



**MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE MALMESBURY,
BANQUETING HALL ON THURSDAY, 9 NOVEMBER 2023 AT 14:00**

PRESENT:

The Executive Mayor, ald J H Cleophas (chairperson)
The Executive Deputy Mayor, cllr J M de Beer
Cllr D G Bess
Cllr N Smit
Ald T Van Essen
Cllr A K Warnick

Advisor:

Senior Manager: Development Management

Secretariat:

Manager: Secretariat Services and Records, Ms N Brand

1. OPENING

The chairperson opened the meeting and declared the Appeal Authority in session in terms of paragraph 91 of the Swartland Municipality: By-law relating to Municipal Land Use Planning (PG 8226 dated 25 March 2020).

The chairperson expressed his believe that the parties to the appeal will regard the proceedings as fair and transparent.

2. APOLOGIES

No apologies was received.

3. MINUTES

None.

4. MATTERS FOR CONSIDERATION

**4.1 APPEAL RECEIVED ON THE PROPOSED CONSOLIDATION OF ERF 2241 AND 2385,
YZERFONTEIN (15/3/12-14)**

An appeal was received on the decision by the Municipal Planning Tribunal (MPT) – Item 6.4 dated 8 August 2023 – to refuse the application for consolidation of Erf 2241 and 2385, Yzerfontein.

The evaluation of the appeal was presented to the Appeal Authority in the report of the Municipal Manager dated 18 October 2023 and the report of the authorised official dated 16 October 2023 respectively.

The chairperson stated that the Appeal Authority must adhere to the following requirements in resolving the appeal:

- (1) All actions must, in terms of administrative law and natural justice, be more than fair;
- (2) All the relevant facts must be legally considered and evaluated independently of the matters considered by the MPT in order to conclude on the matter.

The chairperson/...

4.1/...

The chairperson further stated that all parties to the appeal were invited to make submissions to the Appeal Authority in adherence to natural justice to apply the *audi alteram partem* rule.

The chairperson requested the appellant, represented by CK Rumboll and Partners, to table their appeal dated 23 August 2023.

The following statements from the appeal, amongst others, are presented by Mr N J de Kock of CK Rumboll and Partners –

- (1) No policy exists that restrict the maximum erf size for consolidation;
- (2) The Homeowners' Association (HOA) has already approved the consolidation and the draft building plans for Erven 2241 and 2385, Yzerfontein – the main objective of a Residential Zone 3 development is to create a residential estate that is governed by the HOA;
- (3) In 2004 the initial layout created medium density residential properties;
- (4) In 2008 the need for high density residential properties was accommodated in the amendment of the general plan;
- (5) The needs of the property owners and HOA now changed to create larger (low density residential) erven;
- (6) To create a low density residential erf will not have an impact on the character of the development where a mixed density erven already exists;
- (7) The character of the area has changed from medium density properties to a mixed density residential estate with both medium and high density residential properties;
- (8) Low density erven are proposed by the Spatial Development Framework and adheres to the zoning of the area, the proposed consolidation is supported by the HOA and the architect and the impact thereof is regarded as minimal;
- (9) At the moment it is possible to established two large properties on the mentioned erven, but with the consolidation only one property is created;
- (10) Building lines and sight lines were taken into consideration with the proposed consolidation and will not have and impact on any sight lines of adjacent properties.

The chairperson requested the Senior Manager: Development Management to highlighted aspects from the evaluation of the appeal and the following, amongst others, are mentioned:

- (1) The Mile 16 residential development was established as a medium density resort in order to allow for smaller, holiday-oriented housing;
- (2) With the new legislation and zoning categories, the character and theme of the land use should remain and is guided by the architectural design guidelines in order to established a harmonised and holiday designs within the natural environment;
- (3) The design manual is specific to ensure a cohesive character within the development;
- (4) The proposed application intents the consolidation of two erven creating a 825 m² erf which is not consistent with erf sizes in the development;
- (5) The cohesive character that is promoted by the design manual will be disturbed by such a large erf;
- (6) The building (750 m² in extent) to be constructed does not adhered to the intension of the design manual and is not complementary to the architectural character of the development;
- (7) 85% of erf sizes in the development is smaller than 500 m²;
- (8) Although the consolidation is within the guidelines of the SDF, the development has additional requirements which are determined by the design manual and therefore to be considered separate of the SDF.

The chairperson allowed for questions by members of the Appeal Authority for clarity.

The chairperson closed the meeting and confirmed that the outcome of the appeal will be communicated to the appellant.

OUTCOME OF THE APPEAL:

The merits of the appeal was considered and assessed by the Appeal Authority on 9 November 2023, taken into account all relevant legislation and policy guidelines.

RESOLUTION

- (a) The appeal be dismissed for the following reasons:
 - (i) The size of the consolidated erf and development proposal will impact negatively on the uniformity in the development;
 - (ii) The existing scope of erf sizes and design guidelines make provision for different housing topologies which creates the character of the development;
 - (iii) The Owners Association and the design architect fail in their responsibility to protect the character of the development;
 - (iv) The favourable consideration of the application will negatively influence decision making on similar applications in the future;

- (b) The Executive Mayor as Appeal Authority of Swartland Municipality, in terms of Section 91(7)(b) of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020), confirms the decision by the Municipal Planning Tribunal, Item 6.4 dated 8 August 2023, to refuse the application for consolidation of Erf 2241 and 2385, Yzerfontein.

**(SGD) ALD J H CLEOPHAS
CHAIRPERSON**



**MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE MALMESBURY,
BANQUETING HALL ON THURSDAY, 9 NOVEMBER 2023 AT 15:00**

PRESENT:

The Executive Mayor, ald J H Cleophas (chairperson)
The Executive Deputy Mayor, cllr J M de Beer
Cllr D G Bess
Cllr N Smit
Ald T Van Essen
Cllr A K Warnick

Advisor:

Senior Manager: Development Management

Secretariat:

Manager: Secretariat Services and Records, Ms N Brand

1. OPENING

The chairperson opened the meeting and declared the Appeal Authority in session in terms of paragraph 91 of the Swartland Municipality: By-law relating to Municipal Land Use Planning (PG 8226 dated 25 March 2020).

The chairperson allowed for a round of introductions and confirmed that the applicant, as well as some of the appellants are in attendance.

The chairperson expressed his believe that the parties to the appeal will regard the proceedings as fair and transparent.

2. APOLOGIES

No apologies was received.

3. MINUTES

None.

4. MATTERS FOR CONSIDERATION

4.1 APPEAL RECEIVED ON THE PROPOSED CONSENT USE AND DEPARTURE ON ERF 505, YZERFONTEIN (15/3/10-14, 15/3/4-14)

An appeal was received on the decision by the Municipal Planning Tribunal (MPT) – Item 6.3 dated 8 August 2023 – to refuse the application for consolidation of Erf 2241 and 2385, Yzerfontein.

The evaluation of the appeal was presented to the Appeal Authority in the report of the Municipal Manager dated 18 October 2023 and the report of the authorised official dated 11 October 2023 respectively.

The chairperson stated that the Appeal Authority must adhere to the following requirements in resolving the appeal:

- (1) All actions must, in terms of administrative law and natural justice, be more than fair;
- (2) All the relevant facts must be legally considered and evaluated independently of the matters considered by the MPT in order to conclude on the matter.

4.1/...

The chairperson further stated that all parties to the appeal were invited to make submissions to the Appeal Authority in adherence to natural justice to apply the *audi alteram partem* rule.

The chairperson confirmed that an appeal was received on behalf of various homeowners and gave the opportunity to the appellants to highlight matters from the appeal.

Mr Du Plooy, on behalf of the appellants, confirmed that the content of the appeal is clear and that no further explanations are necessary.

The chairperson gave the opportunity to the applicant to explain the proposed application for a place of education to be operated in the form of a learning centre for children.

Mr H Volgraaf, co-owner of Erf 505, Yzerfontein confirmed that the learning centre is already in operation from the rental house and that no disturbances are created. The learning centre is operated as an in-house learning hub and at there will not be a noise disturbance at any stage during the day. The operating hours at the moment are from 08:00 to 12:00. The learning centre is mainly for learners with learning difficulties that cannot be accommodated in the mainstream schools in the surrounding towns.

The chairperson requested the Senior Manager: Development Management to highlight aspects from the evaluation of the appeal and it is confirmed by Mr Zaayman that the information before the Appeal Authority is adequate and complete in order to make a decision.

The Senior Manager: Development Management stated that the appeal received is based on the reasons given by the Municipal Planning Tribunal in the support of the application and some are highlighted:

- (a) There are no physical restrictions on the property that will have a negative impact on the proposed application;
- (b) There are no restrictions registered against the title deed of the property that prohibits the proposed land use;
- (c) The SDF, 2023 supports densification as well as the accommodation of professional services and secondary educational facilities in residential areas. The subject property is located next to the identified CBD of Yzerfontein;
- (d) The proposed application is consistent with and not in contradiction to the Spatial Development Frameworks adopted on Provincial, District and Municipal levels;
- (e) The proposed application will not have a negative impact on the character of the area;
- (f) The proposed development is not perceived to have a detrimental impact on the health and safety of surrounding landowners, nor will it negatively impact on environmental/heritage assets;
- (g) A place of education is accommodated as a consent use under Residential Zone 1 of the By-Law;
- (h) The development proposal supports the optimal utilisation of the property;
- (i) The place of education may support the tourism industry in Yzerfontein, as well as the local economy.
- (j) The need for this service in Yzerfontein is recognised;
- (k) Sufficient on-site parking is proposed, and the proposal will not have a significant impact on traffic in Gey van Pittius Street."

The Senior Manager: Development Management, in addition to the above, mentioned the following:

- The report refer to a place of education, but the facility is operated as a learning centre;
- The learning centre is in operation on the rental property and when visiting the property the same activities as for a normal household are experienced;
- There are no disturbances to the outside of the learning centre;
- The learning centre is operated from 88 m² of the property;
- The impact of the learning centre is low within a residential area;
- Early childhood development and education is a major priority for Swartland Municipality.

The Senior Manager: Development Management requested the chairperson to suffice with the decision by the Municipal Planning Tribunal.

The chairperson allowed for questions for clarity:

Question	Answer
Operating hours (07:30 to 17:30, Monday to Saturday)	4 hours in the morning, might extent to 4 hours in the afternoon
Operating hours on Saturday may create a problem	
Number of children?	x12 learners – a new application be made if the learning centre intents to expand
Play area?	Not a requirement as learners are there for 4 hours of learning
School vs learning centre	Learning centre – 1 on 1 specialised learning / individual learning
Traffic impact	Learners are dropped off / no other educators except for occupants of the dwelling
Parking requirements – are x4 parking bays adequate?	
Consideration for speedhumps / Only one speedhump was constructed, but two were required	Need for speedhumps can be evaluated when the learning centre is established and the affect on traffic is known
Registration for home schooling	Responsibility of parents – learning centre is part of support system for parents. The curriculums that are presented is of international standard, amongst other, Cambridge International Curriculum.

The Senior Manager: Development Management, considering the above questions of clarity, confirmed an excerpt from the resolution by the Municipal Planning Tribunal, namely –

- A1(b) The place of education consisting of a learning centre, be restricted to 88 m²;
- A1(c) No more that 12 children/students be accommodated at the place of education;
- A1(d) The hours of the place of education be restricted from 07:30 to 17:30 on Monday to Saturdays.

The chairperson closed the meeting and confirmed that the outcome of the appeal will be communicated to the applicant and appellants after a site inspection to the subject property.

The meeting adjourned at 15:45.

**(SGD) ALD J H CLEOPHAS
CHAIRPERSON**



**MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE COMMITTEE ROOM,
COUNCILLOR'S OFFICES ON MONDAY, 27 NOVEMBER 2023 AT 09:15**

PRESENT:

The Executive Mayor, ald J H Cleophas (chairperson)
Cllr D G Bess
Cllr N Smit
Ald T Van Essen
Cllr A K Warnick

Advisor:

Senior Manager: Development Management

Secretariat:

Manager: Secretariat Services and Records, Ms N Brand

1. OPENING

The chairperson opened the meeting and declared the Appeal Authority in session in terms of paragraph 91 of the Swartland Municipality: By-law relating to Municipal Land Use Planning (PG 8226 dated 25 March 2020).

2. APOLOGIES

COGINSANCE BE TAKEN of the apology received from the Deputy Executive Mayor, Cllr J M de Beer.

3. MINUTES

None.

4. MATTERS FOR CONSIDERATION

4.1 APPEAL RECEIVED ON THE PROPOSED CONSENT USE AND DEPARTURE ON ERF 505, YZERFONTEIN (15/3/10-14, 15/3/4-14)

[Read with minutes of Appeal Authority held on 9 November 2023.]

The chairperson confirmed that the purpose of the meeting is to finalise the outcome of the appeal received on the proposed consent use and departure on Erf 505, Yzerfontein taking into account the discussions on 9 November 2023 as well as the site inspection on 21 November 2023.

The chairperson confirmed futher that both the properties were visited where (1) the learning centre is operated from at the moment and (2) Erf 505, Yzerfontein and that members of the Appeal Authority took the opportunity to ensured themselves of the activities of the learning centre and impact thereof on surrounding properties.

The chairperson allowed for members to give comments/inputs and Ald T van Essen gave background on the requirements, or lack thereof, regarding home schooling as presented by current legislation. Ald T van Essen stated that 95% of parents do not registered their children for home schooling. Although the Act required for learning centres to be registered with the Provincial Departments, same do not have the capacity or knowledge to handle the registration processes, because it is not govern by any regulation.

Ald Van Essen confirmed that there are many examples of home schools in the Swartland Municipality that is not registered and do not comply with the requirements of the By-law, e.g. 10 m building line.

The learning centre proposed on Erf 505, Yzerfontein followed the correct procedures to obtain the required land-use and there is an urgent need in South Africa for learning centres such as the proposed one. For the children who go to school there, an injustice will be done if the application is not approved.

The Senior Manager: Development Management confirmed that the proposed facility is supported by the Departement as well as the Municipal Planning Tribunal. Mr Zaayman confirmed that most places of education have the necessary land-use approval and are regulated by the By-law.

UNANIMOUSLY RESOLVED

- (a) That the Executive Mayor as Appeal Authority of Swartland Municipality dismissed the appeals received for the following reasons:
 - (i) Land uses like places of education can be accommodated inside a residential area due to its low disturbance potential. In this case an existing facility will relocate to Erf 505;
 - (ii) Erf 505 is situated directly adjacent to the identified CBD of Yzerfontein. This makes the locality of Erf 505 even more favorable to accommodate mix uses;
 - (iii) The impact of the proposed place of education on the surrounding area remains to be deemed low, taking into consideration the number of students, specialized learning, business hours, availability of on-site parking and mitigating the impact on Erf 506 by the erection of a boundary wall;
 - (iv) Existing traffic calming measures (speed hump) in Gey van Pittius Street is to the benefit of the proposed place of education;
- (b) That the Executive Mayor as Appeal Authority of Swartland Municipality, in terms of Section 91(7)(b) of the Swartland Municipality: Municipal Land Use Planning By-law (PG 8226 of 25 March 2020), confirmed the decision by the Municipal Planning Tribunal, Item 6.3 dated 8 August 2023, to approve the consent use and departure on Erf 505, Yzerfontein subject to the conditions of approval.

**(SGD) ALD J H CLEOPHAS
CHAIRPERSON**



**MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE MALMESBURY, TOWN HALL
ON WEDNESDAY, 13 DECEMBER 2023 AT 14:00**

PRESENT:

The Executive Mayor, ald J H Cleophas (chairperson)
The Executive Deputy Mayor, cllr J M de Beer
Cllr D G Bess
Cllr N Smit
Ald T Van Essen
Cllr A K Warnick

Advisor:

Senior Manager: Development Management

Secretariat:

Manager: Secretariat Services and Records, Ms N Brand

1. OPENING

The chairperson opened the meeting and declared the Appeal Authority in session in terms of paragraph 91 of the Swartland Municipality: By-law relating to Municipal Land Use Planning (PG 8226 dated 25 March 2020).

The chairperson allowed for a round of introductions and confirmed that the representative of the appellant, Mrs M Crafford from CK Rumboll and Partners, is in attendance.

The chairperson expressed his believe that the parties to the appeal will regard the proceedings as fair and transparent.

2. APOLOGIES

No apologies was received.

3. MINUTES

None.

4. MATTERS FOR CONSIDERATION

4.1 APPEAL RECEIVED ON THE PROPOSED AMENDMENT OF RESTRICTIVE TITEL CONDITIONS AS WELL AS THE DEPARTURE OF DEVELOPMENT PARAMETERS ON ERF 526, YZERFONTEIN (15/3/5-14, 15/3/4-14)

An appeal was received on the decision by the Senior Manager: Development Management (by virtue of delegated authority) dated 15 September 2023 – to refuse the application for the amendment of restrictive title conditions as well as the departure of development parameters on Erf 526, Yzerfontein.

The evaluation of the appeal was presented to the Appeal Authority in the report of the Municipal Manager dated 20 November 2023 and the report of the authorised official dated 6 November 2023 respectively.

The chairperson stated that the Appeal Authority must adhere to the following requirements in resolving the appeal:

(1)/...

4.1/...

- (1) All actions must, in terms of administrative law and natural justice, be more than fair;
- (2) All the relevant facts must be legally considered and evaluated independently of the matters considered by the Senior Manager: Development Management in order to conclude on the matter.

The chairperson further stated that all parties to the appeal were invited to make submissions to the Appeal Authority in adherence to natural justice to apply the *audi alteram partem* rule.

The chairperson referred to paragraph 91(7) of the Municipal Land Use Planning By which stipulates the manner in which the Appeal Authority must consider the appeal and this may include that the decision of the Senior Manager: Development Management can be confirmed, changed, revoked or referred back.

The Appeal Authority must by law assess the appeal against the applicable Swartland Municipal Spatial Development Framework ("MSDF") as approved on 30 May 2019.

The chairperson confirmed that an appeal was received on behalf of the owner of Erf 526, Yzerfontein and gave background regarding the appeal and also the reasons as stated by the authorised official for the refusal of the application.

After explaining the procedures to be followed for the representations by the parties involved, the opportunity is given to CK Rumboll and Partners to highlight matters from the appeal. The following matters, amongst others, are highlighted by Mrs Crafford:

- (1) The location of the house is largely at the front of the Erf with a 3 m space between the eastern boundary and existing dwelling on the property. Inside the 3 m alley there is a storm water ditch that reduces space – this is the only space that gains access to the back of the yard;
- (2) It is a recognized planning requirement that drive through space for vehicles be 4 m or more;
- (3) The owners are of the intent to make internal changes to improve the dwelling and the latter necessitates an extension to the garage;
- (4) The owners also plans a barbecue area at the back of the yard that overlooks the sea;
- (5) Considering the above, it is impractical to provide a garage at the rear of the Erf;
- (6) The owners, considering the specific circumstances on the Erf, made use of the opportunity offered by the By-law to apply for a departure;
- (7) Ms Crafford elaborates on the character of L J Smit Street, with ±18 residential dwellings whose garage are located at the front or next to the house. This is an indication that it is not the norm in L J Smit Street to build a garage at the back of the Erf;
- (8) In the design of the garage and orientation of its placement, considering that it is impractical to place it at the rear of the dwelling, mitigating measures were used to avoid that vehicles would have to wait in the street for the garage door to open;
- (9) There are specific circumstances on Erf 526, Yzerfontein that justify the positive consideration of the application;
- (10) It is the opinion that the application will not negatively affect the character of L J Smit Street, but should rather be seen in a positive light as the owner intends to establish a formal structure for the garage in stead of shadow netting.

The chairperson requested the Senior Manager: Development Management to highlight aspects from the evaluation of the appeal and it is confirmed by Mr Zaayman that the information before the Appeal Authority is adequate and complete in order to make a decision.

The Senior Manager: Development Management confirmed the following:

- (1) Erf 526, Yzerfontein is 805 m² in extent with a coverage of only 23%. Therefore there is enough space on the Erf to accommodate the garage at the back;
- (2) The proposed changes to the dwelling are explained, amongst others, the proposed bathroom to be erected in part of the garage, necessitating the changes to the garage;
- (3) With proper planning, the owner will be able to erect the relevant bathroom in line with the canopy and no changes to the garage will be necessary;

- (4) The proposed garage on the street boundary will have an affect on the character of LJ Smit Street;
- (5) If the application be approved, it will influence the outcome of similar applications in future and the Municipality is sensitive towards departures of street building lines;
- (6) Similar applications in the past were refused.

The chairperson closed the meeting and confirmed that the outcome of the appeal will be communicated to the appellatant at a later stage.

5. OUTCOME OF APPEAL (13 DECEMBER 2023)

The chairperson confirmed that the purpose of the meeting is to finalise the outcome of the appeal received on the proposed amendment of restrictive title conditions as well as the departure of development parameters on Erf 526, Yzerfontein.

RESOLUTION

(proposed by ald T van Essen, seconded by cllr J M de Beer)

That the appeal be dismissed for the following reasons:

- (a) The development proposal in it's current format remains to impact negatively on the street scape of the street;
- (b) Street building lines also act as a setback from the street, to promote a visual 'break' between the street and structures. In cases where a structure encroaches on the building line, care should be taken to keep the scale of the encroaching element consistent with that of the surrounding area. The proposed new garage is not considered to be consistent with the character of the street;
- (c) Access way to the rear of the property is not ideal for vehicle movement, but not impossible. Ample space is available to the rear of the property to accommodate the proposed garage.

**(SGD) ALD J H CLEOPHAS
CHAIRPERSON**



**MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE MALMESBURY, TOWN HALL
ON WEDNESDAY, 13 DECEMBER 2023 AT 14:00**

PRESENT:

The Executive Mayor, ald J H Cleophas (chairperson)
The Executive Deputy Mayor, cllr J M de Beer
Cllr D G Bess
Cllr N Smit
Ald T Van Essen
Cllr A K Warnick

Advisor:

Senior Manager: Development Management

Secretariat:

Manager: Secretariat Services and Records, Ms N Brand

1. OPENING

The chairperson opened the meeting and declared the Appeal Authority in session in terms of paragraph 91 of the Swartland Municipality: By-law relating to Municipal Land Use Planning (PG 8226 dated 25 March 2020).

The chairperson allowed for a round of introductions and confirmed that the representative, Mrs A Coetzee from CK Rumboll and Partners, of the appellant is in attendance.

The chairperson expressed his believe that the parties to the appeal will regard the proceedings as fair and transparent.

2. APOLOGIES

No apologies was received.

3. MINUTES

None.

4. MATTERS FOR CONSIDERATION

4.1 APPEAL RECEIVED ON THE PROPOSED REZONING AND DEPARTURE ON ERF 5977, MALMESBURY (15/3/3-8, 15/3/4-8)

An appeal was received on the decision by the Senior Manager: Development Management (by virtue of delegated authority) dated 18 September 2023 – to refuse the application for rezoning and departure on Erf 5977, Malmesbury.

The evaluation of the appeal was presented to the Appeal Authority in the report of the Municipal Manager dated 20 November 2023 and the report of the authorised official dated 6 November 2023 respectively.

The chairperson stated that the Appeal Authority must adhere to the following requirements in resolving the appeal:

- (1) All actions must, in terms of administrative law and natural justice, be more than fair;

4.1/...

- (2) All the relevant facts must be legally considered and evaluated independently of the matters considered by the Senior Manager: Development Management in order to conclude on the matter.

The chairperson further stated that all parties to the appeal were invited to make submissions to the Appeal Authority in adherence to natural justice to apply the *audi alteram partem* rule.

The chairperson referred to paragraph 91(7) of the Municipal Land Use Planning By which stipulates the manner in which the Appeal Authority must consider the appeal and this may include that the decision of the Senior Manager: Development Management can be confirmed, changed, revoked or referred back.

The Appeal Authority must by law assess the appeal against the applicable Swartland Municipal Spatial Development Framework ("MSDF") as approved on 30 May 2019.

The chairperson confirmed that an appeal was received on behalf of the owner of Erf 5977, Malmesbury and gave background regarding the appeal and also the reasons as stated by the authorised officials for the refusal of the application.

After explaining the procedures to be followed for the representations by the parties involved, the opportunity is given to CK Rumboll and Partners to highlight matters from the appeal. The following matters, amongst others, are highlighted by Mrs Coetzee:

- (1) Although the appeal is lodged against the entire decision, the aspect regarding the rezoning will not be addressed and only to focus on the residential aspects of the application;
- (2) The reasons for the above is that if the rezoning is not considered, the application for departure from the building lines and coverage is still relevant for Residential Zone 1;
- (3) The following should be taken into account –
 - for the current zoning, Residential Zone 1, the departure in terms of the coverage is only for 18 m² (11%);
- (4) The request therefore is to permit for the residential building to remain and that the departure from the building lines may continue, for the reason that –
 - the adjacent erven is not rectangular in shape and larger than the subject property. Therefore there is sufficient space on the adjacent erven for further developments and to allow the building line departures;
- (5) It is requested that the Appeal Authority allow the continued existence of the residential building and that the departures be approved as the building is already been erected;
- (6) The appellant referred to the practice at De Noon where the double storeys erected in the area contributed to the improvement of the area as many other houses followed suit;
- (7) Although disorder is not encouraged, the owner was granted an asset and the latter was improved. It is therefore requested that the initiative be supported.

The chairperson requested the Senior Manager: Development Management to highlight aspects from the evaluation of the appeal and it is confirmed by Mr Zaayman that the information before the Appeal Authority is adequate and complete in order to make a decision.

The Senior Manager: Development Management confirmed the following:

- (1) The Appeal Authority should consider the application for rezoning on the table and not the land use awaiting the rezoning application;
- (2) General Residential Zone 3 is traditionally the relevant zoning for flats as primary use, which is confirmed by the prospective building plan;
- (3) New building lines for new zoning comes into play, e.g. street building line becomes 5 m, side building line and rear building lines also become 5 m;
- (4) Coverage change to 40% – can only build for 66 m² on erf, and not 91% as already illegally built;
- (5) New zoning category determines that for each residential unit there must be an outside living space, as well as parking requirements.

4.1/...

The current situation comes down to a grossly-overdeveloped erf which is not desirable within the context of the surrounding area.

The chairperson closed the meeting and confirmed that the outcome of the appeal will be communicated to the appellants at a later stage.

5. OUTCOME OF APPEAL (13 DECEMBER 2023)

The chairperson confirmed that the purpose of the meeting is to finalise the outcome of the appeal received on the proposed rezoning and departure on Erf 5977, Malmesbury.

The chairperson allowed for discussions and the following matters are highlighted:

- (1) Sympathised with the owner who illegally erect the building, but the owner should have adhered to the relevant legislation;
- (2) If the rezoning application is rejected by the Appeal Authority, the parameters of Residential Zone 1 is applicable. The building can, within the residential character, be adjusted to a double dwelling with a double storey within the existing zoning parameters in order to limit the demolition of illegal building works.

RESOLUTION

- (a) That the appeal be dismissed for the following reasons:
 - (i) Erf 5977 is grossly over-developed regarding the placement and scale of the existing building;
 - (ii) Building work encroaches the erf boundaries;
 - (iii) It is not possible to alter the existing building in a minor way in order to comply with zoning and building regulations requirements;
- (b) That building plans be submitted to the Senior Manager: Development Management for consideration and approval within 30 days from final decision. Building work on site be altered to reflect the development proposal, as approved on building plans referred above, before 31 March 2024.

**(SGD) ALD J H CLEOPHAS
CHAIRPERSON**



Verslag ♦ Ingxelo ♦ Report

Office of the Municipal Manager
19 January 2024

15/3/4-14
15/3/6-14
15/3/12-14
5/3/13-14
(Erf 2122, 2123)

ITEM 4.1 OF AN APPEAL COMMITTEE MEETING TO BE HELD ON 31 JANUARY 2024

SUBJECT: APPEAL ON THE PROPOSED SUBDIVISION OF ERF 2122 AND CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN
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1. BACKGROUND

Full background is contained in the evaluation of the appeal by the authorised official (**Annexure A**).

This report **is aimed at affording the appeal authority an opportunity to dispose of the appeal** in terms of paragraphs 91(13) and 90(14) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 dated 25 March 2020).

2. COMMENTS: MUNICIPAL MANAGER

2.1 In terms of section 33 of the Constitution, everyone has the right to administrative action that is lawful, reasonable and procedurally fair, and to be given written reasons. The Constitution also provides for the enactment of national legislation, hence the Promotion of Administrative Justice Act (PAJA) 3 of 2000.

2.2 Administrative law entails the following general legal principles governing the organisation of administrative institutions, with specific reference to the FAIRNESS and REASONABLENESS of administrative processes. Naturally, the scope of administrative law includes the administrative actions of a municipality in performing a public function or taking a decision.

2.3 Administrative action is defined as:

"... any decision taken, or any failure to take a decision, by an administrator which adversely affects the rights of any person and which has a direct external legal effect ..."

2.3.1 As far as the "direct external legal effect" is concerned, the decision is binding, having been taken in terms of statute.

2.3.2 It also includes a decision that needs to be taken to, inter alia:

- impose conditions;
- set a requirement; and
- grant permission.

2.4 Before any "decision-making institution" can take a decision that affects the rights of individuals/the public –

(s)he needs to have the statutory mandate to take such a decision, and the "decision-making institution" – in this instance, the AUTHORISED OFFICIAL – must derive his/her powers/functions from the enabling provisions of statute, common law rules, customary law, and agreements or policies applicable to the relevant sphere of government.

2.5 PAJA:

- sets a benchmark for minimum standards applicable to administrative actions;

- 2.5/...
- gives effect to the constitutional principle of just and fair administrative decision-making; and
 - provides a minimum set of procedures for:
 - taking decisions; and
 - supplying reasons for decisions.

- 2.6 The principles of legality are as follows:
- o Fair manner
The administrative action must be performed and taken in a fair manner (procedurally).
 - o Reasonable
The administrative action must be reasonable.
 - o Administrator/decision-making institution
The institution must be mandated by statute (the administrator) to take the decision.
 - o Authorised
The administrator must be lawfully authorised to perform a specific action or take the decision.

2.7 Legal effect

2.7.1 Administrative decisions are presumed to have been taken lawfully, until a particular decision is declared unlawful by a court of law.

2.7.2 This is to establish legal certainty.

2.8 **SUMMARY**

Judged against the principles of legality stated in paragraph 2 above, the following can be confirmed:

2.8.1 The administrative action (process to take the decision) was subjected to a public participation process, the applicant's comments and motivations were weighed against the legal framework, the applicant was informed of their right to appeal, and therefore, it can be confidently stated that the action was FAIR and PROCEDURALLY CORRECT.

2.8.2 Moreover, it is clear that the administrative action was REASONABLE and that the decision was taken in terms of the scheme regulations and the by-law, which acknowledge the rights of the individuals residing in the residential area.

2.8.3 The authorised official was duly authorised to take the decision in terms of the applicable legislation, and the Executive Mayoral Committee is the institution/authority who serves as the Appeal Authority and considers appeals.

3. **RECOMMENDATION: MUNICIPAL MANAGER**

- (a) That, considering the evaluation of the appeal as outlined in Annexure A, the resolution of the Authorised Official dated 24 May 2023 (correction dated 1 June 2023) be confirmed;
- (b) That the appeal be dismissed for the reasons as stated in Annexure A.

(sgd) J J Scholtz

MUNICIPAL MANAGER



Verslag ♦ Ingxelo ♦ Report

Office of the Director : Development Services
Division : Development Management

5 January 2023

15/3/4-14/Erf_2122, 2123
15/3/6-14/Erf_2122, 2123
15/3/12-14/Erf_2122, 2123
15/3/13-14/Erf_2122, 2123

SUBJECT: EVALUATION OF THE APPEAL ON THE PROPOSED SUBDIVISION OF ERF 2122 AND CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN

1. BACKGROUND

The application for subdivision of Erf 2122, Yzerfontein into Portion A (54m² in extent) and the Remainder (397m² in extent) in terms of section 25(2) (d) of Swartland Municipality: Municipal Land Use Planning By-law (PG 8226 of 25 March 2020) has been received.

An application for consolidation of Portion A of Erf 2122, with Erf 2123, Yzerfontein in terms of Section 25(2) (d) of Swartland Municipality: Municipal Land Use Planning By-law (PG 8226 of 25 March 2020) has been received. The newly created Portion A (54m² in extent) be consolidated with Erf 2123 (365m² in extent) to form a new land unit of 419m² in extent;

The application for departure from the development parameters on Erf 2123, Yzerfontein, in terms of section 25(2) (b) of Swartland Municipality: Municipal Land Use Planning By-law (PG 8226 of 25 March 2020) has been received.

The following departures are proposed:

- Northern and north-eastern 4m street building lines be departed from and each reduced to 3,15m;
- The height restriction limiting building line departure to the ground floor, be departed from;
- The 1,5m western lateral building line be departed from and reduced to 0m for the extent of 7m to accommodate the garage;
- The 1,5m western lateral building line be departed from and reduced to 1m for the extent of 5,1m to accommodate the portion of the dwelling (bedroom no 2) that encroaches on the building line;
- The maximum permissible coverage of 50% be departed from and increased to 54%;

The application for the registration of a right-of-way servitude over the consolidated erf (portion A of Erf 2122 and Erf 2123) and the remainder of Erf 2122, Yzerfontein, has been received.

2. SUPPORTING DOCUMENTATION

Inclosed are the following documentation:

- Annexure 1:** Letter to applicant, C K Rumboll & Partners dated 24 May 2023 to inform them on the decision of the Authorized Official.....bl 31-35
- Annexure 2:** Correction of error letter to applicant, C K Rumboll & Partners dated 1 June 2023.....bl 36-41
- Annexure 3:** Appeal received from Ilze Smit dated 12 June 2023bl 42-78
- Annexure 4:** Letter to applicant dated 14 June 2023 to notify them of the appeal and the opportunity to comment on the appeal in terms of Swartland Municipality: Municipal Land Use Planning By-Law, (PN 8226 of 25 March 2020)bl 79

Annexure 5 Letter from applicant C K Rumboll & Partners dated 5 July 2023 : Permission for extension to comment on appealbl 80

Annexure 6: Comment on appeal from Duncan & Rothman Attorneys (on behalf of Dr Christie Smit dated 3 July 2023bl 81-94

Annexure 7: Letter from Joubert Attorneys (on behalf of Ilze Smit) dated 18 August 2023bl 95-96

3. **TIME FRAME FOR FINALISING THE APPEAL IN ACCORDANCE WITH THE SWARTLAND MUNICIPALITY: BY-LAW REGARDING MUNICIPAL LAND USE PLANNING (PG 8226 VAN 25 MAART 2020)**

Section 89(1): The executive mayor is the appeal authority in respect of decisions of the Tribunal or an authorised employee contemplated in sections 78(a) or (b) and a failure to decide on an application as contemplated in section 68.			
		RESPONSIBLE PERSON(S) / ACTION	ADHERENCE TO DEADLINE (YES/NO)
Section 89(2)	A person whose rights are affected by a decision contemplated in subsection (1) may appeal in writing to the appeal authority within 21 days of notification of the decision.	Development Management: Notice dated 1 June 2023 /registered mail dated 7 June 2023	28 June 2023
Section 90(8)	If any person other than the applicant lodges an appeal, he or she must submit proof of payment of appeal fees as determined by the municipality to the municipal manager and the municipal manager must give written notice of the appeal to the applicant within 14 days of receipt thereof	Joubert Attorneys on behalf of Ilze Smit	Yes, appeal and proof of payment of appeal fees received on Tuesday, 12 June 2023
Section 90(9)	An applicant who received notice of an appeal in terms of subsection (8) may submit comment on the appeal to the municipal manager within 21 days of the date of notification.	Duncan & Rothman on behalf of the applicant C K Rumboll & Partners	Yes, on Monday, 3 July 2023
Section 90(12)	An authorised employee must draft a report assessing an appeal and must submit it to the municipal manager within 30 days of the closing date for comments requested in terms of subsection (6).	Development Management	Yes, on Thursday 7 September 2023 (See reasons for not meeting the required time frames in Point 4.1 of Evaluation of appeal by Authorised Official)
Section 90(13)	The municipal manager must within 14 days of receiving the report contemplated in subsection (12) submit the appeal to the appeal authority.	Municipal Manager	
Section 91(8)	Subject to subsection (12), the appeal authority must decide on an appeal within 60 days of receipt of the assessment report as contemplated in section 90(13).	Executive Mayoral Committee	
Section 91(11)	The appeal authority must within 21 days from the date of its decision notify the parties to an appeal in writing of the outcome.	Executive Mayoral Committee	

4. **EVALUATION OF APPEAL BY AUTHORISED OFFICIAL**

4.1 **Background**

The appeal is lodged by JP Joubert Attorneys on behalf of Mrs Ilze Smit. Mrs Ilze Smit is a trustee and beneficiary of the Smit Family Trust which is the owner of erf 2122. Mrs Ilze Smit lodges the appeal as an affected party and not on behalf of the Smit Family Trust.

Appeal is lodged against the whole decision of the Authorised Official.

It is important for the Appeal Authority to take note of the following:

An application for the departure of development parameters on erf 2123, Yzerfontein was decided on by the Municipal Planning Tribunal on 10 August 2022. This departure application was very

similar to the application that is considered today. Nearly all the departures were refused except the departure of the 1,5m side building lines (eastern and western sides) to 0m to accommodate the proposed garage.

An appeal on the abovementioned decision was lodged by Mrs Ilze Smit. The appeal was never presented to the Appeal Authority for decision making as the application was withdrawn.

Since the withdrawal of the application for departure of development parameters on erf 2123, numerous meetings/discussions took place between the municipality and the owner of erf 2123 and his professional team regarding the development proposal on the property.

A new land use application was then submitted in November 2022, which is the application which is currently being considered.

Non-compliance with time frames for decision making

The commenting period for the applicant (CK Rumbol & Partners) on the appeal ended on 5 July 2023. Comments on the appeal was not received by the applicant, but from Duncan & Rothman Attorneys on 4 July 2023.

On 5 July 2023 the applicant requested an extension of the commenting period on the appeal. The reason for this being that the appellant, by means of a technical point, indicated that the trust resolution provided by the Smit Family Trust giving consent (power of attorney) to CK Rumboll & Partners to lodge the land use application as well as approvals required for the land use applicant was flawed.

The Planning By-law does not make provision for an extension of the commenting period on an appeal. However, given importance of the trust resolution scheduled for 20 July 2023, extension was granted until 31 July 2023 to present the trust resolution. The trust meeting took place on 20 July 2023.

Since the trust meeting took place there was a dispute from Mrs Ilze Smit which did not want to sign the trust resolution. The dispute could not be resolved. The signed trust resolution (by only 2 of the 3 trustees) was only received on 14 August 2023 (Mrs Ilze Smit refused to sign the resolution).

Since 14 August 2023 the comments on the appeal has been prepared and is now presented for decision making by the Appeal Authority.

4.2 Comments on the appeal

a) Decision A – Subdivision of Erf 2122, Yzerfontein

- i. As stated by the appellant the coverage of erf 2122 increased after the subdivision approval. This aspect was not considered by the Authorised Official as a departure from this development parameter on erf 2122 was not applied for by the applicant.

The coverage on erf 2122 increased due to the subdivision of the property. It has to be noted that the panhandle portion of erf 2122 has been subdivided and consolidated with erf 2123. This panhandle portion also accommodates a right-of-way servitude which gives access to erf 2119 from 9th Street. The size of erf 2122 decreased with a portion which could not be developed in the first place. The development potential of erf 2122 was therefore not affected negatively, regardless of the increase in coverage.

The erf size of erf 2123 is enlarged by the consolidation with a portion of erf 2122. The development potential of erf 2123 is only improved regarding the coverage of the erf. It has to be noted that this added portion accommodates the same right-of-way servitude which was previously accommodated on erf 2122, which cannot be developed.

If the owner of erf 2122 in future want to do additions to the existing dwelling on the erf, possible departure from development parameters will be considered at that stage.

The subdivision of erf 2122 does not affect the zoning of the property, which remains to be Residential zone 1.

- ii. The appellant is correct that historically the panhandle portion of erf 2122 never formed part of erf 2123.

- iii. A trust resolution was received from the Smit Family Trust (owner of erf 2122) dated 26 April 2023 which granted power of attorney to CK Rumboll & Partners to submit the land use application as well as given consent for the subdivision of erf 2122 and consolidation with erf 2123 and the departures from the development parameters on the consolidated erf. The trust resolution was taken by means of a majority vote as stipulated in the trust deed of the Smit Family Trust. This was deemed sufficient evidence for the municipality to process the application for decision making.
- iv. The trust resolution that was provided was deemed sufficient by the Authorised Official to take a decision on the land use application, due to the fact that the majority of the trustee members have supported the application.
- v. The Authorised Official deemed the power of attorney and permissions granted by the trust resolution as sufficient due to the decision taken by the Trustees.

b) Decision B – Consolidation of portion A of erf 2122 with erf 2123, Yzerfontein

See the comments at point 4.2(a).

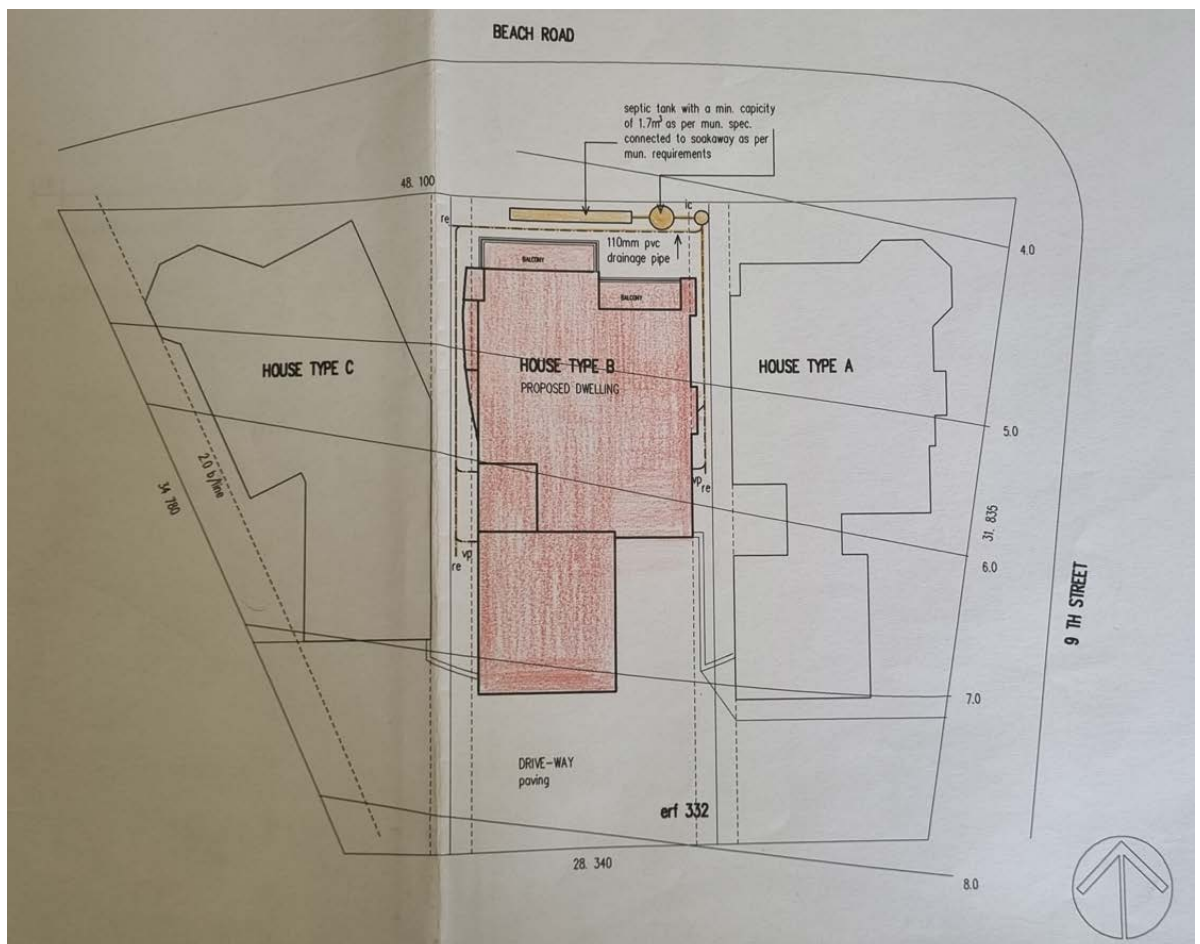
The subdivision of erf 2122 does not affect the zoning of the erf. The zoning of erf 2122 remains to be Residential zone 1.

c) Decision C – Departure of development parameters on the consolidated erf

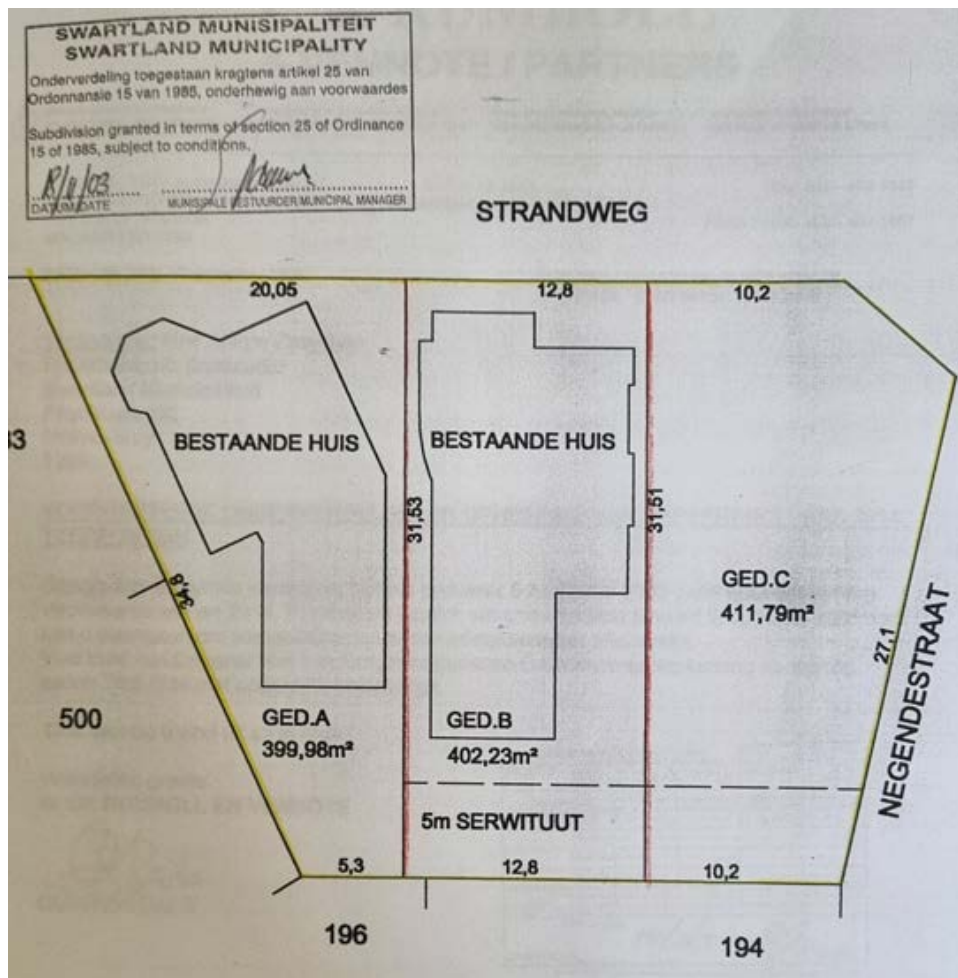
1. Street building lines (northern and north eastern boundaries)

- i. Historically 2 dwellings were approved on erf 332 by the Yzerfontein Municipality in May 2001– today these 2 houses are erected on erf 2119 and 2122. At that stage a development proposal was also presented for a third house on erf 332 which would be erected on what we today know as erf 2123. As part of the site development plan the footprints of the three dwellings were indicated, taking into account the future subdivision lines which will eventually become erven 2119, 2122 and 2123. The subdivision of erf 332 only took place in 2003.

See below the building plan approved in 2001 on erf 332 for the dwelling on erf 2122 as we know it today.



See below the subdivision plan as approved in 2003 which indicates the position of the existing dwellings on erven 2119 and 2122 as we know it today.



Erf 332 had only one street front on 9th Street which provided access to the two houses on the erf. When subdivided in 2003, each house remained to take access from 9th Street. Only in 2016 the road which connects 9th, 10th and 11th Streets obtained legal status as a road. This impacted on the all the erven on the newly declared road by means of access from a street and new street building lines which became applicable.

Historically erf 332 contained restrictive title deed conditions which were removed in 2003 as part of the subdivision process. These conditions included Condition C.I(5) which stated the following:

"... That no building shall be erected within 3,15 metres of any street line which forms a boundary of the erf hereby conveyed or within 3,15 metres of the open space where it forms a boundary of the erf to the sea front..."

So, historically erf 332 and later erven 2119, 2122 and 2123 had a 3,15m building line along the sea front boundary line. The dwellings on erven 2119 and 2122 appears to have not been erected according to this building line. It is therefore fair to consider the departure of the 4m street building line to 3,15m on erf 2123 as it brings the development of the erf in line with the street scapes of erven 2119 and 2122.

The appellant incorrectly refers to the Planning By-law of 2020 being applicable in the year 2000.

- ii. Historically erven 2119 and 2122 had the same 3,15m building lines as applicable to erf 2123. The character of the street scape of the properties on the sea front will remain unchanged.
- iii. A dwelling on erf 2123 is proposed similar in size as on erven 2119 and 2122. Given the historic background of the three properties it will be unfair to restrict the development on erf 2123. The values of surrounding properties will be enhanced rather than being impacted negatively.

2. Departure of 1,5m side building line (western boundary) to 1m on ground floor level

- i. The departure is on ground floor level and there is no windows proposed on this portion of the building which has a minimal to no impact on erf 2122.

A roof overhang of 0,75m is permitted by the Planning By-law.

The impact remains to be minimal. The decision of the Authorised Official is supported.

- ii. The building work that is referred to complies with the 1,5m side building line and is within the rights of the owner of erf 2123.
- iii. Access to services to erf 2122 must be obtained via the right of way servitude or from the streetfront of erf 2122. Access cannot not be taken over erf 2123 to erf 2122 in any other way. There is $\pm 0,7m$ space between the dwelling on erf 2122 to the proposed boundary wall on erf 2123, which provides sufficient space for access to the sewerage lines on erf 2122.
- iv. The proposed building work on first floor level on erf 2123 complies with the side building lines. In this case the views that are lost from erf 2122 were a privilege and not a right.
- v. Building work on the western side boundary is relaxed to 0m (garage) and 1m (bedroom) on ground floor level. The building work on first floor level the building work complies with the 1,5m side building line. The impacts of the departures on erf 2122 remains to be deemed minimal.

The decision from the Authorised Official remains to be supported.

3. Departure of 1,5m side building line (western boundary) to 0m for the garage on ground floor level

- i. Non compliance with this requirement of the Planning By-law is historic on erf 2122. Access around the dwelling cannot be taken over erf 2123.
- ii. There are only windows and no doors on erf 2122 that give access to the area between the existing dwelling on erf 2122 and the proposed dwelling on erf 2123. No boundary wall is proposed between the two dwellings.
- iii. It is not clear how erf 2122 will be impacted on as described by the appellant. The plans that are presented as part of this application does not indicate a washing line area.
- iv. A roof overhang of 0,75m is permitted by the Planning By-law.

The comment from the appellant is speculative regarding the possible ensurance coverage due to the proposed position of the roof overhang on erf 2123.

- v. The proposed garage and laundry room on erf 2123 only have access from the garage door and from a door from the dwelling. No washing line area is proposed.

The impact remains to be minimal. The decision of the Authorised Official is supported.

4. Departure from the 1,5m side building line (southern boundary) to 0m on ground floor and 1m on first floor

- i. Irrespective of the position of the proposed garage on erf 2123, a boundary wall can be erected on erf 2123 which will have the same effect on the turning circles for vehicles on erf 2122. The argument is deemed flawed.
- ii. The driveway width stays unchanged as it accommodates a right of way servitude.
- iii. It is unclear how the optimal use of space on erf 2123 impacts on the privacy of erf 2122. On the other hand, the design of the proposed dwelling on erf 2123 takes into consideration the personal space of erf 2122.

- iv. Noted. The Authorised Official deemed the power of attorney and permissions granted by the trust resolution as sufficient in order to take a decision on this application.
The development proposal does not include any departures of the 1,5m side building line to 1m on first floor level. The appellant is referring to another development proposal.
The decision from the Authorised Official remains to be supported.

5. Opinion from Davantoni Design

- i. The departure of the side building line (western boundary) to 1m on ground floor between erven 2122 and 2123 is only relevant to 1 bedroom which has no windows or doors on the walls facing erf 2122. The rest of the building work (ground and first floor – except the garage on ground floor) complies with the building lines which is within the rights of erf 2123.
- ii. The impact on Beach will be similar for all three even 2119, 2122 and 2123. The only difference would be that erf 2123 will have a boundary wall to provide privacy to the outdoor living areas on the property.
- iii. All affected parties provided their written consent for the proposed departures. No building work on first floor level encroaches the applicable building lines, except the street boundaries. The street fronts of erf 2122 and 2123 are aligned with each other, creating no impacts on views from the properties.
- iv. The compliance with fire safety regulations will be enforced on building plan stage.
- v. No valuation information was provided. However, it is anticipated that the development of erf 2123 will rather have a positive impact on surrounding properties than a negative impact.

4.3 Evaluation of missing pages

a) Eastern boundary

From the erf boundary of erf 2123 to the stormwater channel which forms the kerb at the road surface of 9th Street there is a distance of ±6m. This is deemed more than sufficient space to safely accommodate pedestrian movement.

Site access requirements are applicable to each erf. In this case there will only be focussed on erf 2123.

Erf 2123 accommodates a 5m wide right of way servitude and right next to it the 5,5m wide driveway to the garage. The combined access points are 10,5m wide. The planning and design of the proposed dwelling on erf 2123 specifically makes provision that the right of way servitude is not used as an access point to the garage on the property. In this case there is sufficient merit to permit the combined access points of 10,5m in stead of the 8m wide requirement as access is provided to two separate destinations.

It needs to be pointed out that in construction today dropped kerbs are used in new residential developments. This provides access to the streetboundary of the property as a whole. In future, the Planning By-law will need to be amended to accommodate this aspect.

b) Departure of allowable coverage

- i) The development proposal on erf 2123 portrays the development potential of the property taking into consideration the subdivision and consolidation, coverage of 59% before and 54% there after.
- ii) Any disputes between the trustees of the Smit Family Trust to the High Court are a matter to be decided on by the High Court. The trust resolution provided as part of this land use application is deemed sufficient for the municipality to take a decision on the application.
- iii) It remains the prerogative of the owner of erf 2123 to attempt to develop the property to its full potential, even if the development proposal accommodates departures of development parameters. It remains the right of the owner of erf 2123 to apply for approval for these departures.
- iv) All surrounding/affected land owners have consented to the departures. Subsequently the departures have been approved by the Authorised Official.

c) Title Deed & Restrictive Conditions

i) Historically erf 332 contained restrictive title deed conditions which were removed in 2003 as part of the subdivision process. These conditions included Condition C.I(5) which stated the following:

"...That no building shall be erected within 3,15 metres of any street line which forms a boundary of the erf hereby conveyed or within 3,15 metres of the open space where it forms a boundary of the erf to the sea front..."

A conveyancer certificate is not deemed necessary as the title deed restrictions applicable to erf 2123 are known to the municipality and does not affect this application.

ii) When erven 2119, 2122 and 2123 created from the subdivision of erf 322 a condition of approval was laid down which states:

"...Dat slegs een wooneenheid op Gedeelte C opgerig mag word wat argitektonies soortgelyk sal wees aan dit wat op die Gedeeltes A en B opgerig is..."

This is the only record that can be found regarding the architectural style of the proposed dwelling on erf 2123. No record can be found of an agreement between the owners of erven 2119, 2122 and 2123 or predecessors in ownership.

Compliance with this condition will be enforced at building plan stage if this application is successful.

d) Exemption for the registration of a right of way servitude over the newly consolidated property to provide access to erven 2122 and 2119, Yzerfontein.

i) A private right of way is exempted from obtaining an approval in terms of the Swartland Planning By-law. If the application is successful erven 2122 and 2123 will receive new erf numbers. The right of way will need to be registered against the new erf numbers.

e) Conclusion

i) The points mentioned in the conclusion have been addressed as part of this report. Comments will not be made on the conclusion.

f) B. Additional to the above, the following for your attention

i) The impact of the proposed garage on the south-western boundary of erf 2123 on the parking bay on erf 2122 is no different of that of a boundary wall on erf 2123. Access to the parking bay is still possible.

The size of the proposed garage on erf 2123 remains the right of that owner to fulfill in their needs.

ii) The turning circle modelling done by FBS Civil Engineering Consultants to the parking bay on erf 2122 is noted. Easy access to this parking is only possible today as a portion of erf 2123 is crossed. If this is not the case, access to the parking bay remains uninfluenced by the proposed building work on erf 2123. See the splay on erf 2123 marked in red on the picture below.



iii) The restriction of free movement from the front to the rear on erf 2122 due to the placement of the existing dwelling and is historic of nature. The development proposal on erf 2123 does not affect this restricted free movement as access to and from erf 2122 cannot be taken over erf 2123.

g) Conclusion

The points mentioned in the conclusion have been addressed as part of this report. Comments will not be made on the conclusion.

4.4 **Conclusion**

The historic background of the dwellings on the original erf 332 which was erected in 2001 and the creation of erven 2119, 2122 and 2123 in 2003, creates merit for the departures as approved by the Authorised Official.

The scale, massing and placement of the proposed building work on erf 2123 is not only optimising the development potential of the property, but also compliments the character of the existing buildings with similar character.

The impact of the departures remains to be deemed to have either minimal impact on the surrounding area with regards to views, safety, access, privacy and health concerns.

The appellant is not only an affected party but also a trustee and beneficiary of the Smit Family Trust who is the owner of erf 2122. The trust resolutions by the Smit Family Trust is questioned by the appellant which intends to take the matter to the High Court. This raises questions regarding the motive for the appeal which may be seen as a possible unreasonable action to prevent the owner of erf 2123 to develop the property.

4.3 **Conclusion**

The historic background of the dwellings on the original erf 332 which was erected in 2001 and the creation of erven 2119, 2122 and 2123 in 2003, creates merit for the departures as approved by the Authorised Official.

The scale, footprint and placement of the proposed building work on erf 2123 is not only optimising the development potential of the property, but also compliments the character of the existing buildings with similar character.

The impact of the departures remains deemed to have either minimal impact on the surrounding area with regards to views, safety, access, privacy and health concerns.

The appellant is not only an affected party but also a trustee and beneficiary of the Smit Family Trust who is the owner of erf 2122. The trust resolutions by the Smit Family Trust is questioned by the appellant which intends to take the matter to the High Court. This raises questions regarding the motive for the appeal which may be seen as a possible unreasonable action to prevent the owner of erf 2123 to develop the property.

5. **RECOMMENDATION: AUTHORISED OFFICIAL**

5.1 The appeals be dismissed for the following reasons:

- a) The re-arrangement of erven 2122 and 2123 has no effect on access to the properties as well as the zoning of the properties.
- b) The development potential of erf 2212 is not affected, while the development potential on erf 2123 is increased by coverage only.
- c) Given the historic background of the three properties it will be unfair to restrict the development potential of erf 2123.
- d) The power of attorney and permissions granted by the trust resolutions of the Smit Family Trust remains to be deemed to be sufficient.
- e) The values of surrounding properties will be enhanced rather than being impacted on negatively.
- f) A roof overhang of 0,75m is permitted by the Planning By-law.
- g) Compliance with the fire safety regulations will be dealt with at building plan stage.

- 5.2 The appellant be informed of the decision of the Appeal Authority.
- 5.3 The decision of the Authorised Official be implemented.



CLEAN AUDITS SINCE 2010/11
SKOON OUDITS SEDERT 2010/11



Munisipaliteit
Municipality
Umasipala

Ons gee gestalte aan 'n beter toekoms!
We shape a better future!
Sakha ikusasa elingcono!

File ref: 15/3/4-14/Erf 2122, 2123
15/3/6-14/Erf 2122, 2123
15/3/12-14/Erf 2122, 2123
15/3/13-14/Erf 2122, 2123

Enquiries:
A. de Jager

24 May 2023

C K Rumboll & Partners
P.O. Box 211
MALMESBURY
7299

Per Registered Post

Dear Sir/Madam

PROPOSED SUBDIVISION OF ERF 2122 AND CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN

Your application with reference number YZER/12335/NJdK, dated 30 November 2022, on behalf of A.J. Smit, refers.

- A.** By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for subdivision of Erf 2122, Yzerfontein, is approved in terms of Section 70 of the By-Law;
- B.** By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for consolidation of Portion A of Erf 2122, Yzerfontein, with Erf 2123, Yzerfontein is approved in terms of Section 70 of the By-Law;

Approval A. and B. are subject to the conditions that:

1. TOWN PLANNING AND BUILDING CONTROL

- a) Erf 2122 (398m² in extent) be subdivided into Portion A (54m² in extent) and the Remainder (344m² in extent) as presented in the application;
- b) The newly created Portion A (54m² in extent) be consolidated with Erf 2123 (365m² in extent) to form a new land unit of 419m² in extent;
- c) The right-of-way servitude over the consolidated erf (portion A of Erf 2122 and Erf 2123) and the remainder of Erf 2122, Yzerfontein be taken up in the title deeds of the properties;
- d) The legal certificate which authorises the transfer of the subdivided portions in terms of section 38 of the By-Law, will not be issued unless all the relevant conditions have been complied with;
- e) The owner/developer submits a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - i. the municipality's decision to approve the subdivision and consolidation;
 - ii. the conditions of approval imposed in terms of section 79; and
 - iii. the approved subdivision plan and consolidation plan;

- C. By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for departure from the development parameters on Erf 2123, Yzerfontein, is approved in terms of Section 70 of the By-Law, subject to the conditions that:

1. TOWN PLANNING AND BUILDING CONTROL

- a) The northern and north-eastern 4m street building lines be departed from and each reduced to 3,15m, as presented in the application;
- b) The height restriction limiting building line departure to the ground floor, be departed from and that the street building line departures described in C.1.a) be applicable to the first storey as well;
- c) No building work, including the proposed balcony on first floor level, may be closer than 3,15m to the northern and north-eastern street boundaries;
- d) No building work, including the proposed balcony on first floor level, may be closer than 3m to the eastern street boundary;
- e) The 1,5m western lateral building line be departed from and reduced to 0m for the extent of 7m to accommodate the garage, as presented in the application;
- f) The 1,5m western lateral building line be departed from and reduced to 1m for the extent of 5,1m to accommodate the portion of the dwelling (bedroom no 2) that encroaches on the building line, as presented in the application;
- g) The building line departures approved in C.1.e) and C.1.f) are restricted to the ground floor, measured from finished floor level to the finished floor level of the first floor above;
- h) The roof of the garage that encroach on the building lines be in no way utilised as terraces, balconies or any such use and that said portions be made inaccessible for such use;
- i) The maximum permissible coverage of 50% be departed from and increased to 54%;
- j) No openings, windows or doors be permitted closer than 1m to the property boundary;
- k) No swimming pool be permitted closer than 1m to the property boundary;
- l) Building plans be submitted to the Senior Manager: Development Management for consideration and approval.

2. GENERAL

- a) The approval will not exempt the owner/developer from adherence to all other legal procedures, applications and/or approvals related to the intended land use;
 - b) The approval is, in terms of section 76(2)(w) of the By-Law, only valid for a period of 5 years. All conditions of approval be complied with before the occupancy certificate be issued and failing to do so will result in the approval expiring;
- D. The registration of a right-of-way servitude over the consolidated erf (portion A of Erf 2122 and Erf 2123) and the remainder of Erf 2122, Yzerfontein, complies with the requirements of Section 34 of Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020) and is thus exempted from approval from Swartland Municipality;

Kindly provide Swartland Municipality with copies of the approved Surveyor General diagrams for record keeping purposes.

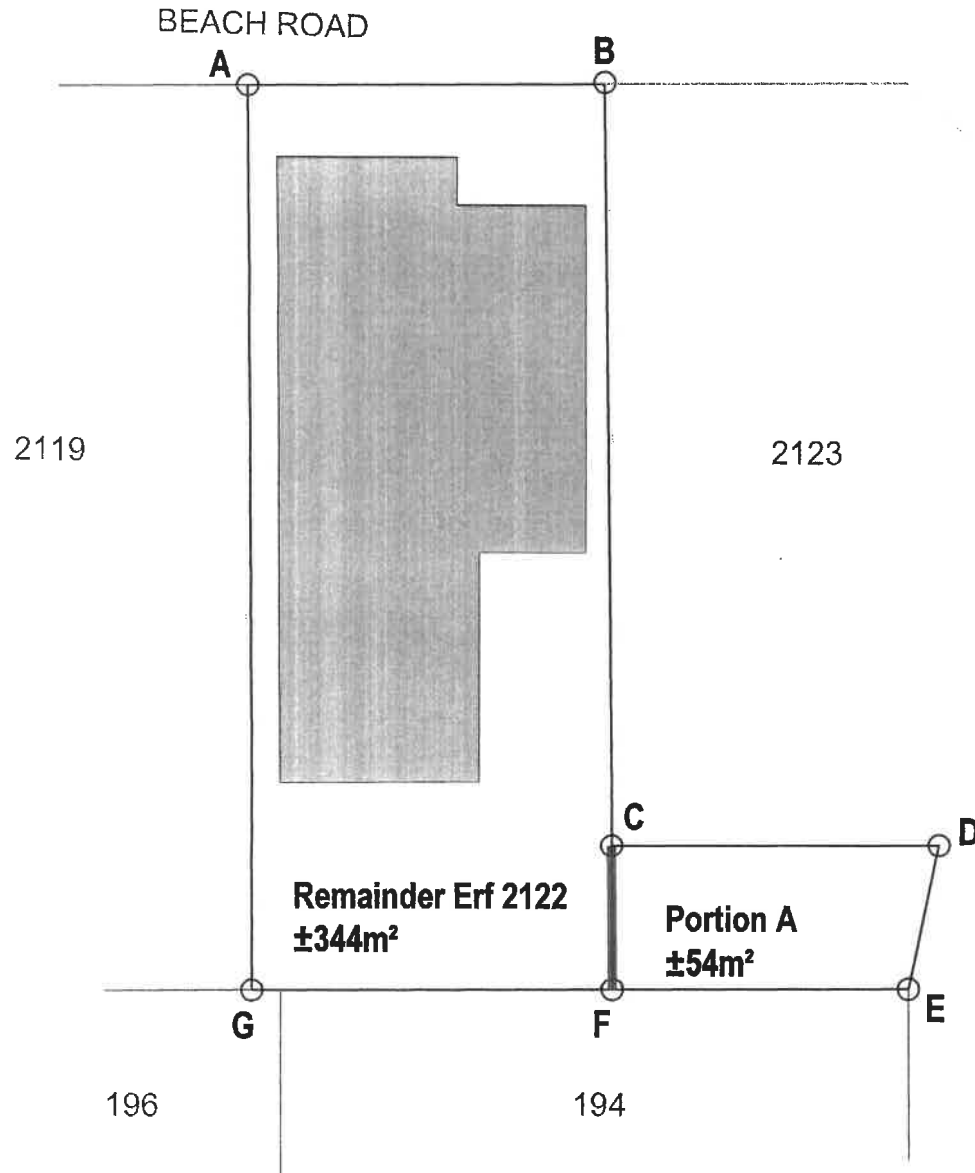
Yours sincerely


MUNICIPAL MANAGER

per Department Development Services
A.J.S

Copies: *Surveyor General, Private Bag X9028, Cape Town, 8000*
 Director: Civil Engineering Services
 Director: Financial Services
 Building Control Officer
 A.J. Smit, P.O. Box 211, Malmesbury, 7299, ajsmit@lantic.net

PLAN OF SUBDIVISION: ERF 2122 , YZERFONTEIN




**SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY**

Ondervedeling toegestaan ingevolge artikel 70 van die Verordening insake Munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020), onderhewig aan voorwaardes.

Subdivision granted in terms of section 70 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020) subject to conditions.

2023/05/24
DATUM/DATE:


MUNISIPALE BESTUURDER
MUNICIPAL MANAGER

9TH STREET

NOTES:

Figure A B C D E F G represents Erf 2122 Yzerfontein which measures ±398m². Erf 2122 is to be subdivided into:

- a) Portion A (±54m²) represented by Figure C D E F
- b) Remainder (±344m²) represented by Figure A B C F G

Subdivision Line ———

Existing building ———

Drawing by: NJ de Kock

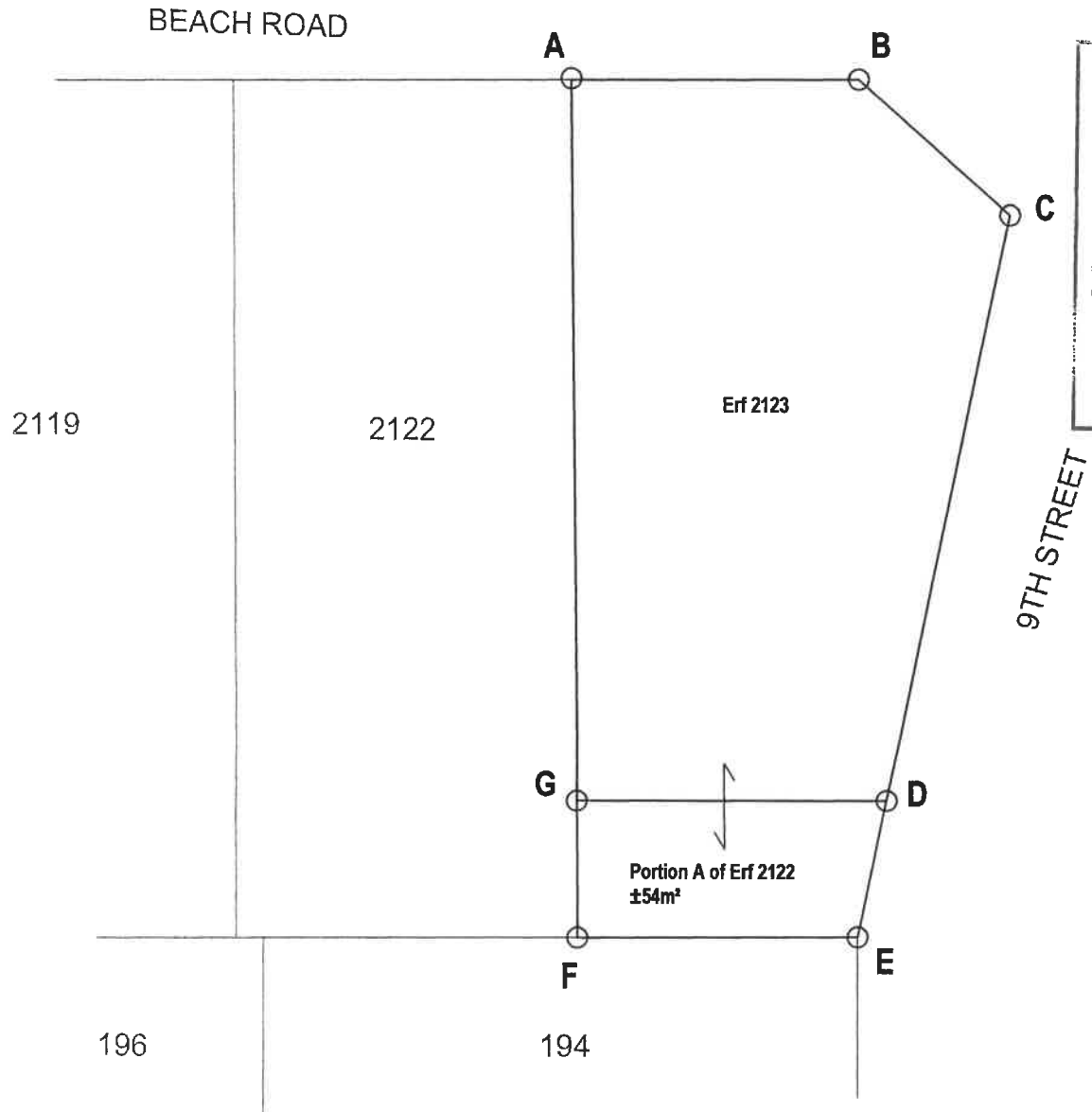
ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING

 C.K. RUMBOLL & VENNOTE
TOWN PLANNERS
PROFESSIONAL SURVEYORS
18 RAINIER STREET, MALMESBURY
Tel: 022 - 4821845
Fax: 022 - 4871661
Email: leap@rumboll.co.za

DATE: SEPTEMBER 2022	AUTHORITY: SWARTLAND MUNICIPALITY
-------------------------	--------------------------------------

REF: YZER/12335/NJdk	SCALE: NTS
-------------------------	------------

PLAN OF CONSOLIDATION: PORTION A OF ERF 2122 AND ERF 2123, YZERFONTEIN




**SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY**

Konsolidasie toegestaan ingevolge artikel 70 van die Verordening insake munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020) onderhewig aan voorwaardes.

Consolidation granted in terms of section 70 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020), subject to conditions.

2023/05/24
DATUM/DATE


MUNISIPALE BESTUURDER
MUNICIPAL MANAGER


NOTES:

Figure A B C D G represents Erf 2123 Yzerfontein which measures ±365m².

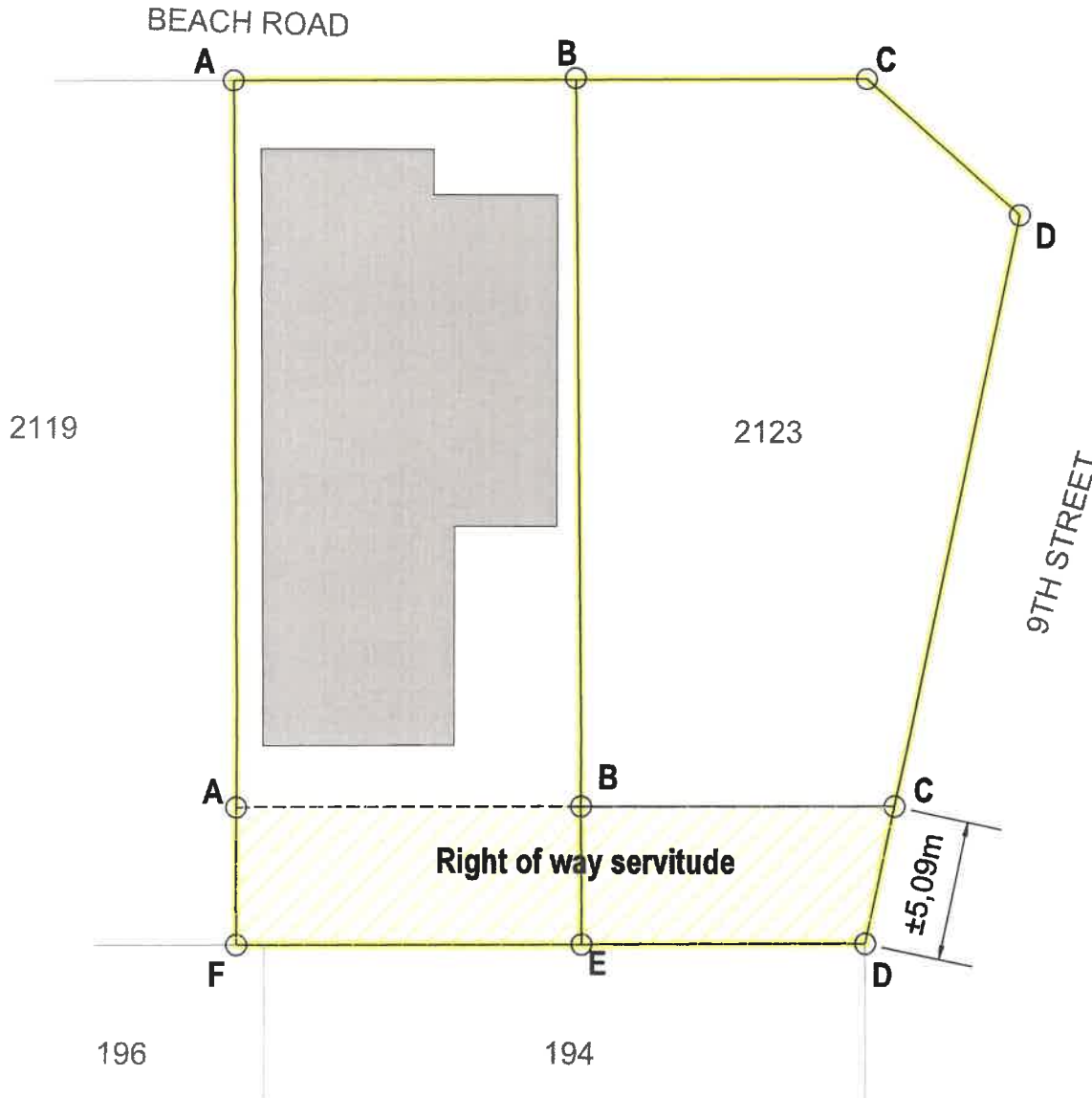
Figure G D E F represents Portion A of Erf 2122 Yzerfontein which measures ±54m².

Portion A and Erf 2123 to be consolidated to create new Erf with an extent of ±419m².

Consolidation →

Drawing by: NJ de Kock	
ALL AREAS AND DISTANCES ARE SUBJECTED TO SURVEYING	
 C.K. RUMBOLL & VENNOTE TOWN PLANNERS PROFESSIONAL SURVEYORS 16 RAINIER STREET, MALMESBURY Tel: 022 - 4821845 Fax: 022 - 4871661 Email: leap@rumboll.co.za	
DATE: SEPTEMBER 2022	AUTHORITY: SWARTLAND MUNICIPALITY
REF: YZERV12335/NJdK	SCALE: NTS

SERVITUDE RIGHT OF WAY OVER ERVEN 2122 AND 2123, YZERFONTEIN



SWARTLAND MUNISIPALITEIT SWARTLAND MUNICIPALITY

Vrygestel ingevolge artikel 34 van die Verordening insake Munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020).

Exempted in terms of section 34 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020).

2023/05/24
DATUM/DATE

[Signature]
MUNISIPALE BESTUURDER
MUNICIPAL MANAGER

NOTES:

Figure A B C D E F represents a right of way servitude over erven 2122 and 2123, Yzerfontein measuring $\pm 120\text{m}^2$

Drawing by:

NJ de Kock

ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING



C.K. RUMBOLL & VENNOTE
TOWN PLANNERS
PROFESSIONAL SURVEYORS
16 RAINIER STREET, MALMESBURY
Tel: 022 - 4821845
Fax: 022 - 4871861
Email: leap@rumboll.co.za

DATE:
SEPTEMBER 2022

AUTHORITY:
SWARTLAND MUNICIPALITY

REF:
YZER/12335/N/JK

SCALE: NTS



CLEAN AUDITS SINCE 2010/11
SKOON OUDITS SEDERT 2010/11



ANNEXURE 2

*Ons gee gestalte aan 'n beter toekoms!
We shape a better future!
Sakha ikusasa elingcono!*

File ref: 15/3/4-14/Erf 2122, 2123
15/3/6-14/Erf 2122, 2123
15/3/12-14/Erf 2122, 2123
15/3/13-14/Erf 2122, 2123

Enquiries:
A. de Jager

1 June 2023

C K Rumboll & Partners
P.O. Box 211
MALMESBURY
7299

Per Registered Post

Dear Sir/Madam

CORRECTION OF ERROR: PROPOSED SUBDIVISION OF ERF 2122 AND CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN

Your letter, with reference number YZER/12335/NJdK, dated 25 May 2023, refers.

Please note that this letter serves to correct the portion areas stated in condition A.1.a) of the letter of approval dated 24 May 2023, pertaining to the subject. The correction includes the amendment of the approved subdivision plan to reflect the corrected portion areas.

- A. By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8227 of 25 March 2020), the application for subdivision of Erf 2122, Yzerfontein, is approved in terms of Section 70 of the By-Law;
- B. By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8227 of 25 March 2020), the application for consolidation of Portion A of Erf 2122, with Erf 2123, Yzerfontein is approved in terms of Section 70 of the By-Law;

Approval A. and B. are subject to the conditions that:

1. TOWN PLANNING AND BUILDING CONTROL

- a) Erf 2122 (451m² in extent) be subdivided into Portion A (54m² in extent) and the Remainder (397m² in extent) as presented in the application;
- b) The newly created Portion A (54m² in extent) be consolidated with Erf 2123 (365m² in extent) to form a new land unit of 419m² in extent;
- c) The right-of-way servitude over the consolidated erf (portion A of Erf 2122 and Erf 2123) and the remainder of Erf 2122, Yzerfontein be taken up in the title deeds of the properties;
- d) The legal certificate which authorises the transfer of the subdivided portions in terms of section 38 of the By-Law, will not be issued unless all the relevant conditions have been complied with;
- e) The owner/developer submits a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - i. the municipality's decision to approve the subdivision and consolidation;
 - ii. the conditions of approval imposed in terms of section 79; and

Rig asseblief alle korrespondensie aan:
Die Munisipale Bestuurder
Privaatsak X52
Malmesbury 7299

Darling Tel: 022 492 2237

Tel: 022 487 9400
Faks/Fax: 022 487 9440
Epos/Email: swartlandmun@swartland.org.za

Moorreesburg Tel: 022 433 2246

Kindly address all correspondence to:
The Municipal Manager
Private Bag X52
Malmesbury 7299

Yzerfontein Tel: 022 451 2366

iii. the approved subdivision plan and consolidation plan;

- C. By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for departure from the development parameters on Erf 2123, Yzerfontein, is approved in terms of Section 70 of the By-Law, subject to the conditions that:

1. TOWN PLANNING AND BUILDING CONTROL

- a) The northern and north-eastern 4m street building lines be departed from and each reduced to 3,15m, as presented in the application;
- b) The height restriction limiting building line departure to the ground floor, be departed from and that the street building line departures described in C.1.a) be applicable to the first storey as well;
- c) No building work, including the proposed balcony on first floor level, may be closer than 3,15m to the northern and north-eastern street boundaries;
- d) No building work, including the proposed balcony on first floor level, may be closer than 3m to the eastern street boundary;
- e) The 1,5m western lateral building line be departed from and reduced to 0m for the extent of 7m to accommodate the garage, as presented in the application;
- f) The 1,5m western lateral building line be departed from and reduced to 1m for the extent of 5,1m to accommodate the portion of the dwelling (bedroom no 2) that encroaches on the building line, as presented in the application;
- g) The building line departures approved in C.1.e) and C.1.f) are restricted to the ground floor, measured from finished floor level to the finished floor level of the first floor above;
- h) The roof of the garage that encroach on the building lines be in no way utilised as terraces, balconies or any such use and that said portions be made inaccessible for such use;
- i) The maximum permissible coverage of 50% be departed from and increased to 54%;
- j) No openings, windows or doors be permitted closer than 1m to the property boundary;
- k) No swimming pool be permitted closer than 1m to the property boundary;
- l) Building plans be submitted to the Senior Manager: Development Management for consideration and approval.

2. GENERAL

- a) The approval will not exempt the owner/developer from adherence to all other legal procedures, applications and/or approvals related to the intended land use;
 - b) The approval is, in terms of section 76(2)(w) of the By-Law, only valid for a period of 5 years. All conditions of approval be complied with before the occupancy certificate be issued and failing to do so will result in the approval expiring;
- D. The registration of a right-of-way servitude over the consolidated erf (portion A of Erf 2122 and Erf 2123) and the remainder of Erf 2122, Yzerfontein, complies with the requirements of Section 34 of Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020) and is thus exempted from approval from Swartland Municipality;

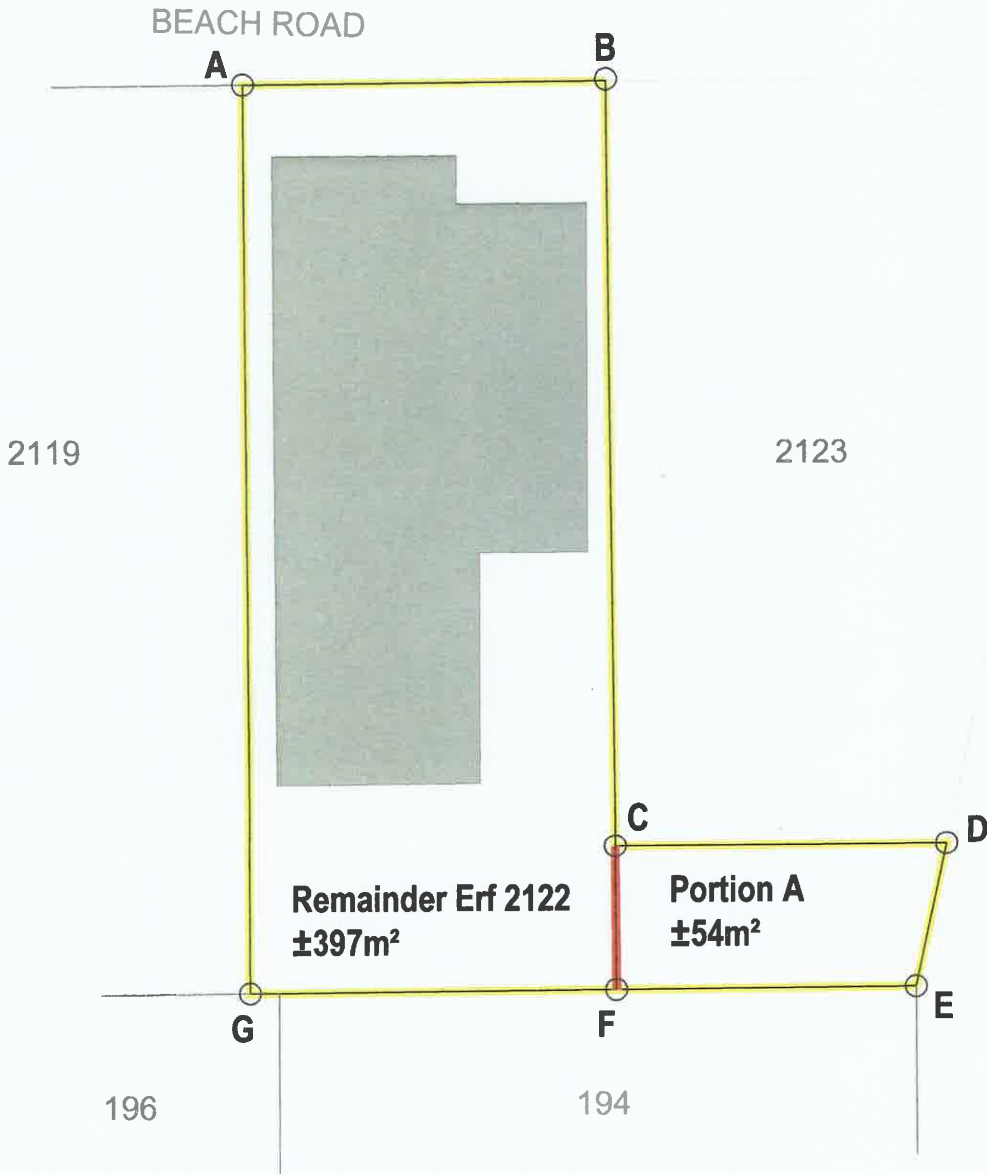
Kindly provide Swartland Municipality with copies of the approved Surveyor General diagrams for record keeping purposes.

Yours sincerely


MUNICIPAL MANAGER
per Department Development Services
Adj/ds

Copies: *Surveyor General, Private Bag X9028, Cape Town, 8000*
 Director: Civil Engineering Services
 Director: Financial Services
 Building Control Officer
 A.J. Smit, P.O. Box 211, Malmesbury, 7299, ajsmit@lantic.net

PLAN OF SUBDIVISION: ERF 2122 , YZERFONTEIN



SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY

Onderverdeling toegestaan ingevolge artikel 70 van die Verordening insake Munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020), onderhewig aan voorwaardes.

Subdivision granted in terms of section 70 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020) subject to conditions.

2023/06/01
DATUM/DATE

[Signature]
MUNISIPALE BESOUJDER
MUNICIPAL MANAGER

- NOTES:
- Figure **A B C D E F G** represents Erf 2122 Yzerfontein which measures ±451m². Erf 2122 is to be subdivided into:
- a) Portion A (±54m²) represented by Figure **C D E F**
 - b) Remainder (±397m²) represented by Figure **A B C F G**

Subdivision Line ———

Existing building ———

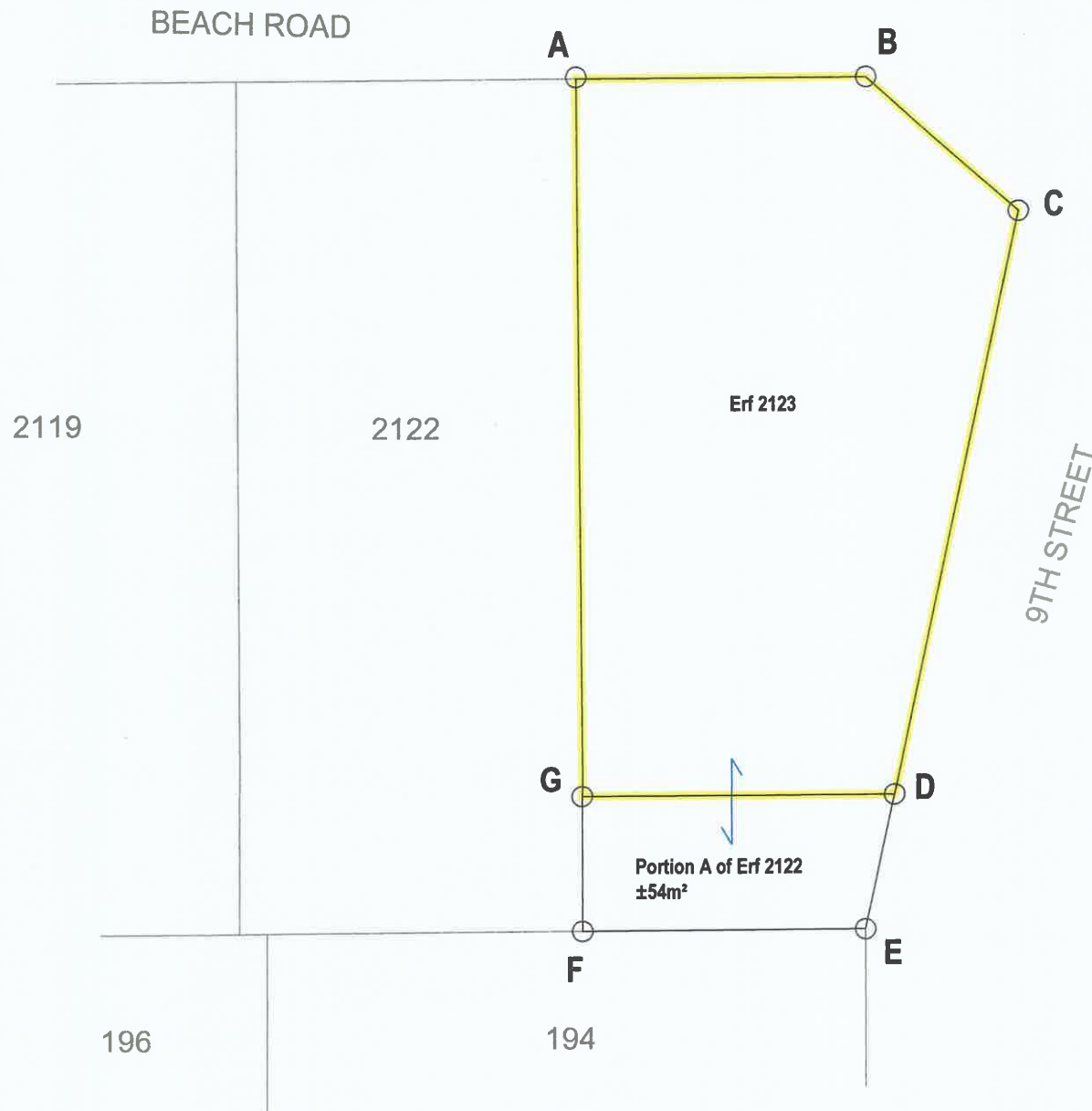
Drawing by: NJ de Kock

ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING

C.K. RUMBOLL & VENNOTE
TOWN PLANNERS
PROFESSIONAL SURVEYORS
16 RAINIER STREET, MALMESBURY
Tel: 022 - 4821845
Fax: 022 - 4871661
Email: leap@rumboll.co.za

DATE: SEPTEMBER 2022	AUTHORITY: SWARTLAND MUNICIPALITY
REF: YZER/12335/NJdK	SCALE: NTS

PLAN OF CONSOLIDATION: PORTION A OF ERF 2122 AND ERF 2123, YZERFONTEIN



**SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY**

Konsolidasie toegestaan ingevolge artikel 70 van die Verordening insake munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020) onderhewig aan voorwaardes.

Consolidation granted in terms of section 70 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020), subject to conditions.

2023/06/01
DATUM/DATE


MUNISIPALE BESTUURDER
MUNICIPAL MANAGER

NOTES:

Figure A B C D G represents Erf 2123 Yzerfontein which measures ±365m².

Figure G D E F represents Portion A of Erf 2122 Yzerfontein which measures ±54m².

Portion A and Erf 2123 to be consolidated to create new Erf with an extent of ±419m².

Consolidation →

Drawing by: NJ de Kock

ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING

 C.K. RUMBOLL & VENNOTE
TOWN PLANNERS
PROFESSIONAL SURVEYORS
16 RAINIER STREET, MALMESBURY
Tel: 022 - 4821845
Fax: 022 - 4871661
Email: leap@rumboll.co.za

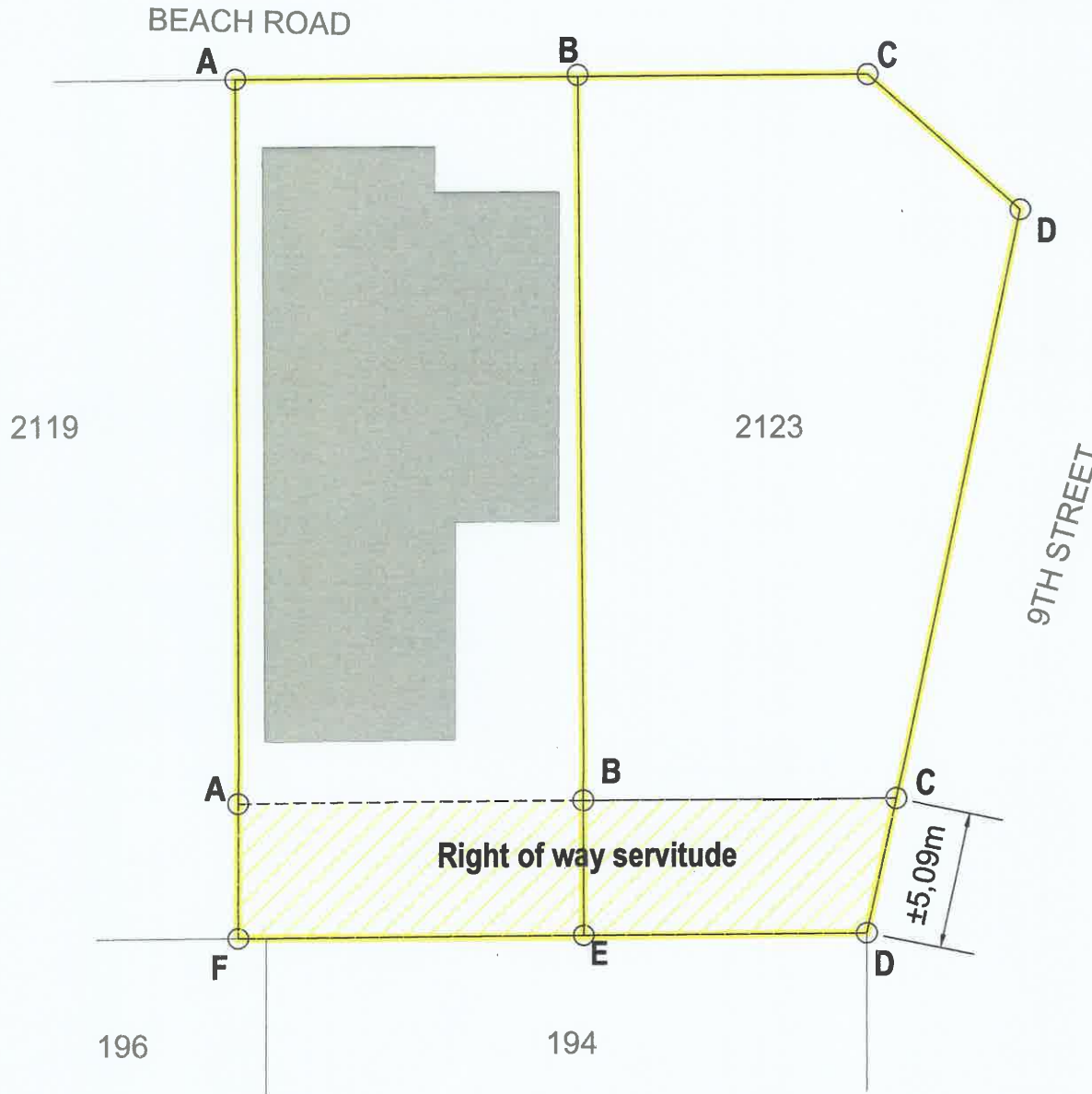
DATE:
SEPTEMBER 2022

AUTHORITY:
SWARTLAND MUNICIPALITY

REF:
YZER/12335/NJdK

SCALE: NTS

SERVITUDE RIGHT OF WAY OVER ERVEN 2122 AND 2123, YZERFONTEIN



**SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY**

Vrygestel ingevolge artikel 34 van die Verordening insake Munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020).

Exempted in terms of section 34 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020).

2023/06/01
DATUM/DATE


MUNISIPALE BESTUURDER
MUNICIPAL MANAGER

NOTES:

Figure A B C D E F represents a right of way servitude over erven 2122 and 2123, Yzerfontein measuring ±120m²

Drawing by: NJ de Kock

ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING

 C.K. RUMBOLL & VENNOTE
TOWN PLANNERS
PROFESSIONAL SURVEYORS
16 RAINIER STREET, MALMESBURY
Tel: 022 - 4821845
Fax: 022 - 4871661
Email: leap@rumboll.co.za

DATE: SEPTEMBER 2022 AUTHORITY: SWARTLAND MUNICIPALITY

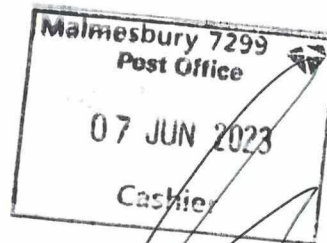
REF: YZER/12335/NJdk SCALE: NTS

15/3/4-14/Erf 2122, 2123
 15/3/6-14/Erf 2122, 2123
 15/3/12-14/Erf 2122, 2123
 15/3/13-14/Erf 2122, 2123

CORRECTION OF ERROR: PROPOSED SUBDIVISION OF ERF 2122 AND CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN

Per Registered Mail

CK Rumboll & Partners
 P.O Box 211
 MALMESBURY
 7299



DATE of DELIVERY DATUM van AFLEWERING INITIALS of DELIVERY OFFICER VOORLETTERS van AFLEWERINGSBEAMPTTE	<p>IDENTIFICATION REQUIRED - IDENTIFIKASIE VERLANG</p> <p>Receipt of INSURED PARCEL Ontvangs van VERSEKERDE PAKKET</p> <p>Ingelewer te: _____ Addressed to: _____ Geadresseer aan: _____</p> <p style="text-align: center;">No. 018056</p> <p style="text-align: center;">  Issuing Officer / Uitreikingsbeampte </p> <p style="text-align: center;">  Signature of recipient / Handtekening van ontvanger </p> <p>Identification/Identifikasie: This article will be returned to the sender if not collected within 21 days of the date of issue of the original delivery advice. Hierdie posstuk sal aan die afsender teruggestuur word as dit nie binne 21 dae na die uitreikingsdatum van die oorspronklike afleweringadvies afgehaal is nie.</p>	<p>Post Office </p> <p>Malmesbury 7299 Post Office</p> <p>07 JUN 2023</p> <p>Cashier</p> <p>Date stamp Datumstemple</p>
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Note: Demurrage at the applicable rate is payable as from _____ betaalbaar
Opm: Lêgeld teen die toepaslike tarief is vanaf _____

BY HAND

The Executive Mayor
Swartland Municipality
MALMESBURY

Amos
14/06/2023

Our reference	JP/tk/JP2451
Your reference	
Date	12 June 2023

Dear Sir

APPEAL AGAINST DECISION:

SUBDIVISION OF ERF 2122, YZERFONTEIN, CONSOLIDATION WITH ERF 2123, TOGETHER WITH A DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN

DATE OF DECISION: 24 MAY 2023

I refer to the above matter in which I act on behalf of Mrs Ilze Smit who is as you are aware a trustee and beneficiary of The Smit Family Trust.

My client's rights were affected by the decision referred to above and as a result, she is entitled to lodge an appeal against the decision as she hereby does.

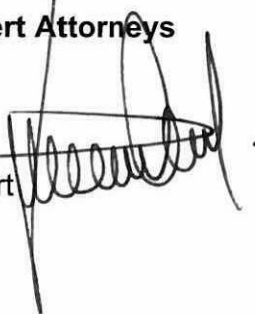
I attach her appeal documents.



Yours faithfully

J P Joubert Attorneys

J P Joubert

A handwritten signature in black ink, appearing to be 'J P Joubert', written over a horizontal line. The signature is stylized with loops and a long vertical stroke at the end.

Copy to:

Mr Alwyn Burger

alwynburger@swartland.org.za

and

Mr Alwyn Saayman

alwyn@swartland.org.za

Hallo Alwyn

I refer to my phone call today.

Attached please find the following documents supporting the above Appeal:

1. I SMIT APPEAL report pdf. dated 10/06/23
2. I SMIT OBJECTIONS report pdf. dated 10/0623
3. ARCHITECT PC van Rensburg report
4. JP Joubert (attorney) letter
5. Marten Daling (Adv) opinion
6. ABSA NOTICE OF PAYMENT dated 12/0623

If there are any more outstanding documents, please let me know.

Mr Burger, can you please communicate a notice of appeal to all owners who commented on the application per registered mail OR email address (*in terms the Electronic Communications & Transactions Act 25 of 2002*), as well as any other person Swartland Municipality may determine?

Thank you and kind regards

Ilze Smit

OBJECTIONS: LATEST APPLICATION FOR THE SUBDIVISION OF ERF 2122, CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN, DATED 24 MAY 2023

I, the undersigned, is a trustee of the Smit Family Trust (hereafter 'Trust') (registration number IT 4612/96), the owner of Erf 2122, Yzerfontein.

As a beneficiary of the Smit Family Trust I am also an affected person.

My contact details are as follows:

Mrs Ilze Smit

Email: ilze.smit2015@gmail.com

Cell: 083-287-6372

Address: 26 Andrag Road, Vierlanden, Durbanville, 7550

Preferred communication method: Email

Interest in the land use application and reasons for objecting: As trustee; beneficiary and affected person of the adjacent property Erf 2122, Yzerfontein, I have the opinion that the proposed land use applications for Erf 2123 will have negative effects on the dwelling on Erf 2122 and is therefore not in best interest of the Trust.

I herewith **object and appeal** against the following land use applications proposed for adjacent Erf 2123, which were submitted to the Swartland Municipality:

- A. Subdivision of Erf 2122, Yzerfontein into a portion A (+/- 54m²) and the remainder (+/- 344m²)
- B. Consolidation of the proposed portion A of Erf 2122 with Erf 2123, Yzerfontein to create a larger land unit.
- C. Permanent departure of development parameters:
 1. The relaxation of the northern and north-eastern street building line from 4.0m to +/- 3.15m (ground and first floor) to accommodate the proposed dwelling.
 2. The relaxation of the western side building line from 1.5m to +/-1.0m (ground floor) to accommodate the proposed dwelling.
 3. The relaxation of the western side building line from 1.5m to 0m to accommodate the proposed garage
 4. The relaxation of coverage from the prescribed 50% to +/- 54%

- D. Exemption for the registration of a right of way servitude over the newly consolidated property to provide access to Erven 2122 and 2119, Yzerfontein.

THE REASONS FOR THE OBJECTIONS ARE EXPLAINED IN MORE DETAIL BELOW:

A. SUBDIVISION OF ERF 2122, YZERFONTEIN INTO A PORTION 'A' (+/- 54M2) AND THE REMAINDER (+/- 344M2):

- a. Subdivision of Erf 2122 into a portion A is not to the benefit of the Trust (see par 6.1 and Table 2 of the application):

It reduces the size of Erf 2122 from 398m² to 344m². Before the proposal, coverage of Erf 2122 is 54% and after the proposal it jumps to 63%. Note that the dwelling on Erf 2122 was built in 2000 and the registration of the boundary lines only done in 2004, consequently the increased coverage of 54%. Swartland Municipality cannot be ignorant about this increased coverage as it calls for possible rezoning of Erf 2122 to allow for the 63% coverage.

On the other hand the subdivision increases the size of Erf 2123 from 365m² to 419m². Before the proposal, coverage of Erf 2123 is 59% and with the prospect of an additional 54m² subdivided from Erf 2122, the coverage is reduced to 54%. This is clearly a biased action to benefit one to the disadvantage of another.

The proposed smaller erf (proposed 344m² instead of original 398m²) restricts further development of Erf 2122. This decision is not in best interest of the owner of Erf 2122 (Trust and beneficiaries).

A statement by Rumboll et al (p18): *'...due to the small extent of the properties created from the mother Erf 2014, departure of coverage is requested.'* The owner of Erf 2123 should have done his homework properly before purchasing Erf 2123, but instead requested all departures afterwards to be granted to him to be able to build a house that does not fit on Erf 2123 to the detriment of neighbouring properties and owners.

- b. According to the SG report on the historical development of Erven 2122 and 2123, the 54m² servitude was never part of Erf 2123 (see p66). Christie Smit *'...wants to return this part to the owner'*. Furthermore Riaan Smit bought the Erf 2123 in 2021 sized 365m² without the servitude.

- c. The proposed subdivision of Erf 2122 is based on an invalid Power of Attorney (POA) submitted and accepted by Swartland Municipality although they received documentation on 10 February 2023 from attorney Johan du Plessis that the POA is for various reasons not valid. Swartland Municipality however, continued with approvals (See par 9.1 Trust Deed: Power of Trustees).
- d. Swartland Municipality also continued with further approvals although they were also notified that the trustee meetings were invalid. An application to the High Court is pending to set aside the power of attorney and minutes of invalid trust meetings.
- e. Swartland Municipality and the owner of Erf 2123 were also notified that they are proceeding on the basis of these illegal actions on their own risk.

B. CONSOLIDATION OF THE PROPOSED PORTION 'A' OF ERF 2122 WITH ERF 2123, YZERFONTEIN TO CREATE A LARGER LAND UNIT:

The comments under the paragraph .A: SUBDIVISION applies to the consolidation.

Swartland Municipality should indicate whether a rezoning of Erf 2122 is required due to the increased coverage to approximately 63% if the proposal is approved. Should this be required as stated in the *WC Government Provincial Gazette Extraordinary 8226*, it is further confirmation that the subdivision and consolidation are not to the benefit of the Trust and is apposed in every way.

C. PERMANENT DEPARTURE OF DEVELOPMENT PARAMETERS:

1. THE RELAXATION OF THE NORTHERN AND NORTH-EASTERN STREET BUILDING LINE FROM 4.0M TO +/- 3.15M (GROUND AND FIRST FLOOR) TO ACCOMMODATE THE PROPOSED DWELLING.

I wish to contend that the abovementioned impact on Erf 2122 will be much larger than what is suggested in the application:

- 1.1 A statement by Rumboll et al that '*... the precedent to build closer to the street building lines has already been set*', cannot be accepted as a general condition of approval for proposed new developments in Yzerfontein. Rumboll et al request in the new application that the historic parameters be adhered to for the approval of this application, cannot be accepted. All developers and proposed developments are bound by parameters as set out by the local

council and Western Cape Government. The owner of Erf 2123 bought the property after the proclamation of the road - previous Erven 2718 and 2013. The development on Erf 2122 in year 2000 was done within parameters as set out by National Building Regulations and the provincial Gazette Extraordinary 8226.

1.2 Furthermore, the proposed relaxation of the northern street building line will have an adverse effect on the dwelling of Erf 2122 insofar as the sun will be blocked for a large part of the day causing the dwelling, and specifically the 4 bedrooms and 4 bathrooms on the eastern side of Erf 2122, to be cold and dark.

1.3 A statement by Rumboll et al (p21): '*...it is highly unlikely that the development proposal will have a negative impact on the value of existing properties in the surrounding area; it will rather enhance the high-end residential character of the area*'. See report of architect PC van Rensburg in this regard.

2. THE RELAXATION OF THE WESTERN SIDE BUILDING LINE FROM 1.5M TO +/-1.0M (GROUND FLOOR) TO ACCOMMODATE THE PROPOSED DWELLING.

2.1 The relaxation of the 1.5m building line to approximately 1.0m will have a serious impact on the residents of Erf 2122 as all services including cold room equipment and air conditioners etc. will be placed in this area resulting in constant noise pollution, aggravated by the narrow passage between the 2 dwellings, as well as the proposed 750mm roof overhang. Note that windows of all 4 bedrooms and 4 en-suite bathrooms of dwelling Erf 2122 are situated against this proposed passage way. I strongly oppose the 750mm roof overhang as this forms part of the dwelling structure and will curtail only 250mm from the boundary line which is unacceptable.

2.2 A previous statement by Rumboll et al that the privacy of Erf 2122 '*...will not be adversely affected... as the building where relaxation is proposed does not consist of any windows or doors...*' This is not true, as sliding doors for a pyjama lounge / TV room on the ground floor is indicated on the proposed plans, opposite and in close proximity of 2 bedrooms and en-suite bathrooms of Erf 2122, as well as an outside shower. Two bathrooms / toilet windows are also indicated on the first floor of the proposed plans, opposite and in close proximity of the front door and reception area of Erf 2122.

This will result in invasion of privacy and quietness to the residents of dwelling on Erf 2122 occupying bedrooms and en-suite bathrooms on ground floor as well as the first floor. The curtains and windows need to be closed permanently to counteract this invasion of privacy and quietness for the residents of Erf 2122, leaving the rooms dark and humid.

Furthermore the above departure is to accommodate a larger bedroom to '*... ensure sufficient living and cupboard space within the bedroom*'. This departure is a serious invasion of the privacy of the residents of Erf 2122 as this bedroom is adjacent to our outside social area. This cannot be allowed.

2.3 Access to services and maintenance will not be possible as a security gate is shown on the proposed plan blocking free access to the eastern side of Erf 2122. Furthermore, this proposal denies the residents of Erf 2122 of the privilege enjoyed for 23 years to have access all around their dwelling.

2.4 As mentioned above, all 4 bedrooms and en-suite bathrooms, ground and first floor, are situated on the eastern boundary of Erf 2122. The construction of a 6.6m high double storey wall from the southern boundary (relaxed to 0m) up to the northern boundary (relaxed to 1m) will put the entire eastern side of the dwelling on Erf 2122 in the shade and hence block all sun; light; proper ventilation; and existing view from bedrooms and bathrooms on the eastern side of the Erf 2122. A statement by Rumble et al that '*it is unlikely that there will be detrimental impacts on the existing views on Erf ...2122*' is therefore not true.

2.5 According to Rumboll et al '*the small relaxation [of the western side building line] will improve the aesthetics of the street and building*'. This statement is not justifiable as the relaxation is almost onto the dwelling of Erf 2122 and therefore do not improve any aesthetics of either Erf 2122 or 2123. It also has a negative effect on the value of the dwelling of Erf 2122. See inserted 3D image contradicting the statement by Rumboll.

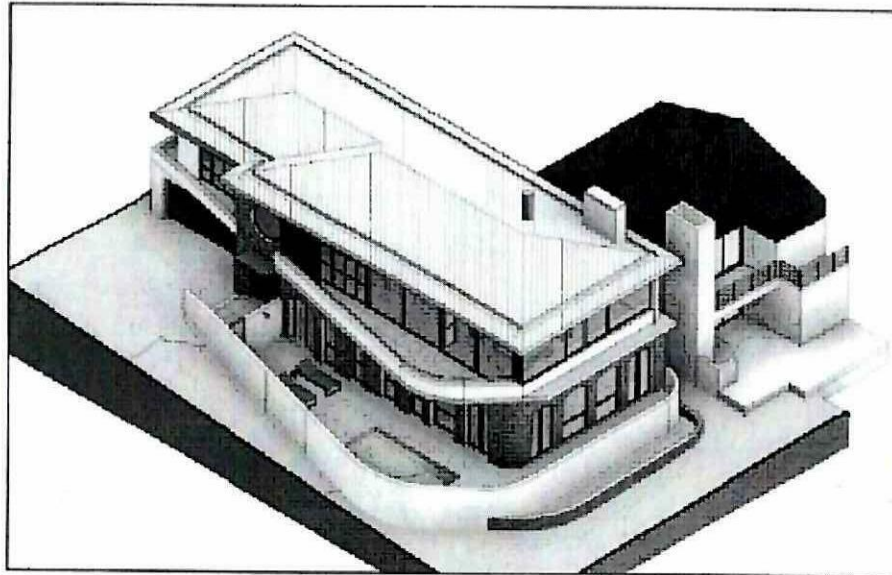


Figure 5: Proposed development and alignment with Erf 2122

3. THE RELAXATION OF THE WESTERN SIDE BUILDING LINE FROM 1.5M TO 0M TO ACCOMMODATE THE PROPOSED GARAGE

3.1 The relaxation of the 1.5m building line to 0m will not allow access around the dwelling on Erf 2122. Refer chapter 12 par 12.2.1(iii) of THE PROVINCE OF THE WESTERN CAPE: PROVINCIAL GAZETTE EXTRAORDINARY 8226: '*an access way, other than through a building 1.0m wide shall be provided from a public street to every vacant portion of the land unit concerned, other than a courtyard*'.

3.2 The relaxation of the 1.5m western building line to 0m and hence the total blocking of access around the dwelling on Erf 2122 will result in the remaining section of Erf 2122 being alienated and in effect becoming part of Erf 2123.

3.3 The proposed relaxation of the 1.5m building line to 0m will furthermore have an impact on the front door and reception area of the dwelling on Erf 2122. The previous proposed building plan indicates a washing line area right in front of the front door of dwelling on Erf 2122. This will be unsightly and can never be considered for approval.

3.4 The proposed relaxation of the 1.5m building line on the western boundary to 0m will result in the 750mm roof overhang being approximately 880mm from the dwelling on Erf 2122. This

will have a detrimental effect in the event of fire, as well as deprive the dwelling on Erf 2122 from necessary sunlight. In the event of fire it is questionable if an insurance policy will cover damages if building is not according to code requirements. There is no access around the dwelling on Erf 2122 due to proposed garage with 0m building line; access not possible due to proposed security/pedestrian gate at northern boundary; and passage between the dwellings is too narrow for effective firefighting. It is requested that all code requirements of part T of SANS 10400 are strictly adhered to.

3.5 The question arises why the owner of Erf 2123 insists to have an enlarged garage of 59m² built onto Erf 2122. The garage also houses a laundry which will spill over into the area in front of Erf 2122 front door. Rumboll et al announces these beachfront properties as “high end” developments. How can this be approved with washing lines in front of the neighbouring front door.

**DEPARTURE FROM THE 1.5M SIDE BUILDING LINE (SOUTHERN BOUNDARY)
TO 0M WITH REGARD TO THE GROUND FLOOR AND 1M IN REGARD OF THE FIRST
FLOOR.**

With regards to the proposed building line relaxation on the southern boundary, a previous application stipulates that *“It is recognised that Erven 194 and 2122 is impacted by the proposed departures on the ground floor level...”*

My objections against the proposed relaxation of the side building line (southern boundary) are explained in more detail below:

- a. The proposed relaxation of the southern & western building lines to 0m will have a detrimental effect on the driveway and the parking area on the eastern boundary of Erf 2122. Minimum turning circles will not be possible with minimum standards not met. The proposed position and size of the garage will result in turning circles of 2.1m to 2.8m respectively. A minimum turning circle for a medium to large sedan vehicle is 5.9m. Figure 1 below indicates a modelled turning circle to allow parking for Erf 2122. The relaxation of the southern and western building lines to 0m is thus not possible and can therefore not be considered for approval.
- b. Furthermore, the driveway is shared with Erf 2119. Reducing the width of the driveway in the new application from 5.88m to 5.0m will have an effect on traffic flow. The current 5.88m

driveway width barely allows for 2 way traffic which in busy holiday times are often used as such. Reducing the width of the driveway will result in traffic backing up into Ninth Street, should access be blocked by in/outgoing vehicles. The T junction in close proximity already calls for careful entrance / exit strategies.

- c. Rumboll et al stated (p16): '*...the garage is proposed on the narrowest portion of the property ... at the optimal use of available space. The owners of Erf 2122 also gave permission to encroach on the building lines*'. Noting '*optimal use of available space*' is a further indication that the owner of Erf 2123 do not respect the neighbours' personal space.
- d. I have not given permission to this encroachment of the building lines as I am being side lined in decision making by various attempts and officials, and consent is pushed through by means of invalid ways to the benefit of owner of Erf 2123.

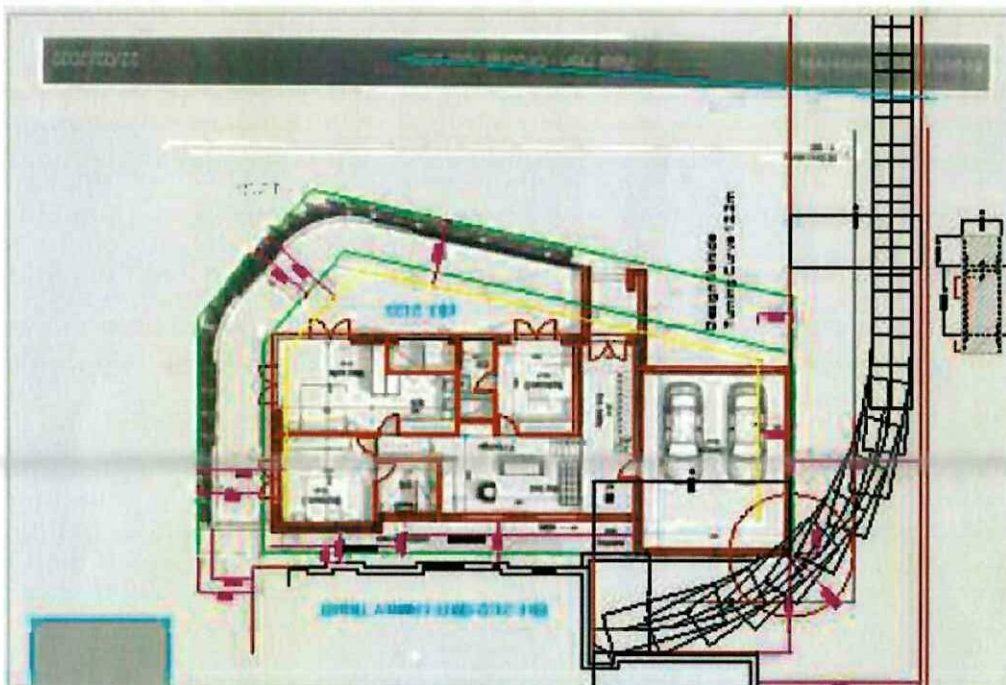


FIGURE 1: IMPACT ON ACCESSIBILITY OF PARKING AND OTHER MATTERS

EASTERN BOUNDARY

Although the eastern boundary does not have a direct impact on Erf 2122, there are a few points of importance to mention:

- a. Rumboll et al previously mentioned that *'the road reserve on the eastern boundary is very large... which is more than sufficient to accommodate safe movement of traffic'*. However, the entire road on the eastern side of the proposed dwelling has NO sidewalks for pedestrians for safe walking to the beach.
- b. The proposed building plan parameters, indicates a double garage with carriageway crossing from Ninth Street. The total length of the carriageway crossing of Erven 194; 2122-2119; and 2123 (7.3m + 5.88m+ 6.7m respectively) amounts to 19.88m. This contradicts the maximum of 8.0m as prescribed in the gazette. Refer PROVINCIAL GAZETTE EXTRAORDINARY 8226 Par 13.1.3 (a) (b) (c).

4. DEPARTURE FROM THE ALLOWABLE COVERAGE.

- a. The proposed building plans are submitted as if the subdivision of Erf 2122 (54m²), and consolidation with Erf 2123 are already approved and registered.
Erf 2123 is 365m² in size which means that the existing allowable coverage on Erf 2123 is 182.5m². The coverage remains at 59% as the proposed subdivision of Erf 2122 and consolidation with Erf 2123 is not registered and is contested. The proposed coverage with departures at all 4 boundaries is +/-204m², thus 21.5m² over the allowable.
- b. The approval of this subdivision by 2 of 3 trustees of the Smit Family Trust was done in an unlawful manner and Swartland Municipality was well informed thereof. This subdivision and accompanying actions are appealed and in the process of Higher Court application to reverse and interdict further approvals.
- c. A statement is made that *"...due to the shape of the property it has very little development potential"* (p14). This was known to the owner when he purchased Erf 2123, but afterwards all options were utilised to build a house that does not fit the Erf.
- d. There is no reason why the proposed dwelling cannot be planned with skilful architecture within the parameters without disadvantage to the surrounding properties and owners.

TITLE DEED & RESTRICTIVE CONDITIONS

- a. Rumboll et al mentioned that 'there are no physical or title restrictions that will prohibit the proposed development...'. Furthermore, Rumboll et al, state '*Erf 2123 does not hold any heritage significance to the Swartland Heritage Survey...and can therefore be developed to its full potential*'(par 5).

However, the Title Deed (T39250/2021) of Erf 2123 makes references to conditions in historical Title Deeds (e.g. T10028/1951, T3728/1937, etc.) that are still relevant to and applicable to this property Erf 2123. I believe it would be wise for a conveyancer to inspect the historical title deeds to confirm whether there are any restrictive conditions in these historical title deeds that might need to be removed.

- b. Furthermore, during the initial planning of the development on Erven 2119; 2122; and 2123 in 1999, a mutual agreement was made that the 3 owners would seek one architectural style for aesthetic reasons with individualised layouts for the 3 dwellings. Erf 2123 was sold with such plan. This agreement is still standing, but not adhered to by the new owner of Erf 2123.

D. EXEMPTION FOR THE REGISTRATION OF A RIGHT OF WAY SERVITUDE OVER THE NEWLY CONSOLIDATED PROPERTY TO PROVIDE ACCESS TO ERVEN 2122 AND 2119, YZERFONTEIN

The right of way is currently registered in favour of Erf 2119. In the highly unlikely event of the servitude section (54m²) of Erf 2122 be consolidated with Erf 2123, it is obvious that Erf 2113 will receive a new erf number, and right of way servitude will have to be registered in favour of both Erven 2112 and 2119. It makes absolutely no sense to apply for exemption of the obvious.

CONCLUSION

Rumboll et al stated '*... the architectural effect of the building line relaxation will enhance the appearance of a public street*' (Par 6). This statement is not applicable as the departure of all building lines have a negative effect on the comfort, privacy and appearance of the dwelling on Erf 2122.

The development proposal for Erf 2123 will have a negative impact on the value of Erf 2122, as the latter will give up the spacious appearance of the existing dwelling to a rather cramped-in

dwelling on the foreshore/beach. Town planning regulations are specifically set and continuously amended to ensure harmonious living to all neighbouring owners. Swartland Municipality will set a precedent by approving encroachments and relaxing standards to the benefit of one owner and to the detriment of other.

To develop property to its full potential does not mean to relax all restrictions and building lines. Rumboll et al acknowledged that '*...there is limited development within the Residential Zone 1 development parameters*'. Due to the size; narrowness; slanted slope; shape; and limited development potential of Erf 2123, as well as the resultant request for relaxation of all four (4) building lines, and the negative effect thereof on surrounding properties, are all indications that Erf 2123 is not suitable to accommodate the proposed dwelling.

In the event of proper and open communication it would have saved a lot of time and cost for all parties involved. It is regrettable that the impact of the proposed dwelling on neighbours has to be mediated by legal opinion and not by the owner of Erf 2123 himself.

The under-signed acknowledges the right of the owner to develop his property and does not object to the construction of a house on Erf 2123, but believe that such a dwelling should be constructed within the existing development parameters of the Single Residential Zone 1 without any departures from these parameters.

I trust that all decision-making regarding the outcome of this application will be guided by relevant statutory land use planning systems and gazettes, as well as consideration of the affected parties' rights and privileges. I also request any decision making body to be completely unbiased and just in their verdict.

Yours faithfully

I Smit

10/06/23

ILZE SMIT

DATE

08/06/2023

TO WHOM IT MAY CONCERN

OPINION ON THE IMPACT OF PROPOSED DEPARTURES ON ERF 2123 ON THE NEIGHBOURING DWELLING ON ERF 2122 YZERFONTEIN: ADDENDUMS A-E REFER:

We were approached by Ilze Smit to give an opinion on the health, aesthetical, fire safety and diminished value impact on Erf 2122 in view of departures applied for the neighbouring Erf 2123.

- (a) Health Impact:
The departure application requests a relaxation of a 1.5m building line to 1m between Erf 2123 and 2122. The existing dwelling on Erf 2122 has a set-back of approximately 630mm from the boundary. The present 1.5m building line applicable to Erf 2123 gives a distance of 2.130m between the two double storey dwellings. This departure therefore reduces the distance to 1.630m, which will have a negative effect on the natural light, visual and acoustic privacy between the two adjoining properties. (Addendum A)
- (b) Aesthetical Impact:
We differ from the opinion expressed in the Rumboll Report as follows:
The application for relaxation of the abovementioned building line from 1.5m to 1m would have a negative effect on the aesthetical appearance of the existing dwelling on Erf 2122.
A minuscule gap of 1.630m between two double storey dwellings of different architectural value and not designed in relation to each other, will in our opinion have a negative impact on the Beach Road street scape. We propose a similar setback between Erf 2122 and 2123 as per the opposite side between Erf 2122 and 2119. (Addendum D)
- (c) Impact on surrounding Views:
A relaxation of the building line to 1m combined with the height of the proposed boundary wall on Erf 2123 will have a considerable impact on the sea view from both levels of the existing dwelling on Erf 2122. (Addendum E)
- (d) Fire Safety:
SANS 10400-T:2011 (Edition 3) calls for certain safety distances depending on the area of the window openings in an external wall.
The window openings of the existing dwelling on Erf 2122 is 11.32m², and the window openings in the proposed dwelling on Erf 2123 is 11.5m²
Tabel 2 calls for a safety distance of 2,4 - 3.8m for Occupation Use H4 (Dwellings). Due to the proximity of two double storey dwellings we recommend a Fire Engineer to advise on a minimum safety distance due to the risk posed to both these structures. This should be in accordance with SANS 10400-T in order to comply with the fire regulations (Addendums A,B & C)
- (e) Negative Value Impact:
We recommend the Smit Family Trust obtain a valuation of the property to ascertain the negative impact of the proposed departures applied for by the owners of Erf 2123. This valuation should allow for the loss in value due to the consolidation of a 54m² portion of the ROW previously assigned to Erf 2122. The Sale Agreement between the Smit Family Trust with the owner of Erf 2123 need to be available to determine the value of this sale.



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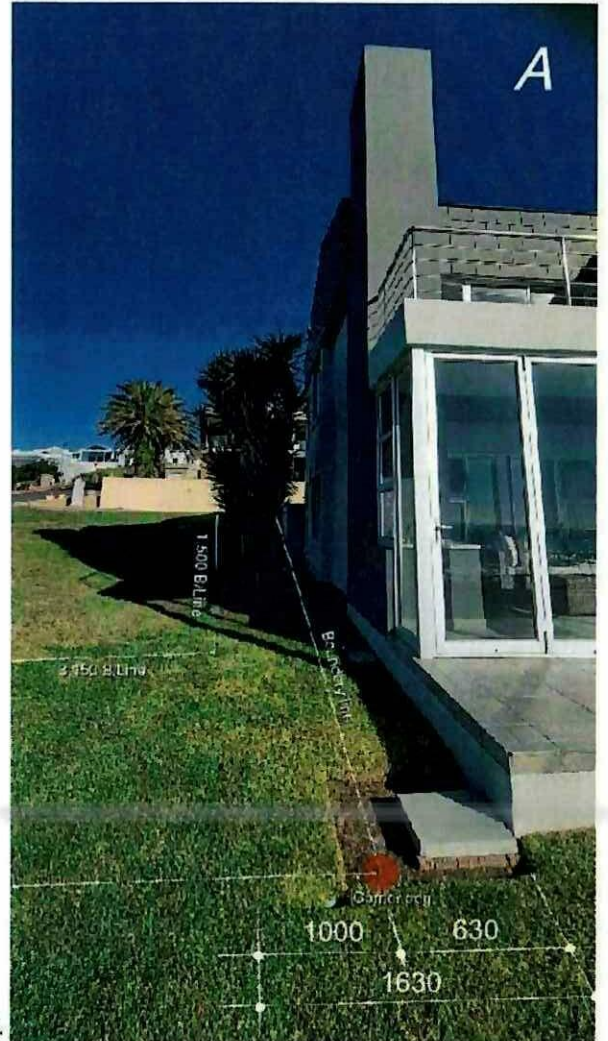
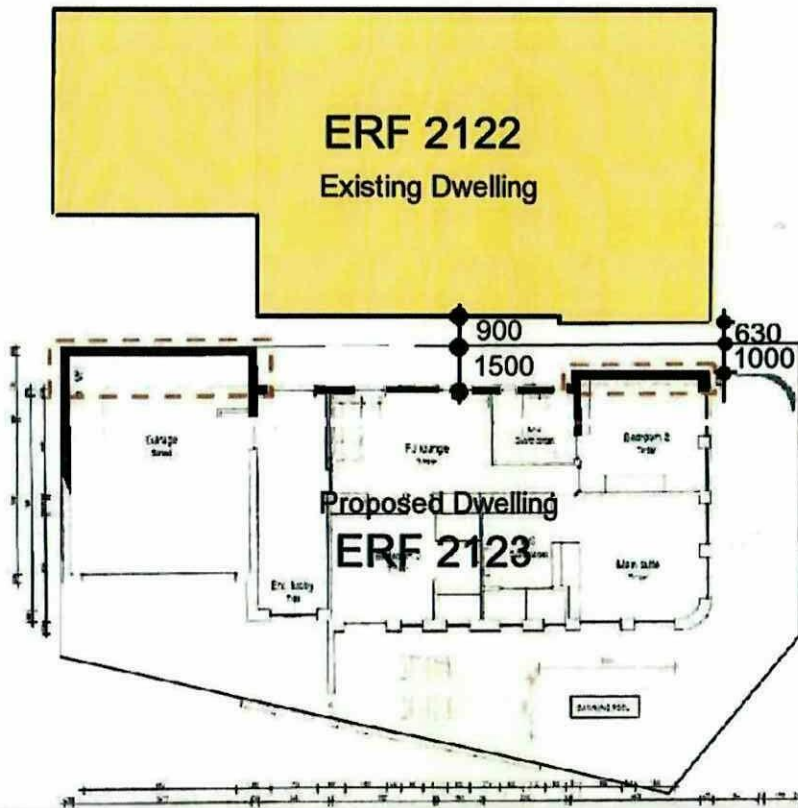


Figure 9: Relaxation of western building lines

6.2.2 Application is made for the relaxation of building lines as follow:

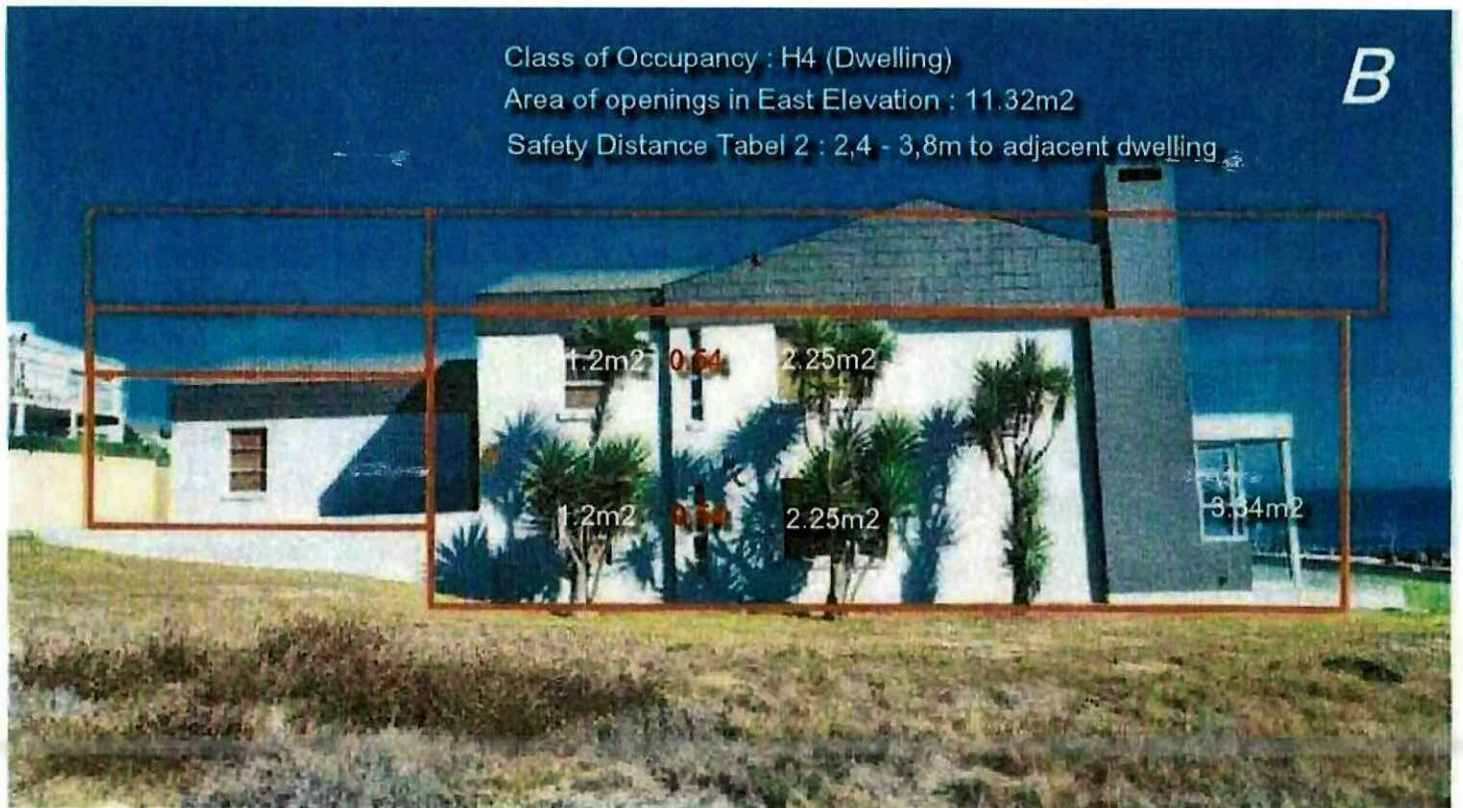
- The relaxation of western side building line from
 - 1.5m to ± 0 m on ground floor to accommodate the proposed garage.
 - 1.5m to 1m on ground floor to accommodate the proposed dwelling house.

Class of Occupancy : H4 (Dwelling)

Area of openings in East Elevation : 11.32m²

Safety Distance Tabel 2 : 2,4 - 3,8m to adjacent dwelling

B



SANS 104400 - PART T : FIRE PROTECTION

4.2.4 Where any external wall of any building is of type N, or where any building is provided with external walls containing windows or other openings, such building shall, subject to the requirements of 4.2.8, be so sited that a circle of radius equal to the safety distances given in table 2 for the window area and occupancy concerned, drawn from any point on any such window or other opening in such exterior wall, shall not intersect any lateral boundary of the site; provided that this requirement shall not apply in respect of

- a) any building contemplated in 4.57;
- b) any such wall which faces a public place, railway siding reserve or any open space secured by a servitude or servitudes on an adjoining site(s) approved by the local authority. Such servitude or combination of servitudes shall be not less than the requirements given in table 2;
- c) any such wall of a ground storey or basement, facing a lateral boundary on which is erected a free-standing wall which
 - 1) is constructed of non-combustible material,
 - 2) has a fire resistance of not less than that prescribed for such external wall,
 - 3) is equal in height to that of the ground storey or basement, as the case might be, and
 - 4) extends at each end beyond any window or opening concerned by a distance of not less than the difference between the minimum safety distance given in table 2 and the actual boundary distance.

4.2.5 Where there are two or more buildings on the same site, or where any building has two or more divisions and

- a) where any external wall of any such building or division does not contain any windows or other openings, the distance between such external wall and a notional boundary line between such buildings or divisions shall be not less than the relevant safety distance given in 4.2.2 or 4.2.3; and
- b) subject to the requirements of 4.2.8, where any external wall of such building or division is of type N or contains windows or other openings, any circle of radius equal to the safety distance given in table 2 for the occupancy concerned, drawn from any point on any window or opening in the external wall of one such building or division, shall not intersect any circle of radius equal to the safety distance given in table 2 for the occupancy concerned in the external wall of such other building or division, drawn from any point in any window or opening in the external wall of such other building or division; provided that the intersection of such circles shall be permitted where
 - 1) the included angle between such walls is more than 135°, or
 - 2) the included angle between such walls is more than 90° and the distance between the nearest points on such windows or openings is more than 2 m.

Table 2 — Safety distances

1	2
Area of openings in elevation m ²	Low fire load ≤ 25 kg/m ² (timber equivalent)
	A1, A2, A3, A4, A5, B3, C2, D3, D4, E1, E2, E3, E4, G1, H1, H2, H3, H4, H5, J3, J4
Type F wall (no openings)	1,0
< 5	1,0
5	1,5
7,5	2,0
10	2,4
30	3,8

19

C
ADDENDUM



Figure 6: Proposal in accordance with existing development

Considering figures 4 to 6 above, the dwellings located along Ninth Street are all located within the northern street building line and closer than 3.15m to the erf boundary. The relaxation of the street building lines on Erf 2123 will therefore enhance the appearance of the public street as all the buildings align with one another. The proposal application to relax the 4m northern and north-eastern street building line to a 3.15m will ensure that their initial rights, as was stated in the title deed, are redeemed.

Section 12.2.1 (e)(iii)

Considering figure 7 below, there is a significant fall ($\pm 0.9m$) from the southern side of Erf 2123 to the northern boundary. The departures will therefore not have considerable impacts on the sea view of the surrounding properties.

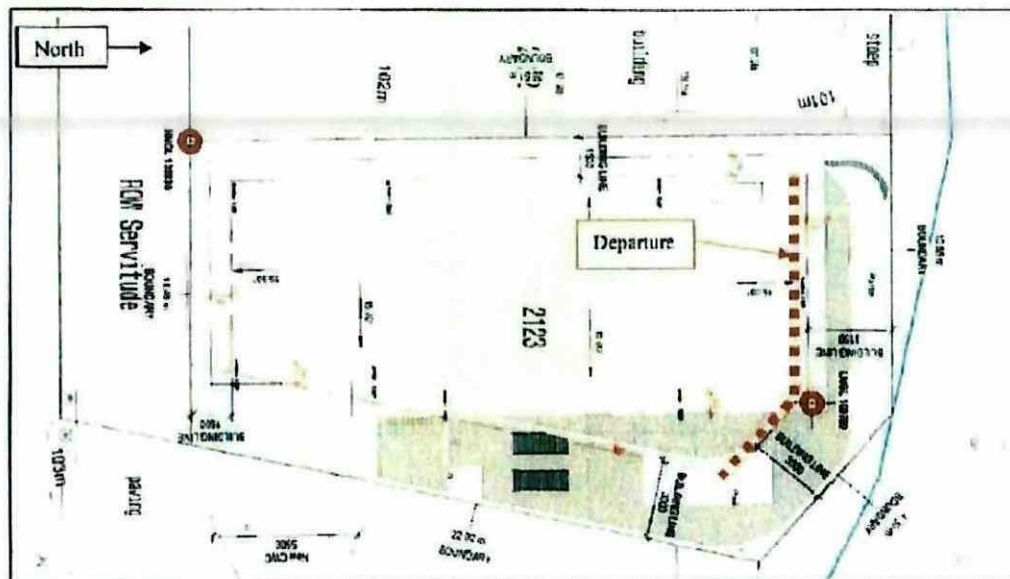


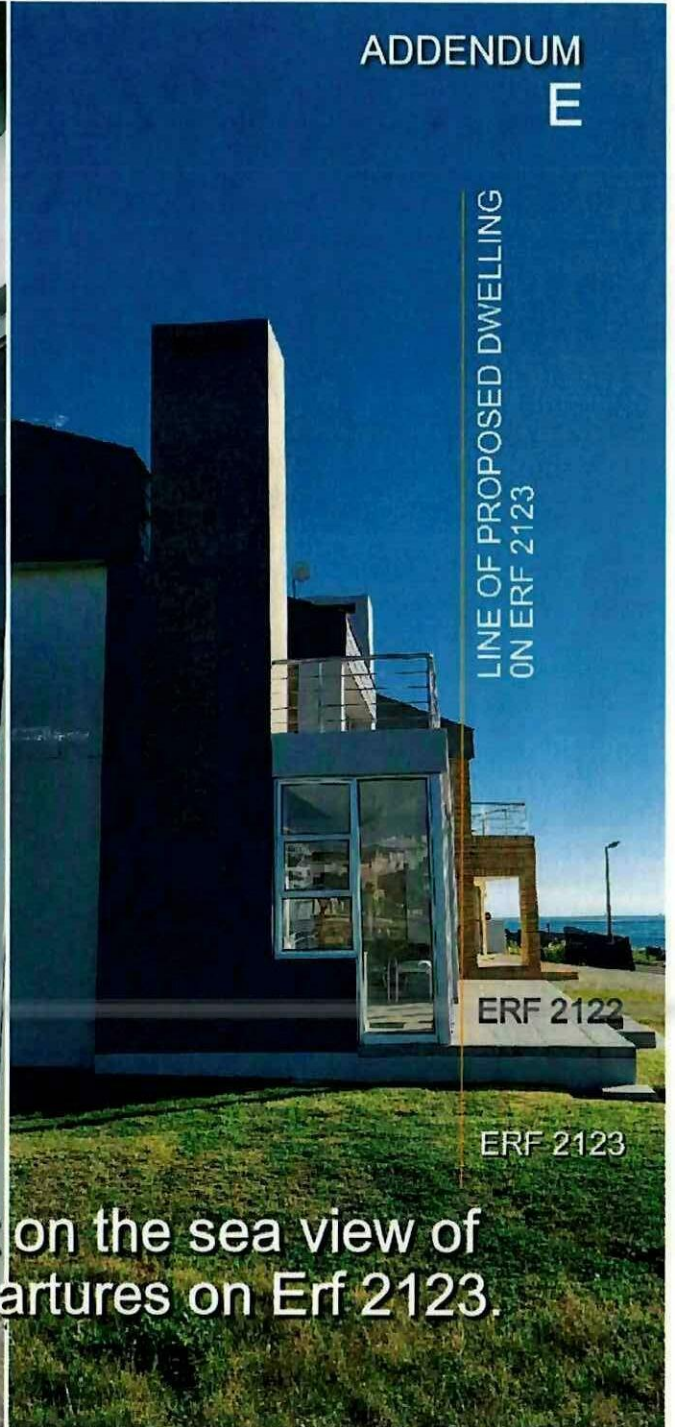
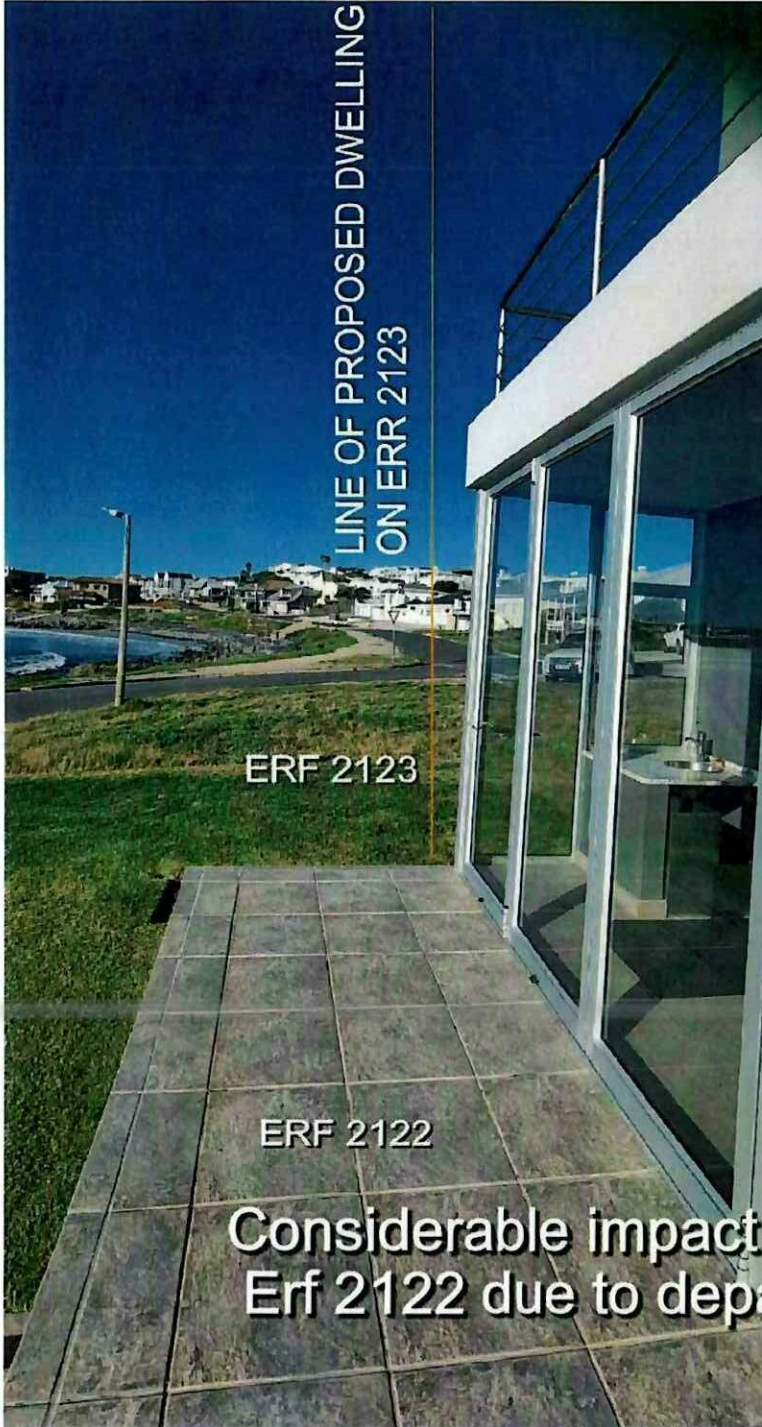
Figure 3: Relaxation of northern building lines

Section 12.2.1 Encroachment of building lines:

(e)The municipality may relax the street building line under the following circumstances:

- (i) in the case of a garage or carport subject to 13.1.2;
- (ii) if, in its opinion, the architectural effect of the building line relaxation will enhance the appearance of a public street, or

Proposed setbacks on Erf 2123 to mitigate negative effect on street scape and sea views of existing dwelling on Erf 2122



Considerable impact on the sea view of Erf 2122 due to departures on Erf 2123.

APPEAL: LATEST APPLICATION FOR THE SUBDIVISION OF ERF 2122, CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN, DATED 24 MAY 2023

10 June 2023

The Municipal Manager Swartland Municipality / Mr. Alwyn Burger / Mr Alwyn Saayman

APPEAL IN TERMS OF SECTION 89(2) OF THE BY-LAW

I have received the application regarding the proposed permanent departures on Erf 2123, Yzerfontein.

I wish to appeal against the decision of the Swartland Municipal in terms of section 89(2) of the By-Law based on the following:

A. The administrative action was not procedurally fair as contemplated in the *Promotion of Administrative Justice Act 2000 (Act 3 of 2000)*:

There was no proper valid meetings of the trustees of the Smit Family Trust (hereafter 'Trust') regarding proposed building plans, departure of all building lines; subdivision of part of Erf 2122 and consolidation thereof with Erf 2123.

Furthermore, a valid Resolution was not filed by the Trust to mandate the other trustees to decide on behalf of me. In due time, this matter will be dealt with by all managing authorities of the Trust and legal advice and/or intervention as this falls outside the responsibilities of Swartland Municipality.

It seems as if Swartland Municipality was satisfied that the Trust had agreed to the departures, subdivision and consolidation on the strength of a minute of the Trust dated 26 April 2023. This minute and the decisions noted therein is unlawful and invalid as no proper notice of the meeting was given.

The trustees were requested to withdraw the said resolution and should they fail to do so, I intend approaching the Western Cape High Court for a declaratory order declaring the resolution to be unlawful and invalid.

B. Additional to the above, the following for your attention:

Please see attached document (I. SMIT OBJECTIONS dated 10June'23) for consideration of my objections, with **special attention to departure of southern, and western building lines, and the effect thereof on Erf 2122.**

I want to emphasize the following:

1. The impact of the proposed and allowance of departure of the south-western building lines on the access of the parking bay next to garage of Erf 2122.

The southern-western building line is 1.5m. Departure from 1.5m to 0m to accommodate the garage is not acceptable

The average size of a double garage is 36m², approximately 6m x 6m. The proposed garage is indicated as 8.3m deep. There is no reason why the garage cannot be the normal 6.0m deep, and why it should extend unto our parking bay, and restrict parking access to the parking bay of Erf 2122. Note that this parking bay is the only additional parking for Erf 2122 visitors.

It seems that the reason might be for a laundry and/or rooftop terrace. The latter is not included in the proposal and not allowed. There is however no guarantee that this area will not eventually be developed into a rooftop terrace.

2. ~~A~~ proper average vehicle turning circle was modelled by FBS Civil Engineering Consultants.

The minimum requirements are not met and approval of the 0m building line application will impair the parking access of Erf 2122. Note that it is important that this section of the departure application is given full attention.

3. Departures of south-western building lines to 0m to accommodate a garage has negative implications for Erf 2122 as free movement and access round the dwelling on Erf 2122 is not possible. Approval of the 0m western building line impair the rights of Erf 2122 to have access from front to back around the dwelling. According to Sec 12.2.1(c) iii By-Law 2020 "*...an access way ... at least 1m wide, shall be provided from a public street to every vacant portion of the land unit concerned ...*" It is not clear whether free access is possible alongside Erven 2122 and 2123 north to south and *vice versa*. A proposed washing line; outdoor shower; and pedestrian gate restrict free access between the dwellings of Erven 2123 and 2122 (discussed below). Only 670mm is available to construct a staircase on Erf 2122 to this area to ensure free movement and access from Ninth Street to the back parking bay area of Erf 2122. However, a minimum of 1500mm is required for fire escape stairways.

4. See the proposed building plan: a washing line per previous application; and slide door of pajama lounge/TV room is almost onto the only window of both the children's bedrooms of Erf 2122. Taking in consideration that the entire view; sunlight; and natural light of these bedrooms is been taken away by the proposed building plans, these structures are even more undesirable.
5. The proposed outdoor shower is directly opposite the other bedrooms and en-suite bathrooms. Noise pollution and negative effect on privacy is a given and unavoidable.
6. The proposed pedestrian gate restricts access of owners of Erf 2122 of free access to services (municipal; plumbing; taps, etc); windows of the bedrooms and *en-suite* bathrooms. It is evident that this part of Erf 2122 becomes part of Erf 2123 for private use and will be alienated in future. This is not acceptable. Full grown Yuccas fill this area as this is the only area for shrubs and greenery for Erf 2122.
7. A cold room is indicated on the building plan for the upper level. The motors for this cold room are situated in the alley between Erven 2122 and 2123 directly opposite the bedrooms of Erf 2122. This will undoubtedly result in noise pollution - day & night - and is not acceptable. All 'back yard structures' are planned to be installed in the alley between Erven 2122 and 2123, which replaces the sea view and tranquil experience the owners of Erf 2122 used to have since 2000.
8. Departures of western building lines are considered as obstructive to direct sunlight; view; ventilation; and privacy on Erf 2122. Take note that all 4 bedrooms and 4 en-suite bedrooms are situated on the eastern side of Erf 2122 and are all impacted by development on Erf 2123. Special care must be given not to depart building lines, and/or erect structures which will cause a negative impact on Erf 2122. This must be avoided.
9. The question is whether the owner of Erf 2123 would allow all the above, as well as the structures mentioned, and being cramped in, if he was the owner of Erf 2122.
10. Full fire safety must be guaranteed by submission of rational design by an approved registered professional fire engineer.

I hereby request that notice of appeal be communicated per registered mail OR email address (in terms the Electronic Communications & Transactions Act 25 of 2002) by Swartland Municipality to all owners who commented on the application, as well as any other person Swartland Municipality may determine.

In conclusion:

The owner purchased Erf 2123 with the current building lines applicable, and being well aware of the limitations of the erf (size; shape; and slope). Proposed departures of building lines have a negative effect on Erf 2122 regarding the driveway, parking bay and free access, etc. Departure of all building lines, specifically the south-western building lines reduces the spaciousness and openness of the immediate area, as well as traffic flow and turning circles in the driveway to Erven 2122 and 2119.

The owner of Erf 2123 is aiming at developing a dwelling in order to optimally utilize the space, and consequently increase the value of his property. The right of the owner to develop his property in accordance with existing land use rights is recognized, but not to the detriment of others and/or surrounding neighbours.

Kind regards

I Smit

ILZE SMIT

(trustee and/or beneficiary and affected person Erf 2122)

BY E-MAIL

[doctor@drchristiesmit-
plasticsurgeon.co.za](mailto:doctor@drchristiesmit-plasticsurgeon.co.za)
hertzros@gmail.com

The Trustees for the time being of the
Smit Family Trust
DURBANVILLE

ATTENTION:

**DR CHRISTIE SMIT
DR HERTZOG ROUSSEAU**

Our reference
Your reference

JP/JP2451

Date

12 June 2023

Dear Sirs

SMIT FAMILY TRUST

Our previous correspondence and more specifically my letter of 4 May 2023 refers.

It has now come to our attention that you have used the minutes of the purported trustee meeting of 26 April 2023 in order to support an application to Swartland Municipality by Mr Adriaan Smit, the brother of Dr Christie Smit, for the Subdivision of Erf 2122, Yzerfontein, Consolidation with Erf 2123, together with a Departure and Exemption on Erf 2123, Yzerfontein.

These minutes were submitted and accepted on the basis of your confirmation that my client, Ms Ilze Smit, had received proper notice of the meeting and indicated that she would not attend.

As has already been communicated to you, this is factually incorrect as you had not convened a meeting, but merely enquired whether Wednesday, 26 April 2023 at 19:00 was convenient to all concerned. As the meeting was not properly convened, no business of the trust could have been considered at the said "meeting". As no business could have been considered the purported "minutes" and purported "decision" contained therein was unlawful and invalid.

I have also obtained a legal opinion from Adv Marten Daling confirming the above conclusion. I attach the opinion.

Further to the formal shortcomings of the minute it is repeated that the decision which you purported to take, was not, and can never be in the interest of the Trust and its beneficiaries. The decision thus falls foul of the mandatory provisions contained in the trust deed and as such it is similarly unlawful and invalid. I again attach my letter of 4 May 2023 in which your obligations as trustees are summarised.

As a result, you are provided with 5 days from date hereof to withdraw the minutes by endorsing same and providing me with a copy thereof.

Should you however fail to do so within the time frame provided, I have instructions to approach the High Court for a declaratory order that the minutes are unlawful and of no force and effect.

Yours faithfully

J P Joubert Attorneys

J P Joubert



IN RE: THE SMIT FAMILIE TRUST

OPINION

1. In this matter the Smit Familie Trust (“the Trust”) purported to have held a meeting on 26 April 2023, where certain matters were discussed and approved.
2. The trust deed of the Trust provides *inter alia* as follows:

“22. VERGADERINGS VAN TRUSTEES EN BESLUITE

22.1 *Die trustees moet van tyd tot tyd vergader om die sake van die trust te bespreek en besluit daaroor te neem. In dié verband geld die volgende reëlings:*

22.1.1 *Op die eerste vergadering van trustees kies hulle uit eie geledere 'n voorsitter, welke voorsitter vir sodanige tydperk as wat die trustees bepaal, in dié hoedanigheid sal optree.*

22.1.2 *Die besluite wat op vergaderings geneem word, moet behoorlik genotuleer word en oor die algemeen moet dieselfde prosedure gevolg word soos in Artikel 204 van die Maatskappywet Nr 61*

van 1973, of latere verwysings daarvan, voorgeskryf.

22.1.3 *Elke trustee het die reg om 'n vergadering van trustees byeen te roep.*

22.1.4 *Beleidsrigtings en prosedures wat op vergaderings gevolg moet word, word deur die trustees self bepaal.*"

3. The trustees of the Trust, at this stage, are Ms Ilze Smit-Hurter ("Smit-Hurter"), Mr Christie Smit ("Smit") and Mr Hertzog Rousseau ("Rousseau").
4. On 23 April 2023, Smit sent an email to the other two trustees wherein he said the following:

"Beste Hertzog en Ilze

Die Swartland Munisipaliteit het versoek dat die Trust nog 'n paar besluite moet goedkeur tov Riaan se verbouings. Ons moet dus weer 'n vergadering hou en ek wil hoor of Woensdagaand 7 uur julle pas.

Groete"

5. To this email Smit-Hurter replied on 26 April 2023, at 14:30 as follows:

“Christie

Jou epos van 23 April waarin jy vra of vanaand 7 uur ‘n geleë tyd sal wees vir ‘n trustvergadering, verwys.

Dit is ongelukkig nie geleë nie.

Ilze”

6. Smit answered to this email as follows:

“Jy laat weet baie laat en aangesien jy geen onlangse vergaderings bygewoon het nie, sal die vergadering voortgaan sonder jou.”

7. It is thus clear that Smit regards his email of 23 April as a notice of a meeting. It is nothing of the sort. It was simply an enquiry whether Wednesday, 26 April at 7 o'clock would be a convenient time. The email definitely does not call a meeting for 26 April 2023 at 19:00.

8. Smit-Hurter said it would not be a convenient time.¹

¹ It should be remembered that it was the day before a long weekend.

9. Notwithstanding this, it is clear that [redacted] and Rousseau proceeded to hold a "meeting" wherein certain matters were discussed and certain decision taken.
10. From the trust deed it is clear that any business of the Trust must be done at meetings which can be called by any trustee.
11. In **Land and Agricultural Bank of SA v Parker and Others**² it was held as follows:

"Who the trustees are, their number, how they are appointed, and under what circumstances they have the power to bind the trust are matters defined in the trust deed, which is the trust's constitutive charter. Outside its provisions the trust estate can not be bound."
12. A meeting of trustees can only be valid if it is properly convened, which this meeting was not. For any meeting to be properly convened there had to be proper notice of said meeting. There was no notice of the meeting of 26 April 2023.
13. In the circumstances, any decisions taken at that meeting are invalid and unlawful.
14. Smit and Rousseau might argue that notice would have made no

² 2005(2) SA 77 (SCA)

difference as the decision would then have been taken 2-1 as opposed to 2-0. This proposition has at least two serious flaws:

14.1. Firstly it would mean that Smit and Rousseau simply steamroller decisions through without having an open mind, and without being open to persuasion.³

14.2. Secondly the "*no difference rule*" has no place in our law.⁴

15. My advice is thus that the decisions at the "*meeting*" of 26 April 2023 are unlawful and invalid and stand to be set aside.⁵

MARTEN DALING
Chambers
CAPE TOWN
12 June 2023

³ It should be remembered that at common law, a trustee is duty bound to act in good faith, observe proper diligence and bring an independent mind to bear when dealing with the affairs of the trust Cameron *et al* Honoré South African Law of Trust (5th ed) at p 262, para 160).

⁴ Administrator Tvl and Others v Zenzile and Others 1991(1) SA 21 (A). Although this was said in a labour law matter the principle is clear.

⁵ The decisions are in any event not in the best interest of the Trust or its beneficiaries.

BY E-MAIL

Dr Christie Smit
DURBANVILLE

Our reference
Your reference

JP/nc/JP2451

Date

4 May 2023

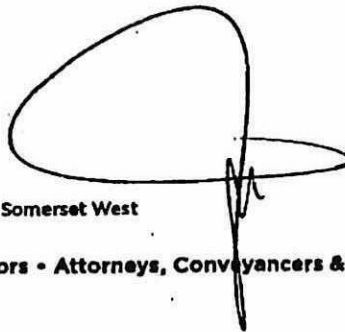
Dear Sir

SMIT FAMILY TRUST

We act on behalf of Ms Ilze Smit ('our client'), a trustee and beneficiary of the above named Smit Family Trust ("the Trust").

Our client is concerned regarding the governance of the Trust in general and especially in respect of the 'decision' of 2 of the trustees to the effect that the servitude area that is part of Erf 2122, Yzerfontein be released and incorporated as part of Erf 2123, Yzerfontein; and also that the eastern building line be relaxed to 1 metre, in order to assist your brother Mr Riaan Smit with his proposed building works on Erf 2123.

t 021 851 8116 • info@jpjoubert.net
p PO Box 445, Strand, 7139
Ground Floor, Caledon Street Chambers, 30 Caledon Street, Somerset West



www.jpjoubert.net

JP Joubert Attorneys Inc
(Reg. No.: 2015/041718/21)

Prokureurs, Aktebesorgers & Kommersiële Mediators • Attorneys, Conveyancers & Commercial Mediators

This 'decision' will undoubtedly negatively affect the value, enjoyment and future development of Erf 2122, which is an asset of the Trust. As such it is not in the interest of the Trust or its beneficiaries, but solely in the interest of Mr Riaan Smit.

It is trite law that trustees must govern a Trust to the benefit of the beneficiaries.

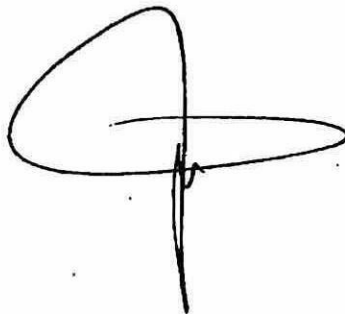
Not only is this trite, but in the trust deed of the Trust it was recorded as follows:

"9.1 Die magte wat vir die trustees in hierdie trustdokument omskryf word, is magte waarmee die trustees ampshalwe bekleed word ten einde hulle in staat te stel om met die trustfonds te handel ten behoewe van die begunstigdes en nie tot persoonlike voordeel van die trustees nie. Die omvangrykheid van die magte wat in trustees setel, moet altyd so geïnterpreteer word dat die essensie van die trust, naamlik, die bevoordeling van die trustbegunstigdes, nie leed aangedoen word nie."

We understand from our client that you keep on calling Trust meetings with the sole intention of assisting your brother with his proposed dwelling on Erf 2123.

You set up meetings and purport to set up meetings without any agenda and/or relevant documents being distributed to the trustees for prior assessment thereof in order to prepare for such meeting.

Your latest email in this regard was sent on 23 April 2023 and read as follows:

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a vertical line extending downwards from the center of the loop, ending in a small hook.

"Beste Hertzog en Ilze

Die Swartland Munisipaliteit het versoek dat die trust nog 'n paar besluite moet goedkeur ten opsigte van Riaan se verbouings. Ons moet dus weer 'n vergadering hou en ek wil hoor of Woensdagaand 7 uur julle pas.

Groete"

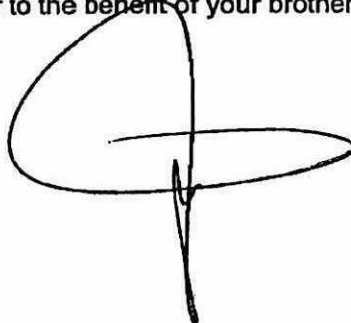
Our client indicated that Wednesday evening 26 April 2023 at 7 was not convenient to her. The meeting was scheduled on eve of a long weekend. To this you responded as follows:

"Jy laat weet baie laat en aangesien jy geen onlangse vergaderings bygewoon het, sal die vergadering voortgaan sonder jou."

Your email of 23 April 2023 was not a notice of a meeting, but rather an enquiry whether Wednesday 7 o'clock might be a convenient time for a meeting. Our client indicated that it was not. Any business conducted at that 'meeting', as well as all previous meetings in this regard, is thus invalid, as the meetings were not properly convened. Be that as it may, we look forward to receiving any resolutions taken at those 'meetings'.

We are therefore in any event of the view that all of the recent meetings of the Trust were invalid for at least two reasons:

1. no proper notice of meetings were given;
2. the decisions taken at these meetings were not to the benefit of the Trust or its beneficiaries, but rather to the benefit of your brother.

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a vertical line extending downwards from the center of the loop.

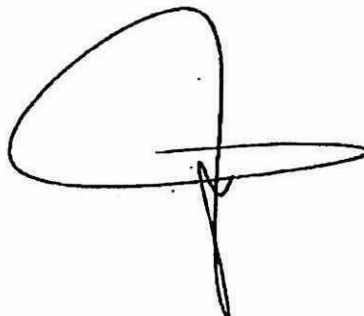
You and the purported independent trustee, Mr Hertzog Rousseau, use your majority to steamroll decisions through. The decisions might very well be taken by majority vote, but if they are not to the benefit of the Trust and beneficiaries, they fall to be set aside.

Our client's erstwhile attorney, Johan du Plessis, directed a letter to you dated 1 Feb 2023 in which you were specifically addressed regarding your actions as (a) trustee(s) of the Trust. Notwithstanding the content of that letter, you have continued with actions which are not in the interest of the Trust or its beneficiaries.

We seek an undertaking from you that you will cease to cause decisions to be taken by the trustees to the detriment of the Trust and its beneficiaries and more specifically that you will stop assisting your brother with his building plans to the detriment of the Trust and its beneficiaries.

Should we fail to receive the necessary undertaking, we would consider an approach to the High Court for the necessary relief which may include, but not be limited to the following:

1. an application to have you and Mr Rousseau removed as trustees in terms of Section 20(1) of the Trust Property Control Act, 57 of 1988, alternatively the common law; and/or
2. a declaratory order that none of the business conducted at the last few meetings of the Trust was valid; and/or

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a horizontal line extending to the right, with a vertical stroke at the end.

3. an interdict against the proposed building relaxations and transfer of the servitude area to Erf 2123.

We look forward to hearing from you. In the meantime, all our client's rights remain expressly reserved.

ours faithfully

J P Joubert Atto neys

J P Joubert



Notice of Payment

12 June 2023

Dear MRS I SMIT

Subject: Notice Of Payment: Swartland Mun Divers

Please be advised that you made a payment to Swartland Mun Divers as indicated below.

Transaction number:	80792C2B54-2
Payment date:	2023-06-12
Payment made from:	PERSOONLIK
Payment made to:	Swartland Mun Divers
Beneficiary bank name:	STD S.A.
Beneficiary account number:	372865143
Bank branch code:	050507
For the amount of:	4 500.00
Immediate interbank payment:	N
Reference on beneficiary statement:	Appel Erf2123Yzer

Please remember that the following applies to online banking payments to non-ABSA and Absa Vehicle and Asset Finance bank accounts.

- Payments made on weekdays before 15:30 will be credited to the receiving bank account by midnight of the same day.
- Payments made on weekdays after 15:30 will be credited by midnight of the following day.
- Payments made on a Saturday, Sunday or Public holiday will be credited to the account by midnight of the 1st following weekday.
- Payments may take up to 30 minutes to reflect in the beneficiary's Vehicle Finance Account.

If you need more information or assistance, please call us on 0860 008 600 or +2711 501 5110 (International calls).

If you have made an incorrect internet banking payment, please send an email to digital@absa.co.za

Yours sincerely

General Manager: Digital Channels

This document is intended for use by the addressee and is privileged and confidential. If the transmission has been misdirected to you, please contact us immediately. Thank you.

ANNEXURE 4

File ref: 15/3/4-14/Erf 2122, 2123
15/3/6-14/Erf 2122, 2123
15/3/12-14/Erf 2122, 2123
15/3/13-14/Erf 2122, 2123

Enquiries:
D N Stallenberg

14 June 2023

C K Rumboll & Partners
P.O. Box 211
MALMESBURY
7299

Dear Sir/Madam

APPEAL : PROPOSED SUBDIVISION OF ERF 2122 AND CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN

Your application with reference number YZER/12335/NJdK, dated 30 November 2022, on behalf of A.J. Smit as well as letter of approval dated 1 June 2023 refers.

Please find attached letter dated 12 June 2022 from Joubert Attorneys on behalf of Ilze Smit.

This letter serves as an appeal on the decision by the Delegated Official on 1 June 2023 to approve the proposed subdivision of Erf 2122 and consolidation of Erf 2123, together with departure and exemption on Erf 2123, Yzerfontein.

You are hereby invited in accordance with sections 90(8) and (9) of the Swartland Municipality's By-law on Municipal Land Use Planning (PN 8226 dated 25 March 2020) to submit comments on the appeal to the municipality by no later than 5 July 2023.

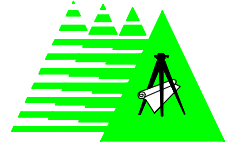
If no comments are received by the deadline, the municipality will continue with the appeal process.

Yours faithfully

MUNICIPAL MANAGER
via Department Development Services

/ds

CK RUMBOLL & VENNOTE / PARTNERS



PROFESIONELE LANDMETERS ~ ENGINEERING AND MINE SURVEYORS ~ STADS- EN STREEKSBEPLANNERS ~ SECTIONAL TITLE CONSULTANTS

DATE: 5 July 2023

OUR REF:YZER/12335/NJdK

BY HAND

Attention: Mr. A. Zaayman
Municipal Manager
Swartland Municipality
Private bag X52
MALMESBURY
7300

**APPLICATION FOR THE SUBDIVISION OF ERF 2122, YZERFONTEIN, CONSOLIDATION WITH
ERF 2123, TOGETHER WITH A DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN**
Extension for appeal period

The land use application as mentioned above was approved on 1 June 2023. An appeal was lodged against the outcome of the land use approval on 14 June 2023. Mr Joubert, who is acting on behalf of Mrs Ilze Smit-Hurter's appeal, rests on the technical point that sufficient notice was not given of the Smit Family Trust meeting at which decisions were made regarding the estates. The Smit Family Trust is not going to fight this technical point, but a next meeting notice has already been sent to the trustees. The previous points will be discussed again and if a majority vote will be taken. The meeting date is the 20th of July 2023.

In the interest of fair administrative processes and public participation, we request that our office receive extension until 25 July 2023 to address the appeal.

We would appreciate your favourable consideration for extension.

Yours faithfully,

NJ de Kock

for *CK RUMBOLL and PARTNERS*

VENNOTE / PARTNERS:

IHJ Rumboll PrL (SA), BSc (Surv), M.I.P.L.S. and AP Steyl PrL (SA), BSc (Surv), M.I.P.L.S.

ADDRESS/ ADRES: reception@rumboll.co.za / PO Box 211 / Rainierstr 16, Malmesbury, 7299
MALMESBURY (T) 022 482 1845 (F) 022 487 1661 VREDENBURG (T) 022 719 1014



DUNCAN & ROTHMAN
PROKUREURS

Ons verw: J G STEYN/CV/C0099/SMI237/0001

U verw:

4 Julie 2023

DELMARY STALLENBERG
ADMINISTRATIEWE BEAMPTE
AFDELING BEPLANNING
DEPARTEMENT ONTWIKKELINGSBESTUUR
DIREKTORAAT ONTWIKKELING
SWARTLAND MUNISIPALITEIT
MALMESBURY

PER EPOS : delmarie@swartland.org.za

Waarde dame

CHRISTAAN SMIT // ERF 2123 YZERFONTEIN

Ons verwys na bovermelde aangeleentheid en heg hierby aan ons skrywe gedateer 3 Julie 2023 vir u dringende aandag en kennisname.

Geliewe skriftelik goeie ontvangs daarvan te erken.

Die uwe
DUNCAN & ROTHMAN ING.

per:

KANTOOR 66, SUITE 1, 1^{ste} VLOER, NOORDKAAP MALL, JACOBUS SMIT STRAAT 31, ROYLDENE, KIMBERLEY, 8301; POSBUS 64, KIMBERLEY, 8300; DOCEX 5, KIMBERLEY; E-POS: charmaine@duncan-rothman.co.za; TELEFOON: 053 838 4700; FAKS: 086 563 1259
Duncan & Rothman Ingelyf – Reg Nr 2002/012630/21
Direkteure: IC Potgieter, B.Proc; JG Steyn, B.A., LL.B; SS Lawrence, LL.B.; SB Kader, BA.LL.B.
Profesionele Assistent: FJ van Straten, LL.B
Konsultant: HPA Venter, B.Proc.
Finansiële Bestuurder: C Wiid, B.Compt.





DUNCAN & ROTHMAN
PROKUREURS

Ons verw: J G STEYN/CV/C0099/SMI237/0001

U verw:

3 Julie 2023

**MUNISIPALE BESTUURDER
ADMINISTRATIEWE BEAMPTTE
AFDELING BEPLANNING
DEPARTEMENT ONTWIKKELINGS BESTUUR
DIREKTORAAT ONTWIKKELS DIENSTE
SWARTLAND MUNISIPALITEIT
MALMESBURY**

VIR AANDAG : Me Delmary Stellenberg

PER E-POS: delmary@swartland.org.za

Waarde heer / dame

**KOMMENTAAR OP : APPÉL VAN ME ILZE SMIT NA AANLEIDING VAN DIE
GOEDKEURING VAN DIE VOORGESTELDE ONDERVERDELING VAN ERF 2122
EN KONSOLIDASIE VAN ERF 2123 TESAME MET VERWYDERING EN KWYT
SKELDING OP ERF 2123 YZERFONTEIN, SOOS GELIASSEER PER SKRYWE
JOUBERT PROKUREURS GEDATEER 12 JUNIE 2022.**

1. Ons verwys na bovermelde aangeleentheid en wens te bevestig dat ons hierin optree namens Dr Riaan Smit, ons kliënt en die geregistreerde eienaar van Erf 2123 Yzerfontein.

KANTOOR 66, SUITE 1, 1^{ste} VLOER, NOORDKAAP MALL, JACOBUS SMIT STRAAT 31, ROYLDENE, KIMBERLEY, 8301; POSBUS 64, KIMBERLEY, 8300; DOCEX 5, KIMBERLEY; E-POS: charmaine@duncan-rothman.co.za; TELEFOON: 053 838 4700; FAKS: 086 563 1259
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Direkteure: IC Potgieter, B.Proc; JG Steyn, B.A., LL.B; SS Lawrence, LL.B.;
SB Kader, BA, LL.B.
Profesionele Assistent: FJ van Straten, LL.B
Konsultant: HPA Venter, B.Proc.
Finansiële Bestuurder: C Wiid, B.Compt.



2. Ons verwys na u skrywe van 14 Junie 2023, gerig aan C K Rumboll & Vennote in terme waarvan ons kliënt uitgenooi word om kommentaar te lewer ooreenkoms die toepaslike wetgewing na aanleiding van die beoogde appél van Me I Smit, gedateer 10 Junie 2023, soos hierbo na verwys. Alvorens ons poog op die genoemde appél antwoord, wil ons bloot net die volgende onder u aandag bring en op rekord plaas naamlik;

2.1 Die voorgestelde aansoeke met betrekking tot Erwe 2122 en 2123 is goedgekeur, soos behoorlik bevestig en uiteengesit in 'n skrywe van Swartland Munisipaliteit Malmesbury, gedateer 24 Mei 2023, waarvan 'n afskrif hierby aangeheg word as synde aanhangsel "RS1";

2.2 'n Eerste aansoek is gedoen vir die ontwikkeling van ERF 2123, Yzerfontein, waartydens 'n hele aantal afwykings voorgestel was. Die aansoek is deur sekere bure teen gestaan en die Munisipale Beplanningstribunaal het die afwykings afgekeer, met uitsondering van die boulyn oorskryding deur die motorhuis in die suidwestelike hoek.

2.2 'n Tweede aansoek, wat deur ons kliënt, synde die geregistreerde eienaar in die verband geloods was en wat positief oorweeg en gedelegeerd deur die gemagtigde is deur die Munisipale Amptenaar goedgekeur was, was suksesvol, welke sukses ons van mening is, gebaseer is op die ondervermelde naamlik;

2.2.1 Skriftelike toestemmings is van die suidelike en westelike aangrensende bure verkry, voordat die aansoek goedgekeur was. Beide aangrensende erwe word deur Trusts besit en die nodige handtekening en Trust Resolusies is verkry. Hierdie Resolusies is deur die Munisipaliteit aanvaar, gebaseer op meerderheid stem. Indien daar onderlinge geskille sou wees tussen die Trustees van die Smit Familie Trust, sou dit as

onredelik geag kan word om die ontwikkeling op Erf 2123 te laat sloer, tot benadeling van ons kliënt;

2.2.2 Die oorskrydings op die westelike grens, soos volledig uiteengesit in aanhangsel "RS1", soos hierbo na verwys, word beperk tot die grondvloer ten einde die sig korridor vanaf Erf 194 tot by die see te handhaaf. Erf 2123 val afwaarts vanaf suid na noord en die grond vloer oorskryding het dus geen impak op die uitsig van Erf 194;

2.2.3 Die oorskrydings op die grond vloer oor die westelike grens is slegs by gedeeltes en nie vir die totale lengte van die grens nie. Die mees noordelike oorskryding van die grens is reeds een meter weg van die grens;

2.2.4 Die noordelike straat grens oorskryding is goed gekeur so wil dit voorkom, op beide grond vloer en eerste vloer tot op 3.15 meter van die grens;

2.2.5 Dit wil ook voorkom dat die volgende relevante feite aanleiding gegee het tot die gunstige oorweging van die betrokkenes se besluit naamlik;

2.2.5.1 Erwe 2119, 2122 en 2123 is histories gelyk ontwikkel;

2.2.5.2 Al drie die erwe bevat dieselfde straat boulyn beperking van 3.15 meter (dit was in die tyd voordat Sonering Skemas ontwikkelings parameters bepaal het en boulyne en dekking deur Titelaktes gereël is);

2.2.5.3 Erwe 2119 en 2122 is eerste behou, terwyl 2123 vakant gebly het. Die eerste twee huise is gevolglik tot op die 3.15 meter boulyn gebou, maar nuwe wetgewing en die ontwikkeling van die Skema het tot gevolg gehad dat straat boulyne sedertdien meer beperkend is tot op 4 meter. Ten einde die straat landskap (street scape) te versterk is die afwyking van die 4 meter straat boulyn dus

goedgekeur tot op 3.15 meter, in ooreenstemming met die Titelakte. Die fasades van die drie aangrensende erwe sal gevolglik op dieselfde lyn lê, wat vloei en kontinuïteit bewerkstellig;

2.2.5.4 Die tweede aansoek konsolideer 'n gedeelte van Erf 2122 met Erf 2123 om 'n groter erf oppervlak te skep en die dekking wat voorheen plus minus 59% sou wees, te verminder na 52%.

3. Die laer dekking, met in begrip van die meer sensitiewe oorskrydings en verbeterde feit gebaseerde motivering, het teweeg gebring dat die aansoek heelwat meer gewens binne die konteks is. Die ontwikkelings voorstel kon gevolglik nie meer voor as 'n oor ontwikkeling van 'n te klein erf nie maar eerder as 'n gepaste voorstel wat spreek tot die omliggende area en derhalwe 'n positiewe oorweging, soos wat gemaak was regverdig.
4. Ons kliënt lewer as volg kommentaar na aanleiding van Me Ilze Smit se appél naamlik:

4.1 AD PARAGRAAF A DAARVAN

Ons kliënt neem kennis van die inhoud hiervan, maar blyk dit dat dit 'n interne dispuut is tussen die Trustees van die betrokke Trust en is nie bereid om enige kommentaar daarop te lewer nie.

5. **AD RESTANT DAARVAN EN VERDERE BESWARE**

Geliewe kennis te neem dat die Appellant staat maak en of verwys na planne wat nie van toepassing is op die huidige ontwikkeling nie. Geen planne tot op datum is deur ons kliënt ingedien vir goedkeuring nie en is nog in ontwikkelings fase. Hierdie planne sal uiteraard behoorlik voldoen aan die voorwaardes en voorskrifte soos vervat in aanhangsel "RS1" hierby aangeheg. Daar word spesifiek verwys na die inhoud van bovermelde aanhangsel in terme waarvan dit uitdruklik gemeld word dat beide goedkeurings onderworpe is aan die voorwaardes soos uiteengesit in paragrawe 1 en C1,2 daarvan. Ons kliënt is van mening dat alle gronde van Appél, soos waarna verwys word in bovermelde paragrawe van Me I Smit, deur hierdie voorwaardes behoorlik ondervang word.

6. Dit is ook ons instruksies om na die volgende aspekte te verwys van die kort verslag van Davantoni Ontwerp gedateer 8 Junie 2023 naamlik;

6.1 Die besluit van Swartland Munisipaliteit Malmesbury, is gebaseer op onder andere die Munisipale Grond Gebruik Beplanning Bywet 8226 wat onder andere nie verlang dat daar voldoen moet word aan die Nasionale Bou Regulasies of enige

van die ander SANS Standaarde nie. Hierdie is die uitsluitlike funksie van bou beheer en die bou goedkeurings proses.

- 6.2 Dit blyk ook dat daar gesteun word op verouderde voorskrifte met betrekking tot Brand gevaar ensovoorts deurdat SANS 10400-T:2011 verouderd is en in tussen vervang is met Uitgawe 4:2020;
 - 6.3 Dit blyk ook uit gemelde verslag dat die berekeninge foutiewelik bereken is deurdat die venster areas vir die oostelike fasade nie gekombineer behoort te word nie maar dat elke fasade gedeelte, afsonderlik bereken moet word om te bepaal of die gevaar zone tot 'n ander gebou grens of nasionale grens in gevaar is aldan nie.
7. Van die gronde van appél soos aangevoer deur Me I Smit, is blatant foutief. In die verband, word daarna verwys, dat die reg van weg toegangs-serwituut se wydte op geen stadium 5.88 meter was, maar wel 5 meter, soos aangetoon deur L G Kaartnommer 4160/2004, waarby 'n afskrif daarvan hierby aangeheg word as aanhangsel "RS2"
 8. Ons kliënt wil ook hiermee bevestig dat die nuwe ontwerp, wat nog ingedien moet word, word gedoen in samewerking en in onderhandeling met die Munisipaliteit.
 9. Opsomender wys is dit ons instruksies dat dit ons kliënt se mening is dat:
 - 9.1 Alle beoogde punte van appél soos waarna verwys word in die dekking skrywe van J P Joubert Prokureurs met **alle aanhangsels** daartoe, word deur ons kliënt geag as

ongefundeerd te wees en word hiermee ontken asof met iedere en elke aspek daarvan afsonderlik gehandel is.

- 9.2 Alle gronde van beswaar word behoorlik ondervang deur die voorwaardes geopper en uiteengesit in aanhangsel "RS1" hierby aangeheg;
- 9.3 Van die verslae waarop Me I Smit steun, is gebaseer op verouderde wetgewing en spekulasie
- 9.4 Die besluite soos geneem behoort gevolglik gehandhaaf te word.

Die uwe
DUNCAN & ROTHMAN ING.
per:



"RSI"



CLEAN AUDITS SINCE 2010/11
SKOON OUDITS SEDERT 2010/11

Munisipaliteit
Municipality
Umasipala

Ons gee gestalte aan 'n beter toekoms!
We shape a better future!
Sakha ikusasa elingcono!

File ref: 15/3/4-14/Erf 2122, 2123
15/3/6-14/Erf 2122, 2123
15/3/12-14/Erf 2122, 2123
15/3/13-14/Erf 2122, 2123

Enquiries:
A. de Jager

24 May 2023

C K Rumboll & Partners
P.O. Box 211
MALMESBURY
7299

Per Registered Post

Dear Sir/Madam

PROPOSED SUBDIVISION OF ERF 2122 AND CONSOLIDATION WITH ERF 2123, TOGETHER WITH DEPARTURE AND EXEMPTION ON ERF 2123, YZERFONTEIN

Your application with reference number YZER/12335/NJdK, dated 30 November 2022, on behalf of A.J. Smit, refers.

- A. By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for subdivision of Erf 2122, Yzerfontein, is approved in terms of Section 70 of the By-Law;
- B. By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for consolidation of Portion A of Erf 2122, Yzerfontein, with Erf 2123, Yzerfontein is approved in terms of Section 70 of the By-Law;

Approval A. and B. are subject to the conditions that:

1. TOWN PLANNING AND BUILDING CONTROL

- a) Erf 2122 (398m² in extent) be subdivided into Portion A (54m² in extent) and the Remainder (344m² in extent) as presented in the application;
- b) The newly created Portion A (54m² in extent) be consolidated with Erf 2123 (365m² in extent) to form a new land unit of 419m² in extent;
- c) The right-of-way servitude over the consolidated erf (portion A of Erf 2122 and Erf 2123) and the remainder of Erf 2122, Yzerfontein be taken up in the title deeds of the properties;
- d) The legal certificate which authorises the transfer of the subdivided portions in terms of section 38 of the By-Law, will not be issued unless all the relevant conditions have been complied with;
- e) The owner/developer submits a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - i. the municipality's decision to approve the subdivision and consolidation;
 - ii. the conditions of approval imposed in terms of section 79; and
 - iii. the approved subdivision plan and consolidation plan;

Rig asseblief alle korrespondensie aan:

Die Munisipale Bestuurder
Privaatsak X52
Malmesbury 7299

Darling Tel: 022 492 2237

Tel: 022 487 9400

Faks/Fax: 022 487 9440

Epos/Email: swartlandmun@swartland.org.za

Moorreesburg Tel: 022 433 2246

Kindly address all correspondence to:

The Municipal Manager
Private Bag X52
Malmesbury 7299

Yzerfontein Tel: 022 451 2366

- C. By virtue of the authority delegated to the Senior Manager: Development Management in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for departure from the development parameters on Erf 2123, Yzerfontein, is approved in terms of Section 70 of the By-Law, subject to the conditions that:

1. TOWN PLANNING AND BUILDING CONTROL

- a) The northern and north-eastern 4m street building lines be departed from and each reduced to 3,15m, as presented in the application;
- b) The height restriction limiting building line departure to the ground floor, be departed from and that the street building line departures described in C.1.a) be applicable to the first storey as well;
- c) No building work, including the proposed balcony on first floor level, may be closer than 3,15m to the northern and north-eastern street boundaries;
- d) No building work, including the proposed balcony on first floor level, may be closer than 3m to the eastern street boundary;
- e) The 1,5m western lateral building line be departed from and reduced to 0m for the extent of 7m to accommodate the garage, as presented in the application;
- f) The 1,5m western lateral building line be departed from and reduced to 1m for the extent of 5,1m to accommodate the portion of the dwelling (bedroom no 2) that encroaches on the building line, as presented in the application;
- g) The building line departures approved in C.1.e) and C.1.f) are restricted to the ground floor, measured from finished floor level to the finished floor level of the first floor above;
- h) The roof of the garage that encroach on the building lines be in no way utilised as terraces, balconies or any such use and that said portions be made inaccessible for such use;
- i) The maximum permissible coverage of 50% be departed from and increased to 54%;
- j) No openings, windows or doors be permitted closer than 1m to the property boundary;
- k) No swimming pool be permitted closer than 1m to the property boundary;
- l) Building plans be submitted to the Senior Manager: Development Management for consideration and approval.

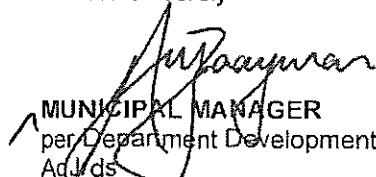
2. GENERAL

- a) The approval will not exempt the owner/developer from adherence to all other legal procedures, applications and/or approvals related to the intended land use;
- b) The approval is, in terms of section 76(2)(w) of the By-Law, only valid for a period of 5 years. All conditions of approval be complied with before the occupancy certificate be issued and failing to do so will result in the approval expiring;

- D. The registration of a right-of-way servitude over the consolidated erf (portion A of Erf 2122 and Erf 2123) and the remainder of Erf 2122, Yzerfontein, complies with the requirements of Section 34 of Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020) and is thus exempted from approval from Swartland Municipality;

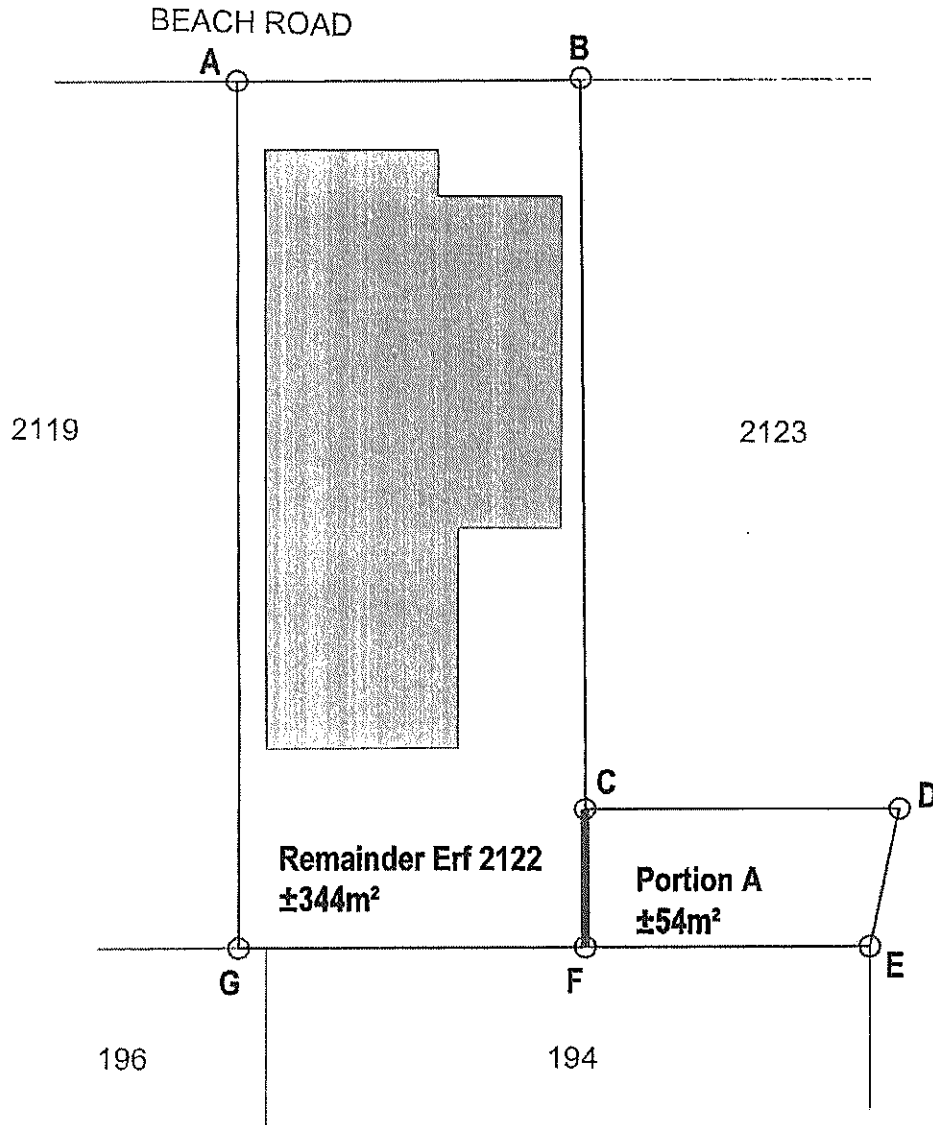
Kindly provide Swartland Municipality with copies of the approved Surveyor General diagrams for record keeping purposes.

Yours sincerely


MUNICIPAL MANAGER
per Department Development Services
AdJ ds

Copies: Surveyor General, Private Bag X9028, Cape Town, 8000
Director: Civil Engineering Services
Director: Financial Services
Building Control Officer
A.J. Smit, P.O. Box 211, Malmesbury, 7299, ajsmil@lantic.net

PLAN OF SUBDIVISION: ERF 2122 , YZERFONTEIN



SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY

Ondervedeling toegestaan ingevolge artikel 70 van die Verordening insake Munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020), onderhewig aan voorwaardes.

Subdivision granted in terms of section 70 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020) subject to conditions.

2023/05/24
DATUM/DATE

A. Bayman
MUNISIPALE BESTUURDER
MUNICIPAL MANAGER

9TH STREET


NOTES:

Figure A B C D E F G represents Erf 2122 Yzerfontein which measures ±398m². Erf 2122 is to be subdivided into:

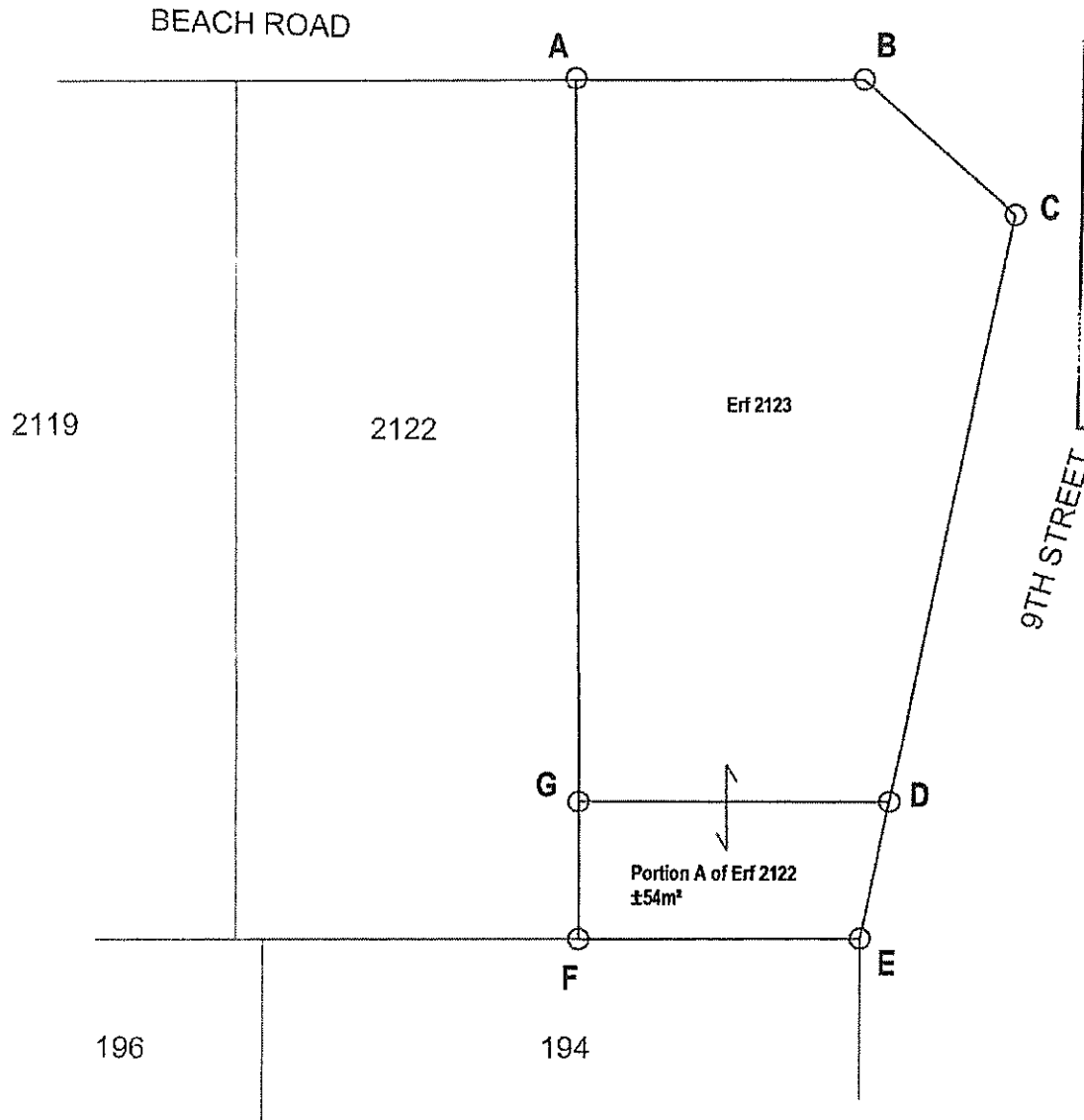
- a) Portion A (±54m²) represented by Figure C D E F
- b) Remainder (±344m²) represented by Figure A B C F G

Subdivision Line ———

Existing building ———

Drawing by: HJ de Kock	
ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING	
 C.K. RUMBOLL & VENNOTE TOWN PLANNERS PROFESSIONAL SURVEYORS 18 RAINTER STREET, MALMESBURY Tel: 022 - 4821845 Fax: 022 - 4871661 Email: leap@rumboll.co.za	
DATE: SEPTEMBER 2022	AUTHORITY: SWARTLAND MUNICIPALITY
REF: YZER/12335/NA/0K	SCALE: NTS

PLAN OF CONSOLIDATION: PORTION A OF ERF 2122 AND ERF 2123, YZERFONTEIN



**SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY**

Konsolidasie toegestaan ingevolge artikel 70 van die Verordening insake munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart 2020) onderhewig aan voorwaardes.

Consolidation granted in terms of section 70 of the Municipal Land Use Planning By-Law (PN 8226 of 25 March 2020), subject to conditions.

2023/05/24
DATUM/DATE

[Signature]
MUNISIPALE BESTUURDER
MUNICIPAL MANAGER


NOTES:

Figure A B C D G represents Erf 2123 Yzerfontein which measures ±365m².

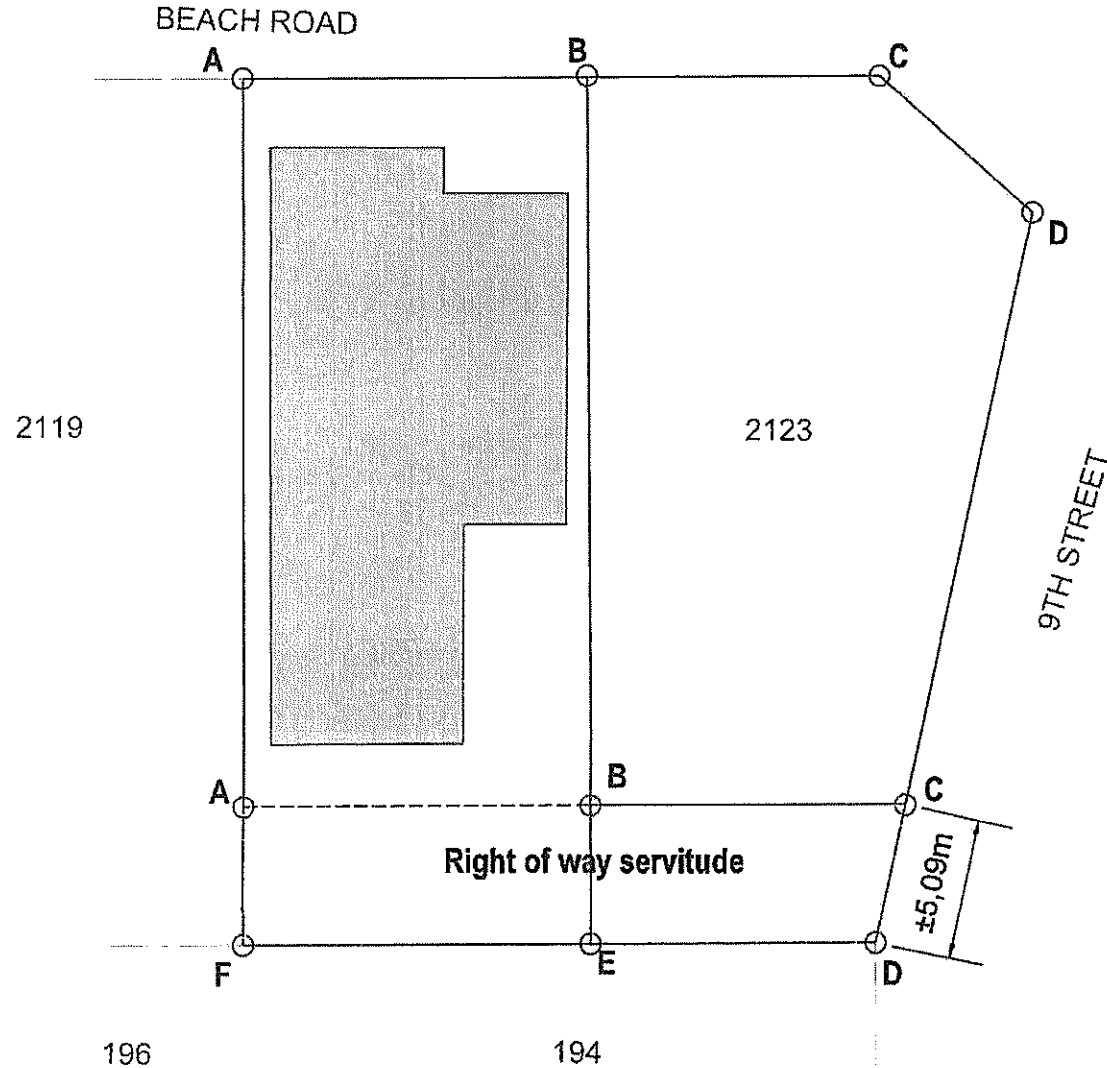
Figure G D E F represents Portion A of Erf 2122 Yzerfontein which measures ±54m².

Portion A and Erf 2123 to be consolidated to create new Erf with an extent of ±419m².

Consolidation →

Drawing by: NJ de Kock	
ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING	
 C.K. RUMBOLL & VENNOTE TOWN PLANNERS PROFESSIONAL SURVEYORS 16 RAHNER STREET, MALMESBURY Tel: 022 - 4871815 Fax: 022 - 4871661 Email: hsp@rumboll.co.za	
DATE: SEPTEMBER 2022	AUTHORITY: SWARTLAND MUNICIPALITY
REF: YZER/12335/NJK	SCALE: NTS

SERVITUDE RIGHT OF WAY OVER ERVEN 2122 AND 2123, YZERFONTEIN



**SWARTLAND MUNISIPALITEIT
SWARTLAND MUNICIPALITY**

Vrygestel ingevolge artikel 34 van die Verordening insake
Munisipale Grondgebruikbeplanning (PK 8226 van 25 Maart
2020).


Exempted in terms of section 34 of the Municipal Land Use
Planning By-Law (PN 8226 of 25 March 2020).

2023/05/24
DATUM/DATE

[Signature]
MUNISIPALE BESTUURDER
MUNICIPAL MANAGER

NOTES:

Figure A B C D E F represents a right of way servitude over erven 2122 and 2123, Yzerfontein measuring ±120m²

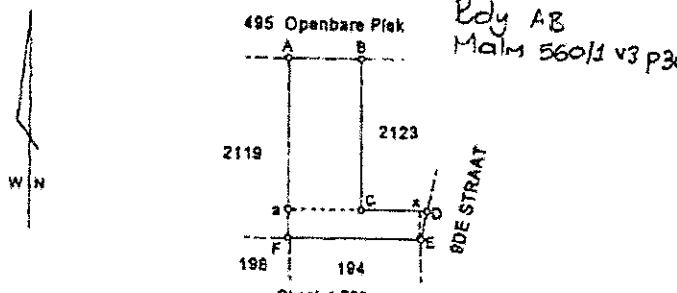
Drawing by: NJ de Kock	
ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING	
 C.K. RUMBOLL & VERHOTE TOWN PLANNERS PROFESSIONAL SURVEYORS 16 RARIER STREET, MALMESBURY Tel: 022 - 4821845 Fax: 022 - 4871681 Email: leap@rumboll.co.za	
DATE: SEPTEMBER 2022	AUTHORITY: SWARTLAND MUNICIPALITY
REF: YZER/2335A/1/1K	SCALE: NTS

"RS 2"

BYE Meter	RIGTINGS-HOEKE	KOORDINATE Y Stekel. WG 19° X	L.G. No
	Konstante	0,00	4160/2004
AB 12,53	289 43 10	A +78 418,33	+91 251,84
BC 26,51	358 25 10	B +78 405,80	+91 251,88
CD 11,48	269 47 10	C +78 405,53	+91 278,39
DE 5,09	11 49 00	D +78 394,05	+91 278,35
EF 23,04	89 39 20	E +78 395,09	+91 283,33
FA 31,53	179 38 10	F +78 418,13	+91 283,47
SERWITUUT	GEGEWENS		nms. LANDMETER- GENERAAL
Fa 5,03	179 38 10	a -78 418,16	Z 004-10-18
aC 12,63	269 47 10		
	152 Slangkop Δ	+68 665,24	+87 801,87
	156 Yzerfontein Δ	+77 638,59	+92 108,86

Beskrywing van bakens
A, B, D : 12mm ronde ysterpen
C, E, F, a : 12mm gat in baksteen plavessel

Serwitutwysing
Die figuur aDEF stel voor n' Serwitut Reg van Weg



Die figuur ABCDEF
Stel voor 451 vierkante meter grond, synde

ERF 2122, gedeelte van Erf 2014 YZERFONTEIN

geles in die Munisipale Swartland Administratiewe Distrik Malmesbury Provinsie Wes-Kaap

Opgemaak in Desember 2003 deur my

PLS 1141 F. Truter
Professionele Landmeter

Hierdie diagram is gehag aan No T 98332/2005 ged. Lp v Registrateur van Aktes	Die oorspronklike diagram is L.G. No. 6947/2001 Transport 72797/2004	Lêer Matn 560/1 M S E2623/2003 Komp BHNQ2471(M2459) BHNQ-2472(M2490) LPI - C0460015
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Paster Plan
 Beskrywing van AB
 Oorspronklike Diagram No. 6947/2001
 PLS 1141 v3 p30

BOEKHOUDING WINKELING ART. 23
 VAN OERD LUSTERS
 VERWYSING 15/16-18 H.Y.
 DATUM 18/11/2004

EXEMPT FROM PROVISIONS OF ACT
 TO BE 1970
 SECTION 16

Erf 2122 Yzerfontein



J P Joubert
Director

Francis Clerke
Consultant

Michaela Cole
Candidate Attorney

Erika Wright
Associate

Karel Brink
Consultant

BY E-MAIL

alwynburger@swartland.org.za
alwyn@swartland.org.za

The Municipal Manager
MALMESBURY

For attention:

**Mr Alwyn Burger /
Alwyn Saayman
JP/tk/JP2451**

Our reference
Your reference

Date

18 August 2023

Dear Sir

DEPARTURE APPLICATION, ERF 2123, YZERFONTEIN

Your e-mail to me dated 16 August 2023, but received earlier today refers.

According to my client, the content of the resolution (annexure "A" to your letter under reply) does not at all reflect what was discussed during the trustee meeting of 20 July 2023.

The content thereof is therefore not correct and Swartland Municipality is accordingly misled by the other trustees that any issue, apart from point 2 (to a limited extent), was discussed at the meeting.

My client intends to approach the High Court to challenge its validity. Such challenge would be amongst other things, on the basis that:-

- 1 Most of the purported decisions and undertakings were never discussed or taken at the meeting, and

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p PO Box 445, Strand, 7139

Ground Floor, Caledon Street Chambers, 30 Caledon Street, Somerset West

www.jpjoubert.net

JP Joubert Attorneys Inc
(Reg. No.: 2015/041718/21)

Prokureurs, Aktebesorgers & Kommersiële Mediators • Attorneys, Conveyancers & Commercial Mediators

2 Even if they were properly taken, they are not in the best interests of the Trust or its beneficiaries.

Furthermore, according to Regulation 89(2) of the Swartland Municipality, Municipal Land Use Planning By-law – 2020, an appeal may be instituted by any “person whose rights are affected by a decision”. My client, as a trustee and a beneficiary of the Smit Family Trust and frequent occupier of the immovable property situated at Erf 2122 is therefore a “person whose rights are affected by a decision”. She did not lodge the appeal on behalf of the Trust, nor did she indicate that she acted on its behalf.

As a result, we fail to see how her appeal could lose its validity. The appeal must be dealt with by the Executive Mayor in terms of Swartland Municipality, Municipal Land Use Planning By-law – 2020, and cannot be swept under the carpet without the merits having been considered.

Please provide us with the outcome of the appeal and the reasons therefore.

Yours faithfully

J P Joubert Attorneys

J P Joubert

