

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
22 March 2016
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

12.

**ERF 4690, 35 DOLPHIN STREET, HERMANUS, OVERSTRAND MUNICIPAL AREA :
REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967) AND DEPARTURE :
MESSRS PLAN ACTIVE ON BEHALF OF CC HARDIE**

4690 HNC (2856)

H van der Stoep

13 January 2015

(028) 313 8900

Hermanus Administration

1. Executive Summary

An application has been received on 13 March 2015 from Messrs. Plan Active on behalf of CC Hardie on Erf 4690, Hermanus for a departure from the relevant Scheme Regulations in order to relax the lateral building lines from 2m to 0m in order to accommodate existing structures.

An application has also been received for the removal of restrictive title conditions in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) applicable to Erf 4690, Hermanus, to enable the owner to legalise the existing outbuildings (bird aviary/potting shed, dog kennel, built braai, open air potting shelter and wooden deck) on the property. The street and lateral building lines are encroached.

A Locality Plan of the property concerned is attached as Annexure A. The proposed Site Development Plan is attached as Annexure B, while the Motivation Report from the applicant in support of the proposal is attached as Annexure C.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Removal of Restrictions Act, 1967 (Act 84 of 1967)
- Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
22 March 2016
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

6. Background/Discussion/Evaluation/Conclusion

Background

The application is for the removal of Restrictive conditions and departure of the Zoning Scheme Regulations in order to legalize existing structures on the property concerned. The structures are a dog kennel, aviary, potting shed, open air potting shelter and a braai.

An application has also been received for the removal of restrictive title condition C.4 in Title Deed T101658/2005 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) applicable to Erf 4690, Hermanus.

The restrictive condition reads as follows:

Page 3, Paragraph C.4 :

“4. that no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4.72 metre to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2.36 metres of the lateral boundary common to any adjoining erf.”

Discussion

The application was advertised in the local newspaper and Government Gazette, and registered notices were sent to the potentially affected property owners. No objections were received against the proposal.

The application was also circulated to all relevant municipal departments, and no objections were received against the application.

Evaluation

The property is located in Northcliff residential area and is zoned as Single Residential. The structures applied for will fall under the definition of an outbuilding.

The removal of restrictive Title Deed condition is due to the fact that these structures are built within the prescribed 2,36m of the lateral boundary and the transgression of the 4,72m street boundary to 4,33m. The latter is a wooden deck built in 2009, but it does not transgress the 4m street building line in terms of the Overstrand Integrated Zoning Scheme Regulations.

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
22 March 2016
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

The lateral building line transgressions are structures related to animal and hobby activities. The dog kennel is a built brick kennel, built in the 1980's and is lower than the boundary wall of 1,8m. The structure does not infringe on the aesthetics of the surrounding erven due to its height of approximately 1,0m.

The aviary/potting shed was originally used as an aviary and at present is being utilized as a potting shed. The shed is evaluated in similar fashion as a store room, but is more related to garden activities. In terms of the Overstrand Zoning Scheme an outbuilding is defined as a structure which is ancillary and subservient to the primary use, namely residential. The latter reasoning will also apply to the open air potting shed, which consists of gum poles and a roof that is covered with vines.

The braai area was built around the 1990's and is a smallish structure that is screened with bamboo poles from the adjacent neighbour. Although this type of structure in terms of the Zoning Scheme is not viewed favourable, the structure has been erected more than ten (10) years ago and no complaints have been received during this time in terms of being a nuisance to the adjacent neighbours.

The proposed structures relates to the applicant's hobby, namely gardening and typical residential activities. The structures are well screened from the adjacent neighbours and no objection has been received during the public participation process.

Conclusion

The application is recommended for approval.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Engineering Services Department

Attached as Annexure D.

Building Control Department

No objection.

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
22 March 2016
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

10. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Services Report

RECOMMENDATION:

1. that the removal of restrictive title conditions Page 3, Paragraph C.4 in Title Deed T101658/2005 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) applicable to Erf 4690, Hermanus, **be recommended for approval** by the Department of Environmental Affairs and Development Planning;
2. that in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) the application on Erf 4690, Hermanus for a departure from the Scheme Regulations in order to relax the lateral building lines from 2m to 0m in order to accommodate existing structures, **be approved**, subject to the following conditions:
 - (a) that approval of the departure be subject to the removal of the restrictive title conditions;
 - (b) that no other structures be erected within the building lines and the approval is only for structures as indicated on Plan No A.01.3 445 dated 12 May 2015, as submitted with the application;
 - (c) that no extension of the structures be allowed;
 - (d) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control– and the Fire Department be complied with at that stage;
 - (e) that all other development parameters, as prescribed in the relevant Zoning Scheme, be complied with;
 - (f) that the approval does not absolve the applicant from compliance with any other relevant legislation and/or Title Deed conditions;
 - (g) that all conditions imposed in the Services Report (attached as Annexure D), be complied with; and
 - (h) that compliance with Fire Safety Regulations is pre requisite-SANS 10400T : 2011.

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
22 March 2016
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

3. that the applicant be notified of its right of appeal in terms of the provisions of the Local Government Municipal Systems Act, 2000 (Section 62) with regard to the above decision.

RESPONSIBLE OFFICIAL : H VAN DER STOEP

TARGET DATE FOR IMPLEMENTATION : 13 APRIL 2016

TARGET DATE TO INFORM APPLICANT: 13 APRIL 2016

TARGET DATE TO INFORM OBJECTOR: N/A

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 March 2016
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

12.

**ERF 4690, 35 DOLPHIN STREET, HERMANUS, OVERSTRAND MUNICIPAL AREA :
REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967) AND DEPARTURE :
MESSRS PLAN ACTIVE ON BEHALF OF CC HARDIE**

4690 HNC (2856)

H van der Stoep

13 January 2015

(028) 313 8900

Hermanus Administration

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
22 MARCH 2016, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL : H VAN DER STOEP

TARGET DATE FOR IMPLEMENTATION : 13 APRIL 2016

TARGET DATE TO INFORM APPLICANT: 13 APRIL 2016

TARGET DATE TO INFORM OBJECTOR: N/A



NOTES:
The Site

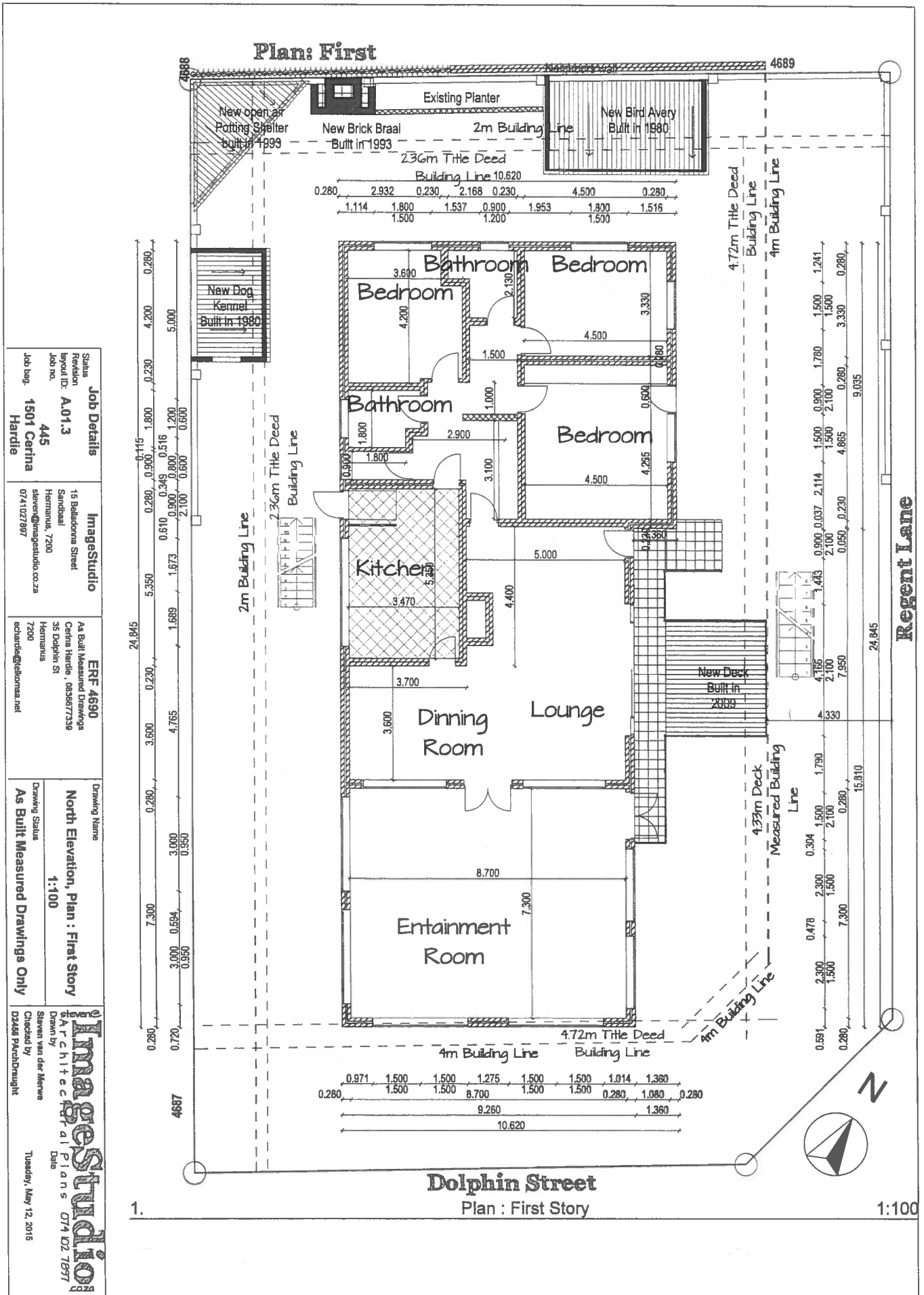
Scale: NTS
Drawing Nr: HER4690.drw
Date: 04/05/2015

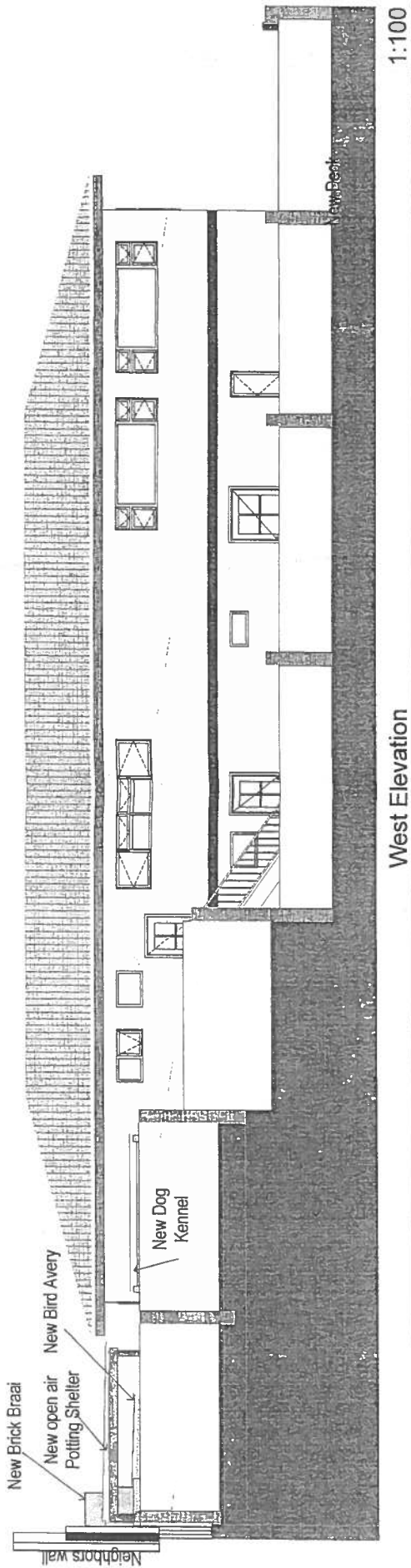
Plan Description:
LOCALITY MAP

Property Description:
ERF 4690
HERMANUS

All distances approximate
and subject to survey.
COPY RIGHT RESERVED

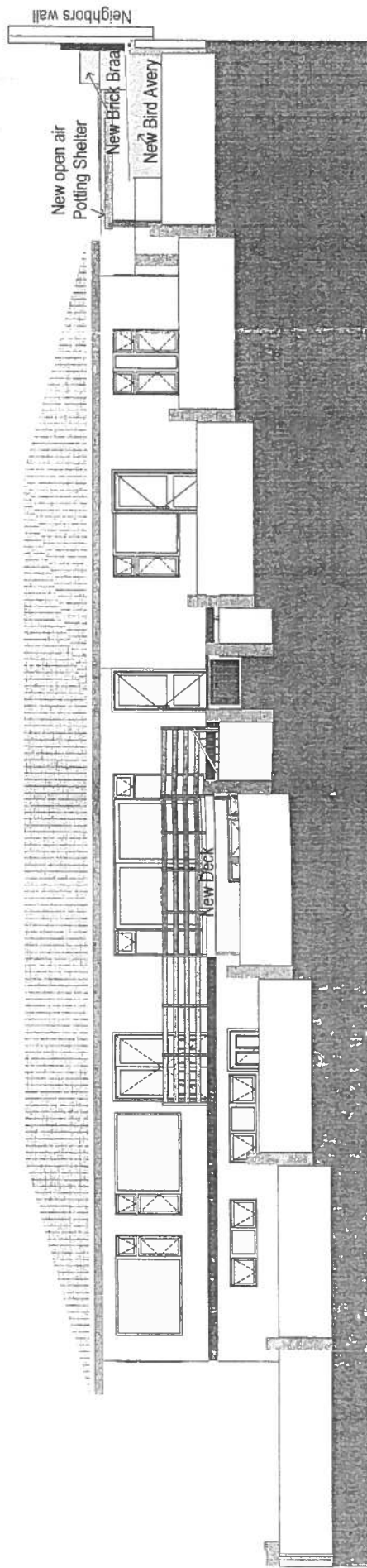
Stads- en Streeksbeplanners
Town & Regional Planners
PLActive





West Elevation

1:100



East Elevation

1:100

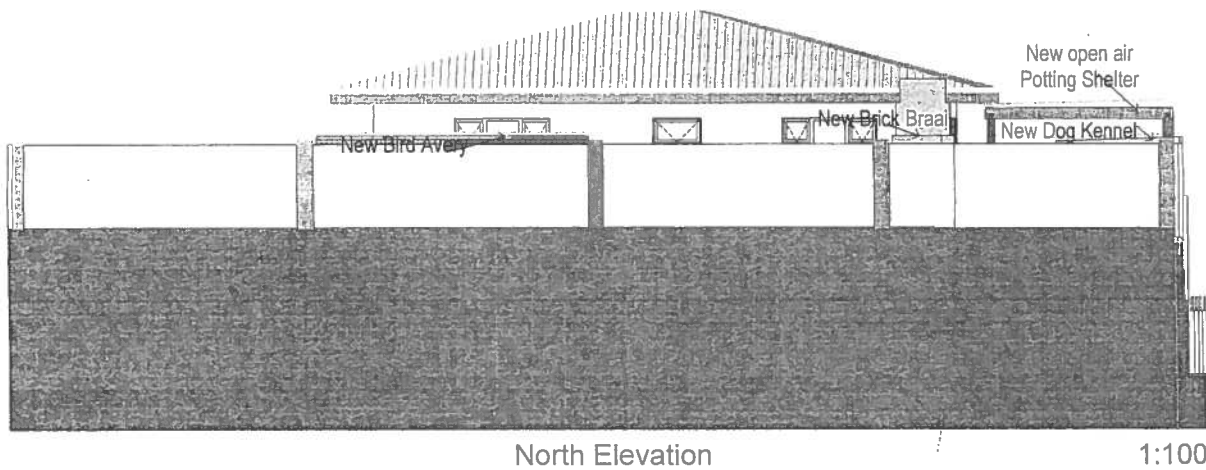
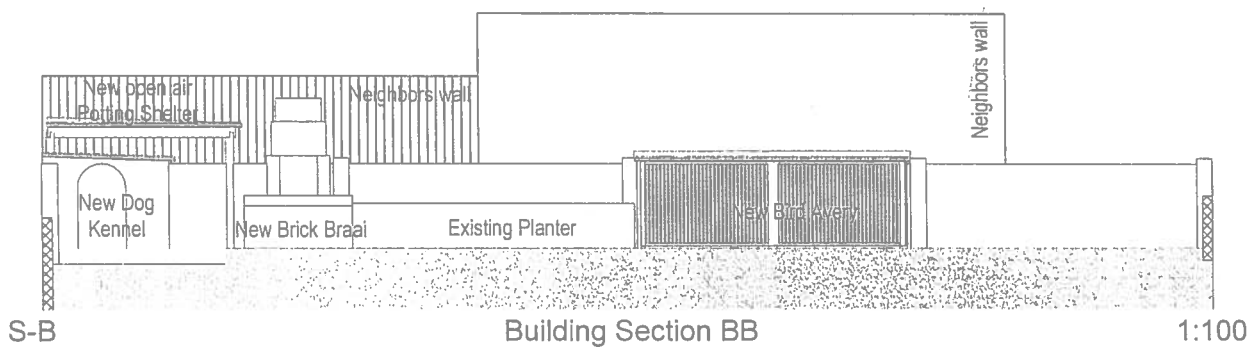
ImageStudio
 Architectural Plans 074 102 7697
 Drawn by: Steven van der Merwe
 Checked by: D2458 PatchDraught
 Date: Wednesday, March 11, 2015

Drawing Name:
West Elevation, East Elevation
 1:100
 Drawing Status:
As Built Measured Drawings Only

ERF 4690
 As Built Measured Drawings
 Cerina Hardie, 08356677399
 35 Dolphin St
 Hermanus
 7200
 ehardie@ieikomsa.net

ImageStudio
 15 Belladonna Street
 Sandbaai
 Hermanus, 7200
 steven@imagestudio.co.za
 0741027697

Job Details
 Status: 445
 Revision: A.01.4
 layout ID: 1501 Cerina
 Job no. Hardie
 Job bag.



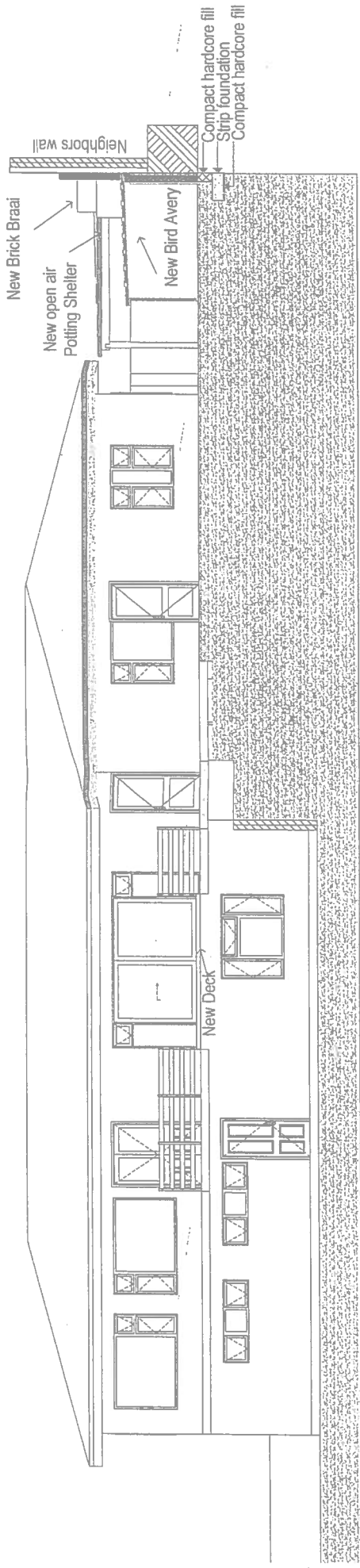
Job Details
 Status
 Revision
 Layout ID
A.01.5
 Job no.
 Job bag.

ImageStudio
 15 Belladonna Street
 Sandbaai
 Hermanus, 7200
 steven@imagestudio.co.za
 0741027897

ERF 4690
 As Built Measured Drawings
 Cerina Hardie, 0836677339
 35 Dolphin St
 Hermanus
 7200
 ehardie@telkomsa.net

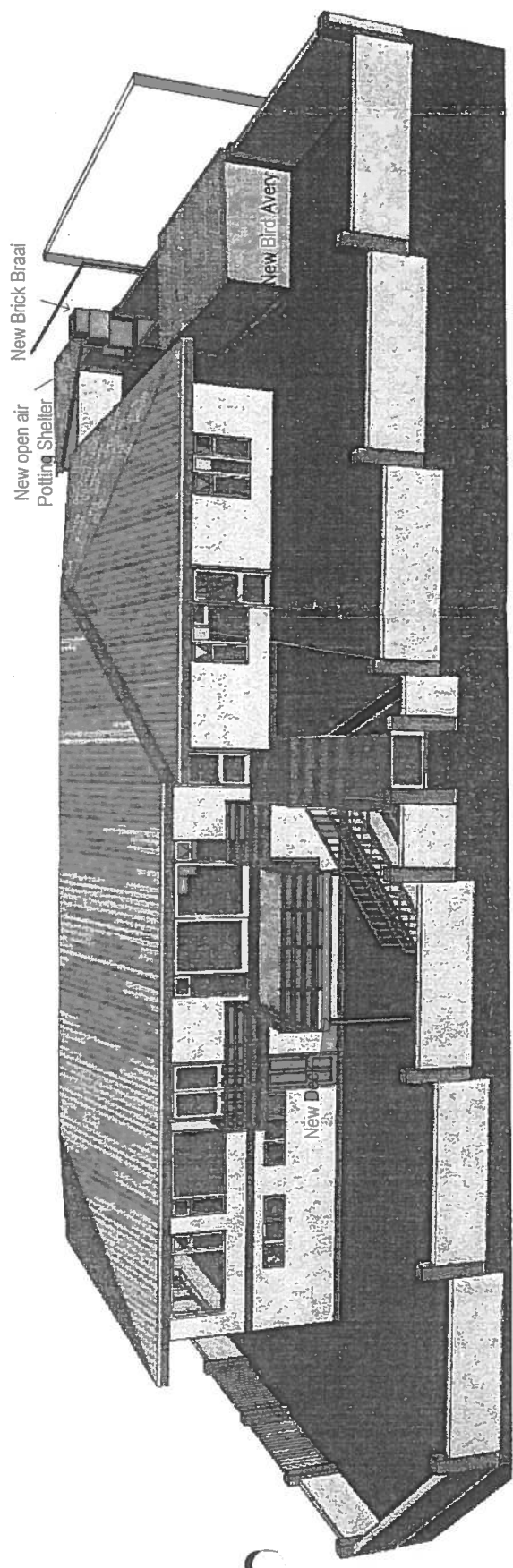
Drawing Name
**North Elevation, South Elevation,
 Building Section BB**
1:100
 Drawing Status
As Built Measured Drawings Only

ImageStudio
 Architectural Plans 074 02 7897
 Drawn by
 Steven van der Merwe
 Checked by
 D2466 Parrh Draught
 Date
 Wednesday, March 11, 2015



Building Section AA

1:100



Generic Perspective

1:1.33

Photo

ImageStudio
 Architectural Plans 074 102 7200
 Drawn by: Steven van der Merwe
 Checked by: D2456 PArchDraught
 Date: Wednesday, March 11, 2015

Building Section AA, Generic Perspective, Apex
 1:100, 1:1.33, 1:844.88
 Drawing Status: As Built Measured Drawings Only

ERF 4690
 As Built Measured Drawings
 Cerina Hardie, 0636677339
 35 Dolphin St
 Hermanus
 7200
 ehardie@elkomsaa.net

ImageStudio
 15 Belladonna Street
 Sandbaai
 Hermanus, 7200
 steven@imagestudio.co.za
 074 102 7897

Job Details
 Status: A.01.6
 Revision: 445
 layout ID: 1501 Cerina
 Job no.: Hardie
 Job bag:

APPLICATION FOR A DEPARTURE
FROM THE BUILDING LINES AND
REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS:

ERF 4690 HERMANUS

OVERSTRAND MUNICIPALITY

CALEDON DISTRICT

1. **BACKGROUND**

The Owner, Mrs. Carina Combrinck Hardie instructed Plan Active to apply for a departure from the building lines and removal of restrictive Title Deed conditions in order to accommodate the existing structures situated on Erf 4690 Hermanus.

The Overstrand Municipality has no records of approved building plans for the subject property. Subsequently Mrs. Hardie appointed Image Studio to compile "as built" plans of all the structures on the property. These plans were submitted to the Overstrand Municipality for approval, where it was found that the buildings encroach the building lines as prescribed in the Scheme Regulations and in the Title Deed of Erf 4690 Hermanus. Mrs. Hardie was requested to submit an application for a departure and the removal of restrictive Title Deed restrictions to rectify the matter. The structures that encroach the building lines date back as far as 1980. The detail of the proposal will be described in detail further in this document.

2. **APPLICATION DETAILS**

2.1 **Property Description**

Erf 4690 Hermanus is 752m² in extent, held by Title Deed T101658/2005 and is situated on the corner of Dolphin Street and Regent Lane Hermanus. Please refer to the enclosed locality map.

2.2 Application

The owner wants to accommodate the various structures that were constructed over the side building lines in terms of the Overstrand Municipality Zoning Scheme by means of applying for a departure from the land use restrictions. The structures have also been constructed over the street and lateral boundary lines as described in the Title Deed of the subject erf.

In order to accommodate the structures within the prescribed building lines in terms of the Scheme Regulations and Title Deed it would be required to apply for the following:

- The Removal of Restrictions Act, Act 84 of 1967 as amended, for the removal of a restrictive title deed condition.
- An application for a departure from the building lines in terms of Section 15 (1)(a)(i) of the Land Use Planning Ordinance, Ordinance 15 of 1985.

3. ZONING

Erf 4690 Hermanus is zoned Residential Zone I in terms of the Overstrand Municipality Zoning Scheme.

4. LAND USE

The subject property is used for single residential purposes. A dwelling with double garage, bird aviary / potting shed, braai, open air potting shelter and dog kennel are constructed on the property.

5. PROPOSAL

Our proposal consists of an application for a departure from the building lines in terms of the Scheme Regulations and a removal of restrictive Title Deed conditions. The restrictive Title Deed restrictions constitutes prescribed building lines that will have to be removed in order to accommodate a number of structures that were constructed within these building lines.

The prescribed building lines in terms of the Scheme Regulations under a zoning of Residential Zone I can be summarised as follow:

- Street Building Line: 4m
- Side Building Lines: 2m

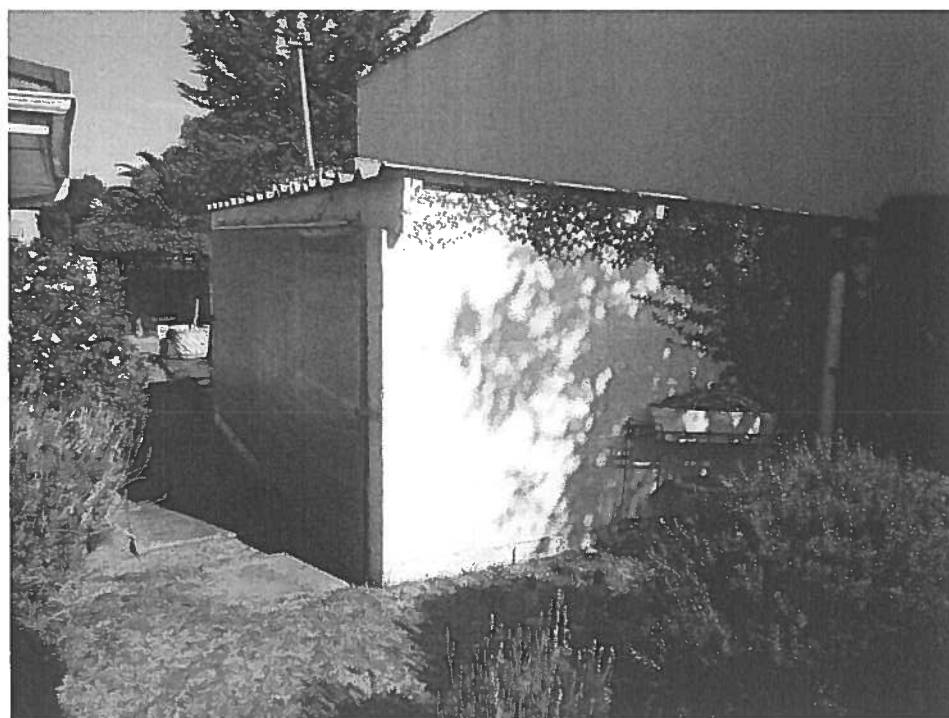
The prescribed building lines in terms of the Title Deed can be summarised as follow:

- Street Building Line: 4.72
- Lateral Boundary Lines: 2.36m

The detail of the structures that needs to be addressed in terms of the land use restrictions in terms of the Scheme Regulations and Title Deed are as follow:

Bird Aviary / Potting Shed

A bird aviary was constructed on the northern boundary of Erf 4690 Hermanus in 1980. The bird aviary is currently being used as a potting shed. Please refer to the photograph below:



The potting shed was constructed right up to the erf boundary as indicated on the site development plan and it would be required that the northern side building line be

relaxed from 2m to 0m in order to accommodate the potting shed. It would also be required that the following Title Deed restriction be removed in order to accommodate the potting shed:

Page 3, Paragraph C. 4 of Title Deed Number T101658/2005:

"That no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4.72 metre to the street line that forms the boundary of this erf. No such building or structure shall be situated within **2.36 metres of the lateral boundary** common to any adjoining erf."

Dog Kennel

A dog kennel was constructed on the eastern boundary in 1980 as depicted on the site development plan. Also refer to the photograph below:



The dog kennel was constructed up to the eastern boundary of Erf 4690 Hermanus. It would therefore be required that the prescribed building line in terms of the Scheme Regulations be relaxed from 2m to 0m in order to accommodate the existing dog kennel.

It would also be required that the following Title Deed restriction be removed in order to accommodate the dog kennel:

Page 3, Paragraph C. 4 of Title Deed Number T101658/2005:

"That no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4.72 metre to the street line that forms the boundary of this erf. No such building or structure shall be situated within **2.36 metres of the lateral boundary** common to any adjoining erf."

Built Braai

A braai was constructed on the northern boundary in 1993 as depicted on the site development plan. Also refer to the photograph below:



The braai was constructed up to the northern boundary of Erf 4690 Hermanus. It would therefore be required that the prescribed building line in terms of the Scheme Regulations be relaxed from 2m to 0m in order to accommodate the existing braai.

It would also be required that the following Title Deed restriction be removed in order to accommodate the braai:

Page 3, Paragraph C. 4 of Title Deed Number T101658/2005:

"That no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4.72 metre to the street line that forms the

boundary of this erf. No such building or structure shall be situated within **2.36 metres of the lateral boundary** common to any adjoining erf.”

Open Air Potting Shelter

An open air potting shelter was constructed on the northern boundary in 1993 as depicted on the site development plan. Also refer to the photograph below:



The open air potting shelter was constructed up to the northern and western boundary in the corner of Erf 4690 Hermanus and consists of 3 gumpoles, and a roof that is covered in vines. It would therefore be required that the prescribed building line in terms of the Scheme Regulations be relaxed from 2m to 0m in order to accommodate the open air potting shelter.

It would also be required that the following Title Deed restriction be removed in order to accommodate the open air potting shelter:

Page 3, Paragraph C. 4 of Title Deed Number T101658/2005:

“That no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4.72 metre to the street line that forms the boundary of this erf. No such building or structure shall be situated within **2.36 metres of the lateral boundary** common to any adjoining erf.”

Wooden Deck

A wooden deck was constructed on the eastern side of the dwelling facing Regent Lane in 2009 as depicted on the site development plan. Also refer to the photographs below:



The wooden deck was constructed in 2009 as an extension of the existing balcony towards Regent Lane to the eastern boundary of Erf 4690 Hermanus. The balcony is situated $\pm 4.33\text{m}$ from the street boundary. The deck does not exceed the 4m street building line as prescribed in terms of the Scheme Regulations. The deck however encroach the street building line as it is prescribed in the Title Deed, by $\pm 0.39\text{m}$.

It would be required that the following Title Deed restriction be removed in order to accommodate the deck:

Page 3, Paragraph C. 4 of Title Deed Number T101658/2005 reads as follows:

"That **no building or structure or any portion thereof**, except boundary walls and fences **shall be erected nearer than 4.72 metre to the street** line that forms the **boundary** of this erf. No such building or structure shall be situated within 2.36 metres of the lateral boundary common to any adjoining erf."

6. ACCESS ROAD

The existing accesses to Erf 4690 Hermanus will remain. Vehicular access is gained from Dolphin Street via a driveway to the double garages and pedestrian access is via a gate situated on Regent Lane.

7. PROVISION OF SERVICES

All services with regards to the provision of water, electricity, sewerage and refuse removal exists. The application constitutes building line relaxations and removal of restrictive Title Deed conditions that has no impact on services.

8. THE TITLE DEED

There is a restrictive title deed condition that has to be removed to accommodate the various structures as mentioned above on Erf 4690 Hermanus.

Please refer to Page 3, Paragraph C. 4 of Title Deed Number T101658/2005 that reads as follows:

"That **no building or structure or any portion thereof**, except boundary walls and fences **shall be erected nearer than 4.72 metre to the street** line that forms the **boundary** of this erf. **No such building or structure shall be situated within 2.36 metres of the lateral boundary** common to any adjoining erf."

In order to accommodate the bird aviary / potting shed, dog kennel, built braai and potting shelter that are built right up to the lateral boundaries within the prescribed

2.36m building line it would be required that the above mentioned Title Deed restriction be removed.

The existing wooden deck was constructed 4.33m from the street boundary. The deck encroaches the building line that is 4.72m in terms of the Title Deed by 0.39m and therefore it would be required that the above mentioned Title Deed Restriction be removed.

9. RECOMMENDATION

- The application is to accommodate existing structures that were constructed as far back as 1980 and raised no concern with any neighbours.
- The dog kennel and built braai are situated below the existing boundary walls and are not visible from the neighbour's properties. The bird aviary that is now used as a potting shed was constructed prior to the neighbour constructing his garage on the common boundary. Therefore the bird aviary / potting shed is also not visible to the adjoining neighbour.
- The existing wooden deck situated on the eastern side of the existing dwelling facing Regent Lane is within the building line in terms of the Scheme Regulations. The garden is well maintained and with the lush vegetation on the property the wooden deck is hardly visible from Regent Lane.
- The proposed departure from the building lines and removal of restrictive Title Deed conditions will not have a negative effect on the current character and land values of the surrounding erven.

With regards to the above mentioned it will be appreciated if Council would approve and recommend the proposed:

- The Removal of Restrictions Act, Act 84 of 1967 as amended, for the removal of a restrictive title deed condition.
- An application for a departure from the building lines in terms of Section 15 (1)(a)(i) of the Land Use Planning Ordinance, Ordinance 15 of 1985.

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTION AND DEPARTURE:
ERF 4690, NORTHCLIFF (2856)**

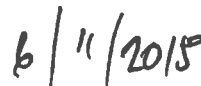
Electricity : In order
Water : In order
Sewer : In order
Stormwater : In order
Roads and traffic : In order

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that stormwater be allowed to discharge through Erf 4690, Northcliff, unobstructed;
4. that no on-street parking be allowed.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**



DATE