



MEETING OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

MINUTES

DATE:	25 FEBRUARY 2021
VENUE:	GLASKAS HERMANUS
TIME:	10:00

OVERSTRAND

MUNICIPAL PLANNING TRIBUNAL

MINUTES OF A MEETING OF THE MUNICIPAL PLANNING TRIBUNAL, HELD IN THE GLASKAS, HERMANUS ON 25 FEBRUARY 2021 AT 10:00

PRESENT:

MEMBERS:

Ms H Janser, Directorate Development
Management

Mr S Müller, Director : Infrastructure & Planning

Mr H Blignaut, Deputy Director : Engineering
Services

Ms R Louw, Senior Manager : Strategic Services

OFFICIALS:

Mr R Kuchar, Authorised Official

Ms H van der Stoep, Senior Town Planner

Mr H Olivier, Town Planner

Mr P Roux, Town Planner

Ms S Swart, Council Support Services

APOLOGIES:

Mr S Madikane, Director : LED

MUNICIPALITY



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MUNICIPAL PLANNING TRIBUNAL

ATTENDANCE REGISTER

Date: 25 FEBRUARY 2021

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	Apology
H BLIGNAUT	MPT MEMBER OVERSTRAND MUNICIPALITY	
R LOUW	MPT MEMBER OVERSTRAND MUNICIPALITY	
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

1. OPENING

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

2. APPLICATIONS FOR LEAVE OF ABSENCE

Dir S Madikane

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 28 January 2021****RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **28 January 2021, be confirmed.**

4. ITEMS FOR CONSIDERATION

4.1

ERF 790, 17 COVE STREET, DE KELDERS, OVERSTRAND MUNICIPAL AREA: REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND CONSENT USE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF HIPPOMANIA (PTY) LTD

790 GDK

P Roux

10 December 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 11 February 2020 from Messrs WRAP Project Office on behalf of Hippomania (Pty) Ltd applicable to Erf 790, De Kelders for the following:

- ❖ removal of restrictive title deed conditions D(1)(a), D(1)(b), D(1)(c), D(1)(d) as contained in Title Deed T21764/2018 applicable to Erf 790, De Kelders in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law);
- ❖ application for consent use in terms of Section 16(2)(o) of the By-Law in order to accommodate a restaurant and a flat on ground floor on the property.

RESOLVED:

1. that the comments received be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the removal of restrictive title deed conditions with reference to Clauses D(1)(a), D(1)(b), D(1)(c), D(1)(d) as contained in Title Deed T21764/2018, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(o) of the By-Law received from Messrs WRAP on behalf of Hippomania (Pty) Ltd applicable to Erf 790, De Kelders for consent use in order to accommodate a restaurant and a flat on ground floor on the property, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the decisions in paragraph 2. and 3. be subject to the following conditions:
 - (a) that the approval is only for the development and utilisation of the property as indicated on the Site Development Plan (*Plan No 3, file number 19/126*), as submitted with the application;

- (b) that the conditions in the Services Report be complied with;
 - (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
 - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
5. that the applicant and persons who commented 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 conditions of approval.

REASONS FOR RESOLUTION:

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ There are other properties in the commercial node which are developed with mixed use land uses and which are developed onto boundaries, and the removal of these restrictions would therefore not impact on the character of the area.
- ❖ The Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The removal of the restrictions will be beneficial to the De Kelders Community.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.
- ❖ The proposal is in line with the Municipality's SDF.

RESPONSIBLE OFFICIAL :**P ROUX**

4.2

ERF 3010, 93 ATLANTIC DRIVE, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE : MESSRS ADSQUARED ARCHITECTURE & DESIGN CC ON BEHALF OF JA HOLTZHAUSEN

3010 HON

H Olivier

(028) 313 8900

Hermanus Administration

23 November 2020

EXECUTIVE SUMMARY

An application was received on 5 August 2020 from Messrs Adsquared Architecture & Design CC on behalf of JA Holtzhausen on Erf 3010, Onrustrivier for an application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 for a departure to relax the following:

- southern lateral building line from 2m to 1,243m to accommodate alterations and new windows;
- northern building line from 3m to 1,5m and 0m to accommodate the change of the existing balcony area as an extension to the dwelling on ground floor and first storey area, and the new pergola over the courtyard respectively;
- rear building line from 2m to 0m to accommodate a new pergola over the courtyard, and
- height restriction from 8m to 10,710m to accommodate a change to the existing roof structure.

RESOLVED:

1. that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for a departure on Erf 3010, Onrustrivier to relax the 8m height restriction to 10,7m to accommodate a change to the existing roof structure, **not be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(b) of the By-Law for a departure on Erf 3010, Onrustrivier to relax the northern street building line from 3m to 1,5m to change an existing balcony to an extension to the dwelling, **partially be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following condition:

that only the area below the existing balcony may be enclosed, but the proposed covering and full enclosure of the first-floor balcony area **not be supported**;
3. that the application in terms of Section 16(2)(b) of the By-Law for a departure on Erf 3010, Onrustrivier for a departure to relax the following:

- northern lateral building line from 3m to 0m and the rear building line from 2m to 0m to accommodate a pergola; and
- southern lateral building line from 2m to 1,243m to accommodate internal changes and new windows

be approved in terms of the provisions of Section 61 of the By-Law;

4. that the decisions in 1. to 3. above be subject to the following conditions:
 - (a) that the building plans be amended to be in line with the decisions in 1. to 3. above and submitted to the Building Control Department;
 - (b) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (c) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (d) that all conditions of the Building- and the Fire Department be complied with at building plan submission phase;
 - (e) that all the conditions in the Services Report be complied with; and
 - (f) that all the conditions by Telkom be complied with.
5. 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 conditions of approval.

REASONS FOR THE RESOLUTION:

POINT 1.

- ❖ The extension to the roof structure above the 8m height restriction line will impede on views from the north and west.
- ❖ The alterations to the roof structure are for aesthetic reasons and not a necessity.
- ❖ Objections were received from surrounding property owners that their view will be impacted, and their property value thereby affected.
- ❖ The applicant, in his response on the objections, did not provide any detailed information to prove the objectors are wrong in their opinion that view will be impacted and possibly the character of the area.

POINT 2.

- ❖ The objections regarding the impact of the relaxation of building lines on the character of the area and impeding on a public area does have merit with the roofing and enclosure of the existing first floor balcony.
- ❖ The proposed covered and enclosed balcony would be 6,5m to 5m in height over a 12m long distance, and will only be 1,5m from the public area. It will be an imposing structure and could impact on the aesthetical character of the Onrus Beach parking area.
- ❖ The applicant did not provide any detailed information in his response to objections disproving the concerns of the objectors regarding the proposed extension.
- ❖ The enclosure of the area underneath the balcony will not be imposing on the public parking area and will provide the property owner with some privacy.

POINT 3.

- ❖ The departure applied for of the southern building line is internal changes and some new windows in an existing wall, with limited impact on neighbours.
- ❖ The adjacent neighbour (Erf 3009), who is the only neighbour, really impacted by the relaxation of the southern boundary submitted no objection.
- ❖ The pergola proposed to be constructed over the 3m street and 2m rear building lines up to the boundary, is a low non-imposing structure that would be hidden behind milkwood trees, and hardly visible to neighbours.
- ❖ The pergola structures will be placed next to parking areas, not close to any neighbours.
- ❖ The objections regarding views, aesthetics and impact on the character of the area is not considered relevant to the relaxations of the southern lateral building line and also the relaxation to accommodate the pergola, as its impact is minimal.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP**

4.3

PORTION 47 OF FARM HANGKLIP NO.559, HANGKLIP, OVERSTRAND MUNICIPAL AREA: PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF MR J DE JAGER ON BEHALF OF THE TRIO DATA SECURITY SERVICES BK

KHANG 47/559 (4060)

H van der Stoep

28 December 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 26 June 2018 from Messrs Plan Active Town and Regional Planners on behalf of Mr J de Jager on behalf of the Trio Data Security Services BK on Portion 47 of the Farm Hangklip No. 559 for the following:

- ❖ Removal of restrictive title conditions with reference to Clauses D.(b), D.(d), D.(e), D.(i), D.(n), D.(o), D.(r), E.(i), E.(ii) and E.(iii) of Title Deed T3920/2017 applicable to Portion 47 of the Farm Hangklip No. 559, in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

The restrictive conditions contained in Title Deed T3920/2017 to be removed read as follow:

“Clause D:

- (b) *No wood and iron buildings or works of any description shall be erected nor shall corrugated iron be used for roofing purposes.*
- (d) *All buildings and other constructional works, including all fences and garden or other gates, shall be of good design and sound construction and plans thereof must be approved by the Seller before construction is commenced. In the event of a breach of this Clause the Seller shall have the right to require the Purchaser to demolish such unauthorised buildings or works and/or shall have the opinion to re-purchase the land upon payment of the cost price thereof without compensation for improvements.*
- (e) *No signs, advertisements, advertisement hoardings or other lettering shall be erected on the land hereby sold and purchased, nor shall any advertisements, signs or lettering be painted on any buildings, walls or fence erected or to be erected on the said land save and except with the written approval of the Seller.*
- (i) *No Person other than the registered owner and his immediate family shall camp overnight or light open fires on the said land save with the written*

- consent of the Seller which shall have the right to refuse such consent without assigning any reason therefore or to give such consent subject to such conditions as it thinks fit.*
- (n) *The land shall be used only for agricultural purposes and the breeding and keeping of domestic animals, poultry and/or bees provided that no goats or pigs may be kept except with the special written consent of the Seller.*
 - (o) *Only buildings and structures to be used as dwellings and farm buildings shall be erected on the land.*
 - (r) *No boarding houses, flats, maisonettes, hotel, shops, public garage or filling station, business premises, canteen, restaurant, bioscope, factory or industrial buildings shall be erected on the land nor shall any such business or entertainment be conducted on the land”*
- E. *ENTITLED to the benefit of the conditions referred to in the Servitude Endorsements appearing on said Certificate of Registered Title No. T5789/1957 which said endorsements are dated and read as follows:*

(i) 17th December 1959:

By D.T. No 18344/59 dd. This day Portion 59 thereby conveyed is subject to conditions relating to (a) buildings (b) restriction against erection of signs, advertisements etc. (c) restriction against trade (d) prohibition against making of bricks, tiles and pipes (e) prohibition against deposit of debris, scrap, etc. (g) camping (h) access (i) sewerage (j) water (k) sub-division, and use of land i.f.s. the remainder of within portion 45 meas. 250,8309 hectares held hereunder. As will more fully appear on reference to the said D.T.”

(ii) Dated 10th May 1960:

“By Deed of Transfer No. 6799/1960 dated this day Portion 62 = 9,2831 hectares thereby conveyed is (A) not entitled to conditions referred to in certain, endorsements and (B) Subject to conditions relating to (a) (b) (c) and (d) buildings and design (e) advertising (f) trade (g) and (h) building materials and scrap (j) camping (k) access to roads (l) sewage (m) use of water (n) subdivision (o) (p) (q) (r) & (s) use of land and buildings in favour of the remainder of Portion 45 = 242,1473 hectares held hereunder, as will mote fully appear on reference to the said Deed of Transfer.”

(iii) Dated 20th of November 1961:

“By Deed of Transfer No. 16184/1961 dd. This day, Portion 58 meas. 9,6944 hectares thereby conveyed is (A) Not entitled to conditions referred to in certain endorsements and (B) Subject to conditions relating to (a) (b) (c) and (d) buildings and design (e) advertising (f) trade (g) & (h) building materials and scrap (j) camping (k) access to roads (l) sewage (m) use of water (n) sub-division (o) (p) (q) (r) & (s) use of land and buildings in favour of the remainder of Portion 45 meas. 232,4530 hectares held hereunder as will more fully appear on reference to the said Deed of Transfer.”

RESOLVED:

1. that the objections be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the removal of restrictive title conditions D.(d), D.(i), D.(n), D.(o), E.(i), E.(ii) and E.(iii) of Title Deed T3920/2017 applicable to Portion 47 of the Farm Hangklip No. 559, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;
 - (b) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
 - (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
3. that the application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title conditions D(b), D.(e) and Condition D.(r) of Title Deed T3920/2017 applicable to Portion 47 of the Farm Hangklip No. 559 **be amended** as follows:
 - ❖ Condition D.(b) remove “corrugated iron for roofing purposes”
 - ❖ Condition D.(e) replace “seller” with Local Authority”
 - ❖ Condition D.(r) amend to read as follows: “... with the exception of a home occupation and guest rooms”

4. 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 removal of the restrictive conditions will have no impact on the character of the area and/or the environment.
- ❖ The Overstrand Zoning Scheme is more restrictive than the Title Deed restrictions.
- ❖ The buildings are in existence and is there no impact on the CBA area.
- ❖ The use category is in line with the Kogelberg Biosphere Framework.
- ❖ The application is not a blanket removal of all the conditions in the Title Deed and not all the conditions that were applied for to be removed, had been approved.
- ❖ The application indicates that the applicant intends to make use of the primary rights in terms of the Zoning Scheme.
- ❖ The primary rights can only be accommodated in the existing structures.
- ❖ The objectors were part of the compilation of the amalgamated Zoning Scheme, and the primary rights of Conservation Usage were not objected against.
- ❖ The objectors did not elaborate on the assumptions being made in terms of character on the township, public interest etc. Thus, the negative impact of the application could not be established.
- ❖ The application site is not part of Rooi Els and or Pringle Bay Township and thus should be evaluated in the context of small holdings and not a residential erf.
- ❖ The letter received from Raymond McCreath Attorneys, dated 23 February 2021 is noted. The comments received fall outside the public participation time frame and cannot be considered in the evaluation of the application before the Tribunal.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP****The meeting adjourned at 11:10**