



**FILE: 18/1297/PB**

**ERF 1297, PLETTENBERG BAY: PROPOSED PERMANENT DEPARTURE AND REMOVAL OF RESTRICTIVE CONDITIONS OF TITLE**

**RESOLUTION BY ACTING DIRECTOR: PLANNING & DEVELOPMENT IN HIS CAPACITY AS THE AUTHORIZED EMPLOYEE IN TERMS OF SECTION 69 (1) OF THE BY-LAW ON MUNICIPAL LAND USE PLANNING (2015)**

**1. DECISION**

- 1.1 That the application for the removal of restrictive condition of title E.4(b) in respect of Erf 1297, Plettenberg Bay be refused in terms of Section 60 of the Land Use Planning By-Law (2015), but that approval be granted (as allowed for by condition E.4) for the suspension of the condition while the premises is being used as a ‘cottage school’.
- 1.2 That the following be approved in terms of Section 60 of the Bitou Land Use Planning Bylaw (2015):
  - (a) A permanent departure for a relaxation of the 10m northern lateral building line to 3m to accommodate the existing building;
  - (b) A permanent departure for a relaxation of the 10m eastern street building line to 6m, to accommodate the existing building;
  - (c) A permanent departure for a relaxation of the 10m southern lateral building line to 1.57m to accommodate the existing building;
  - (d) A permanent departure to allow a relaxation of the 10m western street building line to 4.72m to accommodate the existing building.
- 1.3 That the following conditions of approval be imposed in terms of Section 66 of the Land Use Planning Bylaw (2015):
  - (a) That the development of the property be limited to the structures currently on the site (to be clearly indicated on the building plans referred to in condition (g) below);
  - (b) That the use of the premises be limited to either a residential dwelling house or a ‘cottage school’;
  - (c) That a minimum of 6 on-site parking bays be provided;

- (d) That a Service Level Agreement be entered into between the land owner and the Municipality within a period of 3 months, and that this Agreement addresses (but not be limited to) the payment of augmentation fees and development contributions in accordance with the policy of the Municipal Council;
- (e) That the prescribed tariff for the conversion of a building without prior approval be paid within 3 months of date of this approval;
- (f) That the prescribed tariff for the unlawful occupation of a building for purposes contrary to the approved building plans be paid within 3 months of date of this approval;
- (g) That revised building plans shown the conversion and actual use of the structures on the property be submitted for consideration within 2 months of date of this approval;
- (h) That the total number of students that may be enrolled at the school does not exceed 60;
- (i) That it be recorded that the maximum number of students that may be allowed per class or be accommodated on the premises at any time will be determined at building plan stage;
- (j) That the suggestion that the school will make suitable arrangements for the students to be dropped off and picked up at the public parking area adjacent to Erf 2164 (i.e. the 'Total Garage') be accepted, but that the following be recorded:
  - That the situation will be monitored, and that should it be deemed necessary at the sole discretion of the Municipality, the land owner will be required to, at his own costs, implement the proposal recommended in the Traffic Impact Assessment to the satisfaction of and within the period stipulated by the Municipality;
- (k) That the unlawful signs on the fence and at the vehicular entrance (Longships side) be removed with immediate effect, and that a formal application be made in the prescribed manner should the land owner wish to display new signs.

## **2 REASONS FOR THE DECISION**

- 2.1 Erf 1297 has been 'problematic' from the outset. During 2008 building plans for a new dwelling house were submitted. These plans showed that virtually the whole ground floor (288m<sup>2</sup>) would have been used as a 'speelkamer'. When this was questioned the architect/land owner at the time confirmed that the area was intended for a recreational area with table tennis and pool tables, storage for paddle ski's and bicycles, etc. etc. These explanations were accepted by the Municipality and the building plans were approved in good faith.
- 2.2 The reality is that since the building was constructed it has at no stage (or at best for short periods of time) been used as a normal dwelling house. The further reality is that the ground floor was purposefully designed to be not used for residential purposes.
- 2.3 The suggestions of the 'case officer' that the property is situated in a residential area, that it is similar to any other residential property in the immediate neighbourhood, that there is no

unique reason why any use other than residential should be allowed, etc. are all correct. However, these are all 'locality factors'. The one major difference between Erf 1297 and the surrounding properties is not a 'locality factor', but rather an 'on-site consideration'. The reality is that the design of the house on the property (and specifically of the ground floor) makes it unsuitable for use as a pure residential house.

2.4 Three further aspects are relevant:

- (a) First, there can be little doubt that Erf 1297 is not ideally suited for a normal 'school'. This is so because a conventional school requires outdoor play and sport areas, the students attend the classes full time and all have breaks at the same time, etc. The facility currently being operated on Erf 1297 is different. Class times are staggered, no external play areas are required as the number of students is small enough that the indoor recreational areas can cater for their needs, etc. Any concerns pertaining to nuisances as a result of noise or privacy are therefore not really valid.
- (b) Second, the current use of the premises is of such a nature that the external appearance of the building is in all respects compatible with the surrounding environment. With the exception of the signage on the fence, there is nothing that creates the impression that the building is being used for anything else than normal residential purposes. In this sense the structure complies with the title deed condition, which can be interpreted to mean that the external appearance / design (as opposed to the use) of the building should be that of a normal dwelling house.
- (c) Third, the zoning of the property already allows for a school. The only 'town planning' application that is made is a relaxation of the 10m building line. The arguments of the 'case officer' in this regard cannot be faulted. The purpose of the 10m building line may well have been to reduce the potential impact of school activities on the abutting property owners. However, as mentioned above, this concern does not come into play because of the nature of the school activities and the staggered times of the different classes.

2.5 The biggest single concern in relation to the operation of the current school facility on Erf 1297 relates to traffic. The 'dropping off' of students along Longships Drive is not desirable. At the same time the suggestion made in the Traffic Impact Assessment of a 'through road' is a theoretical rather than a practical option. The suggestion by the applicant that students would be dropped off at the Total Garage may not be 'technically correct', but in practise it may well be the best (and possibly the only) solution.

2.6 The fact that the land owner has proceeded with the operation of the school without formal approval and has been somewhat tardy in the eventual submission of his formal application is unfortunate. The flagrant disregard of both the legislation as well as the unambiguous instruction by the Municipality to cease the unlawful activities can also not be taken lightly.

2.7 As a result of the above the reality is that building alterations have been completed and that the building has been occupied and used for the purposes of a school for a considerable period of time. Due to the (rather unfortunate) 'history' of the matter a pragmatic approach should be adopted, as it will serve little constructive purpose to refuse the application and force the

land owner to convert the building back to a dwelling house unless it can be said with confidence that the current use is so detrimental to the area that it cannot be allowed under any circumstances. This is not the case.

- 2.8 In view of the above the proposed land use is accepted (subject to certain conditions). However, it is considered prudent that some form of 'penalty' be imposed due to actions of the land owner to wilfully and deliberately continue with unlawful building operations (and occupation).



22 February 2024

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**L GERICKE**

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**DATE**

**AUTHORIZED EMPLOYEE /**

**ACTING DIRECTOR: PLANNING & DEVELOPMENT**