



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON WEDNESDAY, 7 JUNE 2017 AT 14:00 IN THE COMMITTEE ROOM: CORPORATE SERVICES

PRESENT

Internal members:

Municipal Manager, Mr J J Scholtz (chairperson)

External members:

Mr C Rabie

Mr W Steyn

Other officials:

Sr Manager: Building Environment, Mr A M Zaayman (advisor)

Manager: Secretariat and Records, Ms N Brand (secretariat)

Director: Development Services (observer)

Sr 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 and welcomed all members.

2. ABSENCE OF LEAVE

Apologies were received from Ms M S Terblanche and Mr P A C Humphreys. The chairperson mentioned that Mr Humphreys is involved in assisting households that were effected by the passing storm.

3. DECLARATION OF INTEREST

RESOLVED that cognisance is taken that no conflict of interests were declared.

4. MINUTES

4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 3 MAY 2017

RESOLVED

That the minutes of a Municipal Planning Tribunal Meeting held on 3 May 2017 are approved and signed by the chairperson.

5. MATTERS ARISING FROM THE MINUTES OF 3 MAY 2017

None

6. MATTERS FOR CONSIDERATION

6.1 PROPOSED REMOVAL OF TITLE RESTRICTIONS AND CONSENT USE ON ERF 371, YZERFONTEIN (15/3/10; 15/3/5 – erf 371) (WARD 5)

Mr A J Burger, as the author, tabled the application received for the proposed removal of title restrictions and consent use on erf 371, Yzerfontein.

6.1/...

A discussion followed on the need to remove, or not to remove, the title restrictions as the title deed allows for "other buildings for such purposes as the Administrator may approved, 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".

Mr Zaayman confirmed that the Swartland Integrated Scheme Regulations allows for a second dwelling as consent use. If the title deed determined "that the erf shall be used solely for the purpose of erecting thereon one dwelling", then a removal of title restriction or an amendment of the title deed would have been necessary. This restriction was largely applicable to the old title deeds, but with the implementation of the new zoning scheme regulations it may be handled in a different manner.

A further discussion followed on the interpretation of "other buildings" and the possibility to also include a "second dwelling" as part of "other buildings", especially if the land use is allowed by the zoning scheme regulation.

Mr Burger mentioned that it is however important to consider the removal of the restriction on the building lines, as it is not addressed in the by-law.

Mr Steyn concluded the discussion with the request that the application must be considered as it was received by the applicant, and that the committee must not amend the application.

RESOLVED

A The application for the removal of restrictive title conditions C(6) and C(7) of title deed T12739/1978 on erf 371, Yzerfontein, be approved in terms of Section 70 of Swartland Municipality: By-Law on Municipal Land Use Planning (PG 7741 of 3 March 2017), subject to the following conditions that:

A1 TOWN PLANNING

- (a) The applicant/owner must apply to the Deeds Office to amend the title deed in order to indicate the removal of the restrictive condition. The following minimum information must be provided to the Deeds Office in order to consider the application, namely:
- Copy of the approval by Swartland Municipality;
 - Original title deed, and
 - Copy of the notice which was placed in the Provincial Gazette by Swartland Municipality;
- (b) A copy of the amended title deed must be provided to Swartland Municipality for record purposes, prior to final consideration of building plans;
- (c) In terms of section 76(2)(w) of the By-Law, this approval is valid for a period of 5 years. All conditions of approval have to be complied with within the 5 year period and failure of compliance will result in the lapsing of this approval;
- (d) The applicant/objector be notified of their right to appeal in terms of Section 89 of the Swartland Municipality: Municipal Land Use Planning By-law (PG 7741 of 3 March 2017);

B The application for a consent use on erf 371, Yzerfontein, be approved in terms of Section 70 of Swartland Municipality: Municipal Land Use Planning By-law (PG 7741 of 3 March 2017), subject to the following conditions that:

B1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use authorize the erection of a second dwelling unit;
- (b) Building plans be submitted to the Director: Development Services for consideration and approval;
- (c) The second dwelling be restricted to a maximum size of 120m²;
- (d) The second dwelling complies with the parameters of the existing zoning;
- (e) This approval is in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval have to be complied with within the 5 year period and failure of compliance will result in the lapsing of this approval;
- (f)/...

6.1/...

- (f) The objector be notified of their right to appeal in terms of Section 89 of the Swartland Municipality: Municipal Land Use Planning By-law (PG 7741 of 3 March 2017);

B2 REFUSE REMOVAL

- (a) The basic refuse removal tariff be charged for each dwelling on the property;
- (b) Refuse be placed in refuse bags on the nearest municipal street on the morning of refuse removal;

B3 WATER

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

B4 SEWERAGE

- (a) The property be provided with a sewerage conservancy tank of appropriate volume to the satisfaction of the Department: Civil Engineering which is accessible for the service truck from the street;

B5 CAPITAL CONTRIBUTIONS

- (a) The owner/developer take note of the capital contribution for the regional bulk supply of water at R5 397,90. This capital contribution is payable to Swartland Municipality at building plan stage. This amount is payable to vote number 77-92-86-00-6230 and is valid for the financial year of 2016/2017 and may be revised thereafter;
- (b) The fixed capital contribution towards water be made to this municipality to the amount of R7 277,00 at building plan stage. This amount is payable to vote number 77-92-86-00-6200 and is valid for the financial year of 2016/2017 and may be revised thereafter;
- (c) The fixed capital contribution towards sewerage be made to this municipality to the amount of R3 600,00 at building plan stage. This amount is payable to vote number 59-76-86-00-6200 and is valid for the financial year of 2016/2017 and may be revised thereafter;
- (d) The fixed capital contribution towards streets and stormwater be made to this municipality to the amount of R5 363,00 at building plan stage. This amount is payable to vote number 71-82-86-00-6200 and is valid for the financial year of 2016/2017 and may be revised thereafter;
- (e) The fixed capital contribution towards electricity be made to this municipality to the amount of R4 321,00 at building plan stage. This amount is payable to vote number 83-34-86-00-6200 and is valid for the financial year of 2016/2017 and may be revised thereafter;
- (f) Council's resolution dated May 2016 makes provision for a 40% rebate applicable on the capital contributions of Swartland Municipality. This rebate is valid for the 2016/2017 financial year and may be revised thereafter;

C That the application be supported for the following reasons:

- (a) The proposed application is supported by the Provincial Spatial Development Framework and Swartland Spatial Development Framework as it will lead to densification;
- (b) Physically there are no restrictions on the property which will negatively affect the proposed application;
- (c) The proposal complies with the requirements of the Planning By-law;
- (d) The removal of title deed restrictions will enable the owner of erf 371 to develop the erf according to the requirements of the Planning By-law.

6.2 PROPOSED REZONING AND DEPARTUIRE ON ERF 1871, YZERFONTEIN (15/3/3-14, 15/3/4-14) (WARD 5)

An application for the rezoning of erf 1871, Yzerfontein was received from residential zone 1 to general residential zone 3 in order to operate a guest house with five rooms.

Mr A J Burger, as author, tabled the item.

RESOLVED UNANIMOUSLY

- A The application for the rezoning erf 1871, Yzerfontein, be approved in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017), subject to the conditions that:

A1 TOWN PLANNING / BUILDING CONTROL

- (a) Erf 1871, Yzerfontein be rezoned from residential zone 1 to general residential zone 3, in order to establish a guest house on the property;
- (b) The guest house be limited to the development proposal made in the site development plan, as submitted during the application as follows:
- (i) Ground floor comprising of:
 - 4 x guest bedrooms with ensuites;
 - 1 x entertainment area;
 - 1 x laundry/pantry/scullery;
 - 1 x garage;
 - (ii) First floor:
 - 1 x guest bedroom with ensuite;
 - 1 x main bedroom for owner/manager with ensuite;
 - 1 x kitchen/dining room/lounge area;
 - (iii) Five on-site parking bays, as per the site development plan. The parking area must be provided with a permanent dust free surface being tar, concrete or paving of a material pre-approved by Swartland Municipality and that the parking bays are clearly demarcated to the satisfaction of Swartland Municipality;
- (c) The owner or the guest house manager must occupy the guest house to maintain order;
- (d) Building plans for the conversion of the existing dwelling to a guest house be submitted to the Director: Development Services for consideration and approval;
- (e) All amenities and provision of meals shall be for the sole benefit of bona fide lodgers;
- (f) A register of guests and lodgers be kept, and completed when rooms are let, and the register must be produced for inspection on request by a municipal official;
- (g) Guest rooms may not be converted to or used as separate dwelling units;
- (h) An application for the right to display an advertising sign be made to the Director: Development Services for consideration and approval;
- (i) No advertising sign shall be displayed other than a sign or notice not projecting over a public street, and such sign may not exceed 1 m² in area;
- (j) A Certificate of Compliance for the operation of the guest house be obtained from the West Coast District Municipality;
- (k) A business licence for the operation of the guest house be obtained from Swartland Municipality;
- (l) This 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 must be utilised and all conditions of approval adhered to for the new zoning to be established. All conditions of approval have to be comply with within the 5 year period and that failing to do so will result in the lapsing of this approval;
- (m) 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;

A2 WATER

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

A3 SEWERAGE

- (a) The erf be provided with a conservancy tank with a suitable size to the satisfaction of the Department: Civil Engineering Services which is accessible for the services truck from the street;

A4 Streets/...

A4 STREETS

- (a) The parking area be provided with a suitable permanent dust free surface and that the stormwater be conducted to the nearest suitable municipal collection point;

A5 REFUSE REMOVAL

- (a) The basic refuse removal tariff be levied for the dwelling house and the business and in the case of the business the tariff will be amended according to the amount of refuse removed;
- (b) Refuse be placed in refuse bags on the nearest municipal sidewalk on the morning of removal;

A6 CAPITAL CONTRIBUTIONS

- (a) The owner/developer takes note of the capital contribution for the regional bulk supply of water at R2 910,80. This capital contribution is payable to Swartland Municipality at building plan stage. This amount is payable to vote number 77-92-86-00-6230 and is valid for the financial year of 2016/2017 and may be revised thereafter;
- (b) The fixed capital contribution towards water be made to this municipality to the amount of R7 197,20 at building plan stage. This amount is payable to vote number 77-92-86-00-6200 and is valid for the financial year of 2016/2017 and may be revised thereafter;
- (c) The fixed capital contribution towards sewerage be made to this municipality to the amount of R1 440,00 at building plan stage. This amount is payable to vote number 77-92-86-00-6200 and is valid for the financial year of 2016/2017 and may be revised thereafter;

B The application for the departure from development parameters on erf 1871, Yzerfontein, be approved in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7420 of 3 July 2015), as follows:

- (a) The 5m side building to 1,5m along the eastern and western boundaries;
- (b) The 5m rear building line to 2m;
- (c) The permissible coverage of 40% to 42,6%;

C That the application be supported for the following reasons:

- (a) The application is in compliance with the Spatial Development Framework of Swartland Municipality;
- (b) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
- (c) There are no physical restrictions on the property that will have a negative impact on this application;
- (d) An existing dwelling house will be converted into the proposed guest house, which can easily be converted back to a dwelling house for the living accommodation of a single family;
- (e) The scale and placement of the guest house is consistent with the character of the surrounding single residential erven. This ensures that privacy or views are not being affected negatively. This is also applicable to the proposed departures as the existing building will be accommodated according to the new zoning;
- (f) The proposed guest house will have a positive economic impact as it will generate income for both the land owner, municipality (through rates and taxes) and tourism as a whole, through visitors spending to the area;
- (g) B&B's and guest houses are allowed in residential areas due to its low disturbance potential. The enforcement of house rules will further ensure that guests will not only inconvenience other guests, but also adjoining/surrounding properties;
- (h) The property market in Yzerfontein has grown positively the last few years. A guest house will not be detrimental to property values;
- (i) Sufficient engineering services exist to accommodate the guest house.

6.3 PROPOSED REMOVAL OF TITLE RESTRICTIONS, CONSENT USE AND DEPARTURE ON ERF 405, YZERFONTEIN (15/3/10, 15/3/5, 15/3/4 – erf 405) (WARD 5)

Ms A de Jager, as the author, tabled the application received for the proposed removal of title restrictions, consent use and departure on erf 405, Yzerfontein in order to accommodate a second dwelling.

The encroachment of the rear building line to 1,3 m with the expansion of the braai room is not regarded as desirable and the following matters were highlighted:

- The existing second dwelling encroaches the prescribed 3 m rear building line as contained in the title deed, as well as the 2 m rear building line as prescribed by the By-law;
- The title deed has a higher status than the By-law, and therefore the rights of adjacent owners as obtained from their title deeds must be protected;
- The right to a view is protected by the applicant adhering to the prescribed development parameters, but if a departure is allowed, the rights of adjacent owners will be violated.

Mr Rabie suggested to amend the title deed to bring it in line with the parameters of the scheme regulations, in other words to amend the 3 m rear building line in the title deed to 2 m.

RESOLVED UNANIMOUSLY

A The application for the removal of restrictive conditions C6, and the amendment of restrictive conditions C7 with regard to the 3 m rear building line in Deed of Transfer T3566/2004 of erf 405, Yzerfontein, is approved in terms of section 60 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7420 of 3 July 2015), subject to the conditions that:

- (a) The applicant/owner applies to the Deeds Office to amend the Deed of Transfer, in order to indicate the removal of the restrictive condition;
- (b) 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;
- (c) A copy of the amended title deed be provided to Swartland Municipality for record purposes, prior to final consideration of building plans;

B The application for a consent use on erf 405, Yzerfontein, is approved in terms of Section 60 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7420 of 3 July 2015) to erect a second dwelling unit;

C The application for departure from the 2 m rear building line to be reduced to 1.3 m on erf 405, Yzerfontein, is not approved in terms of Section 60 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 7420 of 3 July 2015);

D That the approvals in A and B above are subject to the conditions that:

D1 TOWN PLANNING AND BUILDING CONTROL

- (a) The portion of the second dwelling that encroaches on the 2 m rear building line, be amended to adhere to the building line;
- (b) Building plans indicating the correct layout, as well as alterations stipulated in (a), be submitted to the Director: Development Services for consideration and approval within 30 calendar days of this approval;
- (c) The primary dwelling remains the primary land use of the property;
- (d) The floor area of the second dwelling be lesser than that of the primary dwelling and may not exceed 120m²;
- (e) The second dwelling may not be higher than one storey;
- (f) The coverage of the erf, including all buildings, may not exceed 66%;

6.3(D)/...

- (g) At least one additional parking bay be provided on the property for the second dwelling;
- (h) This approval is in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval have to be complied with within the 5 year period and that failing to do so will result in this approval expiring;
- (i) 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 79(2) of the By-Law;

D2 WATER

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

D3 SEWERAGE

- (a) A conservancy tank of sufficient capacity to the satisfaction of the Department Civil Engineering Services be provided and said tank be accessible to the vacuum truck from the street;

D4 REFUSE REMOVAL

- (a) The basic refuse removal tariff be levied for each dwelling unit;
- (b) The refuse, in refuse bags, be placed on the nearest municipal sidewalk on the morning of refuse removal;

D5 CAPITAL CONTRIBUTIONS

- (a) The owner/developer is responsible for a fixed capital contribution towards the bulk provision of regional water, to the amount of R5 397,90 (R10 795,80 x 0.5 vir Res Med Density), at building plan stage. This amount is payable to the Swartland Municipality, is valid for the financial year of 2016/2017 and may be revised thereafter (vote number 77-92-86-00-6230);
- (b) The owner/developer is responsible for a fixed capital contribution towards the bulk reticulation of water, to the amount of R7 277,00, at building plan stage. This amount is payable to the Swartland Municipality, is valid for the financial year of 2016/2017 and may be revised thereafter (vote number 77-92-86-00-6200);
- (c) The owner/developer is responsible for a fixed capital contribution towards sewerage, to the amount of R3 600,00, at building plan stage. This amount is payable to the Swartland Municipality, is valid for the financial year of 2016/2017 and may be revised thereafter (vote number 59-76-86-00-6200);
- (d) The owner/developer is responsible for a fixed capital contribution towards streets and stormwater, to the amount of R5 363,00, at building plan stage. This amount is payable to the Swartland Municipality, is valid for the financial year of 2016/2017 and may be revised thereafter (vote number 59-76-86-00-6200);
- (e) The owner/developer is responsible for a fixed capital contribution towards electricity, to the amount of R4 321,00, at building plan stage. This amount is payable to the Swartland Municipality, is valid for the financial year of 2016/2017 and may be revised thereafter (vote number 83-34-86-00-6200);
- (f) Council's resolution dated May 2016 makes provision for a rebate of 40% in terms of the capital contributions of Swartland Municipality. This rebate is valid for the 2016/2017 financial year and may be revised thereafter;

D6 GENERAL

- (a) Should the expansion of any existing services prove necessary in order to provide the development with services, it will be for the cost of the owner/developer;

E That the proposed removal and amendment of title restrictions and consent use on erf 405, Yzerfontein be supported for the following reasons:

- (a) The land use of a second dwelling is compatible with the permissible land uses of residential zone 1, through consent from Council;
- (b) The proposed second dwelling is consistent with the existing residential character of the surrounding area;

6.3(E)/...

- (c) The application property is of sufficient size to accommodate the second dwelling, while promoting densification within the urban edge, as per local, Provincial and National policies;
- (d) The proposal will not negatively affect any biophysical or cultural environmental resources;
- (e) The removal and amendment of the applicable restrictive conditions from Deed of Transfer T3566/2004 will not impact negatively on the land use of the property, nor surrounding area, as the development parameters will still be governed by the By-Law;
- (f) The impact of the development on traffic patterns is negligible;
- (g) The second dwelling and the removal and amendment of restrictive title conditions are considered desirable within the spatial context;

F The application to depart from the building line is rejected for the following reasons:

- (a) A portion of the second dwelling was constructed over the rear building line, without prior consent and input from municipal departments or affected property owners;
- (b) The addition to the second dwelling can comfortably be accommodated elsewhere on the property, within the development parameters;
- (c) The topography of the area slopes downward from Erf 409 towards Erf 405. The construction of the second dwelling extension too close to the property boundary, compromises the structural integrity of the boundary wall between the two erven.
- (d) The second dwelling is constructed from adjustable, modular building materials (Nu-tech) and the construction can be altered to comply with the prescribed 2m building line, without excessive difficulty.
- (e) The building line departure is considered undesirable and thus this portion of the application is not approved.

7. GENERAL MATTERS

7.1 DIFFERENCE IN INTERPRETATION REGARDING THE REMOVAL OF RESTRICTIVE CONDITIONS IN RESPECT OF SECOND DWELLING

Certainty must be obtained regarding the following two opinions:

- (1) The application for the removal of restrictive conditions on the title deed; or
- (2) The application for a consent use in accordance with the by-law, if the title deed read as follows:

“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 Township 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 building as are permitted by the scheme, subject to the conditions and restrictions stipulated by the scheme”.

Mr Steyn stated that it is important to get clarity – from the public’s perspective – because the process to obtain removal of restrictive conditions is more expensive, and might lead to a delay in the approval of building plans.

RESOLUTION

That the Snr Manager: Building Environment, Mr A M Zaayman, contact either the Department Environmental Planning or the legal advisor from Province, Ms Anitha Vosloo, to obtain an opinion regarding the application of the above.

7.2/...

7.2 QAULITY OF REPORTS

Mr C Rabie – supported by Mr W Steyn – congratulated the Planning Division on the quality of the reports tabled to the Municipal Planning Tribunal. Mr Rabie requested to use the reports as examples at other municipalities where he is involved.

Mr Steyn also complimented the Planning Division on the efficient manner in which applications are dealt with in respect to the timeframes from the advertising of the application, the closing date of comments and receiving comments by the applicant to the tabling of the item to the Municipal Planning Tribunal.

Mr A M Zaayman mentioned that above process is regulated by Key Performance Indicators that must be adhered to. The chairperson confirmed that when performance bonuses are not linked to performance, the opportunity is given for the correct aspects to be evaluated. The opportunity is further used by officials to set innovative KPI's with the result that systems are improved on a continuous basis.

FOR COGNISANCE

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**