



**MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE BANQUETING HALL,
MALMESBURY ON WEDNESDAY, 7 APRIL 2021 AT 14:00**

PRESENT

Internal members:

Municipal Manager, Mr J J Scholtz (chairperson)
Director: Protection Services, Mr P A C Humphreys

External members:

Mr C Rabie
Ms C Havenga

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

That cognisance be taken of the apology received from the Director: Corporate Services, Ms M S Terblance.

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 11 MARCH 2021

RESOLVED

That the minutes of a Municipal Planning Tribunal Meeting held on 11 March 2021 are approved and signed by the chairperson

5. MATTERS ARISING FROM MINUTES

5.1 MINUTES OF MUNICIPAL PLANNING TRIBUNAL HELD ON 11 NOVEMBER 2020

**5.1.1 ITEM 6.4: APPLICATION FOR REZONING, CONSENT USE AND DEPARTURE ON
ERF 110, MALMESBURY (15/3/3-8, 15/3/4-8, 15/3/10-8)**

The application was referred back to discuss the appropriate zoning with the applicant to accommodate a residential building for the purpose to establish student accommodation (boarding house). During this time the objections received were withdrawn.

Resolution/...

5.1.1/...

RESOLUTION

That cognisance be taken that all objections have been withdrawn on the proposed rezoning, consent use and departure on Erf 110, Malmesbury and that the application be finalised in terms of delegated authority by the authorised employee.

6. MATTERS FOR CONSIDERATION

6.1 PROPOSED DEPARTURE, REMOVAL OF RESTRICTIVE CONDITIONS AND CONSENT USE ON ERF 1125, YZERFONTEIN (15/3/4-14, 15/3/5-14, 15/3/10-14) (WARD 5)

The chairperson requested the author, Ms A de Jager, to table the item. Ms de Jager gave the background to the application and mentioned that the owners reside in the dwelling, but a portion is already being rented out on an ad hoc basis for self-catering to tourists.

Although the By-Law does not prohibit owners to rent out dwellings for self-catering, the current land-use creates problems and complaints from neighbouring owners were made to the Municipality in this regard.

Ms de Jager stated that once the building plans for the expansion of the dwelling was received, it became clear that the owner intends to expand the house in such a way that an entirely new dwelling unit is formed. The owner was subsequently informed to submit a land use application for a double dwelling unit.

A discussion followed on the removal of restrictive conditions that are not motivated in the application, amongst others, the restrictive condition prohibiting subdivision. The tribunal is of the opinion that although the scheme regulations in terms of the By-Law determines the building parameters, it is desirable to only remove those restrictive conditions applicable to the application and which are fully motivated by the applicant/owner.

RESOLUTION

A. The application for departure on Erf 1125, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), in order to encroach on the north-eastern street building line, subject to the conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

(a) The 4 m north-eastern street building line be departed from and reduced to 0m, in order to allow for a carport to encroach on the building line and be restricted to the portion of the carport that encroaches on the building line, as presented in the application;

B. The application for the removal of title deed restrictions on Erf 1125, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), in order to remove and amend restrictive conditions registered in Title Deed T109374/2000, subject to the conditions that:

B1 TOWN PLANNING AND BUILDING CONTROL

(a) The restrictions to be removed read as follows:

"...B.7.(a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Townships Board 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 stipulated 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 of this erf, nor within 3 metres of the rear or 1,5 metres of

6.1/B1(a)...

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 outbuilding to the wall-plate thereof, may be erected within such side and rear space, and any other outbuildings 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 subparagraph (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.*
- (c) *On consolidation of this erf or any portion thereof with any abutting erf which is subject, to the same conditions as herein set forth, these conditions shall apply to the consolidated holding as if it was one erf.*

C.3. Neither the transferee nor his successors-in-title shall make any application to the Local Transitional Council of Yzerfontein or any other authority for the rezoning of this erf."

- (b) The restriction that reads as follows:

"...C.2. This erf shall be used exclusively for single residential purposes..."

be amended to read as follows:

"...C.2. This erf shall be used exclusively for residential purposes..."

- (c) The applicant/owner applies to the Deeds Office to amend the title deed in order to reflect the removal of the restrictive conditions;
 - (d) The following minimum information 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;
 - (e) A copy of the amended title deed be provided to Swartland Municipality for record purposes, prior to final consideration of building plans;
- C. The application for a consent use on Erf 1125, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), in order to establish a double dwelling on the property, subject to the conditions that:

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent authorises a double dwelling on Erf 1125, as presented in the application;
- (b) Building plans, clearly indicating the separate dwelling units, be submitted to the Senior Manager: Built Environment, for consideration and approval;
- (c) The double dwelling be designed to appear as an architectural unit;
- (d) The double dwelling be designed to adhere to the height restrictions, as determined by the By-Law;
- (e) A code of conduct for guests to the self-catering unit in the double dwelling be submitted to the Senior Manager: Built Environment, for consideration and approval;

6.1/C1...

- (f) The contact information of the owner/developer be available at all times and conspicuously displayed in the self-catering unit;
- (g) No off-site parking be allowed;
- (h) The Western Cape Noise Regulations be applied;

C2 WATER

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

C3 SEWERAGE

- (a) The property be provided with a conservancy tank of appropriate size, as previously approved by the Director: Civil Engineering Service;
- (b) The conservancy tank be accessible to the municipal vacuum truck from the street;

C4 DEVELOPMENT CHARGES

- (a) The development charge toward the regional bulk supply of 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 2020/2021 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The fixed 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 2020/2021 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The owner/developer is responsible for the development charge towards waste water treatment, to the amount of R8 280,00, at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2020/2021 and may be revised thereafter (mSCOA 9/240-183-9210);
- (d) The fixed development charge towards sewerage amounts to R 5 612,00 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2020/2021 and may be revised thereafter (mSCOA 9/240-184-9210);
- (e) The fixed 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 2020/2021 and may be revised thereafter (mSCOA 9/249-188-9210);
- (f) The owner/developer is responsible for the fixed development charge towards storm water, to the amount of R3 192,40 at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2020/2021 and may be revised thereafter (mSCOA 9/248-144-9210);
- (g) The Council resolution of May 2020 provides for a 40% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2020/2021 and may be revised thereafter. The discount is not applicable to C4(a).

D. The application for the removal of a title deed restriction 7.(c) and C.1 in Title Deed T109374/2000 Erf 1125, Yzerfontein, be not approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2021);

E. 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 the double dwelling be occupied and failing to do so will result in further administrative action against the owner/developer;
- (b) The applicant/objector be 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;

F. The reasons for the approvals are as follows:

- (a) Application for departure is a mechanism provided for by the By-Law, in order to deviate from the required development parameters;
- (b) The impact of the departure has been evaluated and deemed to have minimal impact on the surrounding area with regards to views, safety, access and privacy

6.1/F(b)/...

and the impacts were considered manageable and mitigated through conditions of approval;

- (c) The approved departure will have little impact on the residential character of the area, as the land use will remain unchanged;
- (d) The removal of restrictive conditions poses no risk to any of the affected parties, as the conditions proposed for removal will all continue to be governed by the By-Law and the SDF;
- (e) A double dwelling is a consent use accommodated within Residential Zone 1 and the owner/developer exercised the right to apply to Council for consent, in order to legally accommodate a double dwelling on Erf 1125;
- (f) The approved departures are considered desirable within the spatial context;
- (g) 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 T66779/2015;

G. The reason for refusal/non-approval is as follows:

- (a) Condition 7.(c) and C.1 are unrelated to the application and the removal is not motivated.

6.2 APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS ON ERF 205, YZERFONTEIN (15/3/5-14) (WARD 5)

The chairperson requested Mr H Olivier, the author of the item, to table the item. Mr Olivier gave background on the application received for the removal of restrictive title conditions on Erf 205, Yzerfontein.

After a discussion whether to approve the removal of all restrictive title conditions the Tribunal concluded that approval cannot be granted for the removal of restrictions that have no bearing on what is proposed, namely the encroachment of the unauthorised alterations and additions on the title building lines. Furthermore, the need of the owner to expand the outdoor living space could have been accommodated consistent with the restrictions.

RESOLUTION

A. The application for the removal of restrictive conditions C1(1), C1(2), C1(3), C1(4) and C1(5) from Deed of Transfer T9212/2020 not be approved 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 and 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;
- (b) Building plans be submitted for the unauthorised alterations and additions to the existing building and the unauthorised building work that encroaches the title building lines be removed within 60 days from the date of the notice of the decision;

C. The reasons for not approving the applications are:

- (a) Seeing that the proposal does not relate to what is being applied for, there is not enough motivation to remove all the conditions pertaining to the use of the property, subdivision of the property, the number of dwellings on the property, the permissible coverage or building lines and therefore the removal of restrictive title conditions C1(1), C1(2), C1(3), C1(4) and C1(5) of the Deed of Transfer T9212/2020 be refused;
- (b) Where the proposal does relate to restriction C1 (5), (the 0.75m where the deck was constructed over the building line restriction), the applicants need for larger outdoor space could have easily been accommodated consistent with the building line restriction. The fact that it was erected without the necessary authorisation is not sufficient motivation to approve the application. Unlike an application for departure where the encroachment is restricted to the specific structure being applied for, the removal of the building line restriction from the title deed, will

6.2/C(b)/...

remove the condition in its entirety. The proposed departure of the deck, 750mm over the building line, therefore does not warrant the removal of the restriction from the title deed. The result would be that future extensions of which the impact is not currently considered, will be able to be constructed up to the 1,5m building line for the whole side boundary. These extensions may negatively impact on affected properties, erven 203, 204 & 1334.

6.3 APPLICATION FOR THE REZONING, CONSENT USE AND DEPARTURE ON ERF 254, MALMESBURY (15/3/3-8, 15/3/4-8, 15/3/10-8)

Mr A J Burger, as author of the item, stated the background to the application on Erf 254, Malmesbury to enable the owner to obtain permanent land use rights. The purpose of the application is to operate a restaurant and a flat.

A discussion followed on the requirement to provide for on-site parking for the restaurant. The comments of the Department: Civil Engineering Services are highlighted regarding the practicalities around off-site parking as the Swartland High School is located across the road from the proposed restaurant. The Tribunal concluded to accommodate the owner by lessen the required on-site parking bays from 8 to 5, which resulted in a reduced financial contribution to be made for the non-provision of parking.

RESOLUTION

- A. The application for the rezoning of Erf 254, Malmesbury, is approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).
- B. The application for a consent use on Erf 254, Malmesbury is approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).
- C. The application for the departure of development parameters on Erf 254, Malmesbury is approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).
- D. The approvals in paragraphs A, B and C are subject to the following conditions:

D1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 254 be rezoned from Residential zone 1 to Business zone 2 as presented in the application;
- (b) The consent use authorises a restaurant, restricted to $\pm 54\text{m}^2$ of the dwelling and outside seating area (restricted to 24 seats for the outside seating area), as presented in the application;
- (c) The 3m side building line (south eastern boundary) be departed to 1,5m, as presented in the application;
- (d) The provision of 8 on-site parking bays for the restaurant be departed to 0 on-site parking bays;
- (e) A financial contribution for the non-provision of on-site parking to the amount of R25 000,00 be made at building plan stage;
- (f) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval for the change of use of the dwelling to a restaurant;
- (g) An application for the display of advertising signs be submitted to the Senior Manager: Built Environment for consideration and approval;
- (h) An application for a business license be submitted to the Director: Development Services for consideration and approval;
- (i) An application for a compliance certificate be submitted to the West Coast District Municipality for consideration and approval;
- (j) The undertaking of the operator of the restaurant be complied with regarding the following aspects:
 - (i) The proposed restaurant will be operated during normal business hours, restricted as follows:
 - Monday to Thursday – 7h00 tot 17h00
 - Friday – 7h00 tot 22h00

6.3/D1(j)(i)/...

- Saturday – 7h00 tot 13h00
- (ii) The 3 meter building line (common boundary between erven 254 and 255) strictly be adhered to and no activities relating to the restaurant will take place within this space.
- (iii) When used, the freestanding braai be moved more to the side of Dirkie Uys Street in order to reduce smoke to Erf 255.
- (iv) The advertising sign be displayed inside Erf 254 at all times so that customers can use the parking in Dirkie Uys Street along the property.
- (v) Children climbing up the wall - A sign be displayed against the vibracrete wall to notify parents.
- (vi) Covid 19 regulations in respect of sanitation and distancing strictly be adhered to.
- (k) The operation of the restaurant complies with the Western Cape Noise Regulations at all times;

D2 WATER

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

D3 SEWERAGE

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

D4 GENERAL

- (a) If the extension of existing services are deemed necessary in order to provide the development with services connections, the costs will for the account of the owner/developer;
- (b) 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 the restaurant be operated and that failing to do so will result in further administrative action;
- (c) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (d) The applicant/objectors be notified of this outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;

E. The application is supported for the following reasons:

- (a) The application is in compliance with the SDF.
- (b) The application complies with the principles of LUPA and SPLUMA.
- (c) Existing services connection are deemed sufficient to provide the property with services.
- (d) The departure of the building line is deemed to have no impact.
- (e) The departure of on-site parking by providing no on-site parking is deemed practical due to the locality of the property at the entrance of the school. Taking into consideration the comments from the Department: Civil Engineering Services, credit will be given for the provision of 3 on-site parking bays for the restaurant.
- (f) The proposed restaurant will have a limited impact on the afternoon rush hour and no impact on the morning rush hour traffic of the school.
- (g) The undertaking is seen as sufficient to address the concerns of the objector.
- (h) There are no restrictive conditions in the title deed negatively impacting on the development proposal.
- (i) The restaurant as business use is complimentary to the existing mixed use character of the surrounding area.

6.4 APPLICATION FOR A CONSENT USE ON ERF 5123, MALMESBURY (15/3/10-8)

Mr A J Burger, as author of the item, explained that the application for consent use on Erf 5123 is made in order to operate a house shop from a portion ($\pm 24\text{m}^2$) of the existing buildings.

The owners of Erf 5123 have a lease agreement with Mr A Mohammed who will use the property as his residence and the operation of a house shop.

RESOLUTION

- A. The application for the consent use on Erf 5123, Malmesbury, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent authorises a house shop, restricted to $\pm 24\text{m}^2$, as presented in the application;
- (b) Building plans, clearly indicating the house shop in relation to the house, be submitted to the Senior Manager: Built Environment, for consideration and approval. Please note that the existing house shop is being operated from a temporary structure which is not permitted. The temporary structure needs to be replaced with a structure which can be approved in terms of the National Building Regulations;
- (c) 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 1 m^2 in area and not exceeding the land unit boundaries with any part of it, shall be permitted and it shall indicate only the name of the owner, name of the business and nature of the retail trade;
- (d) No more than three persons, including the occupant of the property, are permitted to be engaged in retail activities on the land unit;
- (e) Only pre-packaged food products be sold;
- (f) No food preparation be allowed in the house shop;
- (g) The following activities not be allowed for sale in the house shop:
 - (i) The sale of wine and alcoholic beverages;
 - (ii) Storage or sale of gas and gas containers;
 - (iii) Vending machines;
 - (iv) Video games; and
 - (v) Snooker or pool tables;
- (h) Application for a trade licence be submitted to the Director: Development Services for consideration and approval;
- (i) Application for a Certificate of Compliance be submitted to the West Coast District Municipality for consideration and approval;
- (j) The municipal approval from Swartland be displayed inside the house shop;

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 with a gross vehicle mass of 16000 kg;

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 6 months (by 30 September 2021) 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 application is supported for the following reasons:

- (a) The application complies with section 42 of SPLUMA and the principles referred to in Chapter VI of LUPA;
- (b) The application complies with the land uses proposed for this area of Malmesbury, as determined by the SDF;
- (c) This application supports the local economy and promotes entrepreneurship and local businesses, as a goal of the IDP;
- (d) The proposed house shop complies with the development parameters and requirements of the By-Law;

6.4/C...

- (e) The development is envisioned to promote economic opportunities, shorter travel distances and amenities in the residential neighbourhood;
- (f) The proposed consent use will not negatively affect the character of the neighbourhood;
- (g) The proposed development is located on an activity street.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**