

ERF 3900, 26 DEMPERS STREET, ONRUS RIVER: APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: PLAN ACTIVE (obo MVE WENTZEL)

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

- a) departure in terms of Section 16(2)(b) of the By-Law to relax the:
- western lateral building line from 2m to 0m to legalize the existing as built shed.
 - western lateral building line from 2m to 0.9m to accommodate the change of use of the approved garage / outbuilding to a second dwelling unit.
 - rear building line from 2m to 0.9m to accommodate the change of use of the approved garage / outbuilding to a second dwelling unit, and to legalize the addition of an existing gardener's bathroom.
 - To exceed the maximum permissible coverage for all structures on the property from 50% to 52,28%.
- b) the determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law for the illegal coverage and building line encroachments and uses as discussed 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 comments must be in writing and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) on or before **26 November 2021**, quoting your name, address and contact details, interest in the application and the reasons for comment. Telephonic enquiries can be made to the Town Planner, **Mr. H Olivier** 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 to formalize their comment.

ERF 3900, DEMPERSSTRAAT 26, ONRUSRIVIER: AANSOEK OM AFWYKING EN BEPALING VAN ADMINISTRATIEWE BOETE: PLAN ACTIVE (nms MVE WENTZEL)

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

- a) afwyking ingevolge Artikel 16(2)(b) van die Verordening vir die verslapping van die:
- westelike syboullyn vanaf 2m na 0m om die bestaande skuur te wettig.
 - westelike syboullyn vanaf 2m na 0,9m om die gebruiksverandering van die goedgekeurde motorhuis / buitegebou na 'n tweede wooneenheid te akkommodeer.
 - agterboullyn vanaf 2m na 0,9m om die gebruiksverandering van die goedgekeurde motorhuis / buitegebou na 'n tweede wooneenheid te akkommodeer, en om die aanbouing van 'n bestaande tuinier-badkamer te wettig.
 - Om die maksimum toelaatbare dekking vir alle strukture op 'n eiendom vanaf 50% na 52,28% te oorskry.
- b) die bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening vir die onwettige dekking en boullyn oorskrydings, en gebruike soos bo bespreek.

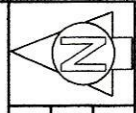
Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentaar op die voorstel moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) bereik voor of op **26 November 2021**, met u naam, adres en kontakbesonderhede, belang in die aansoek, sowel as redes vir die kommentaar. Telefoniese navrae kan gerig word aan die Stadsbeplanner, **Mnr. H Olivier** 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 ESINGU-ERF 3900, 26 DEMPERS STREET, ONRUS RIVER: ISICELO SOKWAHLULA NENGQINISEKISO YEMIDLIWO YOBHALISO/IPENALTHI YOBHALISO: NGABAKWAPLAN ACTIVE (egameni labakwaMVE WENTZEL)

Kukhutshwe isaziso esimayela nemiba yeSoloty lama48 noMasipala wase-Overstrand Ongokuhlonyelwa kioMthethwana OngeziCwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 (UMthethwana) esithi kufunyenwe ezi zicelo zilandelayo:

- a) ukwahlula ngokwemiba yeSoloty le16(2)(b) yoMthethwana ukushenxisa le miba:
- Umgca wesakhiwo omelene necala elisentshona ukusuka kumgca ozimitha ezi-2m ukuya ku0m ukufaka ngokusemthethweni ished i esele ikhona neseyakhiwe.
 - Umgca wesakhiwo omelene necala elisentshona ukusuka kwiimitha ezi-2m ukuya ku-0.9m ukulungiselela utshintsho ukuvumela ukusebenzisa igaraji/ neyunithi yesibini kwisakhiwo esinendawo yesibini yokuhlala.
 - Umgca wesakhiwo sangasemva ukusuka kwiimitha ezi-2m ukuya kwimitha ezi-0,9m ukulungiselela utshintsho nokuvumela ukusetyenziswa kwegaraji/iyunithi yesakhiwo sesibini esiyindawo yokuhlala, nokumisela ngokusemthethweni ukongezwa negumbi lokuhlambela eselikhona lokuhlala.
 - Ukudlula ngaphaya kwendawo enkulu kwindawo evunyelwe nevulelekileyo zonke iindawo ezizizakhiwo kwisiza esikulo mhlaba ukusuka kwiipesenti ezingama 50% ukuya kuma-52,28%.
- b) ingqikelelo yomdlwiwo/lwepenalthi lobhaliso ngokwemiba yomdlwiwo/ipenalthi ngokwemiba yeSoloty le16(2)(q) loMthethwana lokukhuselwa nokuvalwa kwendawo evulelekileyo nephumela ngaphaya komgca wesakhiwo, ize isebenzise le miba ichazwe ngentla.

linkcukacha ezipheleleyo ezimayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku phakathi kwentsimbi yesi8:00 neye 16:30 kwiSebe: Lezicwangciso ngeDolophu, Paterson Street, Hermanus. Naziphi na izimvo mazingeniswe zibhaliwe mazifike kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) ngomhla okanye **ngaphambi kwama 26 kuNovember ku2021**, uchaze igama lakho, idilesi neenckukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla. Imibuzo ngefowuni ingathunyelwa kuMwangcisi weDolophu, **Mnu. H Olivier** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifunyenwe emva komhla wokuvula. Nanbani na ongakwazi ukufunda okanye ukubhala angandwendwela iSebe Lezicwangciso zeDolophu apho igosa likamasipala liza kumnceda ukungenisa izimvo zakho ngokusemthethweni.



Scale: NTS
 Drawing No: ERG 3009 ONRUSTL.dwg
 Date: AUGUST 2021

Plan Description:
LOCALITY MAP

Property Description:
**ERF 3900
 ONRUSTRIEVER**

All distances approximate
 and subject to survey.
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PLAN Active Stads- en Streeksbeplanners
 Town & Regional Planners



**DETERMINATION OF AN
ADMINISTRATIVE PENALTY & PROPOSED DEPARTURE**

ERF 3900 ONRUSTRIVIER

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by Marthinus van Eeden Wentzel, the owner of erf 3900 Onrustrivier, to apply for the determination of an administrative penalty and departure on his behalf.

In 1996 the outbuilding on the site plan was approved as a garage. In 2005 another building plan was approved for a carport on the Dempers Street boundary. The 2005 building plan indicated the approved garage on the rear boundary as an outbuilding. The 2005 building plan indicated that a portion was added on the eastern side of the outbuilding (a toilet) for which no formal building plan was submitted. Thus, during 1996-2005 a toilet addition was made on the eastern side of the outbuilding and in 1996 the use of the outbuilding changed from outbuilding / garage to second dwelling unit. The outbuilding was therefore extended, and the use changed without approved building plans. A second addition (hall entrance) on the eastern side of the outbuilding was made post 2005, also without an approved building plan. A shed was also added to the subject property post 2005 without the necessary land use and building plan approvals. The municipality confirmed that the additions and internal alterations (post 1996) required formal building plan approval, of which there is no record.

This application is therefore to legalize the additions and alterations made on the eastern side of the outbuilding and the change of use from outbuilding to second dwelling unit. In addition, a shed was added west of the existing outbuilding. The second dwelling and shed require a departure since the illegal building work and change of use occurred within the rear and western lateral building lines.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an **administrative penalty**;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the **departure** (building lines, change of use, permanent departure from the provisions of the Overstrand Land Use Scheme, 2020, and deviation from coverage) of erf 3900 Onrustrivier.

3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 3900 Onrustrivier is situated at 26 Dempers Street, Onrus. Refer to the locality plan attached.

Erf 3900 Onrustrivier is 495m² in extent and is held by title deed no. T3658/2004.

The subject property is characterized by residential structures (single storey dwelling, single garage, carport and outbuilding converted to second dwelling) and a garden area.

3.2 ZONING

Erf 3900 Onrustrivier has the following land use rights:

ERF NUMBER	ZONING
Erf 3900 Onrustrivier	Residential Zone 1: Single Residential

Surrounding properties are zoned for single residential, public roads and authority purposes.

3.3 LAND USE

There is an existing single storey dwelling, single garage, carport, shed, outbuilding converted to second dwelling and a garden area on the subject property.

Land uses that surround the subject property are single residential dwellings, public roads and municipal offices.

3.4 THE POTENTIAL OF THE PROPERTY

The zoning and land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to be developed (in future) for low impact land uses only. The proposed departure will not hinder any future land use applications on erf 3900 Onrustrivier.

The subject property has the potential and allows for the deviations being applied for. The following factors confirm the potential of the property to accommodate the proposed departure:

- Good quality materials were used;
- The additions match the architectural style of the buildings;
- The existing As Built structures have a low impact on the streetscape since it is positioned on the rear erf boundary;
- The existing As Built structures have a low impact on the neighbouring properties since;
 - the shed is not considered a habitable area and the neighbour gave his in principle approval for the existing shed;
 - there are no windows placed on the western side of the shed (where the structure encroaches the western lateral building line);
 - the greatest extent of the footprint of the outbuilding was approved in the past (the use has since changed);
 - the outbuilding has been used as a second dwelling since 1996 with no complaints from the neighbours.
- The impact on the adjacent properties is minimal since the window placements for the second dwelling unit visible from the neighbouring properties, have remained unchanged since 1996.

3.5 PROPOSAL

The following is proposed:

- The determination of an **administrative penalty** in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020;
- The **departure** of erf 3900 Onrustrivier in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:

- Deviate from the western lateral building line from 2m to 0m to accommodate the existing As Built shed;
- Deviate from the western lateral building line from 2m to 0,9m to accommodate the change of use of the approved garage / outbuilding to a second dwelling unit;
- Deviate from the rear building line from 2m to 0,9m to accommodate the existing As Built second dwelling unit:
 - "Outside" / gardener's bathroom addition;
 - Change of use of the approved garage / outbuilding to second dwelling unit positioned on the 0,9m rear building line.
- Deviate from the provisions of the Overstrand Land Use Scheme Regulations (2020) as stipulated in Chapter 16.10.20(e) to accommodate the existing second dwelling unit within the western lateral and rear building lines;
- To exceed the maximum permissible coverage for all structures on a SR1 zoned property from 50% to 52,28%.

The potential of the subject property is discussed in detail in *Section 3.4 Potential of the property*.

In 1996 the outbuilding on the site plan was approved as a garage. In 2005 another building plan was approved for a carport on the Dempers Street boundary. The 2005 building plan indicated the approved garage on the rear boundary as an outbuilding. The 2005 building plan indicated that a portion was added on the eastern side of the outbuilding (a toilet) for which no formal building plan was submitted. Thus, during 1996-2005 a toilet addition was made on the eastern side of the outbuilding and in 1996 the use of the outbuilding changed from outbuilding / garage to second dwelling unit. The outbuilding was therefore extended, and the use changed without approved building plans. A second addition (hall entrance) on the eastern side of the outbuilding was made post 2005, also without an approved building plan. A shed was also added to the subject property post 2005 without the necessary land use and building plan approvals. The municipality confirmed that the additions and internal alterations (post 1996) required formal building plan approval, of which there is no record.

This application is therefore to legalize the additions and alterations made on the eastern side of the outbuilding and the change of use from outbuilding to second

dwelling unit. In addition, a shed was added west of the existing outbuilding. The second dwelling and shed require a departure since the illegal building work and change of use occurred within the rear and western lateral building lines.

This application intends to address the following As Built unauthorised structures that encroach the Overstrand Land Use Scheme's (2020) building lines applicable to Residential Zone 1: Single Residential properties:

- To deviate from the rear erf boundary building line from 2m to 0,9m to accommodate the As Built addition (bathroom) and change of use of the approved structure (garage / outbuilding converted to a second dwelling unit positioned on the 0,9m rear building line).
- To deviate from the western lateral building line as follows:
 - from 2m to 0,9m to accommodate the As Built second dwelling unit (change in use of the approved garage / outbuilding to second dwelling unit);
 - from 2m to 0m to accommodate the As Built shed.
- To deviate from the provisions of the Overstrand Land Use Scheme Regulations (2020) as stipulated in Chapter 16.10.20 (e) =to accommodate the existing second dwelling unit within the western lateral and rear building lines;
- To exceed the maximum permissible coverage for all structures on a SR1 zoned property from 50% to 52,28%.

Here follows the detail of the proposed application for consideration:

3.5.1 Rectification of contravention

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.

As the application is for the rectification of a contravention of the By-Law (due to the existing As Built second dwelling), an application is submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee.

In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

- **The nature, duration, gravity and extent of the contravention**

Our client bought the subject property in 2004 with the approved dwelling (with one garage attached to the dwelling) and one separate outbuilding used as a cottage already constructed. Refer to a copy of the approved building plan approved in 1996 attached. At the time of purchase in 2004 our client did not realize that there was an illegal addition made (toilet) on the eastern side of the approved garage building. The addition to the approved garage structure is shown on the new site plan ("old addition: 1996-2004"). In addition, the outbuilding was already converted to a cottage at the time of purchase in 2004. It is understood that the previous landowner converted the garage / outbuilding to a second dwelling / cottage in 1996.

The second addition to the outbuilding / garage (entrance hall) was undertaken by the current owner (refer to "new addition: post 2005" on the site plan). Although this addition was constructed without an approved building plan, it does not encroach the applicable building lines. The shed was added by the existing owner.

The position and nature of the As Built second dwelling / cottage on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date. In addition, the second dwelling was only used by family members since our client bought the subject property in 2004. One of the selling points of the property at the time of purchase in 2004 was the second dwelling unit / cottage present on the subject property. Our client's mother-in-law also had to be accommodated at the time and the second dwelling proved to be ideal. When his mother-in-law moved out of the cottage due to illness, another family member lived in the cottage. The cottage

is vacant at the moment. It is therefore evident that the second dwelling was never used for self-catering purposes where our client received a rental income from. We request that the latter be taken into consideration when the administrative penalty is considered.

- **The conduct of the person involved in the contravention**

The As Built second dwelling with "outside" / gardener's bathroom that encroaches the relevant building lines was constructed by the previous owner of the property. The change of use of the outbuilding to second dwelling unit was also done by the previous landowner. The current landowner (our client) merely added the entrance hall of $\pm 5,7\text{m}^2$ to the existing second dwelling shortly after he purchased the property in 2004 and later added the shed as well. The owner only became aware of the fact that the second dwelling / cottage was not approved when building plans were requested by a potential buyer of the subject property. The current property owner immediately acted on the notice from the municipality that the building plans were not in order and appointed the relevant consultants to assist in the matter.

- **Whether the unlawful conduct was stopped**

The current owner was unaware that the necessary land use and building plan approvals were not in place when he bought the subject property in 2004. The post 2005 addition to the second dwelling (entrance hall) was done by our client (also without the approval of a building plan first); however, this addition does not encroach the relevant building lines and the use of the approved outbuilding / garage was already for second dwelling purposes. The As Built shed is considered an outbuilding that can be accommodated within the building lines. The property is on the market to be sold, hence our client wants to rectify the contravention by submitting the administration penalty application and subsequent departure application in order to legalise the As Built structures on the subject property.

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

If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised building work, we will submit a report from a quantity surveyor with reference to the unauthorised building work. The reason being that if there is a chance that no penalty fee is imposed the report from a quantity surveyor will be unnecessary at this stage.

- **Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law**

To the best knowledge of the applicant and as confirmed by the landowner, he has never previously contravened this By-Law or any other previous planning law.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the low impact the As Built second dwelling (cottage) and shed have had and will continue to have on the surrounding area. In addition, the As Built structures will not negatively impact on the neighbouring properties since the footprint of the structures that encroach the relevant building lines will remain unchanged.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures. The neighbouring property owner (erf 3138) gave his in principle consent for the encroachments on the western lateral erf boundary. The current owner was unaware of the fact that there were structures constructed by the previous owner over the relevant building lines and without the necessary building and land use management approvals. He only became aware of the latter when a prospective buyer enquired about the latter as part of the potential sales agreement of the subject property.

The owner never hesitated to immediately give instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure and determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owner for the reasons given above.

3.5.2 Departure: building line deviation, deviation from the provisions of the Overstrand Land Use Scheme Regulations (2020) and coverage deviation

An application is submitted for a departure to accommodate the existing second dwelling in its current position (As Built structure; inclusive of additions made between 1996-2005 and post 2005), as follows:

- Deviation from the western lateral building line from 2m to 0m to accommodate the existing As Built shed;
- Deviation from the western lateral building line from 2m to 0,9m to accommodate the change of use of the approved garage / outbuilding to second dwelling unit;
- Deviation from the rear building line from 2m to 0,9m to accommodate the existing As Built second dwelling unit:
 - “Outside / gardener’s bathroom addition;
 - Change of use of the approved garage / outbuilding to second dwelling unit positioned on the 0,9m rear building line.

Refer to the site development plan attached. The footprint and layout of the second dwelling (cottage) and shed remain As Built. No new additions / building work are proposed.

It is also proposed to deviate from the provisions of the Overstrand Land Use Scheme Regulations (2020) as stipulated in Chapter 16.10.20 e. to accommodate the existing second dwelling unit within the western lateral and rear building lines. Regulation 16.10.20 e. specifies that second dwelling units must be located within the applicable building lines. Since this is an As Built structure, of which the largest extent of the structure has been approved on the 0,9m western lateral and rear building line (for outbuilding / garage purposes), the conversion of the outbuilding to a second dwelling unit cannot meet the requirement.

The position of the second dwelling on the 0,9m western lateral boundary will have a low impact on the neighbours. On this boundary, it is only the toilet / bathroom section of the second dwelling that encroaches the 2m western lateral building line.

The remaining part of the second dwelling is stepped back and positioned on the 2m western lateral building line. This impact would have been the same if the building remained for garaging of motor vehicles / outbuilding purposes with a lavatory as part of the outbuilding use.

The position of the second dwelling on the 0,9m rear building line also has a low impact on the neighbours. On the rear boundary, it is only the "outside" / gardener's bathroom addition that is a "new" addition that encroaches the rear building line (the garage / outbuilding was previously approved on the 0,9m rear building line). In addition, the change of use of the structure from outbuilding / garage to second dwelling on the 0,9m rear building line will have an insignificant impact on the neighbours since the section of the second dwelling positioned on the 0,9m rear building line is used for bathroom and kitchen purposes (second dwelling unit) and "outside" / gardener bathroom purposes.

Although the second dwelling (cottage) is considered habitable areas within the applicable building lines, the impact is considered low as described above. The cottage is $\pm 65\text{m}^2$ in extent and meets all other requirements for the consideration of a second dwelling on a SR1 zoned property. The layout with reference to the placement of windows, etc. remains As Built (no alterations are proposed). Since the second dwelling / cottage and bathroom addition are As Built, the placement of windows on the western lateral and rear erf boundary will remain unchanged (on the 0,9m boundary lines).

An application for departure is submitted to deviate from the western lateral building line from 2m to 0m to accommodate the existing As Built shed. The shed is used for the storage of gardening implements and is $\pm 8,9\text{m}^2$ in extent. There are no windows placed in the shed on the northern or western walls of the structure (i.e. no windows on the 0m western lateral building line). In addition, the shed will meet all requirements for the consideration of the As Built outbuilding on the 0m western lateral building line.

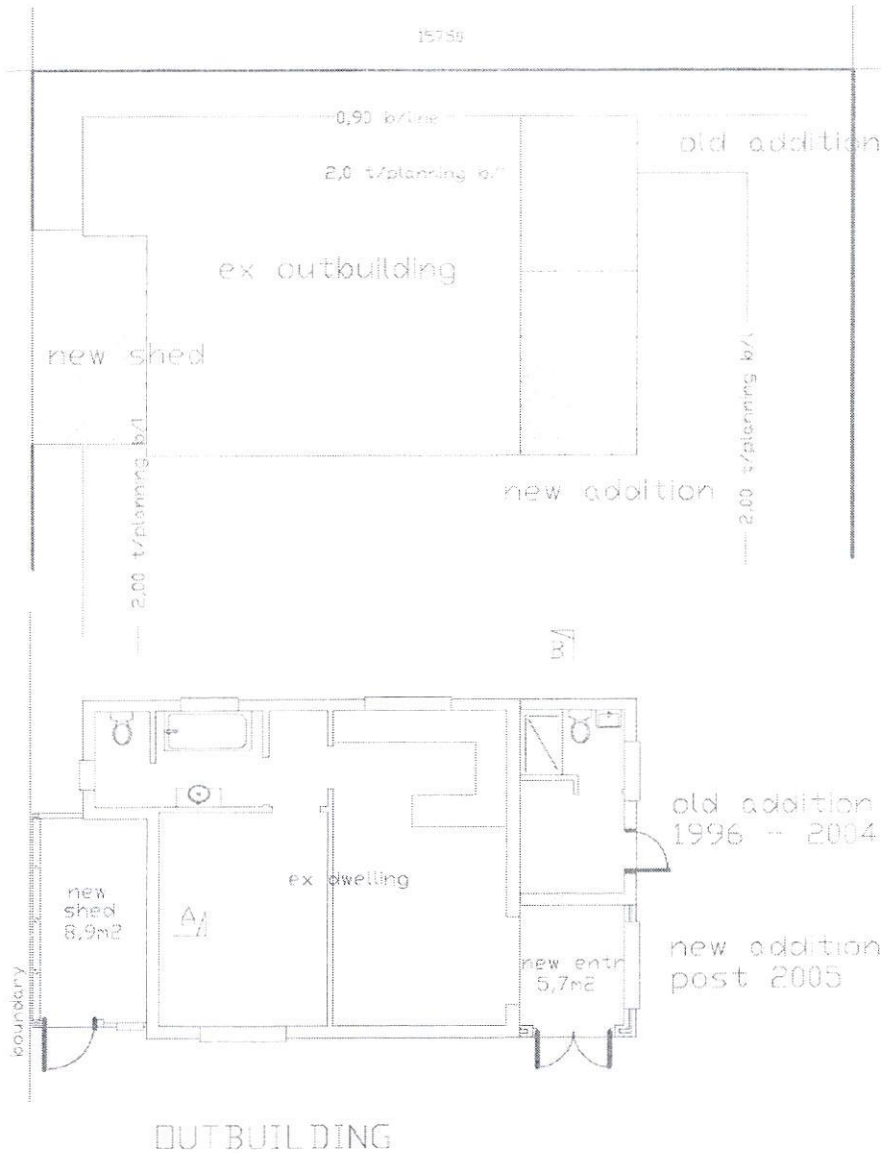
The position and nature of the As Built second dwelling with "outside" / gardeners bathroom and garden shed on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date. The neighbouring property (erf 3138)

gave his in principle consent for the encroachments on the western lateral building line.

The following should be noted when considering the departure application:

- An outbuilding / garage was previously approved at the current position of the second dwelling / cottage. However, the additions and alterations to convert the structure into a second dwelling with "outside" / gardener's bathroom addition did not follow a building plan and / or land use application process at the time.
- No new building work / alterations are proposed to the existing As Built second dwelling, "outside" / gardener's bathroom and shed.
- The visual impact of the As Built structures is minimal since the approved outbuilding / garage footprint comprises the largest extent of the second dwelling, and the bathroom and shed additions are considered uses with a low impact.
- The position of the As Built structures at the back of the property mitigates the impact the encroachments have on the streetscape.
- To demolish the As Built structure to make the structures compliant to the building lines, will diminish the aesthetic value of the property.

The images below indicate the encroachments of the As Built shed, second dwelling and bathroom addition:



OUTBUILDING

All the structures meet the height requirements as stipulated in the land use scheme regulations.

The existing As Built structures do not create an infringement to any passing traffic or public activity. It is therefore evident that the existing As Built structures meet the requirements for the consideration of these structures within the respective western lateral and rear building lines and can be favourably considered.

It is noteworthy that the As Built structures are visible from the neighbouring properties. It is however submitted that the massing and height of the sections of the existing structures that encroach the western lateral and rear building lines will remain

unchanged. The visual impact on the adjacent property owners and the passers-by will be marginally higher than if the additions to the outbuilding / garage were not made and if the change of use to accommodate the second dwelling unit did not occur. A shed on an erf boundary generally has a low impact. The encroachments are therefore considered to have a low impact.

The zoning of erf 3900 Onrustrivier will remain unchanged (Residential Zone 1: Single Residential).

The area schedule for the subject property is as follows:

Floor Areas & Coverage

Main Dwelling	155,78 m ²	0,30
Outbuilding	64,86 m ²	
Garden shed	8,90 m ²	
Carport	29,25 m ²	
Total	258,79 m ²	
Erf Size	495 m ²	
Coverage	52,28 %	

The main dwelling has a footprint size of $\pm 156\text{m}^2$. As mentioned, the second dwelling has a footprint of $\pm 65\text{m}^2$. The carport's extent is $\pm 29\text{m}^2$. The shed is $\pm 8,9\text{m}^2$ in extent. In total, the existing structures have a coverage of $258,79\text{m}^2$ ($\pm 52,28\%$). As a result, a departure is submitted to deviate from the provisions of Chapter 6, section 6.1.2 (a) to allow the dwelling house with second dwelling and outbuildings to retain the existing coverage of $\pm 52,28\%$. Basically, the existence of the shed of $8,9\text{m}^2$ pushes the total coverage of the site over the maximum permissible coverage. Our client would like to retain the shed, hence the application for the deviation from the maximum permissible coverage. The small extent of the subject property (a mere 495m^2) should be considered when evaluating the coverage encroachment. The existing coverage encroachment is easily accommodated on erf 3900 Onrustrivier and proofs that the existing coverage can be positively considered.

It is submitted that the existing As Built structures are compatible with the character of the area, do not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

The proposed application for erf 3900 Onrustrivier is not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

3.6 ECONOMIC IMPACT

The proposal is to accommodate the existing As Built structures and uses thereof on the subject property only. No new structures or additions are proposed. The proposed departure will allow the owner to retain and legalise the existing structures and this will favour the resale of the property in the future and have a positive impact on the adjacent properties.

The approval of the existing As Built structures will save our client the cost of demolishing the structures. The proposed building line deviations therefore has a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposal will have no impact on the social status quo of the area. The approval of this application will however allow the owner to keep the existing As Built structures and ensure that the developed structures on erf 3900 Onrus remain aesthetically pleasing.

No negative impact on the social wellbeing of the surrounding community is anticipated.

It is submitted that the As Built structures are compatible with the character of the area and does not impact negatively on the rights of anyone else.

3.8 COMPATIBILITY WITH SURROUNDING LAND USES

The subject property is situated in an existing residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposal is compatible with the surrounding land uses.

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties are for permanent residences and holiday houses. The scale of the As Built structures on erf 3900 Onrustrivier merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built structures will contribute towards the value of the subject property and consequently have a positive impact on the area as a whole. It is therefore submitted that the proposed encroachments and deviations are compatible with the character of the area and do not impact negatively on the rights of anyone else.

The As Built second dwelling is a habitable structure, but the largest extent of the structure and use thereof has been in existence since 1996, hence the impact on the neighbouring properties' privacy will remain unchanged.

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

All services on the subject property already exist. The proposed departure will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated.

Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY

The proposed application will have no impact on the general safety and wellbeing of the surrounding community.

To retain the As Built structures with encroachments proof to be the best option for the site without having a detrimental impact on the aesthetic value, safety and privacy of the estate.

Since the proposed departure is not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

3.11 IMPACT ON HERITAGE

The application does not involve changing the character of a site larger than 5 000m². Consequently, the proposed application for the departure does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 3900 Onrustrivier is not situated within the Heritage Overlay Zone as determined by the Overstrand Heritage Report (2009). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010). The subject property is not located within a Heritage Protection Overlay Zone (2020).

The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above mentioned it is evident that the proposed departure will not have a negative impact on the heritage value of Onrus.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departure does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998). The subject property is also not situated within the Environmental Management Overlay Zone (2020).

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to erf 3900 Onrustrivier will remain unchanged and will be from the existing access point in Dempers Street. No new access points are proposed. Refer to the site development plan indicating the position of the vehicle entrance.

The Overstrand Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house. An additional parking bay is required for a second dwelling unit on the subject property. There is currently a single garage and double carport on the subject property. The existing garage and carport can therefore accommodate a total of three vehicles - refer to the site development plan. The main dwelling and second dwelling on the subject property therefore complies with the minimum parking requirements for SR1 zoned properties as stipulated in the land use scheme regulations.

The subject property will still be used for single residential purposes only and therefore the impact on the traffic flow in the area will remain unchanged.

3.14 TITLE DEED

Title deed no. T3658/2004 and pivot title deed no. T466/1908 have no restrictive conditions that prohibit the existing As Built structures or the uses thereof. Since the

title deed conditions are straight forward, a conveyancer's certificate is not submitted with this application.

There is a bond registered against erf 3900 Onrustrivier. The subject property is however in the process of being sold and as a result the bondholder's consent would not be applicable.

3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2020)* earmarks the area where erf 3900 Onrustrivier is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). The unique village / rural character of the area will be maintained. In addition, the urban footprint will be maintained within the existing urban edge. As a result, the impact of the proposed departure on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

The proposal will promote land development in a location that is sustainable. The proposed departure is to an improved erf within an established residential area and will not impact on urban sprawl or upon a sensitive environment.

The impact on the overall density of Onrus will remain unchanged since the proposed application still promotes a low-density rural-residential area.

From the above it is evident that the proposed development **adheres and complies** with the relevant municipal spatial planning policies.

3.16 PLANNING PRINCIPLES

The planning principle of spatial resilience does not apply to this application.

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1995.

This principle addresses the need to address the past imbalances regarding opportunity. This application is for an erf as per the establishment of the existing Onrus township and this principle does therefore not apply to this application.

Spatial sustainability: The proposed departure will have a low impact on the visual elements of the subject property and surroundings since it is considered low impact encroachments that has been in existence for more than 20 years. It is submitted that the existing As Built structures are compatible with the character of the area and many examples of similar deviations granted to property owners in the area exist. It is submitted that the As Built structures will not impact negatively on the rights of anyone else. The impact on the biophysical environment will also be kept to a minimum.

The second dwelling unit that encroaches the respective building lines can be favourably considered due to factors such as the good quality materials used and no changes to window placements since the structure was converted to a second dwelling in 1996. The aforementioned promotes the desirability and sustainability of the proposal and allows for the consideration and approval of the proposed deviations without having an adverse impact on the spatial sustainability of the area.

Efficiency: The subject property is easily accessible and conveniently located close to Onrus centres, Hermanus and major routes. The massing and height of the As Built structures that deviate from the respective building lines are in line with the relevant land use scheme regulations and architectural guidelines. It proves to be resourceful to approve the As Built structures since it is compatible with the existing built environment and the way the development was done is aesthetically pleasing.

It proves to be efficient to accommodate the existing As Built structures by approving the proposed departure for erf 3900 Onrustvriër instead of demolishing / partially demolishing the existing structures to accommodate the latter elsewhere on the already small property.

The proposed departure proves to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

Good administration: Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.

4. RECOMMENDATION

When this application is evaluated it is important to take note of the following:

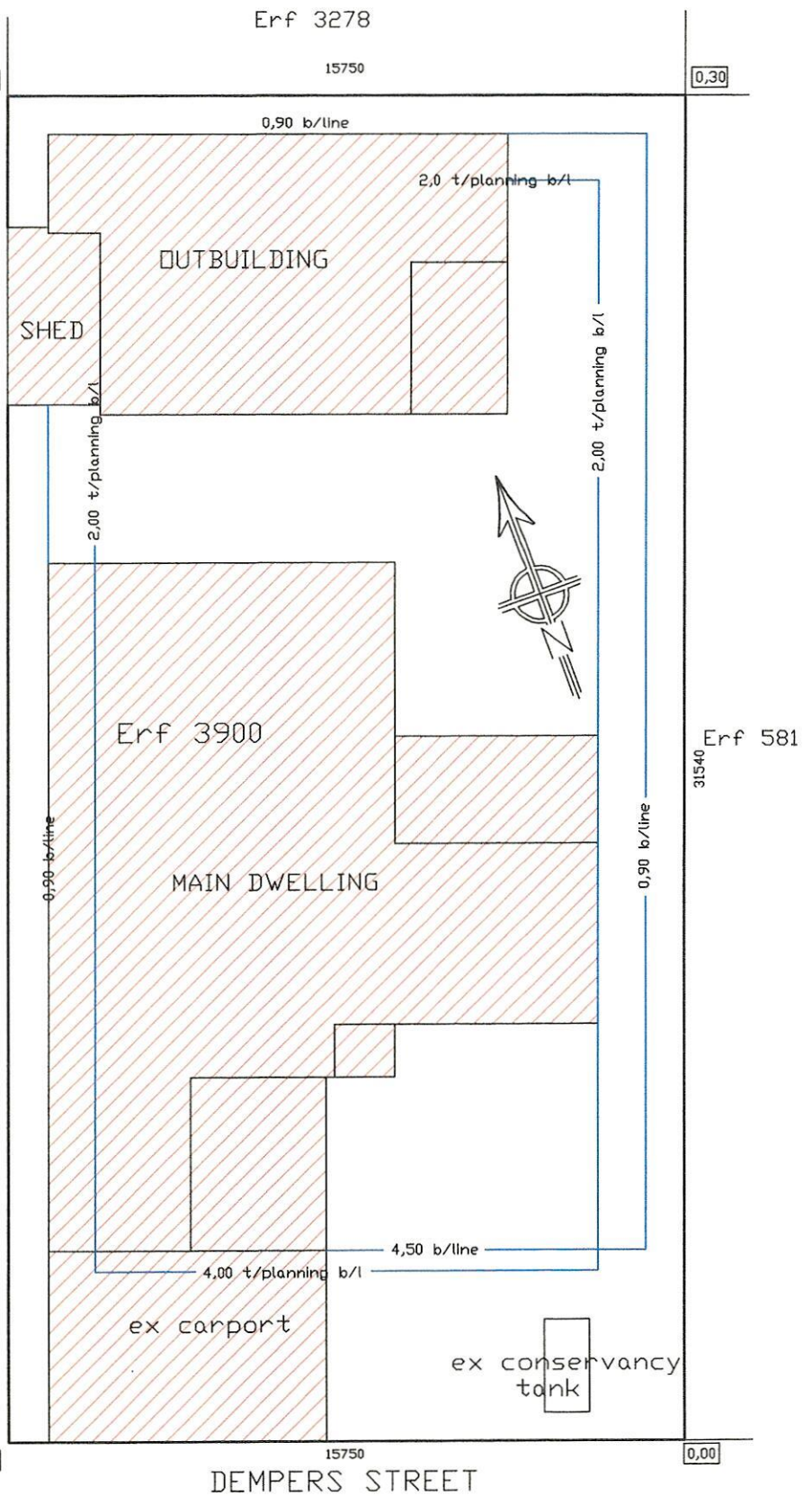
- The previous owner added to and converted the approved garage / outbuilding to a second dwelling between 1996-2004;
- The existing owner merely added the entrance hall section to the existing second dwelling in 2005 – the latter addition does not encroach the relevant building lines;
- The shed is considered a low impact use that can be accommodated on the lateral erf boundary;

- The current landowner used the second dwelling unit / cottage for accommodation to family members (mother-in-law and later his son); hence no rental income was obtained from the cottage;
- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification status quo of the area will remain unchanged;
- The zoning of the subject property will remain unchanged;
- The deviations from the applicable scheme regulations' building lines are to accommodate the As Built structures only;
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic and services will be kept to a minimum;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013).

The application can be supported for your favourable evaluation. The opinion is held that this application will have no negative impact on the land values, privacy, built environment and character of the area.

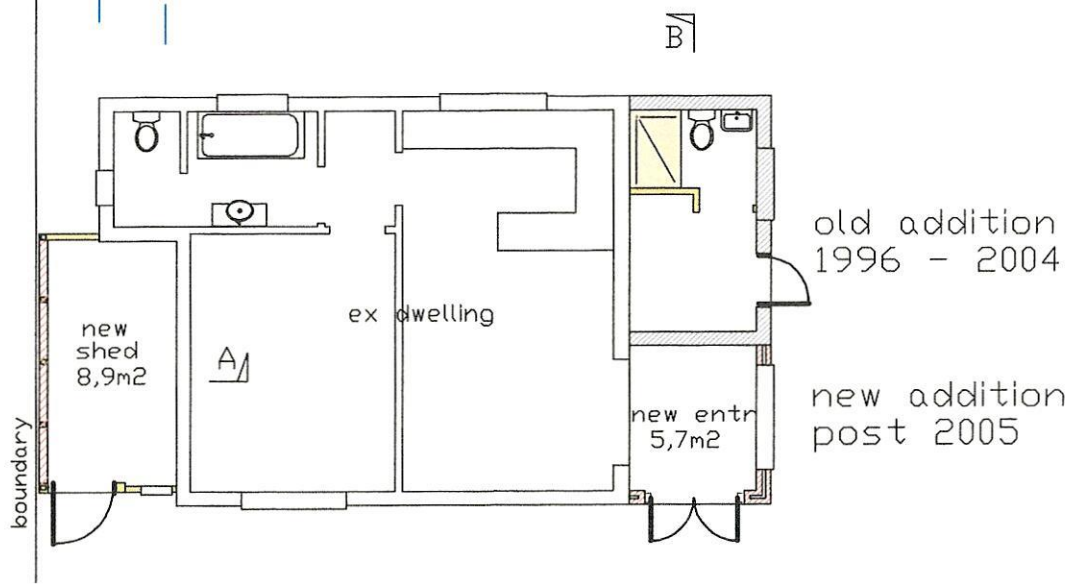
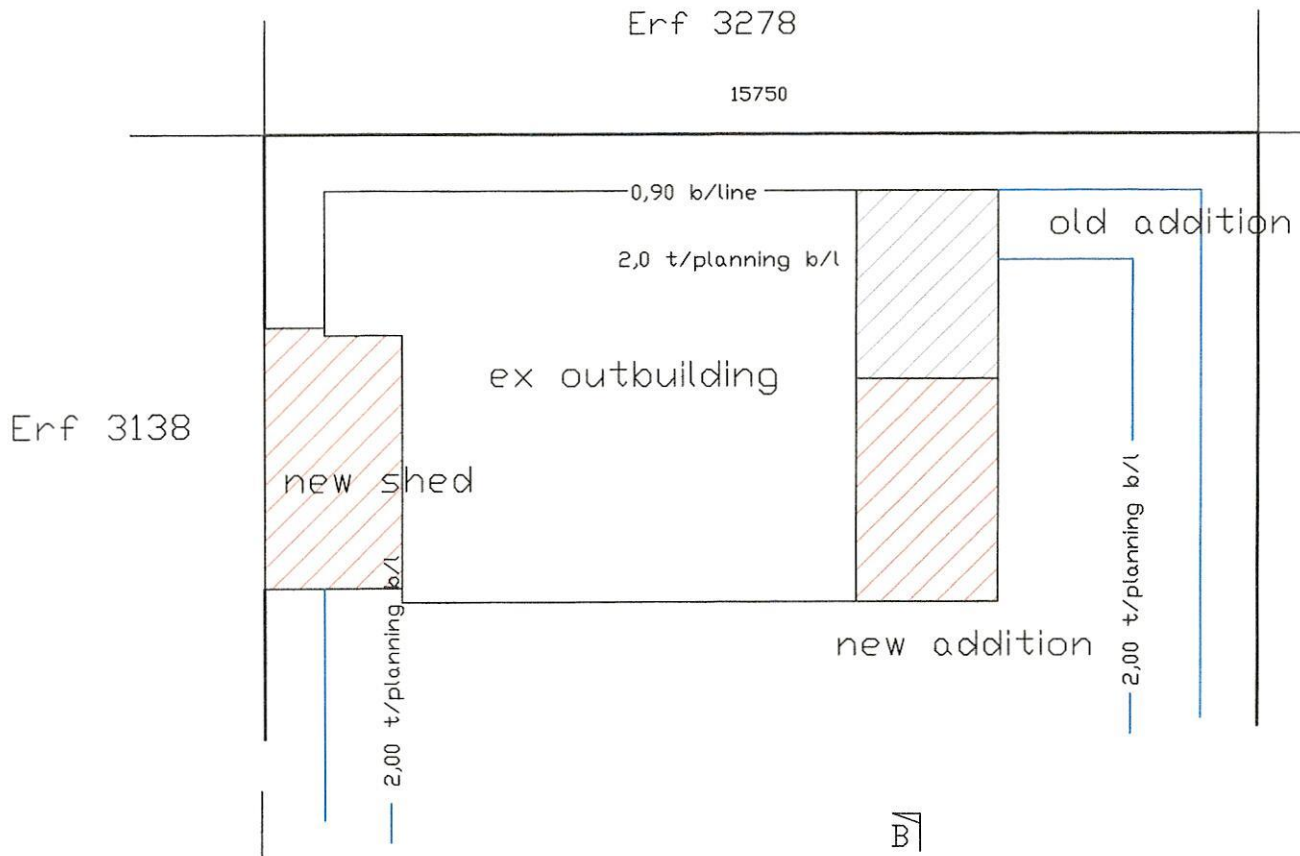
House - Wentzel
 Erf 3900 Dnrusriver
 26 Demper Street
 Floor Areas & Coverage

Main Dwelling	155,78 m ²	0,30
Outbuilding	64,86 m ²	
Garden shed	8,90 m ²	
Carport	29,25 m ²	
Total	258,79 m²	
Erf Size	495 m ²	
Coverage	52,28 %	



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 CK88/24779/23
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 2nd September 2021

House - Wentzel
 Erf 3900 Inrusriver
 26 Demper Street
 Additions to Outbuilding



OUTBUILDING

LINK Architecture

CK88/24779/23

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