

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 May 2015
(Also the agenda for the Mayoral Committee Meeting : 28 May 2015)**

4.

ERF 213, 90 MARAIS STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND RELAXATION OF RESTRICTIVE TITLE DEED CONDITION : DT & JM WALLIS

Erf 213 GFK (2706)

SW van der Merwe

13 April 2015

(028) 313 8900

Hermanus Administration

1. Executive Summary

To consider an application for departure and relaxation of a restrictive title deed condition received on 23 September 2014 from the owners of Erf 213, Franskraal, DT & JM Wallis, in order to accommodate the existing carport, which carport encroaches the 4m street- and 2m lateral building line up to the respective property boundaries.

A Locality Plan of the property concerned is attached as Annexure A. The Site Development Plan is attached as Annexure B, and the Motivation Report from the applicant in support of the application is attached as Annexure C.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town Planning

3. Compliance with Strategic Priorities

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

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)
- Removal of Restrictions Act, 1967 (Act 84 of 1967)

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6. Background/Discussion/Evaluation/Conclusion

Background

Erf 213, Franskraal measures 988m² in extent. The property is developed with a part double, part single storey dwelling house and a detached garage. The applicant constructed a carport without the necessary statutory approvals. The application comprises the retention of the carport, which carport encroaches the street- and lateral building lines up to the respective property boundaries.

The Title Deed of the property imposes a 4,72m street- and 1,57m lateral building line restriction. The application therefore also comprises the relaxation of restrictive title conditions with regard to the garage extension and existing carport.

Discussion

The application was advertised in the prescribed manner. Mr Roodman, on behalf of The Franskraal Ratepayers' Association objected to the retention of the proposal (refer to Annexure D). The objection is based on the following grounds, namely:

“We cannot be seen to set precedents when considering these kind of excursions over the normal building limits. The Council should also see that the illegal structure is pulled down.”

In terms of Section 36 of the Land Use Planning Ordinance, each planning application should be considered on the basis of its planning merit, i.e desirability and impact on vested rights of adjoining properties. The creation of a precedent is thus not considered to be a planning consideration, sufficient to justify refusal of planning permission. Furthermore the Zoning Scheme Regulations also contain criteria for carports that encroach building lines. The proposal will therefore be considered in terms of the aforementioned criteria.

The applicant's response is attached as Annexure E.

Evaluation

The application property is situated south of Marais Street abutting a Public Open Space erf, Erf 456, Franskraal. The carport measures 7,4m wide and 3,2m high (from natural ground level). The carport abuts the aforementioned Public Open Space erf and is set back at least 5,5m from the road surface.

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Section 16.1.1(c) of the Zoning Scheme Regulations provides that Council may relax the street building line in the case of a carport subject to compliance with Section 16.1.2(b) which states the following, namely:

A carport may be erected on the street boundary provided that:

- (i) The width of such carport shall not exceed 6,5m;
- (ii) The roof of the carport shall be supported by metal or timber post or brick, concrete or masonry pillars;
- (iii) The carport shall not be enclosed on any side except by:
 - a boundary fence or wall;
 - wall which forms the external wall of a building; or
 - security or automated gate.
 the height of such carport measured from the natural ground level to the highest point of the structure over the building line may not exceed 3,0 m, but the height may increase at a 40° angle away from such boundary(roof); and
- (iv) The edges of the roof sheeting must be trimmed with a fascia board not less than 150 mm in width.

The carport, the subject of the current application measures 7,4m wide and encroach the maximum width applicable to carports with 0,9m and the 3m height restriction with 0,2m. The carport abuts the Public Open Space erf, is open on three sides and set back from the road. The opinion is thus held that the retention of the carport would not adversely impact on the vested rights of adjoining residential properties provided that the carport remains open on the sides. The subject property is developed with a single garage and a single carport to the side of the garage. It could be argued that the carport is reasonably connected to the primary use of the property for single residential purposes. The carport is designed with high quality materials and would not detract from the character the area or result in circumstances prejudicial to highways and traffic safety and is thus supported from a planning point of view.

The relaxation of the restrictive title conditions is supported from a planning point of view as the affected adjoining property owners provided letters of support.

Conclusion

That the application for departure and relaxation of restrictive title condition be supported as per the recommendation below.

7. Financial Implications

None

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Building Department

“No objection.”

Fire Brigade

“In terms of National Building Regulations SANS 10400T: 2011 – A carport may not be enclosed on more than two sides.”

10. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Objection
- Annexure E: Applicants' comment on objection
- Annexure F: Comment: Fire Brigade

RECOMMENDATION:

1. that the objection **be noted**;
2. that, in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) the application for the relaxation of restrictive title deed conditions in order to relax the 4,72m street- and 1,57m lateral building lines contained in Title Deed T13059/2005, **be recommended for approval** to the Provincial Government: Western Cape;
3. that, in terms of the provisions of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) the application for departure in order to retain the existing carport, which carport encroach the 4m street- and 2m lateral building lines up to the respective erf boundaries, **be approved**, subject to the following conditions:
 - (a) that the approval in 2. above be subject to the successful relaxation of the restrictive title deed conditions in 1. above;
 - (b) that this approval only has reference to the relaxation of the building lines as indicated on Plan No. 358-008-2013, as submitted with the application;

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- (c) that the conditions of the Fire Brigade (Annexure F) be complied with;
 - (d) that building plans be submitted to the Building Department for approval;
 - (e) that this approval does not absolve the applicant from compliance with any other relevant legislation; and
 - (f) that the carport, save for the boundary wall, may not be enclosed.
4. that the applicant/objector be notified of their right of appeal in terms of Section 62 of the Local Government : Municipal Systems Act No 32 of 2000 with regard to the above decision.

RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	10 JUNE 2015
TARGET DATE TO INFORM APPLICANT :	10 JUNE 2015
TARGET DATE TO INFORM OBJECTOR :	10 JUNE 2015

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4.

**ERF 213, 90 MARAIS STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR DEPARTURE AND RELAXATION OF RESTRICTIVE TITLE
DEED CONDITION : DT & JM WALLIS**

Erf 213 GFK (2706)

SW van der Merwe

13 April 2015

(028) 313 8900

Hermanus Administration

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
19 MAY 2015, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

SW VAN DER MERWE

TARGET DATE FOR IMPLEMENTATION :

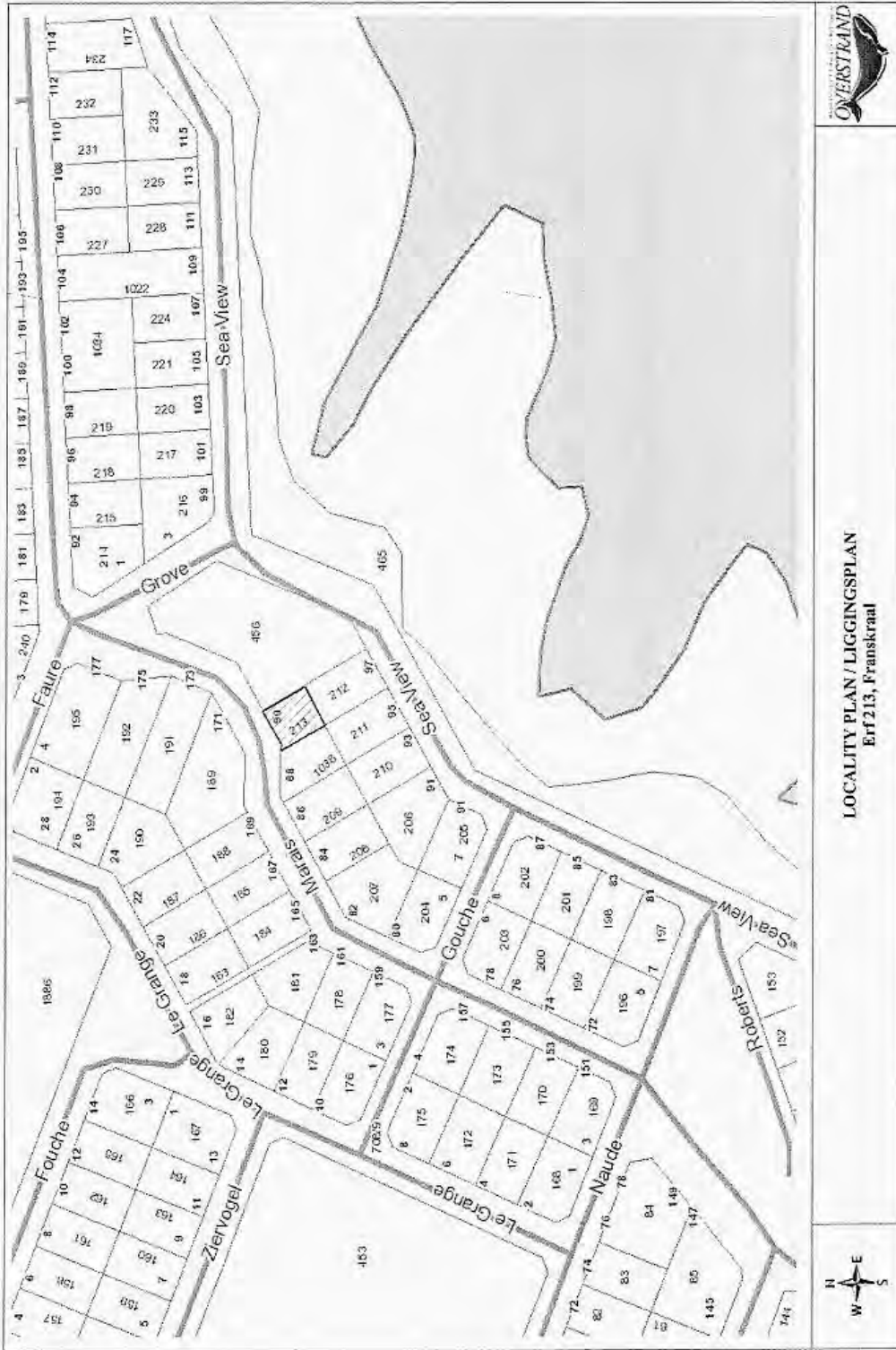
10 JUNE 2015

TARGET DATE TO INFORM APPLICANT :

10 JUNE 2015

TARGET DATE TO INFORM OBJECTOR :

10 JUNE 2015



LOCALITY PLAN / LIGGINGSPLAN
Erf 213, Franskraal

Maraisstraat 90
 Erf 213
 Franskraal
 5 Januarie 2015

WIE DIT MAG AANGAAN

Die Munisipale Bestuurder
 Overstrand Munisipaliteit
 Hermanus

ERF 213, FRANSKRAAL : AANSOEK OM AFWYKING EN VERSLAPPING VAN 'N BEPERKENDE TITELVOORWAARDE

Erf 213 is vir enkel residensiële doeleindes gesoneer en is 388m² groot.

Ek het 'n afdak aan die voorkant van die eiendom opgerig sonder dat die nodige statutêre goedkeuring verkry is.

Ek doen dus hiermee aansoek ten einde die bestaande afdak op die eiendom te wettig, welke afdak die straat- en syboulyne van die eiendom tot op die onderskeie erfgrense oorskry. Die titelakte van die eiendom bevat 'n beperkende klousule met betrekking tot boulyne (klousule C.20.d.) en doen ek ook hiermee ingevolge die Wet op Opheffing van Beperkings aansoek om die straat- en syboulyne te verslap om die afdak te akkommodeer.

Die afdak word gebruik vir die parkering van motors ten einde dit teen natuurelemente te beskerm en ook om die bestaande woning te komplimenteer.

Die afdak is esteties mooi en is dit my mening dat die impak op die karakter van die omliggende omgewing en grondeienaars se eiendomme minimaal van aard is aangesien geen uitsigte nadelig beïnvloed word nie en verkeer ook nie deur die afdak belemmer word nie.

Ek vertrou dat u my aansoek gunstig sal oorweeg.

Baie dankie


 BT WALLIS



Alida Calitz - Fwd: Relaxation and departure - Reference Erf 213 GFK(2706)

From: Theuns Roodman <sheerbliss80@gmail.com>
To: <alida@overstrand.gov.za>
Date: 2015/02/25 05:39 PM
Subject: Fwd: Relaxation and departure - Reference Erf 213 GFK(2706)

TP A Theart
CS vld Marwel



----- Forwarded message -----

From: Theuns Roodman <sheerbliss80@gmail.com>
Date: 25 February 2015 at 17:37
Subject: Relaxation and departure - Reference Erf 213 GFK(2706)
To: alida@overstran.gov.za

On behalf of the Franskraal ratepayers Association committee we wish to object to the above application by DT & JM Wallis. An illegal structure already exists and the property hosts a carport and a garage.

We cannot be seen to set precedents when considering these kind of excursions over the normal building limits.

The Council should also see that the illegal structure is pulled down

Kind Regards

THEUNS & DIANE ROODMAN
"SHEER BLISS"
80 SCHNEIDER STREET
FRANSKRAAL, 7220
082 927 2170
028-3880188

THEUNS & DIANE ROODMAN
"SHEER BLISS"
80 SCHNEIDER STREET
FRANSKRAAL, 7220
082 927 2170
028-3880188

FILE NO:	EL 213 FK
SCAN NO:	
COLLABORATOR NO:	759845

26 Feb 2015

Alida Calitz - RE: Erf 213 Franskraal

TR A Theart
(S vld Merwe)

From: "Theo Wallis" <twallis@lantic.net>
To: "Alida Calitz" <alida@ovcrstrand.gov.za>
Date: 2015/03/12 11:28 AM
Subject: RE: Erf 213 Franskraal



Beste Alida,

Na aanleiding van die skrywe ontvang, lewer ek graag die volgende kommentaar.

Gedurende Desember 2011, het ek na n besoek aan Paternoster, die gedagte gekry om n afdak soortgelyk aan die wat by Paternoster die gebruik is, by my woning in Franskraal te laat oprig. Dit was vir my esteties mooi en was ek van mening dat dit my bestaande woning te Franskraal sou komplimenteer en geensins afbreuk daaraan doen nie. Franskraal, anders as Paternoster bestaan uit n mengelmoes van boustyle.

Ek het toe n kontrakteur wat werksaam was in Paternoster gekontak en hom die opdrag gegee om die bestaande afdakke vir my op te sit wat hy toe ook gedoen het. Tydens die proses en veral daarna, was ons deur verskeie mense gekontak, wat ons gekomplimenteer het met die verbeterings en het navraag na die kontrakteur gedoen ten einde soortgelyke verbeteringe by hulle huise te laat doen. Die standaard van vakmanskap en die materiaal is dus presies die van Paternoster.

Gedurende 2014, het ek besluit om my huis aan die binnekant te laat verander. Ek wil die bestaande kagel in die woonvertrek laat afbreek en dit met n venster vervang ten einde die see-uitsig maksimaal te kan geniet. Dit was tydens hierdie afspraak met mnr Martin Prinsloo, n argitek/tekenaer (wat my huis se aanvanklike planne geteken het), wat hy my gevra het of die afdakke se planne goedgekeur is. Ek het hom meegedeel dat ek van mening was, dat dit seker nie nodig was nie. Hy het my meegedeel dat goedkeuring wel nodig was. Ek het op daardie presiese oomblik aan hom die opdrag gegee om die fout van my kant, onmiddelik te laat regstel.

U sal met my saamstem dat ek die aangeleentheid net so kon gelaat het aangesien daar al bykans 4 jaar verloop het, sonder dat die spreekwoordelike haan gekraai het. Dit is egter nie my styl nie en is dit my opregte begeerte om die nodige goedkeuring te verkry.

Soos aan u telefonies genoem, het my bure geen probleem gehad die afgelope bykans 4 jaar met die verbeteringe nie. Dit verstom my dat n instansie soos die Franskraal Belastingbetalersvereniging, waarvan ek terloops ook n lid is, nou skielik n probleem blyk te he met die verbeteringe. Merk hulle dit dan nou vir die eerste keer op na hulle daarop gewys word? Kan tog nie wees nie. Wat is die proses wat die vereniging gevolg het om by hulle besluit uit te kon kom? Is daar n vergadering gehou (waar lede seker moes kennis kry van)? Wie en hoeveel lede was teenwoordig? Was daar n kworum waartydens die besluit geneem is en is die Franskraal belastingbetalersvereniging enigins verteenwoordigend van die totale inwonertal? Ek sal graag hulle lederegister wil sien sou u hulle mening ernstig beskou.

Ek dank u vir u tyd en vertrou dat u my aansoek derhalwe gunstig sal oorweeg en goedkeur.

Groete,

Theo Wallis

12 MAR 2015

FILE NO:	EL23FK
SCAN NO:	
COLLABORATOR NO:	764275

Town Planning Internal Memo



Enquiries: S W van der Merwe (Senior Town Planner)

Applicant: D T & J M Wallis

File Reference: 2706

Date: 3 February 2015

Comment By: 17 February 2015

TO:

INTERNAL & EXTERNAL DEPARTMENTS CIRCULATION							
INTERNAL DEPT	✓	Req	Rec		✓	Req	Rec
Operational (Jan Nel - GB)	X			Traffic Dept.			
Electrical (Danie Maree - GB)				Building Dept. (R Dickson - GB)	X		
Environmental Officer (B Kondokter - GB)				Fire Dept. (Joe Schoeman)	X		
Health Dept. (Chantal Adams)				Engineering Services (D Hendriks)			
Ward Councillor				Area Manager	X		

SUBJECT: ERF 213 FRANSKRAAL

PROPOSAL: DEPARTURE (BUILDING LINES)

ATTACHED: Notice, locality plan, lay out plan, motivation

COMMENT ON THE PROPOSAL:

In terms of National Building Regulation
 SANS 10400T:2011 - A carport may not be enclosed
 on more than 2 sides.

MUNISIPALITEIT OVERSTRAND MUNICIPALITY
 FIRE BRIGADE / BRANDWEER
 APPROVED / GOEDGEKEUR
 17 FEB 2015

Kindly provide your comment (with specific reference to any conditions of approval that should be imposed) in the space provided or in a separate Memo by not later than the date stipulated. Should no comment be received, it will be assumed that you have no objection to the proposal (and where appropriate Mayco will be informed accordingly).

