

ERF 12232, 312A MAIN ROAD, EASTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF MRS A LOUBSER

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) that an application has been received for the following:

- Departure in terms of Section 16(2)(b) for the following:
 - relaxation of the north-eastern lateral boundary line from 2m to 0m to accommodate the proposed covered walkway;
 - encroachment of the permissible height restriction for boundary walls exceeding 2.1m above the existing ground level.
- Determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law, to accommodate the legalization of the existing boundary walls and supporting pillars on the property.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus. Any written comments may be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) on or before **21 January 2022**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to **Mr P Roux** at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

ERF 12232, HOOFWEG 312A, EASTCLIFF, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE PLAN ACTIVE STAD- EN STREEKSBEPLANNERS NAMENS ME A LOUBSER

Kennis word hiermee gegee ingevolge Artikel 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) dat 'n aansoek ontvang is vir die volgende:

- Afwyking ingevolge Artikel 16(2)(b) vir die volgende:
 - verslapping van die noord-oostelike lateralegrenslyn vanaf 2m na 0m om die voorgestelde onderdak looppad te akkommodeer;
 - oorskryding van die toelaatbare hoogtebeperking vir grensmure wat 2.1m oorskry bokant die bestaande grondvlak.
- Bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening, om die wettiging van die bestaande grensmure en ondersteunende pilare op die eiendom te akkommodeer.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening na die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) voor of op **21 Januarie 2022**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan **Mnr P Roux** by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.

ISIZA ESINGU12232, 312A EMAIN ROAD, EASTCLIFF, HERMANUS, KUMASIPALA OKUMMANDLA WASE-OVERSTRAND: ISICELO SOKWAHLULA NOKUQINISEKISA ISOHLWAYO/UMDLIWO WOKUBHALISA: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS EGAMENI LIKANKSKZ A LOUBSER

Kukhutshwe isaziso esimayela nemiba yeSoloty lama-48 elisisiHlomelo soMthethwana kaMasipala waseOverstrand ngeZicwanciso zokuSetyenziswa koMhlaba kaMasipala ku2020 (uMthethwana) isaziso esi sithi kufunyenwe isicelo esimayela nale miba ilandelayo:

- Ukwahlula ngokwemiba yeSoloty le16(2)(b) elilandelayo:
 - ukunyenysiswa komgca omelene nomgca osemntla-mpuma nomgca owenza umda ukusuka kwiimitha ezizimitha ezi2m ukuya ku0m ukulungelelanisa indawo enqumla abahambi ngenyawo nevaliweyo;
 - ukugqithela nokukroba ngaphaya kobude ngokuphakama (umphakamo) ngaphaya komda ovumelekileyo ukudlula kwidonga elingumda ozimitha ezi2.1m ngaphezulu komgangatho wokuqala ophantsi nosele ukhona.
- Inggikelelo yentlawulo engumdlwiwo nesohlwayo sobhaliso ngokwemiba yeSoloty le16(2)(q) loMthethwana, ukulungiselela ukumisela ngokusemthethweni nokugunyazisa ngokomthetho amadonga angumda asele ekhona naxhasa iintsika ezikhoyo kwisakhiwo okanye kulo mhlaba.

linkcukacha ezipheleleyo nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini ukususela ngentsimbi ye08:00 uku akuma kweye16:30 kwiSebe: Izicwanciso ngeDolophu, 16 Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo zingangeniswa kwamasipala ngokwezibonelelo zeSoloty lama51 nelama52 oMthethwana kaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) ngomhla okanye ngaphambi komhla **21 uJanuwari ku2022**, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umda wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingabuzwa ku**Mnu P Roux** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifunyenwe emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angandwendwela kwiSebe leziCwanciso ngeDolophu apho igosa likamasipala liza kumnceda afake ahlomle ngokusemthethweni.

**PROPOSED DETERMINATION OF AN
ADMINISTRATIVE PENALTY AND
DEPARTURES**

REMAINDER ERF 12232 HERMANUS

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by A. Loubser, the owner of Erf 12232 Hermanus, to apply for the determination of an administrative penalty and departures of the subject property.

There is an existing dwelling established on the subject property. The intention is to legalise the boundary walls and clear view fence which were erected on the subject property, higher than 2.1m, which is the permissible height for boundary walls and fencing. The owner also intends to erect a covered walkway within the lateral building line, that has not been constructed yet. Only the supporting pillars for the covered walkway have already been erected. The intention of the owner is to legalise the existing boundary walls and supporting pillars by applying for the determination of an administration penalty and departures. A building line departure application is also made to accommodate a proposed covered walkway.

Erf 12232 Hermanus is held by Title Deed Number T34611/2019 and is 991m² in extent.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed building lines.

3. GENERAL APPLICATION INFORMATION

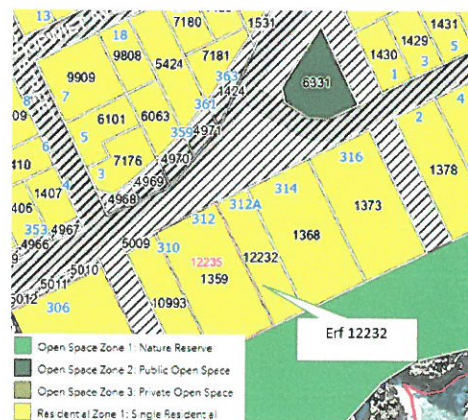
3.1 PROPERTY DESCRIPTION

Erf 12232 Hermanus is situated at 312A Main Road, Hermanus. Refer to the enclosed locality plan. Erf 12232 Hermanus is 911m² in extent and held by Title Deed Number T34611/2019.

3.2 ZONING

The subject property is zoned Residential Zone I: Single Residential and it is utilized as such.

The majority of the surrounding properties are also zoned for Residential Zone I: Single Residential purposes.



3.3 LAND USE

The subject property is used for residential purposes. A double storey dwelling with a single and double garage are established on the subject property.

The majority of land uses that surround the subject property are single residential dwellings, public roads and Walkerbay to the south-east.

3.4 PROPOSED DEVELOPMENT

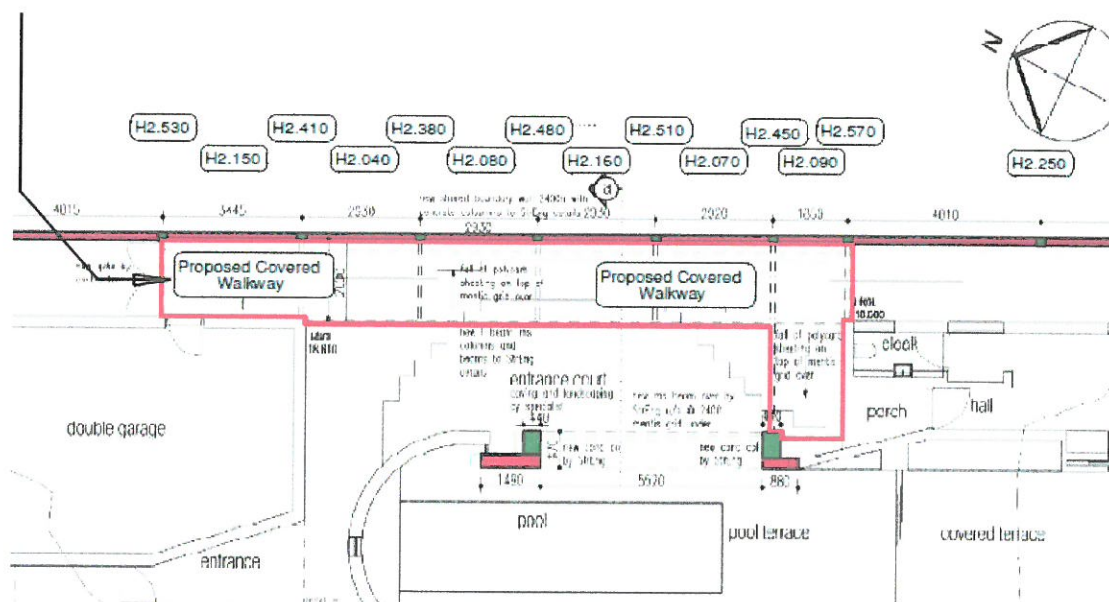
Application is made in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure of the permissible height for boundary walls exceeding 2.1m above the existing ground level and a proposed covered walkway;

3.4.1. Determination of an administrative penalty

After the construction of the boundary walls and clear view fence on the subject property it was found that the measurements of the boundary walls and clear view fence are slightly higher than the permissible height of 2.1m at some points as indicated on the enclosed site plan. The intention of the owner is also to erect a covered walkway along the north-eastern boundary of the site. The pillars for the covered walkway that forms part of the boundary wall have also been constructed and also exceed the permissible height allowed for boundary walls. The covered walkway however has not been constructed. The pillars will be used as support for the roof of the proposed covered walkway.

The intention of the owner is to rectify the height encroachment of the boundary walls. As can be seen on the plan below the proposed covered walkway will extend onto the boundary line.



In terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of Chapter 9, Section 90(3), of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must, to the satisfaction of the municipality, provide the following:

3.4.1.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY

a) The Nature, duration, gravity, and extent of the contravention

The subject property was developed earlier this year. With the construction of the boundary walls, it was found that the boundary walls and clear view fence at places are slightly higher than what was approved on the building plan. The mentioned boundary walls and clear view fence are slightly higher than the permissible height of

2.1m. The intention of the landowner is also to construct a covered walkway on the north-eastern boundary. Although the pillars for the covered walkway have been erected, the roof of the proposed covered walkway has not been erected. The supporting pillars of the proposed covered walkway have been erected on the north-eastern boundary of which the height ranges between 2.380m to 2.570m as per the site plan attached.

The extent of the unauthorised pillars are as follows:

Supporting pillars for covered walkway		
Pillar	Height	Extent
1	±2.530	0.1936m ²
2	±2.410	0.1936m ²
3	±2.380	0.1936m ²
4	±2.480	0.1936m ²
5	±2.510	0.1936m ²
6	±2.450	0.1936m ²
7	±2.570	0.1936m ²
Total		1.3552 m²

The actual boundary walls and clear view fence exceeds the permissible height at some areas, the encroachments can be regarded as minor encroachments. The height of the boundary walls can be easily identified on the attached site development plan.

A summary of the encroachments of the boundary walls can be seen below:

Side of property	Highest point	Lowest point	Average
Street boundary wall	2.250m	2.150m	2.20m
Rear boundary (clear view fence)	2.770m	2.360m	2.57m
North eastern boundary (lateral)	2.770m	2.040m	2.405m
South western (lateral)	2.380m	2.220m	2.30m

The owner of the subject property intends to provide her full co-operation to the Overstrand Municipality to rectify the illegal building works.

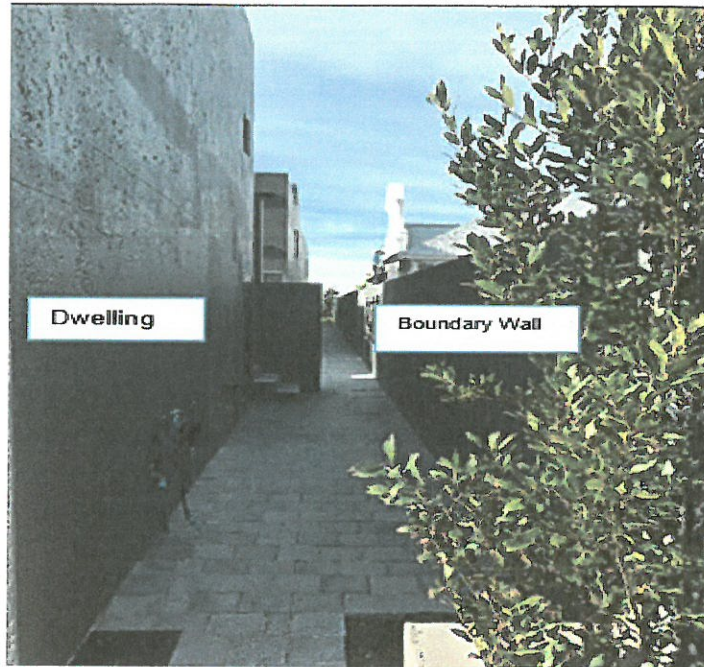
The position and nature of the unauthorised building work on the property are unobtrusive in nature and do not impact negatively on the surrounding properties or the traffic flow in Main Road. From inside the property the existing boundary walls are perceived to be lower. The encroachments can be regarded as minor encroachments. A covered walkway is also proposed on the subject property within the building line. With reference to the photograph below the pillars that will support the covered walkway is clearly visible as well as the paved walkway.



The North Eastern boundary wall with pillars that will support the proposed covered walkway



The Clearview fence at the rear of the subject property



Boundary wall at the south western side of the subject property

b) The conduct of the person involved in the contravention

After the owner was informed that the boundary walls and pillars encroach the 2.1m height restriction, she immediately started to enquire on how the encroachments can be rectified. The owner intends to provide her full co-operation to address the encroachments and accept full responsibility for the contraventions on the subject property.

c) Whether the unlawful conduct was stopped

The owner is in the process of addressing the contravention by applying for the determination of an administration penalty and building line departures. The building works pertaining to the boundary walls, clear view fence and pillars have already been completed, except for the roof for the proposed covered walkway.

d) **A report by a quantity surveyor in matters of unauthorised building/construction.**

If the Overstrand Municipality finds it necessary that an administrative penalty fee be enforced for the unauthorised building works, we will submit a report from a quantity surveyor with reference to the unauthorised building work. The reason being that if there is a chance that no penalty fee is imposed, the report from a quantity surveyor will be unnecessary at this stage.

e) **Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.**

To the best knowledge of the applicant and as confirmed by the landowner, she has never previously contravened this By-Law or any other previous planning law.

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised building work has on the surrounding area. It should also be considered that the unauthorised building work does not have any impact on the existing character.

These encroachments are in contravention with the development rules of the Overstrand Scheme Regulations, 2020.

With the proposed application the owner intends to address these encroachments on the subject property and will also submit as built building plans in order to obtain the necessary approvals from the building control department as soon as the land use application has been concluded. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above

3.4.2 Departures

Erf 12232 Hermanus is 991m² in extent. Boundary walls and clear view fence were constructed on the subject property that exceeds the maximum allowable height that is 2.1m applicable to boundary walls. The intention is also to construct a covered walkway of which the supporting pillars have already been constructed.

The applicable restrictions in the Overstrand Municipality Zoning Scheme, 2020, Sections 16.1 and 16.6 read as follows:

16.1 GENERAL ENCROACHMENTS

Encroachment of building lines permitted

16.1.1 The following additional development parameters apply with regard to encroachment of building lines:

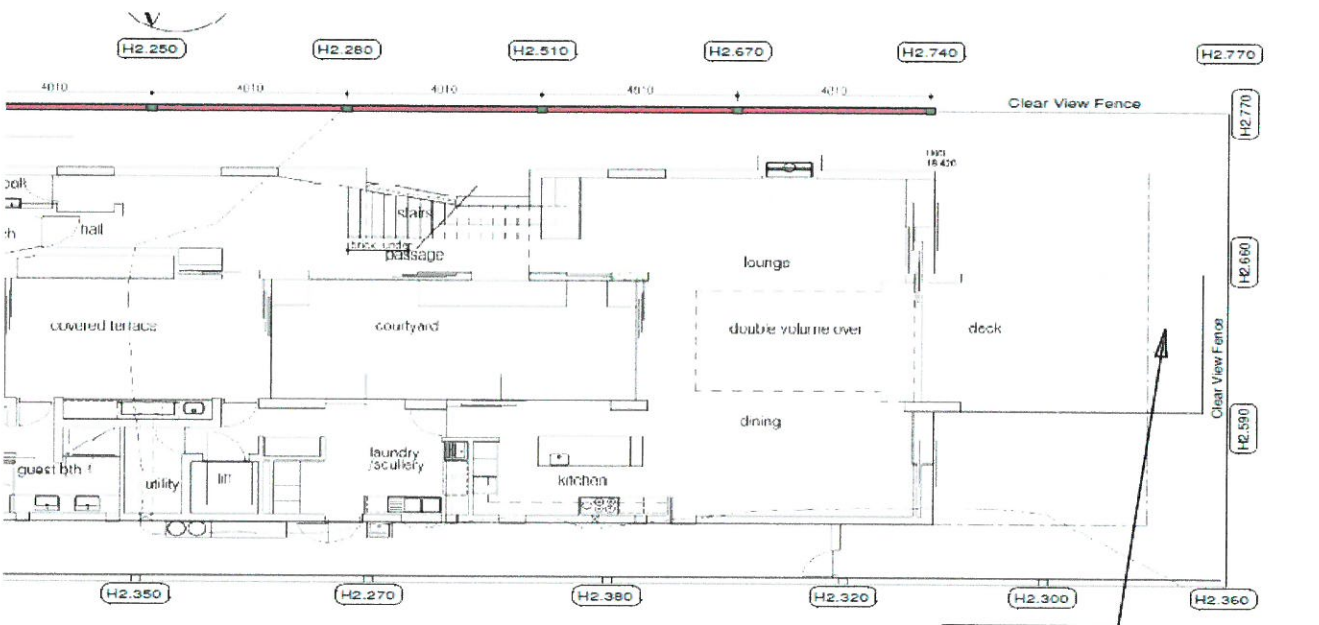
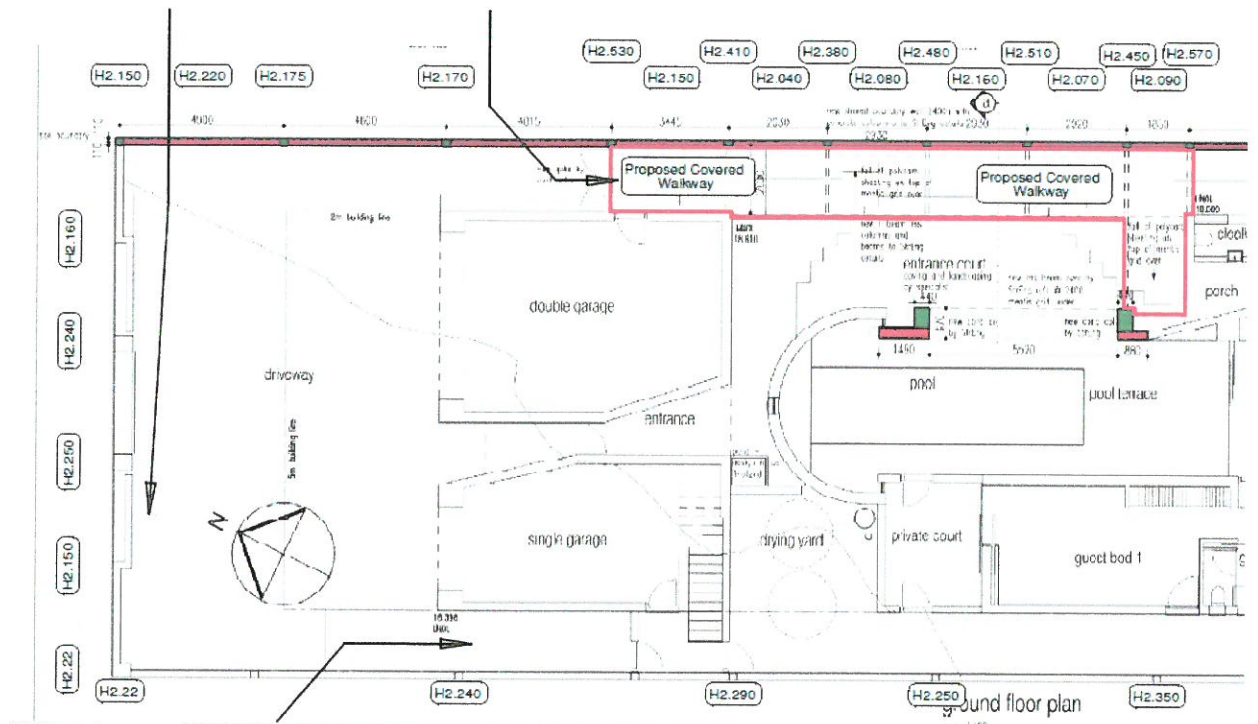
General encroachments permitted

- a) Notwithstanding the building line requirements set out in Part 2, the following structures or portions of structures may be erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit:
- (i) boundary walls, retaining walls, screen walls, fences and gates not exceeding 2,1 m in height above the existing ground level abutting such wall;

16.6 BOUNDARY WALLS

16.6.1 Without the prior written permission of the Municipality, no boundary wall or fence shall exceed 2,1 m in height above the existing ground level abutting such wall or fence (unless other heights are required by Fire Regulations), provided that where the ground levels on opposite sides of the wall or fence are unequal, the height of the wall or fence shall be measured from the higher of the two levels.

When the height of the boundary walls was measured, the height of the wall was measured from the higher of the two levels, as the ground levels on the opposite sides of the walls differ. The height as measured can be easily identified as it is indicated on the Site Development Plan that accompanies this application and is as depicted below.



The height of the boundary walls can be tabled as follows:

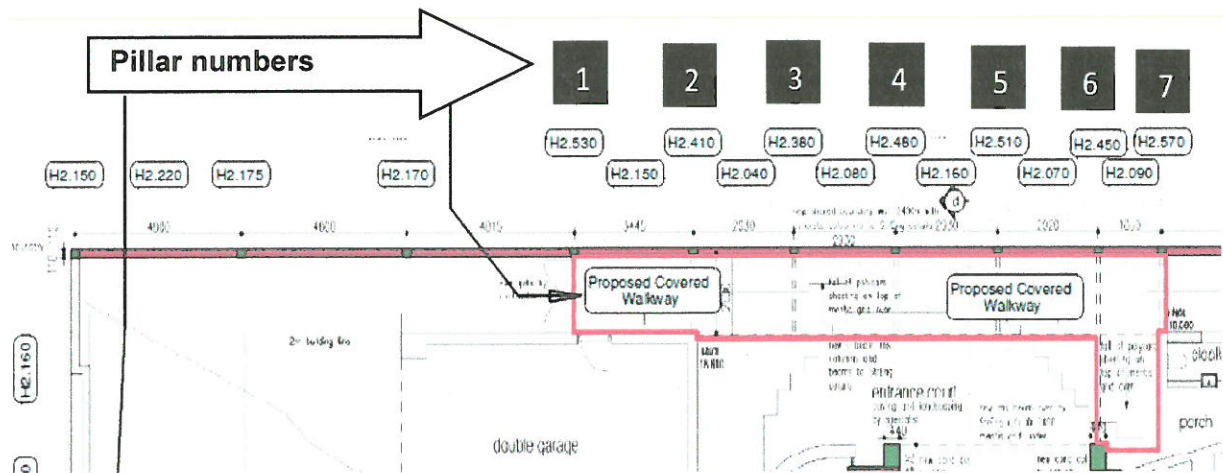
Side of property	Highest point	Lowest point	Average
Front boundary wall	2.250m	2.150m	2.20m
Rear boundary clear	2.770m	2.360m	2.57m

view fence			
North eastern boundary (lateral)	2.040m	2.770m	2.00m
South western (lateral)	2.380m	2.220m	2.30m

As previously mentioned, the owner intends to erect a covered walkway on the subject property to provide cover during bad weather for access to and from the double garage and the house. The supporting pillars have already been erected. The detail of the 7 supporting pillars situated on the north-eastern boundary line can be described as follows:

Supporting pillars for covered walkway		
Pillar	Height	Extent
1	±2.530	0.1936m ²
2	±2.410	0.1936m ²
3	±2.380	0.1936m ²
4	±2.480	0.1936m ²
5	±2.510	0.1936m ²
6	±2.450	0.1936m ²
7	±2.570	0.1936m ²
Total		1.3552 m²

The proposed covered walkway will extend onto the north-eastern boundary and will be supported by the existing pillars.



Proposed departure of the height of the boundary wall

- In terms of Section 16.6.1, we are applying for a departure from the 2.1m applicable height restriction imposed for boundary walls. The departures from the height restrictions are applicable to all four boundaries that include a clear view fence located on the rear boundary. The heights of the existing boundary walls and fence were measured of which the measurements have been indicated on the Site Development plan.
- In relation to the surrounding properties in Main Road it is evident that high boundary walls and fences are part of the character of the area. The proposed application will be within the current character of the surrounding area and surrounding properties. The proposal will not have any impact on the traffic flow in Main Road.

Proposed building line departure to accommodate a covered walkway

- The intention of the owner is to erect a covered walkway which will extend onto a portion of the north-eastern boundary wall, where the supporting pillars have been constructed.

The detail of the proposed building line departure is as follows:

- Relaxation of the north-eastern lateral boundary line from 2m to 0m to accommodate a proposed covered walkway.

A 2m wide covered walkway is proposed alongside the north-eastern boundary from the side door of the double garage to the side entrance of the house. The total distance of the covered walkway is ±17m. The proposed covered walkway will be constructed with beams and columns to engineer's specifications and will be supported by the above-mentioned pillars and a portion of the existing double garage's outer wall.

With reference to our measurements and calculations the total height of the proposed covered walkway will not exceed the height of 3m alongside the north-eastern boundary. With reference to the building plan the covered walkway will be covered with Polycarp sheeting. Stormwater will be channelled from the proposed covered walkway to dispose of within the boundaries of Erf 12232 Hermanus. The proposed covered walkway will not have a negative impact on the adjacent property.

3.5 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)

The subject property's zoning and land use will remain unchanged. The location of the subject property within a single residential area allows the property to be developed (in future) for low impact land uses as being provided for in terms of the primary and secondary rights of its zoning such as a bed-and-breakfast, guesthouse, home occupation, etc. The proposed departures will not discourage any future land use applications on Erf 12232 Hermanus.

3.6 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.6.1 PROVISION OF SERVICES

All services on the subject property already exist. Additional services are not required and therefore the proposal will not have a negative impact on existing services that are provided by the Overstrand Municipality.

3.6.2 ACCESS

Access to Erf 12232 Hermanus will remain the same and it is from Main Road, Hermanus. The proposed application only constitutes a departure from the permissible height of boundary walls and clear view fence and the building lines to accommodate a proposed covered walkway.

3.7 TITLE DEED

There are no restrictive Title Deed conditions in Title Deed No. T34611/2019 that must be removed from the Title Deed to accommodate the proposed departures.

There is no bond registered against the subject property.

3.8 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.8.1 HERITAGE VALUE

Erf 12232 Hermanus is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The existing dwelling situated on Erf 12232 Hermanus is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

In the light of the above mentioned the proposed departures will not have a negative impact on the heritage value of the Kwaiwater area.

3.8.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departures do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.9 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2020)* earmarks the area where Erf 12232 Hermanus is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the application will not impact negatively on the spatial integrity of the area and is therefore consistent with the Overstrand SDF (2020).

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that Erf 12232 Hermanus forms part of Planning Unit no. 8. This planning unit indicates that the status quo for the area must be maintained. The existing status quo will remain since the proposal is in line with the existing land use developments in the area. No deviation from this policy will be required to accommodate the proposed departures. The proposed departure will not have any impact on the overall density of the Kwaiwater area and therefore the density will remain the same after the departures have been approved.

3.10 PLANNING PRINCIPLES

The planning principles of spatial justice and spatial resilience do not apply to this application.

Spatial sustainability: It is motivated that the proposed departures are compatible with the character of the area and do not impact negatively on the rights of the surrounding landowners.

Spatial Resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to

be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

Efficiency refers to the need to create settlements that optimise the use of space, energy, infrastructure, resources, and land. Inherent in this statement is the need to promote densification and urban (as opposed to suburban) development typologies. This also has to do with the way the settlement itself is designed and functions, which should reduce the need to travel long distances to access services, facilities, and opportunities. Efficiency also refers to decision making procedures which are designed to minimise negative financial, social, economic, or environmental impacts. In addition, efficiency refers to the need for development application procedures that are efficient and streamlined. In our opinion the principle of efficiency is not applicable to this application.

Good administration: Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.

4. **RECOMMENDATION**

When this application is evaluated, it is important to take note of the following:

- The departures are compatible with the character of the area and do not impact negatively on the rights of the neighbouring landowners;

- No additional services are needed for the proposed application to be approved;
- The departures will not have a negative impact on the current character and land values of the surrounding erven;
- The existing dwelling, garages, boundary walls and clear view fence is of high quality and an asset to the area.
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the dismissal of an administrative penalty and the height and building line departures of Erf 12232 Hermanus.

