



MEETING OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

MINUTES

DATE: 1 SEPTEMBER 2022
(AUGUST 2022 CYCLE)

VENUE: VIRTUAL / MM BOARDROOM

TIME: 10:00

OVERSTRAND
MUNICIPAL PLANNING TRIBUNAL
MINUTES OF A MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL,
HELD IN VIRTUALLY ON
1 SEPTEMBER 2022 AT 10:00

PRESENT:

MEMBERS:

Ms H Janser, Directorate Development
Management
Mr S Müller, Director : Infrastructure & Planning
Mr H Blignaut, Deputy Director : Engineering
Services

OFFICIALS:

Mr R Kuchar, Senior Manager : Town & Spatial
Planning
Mr H Olivier, Town Planner
Mr P Roux, Town Planner
Ms S Swart, Council Support Services

APOLOGIES:

Ms R Louw, Senior Manager : Strategic Services

ABSENT WITHOUT LEAVE:

Mr S Madikane, Director : LED

ALSO PRESENT:

Mr F Zondagh (Guest)
Mr J Fourie (Guest)
Mr F de Lange (Guest)

MUNICIPALITY



MUNISIPALITEIT

MUNICIPAL PLANNING TRIBUNAL

ATTENDANCE REGISTER

Date: 1 SEPTEMBER 2022

I, the undersigned, hereby declare:

- that I will make known details of any personal or other interest in respect of matters on the agenda and whether I have been approached by any party prior to the meeting
- that I have read all the information on the agenda

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
H JANSER	CHAIRPERSON DIR. DEV MANAGEMENT	✓
S MÜLLER	VICE-CHAIRPERSON OVERSTRAND MUNICIPALITY	✓
S MADIKANE	MPT MEMBER OVERSTRAND MUNICIPALITY	Absent
H BLIGNAUT	MPT MEMBER OVERSTRAND MUNICIPALITY	✓
R LOUW	MPT MEMBER OVERSTRAND MUNICIPALITY	Apology
R KUCHAR	AUTHORISED OFFICIAL OVERSTRAND MUNICIPALITY	✓
S VAN DER MERWE	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
H VAN DER STOEP	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
P ROUX	TOWN PLANNER OVERSTRAND MUNICIPALITY	✓
H OLIVIER	TOWN PLANNER OVERSTRAND MUNICIPALITY	✓
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	Swart
F Zondagh	Guest	✓
J Fowrie	Guest	✓
F de Lange	Guest	✓

1. OPENING

The Chairperson, Ms H Janser, opened the meeting and welcomed those present.

2. APPLICATIONS FOR LEAVE OF ABSENCE

Ms R Louw

RESOLVED:

that the above-mentioned application for leave of absence, **be granted.**

3. CONFIRMATION OF MINUTES**3.1 Minutes of a **Municipal Planning Tribunal Meeting** held on **30 June 2022******RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **30 June 2022, be approved.**

3.2 Minutes of a **Municipal Planning Tribunal Meeting held on **28 July 2022******RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **28 July 2022, be approved.**

4. ITEMS FOR CONSIDERATION**4.1****ERF 6114, 49 6th STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE
PENALTY: DLC TOWNPLAN ON BEHALF OF ZONDAGH FAMILY TRUST****EXECUTIVE SUMMARY**

An application has been received on 29 April 2021 (revised application received on 30 August 2021) from DLC Townplan on behalf of the owner of Erf 6114, Voëlklip, Hermanus, Zondagh Family Trust, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- departure in terms of Section 16(2)(b) to relax the western lateral building line from 2.0m to 0.0m to accommodate the change of use of an existing outbuilding (from garage to hobby/entertainment area and toilet) and pergola; and to relax the street building line from 4.0m to 0.0m to accommodate the pergola attached to the outbuilding, and
- determination of administrative penalty in terms of Section 16(2)(q) for the unauthorised land use on the property.

RESOLVED:

1. that the objection be noted;
2. that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), applicable to Erf 6114, Hermanus (Voëlklip) to relax the western lateral building line from 2.0m to 0m to accommodate the change of use of an existing outbuilding (from garage to hobby/entertainment), **not be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), applicable to Erf 6114, Hermanus (Voëlklip) to relax the western lateral building line from 2.0m to 0m to accommodate the change of use of an existing outbuilding (from garage to bathroom), **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), applicable to Erf 6114, Hermanus (Voëlklip) to relax the western lateral building line from 2.0m to 0m and to relax the street building line from 4.0m to 0m to accommodate the pergola attached to the outbuilding, **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application for the determination of an administrative penalty in terms of Section 16(2)(q) of the By-law for the unauthorised land use activities stipulated above, **not be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-Law;

6. that the recommendations above be subject to the following conditions:
- (a) that the Site Development Plan and building plan be revised to indicate that the hobby/recreational room is altered back to a garage;
 - (b) that the approvals are for the development as indicated on Drawing No WD-100-GEN, as submitted with the application;
 - (c) that an administrative penalty of R 2 923.22, excluding VAT (being 10% of the valuation cost as determined by the municipality) be payable within thirty (30) days of the decision;
 - (d) that the storeroom can only be used for storage purposes and not for the accommodation of people;
 - (e) that building plans be submitted to the building control office within (60) days of the decision, and all comments from the fire department be complied with at that stage;
 - (f) that this approval does not absolve the landowners from compliance with any other relevant legislation; and
 - (g) that all other applicable development parameters as prescribed in the relevant Land Use Scheme be complied with.
7. that the applicant be notified of its appeal right in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decisions.

REASONS FOR THE RESOLUTION:

Points 2, 3, 4

- ❖ The proposed retention of the hobby / recreational room has a negative impact on the neighbouring property owner and its vested rights. Considering this, the retention of the hobby / recreational room is considered to be in transgression of the definition of and outbuilding in the Land Use Management Scheme, 2020 which states the following: *“recreational activities such as a pool room, braai room, Lapa and gazebo and the practising of hobbies (which may not cause a **nuisance and/or disturbance and/or noise** and/or damage to a neighbouring property or properties or premises).”*
- ❖ The character of the area is a low-density residential suburb as opposed to a high-density residential area where such applications would be regarded as more in line with the character of such a built environment.
- ❖ From the inspection done on the property the outbuilding is furnished as a living room.
- ❖ The pergola will have a minimal impact on the adjacent property owners.
- ❖ The location where the pergola is situated will have limited impact.
- ❖ The proposed bathroom will have no negative impact on the adjacent property owners or the character of the area.
- ❖ The application has followed due procedure.
- ❖ The proposal is compliant with the spatial policies contained in the SDF.
- ❖ The proposal is consistent with the spatial principles as set out in SPLUMA and LUPA.

Point 5

- ❖ The property owner made alterations to the outbuilding without first seeking approval and gaining approval from the Municipality.
- ❖ The property owner knowingly contravened the parameters of the applicable land use scheme.

RESPONSIBLE OFFICIAL :

P ROUX

The guests left the meeting at 10:32

4.2

**ERF 3266, 21 MAIN ROAD, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA:
PROPOSED CONSENT USE AND DEPARTURE: MESSRS WARREN PETTERSON
PLANNING CONSULTANTS ON BEHALF OF TELKOM SA (LTD)**

3266 HON (3755/2021)

H Olivier

(028) 313 8900

Hermanus Administration

29 June 2022

EXECUTIVE SUMMARY

An application was received on 3 September 2021 from Messrs Warren Petterson Planning on behalf of Telkom SA (Ltd), applicable to Erf 3266, Onrustrivier for the following:

- ❖ application in terms of Section 16(2)(o) for a consent use to erect a transmission tower on the above property.
- ❖ application in terms of Section 16(2)(b) for a departure to exceed the applicable 8,5m height restriction to accommodate the proposed 25m high transmission tower, and
- ❖ application in terms of Section 16(2)(b) for a departure to encroach the 3m rear building line up to 0m to accommodate the transmission apparatus.

RESOLVED:

1. that the objections be noted;
2. that the application in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law), for a consent use to erect a transmission tower on Erf 3266, Onrustrivier, **be approved** in terms of the provisions of Section 61 of the By-Law,
3. that the application in terms of Section 16(2)(b) of the By-Law for a departure to exceed the applicable 8,5m height restriction on Erf 3266, Onrustrivier, **be partially approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following condition:

that the relaxation is to only construct a transmission tower of a maximum of 15m in height.
4. that application in terms of Section 16(2)(b) of the By-Law for a departure to encroach the 3m rear building line up to 0m on Erf 3266, to accommodate the transmission apparatus, **be approved**, in terms of the provisions of Section 61 of the By-Law;
5. that the approvals in 2 to 4 above be subject to the following conditions:
 - (a) that a tree must be erected as recommended in the Visual Impact Assessment, in consultation with the Municipal Environmental Branch;
 - (b) that the transmission apparatus be restricted to the development indicated on Plan 05185-P1 and that an amended elevation plan showing the 15m height tree must be submitted;

- (c) that, should the transmission tower become defunct, the structures be removed;
 - (d) that all the conditions in the Service Report be complied with;
 - (e) that the conditions in the letter from Telkom be complied with;
 - (f) that this approval does not absolve the applicant from compliance with any other relevant legislation; and
 - (g) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with.
6. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above decision.

REASONS FOR THE RESOLUTION:**Points 2 and 4**

- ❖ The objections relating to health and safety concerns and environmental impact have duly been addressed and do not prove the application not to be desirable. Concerns relating to impact on property value, visual impact and location of the site (alternative better sites) have been addressed by applying mitigation measures to only allow a 15m high tree mast on the property.
- ❖ Erf 3266, Onrustrivier is zoned Business Zone 3 and utilized by Telkom for telecommunication infrastructure. The utilization of this site for a transmission tower will be in line with the existing land use and will utilize existing infrastructure.
- ❖ With an increased demand for coverage, more communication infrastructure will be placed closer to residential areas as their radius for coverage gets smaller. Erf 3266 is one of the few sites in Onrus that is zoned for such use. Mitigating measures such as the construction of a lower mast of 15m in height in line with surrounding tree heights, and camouflaging the mast as a tree, will mitigate the major concern of visual impact.
- ❖ The relaxation of the 3m rear building line to accommodate the transmission apparatus will have no impact on surrounding property owners, as there is still a vacant business site to the rear, and all residential sites will still be more than 13m from the transmission tower service yard.

Point 3

- ❖ The concerns of the objectors are valid with regards to the visual impact of a 25m transmission tower so close to residential units.
- ❖ The Visual Impact Assessment indicated that a 25m transmission tower will have a high visual impact over a short distance from the site up to 150m, and moderate up to 400m.
- ❖ The proposal to construct a tree mast, as recommended in the Visual Impact Assessment, would mitigate the visual impact to a certain extent, but considering that existing surrounding trees are only approximately 15m in height, a 25m high structure or even a 20m high structure will still be visually imposing in this area.
- ❖ A tree mast of 15m in height will be in line with the height of adjacent trees in the area and will blend in more with the surrounding area.

RESPONSIBLE OFFICIAL :

H OLIVIER

4.3**ERF 1449, LYNX ROAD, VERMONT: APPLICATION FOR REZONING, SUBDIVISION, DEPARTURES, RIGHT OF WAY SERVITUDES, PHASING OF A DEVELOPMENT AND THE ALLOCATION OF STREET NAMES AND NUMBERS: MESSRS PLAN ACTIVE ON BEHALF OF L LEWIS****1449 HVM****H Olivier****1 August 2022****(028) 313 8900****Hermanus Administration****EXECUTIVE SUMMARY**

An application was received on 23 October 2020 from Messrs Plan Active on behalf of L Lewis on Erf 1449, Vermont in terms of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) for the following:

- Rezoning of the property in terms of Section 16(2)(a) of the By-Law from Residential Zone I: Single Residential (SR1) to Subdivisional Area Zone (SA); and
- Subdivision of the rezoned property in terms of Section 16(2)(d) of the By-Law, to create the following:
 - Seventeen (17) Residential Zone I: Single Residential (SR1) erven;
 - Thirteen (13) General Residential Zone I: Town Housing (GR1) erven;
 - Three (3) Open Space Zone 2: Public Open Space (OS2) erven; and
 - One (1) Transport Zone 2: Road and Parking (TR2) portion.
- Departure in terms of Section 16(2)(b) of the By-Law to relax the following:
 - Street building line applicable to Erf 26 from 4m to 2,1m to accommodate an existing outbuilding, and 4m to 0,71m to accommodate a portion of the existing stoep;
 - Street building line next to Lynx Road from 4m to 3m applicable to Erven 15 to 17;
 - Street building line from 3m to 2m applicable to Erven 2 to 7 and 18 to 24;
 - Common building lines from 3m to 0m applicable to Erven 1, 2, 7 and 8 to construct garaging;
 - Common building lines from 3m to 2m applicable to Erven 7 and 8, 17, 18, and 22 to 25
- Subdivision in terms of Section 16(2)(d) to create the following:
 - 5m right of way servitude over Erven 28 and 29 in favour of Erven 27 to 29.
 - 0,5m wide servitude between the newly created right of way servitude and the existing southern boundary of Erf 1449, Vermont to accommodate a proposed unlined stormwater channel.
- Phasing of the development in terms of Section 16(2)(k) of the By-Law to phase the development in five (5) phases.
- Allocation of street names and numbers in terms of Section 96 of the By-Law, in order to allocate street names (Flycatcher Street and Buzzard Close) and numbers to the new streets in the development.

RESOLVED:

1. that the application in terms of Section 16(2)(a) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Erf 1449, Vermont to rezone said property from Residential Zone I: Single Residential (SR1) to Subdivisional Area Zone (SA) and the subsequent subdivision in terms of Section 16(2)(d) of the By-Law, read with Section 22, of the rezoned property to create the following:

- Seventeen (17) Residential Zone I: Single Residential (SR1) erven;
- Thirteen (13) General Residential Zone I: Town Housing (GR1) erven;
- Three (3) Open Space Zone 2: Public Open Space (OS2) erven; and
- One (1) Transport Zone 2: Road and Parking (TR2) site.

be approved, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:

- (a) that Development be in line with Site Development Plan *verm1449naec.drw* dated October 2018;
- (b) that a minimum of 2 (two) parking bays be provided on each erf, to municipal standards and satisfaction;
- (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
- (d) that the Architectural Design Guidelines in line with the Land Use Scheme parameters and the departure relaxation as dealt with in Point 2. below, be submitted for the development to address the style of the houses in line with the surrounding Cape Vernacular style that will be constructed, in consultation with the Building Control department;
- (e) that all the conditions imposed by Telkom be complied with;
- (f) that all the conditions imposed by Eskom be complied with;
- (g) that all conditions in the Services Report be complied with;
- (h) that the original conditions imposed by Heritage Western Cape be complied with;
- (i) that the conditions of the DEA&DP: Western Cape be complied with;
- (j) that a Homeowners' Association be established with compulsory membership for all property owners within the development and that this provision must be inserted into the Title Deed of the respective properties;
- (k) that the Constitution of the Homeowners' Association be submitted for approval by the Municipality (which reserves the right to impose conditions in this regard), and that the following aspects inter alia be addressed in this document:

- the approval of building plans by an “estate architect” prior to submission thereof to the Municipality;
 - that the Constitution clarifies at what stage the responsibility would be transferred from the developer to the Homeowners’ Association to deal with approval of plans; and
- (l) that the owner submits an operational plan for the construction phase to be approved by the Operational Manager before construction commences.
2. that the application for departure in terms of Section 16(2)(b) of the By-Law on Erf 1449, Vermont to relax the following building lines for General Residential Zone I and Residential Zone 1 erven to be created, **be approved** in terms of the provisions of Section 61 of the By-Law, as follows:
- Street building line applicable to Erf 26 from 4m to 2,1m to accommodate an existing outbuilding, and 4m to 0,71m to accommodate a portion of the existing stoep;
 - Street building line next to Lynx Road from 4m to 3m applicable to Erven 15 to 17;
 - Street building line from 3m to 2m applicable to Erven 2 to 7 and 18 to 24;
 - Common building lines from 3m to 0m applicable to Erven 1, 2, 7 and 8 to construct garaging;
 - Common building lines from 3m to 2m applicable to erven 7 and 8, 17, 18 and 22 to 25;
3. that the application for subdivision in terms of Section 16(2)(d) of the By-Law to create the following,:
- 5m Right of Way Servitude over Erven 28 and 29 in favour of Erven 27 to 29.
 - 0,5m wide servitude between the newly created Right of Way Servitude and the existing southern boundary of Erf 1449, Vermont to accommodate a proposed unlined stormwater channel.
- be approved**, in terms of the provisions of Section 61 of the By-Law;
4. that the application in terms of Section 16(2)(k) of the By-Law for the phasing of the developments in 5 phases, as depicted on plan *verm1449ph2.drw* dated October 2018, **be approved**, in terms of the provisions of Section 61 of the By-Law;
5. that the application in terms of Section 96 of the By-Law for the allocation of street names (Flycatcher Street and Buzzard Close) and numbers to the new streets in the development as indicated on plan *verm1449sn2.drw* dated October 2018, **be approved** in terms of the provisions of Section 61 of the By-Law; and
6. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

REASONS FOR THE RESOLUTION:

- ❖ The proposal for a development with a mix of Residential Zone I and General Residential Zone I erven is in line with the Overstrand Municipality Spatial Growth Management Strategy, 2010 (Guideline document) and Overstrand Municipal Wide SDF, 2020.
- ❖ All relevant municipal departments and external departments/institutions support the application.
- ❖ The necessary environmental approval was obtained from the Western Cape Government: Department of Environmental Affairs and Development Planning, and there are no environmental concerns.
- ❖ Concerns/objections raised about the possible impact on the character of the area and property values are unfounded as this proposed development will be in line with the character of surrounding developments, which primarily also have a mixture of Group Housing and Single Residential erven.
- ❖ Concerns/objections raised about the impact of additional traffic in Little Swift Close does not prove the development to be undesirable, as the road was planned in such a manner that it would provide access to future development in the north. Hence the reason the road stopped dead on the border with Erf 1449. The Operational and Engineering Services Departments support the application.
- ❖ The application will have no Heritage impact.
- ❖ The application is in line with the general principles of SPLUMA and LUPA as this development will be spatially sustainable and will not lead to urban sprawl or development on agricultural land or environmentally sensitive areas. In terms of efficiency, it will utilize existing road networks and services.
- ❖ In terms of the character of Vermont, developments comprise a mixture of Residential Zone I and General Residential Zone I erven, with Public Roads, to avoid creating a “gated complex” character. Challenges have been experienced regarding building line limitations in respect of especially group housing erven in such developments, and for this reason the departure application for building line relaxations, is supported.
- ❖ The relaxations only relate to properties abutting the new “internal road” within the development, the internal lateral building lines next to internal Residential Zone I erven, and the external road (Lynx Road), and not any adjacent residential developments.

RESPONSIBLE OFFICIAL :**H OLIVIER****The meeting adjourned at 11:24**