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ERF 5328, 19 ROBIN LANE, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE: WRAP PROJECT OFFICE ON BEHALF OF L. ERASMUS

5328 HNC (4145/2022)

H van der Stoep
17 May 2023

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 11 May 2022 from WRAP Project Office on behalf of L Erasmus on Erf 5328, Hermanus for the following:

- ❖ **Removal of Restrictive Title Deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with reference to Clause B.(b) and B.(d) of Title Deed T85601/1999 applicable to Erf 5328, Northcliff, Hermanus to accommodate the proposed second dwelling and garage.

The restrictive title deed conditions read as follows:

*B. **SUBJECT FURTHER** to the following conditions contained in Deed of Transfer No. T11039/1969 imposed by the Administrator when approving of the establishment of Hermanus Township, Extension No. 4, namely: -*

“That words and expressions used in these conditions shall have the meanings assigned to them in the Regulations published under Provincial No. 401 dated 17th October 1935.”

AS being in favour of the registered owner of any Erf in the Township and subject to amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33 of 1934:

- (b) That only one dwelling together with such outbuildings as are ordinarily required to be used therewith be erected on this erf.*
- (d) That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,36 metres of the lateral boundary common to any adjoining erf.”*

- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the southern lateral building line from 2m to 0m to accommodate the proposed garage.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 5328 is located in Hermanus Extension 4. The application is to erect a garage and a second dwelling. The title deed has restrictive conditions that restrict the land use to a single dwelling and building lines more restrictive than the Overstrand Land Use Scheme, which are addressed in the application.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is as follows:

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

Condition B.(b)

"That only one dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf."

The owner intends to convert the garage into a second dwelling. The Overstrand Land Use Scheme makes provision for a second dwelling and thus in line with the Scheme.

Condition B.(d)

"That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,36 metres of the lateral boundary common to any adjoining erf."

The proposed garage will be located on the 1,5m building line to be used for garage and storage purposes. The existing garage are being uses as such, but the owner has other vehicles such as a trailer, which needs to be safeguarded in a closed structure. Garages with owners' consent is allowed in terms of the Land Use Scheme on a zero-building line. The applicant is the owner of the adjacent property. However, the Title Deed condition is more restrictive that the Land Use Scheme and needs to be removed to enable the applicant to build the proposed garage on the 0m lateral building line.

The intent of the conditions was to ensure that the residential character of the Northcliff will remain intact and to ensure that each property is exclusively used for the accommodation of a single family. The conditions were inserted in an era of low population growth and low-density development.

The Overstrand Land Use Scheme has clear development guidelines and land uses in place to ensure the residential properties of the whole Overstrand Area are managed in a similar manner.

DEPARTURE

The owner intends to erect a second dwelling unit and the construction of a garage. The second dwelling will not benefit any other users or persons but will increase the property value and in future may yield additional income for the Overstrand Municipality.

The proposed second dwelling and garage will comply with the Land Use Scheme development parameters thus ensuring that no views, sunlight or character of the area is affected. There will be little impact on the economy. The building of the proposed second dwelling and a garage will temporarily employ a contractor that will use workers to assist in the construction phase. The development will have no effect on property values.

ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as he owner of a dominant tenement.

No person or entity will be affected financially by the removal of these restrictive conditions.

The personal benefits which will accrue to the holder of rights in terms of the restrictive condition.

No person is personally benefitting from these conditions as these conditions are only restricted to the property owner.

The personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed.

The property owners will be gaining from the removal of the restrictive condition as it will allow them to utilise their property to its full extent.

The social benefit of the restrictive condition remaining in place.

The restrictive conditions do not have a social benefit.

The social benefit of the restrictive condition remaining being removed / amended.

Same.

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

There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.

POLICIES AND REGULATIONS

The application site is subject to the Environmental Overlay Zone, Protected Area Buffer. The erf is located within the Buffer area and does not encroach onto the Nature Reserve.

SPATIAL PLANNING POLICIESProvincial Spatial Development Framework (PSDF)

The application complies with the objectives in the document.

Municipal Spatial Development Framework (MSDF)

The application complies with the objectives in the document.

PLANNING PRINCIPLES:Spatial Justice

The proposed application will not contribute to past spatial injustices.

Spatial sustainability

The principle of viable communities is advocated, and the proposed application will contribute to the principle by utilizing the erf to its full potential.

Efficiency

This proposal is intended to maximise the usage of the property to its full potential.

Spatial Resilience

The proposal is not in conflict with any spatial planning principles.

Good Administration

The Applicant has followed due process as determined by the Overstrand Land Use Scheme.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Gazette	Yes	16 September 2022	21 October 2022
Local newspaper	Yes	16 September 2022	21 October 2022
Registered notices	Yes	13 September 2022	21 October 2022
Internal departments	Yes	19 September 2022	21 October 2022
Ward councillor	Yes	19 September 2022	21 October 2022
Total comments	ONE (1)		
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
Engineering Services	21/09/2022	See Annexure G.
Building Control	20/09/2022	No objection. All buildings to comply with NBR and all other applicable law.
Fire Department	20/09/2022	No objection subject to compliance with the provisions of SANS 10400-A:2016, 10400-T:2020 and the By-Law relating Fire Safety.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) objection was received from Ms Linda McNeil, adjacent property owner of Erf 8025.

The objection is as follows:

The building plan indicates the height of the garage on 3,5m. The objector's erf is lower than the application erf, and the wall will thus be 4m high on her property, which is excessively high for a boundary wall.

An average garage is 2,2m high that can accommodate high vehicles and it should be possible to build the garage lower.

Adjacent to the wall is a washing line, which will be completely shaded during winter times. There is no other suitable place to relocate the washing line.

Applicant's response

The proposed height of the garage is at 3,12m at the highest point (parapet wall). The garage is thus lower than the Land Use Scheme height of 3,5m.

The property owner took advise from the architect in adhering to the minimum height of the ceiling within the garage which is aligned with the minimum slope and ceiling in terms of the National Building Regulations.

The property owner has a 2,1m boundary wall and an additional 1m is not expected to remove all sunlight from the objector's washing line. The objector's property has a low coverage, meaning there is ample space to move the washing line should the minimal impact of the proposed garage be too much for the objector.

Town Planner's response

The height of the garage is as per plan submitted at 3,12m to parapet, thus the 3,5m as indicated by the objector is not correct. However, the comments from the architect that that there is minimum height for the garage is not correct. The only reference to heights in terms of the National Building Regulations is for habitable space, SANS 10400C: Table 2 Section 4.3.2, which indicates a minimum height of 2,1m. The objector has a valid point in as far as the height of the garage at 3,12m is excessive. The motivation and response on the objection submitted did not address the reason or need for a 3,12m high garage.

The aspect of the washing line and the response of the applicant that the objector can move the washing line if there is too much shade due to the garage, is uncalled for. It is the prerogative of the objector to put the washing line where it is the most comfortable in close proximity of the laundry. The applicant is the one requesting the removal of restrictive title deed conditions and departure of a garage to the detriment of the objector to accommodate a second dwelling where a garage could easily be accommodated without being located on the 0m lateral building line.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

See Paragraph 7 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 in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

The proposal will not in any way contribute to the perpetuation of the past apartheid spatial development imbalances.

Spatial Sustainability

The property is located in the residential area, known as Northcliff, Hermanus, in a built-up area and will have no detrimental effect on any agricultural land or the environment sensitive areas.

Efficiency

All municipal services are available to the property. The building will be used optimally.

Spatial Resilience

The proposed development will not lead to any economical and/or environmental shocks as the application allows for a guesthouse, thus optimal use of the erf. All structures on the erf comply with the National Building Regulations, 1977.

Good Administration

Good procedure was followed and with a good public participation process.

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

The principles advocated the densification of existing neighbourhoods to ensure optimal use of properties to ensure sustainability of the area.

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

The principles advocate viable communities that are more sustainable and resilient to economic and environmental shocks. The application relates to more optimal use of the property within the development guidelines of the Overstrand Land Use Scheme, thus ensuring the sustainable use of the property.

One of the key principles of the SDF is a liveable and viable Community and in this case one should consider the adjacent neighbour, especially if there are other options.

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

N/A

10.6 Impact on Municipal Engineering Services

Existing services will be used.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as he owner of a dominant tenement.

No person or entity will be affected financially by the removal of these restrictive conditions.

The personal benefits which will accrue to the holder of rights in terms of the restrictive condition.

No person is personally benefitting from these conditions.

The personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed.

The property owners will benefit from the removal of the restrictive condition as it will allow them to utilise their property to its full extent.

The social benefit of the restrictive condition remaining in place.

The restrictive conditions do have a social benefit for the objector since her way of life and doing is not disturb in any way.

The social benefit of the restrictive condition remaining being removed / amended.

The social benefit is that the owner can safeguard his vehicles and optimally use of the property, thus ensure maintenance of the structures.

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

The conditions applied for will not remove any rights enjoyed by the beneficiaries of Northcliff since the conditions relates to the property.

12. THE DESIRABILITY OF THE PROPOSAL

The property is situated in the residential area of Northcliff with similar land uses. The proposed garage and second dwelling are part of the built fabric in the residential area.

The proposed land uses are in line with the Land Use Scheme and seen as associated uses on a residential erf related to the main dwelling. The optimal use of the property ensures that the owner will be able to maintain the property in keep of the character of the area.

The proposed second dwelling is a proposed new building that is not transgressing any building lines and complies with the Land Use Scheme development parameters pertaining to second dwellings. It does however transgress the Title Deed building lines, which is more restrictive and therefore the application to remove the restriction.

The proposed garage is in line with the Land Use Scheme building lines transgressions in terms in Section 16.1.1.(c)(i). However, it does transgress the restrictive title deed building lines of which the application addresses.

During the public participation process the adjacent neighbour did object to the proposed garage on the 0m building line. The objection relates to the height of the

proposed garage of 3,12m. It is evident in the reply on the objection that the architect incorrectly states that the garage is subject to the National Building Regulations floor to ceiling height of a minimum of 2,1m. There is no such requirement for non-habitable spaces. The applicant agrees with the objector that the average height of a garage is 2,2m and with the proposed concrete beam, the height should not be more than 2,4m in height.

Due to the position of the proposed second dwelling, the applicant needs to transgress the lateral building line for the proposed garage. The positioning of the garage is in line with the existing dwelling. However, the present dwelling is located more than 6m from the street boundary. The garage can be located towards the title street building line of 4,72m, which will be in line with the proposed veranda and will not interfere with the objector's washing line.

The removal of restrictive conditions pertaining to the one dwelling only and the title deed building lines are recommended for approval. The departure application for a garage on the 0m building line is not recommended for approval and the following options and suggestions needs to be considered by the applicant: (1) that the garage complies with the 2m building line and or be located towards the street, away from the objectors washing line at 2,4m in height, with consent of the objector.

13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 5328, Hermanus for the removal of restrictive title deed conditions B.(b) and B.(d) of Title Deed T85601/1999 to accommodate the proposed second dwelling and garage, **be approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the amended title deed be submitted for record purposes to the Municipality;
 - (b) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
 - (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (e) that all the conditions in the Services Report (attached as Annexure G), be complied with.
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 5328, Hermanus for a departure to relax the southern lateral building line from 2m to 0m to accommodate the proposed garage, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
3. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATIONPOINT 1: APPROVAL

- ❖ The application has followed due procedure.
- ❖ It is in line with the aims of the Overstrand SDF.
- ❖ The removal of the restrictive conditions to be in line with the Land Use Scheme is supported.
- ❖ A second dwelling is a primary right in terms of the land use scheme.

POINT 2: NON-APPROVAL

- ❖ The height of the garage is excessive and was not motivated to substantiate the height of 3,12m.
- ❖ The garage will have an impact on the liveability of the adjacent erf (objector).
- ❖ The assumption that the objector has sufficient space to move the washing line, without taking into consideration or verifying why the washing line is located at the specific locality.
- ❖ The financial implication and discomfort should the washing line be moved to a different locality.
- ❖ The garage can be placed at a different locality that will lessen the impact on the adjacent neighbour (objector).
- ❖ The placement of the garage on the 0m lateral building line is to make provision for a second dwelling as proposed.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T
Annexure E:	Objection received
Annexure F:	Applicant's response to objection received
Annexure G:	Services Report

SIGNATURES**REGISTERED PLANNER**

Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: _____

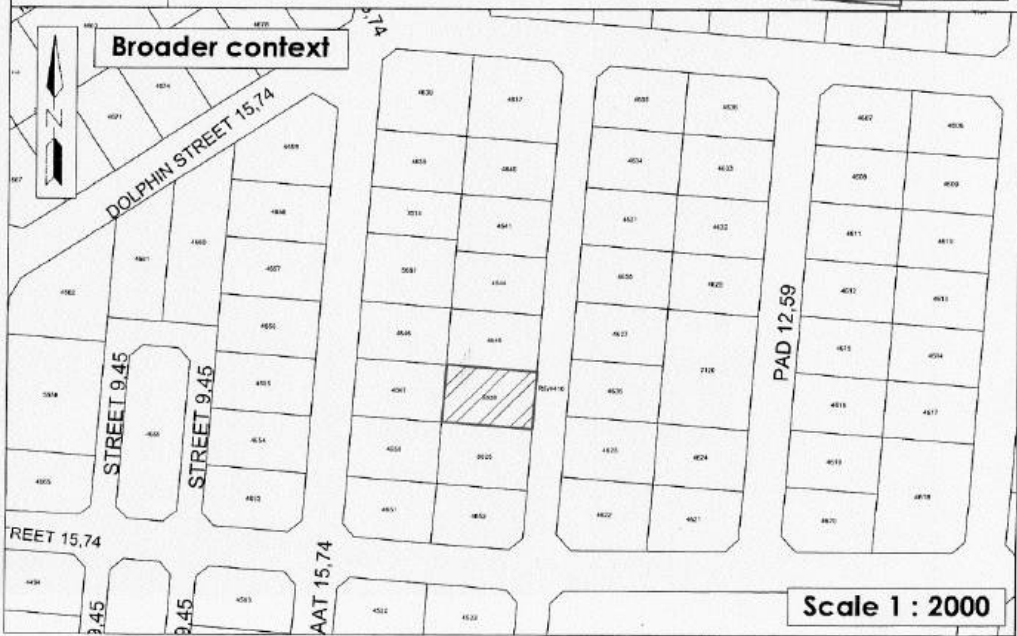
Date: _____

Annexure A | 111

Locality Plan
Erf 5328 - Hermanus

 Subject property

Plan prepared by: Thian Jansen
Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200





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1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SDP	Site Development Plan
SR1	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 5328 Hermanus
Restrictive title deed conditions	Condition B(b) and (d)
Extent	763m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 5328 Hermanus, hereafter referred to as the subject property, is located at 19 Robin Lane Hermanus (refer **Plan 1 – Locality Plan**). The property owner (Louise Erasmus) – appointed WRAP Project Office to submit this land use application on her behalf (refer **Annexure A – Power of Attorney**). The property owner owns the property since 1999 and has the vision to expand on the footprint of the existing dwelling house.

Her vision is to convert one of the bedrooms into a kitchen for a separate dwelling unit and also to add a garage onto the subject property. A second dwelling is a primary right in the OMLUS on a property zoned SR1. The title deed however contains a restrictive condition, which allows only one dwelling unit on the subject property.

The garage is also proposed to be located over the title deed and also the OMLUS side building line. An application for a departure will also be required in terms of the By-Law.

As a result, the following applications are required:

- Removal of restrictive title deed conditions B(b) and (d);
- Departure from the southern 2m side building line to 0m to allow the proposed garage.



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4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

WRAP compiled this report to ensure the property owner's vision is achieved. The following is proposed:

4.1 Removal of restrictive title deed conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended. There are two title deed conditions that prohibit the land use rights sought by the property owner as described in Section 3 and the rationale for the removal of these conditions are discussed below:

Restrictive Title Deed Conditions
Condition B(b) – <i>"That only one dwelling together with such outbuilding as are ordinarily required to be used therewith, be erected on this erf;"</i>
Condition B(d) – <i>"That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 meters to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,36 metres of the lateral boundary common to any adjoining erf"</i>

The rationale for the removal of the restrictive title deed conditions is to enable the property owner to achieve the development intent highlighted in Section 3. The title deed conditions are more restrictive than what is allowed in terms of the OMLUS. The property owner has the vision to construct a second dwelling and garage that is being restricted by the conditions above.

The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

4.2 Departure from the 2m southern side building line to 0m to accommodate the proposed garage in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The property owner plans to build her garage on the boundary line between the subject property and Erf 8025 Hermanus. A garage is a structure that is primarily used for the housing of vehicles and is commonly allowed within the building line according to the OMLUS, Section 16.1.1.

Certain conditions need to be adhered to which include the length, height etc. of the proposed structure, which is illustrated by Engelbrecht & Scorgie, the appointed architect in **Annexure C – Architect's Building Plan**. The proposed structure complies with all the regulations set out by the OMLUS.

It is not predicted that the proposed garage will create a nuisance as it will primarily be used for housing of a vehicle. Having a garage is not out of the ordinary for a residential area as Northcliff and it will not be impeding on the views or character of the surrounding area. The immediate neighbours will be notified by the standard municipal public participation process.

It is of importance to note that no habitable space will be located within the building line.



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5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 5.2 Departure** from the 2m southern side building line to 0m to accommodate the proposed garage in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned for single residential purposes. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). The proposed second dwelling and approval of proposed departure from the building line are not out of the ordinary and is allowed in terms of the OMLUS.

7. TITLE DEED

Title deed T85601/1999 (refer **Annexure B**) was perused and there are several restrictive conditions that were inserted into the original title deed and transferred to the current title deed. These title deed conditions prohibit that the property owner's intent for the subject property can be achieved.

Title deed restrictions

Condition B(b) – "That only one dwelling together with such outbuilding as are ordinarily required to be used therewith, be erected on this erf;"

Condition B(d) – "That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 meters to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,36 metres of the lateral boundary common to any adjoining erf"

Motivation
The rationale for the proposed removal

The subject property is currently being used for purposes of a single dwelling house. The property owner has the vision to expand on her primary right of a Residential Zone 1 property by building a second dwelling unit and building a garage on the boundary line. The proposed development of the property is restricted by these conditions mentioned above and therefore require removal.

Title deed condition background

The restrictive title deed conditions were originally intended to protect the residential character of the Northcliff area. Any amendment or removal of this condition requires the consent of the Administrator. This authority now vests with the Overstrand Municipality. In terms of the provisions of the title deed, the restrictive conditions are in



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favour of each property owner in Northcliff and the entire suburb of Northcliff will be required to be notified of the application.

Status quo

The current OMLUS has clear development guidelines in place to ensure the whole of the Overstrand Area's residential properties are managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions.

The new proposed second dwelling unit and garage will slightly increase the coverage and encroach on the title deed building lines. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the policies of the Overstrand Municipality, the property owner is not able to utilise her property to its full extent.

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of these restrictive title deed conditions.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is personally benefitting from these conditions as these conditions are only restricting the property owner.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The property owner will be gaining from the removal of the restrictive condition as it will allow her to utilise her property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i> <i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	These restrictive conditions do not have a social benefit.
<i>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</i>	There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.

8. ZONING

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:

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RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House and Proposed Second Dwelling Unit	Comply
Consent use that may be applied for	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
Coverage	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: 400m ² and greater = 50%	Development parameters Area of site = 763m ² Existing House = 203,36m ² Proposed Garage = 25,82m ² Proposed Parking Bay = 30,73m ² Proposed Flatlet (Second Dwelling Unit) = 45,05m ² Proposed Back Porch = 11,16m ² Coverage = 316,12m ² / 41,34%	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: 400 m ² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: Greater than 400 m ² = 2m	Southern Side Building Line – 0m (To allow garage)	Deviation required: Applied for and motivated



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Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	Existing – Single Storey Proposal to only extend the single storey.	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Single Garage and parking bays in front of garage	Comply

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9. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Electricity, Water, Sewage and Solid Waste

The subject property is connected to the OM's networks, these include electricity, water and sewage. The proposals of this application will not affect these networks.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the subject property is gained from Robin Lane and the proposal will not affect this.

10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

Need and desirability

The need for the land use application was a result of the property owner's vision to create an additional residential unit on her property and the construction of the proposed garage. The desirability is more often a personal feeling of the property owner. The property owner has an intent to build a new second dwelling unit, while adding a new garage for the storage of motor vehicles. The new second dwelling will not benefit any other users or person, but it will increase the property value and, in the future, may yield additional income for the OM.

To achieve her vision, the property owner appointed WRAP Project Office to submit this application to ensure the proposed development is not in contradiction to any policies, legislation, or title deed conditions.

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the proposed second dwelling unit and garage will comply with the OMLUS's development parameters ensuring no views, sunlight, or the character of the area is affected.

Economic impact

There is little to no impact on the economy. The building of the proposed second dwelling and garage will temporarily employ a contractor that will use workers to assist in the construction phase.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of



MOTIVATION

interested and affected parties when an application is approved. The development will not affect the property values of surrounding properties.

Impact on heritage

The subject property is not listed in the OM Heritage Register.

Environmental impact

The subject property is not located within an environmentally important area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is not located within the EMOZ.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The subject property is not located within this zone.

11.3 Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

Additional accommodation is being created which is limited in a built-up area such as Northcliff. The SDF states that densification should be encouraged.

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a second dwelling and garage is not proposed to contribute to spatial injustices.

Spatial sustainability

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to construct a second dwelling will add housing opportunities into the Northcliff area, densifying an existing property.



MOTIVATION

Efficiency

This proposal is intended to maximise the usage of the subject property and ensure the property owner's requirements are met.

Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good administration

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process. The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



RECOMMENDATION

13. EVALUATION

The property owner has a vision that will add additional uses to her property that will allow her to maximise the usage of the subject property. The property owner envisions constructing a second dwelling unit and a garage that require the removal of certain restrictive title deed conditions. The removal of the restrictive title deed conditions was motivated according to SPLUMA and LUPA.

The land uses are not out of the context of the surrounding area and are not seen as nuisance land uses. The garage will only be used for the housing of vehicles. The construction within the building lines, will also not impede on views, sunlight or negatively affect the character of the area.

The proposal for a second dwelling is in harmony with all relevant spatial planning policies which illustrates that the property owner did not arbitrarily invent this proposal but had due consideration for relevant spatial planning policies.

14. RECOMMENDATION

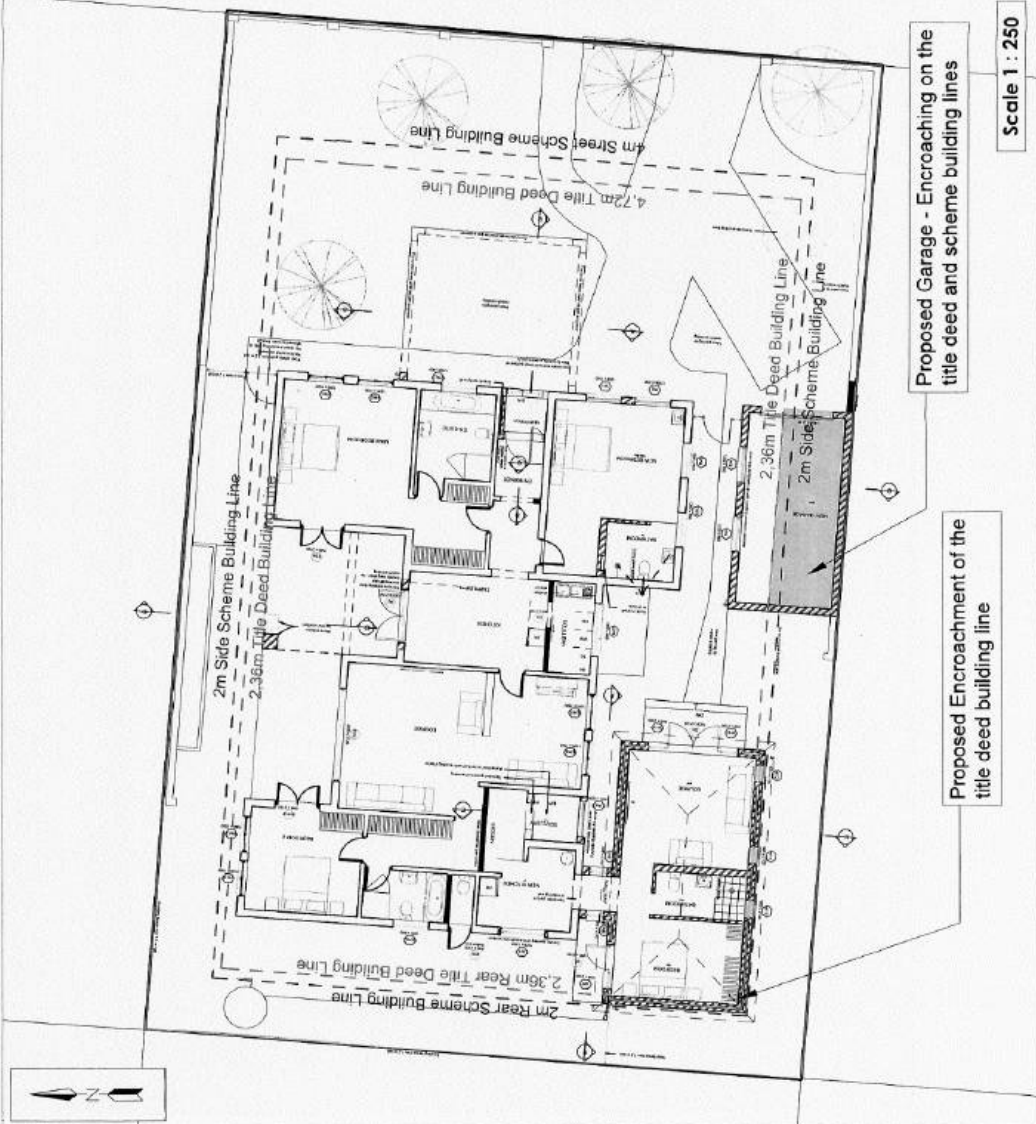
Based on the abovementioned motivation, it is recommended that the following be approved:

- 14.1 **Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 14.2 **Departure** from the 2m southern side building line to 0m to accommodate the proposed garage in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

<p>Site Development Plan Erf 5328 - Hermanus</p>	<p>Proposed Second Dwelling Unit Area - 45,05m²</p>	<p>Existing Dwelling House Area - 203,36m²</p>	<p>Coverage</p> <p>Site Area - 764,75m² Existing Dwelling House - 203,36m² Proposed New Additions - 112,76m² Total Coverage - 316,12m² / 41,34%</p>	<p>Plan prepared by: Thys Van der Bosch on plans drawn by: Engelbrecht & Scorge All dimensions are approximate and subject to survey.</p> <p>Tel: 083 313 4111</p> <p>Email: admin@wvrap.co.za Unit 5, Standaar House, Corner of Kyal and Olive Lys Streets, Hermanus, 7200</p>
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Project Office
Team Housing & Project Management



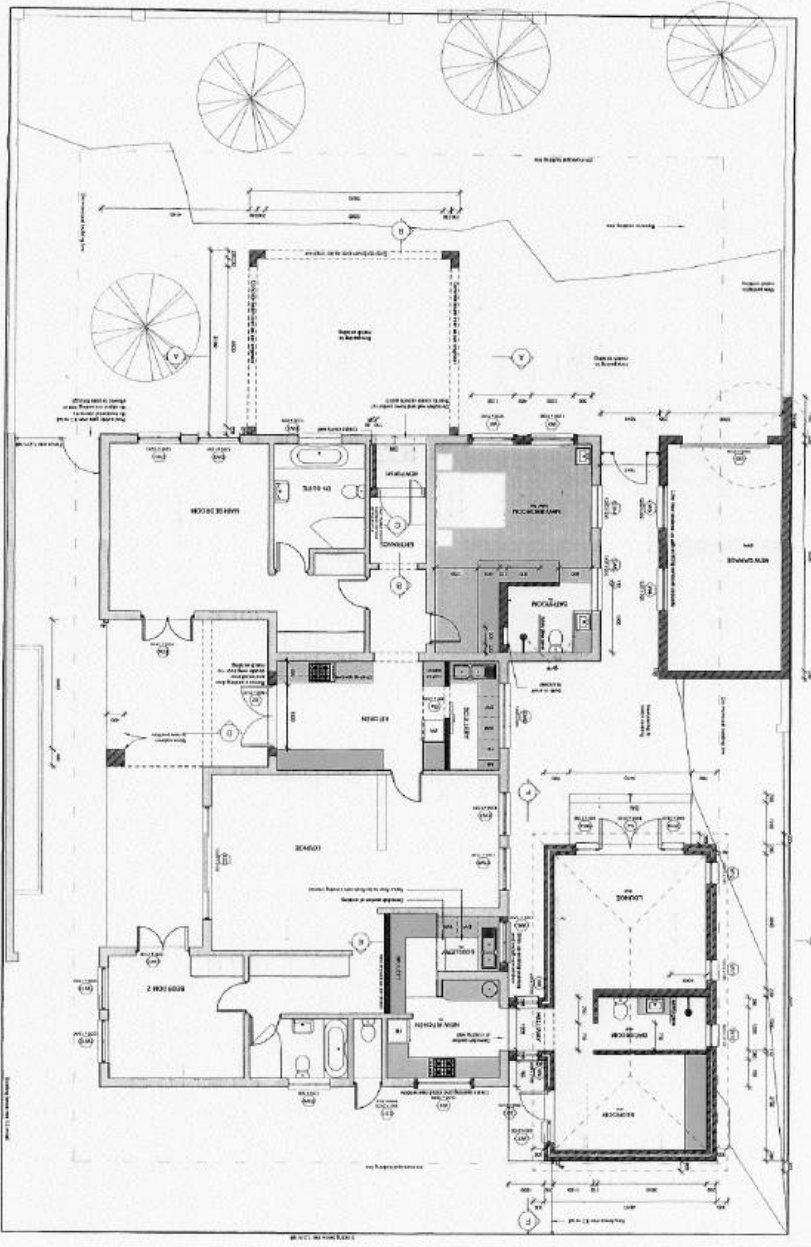
Proposed Garage - Encroaching on the title deed and scheme building lines

Proposed Encroachment of the title deed building line

Scale 1 : 250

<p>DATE: 10/12/11 DRAWN BY: [Name] CHECKED BY: [Name] PROJECT: [Name]</p>	<p>  ENGINEERING & DESIGN 1000 [Address] [City, State, Zip] [Phone Number] [Email Address]</p>	<p>  NORTH SCALE: 1/8" = 1'-0" DATE: 10/12/11 DRAWN BY: [Name] CHECKED BY: [Name]</p>
--	---	--

FLOOR PLAN



2/14

Annexure D

1/5

148.

KRUGER & MARAIS INC.
16 McIntyre Street
PAROW, 7500
Tel. No. (021) 92-3007
P O Box 54, PAROW, 7500

Prepared by me:

CONVEYANCER
MARAIS, N.W.

Take note
✓

SEELREG DUTY	R. _____
FOOT FEE	R. 190,00

T 85601199

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT:

NIELEN WILLIAM MARAIS

appeared before me, Registrar of Deeds at Cape Town, he the said Appearer, being duly authorised thereto by a Power of Attorney dated 14th September 1999 signed at TABLE VIEW granted to him by

VYVYAN JOY BESTER

Identity Number 420720 0109 08 7

Married, which marriage is governed by the Laws of Zimbabwe

duly assisted by her spouse JOHANNES LODEWYK BESTER as far as needs be

Page 2

AND the Appearer declared that his said principal had truly and legally sold on 7th September 1999 and that he, the said Appearer, in his capacity aforesaid, did by these presents, cede and transfer, in full and free property, to and on behalf of

LOUISE ERASMUS
Identity Number 640113 0039 08 8
Married out of community of property

her Heirs, Executors, Administrators or Assigns

REMAINDER ERF 5328 HERMANUS
in the area of the Greater Hermanus Transitional Local Council
Division of Caledon, Western Cape Province

IN EXTENT: 763 (SEVEN HUNDRED AND SIXTY THREE) square metres

FIRST REGISTERED BY Certificate of Consolidated Title No. T11040/1969 with Diagram No. 1686/68 relating thereto and HELD BY Deed of Transfer No. T102071/1996

- I. AS regards the portion marked A.B.b.a. on Diagram No. 1686/68:-
- A. SUBJECT to the conditions referred to in Deed of Transfer No. T11039/1969 save insofar as they may have lapsed by merger by reason of the said Certificate of Consolidated Title No. T11040/1969.
- B. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T11039/1969 imposed by the Administrator when approving of the establishment of Hermanus Township, Extension No. 4, namely:-

"That words and expressions used in these conditions shall have the meanings assigned to them in the Regulations published under Provincial Notice No. 401 dated 17th October 1935."

AS being in favour of the registered owner of any Erf in the Township and subject to amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33 of 1934:

✓

- (a) That this erf be used for residential purposes only.
- (b) That only one dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.
- (c) That not more than half the area of this erf be built upon.
- (d) That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,36 metres of the lateral boundary common to any adjoining erf.

AS being in favour of the Administrator:

- (e) That this erf be not subdivided except with the consent in writing of the Administrator.

AS being in favour of the Municipality:

- (f) That the owner of this erf shall be obliged to allow the drainage or sewerage of any other erf to be conveyed over this erf if deemed necessary by the Council of the Municipality of Hermanus and in such manner and in such position as may from time to time be reasonably required by the said Municipal Council.

- C. SUBJECT FURTHER to the following condition contained in Deed of Transfer No. T11039/1969 imposed by the Municipality of Hermanus for its benefit:

"No person, Company or Syndicate shall at any time own more than four vacant plots in this Extension."

- II. AS regards the whole of the said Erf No. 5328 HERMANUS:-

- A. SUBJECT to the following conditions contained in Deed of Grant issued under the provisions of Section 10 of Act No. 15 of 1887 on the 5th August 1922 (Caledon Freeholds, Vol. 3 No. 8) namely:

✓

Page 4

2. THAT all roads and thoroughfares over the land, whether or not described in the plan or diagram thereof, shall remain free and uninterrupted unless closed, diverted, or altered by competent authority.
- (4) That the land hereby granted shall be subject to all rights and servitudes which now affect or at any time hereafter may be found to affect the title of the land hereby granted, or which may be binding on the Government in respect of the said land as at the date hereof.

w

WHEREFORE the Appearer, renouncing all the right and title which the

TRANSFEROR

heretofore had to the premises, did in consequence also acknowledge the said

TRANSFEROR

to be entirely dispossessed of, and disentitled to the same; and that, by virtue of these presents, the said

TRANSFEEE

her Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom; the State, however, reserving its rights; and finally acknowledging the said

TRANSFEROR

to be satisfactorily paid or secured the whole of the Purchase Price in the sum of R160 000,00 (ONE HUNDRED AND SIXTY THOUSAND RAND) AND TRANSFER DUTY HAS BEEN PAID ON R168771-93.

IN WITNESS WHEREOF, I, the said REGISTRAR OF DEEDS, together with the Appearer, q. q., have subscribed to these Presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND SIGNED at the Office of the Registrar of Deeds at CAPE TOWN on this

27th day of October

1999.

[Handwritten signature]

q. q.

In my presence,

[Handwritten signature]
REGISTRAR OF DEEDS

[Handwritten mark]

Annexure E



L Gillion

From: Linda Mcneil <
Sent: Wednesday, 28 September 2022 14:05
To: L Gillion
Subject: OBJECTION RE. APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS ERF 5328 NORTHCLIFF

TP. N. Aheart
(M. Olivier)

Dear Madam/Sir

I refer to the above, in respect of the Southern lateral building line change from 2m to 0.

I would like to OBJECT to the above application on the following grounds:

1. According to the building plans, the proposed height of new garage will be 3.5m. As my Erf 8025 is considerably lower due to the sloping ground, the height of the wall on the ground from my side could be over 4m or more. I object to this as it is excessively high for a garage wall right on the boundary. I checked with 2 local garage door installers, and both confirmed the average height for a single garage door ranges from 2.1 to 2.2m as this is high enough to accommodate the large, high vehicles. Then taking into account space for the motor to open the door as well as the slope of the roof, it should be possible to build a garage much lower.
2. I already approached the property owners and we had a meeting on site to explain my concerns. However, no compromise was reached.
3. On my side of the wall, there is a washing line which will be completely shaded in the winter, and maybe get half sun in the summer. There is no other suitable location for the wash line on my property.

In view of the above, I object to this construction right on the boundary wall. Perhaps the garage can adjoin the existing wall of the main dwelling and so will be set back from the boundary.

Name: LINDA GAIL MC NEIL
 Address: 17 Robin Lane, Northcliff
 Erf: 8025
 Contact: mobile
 Email:
 Interest: Immediate neighbour with shared boundary wall.

I trust this objection will be noted and acted upon.

Kindly confirm via email that you have received this mail.

Thank you.
 Kind regards
 Linda McNeil

FILE NO. <i>EF 8328</i> ✓
<i>Northcliff Romanus</i>
SCAN NO.
<i>HNC 5328</i>
COLLABORATOR NO.
<i>1754428</i>

29 SEP 2022

Annexure F1/4



Project Office

Town Planning & Project Management

TP-A Theart
(Huidstoep)



Our reference: 21/83
Your reference: 5328 HNC (4145/2022)

10 November 2022

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Ms Hanneen van der Stoep

ERF 5328, 19 ROBIN LANE, NORTHCLIFF, HERMANUS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE

Your email dated 3 November 2022, refers.

One objection was received, which are addressed herein:

FILE NO. EL 5328-HNC
SCAN NO. 09
COLLABORATOR NO. 1775253

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

Unit B, Standard House,
Cnr Royal and Dirkie Uys Street
Hermanus

P O Box 1247
Hermanus,
7200

Tel: +27 (0)28 313 1411
Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za



WRAP Group Established 2002

TP 11 NOV 2022



2/4

Comments

1. According to the building plans, the proposed height of new garage will be 3.5m. As my Erf 8025 is considerably lower due to the sloping ground, the height of the wall on the ground from my side could be over 4m or more.
I object to this as it is excessively high for a garage wall right on the boundary.
I checked with 2 local garage door installers, and both confirmed the average height for a single garage door ranges from 2.1 to 2.2m as this is high enough to accommodate the large, high vehicles.
Then taking into account space for the motor to open the door as well as the slope of the roof, it should be possible to build a garage much lower.
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In view of the above, I object to this construction right on the boundary wall.
Perhaps the garage can adjoin the existing wall of the main dwelling and so will be set back from the boundary.

Response to comments

The comments are noted. The property owners have considered the location of the garage located on the side building line and the suggested location was found to be their ideal position.

The proposed height of the garage is 3.12m at the highest point (Parapet wall), refer to Annexure C of the application document. The height of 3.5m mentioned by the objector is the maximum height allowed in terms of the Overstrand Municipality Land Use Scheme, 2020 for a garage on the boundary line, which is also indicated on the plans, and it is clear the proposed garage is well below the 3.5m.

The height of a standard garage door quoted by the objector is correct, but it should however be considered that 3.12m is the height of the parapet wall on the boundary, and not 3.5 m. The property owner took advice from her architect in adhering to the minimum height of the ceiling within the garage which is aligned with the minimum slope and ceiling height in terms of the national building regulations.

The property owner currently has a boundary wall at 2.1m at the point where the garage is being proposed and an additional 1m is not expected to remove all the sun from the objector's washing line. The objector's property has a low coverage, meaning there is ample space to move the washing line should the minimal of impact of the proposed garage be too much for the objector.

In addition, the statement is speculative that the garage 'could' be more than 4m as no evidence is being presented to support the claims.



3/4

Comments

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In addition, the statement is speculative that the garage 'could' be more than 4m as no evidence is being presented to support the claims.

4/4



Conclusion

Considering the response to objections, it is recommended that the planning application be approved as submitted.

Yours faithfully

A handwritten signature in black ink that reads "L. Jansen". The signature is written in a cursive, flowing style.

L. JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS &
DEPARTURE: ERF 5328, NOTHCLIFF (4145/2022)**

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 on-site parking facility be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning;
5. 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;
6. that any additional and / or extended vehicle entrances will be for the owner's account;
8. that stormwater be allowed to discharge through Erf 5328, Northcliff, unobstructed;

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

21/09/2022
DATE