

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
17 August 2021
(Also the agenda for the Mayoral Committee Meeting : 24 August 2021)**

7.

**ERF 425, MFUNDO STREET, ZWELIHLE, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR DEPARTURE: MESSRS WRAP ON BEHALF OF MC BHALA**

425 HZW (3506/2019)

R Kuchar

Senior Manager : Town & Spatial Planning

14 October 2020

(028) 3138900

1. Executive Summary

An application was received on 30 October 2019 from Messrs Wrap Project Office on behalf of MC Bhala on Erf 425, Zwelihle for a departure in terms of Section 16.(2)(c) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to allow for the operation of a bottle store for a temporary period of three (3) years.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priorities

Promotion of tourism, economic and social development
Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

Spatial Planning and Land Use Management Act (SPLUMA) Act no. 16 of 2013 read with Section 12 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020

6. Background/Discussion/Evaluation/Conclusion

Background

An application was received on 30 October 2019 from Messrs Wrap Project Office on behalf of MC Bhala on Erf 425, Zwelihle for the following:

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- ❖ Departure in terms of Section 16(2)(c) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to allow for the operation of a bottle store for a temporary period of three (3) years;
- ❖ Departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to relax the following:
 - south-western street building line from 2m to 0m to accommodate the bottle store;
 - southern street building line from 2m to 1m to accommodate the existing dwelling; and
 - northern building line from 1m to 0m to accommodate the existing toilet.

The application was considered by the Authorised Official on 29 March 2021, and it was resolved as follows:

RESOLVED:

- “1. *that the application in terms of Section 16(2)(c) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 425, Zwelihle for a departure in order to allow for the operation of a bottle store for a temporary period of three (3) years, **be approved** in terms of the provisions of Section 61 of the By-Law,*
2. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 425, Zwelihle for the following departures:*
 - *to relax the south-western street building line from 2m to 0m to accommodate the bottle store;*
 - *to relax the southern street building line from 2m to 1m to accommodate the existing dwelling; and*
 - *to relax the northern building line from 1m to 0m to accommodate the existing toilet*

be approved, in terms of the provisions of Section 61 of the By-Law,
3. *that the approvals in Points 1. and 2. above be subject to the following conditions:*
 - (a) *that this approval is only for the development as indicated on plan numbers Plan 3 : SDP and Plan 4 : Elevation, dated October 2019, as submitted with the application;*

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- (b) *that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;*
 - (c) *that all illegal structures be demolished within three (3) months after the building plan is approved;*
 - (d) *that the owner must at all times be in possession of a valid liquor license;*
 - (e) *that trading hours be restricted as follows:
Monday – Saturday: 10:00 – 20:00
Sunday: 10:00 – 13:00*
 - (f) *that the property be maintained and kept in a tidy state at all times*
 - (g) *that this approval does not absolve the applicant from compliance with any other relevant legislation;*
 - (h) *that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and*
 - (i) *that all the conditions in the Services Report (attached as Annexure D), be complied with.*
2. *that the applicant be notified of its right of appeal in terms Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regards to the above conditions of approval.*

RECOMMENDATION TO COUNCIL

that the deviation of the Business Corridors, Zwelihle be recommended for a temporary approval.”

REASONS FOR RESOLUTION:

- ❖ The existing structures have approved building plans.
- ❖ The surrounding owners did not object.
- ❖ The change use from a tavern to a bottle store will have less impact on the surrounding area.
- ❖ The approval is temporary to enable the applicant to relocate to a more suitable property.

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The item that served before the Authorised Official is attached as Annexure A, while the decision letter dated 13 April 2021 is attached as Annexure B.

This item serves to inform the Council regarding the application and the subsequent decision which was taken by the Authorised Official and to receive Council's decision in terms of the provisions of Spatial Planning and Land Use Management Act (SPLUMA) Act no. 16 of 2013 read with Section 12 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to deviate from the Business Corridor identification, Zwelihle.

Evaluation

A committee consisting of tavern and bottle store owners approached the Town Planning Department on the procedure with regard to land use applications dealing specifically with existing tavern and bottle store owners, who is not in line with the Zoning Scheme, but have Liquor Licenses. During the meetings, the Committee duly recognized the economic corridors approved by Council. The problem arises that the owners' needs to find a willing seller located in the corridor and the capital to be able to purchase the property located in the corridor.

During the discussions it became clear that owners have started investigating the relocation to the corridor, but it does take time. The other aspect is that the land use activity of a tavern and or bottle store is the only income and thus cannot be stopped with immediate effect, thus limiting the chances to raise the necessary capital to enable to relocate to a more appropriate location.

The discussion further evolved to see how a middle ground can be established to solve the aforementioned obstacles. However, it was also resolved that one look at existing business and not new businesses since they do have the opportunity to find an opportunity within the identified economic corridor. It was also agreed that due to the fact that most of these businesses are located within a residential neighbourhood who have neighbours with small children, school-going children and elderly, that due cognisance should be given to the time of operation and general consideration of the adjacent property owners.

The proposed application is a result of the abovementioned discussion. The application in hand is for a temporary departure to allow the owner sufficient time to relocate. It should be noted that the owner had a liquor license for a tavern, which due to its nature has a more profound impact on the neighbourhood, but essentially the adjacent neighbours. The applicant was requested to get neighbours' consent for the proposed bottle store, which was done.

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The departure for a three (3) year relocation period is recommended to ensure that the owner has an income whilst raising capital and investigate erven within the corridor to find a willing seller.

The departures relate to Building Plan No 2579, dated 09 September 2013. A portion of the existing RDP house was built on the 0m building line and the use was a living room and bedroom. It is the latter that has been used for a tavern in the past but will now be converted to be used as a bottle store and storage. The building line departure from 1m to 0m was approved on the building plan and the application is to bring the building approval in line with the Zoning Scheme.

The application for the bottle store is to accommodate an existing illegal land use for a tavern which had a liquor license issued in 2014. The impact of the liquor store will be less than a tavern with regards to noise pollution and unruly behaviour of patrons. In order to enable the applicant to relocate to a suitable premise, the temporary departure is hereby recommended for approval subject to stringent conditions.

It should be noted that Council approved the Business Corridors in September 2019. The application for a temporary departure entails a deviation from the approved Business Corridor for Zwelihle. The application erf is not located within the approved corridors, but the applicant is seeking erven to rent or purchase within the approved corridors, but to no avail. The owner previously had a liquor license but has not been renewed due to the requirements of the Liquor Board amendments that a correct zoning needs to be in place before a license is issued.

In a meeting with various owners outside the approved corridors, it was discussed and a comprise was reached that people with previously approved liquor licenses, consent from the neighbours and restrictions be put in place in terms of operating hours can apply for a temporary departure to enable them to obtain a correctly located zoned erf within the corridors. This is to ensure that the families can still have an income and trade legally, whilst looking for a suitable erf and that the surrounding residential erven are protected from noise pollution and related social problems.

Conclusion

That the application be supported as per the recommendation below.

7. Financial Implications

None

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A:	Item served before the Authorised Official on 29 March 2021
Annexure B:	Decision letter dated 13 April 2021
Annexure C:	Site Development Plan
Annexure D:	Services Report

RECOMMENDATION TO THE COUNCIL:

that the application in terms of Spatial Planning and Land Use Management Act No. 16 of 2013 read with Section 12 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 in order to accommodate the temporary approval to deviate from the Business Corridors, Zwelihle in order to allow for the operation of a bottle store on Erf 425, Zwelihle for a period of three (3) years, **be approved.**

RESPONSIBLE OFFICIAL :	R KUCHAR
TARGET DATE FOR IMPLEMENTATION :	8 SEPTEMBER 2021
TARGET DATE TO INFORM APPLICANT :	8 SEPTEMBER 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

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**7.
ERF 425, MFUNDO STREET, ZWELIHLE, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR DEPARTURE: MESSRS WRAP ON BEHALF OF MC BHALA**

425 HZW (3506/2019)

R Kuchar

Senior Manager : Town & Spatial Planning

14 October 2020

(028) 3138900

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 AUGUST 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the application in terms of Spatial Planning and Land Use Management Act No. 16 of 2013 read with Section 12 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 in order to accommodate the temporary approval to deviate from the Business Corridors, Zwelihle in order to allow for the operation of a bottle store on Erf 425, Zwelihle for a period of three (3) years, **be approved**.

RESPONSIBLE OFFICIAL :

R KUCHAR

TARGET DATE FOR IMPLEMENTATION :

8 SEPTEMBER 2021

TARGET DATE TO INFORM APPLICANT :

8 SEPTEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

Annexure A 1/18

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**ERF 425, MFUNDO STREET, ZWELIHLE, OVERSTRAND MUNICIPAL AREA:
 APPLICATION FOR DEPARTURE: MESSRS WRAP ON BEHALF OF MC BHALA**

425 HZW (3506/2019)
H van der Stoep
19 January 2021

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application was received on 30 October 2019 from Messrs Wrap Project Office on behalf of MC Bhala on Erf 425, Zwelihle for the following:

- ❖ Departure in terms of Section 16(2)(c) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to allow for the operation of a bottle store for a temporary period of three (3) years;
- ❖ Departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to relax the following:
 - south-western street building line from 2m to 0m to accommodate the bottle store;
 - southern street building line from 2m to 1m to accommodate the existing dwelling; and
 - northern building line from 1m to 0m to accommodate the existing toilet.

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

2. DECISION AUTHORITY

Authorised Official

3. BACKGROUND / SITE HISTORY

The erf measures 207m² in extent and is located in the residential township of Zwelihle. The property is zoned Single Residential Zone 1 and the residential dwelling on the property have approved building plans. The illegal structures will be demolished as indicated in the application. A liquor license was issued in 2014 for a tavern.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is as follows:

The application is for a temporary departure to allow a bottle store for a period of three (3) years. The proposed bottle store will sell alcoholic beverages to clients for off-site consumption. Bottle stores, unlike taverns do not emit excessive noise which could ensure that neighbouring property owners are not exposed to loud noise until the early hours of the morning. The proposed trading hours are aligned with the Liquor By-Law of 08:00 to 20:00, seven days a week. The proposed operational

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hours are therefore intended to ensure that there is no conflict between the residents of the surrounding erven and the proposed bottle store.

The purpose of this proposal is therefore intended to institute a process in Zwelihle where property owners aspire to submit land use planning applications to comply with all the prescribed Town Planning and Building Regulations. The approval of this proposal will enable the Municipality to impose conditions to regulate the activity.

The temporary nature of the proposed land use necessitates the relaxation of the parking requirements as the land use will revert back to residential once the three (3) year period has lapsed. The small-scale nature of the proposed bottle store is therefore not projected to attract a large crowd of people and not lead to parking problems due to the low vehicle ownership prevalent in Zwelihle.

The departure for the southern 2m street building line to 0m is to accommodate an existing RDP house. The application is to align the building plan with the Scheme Regulations. The part that transgresses the street building line will be used as the bottle store.

The departure of the 1m northern lateral building line to 0m is to accommodate an existing ablution facility, which was part of the original RDP house.

All services to the property are available.

The erf can accommodate two (2) parking bays and will gain access from Jingi- and Mfundo Street.

The application is to allow the owner the time to raise capital in order to purchase properties which are located in the economic corridor and apply for permanent land use rights. This application also illustrates that there is a growing optimism among business owners that the Overstrand Municipality Zoning Scheme, By-Law and town planning application process is highly facilitative and enabling for small business to flourish in the area.

Spatial Planning Policies:

PSDF:

The PSDF promotes a transition from an inefficient with high barriers to an innovation driven economy, with low barriers and entrepreneurship rates. The application seeks the approval of the Municipality to ensure that the barrier of entry in conducting a legal business is lowered and allow his entrepreneurial skills to flourish.

The proposal is intended to combat low access to economic opportunities which are prevalent in Zwelihle by providing space.

SDF:

The applicant has employed a draughtsman to draw the building plan in accordance with the National Building Regulations to contribute to the improvement of the visual quality of the area. The location of the bottle store and a dwelling on the subject property promotes economic efficiency and decreasing overheads.

The property will remain primarily Residential Zone 1: Single Residential.

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OMGMS:

The proposed land use promotes integrated living environments which consists of a complementary and appropriate mixture of residential and small business. No densification is proposed for the area.

Planning Principles

- **Spatial Justice**
The implementation of the proposal would contribute to facilities and land. The implementation of this proposal would contribute to unlocking contextually appropriate small business opportunity which is appropriate within the residential context in Zwelihle. This would combat the historic apartheid spatial development trend which only designated Zwelihle to exclusively function as a residential area and did not allocate any erven for commercial purposes, which would enable local entrepreneurs to flourish.
- **Spatial Sustainability**
The proposal promotes the compaction, missed use urban environments which allow for a functional space economy to flourish.
- **Efficiency**
The proposal represents a more efficient use of the land.
- **Spatial Resilience**
The proposal is aligned with the spatial resilience principles contained in the PSDF, SDF and OMGMS.
- **Good Administration**
Procedure as prescribed with public participation was followed.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	6 August 2020	11 September 2020
Ward Committee	Yes	6 August 2020	11 September 2020
Total comments	NONE		
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

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

Name	Date received	Summary of comments
Engineering Services	14/08/2020	See Annexure D.
Fire Department	14/08/2020	No objection subject to compliance with the provisions of SANS 10400-A:2016, SANS-T:2020 & By-Law relating to Community Fire Safety.
Waste Management	17/09/2020	No objection.

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

N/A

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 application gives the applicant the opportunity to access the economy in an area demarcated for residential purposes with little economic opportunities within the township.

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Spatial Sustainability

The land use will not have any impact on the natural environment but will have to be managed properly to limit possible social impact in the human and urban environment.

Efficiency

The proposed application will not have an impact on any municipal services.

Spatial Resilience

The applicant will have a better chance of survival in environmental and economic shocks.

Good Administration

The application has followed due procedure.

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

Same as Point 10.2 above.

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

Consistent with the Spatial Development Framework.

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

N/A

10.6 Impact on Municipal engineering services

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

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial Documents. The application is in line with the Overstrand Zoning Scheme to accommodate such a use through an application process.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

A committee consisting of tavern and bottle store owners approached the Town Planning Department on the procedure with regard to land use applications

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dealing specifically with existing tavern and bottle store owners, who is not in line with the Zoning Scheme, but have Liquor Licenses. During the meetings, the Committee duly recognized the economic corridors approved by Council. The problem arises that the owners' needs to find a willing seller located in the corridor and the capital to be able to purchase the property located in the corridor.

During the discussions it became clear that owners have started investigating the relocation to the corridor, but it does take time. The other aspect is that the land use activity of a tavern and or bottle store is the only income and thus cannot be stopped with immediate effect, thus limiting the chances to raise the necessary capital to enable to relocate to a more appropriate location.

The discussion further evolved to see how a middle ground can be established to solve the aforementioned obstacles. However, it was also resolved that one look at existing business and not new businesses, since they do have the opportunity to find an opportunity within the identified economic corridor. It was also agreed that due to the fact that most of these businesses are located within a residential neighbourhood who has neighbours with small children, school going children and elderly, that due cognisance should be given to the time of operation and general consideration of the adjacent property owners.

The proposed application is a result of the abovementioned discussion. The application in hand is for a temporary departure to allow the owner sufficient time to relocate. It should be noted that the owner had a liquor license for a tavern, which due to its nature has a more profound impact on the neighbourhood, but essentially the adjacent neighbours. The applicant was requested to get neighbours' consent for the proposed bottle store, which was done.

The departure for a three (3) year relocation period is recommended to ensure that the owner has an income whilst raising capital and investigate even within the corridor to find a willing seller.

The departures relate to Building Plan No 2579, dated 09/12/2013. The existing RDP house, a portion of the house was built on the 0m building line and the use was a living room and bedroom. It is the latter that has been used for a tavern in the past, but will now be converted to be used as a bottle store and storage. The building line departure from 1m to 0m was approved on the building plan and the application is to bring the building approval in line with the Zoning Scheme.

The application for the bottle store is to accommodate an existing illegal land use for a tavern which had a liquor license issued in 2014. The impact of the liquor store will be less than a tavern with regards to noise pollution and unruly behaviour of patrons. In order to enable the applicant to relocate to a suitable premise, the temporary departure is hereby recommended for approval subject to stringent conditions.

It should be noted that Council has approved the Business Corridors in September 2019. The application for a temporary departure entails a deviation from the approved Business Corridor for Zwelihle. The application erf is not located within the approved corridors, but the applicant is seeking even to rent or purchase within the approved corridors, but to no avail. The owner had previously a liquor license, but has not been renewed due to the requirements of the Liquor Board

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amendments that a correct zoning needs to be in place before a license are issued.

In a meeting with various owners outside the approved corridors, it was discussed and a compromise was reached that people with previous licenses, consent from the neighbours and restrictions be put in place in terms of operating hours can apply for a temporary departure to enable them to obtain a correctly located zoned erf within the corridors. This to ensure that the families can still have an income and trade legally, whilst looking for a suitable erf and that the surrounding residential even are protected from noise pollution and related social problems.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(c) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 425, Zwelihle for a departure in order to allow for the operation of a bottle store for a temporary period of three (3) years, **be approved** in terms of the provisions of Section 61 of the By-Law,
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 425, Zwelihle for the following departures:
 - o to relax the south-western street building line from 2m to 0m to accommodate the bottle store;
 - o to relax the southern street building line from 2m to 1m to accommodate the existing dwelling; and
 - o to relax the northern building line from 1m to 0m to accommodate the existing toilet

be approved, in terms of the provisions of Section 61 of the By-Law,
3. that the approvals in Points 1. and 2. above be subject to the following conditions:
 - (a) that this approval is only for the development as indicated on plan numbers Plan 3 : SDP and Plan 4 : Elevation, dated October 2019, as submitted with the application;
 - (b) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;
 - (c) that all illegal structures be demolished within three (3) months after the building plan is approved;
 - (d) that the owner must at all times be in possession of a valid liquor license;
 - (e) that trading hours be restricted as follows:
 Monday – Saturday: 10:00 – 20:00
 Sunday: 10:00 – 13:00

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- (f) that the property be maintained and kept in a tidy state at all times
 - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (h) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (i) that all the conditions in the Services Report (attached as Annexure D), be complied with.
2. that the applicant be notified of its right of appeal in terms Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regards to the above conditions of approval.

RECOMMENDATION TO COUNCIL

that the deviation of the Business Corridors, Zwelihle be recommended for a temporary approval.

14. REASONS FOR RECOMMENDATION

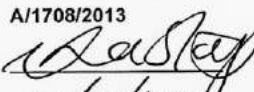
- ❖ The existing structures have approved building plans.
- ❖ The surrounding owners did not object.
- ❖ The change use from a tavern to a bottle store will have less impact on the surrounding area.
- ❖ The approval is temporary to enable the applicant to relocate to a more suitable property.

15. ANNEXURES

Annexure A: Locality Plan
 Annexure B: Motivation Report
 Annexure C: Site Development Plan
 Annexure D: Services Report

SIGNATURES

REGISTERED PLANNER

Name: H VAN DER STOEP
 SACPLAN Reg No: A/1708/2013
 Signature: 
 Date: 28/3/2021

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AUTHORISED OFFICIAL


APPROVED	<input checked="" type="checkbox"/>	APPROVED CONDITIONALLY	<input type="checkbox"/>	APPROVED IN PART	<input type="checkbox"/>	REFUSED	<input type="checkbox"/>
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Name: **R KUCHAR**

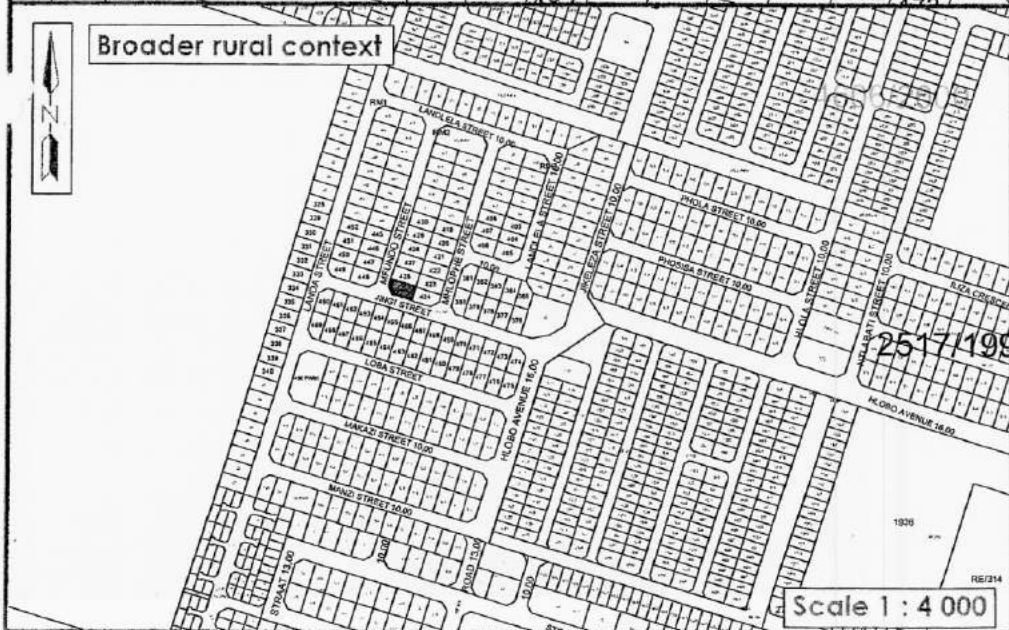
Signature: 

Date: 29/3/2021

Plan 1: Locality Plan Erf 425 Zweilhle

 Erf 425 Zweilhle (207m²)

Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Plan prepared in October 2019
File number: 19/074
35 Duker Street, Hermanus, 7200
Plan prepared by: Reetlehlé Jankie
All distances are approximate and subject to a survey





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MOTIVATION

6. URBAN FABRIC

The zoning plan (refer **Plan B**) indicates that all the land uses around the subject property are residential and this proposal entails retaining the SR1 zoning of the subject property. The dominance of the residential land use on the subject property is therefore in harmony with the prevailing residential character within the vicinity of the subject property as illustrated in the proposed zoning plan (refer **Plan B**).

7. ZONING

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

Residential Zone 1: Single Residential			
	Parameters	Proposal	Comply or deviate
Primary use	Dwelling house, day care centre, guest rooms, home occupation and second dwelling unit.	Dwelling house	Comply
Consent use	Crèche, guest house, green house, house shop, institution, place of instruction, place of worship, residential building and tourist accommodation.	N/A	N/A
Land Use Restrictions			
Coverage	65%	The coverage of all buildings including the ones to be removed is 54%. The coverage of the buildings which will not be removed is 44%.	Comply
Street building line	A 2-meter street building line.	The proposed bottle store area is located 0m from the street boundary; The existing house is located 1m from the street boundary;	Applied for and motivated.
Side and Rear building line	Side and rear building lines	The existing toilet is located 0m from the side boundary.	Comply
Height	8 m measured from the base level to the top of the roof.	3,5m	Comply
Garages and carports	Garages and carports may be constructed within the building lines in accordance with 16.1.2.	N/A	Comply



MOTIVATION

Alcoholic beverages' labels contain information encouraging responsible drinking which does not lead to health complications if observed and followed by customers.

10.5 Opportunity costs

The approval and implementation of this proposal will not result in an unacceptable opportunity cost for other property owners in Zwelihle.

10.6 Respective rights and obligations of all those affected

The approval and implementation of this proposal is not projected to interfere with the ability of surrounding property owners to occupy respective properties in comfort. This is because the proposed bottle store is not a noxious land use and not projected to cause any disturbances.

11. PROPOSED CONDITIONS OF APPROVAL

The impositions of conditions of approval is a relevant consideration in terms of the DEADP Provincial Support Document on Relevant Considerations, 2015.

11.1 The following stringent conditions of approval are proposed for this proposal to not have an adverse impact on the residential character of the area it is recommended that:

- 11.1.1 The approval is granted for a period of 3-years only and that the use of the structures on the property reverts back to residential use after expiry of the 3-year period;
- 11.1.2 The operator of the subject property must reside on the subject property;
- 11.1.3 The permitted use will be limited to a bottle store (off consumption of alcoholic beverages only);
- 11.1.4 The extent of the activity shall be limited to only 28,5m² of the existing dwelling, inclusive of storage as indicated on Plan 3 submitted with the town planning application;
- 11.1.5 Building plans in accordance with the aforementioned plans indicating the temporary use areas shall be submitted within 3 months of receiving the final approval of this application;
- 11.1.6 The bottle store may only operate between 08:00 to 20:00 from Mondays to Sundays;
- 11.1.7 No vehicles delivering goods to the bottle store shall exceed 3500kg;
- 11.1.8 No juke box or loud music shall be permitted to be played on the premises;
- 11.1.9 A refuse bin shall be placed on the premises to be used by customers;
- 11.1.10 Delivery trucks, customers vehicles or vehicles owned by the property owner shall not obstruct the entrance to the driveway of neighbours;
- 11.1.11 The operator shall not be allowed to consume alcohol during business hours while operating the bottle store;
- 11.1.12 The operator shall not be permitted to sell alcohol to any pregnant woman or any persons under the age of 18 years;
- 11.1.13 The facility must comply with Fire and Health requirements;
- 11.1.14 All other conditions of approval laid down by other government departments must be complied with.

12. SPATIAL PLANNING POLICIES

The consistency of this proposal with all relevant spatial planning policies was investigated. This is a relevant consideration in terms of Section 66 (1) (h), (i) (u) (k) and (l) of the OM By-Law:



12.1 PSDF

The aim of the PSDF is to give spatial expression to the national and provincial development agendas and serves as a basis for coordinating, integrating, and aligning ground delivery of national and provincial departmental programmes. The framework also aims to communicate the government's spatial development intentions to the private sector and civil society.

Policy proposals which are pertinent to this application was assessed, and the outcome is as follows:

12.1.1 The PSDF promotes a transition from an inefficient economy with high barriers of entry and low productivity and entrepreneurship rates to an innovation driven economy with low barriers to entry, high productivity and entrepreneurship rates.

The subject property owner seeks to obtain the necessary town planning approval to ensure that the barrier of entry in conducting a legal business is lowered and to allow his entrepreneurial skills to flourish within his immediate surrounding. This will therefore promote high productivity on the subject property as prescribed by the PSDF.

12.1.2 The PSDF promotes a transition from barriers to local and global connectivity (language, identity, distance) to high level of local connectivity.

The implementation of this proposal will attract people who speak different languages, have different cultural identities and therefore reduce socio-cultural distance. This is aligned with the policy proposal of the PSDF.

12.1.3 The PSDF promotes a transition from unhealthy, low access, often alienated, low opportunity neighbourhoods to healthy, accessible, liveable, multi-opportunity communities.

This proposal is intended to combat the low access to economic opportunities which are prevalent in Zwelihle by providing a space for the subject entrepreneur to flourish in Zwelihle. This will subsequently contribute to ensuring that the Zwelihle settlement thrives with multiple opportunities.

12.2 SDF

The SDF identifies areas where growth and changes are projected and contains policy proposals which ensure that this occurs to the benefit of the inhabitants of the area. Policy proposal in the SDF which are pertinent to this proposal are recorded below.

12.2.1 Conserve and improve the visual quality of the landscape.

The owner of the subject property has appointed a draughtsperson to draw building plans which comply with prescribed building regulations to ensure that the proposed structures are of high architectural integrity. This is intended to contribute to the improvement of the visual quality of the area.

12.2.2 Promote economic efficiency

The location of a bottle store and a dwelling on the subject property promotes economic efficiency as the applicant owns the subject property, decreasing overheads.



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MOTIVATION

12.2.3 Spatial proposal plan

The SDF spatial proposal plan designates the subject property for residential purposes and this proposal will retain the Residential Zone 1: Single Residential Zoning of the subject property as prescribed by the SDF.

12.3 OMGMS

The OMGMS aims to guide a process which would institute the enhancement of the quality and efficiency of the built environment. Policy proposals in the SDF which are pertinent to this proposal are recorded below:

12.3.1 Support the development of integrated living environments

The proposed land use promotes integrated living environments which consists of a complementary and contextually appropriate mixture of residential and small business land uses.

12.3.2 Ensure that development proposals are in harmony with the immediate surrounding scale and character.

The dominant use of the subject property is proposed to remain for residential purposes which is in harmony with the immediate surrounding scale.

12.3.3 Spatial proposal plan

The spatial proposal plan designates the subject property as a no densification area. This proposal does not entail any densification as prescribed in the OMGMS.

13. PLANNING PRINCIPLES

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

13.1 Spatial Justice

Spatial justice in the context of spatial and land use planning refers to development proposals which redress the past apartheid spatial development imbalances. This entails development proposals which aim for equity in the provision of access to opportunities, facilities, services and land. The implementation of this proposal would contribute to unlocking contextually appropriate small business opportunity which is appropriate within a residential context in Zwelihle. This would combat the historic apartheid spatial development trend which only designated Zwelihle to exclusively function as a residential area and did not allocate any even for commercial purposes which would enable local entrepreneurs to flourish.

13.2 Spatial Sustainability

Spatial sustainability refers to the need of promoting compaction, mixed use urban environments which allow for a functional space economy to flourish. The proposal promotes a complementary land use mix within a residential area which would allow for a functional space economy to flourish in Zwelihle.

13.3 Efficiency

Efficiency in the context of land use planning refers to the need to create a settlement that optimally make use of space, infrastructure, energy, land and resources. This proposal is intended to efficiently make use of existing services, space, energy and infrastructure on

7/7
15/18**MOTIVATION**

the subject property to cater to prospective customers within the existing service capacity.

13.4 Spatial Resilience

Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems that should enable the communities to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner. This proposal is aligned with the spatial resilience principles contained in the PSDF, SDF and OMGMS.

13.5 Good administration

The OM has a credible track record of good administration regarding the method of public participation which accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.

Plan 4: Elevations
Erf 425 Zweilohle

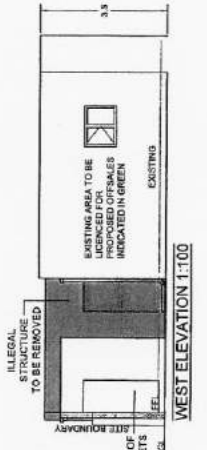
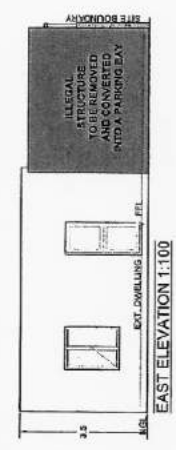
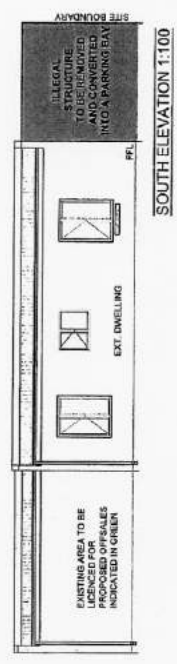
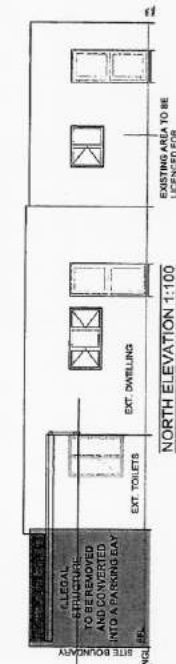
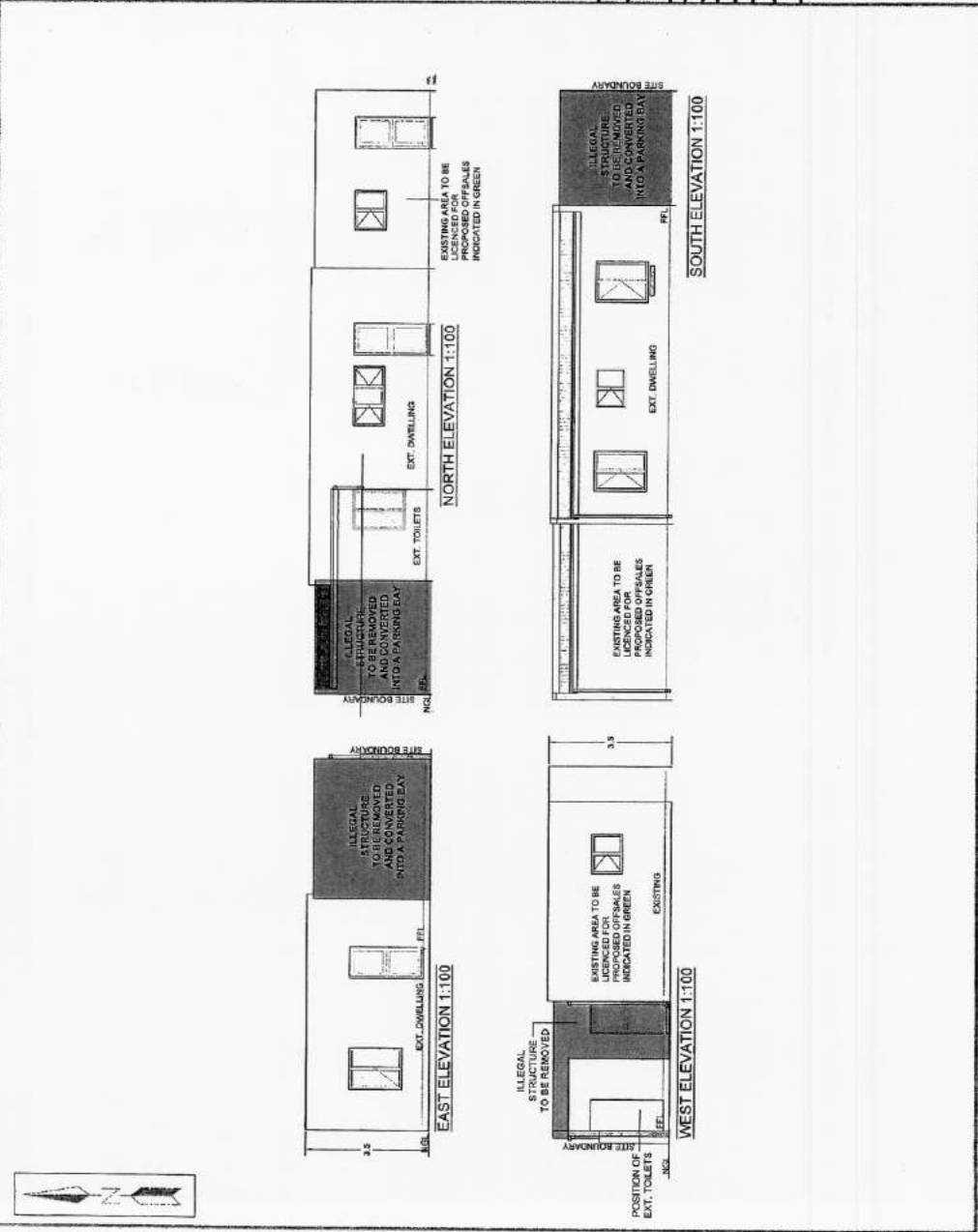
Illegal structure to be removed and converted into a parking bay
Proposed bottle store



Based on plans by CHF
Designs & Drafts
All illegal structures to be demolished
and building rubble disposed of
according to municipal guidelines.
Tel: 028 313 1411
Email: admin@waggroup.co.za
Plan prepared in October 2019
File number: 19/074
35 Du Toit Street, Menlo Park, 7600
Plan prepared by: Facilitate Justice
All dimensions are approximate
and subject to a survey

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18/18

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE: ERF 425, ZWELIHLE**

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 425, Zwelihle, unobstructed;
7. that no on-street parking be allowed.

p.p. M. Chofa
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

14-08-2020
DATE

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

ENQUIRIES | NAVRAE: Ms H van der Stoep
FILE REFERENCE | LEËRVERWYSING: 425 HZW
APP ID | AANSOEK ID : 3506/2019
DATE | DATUM: 13 April 2021



WRAP
R Kotze
PO Box 1247
HERMANUS
7200

REGISTERED MAIL
admin@wrapgroup.co.za

Dear Sir

DECISION LETTER TO APPLICANT

ERF 425, MFUNDO STREET, ZWELIHLE, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: MESSRS WRAP ON BEHALF OF MC BHALA

1. The application received on 30 October 2019 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Authorised Official on 29 March 2021.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED

1. *that the application in terms of Section 16(2)(c) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 425, Zwelihle for a departure in order to allow for the operation of a bottle store for a temporary period of three (3) years, **be approved** in terms of the provisions of Section 61 of the By-Law,*
2. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 425, Zwelihle for the following departures:*
 - o *to relax the south-western street building line from 2m to 0m to accommodate the bottle store;*
 - o *to relax the southern street building line from 2m to 1m to accommodate the existing dwelling; and*
 - o *to relax the northern building line from 1m to 0m to accommodate the existing toilet****be approved, in terms of the provisions of Section 61 of the By-Law,***
3. *that the approvals in Points 1. and 2. above be subject to the following conditions:*
 - (a) *that this approval is only for the development as indicated on plan numbers Plan 3 : SDP and Plan 4 : Elevation, dated October 2019, as submitted with the application;*
 - (b) *that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;*

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: loretta@overstrand.gov.za
PO Box 20 | HERMANUS 7200
www.overstrand.gov.za



- (c) *that all illegal structures be demolished within three (3) months after the building plan is approved;*
 - (d) *that the owner must at all times be in possession of a valid liquor license;*
 - (e) *that trading hours be restricted as follows:
Monday – Saturday: 10:00 – 20:00
Sunday: 10:00 – 13:00*
 - (f) *that the property be maintained and kept in a tidy state at all times*
 - (g) *that this approval does not absolve the applicant from compliance with any other relevant legislation;*
 - (h) *that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and*
 - (i) *that all the conditions in the Services Report (attached as Annexure D), be complied with.*
2. *that the applicant be notified of its right of appeal in terms Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regards to the above conditions of approval.*

RECOMMENDATION TO COUNCIL

that the deviation of the Business Corridors, Zwelihle be recommended for a temporary approval."

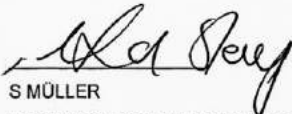
4. Reasons for the above decision are as follows:
- ❖ The existing structures have approved building plans.
 - ❖ The surrounding owners did not object.
 - ❖ The change use from a tavern to a bottle store will have less impact on the surrounding area.
 - ❖ The approval is temporary to enable the applicant to relocate to a more suitable property.
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3351-00).
- 5.2 The appeal form is available at request or alternatively on the Municipal website (www.overstrand.gov.za).
- 5.3 Contact details are as follows:
- | | |
|--------------------|--------------------------------------------------------------------------|
| Physical address : | 16 Paterson Street, Hermanus, 7200 |
| Postal address : | PO Box 20, Hermanus, 7200 |
| E-mail address : | loretta@overstrand.gov.za |

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6. Please be advised that subsequent to the finalization of any appeal, with regard to the above decision, the **recommendation** as contained in the above decision to deviate from the Spatial Development Framework still has to be referred to Council for a decision. You may thus not act on the above decision of the Municipal Planning Tribunal prior to receipt of written confirmation, which will only be issued upon receipt of Council's resolution.

Yours faithfully



S MÜLLER

DIRECTOR : INFRASTRUCTURE AND PLANNING

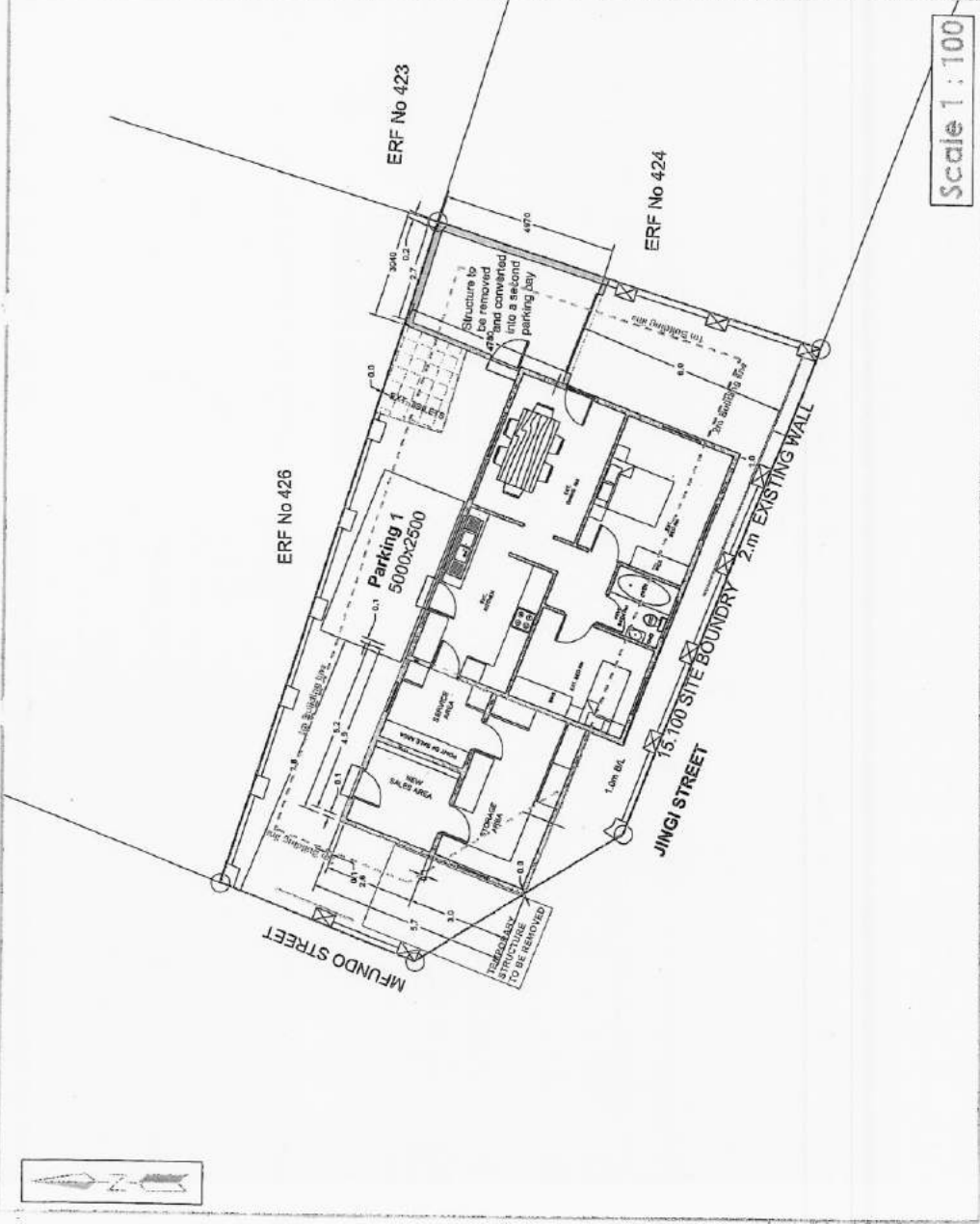
4/6

Plan 3: SDP
Erf 425 Zweilohle



-  Erf 425 Tweilohle
-  Parking area
-  Proposed bottle store

The coverage of all buildings including the areas to be removed is 54%.

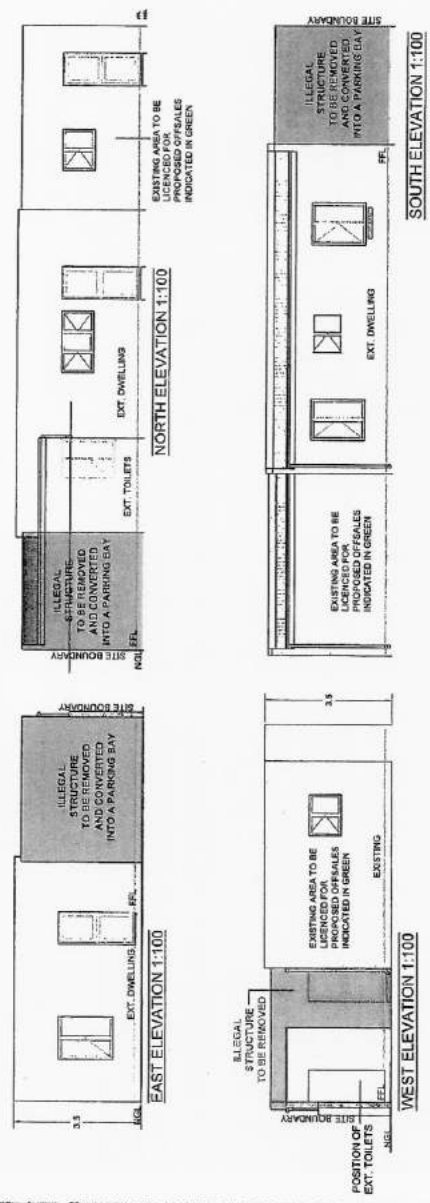
Based on plans by C/F Design & Drafts
 All height structures to be demolished and building rubble disposed of according to Municipal guidelines.
 Email: admin@wrapgroup.co.za
 Phone: 028 3131141
 Fax number: 19424
 35 Duker Street, Hartbeespoort, 7200
 Plan prepared by: Seanese Jones
 All drawings are approximate and subject to a survey



Plan 4: Elevations Erf 425 Zweihle

-  Illegal structure to be removed and converted into a parking bay
-  Proposed bottle store

Based on plans by CHF Designs & Drafts
 All illegal structures to be removed and building rubble disposed of according to Municipal guidelines.
 Tel: 098 313 1411
 Email: central@chfgroup.co.za
 Plan submitted in October 2019
 File number: 19/074
 35 DuBois Street, Harmond, 2201
 Not prepared by, feasible for use
 All dimensions approximate and subject to survey



5/6

6/6

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE: ERF 425, ZWELIHLE**

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 425, Zwelihle, unobstructed;
7. that no on-street parking be allowed.

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

14-02-2020
DATE

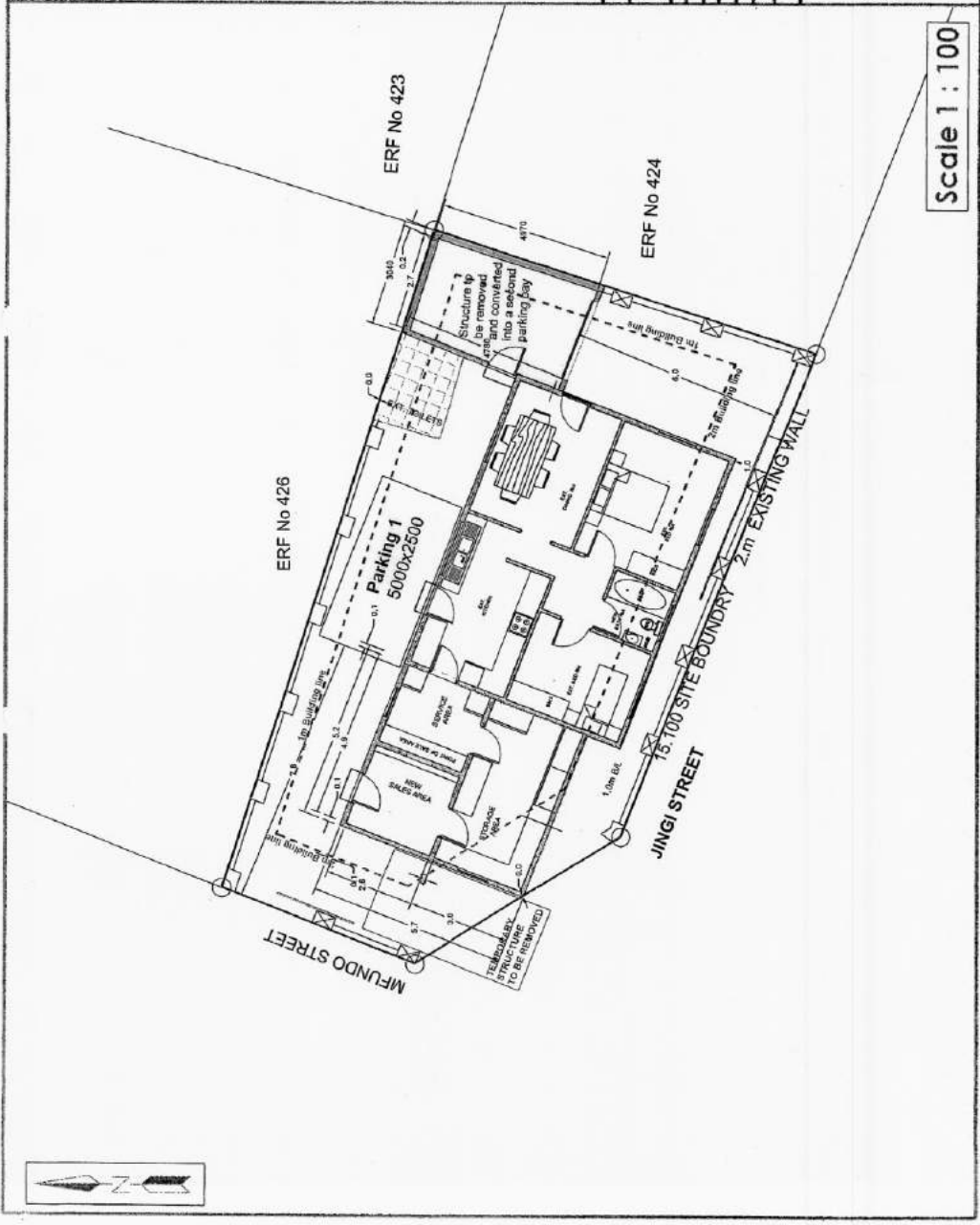
Annexure C 1/2

Plan 3: SDP
Erf 425 Zweilohle

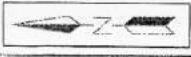
-  Erf 425 Zweilohle
-  Parking area
-  Proposed bottle store

The coverage of all buildings including the ones to be removed is 54%.

Based on plans by CH
All illegal structures to be demolished
and building rubble disposed of
according to Municipal guidelines.
Tel: 028 313 1111
Email: admin@wvrap.co.za
Plan prepared in October 2019
File number: 12024
35 Duku Street, Hermanus, 7200
Plan prepared by: Reinette Jansz
All distances are approximate
and subject to a survey



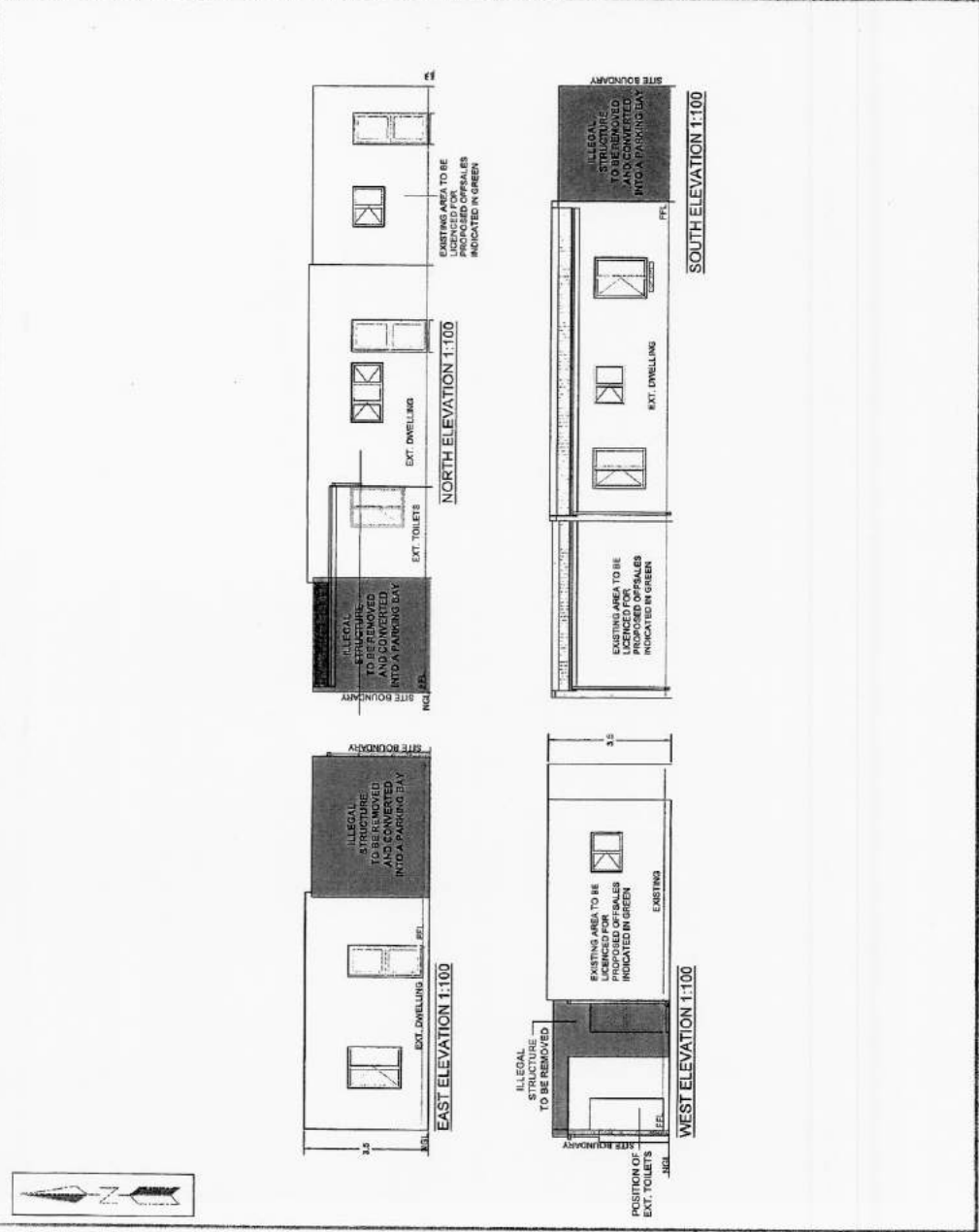
Scale 1 : 100



Plan 4: Elevations
Erf 425 Zweihle

□ Illegal structure to be removed and converted into a parking bay
▨ Proposed bottle store

Based on plans by CHP
Designs & Drafts
All legal structures to be demolished and building rubble disposed of according to municipal guidelines.
Tel: 028 333 1411
Email: dom@wrapgroup.co.za
Plan prepared in October 2019
File number: 19/074
35 Dulles Street, Hammanskus, 2100
Plan prepared by: Beethle Jane
All notices are approximate and subject to survey.



Annexure D**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE: ERF 425, ZWELIHLE**

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 425, Zwelihle, unobstructed;
7. that no on-street parking be allowed.

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

14-08-2020
DATE