

BERGRIVIER MUNISIPALITEIT / MUNICIPALITY

VISIE:

Bergrivier: 'n vooruitstrewende gemeenskap waar almal wil leef, werk, leer en speel op 'n menswaardige manier.

VISION:

Bergrivier: a prosperous community where all want to live, work, learn and play in



KERN WAARDES / CORE VALUES

We are all part of Bergrivier Municipality.
We render good services to ensure dignified living to all.
We are unashamedly pro-poor.
We believe in close innovative partnerships.
We believe in social and economic development of our area.
We care about our work and our colleagues.
We are disciplined.
We believe in good relationships.
We serve with pride.

MINUTES OF THE MUNICIPAL PLANNING TRIBUNAL HELD ON THURSDAY, 15 APRIL 2021 AT 08:00 ON ELECTRONIC PLATFORM

PRESENT

MEMBERS

Municipal Manager (Adv. H Linde: Chairperson)
Director Corporate Services (Mr Vivian Kotzee: Deputy Chairperson)
Director Community Services (Mr D Josephus)
Manager Civil Engineering Services (Mr JJ Breunissen)
External Member (Ms. S van der Merwe)
External Member (Ms. D Kotze)

OFFICIALS

Manager: Planning and Environmental Management (W Wagener)
Town Planner (West) (H Vermeulen)
Compliance Officer (A van Rossum)

PTN001/04/2021

OPENING AND WELCOME

The Chairperson welcomed everyone to the meeting.

PTN002/04/2021

REQUEST FOR LEAVE OF ABSENCE

3/3/1/4

None

PTN003/04/2021

DECLARATION OF INTEREST IN ACCORDANCE WITH SCHEDULE 1: CODE OF CONDUCT FOR MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

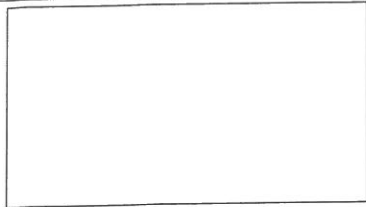
3/3/1/6

ACTION



MINUTES OF THE MUNICIPAL PLANNING TRIBUNAL HELD ON THURSDAY, 15 APRIL 2021 AT 08:00 ON ELECTRONIC PLATFORM

The Director: Corporate Services declared his personal interest and asked to be recused from the meeting. All other members of the Municipal Planning Tribunal present declared that they have no personal interest with regards to the items on the agenda in terms of Schedule 1 of the Code of Conduct of Tribunal Members.

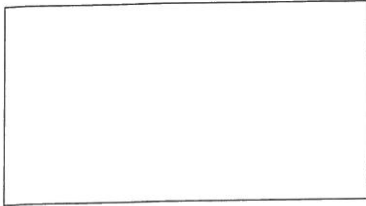


08:05 The Director: Corporate Services left the meeting.

**PTN004/04/2021
COMMUNICATION BY THE CHAIRPERSON**

3/3/1/6

The chairperson thanked the members that the meeting could be rescheduled. She wished everyone the best in these times and urged all to remain safe and effective without exposing themselves to any danger.



**PTN005/04/2021
CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING: THURSDAY, 4 MARCH 2021**

3/3/2/2

That the minutes of the Municipal Planning Tribunal meeting held on Thursday, 4 March 2021 be confirmed.

COMPLIANCE OFFICER

**PTN006/04/2021
APPLICATION FOR CONSOLIDATION, REZONING AND DEPARTURE: ERVEN 151, 152 & 153, DWARSKERSBOS
D. 151-153**

The Manager: Planning & Environmental Management and the Town Planner (West) gave a brief summary to the item under discussion.

TOWN PLANNER (WEST)

RESOLUTION: APPROVED

1. That the application for consolidation of Erven 151, 152, and 153, Dwarskersbos, together with rezoning of the consolidation of Erven 151, 152 and 153, Dwarskersbos from Business Zone 1 to Business Zone 6, **be approved**, in terms of section 60 of the Bergrivier Municipal By-Law relating to Land Use Planning, subject to the following conditions:
 - a) access routes to and from the service station from the Main Road (R399) must be provided with hard surfacing, preferably tarmac or grey interlocking pavers, as well as speed control by means of signage and speed bumps, at the applicant's/developer's cost and to the satisfaction of the Municipality's Technical Services Department, reasonably in accordance with the road connection plan referenced 10028/004;
 - b) the applicant/developer will be responsible for the provision and upgrading of all Municipal service infrastructure required as a result



- of the proposed utilization, as negotiated and agreed upon between the developer and the Municipality's Directorate: Technical Services by means of a Service Level Agreement;
- c) no trucks with a loaded weight of more than 10 tons may be allowed at the proposed service station, other than for delivering fuel, and appropriate signage in this regard must be put in place by the developer;
 - d) trading hours of the service station are restricted to the time between 06:00am to 22:00pm;
 - e) the proposed development must comply with Bergrivier Municipality's Fire safety requirements, to be addressed with the submission of building plans;
 - f) signage and advertising must comply with the Bergrivier Municipality: Advertising & Signage By-law;
 - g) no lighting must be directed to residential properties, including lighting from signage;
 - h) this approval does not exempt the owner(s)/applicant from complying with the requirements of any other legislations e.g. environmental, heritage, petroleum, etc.; and
 - i) all relevant written authorizations, approvals or licenses must be submitted to the Municipality together with the submission of buildings plans.

2. That the application for departure from the 5m street building line applicable to service stations to 0m, **be approved**, in terms of Section 60 Bergrivier Municipal By-Law relating to Land Use Planning.

REASONS FOR RESOLUTION

Section 59 (1) (f) of the Land Use Planning Act, Act 3 of 2014 (LUPA), states that a competent authority may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property will be affected by the outcome of an application. This aspect can therefore not serve as a reason for refusal of an application.

Section 59 (1) (g) of the Land Use Planning Act, Act 3 of 2014 (LUPA), states that the right of owners to develop land in accordance with current use rights should be recognized. Section 42(c) (iv) of SPLUMA also requires that the impact of existing rights and obligations must be taken into account. Erven 151, 152 and 153, Dwarskersbos are currently zoned as Business Zone 1 with the primary right for a business premises, which includes: a shop, big box retail, supermarket, restaurant, sale of alcoholic beverages, two electronic or mechanical playing devices, plant nursery, office, funeral parlour, financial institution and building for similar uses, place of assembly, institution, hotel, hospital, conference facility, rooftop base telecommunication station and multiple parking garage; and the following land uses above ground floor: flats, caretaker's quarters, backpackers lodge, youth hostel, as well as boarding houses. A business premises does not include: a place of entertainment, motor repair garage, industry, noxious trade, risk activity, adult entertainment, adult services or adult shop.

The existing zoning of the property already allows for a variety of land uses as



a primary right, some of which may have similar or more adverse impacts on the area than what is proposed by this application for a service station.

Section 42(1)(c)(i) of the Spatial Planning and Land Use Management Act (SPLUMA) states that the public interest must be taken into account when considering and deciding on an application. Section 42(c) (iv) of SPLUMA also requires that the impact on existing rights and obligations must be taken into account. The development proposed does not involve a truck stop, which would require a consent use application under Business Zone 6. Due to the small scale of the proposed service station ($\pm 55\text{m}^2$ building with three pumps, an office and toilets), with a coverage of less than 5% of the consolidated property, and it being set back approximately 65m from the nearest residential properties opposite the main road, the potential impact on the public interest would be minimal. In comparison, the existing development rights afforded to the subject properties could potentially have a much greater adverse impact on the public interest. The development of a service station could be beneficial to residents, visitors to the town and tourist passing through Dwarskersbos, not having to travel to and from Velddrif/Laaipek for fuel.

The Bergrivier Municipality Spatial Development Framework (BMSDF) 2019-2024 identifies the area in which the subject properties are located as a Central Business District and commercial/retail node. The subject properties are earmarked for mixed use community node / retail precinct in terms of the BMSDF.

With regards to the potential noise generated by the proposed facility, the noise generated by a service station and vehicles refuelling will be minor, particularly considering that the proposed service station would be approximately 65m from the nearest residential property, and being opposite Main Road R399 where existing traffic could potentially generate more noise than the proposed service station. In the absence of any ancillary traffic generating facilities being proposed, the proposed service station would not be a traffic generating development, but rather serve locals and vehicles passing through town. The development parameters (e.g. coverage, height etc.) applicable to Business Zone 6 are more restrictive than the development parameters applicable to Business Zone 1. The development proposed is for three fuel pumps, office space and toilets, within a structure of $\pm 55\text{m}^2$ representing a coverage of less than 5% on the consolidated property. The proposed development would therefore be of a small scale and appropriate for the rural character of the receiving environment.

The Petroleum Products Act (Act 120 of 1977) does not entitle objectors (or the applicants for that matter) to trade free from competition. This is also confirmed in the context of NEMA and the Constitution in the matter of Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others 2007 (6) SA 4 (CC) in which the Constitutional Court was at pains to point out that "... the Constitution and NEMA do not protect the existing developments at the expense of future



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developments”.



**PTN007/04/2021
DATE OF NEXT MEETING**

The next Municipal Planning Tribunal meeting will be held on **Thursday, 6 May 2021** at **10:00** on an Electronic Platform.

NOTED



**THE MEETING ADJOURNED AT 8:39
CONFIRMED AS A TRUE VERSION OF THE PROCEEDINGS**



CHAIRPERSON

19 APR 2021

DATE
