

**AGENDA of the
Portfolio Committee : Infrastructure and Planning
17 June 2015
(Also the agenda for the Mayoral Committee Meeting : 24 June 2015)**

3.

**ERF 4585, 27 HARMONY AVENUE, HERMANUS, OVERSTRAND MUNICIPAL AREA :
REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967) AND DEPARTURE :
JP SMITH**

4585 HNC (2542)

H van der Stoep

28 April 2015

(028) 313 8900

Hermanus Administration

1. Executive Summary

An application has been received on 7 April 2014 from Messrs WRAP on behalf of JP Smith on Erf 4585, Hermanus for a departure from the relevant Scheme Regulations in order to relax the side building line from 2m to 0m to accommodate an existing garage, from 2m to 1,5m for the extension of the existing bar area and from 2m to 0,46m to accommodate an existing roofed terrace respectively.

An application has also been received for the Removal of Restrictive Title Conditions in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) applicable to Erf 4585, Hermanus in order to enable the owner to convert the existing outside living area into a granny flat.

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

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- & Spatial Planning

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Removal of Restrictions Act, 1967 (Act 84 of 1967)
- Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

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6. Background/Discussion/Evaluation/Conclusion

Background

An application has been received for the Removal of Restrictive Title Conditions C(2)2 and C(2)4 in Title Deed T48359/1999 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) applicable to Erf 4585, Hermanus.

The restrictive conditions read as follows:

Page 3 : Paragraph C(2) :

- “2. that only one dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.*

- 4. 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.”*

Discussion

The erf is located in Hermanus Extension 4, also known as Northcliff. The erf is zoned Residential Zone 1 and has been developed as such. The departures are necessary to accommodate existing extensions and structures erected without the necessary Town Planning and/or building plan approvals. The owner, through this process, intends to legalise the irregularities.

The application was advertised in the local newspaper and Government Gazette, and registered notices were sent to the entire Northcliff suburb. No objections were received against the proposal.

The application was also circulated to all relevant municipal departments, and no objections were received against the application.

Evaluation

The evaluation will deal with the departures separately:

The departure of the southern lateral building line from 2m to 0m to accommodate the extension of the existing garage can be viewed in a positive light. The reasons for the positive evaluation are that the Overstrand Municipality Zoning Scheme Regulations make provision for outbuildings, especially the housing of vehicles on a zero building line. Similar applications have been approved by the Municipality. This transgression has triggered the

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restrictive condition of the Title Deed that has a more restrictive lateral building line of 2,36m. The removal of the restrictive condition will have no detrimental consequences for the area, since the development parameters of the Scheme Regulations still prevails.

The departure of the northern lateral building line from 2m to 1,5m to accommodate the extension of the bar area was approved in 2007 by the Municipality and the Department of Environmental Affairs and Development Planning, the latter as a relaxation. The present application is to reinstate the previous approval that has lapsed. The applicant has not executed the approval given in 2007 with a departure of the then applicable aggregate applicable in terms of the Hermanus Regulations 7. The fact that the applicant opted not to act on the approval, rights in terms of the previous Scheme Regulations have lapsed. The extension is part of the living area transgressing the building line and although this is not normally viewed in a positive light, the principle was evaluated in 2007 with no objections

The departure of the northern lateral building line from 2m to 0,46m to accommodate an illegal terrace structure is not recommended. The Overstrand Municipality Zoning Scheme Regulations require at least a 1m open area for fire protection on one of the lateral building lines. The requirement cannot be met since the garage on the southern lateral building line is built on a 0m boundary. The removal of the restrictive condition of a lateral building line of 2,36m can be removed, since the 2m building line will still be enforced. The reason that the neighbouring erf has a roof that reflects into the applicant's dwelling, is not a valid reason since the applicant could take other measures to prevent the glare as to oppose building a structure that forms part of the bar area and serves as an under roof entertainment area. There is sufficient space available for the terrace to have been extended to the western boundary without transgressing the building lines.

The applicant has to apply for three different departures to accommodate illegally erected structures. The applicant knew that approvals need to be obtained for building work, especially over the building lines. This is proven due to the fact that an application was lodged in 2006 to relax the lateral building line to extent the bar area.

The removal of the restrictive condition which only allows a single residential dwelling can be recommended, since it is the intention by the applicant to convert the existing outside living area into a second dwelling. The area is within the building lines and is not more than 120m² in extent. The second dwelling is a primary right in terms of the Overstrand Municipality Zoning Scheme Regulations and does not pose a problem to the neighbours as it is an existing structure.

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Conclusion

The application for departure be partially recommended for approval and the removal of restrictive conditions be recommended for approval by the Department of Environmental Affairs and Development Planning.

7. Financial Implications

None

8. Staff Implications

None

10. Comments from other Departments, Divisions and Administrations

Engineering Services Department

Attached as Annexure D.

Traffic Department

Take note of above address. Traffic will assist where needed.

Building Control Department

Discussed with Building Department – Support as per recommendation.

10. Annexures

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

RECOMMENDATION:

1. that the Removal of Restrictive Title Conditions Page 3, Paragraph C(2)2 and C(2)4 in Title Deed T48359/1999 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) applicable to Erf 4585, Hermanus, **be recommended for approval** by the Department of Environmental Affairs and Development Planning;
2. that, in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) the application on Erf 4585, Hermanus for a departure from the Scheme Regulations in order to relax the side building line from 2m to 0m to accommodate an existing garage and from 2m to 1,5m for the extension of the existing bar area, **be approved**,

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3. that the approval of Point 2. be subject to the following conditions:
 - (a) that approval of the departure be subject to the Removal of the Restrictive Title Conditions;
 - (b) that amended building plans (including the conversion of the outbuilding to a second dwelling) be submitted to the Building Control Department for their final approval;
 - (c) that all other development parameters, as prescribed in the relevant Zoning Scheme, be complied with;
 - (d) that the approval does not absolve the applicant from compliance with any other relevant legislation and/or Title Deed conditions;
 - (e) that all conditions imposed in the Services Report (attached as Annexure D), be complied with; and
 - (f) that compliance with Fire Safety Regulations is pre requisite-SANS 10400T:2011.
4. that in terms of Section 15 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) the application on Erf 4585, Hermanus for a departure from the Scheme Regulations in order to relax the side building line from 2m to 0,46m to accommodate an existing roofed terrace, **not be approved**, due to the following reasons:
 - (a) the structure was erected illegally;
 - (b) no reasons were given for the transgression;
 - (c) the structure is not in line with Scheme requirements; and
 - (d) sufficient space is available for the extensions without transgressing the building lines.
5. that the terrace be removed within three months of the date of the decision letter.
6. that the applicant be notified of his right of appeal in terms of the provisions of the Local Government Municipal Systems Act, 2000 (Section 62) with regard to the above decision.

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RESPONSIBLE OFFICIAL :	H VAN DER STOEP
TARGET DATE FOR IMPLEMENTATION :	8 JULY 2015
TARGET DATE TO INFORM APPLICANT :	8 JULY 2015
TARGET DATE TO INFORM OBJECTOR :	N/A

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28 April 2015

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 JUNE 2015, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

H VAN DER STOEP

TARGET DATE FOR IMPLEMENTATION :

8 JULY 2015

TARGET DATE TO INFORM APPLICANT :

8 JULY 2015

TARGET DATE TO INFORM OBJECTOR :

N/A



Departure Plan

Area of departure

Erf 4585, Hermanus

Plan: 14/021/01

Scale 1:150

All distances approximate and subject to survey.

WRAP makes no warranty of any kind, expressed or implied with regard to data and shall not be held liable in any event for any incidental or consequential damages. It is intended that this drawing shall be used for the purpose of the project and shall not be used for any other purpose without the prior written approval of the drafter.

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4586



Departure Plan

- Proposed extension
- Area of departure

Er 4585, Hermanus

Plan: 14/021/02

Scale 1:150

All distances approximate and subject to survey.

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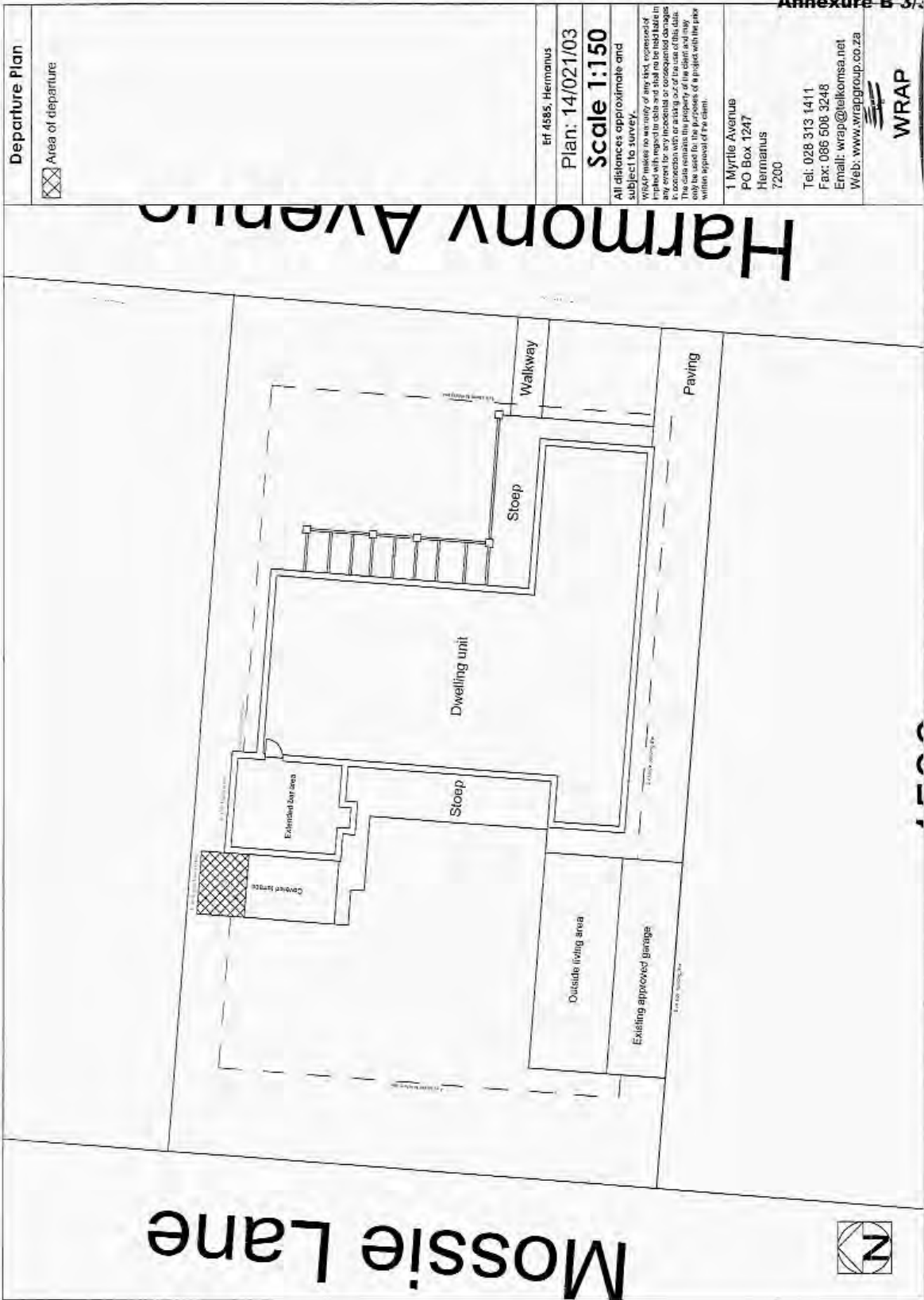


WRAP

Harmony Avenue

Mossie Lane





Departure Plan

Area of departure

trf 4585, Hermanus

Plan: 14/021/03

Scale 1:150

All distances approximate and subject to survey.

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APPLICATION DETAIL AND MOTIVATION

12. DEVELOPMENT OBJECTIVES

The objectives of this application are fourfold. They can be briefly summarised as follows:

- Objective 1: accommodate existing garage's departure on prescribed building lines;
- Objective 2: reinstate departure approval for the extension of an existing bar area;
- Objective 3: accommodate existing covered terrace's departure on prescribed building lines; and
- The removal of restrictive title deed conditions.

The first departure application deals with the existing departure of the garage. As mentioned in a previous section, with the submission of the original building plans of the subject property, approval was granted to develop the garage on a 0 meter lateral building line. The length of this garage was approximately 6.15 meters. The garage was then expanded to a length of approximately 9.8 meters, for which no approval has been granted. The roof of the garage slopes towards the north and therefore all stormwater is discharged onto the subject property itself. Application is therefore made for the following:

- Application for departure from prescribed lateral building lines (2 meters to 0 meter) in terms of Section 15(1)(a)(i) of the Land Use Planning Ordinance, 1985 (no.15 of 1985) to.

The second departure application deals with the extension of an existing bar area. Said bar area is currently located approximately 2.625 meters from the northern lateral building line. The proposal is to extend this area to 1.5 meters of the northern lateral building line. The extension will have an extent of approximately 6.347 m². One window will be located in the area encroaching on said building line. However, the extent of mentioned window will be determined as per applicable fire regulations. Application is therefore made for the following:

- Application for departure from prescribed lateral building lines (2 meters to 1.5 meters) in terms of Section 15(1)(a)(i) of the Land Use Planning Ordinance, 1985 (no.15 of 1985) for the extension of the existing bar area on Erf 4585, Hermanus.

The third and final departure application is for the accommodation of an existing covered terrace. This terrace has support columns located approximately 46 centimetres from the erf boundary as well as a roof that is located the same distance from the erf boundary. The roof is developed with gutters that discharge rainwater onto the property itself. The terrace is open on all sides, apart from the common wall that is shared with the bar area. Application is therefore made for the following:

- Application for departure from prescribed lateral building lines (2 meters to 0.46 meters) in terms of Section 15(1)(a)(i) of the Land Use Planning Ordinance, 1985 (no.15 of 1985) for the accommodation of an existing roofed terrace on Erf 4585, Hermanus.

The owner furthermore intends to develop an outside living area into a "granny flat", which will be regarded as a second dwelling unit. No land use planning approval is necessary for this particular land use.

For the above applications to be approved it is necessary to remove two (2) title deed restrictions from the subject property's title deed. Application is therefore made for the following:

- The removal of restrictive title deed conditions C(2)2 and C(2)4 in terms of the Removal of Restriction Act, 1967 (Act 84 of 1967).

13. CONSISTENCY WITH SPATIAL PLANNING INITIATIVES AND LEGISLATIVE COMPLIANCE

As mentioned in Section 11, the spatial planning initiatives applicable to the area do not cater for building line departure applications. The Growth Management Strategy does make provision for the development of second dwelling units in this particular part of Hermanus. However, as the development of a second dwelling unit is a primary land use right under the existing zoning of the property, land use approval for this use doesn't need to be motivated.

The only other legislation that has to be complied with, apart from the Land Use Planning Ordinance, 1985 is the Removal of Restrictions Act, 1967. However, it is our opinion that this application provides for the prescription of the Act.



APPLICATION DETAIL AND MOTIVATION

14. NEED AND DESIRABILITY OF THE LAND USE PROPOSAL

The owner of the property developed the need to convert the single garage on the property into a double garage. Considering the location of the garage on the erf, the only manner of achieving this was to extend the garage lengthwise. This extension therefore further departs from prescribed building lines.

The owner furthermore expressed the need to have the original departure application for the extension of the bar area, re-approved during this application process. However, instead of extending the bar area towards the west as originally approved, this application intends on achieving the building line departure approval to accommodate the existing roofed terrace. Last mentioned terrace was constructed as a result of the white roof of the neighbouring property owner, which generates harmful amounts of glare. The terrace therefore provides some relieve to this unfortunate situation.

The extension to the garage has taken place some years ago, without ever having a negative impact on the surrounding property owners. No windows are located in this particular wall and the roof of the garage is constructed in such a way that rainwater is discharged directly on the applicant's erf and not the neighbouring property. It is therefore evident that this particular departure can be considered as desirable.

The extension of the bar area and the accommodation of the existing covered terrace will have no impact on surrounding property owners. Both are on ground level and will therefore not have a negative impact on the privacy of neighbours. At no point is a continuous 0 meter building line maintained on the property, and therefore all areas of the erf is accessible in the case of an emergency. We therefore maintain that the departure application for the extension of the bar area as well as the accommodation of the roofed terrace is desirable.

15. COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND IMPACT ON EXISTING LAND USE RIGHTS

The approval of this application will not change the existing land use rights of the property concerned. All rights associated with

Residential Zone I: Single Residential Zone will remain in place. The approval of this application will therefore not establish any additional land use rights.

As mentioned in previous sections, all of the proposed departures are located on the ground level and will therefore not have any negative impact on the privacy of surrounding property owners. In light of the above we maintain that the proposals of this application is compatible with the character of the surrounding area and that the approval of said application will not have a negative impact on existing land use rights.

16. IMPACT ON SERVICE INFRA-STRUCTURE

WATER SUPPLY – No impact anticipated.

ELECTRICITY SUPPLY – No impact anticipated.

SEWAGE SYSTEM – No impact anticipated.

17. GRANTING AND REFUSAL OF APPLICATION

The Land Use Planning Ordinance, 1985 (no 15 of 1985) in Section 36 stipulates that:

- "any application shall be refused solely on the basis of a lack of *desirability* of the contemplated utilization of land concerned including the guideline proposals included in a relevant structure plan in so far as it relates to desirability, or on the basis of its effect on existing rights concerned", and
- "regard shall be had, in considering relevant particulars to only the *safety and welfare of the members of the community* concerned, the conservation of the natural and developed environment concerned or the effect of the application on existing rights concerned".

The acceptance of land use on a specific land portion must be tested in accordance with the physical characteristics of the property, existing planning in the area, and the character of the environment, the potential, location and accessibility of the property as well as the provision of service infrastructure to the proposed development.



APPLICATION DETAIL AND MOTIVATION

It has been argued in the above sections that the proposal as contained within this application is indeed desirable and that it is consistent with the principles of the applicable structure plan and other spatial initiatives. It was also shown that the proposal will not have any negative impact on existing land use rights of surrounding property owners or of the land use rights associated with the existing zoning of the property. Lastly it was proven that the proposal will not have a negative impact on the

safety and welfare of the members of the community and will not have any detrimental impact on the natural or developed environment.

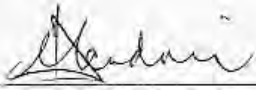
In light of the above it is maintained that this application complies with the provisions of Section 36 of the Land Use Planning Ordinance, 1985 (no.15 of 1985) and therefore it is our recommendation that this application be approved.

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIONS & DEPARTURE: ERF
4585, NORTHCLIFF (2542)**

Electricity	:	In order
Water	:	In order
Sewer	:	In order
Stormwater	:	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 stormwater be allowed to discharge through Erf 4585, Northcliff, unobstructed;
4. that no on-street parking be allowed.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

18/2/2015

DATE