

**ERF 1072, 14 JAN VAN RIEBEEK CRESCENT, SANDBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WRAP PROJECT OFFICE ON BEHALF OF MME LOUW**

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) that an application has been received for:

- ❖ departure in terms of Section 16(2)(b) of the By-Law to relax the southern lateral building line from 2m to 0m, to accommodate an existing family room & covered braai area; and
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus. Any written comments may be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) on or before **Friday, 16 December 2022**, 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. H. Boshoff** at 028-313 8900. The Municipality may refuse to accept comments 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.

**ERF 1072, JAN VAN RIEBEEK SINGEL 14, SANDBAAI, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE WRAP PROJECT OFFICE NAMENS MME LOUW**

Kennis word hiermee gegee ingevolge Artikel 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) dat 'n aansoek ontvang is vir:

- ❖ afwyking ingevolge Artikel 16(2)(b) van die Verordening om die suidelike lateraleboulyn vanaf 2m na 0m te verslap om die bestaande gesinskamer en onderdak braai area te akkommodeer, en
- ❖ bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae 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 na die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) voor of op **Vrydag, 16 Desember 2022**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H. Boshoff** by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar 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 formaliseer.

**ISIZA 1072, 14 JAN VAN RIEBEEK CRESCENT, SANDBAAI, UMMANDLA WOMASIPALA WASE-OVERSTRAND: ISICELO SOKUNYENYISWA NOKUGQITYWA KWESOHLWAYO: IOFISI YAKWA MESSERS WRAP PROJECT EGAMENI LIKA MME LOUW.**

Esi saziso sikhutshwa ngokwemiqathango yeSoloty 48 loMthethwana kaMasipala waseOverstrand Otshintshweyo woYilo lokuSetyenziswa koMhlaba (uMthethwana) wowama-2020 ngokwezicelo ezichazwe:

- Ukuphambuka: Isicelo sokuphambuka ngokweSoloty 16(2)(b) lalo Mthethwana ukukhulula umda wesakhiwo osecaleni osemazantsi ukusuka kwi-2m ukuya ku-0m, ukulungiselela igumbi losapho esele likho kunye nendawo egqunyiweyo yebraai; kwaye
- Ukumiselwa kwesohlwayo solawulo ngokweCandelo le-16(2)(q) lalo Mthethwana.

linkcukacha ezipheleleyo malunga nesi sindululo ziyafumaneka ngeentsuku zomsebenzi phakathi kweyure-08:00 ne-16:30 kwiSebe: Town Planning, Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo mazingeniswe ngokwezibonelelo zamaCandelo 51 nelama-52 alo Mthetho uYilwayo yaye mazithunyelwe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) ngomhla okanye ngaphambi **NgoLwesihlanu 16 EyoMnga 2022** unike igama lakho, idilesi neenkukacha zonxibelelwano nawe, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Xa ufuna ukubuza into malunga nesi saziso ungatsalela **Umcwangcisi Wedolophu uMnu. H. Boshoff** kule nombolo 028-313 8900. Umasipala angala ukuzamkela izimvo ezifike emva komhla wokuvalwa. Nabani na ongakwaziyo ukufunda okanye ukubhala makaye kwiSebe loYilo lweDolophu apho igosa likamasipala liya kumncedisa azibhale izimvo zakhe.

# Locality Plan Erf 1072 - Sandbaai

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**  
Team Planning & Project Management



**Scale 1 : 2 000**



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**1. ABBREVIATIONS**

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<b>OM</b>	Overstrand Municipality
<b>OMLUS</b>	Overstrand Municipality Land Use Scheme, 2020
<b>By-Law</b>	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
<b>PSDF</b>	Western Cape Provincial Spatial Development Framework, 2014
<b>LUPA</b>	Western Cape Land Use Planning Act, 2014.
<b>MSDF</b>	Overstrand Spatial Development Framework, 2020
<b>SRI</b>	Residential Zone 1: Single Residential

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**2. PROPERTY DETAILS**

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<b>Consultant</b>	WRAP Project Office
<b>Erf Number</b>	Erf 1072 Sandbaai
<b>Extent</b>	762m <sup>2</sup>
<b>Zoning</b>	Residential Zone 1: Single Residential

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**3. BACKGROUND AND INTENT**

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Erf 1072 Sandbaai, hereafter referred to as the subject property, is located at 14 Jan van Riebeek Crescent (refer **Plan 1 – Locality Plan**). The property owner (Maria Magdalena Elizabeth Louw) appointed WRAP Project Office to submit this land use application on her behalf (refer **Annexure A – Power of Attorney**).

The subject property is owned by the property owner for the past 34 years. The property was sold and during the transfer process it has come to light that some of the additions that has been done to the building on the property have not been approved by the Overstrand Municipality. To ensure that the property can be transferred without any contraventions of the OMLUS and the National Building Regulations, this application is being submitted to ensure that the aforementioned is achieved.

The property owner has appointed a draughtsperson to draw up as-built plans that the property owner is intending to submit, once the land use application has been approved. (Refer **Plan 4 – Site Development Plans**)

Due to the fact that these additions have been constructed without approved building plans, a determination of an administrative penalty is also being included in this application.

To ensure compliance with the OMLUS, approval of the following applications is required:

- Departure of the side building line to accommodate the family room and undercover braai area; and
- Determination of an administrative penalty.



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#### 4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

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WRAP compiled this report to ensure the property owner's requirements are met. The following is proposed:

##### 4.1 **Departure** from the 2m southern building line to 0m in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The existing dwelling house was built in the late 1990's and featured a pergola on the south side of the building, refer to **Annexure C – Approved Building Plans**. In 2002 the property owner had plans drawn up to add an addition to their home, which was located over the building line and on the boundary line.

The addition was used as an informal seating area and was referred to on the plans as a "Familie Kamer". These 2002 plans were never approved by the Overstrand Municipality.

In 2006 a plan was submitted to add a double garage to the property and the plan indicated an existing "Familie Kamer" and was approved as such in 2006. There was also a covered braai area added to the rear of the "Familie Kamer" where a braai was added at a later stage.

The braai is located more than 1m above the natural ground level and necessitates a departure from the southern side building line. Refer to the figure below:

There was never any malintent when the addition was built and the neighbour at the time also provided his consent that the "Familie Kamer" may be built up to the shared boundary line. The entire area which is located in the building line is  $\pm 23,2\text{m}^2$ .

The property owner is taking corrective steps to submit this application to ensure these additions are approved as built and to ensure that the transfer can be completed, and that the property is compliant with the OMLUS and eventually with the National Building Regulations.

There is also an illegal wendy house that is being demolished as it was also encroaching on the building lines. The property owner is taking remedial steps to ensure the property is compliant.

##### 4.2 **Determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The alterations and additions to the property have been done over the past 20 years. To ensure compliance with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 it is of importance to include the determination of an administrative penalty in this application.

We however would like to request that the administrative penalty is waived as this application serves as method to rectify the contraventions that occurred. The property



## MOTIVATION

was sold, and the owner already relocated to stay with her son in Gauteng as they have deemed the property to be too large to maintain she is not capable to take care of it herself anymore.

Section 90(3) of the By-law requires the following information:

### **The nature, duration, gravity and extent of the contravention**

The nature, gravity and extent are explained in Section 4.2 above.

The addition of the "Familie Kamer" and covered braai area approximately 49m<sup>2</sup> in extent and only ±23,2m<sup>2</sup> of the additions are within the building line. The use of the illegal structure is in-line with the current zoning. The construction that occurred was not previously approved, according to the municipal valuation roll the building value is R589,000.00. With the total extent of the dwelling house being 253m<sup>2</sup> each square meter is valued at R2328,06.

This means that the maximum penalty that is applicable is approximately R54 010,99 (23,2m<sup>2</sup> x R2328,06). The construction took place more than 20 years ago and the building cost applicable today is not considered as an accurate representation of the cost of the existing structure.

This application does however serve as proof that the property owner took steps to resolve the issue and it be requested that no administrative penalty be imposed as the owner is selling to property and relocating closer to her son as she is not able to take care of herself anymore.

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

The intention was never to knowingly contravene the provisions of the OMLUS. The property owner added the structures to the property, but there was never any malintent.

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

Due to the small-scale nature of the encroachment no quantity surveyor was involved.

### **Whether the unlawful conduct was stopped**

No other unlawful conduct is occurring on the property currently, except for the unauthorised building work that occurred in the past.

### **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 property owner has not previously contravened the By-Law.



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**5. APPLICATION**

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Considering the above, application is made for the following:

**5.1 Departure** from the 2m south building line to 0m in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

**5.2 Determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

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**6. LAND USE ENVIRONMENT**

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The properties surrounding the subject property are predominantly zoned for single residential purposes. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

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**7. TITLE DEED**

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Title deed T56899/1988 (refer **Annexure B – Title Deed**) was perused and there are no restrictive conditions that prohibit the departure of the side building line.

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**8. ZONING**

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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:





**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 is not anticipated to place any additional load on services.

Solid waste is collected every week by the OM.

**Access and Egress**

Access and egress to the subject property is gained from Jan van Riebeek Crescent 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 of addressing all the land use requirements and ensuring the property meets the requirements of the property owner to be able to transfer the property. In order to achieve this, the property owner is required to address the non-compliance and illegal encroachments on the building lines.

The purpose of this application is to ensure that the proposal is compliant with the OMLUS. It is not expected that the proposal will benefit any persons, other than the property owner.

The following considerations are amongst other things, relevant to the assessment of the proposed land use to determine if it would be desirable and should therefore be properly motivated in an application:

Socio-economic impact	It is not expected the departure will have a socio-economic impact. The proposal is to rectify past contradictions and to ensure that the building is compliant.
Compatibility with surrounding uses	<p>The proposal is not out of character for the surrounding area and the encroachments are not predicted to have a negative impact on the surrounding area.</p> <p>The property next to the subject property is also improved with a garage on the boundary at 0m.</p> <p>We are of the opinion that the rights of the neighbours adjacent the subject property are not being affected as both structures are existing.</p>



## MOTIVATION

Impact on the external engineering services	It is not predicted that the proposal will have an impact on any external engineering services.
Impact on safety, health and wellbeing of the surrounding community	It is not predicted that the proposal will have an impact on safety, health and wellbeing of the surrounding community.
Impact on heritage	The subject property is not listed in the OM Heritage Register.
Impact on the biophysical environment	The building has already been built and it is not predicted that the proposal will have an impact on the biophysical environment.
Traffic impacts, parking, access and other transport related considerations	The proposal will not have an impact on traffic, parking or access.

To meet her requirements, the property owner has appointed WRAP Project Office to submit this application to ensure the additions are not in contradiction with 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 additions do not have any impact on views, sunlight, or the character of the area.

### **Economic impact**

The application for departure has no economic impact.

### **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 and the addition had a positive impact on the property itself.

### **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.

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## **11. POLICIES AND REGULATIONS**

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### **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.



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### **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.

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## **12. PLANNING PRINCIPLES**

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided by. 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 to depart from the building line is not predicted to contribute to past spatial injustices.

### **Spatial sustainability and Efficiency**

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal is to utilise the property to its maximum extent. Although never approved, the "Familie Kamer" allowed the property owner to add an additional area to enjoy their home.

### **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 suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



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**13. EVALUATION**

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The proposal is to rectify past contraventions and ensure the property is aligned with the OMLUS. The "familie kamer" is not expected to have a negative impact on any of the surrounding properties. The property adjacent the subject property has a garage on the boundary and the two structures share a wall. The property owner now understands the land use process and agreed to the rectification process.

Therefore, the application serves as a motivation to waive the administrative penalty as there has been no malintent and no complaints have been received. The property owner has also taken corrective steps to submit this application to obtain approval for the departure from the building line.

The proposal is not out of the context of the surrounding area and is not seen as nuisance land uses. The proposal is in harmony with all relevant spatial planning policies.

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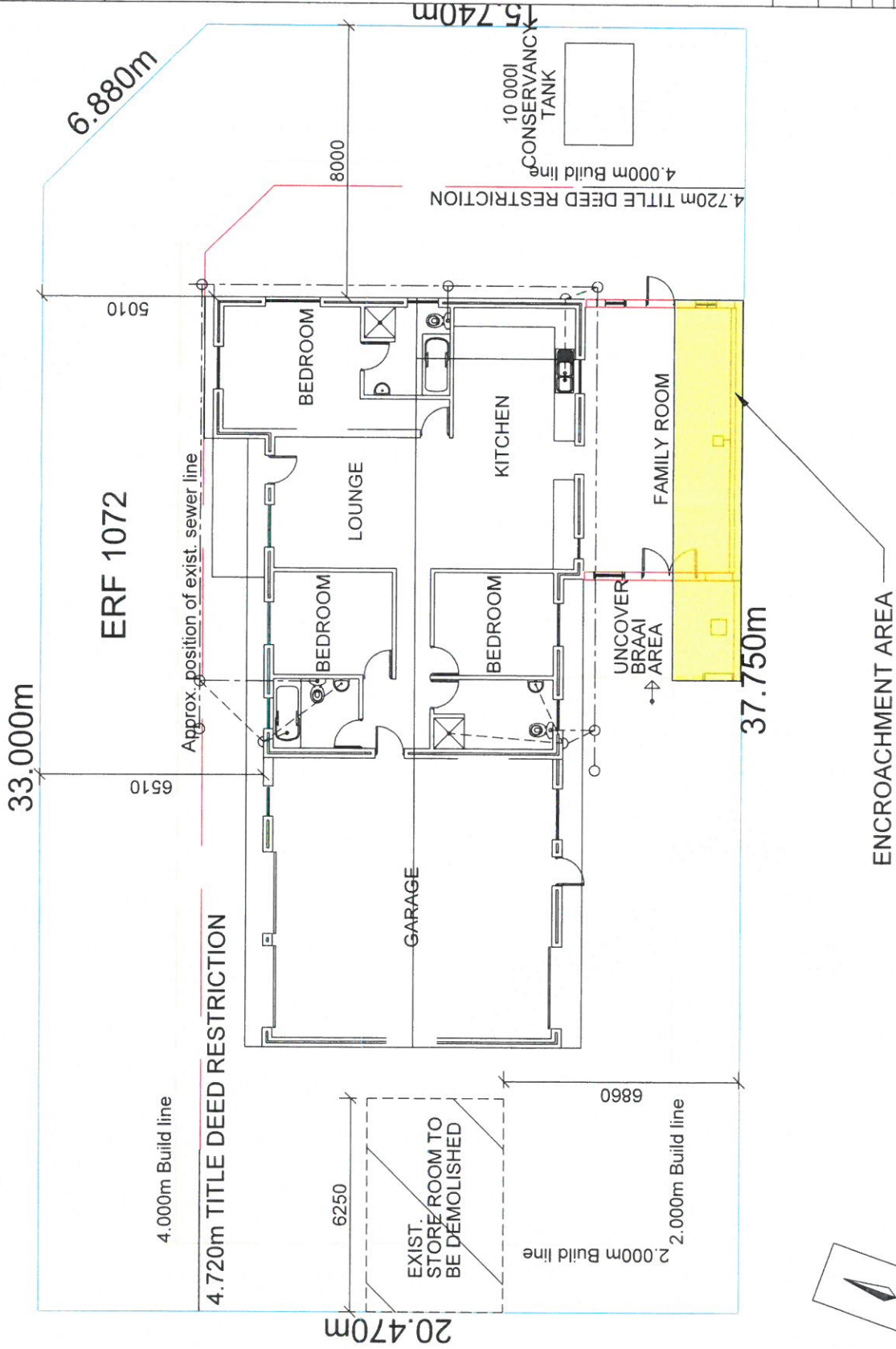
**14. RECOMMENDATION**

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

- 14.1 Departure** from the 2m south building line to 0m in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.2 Determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

# JAN VAN RIEBEECK CRESCENT



Scale 1 : 125

Site Development  
Plan Erf 1072 -  
Sandbaai

Property Extent - 762m<sup>2</sup>

Existing Dwelling and Garage - 204m<sup>2</sup>  
Added Braai Room/  
"Familie Kamer"- 49m<sup>2</sup>

Total Coverage % = 26.77%

Plan prepared by: Thian Jansen  
Based on plans by: Waller Brown

All distances are approximate  
and subject to a survey

Tel: 028 313 1411

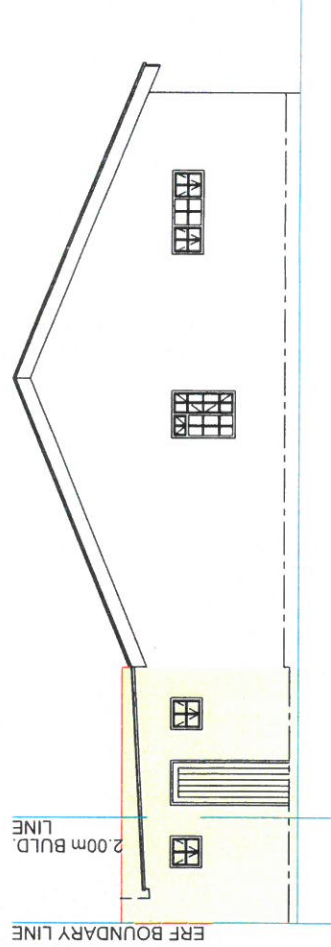
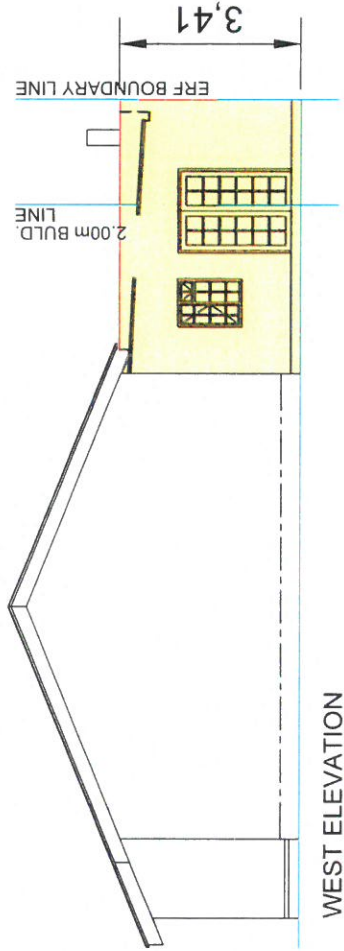
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**Project Office**  
Town Planning & Project Management

Elevations  
Erf 1072 - Sandbaai



Plan prepared by: Thion Jansen  
Based on plans by Wallter Brown

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Scale 1 : 100