



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

## **MINUTES**

**DATE:** 4 OCTOBER 2024  
(SEPTEMBER 2024 CYCLE)

**VENUE:** TOWN PLANNING COMMITTEE  
ROOM

**TIME:** 10:00

**OVERSTRAND**  
**MUNICIPAL PLANNING TRIBUNAL**  
**MINUTES OF A MEETING OF THE**  
**MUNICIPAL PLANNING TRIBUNAL,**  
**HELD IN THE**  
**TOWN PLANNING COMMITTEE ROOM ON**  
**4 OCTOBER 2024 AT 10:00**

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**PRESENT:**

**MEMBERS:**

Ms H Janser, Directorate Development  
Management  
Mr S Müller, Chief Engineer : Infrastructure Services  
Mr H Blignaut, Principal Engineer : Civil  
Infrastructure Planning  
Ms R Louw, Divisional Manager : Strategic Support  
Services

**OFFICIALS:**

Mr R Kuchar, Divisional Manager : Town & Spatial  
Planning  
Mr S van der Merwe, Senior Town Planner  
Ms H van der Stoep, Senior Town Planner  
Mr H Olivier, Town Planner  
Mr P Roux, Town Planner  
Mr B Minnaar, Town Planner  
Ms S Swart, Senior Committee Officer

**APOLOGIES:**

None

## MUNICIPAL PLANNING TRIBUNAL

## ATTENDANCE REGISTER

Date: **4 OCTOBER 2024**

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	
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	
B MINNAAR	TOWN PLANNER OVERSTRAND MUNICIPALITY	
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	

**1. OPENING**

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

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

None

**3. CONFIRMATION OF MINUTES****3.1 Minutes of a Municipal Planning Tribunal Meeting held on 29 August 2024****RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **29 August 2024, be approved.**

#### 4. ITEMS FOR CONSIDERATION

##### 4.1

#### ERF 1735, 71 BERGSIG STREET, SANDBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, SUBDIVISION, AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF TERRA NUOVA DEVELOPMENTS CC

1735 HSB 4409/2023

(H Boshoff)

H van der Stoep

(028) 313 8900

Hermanus Administration

07 August 2024

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#### EXECUTIVE SUMMARY

An application, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), has been received on 3 November 2023 (final amended application) from Messrs WRAP Project Office on behalf of Terra Nuova Development CC, the owner of Erf 1735, Sandbaai, for the following:

- ❖ **rezoning** of the property in terms of Section 16(2)(a) of the By-Law from Residential Zone 1: Single Residential (SR1) to Subdivisional Area Zone (SA) to accommodate a Residential Zone 1: Single Residential (SR1) erf and a General Residential Zone 3: Flats (GR4) erf;
- ❖ **subdivision** in terms of Section 16(2)(d) of the By-Law to subdivide the property in two portions to create one (1) Residential Zone 1: Single Residential erf, namely Portion A  $\pm 1600\text{m}^2$  in extent, and one (1) General Residential Zone 3: Flats (GR4) erf, namely the Remainder  $\pm 1.64\text{ha}$  in extent, to accommodate the following on the said Remainder:
  - seven (7) blocks of flats consisting of a total of one hundred and forty eight (148) sectional title apartment units with associated amenities;
  - communal open spaces;
  - communal road and parking;
  - a communal clubhouse;
  - a covered gate and guardhouse; and
  - a refuse room;
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to:
  - relax the northern street building line of the abovementioned Remainder portion from 4m to 0m to accommodate thirty-four (34) carports for the apartment units;
  - relax the western lateral building line of the abovementioned Remainder portion from 4.5m to 1m to accommodate four (4) carports for the apartment units;

- relax the southern street building line of the abovementioned Remainder portion from 4m to 3.25m to accommodate a covered gate and guardhouse;
- relax the western lateral building line of the abovementioned Remainder portion from 4.5m to 0m to accommodate a covered gate and guardhouse; and to
- relax the southern street building line of the abovementioned Remainder portion from 4m to 0m to accommodate a refuse room

**RESOLVED:**

that the item **be referred back**.

**RESPONSIBLE OFFICIAL :****H VAN DER STOEP**

## 4.2

**ERF 576, 42 FLYING DUTCHMAN WAY, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF J SMIT**

**576 HFH (4583/2024)**

**H Olivier**

**12 August 2024**

**(028) 313 8900**

**Hermanus Administration**

### **EXECUTIVE SUMMARY**

An application has been received 19 February 2024 from Messrs Plan Active Town- and Regional Planners on behalf of J Smit on Erf 576, Fisherhaven in terms of Section 16(2)(f) of the the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed condition E.4.(b) contained in Title Deed T15942/2023, to accommodate the proposed new development consisting of a primary dwelling with a second dwelling unit on the property.

The restrictive title conditions read as follows:

***“E. SUBJECT FURTHER*** to the following special conditions in said Deed of Transfer Number 17733/1985 newly imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance 33 of 1934 when approving of 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;”*

### **RESOLVED:**

1. that the objections **be noted**;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Erf 576, Fisherhaven for the removal of restrictive title deed condition E.4(b) as contained in Title Deed T15942/2023, to accommodate a proposed second dwelling, **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 the conditions in the Services Report be complied with;
  - (c) that all other development parameters as prescribed in the relevant Land Use Scheme, be complied with; and
  - (d) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
3. 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 Land Use Planning, 2020 with regard to the above conditions of approval.

**REASONS FOR THE RESOLUTION:**

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The Overstrand Land Use Scheme Regulations have sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners or the character of the area.
- ❖ The objections received do not prove the application to be undesirable.
- ❖ Similar applications to allow second dwellings have previously been approved in Fisherhaven
- ❖ The proposal is considered in line with the Municipality's SDF.
- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.

**RESPONSIBLE OFFICIAL :****H OLIVIER**



## 4.3

**ERF 121, 51 THE CRESCENT, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND CONSENT USE: INTERACTIVE TOWN AND REGIONAL PLANNING ON BEHALF OF R & BA HAGGARD**

121 HFH (4609/2024)

H Olivier

7 August 2024

(028) 313 8900

Hermanus Administration

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**EXECUTIVE SUMMARY**

An application was received on 14 March 2024 from Interactive Town and Regional Planning on behalf of R & BA Haggard on Erf 121, Fisherhaven in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Removal of Restrictive Title Deed Conditions** 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 deed condition E.4.(c) as contained in Title Deed T28893/2021 of the property to accommodate additions to the existing dwelling on the property.

The restrictive title condition read as follows:

*“E. **SUBJECT FURTHER** to the following special conditions newly imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance No 33 of 1934 when approving the establishment of Fisherhaven Township, as contained in Deed of Transfer No. T36503/1982.*

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 Township 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:*

*(c) not more than 30% of the area thereof shall be built upon;”*

- ❖ **Consent use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to accommodate a proposed dwelling unit on the ground floor.

**RESOLVED:**

1. that the objections **be noted**;
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 121, Fisherhaven for the removal of restrictive title deed condition E.4.(c) as contained in Title Deed T28893/2021 of the property to accommodate additions to the existing dwelling on the property, **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 Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 121, Fisherhaven for a consent use to accommodate a proposed dwelling unit on the ground floor level, **be approved**, in terms of the provisions of Section 61 of the By-Law;
4. that the approvals in Points 2 and 3 above be subject to the following conditions:
  - (a) that the approval is only for the development as indicated on plan number LKN 161/2023 – Rev 1 dated 29 November 2023, submitted with the application;
  - (b) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control – 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 Land Use Scheme be complied with;
  - (e) that the conditions of Eskom be complied with; and
  - (f) that all the conditions in the Services Report 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, 2020 regarding the above decision.

**REASONS FOR THE RESOLUTION:**

- ❖ The application is supported by all relevant Municipal Departments and State or other institutions.

- ❖ The objections received are not relevant as no application was submitted for a bottle store and the property is already situated in an approved business node and therefore the application cannot impact the character of Fisherhaven.
- ❖ No Municipal services are affected.
- ❖ The original dwelling was approved in line with the Title Deed restrictions which allow a dwelling on ground floor, and the application for a consent use to allow the dwelling extensions on ground floor is only to address the conflict with the existing Land Use Scheme regulations for Business Zone 3 erven.
- ❖ The coverage allowed for Business Zone 3 erven in this area is 75%, and the existing dwelling enlarged to a 34% coverage will not have an impact on the character of this area.
- ❖ The application will not have a negative impact on neighbours.

**RESPONSIBLE OFFICIAL :**

**H OLIVIER**

## 4.4

**ERF 775, 13 SHEARWATER CRESCENT, VERMONT, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE, CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF K PALIC**

**775 HVM (4473/2023)**

**H Olivier**

**(028) 313 8900**

**Hermanus Administration**

**5 September 2024**

### EXECUTIVE SUMMARY

An application was received on 4 September 2023 from WRAP Project Office on behalf of K Palic on Erf 775, Vermont in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Removal of Restrictive Title Deed Conditions** 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 deed conditions E.(a), E.(c) and E.(d) as contained in Title Deed T38907/2021 of the property to accommodate building line departures, a guesthouse and a second dwelling on the property.

The restrictive title deed conditions read as follows:

*“E. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T 2109/1948 in favour of “South Westerns Districts Land and Finance Corporation (Proprietary) Limited” (hereafter referred to as the “Transferor Company” and its successors in title of the remaining land held by Deed of Transfer No. T 7023/1935, viz:-*

- (a) “Save with the consent of the Transferor company in writing no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 3,15 metres to the street line which forms a boundary of the said property, and no such building or structure shall be situated within 1,57 metres of the lateral boundary common to any adjoining lot, nor save with the consent aforesaid, may the said property of any lot of the property sold compromises more than one lot, be subdivided.*
- (c) No canteen, hotel, restaurant, shop, factory, industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent in writing of the Transferor Company.*
- (d) Unless the permission of the Transferor Company in writing be obtained under condition (c) above the said property shall be used for residential purposes only and only one dwelling, together with such outbuildings as are ordinarily required for domestic purposes, shall be erected on any one lot in*

*particular, subject to any permission granted as aforesaid, no structure or the type commonly known as "flats" shall be erected on the said property."*

- ❖ **Departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the lateral building line from 2m to 1,2m to accommodate the existing steps.
- ❖ **Consent use** in terms of Section 16.(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to accommodate a five (5) bedroom guesthouse.
- ❖ **Determination of an Administrative penalty** application in terms of Section 16.(2)(q) of the By-Law for the unauthorized building line encroachments and illegal utilisation of the dwelling as two dwellings.

**RESOLVED:**

1. that the objections **be noted**;
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 775, Vermont for the removal of restrictive title deed conditions E.(a), E.(c) and E.(d) as contained in Title Deed T38907/2021 of the property to accommodate building line departures, a guesthouse and a second dwelling on the property, **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 Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 775, Vermont for a departure relax the lateral building line from 2m to 1,2m to accommodate the existing covered steps, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application in terms of Section 16.(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 775, Vermont for a consent use to accommodate a guest house, **be approved**, in terms of the provisions of Section 61 of the By-Law;
5. that the approvals in Points 2 to 4 above be subject to the following conditions:
  - (a) that the approval for the guest house be **limited to 3 guest rooms**, and that a **revised** Site Development Plan be submitted showing which three rooms will be utilized as guest rooms, and also showing a revised parking layout removing parking bays 1, 5 and 6 from the parking plan submitted, and creating one additional parking bay between the outbuilding and the dwelling, to the satisfaction of the Divisional Manager: Town and Spatial Planning;

- (b) that the south-facing balconies that are accessible to guests be screened by the placement of non-see-through screens next to and at the full height of the balustrades, to the satisfaction of the Divisional Manager: Town & Spatial Planning;
- (c) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control and the Fire Departments be complied with at that stage;
- (d) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with;
- (e) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
- (f) that all the conditions in the Services Report be complied with;
- (g) that the conditions imposed by Telkom be complied with,
- (h) that the owner/manager must reside on the property to oversee the guest house,
- (i) that no more than three (3) staff members shall be employed in support of the establishment at any given time;
- (j) that adequate provision be made to manage the behaviour of patrons (both inside and outside the building) and for security and protection of surrounding properties, patrons, vehicles, etc.;
- (k) that no activities constituting a source of public nuisance shall be carried out;
- (l) that no disturbance from loud music and other sources are allowed after 22:00;
- (m) that no cooking facilities or prep bowls may be provided in the guest rooms;
- (n) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
- (o) that commercial rates and tariffs, as determined by the annual budget, be made applicable, which tariffs are automatically adjusted in terms of the annual budget;

- (p) that no advertising sign shall be displayed without the written approval of the Municipality other than a single, un-illuminated sign or notice affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand Signage By-Law at any given time, and
- (q) that a Health Certificate be obtained from the Health Department of the Overberg District Municipality and a Fire Prevention Certificate from the Municipal Fire Department.
6. that all the illegal building work (additional kitchen and wendy house) on the property be removed **within 60 days** of this decision;
7. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 775, Vermont, for the unauthorized structures/buildings over building lines and the illegal land use of self-catering units, as stipulated above, **be imposed**, and that an administrative penalty fee of **R37 749-00** be payable within sixty (60) days of this decision; and
8. 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, 2020 regarding the above decisions.

**REASONS FOR THE RESOLUTION:****POINTS 2 to 5**

- ❖ The encroachment of the staircase over the building line is a minor encroachment and the fact that the staircase is enclosed on three sides and that there is a raised boundary wall next to the staircase will limit the impact on the adjacent neighbours.
- ❖ The conditions in the Title Deed were inserted as no Land Use Scheme was in place when this part of Vermont was originally developed. The new land use scheme stipulates building lines and uses that are compatible with residential uses. The land use scheme also allows for second dwellings as a primary right. The Title Deed restrictions therefore restricts the development of properties to its full potential in line with the Land Use Scheme.
- ❖ The application is supported by all relevant Municipal Departments and State or other institutions.
- ❖ No Municipal services are affected.
- ❖ The objections regarding the lack of parking and impact on privacy do have merit. With the amendment of the parking layout to provide for 5 parking bays and the single garage, the parking manoeuvrability would be improved. The reduction of the number of guest rooms to 3 and the placement of screens on the south-facing balconies would ensure less of an impact on neighbours' privacy and less impact on the character of the area.

- ❖ Guest Houses are part of the fabric of residential areas and if they operate within the parameters as stipulated in the Land Use Scheme, should have a minimal impact on the surrounding property owners.

**POINT 7**

- ❖ It is not clear if the existing landowner constructed the staircase, but every property owner has the responsibility to ensure all buildings / structures on the property are legal.
- ❖ The existing landowner fitted a third kitchen in the dwelling, enclosed areas off and rented it out as self-catering units. A notice was sent out to the existing landowner to cease all illegal activities, but in terms of the objections and existing advertisements on the internet, the units are still being rented out illegally.
- ❖ The penalty fee imposed is reasonable considering the scale of the illegal activities.

**RESPONSIBLE OFFICIAL :****H OLIVIER**



## 4.5

**ERF 9807, 183 MAIN ROAD, EASTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, SUBDIVISION, RIGHT OF WAY SERVITUDE & DEPARTURE: PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF MCGRATH PROPERTY HOLDINGS (PTY) LTD**

**9807 HEC (4467/2023)**

**P Roux**

**(028) 313 8900**

**Hermanus Administration**

**05 August 2024**

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### **EXECUTIVE SUMMARY**

An application was received on 4 September 2023 from Messrs PlanActive Town and Regional Planners on behalf of McGrath Property Holdings (PTY) LTD on Erf 9807, Eastcliff, Hermanus 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).
- ❖ **Subdivision** of the rezoned property in terms of Section 16(2)(d) of the By-Law, to create the following:
  - seven (7) General Residential Zone I: Town Housing (GR1) erven; and
  - one (1) Transport Zone 2: Road and Parking (TR2) erf.
- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to relax the following:
  - the north-western rear building line from 3m to 2m to retain a section of an existing building;
  - the south-eastern street building line from 5m to 0m to retain a section of an existing building, and
  - the south-western lateral building line from 3m to 2m to retain a section of an existing building.

### **RESOLVED:**

1. that the objections **be noted**;

2. 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 9807, Hermanus to **rezone** the 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:

- seven (7) General Residential Zone I: Town Housing (GR1) erven; and
- one (1) Transport Zone 2: Road and Parking (TR2) portion;

**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 Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Erf 9807, Hermanus for **departure** to relax the following:

- the north-western rear building line from 3m to 2m, and
- the south-western lateral building line from 3m to 2m to accommodate the proposed dwellings;

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

4. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Erf 9807, Hermanus for **departure** to relax the south eastern street building line from 5m to 0m to accommodate the existing structure, **not be approved**, in terms of the provisions of Section 61 of the By-Law,

5. that the recommendations under points 2. and 3. be subject to the following conditions:

- (a) that Development be in line with Subdivision Plan Drawing No her9807s9.drw dated *June 2023*;
- (b) that the garages on the properties be set back 5m from the internal road kerb;
- (c) that the areas within the building lines be used for the planting of grass, unless otherwise required in terms of a storm water management plan;
- (d) that prior to the submission of building plans, the developer appoints a specialist to study the area and identify which tree the owls are nesting, whether the owls are currently nesting, whether the tree is indigenous and if required apply for the necessary permit for the removal of the owls under the relevant law and such information be provided to the municipality for record keeping;

- (e) that, prior to the submission of building plans, a singular Architectural Design Guideline (for the development on erven 878, 896 and 9807) in line with the Zoning Scheme parameters and the departure relaxation as dealt with in Point 3 and 4, be submitted to the Town and Spatial Planning Division;
- (f) that prior to the submission of building plans, a right of way servitude be registered in favour of Erven 878 and 896 on the section of the internal road on Erf 9807;
- (g) that the recommendation of the Site Traffic Assessment by DL Consulting be implemented by the developer;
- (h) that all conditions imposed by Waste Management and Engineering Services be complied with;
- (i) that a Homeowners' Association be established with compulsory membership for all subsequent property owners within the development of erven 878, 896 and 9807;
- (j) 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, and
  - 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;
- (k) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with; and
- (l) that erven 878, 896 and 9807 be notorially tied with regards to services, roads, use of the open space and refuse room, prior to the registration of the first property;
- (m) that all services (including roads, water and sewer circulation, refuse room and electrical connection(s)) be completed on erven 878, 896 and 9807 prior to the registration of the first property; and
- (n) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.

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 is desirable as it will allow for new dwelling units near the CBD while conforming to the characteristics of the area.
- ❖ The proposal for a General Residential Zone I development is ideally located to act as a transition between the high-density commercial node of Hermanus CBD and the single low-density areas in the Eastcliff suburb and the development as a whole is, therefore, regarded to be 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.
- ❖ 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 have a mix of group housing, single residential and commercial erven.
- ❖ The 5m street building line will not be relaxed as the existing structure has been approved for demolition in terms of the approved demolition permit and due to the fact that the existing structure is located within the 5m road widening area for Main Road.
- ❖ Concerns/objections raised about the impact of additional traffic in Mitchell Street do not prove the development to be undesirable, as set out in the Site Traffic Assessment Report. The Operational and Engineering Services Departments support the application.
- ❖ Sufficient services are available and while the issues regarding low water pressure are noted, it is not relevant to the application and the public should revert their concerns to the Operational Department.
- ❖ The application will have no heritage impact as a demolition permit was obtained to clear the site.
- ❖ The proposal is in line with the general principles of SPLUMA and LUPA as this development will be spatially sustainable, it will not lead to urban sprawl or be developed on agricultural land or environmentally sensitive areas. In terms of efficiency, it will utilise existing road networks and services.
- ❖ The developer will be responsible for acquiring the services of a specialist to identify the location of the owls and to ensure that they are not nesting at the time of removal of the tree.

**RESPONSIBLE OFFICIAL :****P ROUX**

## 4.6

**ERF 878, 48 MITCHELL STREET, EASTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, SUBDIVISION, EXEMPTION OF THE REGISTRATION OF A RIGHT OF WAY SERVITUDE & DEPARTURE: MESSRS INTERACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF BASFOUR 2072 (PTY) LTD**

**878 HEC (4472/2023)**

**P Roux**

**05 August 2024**

**(028) 313 8900**

**Hermanus Administration**

### **EXECUTIVE SUMMARY**

An application was received on 4 September 2023 from Messrs InterActive Town & Regional Planners on behalf of Basfour 2072 (Pty) Ltd on Erf 878, Eastcliff, Hermanus 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);
- ❖ **Subdivision** of the rezoned property in terms of Section 16(2)(d) of the By-Law, to create the following:
  - three (3) General Residential Zone I: Town Housing (GR1) erven;
  - one (1) Open Space Zone 3: Private Open Space (OS3) 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:
  - the northern lateral building line from 3m to 2m;

### **RESOLVED:**

1. that the objections **be noted**;

2. that the application in terms of Section 16(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Erf 878, Hermanus to **rezone** the 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:
  - three (3) General Residential Zone 1: Town House erven, approximately 194.6m<sup>2</sup> to 224.6m<sup>2</sup> in extent;
  - one (1) Open Space Zone 3: Private Open Space, approximately 601.7m<sup>2</sup> in extent, and
  - one (1) Transport Zone 2: Private Parking and Road, approximately 327.5m<sup>2</sup> in extent;

**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 Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Erf 878, for **departure** to relax the northern lateral building line from 3m to 2m, **not be approved**;
4. that the recommendations under paragraph 2. be subject to the following conditions:
  - (a) that development be in line with Subdivision Plan Drawing No. *A101* dated *08/07/2023*;
  - (b) that the garages on the properties be set back 5m from the internal road kerb;
  - (c) that the areas within the building lines be used for the planting of grass, unless otherwise required in terms of a storm water management plan;
  - (d) that prior to the submission of building plans, the developer appoints a specialist to study the area and identify which tree the owls are nesting, whether the owls are currently nesting, whether the tree is indigenous and if required apply for the necessary permit for the removal of the owls under the relevant law and such information be provided to the municipality for record keeping;
  - (e) that, prior to the submission of building plans, a singular Architectural Design Guideline (for the development on erven 878, 896 and 9807) in line with the Zoning Scheme parameters, be submitted to the Town and Spatial Planning Division;

- (f) that prior to the submission of building plans, a right of way servitude be registered in favour of Erven 9807 and 896 on the section of the internal road on Erf 878;
  - (g) that the recommendation of the Site Traffic Assessment by DL Consulting be implemented by the developer;
  - (h) that all conditions imposed by Waste Management and Engineering Services be complied with;
  - (i) that a Homeowners' Association be established with compulsory membership for all subsequent property owners within the development of erven 878, 896 and 9807;
  - (j) 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, and
    - that the Constitution clarifies at what stage that the responsibility would be transferred from the developer to the Homeowners' Association to deal with approval of plans, and
  - (k) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with;
  - (l) that erven 878, 896 and 9807 be notarially tied with regards to services, roads, use of the open space and refuse room, prior to registration of the first property;
  - (m) that all services (including roads, water and sewer circulation, refuse room and electrical connection(s)) be completed on erven 878, 896 and 9807 prior to the registration of the first property; and
  - (n) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
5. 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 Land Use Planning, 2020 with regard to the above conditional approvals.

**REASONS FOR THE RESOLUTION:**

- ❖ The proposal is desirable as it will allow for new dwelling units near the CBD while conforming to the characteristics of the area.

- ❖ The proposal for a General Residential Zone I development is ideally located to act as a transition between the high-density commercial node of Hermanus CBD and the single low-density areas in the Eastcliff suburb and the development as a whole is, therefore, regarded to be 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.
- ❖ 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 have a mix of group housing, single residential and commercial erven.
- ❖ Concerns/objections raised about the impact of additional traffic in Mitchell Street do not prove the development to be undesirable, as set out in the Site Traffic Assessment Report. The Operational and Engineering Services Departments support the application.
- ❖ Sufficient services are available and while the issues regarding low water pressure are noted, it is not relevant to the application and the public should revert their concerns to the Operational Department.
- ❖ The application will have no heritage impact as a demolition permit was obtained to clear the site.
- ❖ The proposal is in line with the general principles of SPLUMA and LUPA as this development will be spatially sustainable, it will not lead to urban sprawl or be developed on agricultural land or environmentally sensitive areas. In terms of efficiency, it will utilise existing road networks and services.
- ❖ The developer will be responsible for acquiring the services of a specialist to identify the location of the owls and to ensure that they are not nesting at the time of removal of the tree.
- ❖ The proposed relaxation of the common boundary will unduly put pressure on the adjacent property owners and will have a negative impact on the adjacent property owners.

**RESPONSIBLE OFFICIAL :****P ROUX**



## 4.7

**ERF 896, 191 MAIN ROAD, EASTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, SUBDIVISION, DEPARTURE AND EXEMPTION OF THE REGISTRATION OF A RIGHT OF WAY SERVITUDE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF Y & P RAMLAKAN**

**896 HEC (4471/2023)**

**P Roux**

**05 August 2024**

**(028) 313 8900**

**Hermanus Administration**

### **EXECUTIVE SUMMARY**

An application was received on 04 September 2023 from Messrs WRAP Project Office on behalf of Y & P Ramlakan on Erf 896, Eastcliff, Hermanus 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).
- ❖ **Subdivision** of the rezoned property in terms of Section 16(2)(d) of the By-Law, to create the following:
  - six (6) General Residential Zone I: Town Housing (GR1) erven; and
  - one (1) Transport Zone 2: Road and Parking (TR2) erf.
- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to relax the northern and western perimeter building lines from 3m to 2m.

### **RESOLVED:**

1. that the objections **be noted**;
2. that the application in terms of Section 16(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Erf 896, Hermanus to **rezone** the 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:
  - six (6) General Residential Zone 1: Town Housing erven, approximately 190m<sup>2</sup> to 318m<sup>2</sup> in extent; and
  - one (1) Transport Zone 2: Road and Parking (TR2) approximately 341m<sup>2</sup> in extent,

**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 Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Erf 896, Hermanus for **departure** to relax northern- and western perimeter building line from 3m to 2m, **not be approved**, in terms of the provisions of Section 61 of the By-Law;
4. that the recommendation under point 2. be subject to the following conditions:
  - (a) that development be in line with Subdivision Plan Drawing No 22/71(001) dated 06/06/2023;
  - (b) that the garages on the properties be set back 5m from the internal road kerb;
  - (c) that the areas within the building lines be used for the planting of grass, unless otherwise required in terms of a storm water management plan;
  - (d) that prior to the submission of building plans, the developer appoints a specialist to study the area and identify which tree the owls are nesting, whether the owls are currently nesting, whether the tree is indigenous and if required apply for the necessary permit for the removal of the owls under the relevant law and such information be provided to the municipality for record keeping;
  - (e) that prior to the submission of building plans, a singular Architectural Design Guideline (for the development on erven 878, 896 and 9807) in line with the Zoning Scheme parameters and the departure relaxation as dealt with in Point 3., be submitted to the Town and Spatial Department;
  - (f) that prior to the submission of building plans, a right of way servitude be registered in favour of Erven 878 and 9807 on the section of the internal road on Erf 896;
  - (g) that the recommendation of the Site Traffic Assessment by DL Consulting be implemented by the developer;
  - (h) that all conditions imposed by Telkom, Waste Management and Engineering Services be complied with;
  - (i) that a Homeowners' Association be established with compulsory membership for all property owners within the development;
  - (j) 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, and
  - that the Constitution clarifies at what stage that the responsibility would be transferred from the developer to the Homeowners’ Association to deal with approval of plans, and
- (k) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with; and
- (l) that erven 878, 896 and 9807 be notarial tied with regards to services, roads, use of the open space and refuse room;
- (m) that all services (including roads, water and sewer circulation, refuse room and electrical connection(s)) be completed on erven 878, 896 and 9807 prior to the registration of the first property; and
- (n) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
5. 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 Land Use Planning, 2020 with regard to the above conditional approvals.

#### **REASONS FOR THE RESOLUTION:**

- ❖ The proposal is desirable as it will allow for new dwelling units near the CBD while conforming to the characteristics of the area.
- ❖ The proposal for a General Residential Zone I development is ideally located to act as a transition between the high-density commercial node of Hermanus CBD and the single low-density areas in the Eastcliff suburb and the development as a whole is, therefore, regarded to be 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.
- ❖ 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 have a mix of group housing, single residential and commercial erven.
- ❖ Concerns/objections raised about the impact of additional traffic in Mitchell Street do not prove the development to be undesirable, as set out in the Site Traffic Assessment Report. The Operational and Engineering Services Departments support the application.

- ❖ Sufficient services are available and while the issues regarding low water pressure are noted, it is not relevant to the application and the public should revert their concerns to the Operational Department.
- ❖ The application will have no heritage impact as a demolition permit was obtained to clear the site.
- ❖ The proposal is in line with the general principles of SPLUMA and LUPA as this development will be spatially sustainable, it will not lead to urban sprawl or be developed on agricultural land or environmentally sensitive areas. In terms of efficiency, it will utilise existing road networks and services.
- ❖ The developer will be responsible for acquiring the services of a specialist to identify the location of the owls and to ensure that they are not nesting at the time of removal of the tree.
- ❖ The proposed relaxation of the common boundary will unduly put pressure on the adjacent property owners and will have a negative impact on the adjacent property owners.

**RESPONSIBLE OFFICIAL :**

**P ROUX**

## 4.8

**ERF 1169, 5 DIRKIE UYS STREET, SANDBAAI, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF AC PENTREATH**

**1169 HSB (4514/2023)**

**B Minnaar**

**(028) 313 8900**

**Hermanus Administration**

**04 September 2024**

### EXECUTIVE SUMMARY

An application has been received 03 November 2023 from Messrs PlanActive Town- and Regional Planners on behalf of AC Pentreath in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 1169, Sandbaai for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16(2)(f) of the By-Law, namely condition C.(a) and (c) as contained in Title Deed T29623/2023, to accommodate a second dwelling on the subject property;
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to relax the north-western lateral building line from 2m to 1.347m to accommodate the existing cottage; and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law to legalize the existing cottage and the associated encroachment of the north-western lateral building line of the property.

The restrictive condition as contained in Title Deed T29623/2023 to be removed, reads as follows:

Clauses C.(a) and (c)

The restrictive title conditions read as follows:

*“C. VERDER ONDERHEWIG aan die volgende voorwaardes vervat in gesegde Akte van Transport Nommer T3822/1955 opgelê deur Administrateur wat soos volg lui:*

- (a) That the above erf or erven be used for residential purpose only;*
- (c) That not more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half of the area of any one of the above erven be built upon.”*

The item was amended as follows:

**Revised administrative penalty calculation:**  
**(Refer to page 980 of the agenda)**

**Unauthorised building work**

Municipal tariff:	R20 253,00
Encroachment:	6.13m <sup>2</sup>
Calculation:	6.13m <sup>2</sup> x R20 253,00 = R124 150,89
Administrative penalty:	5% x R124 150,89 = R6 207,55

**Unauthorised land use**

Land Value:	R765 500,00
Erf Size:	714m <sup>2</sup>
Price/m <sup>2</sup> :	Land Value ÷ Erf Size = R1 072,13 / m <sup>2</sup>
Unauthorised Land Use extent:	33,34m <sup>2</sup>
Unauthorised Land Use Period:	1 year
Contravention Value:	(33,34m <sup>2</sup> x 1 072,13) = R35 744,82

*Note: An administrative penalty of 5% to be imposed due to the property not being subject to a notice of non-compliance. However, due to the unauthorised period being 1 year (from the submission of the application), an additional 1% (1% per year) be imposed on the unauthorised land use penalty.*

Administrative penalty:	(6% x R35 744,82) = R2 144,69
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<b>Total contravention penalty</b>	= building work + land use = R6 207, 55 + R2 144,69 = R8 352, 24
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**RESOLVED:**

1. that the late objection **be noted**;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) for **the removal of restrictive title deed conditions C (a) and (c)** as contained in Title Deed No. T29623/2023 of Erf 1169, Sandbaai as contained in Title Deed T29623/2023, to accommodate a second dwelling, **be approved** in terms of the provisions of Section 61 of the By-Law;

3. that the application for a **departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the north-western lateral building line of Erf 1169, Sandbaai from 2m to 1.347m, to accommodate the second dwelling; **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the applicant **not be exempt** from the payment of an administrative penalty for the unauthorised building work over building lines and unauthorised land uses on the subject property, in terms of Section 90(4) of the By-Law, ;
5. that the decisions in paragraphs 2, 3 and 4 above be subject to the following conditions:
  - (a) that this approval is only for the development as indicated on the site plan numbered *1 0506/A1/02* dated *13 October 2023* as submitted with the application;
  - (b) 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
  - (c) that all the conditions from Telkom be adhered to;
  - (d) that all the conditions in the Services Report be complied with;
  - (e) that an **administrative penalty of R8 352,24** (being 5% for the unauthorised building work and the 6% of the unauthorised land use, calculated utilising the Overstrand Municipal Budget as determined by the municipality and the land value of the property respectively), **be payable within sixty (60) days** of the decision;
  - (f) that all other development parameters as prescribed in the relevant Land Use Scheme, be complied with; and
  - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
6. that the applicant and person who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.

**REASONS FOR THE RESOLUTION:**Reasons for approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The late objection be noted and that all the objection points were adequately responded to.
- ❖ The onus is on the property owner to ensure that the land use rights and building plans are compliant when purchasing a property. Due to the continuation of letting the property for purposes of self-catering without the necessary approval (in terms of the applicable title deed) for 1 year (after submission of the application), the administrative penalty of 6% was imposed for the unauthorised land use activity.
- ❖ The Overstrand Land Use Scheme Regulations have sufficient control measures when it comes to second dwellings.
- ❖ The proposal is considered in line with the Municipality's SDF.
- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA, as it is efficient to utilised land and infrastructure to it maximum potential.
- ❖ The proposed use and building line encroachment will not impact negatively on the adjacent property owners or the character of the area.

**RESPONSIBLE OFFICIAL :****B MINNAAR**



## 4.9

**ERF 214, 129 JAN VAN RIEBEEK CRESCENT, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF PD DE KOCK & WD SIMPSON**

**214 HSB (3962/2021)**

**B Minnaar**

**(028) 313 8900**

**Hermanus Administration**

**05 September 2024**

### EXECUTIVE SUMMARY

An application was received on 29 December 2021 from Messrs PlanActive Town & Regional Planners on behalf of PD de Kock & WD Simpson in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 214, Sandbaai for the following:

- ❖ **removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-Law of condition B.2.(a), B.2.(c) & B.2.(d) contained in Title Deed T44974/2016, to accommodate more than one dwelling unit on the property and to utilise it as a self-catering unit as well as to accommodate the street building line encroachment;

The restrictive conditions as contained in Title Deed T44974/2016 to be removed, read as follows:

Clause B.(2)(a)

*“That the above erf or erven be used for residential purpose only.”*

Clause B 2.(c)

*“That not more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half of the area of any one of the above erven be built upon.”*

Clause B 2.(d)

*“that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.”*

- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to:
  - ❖ relax the eastern lateral building from 2m to  $\pm 1.876$ m to accommodate the dwelling unit and second dwelling unit;
  - ❖ relax the western lateral building line from 2m to  $\pm 0.963$ m to accommodate the outbuilding; and
  - ❖ relax the rear building line from 2m to  $\pm 0.957$ m to accommodate the outbuilding;
- **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law to legalize unauthorized building work & unauthorised land use on the property.

The item was amended as follows:

**Revised administrative penalty calculation:**  
**(Refer to page 1037 of the agenda)**

**Unauthorised encroachment**

Municipal tariff:	R20 253,00
Encroachment:	3.194m <sup>2</sup>
Calculation:	3.194m <sup>2</sup> x R20 253,00 = R64 688,09
Contravention penalty:	5% x R61 027,76 = R3 234,41

**Unauthorised land use**

Land Value:	R492 00,00
Erf Size:	902m <sup>2</sup>
Price/m <sup>2</sup> :	Land Value ÷ Erf Size = R546,01 / m <sup>2</sup>
Unauthorised Land Use extent:	459,99m <sup>2</sup> (excl. single garage)
Unauthorised Land Use Period:	3 years
Contravention Value:	(459,99m <sup>2</sup> x R546,01) = R251 159,14

*Note: An administrative penalty of 10% to be imposed due to the property in question being subject to non-compliance cases in 2019 as well as in 2020 for unauthorised land use. Additionally, the unauthorised land use (4 flats being rented) with an additional 2 flats being rented after the submission of this application for a 3-year period, an additional 3% (1% per year) be imposed on the unauthorised land use penalty.*

Administrative penalty: (13% x R251 159,14) = R36 650,69

**Total contravention penalty** = building work + land use  
 = R3 234,41 + R36 650,69  
 = R39 885,10

**RESOLVED:**

1. that the objection **be noted**;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the **removal of restrictive title conditions B.2.(a), B.2.(c) & B.2.(d)** as contained in Title Deed T44974/2016 applicable to Erf 214, Sandbaai, in order to accommodate a second dwelling unit on the property to be utilized as a self-catering unit, as well as to accommodate the street building line encroachment, **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 By-Law for the following:
  - a) relaxation of the eastern lateral building line from 2m to  $\pm 1.876$ m to accommodate the main and second dwelling units;
  - b) relaxation of the western lateral building line from 2m to  $\pm 0.963$ m to accommodate the outbuilding; and
  - c) relaxation of the rear building line from 2m to 0.957m to accommodate the outbuilding;**be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the applicant **not be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-Law for the unauthorised building work over building lines and unauthorised land uses on the subject property;
5. that the decisions in paragraphs 2, 3 and 4 above be subject to the following conditions:
  - (a) that the approval is only for the development as indicated on Plan no. / 0391/A3/06 dated 28-10/2021, as submitted with the application;
  - (b) that building plans be submitted to the Building Department for approval, and that all conditions of the Building and the Fire Departments, be complied with at that stage;
  - (c) that all the conditions in the Engineering Services Report and Telkom be complied with;
  - (d) that an **administrative penalty of R39 885,10** (being 5% of the unauthorised building work and 13% for the unauthorised land use, calculated utilising the Overstrand Municipal Budget as determined by the municipality and the land value of the property respectively), be payable within ninety (90) days of this decision;

- (e) that building plans be submitted to the building control department (that reflect this approval) within 30 days of the date of the decision;
  - (f) that the renovations of the buildings on the subject property be done within 6 months of the date of the decision;
  - (g) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with; and
  - (h) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
6. that the applicant and person who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.

**REASONS FOR THE RESOLUTION:**Reasons for approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners or the character of the area.
- ❖ The objection received from the property owner of Erf 164 Sandbaai is not substantial or relevant to the intent of the property owner to rectify the contraventions and the proposed development or the impact thereof.
- ❖ That administrative penalty imposed is for the two (2) additional flats that were constructed after submission of the land use planning application.
- ❖ Due to the continuation and additional unauthorised land use activity being conducted on the subject property after the submission of this application, the administrative penalty of 13% was imposed for the unauthorised land use activity.
- ❖ The proposal is considered in line with the Municipality's SDF and is consistent with the planning principles in terms of LUPA and SPLUMA.

**RESPONSIBLE OFFICIAL :****B MINNAAR**

## 4.10

**ERF 37, 47 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS, REZONING, SUBDIVISION, DEPARTURE AND EXEMPTION OF THE REGISTRATION OF A RIGHT OF WAY SERVITUDE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF BUSHGIRL (PTY) LTD**

**37 GBH (4124/2022)**

**SW van der Merwe**

**12 September 2024**

**(028) 313 8900**

**Hermanus Administration**

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**EXECUTIVE SUMMARY**

An application, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), was received on 19 April 2022 from Messrs WRAP Project Office on behalf of Bushgirl (Pty) Ltd, the owner of Erf 37, Birkenhead in terms of the Overstrand Municipality Municipal Land Use Planning Amendment By-law 2020 for the following:

- **removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-Law for removal of conditions C.(a), C.(b) and C.(c) contained in Title Deed T63771/2021;
- **rezoning** in terms of Section 16(2)(a) of the By-law from Residential Zone 1: Single Residential (SR1) to Subdivisional Area Zone (SA);
- **subdivision** in terms of Section 16(2)(d) of the By-law into five Residential Zone 1: Single Residential (SR1) erven and one Open Space Zone 3: Private Open Space erf, and
- **departure** in terms of Section 16(2)(b) to encroach the lateral building line from 2m to 0m to accommodate a garage between Portion A and Portion B and a covered garden between Portion C and Portion D.

The application also entails registration of a right of way servitude, which is exempted from an application in terms of Section 26 of the By-Law.

**RESOLVED:**

1. that the objections / comments **be noted**;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), for the **removal of restrictive title deed conditions** C(a), C(b) and C(c) as contained in Title Deed T63771/2021 applicable to Erf 37, Birkenhead, **be approved** in terms of the provisions of Section 61 of the By-Law;

3. that the application for **rezoning** in terms of Section 16(2)(a) of the By-Law from Residential Zone: Single Residential (SR1) to Subdivisional Area, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application for **subdivision** in terms of Section 16(2)(d) of the By-Law in five (5) Residential Zone 1: Single Residential (SR1) erven of 600m<sup>2</sup> in extent each and a Remainder Open Space Zone 3: Private Open Space (OS3), **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application for **departure** in terms of Section 16(2)(b) of the By-Law in order to relax the 2m lateral building line applicable to the Residential Zone 1 erven to 0m, **not be approved** in terms of the provisions of Section 61 of the By-Law,
6. that the approvals in paragraphs 2, 3 and 4 above be subject to the following conditions:
  - (a) that a Homeowners Association (HOA) be established prior to the registration of the first erf;
  - (b) that the constitution of the HOA be submitted for municipal approval, which constitution must provide for the development, upkeep and maintenance of the property in accordance with an approved Environmental Management Plan, Alien Clearing Plan and Architectural Guidelines;
  - (c) that Architectural Guidelines be submitted for municipal approval prior to submission of building plans demonstrating compliance with the development parameters as per the Danger Point Precinct Plan;
  - (d) that a revised site development plan be submitted for municipal approval demonstrating compliance with the Danger Point Precinct Plan, the EMOZ and HPOZ, and shall, as a minimum, indicate the position and coordinates of the five single residential erven, the 20m buffer and 150m setback from Marine Drive, as well as the placement of the dwellings on the erven to ensure a fragmented/disaggregated building form to the satisfaction of the municipality;
  - (e) that the conditions in the Services Report be complied with;
  - (f) that all the conditions from Department of Transport and Public Works be adhered to;
  - (g) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;

- (h) that the use of the remainder Open Space Zone 3 portion be limited to conservation use as per the Overstrand Land Use Scheme, 2020 and be maintained in accordance with an approved Environmental Management Plan and Alien Clearing Plan;
  - (i) that an Environmental Management Plan and Alien Clearing plan be submitted for municipal approval prior to commencement of the development that address both construction and operational phases of the development, including rehabilitation;
  - (j) that the total floorspace of the dwellings, garages included, not exceed 250m<sup>2</sup> per single residential erf;
  - (k) that the dwellings may only be provided with one kitchen; and
  - (l) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
7. that a right of way servitude be registered in favour of the subdivided portions and Erf 38 Birkenhead; and
8. 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 conditions of approval.

**REASONS FOR THE RESOLUTION:**Reasons for approval

- ❖ The application has followed due procedure.
- ❖ The development is consistent with the applicable strategic policy documents.
- ❖ The development is consistent with the planning principles.
- ❖ The development does not detract from the character of the surrounding area.
- ❖ The development does not unacceptably detract from the vested rights of adjoining property owners

Reasons for non-approval

- ❖ The building placement and design are not consistent with the Danger Point Precinct Plan and the HPOZ and EMOZ regulations, in that the proposal entails large monolithic buildings with a horizontal emphasis opposed to fragmented building form with a lesser impact.

**RESPONSIBLE OFFICIAL :****S VAN DER MERWE**

## 4.11

**ERF 38, 49 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS, REZONING, SUBDIVISION, CONSENT USE, DEPARTURE AND EXEMPTION OF RIGHT OF WAY SERVITUDE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF BUSHGIRL (PTY) LTD**

**38 GBH (4125/2022)**

**SW van der Merwe**

**13 September 2024**

**(028) 313 8900**

**Hermanus Administration**

### **EXECUTIVE SUMMARY**

An application, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), was received on 12 April 2022 from Messrs WRAP Project Office on behalf of Bushgirl (Pty) Ltd, the owner of Erf 38, Birkenhead in terms of the Overstrand Municipality Municipal Land Use Planning Amendment By-Law 2020 for the following:

- **removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-Law for removal of conditions C.(a), C.(b), C.(c) and C.(e) contained in Title Deed T34160/2021;
- **rezoning** in terms of Section 16(2)(a) of the By-Law from Residential Zone 1: Single Residential (SR1) to Subdivisional Area Zone (SA);
- **subdivision** in terms of Section 16(2)(d) of the By-Law to subdivide the property into one General Residential Zone 3, four Residential Zone 1: Single Residential (SR1) erven and one Open Space Zone 3: Private Open Space erf;
- **consent use** in terms of Section 16(2)(o) of the By-Law to permit a boutique hotel, and
- **departure** in terms of Section 16(2)(b) of the By-Law to encroach the lateral building line from 2m to 0m to accommodate a garage between Portion A and Portion B and a covered garden between Portion C and Portion D.

The application also entails registration of a right of way servitude, which is exempted from an application in terms of Section 26 of the By-Law.

### **RESOLVED:**

1. that the objections / comments **be noted**;



2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), for the **removal of restrictive title deed conditions** C.(a), C.(b), C.(c) and C(e) as contained Title Deed T34160/2021 applicable to Erf 38, Birkenhead, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for **rezoning** in terms of Section 16(2)(a) of the By-Law from Residential Zone: Single Residential (SR1) to Subdivisional Area, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application for **subdivision** in terms of Section 16(2)(d) of the By-Law in four (4) Residential Zone 1: Single Residential (SR1) erven (approximately 600m<sup>2</sup> each), one Residential Zone 1 erf to retain the existing dwelling and one (1) Open Space Zone 3: Private Open Space (OS3) erf (approximately 5848m<sup>2</sup>), **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application for **subdivision** in terms of Section 16(2)(d) of the By-Law applicable accommodate a General Residential Zone 3 erf on Portion D **not be approved** in terms of the provisions of Section 61 of the By-Law;
6. that the application for **departure** in terms of Section 16(2)(b) of the By-Law in order to relax the 2m lateral building line applicable to the Residential Zone 1 erven to 0m, **not be approved** in terms of the provisions of Section 61 of the By-Law;
7. that the application for **consent use** in terms of Section 16(2)(o) of the By-Law to accommodate a boutique hotel, **not be approved** in terms of the provisions of Section 61 of the By-Law;
8. that the approvals in paragraphs 2. to 4. above be subject to the following conditions:
  - (a) that the erf size of portion A be limited to an area not exceeding 1500m<sup>2</sup>;
  - (b) that a Homeowners Association (HOA) be established prior to the transfer of the first erf;
  - (c) that the constitution of the HOA be submitted for municipal approval, which constitution must provide for the development, upkeep and maintenance of the property in accordance with an approved Environmental Management Plan and Alien Clearing Plan and Architectural Guidelines;
  - (d) that Architectural Guidelines be submitted for municipal approval prior to submission of building plans demonstrating compliance with the development parameters as per the Danger Point Precinct Plan;

- (e) that a revised site development plan be submitted for municipal approval demonstrating compliance with the Danger Point Precinct Plans, the EMOZ and HPOZ and shall, as a minimum, indicate the position and coordinates of the five single residential erven, the 20m buffer and 150m setback from Marine Drive as well as the placement of the dwellings on the erven to ensure a fragemented/disaggregated building form;
  - (f) that the conditions in the Services Report be complied with;
  - (g) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
  - (h) that the use of the remainder Open Space Zone 3 portion be limited to conservation use as per the Overstrand Land Use Scheme, 2020 and be maintained in accordance with an approved Environmental Management and Alien Clearing Plan;
  - (i) that an Environmental Management Plan and Alien Clearing plan be submitted for municipal approval prior to commencement of the development that address both construction and operational phases of the development, including rehabilitation;
  - (j) that the total floorspace of the dwellings, garages included on Portions b, c, d and e not exceed 250m<sup>2</sup>;
  - (k) that the dwellings may only be provided with one kitchen; and
  - (l) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
9. that a right of way servitude be registered in favour of the subdivided portions and Erf 37, Birkenhead; and
10. 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 conditions of approval.

**REASONS FOR THE RESOLUTION:**Reasons for approval

- ❖ The application has followed due procedure.
- ❖ The development is consistent with the applicable strategic policy documents.
- ❖ The development is consistent with the planning principles.
- ❖ The development does not detract from the character of the surrounding area.

- ❖ The development does not unacceptably detract from the vested rights of adjoining property owners

Reasons for non-approval

- ❖ The subject property is not situated in the commercial node.
- ❖ The boutique hotel does not comprise residential densification.
- ❖ The building placement and design are not consistent with the Danger Point Precinct Plan, the Heritage Protection Overlay Zone and Environmental Management Overlay Zone regulations in that the proposal entails large monolithic buildings with a horizontal emphasis.
- ❖ The rezoning to General Residential Zone and consent use to accommodate a boutique hotel with public facilities is not considered consistent with the Spatial Development Framework, the Overstrand Municipal Growth Management Strategy and the Danger Point Precinct Plan.
- ❖ The applicant did not motivate a deviation from the Spatial Development Framework, the Overstrand Municipal Growth Management Strategy and the Danger Point Precinct Plan.

**RESPONSIBLE OFFICIAL :**

**S VAN DER MERWE**

**The meeting adjourned at 12:28**