

**ERF 2087, 49 FOURTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: JAMES THOMAS SMITH**

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

- **departure** in terms of Section 16(2)(b) of the By-Law, to relax the western lateral building line from 2m to 1.134m in order to accommodate the existing dwelling; 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 and at the Hermanus Library. 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 **3 March 2023**, quoting your name, address and contact details, interest in the application and reasons for comments. Telephonic enquiries can be made to **Mr P Roux** at 028-313 8983. 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 2087, VIERDESTRAAT 49, VOËLKLIP, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: JAMES THOMAS SMITH**

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

- **afwyking** in terme van Artikel 16(2)(b) van die Verordening om die lateraleboulyn vanaf 2m na 1.134m te verslap ten einde die bestaande woning 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 woensdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus en by die Hermanus Biblioteek. 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 **3 Maart 2023**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan **Mnr P Roux** by 028-313 8983. 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.

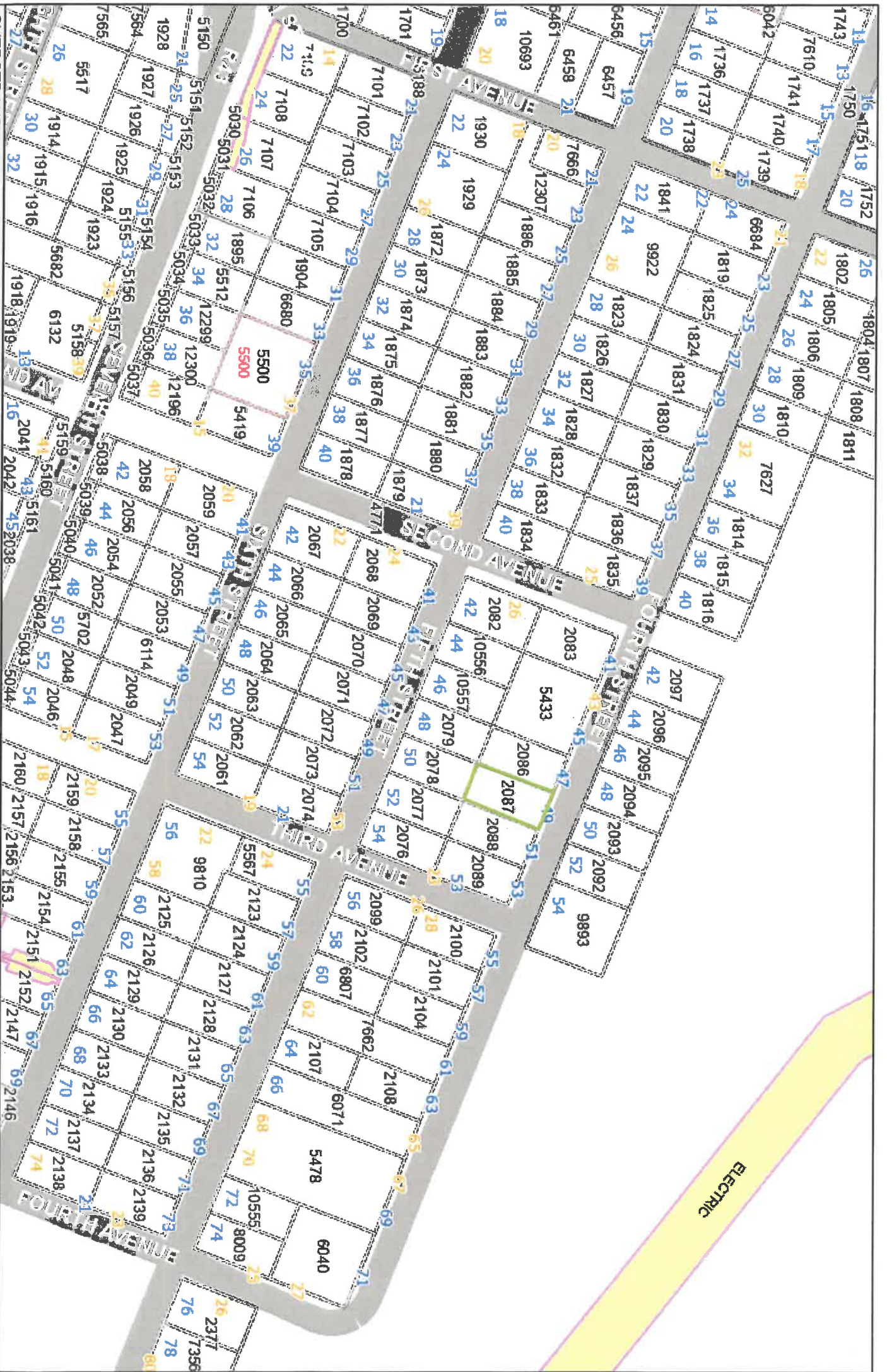
**ISIZA SAMA-2087, 49 FOURTH STREET, EVOËLKLIP, EHERMANUS, UMMANDLA AKAMASIPALA WASE-OVERSTRAND: ISICELO SOKUPHAMBUKA NOKUMISELA ISOHLWAYO SOLAWULO: JAMES THOMAS SMITH**

Isaziso sinikwe ngokuphathelele kwiCandelo lama-48 - lomThetho kaMasipala wesiLungiso wase-Overstrad kuYilo lokuSetyenziswa koMhlaba kaMasipala (*the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning*), 2020, (UmThetho kaMasipala) ukuba isicelo sifunyenwe koku kulandelayo:

- **ukuphambuka** ngokuphathelele kwiCandelo le-16(2)(b) lomThetho kaMasipala, ukunyenya umda wokwakha osemacaleni asentshona ukusuka kwisi-2m ukuya kwisi-1.134m ukuze kulungiselelwe indawo yokuhlala eseyikho; kwaye
- **ukumisela isohlwayo solawulo** ngokuphathelele kwiCandelo le-16(2)(q) lomThetho kaMasipala.

linkcukacha ezipheleleyo malunga nesi sindululo ziyafumaneka ngeentsuku zomsebenzi phakathi kweyure-08:00 ne-16:30 kwiSebe: loCwangciso lweDolophu, Paterson Street, Hermanus, kunye neThala lencwadi, Stanford, Queen Victoria Street, Stanford.

Naziphi na izimvo ezibhaliweyo mazingeniswe ngokwezibonelelo zamaCandelo 51 nelama-52 alo Mthetho kaMasipala zithunyelwe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) ngomhla okanye ngaphambi komhla wama- **3 EyoKwindla 2023** unike igama lakho, idilesi neenkukacha zonxibelelwano nawe, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Xa ufuna ukubuza into malunga nesi saziso ungatsalela, u**Mnu P Roux** kule nombolo 028-313 8983. 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 2087, VOËLKLIP



3 November 2022



Director: Town and Spatial Planning Department  
Overstrand Municipality  
16 Paterson Street  
Hermanus  
7200

TP- n. Ahearne  
(H. Olivier)

Attention: Mr. Petrus Roux

FILE NO.	EF 2087 ✓
	I-VK
SCAN NO.	HVK 2087
COLLABORATOR NO.	1782621

Sir

**ERF 2087, VOËLKLIP, HERMANUS: MOTIVATION FOR THE LAND USE PLANNING APPLICATIONS**

On 24 August 2022 we submitted a land use planning application – pertaining to Erf 2087, Voëlkliip, Hermanus – i.t.o. Sections 16(2)(b) and (q) of the Overstrand Municipality By-Law on Municipal Land Use Planning (2015) for a permanent departure to relax the western side building line from 2m to 1.134m, and for the determination of an administrative penalty.

Our land use planning application (to illustrate need and desirability) is motivated as follow:

**1. Background and purpose of the application**

In 1995 building plans were submitted by Mr J T Smith, (the landowner) to the Overstrand Municipality for the construction of a double storey residential dwelling house on the subject property.

TP 30 NOV 2022

The building plans were approved by the Overstrand Municipality and the dwelling house was constructed on the subject property .

In 1996 – at the time of construction – the side building line was 1.2m and the dwelling house was constructed on this 1.2m side building line. It was only in 2015 when the Overstrand Municipality approved their new planning by-law and amended the development rules (which included increasing the side building line from 1.2m to 2m) that the situation changed. It is therefore important to note that when the dwelling house was constructed in 1996 the side building line was 1.2m (and the building complied with this side building line).

In 2013 Mr Smith's architect submitted drawings for a new timber deck ,pergola and garden walls. See attached drawing. Plans were approved and construction was completed in 2014.

In 2019 Mr Smith asked an architect to submit drawings for a new external braai and pizza oven as well as a motorised gate and steel fence. It has now come to the attention of the architect that as built drawings were not previously submitted. These changes included an enclosed braai area on the ground floor with a bedroom over.

The architect has approached the Overstrand Municipality in this regard, but he was unable to find any record of approved building plans showing these changes. It is therefore assumed that the previous architect/principal agent never submitted rider building plans to the Municipality that illustrated these changes by way of final as-built building plans for the dwelling house.

Mr Smith has subsequently appointed an architect to draw up as-built plans for the existing dwelling house. A copy of the as-built plans is attached hereto.

The purpose of this departure application is to obtain the Overstrand Municipality's planning approval for the relaxation of the western side building line from 2m to 1.134m in order to normalise the existing dwelling house. The planning approval will not allow any additional developments or extensions to the existing dwelling house, but it will allow the Overstrand Municipality to approve the as-built building plans.

## **2. Motivation for the building line relaxation**

The proposed permanent departure to relax the western side building line from 2m to 1.134m is motivated as follows:

- No changes to the existing dwelling house are proposed.
- In 1996 – when the existing dwelling house was constructed – the side building line was 1.2m. In other words, the dwelling house was constructed in accordance with the applicable development rules (building lines, coverage, height, etc.).
- In 2013 Plans for alterations were submitted and approved by Overstrand Municipality . These alterations were completed in 2014.
- It seems that the deviations – during the construction period – were not submitted to council since Overstrand Municipality could not find a copy of these drawings. The architect, who was also the principal agent, neglected to submit the rider building plans with completion of the construction period. This application aims to rectify this oversight.

- The changes made , included the enclosure of the braai ( this entailed a sliding folding door on one side and a window on the western side) and external changes to the 1<sup>st</sup> floor (i.e. enlarging the floor area , but still on the building's footprint). These changes to the dwelling house did not increase / change the coverage or height, or even the side building line – these changes took place on the building's footprint.
- The purpose of this application is to normalise the current situation, and will not lead to any new developments or extensions to the existing dwelling house.
- The 1.2m side building line is compatible with the surrounding properties, as it is the dominant side building line in Voëlklip. The proposed building line relaxation will therefore not be foreign to the area or adversely affect any of the surrounding properties, but will rather reinforce the historic character and urban landscape of Voëlklip.

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

In 1996 building plans were submitted by Mr Smith, the landowner, to the Overstrand Municipality for the construction of a double storey residential dwelling house on the subject property. The building plans were approved by the Overstrand Municipality and the dwelling house was constructed on the subject property.

In 1996 – at the time of construction – the side building line was 1.2m and the dwelling house was constructed on this 1.2m side building line. It was only in 2015 when the Overstrand Municipality approved their new planning by-law and amended the development rules (which

included increasing the side building line from 1.2m to 2m) that the situation changed. It is therefore important to note that when the dwelling house was constructed in 1996 the side building line was 1.2m (and the building complied with this side building line).

In 2019 It has now come to my attention that the changes to the envisaged building were made without the rider plans being submitted. These changes included a an enclosed braai area to the groundfloor layout and a bedroom on top of the braai area, to the 1<sup>st</sup> floor.

Mr Smith has approached the Overstrand Municipality in this regard, but Council was unable to find any record of approved building plans showing these changes. It is therefore assumed that the previous architect/principal agent never submitted rider building plans to the Municipality that illustrated these changes by way of final as-built building plans for the dwelling house.

Our client has subsequently appointed an architect to draw up as-built plans for the existing dwelling house.

The purpose of our land use planning application is to obtain the Overstrand Municipality's planning approval for the relaxation of the western side building line from 2m to 1.134m in order to normalise the existing dwelling house. The planning approval will not allow any additional developments or extensions to the existing dwelling house, but it will allow the Overstrand Municipality to approve the as-built building plans.

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

As explained above, Mr Smith was unaware that rider plans were not submitted and therefore also unaware that he has contravened any municipal regulations. This was only discovered when another architect was appointed to prepare drawings for the garden walls and entrance gate.

**5. The monetary value of the unlawful building work .**

The total area of the building work that has been built over the “new building line” is 5,6 m<sup>2</sup> on the ground floor and 5,6 m<sup>2</sup> on the first floor. The architect has done a pro rata calculation based on the total cost of the alterations and has arrived at a value of R62 720,00.

**6. Was the unlawful conduct stopped**

In 2013 drawings for alterations to the existing house were submitted and approved. However, it appears as if Mr. Smith – during the construction period – deviated from the approved building plans. With the completion of the alterations in 2014 the then architect/ principal agent neglected to submit the rider building plans.

**7. Did the person (allegedly) involved in the contravention previously contravened this By-Law or a previous planning law**

Mr. Smith has not previously contravened the Planning By-Law.

From the above it is clear that Mr Smith was unaware that rider plans were not submitted and therefore not approved . He has now decided to do the right thing, and to normalise the situation by submitting the required land use planning applications (to obtain the Overstrand Municipality's planning approval), so that he may submit the as-built building plans for the

Municipality's building plan approval. It would therefore be unfair for the Municipality to penalise the victim of the unlawful building work.

We trust the information will suffice in processing the application. However, please feel free to contact the undersigned if you have any queries or require any additional information.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J T Smith', written in a cursive style.

J T Smith

DRAWING NOT TO BE SCALED  
VERIFY ALL DIMENSIONS ON SITE

Drawing Information:	
DATE	28 AUGUST 2007
SCALE	1:50
DESIGN BY	JSR
CHECKED BY	JSR
DATE	28 AUGUST 2007
DATE	28 AUGUST 2007
DATE	28 AUGUST 2007

**HOUSE SMITH**

PROMISED ADDITIONS TO EXISTING  
DWELLING ON ERF 2087 40-41  
4th STREET HERMANUS FOR  
MR & MRS J. SMITH  
REF. 308.37.2087.PLAN



**JACQUES DU TOIT**  
ARCHITECTURE & DESIGN

Hermonus 1000  
Hermonus@jacquesdu toit.com / 082 742 3039  
JACQUESDU TOIT@GMAIL.COM  
121 37th STREET GORDONSBURG 7140





**NOTES**

1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.

2. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE SURVEY DATA OR THE EXISTING CONDITIONS SHOWN ON THIS PLAN.

3. THE ARCHITECT HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS SHOWN ON THIS PLAN.

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NO. 1	DESCRIPTION	DATE
1	FOUNDATION	2008
2	WALLS	2008
3	FLOORING	2008
4	CEILING	2008
5	ROOFING	2008
6	MECHANICAL	2008
7	ELECTRICAL	2008
8	PLUMBING	2008
9	PAINTING	2008
10	LANDSCAPE	2008

**HOUSE SMITH**

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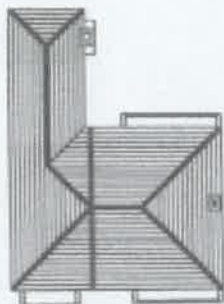
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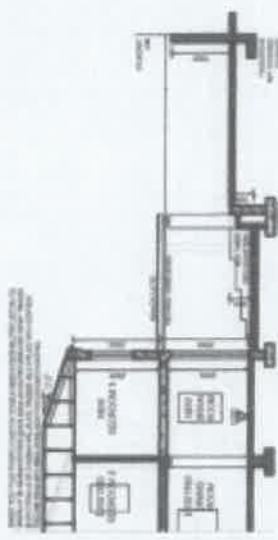
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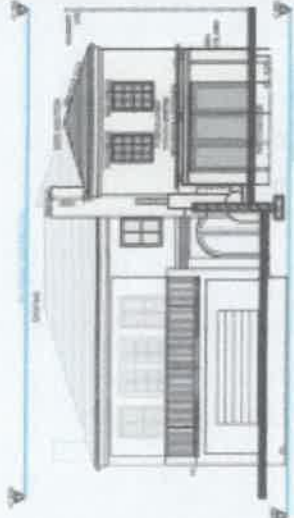




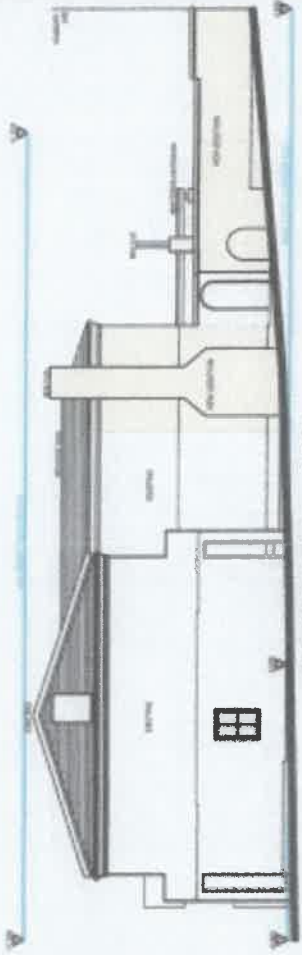
ROOF PLAN 1:400



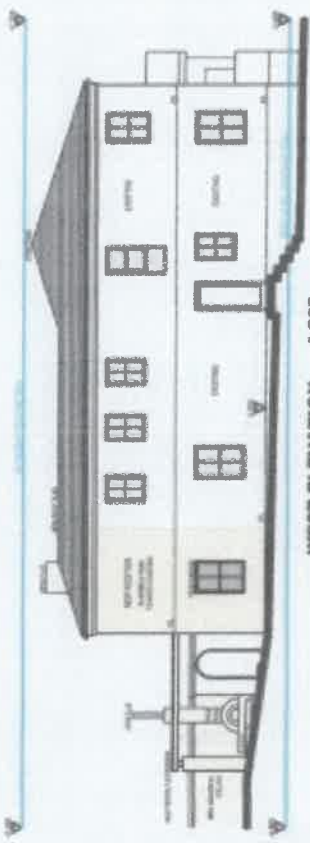
SECTION A-A 1:200



NORTH ELEVATION 1:200



EAST ELEVATION 1:200



WEST ELEVATION 1:200

**NOTES**

1. ALL WORK TO BE ACCORDING TO THE NATIONAL BUILDING REGULATIONS AND ALL APPLICABLE BY-LAWS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING SERVICES AND STRUCTURES.
4. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE LOCAL AUTHORITY.
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3	ROOF		
4	FLOORING		
5	CEILING		
6	PAINTING		
7	GLAZING		
8	MECHANICAL		
9	ELECTRICAL		
10	PLUMBING		
11	LANDSCAPING		
12	OTHER		

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