



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING VIRTUALLY HELD ON WEDNESDAY, 9 JUNE 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:

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
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 Snr Town and Regional Planner, Mr A J Burger.

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 12 MAY 2021

RESOLVED

That the approval of minutes of a Municipal Planning Tribunal held on 12 May 2021 is pending in anticipation of finalising the decision regarding Item 6.1: Application for the subdivision, amendment of site development plan, amendment and deletion of conditions of approval and consent use on erven 11203, 327 and 2654, Malmesbury.

5. MATTERS ARISING FROM MINUTES

None.

6. MATTERS FOR CONSIDERATION

6.1 APPLICATION FOR A DEPARTURE ON UNREGISTERED ERF 6491 (CONSOLIDATION BETWEEN ERF 4131 AND A PORTION OF ERF 4128), MOORREESBURG (15/3/4-9) (WARD 1)

The author/...

6.1/...

The author, Mr Herman Olivier, confirmed that the owner of unregistered Erf 4691, Moorreesburg intends to erect 5 silos for the storage of canola which will be used for the production of canola oil.

The application is made for the departure for 8.4 m as the existing rights make provision for structures of 21 m in height. However, it is not the silo's itself to be 29, 4 m in height, but the elevator structure. This drastically reduces the bulk of what needs to be considered as the impact of the 29 m elevator structure is much less than that of silo's structures of such a height.

RESOLUTION

A. The application for a departure from development parameters on unregistered erf 6149 (Erf 4128 and portion of erf 4131), Moorreesburg 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:

- Departure from the 21 m height restriction to accommodate the 29 m elevator structure as well as conveyors in order to accommodate the silos at a height of 20,7 m as proposed on the elevations provided with the application.

The approval is subject to the following conditions:

A1 TOWN PLANNING AND BUILDING CONTROL

(a) Building plans for the proposed structures be submitted to the Senior Manager: Built Environment for consideration and approval.

B. GENERAL

(a) The applicant and objector 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 property is currently zoned Industrial zone 2, which permits the operations of the canola oil extraction plant, and the application for consideration only entails a departure of the height restriction.
- (b) Further, the departure only entails the 29m elevator and conveyor structures. The proposed silos comply with the 21m height restriction.
- (c) As stated in the applicable development management scheme it is accepted that the intensive nature of the industrial activity or the scale of the operations on an Industrial zone 2 property could generate some negative impact on adjacent land.
- (d) Although the structures will be visible, silos are not an uncommon sight in Moorreesburg, which is considered an agricultural service centre.
- (e) Approving the structures at the proposed height will result in the optimal use of space on the property, sufficient volume of raw material for the uninterrupted operation of the plant as well as ensure efficient vehicular movement on the property.

6.2 PROPOSED DEPARTURE AND REMOVAL OF RESTRICTIVE CONDITIONS ON ERF 328, YZERFONTEIN (15/3/4-14, 15/3/5-14) (WARD 5)

The chairperson requested Ms A de Jager, as author, to table the item.

Ms de Jager confirmed that the application is made to depart from the 4 m street building line to 3.31 m and the 1.5 m side building line to 0.55m. During the evaluation of the application it became clear that no reasons exists for the removal of restrictive title deed conditions as the encroachment is within the restrictions of the title deed.

After a discussion regarding the demolishing of the structures (stairs) that exceeds the legal property boundary of Erf 328, the Municipal Planning Tribunal is of the opinion that it is an established use and that the use be formalised by an agreement of use with the Municipality.

RESOLUTION

- A. The application for building line departure on Erf 328, 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) The 4 m southern street building line be departed from to 3,31 m, in order to allow for a portion of the dwelling to encroach on the building line, as presented in the application;
- (b) The 1,5 m western lateral building line be departed from to 0,55 m in order to allow for a portion of the dwelling to encroach on the building line, as presented in the application;
- (c) The departures be limited to the portions of the building that encroaches, as presented in the application;
- (d) The unauthorised garage be relocated, amended or demolished, in order to comply with the development parameters for Residential Zone 1;
- (e) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (f) The owner/developer submit an encroachment agreement to the Municipality within three months of the decision;

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 before occupation be issued 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 the decision of the Municipal Planning Tribunal, within 21 days of the notice, in terms of section 89(2) of the By-Law;

- C. The approval above 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;
- (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 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 approved departures are considered desirable within the spatial context;
- (e) The development parameters will be managed by the By-Law, limiting any risks to the Municipality and the surrounding community;

- D. The application for the removal or amendment of title deed restrictions on Erf 328, Yzerfontein, be not 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 restrictive condition B.5. registered in Title Deed T7895/2019;

- E. The reasons for the refusal are as follows:

- (a) The dwelling unit does not encroach on the 3,15 m street building line restricted by the title deed and the proposal for removal is arbitrary;
- (b) The unauthorised garage is not presented for building line encroachment;
- (c) No other aspect of the development relates to the title deed restrictions and vice versa;
- (d) Insufficient motivation was presented for the removal of restrictive condition B.5.

6.3 APPLICATION FOR A CONSENT USE ON ERF 3261, MALMESBURY (15/3/10-8) (WARD 10)

Mr H Olivier, as author, mentioned that the application is for a consent use to operate a house shop on Erf 3261, Malmesbury from a portion ($\pm 24 \text{ m}^2$) of a proposed outbuilding (addition to the existing dwelling).

The owner of Erf 3261 has a lease agreement with Messrs Yakub and Arafat who will use a portion of the property as their residence and a house shop.

RESOLUTION

- A. The application for the consent use on erf 3261, 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) 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;
- (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, be permitted and only indicating 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) No direct access from the house shop to a bedroom or bathroom be allowed, as well as storage of products in such rooms;
- (h) 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;
- (i) Operating hours of the house shop be limited from 07:00 till 22:00 daily;
- (j) The Western Cape Noise Regulations be applied;
- (k) Application for a trade licence be submitted to the Director: Development Services for consideration and approval;
- (l) Application for a Certificate of Compliance be submitted to the West Coast District Municipality for consideration and approval;
- (m) The letter of authorisation from Swartland Municipality 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 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 2 years, with the option to extend the approval for a further period. All conditions of approval must 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;

6.3B/...

- (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;
- (d) The Building Control Officer be requested to bring the unauthorized structures to the attention of the applicant;

C. The application is supported for the following reasons:

- (a) The application complies with section 42 of SPLUMA and 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) The 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;
- (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.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**