



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

MINUTES

DATE:	28 JULY 2022
VENUE:	VIRTUAL
TIME:	10:00

OVERSTRAND
MUNICIPAL PLANNING TRIBUNAL
MINUTES OF A MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL,
HELD VIRTUALLY ON
28 JULY 2022 AT 10:00

PRESENT:

MEMBERS:

Ms H Janser, Directorate Development
Management
Mr D Hendriks, Acting Director : Infrastructure &
Planning
Mr S Madikane, Director : LED
Mr H Blignaut, Deputy Director : Engineering
Services

OFFICIALS:

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

APOLOGIES:

Mr S Müller, Director : Infrastructure & Planning
Ms R Louw, Senior Manager : Strategic Services

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**MUNICIPAL PLANNING TRIBUNAL
ATTENDANCE REGISTER**

Date: 28 JULY 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 (D Hendriks)	VICE-CHAIRPERSON OVERSTRAND MUNICIPALITY	Apology
S MADIKANE	MPT MEMBER OVERSTRAND MUNICIPALITY	✓
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 OLIVER	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

Mr S Müller
Ms R Louw

RESOLVED:

that the above-mentioned applications 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 stand over** until the next meeting.

4. ITEMS FOR CONSIDERATION

4.1

ERF 463, 17 SHARPIE STREET, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: WRAP PROJECT OFFICE ON BEHALF OF DJ & M ERASMUS

463 HFH (4050/2022)

H Olivier

(028) 313 8900

Hermanus Administration

9 June 2022

EXECUTIVE SUMMARY

An application has been received on 3 February 2022 from WRAP Project Office on behalf of DJ & M Erasmus on Erf 463, Fisherhaven in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title conditions E.4.(b), E.4.(c) and E.4.(d) as contained in Title Deed T68400/2017 of the property in order to enable the construction of a second dwelling unit and to remove conditions relating to building lines and coverage.

The restrictive title conditions read as follows:

*“E. **SUBJECT FURTHER** to the following special conditions as contained in Transfer No. T3108/1984, newly imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance 33 of 1934, when approving the establishment of Fisherhaven Township, namely:*

4. *This erf shall be subject to the following further conditions, provided especially that where in the opinion of the Administrator after consultation with the Townships Board and the Local Authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation, subject to compliance with such conditions as he may impose:-*
 - (b) *it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;*
 - (c) *not more than 30% of the area thereof shall be built upon;*
 - (d) *no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,15 metres of the lateral boundary common to any adjoining erf, provided with the consent of the Local Authority, any outbuildings not exceeding 3,05 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any*

two or more erven, this condition shall apply to the consolidated area as one erf.”

RESOLVED:

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 463, Fisherhaven for the removal of restrictive title conditions E.4.(c) and E.4.(d) as contained in Title Deed T68400/2017 of the property in order to remove conditions relating to building lines and coverage, **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)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 463, Fisherhaven for the removal of restrictive title condition E.4.(b) as contained in Title Deed T68400/2017 of the property in order to enable the construction of a second dwelling unit, **be approved**, in terms of the provisions of Section 61 of the By-Law subject to the following conditions:
 - (a) that this approval is only for the removal of a restriction and is not an approval in terms of any other legislation;
 - (b) that building plans be submitted for all new buildings to the Building Department for approval, and that all conditions of the Building and the Fire Department be complied with at that stage;
 - (c) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (e) that all the conditions in the Services Report be complied with; and
 - (f) that the conditions imposed by Telkom be complied with.
3. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 regarding the above conditions of approval.

REASONS FOR RESOLUTION:**POINT 1**

- ❖ The application did not propose any new building work over the Title Deed building lines or the 30% coverage limitation and did not require the removal of said building lines for the proposed second dwelling.
- ❖ To evaluate the impact of the removal of a Title Deed Restriction a detailed motivation and proposal must be provided to enable the decision maker to measure the impact of the removal of such restrictions. The applicant only motivates that the reason to remove these restrictions is to allow future development in line with the Overstrand Municipality Land Use Scheme, with no detailed proposal or motivation to properly measure the impact.

POINT 2

- ❖ The application has followed due procedure.
- ❖ No new municipal services will be required.
- ❖ The proposed construction of a second dwelling is in line with Policy Plans that promote densification.
- ❖ The proposed second dwelling smaller than 120m² will be in line with the primary rights in terms of the Residential Zone I zoning in terms of the Land Use Scheme.
- ❖ No negative impact on the character of the area.
- ❖ No objections were received from neighbours as the impact on neighbours' privacy and rights will be minimal.
- ❖ The application is desirable.

RESPONSIBLE OFFICIAL :**H OLIVIER**

4.2**ERF 2699, 12 TREWWA STREET, GANSBAAI (PERLEMOENBAAI), OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF DP BOTHA****2699 GPB****SW van der Merwe****(028) 313 8900****Hermanus Administration****30 June 2022****EXECUTIVE SUMMARY**

An application has been received on 7 May 2021 from Messrs Interactive Town- and Regional Planning on behalf of DP Botha in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 2699, Gansbaai (Perlemoenbaai) for the following:

- ❖ departure in terms of Section 16(2)(b) of the By-law to accommodate the following:
 - a. encroachment of the eastern lateral building line from 2m to 1,56m, the southern rear building line from 2m to 1,86m and the western lateral building line from 2m to 1,55m to accommodate the existing dwelling;
 - b. encroachment of the western lateral building line from 2m to 1,72m to accommodate the existing store (outbuilding);
 - c. encroachment of the height restriction from 8m to 8,44m to accommodate the roof of the existing braai room;
 - d. encroachment of the boundary wall height restriction from 2,1m to 2,39m and 3,19m along the northern street boundary, from 2,1m to 3,16m and 3,19m on the western lateral boundary and from 2,1m to 2,39m along the eastern lateral boundary, and from 2,1m to 3,19m along the rear boundary;
 - e. encroachment of the street building line from 4m to 0m and the western lateral building line from 2m to 0m, and
 - f. encroachment of the maximum permissible coverage from 50% to 54,92% to accommodate a proposed garage.

- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-law to accommodate the existing building.

RESOLVED:

1. that the comment 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 2699, Gansbaai (Perlemoenbaai), to accommodate the following:
 - encroachment of the height restriction from 8m to 8,44m to accommodate the roof of the existing braai room;

- encroachment of the eastern lateral building line from 2m to 1,56m, the southern rear building line from 2m to 1,86m and the western lateral building line from 2m to 1,55m to accommodate the existing dwelling;
- encroachment of the western lateral building line from 2m to 1,72m to accommodate the existing store (outbuilding); and
- encroachment of eastern lateral and rear boundary wall height restriction

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 2699, Gansbaai (Perlemoenbaai), to accommodate the following:

- encroachment of the maximum permissible coverage from 50% to 54,92% to accommodate the proposed garage;
- encroachment of the boundary wall height restriction from 2,1m to 2,39m and 3,19m along the northern street boundary, from 2,1m to 3,16m and 3,19m on the western lateral boundary; and
- encroachment of the street building line from 4m to 0m and the western lateral building line from 2m to 0m to accommodate a proposed garage

not be approved in terms of the provisions of Section 61 of the By-Law, due to the reasons provided in paragraph 13 below.

4. that an administrative penalty in terms of Section 16(2)(q) of the By-law for the deviations from approved Building Plan No. 21594, dated 18 October 2019, **not be imposed** in terms of Section 90(4) of the By-Law;
5. that an administrative penalty in terms of Section 16(2)(q) of the By-law for the unauthorised deviations from approved Building Plan No 38060 and unauthorised boundary wall alterations resulting in the encroachment of the height restriction **be imposed** in terms of Section 90(4) of the By-Law;
6. that the recommendations in 2. and 5. above be subject to the following conditions:
- (a) that the approval is limited to the encroachments as indicated on the Site Development Plan submitted with the application;
 - (b) that building plans, in line with the above, be submitted to the Building Department for consideration within 60 days from the date of the final decision and all comments from the Building and Fire Departments be complied with at that stage;
 - (c) that the portions of the street and western lateral boundary walls encroaching the 2,1m boundary wall height restriction be demolished within 90 days from the final approval of the application;

- (d) that an administrative penalty of **R23751,87** (VAT inclusive) (20% of the building costs) be payable within thirty (30) days of the decision;
 - (e) that this approval does not absolve the landowners from compliance with any other relevant legislation; and
 - (f) that all other applicable development parameters as prescribed in the relevant Land Use Scheme be complied with.
7. that the applicant/person who commented 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

Reasons for approval

- The development is not considered to unacceptably detract from the character of the area or vested rights of adjoining property owners in terms of loss of privacy, overlooking, loss of views or sun / daylight.
- The application followed due process.
- The proposal is consistent with the SDF.
- The applicant is in possession of occupation certificates.

Reasons for non-approval

- The proposed double garage and resulting coverage encroachments are not in keeping with the character and morphology of existing development in the area.
- The retention of the street and western lateral boundary wall height encroachments is not in keeping with the character of the area.
- The street boundary wall encroachment visually dominates the street scape.
- Boundary walls should follow or step with the contours.
- The applicant failed to stop raising the boundary wall contrary to the advice of the Senior Town Planner, whilst a stop notice from Building Control was ignored.
- The raised boundary walls were constructed without building plan approval in terms of the National Building Regulations.

RESPONSIBLE OFFICIAL :

S VAN DER MERWE

The meeting adjourned at 10:40