



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

A G E N D A

DATE: 1 SEPTEMBER 2022
(AUG 2022 CYCLE)

VENUE: VIRTUAL

TIME: 10:00

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

22 August 2021

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

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

NOTICE IS HEREBY GIVEN that the **Municipal Planning Tribunal (MPT)** will go into session **virtually** on **Thursday, 1 September 2022 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. Mr P Roux (Town Planner)
9. Mr H Olivier (Town Planner)
10. Secretariat

- 1. OPENING**
- 2. APPLICATIONS FOR LEAVE OF ABSENCE**
- 3. CONFIRMATION OF MINUTES**
 - 3.1 Minutes of a Municipal Planning Tribunal Meeting held on 30 June 2022**
 - 3.2 Minutes of a Municipal Planning Tribunal Meeting held on 28 July 2022**
- 4. ITEMS FOR CONSIDERATION**
 - 4.1 ERF 6114, 49 6th STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: DLC TOWNPLAN ON BEHALF OF ZONDAGH FAMILY TRUST**

Report attached
 - 4.2 ERF 3266, 21 MAIN ROAD, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: PROPOSED CONSENT USE AND DEPARTURE: MESSRS WARREN PETTERSON PLANNING CONSULTANTS ON BEHALF OF TELKOM SA (LTD)**

Report attached
 - 4.3 ERF 1449, LYNX ROAD, VERMONT: APPLICATION FOR REZONING, SUBDIVISION, DEPARTURES, RIGHT OF WAY SERVITUDES, PHASING OF A DEVELOPMENT AND THE ALLOCATION OF STREET NAMES AND NUMBERS: MESSRS PLAN ACTIVE ON BEHALF OF L LEWIS**

Report attached.

MUNICIPAL PLANNING TRIBUNAL (MPT)

1 September 2022
(August 2022 Cycle)

INDEX

<u>ITEM</u>		<u>PAGE NUMBER</u>
	APPLICATIONS FOR LEAVE OF ABSENCE	
4.1	ERF 6114, 49 6th STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: DLC TOWNPLAN ON BEHALF OF ZONDAGH FAMILY TRUST	1
4.2	ERF 3266, 21 MAIN ROAD, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: PROPOSED CONSENT USE AND DEPARTURE: MESSRS WARREN PETTERSON PLANNING CONSULTANTS ON BEHALF OF TELKOM SA (LTD)	45
4.3	ERF 1449, LYNX ROAD, VERMONT: APPLICATION FOR REZONING, SUBDIVISION, DEPARTURES, RIGHT OF WAY SERVITUDES, PHASING OF A DEVELOPMENT AND THE ALLOCATION OF STREET NAMES AND NUMBERS: MESSRS PLAN ACTIVE ON BEHALF OF L LEWIS	185

4.1**ERF 6114, 49 6th STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE
PENALTY: DLC TOWNPLAN ON BEHALF OF ZONDAGH FAMILY TRUST****6114 HVK****P Roux****19 May 2022****(028) 313 8900****Hermanus Administration**

1. EXECUTIVE SUMMARY

An application has been received on 29 April 2021 (revised application received on 30 August 2021) from DLC Townplan on behalf of the owner of Erf 6114, Voëlklip, Hermanus, Zondagh Family Trust, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

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

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, and the Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 6114, Voëlklip, Hermanus is zoned for Residential Zone 1: Single Residential and measures 497m². The property is developed with a double storey dwelling unit, and outbuilding and pergola.

The property owner purchased the property in 2012 and made alterations to the outbuilding. The outbuilding was changed from a garage/storeroom into a staff quarters and all-purpose living room/dining room. A pergola was also added to the front of the outbuilding over the northern street building line. Due to the change of use and the illegal pergola structure a land use application was required.

It should be noted that the previous decision on the land use application made in 2017 and all processes which flowed from or followed after were set aside by the High Court of South Africa on 3 July 2020.

Although the previous decision of the Municipality was set aside, the alteration of the outbuilding and the pergola is still not in line with the approved building plans which indicate the outbuilding as a garage without the pergola. Therefore a land use application was submitted.

4. SUMMARY OF APPLICANT'S MOTIVATION

Only the main points of motivation are summarised as follows (the detailed report is attached as Annexure B).

Departure

Relaxation of the western side building line from 2.0m to 0.0m to accommodate the change of use of an existing outbuilding (from garage to hobby/entertainment area and toilet) and pergola; and relaxation of the street building line from 4.0m to 0.0m to accommodate the pergola attached to the outbuilding.

- ❖ The approved garage is situated on the western boundary of the property. The position of the building is therefore not a contention.
- ❖ The structure was previously used as a garage and storeroom. The current zoning scheme allows for a garage to be developed on the boundary of a property.
- ❖ The outbuilding was originally converted into a hobby room/recreational room, storage room and staff quarters. Outbuilding which is a primary right in terms of the current zoning scheme allows for the following:
- ❖ *“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 designed to be used for the garaging of motor vehicles, for storage purposes and any normal activities in so far as these are usually and reasonably required in the connection with the main dwelling as well as the accommodation of recreational activities such as a pool room, braai room, Lapa and gazebo and the practising of hobbies (which may not cause a nuisance and/or disturbance and/or noise and/or damage to a neighbouring property or properties or premises);*
- ❖ Under outbuilding a hobby is allowed which is defined as *“an activity done regularly in one's leisure time for pleasure, excluding activities creating noise, health and nuisance and not related to a commercial venture”*.
- ❖ Recreational activities are not defined in the zoning scheme; however the Oxford dictionary defines it as an *“enjoyable leisure activity”*.
- ❖ Habitable spaces in the form of second dwellings are permitted in terms of the zoning, but clause 16.10.20 (e) of the current zoning scheme does stipulate that a second dwelling must be located within the applicable building lines.
- ❖ Due to the municipality not allowing for habitable spaces within the building line the owner has revised the plans for the outbuilding to only use it for a hobby room/recreational room, storage room and an ancillary toilet facility for the hobby room.
- ❖ Application is made for the relaxation of the 4m street building line and the 2m lateral building to allow the retention of the existing pergola.
- ❖ The proposed application will not result in the construction of additional buildings but to rectify the internal alterations done to the existing outbuilding, which was to convert the existing outbuilding from a double garage into a hobby room/recreational room with ancillary storage and toilet facilities, as well as the pergola between the outbuilding and the street boundary wall.
- ❖ The visual appearance of the property will remain unchanged, and the outbuilding will be used in line with the primary rights as enjoyed by all property owners in the area.

- ❖ Activities proposed will not have a negative affect such as noise or pollution or be a nuisance to the neighbour as the use will be restricted to the activities conducted by a single family and occasional visitors to their home.
- ❖ There are no privacy concerns as there are no windows or doors which front directly to the west.
- ❖ The municipality's only reason for the refusal of the original application for the relaxation of the side building line was the fact that the outbuilding included a habitable space (i.e. staff quarters). This has now been removed and the only use remains in the outbuilding is that of a hobby room/recreational room with an ancillary toilet facility and storeroom. The outbuilding will therefore not be used for permanent or temporary habitation.
- ❖ The land use of the property will remain unchanged and therefore the character of the area will not be affected as indicated in the Overstrand Municipality Spatial Development Framework, 2020.
- ❖ Removal of the title deed restrictions is not required as the restrictive conditions have already been removed from the pivot deed.

Determination of an administrative penalty

No previous contraventions were listed.

(a) nature, duration, gravity and extent of the contravention

- The property was bought by the owner of the property in 2012 and at that stage the outbuilding was a storeroom and garage with the same footprint (excluding the pergola) as per approved building plans.
- The property owner then converted the outbuilding to staff quarters and an all-purpose living/dining room for the owner's exclusive use. The term studio in the 2016 application was erroneously used. The correct term is hobby room/recreational room with and ancillary toilet facility and storage space.
- The relaxation of the street building line for the pergola was previously approved by the municipality and should therefore not be deemed to be as part of the determination of administrative penalty.

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

- It is evident that the owner has always intended to apply for the amendment of the building plans to illustrate the recreational/hobby room through the numerous applications already submitted to the municipality.

(c) a report by a quantity surveyor in matters of unauthorised building/construction

- The applicant requests that a report by a quantity surveyor only be submitted once the application of administrative penalty is approved. The owner is willing to pay once the confirmation is received that the application is favourably considered.

(d) whether the unlawful conduct was stopped

- The use of the staff room was stopped by the owner once he was aware that the use was not supported by the planning division. The current uses

are now in accordance with the provisions of the planning law subject to the application being approved.

(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law.

- The applicant did not address this point directly.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	22 September 2021	29 October 2021
Internal Departments	Yes	21 September 2021	29 October 2021
Ward councillor	Yes	21 September 2021	20 October 2021
Total objections	ONE		
Total letters of support	NONE		
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? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Fire Department	22/09/2021	Not in order, subjection to compliance with SANS-A:2016 10400-T:2020 and the By-law relating to community fire safety (safety distances of an opening to boundary).
Waste Management	28/09/2021	No objection.
Building Department	28/09/2021	No objection. The building plan application must comply with all applicable law. The town planning drawing No WD-100- gen down not comply with fire safety distance.
Engineering Services	05/11/2021	Attached as Annexure F.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One objection was received against the proposed application, only the relevant points which pertain to proposal on Erf 6114 will be summarised below:

Illegal building work was carried out by the property owner on Erf 6114. Every citizen needs to follow building law regulations. As a property owner I do have the right to protect my property and my owner privacy.

Response from the applicant

The allegation that the building activities continued without approval and obtaining permission from neighbours is simply wrong and rejected.

The outbuilding was constructed by the applicant's predecessor prior to 2012. The minor renovation work that was done by the applicant did not, at all, expand upon such existence and neither necessitated the approval of the building plans nor any permission required from neighbours.

Response from the town planner

Any change of use over the building line or in transgression of the land use scheme parameters is considered illegal and requires approval from the municipality prior to construction/alteration. Only a garage was previously approved and therefore the structure is only allowed to be used for such purposes.

The separate party area/building is directly against the Erf border. This stepped into the privacy of the objector.

Response from the applicant

This point is without merits and in any event irrelevant for purposes of considering this application. The relevant outbuilding has been in existence for more than a decade and does certainly not constitute a party area. This is an attempt to mislead the municipality.

Response from the town planner

The objector's concern is noted and cannot be regarded as irrelevant; although the outbuilding was in existence for more than a decade the property owner made changes to the use of the structure which the objector believes negatively impacts her rights (privacy). It should be noted that the impact of the proposed use will be evaluated. Further, it is not a right to construct or make land use changes within the building line, any land use rights gained is a privilege as the changes may have a negative impact on the neighbouring property owner.

The building is not used as a studio/workroom; this building has been used as a living area which contains a bathroom/toilet. This should remain being used as a garage due to building line restrictions. The social events are causing noise disruption after hours. This party room has two sliding doors one on the east side and one on the south side which interfere with my privacy.

Response from the applicant

This point again inappropriately refers to a studio (party room) which again simply constitutes a misrepresentation of facts to the municipality. The outbuilding poses no

threat to the objector's privacy and this is evident from a photograph attached. There are no windows facing the objector's property.

The outbuilding has never been used as a living area or a habitable space and a condition of approval can be stipulated to limit the use of the outbuilding.

The allegation that noise is created is nonsensical. A garage housing motor vehicles will create significantly more noise than the irregular use of the recreational room. The allegation is untruthful insofar as noise disruption is caused by the use of the outbuilding.

There are other by-laws of the municipality which can be recourse for the objector when dealing with noise.

Response from the town planner

An inspection was done at the subject property, and it was noted that the southern sliding doors open up to a courtyard, this courtyard is situated next to a bedroom window on the objector's property. It stands to reason that any loud recreational activities taking place here (and within the outbuilding) will cause a noise disturbance, therefore the applicant's response is not fully agreed with.

The dispute of the pergola which was added to the side wall, which stepped over the building line. On top of the pergola is a geyser next to my wall. This has not been removed as was specified in the previous report.

Response from the applicant

The allegation relating to the pergola has already been dealt with and the objection is without merit.

The complaint regarding the geyser is ridiculous. Same was installed at ground level and not visible from the street or objector's property.

Response from the town planner

It is noted that the geyser is no longer on top of pergola, and it is placed on the ground next to the boundary wall. The geyser should therefore not have an impact on the neighbour.

The original wall between the two erven was broken down and rebuilt which stepped over the building line on to the objector's property which is unacceptable and causes negative effects.

Response from the applicant

The original wall has been in existence for more than a decade and is reflected on the approved building plans.

The boundary wall remains exactly the same as was when the applicant became the owner and its location accords with the approved building plans.

Response from the town planner

This seems to be a civil issue which does not relate to the application.

The boundary wall is not maintained and remains an eyesore.

Response from the applicant

This is untrue and irrelevant.

Response from the town planner

Maintenance of a boundary wall is a dispute which must be resolved between the two neighbours, and it does not relate to the aspects of this application.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS

It is noted that the fire department states the following:

"Not in order, subjection to compliance with SANS-A:2016 10400-T:2020 and the By-law relating to community fire safety (safety distances of an opening to boundary)". In order to mitigate or comply with this, the applicant will have to raise the boundary wall at certain sections or replace windows with fire safety glass. This is permitted in terms of the land use scheme and should the application be approved then a condition will be stipulated to comply with the fire department's comment and the relevant SANS parameters.

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 considered consistent in the following manner from a town planning perspective:

Spatial Justice

The application will not prolong spatial development injustices.

Spatial sustainability

The application is located within the urban edge and will not lead to urban sprawl. The property is already developed, and no natural habitat is impacted upon.

Efficiency

The application will not have additional impact on municipal services and infrastructure.

Spatial resilience

The structures on the property will ensure that the existing resource (land) is used to its maximum.

Good administration

The application followed the required planning procedures, and the required public participation 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

The primary uses are in line with the land uses in terms of the Land Use Scheme. It is however inconsistent with the development parameters (building lines) as set out in the Land Use Scheme, but the use of the property and proposed development is 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 Department, thus no additional services will be required.

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

The application does not trigger any listed activities in terms of local or national legislation.

10.8 Existing and proposed zoning comparisons and considerations

The subject property is zoned Residential Zone 1: Single Residential and the parameters as prescribed in the Overstrand Land Use Scheme, 2020 applies; this includes a street building line of 4m, and 2m lateral- and rear building lines apply.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

Firstly, it should be noted that the decision of the High Court of South Africa (WC) dismissed all aspects of the decision, this includes the reasons for the decision, the approval provided for the pergola and the non-approval, and therefore this

evaluation will evaluate the pergola without taking cognisance of the approval previously provided. The opinion is held that the motivation is flawed due to the reliance on what was previously decided as technically those decisions and reasons do not exist as they were set aside by the High Court of South Africa (WC).

Departure

The application is to allow for the change of use of the existing garage into a hobby / recreational room with ancillary storage and toilet facilities, as well as the pergola between the outbuilding and the street boundary wall.

The applicant states that no additional buildings were added with the alteration, what is of note is that a pergola was added, and the outbuilding was altered to accommodate the proposed uses which includes the enlargement of the openings (to allow for large sliding doors). It is this opening which has a noise impact on the neighbouring property owner as discussed in the objection this will noted in the evaluation of the application.

The applicant also mainly motivates that the outbuilding will not be used as a habitable space (a dwelling) and therefore it should no longer have an impact on the adjacent property owner. It should be noted that the in terms of the oxford dictionary habitable is defined as: "Fit or suitable for habitation; can be inhabited" and habitation is defined as: "The action of dwelling in or inhabiting; occupancy by inhabitants". The change of use from a garage to recreational room is to allow for the persons of the property to occupy the room on a more permanent basis, therefore the recreational room is considered a habitable space

It should be note that when the municipality considers an application it considers various elements such as the likely impacts that the proposal may have on the character of the existing surrounding built environment, the likely infringements thereof on vested rights of surrounding property owners, as well as to attempt to preserve the immediate built residential environment as far as possible.

The applicant states that the proposed use for hobby / recreational room will not have a negative affect such as noise or pollution or be a nuisance to the neighbour as the use will be restricted to the activities conducted by a single family and occasional visitors to their home. However as seen in objection submitted the activities proposed does negatively affect the neighbouring property. The use is therefore considered to be in transgression of the definition of an outbuilding in the Land Use Management Scheme, 2020 which states the following "... *recreational activities such as a pool room, braai room, Lapa and gazebo and the practising of hobbies (which may not cause a nuisance and/or disturbance and/or noise and/or damage to a neighbouring property or properties or premises).*"

The concern is that the applicant does not state or define what type of hobby or recreational activities will take place in the structure. An inspection was done, and the following was noted: The larger portion of the outbuilding was converted into a living room setup with a fridge (as seen below), the storeroom has built in cupboards and various equipment with a bunk bed, and lastly the bathroom is equipped with a shower, basin and toilet (no picture was taken).

Picture 1: living room area



Picture 2 & 3: Storage room



From the layout and furniture of the rooms the opinion is held that the living room is being used for the occupancy of the residents for family gatherings.

The previous building plans the store room and bathroom area was indicated as an existing storage area. A bathroom is only used periodically and is not considered to have a negative impact on the adjoining property, the bathroom can therefore be considered favourably subject to the usage of the room being limited made for storage purposes.

On the outside, the structure has sliding doors facing southward into a courtyard; in the picture below the objector's window can be seen. Further a window and door lead from the pergola area to the storeroom.

Picture 4: Sliding door leading from courtyard to living room.



Picture 5: Door and windows on the northern side leading to the storeroom.



It should be noted that since the adoption of the Overstrand Municipal Zoning Scheme in 2013 (and its successor) the character of the area has been established as follows: *“outbuildings utilised for storage purposes and as garaging are more commonly constructed on boundaries and outbuildings used for activities which accommodate people are constructed to comply with the 2m building line.”*

It should further be noted that the property falls within a low density tranquil residential area oppose to a high-density residential area where such applications would be regarded as more in line with the character of such a built environment.

Considering the abovementioned the proposed application for the change of use of the garage is partially supported as set out in the recommendation.

Application is made to retain the existing pergola. It is noted that the pergola is situated on the existing boundary walls and is supported by the outer northern wall of the outbuilding. The pergola is therefore not a high structure and does not lead to an infringement of privacy nor does it cause shading on the neighbouring property.

The pergola is further situated in an area which has limited use other than being used for gardening purposes and/or the storage of vehicles. Considering the aforementioned the proposed retention of the pergola is considered desirable.

Application for determination of an administrative penalty

In terms of the By-law the applicant must provide the following in terms of Section 90(3) of the By-Law, it is evident that the applicant did provide the information and herewith comment from the town planner, Overstrand Municipality on the information:

(a) nature, duration, gravity and extent of the contravention

The nature, duration and gravity of the illegal land uses have already been discussed in this report. The structure of the garage was previously approved; therefore the determination of an administrative penalty is for an illegal land use which is the bathroom and hobby/recreational room. The pergola is excluded from the determination of an administrative penalty as the pergola is seen as a minor structure which does not have a negative impact on the character of the area.

The section of the existing outbuilding which contravenes the lateral building line is 9.175m by 2m and equates to 18.35m².

As per the Municipal By-law for land use in contravention of this By-Law – may not be more than 100% of the municipal valuation of the area that is used unlawfully, as determined by the Municipality. The value of the subject property is R 2 721 400.00 which is R 4 872.03 per m², this means that the property owner could be fined up to R 89 401.75 (excluding VAT). However, as discussed above, the application is partially supported, and it is proposed that the hobby / recreational room be converted back into a garage at a significant cost to the property owner. The bathroom may be retained and the storeroom. Thus, in effect only the section of the bathroom can be fined as the property owner will have the cost to make the alterations. The maximum costing for the bathroom is R 29 232.18.

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

Renovations and alterations to the outbuilding were done without approval from the municipality.

(c) a report by a quantity surveyor in matters of unauthorised building/construction

No report was provided.

(d) whether the unlawful conduct was stopped

All building work was completed by the property owner.

(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law.

The applicant advised that the landowners did not previously contravene the By-law.

The opinion is held that the owner contravened municipal and national regulations by proceeding to develop the structure without an approved building plan, and or municipal approval. After the High Court set aside the previous land use decision the applicant then reapplied for the contraventions. From the layout and information provided, there is no evidence that the outbuilding has been altered to comply with the building line regulations. It is further noted that the layout of the building is the same as was submitted in 2016 except for the proposed use change, it is now proposed that the living room be the recreation / hobby room and the bedroom is the storeroom. From the photos provided it is evident that the recreation / hobby room is still equipped with living room furniture.

As discussed above only the bathroom and storage area will be supported. The recreation / hobby room must be altered back to a garage due to the following; recreational room is still considered a habitable space specifically designed for the occupancy of people and the impact the usage of the room has on the neighbouring property owner. The costing of the bathroom as determined on the municipal budget is R 29 232.18. Considering the fact that similar uses such as the bathroom have been previously approved on boundaries and outbuildings which are situated over building lines it is proposed that an administrative penalty of 10% of the total cost is levied. This will be R 2 923.22 (excluding VAT).

Due to the facts on record, it is evident that the current landowner is responsible for the contraventions and that it should not be exempted of the payment of an administrative penalty, being the penalty as set out above.

Updated building plans needs to be submitted to the Building Department for approval and the compliance shown.

Conclusion

The opinion is held that the application should be partially approved subject to conditions and the payment of a administration penalty fee as discussed in the recommendation.

13. RECOMMENDATION

1. that the comment be noted;
2. that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), applicable to Erf 6114, Hermanus (Voëlklip) to relax the western lateral building line from 2.0m to 0m to accommodate the change of use of an existing outbuilding (from garage to hobby/entertainment area and toilet) and pergola; and to relax the street building line from 4.0m to 0m to accommodate the pergola attached to the outbuilding, **be partially approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for the determination of an administrative penalty in terms of Section 16(2)(q) of the By-law for the unauthorised land use activities stipulated above, **not be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-Law;

4. that the recommendations in 1 and 2. above be subject to the following conditions:
 - (a) that the approvals are for the development as indicated on Drawing No WD-100-GEN, as submitted with the application;
 - (b) that an administrative penalty of R 2 923.22, excluding VAT (being 10% of the valuation cost as determined by the municipality) be payable within thirty (30) days of the decision;
 - (c) that the Site Development Plan and building plan be revised to indicate that the hobby/recreational room is altered back to a garage;
 - (d) that the storeroom can only be used for storage purposes and not for the accommodation of people;
 - (e) that building plans be submitted to the building control office within (60) days of the decision, and all comments from the fire department be complied with at that stage;
 - (f) that this approval does not absolve the landowners from compliance with any other relevant legislation, and
 - (g) that all other applicable development parameters as prescribed in the relevant Land Use Scheme be complied with.
5. that the applicant be notified of its appeal right in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decisions.

14. REASONS FOR RECOMMENDATION

Reasons for the decisions in 1.

- ❖ The proposed retention of the hobby / recreational room has a negative impact on the neighbouring property owner and its vested rights. Considering this, the retention of the hobby / recreational room is considered to be in transgression of the definition of and outbuilding in the Land Use Management Scheme, 2020 which states the following: "*recreational activities such as a pool room, braai room, Lapa and gazebo and the practising of hobbies (which may not cause a **nuisance and/or disturbance and/or noise** and/or damage to a neighbouring property or properties or premises).*"
- ❖ The character of the area is a low-density residential suburb low density tranquil residential area oppose to a high-density residential area where such applications would be regarded as more in line with the character of such a built environment.
- ❖ From the inspection done on the property the outbuilding is still furnished with similar furniture as per the 2016 application (living room and bunk beds).
- ❖ The pergola will have a minimal impact on the adjacent property owners.
- ❖ The area where the pergola will be situated has limited functionality such as for storage or gardening purposes.
- ❖ The proposed bathroom will have no negative impact on the adjacent property owners or the character of the area.
- ❖ The application has followed due procedure.

- ❖ None of the internal departments have any objection.
- ❖ 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.

Reasons for recommendation point 2.

- ❖ The property owner made alterations to the outbuilding without first seeking approval and gaining approval from the Municipality.
- ❖ The property owner knowingly contravened the parameters of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Comment from affected property owners
Annexure E:	Comment from applicant
Annexure F:	Services Report

SIGNATURES

AUTHOR

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: _____



Date: 2021/05/04

Locality Map

Erf 6114, Voelklip



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

ERF 6114, HERMANUS

49 SIXTH STREET, VOËLKLIP

1. INTRODUCTION

1.1 PURPOSE OF THE APPLICATION

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

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

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

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

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

1.2 BACKGROUND TO THE APPLICATION

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

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

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

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

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

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

Table 1: History of decisions relating to side building line

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

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

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

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

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

1.3 SUMMARY OF THE FACTS OF THE DEVELOPMENT

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

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

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

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

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

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

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

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

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

2. SITE INFORMATION

2.1 PROPERTY DESCRIPTION

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

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

2.2 LOCALITY

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

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

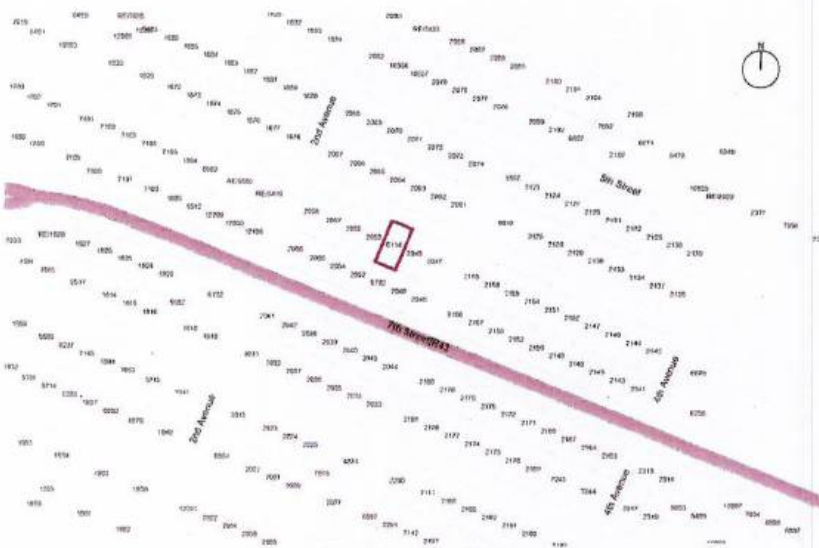


Figure 1: Locality Map

2.3 PROPERTY SIZE

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

2.4 REGISTERED OWNERS

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

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

2.5 EXISTING ZONING

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

Permitted Land Uses:

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

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

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

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

Applicable Building Lines:

The following building lines apply to the application site:

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

2.6 EXISTING LAND USE

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

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

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

2.7 TITLE DEED CONDITIONS

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

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

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

2.8 MORTGAGE BONDS

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

2.9 SERVITUDES

There are no servitudes registered over the application site.

3. APPLICATION

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

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

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

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

4. URBAN CONTEXT

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

5. LEGISLATIVE AND POLICY FRAMEWORKS

5.1 OVERSTRAND MUNICIPALITY SPATIAL DEVELOPMENT FRAMEWORK, 2020

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

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

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

5.2 PLANNING PRINCIPLES

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

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

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

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

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

5.3 HERITAGE

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

6. MOTIVATION

6.1 DESIRABILITY

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

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

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

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

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

6.2 MOTIVATION FOR ADMINISTRATIVE PENALTY ITO SECTION 90(3)

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

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

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

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

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

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

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

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

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

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

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

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

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

6.3 ENGINEERING SERVICES

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

6.4 NATURAL ENVIRONMENTAL IMPACT

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

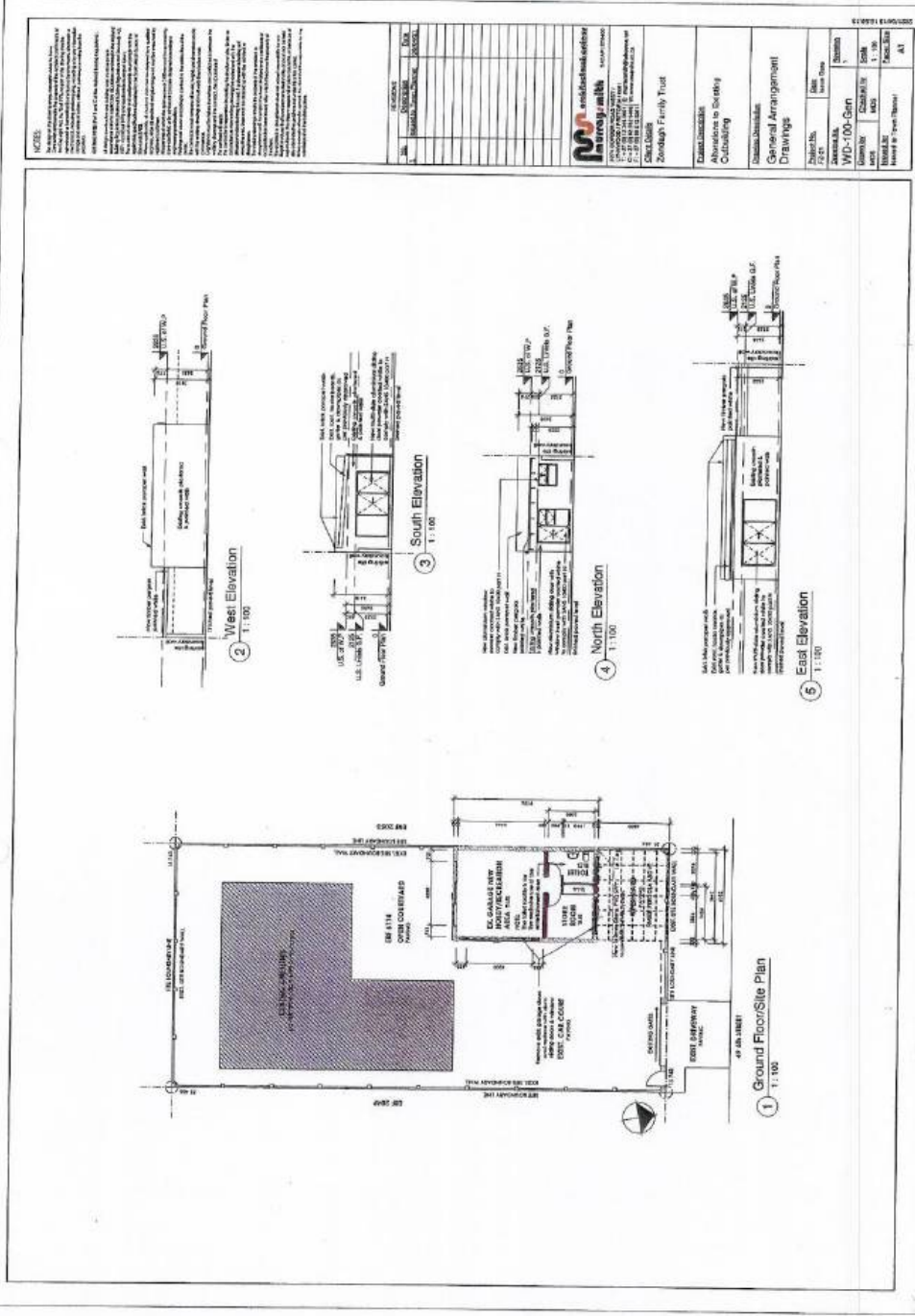
7. CONCLUSION

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

Frikkie de Lange
DLC Town Plan (Pty) Ltd

23 August 2021

Annex C



15 October 2021

Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO: <u>51 6114</u>
<u>Voëlklip Hermanus</u>
SCAN NO: <u>HVK 6114</u>
COLLABORATOR NO: <u>594032</u>



TP A. Conradie
(P. Roux)

ATTENTION: A Conradie (aconradie@overstrand.gov.za)
Mr P Roux (028 313 8900)

Dear Sirs

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

With reference to the registered letter dated 21 September 2021 and received on 15 October 2021.

I am situated at 47, 6th Street, Voëlklip, Hermanus, Erf 2053.

I am definitely still declining the following:

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

The abovementioned matter has been a long-withdrawn matter. The matter was raised January 2016. During this time an application was made by myself with regards to a balcony which was declined due to municipal regulations.

The Zondagh Family Trust continued with building work to the resident without obtaining approved building plans nor obtaining permission from neighbours as per building law. Building law procedure were not followed by the Zondagh Family. Every citizen needs to follow building law regulations. As a property owner I do have the right to protect my property and my own privacy.

The following list of objections remains problematic:

1. Building work continued without approved building plans. The separate party area/building is directly on the Erf border.
2. The dispute with regards to a studio (party room) was built on the southern side of the house which stepped into my privacy. This building is also not used as a studio/workroom, this building has been used as a living area which contains a bathroom/toilet. This should remain being used as a garage due to building line

18 OCT 2021

TP

- restrictions. This is directly next to a bedroom in my house. All the social events are creating noise disruption after hours. This party room has two sliding doors one on the east side and one on the South side which interfere with my privacy.
3. The dispute with regards to the unlawful pergola which was added to the side wall which stepped over the building line. This should be removed. On top of this a geyser was installed next to my wall. This has not been removed as specified in the report received.
 4. The original wall between house 49 and 47 was broken down and a new wall was built which stepped over the building line onto my side of the property which is unacceptable. This caused extreme negative effects. The building line should be rectified by the Zondagh Family. This has still not been rectified.
 5. On top of this, the lack of maintenance of the building wall directly on the border remains an eye sore. The Zondagh Family are not maintaining the property.

The aforementioned points create a negative impact on the value of my property and adjacent properties. As to my understanding none of these points comply with the Municipal Land use rules and title deed restrictions. This remains a violation of a building line which violates privacy. The purpose of a 2 meter building line on either side of a border is surely to ensure privacy between adjacent neighbours.

Please note that house 51, 6th Street, Voëlkip, Hermanus also belongs to the Zondagh Family. I suggest that the Zondagh Family also obtain Mr and Mrs Leigh the owners of house 53, 6th Street, Voëlkip with regards to the matter. We have received complaints from them with regards to noise abuse.

I therefore remain standing with not going ahead with the suggested building plans. The building needs to be changed back into a garage. No correction has been made since 2016. This is a long withdrawn outstanding matter.

It remains important for all property owners to comply with law regulations.

Regards



Susan Wright

TR N/Heart
(C. Olivier)

OVERSTRAND MUNICIPALITY
11 FEB 2022

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URBAN DESIGN
PROJECT MANAGEMENT

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TOWN PLAN

Strategic Executive Director
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FILE NO:	CF 6114 ✓
Voetbip Hermanus	
SCAN NO:	HVK 6114
LABORATOR NO:	1639813

Your ref: 6114 HVK
Our Ref.: A145 –
CC Erf 6114 Hermanus /
NDT – reply to comments
/ objections

9 February 2022

APPLICATION IN TERMS OF SECTION 16(2)(b) READ WITH SECTION 20(1)(a) OF THE OVERSTRAND MUNICIPALITY AMENDMENT BY-LAW ON MUNICIPAL LAND USE PLANNING, 2020 FOR A PERMANENT DEPARTURE FROM THE PROVISIONS OF THE OVERSTRAND MUNICIPALITY LAND USE SCHEME, 2020 AND THE DETERMINATION OF AN ADMINISTRATIVE PENALTY, IN RESPECT OF:

ERF 6114, HERMANUS

APPLICANT TO REPLY TO COMMENTS / OBJECTIONS

The above mentioned has reference.

The letter received from Council dated the 4th of November 2021 with ref: 6114 HVK (Mr P Roux) has reference.

Council requested the client to reply on the comments / objections within 30 days of date of the letter (on or before 4 December 2021). Extension was granted until the 31st of January 2022 and a further extension again granted until the 1st of March 2022.

We herewith would like to provide a response to the objection submitted by means of this letter (from DLC Town Plan) as well as a response compiled by the Advocate of the High Court of South Africa who is dealing (and dealt with) the owner's existing court matters relating to this subject property (Adv JA Venter) and includes two (2) annexures.

Our office wishes to additionally mention that this application is submitted on behalf of the owner, in support of their willingness to do all that is requested and required to rectify the matter.

Throughout the motivational memorandum the following is summarised:

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

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

211

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

The relaxation of the street building line for the pergola was already approved by the municipality.

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

The outbuilding is solely for the purpose of a recreational/hobby room with an ancillary toilet facility and storage space, which is in accordance with the provisions of the planning law, fully allowable, subject to the relevant application(s) being approved.

Your favourable consideration of the response and application will be highly appreciated.

Yours faithfully,



Nandré du Toit
DLC Town Plan (Pty) Ltd

3/11

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MEMORANDUM TO INSTRUCTING ATTORNEY

28 January 2022

TO: STRATEGIC EXECUTIVE DIRECTOR
CITY PLANNING DIVISION
OVERSTRAND MUNICIPALITY
PO BOX 20
HERMANUS
7200

ATT: P ROUX

A CONRADI
aconradi@overstrand.gov.zaS MULLER
alida@overstrand.gov.za

REF: 6114HVK

APPLICATION ID: 3674

Dear Sirs/Madam

**REPLY TO OBJECTION: ERF 6114, 49 SIXTH STREET, VOËLKLIP, HERMANUS,
OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND
DETERMINATION OF ADMINISTRATIVE PENALTY: DLC TOWN PLAN ON BEHALF
OF THE ZONDAGH FAMILY TRUST**

1. We act herein on behalf of the Zondag Family Trust ("Applicant") in the application submitted by DLC Town Plan on the 21st of April 2021.

2. We herewith reply to the objection of Susan Wright ("Objector") dated the 15th of October 2021 and delivered to your municipality on the 18th of October 2021.
3. An extension of time has been granted for the filing of this reply until the 31st of January 2022.
4. A further extension of time has been granted for the filing of this reply until the 1st of March 2022.
5. Introduction:
 - 5.1. It will be demonstrated herein below that the objection does not constitute any impediment against the approval of the application.
 - 5.2. It is abundantly clear that the Objector conflates an application for the amendment of land use rights with an application for departure in respect of building lines.
 - 5.3. The Applicant does not apply for any amendment of the existing zoning of Erf 6114, Hermanus ("the subject property").
 - 5.4. The application is necessitated by the decision of the High Court of South Africa, Western Cape Division, to set aside the (*your*) municipality's previous decision.
 - 5.5. The previous application erroneously referred to a "studio" and it was assumed by the (*your*) municipality that the relevant outbuilding is to be used as a habitable space.
 - 5.6. That was never the intention of the Applicant.
 - 5.7. The Applicant became the registered owner of the subject property in 2012 and no building activities were undertaken on the subject property that could possibly necessitate the approval of building plans in terms of Section 4(1) of the National Building Regulations and Building Standards Act, 103 of 1977.

- 5.8. The Applicant only made some minor renovations to the existing outbuilding and the footprint thereof remained as it was in 2012.
- 5.9. The Applicant fully appreciates the fact that a relaxation of the building lines will not be approved in circumstances where it is envisaged that the relevant building will be used as a habitable space.
- 5.10. It is exactly for the aforesaid reason that the previous application that served before the (*your*) municipality was refused.
- 5.11. It cannot be over emphasised that the Applicant has no intention whatsoever to utilise the relevant outbuilding as a habitable space. The use will be restricted to conform with the primary rights vesting in the subject property and the definition of an "outbuilding" as defined in the Overstrand Municipality Land Use Scheme, 2020 ("the Scheme").
- 5.12. Accordingly, the Applicant requires a permanent departure (relaxation of two building lines) to accommodate the relevant outbuilding and pergola that was erected on the subject property more than a decade ago.
- 5.13. The Applicant will have no objection whatsoever if, as part of the approval, a condition is imposed by your municipality that the relevant outbuilding and pergola shall not be used as a habitable space.
- 5.14. We shall herein after deal succinctly with the contents of the objection and reply thereto insofar as it may be necessary.
- 5.15. It must be pointed out that the majority of the objection is refuted by the contents of the motivating memorandum submitted as part of the application.
6. Reply to objection:
 - 6.1. The application is not for the determination of any penalty in terms of Section 16(2)(q) of the Scheme.
 - 6.2. It is noted that the Objector refers to the matter as being "long-withdrawn". The application was not withdrawn. It was refused because the (*your*)

municipality was under the impression (which impression was created by an error in the previous application referring to "a studio") which has been rectified in the current application.

- 6.3. The reference to some "balcony" is not understood, is non-existent and accordingly irrelevant for purposes of considering this application.
- 6.4. The allegation that the Applicant continued with building activities without:
 - 6.4.1. approved building plans and
 - 6.4.2. obtaining permission from neighbours;is simply wrong and rejected.
- 6.5. The relevant outbuilding was constructed by the Applicant's predecessor in title and was in existence when the Applicant became the registered owner of the subject property in 2012.
- 6.6. The minor renovation work that was done by the Applicant did not, at all, expand upon such existing outbuilding and neither necessitated the approval of building plans nor any permission required from neighbours.
- 6.7. The objector seemingly relies on five points of objection.
- 6.8. The first point is, for the reasons aforesaid, without merits and in any event irrelevant for purposes of considering this application. The relevant outbuilding has been in existence for more than a decade and does certainly not constitute a "party area". The objector is clearly attempting to mislead the (*your*) municipality in this regard.
- 6.9. In the second point raised the objector, again inappropriately, refers to "a studio (party room)" which again simply constitutes a misrepresentation of facts to the (*your*) municipality. The outbuilding poses no threat whatsoever to the objector's privacy and this is evident from a photograph attached hereto marked **Annexure "A"**. There are no windows facing the Objector's property that could notionally cause any privacy concerns.

- 6.10. The outbuilding has never been used as a living area or a habitable space and as aforesaid. Should the municipality deem it necessary, a condition may be imposed stating that the relevant outbuilding will not be used for such purpose.
- 6.11. The Objector's allegation that noise is created is simply nonsensical. A garage housing motor vehicles will create significantly more noise emanating from motor vehicles than a recreational room irregularly being used. The objector is simply being untruthful insofar as the allegation is made that the outbuilding caused a noise disruption.
- 6.12. Furthermore, as far as noise is concerned, the Objector in any event has a remedy in the municipal bylaws dealing specifically therewith.
- 6.13. It is restated that the outbuilding cannot by any stretch of the imagination interfere with the privacy of the Objector.
- 6.14. The allegation relating to the pergola has already been dealt with and disposed of and it is unnecessary to herein again respond thereto, save to state that the objection is without merits and completely irrelevant.
- 6.15. The objector's complaint regarding "a geyser" is, with respect, ridiculous. Same was installed at ground level and is not visible from the street or the Objector's property. The objection is also thus completely without merits.
- 6.16. In the fourth point the Objector is wrong in stating that a new wall was built.
- 6.17. The original wall has been in existence for more than a decade and is reflected on the approved building plans annexed hereto marked **Annexure "B"**. Again, the objector is misstating the facts.
- 6.18. The boundary wall remains in exactly the same position it was when the Applicant became the registered owner of the subject property and its location accords with the approved building plans.
- 6.19. It thus boggles the mind that the objector could state that same "caused extreme negative effects" in circumstances where same has been in

-6-

existence for more than a decade and has been erected in terms of approved building plans.

6.20. In the fifth point raised by the objector, she complains about an alleged lack of maintenance of such boundary wall, which is not only completely irrelevant for purposes of considering the application, but also untrue.

6.21. The remainder of the contents of the objection has already been dealt with either herein above, or in the motivating memorandum that accompanied the application.

7. Conclusion:

7.1. In the aforesaid circumstances, it is clear that the objection has no merits whatsoever and the (*your*) municipality is requested to approve of the application.

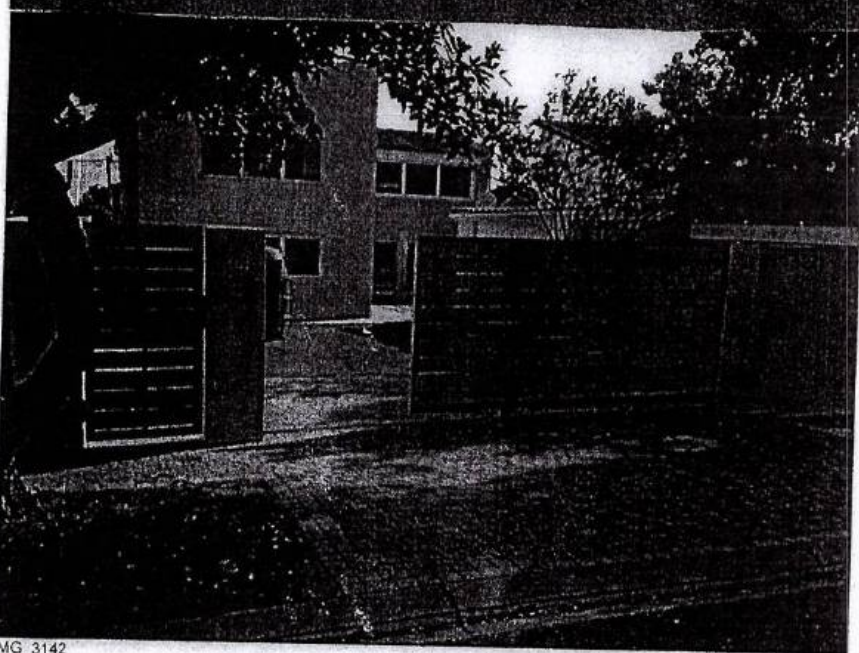
7.2. Should it be necessary, the Applicant requests an opportunity to make oral representations to your municipality (whilst then also affording the objector to make such oral representations) in order to satisfy the (*your*) municipality with regard to the merits of the application and to further demonstrate the unsubstantiated nature of the objection.

Yours sincerely,

9/11

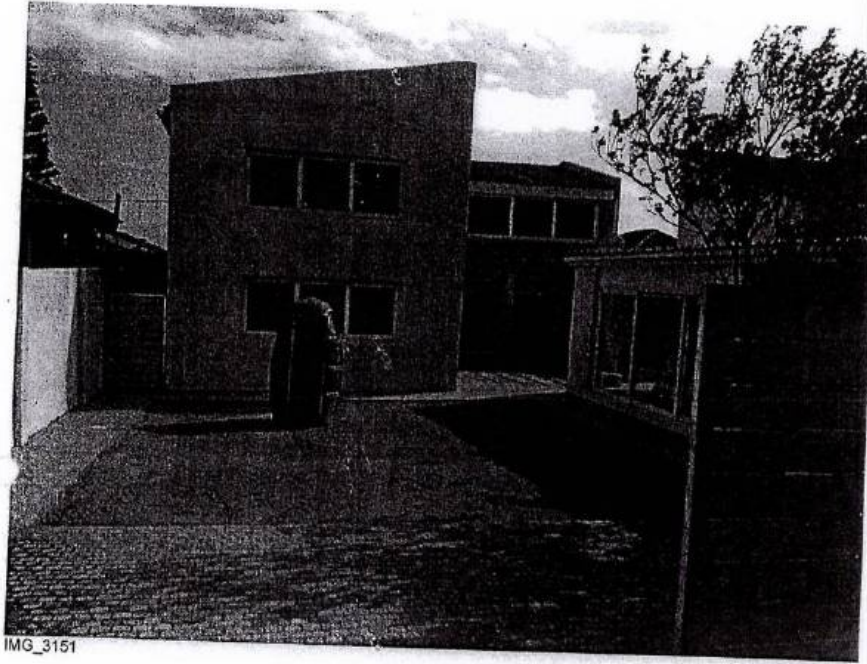


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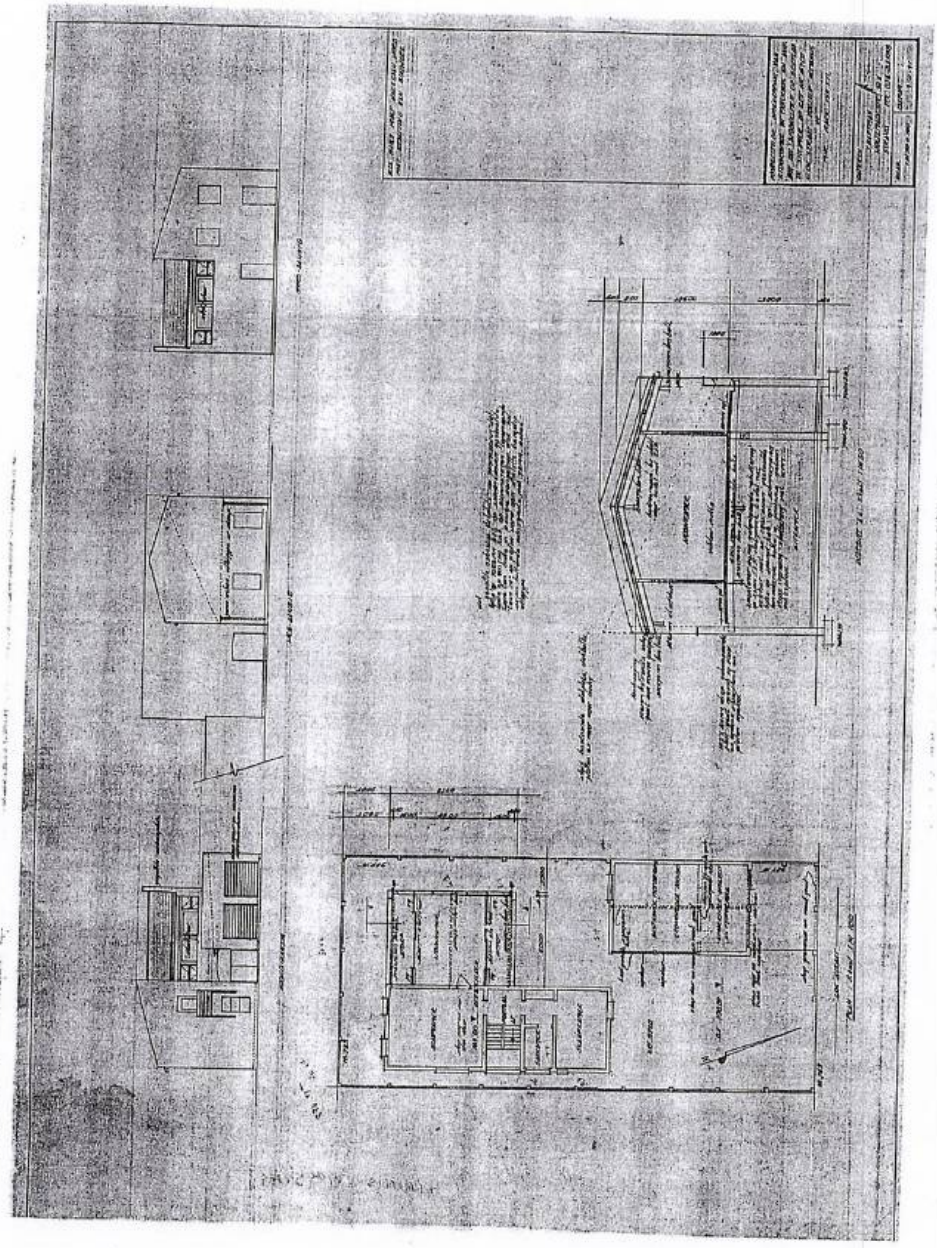
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3
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"B"

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Annexure F

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE
PENALTY: ERF 6114, 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 6114, Voelklip, unobstructed;
7. that no on-street parking be allowed.

p.p. A. Hendriks
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

05/11/2021
DATE