

2nd December 2015

Director: Infrastructure and Planning,
OVERSTRAND MUNICIPALITY.



TR- A Theent
(H Oliver)

Dear Sir/Madam,

ERVEN 6225, 6226 & 6227, 237 ELEVENTH STREET, VOELKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE AND AMENDMENT OF THE SITE DEVELOPMENT PLAN: AM. WIEHAHN ON BEHALF OF VILDEK BELEGGING PTY LTD, MARIANA FAMILY TRUST, MARDA TRUST

Concerning your request for owners of No. 240 11th Street to consent to the relaxation of the eastern boundary building line from 3m. to 2m. as indicated in your correspondence dated 29th October 2015, we give our consent.

May we please request that the Owners pay attention to the boundary wall on their side of the dividing line, without impeding the view of above residence.

Yours faithfully,

OWNERS OF 249 11TH STREET VOELKLIP: A. WOLFAARDT, P. WOLFAARDT AND C. FRIEDLANDER.

| | |
|------------------|-----------------|
| FILE NO. | Erven 6225-6227 |
| SCAN NO: | 23 |
| COLLABORATOR NO: | 860981 |

PIETER LAUBSCHER TRUST

TRUST NUMBER: IT 6163/99

NO 1 SANDALS, 241 ELEVENTH STREET, VOËLKLIP, HERMANUS 7200
 POSTNET SUITE 26, PRIVATE BAG X16, HERMANUS 7200
 TEL: +27 28 314 1541 • MOBILE: +27 82 456 5145 • E-MAIL: pieter@koda.co.za



TP - A Theart
(H Olivier)

BY e-MAIL (alida@overstrand.gov.za)

Your reference: 6225, 6226 & 6227, HVK (3032)

Date: 30 November 2015

The Director
 Infrastructure & Planning
 Overstrand Municipality
 Hermanus
 7200

| |
|------------------------------|
| FILE NO: Erven 6225 6227-HVK |
| SCAN NO: 01 |
| COLLABORATOR NO: 860236 |

Dear Sir,

**ERVEN 6225 to 6227, 237 ELEVENTH STREET, VOËLKLIP, HERMANUS:
 PROPOSED DEPARTURE & AMENDMENT OF THE SITE DEVELOPMENT PLAN**

Your letter with attachments dated 29 October 2015 refers.

The Pieter Laubscher Trust is the registered owner of Erf 9833, Hermanus.

As trustees of the abovementioned Trust, our consent to the proposed departure and amendment of the Site Development Plan and building changes is subject to the following conditions:

1. The existing approved building height restriction (to top of parapet walls or safety railings) is not amended or compromised.
2. 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.
3. No "braai" structures with or without chimneys that exceed the existing building height restriction (to top of parapet walls or safety railings) may be erected on the Second Floor C.

Kindly acknowledge receipt of this letter.

Yours faithfully

Pieter Laubscher
 Trustee

Lucia Laubscher
 Trustee



WRAP



TP - A Theart
(Hollis)

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| FILE NO: | erwen 6225-6227 |
| SCAN NO: | |
| COLLABORATOR NO: | 861627 |
| | |

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Town and
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Planning

Municipal
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Local Economic
Development
Technical
Assistance

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Wright Approach
Investments 136 CC

Reg No
CK 2002/060745/23

Our reference: 15/057

4 December 2015

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Sir

OBJECTION TO APPLICATION FOR DEPARTURE, COVERAGE AND AMENDMENT OF SITE DEVELOPMENT PLAN: ERVEN 6225, 6226 AND 6227, ELEVENTH STREET HERMANUS

We act on behalf of the registered owners of Erf 6221 and 6224 Hermanus.

1. Introduction

The applicant applies for a departure in terms of a building line, coverage and the amendment of the Site Development Plan of Erven 6225 to 6227 Hermanus in terms of Section 15 of the Land Use Planning Ordinance 15 of 1985.

Our clients agree that it is every owner's right to develop his or her property to its best value and they are not opposed to sustainable, well planned development.

Our clients also support the applicant's view that their properties have the potential to be developed uncoordinated and may in some cases detract from the value of neighboring properties and the area as a whole. To this extent they support the applicant's initiative to structure future development of their properties.

There is however certain aspects, with specific reference to the departure from the building line, our clients want to object to:

TP

~~WRAP~~
WRAP

2. Legal reference

In terms of Section 36 of the Land Use Planning Ordinance, 15 of 1985 an application shall be refused solely on the basis of lack of desirability which relates to safety and welfare of the members of the community concerned, the conservation of the natural and developed environment concerned or **the effect of the application on existing rights concerned.**

In Hayes and Another V Minister of Finance and Development Planning, Western Cape, and others 2003 (4) SA 598 (C) Erasmus AJ gave the following authoritative interpretation to 'desirability':

"The test of desirability is conclusive – in terms of s 36(1) 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".

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.

3. Objection

Erven 6225, 6226 and 6227 are zoned General Residential Zone 2: Town Housing (GR2) in terms of the Overstrand Municipality Zoning Scheme. The Development Rules of the zoning require that building lines on the perimeter of the property are 3m. The application includes a relaxation of the lateral building line on Erf 6225 from 3m to 2m.

We base our objection on the fact that the proposed departure is not desirable, as there is no interaction between proposed land use and the following:

3.1 Safety and welfare of the members of the community

In general, lateral building lines are essential for inter alia the following:

- 3.1 To provide adequate access to the back of the property in case of emergencies such as a fire; and
- 3.2 In particular instances it might be necessary for the Municipality to put some essential services such as water, sewer or electricity in these side spaces created by building lines.

With a relaxation of the building line to 2m, the aforementioned can still be achieved on the ground floor, but if the relaxation is also allowed on the first floor, the welfare of the owners of neighboring properties will be compromised. Privacy will be lost which will have a direct impact on the use and enjoyment of our client's properties.

3.2 Conservation of the natural and developed environment

Although the departure from the building line is motivated by the applicant from an architectural and aesthetic point of view, the impact on the row of erven behind the subject properties of which our clients owns two, should also be

WRAP

considered. Our clients support the upgrade of the aesthetical appearance of the buildings, as long as it is not affecting their own built environment. Our client's support for the relaxation is subject to the condition that no building work is allowed on the first floor as it will impact on the built environment of our clients.

3.3 Effect of the application on existing rights

The statement made by the applicant that *the South African Law does not recognize an inherent right to an existing view from a property...*, was quoted from a paper of over 270 pages.

It is however acknowledged in South African case law that 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 temporary¹.

The unobstructed, 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 neighboring 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 neighboring owners. The protection of the view from a property is an example of such a benefit.

When the 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 local authority must then decide if such an application is desirable, based on the criteria prescribed by Section 36 of the Land Use Planning Ordinance, 15 of 1985.

Our clients do not have any objection to the relaxation of the building line on the ground level and will even support further relaxation, on condition that no building work is allowed on the first floor, due to the fact that it would affect their existing rights, that is not limited to view only, which they currently have outside existing building lines.

The rights of our clients are also affected in terms of their privacy if any building work is allowed on the first floor. Due to the size of the properties, windows on the first floor will be looking directly into our client's properties. The impact will be exacerbated by the fact that the proposal includes the construction of a deck on the roof of the second floor. One of our clients who instructed us to submit this objection, is a professional architect and prepared the following sketches to graphically illustrate their objection and proposals to which they will agree to, which will minimize the impact:

¹ *Erasmus v Blom* 2011 JDR 0321 (ECP); *Myburgh v Jamison* (1861) 4 Serale 8; *Lewkowitz v Billingham & Co* (1895) 2 Off Rep 36; *Kruger v Downer* 1976 (3) SA 172 (W); *Richardson and Others v South Peninsula Municipality and Others* 2001 (3) BCLR 265 @; *Muller NO and Others v City of Cape Town and Another* 2006 (5) SA 415 (C); *Transnet Ltd v Proud Heritage Properties* (405/08)(2008) ZAECHC 155 (5 September 2008); *Camps bay ratepayers and Residents Association and Another v Harrison and Another* 2011 (4) SA 42 (CC); *Paola v Jeeva NO and Others* 2002 (2) SA 391 D; *Paola v Jeeva NO and Others* 2004(1) SA 396 (SCA); *Clark v Farraday and Another* 2004 (4) SA 564 (C) ; *De Kock v Saldanhaabai Munisipaliteit en Andere* (7488/04) (2006) ZAWCHC 56 (28 November 2006) and *Searle c Mossel Bay Municipality and Others* (1237/09) ZAWCHC 10 (13 February 2009).

The logo for WRAP (Water Resource Assessment Programme) features the word "WRAP" in a bold, sans-serif font, centered below a stylized graphic of three horizontal lines of varying lengths, suggesting water or a landscape feature.

4. Conclusion

Although the applicant failed to provide a positive advantage for the departure of the building lines to the properties of our clients, our clients are willing to support the relaxation of the building line on the ground floor, subject to the condition that no building work is allowed on the first floor. The support for the relaxation of the building line on the ground floor is however subject to the following conditions:

- 4.1 No construction on the first floor past the current face of the house;
- 4.2 Only glass balustrades to be used on the first floor, without any solid elements such as braai chimneys, or any other solid elements that may block the existing view from the units in 10th street; and
- 4.3 No roof structures are allowed in this view area.

Yours faithfully

A handwritten signature in black ink, appearing to be "R. Kotzé", written in a cursive style.

RICHARD KOTZÉ

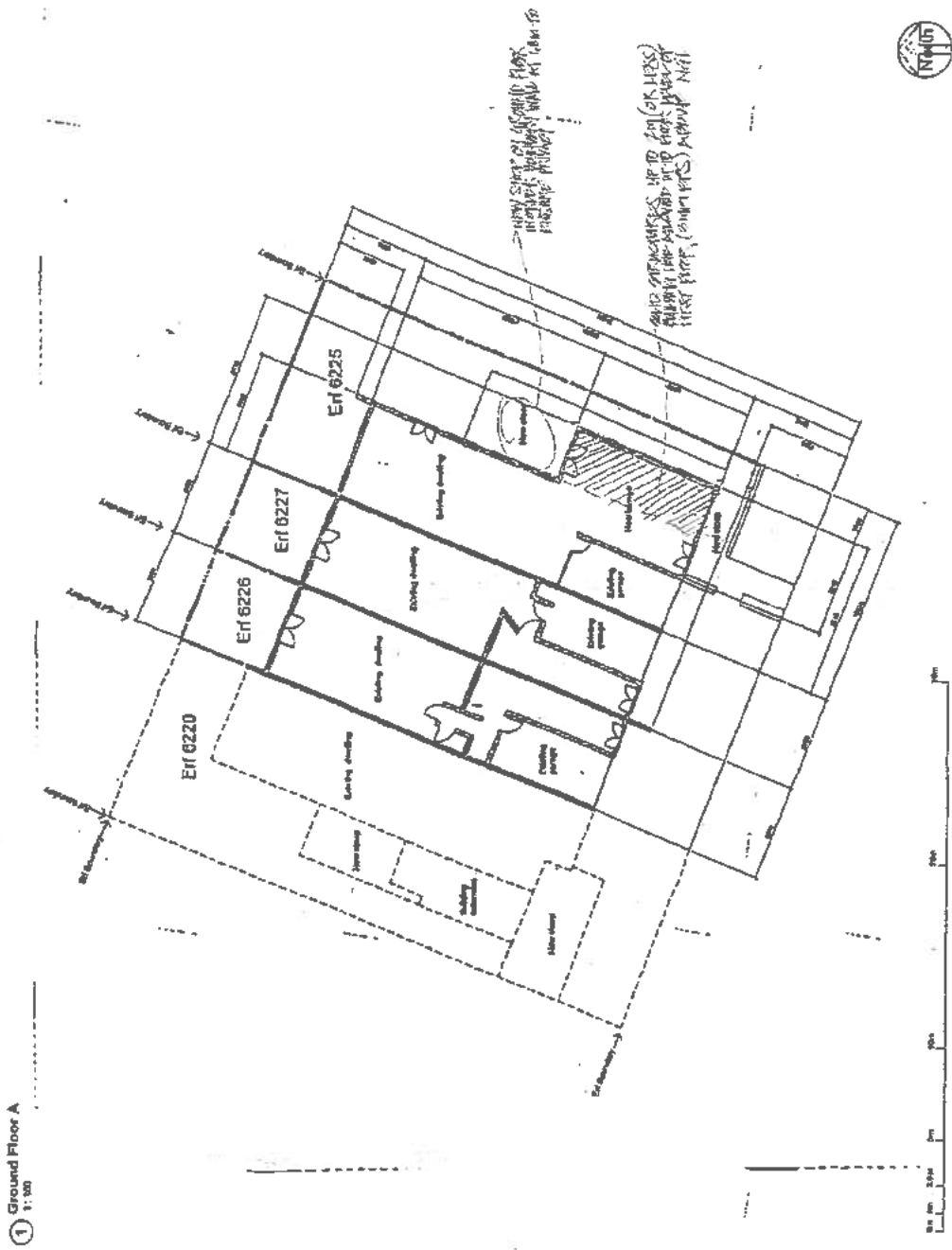


Figure 1: Proposed amendments to construction on ground floor

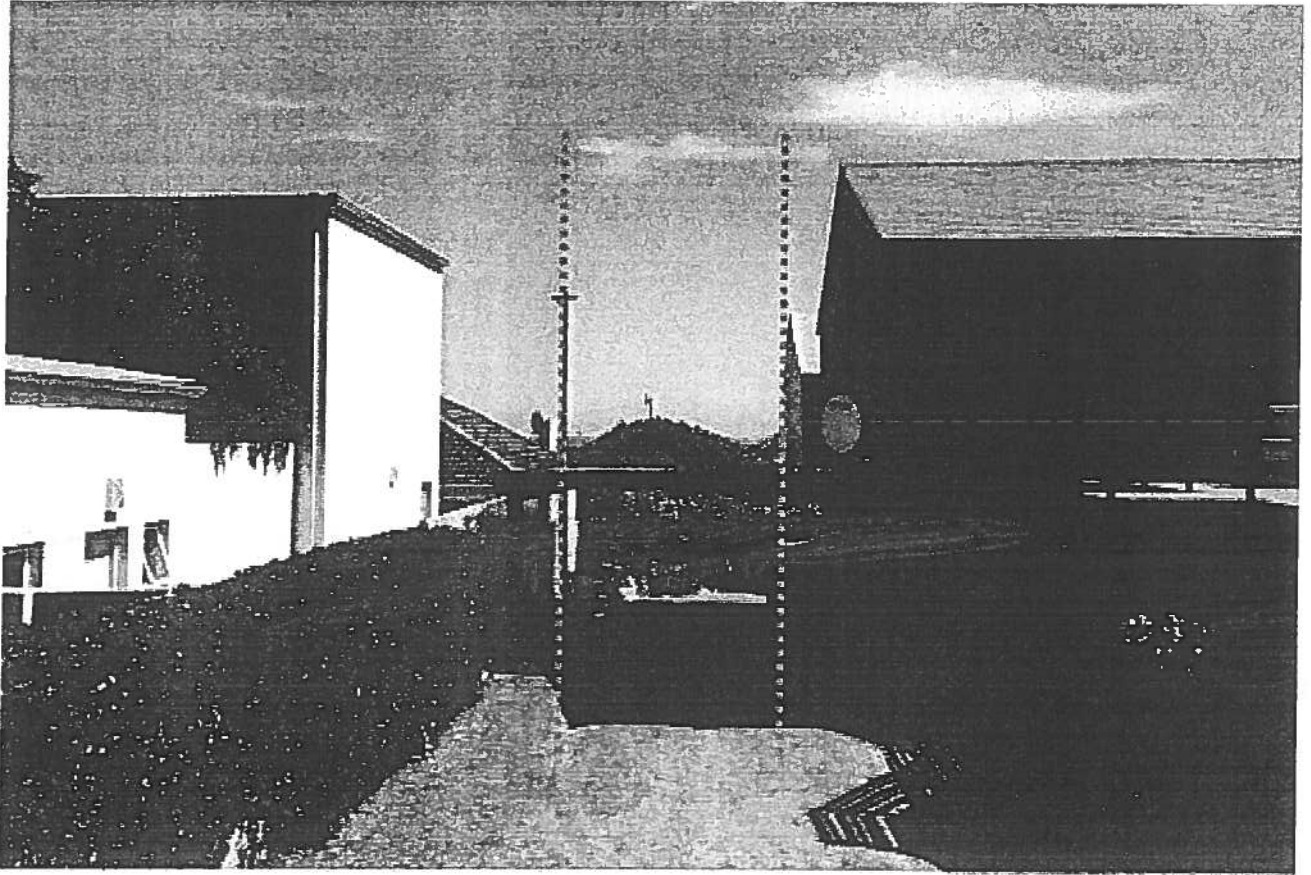
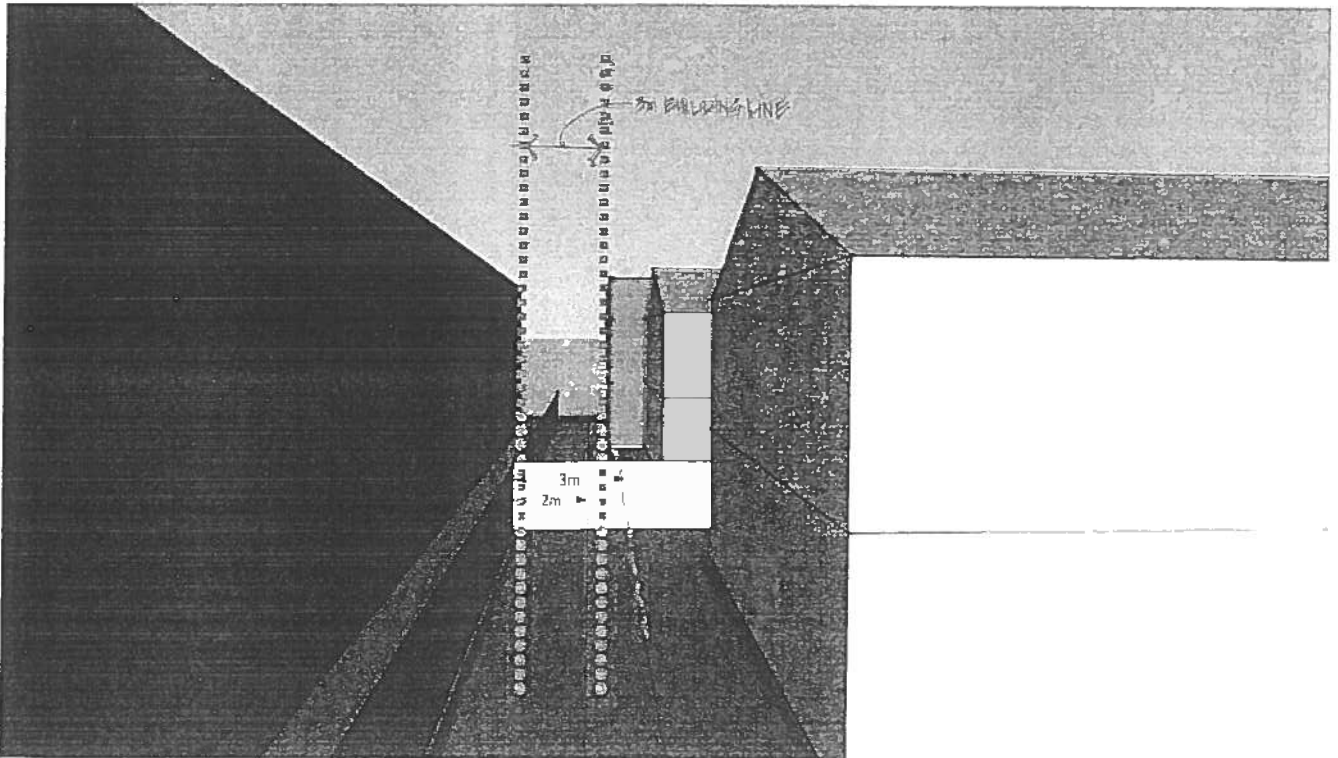
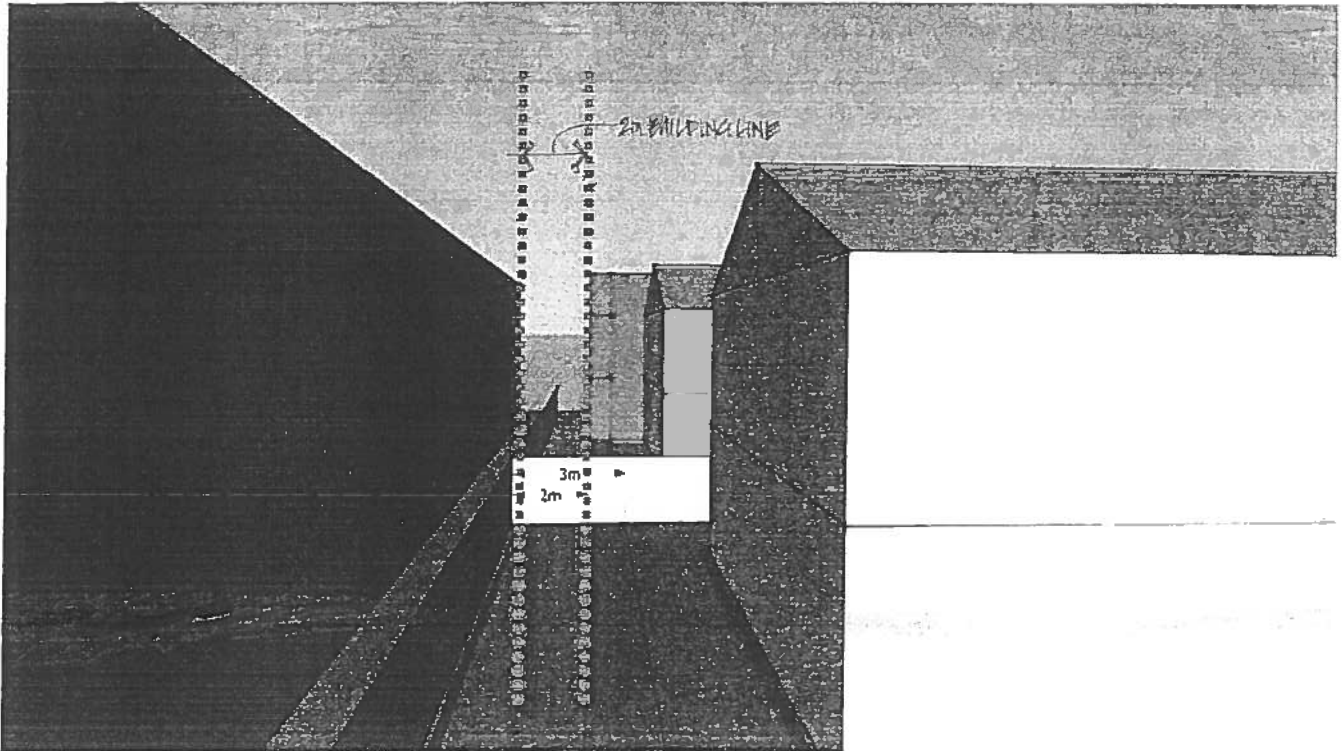


Figure 4: Current view



3m building line



2m building line

Figure 5 & 6: 3m vs 2m building line, including building work on first floor

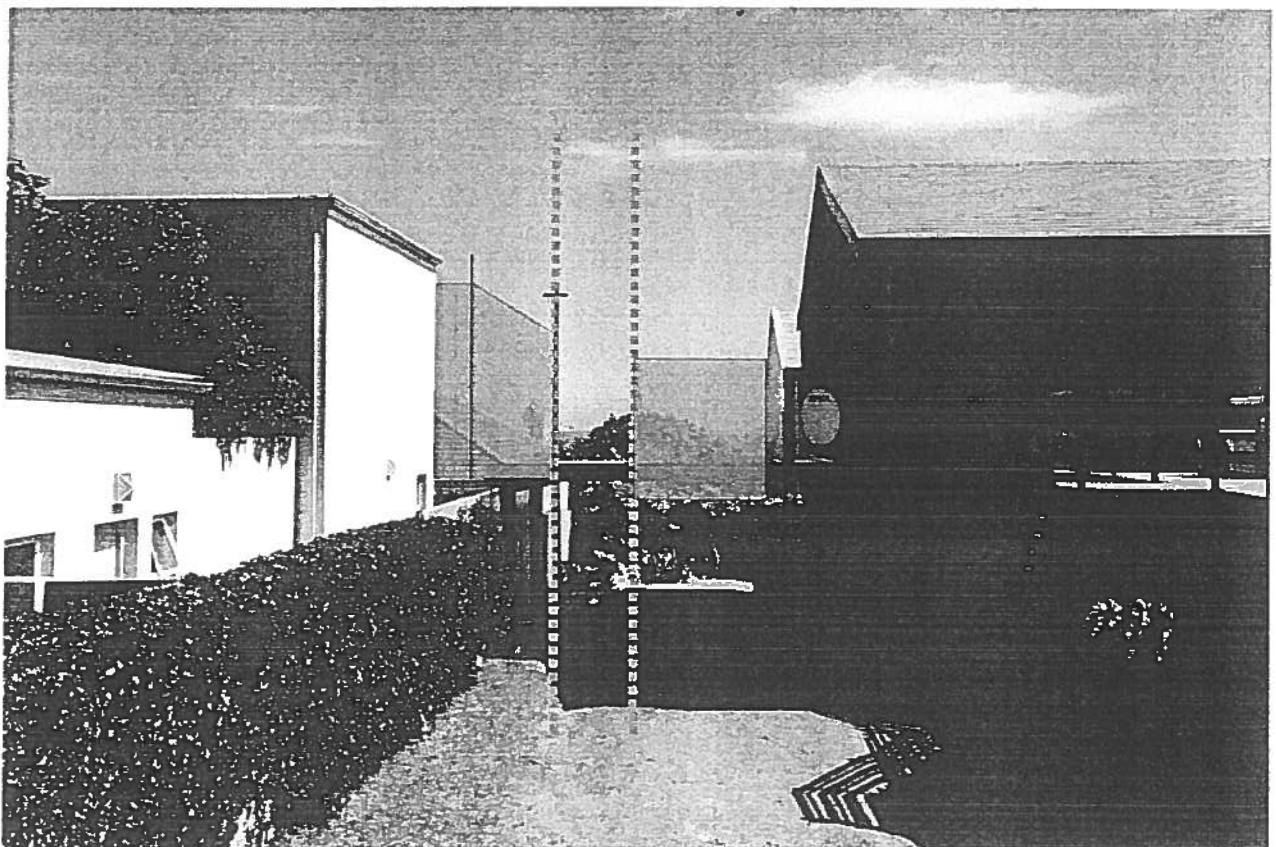
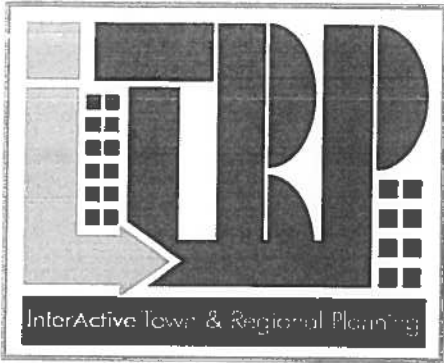


Figure 7: View with a 2m building line and building work on first floor

ANNEXURE E 1/14
TR-A Thant
(C P Roux)



InterActive Town & Regional Planning

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E-Mail: wiehahn.a@gmail.com

Date: 3 February 2016

Reference: Voëlklip 3



ERVEN 6225, 6226 AND 6227 237 ELEVENTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE AND AMENDMENT OF THE SITE DEVELOPMENT PLAN.

With reference to your letter 6224-6227 (3032) dated 14 December 2015 please find attached a copy of my response to the objections to the above-mentioned application.

Your attention is also drawn to the granting of an extension to the response to the objections as per the attached e-mail received from Me Alida Calitz dated 13 January 2016.

Should you have any questions in this regards or need any additional information, please do not hesitate to contact me.

Kind Regards

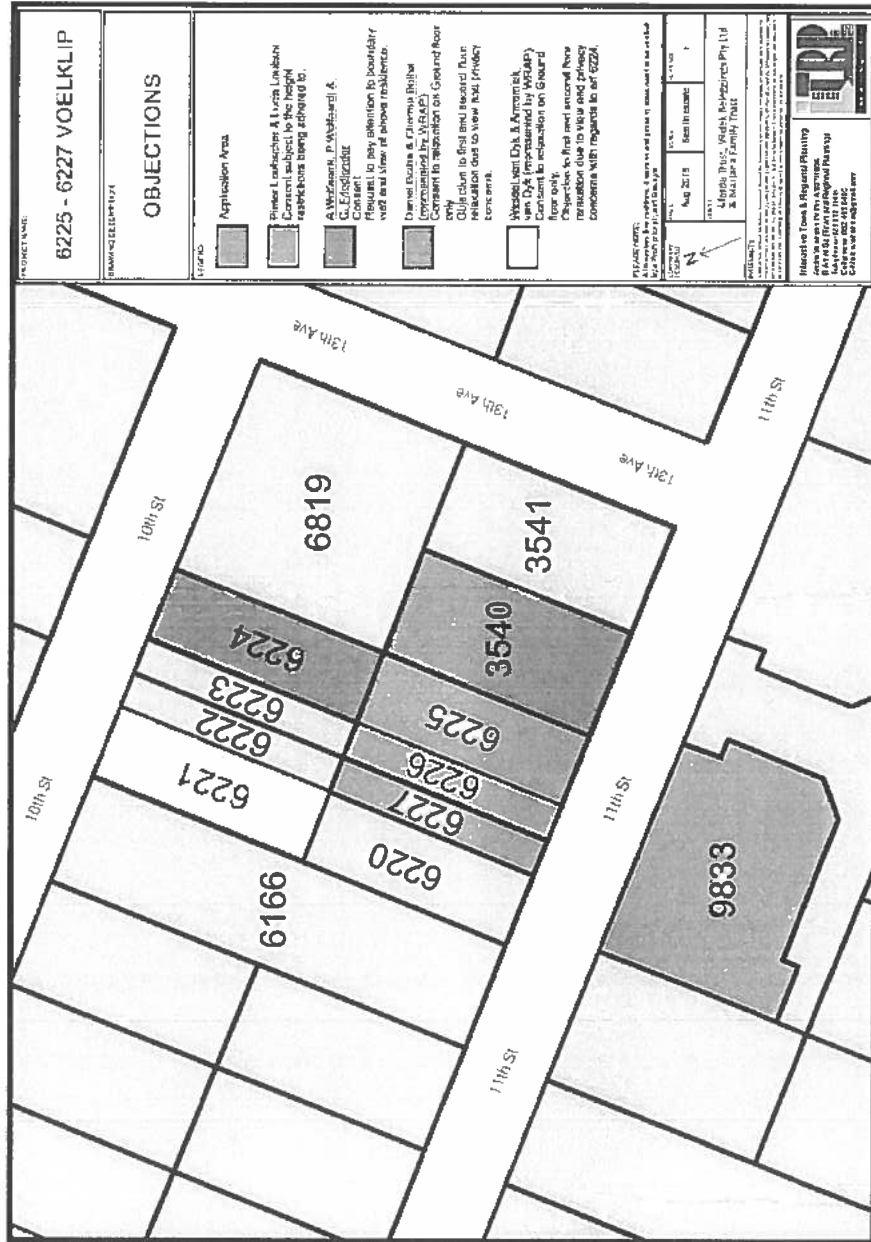
Andre Wiehahn Pr Pln A/927/1996

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| FILE NO: Erven 6225-6227 |
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| SCAN NO: 13 |
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| COLLABORATOR NO: 872827 |
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Ontvang: 03 FEB 2016

ERVEN 6225, 6226 & 6227, 237 ELEVENTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE AND AMENDMENT OF THE SITE DEVELOPMENT PLAN: RESPONSE TO OBJECTIONS

Objections have been received from Messrs Pieter Laubscher Trust of Erf 9833 Hermanus, A and P Wolfaardt and C Friendlander of Erf 3540 Hermanus and WRAP on behalf of the registered owners of Erven 6224 and 6221 Hermanus. For background purposes the location of each of the objectors is shown in the following map:





The following methodology is followed in response to the objections / comments:

- Analyse each objection,
- Provide a summary and interpretation of the objections / comments, and
- Comment on the different points made in terms of the objections / comments.

In principle Messrs Pieter Laubscher Trust of Erf 9833 Hermanus, A and P Wolfaardt and C Friendlander of Erf 3540 responses are merely considered as comments and not objections.

On the other hand, the objections made by Messrs WRAP is interpreted as an attempt to secure a view from Erf 6224 Hermanus along the eastern boundary of Erf 6225 Hermanus contrary to the principle in the South African law that does not recognise an existing view as an inherent right, a mere incidental advantage.

The objections made by WRAP are considered unjustified and recommended to be rejected.

| Objector and Erf Number | Summary of Comment / Objection | Comment in response to the points of objection |
|--|---|--|
| <p>Messrs Pieter Laubscher Trust of Erf 9833 Hermannus</p> | <p>In Messrs Pieter Laubscher Trust letter, the application is supported subject to the building height restriction being respected (not amended or compromised), no structures being erected (temporary and / or permanent) on the second floor including any braai structures that will exceed the existing building height restriction.</p>  <p><i>The application site relative to the property of Messrs Pieter Laubscher Trusts.</i></p> | <p>The response from Messrs Pieter Laubscher Trust is considered rather as a comment / confirmation of agreement than an objection.</p> <p>It is clear from Messrs Pieter Laubscher Trust 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.</p> <p>The comments from Messrs Pieter Laubscher Trust are thus considered most consistent with the content and objective of the application.</p> |
| <p>A and P Wolfaardt and C Friedlander of Erf 3540 Hermannus</p> | <p>The owners consented to the application proposal but requested that the owners pay attention that the boundary wall does not impede the view of the "above residence".</p>  <p><i>The application site relative to the property of Messrs Pieter Laubscher Trusts</i></p> | <p>The owners of Erf 3540 Hermanus, Messrs A and P Wolfaardt and C Friedlander gave their support to the application.</p> <p>However, Messrs A and P Wolfaardt and C Friedlander made a request that attention be paid to the boundary wall without impeding on their view.</p> <p>The above mentioned 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.</p> <p>Thus, this above-mentioned request should be ignored.</p> |

Messrs WRAP on behalf of the registered owners of Erven 6224 and 6227 Hermanus

Background to the objection:

The owners of Erven 6221 and 6224 Voëklip, Hermanus appointed WRAP to object to the application.

WRAP is a multi-disciplinary consultancy practising inter alia in urban and rural planning.

The location of the properties of Erven 6221 and 6224 Voëklip Hermanus is reflected in the adjacent sketch.

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 attempt to retail a view from Erf 6224 Hermanus.

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

WRAP also supports the applicant's 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.

WRAP further distinctly declare their support to the applicant's initiative to structure the future development of the adjacent properties.

However, **contradictory to the above**, 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 3 m to 2 m.

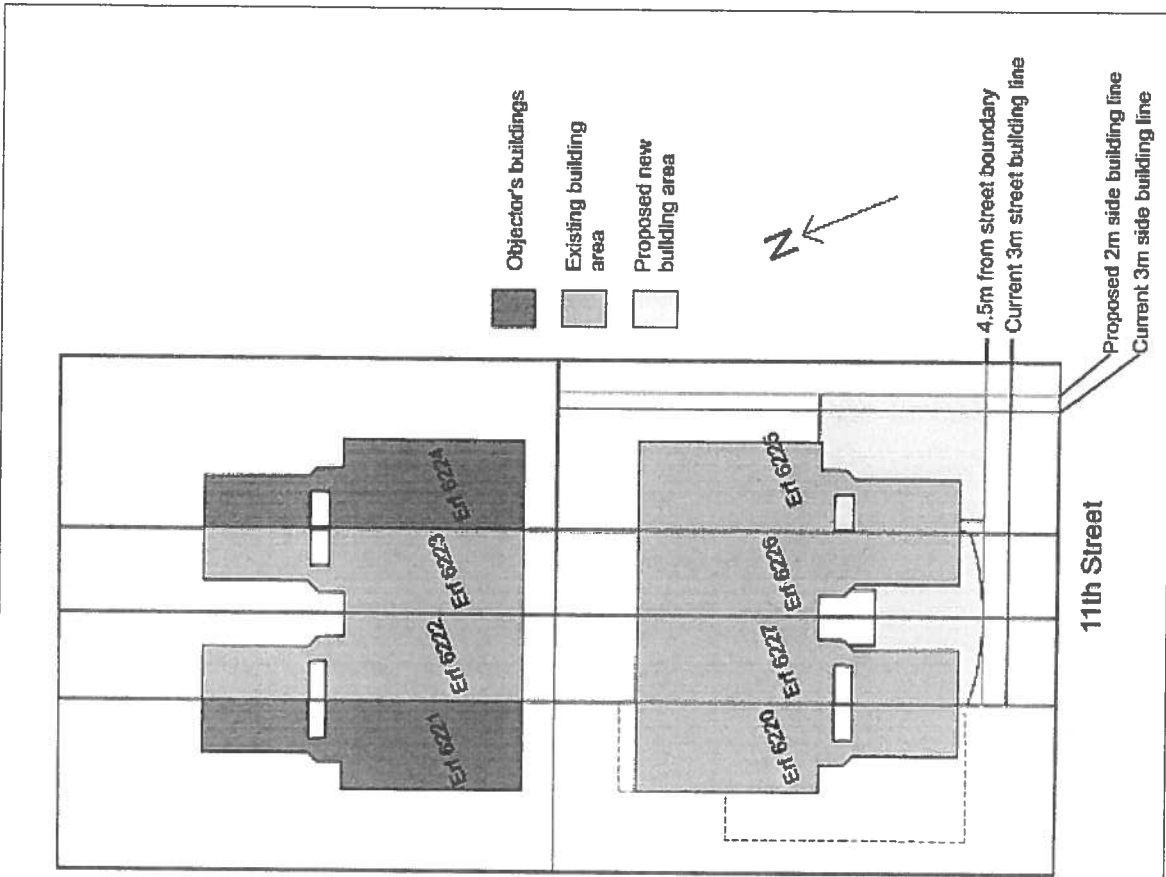


The application site relative to the properties of Erven 6221 and 6224 who objected to the relaxation of the building line along the eastern boundary of Erf 6225.

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| <p>Furthermore WRAP concludes contradictory to the above, that:</p> <p><u>No building supported on first floor</u></p> <p>and</p> <p><u>Limited building supported on building on first floor</u></p> | <p>a. Our clients are willing to support the relaxation of the building line on the ground floor, subject to the condition that <u>no building work is allowed on the first floor.</u></p> <p>b. The support for the relaxation of the building line on the ground floor subject to the following conditions:</p> <ul style="list-style-type: none"> • No construction on the first floor <u>past the current face of the house (on the first floor);</u> • Only glass balustrades to be used on the <u>first floor, without any solid elements such as braai chimneys, or any other solid elements that may block the existing view from the units in 10th Street; and</u> • No roof structures are allowed in this view area. <p>WRAP uses Section 36 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) 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:</p> <ul style="list-style-type: none"> • the safety and welfare of the community concerned; • the conservation of the natural and developed environment concerned and • the effect of the application on existing land-use rights. <p>WRAP also makes use in their objection of the outcome of the legal case Hayes and Another v 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 s 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 <u>positive test: the test is the presence of a positive advantage which will be served by granting the application</u>".</p> <p>Subsequently, WRAP converted this verdict thereto that the onus must now lie on the applicant to prove the <u>positive interaction</u> 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.</p> |
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Based on the above, the objector claims that the proposed departure (of the building line relaxation from 3 m to 2 m) 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 objectors as illustrated in the adjacent sketch:



Sketch illustrating the proposed extension / addition areas relative to the existing building area on the objector's properties on Erven 6221 and 6224 Hermanus

| <p>1. The Safety and Welfare on the members of the community</p> <p>Response to point of objection</p> | <p>Summary of Point of Objection</p> |
|---|--|
| <p>The objection is considered misleading, confusing, lacks objectivity, proof and evidence and should therefore be disregarded.</p> <p>The only one reason the objector provides for the proposed development to compromise his client's welfare and safety is that "... privacy will be lost which will have a direct impact on the use and enjoyment of our client's properties".</p> <p>The objector does not provide any proof and/or evidence on how his client's welfare and safety will be impacted.</p> <p>The objector also forsakes to mention that the existing buildings have northwards facing windows over Erf 6224 Voëlklop.</p> <p>The objector muddles the topic of discussion (deliberately or unthoughtfully) by stating the purpose of building lines (namely being for municipal services and safety purposes) and then diverts the point of discussion stating that the proposed relaxation of building line will not be a problem on the ground floor and that the "welfare of the owners of the neighbouring properties will be compromised".</p> <p>The objector's reasoning is confusing and distracts the reader away from the topic (i.e. misleading tactics).</p> <p>It is also important to keep in mind that these properties are within a residential area (with relatively high densities) where views over adjacent properties are an everyday phenomenon. It is unrealistic to expect restrictions on the provision / placing of windows which can potentially have a view on and over adjacent and abutting properties. Such restrictions where no windows are allowed on first floors of buildings is considered unrealistic and impractical and also</p> | <p>The objector argues that the proposed development is not desirable as the <u>welfare and safety</u> of his client's properties will be compromised if the building line relaxation from 3 m to 2 m will be allowed.</p> <p>From his viewpoint his client's privacy will be lost which will have a direct impact on the use and enjoyment of their properties.</p> <p>However, the objector concedes that the relaxation of the building line on the ground floor from 3 m to 2 m is acceptable.</p> |

a potential safety and health risk.

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 V Minister of Finance and Development Planning, Western Cape, and others 2003 (4) SA 598 (C) Erasmus AJ out of context by claiming that 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.

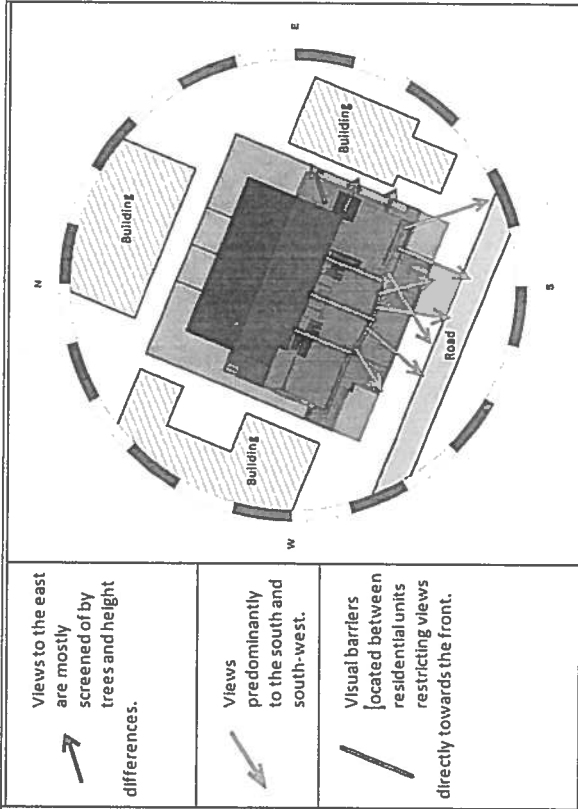
The objector acknowledges that many advantages will result from the proposed relaxation and the subsequent upgrading of the building, but contrary claims without any proof that the application for the relaxation of the building line will not create a positive interaction between the neighbouring properties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

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

Thus, it is clear that the objector's reasoning and interpretation is

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| | | <p>confusing and factually incorrect.</p> <p>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, 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")</p> <p>and</p> <p>that no legal document relevant to the Overstrand Municipality makes provision to protect a view.</p> <p>Thus it is clear that the proposed relaxation of the building line will in no manner at all affect the <u>safety and / or welfare</u> of the owners of the neighbouring properties.</p> <p>Thus, the argument made by the objector is flawed and incorrect and should be ignored and omitted.</p> |
| | <p>Privacy will be lost which will impact negatively on the use and enjoyment of the objector's client's property.</p> | <p>This objection is based on incorrect and unsubstantiated assumptions.</p> <p>Even though, views are not protected in terms of the South African Law, the objector ignores the fact that there are existing windows with a view over Erf 6224 Voëlkop.</p> <p>Thus their privacy would not be compromised more than what is currently the situation.</p> <p>Erf 6221 Hermanus, is completely out of sight from the construction area on Erf 6225 Hermanus.</p> |

| | | |
|--|---|--|
| <p>Given the above, nor the safety or the welfare of the objector's client will be affected as a result of this application.</p> <p>Thus, as the objection is based on incorrect assumptions Council is subsequently requested to reject this objection.</p> | | |
| <p>2. Conservation of the natural and developed environment</p> <p>This objection is patently flawed and must therefore be regarded as invalid by the competent decision-making authority.</p> <p>Paragraph e. on pages 8 to 12 specific attention was provided to the potential impact of the relaxation of the building and the subsequent extension of the building beyond the existing buildings. The impact of the proposed extension of the building was expressly illustrate with sketches to demonstrate the impact of the proposed development in terms of views, privacy, sun and shade as shown in the following extract from the motivation report:</p> | <p>The objector states that the impact of the proposed development on the row of erven behind the subject properties should also have been considered or alternatively said that the impact of the proposed development did not take the existing development behind / rear of the development not into consideration.</p> <p>This relates thereto that the proposed building line departure application is not desirable and will not advantage the adjacent properties.</p> | |



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 building 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.

The viewpoint of the objector is thus considered totally flawed and taken out of perspective.

Therefore it is also requested that Council reject this point of objection.

| | | |
|--|---|--|
| | <p>The objector's client support the upgrade of the aesthetical appearance of the buildings subject thereto that it does not affect the clients built environment.</p> | <p>The comment is acknowledged, and the assurance can be given that the implementation of the proposal will contribute towards the upgrade of this residential complex and the built environment</p> |
| | <p>The relaxation is supported, subject that no building work is allowed on the first floor, as it will impact on the built environment of the objector's client building.</p> | <p>The condition of support by the objector is unrealistic and unsubstantiated.</p> <p>Although the objector claims that construction on the first floor will impact on the built environment of his client's building, his objection is rather seen as an attempt to retain a view from the eastern side of his property on Erf 6224 Hermanus.</p> <p>Given the distance, the extent of the area exposed to his objector's properties, the proposed buildings within the area of the building line departure application, will in no way at all impact negatively on the subject properties. This objector provides no reasons for this objection and is completely unsubstantiated.</p> <p>This objection is unfounded and should subsequently be rejected by the competent decision making authority.</p> |
| | <p>3. Desirability: Effect of the application on the existing rights.</p> <p>WRAP makes the statement that it is acknowledge that in South African Law that 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 unobscured , existing view from a property can be protected by for instance a zoning scheme and buildings regulations insofar as these devices restrict buildings works on a neighbouring property that will interfere with such a view. It has been established that a property</p> | <p>It is important for the decision makers to retain perspective when considering this objection.</p> <p>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 <u>existing rights</u> of the adjacent properties.</p> <p>The correct interpretation within the context of this application is that is that Section 36 of the Land Use Planning Ordinance, 1985 (Ord</p> |

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| | <p>owner may derive an indirect benefit from the restrictions that building regulations place on neighbouring owners. The protection of the view from a property is an example of such a benefit."</p> <p>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.</p> <p>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 that no building work obscures his view on the first floor which they have outside their existing building lines.</p> | <p>15 of 1985) stipulates that an application may only be refused if it lacks desirability or if it has a negative impact on <u>existing rights</u>.</p> <p>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 (Ord 15 of 1985) by complying with the existing approved spatial policies.</p> <p>The objector provides no evidence of non-desirability apart from stating that there is no positive <u>interaction</u> between the proposed land use and (in this case) the <u>effect thereof on existing rights</u> (i.e. meaning surrounding properties) with the <u>emphasises on the view over the first floor level</u>.</p> <p>It should be noted that the objector, creates confusion in his argument by, stating that views can be protected by virtue of certain instruments like zoning schemes, building regulations etc,</p> <p>but</p> <p><u>refrains from mentioning if any of these mentioned instruments (intentionally or unintentionally) which can protect a view of the application area or surrounding properties and also that no such documents / policies / instruments in the Overstrand Municipal area exists that protect any view.</u></p> <p>The fact is that there is no statutory document that protects any right to view relevant to the properties subject to this application.</p> <p>The fact is also that the South African Law does not in principle; recognise an inherent right to an existing view from a property, because a view is considered a mere incidental advantage.</p> |
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| | | <p>In conclusion, the objector fails to prove that the application will disadvantage existing rights to his property.</p> <p>The fact of the matter is that the application will not detrimentally affect the existing land-use rights of Erven 6224 or 6221 Voëlkop, Hermanus in terms of existing land-use rights but in actual fact rather benefit the properties through improved property value as a result of the proposed upgrading.</p> |
| | <p>WRAP further states as part of his objection states that his client will also be affected in terms of their privacy if any building work is allowed on the first floor.</p> <p>He mentions that due to the size of the properties, windows on the first floor will be looking directly into his client's properties. The impact will be exacerbated by the fact that the proposed construction of a deck on the roof of the second floor illustrated by the following architectural sketches:</p> | <p>This matter was already discussed in the previous paragraph.</p> <p>To iterate on this, matter the following needs to be taken into consideration:</p> <ul style="list-style-type: none"> • the South African law does not recognise an inherent right to an existing view from a property, • The development is located within a relatively high density area where buildings commonly overlook adjacent properties – general character of the area • There are existing windows on the application sites overlooking the objector's client's properties. <p>Thus the point of objection made by the objector is irrelevant and subsequently should be rejected by Council.</p> |
| | | <p>In conclusion, the application for the relaxation of the building line positively complies with the "dictum of desirability" as set out by the objector in terms of Section 36 of the Land Use Planning Ordinance, 1985 (Ord 15 of 1985) through positively contributing to the safety and welfare of the members of the community and the conservation of the natural and developed environment, with no detrimental effect whatsoever on the existing surrounding land use rights.</p> <p>From the above, it is clear that the objector's conclusion regarding their opinion that the desirability is not proven, lacks factual basis and must be viewed as misguided conjecture.</p> |

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE & AMENDMENT OF THE SITE
DEVELOPMENT PLAN: ERVEN 6225 - 6227, VOELKLIP (3032)**

Electricity : In order
Water : In order
Sewer : In order
Stormwater : In order
Roads and traffic : In order

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that stormwater be allowed to discharge through the proposed erven , Voelklip, unobstructed;
4. that no on-street parking be allowed.



DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

9/12/2015
DATE