



OVERSTRAND MUNISIPALITEIT

ERF 321, LOUIS TRICHARDSTRAAT 1, SANDBAAL:
AANSOEK OM OPHEFFING VAN BEPERKENDE
TITELAKTEVOORWAARDES, VERGUNNINGSGEBRUIK,
AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE
BOETE: WRAP PROJECT OFFICE (nms SCHOOL FOR
MATURE PERSONHOOD)

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoek van toepassing op Erf 321, Sandbaai (die eiendom), naamlik:

Opheffing van Beperkende Titelaktevoorwaardes

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaardes B.(2)(a), B.(2)(c) en B.(2)(d) soos vervat in Titelakte T6316/2001 van die eiendom om:

- 'n gedeelte van die hoof woning as 'n instelling aan te wend vir persone wat gesondheidsverwante (geestelik sowel as fisiese) behandeling benodig deur middel van Christelike-terapeutiese sessies,
- 'n tweede wooneenheid wat as 'n selfsorgeenheid deur toeriste aangewend word, te akkommodeer, en
- om 'n gedeelte van die hoof woning wat die 4.72m titelakte straatboulyn oorskry, te akkommodeer.

Vergunningsgebruik

Aansoek om vergunningsgebruik ingevolge Artikel 16(2)(o) van die Verordening om 'n gedeelte van die hoof woning aan te wend as 'n instelling vir persone wat gesondheidsverwante (geestelik sowel as fisiese) behandeling benodig, deur middel van Christelike-terapeutiese sessies te behandeling.

Afwyking

Aansoek ingevolge Artikel 16(2)(b) van die Verordening om die noordelike syboulyn van die eiendom te verslap vanaf 2m na 1,5m om 'n gedeelte van die tweede wooneenheid te akkommodeer, en afwyking om twee gastekamers vir toeriste in die hoof woning tesame met 'n selfsorgeenheid op die eiendom te akkommodeer.

Bepaling van Administratiewe Boete

Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir die bepaling van 'n administratiewe boete vir die onwettige gebruike op die eiendom en die tweede wooneenheid wat die syboulyn sonder toestemming oorskry.

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

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) bereik voor of op 9 September 2022, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die Stadsbeplanner, Mnr. H Boshoff 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 om hul kommentare te formuleer.

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

Munisipale Kennisgewing Nr. 88/2022



OVERSTRAND MUNICIPALITY

ERF 321, 1 LOUIS TRICHARD STREET, SANDBAAL:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE
DEED CONDITIONS, CONSENT USE, DEPARTURE AND
DETERMINATION OF AN ADMINISTRATIVE PENALTY:
WRAP PROJECT OFFICE (obo SCHOOL FOR MATURE
PERSONHOOD)

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 321, Sandbaai (the 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 conditions B.(2)(a), B.(2)(c) and B.(2)(d) as contained in Title Deed T6316/2001 of the property to:

- utilize a portion of the main dwelling as an institution for persons who need health related (mental as well as physical) treatment by means of Christian-therapeutic sessions,
- to accommodate a second dwelling unit that is used as a self-catering unit by tourists, and
- to accommodate a section of the main dwelling that exceeds the 4.72m title deed street building line.

Consent Use

Application for consent use in terms of Section 16 (2)(o) of the By-Law to utilize a portion of the main dwelling as an institution for persons who need health related (mental as well as physical) treatment by means of Christian-therapeutic sessions.

Departure

Application in terms of Section 16(2)(b) of the By-Law to relax the northern lateral building line of the property from 2m to 1,5m to accommodate a portion of the second dwelling unit, and departure to allow for two guest rooms in the main dwelling for tourists together with a self-catering unit on the property.

Determination of Administrative Penalty

Application in terms of Section 16(2)(q) of the By-Law for the determination of an administrative penalty for the illegal uses on the property and the second dwelling unit that exceeds the side building line without permission.

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 comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) on or before 9 September 2022, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the Town Planner, Mr. H Boshoff 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 comments.

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

Municipal Notice No. 88/2022



UMASIPALA WASE-OVERSTRAND

ISIZA 321, 1 LOUIS TRICHARD STREET, ESANDBAAL:
ISICELO SOKUSUSWA KWEZITHINTELO, IMVUME
YOKUSEBENZISWA NOKUPHAMBUKA, UKUMISELWA
KWEZOHLWAYO ZOLAWULO: WRAP PROJECT OFFICE
(EGAMENI LIKA SCHOOL FOR MATURE PERSONHOOD)

Esi zisizo sikhutshwa ngokwemiqathango yeSoloty 47 no 48 loMthethwana kaMasipala waseOverstrand woYilo lokuSetyenziswa koMhlaba wowama-2020 ngokwezicelo esifunyenweyo escapazela Isiza 321 ESandbaai (ipropathi) ezichazwe ngezantsi:

Ukususwa Kwezithintelo Ngokwemiqango

Isicelo ngokweSoloty 16(2)(f) laloMthethwana sokushenziswa kwemiqathango yeemeko ezithintela itayitile ngokwemihlathi B.(2)(a), B.(2)(c) & B.(2)(d) yeTitle Deed T6316/2001 sepropati ukuya:

- sebenzisa inxalenye yendawo yokuhlala ephambili njengeziko labantu abafuna unyango olunxulumene nempilo (yengqondo kunye nomzimba) ngeeseshoni zonyango zobuKristu,
- ukulungiselela indawo yokuhlala yesibini esetyenziswa njengeyunithi yokuziphakela ngabakhenkethi, kunye
- ukuze kuvumeleke icandelo lendlu yokuhlala engundoqo elingaphezulu komda wesakhiwo osisi-4.72m wetayitile yesitalato.

Imvume yokusebenzisa

Isicelo ngokweSoloty 16(2)(o) ilaloMthethwana ukusebenzisa inxalenye yendawo yokuhlala engundoqo njengeziko labantu abafuna unyango olunxulumene nempilo (yengqondo kunye nomzimba) ngeeseshoni zonyango lobuKristu.

Ukuphambuka

Isicelo ngokweSoloty 16(2)(b) laloMthethwana ukunyenisa umda wesakhiwo osecaleni osemantla wale propati ukususela kwi-2m ukuya kwi-1,5m ukulungiselela isahlulo seyunithi yokuhlala yesibini, kunye notyeshelo lomda ukuze kuvumeleke amagumbi amabini eendwendwe kwindawo enkulu yokuhlala yabakhenkethi kunye neyunithi yokuziphakela kwipropati.

Ukumiselwa kweZohlwayo zoLawulo

Ukumiselwa kwesohlwayo solawulo ngokweCandelo le-16(2)(q) loMthetho kaMasipala, kusetyenziso olungekho mthethweni kwipropati nakwiyunithi yokuhlala yesibini egqitha komda wesakhiwo osecaleni ngaphandle kwemvume.

inkcukacha mayela nesindululo siyafumaneka ukuze sihlolwe phakathi evekini ngamaxesha omsebenzi ukusuka kwintsimbi ye08:00 ukuya kweye16:30 kwiSebe: Izicwangciso Zedolophu kwanombolo 16 Paterson Street, eHermanus.

Naziphi na izimvo ezibhaliweyo zingangeniswa ngokwezibonelelo zamaSoloty ama-51 nama-52 kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) ngoLwesihlanu okanye ngaphambi koLwesihlanu, 9 EyoMsintsi 2022, ukhankanye igama lakho, idilesi, iinkcukacha ofumaneka kuzo, umda wakho kwesi sicelo nezizathu zokunika izimvo. Imibuzo ngefowuni ingabhekiswa kuMphathi kuCwangciso lweDolophu, uMnu. H Boshoff ku-028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokulala. Nabani na ongakwazi ukufunda okanye ukubhala angaya kwiCandelo leDolophu apho igosa likamasipala liza kumnceda avakalise izimvo zakhe ngokusemethethweni.

Umlawuli kaMasipala, Masipala waseOverstrand, P.O. Box 20, HERMANUS, 7200

Municipal Notice No. 88/2022

**1. ABBREVIATIONS**

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SDP	Site Development Plan
SRI	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 321 Sandbaai
Restrictive title deed conditions	Condition 4(a), (c) and (d)
Extent	1340m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 321 Sandbaai, hereafter referred to as the subject property, is located at 1 Louis Trichardt Street, Sandbaai (refer **Plan 1**). The property owners (School for Mature Personhood) appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney**).

The property owners have owned the property for 21 years and have been operating a non-profit company (NPC) 'Mature Personhood' from the property for most of this time. The extent and operations thereof will be discussed throughout the motivation report. In addition to the NPC, the owners established accommodation is used by the NPC and also independently used by transient guests.

Unbeknownst to the property owners, these uses were in transgression of the provisions of the OMLUS and preceding land use schemes. The OM's compliance Town Planner notified the property owners of these transgressions, and they took immediate steps to rectify these transgressions.

To ensure compliance with the OMLUS, the following applications will be required:

- Removal of restrictive title deed conditions 4(a), (c) and (d);
- Departure from the northern 2m side building line to 1,5m and from the 2m rear building line to 1,5m to allow the proposed use change;
- Consent Use to allow an 'institution';
- Departure to allow guest rooms and self-catering accommodation; and
- Determination of an administrative penalty.



4. PROCEDURE TO ACHIEVE THE PROPERTY OWNERS' INTENT

WRAP compiled this report to ensure the applicant's vision is achieved and that the non-compliant land uses are legalised. The following is proposed:

4.1 Removal of restrictive title deed conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

There are three title deed conditions that prohibit the land use rights sought by the applicant as described in Section 3 and the rationale for the removal of these conditions are discussed below:

Restrictive Title Deed Conditions
Condition 2(a) – <i>"That the above erf or erven be used for residential purposes only."</i>
Condition 2(c) – <i>"That no more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven and that not more than one-half ("half") the area of any one of the above erven be built upon."</i>
Condition 2(d) – <i>"That no building shall be erected on the above erf or erven within 4,72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon."</i>

The rationale for the removal of the restrictive title deed conditions is to enable the applicant to achieve the development intent highlighted in Section 3. The title deed conditions are more restrictive than what is allowed in terms of the OMLUS. The property owners have the vision to continue utilising the subject property for its intended use.

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 northern side building line to 1,5m to accommodate the proposed use change in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The subject property has historic approved building plans (Refer **Annexure C – Approved Building Plans**) which were approved when 1,5m side building lines were applicable to single residential properties in the area.

The proposal is to allow the property owners to provide self-catering accommodation on the subject property. Self-catering accommodation is a primary right in terms of the OMLUS - refer to Section 8 for the existing zoning information. The self-catering accommodation is positioned over the applicable 2m side building line and it is located in the historically approved garage and servants' quarters.

Approximately 5.4m² of the area of which the land use is proposed to be changed, is located within the side building line. The garage was converted into a bedroom with an en-suite bathroom, refer to **Plan 4 – SDP**. The self-catering unit will be used independently or in conjunction with the institution as later discussed in Section 4.3.



The only habitable space that will be created is a small section where the approved garage (converted into a bedroom and bathroom) is located over the 2m building line on the northern side boundary line.

4.3 Consent Use to allow an institution on Erf 321 Sandbaai in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The property owners as mentioned previously operate an NPC from the subject property.

The operations that occur on the subject property include the following:

- Providing multifaceted and comprehensive Christian-therapy.

These therapy sessions are conducted at the subject property as it is a calm, quiet and relaxing location that will enhance the experience of the counselling that is received.

The use of a section of the main dwelling for purposes of an institution is in line with an institution as indicated by the OMLUS:

An *institution* is defined as the following –

“means a property used as a **social, health or welfare facility** or for the administration thereof and includes a hospital; special needs school; **clinic**; homes for the aged, indigent or handicapped; and a reformatory or place of detention, whether of commercial or charitable nature, but does not include a jail;”

A *Clinic* is defined as the following:

“means an in situation where **members of the public** are given medical treatment or medically related advice and may include a medical centre, an outpatients' centre and a **wellness centre** with associated uses, provided that a clinic shall not contain live-in facilities for more than thirty persons, including patients and staff;”

And lastly a *Wellness Centre* is defined as the following:

“means a place where **health-related treatments** and **services** such as .meditation, massage, beauty treatments and exercise regimes, including yoga, are provided for the **general health and wellbeing of clients**; it includes a health spa, **retreat** and the provision of meals to clients but does not include accommodation facilities or provide for medical treatment of patients;”

The services provided by Mature Personhood is a unique experience not catered for anywhere else in the Overstrand Municipality. These services are health related, mentally and physically, ensuring that the individuals that seek these treatments and therapy are catered for. These are allowed for in terms of the OMLUS - *an institution that is focussed on health-related treatments and services provided through retreats on the subject property that will increase the general health and wellbeing of clients.*

4.4 Departure from the provisions of the OMLUS to allow guest rooms and self-catering accommodation on Erf 321 Sandbaai in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.



MOTIVATION

The property owners have been utilising two of the bedrooms within the main dwelling unit as guest rooms. As a result of the proposal to utilise the existing garage and historic servant quarters as a self-catering unit, these guest rooms are not allowed to be operated due to the restriction within the OMLUS that states:

"16.10.21 (c) Self-catering will not be permitted if there is a home occupation or guest rooms;"

As a result of the above and to allow the property owners to maintain utilising two bedrooms within the main dwelling unit for the purpose of lodging transient guests for compensation, a departure is being applied for. The proposed departure will allow the property owners to maximise the use of subject property. One of the property owners will be the manager of the guest house and will be staying on the premises within the main dwelling unit.

Both guest rooms and the self-catering unit are used mainly for housing of clients of the proposed institution. Mature Personhood offers retreats to these affected individuals and would like to offer them accommodation.

Funds that are raised through the accommodation is used directly in the NPC and used for charitable reasons, such as providing food to people in need.

4.5 Determination of an administrative penalty in terms of Section 16(2)(q) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The property has been used over the past 20 years by 'Mature Personhood' to host these retreats and there have never been a complaint or objection. To ensure compliance with the Overstrand Municipality By-Law on Municipal Land Use Planning 2015 as amended, it is necessary to include an application for the determination of an administrative penalty.

It is however request that the administrative penalty be waived as the operations are not considered obtrusive or having a negative effect on the surrounding property owners. The property owners were also unaware that these operations were not aligned with the applicable zoning and land use schemes over the past 20 years.

The previous property owner had a garage and domestic worker's quarters built from approved building plans (refer **Annexure C**), the side building lines applicable at the time of approval was 1,5m. Over the years the outbuilding was altered and converted to a second dwelling unit which changed the use of the building. This is being applied for, there is no illegal building built over the building lines, only the use that needs consent from the municipality.

In terms of Section 90(3) and 90(5) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended, Section 90(3) is addressed below:



The nature, duration, gravity and extent of the contravention

Two areas are being applied for to determine an administrative penalty –

- 1) ±5,4m² of the converted second dwelling unit is within the 2,0m side building line, this portion is being used for a use that has not been approved and requires the approval of the Overstrand Municipality; and
- 2) ±40m² of the main dwelling was used for the operation of a 'institution' as defined in Section 4.3.

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

The property owners were unaware of any possible contraventions and did not intentionally contravene.

A report by a quantity surveyor in matters of unauthorised building/construction

No unauthorised building is applicable to the application.

Whether the unlawful conduct was stopped

The property owners have ceased utilising the self-catering accommodation for transient guest and is only utilising the rooms in the main dwelling as guest rooms. After further discussion with Ms Gerber and Ms Boshoff, no "institution" related activities are being conducted until the approval of this application is confirmed.

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

To the knowledge of this office, the applicant has not previously contravened the By-Law.

Section 90(5)(b) states the following –

'for land use in contravention of this By-Law – may not be more than 100% if the municipal valuation of the area that is used unlawfully, as determined by the Municipality;'

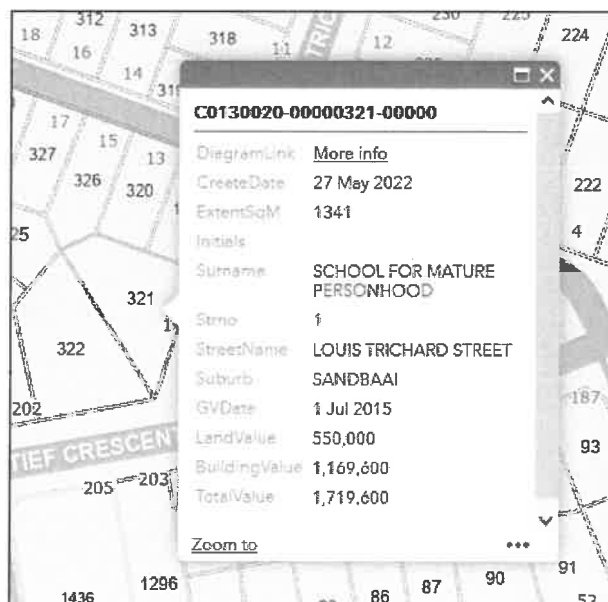




Figure 1: Screenshot of the Overstrand Municipal GIS Viewer

Due to the contravention occurring within the building, and it is parts of the building that are contravening on the By-Law, the building value will be used for the calculation:

$$377\text{m}^2 = \text{Total Building Footprint}$$

$$\text{R1 169 600} = \text{Building Value}$$

$$\text{R1 169 600} \div 377\text{m}^2 = \text{R3102.40/m}^2$$

1) $\pm 5,4\text{m}^2$ of the converted second dwelling unit;

$$5,4 \times \text{R3102,40} = \text{R16 752,96}$$

2) $\pm 40\text{m}^2$ of the main dwelling was used for the operation of a 'institution';

$$40 \times \text{R3102,40} = \text{R124 096,00}$$

Referring to Section 4.5 and Section 13, it should be emphasised that these calculations should not entertained, and it is requested that these be waived. The land uses are not out of the context of the surrounding area and are not seen as nuisance land uses. The second dwelling unit (self-catering unit) is a primary right in terms of the OMLUS and the proposed institution use will be carried out indoors. The application for departure from building lines originates from a proposed use change. We are of the opinion that the use change will not impede on views, sunlight or negatively affect the character of the area.

5. APPLICATION

Considering the above, application is made for the following:

5.1 Removal of restrictive title deed conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;

5.2 Departure from the 2m northern side building line to 1,5m to accommodate the proposed use change in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;

5.3 Consent Use to allow an institution on Erf 321 Sandbaai in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;

5.4 Departure from the provisions of the OMLUS to allow a guest rooms and self-catering accommodation on Erf 321 Sandbaai in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and

5.5 Determination of an administrative penalty in terms of Section 16(2)(q) 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 predominantly zoned for single residential purposes, with Erf 322 being recently approved to be utilised as a guest house. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). The proposed departure and consent use are not out of the ordinary and is allowed in terms of the OMLUS.

7. TITLE DEED

Title deed T6316/2001 (refer **Annexure B**) was perused and there are three restrictive conditions that were inserted into the original title deed and transferred to the current title deed. These restrictive title deed conditions that were originally inserted in 1957 when Sandbaai was established. These conditions prohibit the property owners' intent for the subject property.

Title deed restrictions

Condition 2(a) – *“That the above erf or erven be used for residential purposes only;”*

Condition 2(c) – *“That no more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven and that not more than one-half (“half”) the area of any one of the above erven be built upon.”*

Condition 2(d) – *“That no building shall be erected on the above erf or erven within 4,72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon”*

Motivation

The rationale for the proposed removal

The subject property is currently being used for various purposes which include accommodation of a single family and transient guests in a second dwelling unit while providing counselling. The property owners have the vision to legalise the current uses on the subject property as these uses are being restricted by the conditions mentioned above. The existing main dwelling is located 4m from the street boundary line, necessitating the removal of the 4,72m title deed building line.

Title deed condition background

The title deed condition was intended to protect the residential character of Sandbaai for each property to exclusively be used for the accommodation of a single-family. Times have changed and there are several other business-related uses being operated in close proximity, which include guest houses. These title deed conditions were inserted in an era of low population growth and low-density development and the cap of residential use for a single-family was intended to protect this character. Mixed use development and areas are becoming more important as densification is being required as new development areas are limited.



MOTIVATION

Status quo
 The current OMLUS has clear development guidelines and land uses in place to ensure the whole of the Overstrand Area's residential properties are managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions.

In terms of the requirements of LUPA, the following information is 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>	No person or entity will be affected financially by the removal of these restrictive title deed conditions.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is personally benefitting from these conditions as these conditions are only restricting 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 property owners will be gaining from the removal of the restrictive condition as it will allow them to utilise their property to its full extent.
<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 benefit.
<i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	The restrictive condition does not have a social benefit.
<i>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</i>	There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.

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) (q) of the OM By-Law:



MOTIVATION

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 and Self-Catering	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.	Institution	Applied and motivated for
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%	Area of site = 1340m ² Existing Dwelling = 295m ² Existing Second Dwelling = 82m ² Coverage = 377m ² / 28,13%	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: 400 m ² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: Greater than 400 m ² = 2m	Northern Side Building Line – 1,5m (To allow the use change)	Deviation required: Applied for and motivated
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	Existing – Single Storey	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Single Garage and five parking bays 2 parking bays for the manager 4 parking bays for the guest rooms and self-catering units	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.

Electricity, Water, Sewage and Solid Waste

The subject property is connected to the OM's networks, which include electricity, water and sewage. The proposal of this application will not affect these networks.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the subject property is gained from Louis Trichardt Street and the proposal will not affect 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:

Need and desirability

The need for the land use application was a result to address all the land use requirements and ensuring the property meets all the needs of the property owners. The desirability is more often a personal feeling of the property owners. The property owners have an intent to continue utilising the subject property for both transient accommodation and counselling purposes. The proposal will not benefit any other users or person.

To achieve their vision, the property owners have appointed WRAP Project Office to submit this application to ensure the proposed development is not in contradiction to any policies, legislation, or title deed conditions.

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the existing buildings will comply with the OMLUS's development parameters ensuring no views, sunlight, or the character of the area is affected.

The proposed use change is not out of the ordinary for the area and a second dwelling unit will not affect or have an impact on the surrounding property owners.

Economic impact

The proposal has little to no impact on the economy.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The proposal is not predicted to have a negative impact on surrounding properties.



Impact on heritage

The subject property is not listed in the OM Heritage Register.

Environmental impact

The subject property is not located within an environmentally important area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is not located within the EMOZ.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The subject property is not located within the HPOZ.

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 by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a second dwelling and legalisation of historic building line encroachments will not contribute to spatial injustices.

Spatial sustainability

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to continue utilising the property for more than just residential purposes will ensure the area and Sandbaai remain viable, as it contributes to the economy of the greater Hermanus.

Efficiency

This proposal is intended to maximise the usage of the subject property and to ensure the land owners' requirements are met.

Spatial resilience

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

Good administration

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process. The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestion that may result in an enhance outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



13. EVALUATION

Once the property owners became aware of the contraventions, they appointed WRAP Project Office to apply for rectification of these contraventions in terms of the By-Law. The application also includes the determination of an administrative penalty. The property owners understand the land use process and will in the future ensure all land uses and buildings adhere to the provisions of OMLUS. In addition to the rectification side of the application, the property owners envision the counselling to continue that will assist the community and others that may have been affected.

The land uses are not out of the context of the surrounding area and are not seen as nuisance land uses. The self-catering unit is a primary right in terms of the OMLUS and the proposed institution use will be carried out indoors. The application for departure from building lines originates from a proposed use change. We are of the opinion that the use change will not impede on views, sunlight or negatively affect the character of the area.

The proposal for an institution is in harmony with all relevant spatial planning policies which illustrates that the property owners did not arbitrarily invent this proposal but had due consideration for relevant spatial planning policies.

14. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

- 14.1 Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.2 Departure** from the 2m northern side building line to 1,5m to accommodate the proposed use change in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.3 Consent Use** to allow an institution on Erf 321 Sandbaai in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.4 Departure** from the provisions of the OMLUS to allow a guest rooms and self-catering accommodation on Erf 321 Sandbaai in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 14.5 Waiving of the determination of an administrative penalty** 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 321 - Sandbaai

Existing approved encroachment
(±10,5m²)

This area's use is proposed to change, it is currently being used as a second dwelling. It was approved as a bedroom and studio.

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

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

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