



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

A G E N D A

**DATE:
VENUE:
TIME:**

**26 AUGUST 2021
VIRTUAL
10:00**

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

11 August 2021

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that, due to the Covid-19 lockdown, a meeting of the **Municipal Planning Tribunal (MPT)** will go into session by means of a virtual platform on **Thursday, 26 August 2021 at 10:00**, to consider the attached agenda.

H JANSER (MS)
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr H Olivier (Town Planner)
10. Mr P Roux (Town Planner)
11. Secretariat

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 1 July 2021

4. ITEMS FOR CONSIDERATION

4.1 ERF 4336, 305 THIRD STREET, VOËLKLIP, HERMANUS: APPLICATION FOR DEPARTURE: MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNING ON BEHALF OF M BEYLEVELDT

Report attached.

4.2 MOUNT PLEASANT IRDP INFILL RESIDENTIAL HOUSING PROJECT (AREA 8) ON A PORTION OF REMAINDER ERF 243, HERMANUS AT HEIDE STREET, MOUNT PLEASANT: APPLICATION FOR DEVIATION FROM THE OVERSTRAND MUNICIPALITY SPATIAL GROWTH MANAGEMENT STRATEGY, SUBDIVISION, REZONING AND EXEMPTION TO EXCLUDE AN APPLICATION FOR THE NAMING OF STREETS: MESSRS NUPLAN AFRICA ON BEHALF OF OVERSTRAND MUNICIPALITY

Report attached.

4.3 ERF 454, 21 ANDRIES PRETORIUS STREET, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND THE DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE ON BEHALF OF RF SANTANA

Report attached.

4.4 ERF 4164, CHANTECLAIR AVENUE, ONRUSTRIVIER: OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, CONSENT USE, DEPARTURE AND APPROVAL OF STREET NAME: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF KM DUCCI FOR CAPE DETAIL CONSTRUCTION (PTY) LTD

Report attached.

**MUNICIPAL PLANNING TRIBUNAL
(MPT)**

26 August 2021

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4.1

ERF 4336, 305 THIRD STREET, VOËLKLIP, HERMANUS: APPLICATION FOR DEPARTURE: MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNING ON BEHALF OF M BEYLEVELDT

4336 HVK (2020)

P Roux

26 May 2021

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application was received on 12 February 2020 from Messrs Plan Active Town- and Regional Planning on behalf of M Beyleveldt on Erf 4336, Hermanus (Voëlklip) in terms of Section 16(2) of the Overstrand By-Law on Municipal Land Use Planning, 2015 (By-Law) for a departure to relax the following:

- ❖ eastern lateral building line from 2m to 0m to accommodate a covered stoep;
- ❖ eastern lateral building line from 2m to 0,959m and 0,879m respectively to accommodate the existing timber deck and column;
- ❖ eastern lateral building line from 2m to 0m to accommodate the change of use from braai room to deli foods preparation and dry room, and
- ❖ western lateral building line from 2m to 1,459m to accommodate the extended double garage to be used as a cold room.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf measures 496m² in extent and is located in the residential township of Hermanus. The property is zoned Single Residential Zone 1 and the property is developed with two (2) dwellings and subservient outbuildings. The applicant is seeking to legalise several structures and uses on the property which do not have building plan approval as indicated in the application.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is as follows:

The property is already developed with "as built" structures which were constructed 1,2m away from the erf boundaries, the previous Hermanus Zoning Scheme allowed for 1,2m lateral building lines.

The previous and current property owners made alterations to the dwelling not knowing that building plans were required and that stricter building lines now apply to the subject property.

The application is therefore to address the following encroachments:

- ❖ The covered stoep (braai area) on the ground floor (relaxation of the eastern 2m lateral building line to 0m).
 - the covered stoep is 9,3m² next to the already approved braai room;
 - the covering is made of corrugated roof sheeting in order to make the braai area more private;
 - it is not visible from the street as it is situated between the braai room and the dwelling;
 - the stoep is enclosed on all sides and not visible by the neighbouring property;
 - the height of the covered stoep meets the 3,5m/40-degree height requirement for the consideration of a covered, enclosed stoep within the building lines.

- ❖ The timber deck on the ground floor level and supporting column on lower ground floor (relaxation of the eastern lateral building line from 2m to 0,959m and 0,879m respectively).
 - the deck is 12,58m² in extent. The deck is visible from the adjacent properties;
 - the deck is considered a low structure when compared to the permissible 8m height restriction;
 - the deck is situated 1,01m from the eastern lateral building line (with the column on the 0,88m building line);
 - consent was provided from the property owners of Erf 7183, and
 - the deck allows for rainwater and sunlight through and does not form part of the coverage calculation for the subject property.

- ❖ The extended garage to accommodate a cold room/cooler (relaxation of the western lateral building line from 2m to 1,459m).
 - the cold room forms part of the home occupation;
 - it is located in the rear extended area (southern end) of the approved garage. The extension is in line with the development line of the approved garage structure;
 - a garage is defined as an outbuilding: *“means a structure, whether attached or separate from the main building, which is ancillary and subservient to the main building on a land unit, and includes a building which is designed to be normally used for the garaging of motor vehicles, for **storage purposes**”*.....the extension of the garage will be used for cold room purposes and therefore meets the definition of an outbuilding;
 - the size of the cold room is 2,48m² in extent and only one storey high; due to the slope the extension is more visible however it is on ground floor;
 - the garage is no longer than 9m and no doors or windows placed in the extended garage;
 - noise complaints were received regarding the compressor, which was initially mounted on the southern wall. The compressor was moved to the roof of the dwelling and further away from the next door neighbour in order to mitigate the noise impact.

- ❖ Change of use of the approved braai room for preparation and dry room for home occupation use (relaxation of the eastern 2m lateral building line to 0m):

- the structure was previously approved as a braai room.
- the extension of the braai room of 4,92m² as indicated on the plans does not encroach any building lines. The approved structure and extension to the braai room will now be used for home occupation, together with the main dwelling's kitchen and cold room.
- no changes to the approved structure are proposed only the change of use to allow for the braai room to be used for home occupation purposes.
- home occupation is a primary right under the land use parameters of properties zoned for Residential Zone 1: Single Residential purposes. No land use application is required subject to compliance with the definition and parameters of a home occupation. The definition is as follows: "**home occupation** means the practicing of an occupation, profession, art or trade, or the conducting of an enterprise, which includes an estate agency, from a dwelling unit by one or more of the occupants of a dwelling unit; provided that the dominant use of the dwelling concerned shall remain for the living accommodation of a single family, and the property complies with the requirements contained in this zoning scheme for a home occupation; but does not include adult entertainment;
- a trade is defined as "a job requiring manual skills and special training". An enterprise is defined as a business or company. Enterprise is also another word for a for-profit business or company, but it is most often associated with entrepreneurial ventures. A baker and a blockman are considered a trade and their home occupation definitely meets the definition of an enterprise as well.
- the following products are made from their home: home cooked meals, jams, cookies, pickled salads, biltong and "droëwors". The biltong and droëwors are made on a small scale and are not considered to be a butchery from home. Larger portions of meat (not whole carcasses) are transported to the premises from the hunting farms and are cut to size and cured, minced and hanged to dry. The inactive business Overberg Hunting Safari was previously operated by the client for the past five (5) years. All products are transported by the owners and no sales are done from the premises. The deli products are sold in the CBD at the Biltong OU deli/shop.
- due to the scale of the business it will not be feasible to move premises. The premises have an approval from Overberg District Municipality's Health Department.
- the applicant motivates that the home occupation also all the minimum land use requirements/parameters to exercise this primary right:
 - the dominant use of the dwelling house or dwelling unit shall be for the living accommodation of a single family;
 - the total area used for a home occupation shall not exceed 25% of the total floor area of the buildings on the property, the proposed is 12,66% (36,02m²);
 - only 3 persons in total shall be engaged in home occupation activities on the property, including the occupants of the dwelling;
 - no portion of the dwelling, and no home occupation shall be used for the purposes of noxious trade, risk activity or sale of alcoholic beverages.
 - The noise complaint by the next door property owner was addressed; no advertising sign will be displayed;
 - goods and products are stored inside the dwelling and outbuildings and screened from the neighbours and street;

- the operation hours do not apply as no deliveries, pick up or sales are done from the property, the clients use their own vehicles for supplies and deliveries, and
- at least two (2) parking bays are provided in the double garage.

The application is therefore for the departure of the applicable 2m lateral building lines. There are no title deed restrictions which prohibit the proposed application.

A portion of the existing dwelling (36,02m²) is used for home occupation purposes.

Zoning of the property will be unchanged which is for single residential use, this allows for low impact land uses such as bed-and breakfast establishment, day care and home occupation uses.

The property has potential and scope to allow for the proposed deviations in terms of the Zoning Scheme. This is due to it allowing for non-habitable structures such as outbuildings over the building lines subject to conditions. Covered stoeps and open decks are also not considered habitable structures. Further, the existing structures are also constructed on less restrictive building lines as per the previous building lines. The following factors confirm the potential of the property to accommodate the proposed lateral building line deviations:

- good quality materials were used when the additions were made;
- the architectural style of the additions matches that of the existing approved main dwelling;
- the cold room as part of the extended garage addition is not visible from the street and the addition matches that of the existing double garage structure;
- the compressor of the cold room/cooler was moved further away from the neighbour's property and it has been covered to keep the noise impact to a minimum;
- there are no windows placed in the western or northern wall of the existing garage. No windows or doors face the neighbours;
- the braai room and braai were approved with a previous building plan application. Since the last building plan was approved the strop area next to the braai room was merely covered with corrugated roof sheeting. The height of the roof and the materials used has a low impact on the adjacent property owner;
- one of the existing braai rooms were built and approved on the eastern property boundary. It is used for the preparation and drying of deli products and is considered to be a low impact used (compared to the use as an entertainment area/braai room). The structure already exists and therefore its impact will be minimal;
- the extended garage and covered stoep is not visible from the street and will not impact the street scape;
- the deck and covered stoep's roof are visible from the neighbouring properties. The deck was constructed to follow the construction line of the existing dwelling.
- the additions have minimum impact on the massing of the property as the approved structures already occupy almost half of the property, and
- the slope of the subject property favours the "as built" additions since the height of the additions is inline with the height of the approved structures and does not exceed one storey and is still on ground level.

The applicant further motivates the following:

- ❖ the proposal including the massing and height is in line with the character of the area;
- ❖ the street scape will be maintained;
- ❖ no title deed restrictions prohibit the proposed use and development;
- ❖ coverage of the site is 49,74% and therefore does not exceed the allowable coverage;
- ❖ all structures applied for already exist and are “as built”, therefore there will not be a greater impact;
- ❖ no negative impact on heritage;
- ❖ access to the subject property will remain unchanged;
- ❖ the proposal is in line with the forward planning document of the Municipality, and
- ❖ the proposal is motivated to be in line with the planning principles of SPLUMA and LUPA

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	Applicant circulated the notices	
Ward Committee	Yes	15 June 2020	24 July 2020
Total comments	TWO (2)		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Fire Department	17/06/2020	No objection provides that the structure complied to the SANS 10400-A:2016, SANS-T:2020 & By-Law relating to Community Fire Safety.
Engineering Services	23/06/2020	Annexure F.
Building Department	19/06/2020	No objection. All buildings to comply with NBR and all other applicable law.
Heritage	30/06/2020	No comment.
Waste Management	13/07/2020	No objection.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Two (2) comments were received.

COMMENT 1

The first comment from Myra Korsten only specified conditions and did not object to the proposal, the conditions are as follows:

- ***no further expansions;***
- ***home occupancy activities may not increase;***
- ***home occupancy activities to comply to all health regulations at all times, and***
- ***no commercial trading on Erf 4336.***

Response from applicant

Comments are noted and conditions of her consent are in line with the land use application proposal and thus we have no further comment.

Response from Town Planner

Comments and response thereto are noted.

COMMENT 2

The second comment from M Raubenheimer who indicated that they object to the proposal, due to the reasons as summarised below:

- **The wooden deck is visible from the street while the motivation report stipulates otherwise and that the southern deck will have no impact on the street scape.**

Response from applicant

It should be corrected to hardly be visible from the street. It is visible from Third- and Fourth Streets but it does not affect the street scape due the slope of the property. The affected neighbours did not object to the deck - Mr Raubenheimer resides on the opposite side of the road.

Response from Town Planner

It is true that the deck is visible from the street, however the structure is only marginally visible from the street. It should be noted that the structure is situated at the back of the property and not towards the street and therefore the structure does not have a high visual impact from the street.

COMMENT 3

- **The health inspector approved the home occupation, how can one believe this since dogs are roaming the subject property (how is this hygienic?).**

Response from applicant

The dogs are kept on the southern end of the garden and does not come closer than 50m from the deli product preparation and dry room which is situated on the northern side of the property. There is no risk to hygiene, it is also in the best interest of the property owner to keep to the conditions of the Health Department. This objection is superfluous and should be dismissed.

Response from Town Planner

Comments are noted.

COMMENT 4

- **The house is being used by more than one family living on the premises.**

Response from applicant

A second dwelling is a primary right on the property. There are no title deed conditions which prohibit a second dwelling on the subject property. The proposed set of site development plans indicates a two-storey dwelling with both a kitchen and a kitchenette. This is in line with the requirements of the Municipality. It is the client's prerogative to accommodate another family, subject to compliance with the relevant land use and building requirements.

Response from Town Planner

It is true that a second dwelling is a primary right on the property and that it is subject to compliance with the relevant land use and building requirements. The Zoning Scheme stipulated that a third parking bay is required on site. It will therefore be a requirement, prior to building plan approval, that a third parking bay be provided on the building plan.

COMMENT 5

- **There are windows in the preparation room facing the street to the north.**

Response from applicant

The portion which has windows does not encroach any of the building lines. There was stated that where the preparation and dry room encroach the lateral building line there are no windows placed.

Response from Town Planner

The objector does not provide reasons why this will have a negative impact.

COMMENT 6

- **The processing of carcasses is a health risk and should not be allowed in a residential area. The use attracts flies and other insects to the residential area.**

Response from applicant

The following products are made from their home: home cooked meals, jams, cookies, pickled salads, biltong and “droëwors”. The biltong and droëwors are made on a small scale and are not considered to be a butchery from home. Larger portions of meat (not whole carcasses) are transported to the premises from the hunting farms are cut to size and cured, minced and hanged to dry. The inactive business Overberg Hunting Safari was previously operated by the client for the past five (5) years. All products are transported by the owners and no sales are done from the premises. The deli products are sold in the CBD at the Biltong OU deli/shop.

The type of home occupation exercised from the dwelling on Erf 4336 fits into the definitions of both a trade and enterprise which are included in definition of a home occupation. The home occupation also meets all the minimum land use requirements to exercise this primary right on the premises as discussed in detail in the Motivation Report.

The health inspector regularly inspects the premises. Waste meat tendon is removed from the site on a daily basis. A screen door and windows are installed in the preparation and dry room. An air curtain is also used in the preparation room. The dry room is regularly disinfected and has a company which regularly inspects the property for insect and plague control. Due to the strict measures in place there is no concern for unwanted flies and insects due to the home occupation on the site. There are always some flies in the residential area specifically during the summer months and the home occupation at the premises has not significantly contributed to an increased fly concern in the area. The client is of the opinion the occasional problem is due to a nearby stud farm.

Response from Town Planner

The motivation and rational provided by the applicant regarding the home occupation is not agreed with. This will be further discussed under the desirability heading.

COMMENT 7

- **The cold room/cooler’s dimensions are not indicated on the plan and thus assumed not to be included in the 36,02m² / 12,66% of the home occupation.**

Response from applicant

The ground floor storey plan clearly indicated that the cold room/cooler is included in the calculations.

Occupation Calculations	
Total Area - ground floor	185,16m ²
Total Area - lower ground floor	77,04m ²
Total Area - Dry/prep room	22,21m ²
Total Area - (excluding walls)	284,41m ²
Total Area - used for home occupation activities	36,02m ²
	12,66%

The comment is considered disingenuous and should be dismissed.

Only 2m² of the cooler is encroaching the lateral building line. The cooler is also used for domestic use and will be used as such should the home occupation cease in future.

Response from Town Planner

The plans provided with the application clearly indicates where the home occupation activities are being conducted.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS

No objections were received from the relevant departments.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (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 proposed application will not lead to further spatial injustice.

Spatial Sustainability

The application will have no impact on agricultural land or environmental sensitive areas.

Efficiency

The property owner can extend the usable space on the property and retain the existing structures.

Spatial Resilience

The proposal will maximum the use of the property.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

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

Same as Point 10.2 above.

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

Consistent with the Spatial Development Framework.

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

N/A

10.6 Impact on Municipal engineering services

The existing services are available and have been viewed positively by the Engineering Services Department.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents as the subject proposal is only applicable to a single property and the influence of the proposed structure and uses are limited in scale and scope. Application is made to depart from the building line applicable to the Overstrand Zoning Scheme.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The application is to legalise the existing and proposed structures on the property.

As discussed in the motivation, application is made for the following:

To relax the eastern lateral building line from 2m to 0m to accommodate a covered stoep

The relaxation of the eastern lateral building line from 2m to 0m to accommodate a covered stoep is considered a minor change to the approved building plan as the built braai was constructed in line with the approved building plans which dated back to 1980. The proposed roof covering will not change the use of the area as it has always been used as a braai area. Further, the roof covering will dampen noise and it is built a little higher than the existing boundary wall. In view of the aforesaid the covered stoep is considered a minor encroachment as the use of the area will remain as intend and the impact of the structure is non-intrusive on the amenity of the neighbouring property.

To relax the eastern lateral building line from 2m to 0,959m and 0,879m respectively to accommodate the existing timber deck and column.

The existing timber deck is situated up to 0,959m and 0,879m from the eastern lateral boundary, and although the applicant motivates that the deck is considered a single storey structure the rational is not agreed with due to there being a lower ground storey situated below the existing ground storey therefore the deck will be evaluated and considered as a first storey structure. The deck is accessed from the lounge and dining area. The footprint of the deck is 12,85m². The only property owners truly affected by the encroachment of the deck over the lateral building line is situated on Erf 7183 who did not object to the structure. It should be noted that Erf 7183 is developed with a double storey and that the deck on Erf 4336 faces towards the western elevation of the double storey building on Erf 7183 and not a private garden space. Considering this the deck is considered to have a minor impact which can be supported.

To relax the eastern lateral building line from 2m to 0m to accommodate the change of use from braai room to deli foods preparation and dry room.

Prior to the approval of the building plan in 2003, the outbuilding on the eastern boundary was used as a garage/outbuilding and was constructed on the eastern lateral boundary line. The garage door faced towards the western side of the property. Alterations to the property were indicated on an approved building plan which dates to 2003. On the building plan it was indicated that the garage door was to be built closed and that the use of the garage was to change to a braai room. It is now proposed to utilise the braai room/outbuilding as a place to preparation and dry room for the processing of meat in order to produce biltong and droëwors. As stated in the comment section of this report the rational and motivation provided by the applicant to state that the proposed use complies with the definition and parameters of a home occupation as contemplated in the Zoning Scheme, 2013 is not agreed with as discussed below.

The applicant states that the home occupation will be conducted from the dwelling. However, the area used for preparation and drying of the meat products are to be done in the outbuilding which was previously approved as a braai room. Further, the meat will be kept in a walk-in freezer which is in the garage. The definition and parameters for home occupation in terms of the Zoning Scheme clearly state the following as indicated in bold:

Definition

“home occupation means the practicing of an occupation, profession, art or trade, or the conducting of an enterprise, which includes an estate agency, from a dwelling unit by one or more of the occupants of a dwelling unit; provided that the dominant use of the dwelling concerned shall remain for the living accommodation of a single family, and the property complies with the requirements contained in the Zoning Scheme, 2013 for a home occupation; but does not include adult entertainment”

In terms of the definition, a home occupation can only be conducted from a dwelling unit. It is proposed by the applicant that the preparation and drying of the meat products will be done from the existing outbuilding which is not interleading with a dwelling and is therefore considered not in line with the provision of the definition which limits the home occupation to the dwelling unit. It should be noted that a

decision made for a similar application on a property in Hermanus Heights, this decision emphasized that home occupation must be conducted from a dwelling and not from an outbuilding.

Further, the use as indicated by the applicant is not considered to be compatible with the residential area/suburb. The outbuilding is converted to be fully utilised for the processing of meat products, the certificate obtained by the Health Department states that meat will be prepared, packaged and stored on the property. The uses such as the processing of meat are usually conducted from a business or industrial site such as a butchery where the type of use is more in line with the character of the area. Although the applicant received a Health Certificate it should be noted that the certificate does not allow for the continuation of the use without first complying with all relevant legislation. The onus is always placed on the property owner(s) to ensure that the zoning and building requirements are complied with.

It should further be noted that the applicant did not provide proof that the property owner has a business licence which is required for the preparation of foodstuff, such a license is required by law where food related products are prepared. If no business licence is obtained, then the activities are considered illegal.

It should be noted the Zoning Scheme is the tool which ensures that the rights of the adjacent property owners are protected when it comes to land use. The scale and impact of a home occupation must low and be suitable for the character of the area. The current activities on site were highlighted when a complaint was received from the next-door property regarding building work and noise due to the property owner constructing and operating a walk-in fridge (which also forms part of this application). The walk-in fridge and two (2) deep freezers are used to accommodate the amount of meat which must be kept on the property. The property owner's son also stated that they added solar panels to alleviate the electrical burden. Considering this the property has gone through several alterations and increased the footprint the processing area for the meat in order to cater for the demand of the products at the deli in the Hermanus CBD.

It should be noted that it was never the intension of the home occupation definition to allow for all types of uses which could pose a risk to health and become a nuisance to the neighbours. It is clear from the objection received that the activities have already been noted by the neighbours and have impacted them in some way or another. Considering the former the definition for home occupation was revised in the new Land Use Scheme, 2020 although it should be kept in mind the decision taken must be based on the Zoning Scheme of 2013.

To relax the western lateral building line from 2m to 1,459m to accommodate the extended double garage to be used as a cold room.

Lastly the walk-in fridge is constructed on the western side of the property, 1,459m from the boundary and in line with the development footprint of the rest of the dwelling. The reason for the application is due to cumulative impact of the extension together with the existing structures which encroach the 2m lateral building line and the use of the extended portion.

The encroachment of the structure itself is considered minor as the garage length and height will be compatible with the character of the area and the parameters for garages over lateral building lines. Further the proposed use will be internal with no openings towards the neighbours. The fridge structure itself is not a problem

but what is of concern is that the use of the walk-in fridge will be used for the home occupation on the property and as stated in this report the use as proposed is not considered to be in line with a home occupation as stated in the Zoning Scheme Regulations. Considering this a condition will be imposed that stipulates that the walk-in fridge can only be used for domestic use.

13. RECOMMENDATION

1. that the comments received be noted;
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 4336, Hermanus for a departure of the eastern lateral building line from 2m to 0m to accommodate the change of use from braai room to deli foods preparation and dry room, **not be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 4336, Hermanus for departure for the following:
 - to relax the eastern lateral building line from 2m to 0m to accommodate a covered stoep;
 - to relax the eastern lateral building line from 2m to 0,959m and 0,879m respectively to accommodate the existing timber deck and column, and
 - to relax the western lateral building line from 2m to 1,459m to accommodate the extended double garage to be used as a cold room,

be approved, in terms of the provisions of Section 61 of the By-Law,

that the approvals in Point 3. above be subject to the following conditions:

- (a) that this approval is only for the development as indicated on the plan dated 01/02/2020, as submitted with the application;
- (b) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;
- (c) that the use of the braai room be reverted to an outbuilding / braai room and not utilized for the preparation of meat products or for home occupation purposes;
- (d) that the walk-in fridge only be used for domestic purposes;
- (e) that all the conditions in the Services Report (attached as Annexure F), be complied with.
- (f) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
- (g) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.

4. that the applicant/persons who commented be notified of their right of appeal in terms Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conclusion.

14. REASONS FOR NOT APPROVING THE USE CHANGE OF THE OUTBUILDING/BRAAI ROOM

- The proposed alteration will not comply with the parameters of home occupation. The outbuilding where the meat is processed is not considered a dwelling unit and as per the Zoning Scheme parameters a home occupation must be operated from a dwelling unit and not an outbuilding.
- The scale of a home occupation on site was increased and the property altered in order to sustain the additional processing capacity for the meat, this was done to meet the demand of the products at the deli in the Hermanus CBD.
- It is not clear whether the property owner has a business licence for the preparation of food related products. If no business licence was obtained, then the preparation of food items is done in contravention with the Business Act.
- The use as indicated by the applicant is not considered to be compatible with the residential area/suburb. The outbuilding is converted to fully be utilised for the processing of meat products. The certificate obtained by the Health Department states that meat will be prepared, packaged and stored on the property. The uses such as the processing of meat are usually conducted from a business or industrial site such as a butchery where the type of use is more in line with the character of the area and has the required infrastructure.
- Objections received from the adjacent property owners regarding the activity is indicative that the activities are have an influence on the character of the area.

REASONS FOR THE RECOMMENDATION FOR THE RETENTION OF THE ILLEGAL ADDITIONS

- The covered stoep is considered a minor encroachment as the use of the area will remain as intend and the impact of the structure is non-intrusive on the amenity of the neighbouring property.
- The only property owners truly affected by the encroachment of the deck over the lateral building line is situated on Erf 7183 who did not object to the structure. Erf 7183 is developed with a double storey and that the deck on Erf 4336 faces towards the western elevation of the double storey building on Erf 7183 and not a private garden space. In view of the aforesaid the deck is considered to have a minor impact which can be supported.
- The encroachment of the extension to the garage itself is considered minor as the garage length and height will be compatible with the character of the area and the parameters for garages over lateral boundaries. Due to the home occupation not being supported on the property the walk-in fridge can only be used for domestic use and not for commercial use/home occupation use.
- The application has followed due procedure.
- The proposal is compliant with the spatial policies contained in the SDF.
- The proposal is constant with the spatial principles as set out in SPLUMA and LUPA.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Comments received
Annexure E:	Applicants' response on comments
Annexure F:	Services Report

SIGNATURES**REGISTERED PLANNER**

Name: **P ROUX**

SACPLAN Reg No: **A2246/2015**

Signature: _____

Date: _____

REGISTERED PLANNER

Name: **S VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature: _____

Date: _____

PROPOSED DEPARTURE
ERF 4336 HERMANUS
DIVISION: CALEDON
OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by Mrs. Marianne Beyleveldt, the owner of erf 4336 Hermanus, to apply for the departure of the subject property.

Erf 4336 Hermanus is 495m² in extent and is held by title deed no. T3320/2014.

There is an existing double storey dwelling with double garage situated on the subject property. Most of the As Built structures on the subject property were approved in the past (take note that 1,2m lateral building lines as per the previous Hermanus Zoning Scheme Regulations then applied to the subject property). However, the previous and current owners made some additions to the subject property not knowing that: a) building plans were required (for the deck / covered stoep) and b) that stricter lateral building lines in terms of the Overstrand Zoning Scheme Regulations (2013) now applied to the subject property. The stoep at the braai area (on ground floor level) in the north-eastern corner of the subject property was covered. A timber deck was constructed in the south-eastern corner of the subject property (south of the lounge on ground floor level).

In addition, the existing approved double garage was extended to include a cold-room / cooler. All the aforementioned structures were illegally built and are already existing.

The property owner's son has a deli / biltong shop in town. The products sold at the deli (bakery and dried meat products) are made at their home (erf 4336 Hermanus). The property owner and her son therefore have a home occupation on the subject property. The approved braai room (on the 0m eastern lateral building line), kitchen and cold-room / cooler are used for home occupation purposes. However, since the use of the braai room has changed to "preparation and dry room" for deli products, an application is submitted for a departure to accommodate the preparation and dry room within the approved braai room structure.

This application intends to address the following existing unauthorised structures that encroaches the lateral building lines of the zoning scheme regulations:

- The covered stoep on ground floor level;
- The timber deck on ground floor level and supporting column on lower ground floor level;
- The extended garage to accommodate a cold-room / cooler;
- Change of use of the approved braai room to preparation and dry room for home occupation use.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departure (building lines) of erf 4336 Hermanus.

3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 4336 Hermanus is situated at 305 Third Street, Voëlklip, Hermanus. Refer to the locality plan attached.

Erf 4336 Hermanus is 495m² in extent and is held by title deed no. T3320/2014.

The subject property gently slopes from North to South and is characterized by residential structures (double storey dwelling with double garage) and a garden area. The existing structures have a footprint of ±259,1m² in extent.

3.2 ZONING

Erf 4336 Hermanus has the following land use rights:

ERF NUMBER	ZONING
Erf 4336 Hermanus	Residential Zone 1: Single Residential

Surrounding properties are zoned for single residential, public road and public open space purposes.

3.3 LAND USE

There is an existing double storey dwelling with double garage and garden situated on erf 4336 Hermanus. A portion of the existing dwelling (36,02m²) is used for home occupation purposes.

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

3.4 THE POTENTIAL OF THE PROPERTY

The zoning and primary 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 for low impact land uses only (such as bed-and-breakfast establishments, day care, guest house and home occupation uses). The proposed departure will not hinder any possible future land use applications on erf 4336 Hermanus.

The subject property has the potential and allows for the deviations being applied for since the zoning scheme regulations' general encroachment provisions allows for the positioning of outbuildings in lateral building lines subject to the conditions specified, the definition of an outbuilding includes "for storage purposes" and since covered stoeps and open decks are not considered habitable areas within building lines. In addition, the position of the existing structures already constructed on the less restrictive building lines of the previous zoning scheme regulations, the extent of the property (only 495m²), the scale of the surrounding built environment, the low impact on the streetscape (the street building line is not encroached), etc. are also factors that have to be considered when contemplating the potential of the property to accommodate the departures applied for. The following factors confirm the potential of the property to accommodate the proposed lateral building line deviations:

- good quality materials were used when the additions were made;
- the architectural style of the additions matches the architectural style of the existing approved main dwelling and double garage;
- the cold room / cooler as part of the extended garage addition is not visible from the street and the addition matches the existing double garage structure.
- the compressor of the cold room / cooler was moved further away from the neighbour's property and it has been covered to keep the noise impact to a minimum.
- There are no windows placed in either the western wall of the existing double garage or the garage extension (cold room). There are also no windows placed in the northern wall of the cold room. Thus, the impact on adjacent

properties will be kept to a minimum since there are no window or door placements in the walls facing the neighbours.

- The braai room and braai in the north-eastern corner was already approved with a previous building plan application. Since the last building plan was approved the stoep area next to the braai room was merely covered with corrugated roof sheeting. It is submitted that the height of the roof and materials used mitigate the low impact on the adjacent property owner.
- There are two braai rooms in the existing dwelling. The use of the one braai room positioned on the 0m eastern lateral building line for the preparation and drying of deli products is considered to be a low impact use (considering the noise associated with keeping the use as an entertainment area / braai room). The structure already exists and thus the impact on the neighbouring properties will be kept to a minimum.
- The extended garage, covered stoep and timber deck are not visible from the street and therefore has a low impact on the streetscape.
- The deck and the roof of the covered stoep are visible from the neighbouring properties. When the deck was constructed the owners merely attempted to follow the existing building line of the approved dwelling.
- The additions have a minimum impact on the existing massing of the approved structures since almost half of the property was already developed before the additions were made.
- The slope of the subject property favours the As Built additions since the height of the additions is in line with the height of the approved structures, does not exceed one storey and is still on ground level height.

3.5 PROPOSAL

The following is proposed:

- The departure of erf 4336 Hermanus in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to:
 - relax the eastern lateral building line from 2m to 0m to

accommodate the existing covered stoep;

- relax the eastern lateral building line from 2m to 0,959m and 0,879m respectively to accommodate the existing timber deck and column;
- relax the western lateral building line from 2m to 1,459m to accommodate the extended double garage (cold room);
- relax the eastern lateral building line from 2m to 0m to accommodate the change of use of the existing approved structure (already positioned on the 0m eastern lateral building line) from braai room to deli foods preparation and dry room.

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

There is an existing double storey dwelling with double garage situated on the subject property. Most of the As Built structures on the subject property were approved in the past (take note that 1,2m lateral building lines of the previous Hermanus Zoning Scheme Regulations then applied to the subject property). However, the previous and current owners made some additions to the subject property not knowing that: a) building plans were required (for the deck / covered stoep) and b) that stricter building lines in terms of the Overstrand Zoning Scheme Regulations (2013) now applied to the subject property. The stoep at the braai area (on ground floor level) in the north-eastern corner of the subject property was covered. A timber deck was constructed in the south-eastern corner of the subject property (south of the lounge on ground floor level). In addition, the existing approved double garage was extended to include a cold-room / cooler. All the aforementioned structures were illegally built and area already existing.

Here follows the detail of the proposed departure application for consideration:

1. Covered stoep and change of use of the braai room to deli product preparation and dry room

The Overstrand Zoning Scheme Regulations (2013) stipulate that a 2m eastern lateral building line applies to SR1 zoned properties. To accommodate the existing covered, enclosed stoep on ground floor level an application is submitted for a permanent departure to:

- relax the eastern lateral building line from 2m to 0m.

The covered stoep is 9,3m² in extent and is situated next to the already approved braai room (proposed deli products preparation and dry room) and built braai. Corrugated roof sheets were placed over the existing stoep to create a more private entertainment area that is also protected against the elements of the weather. The covered stoep is not visible from Third Street since it is positioned between the approved braai room and dwelling. The covered stoep is enclosed on all sides and, except for the roof, the stoep is not visible from the neighbouring properties. Refer to the proposed site plan, floor plans, elevations and sections plan attached.

The height of the covered stoep meets the 3,5m / 40 degree height requirement for the consideration of a covered, enclosed stoep within the lateral building lines (refer to the North Elevation). The As Built covered stoep positioned on the 0m eastern lateral building line does not occupy more than 50% of the lateral boundary.

The existing braai room and built braai were previously approved on the 0m eastern lateral building line. The extension to the approved braai room of 4,92m² as indicated on the plans does not encroach any building lines. The approved structure and extension to the braai room will now be used for home occupation practice purposes together with one of the dwelling's kitchens and the cold room / cooler. An application is therefore submitted for a departure to accommodate the change of use of the braai room to a deli products preparation and dry room on the 0m eastern lateral building line. No changes to the approved structure are proposed. It is merely proposed to allow the owner and her son to use this second extended braai room for home occupation purposes. Although the As Built kitchen forms part of the home occupation practised on the subject property, the use (kitchen) remains unchanged. Thus, the existing approved kitchen that encroaches the 2m eastern lateral building line does not require a departure.

A home occupation is a primary use right under the land use parameters of properties zoned for Residential Zone 1: Single Residential (SR1) purposes. As a result, no land use approval is required to accommodate a home occupation on erf 4336 Hermanus subject to the compliance to the definition and parameters of a home occupation. A home occupation is defined as follows:

"Home occupation" means the practicing of an occupation, profession, art or trade, or the conducting of an enterprise, which includes an estate agency, from a dwelling unit by one or more of the occupants of a dwelling unit; provided that the dominant

use of the dwelling concerned shall remain for the living accommodation of a single family, and the property complies with the requirements contained in this zoning scheme for a home occupation; but does not include adult entertainment;

A trade is defined as "a job requiring manual skills and special training". An enterprise is defined as a business or company. Enterprise is also another word for a for-profit business or company, but it is most often associated with entrepreneurial ventures. A baker and a blockman are considered a trade. And their home occupation definitely meets the definition of an enterprise as well.

The owner and her son make the following products at their home: home cooked meals, jams, cookies, pickled salads, biltong and "droëwors". The biltong and "droëwors" are made on a small scale and are not considered to be a butchery from home. Larger portions of meat (not whole carcasses) are transported to the premises from the hunting farms are merely cut into smaller pieces, cured, minced (last mentioned where droëwors are made) and hanged to dry. Our client previously owned and operated the Overberg Hunting Safari, but this business has been inactive for the past 5 years (website must be removed). The small scale of the business will remain unchanged since additional permits and licences are required for larger scale curing and drying of meats (therefore the client is restricted in terms of other legislation regulating the industry). Baking and cooking ingredients as well as the meat are transported to their house with their own vehicles (as with normal household groceries due to the small scale of the business) and no deliveries or distributions are done from the premises. In addition, no sales are done from the premises. All products are sold at the "Die Biltong Ou" deli / shop in the Hermanus CBD.

Our client has the necessary approval from the Overberg District Municipality's health inspector, and they have operated their business from home for the past 6 years. To move premises (which they have investigated extensively) is not an option due to the small scale of their business. The latter will undermine the feasibility of the business.

Thus, the type of home occupation exercised from the dwelling on erf 4336 Hermanus fits into the definition of both a trade and enterprise – both uses that are included in the definition of a home occupation. The type of business conducted from erf 4336 Hermanus is therefore a primary right under the existing SR1 zoning.

In addition, the home occupation also meets all the minimum land use requirements to exercise this primary right on the premises:

- The dominant use of the dwelling house or dwelling unit is still for the living accommodation of a single family;
- The total area used for the home occupation does not exceed 25% of the total floor area of the buildings on the property. The home occupation takes up a mere 12,66% (36,02m²) of the total floor area.
- Only three (3) persons (the property owner, her son and a domestic worker) in total are engaged in the home occupation activities on the property, including the occupants or the occupant and any assistants;
- Neither a portion of the dwelling nor the home occupation is used for the purposes of noxious trade, risk activity or sale of alcoholic beverages. The noise complaint from the owner of erf 4359 Hermanus was addressed (discussed under the cold room / cooler application below).
- No advertising sign is displayed on the premises (since no sales or deliveries are conducted from the site).
- The storage of products, goods and supplies connected to the home occupation is done inside the dwelling and outbuildings and screened from the neighbours and the street;
- Since no deliveries, pick up or sales are conducted from the premises, the operation hours applicable to the home occupation does not apply. The domestic worker works normal working hours during the week.
- There is an existing double garage on the subject property and thus at least two on site parking bays are provided. The one staff member (domestic worker) uses public transport to travel to work.
- Our clients use their own vehicles for product shopping and deliveries.

The proposed deli product preparation and dry room is 27,13m² in extent (inclusive of the 4,92m² extension). The exterior, of the approved braai room to change use, will remain unchanged and thus the impact on adjacent property owners will remain unchanged. There are no windows or doors placed on the 0m eastern lateral building line. The aforementioned As Built structure positioned on the 0m eastern lateral building line does not occupy more than 50% of the lateral boundary. Refer to the proposed site plan, floor plans, elevations and sections plan attached as well as the home occupation calculation below:

OCCUPATION CALCULATIONS	
TOTAL AREA GROUND FLOOR	: 185.16M ²
TOTAL AREA LOWER GROUND FLOOR	: 77.04M ²
TOTAL AREA DRY/PREP. ROOM	: 22.21M ²
TOTAL AREA (EXCLUDING WALLS)	= 284.41M ²
TOTAL AREA USED FOR HOME- OCCUPATION ACTIVITIES	: 36.02M ²
	= 12.66%

It is therefore submitted that although a portion of the existing braai room to be converted to deli products preparation and dry room is situated on the 0m eastern lateral building line, the impact of the home occupation on the neighbours east of erf 4336 Hermanus is minimal due to the nature and scale of the land use.

The adjacent property owners (erf 7183 Hermanus) gave their consent for the proposed building line deviation on the eastern lateral erf boundary. Refer to a copy of the consent from Nicoletta Chistolini dated 21 September 2019 attached.

2. Timber deck

The timber deck is positioned south of the existing lounge on the ground floor level. The supporting column (that also encroaches the eastern lateral building line) is positioned on the lower ground floor. To accommodate the deck with supporting column within the eastern lateral building line, an application is submitted for a permanent departure to:

- relax the eastern lateral building line from 2m to 0,959m and 0,879m respectively to accommodate the existing timber deck and column.

The timber deck is 12,85m² in extent. The deck is visible from adjacent properties. However, due to the slope of the subject property the deck is on ground floor level with regards to height. 1m balustrades encloses the deck. Refer to the Section CC indicating the 8m height restriction and just how low the height of the existing structures and the deck are in relation to the maximum permissible height allowed for the subject property.

The As Built open deck positioned on the 1,041m eastern lateral building line (with column on the 0,88m building line) does not occupy more than 50% of the lateral boundary. In addition, the adjacent property owners (erf 7183 Hermanus) gave their consent for the proposed building line deviation. Refer to a copy of the consent from Nicoletta Chistolini dated 21 September 2019 attached.

Refer to the proposed site plan, floor plans, elevations and sections plan attached.

Since the deck allows for rainwater and sunlight through it does not form part of the coverage calculation for the subject property. The current owner merely proposes to legalise the existing use of the As Built deck and no further additions are proposed.

3. Extended double garage to accommodate a cold room

The existing double garage was extended to accommodate a cold room / cooler. The cold room forms part of our client's home occupation (producing deli products) and is used to store meat. The cold room is positioned south of the existing approved double garage. The garage extension / cold room was constructed to follow the same line as the existing approved double garage structure. Since less restrictive building lines applied with the approval of the double garage and dwelling (1,2m lateral building lines), the extension to the garage is now also situated on this less restrictive building line. To accommodate the existing cold room an application is submitted for a departure to:

- relax the western lateral building line from 2m to 1,459m.

A garage is accommodated under the definition of an outbuilding. In terms of the Overstrand Zoning Scheme Regulations (2013) "**outbuilding**" means a structure, whether attached or separate from the main building, which is ancillary and subservient to the main building on a land unit, and includes a building which is designed to be normally used for the garaging of motor vehicles, **for storage purposes**..." The use of the extended section of the garage for cold room purposes (storage of products that must be kept refrigerated or frozen) therefore meets the definition of an outbuilding.

The garage addition / cold room is 2,48m² in extent and only one storey. The extended garage is visible from adjacent properties. However, due to the slope of

the subject property the cold room (extended garage) is on ground floor level (similar to the deck as explained above). Refer to the West Elevation.

The height of the extended garage meets the 3,5m / 40 degree height requirement for the consideration of an outbuilding within the lateral building lines.

The total length of the garage does not exceed one third of the boundary concerned or 9m (whichever one is lesser). There are no doors or windows placed in the extended garage.

Refer to the proposed site plan, floor plans, elevations and sections plan attached.

The cold room is fitted with a compressor. Initially the compressor was mounted against the southern outside wall of the cold room. Due to noise complaints from the adjacent property owner (erf 4359 Hermanus) the compressor was moved further inwards and mounted to the roof of the dwelling. The compressor was also covered with a box to dim the noise. The noise was therefore mitigated and reduced substantially and is in our opinion on the same noise level as a standard air conditioner (that can be installed at residential properties without any permission required).

4. General

The existing structures on the subject property do not create an infringement to any passing traffic or public activity since the structures that encroach the building lines are positioned further back on the subject property, with the exception of the covered stoep that is also not visible from the street.

The subject property is limited in size (495m²). All structures that encroach the lateral building lines already exist.

It is submitted that the massing and height of the existing structures are compatible with the character of the area, regardless of the slight encroachment of the coverage.

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The zoning of erf 4336 Hermanus will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). All

buildings and uses thereof as indicated on the site development plan already exist and the application addresses existing structures only. Consequently, the proposed departure will not have a greater visual impact on the surrounding properties. The impact on the adjacent property owners and the passers-by will therefore be marginally higher than if these structures did not exist.

The area schedule and coverage for the subject property are as follows:

COVERAGE	
TOTAL ERF: 495M²	
EXISTING GROUND FLOOR	: 200.89M ²
EXISTING LOWER GROUND FLOOR	: 83.27M ²
EXISTING BRAAI ROOM	: 22.54M ²
NEW BRAAI ROOM EXTENSION	: 4.92M ²
ADDITION GROUND FLOOR	: 2.48M ²
ADDITION LOWER GROUND FLOOR	: 6.12M ²
NEW DECK	: 12.85M ²
NEW COVERED STOEP	: 9.30M ²
TOTAL COVERED AREA	: 246.25M²
TOTAL COVERAGE: 49.74%	

The total coverage of 49.74% does not exceed the maximum permissible coverage of 50% for SR1 zoned properties.

It is submitted that the existing 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.

When considering the proposed building line deviations, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departure erf 4336 Hermanus 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 proposed relaxation of the building lines is to accommodate the existing structures and uses thereof on the subject property only. The proposed departure will allow the owners to legalise the use of 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 covered stoep, deck, extended garage (cold room) and change of use of the braai room to accommodate a home occupation will save our clients the cost of demolishing the structures and potentially giving up a small business our client has established over the past few years. The proposed building line deviations therefore have a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposed departure will have no impact on the social status quo of the area. The building line deviation will however allow the owners to keep the existing structures As Built on the subject property.

No negative impact on the social wellbeing of the surrounding community is anticipated. A previous complaint has been taken into consideration and the necessary mitigation measures were put in place.

It is submitted that the existing covered stoep, deck, extended garage (cold room) and change of use of the braai room is compatible with the character of the area and do not impact negatively on the rights of anyone else.

3.8 COMPATIBILITY WITH SURROUNDING LAND USES

The subject property is situated in an existing low-density 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 existing structures with additions on erf 4336 Hermanus (and the respective uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built structures that encroach the eastern and western lateral building lines will contribute towards the value of the subject property and consequently have a positive impact on the area. The use of the subject property will primarily remain for residential purposes (dwelling with outbuildings). The land use on the subject property meets the definition of a home occupation and the latter is a primary right on a SR1 zoned property (refer to Section 3.4 Proposal for a detail explanation and motivation in this regard). The neighbour on which the conversion of the use of the braai room to deli products preparation and dry room has the largest impact on, already gave their consent to the proposed building line deviation. Possible noise pollution from the cold room was mitigated with modifications to the structure (refer to Section 3.5 Proposal). The type, scale and nature of the home occupation is not considered to be industrial of nature. It is therefore submitted that the proposed encroachments are compatible with the character of the area.

There is no impact on the streetscape and one of the neighbours already gave their consent to the proposed building line deviations.

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

All services on the subject property already exist. The As Built additions 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 departure will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that a maximum of one family will continue to occupy the subject property (approved dwelling). The existing As Built structures to be accommodated with a departure will not be used as a habitable area and thus the impact on the adjacent properties will be kept to a minimum.

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.

There are no windows or doors placed in the cold room walls or deli product preparation and dry room (approved braai room) facing the neighbours to keep the impact to a minimum. Recent modifications to the compressor was done in a further attempt to keep the noise levels 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 4336 Hermanus 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 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 the Voëlklip or Greater Hermanus area.

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).

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to erf 4336 Hermanus will remain unchanged and will be from Third Street. No new access points are proposed. Refer to the site development plan indicating the position of the driveway.

The Overstrand Zoning Scheme Regulations (2013) stipulate that a minimum of two parking bays are required for a dwelling house. There is an existing double garage on erf 4336 Hermanus that serves the dwelling on the subject property – refer to the site plans. The dwelling house on erf 4336 Hermanus therefore complies with the minimum parking requirements for SR1 zoned properties. No additional parking is required to accommodate the home occupation since the owner and her son lives on the premises and the third employee is a domestic worker that travels to work with public transport.

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

3.14 TITLE DEED

Title deed no. T3320/2014 has no restrictive conditions that prohibit the consideration of the proposed departure for the existing structures or the uses thereof. Refer to a copy of the conveyancer's certificate compiled by H.L. van Zyl from Van Zyl Kruger Attorneys dated 21 October 2019. Even though the certificate confirms that there are restrictive title deed conditions with regards to the distance that "*buildings and outbuildings have to be from any road or avenue*", the aforementioned refers to the "*Laws and Local Rules and Regulations*" that applies to the subject property. No other title deed building lines are specified in the relevant title deed or pivot deed. Thus, the above condition refers to the 4m street building line that applies to the subject property in terms of the current scheme regulations. The existing structures on erf 4336 Hermanus comply with the 4m scheme regulations' street building line and thus this condition is not restrictive for the purpose of this application. Refer to the email correspondence with Mr van Zyl at Van Zyl Kruger Attorneys dated 23 October 2019 attached.

There is no bond registered against erf 4336 Hermanus.

3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2006)* earmarks the area where erf 4336 Hermanus is situated, for residential purposes. Refer to the Spatial Development Framework Plan (2006) attached. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). 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 (2006).

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 4336 Hermanus forms part of Planning Unit no. 3. This planning unit stipulates an increase in density from 11du/ha to 14,3du/ha. No additional portions or second dwelling units are proposed with this application. The status quo of the area (low density residential) will remain unchanged. The land use application

for the subject property therefore falls within the existing planning for the Hermanus area.

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 this part of Hermanus will therefore be kept to a minimum since the proposed application still promotes a low-density 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 1934.

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 Hermanus Township and this principle does therefore not apply to this application.

Spatial sustainability: The proposed departure will have no impact on the visual elements of the subject property and surroundings since all the structures that encroach the lateral building lines already exist. It is submitted that the existing As Built covered stoep, deck, extended garage (cold room) and change in use of the braai room to deli products preparation and dry room are compatible with the character of the

area (as motivated in previous sections of this report). The encroachment of the building lines has no impact on the massing of the buildings and the impact on the streetscape or passers-by. The As Built structures merge well with the approved structures. The impact on the biophysical environment will also be kept to a minimum since the structures already exist.

The subject property has the potential and allows for the deviation being applied for since the zoning scheme regulations' general encroachment provisions allow for the positioning of outbuildings in lateral building lines subject to the conditions specified. Factors such as the good quality materials used, the land uses allowed for outbuildings on SR1 zoned properties, the overall layout of the structures on the subject property, the extent of the existing dwelling and small extent of the subject property, the materials used, the scale of the surrounding built environment, the low impact on the streetscape, the neighbour that gave her consent to the application, etc. allows for the consideration and approval of the proposed deviations without having an adverse impact on the spatial sustainability of the area. The proposed additions are to an improved erf within an established residential area and therefore will not impact on urban sprawl, or upon a sensitive environment.

The visual impact of the As Built additions is considered minimal and it is therefore submitted that the existing structures are compatible with the built character of the area.

Efficiency: The subject property is easily accessible and conveniently located close to the Hermanus CBD area and major routes. The massing and height of the extended garage, covered stoep and deck will be in line with the relevant zoning scheme regulations. It proves to be resourceful to approve the As Built additions to the subject property since it is compatible with the existing built environment and the way the additions were done is aesthetically pleasing.

It proves to be efficient to accommodate the existing As Built additions by approving the proposed departure of erf 4336 Hermanus instead of demolishing the structures and impact on the whole look and feel of the subject property.

The proposed departure proofs 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 By-law on Municipal Land Use Planning, 2016.

4. **RECOMMENDATION**

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

- 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 and primary land use of the subject property will remain unchanged;
- The preparation and drying of deli products from their home meet the definition and requirements of a home occupation;
- The deviations from the applicable scheme regulations' building lines are to accommodate the As Built structures only. No new structures are proposed;
- 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;
- There are no restrictive title deed conditions that prohibit the proposed departure;

- 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.



ANNEXURE D 1/2

Hermanus
14 Julie 2020

Departement Stadsbeplanning,
16 Paterson Straat,
Hermanus.

TP - A Theart
(P Roux)

Vir aandag A Conradie / Mnr P Roux.

In Sake : Aansoek om afwyking van plan – erf 4336.

Dit was met verbasing dat ek die aansoek om afwyking ontvang het vir Voëlklip erf 4336 omdat sover my inligting strek, die veranderings reeds aangebring is waarvoor die aansoek gedoen is.

Daar is verskeie ongerymdhede met van die feite in die dokument en ons het die volgende besware met die aansoek:

- 1 Die hout dek is wel sigbaar van die straat af – punt 3.4.
- 2 Klaarblyklik is die vleisverwerking goedgekeur deur die gesondheidsinspekteur. Dis moeilik verstaanbaar aangesien daar honde los rondloop op die perseel wat nie voordelig is vir higiëne nie.
- 3 Die akkomodasie van die eiendom op die perseel word deur meer as een familie gebruik en nie net n enkele familie nie.
- 4 Daar is wel vensters in die voorgestelde voorbereidingskamer aan die straat se kant (noord grens)
- 5 Volgens my is die gesondheidsrisiko dieselfde vir n karkas en groot stukke vleis en hoort dit nie in n residensieele area nie. Die vleisverwerking lok vliee en insekte waaroor verskeie bure kla.
- 6 Die koelkamer se dimensies is nie aangedui op die plan nie, so verstaan nie hoe die oppervlakte van die tuisbedryf bereken word wat volgens die plan 36.02vkm en 12.66% van die totale oppervlak beslaan nie.

Derhalwe maak ek beswaar teen die versoek op grond van bogenoemde punte.

Die uwe

M Raubenheimer
Derde straat 306
Voëlklip
Hermanus
072 4799 495

FILE NO: EL 4336-HVK
SCAN NO: 24
COLLABORATOR NO: 14-30182

14 JUL 2020

MUNISIPALITEIT OVERSTRAND MUNICIPALITY

The owner of the undermentioned property contemplates to erect a dwelling/do additions to the existing dwelling which will encroach upon the building lines (as per enclosed plan). This requires the consent /comments of the adjacent property owners.

DETAILS OF OWNER(S) THAT NEED/S CONSENT FOR RELAXATION OF BUILDING LINES	
ERF NO	4336
STREET ADDRESS	305 THIRD STREET, VOËLKLIJ, HERMANUS
NAME AND SURNAME	M BEYLEVELDT
APPLICANT	PLAN ACTIVE
TEL NO	0283131673
E-MAIL	merike.planactive@gmail.com

DETAILS OF APPLICATION (complete where necessary)			
RELAXATION OF:	MARK (✓)	BUILDING LINE:	RELAXATION TO:
STREET BUILDING LINE	✓	m	m
LATERAL BUILDING LINE (east)	✓	2m	0m / 0,959m / 0,879m
LATERAL BUILDING LINE (west)	✓	2m	1,459m
REAR BUILDING LINE	✓	m	m

DETAILS OF ADJACENT PROPERTY OWNER(S)	
ERF NO	4360
STREET ADDRESS	304 4th STREET, VOËLKLIJ, HERMANUS
NAME AND SURNAME	M KORSTEN
TEL NO	0823727718
E-MAIL	vkorsten@mweb.co.za

NB: CONSENT TO RELAXATION IS INCOMPLETE IF NOT ACCOMPANIED BY A SITE PLAN SIGNED BY ADJACENT PROPERTY OWNER(S).

I/We hereby give my/our consent to the abovementioned relaxation.

MYRA KORSTEN
NAME


SIGNATURE

2020/07/20
DATE

NAME

SIGNATURE

DATE

COMMENTS/CONDITIONS

- ① NO FURTHER EXPANSIONS
- ② HOME OCCUPANCY ACTIVITIES MAY NOT INCREASE
- ③ HOME OCCUPANCY ACTIVITIES TO COMPLY TO ALL HEALTH REGULATIONS AT ALL TIMES
- ④ NO COMMERCIAL TRADING ON ERF 4336

Tel: 028 3138900
Fax: 028 3132093
E-mail: aanvraag@overstrand.gov.za

PO Box 20 / Posbus 20
HERMANUS
7200

PLAN Town & Regional Planners
Stads-en Streeksbeplanners

TP N. Ahearne
(I. Olivier)



Our reference: PA19068/ML
Your reference: 4336 HVK

19 AUGUST 2020

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200

FILE NO: Erf 4336 ✓
Voëldip Hermanus
SCAN NO: HVK 4336
COLLABORATOR NO: 1444874

FOR ATTENTION: MR SCHALK VAN DER MERWE / MR PETRUS ROUX

Sir

PROPOSED DEPARTURE: ERF 4336 HERMANUS

- **M. BEYLEVELDT**

Reference is made to our application dated 26 November 2019 and your letter with objections attached thereto dated 29 July 2020

One objection and one consent with conditions were received from the public.

The consent letter from Myra Korsten dated 20 July 2020 is noted. The conditions of her consent are in line with the land use application proposal and thus we have no further comment.

Herewith the objections of M. Raubenheimer and our response thereto:

1. The wooden deck is visible from the street while the motivation report stipulated otherwise.

This should be corrected to "hardly" visible from the street. Yes, the deck is visible from both Third and Fourth Street. However, Mr Raubenheimer resides on the opposite side of the road and the neighbours most likely to be directly impacted by the deck, did not submit any objections. Although it is his full right to point this out, it does not impact on his views or the overall streetscape (due to the slope of the erven and the position of his property in relation to erf 4336 Hermanus).

2. Apparently, the health inspector approved of the home occupation. It is difficult to believe this since there are dogs roaming the subject property (how is this hygienic?).

The dogs referred to in his email are accommodated in the enclosed south-western section of the garden. Thus, the dogs cannot get closer than ±50m to the deli product preparation and dry room (which is positioned in the north-eastern corner of the erf / dwelling). There is no risk to the hygiene

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Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witswatersrand; MSAPI
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

TP 19 AUG 2020

of the deli products since it is also in the best interest of our client to keep to the conditions of the health department. This objection is therefore superfluous and should be dismissed.

3. The house is being used by more than one family living on the premises.

A second dwelling unit is a primary right on the subject property. In addition, there are no title deed conditions that prohibit a second dwelling on the subject property. The proposed set of site development plans indicates a two storey dwelling with both a kitchen and a kitchenette. This is in line with the requirements of the municipality. It is therefore our client's prerogative if she accommodates another family on the subject property (subject to meeting the relevant land use and building requirements).

4. There are windows in the preparation room facing the street to the north.

The application does not address the windows in the preparation and dry room facing Third Street since the deli preparation and dry room does not encroach the street building line. It was stated that where the preparation and dry room encroach the lateral building line, there are no windows placed. It is evident that the objector did not understand the reference to the window placement in the report correctly.

5. The processing of carcasses is a health risk and should not be allowed in a residential area. The use attracts flies and other insects to the residential area.

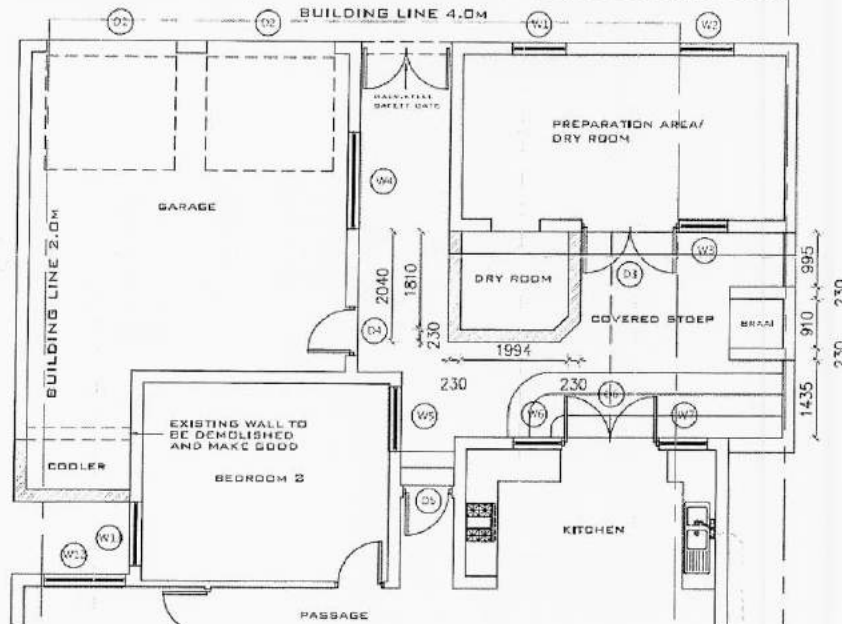
The owner and her son make the following products at their home: home cooked meals, jams, cookies, pickled salads, biltong and "droëwors". The biltong and "droëwors" are made on a small scale and are not considered to be a butchery from home. Larger portions of meat (not whole carcasses) are transported to the premises from the hunting farms and are merely cut into smaller pieces, cured, minced (last mentioned where droëwors are made) and hung to dry. Our client previously owned and operated the Overberg Hunting Safari, but this business has been inactive for the past 5 years (website must be removed). The small scale of the business will remain unchanged since additional permits and licences are required for larger scale curing and drying of meats (therefore the client is restricted in terms of other legislation regulating the industry). Baking and cooking ingredients as well as the meat are transported to their house with their own vehicles (as with normal household groceries due to the small scale of the business) and no deliveries or distributions are done from the premises. In addition, no sales are done from the premises. All products are sold at the "Die Biltong Ou" deli / shop in the Hermanus CBD.

The type of home occupation exercised from the dwelling on erf 4336 Hermanus fits into the definition of both a "trade" and "enterprise" – both uses that are included in the definition of a home occupation. The type of business conducted from erf 4336 Hermanus is therefore a primary right under the existing SR1 zoning. In addition, the home occupation also meets all the minimum land use requirements to exercise this primary right on the premises as discussed in detail in the motivation report submitted with the application.

The health inspector regularly inspects the premises. Waste meat tendon is removed from the site on a daily basis. A screen door and screen windows are installed in the preparation and dry room. An "air curtain" is also used in the preparation room. Our clients make use of an insect and plague control company that regularly visits the site. In addition, they disinfect the preparation and dry room regularly. Due to the strict hygiene and plaque control (mitigation) measures in place, there are no concern for unwanted flies and insects due to the home occupation on the site. Our client has been living in Voëlklip for the past 17 years. There have always been some flies in this residential area especially during the summer months and the home occupation at the premises has not significantly contributed to an increased fly concern in the area. Our client is of the opinion that the occasional fly problem in the area could possibly be attributed to a nearby stud farm.

6. The cold room / cooler's dimensions are not indicated on the plan and thus assumed not to be included in the 36,02m² / 12,66% of the home occupation.

The ground storey plan and report clearly indicated that the cold room / cooler is included in the calculations for the home occupation. Refer to the extract from the ground storey plan below:



OCCUPATION CALCULATIONS	
TOTAL AREA GROUND FLOOR	: 185.16m ²
TOTAL AREA LOWER GROUND FLOOR	: 77.04m ²
TOTAL AREA DRY/PREP. ROOM	: 22.21m ²
TOTAL AREA (EXCLUDING WALLS)	= 284.41m ²
TOTAL AREA USED FOR HOME-OCCUPATION ACTIVITIES	: 36.02m ²
	= 12.66%

This comment is therefore considered disingenuous and should be dismissed.

It is important to note that only ±2m² of the existing cold room / cooler encroaches the lateral building line, the rest of the structure does not encroach the lateral building line. It is also worth mentioning that the cold room / cooler is not exclusively used for the home occupation but also for domestic use. The latter will continue to be the case should the home occupation cease to exist in future.

We trust that you find the above in order and that you will now be able to proceed with the processing of the application.

Yours faithfully



M. LERM Pr. PIn. (A/158/2009)
PLAN ACTIVE

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE: ERF 4336, VOELKLIP**

Stormwater (SW) : In Order
Electricity : In Order
Water : In Order
Sewer : In Order
Roads and traffic : In Order

Conditions:

1. 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 owner's cost;
2. 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 owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
5. that any additional and / or extended vehicle entrances will be for the owner's account;
6. that stormwater be allowed to discharge through Erf 4336, Voelklip, unobstructed;
7. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE