



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

MINUTES

DATE:	1 JULY 2021 (JUNE 2021 CYCLE)
VENUE:	VIRTUAL
TIME:	10:00

OVERSTRAND
MUNICIPAL PLANNING TRIBUNAL
MINUTES OF A MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
HELD BY MEANS OF A VIRTUAL PLATFORM ON
1 JULY 2021 AT 10:00

PRESENT:

MEMBERS:

Mr S Müller, Director : Infrastructure & Planning

Mr H Blignaut, Deputy Director : Engineering
Services

Ms R Louw, Senior Manager : Strategic Services

OFFICIALS:

Ms H van der Stoep, Senior Town Planner

Ms S Swart, Council Support Services

APOLOGIES:

Ms H Janser, Directorate Development
Management

Mr R Kuchar, Senior Manager : Town & Spatial
Planning

Mr H Olivier, Town Planner

ABSENT WITHOUT LEAVE:

Mr S Madikane, Director : LED

**MUNICIPAL PLANNING TRIBUNAL
ATTENDANCE REGISTER**

Date: **1 JULY 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	Apology
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	✓
R KUCHAR	AUTHORISED OFFICIAL OVERSTRAND MUNICIPALITY	Apology
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	Apology
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	S Swart

1. OPENING

The Vice-Chairperson, Mr S Müller, opened the meeting and welcomed those present.

2. APPLICATIONS FOR LEAVE OF ABSENCE

Ms H Janser
Mr R Kuchar
Mr H Olivier

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 29 April 2021****RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **29 April 2021, be confirmed.**

4. ITEMS FOR CONSIDERATION

4.1

ERF 939, VERMONT, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR AMENDMENT OF THE CONDITIONS OF AN EXISTING APPROVAL: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF AFRICA EVANGELISTIC CHURCH

939 HVM

H Olivier

26 March 2021

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 1 June 2020 from Messrs Plan Active Town and Regional Planners on behalf of Africa Evangelistic Church on Erf 939, Vermont for an application in terms of Section 48 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the amendment of conditions of approval in terms of Section 16(2)(h) to allow the registration and transfer of the new erven prior to the construction of the public road.

RESOLVED:

1. that the application in terms of Section 48 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the following:
 - ❖ Amendmend of the conditions of approvals in respect of an existing approval in terms of Section 16(2)(h) of the By-Law to allow the registration and transfer of the new erven prior to the construction of the public road,

not be approved in terms of the provisions of Section 61.
2. 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:

- ❖ The objections relating to the applicant's motivation that the landowner and developers want to transfer the erven to comply with a Sales Agreement and to secure finance, is supported, as it is a matter between the parties concerned how the road construction must be financed, and not the Municipality.
- ❖ In terms of Section 30 of the Amended Overstrand By-Law on Land Use Planning, 2020, all requirements and conditions must be complied with prior to

the registration of an erf in a development. The construction of the road prior to transfer is still considered a requirement to ensure all services, including road access to each new erf is provided to municipal standards. The Amana Resort and at least one (1) other site will have no formal access if the road is not constructed.

- ❖ The Municipal Engineering Branch in their Services Report for this application only supported some of the Department of Transport's revised conditions, and clearly stipulate the road be constructed prior to the subdivision can be registered.
- ❖ Should the transfers be allowed, prior to the construction of the road, the development rights would not lapse anymore, and the public road will vest with the Municipality. This will enable the new property owners to transfer the properties should they wish to do so, and it could create an expectation by new landowners that the Municipality would construct the road.
- ❖ If transfer take place, the Municipality would not be able to enforce a time frame when the construction must take place as it would be in the hands of the developers.
- ❖ The Municipality is not a party to the Sale Agreement between Amana Resort and the two (2) developers. Considering that both developers must still obtain additional rights for development and only then will be able to apply for finances to obtain finances for the construction of the road, there is a risk that the projects are not seen through. This will create challenges with regard to the construction of the road. It could also create challenges to the phasing of the construction of the road if one developer does not proceed with his/her development.
- ❖ The general principle of good administration is also to ensure that development take place in an ordered manner. If this application is supported it will put additional strain on the Municipality and some risk, while should the road be constructed prior to any transfer, no further administrative pressure or risk will be placed on the Municipality.
- ❖ The general principle of spatial sustainability promotes viable communities. This also include the provision of services to ensure viable communities. Should the road not be constructed before transfer, at least two (2) properties will be created without formal road access, which is not considered spatially sustainable.
- ❖ The property owner and developers can amend their sales agreement and can submit a full detailed planning application showing the new proposed developments, and again applying for the subdivision of the road portion and erven with it. If successful, they will be able to use such an approval to obtain finances, and it will enable the Engineering Department to prepare a better service contract with all parties responsible for the finance and construction of the road.

RESPONSIBLE OFFICIAL :

H OLIVIER

4.2

ERF 6165, 32 HARDEPEER AVENUE, KLEINMOND, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE: R COETZEE

6165 KKM

H van der Stoep
5 May 2021

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 20 March 2020 from R Coetzee on Erf 6165, Kleinmond for the following :

- ❖ Removal of Restrictive Title Deed Conditions in terms Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 for the removal of restrictive title deed condition I.C.8 as contained in Title Deed T14595/2013 to permit the proposed application.

The restrictive conditions read as follows:

I. REGARDING the figures AefD and eBCf on Diagram number 936/1988;

C. SUBJECT FURTHER to and with the benefit of the conditions contained in the Annexure marked "A" to Deed Transfer T22152/1951 (wherein "the Company" means KLEINMOND SYNDICATE LIMITED), which conditions read as follows:

8. All buildings to be erected on the land herein sold shall stand back at least 3.15 metres from the line of the street or avenue on which the lot or lots herein mentioned may front."

- ❖ Departure in terms of Section 16(2)(b) of the By-Law to relax the street building line from 4m to 0,380m to accommodate a new garage.

RESOLVED:

1. that the application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed condition I.C.8 as contained in Title Deed T14595/2013 applicable to Erf 6165, Kleinmond to permit the proposed application, **be approved** in terms of the provisions of Section 61, subject to the following conditions:
 - (a) that this approval does not absolve the applicant from compliance with any other relevant legislation;

- (b) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
2. that the application in terms of Section 16(2)(b) and (f) of the Overstrand Municipality By-law on Municipal Land Use Planning, 2015 in order to relax the street building line from 4m and 3,15m to 0,38m to accommodate a proposed garage **not be approved**.
 3. that the applicant and objector 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:POINT 1:

The removal will enable the applicant to make use of Section 16 of the Overstrand Land Use Scheme with regard to structures lower than a 1m and rainwater tanks lower than 2,1m to be constructed within the street building line.

The possibility for a carport is viable through and departure application.

POINT 2

- ❖ There is an existing garage that can be extended to the title deed street building line, which will be similar in size and configuration.
- ❖ There is sufficient space to the rear of the property to add a bedroom.
- ❖ The street scape in the specific area will be compromised with a structure on the street front.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP**

4.3

ERF 3383, 11 BOB LAUBSER STREET, KLEINMOND, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE: MESSRS ARCHITECTURAL HOME DESIGN ON BEHALF OF SL VERRUGGIO

3383 KKM (2785)

H van der Stoep

1 March 2021

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 15 November 2019 from Messrs Architectural Home Design on behalf of SL Verruggio on Erf 3383, Kleinmond for a departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 in order to relax the rear building line from 2m to 1,5m and the eastern lateral building line from 2m to 0m to legalize a staff quarters and western lateral building line from 2m to 0m to legalize a storeroom and staff quarters.

RESOLVED:

1. that the application in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) on Erf 3383, Kleinmond in order to relax the eastern lateral building line from 2m to 0m to accommodate a storeroom, **not be approved** in terms of the provisions of Section 61 of the By-Law and the following action be executed:
 - (a) the illegal structures (servant's quarters, storeroom and the structure on the western lateral and rear building line), **be demolished within six (6) months** from date of the letter of non-approval.
2. that the applicant and objector be notified of its 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 staff quarters (servant's quarters) constitute a third dwelling in terms of the Zoning Scheme and has been illegally built without an approved building plan
- ❖ The storeroom has been changed into a habitable structure, which will constitute a fourth dwelling on the property.
- ❖ The Zoning Scheme and Title Deed do not allow for more than two (2) dwellings on this Single Residential erf
- ❖ Habitable structures are not allowed on the boundary line due to privacy, aesthetics and character of the area and a third and fourth dwellings will have an effect on the latter.

- ❖ The application motivation does not address the structures and uses in terms of need and desirability.
- ❖ The application is not complete since structures and uses on the property is not address or shown on the plans submitted with the application.

RESPONSIBLE OFFICIAL :

H VAN DER STOEP

4.4

**ERF 80, 9 GNIDIA ROAD, ROOI ELS, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR THE REMOVAL OF A RESTRICTIVE TITLE DEED
CONDITION AND DEPARTURE: MESSRS PLAN ACTIVE TOWN AND
REGIONAL PLANNERS ON BEHALF OF T THORSSON AND C THOMPSON-
THORSSON**

80 KRE**H van der Stoep****(028) 313 8900****Hermanus Administration****8 June 2021**

EXECUTIVE SUMMARY

An application was received on 21 September 2020 from Messrs Plan Active Town and Regional Planners on behalf of Messrs. T. Thorsson and C Thompson-Thorsson on Erf 80, Rooi Els for the following:

- ❖ Removal of a restrictive title condition with reference to Clause F.4.(d) of Title Deed T45817/2019 in terms of Section 16.(2)(f) of the Overstrand Municipality By-Law on Land Use Planning, 2020.

Restrictive condition F.4.(d) reads as follows:

“no building or structure 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 rear of 1.57 metres of the lateral boundary common to any adjoining erf provided that the consent of the Local Authority an outbuilding 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 and provided further that a garage may be erected up to such street line if in the opinion of the Local Authority the level of the erf is such as to make that necessary”

- ❖ Departure in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 to relax the following:
 - street building line from 4m to 0,73m to accommodate a portion of the existing carport;
 - southern lateral building line from 2m to 0m to accommodate a portion of the existing carport, and
 - southern lateral building line from 2m to 0,2m to accommodate a portion of the existing dwelling.

RESOLVED:

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 for the removal of restrictive title deed condition Clause F.4.(d) as contained in Title Deed T45817/2019 applicable to Erf 80, Rooiels to accommodate a portion of the existing dwelling, be approved in terms of the provisions of Section 61;
2. that the application in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Erf 80, Rooiels for a departure to relax the southern lateral building line from 2m to 0,2m to accommodate a portion of the existing dwelling, be approved in terms of the provisions of Section 61 subject to the following conditions:
 - (a) that the departure be restricted to surveyed plan V20189 submitted with the application;
 - (b) that this approval only relates to a building line relaxation (for a portion of the dwelling only) as indicated on plan numbers rooiels80.drw dated 08/2020 and RE80 Bailey dated October 2019;
 - (c) that the revised building plans (*indicating the above approval only*) be submitted to the Building Department, and that all conditions set by the Building- and Fire Departments at that stage, be complied with;
 - (d) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
 - (f) that all the conditions in the Services Report be complied with.
3. that the application in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Erf 80 Rooiels for the following departures, **not be approved**:
 - o street building line from 4m to 0,73m to accommodate a portion of the existing carport, and
 - o southern lateral building line from 2m to 0m to accommodate a portion of the existing carport;
4. that the carport be **removed**, the shed be **demolished** and the fence be **moved** to the surveyed boundary within four (4) months from the decision letter;
5. that no additional building work be approved on first floor level transgressing the lateral building line of 2m, 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:**APPROVAL POINT 1**

- ❖ The removal of restrictive condition 4.(d) will not be to the detriment of the area.
- ❖ The title deed condition does allow structures within the building lines and is less prescriptive than the Overstrand Land Use Scheme with regard to noise pollution and or visual impact.
- ❖ The removal of the condition will enable the legalization of the conversion and the water tanks, the latter which forms part of climate change adaptation.

NON-APPROVAL - POINT 2:

- ❖ The carport on both the street- and lateral building lines will influence the street scape, since no other structure in Gnidia Road has been built on the street boundary.
- ❖ The buildings on Erf 80 has not been built according any of the approved building plans and the transgression of both the dwelling and carport has an accumulative impact on Erf 79.
- ❖ There is sufficient space north on the property to erect the carport.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP****The meeting adjourned at 10:38**