

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
20 October 2015
(Also the agenda for the Mayoral Committee Meeting : 28 October 2015)**

13.

**ERF 7355, 6 ABALONE STREET, OVERHILLS, KLEINMOND, OVERSTRAND
MUNICIPAL AREA : PROPOSED DEPARTURE : XH SUKA**

7355 KOH (2609)

H van der Stoep

22 September 2015

(028) 313 8900

Hermanus Administration

4. Executive Summary

An application has been received on 27 June 2014 from XH Suka on Erf 7355, Overhills, Kleinmond for a departure from the Scheme Regulations to enable the owner to legalize the existing shebeen on the property.

A Locality Plan of the property concerned is attached as Annexure A. The proposed Site Plan is attached as Annexure B, and the Motivation Report from the applicant in support of the proposal is attached as Annexure C.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

6. Background/Discussion/Evaluation/Conclusion

Background

A similar application was lodged in 2000. The application was not approved by the Municipality. The applicant lodged an appeal in terms of Section 44 to the Department of Environmental Affairs and Development Planning. The appeal was dismissed.

The applicant did not adhere to the decision and continued with the operation of the tavern. During 2014, the applicant submits an application for a tavern on the same residential property.

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Registered notices were sent to all potentially affected property owners, and one (1) objection was received by the Kleinmond Ratepayers' Association.

The application was also circulated to all relevant municipal departments, and no objections were received.

Discussion

The objection received from the Kleinmond Ratepayers' Association can be summarized as follows:

Kleinmond Ratepayers' Association

- Parking is insufficient.
- Noise pollution.
- Possible drug abuse.

Applicant's response to the objection received:

- Patrons to the facility are mostly from the community and walk to the establishment, thus the parking requirements is not applicable.
- No objection was received from the neighbours and the applicant did indicate that music played is in an orderly fashion.
- The applicant indicated that the establishment is well managed.
- It is the opinion of the applicant that the existing taverns are evenly spread and that the taverns can only accommodate a limited number of people.

Town Planner's comment on the objection received:

- Parking is not provided for patrons who visit the establishment.
- The possibility of drug abuse was not proven.
- Noise pollution may occur at night, however during the inspection which was during the day, patrons behaved in an orderly fashion.
- It was noteworthy – the music system in the tavern – to be quite extreme for such a small area, which may contribute to possible noise pollution.

Evaluation

The township of Overhills is located in Kleinmond and has been approved as an Informal Settlement. The township consists of only residential zoned erven and is seen as a residential suburb in Kleinmond. Due to the status of an Informal Settlement, thus the infrastructure makes provision for limited vehicle movement and is based on households with a limited income.

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The tavern in question is situated adjacent Abalone Street. The erf is 178m² and consist of a residential dwelling consisting of a two (2) bedroom house of 41m² and the tavern of 36m². The ablution facility for the business area is located as a separate building on the erf.

In terms of the Overstrand Wide Spatial Development Framework, 2006 and the Overstrand Municipal Spatial Growth Management Strategy, 2010 no business erven was identified in Overhills as it is seen as a residential neighbourhood, which is in close proximity of the services available in the Central Business District (CBD) of Kleinmond. The township does not have any business erven.

Taverns are a type of business that is earmarked for the CBD or a business node as identified in the policy documents and the Zoning Scheme. This type of business does have special requirements that are not conducive to a residential development. The parameters require enough parking on site, loading bay, ablution facilities (including facilities for disabled persons) and sufficient storage. One of the major aspects is the noise pollution generated by the customers at night time.

A site inspection was conducted and the following was found:

- The ablution facilities do not provide for disabled persons.
- The storage facilities are not adequate.
- No parking for customers.
- No loading bay available.
- The ablution facilities are located outside the erf and not in the establishment.

The applicant did indicate that most of the customers are pedestrians from the immediate surrounding area and thus parking is not required. It is the applicant's only income. The operating hours are stipulated as follow: 10.00 until 22.00, five (5) days a week, except on a Friday and Saturday when the closing time is at 00.00.

Taken into consideration that the tavern is surrounded by residential properties, the operating hours are not conducive to a quiet neighbourhood and especially where there are school going children.

The SAB delivery vehicles are articulated trucks that block the road during the time of delivery. This has a major impact on vehicle flow taken into consideration that the streets are very narrow. The streets were not built to carry the weight of this type of delivery vehicles. The business area exceeds the allowable area of extent as prescribed in the Overstrand Zoning Scheme Regulations.

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The Town Planning Department is investigating the demarcation of business erven in Overhills, but it does not necessarily mean that the specific erf will be demarcated for business purposes. This will entail that the owner will have to purchase the property earmarked for business, which will not solve the problem as it was indicated that the financial means is limited in this regard.

The Town Planning Department is in the process to identify a possible business node in Overhills. The applicant did request in meetings that a temporary approval for a departure be granted until such time the node has been identified and approved. A temporary departure in the present form is not acceptable as the establishment does not comply with National Building Regulations.

The applicant did indicate that Kleinmond has seventeen (17) liquor licenses. However, they are located in the CBD as a business node. The requirements regarding parking and loading bays are addressed. None of them are situated within the residential area and such a comparison cannot be made.

Conclusion

Application not be recommended for approval.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Building Control Department

- Provide disabled toilet and disabled access.
- Exceed allowable 25% floor space.
- Ceiling height to comply with SANS.
- Submit plans to show illegal structures.

Fire Department

The approval is subject to compliance with requirements with Fire Safety Regulations SANS 10400T:2011 and the Overstrand Community Fire Safety By-Law.

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District Health

Supported.

10. Annexures

- Annexure A: Locality Plan
- Annexure B: Proposed Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Objection received
- Annexure E: Applicant's comment on the Objection received

RECOMMENDATION:

1. that the objection **be noted**;
2. that, in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a departure from the Scheme Regulations on Erf 7355, Overhills, Kleinmond, **not be approved**, due to the following reasons:
 - (a) the land use for a tavern is not in line with the Scheme Regulations and the Overstrand Municipal Spatial Growth Management Strategy;
 - (b) the land use is not catered for in the design of the township and width of the street does not cater for articulated trucks and or delivery vehicles;
 - (c) the proposed land use is not conducive to the residential character of Overhills in terms of being compliant with the National Building Regulations, Fire Regulations, noise pollution and hours of trading;
 - (d) the hours of trading for business on residential erven in terms of the Zoning Scheme Regulations, does not allow the trading hours proposed by the applicant in order to accommodate all residents and especially school going children of the area;
 - (e) the ablution facility does not comply as a paraplegic toilet facility and is not catered for; and
 - (f) the tavern exceed the allowable coverage on residential erven for business purposes e.g 25% or 30m², whichever is the lesser.
3. that the applicant be notified of its right of appeal in terms of Section 62 of the Local Government : Municipal Systems Act No 32 of 2000 with regard to the above decision.

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RESPONSIBLE OFFICIAL :	H VAN DER STOEP
TARGET DATE FOR IMPLEMENTATION :	11 NOVEMBER 2015
TARGET DATE TO INFORM APPLICANT :	11 NOVEMBER 2015
TARGET DATE TO INFORM OBJECTOR :	11 NOVEMBER 2015

247a

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MUNICIPAL AREA : PROPOSED DEPARTURE : XH SUKA**

**7355 KOH (2609)
H van der Stoep (028) 313 8900 Hermanus Administration
22 September 2015**

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
20 OCTOBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

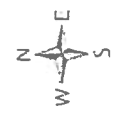
RECOMMENDATION:

that the item **be referred back** for a site inspection and be resubmitted during the November 2015 cycle.

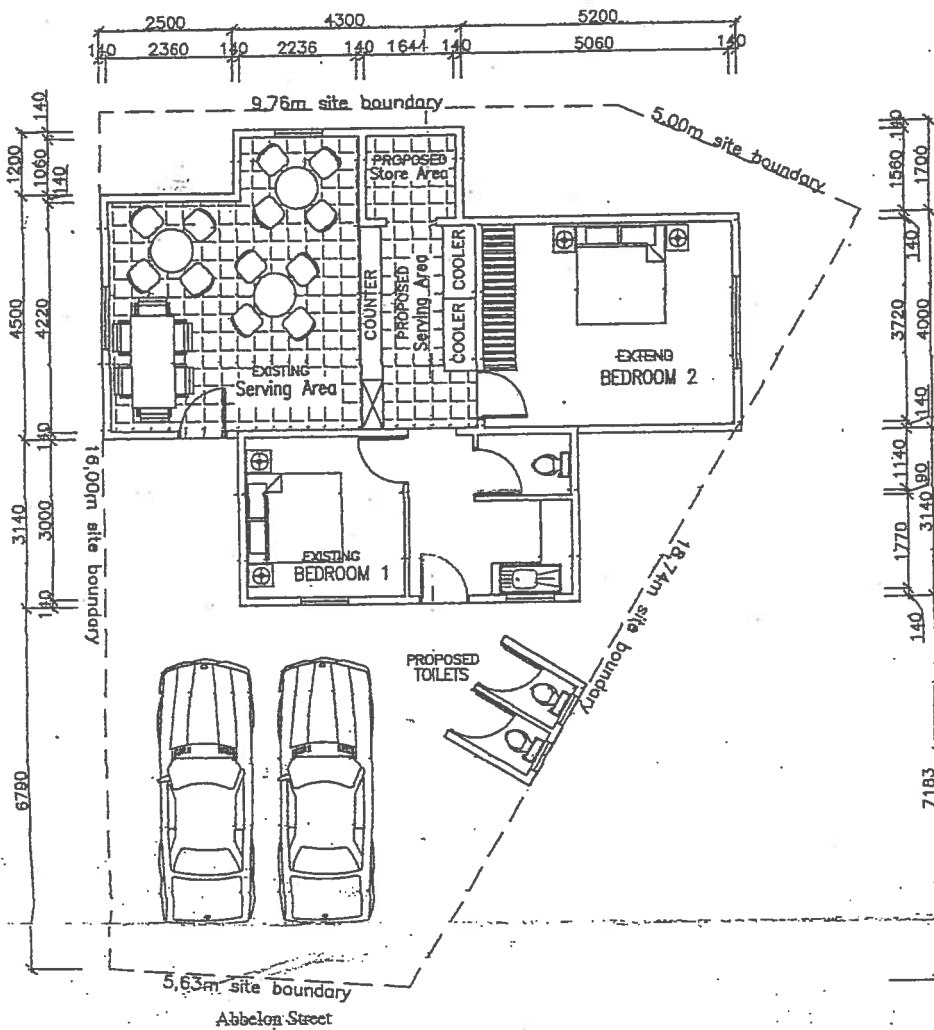
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TARGET DATE FOR IMPLEMENTATION :	11 NOVEMBER 2015
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ERF 7355
 6 ABELONE STREET
 OVERHILLS, KLEINMOND



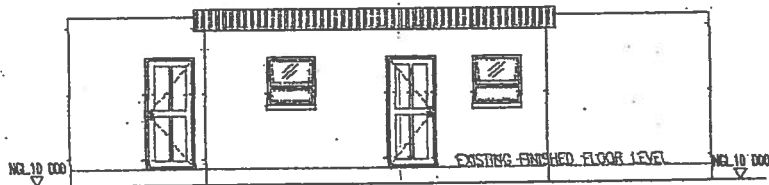
2014/06/30



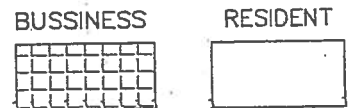
All building work to comply with Municipal Building Specifications. All workmanship to conform with NBR For SPECIFICATIONS REFER TO MUNICIPAL BUILDING MANUAL & ALL WORK TO BE IN STRICT ACCORDANCE WITH MUNICIPAL BUILDING SPECIFICATIONS



GROUND FLOOR PLAN scale 1:100

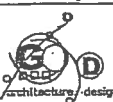



FRONT ELEVATION scale 1:100



COVERAGE

RESIDENT = 41 sqm
BUSINESS AREA = 36 sqm

architecture	name Miss X.H.Suka	drg. title Extention	erf no: 7355	date 02-10-2007	drawn by MANDLA
 15 11 Site B Khayelitsha, 7784 Cape Town, 8000 Tel: (021) 361-9162 Cell: 083 559 7532 Fax: 078 0511 048	address 6 Abbelon Street, Kleinmont	draughtsman: 	owner:	This scheme is subject to town planning and all other necessary consents. Dimensions, areas and levels where given are only approximate and subject to site survey.	
	Loyiso & mandla longudle arch. design, L 511 SITE B, KHAYELITSHA, 7784, CAPE TOWN 8000, Tel. no#: (021) 361-9162				All dimensions are to be checked on site. Any discrepancies are to be reported to the architect before the work commences. Figure dimensions only are to be taken from this drawing.

To whom it may Concerned:

Ms. Xoliswa Hazel Suka Erf: 7355 ,6 Abalone Street KLEINMOND 7195

Application for rezoning Tavern (On Consumption)

Motivation

The Applicant: Ms Suka has the right to occupy the premises which is registered in her name and wants to apply for the right to use part of the property as a business (Documents submitted).

There will be 2 people other than the owner that will be employed and that people is from the community.

Premises: The applicant obtained her liquor license therefore meeting all the Liquor Board's requirements. Liquor will be sold for consumption on the premises only; therefore sitting on the premises to consume alcohol will be allowed (On Consumption). There are 2 toilets in addition to those used by the residents of the house that will be located in the business as per the plan. The infrastructure necessary to operate in accordance to the Liquor Law including tables for people to sit at and the serving bar counter.

Suitability: The premises are easily accessed by patrons, most of whom do not have motorized transport. There is therefore no need for extra parking facilities other than the indicated on the plan submitted and there exist no potential of traffic problems (On site).

Undesirable conditions: There exist no undesirable negative factors such as noise or disturbances at the premises. There have never been any complaints of any nature and neighbours support the applicant.

Zoning: Proposed Zone – Business 1

Operating Hours: Monday-Thursday	10.00 to 22.00
Friday & Saturday	10.00 to 24.00
Sundays	10.00 to 22.00

Products sold: All types of liquor and other items w.r.t. section 41(1)(C) of the Liquor Act which includes food, mineral water, soft drinks & tobacco products etc.

Hoping that this motivation is considered favourably and don't hesitate to contact myself for more information if needed.

Best regards,

Ms XH Suka

X H. Suka

P Bezuidenhout



KLEINMOND BELASTINGBETALERSVERENIGING
KLEINMOND RATEPAYERS ASSOCIATION

Posbus 134, Kleinmond, 7195.
Voorsitter: Jan-Willem van Staden. 028 271 4281 / 082 887 6466
Vonkpos: staden@kingsley.co.za
Sekretaris: Jannie Viljoen. 028 271 5958 / 084 589 7444
Vonkpos: janniev100@gmail.com

VOORKEUR KORRESPONDENSIE WYSE is 'n Strywe na BEIDE bostaande Epos-adresse.

7 Augustus 2014

Mnr Flippie Bezuidenhout
Munisipale Kantore
KLEINMOND



Geagte Mnr Bezuidenhout

VOORGESTELDE AFWYKING VAN GRONDGEBRUIKBEPERKING: ERWE: 7340,7355 & 7418

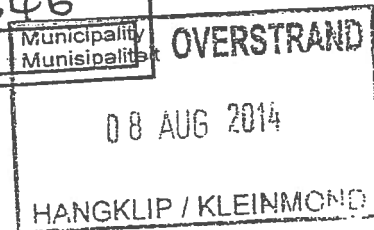
Met verwysing na bogenoemde aansoeke, die volgende:

1. Aangesien die 3 aansoeke, behalwe vir die erf nommers, dieselfde is, word besware in 1 brief saam gevat.
2. Die Kleinmond Belastingbetalers Vereniging (KBBV) maak beswaar teen die voorgestelde afwyking op grond van die volgende:
 - 2.1. Parkering gaan beslis problem veroorsaak. Hoewel die kliënte van die tavern seker meestal per voet daar aankom, is die strate daar baie nou en kan verkeer maklik verspê word.
 - 2.2. Dit is moeilik om te glo dat bure nie gesteur gaan word nie. Ek het nog nie van 'n stil kroeg gehoor nie.
 - 2.3. Dwelm misbruik is 'n algemene problem en selfs al word die huidige plekke gewettig, bestaan daar beslis 'n sterk moontlikheid dat dit dwelm afsetpunte kan word.
 - 2.4. Hoewel elke groep sy eie toegang tot sosiale interaksie gegun word, is dit ons gevoel dat 3 sulke tavernes in die betrokke area te veel is.

Die uwe,

(Get.) Jan Willem van Staden
Voorsitter.

FILE NO:	EL 7355-OH
SCAN NO:	14
COLLABORATOR NO:	651646



VOORKEUR KORRESPONDENSIE WYSE in 'n skrywe (PDF-Lêer) na BEIDE
staden@kingsley.co.za en janniev100@gmail.com



6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200

Tel: (028) 313 1673
Fax / Faks: (028) 312 1351

Email: planactive@hermanus.co.za

Website: www.planactive.co.za

Our reference: PA14057

9 September 2014

The Municipal Manager
Overstrand Municipality
Private Bag X3
KLEINMOND
7195

For attention: Mrs. H. van der Stoep

Sir,

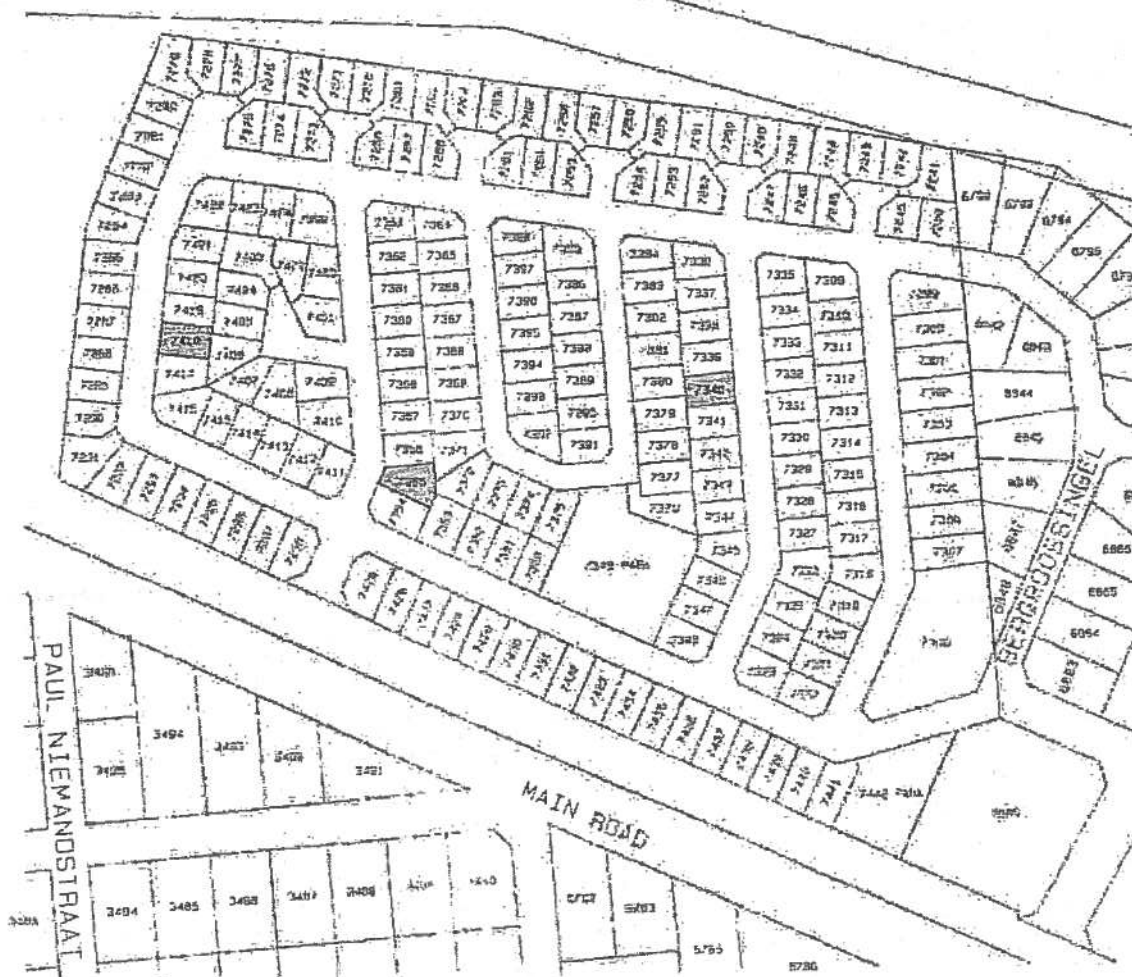
PROPOSED DEPARTURE FROM THE LAND USE RESTRICTIONS: ERF 7355 KLEINMOND

Your letter dated 12 August 2014 to X.H. Suka of 6 Abelone Street with the enclosed objection refers. We have been requested to comment on the objections received from the Kleinmond Ratepayer's Association her behalf. Our comments on the objections are as follow:

- Patrons visiting the tavern are normally from the community and they usually walk there as it is the primary mode of transport. Very few people in this specific township own a motor vehicle and parking will not be of concern. This also explains the reason for the narrow road designs within townships.
- With reference to the objection received from the Ratepayers Association; no objection has been received from a direct neighbours that the tavern is noisy or a nuisance. The owner of the tavern is of the opinion that they play music in an orderly fashion and not excessively loud and that sound levels of patrons are properly managed in order not to be of a nuisance to the neighbours.
- Me. X.H. Suka ensures that her tavern is well managed and that drugs are not tolerated.
- It is our opinion that there are not too many taverns as stated by the Ratepayers Association. The taverns are well spread within the existing township as indicated on the locality map below. The taverns are situated on erven that are $\pm 160\text{m}^2$ each. The number of people that can be accommodated within these taverns are few.

Divine Inspiration Trading 329 (Pty) Ltd, trading as Plan Active
Reg. No. 2006/030921/07
Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP



We trust that you would find our comments on the objections in order.

Yours faithfully

John Mc Lachlan
John Mc Lachlan