

ERF 2275, 77 NINTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WRAP PROJECT OFFICE ON BEHALF OF THE TRUSTEES FOR THE TIME BEING OF PHILIP JOUBERT FAMILIETRUST, GW MC DONALD & DJ MCDONALD

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 in order to:

- relax the western lateral building line from 2m to 0m to convert the existing garage into staff accommodation;
- relax the western lateral building line from 2m to 0m to accommodate a laundry room, and
- relax the eastern lateral building line from 2m to 0 to accommodate an existing braai.

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) on or before **10 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 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 2275, NEGENDESTRAAT 77, VOËLKLIP, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE WRAP PROJECT OFFICE NAMENS THE TRUSTEES FOR THE TIME BEING OF PHILIP JOUBERT FAMILIETRUST, GW MC DONALD & DJ MCDONALD

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 ten einde die:

- westelike laterale boulyn vanaf 2m na 0m te verslap om die bestaande motorhuis in personeelverblyf te omskep;
- westelike laterale boulyn vanaf 2m na 0m te verslap om 'n waskamer te akkommodeer, en
- oostelike laterale boulyn vanaf 2m na 0m te verslap om 'n bestaande braai te akkommodeer.

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) voor of op **10 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 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.

I-ERF 2275, 77 NINTH STREET, VOËLKLIP, HERMANUS, KUMASIPALA WASE-OVERSTRAND: ISICELO SOKUNYENISWA NOKUGQITYWA KWESOHLWAYO: ABAKWA WRAP PROJECT OFFICE EGAMENI LETRASTI NGEXESHA LIKA- PHILIP JOUBERT FAMILIETRUST, GW MC DONALD & DJ MCDONALD

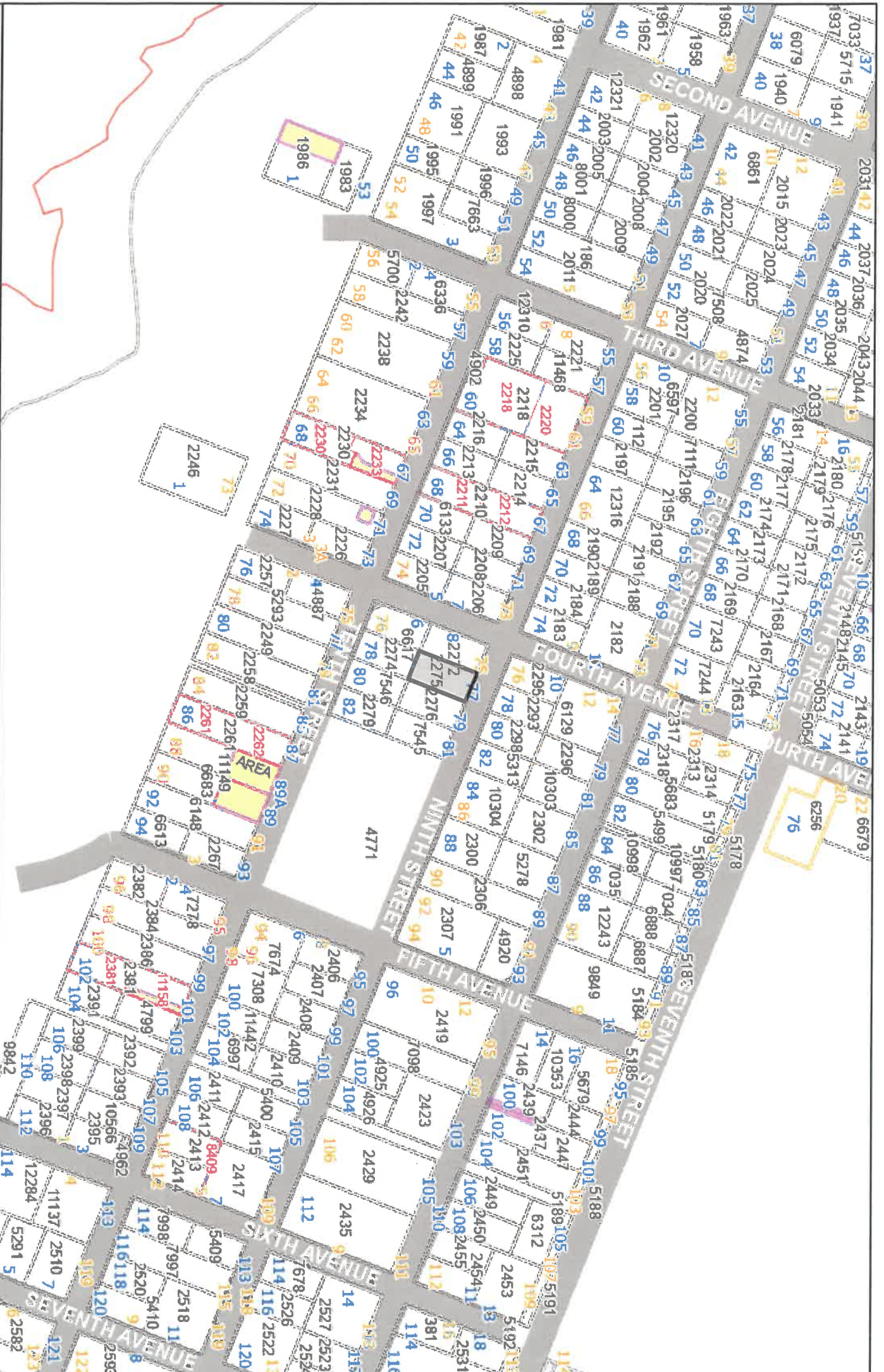
Isaziso siyanikezelwa ngokweCandelo lama-48 loMthetho kaMasipala kaMasipala waseOverstrand kuCwangciso lokuSetyenziswa koMhlaba kaMasipala, ka-2020 (uMthetho kaMasipala) sokuba isicelo sifunyenwe soku kulandelayo:

Ukutenxa ngokuhambelana malunga Candelo 16(2)(b) malunga noku kulandelayo:

- ukunyeniswa komda wesakhiwo osecaleni osentshona ukusuka kwi-2m ukuya ku-0m ukuze kuguqulwe igaraji ekhoyo ibe yindawo yokuhlala abasebenzi;
- khulula umda wesakhiwo osecaleni ongasentshona ukusuka kwi-2m ukuya ku-0m ukulungiselela igumbi lokuhlambela impahla, kunye
- khulula umda wesakhiwo osecaleni ongasempuma ukusuka kwi-2m ukuya ku-0 ukulungiselela indawo vumela ibraai ekhoyo.

Ukumiselwa kwesohlwayo solawulo ngokweCandelo le-16(2)(q) loMthetho kaMasipala.

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 mazingeniswe ngokwezibonelelo zamaCandelo 51 nelama-52 alo Mthetho uYilwayo yaye mazithunyelwe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) ngomhla okanye ngaphambi wama-**10 EyoKwindla 2023** unike igama lakho, idilesi neenkukacha zonxibelelwano nawe, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Xa ufuna ukubuza into malunga nesi saziso ungatsalela umnxeba Umcwangcisi Wedolophu **uMnu. P Roux** 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.





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 2275 Hermanus
Extent	496m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 2275 Hermanus, hereafter referred to as the subject property, is located at 77 Ninth Street (refer **Plan 1 – Locality Plan**). The property owners (Philip Joubert Familietrust, Joan Deborah McDonald and William Geoffrey McDonald) have appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney**).

The property owners bought the subject property in September 2022. They are in the process of altering the dwelling house to meet their needs. The alterations that require consent from the OM is to convert the existing single garage into staff accommodation and add a new laundry to the rear of the garage.

The property owners need to apply for the determination of an administrative penalty, since the alterations have already taken place. In addition to the alterations, the previous owners improved the property with a braai that is located on the boundary line. The braai is higher than 1m which absolves it from a general encroachment in terms of the OMLUS.

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

- Permanent departure from the side building line to accommodate the staff accommodation and laundry;
- Permanent departure of the side building line to accommodate the existing braai; and
- Determination of an administrative penalty.



4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

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

4.1 Permanent Departure from the 2m western building line to 0m to accommodate the change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

4.2 Permanent Departure from the 2m western building line to 0m to accommodate the new laundry in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The property owners bought the property with the vision to alter the dwelling house in such a way that it will be able to meet their needs. As a result of the size and limited space of the subject property, the proposal is not out of the ordinary for the area as the uses being proposed are all connected to residential purposes.

The staff accommodation will allow the property owners to permanently employ and provide accommodation to a staff member to utilise and earn a living and have adequate accommodation to reside in.

The single garage is in the process of being converted and is located on the boundary line and the side building line will understandably be encroached upon by the new staff accommodation. The staff accommodation will be considered as the second dwelling unit and will not be out of the ordinary as the subject property is located in a predominantly residential setting.

Additionally, the property owners are adding a small structure to the rear of the existing garage that will function as a separate outside laundry room. The laundry will be used for the washer and dryer as most of the functional space is located on the first floor of the dwelling house, which areas include the kitchen and dining room areas. (Refer **Plan 4 – Site Development Plans**)

The area of encroachments is indicated below:

Area	Extent
Staff Accommodation (Change of Use)	±12,93m ²
Laundry Room	±5,54m ²

4.3 Permanent Departure from the 2m eastern building line to 0m to accommodate the existing braai in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

As mentioned in Section 3 above, the previous property owners constructed the braai on the eastern side of the property. The property owners were not aware of the illegal construction when they took transfer thereof. The property owners are aware that they are responsible for the compliance of the property in terms of the By-Law.

The braai is located on the eastern boundary line and the total area of the braai equates to only $\pm 8,6\text{m}^2$:



Figure 2: Contravening existing braai

4.4 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.

There are several contraventions that need to be addressed and 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 in this application.

We however would like to request that the administrative penalty be viewed in two categories. The first is the construction of the braai that took place before the property owners took transfer. They were not involved in this, and it is therefore requested that the administrative penalty be waived as the property owners were unaware of the contravening braai when they bought the property, and it was the previous owners that constructed the braai without prior building plan approval.



MOTIVATION

The second category is the current construction that is taking place without building plan approval. The property owners are aware of the contravention and were required to ensure the building work being complete was compliant with the By-Law.

Category	Responsible Party	Area	Extent
1	Previous Owners	Braai	±8,6m ²
2	Current Owners	Laundry Room	±5,54m ²
2	Current Owners	Staff Accommodation (Change of Use)	±12,93m ²

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.

According to the municipal valuation roll the property is valued at R2 556 900, with the total extent of the property being 496m² each square meter is valued at R5 155,04.

Area	Extent	Maximum Applicable Penalty
Braai	±8,6m ²	R44 333,34
Laundry Room	±5,54m ²	R28 558,92
Staff Accommodation (Change of Use)	±12,93m ²	R66 654,67
		Area x Square Meter Value

This application does however serve as proof that the property owners are taking steps to rectify the contraventions and that the maximum penalty is not applied.

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

The property owners were not aware of the past contraventions that had occurred when they took transfer of the property. The previous property owners had constructed the braai without building plans. The property owners however want to ensure that all building work is complaint.

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

The braai has already been built. The alterations have already been built.

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.



5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Permanent Departure** from the 2m western building line to 0m to accommodate the change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.2 Permanent Departure** from the 2m western building line to 0m to accommodate the new laundry in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.3 Permanent Departure** from the 2m eastern building line to 0m to accommodate the existing braai in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 5.4 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 T47037/2022 (refer **Annexure B – Title Deed**) was perused and there are no restrictive conditions that prohibit the departure from the side building line.

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
Primary use	Crèche, Dwelling House , Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House and Second Dwelling Unit
Consent uses 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%	Area of site = 496m ² Building Footprint – 330.38m ² Coverage = 330.38m ² / 44%
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	Deviate – Applied for and motivated • Permanent Departure from the 2m western building line to 0m to accommodate the change of use • Permanent Departure from the 2m western building line to 0m to accommodate the new laundry • Permanent Departure from the 2m eastern building line to 0m to accommodate the existing braai
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	Existing – Double storey.
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	2 Parking Bays
		Comply
		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 is not anticipated to place a substantial additional load on the existing services.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the subject property is gained from Ninth 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 of addressing all the land use requirements and ensuring the property meets the requirements of the property owners. In order to achieve this, the property owners are required to address the non-compliance and illegal encroachments on the building lines.

Socio-economic impact	It is not expected that the departure will have a socio-economic impact. The proposal is to rectify past contradictions and ensure that the property is compliant with the provisions of the OMLUS.
Compatibility with surrounding uses.	The proposal is not out of character with the surrounding area and the encroachments are not predicted to have a negative impact on the surrounding area.
Impact on the external engineering services	Refer Section 9.
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	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.



MOTIVATION

To meet their requirements, the property owners have 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 change of use from a garage to staff accommodation is not predicted to have any impact on views, sunlight, or the character of the area.

The garage is not being proposed to be altered externally and only internal alterations are being proposed. The laundry is a completely new structure that was built over the building line, but it is an associated use with residential and not considered as habitable space.

Economic impact

The application will allow the property owners to employ a permanent employee and provide such employee with adequate accommodation.

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 will have a positive impact on the property itself.

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 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. The property has limited developable space and to convert the existing garage unlocks additional space that may be used for accommodation purposes.

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.



13. EVALUATION

The application is being submitted to obtain consent for the existing conversions, alterations and additions that have taken place which includes the conversion existing single garage into staff accommodation and the addition of a new structure at the rear of the garage that will be used for a new laundry.

The property owners are also required to apply for a determination of an administrative penalty, since the alterations have already taken place in addition to the previous owners that had improved the property with a braai.

Due to the fact that the current owners are taking steps to ensure the property is aligned with the requirements of the OMLUS, it is requested that the administrative penalty be waived as there has been no malintent and no complaints have been received.

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

14. RECOMMENDATION

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

- 14.1 Permanent Departure** from the 2m western building line to 0m to accommodate the change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 14.2 Permanent Departure** from the 2m western building line to 0m to accommodate the new laundry in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 14.3 Permanent Departure** from the 2m eastern building line to 0m to accommodate the existing braai in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 14.4 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.

