

**4.4****ERF 3941, 266 EIGHTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE: LF BIDEN****3941 HVK (3238)****P Roux****7 February 2021****(028) 313 8900****Hermanus Administration**

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**1. EXECUTIVE SUMMARY**

An application was received on 26 June 2019 from LF Biden for a departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 applicable to Erf 3941, Hermanus in order to:

- ❖ relax the western lateral building lines from 2m to 1,325m and 0,20m respectively to accommodate alterations on the ground and first floor;
- ❖ relax the rear building line from 2m to 0m in order to accommodate the proposed improvements on the building, and
- ❖ exceed the permissible height restriction applicable to boundary walls/fencing from 2,1m to 2,235m at the highest point.

The Locality Plan of the property concerned is attached as Annexure A, the Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan (SDP) is attached as Annexure C.

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

Erf 3941 is situated in Voëlklip, a suburb of Hermanus, and is 495m<sup>2</sup> in extent. The property is zoned Residential Zone 1 and therefore a 2,1m boundary wall height restriction and a 2m rear- and lateral building line applies. The applicant seeks to deviate from these parameters in order to accommodate ground floor covered yard areas to the north and west, as well as a first-floor covered terrace area.

The application was initially submitted, and it was found that the new "Clear-Vu" fencing exceeded the 2,1m height restriction above the Natural Ground Level (NGL). The applicant was requested to amend the building plans and the land use application to include the deviation from this height restriction, which the applicant subsequently did.

An approved building plan, dated 29 July 1999, indicates a portion of the dwelling unit situated on the northern rear boundary and western side boundary. The portion of the dwelling contains a bedroom, bathroom and laundry room. This portion is considered inter-leading and forms part of the main dwelling unit, as it is directly accessible from the rest of the dwelling unit via two doors.

#### 4. SUMMARY OF APPLICANT'S MOTIVATION

The main points of motivation are conveyed as follows (the detailed motivation is attached as Annexure B):

- The proposed ground floor roofs will be spanning between existing walls and will not protrude above any existing structures.
- Neighbours have no views of these roofs and will not be affected by any shading or reduced light penetration or privacy.
- The new first floor covered terrace roof will be set back from the west boundary by 1,325m (as per the existing structure) and will have a screen wall on the west side.
- There will be no privacy impact on the neighbours and there will be no additional shading cast onto the neighbouring property.
- A minimal impact on the character of the surrounding area will occur as no change in land use is proposed, other than the temporary employment as a result of the construction on site.
- There will be no impact on external engineering services, safety, health and wellbeing of surrounding communities.
- No impact on the biophysical environment is foreseen.
- There will be no impact on parking or access, as there will be no new residents using these additions.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	20 September 2019	25 October 2019
Internal Departments	Yes	20 September 2019	25 October 2019
Ward councillor	Yes	20 September 2019	25 October 2019
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?			Yes
Was the application processed correctly?			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes

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

Name	Date received	Summary of comments
Building Department	26/09/2019	The building plan to comply with the Building Act and all other applicable law.

Telkom	29/10/2019	Annexure D.
Fire Services	7/11/2019	Annexure E.
Engineering Services	17/11/2019	Annexure F.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

No objection was received during the public participation process.

## 8. MUNICIPAL ASSESSMENT OF COMMENTS

All internal departments support the application.

## 9. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

### 9.1 Background

N/A

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

The (in)consistency of the application with regards to the planning principles, can be considered as follows:

#### Spatial Justice

N/A

#### Spatial sustainability

The proposed development will not influence environmental sensitive areas or impact on existing agricultural land.

#### Spatial Efficiency

The proposed development will seek to make efficient use of the property.

#### Spatial resilience

N/A

#### Good administration

The application followed the required planning procedures and the public process has been followed.

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

Same as 9.2 above.

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

The proposed application is in line with the forward planning documents of the Municipality.

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

N/A

**9.6 Impact on Municipal engineering services**

No additional municipal services will be required.

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

N/A

**9.8 Existing and proposed zoning comparisons and considerations**

As stated under the background heading, Erf 3941 is situated in Voëlklip a suburb of Hermanus. The property is zoned Residential Zone 1 and therefore a 2,1m boundary wall height restriction, 2m rear- and lateral building lines apply. The applicant seeks to deviate from the parameters of the Zoning Scheme. The property's zoning will remain unchanged.

**9.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

N/A

**10. THE DESIRABILITY OF THE PROPOSAL**

The departure application is for the following:

- ❖ to relax the western lateral building line from 2m to 1,325m and 0,20m respectively to accommodate alterations on the ground floor and first floor;
- ❖ to relax the rear building line from 2m to 0m, in order to accommodate the proposed improvements on the building; and
- ❖ to exceed the permissible height restriction applicable to boundary walls/fencing from 2,1m to 2,235m at the highest point.

Firstly, the applicant proposes to make alterations to the existing laundry and bedroom by adding a roof section to the laundry which will encroach upon the northern 2m rear building line. It is noted that the laundry and the bedroom with en-suite which is situated in the north western corner of the property was never formally approved on the building plans, this is due to the following information:

- 1973 the building plan approved which only indicated the main dwelling with the garage. All buildings were to comply with the respective building lines.
- 1974 a carport was constructed on the north western corner.
- 1995 the carport was indicated as a garage on the plan and on the building plan dated July 1999 a laundry and the bedroom with en-suite was indicated

in the space of the garage, however the building plan was not coloured in correctly to indicate the changed of use or that carport will be enclosed.

As confirmed by Building Control the validity of the use change and the structure itself cannot be confirmed. In terms of National Building Regulations Act 103 of 1977 all new work not previously approved must be coloured in on the building plan, as evident in recent court cases if the building or structure is not coloured in then the building/structures were never formally approved. Thus, the validity of the structures is questioned. The motivation of the applicant does not relate to the change of use of the structure and therefore the application is flawed. It should be further noted that the conditions were indicated on the 1999 building plan which relate to development parameters, the first parameter is: *Lateral building line 1,2m*. The property owner at the time evidently did not adhere to this parameter. Due to the nature and proximity of the new roof section to the laundry the proposed encroachment of the northern rear building line cannot be supported until such time the validity of the existing building and uses are approved.

The second proposal is to establish a covered entrance area on the ground floor, specifically on the western boundary, between the main dwelling and Erf 3940, Hermanus. This portion of the covered area measures 6,5m<sup>2</sup> in extent and can be considered minor in scale and will not have a detrimental impact on the rights of the adjacent property owner because it will be lower than the existing boundary wall and will be used as an entrance to the main dwelling which is already situated on the western side. The fall of the roof, from north to south, will ensure that the stormwater be contained within the boundaries of the property.

The third proposal is to establish a covered terrace on the first floor. The application to deviate from the lateral building line restriction, from 2m to 1,325m is to accommodate the proposed terrace on the load-bearing wall of the existing building. No windows are proposed facing directly onto the adjacent Erf 3940, Hermanus, which mitigates potential impacts on the right to privacy for the neighbouring property. Considering that the proposed terrace will replace the existing pergola structure, it could be viewed that the covered terrace better preserves the right to privacy of the neighbouring property. The covered terrace further does not have an impact on the streetscape of area as the street building line is maintained and not encroached upon.

The fourth and last proposal is to install a new "Clear-Vu" fencing at highest point on the lateral boundary will measure 2,235m. The proposal includes an application to deviate from the 2,1m height restriction on boundary walls. This is 0,135m deviation at a single point of the proposed boundary wall, which can be deemed minor in nature and still in keeping with the character of the surrounding area. It will not have an impact on the streetscape as it is positioned on the lateral boundary.

Sufficient parking and access are provided for in the development and all other prescriptions of the Zoning Scheme are complied with.

All four the departures are minor in scale and will not detract from the character of the surrounding area however as stated in this report only the first proposal cannot be supported due to the history of the property. The remaining departures can be considered desirable.

**11. RECOMMENDATION**

1. that the application in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) applicable to Erf 3941, Hermanus for the following departures:
  - ❖ to relax the rear building line from 2m to 0m in order to accommodate the proposed improvements on the building,

**not be approved** in terms of the provisions of Section 61 of the By-Law, subject the conditions listed below;

  - (a) that a land use application be submitted by a registered Town Planning Consultant within **120 days** from the date of the decision in order to apply for the legalisation for the historical additions on the property;
  - (b) simultaneously to the submission of a land use application the applicant applies for the determination of an administrative penalty, and
  - (c) that should no application be received within **120 days**, the structure on site be altered back in order to comply with the approved building plan;
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) applicable to Erf 3941, Hermanus for the following departures:
  - ❖ to relax the western lateral building lines from 2m to 1,325m and 0,20m respectively to accommodate alterations on the ground floor and first floor, and
  - ❖ to exceed the permissible height restriction applicable to boundary walls/fencing from 2,1m to 2,235m at the highest point;

**be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:

- (a) that this approval only relates to the relaxation of the building lines as indicated on Site Plan 2019, Drawing No.: MB-H-100 Rev-C (attached as Annexure C);
- (b) that building plans be submitted to the Building Department for approval, **subject to the finalisation of conditions 1(a), (b) and (c)**;
- (c) that all the conditions of Telkom (attached as Annexure D), be complied with;
- (d) that all the conditions of Fire Services and Engineering Services, (attached as Annexures E and F), be complied with;
- (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and

- (f) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
3. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regards to the above conditions of approval

### **12.1 REASONS FOR APPROVAL**

- The conversion of the existing pergola to a covered terrace will have a minimal impact on the street scape and adjacent property owners in terms of visual impact.
- The covered terrace on the first floor does not propose any windows and/or openings facing directly onto the adjacent property (Erf 3940, Hermanus).
- The boundary wall at its highest point exceeding 2,1m in height will not have an impact on the street scape.
- The proposal will not have a detrimental impact on the character of the surrounding area.
- No objections were received from adjacent property owners.
- The application has followed due process.
- The proposal is compliant with the spatial policies of the SDF.
- The proposal is consistent with the spatial principles as set out in SPLUMA and LUPA.

### **12.2 REASONS FOR NON-APPROVAL**

- The proposed encroachment of the roof on the northern side of the property is tied to the usage and validity of the existing structure (bedroom, en-suite and laundry);
- The conversion of the carport into a garage and then into a bedroom, en-suite and laundry was never formally approved and was historically only indicated as existing structures;
- Formal application needs to be done in order to legalise the existing encroachments prior to the consideration of the proposed encroachment of the rear building line;
- Comment from the Building Department indicates that the alterations made to the carport were never formally approved due to it not being coloured in correctly.

### **13. Annexures**

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Comment: Telkom
Annexure E:	Comment: Fire Services
Annexure F:	Services Report

**SIGNATURES****AUTHOR**

Name:

**PJ ROUX**

SACPLAN Reg No:

**A/2246/2015**

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

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

**REGISTERED PLANNER:**

Name:

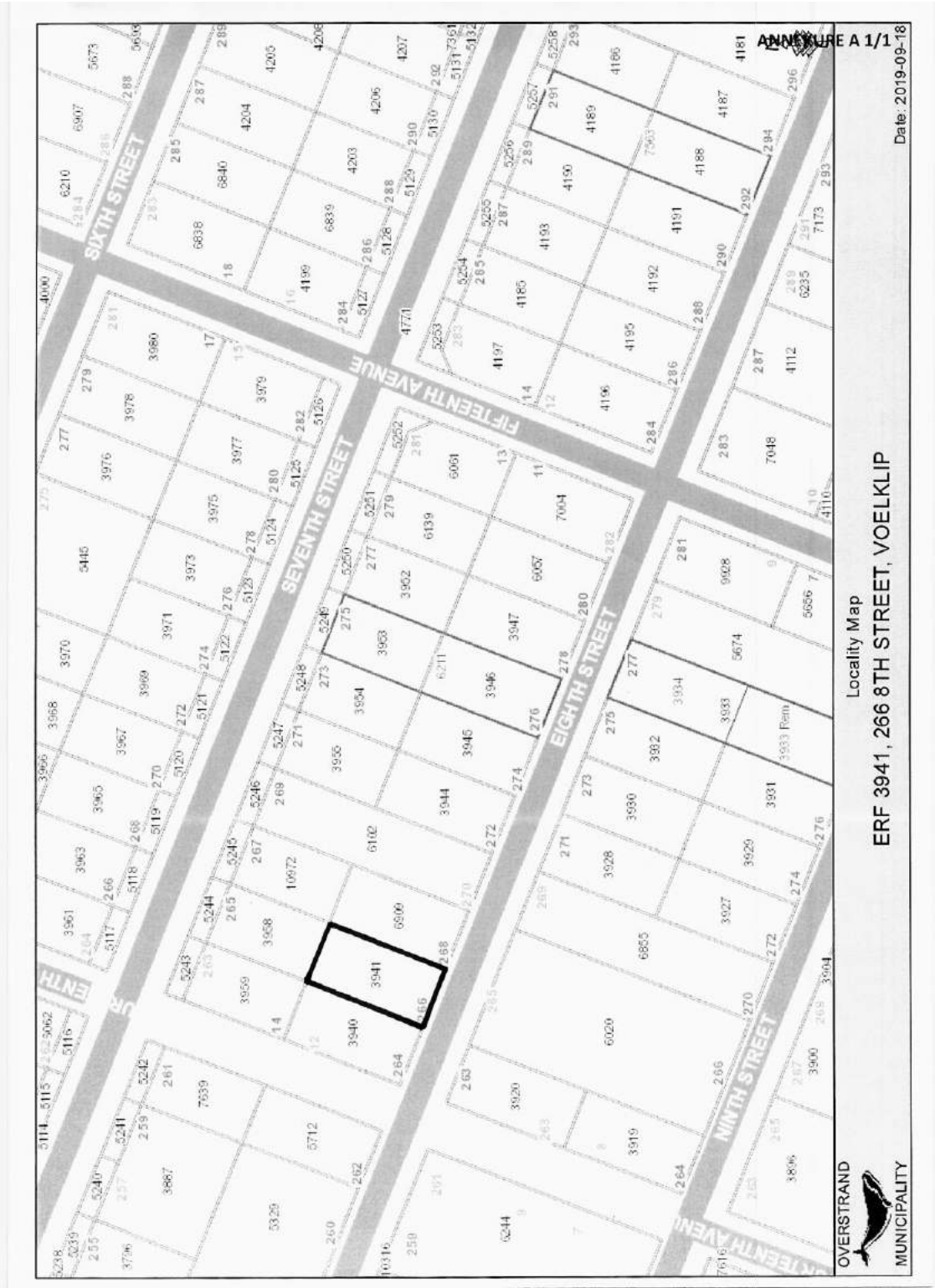
**SW VAN DER MERWE**

SACPLAN Reg No:

**A/1850/2014**

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

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



Locality Map  
**ERF 3941, 266 8TH STREET, VOELKLIP**

Date: 2019-09-18

ANNEXURE A 1/1

AP N. Hood (H. Olivier)



Architects Incorporated ANNEXURE B 1/1

8 Yeoville Road Vredehoek Cape Town  
 Tel: 021 462 7376  
 Cell: 082 898 6926  
 E-mail: barnaby@archinc.co.za

25 June 2019

- APPLICATION FOR REGULATION DEPARTURE in terms of SECTION 42 (b) of the MPBL:  
 BUILDING SETBACK OF 0M TO NORTH COMMON BOUNDARY I.L.O. 2,0M REQUIREMENT AND  
 0,675M AND 1,80M I.L.O. 2,0M REQUIREMENT ON WEST COMMON BOUNDARY
- APPLICATION FOR DEPARTURE TO BOUNDARY FENCE HEIGHT RESTRICTION FROM 2,1M ABOVE  
 NATURAL GROUND LEVEL

**ERF 3941 HERMANUS AT 266 EIGHTH AVENUE**

The application is to introduce Ground Floor covered yard areas to the North & West boundaries, as well as a First Floor covered patio area set back 1,325m from the West boundary.

The new ground floor roofs will encroach 2m at the rear and 1.8m on the side. The neighbouring properties will not be affected by the Ground floor roofs, as the roofs will be spanning between existing walls, and will not protrude above any existing structures.

Neighbours have no views of these roofs, and will not be affected by any shading or reduced light penetration or privacy.

The new First Floor covered terrace roof will be set back from the West Boundary by 1,325M (as per the existing structure) and will have a screen wall on the West side. There is an existing pergola structure which will be replaced with this new roof. There will be no privacy impact on the neighbours, and there will be no further shading as the new roof will be positioned on an existing West side screen wall.

The new "Clear-Vu" fencing will be installed at nominally 1,8m above the existing modified ground level. The modified levels are a result of historical earthworks and these modified levels have existed for some time. The additional fencing is a security measure, and will not be higher than nominally 1,8m above the existing ground level, thus will be in keeping with the surrounding aesthetics. The max height above original natural ground level will be 2,235m on the Lateral boundary, and 2,04m on the Street Boundary

In response to Section 99 of the MPBL, the Criteria for deciding the application:  
 Due to the minor nature of this proposal, and the fact that the land-use will be unchanged, there will be minor temporary socio-economic impact. Only temporary employment during the construction period;  
 The Land Use will remain compatible with the surrounding areas as residential;  
 There will be no impact on external engineering services, safety, health and wellbeing of surrounding communities;  
 There is no impact on the biophysical environment;  
 There is no impact on Parking or access, as there will be no new residents using these additions.

There is no impact on any privacy or light penetration to any neighbours.

With the above in mind, I trust that the applications will be approved.

Yours sincerely

Barnaby Steynor  
 8 Yeoville Road  
 Vredehoek  
 Cape Town 8001

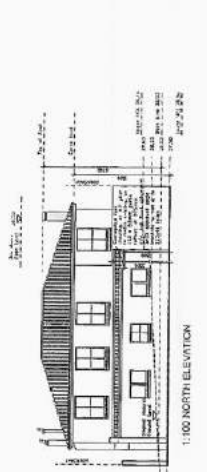
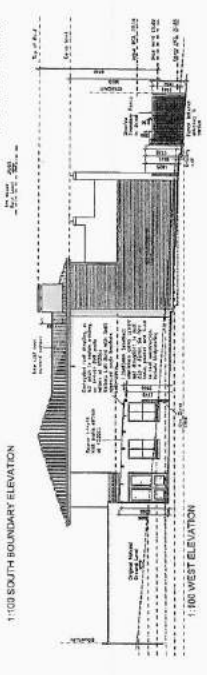
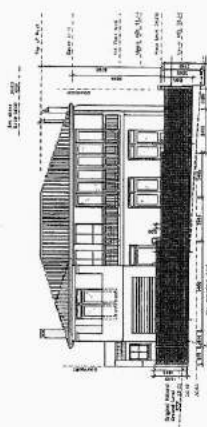
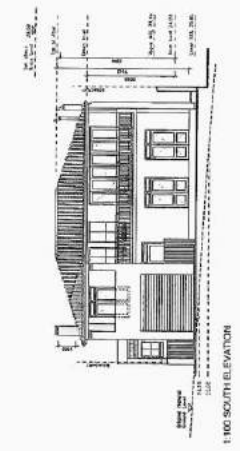
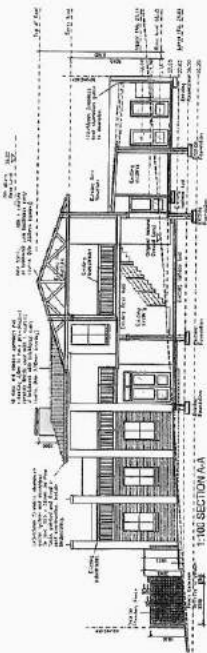
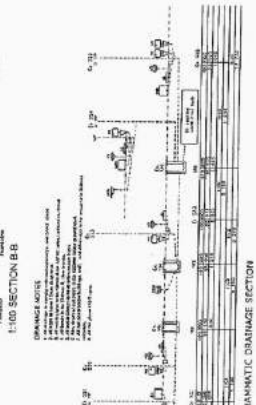
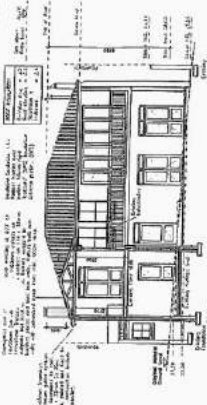
FILE NO:	21V 3941
	Hermanus
SCAN NO:	HVK 3941
COLLABORATOR NO:	1311643

12 AUG 2019



**GENERAL NOTES**

1. Please refer to the site plan for the location of the building on the lot. The building is to be located on the north side of the lot, adjacent to the driveway. The building is to be constructed of masonry and wood. The building is to be constructed on a concrete foundation. The building is to be constructed on a lot of 10,000 square feet. The building is to be constructed on a lot of 10,000 square feet.



**REVISION DATE**

- 12/15/2010 Initial Design
- 12/15/2010 Final Design

**Architects Incorporated**

12345 Main Street  
San Francisco, CA 94101  
Tel: 415-555-1234  
Fax: 415-555-5678  
www.architects.com

**PROJECT**

ARCHITECT  
200 SOUTH STREET  
SAN FRANCISCO, CA 94101

**DATE**

12/15/2010

**PROJECT NUMBER**

MB-11-01

**SCALE**

AS SHOWN

**DATE**

12/15/2010

**BY**

C



TP - A. Theart  
(11 Olivier)

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive  
Pinelands  
7404

FILE NO:	3941
	Hermanus
SCAN NO:	HVK 3941
COLLABORATOR NO:	1344238

Candice Spammer  
Tel: 021 414 5582  
Fax: 086 480 0617  
Email: spammec1@telkom.co.za

Our Ref.: WWIP\_WVKL3477\_19  
Your Ref.: 3941 HVK 3238/2019

15 October 2019

Attention: S Muller

Overstrand Municipality  
HERMANUS

**PLANT AFFECTED:**

**PROPOSED DEPARTURE: ERF 3941, 266 EIGHT STREET, VOELKLIP, HERMANUS**

With reference to your application received 20 September 2019.

**As important cables and other infrastructure are affected, please contact our representative Frederik Swart at 028 514 1199 / 081 363 7815 / FrederikS@openserve.co.za 48 hours prior to commencement of construction work.**

I hereby inform you that OpenServe approves the proposed work indicated on your drawing in principle. This approval is valid for **12 MONTHS ONLY**, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, OpenServe infrastructure **WILL BE AFFECTED**, consequently the conditions below and on the attached legend will apply.

51 Oak Avenue, Highveld, Techno Park, Centurion 0157.

Private Bag X881, Pretoria, Gauteng, 0001

Telecommunication services position is shown as accurately as possible but should be regarded as **approximate only**.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

**Should OpenServe infrastructure be damaged while work is undertaken, kindly contact our representative immediately.**

All OpenServe rights remain reserved.

Yours faithfully



---

Selwyn Bowers  
Operations Manager  
Wayleave Management: Western Region

**PLANT AFFECTED : COPPER**

This wayleave, Reference Number **WWIP: WVKL3477 19** is valid for 12 months from date hereof and is subject to the following conditions:

1. No mechanical plant or vibrator type compactors may be used within three meters of any Openserve Plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and **Frederik Swart** at Telephone No **081 363 7815** must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of the Openserve Plant will be indicated on site.
3. A written request must be submitted to Openserve for consideration, should the of the work, upon which the actual location of Openserve Plant will be applicant require our plant to be relocated. The cost of such a relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existance of the indicated plant and to notify Openserve immediately, should the applicant locate any Openserve Plant which is not indicated on the plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for any damage or loss as a result thereof.

Date: 2019/10/15

By: C. Spammer  
For Regional General Manager  
Western Cape

Legend	Green
1. Underground Pipe	
2. Underground Cable	
3. Manhole	
4. Street Distributio Cabinet (SDC)	
5. Jointing Pit / AJB	
6. Jointing Pillar ( PJ )	
7. Pipe Junction Box ( B/S )	
8. Robot Control	
9. Pole	
10. Stay	
11. Strut	
12. Aerial Cable ( A/C )	





File reference:	3941 (3238/2019) HVK
Date:	17 September 2019



## INTERNAL MEMORANDUM

From	: Town Planning Department
Town Planner	: P Roux (Town Planner)

**TO:**


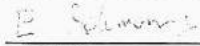
<u>Area Manager</u>	<u>Building Department</u>	District Health	<u>Electrical Department</u>
Environmental Officer	<u>Fire Department</u>	<u>Infrastructure and Planning</u>	Local Heritage Committee
<u>Operational Services</u>	Traffic Department	<u>Ward Councillor</u>	Waste Management

<b>Applicant</b>	LF BIDEN
<b>Property Details</b>	ERF 3941, 266 EIGHT STREET, VOËLKLIP
<b>Application Description</b>	<p>Notice is hereby given in terms of Section 48, read with Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 that an application has been received for a departure applicable to the above property in order to:</p> <ul style="list-style-type: none"> <li>❖ relax the Western lateral building lines from 2m to 1,325m and 2m to 0,20m respectively to accommodate alterations on ground and first floor;</li> <li>❖ relax the rear building line from 2m to 0m, in order to accommodate the proposed improvements on the building, and exceed the permissible height restriction applicable to boundary walls/fencing from 2,1m to 2,235m at the highest point.</li> </ul>

**ATTACHMENTS :**

1. Notice	Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.
2. Locality Plan	
3. Site Development Plan	
4. Motivation	

**YOUR DEPARTMENT'S COMMENTS:**

The Fire department have no objection provides that the structure complied to the National Fire Protection Regulations SANS-T:2011 and Community Fire Safety By-Law	
<b>ASSISTANT CHIEF</b> <b>Enrico Solomons</b>  PG Box 20 HERMANUS 7209 Tel: 028 313 8979 Fax: 028 313 1493	
Date: 07 NOV 2019	
Signature: 	Date: _____
Email: esolomons@overstrand.gov.za 2019	
Signature: _____	

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR DEPARTURE: ERF 3941, VOELKLIP (3238/2019)**

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 3941, Voelklip, unobstructed;
7. that no on-street parking be allowed.

  
**DENNIS HENDRIKS**  
SENIOR MANAGER:  
ENGINEERING SERVICES

  
DATE