Munisipaliteit
Municipality
Umasipala

MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE BANQUETING HALL, MALMESBURY ON THURSDAY, 6 JULY 2023

PRESENT:

The Executive Mayor, Alderman J H Cleophas (chairperson)
The Deputy Executive Mayor, Cllr J M de Beer
Cllr D G Bess
Cllr N Smit
Ald T van Essen

1. OPENING AND APOLOGIES

The chairperson opened the meeting.

RESOLVED that the apology be noted of Cllr A K Warnick.

2. MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD ON 21 JUNE 2023

RESOLUTION
(proposed by cllr N Smit, seconded by cllr D G Bess)

That the minutes of a meeting of the Appeal Authority held on 21 June 2023 be approved and signed by the Executive Mayor.

3. MATTERS FOR CONSIDERATION

3.1 OUTCOME OF APPEAL RECEIVED ON THE PROPOSED REZONING OF ERF 975, DARLING (15/3/6-8, 15/3/3-3)

An appeal was received on the decision by the Municipal Planning Tribunal (MPT) – Item 6.3 dated 8 February 2023 – to refuse the application for the rezoning of Erf 975, Darling.

The evaluation of the appeal was presented to the Appeal Authority on 21 June 2023 in the report of the Municipal Manager dated 18 May 2023 and the report of the authorized official dated 4 May 2023, respectively.

At a meeting of the Appeal Authority held on 21 June 2023 all the parties to the appeal were given the opportunity, in order to apply the *audi alteram partem* rule, to make submissions to the Appeal Authority.

The Appeal Authority **RESOLVED** on 21 June 2023 –

”That the appeal will not be resolved on date and that all parties will be notified of the outcome of the Appeal Authority after due consideration of all the information, including (but not limited to) all submissions made (orally and in writing).”

The merits of the appeal was considered and assessed by the Appeal Authority on 6 July 2023, taken into account all relevant legislation and policy guidelines, including the Swartland Municipal Spatial Development Framework (MSDF, approved by Council on 30 May 2021) in order to adhere to all requirements.

The following matters/…

The following matters were discussed in reaching the decision:

(1) Process

With reference to Section 90(2) of the By-Law, the Appeal Authority notes that the appellant did not appeal the process followed by the Municipality during the consideration of the application.

The process followed in the consideration of the application is therefore deemed true and fair.

(2) Public Participation

formal notice were served, in terms of Section 56(2) (c) & (d) of the By-Law, on each person whose rights or legitimate expectations were deemed to be affected by the approval of the application as well as on every owner of land adjoining the land concerned. A total of 19 properties were identified by the municipality, deemed to be affected.

In terms of Section 55 of the By-Law, public notice of the application was also done as required with the publishing of the application in a newspaper circulating in the area, the Provincial Gazette as well as the municipality's website.

The public participation process followed is therefore deemed compliant with the applicable legislation.

(3) Contradiction with planning policy, norms and standards

The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA.

The development proposal is deemed inconsistent with the PSDF as it will detract from the character of the area as well as negatively impact the sense of place. Decision making should target existing economic nodes (CBDs or township centres) to accommodate development of this scale and nature.

The proposal is deemed to be in contradiction with the MSDF, 2019 which supports concentration of mixed use development along identified main activity corridors and streets to support integration. It also rather support the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods;

The Appeal Authority therefore conclude that the proposed use of business premises consisting of shops and offices in the proposed location as well as the scale of the proposed rezoning is in contradiction with the MSDF, 2019 and therefore the Municipal Planning Tribunal did not err in its decision to refuse the application.

Section 42(1) of Spatial Planning and Land Use Management Act, Act 16 of 2013, clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with provincial government policies and the Municipal Spatial Development Framework.

(4) Public interest

The Appeal Authority is in agreement that the position will result in bringing commercial opportunities closer to the low cost housing/highly populated area of Darling. However, the proposed usage is not desirable and furthermore no site specific circumstances has been submitted to deviate from the SDF.

Section 89(1) of the By Law determines that '…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.

Resolution/…

RESOLUTION

(a) The Executive Mayor as Appeal Authority of Swartland Municipality therefore dismiss the appeal received from C K Rumboll and Partners (on behalf of the owners of Erf 975, Darling), for the following reasons:

(i) The proposed development remains to be non-compliant with the principles of LUPA and SPLUMA;
(ii) The proposed development remains to be non-compliant with the Municipal Spatial Development Framework;
(iii) No site specific circumstances were argued to deviate from the spatial planning of Darling;
(iv) An existing business node exists in the high density residential development to the north of erf 975 which is better suited to accommodate a development of this scale. This will enhance the social cohesion of the neighbourhood and promote the sense of place according to the Provincial Spatial Development Framework policy objectives. The application as presented remains to be non-compliant with the Provincial Spatial Development Framework;
(v) The impact of the proposed development on municipal infrastructure is not known and could not be considered;

(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 6.3 dated 8 Februarie 2023, to refuse the application for rezoning of Erf 975, Darling.

(sgd) ALD J H CLEOPHAS
CHAIRPERSON

Munisipaliteit
Municipality
Umasipala

Verslag ◆ Ingxelo ◆ Report

Office of the Municipal Manager
14 September 2023

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 14 NOVEMBER 2023

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

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;

- 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 be confirmed;

(b) That the appeal be dismissed for the reasons as stated in Annexure A.

(sgd) J J Scholtz

MUNICIPAL MANAGER

Aanhangsel A

Verslag ◆ Ingxelo ◆ Report

Office of the Director : Development Services
Division : Development Management

7 September 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

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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.....p 17-21

Annexure 2: Correction of error letter to applicant, C K Rumboll & Partners dated 1 June 2023.....p 22-27

Annexure 3: Appeal received from Ilze Smit dated 12 June 2023 .....p 28-59

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).....p 60

Annexure 5 Letter from applicant C K Rumboll & Partners dated 5 July 2023 : Permission for extension to comment on appeal .....p 61

Annexure 6: Comment on appeal from Duncan & Rothman Attorneys (on behalf of Dr Christie Smit dated 3 July 2023 .....p 62-75

Annexure 7: Letter from Joubert Attorneys (on behalf of Ilze Smit) dated 18 August 2023 .....p 76-77

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 apeal fees as determined by the municipality to the municipal manager and the municipal manager mustg ive 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 commenton 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	On/before 21 September 2023
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	On/before 20 November 2023
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	TBC

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 Familiy 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 withdrawl of the application for departure of development parameters on erf 2123, numerous meetings/dicussions 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-complaince 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 extention 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 fluad.

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, extention 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 Authortiy.

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 effidence 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).

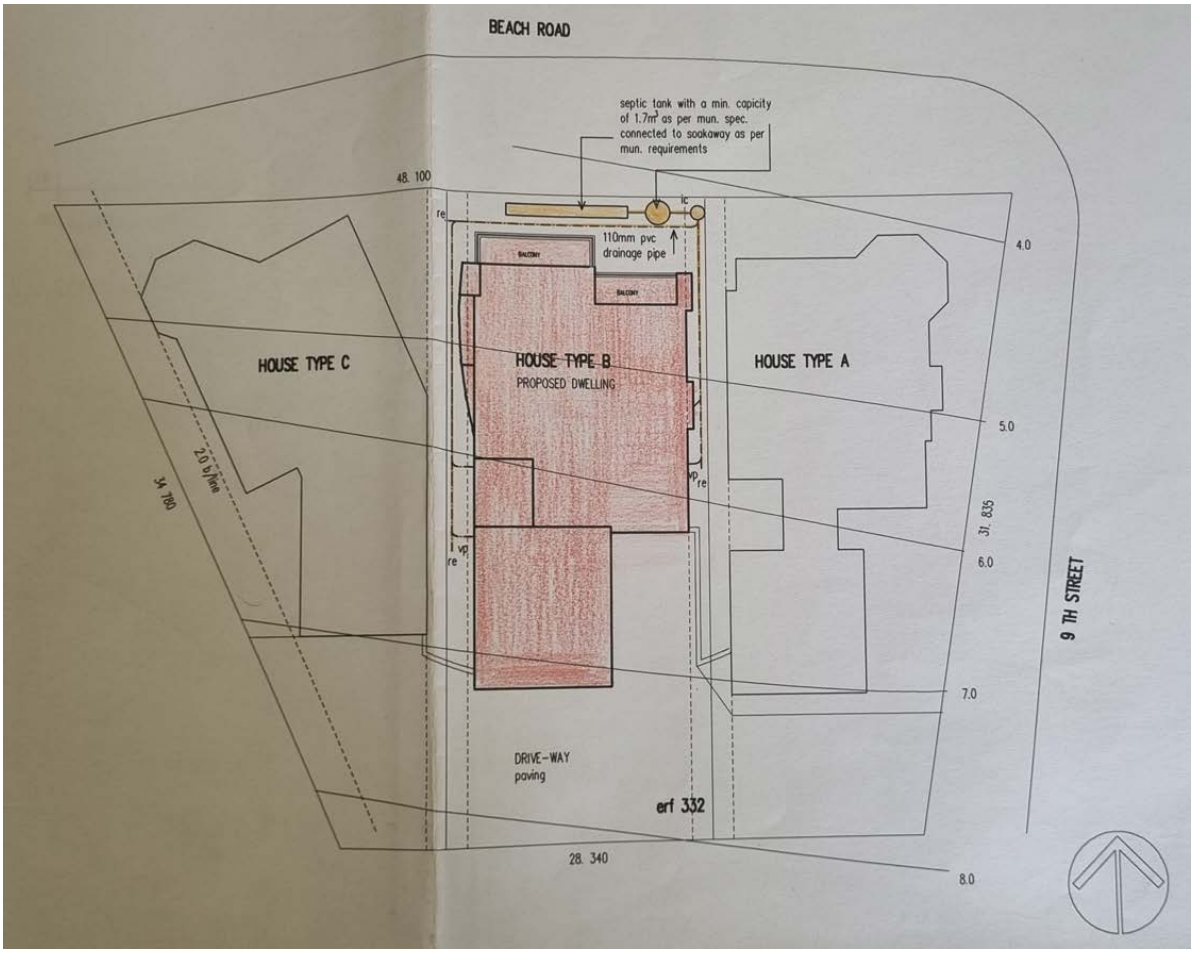
The subdivision of erf 2122 does not affect the zoning of the erf. The zoning of erf 2122 remains to be Residential zone 1.

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

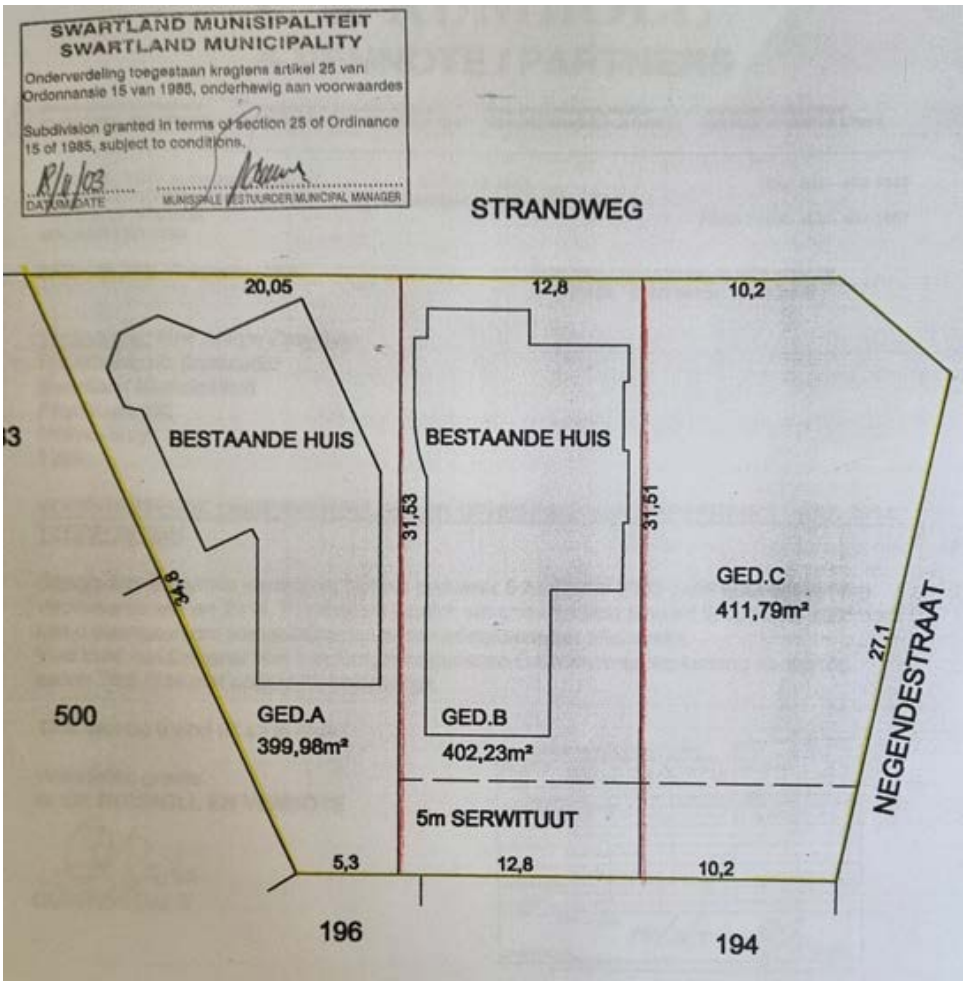
1. Street building lines (northern and north eastern boundaries)

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 2199 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 2219 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 enchanced rather than being impacted negatively.

2. Departure of 1,5m side buildling 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 buidling 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 ±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 previledge 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 laundary 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 – exept 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 **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.

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:
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30 August 2023

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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

This municipality's letter to you dated 16 August 2023 regarding the subject refers.

The appeal received from JP Joubert Attorneys, dated 12 June 2023, on behalf of Mrs Ilze Smit refers. Mrs Ilze Smit is not acting on behalf of the Smit Family Trust but in her own capacity as an affected party.

The appeal is therefore valid and will be considered.

Please inform your client that there cannot be given effect to the land use approval until such time as a decision on the appeal has been issued.

Yours faithfully

MUNICIPAL MANAGER
via Department Development Services

AJB/ds

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:
AJ Burger

30 August 2023

JP Joubert Attorneys
Ground Floor, Caledon Street Chambers
30 Caledon Street
SOMERSET WEST
6665

Email: jp@jpjoubert.net

Dear Sir/Madam

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

Your letter with reference JP/tk/JP2451, dated 18 August 2023, regarding the subject refers.

Your actions to the High Court regarding the validity of the trust resolution is noted.

Swartland Municipality has changed its view on the validity of the appeal and will consider the appeal of Mrs Ilze Smit as an affected party and not that she appealed on behalf of the Smit Family Trust.

Yours faithfully

MUNICIPAL MANAGER
via Department Development Services

AJB/ds

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;

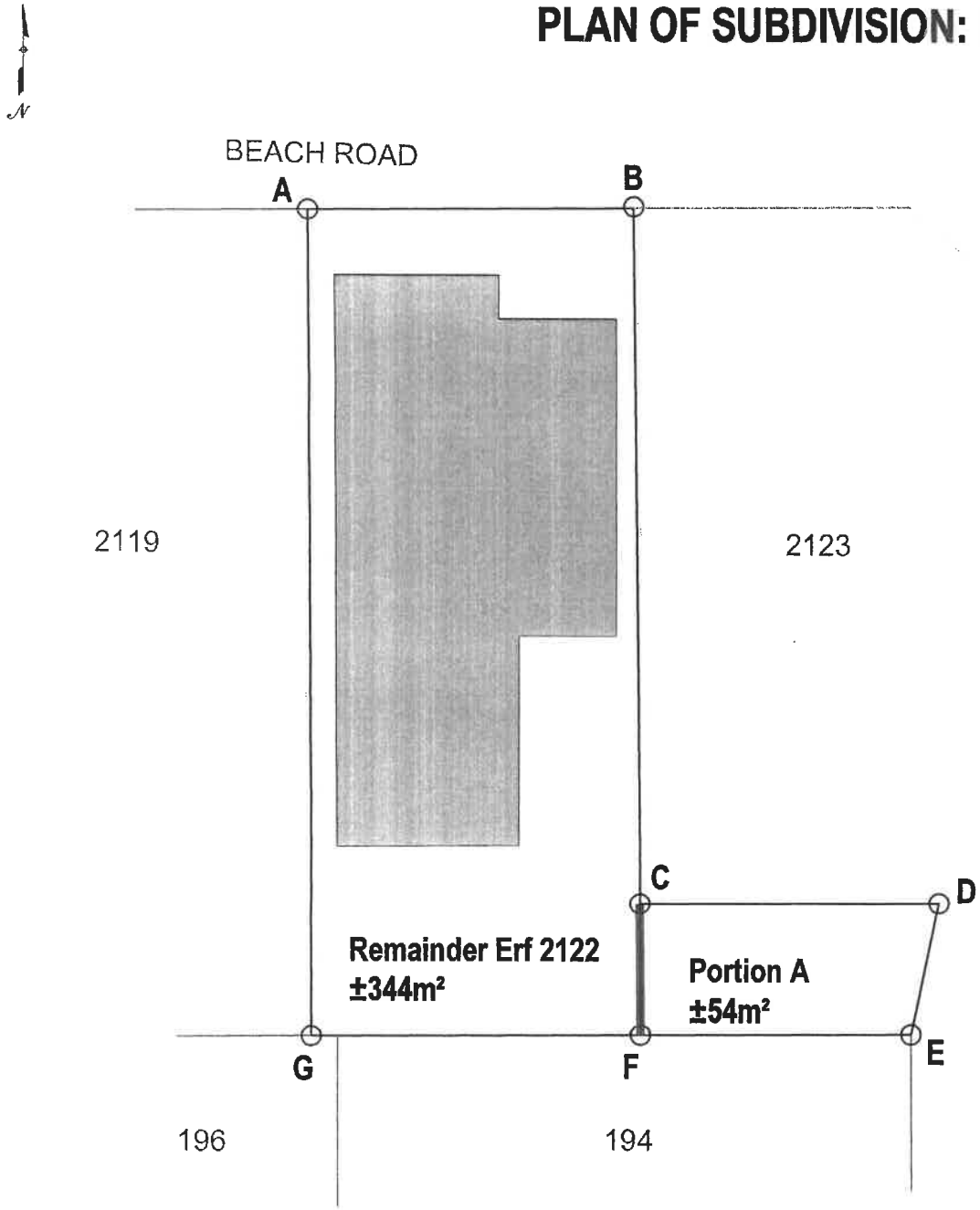
Kindly provide Swartland Municipality with copies of the approved Surveyor General diagrams for record keeping purposes.

Yours sincerely

MUNICIPAL MANAGER
per Department Development Services
Adjds

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

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 ——

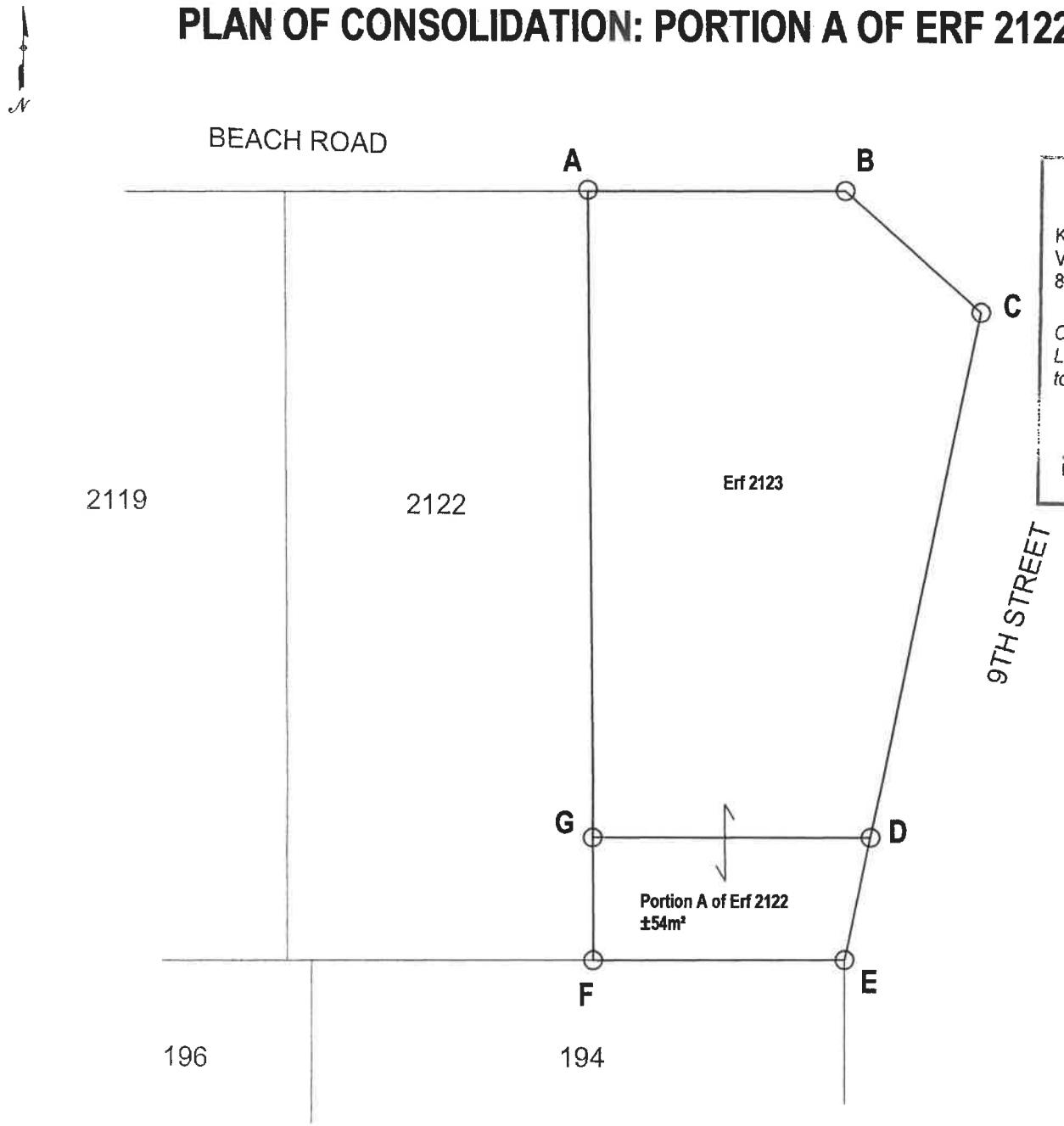
Drawing by:
NJ de Kock

ALL AREAS AND DISTANCES ARE 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: 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.

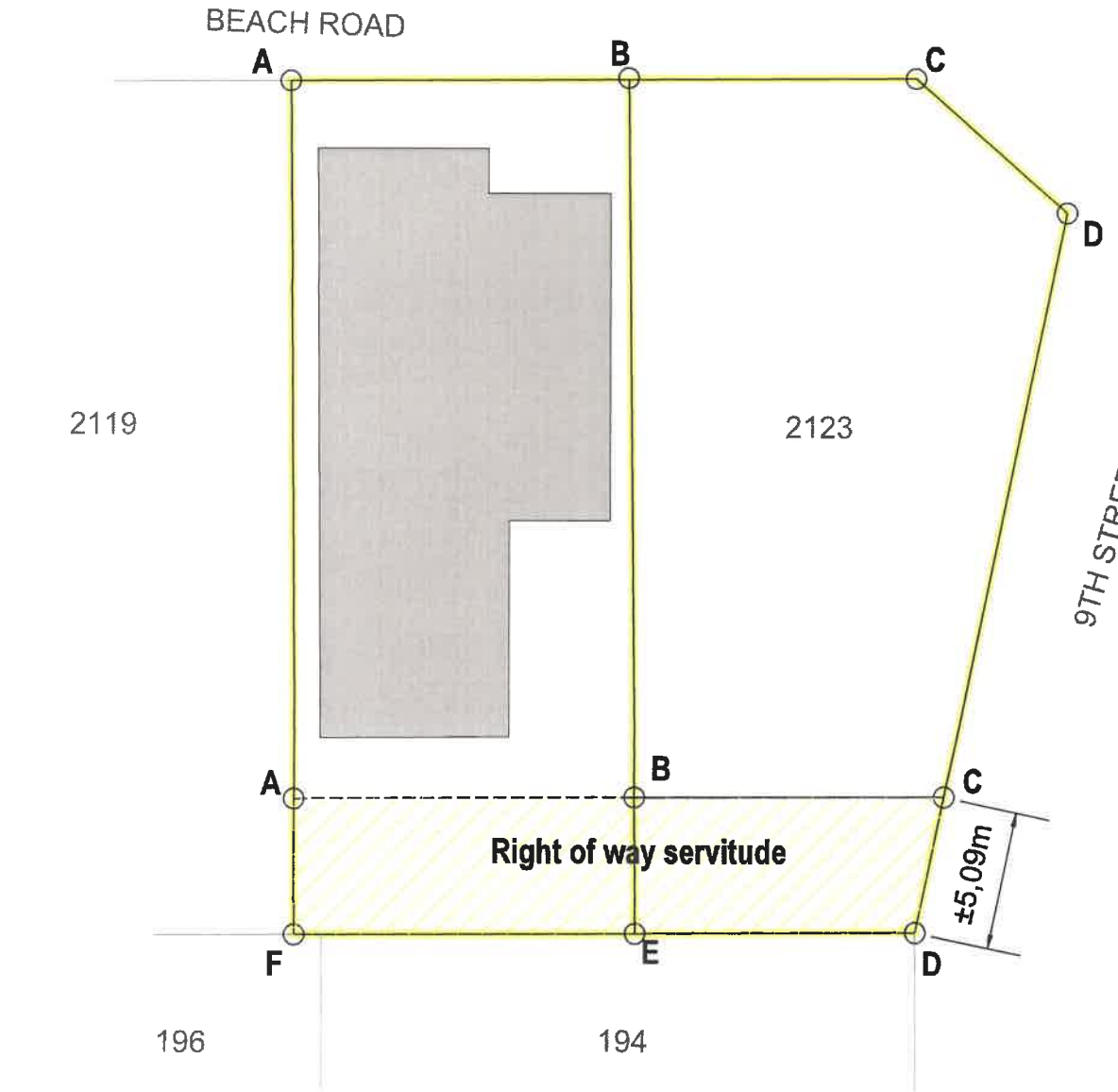
Figure **G D E F** represents Portion A of Erf 2122 Yzerfontein which measures ±54m².

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: lesp@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).

2023/05/24
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 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: YZER/12335/NJdK	SCALE: NTS

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

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;

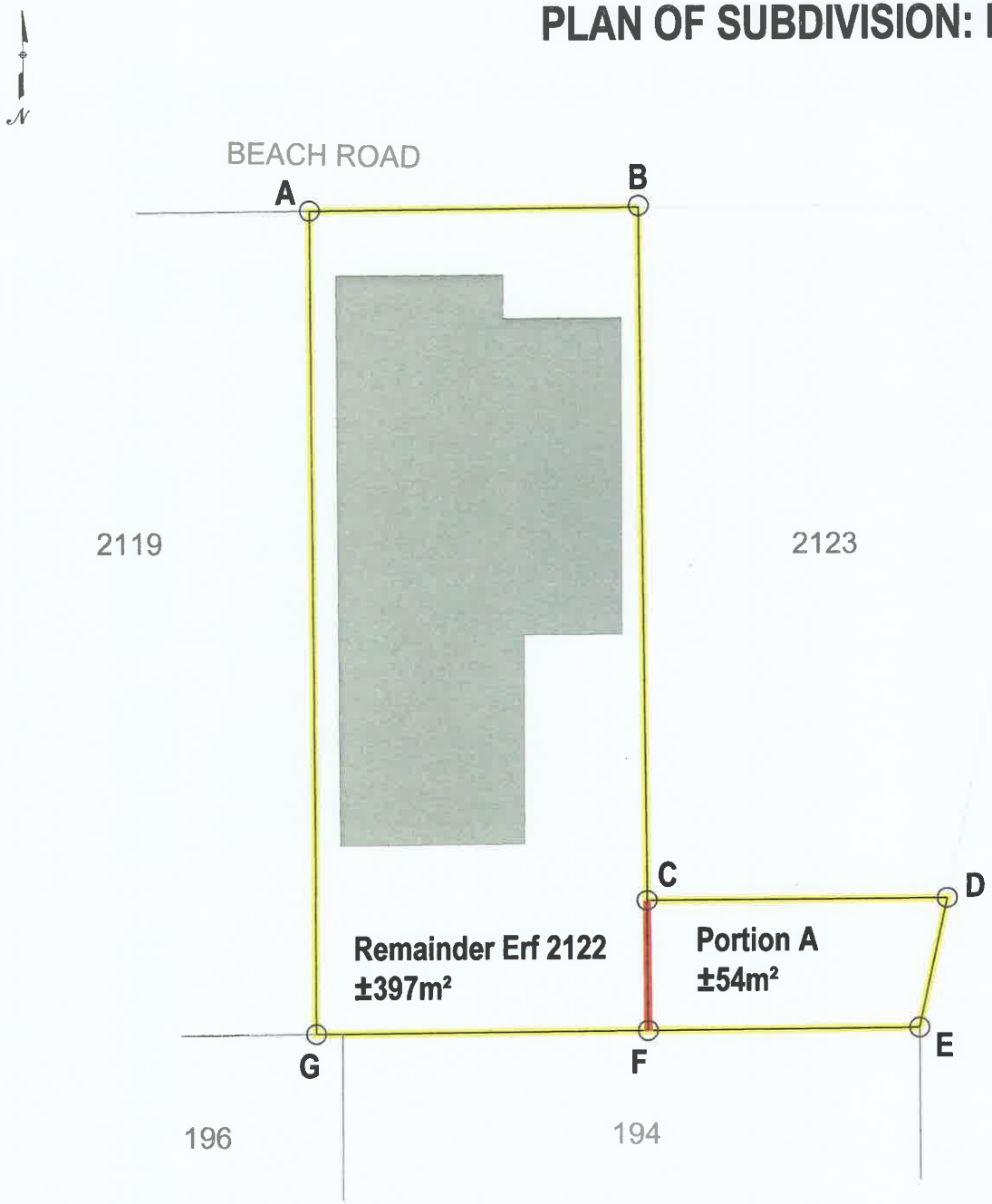
Kindly provide Swartland Municipality with copies of the approved Surveyor General diagrams for record keeping purposes.

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

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.

2023/06/01
DATUM/DATE

MUNISIPALE BESTUURDER
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

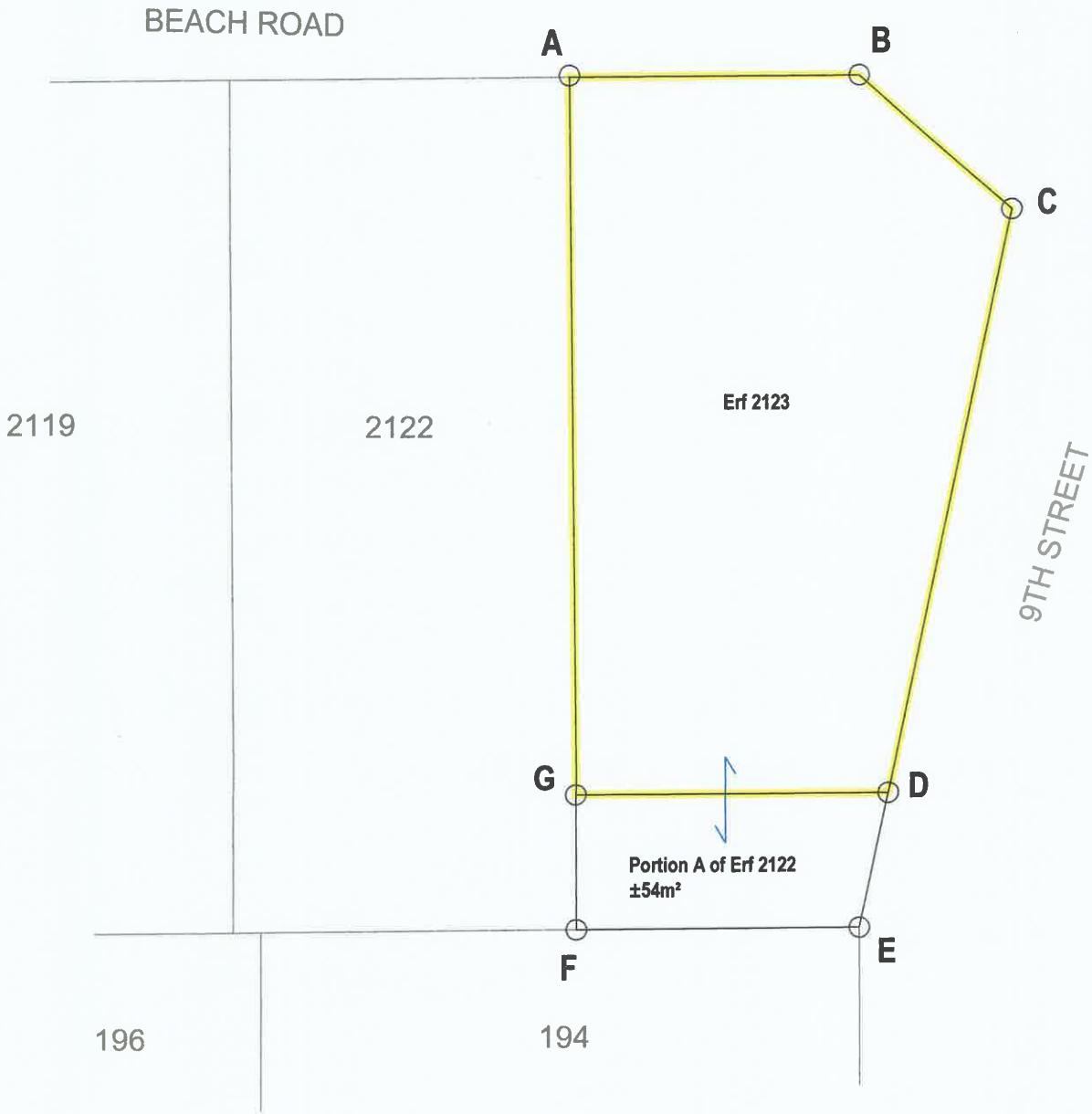
Drawing by:
NJ de Kock

ALL AREAS AND DISTANCES ARE 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:	AUTHORITY:
SEPTEMBER 2022	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

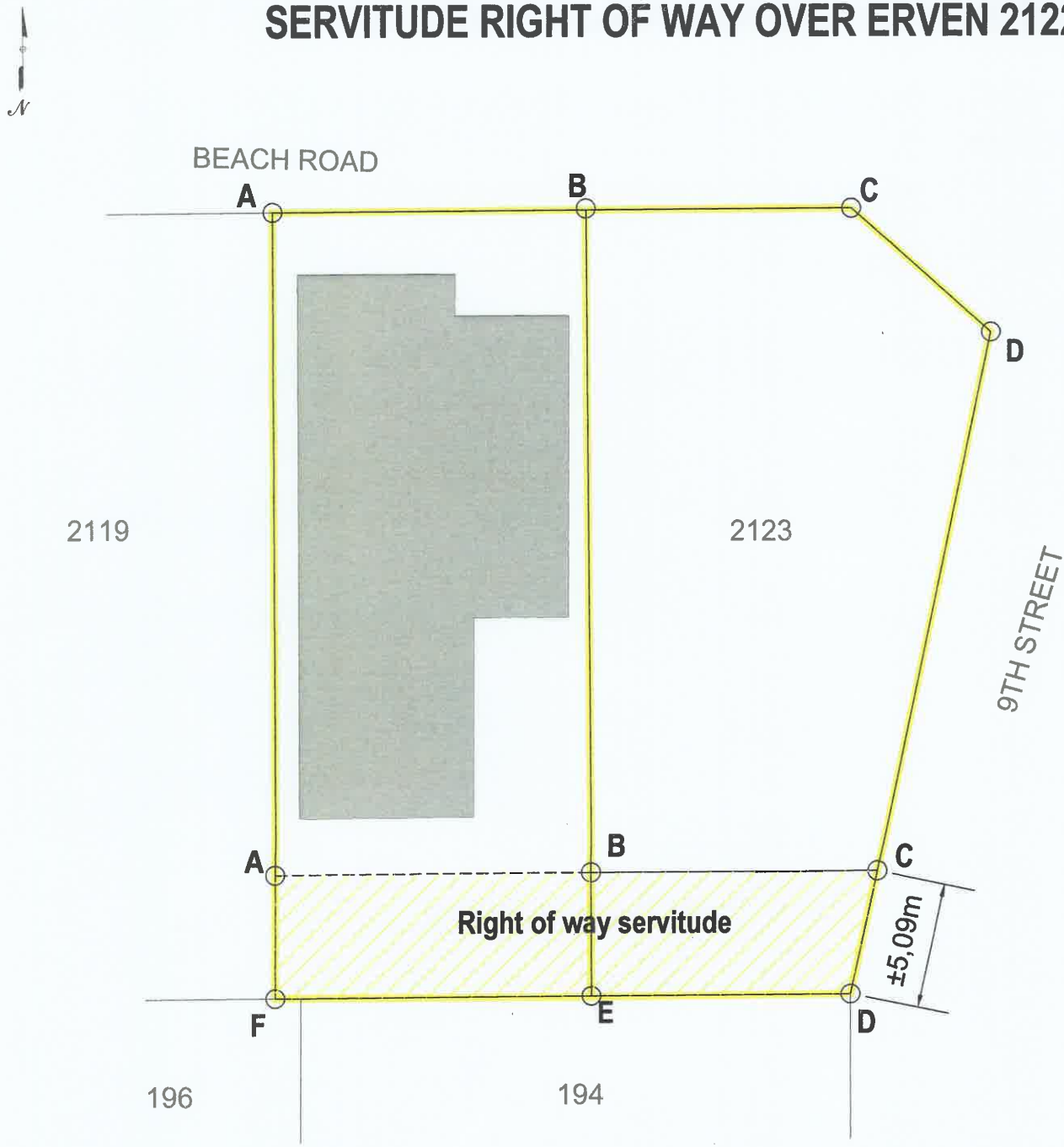
Drawing by:
NJ de Kock

ALL AREAS AND DISTANCES ARE 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:	AUTHORITY:
SEPTEMBER 2022	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 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: 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

EMS South Africa
EE 048 586 390 ZA
A BOOK COPY

Malmesbury 7299
Post Office
07 JUN 2023
Cashier

DATE of DELIVERY
DATUM van AFLEWERING

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VOORLETTERS van
AFLEWERINGSBEAMPTE

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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 sall aan die afsender teruggestuur word as dit nie binne 21 dae na die uitreikingsdatum van die oorspronklilke afleweringsadvies afgehaal is nie.

Malmesbury 7299
Post Office
07 JUN 2023
Cashier

Date-stamp
Datumstemple

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Leitam Business Solutions

Joubert
Prokureurs • Attorneys

J P Joubert Director
Francis Clerke Consultant
Nichaela Cole Candidate Attorney
Erika Wright Associate
Karel Brink Consultant

BY HAND

The Executive Mayor
Swartland Municipality
MALMESBURY

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.

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

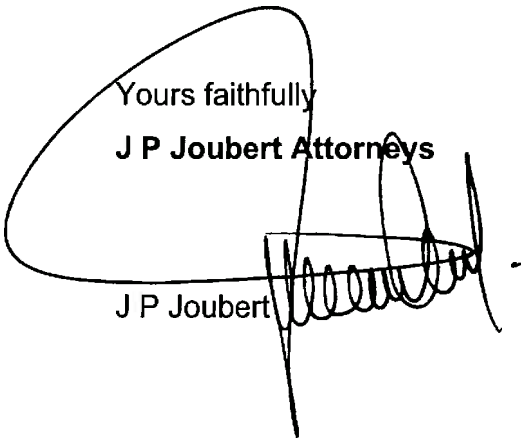
www.jpjoubert.net

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

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

Yours faithfully

J P Joubert Attorneys



J P Joubert

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 all (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.

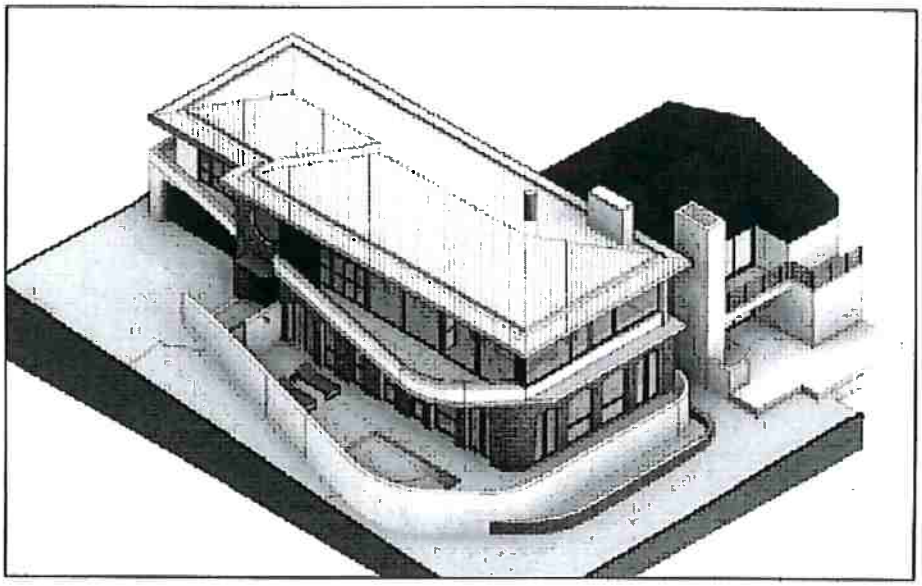


Figure 5: Proposed development and alignment with Erf 2122

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.

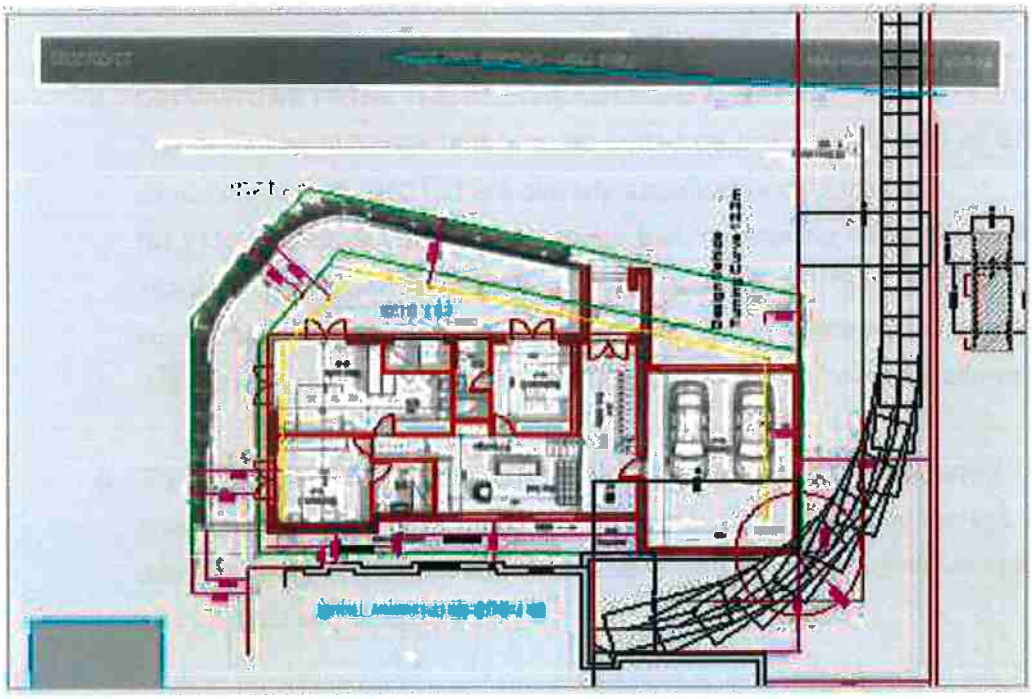


FIGURE 1: IMPACT ON ACCESSIBILITY OF PARKING AND OTHER MATTERS

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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 1223 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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davantoni design

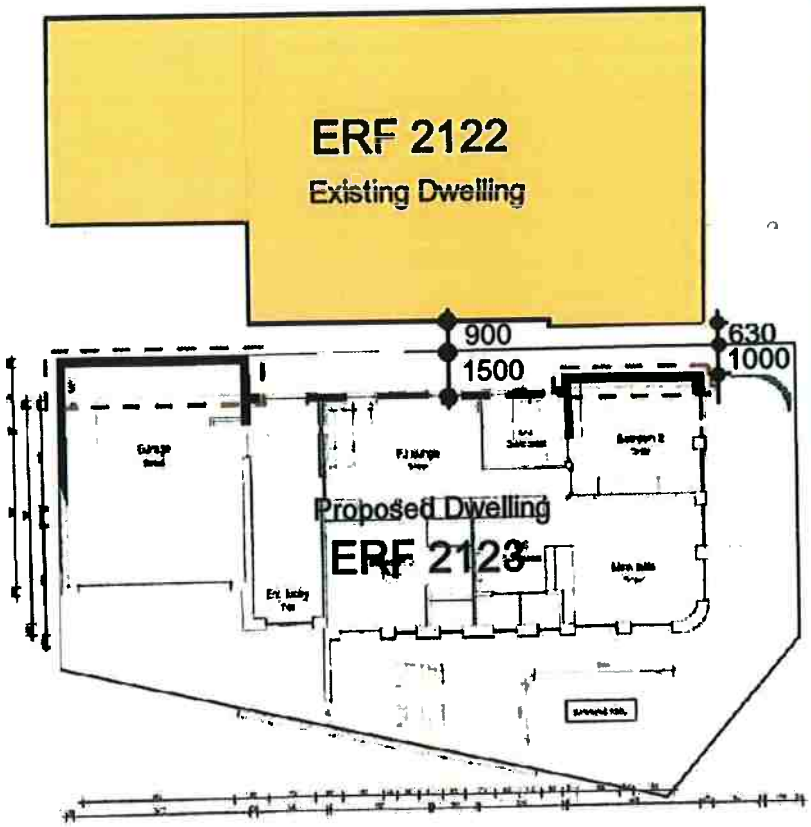
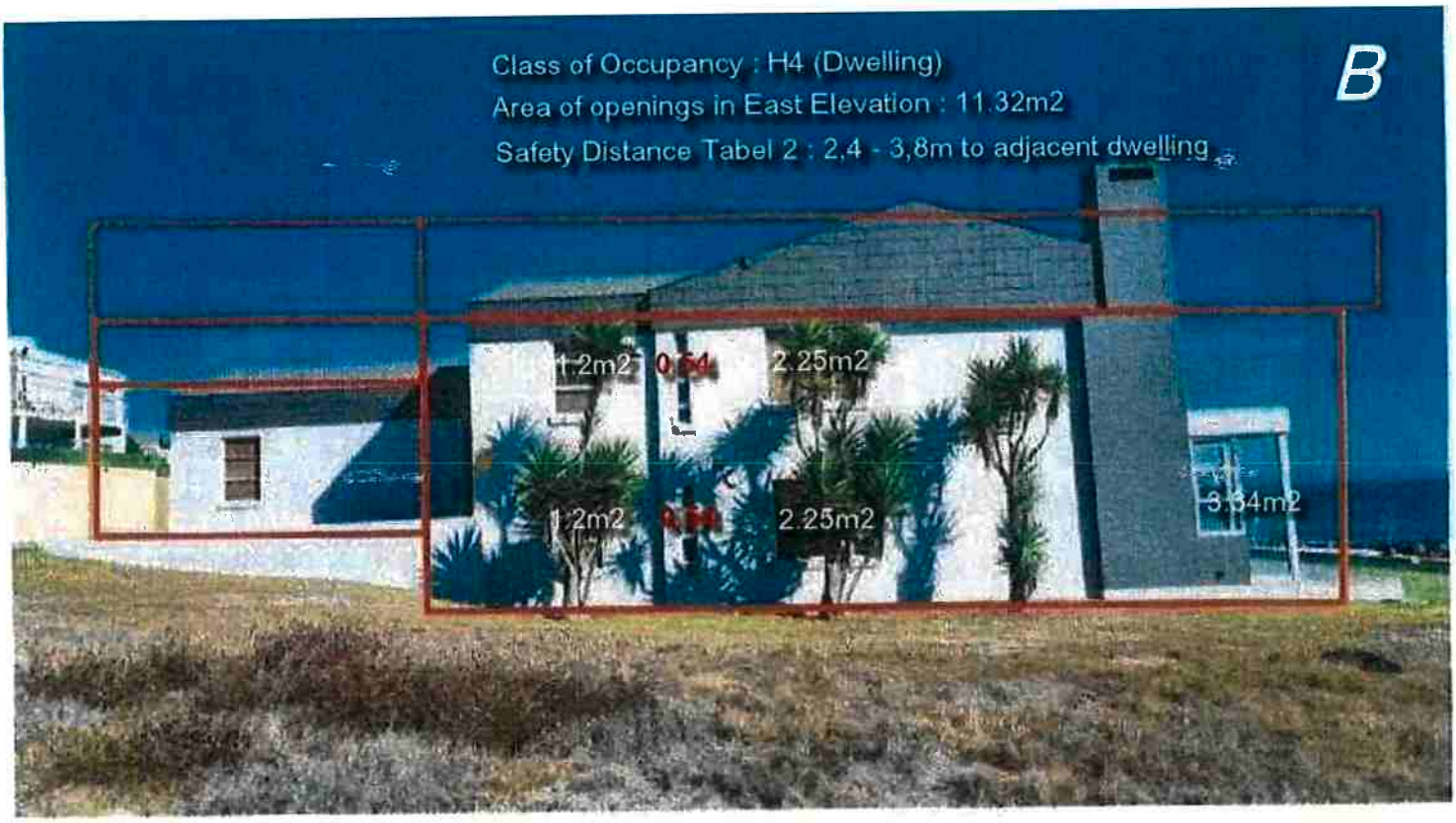


Figure 9: Relaxation of western building lines

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 ±0m on ground floor to accommodate the proposed garage.
  - 1.5m to 1m on ground floor to accommodate the proposed dwelling house.



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/m² (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 (±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.

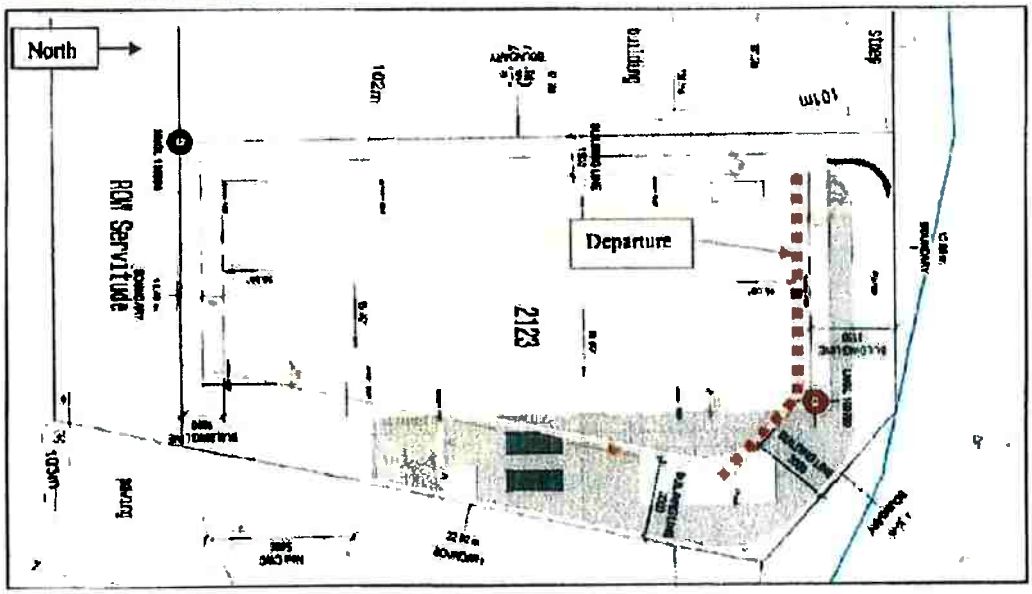


Figure 3: Relaxation of northern building lines

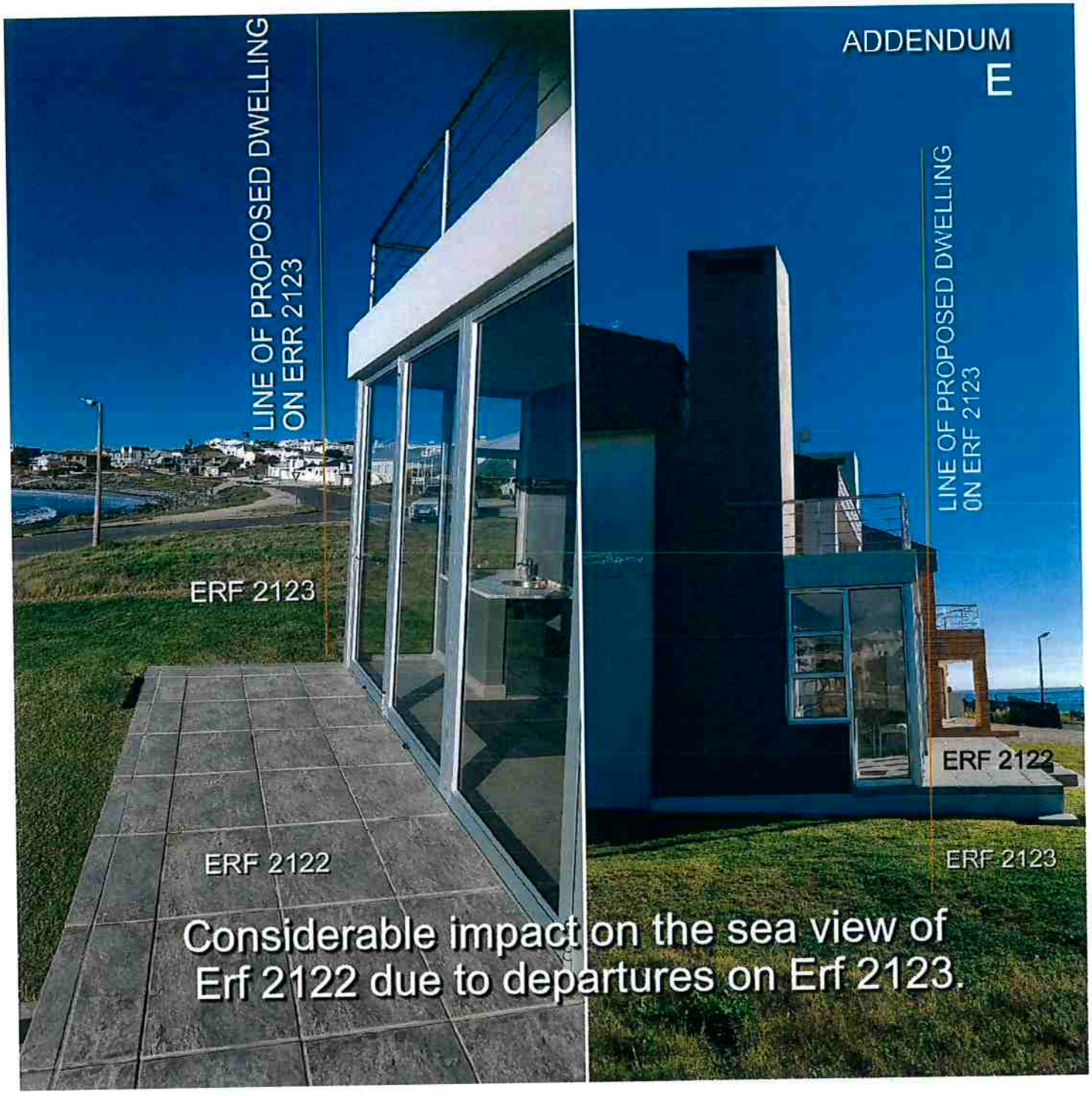
Section 12.2.1 Encroachment of building lines:

(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


LINE OF PROPOSED DWELLING ON ERR 2123
ERF 2123
ERF 2122
ADDENDUM
E
LINE OF PROPOSED DWELLING ON ERF 2123
ERF 2122
ERF 2123
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.

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.

Joubert
Prokureurs • Attorneys

J P Joubert
Director

Francis Clerke
Consultant

Nichaela Cole
Candidate Attorney

Erika Wright
Associate

Karel Brink
Consultant

BY E-MAIL

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hertzros@gmail.com

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

ATTENTION: **DR CHRISTIE SMIT**
DR HERTZOG ROUSSEAU

Our reference JP/JP2451
Your reference

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.

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

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

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 Maatskappyewet 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 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 A ricultural 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.

Joubert
Prokureurs • Attorneys

J P Joubert
Director

Francis Clerke
Consultant

Nichaela Cole
Candidate Attorney

Erika Wright
Associate

Karel Brink
Consultant

BY E-MAIL

Dr Christie Smit
DURBANVILLE

Our reference JP/nc/JP2451
Your reference

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 Rlaan Smit with his proposed building works on Erf 2123.

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.

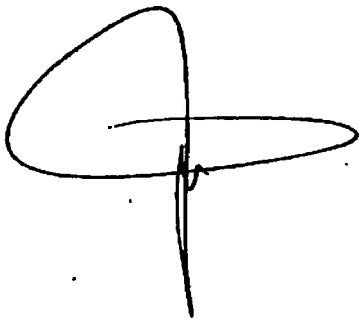
Not only is this trite, but in the trust deed of the Trust it was recorded as follows:

"9.1 *Die magte wat vir die trustees in hierdie trustdokument omskryf word, is magte waarmee die trustees ampshalwe beklee 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:



"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.

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.

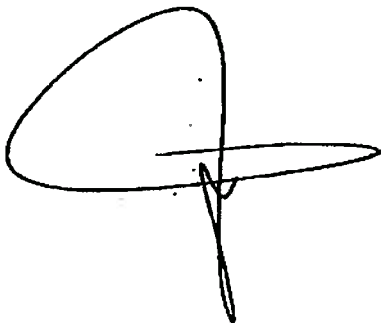
Our client's erstwhile attorney, Johan du Plessis, directed a letter to you dated 1 Feb 2023 in which you were specifically addressed regarding your actions as (a) trustee(s) of the Trust. Notwithstanding the content of that letter, you have continued with actions which are not in the interest of the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



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

Absa Bank Limited Reg No 1986/004794/06 Authorised Financial Services and Registered Credit Provider Reg No NCRCP7 Company Information: www.absa.co.za

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

PROFESSIONELE 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,

NJdeKock
.....
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, 1ste 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 Assistente: FJ van Straten, LL.B
Konsultant: HPA Venter, B.Proc.
Finansiële Bestuurder: C Wiid, B.Compt.

B-BBEE LEVEL 2 CONTRIBUTOR

DUNCAN & ROTHMAN
PROKUREURS

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

3 Julie 2023

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

VIR AANDAG : Me Delmary Stallenberg

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, 1ste 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 Assistente: 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:

"RS1"

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

SWARTLAND
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;

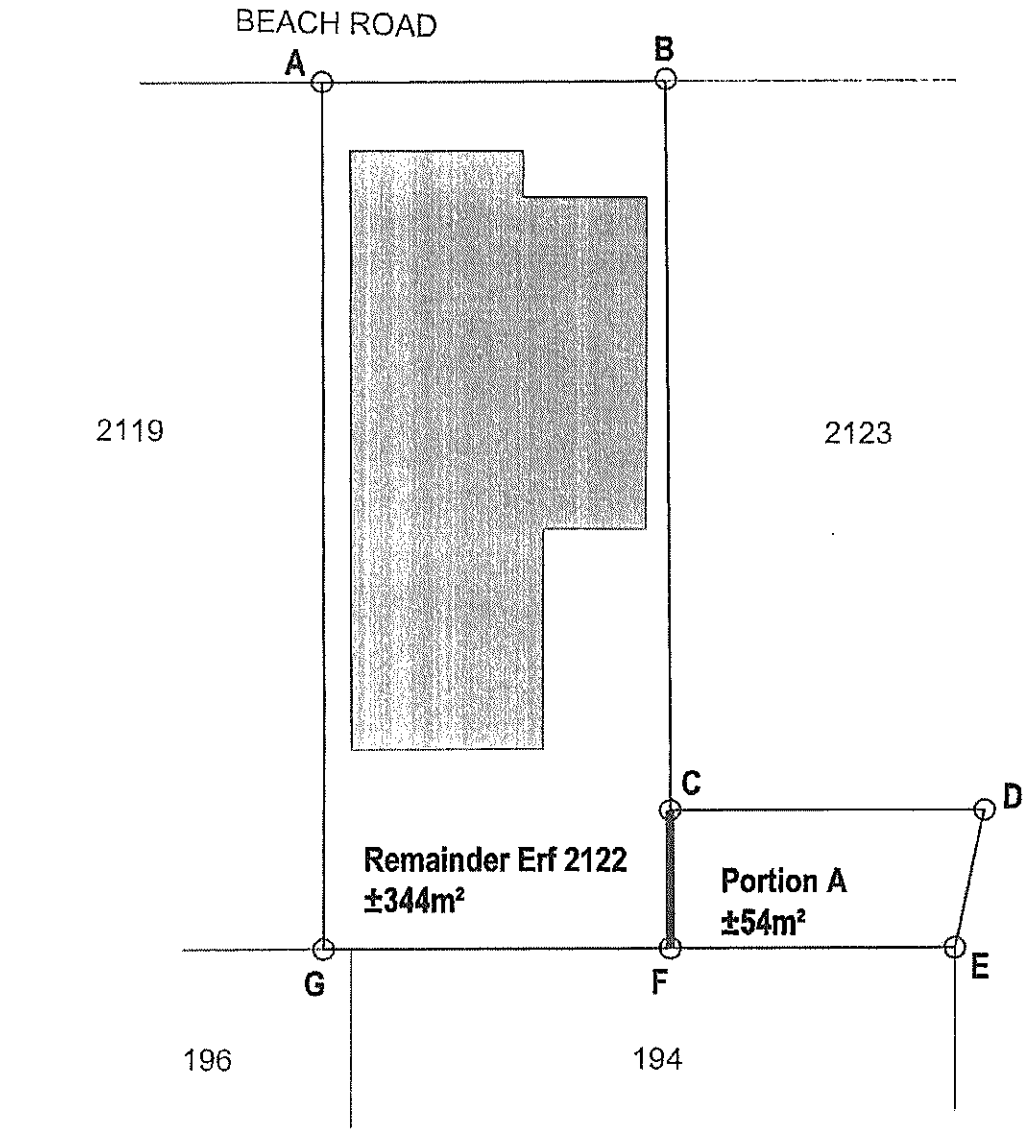
Kindly provide Swartland Municipality with copies of the approved Surveyor General diagrams for record keeping purposes.

Yours sincerely

MUNICIPAL MANAGER
per Department Development Services
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

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

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 ——

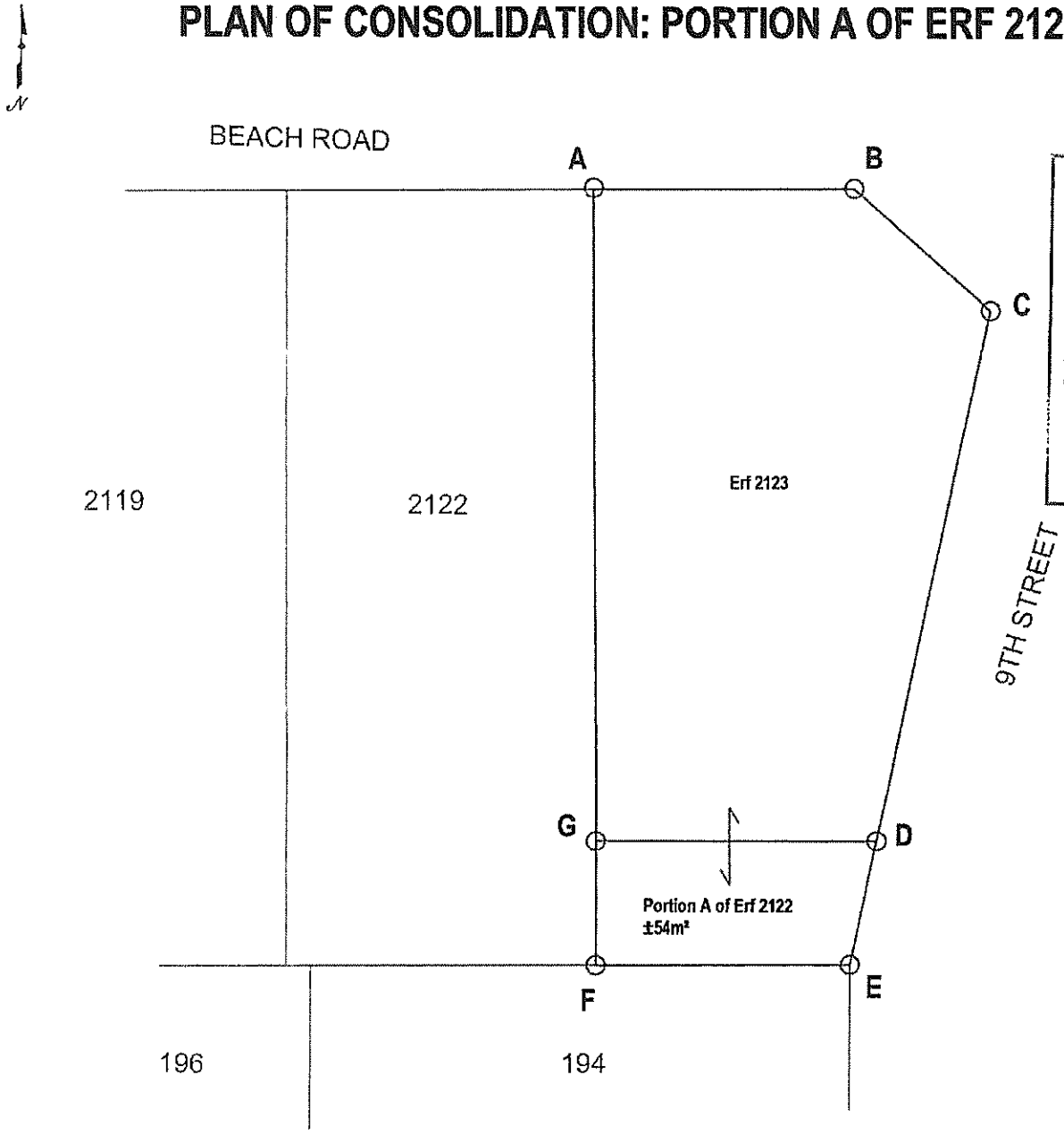
Drawing by:
NJ de Kock

ALL AREAS AND DISTANCES ARE SUBJECTED TO SURVEYING

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

DATE:	AUTHORITY:
SEPTEMBER 2022	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

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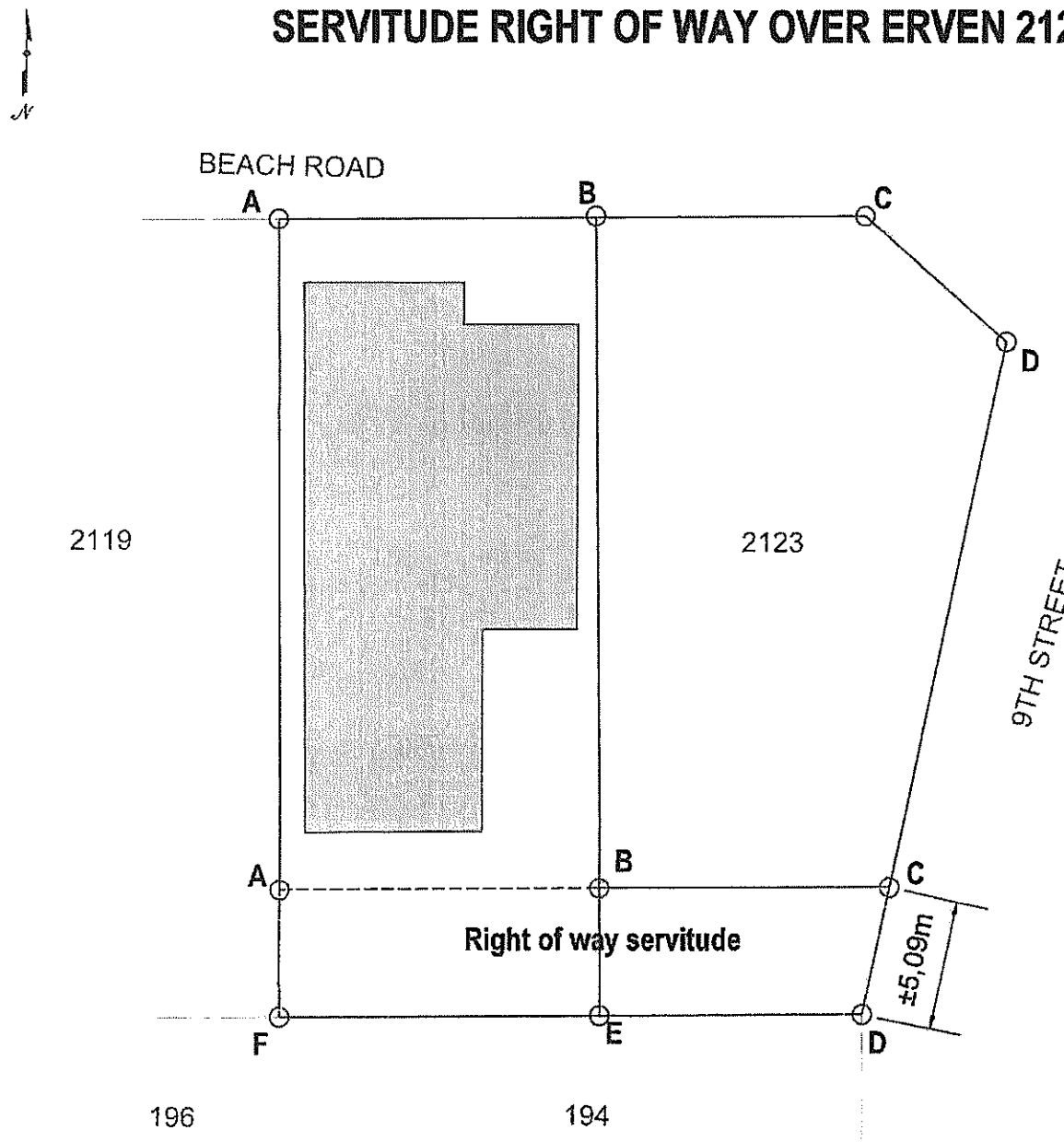
DATE:	AUTHORITY:
SEPTEMBER 2022	SWARTLAND MUNICIPALITY
REF: YZER/12335/NJdK	SCALE: NTS

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).

2023/05/24
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 SUBJECTED TO SURVEYING

C.K. RUMBOLL & VENNOTE
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DATE:	AUTHORITY:
SEPTEMBER 2022	SWARTLAND MUNICIPALITY
REF: YZER/12335/NJdK	SCALE: NTS

"RS 2"

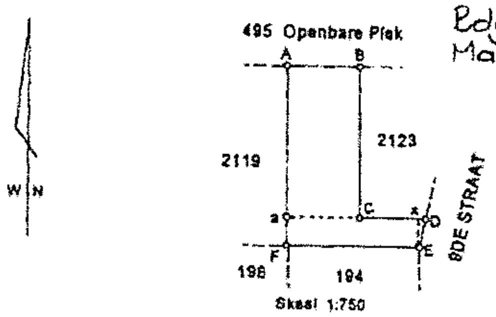
C.K Rumbold & Vennote, Pr.Landmeters, Malmesbury

KANTOORAFSKRIF

	BYE Meter	RIGTINGS-HOEKE		KOöRDINATE Y Stelsel WG 19°	X	L.G. No
		Konstante		0,00	+3800 000,00	4160/2004
AB	12,53	269 43 10	A	+78 418,33	+91 251,84	Goedgekeur
BC	26,51	359 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	nms.
FA	31,53	179 38 10	F	+78 418,13	+91 283,47	LANDMETER-GENERAAL
	SERWITUUT	GEGEWENS				
Fa	5,03	179 38 10				2004-10-18
aC	12,63	269 47 10	a	+78 418,16	+91 278,44	
		152 Slangkop	Δ	+68 665,24	+87 801,67	
		156 Yzerfontein	Δ	+77 638,59	+92 106,06	

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

Serwituutnota
Die figuur aDEF stel voor n' Serwituut Reg van Weg



Bdy AB
Malm 560/1 V3 P30

Skaal 1:750

Die figuur ABCDEF

Stel voor 451 vierkante meter grond, synde

ERF 2122, gedeelte van Erf 2014 YZERFONTEIN

geleë in die Munisipaliteit Swartland
Administratiewe Distrik Malmesbury
Provinsie Wes-Kaap

Opgemeet in Desember 2003 deur my

PLS 1141 F.Truter
Professionele Landmeter

Hierdie diagram is geheg aan No T98332/2005 ged. t.g.v. Registrateur van Aktes	Die oorspronklike diagram is L.G. No. 6947/2001 Transport 72797/2004	Lêer Malm 560/1 M.S. E2623/2003 Komp. BHNQ2471(M2489) BHNQ-2472(M2490) LPI - C0460015

Erf 2122 Yzerfontein

Public Place
Bdy AB
Fa S/ Malm. 560/1 V3 p42

EXEMPT FROM PROVISIONS OF ACT 70 OF 1970
SECTION (16)

DATUM 18/11/2004

jp Joubert
Prokureurs • Attorneys

J P Joubert
Director

Francis Clerke
Consultant

Nichaela 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**

Our reference JP/tk/JP2451
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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Ground Floor, Caledon Street Chambers, 30 Caledon Street, Somerset West

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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