

ERF 5907, 47 FERNKLOOF DRIVE, HERANUS HEIGHTS, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF W.A. & L. VON ZEUNER

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 following:
 - rear building line from 2m to 1.04m to accommodate the existing wendy; &
 - north-eastern lateral building line from 2m to 0.53m, to accommodate the existing wendy.
 - north-western lateral building line from 2m to 0m to accommodate the change of use (to convert the existing garage into storage).
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law, in order to accommodate the existing outbuilding, garage & storage.

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) on or before **Friday, 27 January 2023**, 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 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 5907, FERNKLOOFWEG 47, HERANUS HEIGHTS, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: WRAP PROJECT OFFICE NAMENS W.A. & L. VON ZEUNER

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 vir die verslapping van:
 - agter boulyn vanaf 2m na 1.04m ten einde die bestaande wendy te akkommodeer; &
 - noordwestelike syboullyn vanaf 2m na 0.53m, ten einde die bestaande wendy te akkommodeer.
 - noordwestelike syboullyn vanaf 2m na 0m, ten einde die verandering van gebruik (motorhuis in 'n stoor te omskep) te akkommodeer.
- ❖ bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening vir die bestaande buitegebou, motorafdak en stoor.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weekdae 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) voor of op **Vrydag, 27 Januarie 2023**, 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. P. Roux** 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 5907, 47 FERNKLOOF DRIVE, HERANUS HEIGHTS, HERMANUS, UMMANDLA WOMASIPALA WASE-OVERSTRAND: ISICELO SOKUNYENYISWA NOKUGQITYWA KWESOHLWAYO: IOFISI YAKWA MESSERS WRAP PROJECT EGAMENI LIKA W.A. & L. VON ZEUNER.

Isaziso siyanikezelwa ngokweCandelo lama-48 loMthetho kaMasipala woLungiso loMthetho kaMasipala kuCwangciso lokuSetyenziswa koMhlaba kaMasipala, ka-2020 (uMthetho kaMasipala) sokuba isicelo sifunyenwe:

- ❖ Sokuphambuka ngokweCandelo le-16(2)(b) loMthetho kaMasipala ukunyenyisa oku kulandelayo:
 - umda wesakhiwo ongasemva ukusuka kwisi-2m ukuya kwisi-1.04m ukulungiselela i-wendy ekhoyo; &
 - umda wesakhiwo osecaleni kumntla-mpuma ukusuka kwi-2m ukuya kwi-0.53m, ukulungiselela i-wendy ekhoyo.
 - umda wesakhiwo osecaleni kumntla-ntshona ukusuka kwi-2m ukuya ku-0m ukulungiselela utshintsho losetyenziso (ukuguqula igaraji ekhoyo ibe yindawo yokugcina).
- ❖ Ukumiselwa kwesohlwayo solawulo ngokweCandelo le-16(2)(q) loMthetho kaMasipala ukuze kuhlaliswe indawo yokwakha ekhoyo, igaraji kunye nokugcinwa.

linkcukacha ezipheleleyo malunga nesi sindululo ziyafumaneka ukuze zihlolwe ngulowo ngolowo ufuna ukuzifundela ngeentsuku zokusebenza ngamaxesha okusebenza phakathi kwentsimbi ye-08:00 neye-16:30 kwiSebe: Zicwangciso ngeDolophu, 16 Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo zingangeniswa ngokungqinelana nemimiselo yeCandelo lama-51 kunye nelama-52 alo Mthetho kaMasipala oxeliweyo kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) okanye phambi **koLwesihlanu, 27 EyoMqungu 2023**, ucaphula igama lakho, idilesi kunye neenkukacha zohagamshekwano, umda kwisicelo kunye nezizathu zokuphawula. Imibuzo ngomnxeba ingenziwa **kuMchwangcisi weDolophu. U Mnu. P. Roux** kule nombolo 028-313 8900. UMasipala unokwala ukwamkela izimvo ezifunyenwe emva komhla wokuvala. Nabani na ongakwaziyo ukufunda okanye ukubhala angandwendwela iSebe loCwangciso lweDolophu apho igosa likamasipala liya kuthi limncedise ukuze abhale ngokusesikweni izimvo zakhe.

Locality Plan Erf 5907 - Hermanus

Plan prepared by: Thian Jansen

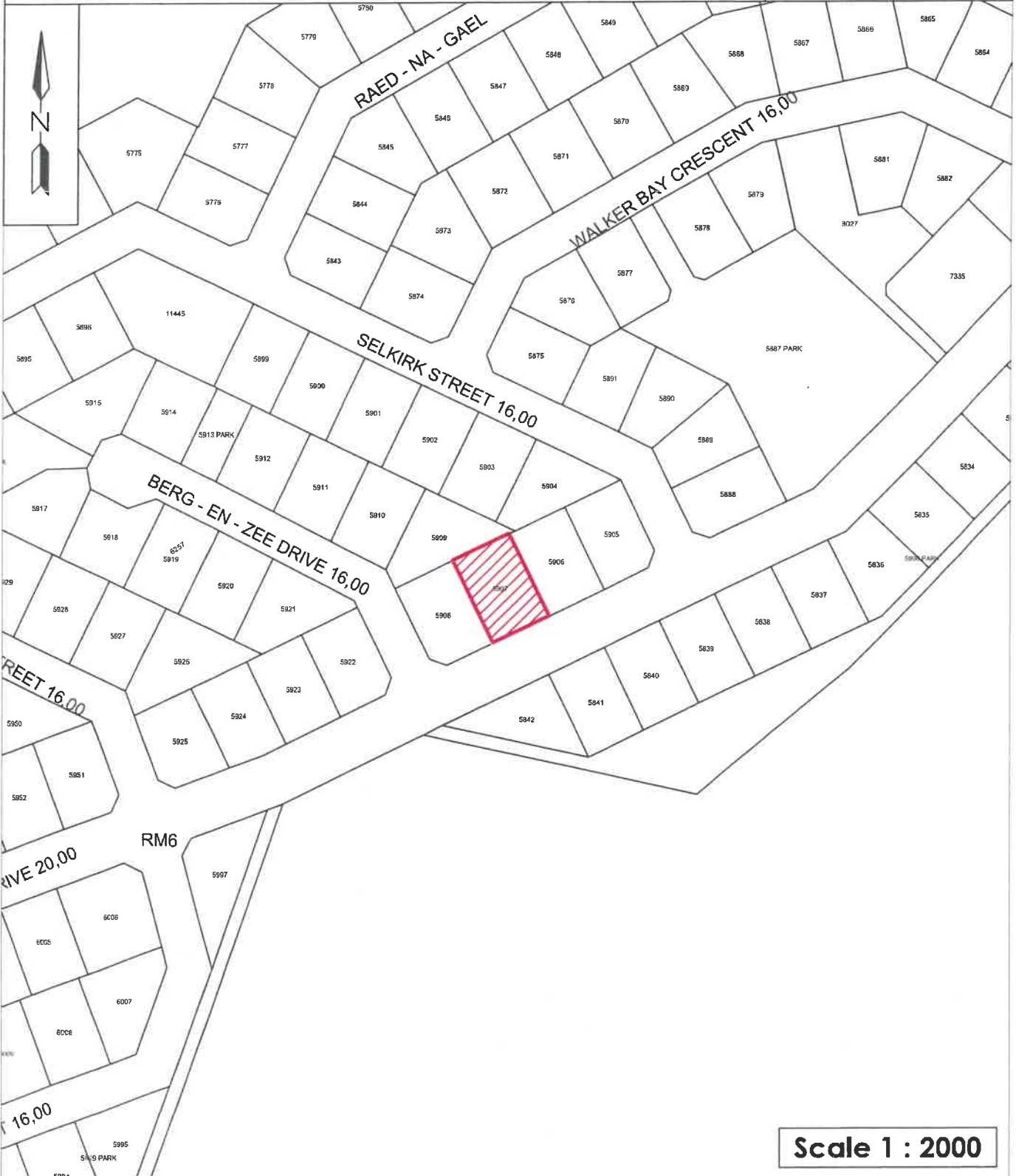
Tel: 028 313 1411

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Corner of Royal and Dirkie Uys
Street Hermanus, 7200



Project Office
Town Planning & Project Management



Scale 1 : 2000



1. ABBREVIATIONS

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

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 5907, Hermanus
Extent	823m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 5907 Hermanus, hereafter referred to as the subject property, is located at 47 Fernkloof Drive, Hermanus (refer **Plan 1 – Locality Plan**). The property owners (Werner Von Zeuner & Linda Von Zeuner) appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney**).

The subject property has been owned by the property owners from 2016 and when they bought the property it was improved with a dwelling house and several outbuildings. Unbeknown to them, these buildings were converted and added to the property by the previous owners, without prior building plan approval.

The property owners have taken it upon themselves to submit the land use application to ensure their property is compliant with the OMLUS and the development parameters indicated therein. The approved building plans indicate a garage encroaching on the building lines which is compliant in terms of Section 16.10, general encroachments, of the OMLUS. The garage was however converted by the previous owners to an office space. The garage door was removed and replaced with a double hinge door and the garage cannot be utilised for the storage of motor vehicles anymore due to the changes done by the previous owners.

The current property owners have indicated that they do not want to utilise the historically approved garage as a converted office and is utilising the space as storage for additional furniture and other miscellaneous items. No habitable space will be created, and the space cannot be considered as additional habitable space.

The other outbuilding within the building line is a wendy house and is used for the storage of outdoor sporting equipment and gardening equipment. The property owners do not want to lose this space as it is used for 'dirty' equipment.

Approval of the following applications will be required to ensure compliance:

- Permanent Departure from the side and street building lines; and
- Determination of an administration penalty.

4. PROCEDURE TO ACHIEVE THE PROPERTY OWNERS' INTENT

WRAP compiled this report to ensure the property owners' requirements are achieved. The following is proposed:

4.1 Permanent Departure from the 2m rear building line to $\pm 1.04\text{m}$ in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

4.2 Permanent Departure from the 2m north-eastern building line to $\pm 0.53\text{m}$ in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

To ensure compliance with the requirements set out by the OMLUS, the outbuilding that is currently encroaching on the side- and rear building line will need to be addressed in terms of Section 16 of the By-Law.

As mentioned in Section 3, the previous owners improved the property with the outbuilding, the current property owners do not wish to remove the outbuilding. The outbuilding is used solely for the storage of outdoor equipment. This includes sporting and garden equipment and with the property owners being avid cyclists, they also stored the cycles in the outbuilding. Refer to the figure below:

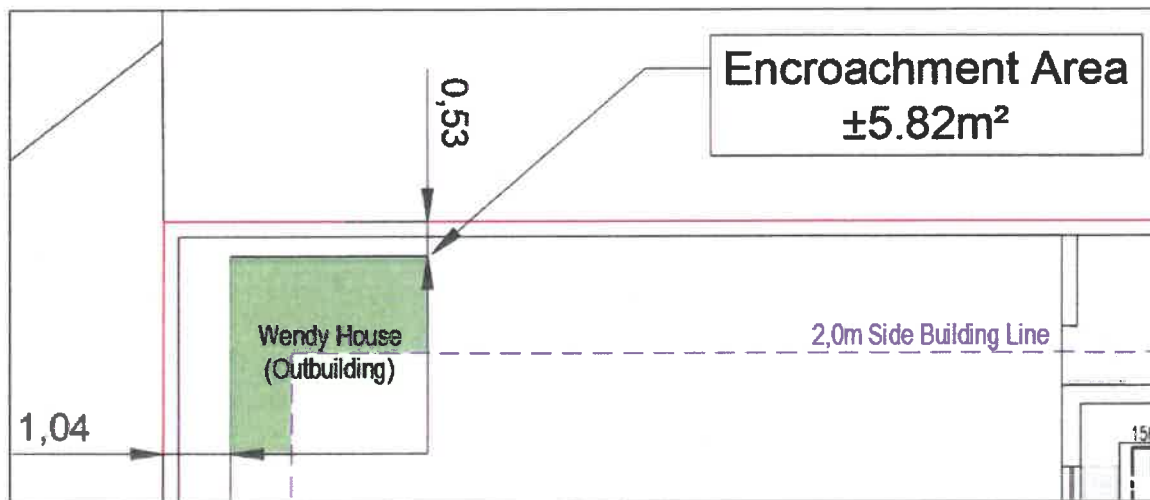


Figure 1: Encroaching Outbuilding

	Area encroaching
Outbuilding	$\pm 5.82\text{m}^2$



MOTIVATION

4.3 Permanent Departure from the 2m north-western building line to 0m to allow a proposed use change in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

4.4 Permanent Departure from the 2m north-western building line to 0m allow a shade port in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The approved second dwelling unit and garage building was altered by the previous owners and the proposal is to ensure compliance with the requirements set out by the OMLUS. As discussed in Section 3, the garage was converted to an office space and the current property owners are only utilising the space for storage purposes. No additional habitable space is proposed to be created. The space is ideal to store additional furniture and other miscellaneous items.

The property owners had no knowledge that there are contraventions present on the property and they are submitting this application to rectify the use change that had occurred. The storage area is not out of the ordinary and it is not predicted that a single garage and the proposed use will have additional impact on the surrounding area. The garage was built on the boundary line and the total encroachment area of this encroachment is $\pm 13.14\text{m}^2$.

In addition to the encroachment of the proposed use change is the shade port that is located over the side building line. The shade port is used for the storage of motor vehicles, and it has not been approved in terms of the OMLUS.

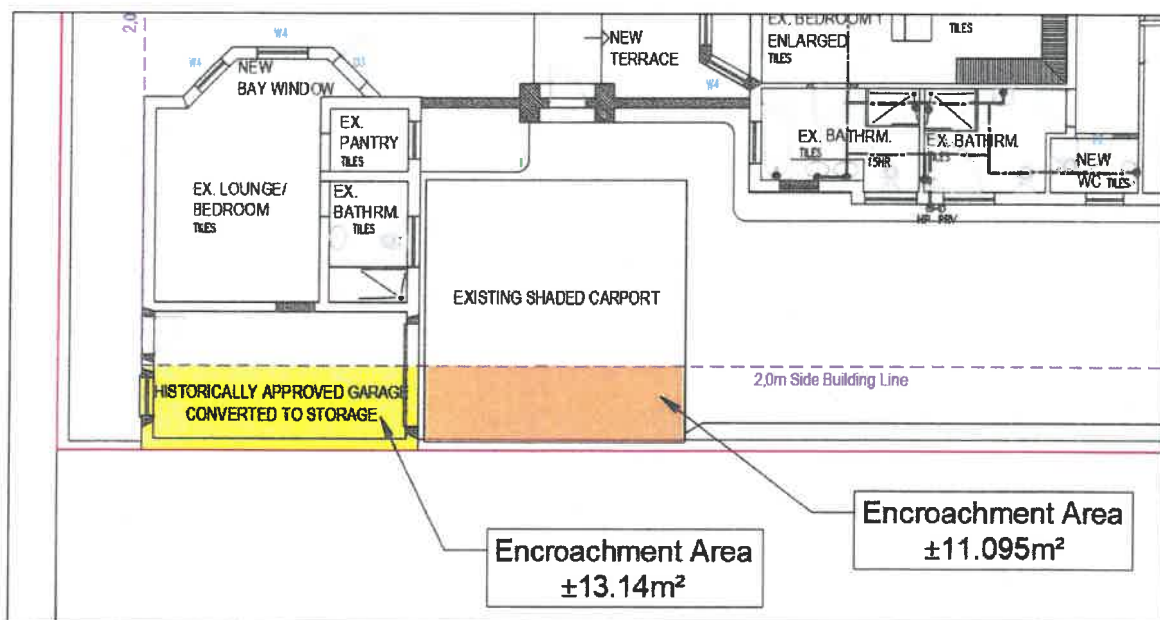


Figure 2: Encroaching use change and shade port.



MOTIVATION

The property owners have been informed of the process and they have a better understanding on the OMLUS and the By-Law that will ensure future contraventions do not occur.

4.5 Determination of an administrative penalty in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

To ensure compliance with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 it is of importance to include an application for the determination of an administrative penalty into this application.

We however would like to request that the administrative penalty is waived as this application serves as method to rectify contraventions that had occurred and that these encroachments were not done by the current property owners, but by previous owners. 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 4.1 - 4.4 above.

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

The property owners take responsibility and acknowledge that they were supposed to ensure that there was no contradiction in terms of the By-Law when they took transfer of the property. They can however not be held responsible for any historic contraventions that had occurred before they owned the property. The contraventions are not considered detrimental, and they are not out of the ordinary for a residential area.

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

Due to the small-scale nature of the building work a quantity surveyor's report was not obtained.

Whether the unlawful conduct was stopped

The building is an existing structure.

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 owners have not previously contravened the By-Law.



5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Permanent Departure** from the 2m rear building line to $\pm 1.04\text{m}$ in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.2 Permanent Departure** from the 2m north-eastern building line to $\pm 0.53\text{m}$ in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.3 Permanent Departure** from the 2m north-western building line to 0m to allow a proposed use change in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.4 Permanent Departure** from the 2m north-western building line to 0m allow a shade port in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.5 Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

6. LAND USE ENVIRONMENT

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).

7. TITLE DEED

Title deed T17273/2011 (refer **Annexure B**) was perused and there are no restrictive title deed conditions that may prohibit the proposed departures.

8. ZONING

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



MOTIVATION

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL Land Use Restrictions		
Primary use	Parameters	Proposal
	Crèche, Dwelling House , Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House
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.	N/A
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%	Site Area - 823m ² Existing House - 216.9m ² Existing Outbuilding - 55m ² Open Stoep - 14m ² Existing Wendy House - 9m ² Existing Shade port - 38m ² Coverage - 38,75%
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	<ul style="list-style-type: none"> Permanent Departure from the 2m rear building line to ±1.04m. Permanent Departure from the 2m north-eastern building line to ±0.53m. Permanent Departure from the 2m north-western building line to 0m to allow a proposed use change.
		Comply



MOTIVATION

		<ul style="list-style-type: none">• Permanent Departure from the 2m north-western building line to 0m allow a shade port.	
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 dwelling house.	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Parking On-site	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 Fernkloof Drive 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 land use application is required to address all the land use requirements and ensuring the property meets the needs of the property owners. Need is more often a personal feeling of the property owners, and they wish to keep their property as they bought it.

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 that the departures and use change will have a socio-economic impact. The proposal is to rectify past contraventions and to ensure the improvements on the property is compliant.
Compatibility with surrounding uses	The proposal is not out of character for the surrounding area and the encroachments does not have a negative on the surrounding area.
Impact on the external engineering services	There will be no additional impact on any external engineering services.
Impact on safety, health and wellbeing of the surrounding community	There will be no 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 does not have an impact on the biophysical environment.



MOTIVATION

Traffic impacts, parking, access and other transport related considerations	The proposal does not have an impact on traffic, parking or access.
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To achieve the vision of the property owners, they 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 building does not have any detrimental impact on the views, sunlight and character of the area. The neighbours and surrounding property owners have become accustomed to the position of the dwelling house and these outbuildings.

Economic impact

The proposal has little to no impact on the economy. The proposal is only to rectify the past contraventions.

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.

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

This proposal does not have an impact on spatial justice.

Spatial sustainability and Efficiency

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal is to continue utilising the property with the current position of the outbuilding, ensuring minimal effect on the property owners and their family of young children.

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.



13. EVALUATION

The proposal that should be considered is an application being submitted to rectify contraventions that occurred when implemented by the previous owners. The current owners are aware of the relevant legislation and wish to ensure their property have no contraventions and that all structures are compliant in terms of the OMLUS.

The proposals are not out of the context with the surrounding area and are not seen as nuisance land uses. The proposals are aligned with the OMLUS and other regulations.

14. RECOMMENDATION

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

- 14.1 Permanent Departure** from the 2m rear building line to $\pm 1.04\text{m}$ in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.2 Permanent Departure** from the 2m north-eastern building line to $\pm 0.53\text{m}$ in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.3 Permanent Departure** from the 2m north-western building line to 0m to allow a proposed use change in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.4 Permanent Departure** from the 2m north-western building line to 0m allow a shade port in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.5 Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Site Development Plan
Erf 5907 - Hermanus

Schedule of Areas

Site Area - 823m²

Existing House - 216.9m²
Existing Outbuilding - 55m²
Open Stoep - 14m²
Existing Wendy House - 9m²
Existing Shade port - 38m²

Coverage - 38,75%

Plan prepared by: Thian Jansen
Based on plans by Luke Architects
All distances are approximate
and subject to a survey

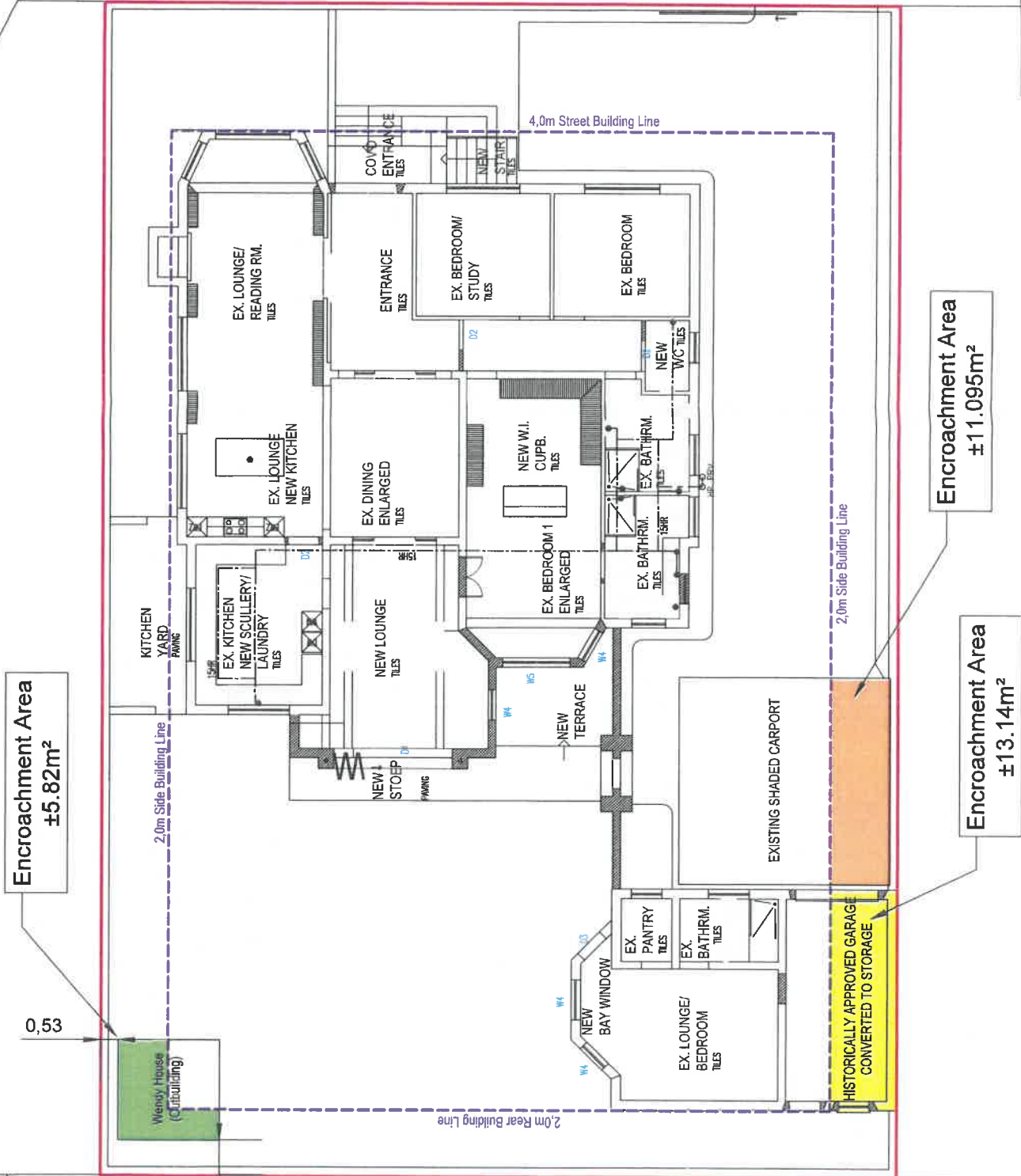
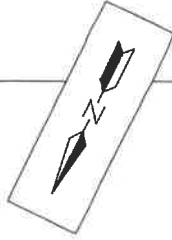
Tel: 028 313 1411

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Street Hermanus, 7200



Project Office
Town Planning & Project Management



Encroachment Area
±5.82m²

Encroachment Area
±11.095m²

Encroachment Area
±13.14m²

Scale 1 : 125