

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
19 April 2016
(Also the agenda for the Mayoral Committee Meeting : 28 April 2016)**

8.

**ERVEN 6225, 6226 & 6227, 237 ELEVENTH STREET, HERMANUS (VOËLKLIP),
OVERSTRAND MUNICIPAL AREA : PROPOSED DEPARTURE AND AMENDMENT
OF THE SITE DEVELOPMENT PLAN : MESSRS INTERACTIVE TOWN &
REGIONAL PLANNING ON BEHALF OF THE MARDA TRUST, VILDEK
BELEGGINGS (PTY) LTD AND THE MARIANA FAMILY TRUST**

6225,6226 & 6227 HVK (3032)

P Roux

(028) 313 8900

Hermanus Administration

9 March 2016

1. Executive Summary

An application has been received on 27 August 2015 from Messrs InterActive Town & Regional Planning on behalf of the owners of Erven 6225, 6226 and 6227, Hermanus, The Marda Trust, Vildek Beleggings (Pty) Ltd and The Mariana Family Trust for the following:

- ❖ a departure from the relevant Scheme Regulations in order to relax the lateral building line from 3m to 2m to accommodate proposed alterations;
- ❖ amendment of the Site Development Plan to accommodate proposed alterations.

A Locality Plan of the property concerned is attached as Annexure A. The proposed Site Development Plan is attached as Annexure B, while 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 Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

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5. Legal Requirements

- Sections 15 and 42 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

6. Background/Discussion/Evaluation/Conclusion

Background

Erven 6225, 6226 and 6227 is zoned General Residential Zone 2: Town House and is situated in Voëlklip, Hermanus. Erf 6227 measures 326m² in extent and Erven 6225 and 6226 measures 162m², respectively. All the erven combined with Erf 6220 is developed with semi-detached houses, and forms part of a housing complex.

The existing units on the subject properties do not conform to the aesthetical appearance, value and scale of the properties in the immediate vicinity. Thus, the respective owners intend to upgrade the current dwellings in order to align the appearance and value of the property with that of the adjacent properties.

Registered notices were sent to all surrounding property owners, and three letters of comment/objections were received. Two objection letters were received against the application and one comment letter.

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

Discussion

Letter of comment

Erf 3540, Hermanus - A Wolfaardt, P Wolfaardt and C Friedlander

Consent is given for the relaxation of the 3m lateral building line. The owners of the property requested that the boundary wall must not obstruct any views.

Objections Received

The Pieter Laubscher Trust - Erf 9833, Hermanus

The Trust gives their consent for the proposed departure and amendment of the Site Development Plan, but states that the changes be subject to the following conditions:

- the existing approved building height restriction (to top of parapet walls or safety railings) is not amended or compromised;

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- no temporary and/or permanent structures and/or shelters of whatever nature may be erected on the Second Floor C. This excludes temporary removable shade umbrellas; and
- no “braai” structures with or without chimneys that exceed the existing building restriction (to top of parapet walls or safety railings) may be erected on the Second Floor C.

Messrs WRAP Conculancy on behalf of the Owners of Erven 6221 and 6224, Hermanus

The objector uses Section 36 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) (LUPO) as basis for their objection with specific reference to the point that a departure application for the relaxation of the lateral building line from 3m to 2 must be refused solely on the basis of lack of desirability relating to:

- the safety and welfare of the community concerned
 - In general to provide adequate access to the back of the property in the case of emergencies; and
 - In particular cases it is used by the Municipality to install essential services.

The objector states that the aforementioned can still be achieved with the relaxation of the 3m building line to 2m, but that the privacy of the adjacent property owners will be negatively affected.

- the conservation of the natural and developed environment concerned

The impact of the view of the row of erven behind the subject properties should be considered. The objector supports the upgrade of the aesthetical appearance of the buildings, as long as it is not affecting their own built environment. The relaxation is supported subject to the condition that no building work is allowed on the first floor as it will impact the environment of the objector’s clients.

- the effect of the application on existing land-use rights

The objector makes the statement that it is acknowledged that in South African Law the view from property can nevertheless be protected in a number of ways, some of which are direct, substantive and permanent while others are indirect, procedural and temporary and that *“the un-obscured, existing view from a property can be protected by for instance a Zoning Scheme and building regulations insofar as these devices restrict building works on a neighbouring property that will interfere with such a view. It has been established that a property owner may derive an indirect benefit from the restrictions that building regulations place on neighbouring*

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owners. The protection of the view from a property is an example of such a benefit.”

The objector further states that when a land use right to a view has been secured through zoning or building regulations, any departure of such parameters needs to be advertised to interested and affected parties for comment and if an interested and affected party feels that his rights are affected, may object to such an application.

The objector declare that his client has no objection to the relaxation of the building line on the ground level and will even support further relaxation, on condition that no building work obscures his view on the first floor which they have outside their existing building lines.

Response from the Applicant regarding the Objections received

Response to the Comment received from the Owners of Erf 3540

The applicant states that the abovementioned request is not considered relevant to the application, as the application is made for an amendment of the Site Development Plan and a departure to relax the eastern building line. Thus, the applicant requests that the abovementioned request should be ignored

Response to the objection received from The Pieter Laubscher Trust - owners of Erf 9833

It is clear from The Pieter Laubscher Trust’s comments that they envisage protecting the character of the area and encourages the upgrading of the area through limiting the urban scale (i.e. keeping within the approved height restrictions) and preventing a repeat of the existing situation where temporary structures are erected on the verandas of the buildings.

The comments from The Pieter Laubscher Trust are thus considered most consistent with the content and objective of the application.

Response to the objection received from Messrs WRAP on behalf of the owners of Erven 6221 and 6224

It is considered important to note, when evaluating the objection, that the objector in general follows a methodology of making general statements, but fails to provide any evidence or proof to substantiate these statement, or how these statements relate to the application site.

From the objection, it is undoubtedly clear that the objector attempts to retain a view from Erf 6224, Hermanus.

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It should also be noted that Messrs WRAP acknowledges that it is every owner's right to develop their property to its best value and is not opposed to sustainable well planned development.

Messrs WRAP also supports the applicants' view that the subject properties (on the application area) have the potential to develop in an uncoordinated manner and detract property values in the nearby vicinity.

Messrs WRAP further distinctly declares their support to the applicants' initiative to structure the future development of the adjacent properties.

However, contradictory to the above, Messrs WRAP claims that the application fails to provide a positive advantage to his clients' properties as a result of the proposed departure for the relaxation of the building line from 3m to 2m.

Messrs WRAP uses Section 36 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) (LUPO) as basis for their objection with specific reference to the point that an application shall be refused solely on the basis of lack of desirability relating to:

- the safety and welfare of the community;
- the conservation of the natural and developed environment, and
- the effect of the application on existing land-use rights.

Messrs WRAP also makes use in their objection of the outcome of the legal case: *Hayes and Another vs Minister of Finance and Development Planning, Western Cape, and Others 2003 (4) SA 598 (C) Erasmus AJ* in terms of the interpretation to "desirability". In this legal case the verdict was made that: *"the test of desirability is conclusive- in terms of Section 36(1) where a departure application shall be refused solely on the basis of a lack of desirability. Though the test is phrased in the negative, it lays down a positive test: the test is the presence of a positive advantage which will be served by granting the application"*.

Subsequently, Messrs WRAP converted this verdict thereto that the onus must now lie on the applicant to prove the positive interaction between the proposed land use, the character of the area, existing land uses, and service infrastructure in the area and the guidelines of any relevant structure plan.

Based on the above, the objector claims that the proposed departure (of the building line relaxation from 3m to 2m) is not desirable as there is no interaction between the proposed land use and the proposed additions as a result of the building line departure application.

It is also considered important as a starting point to be aware and informed of the actual proposed construction area in relation with the location of the

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objectors as illustrated in the sketch which is inserted into the response to the objection.

The Safety and Welfare on the Members of the Community

The applicant states that the objection is considered misleading, confusing, lacks objectivity, proof, evidence and should therefore be disregarded.

The only one reason the objector provides for the proposed development to compromise his clients' welfare and safety is that "... *privacy will be lost which will have a direct impact on the use and enjoyment of our clients' properties*".

The objector does not provide any proof and/or evidence on how his clients' welfare and safety will be impacted.

The objector also forsakes to mention that the existing buildings have northwards facing windows over Erf 6224, Voëlklip.

The objector muddles the topic of discussion by stating the purpose of building lines and then diverts the point of discussion stating that the proposed relaxation of building lines will not be a problem on the ground floor and that the "*welfare of the owners of the neighbouring properties will be compromised*".

The claim by the objector that the relaxation of the building line would impact on the safety and welfare of his clients also lacks proof and evidence.

The objector also inappropriately takes the finding of the court case: Hayes and Another vs Minister of Finance and Development Planning, Western Cape, and Others 2003 (4) SA 598 (C) Erasmus AJ out of context by claiming that the proposal will only be desirable if the development proposal provides "*a positive advantage*" towards the abutting properties.

The objector distorted the interpretation of the Court Case to read as follows:

"An application will therefore be desirable if the applicant is able to show that the proposed land use will result in a positive advantage. This translates into an onus on an applicant to provide a positive interaction between the proposed land use, the character of the area, existing land uses, and service infrastructure in the area and the guidelines of any relevant structure plan."

The objector acknowledges that many advantages will result from the proposed relaxation and the subsequent upgrading of the building, but contrary claims without any proof that the application for the relaxation of the building line will not create a positive interaction between the neighbouring properties in terms of safety and welfare.

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It should also be observed that the objector supports an open deck area on first floor with transparent balustrading, but simultaneously and contradicting objects to his clients' privacy being lost.

Thus, it is clear that the objectors' reasoning and interpretation is confusing and factually incorrect.

It should also be taken into consideration that the South African Law does not recognise an inherent right to existing view from a property, because a view is considered a mere incidental advantage, and since the recognition of a natural right to a view from a property would interfere with neighbouring owners' rights to build on their properties, (Carolina A. Koch, University of Stellenbosch Paper with topic of The Right to a View: Common Law, Legislation and the Constitution) and that no legal document relevant to the Overstrand Municipality makes provision to protect a view.

It should also be taken into consideration that the South African Law does not recognise an inherent right to an existing view from a property.

Thus, it is clear that the proposed relaxation of the building line will in no manner at all affect the safety and/or welfare of the owners of the neighbouring properties.

Thus, the argument made by the objector is flawed and incorrect and should be ignored and omitted.

Conservation of the Natural and Developed Environment

The applicant states that this objection is patently flawed and must therefore be regarded as invalid by the competent decision-making authority.

The applicant illustrates the impact of the proposed extension of the building with sketches to demonstrate the impact of the proposed development in terms of views, privacy, shade, sun and as shown in the response to the objection.

It should thus also be clearly noticed that the proposed development will have very little, if any, impact on the row of buildings behind (i.e. the northern side of the row of buildings along Eleventh Street) as the proposed additions are located in front of the existing buildings.

Given the point of conservation of the natural and built environment, the proposal envisage an upgrade/improvement of the existing developed environment which is currently in a relatively poor condition, not aligned with the existing character of the area, and can be considered, if not being attended to soon, on the verge of urban decay.

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The viewpoint of the objector is thus considered totally flawed and taken out of perspective. And the condition of support by the objector is unrealistic and unsubstantiated.

Desirability: Effect of the Application on the Existing Rights

The applicant states that it is important for the decision makers to retain perspective when considering this objection.

In essence the objector takes the stance that the applied building line departure, with the resulting extension to the existing building will not be beneficial (the positive) to the existing rights of the adjacent properties.

The correct interpretation within the context of this application is that Section 36 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) stipulates that an application may only be refused if it lacks desirability or if it has a negative impact on existing rights.

The application to relax the building line undoubtedly complies with the criteria of “need and desirability” as set out in terms of Section 36 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) by complying with the existing approved spatial policies.

The objector provides no evidence of non-desirability apart from stating that there is no positive interaction between the proposed land use and (in this case) the effect thereof on existing rights (i.e. meaning surrounding properties) with the emphasises on the view over the first floor level.

The fact of the matter is that the application will not detrimentally affect the existing land use rights of Erven 6224 or 6221 Voëlklip, Hermanus in terms of existing land use rights, but in actual fact rather benefit the properties through improved property values as a result of the proposed upgrading.

Town Planners’ Response to the Objections

Response to the Comment received from the Owners of Erf 3540

The comment received is regarding the height of the boundary wall. The Zoning Scheme prescribes that a boundary wall may not be higher than 2,1m from the existing ground level. This will only be determined by a submission of a building plan.

Furthermore, this application is not dealing with the boundary wall, therefore the comment will not be considered.

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Response to the Objection received from The Pieter Laubscher Trust owners of Erf 9833

It should be noted that there are no architectural guidelines for Erven 6220, 6227, 6228 and 6225. Therefore the zoning parameters are of affect. The Zoning Scheme prescribes an 8m height restriction. The proposed amendment of the Site Development Plan is in line with the Zoning Scheme parameters. A condition to this effect will also be imposed. Furthermore, in accordance with the building regulations, chimneys must be at least 1m from the roof in order to work efficiently. A condition will be imposed that all chimneys may not be higher than 1m from the roof or 1m above the height restriction, excluding the cowl.

The opinion is held that the concerns of the objectors are addressed by means of the conditions which will be imposed.

Response to the objection received from Messrs WRAP on behalf of the Owners of Erven 6221 and 6224

It is noted that the application will be evaluated in terms of Section 36 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985).

The safety and welfare of the community

The proposed 2m lateral building line will still allow access to the back of the property for emergency personnel. Furthermore, each site receives services from the road; therefore no services will be affected by the proposed development.

Privacy is the main concern of the objector. The applicant illustrates that the views from the additions will not lead to a loss in privacy for the owners of the two erven. It should be noted that the northern elevation of the existing building is proposed to remain the same; no changes will be made to the northern elevations. Therefore, the privacy of the owners on the two erven will remain unchanged.

The Conservation of the Natural and Developed Environment

As previously stated the northern elevation of the dwellings will remain unchanged. Therefore the existing built environment will only be upgraded from an aesthetics point of view, without infringing on the privacy of the northern property owners. The overall upgrade of the additions to the existing structure will help uniformity in the area and help the existing structures to be more in line with the character of the area.

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The Effect of the Application on Existing Land Use Rights

The objector seeks to retain the existing view of the ocean. It should be noted the view is only gained from the eastern side of the property and not from the dwelling itself. A site visit was conducted on the property to establish the amount of sea view which will be lost due to the proposal and it can be concluded that the property has no sea view due to trees which are planted on the erven closer to the sea. Therefore, the objection against the relaxation of the 3m building line in order to secure the sea view is flawed and will not be considered.

Evaluation

Erven 6225, 6226 and 6227 is situated in Voëlkop and access to the properties is gained from Eleventh Street. The properties are zoned General Residential Zone 2: Town Housing and forms part of a row of semi-detached dwellings with the structure situated on Erf 6220.

In August 2015 the Executive Mayor approved the amendment of the Site Development Plan (SDP) and the relaxation of the lateral building lines in order to upgrade the structure on Erf 6220. The owners of Erven 6225, 6226 and 6227 propose to upgrade the dwellings in order to be of the same athletic value as the proposal of Erf 6220. The upgrade includes a new lounge on Erf 6225 on ground floor and the formalisation of the garage, entrance and passage ways. Two new lounges will be incorporated on first floor of Erven 6226 and 6227, while Erf 6225 will receive a braai room. All three erven will also include a new stoep/roof area. As mentioned in the discussion the existing roof and northern elevations will remain unchanged and at the same height as the approved building plans. There are no Title Deed restrictions which prohibit the proposed developments and a conveyance's certificate was also submitted as proof.

Although the properties form part of a row of semi-detached dwellings, no formal Architectural Guidelines were ever established. A SDP was drawn up and dates 24 February 1983. With no formal guideline or Home Owners' Association the structures on the erven differed from each other in terms of character, aesthetics and type of building material used, and subsequently, most of the existing structures on Erven 6220, 6225, 6226 and 6227 have deviated from the SDP. Bearing in mind that no formal guidelines are applicable, the provisions in the Overstrand Zoning Scheme Regulations are applied.

Provisions made under General Residential Zone 2: Town Housing in the Overstrand Zoning Scheme Regulations are for a 3m lateral building line on the perimeter. The proposal is made to encroach upon the latter on Erf 6225 from 3m to 2m from the lateral boundary line. This is due to the relative small size of the property. Furthermore, General Residential Zone 2 is normally applied to

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large town house complexes and not on erven which are meant to be used for single residential purposes, thus further limiting the potential of the site.

The current dwellings on Erven 6225, 6226 and 6227 is not in line with the aesthetics and character of surrounding properties and this has led to the property value of the subject property being negatively affected. Thus, the capital investment into the upgrading of the existing structures will lead to the influx of property values. Therefore the proposed development is considered desirable in terms of Section 36 of LUPO.

Conclusion

The departure of the lateral building line and the amendment of the SDP are recommended for approval, subject to conditions.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Engineering Services Department

Attached as Annexure F.

Building Control Department

“Supported any plans submitted to comply with SANS 10400.”

Fire Department

No objection.

10. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Letters of comment and objections
- Annexure E: Applicants' response to the objections
- Annexure F: Services Report

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RECOMMENDATION:

1. that, in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a departure from the relevant Scheme Regulations on Erven 6225, 6226 and 6227, Hermanus (Voëlklip) in order to relax the lateral building line from 3m to 2m to accommodate proposed alterations, **be approved**;
2. that, in terms of Section 42 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application to amend the Site Development Plan applicable to Erven 6225, 6226 and 6227, Hermanus (Voëlklip) to accommodate proposed alterations, **be approved**;
3. that the approval of paragraphs 1. and 2. above be subject to the following conditions:
 - (a) that no other structures be erected within the building lines and the approval is only for structures as indicated on Plan No's. A100 to A103, dated July 2015, as submitted with the application;
 - (b) that the maximum height be restricted to 8m;
 - (c) that all chimneys may not be higher than 1m from the roof or 1m from the height restriction, excluding the cowl and the maximum width of the chimney may not be more than 1m;
 - (d) 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;
 - (e) that all other development parameters, as prescribed in the relevant Zoning Scheme, be complied with;
 - (f) that the approval does not absolve the applicant from compliance with any other relevant legislation and/or Title Deed conditions;
 - (g) that all conditions imposed in the Services Report (attached as Annexure F), be complied with; and
 - (h) that a Site Development Plan indicating all the structures on Erven 6220, 6225, 6226 and 6227 be submitted to the Senior Manager: Town- and Spatial Planning for approval prior to the approval of building plans.
4. that the applicant be notified of its right of appeal in terms of the provisions of the Local Government Municipal Systems Act, 2000 (Section 62) with regard to the above decision.

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RESPONSIBLE OFFICIAL :	P ROUX
TARGET DATE FOR IMPLEMENTATION :	12 MAY 2016
TARGET DATE TO INFORM APPLICANT :	12 MAY 2016
TARGET DATE TO INFORM OBJECTORS:	12 MAY2016

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REGIONAL PLANNING ON BEHALF OF THE MARDIA TRUST, VILDEK
BELEGGINGS (PTY) LTD AND THE MARIANA FAMILY TRUST**

**6225,6226 & 6227 HVK (3032)
P Roux (028) 313 8900 Hermanus Administration
9 March 2016**

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
19 APRIL 2016, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

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