to the operation of an occupational practice (the offering of classes in mathematics);
- (b) The occupational practice be restricted to $\pm 14\text{m}^2$ in extent as presented in the application;
- (c) The classes be restricted to a maximum of 4 learners/students per class;
- (d) The operational hours of the occupational practice be restricted from 7h30 to 17h30 on Mondays to Thursdays and from 7h30 to 16h30 on Fridays. No classes to be offered on weekends;
- (e) The dominant use of the dwelling house or dwelling unit be for the living accommodation of a single family;
- (f) No portion of such dwelling, and no home occupation, be used for the purposes of a noxious trade, a risk activity or the sale of alcoholic beverages;
- (g) No goods for sale be publicly displayed and no external evidence of the home occupation be visible from the street, except for an advertising sign in accordance with A1.(h) below;

6.4/A1...

- (h) No advertising sign be displayed other than a single un-illuminated sign or notice not projecting over a street, and such sign shall not exceed 2000cm² in area and shall indicate only the name, telephone number and profession or occupation of the occupant;
- (i) Application be made to Senior Manager: Built Environment to display advertising signage;
- (j) No products, goods, or supplies connected with the home occupation be stored on the land unit outside a building;
- (k) Only the occupant be engaged in home occupation activities on a land unit;
- (l) No more than one commercial vehicle with a gross weight exceeding 10 000 kg, be utilised for the home occupation, provided that a vehicle used by an occupant exclusively for personal purposes shall not be regarded as a commercial vehicle;
- (m) Any new structure, or alteration to the existing dwelling or outbuilding, be conformed to the residential character of the area concerned;
- (n) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (o) On-site parking be provided to the satisfaction of the municipality;

B GENERAL

- (a) The approval does not exempt the applicant from adherence to any and 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 necessary to upgrade any existing services in order to accommodate the access or service connections of the proposed development, the cost thereof will be for the developer's account;
- (c) The approval is in terms of section 76(2)(w) of the By-Law, valid for a period of 5 years. Due to the fact that the home occupation is in use, all conditions of approval must be complied with within 90 days from date of this approval and failing to do so will result in the approval expiring;
- (d) The applicant/objectors are informed of the right to appeal against this decision of the Municipal Planning Tribunal, within 21 days of the notice, in terms of section 89(2) of the By-Law;

C The application is supported for the following reasons:

- (a) The proposed application is consistent and not in contradiction with the MSDF, 2019;
- (b) There are no physical restrictions on the property that will have a negative impact on this application. In fact, the property and existing buildings are adequately suited to accommodate the proposed occupational practice;
- (c) The proposed consent use is consistent with the character and zoning of the property and surrounding area;
- (d) The proposed activity will have a positive economic impact as it will generate income for the land owner as well as creating a platform, helping children to further their education and skills in mathematics;
- (e) The proposed activity will have a minimal impact on the flow of traffic.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**