



OVERSTRAND MUNISIPALITEIT
ERF 445, HOOFWEG 55, NORTHCLIFF,
HERMANUS: AANSOEK OM TYDELIKE
AFWYKING EN BEPALING VAN
ADMINISTRATIEWE BOETE:
INTERACTIVE TOWN & REGIONAL
PLANNING (nms ERF NO 445
HERMANUS TRUST)

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Gewysigde Verordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die volgende aansoeke van toepassing op Erf 445, Northcliff, naamlik:

Tydlike Afwyking

Aansoek ingevolge Artikel 16(2)(c) van die Verordening om toe te laat vir die deurlopende bedryf van die bestaande tandartspraktijk op die eiendom.

Bepaling van Administratiewe Boete

Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir bogenoemde ongemagtigde grondgebruik.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weeksdag tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus.

Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening by die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) voor of op **12 November 2021** met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan die **Senior Stadsbeplanner, Me. H van der Stoep** by 028313 8900. 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. 146/2021

OVERSTRAND MUNICIPALITY
ERF 445, 55 MAIN ROAD, NORTHCLIFF,
HERMANUS: APPLICATION FOR
TEMPORARY DEPARTURE AND
DETERMINATION OF ADMINISTRATIVE
PENALTY: INTERACTIVE TOWN &
REGIONAL PLANNING (obo ERF NO 445
HERMANUS TRUST)

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) of the following applications applicable to Erf 445, Northcliff; namely:

Temporary Departure

Application in terms of Section 16(2)(c) of the By-Law to allow for the continuous operation of the existing dental practice on the property.

Determination of Administrative Penalty

Application in terms of Section 16(2)(q) of the By-Law for the above unauthorised land use.

Full details regarding the proposal are 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 to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) in accordance with the provisions of Sections 51 and 52 of the said By-law on or before **12 November 2021**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to the **Senior Town Planner, Ms. H van der Stoep** 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 to formulate their comment.

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

Municipal Notice No. 146/2021

UMASIPALA WASE-OVERSTRAND
I-ERF 445, 55 MAIN ROAD, EASTCLIFF,
HERMANUS: ISICELO SOKUNYENYISWA
OKWETHUTYANANOKUGQITYWA
KWESOHLWAYO: I-INTERACTIVE TOWN &
REGIONAL PLANNING (egameni le-ERF NO.
445 HERMANUUS TRUST)

Kukhutshwa isaziso ngokumayela neCandelo 47 no-48 loMthetho Otshintshiweyo woMasipala waseOverstrand ongokuSetyenziswa Nokucetywa koMhlaba kaMasipala, 2020 (uMthetho kaMasipala), ukuba kufunyenwe isicelo ngokumayela ne-erf engentla sifunyenwe ngokumayela ne-Erf 445, Northcliff; ngolu hlobo:

Ukunyenysiswa Okwethutyana

Isicelo simayela neCandelo 16(2)(c) loMthetho kaMasipala ukuze indawo kagqirha wamazinyo iqhubeke isebenzela kwipropathi.

Ukugqitywa Kwesohlwayo

Isicelo simayela neCandelo 16(2)(q) loMthetho kaMasipala malunga nokusetyenziswa komhlaba ongasentla ngaphandle kwemvume.

linkcukacha ezipheleleyo mayela nesi sindululo ziyafumaneka ukuze zihlolwe phakathi evekini phakathi kwentsimbi yesi-08:00 neye-16:30 kwiSebe: loCwangciso lweDolophu (16 Paterson Street, Hermanus.

Naziphi na izimvo ezibhaliweyo mazingeniswe kuMasipala (16 Paterson Street Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngokuhambelana nezibonelelo zamaCandelo 51 nele 52 lalo Mthetho kaMasipala uchaziweyo ngomhla okanye ngaphambi komhla **wama-12 uNovemba 2021**, unike igama lakho, idilesi yakho kunye neenkukacha zoqhagamshelwano, umdla wakho kwisicelo nezizathu zokubhala izimvo zakho. Imibuzo ngomnxeba ingatsalelwa **kuMchwangcisi oPhezulu, Nksk H. van der Stoep** kule nombolo 028-313 8900. UMasipala angala ukuzamkela izimvo ezifike emva komhla wokuvalwa. Nabani na ongakwaziyo ukufunda okanye ukubhala makaye kwiSebe loCwangciso lweDolophu apho igosa likamasipala liya kumncedisa azibhale izimvo zakhe.

Umlawuli kaMasipala, UMasipala wase-Overstrand, P.O. Box 20, **HERMANUS**, 7200

ISaziso sikaMasipala No. 146/2021

1. Introduction

<p>a. Brief</p> <p>Refer to Annexure B for the Power of Attorney.</p>	<p>Interactive Town and Regional Planning was appointed by the owner of the property Erf No 445 Hermanus Trust to prepare and submit an application for a temporary departure and the determination of an administrative penalty for Erf 445, Northcliff in terms of the relevant legislation.</p>
<p>b. Background</p>	<p>The application area consists of an 843m² single residential erf on Main Road (R43), accommodating a dwelling house on the property which is used as a dental practice.</p> <p>The dental practice has been in existence for more than 50 years. In the past when the practice belonged to the previous owner, a temporary approval for the dental practice was acquired but has since expired.</p> <p>A Notice of Non-Compliance from the Overstrand Municipality was received by the current owner, requesting that a new application be lodged.</p> <p>The owner subsequently wishes to comply with the municipality's requirements and therefore this application proposal for a temporary departure to allow for a dental practice on a single residential erf and the determination of an administrative penalty is applicable.</p>
<p>c. Development Objective & Application Proposal</p>	<p>The development objective is to <u>legalise</u> the existing land use, which is a dental practice on a single residential erf.</p> <p>Subsequently, the application proposal is for:</p> <p>a <u>temporary departure</u> to allow for business premises on Erf 445 Hermanus in terms of Chapter IV, Section 16(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020.</p> <p><u>the determination of an administrative penalty</u> in terms of Chapter IV, Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020.</p>

2. The Application

<p>a. Analysis: Title Deed Refer to Annexure D for the Conveyancer Certificate.</p>	<p>The Conveyancer Monica Korf issued a certificate confirming that <u>no</u> restrictive title deed conditions exist against the proposal on Erf 445 Hermanus.</p>				
<p>b. Analysis: Development Criteria:</p> <p>The development parameters for Erf 445 Hermanus as per the Overstrand Municipality Land use Scheme, 2020 are summarised as follows:</p>	Parameters	Existing Zoning:	Proposal:	Comments	
	Zoning	Residential Zone 1: Single Residential (SR1)	Residential Zone 1: Single Residential (SR1)	Consistent	
	Primary Use	Crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.	Business premises	Application is for a temporary departure	
	Consent Uses	Day care centre, green house, guest house, house shop, institution, place of instruction, place of worship, residential building and intensive horticulture.	None	Consistent	
	Coverage	50%	28%	Consistent	
	Height	8m	4m	Consistent	
	Building lines	Street	4m	6.5m	Consistent
		Common	2m	6m east 2.5m west	Consistent
	Parking	Dwelling House: 2 bays	2 bays	Consistent	
Medical Consulting Rooms: 4 bays per 100m ² GLA		4 bays per 100m ² GLA 8 bays required 8 bays provided	Consistent		
<p>c. Application:</p> <p>The application form is attached as Annexure A.</p>	<p>Application is subsequently made in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following;</p> <ul style="list-style-type: none"> • a <u>temporary departure</u> to allow for business premises on Erf 445 Hermanus in terms of Chapter IV, Section 16(2)(c) • a <u>determination of an administrative penalty</u> in terms of Chapter IV, Section 16(2)(q) 				

3. Contextual Site Information

a. Property Description

Property	Extent	Title Deed	Registered Owner
445 Hermanus	843m ²	T62288/2010	Erf No 445 Hermanus Trust

Refer to Annexure E for the SG Diagrams, Annexure C for the Title Deed of Erf 445 Northcliff.

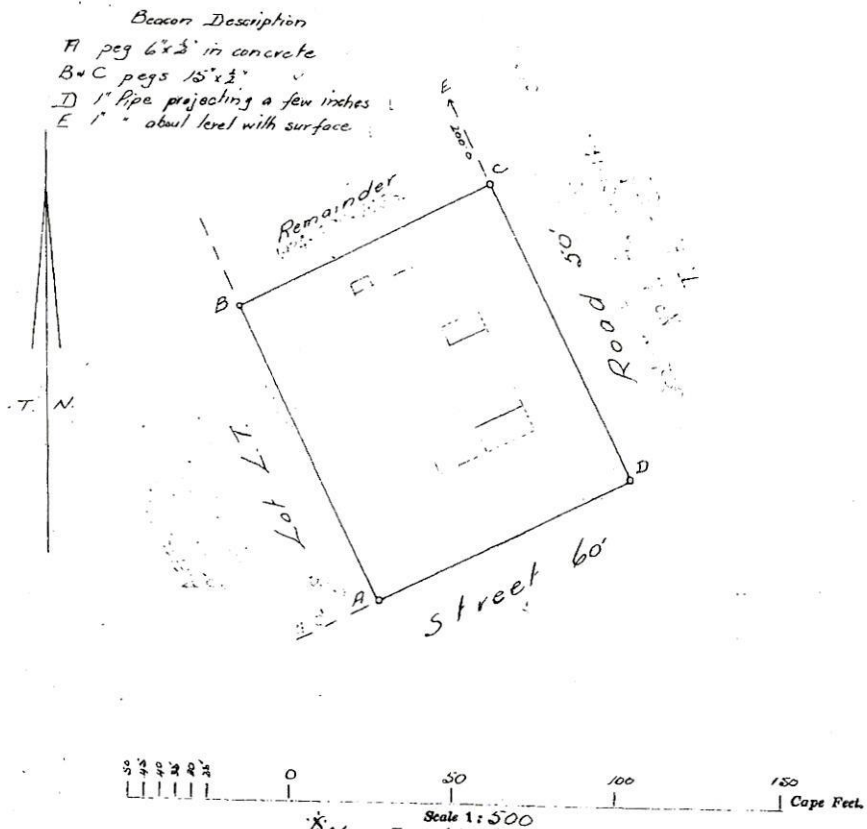
The following Surveyor General Plans reflect the application site:

SIDES Cape Feet		ANGLES	
AB	100.00	A	90 0 0
BC	85.00	B	90 0 0
CD	100.00	C	90 0 0
DA	85.00	D	90 0 0

S. G. No. 2738/1940

Approved

J. L. Till
Surveyor-General.
12-6-1940



The figure ABCD

represents 8500 Sq. Feet of land being *Portion 2* of Lot 16 Block B.B. situate in the Municipality of Hermanus Division of Coledon

Surveyed in May 1940 by me

Province of Cape of Good Hope.

J. L. Till

Land Surveyor.

This diagram is annexed to Transfer Deed No 7092 dated 19-7-1940 in favour of *Charles A. Reynolds*

Registrar of Deeds

The original diagram is No. 4423/1920 annexed to transfer No 9338 dated 15-10-1924 in favour of J.B. Lourens (1924-208-9338)

S.G. File No. S.2479.
S.R. No. E. 74/1920.
Hermanus Sheet D.3.
Plan H. 34A

C

B. S.P.C.T.

Figure 1: Extracts of the Surveyor General Plans of the application site

b. Location:

For the Locality Plans refer to Annexure F

Regional Context:

The application area is located within Northcliff. Northcliff is located on the north western side of Hermanus CBD and forms part of the larger Hermanus East area.

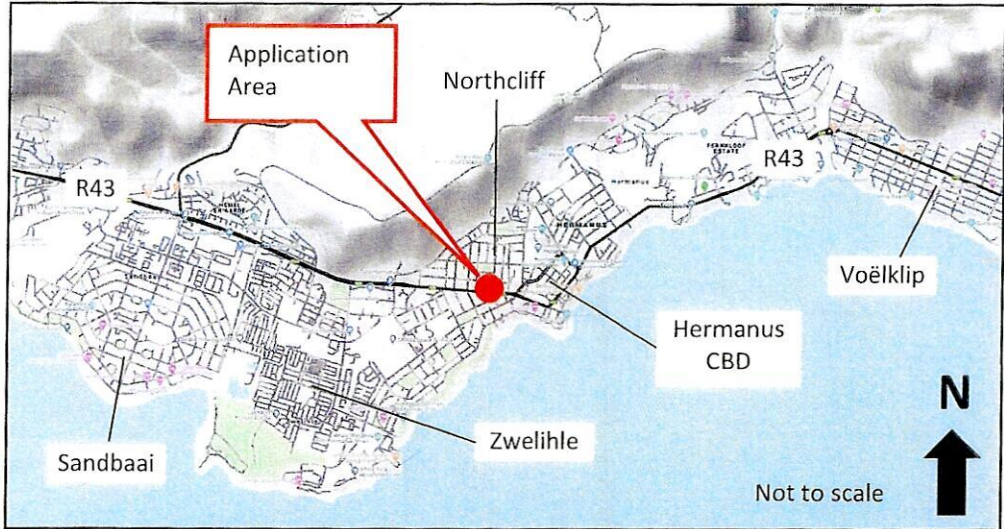


Figure 2: Locality Plan – Regional Context

Local Context:

The application area consists of a residential erf within Northcliff located at number 55 Main Road (R43).

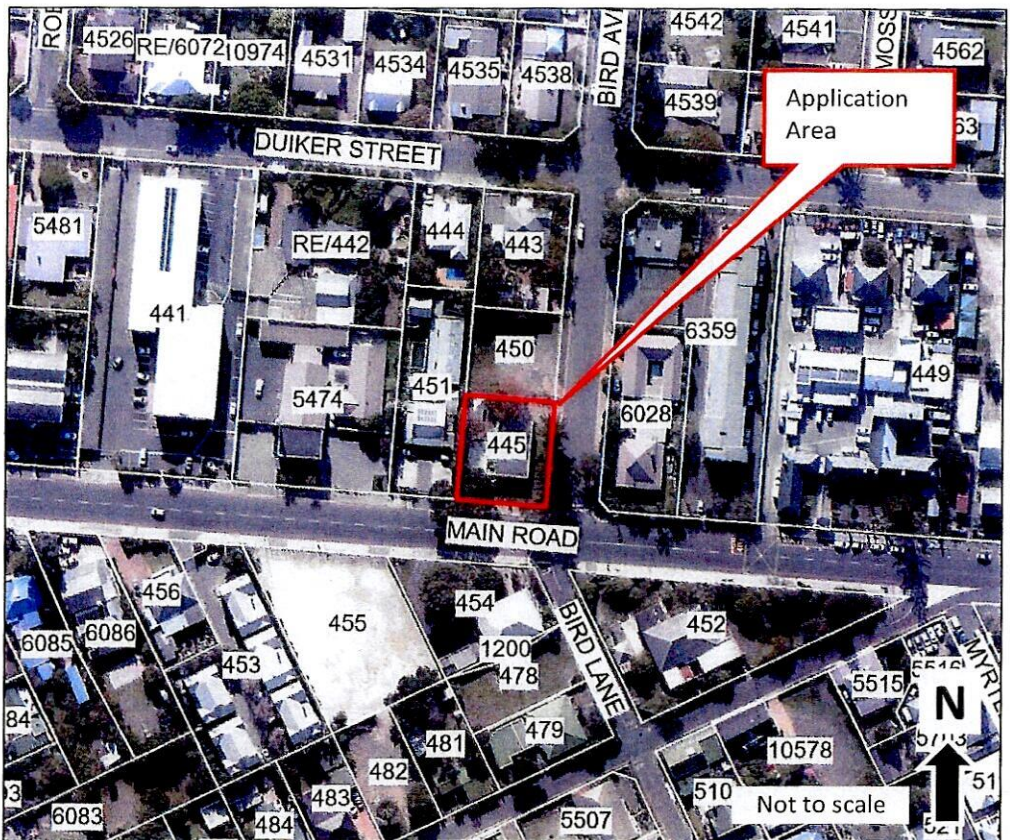


Figure 3: Locality Plan – Local Context

c. Land Use:

Refer to the Extract of Hermanus Zoning plan attached as Annexure G.

The application area accommodates a dwelling house on the property which is used / converted as a dental practice. The surrounding land-uses consist of business premises (guest houses- east and west and a dr's consulting rooms -south) along the high volume Main Road with a vacant stand to the north (belonging to the application owner) as is evident in the Land-Use Plan, Figure 4 here-below. The general area in general has mixed land uses, but along Main Road several business, community of high density residential land-uses have established. The application proposal is therefore considered **consistent** with the land use of the area.

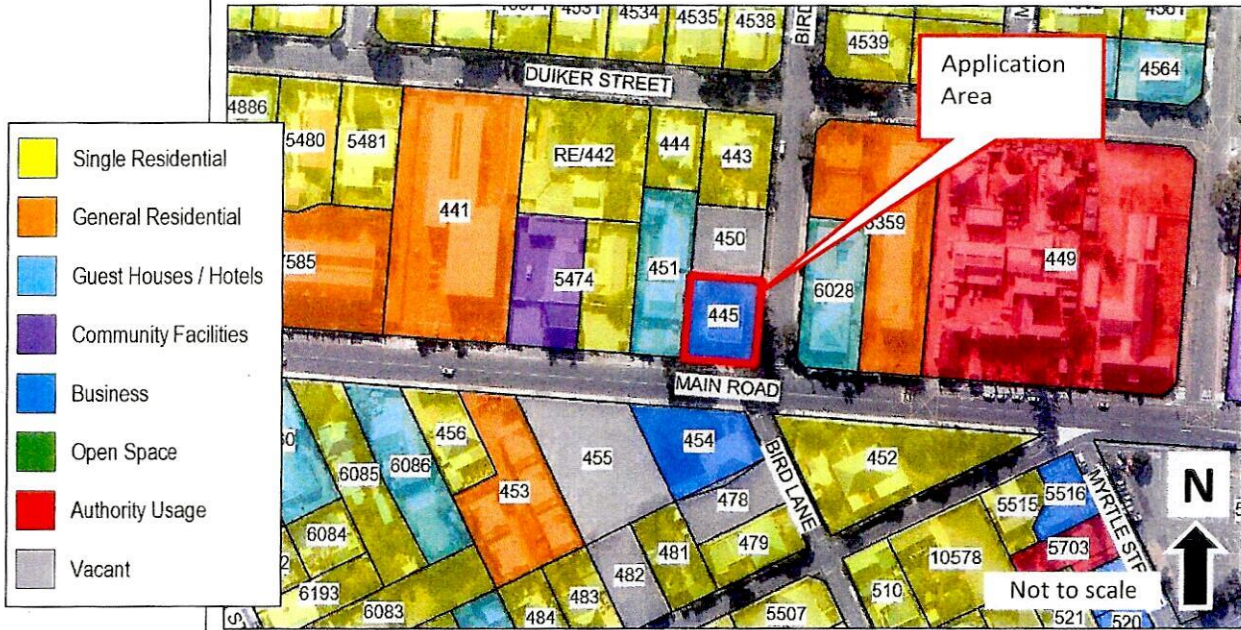


Figure 4: Google Image illustrating the residential land-use activities of the application area and surrounding properties

d. Zoning:

Refer to the Extract of Hermanus Zoning plan attached as Annexure H.

The application area, Erf 445, Northcliff is zoned Residential Zone 1: Single Residential. The surrounding erven are zoned Residential Zone 1: Single Residential and Business Zone 2: General Business Bulk Zone 2. No change in zoning is proposed. The application proposal is **consistent** with the zoning of the area.



Figure 5: Extract from the Overstrand Municipality: Online zoning viewer

e. Laws and policies relevant to the consideration of the application and forward planning and land use documents

The following policy is applicable to the application area.

i. **Overstrand Municipal Spatial Development Framework, 2020**

The application area falls within an existing urban development area, within the Urban Edge and is on a major collector road. Furthermore, it is located between the Business/Industrial/Community Node to the west and the CBD to the east.

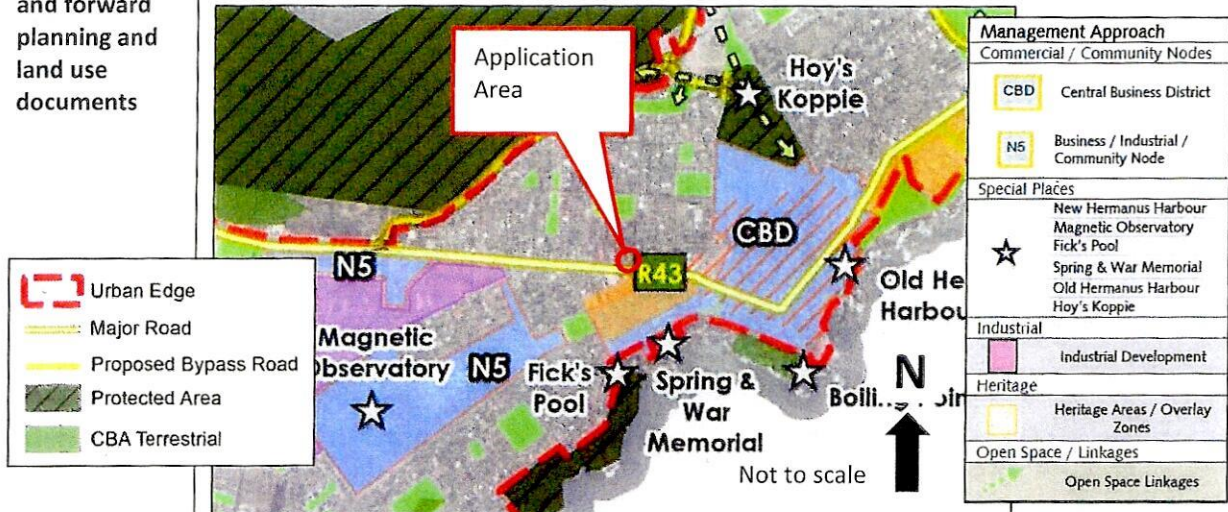


Figure 6: Spatial Development Framework 2020 Spatial Proposals Plan

The proposal for a dental practice is not consistent with the Overstrand Municipal Spatial Development Framework, 2020 and therefore the submission of this application for a temporary departure.

ii. **Overstrand Municipality Growth Management Strategy, 2010**

The application area is within an area earmarked for 20 to 30 Dwelling Units Per Hectare Density Zone. No further densification is applicable to this application.

The application area is not within a heritage overlay zone and is adjacent to the economic opportunity area.

The proposal for a dental practice is not consistent with the Overstrand Municipality Growth Management Strategy, 2010 and therefore this submission of the application for a temporary departure.

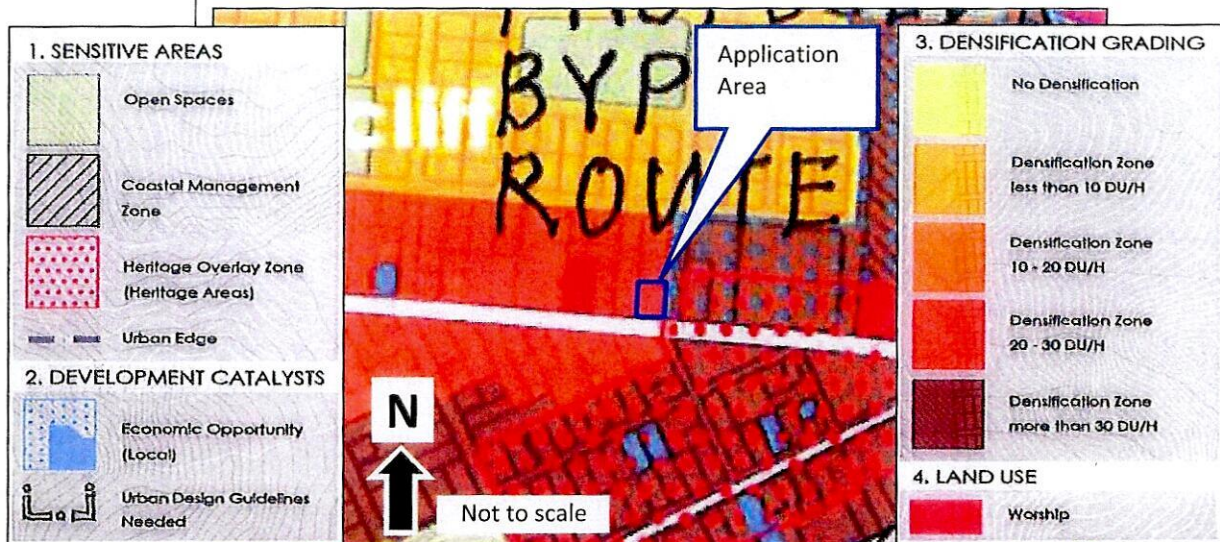


Figure 7: Extract from the Overstrand Municipality Growth Management Strategy, 2010 reflecting the envisaged land-uses for the area.

iii. **Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020**

90. Application for administrative penalty

- (1) A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.
- (2) A person making an application contemplated in Subsection (1) must –
 - (a) submit an application;
 - (b) pay the prescribed fee;
 - (c) provide the information contemplated in Subsections (3); and
 - (d) comply with the duties of an applicant in Section 84.
- (3) The applicant must, to the satisfaction of the Municipality, provide the following information such as-
 - (a) the nature, duration, gravity and extent of the contravention;
 - (b) the conduct of the person (allegedly) involved in the contravention;
 - (c) a report by a quantity surveyor in matters of unauthorised building/construction;
 - (d) whether the unlawful conduct was stopped; and
 - (e) whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.

4. Motivation

Motivation for the application:

Refer to Annexure I for the Site Plan

a. Introduction and Background

The application area consists of an 843m² single residential erf on the corner of Main Road (R43) and Bird Lane, accommodating a dwelling house on the property which is converted and used as a dental practice.

The dental practice has been in existence for more than 50 years. In the past when the practice belonged to the previous owner, a temporary approval for the dental practice was acquired which subsequently expired.

A Notice of Non-Compliance was received from the Overstrand Municipality by the current owner, requesting that a new application be lodged.

The applicant wishes to comply with the requirements of the municipality and therefore the application proposal for a temporary departure to allow for a dental practice on this single residential erf as well as the determination of an administrative penalty.

b. Proposal

The development objective is to legalise the existing land use on the application area, which was a dwelling house but converted to a dental practice on a single residential zoned erf.

In order to achieve the development objective, the following applications are required namely:

- Temporary Departure to allow for Business Premises
- Determination of Administrative Penalty

Temporary Departure to allow for Business Premises

The dental practice has been in existence for more than 50 years and the practice employs two dentists, 2 nurses, 2 receptionists, a cleaner and a laboratory technician.

Patients arrive mostly by appointment and according to the owner, the maximum number of patients which are accommodated at any one time is about 4.

The online reviews for the dental practice are generally good and according to the owner's knowledge, no complaints have ever been lodged by the surrounding neighbours or other complainants. The property is neat and well maintained as is evident from the front page of this application report; contributing to the positive visual gateway towards the main business area of Hermanus.

Sufficient parking for the proposed existing business is available with access from Bird Lane, which is highly accessible from the north of Main Road via alternative roads.

This area along the main road consists of various mixed land-uses accommodating inter alia a physiotherapist, a vet, 2 other dentists, guesthouses and places of worship as well as municipal and government buildings. The properties to the east, west and south are businesses/guesthouses and the property to the north is vacant and owned by the same owner as for the application area.

The Central Business District is located in close proximity to the east and the industrial/commercial/business area a little further to the west of the application area. The Day hospital, Provincial hospital and Mediclinic medical facility node is located to the south-west of the application area and in relative close proximity thereof.

Due to natural market forces, high visibility and accessibility as well as close proximity of the CBD, the industrial/commercial/business node and the medical facilities node, the erven along the main road (a major collector road) in this area, are naturally prone to densification and intensification.

It is evident therefore that this area surrounding the application area, is transforming to a mixed-use area with a transitional character, with which the application proposal is consistent.

A business may not be accommodated as a primary or a consent use on a single residential property and therefore a temporary departure is required for legalising the dental practice on the application area.

Subsequently, the application proposal is for a temporary departure to allow for business premises on Erf 445 Hermanus in terms of Chapter IV, Section 16(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020.

Site Plan and parking layout

The parking plan is the result of consultation sessions with the Overstrand Engineering Services Department.

The proposed parking of 8 bays meets the parking required for the application area.

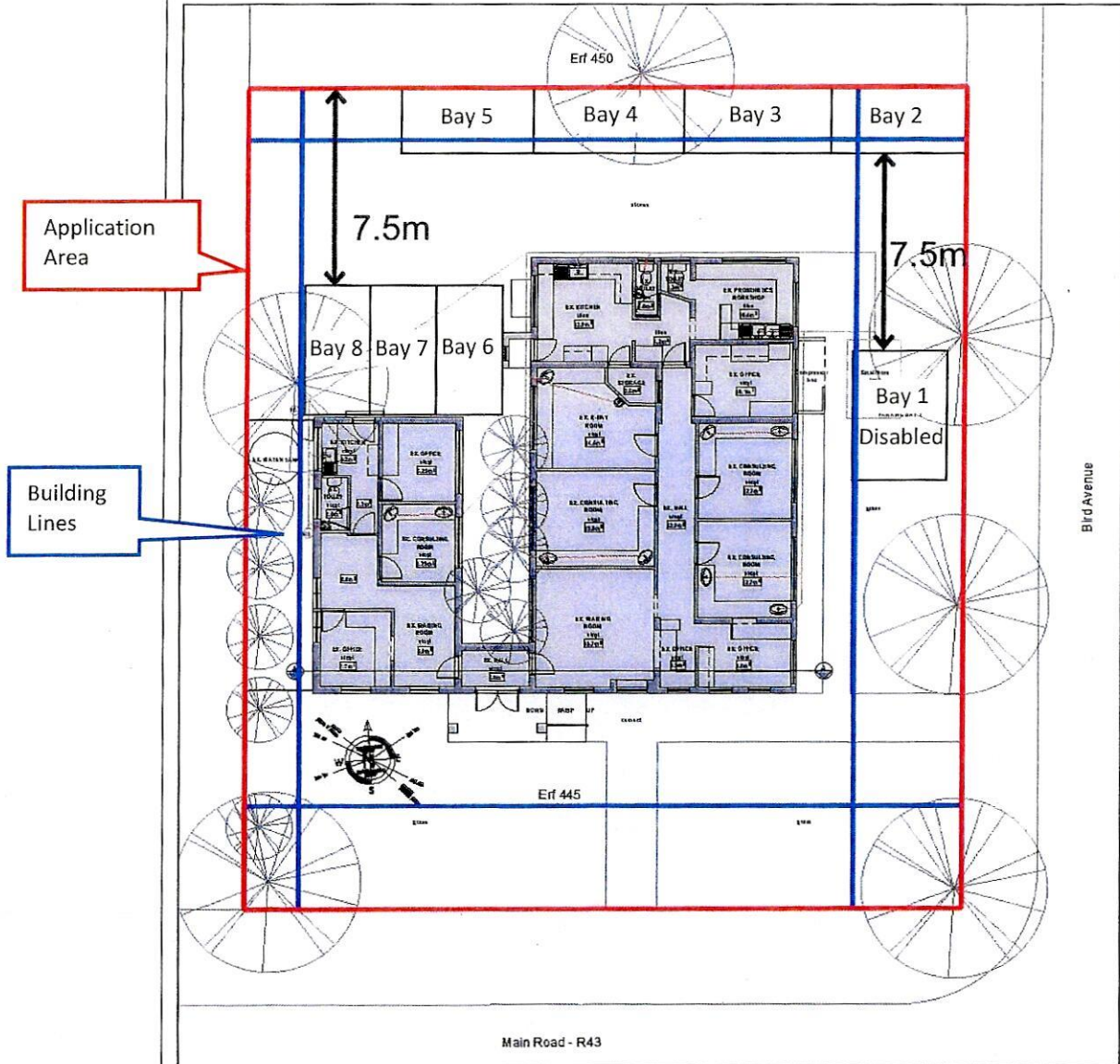


Figure 9: Site Plan extract

Determination of Administrative Penalty

Furthermore, due to the proposal representing an existing contravention of the By-Law, the application is for a determination of an administrative penalty in terms of Chapter IV, Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020, as follows:

The following information with regards to the administrative penalty is provided as required according to Chapter X, Section 90(3):

(a) The nature, duration, gravity and extent of the contravention;

The nature, duration, gravity and extent of the contravention has been described in detail in this motivation report and includes the following contravention;

- the existing dwelling is used for a dental practice for which the previous temporary departure approval has expired.
- There are structures on the property with no approved building plan.
 - Carport
 - The additional floor area of approximately 1m² under a previously covered entrance stoep.
 - Minor internal changes.
 - Changes to bathrooms and passage.
 - Removal of a storeroom.
 - Creation of an office and new storeroom with drywall.
 - Slight changes in decorative features.
 - Ramp at entrance instead of stairs.

(b) The conduct of the person (allegedly) involved in the contravention;

It is evident from this application that the applicant/owner is co-operative and willing to rectify the existing contravention and to follow the correct statutory procedure to apply to legally keep operating a much-needed professional dental practice which has been operating for many years. In addition to this application, building plans have been submitted to legalise the existing structures not yet approved with the exception of the carport which is proposed to be removed in order to comply with all requirements.

(c) Report by a quantity surveyor in matters of unauthorised building/construction;

A report by a quantity surveyor is not considered applicable as all building work on the property is in process of being authorized by the municipality, The use of the property is inconsistent with the zoning of the property.

(d) Whether the unlawful conduct was stopped

Due to the nature of the contravention being the unlawful use of the property, the only way to stop the unlawful conduct is either by legalising the contraventions while the business keeps on operating and which the applicant/owner is in the process of doing through this application, or by temporarily seizing the business which could be detrimental to the business leading to loss of income and employment, especially in view of the conclusion that the current contravention is not causing a negative impact on the environment but rather contributing valuable and professional dental services and employment to the community.

(e) Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law

According to our knowledge, the applicant/owner has not previously contravened this By-Law or a previous planning law.

c. Desirability

The application proposal is considered **desirable** for the following reasons:

- Provider of dental services for more than 50 years
- Generally positive online reviews indicating professional dental services
- The area represents a mixed area with which the application proposal is compatible
- Location adjacent to Economic Opportunity area, close to the CBD and the industrial/commercial/business area as well as along a major road
- No negative impact on the surrounding area in terms of noise or traffic
- Building is aesthetically pleasing thus augmenting the visual appeal of the area

- Optimal use of the erf
- Supports intensification along a major road
- The proposal creates a positive impact on the area without any material negative impacts
- Provides employment
- Stimulates the local economy
- Provides professional dental services to the local community as well as to tourists due to high visibility and accessibility of the practice
- Safe access to the parking area is available
- Sufficient parking space is available
- The unapproved structures do not contravene town planning parameters.
- Building plans have been submitted to legalise the existing structures not approved.
- The changes made improves the functionality of the property.
- It is proposed that the carport be removed and parking be amended as discussed with Overstrand Engineering Services Department which will as a result comply.

d. Planning Principles

In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:

- 1) **Spatial Justice** which refers to the need for redressing the past apartheid spatial development imbalances and aims for equity in the provision of access opportunities, facilities, services and land.

Possible results of the development

The proposal will not in any way contribute to the perpetuation of past apartheid spatial development imbalances as the application proposal will legally accommodate an existing professional dental practice on the application area.

The application proposal is **consistent** with **spatial justice**.

- 2) **Spatial Sustainability** which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

Possible results of the development

The proposal will allow for an existing dental practice within the existing approved single residential dwelling within the urban edge and will therefore have no impact on agricultural land, environmentally sensitive areas and biodiversity rich areas.

The application proposal can thus be deemed to be **spatially sustainable**.

- 3) **Efficiency** which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

Possible results of the development

The proposal represents the intensification of the application area which is ideally located in terms of visibility and accessibility in a mixed-use area on the corner of the R43 and Bird Lane and between the CBD and the Industrial/Commercial/Business Node. The dental practice provides much needed professional dental services to the community as well as to tourists without any negative impact foreseen on the surrounding area.

The application proposal is **consistent** with the **efficiency principle**.

- 4) **Spatial Resilience** which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

Possible results of the development

The proposed development will not lead to any economical and/or environmental shocks as the application allows for an existing dental practice within a mixed-use area.

The application proposal is **consistent** with the principle of **spatial resilience**.

- 5) **Good Administration** which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

Possible results of the development

Consultive practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the Government and the general public to participate in the eventual decision-making process.

The application proposal is **consistent** with the principle of **good administration**.

5. Conclusion

The application as motivated in this report is regarded **desirable** within its local context and well-integrated within the existing community land-use activities.

It is therefore recommended that the application **be approved** as follows:

- a temporary departure to allow for business premises on Erf 445 Hermanus in terms of Chapter IV, Section 16(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020.
- a determination of an administrative penalty in terms of Chapter IV, Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020.

