



## Overstrand Municipality

**LAND USE PLANNING REPORT – MUNICIPAL PLANNING TRIBUNAL (MPT)**

**ERF 8395, 65 LAVENDER STREET, KLEINMOND, OVERSTRAND MUNICIPAL AREA : PROPOSED  
REMOVAL OF RESTRICTIVE CONDITIONS AND CONSENT USE : M MOHAMUD (obo YP MBALI)**

Reference number	8395 KKM (3341)	Application submission date	29 June 2016	Date report finalised	14 November 2016
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**PART A: AUTHOR DETAILS**

First name(s)	Helena Johanna				
Surname	Van der Stoep				
Job title	Senior Town and Regional Planner				
SACPLAN registration number	A/1708/2013				
Directorate/ Department	Infrastructure and Planning				
Contact details	028-3138900 hvdstoep@overstrand.gov.za				

**PART B: APPLICANT DETAILS**

First name(s)	Maow				
Surname	Mohamud				
Company name	N/A				
SACPLAN registration number	N/A	Is the applicant authorised to submit this application	Yes		
Registered owner(s)	YP Mbali				

**PART C: PROPERTY DETAILS**

Property description (in accordance with Title Deed)	Erf 8395, Kleinmond				
Physical address	65 Lavender Street	Town/City	Kleinmond		
Current zoning	Residential	Extent (m <sup>2</sup> /ha)	128m <sup>2</sup>	Are there existing buildings on the property?	Yes
Applicable zoning scheme	Overstrand Municipality Zoning Scheme Regulations, 2014				
Current land use	Residential	Title Deed number & date	T56782/2015		
Any restrictive title conditions applicable	Yes	If Yes, list condition number(s)	Clause D.1		
Any third party conditions applicable?	No	If Yes, specify	NONE		

Any unauthorised land use/building work	No	If Yes, explain	
<b>PART D: PRE-APPLICATION CONSULTATION (ATTACH MINUTES)</b>			
Has pre-application consultation been undertaken?	No	If yes, provide a brief summary of the outcomes below.	
<b>PART E: LIST OF APPLICATIONS (TICK APPLICABLE)</b>			
Consent use		Removal, suspension or amendment of restrictive conditions	
<b>PART F: EXECUTIVE SUMMARY</b>			
An application was received on 29 June 2016 from Mr M Mohamud on behalf of Ms YP Mbali for the following:			
<ul style="list-style-type: none"> <li>Removal of restrictive title conditions with reference to Clause D.1 of Title Deed T56782/2015 in terms of Section 16(2)(f) applicable to Erf 8395, Kleinmond, to enable the owners to operate a house shop on the subject property, and</li> <li>Consent use in terms of Section 16(2)(o) in order to utilize a portion of the existing dwelling on Erf 8395, Kleinmond, as a house shop.</li> </ul>			
<b>PART G: BACKGROUND</b>			
The erf is located in 65 Lavender Street, Kleinmond and is zoned as Residential 1.			
<b>PART H: SUMMARY OF APPLICANTS MOTIVATION</b>			
The house shop will be to the benefit of the community. The shop will be in walking distance from the houses. The erven is very small and the houses are close to each other. The shop will be part of the house and the physical character of the property will remain intact. The tuck shop will provide for people who do not own a car.			
<b>PART I: SUMMARY OF PUBLIC PARTICIPATION</b>			
Methods of advertising		Date published	Closing date for comments
Press	Yes	4 & 11 August 2016	16 September 2016
Gazette	Yes	5 August 2016	16 September 2016
Notices	Yes	4 August 2016	16 September 2016
Ward councillor	Yes	4 August 2016	16 September 2016
Was public participation undertaken in accordance with Section 45 - 49 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016			Yes
<b>PART J : SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION</b>			
No objection was received during the official comment period from the public. An objection was lodged before the objection period, which will be dealt with as an early objection for completeness of the application. The objectors indicated that the whole house will be used for a shop and that the owner does not reside on the property. Other surrounding residents have signed the letter, but none of the aforementioned objected during the comment period.			
Negative comments were received from the internal departments of Fire and Building Control.			
<b>Fire Department:</b>			
The structure does not comply with the national Fire Protection Fire protection Regulations and does not meet the Fire			

Safety Requirements.

**Building Control Department :**

A dwelling house has a minimum floor area of 30m<sup>2</sup>. Due to the house shop taking 10m<sup>2</sup> of the habitable space of the dwelling, which is 35m<sup>2</sup>, the minimum requirement is not met for a dwelling house.

**PART K: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS**

Name	Date received	Summary of comments	Recommendation
Fire Department	18/09/16	In terms of requirements of National Fire Protection Regulations SANS10400T:2011 any occupancy category F2 – Small Shop must be separated from a dwelling H4 occupancy by a 60 minute fire wall. Any pedestrian opening must also therefore be protected with a 60 minute SANS1253-Class A self-closing fire door. A minimum of 1x4.5kg Dry Chemical Powder fire extinguisher must be provided in addition to the above requirements.  This application does not currently meet the requirements therefore Fire Safety is unable to support the approval of this application until such time that there is full compliance with the regulation.	Negative
Engineering Services	15/08/16	See Annexure D.	Positive
Traffic	15/08/16	All in order. Will not have any effect on Traffic.	Positive
District Health	08/08/16	No additional requirements. If this application is approved the owner need to apply for a Certificate of Acceptability for a Food Premises.	Positive
Building Control	05/08/16	Not supported. Non-compliance with National Building Regulations.	Negative
Senior Manager : Kleinmond Administration	05/08/16	Support application.	Positive

**PART L: SUMMARY OF APPLICANT'S REPLY TO COMMENTS**

Not applicable, since the objection was not lodged during the comment period.

**PART M: MUNICIPAL ASSESSMENT OF COMMENTS**

The Municipality cannot exclude any foreigners from lodging an application if they are legally in the country.

**PART N: MUNICIPAL PLANNING EVALUATION ( REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**

Was the application processed correctly (if no, elaborate below):	Yes
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Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes
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**Application history**

N/A

**(In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)**

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

**Spatial Justice:**

The application is addressing the injustice of the past planning practices that did not provide for commercial erven within the townships.

**Spatial Resilience:**

The application belong to a South African citizen and the partnership of a business and the renting of the house will provide a much needed income to the owner, especially in the present economic environment and in the future.

**Spatial Sustainability**

The sustainability with regard to the residential dwelling is in question due to the fact hat the house will lose it social space for the functioning of the family unit.

**Efficiency:**

The application will minimize negative effect of possible illegal structures being erected, which may have an economic impact on the resale value of the property.

**Good administration :**

The application follows the required planning procedures to ensure all structure as are legal and the public process has been followed.

**(In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)**

Inconsistent with regard to sustainability.

**(In)consistency with the IDP/Various levels of SDF's/Applicable policies**

Consistent with the Zoning Scheme.

**(In)consistency with guidelines prepared by the Provincial Minister**

Not Applicable

**Impact on Municipal engineering services**

None of the services are impacted upon.

**Outcomes of investigations/applications i.t.o other legislation**

Not Applicable

**Existing and proposed zoning comparisons and considerations**

The existing zoning is Residential 1 and will remain as such. The application is for utilizing only a portion of the building for limited commercial purposes.

**The desirability of the proposal**

The application erf is located in a residential area known as 'Riemvasmaak". This area has no business erven and does not make any provision for any commercial activity. This has led to various illegal house shops due to the aforementioned and the distance to formal businesses catering for basic foodstuffs.

The erf is located on Lavender Road and measures 128m<sup>2</sup> in extent. The residential dwelling is 35m<sup>2</sup> in extent. One (1) parking bay in front of the house may be possible should the owners have no steps to the front of the house. The development is a housing project and it is assumed that the occupants will not be owners of vehicles and that car ownership will be limited if any at all. The need for such small shops do exist within the residential area and is in close proximity for people not owning cars and access the property on foot.

The removal of the restrictive condition is recommended for approval to ensure that the erf does have options to execute primary rights attracted to Residential Zone 1 erven.

The consent use for the house shop in the house cannot be recommended due to the negative comments received from the internal departments. The present dwelling will lose its lounge/sitting room, which will lead to a residential dwelling measuring 25m<sup>2</sup> and therefore does not comply with the minimum required 30m<sup>2</sup> for residential purposes. It should be noted that the social area of the house is lost, which will create a structure with rooms and no positive interaction between family members.

The Fire Department did not give positive comments since the present building cannot adhere to the requirements of the National Fire Regulations. This is imperative to the application, since the proposed house shop will now be a public building with specific requirements with regard to safety.

Thus the present building is not viable for a house shop due to the aspects mentioned above.

**PART O: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS****The financial or other value of the rights**

The owner of the property will acquire financial benefit from the application.

**The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal**

The personal benefit will be to the owner of the house due to the income generated by the house.

**The social benefit of the restrictive condition remaining in place, and/or being removed/amended**

The condition has been transferred on each of the erven in that development. The condition was for the benefit of the original owners of the property and is not in existence anymore. It has no social value for any of the residents of Riemvasmaak.

**Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights**

The condition will be completely removed.

**PART P: SUMMARY OF EVALUATION**

An application has been received for a consent use for a house shop and the removal of restrictive condition D.(1) of Title Deed T56782/2015. The erf is located in 65 Lavender Street, Kleinmond and is zoned for Residential 1. The application was distributed to the surrounding owners and no objections were received against the application from the public.

The application complies with the Overstrand Zoning Scheme development parameters pertaining to a house shop. The house shop building does not comply with the National Building Regulations of 10m<sup>2</sup> of the original building size of 35m<sup>2</sup> which entail that the house is approximately 25m<sup>2</sup>. Thus the building does not comply with National Building Regulations minimum standard of 30m<sup>2</sup> for a functional house. The building also does not comply with the National Fire regulations for Fire Safety. This is crucial due to the involvement of the general public that will visit the house shop and the inhabitants of the house.

#### PART Q: RECOMMENDATION

##### RECOMMENDATION :

1. that the application for the removal of title deed restriction in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 as per Clause D.1 of Title Deed T56782/2015 applicable to Erf 8395, Kleinmond, **be approved**.
2. that the application in terms of Section 16(2)(o) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 for a consent use in order to utilize a portion of the existing dwelling on Erf 8395, Kleinmond, as a house shop, **not be approved**.
3. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

#### PART R: REASONS FOR RECOMMENDATION

- ❖ The Removal of restrictive condition will assist the owner of the building to execute the primary rights of the Residential Zone 1 parameters, should it be able to comply with legislation dealing with safety and structures.
- ❖ The application has followed due procedure.
- ❖ No objections have been received from the public.
- ❖ None of the Municipal services will be needed.
- ❖ The consent use application is not approved due to the fact that the internal departments have objections based on technical grounds that involve safety and structural regulations that are there to protect the public.

#### PART S: ANNEXURES

Annexure A	Locality Plan
Annexure B	Proposed Site Development Plan
Annexure C	Motivation Report
Annexure D	Services Report

#### PART T: SIGNATURES

Author name : **H VAN DER STOEP**

Author signature :

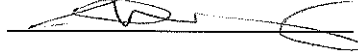


Date:

28/3/2017

Registered planner name : **S VAN DER MERWE**

SACPLAN registration number: **A/1850/2014**

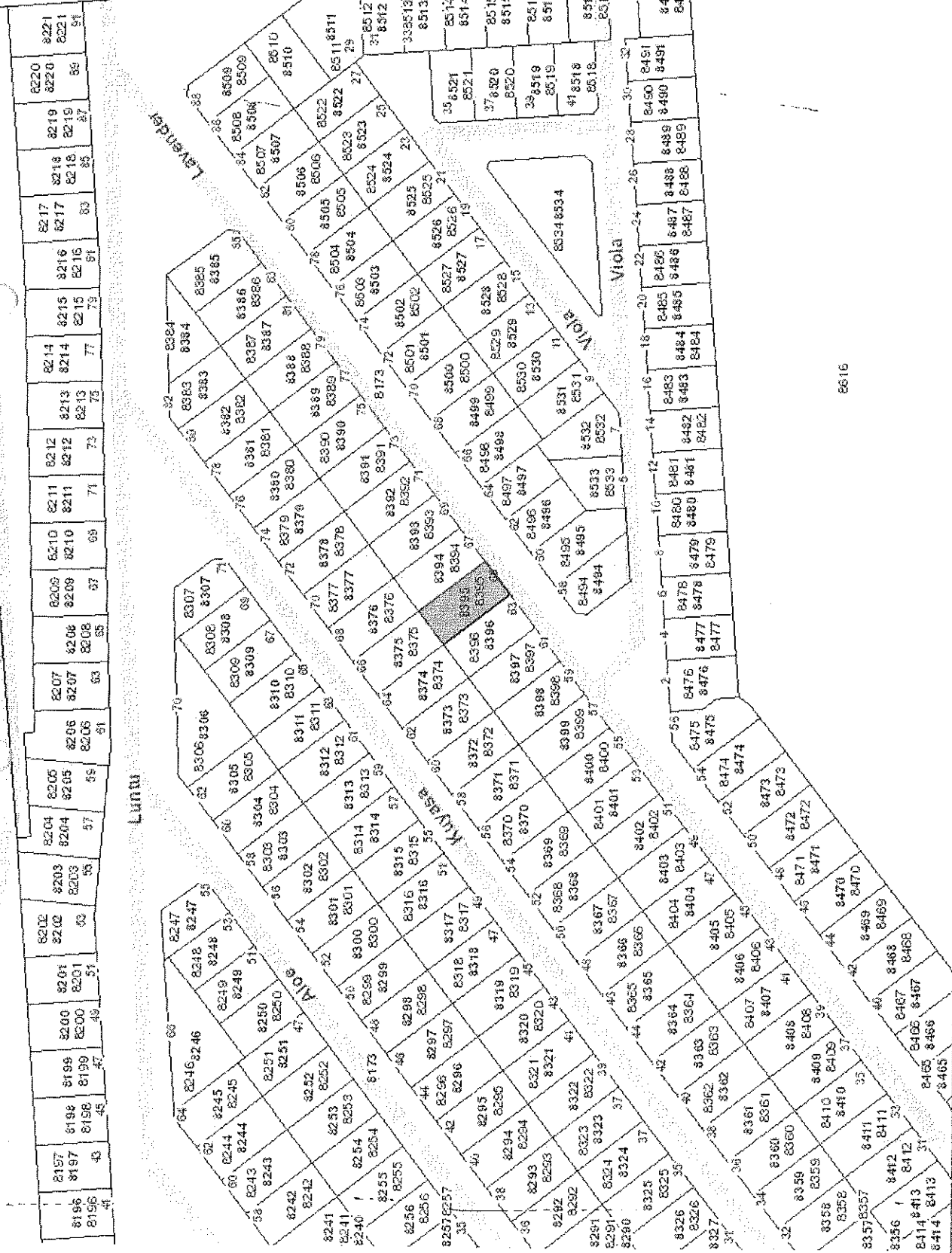
Registered planner signature : 

Date: 28/03/2017

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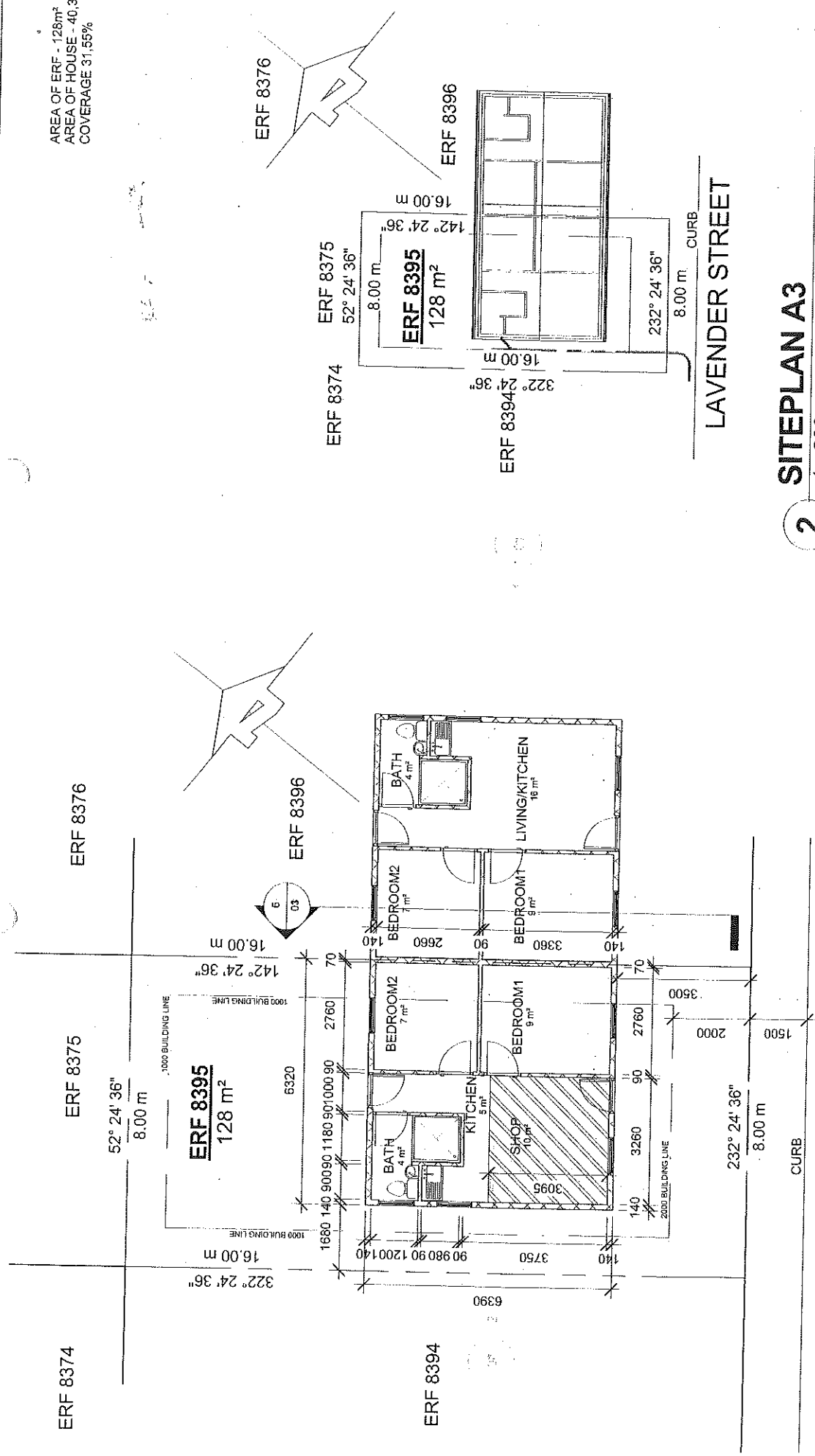


**LOCALITY PLAN**  
**ERF 8395**  
**KLEINMOND**



67

AREA OF ERF - 128m<sup>2</sup>  
 AREA OF HOUSE - 40,38m<sup>2</sup>  
 COVERAGE 31,55%



**2** SITEPLAN A3  
 1 : 200

**1** 1GROUNDSTOREY A3  
 1 : 100

SAARP REG. NR. ST2385

**J H BLIGNAULT**  
 KUSWEG 42  
 KLEINMOND  
 7195  
 SELFHOON 082 7322732  
 TELEFOON 028 2713796  
 EPOS janblignault@axxess.co.za

PROF. SENIOR ARGITEKSTEGNOLOG

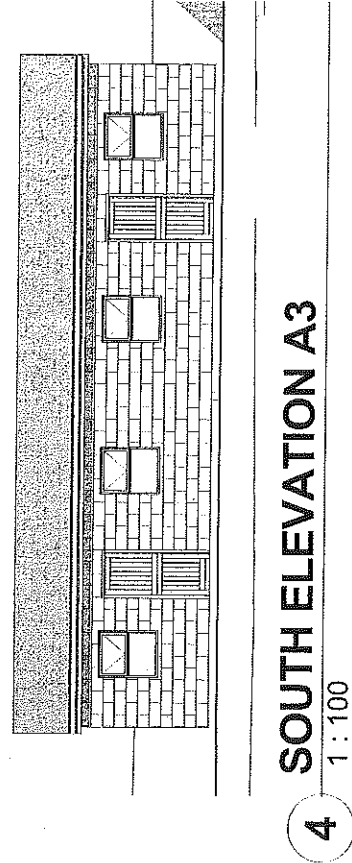
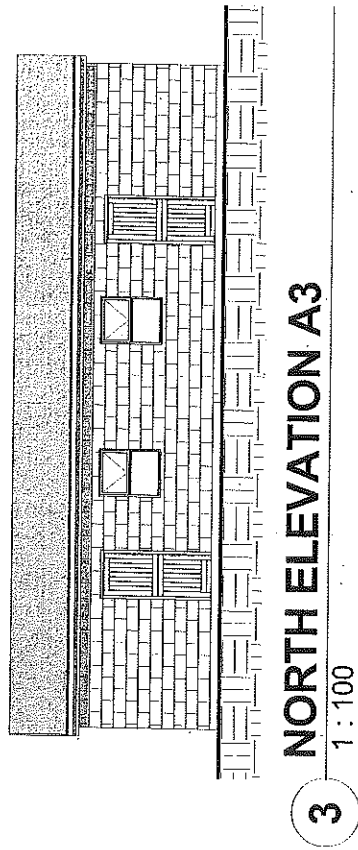
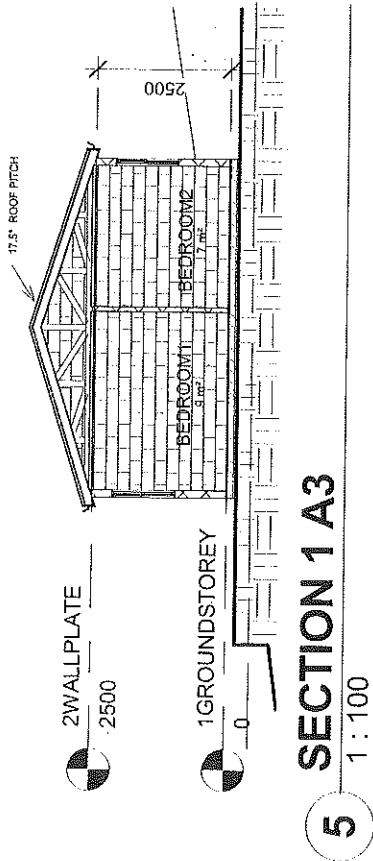
APPLICATION FOR SMALL SHOP  
 FOR MS. MBALI

GROUNDSTOREY PLAN

No.	Description	Date

Projectnummer: B5037  
 Datum: 2015.06.22  
 Getekende deur: Author  
 Mannekes deur: Author

02



No.	Description	Date

PROF. SENIOR ARGITEK/TEKNOLOG

SAARP REG. NR. ST2385

**J H BLIGNAUT**

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APPLICATION FOR SMALL SHOP  
FOR MS. MBALI

**ELEVATIONS**

Projektnommer: B6037  
Datum: 2016.06.22  
Getekende: Author  
Napasien deur: Checker

## MOTIVATIONAL LETTER

The changes requested in the rezoning of this property will have little impact on the environment. It is an application for a small erf to obtain business rights so a legal Tuck-Shop can be managed by an individual to be able to earn a living and provide for his family.

## PHYSICAL CHARACTERISTICS OF THE PROPERTY

The erven are small and close to one another. The proposed change will have no impact on the physical characteristics of the property. No topography, geological changes will be necessary.

## EXISTING PLANNING IN THE AREA

It is an already developed residential area.

## CHARACTER OF THE SURROUNDING AREA

It is a residential area. The changes are 100% compatible with the area. The tuck-shop will provide a shop for people without vehicles that have to walk to shops, to purchase necessities.

## POTENTIAL OF THE PROPERTY

The property is a small residential erven. The erven can not be used for agriculture, conservation, mining or recreation. The small tuck-shop will not influence any potential of the property.

## LOCATION AND ACCESSIBILITY OF THE PROPERTY

The property can be accessed on foot. It will not have the effect of additional traffic.

**PROVISION OF SERVICES**

All infrastructure are in place and all services such as water, electricity etc., is already supplied to the erf. No new services will be needed and there will be no effect on the environment.



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M MOHAMUD

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS &  
CONSENT USE: ERF 8395, KLEINMOND (3341)**

Electricity : In order  
Water : In order  
Sewer : In order  
Stormwater : In order  
Roads and traffic : In order

**Conditions:**

1. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
2. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the developer's cost;
3. that no on-street parking be allowed;
4. that stormwater be allowed to discharge through Erf 8395, Kleinmond, unobstructed.

  
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**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

15/8/2016  
DATE