



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

**A G E N D A**

<b>DATE:</b>	<b>30 JUNE 2022</b>
<b>VENUE:</b>	<b>VIRTUAL</b>
<b>TIME:</b>	<b>10:00</b>

# OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT  
Civic Centre  
HERMANUS  
7200

21 June 2022

**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, 30 June 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. Ms H van der Stoep (Senior Town Planner)
9. Mr P Roux (Town Planner)
10. Secretariat

**MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

30 June 2022

**I N D E X**

<u>ITEM</u>		<u>PAGE NUMBER</u>
	<b>APPLICATIONS FOR LEAVE OF ABSENCE</b>	
4.1	<b>ERF 5548, 31 SEVENTEENTH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS ENGELBRECHT &amp; SCORGIE ARCHITECTURAL OFFICE ON BEHALF OF KRM CRASEMANN</b>	1
4.2	<b>PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP NO. 559, DIVISION CALEDON: APPLICATION FOR REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE: PLANNING PARTNERS ON BEHALF OF FREE LIFE TRUST</b>	37
4.3	<b>PORTION 25 (PORTION OF PORTION 2) OF THE FARM RIVERSIDE NO. 644, DIVISION CALEDON: APPLICATION FOR REZONING AND CONSENT USE</b>	917

**1. OPENING**

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

**3. CONFIRMATION OF MINUTES**

**3.1 Minutes of a Municipal Planning Tribunal Meeting held on 3 June 2022.**

**4. ITEMS FOR CONSIDERATION**

**4.1 ERF 5548, 31 SEVENTEENTH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS ENGELBRECHT & SCORGIE ARCHITECTURAL OFFICE ON BEHALF OF KRM CRASEMANN**

Report attached

**4.2 PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP NO. 559, DIVISION CALEDON: APPLICATION FOR REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE: PLANNING PARTNERS ON BEHALF OF FREE LIFE TRUST**

Report attached.

**4.3 PORTION 25 (PORTION OF PORTION 2) OF THE FARM RIVERSIDE NO. 644, DIVISION CALEDON: APPLICATION FOR REZONING AND CONSENT USE**

Report attached.

## 4.1

**ERF 5548, 31 SEVENTEENTH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS ENGELBRECHT & SCORGIE ARCHITECTURAL OFFICE ON BEHALF OF KRM CRASEMANN**

5548 HVK (3820/2021)

P Roux

25 March 2022

(028) 313 8900

Hermanus Administration

## 1. EXECUTIVE SUMMARY

An application has been received on 26 July 2021 from Messrs Engelbrecht & Scorgie Architectural Office on behalf of the owner of Erf 5548, Hermanus (Voëlklip) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- ❖ departure in order to relax the southern street building line from 4m to 1,6m to accommodate a double garage on the property, and
- ❖ the determination of an administrative penalty in terms of Section 16(2)(q).

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 5548, Voëlklip, Hermanus is zoned for Residential Zone 1: Single Residential and measures 768m<sup>2</sup>. The property is developed with a double storey dwelling unit. An application was submitted in 2020 in order to relax the southern street building line from 4m to 1.7m to accommodate a garage.

It was noted during the evaluation of the application that the proposed garage was already constructed.

The application was not approved, and the applicant was notified of the decision on 25 February 2021. The decision was resolved as follow:

- “1. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) on Erf 5548, Hermanus (Voëlklip) in order to relax the southern street building line from 4m to 1.7m to accommodate a garage, **not be approved** in terms of the provisions of Section 61 of the By-Law, and*
2. *that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.*

Reasons for the above decision are as follows:

- ❖ *The garage can reasonably be sited on the property without having to encroach upon the 4m street building line.*
- ❖ *There are no site-specific reasons why the garage must be situated over the street building line, and it is a design choice.*
- ❖ *The proposed 4.7m between the front of the garage and the road is inadequate as there is no road kerb and should a road kerb be developed of at least 1.5m width then the distance in front of the garage will be 3.2m from the kerb instead of the 5m requirement as contained in the Land Use Scheme 2020. This was not adequately addressed and discussed in the motivation.*
- ❖ *The encroachment is in stark contrast to the character of the area and the street scape as all of the dwellings nearby is developed to respect the 4m building line."*

No appeal was submitted against the decision. The property owner subsequently appointed Messrs Engelbrecht & Scorgie Architectural Office to submit the application under consideration.

The property owner made additional alterations to the double garage and the access to the garage is now obtained over the property as opposed to directly from Third Street. Therefore, a new application was submitted as some of the merits as considered in the previous item have changed.

The application is made to legalise the existing double garage, which is situated to 1,6m from the property boundary.

#### **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 southern street building line from 4m to 1.6m to allow the retention of the existing double garage (to be legalised)**

- The property was previously developed with a double storey dwelling and a single garage. The property owner has made alterations to the dwelling to enlarge the living space and to accommodate a double garage on the property.
- The applicant acknowledges that all the structures described in the motivation have already been constructed and that the applicant apologise on behalf of their client who started the construction process without the necessary approval processes.
- The applicant states that they have advised their client to stop all the building work so that the required approvals can first be obtained.
- Alterations and additions to the dwelling included the following:
  - The existing garage was converted to enlarge the existing two bedrooms. This conversion does not encroach upon building lines.
  - A scullery, dining/braai area and a bathroom were added. These additions do not exceed the building lines in any way and does not need to be addressed.

- The addition of a double garage which exceeds the Third street, 4m municipal street building line with 2.4m up to 1.6m from the erf boundary line.
- The placement of the double garage was based on 3 main factors as this will have a direct impact on the outcome of the departure application:
  1. To minimize the effects on nature, the environment, streetscape and surrounding properties
    - a. The double garage was constructed in order not to impact on the environment as no trees and vegetation was affected with this placement.
    - b. The impact of the structure on the surrounding and adjoining properties is negligible and will be completed in an architecturally pleasing style.
    - c. The structure does not have a negative impact on the environment, streetscape and surrounding properties.
  2. Feasibility of the project and towards the owner
    - a. From a feasibility perspective, the design, proportion, and layout of the exiting footprint of the dwelling cannot easily be converted to allow parking and garaging within the municipal building lines as stipulated in the zoning scheme.
    - b. The zoning scheme allows for the construction of a garage on side- and rear boundaries; however this is not feasible on the south-western corner due to the placement of entrance and the distance to the garage. No easy access to the existing dwelling as the garage will be adjacent to bedroom1. Trees will have to be removed, another cost aspect toward the owner and the adjacent owner.
    - c. Placement of a garage on the north-western corner of the subject property is not feasible due to:
      - i. Stacking doors facing which will not allow a garage to be built, without having to change the size of the doors.
      - ii. Far from the entrance.
      - iii. Loss of private courtyard space
      - iv. Double garage cannot be situated without having to demolish a great extent of the boundary wall.
  3. To generate minimal traffic
    - a. The entrance of the garage will be moved from Third Street to Seventeenth Avenue. Impact on traffic will be minimal as Seventeenth Avenue is the last street of Voëlklip with no further extensions.
    - b. A motorized garage door will be installed as to allow the property owner to drive directly into the garage. There is sufficient setback space between the garage and Seventeenth Avenue.
- The double garage structure is to ensure that it can comfortably accommodate 2 larger vehicles as well as allowing for sufficient clearance around the parked vehicles.
- The garage structure does not impede on the character of the area or on the mountain and sea views of the adjacent property owners.

#### **Determination of an administrative penalty**

- The property was bought by the owner of the property in 2008 and alterations were recently made to the dwelling.

➤ No previous contraventions were listed.

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

- The section of the existing double garage which contravenes the street building line is 19.12m<sup>2</sup> the total value of this section is R113 600.00 (R5 941.42 per m<sup>2</sup>).
- No notice was served on the property owner to stop the illegal building work and the building is in place for the past 8 months.
- The garage is not considered to cause any negative impact on any nature, the environment, streetscape and surrounding neighbouring properties.

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

- The client recalls the discussion with Mr R Kuchar and Mr P Roux in December 2020.
- The applicant states that the discussion was that if the client gets the permission from the certain surround neighbour's, then they could not see any reason why the departure application should be turned down. Within a week our client had the approval from all the applicable surrounding neighbours, the contractor proceeded with the construction as it appeared to be low-risk due to the discussion held.
- It is considered by the applicant that the client followed the correct procedures and consulted with the authorities first.

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

- The applicant submitted a report by a quantity surveyor.

**(d) whether the unlawful conduct was stopped**

- The owner of the property was not stopped from completing the building work and has also received no notice with regards to the transgression.

**(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 applicant requests that a penalty of fee be set at R11 360.00 (which is approximately 10%) of the cost of the area which encroaches upon the street building line.

**5. ADMINISTRATIVE COMPLIANCE**

Methods of advertising		Date published	Closing date for comments
Notices	Yes	22 November 2021	20 December 2021
Internal Departments	Yes	19 November 2021	20 December 2021

Ward councillor	Yes	19 November 2021	20 December 2021
Total comments	<b>NONE</b>		
Total letters of support	<b>NONE</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly (if no, elaborate below):			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			<b>Yes</b>

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

Name	Date received	Summary of comments
Waste Management	19/11/2021	No objection.
Building Department	19/11/2021	No objection. Building plan application must comply with all applicable law.
Fire Department	22/11/2021	The fire department has no objection subject to compliance with the provision of SANS-A:2016 10400-T:2020 and the By-law relating to community fire safety.
Engineering Services	23/11/2021	Attached as Annexure D.
Environmental Management Services	30/12/2021	No additional comments.

#### 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

N/A

#### 8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

#### 9. MUNICIPAL ASSESSMENT OF COMMENTS

As above.

#### 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, some of the aspects of the motivation are not agreed with as discussed below:

**The applicant states that they have advised their client to stop all the building work so that the required approvals can first be obtained.**

The construction on the property has been finalised, still without acquiring the necessary approval. This can be seen in the photo below:



**The double garage was constructed in order not to impact on the environment as no trees and vegetation was affected with this placement.**

The construction of the double garage did require the removal of two trees; this can be seen in the photo below:



**From a feasibility perspective, the design, proportion, and layout of the exiting footprint of the dwelling cannot easily be converted to allow parking and garaging within the municipal building lines as stipulated in the zoning scheme.**

Prior discussions were held with the architect who did the original designs and changes to the design of the dwelling could have been made prior to the construction of the garage and to allow passage into the dwelling through the garage.

**The entrance of the garage will be moved from Third Street to Seventeenth Avenue. Impact on traffic will be minimal as Seventeenth Avenue is the last street of Voëlklip with no further extensions.**

Although the entrance to the garage is moved the effect on the street scape remains, this is a point which was not adequately addressed in the motivation and will be discussed further below. It is noted that the applicant focused on the impact the garage will have on the ocean and sea views of the adjacent property owners.

**The client recalls the discussion with Mr R Kuchar and Mr P Roux in December 2020. The applicant states that the discussion was that if the client gets the permission from the certain surround neighbour's, then they could not see any reason why the departure application should be turned down. Within a week our client had the approval from all the applicable surrounding neighbours, the contractor proceeded with the construction as it appeared to be low-risk due to the discussion held.**

**It is considered by the applicant that the client followed the correct procedures and consulted with the authorities first.**

Prior to the submission of the original application two meetings were held with the consultants appointed by the applicant. The first meeting was held with the architect and the second with the town planner. On both occasions the merits of the application were discussed, and the municipal town planner confirmed that the application will be regarded as a high-risk application due to the proximity to the street and the character of the area. The meeting held with the Senior Manager and the Town Planner was held to discuss on how to fast track the application as the client was in a hurry to start construction whereby it was confirmed that neighbour's consent may be acquired. This did not give the property owner a right to start construction.

The signed letters from the neighbours were first submitted on 7 January 2021 and it was noted that the letters which was sent to the adjacent property owners stated the property owner of Erf 5548 intends to start construction on 18 January 2021. On 13 January 2021 this department phoned and emailed the previous consultant who worked on the original application to discuss the roll out of the construction with his client and that he must advise his client to follow the correct procedures in terms of National Building Regulations (i.e. to have building plan approval) prior to the construction of the garage, this was then further confirmed in the email sent on 13 January 2021.

Considering the abovementioned it was the duty of the property owner's consultants to advise the property owner not to continue with the building work prior to obtain approval from the municipality. Lastly, any architect, builder or town planner knows

that it is illegal to construct a building without a building plan approval, and the consultants would have inquired from the property owner whether they can continue. Therefore, the risk taken to construct without building plans and land use approval is the property owner's own liability.

### Departures

As discussed in the background of this report a previous application was submitted for the encroachment of the 4m street building line and no appeal was submitted against the decision. As seen in the motivation the property owner constructed the double garage while the original application was in progress and the owner did not wait for the regulatory process to be concluded. After the decision was finalised the property owner made additional changes to the structure and moved the entrance of the garage in order to allow vehicles to access the garage over the property and not directly from Third Street. However, the garage still transgresses the 4m street building line and in terms of Section 16.1.2 of the Overstrand Municipality Land Use Scheme, 2020, there are rules with regard to garages and carports within street building lines, these rules are quoted below:

- “a) Upon an application, the Municipality will also take the following principles into account:*
- (i) The Municipality may permit the construction of a garage over a street building line if, in the Municipality's opinion, the garage cannot reasonably be sited at the prescribed distance due to the slope of the land unit or for other reasons provided.*
  - (ii) The height of such garage from the natural ground level to the top of the structure does not exceed 4.5 m.*
  - (iii) The front elevation of the garage may not be closer than 5.0 m to the road kerb or surface.”*

Due to the nature of the application Section 16.1.2 a) (i) of the Overstrand Municipality Land Use Scheme, 2020 will be considered as part of the desirability of the application. The applicant motivates that the only portion available to develop the double garage is the space between the dwelling and the road reserve on the southern side of the property, this is due to feasibility (layout of the dwelling and placement of the front entrance), cost to the owner (removing trees and compensating adjacent property owner for trees removed) and cost to the environment (not to disturb the natural environment). These points and the motivation provided for each are not agreed with due to the following:

- Feasibility and cost are subjective arguments as the property owner had opportunity to design the placement of the garage and how it would be inter-leading with the dwelling. Further, the property owner was willing to spend a considerable amount of money to renovate, alter dwelling, and added a double garage prior to obtaining approved building plans which could lead to the payment of a penalty, court case or demolition of the structure.
- Trees were removed to accommodate the existing garage.
- The property is already developed and therefore any truly natural veld or ecosystem has already been removed. The placement of the garage would therefore have had no impact on the natural environment.

Although it is agreed that the new placement of the entrance of the garage is more desirable in terms of traffic and pedestrian movement, the one aspect not motivated is the character of the street scape adjacent to 3<sup>rd</sup> Street. A site inspection was

done, and it was found that all the other dwellings and garages in the area and more specifically Third Street are set back 4m or greater from the property street boundaries. By approving the subject application, a precedent will be created, which will be in stark contrast to the character of the area and the street scape. However the proposed change to the entrance of the garage will make the retention of the garage more desirable.

It should be noted as per the original building plan, two bedrooms were already designed and constructed, and the property owner sought to extend the bedrooms and not create additional bedrooms. The two existing bedrooms were extended into the existing single garage which required the property owner to seek additional placement for secured parking. Further, there is ample space available at the northern side of the property, or on the western boundary to allow the construction of a garage without encroaching the land use scheme parameters. Considering the aforementioned, the opinion is held that the garage could have been reasonably sited at the prescribed distance from the street boundary and that there are no site-specific reasons why the garage should have been situated over the street building line.

Lastly, it is noted that there are inconsistencies with regards to what is being motivated, the building plans presents and what is constructed on site. The motivation only states that the application is for a double garage which encroaches over the building line, however, as can be seen on the picture below the garage has a balcony area which encroaches over the 4m building line. Further, the building plans submitted shows that the portion of the garage will not be traversable however, on the elevation it is indicated that the balustrades will run to the edge of the garage which is over the 4m building line. It should also be noted that this cannot be considered to be a roof structure as it is traversable. Considering this, should the application be approved then a condition should be inserted that the balustrade be moved back to respect the 4m building line.



### **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**

As discussed in this report the illegal building work (double garage with a first-floor balcony) were constructed up to 1.6m from the southern street boundary. The section of the existing double garage which contravenes the street building line is 19.12m<sup>2</sup>. The total value of this section is R113 600.00 (R5 941.42 per m<sup>2</sup>).

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

The building with the contraventions was constructed in early 2021. The decision of the original application was provided to the applicant on 25 February 2021. However, even though the application was not approved the building work still continued and further alterations were made. It should further be noted that on 25 March 2021 building plans were approved and it was indicated on the plan that the section of the garage which will be encroached upon will be demolished in order to comply with the 4m building line. Therefore, the architect (maybe on instruction of the property owner) made a misrepresentation on the building plan.

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

Costing of the structures was done and the applicant requests that if a contravention penalty is payable then the fee must be set at R11 360.00 (which is approximately 10%) of the cost of the area which encroaches upon the street building line.

**(d) whether the unlawful conduct was stopped**

The owner of the property did not cease the illegal building work even after receiving the decision of the original application dated 25 February 2021.

**(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.

However, the opinion is held that the owner contravened by proceeding to develop the structure even without an approved building plan, and thereafter again made changes to the structure even after it was indicated on the approved building plan that the structure will be demolished and being fully aware that the land use application was not approved.

It should be noted that the applicant motivates that the property owner is willing to pay a penalty cost which is equivalent to 10% total costs. However, as stated in this report the opinion is held that the property owner knowingly transgressed the land use scheme parameters (and that the consultants were made aware of the risk and merits involved) and even after receiving the decision of the municipality for the original application, the owner still finalised the construction and made additional alterations which are not in line with the approved building plans. Therefore, the opinion is held that the gravity of the situation caused by the property owner requires a greater repercussion than suggested by the applicant therefore should the structure be retained a penalty of 20% should be implemented this equates to R22 720,00. This is in line with Section 90 of the by-law with states that the penalty

cannot be more than 100% of the value of the building/construction work which was unlawfully carried out.

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.

Building plans needs to be submitted to the Building Department for approval.

### **Conclusion**

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

### **13. RECOMMENDATION**

1. 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 5548, Hermanus (Voëlklip) to relax the southern street building line from 4m to 1,6m to accommodate a double garage on the property, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. 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;
3. 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 31 May 2021;
  - (b) that an administrative penalty of R22 720.00 (being 20% of the built cost) be payable within thirty (30) days of the decision;
  - (c) that SDP be revised to indicate that the balustrades will be set back to respect the 4m street building line on all elevations and on the site plan;
  - (d) 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;
  - (e) that this approval does not absolve the landowners from compliance with any other relevant legislation, and
  - (f) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with.
4. 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.

- ❖ Alterations made to the garage will mitigate the issue regarding traffic and pedestrian movement.
- ❖ 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.
- ❖ No objection was received from the adjacent property owners.

Reasons for recommendation point 2.

- ❖ The consultants working on the original project was fully informed and the property owner knowingly transgressed the land use scheme parameters (and the consultants were made aware of the risk and merits involved) and even after receiving the decision of the Municipality for the original application, the construction was still finalised and made additional alterations were made.
- ❖ Building plans were submitted and approved on 26 March 2021 indicating that portions of the structure would be demolished.
- ❖ 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:	Services Report

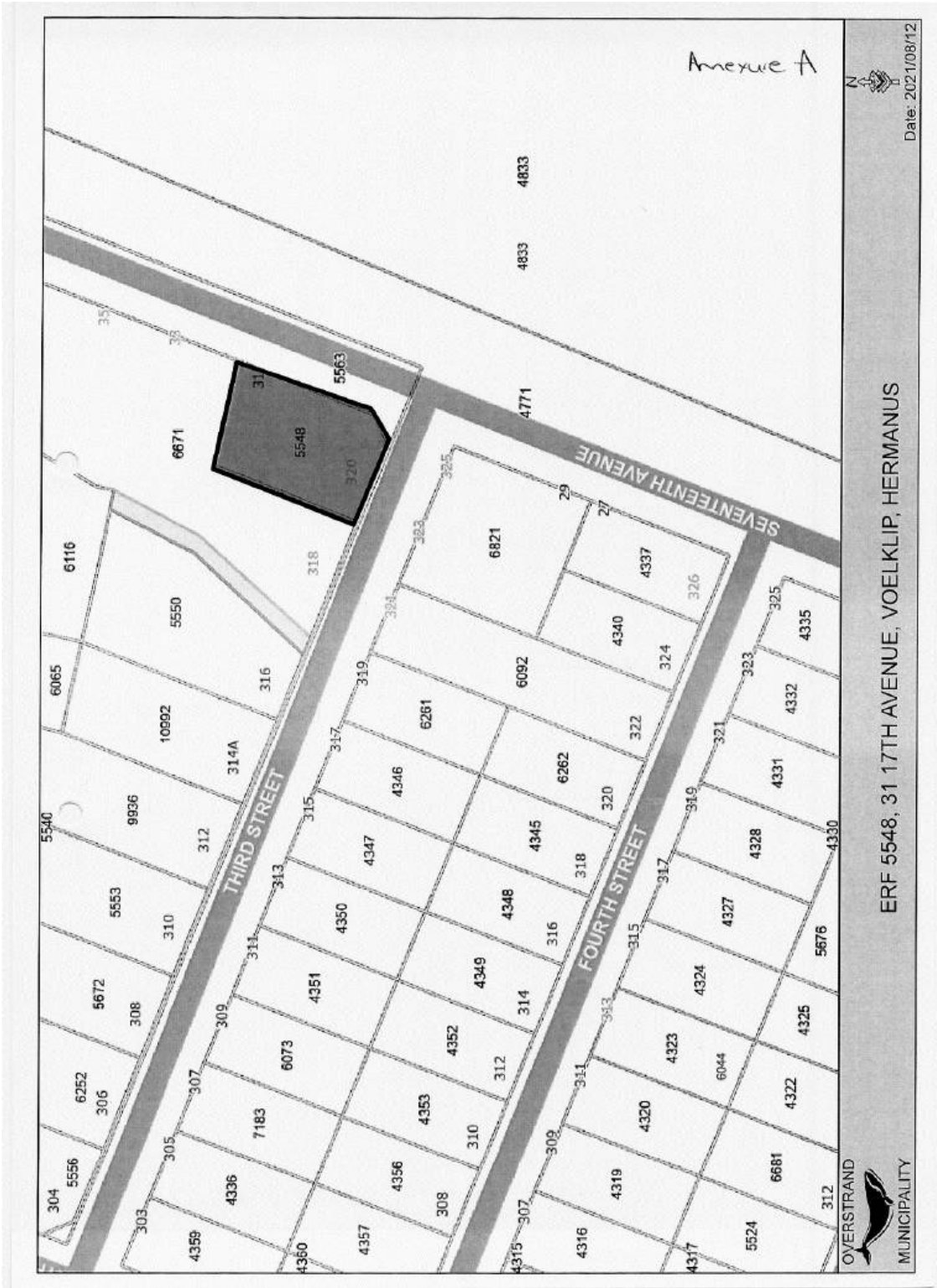
**SIGNATURES****AUTHOR**

Name: **P ROUX**

SACPLAN Reg No: **A2246/2015**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



ERF 5548, 31 17TH AVENUE, VOELKLIP, HERMANUS

Date: 2021/08/12

Annexure B1/19

**1. INTRODUCTION:****1.1 Background**

The owner of the property, Mr. K.R.M Crasemann has instructed Brandon Scorgie from the firm Engelbrecht & Scorgie Architectural office to apply for a building line departure from the Overstrand Municipality's Zoning Scheme Regulations. Erf 5548, referred to in this document as the application area, measures 768.0m<sup>2</sup> and is held by Title Deed no. T000033204/2008

**1.2 Application detail**

Application is made in terms of the following:

- 1.2.1 The Overstrand Municipality's By-Laws on Municipal Land Use Planning, Chapter 4 Section 16(2)(b), 2020 states that an owner of an erf may apply to the Municipality for a permanent departure from the provisions as stated in the Overstrand Municipality's Zoning Scheme Regulations.

Relevant sections in the Zoning Scheme Regulations applicable to the departure:

- Section 6.1.2 (b)(i) "Street Building Lines". The street building line is determined in accordance with the net erf area, as listed in the table below:

<b>Net erf area:</b>	<b>Street building line</b>
400m <sup>2</sup> and greater	4.0m

- 1.2.2 Overstrand Municipality's amended By-laws on Municipal Land Use Planning states that a person who is in contravention of this By-laws, and submit application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof.

**1.3 Need and desirability****1.3.1 Property description**

The application area of 768m<sup>2</sup> in extent is located within the residential suburb of Voëlklip at 31 Seventeenth Avenue. The existing dwelling on the application area is a double story comprising typical family type living accommodation.

The current owner, Mr. K.R.M Crasemann, purchased this property in 2008 for a fair sum of money and has been using the property as a semi-permanent residence ever since. The current double story dwelling and single garage is no longer adequately sized for their family and their associated lifestyle and therefore necessitates a few additions and alterations as discussed later in this application document.

## 2. THE APPLICATION:

### 2.1 Analysis - Development Criteria as per the Overstrand Municipality

The development parameters for the application area as per the Overstrand Municipality Land Use Scheme, 2020 can be summarized as follows:

Design Parameters:	Overstrand Municipality's Zoning Scheme Regulations:	Proposal:	Comments:
<b>Zoning</b>	Residential Zone 1: Single Residential (SR1)	Residential Zone 1: Single Residential (SR1)	Unchanged
<b>Primary Use</b>	Crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self - catering	Dwelling house	Unchanged
<b>Consent Use</b>	Day care centre, green house, guest house, house shop, institution, place of instruction, place of worship, residential building and intensive horticulture	None	Unchanged
<b>Coverage</b>	50%	33.50%	Unchanged
<b>Height Restriction</b>	8.0m	6.2m	Unchanged
<b>Building lines</b>	<b>Street</b>	4.0m	4.0m Seventeenth Street & 1.6m Third Street
	<b>Side</b>	2.0m	2.0m
	<b>Rear</b>	2.0m	2.0m
<b>Parking</b>	Dwelling house: 2 bays	Dwelling house: 2 bays	Unchanged

### 2.2 Analysis - Development Criteria as per the Title Deed

Refer to Annexure C in the Title Deed.

The Conveyancer Monica Korf issued a certificate confirming that no restrictive Title Deed conditions exist against the proposal on Erf 5548 Voëlklip. Refer to Annexure E in the Conveyancer Certificate.

## 2.2 Application

### As stated earlier in this Departure Document;

- 2.2.1 the Overstrand Municipality's By-Laws on Municipal Land Use Planning Chapter 4 Section 16(2)(b), 2020 states that an owner of an erf may apply to the Municipality for a permanent departure from the provisions as stated in the Overstrand Municipality's Zoning Scheme Regulations.

Therefore, application is subsequently made in terms of the Overstrand Amendment By-Law on Municipal Land-use Planning, 2020 for a permanent departure to relax the Southern Municipal Street Building Line from 4.0m to 1.6m to allow for a double garage.

- 2.2.2 The Overstrand Municipality's amended By-laws on Municipal Land Use Planning states that a person who is in contravention of this By-laws, and submit application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof.

Therefore, application is subsequently made in terms of the Overstrand Amended By-Law on Municipal Land-use Planning, 2020 for the application of an administrative penalty as contemplated in Section 90 in the Overstrand Municipality's amended By-laws on Municipal Land Use Planning

Refer to Annexure A for the application form.

4/19

3. CONTEXTUAL SITE INFORMATION:

3.1 Property Description

Property:	Extent:	Title Deed No:	Registered Owner:
Erf 5548, Voëlklip	768.00m <sup>2</sup>	T000033204/2008	Kai Reinhard Michael Crasemann

Refer to Annexure C for the Title Deed of Erf 5548 Voëlklip

Refer to Annexure G for SG Diagram

The following Surveyor General Plans reflect the application site:

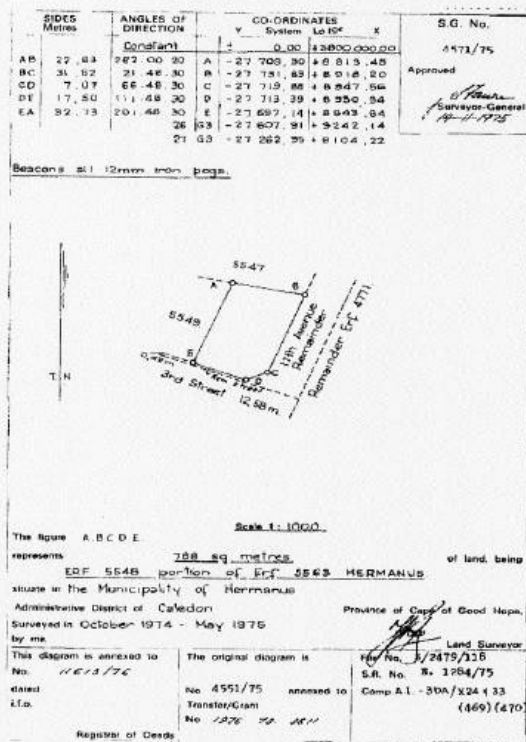


Figure 1: Extract of the Surveyor General Plans of the application site

3.2 Location

A. Regional Context

Within a regional context, the application area is located within Voëlklip residential suburb.

Refer to Annexure H for the Locality layout

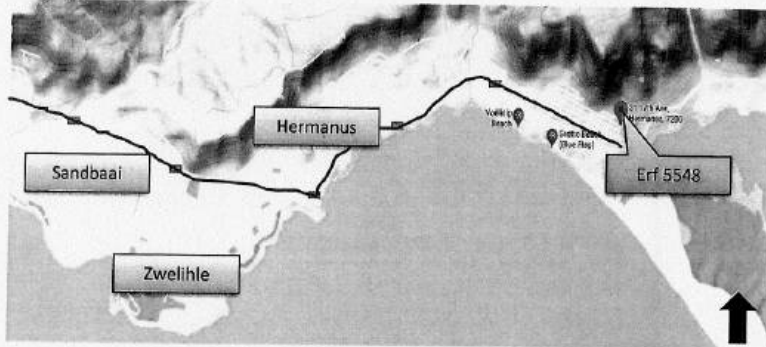


Figure 2: Regional Context – NOT TO SCALE

B. Local Context

Within a local context, the application area consists of a residential erf within Voëlklip. The application area is located at No. 31 Seventeenth Avenue.



Figure 3: Local Context, an extract from the Overstrand Public Viewer – NOT TO SCALE

6/19

### 3.3 Land Use:

The application area accommodates a double storey dwelling with both the North and Southern facing areas both optimizing the sea and mountain views. The areas of the Dwelling as it stands (including the additions and alterations) comprise the following:

-	Ground floor area	- 203.70m <sup>2</sup>
-	Double garage	- 49.60m <sup>2</sup>
-	Loft area	- 29.30m <sup>2</sup>
-	Balcony area	- 66.40m <sup>2</sup>

	Total surface area (incl. all improvements)	- 349.0m <sup>2</sup>
	Total coverage (incl. all improvements)	- 33.00%

### 3.4 Zoning

The application area is zoned Residential Zone 1 (SR1). All surrounding properties are zoned Residential Zone 1 (SR1) as well as an Open Space Zone 2 (Erf 4833).

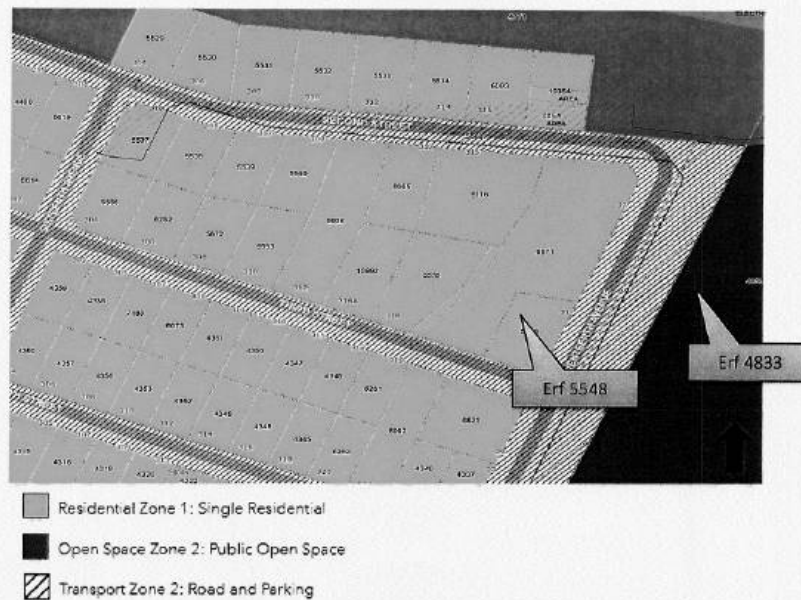


Figure 4: Zoning, an extract from the Overstand Public Viewer – NOT TO SCALE

#### 4. PROPOSAL

##### 4.1 Background and introduction to the proposal

The firm Interactive Town and Regional Planning was first appointed by the owner of the property Mr. K.R.M Crasemann to prepare and submit an application for a building line departure on Erf 5548, Voëlklip, Hermanus on 7 August 2020.

The decision letter, received from the Overstrand Municipality, refers that the application in terms of Section 16(2)(B) of the Overstrand Municipality By-Lay on Municipal Land Use Planning, 2015 (BY-Law) on Erf 5548, Hermanus (Voëlklip) in order to relax the Southern Street Building Line from 4.0m to 1.6m to accommodate a garage was **not approved** in terms of the provisions of Section 61 of the By-Laws.

Reasons for the above decisions are as follows:

- The garage can reasonably be sited on the property without having to encroach upon the 4.0m street building line
- There are no site-specific reasons why the garage must be situated over the street building line and it is a design choice.
- The proposed 4.7m between the front of the garage and the road is inadequate as there is no road kerb and should a road kerb be developed of at least 1.5m width then the distance in front of the garage will be 3.2m from the kerb instead of the 5m requirement as contained in the Land Use Scheme 2020. This was not adequately addressed and discussed in the motivation.
- The encroachment is in stark contrast to the character of the area and the street scape as all the dwellings nearby are developed to respect the 4.0m building line.

No appeal form or application was submitted by the appointed firm

The owners of the property, Mr. K.R.M Crasemann, then instructed Brandon Scorgie from the firm Engelbrecht & Scorgie Architectural Office to assist with a new Departure application motivating the proposal from a different perspective for consideration.

We, as the newly appointed Architectural Firm to handle this Departure Application, acknowledge that the owner of the application area already started construction on all the structures as described within this document.

We can only apologize on behalf of our client that he started the construction process without the necessary approval processes. I come with my hat between my legs as I was appointed by the owner of the property to assist with the new Departure application and I appeal to your experienced consideration to look at the departure application from a different perspective.

We advised our client that it would be better to stop all construction work for the time being so that we can first go through all the necessary approval processes. All the structures as described above have been reflected on the drawings as new together with the internal alterations and reconfigurations of the footprint.

#### 4.2 Details of proposal

The Departures that would be required for the application area include:

- The relaxation of the 4.0m Municipal Street Building Line (Third Street) that is affected by the double garage structure.

#### 4.2 Proposal

As mentioned earlier in this document, the current owner, Mr. K.R.M Crasemann, purchased this property in 2008 for a fair some of money and has been using the property as a semi-permanent residence ever since. The layout, proportion and flow of the current double storey dwelling with its single garage is no longer adequately sized for their family and their associated lifestyle and therefore necessitated the need for a few additions and alterations.

The additions and alterations on the application area include the following:

- The two ground floor bedrooms were minuscule and by converting the existing single garage to form part of the two existing bedrooms on the Ground floor achieved the goal of suitably sized bedrooms. These conversions **do not exceed the building lines** in any way and does not need to be addressed.
- Adding a scullery, a dining / braai area and a bathroom. These additions **do not exceed the building lines** in any way and does not need to be addressed.
- The addition of a double garage which **exceeds the Third street, 4.0m Municipal Street building line** with 2.4m up to 1.6m from the Erf Boundary Line, therefore application is being made for the permanent Departure of the Third street, 4.0m Municipal Street building line.

The placement of the new double garage structure was based on 3 main factors as this will have a direct impact on the outcome of this Departure Application:

1. To minimize the effects on nature, the environment, streetscape and surrounding properties

The Overstrand Municipality encourages Town Planners and Architects to minimize the effects new building work may have on nature, the environment and streetscape as this plays an important role in forming the visual image of a sustaining town.

With this in mind, it was important for our client to respect this and construct the new double garage where it would have less of an impact on the environment as no trees and vegetation was affected with this placement.

The impact the new double garage structure has on the surrounding and adjoining properties, as discussed later in this document, is negligible and will be completed in an architecturally pleasing style

With this in mind, one can summarize the effects this contravention as minor in nature and it does not impact negatively on the environment, the streetscape and surrounding properties.

## 2. Feasibility on this project and towards the owner

From a feasibility perspective, the design, proportion and layout of the existing footprint of the dwelling cannot easily be converted to incorporate adequate garaging and secured parking within the Municipal building lines as stipulated in the Overstrand Zoning Scheme Regulations without demolishing a great extent of the existing dwelling.

The Overstrand Municipality's Land Use Scheme, 2020 Section 6.2.2 (e)(iii) make provision for a garage structure that may be constructed at 0.0m on one internal side boundary and 0.0m on the internal rear boundary, provided that the building does not occupy more than 50% of such internal side or rear boundary. With this being said it will have a much more financial impact on our client having to construct the new double garage structure on either the South Western corner of the erf of the North Eastern corner of the erf as discussed below.

Double garage on the South Western corner of the property:

- Far from the existing entrance on the application area. One would prefer your garage and your entrance as close together as possible.
- No easy access to the existing dwelling as the garage will be adjacent bedroom 1. Having to enter the dwelling by walking through a bedroom is not logic.
- Trees will have to be removed, another cost aspect towards the owner and most probably the owner of the adjoining Erf 6671, plus the added negative impact on the appearance of the property with the trees screening the property and providing shading.

Double garage on the North Western corner of the application area:

- The 4-panel sliding door in the Dinning / Braai area on the application area does not accommodate a new double garage without having to build the garage over the 4.0m Municipal Street Building Line or without having to adjust the door sizes.
- Far from the existing entrance on the application area. Again, one would prefer your garage and your entrance as close together as possible.
- The new double garage cannot be situated without having to demolish a great extend of the existing boundary wall.
- The owner will lose private courtyard space.

## 3. To generate minimal traffic

During the first Departure application, submitted by the firm Interactive Town and Regional Planning as mentioned above, the proposed double garage proposed access directly from Third Street. This firm argued that this will not have an impact on traffic in the area as Third Street generates minimal traffic at this section of the road because the application area is one of the

last two erven in Third Street and the second last erf in Seventeenth Avenue as seen on figure 2 - 4 above.

When the owners of the property approached my firm, I advised my client to move the entrance of the new double garage structure so that it takes direct access from Seventeenth Avenue. This will generate minimal traffic even more so due to the fact that Seventeenth Avenue is the last street in the Voëlkop area. Furthermore, the application area is situated on the urban edge and borders a Statutory Nature Reserve to the East as well as is located within a mountain management area, which prevents further development up against the mountain, thus minimizing the future potential for an increase in traffic due to no further residential development permitted in this area.

The owner will install a motorized garage door to ensure that the vehicle may drive directly into the garage without impacting on the traffic by having to stop the car in front of the garage, getting out of the vehicle and having to open the garage door manually. As can be seen from the layout drawings, there is sufficient setback of the garage to allow for a vehicle to park 100% on the erf without encroaching on the road reserve. Even be a boundary wall and gate were to be constructed, the road reserve has sufficient width to accommodate a 1.5m pedestrian walkway with sufficient space for a vehicle to stand on the road reserve without affecting the pedestrian crossing.

Please refer to the self-explanatory drawings showing the minimal impact the new structure will have on traffic attached as Annexure I

Furthermore, the reason for the double garage structure is to ensure that it comfortably accommodates 2 larger vehicles as well as allowing for sufficient clearance at the front, the rear and the sides of the parked vehicles ensuring that the owner can comfortably walk around the parked vehicles to reach the access to the existing dwelling from inside the garage for security purposes. With this being said, no unnecessary dimensions were added to enlarge the new double garage structure other than which was needed.

As stated earlier in this Departure document, the Overstrand Municipality's By-Laws on Municipal Land Use Planning Chapter 4 Section 16(2)(b), 2020 states that an owner of an erf may apply to the Municipality for a permanent departure from the provisions as stated in the Overstrand Municipality's Zoning Scheme Regulations.

Relevant sections in the Zoning Scheme Regulations applicable to the departure:  
Section 6.1.2 (b)(i) The Third Street, Street Building Line requires a relaxation from 4.0m to 1.6m to accommodate the double garage structure.

With the above mentioned being said, it is therefore necessary for the new double garage structure to be built over the current 4.0m Municipal Street Building Line.

11/19

#### 4.3 Character of the environment

- The property is situated in the Voëlklip residential area which has a multitude of different architectural styles.
- The application erf is smaller than the direct erven surrounding the application area as shown on figure 5 below.

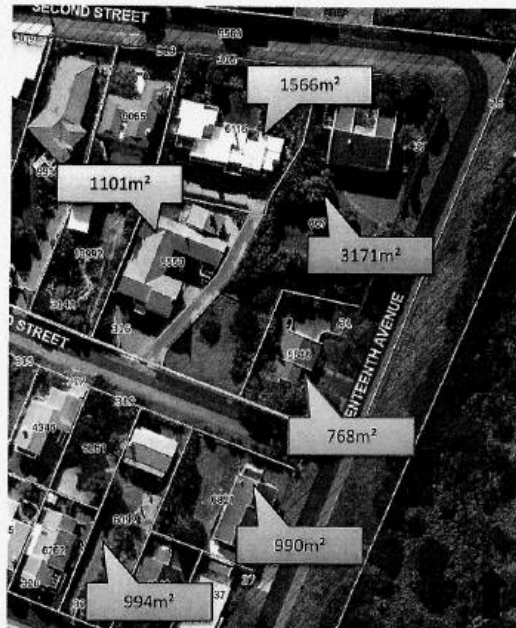


Figure 5: Direct surrounding erven, an extract from the Overstrand Public Viewer – NOT TO SCALE

- Third Street and Seventeenth Avenue lies relatively high up against the mountain slopes in this node of Voëlklip. There is only 1 more row of erven to the North of Third Street in Second Street. Many of these Dwellings overlook the Dwellings in Third Street having a view at first floor level.
- Where dwellings in Second Street do not overlook dwellings in Third Street, most if not all of these properties have some sea view in between houses in Third Street due to the topography in the area.

#### 4.4 Effects on nature / environment, streetscape and surrounding properties:

As mentioned earlier in die document, the Overstrand Municipality encourages Town Planners and Architects to minimize the effects that new building work may have on nature, the environment and streetscape as this plays an important role in forming the visual image of a sustaining town and is therefore one of the 3 main factors that played an important role in the placement of the new double garage structure.

- As shown on the attached drawings, these contraventions are relatively minor in nature and do not impact negatively on the environment, streetscape and surrounding properties.
- Most of the properties have sea and mountain views due to the topography of the ground in Voëklip. Due to the topography as mentioned above no view lines of the adjoining properties will be affected in any way as the views are towards the mountain and the sea.
- This section of Voëklip (north eastern extreme) is relatively high up against the base of the mountain with most erven here having considerable gradients
- The surrounding properties either overlook the properties below them or in some cases they have views towards the sea in between the buildings to their south
- The surrounding properties which have references to the structures mentioned in this departure are the following:

##### 4.4.1 Erf 6671 - Single Residential Zone 1 (3171m<sup>2</sup>)



Figure 6: Erf 6671 and the application area, an extract from the Overstrand Public viewer – NOT TO SCALE

This Erf lies North of the application area. The existing dwelling on this erf is situated North of the existing dwelling on the application area. Views towards the sea are in a South Western direction and views towards to mountain lies in a Northern direction. Due to the sloping topography, views from Erf 6671 will not be interrupted as it is situated at a considerable higher level than the application area

The new additions and alterations are visible from Erf 6671, however as these additions and alterations are done in an architecturally pleasing style, it will blend in very well and are minor in scale and therefore the impact of this is negligible.

#### 4.4.2 Erf 5550 - Single Residential Zone (1101m<sup>2</sup>)

This Erf lies West of the application area. The dwelling constructed on this erf enjoys views of the sea toward the South and mountain views towards to North, hence no change to the current views. These additions and alterations do not impact on their privacy in any way as there are no windows or door openings to the Western elevation of the new double garage structure.

The structure is hardly visible from Erf 5550 due to the current dense vegetation on Erf 6671 and the application area as shown on the figure 7 below.



Figure 7. Erf 5550 and the application area, an extract from the Overstrand Public viewer – NOT TO SCALE

#### 4.4.3 Erf 6821 - Single Residential Zone (990m<sup>2</sup>)



Figure 8: Erf 5548 and the application area, an extract from the Overstrand Public viewer – NOT TO SCALE

This Erf lies South of the application area (across Third Street). The dwelling constructed on this erf enjoys views of the sea towards the South and views of the mountain towards a North West direction and North East direction, hence no change to current views by the structure.

The structure is visible from Erf 6821, however as the structure is done in an architecturally pleasing style, it will blend in very well and is minor in nature and therefore the impact of the structure is negligible. See figure 8.

The scale and the proportion of the structure is submissive to the scale of the rest of the dwelling and height.

#### 4.4.4 Erf 6092 - Single Residential Zone (994m<sup>2</sup>)



This Erf lies in a South Western direction in relation to the application area (across Third Street). Views towards the sea are in a Southernly direction and views towards the mountain are in a Northerly direction. The garage structure does not impede views in any way. The increased impact on the streetscape and privacy are negligible.

#### 4.4.4.1 Erf 4833 – Public open space (628571m<sup>2</sup>)

As Mentioned above Erf 4833 is a public open space hence no buildings are constructed on this Erf. This Erf lies East of Erf 5548 (across Seventeenth Avenue). Views towards the sea are in a Southernly direction and views towards the mountain are in a Northerly directions. The structure does not impede sea or mountain views in any way. The structure is visible from Erf 4833, however as the structure is done in an architecturally pleasing style, it blends in very well and are minor in nature and therefore the impact of the as build addition is negligible



Figure 10: Erf 4833 and the application area, an extract from the Overstrand Public viewer – NOT TO SCALE

## 5. APPLICATION FOR ADMINISTRATIVE PENALTY

### 5.1 Background and site history

- The application area is zoned as Single Residential 1 (SR1) in terms of the Overstrand's Town planning scheme.
- The application area of 768m<sup>2</sup> in extent is located within the residential suburb of Voëklip at 31 Seventeenth Avenue. The existing dwelling on the application area is a double story comprising typical family type living accommodation.
- The unauthorized building / construction work is highlighted throughout this Application document and does not cause negative impact on nature, the environment, streetscape, surrounding properties or on traffic as discussed earlier in this Departure Document.
- In total, 19.12m<sup>2</sup> contravenes the Overstrand Municipality's amended By-Laws on Municipal Land Use Planning

### 5.2 Summary of the motivation

Our client's motivation of the proposed is highlighted throughout this Departure Application, but can be summarized as follows:

- The current owner, Mr. K.R.M Crasemann, purchased this property in 2008 for a fair sum of money and has been using the property as a semi-permanent residence ever since. The current double story dwelling and single garage is no longer adequately sized for their family and their associated lifestyle and therefore necessitated a few additions and alterations as discussed earlier in this application document.
- Part of the unlawful structure forms a double garage which can comfortably accommodated 2 large vehicles as well as allowing for sufficient clearance at the front, the rear and the sides of the parked vehicles ensuring that the owner can comfortably walk around the parked vehicles to reach the access to the existing dwelling from inside the garage for security purposes. With this being said, no unnecessary dimensions were added to enlarge the new double garage structure other than which was needed.
- The current owner, Mr. K.R.M Crasemann, saw this to be a low-risk application after a meeting at the Overstrand Municipality's Town Planning office as discussed later in this Departure application.
- No previous contraventions were listed.

17/19

### 5.3 Assessment of application

- As indicated above, the unauthorized building work is in contravention of the Overstrand Municipality's amended By-Laws on Municipal Land Use Planning 2020. Application is made for the determination of an administrative penalty in respect of part of a double garage structure, constructed prior to application approval. The full extent of the unauthorized building work is 19.12m<sup>2</sup>.
- In terms of section 90(5)(b) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.
- Administrative Penalty: Calculation

Unauthorized section that encroaches the 4.0m Municipal Street building line

**Value per m<sup>2</sup> (R 5 941.42) x Total unlawful area (19.12m<sup>2</sup>) = R 113 600.00**

An amount which is not more than 100% of R 113 600.00 may be imposed as an administrative penalty.

### 5.4 The nature, duration, gravity and extent of the contravention

The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 90 of the Overstrand Municipality's amended By-laws on Municipal Land Use Planning:

#### 5.4.1 Nature:

The unauthorized building work involves part of a double garage structure encroaching upon the 4.0m Municipal Street Building Line as discussed earlier in this Departure Application.

#### 5.4.2 Duration:

The duration is not really applicable I would not think. Our client was not served with a notice, but if a time frame must be allocated, then the structure has been standing in place for approximate 8 months.

#### 5.4.3 Gravity:

The gravity of the contravention is not considered serious insofar the extent is limited to 19.12m<sup>2</sup>. The structure is non-habitable, used as a garage. The garage is not considered to cause any negative impact on any nature, the environment, streetscape and surrounding neighboring properties neither will this have an impact on traffic in the area as discussed earlier in this Departure Application.

#### 5.4.4 Extent:

19.12m<sup>2</sup>

**5.5 The conduct of the person (allegedly) involved in the contravention**

Our client, Mr. K.R.M Crasemann, and Andre Wiehahn from the firm Interactive Town and regional planning, had a meeting with Mr. R. Kuchar and Mr. P. Roux in December 2020 at the Municipal Office to discuss the project and the approval thereof. Unfortunately, no meeting minutes were circulated, but our client could re-call what was discussed during the meeting.

The discussion with Mr. Kuchar was that if the client gets the permission from certain surrounding neighbor's (as specified by Mr. R Kuchar and Mr. P Roux) that they could not see any reason why the departure application should be turned down. Within a week our client had the approval, signed site plan and other documents from all the applicable neighbors. Based on the discussion with Mr. R Kuchar and Mr. P Roux and the approval of all the applicable surrounding neighbors, the contractor proceeded with the construction as it appeared to be a low-risk application.

It can be concluded that our client followed the correct procedures i.e., consulting with the authorities dealing with the Departure first. Following the meeting and as advised by Mr. R Kuchar, our client went through considerable effort approaching all the neighbors obtaining their permission discussing the proposed addition in detail.

**5.6 A report by a quantity surveyor in matters of unauthorized building / construction**

Refer to Annexure O for the report by the quantity surveyor

**5.7 Whether the unlawful conduct was stopped**

Overstrand Municipality did not stop the building work and have also not issued a notice with regards to the transgression. Openings facing 3<sup>rd</sup> Street have however been built closed.

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

As far as can be ascertained, there is no evidence that the owner of the property has previously contravened this By-law

**5.9 Reasons for decision**

Reasons for the recommended decision may be summarized as follows:

- It is concluded that our client followed the correct routes through first consulting with Mr. R Kuchar and Mr. P Roux.
- The 19.12m<sup>2</sup> encroachment for the part of the garage structure that encroaches the 4.0m Municipal Street Building Line is not considered a negative visual structure and has no impact on any of the neighbors nor does it affect traffic flow in any way.
- The unauthorized building / construction work is highlighted throughout this Application document and does not cause negative impact on nature, the environment, streetscape, surrounding properties or on traffic as discussed earlier in this Departure Document.

19/19

#### 5.10 Recommendation

In light of the above assessment, we appeal to your generosity and humanism that an administrative penalty of R 11 360.00 (approximately 10%) be imposed for part of the double garage structure that encroaches the 4.0m Municipal Street Building Line.

### 6. CONCLUSION

#### 6.1 Heritage value

The property is not situated within a heritage overlay zone and has no grading or any heritage value.

#### 6.2 Impact on Municipal Engineering Services

No additional electrical, water or sewerage will be required. The current Municipal provision is adequate to supply the dwelling

#### 3.9 Forward planning

The Overstrand Spatial Development Framework (SDF) 2006 earmarks the area where Erf 5548 is situated for residential purposes. The structures, for which the departure is required, form part of any typical residential component and the Zoning Scheme Regulations make provision for departure procedures to incorporate structures within the building line zone. The character and zoning of the property will remain unchanged and therefore the property falls within the existing planning for the Voëlkip area.

It is therefore recommended that the application be approved in terms of the Overstrand Amendment By-Lay on Municipal Land – use Planning, 2020.

I appeal to your experienced consideration of this Departure Application. I look forward to your correspondence.

Yours sincerely



BRANDON SCORGIE  
for Engelbrecht & Scorgie

Annex C.12

**DESIGNER'S RESPONSIBILITIES**

The Designer shall be responsible for the design and construction of the building and shall ensure that the building complies with all applicable codes and regulations. The Designer shall also be responsible for the preparation of all drawings and specifications for the building.

**GENERAL NOTES**

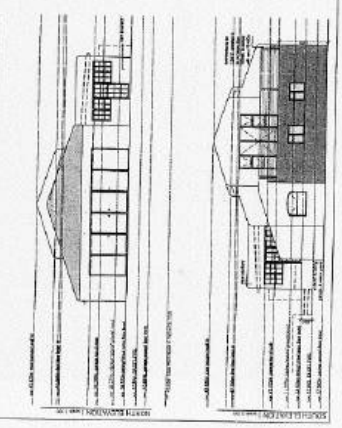
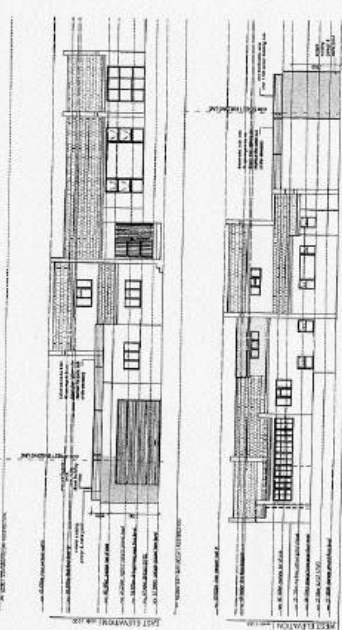
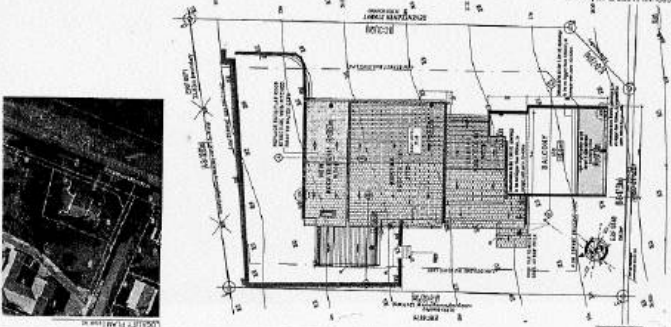
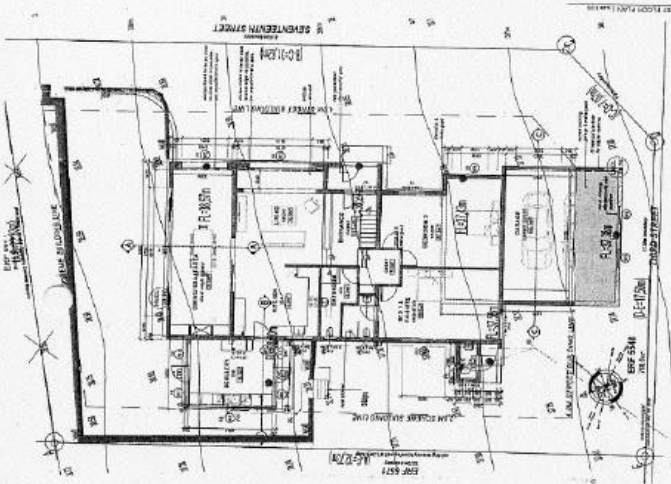
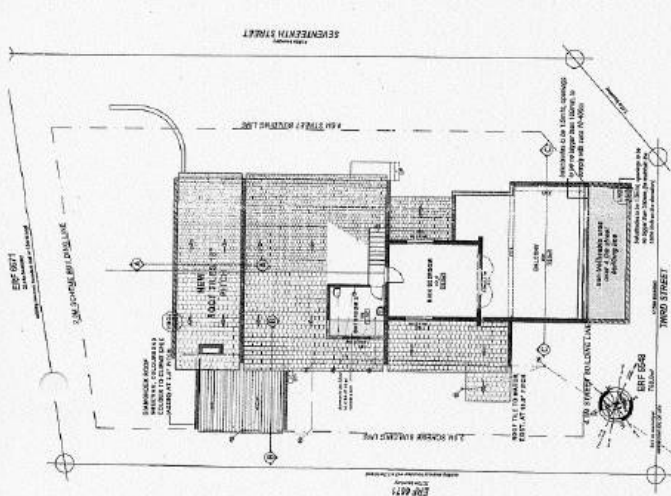
1. All dimensions are in feet and inches unless otherwise noted.

2. All materials shall be of the highest quality and shall be approved by the Designer.

3. All work shall be done in accordance with the latest edition of the International Building Code (IBC).

4. The Designer shall be responsible for the design and construction of the building and shall ensure that the building complies with all applicable codes and regulations.

5. The Designer shall also be responsible for the preparation of all drawings and specifications for the building.



**DESIGNER'S SIGNATURE**

\_\_\_\_\_  
 DATE: \_\_\_\_\_




Annexure D

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR DEPARTURE: ERF 5548, 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 5548, Voelklip, unobstructed;
7. that no on-street parking be allowed.

  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

23/11/2021  
DATE