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REMAINDER ERF 1294, 215 PIET RETIEF CRESCENT, SANDBAAI, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS PLANACTIVE ON BEHALF OF P JOUBERT, CM JOUBERT AND NJ JOUBERT

1294 HSB (3707)

H van der Stoep

1 February 2018

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 7 June 2017 from Messrs PlanActive on behalf of Messrs P Joubert, CM Joubert and NJ Joubert on Remainder Erf 1294, Sandbaai for an application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 (By-Law) for the removal of restrictive title deed conditions C.2.(a), C.2.(c), and C.2.(d) as contained in Title Deed No. T7855/2012 applicable to the above property in order to enable the owners to construct a second dwelling unit on the property, as well as to be in line with the primary rights and development rules applicable to single residential properties as set out in the Zoning Scheme Regulations of the Municipality.

The restrictive conditions C.2.(a), C.2.(c), and C.2.(d) contained in Title Deed T7855/2012 to be removed read as follows:

- ❖ Condition C.2.(a): *“Dat die hierbokeskrye grond gebruik sal word slegs vir woondoeleindes”.*
- ❖ Condition C.2.(c): *“Dat nie meer dan een woonhuis met die nodige buitegeboue en benodighede opgerig sal word op enigeen van die bogemelde erwe nie en dat nie meer dan helfte van die oppervlakte van elke erf behou sal word.”*
- ❖ Condition C.2.(d): *“Dat geen gebou op enigeen van die bogenoemde erwe binne 15 voet (4.72m) van enige grenslyn tussen gemelde erf en enige straat buite die land waaraan sulke erf grens, opgerig sal word nie; genoemde ruimte mag gebruik word vir tuinery maar sal nie op gebou word nie.”*

The Locality Plan is attached as Annexure A and the Motivation Report from the applicant in support of the application is attached as Annexure B. The Title Deed is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf measures 713m² and is the remaining extent of the subdivision of the property during 1998. It is located in the residential area of Sandbaai. There is a small structure situated close to the south western corner of the site that existed on the mother property before subdivision. At that time it was an outbuilding, but has in the meantime illegally been converted for habitable purposes. Other than the latter structure, no formal residential development occurs on the property.

4. SUMMARY OF APPLICANT'S MOTIVATION

The main points of motivation are conveyed as follows (the detailed report is attached as Annexure B):

- The owners intend to develop the property and also erect a second dwelling on the erf in the future. The applicable Title Deed restricts the property to one (1) dwelling only. Because the owners have to remove the restrictive condition, application is simultaneously made to have the other restrictive conditions removed which are more restrictive than the current land use rights and development parameters prescribed in the Overstrand Municipality Zoning Scheme.
- The property is situated in a predominantly residential area in close proximity to the coast.
- Surrounding properties are zoned for single residential purposes and are being used as such. There are also a number of tourist accommodation establishments in the area such as the Sandbaai Country House, Ocean Song Self Catering and the Schulphoek Country House.
- There is a small structure that is $\pm 50\text{m}^2$ in extent situated in the south western corner of the site. This structure will be partially demolished to comply with the rear boundary line and will either be incorporated in the design of the new dwelling or it will be utilised as an outbuilding. The existing structure will comply with the current 2m lateral and 2m rear building lines.
- Land uses that surround the property are single dwellings, vacant erven, tourist accommodation establishments, public roads and public open spaces. It is therefore evident that the property is within a predominantly residential area.
- It is the intention of the owners to develop the property within the current land use rights as prescribed in the Overstrand Municipality Zoning Scheme Regulations that includes a second dwelling unit. In order to do so it requires the removal of the restrictive Title Deed conditions that is more restrictive than the Overstrand Municipality Zoning Scheme Regulations.
- The reasons to have the Title Deed restrictions removed are mainly to give the owners the opportunity to utilise the property to its fullest potential in terms of the primary land use rights and development rules under the current zoning of Residential Zone 1.
- It is not proposed that to depart from any land use restrictions or development rules as prescribed in the Overstrand Municipality Zoning Scheme, under a Residential Zone 1 zoning.
- The exact position of the access point to the property will be confirmed with a building plan submission, when the new owners intend to build.
- Due to the fact that the property is within an already developed residential area municipal services already exist to which the property can connect to. Application is not made for any additional land use rights, but to have the restrictive Title Deed conditions removed in order to utilise the property as prescribed in the Overstrand Municipality Zoning Scheme Regulations. Because no change of land use by means of a rezoning or consent use or creating additional erven are applied for, the current services provided to the property will be sufficient.
- In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for residential purposes. The residential zoning of the subject property will be retained.
- With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 3 that consists mainly of Sandbaai's single

residential erven. No densification of this planning unit is proposed. The proposed application for the removal of restrictive Title Deed conditions is in line with the proposals of the Overstrand Wide Spatial Development Framework and the Overstrand Growth Management Strategy. It is therefore the opinion that the proposed removal of the restrictive Title Deed conditions can be supported and that the proposal is also in line with the current land use trends for the area.

- The property is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).
- The property is not associated with any important persons or groups or important events and activities.
- The subject property has no association with the history of slavery and is not used for living heritage.
- The proposed removal of restrictive conditions does not trigger any listed activities in terms of the National Environmental Management Act 1998 (Act no. 107 of 1998) (NEMA).

The applicant further elaborates on Planning Principles. It is the opinion that the latter needs not be conveyed, since it is regarded as not having a significant, if any, relevance to this application – the points can however be viewed in the detailed Motivation Report attached to this submission.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	Yes	24 August 2017	29 September 2017
Gazette	Yes	25 August 2017	29 September 2017
Notices	Yes	21 August 2017	29 September 2017
Ward councillor	Yes	21 August 2017	29 September 2017
Total comments	TWO (2)		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 45- 49 of the Proposed Draft By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments	Recommendation
Ward Councillor	22/08/17	No comment.	Positive
Engineering Services	12/09/17	Attached as Annexure F.	Positive
Fire Services	03/10/17	No objection provided that all development is in compliance with National Fire Protection Regulations SANS10400T:2011.	Positive

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Two (2) legal objections were received that can be summarized as follows:

Palm Trust (Erf 1806, Sandbaai)

The main points of objection are conveyed as follows:

- ❖ Objector supports the removal of the condition that refers to the street building line from 4,72m to 4m, as well as the lateral building line relaxations from 4,72m to 2m between Erven 1294 and 64, Sandbaai, but not the relaxation of the building line between Erven 1294 and 68, Sandbaai.
- ❖ With regards to the boundary adjoining Erf 68, the 4,72m may not be changed to less than 3,35m. This is qualified due to the fact that electrical supply to properties in Kusweg is routed along this boundary and from the electrical kiosk located in Piet Retief Crescent. The Palm Trust requests servitude along this boundary to ensure a continuous electrical supply and to avoid damage to the cable due to building construction.
- ❖ The 4,72m waiver between Erven 1294 and 1806 is not granted. This is qualified due to the fact that Erf 1294 is developed with a dwelling of approximately 50m². The dwelling has a bathroom with a geyser, toilet and open plan living area with kitchen. This dwelling has a sewerage tank within the 4,72m building line of Erf 1806. This dwelling has an approximate footprint of 120m². This again is qualified due to the fact that the dwelling is occupied with the occupant making use of this area to park a vehicle. A 3,5m building boundary should apply. This is to accommodate access by a private vehicle and the municipal sewerage tanker to have access to the rear of the property.
- ❖ The request to erect a dwelling on Erf 1294 and another at a later stage is unreasonable and not supported due to the fact that there is a dwelling on the property already. Only one (1) new dwelling is supported by the Palm Trust. The Title Deed ruling in this regard is thus to be upheld as is. Attention is drawn to the municipal requirement for sewerage for each dwelling. Erf 1294 will thus have three (3) sewerage tanks. Over population of the property shall have sewerage capacity problems. A small bore sewerage pipe is located through Erven 64 and 63 and flows down to Kusweg. The electrical supply from the kiosk in Piet Retief Crescent to Erf 1294 could be problematic due to a large draw of electricity which will cause the circuit breakers to trip and consequently

the power failure at other dwellings in the vicinity causing material loss and also causing unnecessary financial expense to the Municipality to rectify.

- ❖ By allowing over population of dwellings on Erf 1294 could set a precedent for other property holders in the Overstrand who will insist on similar treatment to alter title deeds as they find fit.

SJ Thompson (Erf 67, Sandbaai)

The main points of objection are conveyed as follows:

- ❖ The vast majority of residents in the area adhere to the single residential zoning and one (1) dwelling per erf. This adds to the character of Sandbaai and gives the area a village atmosphere. Should the erf be rezoned to allow two (2) dwellings it will set a precedent and indeed could open the doors to further multiple units. One only has to look at developments along Hermanus central sea front and Cape Town city bowl, Seapoint, etc. allowing high rise blocks to be erected. It is not in the interest of residents in Sandbaai to support the application as it will be in no way being advantageous to our area.
- ❖ You are aware that there is an existing “storeroom”, etc. on the property which appears to be habitable as it is currently tenanted. In the motivation it is indicated that it will form part of one (1) dwelling which seems to imply that one (1) dwelling will be directly on the boundary. The Title Deed states one (1) dwelling with necessary outbuildings and that no building may be erected within 15 feet of the boundary lines. This point is of particular importance as it is obvious that the clients need this to be revised in order to exploit the other primary land use rights to use the land to its fullest potential. This will obviously be very detrimental to the neighbours, both in terms of light and also bulk and height. There is no doubt that this is only in the interest of the applicants with no consideration of the adverse effects to the neighbourhood and Sandbaai in general.

8. SUMMARY OF APPLICANT’S REPLY TO COMMENTS

The applicant’s comments on the objections are summarised as follows:

Palm Trust (Erf 1806, Sandbaai)

- ❖ The objector supports the removal of the condition that refers to the street building line from 4,72m to 4m. He further supports lateral building line relaxations from 4,72m to 2m between Erven 1294 and 64, Sandbaai, but not the relaxation of the building line between Erven 1294 and 68, Sandbaai. Cognisance must be taken that the relevant restrictive Title Deed condition only relates to a street building line and is not applicable to side and rear building lines. This point of objection is therefore irrelevant to the application. The standard building lines prescribed under a zoning of Residential Zone 1 in terms of the Overstrand Municipality will be applicable to the future development of the site.
- ❖ The owners of Erf 1294, Sandbaai are aware of the location of the electrical cable. This cable falls within the applicable 2m building line. Application is not made to have the 2m lateral building line relaxed thus providing more than enough space to safeguard the electrical cable. The objector is not in a position to impose more restrictive building lines than what currently applies. It is further

also acceptable to park motor vehicles on-site within building lines, and is not restricted in terms of the Overstrand Municipality Zoning Scheme.

- ❖ Application is not made for a building line relaxation on the rear building line as the objector mentions. The 4,72m building line referred to by the objector as a rear building line, is incorrect because the 4,72m building line referred to in the Title Deed only applies to street building lines and not lateral and rear building lines. The standard 2m rear building lines referred to in the Zoning Scheme applies and the objector cannot impose more restrictive Title Deed conditions.
- ❖ As mentioned in the motivation report, no applications for any building line relaxations as prescribed in the Zoning Scheme are applied for. Once the application for the removal of restrictions is approved, the owners of Erf 1294 will submit building plans for a new dwelling. The existing building will either be totally demolished or partially incorporated in the new dwelling. If the building is incorporated in the new dwelling the section that encroach the rear building line will be demolished up to the 2m rear building line. It is the intention of the owners to later build a second dwelling on the subject erf that will be in line with the land use restrictions applicable and all building lines will be adhered to.
- ❖ The owner will also ensure that with the design of the new dwellings, enough on-site parking will be provided for. The Overstrand Municipality Zoning Scheme makes provision for second dwellings as a primary right in order to promote densification. Only two (2) dwellings are permitted on an erf of which one (1) may not exceed 120m² in floor space. Subsequently over population will not take place and would it not be possible to erect three (3) dwellings as stated by the objector. The owner intends to erect a house larger than the current house and also construct a second dwelling in the future that will better the current situation and will in effect have a positive impact on the value of surrounding residential erven.
- ❖ With the construction of the main dwelling and second dwelling unit, conservancy tanks will be constructed to the satisfaction of the Overstrand Municipality that will be linked to the small bore sewerage system and will also be provided with a proper coupling point in order for the tanks to be emptied by the Overstrand Municipality, when required.

SJ Thompson (Erf 67, Sandbaai)

- ❖ The objector mentions that the vast majority of residents in the Sandbaai area have adhered to the zoning of Single Residential I and one (1) dwelling per erf and that if the residential properties are rezoned to allow two (2) dwellings it will set a precedent for further multiple dwellings allowing for high rise blocks to be erected. One should take note of the fact that there are single dwellings and in some cases so called granny-flats/second dwellings established on single residential erven in Sandbaai There are numerous examples of erven in Sandbaai that accommodate two (2) dwelling units. Therefore a precedent will not be created by approving the application for the removal of restrictions. In order to stimulate densification, the Overstrand Municipality has included a second dwelling unit as a primary right under a Residential Zone 1 zoning. The owner will adhere to all land use restrictions prescribed in the Zoning Scheme applicable to Residential Zone 1 erven.
- ❖ As mentioned in the motivation application is not made for any building line relaxations. The existing building on the proposed remainder will either be totally demolished or partially incorporated in the new dwelling. If the building is incorporated in the new dwelling the section that encroach the rear building line will be demolished up to the 2m rear building line. It is the intention of the owners

to later build a second dwelling on the subject erf that will be in line with the land use restrictions applicable and all building lines will be adhered to.

9. MUNICIPAL ASSESSMENT OF COMMENTS

Palm Trust (Erf 1806, Sandbaai)

- ❖ The objector is under the impression that all building lines on the property are 4,72m and therefore base certain points on this assumption. It is thus obvious from these points of objection that the objector did not familiarize itself with the contents of the motivation report. These points of objection are therefore irrelevant to the application. The applicant indicated in its motivation report that the applicable building lines as prescribed in the Zoning Scheme will be applicable to the future development of the site. Application is thus not made to encroach any building lines.
- ❖ According to the applicant the electrical cable referred to by the objector falls within the applicable 2m building line and that application is not made to have the 2m building line relaxed, thus providing enough space to protect the electric cable. The latter point was taken up with the Engineering Department who indicated that it has no comment to offer – thus no problems are foreseen with the position of the cable. It is concurred with the applicant's comment that the objector is not in a position to impose more restrictive building lines than what currently applies. It is further concurred that the parking of motor vehicles within building lines are allowed on a property.
- ❖ Only two (2) dwellings are permitted on a single residential property of which one (1) may not exceed 120m² in floor space. A third dwelling would necessitate the rezoning of the property. No application is made for the rezoning of the property. The applicant indicates that the existing structure will either be totally demolished or partially incorporated in the new dwelling. Read the following in conjunction with paragraph 3. of this submission. In the above regard it is important to note that the subdivision of the mother property was conditionally approved during 1998. Condition 3.3 of the subdivision approval is quoted as follows (a copy of the letter of approval is attached as Annexure G):

“3.3 A written undertaking to be submitted by the owner or his successor in title to the effect that a dwelling will be erected on the Remainder (property under discussion – own wording) within two years of confirmation of the subdivision, failing which the outbuilding will be demolished.”

It is evident from all information contained in this submission that the condition was never adhered to and therefore legally needs to be enforced. (The application under discussion did not include the amendment or removal of the above condition of approval of the subdivision.) A condition must therefore be imposed that the structure be demolished immediately, should the application be successful.

- ❖ The standard service requirements by the Engineering Department will apply should the application be approved.

SJ Thompson (Erf 67, Sandbaai)

- ❖ Various similar applications in Sandbaai and the broader Overstrand area have been approved already. A precedent will therefore not be created by the application under discussion. The objective of the Overstrand forward planning

documentation, amongst others, is to encourage densification within the urban edges of the Overstrand's townships in order to prevent urban sprawl. A second dwelling unit is in any event a primary right on single residential property that does not contain the relevant restrictive clauses in the Title Deeds.

- ❖ Application is not made for the rezoning of the property to construct high rise blocks. To state that to allow two (2) dwellings would set a precedent that could open doors for further multiple units is unfounded. The current structure on the proposed remainder will either be demolished in total or retract to the 2,0m building line. The points that the removal of the restrictive Title Deed conditions will be detrimental to neighbours in terms of light, bulk and height that will be only in the interest of the applicants with no consideration to the adverse effect on the neighbourhood, is also speculative. The Zoning Scheme regulates the development of residential properties in this regard. Various such applications have already been approved in Sandbaai and other townships in order to allow property owners to enjoy all the primary rights as set out in the Zoning Scheme. These points of objection are therefore not supported.

The internal departments' comments have been positive.

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 in general is in line with the planning objectives, the objectives relating to:

Spatial Justice

The application property is situated within an existing residential area. The proposal will not further perpetuate past spatial imbalances.

Spatial sustainability

The property is located within the urban edge and thus will not lead to urban sprawl. No natural habitat is impacted upon and the proposals will have no negative influence on the environment.

Efficiency

The property owners will optimize the use of property in terms of municipal services and infrastructure.

Spatial Resilience

The application will ensure that the existing resource (land) is used to its maximum in an affordable manner and in line with the Overstrand Municipality's forward planning documents.

Good administration

The application followed the required planning procedures 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.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable Policies

Consistent with the Zoning Scheme and Spatial Development Framework.

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 and have been viewed positively by the Engineering Department.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents.

10.9 Additional Planning Motivation For Removal of Restrictive Condition

Due to the essence of the application, the aspects considering financial or other value of rights; personal benefits; social benefit of the restrictive conditions remaining in place and/or being removed; and the rights to be enjoyed by the beneficiaries or only some of those by removal of the restrictive conditions, are not regarded as significant in this case as it will be in line with relevant parameters of the Zoning Scheme, thus not having any mentionable impacts.

11. THE DESIRABILITY OF THE PROPOSAL

The above municipal comments on the points of objections should be read in conjunction with the desirability of the application.

The property is burdened with restrictions in the Title Deed to such an extent that the owners cannot enjoy the primary rights applicable to single residential properties as set out in the Zoning Scheme, whilst property owners in other townships and/or extensions of townships who has not restrictive conditions enjoy such rights. The owners of the subject property wishes to have these restrictions removed from the Title Deed in order to be in line with the applicable primary rights and development parameters as set out in the Overstrand Municipality Zoning Scheme. One of the primary rights in terms of the scheme is a second dwelling unit. Should the applicable condition be removed the owners will be able to construct a second dwelling unit.

Cognisance must be taken of the fact that the Title Deed restrictions date back to before the establishment of the Overstrand Municipality and the relevant

Zoning Scheme Regulations. As such the Title Deeds of single residential properties in Sandbaai were used to limit the development thereof. However, the development of all properties within the Overstrand in present-day times is governed by the Zoning Scheme. It is therefore the opinion that the relevant restrictions as set out in the Title Deed are out-dated and not in keeping with modern day development trends anymore. For this reason various property owners in the township already had their respective Title Deeds altered by means of relaxations or removals of the specific restrictive development clauses. The removal of the restrictions will enable the owners to utilise the property more efficiently, but still in line with the development rules as set out in the Zoning Scheme.

As mentioned in Paragraph 9. of this submission, a condition of subdivision during 1998 applicable to the property under discussion (Condition 3.3 as per the resolution attached as Annexure G) was never adhered to and therefore legally needs to be enforced. The landowner or successor in title at the time had to submit a written undertaking to the Municipality to the effect that a dwelling will be erected on the Remainder (property under discussion) within two (2) years of confirmation of the subdivision, failing of which the outbuilding on the property had to be demolished. The outbuilding on the other hand has been illegally converted into a habitable structure. The application under discussion did not include the amendment or deletion of the condition. Thus, a condition must therefore be imposed that the structure be demolished immediately, whether the application is successful or not.

In view of the above the application is regarded as being desirable from a town planning point of view and can be recommended for approval.

12. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law), applicable to Remainder Erf 1294, Sandbaai for the removal of conditions C.2.(a), C.2.(c) and C.2.(d) as contained in Title Deed T7855/2012, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the existing structure on the property be demolished with immediate effect on final approval of the application – this is due to non-compliance of condition 3.3 pertaining to the subdivision approval dated 23 September 1998 (letter attached as Annexure G); Should the owner intends to make the structure part of the dwelling, the portion transgressing the building line must be demolished.
 - (b) that a servitude be registered to accommodate the existing electrical cable;
 - (c) that all the applicable development parameters as prescribed in the relevant Zoning Scheme be complied with when the property is to be developed;
 - (d) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and

(e) that all the conditions in the Services Report (attached as Annexure F), be complied with.

2. that the applicant and the objectors be notified of their respective rights of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditional approval.

12. REASONS FOR RECOMMENDATION

- ❖ The objections that were received are unsubstantiated and generally not related to the essence of the application,
- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ The application is desirable from a town planning point of view.

13. ANNEXURES

Annexure A: Locality Plan
 Annexure B: Motivation Report
 Annexure C: Title Deed T7855/2012
 Annexure D: Objections received
 Annexure E: Applicant's response to objections received
 Annexure F: Services Report
 Annexure G: Subdivision approval dated 23 September 1998

SIGNATURES

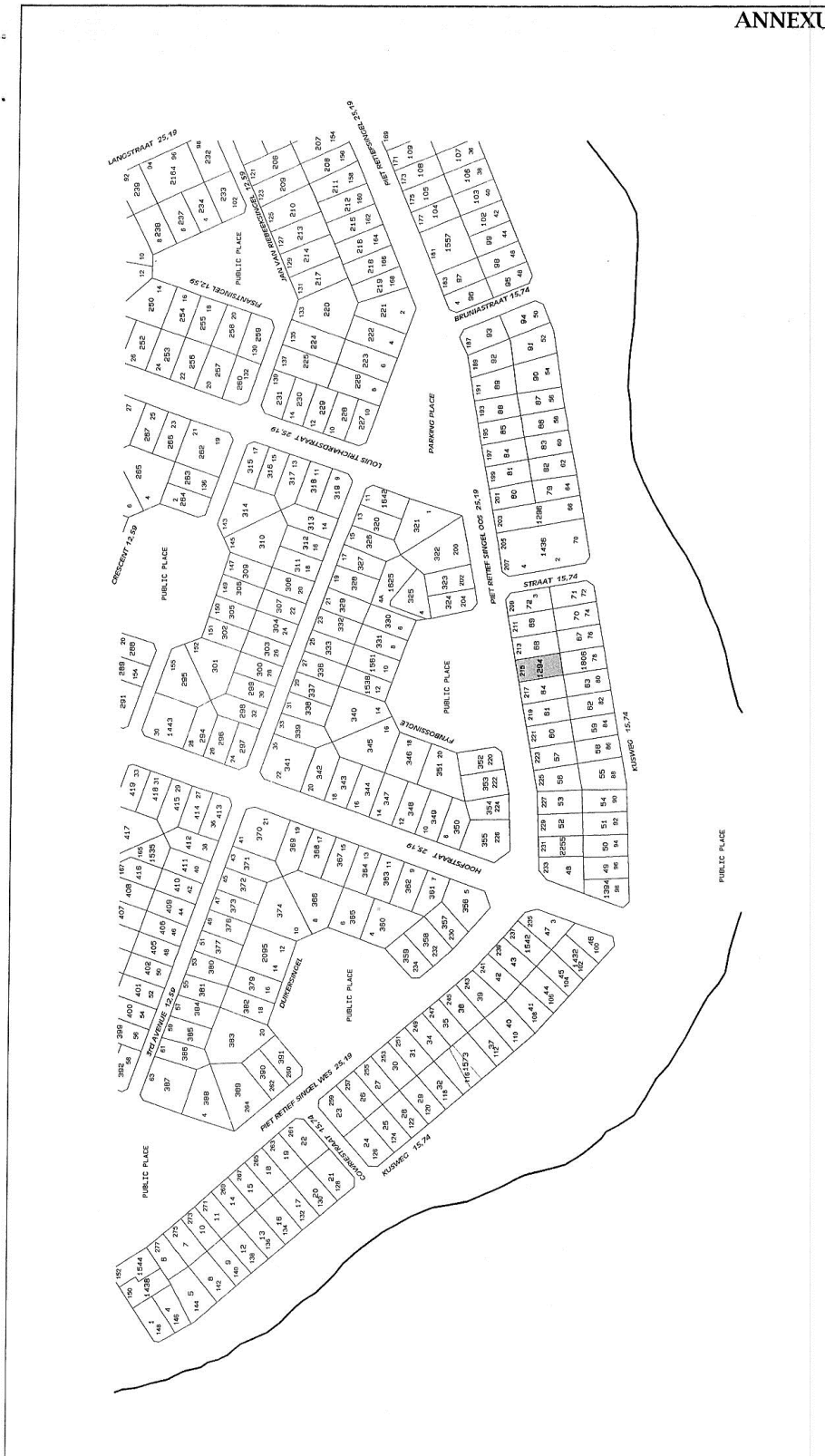
REGISTERED PLANNER:

Name : **H VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

Signature : _____

Date: _____



	Stads- en Streeksbeplanners Town & Regional Planners		Property Description: ERF 1294 SANDBAAI	Plan Description: LOCALITY MAP	Scale: NTS
	All distances approximate and subject to survey. COPY RIGHT RESERVED				Drawing Nr: sandb1294L.drw Date: 05/2017

**PROPOSED REMOVAL OF
RESTRICTIVE TITLE DEED
CONDITIONS**

ERF 1294 SANDBAAI

**DIVISION: CALEDON
OVERSTRAND MUNICIPALITY**

MOTIVATION REPORT

1. BACKGROUND

The owners of Erf 1294 Sandbaai, Mr. P. Joubert, Mr. C.M. Joubert and Mr. N.J. Joubert have instructed the company Plan Active to apply for the removal of restrictive Title Deed conditions applicable to the subject erf.

The owners want to develop Erf 1294 Sandbaai and also erect a second dwelling on the erf in the future. The Title Deed applicable to Erf 1294 Sandbaai contains a restriction that stipulates that only 1 dwelling may be erected on the property. Because the owners have to remove the mentioned restrictive Title Deed condition we are also applying to have the other Title Deed restrictions that are more restrictive than the current land use rights and development parameters prescribed in the Overstrand Municipality Zoning Scheme removed.

Erf 1294 Sandbaai is 713m² in extent and is held by title deed number T7855/2012.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions.

3. DESIRABILITY

3.1 PROPERTY DESCRIPTION

The subject property is situated at 215 Piet Retief Crescent, West of Main Road, Sandbaai. Please refer to the enclosed locality plan. Erf 1294 Sandbaai is 713m² in extent and it is situated in a predominantly residential area in close proximity to the coast.

3.2 ZONING

Erf 1294 Sandbaai is zoned Residential Zone 1. Surrounding properties are zoned for single residential purposes and are being used as such. There are also a number of tourist accommodation establishments in the area such as the Sandbaai Country House, Ocean Song Self Catering and the Schulphoek Country House.

3.3 LAND USE

Erf 1294 Sandbaai is currently developed. There is a small structure that is ±50m² in extent situated in the south western corner of the site. This structure will be partially demolished to comply with the rear boundary line and will either be incorporated in the design of the new dwelling or it will be utilised as an outbuilding. The existing structure will comply with the current 2m lateral and 2m side building line.

Motivation report

Land uses that surround erf 1294 Sandbaai are single dwellings, vacant erven, tourist accommodation establishments, public roads and public open spaces. It is therefore evident that erf 1294 Sandbaai is within a predominantly residential area.

3.4 PROPOSAL

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions.

It is the intention of the owners of erf 1294 Sandbaai to develop the erf within the current land use rights as prescribed in the Overstrand Municipal Zoning Scheme Regulations that includes a second dwelling unit. In order to do so it would be required that we apply for the removal of restrictive Title Deed conditions that are more restrictive than the Overstrand Municipal Zoning Scheme Regulations.

The detail of the application can be described as follows:

3.4.1 Proposed Removal of Restrictive Title Deed Conditions

Erf 1294 Sandbaai is 713m² in extent and the owners intend to erect a second dwelling unit in the future on Erf 1294 Sandbaai.

The enclosed Title Deed, T 7855/2012 contains the following Title Deed restrictions of which 2(a), 2(c) and 2(d) will have to be addressed:

- Page 4, paragraph (2)(a): "Dat die hierbokeskrye grond gebruik sal word slegs vir woondoeleindes". (That the above erf or erven be used for residential purposes only.)
- Page 4, paragraph (2)(b): "Dat die bogemelde erf or erwe nie onderverdeel sal word nie." (That the above erf or erven not be subdivided.)
- Page 4, paragraph (2)(c): "Dat nie meer dan een woonhuis met die nodige buitegeboue en benodighede opgerig sal word op enigeen van die bogemelde erwe nie en dat nie meer dan helfte van die oppervlakte van elke erf behou sal word." (That not more than one dwelling together with the

necessary outbuildings and accessories be erected on any of the above erven and that not more than one half of the area of any one of the above erven be built upon.”

- Page 4, paragraph (2)(d): “Dat geen gebou op enigeen van die bogenoemde erwe binne 15 voet (4.72m) van enige grenslyn tussen gemelde erf en enige straat buite die land waaraan sulke erf grens, opgerig sal word nie; genoemde ruimte mag gebruik word vir tuinery maar sal nie op gebou word nie.” (That no building be erected on the above erf or erven within 15 feet (4.72 m) of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts, such space may be used as gardens but shall not be built upon.)

The reasons to have the above mentioned Title Deed restrictions 2(a), 2(b) and 2(d) removed is mainly to give the owner the opportunity to utilise the property to its fullest potential in terms of the primary land use rights and development rules under the current zoning of Residential Zone 1. The primary rights and development rules (street building line) referred to are as follow:

6.1 RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)

Use of the property

6.1.1 The following use restrictions apply to property in this zone:

- (a) **Primary uses** are: day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;
- (b) **Building lines**
 - (i) **Street building line**
The street building line is determined in accordance with the net erf area as listed in the table below:

Net erf area	Street building line
Less than 400 m ²	2,0 m
400 m ² and greater	4,0 m

If paragraphs 2(a) and 2(c) of the above mentioned Title Deed are not removed the owner will be restricted to use the property for single residential purposes only and will not have the possibilities to exploit his other primary land use rights such as the

Motivation report

construction of a second dwelling unit, the use of a portion of the dwelling as home occupation or guest rooms (2).

The Title Deed restriction, paragraph 2(d) as mentioned above prescribes a 4.72m street building line that is more restrictive than the prescribed building lines in terms of the Overstrand Municipality Zoning Scheme under a zoning of Residential Zone 1. With the removal of the restrictive Title Deed condition our client will at least gain an additional 0.72m to build closer to the street frontage.

Please take note that the proposed removal of the restrictive Title Deed conditions is mainly because they are more restrictive than the land use restrictions under the current zoning of the property that is Residential Zone 1. It is not proposed that we depart from any land use restrictions or development rules as prescribed in the Overstrand Municipality Zoning Scheme, under a Residential Zone 1 zoning.

Building plans will be submitted in the future once the owners are ready to develop the subject erf. The building plans will conform to all land use restrictions and development rules as prescribed under the current zoning, Residential Zone 1, in the Overstrand Municipality Zoning Scheme Regulations.

3.5 ACCESS

The property is situated at 215 Piet Retief Crescent, Sandbaai. The exact position of the access point to the subject erf will be confirmed with a building plan submission, when the new owners intend to build.

3.6 SERVICES

Due to the fact that Erf 1294 Sandbaai is within an already developed residential area municipal services already exist to which the erf can connect to. We are not applying for any additional land use rights, but to have the restrictive Title Deed conditions removed in order to utilise the erf as prescribed in the Overstrand Municipality Zoning Scheme Regulations. Because we are not applying for a change

Motivation report

of land use by means of a rezoning or consent use or creating additional erven the current services provided to Erf 1294 Sandbaai will be sufficient.

3.7 TITLE DEED

The title deed T78557/2012 has restrictions that need to be removed in order for the owners to utilise the subject property to its fullest potential.

The Title Deed restrictions that we are applying for to have them removed are:

- Page 4, paragraph (2)(a): "Dat die hierbokeskrye grond gebruik sal word slegs vir woondoeleindes". (That the above erf or erven be used for residential purposes only.)
- Page 4, paragraph (2)(c): "Dat nie meer dan een woonhuis met die nodige buitegeboue en benodighede opgerig sal word op enigeen van die bogemelde erwe nie en dat nie meer dan helfte van die oppervlakte van elke erf behou sal word." (That not more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one half of the area of any one of the above erven be built upon.)
- Page 4, paragraph (2)(d): "Dat geen gebou op enigeen van die bogenoemde erwe binne 15 voet (4.72m) van enige grenslyn tussen gemelde erf en enige straat buite die land waaraan sulke erf grens, opgerig sal word nie; genoemde ruimte mag gebruik word vir tuinery maar sal nie op gebou word nie." (That no building be erected on the above erf or erven within 15 feet (4.72 m) of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts, such space may be used as gardens but shall not be built upon.)

The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.1 above.

3.8 FORWARD PLANNING

Overstrand Municipal Wide Spatial Development Framework

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for residential purposes. The residential zoning of the subject erf will be retained and no additional land use rights are applied for with this application. No additional erven will be created.

Overstrand Growth Management Strategy

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 3 that consists mainly of Sandbaai's single residential erven. No densification of this planning unit is proposed.

The proposed application for the removal of restrictive Title Deed conditions is in line with the proposals of the Overstrand Wide Spatial Development Framework and the Overstrand Growth Management Strategy.

It is therefore our opinion that the proposed removal of the restrictive Title Deed conditions can be supported and that the proposal is also in line with the current land use trends for the area.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 1294 Sandbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is developed and not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

Motivation report

The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above mentioned it is evident that the proposed removal of restrictive Title Deed conditions will not have a negative impact on the heritage value of the subject property or the Greater area of Sandbaai.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed removal of restrictive Title Deed conditions do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.10 PLANNING PRINCIPLES

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience of this application can be described as follows:

Spatial Justice: The proposed removal of restrictive Title Deed conditions will be in line with the current land use tendencies. The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. It is therefore proposed that only the land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 apply and not the restrictions prescribe in the Title Deed.

Spatial sustainability: The proposed removal of restrictive Title Deed conditions is in line with the current character of the established residential area. The proposed applications will have no impact on the conservation worthy areas of Sandbaai. Spatially the land use will be in line with the residential character of the area.

Efficiency: The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. It is therefore proposed that only the land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 apply and not the restrictions prescribed in the Title Deed.

Spatial Resilience: Spatial resilience is not applicable to this application.

Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process.

4. **RECOMMENDATION**

When this application is evaluated it is important to take note of the following:

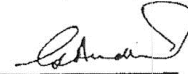
- The proposed removal of restrictive Title deed conditions of Erf 1294 Sandbaai falls within the existing land use tendencies in the area;
- There will be no impact on services;
- The proposed removal of restrictive Title Deed conditions will not have a negative impact on the current character and land values of the surrounding erven.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of restrictive Title Deed conditions applicable to Erf 1294 Sandbaai.

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VAN DER WESTHUIZEN VOS & HORN
P O BOX 168, STELLENBOSCH 7599

Prepared by me,



Conveyancer

G A VAN DER WESTHUIZEN

Fee endorsement		Office fee
Amount		
Purchase price/Value	R. 735 000,00	R. 580,00
Mortgage capital Amount	R. /	R. /
Reason for assumption	Exempt i.t.o section Act	

ISSUE FOR INFORMATION ONLY
ALLES IN VERBODEN TOEGANG VOOR TOEGANG

VERBIND MORTGAGED	
VIR FOR R 516 000,00	
B 000004649 / 2012	
22 FEB 2012	REGISTRAR/REGISTRAR

T 000007855 / 2012

DEED OF TRANSFER NO T.

KNOW ALL MEN WHOM IT MAY CONCERN :

THAT JACOBUS PETRUS VAN ZYL
appeared before me, Registrar of Deeds, at Cape Town, the said Appraiser duly authorised thereto by a Power of Attorney, granted to him/her, by

DATA / CAPTURE 2012 -02- 27 NCAPI BANDA

- ROBERT ALEXANDER ROHLANDT**
Identity Number 711009 5120 08 5
Married out of community of property
- NADIA ROHLANDT**
Identity Number 760216 0083 08 1
Married out of community of property

dated 8 DECEMBER 2011
and signed at STELLENBOSCH

2

and the said Appearer declared that the transferor/s had on 31 October 2011 truly and legally sold to, and that he/she, in his/her capacity aforesaid, did by these presents, cede and transfer to and on behalf of

1. **PIERRE JOUBERT**
Identity Number 731129 5135 08 5
Unmarried
2. **CHARL MARTHINUS JOUBERT**
Identity Number 701201 5202 08 6
Unmarried
3. **NOEL DAVID JOUBERT**
Identity Number 610119 5150 08 1
Married out of community of property

IN THE INFORMATION ON
PROPERTY TRANSFER REGISTER

their heirs, executors, Administrators or Assigns

in full and free property

REMAINDER ERF 1294 SANDBAAI
in the Overstrand Municipality, Division of Caledon, Province of the Western Cape

IN EXTENT : 713 (Seven Hundred and Thirteen) Square metres

FIRST TRANSFERRED by Certificate of Consolidated Title T28574/1969 with Diagram Number 7007/1969 relating thereto and held by Deed of Transfer T83412/2005.

- A. **SUBJECT** to the conditions referred to in said Certificate of Consolidated Title No T28574/1969.
- B. **NOT SUBJECT TO** Condition B on page 2 of Deed of Transfer T83412/2005 by virtue of the provisions of Section 53 of the Mining Titles Registration Amendment Act, Act 24 of 2003.
- C. **SUBJECT FURTHER** to the following special conditions contained in Deed of Transfer No T13242/1944 that, namely:-
 1. Opgelê is ten voordele van SANDBAAI SEASIDE ESTATE COMPANY (PROPRIETARY) LIMITED as eienaar van die restant van Perseel Nr 3 van die plaas onrust Rivier, soos gehou deur Transportakte Nr 1146 van 1929 en die eienaar van Lotte in die gesegde dorp wat alreeds getranspoteer is of in die toekoms getranspoteer sal word onder soortgelyke voorwaardes naamlik:-

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- (a) Die Maatskappy behou vir homself en sy opvolgers in regte die alleenreg tot alle hotelle en dranklisensies, en die Transportnemer/s of sy/hulle opvolgers in regte sal die reg nie hê om enige hotel op te rig of om enige dranklisensie te besit, sonder om eers die skriftelike toestemming van die Direkteure van die Maatskappy of sy opvolgers in regte, te verkry.
- (b) Die maatskappy en sy opvolgers sal nie geregtig wees om die grond liggende tussen die erwe verkoop as seefronterwe en die see, in erwe te verdeel en/of te verkoop nie.
- (c) Dat geen gebou opgerig sal word op die hierbokeskrywe eiendom voordat die planne van sulke geboue nie voorgelê is aan en goedgekeur is deur die Direkteure van die gesegde Maatskappy of sy opvolgers in regte.
- (d) Die transportnemer/s of sy/hulle opvolgers in regte van die hierbokeskrywe eiendom sal die reg hê om enige stroom water wat oor die eiendom loop, af te keer langs enige van die lane, of strate soos aangewys op die algemene plan van die dorp.
- (e) Die Maatskappy behou vir homself en sy opvolgers in regte die rye en onbelemmerde oorgang van elektriese telegraaf- of telefoonlyne, te enige tyd hierna oor en op enige gedeelte van die hierbokeskrywe eiendom, met die verder reg om hulle aan enige gebou van watter aard ook te laat vassit, nie minder dan 10 voet van die grond af, met reg van toegang tot sulke lyne vir die doel om hulle te verwyder of in orde te hou.
- (f) Die Maatskappy behou die reg vir homself en sy opvolgers in regte, om enige tyd hierna pype te lê en in order te hou onder enige gedeelte van die hierbokeskrywe grond of op enige ander plek, en ten alle tye reg van toegang te hê na sulke pype, vir verwydering, in orde te hou of uitbreiding daarvan of vir enige ander doel en om alles te laat doen as nodig mag blyk vir die gerief van die inwoners van die dorpsgebied in verband met die verskaffing van water aan hulle.
- (g) Die Maatskappy behou vir homself die alleenreg tot alle water wat ontstaan of vloei oor die eiendom van die Maatskappy. Daar sal egter van hierdie voorbehoud uitgesluit word enige water verkry deur 'n eenaar van die hierbokeskrywe grond deur middel van puppe of boorgate op sulke grond gegrawe of geboor.

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ANNEXURE C 4/5

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2. Opgelê deur die Administrateur toe hy die oprigting van die dorp goedgekeur het, ni:-
- (a) Dat die hierbodeskrye grond gebruik sal word slegs vir woningsdoeleindes.
 - (b) Dat die bogemelde erf or erwe nie onderverdeel sal word nie.
 - (c) Dat nie meer dan een woonhuis met die nodige buitegeboue en benodighede opgerig sal word op enigeen van die bogemelde erwe nie en dat nie meer dan helfte van die oppervlakte van elke erf behou sal word nie.
 - (d) Dat geen gebou op enigeen van die bogenoemde erwe binne 15 voet van enige grenslyn tussen gemelde erf en enige straat buite die land waaraan sulke erf grens, opgerig sal word nie; genoemde ruimte mag gebruik word vir tuinery maar sal nie op gebou word nie.

WHEREFORE /

Handwritten signature and stamp area.

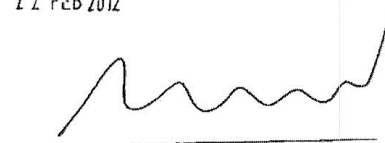
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WHEREFORE the Appearer, renouncing all the rights and title the TRANSFEROR heretofore had to the premises, did, in consequence, also acknowledge the transferor/s to be entirely dispossessed of, and disentitled to the same; and that by virtue of these presents the said TRANSFEREES, their heirs, executors, Administrators or Assigns, now is/are and henceforth shall be entitled thereto, conformably to local custom; the State, however, reserving its rights; and finally acknowledging the whole of the purchase price amounting to **R735 000-00 (Seven Hundred and Thirty Five Thousand Rand)** to have been duly paid or secured.

IN WITNESS whereof I, the said Registrar, together with the Appearer, have subscribed to these presents, and have caused my Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the Registrar of Deeds, at Cape Town on 22 FEB 2012




q.q.

In my presence,



REGISTRAR OF DEEDS

Certified a true and correct copy of record in the Deeds Registry Reg 66
Deeds Registry Cape Town 12/04/2012  Registrar of Deeds

9

TP - A Theart
C H Olivier)



Sandra Thompson

From: Sandra Thompson <sandrathompson@hermanus.co.za>
Sent: (Erf 67, SE) OVERSTRAND MUNICIPALITY / LORRETTA W. OVERSTRAND
To: gov. za
Subject: Application of Removal of Title Deed Restrictions for Erf 1294 Sandbaai Hermanus

I have received a notification from Plan Active with regard to the above and would like to advise that it is my intention to object to this proposal.

Point 3. Desirability.

The vast majority of residents in this area have adhered to the Zoning of Single residential and one dwelling per plot. This adds to the character of Sandbaai and gives the area a village atmosphere. Should this plot be rezoned to allow 2 dwellings it will set a precedent and indeed could open the doors to further multiple units and one only has to look at developments along Hermanus central sea front and Cape Town city Bowl, Sea point etc. allowing high rise blocks to be erected. It is not in the interests of residents here in Sandbaai to support this application as it will be in no way advantageous to our area.

Point 3.2. It appears that you are now aware that there is an existing 'storeroom' etc. on this erf which appears to be habitable as it is currently tenanted.

Your comments that this will form part of 1 dwelling seems to imply that that 1 dwelling will be directly on the boundary.

Point 3.4. Title Deed states one dwelling with necessary outbuildings. Also that no building be erected within 15 feet of the boundary lines.

This point is of particular importance as it is obvious that the clients need this be to revised in order to 'exploit his other primary land use rights in order to use the land to its fullest potential'. This will obviously be very detrimental to the neighbours both in terms of light and also bulk and height. There is no doubt that this is only in the interests of the applicants with no consideration of the adverse effects to the neighbourhood and Sandbaai in general.

Yours sincerely
Sandra Thompson
Erf 67 Sandbaai Hermanus.

[Signature] 13th September 2017

FILE NO:	EL 1294
	Sandbaai
SCAN NO:	05
COLLABORATOR NO:	1075667

76, Kvs Weg.
Sandbaai
083 261 3398
028-316 2186

TP 13 SEP 2017

TP- A Theart
(Hollivier) (EDF 1806, SB.)

ANNEXURE D 2/10

Loretta Gillion - OBJECTION RE REMOVAL OF TITLE DEED RESTRICTION Erf 1294, SANDBAAI

From: "Manfried Dietstein" <acd@ibits.co.za>
To: <loretta@overstrand.gov.za>
Date: 12/09/2017 08:26 AM
Subject: OBJECTION RE REMOVAL OF TITLE DEED RESTRICTION Erf 1294, SANDBAAI
Attachments: 1294 Sandbaai.pdf; Mot1294Sandbaai.pdf; 170904143738_0001.pdf; Photo of existing building.pdf; Photo of electricity box.pdf



Dear Sir / Madam ,

I sent the below objection letter yesterday. **Please add** to the below Palm Trust's objection the attached photo's of the existing building on Erf 1294 and the electricity box in support of the objection arguments.

Kind regards,
 Manfred Dietstein
 Trustee: Palm Trust
 0828025231

THE MUNICIPAL MANAGER
 OVERSTRAND MUNICIPALITY
 HERMANUS ADMINISTRATIVE
 P.O.BOX 20
 HERMANUS
 7200

ATTENTION: MR H. BOSHOFF

FILE NO: EL 1294-HSB
SCAN NO: 15
COLLABORATOR NO: 1074989

REFERENCE:

PROPOSED REMOVAL OF TITLE DEED RESTRICTIONS OF ERF 1294, SANDBAAI.

Dear Sir /Madame,

A notice has been issued to the **Palm Trust IT 1205/95** the owner of Erf 1806 Kusweg Sandbaai for comment regarding the above. I, Manfred Dietstein with ID 4601025003089, is duly authorised by the Palm Trust trustees to make comments on behalf of the Trust. The Palm Trust who is a rate payer of the Overberg Municipality respectfully also reserve the right to make restrictive requests on Erf 1294 and Title Deed T7855/2012 so as to protect its interest in the area.

- a) With regards the relaxation of the front boundry line adjoining Piet Retief Cresent from 4.72m to 4m is accepted.
- b) With regards the boundry adjoining erf 64 from 4.72 to 2 m is acceptable.
- c) With regards the boundry adjoining erf 68: The 4.72 m to change to not less than 3.5m. This slight relaxation I qualify due to the fact that electrical supply to properties in Kusweg is routed along this boundry and from the electrical kiosk located in Piet Retief Cresent road. Also as stated above, that the

TP

12 SEP 2017

file:///C:/Users/loretta/AppData/Local/Temp/XPgrpwise/59B79A23HermanusMunpos... 2017/09/12

ANNEXURE D 3/10

Trustees of the Palm Trust request a servitude along this boundary so as to ensure a continuous electrical supply and also to avoid damage to the electrical cable due to any building construction. Here I respectfully request that due to the electrical supply cable being in this area that there should be no waiver of encroachment over the 3.5m building line now and in the future.

(d) With regards the rear boundary of 4.72m between erf 1294 and 1806, the waiver is not granted. I qualify this due to the fact that plot 1294 is not a vacant plot, but with a dwelling of approximately 50 square metres. The size of the dwelling is larger than a subeconomical dwelling. The dwelling has a bathroom with geyser, toilet and open plan living area with kitchen. This dwelling has a sewerage tank within the 4.72m building line as taken from the boundary of plot 1806. This dwelling has an approximate footprint of 120 square meters and more. Here I once again qualify this due to the fact that this dwelling is occupied with the occupant making use of parking a vehicle in this area. I refer back to paragraph (c) where the 3.5 metre minimum building boundary line should not be narrower. This is to accommodate access by private vehicle. The municipal sewerage tanker is also required to have access to the rear plot area.

(e) With regards to the request to erect a dwelling on plot 1294 and another at a later stage: This request is unreasonable and not supported due to the fact that there is a dwelling on the plot already. Only one new dwelling is thus supported by the Trustees of the Palm Trust. The Title Deed T7855/2012 ruling in this regard is thus to be upheld as is. I draw your attention to the municipal requirement with regards the sewerage requirements for each dwelling. Plot 1294 will thus have three sewerage tanks should a waiver be granted. Over population of plot 1294 could have sewerage capacity problems. A small bore sewerage pipe is located through plot 64 and 63 and flows down to Kus Weg. The electrical supply from the kiosk in Piet Retief Crescent road to plot 1294 could be problematic due to a large draw off of electricity and which will cause the circuit breakers to trip and consequently the power failure at other dwellings in the area cause material loss and also causing unnecessary financial expense to the municipality to rectify.

I further venture to state that allowing over population of dwellings on plot 1294 could set a precedent that will have the effect that other property holders in the Overberg Municipal area will insist on like treatment to alter Title Deeds as they find fit. This will also cause a parking problem where not sufficient parking is available on the plot and vehicles will have to park along the street.

I respectfully request that you, the municipal authority, consider the above comments with the due concern as I am sure would be, in upholding the image of Sandbaai and applying good and fair building rules.

Your sincerely

Manfried Dietstein

For Palm Trust IT 1205/95

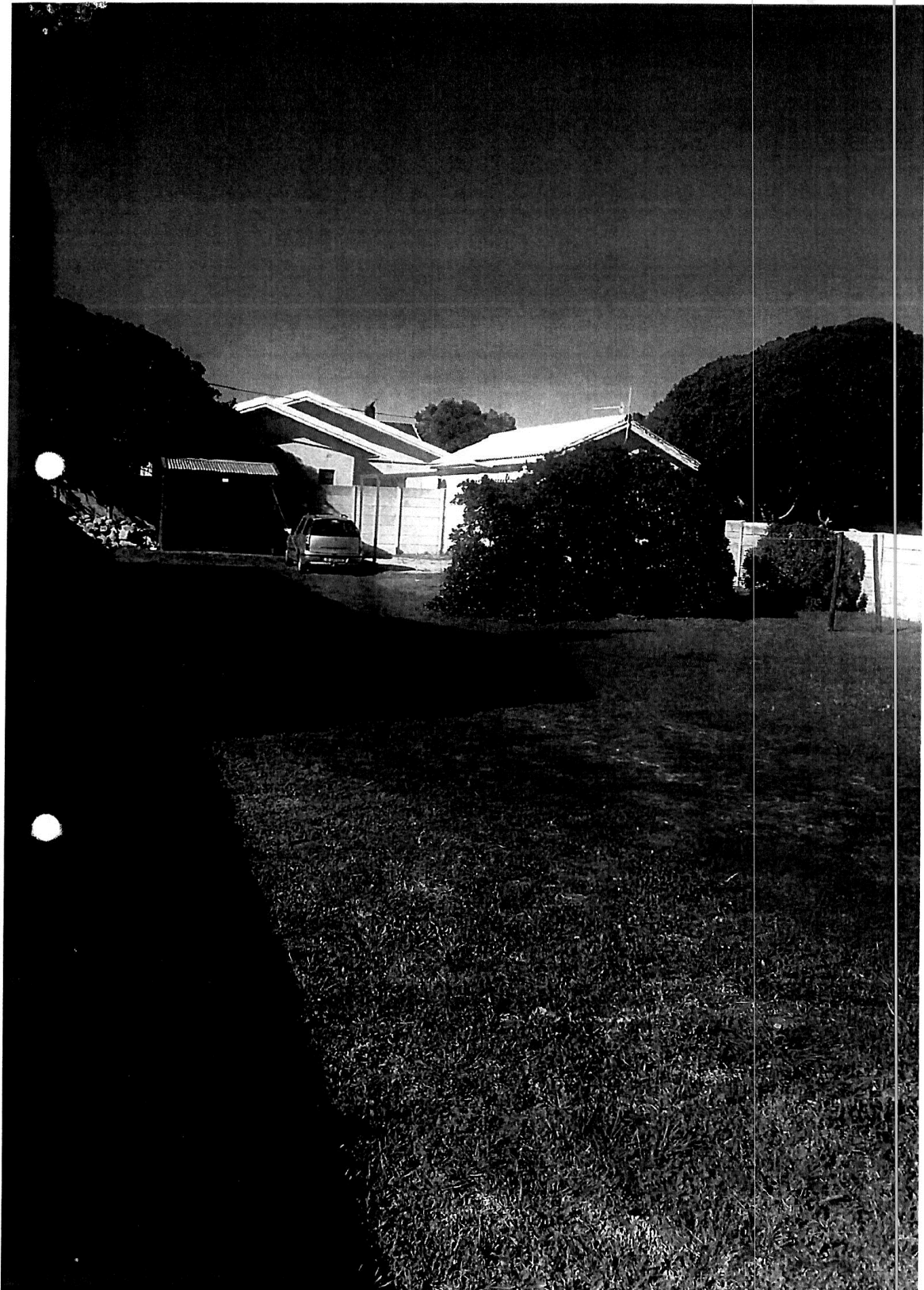
Telephone: [+27 21 8641011](tel:+27218641011)

Personal Fax: 086 614 2842

Mobile: [+27 82 802 5231](tel:+27828025231)

E-mail: Manfriedd@ibits.co.za

The information in this email is confidential and privileged. Any unauthorized use or interception of this email is illegal. If this email is not intended for you, you may not copy, distribute nor disclose the contents to anyone.



ANNEXURE D 5/10



9

VAN DER WESTHUIZEN VOS & HORN
P O BOX 168, STELLENBOSCH 7599

Prepared by me,

G A Van der Westhuizen

Conveyancer
G A VAN DER WESTHUIZEN

Fee endorsement	
Amount	Office fee
Purchase price/Value R. 735 000,00	R. 550,00
Mortgage capital Amount R. /	R. /
Reason for exemption Cat. /	Exempt i.t.o section / Act.

VERBIND	MORTGAGED
VIR FOR R 516 000,00	
B 000004649 / 2012	
22 FEB 2012	REGISTRATEUR/REGISTRAR

T 000007855 / 2012

DEED OF TRANSFER NO T.

KNOW ALL MEN WHOM IT MAY CONCERN :

THAT JACOBUS PETRUS VAN ZYL appeared before me, Registrar of Deeds, at Cape Town, the said Apparer being duly authorised thereto by a Power of Attorney, granted to him/her, by

DATA / CAPTURE 2012 -02- 27 NCA/PA/BINDA
--

1. **ROBERT ALEXANDER ROHLANDT**
Identity Number 711009 5120 08 5
Married out of community of property
2. **NADIA ROHLANDT**
Identity Number 760216 0083 08 1
Married out of community of property

dated 8 DECEMBER 2011
and signed at STELLENBOSCH

2

and the said Appearer declared that the transferor/s had on 31 October 2011 truly and legally sold to, and that he/she, in his/her capacity aforesaid, did by these presents, cede and transfer to and on behalf of

1. **PIERRE JOUBERT**
Identity Number 731129 5135 08 5
Unmarried
2. **CHARL MARTHINUS JOUBERT**
Identity Number 701201 5202 08 6
Unmarried
3. **NOEL DAVID JOUBERT**
Identity Number 610119 5150 08 1
Married out of community of property

their heirs, executors, Administrators or Assigns

in full and free property

REMAINDER ERF 1294 SANDBAAI

In the Overstrand Municipality, Division of Caledon, Province of the Western Cape

IN EXTENT : 713 (Seven Hundred and Thirteen) Square metres

FIRST TRANSFERRED by Certificate of Consolidated Title T28574/1969 with Diagram Number 7007/1969 relating thereto and held by Deed of Transfer T83412/2005.

- A. **SUBJECT** to the conditions referred to in said Certificate of Consolidated Title No T28574/1969.
- B. **NOT SUBJECT TO** Condition B on page 2 of Deed of Transfer T83412/2005 by virtue of the provisions of Section 53 of the Mining Titles Registration Amendment Act, Act 24 of 2003.
- C. **SUBJECT FURTHER** to the following special conditions contained in Deed of Transfer No T13242/1944 that, namely:-
 1. Opgelê is ten voordele van SANDBAAI SEASIDE ESTATE COMPANY (PROPRIETARY) LIMITED as eienaar van die restant van Perseel Nr 3 van die plaas onrust Rivier, soos gehou deur Transportakte Nr 1146 van 1929 en die eienaar van Lotte in die gesegde dorp wat alreeds getranspoteer is of in die toekoms getranspoteer sal word onder soortgelyke voorwaardes naamlik:-

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3

- (a) Die Maatskappy behou vir homself en sy opvolgers in regte die alleenreg tot alle hotelle en dranklisensies, en die Transportnemer/s of sy/hulle opvolgers in regte sal die reg nie hê om enige hotel op te rig of om enige dranklisensie te besit, sonder om eers die skriftelike toestemming van die Direkteure van die Maatskappy of sy opvolgers in regte, te verkry.
- (b) Die maatskappy en sy opvolgers sal nie geregtig wees om die grond liggende tussen die erwe verkoop as seefronterwe en die see, in erwe te verdeel en/of te verkoop nie.
- (c) Dat geen gebou opgerig sal word op die hierbokeskrywe eiendom voordat die planne van sulke geboue nie voorgelê is aan en goedgekeur is deur die Direkteure van die gesegde Maatskappy of sy opvolgers in regte.
- (d) Die transportnemer/s of sy/hulle opvolgers in regte van die hierbokeskrywe eiendom sal die reg hê om enige stroom water wat oor die eiendom loop, af te keer langs enige van die lane of strate soos aangewys op die algemene plan van die dorp.
- (e) Die Maatskappy behou vir homself en sy opvolgers in regte die rye en onbelemmerde oorgang van elektriese telegraaf- of telefoonlyne, te enige tyd hierna oor en op enige gedeelte van die hierbokeskrywe eiendom, met die verder reg om hulle aan enige gebou van watter aard ook te laat vassit, nie minder dan 10 voet van die grond af, met reg van toegang tot sulke lyne vir die doel om hulle te verwyder of in orde te hou.
- (f) Die Maatskappy behou die reg vir homself en sy opvolgers in regte, om enige tyd hierna pype te lê en in orde te hou onder enige gedeelte van die hierbokeskrywe grond of op enige ander plek, en ten alle tye reg van toegang te hê na sulke pype, vir verwydering, in orde te hou of uitbreiding daarvan of vir enige ander doel en om alles te laat doen as nodig mag blyk vir die gerief van die inwoners van die dorpsgebied in verband met die verskaffing van water aan hulle.
- (g) Die Maatskappy behou vir homself die alleenreg tot alle water wat ontstaan of vloei oor die eiendom van die Maatskappy. Daar sal egter van hierdie voorbehoud uitgesluit word enige water verkry deur 'n eienaar van die hierbokeskrywe grond deur middel van puppe of boorgate op sulke grond gegrawe of geboor.

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ANNEXURE D 9/10

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- 2 Opgelê deur die Administrateur toe hy die oprigting van die dorp goedgekeur het, nl:-
- (a) Dat die hierbokeskrye grond gebruik sal word slegs vir woningsdoeleindes.
 - (b) Dat die bogemelde erf or erwe nie onderverdeel sal word nie.
 - (c) Dat nie meer dan een woonhuis met die nodige buitegeboue en benodighede opgerig sal word op enigeen van die bogemelde erwe nie en dat nie meer dan helfte van die oppervlakte van elke erf behou sal word nie.
 - (d) Dat geen gebou op enigeen van die bogenoemde erwe binne 15 voet van enige grenslyn tussen gemelde erf en enige straat buite die land waaraan sulke erf grens, opgerig sal word nie; genoemde ruimte mag gebruik word vir tuinery maar sal nie op gebou word nie.

WHEREFORE / ...

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WHEREFORE the Appearer, renouncing all the rights and title the TRANSFEROR heretofore had to the premises, did, in consequence, also acknowledge the transferor/s to be entirely dispossessed of, and disentitled to the same; and that by virtue of these presents the said TRANSFEREES, their heirs, executors, Administrators or Assigns, now is/are and henceforth shall be entitled thereto, conformably to local custom; the State, however, reserving its rights; and finally acknowledging the whole of the purchase price amounting to R735 000-00 (Seven Hundred and Thirty Five Thousand Rand) to have been duly paid or secured.

IN WITNESS whereof I, the said Registrar, together with the Appearer, have subscribed to these presents, and have caused my Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the Registrar of Deeds, at Cape Town on 22 FEB 2012


g.g

In my presence,

REGISTRAR OF DEEDS

Confirmed a true and correct copy of the original
Deeds Registry
Cape Town
12/04/2012
Registrar of Deeds

9

ANNEXURE E 1/4

Plan Active
Town & Regional Planners
Stads- en Streeksbeplanners



6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200
Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email: planactive@hermanus.co.za
Website: www.planactive.co.za

Our reference: PA17034
Your reference: 1294 HSB(3707)

17 November 2017

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200

FOR ATTENTION: MR. H. Boshoff

Sir

ERF 1294 SANDBAAI - PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

Your letter dated 1 November 2017 and the objection from M. Dietstein attached thereto refers. Our comments on the objection received are as follows:

Mr. Dietstein supports the removal of the condition that refers to the street building line from 4.72m to 4m. He further supports lateral building line relaxations from 4.72m to 2m between erven 1294 and Erf 64 Sandbaai but not the relaxation of the building line between erven 1294 and 68 Sandbaai. Please take note that our application for the removal of restrictive Title Deed conditions, especially clause 2(d) is applicable to street building lines only and is therefore not applicable to side and rear boundary lines. The objection in this regard is therefore irrelevant to our application. The standard building lines prescribed under a zoning of Residential Zone 1 in terms of the Overstrand Municipality will be applicable to the future development of the site.

The owners of Erf 1294 Sandbaai are aware of the location of the electrical cable. This cable falls within the 2m building line that is currently applicable. We are not applying to have the current 2m building line relaxed that provides more than enough space to safeguard the electric cable. The objector is not in a position to impose more restrictive building lines than that what are currently applied. It is further also acceptable to park motor vehicles on-site within building lines, it is not restricted in terms of the Overstrand Municipality Zoning Scheme.

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

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

TR A Theart
C H Boshoff

FILE NO:	EL 1294
	Sandbaai
SCAN NO:	67
COLLABORATOR NO:	1103104

ANNEXURE E 2/4

We are not applying for a building line relaxation on the rear building line as the objector mentions. The 4.72m building line referred to by the objector as a rear building line is incorrect because the 4.72m building line referred to in the Title Deed only applies to street building lines and not lateral and rear building lines. The standard 2m rear building lines referred to in the Zoning Scheme applies. The objector cannot impose more restrictive Title Deed conditions.

As mentioned in our motivation we are not applying for any building line relaxations as prescribed in the Zoning Scheme. Once this application for the removal of restrictions is approved, the owners of Erf 1294 will submit building plans for a new dwelling. The existing building will either be totally demolished or partially incorporated in the new dwelling. If the building is incorporated in the new dwelling the section that encroach the rear building line will be demolished up to the 2m rear building line. It is the intention of the owners to later build a second dwelling on the subject erf that will be in line with the land use restrictions applicable and all building lines will be adhered to.

The owner will also ensure that with the design of the new dwellings that enough parking will be provided for on-site. The Overstrand Municipality Zoning Scheme makes provision for second dwellings as a primary right in order to promote densification. Only 2 dwellings are permitted on an erf of which one of the dwellings may not exceed 120m² floor space. Subsequently over population will not take place and would it not be possible to erect 3 dwellings as stated by the objector. The owner intends to erect a house larger than the current house and also construct a second dwelling in the future that will better the current situation and will in effect have a positive impact on the value of surrounding residential erven.

With the construction of the main dwelling and second dwelling unit conservancy tanks will be constructed to the satisfaction of the Overstrand Municipality that will be linked to the small bore sewerage system and will also be provided with a proper coupling point in order for the tanks to be emptied by the Overstrand Municipality when required.

We hope you find our comments acceptable and that you would be in a position to finalize the application.

Yours faithfully



J V Mc LACHLAN
PLAN ACTIVE

ANNEXURE E 3/4

PLAN Active
Town & Regional Planners
Stads- en Streeksbeplanners

TR A Theart
CH Boshoff

6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200
Tel: (028) 313 1673
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Email: planactive@hermanus.co.za
Website: www.planactive.co.za



Our reference: PA17034
Your reference: 1294 HSB(3707)

5 December 2017

**THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200**

FILE NO: EL 1294 SB
SCAN NO: ERF 1294 ✓
COLLABORATOR NO: 1109685

FOR ATTENTION: MR. H. Boshoff

Sir

ERF 1294 SANDBAAI - PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

In addition to our comments on the objections received, dated 17 November 2017, our comments on the objection received via e-mail on 29 November 2017 are as follow:

The objector mentions that the vast majority of residents in the Sandbaai area have adhered to the Zoning of Single Residential and one dwelling per plot and that if the residential properties are rezoned to allow 2 dwellings it will set a precedent for further multiple dwellings on allowing for high rise blocks to be erected.

One should take note of the fact that there are single dwellings and in some cases so called granny-flats / second dwellings established on single residential erven in Sandbaai. Some of these units were legally built and in some cases illegally. There are numerous examples of erven in Sandbaai that accommodate 2 dwelling units. Therefore a precedent will not be created by approving our application for the removal of restrictions. In order to stimulate densification the Overstrand Municipality has included a second dwelling unit as a primary right under a Residential Zone 1 Zoning. We are not applying for a rezoning. The owner will adhere to all land use restrictions prescribed in the Zoning Scheme applicable to Residential Zone 1 erven. It will therefore not be possible to construct high rise blocks as mentioned by the objector.

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Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

TP - 5 DEC 2017

ANNEXURE E 4/4

As mentioned in our motivation we are not applying for any building line relaxations as prescribed in the Zoning Scheme. Once this application for the removal of restrictions is approved, the owners of Erf 1294 will submit building plans for a new dwelling. The existing building will either be totally demolished or partially incorporated in the new dwelling. If the building is incorporated in the new dwelling the section that encroach the rear building line will be demolished up to the 2m rear building line. It is the intention of the owners to later build a second dwelling on the subject erf that will be in line with the land use restrictions applicable and all building lines will be adhered to.

We hope you find our comments acceptable and that you would be in a position to finalize the application.

Yours faithfully



J V Mc LACHLAN
PLAN ACTIVE

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIONS: ERF 1294,
SANDBAAI (3707)**

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

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that, 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;
4. that stormwater be allowed to discharge through Erf 1294, Sandbaai, unobstructed;
5. that no on-street parking be allowed.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

12/9/2017.
DATE

GREATER
GROTER**HERMANUS**MUNICIPALITY
MUNISIPALITEITDATE
DATUM 23 September 1998OUR REF
ONS VERW 15/3/2/3-12/98YOUR REF
U VERWENQUIRIES
NAVRAE

Mrs Burman

☒ 20
HERMANUS 7200

☎ (0283) 700300 / 21122

☎ (0283) 21894

REGISTERED POST

Messrs Harris & McGarrick
Land Surveyors
Fourth Floor
74 Shortmarket Street
CAPE TOWN
8001

Dear Sir

**SUBDIVISION OF ERF 1294 SANDBAAI: A C VAN DER SPUY & SEUN (EDMS)
BEPERK**

1. By virtue of the powers granted to my Council in terms of the regulations made under section 8 of Ordinance 15 of 1985, approval is hereby granted in terms of Section 25 of the said Ordinance for the subdivision of the abovementioned property as shown on the attached plan which bears my Council's stamp dated 22 September 1998.
2. Attention is drawn to paragraph 5.2.6 of the aforementioned regulations, a copy of which is attached as Annexure "A".
3. Approval is subject to the following conditions:
 - 3.1 Payment of a bulk services development contribution, the amount of which will be determined by the Town Engineer on registration of the subdivision, in respect of one new erf. As a guide, the amount payable as at date hereof is R8202,00.
 - 3.2 The usage of the outbuilding which straddles the boundary of the new erven is restricted in accordance with the definition of "outbuilding" in the abovementioned regulations.
 - 3.3 A written undertaking to be submitted by the owner or his successor in title to the effect that a dwelling will be erected on the Remainder within two years of confirmation of the subdivision, failing which the outbuilding will be demolished.
 - 3.4 Any costs relating to the provision of municipal services which may arise as a result of the subdivision will be for the account of the applicant.

4/....

- 2 -

4. Kindly note that separate registration of at least one land unit must be effected in the Deeds Office within five years of the date of approval, failing which the application shall be deemed to have lapsed.
5. It should be noted that the Surveyor-General will, when approving the diagrams of the newly created erven, indicate on the back thereof by means of a rubber stamp, the date and reference number of this approval. The registrar of Deeds will not register separately any land unit until the application for Certificate of Registered Title or Power of Attorney has been endorsed by my Council. The endorsement will be given on submission of proof that the conditions of approval, if any, have been complied with.
6. Your attention is drawn to your client's right of appeal against any of the above conditions in terms of section 44(1)(a) of Ordinance 15 of 1985, full details of which are attached hereto.

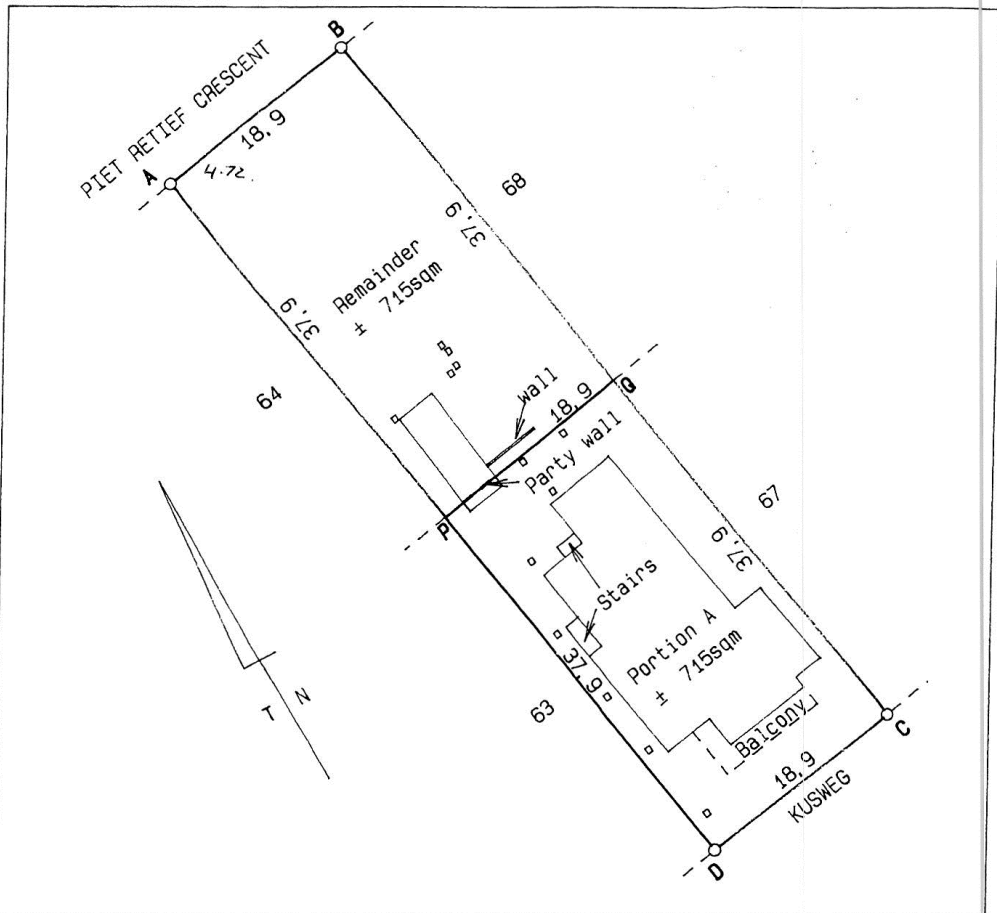
Yours faithfully



✓ TOWN CLERK

cc: Chief Clerk
Town Engineer

ANNEXURE G 3/3



- NOTES:
1. THE FIGURE ABCD REPRESENTS ERF 1294 SANDBAAI.
 2. THE LINE PQ REPRESENTS A SUBDIVISIONAL LINE.
 3. □ = MANHOLE.

[Signature] 23-9-1998

DATE: JUNE 1998	SCALE:
DRAWN BY:	1/500
CHECKED BY:	
PROPOSED SUBDIVISION OF ERF 1294 SANDBAAI SITUATE AT SANDBAAI, IN THE GREATER HERMANUS MUNICIPALITY, ADMINISTRATIVE DISTRICT OF CALEDON, PROVINCE OF WESTERN CAPE	
OWNERS: MR. BERTIE VAN DER SPUY	
SUBMITTED BY: HARRIS & MCGARRICK PROFESSIONAL LAND SURVEYORS FOURTH FLOOR, 74 SHORTMARKET STREET CAPE TOWN 8001 TEL: 23-3165 FAX: 26-1908	
REMARKS: ALL DIMENSIONS ARE APPROXIMATE ONLY.	
DIAGRAM Nos: 7007/69	ROLL No:
	S.G. SHEET No:
	VAL. REF. No:
D/T Nos: 1969/28574	