

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

7.

ERF 1685, 18 HARBOUR STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA : APPLICATION FOR DEPARTURE AND RELAXATION OF RESTRICTIVE TITLE DEED CONDITION : EE VAN TUBBERGH

1685 PB (2907)

SW van der Merwe

(028) 313 8900

Hermanus Administration

25 September 2015

1. Executive Summary

To consider an application for departure and relaxation of a restrictive Title Deed condition received on 4 May 2015 from the owner of Erf 1685, Pearly Beach, EE van Tubbergh, in order to:

- encroach the 5m street- and 1,57m lateral building lines in terms of the Title Deed to 1,2m and 0m respectively;
- encroach the 4m street- and 2m lateral building lines in terms of the Overstrand Zoning Scheme Regulations to 1,2m and 0m respectively.

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- and Spatial 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)(LUPO)
- Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)

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6. Background/Discussion/Evaluation/Conclusion

Background

Erf 1685, Pearly Beach measures 902m² in extent and is developed with a single storey dwelling and attached garage. The aforementioned garage is situated on the lateral property boundary, adjoining Erf 1686.

The applicant proposed to extend the existing garage towards Harbour Way. The proposal will result in the encroachment of the lateral building line onto the property boundary as well as the street building line with 2,8m. The proposed additions will therefore be situated 1,2m from the street boundary. The subject property maintains a distance of at least 8m between the street boundary and the edge of Harbour Way, which currently does not have a formal footway.

The Title Deed of the property imposes 5m street- and 1,5m lateral building line restrictions. The application therefore also comprises the relaxation of restrictive title conditions. In a letter dated 21 July 2015 (refer to Annexure D) the Provincial Government: Western Cape (PGWC) advised that from 1 July 2015 as a result of the enactment of the Spatial Planning Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) and the Land Use Planning Act, 2014 (Act 3 of 2014) the Provincial Government: Western Cape can no longer dispose of applications for relaxation of restrictive title conditions since Municipalities are from the aforementioned date regarded as the administrator.

Discussion

The application for departure was advertised in the prescribed manner. No objections were submitted. Letters of support have been submitted from the affected adjoining property owners, namely Erven 1684, 1686 and 2638, Pearly Beach (attached as Annexure E).

Evaluation

The application property is situated in Harbour Way, Pearly Beach which is characterised by a very wide road reserve measuring 22m wide. A distance of 8m will be maintained between the street boundary of the subject property and the road surface, whilst the proposed garage extension will be situated 1,2m from the street boundary of the subject property.

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Proposed departure

In terms of the provisions of Section 16.1.2(a) of the Scheme Regulations garages that encroach the street building may be permitted if they cannot be sited at the prescribed distance or for other relevant reasons, provided that a distance of 5m to the road kerb/surface be maintained. The proposed garage due to the wide road reserve will be situated 9,2m from the road surface in line with the Scheme Regulation requirements. The proposed garage extension is situated abutting the driveway and landscaped screen of the adjoining property that is situated further to the rear. The existing lean-to roof will be replaced by a pitched roof which is deemed to be an improvement from an aesthetical point of view with less impact on the adjoining Erf 1686.

Having had regard to the aforementioned, the opinion is held that the encroachment of the street- and lateral building lines will not unacceptably detract from the character and appearance of the surrounding area or the residential amenity of the adjoining properties. The proposal will not result in circumstances detrimental to highway and pedestrian traffic safety and is therefore supported from a planning point of view due to the prevailing site specific circumstances.

Proposed title relaxation

Paragraph D (6) (a) of the Title Deed T34575/2000 states:

“Hierdie erf mag alleenlik gebruik word vir die oprigting daarop van een woning of ander geboue vir die doeleindes wat die Administrateur van tyd tot tyd, na oorleg met die Dorpekommissie en die plaaslike owerheid, goedkeur, met dien verstande dat, indien die erf in die gebied van ‘n dorpsaanlegskema ingesluit is, die plaaslike owerheid enige ander geboue wat deur die skema toegelaat word, kan toelaat, onderworpe aan die voorwaardes en beperkings wat in die skema bepaal word.”

It is thus clear that the Title Deed permits the administrator to grant a relaxation. The relaxation of the relevant restrictive Title Deed condition is supported, as it would not adversely impact the safety and wellbeing of the local community. The adjoining affected property owners also provided written consent.

Conclusion

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

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7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Building Department

“No objection to the departure of the street building line. Road reserve to the harbour is around 8m.”

Fire Brigade

“No objection – does not affect Fire Protection Regulations.”

10. Annexures

Annexure A: Locality Plan

Annexure B: Site Development Plan

Annexure C: Motivation Report

Annexure D: Letter from the Department of Environmental Affairs and Development Planning

Annexure E: Letters of consent from adjacent property owners

RECOMMENDATION:

1. that the application for relaxation of a restrictive Title Deed condition applicable to Erf 1685, Pearly Beach in order to relax the 5m street- and 1,57m lateral building lines to 1,2m and 0m respectively as contained in Title Deed T34575/2000, **be approved**;
2. that, in terms of the provisions of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a departure from the relevant Zoning Scheme Regulations on Erf 1685 Pearly Beach, to relax the 4m street- and 2m lateral building lines to 1,2m and 0m respectively to accommodate the proposed extension to the garage, **be approved**, subject to the following conditions:
 - (a) that this approval only has reference to the relaxation of the building lines as indicated on Plan No. JJ 27/15 dated 22 April 2015, as submitted with the application;

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- (b) that building plans be submitted to the Building Department for approval, and that all conditions of the Building – and the Fire Department be complied with at that stage;
 - (c) that this approval does not absolve the applicant from compliance with any other relevant legislation; and
 - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
3. that the applicant be notified of its right of appeal in terms of Section 62 of the Municipal Systems Act with regard to the above decision.

RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	9 DECEMBER 2015
TARGET DATE TO INFORM APPLICANT :	9 DECEMBER 2015
TARGET DATE TO INFORM OBJECTOR :	N/A

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7.

**ERF 1685, 18 HARBOUR STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL
AREA : APPLICATION FOR DEPARTURE AND RELAXATION OF RESTRICTIVE
TITLE DEED CONDITION : EE VAN TUBBERGH**

1685 PB (2907)

SW van der Merwe

(028) 313 8900

Hermanus Administration

25 September 2015

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 NOVEMBER 2015, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

SW VAN DER MERWE

TARGET DATE FOR IMPLEMENTATION :

9 DECEMBER 2015

TARGET DATE TO INFORM APPLICANT :

9 DECEMBER 2015

TARGET DATE TO INFORM OBJECTOR :

N/A



LIGGINGSPLAN / LOCALITY PLAN
Erf 1685 Pearly Beach



**VOORGESTELDE VERANDERING/VERBETERING
VAN WOONHUIS VIR
MEV. E.E. VAN TUBBERGHI
OP ERF No 1685 GELEË TE PEARLY BEACH**

STEEENWERK	Buitemure baksteen, gepelster en geverf volgens eienaar keuse.
DAKONSTRUKSIE	Nuwe dakkappe bedek met leëls vir die hoof woning. Alle dakkappe volgens spesifis.
VENSTERS EN DEURE	Alle vensters en deure word vervang met brons aluminium
PLAFONNE	Isobord tussen kappe
RIJOLWERK	Volgens munisipale verelates en regulasies
ORPERVLAKTE	Woonhuis..... 198,11 m ²
	Motorhuis..... 41,73 m ²
	Nuwe aanbouing 19,38 m ²
	Totaal..... 259,22 m ²
SKAAL	1:100 / 1:200

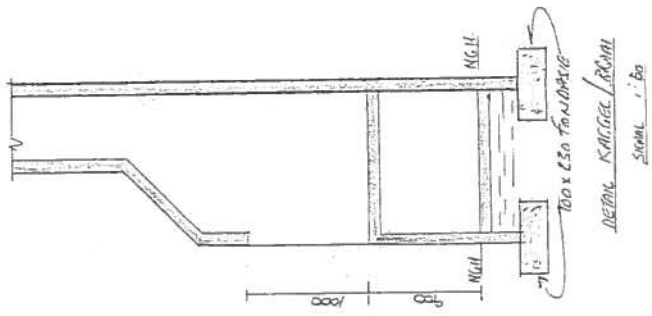
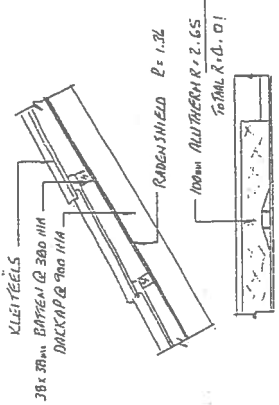
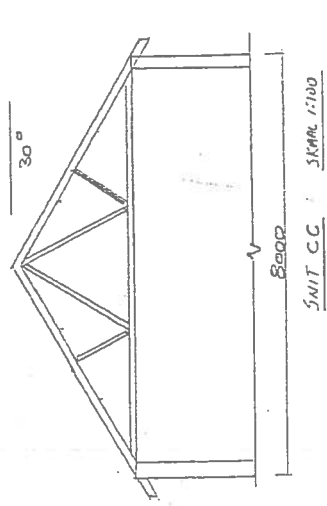
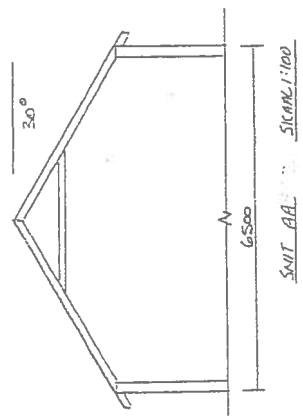
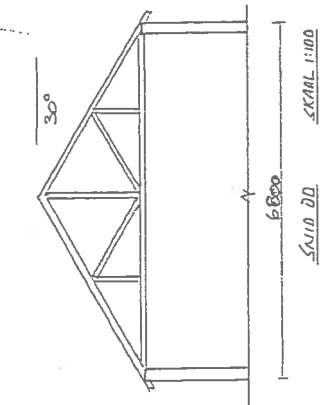
Reg no D2720

ALGEMEEN:

Alle mure en hoogtes moet op terrein nagegaan word voor werk mag begin. Mure op plan geniet voorsorg toe mure gebou word op plan. Moetsvlak in alle gevalle min 300mm bo grondvlak. Voeginglaag moet omter alle openinge in buitemure eerste bouers word. Kappe besorg met gegelbuisse erde bouers hoopel 600mm diep gemetsel in steenwerk. Beton late oer alle openinge Min 4 faesienze met "back foret" tussen stene bo late. Alledat hante wat in mure in gebou word moet met tipe bedek word by gedeelte waar dit met die mure kontak maak.

ALLE BOUWERK STRENG VOLGENS NATIONALE PROEFSKEMME EN PLAAASLINE BUREGULASIE

GETEKEN: *[Handwritten Signature]*
 J van der Nest
 Bieshoksked 3
 Kleinbaai. 7220
 Tel: 082-486-8580
 DATUM: 22.4.2015
 TEK NO: JT 27/15

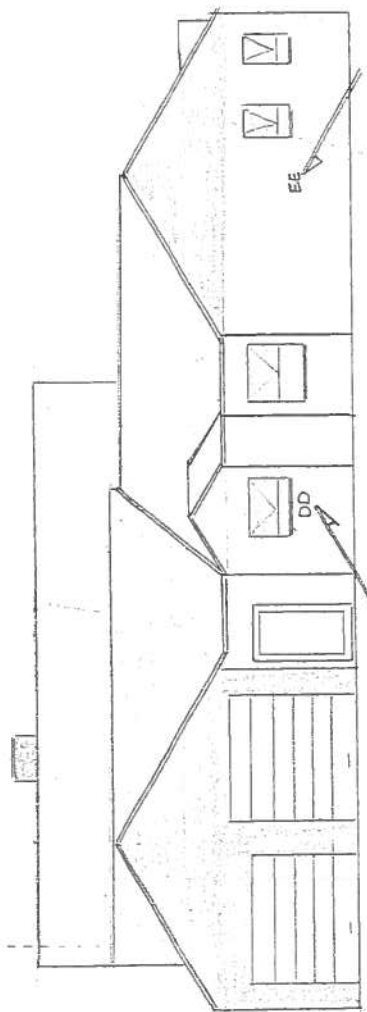


DETAIL DAK ISOLASIE

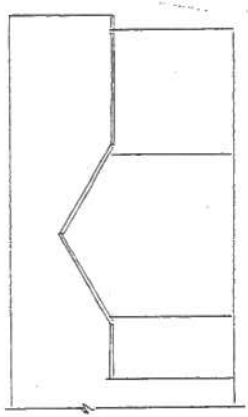
NOTE: MURE VAN KAPPE MOET OP PROJEK GEMEET WORD.

NOTA:

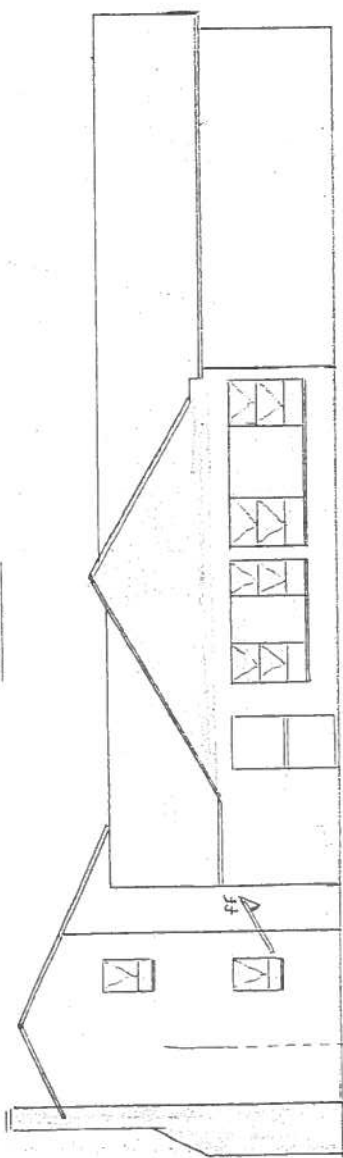
TOTALE DAK VAN HOOFDINGWING
WAS VERVANG MET NUIKE KAPPE EN
BENEZ MET TEELS



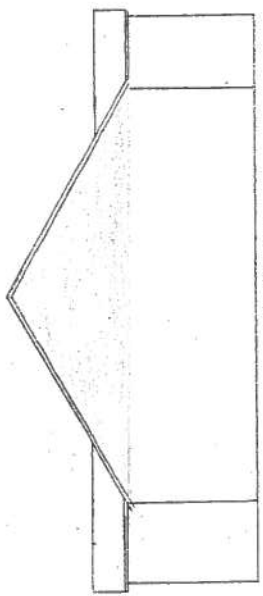
WES AANSIG



AANSIG DD

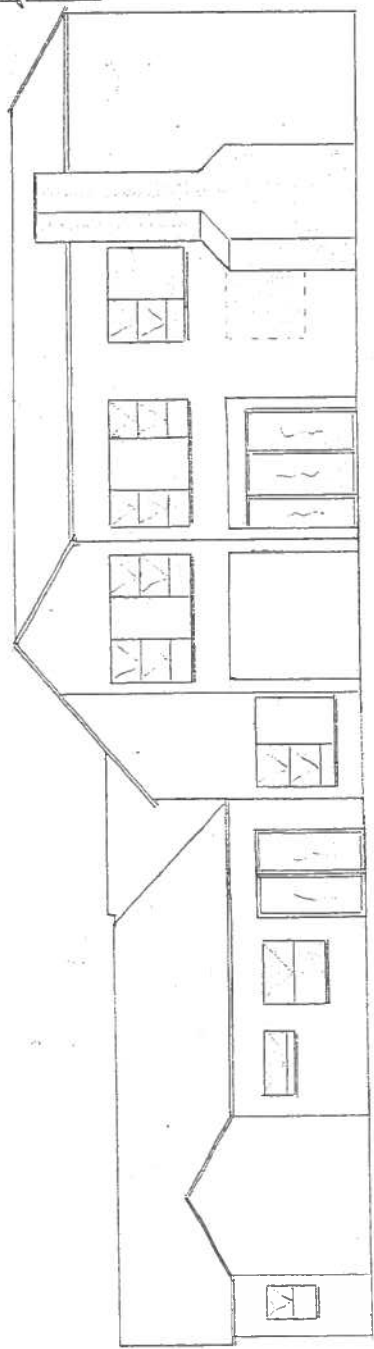


FF

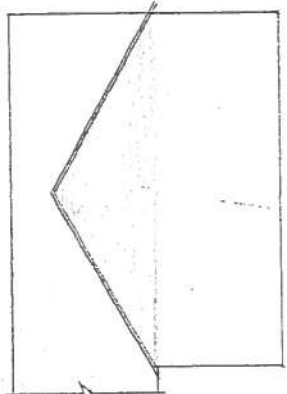


AANSIG EE

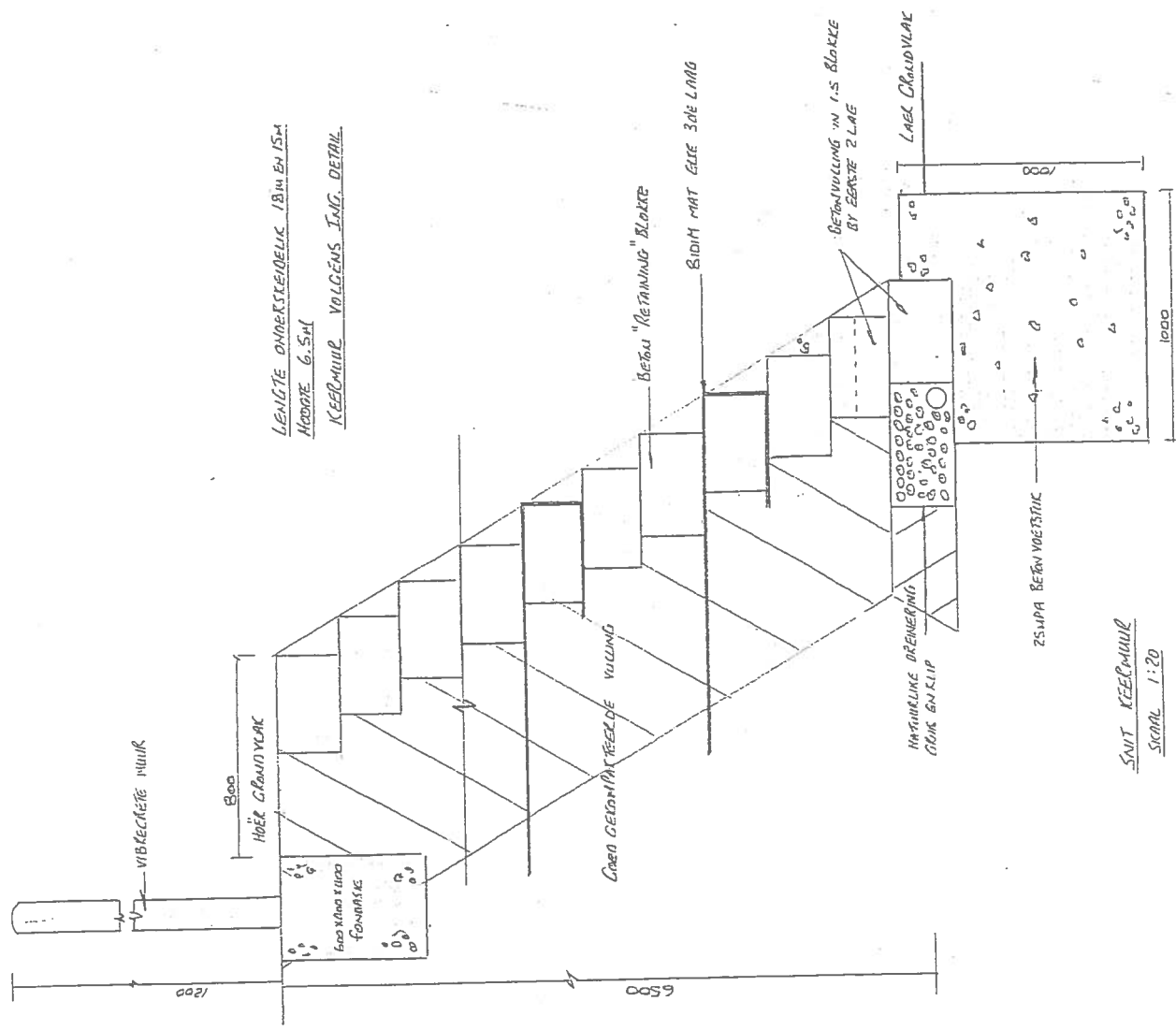
NOORDAANSIG



SUID AANSIG



AANSIG FF



LEVENSTE ONREKTEHOEKIG BILIM EN ISM
 HOODTE 6.5M
 KEEPMUUR VOLGENS I.A.G. DETAIL

SWIT KEEPMUUR
 SCHAAL 1:20

Die Munisipale bestuurder
Overstrand Munisipaliteit
Stadsbeplanning
Gansbaai

E.E. van Tubbergh
Amsterdamstraat 19,
Parow-Oos.
7500
22 April 2015

**Insake: Erf 1685 – Hawestraat 18, Pearly Beach:
Aansoek om afwyking**

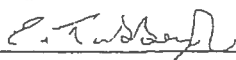
Erf 1685, Pearly Beach, geleë te **Hawestraat 18** is 902 m² groot. Die bestaande woning het 'n dubbel motorhuis van 41 m² met 'n lengte van 6m en oorskry die straat boulyn met 800 mm. Die woning word as 'n vakansie woning gebruik. Ek besit 'n boot met lengte van 8m en wil die boot in die motorhuis stoor gedurende die jaar.

Aansoek word hiermee gedoen om die motorhuis na vore te verleng met 3m wat sal meebring dat die motorhuis 1,2m vanaf die straatgrens sal wees. Die pad se randsteen is tans 8m vanaf die erfrens.

Volgens my mening sal die aanbouing geen negatiewe invloed op die karakter van die omgewing of omliggende eienaars hê nie.

U gunstige oorweging sal waardeer word.

Die uwe,



E.E. van Tubbergh



**Western Cape
Government**
Environmental Affairs and
Development Planning

DIRECTORATE: DEVELOPMENT MANAGEMENT (REGION 2)

Rifaah.Samaai@westerncape.gov.za
Tel: +27 21 483 8338 Fax: +27 21 483 3633
1 Dorp Street, Cape Town, 8000
www.westerncape.gov.za/eadp

REFERENCE: 15/3/1/4/1/E2/9/Erf 213, Franskraal
ENQUIRIES: R Samaai

The Municipal Manager
Overstrand Municipality
P. O. box 20
HERMANUS
7200

Sir / Madam

PENDING REQUESTS FOR RELAXATION OF BUILDING LINE(S):

1. The purpose of this letter is to inform you that as of 1 July 2015 the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)(SPLUMA) was enacted in the Republic of South Africa as national legislation, to provide a framework for spatial planning and land use management.
2. Prior to 1 July 2015 this Provincial Department granted consent for the relaxation of title deed conditions that were imposed by the former Administrator of the Cape, in terms of the Townships Ordinances (Ordinance 13 of 1927 and Ordinance 33 of 1934).
3. The restrictive conditions contemplated in section 39(4) of the Land Use Planning Act, 2014 (Act 3 of 2014) and section 45(6) of SPLUMA provides that a restriction may be relaxed with the consent of the Administrator. From the commencement of SPLUMA and LUPA, municipalities will be regarded as the Administrator and will therefore be the competent authority to decide on these matters.
4. This Department has obtained legal clarification with regards to title deed relaxations and the manner in which to proceed with it given the new planning law regime. The implications for this Department and for you, as the municipality, is that this Department will not have the competency to issue consent letters for title deed relaxations from 1 July 2015. This Department will now handover these requests for title deed relaxations to the municipality who now have this competency.

5. In the interest of cooperative governance and in an effort to prevent any delays in the finalisation of these requests, this Department will undertake to hand deliver all pending requests to the applicable Municipality (where deemed necessary) for processing and provide assistance if required. It is, however, the Municipality's discretion to determine the manner in which these will be dealt with. The applicant should liaise with the Municipality in this regard.
6. As noted in paragraph 3 the only conditions in title deeds that can be relaxed are those imposed by the former Administrator and must be clearly stated in the wording of the preamble of the conditions in question, or in the condition itself. Conditions imposed by third parties (e.g. municipalities, private companies, individuals etc.) cannot be relaxed. The only types of conditions that this Department has relaxed in the past are conditions pertaining to building lines and coverage/built upon area. The property owner was advised that when the building work/activity is not permitted in terms of all other restrictive conditions, these conditions must be removed or amended in terms of the applicable legislation or other procedures available (e.g. court order).
7. Before consent to a title relaxation was issued, the following information was required by this Department (please see example attached):
 - A **locality plan**, clearly showing the erf numbers of the relevant property and surrounding properties.
 - A **building / development plan**, clearly showing the new building work for which a relaxation is required and the relevant building lines in terms of the title deed.
 - A **full copy of the title deed** for the property concerned.
 - A **copy(ies) of the form(s) or letters of consent or the relevant building plan(s) signed by the affected property owner**, clearly indicating the relaxations required and the correct erf numbers of the affected property owners (please see checklist attached).
8. The affected neighbours are the ones that abut (e.g. next door) or are closest to (e.g. across the street from) the building lines being encroached upon or the property on which the coverage/built upon area is being exceeded. This will vary according to each request for a relaxation and should be determined by the relevant official.
9. The written consent from the affected neighbor(s) was required and in the event that the neighbor(s) were not prepared to sign, this was seen as a refusal and an objection. In such a case, the applicant was then advised that a formal removal application was necessary.

10. The difference in the concept of 'coverage' and 'area to be built upon' should be noted. To ensure correct and consistent practice and advise to applicants, the concepts are further explained and defined below:

- Regulation 6 of the "Requirements for the establishment of townships or subdivision of estates under Ordinance 33 of 1934" as published in the Cape of Good Hope Province Official Gazette of 18 October 1935 (see copy attached), refers to "area to be built on" as "The proportion of the area of any one erf which may be covered by buildings ...". It is noted specifically that the above approach only refers to "buildings" as opposed to structures, where it sets such "built upon" restrictions.
- In light of the above, the standard interpretation of the "area to be built upon" title restrictions are therefore considered to include the following building elements and components for the purposes of calculating compliance with the maximum upper limit of this parameter:
 - All parts of a building (including cantilevered/overhanging parts, e.g. balconies or suspended floors), as well as all outbuildings, whether attached or detached;
 - All basements or parts thereof above ground (after construction completion) and visible from level or angle;
 - Covered decks (including swimming pools within it)

11. Please note that the Departmental file is now considered closed.

12. Further queries regarding the contents of this letter can be directed at the Director: Development Management:

- Region 2 (Cape Winelands and Overberg)
Henri Fortuin - Henri.Fortuin@westerncape.gov.za - (021) 483 5842

1 *S. Abraham*
HEAD OF DEPARTMENT

Date: 21 JUL 2015

MUNISIPALITEIT OVERSTRAND MUNICIPALITY

Die eienaar van onderstaande erf beoog om uitbreidings aan sy woonhuis te doen/woonhuis op te rig/grensmure op te rig wat die boulyne oorskry (soos per bygaande plan). Die instemming/kommentaar van die aanliggende erfeienaars word vereis.

BESONDERHEDE VAN EIENAAR(S) WAT AANSOEK DOEN VIR VERSLAPPING VAN BOULYNE	
ERF NO	1685
STRAATADRES	HAWESTRAAT 18
NAAM EN VAN	E.E. VAN TUBBERGH
TEL NO	
POSADRES	AMSTERDAMSTRAAT 19
	PAROW OOS
	POSKODE 7500

BESONDERHEDE VAN AANSOEK (voltooi waar van toepassing)			
VERSLAPPING VAN:	MERK (✓)	BOULYN VOLGENS TITELAKTE/SKEMAREGULASIES:	VERSLAPPING TOT:
SYBOULYN		2m m	120mm m
AGTERBOULYN		/ m	m
STRAATBOULYN		5m m	2m m
OPRICHTING VAN GRENSMUUR		/	

BESONDERHEDE VAN EIENAAR(S) VAN OMLIGGENDE ERF	
ERF NO	1684
STRAATADRES	16 HARBOUR ST PEARLY BEACH
NAAM EN VAN	K. Scott
TEL NO	028 TRR 1717
POSADRES	P.O. Box 308
	HEIDELBERG
	POSKODE 6665

NB: INSTEMMING TOT VERSLAPPING IS ONVOLLEDIG INDIEN NIE VERGESEL VAN TERREINPLAN WAT ONDERTEKEN IS DEUR EIENAAR(S) VAN AANLIGGENDE ERF NIE.

Hiermee stem ek/ons in tot die bogenoemde verslapping.

Ek/ons gee toestemming tot die betreding van my/ons erf vir die uitvoering van by oorskryding/oprigting van grensmuur.



HANDTEKENING E

29 MAY 2015

DATUM

OPMERKINGS/VOORWAARDES

NO OFFLOADING (STORAGE)
OF ANY BUILDING MATERIAL ON ERF 1684
OR DEPOSITING OF ANY BUILDING RUBBLE
AND GARDEN REFUSE ON MY ERF.

MUNISIPALITEIT OVERSTRAND MUNICIPALITY

Die eienaar van onderstaande erf beoog om uitbreidings aan sy woonhuis te doen/woonhuis op te rig/grensmure op te rig wat die boulyne oorskry (soos per bygaande plan). Die instemming/kommentaar van die aanliggende erfgaars word vereis

BESONDERHEDE VAN EIENAAR (S) WAT AANSOEK DOEN VIR VERSLAPPING VAN BOULINE

ERF NO	1685
STRAATADRES	HAWESTRAAT 18
NAAM EN VAN	E.E. VAN TUBBERGH
TEL NO	
POSADRES	AMSTERDAMSTRAAT 19 PAROW OOS
POSKODE	7800

BESONDERHEDE VAN AANSOEK (voltooi waar van toepassing)

VERSLAPPING VAN:	MERK (1)	BOULYN VOLGENS TITELAKTE/SKEMEREGULASIES:	VERSLAPPING TOT:
SYBOULYN		2m	120mm
AGTERBOULYN		/	
STAPBOULYN		5m	2m
OPRICHTING VAN GRENSMURE		/	

BESONDERHEDE VAN EIENAAR (S) VAN OMLIGGENDE ERF

ERF NO	1686
STRAATADRES	20 HERBERT ROAD, PEARLY BEACH
NAAM EN VAN	G ALDWORTH
TEL NO	683 676 8880
POSADRES	P.O. Box 13117 N. City
POSKODE	7463

NB: INSTEMMING TOT VERSLAPPING IS ONVOLLEDIG INDIEN NIE VERGESEL VAN TERPSEIMPLAN WAT ONDEPTEKEN IS DEUR EIENAR(S), VAN AANLIGGENDE ERF NIE.

- IK, DIE EIENAAR, VERSTANDIG EN WILDE WIL DIE AANSOEK VERVOLG.
- IK, DIE EIENAAR, VERSTANDIG EN WILDE WIL DIE AANSOEK VERVOLG, EN VERSTANDIG EN WILDE WIL DIE AANSOEK VERVOLG.

61 June 2015

- 1. All building rubble to be removed.
- 2. Please ensure that the adjoining trees and shrubs within our property line remain undisturbed.
- 3. The wooden picket fence must remain intact.



Provincetown, MA
7200

Tel: (508) 313-0000
Fax: (508) 313-0222
e-mail: info@overstrand.gov

P O Box 201
HEERMANNUS
7200

BUILDING ON REAR- AND SIDE AND STREET BOUNDARIES

NAME OF APPLICANT
ERF NO 1688 Pealy Beach
STREET ADDRESS

NOTE: REASONS FOR REFUSAL MUST BE STATED AND IF NOT, IT WILL BE ASSUMED THAT THERE ARE NO LEGITIMATE GROUNDS FOR REFUSAL
IF THE ERF IS REGISTERED IN A TRUST, THE PERSON SIGNING ON BEHALF OF THE TRUST MUST PROVIDE POWER OF ATTORNEY.

1) ABUTTING OWNER'S COMMENTS

I, ROBERT VICTOR MAINE the owner of ERF 2638 which abuts ERF 1688 have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / ~~do not~~ hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED [Signature]
DATE 30/6/15

2) ABUTTING OWNER'S COMMENTS

I, LINDA MARY MAINE the owner of ERF 2638 which abuts ERF 1688 have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / ~~do not~~ hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED [Signature]
DATE 30/06/2015

