

ERF 4174 (a portion of Erf 4173, Onrustrivier), 12 VILLAGE LANE, HEMEL EN AARDE VILLAGE, HERMANUS: APPLICATION FOR DEPARTURE, AMENDMENT OF A CONDITION IN RESPECT OF AN EXISTING APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF IBISICON CONSULTANTS CC

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

- **Departure** in terms of Section 16(2)(b) to relax the;
 - a) eastern street building line from 4,5m to $\pm 2,36m$ to accommodate the change of use of the approved carport into a kitchen of the existing restaurant;
 - b) western street building line from 4,5m to $\pm 4,0m$ to accommodate the change of use of the approved bathroom and scullery into a kitchen and bathroom of the existing restaurant;
 - c) south eastern street building line from 4,5m to $\pm 1,51m$ to accommodate a bathroom;
 - d) eastern street building line from 4,5m to $\pm 2,98m$ to accommodate a bathroom;
 - e) southern street building line from 4,5m to $\pm 4,0m$ to accommodate the change of use of the approved entrance into a refuse area.
- **Amendment of a condition in respect of an existing approval** in terms of Section 16(2)(h) of the By-Law to allow the property owner to accommodate 6 flats inside the existing building footprint in lieu of 5 flats as per approval condition.
- **Amendment of a condition in respect of an existing approval** in terms of Section 16(2)(h) of the By-Law to allow the property owner to provide 27 parking bays in lieu of the 32 bays as per approval condition, and which is also in line with the parking requirements of the Hemel-en-Aarde Village Scheme Regulations.
- **Determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law for the unauthorised building line encroachments as detailed above.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 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 / loretta@overstrand.gov.za) on or before **17 March 2023**, quoting your name, address and contact details, interest in the application and reasons for comments. 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 4174 ('n gedeelte van Erf 4173, Onrustrivier), VILLAGELAAN 12, HEMEL EN AARDE VILLAGE, HERMANUS: AANSOEK OM AFWYKING, WYSIGING VAN 'N BESTAANDE GOEDKEURINGVOORWAARDE EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: WRAP PROJECT OFFICE NAMENS IBISICON CONSULTANTS CC

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

- **Afwyking** ingevolge Artikel 16(2)(b) om die:
 - a) oostelike straatboulyn vanaf 4,5m na $\pm 2,36m$ om die gebruiksverandering van die goedgekeurde motorafdak na 'n kombuis in die bestaande restaurant te akkommodeer;
 - b) westelike straatboulyn vanaf 4,5m na $\pm 4,0m$ om die gebruiksverandering van die goedgekeurde badkamer en opwaskamer na 'n kombuis en badkamer in die bestaande restaurant te akkommodeer;
 - c) suidoostelike straatboulyn vanaf 4,5m na $\pm 1,51m$ om 'n badkamer te akkommodeer;
 - d) oostelike straatboulyn vanaf 4,5m na $\pm 2,98m$ om 'n badkamer te akkommodeer;
 - e) suidelike straatboulyn vanaf 4,5m na $\pm 4,0m$ om die gebruiksverandering van die goedgekeurde ingangsarea na 'n vullis-area te akkommodeer.
- **Wysiging van 'n bestaande goedkeuringvoorwaarde** ingevolge Artikel 16(2)(h) van die Verordening om die eienaar van die eiendom toe te laat om 6 woonstelle binne die oppervlak van die bestaande gebou te akkommodeer in plaas van 5 woonstelle soos per goedkeuringsvoorwaarde.
- **Wysiging van 'n bestaande goedkeuringvoorwaarde** ingevolge Artikel 16(2)(h) van die Verordening om die eienaar van die eiendom toe te laat om 27 parkeerplekke te voorsien in plaas van 32 parkeerplekke soos per goedkeuringsvoorwaarde, en wat ook in lyn is met die parkeervereistes van die Hemel-en-Aarde Dorpskema regulasies.
- **Bepaling van 'n administratiewe boete** ingevolge Artikel 16(2)(q) van die Verordening vir die onwettige boulyn oorskrydings soos hierbo uiteengesit.

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 / loretta@overstrand.gov.za) voor of op **17 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 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 4174 (inxalenye yeSiza-4173, e-Onrustrivier), i-12 VILLAGE LANE, I-HEMEL EN AARDE VILLAGE, HERMANUS: ISICELO SOKUPHAMBUKA, SOKULUNGISWA KOMQATHANGO WEMVUME EKHOYO KUNYE NOKUGQITYWA KWESOHLWAYO: I-MESSRS WRAP PROJECT OFFICE EGAMENI LIKA IBISICON CONSULTANTS CC.

Kukhutshwa isaziso ngokumayela neCandelo 48 loMthetho Otshintshiweyo woMasipala waseOverstrand ongokuSetyenziswa Nokucetywa koMhlaba kaMasipala, 2020 (uMthetho kaMasipala), ukuba kufunyenwe ezi zicelo zilandelayo ezimayela:

- **Sokuphambuka** ngokweSolotya 16(2)(b) yaloMthethwana ukuya:
 - a) umda wesakhiwo ongasempuma ukusuka kwi-4,5m ukuya ku- $\pm 2,36m$ ukulungiselela utshintsho lokusetyenziswa i-carport evunyiweyo ukuya kwikhithi lendawo yokutyela ekhoyo;
 - b) Umda wesakhiwo sesitalato esisentshona ukusuka kwi-4,5m ukuya ku- $\pm 4,0m$ ukulungiselela utshintsho losetyenziso lwegumbi lokuhlambela elivunyiweyo kunye ikhithi scullery ukuya esisekhithshini negumbi lokuhlambela lendawo yokutyela ekhoyo;
 - c) Umda wesakhiwo osemazantsi-mpuma ukusuka kwi-4,5m ukuya ku- $\pm 1,51m$ ukuze ube nendawo yokuhlambela;
 - d) Umda wesakhiwo ongasempuma ukusuka kwi-4,5m ukuya ku- $\pm 2,98m$ ukuze ube nendawo yokuhlambela;
 - e) Umda wesakhiwo osemazantsi ukusuka kwi-4,5m ukuya ku- $\pm 4,0m$ ukulungiselela utshintsho losetyenziso lwesango elivunyiweyo lokungena kwindawo yenkunkuma.
- **Ukuhlengahlengiswa kwemiqathango ngokubhekiselele kulwamkelo olukhoyo** ngokweSolotya 16(2)(h) yaloMthethwana, ukuvumela umnini propati ukuba athabathe iiflethi ezi-6 ngaphakathi kwendawo ekhoyo yesakhiwo endaweni yeeflethi ezi-5 ngokwemeko yemvume.

- **Ukuhlengahlengiswa kwemiqathango ngokubhekiselele kulwamkelo olukhoyo** ngokweSoloty 16(2)(h) yaloMthethwana, ukuvumela umnini propati ukuba abonelele ngeendawo zokupaka ezingama-27 endaweni yeebheyi ezingama-32 ngokwemiqathango yolwamkelo, kwaye ekwahambelana neemfuno zokupaka zeHemel-en-Aarde Village Scheme Regulations.
- **Ukugqitywa Kwesohhwayo** ngokumayela neCandelo 16(2)(q) loMthetho kaMasipala kuphokelo lwemida yesakhiwo ungenelelo lwe olungagunyaziswanga njengoko kucacisiwe ngasentla.

Iinkcukacha ngokwemiba yesi sindululo ziyafumaneka ukuze zihlolwe ngulowo nalowo ufuna ukuzifundela kwentsimbi yesi-08:00 ne-16:30 kwiCandelo: Zicwangiso ngeDolophu kwa-16 Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo zingangeniswa kuMaspala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngokwezibonelelo zamaSoloty ama-51 nama-52 laloMthethwana nge **17 EyoKwindla 2023** okanye ngaphambi, ukhankanye igama lakho, idilesi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Imibuzo ngefowuni ingabhekiswa Umcwangcisi Wedolophu, **uMnu. H Boshoff** ku-028-313 8900.. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda okanye ukubhala angaya kwiCandelo leDolophu apho igosa likamasipala liza kumnceda avakalise izimvo zakhe ngokusemethethweni.

Locality Plan Erf 4174 - Onrustrivier

 Subject property

Plan prepared by: Thian Jansen

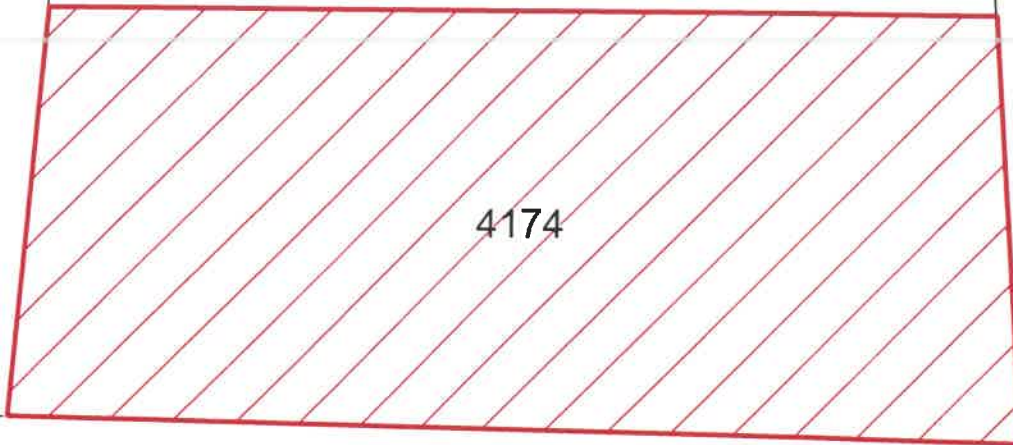
Tel: 028 313 1411

Email: admin@wrapgroup.co.za

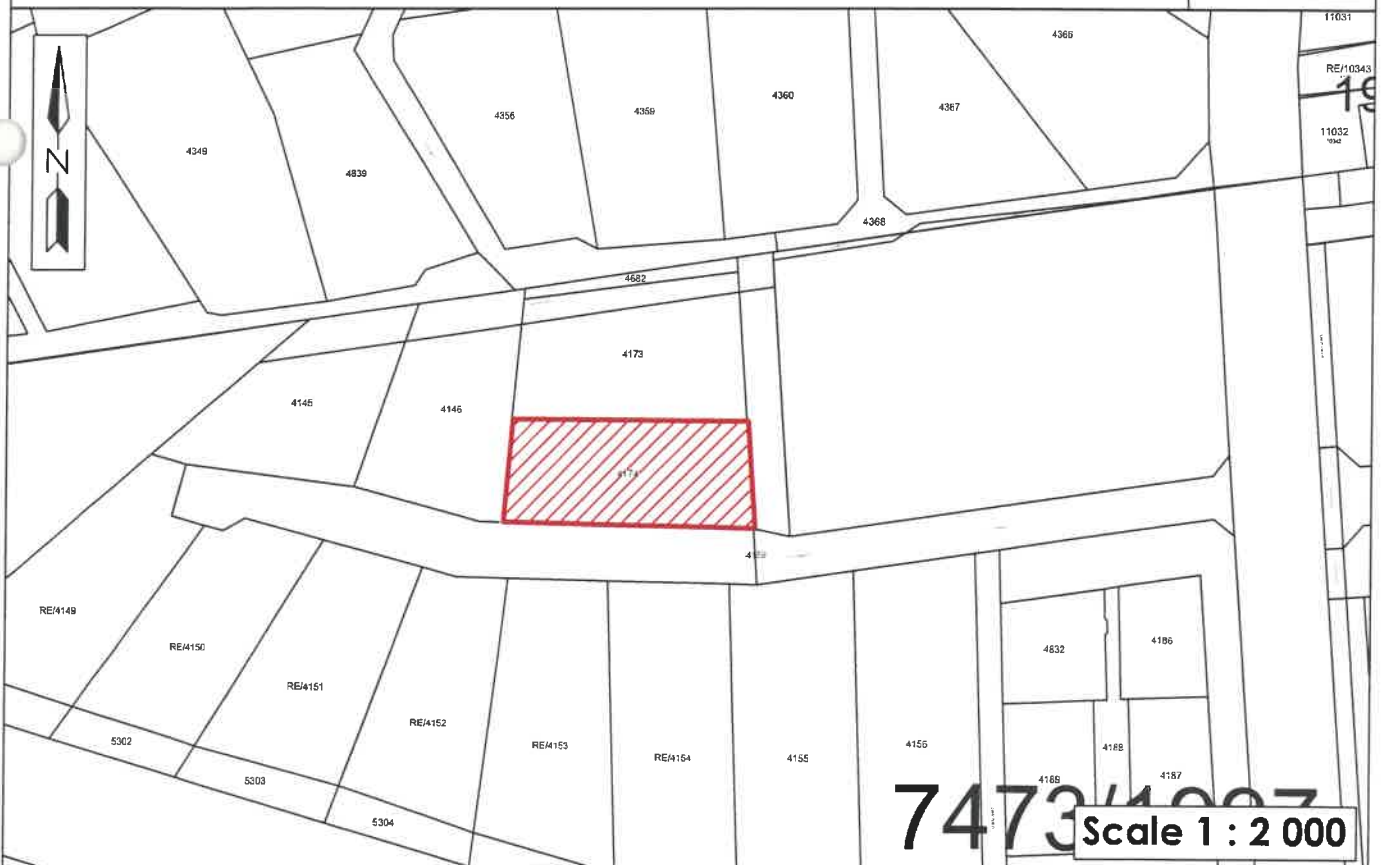
Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200



Project Office
Town Planning & Project Management



Scale 1 : 500



7473/1007
Scale 1 : 2 000



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
SZ	Special Zone (Hemel-en-Aarde Village)

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 4174, Onrustrivier
Extent	2099m ²
Zoning	Special Zone (Hemel-en-Aarde Village)

3. BACKGROUND AND INTENT

Erf 4174 Onrustrivier, hereafter referred to as the subject property, is located at 12 Village Lane in the Hemel & Aarde Village (refer **Plan 1**). The property owners (Ibisicon Consultants CC) appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney**).

The property owners have a vision to create a sectional title scheme on the property, that will allow them to sell individual portions of the property. The existing building has been built over the past 23 years with several additions and alterations taking place over the course of time.

The historically approved building was built on the 4m street building line and 1,5m side building line, applicable at the time. When the Special Zone (Hemel-en-Aarde Village) was adopted, it altered the building lines to 4,5m for street building lines and 1,5m common building lines. This alteration of the building lines meant that the existing approved building encroaches on the building lines.

It was discovered that the use in areas of some of the additions and alterations within the 4,5m street building changed without prior approval and as a result the property is currently not compliant in terms of the Hemel-en-Aarde Village Scheme Regulation.

Additionally, a land use application was approved to allow the property owners to establish 6 flats that may be rented out for holiday accommodation and the conditions stated that 32 on-site parking bays are required to be provided. Application was made in 2013 to amend the condition to only allow 5 flats, as only 5 flats were required at that stage.



MOTIVATION

Application is currently being made to amend both the 2012 and 2013 approvals. A condition in the 2012 approval states that 32 on-site parking bays to be provided. This condition needs to be amended as it is more than what is required in terms of the Hemel-en-Aarde Village Scheme Regulation.

Additionally, the condition of the 2013 approval to only allow 5 flats is being proposed to be amended to reinstate the previously approved 6 flats as the proposal is to create an additional flat on the ground floor.

To ensure compliance with the Hemel-en-Aarde Village Scheme Regulation, approval is required to allow these changes of use to ensure the building and the alterations are compliant with the Hemel-en-Aarde Village Scheme Regulation.

Approval of the following applications is required:

- Departure from the street building line;
- Amendment of conditions in respect of an existing approval; 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 intent is achieved. The following is proposed:

4.1 Permanent Departure from the 4,5m eastern street building line to $\pm 2,36\text{m}$ to allow the change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The first section where the use has been changed is a historically approved carport that was altered to accommodate the kitchen of the existing restaurant. The sections encroaching on the building line are used for storage and other kitchen areas. The carport was approved in 1999 by the municipality's building control department and the town planning department (Refer **Annexure C – Land Use Approval (1999)**) and was changed over time into these new sections of kitchen that for which approval of the change of use is required. (Refer **Annexure D - Approved building plan - 1999 (Plan No 100044)**)

The total area that is encroaching on the building line, is only $\pm 10,7\text{m}^2$, for which consent for the change of use is required.



MOTIVATION

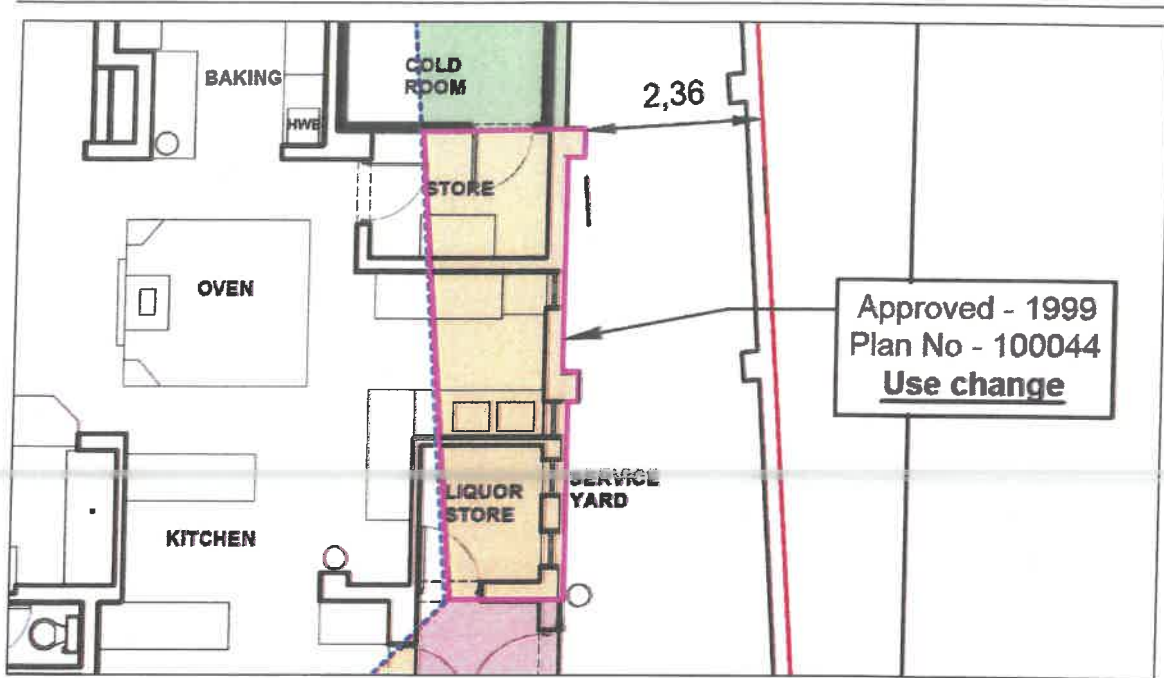


Figure 1: Eastern Street building line encroachment (AS-BUILT)

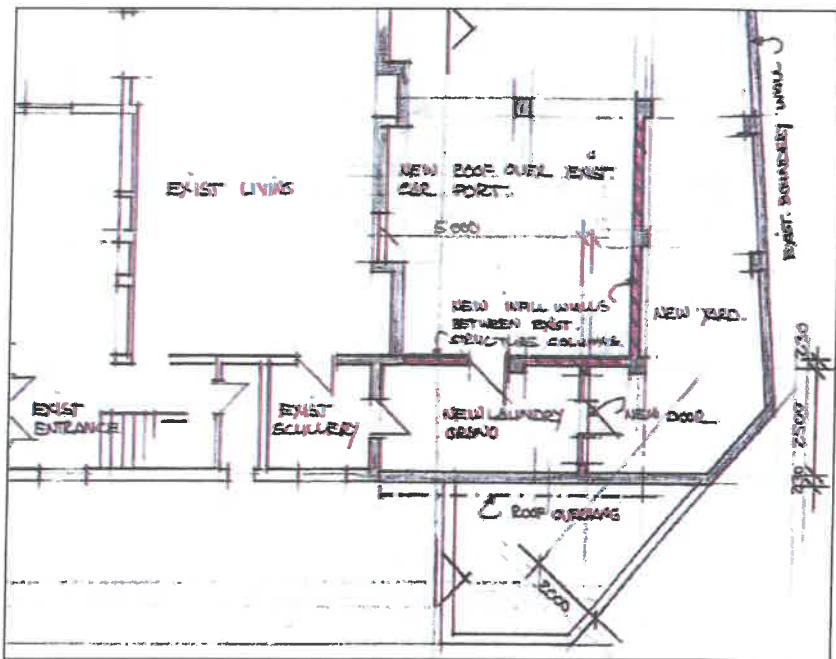


Figure 2: Extract from approved building plan - 1999 (Plan No 100044)

The entire area has been transformed and the property owner was unaware that approval must be obtained for a change of use and was under the impression that as he obtained approval in 1999 it would not be required again. The kitchen has been



MOTIVATION

established for quite some time and there has never been a complaint and/objection regarding the placement or location thereof.

4.2 Permanent Departure from the 4,5m western street building line to $\pm 4,0\text{m}$ to allow the change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The second section where the use has been changed is a historically approved bathroom and scullery area in 1999. The section was approved on the historic 4m street building line. However, due to the Special Zone that was adopted, it was altered to 4,5m.

Over the past 23 years, small alterations to the internal portions occurred which means that the uses of the area have been changed slightly. This area was approved for the use of a storage area and scullery in 1998 and 1999, but these areas were altered and changed to accommodate portions of the existing kitchen (of the restaurant) and bathroom for the patrons of the restaurant. (Refer and **Annexure D - Approved building plan - 1999 (Plan No 100044)** and **Annexure E - Approved building plan - 2016 (Plan No 30049)**)

The total area that is encroaching on the building line, is only $\pm 5,57\text{m}^2$, for which consent for the change of use is required.

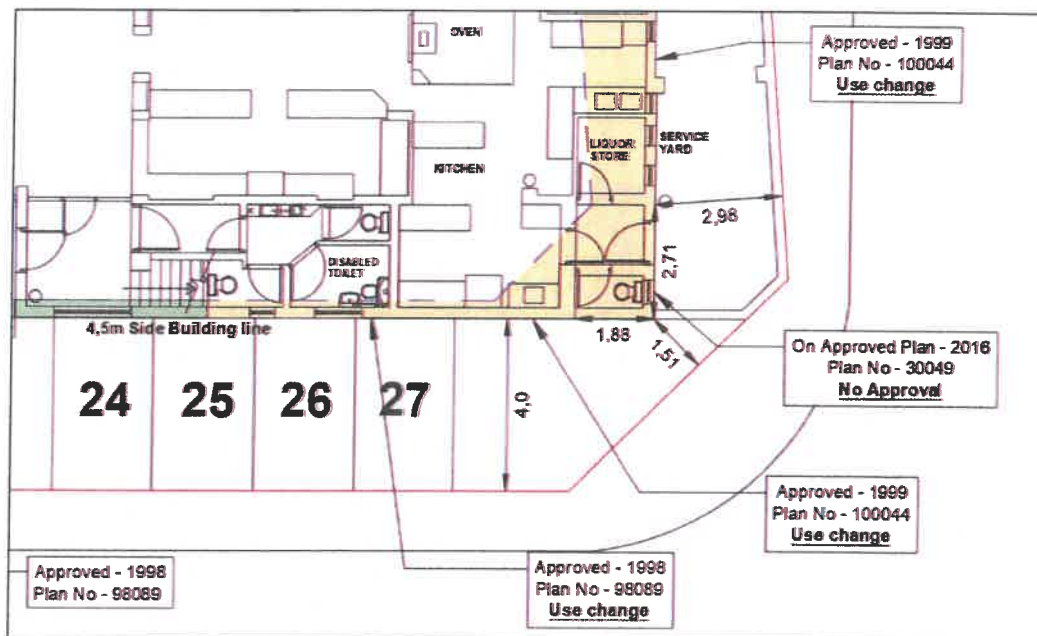


Figure 3: Southern Street building line encroachment (AS-BUILT)

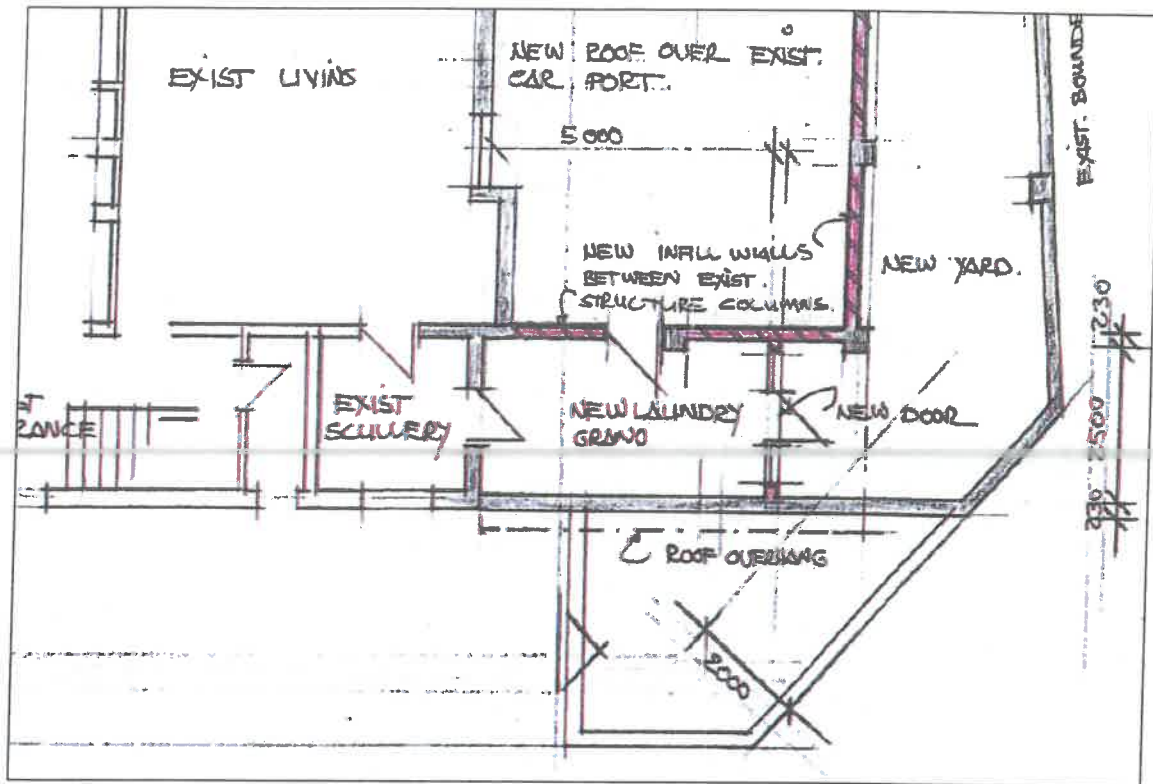


Figure 4: Approved building plan - 1999 (Plan No 100044)

The entire area has been transformed and the property owner was unaware that approval is required for a change of use and was under the impression that as he obtained approval in 1998/1999 it would not be required again. The kitchen and bathrooms have been established for quite some time and there has never been a complaint and/objection regarding the placement or location thereof.

The property owners now realise that land use needs to be considered as the changes of use are not out of the ordinary as a restaurant is a primary right but trigger the application in terms of the Special Zone (Hemel-en-Aarde Village).

4.3 Permanent Departure from the 4,5m south eastern street building line to $\pm 1,51m$ to allow a bathroom in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

4.4 Permanent Departure from the 4,5m eastern street building line to $\pm 2,98m$ to allow a bathroom in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The third section of the existing building is the south-eastern corner of the building where a bathroom is situated. It does appear on the 2016 approved plan, Plan No – 30049 but it is not shown as new building work and indicated as existing. There is no historical

approval for the bathroom, and it is required to be included into this application to obtain consent. (Refer **Annexure E - Approved building plan - 2016 (Plan No 30049)**)

The bathroom was added to provide ablutions to the staff and make it more accessible for them if they were required to use the bathrooms. The bathroom is encroaching on two street building lines which include the south-eastern and eastern by 1,51m and 2,98m in that order. The bathroom is only equating to a small section that is located over the building lines and is only $\pm 1,41\text{m}^2$ in extent.

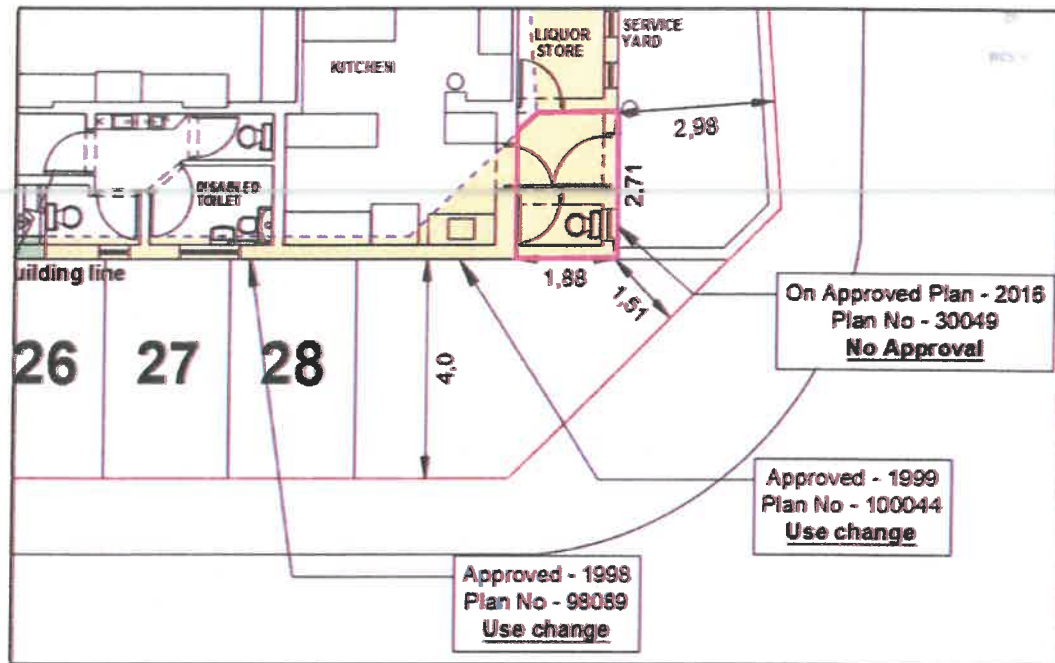


Figure 5: Existing Bathroom encroachment (AS-BUILT)

The refuse area was added for functional purposes and the property owners were not aware consent to encroach on the street building lines is required. The property owners now realise that this needs to be considered as the uses are not out of the ordinary and the bathroom is an extension of the restaurant, which is a primary right in terms of the Special Zone (Hemel-en-Aarde Village).

4.5 Permanent Departure from the 4,5m southern street building line to $\pm 4\text{m}$ to allow a change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The fourth and final section of the existing building that is required to be included into the application is the front section of the building where a refuse area was constructed, and an indicated and approved open section was enclosed. (Refer **Annexure F - Approved building plan – 1998 (Plan No 98089)**)



MOTIVATION

The refuse area was added to provide a separate area where the refuse generated on the property may be collected. The area is managed to ensure the area is kept clean and safe in terms of health regulations.

The area that was enclosed is only a small section that is located over the building line and in total is only $\pm 5,02\text{m}^2$.

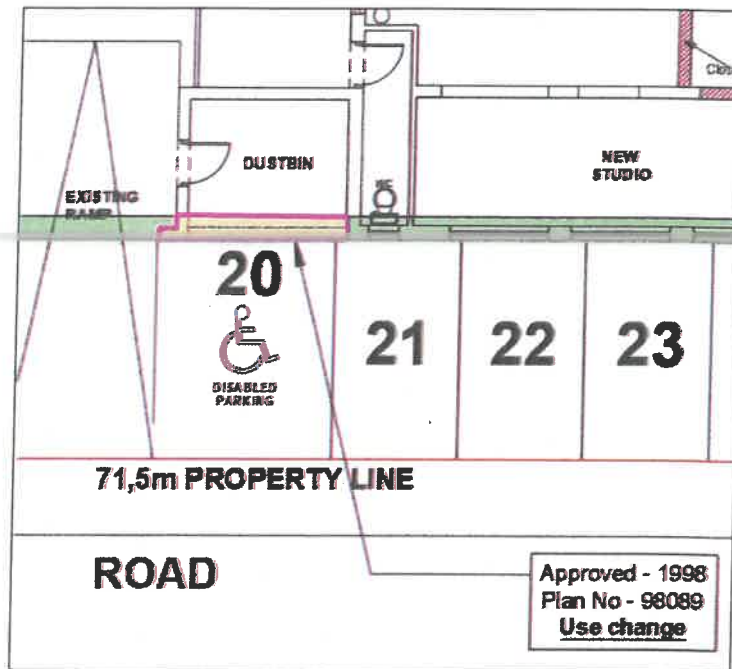


Figure 5: Existing refuse room encroachment (AS-BUILT)

The refuse area was added for functional purposes and the property owner was not aware that land use approval was required as they were utilising the same 4,0m building line previously approved. As previously mentioned, the property owners now realises that this needs to be considered as the use adds a positive aspect to the property and it is required in terms of the OMLUS as the Hemel-en-Aarde Village Scheme Regulation does not specify the requirements.

4.6 Amendment of a condition in respect of an existing 2013 approval in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

As mentioned previously, the property owners in 2012, obtained approval that allowed them to construct 6 flats inside the existing building footprint. That was subsequently amended in 2013 to change the 6 flats to 5 flats, the proposal is to amend the following condition and reinstate the 6 flats as originally approved in 2012:



"1(a) that condition 1(a) in the resolution dated 25 April 2012 be amended as follows:

"1(a) that the approval for the FIVE flats as indicated on Plan No WO1R and WO2R dated March 2013"

Refer to **Annexure G – Land Use Application Approval (2013 – Page 10 to 15)**.

The property owners have a vision to alter the ground floor to develop the sixth flat, as it was already approved it is only requested that the historic 2012 approval be reinstated and that the 2013 condition be amended.

4.7 Amendment of a condition in respect of an existing 2012 approval in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

As mentioned previously, the property owners in 2012, obtained approval that allowed them to construct 6 flats inside the existing building footprint. The conditions of approval stated the following:

"1(b) that at least thirty-two (32) on-site parking bays (including garages) be provided to the satisfaction of the Senior Manager: Town Planning and Property Administration"

Refer to **Annexure G – Land Use Application Approval (2012 – Page 1 to 10)**.

According to the Hemel-en-Aarde Village Scheme Regulations the parking requirements are calculated as follows:

Tourism Business = 1 parking bay per 25m² Existing GLA = 389m ² 16 (15.56) Parking Bays Required
Main Dwelling = 2 Parking Bays Required
Guest Units / Flats = 1.25 per flat / unit 7.5 Parking Bays Required
Total Parking Bays Required = 26
Total Parking Bays Provided = 27

With the parking calculation it is not required to provide 32 parking bays and the proposal is to amend the condition to only require the property owners to provide 26 parking bays



MOTIVATION

as per the parking calculations. The property owner can provide 27 parking bays, being 1 more than required.

4.8 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.

The alterations to the property have been concluded. 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 into this application.

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

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 – 4.5 above.

Section	Use Change	Encroachment area
4.1	Kitchen and Storage	±10,7m
4.2	Kitchen and Bathroom	±5,57m ²
4.3 & 4.4	South-eastern Bathroom	±1,41m ²
4.5	Refuse Area	±5,02m ²

The improved value of the property in terms of the valuation roll is R4 900 000.00. With the property extent of 2099m² each square meter is valued at R2334,44. That means the total administrative penalty should not exceed R52 991,79 (±22,7m² x R2334,44). It is requested that this penalty be waived as the building position was historically approved and it is only the internals of the building that were changed without prior approval.

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

The property owners were not aware that they contravened the scheme regulations as they were under the impression that due to the building departures being approved, no further consent was required. The property owners have been informed of the requirement and will take this into consideration if future alterations are required.

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

There is no unauthorised building/construction.

Whether the unlawful conduct was stopped

The building work was completed and there is no unlawful use being operated on the property.

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 4,5m eastern street building line to $\pm 2,36\text{m}$ to allow 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 4,5m western street building line to $\pm 4,0\text{m}$ to allow the change in use 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 4,5m south eastern street building line to $\pm 1,51\text{m}$ to allow a bathroom in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.4 Permanent Departure** from the 4,5m eastern street building line to $\pm 2,98\text{m}$ to allow a bathroom in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.5 Permanent Departure** from the 4,5m southern street building line to $\pm 4\text{m}$ to allow a change in use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.6 Amendment of a condition in respect of an existing 2013 approval** in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.7 Amendment of a condition in respect of an existing 2012 approval** in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.8 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 also zoned Special Zone. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

7. TITLE DEED

Title deed T71115/1998 (refer **Annexure B**) was perused and there are no restrictive title deed conditions present that may restrict the approval of the changes of use.

8. ZONING

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



MOTIVATION

SPECIAL ZONE (HEMEL-EN-AARDE VILLAGE SCHEME REGULATION)			
Land Use Restrictions			
Primary use	Parameters	Proposal	Comply/ deviate
Tourism Business / Cottage House Industry & Dwelling Flats	Tourism Business Flats	Tourism Business Flats	Comply Comply
Development parameters			
Floor Factor	0.75	0.70	Comply
Coverage	50%	44,6%	Comply
Height	Maximum 8m and 2 storeys	Existing – Two Storey	Comply
Building Lines	Street Building Line – 4,5m Side Building Line – 2m	<ul style="list-style-type: none"> Permanent Departure from the 4,5m eastern street building line to ±2,36m to allow the change of use; Permanent Departure from the 4,5m western street building line to ±4,0m to allow the change of use; Permanent Departure from the 4,5m south eastern street building line to ±1,51m to allow a bathroom; Permanent Departure from the 4,5m eastern street building line to ±2,98m to allow a bathroom; and Permanent Departure from the 4,5m southern street building line to ±4m to allow a change of use. 	Deviate Departure required



MOTIVATION

<p>Parking</p>	<p>Tourism Business – 1 parking bay per 25m² Flats – 1.25 parking bays</p>	<p>Tourism Business = 1 parking bay per 25m² GLA = 389m² 15.56 (16) Parking Bays Required Main Dwelling = 2 Parking Bays Required Guest Units / Flats = 1.25 per flat / unit 7.5 Parking Bays Required Total Parking Bays Required = 26 Total Parking Bays Provided = 27</p>	
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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 expected to impact the service as it is only for the use changes that is being applied for.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the subject property is gained from Village 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 land use application is required to address all the land use requirements and ensuring the property meets all the needs of the property owner. Need is more often a personal feeling of 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 that the departures will have a socio-economic impact. The proposal is to rectify past contradictions and ensure that the property owners are compliant with the provisions of the scheme regulations.
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	It is not predicted that the proposal will have any additional impact on 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.



MOTIVATION

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 ensure that all building work on the subject property is compliant, the property owners 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 unique tourism focussed area, the existing buildings are compliant with the scheme regulation's development parameters ensuring no views, sunlight, or the character of the area is affected.

Economic impact

The subject property has a sustainable impact on the economy by firstly creating jobs and secondly providing accommodation to tourists that visit the Hermanus area. The commercial activity on the property will also add additional value to the property and would create additional income for the municipality through the collection of rates and taxes and an increased municipal valuation.

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 renovation had a positive impact on the area 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

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 building as built and obtaining consent for portions within the building lines where the uses have changed.

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

Approval of the application is required as the property owners have altered certain portions of the buildings without prior approval of the Municipality. These sections were historically approved on the 4,0m building line and with the adoption of the Hemel-en-Aarde Scheme Regulations it was changed to 4,5m. Due to the uses being altered it necessitates approval of a departure application. Additionally, the conditions of approval concerning the on-site parking provision is more than what is required in terms of the Hemel-en-Aarde Village Scheme Regulation and the proposal is only to align with these requirements, while also allowing a 6th flat to be built according to the submitted site plan.

To ensure compliance with the by-law, a determination of an administrative penalty application is also required as these additions/alterations have already occurred. The property owners now understand the land use process and will in the future ensure that all changes adhere to the provisions of by-law and scheme regulations.

This application also serves as a mitigation to waive the administrative penalty as there has been no malintent and no complaints have been received. The property owners have also taken corrective steps to submit this application.

14. RECOMMENDATION

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

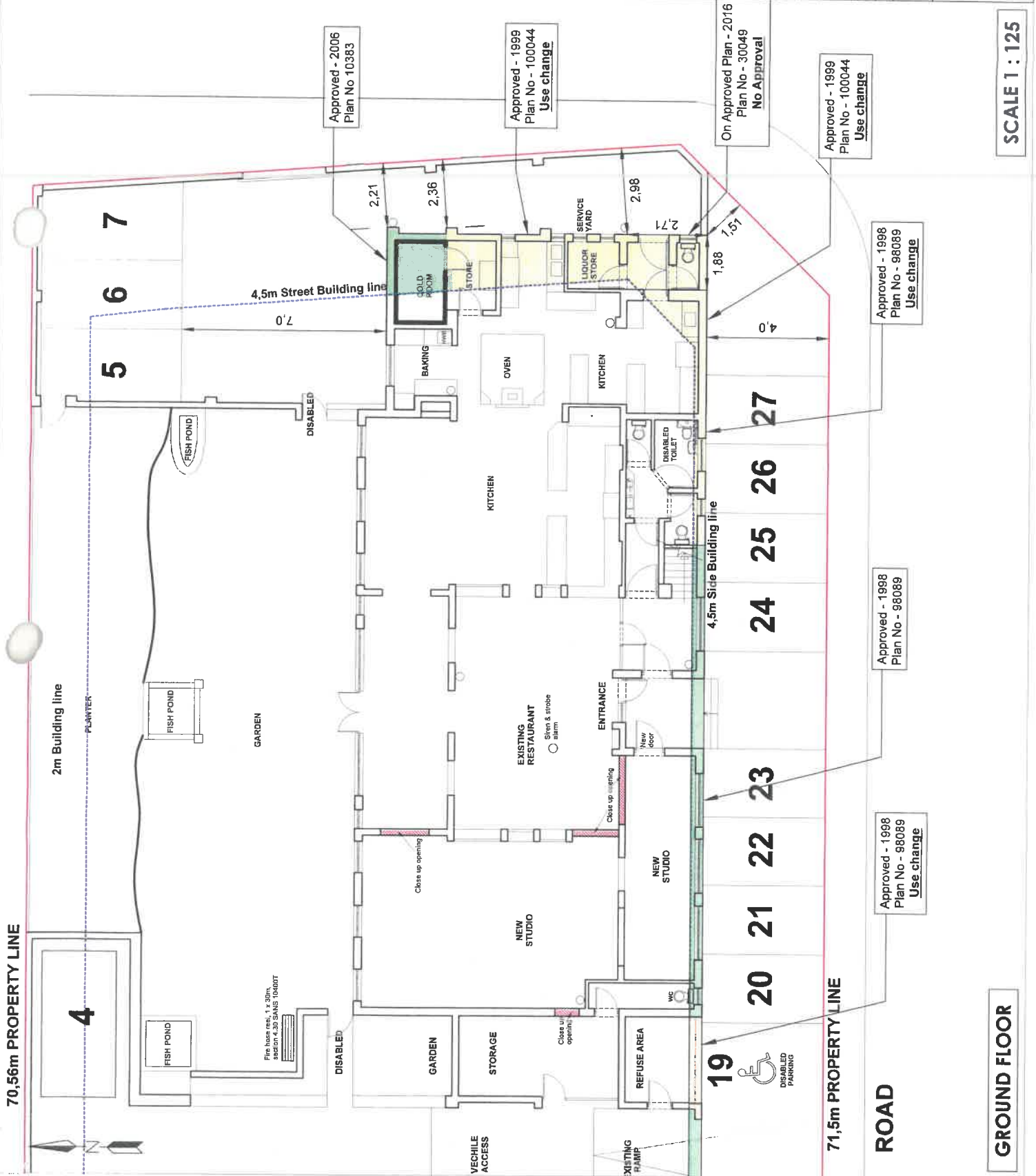
- 14.1 Permanent Departure** from the 4,5m eastern street building line to $\pm 2,36m$ to allow the change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.2 Permanent Departure** from the 4,5m western street building line to $\pm 4,0m$ to allow the change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.3 Permanent Departure** from the 4,5m south eastern street building line to $\pm 1,51m$ to allow a bathroom in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.4 Permanent Departure** from the 4,5m eastern street building line to $\pm 2,98m$ to allow a bathroom in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.5 Permanent Departure** from the 4,5m southern street building line to $\pm 4m$ to allow a change of use in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.



RECOMMENDATION

- 14.6 Amendment of a condition in respect of an existing 2013 approval** in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.7 Amendment of a condition in respect of an existing 2012 approval** in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.8 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.

70.56m PROPERTY LINE



Inset Site Plan Erf 4174 Onrusivier
Property Extent - 2099m ²
Coverage - 936m ² / 44,6%
<u>Parking requirements</u>
<ul style="list-style-type: none"> Commercial activities = 1 parking bay per 25m²
Restaurant = 197m ² New Studio = 87m ² Gallery/Office = 105m ²
Total GLA = 389m²
15 Parking Bays Required
<ul style="list-style-type: none"> Main Dwelling = 2 Parking Bays Required Guest Units / Flats = 1.25 per flat / unit 7.5 Parking Bays Required
Total Parking Bays Required 26
Total Parking Bays Provided 27
Plan Number - 22/144 (002) 2022/12/05
Plan prepared by: Titian Jansen
All distances are approximate and subject to a survey
Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Unit B, Standard House, Corner of Royal and Dikie Oys Street Hermanus, 7200.



SCALE 1 : 125

GROUND FLOOR

Approved - 2006
Plan No 10383

Approved - 1999
Plan No - 100044
Use change

On Approved Plan - 2016
Plan No - 30049
No Approval

Approved - 1999
Plan No - 100044
Use change

Approved - 1998
Plan No - 98089
Use change

Approved - 1998
Plan No - 98089
Use change

Approved - 1998
Plan No - 98089
Use change

ROAD

71,5m PROPERTY LINE



DISABLED PARKING

19

20

21

22

23

24

25

26

27

5

6

7

2m Building line

4.5m Street Building line

4.5m Side Building line

PLANTER

FISH POND

GARDEN

FISH POND

FISH POND

Fire hose reel, 1 x 50m, section 4.30 BANKS 10m/11

DISABLED

GARDEN

STORAGE

NEW STUDIO

EXISTING RESTAURANT

Shim & strobe alarm

ENTRANCE

New floor

Close up opening

Close up opening

KITCHEN

OVEN

BAKING

COLD ROOM

STONE

LIQUOR STORE

SERVICE YARD

KITCHEN

DISABLED TOILET

WC

EXISTING FLAMP

VEHICLE ACCESS

Site Plan
Erf 4174 Onnusrivier

Property Extent - 2099m²
Coverage - 936m² / 44,6%

Parking requirements

- Commercial activities = 1 parking bay per 25m²
- Restaurant = 197m²
- New Studio = 87m²
- Gallery/Office = 105m²

Total GLA = 389m²

15 Parking Bays Required

- Main Dwelling = 2 Parking Bays Required
- Guest Units / Flats = 1.25 per flat / unit
- 7.5 Parking Bays Required

Total Parking Bays Required
26

Total Parking Bays Provided
27

Plan Number - 22/144 (002)

2022/12/05

Plan prepared by: Thian Jansen

All distances are approximate and subject to a survey

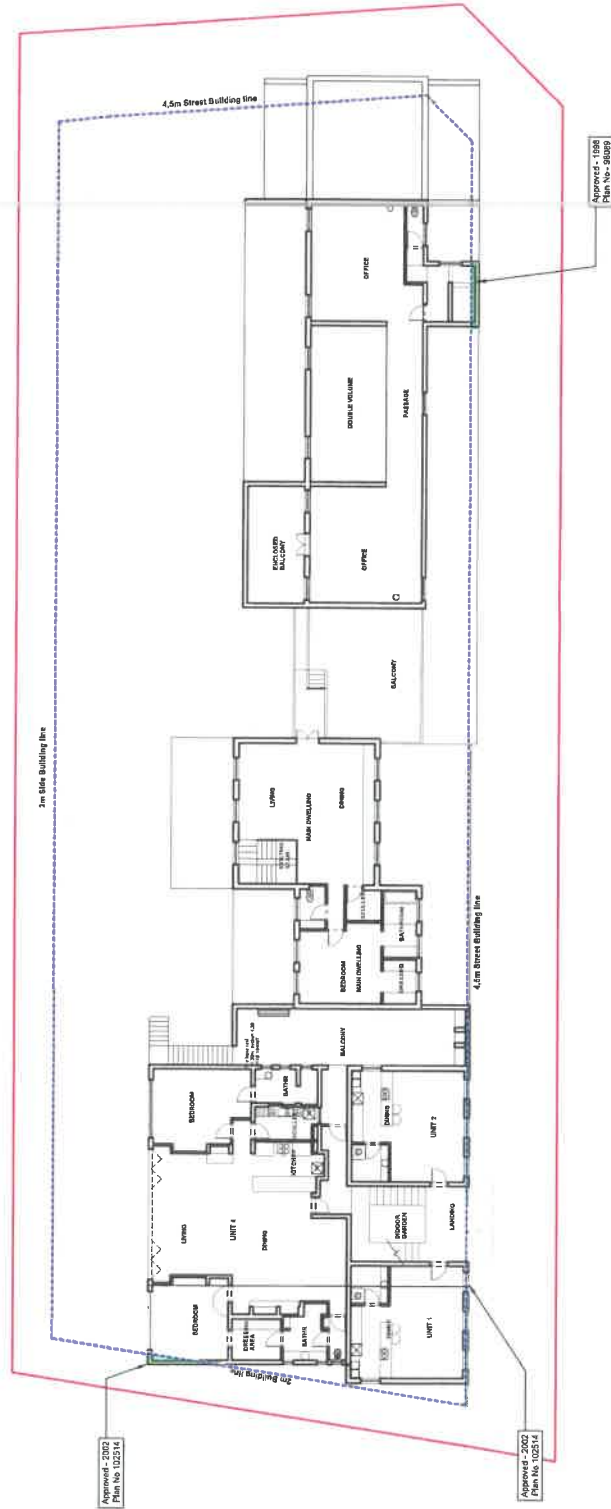
Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,
Corner of Royal and Dikkie Uys
Street Hermanus 7200



Project Office
Town Planning & Project Management



Approved - 2021
Plan No 102574

Approved - 2022
Plan No 102574

SCALE 1 : 250

FIRST FLOOR

