



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE MALMESBURY BANQUETING HALL, MALMESBURY ON WEDNESDAY, 13 OCTOBER 2021 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:

Senior Manager: Built 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, Mr H Olivier
Town and Regional Planner, Ms A de Jager

1. OPENING

The chairperson opened the meeting and welcomed members.

2. APOLOGY

No apology was received.

3. DECLARATION OF INTEREST

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

4. MINUTES

4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 8 SEPTEMBER 2021

RESOLVED

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

That the minutes of a Municipal Planning Tribunal Meeting held on 8 September 2021 are approved and signed by the chairperson.

5. MATTERS ARISING FROM MINUTES

5.1 MINUTES OF MUNICIPAL PLANNING TRIBUNAL HELD ON 8 SEPTEMBER 2021

None.

6. MATTERS FOR CONSIDERATION

6.1/...

6.1 PROPOSED CONSENT USE ON ERF 956, YZERFONTEIN (15/3/10-14) (WARD 5)

The chairperson requested the author, Ms A de Jager, to table the item. Ms de Jager confirmed that the application is made for a consent use to establish a double dwelling on Erf 956, Yzerfontein.

A discussion followed on the proposed access to the double dwelling of 10 m from the stop sign and the positioning of the double dwelling to allow for circulation space for vehicles and not compromising traffic flow. The Municipal Planning Tribunal is of the opinion that the proposed 10 m and 7 m are too stringent measures.

RESOLUTION

A. The application for consent use on Erf 956, Yzerfontein, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2021), be approved, subject to the conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use authorises a double dwelling, as presented in the application;
- (b) No access to the property will be allowed closer than 5 m away from the surveyed stop sign;
- (c) A boundary wall of at least 1 m high be constructed on the street boundary for 5 m from the stop sign, in order to prevent access to the property;
- (d) The proposed double dwelling be repositioned at least 6 m away from the street boundary, in order to allow for circulation space in front of the proposed garages;
- (e) A site development plan indicating the additional circulation space be submitted to the Senior Manager: Built Environment for consideration and approval, prior to building plan submission;
- (f) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;

A2 WATER

- (a) The property be provided with a single water connection and that no additional connections be provided;

A3 SEWERAGE

- (a) The double dwelling be provided with a conservancy tank with the minimum capacity of 8 000 litre, to be installed on the property at a point that is accessible to the municipal vacuum truck, to the satisfaction of the Director: Civil Engineering Services;

A4 DEVELOPMENT CHARGES

- (a) The development charge towards the supply of regional bulk water amounts to R5 445,25 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 2021/2022 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The development charge towards bulk water reticulation amounts to R4 502,25 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The development charge towards waste water treatment amounts to R8 280,00, 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 2021/2022 and may be revised thereafter (mSCOA 9/240-183-9210);
- (d) The development charge towards sewerage amounts to R5 612,00 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-184-9210);
- (e) The development charge towards streets amounts to R11 500,00 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter. (mSCOA 9/249-188-9210);

6.1/A4...

- (f) The development charge towards storm water amounts to R3 192,40 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/248-144-9210);
- (g) The development charge towards electricity amounts to R10 419,00 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/253-164-9210);
- (h) The Council resolution of May 2021 makes provision for a 40% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2021/2022 and may be revised thereafter. The discount is not applicable to A4(a);

B. GENERAL

- (a) The approval is, in terms of section 76(2)(w) of the By-Law valid for 5 years. All conditions of approval be met before the double dwelling comes into operation and the occupancy certificate be issued, after which the 5 year period will no longer be applicable;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (c) The applicant/objectors be notified of this outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;

C. That the approval be supported for the following reasons:

- (a) The proposed double dwelling is a residential use and is therefore consistent with the proposals of the SDF;
- (b) A double dwelling is accommodated as a consent use under Residential Zone 1 of the By-Law;
- (c) The development proposal supports the optimal utilisation of the property;
- (d) The double dwelling may support the tourism industry in Yzerfontein, as well as the local economy;
- (e) The double dwelling will provide in a need for a larger variety of housing opportunities to the wider population;
- (f) The development proposal will not negatively impact on the character of the surrounding neighbourhood or the larger Yzerfontein;
- (g) The concerns of the neighbouring and affected property owners are sufficiently addressed in the conditions of approval.

6.2 APPLICATION FOR REZONING OF A PORTION 39 OF THE FARM JACOBUSKRAAL NO. 554 (15/3/3-15) (WARD 5)

Mr Olivier, as author of the item, confirmed that the application entails the rezoning of a portion of the farm Jacobuskraal, Yzerfontein, from Agricultural Zone 1 to Industrial Zone 1 in order to accommodate a storage facility.

Mr Olivier explained the reasons for the refusal of the application, amongst others, that commercial storage facilities is not appropriate within a rural context.

RESOLUTION

A. The application for the rezoning of a portion of portion 39, of the Farm Jacobus Kraal no 554, Malmesbury Registration Division, 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

- (a) The applicant be informed of their right to appeal against the decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;

6.2/B...

- (b) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval with specific reference to any existing unauthorised structures. These plans need to specifically indicate how the existing container structures relate to the primary right as well as authorised activities on the property. All structures which does not relate to the existing authorised use or which is in contradiction with conditions of approval of any existing approval granted to the property, be removed within 60 days from the date of the notice;
- (c) The use of a portion of the property as a car wash is in contradiction with the By-Law as well as the existing authorisations on the property and should be stopped immediately;

C. The application is refused for the following reasons:

- (a) The proposal is in contradiction with the spatial proposals of the Swartland MSDF, 2019. The SDF clearly identifies the R315 as a vibrant and growing tourism corridor with an agricultural and natural landscape that needs to be protected. It also supports development that is sensitive to the agricultural landscape with the development of limited service industries and agri-processing being supported south of the fish market as well as at the R315 and R27 intersection. The MSDF, 2019 does identify this portion of the R315 as an intensive rural use corridor but only supports the development of small holdings, small scale agri-processing as well as conservation and tourism related uses.
- (b) In terms of Section 22(1) of the Spatial Planning and Land Use Management Act, Act 16 of 2013, (SPLUMA) the Municipal Planning Tribunal or any other authority required or mandated to make a land development decision in terms of the Act or any other law relating to land development, may not make a decision which is inconsistent with the applicable Municipal Spatial Development Framework.
- (c) As stated in the Western Cape Land Use Planning Guidelines for Rural Areas, 2019, "...all non place-bound industry (industries not ancillary to agriculture or serving the rural needs e.g. transport contractors and builder's yards) should be located within urban areas... ". Should the application be approved it will not promote sustainable development in appropriate rural locations as required by the guideline. It will also not safeguard priority biodiversity areas or maintain integrity or authenticity of the farming, ecological, coastal, cultural and scenic rural landscape in which it is located.
- (d) Although not specifically defined, the development management scheme is not vague in the fact that commercial storage fits directly into the objective of Industrial zone 1 zoning. Commercial storage is deemed inappropriate within a residential area, inappropriate within the central business district as well as inappropriate in a rural context. The application is therefore deemed inappropriate in the position applied for, as it is not within the urban edge, not in an area deemed to be an industrial area or a transitional area between an industrial area and a residential and business area respectively.
- (e) The Yzerfontein community's need for a storage facility is recognised, however sufficient vacant and under-utilised land exists within the urban edge of Yzerfontein where this need can be accommodated.
- (f) The proposed use is detrimental to the rural character of the area.
- (g) The application does not take into account that the facility is located in an earmarked CBA and no proof / supporting documentation is provided to motivate the contrary.

6.3 APPLICATION FOR A CONSENT USE ON ERF 107, ABBOTSDALE (15/3/10-1) (WARD 7)

The author, Mr Olivier, confirmed that the application is made for a consent use in order to operate a house tavern from a portion (± 41 m² in extent) within the existing outbuilding on Erf 107, Abbotsdale. The house tavern will sell liquor for off-consumption purposes.

RESOLUTION

- A. The application for consent use on Erf 107, Abbotsdale, 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) The consent use be restricted to accommodate a house tavern ($\pm 41\text{m}^2$ in extent), in a portion of the existing outbuilding as presented in the application;
- (b) Liquor only be sold for off-consumption purposes;
- (c) In addition to the house tavern, the land unit contains a dwelling which is occupied by the proprietor of the house tavern;
- (d) Building plans, clearly indicating the house tavern in relation to the house, be submitted to the Senior Manager: Built Environment, for consideration and approval;
- (e) The Western Cape Noise Control Regulations (PG 7141 dated 20 June 2013) be adhered to, to the satisfaction of the relevant authority;
- (f) Application for construction of or attaching an advertising sign to the building be submitted to the Senior Manager: Built Environment, for consideration and approval. Only one sign, not exceeding 1m^2 in area and not exceeding the land unit boundaries with any part of it, be permitted and it shall indicate only the name of the owner, name of the business and nature of the retail trade;

A2 WATER

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

A3 SEWERAGE

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

A4 STREETS AND STORMWATER

- (a) Deliveries may only be done by delivery vehicles of with a gross vehicle mass of 16000kg ;

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 be complied with within the time period from the date of notice of the approval and that failing to do so will result in the lapsing of the approval;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (c) The objectors be informed of their right to appeal against the 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 application is in compliance with the SDF and promotes mixed uses along activity street;
- (b) The proposed house tavern complies with the requirements of the zoning scheme regulations;
- (c) The house tavern will not increase the risk and safety of the community as the business cannot be blamed for the existing social problems;
- (d) Have a complimentary impact on the surrounding residential land uses as well as the existing neighbouring shop by enhancing the shopping experience in the area;
- (e) Is in the interest of the surrounding community.

6.4 APPLICATION FOR THE REZONING AND DEPARTURE ON ERF 674, MALMESBURY (15/3/3-8) (15/3/4-8) (WARD 10)

Mr A J Burger, as author, explained the application in order to accommodate a place of education (crèche), shop and flat in the existing buildings on Erf 674, Malmesbury.

The intent of the application is to enlarge the Business Zone 1 area to authorise a shop and flat on a portion of the property and to rezone the remaining extent of the property to Community Zone 1 to establish a place of education (crèche).

Resolution/

RESOLUTION

- A. The application for the rezoning of Erf 674, Malmesbury, 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 following conditions:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 674 be rezoned from Residential Zone 1 (1183 m² in extent) and Business Zone 1 (245 m² in extent) to Community Zone 1 (921 m² in extent) and Business Zone 1 (507 m² in extent) as presented in the application;
- (b) The crèche be restricted to 24 registered children at any time as presented in the application;
- (c) A minimum of 1,5 m² free, unlimited floor space per child and a minimum of 2 m² outside playing area per child be provided;
- (d) The operation of the crèche be restricted between 06h00 and 18h00;
- (e) The preparation of meals for the children are prohibited on the property;
- (f) The crèche complies with the requirements of the Provincial Department Social Services and be registered at the Department;
- (g) Application be made to the West Coast District Municipality for a compliance certificate for an early childhood development facility;
- (h) A building plan for the change in use of the buildings, be submitted to the Senior Manager: Built Environment for consideration and approval;
- (i) Application for the display of advertising signs be submitted to the Senior Manager: Built Environment for consideration for approval;
- (j) At least 9 on-site parking bays be provided with a permanent dust free surface being tar, concrete or paving or a material pre-approved by Swartland Municipality to the satisfaction of the Director: Civil Engineering Services. The parking bays be clearly marked;
- (k) The crèche may not go in operation until such time as the 6 on-site parking bays with access from Hugenote Street has been created;

A2 WATER

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

A3 SEWERAGE

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

A4 STREETS AND STORMWATER

- (a) Access to the crèche be restricted to Hugenote Street for the drop-off and pick-up of children. No access to the crèche may be taken from Voortrekker Road;
- (b) Parking bays 8 to 13 including the side walk which gives access to the parking bays, be provided with a permanent dust free surface; as per A1(j);

A5 ELECTRICITY

- (a) If any municipal electricity services needs to be moved, for example the relocation of the electricity kiosk and street light in Hugenote Street, it will be for the cost of the owner/devloper;

- B. The application for a departure of development parameters on erf 674, Malmesbury be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), as follows:

- (a) Departure of 1 on-site parking bay by providing only 9 on-site parking bay instead of 10 on-site parking bays;
- (b) A financial contribution of R7 500 (12.5 m² & R600/m²) be made for the non-provision of 1 parking bay;
- (c) Departure of the 10 m street building line (Voortrekker Road) to 1 m and the 5 m side building line (northern boundary) to 2,5 m;

- C. General/...

C. **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 be complied with before new land uses come into operation and failing to do so will result in the administrative action;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;

D. The application be supported for the following reasons:

- (a) Erf 674 has limited physical restrictions which will not impact negatively on the application;
- (b) The proposed uses complements the existing mixed use character of the area situated inside the CBD of Malmesbury;
- (c) The application is in compliance with the SDF of Malmesbury;
- (d) The application complies with the principles of LUPA and SPLUMA;
- (e) Sufficient on-site parking is provided;
- (f) The existing noise created by traffic in Hugenote Street, it is foreseen that possible noise created by the crèche will have a low impact on the surrounding properties;
- (g) Existing services are deemed sufficient;
- (h) Erf 674 has no restrictive title deed conditions which will impact negatively on the proposed development;
- (i) The proposed uses will not result in alterations to the property which will impact on the heritage significance of the property;
- (j) Erf 674 provides sufficient indoor and outdoor space to accommodate the maximum of 24 children.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**