



MUNISIPALITEIT OVERSTRAND
ERF 1012, MUSSONSTRAAT 42, EASTCLIFF,
HERMANUS, OVERSTRAND MUNISIPALE
AREA: AANSOEK OM OPHEFFING VAN
BEPERKENDE TITELAKTEVOORWAARDES EN
AFWYKING: MNRE WRAP PROJECT OFFICE
NAMENS FB EGGERT

Kragtens Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die volgende aansoeke wat ontvang is van toepassing op die bogenoemde eiendom, naamlik:

Opheffing Van Beperkende Titelaaktevoorwaardes

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaaktevoorwaarde 2.A(d), soos vervat in Titelaakte T5569/2020 ten einde die konstruksie van 'n motorhuis toe te laat op die laterale grens van die eiendom toe te laat.

Afwyking

Aansoek om afwyking ingevolge Artikel 16(2)(b) van die Verordening om die oostelike laterale boulyn vanaf 2m na 0m te verslap om die voorgestelde motorhuis te akkommodeer.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 en 16:30 by die Departement Stadsbeplanning te Patersonstraat 16, Hermanus.

Enige kommentare moet skriftelik ingedien word ingevolge die bepalinge van Artikels 51 en 52 van die Verordening en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za bereik voor of op **5 November 2021**, met u naam, adres en kontak besonderhede, belang in die aansoek en redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr P Roux** by 028-3138900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.

Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, **HERMANUS**, 7200

Munisipale Kennisgewing Nr. 139/2021

OVERSTRAND MUNICIPALITY
ERF 1012, 42 MUSSON STREET, EASTCLIFF,
HERMANUS, OVERSTRAND MUNICIPAL
AREA: APPLICATION FOR REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS AND
DEPARTURE: MESSRS WRAP PROJECT
OFFICE ON BEHALF OF FB EGGERT

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) that the following applications have been received applicable to the above-mentioned property namely:

Removal of Restrictive Title Deed Conditions

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed condition 2.A(d) as contained in Title Deed T5569/2020 in order to allow the construction of a garage on the lateral boundary of the property.

Departure

Application for departure in terms of Section 16(2)(b) of the By-Law to relax the eastern lateral building line from 2m to 0m in order to accommodate the proposed garage.

Details regarding the proposal is available for inspection during weekdays between 08:00 and 16:30 at the Department Town Planning at 16 Paterson Street, Hermanus.

Any written comments must be submitted in accordance with the provisions of Sections 51 and 52 of the said By-law and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za on or before **5 November 2021**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr P Roux** at 028-313 8900. The Municipality may refuse to accept comment received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

Municipal Manager, Overstrand Municipality, P.O. Box 20, **HERMANUS**, 7200

Municipal Notice No.139/2021

UMASIPALA WASE-OVERSTRAND
ISIZA 1012, 42 MUSSON STREET, EASTCLIFF
UMMANDLA WOMASIPALA WASE-
OVERSTRAND: ISICELO SOKUSUSWA
KWEZITHINTELO NGOKWEMIGAQO
YEEMEKO NOKUPHAMBUKA: WRAP
PROJECT OFFICE (EGAMENI LIKA FB EGGERT)

Kukhutshwe isaziso esimayela nemiba yeSoloty lama-47 nelama-48 nguMasipala waseOverstrand esingokuHlomela uMthethwana kaMasipala Ongokuhlomela iZicwangciso zokuSetyenziswa koMhlaba kaMasipala ku2020 (uMthethwana) isaziso eso sithi kufunyenwe ezi zicelo zilandelayo ezisebenza kwesi siza sichazwe ngentla esibizwa:

Isicelo sokushenxiswa kwemiqathango yeemeko

Isicelo ngokweSoloty 16(2)(f) lalo Mthethwana sokususwa kwezithintelo ngokwemigaqo yeemeko ngokwemihlathi: 2.A(d) njengoko kuqulatwe kwiTitle Deed T5569/2020 ukulungiselela ukuvumela ukwakhiwa kwegaraji kumda osecaleni wepropathi.

Ukuphambuka

Isicelo sokuphambuka ngokweSoloty 16(2)(b) lalo Mthethwana ukuvumela okulandelayo ukuphambuka kumgca wokwakha osecaleni kwimpuma ukusuka kwi-2m ukuya ku-0m ukulungiselela igaraji ecetywayo.

linkcukacha ezimayela nesiphakamiso ziyafumaneka ukuze sihlolwe kwiintsuku zaphakathi evekini Phakathi kwentsimbi ye-08:00 neye- 16:30 kwiSebe Lezicwangciso zeDolophu kwa16 Paterson Street, Hermanus.

Naziphi na izimvo mazingeniswe ngokwezibonelelo zeSoloty lama51 nelama52 oMthethwana zifike zikaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za ngomhla okanye ngaphambi komhla **wama-5 uNovemba 2021**, uchaze igama lakho, idilesi neenkukacha ofumaneka, umdla wakho kwesi sicelo nezizathu zokuhlomla. Imibuzo ngefowuni ingabuzwa ku**Mcwangcisi oMkhulu weDolophu, uMnu. P Roux** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva kokuvala. Nabani na ongakawazi ukufunda nokubhala angaya kwiSebe Lezicwangciso zeDolophu apho igosa likamasipala liza kumnceda ukuze akwazi ukufaka izimvo zakhe ngokusemthethweni.

Municipal Manager, Overstrand Municipality, P.O. Box 20, **HERMANUS**, 7200

Inothi kaMasipala Nomb.139/2021

Locality Plan Erf 1012, Hermanus

 Subject property (Erf 1012, Hermanus - 854m²)

Plan prepared by: Thian Jansen

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

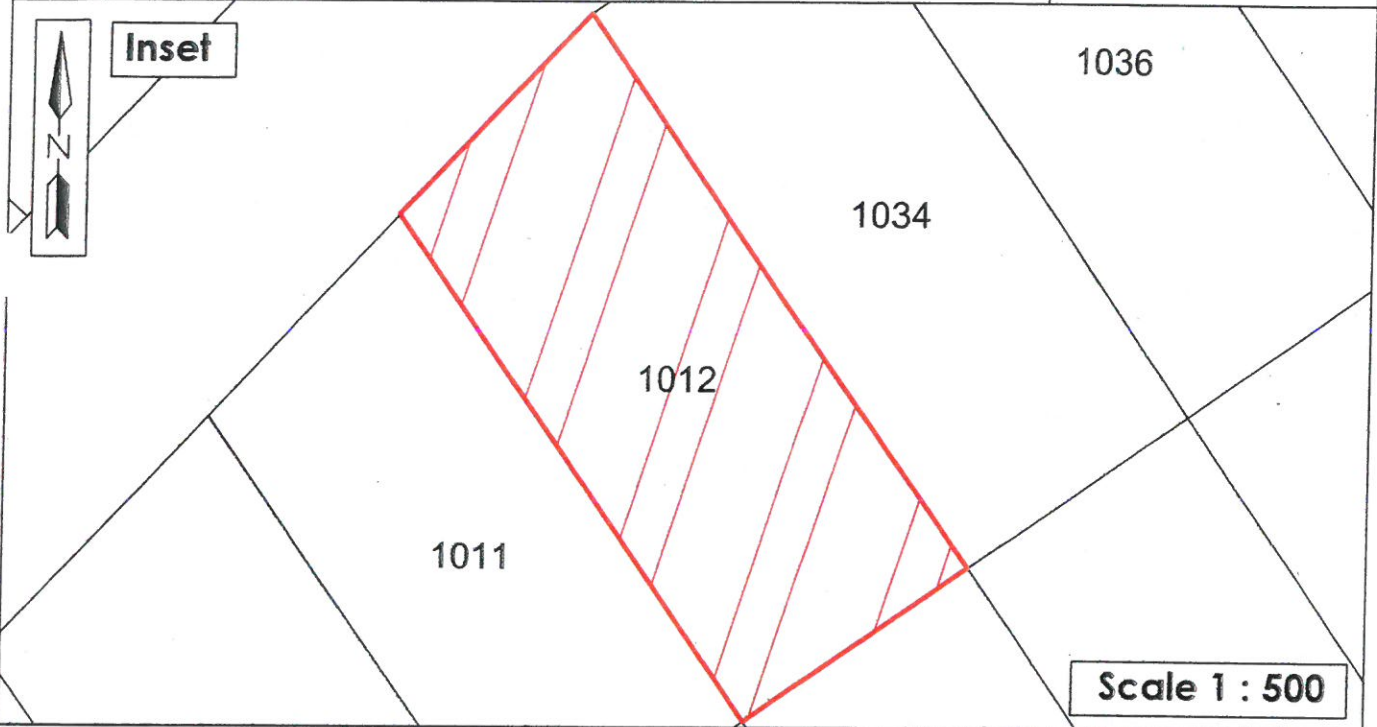
Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200



Project Office
Town Planning & Project Management



Inset



Suburban context





1. ABBREVIATIONS

1.1	OM	Overstrand Municipality
1.2	OMLUS	Overstrand Municipality Land Use Scheme, 2020
1.3	OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
1.4	DEADP	Western Cape Department of Environmental Affairs and Development Planning
1.5	PSDF	Western Cape Provincial Spatial Development Framework, 2014
1.6	LUPA	Western Cape Land Use Planning Act, 2014.
1.7	MSDF	Overstrand Spatial Development Framework, 2020
1.8	SDP	Site Development Plan
1.9	SRI	Residential Zone 1: Single Residential

2. SUMMARY OF STATUS QUO AND PROPOSED PROPERTY DETAILS

2.1	Consultant	WRAP Project Office
2.2	Restrictive title deed conditions	Conditions 2.A(d), refer to Section 7 for a full explanation.
2.3	Erf extent	854m ²
2.4	Current zoning	Residential Zone 1: Single Residential
2.4.1	Primary rights	Crèche, Dwelling House , Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.
2.4.2	Consent uses that may be applied for	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building and Intensive Horticulture.

3. BACKGROUND

- 3.1 Erf 1012 Hermanus, hereafter referred to as the subject property is owned by the Falk Burkhardt Eggert, hereafter referred to as the applicant.
- 3.2 The applicant wants to construct a garage, but it is being restricted by a condition in the title deed, which necessitates an application to the Overstrand Municipality for the removal thereof. The title deed condition limits the applicant to build on the boundary of the subject property. The restrictive title deed condition states that no buildings may be built within 15 feet (4,57m) of a street boundary line, and 5 feet (1.52m) from the side boundary lines.
- * 3.3 The applicant's vision is to construct a garage inside the 1.52m title deed building line. The applicant wants to utilise the garage as a place to store his motor vehicle and to increase the security of the subject property. No habitable space will be added in the building line.



3.4 In addition to the removal of restrictive title deed restriction, a departure of the OMLUS's building line is also required as the proposed garage is proposed to be constructed over the side building line.

3.5 To achieve the applicant's vision, the following is required:

- Removal of a restrictive title deed condition; and
- Departure of the 2m OMLUS side building line.

4. PROCEDURE TO ACHIEVE THE APPLICANT'S INTENT

WRAP was appointed to compile and submit a land use planning application to materialise the intent highlighted in Section 3 of this report. The following is proposed:

4.1 Removal of restrictive title deed condition 2.A(d) from title deed T5569/2020 in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

There is a title deed condition that prohibits the land use rights sought by the applicant as described in Section 3 and the rationale for the removal of these conditions is discussed below:

4.1.1 Condition 2.A(d) *"That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line which forms a boundary of this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf."*

4.1.2 The removal of the title deed condition mentioned above is required as the proposed garage is closer than 1.52m of the side title deed building line. The removal thereof would allow the applicant to enjoy his property in full. As it currently stands, the applicant is being restricted by the condition.

4.1.3 The extent of the garage is 40.6m² with dimensions of 5.8m x 7m. The space inside the building line will not be used as habitable space and will only be used for the storage of a motor vehicle.

4.1.4 The rationale for the removal of the restrictive title deed condition is to enable the applicant to achieve the development intent highlighted in Section 3.

4.1.5 The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

4.2 Departure from the 2m eastern side building line to 0m to accommodate the proposed garage in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

4.2.1 The garage is proposed to be located along the eastern boundary encroaching on the building line, necessitating a departure from the OMLUS's building lines.

4.2.2 As indicated on Plan 4, the proposed garage is located on the boundary line between Erven 1012 and 1034, Hermanus. The proposed



encroachment is 14.98m² in extent, with no habitable space planned within this area.

- 4.2.3 The proposed height of the garage is also within the development parameters set out in Section 16.1.1 (c) and will be 3m high.
- 4.2.4 The length of the garage is only 7.46m including the outside walls of the garage. There are no doors or windows planned in the wall facing Erf 1034, Hermanus. In addition, the water runoff will be dealt with on Erf 1012, Hermanus.

5. APPLICATION

Considering the above, application is made for the following:

- 5.1 **Removal of restrictive title deed condition 2.A(d)** from title deed T5569/2020 in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 5.2 **Departure** from the 2m eastern side building line to 0m to accommodate the proposed garage in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

6. LAND USE ENVIRONMENT

The properties surrounding the subject property are also zoned Residential Zone 1: Single Residential. The surrounding area's zoning is illustrated in Plan 2 (zoning plan). The proposed garage is not out of the ordinary in a residential area.

7. TITLE DEED

Title deed T5569/2020 (refer **Annexure B**) was perused and there is a restrictive title deed condition that was inserted into the original title deed and transferred to the current title deed. The title deed condition prohibits the applicant to build the proposed garage in the position proposed.

7.1	<p><u>Title deed restriction</u></p> <p>Condition 2.A(d) <i>"That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line which forms a boundary of this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf."</i></p> <p><u>Motivation</u> The rationale for the proposed removal The subject property is currently being used for a dwelling unit. The applicant has the vision to increase the safety of his home by building a garage. The development parameters for a SR1 zoning are clearly indicated in the OMLUS and the title deed's side building line is much more restrictive than what is allowed in terms of the development parameters. The proposed</p>
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	<p>development of the property would be restricted by this condition and therefore the condition requires removal.</p> <p>Title deed condition background</p> <p>The restrictive title deed condition was originally intended to protect the residential character of the Hermanus area. This restrictive title deed condition was inserted into the title deed of the applicant. Any amendment or removal of this condition requires the consent of the Administrator. This authority now sits with the Overstrand Municipality.</p> <p>Status quo</p> <p>Plan 2 illustrates that the current land use/zoning trend in the area is a residential area, and the proposed garage is not out of context for a residential area. The condition made sense when no clear development parameters existed, but the OMLUS has filled the gap. The OMLUS has provided clear development guidelines when it comes to building lines that are applicable to the subject property. With the restrictive condition being more restrictive than the prescribed building lines of the OMLUS, the applicant may not utilise his property to its full extent.</p>
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Regarding the requirement set out in LUPA, the following information is required to be addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	The restrictive condition does not have any real financial value. The applicant will be the only person that will be gaining from the removal of a restrictive title deed condition.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	The holder and the person that is supposed to benefit from the restrictive title deed condition is the registered owner (the applicant).
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The applicant will be gaining from the removal of the restrictive condition as it will allow him to construct the envisioned garage.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i>	The restrictive condition does not have a social impact and there will be no social benefit if the condition remains in place.
<i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	As the registered owner is the only person being affected by the restrictive title deed condition.
<i>(f) whether the removal, suspension or amendment of the restrictive condition</i>	The beneficiary of the restrictive condition is the applicant. The



MOTIVATION

will completely remove all rights enjoyed by the beneficiary or only some of those rights.	development parameters of OMLUS will still be the parameters that are required to be adhered to.
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8. ZONING

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (a) of the OM By-Law:

The **current zoning** of the subject property is:

Residential Zone 1: Single Residential			
Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House	Comply
Consent use that may be applied for	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building and Intensive Horticulture.	None	Comply
Development parameters			
Coverage	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: 400m ² and greater = 50%	27%	Comply
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	±6.5m	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: 400 m ² and greater = 4m	(i) Comply	(i) Comply



MOTIVATION

	(ii) The side and rear building lines are determined in accordance with the net erf area: Greater than 400 m ² = 2m	(ii) Departure applied for. from 2m on the eastern side building line to 0m.	(ii) Applied for and motivated
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Departure applied for.	Comply
Parking	Two on-site parking bays per dwelling unit, provided that on erven less than 400 m ² , only 1 on-site parking bay needs to be provided.	2 parking bays required 2 parking bays provided	Comply

9. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

9.1 Electricity

The subject property is connected to the Hermanus electricity network, and the proposed garage will not require a large amount of electricity.

9.2 Water

The existing building is connected to the reliable water network provided by the OM in the Hermanus area. The proposed garage will not require a large amount of water.

9.3 Sewage

The existing building is connected to sewage network provided by the OM in the Hermanus area. The proposed garage will not be required to connect to the sewage network.

9.4 Access, egress, and parking

Vehicular access and egress to the subject property is gained from Musson Street and the approval and implementation of this application will not alter this.

10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:



10.1 Need and desirability

The need for the development arose from the applicant's vision to increase the safety features of his property. The applicant wants to build a new garage on the subject property.

The desirability is more often a personal feeling of the applicant that may in the future benefit others, such as increasing the property value that could possibly increase the financial benefit that the Municipality may gain from the sale of the property in the future.

To achieve their desire, the applicant has appointed WRAP Project Office to submit this application, to ensure the proposed garage is not in contradiction to any policies, legislation or title deed conditions.

10.2 Impact on views, sunlight and character of the area

The small physical change that will occur on the property is not foreseen to impact on any surrounding property or property owner. The proposed garage will be built to the correct scale and dimensions allowed by the OMLUS. The buildings are not impeding on the views, sunlight and character of the surrounding area.

10.3 Economic impact

There will be little to low impact in an economic sense. While the garage is built it will provide employment opportunities to several employees who will be involved in the project.

10.4 Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal which leads to the devaluation or foregoing valued land use rights of interested and affected parties when an application is approved. The proposed garage will not adversely affect the surrounding area, the garage will be used to safely store a motor vehicle.

10.5 Impact on heritage

The subject property is not listed in the OM Heritage Register. None of the provisions in the National Heritage Resources Act, 1999 are triggered by this proposal.

10.6 Environmental impact

No listed activities in terms of the National Environmental Management Act are triggered by this proposal.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone

The subject property is not located within this zone.



11.2 Heritage Protection Overlay Zone

The subject property is not located within this zone.

11.3 Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles which each development application must be guided by. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

12.1 Spatial justice

Spatial justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a garage does not perpetuate apartheid spatial development imbalances.

12.2 Spatial sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal is intended to increase the comfort with which the applicant enjoys his property and add value to the property.

12.3 Efficiency

This proposal is intended to maximise the usage of the subject property and ensure the applicant has sufficient parking for his vehicles.

12.4 Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

12.5 Good administration

The OM has a credible track record of good administration regarding the method of public participation which invites and accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.



13. EVALUATION

- 13.1** The rationale for the removal of a restrictive title deed condition is a method to ensure the applicant is not restricted to construct his garage. The proposed garage is within the title deed building lines and would not be allowed without the removal of the restrictive title deed condition; and
- 13.2** This proposal would allow the applicant to construct a 40.6m² garage to store his motor vehicle. The proposal is in line with what is allowed in a residential area and it is not out of character. It is also in-line with the OMLUS's development parameters.

14. RECOMMENDATION

Considering the merits of this motivation, it is recommended that the following be approved:

- 14.1 Removal of restrictive title deed condition** 2.A(d) from title deed T5569/2020 in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 14.2 Departure** from the 2m eastern side building line to 0m to accommodate the proposed garage in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

Site Development Plan
Erf 1012, Hermanus

Coverage

House - 177.7m²
Covered Entrance - 1.0m²
Garage/Store/Refuse Area - 40.6m²
Covered Deck/Stoop - 11.25m²
Total Coverage = 230.6m²
Property Extent = 854m²

Coverage - 27%

Total allowable coverage - 50%

Parking

Parking required for the dwelling unit =
2 parking bays
(2 parking bays per dwelling)



Building Line Encroachment Area

Plan prepared by: Thian Jansen
Plans based on drawing done by:
LUKE Architect

All distances are approximate
and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House, Corner of Royal and Dikie Uys
Street Hermanus, 7200



Project Office
Team Planning & Project Management

1033

1013

1010

1034

1012

1011

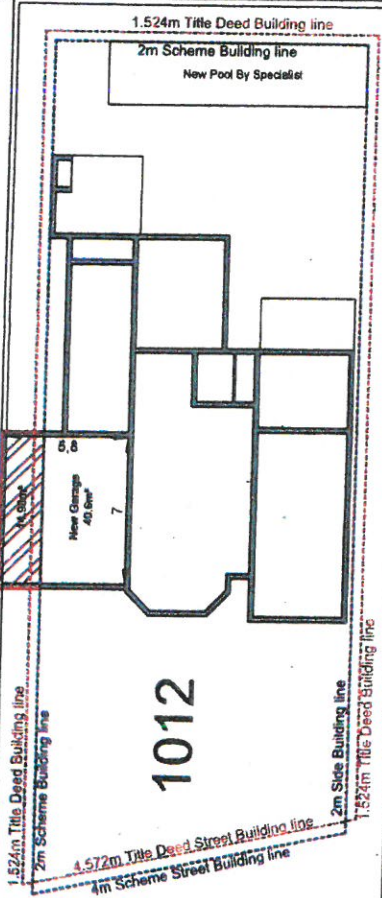
MUSSON STREET

18.89m

47.23m

43.21m

19.32m



Scale 1 : 100

47.23m

14.98m²

5,8

















New Garage
40.6m²

7

Scale 1 : 250



Zoning Plan Erf 1012 Hermanus

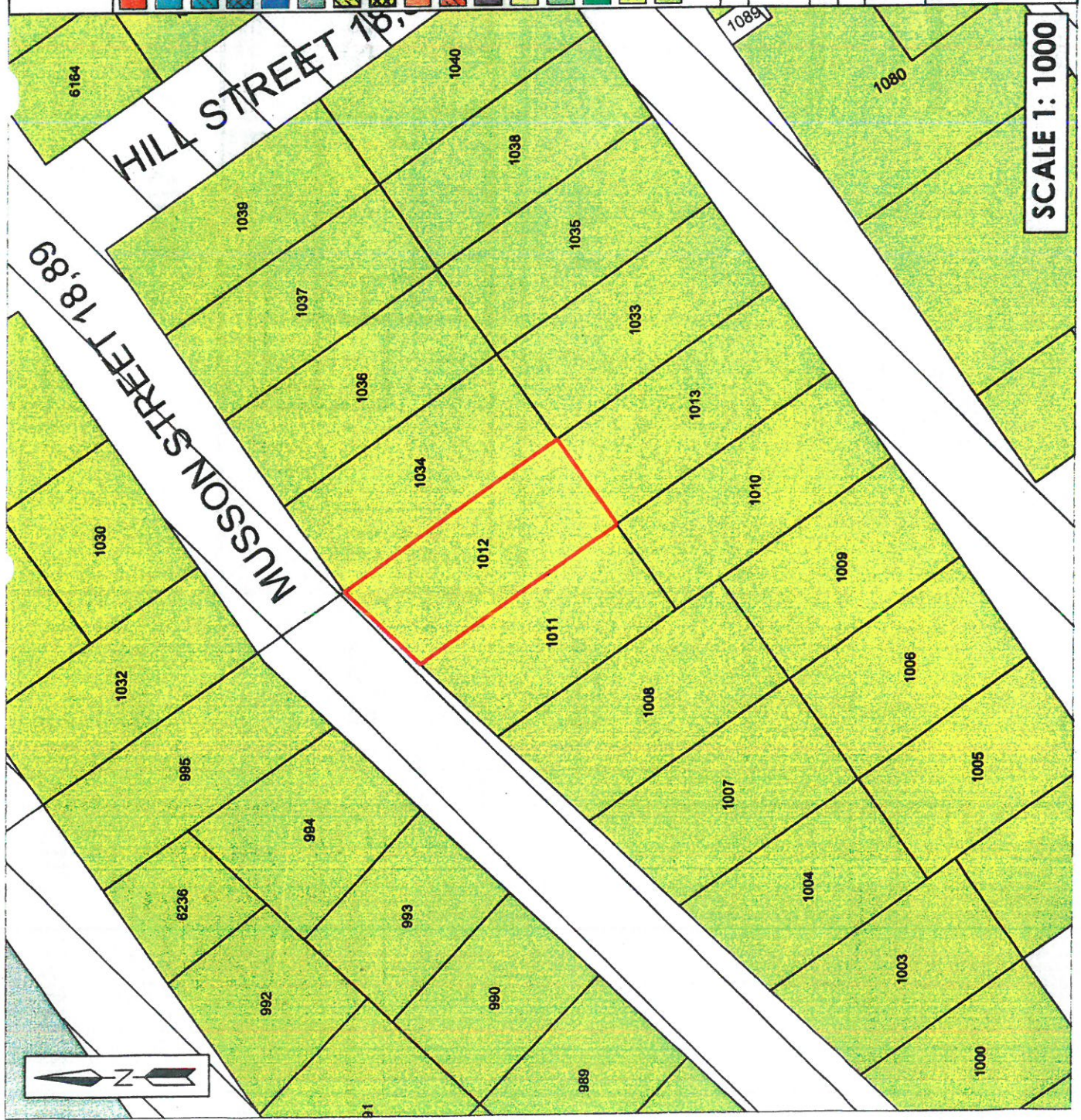
-  Authority Zone : Authority Usage
-  Business Zone 1: General Business Bulk Zone 1
-  Business Zone 2: General Business Bulk Zone 2
-  Business Zone 3: Local Business
-  Business Zone 4: Service Station
-  Community Zone 1: Community Facilities
-  General Residential Zone 1: Town Housing
-  General Residential Zone 2: Town Housing
-  General Residential Zone 3: Flats Bulk Zone 1
-  General Residential Zone 3: Flats Bulk Zone 2
-  Industrial Zone 1: General Industry
-  Less Formal Development Zone
-  Open Space Zone 1: Nature Reserve
-  Open Space Zone 2: Public Open Space
-  Open Space Zone 3: Private Open Space
-  Residential Zone 1: Single Residential

Plan prepared by: Thian Jansen
All distances are approximate and subject to a survey

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Unit B, Standard House,
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SCALE 1: 1000