

LAND USE PLANNING ASSESSMENT REPORT FOR THE LANGEBERG MUNICIPAL PLANNING TRIBUNAL
(In terms of Sections 56, 65 & 66 of the Langeberg Land Use Planning Bylaw PN 264/2015, 30 July 2015)

ERF 390 ROBERTSON: CONSENT FOR GUEST HOUSE AND SECOND DWELLING & PERMANENT DEPARTURES

Reference number	15/4/12/5&9	Application submission date	11/08/2023 Last Comments Received 30/5/24	Date report finalised	18/06/2024
PART A: AUTHOR DETAILS					
First name(s) & Surname	Tracy Brunings.				
Job title	Manager: Town Planning				
SACPLAN registration number	Pr. Pln A/951/1997				
PART B: PROPERTY DETAILS					
Property description (in accordance with Title Deed)	Erf 390 Robertson				
Physical address	152 Alberts Street	Town	Robertson		
Current zoning	Single Residential Zone I	Extent	1071m ²	Are there existing buildings on the property?	NO YES
Applicable zoning scheme	Langeberg Integrated Zoning Scheme By-law, 2018				
Current land use	Dwelling house, garage, storeroom, laundry & existing second dwelling (±60m ²).			Title Deed number & date	T61466/2022
Any restrictive title conditions applicable	Y	<u>N</u>	If Yes, list condition number(s)		
Any third-party conditions applicable?	Y	<u>N</u>	If Yes, specify		
Any unauthorised land use/building work	Y	N	If Yes, explain	Existing storeroom converted to second dwelling.	
PART C: APPLICATION DESCRIPTION					
Application has been lodged for the following uses on Erf 390, Robertson:					
Consent use for a guesthouse to be operated from the primary dwelling house (maximum four bedrooms). Consent use for a second dwelling that exceeds 60m². Permanent departure from the northwestern side building line to allow the second dwelling (on first floor level) to be situated ±1,15m in lieu of 1,5m from the common side boundary. Permanent departure from the height restriction of 6,5m applicable to a second dwelling to a height of 7,488m					

PART D: BACKGROUND & SUMMARY OF APPLICANTS MOTIVATION

Background

The original application was amended in terms of section 52(1)(b), as a result of a comment received during the notice period. Section 52 of the Municipal Land Use Planning By-law, 2015 makes provision for an application to be amended prior to the decision being taken. A letter from the applicant in this regard is attached as **Annexure 1**.

It was not deemed necessary to readvertise the application, as the development proposal remains unchanged, however the amended application was referred back to the objector for comment, since these issues were raised by the objector in response to the public participation process.

The application submitted is for a consent use to utilise the existing primary dwelling house as a four-bedroom guest house and for a consent use to extend the existing second dwelling of 60m² (primary right) to 150m² (on first floor level above the existing second dwelling). In response to the comments received during the public participation process, it was established that the applicant also needed to apply for permanent departures from the height restriction and the side building line applicable to the second dwelling.

Summary of the applicant's motivation (full motivation attached as **Annexure 2**)

Erf 390 is located in Albert Street, Robertson as shown on the Locality Plan, attached as **Annexure 3**. Access is obtained from Albert Street.

The property is currently developed with a dwelling house and a second dwelling of 58m² on ground floor level. A second dwelling not exceeding 60m² is permitted as a primary right in terms of the zoning scheme.

The owner intends to use the existing dwelling as a 4-bedroom guest house and to extend the existing, approved second dwelling (±60m²) at the back of the garage to 150m². The position of the guest house, second dwelling and parking is shown on the proposed site development plan, attached as **Annexure 4**.

The additional 90m² of the second dwelling will replace the existing storerooms on ground and first floor level. Refer to (**Annexure 5**) for the elevation plans. The storeroom on first floor level will be replaced by an en-suite bedroom and a study. The storage area between the garage and the approved second dwelling will be replaced by a bathroom and laundry for the second dwelling. An additional stoep will also be constructed in front (northeast) of the second dwelling.

Building plans were approved to build a double storey structure at the back of the existing garage that includes a second dwelling of ±60m² (primary use right) on ground floor with a store on top (primary use right). The approved building plans are attached as **Annexure 6**. It is proposed to convert the store to expand the second dwelling. The owners or a manager will reside in the second dwelling and manage the guest house.

It is a small guest house and will have minimal impact on the surrounding neighbours.

Adequate parking can be provided. Four parallel parking bays are provided next to the internal access road and the 4m wide area in front of the house will be covered in gravel and serve as a turn-around space. Three additional bays are provided at the back.

The impact of the second dwelling on Erf 394 will be mitigated by means of landscaping including Star Jasmine growing on the western wall of the structure as well as new trees on Erf 394 along the common boundary.

PART E: SUMMARY OF PUBLIC PARTICIPATION					
Public participation required in terms of Sections 45- 49 of the Bylaw?				Y	N
Where participation is required, state method of advertising	Press: ✓	Notices: ✓	Ward Councillor: ✓	Other	
PART F: SUMMARY OF PUBLIC COMMENTS RECEIVED DURING PUBLIC PARTICIPATION (if applicable)					
One letter of objection/comment was received from the adjacent property owners (owners of Erf 394). The content is summarised below: Refer to Annexure 7 - The objector will not consent until they receive a copy of the approved plans (main house and second dwelling). - The objector wants to know when the plans were approved. - The objector wants confirmation from the Municipality that the current buildings were built in accordance with the approved plans and building regulations. - The objector request that setback from the property boundary and the height of the structure (second dwelling/storeroom) is confirmed by a land surveyor. - The setback from the boundary should be 1,5m in terms of the zoning scheme and building regulations. - The height of a second dwelling is restricted to a maximum height of 6,5m in terms of the zoning scheme. - If the application is for a departure from the height restriction, the objector will not consent. - The objector has not consented to the Chinese poplar trees due to the fact that they are deciduous and not evergreen to ensure all year-round privacy. - The garden patio that has already been built overlooks the objector's property. The amended application, which included the application for the departure from the height restriction and building line, was circulated to the objector for comment on 14 December 2023. The content of the objector's response dated 16 February 2024, is summarised below: Refer to Annexure 10 - Due to the building line infringement, until such time that the Water Pear and Star Jasmine trees have been planted as agreed, the objector will withhold consent. - A resolve on the lighting pollution is also required. Until it has been resolved, the objector will withhold consent. - The objector wants to know how the guest house will be managed in future, especially regarding noise.					
PART G: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS (if applicable)					
The following Municipal Departments provided comment on the development proposal. The comments are attached in Annexure 8 . The contents are summarised below.					
Name	Date received	Comments			
Civil Engineering Services	24/08/2023	In principle, no objection to the proposal, provided that the existing water and sewerage connection as well as access to the erf be retained. Development contribution in terms of bulk civil infrastructure services is payable for one additional erf that is created in accordance with the tariff applicable at the time of payment.			
Building Control	17/08/2023	Verify that there is adequate parking space and proper access to accommodate the second dwelling. Fire safety measures and systems must meet or exceed the standards set by the National Building Regulations to ensure the safety of occupants.			

		Architectural and Structural Compliance: Any new structures or buildings that may be constructed must adhere to local architectural and structural standards. Building plans must be submitted to and approved by the Building Control Department prior to construction.
Fire and disaster management	20/09/2023	Fire services will require a fire plan indicating the siting of fire protection equipment etc.
Electrical Engineering Services	18/09/2023	No objection. Existing services must be used. The owner must apply for additional capacity, should it be required. It should be noted that currently, there is no additional capacity available. Should alternative energy be used the applicant must take note of the regulations that is available on the municipal website.
Cape Winelands District Municipality: Health Services	23/08/2023	- The provision of meals and the sale of foodstuffs will require a Certificate of Acceptability with adherence to Regulations 5 & 6 of GNR 638/22 June 2018. - The owner must have a smoking policy on-site and enforce the policy with reference to the Tobacco Control Act, Act 83 of 1993. - No activities on the premises should cause a health nuisance.

PART H: APPLICANT'S RESPONSE TO THE COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Response to the objection received from the owner of Erf 394 during the public participation process:

- According to the applicant, the proposed development conforms to the development parameters of the zoning scheme.
- The area between the garage and first floor of the second dwelling is a patio that is accessed through glass doors from the second dwelling. A flower box and balustrade were positioned for privacy purposes. This does however not meet the approval of the objector and will be replaced by a 1,75 m high wall on the side of the patio.
- The building plan referred to, was for the existing second dwelling. A second dwelling of 60m² or less is a primary right and is not subject to public participation.
- The height of the building conforms to the building plans and was inspected by the building officer of Langeberg Municipality on 19 October 2023.
- The owners will plan Star Jasmine against the side of the wall and is willing to plant Water Pear trees along the boundary wall.
- The windows of the first storey are tinted glass and the bulbs are warm white. The applicant is of the opinion that the views to the second dwelling are restricted due to existing trees and the distance between the objector's house and the second dwelling, which is 30m. The windows facing Erf 394 was replace with very narrow windows to ensure minimum impact.

Response to the additional comment/objection received from the owners of Erf 394 on the amended application:

- Boundary pegs have been re-instated and the location of the second dwelling on site was surveyed. The survey showed that the second dwelling was wrongfully built within the side building line and therefore an application for a permanent departure from the 1,5m side building line needs to be added to the existing application.
- One of the two existing windows in the garage/store facing the objector's property (Erf 394) will be removed to adhere to the building regulations.
- The height of the roof is 7,488m which adheres to the maximum height of 8,5m. *[Note: It was later determined that the applicant also needs to apply for a departure from the 6,5m height restriction applicable to second dwellings.]*
- The owners have agreed to plant trees along the common boundary to lower the impact.

- e. The patio as referred to is the open roof space on top of the proposed laundry/bathroom between the garage/store and the double storey second dwelling. A flower box was placed on the 'patio' and a steel balustrade has been manufactured to ensure privacy for both owners.
- f. The applicant is in the process of ordering and paying for the 3x 100-liter Water Pear trees as requested. The Star Jasmine has already been planted in November.
- g. With regards to the lighting pollution, we have been considering tinting the window instead of blinds as blinds can be left open which will not solve this issue.
- h. The property is managed by Deon and Dienie Pienaar that lives down the road, they are welcome to contact them on 082 503 6985 when guests are a nuisance.

PART I: MUNICIPAL PLANNING EVALUATION

When the decision maker considers a land development application, the general criteria, in terms of Section 65(1) of the Langeberg By-law on Municipal Land Use Planning, 2015, must be taken into consideration.

1. Legislation/policy/guidelines applicable to the application

a) Langeberg By-law on Municipal Land Use Planning, 2015

The application was submitted and processed in compliance with the prescripts of the said By-law. Section 52(1)(b) of the By-law makes provision for an application to be amended as a result of an objection, comment or representation submitted during the notice process, before the approval of the application. In this regard the applicant amended the application to include an application for a permanent departure from the height restriction of 6,5 to accommodate the second dwelling on first floor level and an application for a permanent departure to allow the second dwelling (on 1st floor level) within the 1,5m side building line. A letter in this regard is attached as **Annexure 1**.

b) Development principles in terms of section 7 of the Spatial Planning and Land Use Management Act (SPLUMA), 2013 (Act 16 of 2013) & section 59 of the Land Use Planning Act, 2014 (LUPA) (Act 3 of 2014)

- (i) **Spatial Justice:** Not relevant to the application.
- (ii) **Spatial Sustainability:** The proposed guest house and second dwelling will promote densification and development in a location that is sustainable and limits urban sprawl as it is situated within the demarcated urban edge of Robertson.
- (iii) **Efficiency:** The development makes optimal use of existing resources, such as land and infrastructure.
- (iv) **Good administration:** The prescribed administrative and public participation processes were adhered to.
- (v) **Resilience:** Not applicable.

c) Langeberg Municipal Spatial Development Framework (MSDF), 2015

- (i) The application property is situated inside the urban edge of Robertson, and it is designated as 'existing development'. The development is not in conflict with the purpose of the relevant designation in the MSDF and is therefore regarded as being consistent with the Langeberg MSDF, 2015.

d) Langeberg Integrated Zoning Scheme By-law, 2018

- (i) The zoning scheme makes provision for a second dwelling, not exceeding 60m², as a primary right in Single Residential Zone I, provided that it complies with the parameters applicable to second dwelling.

Extract of the land use description of "dwelling house":

"dwelling house" means a building containing only one dwelling unit, together with such outbuildings as are ordinarily used with a dwelling house, including:

(a) a storeroom and garaging;

(b) a second dwelling or additional dwelling, with a floor area which does not exceed 60 m²;

(ii) For a second dwelling exceeding 60m² an application for a consent use is required. The existing second dwelling was constructed as a primary right. It should however be noted that the storeroom of 26m² on first floor level above the second dwelling and the double volume kitchen/lounge area did not conform to the land development parameters of the zoning scheme as they exceed the height restriction and encroached within the side building line.

(iii) The existing structure has been approved and the building itself is not the subject of this report. The matters under consideration are the following:

- Consent use to allow a four-bedroom guest house in the primary dwelling house.
- Consent use for a second dwelling exceeding 60m².
- Permanent departures from the height restriction and the 1,5m lateral building line to allow the 1st floor of the existing structure to be used for the extension of the second dwelling as these parameters are specifically applicable to second dwelling units. The Langeberg By-law on Municipal Land Use Planning, 2015, does make provision for applications for permanent departures from development parameters.

Extract of the development parameters applicable to a second dwelling:

The development parameters applicable to "dwelling house" apply, together with the following additional parameters:

(a) the total floor space of a second dwelling may not exceed 60 m² including the floor space of all ancillary buildings;

(b) a second dwelling must be constructed in a style that is similar to the architecture of the main dwelling house;

(c) a second dwelling that is a separate structure to a dwelling house may not exceed a height of 6,5 metres to the top of the roof;

2. Merits of the development proposal

Public participation

During the initial public participation process, one objection, was received from the adjacent property owners (owners of Erf 394). The objectors raised concerns regarding the position and height of the second dwelling and questioned the validity of the building plans. In response to the inputs received, the application was amended to include the departures from the height restriction and the lateral building line. The objector was afforded another opportunity to comment on the amended application. The objector raised issues including the negative impact on privacy, light pollution, visual impact and noise. The applicant did not want to give consent prior to trees being planted and the light pollution being addressed. The objector also raised questions regarding the operation/management of the guest house and second dwelling.

Second dwelling

The building plan for the existing double storey structure was approved on 24 February 2023. The first floor directly above the second dwelling consists of a storeroom and double volume space. The opinion is held that the double storey structure was wrongly approved since the double volume space forms part of the second dwelling that is restricted to a height of 6,5 m and the storeroom forms part of an outbuilding, which may also not exceed a height of 3,5m, if constructed within the lateral building line. Notwithstanding the aforementioned, the current status is that the double storey structure (7,488m high) was constructed largely in accordance with an approved building plan. The staircase for example is not in accordance with the

approved building plan, however it is not the subject of this application and final approval of any amendments to either the structure or the building plan will be addressed in terms of the relevant legislation to the satisfaction of the Building Plan Department. The current consent use application is specifically for the utilization of the first floor of the existing building for the purpose of extending the existing second dwelling ($\pm 60\text{m}^2$) and not for the approval of the building *per se* as it is already approved.

The opinion is held that the use of the first floor of the existing building for increasing the size of the second dwelling will not have a significant impact on the objector for the following reasons:

- The extension of second dwelling will take place in an approved structure, therefore irrespective of whether this application is approved or refused, the status quo with regard to the visual impact of the building will remain unchanged.
- The first-floor level will be used for a study and a bedroom, which are passive living spaces with active living space, such as the kitchen and living room on ground floor level. It is not foreseen that the additional bedroom and study will be a source of noise or that it will have any other negative impact on the adjacent property.
- The existing windows on first floor level are very narrow and positioned relatively high, which discourages overlooking the objectors' property. A condition will be imposed regarding the planting of trees to serve as a buffer to absorb noise and aid with privacy concerns.
- The patio/stoep area that is situated above the existing laundry room and store may possibly have a negative impact on the objectors' privacy and should be screened in a satisfactory manner. In the last correspondence the applicant mentioned that a wall will be constructed because the objector is not satisfied with the screening that was provided. From a planning perspective a solid wall is not supported as it will exacerbate the visual impact of the building and it is not aesthetically pleasing. It is recommended that the applicable 1,5m setback be maintained for the patio/stoep area and that a wall and balustrade be erected 1,5m from the common boundary line.
- According to the objectors the triangular glass windows in the roof structure are a source of light pollution. The existing structure does not form part of the subject currently under consideration and therefore conditions in this regard will not be imposed.

Guest house

The proposal is for the use of the primary dwelling house as a four-bedroom guest house. Small scale guest houses are generally regarded as being compatible with single residential areas and therefore the opinion is held that a four-bedroom guest house will not have a negative impact on the neighbourhood or the objector. The proposed dwelling house is not situated directly adjacent to the objector's property. Furthermore, in terms of the development parameters applicable to 'guest house' in terms of the Langeberg Zoning Scheme By-law, 2018 the owner or a manager must reside on the property, which will address the current concerns related to noise, the absence of a contact person and the management of the guest house.

On the balance of all considerations as contemplated in terms of section 65 of the Langeberg Land Use Planning By-Law, 2015, the impact on the adjacent property owner is primarily due to the existing structure and the opinion is held that the proposed consent uses for a guesthouse and the extension of the existing second dwelling together with the departures will not have a significant negative impact on the objector and therefore the application is supported, subject to conditions to mitigate and limit the impact on the objector's property as far as possible.

PART J: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Not applicable.

PART K: RECOMMENDATION

That the following application on Erf 390 Robertson be approved in terms of Section 60 of said By-Law 2015, subject to conditions of approval, as imposed in terms of section 66 of the said By-law, as set out below:

- **Consent** 2015 for a guest house (restricted to a maximum of four rooms and eight guests).
- **Consent** for a second dwelling exceeding 60m² (maximum of 150m²).
- **Permanent departure** from the 6,5m height restriction applicable to second dwellings, to allow the extension of the second dwelling to the first-floor level of the existing building that currently has a height of 7,488m.
- **Permanent departure** from the side building line restriction from 1,5m to 1,15m for the second dwelling.

Conditions of Approval:

1. The position, size and design of the buildings must be substantially in accordance with the site plan marked ROB390-LBM-TP (June 2024),
2. The applicant must submit building plans for all structures to the Municipality in terms of the National Building Regulations. Any irregularities must be rectified to the satisfaction of the Building Control Officer. Building Plans and a Fire Plan must be approved prior to the Guesthouse being permitted to operate.
3. The landscaping, including the agreed planting of Star Jasmine and a minimum of three Water Pear trees, as implemented in May 2024, must be maintained to the satisfaction of the Manager: Town Planning, to minimise the visual impact of the scale of the building on the neighbouring property.
4. A setback of 1,5 meters is applicable to the patio/stoep area above the existing laundry room and suitable screening with a height of at least 1,2m (for example positioning the existing flower box and balustrade to comply with the 1,5m setback), Must be maintained by the owner to the satisfaction of the Manager: Town Planning, to secure the neighbour's privacy.
5. Only low-level outdoor lighting, to the satisfaction of the Manager: Town Planning may be utilised.
6. A minimum of seven (7) on-site parking bays must be provided. A minimum of one parking bay per guest room must be available and accessible for guest parking. No street parking is permitted for guests.
7. The guest house may only be operated from the primary dwelling house. No portion of the second dwelling or any outbuilding may be used for guest accommodation.
8. The owner or manager of the guest house must reside on the property to ensure appropriate management, specifically noise control.
9. Only existing engineering services and the existing accessway may be used.
10. Development Contributions are payable to the Municipality in terms of Council's policy and at rates applicable at the time of payment.
11. No name, advertising sign or board may be erected without written approval of the municipality, other than a sign of a maximum of 0,54m² with only the name, logo and contact number of the guesthouse.
12. The conditions imposed by the Cape Winelands District Municipality (Health), in their letter dated 23 August 2023, ref. 23/08/23/01 (attached) must be complied with.

13. The owner must sign the attached agreement with respect to the implementation of all conditions of approval. The conditions of approval must be brought to the attention of all persons (employees, sub-consultants etc.) associated with this activity.

The **REASONS** for the decision are as follows:

1. The application property is sufficient in size to accommodate the proposed extension of the second dwelling from 60m² to 150m².
2. Second dwellings promote densification, without compromising the residential quality of the area.
3. The proposed utilisation of the existing first floor for the extension of the second dwelling comprises an existing building of which the ground floor is already used as a second dwelling.
4. The applicant has implemented the landscaping plan as requested by the objector and made modifications to the lighting, to address the neighbour's objections.

Notes:

- i) The owner must comply with all the development parameters applicable to a guest house as specified in the Langeberg Zoning Scheme By-law, 2018.
- ii) Should alternative energy be used the applicant must take note of the regulations available on the municipal website.
- iii) The restrictions of any law and regulations relating to noise controls are applicable and the owner must ensure that no undue noise nuisance occurs, as described in the Western Cape Noise Control Regulations (PN 200/2013 of June 2013).

PART L: ANNEXURES

Annexure 1: Applicant's letter regarding amendment of the application i.t.o. Section 52 LLUPB

Annexure 2: Applicant's motivation report

Annexure 3: Locality plan

Annexure 4: Site Development Plan

Annexure 5: Elevation plan

Annexure 6: Extracts of the approved building plans

Annexure 7: Objection from the owners of Erf 394 dated 13 September 2023

Annexure 8: Comments received from Departments

Annexure 9: Applicants response – 2 and 23 October 2023

Annexure 10: Objectors comments, dated 16 February 2024 on amended application

Annexure 11: Applicants response dated 30 May 2024 regarding landscaping and lighting

PART L: SIGNATURES: TOWN PLANNING DEPARTMENT

Author name: Tracy Brunings

Author signature: TLB gp.

Date: 18 June 2024

Authorised for submission to Tribunal.

TLB gp.
TL BRUNINGS
MANAGER: TOWN PLANNING

18/06/24
DATE

PART M: SIGNATURES FOR DECISIONS BY TRIBUNAL

APPROVED

APPROVED CONDITIONALLY

APPROVED IN PART

REFUSED

LANGEBERG MUNICIPAL PLANNING TRIBUNAL

Date:

SKEDULE / SCHEDULE 1

Ooreenkoms / Agreement

aangegaan deur / *entered into by*

.....
Volle name en van / *Full name*

.....
Identiteitsnommer / *Identity number*

.....
Adres / *Address*

(die aansoeker / *the applicant*)

met die **Langeberg Munisipaliteit** / *with the Langeberg Municipality*

ten opsigte van die volgende ontwikkeling, soos goedgekeur op:
in respect of the following development, as approved on:

... **June 2024**

**ERF 390 ROBERTSON: CONSENT FOR GUEST HOUSE AND SECOND DWELLING AND
PERMANENT DEPARTURES**

Die aansoeker aanvaar die voorwaardes ten opsigte van bogenoemde goedkeuring en onderneem om toe te sien dat die voorwaardes uitgevoer word alvorens die onderverdelings geregistreer mag word.

The applicant accepts the conditions in terms of the abovementioned approval and undertakes to ensure the execution of the conditions before the subdivisions may be registered.

Geteken op die / *Signed on the* dag van / *day of*
20.....

te / at

.....
Aansoeker / *Applicant*

.....
Datum