



TP

JF Koekemoer

Posbus 626

Hermanus

7200

**Die Munisipale Bestuurder**

Overstrand Munisipaliteit

Hermanus

Per E-pos

Geagte Meneer

**ERF 5282, Voëlklip: Voorgestelde Afwykings: Verw 5282 HVK(2398)**

U skrywe in bogemelde verband gerig aan my as eienaar van erwe 3830 en 3840, geleë aan die noordekant van die gekonsolideerde erf 5282, verwys.

Ek het reeds vroeër vanjaar tydens 'n besoek aan Me van der Stoep my bedenkinge rakende die ontwikkeling van erf 5282 bespreek nadat Mnr Deysel, namens die eienaar, aan my die bouplan oorhandig het vir kommentaar. Ek het Mnr Deysel ook meegedeel dat ek gekant is teen die ontwikkeling.

My woonhuis is geleë op erf 3838, reg agter die huidige geboue op erf 5282. Binne een meter van die erfgrens is 'n dubbelverdiepinggebou waarna verwys word in die aansoek as 'n 'woonstel'. Hierdie gebou is minder as twee meter vanaf die westelike erfgrens en gebou oor die oorspronklike erfgrens aan die oostelike kant van die erf. Ek vermoed dit was die rede waarom die oorspronklike erwe wat nou erf 5282 is, gekonsolideer moes word. Daar is vensters op beide vlakke in hierdie gebou wat uitkyk oor my erf. Die **totale** uitsig van my erf na die see word dus tans versper.

Tydens my soeke na 'n huis gedurende 2001 in Hermanus was erf 5282 ook in die mark. Die verkoopsagent het my meegedeel dat die geboue op die erf ooglopend nie wettig opgerig kon word nie en my afgeraai om dit te koop. Na die koop van my woning het ek die aangeleentheid opgevolg met die Hoofde van Stadsbeplanning en Boubeheer, Mnre Kuchar en Simson. Tydens 'n inspeksie ter plaatse is ek meegedeel dat die sogenaamde 'woonstel' slegs goedgekeur kon word as dit as bediendekamer aangedui is op die bouplan. Hul kon nie aan my verduidelik waarom die gebou se vensters uitkyk op my erf nie. Ek het hul woord aanvaar. Ek het later versoek dat **enige** verdere bouwerk op die erf na my verwys moes word en dat so aantekening op die erf lêer geplaas moet word. Ek was ook op daardie stadium die munisipale bestuurder van Overstrand en wou uiteraard nie in litigasie teen my werkgewer betrokke raak nie. Ek het hul egter meegedeel dat die gebou nog nooit tydens my eienaarskap as bediendekamer gebruik is nie, wat vandag nog die geval is. Die gebou was somtyds gebruik om bouwerkers in te huisves en sedert die nuwe eienaar dit gekoop het, is dit baie selde gebruik, maar dan slegs vir vakansiegangers.

FILE NO:	EL 5282
SCAN NO:	
COLLABORATOR NO:	571016

TP

03 DEC 2013

**Dit is my submitisie dat hierdie buitegebou onwettig opgerig is en/of gebruik word. Indien daar destyds goedkeuring deur die Munisipaliteit verleen is vir die oprigting daarvan, is my submitisie verder dat sodanige goedkeuring onreëlmatig verleen is.**

Voordat u enige besluite neem oor die aansoek versoek ek dat u, in my teenwoordigheid indien enigsins moontlik, sowel as die teenwoordigheid van die eienaar, indien moontlik, 'n inspeksie ter plaatse uitvoer. Indien u enige goedkeurings verleen versoek ek verder dat u die aansoeker sal meedeel dat u besluit onderhewig is aan appél, wat ek dan voornemens is om aan te teken.

Dit blyk dat die aansoeker bloot die huidige struktuur wil inkorporeer sodat dit deel sal wees van die huidige woonhuis. Dit is onaanvaarbaar. Ek is egter meer as bereid om die aansoeker in te lig welke wysigings aangebring kan word aan die struktuur/strukture om dit aanvaarbaar te maak, solank sodanige vereistes deel word van die voorwaardes van goedkeuring deur die Munisipaliteit.

Omdat daar reeds 'n bediendekamer op die perseel is, maak ek ook beswaar teen die oprigting van 'n verdere bediendekamer. Indien die ontwikkeling aangepas word deur die huidige buitegebou deel te maak van die bestaande woonhuis op voorwaardes soos ooreengekom, sal hierdie beswaar uiteraard verval.

Soos reeds voorheen rakende ander nabygeleë ontwikkelings aangetoon, is ek ook gekant teen die verslapping van boulyne. Sodanige verslapping, veral as dit hoër as net 'n grondverdieping is, versper enige uitsig wat die waarde van erwe verminder. Hierdie regte is beslis beskermbaar indien dit goedkeuring van enige aard vereis en nie reeds 'n die reg van die eienaar is nie.

Bogemelde kommentaar word aan u gerig sonder benadeling van enige regte waarvoor ek mag beskik om die ontwikkeling teen te staan. Terselfdertyd sal ek enige ontwikkeling wat die bestaande probleme oplos, verwelkom.

Geliewe ontvangs van hierdie skrywe te erken en my in te lig of enigiets bykomend verlang word.

Vriendelike groete

Adv Jan Koekemoer

0833250485 of 0283141621.

E-pos: jan@caperf.co.za

## MEMORANDUM: ERF 5282, VOËLKLIP

## A. HISTORY

Building plans in respect of erf 5282 were brought to me by an agent of the owner in 2013. I informed him that I am not prepared to sign on the plan indicating that I approve thereof. I followed it up with Ms van der Stoep of the Planning Department of the Municipality where I informed her of my concerns regarding the existing building on the northern boundary of the erf. I was asked by the Municipality late in 2013 to comment on an application by the owner. I formally objected to the building proposals on the erf. The owner contacted me to see if we can agree on him going ahead subject to certain agreed conditions. I wrote requesting inter alia a copy of the existing building plan on the property and was informed by the Municipality in January 2014 that no such building plan could be traced. After receipt of this information I informed the owner that I am not prepared to withdraw my objection.

During May 2014 I received a letter from the Municipality that the development has been approved. As I was given the right to appeal the decision, I submitted an appeal. I asked for information to add detail to my objection, but I received no reply. I was given the erf file and some of the information I requested, but never received a written reply. I contacted the Municipality to find out when the appeal will be heard. The appeal was heard on 2 February 2015 after I contacted the Chair of the Appeal Committee. The matter was referred back to the Executive Mayor for re-consideration by the Appeal Committee.

## B. PAST IRREGULARITIES/ POSSIBLE IRREGULARITIES

1. The application was made in terms of the Hermanus Town Planning Scheme, 1974 (HTPS). Part VI, Clause 16, 2 determines that a record of all approvals, consents, authorities or permissions granted must be kept, which shall be available for inspection. No record was produced of any departures (i.e. from building lines) granted on Erf

5282, although I requested it in writing for preparation of my appeal.

2. The building line on the western boundary of erf 5282 is 1.2m, whereas Part IV, Clause 8, A, 1, (a) (iii) determines lateral building lines at 2.5m (aggregate 6m). The building line on the rear boundary is 1m, whereas the same clause point (ii) determines it at 3m.
3. Non-compliance with S7(1)(a) of the National Building Regulation an Building Standards Act, 1977,(NBRBSA) as no decision is on record regarding the relaxation of the building lines.
4. Part I, Clause 1 defines an outbuilding as a 'single-storeyed structure', yet the outbuilding on the northern boundary of erf 5282 is a double-storeyed structure.
5. Part V, Clause 9 (a) allows only one building with such outbuildings as are ordinarily used in connection therewith, whereas erf 5282 has a dwelling house (122.87m<sup>2</sup>) plus a double-storeyed outbuilding consisting of two flats (142.6m<sup>2</sup>). The structure at the rear boundary (flats) cannot be classified as an outbuilding but rather as a second dwelling.
6. The structure on the rear boundary (structure) is not in accordance with any building plan that was made available to me.
7. Regarding the structure, a building plan was made available to me by the Municipality dated 1987. Two approvals of neighbours for the structure are attached to building plan, one from van der Merwe, no address indicated, and one from Nicol, erf 6324. I have no idea where erf 6324 is situated. A plan was approved on 23 Oct 1987 where the double storey on the structure did not exceed the side building line. Another plan was approved on 5 Nov 1987 where the

side building line was exceeded at double storey level, which is against the HTPS. The building area (m<sup>2</sup>) on the second plan is also incorrectly calculated. A letter is also on record from the building inspector dated 12 Jan 1989 instructing that revised building plans had to be submitted as there were a number of deviations from the plan. No plan was made available to me where this was done. I cannot see that the comments of neighbours could refer to the revised building plan approved on 5 Nov 1987 as it was in respect of the first plan.

8. A further building plan dated 1992 was made available to me. On this plan the structure is referred to as a 'woonstel' (flat). There is no indication on this plan that it was approved. In the agenda of the Appeal Committee, the Planning Department refers to this plan as follows: 'Outbuilding converted to flat, 1987 neighbours consent'. How the 1987 neighbours' consent can be construed to apply to this plan, is beyond my understanding, especially as the 1987 plan where the 'consent' was allegedly given, differs from the built structure and can therefore not be regarded as consent at all. It must further be noted that the HTPS was amended on 5 December 1988 to provide inter alia for granny flats to be erected, thus before this alleged approval in 1992. No approval for such structure could be given before this amendment. However, such flat was restricted to 120m<sup>2</sup> and to one storey. The structure could therefore not be approved as it is more than 120m<sup>2</sup>(143.6m<sup>2</sup>), it is a double storey structure, and the structure still did not comply with the approved building plan. Although requested, no decisions were provided as required in terms of LUPO or the HTPS that any deviation or approval was given for the erection or use of the structure, except the dubious building plan approvals in 1987 (no approval supplied to me for the 1992 plan).
9. None of the building plans supplied to me has any reference to comments of the Building Control Officer, as required by the NBRBSA.

10. It is clear from the HTPS that if a building exceeds the building line, it should only be at one storey level and that windows should not be allowed or at least be restricted.

#### C. THE APPLICATION AND REPORT TO EXECUTIVE MAYOR

1. The report and application seems to confirm that no deviations have been approved in the past, as the relaxations of building lines are applied for. Why does the report not include the rear building line?
2. The eastern lateral building line, which should be  $6\text{m} - 1.2\text{m} = 4.8\text{m}$ , is relaxed to 2m disregarding my right on erf 3840. This right is ignored in the report and has a serious effect on the value of this erf.
3. Negotiations between myself and the owner of erf 5282 which I did not supply to the Municipality, and which were always qualified in respect of the validity of the erection of the structure, were included in the report and all my requirements were summarily dismissed as 'excessive' without reasons. As set out above, I was informed in writing by the Municipality that there was no building plan for the structure and my only reaction at the Municipality was my objection.
4. The report states that it was my responsibility to follow up on the alleged illegality of the rear structure. I questioned the legality of it with the heads of town planning and building survey many years ago. It is however the duty of the Municipality in terms of LUPO to follow up on any illegality. Even the 1987 deviation from the building plan on their records was not followed up on. In the case of *United Technical Equipment v Johannesburg City Council 1987 (4) SA 343 (T)* Judge Harms said: 'The respondent has not only a statutory duty, but also a moral duty to uphold the law and to see to the due

compliance with its town planning scheme.' The same could be said about building rules.

5. No comments by the Town Planner as required by S36 of LUPO is part of the report and reference to the new Town Planning Scheme (NTPS) is irrelevant. In fact the reference to the NTPS is also misleading as it suggests that it will support the application. I could not find that the NTPS allows for any deviation, which will entail that the buildings erected without valid deviations in place will have to be demolished.

#### D. OTHER LEGAL ASPECTS

1. It is argued in the report to the Executive Mayor that I am bound by consents of previous owners of my erven and other neighbours given in the past for building plans. If no recorded deviation was validly approved, this cannot be the case.
2. I cannot find any power for the Municipality to approve a structure which is not in compliance with the HTPS or NBRBSA. Furthermore the Title Deeds applicable to the erf stipulates that all municipal and legal requirements must be complied with regarding structures on the erf. Both the HTPS and the NTPS stipulates that they are subservient to title deed conditions. The Municipality is also bound by its town planning scheme. In the case of *Club Mykonos Langebaan Ltd v Langebaan Country Estate Joint Venture and Others* 2009 (3) SA 546 (C), Act Judge Koen said: 'Once they are imposed the conditions acquire the force of law, because s 39 of LUPO compels both the local authority and all other persons to comply with them.'

#### E. CONCLUSION

This memorandum does not set out all detail, as it highlights only most of the salient points. My argument at the appeal hearing provides some more detail on some aspects. It is disturbing that the Municipality could not

produce at my written request **any** decision regarding deviations in respect of erf 5282, although it is its statutory duty they imposed on themselves in its town planning scheme, nor any policy or delegation in terms of which decisions are made. In spite of their arbitrary and cavalier way of handling town planning applications, I am accused of not doing my duty and even mala fides in their reports. My objection and even comments are not given any consideration whereas I am entitled to a balanced consideration of my objection. The fact remains that there are many relevant aspects that the expert officials did not put before the Executive Mayor in their report. Although the report classifies the rear structure on erf 5282 as 'illegal' there is no reference to the power of the municipality to condone such a structure by the Municipality.

*If I did not insist on documents, the unfairness, bad processes and blatant illegalities would have remained unanswered. This should not be the task of a member of the public. I am prepared to give further information on any aspect.*

JF Koekemoer

24 March 2015

JF Koekemoer  
PO Box 626  
Hermanus  
7200

14 May 2015

The Municipal Manager  
Overstrand Municipality

Dear Mr Groenewald

Erf 5282: Voëlklip

As you are aware, the application for certain departures has been referred back by your Appeal Committee to the Executive Mayor for consideration after the first decision was set aside. This appeal was heard during February 2015.

I visited you after this decision and forwarded a memorandum to you afterwards summarising my input at the Appeal Committee. My argument at the Committee should also be on record as I submitted it in writing.

*In view of my experience last year, I am concerned that a new report may be considered by the Executive Mayor which may not take into account my input at the Appeal Committee. I also believe that my previous inputs may be too comprehensive for that purpose. My request is therefore that this letter be submitted with any report to the Executive Mayor and/or any committee which may consider the application.*

My objection to the application can be summarised as follows:

1. In spite of my written request, no decision for any departure on erf 5282 could be produced by your administration. The only logical conclusion therefore is that no departure has been validly approved in the past.
2. *In spite of my written request, no policy for the consideration of departures from prescribed building lines was produced by your administration. I submitted evidence at the appeal hearing that your administration do not allow buildings of higher than ground floor level when building lines are relaxed. Due to legal principles you are legally bound to treat all applications alike at least in the same area.*
3. There was no public participation on the building plan which was ultimately approved for the building on the northern boundary of erf 5282. This approval, if indeed it was approved, is unlawful.

4. The use of the building was apparently changed for occupation purposes or 'granny flat', without following the procedure as set out in the Town Planning Scheme applicable at that time. Furthermore, no approval of such application was supplied to me, although requested in writing.
5. Your records which was supplied to me indicate that your building inspector informed the owner of erf 5282 that the 'approved' building plan was not complied with regarding the structure built on the northern boundary. This notice was given just after the structure was erected. It is clear from my view of the building that until today the building is still not in compliance with the building plan.
6. Regarding the proposed development, I submit that you do not have the power in law to condone the structure that was illegally erected in any way. Even if you purport to have that power, it will be in breach of a title deed condition applicable to all erven in Voëlklip.
7. The application for the relaxation of the building line on the eastern boundary of erf 5282 are indeed affecting my rights as owner of erf 3840. The remark in the report that served before the Executive Mayor that my rights are not affected, is incorrect.

The above is a summary of the points raised and must not be seen as the complete list of comments there are or may be. It is regretted that the officials who compiled the report to the Executive Mayor did not raise any of the above, and then continued to defend the illegalities on erf 5282 at the Appeal Committee.

I appeal to the Municipality to now start doing its legal duty by enforcing its legislation. Your reaction in this regard will be appreciated.

Yours sincerely

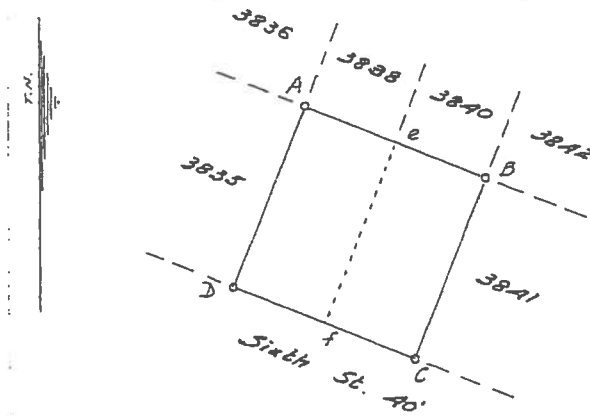
Adv Jan Koekemoer

DEPARTMENT OF SURVEY  
CAPE PROVINCE

SIDES Cape Feet		ANGLES DIRECTIONS	SYSTEM L <sup>s</sup> 19 <sup>s</sup> CO-ORDINATES		Uit. Desig.
			y	x	
AB	100.00	A 90° 0' 0"			
BC	100.00	B 90 0 0			
CD	100.00	C 90 0 0			
DA	100.00	D 90 0 0			

Approved

*[Signature]*  
Surveyor-General.  
26.1.1965



- (1) figure AefD representing Erf 3837, Hermanus, in extent 34 sq. rds. 104 sq. ft.; Dgm. No. 214/1937; D./T. 1939.99.4853.
- (2) figure eBCf representing Erf 3839, Hermanus, in extent 34 sq. rds. 104 sq. ft.; Dgm. No. 215/1937; D./T. 1939.99.4853.

Scale 1 : 1,000

The figure A B C D represents 10,000 sq. ft. of land being: ERF 3837 HERMANUS comprising the properties specified above

situate in the Municipality of Hermanus.

Administrative District of Caledon,

Province of Cape of Good Hope.

Compiled ~~Surveyed~~ in Dec. 1964 by me

*[Signature]*

Land Surveyor.

This diagram is annexed to

The original diagrams are ~~No.~~ as quoted above.

S. G. File No. 5/2479/1965  
S. R. No. E. *Completed*

C. C. T. No. 3132 B/1965 dated

D./T.

Comp. A1-3DA/X.24

i.f.o.

Registrar of Deeds.

g Model. C.T. **C**