

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
22 November 2016  
(Also the agenda for the Mayoral Committee Meeting: 2 December 2016)**

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**2.**

**ERF 2449, 21 LEERVIS STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA : PROPOSED DEPARTURE : HM LE ROUX ON BEHALF OF MORGAN CREEK PROPERTIES 346 (EDMS) BEPERK**

**2449 GPB (3154)**

**H Boshoff**

**(028) 313 8900**

**Hermanus Administration**

**4 October 2016**

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**1. Executive Summary**

To consider an application received on 4 December 2015 from the owner of Erf 2449, Pearly Beach for departures from the Pearly Beach Resort Development Rules in order to:

- encroach the 1m northern lateral building line of the property with 900mm;
- exceed the height applicable to boundary walls; and
- provide on (1) parking bay on the property instead of the required two (2) parking bays.

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

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
22 November 2016  
(Also the agenda for the Mayoral Committee Meeting: 2 December 2016)**

---

## **6. Background/Discussion/Evaluation/Conclusion**

### **Background/Discussion/Evaluation**

Erf 2449 is situated in the Pearly Beach Holiday Resort and is 132m<sup>2</sup> in extent. The property is developed with a dwelling unit for holiday purposes.

The approved building plans for the development on the property indicates, amongst others, a carport that forms part of the main structure which carport encroach the applicable 1m northern lateral building line basically up to the erf boundary. (In terms of the development rules applicable to the resort, carports and garages are allowed within the lateral and rear building lines, subject to a height restriction of 3m.)

Further, in terms of the applicable development rules, the height of boundary walls of the individual resort erven are restricted to 1,2m on the street boundaries as well as the first 3 metres of the lateral boundaries measured from the street boundaries.

The development rules also require that a minimum of two (2) parking bays be provided on the individual resort erven. (Garages and carports are regarded as parking bays.)

The current owner of the property illegally converted the above-mentioned carport into a combined enclosed entrance portal and store area that resulted in a change of use of the carport that lead to a "new" lateral building line encroachment.

The above further resulted that the landowner can now only provide one (1) practical parking bay on the property instead of the two (2) required parking bays. The width of the property in front of the dwelling is 9,4m, whereas the size of a parking bay must be 2,5m x 5m. Two (2) parking bays have a combined width of 10m that exceeds the width of the property in question which in this case results that two (2) parking bays cannot be provided at the front section of the property. Due to the development on the property, motor vehicles cannot access the rear section of the property, and parking must therefore be provided at the front section of the property.

The landowner also illegally constructed 1,8m high boundary walls partially on the street boundary of the property, as well as at the above-mentioned 3m lateral zones. The latter is in contradiction with the legally prescribed 1,2m high boundary walls at those sections of the property.

In view of the above, the landowner had to submit the applications under discussion for consideration by the Municipality.

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
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---

### **Discussion**

The application was advertised in the prescribed manner and the Pearly Beach Resort Home Owners Association (further referred to as HOA) was notified. No objections were received. The HOA initially objected to the application but eventually formally withdrew its objection.

### **Evaluation**

Each owner of a property within the resort development is, in terms of a clause contained within all the Title Deeds of the individual resort erven, automatically a member of the HOA and therefore bounded by the contents of its constitution. Amongst others, the constitution makes it clear that each member (landowner) must submit building plans for new structures, alterations and so forth to the committee of the HOA for approval, and that they must also abide by the development rules applicable to the resort erven. The owner of Erf 2449 therefore knowingly contravened the provisions of the constitution and ultimately the development rules.

The landowner purchased the property in 2008, and during 2010 pursued approval for departure in order to erect a new carport that encroach the street- and lateral building lines of the property (not the carport under discussion). (Such application was eventually refused.) The landowner is therefore aware of the formal processes involved to deviate from the rules, and that the development on the property must be in accordance with the approved building plans. On the other hand the HOA can also be blamed for not monitoring activities within the resort development, since the association is in terms of its constitution also responsible to enforce its objectives. The applicant indicated in her motivation letter that the constructions were done in 2010 already. For some reason the HOA did not comment on this point when the current application was circulated to them whilst nearly six (6) years have passed since these contraventions. It should be pointed out to the HOA that when irregularities are observed that it be conveyed to the Municipality immediately.

The space between the entrance portal on Erf 2449 and the braai room on the adjacent Erf 2450 is a mere approximately 600mm. Besides creating a fire risk in terms of the comment from the Fire Department, the distance between these structures are very close compared to a combined 2m distance between buildings under normal circumstances. It is even closer than higher density developments such as town- and group housing, and the current situation is therefore seen as undesirable. The initial open carport was less risky and thus more desirable than a habitable room. It should however be noted that most existing building line encroachments on other resort erven were condoned by the Municipality when the resort was formalized. This was also the case with the adjacent Erf 2450, which existing encroachment were approved (condoned) in 2008 already.

**AGENDA of the  
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---

The application under discussion is regarded as a new application whereby the landowner now wishes to legalize the deviations from the applicable development rules, that in any event sends out an unwanted message to the rest of the property owners (“build first and then apply”).

It is however wise that that section of the boundary wall on the northern boundary that exceeds the 1,2m height restriction remains in order to minimize any fire risks due to the already close distance between the structures on Erven 2450 and 2449. The remainder of the boundary walls in front of the property must however be demolished to be in line with the development rules. The applicant claims that the walls only exceed the height restriction in order to alleviate uncomfortable windy conditions. Such uncomfortable conditions are not limited to the property, and can therefore not be regarded as a justifiable reason for enclosing the approved carport and to exceed the prescribed height restrictions.

Although the applicant does not motivate security or privacy issues, it is felt necessary to mention that the resort is an enclosed development and access thereto is done by means of a controlled security entrance. Further, the property is situated within a holiday resort development of which the dwellings may legally not be permanently resided. Reasons for privacy could therefore also not have been justified, since only the front sections of the resort erven are restricted to 1,2m boundary walls whilst the remainder may still be 1,8m in height.

### **Conclusion**

Although each town planning application is evaluated on its own merits, the general view is also held that contraventions of development rules should rather be discouraged and only be permitted under unique circumstances. The applicant’s reasons are not considered as unique in order to justify the illegal constructions and therefore the application should not be entertained.

Furthermore, the opinion is held that approval of the application would set an undesirable precedent and that the cumulative impact would detract from the character and the visual amenity of the Pearly Beach Holiday Resort.

That the application partially be approved as per the recommendation below.

### **7. Financial Implications**

None

### **8. Staff Implications**

None

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
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**9. Comments from other Departments, Divisions and Administrations**

**Building Control**

Overstrand Building Department does not have any objection to the departures on above mentioned property.

**Fire Department**

“Aangesien die afdak nou as deel van die huis deur die huis se dak konstruksie geword het beveel ek aan dat die aansoek nie toegestaan kan word nie en net as die afdak na die oorspronklike goedgekeurde afdak verander word sal fire safety dit kan ondersteun.”

(The Fire Department initially did not object to the application, but was requested to conduct a site-inspection for further comment, because the department only commented on the application from an administrative point of view and not from a fire risk point of view - thus the above additional comment.)

**District Health**

Recommended for approval, no objection with this application.

**10. Annexures**

- Annexure A: Locality Plan
- Annexure B: Layout Plan
- Annexure C: Motivation Report

**RECOMMENDATION:**

1. that, in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)(LUPO), the application for departures from the Pearly Beach Holiday Resort Development Rules applicable to Erf 2449, Pearly Beach in order to encroach the 1m northern lateral building line with approximately 900mm as a result of an open carport that was enclosed to create an entrance portal, and to provide only one (1) parking bay instead of the required two (2) parking bays, **be refused**, for the following reasons:
  - (a) the applicant did not provide any substantive or justifiable reasons to deviate from the applicable development rules, nor does the reasons provided permit the situation to be regarded as being unique/exceptional in nature; and
  - (b) the approval will set an undesirable precedent, the cumulative impact of which will detract from the character and appearance of the surrounding area.

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
22 November 2016  
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2. that, in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)(LUPO), the application for departure from the Pearly Beach Holiday Resort Development Rules applicable to Erf 2449, Pearly Beach in order to deviate from the height restrictions applicable to the boundary walls, **be approved**, for only that section at the northern boundary of the property, for the following reasons:
  - (a) that section at the northern lateral boundary of the property can be regarded as a fire risk to both the dwellings of Erven 2449 and 2445, due to their close proximity (approximately 600mm) to each other; and
  - (b) the applicant did not provide any substantive or justifiable reasons to deviate from the applicable development rules pertaining to the remainder of the boundary walls in front of the property, nor does the reasons provided permit the situation to be regarded as being unique/exceptional in nature;
3. that the applicant/landowner be instructed to convert the illegal entrance portal back to a carport in order to provide two (2) parking bays in terms of the applicable development rules;
4. that the applicant/landowner be instructed to demolish the remainder (excluding the approval in 2. above) of the boundary walls at the front of the property to the extent that it conforms to the requirements of the applicable development rules;
5. that the instructions in 3. and 4. be fully completed within **60 days** from the final date of the decisions of this application;
6. that immediately upon completion of the instructions in 3. and 4. above, the applicant/landowner must submit "as built" building plans that comply with the applicable development rules to the Building Department of the Municipality for approval;
7. 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 decisions; and
8. that the committee of the Home Owners' Association of the Pearly Beach Holiday Resort be requested to abide by their objectives as set out in their approved constitution and development rules by monitoring activities within the resort and to without ado report any illegal activities to the Municipality.

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<b>RESPONSIBLE OFFICIAL :</b>	<b>H BOSHOFF</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>14 DECEMBER 2016</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>14 DECEMBER 2016</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

**AGENDA of the  
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**2449 GPB (3154)**

**H Boshoff**

**(028) 313 8900**

**Hermanus Administration**

**4 October 2016**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 NOVEMBER 2016, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL :**

**H BOSHOFF**

**TARGET DATE FOR IMPLEMENTATION :**

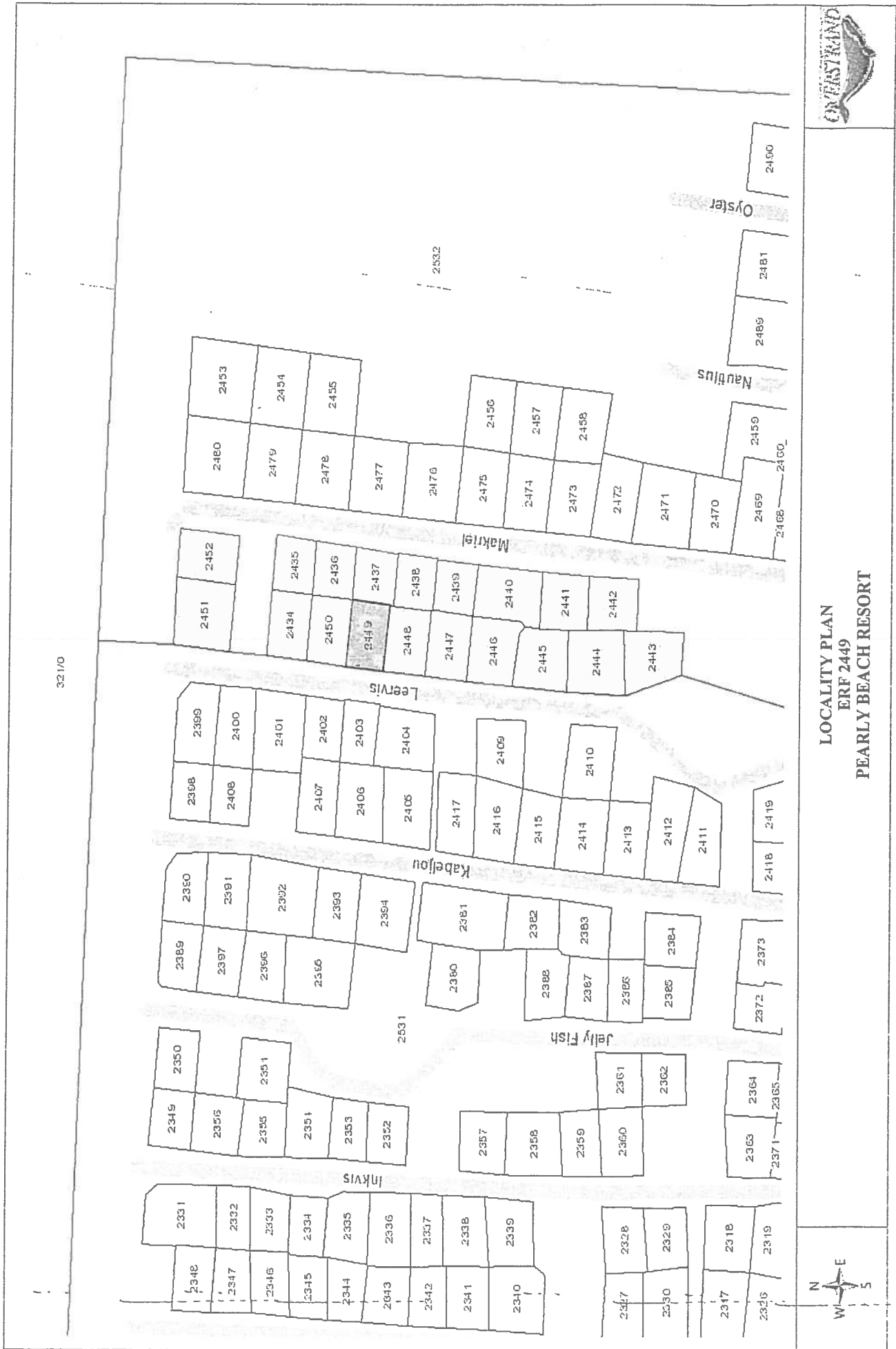
**14 DECEMBER 2016**

**TARGET DATE TO INFORM APPLICANT :**

**14 DECEMBER 2016**

**TARGET DATE TO INFORM OBJECTOR :**

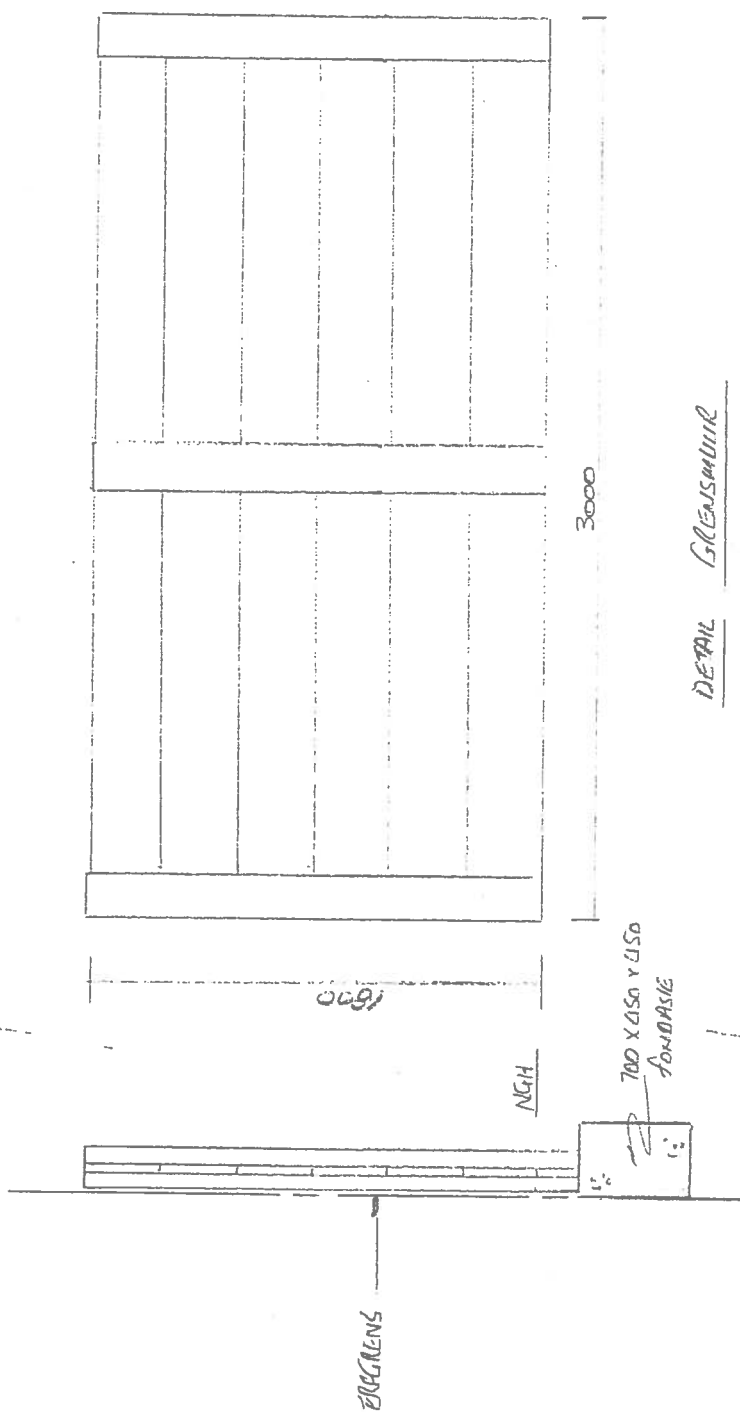
**N/A**



**LOCALITY PLAN**  
**ERF 2449**  
**PEARLY BEACH RESORT**







VIR AANDAG  
BOUBEHEER  
Stadsbeplanning

Morgan Creek Properties 346 (Edms) Bpk  
Posbus 3660  
Witbeek  
November 2015

I/s AANSOEK OM AFWYKING BY SY BOULYN,  
EEN MOTOR PARKERING EN 1,8M GRENSMUUR

Met die ontwerp en bou van die huidige woning in 2008 op erf no 2449 was daar voorsiening gemaak vir 'n onderdak parkering en oop parkeer area. Die woning se ingang deur is aan die agterkant van die motor afdak geleë. Met die grensmuur aan die een kant en die woning aan die anderkant het dit 'n geweldige wind tunnel gevorm sodat alle vullis en blare voor die deur gewarrel het en 'n groot probleem geword het, wat teweeg gebring het dat die deur meestal moes toestaan.

In 2010 het ek die motor afdak voor toegemaak met 'n skuif deur met die hoop dat dit die probleem sou oplos. Die toegeboorde afdak word nie as 'n leef vertrek gebruik nie, maar slegs om kamp toerusting (braai rooster, stoele ens.) te stoor en word as 'n deurloop/gang na die hoof woning gebruik. Met al die uitgawes wat aangegaan was, was die probleem net verskuif na die skuif deur. Met die tyd het ek agter gekom dat as ek 'n kort muur voor op die grens regoor die skuif deur bou, die probleem opgelos sou wees. Ek laat toe 'n 3m by 1,8m hoë muur oprig wat al my probleme opgelos het. Die spasie is groot genoeg sodat my voertuig steeds voor kan parkeer, met genoeg spasie vir nog 'n kleiner voertuig (sien foto's).

Daar is verskeie ander persele op die terrein wat ook 1,8m mure voor op het en daarom was ek onder die indruk dat ek wel die muur mag oprig.

Hiermee word die nodige aansoek gedoen vir al bogenoemde afwykings. Die voorkoms van die woning vertoon nog steeds netjies en sal volgens my mening geen waarde vermindering of enige negatiewe impak op die omliggende eienaars of hul regte hê nie

Dit word vertrou dat my aansoek gunstig oorweeg sal word.

Die uwe

Geteken: .....

  
H.M. le Roux

MORGAN CREEK PROPERTIES