



**MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE BANQUETING HALL,
MALMESBURY ON WEDNESDAY, 13 APRIL 2022 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
Town and Regional Planner, Ms A de Jager
Snr Town and Regional Planner, Mr A J Burger
Town and Regional Planner and GIS, Mr H Olivier

1. OPENING

The chairperson opened the meeting and welcomed members.

2. APOLOGY

No apology was received.

3. DECLARATION OF INTEREST

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

4. MINUTES

4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 9 MARCH 2022

RESOLVED

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

That the minutes of a Municipal Planning Tribunal Meeting held on 9 March 2022 are approved and signed by the chairperson.

5. MATTERS ARISING FROM MINUTES

5.1 MINUTES OF MUNICIPAL PLANNING TRIBUNAL HELD ON 9 MARCH 2022

None.

6. MATTERS FOR CONSIDERATION

6.1/...

6.1 PROPOSED REZONING, CONSOLIDATION AND CONSENT USE ON ERF 301 AND ERF 302, KORINGBERG (15/3/3-7, 15/3/10-7, 15/3/12-7) (WARD 1)

The author, Ms A de Jager, tabled the item and highlighted the location of the erven a block from the main road in Koringberg and Erf 302 abutting an activity street. The erven are located in a low density residential area with limited opportunities for densification along the activity streets. The application is therefore partially supported for the accommodation of a residential dwelling and a guest house.

Ms de Jager confirmed that the majority of objections were against the proposed development of a Place of Assembly of which the latter is not consistent with the Swartland Municipality: Spatial Development Framework and therefore not supported.

RESOLUTION

- A. The application for the rezoning of Erf 301 and Erf 302, Koringberg from Residential Zone 1 to General Residential Zone 3, be 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 the consolidation of Erf 301 and Erf 302, Koringberg be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);
- C. Approvals A. and B. are subject to the conditions that:

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 301 and Erf 302, Koringberg be rezoned from Residential Zone 1 to General Residential Zone 3, in order to accommodate a residential dwelling and a guest house, as presented in the application;
- (b) Erf 301 (1 658 m² in extent) and Erf 302 (1 493 m² in extent) be consolidated in order to form one erf of 3 151 m² in extent;
- (c) A minimum of thirteen (13) on-site parking bays be provided and that parking bays be finished in a permanent dust free surface, whether it be tar, concrete, paving or any other material, as approved by the Director: Civil Engineering Services beforehand, and the parking bays be clearly demarcated, at building plan stage;
- (d) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (e) A site development plan, including positioning of buildings, parking layout, access to property and proposed landscaping that complement the residential character of the area, be submitted to the Senior Manager: Built Environment at building plan stage for consideration and approval;
- (f) Application be made to the Senior Manager: Built Environment for the right to construct or affix and display any signage;
- (g) Any signage be limited to 1 m² in area and may not project over a public street;
- (h) A contact number of the owner be displayed conspicuously on the premises at all times for emergency and/or complaint purposes;
- (i) A code of conduct for guests to the guest house be submitted to the Senior Manager: Built Environment for consideration and approval;
- (j) The owner/developer be responsible for enforcing the code of conduct;
- (k) All amenities and provision of meals be for the sole benefit of bona fide lodgers. The approval does not authorise the use of the guest house or its amenities by individuals who are not bona fide lodgers as a venue for parties, weddings or any other such use restricted by the By-Law;
- (l) A register of guests and lodgers be kept and completed when rooms are let, and the register be produced for inspection on request by a municipal official at any time;
- (m) Guest rooms not be converted to, or used as separate dwelling units;
- (n) A Certificate of Compliance be obtained from the West Coast District Municipality for the operation of the guest house;
- (o) A trade licence be obtained from Swartland Municipality for the operation of the guest house;
- (p) The Western Cape Noise Control Regulations (PG 7141 dated 20 June 2013) be adhered to, to the satisfaction of the relevant authority;

C2 WATER

- (a) The consolidated property be provided with a single water connection;

C3 SEWERAGE

- (a) The consolidated property be provided with a conservancy tank of minimum 8 000 litre volume, which is accessible to the service truck from the street;

C4 STREETS AND STORM WATER

- (a) The parking bays and sidewalk be designed by an engineer, appropriately certified in terms of Act 46 of 2000;
- (b) The design be submitted to the Director: Civil Engineering Services for consideration and approval, at building plan stage;
- (c) The construction of the sidewalk and parking bays be completed under the supervision of the appointed engineer;

C5 DEVELOPMENT CHARGES

- (a) The owner/developer be responsible for the development charge of R23 959,10 towards bulk water supply, payable at building plan stage. The amount is due to the Swartland Municipality and is valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The owner/developer be responsible for the development charge of R26 916,37 towards bulk water distribution, payable at building plan stage. The amount is due to Swartland Municipality and is valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The owner/developer be responsible for the development charge of R13 315,77 towards sewerage, payable at building plan stage. The amount is due to the Swartland Municipality and is valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-184-9210);
- (d) 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 C5(a).

D. GENERAL

- (a) Should it be necessary to expand any of the engineering services, in order to ensure supply to the development, the associated costs will be for the account of the owner/developer;
- (b) 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 occupancy certificate be issued, after which the 5 year period will no longer be applicable;
- (c) The approval does not exonerate the applicant from obtaining the necessary approval(s) from any other applicable statutory authority;
- (d) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law.

- E. The application for a consent use in order to accommodate a Place of Assembly on Erf 301 and Erf 302, Koringberg, be refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);

E1 TOWN PLANNING AND BUILDING CONTROL

- (a) The SDF only allows for limited residential densification along activity streets in Zone C of Koringberg, thus the proposed land use is contradictory to the spatial planning for the area;
- (b) The Place of Assembly will constitute a land use that is not consistent with the character of the low density residential neighbourhood;

- F. The application for rezoning and consolidation be supported for the following reasons:

- (a) The proposed dwelling and guest house are residential uses and are therefore consistent with the proposals of the SDF;
- (b) A rezoning is necessary, as General Residential Zone 3 allows for both a dwelling and a guest house as primary rights within the zone;

6.1/F...

- (c) The development proposal supports the optimal utilisation of the property;
- (d) The guesthouse will support the tourism industry in Koringberg, as well as the local economy;
- (e) The development proposal, without the Place of Assembly, will not negatively impact on the character of the area;
- (f) The property is of sufficient space to accommodate the required number of parking bays;
- (g) The concerns of the neighbouring and affected property owners are sufficiently addressed in the conditions of approval;
- (h) The desirability factors considered are consistent with those applied during the evaluation of similar, previous applications;
- (i) The nature and scale of the development is limited and appropriate in the context;

G. The application for consent use be refused for the following reasons:

- (a) The SDF only allows for limited residential densification along activity streets in Zone C of Koringberg, thus the proposed land use is contradictory to the spatial planning for the area;
- (b) The Place of Assembly will constitute a land use that is not consistent with the character of the low density residential neighbourhood.

6.2 APPLICATION FOR A CONSENT USE ON ERF 278, DARLING (15/3/10-3) (WARD 5)

Mr H Olivier, as author of the item, confirmed that the application entails the obtaining of the necessary approval to operate a bottle store from a portion of Erf 728, Darling. A bottle store is accommodated as a consent use (with special permission for the municipality) under the Business Zone 2 zoning.

RESOLUTION

A. The application for a consent use on Erf 728, Darling, 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 bottle store from a portion of the existing business premises, as presented in the application;
- (b) Building plans, clearly indicating the bottle store, be submitted to the Senior Manager: Built Environment for consideration and approval;
- (c) The trading hours of the bottle store be determined by the By-Law relating to control of undertakings that sell liquor to the public (PG 7394 of 22 May 2015);
- (a) The Western Cape Noise Control Regulations (PG 7141 dated 20 June 2013) be adhered to, to the satisfaction of the relevant authority;
- (b) 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 m² 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;

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;

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;

6.2/B...

- (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 be supported for the following reasons:

- (a) No physical restrictions exists on the property that will have a negative impact on the proposed application;
- (b) No restrictions registered against the title deed of the property that prohibits the proposed land use;
- (c) The proposed application is consistent with and not in contradiction to the Spatial Development Frameworks adopted on Provincial, District and Municipal levels;
- (d) The proposed bottle store complies with the requirements of the zoning scheme regulations;
- (e) The bottle store will not increase the risk and safety of the community as the business cannot be blamed for the existing social problems;
- (f) Have a complementary impact on the surrounding land uses as well as the existing neighbouring shops by enhancing the shopping experience in the area;
- (g) Is in the interest of the community of Darling North;
- (h) The proposed development is not perceived to have a detrimental impact on the health and safety of surrounding landowners, nor will it negatively impact on environmental/heritage assets.

6.3 APPLICATION FOR REZONING AND DEPARTURE ON ERF 349, DARLING (15/3/3-3, 15/3/4-3) (WARD 5)

Mr H Olivier stated that Erf 349, Darling is a Residential Zone 1 property located within the Central Business District of Darling and adjacent to an activity corridor and activity street.

The purpose of the application is to obtain the necessary land use rights for the property to be utilised as a business premises to accommodate a restaurant, nursery and shop.

RESOLUTION

A. The application for the rezoning of Erf 349, Darling from Residential Zone 1 to Business Zone 1, be approved in terms of section 70 of the Swartland 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 use of the business premises be restricted to a restaurant, nursery and shop;
- (b) The trading hours be restricted to normal business hours as presented in the application;
- (c) Any music being played on the property complies with the Western Cape Noise Control Regulations (PG 7141 dated 20 June 2013) and that the necessary measures be taken in order to mitigate any potential nuisance;
- (d) Building plans, including a site development plan, be submitted to the Senior Manager: Built Environment for consideration and approval;

A2 WATER

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

A3 SEWERAGE

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

A4 STREETS AND STORMWATER

- (a) The proposed parking bays, including the sidewalk that provide access to the parking bays, be provided with a permanent surface. The materials used to be pre-approved by the Director Civil Engineering services on building plan stage;

B. GENERAL

- (a) 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;
- (b) The approval is in terms of section 76 (2) (w) of the By-Law valid for a period of 5 years, during which time the rezoned land use be utilised, and all conditions of approval adhered to for the new zoning to be established;
- (c) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (d) The applicant/objectors 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 application for the departure of the building lines applicable to the new zoning of Erf 349, Darling, be approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), subject to the following conditions:

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) The approval is restricted to the accommodation of existing structures pergola and patio ("lapa"), 0 m and 2,3 m respectively from the side boundary in-lieu of the 3 m side building line restriction;

- D. The application for the departure for the non-provision of the required on-site parking on Erf 349, Darling, be approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), subject to the following conditions:

D1 TOWN PLANNING AND BUILDING CONTROL

- (a) As presented in the application the proposed restaurant be restricted to 32 seats;
- (b) In terms of section 13.1.2(c) of the development management scheme the owner/developer pay a cash sum for the non-provision of the 3 on-site parking bays calculated at R400/m² = R 15 000;

- E. The application be supported for the following reasons:

- (a) No physical restrictions exist on the property that will have a negative impact on the proposed application;
- (b) No restrictions registered against the title deed of the property exist that prohibits the proposed land use and departures;
- (c) Business / mixed use development is generally supported along activity streets and corridors;
- (d) The MSDF, 2019 supports the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods and especially business uses along activity streets;
- (e) The proposed application is consistent with the Spatial Development Frameworks adopted on Provincial, District and Municipal levels;
- (f) The proposed application will not have a negative impact on the character of the area;
- (g) The proposed development is not perceived to have a detrimental impact on the health and safety of surrounding landowners, nor will it negatively impact on environmental/heritage assets;
- (h) The proposal will not have a significant impact on traffic along Main Street or High Street;
- (i) The departure of the building lines, as presented in the application, does not pose a threat to privacy or safety of neighbouring property owners. It also does not detract from the character of the area;
- (j) During the site inspection held on the 5th of April 2022 it was found that there are ample space for parking next to both Main and High Street. Please refer to the photos attached as annexure H. This is mainly due to the very large road reserves. During the site inspection it was also found that people already use the side of the road to park their vehicles and that it does not cause any obstruction of vehicle or pedestrian traffic. Patrons to the proposed restaurant/coffee shop can also be directed with signage/road markings where parking is allowed or not.

6.3/(j)...

It can therefore be argued that the non-provision of on-site parking in this case will not have a detrimental impact on the neighbouring properties and that the departure can therefore be considered favourable.

6.4 PROPOSED CONSENT USE AND DEPARTURE ON ERF 3785, MALMESBURY (15/3/10-8, 15/3/4-8) (WARD 10)

Mr A J Burger, as author, explained the background to the application, namely the conversion of a dwelling house in order to accommodate a crèche (Kammaland Skool) on Erf 3785, Malmesbury.

Currently the crèche accommodates 42 children of which some only attends half a day and 15 after care students. In accordance with the capacity of the crèche it may accommodate 72 children ranging from ages 4 months to 13 years.

Mr Burger confirmed that only 4 on-site parking bays are available for the use of staff members. However, an agreement was entered into with the *Evangeliese Reformeerde Kerk* situated on Erf 5617, to utilise the church's parking as the primary drop-off and pick-up area for the crèche, providing 12 parking bays.

A discussion followed on the levying of the municipal tariff for the continued illegal land use and it is concurred that the tariff be calculated for the period from the expiring date of the compliance notice to the receiving of the application, namely from 21 February 2022 to 23 February 2022 (2 days).

RESOLUTION

- A. The application for consent use on Erf 3785, 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 conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use authorises a Place of Education, as presented in the application;
- (b) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (c) The crèche be restricted to 72 registered children at any time as presented in the application;
- (d) 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;
- (e) The operation of the crèche be restricted between 06h00 and 18h00 from Mondays to Fridays;
- (f) The crèche complies with the requirements of 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 as well as a second compliance certificate for the preparation of food;
- (h) Application for the display of advertising signs be submitted to the Senior Manager: Built Environment for consideration and approval;
- (i) At least 4 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;
- (j) The drop-off and pick-up of children are restricted to the parking area of the church on Erf 5617. The drop-off and pick-up of children in Dr Euvrard Street is prohibited;
- (k) If the lease agreement for the use of the parking area of the church is ended for whatever reason in the future, the Municipality be informed immediately as the operation of the Place of Education will need to be re-evaluated;
- (l) A municipal tariff of R540,00 be levied for the continued illegal land use;

A2 WATER

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

A3 SEWERAGE

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

A4 STREETS AND STORMWATER

- (a) A proper design of the safe pedestrian crossing be done by an engineer registered in terms of the requirements of Act 46 of 2000 which be submitted to the Director: Civil Engineering Services for approval. The pedestrian crossing be constructed under the supervision of the engineer. The condition be met within 60 days from the date of the final decision;

A5 WEST COAST DISTRICT MUNICIPALITY

- (a) The provisions of the Norms and Standards of 24 December 2015 be complied with;
- (b) Application for a compliance certificate for a childcare facility be submitted to the Environmental Health Division of the West Coast District Municipality;
- (c) If food is to be prepared on the premises, a suitability certificate for food preparation be submitted to the West Coast District Municipality's Environmental Health Division;
- (d) Other health requirements may be set from time to time;

- B. The application for a departure of development parameters on Erf 3785, 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 presented in the application as follows:

- 1. Departure of coverage from 50% to 52%;
- 2. Departure of the 10 m side building line (northern boundary) to 0 m;
- 3. Departure of the 10 m street building line to 5,7 m, 4,6 m and 9,3 m respectively;
- 4. Departure of the 10 m side building line (southern boundary) to 2,5 m and 0 m respectively;
- 5. Departure of the 10 m rear building line to 5,8 m, 5,2 m and 2,8 m respectively, and
- 6. Departure of the required 16 on-site parking bays by only providing 4 on-site parking bays.

C. 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 complied with within a period of 2 months after the date of the final decision, after which the 5 year period will no longer be applicable;
- (b) The preparation of meals for the children are permitted on the property;
- (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.

- D. The application be supported for the following reasons:

- (a) The application is in compliance with the planning principles of LUPA and SPLUMA;
- (b) The application is compliant with the spatial planning of Malmesbury;
- (c) The proposed Place of Education will complement and not have a negative impact on the mixed use character of the surrounding residential area;
- (d) The development proposal supports the optimal utilisation of the property;
- (e) A Place of Education is an acceptable use in a residential area which makes the possible impacts on affected parties, also acceptable;
- (f) Sufficient services capacity exists to accommodate the Place of Education;
- (g) The departure of coverage and building lines are as a result of the placement and scale of existing buildings in relation to the new zoning parameters. No new building work is proposed;
- (h)/...

6.4/...

- (h) The usage of the parking area of the church on Erf 5617, which is arranged by means of a lease agreement, provides sufficient parking for the drop-off and pick-up of children;
- (i) The construction of a pedestrian crossing in Dr Euvrard Street will provide safe access from the parking area of the church (Erf 5617) to the crèche on Erf 3785;
- (j) The noise impact of the crèche on the tranquility of the neighbourhood is deemed to be low;
- (k) The ad-hoc use of Dr Euvrard Street by parents to drop-off and pick-up children if the parking area on Erf 5617 are used by the church is deemed acceptable as it is not the rule/norm;
- (l) Section 96(3) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020) authorises the institution of a fine for every day the illegal land use continues. Municipal tariffs make provision for a tariff to be levied for a continued unauthorised land use. The reluctance of the owner to stop the illegal land use cannot be condoned.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**