

4.3**ERF 4177, 2 LAGOON DRIVE, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR AMENDMENT OF THE CONDITIONS OF AN EXISTING APPROVAL
AND AMENDMENT OF THE SITE DEVELOPMENT PLAN: MESSRS PLAN ACTIVE TOWN
AND REGIONAL PLANNERS ON BEHALF OF LA & RM VAN DYK****4177 HON (3498/2019)****H Olivier****9 December 2020****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application was received on 8 November 2019 from Messrs Plan Active Town and Regional Planners on behalf on LA and RM van Dyk on Erf 4177, Onrustrivier for an application in terms of Section 48 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the following:

- ❖ Amendmend of the conditions of approvals in respect of an existing approval in terms of Section 16(2)(h) of the By-Law, which restricts the subject property to be used for an art gallery and residential component only to now also use the property for office use and the residential component, and
- ❖ Amendment of the Site Development Plan in terms of Section 16(2)(i) of the By-Law in order to accommodate additional land uses.

The application will enable the applicant to allow for additional land uses on the property other than an art gallery and residential component.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The property was rezoned to Business Zone II (in terms of Section 8 Zoning Scheme Regulations) in 1994, subject to a condition that the property be restricted to an art gallery and residential component. In 1998 the owner also rezoned the neighbouring property and consolidated the two (2) properties. The same restrictive condition was made applicable to the consolidated erf.

The property owner is at this stage utilising a portion of the building for an estate agency and wants to amend the condition.

4. SUMMARY OF APPLICANT'S MOTIVATION

The application is motivated as follows:

- ❖ The erf measures 1371m² in extent and is an upmarket area.
- ❖ The erf is zoned Business Zone III, whilst most surrounding properties are zoned Residential Zone I.
- ❖ The applicant wants to change the limiting conditions to also allow for office purposes.

- ❖ The application will not impact on the character of the area, as the existing residential component and estate agency are associated with home occupation which is a primary right under Residential Zone I.
- ❖ "Home occupation" means the practising of an occupation, profession, art or trade, or the conducting of an enterprise, which includes an estate agency, from a dwelling unit by one or more of the occupants of a dwelling unit, provided that the dominant use of the dwelling concerned shall remain for the living accommodation of a single family, and the property complies with the requirements contained in this Zoning Scheme for a home occupation, but does not include adult entertainment.
- ❖ Will still be used as a business and residential component.
- ❖ The existing accesses off Lagoon Drive for the double garage and off Van Blommestein Street for the art gallery parking will be used.
- ❖ No additional impact on traffic is expected.
- ❖ No additional parking will be required for the offices as six (6) bays are already provided at a ratio of 4/100m². The office floor area is 149m².
- ❖ The area is already serviced and there will be no additional impact on services.
- ❖ There are no restrictions in the title deed that prohibit this application.
- ❖ The Overstrand Municipality SDF, 2006 earmarks this area for residential purposes, but this erf is already zoned Business.
- ❖ The Overstrand Municipality GMS, 2010 earmarks this area for status quo.
- ❖ This application for amendment of conditions as well as amendment of site development plans will only mean an area of an art gallery will now be able to be utilised for office purposes, which will not change the character of the area.
- ❖ The erf has no heritage value.
- ❖ No environmental listed activities are triggered.

Planning Principles:

Spatial Justice

N/A

Spatial Sustainability

No impact on conservation worthy areas.

Efficiency

N/A

Spatial Resilience

N/A

Good Administration

The Municipality will ensure a streamlined process and a good public participation process

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	14/02/2020	20/03/2020
Ward councillor	Yes	14/02/2020	20/03/2020

Total comments	TWO (2)
Total letters of support	NONE
Was public participation undertaken in accordance with Section 46 - 50 of the Proposed Draft By-Law on Municipal Land Use Planning?	N/A
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
Overberg District Health	6/2020	No objection.
Fire Department	24/02/2020	No objection.
Building Department	18/02/2020	No objection.
Engineering Branch	21/02/2020	See Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

1. *Objection*

The subject property is situated in a residential area with no business activities, and not in a mixed-use area.

Applicant's Response

The property is situated in a mixed-use area, with the Onrust Caravan Park opposite the property, the Onrust Community Hall close by, and estate agencies and shops higher up in Van Blommestein Street. The objector's opinion is therefore incorrect.

Town Planner's Response

The objections and applicant's response are noted. It appears that the objectors refer more to Lagoon Drive and the area next to Lagoon Drive, that has a purely single residential character. The applicant however is motivating his application more in context to the wider area close to Van Blommestein Street, which does have other land uses, and which the applicant refers to as not a predominant single residential area, with mixed uses.

Both parties are correct in their opinion about the character. Lagoon Drive residential pocket has a strong residential character, and the area next to Van Blommestein Street has a mixed-use character.

It must also be noted that the property is situated outside the Local Economic Opportunity areas as identified for Onrust River, of which there is such an area identified in Van Blommestein Street. The property however already has a Business zoning.

2. **Objection**

The motivational report is vague and lacks particularity, and no sketch plan was attached, and no reference was made to the type of offices consent is required.

Applicant's Response

It is indicated in the motivation that the residential unit will still be utilised, with only to include office space in the other area. The owner will still reside on the property and has no plans to expand the building to create additional business space. It was not necessary to provide a sketch plan of the building, as no changes were proposed.

Town Planner's Response

The comments are noted. The applicant did address the concern. Also note that it is indicated on the "Site Plan" submitted with the application that the office/gallery GLA is 149m², which is an indication of the limitation. The concerns regarding the type of office use is later discussed in this report.

3. **Objection**

The office use will allow higher visitation to the property for longer periods with a negative impact on neighbouring properties as well as the use of Lagoon Drive. Negative impact on safety and risk for criminal activity.

Applicant's Response

The owner has been residing on the property for the last 15 years and experienced more people visiting the property as an art gallery than as an estate agency office.

The art gallery had to hold auctions and art shows till late at night (after normal office hours), which caused much greater negative impact on the neighbours.

The paved area in front of the building was created for the building prior to the consolidation of the site, whereafter parking was created for the gallery off Van Blommestein Street. Only this parking will be used for office purposes.

Note the premises were also used by a property agent from 2004 up until 2008 with no complaints, and complaints with regards to the existing estate agency were also only received after the public participation process.

Town Planner's Response

The comments are duly noted. The comments regarding an increase in visitors to the site are noted, but it is speculative. An estate agency operates during

normal office hours and will during such hours in all probability have more permanent people at the site and then also visitors. Visitors will come visit specific estate agents, and come to view properties that are for sale. An art gallery have very limited staff administering the art gallery and will also have much less visitors during the normal office hours, due to the fact that an art is a niche market. However, art exhibitions and art shows, which will happen at limited occasions will be held usually after normal office hours and can result to many more people visiting the premises for such occasions than in the case of an estate agency.

Ultimately the impact of an estate agency or other office use will have a possible greater impact during the day, in a consistent manner, while visitors to an art gallery will be more after hours in an inconsistent manner. It is therefore debatable which of these facilities would have a greater impact on neighbouring properties.

The objections regarding safety and criminal activities are speculative, and the fact that an art gallery or offices be on the property, should not lead to an increase or decrease in safety or criminal activities.

The applicant's comments that an estate agency operated on the property from 2004 to 2008 and no objections were received, is noted. This fact cannot be debated or concurred with by this office. It must however be noted that if the statement is correct, such activity would have been an illegal activity.

4. Objection

The application will have a negative impact on the conservation of the area, and there is no need for offices in the area as it is close to the business node in Van Blommestein Street with restaurants, estate agencies, etc. There is also vacant land in Van Blommestein Street that could be used for offices. It is also not clearly indicated if the office use will only be on the ground floor or if it is a home occupation.

Applicant's Response

The owner is of the opinion that the estate agency has less of an impact than the art gallery. The fact that there is other vacant land in the area earmarked for business purposes is not relevant, and this application on Erf 4177, Onrustrivier must be considered on its own merits. It is clearly mentioned that a portion of the building on ground floor, previously used as an art gallery, will be used as offices, and no further developments are proposed.

The concept of the office and the residential component is similar to a home occupation in terms of Single Residential Zone I zoning. The primary use will be residential, and a smaller percentage will be used as an office.

Town Planner's Response

The comments are duly noted. The objectors motivate that the estate agency has other options where to accommodate their business, but is now occupying a property not earmarked for estate agency purposes. Their comment is correct,

but the applicant's opinion that this application should be considered on its own merit is also correct.

It was clearly indicated in the application that only the area where the art gallery operated, which is on the ground floor only, will be utilised for office purposes.

The applicant's opinion that the existing situation on Erf 4177, Onrustrivier is similar to a home occupation can only partially be supported. A home occupation will only have three (3) people working from the premises, which includes the home owner that is involved in the business, it will draw limited feet and will also have very limited signage. The new Zoning Scheme Regulations (October 2020) also limit the footprint of a home occupation to a maximum of 50m², and the resident must be involved in the business.

The above-mentioned restrictions and new restrictions were all inserted to limit impact on residential areas. The use of the property for residential accommodation and estate agency (office use) might be in line with the type of uses allowed in a home occupation, but it is being operated on a much bigger scale with a much greater impact on the adjacent residential area.

5. Objection

Is the application in line with the relevant legislation referred to in the application?

Applicant's Response

It is in line with the legislation and has been motivated in terms of the planning principles. The application has been deemed to be completed in terms of the requirements of the By-Law and has been processed.

Town Planner's Response

The objectors are of the opinion that there is a lack of information in the motivation and therefore the application is not clear enough to what the scale and future activities will entail. It is however, clearly indicated that the intension is to utilise 149m² for office space. It is also indicated that the application is made to allow any office uses on the property in future (only in the 149m² area). The objector's concerns relate more to the possible future office activities that might lease the space, and for example security firm offices were mentioned, as this could have a greater impact with possibly more vehicles and traffic after hours. The applicant basically cannot provide such information, as he would be speculating who will lease the office space after the estate agency. The objector's concern is however noted, as at least surrounding neighbours know what impact an art gallery and estate agency have on the area.

If the office use is approved the identified area could also be used for a bank, postal office, etc., which would have a much greater impact on the area. To allow full blow office rights should therefore carefully be considered, rather limiting the land uses.

6. *Objection*

UKH Neugebeuer included a list of surrounding property owners (petition) whom have some concerns regarding the proposed application.

Applicant's Response

In terms of the requirements of a petition listed members should sign the document, which was not done. This extended part of the objection should be disregarded, but the issues on such page were discussed.

Town Planner's Response

The applicant's response is supported. It is to be noted that in terms of the By-Law only the persons, who duly signed the petition and whose contact address are duly provided, is considered the legal objector.

7. *Objection*

The Business Zone III zoning should never have been allocated, and a more proper approach would have been a consent use for an art gallery. This will make it easier for similar applications in the area, as a precedent has been created.

Applicant's Response

The business rights were considered and approved following due process, and the statement is not relevant. Council must consider the facts at hand, and not on what could happen in future.

Town Planner's Response

The objector's comments are duly noted. When the art gallery was approved in 1994, the Section 8 Zoning Scheme Regulations were applicable. In terms of the Residential Zone I zoning, the primary use was dwelling house and consent use for an additional dwelling unit. The only other way to accommodate the art gallery on a permanent basis was to rezone the property to Business Zone II at that stage. Such zone also made provision for a shop as primary use, which then accommodated the art gallery. It was also then limited only to be used as an art gallery. This was therefore the only planning tool for Council to accommodate the art gallery use on a permanent basis in 1994.

The objector's statement that the business zoning provides the landowner with some expectation, is not unfounded, as the application is now directed to obtain one of the consent uses under the Business Zone III zoning which is office use.

The fact is that a precedent was already created with council's decision for art galleries in residential areas, however it must be carefully considered if allowing the change thereof to full blown office use purposes will not create a further precedent.

8. **Objection**

The limitation of the old approval to only art gallery and residential was to ensure that the business does not infiltrate the residential area of Onrustrivier.

Applicant's Response

There are already numerous businesses in the area, with a much greater impact than offices. This office use application therefore is only a proposed change in use for an area already utilised as a gallery. The use is similar to the art gallery use, which is compatible with surrounding land uses.

Town Planner's Response

Both comments are duly noted. There is already a historic business on the property. The important issue here is whether the full office use would have a greater impact on the residential area to the east, not necessarily the infiltration of the residential area.

9. **Objection**

The application uses the existing zoning to motivate the "office" use to be permitted.

Applicant's Response

The section of the report was only to motivate the application in terms of the Zoning Scheme and does not entail anything out of the ordinary. The application is in line with the Zoning Scheme Regulations and is also motivated to be in line with surrounding land uses.

Town Planner's Response

Both comments are duly noted.

10. **Objection**

It is not clear whether there are any restrictive conditions in the Title Deed of Erf 3297, Onrustrivier to utilise it as business as it is zoned Business. The further development of Erven 4177 and 3297 could lead to various business options with negative impacts and safety risks.

Applicant's Response

This application does not include Erf 3297, Onrustrivier, and the applicant has no information regarding such property's rights. This application should be considered on its own merits, and speculation of developing both these properties should not be considered. An estate agency previously operated for three (3) years on Erf 4177 without safety risks.

Town Planner's Response

Although the objector's comments are duly noted, the applicant's opinion that the objector is speculating and that this application should be considered based on its own merits, is supported.

11. Objection

Once the business zoning was allocated to the property the following pressures were created:

- ***local authority is pressured to agree to future zoning changes, and***
- ***uplifting of restrictive conditions leads to alternative uses.***

Applicant's Response

The application must still be considered on its own merit, and this application is only to use the same space for the art gallery for office space.

Town Planner's Response

Both comments are duly noted. The objector is again referring to a precedent that was created. This is true to a certain extent, but then the fact is that an art gallery (and an illegal estate agency) was operated on the property over the last 25 years, and the property was rezoned 25 years ago. The Municipality can only now consider the existing environment around the erf and the merit of the application at this stage.

12. Objection

Negative impact of traffic and increase of staff. The traffic influx for the art gallery was for limited occasions and limited time periods. The parking lot next to Van Blommestein Street is hardly used, and up to five (5) vehicles park on the corner of Lagoon Drive, creating a dangerous traffic situation for vehicles and pedestrians entering Lagoon Drive. The left-in left-out traffic arrangement for the parking off Van Blommestein Street is ignored by the road users.

Applicant's Response

The office use will have less impact on traffic. The parking off Van Blommestein Street has already been approved in 1998 and sufficient parking can be provided. The primary parking area will be from Blommestein Road. The owners will comply with parking regulations.

Town Planner's Response

The comments of the objector and applicant are duly noted. It is speculative to presume offices will create a greater influx than an art gallery. It is safe to assume that offices will lead to a consistent flow of traffic during the day, whilst an art gallery will create possible traffic increase after hours or on weekends when art exhibitions are usually held. It is however very difficult to prove that the proposed office use will have a greater traffic impact than an art gallery.

The objections regarding traffic and pedestrian safety are valid concerns, and the Municipality should carefully consider if it is necessary to apply stricter conditions for this consideration for additional rights.

It is safe to say that at this stage, the employees of the estate agency on the site mostly park their vehicles off Lagoon Drive, and not Van Blommestein Street. Considering the old original approvals from 1994 and 1998, it is interpreted that parking for the art gallery was mainly to be off Van Blommestein Street, and any parking off Lagoon Drive should be in such manner that it should not have created any traffic problems. Considering the fact that more traffic would be created to the property during office hours, should the additional office rights be granted, serious consideration should be given to alter or remove the parking off Lagoon Drive. This would not only ensure better traffic and pedestrian safety, but also help limit the impact of the office use on the residential character of Lagoon Drive.

13. Objection

The estate agent's flags, signage and branded agent vehicles have rendered the residential area unappealing and changed the character of the residential area.

Applicant's Response

The lessee will comply with the advertising By-Law of the Overstrand Municipality. The intension is to utilise the existing land use on the subject property that are offices for the estate agents.

Town Planner's Response

The applicant's comments are not unfounded. It is also the opinion that the existing estate agency does at times place large flags on the property, which in all likelihood is not in line with the advertising By-Law of the Overstrand Municipality. Should the proposed offices comply with the By-Law, the impact would be less.

It is also the opinion that the signage in Lagoon Drive should be limited, to protect the residential character of the area next to Lagoon Drive.

14. Objection

A quiet low impact art gallery is now replaced by a visually intrusive full-fledged business, and it is considered "leap frog" land use. This will lead to fragmentation of the Onrustrivier business node.

Applicant's Response

Art galleries must host art exhibitions and even auctions to be financially viable, which has a much greater impact on neighbours than an estate agent's office.

Town Planner's Response

Both comments are noted. The objectors' comment regarding "leap frogging" is noted. It appears that the art gallery was allowed to enhance the tourism character of Onrustvrievier and provide economic opportunities when it was approved. The property does have a business zoning to be utilised for art gallery purposes for more than 25 years, therefore it is debatable if the application must be considered as "leap frogging".

15. Objection

The property in future may possibly be used for activity with a greater impact, possibly even a shop if the conditions are amended. The type of offices is not specified which can have a much greater impact than an art gallery. The zoning and land use is not in line with current trends and the character of the area.

Applicant's Response

The objector is speculating, however only the existing art gallery area will be utilised for office purposes. The application is not to allow a shop. An art gallery and offices have similar impact, and an art gallery even has a greater impact than offices.

Town Planner's Response

Both comments are noted. The application is only for office use purposes, with the residential component to remain on the first (1st) floor.

The objector's concern regarding the type of "office" to be allowed and the impact thereof on the character of the area is not unfounded, considering the different impact of land uses allowed under "office" definition.

The applicant did motivate in his report that the office will be similar to home occupations such as estate agents, doctor's surgery, etc. allowed to operate from home. Office use will however also allow a bank or post office, which could have a much greater impact on the character of the area and surrounding property owners. It is therefore the opinion that a limit can be placed on the type of office uses allowed, to ensure the impact on the residential component is limited.

16. Objection

The estate agency is being operated illegally and the use is purely based on financial gain for the landowners.

Applicant's Response

The application is to legalise the current land use and to utilise the property to its full potential.

When the current owner purchased the property, an estate agency was already established in the area that was allocated to an art gallery.

Town Planner's Response

The comments are duly noted. The application is to legalise the existing illegal situation. The fact that there is an existing estate agency on the premises should have no relevancy in the consideration of the application. The applicant's opinion that the leasing of the premises is for financial gain is not debated, but then would leasing the premises to an art gallery also be for financial gain.

17. Objection

Not everybody received notices.

Applicant's Response

No comment provided.

Town Planner's Response

Registered notices were sent to nineteen (19) surrounding possibly affected property owners, and also the Onrustrivier Ratepayers Association. Only four (4) notices were returned to the Municipality which were not collected from the Post Office.

A fair public participation process was followed in line with the requirements of the Planning By-Law.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

See Paragraph 7 above.

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 is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The application will have no impact on environmentally sensitive areas or valuable agricultural land.

Any possible increased impact of the business use should however be carefully considered to ensure the residential character of the residential area next to Lagoon Drive is not negatively affected by commercial activities.

Efficiency

It is more efficient for the landowner to lease the property to an estate agency than to not have any lease at all.

Spatial Resilience

The amendment of the condition will enable the property owner to lease the business portion within the building for other land uses which would provide for a larger pool of lessees and would ensure less periods the business will stand empty.

Good Administration

A good public participation process was 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

The property is zoned Business Zone III. This area is not identified for commercial purposes in terms of the SDF, but the erf is already zoned for such purposes.

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

N/A

10.6 Impact on Municipal Engineering Services

No new services will be required.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The new proposal will still be in line with the Overstrand Zoning Scheme.

10.9 THE DESIRABILITY OF THE PROPOSAL

Erf 4177, Onrustrivier is situated on the corner of Lagoon Drive and Van Blommestein Streets in Onrustrivier.

An approval was granted in 1994 for a rezoning of Erf 3214, Onrustrivier. The approval was granted to allow an art gallery on ground floor level, and a consent use was approved to allow a dwelling on the first floor. In 1999 an application was made to rezone Erf 3803, Onrustrivier and consolidate it with Erf 3214, Onrustrivier. This was due to the fact that parking was created on Erf 3803, Onrustrivier for the gallery. The approval only granted business rights for an art gallery limited to the ground floor of the building and the residential component on first floor level. Erven 3214 and 3803 were consolidated to create Erf 4177.

The property had a Business Zoning for the last 25 years to operate an art gallery/dwelling. It is noted that the existing landowner indicated the property was also previously used as an estate agency, but this fact cannot be debated or concurred with by this office.

The fact is the estate agency on the property is operating illegally and in conflict with Council's approval, hence the reason why this land use application to amend the condition limiting the business use to an art gallery, was submitted.

The new owner is only utilising a portion of the ground floor area of 149m² (GLA), as previously used for the art gallery, for estate agency's office purposes. The area on first floor level and a portion on ground floor level is still being utilised by the landowner as a residence. There is also a double garage utilised by the owner for residential purposes, which obtains access off Lagoon Drive.

There is an existing paved area north of the art gallery that obtains access off Lagoon Drive, and also a parking area south of the building which obtains access off Van Blommestein Street, which was created as a parking area for the art gallery.

The applicant's main reason for applying for the amendment of the conditions of approval is to change the limiting conditions to accommodate other office uses. The application was fully motivated as can be seen under the summary of the motivation report.

The application was duly advertised by sending notices to surrounding property owners. Two (2) letters of objection were received.

The applicant was provided with an opportunity to respond to the objections. This was discussed in detail under point 7 in this report.

The major points of concern will be discussed in more detail and include the impact on the character of the area (safety, mixed-use, etc.), the precedent that is created (expectations, leap frog), and lastly traffic and parking concerns.

The objector is of the opinion that Council created an expectation when the rezoning of the erf to business was approved, and such approval and this application will create a further "leap frog" of business purposes and create a precedent. The applicant is of the opinion that there are already business rights on the property, and the office use purposes applied for is similar to the approved art gallery use.

The objector's comments about "leap frogging" are duly noted, but considering the fact that the site already has business zoning, "leap frogging" already occurred 25 years ago, and the current owner cannot be blamed. The business environment in 1994 was totally different than now, therefore Council had totally different considerations to consider at that time.

The business zoning definitely did create expectations for the land owner, and considering the economic challenges experienced in South Africa, it is logical the land owner wants to ensure he/she has security of a tenant at all times.

Also, the erf was already approved in 1994 for business purposes, and if any precedent was created it was created in 1994. However, no other rezoning was approved in close proximity in this area. The new application will not include a rezoning, and therefore it is the opinion that this application will not create a precedent, but merely expand on the type of business rights on the property.

The second major point of objection are traffic and parking concerns. The applicant is of the opinion that the office will not have a greater impact on traffic and parking, while the objectors foresee a greater impact. The fact is that an art gallery and normal administrative or other office uses draw different clientele at different times of the day or week. An art gallery would draw less people during office hours during the week, but could draw more people in the evenings and over weekends with art exhibitions, auctions and as tourist attractions. It is then therefore foreseen that traffic will be less during office hours, but large amounts of traffic could be drawn over weekends and in the evenings to art galleries.

Office use will operate during normal office hours and Saturday mornings. On average, it would create more traffic during working hours, but almost no traffic in the evenings.

Ultimately, it would be impossible to say if an art gallery or offices draw the most traffic.

The objector's concerns regarding the parking in Lagoon Drive not being safe is supported. The fact that there will be constant traffic during the day when other businesses and tourist facilities draw traffic, makes it important that the safety of such parking area be revisited.

The parking bay off Van Blommestein Street already provide for six (6) parking bays, which at the required ratio of four (4) parking bays/100m² GLA for office use, is sufficient parking for the 149m² office area. It could be that at times, there would be more than six (6) vehicles visiting the offices, therefore instead of removing the parking area off Lagoon Drive, the area can be limited in scale to only provide for two (2) vehicles, which must be reserved for personnel only, and not be used by any visitors. The two (2) parking bays must also be provided in such a manner to improve the traffic safety at the crossing of Lagoon Drive and Van Blommestein Street.

Considering the above, it is not foreseen that there will be a major increase in traffic or parking requirements, only more consistent traffic during working

hours. With the above-mentioned mitigation measures traffic safety can be improved.

The third major concern is that the application will create a mixed-use character that would not only impact the safety of the area, but also the residential character of the Lagoon Drive area. The applicant does not support such sentiment and is of the opinion that the office use impact would be similar to the art gallery's impact. Erf 4177, Onrustrivier is situated on the corner of Lagoon Drive and Van Blommestein Street with the existing building constructed on the corner. The aim with the previous planning approvals were always to focus the business activities closer to Van Blommestein Street, and the residential outbuildings and back yard closer to Lagoon Drive, and the properties to the east and south.

In this way, traffic impact and also visual impact was limited in Lagoon Drive. The comments by objectors of the impact of signage and flags having a visual impact on the residential area is not unfounded. It is therefore recommended that only the existing constructed signage board and the area above the entrance door of the business component be utilised for signage purposes to limit visual impact. The recommendations made with regards to traffic and parking would also help limit flow into Lagoon Drive and the residential area, providing more protection to the residential character.

The concerns of the objectors that various types of activities could be allowed under the office use definition, some with a greater impact than others, are duly noted. The objectors' concern is that a mixed-use character will be created, which could impact the safety and character of the area.

The applicant motivates that the new office use will allow nothing more than what is allowed under a home occupation. To ensure a balance between the objectors' concerns and the applicant's expectations, it is recommended that uses be limited to be more in line with home occupation uses. It is recommended the uses be limited to an art gallery, and professional/clerical work (estate agency, doctor, etc.).

The above-mentioned mitigation measures are recommended to limit visual impact, traffic impact and limit uses and will ensure the character of the surrounding area will not negatively be affected.

11. RECOMMENDATION

1. that the application in terms of Section 47 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the following:
 - ❖ amendmend of the conditions of approvals in respect of an existing approval in terms of Section 16(2)(h) of the By-Law that restricts the subject property to be used for an art gallery and residential component only to enable the property also to be used for office purposes on ground floor level, and
 - ❖ amendment of the Site Development Plan in terms of Section 16(2)(i) of the By-Law in order to accommodate additional land uses.

be approved in terms of Section 61 and subject to the following conditions:

- (a) that the area of the building of 149m² (GLA) on ground floor level be limited for land uses for art gallery purposes and professional/clerical purposes (estate agency, doctor's surgery, etc.) only;
 - (b) that the parking area off Lagoon Drive be amended to only provide for two (2) reserved parking bays to the satisfaction of the Engineering and Operational Branches;
 - (c) that a revised Site Development Plan be submitted stipulating the limited land uses in 1(a) above and showing the amended parking layout for the parking area off Lagoon Drive as stipulated in condition 1(b) above, to the satisfaction of the Senior Manager: Town- and Spatial Planning;
 - (d) that all the conditions in the Services Report (attached as Annexure F), be complied with, and
 - (e) that signage be limited next to Lagoon Drive to only signage above the front door entrance facing Lagoon Drive, and such signage and any signage to be placed next to Van Blommestein Street must be applied for and comply with the Signage By-Law.
2. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditions of approval.

12. REASONS FOR RECOMMENDATION

- ❖ Office purposes allows for example security company offices, banks, port office, etc. which could have a much greater impact on the surrounding area due to influx of people and operating hours. By limiting the uses to art gallery and professional/clerical purposes (estate agency, doctors surgery, etc.) the impact on the residential area next to Lagoon Drive can be limited.
- ❖ The recommended alteration of the existing parking off Lagoon Drive would help limit the traffic impact and improve the traffic safety in Lagoon Drive.
- ❖ The proposed new land uses will not have a greater impact on traffic and parking requirements, and with the minor mitigation measures the traffic safety concern in Lagoon Drive can be addressed.
- ❖ The area utilised for business purposes (149m² GLA) will not be increased.
- ❖ The new proposed land uses would not have a greater impact on the residential character of Lagoon Drive, and with some mitigation measures, visual impact can be limited.
- ❖ The objections do not prove the application to be undesirable.
- ❖ The proposal is in line with the Planning Principles in that the property can be used more efficiently and will have more spatial resilience.

13. ANNEXURE

- Annexure A: Locality Plan
Annexure B: Site Development Plan

Annexure C: Motivation Report
Annexure D: Objections Received
Annexure E: Applicant's Response to Objections
Annexure F: Services Report

SIGNATURES**AUTHOR:**

Name: **H OLIVIER**
SACPLAN Reg No: **B/8128/2004**
Signature: _____
Date: _____

REGISTERED PLANNER:

Name: **H VAN DER STOEP**
SACPLAN Reg No: **A/1708/2013**
Signature: _____
Date: _____

ANNEXURE A



PLAN
Active

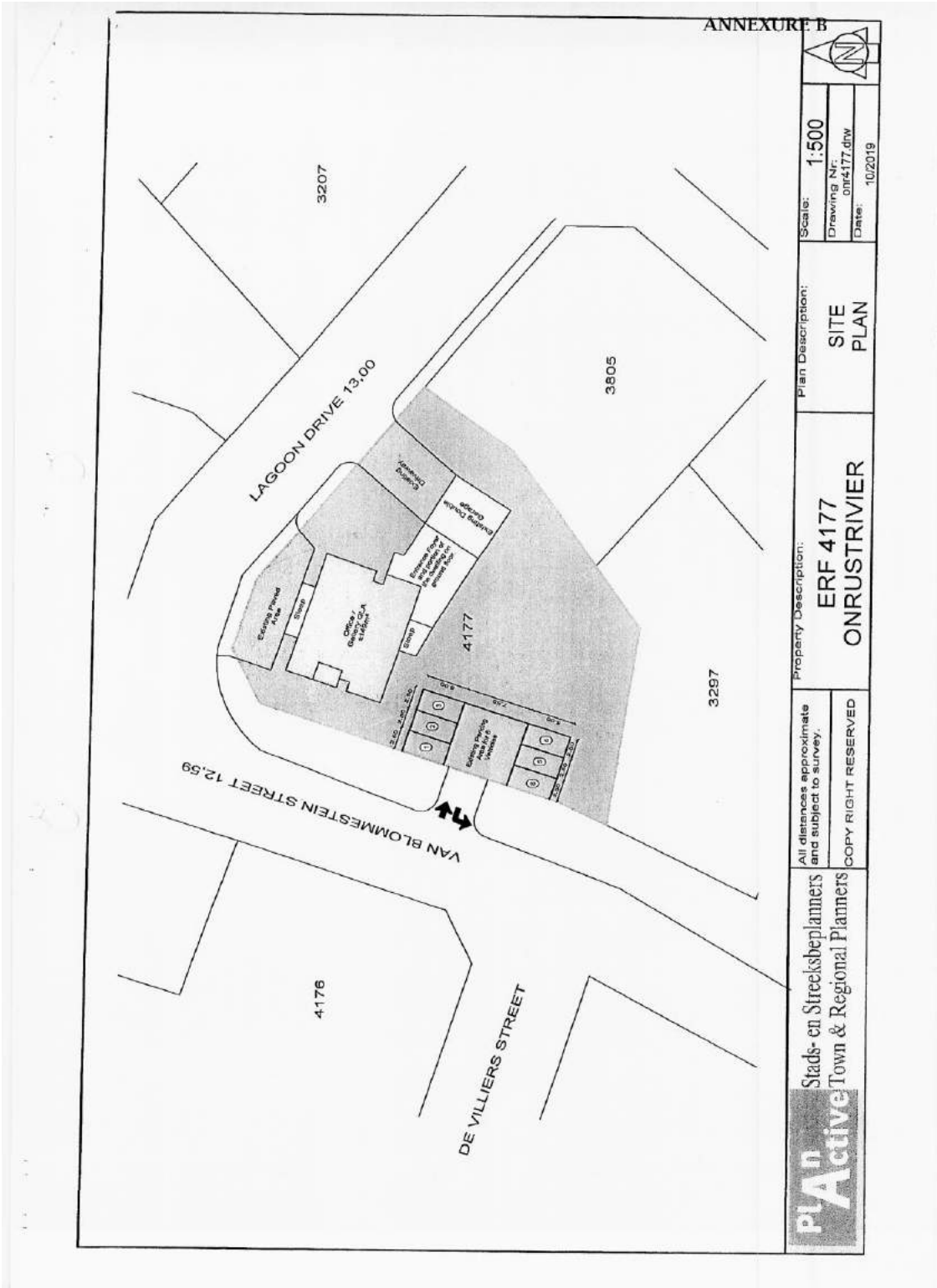
Stads- en Streeksbeplanners
Town & Regional Planners

All distances approximate
and subject to survey.
COPY RIGHT RESERVED

Property Description:
ERF 4177
ONRUSTRIMIER

Plan Description:
LOCALITY MAP

Scale: **NTS**
Drawing Nr: **004177L00W**
Date: **08/01/2013**



ANNEXURE B

PLAN Stads- en Streeksbeplanners Town & Regional Planners Active	All distances approximate and subject to survey. COPY RIGHT RESERVED	Property Description: ERF 4177 ONRUSTRIVIER		Plan Description: SITE PLAN	Scale: 1:500
				Drawing Nr: onr4177.dwg	Date: 10/2019

**PROPOSED AMENDMENT OF THE
CONDITIONS OF AN EXISTING
APPROVAL AND AMENDMENT OF
SITE DEVELOPMENT PLAN**

ERF 4177 ONRUSTRIVIER

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Mr. L.A. and Mrs. R.M Van Dyk the owners of Erf 4177 Onrustrivier, have instructed the company Plan Active to apply for the amendment of conditions of approval in respect of an existing approval and to amend the site development plan.

During our investigation into previous approvals we have noted that one of the conditions of approval was that a site development plan be submitted for approval. Both the Building Control Department and the Town Planning Department have no records of an approved site development plan. Because there is no certainty that a site development plan was submitted and approved, we are applying for the amendment of the site development plan as a precaution. The site development plan that accompanies this application was compiled as an as built site development plan when our client purchased the property and no changes were made to the layout.

In 1994 the rezoning of Erf 3214 Onrustrivier to Business Zone 2 (in terms of the Section 8 Zoning Regulations Scheme) was approved. A condition of approval was

that the use of the property be restricted to an art gallery and a residential component. In 1998 the owner then applied to rezone the neighbouring property, Erf 3803 Onrustrivier, from Residential zone 1 to Business Zone 2 and that the erf be consolidated with Erf 3214 Onrustrivier to create Erf 4177 Onrustrivier. The same condition of approval was imposed that the consolidated property's (Erf 4177 Onrustrivier) land use be restricted to an art gallery with a residential component.

Erf 4177 Onrustrivier is 1371m² in extent and is held by Title Deed Numbers T87021/2005, T63881/2007, T45718/2018 and T45717/2018.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(h) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the amendment, deletion or additional conditions in respect of an existing approval for Erf 4177 Onrustrivier.
- Chapter 4, Section 16(2)(l) Amendment of Site Development Plan (SDP) for Erf 4177 Onrustrivier.

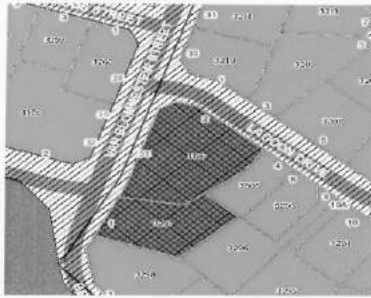
3. DESIRABILITY

3.1 PROPERTY DESCRIPTION

The subject property is situated at 2 Lagoon Drive, Onrustrivier. Please refer to the enclosed locality plan. Erf 4177 Onrustrivier is 1371m² in extent and it is situated in a predominantly upmarket single residential area.

3.2 ZONING

Erf 4177 Onrustrivier is zoned Business Zone 3 and is currently used for Residential and Business purposes. Surrounding properties are zoned for single residential purposes and the neighbouring property, Erf 3297 Onrustrivier is also zoned Business Zone 3.



3.3 LAND USE

Erf 4177 Onrustrivier is currently used for residential use and as a real estate agency.

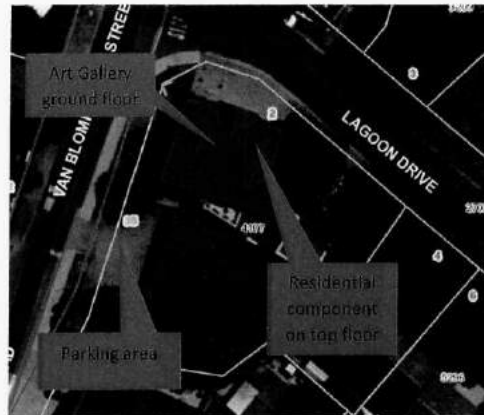
Land uses that surround Erf 4177 Onrustrivier are single dwellings, businesses, public roads and public open spaces. It is therefore evident that Erf 4177 Onrustrivier is within a mixed use land use area, consisting of businesses and single residential dwellings.

3.4 PROPOSAL

Application is made in terms of:

- Chapter 4, Section 16(2)(h) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the amendment of the conditions of approval in respect of an existing approval for Erf 4177 Onrustrivier.
- Chapter 4, Section 16(2)(l) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016 for the Amendment of Site Development Plan (SDP), for Erf 4177 Onrustrivier.

It is the intention of the owners of Erf 4177 Onrustrivier to amend the conditions of approval that restricts the subject property to be used for an Art Gallery and residential component only. The intention is also to amend the SDP to reiterate the amendments of the previous conditions of approval.



The intention of the owners is to diversify the rights of the subject property that is currently approved. The subject property is currently restricted to be used as an art gallery with a residential component.

The intention is to amend the restricted condition in order to allow the subject property to be also used for office purposes. The subject property is currently zoned Business Zone 3 and the following land use restrictions apply to a property in this zone in terms of the Zoning Scheme Regulations:

7.2 BUSINESS ZONE 3: LOCAL BUSINESS (B3)

Use of the property

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

- (a) **Primary uses** are: shops, flats (above ground floor), offices;
- (b) **Consent uses** are: bottle store, business premises, clinic, conference facility, flats (on ground floor), town housing, guest house, hotel, informal trading, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building, restaurant, rooftop base station, sale of alcoholic beverages, service station, service trade, transmission tower.

In our opinion the existing condition of approval is more restricted than the Zoning Scheme Regulations applicable in the Overstrand Municipal Area. According to the abstract above

properties with a Business Zone 3, zoning have the following primary land use rights: **shops, flats (above ground floor) and offices.**

The proposed amendment of the previous approved conditions and site development plan will not have a negative impact on the character and the land values of the surrounding properties in the Onrustrivier area. Cognisance should be taken of the fact that the subject property currently only accommodates 1 dwelling and an estate agency office. The last-mentioned use is compatible with single residential land uses and therefore office type uses that are associated with a home occupation is a primary right under a Residential Zone 1 zoning. Please refer to the abstract below from the Overstrand Municipality Zoning Scheme.

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) **Consent uses** are: crèche, green house, guest house, house shop, institution, place of instruction, place of worship, residential building, tourist accommodation.

The definition of a home occupation read as follows:

"home occupation" means the practicing of an occupation, profession, art or trade, or the conducting of an enterprise, which includes an estate agency, from a dwelling unit by one or more of the occupants of a dwelling unit; provided that the dominant use of the dwelling concerned shall remain for the living accommodation of a single family, and the property complies with the requirements contained in this zoning scheme for a home occupation; but does not include adult entertainment;

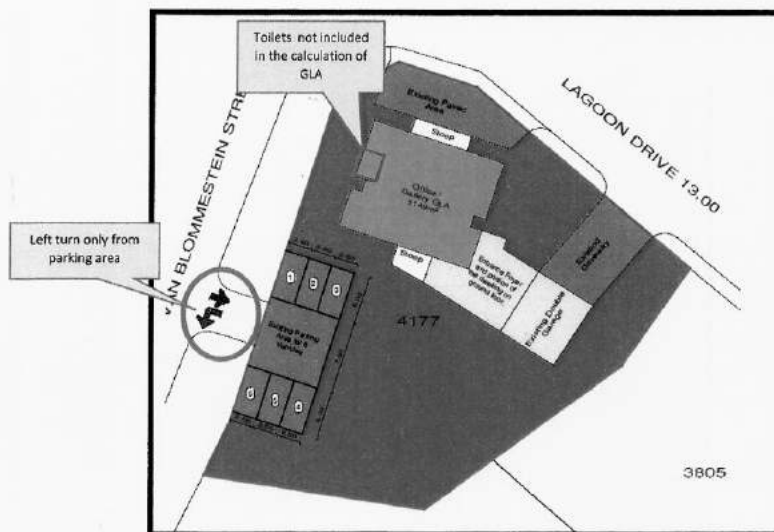
An approval for the rezoning of the subject property (Erven 3214 and 3803 Onrustrivier, before consolidation) from residential use to Business use has already been obtained. The proposal is not to depart from the development parameters, as the office use is included under the primary land use rights for properties with a Business Zone 3 zoning.

The subject property will still be utilised as a business and a residential component as previously approved, but the intention is not to be restricted to an Art Gallery only, but to include offices.

3.5 ACCESS, TRAFFIC AND PARKING

Erf 4177 Onrustrivier is situated on the corner of Lagoon Drive and Van Blommestein Street. All the existing access points will be retained with the proposed application. The residential component of the subject property obtains access to the established double garage via a driveway from Lagoon Drive. A formal parking area was constructed especially for the approved art gallery that gains access from Van Blommestein Street.

The proposed application is to amend the conditions of a previous approval that restricted the use of the subject property to an art gallery and a residential component and the amendment of the SDP. The proposed change of land use from an art gallery to an estate agent (office type land use) is land uses similar to one another. Subsequently the land use in effect will remain the same, that is office / business orientated and therefore no additional impact on the traffic is expected. As previously disclosed in the former approval, traffic exiting the parking area will be allowed to only exit left into Van Blommenstein Street as seen in the drawing below.



With the historic nature of the subject property, a parking ratio of 1 bay per 25m² floor area was applicable at the time of obtaining the approval for the art gallery. With the proposed amendments, the similarity in nature of the proposed use as office of the exact same portion of the building that was formerly approved as an art gallery, is it our opinion that the parking bays provided for the art gallery should remain the same and that the 6 parking bays provided are sufficient. The extent of the business area remains the same as previously approved. The total amount of parking bays provided, is 6 parking bays, calculated at 1 parking bay per 25m² floor area. (Floor area:149m²).

3.6 SERVICES

Erf 4177 Onrustrivier is situated in an already developed area where all services exist. The required services for the subject property will remain the same as previously approved. This application constitutes the amendment of a previous approval and a condition imposed limiting the use to an art gallery and a residential component. The change of land use from an art gallery to an office use (estate agent) is a similar land use and no additional services will be required.

3.7 TITLE DEED

Title Deeds Numbers T87021/2005, T63881/2007, T45718/2018 and T45717/2018 have no restrictions that need to be removed in order for this application for the amendment of conditions imposed by an existing approval and to amend the Site Development Plan (SDP) of Erf 4177 Onrustrivier. The ownership is tabled below for easy reference:

<u>Title Deed Number</u>	<u>Description</u>	<u>Capture date</u>
T87021/2005	First Established owners of the subject property (Erf 4177 Onrustrivier).	31 October 2005
T63881/2007	Mrs R.M. Van Dyk bought out the shares of Mrs R.H. Roos	20 September 2018
T45718/2018	Mrs R.M. Van Dyk bought out the shares of Mrs K.W. Strydom	03 October 2018
T45717/2018	Mrs. R.M. van Dyk inherited the shares of the late Mrs. M Pretorius	03 October 2018

There is a bond registered against Erf 4177 Onrustrivier as reflected as an endorsement on the mentioned Title Deeds.

The bondholder's consent will be submitted as soon as it is available.

3.8 FORWARD PLANNING

The *Overstrand Spatial Development Framework (2006)* earmarks the area where Erf 4177 Onrustrivier is situated, for residential purposes.

The zoning of the subject property will remain unchanged (Business Zone 3) as per the Zoning Certificate dated 26 August 2019 (attached as Annexure A).

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 1 that consists mainly of Vermont and Onrustrivier single residential erven. No densification of this planning unit is proposed.

Taking the history of Erf 4177 Onrustrivier into consideration, the fact that it has a Business Zone 3 zoning and that this application constitutes the amendment of a condition of approval and the amendment of the site development plan to also include office use for the area demarcated as a gallery, is it our opinion that the application can still be supported. Even though the land use contradicts the forward planning strategies the land use is compatible with the current land use trends and character of the area.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 4177 Onrustrivier 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 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 is it obvious that the proposed amendment of conditions in respect of an existing approval of Erf 4177 Onrustrivier and the amendment of the existing Site Development Plan (SDP) will not have a negative impact on the heritage value of the subject property or the greater area of Onrustrivier.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed amendment of conditions in respect of an existing approval of Erf 4177 Onrustrivier and the amendment of the site development plan (SDP) 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 refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. In the broadest sense, it seeks to promote the integration of communities and the creation of settlements that allow the poorest of the poor to access opportunities. In a spatially just settlement, opportunities and access are provided to those whose historical access and opportunities have been impeded by the practice of apartheid spatial planning. Land

development procedures must include provisions that accommodate access to, and facilitation of, security of tenure and the incremental upgrading of informal areas. In our opinion the principle of Spatial Justice is not relevant to the subject application.

Spatial sustainability: The proposed amendment of conditions in respect of an existing approval and the amendment of site development plan (SDP) for Erf 4177 Onrustvriër is in line with the current character where the subject property is located. The proposed application will have no impact on the conservation worthy areas of Onrustvriër.

Efficiency Refers to the need to create settlements that optimise the use of space, energy, infrastructure, resources and land. Inherent in this statement is the need to promote densification and urban (as opposed to suburban) development typologies. This also has to do with the manner in which the settlement itself is designed and functions, which should reduce the need to travel long distances to access services, facilities and opportunities. Efficiency also refers to decision making procedures which are designed to minimise negative financial, social, economic or environmental impacts. In addition, efficiency refers to the need for development application procedures that are efficient and streamlined. In our opinion the principle of Efficiency is not applicable to this application.

Spatial Resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

Good administration: Our Company 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. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015.

4. **RECOMMENDATION**

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

- The proposed amendment of conditions in respect of an existing approval of Erf 4177 Onrustrivier, and the amendment of the site development plan (SDP) falls within the existing land use tendencies in the area;
- The proposal is compatible with the existing land uses in the area;
- There will be no impact on services;
- The proposed amendment, deletion or additional conditions in respect of an existing approval of Erf 4177 Onrustrivier, and Amendment of the Site development Plan (SDP) will not have a negative impact on the current character and land values of the surrounding erven.
- The proposed application will not have any additional impact on the current traffic flow;
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the amendment of conditions in respect of an existing approval of Erf 4177 Onrustrivier, and the amendment of the site development plan (SDP) for Erf 4177 Onrustrivier.

Loretta Gillion - FW: OVERSTRAND FILE REFERENCE 4177 HON

From: "CREATIVE PROFILE" <profile@netactive.co.za>
To: <ppsec@overstrand.gov.za>
Date: 20 March 2020 04:13 PM
Subject: FW: OVERSTRAND FILE REFERENCE 4177 HON
Cc: "Henk Olivier" <holivier@overstrand.gov.za>
Attachments: Erf 4177 HON WEST TRUST COMMENT ON APPLICATION.pdf

Dear Henk

I believe Loretta is currently out of office and as such has not acknowledged receipt of our email.

May we please request confirmation from your offices of receipt of the attached

With thanks

Michelle

ADMINISTRATION

CREATIVE PROFILE STADSBEPLANNERS (PTY) LTD

EMAIL: profile@netactive.co.za



From: CREATIVE PROFILE [profile@netactive.co.za]
Sent: 19 March 2020 04:26 PM
To: 'loretta@overstrand.gov.za' <loretta@overstrand.gov.za>
Subject: OVERSTRAND FILE REFERENCE 4177 HON
Importance: High

Dear Loretta

On behalf of West Trust, owner of Erf 3220 Onrus (14 Lagoon Drive), herewith comment and objection against the above application with file reference 4177 HON.

We will appreciate if you can please confirm receipt of the attached for our records.

Thanks and best regards

Michelle

ADMINISTRATION

CREATIVE PROFILE STADSBEPLANNERS (PTY) LTD

EMAIL: profile@netactive.co.za



Loretta Gillion - OVERSTRAND FILE REFERENCE 4177 HON

From: "CREATIVE PROFILE" <profile@netactive.co.za>
To: <loretta@overstrand.gov.za>
Date: 19 March 2020 04:27 PM
Subject: OVERSTRAND FILE REFERENCE 4177 HON
Attachments: Erf 4177 HON WEST TRUST COMMENT ON APPLICATION.pdf

Dear Loretta

On behalf of West Trust, owner of Erf 3220 Onrus (14 Lagoon Drive), herewith comment and objection against the above application with file reference 4177 HON.

We will appreciate if you can please confirm receipt of the attached for our records.

Thanks and best regards

Michelle

ADMINISTRATION
CREATIVE PROFILE STADSBEPLANNERS (PTY) LTD
EMAIL: profile@netactive.co.za



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Email: loreffa@overstrand.gov.za

13 March 2020

TO: Overstrand Municipality
Mr Henk Olivier

YOUR FILE REF: 4177 HON

APPLICATION ID: 3498/2019

RE: APPLICATION IN RESPECT OF ERF 4177
LAGOON DRIVE, ONRUSTRIVIER,
OVERSTRAND MUNICIPAL AREA



APPLICATION: ERF 4177 2 LAGOON DRIVE, ONRUSTRIVIER: APPLICATION FOR AMENDMENT OF THE CONDITIONS OF AN EXISTING APPROVAL AND AEMNDMENT OF THE SITE DEVELOPMENT PLAN

On behalf of West Trust, owner of Erf 3220 Onrustrievier, located at 14 Lagoon Drive Onrustrievier, herewith written comment and objection on the application as stated above.

1. BACKGROUND

- 1.1 For the past couple of decades, the art gallery located on Erf 4177 Onrustrievier has been acknowledged and recognised as an art facility located on the corner of Van Blommestein Road and Lagoon Drive within the Onrustrievier town layout.
- 1.2 Art galleries serve not only the local community but also provide tourists, visitors and surrounding land owners within the immediate area, with a sensitive and tranquil facility earmarked for those individuals who are focused on the arts. It is also a recognised fact that Onrustrievier has a long history of well-known artists who have made Onrustrievier their base from where they have created their artwork and Onrus has been their home for many years.
- 1.3 Art galleries are considered a land use with an extremely low impact on surrounding land uses, the latter in all probability the singular reason for the approval in the 1990's to allow this art gallery to be established in a purely residential area. The approval for this alternative land use, was however limited specifically to an art gallery with a residential component and was not intended for Business Zone 3 zoning, hence the restrictive approval conditions.

2. SURROUNDING LAND USES

- 2.1 The applicant's statement in paragraph 3.3 that the surrounding land uses can be classified as a mixed land use area, is incorrect, and as such is refuted. The surrounding land uses are residential in their entirety. Business orientated land uses are centrally located to the north of Erf 4177 on Van Blommestein Road – approximately 190 meters from Erf 4177 Onrustrievier.
- 2.2 The business zoning allocated to Erf 4177 is a specific case with specific approval conditions (ie limited to art gallery with a residential component) and the historic reasoning for said approval will have been to ensure that "business creep" does not infiltrate the surrounding (to quote the applicant) "predominantly upmarket single residential area".
- 2.3 It is the writer's opinion that the municipality erred in allocating the historic business zone rights to Erf 4177 and Erf 3297 in a purely residential area. In other words, Business Zone 3 on Erf 4177 and 3297 has in effect furnished a purely residential area (albeit in good faith with only a low impact art gallery allowed on Erf 4177). A more prudent approach would have been to assign a "CONSENT USE" for an art gallery on Erf 4177 versus amending the zoning to Business Use. Furthermore, it is the writer's opinion that once the latter has occurred it can become easier for surrounding land users to make similar applications as a PRECEDENT has been set with

Council condoning business zonings within a residential area. An existing, approved, alternative Business Zone counts heavily in favour of any other applicant who wishes to make similar, future applications and makes the municipality's mandate of dismissing additional applications more difficult.

- 2.4 The writer wishes to point out that the content of Paragraph 3.4 "PROPOSAL" of the application shows a clear indication by the applicant to utilize the zoning descriptions as set by the local authority's scheme regulations to motivate and support why "offices" should be permitted in lieu of the art gallery limitation on Erf 4177.
- 2.5 The applicant has also pointed out that Erf 3297 (to the south of Erf 4177) has Business Zone rights. This begs the question of whether there are any restrictive conditions applicable to this Erf 3297 (i.e. that the property may only be utilized for art gallery and residential purposes)?
- 2.6 As matters currently stand, the approval of the business zone rights for Erf 4177 with a restriction for art gallery use only, supersedes anything that may be set out in the municipal scheme regulations.
- 2.7 However, based on the writer's personal experience of 34 years as a town planner in numerous municipal jurisdictions, once a zoning has been assigned to a property (albeit it with a historic restriction) and applicants and land owners start making amendments and attempting to change restrictive conditions which are approved by Council, the latter inexorably leads to pressure on various facets of the town planning sphere, i.e. :-
- the local authority is pressured to agree to further zoning changes;
 - the uplifing of restrictive conditions leads to alternative uses that do not conform to the surrounding land uses;
 - point in case is the use of the gallery space for a property agent's office.
 - The offices and associated increase in traffic and staff numbers have a far greater negative impact on the surrounding area than an art gallery. The estate agents office has turned the entrance to Lagoon Drive into a hive of traffic activity with motor vehicles coming and going throughout the day which is disruptive to normal traffic flow at the entrance of what was a quiet, residential cul de sac;
 - The property agent may decide in future not to renew their lease, or may even purchase the building and alternative office uses will be permitted. In respect of alternative office uses as an example, the building on Erf 4177 may be utilized at a later stage as an office for an alarm company. Said offices have a monitoring centre. An alarm company and monitoring centre have numerous vehicles moving around, using lights and sirens at all times of the day and night.
 - If the existing conditions are amended and according to the existing zoning applicable to Erf 4177 Onrustvriër, a shop could open on the premises.

All of the above will have dire negative impacts on the surrounding area. Ultimately, neither the local authority nor the surrounding land owners can police the "zoning" and the surrounding land owners are left with the negative impact of whatever "offices" or land use the land owner chooses to allow to occupy or take place on the property.

- 2.8 Furthermore, while it is noted that the applicant is applying "to allow the subject property to be also used for office purposes", nowhere has the applicant stated that the application will include a restrictive condition that "offices only" will apply or "that a specific type of office only" will be operated from Erf 4177 Onrustvriër.
- 2.9 It is the opinion of the writer that the reason for and content of the application are unclear and general. "Diversify rights" of the subject property to what exactly? "Amend the restricted condition to allow" for what office purposes? The applicant has pointed out in their motivation that it is their opinion that "the existing condition of approval is more restricted than the Zoning Scheme Regulations with primary land use rights shops, flats (above ground floor) and offices". Giving due consideration to the latter point made by the applicant, one can conclude that should the existing restrictive conditions be amended to allow primary land use rights such as "shops, flats (above ground floor) and offices", that a shop could very well open on this property given the existing zoning. Of greater concern is the possibility of the consent uses being established in future via an application and due statutory process which is permissible under existing Business Zone 3 zoning for Erf 4177, i.e. a restaurant, bottle store, etc.

The writer disagrees with the applicant's contention that an art gallery and an estate agent (office type land use) are similar to one another and therefore no additional impact on traffic is expected. Furthermore, what is to become of this building should the estate agent move out?

Whilst purely speculative at this time, given that Erf 3297 directly adjacent to Erf 4177 also has existing business rights (and the general public and more specifically the surrounding land owners, are unaware if any restrictive conditions apply to Erf 3297), the risk of a possible consolidation of these 2 erven in future is probable, should the restrictive conditions be removed on Erf 4177. It is the writer's opinion that Erf 3297 is sterilized due to its size, shortage of parking and lack of safe vehicular access. As matters currently stand, these two Business Zone 3 properties have formed a quasi-business node. Therefore, the removal of restrictive conditions on Erf 4177 and

a consolidation with Erf 3297 can lead to all manner of possibilities under Business Zone 3. One does not need to point out that aforementioned land use consents and a shop notoriously go hand in hand with negative impacts and safety risks. It is noted that the existing business nodes located further north on Van Blommestein Road are frequented by vagrants, people loitering on the pavements and behind buildings, job seekers dawdling around on street corners, abusive and intoxicated individuals making a public nuisance of themselves, etc. Should the approval of the application be granted by Council and the above situation established as set out in this paragraph, one can certainly agree that we will see similar objectionable individuals loitering around in the centre of a residential area bringing associated negative impacts.

3. CURRENT ZONING LIMITATIONS

- 3.1 The writer does not agree with the applicant's statement that Business Zone 3 or "the land use is compatible with the current land use trends and character of the area" and finds this comment misleading.
- 3.2 Lagoon Drive is a quiet, residential cut-de-sac ending in an environmentally sensitive estuarine area and grassed park.
- 3.3 The property in question, Erf 4177 is currently being utilized illegally as offices by estate agents. One can conclude that this illegal usage is based purely on financial gain for the landowner.
- 3.4 According to the "SITE PLAN" compiled by the applicant, there is a paved area located on Lagoon Drive and a 6 bay parking area located at the rear of the building.
- 3.4.1 The applicant's statement that the proposed application will not have a negative impact on the current traffic flow is refuted. The writer has noted that the entrance to Lagoon Drive now has a 'parking lot' on the "paved area" in front of Erf 4177 with up to as many as 5 vehicles on occasion/at a single time parked at a 90° angle to Lagoon Drive. The formal parking area at the rear of the building is rarely utilized. The substantial increase in staff with motor vehicles are parked dangerously close to the corner of Lagoon Drive with Van Blommestein Road. In order to avoid a skewed intersection, Lagoon Drive has a kink in the road alignment directly in front of the paved area outside Erf 4177. This kink ensures that the Lagoon Drive/Van Blommestein has a 90° intersection. However, the kink in Lagoon Drive and the proximity of this paved area to the corner of Lagoon Drive results in a 'vehicle to vehicle' conflict between parked vehicles making long reverse paths into Lagoon Drive and vehicles and pedestrians entering Lagoon Drive from Van Blommestein Road. Vehicles making left turns are particularly vulnerable as once they have turned into Lagoon Drive (and if a reversed vehicle from the paved area of Erf 4177 is in the middle of the tarred road surface) drivers are required to carry out hard braking to avoid collisions. Pedestrians use Lagoon Drive to access the pedestrian thoroughfare located in Lagoon Drive when visiting the beach. In the absence of a formalized pavement, pedestrians also use the road surface of Lagoon Drive which puts them at risk of the vehicular movements in this area. Estate agents vehicles are also parking on the opposite side of Lagoon Drive. See Figures 1 & 2 Furthermore, it is blatantly obvious that the estate agent office proposal is creating an unsafe and dangerous traffic and pedestrian situation due to numerous, staggered traffic intersections that include De Villiers, Lagoon, Roos streets together with the 6 bay parking area behind the building with a "so called" left in/left out entrance only (suffice to say, the writer has noted that this left in, left out is ignored by road users as there is no median to force a left turn only out of the parking area). These 4 intersections occur along less than 80 meters of Van Blommestein Road. Van Blommestein Road is a main traffic feeder in Onrustvriër and equally notorious for speeding vehicles that exceed the speed limit between the 4-way stop at Old Main Road/ Van Blommestein and the intersection of De Villiers Street/ Van Blommestein. The cumulative upshot of these traffic conditions has resulted in Lagoon Drive becoming unsafe and difficult to enter and exit (particularly during peak traffic periods, during holidays, over long weekends, etc) due to the business premises on Erf 4177, additional traffic generated by the business and the parked vehicles in Lagoon Drive

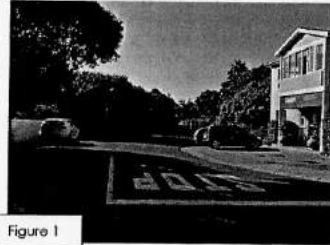


Figure 1

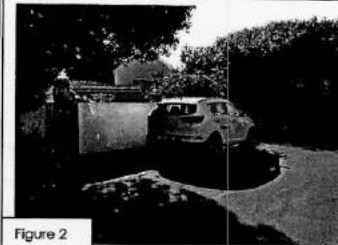


Figure 2

- 3.4.2 The concrete displays originally constructed by the gallery and decorated with art/ paintings that are located on the grassed areas to the west of the existing structure on Erf 4177, are now utilized as advertising space and adorned with 'Property for Sale' signs and photographs.
- 3.4.3 Advertising flags on poles ±1.5 meters high have been planted in the grassed areas around the edge of the property.
- 3.4.4 As such, it is the writer's opinion that the entire corner of Lagoon Drive with numerous motor vehicles, brand-named agents motor vehicles, concrete advertising structures, metal signage, advertising flags planted along the perimeter of Erf 4177, flag poles and traffic signs, etc (see Figure 3), **have rendered the residential area unappealing, completely changed the character of the residential area and left the corner of Lagoon Drive looking like a company's marketing headquarters and is a factless, eyesore branding a particular estate agent's business operation.**



Figure 3

- 3.4.5 The visual appearance of Erf 4177 with the current estate agent utilizing the building for 'offices' lends credence to the fact that an obvious **'business'** is operating on the corner of Lagoon Drive. One cannot dismiss the fact that **the quiet art gallery with its low impact** has clearly been replaced by a **full-fledged, high impact business use**, which property is regularly visited by clients and has numerous staff members coming and going in a residential area. This **indicates a "leap frog" land use** in town planning, which **is totally unacceptable and not considered sensible or sound town planning practise. It is a practise that town planning professionals seek to avoid as:-**
- **It negatively impacts on the established, surrounding land uses with the risk of infiltrating further into the existing residential surrounds;**
 - **is not in keeping with the quiet, residential character of the area;**
 - **the core/primary business nodes within Onrus are fragmented further by creating additional business nodes;**
 - **and the original streetscape and aesthetics of an "upmarket residential area" become non-existent.**

4. CONCLUSION

One of the most notorious town planning indiscretions is that once an alternative land use (in the case of Erf 4177 & 3297 - Business Zoning) infiltrates an area that is characterized by a predominant land use (in this instance Residential Use), **said residential area becomes infected with all types of alternative land uses**. In these cases, we refer to this as "business creep". Once this town planning irregularity takes hold, there is extremely little that the local authority can do to stem the potential tide of additional "business creep" from entering a predominantly residential area. **The latter point is reinforced by the fact that Erf 3297 (which has no bearing on the art gallery) has been issued with business zone land rights** and the residential unit located on Erf 3260 (corner of Roos and Van Blommestein) was once used as doctor's rooms. The negligence of business creep is a town planning blunder that needs to be halted. **Business creep erodes quality spaces, turns once unspoiled areas (i.e. upmarket residential areas) into unkempt, mixed use nodes that destroy the character of the landscape, spoil the existing streetscape and merely benefit a couple of property owners financially, while negatively impacting on dozens of others.**

- 4.1 The **current estate agent office is not compatible with the character of an "upmarket residential area"** and the application should not be approved by Council. This incompatibility applies to any office or shop or alternative use on Erf 4177.

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- 4.2 Given that the current zoning is Business Zone 3 with existing restrictive conditions for a residential component and art gallery use only - these restrictive conditions are the only security that surrounding property owners have that their immediate residential area will not go to seed and the current character be destroyed.
- 4.3 As the applicant has stated in their report, Erf 4177 is situated in an area earmarked for residential purposes in terms of the Overstand forward planning document and Council should therefore not approve the application.
- 4.4 An approval of this application will most certainly lead to decreased land values of residential properties. This can be proven and Council should therefore not approve the application.
- 4.5 The writer reiterates that the current, illegal estate agent office located on the premises at Erf 4177 is indeed a business in a highly visible marketing hot spot that makes the entrance to Lagoon Drive look like an advertising/media circus and this is not in line with Council's forward planning and the application must therefore not be approved by Council.
- 4.6 The dangerous, haphazard parking at the entrance to and on either side of Lagoon Drive by clients and estate agents is in the opinion of the writer non-compliant with transport regulations governing business parking standards on a minor residential road and as such the application should not be approved by Council.
- 4.7 Finally, the property is reserved for utilization as an art gallery and a residential component and with all due respect, the current land owner/s will have been fully aware of and informed of the zoning and restrictive conditions associated with said zoning on Erf 4177 at the time of the purchase of the property in question. This application is an attempt to change zoning conditions for financial gain by ensuring that the ground floor of the building on Erf 4177 is occupied. Council should not approve the application as this application will force the surrounding community and numerous surrounding land owners to bare the negative brunt of a possible misjudged purchase by one land owner of a property with specific rezoning restrictions, which restrictions were specifically instated to protect the investments and interests of a greater number of residential land owners within the residential vicinity of Erf 4177.

Based on the above the writer respectfully recommends that the application be dismissed and the illegal use of the property as an estate agent's office be halted with immediate effect.

Yours sincerely
AFO DU TOIT
PR PL NO A/573/1988
0827714955



8/12

Loretta Gillion - ERF 4177 Onrustrivier; Comments on proposed amendment of conditions

From: Caroline van Niekerk <carolinevannickerk@gmail.com>
To: <loretta@overstrand.gov.za>
Date: 19 March 2020 05:48 PM
Subject: ERF 4177 Onrustrivier; Comments on proposed amendment of conditions
Cc: <jimmyw@nr.co.za>, <aletgerberjbay@gmail.com>, <esmariejoubert@icloud.e...>
Attachments: Erf 4177 Application.PDF; re APPLICATION FOR AMENDMENT OF LAND USE IN RESPECT OF ERF 4177.docx



Att: Mr H Olivier,
 Attached please find (a) Commentary by Mr UKH Neugebauer on the above application, dated 17 March 2020, and (b) letter in same connection from other owners of properties in Lagoon Drive, Onrus River.
 Please acknowledge receipt of this email.
 Regards,
 Caroline van Niekerk

TP. A. (heard)
 (H. Olivier)

FILE NO:	ERF 4177 / Onrus River
SCAN NO:	Caroline
COLLABORATOR NO:	1399593

TP 19 MAR 2020

COMMENTARY ON APPLICATION FOR AMENDMENT OF LAND USE IN RESPECT OF ERF 4177 ONRUSTRIVIER AND APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT PLAN AS FAR AS ERF 4177 ONRUSTRIVIER IS CONCERNED

I, U.K.H. Neugebauer, wish to hereby comment on the above application.

1. My address is the following: -

3 Lagoon Drive, Onrus River 7201

2. My contact details are as follows: -

Tel: 028 316 3627

Cell phone: 073 284 8735

3. My interest in the above application is based on the following: -

a. I am a resident in the residential area where Erf 4177, 2 Lagoon Drive, Onrustrivier, is situated.

b. I am the owner of Erf 3209 Onrustrivier.

c. The street address of my property where I and my family reside is: -

32 Lagoon Drive, Onrus River

d. Access to my property can only be gained through use of Lagoon Drive and in fact past the said Erf.

4. I have personal knowledge that some of the owners in this specific area have NOT received the NOTICE in regard to the relevant application or in fact received the NOTICE late due to poor delivery service of the Post Office.

5. The present conditions of approval in respect of the use of the said property for an Art Gallery and Residential Component have a specific history.

The following is inter alia relevant: -

a. An Art Gallery is not a venture that attracts the general public at large like a business or office development.

b. The planning of the building and internal layout were at the time specifically focused on an Art Gallery and the provision of parking facilities for the intended use.

c. The Art Gallery's locality as well as its activity did not disrupt traffic or interfere with the normal use of Lagoon Drive and/or Van Blommestein Street.

d. The said Erf is a consolidated Erf and as such qualified for the use as approved of.

Ad paragraph 3.1 of the application: -

I deny that the relevant area is predominantly single residential. It is except for the Art Gallery only a residential area.

Ad paragraph 3.2 of the application: -



The surrounding properties are all single residential developments. There is no business activity in the relevant area except for the Art Gallery.

Ad paragraph 3.3 of the application: -

I disagree that Erf 4177 Onrustvriër is within a mixed land use area, consisting of businesses and residential dwellings. There is no business that surrounds the said Erf 4177.

Ad paragraph 3.4 of the application: -

This paragraph does not refer to the residential component of Erf 4177. The residential component of the said Erf cannot be overlooked.

- e. The application is generally speaking vague and lacks particularity.

No sketch plan was attached to the application and no reference has been made to the type of offices for which consent use is required.

I accept that the offices will be for general use which will involve several personnel members, additional parking requirements to accommodate staff and clients of the venture occupying the premises. Higher visitation to the property will have a negative impact on access to adjoining properties as well as the use of Lagoon Drive. It will have a negative impact on the safety requirements of a residential area and the risk of criminal activity.

- f. Additional rights of use are contrary to the current character of this specific area. There is a real risk that office use will negatively affect the conservation of the area as used for single residential dwellings.
- g. As far as efficiency is concerned the position is that there is no need for an office development in the specific area. It is a residential node and close to a business node in Van Blommestein Street where there are various other enterprises such as Estate Agents, a Laundry, Hairdressers, professional offices, Restaurant, catering enterprises or café's and other commercial enterprises, e.g. a Hardware Store.

There is vacant land on Van Blommestein Street adjoining AIDA Real Estate's premises available for further utilization in regard to offices, trading enterprises and so forth.

- h. No mention is made that the premises will be used for so-called "home occupation". It states that the use should not be restricted to an Art Gallery but include offices.

It does not clearly state "offices on the ground floor only".

- i. I deny that the land use will in effect remain the same. Office use will have an additional impact on parking required and expected traffic.

- j. As far as forward planning is concerned the present character of single residential erven should be maintained. I reiterate that the change of use in respect of the said erf is not compatible with the current use and character of the area. There is no need for the change requested based on the needs of the area.
6. Ad Recommendation -
- a. There is no tendency in the specific area, especially as far as Lagoon Drive is concerned, justifying the proposed amendment.
 - b. The proposal with unavoidable consequences is not compatible with the existing use of neighbouring properties and the area.
 - c. There is a real risk that the amendments in question will have a negative impact on the current character and values of surrounding erven.
 - d. I reiterate that an increase in staff and clientele of an office development will necessarily have an impact on traffic flow and parking required.
 - e. I deny that the application is in line with the relevant legislation as referred to in the application.
7. Conclusion

I submit that no acceptable grounds for the requested amendments have been proven and request that the applications be dismissed.

THUS DONE AND SIGNED AT Onruskwee ON THIS THE 17TH
DAY OF MARCH 2020.



To: Department of Town Planning: Overstrand Municipality

19 March 2020

**re APPLICATION FOR AMENDMENT OF LAND USE IN RESPECT OF ERF 4177
ONRUSTRIVIER AND APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT
PLAN AS FAR AS ERF 4177 ONRUSTRIVIER**

We, owners of properties in Lagoon Drive and Birkenhead Place listed below, associate ourselves fully with the attached objection by Mr UKH Neugebauer regarding the above application. In addition, we want to bring the following to the attention of the Overstrand Municipality as relevant public authority:

1. Lagoon Drive/Birkenhead Place, in particular in this whole area, is highly prized for its quiet and rustic ambience enhanced by it being a cul-de-sac. It is very popular residentially as well as for recreational purposes such as dog-walking and bird watching next to the lagoon.
2. The proposal neglects to mention that the main entrance to the art gallery is from Lagoon Drive with the parking of choice for clients and staff being on the paved area in front of the main entrance, i.e. in Lagoon Drive.
3. In 1994 it was precisely the objections against granting business rights to the (then) Erf 3214 (as it was wholly the out-of-character with the feel of the Lagoon Drive residential area) that led to the restrictive condition that the business would be limited to an art gallery. This was a reluctant compromise by the then objectors, cognisant of the milieu of the area, supportive of the visual arts.
4. The art gallery business subsequently proved to be fairly contained regarding traffic and parking issues in Lagoon Drive except when, for short periods, new exhibitions were opened. The latter situation occurred infrequently and only for a few hours, typically late afternoon/early evening.
5. With the entrance and first-choice parking being in Lagoon Drive, close to the entrance into Lagoon Drive, business with characteristics other than an art gallery will lead (as already evident) to more traffic and parking in Lagoon Drive, often in front of the residential properties neighbouring Erf 4177 Onrustrivier.

For the above reasons we submit that the application be dismissed.

Name of Owner	Erf Number	Contact Detail and Street address
A Wheeler	3805	4 Lagoon Drive, Onrus River, 0834154666 jimmyw@njr.co.za
JA Gerber	3207	5 Lagoon Drive, Onrus River, 082 417 7990, email: aletgerberjbay@gmail.com
Willem and Esmarie Joubert	3296	6 Lagoon Drive, Onrus River, 0835005397, esmariejoubert@icloud.com
TCM Lewis	3206	7 Lagoon Drive, Onrus River, 083-302-2028, plewisper@gmail.com
Volker Kühnel	3296	8 Lagoon Drive, Onrus River; 021 438 0057(t), 083 449 1944 (m) volkerkuhnel@hotmail.com
Louis Marais	3205	9 Lagoon drive, Onrus River, lpmarais@mweb.co.za
H Hanekom (Das Neves)	3204	11 Lagoon Drive, Onrus River, 028 316 2177, 082 895 3201, cdasneves@ymail.com
Sarika Family Trust	3217	12 Lagoon Drive, Onrus River, 082 562 5995, email: sandcbrice@gmail.com
PH van Niekerk	3221	16 Lagoon Drive, Onrus River, 0283161968 (t) 0826074981 (m); peter.v.n@mweb.co.za
GA Ehrenberg	3200	8 Birkenhead Place, Onrus River, 083 760 1234



TOWN & REGIONAL PLANNERS
STADS-EN STREEKSBEPLANNERS



Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200
Tel: (028) 313 1673
Fax / Faks: (028) 312
1351
Email

TP- A. Abcaat
(H. Olivier)

planactive@hermanus.co.za

Website: www.planactive.co.za

Our reference: PA19070

Your reference: 4177 HON

28 August 2020

The Municipal Manager
Overstrand Municipality
PO BOX 20
Hermanus
7200

FILE NO:	SF 4177 ✓
	Onrust
SCAN NO:	HON 4177
COLLABORATOR NO:	1448483

FOR ATTENTION: MR H. OLIVIER

Sir

ERF 4177 ONRUSTRIVIER: PROPOSED AMENDMENT OF SDP AND CONDITIONS OF APPROVAL
MR. L.A & MRS. R.M VAN DYK

Reference is made to our application dated 7 November 2019 as well as your email dated 22 June 2020 with Annexures.

The objections received from Creative Profile Town Planning & Architecture on behalf of West Trust and Mr. U.K.H. Neugebauer, refer and can be summarized as follows :

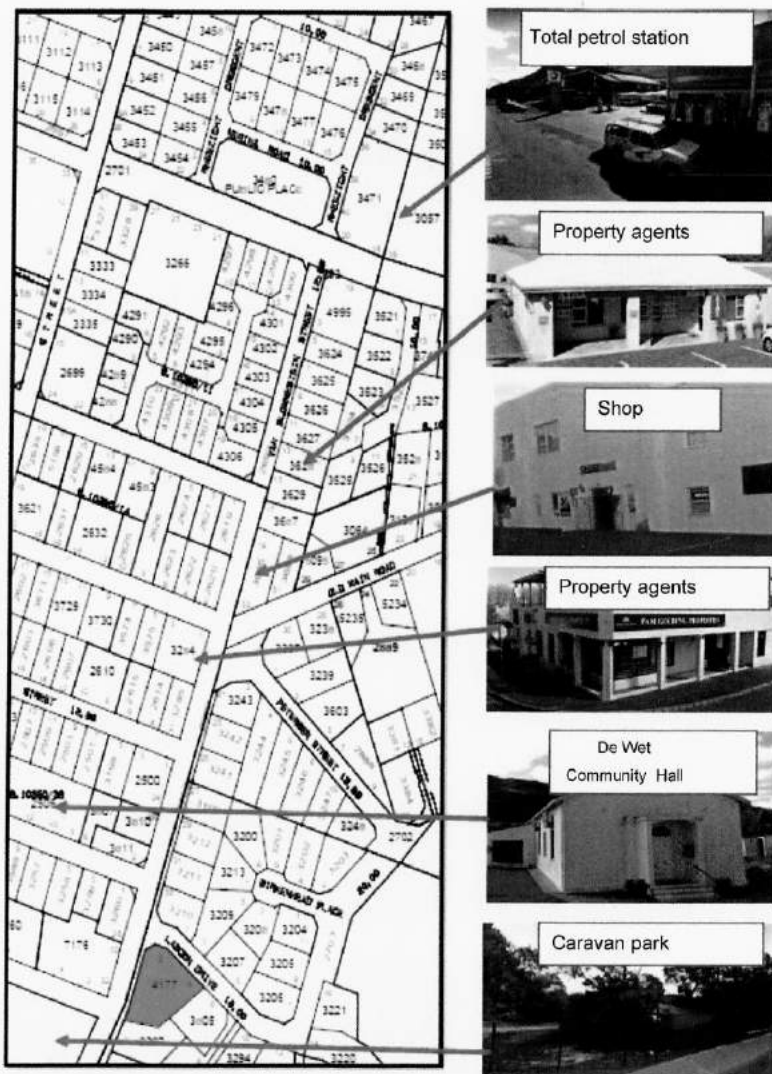
- *The objector states that the subject property is not situated in a predominantly single residential area but except for the gallery, is situated in a residential only area. The objector also indicates that no business activities are situated in the surrounding areas and that the subject property is not situated in a mixed-use area.*

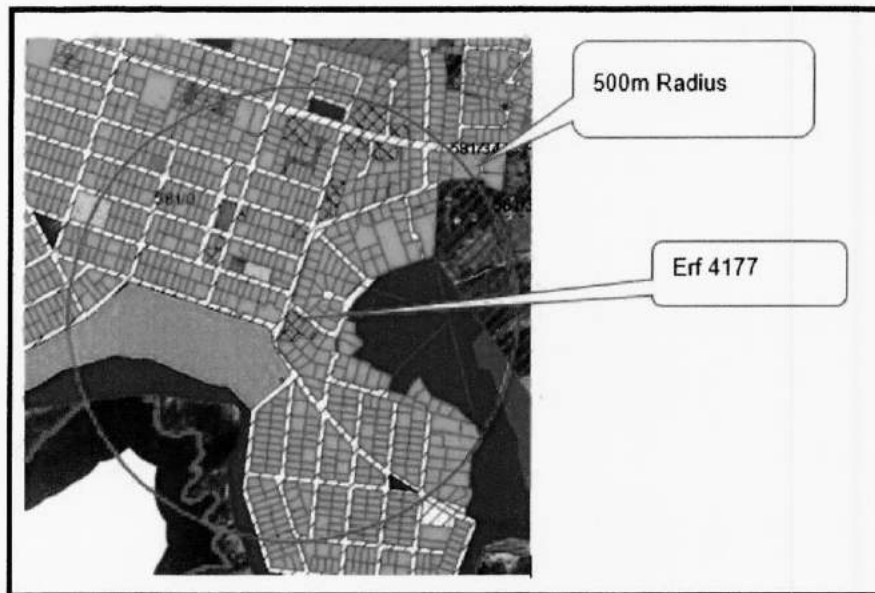
As illustrated in the picture below, it is clear that the subject property falls within a mixed-use area. Right opposite the subject property, across the road, is the Onrus River Caravan Park situated. As noted in the picture below it illustrates land uses within a 500m radius from the subject property.

Page 1

TP 28 AUG 2020

Numerous business zoned properties exist that are being used for offices, restaurants and shop purposes. These uses are all located within walking distance from the subject property. It is clear that the statement made by the objector that the subject property is situated in a residential use area only, is **incorrect**. The picture clearly illustrates that the subject area where the property is situated is a mixed-use area. In the pictures below the different land uses in the area can be identified as:





- *It is indicated in the letter of objection that paragraph 3.4 of the motivational report does not mention the residential component and that the application is vague and lacks particularity. It is also stated that no sketch plan was attached to the application at hand and no reference was made to the type of offices for which that consent use is required.*

It was stipulated clearly in paragraph 3.4 of the motivational report, that accompanied the proposed application, that the intention is to still utilise the subject property as a residential unit, but to include office space. The owners of the subject property will continue to reside on the property and does not have any other plans to expand the building to create additional business space (see excerpt from the motivation below).

"The subject property will still be utilised as a business and a residential component as previously approved, but the intention is not to be restricted to an Art Gallery only, but to include offices".

The proposed application constitutes an amendment of the Site Development Plan and conditions of approval and therefore a sketch plan of the building was not provided as no changes are proposed to the building on the subject property. The intention of the proposed application is very clear, and it

is to amend the SDP and conditions of approval in order for the subject property to be utilized as offices and a residential component (not restricted to an art gallery).

- ***It is mentioned that the proposal will allow higher visitation to the subject property which will have a negative impact on the neighbouring properties as well as the use of Lagoon Drive. It is also mentioned that it will have a negative impact on the safety requirements of the residential neighbourhood as well as a risk for criminal activities.***

From a personal experience (by the owners of the subject property whom have resided on the subject property for ±15 years) it is clear that the use of part of the property as an art gallery, has attracted more patrons to the subject property as the current land use of estate agents. The mentioned use as an art gallery was more of a disturbance to the owners and the surrounding property owners. Because of financial sustainability, art galleries that were established on the subject property in the past attempted to create opportunities for the industry to be financially more viable by having auctions and art shows till late at night which caused a much greater negative impact on the surrounding neighbours and the owners and occupants of Erf 4177 Onrustrivier. With these innovations the art galleries extended their trading hours past normal office hours.

Although the entrance of the building faces to Lagoon Drive, the intention is to have clients park at the rear of the building where an established tarred parking area exists. The paved area in the front was constructed after a previous application was approved whereby the parking bays were established for the art gallery with the approval letter dated 27 February 1998 (see attached as annexure A).

From the year 2004 to 2008 an estate agency (Saffrin Properties) has been occupying the specific portion of the building that was earmarked for the art gallery and no concerns or objections were raised by the surrounding property owners. The first and only objections that have been raised only came to light during the public participation process with the current application. It is clear that the current land use did not raise any concerns amongst property owners in the area.

- ***It is stated by the objector that the proposed application will have a negative impact on the conservation of the area and that the additional rights for offices are not necessary as it is closely located to a business node in Van Blommestein Street which consists of Restaurants, Estate Agents etc. The objector also states that a vacant portion of land is situated in Van Blommestein Street which can be utilised for office use. It is also stated that the application does not mention a home occupation and does not clearly state that the offices will only be on the ground floor.***

The owners of the subject property have experienced that an art gallery has more disruptive impacts on the them and the surrounding properties than the current land use (an office for an estate agent).

The opportunities of every property should be evaluated on its own merit. The owners of Erf 4177 do not own the vacant portion of land mentioned and there for the vacant portion does not provide any alternative options for the property owners of Erf 4177 Onrustrivier. It was also clearly stated that it is proposed to utilise the portion of the building on the ground floor, previously used as an art gallery, as an office. No further development of the subject erf was proposed.

It is also mentioned in paragraph 3.4 of the motivation report that the concept of the office and the residential component is similar to a home occupation as per the Single Residential Zone 1 zoning. The primary land use of the subject property remains residential and a smaller percentage is used as an office. Please also refer to the abstract below from the motivational report:

"The proposed amendment of the previous approved conditions and site development plan will not have a negative impact on the character and the land values of the surrounding properties in the Onrustrivier area. Cognisance should be taken of the fact that the subject property currently only accommodates 1 dwelling and an estate agency office. The last-mentioned use is compatible with single residential land uses and therefore office type uses that are associated with a home occupation is a primary right under a Residential Zone 1 zoning."

- ***It is also questioned that the proposed application is in line with the relevant legislation as referred to in the proposed application.***

The proposed application is in line with the mentioned legislation. Where the planning principles are relevant to the application it has been discussed and where they were not it was disclosed. The proposed application has been submitted in accordance with the regulations of the Municipal By-law for the Overstrand area, it was evaluated and has been deemed as being complete. The proposed application has followed due process and therefor the application was submitted in terms of the relevant legislation.

- ***The objector Mr. U.K.H. Neugebauer also included a list of surrounding property owners (a "petition") whom have some concerns regarding the proposed application.***

According to the requirements of a petition it is important to note that the listed members should sign the document and contact details should be provided. The neighbouring property owners that were included in the list did not sign the document. We are therefore of the opinion that this extended part of the objection should be discarded, however the issues that were raised under this section are already discussed in this document. Please see the abstract below with regards to the requirements for a petition as per the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

51. Requirements for petitions

- (1) All petitions must clearly state—
- (a) the contact details of the authorised representative of the signatories of the petition;
 - (b) the full name and physical address of each signatory; and
 - (c) the objection and reasons for the objection.

- ***According to the objections received the Business Zone 3 zoning should never have been allocated to the subject property. The objector indicates that a more proper approach should have been to assign a consent use for an art gallery. It is also mentioned that with the approval of the application it will become easier for surrounding property owners to make similar applications as a precedent has been set.***

The application to rezone the subject property has gone through due process and has been approved. The objector is in no position to make such a statement as the application was evaluated and followed due process at the time. All applications should be evaluated on its own merit and therefor the council cannot make decisions based on what could happen in the future but should rather deal with the facts at hand.

- ***The current approval which limited the subject property to be used for an art gallery and residential component was to ensure that businesses does not infiltrate the residential area of Onrus.***

It is evident that there are already numerous businesses situated in the Onrus area as illustrated earlier in this document. The proposed application is in line with the land use tendencies in the area. As discussed earlier in this document, there are numerous offices, restaurants and shops that are situated in the area of Onrus and within walking distance from the subject property. These businesses have a greater impact on the area than the proposed offices. It should be noted that this application merely constitute the change of use to also include the rights of the building to be used as an office within the same approved area the gallery previously occupied. The use as an art gallery also constitutes a business. It is our opinion that to make provision for an office is similar to the use as an art gallery of which both uses are compatible with the surrounding land uses.

- ***The content of paragraph 3.4 "Proposal" of the application shows a clear indication that the applicant utilizes the zoning descriptions set out by the local authorities' scheme regulations to motivate and support why "offices" should be permitted in lieu of the art gallery.***

This section of the motivation refers to the Zoning Scheme Regulations to motivate that the proposed application is in line with the zoning scheme and that the proposed application does not entail anything out of the ordinary. As per paragraph 3.4 of the motivation report it is clear that the proposal is in line with the development rules of the zoning scheme regulations for the Overstrand Municipal area and that the proposal is compatible with the current surrounding land uses.

- ***The applicant stated that the neighbouring property, Erf 3297 Onrustrivier has business rights. It begs the question to whether this property has any restrictive conditions. A risk of a consolidation of Erf 4177 and Erf 3297 Onrustrivier exists if the restrictive conditions of Erf 4177 Onrustrivier is removed. The consolidation of these two properties can lead to all manner of possibilities under Business Zone 3. It is clear that aforementioned land use consents and a shop goes hand in hand with negative impacts and safety risks.***

It is stated in the motivation report that Erf 3297 Onrustrivier is zoned for Business Zone 3. The motivation does not specify what the rights of Erf 3297 Onrustrivier are as we do not have any access to the information and cannot speculate on the property rights and future development of Erf 3297 Onrustrivier. The owners of Erf 4177 Onrustrivier have no interest in the adjoining erf. Our application clearly excludes the adjoining erf. Every application should be evaluated at its own merit. The objector merely speculates at the possibility of a consolidation with the neighbouring property. Applications cannot be evaluated on speculations and therefor we see the comment as irrelevant. The property owners of Erf 4177 Onrustrivier do not have any intention of developing the property any further nor do they have any plans to establish a shop on the subject property. During the ±3years of the previous estate agent offices being established on the subject property no safety hazards have been raised by the surrounding property owners. The comment with regards to safety risks is pure speculation and the opposite has been proved over the past 3 years.

- ***According to the objector once a zoning is assigned to a property and the landowners attempt to make amendments and attempting to change the restrictive conditions, the latter attempts to lead to pressure on various facets of the town planning sphere:***
 - ***The local authority is pressured to agree to further zoning changes.***

Every application should be evaluated on its own merit. If an application has the merit to create better opportunities to be utilized to its full potential, is compatible with the surrounding land uses and does not have a negative impact on the surrounding even it should be supported. The proposed application does not propose a rezoning application as the subject property is already zoned for Business Zone 3. It is merely to use the same space that the art gallery previously occupied to be used as office space.

- ***Uplifting of restrictive conditions leads to alternative uses.***

The intention of the owners are to amend the conditions of approval to **not** restrict the use of the subject property to an art gallery but to also allow for offices as a land use on the subject property. The residential component will still be utilized for residential purposes as no new development is proposed to the subject property. The intention is to legalise the existing use (estate agency) on the subject property not limiting the use to an estate agency only, but for office use.

- ***The traffic and increase of staff members have a negative impact on the surrounding areas, especially as the estate agents have turned the entrance to Lagoon Drive.***

As discussed earlier, the existing use of offices has less impact on the traffic. A parking area was approved in Van Blommestein Road for the Art gallery in 1998 and paragraph 3 of the consent letter (Annexure A) also formalizes the parking in Lagoon Drive. With the new application sufficient parking will be provided on the subject property at the front and rear of the existing building. It is also indicated that vehicles can only turn left into Van Blommestein Road to allow vehicles to turn safely from the subject property. Lagoon Drive will not be affected with the proposal as the primary parking area will be on the subject property that is accessed from Van Blommestein Road.

- ***The property agent may decide to renew their lease or may even purchase the property and alternative offices will be permitted. An example will be if the building on the subject property may be utilised for an alarm response office and such an office will have a negative impact as numerous vehicles will be moving around.***

This statement is the opinion of the objector which is purely speculation. The owners of Erf 4177 Onrustvriër have no intention to sell the property nor do they have any intention to develop any further. The application cannot be negatively affected because of speculation or the opinion of the objectors. The application is for the change of use of the gallery to offices. Only the section of the building in which the gallery was established will have office rights and not the whole building. Subsequently the built property will not be able to be developed solely for the use as offices.

- ***If the existing conditions are amended, an opportunity will be created for a shop to be established on the subject property.***

The proposed application does not mention anything about establishing a shop. The intention is to allow offices and not to be restricted to an art gallery only. The residential component will also be kept as this is the primary residence of the property owners.

- ***The applicant does not state in the proposed application that the premises will be used for offices only or does not specify the type of office that will be allowed on the subject property.***

The intention is to still use the subject property as a residential component. The intention is merely to not be restricted to the use of the art gallery only, but to make provision for the former art gallery area to be used as offices. The offices will be accommodated within the part of the building which was reserved for the art gallery with the previous approval.

- ***The objector states that an art gallery and office type land use are not similar to one another.***

As per the experience of the property owners the art gallery had a more severe impact, than the current office use of the estate agents. We are of the opinion that the land use of an art gallery and offices are similar but because of the reasons discussed earlier, the art gallery had a more severe impact on the area. The current land use which is the estate agents is similar to an art gallery setup as people come to view available properties to buy, similar to a person that will view art work to be purchased, but the trading hours of an estate agent does not extent past normal office hours as was the case with the art gallery.

- ***The objector states that he does not agree that Business Zone 3 or the land use is compatible with the current land use trends and character of the area.***

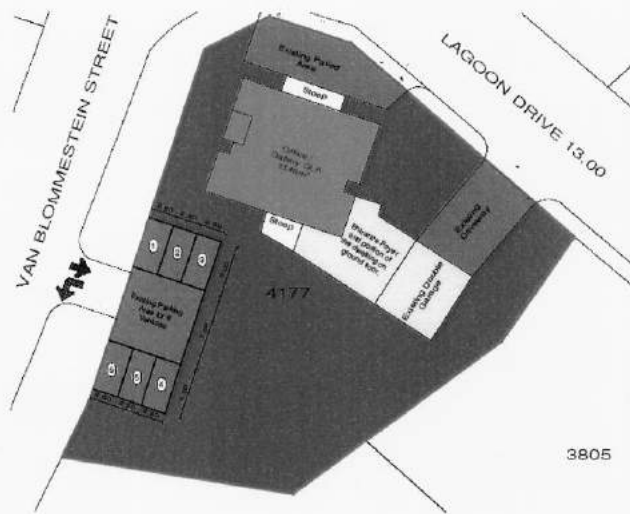
The abovementioned objection has already been discussed earlier in this document.

- ***Erf 4177 Onrustrivier is currently illegally occupied by offices by estate agents and it can be concluded that this illegal usage is based purely on financial gain for the landowners.***

The reason for the proposed application is to legalise the current land use. The fact that the objector states that the occupation of the estate agents is for financial gain is purely speculation. The intention is to utilise the subject property to its full potential. When the current owners purchased the property an estate agent was already established in the area that was allocated to be used as an art gallery. The main reason for the proposed application is to legalise the existing land use and the owners will comply with all the proposed requirements set out by the local authority.

- ***The objector does not agree with the applicant that the application will not have any impact on the traffic. It is stated that Lagoon Drive has a parking lot and that the formal parking at the rear of the building is hardly used. It is also stated that vehicles are dangerously parked close to the corner of Lagoon Drive and Van Blommestein Road. It is stated that vehicles making left turns are particular vulnerable as they would once, they have turned into Lagoon Drive will have to watch out for vehicles that reverse out of the paved area in Lagoon Drive. According to the objector the estate agent is creating an unsafe and dangerous traffic and pedestrian situation due to numerous, staggered traffic intersections that include De Villiers, Lagoon, Roos Streets together with 6 bay parking bay parking area behind the building with the so called left in/left out entrance only. (which is ignored by road users as there is no median to force a left.) The paved area have resulted in Lagoon Drive being unsafe and additional traffic generated by the business and the parked vehicles in Lagoon Drive.***

As per the proposed application the primary demarcated parking area is situated at the rear of the existing building (as seen below). The paved parking area in Lagoon Drive was addressed in 1998 and Erf 3803 (a portion of Erf 4177) was allocated as a parking area for the art gallery (see attached annexure A). The proposed parking for the offices can be provided on the subject property as seen in the abstract below. Vehicles will only be allowed to turn left from the subject property to secure that they do so safely as per the condition of approval of the gallery. The owners will comply with all parking regulations.



- ***The objector states that the entire corner of Lagoon Drive with numerous motor vehicles, brand-named agents motor vehicles, concrete advertising structures, metal signage, advertising flags planted along the perimeter of Erf 4177 Onrustrivier, flag poles and traffic signs etc have rendered the residential area unappealing and completely changed the character. The corner is not visually good because of the advertising of an estate agent.***

The lessee will comply with the advertising Bylaw of the Overstrand Municipality. The intention is to legalise the existing land use on the subject property that are offices for the estate agents.

- ***The quiet art gallery with its low impact has been replaced by a full-fledged high impact business use. The concept negatively impacts the established, surrounding land uses with the risk of infiltrating further into the existing residential surrounds. The establishment does not keep with the quiet, residential character of the area. The primary business nodes within Onrus are fragmented further by creating additional business nodes and the original streetscape and aesthetic of an upmarket residential area become non-existent.***

As previously discussed, the use of a portion of the building for an art gallery had a more severe impact on the occupants and neighbours than the use thereof by estate agents. Because of the financial viability art galleries had to be more inventive and that meant that more and more art exhibitions had to be held in order to advertise art. Art auctions were also later implemented. These art exhibitions and auctions on many occasions included the provision of beverages and snacks. This meant that more clients were

attracted to the art gallery and it usually meant that the art gallery was active after hours which disturbed the property owners as well as neighbouring property owners.

Conclusion

- It is important to note that the proposed amendment of the SDP and conditions of approval are to establish office space where the land use has been restricted to an art gallery within the existing structure on the ground floor.
- The residential component will still be utilised as such and it will still be occupied by the property owners.
- Sufficient parking bays are to be provided on the subject property, and the existing paved area in Lagoon Drive is where the parking area for the art gallery was previously approved. At the rear of the existing building on the subject property, additional parking bays are also provided.
- It is also clear that the area where the subject property is situated is a mixed-use area where offices, shops and residential units exist. It is not the intention of the owner to create a shop on the subject property.
- No expansion of the current structures are proposed.
- As clearly illustrated in this document, the proposal is in line with the existing character for the area.
- There are already a few established businesses in the area which is similar to our proposal.
- The objections received are mostly based on the opinions of the objectors and are pure speculation.
- Land use applications should be evaluated on its own merit and decisions cannot be made based on speculations and opinions but must be made based on the facts at hand.

We trust that you will find our comments on the objections received in order and that the application will be dealt with favourably.

Yours faithfully



Darren Adams

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR AMENDMENT OF CONDITIONS OF AN EXISTING
APPROVAL AMENDMENT OF THE SITE DEVELOPMENT PLAN: ERF 4177,
ONRUS RIVER**

Stormwater (SW) : In order
Electricity : Escom
Water : In order
Sewer : 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 should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. 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*;
4. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
5. that any additional and / or extended vehicle entrances will be for the developer's account;
6. 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;
7. that stormwater be allowed to discharge through Erf 4177, Onrus River, unobstructed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE