

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
17 November 2015
(Also the agenda for the Mayoral Committee Meeting : 25 November 2015)**

**6.
ERF 7340, 17 PS LITHOLI STREET, OVERHILLS, KLEINMOND, OVERSTRAND
MUNICIPAL AREA : PROPOSED DEPARTURE : NS & T VARA**

7340 KOH (2608)

H van der Stoep

22 September 2015

(028) 313 8900

Hermanus Administration

1. Executive Summary

An application has been received on 27 June 2014 from NS & T Vara on Erf 7340, Overhills, Kleinmond for a departure from the Scheme Regulations to enable the owner to legalize the existing shebeen on the property.

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

A site inspection has been arranged for councillors, whereafter a meeting is arranged to discuss the situation. Feedback of the outcome will be given at the Portfolio Committee Meeting.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

6. Background/Discussion/Evaluation/Conclusion

Background

A similar application was lodged in 2000. The application was not approved by the Municipality. The applicant lodged an appeal in terms of Section 44 to the Department of Environmental Affairs and Development Planning. The appeal was dismissed.

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The applicant did not adhere to the decision and continued with the operation of the tavern. During 2014 the applicant submits an application for a tavern on the same residential property. Support from the Overhills community was submitted per memorandum.

Registered notices were sent to all potentially affected property owners, and two objections were received.

The application was also circulated to all relevant municipal departments, and no objections were received.

Discussion

The objections received can be summarized as follows:

Kleinmond Ratepayers' Association

- Parking is insufficient.
- Noise pollution.
- Possible drug abuse.

Ms. DG Cronje (an adjacent neighbour)

- Loud music till late at night.
- Patrons of the tavern entering her erf conducting indecent behaviour.
- Inebriated patrons vomit in front of the house
- Patrons throw bottles against the wall and needs to be cleaned.
- Patrons enter her property to accept calls.
- Parking in front of her house.
- Patrons enter her premises and make use of her stoep.

Applicant's response to the objections received:

- Patrons to the facility are mostly from the community and walk to the establishment, thus the parking requirements is not applicable.
- No objection was received from the direct neighbours and the applicant did indicate that music played is in an orderly fashion.
- The applicant indicated that the establishment is well managed.
- It is the opinion of the applicant that the existing taverns are evenly spread and that the taverns can only accommodate a limited number of people.
- The objector resides across the street and no objection was received from the direct neighbours. Music is played in an orderly fashion.
- The unruly behaviour may be from anybody and not necessary from patrons acquainting the tavern. No unruly behaviour is allowed.
- No patron is allowed to leave the establishment with bottles and the broken bottles are from the general public.

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- People do leave the establishment to take calls, but do not transgress the objectors premises.
- To give the objector more privacy, the applicant did offer to erect a street boundary wall, but this gesture was refused by Ms. Cronje.

A separate letter was received with the owner's response to the objections received :

- Patrons frequenting the premises are pedestrians and an arrangement is in place that should parking be required, the visitor can park on the neighbours' premises. The South African Breweries (SAB) truck can be seen as a nuisance, but due to the low traffic movement and people at work, this in itself therefore does not create a problem.
- The noise pollution is limited
- There is no drug abuse and objectors should submit proof.
- The present three (3) taverns are too much, however the town has seventeen (17) licensed liquor premises and indicates discrimination against the Black and Coloured community.
- The same business opportunities should be given as the White community.

Town Planner's comment on the objections received:

The site was inspected and the following was observed:

- There was no noise pollution, however the site inspection was done during the day, thus it may differ at night.
- The SAB truck blocked the street and no vehicle can pass.
- The existing garage is utilized as storage space
- Patrons conducted themselves in an orderly fashion.
- The liquor license is valid until December 2015.
- The ablution facilities do not provide for disabled persons.
- The storage facilities are not adequate.
- No parking for customers.
- No loading bay available.

Evaluation

The township of Overhills is located in Kleinmond and has been approved as an Informal Settlement. The township consists of only residential zoned erven and is seen as a residential suburb in Kleinmond. Due to the status of an Informal Settlement, thus the infrastructure makes provision for limited vehicle movement and is based on households with a limited income.

The tavern in question is situated in PS Litholi Street, Overhills. The erf is 160m² and consist of a residential dwelling consisting of a two (2) bedroom

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house of 64m² and the tavern of 44m². The ablution facility for the business area is located within the tavern. In terms of the Overstrand Wide Spatial Development Framework, 2006 and the Overstrand Municipal Spatial Growth Management Strategy, 2010, no business erven was identified in Overhills as it is seen as a residential neighbourhood, which is in close proximity of the services available in the Central Business District (CBD) of Kleinmond. The township does not have any business erven.

Taverns are a type of business that is earmarked for the CBD or a business node as identified in the policy documents and the Zoning Scheme. This type of business does have special requirements that are not conducive to a residential development. The parameters require enough parking on site, loading site, ablution facilities (including facilities for disabled persons) and sufficient storage. One of the major aspects is the noise pollution generated by the customers at night time.

A site inspection was conducted and the following was found:

- The ablution facilities does not provide for persons with disabilities.
- The storage facilities are not adequate and the garage is used for storage purposes.
- No parking for customers.
- No loading bay available.
- The applicant was at work according to an employee and the tavern is an additional income, and not the only income as claimed.

The applicant did indicate that most of the customers are pedestrians from the immediate surrounding area and thus parking is not required. It is the applicant's only income. The operating hours are stipulated as follows : 10:00 until 22:00, five (5) days a week, except on a Friday and Saturday when the closing time is at 00:00. It is correct that the township has a low vehicle ownership and caters mostly for pedestrians, however not all patrons are pedestrians and thus parking must be available.

Taken into consideration that the tavern is surrounded by residential properties, the operating hours are not conducive to a quiet neighbourhood and especially where there are school going children.

The SAB delivery vehicles are articulated trucks that block the road during the time of delivery. This has a major impact on vehicle flow taken into consideration that the streets are very narrow. The streets were not built to carry the weight of this type of delivery vehicle. The business area exceeds the allowable area of extent as prescribed in the Overstrand Zoning Scheme Regulations.

The Town Planning Department is investigating the demarcation of business erven in Overhills, but it does not necessarily means that the specific erf will be

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demarcated for business purposes. This will entail that the owner will have to purchase the property earmarked for business, which will not solve the problem as it was indicated that the financial means is limited in this regard.

The Town Planning Department is in the process to identify a possible business node in Overhills. The applicant did request in meetings that a temporary approval for a departure be granted until such time the node has been identified and approved. The request to allow the applicant temporary approval is not possible since should even be identified for business purposes, it will be restricted to business premises and a tavern will be a consent use. It should be noted that should such a business node be identified, the existing tavern may not be in a position to acquire an erf for tavern purposes due to financial constraints.

The applicant did indicate that Kleinmond has seventeen (17) liquor licenses; however it is located in the CBD and earmarked business node. The premises comply with the Zoning Scheme requirements and none of them are situated within the residential area and such comparison cannot be made.

The business area transgresses the 25% for businesses on residential erven.

Conclusion

Application not be recommended for approval.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Building Control Department

- Provide seating layout to determine ventilation.
- Exceed allowable 25% floor space @ 40.7.
- No disabled toilet provided. 1 x Disabled toilet to be provided and disabled access.
- Floor to ceiling height to comply with SANS.
- Submit plans for illegal structures.
- Provide parking layout.
- Fire Safety to be complied with.

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Fire Department

The approval is subject to compliance with requirements with Fire Safety Regulations SANS 10400T:2011 and the Overstrand Community Fire Safety By-Law PN 6454/2007.

District Health

Supported.

10. Annexures

- Annexure A: Locality Plan
- Annexure B: Proposed Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Objections received
- Annexure E: Applicant's/owner's comment on the objections received

RECOMMENDATION:

1. that the objections **be noted**;
2. that, in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a departure from the Scheme Regulations on Erf 7340, Overhills, Kleinmond, **not be approved**, due to the following reasons:
 - (a) the land use for a tavern is not in line with the Scheme Regulations and the Overstrand Municipal Spatial Growth Management Strategy;
 - (b) the land use is not catered for in the design of the township and width of the street does not cater for articulated trucks and/or delivery vehicles;
 - (c) the proposed land use is not conducive to the residential character of Overhills in terms of being compliant with the National Building Regulations, Fire Regulations, noise pollution and hours of trading;
 - (d) the hours of trading for business on residential erven in terms of the Zoning Scheme Regulations, does not allow the trading hours proposed by the applicant in order to accommodate all residents and especially school going children of the area;
 - (e) the ablution facility does not comply as a paraplegic toilet facility is not catered for, and

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- (f) the tavern exceeds the allowable coverage on residential erven for business purposes e.g 25% or 30m², whichever is the lesser.
3. that the applicant be notified of its 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 :	H VAN DER STOEP
TARGET DATE FOR IMPLEMENTATION :	9 DECEMBER 2015
TARGET DATE TO INFORM APPLICANT :	9 DECEMBER 2015
TARGET DATE TO INFORM OBJECTOR :	9 DECEMBER 2015

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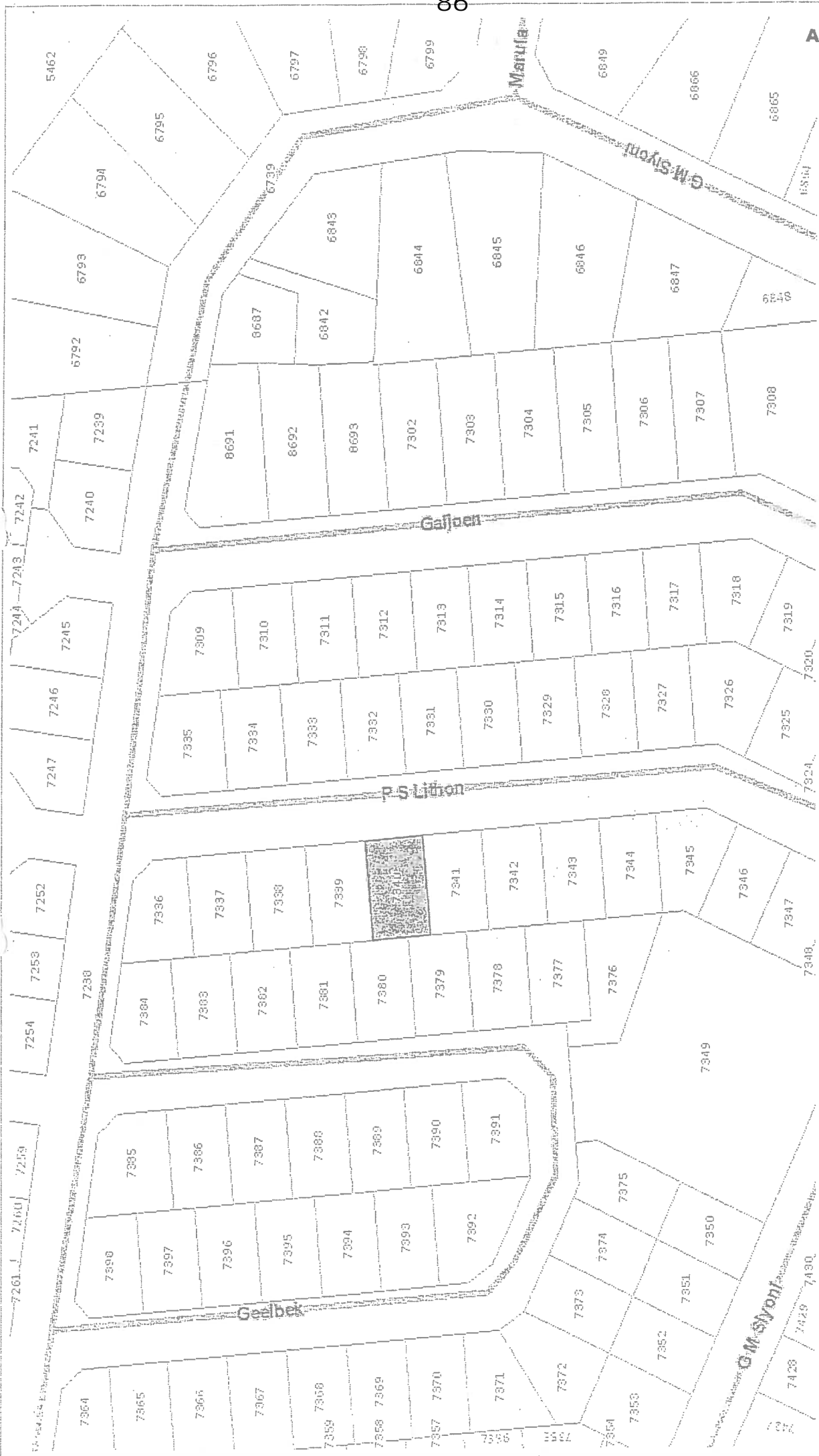
**7340 KOH (2608)
H van der Stoep (028) 313 8900 Hermanus Administration
22 September 2015**

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 NOVEMBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION:

that the item **be referred back.**

RESPONSIBLE OFFICIAL :	H VAN DER STOEP
TARGET DATE FOR IMPLEMENTATION :	9 DECEMBER 2015
TARGET DATE TO INFORM APPLICANT :	9 DECEMBER 2015
TARGET DATE TO INFORM OBJECTOR :	9 DECEMBER 2015



ERF 7340
 17 PS LITHOLI STREET
 OVERHILLS, KLEINMOND



To whom it may Concerned:

Mr. Ntuse Sajini Vara Erf: 7340 ,17 Litholi Street KLEINMOND 7195

Application for rezoning Tavern (On Consumption)^P

Motivation

The Applicant: Mr Vara has the right to occupy the premises which is registered in his name and wants to apply for the right to use part of the property as a business (Documents submitted).

There will be 2 people other than the owner that will be employed and that people is from the community.

Premises: The applicant obtained her liquor license therefore meeting all the Liquor Board's requirements. Liquor will be sold for consumption on the premises only; therefore sitting on the premises to consume alcohol will be allowed (On Consumption). There are 2 toilets in addition to those used by the residents of the house that will be located in the business as per the plan. The infrastructure necessary to operate in accordance to the Liquor Law including tables for people to sit at and the serving bar counter.

Suitability: The premises are easily accessed by patrons, most of whom do not have motorized transport. There is therefore no need for extra parking facilities other than the indicated on the plan submitted and there exist no potential of traffic problems (On site).

Undesirable conditions: There exist no undesirable negative factors such as noise or disturbances at the premises. There have never been any complaints of any nature and neighbours support the applicant.

Zoning: Proposed Zone – Business 1

Operating Hours: Monday-Thursday	10.00 to 22.00
Friday & Saturday	10.00 to 24.00
Sundays	10.00 to 22.00

Products sold: All types of liquor and other items w.r.t. section 41(1)(C) of the Liquor Act which includes food, mineral water, soft drinks & tobacco products etc.

Hoping that this motivation is considered favourably and don't hesitate to contact myself for more information if needed.

Best regards,

Mr NS Vara

NSVARA

P Bezuidenhout



KLEINMOND BELASTINGBETALERSVERENIGING
KLEINMOND RATEPAYERS ASSOCIATION

Posbus 134, Kleinmond, 7195.

Voorsitter: Jan-Willem van Staden. 028 271 4281 / 082 887 6466

Vonkpos: staden@kingsley.co.za

Sekretaris: Jannie Vijoen. 028 271 5958 / 084 589 7444

Vonkpos: janniev100@gmail.com

VOORKEUR KORRESPONDENSIE WYSE is 'n Skrywe na BEIDE bostaande Epos-adresse.

7 Augustus 2014

Mnr Flippie Bezuidenhout
Munisipale Kantore
KLEINMOND



Geagte Mnr Bezuidenhout

VOORGESTELDE AFWYKING VAN GRONDGEBRUIKBEPERKING: ERWE: 7340,7355 & 7418

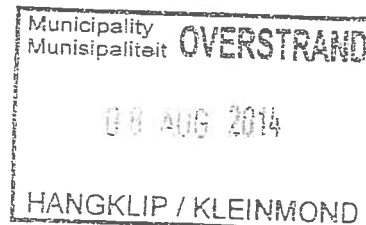
Met verwysing na bogenoemde aansoeke, die volgende:

1. Aangesien die 3 aansoeke, behalwe vir die erf nommers, dieselfde is, word besware in 1 brief saam gevat.
2. Die Kleinmond Belastingbetalers Vereniging (KBBV) maak beswaar teen die voorgestelde afwyking op grond van die volgende:
 - 2.1. Parkering gaan beslis problem veroorsaak. Hoewel die kliënte van die tavern seker meestal per voet daar aankom, is die strate daar baie nou en kan verkeer maklik verspêr word.
 - 2.2. Dit is moeilik om te glo dat bure nie gesteur gaan word nie. Ek het nog nie van 'n stil kroeg gehoor nie.
 - 2.3. Dwelm misbruik is 'n algemene problem en selfs al word die huidige plekke gewettig, bestaan daar beslis 'n sterk moontlikheid dat dit dwelm afsetpunte kan word.
 - 2.4. Hoewel elke groep sy eie toegang tot sosiale interaksie gegun word, is dit ons gevoel dat 3 sulke tavernes in die betrokke area te veel is.

Die uwe,

(Get.) Jan Willem van Staden
Voorsitter.

FILE NO:	EL7340 OH
SCAN NO:	
COLLABORATOR NO:	651654



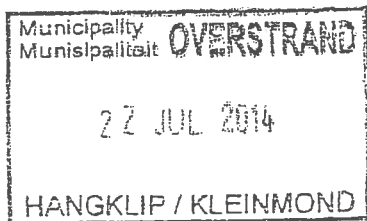
VOORKEUR KORRESPONDENSIE WYSE in 'n skrywe (PDF-Lêer) na BEIDE
staden@kingsley.co.za en janniev100@gmail.com



FILE NO:	EL 7340 km
SCAN NO:	
COLLABORATOR NO:	643840

P. Bezuidenhout

KOH 7340



Mr. DG Cronje
22 PS Litholi Str.
Overhills
Kleinmond
7195

2 Municipale Bestuurder
Hangklip Kleinmond Admin
Waal Sak X3
Kleinmond
195

reagte Meer

sake: Besware rondom afwyking van
7340 Kleinmond aka Tapu's Tavern.

vernie my formele beswaar ten opsigte
an bogenemde aansoek. My redes is as
Ag:

Maarde rusiek tot laat in die nag.

2. Ongewenste figuur wat laat nag my erf betree en seks het agter my huis.
3. Kliënte verlaat die tavern en winkel en komer (kots) en sloot voor my huis.
4. Bottels word stukkend gegooi in straat voor my huis en moet dan oopgeruim word.
5. Kliënt van Tapiras verlaat die tavern om op roep op my stoep te ontvang.
6. Voertuig word voor my huis parkeer sonder toestemming.
7. Van die kliënte kom sit op my stoep en drink.

Uit bogenoemde redes kan u sien/aflei dat dit duidelik vir my is probleem is. Met een van die gevalle (die proepe ontvang) was ek gedreig deur die persoon toe ek hom aanspreek.

Op 'n ander geval, waar die kliënte voor my huis parkeer, was ek gedreig

dat my huis afgebrand gaan word.
 Ek het dit al onder die leënaar se
 aandag gebring. Sy verweer was ek
 moet my eif toemaak aan die werk
 iets waarvoor ek nie die finansies het nie
 selfs al het ek die geld gehad sou dit
 egter nie die probleem oplos. want van
 my buur (wie se erwe toe is) sit steeds
 met die probleem.

Ek het al verskeie kere met die
 leënaar gepraat en ook in argumente
 betrokke geraak as gevolg van die
 probleme wat ek ondervind.

ten slotte wil ek onder u aandag
 bring dat ek nooit geken was in
 die saak met die opening van
 die "berigheids / tavern" nie. Indien
 wel sou ek nooit instem daartoe
 nie.

Dankie vir die geleentheid om my
arsae te besien in die verband. Ek
hoop egter dat my besware nie op
dowe Uore sal val nie.

Byvoorbaat Dankie.

Die ouer

nie. DG Cronje.

PLAN Town & Regional Planners
Stads- en Streeksbeplanners
Active

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

Email: planactive@hermanus.co.za

Website: www.planactive.co.za



9 September 2014

Our reference: PA14057

The Municipal Manager
Overstrand Municipality
Private Bag X3
KLEINMOND
7195

(H van der Stoep)
A Theart

For attention: Mrs. H. van der Stoep

Sir,

PROPOSED DEPARTURE FROM THE LAND USE RESTRICTIONS: ERF 7340 KLEINMOND

Your letter dated 12 August 2014 to N.S. & T. Vara of 17 PS Litholi Street with the enclosed objections refers. We have been requested to comment on the objections received from the Kleinmond Ratepayer's Association and Ms. D.G. Cronje on Mr. Vara's behalf. Our comments on the objections are as follow:

- Patrons visiting the tavern are normally from the community and they usually walk there as it is the primary mode of transport. Very few people in this specific township own a motor vehicle and parking will not be of concern. This also explains the reason for the narrow road designs within townships.
- With reference to the objections received; only one objection has been received from a direct neighbour opposite the road that complains about the loud music. No other direct neighbours are complaining. Mr. Vara is of the opinion that they play music in an orderly fashion and not excessively loud to be of a nuisance to the neighbours.
- Mr. Vara ensures that his tavern is well managed and that drugs are not tolerated.
- As mentioned above, Mr. Vara does not tolerate unruly behaviour at his tavern. He is also of the opinion that people that engages in unruly behaviour outside his property could come from elsewhere and does not necessarily come from his tavern.
- People leaving the tavern may not exit with their beverage or any glass bottle. Bottles and broken bottles that end up in the streets are bottles that are left by the general public passing by.
- People do leave the tavern to take phone calls outside, and sometimes end up having a phone call conversation on the sidewalk. They don't trespass onto the neighbouring properties as alleged.
- To give the neighbour more privacy, Mr. Vara has offered to erect a street boundary wall on the complainants property at his cost, but the offer was turned down by Ms. Cronje.

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

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

FILE NO:

EL 7340-km

SCAN NO:

COLLABORATOR NO: 661398

- It is our opinion that there are not too many taverns as stated by the Ratepayers Association. The taverns are well spread within the existing township as indicated on the locality map below. The taverns are situated on even that are $\pm 160m^2$ each. The number of people that can be accommodated within these taverns are few.



We trust that you would find our comments on the objections in order.

Yours faithfully

John Mc Lachlan
John Mc Lachlan

NS & T Vara

No. 17 PS Litholl Street

Kleinmond

7195

The Municipal Manager

Attention : P Bezuidenhout

Overstrand Municipality

Kleinmond

7195

ERF 7418

ERF 7355

PROPOSED DEPARTURE OF LAND USE RESTRICTION : ERF 7340, KLEINMOND

OBEJECTION LETTER FROM KLEINMOND RATEPAYERS ASSOCIATION

- 2.1 People that come enjoy themselves in my premises are mostly pedestrians. In a case where someone comes with his or her own vehicle I arrange with my neighbour to let my client park the vehicle at his/her premises (Neighbour). Once a week we get deliveries from SAB which can be seen as disturbance in traffic flow but in our area we don't high volumes of traffic. Most of the residents in our area are at work when SAB truck comes for deliveries. When the roads were developed in our area there were no provisions for parking and sidewalks for pedestrians. I also have never received any complaint from local traffic or Kleinmond Ratepayers Association about obstruction of traffic in my street. It is surprising to us for the Association to raise such complaint without any consultation with us.
- 2.2 We have big respect for our neighbours so the mutual understanding is that at an agreed time we must try our best to reduce the noise. We believe the neighbours would have frequently contacted the local police to help them with addressing the noise if had problems with it.
- 2.3 We view this point as insulting, undermining our intelligence and business thinking or ideas. Our premises are licenced for liquor consumption. If Kleinmond Ratepayers Association are aware of any drug abuse or drug dealing in our premises, they must present proof to us or at the local police. They are also free to view crime statistics in terms of drug dealing or drug abuse at our premises since I have been trading.

2.4 It is suprising to me for the Association to say Three(3) Taverns are too much for Overhills, Proteadorp and Sqarter Camp whereas in town there are Seventeen (17) licenced liquor premises. Most of the residents In town are holiday makers whereas in Overhills, Proteadorp and Sqarter Camp are permanent residents. We believe the population in Proteadorp, Overhills and Sqarter Camp is more than permanent residents in town. This is discrimination towards Blacks and Coloureds communities.

2.5 We wish the Association can be practical and involve themselves with everybody that is staying in Kleinmond as whole not only in town as we are also paying rates like them. Currently business opportunities are presented to a fraction of the community in Kleinmond. We would like to be given same opportunities as white communities. We applied for this departure in order to have correct zoning as required by the Municipal By-Laws.

OBEJECTION LETTER FROM MRS DG CRONJE

1. On 2014-08-27 at about 17:00 I (T. Vara) had a meeting with Mrs DG Cronje inconnection with the objection that she put against our application. We had a detailed discussion about the letter.
2. We discussed the issue of security and I promised Mrs Cronje that I get more security. She also suggested that I must get somebody that is not known in Kleinmond so that he or she can be very strict with the clients. I agreed and asked her to give us enough chance to get somebody outside of Kleinmond.
3. I suggested to Mrs Cronje that we can assist her with a certain percentage in finances to get fencing for her premises but she refused. If a client of mine comes our premises with his or her own vehicle and would like to park adjacent to Mrs Cronje's premises we will first get permission from Mrs Cronje.
4. Mrs Cronje informed me that she don't have a problem with us or our business but we must just implement what we agreed on.