

ERF 6114, 49 6th STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: DLC TOWNPLAN ON BEHALF OF ZONDAGH FAMILY TRUST

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 western side building line from 2.0m to 0.0m to accommodate the change of use of an existing outbuilding (from garage to hobby/entertainment area and toilet) and pergola; and to relax the street building line from 4.0m to 0.0m to accommodate the pergola attached to the outbuilding.
- Determination of administrative penalty in terms of Section 16(2)(q) for the unauthorised land use on the property.

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 must be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) aconradie@overstrand.gov.za) on or before **29 October 2021**, quoting your name, address and contact details, interest in the application and reasons for comment. 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 6114, 6de STRAAT 49, VOËLKLIP, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN BEPALING VAN ADMINISTRATIEWE BOETE: DLC TOWNPLAN NAMENS ZONDAGH FAMILIE TRUST

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

- Afwyking ingevolge Artikel 16(2)(b) om die westelike syboullyn vanaf 2.0m na 0.0m te verslap om die gebruik van die bestaande buitegebou te verander (van 'n motorhuis na 'n stokperdjie/vermaaklikheidskamer en toilet) en pergola te akkommodeer; en om die straatboullyn vanaf 4.0m na 0.0m te verslap ten einde die pergola aangrensend aan die buitegebou te akkommodeer.
- Bepaling van administratiewe boete vir ongemagtigde grondgebruik op die eiendom.

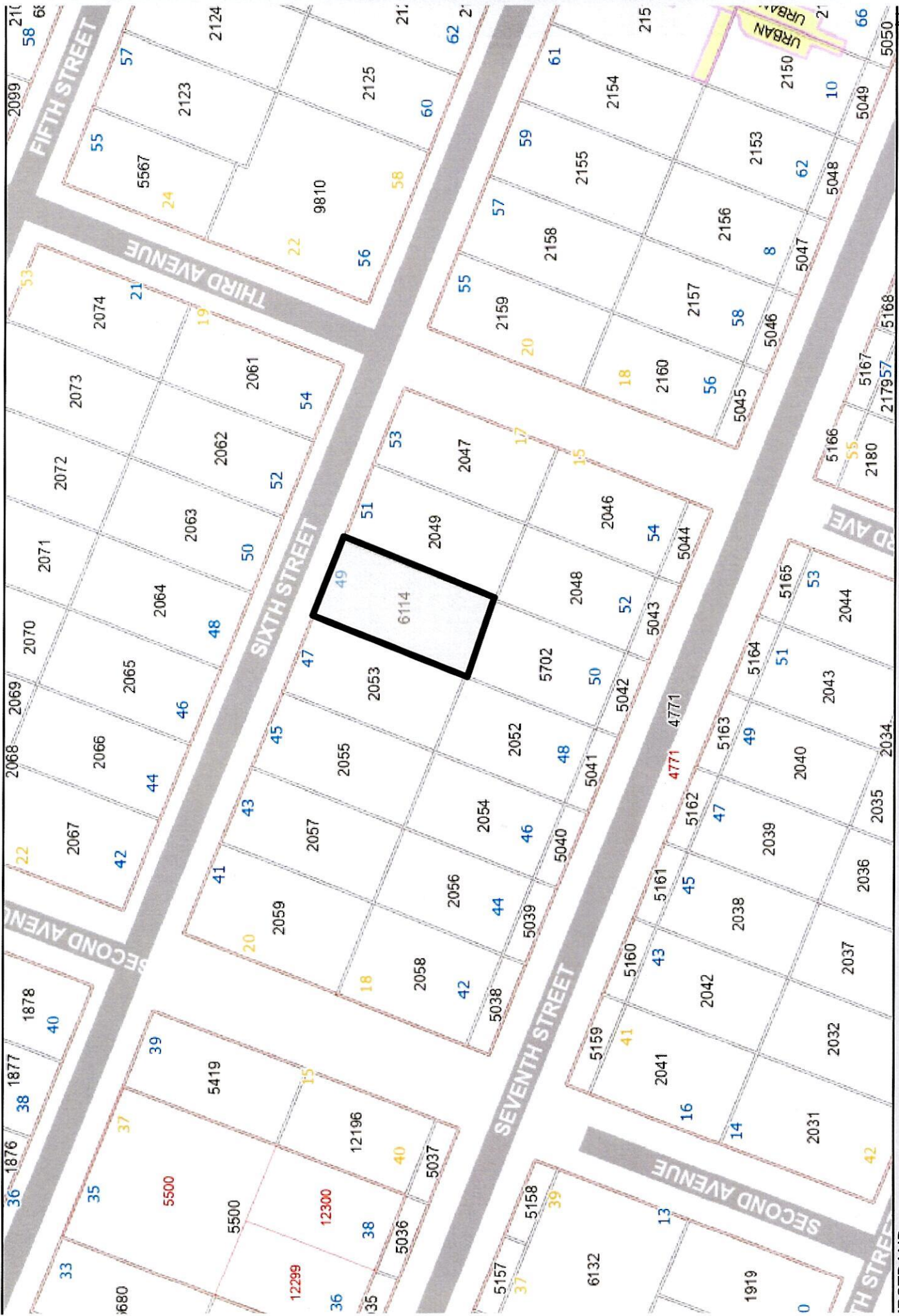
Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige skriftelike kommentaar moet ingevolge die bepalings van Artikels 51 en 52 van die Verordening ingedien word en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) aconradie@overstrand.gov.za) bereik voor of op **29 Oktober 2021**, met u naam, adres en kontakbesonderhede, belang in die aansoek, sowel as die redes vir kommentaar. 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.

ISIZA 6114, 49 6th STREET, VOËLKLIP, HERMANUS, UMMANDLA WOMASIPALA WASE-OVERSTRAND: ISICELO SOPHAMBUKO NOKUMISELWA KWESOHLWAYO SOLAWULO: DLC TOWNPLAN EGAMENI LEZONDAGH FAMILY TRUST

Isaziso sinikwa ngokwemiqathango yeCandelo 48 loMthetho kaMasipala oLungisiweyo woMasipala wase- Overstrand ongoCwangciso lokuSetyenziswa koMhlaba kaMasipala, 2020 (uMthetho kaMasipala), sokokuba isicelo sifunyenwe esilungiselelwe okulandelayo:

- Ukuphambuka ngokwemiqathango yeCandelo 16(2)(b) kunyenyiswa umda wesakhiwo okwicala elingasentshona ukususela kwi-2.0m ukuya kwi-0.0m ukulungiselela inguqu uokusetyenziswa kwesakhiwo esingaphandle esele sikho (ukusuka kwigaraji ibe yindawo yokuzonwabisa kunye nendlu yangasese) kunye nephegola; nokunyenyiswa komda wesakhiwo ongasesitalatweni kususela kwi-4.0m ukuya kwi-0.0m ukulungiselela iphegola encanyathelise kwisakhiwo esingaphandle.
- Ukumiselwa kwesohlwayo solawulo ngokwemiqathango yeCandelo 16(2)(q) kulungiselelwa usetyenziso lomhlaba olungagunyaziswanga kwipropati.

linkcukacha ezipheleleyo malunga nesi sindululo ziyafumaneka ngeentsuku zomsebenzi phakathi kweyure-08:00 ne-16:30 kwiSebe: Town Planning, Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo mazingeniswe ngokwezibonelelo zamaCandelo 51 nelama-52 alo Mthetho uYilwayo mazithunyelwe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) aconradie@overstrand.gov.za) ngomhla okanye ngaphambi komhla **wama-29 ku-Oktobha 2021**, unike igama lakho, idilesi neenkukacha zoxibelelwano nawe, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Xa ufuna ukubuzaz into malunga nesi saziso ungatsalela umnxeba ku**Mnu. P Roux** kule nombolo yomnxeba 028-313 8900. UMasipala angala ukuzamkela izimvo ezifike emva komhla wokuvalwa. Nabani na ongakwaziyo ukufunda okanye ukubhala makaye kwiSebe loYilo lweDolophu apho igosa likamasipala liya kumncedisa azibhale izimvo zakhe.



Locality Map

Erf 6114, Voelklip



APPLICATION IN TERMS OF SECTION 16(2)(b) READ WITH SECTION 20(1)(a) AND SECTION 90(1) OF THE OVERSTRAND MUNICIPALITY AMENDMENT BY-LAW ON MUNICIPAL LAND USE PLANNING, 2020 FOR A PERMANENT DEPARTURE FROM THE PROVISIONS OF THE OVERSTRAND MUNICIPALITY LAND USE SCHEME, 2020 IN RESPECT OF A SIDE AND STREET BUILDING LINE, AS WELL AS THE APPLICATION FOR ADMINISTRATIVE PENALTY FOR A PERSON WHO IS IN CONTRAVENTION OF THE BY-LAW AND WISHES TO RECTIFY THE CONTRAVENTION

ERF 6114, HERMANUS

49 SIXTH STREET, VOËLKLIP

1. INTRODUCTION

1.1 PURPOSE OF THE APPLICATION

The registered owner of Erf 6114, Hermanus appointed DLC Town Plan (Pty) Ltd to apply to the Overstrand Municipality for (i) the relaxation of the side building line along the western boundary of the property from 2.0m to 0.0m, (ii) the relaxation of the street building line from 4.0m to 0.0m, and (iii) for the determination of an administrative penalty for a person who wishes to rectify a contravention.

Application is therefore hereby made in terms of Section 16(2)(b) read with Section 20(1)(a) and Section 90(1) of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 for a permanent departure from the provisions of the Overstrand Municipality Land Use Scheme, 2020 (hereinafter referred to as the Land Use Scheme), as follows:

- The permanent departure from clause 6.1.2(b)(ii) of the Land Use Scheme to relax the western side building line from 2.0m to 0.0m (zero meters) in order to accommodate the existing outbuilding and pergola;
- The permanent departure from clause 6.1.2(b)(i) of the Land Use Scheme to relax the street building line from 4.0m to 0.0m (zero meters) in order to accommodate the pergola attached to the outbuilding; and
- The application for an administrative penalty for a person who wishes to rectify a contravention in terms of the By-law.

The purpose of this report is to provide the necessary information regarding the application site, the proposed application(s) and to motivate the merits of the proposed departure as well as the motivation for an administrative penalty for the rectification of a contravention.

Erf 6114, Hermanus will be referred to as the “application site” for the purpose of this memorandum.

1.2 BACKGROUND TO THE APPLICATION

The registered owner purchased the application site in 2012. At the time of purchase, the application site comprised of the existing dwelling house as well as a double garage (with a storeroom) that bordered onto the western boundary of the application site.

Subsequent to the purchase, the owner renovated the existing outbuilding (up to then used as a garage and storeroom) and converted it into staff quarters and an all-purpose living/dining room for use by the owner. The owner also built a pergola between the northern boundary of the outbuilding and the street wall. The owner did not extend or alter the footprint of the existing outbuilding, but only made internal changes to the structure as well as architectural design changes such as doors and windows.

An application was submitted to the Overstrand Municipality in 2016 for:

- the relaxation of the side building line to accommodate the outbuildings;
- the relaxation of the street building line to accommodate the pergola; and
- the removal of a restrictive title condition.

The previous application had a long history, but in summary (i) the **relaxation of the side building line** was **refused** by the Overstrand Municipality and (ii) the **relaxation of the street building line** and **removal of restrictive title condition** were **approved** by the municipality.

Key decisions related to the refusal of the relaxation of the side building line are summarised in Table 1 below.

Table 1: History of decisions relating to side building line

	Date	Resolution
First decision by Authorised Employee of Overstrand Municipality	26 July 2017	<p><i>“that the application in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 (By-Law), applicable to Erf 6114, Hermanus (Voëlklip) in order to relax the western lateral building line from 2m to 0m to accommodate the existing structure (approved garage) that was converted into a studio; be refused in terms of the provisions of Section 61 of the By-Law”</i></p> <p><u>Reasons:</u></p> <ul style="list-style-type: none"> • The objections that were received are substantial and fair, and thus supported. • Liveable areas on common boundaries are not desirable from a town planning point of view
Overstrand Municipality Appeal Authority	19 January 2018	<i>“that the Town Planning Department be instructed to submit the application under discussion to the Municipal Planning Tribunal for consideration as a whole”</i>
Municipal Planning Tribunal	28 February 2018	<p><i>“that the application in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 (By-Law), applicable to Erf 6114, Hermanus (Voëlklip) in order to relax the western lateral building line from 2m to 0m to accommodate the existing structure (approved garage) that was converted into a studio; be refused in terms of the provisions of Section 61 of the By-Law”</i></p> <p><u>Reasons:</u></p> <ul style="list-style-type: none"> • The objections that were received are substantial and fair, and thus supported. • Liveable areas on common boundaries are not desirable from a town planning point of view.
Appeal Authority	23 November 2018	Dismissed the appeal brought by the applicant
Final Notice of Non-Compliance	7 October 2019	
Summons Issued	3 December 2019	

	Date	Resolution
High Court of South Africa (Western Cape Division, Cape Town)	3 July 2020	The decision of Overstrand Municipality taken on 26 July 2017, and all administrative decisions and processes which flowed from or followed after were set aside.

The position of the outbuilding in terms of the previous use (garage and storeroom) was considered to be lawful in terms of the municipal regulations and was formally approved as part of the building plans and the then zoning provisions. The contention arose when the new owner decided to change the use of the outbuilding.

The application submitted to the Overstrand Municipality in 2016 indicated the use of the outbuilding as a “studio”, which the Overstrand Municipality interpreted as being a habitable space, and this was the main reason for the refusal of the application. The intention of the owner was however never to create a permanent habitable space (interpreted as a dwelling unit), but rather just to create (i) staff quarters and (ii) additional recreational space in the form of a hobby room/recreational room.

Although the High Court set aside the previous decision by the municipality, the existing building plans still show the outbuilding as a double garage, and the owner wants to rectify this by submitting building plans that show the alterations to and conversion of the outbuilding. The owners have amended the plans (i) by removing the staff quarters (which were deemed to be a habitable space) and (ii) showing the correct use of the main part of the outbuilding as a hobby room/recreational room rather than a “studio”, which was erroneous terminology used on the previous building plan, given the municipality’s use of the Oxford Dictionary to clarify definitions.

1.3 SUMMARY OF THE FACTS OF THE DEVELOPMENT

The following is a summary of the relevant facts relating to the development:

- There is an **existing, approved** outbuilding situated on the 0.0m building line adjacent to the western side boundary of the application site. The position of this building is therefore not in contention.
- The structure was previously used as a garage and storeroom, which in terms of the provisions of the Hermanus Town Planning Scheme, 1988, Overstrand Municipality Zoning Scheme, 2013, and Overstrand Municipality Land Use Scheme, 2020 were also not in contention as each of these schemes allowed a garage to encroach on a side building line, as indicated in Table 2.

Table 2: Permitted Encroachment of Building Lines in terms of Schemes

	Hermanus Town Planning Scheme, 1988	Overstrand Municipality Zoning Scheme, 2013	Overstrand Municipality Land Use Scheme, 2020
Permitted encroachment of building line	<p>Clause 8:</p> <p>“(b)(i) Nieteenstaande die boulyne wat in subparagraaf (a) hierbo genoem word en onderhewig aan die Raad se goedkeuring, mag ’n buitegebou wat slegs as motorhuis gebruik word, opgerig word op die agterste en/of sygrens en enige buitegebou van dieselfde hoogte mag op die agterste en/of sygrens opgerig word vir ’n afstand van 11 meter gemeet vanaf die agterste grens van die erf.”</p>	<p>Clause 16.1.1:</p> <p>“(b) The Council may approve the erection of an <u>outbuilding</u>, which encroaches into the side and rear building lines”, subject to conditions in subclauses (i) to (ix)</p>	<p>Clause 16.1.1</p> <p>“(c) The Municipality may approve the construction of <u>a structure used for the housing of vehicles</u> that encroaches onto the side and rear building lines”, subject to conditions in subclauses (i) to (ix)</p>

- The owner initially converted the existing garage into a hobby room/recreational room, storage room and staff quarters. The current zoning of the application site, Residential Zone 1: Single Residential (SR1), permits inter alia a dwelling house, guest rooms, home occupation, second dwelling unit, self-catering, outbuildings and staff quarters (read as ancillary to the dwelling house) as **primary rights**.
- The definition of an “outbuilding” in Overstrand Municipality Land Use Scheme, 2020 includes “the **garaging of motor vehicles**, for storage purposes and **any normal activities in so far as these are usually and reasonably required in connection with the main dwelling** as well as the accommodation of recreational activities such as a **pool room**, **braai room**, **lapa** and **gazebo** and the practicing of hobbies (which may not cause a nuisance and/or disturbance and/or noise and/or damage to a neighbouring property or properties or premises)”.

In terms of the definitions of the Land Use Scheme, “**hobby**” means “**an activity done regularly in one's leisure time for pleasure**, excluding activities creating noise, health and nuisance and not related to a commercial venture”.

A hobby room is also included under the definition of “**garage**”, i.e. “*a building for the storage of one or more vehicles, which does not include a motor repair garage or service station but **may include a workspace for the owner's hobby.***”

Although the definition of an outbuilding in the Land Use Scheme includes “recreational activities”, the Land Use Scheme does not further define “recreational activities”. In terms of the Oxford Dictionary, recreation is defined as an “*enjoyable leisure activity*”.

- Habitable spaces in the form of a second dwelling units are also permitted in terms of the current zoning, but clause 16.10.20(e) of the Scheme does stipulate that a second dwelling must be located within the applicable building lines.
- Due to the fact that the municipality does not permit habitable spaces within the building line, the owner has revised the plans for the outbuilding to only use it for a hobby room/recreational room, storage room and an ancillary toilet facility for the hobby room/recreational room.
- In conclusion, (i) there is no contention with the position of the existing outbuilding, (ii) there is no contention with the intended use of the outbuilding for a hobby room/recreational room, storage room and ancillary toilet facility, and (iii) the municipality’s only motivation for the refusal of the previous application (other than the fact that there were objections) was the fact that the outbuilding included habitable spaces (i.e. a bedroom as part of the proposed staff quarters), which have now been removed.
- The municipality already approved the relaxation of the street building line, but due to the fact that the High Court set aside all decisions taken by the municipality in respect of the application, application must again be made for the relaxation of the street building line together with the relaxation of the side building line.

2. SITE INFORMATION

2.1 PROPERTY DESCRIPTION

According to Deed of Transfer T12567/2012 (Attached as **Annexure A**) the application site is described as:

Erf 6114, in the Overstrand Municipality, Division Caledon, Province of the Western “Cape”

2.2 LOCALITY

The application site is located at 49, 6th Street, Voëlklip, Hermanus.

The locality of the application site is shown on Figure 1 and the Locality Plan attached as **Annexure B**.

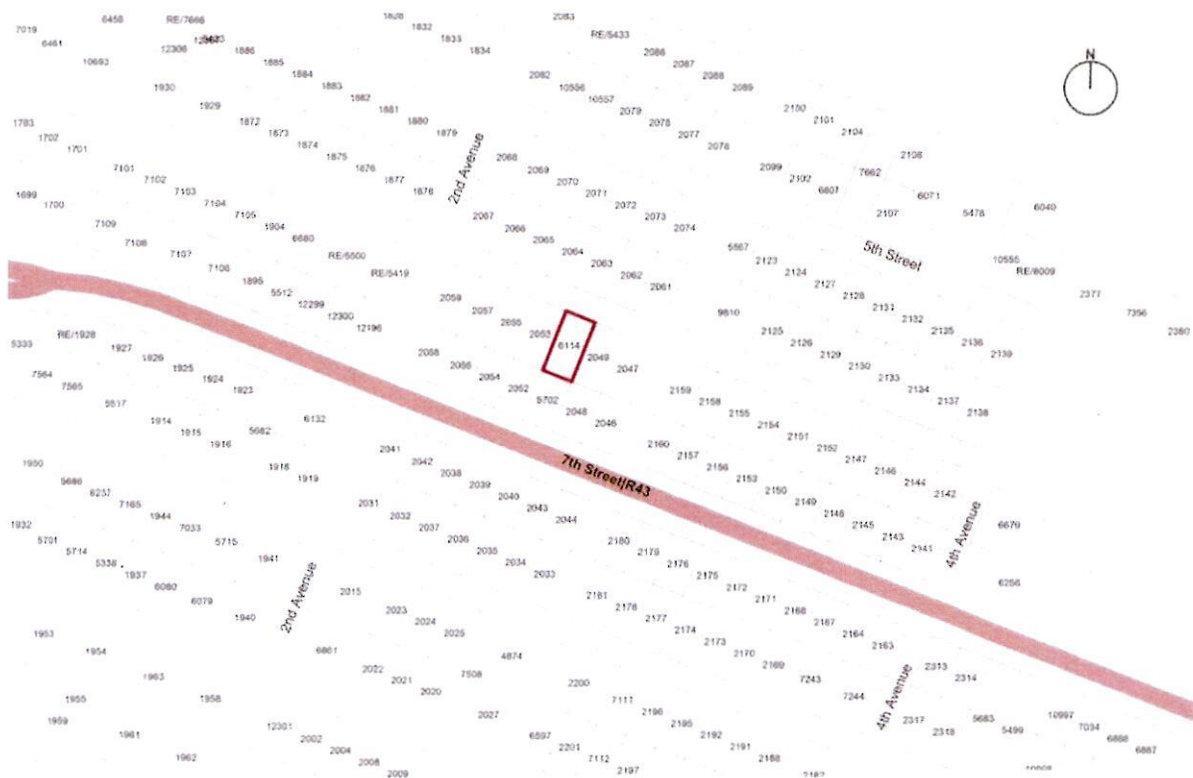


Figure 1: Locality Map

2.3 PROPERTY SIZE

The application site is **497m²** (four hundred and ninety seven square metres) in extent.

2.4 REGISTERED OWNERS

The registered owners of the application site are **The Trustees for the time being of The Zondagh Family Trust**.

DLC Town Plan (Pty) Ltd has been appointed by the registered owners to submit this application on their behalf. The Special Power of Attorney and Trust Resolution are attached as **Annexure C**.

2.5 EXISTING ZONING

The application site is zoned **Residential Zone 1: Single Residential (SR1)** in terms of the Overstrand Municipality Land Use Scheme, 2020.

Permitted Land Uses:

In terms of Clause 6.1.1.a, the primary uses include a Creche, Dwelling House, Guest Rooms, Home Occupation, Second dwelling unit, and Self-catering. In terms of the

definition of an Outbuilding in the Land Use Scheme, “...outbuildings are primary uses under each zoning except in open space zones”,

In terms of the Land Use Scheme an Outbuilding includes “...the garaging of motor vehicles, for storage purposes and any normal activities in so far as these are usually and reasonably required in connection with the main dwelling as well as the accommodation of recreational activities such as a pool room, braai room, lapa and gazebo and the practicing of hobbies ...”

The Land Use Scheme further defines “hobby” as “an activity done regularly in one's leisure time for pleasure, excluding activities creating noise, health and nuisance and not related to a commercial venture”.

Applicable Building Lines:

The following building lines apply to the application site:

Street Building Line	:	4.0m (for erven 400m ² and greater); provided that an erf with an average depth of 20,0m or less has a 3.0m street building line
Side and Rear Building Line	:	2.0m (for erven greater than 400m ²)
Encroachments permitted	:	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.

2.6 EXISTING LAND USE

The application site comprises a dwelling house with an outbuilding, and the site is used for single residential purposes only.

The outbuilding borders on the western boundary of the application site, and therefore encroaches the 2.0m side building line. The outbuilding, which was previously a double garage, was converted into a hobby room/recreational room with an ancillary toilet facility and a storeroom.

A pergola is attached to the outbuilding, between the northern boundary of the outbuilding and the street boundary wall, encroaching into the side and street building lines.

2.7 TITLE DEED CONDITIONS

There are no restrictive title conditions in Deed of Transfer T12567/2012 that prohibit the relaxation of the side building line or the outbuilding.

The application site was subject to a condition related to the street building line for outbuildings that emanated from Pivot Deed of Transfer T1129/1935. The municipality

however confirmed in an e-mail dated 9 October 2020 that the removal of this restrictive title condition is not necessary as a previous application for the removal of this condition from the title deed of another property covered all the properties in respect of which the restrictive condition was created.

2.8 MORTGAGE BONDS

There is a bond registered over the application site in favour of ABSA Home Loans Guarantee Company (Pty) Ltd (B22411/2020). Application has been made for the bond holder's consent and will be received shortly.

2.9 SERVITUDES

There are no servitudes registered over the application site.

3. APPLICATION

Application is made in terms of in terms of Section 16(2)(b) read with Section 20(1)(a) and Section 90(1) of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 for a permanent departure from the provisions of the Overstrand Municipality Land Use Scheme, 2020 as follows:

- The permanent departure from clause 6.1.2(b)(ii) of the Land Use Scheme to relax the western side building line from 2.0m to 0.0m (zero meters) in order to accommodate the existing outbuilding (being used for a hobby room/recreation room, storeroom and ancillary toilet facility) and pergola; and
- The permanent departure from clause 6.1.2(b)(i) of the Land Use Scheme to relax the street building line from 4.0m to 0.0m (zero meters) in order to accommodate the pergola attached to the outbuilding; and
- The application for an administrative penalty for a person who wishes to rectify a contravention in terms of the By-law.

For the purpose of this application, a Concept Site Development Plan has been drafted to illustrate the development on the application site. A formal Building Plan will be drafted and submitted to the Municipality for approval should the application be approved.

The Concept Site Development Plan is attached as **Annexure D**.

4. URBAN CONTEXT

The application site is situated in a predominantly single residential area, and is surrounded by dwelling houses that are zoned Residential Zone 1: Single Residential, similar to the application site.

5. LEGISLATIVE AND POLICY FRAMEWORKS

5.1 OVERSTRAND MUNICIPALITY SPATIAL DEVELOPMENT FRAMEWORK, 2020

In terms of the Overstrand Municipality Spatial Development Framework, 2020 the application site falls within the Urban Edge and Core Urban Area (Spatial Development Concept). The Hermanus East Spatial Proposal 2020 also just indicates the application site as part of Urban Development located within the urban edge.

The Hermanus East area is defined as “a low density residential suburban area situated in a pristine natural landscape.”

This application is not for a change of land use, and the zoning and use remains Residential Zone 1: Single Residential (SR1) as per the Land Use Scheme.

5.2 PLANNING PRINCIPLES

In terms of the Overstrand Municipality’s guidelines for motivational reports, the applicant must indicate that the principles of Spatial Justice, Spatial Sustainability, Efficiency, Spatial Resilience and Good Administration were considered.

As the application will not result in a change of land use (i.e. the activity on the application site remains single residential in line with the zoning of the site) or an extension of the building footprint or bulk, the principles of Spatial Justice, Spatial Sustainability and Efficiency are not relevant to this application.

Spatial Resilience inter alia refers to the need for planning and land use management to accommodate greater flexibility in planning proposals to accommodate economic and environmental change (shocks). Greater flexibility is therefore needed in inter alia land use schemes to ensure that existing buildings become more adaptive to changing circumstances.

The principle of Good Administration deals with the administrative processes of local government. The application is submitted in terms of the provisions of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 and the Overstrand Municipality Land Use Scheme, 2020 and will adhere to all the requirements of the by-laws as far as procedure and content are concerned.

The municipal departments, any sphere of government and residents that may be influenced by the development are also given the opportunity to provide their comments or raise concerns. Once all the above have been completed and all factors have been taken into consideration, the municipality may take a decision on the application. In this regard the application adheres to the principal of good administration.

5.3 HERITAGE

The application site is not affected by any heritage considerations, and the application will therefore not have any impact on the heritage value of Hermanus.

6. MOTIVATION

6.1 DESIRABILITY

The primary land use on the property remains single residential (i.e. one dwelling house with an ancillary outbuilding). The proposed application will also not result in the construction of any additional buildings, merely to rectify the internal alterations done to the existing outbuilding to convert it from a double garage into a hobby room/recreational room with ancillary storage and toilet facility, as well as the pergola between the outbuilding and the street boundary wall.

From the perspective of the neighbourhood and surrounding properties, the land use, structures and visual appearance of the development on the application site remain the same as it has always been. The only difference is the new purpose for which the existing outbuilding is being used, which uses are permitted as primary rights in terms of the Land Use Scheme. Any and all property owners can therefore accommodate these uses/activities on their properties.

Because this remains a single residential development, it will not have any negative externalities (such as noise or pollution) and will therefore not have a negative impact on or cause a nuisance for neighbouring properties or the area in general. Activities on the application site are therefore restricted to normal activities conducted by a single family and occasional visitors to their home.

With regard to privacy considerations, there are no windows or doors in the outbuilding that front onto the property directly west thereof.

As indicated in the introduction, the municipality's only reason for the refusal of the original application for the relaxation of the side building line was the fact that the outbuilding included habitable spaces (i.e. staff quarters), i.e. *“Liveable/habitable structures on common erf boundaries are undesirable from a town planning perspective due to negative impacts”*. That has now been removed, and the only use that remains in the outbuilding is that of a hobby room/recreational room with an ancillary toilet facility and a storeroom. The outbuilding will therefore not be used for permanent or temporary habitation.

6.2 MOTIVATION FOR ADMINISTRATIVE PENALTY ITO SECTION 90(3)

In accordance with Subsection (3) of Section 90 of the By-Law, the following must be provided, to the satisfaction of the Municipality:

- (a) The nature, duration, gravity and extent of the contravention;
- (b) The conduct of the person (allegedly) involved in the contravention;
- (c) A report by a quantity surveyor in matters of unauthorised building/construction;
- (d) Whether the unlawful conduct was stopped; and
- (e) Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.

As previously mentioned in this motivational memorandum, the owner purchased the property in 2012. At that stage the outbuilding was use as a storeroom and garage with the same footprint as it currently has (excluding the pergola between the northern boundary of the outbuilding and the street wall), with approved building plans.

The owner converted the existing outbuilding to staff quarters and an all-purpose living / dining room for the owner's exclusive use. Since then, the owner has applied for the staff quarters and studio (in 2016) which was refused. The term 'studio' was erroneously used (as discussed in depth in previous paragraphs) and the owner removed the staff quarters (due to it being deemed as habitable space).

As such the correct terminology for the main use of the outbuilding should read a hobby room / recreational room with an ancillary toilet facility and storage space.

The relaxation of the street building line for the pergola was already approved by the municipality and should therefore not be deemed as part of the determination of an administrative penalty request.

When reviewing the above summary, it is evident that the owner has always intended to apply for the amended building plans to illustrate the recreational/hobby room through the numerous applications already submitted to the municipality.

With reference to the staff quarters (or habitable room), the owner stopped the use as it was brought to his/her attention that it is not supported by the planning division and thus ceased the use. The outbuilding is now solely for the purpose of a recreational/hobby room with an ancillary toilet facility and storage space, which is in accordance with the provisions of the planning law, fully allowable, subject to the relevant application(s) being approved.

Lastly, we humbly request that the quantity surveying report only be done once the application for administrative penalty is approved (or deemed favourable), seeing that the owner has to date, encumbered exorbitant costs to rectify the contravention. Reason being that the owner has at this stage, no assurance that the application(s) as mentioned within this motivational memorandum will be approved (which may lead to more costs for the owner). The owner has agreed that he/she will appoint a registered quantity surveyor for the mentioned report should the application be deemed favourable.

Supplementary, the owner undertakes provide the municipality with the payment of the application fees (which is based on the outcome of the quantity surveying report) once confirmation is received on the favourability of the application for administrative penalty.

Furthermore, this office wishes to bring forth the following in respect of Section 90(7) Subsections (a) – (e):

The subsections refer to the possibility of the institution of a criminal prosecution, etc., the owner, as mentioned throughout the memorandum wishes to rectify the contravention and has attempted to do so on numerous occasions (and by means of numerous applications) over time. The owner has also been criminally prosecuted due to the aforementioned, subject to the resubmission of the application(s) as motivated in this memorandum.

As such it is humbly requested that the municipality see merit in approving the administrative penalty application (as well as the permanent departure from the provisions of the of Land Use Scheme) with no further prosecution(s).

6.3 ENGINEERING SERVICES

The application site is situated in an established neighbourhood with existing services. The application will not result in a change in land use or the expansion of the existing development footprint on the application site, and therefore will not have an impact on engineering services in the area.

6.4 NATURAL ENVIRONMENTAL IMPACT

The application site is situated in an established residential neighbourhood, and does not comprise or border on any environmentally sensitive areas. The site is surrounded by dwelling houses and therefore does not or will not have any negative impact on any sensitive natural environments or features, and does not trigger any listed activities in terms of the National Environmental Management Act, 1998.

7. CONCLUSION

In light of the above-mentioned we trust that the application made in terms of Section 16(2)(b) read with Section 20(1)(a) and Section 90(1) of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 for a permanent departure from the provisions of the Overstrand Municipality Land Use Scheme, 2020 as well as the determination for an administrative penalty for a person who wishes to rectify a contravention of the By-Law in respect of a side and street building line on Erf 6114, Hermanus will be considered favourably.

Frikkie de Lange
DLC Town Plan (Pty) Ltd

23 August 2021

