

4.3

REFERRAL: ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD

5473 HVK

File Ref: 4088/2022

P Roux

17 July 2023

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 14 March 2021 from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus, for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16.(2)(f) of the By-Law in order to remove restrictive Condition III.D.(c) contained in Title Deed T9341/2014;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

The proposal was considered by the Municipal Planning Tribunal (MPT) on 27 February 2023, and it was resolved as follows:

- “1. *that the comments/objections received 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) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;*
3. *that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following*
 - ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
 - ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
 - ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

not be approved in terms of the provisions of Section 61 of the By-Law;

4. *that the applicant and persons 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 above decision are as follows:

- The proposed use is in stark contrast to the residential character of the area.
- The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street).
- The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.
- The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has its own operational methods which could negatively impact the surrounding area.

Notice of the decision was sent on 7 March 2023. One appeal was received against the decision of the Municipal Planning Tribunal (MPT). The appeal was received from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd. The appeal was submitted on 27 March 2023 and is therefore submitted within the prescribed 21 days from the date of notification of the decision and the relevant appeal fee was paid. The appeal is thus regarded valid.

The Appeal was sent to the Appeal Authority on 21 June 2023. On 5 July 2023 the Appeal Authority referred the appeal back to the MPT. The reason for the referral is to request advice and reconsideration of the application, in that the MPT suggests restrictive conditions to the type of business to be accommodated on Erf 5473 which will have the least potential of negative impact on the ambiance of Voëlklip.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The application was previously considered by the MPT and the decision of the MPT was appealed. The Appeal Authority has referred the matter back to the MPT to request advice and reconsideration of the application.

The Regulations in terms of the Spatial Planning and Land Use Management Act, 16 of 2013 SPLUMA, hereafter referred to only as the Regulations, states the following:

“26 Decision of appeal authority

(1) An appeal authority must -

- (a) consider and determine all appeals lawfully submitted to it;*
- (b) confirm, vary or revoke the decision of the Municipal Planning Tribunal or authorised official;*
- (c) provide reasons for any decision made by it;*
- (d) give directions relevant to its functions to the municipality;*
- (e) keep a record of all its proceedings; and*
- (f) determine whether the appeal falls within its jurisdiction.*

(2) If the appeal authority revokes a decision of the Municipal Planning Tribunal or authorised official it may remit the matter to the Municipal Planning Tribunal or authorised official or replace the decision with any decision it regards necessary.

(3) The appeal authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.”

In terms of Section 26(2) of the Regulations the Appeal Authority can remit the matter to the Municipal Planning Tribunal, and in this case the Appeal Authority has done so (Refer to Annexure A).

This report will not discuss all the details of the application and appeal as the various reports including the motivation and appeal documents are attached. This report will be limited to the task which the MPT has been assigned with, which is to suggest restrictive conditions to the type of business to be accommodated on Erf 5473 which will have the least potential of negative impact on the ambiance of Voëlklip.

4. Discussion

The application entails the rezoning of Erf 5473 from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow for offices. In the reports which served before the MPT and the Appeal Authority it was stated that the proposed rezoning cannot be supported due to the rezoning not being localised (centralised) with other commercial activities and that the office use does not limit the use of the property to a specific use. The applicant compared the rezoning to that of a home occupation and seemingly the physio therapist which was there previously. It was noted in the reports that the rezoning will allow the property owner to retain the structure as is and utilise the property on a scale which is more than what is allowed for under home occupation.

As discussed in the reports, the opinion is still held that rezoning cannot be supported and the only commercial use of the property which will not affect the character of the area is a home occupation. Home occupation is a primary right under the Residential Zone 1: Single Residential and has set parameters. The parameters limit the scope of the use in terms of size and impact which is essential in order to maintain the residential character.

It should also be noted that should the rezoning be allowed that the impact of the rezoning may negatively affect traffic flow in the area (as the site is situated at the entrance of Voëlklip), it will create a precedent where commercial zoned erven are developed haphazardly throughout the suburb and linear dispersion of business activities along the R43 can occur which will have additional impact on traffic flow on the R43.

It is therefore proposed that the restrictive conditions which are to be considered are the parameters of home occupation and that the rezoning of the property not be approved.

The parameters for home occupation in terms of the Section 16.10.10 of the Land Use Scheme is as follows:

(2) *General development parameters for home occupation:*

- a) *the proprietor of the home occupation must permanently reside in the dwelling;*
- b) *the total area used for a home occupation, including storage area required for the use, shall not exceed **25% or 50 m²** (whichever is most restrictive) of the total floor area of the building from which it is to be conducted;*
- c) ***no more than 3 persons** in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;*
- d) *home occupation shall be conducted completely indoors;*
- e) *the storage of products, goods, or supplies connected to the home occupation shall be inside a building;*
- f) *no more than one vehicle, not exceeding 3 500 kg in gross weight, shall be utilised for the home occupation;*
- g) *the hours of operation are restricted to 07h30 to 17h30 on Mondays to Fridays and 07h30 to 13h00 on Saturdays;*
- h) *on-site parking must be provided to the satisfaction of the Municipality, provided that at least two on-site parking bays are provided in addition to the normal parking required;*
- i) *the exercise of home occupation shall be subject to the submission of a site plan (for record purposes) demonstrating compliance with the requirements pertaining to home occupation and land use parameters;*
- j) *a conveyancing certificate shall be submitted, demonstrating there is no title deed restrictions that restrict the home occupation;*
- k) *the use shall also comply with all environmental and nuisance control regulations; the exterior of the building and the lot shall not be changed in such a way as to decrease its residential appearance, except for permitted parking spaces;*
- l) *the use shall not involve the storage or use of hazardous, flammable, or explosive substances, other than types and amounts commonly found in a dwelling; the use shall not involve the use or storage of toxic substances;*
- m) *the Municipality may impose additional conditions in order to minimise any potential public nuisance;*
- n) *occupation shall be subject to the submission of a site plan for record purposes, demonstrating compliance with the requirements, and*
- o) *only one un-illuminated sign shall be permitted, which shall be fixed to the building or boundary wall or fence, and such sign shall be in line with the Overstrand bylaw relating to outdoor advertising and signage.*

Removal of restrictive title deed condition

The application also intended to remove a restrictive title deed condition that prohibits the applicant from operating a place of business on the subject property this includes a home occupation.

The title deed condition contained the following wording: Condition III.D.(c) *“No canteen, hotel, shop, factory industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent of the Transferor Company.”*

Should a home occupation be allowed, then it stands to reason that the application for the removal of the title deed condition will also have to be considered.

It is proposed that the condition be replaced with the following condition which limits the use of the property as follows:

*“No canteen, hotel, shop, factory industry or any place of business whatsoever, **except for offices**, shall be conducted on the said property except with the consent of the **Overstrand Municipality**.”*

Conclusion

That the Appeal Authority notes that the MPT does not support the rezoning of the property. Home occupation is supported on the property and the amendment of the restrictive title deed conditions is supported on the subject property subject to the recommendation.

13. RECOMMENDATION

1. that Appeal Authority take note of the conditions as proposed by the Municipal Planning Tribunal, which are as follow;
2. that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following
 - rezoning in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
 - consent use in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
 - departure in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

not be approved in terms of the provisions of Section 61 of the By-Law;

3. that the commercial use be limited to that of a home occupation and subject to the following parameters:
 - (a) the proprietor of the home occupation must permanently reside in the dwelling;

- (b) the total area used for a home occupation, including storage area required for the use, shall not exceed 25% or 50 m² (whichever is most restrictive) of the total floor area of the building from which it is to be conducted;
 - (c) no more than 3 persons in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;
 - (d) home occupation shall be conducted completely indoors;
 - (e) the storage of products, goods, or supplies connected to the home occupation shall be inside a building;
 - (f) no more than one vehicle, not exceeding 3 500 kg in gross weight, shall be utilised for the home occupation;
 - (g) the hours of operation are restricted to 07h30 to 17h30 on Mondays to Fridays and 07h30 to 13h00 on Saturdays;
 - (h) on-site parking must be provided to the satisfaction of the Municipality, provided that at least two on-site parking bays are provided in addition to the normal parking required;
 - (i) the exercise of home occupation shall be subject to the submission of a site plan (for record purposes) demonstrating compliance with the requirements pertaining to home occupation and land use parameters;
 - (j) a conveyancing certificate shall be submitted, demonstrating there is no title deed restrictions that restrict the home occupation;
 - (k) the use shall also comply with all environmental and nuisance control regulations; the exterior of the building and the lot shall not be changed in such a way as to decrease its residential appearance, except for permitted parking spaces;
 - (l) the use shall not involve the storage or use of hazardous, flammable, or explosive substances, other than types and amounts commonly found in a dwelling; the use shall not involve the use or storage of toxic substances;
 - (m) the Municipality may impose additional conditions in order to minimise any potential public nuisance; and
 - (n) only one un-illuminated sign shall be permitted, which shall be fixed to the building or boundary wall or fence, and such sign shall be in line with the Overstrand bylaw relating to outdoor advertising and signage.
4. *that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **be amended to read as follow:***

“No canteen, hotel, shop, factory industry or any place of business whatsoever, except for offices, shall be conducted on the said property except with the consent of the Overstrand Municipality.”

15. ANNEXURES

Annexure A: Letter from the Appeal Authority, dated 5 July 2023
 Annexure B: Report to the Appeal Authority, dated 21 June 2023

SIGNATURES**REGISTERED PLANNER****AUTHOR**

Name: **P ROUX**
 SACPLAN Reg No: **A/2246/2015**
 Signature: _____
 Date: _____

REGISTERED PLANNER

Name: **SW VAN DER MERWE**
 SACPLAN Reg No: **A/1850/2014**
 Signature: _____
 Date: _____

ANNEXURE A



Memo

OFFICE OF THE EXECUTIVE MAYOR, OVERSTRAND MUNICIPALITY

To: R. Kuchar.
From: Executive Mayor Annelie Rabie
cc: S. Muller
 Dean O'Neill
Date: 5 July 2023



Re: APPEAL: ERF 5473, 13 SEVENTEENTH AVENUE, VOËLKLIP, HERMANUS: APPLICATION FOR THE REZONING, CONSENT USE & PERMANENT DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY)

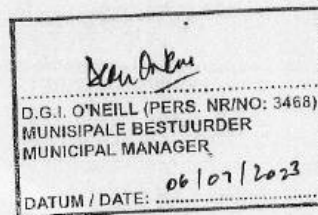
The appeal was received within the 21-day period and the required fee lodged by the appellant. Thus, the appeal is regarded as valid.

In an appeal against a decision of the Municipal Planning Tribunal (MPT) the onus is on the appellant to show that the members of the MPT erred in reaching their decision and to set out the reasons why there is a belief that MPT erred.

The appeal documentation was scrutinised and after due consideration of the reasons provided by the MPT and the arguments of the appellant, the view is held that this appeal should be referred back to the Municipal Planning Tribunal requesting advice and reconsideration of the application, in that the MPT suggests restrictive conditions in regards to the type of business to be accommodated on ERF 5473 which will have the least potential of negative impact on the ambience of Voëlkliip.

Yours sincerely

Annelie Rabie (Dr.)
 Executive Mayor



APPEAL AUTHORITY

APPEAL: ERF 5473, 13 SEVENTEENTH AVENUE, VOËLKLIP, HERMANUS:
APPLICATION FOR THE REZONING, CONSENT USE & PERMANENT DEPARTURE:
MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY)
LTD

Town- and Spatial Planning Department

Erf 5473 HVK

02 June 2023

(028) 313 8900

Hermanus Administration

1. Executive Summary

An application has been received on 14 March 2021 from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus, for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16.(2)(f) of the By-Law in order to remove restrictive Condition III.D.(c) contained in Title Deed T9341/2014;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

The proposal was considered by the MPT on 27 February 2023, and it was resolved as follows:

RESOLVED

1. that the comments/objections received 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) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following
 - ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
 - ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
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not be approved in terms of the provisions of Section 61 of the By-Law;

4. *that the applicant and persons 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 above decision are as follows:

- The proposed use is in stark contrast to the residential character of the area of the area.
- The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street).
- The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.
- The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has their own operational methods which could negatively impact the surrounding area.

Notice of the decision was sent on 7 March 2023. One appeal was received against the decision of the Municipal Planning Tribunal (MPT). The appeal was received from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd. The appeal was submitted on 27 March 2023 and is therefore submitted within the prescribed 21 days from the date of notification of the decision and the relevant appeal fee was paid. The appeal is thus regarded valid.

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

Katobolic

APPEAL AUTHORITY**5. Legal Requirements**

Section 78 and 79 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020

6. Background/Discussion/Evaluation/Assessment

The appellant's appeal and reasons for appeal are attached as Addendum CC. The reasons for the appeal are summarised and discussed below.

The property owner bought the property in 2014 and utilised the dwelling to practice a home occupation on the subject property. As the years progressed the home occupation was practised successfully and expanded, without them knowing the expansion surpassed the allowable parameters as contained in the new policies and schemes.

The property owner retired, and she ceased to practice the home occupation from the property. Due to the history of the property, it is proposed to sell the property for offices purposes and in more particular for a professional practice.

The entire application was refused by the Municipal Planning Tribunal (MPT):

- ❖ **removal of restrictive title deed condition** in terms of Section 16.(2)(f) of the By-Law in order to remove restrictive Condition III.D.(c) contained in Title Deed T9341/2014;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

Grounds of the appeal

The appeal is against the entire decision.

The appellant is of the opinion that the decision maker erred in coming to the conclusion it did.

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The appellant states that the MPT based its decision on the opinion, motivation and recommendation of the municipal planner. The main factor of refusal was that the proposal is in stark contrast to the residential character, or the area and that the motivation failed to motivate and address deviation within the Overstrand Municipality Spatial Development Framework (OMSDF) and Overstrand Growth Management Strategy (OMGMS) and is undesirable and not in-line with the character of the area and zoning legislation.

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The reasons for refusal are addressed by the appellant:

The proposed use is in stark contrast to the residential character of the area of the area.

The property owner only has a vision to develop offices on the property as stated in the motivation.

The definition of office is as follow:

"office" means property used for conducting an enterprise primarily concerned with administrative, clerical, financial or professional duties and includes medical consulting rooms;"

Under the Residential Zone 1: Single Residential – home occupation is a primary right and is defined as follow:

"home occupation" means the practising of a non-residential use conducted from a dwelling provided that the dominant use of the dwelling concerned shall remain the accommodation of a single family, provided that the use and property complies with the requirements contained in this land use scheme for home occupation;"

In addition to the definition the following parameters for home occupation in the Land Use Scheme are highlighted under 16.10.10.

(2) General development parameters for home occupation:

- a) the proprietor of the home occupation must permanently reside in the dwelling;
- b) the total area used for a home occupation, including storage area required for the use, shall not exceed **25% or 50 m²** (whichever is most restrictive) of the total floor area of the building from which it is to be conducted;
- c) **no more than 3 persons** in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;
- d) home occupation shall be conducted completely indoors;
- e) the storage of products, goods, or supplies connected to the home occupation shall be inside a building;
- f) no more than one vehicle, not exceeding 3 500 kg in gross weight, shall be utilised for the home occupation;
- g) the hours of operation are restricted to 07h30 to 17h30 on Mondays to Fridays and 07h30 to 13h00 on Saturdays;
- h) on-site parking must be provided to the satisfaction of the Municipality, provided that at least two on-site parking bays are provided in addition to the normal parking required;
- i) the exercise of home occupation shall be subject to the submission of a site plan (for record purposes) demonstrating compliance with the requirements pertaining to home occupation and land use parameters;
- j) a conveyancing certificate shall be submitted, demonstrating there is no title deed restrictions that restrict the home occupation;
- k) the use shall also comply with all environmental and nuisance control regulations; The exterior of the building and the lot shall not be changed in such a way as to decrease its residential appearance, except for permitted parking spaces;

But a right is reserved
 right but reserved

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- l) the use shall not involve the storage or use of hazardous, flammable, or explosive substances, other than types and amounts commonly found in a dwelling. The use shall not involve the use or storage of toxic substances;*
- m) the Municipality may impose additional ~~conditions in order~~ to minimise any potential public nuisance;*
- n) occupation shall be subject to the submission of a site plan for record purposes, demonstrating compliance with the requirements, and only one un-illuminated sign shall be permitted, which shall be fixed to the building or boundary wall or fence, and such sign shall be in line with the Overstrand bylaw relating to outdoor advertising and signage.*

Any property zoned as Residential Zone 1: Single Residential is allowed to be used for home occupation on condition that it complies with the parameters as indicated above and if it has no title deed restrictions. This was done on the property, however, it was converted to cater for the business needs and the restrictive conditions. The business is larger in footprint and has more than three people working on the premises. The only way to accommodate such a business is to rezone and remove the restrictive conditions. The property owner is aware that a business property may be used for other land uses however the motivation report strictly refers to office use.

The proposed office space is in line with the typical home occupation enterprises, which are compatible with residential areas. Except for the size and number of employees. This office space proposes a larger office footprint and an increase in the number of employees, which are still within reasonable limits of a home occupations. This GLA (gross leasable area) is limited to the number of parking available on the property, which is currently at maximum.

The proposal should not be categorised as typical commercial property as it will only be used as office space with no other business activities. The proposal must be evaluated on its compliance with home occupation enterprise regulations and be considered accordingly.

Response from Town and Spatial Planning Department

The appellant is correct to state that there are set parameters for home occupation on residential erven. These parameters limit the scope of the use in terms of size and impact which is essential in order to maintain the residential character.

However, as stated by the appellant the past utilization of the property and how it is currently developed cannot adhere to the land use parameters for home occupation, thus the reason for the application. Therefore, the above statements made by the appellant is not agreed with as the proposal cannot be evaluated on its compliance with home occupation, because it is not a home occupation.

It should be noted that the proposed rezoning of the property is not the only recourse. The property could still be used as a home occupation if compliance is shown with the land use scheme and the title deed is addressed. This option was discussed with the property agent however, they purely seek to market the property as is, without the need to make changes to the dwelling. However a home occupation is restricted to 25% or 50 m² and the current development is not restricted in such a manner.

Further, as stated by the appellant and made clear in the motivation the dwelling was used for a physiotherapist, however the opinion is held that, should a doctor or dentist

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or veterinarian purchase the property, that the respective profession will change the dwelling to fit the specific profession's needs which will not be the same as a physiotherapist. As an example, a dentist will have an x-ray equipment and a veterinarian will have a type of grooming or holding facility for the animals. Further, the way such type of professional services is conducted has their own way of management and operating procedures as opposed to the physio practice which was conducted on the site years ago.

The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëklip which is earmarked for Economic Opportunity (local). This area is central in Voëklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street).

On 27th May 2020 the Municipal Council adopted the OMSDF, 2020 (Overstrand Spatial Development Framework, 2020), in the same instance rescinded the following:

- 2006 (Council's resolution 27 October 2006), *Overstrand Municipal Wide Spatial Development Framework -*
- 2011 (Council's resolution 26 January 2011), *Overstrand Municipal Spatial Growth Management Strategy - and*
- 2014 (Council's resolution 25 June 2014), *Integrated Development Framework with its sectoral plans;*

The OMGMS was rescinded in 2020 and carries no weight, although it is still utilised as a guideline by the Town- and Spatial Planning Department, the document and its contents cannot be enforced.

The document which was rescinded indicated an area for Local Business Zone (Economic Opportunity (local)) and the area earmarked for Economic Opportunity (local) was recently put out on tender and can therefore not be developed as a Local Business Zone anymore.

In addition, a precedent cannot be created as town-planning is a site-specific process and the notion that if the rezoning is approved other rezonings will use it as motivation.

Each application is evaluated individually and site specific and considered if desirable to approve the rezoning. The Overstrand Municipality cannot be forced to approve a rezoning application just because Erf 5473, Hermanus was rezoned. The Municipality must consider factors which may influence their consideration of the proposed rezoning.

Response from Town and Spatial Planning Department

The appellant only quotes a section of the resolution of the Council's decision taken in 2020. The context of the item which served before the MPT must be considered. In the item the following is stated:

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APPEAL AUTHORITY

"The current reviewed Growth Management Strategy (OMGMS) will serve as an informant to the OMSDF, by guiding the implementation of its growth vision. The OMGMS does not form part of the OMSDF and will be a strategy document adopted by Council on its own. This will, together with other sectoral plans, serve as strategic document informing the OMSDF, but not part of the OMSDF. This is to ensure flexibility and dynamism in development projects and to reduce rate type for developments."

Thus, although the OMGMS was rescinded and now acts as a strategic document which guides growth and development in the Overstrand. It is the consultant's responsibility to discuss and motivate the relevant strategies, and in this case the motivation is considered in adequate.

Irrelevant

The appellant also uses the OMGMS as a reason and motivation in other of its applications. It is in cases where it does not align with the desired outcome the document and its contents is overlooked.

A section of Erf 4771 was out on tender however no valid bid was received. It should be noted that the area as indicated in the OMGMS (for Economic Opportunity ([local])) was not included in the portion which was out on tender. Please refer to the images below, the area for Economic Opportunity (local) is around the Ok-mini.

OMGMS, 2010 (area in blue is indicated for Economic Opportunity [local])

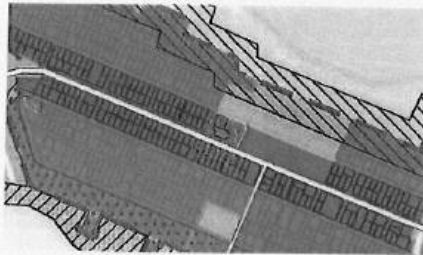


Illustration of tender area (area in blue is indicated as tender area):



APPEAL AUTHORITY

Further, the appellant states that a precedent cannot be created as town-planning is a site-specific process and the notion that if the rezoning is approved other rezonings will use it as motivation, and that each application is evaluated individually and on a site specific basis and that the Overstrand Municipality cannot be forced to approve a rezoning application just because Erf 5473, Hermanus was rezoned. The Municipality must consider factors which may influence their consideration of the proposed rezoning.

These statements are not agreed with as the town planning practice does not only consider local/site specific contextualisation and impact of an application but also on town to regional scale. The opinion is held that rezoning residential erven for business use along the R43 on a haphazard manner will lead to more applications along the R43 for rezonings and throughout the residential suburb.

Lastly, although the outcome/merits of the next rezoning cannot simply be determined on precedent, this department is aware of various applications and motivations received where the term "precedent" is strongly used to motivate a proposal, and the consultant's applying for this application also does the same. Therefore, the opinion is held that a precedent will be created if this rezoning is approved which will provide other property owners the notion that they may also apply for the rezoning of their respective erven to accommodate larger commercial activities.

The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.

The Growth Management Strategy has been rescinded and therefore cannot be deviated from as it does not carry weight anymore and is only used as a guideline and therefore the document and its contents cannot be enforced.

In terms of the item which served before the MPT the following was stated:

The wording used in the SDF refers to "localized" in terms of the New Shorter Oxford English Dictionary, localized means: Confined to or concentrated in a particular place or part; that has been localized.

This was however taken out of context as the OMSDF clearly indicates that areas in Voëlklop that may be regarded for commercial activities needs to be:

"Small individual localized business enterprises could be considered consistent with the status quo (ie. a limited scale on public transport routes where services infrastructure is available)."

It is important to note the "small individual" section from the MSDF, which the proposal is aligned with, and as a result no deviation is required. The property owner is only attempting to rezone his property for a single office enterprise which can be considered as a "small individual localised business enterprise".

Response from Town and Spatial Planning Department

The whole statement made in the item which served before the MPT must be regarded and not just one section, for ease of reference it is quoted below, please

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note the sections underlined. It is regarded that the proposal made by the applicant will not be localised (confide to the existing commercial activities in Voëlklip). This department stand by the wording by the town planner.

"In terms of the SDF (Overstrand Municipal Spatial Development Framework, 2020), the property is indicated as a residential property. As motivated by the applicant the following is stated in the SDF - Small individual localized business enterprises could be considered consistent with the status quo (ie. a limited scale on public transport routes where services infrastructure is available). The applicant uses this to motivate the proposed rezoning however fails to link the SDF with the OMGMS (Growth Management Strategy, 2010) which is a policy document of the Municipality.

The wording used in the SDF refers to "localized" in terms of the New Shorter Oxford English Dictionary, localized means: Confined to or concentrated in a particular place or part; that has been localized. This relates to the OMGMS which identified key spatial areas for the development of commercial erven. The OMGMS identified the spatial areas due to the character of the area and the central location of the residential suburb. And as stated earlier by allowing ad hoc development of commercial a precedent will be created which will cause the fragmentation residential area and character.

Further by localizing business to a certain demarcated area will lessen the impact of the business activity on transport and infrastructure. The SDF does not promote the spread of commercial activities throughout the residential area or along the main road.

Lastly the applicant failed to address the specific zoning as demarcated in the SDF, which is residential, therefore the application is considered a deviation of the SDF and should have been addressed as such.

Considering the abovementioned it is considered that there is an oversight in the motivation which were not made clear to the relevant stakeholders."

The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has their own operational methods which could negatively impact the surrounding area.

As stated in the motivation the property owner's mother had been running a physiotherapy practice on the property for over eight years without any complaints, even though it is noted that practice was not operated within the scope of a home occupation. The application clearly specifies that only an office is being applied for, which is a professional type of development and not considered a nuisance.

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The definition of office is as follow:

"office means property used for conducting an enterprise primarily concerned with administrative, clerical, financial or professional duties and includes medical consulting rooms;"

The property owners are attempting to sell the property as it is developed, however due to no approval for the land use the property is not selling. Until such time the property is sold, it is not known what type of business will be conducted on the property. It will be limited to an office as defined by the OMLUS and can be register in the title deed as a restrictive condition.

If the appeal is upheld any additions or alterations required would require municipal Building Control approval.

Compromise and mitigation being proposed for the application that was made:

Application was made for removal of a restrictive title deed condition. The restrictive condition restricts the operation of any business on the property:

Condition III.D.(c) *"No canteen, hotel, shop, factory industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent of the Transferer Company."*

A compromise is proposed not to remove the condition but to amend the condition that it only refers to offices may be operated on the property, and read as follow:

Condition III.D.(c) *"No canteen, hotel, shop, factory industry or any place of business whatsoever, **except for offices**, shall be opened or conducted on the said property except with the consent of the **Overstrand Municipality**."*

Response from Town and Spatial Planning Department

It was noted by the town planner that the proposal was for office space/professional practice. However, it was also noted how the property is being marketed on-line as quoted below:

"Proud Sole Mandate - This modern practice is ideal for professionals such as: doctors, vets, attorneys, or architects' offices. An immaculate and spacious residence with stunning mountain views, situated on a large stand on the corner of Main Road and 17th Avenue in sought-after Voëlklip. Within close proximity to our popular beaches and scenic cliff paths.

The property offers: a welcoming reception area, five rooms and two bathrooms plus a lovely kitchen, two garages and ample off-street parking. An added bonus: a one-bedroom apartment perfect to generate a rental income. Neat, irrigated garden and more. Please contact me to arrange a viewing."

Although the property has been used for home occupation in the past it cannot be sold as a commercial property as the primary rights and zoning is for residential use.

Any home occupation must be compliant with the parameters of the land use scheme. The rezoning is therefore used to market the property for commercial use such as

APPEAL AUTHORITY

offices for doctors, vets, attorneys or architects. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office, and it seems like the rezoning is to allow for any type of professional office. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use/management. Each type of profession has their own character operational methods which could negatively impact the surrounding area.

It will however be a benefit to the property owner to sell the property with business rights as it can be marketed better without having to make alterations to the building. The removal of the title deed restriction is therefore advantageous for the property owner who will certainly benefit from the proposed application, it is maintained that the proposal led to a precedent being created and will lead to the fragmentation of the residential suburb.

The proposed mitigation measure is not supported as it still does not limit the use of the property for a specific use and as stated as an example, offices for doctors, vets, attorneys or architects all have their own operation/management style which does not relate to the past uses on the property nor does it safe guard the adjacent property owners against any nuisances and negative impact they may experience.

~~The property is advertised as a residence together with the apparatus to be conducted as an office.~~

The above can all be achieved without the need for a rezoning and is possible under the residential zoning.

Replication against the rezoning

The appellant further states that the property owner has made extensive changes to the dwelling in the past to accommodate a physiotherapy practice and it would be illogical and costly to convert the property back into a dwelling. The property was completely utilised for business purposes (except for the single bedroom flatlet). The renovation of the building uplifted the area.

The location is unique as it is at the edge of Voëlklip across De Mond Caravan park on the Main Road, ideal for office space.

Jobs will be created ensuring economic development and is aligned with the MSDP and PSDP.

Businesses in the Voëlklip area

The municipal town planner indicated that Voëlklip is purely a residential area, which is not the case as various 'small individual localised business enterprises' scattered around the entire area:

- ❖ OK Minimark
- ❖ Lizette's
- ❖ Caltex
- ❖ Hopside Down
- ❖ Greeff Offices

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❖ Baleens Guest House

The appellant further refers to 10 and more home occupations being conducted throughout Voëlkliip. The area is therefore not strictly residential. It was accepted that the land use scheme promotes this, and that low intensity, low scale business uses will be operated in cohesion with residential areas. The proposed offices will be aligned herewith.

Response from Town and Spatial Planning Department

The changes made to the dwelling were made illegally and without prior approval from the municipality. The business (physio) practice was halted while the planning application process began and therefore cannot be used as a motivation to allow other business practices. The opinion is held that the changes currently made to the dwelling can be easily changed and reverted back into bedrooms as there are no specialised equipment being sold with the property.

The location of the site was adequately considered by the town planner, further the statement following statement made by the appellant is wrong: "the municipal town planner stated that Voëlkliip suburb is purely residential". The statement made by the municipal town planner is as follow:

"It is noted that the majority of the erven in Voëlkliip is zoned for residential use. What is further noted is that the existing commercial erven was historically established prior to the adoption of the Hermanus SDF. Further, some of the commercial erven have also been rezoned and/or altered to accommodate residential dwellings/units due to the lack of commercial demand in the area." → at the time I suppose

- OK Minimark indicated was approved in 1985;
- Lizette's was approved post 1999;
- Caltex indicated on the 1974 zoning map;
- Hopside Down indicated on the 1999 zoning map. However approval pre-dates this map 1999;
- Greeff Offices – old postal office which have been subdivided and a portion of the property have been rezoned to Single Residential Zone 1;
- Baleens Guest House – indicated on the 1999 zoning map;
- De Mond Caravan Park – indicated on the 1974 zoning map. It is true that there is a proposal to further develop the De Mond Resort, however these developments will relate to tourist activities as per the resort zoning as per the title deed conditions.

Considering the above there isn't a lot of commercial erven in Voëlkliip. Further, the land use rights are historical in nature. Any new commercial erven will have to be coherent with the current trend and development proposals for the area and spatial planning best practices. The current proposal is a piece meal solution based on an activity which was done under the guise of a primary use."

In terms of the Growth Management and SDF it is stated that business should be localised. This means that any addition to the business existing in the Voëlkliip area should be around the existing localised business. This is the desired pattern and not as the appellant argues. The argument would mean that any property in Voëlkliip has localised business potential.

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The context of Voëlklip was carefully considered by the municipal town planner and although there are several home occupations in Voëlklip the emphasis needs to be placed on commercial erven as this proposal is not for a home occupation but for a commercial property.

Letters of support

Several letters of support were also received for the business and the letters state the reason why they are of opinion the rezoning needs to be approved. Most of the letters are of clients who have utilised the service available on the property.

The reasons are:

- ❖ less travel time;
- ❖ reduced travelling costs;
- ❖ residential nature will not be affected;
- ❖ majority of residents are elderly and will benefit from a local professional service;
- ❖ sufficient parking;
- ❖ only be used for professional use;
- ❖ De Mond located across the road from the subject property is to be aligned with residential character of Voëlklip;
- ❖ the redevelopment of the property has uplifted the area;
- ❖ there were no objections from the neighbours from 2014 to 2020;
- ❖ job creation;
- ❖ no change in status quo as the property is being proposed to be used for a professional business as it has been since 2014, and
- ❖ no change to the building is proposed.

Response from Town and Spatial Planning Department

It is noted that several letters of supported was submitted with the appeal, however, the appellant only provides a summary of the letters. The letters will not be discussed in detail but the following points needs to highlighted:

- Most of the letters refer to a doctor's practice on the property and that the elderly in the Voëlklip area is in need of such a facility. This is noted. However, the application made is not limited to a doctor's or physiotherapist practice. The land use being applied for could accommodate any type of use which can be accommodated under an 'office' use such as accountants, legal firm, estate agent or a veterinarian, thus the need of the community (for medical facilities) will still be unresolved.
- Westcliff, which house most of the doctor offices in Hermanus, is only 5km away from Voëlklip which is a 5min to 10 travel time. Pensioners who are in such a state that they cannot travel will then also require specialised care which is beyond that of a normal doctor's office.
- The addresses provided in the letters of support are not of any person living next to the subject property.
- When the property owner bought the property in 2014 the Zoning Scheme Regulations of 2013 was already implemented, therefore the property owner was only allowed to utilise a maximum floor area of 25% or 50m² of the building, this was communicated with the property owner, however the parameter was not

No complaints subsequent

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complied with. The fact that this is encroached upon is the reason why the rezoning application was submitted as the property owner does not want to adhere to the land use regulations.

- During the public participation period for the land use application, 24 objections were received and only three letters of support. Therefore, the number of objections against the proposal far outweigh the support which cannot be overlooked.

Seven letters of objection were also received from the community which dispute the statements made in support of the appeal and support the findings of the MPT and municipal town planner.

Objections or comment towards the appeal relate to the following:

- Don't agree*
- The proposal will have a negative impact on the quality of life for those of us who live in Voëlklip. The residence of the suburb has the right to peaceful use and enjoyment of our property, and we firmly believe the rezoning will impede on this right.
 - Land use regulations are in place to ensure that the community remains balanced and that residents can enjoy a peaceful and comfortable living environment.
 - The rezoning will have the effect of increased flow of traffic and noise pollution in our once peaceful neighbourhood.
 - A precedent will be set for further rezoning applications. Although it is stated that rezoning is site specific, the applicant is clearly relying on precedent as grounds for argument.
 - A home occupation is more desirable than a commercial property.
 - The Central Business District of Hermanus is a mere 5 kilometres away and lots of office space is available. The persons in need of medical aid can easily travel there, and if elderly cannot travel then specialised care will be required.
 - The supporting letters mostly refer to elderly needing closer medical help, which would be null & void if this property were to be used as any other 'Office' ...as this is not divulged.
 - The purpose of the application is solely for financial gain and not as a service to or in the interest of the community.
 - The address provided by the supporting letters are not situated in the immediate affected area and will not be affected by the devaluation of property, noise, safety concerns and uncertainty on how the erf will develop in the future.
 - A letter of support also shares the objector's worry that there is no assurance that, should the erf be rezoned, it will only be utilised as doctors' offices.
 - Another letter, acknowledges that even guest houses have often created "huge parking and noise problems", which confirms the objector's concern regarding the same problems.
 - The letter from De Klerk MacLennan-Smith Inc Attorneys is written on the applicant's behalf and cannot be considered a letter of support. According to the letter, "approval will help relieve additional traffic and parking required in the CBD". Five parking spaces will have little effect on the CBD and the five parking bays will be enough parking for practitioners and personnel, and clients will have to park on the side of the road.
 - Changing the title deed to state "offices only" still deviates from the upmarket residential aspect of Voelklip. To have a dead, empty office property which is unoccupied at night, weekends etc. creates a cold/clinical atmosphere for nearby residents & the security risk of an unoccupied property.

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- Regarding the statement that Economic Activity will create more job opportunities is unfounded, as it should not be a requisite for a residential area to supply more job opportunities. Residential is what the name implies - for people to inhabit, retire etc.
- The resident businesses referred to are all long standing, with unusual location, history or circumstances and their location have few direct residential neighbours.
- Land use application is not clear - neither is the type of business clear "office" is not a very clear indication as to the type of business being conducted, as well as how many people will be conducting business in these offices. To state that the previous physio practice never caused residents to complain cannot be used as a defining factor that the new offices will function in the same, low-key manner.
- The mere fact that the owners for many years were running a business unlawfully on this site, does not now give them the right to apply forward to get ERF 5473 HVK to be zoned as a business in our residential area of Voëlklip..... "two wrongs don't make a right"

Reasons why the appellant believes the decision maker erred in its decision is due to the information not accurately conveyed to the decision maker as contained above and summarised below

- ❖ Voëlklip being considered only as a residential area – this is not the case as numerous other small individual localised business enterprises existing within the area.
- ❖ The OMGS and MSDF had to be deviated from – the OMGMS was rescinded and cannot be deviated from as it is not a valid document anymore.
- ❖ Voëlklip has an area earmarked as a Local Business Zone – this is not the case, as the area earmarked in the OMGMS to become a Local Business Zone, was put up for tender by the Overstrand Municipality to be developed as a residential area.
- ❖ Precedent will be created if this application is approved – which is flawed as town planning is a site-specific process.
- ❖ Contents and definitions within the MSDF being inaccurately presented and focus being placed on only a section of the specific definition as to why small individual localised business enterprises may be allowed in Voëlklip.
- ❖ Land use application is not clear on the type of business being proposed – which is not the case as the land use application is clear that only office use will be allowed.

Response from Town and Spatial Planning Department

The reasons provided by the appellant is not agreed with as stated below –

- ❖ The municipal town planner never stated that Voëlklip is being considered only as a residential area – the context of the history of the businesses in the suburb was made clear to the MPT. Further, the context of the SDF was also explained and discussed clearly that localized means at a specific location and therefore meaning grouped/clustered together and not developed haphazardly.
- ❖ The OMGS and MSDF had to be deviated from – the proposed zoning differs from what is indicated in the SDF therefore the deviation is highlighted. It was further discussed in the item which served before the MPT that the Growth Management Strategy is a policy document, however this document was not regarded by the applicant. A deviation of the SDF is allowed when there are site

APPEAL AUTHORITY

specific conditions and in terms of his application there are no site-specific conditions.

- ❖ The area earmarked as a Local Business Zone – was not part of the tender site as indicated above in response to the appeal.
- ❖ The appellant/applicant itself motivates the proposal on precedent (due to the history of the site, even if it is illegal), and it is common knowledge the town planning practice does not just consider the local context but also town to regional context. Further how can an illegal use be used to establish a precedent as motivated by the applicant?
- ❖ Contents and definitions within the MSDF were discussed in context within the report which served before the MPT.
- ❖ As pointed out by the objectors stating that the use will be office space, still does not commit to how the property will be utilised. Cognisance of this was taken in the report and it was merely pointed out that any type of professional practice can utilise the property and that the previous utilization of the property as a physiotherapist practice has nothing to do with the future use of the property.

Evaluation/Assessment

Section 79 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) states that an appeal must set out the grounds on which the appellant believes the decision maker erred in coming to the conclusion it did.

As seen under the previous heading the appellant provides its reasons why it does not agree with the decision. However, the opinion is held that the MPT took an informed decision and did not err on the decision made after considering the information provided to it.

In short, the following needs to be highlighted:

- ❖ The property owner seeks to rezone the property to Business Zone 3: Local Business in order to allow business related uses (offices for professionals).
- ❖ Although the property has been used for home occupation in the past it cannot be sold as a commercial property as the primary right and zoning is for residential use. Further, the home occupation did not comply with the land use parameters. Home occupation is restricted to 25% or 50m².
- ❖ The rezoning is therefore used to market the property for commercial use such as offices for doctors, vets, attorneys, property agents or architects. This will benefit the property owner as it is seeking to sell the property with business rights and to market it as such without having to make alterations to the building.
- ❖ The other uses for offices does not aid the elderly in the Voëlkop area as motivated or highlighted in the letters of support provided by the appellant.
- ❖ It is noted that there are business zoned erven in Voëlkop. However, these erven were developed prior to modern forward planning documentation such as the Overstrand Municipal Spatial Development Framework in 2006 (now the SDF 2020) and the 2010 Growth Management Strategy. Any new commercial erven will have to be coherent with the current trend and development proposals for the area. The current proposal made in this application is a piece meal solution based on an activity which was done under the primary use of the residential zoning.
- ❖ Each type of professional practice has their own operational methods which could negatively impact the surrounding area. Further, even though it will be costly for the property owner to revert the structure back to a dwelling any new professional practise will have to develop the structure for its specific use.

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- ❖ The objections received are noted and the concern that the proposed use will change the character of the area is agreed with.

Conclusion

Having regard for the above it is clear that the appellant failed to prove that the decision made was in error and that the decision of the Municipal Planning Tribunal be upheld.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

- Addendum AA: The item with annexures that served before the Municipal Planning Tribunal on 27 February 2023
- Addendum BB: Decision letter
- Addendum CC: Appeal lodged Messrs WRAP Project Office date 27 March 2023
- Addendum DD: Proof of payment of the appeal deposit
- Addendum EE: Objections against the appeal

RECOMMENDATION:

- (a) that the decision of the Municipal Planning Tribunal on 27 February 2023, be upheld, and
- (b) that the appeal deposit is not refunded.

AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL**23 FEBRUARY 2023**

ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD

5473 HVK

File Ref: 4088/2022

P Roux

(028) 313 8900

Hermanus Administration

22 December 2022

1. EXECUTIVE SUMMARY

An application has been received on 14 March 2021 from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus, for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16.(2)(f) of the By-Law in order to remove restrictive Condition III.D.(c) contained in Title Deed T9341/2014;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan (SDP) is attached as Annexure C. Title Deed T9341/2014 is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 5473 is situated on the corner of Seventeenth Avenue and Seventh Street and is developed with dwelling. The subject property measures 832m² in extent, is zoned Residential Zone 1: Single Residential. The property owner seeks to rezone the property to Business Zone 3: Local Business in order to allow business related uses on the property and to apply for consent use to retain a small flatlet on the ground floor.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL

23 FEBRUARY 2023

Rezoning

- The subject property is zoned Residential Zone 1: Single Residential and it is proposed to rezone the property to Business Zone 3: Local Business in order to allow for offices such as medical consulting rooms.
- The property owner bought the property in 2014 and utilised the dwelling to practice a home occupation on the subject property. As the years progressed the home occupation was practised successfully and expanded, without them knowing the expansion surpassed the allowable parameters as contained in the new policies and schemes.
- The property owner retired, and she ceased to practice the home occupation from the property. Due to the history of the property, it is proposed to sell the property for offices purposes and in more particular for a professional practice.
- Office is defined as – "*means property used for conducting an enterprise primarily concerned with administrative, clerical, financial or professional duties and includes medical consulting rooms.*"
- The parking for the office can be accommodated on site as per the SDP.

Removal of restrictive title deed condition

It is also intended to remove a restrictive title deed condition that prohibits the applicant from operating a place of business on the subject property.

- The Title Deed T9341/2014 contains title deed conditions which restrict the land use on the property. This is Condition III.D.(c) "*No canteen, hotel, shop, factory industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent of the Transferor Company.*"
- The property was used for the operation of a professional office over the past few years. The applicant has the vision to allow a business enterprise to continue operating on the subject property. The proposal to rezone is being restricted by the condition mentioned above and therefore requires removal.
- The restrictive condition was originally intended to protect the residential character, but the intention is to create a unique professional office space within a continually diversifying area.
- The area currently allows for "small individual localised business activities" as stated by the OMSDF and the proposal is to have a small professional office space. The tile deed condition restricts this intended used and what is proposed by the OMSDF. Voëlklip is no longer just a residential neighbourhood as businesses are scattered around the neighbourhood.

The removal of the title deed condition is further motivated in terms of Section 39(5)(a-f):

Will financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.

No person or entity will be affected financially by the removal of the restrictive title deed condition.

AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL**23 FEBRUARY 2023**

The personal benefits which accrue to the holder of rights in terms of the restrictive condition.

No person is directly benefitting from this condition as the condition only restricting the application.

The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended.

The applicant will be gaining from the removal of the restrictive conditions as it will allow him to utilise his property to its full extent.

The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition.

There is no social benefit should the condition remain in place.

Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights.

There is not specific beneficiary of the condition, and no person or entity will be affected if these are removed.

Consent use

Consent is also requested to retain the flat on the property which is located on the ground floor.

- The proposed zoning for Business Zone 3: Local Business allows for a flat (on ground floor) with consent from the Overstrand Municipality. A flat is defined as "a unit containing one or more inter-leading rooms with adequate sanitary facilities and a kitchen, used for the accommodation and housing of a single family, and may be included in or separate from the main building on the property."
- This additional use will add value to the subject property as it will retain a residential character to the area.

Departure

To retain the existing structure as is it is proposed to depart from the building lines as contained under the Business Zone 3: Local Business zoning.

- relax the western building line from 3m to 2,68m to accommodate the proposed offices;
- relax the southern building line from 3m to 2,48m to accommodate the proposed flat.
 - With the change in zoning the land use parameters will change from a 2m lateral building line to 3m as the zoning abuts other zonings which are not the same as the proposed zoning.
 - The building, as built, complies with the current zoning parameters but will transgress the proposed zonings parameters.
 - These are small scale encroachments of existing structures.

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- The applicant states that the Overstrand Municipal Spatial Development Framework 2020 regarding commercial activities in Voëklip – “*Small localised business enterprises could be considered consistent with the status quo (i.e., a limited scale on public transport routes where services infrastructure is available).*”
- The subject property is located within a unique position on the edge of Voëklip, on the R43 and across the previous De Mond caravan park, where the proposed business zoning will not be intrusive or create a disturbance as it will only be offices (medical practice).
- All services are already connected, and access will be gained from 17th Avenue.
- The proposal does not trigger any listed activities in the National Environmental Management Act.
- The proposal is motivated to be in line with the planning principles.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	15 July 2022	19 August 2022
Gazette	Yes	15 July 2022	19 August 2022
Notices (possibly affected property owners)	Yes	15 July 2022	19 August 2022
Notices (persons mentioned in title deed)	No	N/A	N/A
Internal Departments	Yes	15 July 2022	19 August 2022
Ward councillor	Yes	15 July 2022	19 August 2022
Total comments	Twenty-seven (27) comments were received of which three (3) letters of support and twenty-four (24) letters of objection.		
Was public participation undertaken in accordance with section 46- 50 of the By-law on Municipal Land Use Planning?			Yes
Was the application processed correctly?			Yes
Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			N/A

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Building Control	15/07/2022	No objection. The building plan application must comply with all applicable law.

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Traffic Department	18/07/2022	No objection.
Waste Management	18/07/2022	No objection. Note that all medical waste generated will need to be collected by a registered healthcare risk waste company and disposed of at an approved facility as per the undertaking provided in the attached email (dated 18/07/2022).
Fire Department	19/07/2022	No objection subject to compliance with the provisions of SANS 10400 A: 2016, 10400T: 2020 and the By-law relating to community safety.
Engineering Services	22/09/2022	Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Twenty-seven (27) comments were received of which three (3) letters of support and twenty-four (24) letters of objection.

Objection NEIGHBOURHOOD
<p><u>Mrs N Ralph</u> <i>"The subject property is within an upmarket residential area. Therefore, by allowing offices will negatively affect this."</i></p>
<p><u>Dr J and Mrs C de Villiers</u> <i>"In contrast, allowing the proposed rezoning hold the real risk of permanently altering the character of the immediate neighbourhood with unknown economic consequences."</i></p>
<p><u>Mrs T Guthrie</u> <i>"Voëlklip should remain a residential area only, and the building lines should not be reduced - this will prevent business creep and encroachment that disadvantages neighbours and the nature of the area."</i></p>
<p><u>Mr R Oosthuizen & Mrs E Swanepoel</u> <i>"The subject property is within an upmarket and well-established residential area. Therefore, by allowing offices will negatively affect this upmarket residential area..."</i></p>
<p><u>Mrs S van Ryneveld</u> <i>"I wish to lodge an objection to the approval of business rights on this property and request it remain a residential plot in keeping with the area."</i></p> <p><i>Whilst we understand that it has been used for a small business practice, the sale of the plot with business rights does not guarantee that the new owners will continue a low-key operation."</i></p>
<p><u>Mr A de Villiers</u> <i>"Voëlklip is a residential area and its charm and attraction come from this zoning. In particular, it is a quiet suburb that attracts tourists and holiday goers, benefiting the</i></p>

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region at large. Having another commercial property (not a work from home or home business establishment), in my opinion, will detract from the nature of the area in a negative way."

Mrs S Peloi

"I am not sure of the perimeters of the new zoning mentioned, please explain what is the extend of Zone 3 business rights. As a house owner in the area (320, 8th street) we enjoy the quietness of the neighbourhood, and we would like to see it stay like that for the years to come. Our family owns the house from the early 1980's and we are the longest owners of property in that area."

"Further down in 7th street there is a cafe with takeaways and a liquor license, and there is open space around that premises as there are always traffic and elements hanging out there. And the last thing I want to see is that our neighbourhood property gets devalued because of that. Our property already has been devalued because the uncertainties and the state of the caravan park."

Mr & Mrs Coetzee

"We, Carl and Uta Coetzee as residents of Voëlklip at 305 9th Str, Hermanus, strongly object to the application to rezone any area of Voëlklip for Business rights."

Mrs R Beukes

"The rezoning will change the character of the area which was the main driver for us purchasing a property in this area."

Mrs E de Kock

"I hereby want to object to the rezoning of Erf 5473 to be zoned as business premises. There are sufficient businesses and petrol stations servicing Voëlklip. As ratepayer and owner of the property 317 De Mond this is a quiet neighbourhood and should be preserved as such."

Mrs V Thom

"I wish to object to the rezoning of private dwelling of cnr 7th street and 17th Avenue, Voëlklip."

Mr and Mrs Bourne

"The Voëlklip area is residential; the use of the existing property as a place of business beyond what was allowed was not then approved and it should not now be approved."

Mrs L Vernon

"4. Over time, this could cause the decay of the residential character of Voëlklip."

SM Turpin

"Voëlklip (and specifically this part) is a quiet residential area; people buy property and live here for that reason. Starting to give additional business rights to one property (specifically an office) will put the quiet nature of the neighbourhood at risk."

Mr B Lamprecht

"The part of Voëlklip and Hermanus is particularly charming to people who want to appreciate the nature and get away from cities and town centres."

Prof S Scott

"My property is on the corner of 10th Street and 3rd Avenue and the property on the other corner used to have commercial rights. For close on 35 years, we had endless problems of various natures with the owners, tenants and sublessees of the property. We had to bring court applications and I had endless discussions with Ms Van der Stoep to get the municipality to intervene, which they never did. Only when Mr Marcus Jooste, in desperation about the conditions on the property, bought it, our problems stopped. You cannot allow this kind of commercial development in a residential area as it infringes on the rights of other owners in the area."

Mr L Swanson

"As a trustee representing The Three G's Trust, the owners of 232 9th Street, Voëlklip I wish to raise our objection to the proposed changing in the zoning of the property situate on the corner of 7th Street and 17th Avenue, Voëlklip to allow for the establishment of offices and business rights. This detracts from the residential character of the area and is unacceptable."

Mr I Cason

"Dit sal ook 'n negatiewe uitwerking hê op die huislike karakter van Voëlklip."

Mrs G Hartman

"I have first-hand experience of houses being rented out around me and on this basis oppose this application."

"When it is not a home, there is constantly movement and noise of public persons with no regard for neighbours in close proximity. This is very evident as our erf is relatively small. Some businesses will also be active on Sundays and public holidays, which is totally unacceptable."

"The proposal is out of character of the residential area."

"The proposed rezoning will impact your property negatively as the pure residential land use will now be jeopardised."

Response from applicant on comment and objections

"The property is located on the outskirts of Voëlklip and cannot be considered surrounded by residential properties. Each of the properties that have a business zoning in Voëlklip has this unique position within the area.

Voëlklip cannot be considered purely residential anymore as there are several businesses within the area and the proposal is not considered out of character.

The property owner is aware of the sensitive nature of the property and area and is not proposing to change the site drastically. There are several businesses in Voëlklip and as indicated within the motivation report the Spatial Development Framework makes provision for isolated businesses such as the OK minimart, Lizette's, Caltex, Hopside Down, Dutchies, Greeff Offices.

Voëlklip is not proposed to have a dedicated business node and a professional medical office is not considered to be out of character or a nuisance business. The desirability of a medical office is also that it provides access to these services without the need to travel great distances into the CBD.

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A nuisance business is an enterprise which creates noise, pollutants, or any other negative impacts on the area.

The businesses being proposed are office/consulting type of work and are not a source of noise or other nuisances. The existing building is also not out of character and falls within the design style of a single residential house. Should the operations not be to the satisfaction of the surrounding area, the municipality have an appointed compliance officer that will investigate any concerns that the objectors may have.

Response from town planner

It is noted that the majority of the erven in Voëlklip is zoned for residential use. What is further noted is that the existing commercial erven was historically established prior to the adoption of the Hermanus SDF. Further, some of the commercial erven have also been rezoned and/or altered to accommodate residential dwellings/units due to the lack of commercial demand in the area.

- OK minimart indicated was approved in 1985;
- Lizette's was approved post 1999;
- Caltex indicated on the 1974 zoning map;
- Hopside Down indicated on the 1999 zoning map however approval pre-dates this map 1999;
- Greeff Offices – old postal office which have been subdivided and a portion of the property have been rezoned to Single Residential Zone 1;
- Baleens Guest House – indicated on the 1999 zoning map;
- De Mond Caravan Park – indicated on the 1974. It is true that there is a proposal to develop De Mond caravan, however these developments will relate to tourist activities as per the resort zoning as per the title deed conditions.

Considering the above there isn't a lot of commercial erven in Voëlklip. Further, the land use rights are historical in nature. Any new commercial erven will have to be coherent with the current trend and development proposals for the area and spatial planning best practices. The current proposal is a piece meal solution based on an activity which was done under the guise of a primary use.

Objection**COMPLIANCE / ENFORCEMENT**

Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel

"Once rights for 'office use' have been granted, virtually any business can be operated and stated as an 'office' and the "unique professional office space" quoted by the applicant cannot be guaranteed."

Mrs S Peloi

"I stay in Bellville and use the Hermanus property as a breakaway over holidays and weekend, any rezoning will open the opportunity for future business. Now it may be explained as an office development, but the property can be resold and then with rezoning in place it would be out of our control what the new owners will be developing there."

Response from applicant

The application is currently being evaluated and should approval for the application be

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received, the Overstrand Municipality's Town Planner and decision-making Authority will impose conditions of approval.

These conditions will be limiting and very specific to the type of businesses that may be operated on Erf 5473 - Hermanus. In addition, these conditions may also be registered in the title deed and should any owner in the future not comply with these conditions the municipality has a mechanism to enforce compliance.

Response from town planner

It is true that a condition of approval can be inserted in order to limit the use of the property. Should such a condition be imposed it must be done in a sensible and practical manner.

Objection

HISTORIC BUSINESSES

Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel

"The historical business properties alongside the Main Road (7th Street) are historical occurrences. They are also 'Low key' and have not changed in character for many years."

Mrs S van Ryneveld

"We are ERF 4134 and many years ago got our view obstructed by the development of Baleens which is an unattractive development blocking our front view."

Response from applicant

The comment is noted. This application is site-specific; however, the objector does make the statement that historic existing businesses are considered "low-key".

The objector does not quantify what is "low-key" and if the existing Caltex filling station, Lizette's, the OK Mini mart considered as "low-key"?

It could be suggested that professional offices are even more "low-key" than the existing businesses.

- In response to Mrs. van Ryneveld, this application is not on the scale of Baleens, and it is not expected to negatively affect her property.

No views are proposed to be obstructed.

Response from town planner

It is agreed with the objector that the commercial properties in the area have historic rights and people in the area have adopted the historic uses as part of the character of the area. Although the application is not the scale to that of the Baleens it will be a commercial activity in terms of office space. It should be noted that in terms of the Overstrand Municipality Land Use Scheme, 2022 home occupation is a primary right. Home occupation is defined as – *"means the practising of a non-residential use conducted from a dwelling provided that the dominant use of the dwelling concerned shall remain the accommodation of a single family, provided that the use and property complies with the requirements contained in this land use scheme for home occupation."*

It should therefore be noted that due to the scale of the proposed business it cannot comply with the primary use and therefore the proposed rezoning of the property. Thus, changing the primary use of the property and becoming predominantly commercial use as opposed to residential.

Objection

PRECEDENT BEING CREATED

Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel

"The rezoning of Erf 5473 will create a precedent, which will ultimately result in many applications along this line. Voëlklip residents do not want our residential suburb to be marred by the bastardisation of residential homes into businesses, which will jeopardise the value of our area & therefore property values will also be negatively affected."

Mrs L Vernon

- "1. Any change to the residential zoning sets a precedent that can further be leveraged or exploited by others (existing or those buying) in the area.*
- 2. There is no critical reason for allowing this rezoning request.*
- 3. If OM were to approve this rezoning request; OM could find it difficult not to allow others in the area to rezone their properties 'in future'."*

Mr and Mrs Malan

"Although we are always sympathetic to anyone wanting to make an income, we would have to object to the rezoning of the said property. We feel this will set a bad precedent and is not right for this area.

Our suggestion is to rather try to assist this couple with affordable accommodation in the business district of Hermanus to start their business."

Prof S Scott

"The reasons advanced for such lifting can be applied to most residential erven in the area. This is purely a moneymaking endeavour and, if allowed, sets a precedent for other residential owners to turn their properties into commercial properties.

Furthermore, the biggest danger lies in the precedent you are setting. You are opening up the possibility for other owners to develop their properties."

Mrs G Hartman

"The rezoning of Erf 5473 Hermanus will create a precedent."

Response from applicant

These comments are noted, and the proposal cannot create a precedent, as town planning is a site-specific process and the notion that if one property is rezoned is not motivation enough to approve the rezoning of another property.

Each application is evaluated individually and site specific and considered if deemed fit to approve the rezoning.

The Overstrand Municipality is required to consider various factors that may influence their consideration of the proposed rezoning.

Response from town planner

When a property is rezoned for commercial use, it must be well thought out and correlate with the placement other commercially zoned erven. From a planning point of view, it is desirable to cluster commercial activities certain areas to regulate growth and traffic flow.

If ad hoc rezoning is allowed, it could set a precedent in the area where any property can be developed as a commercial property which will lead to the fragmentations of the residential character and could lead to a linear commercial corridor as found in Kleinmond where line shops have opened along the main road.

Objection**PROPERTY VALUE**

Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel

"The rezoning of Erf 5473 will create a precedent, which will ultimately result in many applications along this line. Voëlklip residents do not want our residential suburb to be marred by the bastardisation of residential homes into businesses, which will jeopardise the value of our area & therefore property values will also be negatively affected."

Mr and Mrs Pedersen

"Our property's will lose their value, during covid a lot of residents worked from home, we had delivery trucks up and down our road at high speeds, it wasn't at all pleasant. I vote against it. Why can't they move into an industrial area?"

SM Turpin

"Apart from disturbing the peaceful nature of the neighbourhood, residential property values will be negatively affected."

Mr I Cason

"My erf, 7355, grens direk aan die genoemde erf tussen 7de en 6de straat. Die toekenning van besighedsregte sone 3 kan die markwaarde van my huis negatief beïnvloed."

Response from applicant

These comments are noted, it is however not predicted to have a negative effect on the property values.

These comments are not being supported by any factual statements and are only opinions of property owners that are concerned. Most of the properties of the objectors are not located in close proximity to the subject property and it is not expected that it could have an impact on their property values.

The property owner and any potential buyers will be required to still be considered as a reasonable neighbour and will be required to adhere to any applicable legislation which includes the Overstrand Municipality's regulations and by-laws.

The property is located on the main distributor in and out of Hermanus and there is easy access from the R43, which does not necessitate entering the residential area by any visitors or for deliveries to the premises.

Response from town planner

Even though the subject property is situated alongside the R43, the rezoning does not correlate to the placement of existing and vested commercial uses.

Objection**LUPA SECTION 39(5)****Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel**

"With regard to the Motivation statements (LUPA, Section 39(5) (a-f), my concerns are as follows;

- a) *"No person or entity will be affected financially by the removal of the restrictive title deed condition".*

Ultimately all Voëlklip property owners will be financially affected, as our property values as prime residential will be negatively impacted.

- b) *"No person is directly benefitting from this condition as the condition is only restricting the applicant".*

The property owners of Voëlklip are benefitting from this condition as it protects their suburb as a residential area, without the negative impact of additional potentially disruptive activities, noise, deliveries, unnecessary extra traffic etc., which will harm the peaceful, residential atmosphere.

- c) *"The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".*

This motivational statement invalid, as the property is residential and using it to its 'full extent' has nothing to do with running a business from the property. However, the applicant will definitely benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.

- d) *"The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".*

The restrictive condition definitely does have a social benefit in that it protects the residents of Voëlklip from disruptive business activities.

- e) *"The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".*

The owner of Erf 5473 Hermanus is the beneficiary and will benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential."

Mr and Mrs Bourne

"Contrary to the assertion that no financial benefit will accrue or detract from any property, the proposed rezoned ERF 5473 will be hugely more valuable to the existing owner and it appears he/she will sell the property - there will be a significant financial benefit to the existing owner if the property obtains rezoning rights for a business with

up to three practitioners."

Response from applicant

"a)" – This is noted, but however this is not backed by any factual evidence and it a mere statement.

"b)" – This is noted. It is however not predicted that the rezoning will have adverse effect on the surrounding area. The proposed use has been in operation over the past 10 years and the proposal is to ensure compliance with the regulations set out by the Overstrand Municipality. Refer to Section 4.2 for the motivation of the business property.

"c)" – LUPA Section 39(5)(c) states :

"(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;"

The motivation is clear, the property owner wants to remove the restriction to rezone the property to utilise the property for a business.

"d)" – This is a vague statement that is not backed by any motivation. There is no social impact applicable.

"e)" – This was stated numerous times throughout the motivational report. The property owner's mother who operated the physiotherapy centre retired and after which the owner intended to sell the property. To ensure the property may be sold as a business property it is required to be rezoned.

- Response to the comment from Mr. and Mrs. Bourne:

This was never hidden, and the motivation stated that the property owner is attempting to sell the property.

Response from town planner

The property is currently being marketed as a five-bedroom house, however it is noted that the description of the advertisement reads as follow:

Proud Sole Mandate - this Modern practice is ideal for professionals such as: doctors, vets, attorneys or architects' offices. An immaculate and spacious residence with stunning mountain views, situated on a large stand on the corner of Main Road and 17th Avenue in sought-after Voëlklop. Within close proximity to our popular beaches and scenic cliff paths.

The property offers: a welcoming reception area, five rooms and two bathrooms plus a lovely kitchen, two garages and ample off-street parking. An added bonus: a one-bedroom apartment perfect to generate a rental income. Neat, irrigated garden and more. Please contact me to arrange a viewing.

Although the property has been used for home occupation in the past it cannot be sold or marketed as a commercial property as the primary right and the zoning is for residential use. Any home occupation must be compliant with the parameters of the land use scheme. The rezoning is therefore used to market the property for

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commercial use such as offices for *doctors, vets, attorneys, or architects*. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office, and it seems like the rezoning is to allow for any type of office use. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property as they respective sees fit. Each type of practice has their own character and operational methods which could negatively impact the surrounding area and are not in line with how the property was used in the past.

It will however be a benefit to the property owner to sell the property with business rights as it can be marketed better without having to make alterations to the building. The removal of the title deed restriction is therefore advantageous for the property owner who will certainly benefit from the proposed application.

The comment from the objector is therefore agreed with.

CHASTVERTIL R3,900,000 Land Size Right

SOLE MANDATE Web Ref: CW50-0140

R3,900,000

13 17th Avenue

Monthly Bond Repayment R36 992.16
Calculated over 20 years at 9.75% with no deposit. Charge Assumptions

Calculate Affordability | Calculate Bond & Transfer Costs | Currency Converter

Monthly Rates
R994

Contact Paulette van den Bosch
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Name *
Contact Number *
Email Address *

Please send me more information on CW50-0140 in Voelklip, Hermanus. Thank You

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Modern Practice / Residence in Voelklip

Proud Sole Mandate - This Modern practice is ideal for professionals such as Doctors, vets, attorneys, or architects offices. An immaculate and spacious residence with stunning mountain views, situated on a large stand on the corner of Main Road and 17th Avenue in sought-after Voelklip. Within close proximity to our popular beaches and scenic cliff paths.

The property offers a welcoming reception area, fire room and two bathrooms plus a lovely kitchen, two garages and ample of street parking. An added bonus is a one bedroom apartment perfect to generate a rental income. Neat irrigated garden and more. Please contact me to arrange a viewing.

Image taken from website dated 16 November 2022

Objection
DEVELOPMENT PARAMETERS (HEIGHT)
<p><u>Mrs N Ralph</u> <i>"The increase in building height which will be put into place with this rezoning, will have a negative impact on my property. It will also result in a more 'built up' feel, as opposed to the residential atmosphere of Voëlklip."</i></p> <p><u>Dr J and Mrs C de Villiers</u> <i>"In addition to this, the increased allowed building height under the proposed rezoning will have a direct negative affect on the adjoining properties, both with regards to shade, view and aesthetics."</i></p> <p><u>Mr I Cason</u> <i>"Indien daar meer verdiepings opgerig word, sal dit ook my see-uitsig belemmer."</i></p> <p><u>Mrs G Hartman</u> <i>"0.5m in building height increase from 8m to 8.5m will have a negative impact on your sea views if the rezoning is approved."</i></p> <p><u>Mrs T Robinson</u> <i>"What is the high restriction on this property if zoning is changed as proposed?"</i></p>
Response from applicant
<p>The current zoning (Residential Zone 1: Single Residential) allows a maximum height of 8,0m over two storeys.</p> <p>The proposed zoning (Business Zone 3: Local Business) will have a maximum height of 8,5m over two storeys.</p> <p>This is a small 0,5m difference.</p> <p>It should however be stated that no additions or alterations are being proposed for the property. As stated in Section 4.2 of the motivational report.</p> <p>If it is considered detrimental to the application it may be considered that the Overstrand Municipality's Town Planner or decision-making authority make it a condition of approval that the maximum height remains 8,0m.</p> <p>The property owner is not seeking any additional development parameters in terms of height.</p>
Response from town planner
<p>Should the application be approved the structure's height will be limited to the same height of a Residential Zone 1: Single Residential. It is however noted that the property has very little additional space for parking and should the footprint increase; the property will have to be redeveloped in order to allow for more parking on site.</p>

Objection**EXISTING USE / HISTORIC ACTIVITIES**

Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel

"It is questionable that this rezoning is based on an existing land use. If the existing land use of Erf 5473 was approved, surely the Title Deed restrictions should have already been addressed for the previous 'business' which operated there? I therefore question whether the current land use is legal. Therefore, the motivation is to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voëlklip area."

Dr J and Mrs C de Villiers

"The subject property was previously allowed to be used for the operation of a professional office by the resident owner.

It is therefore argued that "temporary deviation of use" would be the appropriate avenue in law that will protect both the long-term residential character of the property and the right of its resident owner to practicing his or her profession."

Mrs G Hartman

"The motivation for the rezoning is based on an existing land use that is questionable. If the existing land use of Erf 5473 Hermanus was approved surely the Title Deed restrictions should have been addressed with a former application. An assumption can therefore be made that the current land use is illegal, and that the application should have included an application for an administrative penalty as well."

"The motivation is therefore to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voëlklip area."

Response from applicant

Refer to Section 3 of the motivational report that indicates the history of the property. It is not the intention of this application to legalise any alleged past contravention. The activities have been halted and the physiotherapy offices have been closed down.

This section was included to ensure the entire history is addressed and the new proposal for professional offices is not trying to legalise what had occurred but to ensure the property is compliant in the future.

Response from town planner

It is clear that from the objector's view that the history of the property was used to motivate the rezoning. This also seems to be the case with some of the responses to the comments. In the application it is also state that the property owners want to sell the property with a business zoning due to the history of the building. It is not wrong to motivate the application in such a manner; however, the objectors are questioning this. The applicant also not hiding the fact that the rezoning it to market the property. What is of concern is that the property will be utilised by other professionals such as vets, doctors or attorneys these uses have their own methods of operation which cannot be compared to a physio practice.

Objection
REMOVAL OF RESTRICTIVE CONDITIONS
<p><u>Dr J and Mrs C de Villiers</u> <i>"The original intent of the restrictive title deed condition was to protect the residential character of the Voëlklip area. This has not change."</i></p>
Response from applicant
<p>The title deed condition was inserted 1937 and times have changed significantly, and the entire dynamic of businesses and residential properties have seen dramatic change over the past few years.</p> <p>Mixed use urban areas are becoming more prolific and stating that Voëlklip is only a residential area is also not correct. Several businesses exist within Voëlklip and having a medical facility located close by should be seen as progressive.</p> <p>It is however not proposed that Voëlklip be over developed with businesses only that these uses are able to co-exist.</p>
Response from town planner
<p>The existing commercial erven have historical land use rights, the placement of these land uses where not done with current best land use practices and therefore are not clustered together. This will be noted and form part of the evaluation.</p>
Objection
DEPARTURES
<p><u>SM Turpin</u> <i>"I also object to the application to relax any building restrictions. This neighbourhood has broad sidewalks to which we all adhere for the sake of the character of the neighbourhood. In other words, starting to relax the building lines will negatively affect the character of the neighbourhood."</i></p>
Response from applicant
<p>The objector may have been mistaken as no departure of the street building line is being proposed. No parking or sidewalks will be affected.</p>
Response from town planner
<p>The building lines applicable to this application are only the lateral building lines. It should be noted that in terms of the proposed commercial zoning the street building line will change to 0m which is in contrast to the residential area where structure must respect a 4m street building line.</p>
Objection
DE MOND
<p><u>Mrs S Peloi</u> <i>"With many uncertainties regarding the De Mond Caravan Park and its current state we would highly oppose any further new developments and rezonings."</i></p> <p><u>Mr and Mrs Bourne</u></p>

"There is an exciting proposal to develop the De Mond caravan site currently out on tender. This development will offer good opportunities for employment, tourism and commerce. The tender document stipulates that whatever is proposed, it must be sensitive to the residential nature of Voëlklip and be minimally disruptive or encroaching. The rezoning of the ERF 5473 which is right across the road from the caravan park will contradict this need to be sensitive and it may encourage further rezoning applications from other properties nearby.... "well if they could do it, why not me"."

Response from applicant

The proposal was submitted before the tender process for De Mond was advertised and did therefore did not consider the caravan park.

The businesses proposed to be operated on the subject property have nothing to do with the tender process. The medical offices will however be able to accommodate any patients from the caravan park.

Response from town planner

This application will be evaluated on its own merit. It should be noted that De Mond caravan park's primary use right is resort zoning and not commercial.

Objection

TRAFFIC & PARKING

Mrs R Beukes

"The rezoning will increase the traffic levels in the very calm part of the neighbourhood which is detrimental."

Mr and Mrs Bourne

"That no neighbour objected previously to the property being used by a single practitioner before is most likely due to the low traffic impact of that business. With a number of practitioners operating a business on the property, this will definitely be more disturbing and detract from the peaceful residential nature of the neighbourhood. What if the proposed business is wildly successful, with queues lining up outside, spilling out of the carpark, down the road and onto the verges?"

SM Turpin

"Increased traffic due to business reasons brings along an additional safety risk. Safety is a big concern to the many retired people living in the neighbourhood."

Mrs T Robinson

"What is the parking/ volume of cars expectation for the proposed business"

Response from applicant

There is adequate parking on-site to accommodate the clients of the proposed business. The property has been used as a professional practice before and there were never any complaints or objections.

The application will also be circulated to the Traffic- and Engineering Department for comment and should any comments be made, or concerns raised it will be addressed accordingly.

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The property is located on the main distributor road into and out of Hermanus which will allow traffic to keep flowing. It is understood that there could be a parking concern, however, a doctor's offices have appointments which will limit the number of cars/patients at a single time on the property.

Response from town planner

The amount of activity generated via a commercial property and a residential property is very different and business generated activity is much more frequent. The size of a home occupation, the type of uses and the amount of people employed at a home occupation is limited; this aids in limiting the impact of home occupation in residential areas. By rezoning the property these limitations are removed which will increase the activity on the site. The concern of the objector is therefore noted.

Objection**PUBLIC RESPONSE**

Mrs L Vernon

"Further, it has to be said that 'probably' 99% or so of the Home Owners in Voëlkop invested in their properties here as HOMES, as it is a well set out Residential Suburb.

In the absence of a formal survey, it is very likely that this same very high percentage of Homeowners want the area to remain Single Use - Residential. Please respect these, Home Owners!"

Response from applicant

The standard public participation procedure was followed and the timeframe to submit comments has closed. The objectors cannot make assumptions and speak on behalf of other property owners that did not provide their feedback.

Response from town planner

The application was advertised, and all affected property owners could give their input on the application. The property owners directly adjacent to the site was notified via registered mail and provided an opportunity to voice their concerns.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See paragraph 7.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All the relevant departments provided positive comments.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**10.1 Background**

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application can be motivated in terms of the principles in the following manner:

Spatial Justice

The proposal will not further perpetuate historic spatial imbalances.

Spatial sustainability

The application is located within the urban edge and will thus not lead to urban sprawl. No natural habitat is impacted upon, and it will not have any negative influence on the environment.

Efficiency

Although the application discourages urban sprawl, the proposed development is not considered efficient from a spatial point of view as the location of the proposal is well located to other/similar commercial activities (or in other words clustered together). From a spatial planning point of view the clustering of commercial activities are encouraged. This is due to the following benefits, which are localised traffic, optimal concentration of commercial activities and limiting non-residential uses to localised point instead of spreading them through a suburb or residential area.

Spatial Resilience

The property is located in the Overstrand municipal area and is therefore guided by the Overstrand Municipality's Spatial Development Framework and Integrated Development Plan.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies**Overstrand Municipal Spatial Development Framework**

In terms of the SDF (Overstrand Municipal Spatial Development Framework, 2020), the property is indicated as a residential property. As motivated by the applicant the following is stated in the SDF - *Small individual localized business enterprises could be considered consistent with the status quo (ie. a limited scale on public transport routes where services infrastructure is available)*. The applicant uses this to motivate the proposed rezoning however fails to link the SDF with the GMS (Growth Management Strategy, 2010) which is a policy document of the Municipality.

The wording used in the SDF refers to "localized" in terms of the New Shorter Oxford English Dictionary, localized means: Confined to or concentrated in a

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particular place or part; that has been localized. This relates to the GMS which identified key spatial areas for the development of commercial erven. The GMS identified the spatial areas due to the character of the area and the central location of the residential suburb. And as stated earlier by allowing ad hoc development of commercial a precedent will be created which will cause the fragmentation residential area and character.

Further by localizing business to a certain demarcated area will lessen the impact of the business activity on transport and infrastructure. The SDF does not promote the spread of commercial activities throughout the residential area or along the main road.

Lastly the applicant failed to address the specific zoning as demarcated in the SDF, which is residential, therefore the application is considered a deviation of the SDF and should have been addressed as such.

Considering the abovementioned it is considered that there is an oversight in the motivation which were not made clear to the relevant stakeholders.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal engineering services

The existing services are available.

10.7 Outcomes of investigations/applications i.t.o other legislation

N/A

10.8 Existing and proposed zoning comparisons and considerations

Erf 5473 is zoned Residential Zone 1: Single Residential. The property owner seeks to rezone the property to Business Zone 3: Local Business in order to allow business related uses (offices) on the property and to apply for consent use to retain the existing dwelling units on the ground floor.

11. REMOVAL OF TITLE DEED RESTRICTIONS

Title Deed T9341/2014 applicable to Erf 5473, Voëlklip contains the following restrictive condition being proposed for removal:

Condition III.D.(c) "No canteen, hotel, shop, factory industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent of the Transferer Company."

In view of the above being stated the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

The financial or other value of the rights

The applicant states that no person or entity will be affected financially by the removal of the restrictive title deed condition. This statement is not agreed with as

the removal will increase the use rights of the property and allow for the property to be marketed as a business property with rights for office space. There by the property owner will be able to increase the asking price for the property, or in an indirect manner; if the land use is obtained, the property owner will not be required to alter the office space back to residential use.

Should the property be rezoned the municipality can benefit financially due to the increase in rates and taxes on the property.

However, the direct impact on properties adjacent will be negative due to the adjoining properties being zoned residential and not commercial. The aim of the title deed restriction would have been to protect where certain commercial activities may take place.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition

There is no personal benefit for the holder of the rights (the municipality).

The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended

The personal benefit would be that the removal will facilitate the operation of a business on the property, further the property owner will be allowed to market the property and gain a relevant market related price. Further, the property owner will then not be required to make changes to the structure in order to revert it back to a dwelling.

The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension, or amendment of the restrictive condition

The social benefit of the restrictive conditions remaining in place is that the character of the area will remain unchanged. It is of concern as noted by the objector's that the removal will impact the character of the area negatively.

Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights:

Application is only made for removal of some restrictive conditions, namely condition III.D.(c) pertaining to business rights on the property.

The support for the removal of the restrictive condition will be depended on whether the rezoning of the property is supported as discussed below.

12. THE DESIRABILITY OF THE PROPOSAL

Erf 5473 is situated on the corner of Seventh Street and Seventeenth Avenue and is developed with a single dwelling and a second dwelling. The subject property measures 832m² in extent. The main dwelling was converted into a physio practice. It is noted that the operation of the business was ceased and is currently vacant. The property owner seeks to gain permanent land use rights to develop professional office space on the property in order to market and sell the property as developed.

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The application contains three aspects namely rezoning of the property, consent use and departure application this evaluation will concentrate on the rezoning of the property. The consent use and departure are a result of parameters of the proposed zoning to Business Zone 3: Local Business being different to that of a Residential Zone 1: Single Residential zoning.

Rezoning

The property owner seeks to rezone the property to Business Zone 3: Local Business in order to allow business related uses (offices for professionals). Although the property started out as a home occupation there were several issues which were communicated to the property owner regarding the home occupation in the past which were never addressed.

Considering this, there was always a concern that the use of the property would become more business dominant and not remain residential. The property owner is now struggling to sell the property because the use of the property and how the property was developed is not in line with the land use rights therefore it will be advantageous for the owner to gain the rezoning and land use rights.

The property is currently being marketed as a five-bedroom dwelling; however it is noted that the description of the advertisement reads as follow:

Proud Sole Mandate - This Modern practice is ideal for professionals such as: doctors, vets, attorneys or architects' offices. An immaculate and spacious residence with stunning mountain views, situated on a large stand on the corner of Main Road and 17th Avenue in sought-after Voëklip. Within close proximity to our popular beaches and scenic cliff paths.

The property offers: a welcoming reception area, five rooms and two bathrooms plus a lovely kitchen, two garages and ample off-street parking. An added bonus: a one-bedroom apartment perfect to generate a rental income. Neat, irrigated garden and more. Please contact me to arrange a viewing.

Although the property has been used for home occupation in the past it cannot be sold as a commercial property as the primary right and zoning is for residential use. Any home occupation must be compliant with the parameters of the land use scheme. The rezoning is therefore used to market the property for commercial use such as offices for doctors, vets, attorneys or architects. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office, and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use. Each type of practice has their own character operational methods which could negatively impact the surrounding area.

It will however be a benefit to the property owner to sell the property with business rights as it can be marketed better without having to make alterations to the building. The removal of the title deed restriction is therefore advantageous for the property owner who will certainly benefit from the proposed application, it is maintained that the proposal lead to a precedent being created and will lead to the fragmentation of the residential suburb.

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It is noted that there are business zoned erven in Voëlklip. However, these erven were developed prior to modern forward planning documentation such as the Overstrand Municipal Spatial Development Framework in 2006 (now the SDF 2020) and the 2010 Growth Management Strategy. Any new commercial erven will have to be coherent with the current trend and development proposals for the area. The current proposal made in this application is a piece meal solution based on an activity which was done under the primary use of the residential zoning. Further as stated under section 10.4 of this report:

In terms of the SDF (Overstrand Municipal Spatial Development Framework, 2020), the property is indicated as a residential property. As motivated by the applicant the following is stated in the SDF - Small individual localized business enterprises could be considered consistent with the status quo (ie. a limited scale on public transport routes where services infrastructure is available). The applicant uses this to motivate the proposed rezoning however fails to link the SDF with the GMS (Growth Management Strategy, 2010) which is a policy document of the Municipality.

The wording used in the SDF refers to "localized" in terms of the New Shorter Oxford English Dictionary, localized means: Confined to or concentrated in a particular place or part; that has been localized. This relates to the GMS which identified key spatial areas for the development of commercial erven. The GMS identified the spatial areas due to the character of the area and the central location of the residential suburb. And as stated earlier by allowing ad hoc development of commercial a precedent will be created which will cause the fragmentation residential area and character.

Further by localizing business to a certain demarcated area will lessen the impact of the business activity on transport and infrastructure. The SDF does not promote the spread of commercial activities throughout the residential area or along the main road.

Lastly the applicant failed to address the specific zoning as demarcated in the SDF which is residential, therefore the application is considered a deviation of the SDF and should have been addressed as such.

Considering the abovementioned it is considered that there is an oversight in the motivation which were not made clear to the relevant stakeholders.

Considering the above mentioned and the information contained in this report the proposal to rezone the property is not supported due to the following:

- The proposed use is in stark contrast to the residential character of the area of the area,
- The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43. A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb.
- The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.

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- The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has their own operational methods which could negatively impact the surrounding area. Further, even though it will be costly for the property owner to revert the structure back to a dwelling any new professional practise will have to develop the structure for its specific use.

In addition to the rezoning of the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business the property owner also applies for a consent use to retain the existing dwelling unit on the ground floor. This is due to the difference in land use parameters between the two zonings. Should the rezoning not be approved then the application for a consent use is not required as a second dwelling is allowed for on a Residential Zone 1 erven.

Lastly, application is made to depart from the building line parameters applicable to a Business Zone 3: Local Business zoned property. It is noted that the proposed departures will be for the retention of the existing structure and that no new structure will be developed. The existing structure is compliant with the building line parameters and therefore, should the rezoning not be approved then the application to depart from the building line is not required.

Considering the abovementioned evaluation, the proposed application is not supported.

13. RECOMMENDATION

1. that the comments/objections received 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) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following
 - ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
 - ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
 - ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

not be approved in terms of the provisions of Section 61 of the By-Law;

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4. that the applicant and persons 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.

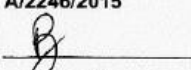
14. REASONS FOR RECOMMENDATION

- The proposed use is in stark contrast to the residential character of the area of the area.
- The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street).
- The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.
- The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has their own operational methods which could negatively impact the surrounding area.

15. ANNEXURES

- Annexure A: Locality Plan
 Annexure B: Motivation Report
 Annexure C: Site Development Plan
 Annexure D: Title Deed
 Annexure E: Objections
 Annexure F: Comment on objections
 Annexure G: Services Report

SIGNATURES**REGISTERED PLANNER****AUTHOR**

Name: **P ROUX**
 SACPLAN Reg No: **A/2246/2015**
 Signature: 
 Date: 3/2/2023

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23 FEBRUARY 2023

REGISTERED PLANNER

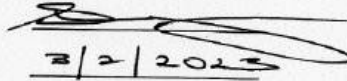
Name:

SW VAN DER MERWE

SACPLAN Reg No:

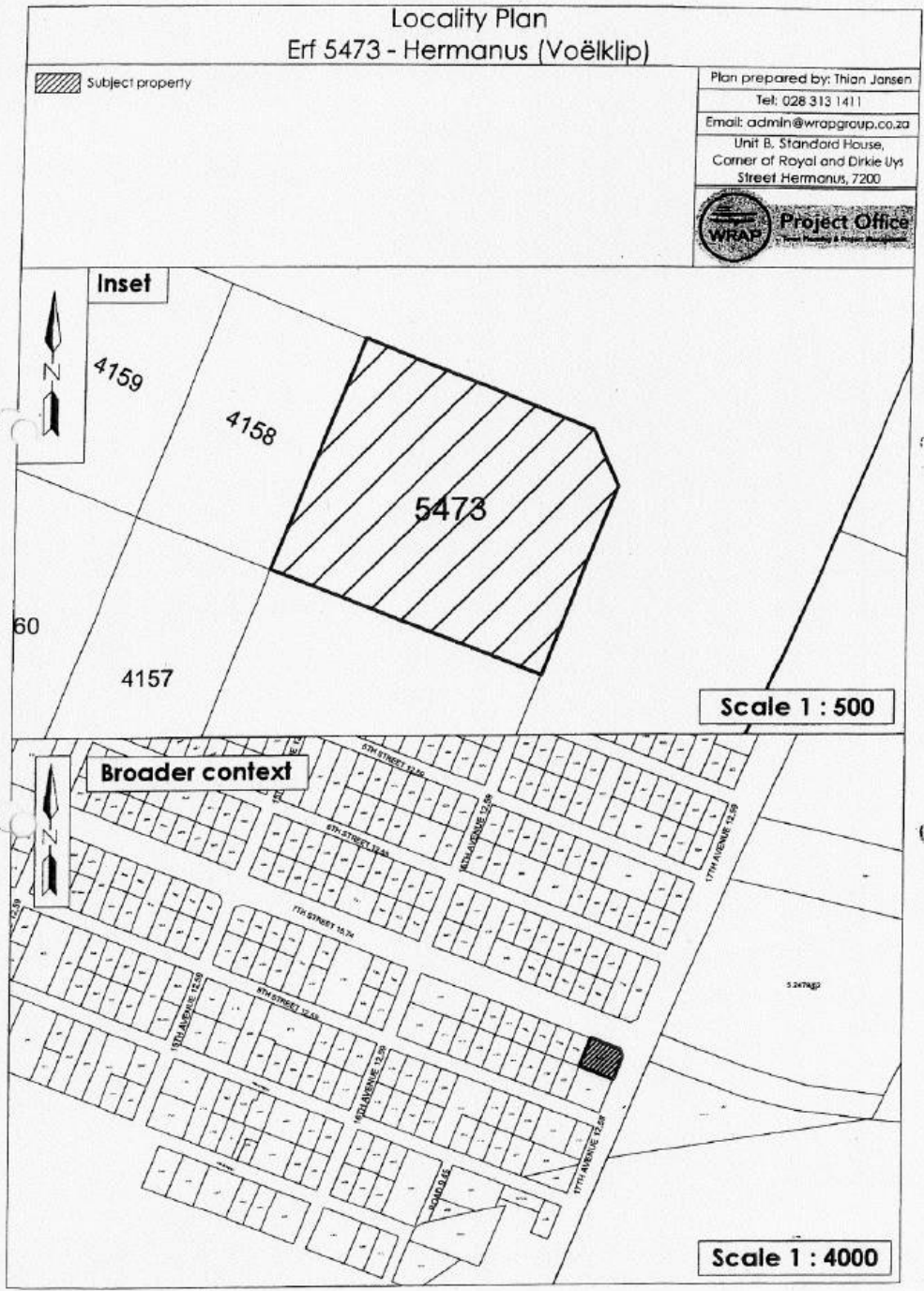
A/1850/2014

Signature:



Date:

2/2/2023





MOTIVATION

1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SR1	Residential Zone 1: Single Residential (SR1)

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	5473 Hermanus
Extent	832m ²
Zoning	Residential Zone 1: Single Residential (SR1)

3. BACKGROUND AND INTENT

Erf 5473 Hermanus, hereafter referred to as the subject property is owned by De Broeder Investments (Pty) Ltd hereafter referred to as the applicant. The applicant has a vision to rezone the subject property to allow the property to be used as offices (for example medical consulting rooms).

The subject property is located on the corner of 17th Avenue and 7th Street on the edge of Voëlklip (Refer **Plan 1 – Locality Plan**). The applicant bought the property in 2014 to be utilised as a dwelling house and to allow his mother to practice a home occupation on the subject property. As the years progressed, the home occupation was practised successfully and expanded, without them knowing, the expansion occurred past the allowable limit as a result of new policies and schemes that were implemented by the Overstrand Municipality.

The applicant's mother retired, and she ceased to practice her occupation from the property. With the history of the property being used as a physiotherapy practice, it is the intention of the applicant to sell the property zoned for offices purposes and in more particular for a professional practice. To ensure the property has an appropriate zoning, the applicant appointed WRAP Project Office to submit this application.

In addition to the rezoning application, an application for the removal of a restrictive title deed condition that prohibits the applicant from operating a place of business on the subject property, is also submitted.

There is also a flat on the subject property that is located on the ground floor which will require a consent use in terms of the OMLUS. (Refer **Annexure A – Power of Attorney**)



MOTIVATION

4. PROCEDURE TO ACHIEVE THE APPLICANT'S INTENT

The following is proposed:

4.1 Removal of a restrictive title deed condition in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

There is a title deed condition that prohibits the applicant to utilise his property to its full extent as described in Section 3 and the rationale for the removal of these conditions are discussed below:

Restrictive Title Deed Conditions
Condition III.D.(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 of the Transferor Company."

The rationale for the removal of the restrictive title deed condition is to enable the applicant to achieve the development intent highlighted in Section 3 and not be restricted in the future. The title deed condition is more restrictive than what is allowed in terms of the OMLUS.

The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

4.2 Rezoning of Erf 5473 Hermanus from Residential Zone 1: Single Residential (SR1) to Business Zone 3: Local Business (B3) in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The applicant has the vision to sell the property with a business zoning due to the history of the use of the building. The building has over the years been altered to accommodate physiotherapy practice and it would be illogical and costly to return the property into a dwelling house.

The proposal is to rezone the subject property to align with the intended use and ensure the rights are in place for the new owners. The proposal is to allow the new owners to operate offices from the subject property that will be aligned with the layout of the existing building.

Offices are defined in terms of the OMLUS as:

"property used for conducting an enterprise primarily concerned with administrative, clerical, financial or professional duties and includes medical consulting rooms"

The property will be able to accommodate the parking requirements refer Plan 4 – SDP. The total GLA calculated for the proposed business is 140,5 which requires 5,62 parking bays. The SDP illustrates the location of the consulting rooms/office that may be utilised for business purposes.



MOTIVATION

No additional additions are proposed, and the proposal is to utilise the existing building for the proposed business premises.

4.3 Consent Use to allow a flat (on the ground floor) in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The subject property currently has a flat on the premises, which the applicant wants to retain when the property is rezoned to Business Zone 3. This requires a consent use to be approved as it is located on the ground floor.

The proposed zoning (B3) allows for a flat (on the ground floor) with consent from the OM. A flat is defined as: 'a unit containing one or more inter-leading rooms with adequate sanitary facilities and a kitchen, used for the accommodation and housing of a single family, and may be included in or separate from the main building on the property'. This additional use will add value to the subject property as it will retain a residential character to the area.

4.4 Permanent Departure from the western building line from 3m to 2,68m in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

Permanent Departure from the southern building line from 3m to 2,48m in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The subject property is currently zoned as Single Residential Zone 1. The current side building line is 2m and the street building line is 4m as determined by the OMLUS.

The proposed zoning of Business Zone 3's development parameters are as follows:
"The side building line is 0 m, provided that where any Business Zone 3 abuts another zone, the side building line is 3,0m."

With the subject property abutting two SR1 properties on the southern and western boundaries, 3m building lines will be required. The existing building was developed in line with the SR1 building lines. Due to the proposal to rezone, the existing building will be encroaching on both side building lines. See Figure 1 and 2 that illustrates the building line encroachments:



MOTIVATION

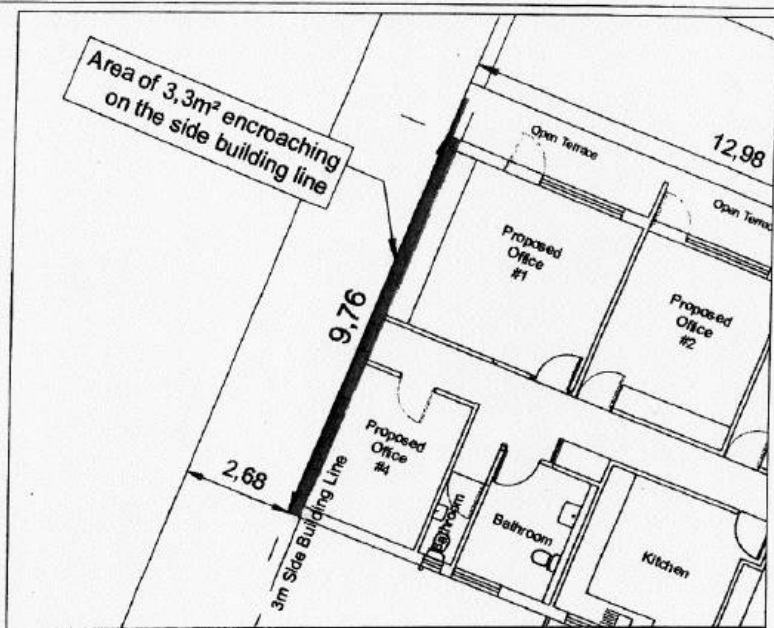


Figure 1: Proposed western boundary encroachment.

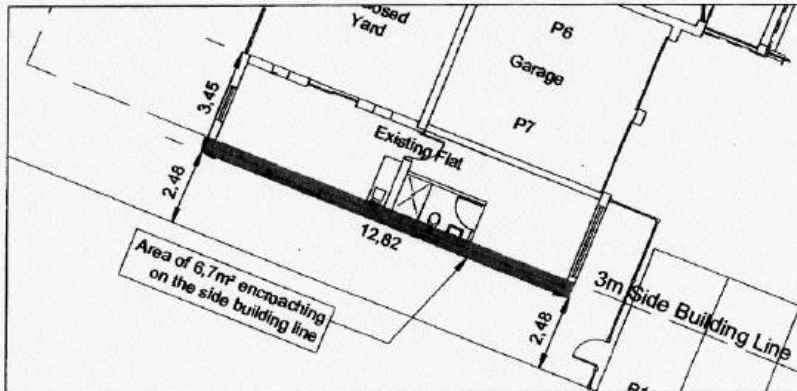


Figure 2: Proposed southern boundary encroachment.



MOTIVATION

The figures above illustrate the small-scale encroachments that are proposed. The proposed encroachments are only 6,7m² and 3,3m².

The applicant would like to ensure the building line is appropriately relaxed in terms of what is required by the Overstrand Municipality.

5. APPLICATION

Considering the above, application is made for the following:

- 5.1 **Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.2 **Rezoning** of Erf 5473 Hermanus from Residential Zone 1: Single Residential (SR1) to Business Zone 3: Local Business (B3) in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.3 **Consent Use** to allow a flat (on the ground floor) in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.4 **Permanent Departure** from the western building line from 3m to 2,68m in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 5.5 **Permanent Departure** from the southern building line from 3m to 2,48m in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned Residential Zone 1: Single Residential. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

7. TITLE DEED

Title deed T9341/2014 (refer **Annexure B**) was perused and there is a restrictive condition that was inserted into the original title deed and transferred into the current title deed. This title deed condition prohibits that the applicant's intent with the subject property can be realised.

Title deed restriction

Condition III.D.(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 of the Transferor Company."



MOTIVATION

Motivation**The rationale for the proposed removal**

The subject property was used for the operation of a professional office over the past few years. The applicant has the vision to allow a business enterprise to continue operating on the subject property. The proposal to rezone is being restricted by the condition mentioned above and therefore requires removal.

Title deed condition background

The restrictive title deed condition was originally intended to protect the residential character of the Voëlklip area, but the intention of the land owner is to create a unique professional office space within in a continually diversifying area.

Status quo

The area currently allows for "Small individual localized business enterprises" as stated by the OMSDF and the proposal is to have a small professional office space. The title deed condition restricts what is proposed by the OMSDF and the changes that have been experienced over the past few years. The applicant has a vision and plans to expand beyond these conditions.

The current and future development of the property is being restricted by the above-mentioned title deed condition. The condition made sense when Voëlklip was only a residential area, but times have however changed and Voëlklip has businesses scattered around the neighbourhood. With the current restriction the applicant is not able to utilise his property to its full extent.

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of the restrictive title deed condition.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is directly benefitting from this condition as the condition is only restricting the applicant.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i>	This restrictive condition does not have a social benefit.



MOTIVATION

(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and	
(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.	There is no specific beneficiary of the condition, and no person or entity will be affected if these are removed.

8. ZONING

The following zoning parameters were assessed in conjunction with the SR1 & B3 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (a) of the OM By-Law:

Residential Zone 1: Single Residential		
Land Use Restrictions		
	Development Parameters	Current Use
Primary uses	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling house and home occupation.
Consent uses	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building and Intensive Horticulture.	Not applicable



MOTIVATION

PROPOSED ZONING - BUSINESS ZONE 3: LOCAL BUSINESS (B3)		
Land Use Restrictions		
Primary use	Parameters	Proposed
	Shops, Dwelling Unit (above ground floor) in accordance with 6.3.2, Flats (above ground floor), Offices , Restaurant, Caretaker's Accommodation and Self-Catering.	Offices
Consent use that may be applied for	Bottle Store, Business Premises, Clinic, Conference Facility, Dwelling Unit (on ground floor) in accordance with 6.3.2, Flats (On Ground Floor) , Town Housing in accordance with 6.3.2, Tourist Accommodation, Hotel, Institution, Place of Assembly, Place of Entertainment, Place of Instruction, Place of Worship, Recreational Facilities, Residential Building, Sale of Alcoholic Beverages, Service Station, Service Trade and Transmission Apparatus (subject to the provisions of chapter 16.10)	Flat (on ground floor)
Coverage	Development parameters The maximum coverage for all buildings on the land unit is 75% .	
Floor Factor	The maximum floor factor is 1.5 . 0.31	
		Comply
		Comply



		MOTIVATION	
Height	i. The maximum height of a building, measured from the base level to the top of the structure, is 8,5 m. ii. The maximum number of storeys is 2.	i. The building is not higher than 8,5m. ii. 1 Storey	Comply
Setback	i. The Municipality may require that all buildings and structures on the property are set back at least 6,5 m from the centre line of the street. ii. Where special circumstances exist, the Municipality may require a greater setback.		Comply
Building Lines	i. The street building line is 0 m, provided that a 5,0 m building line applies where fuel pumps are erected. ii. The side building line is 0 m, provided that where any Business Zone 3 abuts another zone, the side building line is 3,0m; iii. The rear building line is 3,0 m, provided that where any Business Zone 3 abuts another zone, the rear building line is 3,0m; and Provided that the Municipality may require more restrictive building lines in the interests of public health or safety or the environment or in order to enforce any applicable law or right.	i. No fuel pumps are proposed ii. Applied for a 2,48m side building line (Southern building line). Applied for a 2,68m side building line (Western building line). iii. & iv. - N/A	Applied for and motivated.
Window and door placement	i. Where a 0 m building line applies and where a wall of a building is erected 1,0 m or less from the side or rear building line, no door or window shall be permitted in the wall concerned.	N/A	Comply



MOTIVATION

	<p>ii. Any portion of the building which contains a door or window onto a side or rear boundary shall be at least 1,5 m away from such boundary.</p>		
<p>Parking and access</p>	<p>According to section 17.1 of the OMLUS: Office Four bays per 100m² GLA Flats 1,5 for a one-bedroom flat</p>	<p>Parking requirements: Office: GLA - 140,5m² 5,62 Parking bays required. Flat: 1,5 Parking bays are required. Z Parking Bays are provided</p>	<p>Comply</p>
<p>Loading Bays</p>	<p>The minimum off-street loading must be provided to the satisfaction of the Engineering Department.</p>	<p>To be determined</p>	

**MOTIVATION****9. SERVICES**

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Electricity

The existing buildings are connected to the electricity network in the Voëlkop area.

Water

The existing building is connected to the reliable water network provided by the OM in the Voëlkop area.

Sewage

The existing building is connected to sewage network provided by the OM in the Sandbaai area.

Solid Waste

The owners will collect and dispose of solid waste at an OM waste treating facility.

Access and egress

Vehicular access and egress to the subject property is gained from 17th Avenue and the approval and implementation of this application will not alter this.

10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

Need and desirability

The need for the development arose from the applicant's vision to increase the value of the subject by aligning the zoning with the existing building's functionality. Creating a space where job opportunities are created.

The desirability is more often a personal feeling of the applicant that may in the future benefit others, such as creating a property where businesses may operate, and jobs may be created. This in turn will impact on economic activity of the Hermanus area.

To achieve their desire, the applicant appointed WRAP Project Office to submit this application, to ensure the application is in line with the relevant policies and legislation. The physiotherapy practice has been in operation for years and has not felt out of character for the area and, opportunities to create jobs in the area should not be discouraged.

Impact on views, sunlight and character of the area

No physical changes to the subject property are proposed and no new construction will take place. The current building as indicated above in Section 8 proves that the subject site complies with the proposed zoning's development parameters. The buildings are not impeding on the views, sunlight and character of the surrounding area.



MOTIVATION

There have never been complaints from surrounding property with regard to views, sunlight and character of the area.

Economic impact

The proposed establishment that will be operated on the subject property will have a positive impact on the economy as it creates a space where employment opportunities are created. The alignment of the zoning and the function of the existing building will stimulate further economic growth to occur within the surrounding area and ensure that Voëlkop makes further economic contributions to the greater Hermanus area.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The development will not affect the property values of surrounding properties.

Impact on heritage

The subject property is not listed in the OM Heritage Register. None of the provisions in the National Heritage Resources Act, 1999 are triggered by this proposal.

Environmental impact

The subject property is not located within an environmentally important area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is located within the 'Protected Area Buffer' EMOZ. The purpose thereof is to protect the integrity of National, Provincial and Municipal Nature Reserves from negative external pressures/impacts while reducing pressure on core areas and to assist in preserving their value to the eco-cultural tourism economy of the Overstrand through alignment of appropriate land use and regulation.

To ensure compliance with the guidelines set out in the EMOZ the application was evaluated in terms of the provisions of Schedule A & B of the Environmental Management Overlay Zone 2020:

SCHEDULE A PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES		
Prohibited Activity	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Protected Area Buffer	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A



MOTIVATION

Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	N/A
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	The entire subject property is located within the zone. There is a flat on the subject property.
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A



MOTIVATION

Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non-designated zones.	X	N/A

SCHEDULE B ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES		
A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Protected Area Buffer	
Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.		N/A
Removal or destruction of vegetation which is protected and/or of conservation concern.	X	N/A
Dune maintenance on private land as per approved dune maintenance management plans.		N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open spaces without the necessary approval from the Municipality.	X	This is noted and will not occur on the subject property.
B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Protected Area Buffer	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	N/A

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MOTIVATION

Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
Launching of vessels at registered launch sites.		N/A
C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Protected Area Buffer	
Buildings / Structures associated with; Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	N/A
Encroachment of private buildings, structures, infrastructure, access routes.	X	The entire proposed development is within the zone.
Commercial Harvesting/collection and removal of any natural resource.	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	The entire proposed development is within the zone.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The subject property is not located within the Heritage Protection Overlay Zone.

11.3 Spatial Planning Policies

The consistency and inconsistency of this proposal with the applicable spatial development policies will herewith be illustrated. The spatial policies which are pertinent to the submitted proposal are the following:

PSDF

The PSDF is a product of a provincial inter-departmental and inter-governmental collaboration under the guidance of the inter-departmental steering committee in collaboration with the private sector, academia, and non-governmental organisations.



MOTIVATION

This broad participatory process has created a shared spatial vision that is intended to inform spatial development patterns in urban and rural areas in the province.

Throughout the PSDF economic development is a widespread term used and focussed on. Economic development is an aspect that is important to ensure the Provincial economy has a large impact on the National economy.

The continual growth of the Provincial economy means that economic activity should be stimulated in other spheres of the government. This application to provide for the business uses are in line with the proposal to add economic value to the Voëlklip area which in turn will have a positive impact on the Overstrand Municipality.

The application then relates to the development of economic activity which is in line with the PSDF.

MSDF

The MSDF's purpose is to ensure compliance with national, provincial and municipal legislation policies and principles. The SDF aims to provide sufficient guidance regarding what constitutes appropriate spatial development land uses and direction within the urban edge. The SDF was drafted after considering input from other state departments and the public and provides a shared spatial vision which the development proposal should ideally attempt to synchronise with.

To ensure compliance with the principles and objectives set out by the PSDF and the National Development Plan the MSDF was synthesised through the influence of these policies and frameworks.

Ensuring economic development take place in the OM would ensure sustainable growth of the municipal area.

The area where the subject property is located, falls in a unique category where businesses are not promoted to be clustered, but rather be spread out across Voëlklip.

The MSDF states the following in terms of commercial activities in Voëlklip:

"Small individual localized business enterprises could be considered consistent with the status quo (ie. a limited scale on public transport routes where services infrastructure is available)."

The subject property is located within a unique position on the edge of Voëlklip, on the R43 and across the previous De Mond caravan park, where the proposed business zoning will not be intrusive or create a disturbance as it will only be offices (medical practice). The offices proposed are intended to be used by professionals that will aid in creating jobs and having a positive economic impact on the surrounding area.



MOTIVATION

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

Spatial justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a business premises would encourage economic growth that in turn could employ less fortunate and not add to the perpetuate apartheid spatial development imbalances.

Spatial sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal is intended to increase the economic power of the Voëlklip area in the OM. This will aid that the Voëlklip area is staying in contact with the ever-changing greater Hermanus area.

Efficiency

This proposal is intended to maximise the usage of the subject property, which is proposed as the new zoning would unlock more options of economic development.

Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good administration

The OM has a credible track record of good administration regarding the method of public participation which accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.



RECOMMENDATION

13. EVALUATION

The rationale for the removal of the restrictive title deed condition and the rezoning is a method to obtain the additional land use required for the applicant to be able to sell the subject property with a zoning that will match the existing building's functionality as being utilised as offices, previously utilised as a physiotherapy practice.

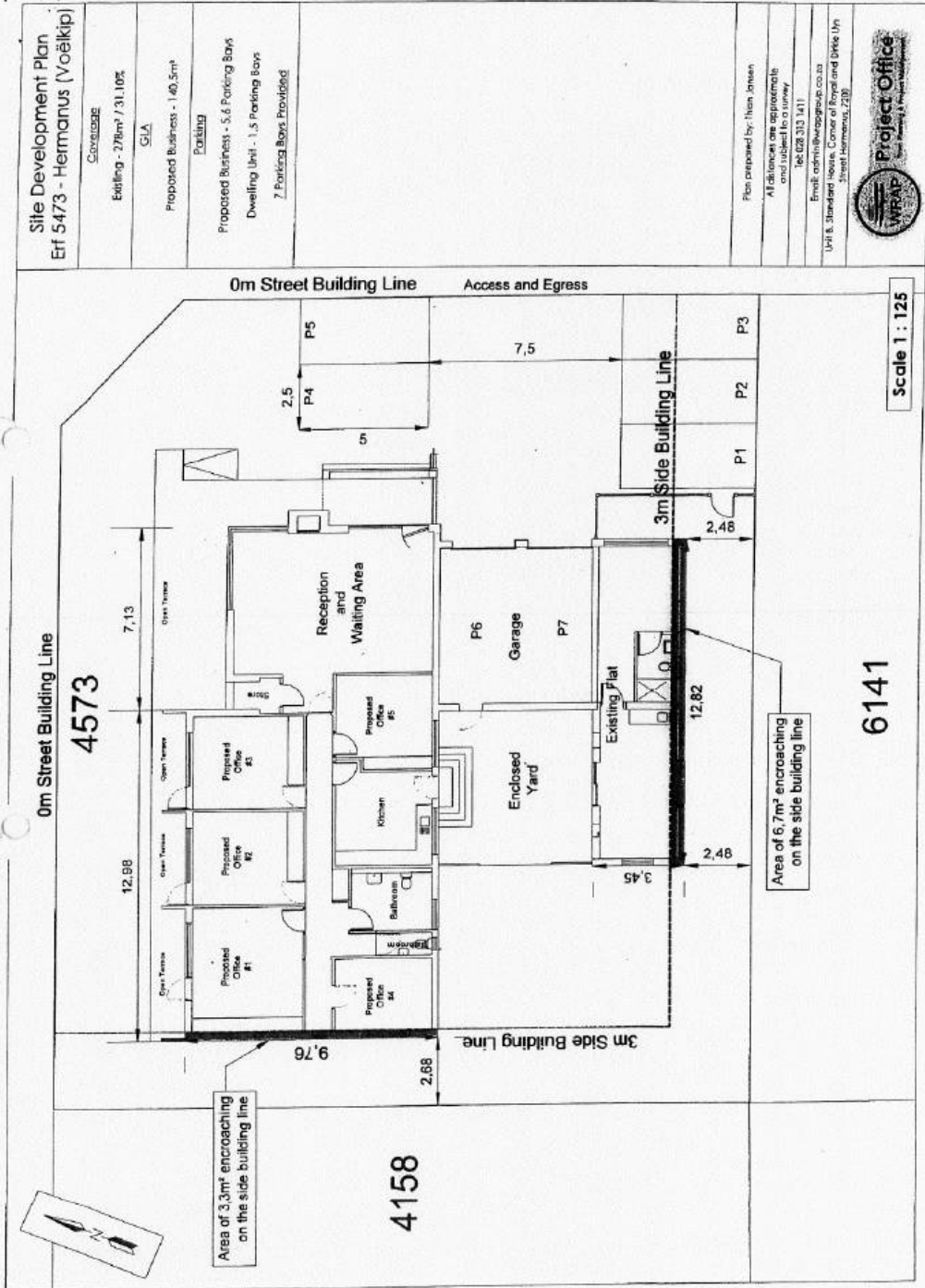
The proposal for the rezoning, consent use and departures are in harmony with all relevant spatial planning policies which illustrates that the applicants had due consideration for relevant spatial planning policies.

The title deed also is not restricting the proposal and the history of the use of the property should be considered. Since 2014, there has been no complaints or objections against the use of the property as professional practice from any of the surrounding property owners.

14. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

- 14.1 Removal of a restrictive title deed condition** III.D.(c) in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.2 Rezoning** of Erf 5473 Hermanus from Residential Zone 1: Single Residential (SR1) to Business Zone 3: Local Business (B3) in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.3 Consent Use** to allow a flat (on the ground floor) in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.4 Permanent Departure** from the western building line from 3m to 2,68m in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 14.5 Permanent Departure** from the southern building line from 3m to 2,48m in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.



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DYKES VAN HOPKINS
 Eenhede E4/2 Edward IV
 Edwardstraat
 Bellville 7530, Suid-Afrika

F.V. erfgoedbesoort		
Purchase price/Value	Amount	Description
R. 1350 00,00	R. 900,00	
HEERDENSLABBERT		
Exempt. L.L.O.		

Opgestel deur my

TRANSPORTBESORGER
 MAGNUS DANIEL STEENKAMP

Information

DATA / VERIFY
 06 MAR 2014
 NCAPAI LINDA

TRANSPORTAKTE

T 0000093417/2014

HIERBY WORD BEKEND GEMAAK DAT

LISE COETZEE

voor my verskyn het, REGISTRATEUR VAN AKTES te Kaapstad, hy die genoemde komparant synde behoorlik daartoe gemagtig deur 'n Volmag aan hom verleen deur

JOAN JUDITH GELDENHUYS
 Identiteitsnommer 390625 0032 088
 Ongetrou

geteken te HERMANUS op 16 JANUARIE 2014

DATA / CAPTURE
 04 MAR 2014
 NGONGWANA PENELOPE

10

en

-2-

En genoemde Komparant het verklaar dat sy prinsipaal, op 2 Desember 2013, wettig en wettiglik verkoop by Privaat ooreenkoms, en dat hy, in sy voorgenoemde hoedanigheid hierby, seëer en transporteer aan en ten gunste van

DE BROEDER INVESTMENTS EIENDOMS BEPERK
 Registrasienommer 2011/145134/07

diese Opvolgers in titel of Regverkrygendes in volkome en vrye eiendom

ERF 5473 HERMANUS,
 IN DIE OVERSTRAND MUNISIPALITEIT
 AFDELING CALEDON
 PROVINSIE WES-KAAP

GROOT: 832 (AGT HONDERD TWEE EN DERTIG) Vierkante Meter

OORSPRONKLIK GEREГИSTREER kragtens Sertifikaat van Verenigde Titel Nr. T26606/1972 met Kaart Nr. 6636/1972 daaraan geheg en **GEHOU** kragtens Transportakte Nr. T35840/1985

I. **WAT BETREF** die figuur A f g E op Kaart Nr. 6636/1972 -

ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T12886/1970.

II. **WAT BETREF** die figuur f B C D g op Kaart Nr. 6636/1972 -

ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T23853/1970.

III. **WAT BETREF** die hele eiendom -

A. **ONDERHEWIG** aan die spesiale voorwaarde genoem in gewysigde Grondbrief gedateer 22 November 1904 (Caledon Erfpakte Boekdeel 10 nr. 19) naamlik:-

-3-

"The land thus granted being further subject to all such rules and regulations as either are already or shall in future be established respecting lands granted on similar tenure."

B. **GEREGTIG** op die voordeel van die serwituit verwysing waarna op 11 Oktober 1920 ondosseer is op Grondbrief, gedateer 22 November 1904 (Caledon Erfpakte Boekdeel 10 nr. 19), naamlik:-

"Portion of this property has been set aside for grazing purposes as will appear from the conditions of the sale attached to a Transfer No. 12857 of 9 September 1920, of erven shown on the General Plan, M55A."

C. **ONDERHEWIG VERDER** aan die voorwaardes van verkoop, genoem in Transportakte Nr. T1129/1935, opgelê deur die **MOSSEL RIVER ESTATE COMPANY LIMITED**, nr. (iv) waarvan soos-volg lees:-

"(iv) The Company reserves to itself the sole right to all water arising on or flowing over the Company's property. There shall, however, be excluded from this reservation any water obtained by the Owner of any land within the Township by means of wells of Boreholes sunk on such land."

en nrs. (i) en (iii) waarvan betrekking het op Wette en plaaslike Reëls en Regulasies en aan paaie, rioolpype, duikslote en die afstand wat geboue en buitegeboue van enige weg of laan moet wees.

D. **ONDERHEWIG VERDER** aan die volgende voorwaarde genoem in Transportakte Nr. T8165/1940 opgelê deur en ten gunste van **HERMANUS-MOSSEL RIVER TOWNSHIP PROPRIETARY LIMITED** en sy opvolgers in titel as eienaars van die restant van die erfenis gehou kragtens Transportakte Nr. T10114/1937, naamlik:-

"(a) The said property may not be subdivided except with the consent of the Transferor Company."

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(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 of the Transferor Company."

E. **NIE ONDERHEWIG** aan voorwaarde E op bladsy 4 van Transportakte Nr. T35840/1985 nie, kragtens Artikel 53 van die "Mining Titles Registration Amendment Act 24 of 2003".

For Informal

b

[Handwritten signature]

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-5-

WESHALWE, die komparant afstand doen van al die regte en titel wat

JOAN JUDITH GELDENHUYS, Ongetroud

voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat sy geheel en al van die besit daarvan onthief en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde

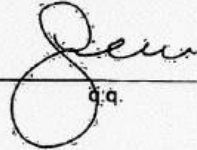
DE BROEDER INVESTMENTS EIENDOMS BEPERK

Registrasienommer 2011/145134/07

diese Opvolgers in titel of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken dit dat die verkoopprijs die bedrag van R1.350.000,00 (Een Miljoen Drie Honderd en Vyftig, Duisend Rand) beloop.

TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die ampseel bekragtig het.

ALDUS GEDOEN EN VERLY op die Kaartoor van die REGISTRATEUR VAN AKTES te Kaapstad op 2014-02-27


d.d.

In my teenwoordigheid


REGISTRATEUR VAN AKTES

340

DYKES VAN HEERDEN SLABBERT
HOPKINS
Unit E4/2
Edward IV
120-122 Edward Road
Bellville 7530
South Africa

Prepared by me

[Handwritten Signature]
CONVEYANGER
MAGNUS DANIEL STEENKAMP

POWER OF ATTORNEY TO PASS TRANSFER

I, the undersigned

JOAN JUDITH GELDENHUYS
Identity Number 390625 0032 088
Unmarried

[Handwritten initials]

do hereby nominate and appoint ELANA HOPKINS and/or JACOBUS PETRUS VAN ZYL and/or LISE COETZEE and/or MAGNUS DANIEL STEENKAMP and/or ANTON LUTHER POSTHUMUS

with power of substitution to be my true and lawful Attorney and Agent in my name, place and stead to appear at the Office of the REGISTRAR OF DEEDS at Cape Town or any other competent official in the Republic of South Africa and then and there to act as my Attorney and Agent and to pass transfer to:

DE BROEDER INVESTMENTS PROPRIETARY LIMITED
Registration Number 2011/145134/07

[Handwritten initials]

the property described as:

ERF 5473 HERMANUS
IN THE OVERSTRAND MUNICIPALITY
DIVISION CALEDON
WESTERN CAPE PROVINCE

[Handwritten initials]

IN EXTENT: 832 (EIGHT HUNDRED AND THIRTY TWO) Square Metres

HELD BY Deed of Transfer Number T35840/1985

[Handwritten initials]

[Handwritten initials]
GhentConvey 14.10.4.11

the said property having been sold by me on 2 December 2013, to the said transferee/s for the sum of R1 350 000.00 (One Million Three Hundred and Fifty Thousand Rand);

and further cede and transfer the said property in full and free property to the said Transferee; to renounce all right, title and interest which the Transferor heretofore had in and to the said property; and generally, for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually, to all intents and purposes, as the Transferor might or could do if personally present and acting therein; hereby ratifying, allowing and confirming all and whatsoever the said Agent/s shall lawfully do or cause to be done in the premises by virtue of these presents.

Signed at Heemraap on 16 January 2014
in the presence of the undersigned witnesses.

AS WITNESSES:

1.  _____


JOAN VINDITH GELDENHUIS

2.  _____

For Info



Transfer Duty Declaration

TDREP

Reference Details

Transfer Duty Reference Number: TDE0095C1D

Details	
Transfer Duty Reference Number	TDE0095C1D
Transaction Reference of Related Exchange Transaction	
Transfer Duty Reference Number	Total Fair Value
Any Other Consideration	R
Transaction Type	
Transaction Type Purchased	
Details of Seller / Transferor / Time Share Company	
Nature of Person	INDIVIDUAL
Surname / Registrant Name	GELDENHUIS
ID Number	80025002088
Passport Number	
Natural Person	YES
Controlled Person to the Purchaser	NO
Gender	FEMALE
Passport Country	
Original Purchase Price	R 0.00
Full Name	JOHAN JUDITH
Initials	JJ
Date of Birth (CCYYMMDD)	1925-06-25
Income Tax Number	0280-12424
Period (years)	100.00
Share Percentage	100.00
Marital Status	NOT MARRIED
Date Property Acquired by Seller	1925-06-25
Effective Date of Transaction	2013-12-02
Details of Purchaser / Transferee	
Nature of Person	PRIVATE CO
Full Name	
Income Tax Number	6431172171
Company / CC / Trust Reg No.	201114513407
Period (years)	
Share Percentage	100.00
Effective Date of Transaction	2013-12-02
Deeds Number	
Signature / Registered Name	DE BROEDER INVESTMENTS PTY LTD
Annual Income from all sources	R
Natural Person	NO
Controlled Person to the Seller	NO
Gender	
Details of Conveyancer / Attorney	
Conveyancing Firm	DYER VAN HEERDEN ELABBERT HODGINS
Business Telephone Number	XXXXXXXXXX
Contact Email	STIMEL@DVS.LAW.ZA
Name of Conveyancer	MAGNUS DANIEL STEENKAMP
Fax Number	
Details of Estate Agent	
Commission Payable on this Transaction	R XXXXXXXXXX
Fax Number	
Cell Number	
Income Tax Number	975730195
Business Telephone Number	
Signature	CCETZE
Initials	S
Details of the Property	
Is the property an enterprise asset for VAT purposes?	NO
Date of Transaction/ Acquisition (CCYYMMDD)	2013-12-02
Bought by	PRIVATE TREATY
Nature of property	PRIMARY RESIDENCE
Are the provisions of Section 35A of the Income Tax Act 1962 applicable?	NO
Local Authority Valuation (Urban Properties)	R 185 170.00
Value of property	R
Land Value	R
Improvements Value	R 130 000.00
Total Fair Value	R 130 000.00
Was any grant tax claimed in respect of the property?	NO
Is the property improved?	IMPROVED
How will property used?	PRIMARY RESIDENCE
For what purpose will the property be used?	PRIMARY RESIDENCE
Amount of bond	R
Monthly Rental Value	R
Occupational Rent/Interest Paid or Received	R
Selling Price	R 130 000.00
Any Other Consideration Payable	R
Total Consideration	R 130 000.00

Details			
Calculation of Duty and Penalty/ Interest			
Transfer Duty Payable on	R	1550000.00	
Natural Person	% on R	4 R	
	% on R	4 R	
	% on R	4 R	
	% on R	4 R	
	% on R	4 R	
	% on R	4 R	
	% on R	4 R	
	% on R	4 R	
	% on R	4 R	
Other than Natural Person	000 % on R	600000.00	0.00
	003 % on R	400000.00	12000.00
	005 % on R	350000.00	17500.00
	% on R		
	% on R		
	% on R		
	% on R		
	% on R		
	% on R		
	% on R		
	% on R		
Sub total		R	28600.00
Penalty/Interest		R	0.00
Total Payable		R	28600.00
Calculation of VAT Payable:			
VAT Rate			Including VAT
VAT Payable	R		Tax on land when owned tax will be declared on the VAT 200 Declaration
Output Tax	R		Single is that of a going concern which is subject to BIR 200/200
Transaction Status			
Exempt in terms of Section 8 of the Transfer Duty Act		Exemptions allowed by Transfer Act	
Property Description			
1 ERF 5473 HERMANUS IN THE OVERSTRAND MUNICIPALITY DIVISION CALEDON WESTERN CAPE PROVINCE IN EXTENT: 632 (EIGHT HUNDRED AND THIRTY TWO) SQUARE METRES			
Voluntary Disclosure Programme			
Is this declaration made in respect of a VDP agreement with SARS?		VDP Application No.	



Transfer Duty Declaration **TDREP**

Transfer Duty Reference Number: TDE0095C1D

Receipt	
Receipt Details	
Transfer Duty Reference Number	TDE0095C1D
Receipt No.	1200115436
Receipt Amount	R. 29500.00

Declaration by Conveyancer / Attorney

I certify that this is a true copy of the transfer duty declaration / receipt / exemption certificate drawn from the SARS eFiling site, which will be retained by me for 5 years from the date of registration of transfer.

Please ensure you sign over the 2 lines of 'X' above

10883407522800-442950
1810216861663062

Date: 2014/02/12

For enquiries go to
www.sars.gov.za or call
0800 00 SARS (7277)

FOR INFORMATION

[Handwritten signature]



OVERSTRAND LOCAL MUNICIPALITY

3

CLEARANCE CERTIFICATE FOR MUNICIPAL SERVICES, SURCHARGES ON FEES, PROPERTY RATES, OTHER MUNICIPAL TAXES, LEVIES, DUTIES ON TRANSFER OF PROPERTY

Authority is hereby granted in terms of section 118 of the Local Government Municipal Systems Act, 2000 (32 of 2000), for the registration of the transfer of the properties mentioned herein.

Certificate Nr.: 10282769

Date: 12/02/2014

Valid Until: 13/05/2014

Conveyancer Ref Nr: D3077/SL

Transfer from: JOAN JUDITH GELDENHUYS Id. Nr: 3906250032088

Transfer to: DE BROEDER INVESTMENTS PROPRIETARY LIMITED Id. Nr: 2011/145194/07

Erft/Farm portion: 5473 0 Township: HERMÁNUS /Farm:

Council: Overstrand Local Municipality

Declaration By Conveyancer:

I MAGNUS DANIEL STEENKAMP

acting on behalf of

DVHS - Bellville

hereby certify that this is a true copy of the rates clearance certificate drawn from GhostConvey

Signature:

Date:

[Handwritten Signature] 12 February 2014

Ms E. Hoonenberg
for: Director: Finance
Manager: Revenue

Use and reliance on information contained herein is subject to the terms and conditions contained in the Korbitec End User License Agreement.

(4)

PROD DEEDS REGISTRATION SYSTEM - CAPE TOWN
PREPARED BY : DRS98231 - MADAMA LITHA

DATE : 20140214 TIME : 11:32:12,7 PAGE : 1

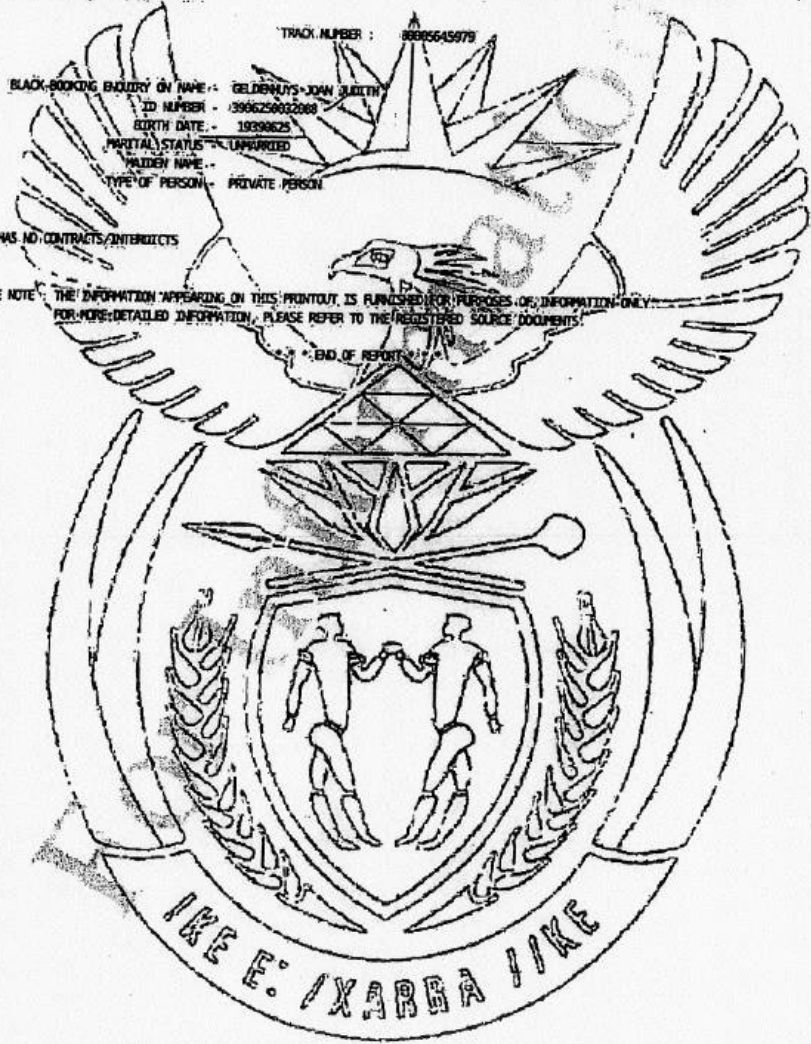
TRACK NUMBER : 8885645979

BLACK-BOOKING ENQUIRY ON NAME :- GELDENHUIS-JOAN ELIZABETH
ID NUMBER :- 3966250032088
BIRTH DATE :- 19390625
MARRITAL STATUS :- MARRIED
MAIDEN NAME :-
TYPE OF PERSON :- PRIVATE PERSON

PERSON HAS NO CONTRACTS/INTERESTS

PLEASE NOTE: THE INFORMATION APPEARING ON THIS PRINTOUT IS FURNISHED FOR PURPOSES OF INFORMATION ONLY.
FOR MORE DETAILED INFORMATION, PLEASE REFER TO THE REGISTERED SOURCE DOCUMENTS.

END OF REPORT



3

6

PROD DEEDS REGISTRATION SYSTEM - CAPE TOWN DATE: 20140214 TIME: 11:32:31.3 PAGE: 1
PREPARED BY: DRS08231 - MADONA LITAK

TRACK NUMBER: 8006649979

PROPERTY DETAILS (PRINT FOR PORTION 0)
ERS NO: 5473
TOWNSHIP: HERMANUS
REG. DIV: CALEDON RD.

PROVINCE: WESTERN CAPE
PREV DESCRIPTION: ERN R/E 41551 R/E 4154
DIAGRAM DEED NO: T26606/972
EXTENT: 032' 50M
CLEARANCE: HERMANUS MUN

NO INTERLOCKS

DOCUMENTS
VA7190/2007

HOLDER & SHARE
T35840/1985

POINT

O/P/A: 000/MICRO REF: 20130314155825
PROD: 8905

OWNER DETAILS

FILE NAME & SHARE
GELDENHUIS JOAN JUDITH

PURCH DATE: POINT/REASON: O/P/A IDENTITY: TITLE DEED: PROD: MICROFILM REF:
SECT 45(1) 3906/25003/2008 T35840/1985 8930 20130314155822
18215/2013 8220 20130314155852

* O/P/A - 0 - MULTIPLE OWNER P - MULTIPLE PROPERTY A - MULTIPLE OWNER AND PROPERTY

PLEASE NOTE: THE INFORMATION APPEARING ON THIS FRONTOUT IS FURNISHED FOR PURPOSES OF INFORMATION ONLY.
FOR MORE DETAILED INFORMATION, PLEASE REFER TO THE REGISTERED SOURCE DOCUMENTS.

*** END OF REPORT ***

IKHE: IXABGA IKHE

A Conradie

From:
 Sent: Friday, 19 August 2022 21:34
 To: A Conradie
 Cc:

Subject: RE: Erf 5473 Voelklip



nsa.

ine;

TP. N. (head)
 (M. Olivier)

FILE NO.	Erf 5473
	WVK
SCAN NO.	Felicia
COLLABORATOR NO.	1734382



DE KLERK MACLENNAN-SMITH INC.

Reg. No. 1996/001800/21

Attorneys, Executors and Conveyancers/Prokureurs, Eksekuteurs en Aktebesorgers

Registered Office 8 Magnolia Street, Hermanus, 7200
 Home 8 Willow Warbler, Hemel & Aarde Estate, Hermanus 7200
 P.O. Box 113 Hermanus 7200 RSA
 Tel: +27 28 3163411 Fax: +27 865522128
 Director/Direkteur: K.B.E. MacLennan-Smith (B.A. LLB)
 Consultant/Konsultant: A.J. Nel (B.Proc LLB MBA)

19 August 2022

Dear Alida

We act on behalf of Felicia Jordaan ("Felicia"), the previous tenant at the premises in respect of which this application is brought, and also on behalf of Felicity MacLennan-Smith and myself as previous patients who were treated by Felicia.

As has been stated, Felicia conducted a successful physiotherapy practice at the premises, and provided a valuable service to the residents of Voelklip, being the only such practice in the area.

Approving the application will not change what has been the status quo since 2014. The possibility also exists that part of the premises could be used (for example) by a medical doctor or dentist, should approval be granted, for the benefit not only of Voelklip residents but also those from Stanford and neighbouring towns on that side of Hermanus. As you are aware, the building is situated at the Eastern entrance to Hermanus.

Travelling costs in South Africa have increased substantially in the past few years. In addition, parking in and around the CBD has become a greater problem, particularly during the high seasons. By approving this application, both of these will be alleviated for nearby residents.

No building changes are required.

More than sufficient on site parking is and has been provided.

No traffic congestion will be created by reason of the location to of the premises at the entrance to Hermanus. In fact, approval will help relieve additional traffic and parking required in the CBD. Note that the entrance to the premises is not on the main road leading into Hermanus, but from a side street.

No noise or other interference of the enjoyment by adjacent residents will be created by approving the application and there will be no reduction in value of properties in the area.

19 AUG 2022

ANNEXURE B 80/225

No residents of Voelklip will be adversely affected by the approval. In fact, the reverse is true. Residents will retain a benefit they have enjoyed since 2014.

Felicia invested a large amount of money in upgrading the premises into an upmarket medical practice based on the Consent previously enjoyed. She stands to suffer a high loss should she or the owner be required to re-alter the premises for residential purposes only. This constitutes clear prejudice.

Granting the application will in no way further encroachment of business premises in the residential area of Voelklip. It will continue as it has been for years and retain the benefit of what the Voelklip residents have enjoyed for years.

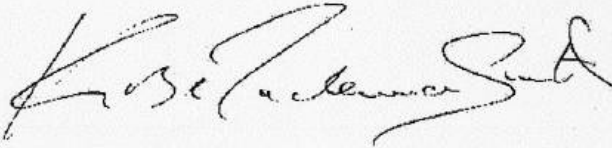
We are more than surprised at the objection by the ratepayers association and respectfully submit that the majority of residents in Voelklip will support the application.

We submit that the application should be granted.

Kindly acknowledge receipt of this email.

Thank you.

Regards



From:
Sent: Friday, August 19, 2022 8:18 PM
To:
Subject: FW: Erf 5473 Voelklip

From: Karl Pretorius
Sent: Friday, 19 August 2022 13:21

Subject: FW: Erf 5473 Voelklip

Middag Felicia en Richard

Ons hou maar duimvas. Dit sal 'n onreg wees as hulle die aansoek afkeur. Ek het 'n voorgevoel dat dit gaan slaag al sal julle maar geduldig moet wees. Sulke meule maal maar langzaam.

Groete
 Karl

From:
Sent: Friday, 19 August 2022 13:16
To: 'alida@overstrand.gov.za' <alida@overstrand.gov.za>
Subject: Erf 5473 Voelklip

A Conradie

TP - n. / heat
z. (M. Oliver)

From:
Sent: Friday, 19 August 2022 13:16
To: A Conradie
Subject: Erf 5473 Voëlklip



Geagte Alida en mnr P Roux

Ek het onlangs 'n skrywe van ene Antoinette en mnr Wridgway (dink van die Belastingbetalersvereniging) insake die aansoek om hersonering ens van Erf5473, Voëlklip ontvang.

Ek wil dit duidelik maak dat ek nie die eienaar van die eiendom ken nie en geen persoonlike belang by die aansoek het nie. My vrou het 7 jaar gelede 'n beroerte gehad en het wel van mev Jordaan se fisiodienste by die eiendom gebruik gemaak, tot en met haar aftrede sowat 'n jaar gelede. Ons, soos vele ander persone, vind dit baie jammer dat daar nie tans sodanige diens in Voëlklip beskikbaar is nie.

Dit die skrywe wat ek ontvang het wil dit voorkom asof die Belastingbetalersvereniging die aansoek wil opponeer, wenskylik op grond van "business creep". Hulle argument het wat my betref absoluut geen meriete nie. Ek het met 'n hele aantal ander inwoners in Voëlklip gesels en hulle ondersteun die aansoek ook ten volle.

Voëlklip is by uitstek 'n residensiële area (en sal so bly), maar oor die jare het is heelwat besighede in die omgewing gevestig. Ek verwys bv na die OK Minimark, die Shell Garage en aangrensende werkswinkel, heelparty restaurante, eiendomsmaatskappye met kantore en les bes talle gastehuisse. Die fisiopraktyk wat op Erf 5473 bedryf is het geen negatiewe impak op Voëlklip en die omgewing nie. Daar is nie sprake van ekstra verkeer of enige geraas nie. Na-ure is die fasiliteit in elk geval gesluit, anders as gastehuisse wat soms 'n groot probleem is met motors op syadjies en geraas veral oor naweke en vakansietye.

Voëlklip se inwoners is merendeels senior of afgetrede persone wat dit dikwels moeilik vind om dorp toe of verder te ry vir mediese/fisiodienste. Dit sal dus uiters voordelig wees indien so 'n praktyk weer in Voëlklip gevestig kan word.

Die aansoek wat deur WRAP namens die eienaar ingedien is, is 'n uitstekende en omvattende dokument wat beslis ondersteun moet word. My aanbeveling is dus dat die aansoek so gou as moontlik goedgekeur word.

ie uwe
Karl Pretorius
6de straat 163, Voëlklip

FILE NO.	SF 8473
	INK ✓
SCAN NO.	Karl
COLLABORATOR NO.	1734404

19 AUG 2022

ANNEXURE B 82/225

A Conradie

TP- n. Hoek
B. (H. Olivier)

From:
Sent: Friday, 19 August 2022 20:35
To: A Conradie
Subject: ERF 5473



Ek skryf die kommentaar in belang van 'n groot aantal inwoners van Voëlklip. Ek wil dit duidelik maak dat ek nie die eienaar van die eiendom ken nie. My eggenote en ek self het wel van mev Jordaan se fisioterapiedienste op die eiendom, gebruik gemaak. Ons vind dit baie jammer dat sodanige diens, sedert mev Jordaan se aftrede, nie meer in Voëlklip beskikbaar is nie. Ons ondersteun dus die aansoek van harte.

Nou blyk dit dat die Belastingbetalersvereniging die aansoek wil opponeer, oënskynlik op grond van "business creep". Hulle argument het m.i. weinig meriete. Voëlklip is hoofsaaklik 'n residensiële area, maar oor die jare is heelwat besighede in die omgewing gevestig. Ek lys die volgende:

- OK Minimark,
- Gastehuse
- Restaurante,
- Shell Garage met aangrensende werkswinkel,
- Eiendomsmaatskappye.

Erf 5473 is die eerste gebou wat 'n mens sien as jy die dorp uit die rigting van Stanford binnekom. Dit is 'n baie netjiese gebou en omgewing en verskaf 'n positiewe indruk van ons dorp. Verder is dit ideaal vir die aanbied van mediese dienste in 'n relatief veilige omgewing. Dit is dus in my en ander inwoners se belang dat sodanige dienste weer daar aangebied kan word.

Die aansoek wat deur WRAP namens die eienaar ingedien is, is 'n omvattende dokument wat ons ondersteuning verdien. My aanbeveling is dus dat die aansoek goedgekeur word.

Vriendelike groete.

Albert Hoek
 Lewende Straat 162

FILE NO.	5473
	WVK
SCAN NO.	Hoek
COLLABORATOR NO.	1734395

19 AUG 2022

Mr. A. Conradie
(M. Uliud)
4.



A Conradie

From:
Sent: Friday, 19 August 2022 09:40
To: A Conradie
Subject: FW: Application for removal Of Restrictive Title Deed - ERF 5473 Hermanus

FILE NO.	OF 5473
	HVK
SCAN NO.	Nicola
COLLABORATOR NO.	1734407

To: Overstrand Municipality, Department of Town Planning

I hereby object to the application for the removal of restrictive title deed condition, rezoning, consent use and departure of ERF 5473, Hermanus. My concerns are as follows;

- The subject property is within an upmarket residential area. Therefore by allowing offices will negatively affect this. Once rights for 'office use' have been granted, virtually any business can be operated and stated as an 'office' and the "unique professional office space" quoted by the applicant cannot be guaranteed.
- The historical business properties alongside the Main Road (7th Street) are historical occurrences. They are also 'Low key' and have not changed in character for many years.
- The rezoning of Erf 5473, will create a precedent, which will ultimately result in many applications along this line. Voelklip residents do not want our residential suburb to be marred by the bastardisation of residential homes into businesses, which will jeopardise the value of our area & therefore property values will also be negatively affected.
- The increase in building height which will be put into place with this rezoning, will have a negative impact on my property. It will also result in a more 'built up' feel, as opposed to the residential atmosphere of Voelklip.
- It is questionable that this rezoning is based on an existing land use. If the existing land use of Erf 5473 was approved, surely the Title Deed restrictions should have already been addressed for the previous 'business' which operated there? I therefore question whether the current land use is legal. Therefore the motivation is to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voelklip area.

With regard to the Motivation statements (LUPA, Section 39(5) (a-f), my concerns are as follows;

- a) "No person or entity will be affected financially by the removal of the restrictive title deed condition".

Ultimately all Voelklip property owners will be financially affected, as our property values as prime residential will be negatively impacted.

- b) "No person is directly benefitting from this condition as the condition is only restricting the applicant".
The property owners of Voelklip are benefitting from this condition as it protects their suburb as a residential area, without the negative impact of additional potentially disruptive activities, noise, deliveries, unnecessary extra traffic etc, which will harm the peaceful, residential atmosphere.
- c) "The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".
This motivational statement invalid, as the property is residential and using it to its 'full extent' has nothing to do with running a business from the property. However, the applicant will definitely benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.
- d) "The restrictive condition does not have a social benefit".
The restrictive condition definitely does have a social benefit in that it protects the residents of Voelklip from disruptive business activities.
- e) "There is no specific beneficiary of the condition, and no person or entity will be affected if these are removed".
The owner of Erf 5473 Hermanus is the beneficiary and will benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.

Name: Mrs N Ralph
Address: 326 8th Street , Voelklip, Hermanus.
Contact details: email:
Cell:
Interest in Application: Resident & property owner in Voelklip situated opposite ERF 5473
Reason for Comments: Objection to proposed removal of restrictive title deed condition.

NB. KINDLY ACKNOWLEDGE RECEIPT OF THIS EMAIL.



Virus-free www.avast.com

ANNEXURE B 85/225

A Conradie

S.



From:
Sent: Thursday, 18 August 2022 20:24
To: A Conradie; Jacques de Villiers
Cc: admin@wrapgroup.co.za
Subject: Municipal Notice No 81/2022 - OBJECTION - ERF 5473, 13 17th Avenue, Voëlklip, Hermanus

Importance: High

TP n/heat
 (H. Olivier)

Kindly acknowledge receipt of this email.

To: Overstrand Municipality, Department of Town Planning, Mr. P. Roux

From: Dr FJ de Villiers
 Squareone Property Holdings Pty Ltd
 Erf 4148, 325 8th Street
 Voëlklip
 Hermanus

FILE NO.	51 5473
	1JK ✓
SCAN NO.	
	Claudi
COLLABORATOR NO.	
	1734411

We hereby object to the application for the removal of restrictive title deed condition, rezoning, consent use and departure of ERF 5473, 13 17th Avenue, Voëlklip, Hermanus.

We have a property, Erf 4148, in close proximity to Erf 5473 and therefor have a vested interest in the amendment of this title deed.

Our comments/concerns are as follow:

The original intent of the restrictive title deed condition was to protect the residential character of the Voëlklip area. This has not change.

The subject property was previously allowed to be used for the operation of a professional office by the resident owner.

It is therefor argued that "temporary deviation of use" would be the appropriate avenue in law that will protect both the long term residential character of the property and the right of it's resident owner to practicing his or her profession.

In contrast, allowing the proposed rezoning hold the real risk of permanently altering the character of the immediate neighbourhood with unknown economical consequences.

In addition to this, the increased allowed building hight under the proposed rezoning will have a direct negative affect on the adjoining properties, both with regards to shade, view and aesthetics.

Vriendelike groete/Kind regards
 Jacques & Claudi de Villiers
 claudiv@gmail.com

18 AUG 2022



A Conradie

G.

From:
Sent: Thursday, 18 August 2022 15:01
To: A Conradie
Cc:
Subject: OBJECTION TO APPLICATION RE ERF 5473
Attachments: Guthrie submission to OV Municipality re ERF 5473 2022.08.18.pdf

Dear Sir /Madam

Please find attached my objection to the application regarding ERF 5473 for removal of restrictive title deed condition, rezoning, consent use and departure.

Many thanks
 Teresa Guthrie
 227 9th Street, Voelklip

TR.G./head
 (M. Olivier)

FILE NO.	5473
SCAN NO.	144
COLLABORATOR NO.	Teresa
	1734418

18 AUG 2022

ANNEXURE B 87/225

*Teresa Guthrie
227 9th Street
Voelklip, Hermanus,
Western Cape, South Africa.
7200*

TOWN PLANNING
OVERSTRAND MUNICIPALITY

18 August 2022

To whom it may concern

RE: OBJECTION TO APPLICATION: ERF 5473 FOR REMOVAL OF RESTRICTIVE
TITLE DEED etc.

My name is Teresa Guthrie
Address: 227 9th Street, Voelklip, Hermanus
Cell: 082-872-4694

I wish to **object to the application** regarding ERF 5473, in all aspects: removal
of restrictive title deed condition, rezoning, consent use and departure.

Voelklip should remain a residential area only, and the building lines should not
be reduced – this will prevent business creep and encroachment that
disadvantages neighbours and the nature of the area.

Many thanks for lodging my objection.

Kind regards



TERESA GUTHRIE

ANNEXURE B 88/225

A Conradie

TR n./sheet
7. (H. Olivier)

From:
Sent: Thursday, 18 August 2022 12:41
To: A Conradie
Subject: Application for removal Of Restrictive Title Deed - ERF 5473 Hermanus
Importance: High
Sensitivity: Confidential

To: Overstrand Municipality, Department of Town Planning

FILE NO.	ERF 5473
	HNK ✓
SCAN NO.	
	Robert
COLLABORATOR NO.	
	1734425

I hereby object to the application for the removal of restrictive title deed condition, rezoning, consent use and departure of ERF 5473, Hermanus.

My concerns are as follows;

The subject property is within an upmarket and well established residential area. Therefore by allowing offices will negatively affect this upmarket residential area. Once rights for 'office use' have been granted, virtually any business can be operated and stated as an 'office' and the "unique professional office space" quoted by the applicant cannot be guaranteed;

The historical business properties alongside the Main Road (7th Street) are historical occurrences. They are also 'Low key' and have not changed in character for many years ;

The rezoning of Erf 5473, will create a precedent, which will ultimately result in many more similar applications other Voelklip residents - especially properties along 7th Street in Voelklip area. Residents do not want our residential suburb to be marred by the bastardisation of residential homes into businesses, which will jeopardise property values of our area being negatively affected;

It is questionable that this rezoning is based on an existing land use. If the existing land use of Erf 5473 was approved, surely the Title Deed restrictions should have already been addressed for the previous 'business' which operated there? I therefore question whether the current and previous land use were legal. Therefore the motivation is to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voelklip area.

With regard to the Motivation statements (LUPA, Section 39(5) (a-f), my concerns are as follows;

18 AUG 2022

ANNEXURE B 89/225

a) "No person or entity will be affected financially by the removal of the restrictive title deed condition".

Ultimately all Voelklip property owners will be financially affected, as our property values as prime residential will be negatively impacted.

b) "No person is directly benefitting from this condition as the condition is only restricting the applicant".

The property owners of Voelklip are benefitting from this condition as it protects their suburb as a residential area, without the negative impact of additional potentially disruptive activities, noise, deliveries, unnecessary extra traffic etc, which will harm the peaceful, residential atmosphere.

c) "The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".

This motivational statement invalid, as the property is residential and using it to its 'full extent' has nothing to do with running a business from the property. However, the applicant will definitely benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.

d) "The restrictive condition does not have a social benefit"

The restrictive condition definitely does have a social benefit in that it protects the residents of Voelklip from disruptive business activities.

e) "There is no specific beneficiary of the condition, and no person or entity will be affected if these are removed".

The owner of Erf 5473 Hermanus is the beneficiary and will benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.

Kindly acknowledge receipt of my mail .

Kind Regards

Mr R. Oosthuizen (Home owner)

315,6th Street,Voelklip,Hermanus,7200

A Conradie

8.

From: Thursday, 18 August 2022 10:15
Sent: A Conradie; ratepayers@hermanus.co.za
To: Bev Joubert
Cc: Application for plans re ERF5473
Subject:



Good day.

I received correspondence regarding the proposed application for plans for ERF 5473 in Voelklip, Hermanus. I wish to lodge an objection to the approval of business rights on this property and request it remain a residential plot in keeping with the area.

Whilst we understand that it has been used for a small business practice, the sale of the plot with business rights does not guarantee that the new owners will continue a low-key operation.

We are ERF 4134 and many years ago got our view obstructed by the development of Baleens which is an unattractive development blocking our front view.

I wish to state my clear objection to these plans.

Thank you.

Regards

Susan van Ryneveld

Executor of Estate late MA Truswell & beneficiary of ERF 4134.

TP. A. Theart
 (I.D. Olivier)

FILE NO.	ERF 5473
	I-VK ✓
SCAN NO.	Susan
COLLABORATOR NO.	1734431

18 AUG 2022

A Conradie

9.

From:
Sent: Thursday, 18 August 2022 10:37
To: A Conradie
Cc:
Subject: Fwd: Application for plans re ERF5473



Hi Alida

My sister's correspondence below refers.

I stand by her and all concerned ratepayers objecting to the proposed plans

Regards

Bev Joubert

Sent from my iPad

Begin forwarded message:

From: Sue vR <sue@ryno.co.za>
Date: 18 August 2022 at 10:14:59 SAST
To: alida@overstrand.gov.za, ratepayers@hermanus.co.za
Cc: Bev Joubert <nikabox@icloud.com>
Subject: Application for plans re ERF5473

FILE NO.	ERF 5473
	LAVK ✓
SCAN NO.	
	Bev
COLLABORATOR NO.	
	1734428

Good day.

I received correspondence regarding the proposed application for plans for ERF 5473 in Voelklip, Hermanus.

I wish to lodge an objection to the approval of business rights on this property and request it remain a residential plot in keeping with the area.

Whilst we understand that it has been used for a small business practice, the sale of the plot with business rights does not guarantee that the new owners will continue a low-key operation.

We are ERF 4134 and many years ago got our view obstructed by the development of Baleens which is an unattractive development blocking our front view.

I wish to state my clear objection to these plans.

Thank you.

Regards

Susan van Ryneveld

Executor of Estate late MA Truswell & beneficiary of ERF 4134.

18 AUG 2022

A Conradie

10.



From:
Sent: Thursday, 18 August 2022 10:02
To: A Conradie
Subject: Fwd: Application for removal of Restrictive Title Deed Condition. Erf 5473 Hermanus

TR N. Ahoor
 (11.01.2022)

From: Estelle Swanepoel
Subject: Re: Application for removal of Restrictive Title Deed Condition. Erf 5473 Hermanus
Date: 17 August 2022 at 16:37:13 SAST
To: alida@overstrand.gov.za

To: Overstrand Municipality, Department of Town Planning

I hereby object to the application for the removal of restrictive title deed condition, rezoning, consent use and departure of ERF 5473, Hermanus. My concerns are as follows:

FILE NO.	ERF 5473
	lvk. ✓
SCAN NO.	Estelle
COLLABORATOR NO.	1734440

- The subject property is within an upmarket residential area. Therefore by allowing offices will negatively affect this. Once rights for 'office use' have been granted, virtually any business can be operated and stated as an 'office' and the "unique professional office space" quoted by the applicant cannot be guaranteed.
- The historical business properties alongside the Main Road (7th Street) are historical occurrences. They are also 'Low key' and have not changed in character for many years.
- The rezoning of Erf 5473, will create a precedent, which will ultimately result in many applications along this line. Voelklip residents do not want our residential suburb to be marred by the bastardisation of residential homes into businesses, which will jeopardise the value of our area & therefore property values will also be negatively affected.
- The increase in building height which will be put into place with this rezoning, will have a negative impact on the sea views from my property. It will also result in a more 'built up' feel, as opposed to the residential atmosphere of Voelklip.
- It is questionable that this rezoning is based on an existing land use. If the existing land use of Erf 5473 was approved, surely the Title Deed restrictions should have already been addressed for the previous 'business' which operated there? I therefore question whether the current land use is legal. Therefore the motivation is to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voelklip area.

With regard to the Motivation statements (LUPA, Section 39(5) (a-f), my concerns are as follows;

(a) "No person or entity will be affected financially by the removal of the restrictive title deed condition".

Ultimately all Voelklip property owners will be financially affected, as our property values as prime residential will be negatively impacted.

(b) "No person is directly benefitting from this condition as the condition is only restricting the applicant".

The property owners of Voelklip are benefitting from this condition as it protects their suburb as a residential area, without the negative impact of additional potentially disruptive activities, noise, deliveries, unnecessary extra traffic etc, which will harm the peaceful, residential atmosphere.

(c) "The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".

This motivational statement invalid, as the property is residential and using it to its 'full extent' has nothing to do with running a business from the property. However, the applicant will definitely benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.

(d) "The restrictive condition does not have a social benefit"

The restrictive condition definitely does have a social benefit in that it protects the residents of Voelklip from disruptive business activities.

(e) "There is no specific beneficiary of the condition, and no person or entity will be affected if these are removed".

The owner of Erf 5473 Hermanus is the beneficiary and will benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.

Name: Mrs E. Swanepoel

Address: 15 Seventeenth Avenue, Voelklip, Hermanus.

Contact details: email: ;

Interest in Application: Resident & property owner in Voelklip situated opposite ERF 5473

Reason for Comments: Objection to proposed removal of restrictive title deed condition.

NB. KINDLY ACKNOWLEDGE RECEIPT OF THIS EMAIL.

ANNEXURE B 94/225

IP: D. Ahearne
(A. Olivia)
11.

A Conradie



From: Thursday, 18 August 2022 09:03
Sent: A Conradie
To: Opposition to Rezoning: Property on the corner of 7th Street and 17th Avenue
Subject:

Dear Alida,

I am a resident of Voelklip staying at 13 16th Avenue. I read the article by Brian Wridgway regarding the potential rezoning of the property on the corner of 7th Street and 17th Avenue and would like to voice my objection to this.

Voelklip is a residential area and its charm and attraction comes from this zoning. In particular, it is a quiet suburb that attracts tourists and holiday goers, benefitting the region at large. Having another commercial property (not a work from home or home business establishment), in my opinion, will detract from the nature of the area in a negative way.

Thank you for listening to our concerns.

Kind regards,
Andrew de Villiers

13 16th Avenue, Voelklip

FILE NO.	21 503
	1/1vk ✓
SCAN NO.	Andrew
COLLABORATOR NO.	1734442

17 AUG 2022

ANNEXURE B 95/225
TP n. / heart
(H. Olivia)

A Conradie

12.

From:
Sent: Thursday, 18 August 2022 07:30
To: A Conradie
Cc: admin@wrapgroup.co.za
Subject: Erf 5473 rezoning
Attachments: Hermanus 1.pdf; Hermanus 2.pdf



Dear Madam/Sirs

I received documentation regarding rezoning Erf 5473 Voelklip Hermanus and are definitively not in favour of rezoning the mentioned property from Zone 1 (single residential) to Zone 3 .

I am not sure of the perimeters of the new zoning mentioned , please explain what is the extend of Zone 3 business rights. As a house owner in the area (320 , 8th street) we enjoy the quietness of the neighbourhood and we would like to see it stay like that for the years to come. Our family owns the house from the early 1980's and we are the longest owners of property in that area.

With many uncertainties regarding the De Mond Caravan Park and its current state we would highly oppose any further new developments and rezonings.

I stay in Bellville and use the Hermanus property as a breakaway over holidays and weekend , any rezoning will open the opportunity for future business. Now it may be explained as a office development , but the property can be re-sold and then with rezoning in place it would be out of our control what the new owners will be developing there. Further down in 7th street there is a café with takeaways and a liquor license and there are open space around that premises as there are always traffic and elements hanging out there. And the last thing I want to see is that our neighbourhood property gets devalued because of that. Our property already has been devalued because the uncertainties and the state of the caravan park.

Please acknowledge recite of my objection and that it is noted.

For any further information please contact me.

Kind regards
Sandro Peloi

FILE NO.	EF 5473
	1AVK
SCAN NO.	
	Peloi
COLLABORATOR NO.	
	1734451

17 AUG 2022

A Conradie

13.

From:
Sent: Wednesday, 17 August 2022 21:49
To: A Conradie
Cc: locations@tlcsa.co.za
Subject: Objection to Business rights on 7th street and 17th ave



We, Carl and Uta Coetzee as residents of Voëlklip at 305 9th Str, Hermanus, strongly object to the application to rezone any area of Voëlklip for Business rights.

Uta Coetzee
Sent from my iPad

TP. N. Theart
(H. Oliva)

FILE NO.	SF 903
	hmk ✓
SCAN NO.	Uta
COLLABORATOR NO.	1734455

17 AUG 2022

A Conradie

14.

From:
Sent: Wednesday, 17 August 2022 19:16
To: A Conradie
Cc:
Subject: APPLICATION FOR REZONING ERF 5473
Attachments: OBJECTION REZONING ERF 5473.pdf



TP. n. (head
 CH. Olivier)

Good Day Alida

Find objection to above application attached

Kind Regards
 René Beukes

FILE NO.	5473
	VVK ✓
SCAN NO.	
	Rene
COLLABORATOR NO.	
	1734459

17 AUG 2022

9th Street 306
Voëlklip
Hermanus
17 August 2022

To whom it may concern,

APPLICATION FOR REZONING ERF 5473

I hereby like to object against the rezoning of ERF 5743 to Business Zone 3 form Residential Zone 1 and the removal of restrictive title deed condition.

I object on the following grounds:

- The rezoning might negatively affect property value.
- The rezoning will change the character of the area which was the main driver for us purchasing a property in this area.
- The rezoning will increase the traffic levels in the very calm part of the neighbourhood which is detrimental.

Yours sincerely

René Beukes

ANNEXURE B 99/225

TP. A. Conrad
(H. Olivier)

A Conradie

15.

From:
Sent: Wednesday, 17 August 2022 17:42
To: A Conradie
Subject: re zone Voelklip



Municipal Council

We are against the re zone of the property on cnr. of 17th and 7th.

Our property's will lose there value, during covid a lot of residents worked from home, we had delivery trucks up and down our road at high speeds, it wasn't at all pleasant. I vote against it. Why can't they move into a industrial area?

Hazel and Ronald Pedersen

FILE NO.	07 913
	1/1K ✓
SCAN NO.	
	Pederson
COLLABORATOR NO.	
	1734462

17 AUG 2022

ANNEXURE B 100/225 -
TP. D/Heart
(M. Olivier)

A Conradie

16.

From:
Sent: Wednesday, 17 August 2022 16:47
To: A Conradie
Subject: Re Rezoning of Erf 5473



Dear Sir/Madam

I hereby want to object to the rezoning of Erf 5473 to be zoned as business premises. There are sufficient businesses and petrol stations servicing Voëlklip. As ratepayer and owner of the property 317 De Mond this is a quiet neighbourhood and should be preserved as such.

Best regards

Elmien de Kock
Sent from my iPhone

FILE NO.	5473
	LMK
SCAN NO.	Elmien
COLLABORATOR NO.	1734474

17 AUG 2022

A Conradie

17.



From: Wednesday, 17 August 2022 16:51
Sent: A Conradie
To: Objection rezoning 7th street/17th Ave, Voelklip
Subject:

TP n/thead
 (H. Olivier)

To whom it may concern

I wish to object to the rezoning of private dwelling of cnr 7th street and 17th Avenue, Voelklip.

Thanks
 Vanessa Thom
 13 13th Ave, voelklip

Sent from [Email.Avn](#) for mobile

FILE NO.	81 5173 ✓
	WVK.
SCAN NO.	Thom
COLLABORATOR NO.	173 4480

17 AUG 2022

A Conradie

18.



From: Friday, 19 August 2022 10:41
Sent: A Conradie
To: admin@wrapgroup.co.za
Cc:
Subject: ERF5473 1317TH AVENUE, VOELKLIP, HERMANUS: APPLICATION FOR THE REZONING CONSENT USE & PERMANENT DEPARTURE: WRAP PROJECT OFFICE ON BEHSLF OF DE BROEDER INVESTMENTS (PTY) LTD

TP. n. Ahearne
(H. Ollivier)

Dear Sir/Madam,

Regarding the above proposal, I object to it on the following grounds:-

1. The Voelklip area is residential; the use of the existing property as a place of business beyond what was allowed was not then approved and it should not now be approved.
2. That no neighbour objected previously to the property being used by a single practitioner before is most likely due to the low traffic impact of that business. With a number of practitioners operating a business on the property, this will definitely be more disturbing and detract from the peaceful residential nature of the neighbourhood. What if the proposed business is wildly successful, with queues lining up outside, spilling out of the carpark, down the road and onto the verges?
3. Contrary to the assertion that no financial benefit will accrue or detract from any property, the proposed rezoned ERF 5473 will be hugely more valuable to the existing owner and it appears he/she will sell the property - there will be a significant financial benefit to the existing owner if the property obtains rezoning rights for a business with up to three practitioners.
4. There is an exciting proposal to develop the De Mond caravan site currently out on tender. This development will offer good opportunities for employment, tourism and commerce. The tender document stipulates that whatever is proposed, it must be sensitive to the residential nature of Voelklip and be minimally disruptive or encroaching. The rezoning of the ERF 5473 which is right across the road from the caravan park will contradict this need to be sensitive and it may encourage further rezoning applications from other properties nearby.... "well if they could do it, why not me".

I appreciate the opportunity to submit my objections and will be happy to discuss these further if necessary.
 My kind regards,
 Peter Bourne and Veronica Bourne
 Address 321 8th Street,
 Voelklip,
 Hermanus 7200

FILE NO.	ERF 5473 ✓
	LWK
SCAN NO.	
	Bourne
COLLABORATOR NO.	
	1734028

19 AUG 2022

A Conradie

19.



From: Friday, 19 August 2022 12:51
Sent: A Conradie
To: Re: Erf 5473 (17th Ave, Voelklip) - Rezoning Request -- OBJECTION
Subject:

TP. n. / hart
(17. Olivier)

Dear OM

Please find our input on the below matter:

Re: Erf 5473 (17th Ave, Voelklip) - Rezoning Request

We are responding to your notice re the above property and its owner's request for rezoning and other actions.

We categorically **OBJECT** to this request, and ask that OM rejects the request.

Our property is at 244 7th St Voelklip. (corner of 13 Avenue and 7th St)..
As a property owner on 7th St, our interest is fundamentally that **Voelklip should REMAIN a RESIDENTIAL Suburb**, without any compromise and any rezoning.

Our concerns and reasoning include the following:

1. **Any change to the residential zoning sets a precedent** that can further be leveraged or exploited by others (existing or those buying) in the area.
2. **There is no critical reason for allowing this rezoning request.**
3. **If OM were to approve this rezoning request, OM could find it difficult not to allow others in the area to rezone their properties in future.**
4. Over time, this **could cause the decay of the residential character of Voelklip.**

Further, It has to be said that 'probably' **99% or so of the Home Owners in Voelklip invested in their properties here as HOMES, as it is a well set out Residential Suburb.** In the absense of a formal survey, it is very likely that this same very high percentage of Homeowners want the area remain Single Use - Residential. **Please respect these Home Owners !**

Thank you for receiving my input on this matter.

Mrs Leonie Vernon

FILE NO.	Erf 5473
	LJK ✓
SCAN NO.	Leonie
COLLABORATOR NO.	1734044

19 AUG 2022

TP. n. Shear
(M. Oliva)
20.



A Conradie

From: [Redacted]
Sent: Thursday, 18 August 2022 10:45
To: A Conradie
Subject: Objection to rezoning request for Erf 5473, 13 17th Avenue

Dear Alida

The Application for Removal of Restrictive Title Deed Condition, Rezoning, Consent of Use and Departure for Erf 5473, 13 17th Avenue, Voelklip, refers.

I am a resident of 17th Avenue, and the owner of 29th 17th Avenue, and therefore consider myself an interested and affected party in this matter.

I object to this Application, based on the following grounds:

- Voelklip (and specifically this part) is a quiet residential area; people buy property and live here for that reason. Starting to give additional business rights to one property (specifically an office) will put the quiet nature of the neighbourhood at risk.
- Increased traffic due to business reasons brings along an additional safety risk. Safety is a big concern to the many retired people living in the neighbourhood.
- Apart from disturbing the peaceful nature of the neighbourhood, residential property values will be negatively affected.
- I also object to the application to relax any building restrictions. This neighbourhood has broad sidewalks to which we all adhere for the sake of the character of the neighborhood. In other words, starting to relax the building lines will negatively affect the character of the neighbourhood.

Yours sincerely
S M Turpin
Owner: 29th 17th Avenue

This message and attachments are subject to a disclaimer.
Please refer to <http://upnet.up.ac.za/services/it/documentation/docs/004167.pdf> for full details.

FILE NO.	GT 503 ✓
	I.MK
SCAN NO.	
	Turpin
COLLABORATOR NO.	
	1734057

18 AUG 2022

A Conradie

21. 5473 HVC



From: A Conradie
Sent: Wednesday, 17 August 2022 12:15
To: A Conradie
Cc:
Subject: Fwd: Erf 5473 : Objection to rezoning to business premises

TP. n. Ahear
(M. Olivier)

> Dear Madam / Sir
>
> We would like to object to the rezoning of the above property into a Business property.
>
> The part of Voëlklip and Hermanus is particularly charming to people who want to appreciate the nature and get away from cities and town centres.

> Kind regards
> Ben Lamprecht
> 308 9th Street

Form with fields: FILE NO. Erf 5473, SCAN NO. Ben, COLLABORATOR NO. 1733033

17 AUG 2022

A Conradie

22.

From:
Sent: Wednesday, 17 August 2022 11:06
To: A Conradie
Subject: erf 5473 Voelklip.



TP - A Theart
(H Olivier)

Hi Alida,

My wife and I live at 17-11th Ave in Voelklip.

Although we are always sympathetic to anyone wanting to make an income, we would have to object to the rezoning of the said property. We feel this will set a bad precedent and is not right for this area.

Our suggestion is to rather try to assist this couple with affordable accommodation in the business district of Hermanus to start their business.

 Pierre and Sharon Malan

FILE NO. EL 5473-HVK ✓
SCAN NO. Malan
COLLABORATOR NO. 1732976

17 AUG 2022
 ST TP

A Conradie

23. 5473 HVC

From:
Sent: Wednesday, 17 August 2022 11:00
To: A Conradie
Subject: FW: Lifting of restrictive conditions

Importance: High



TP-A Theart (Holinier)

Please acknowledge receipt of this letter.

From:
Date: Wednesday, 17 August 2022 at 10:34 AM
To:
Cc:
Subject: Lifting of restrictive conditions

Dear Sir/madam

As the owner of 54 10th Street, Voëlklip I wish to express my extreme displeasure with the proposed lifting of the restrictive conditions on the residential property at the corner of 17th Avenue an 7th Street.

The reasons advanced for such lifting can be applied to most residential erven in the area. This is purely a moneymaking endeavor and, if allowed, sets a precedent for other residential owners to turn their properties into commercial properties.

My property is on the corner of 10th Street and 3rd Avenue and the property on the other corner used to have commercial rights. For close on 35 years we had endless problems of various natures with the owners, tenants and sublessees of the property. We had to bring court applications and I had endless discussions with Ms Van der Stoep (?) to get the municipality to intervene, which they never did. Only when Mr Marcus Jooste, in desperation about the conditions on the property, bought it, our problems stopped.

You cannot allow this kind of commercial development in a residential area as it infringes on the rights of other owners in the area. Furthermore, the biggest danger lies in the precedent you are setting. You are opening up the possibility for other owners to develop their properties.

Yours sincerely

of Susan Scott (BA LLB LLD)
 54 10th Street
 Voëlklip

FILE NO. EL 5473 HVC
SCAN NO. HVC 5473
COLLABORATOR NO. 1732968

17 AUG 2022

70

A Conradie

54781MC 24.

From:
Sent: Wednesday, 17 August 2022 11:00
To: A Conradie
Cc: 'Hermanus Ratepayers Association'
Subject: FW: Opposition to change in Zoning



TP-A Theart
(Holliver)

Dear Sirs,

As a trustee representing The Three G's Trust, the owners of 232 9th Street, Voelklip I wish to raise our objection to the proposed changing in the zoning of the property situate on the corner of 7th Street and 17th Avenue, Voelklip to allow for the establishment of offices and business rights. This detracts from the residential character of the area and is unacceptable.

Regards,

Lawrence Swanson

FILE NO. EL 5473-HVK
SCAN NO. Swanson
COLLABORATOR NO.
1732997

17 AUG 2022
T

ANNEXURE B 109/225

A Conradie

25.



From:
Sent: Friday, 12 August 2022 15:47
To: A Conradie
Subject: Hersoning van erf 5473 Hermanus

TP. N. Ahrak
 (H. Olivia)

Geagte Raadslid

Na aanleiding van 'n brief wat ek ontvang het in verband met bogenoemde hersoning van n erf, wil ek graag 'n beswaar aanteken.

My erf, 7355, grens direk aan die genoemde erf tussen 7de en 6de straat. Die toekenning van besigheidsregte sone 3 kan die markwaarde van my huis negatief beïnvloed. Indien daar meer verdiepings opgerig word, sal dit ook my see-uitsig belemmer. Dit sal ook 'n negatiewe uitwerking hê op die huislike karakter van Voëlklip.

Ek sal die baie waardeer indien u dit steeds slegs as n sone 1 klassifiseer.

Baie dankie

Ivor Cason
 323 6de straat Voëlklip

FILE NO.	5473
	HVK ✓
SCAN NO.	
	Cason
COLLABORATOR NO.	
	1730772

14 AUG 2022
 TP

A Conradie

P. N. Hart
 cc. (11. Olivia)



From:
Sent: Monday, 15 August 2022 09:51
To: A Conradie
Subject: FW: ERF 5473 Hermanus application for rezoning to Business.

To Hermanus Town Planning

Just to add to the below objections

I have first hand experience of houses being rented out around me and on this basis oppose this application.

When it is not a home, there is constantly movement and noise of public persons with no regard for neighbours in close proximity. This is very evident as our erf's are relatively small. Some businesses will also be active on Sundays and public holidays, which is totally unacceptable.

Regards

Gail Hartman

ERF 4222 Hermanus

FILE NO.	Gf 5473
	VVK ✓
SCAN NO.	Gail
COLLABORATOR NO.	1730757

Dear Voelklip Friends,

Attached please find the application by the owners of the property at the end of 7th Street, opposite my property or business rights. Although this might not directly implicate you, this will set a precedent for the whole of 7th Street to do likewise & change the whole of Voelklip, from an upmarket residential area to a suburb marred with businesses lining the main road, which will definitely have a negative impact on property prices going forward.

If you realise the importance of this, kindly send a letter to the Overstrand Municipality BEFORE TH E19TH AUGUST 2022. Below, are some pointers that have been given to me by a Town Planner, who feels that this would be detrimental to the suburban element of Voelklip. Please also forward this on to any neighbours who might also be affected and wish to lodge their objection.

Our concerns are listed as follow:

- The subject property is within an upmarket residential area.
- The existing business properties alongside the Main Road (7th Street) are historical occurrences.
- The rezoning of Erf 5473 Hermanus will create a precedent.
- The proposal is out of character of the residential area.
- The proposed rezoning will impact your property negatively as the pure residential land use will now be jeopardised.

14 AUG 2022

ANNEXURE B 111/225

- 0.5m in building height increase from 8m to 8.5m will have a negative impact on your sea views if the rezoning is approved.
- The motivation for the rezoning is based on an existing land use that is questionable. If the existing land use of Erf 5473 Hermanus was approved surely the Title Deed restrictions should have been addressed with a former application. An assumption can therefore be made that the current land use is illegal and that the application should have included an application for an administrative penalty as well.
- The motivation is therefore to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voëlklip area.

A Conradie

27.

From: WRAP <admin@wrapgroup.co.za>
Sent: Friday, 29 July 2022 14:58
To: tanya@greenhygiene.co.za
Cc: A Conradie; tanyarobins@gmail.com; tracydale007@gmail.com
Subject: RE: Erf5473 13 17th Street Development Objection

Good afternoon, Ms Robinson

Thank you for contacting us.

We would be glad to answer any questions you may have. We are of opinion that the proposal will not have an impact on your property or the value thereof.

1. As per Section 8 of the motivation, the development parameters for the property are indicated.

The maximum height that is allowed for the proposed zoning is 2 storeys or 8.5m.

2. As the motivation states, the property will be used for a medical office and the size of the building requires 7 parking bays, that is already provided on the property.

The medical office will function as any other, having patients come and go during business hours.

Additionally, no alterations are being proposed at this stage as the property was historically used for a physio therapists' office, which has recently retired.

Any future alterations will require approval of building plans and amendment of a Site Development Plan by the Overstrand Municipality.

Kind Regards,

THIAN JANSEN

PROFESSIONAL TOWN PLANNER

Email: admin@wrapgroup.co.za

Tel: +27 (28) 313 1411 | M: +27 (72) 122 7704

Unit B, Standard House, Cnr Royal and Dirkie Uys Street

PO Box 1247, Hermanus, 7200

www.wrapgroup.co.za



Project Office 20
 Town Planning & Project Management

From: Tanya Robinson

Sent: Friday, 29 July 2022 13:28

To: admin@wrapgroup.co.za; enquiries@overstrand.gov.za; alida@overstrand.gov.za

Cc:

Subject: Erf5473 13 17th Street Development Objection

Dear Sirs

ANNEXURE B 113/225

I have recently received a document notifying me of proposed plans for Erf5473 13 17th Street Voelklip

At present I would like to fully object to these plans until I understand better the impact it could have on my property 319 8th Street as I would not want anything to compromise the value of my property or the access to my property and the aesthetic value of my property and the area.

Can someone kindly contact me to address the following concerns- but not restricted to- I have in this matter

1. What is the high restriction on this property if zoning is changed as proposed?
2. What is the parking/ volume of cars expectation for the proposed business

Yours sincerely

TANYA ROBINSON

Admin Manager

e: _____

Green Hygiene,
Unit 11 Protea Place, Prime Park
Printers Way, Montague Gardens,
Cape Town



Green Hygiene

www.greenhygiene.co.za

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Project Office

Town Planning & Project Management

TP. A/Heart
(P. Roux)

Our Reference: 22/22
Your reference: 5473 HVK

30 August 2022

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO.	5473 ✓
	Hermanus
SCAN NO.	HVK 5473
COLLABORATOR NO.	1744842

Attention: Mr P Roux

APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND PERMANENT DEPARTURE ON ERF 5473 HERMANUS

Your email dated 25 August 2022, refers.

Several comments and objections were received, which are addressed herein. With the application being submitted in English the response will also be in English even though several Afrikaans objections were received.

It should be noted that three letters of support were received which are acknowledged.

TD



Response to objections to the Removal of Restrictive Title Deed Condition, Rezoning, Consent Use and Permanent Departure.

Objection

NEIGHBOURHOOD

- Mrs N Ralph:
"The subject property is within an upmarket residential area. Therefore, by allowing offices will negatively affect this."
- Dr J and Mrs C de Villiers:
"In contrast, allowing the proposed rezoning hold the real risk of permanently altering the character of the immediate neighbourhood with unknown economic consequences."
- Mrs T Guthrie :
"Voëklip should remain a residential area only, and the building lines should not be reduced - this will prevent business creep and encroachment that disadvantages neighbours and the nature of the area."
- Mr R Oosthuizen & Mrs E Swanepoel:
"The subject property is within an upmarket and well-established residential area. Therefore, by allowing offices will negatively affect this upmarket residential area..."
- Mrs S van Ryneveld:
"I wish to lodge an objection to the approval of business rights on this property and request it remain a residential plot in keeping with the area.

Whilst we understand that it has been used for a small business practice, the sale of the plot with business rights does not guarantee that the new owners will continue a low-key operation."
- Mr A de Villiers:
"Voëklip is a residential area and its charm and attraction come from this zoning. In particular, it is a quiet suburb that attracts tourists and holiday goers, benefitting the region at large. Having another commercial property (not a work from home or home business establishment), in my opinion, will detract from the nature of the area in a negative way."
- Mrs S Peioi:
"I am not sure of the perimeters of the new zoning mentioned, please explain what is the extend of Zone 3 business rights. As a house owner in the area (320, 8th street) we enjoy the quietness of the neighbourhood, and we would like to see it stay like that for the years to come. Our family owns the house from the early 1980's and we are the longest owners of property in that area."

"Further down in 7th street there is a cafe with takeaways and a liquor license, and there is open space around that premises as there are always traffic and elements hanging out there. And the last thing I want to see is that our neighbourhood property gets devalued because of that. Our property already has been devalued because the uncertainties and the state of the caravan park."
- Mr & Mrs Coetzee:
"We, Carl and Uta Coetzee as residents of Voëklip at 305 9th Str, Hermanus, strongly object to the application to rezone any area of Voëklip for Business rights."



- Mrs R Beukes:
"The rezoning will change the character of the area which was the main driver for us purchasing a property in this area."
- Mrs E de Kock:
"I hereby want to object to the rezoning of Erf 5473 to be zoned as business premises. There are sufficient businesses and petrol stations servicing Voëlklip. As ratepayer and owner of the property 317 De Mond this is a quiet neighbourhood and should be preserved as such."
- Mrs V Thom:
"I wish to object to the rezoning of private dwelling of cnr 7th street and 17th Avenue, Voëlklip."
- Mr and Mrs Bourne:
"The Voëlklip area is residential; the use of the existing property as a place of business beyond what was allowed was not then approved and it should not now be approved."
- Mrs L Vernon:
"4. Over time, this could cause the decay of the residential character of Voëlklip."
- SM Turpin:
"Voëlklip (and specifically this part) is a quiet residential area; people buy property and live here for that reason. Starting to give additional business rights to one property (specifically an office) will put the quiet nature of the neighbourhood at risk."
- Mr B Lamprecht:
"The part of Voëlklip and Hermanus is particularly charming to people who want to appreciate the nature and get away from cities and town centres."
- Prof S Scott:
"My property is on the corner of 10th Street and 3rd Avenue and the property on the other corner used to have commercial rights. For close on 35 years, we had endless problems of various natures with the owners, tenants and sublessees of the property. We had to bring court applications and I had endless discussions with Ms Van der Stoep.

(?) to get the municipality to intervene, which they never did. Only when Mr Marcus Jooste, in desperation about the conditions on the property, bought it, our problems stopped. You cannot allow this kind of commercial development in a residential area as it infringes on the rights of other owners in the area."
- Mr L Swanson:
"As a trustee representing The Three G's Trust, the owners of 232 9th Street, Voëlklip I wish to raise our objection to the proposed changing in the zoning of the property situate on the corner of 7th Street and 17th Avenue, Voëlklip to allow for the establishment of offices and business rights. This detracts from the residential character of the area and is unacceptable."
- Mr J Cason:
"Dit sal ook 'n negatiewe uitwerking hê op die huislike karakter van Voëlklip."



- Mrs G Hartman:

"I have first-hand experience of houses being rented out around me and on this basis oppose this application.

When it is not a home, there is constantly movement and noise of public persons with no regard for neighbours in close proximity. This is very evident as our erf is relatively small. Some businesses will also be active on Sundays and public holidays, which is totally unacceptable."

"The proposal is out of character of the residential area."

"The proposed rezoning will impact your property negatively as the pure residential land use will now be jeopardised."

Response to comment and objections

The property is located on the outskirts of Voëlklip and cannot be considered surrounded by residential properties. Each of the properties that have a business zoning in Voëlklip has this unique position within the area.

Voëlklip cannot be considered purely residential anymore as there are several businesses within the area and the proposal is not considered out of character.

The property owner is aware of the sensitive nature of the property and area and is not proposing to change the site drastically. There are several businesses in Voëlklip and as indicated within the motivation report the Spatial Development Framework makes provision for isolated businesses such as the OK minimart, Lizette's, Caltex, Hopside Down, Dutchies, Greeff Offices.

Voëlklip is not proposed to have a dedicated business node and a professional medical office is not considered to be out of character or a nuisance business. The desirability of a medical office is also that it provides access to these services without the need to travel great distances into the CBD.

A nuisance business is an enterprise which creates noise, pollutants, or any other negative impacts on the area.

The businesses being proposed are office/consulting type of work and is not a source of noise or other nuisances. The existing building is also not out of character and falls within the design style of a single residential house. Should the operations not be to the satisfaction of the surrounding area, the municipality have an appointed compliance officer that will investigate any concerns that the objectors may have.



Objection

COMPLIANCE / ENFORCEMENT

- Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel:
"Once rights for 'office use' have been granted, virtually any business can be operated and stated as an 'office' and the "unique professional office space" quoted by the applicant cannot be guaranteed."
- Mrs S Peloi:
"I stay in Bellville and use the Hermanus property as a breakaway over holidays and weekend, any rezoning will open the opportunity for future business. Now it may be explained as an office development, but the property can be resold and then with rezoning in place it would be out of our control what the new owners will be developing there."

Response to comment

The application is currently being evaluated and should approval for the application be received, the Overstrand Municipality's Town Planner and decision-making Authority will impose conditions of approval.

These conditions will be limiting and very specific to the type of businesses that may be operated on Erf 5473 - Hermanus. In addition, these conditions may also be registered in the title deed and should any owner in the future not comply with these conditions the municipality has a mechanism to enforce compliance.

Objection

HISTORIC BUSINESSES

- Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel:
"The historical business properties alongside the Main Road (7th Street) are historical occurrences. They are also 'Low key' and have not changed in character for many years."
- Mrs S van Ryneveld:
"We are ERF 4134 and many years ago got our view obstructed by the development of Baleens which is an unattractive development blocking our front view."

Response to comment

The comment is noted. This application is site-specific; however, the objector does make the statement that historic existing businesses are considered "low-key".

The objector does not quantify what is "low-key" and if the existing Caltex filling station, Lizettes, the OK Mini mart considered as "low-key"?

It could be suggested that professional offices are even more "low-key" than the existing businesses.

- In response to Mrs van Ryneveld, this application is not on the scale of Baleens, and it is not expected to negatively affect her property.

No views are proposed to be obstructed.



Objection

PRECEDENT BEING CREATED

- Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel:

"The rezoning of Erf 5473 will create a precedent, which will ultimately result in many applications along this line. Voëlklip residents do not want our residential suburb to be marred by the bastardisation of residential homes into businesses, which will jeopardise the value of our area & therefore property values will also be negatively affected."

- Mrs L Vernon:

"1. Any change to the residential zoning sets a precedent that can further be leveraged or exploited by others (existing or those buying) in the area.
2. There is no critical reason for allowing this rezoning request.
3. If OM were to approve this rezoning request; OM could find it difficult not to allow others in the area to rezone their properties 'in future'."

- Mr and Mrs Malan:

"Although we are always sympathetic to anyone wanting to make an income, we would have to object to the rezoning of the said property. We feel this will set a bad precedent and is not right for this area.

Our suggestion is to rather try to assist this couple with affordable accommodation in the business district of Hermanus to start their business."

- Prof S Scott:

"The reasons advanced for such lifting can be applied to most residential erven in the area. This is purely a moneymaking endeavour and, if allowed, sets a precedent for other residential owners to turn their properties into commercial properties.

Furthermore, the biggest danger lies in the precedent you are setting. You are opening up the possibility for other owners to develop their properties."

- Mrs G Hartman:

"The rezoning of Erf 5473 Hermanus will create a precedent."

Response to comment and objections

These comments are noted, and the proposal cannot create a precedent, as town planning is a site-specific process and the notion that if one property is rezoned is not motivation enough to approve the rezoning of another property.

Each application is evaluated individually and site specific and considered if deemed fit to approve the rezoning.

The Overstrand Municipality is required to consider various factors that may influence their consideration of the proposed rezoning.



Objection

PROPERTY VALUE

- Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel:
"The rezoning of Erf 5473 will create a precedent, which will ultimately result in many applications along this line. Voëlklop residents do not want our residential suburb to be marred by the bastardisation of residential homes into businesses, which will jeopardise the value of our area & therefore property values will also be negatively affected."
- Mr and Mrs Pedersen:
"Our property's will lose their value, during covid a lot of residents worked from home, we had delivery trucks up and down our road at high speeds, it wasn't at all pleasant. I vote against it. Why can't they move into an industrial area?"
- SM Turpin:
"Apart from disturbing the peaceful nature of the neighbourhood, residential property values will be negatively affected."
- Mr J Cason:
"My erf, 7355, grens direk aan die genoemde erf tussen 7de en 6de straat. Die toekenning van besigheidsregte sone 3 kan die markwaarde van my huis negatief beïnvloed."

Response to comment and objections

These comments are noted, it is however not predicted to have a negative effect on the property values.

These comments are not being supported by any factual statements and are only opinions of property owners that are concerned. Most of the properties of the objectors are not located in close proximity to the subject property and it is not expected that it could have an impact on their property values.

The property owner and any potential buyers will be required to still be considered as a reasonable neighbour and will be required to adhere to any applicable legislation which includes the Overstrand Municipality's regulations and by-laws.

The property is located on the main distributor in and out of Hermanus and there is easy access from the R43, which does not necessitate entering the residential area by any visitors or for deliveries to the premises.



Objection

LUPA SECTION 39(5)

• Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel:

"With regard to the Motivation statements (LUPA, Section 39(5) (a-f), my concerns are as follows:

- a) "No person or entity will be affected financially by the removal of the restrictive title deed condition".

Ultimately all Voëlklip property owners will be financially affected, as our property values as prime residential will be negatively impacted.

- b) "No person is directly benefitting from this condition as the condition is only restricting the applicant".

The property owners of Voëlklip are benefitting from this condition as it protects their suburb as a residential area, without the negative impact of additional potentially disruptive activities, noise, deliveries, unnecessary extra traffic etc, which will harm the peaceful, residential atmosphere.

- c) "The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".

This motivational statement invalid, as the property is residential and using it to its 'full extent' has nothing to do with running a business from the property. However, the applicant will definitely benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential.

- d) "The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".

The restrictive condition definitely does have a social benefit in that it protects the residents of Voëlklip from disruptive business activities.

- e) "The applicant will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent".

The owner of Erf 5473 Hermanus is the beneficiary and will benefit financially from the removal of the restrictive condition, as he will be selling a business property with income potential."

• Mr and Mrs Bourne:

"Contrary to the assertion that no financial benefit will accrue or detract from any property, the proposed rezoned ERF 5473 will be hugely more valuable to the existing owner and it appears he/she will sell the property - there will be a significant financial benefit to the existing owner if the property obtains rezoning rights for a business with up to three practitioners."



Response to comment and objections

"a)" – This is noted, but however this is not backed by any factual evidence and it a mere statement.

"b)" – This is noted. It is however not predicted that the rezoning will have adverse effect on the surrounding area. The proposed use has been in operation over the past 10 years and the proposal is to ensure compliance with the regulations set out by the Overstrand Municipality. Refer to Section 4.2 for the motivation of the business property.

"c)" – LUPA Section 39(5)(c) states :

"(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;"

The motivation is clear, the property owner wants to remove the restriction to rezone the property to utilise the property for a business.

"d)" – This is a vague statement that is not backed by any motivation. There is no social impact applicable.

"e)" – This was stated numerous times throughout the motivational report. The property owner's mother who operated the physiotherapy centre retired and after which the owner intended to sell the property. To ensure the property may be sold as a business property it is required to be rezoned.

- Response to the comment from Mr and Mrs Bourne:

This was never hidden, and the motivation stated that the property owner is attempting to sell the property.

Objection

DEVELOPMENT PARAMETERS (HEIGHT)

- Mrs N Ralph:
"The increase in building height which will be put into place with this rezoning, will have a negative impact on my property. It will also result in a more 'built up' feel, as opposed to the residential atmosphere of Voëlkliip."
- Dr J and Mrs C de Villiers:
"In addition to this, the increased allowed building height under the proposed rezoning will have a direct negative affect on the adjoining properties, both with regards to shade, view and aesthetics."
- Mr I Cason:
"Indien daar meer verdiepings opgerig word, sal dit ook my see-uitsig belemmer."
- Mrs G Hartman:
"0.5m in building height increase from 8m to 8.5m will have a negative impact on your sea views if the rezoning is approved."
- Mrs T Robinson:
"What is the high restriction on this property if zoning is changed as proposed?"



Response to comment and objections

The current zoning (Residential Zone 1: Single Residential) allows a maximum height of 8,0m over two storeys.

The proposed zoning (Business Zone 3: Local Business) will have a maximum height of 8,5m over two storeys.

This is a small 0,5m difference.

It should however be stated that no additions or alterations are being proposed for the property. As stated in Section 4.2 of the motivational report.

If it is considered detrimental to the application it may be considered that the Overstrand Municipality's Town Planner or decision-making authority make it a condition of approval that the maximum height remains 8,0m.

The property owner is not seeking any additional development parameters in terms of height.

Objection

EXISTING USE / HISTORIC ACTIVITIES

- Mrs N Ralph, Mr R Oosthuizen & Mrs E Swanepoel:

"It is questionable that this rezoning is based on an existing land use. If the existing land use of Erf 5473 was approved, surely the Title Deed restrictions should have already been addressed for the previous 'business' which operated there? I therefore question whether the current land use is legal. Therefore, the motivation is to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voëlklip area."

- Dr J and Mrs C de Villiers:

"The subject property was previously allowed to be used for the operation of a professional office by the resident owner."

It is therefore argued that "temporary deviation of use" would be the appropriate avenue in law that will protect both the long-term residential character of the property and the right of its resident owner to practicing his or her profession."

- Mrs G Hartman:

"The motivation for the rezoning is based on an existing land use that is questionable. If the existing land use of Erf 5473 Hermanus was approved surely the Title Deed restrictions should have been addressed with a former application. An assumption can therefore be made that the current land use is illegal, and that the application should have included an application for an administrative penalty as well."

"The motivation is therefore to legalise an existing illegal use or a use that contradicts the land use restrictions prescribed in the Title Deed to increase the property value to the detriment of the character of the residential Voëlklip area."



Response to comment and objections

Refer to Section 3 of the motivational report that indicates the history of the property. It is not the intention of this application to legalise any alleged past contravention. The activities have been halted and the physiotherapy offices have been closed down.

This section was included to ensure the entire history is addressed and the new proposal for professional offices is not trying to legalise what had occurred but to ensure the property is compliant in the future.

Objection

REMOVAL OF RESTRICTIVE CONDITIONS

- Dr J and Mrs C de Villiers:

"The original intent of the restrictive title deed condition was to protect the residential character of the Voëlkop area. This has not change."

Response to comment

The title deed condition was inserted 1937 and times have changed significantly, and the entire dynamic of businesses and residential properties have seen dramatic change over the past few years.

Mixed use urban areas are becoming more prolific and stating that Voëlkop is only a residential area is also not correct. Several businesses exist within Voëlkop and having a medical facility located close by should be seen as progressive.

It is however not proposed that Voëlkop be over developed with businesses, only that these uses are able to co-exist.

Objection

DEPARTURES

- SM Turpin:

"I also object to the application to relax any building restrictions. This neighbourhood has broad sidewalks to which we all adhere for the sake of the character of the neighbourhood. In other words, starting to relax the building lines will negatively affect the character of the neighbourhood."

Response to comment

The objector may have been mistaken as no departure of the street building line is being proposed. No parking or sidewalks will be affected.

Objection

DE MOND

- Mrs S Peloi:

"With many uncertainties regarding the De Mond Caravan Park and its current state we would highly oppose any further new developments and rezonings."



- Mr and Mrs Bourne:

"There is an exciting proposal to develop the De Mond caravan site currently out on tender. This development will offer good opportunities for employment, tourism and commerce. The tender document stipulates that whatever is proposed, it must be sensitive to the residential nature of Voëlklip and be minimally disruptive or encroaching. The rezoning of the ERF 5473 which is right across the road from the caravan park will contradict this need to be sensitive and it may encourage further rezoning applications from other properties nearby "well if they could do it, why not me"."

Response to comment

The proposal was submitted before the tender process for De Mond was advertised and did therefore did not consider the caravan park.

The businesses proposed to be operated on the subject property has nothing to do with the tender process. The medical offices will however be able to accommodate any patients from the caravan park.

Objection

TRAFFIC & PARKING

- Mrs R Beukes:

"The rezoning will increase the traffic levels in the very calm part of the neighbourhood which is detrimental."

- Mr and Mrs Bourne:

"That no neighbour objected previously to the property being used by a single practitioner before is most likely due to the low traffic impact of that business. With a number of practitioners operating a business on the property, this will definitely be more disturbing and detract from the peaceful residential nature of the neighbourhood. What if the proposed business is wildly successful, with queues lining up outside, spilling out of the carpark, down the road and onto the verges?"

- SM Turpin:

"Increased traffic due to business reasons brings along an additional safety risk. Safety is a big concern to the many retired people living in the neighbourhood."

- Mrs T Robinson:

"What is the parking/ volume of cars expectation for the proposed business?"

Response to comment and objections

There is adequate parking on-site to accommodate the clients of the proposed business. The property has been used as a professional practice before and there were never any complaints or objections.

The application will also be circulated to the Traffic- and Engineering Department for comment and should any comments be made, or concerns raised it will be addressed accordingly.

The property is located on the main distributor road into and out of Hermanus which will allow traffic to keep flowing. It is understood that there could be a parking concern, however, a doctor's offices have appointments which will limit the number of cars/patients at a single time on the property.



Objection
PUBLIC RESPONSE

• Mrs L Vernon:

"Further, It has to be said that 'probably' 99% or so of the Home Owners in Voëlklip invested in their properties here as HOMES, as it is a well set out Residential Suburb.

In the absence of a formal survey, it is very likely that this same very high percentage of Homeowners want the area to remain Single Use - Residential. Please respect these, Home Owners!"

Response to comment

The standard public participation procedure was followed and the timeframe to submit comments has closed. The objectors cannot make assumptions and speak on behalf of other property owners that did not provide their feedback.

Conclusion

These objections have revealed the concerns of the property owners in the Voëlklip area. The application is to rezone a property that has low residential integrity, and the proposal is not out of the ordinary as Voëlklip cannot be considered an outright residential area anymore. The mixed use was indicated by the Overstrand Municipality to allow residential and business to coexist.

The application is to allow the property owner to use the property for its intended purpose and serve a community and allow access to medical facilities within their area.

Considering the response to objections, it is recommended that the planning application be approved as submitted.

Yours faithfully

T JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,
REZONING, CONSENT USE & PERMANENT DEPARTURE: ERF 5473,
VOELKLIP (4088/2022)**

Stormwater (SW) : In Order
Electricity : In Order
Water : In Order
Sewer : In Order
Roads and traffic : In Order

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

- 1.1 **Developments containing Sectional Title Units/ Commercial Buildings** (non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full prior to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

- 1.2 **Developments with free standing properties** (property that is subdivided and plots to be sold individually).

The BICLs are payable prior to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (2022/2023) is as follows:

Freehold erven:

Water	R 26 036.00 x -0.438	=-R 11 403.77
Sewerage	R 17 555.00 x -0.438	=-R 7 689.09
Roads	R 7 872.00 x 2.962820=	R 23 323.32
Stormwater	R 9 082.00 x 1.1093338=	R 10 074.97
Solid Waste	R 1 574.00 x 1.08 =	<u>R 1 699.92</u>
TOTAL (Inclusive of VAT)	=	R 16 005.35

Note:

- 1.3 **The above figures are estimates**
1.4 **The above figures do not include evaluation/investigation levies and connection fees**

- 2
2. 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;
 3. 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;
 4. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage;
 5. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
 6. that any additional and / or extended vehicle entrances will be for the owner's account;
 7. that stormwater be allowed to discharge through Erf 5473, Voelklip, unobstructed;
 8. that all medical waste generated will need to be collected by a registered healthcare risk waste company and disposed of at an approved facility as per the undertaking;
 9. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

22/09/2022
DATE

MINUTES : MUNICIPAL PLANNING TRIBUNAL27 FEBRUARY 2023

4.2

ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD

5473 HVK

File Ref: 4088/2022

P Roux

(028) 313 8900

Hermanus Administration

22 December 2022

EXECUTIVE SUMMARY

An application has been received on 14 March 2021 from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd in terms of the Overstrand By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus, for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16.(2)(f) of the By-Law in order to remove restrictive Condition III.D.(c) contained in Title Deed T9341/2014;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

RESOLVED:

1. that the comments/objections received 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) applicable to Erf 5473, Hermanus for removal of Condition III.D.(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following:

MINUTES : MUNICIPAL PLANNING TRIBUNAL**27 FEBRUARY 2023**

- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(c) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

not be approved in terms of the provisions of Section 61 of the By-Law;

4. that the applicant and persons 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 RESOLUTION:

- The proposed use is in stark contrast to the residential character of the area.
- The Overstrand Growth Management Strategy, 2010 clearly indicates an area in Voëlklip that is earmarked for Economic Opportunity (local). This area is central in Voëlklip and is ideally located for the clustering of commercial/business activities. The Municipality's view is to centralise and cluster business activities together and not allow the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven, which will lead to the fragmentation of the residential suburb and linear development along the R43 (Seventh Street).
- The motivation does not address the deviation from the Overstrand Municipal Spatial Development Framework, 2020 or from the Overstrand Growth Management Strategy, 2010, which is an informant to the SDF.
- The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear what the specific professional practice will be, and the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has its own operational methods which could negatively impact the surrounding area.

RESPONSIBLE OFFICIAL :**P ROUX**

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

ENQUIRIES | NAVRAE: Mr P Roux (Town Planner)
FILE REF | LEÛRVERWY: 5473 HVK
APPL ID | AANSOEK ID: 4088/2022
DATE | DATUM: 6 March 2023



Messrs WRAP Project Office
PO Box 1247
HERMANUS
7200

REGISTERED MAIL
EMAIL: admin@wrapgroup.co.za

Dear Sirs

DECISION LETTER TO APPLICANT

ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD

1. The application received on 14 March 2022 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 27 February 2023.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED

1. that the comments/objections received 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) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following:
 - ♦ rezoning in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
 - ♦ consent use in terms of Section 16.(2)(c) to accommodate a flatlet on the ground floor of a business premises, and
 - ♦ departure in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

not be approved in terms of the provisions of Section 61 of the By-Law;
4. that the applicant and persons 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."



4. Reasons for the above decision are as follows:
- ❖ The proposed use is in stark contrast to the residential character of the area.
 - ❖ The Overstrand Growth Management Strategy, 2010 clearly indicates an area in Voëlkop that is earmarked for Economic Opportunity (local). This area is central in Voëlkop and is ideally located for the clustering of commercial/business activities. The Municipality's view is to centralise and cluster business activities together and not allow the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven, which will lead to the fragmentation of the residential suburb and linear development along the R43 (Seventh Street).
 - ❖ The motivation does not address the deviation from the Overstrand Municipal Spatial Development Framework, 2020 or from the Overstrand Growth Management Strategy, 2010, which is an informant to the SDF.
 - ❖ The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear what the specific professional practice will be, and the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has its own operational methods which could negatively impact the surrounding area.
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 76(2) of the By-law.
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received within 21 days of notification of this decision together with proof of payment of the appeal fee (R3351-00).
- 5.2 The appeal form is available at request or alternatively on the Municipal website (www.overstrand.gov.za).
- 5.3 Contact details are as follows:
- | | |
|--------------------|--|
| Physical address : | 16 Paterson Street, Hermanus, 7200 |
| Postal address : | PO Box 20, Hermanus, 7200 |
| E-mail address : | alida@overstrand.gov.za |

Yours faithfully


 S. MULLEY
 DIRECTOR : INFRASTRUCTURE AND PLANNING

ANNEXURE B 133/225



Project Office
Town Planning & Project Management



TP. N. / Incaal
(M. Oliva)

Our Reference: 23/08
Municipal Reference: 5473 HVK

27 March 2023

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO.	Of 5173
	HVK
SCAN NO.	
COLLABORATOR NO.	1833942

Sir

APPEAL AGAINST DECISION FOR THE APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND PERMANENT DEPARTURE

Attached please find a copy of the Appeal submitted in terms of Section 78 & 79 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Also attached please find proof of payment to the amount of R3 502.00 for the application fees.

We trust that you will find the above in order. Should you require any additional information, please do not hesitate to contact us.

Yours faithfully

THIAN JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

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WRAP Group Established 2002

27 MAR 2023 TP



ERF 5473 HERMANUS
(VOËLKLIP)

APPEAL

Appeal prepared for:
DE BROEDER INVESTMENTS (PTY) LTD

Application prepared by:

WRAP Project Office
PO Box 1247 | Hermanus | 7200
Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

Author
Thian Jansen (A/2858/2019)

Submitted
March 2023



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APPEAL FORM

OVERSTRAND MUNICIPALITY APPEAL FORM

OVERSTRAND		TOWN & SPATIAL PLANNING APPEAL FORM	
(Sections 78 & 79 of the Overstrand Municipality Amendment By-Law, 2020) 16 Paterson Street / PO Box 20 HERMANUS, 7200 Tel: 028 313 8900 Fax: 028 313 2093			
KINDLY NOTE: Please complete this form using BLOCK capitals and ticking the appropriate boxes. Append this form to your letter of appeal which must comply with Annexure E of the Application Form as attached.			
PART A: APPEAL			
Are you appealing against the decision made by the authorised employee or Tribunal?	Y	N	If Yes, indicate in Part E if the appeal is lodged against the whole decision or part thereof. If the latter applies provide a description of the part.
Are you appealing against the condition(s) of approval imposed by the authorised employee or Tribunal?	Y	N	If Yes, list relevant condition(s) and provide a description in Part E.
Is your appeal based on and primarily concerned with the process followed prior to the authorised employee or Tribunal decision?	Y	N	If Yes, specify in Part E.
Is your appeal based on and primarily concerned with the merits of the land development or land use application on which it is believed that the authorised employee or Tribunal erred in coming to the conclusion?	Y	N	If Yes, specify in Part E.
Date of decision	27 FEBRUARY 2023	Date receiving notice of decision	6 MARCH 2023
Who took the original decision?	<input type="checkbox"/> Authorised employee	<input checked="" type="checkbox"/>	Municipal Planning Tribunal
PART B: APPELLANT'S DETAILS			
First name(s)	THIAN		
Surname	JANSEN		
Company name	WRAP PROJECT OFFICE		
Postal address	P O BOX 1247		
	HERMANUS	Postal Code	7200
Email	ADMIN@WRAPGROUP.CO.ZA		
Tel	028 313 1411	Fax	Cell 072 122 7704
PART C: APPELLANT'S PROPERTY DESCRIPTION (Property that is affected by proposed development)			
Erf	N/A		
Physical Address			
GPS Coordinates	Town/City		
PART D: PROPERTY DESCRIPTION OF PROPOSED LAND DEVELOPMENT			
Erf	5473		
Physical Address	No 13 17 TH AVENUE, VOËLKLIIP		
GPS Coordinates	-34.413498, 19.299543	Town/City	HERMANUS
PART E: APPEAL MOTIVATION AND REASONS*			

File 22/22
Erf 5473, Voëlkliip - APPEAL
March 2023



APPEAL FORM

REFER TO ATTACHED MOTIVATIONAL REPORT					
* Appeal motivation, information and reasons may be attached.					
PART F: APPEAL FEE (2022/2023)					
Erven larger than 400m ²			R3502.00		
** PROOF OF PAYMENT OF THE APPEAL DEPOSIT MUST BE SUBMITTED.					
** KINDLY NOTE THAT THE APPEAL DEPOSIT IS REFUNDABLE SHOULD THE APPEAL BE UPHOLD.					
BANKING DETAILS					
Name:		Overstrand Municipality			
Bank:		Nedbank			
Account no.:		1190136678			
Payment Reference:		Erf number and suburb / Farm number and portion			
PART G: ATTACHMENTS AND SUPPORTING INFORMATION AND DOCUMENTATION					
Complete the following checklist and attach all the information and documentation relevant to the appeal.					
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Proof of payment of appeal fees	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Motivation and reasons for appeal
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Copy of decision and proof of notification	<input type="checkbox"/>	<input type="checkbox"/>	Other (specify)
SECTION H: DECLARATION					
I hereby wish to confirm the following :					
1. That the information contained in this appeal form and accompanying documentation is complete and correct.					
2. I'm aware that it is an offense in terms of Section 84 of the said legislation to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct.					
Appellant's signature:				Date: 27 MARCH 2023	
Full name:		THIAN JANSEN			



APPEAL MOTIVATION

1. ABBREVIATIONS

BY-LAW	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
OMLUS	Overstrand Municipality Land Use Scheme, 2020
MSDF	Overstrand Spatial Development Framework, 2020
OGMS	Overstrand Municipality Growth Management Strategy, 2010

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf number	Erf 5473, Voëlklip
Extent	832m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND

Erf 5473 Hermanus, the subject property, is owned by De Broeder Investments (Pty) Ltd hereafter referred to as the property owners. The subject property is located on the corner of 17th Avenue and 7th Street on the edge of Voëlklip.



Figure 1: Locality of Erf 5473 - Hermanus



APPEAL MOTIVATION

The applicant bought the property in 2014 to be utilised as a dwelling house and to allow his mother to practice a **home occupation** on the subject property. As the years progressed, the home occupation was practised successfully and expanded, without their knowledge, the expansion occurred past the allowable limit as a result of new policies and schemes that were implemented by the Overstrand Municipality.

The property owner's mother retired, and she ceased to practice her occupation from the property. With the history of the property being used as a physiotherapy practice, it is the intention of the property owner to sell the property zoned as a business property. This is due to the property already being improved to be operated for this purpose. To ensure the property has the appropriate zoning, the property owners appointed WRAP Project Office to submit the land use application and this appeal. (Refer **Annexure A – Power of Attorney**)

In addition to the rezoning application, an application for the removal of a restrictive title deed condition that prohibits the property owners from operating a place of business on the subject property, was also submitted. While also allowing the existing flatlet on the ground floor.

All of these applications were **refused** by the Municipal Planning Tribunal (MPT):

- **Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- **Rezoning** of Erf 5473 Hermanus from Residential Zone 1: Single Residential (SR1) to Business Zone 3: Local Business (B3) in terms of Section 16(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- **Consent Use** to allow a flat (on the ground floor) in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- **Permanent Departure** from the western building line from 3m to 2,68m in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- **Permanent Departure** from the southern building line from 3m to 2,48m in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

THE ENTIRE DECISION IS BEING APPEALED.

The application was refused by the Municipal Planning Tribunal on 27th of February 2023. The refusal has the implication that the property owners will have to reconvert the property to accommodate residential units. (Refer **Annexure B – Overstrand Municipality's Decision Letter**);



APPEAL MOTIVATION

The motivation of this appeal is based on the surrounding area and site-specific nature of town planning and the motivation for the reasoning behind the proposal for a business enterprise in this specific location.

4. COMPLIANCE OF THE APPEAL WITH SECTION 79 OF THE BY-LAW

The compliance of this appeal with the relevant subsections of Section 79 of the By Law are as follow:

Section	Provision	Compliance
79 (1)	"An appeal that is not lodged within the time period contemplated in Section 78 (2) or that does not comply with this section, is invalid."	The decision letter is dated 6 March 2023 and 21 calendar days were granted within which an appeal may be submitted. This submission is on 27 th of March 2023 and comply with the relevant time frame.
79 (2)	"An appeal must set out the grounds on which the appellant believes the decision-maker erred in coming to the conclusion it did."	This appeal is not against any procedural considerations pertaining to the submitted application but only against the total refusal of the application. The grounds on which is believed the decision maker erred in coming to the conclusion it did, will be motivated in Section 5 of this report.
79 (5)	"Any person who lodge an appeal or apply for intervener status to the Municipal Manager must submit proof of payment of appeal fees as may be determined by the Municipality"	The appeal fee of R3502.00 was paid and proof of payment is submitted with this appeal.



APPEAL MOTIVATION

5. MOTIVATION OF THE APPEAL AND GROUNDS BELIEVED THE DECISION MAKER ERRED IN COMING TO ITS DECISION

It is of importance to take note that the appellant is appealing the entire decision of the Municipal Planning Tribunal.

5.1. REASONS PROVIDED FOR REFUSAL

Section 4 of the refusal letter states the reasons for refusal as the following:

- " ❖ *The proposed use is in stark contrast to the residential character of the area.*
- ❖ *The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street).*
- ❖ *The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.*
- ❖ *The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has their own operational methods which could negatively impact the surrounding area."*

5.2. APPEAL MOTIVATION

The decision was made by the Municipal Planning Tribunal, based on the opinion, motivation and recommendation of the municipal planner. The main factor of refusal was that the proposal was in stark contrast to the residential character of the area and that the motivation failed to motivate and address deviation within the OMSDF and OGMS and it is undesirable and not in-line with the character of the area and zoning legislation.



APPEAL MOTIVATION

5.2.1. REPLICATION AGAINST REASONS FOR REFUSAL

Each of the reasons for refusal will be addressed individually and the reason for this is to ensure each point is address. The information being brought forward in this appeal is in response to the information used by the municipal planner to formulate the recommendation for refusal of the application:

" ❖ *The proposed use is in stark contrast to the residential character of the area.*"

As mentioned, several times within the land use application, it was mentioned that the property owner only has a vision to only allow **offices** to be operated on the subject property as it has been done in the past (physiotherapy practice).

The OMLUS defines an office as the following:

"office" means property used for conducting an enterprise primarily concerned with administrative, clerical, financial or professional duties and includes medical consulting rooms."

It is important to note the uses allowed on a **Residential Zone 1: Single Residential** property, according to the OMLUS are the following:

Residential Zone 1: Single Residential	
Land Use	
Primary uses	Crèche, Dwelling House, Guest Rooms, Home Occupation , Second Dwelling Unit and Self-Catering.
Consent uses	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building and Intensive Horticulture.

Specific reference is made to a "HOME OCCUPATION" and a home occupation is defined within the OMLUS as:

"home occupation" means the practising of a non-residential use conducted from a dwelling provided that the dominant use of the dwelling concerned shall remain the accommodation of a single family, provided that the use and property complies with the requirements contained in this land use scheme for home occupation;



APPEAL MOTIVATION

In addition to the definition, there are also specific parameters for the operation of a "home occupation":

16.10.10

1. Home occupation will be restricted to the following non-residential categories:

- a) office type work (administration);
- b) professional/clerical;
- c) custom sewing, fabric crafts and baking;
- d) creation of visual arts, excluding cabinet maker, recycling and welding;
- e) personal services such as a barber, hairdresser, beautician and masseuse; and
- f) sales and services over the internet/phone.

2. General development parameters for home occupation:

- a) The proprietor of the home occupation must permanently reside in the dwelling;
- b) The total area used for a home occupation, including storage area required for the use, shall not exceed **25% or 50 m²** (whichever is most restrictive) of the total floor area of the building from which it is to be conducted;
- c) **No more than 3 persons** in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;
- d) Home occupation shall be conducted completely indoors;
- e) The storage of products, goods, or supplies connected to the home occupation shall be inside a building;
- f) No more than one vehicle, not exceeding 3 500 kg in gross weight, shall be utilised for the home occupation;
- g) The hours of operation are restricted to 07h30 to 17h30 on Mondays to Fridays and 07h30 to 13h00 on Saturdays;
- h) On-site parking must be provided to the satisfaction of the Municipality, provided that at least two on-site parking bays are provided in addition to the normal parking required;
- i) The exercise of home occupation shall be subject to the submission of a site plan (for record purposes) demonstrating compliance with the requirements pertaining to home occupation and land use parameters;
- j) A conveyancing certificate shall be submitted, demonstrating there is no title deed restrictions that restrict the home occupation;
- k) The use shall also comply with all environmental and nuisance control regulations;
- l) The exterior of the building and the lot shall not be changed in such a way as to decrease its residential appearance, except for permitted parking spaces;
- m) The use shall not involve the storage or use of hazardous, flammable or explosive substances, other than types and amounts commonly found in a dwelling. The use shall not involve the use or storage of toxic substances;
- n) The Municipality may impose additional conditions in order to minimise any potential public nuisance;

File 22/22

Erf 5473. Voëlklip - APPEAL

March 2023

6 | Page



APPEAL MOTIVATION

- o) Occupation shall be subject to the submission of a site plan for record purposes, demonstrating compliance with the requirements, and*
- p) Only one un-illuminated sign shall be permitted, which shall be fixed to the building or boundary wall or fence, and such sign shall be in line with the Overstrand by-law relating to outdoor advertising and signage.*

Any single residential property is allowed to be utilised for a home occupation on condition that it complies with parameters indicated above and the title deed conditions do not restrict it.

- The property owners contemplated using the property solely for a standard home occupation. However, because the property was fully converted to cater to business needs and the title deed condition was restricting the use, this was not a feasible option.
- The proposal is to essentially have a 'larger home occupation' on the property that aligns with the uses of a home occupation but has a larger footprint (larger than only 50m²) and has more employees (more than 3). The only way this will be allowed is to rezone and remove the restrictive title deed condition.
- The property owners are aware that a business property may be operated for various other uses and may have a negative effect on the surrounding area, but as mentioned numerous times in the motivational report only 'Offices' are being proposed.

The proposed office usage on the property is in line with typical home occupation enterprises, which are compatible with residential areas.

It is important to note that this proposal should not be classified as a typical commercial property since it is solely being proposed to have office space and does not entail any other business activities. Therefore, it would be inaccurate to categorize this proposal as a standard business premises.

It is worth mentioning that the proposed office usage adheres to all the guidelines and regulations of home occupation enterprises except for the size and number of employees. Such guidelines allow for limited, non-intrusive business activities to be conducted in a residential setting. This proposal, in particular, proposes a larger office footprint and an increase in the number of employees, which are still within the reasonable limits of a home occupation enterprise. The GLA (Gross Leasable Area) is limited to the number of parking available on the property, which is currently at its maximum.

Therefore, it is imperative that this proposal is not misconstrued as a conventional business establishment. Instead, it should rather be evaluated based on its compliance with home occupation enterprise regulations and be considered accordingly.



APPEAL MOTIVATION

" ❖ The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street)."

On the 27th of May 2020 the Municipal Council adopted the MSDF, (Overstrand Spatial Development Framework, 2020), in the same instance rescinded the following:

- 2006 (Council's resolution 27 October 2006), Overstrand Municipal Wide Spatial Development Framework;
- **2011 (Council's resolution 26 January 2011) Overstrand Municipal Spatial Growth Management Strategy; and**
- 2014 (Council's resolution 25 June 2014) Integrated Development Framework together with detailed Sectoral Plans;

The OGMS was rescinded in 2020 and carries no weight, although the Overstrand Municipality's Town Planning Department still utilise the document as a 'guideline', the document and its contents cannot be enforced. (Refer **Annexure C – OGMS Resolution and Annexure D – Provincial Gazette for the MSDF adoption**);

Additionally, to the rescindment the OGMS, which "clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local)" indicated as a "local business zone" see figure below:

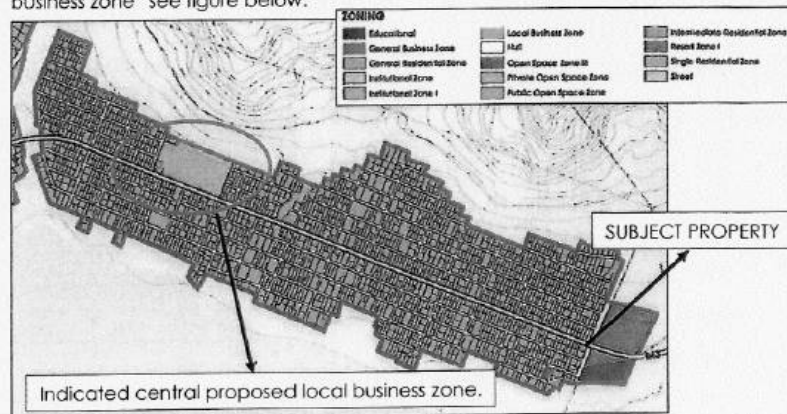


Figure 2: Extract from the OGMS



APPEAL MOTIVATION

The area indicated below as a "local business zone" has recently been put up for tender to be developed as a **residential development**:

TENDER NO.: SC 2344/2022

SALE OF A PORTION OF REMAINDER ERF 4771 HERMANUS (±30,000M2 IN EXTENT)
FOR A RESIDENTIAL DEVELOPMENT



Figure 3: Site area for tender no.: SC 2344/2022

The area referred to was recently put out to tender by the Overstrand Municipality which means that the "clearly indicated an area in Voëlkop which is earmarked for Economic Opportunity (local)" cannot be developed as a "local business zone" anymore.

PRECEDENT

Additionally, as indicated in the response to objections, the proposal cannot create a precedent, as town planning is site-specific process and the notion that if the rezoning of one property is approved it is not enough to motivate the approval of the rezoning of another property.

Each application is evaluated individually and site specific and considered if desirable to approve the rezoning. The Overstrand Municipality cannot be forced to approve a rezoning application just because Erf 5473 Hermanus, was rezoned. The municipality is required to consider factors that may influence their consideration of the proposed rezoning.



APPEAL MOTIVATION

" ❖ The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010."

- OVERSTRAND GROWTH MANAGEMENT STRATEGY

As the OGMS has been rescinded, it cannot be deviated from as it does not carry weight anymore and is only used as a guideline and therefore the document and its contents cannot be enforced.

- OVERSTRAND MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

In terms of the content of the municipal item that was presented to the Municipal Planning Tribunal, the following statement was made:

"The wording used in the SDF refers to "localized" in terms of the New Shorter Oxford English Dictionary, localized means: Confined to or concentrated in a particular place or part; that has been localized."

This was however taken out of context as the MSDF clearly indicates that areas in Voëlklip that may be regarded for 'commercial' activities needs to be:

"Small individual localized business enterprises could be considered consistent with the status quo (i.e. a limited scale on public transport routes where services infrastructure is available)."

The important factor is the "Small individual" section from the MSDF, which the proposal is aligned with, and as a result no deviation from the MSDF is required. The property owner is only attempting to rezone his property for a single office enterprise which can be considered as a "**Small individual localized business enterprises**".

To conclude and appeal this specific reason for refusal is as follows:

- The OGMS was rescinded and carries no weight and cannot be deviated from;
- The MSDF clearly indicates that 'commercial' activities need to occur as **small individual localized business enterprises**; and
- As a result, no deviation is required from either the OGMS (rescinded) as well as the MSDF the reason for refusal should not be upheld.



APPEAL MOTIVATION

" ❖ The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has their own operational methods which could negatively impact the surrounding area."

As stated in the motivation report, the property owner's mother had been running a physiotherapy practice on the property for over eight years without any complaints, even though it is noted the practice was not operated within the scope of a home occupation. The application clearly specifies that only an office is being applied for, which is a professional type of development and is not considered to be desirable and not a nuisance land use.

As mentioned earlier, the OMLUS defines an "office" as the following:

"office" means property used for conducting an enterprise primarily concerned with administrative, clerical, financial or professional duties and includes medical consulting rooms;

The property owners are attempting to sell the property and since the property is improved as an office, it however does not have the rights to operate as one, the property is not selling. Until such time, it is not known what proposed business will be run on the property. It is however being proposed to be limited to only an office as defined by the OMLUS. If required, it can also be registered in the title deed as restrictive condition.

Additionally, if the appeal is upheld, any additions or alterations being required by the new owner would require Municipal Building Control approval.

- Compromise and mitigation being proposed for the application that was made:

Application made – **Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

The restrictive title deed condition restricts any business from being operated on the property:

Condition III.D.(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 of the Transferor Company."

As a compromise, our proposal is to not remove the restrictive condition in its entirety, but to only amend it that only offices may be operated on the property.

File 22/22

Erf 5473, Voëlklop - APPEAL

March 2023

11 | Page



APPEAL MOTIVATION

Amendment of a restrictive title deed condition in terms of Section 14(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

The proposal is to only amend the restrictive condition to read as follows:

Condition III.D.(c) "No canteen, hotel, restaurant, shop, factory industry, or any place of business whatsoever, **except offices**, shall be opened or conducted on the said property except with the consent of the Overstrand Municipality."

This will limit that any future property owners will only be able to utilise the property for residential and/or office purposes.

5.2.2. REPLICATION AGAINST THE REZONING

As motivated in the land use application, the applicant has the vision to sell the property with a business zoning due to the history of the use of the building. The building has over the years been altered to accommodate a physiotherapy practice and it would be illogical and costly to convert the property back into a dwelling house.

Refer to the photos below:



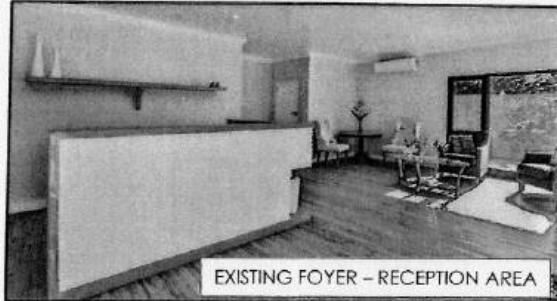
The property owner has spent a lot of money to renovate and create a well-designed and well working property that is ideal for any professional to utilise the property for office purposes. The images below were taken from Property24 that was utilised by the municipal town planner (replying to the responses of the objections received).

See images below:

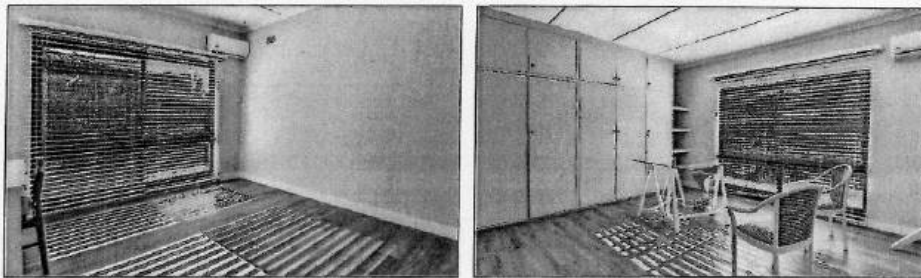




APPEAL MOTIVATION



EXISTING FOYER – RECEPTION AREA



Existing Newly Renovated Consultation Rooms

The property was completely utilised for business purposes (except for the single bedroom flatlet). The entire building was renovated and converted to accommodate the physiotherapy practice. It is clear that the property owner has uplifted the entire area by renovating the building.

The unique location of the property, at the edge of Voëlklip across the De Mond Caravan Park (to be developed into a resort) on the Main Road (R43). The location is less desirable for a residential property but is ideally located for an office.

The property is not in the middle of a residential area, and more considered on the edge of Hermanus - Voëlklip.

Economic Activity

As mentioned in Section 10 of the motivational report, with the property being proposed as an office it would be able to create more job opportunities and attract professionals to the Overstrand Area.



APPEAL MOTIVATION

This is also aligned with the MSDP and Provincial Spatial Development Framework (refer to Section 11.3) ensuring economic development take place in the Overstrand Municipality would ensure sustainable growth of the municipal area.

Voëlklip Area

The municipal town planner indicated that Voëlklip is purely a residential area, which is not the case as there are various "**Small individual localized business enterprises**" scattered around the entire area:

- Lizettes Kitchen - Bar and Restaurant;
- Caltex and Shop;
- Hopside Down bar and restaurant;
- Greeff Properties;
- Balleens Hotel;
- Ok Minimark; and
- Dutchies.

Other than the business zoned properties, there are numerous home occupations being practiced in Voëlklip:

- Vivienne Stone Physiotherapy;
- Body Balance Holistic Healing and Reflexology;
- Threads & Stitches;
- Wise Eye Reading Academy Hermanus;
- Phillip Smit - Voëlklip Estate Agent;
- Kairos Moulds;
- Mobifix Hermanus "Drop & Collect";
- The DJ Company - Weddings and Events;
- Lakeside Wholesale Clothing;
- Cuckoo Chocolate Emotions and more not listed above.

All these businesses are being operated within Voëlklip and it is clear that the Voëlklip area is not 'strictly residential' as there are a lot of business actively occurring in the area. The Overstrand Municipality Land Use Scheme promotes this, as when the Scheme was accepted, it was accepted with the knowledge that low intensity/ low scale businesses and residential areas will be operated in cohesion.

The property owner is aware that some businesses may be a nuisance to a residential area which is why they are only proposing offices, as it is generally low nuisance, low noise and low traffic impact on the surrounding area.

Consent Use – Flatlet on the ground floor

The property is already improved with a single bedroom flatlet on the ground floor, and it needs to be applied for and approved as only flats above the ground floor is a primary right with the proposed zoning.



APPEAL MOTIVATION

6. LETTERS OF SUPPORT FROM THE COMMUNITY

There have been several letters of support appealing to the Appeal Authority providing their inputs on the state of the Voëlklip area and why they are of opinion the rezoning needs to be approved. (Refer **Annexure E – Letters of Support**)

These letters were received from property owners in the Voëlklip area and clients that utilised the services that was previously available on the property. Most of these letters provides an opinion from property owners in the Voëlklip area on why this specific rezoning needs to be supported and approved.

Pertinent topics that were discussed in these also align with the contents of the appeal and land use application submitted are:

- Less traveling time to receive professional services;
- Reduced travelling costs to these professional services;
- Residential nature of Voëlklip will not be affected;
- Majority of the Residents of Voëlklip is elderly and will benefit from a local professional in the area;
- The property has sufficient parking available;
- The property will only be used for professional services (office use);
- De Mond located across the road from the subject property is not aligned with residential character of Voëlklip;
- The redevelopment of the property has uplifted the area, from a derelict building to the modern and functional property it currently is;
- There were no objections received from any neighbours between 2014 and 2020, which indicates the non-intrusive nature of the operations;
- Job creation;
- No change of the status quo as the property is being proposed to be used for a professional business which it has been operated as since 2014; and
- No changes to the building are being proposed and the existing structure is a converted dwelling house which aligns with the nature and scale of the area.

7. REASON WHY THE DECISION-MAKING AUTHORITY ERRED IN COMING TO THE CONCLUSION

We are of opinion that the reasons for refusal provided by the Municipal Planning Tribunal are based on information not accurately conveyed to the decision-making authority as indicated in the abovementioned replication to these reasons, which are summarised as follows:



APPEAL MOTIVATION

- 7.1 *Voëlklip being considered only as a residential area* – This is not the case as numerous other small individual localized business enterprises exist within the area;
- 7.2 *The OMGS and MSDF had to be deviated from* - The OGMS was rescinded and cannot be deviated from as it is not a valid document anymore;
- 7.3 *Voëlklip has an area earmarked as a Local Business Zone* – This is not the case, as the area earmarked in the OGMS to become a Local Business Zone, was put up for tender by the Overstrand Municipality to be developed as a residential area;
- 7.4 *Precedent will be created if this application is approved* - which is flawed as town planning is a site-specific process;
- 7.5 *Contents and definitions within the MSDF being inaccurately presented and focus being placed on only a section of the specific definition as to why small individual localized business enterprises may be allowed in Voëlklip;*
- 7.6 *Land use application is not clear on the type of business being proposed* – Which is not the case as the land use application is clear that only office use will be allowed.

8. PROPOSED MITIGATING MEASURE

Referring to the mitigating measure mentioned above, the property owners have no intention to allow any other business to be operated on the property other than office use.

Instead of removing the restrictive title deed condition it is being proposed that the restrictive title deed condition only be AMENDED to restrict any other business except offices.

This will limit that any future property owners only and will only be able to utilise the property for residential and/or office purposes.

PROPOSED MITIGATION

Amendment of a restrictive title deed condition in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

The proposal is to only amend the restrictive condition to be read as follows:

Condition III.D.(c) "No canteen, hotel, restaurant, shop, factory industry, or any place of business whatsoever, except offices, shall be opened or conducted on the said property except with the consent of the Overstrand Municipality.

**RECOMMENDATION****9. RELIEF SOUGHT**

The relief sought by the property owner and appellant is for the appeal authority to reconsider the decision of the Municipal Planning Tribunal and to allow the rezoning, removal, consent use, and departures being applied for through the land use application.

10. RECOMMENDATION

It is recommended that the appeal authority upholds this appeal and that the following is approved:

- 10.1** Amendment of a restrictive title deed condition III.D.(c) in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 10.2** Rezoning of Erf 5473 Hermanus from Residential Zone 1: Single Residential (SR1) to Business Zone 3: Local Business (B3) in terms of Section 16(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 10.3** Consent Use to allow a flat (on the ground floor) in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 10.4** Permanent Departure from the western building line from 3m to 2,68m in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 10.5** Permanent Departure from the southern building line from 3m to 2,48m in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.



ANNEXURE A: POWER OF ATTORNEY

Ek, die ondergetekende

VOLMAGNAAM: ANDRÉ CHARL JORDAANID NOMMER: 7108095014084

In my hoedanigheid as gevolmagtigde verteenwoordiger van **DE BROEDER INVESTMENTS EIENDOMS BEPERK (Reg. No. 2011/145134/07)** die eienaar van **Erf 5473 HERMANUS** nomineer hiermee Wright Approach Investments 136 CC (Reg No 2002/060745/23) handeldrywend as WRAP Project Office, met volmag tot plaasvervanging om as my wettige agent op te tree in naam en plek wat nodig mag wees ten einde dokumente te onderteken en om alle aksies uit te voer wat nodig mag wees met die

AANSOEK OM HERSONERING, VERGUNNINGSGEBRUIK EN AFWYKING VAN BOULYNE

en om in die algemeen die voorgenoemde doel te bereik, die nodige te doen en uit te voer so volledig en effektiwief vir alle doeleindes as wat ek sou en kan doen indien persoonlik teenwoordig en hierin sou optree, hiermee kondoneer, toe te laat en te bevestig, enigiets wat my Agent wettig mag doen, of laat doen uit hoofde van sy volmag.

GETEKEN TE STIKLAND OP HIERDIE 22 DAG VAN FEBRUARIE 2022


 GETUIE


 GETUIE



ANNEXURE B: OVERSTRAND MUNICIPALITY'S DECISION LETTER

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING



ENQUIRIES | NAVRAE: Mr P Roux (Town Planner)
FILE REF | LEËRVERVY: 5473 HVK
APPL ID | AANSOEK ID: 4088/2022
DATE | DATUM: 6 March 2023

Messrs WRAP Project Office
PO Box 1247
HERMANUS
7200

REGISTERED MAIL
EMAIL: admin@wrapgroup.co.za

Dear Sirs

DECISION LETTER TO APPLICANT

ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD

1. The application received on 14 March 2022 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 27 February 2023.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED

1. *that the comments/objections received 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) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, not be approved, in terms of the provisions of Section 61 of the By-Law;*
 3. *that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following:*
 - ◆ *rezoning in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);*
 - ◆ *consent use in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and*
 - ◆ *departure in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.*
- not be approved in terms of the provisions of Section 61 of the By-Law;*
4. *that the applicant and persons 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."*



4. Reasons for the above decision are as follows:

- ❖ The proposed use is in stark contrast to the residential character of the area.
- ❖ The Overstrand Growth Management Strategy, 2010 clearly indicates an area in Voëlklip that is earmarked for Economic Opportunity (local). This area is central in Voëlklip and is ideally located for the clustering of commercial/business activities. The Municipality's view is to centralise and cluster business activities together and not allow the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven, which will lead to the fragmentation of the residential suburb and linear development along the R43 (Seventh Street).
- ❖ The motivation does not address the deviation from the Overstrand Municipal Spatial Development Framework, 2020 or from the Overstrand Growth Management Strategy, 2010, which is an informant to the SDF.
- ❖ The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear what the specific professional practice will be, and the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has its own operational methods which could negatively impact the surrounding area.

5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.

5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received within 21 days of notification of this decision together with proof of payment of the appeal fee (R3351-00).

5.2 The appeal form is available at request or alternatively on the Municipal website (www.overstrand.gov.za).

5.3 Contact details are as follows:

Physical address : 16 Paterson Street, Hermanus, 7200
 Postal address : PO Box 20, Hermanus, 7200
 E-mail address : alida@overstrand.gov.za

Yours faithfully


 S MÜLLER
 DIRECTOR : INFRASTRUCTURE AND PLANNING

ANNEXURE B 160/225



ANNEXURE C: OGMS RESOLUTION

5.20
**ADOPTION OF OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK:
 OVERSTRAND MUNICIPALITY**

**(ITEM 26, PAGE 838: MAYORAL COMMITTEE MEETING : 27 MAY
 2020)**

RECOMMENDATION TO THE COUNCIL:

1. that the following Council resolutions **be rescinded**:
 - 2006 (Council's resolution 27 October 2006), Overstrand Municipal Wide Spatial Development Framework;
 - 2011 (Council's resolution 26 January 2011) Overstrand Municipal Spatial Growth Management Strategy; and
 - 2014 (Council's resolution 25 June 2014) Integrated Development Framework together with detailed Sectoral Plans;
2. that the Overstrand Municipal Spatial Development Framework **be adopted** for the 2020/2021 financial year in terms of Section 20(1) of the Spatial Planning and Land Use Management Act, 2013; and
3. that the Overstrand Spatial Development Framework **be adopted** as part of Overstrand's IDP for the 2020/2021 financial year.

RESPONSIBLE OFFICIAL :	R KUCHAR
TARGET DATE FOR IMPLEMENTATION :	11 JUNE 2020
TARGET DATE TO INFORM APPLICANT :	N/A
TARGET DATE TO INFORM OBJECTOR :	N/A

5.20
ADOPTION OF OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK:
OVERSTRAND MUNICIPALITY

(ITEM 26, PAGE 838: MAYORAL COMMITTEE MEETING : 27 MAY
2020)

RESOLVED (SUPPORTED BY 24 COUNCILLORS):

1. that the following Council resolutions **be rescinded**:
 - 2006 (Council's resolution 27 October 2006), Overstrand Municipal Wide Spatial Development Framework;
 - 2011 (Council's resolution 26 January 2011) Overstrand Municipal Spatial Growth Management Strategy; and
 - 2014 (Council's resolution 25 June 2014) Integrated Development Framework together with detailed Sectoral Plans;
2. that the Overstrand Municipal Spatial Development Framework **be adopted** for the 2020/2021 financial year in terms of Section 20(1) of the Spatial Planning and Land Use Management Act, 2013; and
3. that the Overstrand Spatial Development Framework **be adopted** as part of Overstrand's IDP for the 2020/2021 financial year.

RESPONSIBLE OFFICIAL : R KUCHAR

TARGET DATE FOR IMPLEMENTATION : 11 JUNE 2020

TARGET DATE TO INFORM APPLICANT : N/A

TARGET DATE TO INFORM OBJECTOR : N/A



ANNEXURE D: PROVINCIAL GAZETTE FOR THE MSDF ADOPTION

12 June 2020

Province of the Western Cape: Provincial Gazette 8249

337

OVERSTRAND MUNICIPALITY

NOTICE

NOTICE IS HEREBY GIVEN that the following document was approved by Council on 27 May 2020:

- Final reviewed Spatial Development Framework (SDF), 2020 in terms of Section 25(4) of the Municipal Systems Act No 32 of 2000, Section 20 of the Spatial Planning and Land Use Management Act, 2013, in terms of Chapter 111, Section 4(10) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

This document is available on our website (www.overstrand.gov.za) as well as at the various Municipal Offices and Libraries within the Overstrand area.

C GROENEWALD
MUNICIPAL MANAGER
Overstrand Municipality
PO Box 20
HERMANUS 7200
Fax number: (028) 313 8030
Notice number: 49/2020

12 June 2020

20204

OVERSTRAND MUNISIPALITEIT

KENNISGEWING

KENNIS GESKIED HIERMEE dat die volgende dokument op 27 Mei 2020 deur die Raad goedgekeur is:

- Finale Hersiene Ruimtelike Ontwikkelingsraamwerk (ROR), 2020 in terme van Artikel 25(4) van die Munisipale Stelselwet Nr 32 van 2000, Artikel 20 van die Wet op Ruimtelike Beplanning en Grondgebruikbestuur, 2013 en in terme van Hoofstuk 111, Artikel 4(10) van die Overstrand Munisipale Verordening op Munisipale Grondgebruikbeplanning, 2015.

Die dokument is op ons webtuiste (www.overstrand.gov.za) asook by die onderskeie Munisipale Kantore en Biblioteke binne die Overstrand gebied beskikbaar.

C GROENEWALD
MUNISIPALE BESTUURDER
Overstrand Munisipaliteit
Posbus 20
HERMANUS 7200
Faksnommer: (028) 313 8030
Kennisgewingsnommer: 49/2020

12 Junie 2020

20204

UMASIPALA WASEOVERSTRAND

ISAZISO

KWAZISWA UKUBA la maxwebhu alandelayo amkelwe liBhunga ngumhla wama 27 Meyi 2020:

- Isicwangciso sokugqibela sohlengahlengiso lophuhliso lwendawo (SDF), 2020 ngokwecandelo 25(4) leenkqubo zoomasipala ka nombolo 32 wama-2000, icandelo lama-20 lokucwangciswa komhlaba kunye noMthetho woLawulo lokuSetyenziswa koMhlaba ka-2013, ngokweSahluko 111, icandelo 4(10) yoMthetho kaMasipala kaMasipala wase-Overstrand kuCwangciso loSetyenziso loMhlaba lukaMasipala, lowama-2015

La maxwebhu ayafumaneka kwiwebhusayithi yethu (www.overstrand.gov.za) nakwiifisi zethu ezahlukeneyo zikaMasipala nakumathala cencwadi akummandla weOverstrand.

C GROENEWALD
UMPHATHI KAMASIPALA
Umasipala waseOverstrand
PO Box 20
Hermanus
7200
Inombolo ye fax: (028) 313 8030
Inombolo yesaziso: 49/2020

12 kweyeSilimela 2020

20204

ANNEXURE B 165/225



ANNEXURE E: LETTERS OF SUPPORT

Appeal Authority (Executive Mayor)
Director of Infrastructure and Planning
Overstrand Municipality
Hermanus

22 March 2023

Dear Executive Mayor, Dr A Rabie

APPEAL AGAINST DISMISSAL OF APPLICATION TO REZONE ERF 5473 TO ZONE 3

It is with great disappointment that I learnt that the application to have Erf 5473 in Voëlklip rezoned from Residential Zone 1: Single Residential to Business Zone 3: Local Business has not been approved.

The reasons for not approving the application are not at all convincing. In my earlier letter in support of the application I acknowledged the residential character of Voëlklip and that it should not be disturbed. The physio practice (with the approval of the Municipality) of Felicia Jordaan until her retirement in 2020 never had any adverse impact on the residential character of Voëlklip. It is the first house as you enter Voëlklip from the Stanford side, it has ample parking, has never been objected to by any neighbours and rendered a valuable service to especially Voëlklip residents many of whom find it difficult to drive to town for reasons of disability and costs. I assume that the rezoning can be limited to certain types of professional services which do not create any disturbance or nuisance such as physio or doctor consulting rooms and which will only be open during daytime. The interior of the property is already designed for such use.

The reasons for not approving the rezoning application inter alia refers to the Overstrand Growth Management Strategy, 2010 which indicates an area in Voëlklip that is earmarked for Economic Opportunity (local). This area is central in Voëlklip and is ideally located for the clustering of commercial/business activities. I have been a permanent resident of Voëlklip since 2015 and do not understand the above comment. Most of the current Voëlklip businesses are not central in Voëlklip but are at the entrance coming from town (garage, restaurant, workshop, estate agent offices etc) whilst the OK Mini Market is a little further but also closer to town side. There is a larger open area on the other (southern side) of the OK which I presume is municipal property. I do not know if this is the central area that the Municipality would like to see developed for commercial/business activities. Surely existing businesses cannot be relocated and to develop this area would really change the residential character of Voëlklip. In dismissing the rezoning application no mention is made of other businesses scattered in Voëlklip such as restaurants (Hopside Down and Dutchies) as well as estate agent offices. The great number of guest houses (how many are approved?) might be residential in the sense of providing accommodation but they often create huge parking and noise problems. The redevelopment of the De Mond site (opposite Erf 5437) will also have a huge impact on traffic volumes in the area, maybe also noise levels and could even include a shop.

Taking everything in consideration I do not see why the rezoning application of Erf5473 should not be approved. The outcome will only be positive, to the advantage not only of Voëlklip residents but also the greater Hermanus and people coming from towns such as Stanford and further.

I therefore recommend that you, in your capacity as executive mayor, consider and approve the appeal.

Yours faithfully
Karl Pretorius, MCom LLB
163 6th street Voëlklip
Tel 082 7879 563

The Director - Infrastructure and Planning - Hermanus

Dirk Leeuw
21, 13th Ave,
Voelklip
Hermanus

In studying the RESOLVE of the application to rezone HVK 5473 to Business Zone 3 the facts of the Voelklip area needs much more attention before the final development plan can be put to pen. For an economic development plan the very first criteria is the potential additional domestic residential land availability of which there is none in Voelklip. Which means that if an area is earmarked for development Voelklip is hopelessly too small for substantial economic development and it will change the residential character dramatically with limited area of movement and disastrous traffic and parking problems.

I have been a property owner in Voelklip for 38 years and lived in highly populated areas like Port Elizabeth, Krugersdorp, Bryanston and Bellville and I am of the opinion that Voelklip needs a totally different approach. Also because most people living in Voelklip are in an older age category and retirement. It therefore makes a lot more sense to address the needs of the community of Voelklip which hinges around medical and legal support.

1. Medical. The cost of medical care is spinning out of control.

- a) The medical situation in South Africa is a total disaster with no prospect of improving,
- b) Over the last few years it has become obvious that general medical practitioners are starting to do house calls again.
- c) This is now greatly being supported by for example Discovery's new initiative to have specific medical cases home hospitalised with doctors and nurses contracted to supply medical services on a contractual basis at a patients home with electronic online condition monitoring systems. To have medical support in close proximity in Voelklip at the site in question will be fantastic.

2. Legal


All the arguments as raised under medical are also applicable but even more so because the legal system has become a real problem for the ordinary South African. If attorneys move into the said premises it will move huge legal facilities to the West of Hermanus.

3. Physio Therapy

There is a big demand for therapy in Voelklip.

From the centre of Hermanus to the West (Sandbaai, Onrus, Vermont) there are numerous medical, physio and legal facilities but nothing to the East - 6 km out of town.

1



D.L. LEEUW
16/3/2023

1/2

The site is at the entrance of Voelklip and will not have any impact on the residential character of the area and have very beneficial benefit to the potential economic development of the caravan park (across the road) as a BUSINESS SITE in any case.

In REZONING HVK 5473 will further enhance the image of Hermanus as a town that really cares/

Dirk Leeuw
21, 13th AVE
Voelklip
0824654000
leeuwdirk@gmail.com



DIRK LEEUW
16/3/2023

23 March 2023

The Appeal Authority
 The Hon Mayor, Dr A Rabie
 Overstrand Municipality

Good Day Madam Mayor

Re: Rejection of Application for Rezoning of Erf 5473, Voëlklip

Cannot believe that abovementioned application for rezoning has been rejected? How is that possible?

Have the Tribunal and Overstrand Municipality forgot that Voëlklip residents are mostly elderly people? Do you not care for us who can no longer go to town easily nor have the nerve left in us to look for parking place which is never available near where we have to be? Have you ever needed to try and find parking in our town near to where you want to be so that, if you had painful legs, you need not walk 3 blocks far to get where you have to be?? It is nerve-racking!

I had insight into your rejection of the application of rezoning of erf 5473 and to my mind none of the reasons for rejection by the Tribunal, have any merit.

The building on the property has been there for ages, a few years ago it has been upgraded with a flatlet, etc after the changes have been approved by the municipality. Overstrand Municipality had no objections re the usage of the building, the relaxing of building lines, etc.

Why do you have objections now? Did the members of the Tribunal know where the property is, and that it has already been built many years ago? Also that, without any objection from neighbours or other Voëlklip residents, the property has been used, very successfully, as a physiotherapy practice – our great delight.

The property is situated at the end of Voëlklip if you travel to Stanford, or at the beginning of Voëlklip if you come from the east into Hermanus. It has always looked just like the other homes around the property – if you did not know that it is in use as a physiotherapy practice, no one would even think that it is not a residential property.

The residents of Voëlklip, truly need medical professionals or even lawyers nearby in order for us not to go into town – at the other side of Hermanus residents have medical and other professional services nearby! It will be a relief and an asset to us if we could have our own professional services within walking distance or easy to get there and to find parking.


Please do not consider a central cluster of offices or businesses in our area. That would hugely change the character of our so very peaceful and rural area.

We have businesses spread all over our area and we find it hugely comfortable and pleasing. While they are not all in the same vicinity, we do not experience traffic noise or a build-up of traffic nor a struggle to park.

PLEASE LOOK AT THIS APPEAL OBJECTIVELY and maybe drive there and through our area and see for yourself that there really is no reason not to grant the owner rezoning of the property to Zone 3

Thank you for your time. I trust that you will seriously reconsider. Especially as the municipality, still have the right to say no to any plans not to the municipality's satisfaction.

Kind regards


J.D. KENT.
165 5th ST. VOELKLIP.

23 March 2023

The Appeal Authority:

The Hon Mayor, Dr A Kapte

Overstrand Municipality

Good Day Madam Mayor

Re: Rejection of Application for Rezoning of Erf 5473, Voëlklip

I cannot believe that abovementioned application for rezoning has been rejected? How is that possible?

Have the Tribunal and Overstrand Municipality forgot that Voëlklip residents are mostly elderly people? Do you not care for us who can no longer go to town easily nor have the nerve left in us to look for parking place which is never available near where we have to be? Have you ever needed to try and find parking in our town near to where you want to be so that, if you had painful legs, you need not walk 3 blocks far to get where you have to be?? It is nerve-racking!

I had insight into your rejection of the application of rezoning of erf 5473 and to my mind none of the reasons for rejection by the Tribunal, have any merit.

The building on the property has been there for ages, a few years ago it has been upgraded with a flatlet, etc after the changes have been approved by the municipality. Overstrand Municipality had no objections re the usage of the building, the relaxing of building lines, etc.

Why do you have objections now? Did the members of the Tribunal know where the property is, and that it has already been built many years ago? Also that, without any objection from neighbours or other Voëlklip residents, the property has been used, very successfully, as a physiotherapy practice – to our great delight.

The property is situated at the end of Voëlklip if you travel to Stanford, or at the beginning of Voëlklip if you come from the east into Hermanus. It has always looked just like the other homes around the property – if you did not know that it is in use as a physiotherapy practice, no one would even think that it is not a residential property.

The residents of Voëlklip, truly need medical professionals or even lawyers nearby in order for us not to go into town – at the other side of Hermanus residents have medical and other professional services nearby! It will be a relief and an asset to us if we could have our own professional services within walking distance or easy to get there and to find parking.

Please do not consider a central cluster of offices or businesses in our area. That would hugely change the character of our so very peaceful and rural area.

We have businesses spread all over our area and we find it hugely comfortable and pleasing. While they are not all in the same vicinity, we do not experience traffic noise or a build-up of traffic nor a struggle to park.

4. Yes, each type of practice does have its own operational methods – but when the owner wants to make changes to the stand or the building – that cannot be done without approval of the Municipality??
5. When, in 2014, letters were sent to house owners in the area to get their approval. Not a single one did not give their consent. I think most of the existing objections came from residents who were not aware of the fact that it has already been used as a medical practice, e.g. a Physiotherapy practice – without any interference to the neighbours and other residents' comfort.
6. The residents of Voëlklip, are mostly elderly people. We are all very happy and satisfied with the garage, the OK mart and the restaurants. At least we do not have to drive all the way to town to get fuel or groceries, or to eat out !! We see it as a privilege and we are glad that all of these places are not centered in one area – then Voëlklip's character will seriously change. Imagine a whole shopping centre here in this lovely area! All the cars, traffic noise, etc in one centre. No, please rethink – as it is now – spread everywhere, there is no traffic problems, no traffic noise and no pollution of the air all in one tiny space.
7. Residents of Voëlklip will be happy not to need to travel to town to get medical services or to see a lawyer or a psychologist, chiropractor, etc. While the stand was used as a physiotherapy practice, more often than not, many visitors with fairly serious injuries came to the practice for help or advice and was always so pleased that someone could help them on the spot, or help to get them to hospital asap.
8. Many of us want to be more eco-friendly and not need to use our cars for longer trips if not necessary. Talking of which – is it not a tragedy that Hermanus no longer is the town in South Africa with the cleanest air!! Oudtshoorn is now The Place to be when you need fresh air. What have we done to Hermanus ??

Madam Mayor, I ask that you will please reconsider the application for rezoning of Erf 5473.

I can understand some of your concerns. But please, we do not want Voëlklip to begin to look like the other parts of Hermanus – all changing into becoming more and more like a town or city!! We love Voëlklip with its rural atmosphere – a holiday area where we can walk from the beach in our costumes and barefeet to any shop or restaurant.

I thank you for your time and trust that you will seriously reconsider. Especially as the Municipality, even when a business or office is part of the owner's plan – the Municipality still have the right to say no to any plans.

Kind regards


Lettie Velthuisen
0827714054

DE KLERK MACLENNAN-SMITH INC.

Reg. No. 1996/001800/21

Attorneys, Executors and Conveyancers/Prokureurs, Eksekuteurs en Aktebesorgers

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Director/Direkteur: K.B.E. Maclellan-Smith (B.A. LLB)
Consultant/Konsultant: A.J. Nel (B.Proc LLB MBA)

19 March 2023

The Appeal Authority
Overstrand Municipality

Dear Madam Mayor

We act on behalf of Andre Charl Jordaan, the owner of the above numbered erf and write in support of the appeal against the refusal to grant our clients various applications, as set out in the Resolution as sent by the Office of the Director, Infrastructure and Planning, dated 6 March 2023.

As has been advised, a successful physiotherapy practice was conducted from these premises for a number of years, and provided a valuable service to the residents of Voelklip and others. It is the only such practice in the area.

We also note that another physiotherapy practice operates from premises on the R43 leading into Hermanus from the Western side.

While we are aware of the Overstrand Growth Management Strategy, 2010, we submit that granting our client's application and upholding this appeal will in no way lead to fragmentation of the residential nature of this part of Voelklip.

We reiterate our previous submissions, as follows.

Approving the application will not change what has been the status quo since 2014. The possibility also exists that part of the premises could be used (for example) by a similar medical practitioner, should approval be granted, for the benefit not only of Voelklip residents but also those from Stanford and neighbouring towns on that side of Hermanus.

As you are aware, the building is situated at the Eastern entrance to Hermanus.

Travelling costs in South Africa have increased substantially in the past few years. In addition, parking in and around the CBD has become a greater problem, particularly during the high seasons. By approving this application, both of these will be alleviated for persons using the service offered.

No building changes are required.

More than sufficient on site parking is and has been provided.

ANNEXURE B 175/225

No traffic congestion will be created by reason of the location to of the premises at the entrance to Hermanus. In fact, approval will help relieve additional traffic and parking required in the CBD.

Note that the entrance to the premises is not on 7th Street/R43, the main road leading into Hermanus, but from a side street.

No noise or other interference of the enjoyment by adjacent residents will be created by approving the application and there will be no reduction in value of properties in the area.

No residents of Voelklip will be adversely affected by the approval. In fact, the reverse is true. Residents will retain a benefit they have enjoyed sine 2014.

The owner invested a large amount of money in upgrading the premises into an upmarket medical practice based on the Consent previously enjoyed. He stands to suffer a high loss should he be required to re-alter the premises for residential purposes only. This constitutes clear prejudice.

Granting the application will in no way further encroachment of business premises in the residential area of Voelklip. It will continue as it has been for years and retain the benefit of what the Voelklip residents have enjoyed for years.

We respectfully submit that the majority of residents in Voelklip will support the application.

We submit that the appeal should be granted.

Kindly acknowledge receipt of this email.

Thank you.

Regards

Adv JF Koekemoer
Vyfdestraat 255
Voëlklip
Posbus 626
HERMANUS
7200

20 Maart 2023

Die Appèlowerheid
Overstrand Munisipaliteit

Geagte Burgemeester, Dr A Rabie

APPÈL: HERSONERING ERF 5473

Ek is ingelig deur die aansoeker in bogemelde verband dat die Tribunaal die bogemelde aansoek afgekeur het. Ek is ook voorsien van die redes aangevoer deur die Tribunaal vir die besluit. Dit sal waardeer word indien die volgende aspekte in ag geneem sal word tydens u oorweging van die appèl, wat aan u voorsien word ter ondersteuning van die aansoek en tersydestelling van die besluit van die Tribunaal:

1. Die betrokke eiendom is geleë in met ingang vanaf Sewentidelaan en op die hoek van Sewendestraat, reg oorkant die De Mond terrein. Hierdie terrein is vele male in die verlede deur die Munisipaliteit geadverteer vir ontwikkeling en tenders is aanvaar maar dit het blykbaar doodgeloop. Feit is dat hierdie aansoek totaal nietig is as dit opgeweeg word teen wat die Munisipaliteit self vir die ontwikkeling beoog het in dieselfde area deur die laaste tender te aanvaar. Daardie ontwikkeling sou die totale karakter van die area, verkeer en gebruiksgewys onder andere, verander het.
2. Die betrokke straatgedeelte is vir baie jare gebruik deur die inwoners en besoekers aan die De Mond terrein. Die goedkeuring van hierdie aansoek is van geringe aard as dit opgeweeg word teen die verkeer soos dit destyds was.
3. Die Munisipaliteit het blykbaar verskillende ontwikkelingsbeleide vir verskillende gebiede van dieselfde karakter. As dit gaan oor die verandering van die karakter van die omgewing waar erf 5473 geleë is, sal ek u met graagte gaan wys waar die Munisipaliteit in die onlangse verlede sy eie beleid oortree het in Westcliff. Dit is tog 'n erkende regsbeginnsel dat almal geregtig is op gelyke behandeling deur 'n owerheidsinstelling.
4. Die feit is dat Voëlklip se inwoners meesal van gevorderde ouderdom is en daar is 'n baie groot behoefte om mediese fasiliteite nader aan ons te kry. Dit kan selfs lewens red. Om kilometers ver te ry na die naaste dokter raak 'n al groter probleem soos ouderdom toeneem. In die blokgedeelte waar ek woonagtig is met 6 woonhuise is daar twee gevalle waar bejaardes is wat daaglikse mediese behandeling benodig. Indien die beswaar is dat ander professies hul daar kan

vestig, kan u dalk 'n ander sonering goedkeur wat dit so sal beperk, of u kan voorwaardes stel wat enige van die voorsiene probleme wat ander professies dalk sou meebring, voorkom.

5. Ek kan persoonlik getuig watter voordeel dit vir my gesin was om die vorige fasiliteit naby ons te kon hê. Waar my eggenote haar voet gebreek het en moeilik kon loop, kon ons die fasiliteit besoek sonder probleme met parkering enige dag wat ons daar was en daar was geen trappe om te klim nie.
6. In belang van die deel van hierdie wonderlike area en munisipaliteit waar ons bevoorreg is om te woon, word u versoek om die belange van die inwoners hier in ag te neem deur die besluit van die Tribunaal ter syde te stel.

Vriendelike groete

Adv Jan Koekemoer
0833250485

The Appeal Authority

Dr A Rabie

23 March 2023

Re: Application for rezoning erf 5473, Voëlklip, Hermanus.

The above property was bought in 2014 for the purpose of upgrading a derelict building into a user-friendly functional facility. A physiotherapy practice was envisioned.

This was done after a meeting with Me Van der Stoep of the Overstrand Municipality when she assured the buyer that this would be acceptable to the Municipality with the proviso that there must be parking for four vehicles and a residential area included (e.g. flat)

At great cost the building was upgraded and used very successfully without any complaint for neighbours or any other person.

In 2015 the Municipality by-laws changed and now the original consent is no longer acceptable?

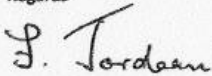
It will be costly to change the existing building into a dwelling house and a great pity when Voëlklip needs office space for professional use e.g. doctor, physiotherapist, lawyer, psychologist or other professions.

Voëlklip needs an asset such as the property on erf 5473 for the comfort and needs of the local, mostly elderly, residents.

I hereby request the Mayor to consider the following:

- Fairness to the owner who had consent for the upgrading of the property
- Fairness to the people of Voëlklip who could have the services of professionals on their doorstep instead of having to travel into town with all that goes with it.
- No objection to the previous use of the property was ever made.
- A demand for a property such as erf 5473 exists
- New job opportunities will be created if e.g. doctor, lawyer, etc should buy it

Regards



Felicia Jordaan

253 Fifth Street

Voëlklip

0846217804

The Mayor,
Director of Infrastructure and Planning
Overstrand Municipality
HERMANUS
21 March 2023

Geagte Uitvoerende Burgemeester,
Dr A RABIE

Insake: Hersenering van erf 5473 na Zone 3

Die Fisioterapie praktyk van Felicia Jordaan wat gesetel was op bogenoemde erf was altyd besonder gewild en in aanvraag by veral die inwoners van Voelklip, as-ook ouer persone en vroue met babas, omdat niemand nodig gehad het om dorp toe te gaan nie.

Die praktyk was maklik toeganklik vanaf 17de Laan en gebruikers vriendelik tot die gebou.

Daar was nooit 'n verkeers-probleem nie, want daar was voldoende parking.

In die geheel gesien WAS DIT 'N UITERS POSITIEWE BATE VIR VOELKLIP.

Enige ander besigheid van professionele aard, soos byvoorbeeld Argitek of Prokureur behoort presies dieselfde invloed op die omgewing te hê.

Indien daar 'n Mediese- fisio praktyk bedryf kan word, behoort dit 'n uiters positiewe invloed op die toekomstige De Mond Ontwikkeling te hê.

U WORD ERNSTIG VERSOEK OM DIE APPÉL GOED TE KEUR!

In afwagting van u positiewe goedkeuring

Voorlopig baie dankie.

DKuschke - 9-13^e laan

Hersonering van ERF 5473, Hermanus

Geagte Uitvoerende Burgermeester

Ek verneem daar is tans n despuut aangaande die hersonering van ERF 5473, Hermanus.

As n mede inwoner van Hermanus woonagtig te ERF 3854, wil ek U graag versoek om die besluit rondom die hersonering van ERF 5473, te hersien.

Ek het geen beswaar indien genoemde Erf gebruik word vir Professionele Dienste nie.

Vir ons inwoners van Voelklip, is dit baie gerieflik om professional dienste aan hierdie kant van die dorp te geniet. In die verlede was daar Fisioterapie dienste aangebied, wat dit baie gerieflik vir my gemaak het, met parkering, maklike toegang en alles op een vlak.

Sulke dienste beteken dat daar bedags besoekers is, maar na-ure is dit stil.

Dit bring ook meer veiligheid na ons buurt met meer mense wat bedags eiendom benut.

Graag versoek ek U daarom, om weer na die aaspek om hersonering heroorweging te skenk.

Met dank

EudWalt 17/03/2023
ELSA VAN DER WALT

From: Louise Coetzee
To: andre@hydradrive.co.za
Subject: Hersonerig van erf
Date: Wednesday, 22 March 2023 20:07:27

The Appeal Authority
Munisipaliteit Hermanus
22 Maart 2023

Geagte dr Rabie,

I.s. hersonerig van Erf 5473, Voelklip, Hermanus.

Ek het met verbasing verneem dat die munisipaliteit geweier het om bogenoemde erf te hersoneer. Hierdie goed toegeruste, aantreklike gebou leen hom uitstekend tot professionele dienste, soos die fisioterapeut wat dit die afgelope paar jaar as praktyk bedryf het. Daar was nooit enige klagtes waarvan ons wat hier woon, ooit gehoor het nie aangesien dit vir ons dienste beskikbaar gestel het waarvoor ons nie hoef in te gery het dorp toe nie. U moet onthou hier is baie ouer mense wat hier woon wat ander mense moet verontrief om by mediese dienste uit te kom. Daar kan vir hulle ook ander dienste beskikbaar raak soos bv 'step down' fasiliteite, waaraan daar 'n geweldige tekort is.

Die gebou staan reg aan die begin van Voelklip en ook nie midde-in die woongebied nie. Meeste ander woongebiede in die land het professionele mense wat dienste binne woongebiede vanuit omskepte huise bedryf met groot sukses (eintlik is dit die norm deesdae). Ek kan nie verstaan wat Hermanus of te wel Voelklip, nou so 'n uitsondering moet maak nie. Die huis lyk soos 'n netjiese moderne woonhuis met 'n paar parkeerplekke. Die besware van die tribunal het myns insiens geen meriete nie.

In belang van die inwoners wil ek u versoek om te herbesin en die hersonerig na zone 3 goed te keur.

Beste wense,

Louise M Coetzee
5e Straat 224
Voelklip
Hermanus
Selno 0827877196

DIE DIREKTEUR – INFRASTRUKTUUR & BEPLANNING – HERMANUS


Mevrou die Burgermeester

Die Perseel HVK 5473 is by die Ingang van Voelklip(oos) met geen huise aan die oorkant van die straat (Oos of noordoos) nie. Daar was geen probleme toe dit as fisio kamers gebruik is nie en dit het 'n baie belangrike diens aan inwoners gelewer.

Omdat mediese en regshulp in sentraal Hermanus en Wes gesentreer is, is die behoefte in Voelklip vir sulke dienste om nader te wees (veral mediese hulp) baie groot. Daarom is hierdie 'n ideale perseel vir so 'n diens wat ook groot byval sal vind by toeriste. So ook sal dit ontsettend bydra tot die gerief van besoekers as die karavaanpark 'n toeriste attraksie word.

Die hersonering sal definitief positiewe gevolde vir Hermanus inhou.

Ek vertrou u sal hierdie bydrae van 'n eienaar, wat al sedert 1975 hier eiendom besit, positief oorweeg.



B.W. Kellermann

ANNEXURE B 183/225

265 5th Street
Voelklip
HERMANUS
7200
karatara.265@gmail.com

Dear Madam Mayor

It has come to my attention that the rezoning application of erf 5473 Voelklip has been rejected by the municipality and that the previous consent for a professional practice is no longer allowed.

Voelklip is a residential suburb with a large number of retired residents. It is a considerable advantage to them to have, particularly medical, and other professional services close by. It is essential however to reduce noise and traffic congestion to an absolute minimum. To ensure this it would be desirable to disperse such practices as much as possible and not concentrate them. I am not well versed in the application of bylaws however I believe the ideal would be to grant the right to practice a profession in Voelklip subject to certain rules which would include:

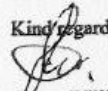
- 1) Only one profession to be allowed to practice in each of the Avenues and Streets (excluding 7th Street).
- 2) No more than 2 professionals to be allowed to practice from any one property.
- 3) On site parking to be provided for all staff members and visitors.

Professional practices do not create noise, other than noise normally to be expected in any residential township, nor do they increase traffic volumes noticeably.

Erf 5473 has been developed specifically for professional use and it would be a loss to the community if its use was not put to the purpose it was designed for. Access to the erf is not from 7th Street it is from 17th Avenue. It has ample on site parking and is in an almost ideal position.

Please acknowledge receipt of this letter.

Kind regards

 16/3/2023

James Williams Pr Eng
(Retired Civil Engineer, having specialised in urban townships and rural roads.)

P O Box 1775
Hermanus

21 March 2023

The Appeal Authority (Executive Mayor)

APPEAL AGAINST DECISION ON REZONING APPLICATION OF ERF 5473 HVK

On 6 March the Department of Town and Spatial Planning resolved to reject the application by Mr Andre Jordaan to approve the zoning of his property in Voëlklip (erf 5473) to accommodate offices and a professional practice.

This resolution was ill-advised for reasons that include the following:

1. It is based on incorrect information.

Points 2 and 3 of the resolution detail accommodations intended to be made to incorporate a "proposed flatlet/flat" that are rejected. The property was bought in 2014 and the relevant bylaw was changed in 2015; under this permission was given for a professional practice to be operated from the property provided (inter alia) provision was made for a resident. The alterations therefore incorporated a flat. It is not "proposed".

2. It constitutes clear prejudice to the owner.

The owner purchased this property almost a decade ago and undertook extensive and expensive alterations to make it suitable to house a physiotherapy practice. This practice was run by his mother (Ms Felicia Jordaan), and until her recent retirement this was a popular and well-used practice. At no time was the practice a cause of concern in the neighbourhood; on the contrary, it fulfilled a clear need and was greatly appreciated for doing so.

The alterations undertaken by the owner made it suitable for similar use.

The owner now intends to sell the property as his mother has retired, and has thus applied for zoning that will allow it to continue to be used for a professional practice, as it had been since purchase. This has been refused and permissible use restricted to residential only.

This naturally reduces its value, as extensive alterations would need to be made to it by anyone who purchased it as a residence.

Potential buyers who have shown interest in the property wish to use it for professional purposes similar to that for which it was used during the past many years. The considerable alterations that would be needed were it to be used for a residence have dissuaded potential purchasers looking for a residence.

The refusal to zone the property for professional use clearly prejudices the owner and has materially affected his plans for funding his mother's retirement.

3. The reasons given are illogical and ill-founded.

Point 4 of the resolution details the reasons given for the decision, none of which stand up to scrutiny.

4.1 states that the proposed use is "in stark contrast to the residential character of the area". The property is the last one in Voëlklip as the R43 exits to town to the east. As it stands it is a single story, unobtrusive building with ample parking accessed from the side road and shielded from the R43 by hedges. It fits seamlessly into its built environment. Any application for business use can be subject to restrictions that will retain this unobtrusive nature.

4.2 states that "a precedent will be created of ad-hoc commercial erven". Given that a valued business was conducted from the premises for many years, it cannot set a precedent. There are indeed many diverse businesses dispersed throughout Voëlklip, ranging from accommodation establishments to restaurants. Presumably those that remain in business also fill a need in the area.

4.2 also refers to the Overstrand Growth Management Strategy of 2010 which intends to cluster businesses in Voëlklip within a central area and notes that the Municipality's "view is to...not allow the dispersion of business activities...throughout the suburb." The section of this document dealing with Voëlklip states the following:

- The majority of the area's population is of mature years
- Acceptable "community facilities" for the suburb are schools (surprisingly) and places of worship
- The suburb's character is that of a "dormitory suburb"
- Planning unit 5, which incorporates the property in question and which is described as "subject to scenic route vistas (sic)" is seen nevertheless as providing opportunities for densification.

4.3 states that the proposed deviation from this guiding strategy has not been covered. It is important to note that a planning approach that restricts business opportunities to a centralised section within a strongly linear residential area presupposes that residents are able to access the businesses and services they need with ease. This is possible if efficient public transport systems are available. If they are not - and there are no public transport systems in Hermanus as yet - the need to travel considerable distances assumes a high level of private car ownership and the means to utilise such.

An elderly population is very often not able to do so. Advanced years are associated with restricted mobility for a variety of reasons. This makes travelling to facilities situated at a considerable distance, negotiating traffic and traffic congestion, accessing parking that may not be conveniently placed, and coping with the time, stress and possibly pain involved with doing so particularly burdensome.

Convenient access to frequently-used services - in particular (but not restricted to) medical services - is vital for this demographic. Failure to provide such within this linear suburb is prejudicial to the larger part of Voëlklip's population.

4.4 agrees with the objections received i.e. that "the proposed use will change the character of the area". This is an illogical inference given that Ms Jordaan's practice operated for many years and was thus part of, and contributed to, the character referred to.

It states further that the past use is irrelevant as different professions could use the property in ways that "could negatively impact the surrounding area". This is a concern that should only be addressed once permission is sought for a particular business to operate on the premises. Restrictive clauses should then be brought into play, if it is considered that the intended use will not contribute value to the residents of Voëlklip.

In conclusion, there is no logical reason not to allow the zoning sought for the property in question. Zoning the property to allow business-related uses (offices and a professional practice) would contribute positively to the quality of life of the residents of Voëlklip. Any proposed business operation that would not do so, could be refused permission to operate.

Yours sincerely

(Dr) P K MILLER
Cell: 082 374-9729
Tel: (028) 313-0093

Subject: FW: Hersenering van erf 5473 , Voëlklip , Hermanus

From: georgejo2021@outlook.com <georgejo2021@outlook.com>

Sent: Friday, March 24, 2023 12: 7 PM

To: 'nd hyd d iv z

Subject: Hersenering van erf 5473 Voëlklip , Hermanus

Heil die L

D redes wat aangevoer word vir die nie-goedkeuring van die aansoek vir die hersenering van die erf dra nie werklik water nie.

1. Dat dit die residensiële voorkoms van die area sal skaad ,is ongegrond .
 - Die gebou is glad nie in kontras met enige gebou in daardie omgewing nie. Dit is 'n huis waarin 'n party ingerig is, en dit is 'n baie netjiese , goedversorgde plek wat nie afbreek doen aan die omgewing nie. Het iemand hom vergewis van hoe die plek lyk? Ek dit was tog immers voorheen deur die munisipaliteit goedgekeur, was dit toe nie in kontras met die residensiële karakter van die omgewing nie?
 - Dit was jare lank as mediese praktyk gebruik ,en as sulks was daar werklik slegs 'n baie beperkte aantal besoekers op 'n slag daar. As huiseienaar in Voëlklip vir baie jare, het ek nog nie eenkeer 'n klagte oor die praktyk aldaar gehoor nie, in teendeel was dit vir baie fisio pasiente grieslik geleë.
 - Die grootte van die eiendom leen hom nie tot 'n groot aantal besoekers nie,waarskynlik nie meer as 2 tot drie op 'n keer. Dit is tog sekerlik moontlik om hersenering moontlik te maak onder sekere streng en beperkte voorwaardes bv. Dat dit uitsluitlik vir kantore of professionele praktyke gebruik kan word wat nie 'n groot toeloop van besoekers het nie.
 - Parkering vind plaas op die perseel, en die ingang na die perseel is vanuit 'n baie stil straat (vanuit 7de straat nie).
 - Ek wil ook wys daarop dat daar reeds vele gastehuse, restaurante en selfs 'n supermark en vulstasie in Voëlklip is. Ek is oortuig dat die besighede veel meer invloed op die residensiële karakter van die omgewing het as die eiendom hierbo. Let wel ek is nie gekant teen die teenwoordigheid van die besighede nie , ek noem dit net ter illustrasie van my punt.
2. Waar gaan die genoemde sentrale area in Voëlklip ,wat ge-oormerk is vir besigheidsontwikkeling , plaasvind? Hoe lank is die ontwikkeling van die De Mond Park al op die kaart , en daar gaan steeds niks aan na hoeveel vermorsde jare! Gelyk die genoemde sentrale area nie dieselfde pad loop nie. Let wel ek is ook nie gekant teen die ontwikkeling van die sentrale area nie,ek noem dit slegs ter illustrasie.
3. Hoeveel besware is ingedien teen die hersenering? Is dit dalk die paar " -alles" mense in die groter Voëlklip?

Ek vertrou dat daar weer oorweging , onder die streng en beperkte voorwaardes wat ek hierbo genoem het, geskenk sal word aan die aangeleentheid.

Die uwe
George J

Die Uitvoerend Burgemeester
Overstrand Munisipaliteit
HERMANUS

Geagte dr. Rabie

HERSONERING ERF 5473

Dit was met verbasing dat ons kennis geneem het van u reaksie op ons versoek.

Baie dankie vir die geleentheid om te kan appelleer. Ek reageer op die 4 redes wat aangevoer word vir u besluit om ons versoek te weier.

- 1 *"The proposed use is in stark contrast to the residential character of the area."* Dit is geensins die geval nie. Die gebou lyk tans net soos enige huis in die omgewing en dié karakter sal nie dramaties met die hersonering verander nie. Heel moontlik gaan die gebou net so in sy huidige vorm behou word of selfs verbeter word. Die huis is gelukkig wel in sterk kontras met die onmiddellike omgewing wat vroeër 'n kampeerterrein was.
- 2 *"The Municipality's view is to centralise and cluster business activities together..."* As sodanig kan dit 'n goeie idee wees, maar daar is altyd uitsonderinge op enige reël en die hersonering van erf 5473 sal nie 'n presedent skep nie. Die presedent is oor jare geskep toe toestemming gegee is vir 'n verskeidenheid van besighede in Voëlklip. (Sien my vorige skrywe).
- 3 Geen kommentaar. Wat wel interessant is, is die datums van die dokumente. Dit lyk nie of die munisipaliteit prioriteit aan dié kwessies gee nie.
- 4 *"It should be noted that the land use is not clear...and the fact that the property was used as a physiotherapy center is not relevant."* Hierdie feit is juis relevant. Dit gaan nie oor 'n spesifieke rigting soos bv. fisioterapie nie, maar bewys dat so 'n tipe fasiliteit in 'n residensiële area vir baie jare professionele diens kon lewer aan al die inwoners in Voëlklip. Dit is die ideale gebou vir 'n verskeidenheid professionele beroepe soos prokureurs, argitekte, en veeartse soos in u skrywe aangehaal. Ek sou nie graag 'n veearts in 'n "cluster" van geboue wil hê nie.

Samevattend wil dit lyk asof erf 5473 met sy ligging, uitleg en parkeergeriewe die ideale gebou vir hersonering na Zone 3 is. Dit raak veral vir ons ouer inwoners toenemend moeilik om by professionele dienste in die dorp uit te kom. Parkering bied ook sy eie uitdagings.

Vriendelike groete.

Albert Hoek BA (Hons) M.Ed.
082 667 2862

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

Municipaliteit - ANNEXURE B, 189/225



ENQUIRIES | NAVRAE: Mr P Roux (Town Planner)
FILE REF | LEËRVERWY: 5473 HVK
APPL ID | AANSOEK ID: 4088/2022
DATE | DATUM: 6 March 2023

Messrs WRAP Project Office
PO Box 1247
HERMANUS
7200

REGISTERED MAIL
EMAIL: admin@wrapgroup.co.za

Dear Sirs

DECISION LETTER TO APPLICANT

ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD

1. The application received on 14 March 2022 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 27 February 2023.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED

1. *that the comments/objections received 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) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;*
3. *that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following:*
 - ❖ *rezoning in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);*
 - ❖ *consent use in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and*
 - ❖ *departure in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.*

not be approved in terms of the provisions of Section 61 of the By-Law;
4. *that the applicant and persons 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.**

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: alida@overstrand.gov.za
PO Box 20 | **HERMANUS** 7200
www.overstrand.gov.za



4. Reasons for the above decision are as follows:

- ❖ The proposed use is in stark contrast to the residential character of the area.
- ❖ The Overstrand Growth Management Strategy, 2010 clearly indicates an area in Voëlklop that is earmarked for Economic Opportunity (local). This area is central in Voëlklop and is ideally located for the clustering of commercial/business activities. The Municipality's view is to centralise and cluster business activities together and not allow the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven, which will lead to the fragmentation of the residential suburb and linear development along the R43 (Seventh Street).
- ❖ The motivation does not address the deviation from the Overstrand Municipal Spatial Development Framework, 2020 or from the Overstrand Growth Management Strategy, 2010, which is an informant to the SDF.
- ❖ The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear what the specific professional practice will be, and the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has its own operational methods which could negatively impact the surrounding area.

5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.


5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received within 21 days of notification of this decision together with proof of payment of the appeal fee (R3351-00).

5.2 The appeal form is available at request or alternatively on the Municipal website (www.overstrand.gov.za).

5.3 Contact details are as follows:

Physical address : 16 Paterson Street, Hermanus, 7200
 Postal address : PO Box 20, Hermanus, 7200
 E-mail address : alida@overstrand.gov.za

Yours faithfully


 S. MÜLLER

DIRECTOR : INFRASTRUCTURE AND PLANNING



Absa Online: Notice of Payment

27 March 2023

Dear WRAP PROJECT OFFICE (PTY) LTD

Subject: Notice Of Payment: Overstrand Municipal

Please be advised that you made a payment to Overstrand Municipal as indicated below.

Transaction number:	807E8F33C9-6
Payment date:	2023-03-27
Payment made from:	Current account
Payment made to:	Overstrand Municipal
Beneficiary bank name:	NEDBANK
Beneficiary account number:	1190136678
Bank branch code:	198765
For the amount of:	3,502.00
Immediate interbank payment :	N
Reference on beneficiary statement:	5473 HVK
Additional comments by payer:	

Please remember that the following apply to Absa Online payments to non-ABSA bank accounts.

- Payments made on weekdays before 15:30 will be credited to the receiving bank account by midnight of the same day but may not be credited to the beneficiary's bank account at the same time.
- Payments made on weekdays after 15:30 will be credited by midnight of the following day.
- Payments made on a Saturday, Sunday or Public holiday will be credited to the account by midnight of the 1st following weekday.

If you need more information or assistance, please call us on 08600 08600 or +27 11 501 5110 (International calls).

If you have made an incorrect internet banking payment, please send an email to digital@absa.co.za

Yours sincerely

General Manager: Digital Channels

This document is intended for use by the addressee and is privileged and confidential. If the transmission has been misdirected to you, please contact us immediately. Thank you.



TP - A Theart
(H Olivier)

Nicola Ralph
326 8th Street
Voelklip
HERMANUS
7200

Your ref.: 5473 HVK
Application ID: 4088/2022

21 April 2023

Office of the Director: Infrastructure & Planning
Overstrand Municipality
6 Magnolia Street
HERMANUS
7200

FILE NO. Erf 5473
HVK
SCAN NO.
HVK 5473
COLLABORATOR NO.
1848801

Dear Sir/Madam:

RE: COMMENTS ON APPEAL (ERF 5473 APPLICATION FOR REZONING,
CONSENT USE & PERMANENT DEPARTURE)

- I'm writing to add to my initial representation, my categorical objection to the applicant's desire to rezone the residential property for commercial usage.

21 APR 2023

TP

2. As a resident of this community, I am convinced that the proposed use of the property will have a negative impact on the quality of life for those of us who live here. We as owners have the right to peaceful use and enjoyment of our property, and I firmly believe the rezoning will impede on this right.

3. The Zoning regulations are in place to ensure that the community remains balanced and that residents can enjoy a peaceful and comfortable living environment. The rezoning will have the effect of increased flow of traffic and noise pollution in our once peaceful neighbourhood.

4. If permission is granted to use the property for business, it will set a dangerous precedent and allow other businesses to set up in residential areas, leading to further disruption and chaos. The applicant is demanding an exception for his own selfish exploitation of his land at the expense of and against the rest of the community's interests and values.

5. The proposed business use of the property will lead to increased traffic and noise levels in the area, not to mention that customers will have to park on the side of the road, which will have a significant negative impact on the daily lives of residents. It will also result in customers parking in front of adjacent houses.

6. The commercial activities will also result in the generation of more waste, which could lead to hygiene and environmental issues.
7. The proposed use of the property for business could negatively affect the value of neighbouring properties. This could make it harder for residents to sell their homes in the future and could also lead to the loss of the residential character of the neighbourhood.
8. A person who owns a home but does not live in it has a completely different view on the situation. Such a person is unconcerned about the well-being of the community, but only about the value he or she can derive from that property. Property owners that live on the property want to invest in and care for the neighbourhood. A company owner who does not live on or operate from the property only seeks to exploit the property for financial gain.
9. I understand there are plans for the now defunct De Monde caravan park to resuscitate the commercial operations there to include short-term holiday camping, chalets and conference facilities, consistent with the historical use of that property; something most people endorse as a means of revitalising the park, offering employment and holiday facilities for the wider community. The plans include utilising the existing entrance

to the caravan park as the main entrance to the new facilities. There will be some resident staff housing and a refuse collection point near that entrance. It seems to me the commercial operations from erf 5437 on the corner of 17th Avenue and 7th Street could well create a traffic bottleneck and congestion when the caravan park becomes functional.

10. I would like to comment on the applicant's appeal but do not intend to deal with each and every point in the appeal and should not be construed as me agreeing with it:
- 10.1 The applicant stated that his mother used the house as a residence and carried out a home business from this property. It is absurd to believe that the applicant is trying to utilise the idea that two wrongs make up a right as support for their application. This reasoning is absurd.
- 10.2 The applicant acknowledges on page 7 that "the property owners are aware that a business property may be operated for various other purposes and may have a negative impact on the surrounding area." Even if the applicant claims his intentions are good, there is no guarantee that it will use the endowment for whatever cause, and the process would then be irrevocable. It is not enough to consider the application in its singularity, we must consider what it can and will become.
- 10.3 The applicant claims that the business will be "non-intrusive" which is devoid of truth as discussed above. Again, the picture that is painted is

not the reality residents in the immediate area will be confronted with should the application succeed; parking is insufficient for a 3-person practice, plus a resident flat-dweller, plus administrative staff, plus patients/clients both being attended to and in the waiting room.

11. The Central Business District of Hermanus is a mere 5 kilometres away and lots of office space is available. The purpose of the application is, in my opinion, solely for financial gain and not as a service to or in the interest of the community.
12. The applicant avers that the rezoning will not create a precedent but if the erf is rezoned, other applicants will have a foot to stand on for why their property should not also be rezoned to enable them to conduct businesses from. The mere fact that the applicant makes mention of the businesses named on page 14 of their application is sufficient proof of that.
13. I then would like to comment on the "Letters of support from the community":
 - 13.1 The authenticity of most of the letters in support of the application cannot be verified as actual residents because they do not contain any addresses and should be rejected with contempt. The ones that contain

addresses are from residents who are not living in the immediate affected area and will not be affected by the devaluation of property, noise, safety concerns and uncertainty on how the erf will develop in the future.

13.2 The writers of these letters are not qualified to come to the conclusion that the residential nature of Voëlklip will not be affected, that the property has sufficient parking available, the property will only be used for professional services, and that no objections were received from 2014 and 2020.

13.3 The letter of support from Albert Hoek supports our worry that there is no assurance that, should the erf be rezoned, it will only be utilised as doctors' offices. In his letter, Mr. Hoek expressed his opposition to having a veterinarian present. To put it another way, he is content if doctors use the building, but anything else must go via him. The residential character of the area is least characterised by the building but rather by what the building is used for.

13.4 Another letter, without even the name of the author, acknowledges that even guest houses have often created "huge parking and noise problems", which confirms our concern regarding the same problems he/she mentions.

- 13.5 The email from George Josling mentions that the municipality approved of the home business run by the applicant's mother, and that it was used as a doctor's practice, which I could not find proof of. Mr Josling claims that he has not heard of anyone complaining, as if people will complain to him.
- 13.6 A letter from Dr Miller accused the municipality's decision as ill-advised. Dr Miller is very concerned for the applicant and its mother, but shows no regard for the residence in the immediate vicinity.
- 13.7 The letter from De Klerk MacLennan-Smith Inc Attorneys is written on the applicant's behalf and cannot be considered a letter of support. According to the letter, "more than sufficient on-site parking is and has been provided". There are just five parking places available, according to the application. According to the letter, "approval will help relieve additional traffic and parking required in the CBD". Five parking spaces will have little effect on the CBD, and the parking space on the property will not be sufficient for customers because it will also be used for practitioners, staff and the tenant. Actually, there will only be enough parking for practitioners, personnel and tenant, and clients will have to park on the side of the road. The letter is full of generalizations, lacks content, and is clearly meant for an uninformed readership.

14. In light of these concerns, I strongly urge you to reject this application. The regulations are in place for the benefit of all residents, and the proposed business use of the property will have far-reaching negative consequences for the community.

Thank you for your attention to this matter.

Sincerely,



Nicola Ralph

ANNEXURE B 200/225



TP-A Theart
(Holivier)

PR Bourne
321 8th Street
Voëlklip
HERMANUS
7200

Your ref.: 5473 HVK
Application ID: 4088/2022

20 April 2023

Office of the Director: Infrastructure & Planning
Overstrand Municipality
6 Magnolia Street
HERMANUS
7200

Dear Sir/Madam:

**RE: COMMENTS ON APPEAL (ERF 5473 APPLICATION FOR REZONING,
CONSENT USE & PERMANENT DEPARTURE)**

1. I'm writing to add to my initial representation, my categorical objection to the applicant's desire to rezone the residential property for commercial usage.

20 APR 2023

170

FILE NO. Erf. 5473 ✓
HVK
SCAN NO.
HVK 5473
COLLABORATOR NO.
1848245

2. As a resident of this community, I am convinced that the proposed use of the property will have a negative impact on the quality of life for those of us who live here. We as owners have the right to peaceful use and enjoyment of our property, and I firmly believe the rezoning will impede on this right.
3. The Zoning regulations are in place to ensure that the community remains balanced and that residents can enjoy a peaceful and comfortable living environment. The rezoning will have the effect of increased flow of traffic and noise pollution in our once peaceful neighbourhood.
4. If permission is granted to use the property for business, it will set a dangerous precedent and allow other businesses to set up in residential areas, leading to further disruption and chaos. The applicant is demanding an exception for his own selfish exploitation of his land at the expense of and against the rest of the community's interests and values.
5. The proposed business use of the property will lead to increased traffic and noise levels in the area, not to mention that customers will have to park on the side of the road, which will have a significant negative impact on the daily lives of residents. It will also result in customers parking in front of adjacent houses.

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7. The proposed use of the property for business could negatively affect the value of neighbouring properties. This could make it harder for residents to sell their homes in the future and could also lead to the loss of the residential character of the neighbourhood.
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to the caravan park as the main entrance to the new facilities. There will be some resident staff housing and a refuse collection point near that entrance. It seems to me the commercial operations from erf 5437 on the corner of 17th Avenue and 7th Street could well create a traffic bottleneck and congestion when the caravan park becomes functional.

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 - 10.2 The applicant acknowledges on page 7 that "the property owners are aware that a business property may be operated for various other purposes and may have a negative impact on the surrounding area." Even if the applicant claims his intentions are good, there is no guarantee that it will use the endowment for whatever cause, and the process would then be irrevocable. It is not enough to consider the application in its singularity, we must consider what it can and will become.
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not the reality residents in the immediate area will be confronted with should the application succeed; parking is insufficient for a 3-person practice, plus a resident flat-dweller, plus administrative staff, plus patients/clients both being attended to and in the waiting room.

11. The Central Business District of Hermanus is a mere 5 kilometres away and lots of office space is available. The purpose of the application is, in my opinion, solely for financial gain and not as a service to or in the interest of the community.
12. The applicant avers that the rezoning will not create a precedent but if the erf is rezoned, other applicants will have a foot to stand on for why their property should not also be rezoned to enable them to conduct businesses from. The mere fact that the applicant makes mention of the businesses named on page 14 of their application is sufficient proof of that.
13. I then would like to comment on the "Letters of support from the community":
 - 13.1 The authenticity of most of the letters in support of the application cannot be verified as actual residents because they do not contain any addresses and should be rejected with contempt. The ones that contain

addresses are from residents who are not living in the immediate affected area and will not be affected by the devaluation of property, noise, safety concerns and uncertainty on how the erf will develop in the future.

- 13.2 The writers of these letters are not qualified to come to the conclusion that the residential nature of Voëlklip will not be affected, that the property has sufficient parking available, the property will only be used for professional services, and that no objections were received from 2014 and 2020.
- 13.3 The letter of support from Albert Hoek supports our worry that there is no assurance that, should the erf be rezoned, it will only be utilised as doctors' offices. In his letter, Mr. Hoek expressed his opposition to having a veterinarian present. To put it another way, he is content if doctors use the building, but anything else must go via him. The residential character of the area is least characterised by the building but rather by what the building is used for.
- 13.4 Another letter, without even the name of the author, acknowledges that even guest houses have often created "huge parking and noise problems", which confirms our concern regarding the same problems he/she mentions.

- 13.5 The email from George Josling mentions that the municipality approved of the home business run by the applicant's mother, and that it was used as a doctor's practice, which I could not find proof of. Mr Josling claims that he has not heard of anyone complaining, as if people will complain to him.
- 13.6 A letter from Dr Miller accused the municipality's decision as ill-advised. Dr Miller is very concerned for the applicant and its mother, but shows no regard for the residence in the immediate vicinity.
- 13.7 The letter from De Klerk MacLennan-Smith Inc Attorneys is written on the applicant's behalf and cannot be considered a letter of support. According to the letter, "more than sufficient on-site parking is and has been provided". There are just five parking places available, according to the application. According to the letter, "approval will help relieve additional traffic and parking required in the CBD". Five parking spaces will have little effect on the CBD, and the parking space on the property will not be sufficient for customers because it will also be used for practitioners, staff and the tenant. Actually, there will only be enough parking for practitioners, personnel and tenant, and clients will have to park on the side of the road. The letter is full of generalizations, lacks content, and is clearly meant for an uninformed readership.

14. In light of these concerns, I strongly urge you to reject this application. The regulations are in place for the benefit of all residents, and the proposed business use of the property will have far-reaching negative consequences for the community.

Thank you for your attention to this matter.

Sincerely,

Peter
PR BOURNE





TP - A Theart
(H Olivier)

ANNEXURE B 208/225

Dr FJ de Villiers
Squareone Property Holdings Pty Ltd
Erf 4148, 325 8th Street
Voëlklip
Hermanus
082 762 1440
aboutpets7@gmail.com
20 April 2023

Mr P Roux (Town Planner)
Your ref.: 5473 HVK
Application ID: 4088/2022
Office of the Director: Infrastructure & Planning
Overstrand Municipality
6 Magnolia Street
HERMANUS
7200

Dear Sir/Madam:

RE: COMMENTS ON APPEAL (ERF 5473 APPLICATION FOR REZONING, CONSENT USE & PERMANENT DEPARTURE)

We hereby object to the application for the removal of restrictive title deed condition, rezoning, consent use and departure of ERF 5473, Hermanus. Our concerns are as follows;

1. As a resident of this community, we am convinced that the proposed use of the property will have a negative impact on the quality of life for those of us who live here. We as owners have the right to peaceful use and enjoyment of our property, and we firmly believe the rezoning will impede on this right.
2. The Zoning regulations are in place to ensure that the community remains balanced and that residents can enjoy a peaceful and comfortable living environment. The rezoning will have the effect of increased flow of traffic and noise pollution in our once peaceful neighbourhood.

20 APR 2023

TP

FILE NO	ERF 5473
	HVK
SCAN NO.	FJ
COLLABORATOR NO.	
	1818750

3. If permission is granted to rezone the property for business use a precedent will be set for further rezoning applications. Although it is stated that rezoning is site specific, the applicant is clearly relying on precedent as grounds for argument.
4. Due to a lack of sufficient parking available on erf 5473, any curb side parking on 17th avenue close to the intersection with 7th street will increase the possibility that inbound traffic turning left into 17th avenue will be obstructed with potential disastrous consequences.
5. We would like to comment on the applicant's appeal but do not intend to deal with each and every point in the appeal and should not be construed as me agreeing with it:
 - 5.1. The applicant stated that his mother used the house as a residence and carried out a home business from this property. Should the owner wish to operate a professional practice from the site whilst living there, he is free to apply for deviation of use. If his mother operated a practice without such concession, she was clearly in the wrong.
 - 5.2. The applicant claims that the business will be "non-intrusive" which is devoid of truth as discussed above. Again, the picture that is painted is not the reality residents in the immediate area will be confronted with should the application succeed.
6. The Central Business District of Hermanus is a mere 5 kilometres away and lots of office space is available. The purpose of the application is solely for financial gain and not as a service to or in the interest of the community.

7. We would like to comment on the "Letters of support from the community":
 - 7.1. The authenticity of most of the letters in support of the application cannot be verified as actual residents because they do not contain any addresses and should be rejected with contempt. The ones that contain addresses are from residents who are not living in the immediate affected area and will not be affected by the devaluation of property, noise, safety concerns and uncertainty on how the erf will develop in the future.
 - 7.2. The writers of these letters are not qualified to come to the conclusion that the residential nature of Voëlklip will not be affected, that the property has sufficient parking available, the property will only be used for professional services, and that no objections were received from 2014 and 2020.
 - 7.3. The letter of support from Albert Hoek supports our worry that there is no assurance that, should the erf be rezoned, it will only be utilised as doctors' offices. In his letter, Mr. Hoek expressed his opposition to having a veterinarian present. To put it another way, he is content if doctors use the building, but anything else must go via him. The residential character of the area is least characterised by the building but rather by what the building is used for.
 - 7.4. Another letter, without even the name of the author, acknowledges that even guest houses have often created "huge parking and noise problems", which confirms our concern regarding the same problems he/she mentions.
 - 7.5. The email from George Josling mentions that the municipality approved of the home business run by the applicant's mother, and that it was used as a doctor's practice, which we could not find proof of. Mr Josling claims that he has not heard of anyone complaining, as if people will complain to him.

- 7.6. A letter from Dr Miller accused the municipality's decision as ill-advised. Dr Miller is very concerned for the applicant and its mother, but shows no regard for the residence in the immediate vicinity.
- 7.7. The letter from De Klerk MacLennan-Smith Inc Attorneys is written on the applicant's behalf and cannot be considered a letter of support. According to the letter, "more than sufficient on site parking is and has been provided". There are just five parking places available, according to the application. According to the letter, "approval will help relieve additional traffic and parking required in the CBD". Five parking spaces will have little effect on the CBD, and the parking space on the property will not be insufficient for customers because it will also be used for practitioners and staff. Actually, there will only be enough parking for practitioners and personnel, and clients will have to park on the side of the road. The letter is full of generalizations, lacks content, and is clearly meant for an uninformed readership.

We urge you to reject this application and urge the applicant to apply for deviation of use should he wish to live and work from this residential property.

Thank you for your attention to this matter.

Sincerely,



Francois Jacques de Villiers

Codrillo

Claudi de Villiers

Alida Conradie

From: Robert Costhuizen <green.gold.wp@gmail.com>
Sent: Thursday, 20 April 2023 20:47
To: Enquiries
Cc: Alida Conradie
Subject: OBJECTION TO APPEAL BY APPLICANT ERF 5473 HVK



To Whom it may concern

TP - A Theart
(HOLLIER)

I have received your letter dated th 27 th of March 2023 and still have reservations and would like to share the following points in this regard namely:

- 1) I would like to make it clear that as a resident of Voelklip , I am totally against any new applications to change properties title deeds to accommodate property owners to change their properties title deeds to run a commercial or home business - state "office only" or changes in any way or form that would allow any property owner on both sides of 7th Street or in any part of the Voelklip residential area to run businesses or sell their properties with business rights;
- 2)Voelklip is a residential area and if a exception is made to grand the owner of ERF 5473 a right to change his title deeds ,more applications will follow as OM have allowed and approved this practise;
- 3)Changing the Title Deeds to state "Offices only" still deviates from the upmarket residential aspect of Voelklip! To have a dead, empty office property which is unoccupied at night, weekends etc creates a cold/clinical atmosphere for nearby residents & the security risk of an unoccupied property.;
- 4)Regarding the statement that Economic Activity will create more job opportunities is unfounded, as it should not be a requisite for a residential area to supply more job opportunities. Residential is what the name implies - for people to inhabit,retire etc;
- 5)The applicant makes the statement "No changes to the building are being proposed". If this statement applies, then why the need to have the building lines lifted on the Southern & Western sides? ;
- 6)Point 7.1 in the Appeal. The resident businesses referred to are all long standing, with unusual location, history or circumstances & their location have few direct residential neighbours.
 - o Lizettes - location in a historical building with limited potential for residential, literally facing a circle on a main road with one potential neighbour & not infringing any building lines.
 - o Caltex - a long standing business, surrounded by access roads.
 - o Baleens Hotel - a Historical business site that was originally a shop for the caravan park.
 - o OK Minimark - positioned with no direct neighbours, an electrical sub station alongside & open land.
 - o Dutchies - totally freestanding with no direct residential properties & virtually only Coastal Reserve around it & a picnic spot behind.;
- 7)Point 7.6 "Land use application is not clear" - neither is the type of business clear "office" is not a very clear indication as to the type of business being conducted, as well as how many people will be conducting business in these offices. To state that the previous Physio practice never caused residents to complain cannot be used as a defining factor that the new offices will function in the same, low key manner.;

20 APR 2023

TP

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FILE NO. ERF 5473 ✓
HVK
SCAN NO. HVK 5473
181.000

ANNEXURE B 213/225

8)The mere fact that the owners for many years were running a business unlawfully on this site ,does not now give them the right to apply forward to get ERF 5473 HVK to be zoned as a business in our residential area of Voelklip....."two wrongs don't make a right" I would like to go as far to point finger at Overstrand Municipality to turn a blind eye in the past when ERF 5473 HVK was run as a Physiotherapist practise for years unlawfully - nobody permanently stayed on this propertyits was run as a commercial business property .

Lastly , I believe the stands in residential Voelklip is all about 495 square meters and we don't need to clutter our beautiful residential area with more density by allowing property owners to re zone and change their title deeds to accommodate more businesses in Voelklip.

No more non-residential activity in the greater Voelklip should be allowed - this is a residential area and there are enough premises that business owners can buy or rent in the CBD /in town.

Kind Regards

Robert Oosthuizen
315,6th Street,Voelklip,Hermanus ,7200

Alida Conradie

TP-A Theart
(Holivier)



From: Estelle Swanepoel <estelleswanepoel1955@gmail.com>
Sent: Tuesday, 18 April 2023 16:19
To: Enquiries
Cc: Alida Conradie
Subject: Objection to Appeal by Applicant ERF 5473 HVK

FILE NO. Erf 5473 ✓
HVK
SCAN NO.
Hvk 5473
COLLABORATOR NO.
1847978

To Whom It May Concern,

I, a resident of Voelklip have read the appeal letter dated 27th March. I still have reservations regarding the proposed application. I have listed certain statements made in the appeal or points, which I believe are of significance.

- Regarding the letters of support from the Community: The letters mostly refer to elderly needing closer medical help, which would be null & void if this property were to be used as any other 'Office'as this is not divulged. In addition, all Medical assistance is near the hospitals, so elderly residents who can't travel this 5Km distance, should be in assisted living and not independently on a property. Secondly, I am sure there were many letters that were NOT supportive, but this is not mentioned.
- Regarding the statement that the property was previously used as a Physio & no complaints had been received of this posing a disturbance. However, there is no guarantee that the 'new' alternative office business will be of a similar neutral impact & by the time that residents in the immediate proximity discover any negative impact, it will be too late.
- The Applicants statement "The property owners contemplated using the property solely for home occupation. However, because the property was fully converted to cater to business needs & the title deed condition was restricting the use, this was not a feasible option" This statement indicates that the property owner never intended the property to be residential, as can be seen from the layout. Other than the flatlet on the side, no one actually lived there as no provision was made for a functional kitchen etc. for home occupation. The onus is not on OM to make allowances to accommodate an illegal building & a business that was actually functioning illegally, in that it was not a 'Home Business'. It is also interesting that the property owner is a Company "de Broeder Investments".
- Changing the Title Deeds to state "Offices only" still deviates from the upmarket residential aspect of Voelklip! To have a dead, empty office property which is unoccupied at night, weekends etc creates a cold/clinical atmosphere for nearby residents & the security risk of an unoccupied property.
- Stating that the property is on the edge of Voelklip & not in the middle of the residential area, does not carry ground for the residential neighbours living on properties adjacent, one of which is also smaller than 500sq m.
- Regarding the statement that Economic Activity will create more job opportunities is unfounded, as it should not be a requisite for a residential area to supply more job opportunities. Residential is what the name implies - for people to inhabit.
- The De Mond caravan park being referred to "as not aligned to the character of Voelklip" is true, however De Mond does not have direct boundary walls with neighbours or small properties such as ERF 5473 does.
- The statement "No changes to the building are being proposed". If this statement applies, then why the need to have the building lines lifted on the Southern & Western sides?
- Point 7.1 in the Appeal. The resident businesses referred to are all long standing, with unusual location, history or circumstances & their location have few direct residential neighbours.
 - Lizettes - a very noisy location in a historical building with limited potential for residential, literally facing a circle on a main road with one potential neighbour & not infringing any building lines.
 - Caltex - a long standing business, surrounded by roads.
 - Baleens Hotel - a Historical business site that was originally a Roadhouse for the caravan park.
 - OK Minimark - positioned with no direct neighbours, an electrical sub station alongside & open land.
 - Dutchies - totally freestanding with no direct residential properties & virtually only Coastal Reserve around it & a picnic spot behind.

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- Point 7.3 It is immaterial if what was meant to be a Local Business Zone was changed to a residential area, as this is what Voelklip should predominantly be.
- Point 7.6 "Land use application is not clear" - neither is the type of business clear "office" is not a very clear indication as to the type of business to be conducted, as well as how many people will be conducting business in these offices. To state that the previous Physio practice never caused residents to complain cannot be used as a defining factor that the new offices will function in the same, low key manner.

I own a property across the road from ERF 5473, and I am not prepared to take the risk of any increased activity around my home. I already deal with the noise from the Main Road, which OM has made no attempt to break the speed of motorists entering and exiting our suburb. In addition I have the noise & nuisance from vehicles & Staff entering & exiting the Cape Nature offices, Working on Fire Staff who often scream & shout in the street outside & the boat & bakkies parked on my pavement at all hours of the early morning & night with staff once again talking in raised voices outside my bedrooms.

NO MORE NON RESIDENTIAL ACTIVITY FOR THIS PART OF VOELKLIP, THANK YOU!!!

Kind regards,
Estelle Swanepoel.

15 Seventeenth Avenue,
Voelklip,
Hermanus
7200

Alida Conradie

TP- A Theart
(H Olivier)

ANNEXURE B 216/225



From: Leonie Vernon <leonie@vernon.co.za>
Sent: Monday, 17 April 2023 10:30
To: Alida Conradie
Subject: OBJECTOR COMMENTS: Re: Erf 5473, Voelklip - Objector to comment on appeal
Attachments: OBJECTOR COMMENTS - Erf 5473 Voelklip Rezoning Application and Appeal - Comments by L Vernon (7th St) 17-4-2023.pdf

Dear Alida

Please find our short letter containing our 'Objector Comments' in response to the Appeal lodged by the Applicant asking for Erf 5473 Voelklip Rezoning of the property. We assume that you will forward his input to the relevant people in the Municipality.

Many thanks for your help

Leonie Vernon
244 7Th St
Voelklip

On Fri, 31 Mar 2023 at 11:57, Alida Conradie <alida@overstrand.gov.za> wrote:

Good day

Attached herewith correspondence for your attention.

Kind Regards

Alida Conradie

Administrator, Town & Spatial Planning Department Overstrand Municipality

A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20

T: 028 313 8900 | F: 028 313 2093 | E: alida@overstrand.gov.za

FILE NO. Erf 5473-HVK
SCAN NO. HVK 5473
COLLABORATOR NO. 1846226

17 APR 2023

To: Office of the Director: Infrastructure Planning, Overstrand Municipality

Attention Mr P Roux, Mr S Müller

File Ref: 5473 HVK

From: Mrs Leonie Vernon, Co-Owner (with her sister) of 244 7th St, Voelklip.

Postal address: L Vernon, SG 423, Val de Vie Estate, Paarl, 7646. Email: leonie@vernon.co.za

Date: April 17th 2023

Dear Sir/Madam

ERF 5473, 13 17th Avenue, Voelklip: Application for Rezoning, Consent Use and Permanent Departure. Overstrand Municipality Decision. Subsequent Appeal: Our Comments on the Appeal.

We note The Municipality's decision, as per your letter to us dated March 6th 2023, to not approve the above application, and then your subsequent letter of March 31st 2023 informing us that the Property Owner is contesting the Municipality's decision and has made motivations around this, which you have provided us with, and that the original decision is now suspended, until the appeal outcome has been finalised.

As a 7th St Voelklip Property Owner, we stand by our original input to the Municipality that the above Application (all components and now Appeal proposals) should NOT be approved, and we make 4 additional comments as follows:

1. It would seem that the Property Owner/Family (of the property erf 5473 with rezoning request) historically chose to make some changes to their property in order to provide an office space and some related upgrades on the property; the decisions to do this would have been done with all their own associated considerations AND the knowledge that the property is zoned Residential. The Property Owner now wants to sell the property and presumably maximise the net sales proceeds by getting it rezoned for Business. The possible intimation that the history of the Property Owner's own decisions should in part motivate that the Municipality should now consider changing the property's zoning to Business would seem to be simply erroneous.
2. Noted: The fact that the Municipality has 'rescinded' (?) the OGMS, which therefore means it can currently only (?) be used as some level of guidance – in this case for any possible Commercial Property zoning guidance, plus the fact that a suggested area in the OGMS for possibly some Commercial Zoning in Voelklip is now likely to be unavailable (??) due to a possible Residential development. Surely then the Municipality has a position on whether there is any other area in Voelklip that could be considered for Commercial Zoning? Until the Municipality has a position on this, then we suggest that - for now - Residential Zoned Properties in RESIDENTIAL AREAS properties (like the property in question here) should remain Residential Zoned – unless a major and very compelling case for rezoning exists, which we do not see to be the case here.

3. Precedent and Consistency. Noted that Rezoning Applications are reviewed on a site-specific basis; but there is also no doubt that the Residents / the Community in an area commonly take note of situations where and when a Rezoning Change is approved. Technically whilst not setting a 'precedent' per se, the decisions are often seen as some possible indication of what potentially might be considered or even approved if other similar applications are made. Municipalities generally try to be consistent in their decision making on Rezoning. if the above Application was to be approved, one can guess that over a few years or so another 5, 10 or more (?) Owners might consider bringing forward similar rezoning motivations.
4. 7th St, Voelklip is a Residential Zoned area. If one looks at how areas in small towns in South Africa evolve from Residential to having some Commercial areas, it is sometimes done along its main road and happens over a number of years, initially with 1 or 2 properties becoming Commercial before property conversion gathers momentum along the whole road. If the Municipality wants to do this with 7th St Voelklip (perish the thought), this obviously has to be well thought through, taking time to do so, and avoiding any rushed interim ad-hoc zoning change decisions, like for the Application in question here.

In summary, our view is that there is no overwhelming reason to change Erf 5473 to a Commercial Zoning (of any sub-type). On the contrary, doing so would set a significant 'precedent' for 7th St, Voelklip which should be avoided for many reasons, some of which are indicated above.

As the Overberg Municipality states in its original decision on this Application: "***The proposed use of the property is in stark contrast to the residential character of the area.***" This comment should apply to any type of Commercial Property, including Offices as the per the Application in question.

Thank you sincerely for your consideration of this input on the matter.



Mrs Leonie Vernon

Van: Prof SJ Scott
10 de Straat 5
Voëlklip
Hermanus



5 April 2023

TP. n./hoed
(S. Müller)

Aan: Mnr S Müller
Direkteur Infrastruktuur en Beplanning
Insake appèl Erf 5473, Voëlklip

Geagte mnr Müller

Aangeheg vind u my antwoord op die argumente van die appellant in die aangeleentheid. U is welkom om van die inligting in die stuk gebruik te maak, maar ek dring daarop aan dat my identiteit en die perseel waarvan ek eienaar is, vertroulik behandel sal word.

Ek vertrou dat hierdie aangeleentheid die sorgvuldige oorweging sal geniet wat dit verdien.

Die uwe
Prof Susan Scott (BA LLB LLD)
Spesialis Navorsingskonsultant (REGTE)

PS Ek voeg my kwalifikasies by aangesien sommige van die briëfskrywers ter ondersteuning van die appèl skynbaar onder die indruk verkeer dat dit dalk 'n rol mag speel – dit is nie my gewoonte nie.

FILE NO.	SF 5473
	LJK
SCAN NO.	
COLLABORATOR NO.	1843524

- 6 APR 2023

TP

VERTROULIK

Mnr S Müller
Direkteur Infrastruktuur en Beplanning

Geagte Mnr Müller

Ek het die inligting ontvang oor die appèl teen die Munisipale Beplanningstribunaal se besluit om die aansoek ten opsigte van Erf 5473, Voëlklip, af te wys. Ek was een van die beswaarmakers (in my hoedanigheid as eienaar in die betrokke woonbuurt en dus reghebbende ingevolge die sonering¹ van die woonbuurt) teen die hersonering en is nog steeds daarteen. Ek het nie tyd om 'n behoorlike regsopinie oor die aangeleentheid te skryf nie, maar wil op enkele punte wys wat die tribunaal by die beoordeling van die appèl moet oorweeg.

Ek is sedert 1978 eienaar van my eiendom in Voëlklip (10 de Straat 54, Voëlklip). Hierdie eiendom is aan die oorkant van 'n perseel wat vir besigheidsdoeleindes gesoneer was. Gedurende hierdie periode is Wikke se negosiewinkel daar bedryf; Heinie se *Steakhouse*, 'n Italiaanse Restaurant; 'n "striplklub"; 'n biljarkamer en kroeg en laastens 'n "kunslokaal". Die oorlas wat ons as bure moes deurstaan was van wisselende aard. Die ergste was die biljarkamer en kroeg wat my genoop het om 'n aansoek aan die drankraad te rig ten einde die dranklisensie weg te laat neem, wat na 'n sitting in Kaapstad inderdaad ook gebeur het. Die oorlas wat die "kunslokaal" veroorsaak het, het gewissel van oorskrydings op die sypaadjie; die ongemagtigde bediening van kos; die gebruik van dagga en ander middels en algemene slordigheid. In my poging om hierdie probleme op te los, het ek weinig steun van die munisipaliteit geniet. Gelukkig het 'n welgestelde weldoener die eiendom gekoop en dit is hersoneer vir woondoeleindes. Waarom die lang relaas oor die verlede? Dit gaan oor voorskrifte van die wet, regulasies en verordeninge.

My versoek is dat die tribunaal in hulle oorweging van die appèl, hulle nie aan emosionele;² ekonomiese³ en ander sosiale⁴ argumente sal steun nie, maar die landswette, regulasies en reëls sal toepas. Oor die jare het al baie vreemde dinge in Hermanus gebeur ten opsigte van die toepassing van die reg op vele terreine.

Ek het die appellante se besware teen die bevinding van die tribunaal en dié van die beswaarmakers⁵ teen die bevinding gelees. Ek het nie tyd om 'n behoorlike regsmening oor die aangeleentheid te skryf nie, dit is in elk geval die tribunaal se plig om 'n onafhanklike regsmening oor die aangeleentheid te kry en dan diensooreenkomstig te besluit. Ek beperk my dus tot enkele aspekte van die huidige appèl en in 'n mindere mate die ondersteunende briewe.

Alhoewel dit nie duidelik uit die stukke blyk nie, wil dit voorkom of sekere optredes van die appellante alreeds onregmatig⁶ was. Die appellante vra vir verligting van die boubeperkings ten aansien van die grense. Appellante toon aan dat die reedsbestaande oorskrydings "onwetend" plaasgevind het.⁷ Hoe so? Wat ook nie duidelik is nie, is of die perseel tydens die bedryf van

¹ Oor die betekenis en belang van sondering, sien Van Wyk, *J LAWSATownships and Town Planning* (2nd ed 2012) par 157.

² Bv die klem wat gelê word op die behoefte van ouer mense in die gemeenskap (Voëlklip) om die dienste van dokters, advokate (?) veeartse, fisioterapeute, en so meer op hulle voorstoep te hê.

³ Die uitgawes deur die appellante aangegaan en die feit dat hy nie nou 'n goeie prys vir sy huis kan kry nie, sien die aanhalings hieronder na die standpunt van die howe in dié verband.

⁴ Die verwysing na maontlike werkskepping is redelik belaglik in die lig van die maontlikhede wat voorsien word ingevolge die voorgestelde hersonering.

⁵ Wat hoofsaaklik op emosionele argumente geskoei is.

⁶ Oortreding van die gebruiksvoorwaardes van sonering is nie alleen onregmatig nie, maar ook strafbaar.

⁷ Sien die howe se standpunt oor onkunde van die oortreder hieronder.

die fisioterapeut praktyk as 'n "home occupation"⁸ regmatig gebruik was. Wie het in die huis gewoon en is aan al die ander vereistes vir sodanige gebruik voldoen? Wat is die posisie ten aansien van die "woonstel"? Was daar goedkeuring vir die bou daarvan en was dit binne die reëls? Indien nie aan hierdie vereistes voldoen is nie, toon die appelland dat hy nie besondere respek vir die reg het nie.

Die volgende stelling verdien verdere belgting:

"As mentioned, several times within the land use application, it was mentioned that the property owner only has a vision to only allow offices to be operated on the subject property as it has been done in the past (physiotherapy practice)."

Die bedoeling van die huidige eienaar ten opsigte van wat hy beoog is irrelevant. Die sonering sal bepaal wat op die perseel mag gebeur en wat nie. Die regte van bure⁹ en ander inwoners van die woonbuurt word daardeur geraak en daarom moet die besluit op regsgronde geneem word. Die voorgestelde redelik ingrypende verandering van die beperkende voorwaardes (*restrictive conditions*)¹⁰ om "office use" in te sluit, verdien deeglike ondersoek en kan nie so ligtelik afgemaak word soos die appelland poog nie. Dit raak die belange van al die inwoners, want soneringsvoorwaardes is in belang van al die inwoners.¹¹

Die volgende argument val vreemd op die oor:

"The proposed office usage on the property is in line with typical home occupation enterprises, which are compatible with residential areas. It is important to note that this proposal should not be classified as a typical commercial property since it is solely being proposed to have office space and does not entail any other business activities. Therefore, it would be inaccurate to categorize this proposal as a (sic) standard business premises. It is worth mentioning that the proposed office usage adheres to all the guidelines and regulations of home occupation enterprises except for the size and number of employees.¹² Such guidelines allow for limited, non-intrusive¹³ business activities to be conducted in a residential setting. This proposal, in particular, proposes a larger¹⁴ office footprint and an increase in the number of employees, which are still within the reasonable limits of a home occupation enterprise.¹⁵ The GLA (Gross Leasable Area) is limited to the number of parking available on the property, which is currently at its maximum. Therefore, it is imperative that this proposal is not misconstrued as a conventional business establishment. Instead, it should rather be evaluated based on its compliance with home occupation enterprise regulations and be considered accordingly¹⁶."

Na my mening kan die eiendom, soos enige ander eiendom, ingevolge *home occupation* gebruik word. Dit ondervang ook die oordrewe emosionele argumente ten aansien van die behoefte van die "ouer mense" in die woonbuurt om nader aan dokters, advokate (sic) en fisioterapeute te wees. Al hierdie persone aan wie se dienste daar so nodig in Voëlklip 'n behoefte is, kan hierdie dienste uitoefen vanuit hulle woonhuise.

Nog 'n stelling wat aanvegbaar is, is die volgende:

"Additionally, as indicated in the response to objections, the proposal cannot create a precedent, as town planning is (a) site specific process and the notion that if the rezoning of one property is approved it is not enough to motivate the approval of the rezoning of another property. Each application is evaluated individually and site specific and considered if desirable

⁸ "home occupation" means the practising of a non-residential use conducted from a dwelling provided that the dominant use of the dwelling concerned shall remain the accommodation of a single family, provided that the use and property complies with the requirements contained in this land use scheme for home occupation; ..."

⁹ Sien my bespreking hieronder oor die posisie van die bure.

¹⁰ Sodanige voorwaardes het 'n eiesoortige karakter en verskil van titelvoorwaardes (title conditions, sien Van Wyk LAWSA hierbo par 161. Die stadsbeplanners kan gerus ook hieraan aandag gee.

¹¹ Sien my bespreking van die regsposisie hieronder.

¹² Met ander woorde, 'n taamlike uitbreiding sonder beperkings.

¹³ Op wie se skouers sal dit val om hierdie vae beskrywing af te dwing?

¹⁴ Groter as wat? Dit is van kardinale belang.

¹⁵ Waarom dan nie maar bly by die *home occupation* enterprise nie?

¹⁶ Wat beteken dit?

to approve the rezoning.¹⁷ The Overstrand Municipality cannot be forced to approve a rezoning application just because Erf 5473 Hermanus, was rezoned. The municipality is required to consider factors that may influence their consideration of the proposed rezoning."

Ek weet nie presies wat met "site-specific process" bedoel word nie en vind die uitdrukking ook nie in die regliteratuur oor dorpsbeplanning nie, maar dit verwys waarskynlik na die feit dat 'n aansoek in elke geval met verwysing na die betrokke perseel beoordeel moet word. Dit moet natuurlik binne die raamwerk van die reg gebeur.

'n Dorpsbeplanningsbeginsel wat wel bestaan, is dat "[p]lanning must pursue and serve the interests of the public to benefit the present and future generations."¹⁸ Die uitleg van appellant oor die betekenis van 'n presedent is ook onduidelik: as 1/20/100 nuwe aansoekers onder dieselfde omstandighede vir hersonering aansoek doen, kan hulle op die besluit van die tribunaal in dié besondere geval steun. Dit is wat gelykheid voor die reg beteken en 'n beginsel wat ook in die Grondwet, 1996 beskerm word.

'n Interessante ander argument is die volgende:

"As stated in the motivation report, the property owner's mother had been running a physiotherapy practice on the property for over eight years without any complaints, even though it is noted the practice was not operated within the scope of a home occupation. The application clearly specifies that only an office is being applied for, which is a professional¹⁹ type of development and is not considered to be desirable and not a nuisance land use."

Die argument is interessant want dit is 'n erkenning dat die perseel onregmatig gebruik is en nie in die omskrywing van 'n *home occupation* gebruik val nie. Ek vind die argument dat die eienaar se moeder die perseel vir 8 jaar (onregmatig) bedryf het en dat daar geen klagtes was nie, ook vreemd. Dit maak nie die onregmatige gebruik wettig nie. Dit is ook geen bewys dat toekomstige kantoor gebruik ook geen probleme gaan veroorsaak nie.

Die oënskynlik tegemoetkomende argument dat daar nie vir opheffing van 'n titelvoorwaarde (beperkende voorwaarde) gevra word nie, maar net vir 'n wysiging bevredig nie. Aansoek vir opheffing is in elk geval 'n veel moeiliker proses, dit is met ander woorde nie 'n tegemoetkoming aan die kant van die appellant nie. Al word die omskrywing van "office" aanvaar as basis vir die wysiging,²⁰ maak dit die wese van die aansoek nie meer aanvaarbaar nie. Uit die omskrywing is dit duidelik dat dit veel verder sal gaan as die "typical home occupation" gebruik. Dit verander die gebruik van die perseel ingrypend. Ek mag enkele moontlike praktiese nadele noem van 'n hersonering van *home occupation* na *offices*: as daar niemand op die perseel woon nie en daar ontstaan 'n brand of die alarm gaan af en niemand kom kyk nie, sit die bure met die sak patats. Die hoeveelheid mense wat hulle pligte op die perseel mag verrig is nie beperk nie. Die toeloop van besoekers aan die kantore en hulle motors wat waarskynlik van die sypaadjie vir parkering gebruik sal moet maak. Die perseel is op 'n hoek waar daar 'n stopteken is wat toegang na 'n hoofroete verskaf – moontlike blokkering van die uitsig?

Nog 'n verbasende argument en erkenning wat geen gewig dra nie, is die volgende:

¹⁷ Enige regs gesag vir hierdie vae stelling?

¹⁸ Van Wyk LAWSA hierbo par 60 en 294.

¹⁹ Wat word alles onder "professional" verstaan – uitleg probleem.

²⁰ "office" means property used for conducting an enterprise primarily concerned with administrative, clerical, financial or professional duties and includes medical consulting rooms; ... Let daarop dat daar in hierdie omskrywing nie 'n beperking is van die getal mense en kantore wat op so 'n perseel mag wees nie en die omskrywing is ook wyer om administrative, clerical, [or] financial duties in te sluit.

"The property owners are attempting to sell the property and since the property is improved as an office, it however does not have the rights to operate as one,²¹ the property is not selling.²² Until such time, it is not known what proposed business will be run on the property. It is however being proposed to be limited to only an office as defined by the OMLUS. If required, it can also be registered in the title deed as restrictive condition."²³

Ten aansien van die eienaars se moontlike finansiële verlies kan, alhoewel in 'n ander konteks, hier na die volgende uittalings van die hof verwys word: *Shilane v Ten Napel and Others: In re: Ten Napel and Another v Ekurhuleni Metropolitan Municipality and Another*²⁴:

"The fact that the appellant persisted with the erection of the offending building even when he knew it was an illegal structure weighed heavily with the learned Judge.²⁵ The courts should not permit landowners to erect illegal structures on their land and then present the authorities with a *fait accompli* created by their illegal actions. The *dictum* by Harms J (as he then was) in *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council*²⁶ is apposite:

'...a lenient approach could be an open invitation to members of the public to follow the course adopted by the appellant, namely to use land illegally with a hope that the use will be legalised in due course, and, pending finalisation, the illegal use would be protected.'

Die eienaars se verlies vanweë hulle onregmatige optrede kan tog nie 'n argument wees waarom sodanige optrede *ex post facto* gesanksioneer moet word nie.²⁷ Die sin

²¹ Met ander woorde daar word erken dat dit onregmatig verander is.

²² *Ten Napel and Another v Ekurhuleni Metropolitan Municipality and Others* (44339/2020) [2021] ZAGPJHC 566 (30 September 2021) par [46]: "Against this I must weigh the fact that the respondent has invested approximately R800 000 of his pension pay-out in the development. Unfortunately, this wasted investment occurred as a result of the failure of the respondent to follow the law. It appears that he has taken the position that it is easier to ask for forgiveness than for permission. For this reason, he continued building works in the face of notices to stop construction and continued to build even after he had agreed with the Municipality that he would not do so."

²³ Wat beoog die appellant, slegs 'n wysiging van die beperkende voorwaardes om voorsiening te maak vir kantoorgebruik en ook 'n verdere omskrywing wat met kantoorgebruik bedoel sal word? Hier verwar die appellant voorts ook 'n titelvoorwaarde en 'n beperkende voorwaarde wat verskillend hanteer word.

²⁴ (A5017/2022) [2022] ZAGPJHC 913 (17 November 2022) par [30].

²⁵ Sien par [39] en [46] van *Ten Napel and Another v Ekurhuleni Metropolitan Municipality and Others* hierbo.

²⁶ 1987 (4) SA 343 (T) 348I-J.

²⁷ Interessantheidshalwe kan hier verwys word na die volgende onlangse uitsprake ingevolge waarvan eienaars wat onregmatig opgetree het drastiese hofbevele teen hulle gekry het: *Ten Napel and Another v Ekurhuleni Metropolitan Municipality and Others* (44339/2020) [2021] ZAGPJHC 566 (30 September 2021); *Shilane v Ten Napel and Others: In re: Ten Napel and Another v Ekurhuleni Metropolitan Municipality and Another* (A5017/2022) [2022] ZAGPJHC 913 (17 November 2022). Sowel die appellant (en sy adviseurs), as die munisipaliteit sal wys wees om die uitspraak in *Waenhuiskrans Arniston Ratepayers Association and Another v Verreweide Eiendomsontwikkeling (Edms) Bpk and Others* ((1926/2008) [2009] ZAWCHC 181; 2011 (3) SA 434 (WCC) (19 November 2009) veral par 126;135;136 en 158) te bestudeer. Daar kan veral kennis geneem word van die ingrypende hofbevele wat in daardie uitspraak gedoen is. Die koste vir die onregmatige litigant is ook nie in ag geneem nie.

("Until such time, it is not known what proposed business will be run on the property. It is however being proposed to be limited to only an office as defined by the OMLUS") is moeilik te verstaan. Verwys die "until such time" na die moontlike hersonering? Verder gee die eienaar toe dat die toekomstig gebruik onseker is, 'n toewyding wat in stryd is met sy vroeëre stelling dat "the property owner only has a vision to only allow offices to be operated on the subject property as it has been done in the past (physiotherapy practice)."

Die appellant verskaf verdere motivering ter ondersteuning van die aansoek vir hersonering: "The applicant has the vision to sell the property with a business zoning due to the history of the use of the building.²⁸ The building has over the years been altered to accommodate a physiotherapy practice and it would be illogical²⁹ and costly³⁰ to convert the property back into a dwelling house. The property was completely utilised for business purposes (except for the single bedroom flatlet). The entire building was renovated and converted to accommodate the physiotherapy practice. It is clear that the property owner has uplifted the entire area by renovating the building."³¹

Hier vind ons weer eens erkenning van onregmatige gebruik en vra die appellant sanksionering vir sy onregmatige gebruik van die perseel in stryd met die regsposisie hierbo uiteengesit.

Die appellant se poging om die munisipale stadsbeplanner se argument dat Voëlklip "purely" 'n residensiële woongebied is, te weerlê met verwysing na die bestaande besighede wat volgens my almal (behalwe Greeff *Properties*) bestaande besighede op besigheidserwe is, dra min, indien enige, gewig. Met die woord "purely" wou hy waarskynlik te kenne gee dat dit oorwegend 'n residensiële woonbuurt is, en nie 'n gemengde buurt nie. Teen die appellant se verwysing na verskeie bestaande *home occupation* gebruike kan nie beswaar ingebring word nie, mits hulle aan die vereistes van die wet voldoen en dit is die munisipaliteit se plig om dit te verseker.

Nêrens in die aansoek word enigsins verwys na die belange van die bure en ander inwoners van die woongebied nie. Hierdie belange is volgens gevestigde regspraak van kardinale belang.³² Indien hierdie appél slaag en die bure ondervind probleme met die nie-inwonende kantoorgebruikers en hulle moet hulle regte in die hof probeer afdwing, plaas dit 'n las op hulle eiendomsreg waarteen die munisipaliteit hulle moes beskerm. Ignorering van die bure se regte is in stryd met die beginsels van sowel dorpsbeplanning (sonering) as by die opheffing van titelvoorwaardes.³³

²⁸ Sien die aanhaling van AR Harms hierbo by vn 24.

²⁹ Waarom sal dit onlogies wees? Die appellant negeer die woorde van AR Harms hierbo aangehaal.

³⁰ Sien die aanhalings uit hofuitsprake hierbo wat presies die teenoorgestelde standpunt inneem.

³¹ Geen argument nie want hy het dit onregmatig gedoen.

³² Sien bespreking hierbo.

³³ Sien die uitgebreide uiteensetting hiervan in *Rossmaur Mansions (Pty) Ltd v Briley Court (Pty) Ltd* 1945 AD 217 228, veral die volgende *ratio decidendi*: "Any variation of such conditions in the case of any particular lot therefore involve interference with the rights of holders of neighbouring lots, and seriously affect the amenities of such lots, and their value. The power to 'administer' a township cannot entitle the authority to which such power is entrusted to deprive lotholders of rights thus conferred by the titles on which their their lots are held."

'n Verdere oorweging vir die munisipaliteit is die moontlikheid dat indien hul (statutêre) beskermingsplig³⁴ nie nougeset nagekom word nie, dit die deur oopmaak vir litigasie³⁵ (nie alleen in die vorm van interdikte en nader bevele met koste teen die munisipaliteit), maar ook siviele eise deur omliggende grondeienaars wie se eiendomswaarde nadelig geraak mag word deur handelsbedrywighede op die perseel wat volgens die beperkende voorwaardes nie daarvoor bedoel was nie. Sodanige moontlike waardevermindering mag die voorwerp word van 'n deliktuele vordering weens die veroorsaking van suiwer ekonomiese verlies, 'n eisoorzaak wat algaande meer sy kop in ons howe uitsteek.³⁶

Die appellant (of sy adviseurs) kan gerus ook kennis neem van die volgende beginsels van stadsbeplanning:³⁷

"Legal principles

"[11] It is 'of the essence of a town-planning scheme that it is conceived in the general interests of the community'³⁸

[12] The importance of the rights which these restrictive conditions create in favour of other landowners, has been dealt with by the SCA in *Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others*.³⁹ The court stated as follows:

'Restrictive conditions of the kind in question inure for the benefit of all other erven in a township, unless there are indications to the contrary. They are inserted for the public benefit and, in general terms, to preserve the essential character of a township'.⁴⁰

Ek vertrou dat daar aan die regsargumente wat ek onder u aandag gebring het die nodige aandag bestee sal word; dat besluite nie op emosionele gronde, maar op regsbeginsele geneem sal word met die nodige aandag aan u rol in die afdwing van regsbeginsele.

Prof Susan Scott (BA LLB LLD)

4 April 2023

Spesialis Navorsingskonsultant (REGTE)

³⁴ Sien in dié verband al die uitsprake wat in *Investec Property (Pty) Limited v China City Limpopo (Pty) Limited and Others* (2168/2020) [2020] ZALMPPHC 35 (19 June 2020) par [25] – [28] aangehaal word.

³⁵ Sien veral die uitspraak in *Waenhuiskrans Arniston Ratepayers Association and Another v Verreweide Eiendomsontwikkeling (Edms) Bpk and Others* ((1926/2008) [2009] ZAWCHC 181; 2011 (3) SA 434 (WCC) (19 November 2009).

³⁶ Sien in die algemeen Neethling, J en JM Potgieter *The Law of Delict* (2020) 349 ev.

³⁷ Soos uiteengesit in *Ten Napel and Another v Ekurhuleni Metropolitan Municipality and Others* (44339/2020) [2021] ZAGPJHC 566 (30 September 2021) par [11-12].

³⁸ *The Administrator, Transvaal and The Firs Investments (Pty) Ltd v Johannesburg City Council* 1971 (1) SA 56 (A) op 70D.

³⁹ 2011 (4) SA 149 (SCA).

⁴⁰ *Ibid* par [37].