

## 4.2

**ERF 349, 10 MAIN ROAD, SANDBAAI: APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNERS (ON BEHALF OF CB & JA VAN WYK)**

**349 HSB (4188/2022)**

**(H Boshoff)**

**H van der Stoep**

**(028) 313 8900**

**Hermanus Administration**

**03 April 2024**

## 1. EXECUTIVE SUMMARY

An application has been received on 28 June 2022 from Messrs PlanActive Town- and Regional Planners on behalf of CB & JA van Wyk in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 349, Sandbaai, for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16(2)(f) of the By-Law, namely condition B.(2)(d) as contained in Title Deed T5251/2018, to accommodate the existing covered porch at ground floor level and the existing open wooden deck directly above the porch at first floor level, which structures encroach the 4.72m title deed street building line;
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to:
  - relax the street building line from 4m to  $\pm 1.975$ m to accommodate the existing covered porch at ground floor level and the existing open wooden deck/balcony directly above the porch at first floor level; and
  - relax the northern lateral building line from 2m to  $\pm 0.82$ m to accommodate an existing pergola.

The restrictive condition as contained in Title Deed T5251/2018 to be removed, reads as follows:

Clause B.(2)(d)

*“That no building shall be erected on the above erf or erven within 4.72m of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.”*

- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law for the contraventions as set out in paragraph 1 above.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plans (SDP) are attached as Annexure C. Title Deed T5251/2018 is attached as Annexure D.

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

## 3. BACKGROUND / SITE HISTORY

The property measures 773m<sup>2</sup> and is zoned for Residential Zone 1 purposes. It is developed with a double storey timber dwelling. An existing covered porch, an open wooden deck/balcony directly above the porch at first floor level, and a pergola encroaches building lines without municipal approval. There is also a wendy house situated at the southern rear corner of the property that encroach both the lateral- and rear building lines. The applicant however indicated that the structure will be moved outside the building line spaces, and therefore the structure does not form part of this planning report. The current owners wish to condone the contraventions.

## 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows (only the main points are conveyed – the detailed motivation report is attached as Annexure D):

- ❖ The previous owner deviated from the approved building plan during the construction of the dwelling. The current property owners want to legalize all existing structures. No new additions or alterations are proposed.
- ❖ The portions of the structures that encroach the land use scheme building lines up a mere ±7,72% of the total extent of the dwelling.
- ❖ The position and nature of the patio, balcony (deck), and pergola is unobtrusive in nature and do not impact negatively on the surrounding properties since no complaint from surrounding property owners has been received to date.
- ❖ The existing covered patio is ±22,172m<sup>2</sup> in extent and ±16m<sup>2</sup> encroaches the street building line. The covered patio is adjacent to the existing living room and serves as an extended area meant for relaxing and socializing.
- ❖ The balcony/deck is ±22,172m<sup>2</sup> in extent and ±15,956m<sup>2</sup> encroaches the street building line. The balcony/deck is adjacent to the existing lounge and dining area and serves as an extended area meant for relaxing and socializing.
- ❖ The pergola is 5,420m<sup>2</sup> in extent and ±4,250m<sup>2</sup> encroaches the northern lateral building line. The pergola is considered an extension of the patio at the northern side of the dwelling and creates additional privacy and shade on the patio area.
- ❖ The current property owners made no additions or alterations to the covered patio, balcony, and pergola.
- ❖ The visual impact of the existing covered patio and balcony is considered minimal and merely an extension of the dwelling.
- ❖ To demolish the structures to make it compliant, will diminish the aesthetic value of the dwelling and the property value.
- ❖ The proposals do not have any impact on the character or property values of the surrounding properties.
- ❖ The covered patio, balcony/deck, and pergola has existed for years without any complaints from neighbours.
- ❖ The massing and height of the structures are compatible with the character of the area.
- ❖ Good quality materials were used when the existing structures were built and match the architectural style of the main dwelling.

- ❖ The existing structures do not create an infringement to any passing traffic or public activity due the positions thereof in relation to the existing structures on the neighbouring properties and the wide road reserve of Main Road.
- ❖ The zoning of the property will remain unchanged, as well as the primary land use (single residential purposes).
- ❖ The proposals are not in conflict with the existing land use tendencies of the surrounding environment.
- ❖ All services on the subject property already exist and the existing structures will have no impact on the existing services.
- ❖ The proposals do not trigger Section 38 of the National Heritage Resources Act.
- ❖ The property is not situated within the Heritage Overlay Zone.
- ❖ The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013).

Administrative penalty

- Rectification of contravention

To rectify the contraventions, an application is submitted for the determination of an administrative penalty fee. However, the Municipal Planning Tribunal has the authority not to impose such a fee.

- The nature, duration, gravity, extent of the contravention and the conduct of the person involved in the contravention

The current owners bought the property in 2018 with all the existing structures. No alterations or additions were made to the existing structures since the owners bought the property in 2018. It is understood that the encroachments of the structures were the previous owner's work. The previous owner owned the property from 2004 until 2018. The latest building plan of property was approved on 11 July 2016. It is therefore assumed that the structures were constructed between July 2016 (after building plan approval) and October 2017 (the latter being the purchase date (registration into the new owners' name was on 13 February 2018)). It is therefore evident that the existing structures have been on the property for ±4-5 years. The latest approved building plan (2016) indicates the patio and balcony/deck, but not in the exact same position as it currently stands. The approved building plan does not indicate a pergola. The existing wendy house will be retained and moved outside the building lines.

- Whether the unlawful conduct was stopped

The current owners were unaware that the structures were never previously approved. The owners now attempt to rectify the contravention by submitting the administration penalty application and subsequent departure and removal of restrictive title deed conditions application in order to legalise the structures on the subject property.

- A report by a quantity surveyor in matters of unauthorised building / construction

Should the municipality find it necessary that an administrative penalty fee needs to be enforced for the unauthorised building work, a report by a quantity surveyor / building contractor with reference to the unauthorised building work, will be submitted. The reason being that there is a chance that no penalty fee will be imposed.

- 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 landowners, they have never previously contravened this By-Law or any other previous planning law.

## 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	23 September 2022	28 October 2022
Gazette	Yes	23 September 2022	28 October 2022
Notices ( <i>possibly affected property owners</i> )	Yes	22 September 2022	28 October 2022
Notices ( <i>persons mentioned in title deed</i> )	Yes	N/A	N/A
Internal Departments	Yes	23 September 2022	28 October 2022
Ward councillor	Yes	23 September 2022	28 October 2022
Total comments	<b>FOUR (4)</b>		
Total letters of support	<b>NONE</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly?			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			<b>Yes</b>
In case of application for removal, amendment, or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			<b>Yes</b>

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

Name	Date received	Summary of comments
Building Department	23/09/2022	No objection. The building plan application must comply with all applicable law.
Fire Services	06/10/2022	No objection subject to compliance with the provision of SANS 10400-A:2016, 10400-T:2020 and the By-Law Relating to Community Fire Safety.
OpenServe	25/10/2022	Attached as Annexure G.
Engineering Services	02/03/2023	Attached as Annexure H.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Four (4) external comments were received, namely:

- *K & L & L Meade & Furney; Erf 347, Sandbaai;*
- *TK Williams; did not provide physical address details;*
- *KT Meade; Erf 344, Sandbaai, and*
- *CG Garden; Erf 348, Sandbaai.*

Only the main points of comment are addressed as follows (the detailed comments are attached as Annexure E).

The applicant made general remarks and subsequently commented on the points of comment, which remarks are summarised as follows:

- The one objector (TK Williams) merely indicated that it is a resident of Sandbaai (no reference to his address or erf number); therefore it can be assumed that it is not an immediate neighbour.
- The property was registered in the names of the current owners on 13 February 2018 and at the time the balcony was in existence in the exact same position as it is currently in. The current owners are not aware when the balcony/deck was constructed, or by which previous owner, but they confirmed that it was constructed prior to the property being advertised to purchase, and prior to them purchasing the property. The balcony/deck was the main attraction and reason for purchasing the property by the current owners.
- At the time of purchase, the owners approached the building department of the municipality to view the approved plans of the property. The approved plans reflected the complete property structure including the balcony/deck. Once the owners were informed of a complaint lodged in respect of the balcony/deck, they approached the building department again to obtain a copy of the approved plans. Upon collection at the building department they specifically enquired whether the balcony/deck is illegal and was advised that the balcony/deck was previously approved and included on the approved plans dated 11 July 2016, which predates their ownership. Only after our client purchased Erf 349, Sandbaai it became evident that the previous owner did in fact deviate from the approved building plans by placing the structures inside the applicable building lines. The owners never hesitated to immediately give instruction to the applicant to assist in the matter to rectify the contravention by submitting a complete planning application.
- The current owners upgraded and renovated the property since they purchased it. The balcony/deck itself has been sanded down, varnished, stained, and the previous railings were removed and replaced with neat, expensive, white stained wood to enhance the aesthetics of the balcony.
- It is important to note that the owners of Erf 348 (Mr and Mrs. Garden), who lodged the complaint or dispute, sold its property since, and it is not clear whether the new owners have any issue with the balcony.

### **Point 1 of comments**

#### **KT Meade (16 Main Road – Erf 344, Sandbaai)**

(Only the noteworthy points of the comments are addressed – the detailed comments are attached as Annexure E.)

- The title deed street building line is 4,57m. To reduce the building line to 1,975m will be a significant reduction that will have a significant impact in terms of views, privacy, noise, neighbourhood degradation and property value degradation.
- The existing balcony blocks the view from erf 344 towards the ocean.
- To allow the balcony in its current position will set a precedent for the neighbouring properties and they will subsequently apply for the same departures to encroach the street building line.
- The balcony is an unsightly spectacle right on the street front – there are no aesthetic or architectural merits to keep this deck.
- The distance of the structure to the street boundary is misrepresented.
- The wall encroaches into the street and makes it appear that the distance to the structure is much larger than it actually is.
- The municipality is responsible to protect views against illegal structures (as is the case with this application).
- Neighbouring properties should not be forced to accommodate illegal structures where prospective buyers neglected to undertake a due diligence prior to buying the property.
- The objector suggests that the balcony be moved to the side of the structure (where it will have no impact on title deed conditions or neighbours' property rights).

#### Response from applicant

The owners of the subject property submit that the commenter's erf (Erf 344, 16 Main Road) is a vacant erf, and as such does not hold water. Even if the commenter develops its property there would in any event be no ocean view, similar to Erf 347 (14 Main Road) which has no view, as trees block the view and certainly not the balcony of the subject property. It is mala fide ("in bad faith") and dishonest to state that the balcony has any effect on Erf 344. The balcony in absolutely no way affects the vacant Erf 344. It will also not affect it even if a double storey is constructed thereon.

Regarding the comments relating to the aesthetics or architectural merits of the deck, the only response the owners could offer is that they have constantly been upgrading the property. Pictures of how the balcony appeared prior to them purchasing it may have been unsightly, but since they purchased the property, it has been neat, tidy, and renovated. Refer to the photographs below:

**PHOTO OF THE BALCONY/DECK AT THE TIME WHEN THE CURRENT OWNERS PURCHASED THE PROPERTY**



**PHOTO OF THE BALCONY/DECK AT THE TIME WHEN THE CURRENT OWNERS PURCHASED THE PROPERTY**



**PHOTO OF THE CURRENT RENOVATED OPEN DECK DIRECTLY ABOVE COVERED PORCH.**



PHOTO OF CURRENT RENOVATED PORCH DIRECTLY BENEATH OPEN WOODEN DECK



The commenter is undoubtedly aware that the construction of the balcony predates the current owners. The owners were aware that the property had approved plans and viewed same at the municipality. The building department also placed their minds at ease, in confirming that the balcony is approved and on the approved plans. The owners therefore indeed performed the necessary due diligence. They could not have known that the placement / development of the structures on site were not done in accordance with the approved building plan – with the balcony developed inside of the street building line and not as indicated on the approved building plans. The balcony certainly is not a simple nor a cheap construction, neither is the balcony impinging on the rights of surrounding property owners.

The owners of Erf 348 and Erf 350 Main Road only purchased their respective properties years after the owners of the subject property and did not take any issue with the balcony at the time of purchase. The owners of Erf 350 Main Road still do not take issue. The owners appreciate the suggestion that the structure be moved, but it is not plausible since the structure cannot simply be moved. It is further not the size of the area to which the commenter proposes it simply to be moved and the issue arises that there is then no access to the balcony. There is also a structure on the inside of the property against the wall to which the commenter proposes the balcony be moved. It is therefore for this reason also not possible to move it to the suggested location. Further, any move of the balcony will cause damage to the property, including but not limited to the walls, and the paint finishes. The property has already been renovated and repainted. There is further also no ocean view from that positioning which was the reason for purchase.

#### Response from town planner

Although Erf 344 is undeveloped, it is not known how the commenter will position the dwelling on the property when it is to be developed. It is firmly presumed that the title deed of the property also contains a clause that prohibits any structures closer than 4.72m from the street boundary (which is the case with the majority of the title deeds of the erven of Sandbaai). Thus, regardless of how a dwelling will be positioned on the property, the owners will enjoy a minimal, if any, sea view. Refer to extract below of the 2020 GIS aerial of the municipality. The yellow line shown on the extract of the GIS below from Erf 344 along the street boundaries of the erven directly to the south of Erf 344 represents the approximate 4.72m title deed street building lines of these properties.

The fact that all the erven from Erf 344 up to Erf 355 (to the south) has already been developed with the dwellings situated at the front sides of these properties, significantly minimizes any sea views for the owners of Erf 344 once it is developed. In addition, the dwelling on Erf 348 is a double storey dwelling that would further obstruct sea views from Erf 344 even if the owners develop a double storey dwelling with a balcony/deck at the street side (see GIS extract of streetscape of the dwelling on Erf 348 further below). An important consideration is the fact that the wooden deck is open and unroofed that makes any view impacts, if any, even more insignificant. It is further found strange that the commenters who now lay claim to sea views never submitted formal complaints at the time the previous owners owned the property being fully aware that the wooden deck already existed when the current owners purchased it. The applicant states that the application is a result of a complaint received by the previous owners of the adjacent Erf 348 regarding the balcony, but no trace of a formal complaint could be traced in any of the planning departments' complaints records. A notice was however served on the current landowners by the building department regarding the building line encroachments and deviations from historical approved building plans. The later will be discussed in the determination of the administrative penalty section of this planning report.

BELOW 2020 GIS EXTRACT: THE APPROXIMATE 4.72M TITLE DEED STREET BUILDING LINE IS INDICATED AS A YELLOW LINE FROM THE SOUTHERN LATERAL BOUNDARY OF ERF 344 WHICH LINE ALSO REPRESENTS THE APPROXIMATE SAME DISTANCE FROM THE STREET BOUNDARIES OF THE ERVEN TO THE SOUTH TOWARDS THE OCEAN/SEA



BELOW DOUBLE STOREY DWELLING ON ERF 348 ADJACENT TO THE SUBJECT PROPERTY



The commenter's comment that a precedent will be created for similar applications is pure speculation since each planning application is considered on its merits, which is also the case with the application under discussion.

The commenter's claim that the relaxation of the building line will have a significant impact in terms privacy, noise, neighbourhood degradation and property value degradation, are exaggerated statements without any substantiated proof. No noise complaints could be traced on records. The current owners upgraded the previous less pleasing appeal of the dwelling to a much more pleasing appeal, thus an upgrade of the property and to the surrounding area. Further, no physical change in the position or alterations to the deck occurred since the current owners purchased the property.

The subject property, due to its location at the lower southern residential area of Sandbaai along Main Road and not the busy hub of Sandbaai, is within an area that is relative quiet throughout the year except during holiday periods when mostly holiday makers are attracted to the coastal area. It is therefore the opinion that the open wooden deck, on which most of the points of comment are concentrated upon, does not impact on the vested rights of the owners of erven in the immediate vicinity of the subject property, nor does it detract from the character of the immediate area, and neither does it degrade the neighbourhood in any significant manner. It can therefore not impact on property values as claimed by the commenters. One must also consider that the impact on the streetscape of the property and that of surrounding developed properties are insignificant when the 25m wide road reserve of Main Road is taken into consideration in relation to the street reserves in the neighbourhood that varies from 15.74m to 12.59m in width. It is important to note that a similar application was approved on Erf 90, Sandbaai during August 2020, which property is situated in Kusweg (road reserve 15.74m), which approval was also for an open deck wooden deck at first floor level at 1.71m at the closest point from the street boundary (see letter of approval attached as Annexure K). Also see photo of wooden deck on Erf 90 directly below. A condition of approval was that the deck may not be enclosed whatsoever. Should the application be approved, it would also be subject to such the same condition.

BELOW AN APPROVED SIMILAR OPEN WOODEN DECK ON ERF 90, SANDBAAL (KUSWEG)



The commenter points out that the distance of the structure to the street boundary is inaccurate, and that boundary wall encroaches into the street that makes it appear that the distance to the structure is much larger than it is, is factual. A topographical survey was conducted by a professional land surveyor prior to the submission of the planning application that revealed that the street boundary wall indeed encroaches the street boundary of the property onto the street reserve by 1.29m (see copy of topographical survey attached as Annexure I). The applicant used the surveyed measurements, and the position of the erf pegs after the survey was completed to provide the correct distances of the encroachments as set out in its application, which is a true reflection as per the survey. It should be noted that the landowners are going to relocate the street boundary wall to within its erf boundaries as per the "as built" building plans that was submitted with the application (attached as Annexure C). Should the application be approved, a condition must be imposed that the street boundary wall be relocated to within the property boundaries.

It should also be noted that it is not the responsibility of the municipality to determine erf pegs. It should however be considered that in earlier days when landowners submitted building plans for approval it was not a requirement that a topographical survey be done by a professional land surveyor that must accompany such plans which at present times is a requirement in certain instances (i.e. new dwellings). The latter lead thereto that numerous dwellings/structures in the area are not positioned on the erven as per the set out dimensions indicated on such approved building plans. There are various reasons for such occurrences for example the flattening of erven where erf pegs got lost and property owners, out of ignorance, built their dwellings by aligning their property boundaries with adjacent property boundary walls resulting in these incorrect positions of dwellings/structures.

Although not applicable to the application at hand, it is obvious that topographical survey suggests that the dwellings/structures on those erven (including the commenters' erven) to the north and to the south of the subject property, are also positioned within the relevant street building lines if one look at the positions of the street boundary walls of certain erven (see aerial extract above) that is aligned with the street boundary wall of the subject property. The latter will however be taken up with the specific landowners at a later stage.

The commenter's point that the municipality is responsible to protect views against illegal structures, is debatable since one must consider that it is nearly impossible for the municipality to be aware of every illegal encroachment on the numerous properties within its vast area of jurisdiction. The current owners of the subject property only became aware that the wooden deck/balcony was illegally constructed and constructed over the street building lines when it received a notice from the building department that subsequently lead to the submission of the planning application under discussion. Further, the owners only became aware that the street boundary wall is situated outside its property boundaries once the property survey was completed. The view impacts on surrounding property owners have been properly assessed in the above response on a similar point of comment.

The commenter suggests that the balcony be moved to the side of the dwelling where it will have no impact on title deed street building line or the neighbours' property rights. It is the choice of the landowners whether it wants to reposition the wooden deck or not. Further, the repositioning thereof is not reflected in the application, thus the landowners wish to retain the current position of the wooden deck. The latter is in any event elaborated upon by the applicant in its response on Point 1 of the above comments.

#### **Point 2 of comments**

#### **TK Williams (resident/tenant in Sandbaai)**

**As a local resident of Sandbaai, I often walk my dog past this unsightly house with wooden deck protruding from front of house with a braai attached to the side. I only noticed today that the deck is illegal since I always wondered why only this house has a balcony so close to the boundary and then read the notice. I object to make something legal by paying money to the municipality where it should never have been there in the first place.**

#### **Response from applicant**

The objection does not make mention which property Mr. Williams owns or resides at. The owners (clients) repeat their submissions as in Point 1 above.

#### **Response from town planner**

A property search was conducted in available records of the municipality, and no evidence could be traced that indicates that the commenter owns property in the Overstrand. It can thus be fairly assumed that the commenter is a tenant somewhere in the area or its property is registered in a trust or alike. No response can therefore be offered on its comment since it cannot be determined to what extent the application impacts on the commenter, except when it walks its dog past the property.

**Point 3 of comments****F Furney (14 Main Road – Erf 347, Sandbaai)**

**The balcony obscures the views toward the ocean and should be removed or moved.**

**They are negatively affected by the structures built in violation of the title deed and zoning scheme building lines.**

**Response from applicant**

The owners submit that the view to the ocean from 14 Main Road is not affected or obscured by the balcony at 10 Main Road. The view is in fact affected and blocked by the trees surrounding 14 Main Road. The existing Milkwood Tree on / in front of Erf 348, Sandbaai clearly already obscures the views of 14 and 12 Main Road that is evident from the photos below that was taken on 20 November 2022.

**Response from town planner**

Refer to planner's response in Point 2 above, as well as the extract of the GIS. The points of comment are the same of that of F Furey above, as well as the planner's response thereto. As already mentioned in Point 2 above, the yellow line on the above GIS extract represents the approximate 4.72m title deed street building lines of those properties situated in a southerly direction towards the ocean/sea in the residential block within which the subject property is situated. All the erven from Erf 347 up to Erf 355 (to the south) at the end of the residential block has already been developed, and the dwellings are situated at the front sides of the properties with the dominant views in a westerly direction that significantly minimizes any sea views.

The dwelling on Erf 348 adjacent to Erf 347 is a double storey dwelling that in any event obstructs sea views from the commenter's property.

**Point 4 of comments**

**C Garden (12 Main Road – Erf 348, Sandbaai)**

**The covered porch on the ground floor and balcony at first floor level are considered an invasion of their privacy and disturbance of the peace to their first floor living area due to the regular use of the said balconies. Their sea view has been greatly affected by the illegal balcony.**

Response from applicant

Mr Craig Garden is not the owner of the subject property. The property is owned by his son that currently resides in Australia. It is unclear if the property owner actually signed the letter. A power of attorney did not accompany the letter authorizing Mr Garden to act on behalf of his son.

Mr. Garden and / or his spouse only purchased the property during 2021 and were aware of the position of the balcony on the subject property. It is opportunistic of Mr Garden to now claim that the balcony is an invasion of privacy after purchasing the property being aware that there is a balcony at the subject property. The balcony is utilised to view the ocean.

The comment that a disturbance of the peace is caused due to the constant usage of the said balconies is false since the dwelling is a holiday house that is only occupied during some weekends and during school holidays. There is no constant usage and no disturbance of peace. Mr Garden also does not qualify his statement and therefore one cannot truly respond to the bold unqualified statement.

It is placed on record that not once has a disturbing the peace complaint or any similar complaint been lodged by anyone against Erf 349. Furthermore, it is placed on record that Mr Garden has installed cameras overlooking Erf 349, infringing the owners' right to privacy which will be taken up amicably with the new owners of Erf 348. The only invasion of privacy is the cameras installed at Erf 348.

Mr Garden does not explain what he means by his sea view being affected by the owners' balcony and it is therefore not possible to respond. The owners of Erf 349 placed it on record that they purchased the property as it stands today which had approved plans including the balcony at the time of purchase. The owner collected the approved plans in December 2021 and was again assured by the building department of the municipality that the balcony is legal and was previously approved and very clear on the approved plans dated 11 July 2016. However, the approved building plan indicates the same dwelling layout / shape with patio and balcony.

It should be noted that the existing Milkwood Tree on / in front of erf 348 Sandbaai clearly already obscures the views of Erven 347 and 348 that is evident on the photographs above taken on 20 November 2022.

Response from town planner

It is agreed with the applicant that the commenter is not the registered owner of the property. However, for record purposes the following response are offered on the commenter's points of comment:

As already responded to similar comments under Point 2 above, the yellow line on the above GIS extract represents the supposed/approximate 4.72m title deed street building lines of those properties situated in a southerly direction towards the ocean/sea in the residential block within which the subject property is situated. All the erven from Erf 347 up to Erf 355 (to the south) at the end of the residential block has already been developed, and the dwellings are situated at the front sides of the properties facing in a westerly direction and that in any event significantly minimizes any sea views. The dwelling on Erf 348 adjacent to Erf 347 is a double storey dwelling that in any event obstruct sea views from the commenter's property.

The comment regarding the disturbance caused of the use of the patio at ground floor and the balcony at first floor level cannot be agreed with since no noise disturbance complaints can be traced on available records. Mr Garden also does not substantiate its statement and therefore one cannot truly respond to the bold unsubstantiated statement.

Further to the above, it is obvious from the GIS street view extract below and the aerial view that the dwelling on Erf 348 has no balcony at the street side thereof. It only has a balcony at the northern side of the dwelling that does not provide any views to the south towards the sea/ocean, apart from views to the west, north, and the east. The balcony on the subject property is not visible from the balcony on Erf 348 at all. In view of the above, any claims that the open balcony on the subject property impacts on views, is an inflated statement.



STREET VIEW OF COMMENTER'S PROPERTY (ERF 348)

AERIAL VIEW INDICATING BALCONIES ON ERVEN 348 AND 349

## 8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

As per Paragraph 7 above.

## 9. MUNICIPAL ASSESSMENT OF COMMENTS

As per Paragraph 7 above.

All relevant departments provided positive comments.

## 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 can be motivated in terms of the principles in the following manner:

Spatial Justice

The proposal will not perpetuate historic spatial imbalances since the property is situated on an erf as per the township establishment of Sandbaai.

Spatial sustainability

The application property is located within the urban edge and will therefore not lead to urban sprawl. No natural habitat is impacted upon, and it will have no negative influence on the environment.

Efficiency

The proposed development intends to make optimal use of space on the property, thereby optimising existing infrastructure resources.

Spatial Resilience

The proposal intends to ensure that the existing resource (land) is used to its maximum in an affordable manner and in line with the Overstrand Municipality's forward planning documents.

Good administration

The application process followed the required planning procedures, and a good public participation process has been followed.

**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 10.2 above.

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

The application is consistent with the SDF and OMGMS.

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

N/A

**10.6 Impact on Municipal engineering services**

All services exist. The additions will not have an impact on existing services and is supported by the Engineering Services Department.

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

The application does not trigger the provisions of NEMA or Section 38 of the National Heritage Resources Act.

**10.8 Existing and proposed zoning comparisons and considerations**

The Overstrand Land Use Scheme requires a 4m street building line, a 2m lateral line, whilst the title deed of the property requires a 4.72m street building line. The encroachment of the street- and lateral building lines are addressed by means of the application.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS*****The financial or other value of the rights***

The removal of the restrictive condition pertaining to the street building line will increase the use rights of the property in that it will legalise the as built structures. There is no financial value to the holder of the rights, being the municipality.

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

There is no personal benefit for the holder of the rights.

***The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended***

The personal benefit would be that the removal of the restrictive condition will legalise the as built covered porch at ground floor level and the existing open wooden deck at first floor level, thus increasing the property value.

***The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition***

The social benefit of the restrictive condition remaining in place is that the character of the area will remain unchanged, whilst the removal of the restrictive condition will enable the legalisation of the existing street building line encroachment.

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

Application is only made for removal of one restrictive condition, namely condition C.(2)(b) pertaining to the street building line, whilst retaining condition B.(2)(a) will ensure that the development and use of the property will be limited to single residential purposes only.

The desirability of the proposed removal of the restrictive title condition will further be evaluated under paragraph 12 below.

## 12. THE DESIRABILITY OF THE PROPOSAL

The desirability of the application must also be read in conjunction with town planner's response to the various points of comment as set out in paragraph 7 above.

### ***Removal of restrictive title deed condition***

The owners of the property will benefit from the removal of the restrictive title deed condition to legalise the covered porch and the existing open wooden deck/balcony directly above that encroaches the title deed street building line instead of demolishing the structure that will lead to the devaluation of the property whereas retaining the structure will ensure an increase in the property's value.

### ***Building line departures***

#### Open balcony/wooden deck and covered porch directly beneath

The covered porch at ground floor level came about merely as a result of the wooden decking of the open balcony that was constructed directly above the porch at first floor level. An important consideration is the fact that the wooden deck/balcony is open and unroofed that makes view impacts, if any, insignificant thus ensuring that the rights of adjacent property owners are minimally affected. The current owners also re-painted the whole dwelling including the balcony which is considered an improvement that positively impacts the appearance of the property and the character of the area.

It needs to be noted that the deck does not encroach any of the 2m lateral building lines of the property that further minimises any possible impacts on adjacent property owners. In addition, it can be observed on the topographical survey that the front street facing mass of the dwelling unit does not encroach the 4.72m title deed street building line except for the open balcony and covered porch. With the removal of the relevant title deed clause, only the encroachment of the 4m land use scheme building line needs to be considered, which encroachment is approximately 2m (2.025m as surveyed) which, in view of the above, is regarded as not significant enough to refuse the encroachment. In addition, it was clearly demonstrated under paragraph 7 above on the responses to the comments received that due to various factors, any view impacts on adjacent property owners are insignificant.

In view of the above it is the considered opinion that the encroachment of the street building line is insignificant since it would not detract from the character of the surrounding built environment, or impact on the rights of adjacent property owners or devalue the surrounding property values. The building line encroachment can therefore be supported.

### Pergola

The pergola that encroaches the 2m northern lateral building line of the property is 5,420m<sup>2</sup> in extent and ±4,250m<sup>2</sup> encroaches the building line. See street view below of the dwelling unit indicating the pergola at the left side thereof. The pergola is considered an extension of the balcony at the northern side of the dwelling, but it is not accessible due to the balustrades of the balcony and the fact that it has no platform/roof. The predominant comments received do not have any bearing to the pergola that encroaches the lateral building line, but the wooden deck/balcony at the street side of the dwelling. The pergola is not enclosed and does not impact on any views or the rights of surrounding property owners. It further does not detract from the character of the area and the building line encroachment is therefore regarded as insignificant in nature and can be supported. A condition should however be imposed that it may not be enclosed whatsoever.

The applicant indicated that the existing wendy-house structure that encroaches the 2m rear building line and the 2m southern lateral building lines will be retained but will be moved outside the building lines. It therefore does not form part of the application, but a condition should be imposed that the structure be relocated outside the building lines.

**STREET VIEW INDICATING PERGOLA AT THE LEFT SIDE OF THE DWELLING (FIXED TO AN EXISTING BALCONY (NOT BALCONY UNDER DISCUSSION))**



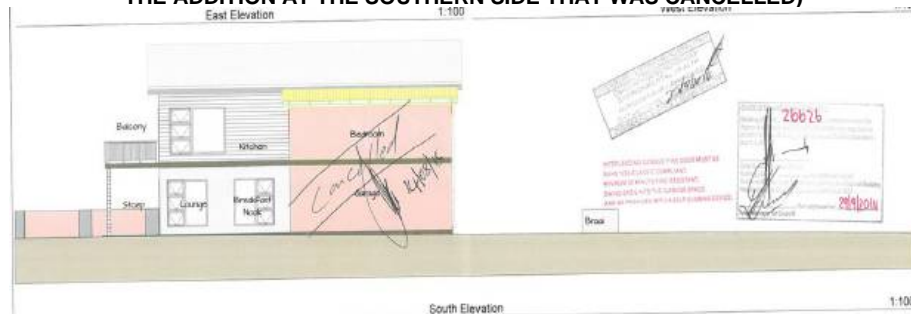
### ***Determination of administrative penalty***

The applicant motivated its application for the determination of an administrative penalty in terms of the required criteria as set out in Section 90(3) of the By-Law (see paragraph 4. of this submission).

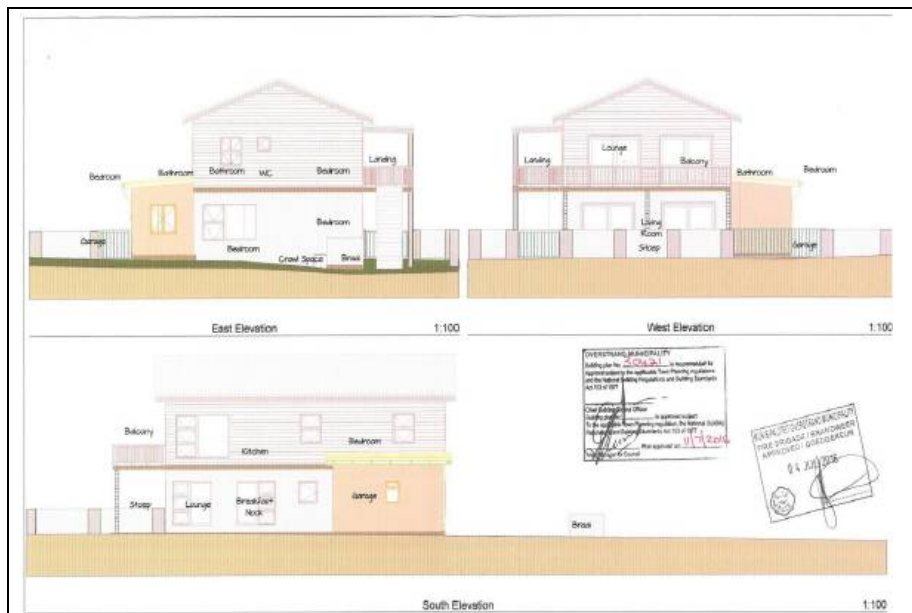
The nature, duration, gravity and extent of the contravention

See extracts of 2014 and 2016 (latest) approved building plans for additions to the dwelling. From the plans it can be determined that the porch and wooden deck existed prior to 2014. The property was only registered in the names of the current owners during 2018 (copy of title deed is attached). From the 2016 plans (west elevation) it can be observed that the pergola did not form part of the building plan approval. The applicant indicates in its motivation that the previous owner owned the property from 2004 until 2018 and that no additions were made to the existing structures since its clients purchased the property in 2018. In view of the afore said it is clear that the contraventions occurred between 2004 and 2018 before the current owners purchased the property.

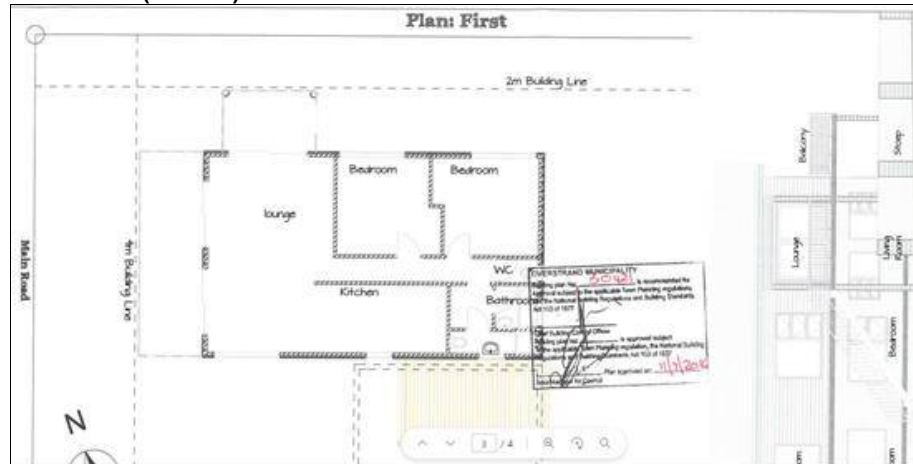
**EXTRACT OF 2014 APPROVED BUILDING PLANS FOR ADDITIONS TO THE DWELLING UNIT (OTHER THAN THE ADDITION AT THE SOUTHERN SIDE THAT WAS CANCELLED)**



**EXTRACT OF 2016 (LATEST APPROVED BUILDING PLANS FOR ADDITIONS TO THE DWELLING UNIT**



## EXTRACT OF 2016 (LATEST) APPROVED BUILDING PLANS FOR ADDITIONS TO THE DWELLING UNIT



The applicant indicates in its motivation that the contraventions (building line encroachments) are as follows:

- ❖ Covered porch:  $\pm 16\text{m}^2$  (total encroachment).
- ❖ Pergola:  $\pm 4.250\text{m}^2$ .

The conduct of the person (allegedly) involved in the contravention

From the evidence at hand, it is apparent that the current landowners were not responsible for the contraventions.

A report by a quantity surveyor in matters of unauthorised building/construction

The applicant indicated that should an administrative penalty be enforced by the municipality, it will provide a report by quantity surveyor or building contractor for the determination of an administrative penalty. However, since no such report was submitted by the applicant, the provisions of Section 90(5) of the By-Law will apply should and administrative penalty be payable.

Whether the unlawful conduct was stopped

The structures are existing whether it is used as such or not and the current owners are in the process of rectifying the contravention via an application for the determination of an administrative penalty, departure, and removal of a restrictive title deed condition.

Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law

No records could be traced that indicates that the current landowners contravened current or any previous local planning legislation.

### Conclusion

#### Wooden deck and covered porch directly beneath

Refer to the above extracts of the 2014 and 2016 building plans. Although the wooden deck is indicated as existing on the 2014 and 2016 approved building plans for alterations and additions, there are no plans on record whereby the wooden deck has been formally approved as an addition to the dwelling unit. The applicant, in its motivation, states that at the time of purchase of the property, the owners approached the building department of the municipality to view the approved plans of the property. However, a thorough investigation by the landowners at the time would have revealed that structure have actually not been formally approved by the municipality. It is therefore the opinion that the landowners not be waived from the payment of an administrative penalty. Due to the fact that the "covered" porch is merely a result of the wooden deck directly above, the administrative penalty should only be applicable to the wooden deck. The administrative penalty payable is calculated as follows at 3% of the building costs:

- Area of wooden deck that encroach the 4m street building line  
15.9m<sup>2</sup> x R18 026,25 (building cost per 1m<sup>2</sup> in terms of Municipal Budget) = R286 617,37.

R286 617,37 divided by 100, multiplied by 3 to calculate the total value of the encroachment, equates to **R8 598,52** (excluding VAT).

#### Pergola

Although it is evident that the current landowners did not construct the pergola, it is obvious that the current landowners did have insight on all the previous approved building plans, which plans did not indicate the pergola that encroach the 2m northern lateral building line. Nonetheless, due to the fact that the structure mainly consists of five wooden poles/planks (as can be observed from the site photos forming part of this submission), being unenclosed, uninhabitable, unroofed, a see-through structure, and small in extent, it is the opinion that it has a very low overall impact/significance that does not justify the payment of an administrative penalty. Further, the points of comments are predominantly aimed at the wooden deck and not the pergola.

### 13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) for the removal of condition B.(2)(d) as contained in Title Deed T5251/2018 of Erf 349, Sandbaai, to accommodate the existing covered porch at ground floor level and the existing open wooden deck/balcony directly above the porch at first floor level, which structures encroach the 4.72m title deed street building line, **be approved** in terms of the provisions of Section 61 of the By-Law;

2. that the application for departure in terms of Section 16(2)(b) of the By-Law to relax the street building line of Erf 349, Sandbaai from 4m to  $\pm 1.975$ m to accommodate the existing covered porch and the existing open wooden deck/balcony directly above the porch, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the By-Law to relax the northern lateral building line of Erf 349, Sandbaai from 2m to  $\pm 0.82$ m to accommodate an existing open pergola, **be approved** in terms of the provisions of Section 61 of the By-law; and
4. that, in terms of the provisions of Section 90(5) of the By-Law, the applicant/landowners, **not be exempted** of the payment of an administrative penalty for the open wooden deck, but **be exempted** of the payment of an administrative penalty for the covered porch;
5. that the decisions in paragraphs 2, 3, and 4 above be subject to the following conditions:
  - (a) that the administrative penalty determined at 3% of the building costs (as per municipal budget) of the extent of the encroachment, calculated at R8 598,52 (excluding VAT), must be payable within 60 (sixty) days of the final decision of the application;
  - (b) that the wendy house type structure at the southern rear corner of the property that encroach both the lateral and rear building lines, must be moved/relocated outside the building line spaces;
  - (c) that the covered porch and open wooden deck/balcony directly above the porch at first floor level, may not be enclosed in any way whatsoever;
  - (d) that the street boundary wall of the property that is situated in the Main Road reserve, must be relocated to within the property boundaries of the property;
  - (e) that building plans must 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, which plans must be submitted within 60 (sixty) days from the final approval of this application;
  - (f) that all the conditions in the Services Report and Telkom (Open Serve) (attached as Annexures G and H), must be complied with;
  - (g) that all other development parameters as prescribed in the relevant Zoning Scheme; and
  - (h) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
6. that the applicant and the commenters be notified of their respective appeal rights in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above conditional approvals.

## 14. REASONS FOR RECOMMENDATION

### Reasons for approvals

- ❖ The application has followed due procedure.
- ❖ None of the relevant internal or external departments have any objection.
- ❖ The encroachments will not negatively impact on the rights of adjoining property owners, nor does it degrade the neighbourhood in any significant way.
- ❖ It is not out of line with the broader character of the area.
- ❖ All the erven from Erf 347 up to Erf 355 (to the south) at the end of the residential block has already been developed, and the dwellings are predominantly situated at the front sides of the properties facing in a westerly direction and that significantly minimizes any sea view impacts.
- ❖ The impact on the streetscape of the property and that of surrounding developed properties are insignificant when the 25m wide road reserve of Main Road is taken into consideration.

### Reasons for the payment of an administrative penalty for the wooden deck

- ❖ The applicant, in its motivation, states that at the time of the purchase of the property, the owners approached the building department of the municipality to view the approved plans of the property. A thorough investigation, however, would have revealed that the structure has actually not been formally approved by the municipality.

### Reasons for the exemption of the payment of an administrative penalty for the pergola

- ❖ From records it is evident that the current landowners are not responsible for the construction of the pergola.
- ❖ No formal complaints from surrounding property owners could be traced on town planning records pertaining to the pergola.
- ❖ Due to fact that the pergola mainly consists of five wooden poles/planks, being unenclosed, uninhabitable, unroofed, a see-through structure, and small in extent, it is the opinion that it has a very low overall impact/significance that does not justify the payment of an administrative penalty.
- ❖ The points of comments received are predominantly aimed at the wooden deck and not the pergola.

## 15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T5251/2018
Annexure E:	Comments received
Annexure F:	Comment from applicant
Annexure G:	Comment: OpenServe
Annexure H:	Services Report
Annexure I:	Topographical survey
Annexure J:	Notice
Annexure K:	Letter of approval, Erf 90, Sandbaai

**SIGNATURES**

**AUTHOR**

Name:

**S VAN DER MERWE**

SACPLAN Reg No:

**A/1850/2014**

Signature:

\_\_\_\_\_

Date:

\_\_\_\_\_



**PROPOSED DETERMINATION OF AN ADMINISTRATIVE  
PENALTY, DEPARTURE & REMOVAL OF A  
RESTRICTIVE TITLE DEED CONDITION**

**ERF 349 SANDBAAI**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

Plan Active Town & Regional Planners has been appointed by C.B. & J.A. van Wyk, the owners of erf 349 Sandbaai, to apply for the administrative penalty, departure and removal of a title deed condition of the subject property.

Erf 349 Sandbaai is 773m<sup>2</sup> in extent and is held by title deed no. T5251/2018.

There is an existing double storey dwelling with wendy house situated on the subject property. Most of the As Built structures on the subject property were approved in the past. Refer to a copy of the approved building plan dated 11 July 2016. The previous owner however deviated from the approved building plan during the construction of the dwelling. Our clients bought the subject property in 2018 and it recently came to their attention that the As Built structures were not constructed in line with the approved building plan. At the time of sale to our clients in 2018 the main attraction of the property was the position of the balcony and the magnificent views from the balcony. It now seems that the patio (ground floor level), the balcony (first floor level) situated on Main Road and the pergola on the northern erf boundary encroach both the Land Use Scheme building lines. The balcony and patio also encroach the title deed street building line.

The current property owners want to legalize all existing As Built structures. No new additions or alterations are proposed.

Thus, this application intends to address the encroachments of the existing As Built structures (covered patio, balcony and pergola).

This application will address the following existing structures that encroach the Land Use Scheme regulations and title deed building lines:

- The existing covered patio (ground floor level) that encroaches the 4,72m title deed street building line and 4m Land Use Scheme street building line;
- The existing balcony (first floor level) that encroaches the 4,72m title deed and 4m Land Use Scheme street building line;
- The existing pergola that encroaches the 2m Land Use Scheme northern lateral building line.

## **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 (building lines)** of erf 349 Sandbaai;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the **removal of a restrictive title deed condition** of erf 349 Sandbaai.

### **3. NEED AND DESIRABILITY**

#### **3.1 PROPERTY DESCRIPTION**

Erf 349 Sandbaai is situated at 10 Main Road, Sandbaai. Refer to the locality plan attached. Erf 349 Sandbaai is 773m<sup>2</sup> in extent and is held by title deed no. T5251/2018.

The subject property gently slopes in an easterly direction and is characterized by residential structures (double storey dwelling with wendy house) and a garden area. The existing dwelling has a footprint (ground floor level) of ±145,656m<sup>2</sup> in extent. The total floor area on first floor level is ±116,082m<sup>2</sup>. The dwelling on the subject property has spectacular sea views to the south and south-west.

#### **3.2 ZONING**

Erf 349 Sandbaai has the following land use rights:

ERF NUMBER	ZONING
Erf 349 Sandbaai	Residential Zone 1: Single Residential

Surrounding properties are zoned for single residential, public road and public open space purposes.

#### **3.3 LAND USE**

There is an existing double storey dwelling with wendy house and garden situated on erf 349 Sandbaai. The subject property is therefore used for single residential living purposes.

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A copy of the latest approved building plan dated 11 July 2016 is attached.

Land uses that surround the subject property are single residential dwellings, public open spaces and public roads.

### 3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** for erf 349 Sandbaai to accommodate the existing covered patio, balcony, pergola and wendy house in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020;
2. The **departure** of erf 349 Sandbaai in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
  - relax the **street building line** (Main Street) from 4m to 1,975m to accommodate the existing covered patio on ground floor level and balcony on first floor level;
  - relax the **northern lateral building line** from 2m to 0,82m to accommodate the existing pergola;
3. The **removal of a restrictive title deed condition** of erf 349 Sandbaai in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to remove condition B.2 (d) on page 3 of title deed no. T5251/2018 to:
  - Accommodate the existing stoep / deck on ground floor level and the As Built balcony on first floor level that encroach the 4,72m title deed street building line (Main Road).

The potential of the subject property is discussed in detail in *Section 3.5 Potential of the property*.

There is an existing double storey dwelling with wendy house situated on the subject property. Most of the As Built structures on the subject property were approved in the past. The approved building plan indicates the same dwelling layout / shape with patio and balcony. However, the previous owner deviated from the approved

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building plan when the dwelling with patio and balcony was constructed. There is also an existing pergola, that encroaches the northern lateral building line, that was constructed by the previous property owner. The current property owners bought the subject property with the existing structures As Built and want to address the unlawful structures and the uses thereof.

Thus, this application will address the encroachments of the existing As Built structures (covered patio, balcony, pergola) and to address the unlawful structures (covered patio, balcony, pergola and wendy house).

Here follows the detail of the proposed application for consideration:

#### **3.4.1 Rectification of contravention**

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), 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.

As the application is for the rectification of a contravention of the By-Law (As Built patio, balcony, pergola and wendy house), an application is submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee.

In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

- **The nature, duration, gravity and extent of the contravention**

Our clients bought the subject property in 2018 with all existing structures As Built. Refer to a copy of the topographical survey plan compiled by the land surveyors dated January 2022 attached. No alterations or additions were made to the existing

structures since our clients bought the property in 2018. It is understood that the encroachments of the As Built structures were the previous owner's work (the previous owner owned the property from 2004 until 2018). The latest building plan for the subject property was approved on 11 July 2016. It is therefore assumed that the As Built structures were constructed between July 2016 (after building plan approval) and October 2017 (the latter being the purchase date; registration into the new owners' name was on 13 February 2018). It is therefore evident that the existing As Built structures have been on the property for  $\pm 4$ -5 years.

The existing covered patio and balcony facing the Atlantic Ocean to the south and south-west was the major drawing / selling point of the subject property when our clients bought the property in 2018. It is therefore of utmost importance to our clients that the structures be retained.

The existing covered patio is  $\pm 22,172\text{m}^2$  in extent. The existing balcony is  $\pm 22,172\text{m}^2$  in extent. The zoning scheme regulations allow a patio to be positioned within the street building line, subject to the structure not being higher than 1m above the existing ground level. However, the As Built patio is considered a *covered* patio since it is covered by the balcony directly above at the same position. The As Built covered patio and balcony encroach the relevant street building line and a departure application is submitted simultaneously to address the building line encroachments.

The As Built pergola is  $5,420\text{m}^2$  in extent.

The existing wendy house is  $\pm 17,5\text{m}^2$  in extent and will be retained since the subject property has no other outbuildings to store garden implements and general property maintenance items. The wendy house will however be moved outside the building line to ensure that the structure no longer encroaches the relevant lateral and rear building lines.

The As Built plan indicates the existing encroachments below:

The total extent of the existing structures that encroaches the relevant building lines is as follows:

	Land use scheme building line encroachment
Patio no. 1	$\pm 16\text{m}^2$ (72% of the covered patio encroaches the street

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	building line)
<b>Balcony</b>	±15,956m <sup>2</sup> (71,97% of balcony encroaches the street building line)
<b>Pergola</b>	±4,250m <sup>2</sup> (78,41% of the pergola encroaches the street building line)
<b>Wendy house</b>	N/a – to be repositioned on site to no longer encroach the relevant building lines.

The existing As Built dwelling's floor area is ±261,738m<sup>2</sup> in extent. The structures / portions that encroach the land use scheme building lines therefore takes up a mere ±7,72% of the total extent of the dwelling.

At present the As Built pergola is not a habitable area but is considered a space of the dwelling used for relaxing and entertaining. The wendy house is used for storage purposes. Both the As Built covered patio and balcony are considered habitable spaces.

The position and nature of the As Built patio, balcony, pergola and wendy house are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date. A building line departure application to accommodate the As Built structures is included in this application.

- **The conduct of the person involved in the contravention**

The As Built structures were constructed by the previous owner of the property. The current owners were unaware that the As Built structures weren't previously approved. They bought the property in 2018. The copy of the latest approved building plan (2016) indicates the patio and balcony, but not in the exact same position as it currently stands. The approved building plan does not indicate a pergola. The existing wendy house will be retained and moved outside the building lines. The current owners (our client) have never contravened the land use planning By-law in the past. They addressed the matter related to the unlawful structures as

soon as they were made aware of the fact and appointed the relevant consultants (architects and town planners) to assist them to obtain the necessary approvals.

- **Whether the unlawful conduct was stopped**

The current owners were unaware that the As Built structures described above were never previously approved. The owners now attempt to rectify the contravention by submitting the administration penalty application and subsequent departure and removal of restrictive title deed conditions application in order to legalise the As Built structures on the subject property.

- **A report by a quantity surveyor in matters of unauthorised building / construction**

If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised building work, we will submit a report from a quantity surveyor / building contractor 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.

- **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 landowners, they have never previously contravened this By-Law or any other previous planning law.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the low impact the As Built patio, balcony, pergola and wendy house have had and will continue to have on the surrounding area (as further motivated in the building line and removal of title deed conditions application below). The As Built structures have a minimal

impact on the neighbouring properties since the footprint of the structures will remain unchanged.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures. The owners were unaware of the fact that the structures were illegally constructed over the relevant title deed and land use scheme's building lines.

The owners never hesitated to immediately give instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure and removal of restrictions application and submitting a determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owner for the reasons given above.

### **3.4.2 Departure (building line relaxations)**

#### **3.4.2.1 Existing covered patio, balcony and pergola**

The existing covered patio and balcony were indicated on the latest approved building plan, but when development took place the construction of the dwelling and balcony deviated from the approved building plans. During the construction the position of the covered patio and balcony shifted over the street building line. An unlawful pergola was also constructed by the previous owner on the northern erf boundary and encroaches the Land Use Scheme's northern lateral building line.

It is proposed to retain the As Built covered patio, balcony and pergola. The existing covered patio and balcony facing the Atlantic Ocean to the south and south-west were the major drawing / selling point of the subject property when our clients bought the property in 2018. It is therefore of the utmost importance to our clients that the structures be retained.

The As Built covered patio and balcony were constructed within the 4,72m title deed street building line as well as the 4m Land Use Scheme street building line. The As Built pergola was constructed within the 2m northern lateral Land Use Scheme building line.

An application is submitted for a departure to:

- Relax the street building line (Main Road) from 4m to 1,975m to accommodate the existing As Built covered patio on ground floor level and balcony on first floor level;
- Relax the northern lateral building line from 2m to 0,82m to accommodate the existing pergola.

The existing covered patio is  $\pm 22,172\text{m}^2$  in extent. As previously mentioned,  $\pm 16\text{m}^2$  ( $\pm 72\%$ ) of the existing covered patio encroaches the street building line. The covered patio is adjacent to the existing living room and serves as an extended area meant for relaxing and socializing.

The balcony is  $\pm 22,172\text{m}^2$  in extent. As previously mentioned,  $\pm 15,956\text{m}^2$  ( $\pm 71,97\%$ ) of the balcony encroaches the street building line. The balcony is adjacent to the existing lounge and dining area and serves as an extended area meant for relaxing and socializing.

The pergola is  $5,420\text{m}^2$  in extent. As previously mentioned,  $\pm 4,250\text{m}^2$  ( $\pm 78,41\%$ ) of the pergola encroaches the street building line. The pergola is considered an extension of the patio and creates additional privacy and shade on the patio area (patio no. 2).

The following should be noted when considering the balcony and pergola:

- The covered patio, balcony and pergola have existed for a few years without any complaints from neighbours.
- The current property owners made no additions or alterations to the As Built covered patio, balcony and pergola.
- The visual impact of the existing covered patio and balcony is considered minimal and merely an extension of the dwelling. Main Road is an exceptionally wide road (25,19m) with wide road reserves on both sides of the tarred road. The existing patio and balcony is positioned  $\pm 10,8\text{m}$  from the edge of the tar road, thus keeping the views down the street unobstructed and the impact low.
- The As Built covered patio, balcony and pergola are an integral part of the design of the dwelling thus to demolish the structure to make it compliant to the street building line, will diminish the aesthetic value and property value of the dwelling.

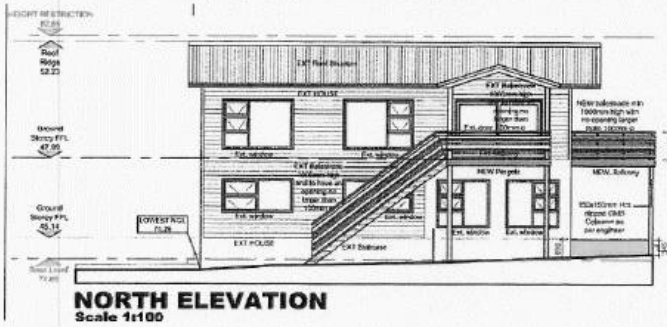
Refer to the site development plan attached for the site plan, ground floor and first floor layout.

The elevations below indicate the As Built structures that must be addressed:

1. West elevation (view of the patio, balcony and pergola from Main Road)



2. North elevation (pergola, patio and balcony as seen from erf 348 Sandbaai)



3. South elevation (covered patio and balcony as seen from erf 350 Sandbaai)



*(d) That no building shall be erected on the above erf or erven within 4,72 meters of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon."*

The removal of the restrictive title deed condition application is addressed in Section 3.14.

The proposed application does not have any impact on the character or property values of the surrounding properties.

The existing structures on the subject property do not create an infringement to any passing traffic or public activity due the position of the As Built structures on site in relation to the existing structures on the neighbouring properties and the wide road reserve of Main Road.

It is submitted that the massing and height of the existing structures are compatible with the character of the area, regardless of the departure being applied for.

The zoning of erf 349 Sandbaai will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). The height of all As Built structures complies with the permissible height requirements for SR1 zoned properties. All buildings and uses thereof that encroach the applicable building lines as indicated on the site development plan already exist and the application addresses existing structures that encroach the building lines. Consequently, the proposed departure and removal of a restrictive title deed condition will not have a greater visual impact on the surrounding properties. The impact on the adjacent property owners and the passers-by will therefore be marginally higher than if these structures did not exist.

The area schedule and coverage for the subject property are as follows:

AREA CALCULATIONS:	
GROUND STOREY AREA -	
House Area G-Storey-	119,413m <sup>2</sup>
Wendy House-	17,459m <sup>2</sup>
Covered parking-	8,784m <sup>2</sup>
Sub-Total-	145,656m <sup>2</sup>
FIRST STOREY AREA -	
Balcony 2 Covered	8,784m <sup>2</sup>
House Area 1st Storey	107,298m <sup>2</sup>
Sub-total	116,082m <sup>2</sup>
<b>TOTAL AREA UNDERCOVER:</b>	<b>261,738m<sup>2</sup></b>
ERF -	773m <sup>2</sup>
OPEN	
NEW Pergola Open-	5,420m <sup>2</sup>
New Patio Open-	22,172m <sup>2</sup>
NEW Balcony Open-	22,172m <sup>2</sup>
<b>TOTAL OPEN AREA:</b>	<b>49,764m<sup>2</sup></b>

COVERAGE CALCULATIONS:	
House Area G-Storey-	119,413m <sup>2</sup>
Wendy House-	17,459m <sup>2</sup>
Covered Parking-	8,784m <sup>2</sup>
<b>Total Coverage:</b>	<b>145,656m<sup>2</sup></b>
ERF -	773m <sup>2</sup>
<b>Coverage -</b>	<b>18,842%</b>

The total coverage of 18,84% does not exceed the maximum permissible coverage of 50% for SR1 zoned properties.

It is submitted that the existing structures are compatible with the character of the area, do not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

When considering the proposed building line deviations and removal of a restrictive title deed condition, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departure and removal of a restrictive title deed condition of erf 349 Sandbaai are not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

### 3.5 THE POTENTIAL OF THE PROPERTY

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The zoning and primary land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to

be developed for low impact land uses only (such as bed-and-breakfast establishments, day care, second dwelling, guest house and home occupation uses). The proposed departure and removal of a restrictive title deed condition will not hinder any possible future land use applications on erf 349 Sandbaai.

The subject property has the potential and allows for the deviations being applied for since the As Built structures have been on the subject properties for a considerable period without any complaints from neighbours. All existing structures meet the maximum of 8m height requirement for SR1 zoned properties as depicted on the Section plans.

The following should be noted when considering the potential of the site:

- The visual impact will be kept to a minimum since the structures have been on the property for a few years now and no new additions / alterations are proposed.
- The visual impact of the existing covered patio and balcony is considered minimal and merely an extension of the dwelling. Main Road is an exceptionally wide road (25,19m) with wide road reserves on both sides of the tarred road. The existing covered patio and balcony is positioned  $\pm 10,8\text{m}$  from the edge of the tar road, thus keeping the views down the street unobstructed and the impact low.
- The massing and scale of the As Built structures are compatible with the area.
- Except for the building line deviations, all other land use parameters are met.
- The As Built covered patio, balcony and pergola are an integral part of the design of the dwelling thus to demolish the structures to make it compliant with the street building line, will diminish the aesthetic value and property value of the dwelling.

The scale of the surrounding built environment and the low impact on the streetscape are also factors that must be considered when contemplating the potential of the property to accommodate the departure and the removal of title deed conditions. The following factors confirm the potential of the property to accommodate the proposed lateral building line deviations:

- good quality materials were used when the existing structures were built;
- the architectural style of the As Built structures matches the architectural style of the existing approved main dwelling;
- the height of the As Built and approved structures will remain unchanged;
- The As Built covered patio and balcony (that encroaches both the Land Use Scheme and title deed street building lines) and pergola (that encroaches the Land Use Scheme northern lateral building line) have been in existence for a few years, with no complaints from neighbours. No alterations or additions to these structures are proposed;
- The As Built structures add value to the subject property;
- The width of Main Road (25,19m) and the position of the structures from the edge of the tar road confirm that the view towards the ocean will remain unobstructed.

### **3.6 ECONOMIC IMPACT**

The proposed departures and removal of a restrictive title deed condition are to accommodate existing structures and uses thereof. The proposed departures and removal of a restrictive title deed condition will allow the owners to legalise the existing structures and this will favour the resale of the property in the future and have a positive impact on the adjacent properties.

The approval of the existing covered patio, balcony and pergola will save our clients the cost of demolishing these structures. The proposed building line deviations and removal of the subsequent restrictive title deed building line conditions will have a low but positive impact on the local economy.

### **3.7 SOCIAL IMPACT**

The proposed departures and removal of a restrictive title deed condition will have no impact on the social status quo of the area. The building line deviations and removal of a restrictive title deed condition will however allow the owners to keep the existing As Built structures on the subject property.

No negative impact on the social wellbeing of the surrounding community is anticipated. It is submitted that the existing developed property is compatible with the character of the area and does not impact negatively on the rights of anyone else.

### **3.8 COMPATIBILITY WITH SURROUNDING LAND USES**

The subject property is situated in an existing low-density residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposal is compatible with the surrounding land uses.

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. The scale of the structures on erf 349 Sandbaai (and the respective uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built structures that encroach the street and northern lateral building lines will contribute towards the value of the subject property and consequently have a positive impact on the area. The use of the subject property will primarily remain for residential purposes (dwelling with outbuildings).

There is no impact on the streetscape as discussed in detail in Sections 3.4 and 3.5 of this report.

### **3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES**

All services on the subject property already exist. The As Built structures will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated.

Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

### **3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY**

The proposed departure and removal of a restrictive title deed condition will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that a maximum of one family will continue to occupy the subject property.

Since the proposed departures and removal of a restrictive title deed condition are not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

The building line deviations are on the Main Road and northern boundary side. The width of Main Road minimizes the impact the As Built covered patio and balcony have on the views of surrounding properties. The proposal will therefore have a minimal impact on surrounding and adjacent properties.

### **3.11 IMPACT ON HERITAGE**

The application does not involve changing the character of a site larger than 5 000m<sup>2</sup>. Consequently, the proposed application for the departures and removal of restrictive title deed conditions does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 349 Sandbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme Heritage Overlay Zone (2020). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010). It is also not demarcated as part of a Heritage Protective Overlay Zone (2020) for the area.

The dwelling on the subject property is not older than 60 years. The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above mentioned it is evident that the proposed departures and removal of a restrictive title deed condition will not have a negative impact on the heritage value of the Sandbaai or Greater Hermanus area.

### **3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

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

The subject property is not situated within the Overstrand Municipality's Zoning Scheme Environmental Overlay Zone (2020).

### **3.13 TRAFFIC IMPACT, PARKING AND ACCESS**

Access to erf 349 Sandbaai will remain unchanged and will be from Main Road. Refer to the access points as indicated on the site development plan. No new access points are proposed.

The Overstrand Municipality Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house. There are no garages present on the subject property. However, there is ample space available on the property where two cars can park – refer to the site development plan. The dwelling house on erf 349 Sandbaai therefore complies with the minimum parking requirements for SR1 zoned properties.

The subject property will still be used primarily for single residential purposes and therefore the impact on the traffic flow in the area will remain unchanged.

### 3.14 TITLE DEED

Title Deed no. T5251/2018 has a restrictive title deed condition that needs to be removed for this application for the departures of the prescribed building lines to be approved. Refer to a copy of the conveyancer's certificate compiled by Mr H.L. van Zyl of Van Zyl Kruger Attorneys dated 9 June 2022 attached.

Application is made for the removal of a restrictive title deed condition to remove condition B.2 (d) on page 3 of title deed no. T5251/2018 to:

- Accommodate the existing covered patio on ground floor level and the As Built balcony on first floor level within the 4,72m title deed street building line (Main Road).

It is proposed to remove the following restrictive title deed condition registered by the Administrator (now the Overstrand Municipality) to accommodate the proposed departure of erf 349 Sandbaai:

**Title deed no. T5251/2018, page 3, paragraph B.2.(d)** that reads as follow:

*"B. Onderhewig aan die volgende spesiale voorwaardes vervat in Transportakte Nr 15283 gedateer 7 Desember 1943, naamlik:*

2. *Wat deur die Administrateur opgelê is:*

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*(d) That no building shall be erected on the above erf or erven within 4,72 meters of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon."*

The street building line restriction / condition 2.(d) in Title Deed no. T5251/2018 is more restrictive than the land use restrictions prescribed in the Overstrand Municipality Land Use Scheme (2020).

Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a Municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restrictive condition":

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

The removal of the restrictive condition intends to increase the use rights of the property to permit an existing As Built balcony and covered patio that were constructed by the previous property owner. The value of the rights is vested in the owners of the property. The title deed is not clear in whose favour the conditions were imposed, it merely states that the conditions were imposed by the Administrator; no other properties are however mentioned and the reference that the conditions were imposed by the Administrator implies that the condition is also in favour of the Administrator. The removal of this condition will consequently have no impact on the value rights of immediate properties.

Property owners not seeking that the title deed building line restrictions should be in line with the zoning scheme regulations' restrictions will favour the restrictive title deed conditions since the conditions impede the development of a residential property in line with the zoning scheme. The existing As Built development (and its encroachments) is not an unusually large-scale form of development that encroaches the building lines. The street building line condition is more restrictive than the zoning scheme regulations' building lines. And where scheme building lines are encroached, it is to address the existing structures.

- ***The personal benefits which accrue to the holder of rights in terms of the restrictive conditions***

The conditions were imposed by the Administrator for the benefit of the Administrator. The only personal benefit to the holder is that the property is more restricted in terms of developing any structures on the subject property. The Administrator is now the Overstrand Municipality, who governs land use applications in line with the existing Land Use Scheme Regulations and relevant spatial planning policies. To keep the title deed conditions will therefore have no personal benefit to the Administrator / Overstrand Municipality.

- ***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if they are removed***

The removal of the restrictive title deed condition will bring about personal benefits to the current landowners since it will allow them to legalise the existing structures that will in turn benefit the value and resale of their property in future. To remove the stricter street building line will also afford the property owners the opportunity to add to and alter the existing dwelling in future (in any) within the relevant land use restrictions and not be prohibited by stricter title deed conditions. The 4,72m street building line as stipulated in the title deed has a negative impact on the developable area of the land since it shrinks it with 15m<sup>2</sup> (20,47m x 0,72m).

All other conditions that are compatible with the zoning scheme regulations will remain unchanged.

The existing property owners will be able to enjoy the personal benefits of the existing structures instead of demolishing the structures. The latter will have a great financial burden on the existing property owners. To remove the title deed's street building line restriction will allow the property owners to keep the existing structures on the 1,975m street building line, and adhere to the less restrictive street building line of the zoning scheme regulations (4m) for any future development on the subject property, instead of being bound by the

more restrictive title deed building line (4,72m) for any future additions or redevelopment of the property.

- ***The social benefit of the restrictive conditions remaining in place in its existing form***

The social benefit if the title deed conditions were to remain unchanged and enforced on the existing As Built structure would be that the character of Main Road will remain unchanged. If the condition remains unchanged, the owner must adhere to the title deed's stricter street building line. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed's street building line is more restrictive than the scheme regulations' street building line.

To keep the 4,72m title deed street building line will have no benefit to neither the property owners nor the adjacent properties since the existing structures (approved dwelling and As Built patio and balcony) already encroach the street building line and no complaints have been received from the immediate property owners over the years.

- ***The social benefit of the removal or amendment of the restrictive conditions***

The removal of the restrictive title deed condition will allow the scheme regulations' building lines to set the rules for future development on the subject property. The social benefit will therefore only be to the property owners of erf 349 Sandbaai since it will allow them to keep the existing As Built structures that encroach onto the street building line on the subject property and allow future additions to be constructed in line with the zoning scheme regulations' building lines only.

- ***Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of those rights***

The removal of the restrictive condition will not remove all rights enjoyed by the beneficiaries, but only some rights and will instead expand the value of these rights to accommodate the existing structures with departures where applicable. The latter is more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone

else or the character of the area. All other title deed conditions that are in line with the SR1 land use parameters will be retained.

There is a bond registered against erf 349 Sandbaai. The bondholder's consent dated 9 June 2022 is attached.

From the above as well as the motivation in Sections 3.4 and 3.5 of this report it is evident that the removal of the restrictive title deed conditions can be favourably considered.

**3.15 FORWARD PLANNING AND LAND USE DOCUMENTS**

The *Overstrand Spatial Development Framework (2020)* earmarks the area where erf 349 Sandbaai is situated, for urban development purposes. Refer to the Spatial Development Framework Plan (2020) below. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed departure and removal of the title deed conditions on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).



The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 349 Sandbaai forms part of Planning Unit no. 7. This planning unit stipulates an increase in density from 7,8du/ha to 16,5du/ha. No additional portions or second dwelling units are proposed with this application. The status quo of the area (low density residential) will remain unchanged. The land use application for the subject property therefore falls within the existing planning for the Sandbaai / Hermanus West area.

The proposal will promote land development in a location that is sustainable. The proposed departure and removal of the title deed condition are to an improved erf within an established residential area and will not impact on urban sprawl or upon a sensitive environment.

The impact on the overall density of this part of Sandbaai will therefore be kept to a minimum since the proposed application still promotes a low-density residential area.

From the above it is evident that the proposed development **adheres and complies** with the relevant municipal spatial planning policies.

### **3.16 PLANNING PRINCIPLES**

The planning principle of spatial resilience does not apply to this application.

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1932.

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The proposed application will not promote spatial development imbalances. This application is for an erf as per the establishment of the existing Sandbaai Township.

The proposed application is in character with the existing area (Sandbaai) where similar applications have been approved in the past and therefore, the approval of the proposed application will not be spatially biased.

Spatial sustainability: The proposed departures and removal of a title deed condition will have no impact on the visual elements of the subject property and surroundings since all the structures that encroach the lateral and street building lines already exist. It is submitted that the proposed application is compatible with the character of the area (as motivated in previous sections of this report). The encroachment of the building lines has no impact on the massing of the buildings and the impact on the streetscape or passers-by. The As-Built unlawful structures merge well with the approved structures. The impact on the biophysical environment will also be kept to a minimum since the structures already exist.

Factors such as the good quality materials used, the overall layout of the structures on the subject property, the scale of the surrounding built environment, the low impact on the streetscape, the width of the road reserve of Main Road, the existence of the structures on the subject property for the past few years, etc. allow for the consideration and approval of the proposed deviations and removal of restrictive title deed conditions without having an adverse impact on the spatial sustainability of the area. To accommodate the As Built structures to an improved erf within an established residential area will not impact on urban sprawl, or upon a sensitive environment.

The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting natural vegetation. The property will be compatible with the character of the area and do not impact negatively on the rights of any adjacent property owner.

Efficiency: The subject property is easily accessible and conveniently located close to Hermanus and major routes. The massing and height of the property will be in line with the relevant zoning scheme regulations. It proves to be resourceful to approve the As Built additions with the proposed uses thereof to the subject property since it is

compatible with the existing built environment and the way the additions were done is aesthetically pleasing.

It proves to be efficient to accommodate the existing structures and its proposed uses by approving the proposed departure of erf 349 Sandbaai instead of demolishing the structures and as a result negatively impact on the whole look and feel of the subject property.

The proposed departures and removal of a restrictive title deed condition prove to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

Good administration: Our firm 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**

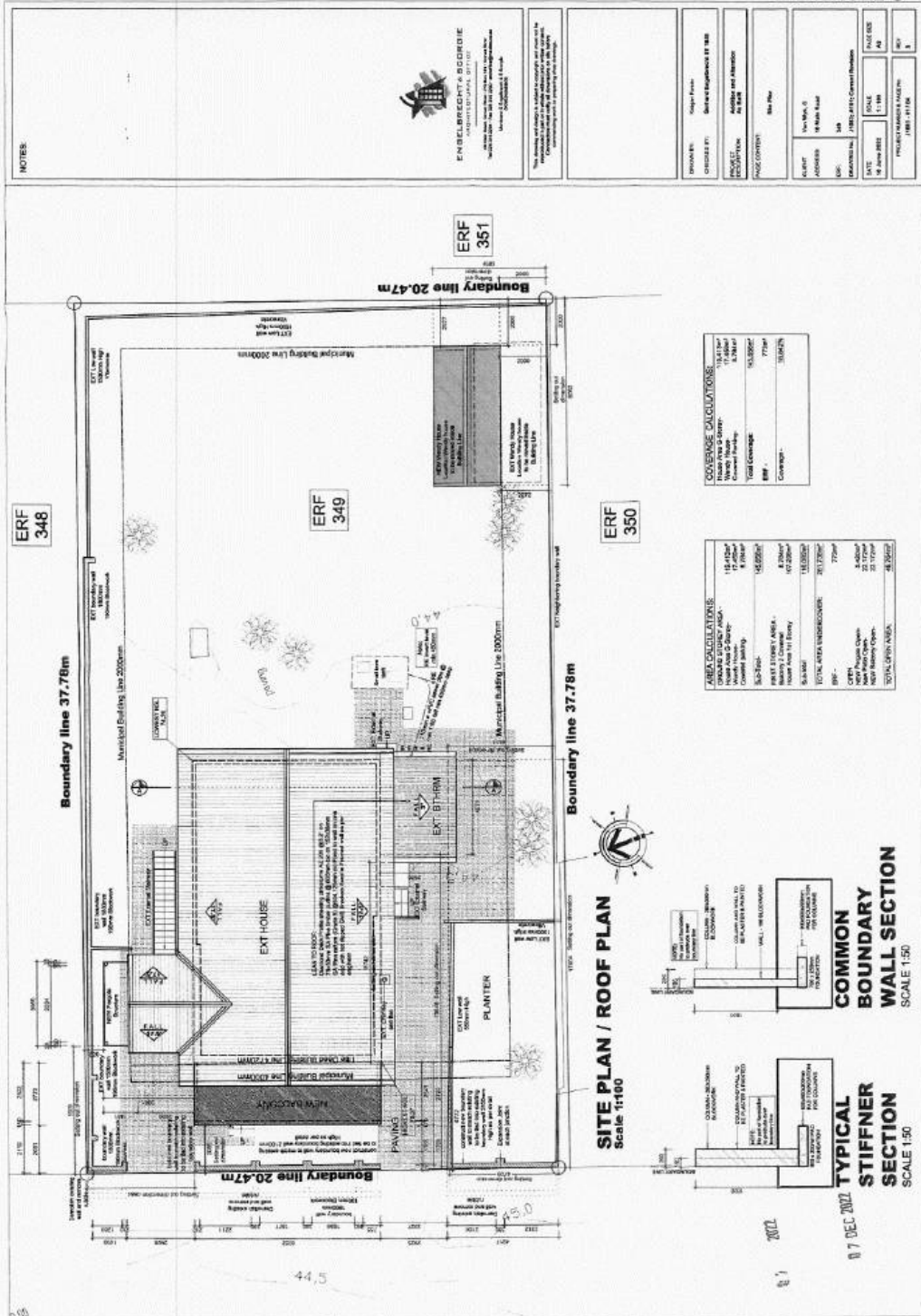
When this application is evaluated, it is important to take note of the following:

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification status quo of the area will remain unchanged;
- The zoning and primary land use of the subject property will remain unchanged;

- The deviations from the applicable scheme regulations building lines are to accommodate As Built structures only (As Built balcony, covered patio and pergola);
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic and services will be kept to a minimum;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);
- We request that a penalty fee not be imposed.

The application can be supported for your favourable evaluation. The opinion is held that this application will have no negative impact on the land values, privacy, built environment and character of the area.

ANNEXURE C



NOTES



DESIGNER:	Enr Beckett & Beckett
CLIENT:	Shirley & Eugene 17 888
PROJECT:	Address and Area
DATE:	17/01/2012
SCALE:	1:100
PROJECT NUMBER:	1701-1716
DATE:	17/01/2012
SCALE:	1:100
PROJECT NUMBER:	1701-1716

COVERAGES CALCULATIONS	
Walls	17.16m <sup>2</sup>
Roof	17.16m <sup>2</sup>
Planters	17.16m <sup>2</sup>
Total Coverage	51.48m <sup>2</sup>
Site Area	17.16m <sup>2</sup>
Coverage	300%

AREA CALCULATIONS	
House Area	17.16m <sup>2</sup>
Planters	17.16m <sup>2</sup>
Roof	17.16m <sup>2</sup>
Total Area	51.48m <sup>2</sup>
Site Area	17.16m <sup>2</sup>
Coverage	300%

SITE PLAN / ROOF PLAN  
Scale 1:100

COMMON BOUNDARY WALL SECTION  
SCALE 1:50

TYPICAL STIFFNER SECTION  
SCALE 1:50

17 DEC 2012

168

SWART & NEL  
McIntyrestraat 54  
Parow  
7500

Opgestel deur my

*(Handwritten Signature)*  
TRANSPORTBESORGER  
GERHARDT JOHANNES SWART

Fee endorsement	
	Amount
Purchase price/Value	R 1 850 000,00
Mortgage capital Amount	R 1 650 000,00
Reason for description	Section 1.1.1

**VERKOP** **MORTGAGED**

R 1 650 000,00

B 000002684 / 2018

2018-02-13

REGISTRATIE- & VERREKSELSKAP

T 000005251 / 2018

TRANSPORTAKTE

HIERBY WORD BEKEND GEMAAK DAT

**GERHARDT JOHANNES SWART**

voor my verskyn het, REGISTRATEUR VAN AKTES te KAAPSTAD, hy die genoemde komparant synde behoorlik daartoe gemagtig kragtens 'n Volmag aan hom verleen deur

**WATERMARK QUALITY IRRIGATION C C**  
Registrasie nommer 1998/039436/23

geteken te HERMANUS op 6 DESEMBER 2017

DATA / VERIFY  
15 FEB 2018  
VAN WYK JENNY

DATA CAPTURE  
14 FEB 2018  
WENDY PANT

- 2 -

En genoemde Komparant het verklaar dat sy prinsipaal, op 17 Oktober 2017, waarlik en wettiglik verkoop by Privaat ooreenkoms, en dat hy, in sy voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

1. **CORNELIUS BENJAMIN VAN WYK** ↗  
Identiteitsnommer 611007 5005 08 3 ↗  
Getroud buite gemeenskap van goed ↗
2. **JOHANNA ADRIANA VAN WYK** ↗  
Identiteitsnommer 650716 0002 08 3 ↗  
Getroud buite gemeenskap van goed ↗

hulle Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, in volke en vrye eiendom

ERF 349 SANDBAAI ↗  
in the Overstrand Munisipaliteit  
Afdeling Caledon  
Provinsie Wes-Kaap

GROOT: 773 (SEWE SEWE DRIE) vierkante meter ↗

**AANVANKLIK OORGEDRA** kragtens Transportakte Nr T 15283/1943 met kaart Nr. 5046/43 wat daarop betrekking het en gehou kragtens Transportakte Nr T46689/2014.

**ONDERHEWIG AAN DIE VOLGENDE VOORWAARDES:**

- A. ....
- B. **ONDERHEWIG** aan die volgende spesiale voorwaardes vervat in transportakte Nr. 15283 gedateer 7 Desember 1943, naamlik:
1. Wat vir die voordeel van Sandbaai Seaside Estate Company (Proprietary) Limited opgelê is as eienaars van die restant van Lot Nr. 3 van die plaas Onrust Rivier gehou deur Akte van Transport Nr. 11466/1929, en die eienaars van lotté in genoemde Dorp as wat reeds onderhewig aan dergelike voorwaardes oorgedra is of wat in die toekoms oorgedra sal word, naamlik:
    - (a) The Company reserves to itself and its successors in title the sole right to all hotels and all liquor licenses and the Purchaser/s (Transferee/s) or his/their successors in title shall not have the right to erect any hotel or hold any liquor license, without the written consent of the Directors of the Company, or its successors in title, first had and obtained.
    - (b) The Company and its successors shall not have the right to subdivide and/or sell in erven the land between lots sold as seafront lots and the sea.
    - (c) That no building shall be erected on any stand unless and until the plans for such buildings have been submitted to and approved by the Directors of the said Company or the successors in title of the said Company.

- (d) The Transferee/s and his/their successors in title of the hereinabove described property shall have the right to divert any stream of water running on the said property so as to run alongside any of the avenues or streets as laid down on the General Plan of the Township.
- (e) The Company reserves to itself and its successors in title the right at any time hereafter to the free and undisturbed passage of electric, telegraph or telephone wires over and upon any portion of the property hereby purchased, with further right of causing them to be affixed to any building or erection not less than 3,05 from the ground with access at any time to such wires for the purpose of removal or maintenance.
- (f) The Company further reserves to itself and its successors in title the right at any time hereafter to lay and to maintain piping under any portion of the above land or elsewhere and at all times have access to such piping for removal, maintenance, extension or any other purposes, and to do all such acts and things as shall be required for the convenience of the inhabitants of the Township in regard to supplying them with water.
- (g) The Company reserves to itself the sole right to all water arising on or flowing over the company's property. There shall however, be excluded from this reservation any water obtained by the owner of the above land by means of wells or boreholes sunk on such land.

2. WAT DEUR DIE ADMINISTRATEUR OPGELÊ IS:

- (a) That the above erf or erven be used for residential purposes only.
- (b) That the above erf or erven be not subdivided.
- (c) That not more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven and that not more than one-half of the above erven be built upon.
- (d) That no building shall be erected on the above erf or erven within 4,72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.

C. ....

D. ....

*A*

WESHALWE die komparant afstand doen van al die regte en titel wat

**WATERMARK QUALITY IRRIGATION C C**  
 Registrasie nommer 1998/039436/23

voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat dit geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde

1. CORNELIUS BENJAMIN VAN WYK , Getroud soos vermeld
2. JOHANNA ADRIANA VAN WYK , Getroud soos vermeld

hulle Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken hulle dat die verkoopprijs die bedrag van R1 850 000,00 (EEN MILJOEN AGT HONDERD EN VYFTIG DUISEND RAND) beloop.

TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die Ampsaël bekragtig het.

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te KAAPSTAD op hede die 13 FEBRUARIE 2018.

q.q.

In my teenwoordigheid

  
 REGISTRATEUR VAN AKTES

Erf 349, 10 Main Road, Sandbaai

Opposition to Removal of restrictive Title Deed Condition

Opposition to Relaxation of the Street Building Line from 4m

Name: Ken Meade

Address: 16 Main Road, Sandbaai, 7200

Phone:

Email:

Interest in Application: Property owner affected by the application

Reason for comment: Impacts to property

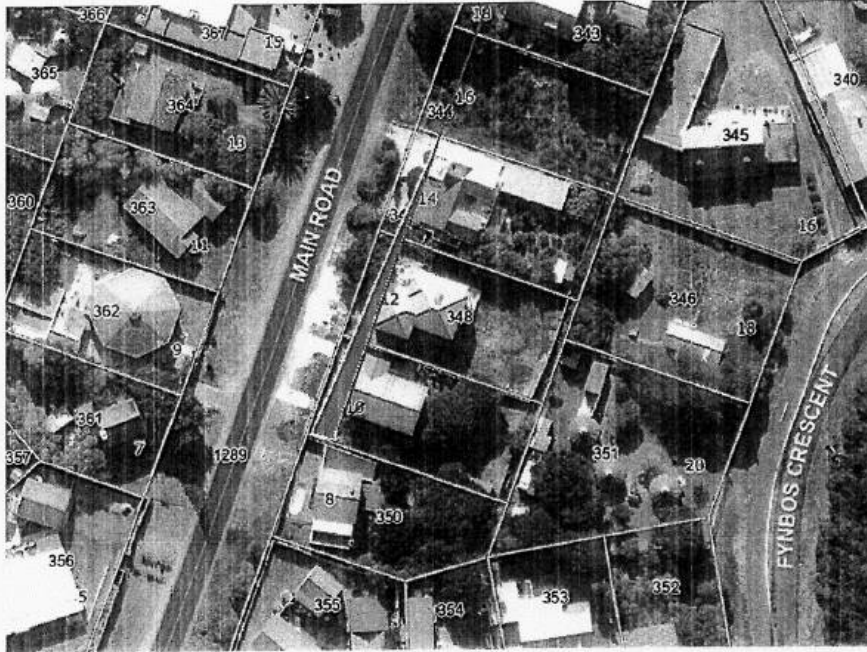


TP. N. Moor  
(H. Olivier)

FILE NO.	OF 019
	Sandbaai
SCAN NO.	
	05
COLLABORATOR NO.	
	1770449

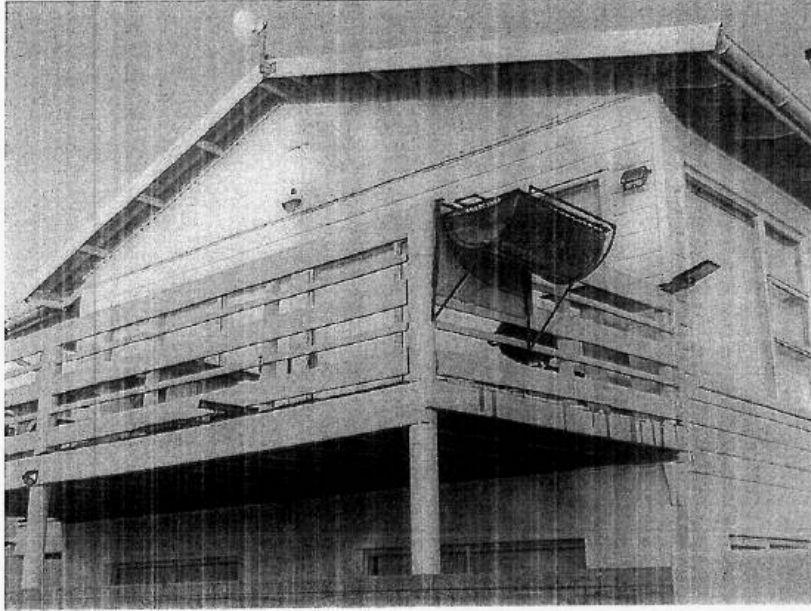
The deed restriction that applies to all the properties affected require a street setback of 4.57 metres. All other properties adhere to this deed restriction. The application seeks to reduce the building line from 4.57 to 1.975. This is a significant reduction – 2.6 metres. Or approximately 60%. It is not a reduction from 4m to 1.975m but from 4.57m to 1.975m. The setback to the building will be less than is required for side and back boundary building setbacks. Allowing this intrusive structure will have a significant impact on surrounding property owners in terms of views, privacy, noise, neighborhood degradation and potential property value degradation.

In the image below, the blue lines indicate approximate setback lines. The red cone indicates the view down the street toward the beach. This view is essentially completely blocked by the illegal deck. The topography is such that the deck happens to be at the point where the slope changes and hence unfortunately impacts this view. This is essentially the same condition as exists at 14 Main Road (erf 347).



When Ross Kavanagh was developing 12 Main Road and complained to the municipality regarding the deck at 10 Main Road he requested that the municipality address the issue and ensure the structure was removed or that he be given the same dispensation and allowed to build a deck with the same street frontage setback. As I now look to develop 16 Main Road (Erf 344), I would like to make the same request, i.e., that if the deed restriction removal and street building line departure are approved for this application, over objections from neighbors, that an immediate application for erf 344, 16 Main Road would receive the same approval. Again, for the record, the view from Erf 344 is directly affected by the illegal deck.

The deck provides an unsightly spectacle right on the street frontage – see image below. There is no aesthetic or architectural merits to the deck. The street frontage setbacks create a consistent environment in the neighborhood with an aesthetic and less intrusive environment. Allowing this deck essentially results in a degradation of the neighborhood.



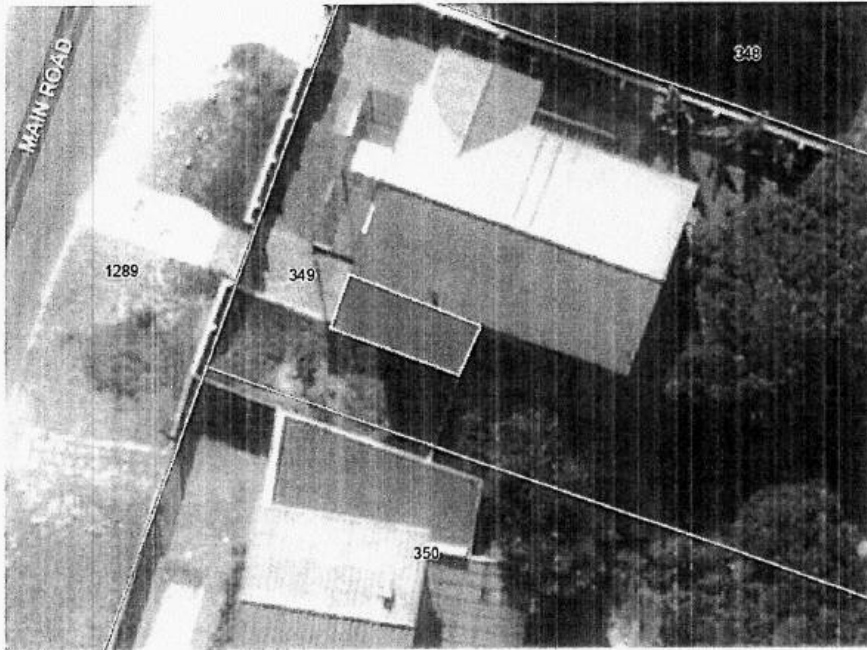
Another issue with the application is the perception that the as-built condition shows the setback from the boundary to the structure, i.e., the distance from the wall to the structure is the departure that is being sought. The frontage wall along the street appears to encroach into the road by about 1.4 meters. The distance from the structure to the boundary is therefore not what the public, when reviewing the notice on site, will have understood to have been the request. The fact that the wall encroaches into the street makes it appear that the distance to the structure from the boundary is much larger than it actually is. Should the municipality wish to approve the application, the public should be given the opportunity to view the structure in relation to the actual property boundary and allowed a further opportunity to comment prior to approval.

While the municipality does not have the obligation to protect views in the case where the structure is fully compliant with By-Laws affecting the property, the municipality is absolutely responsible to protect views against illegal structures as is the case in this application.

Although the illegal structure may have existed prior to the purchase by the current owner, it is the responsibility of the prospective purchaser to review plans and investigate departures prior to purchase.

Failure to perform this due diligence is not an issue that surrounding property owners should be forced to accommodate.

The deck is a simple and cheap construction – 3 support posts and a ledger board attached to the structure to support the deck. There is a simple solution which still provides the property owner a deck with an ocean view, does not require any deed restriction removals or departures and does not impinge on the property rights of surrounding property owners. The structure could be moved to the side of the structure and all issues would be resolved. See image below.



Thanking you for your consideration on this matter.

*Ken Meade*

Ken Meade

**Alida Conradie**

349 HSB

**From:** Terrence Williams  
**Sent:** Friday, 28 October 2022 14:38  
**To:** Alida Conradie  
**Subject:** 10 Main Road Sandbaai



Good day

As a local resident of Sandbaai,

I often walk my dog past this unsightly house with wooden deck protruding out from front of house with a braai attached to side? Only noticed today the deck is illegal. Always wondered other why only this house has a balcony so close to boundary then read the notice. I Object to making something legal by paying money to the Municipality where it should never have been there in first place?

TK Williams

TP. A. (heer)  
(M. Olivia)

FILE NO.	El 349
	Sandbaai
SCAN NO.	
	02
COLLABORATOR NO.	
	1770434

28 OCT 2022

TP. A. / hood  
(H. Alida)

**Alida Conradie**

**From:**  
**Sent:** Friday, 28 October 2022 14:42  
**To:** Alida Conradie  
**Subject:** Objection to deck on Erf 349, 10 Main Road, Sandbaai



Good afternoon,

My name is Fai Furney. My husband Lee and myself are owners at 14 Main Road, Sandbaai. This email pertains to Erf 349 Sandbaai. We would like to lodge an objection to the application for removal of the deed restriction and for relaxation of the street building line. This deck completely obscures the view to the ocean and should be removed or moved in order to enable neighbors to fully enjoy the beauty afforded by the properties that we purchased. It is simply not right that we should be affected by structures of this nature built in violation of the deed restriction and within the street building line set back.

I'm including a picture so you can see the impact of this deck on the view from out upstairs deck.

If you would like additional images or any further information, please don't hesitate to contact me.

Sincerely,

Fai Furney.

FILE NO.	21 219
	Sandbaai
SCAN NO.	03
COLLABORATOR NO.	1770439

28 OCT 2022

**Alida Conradie**



**From:** Paul Garden  
**Sent:** Thursday, 27 October 2022 20:07  
**To:** Alida Conradie  
**Subject:** ERF 349, 10 MAIN ROAD, SANDBAAI REMOVAL OF RESTRICTIVE TITLE DEED OBJECTION

TP. A. Mead  
(M. Olijia)

**ATTENTION MUNICIPAL MANAGER**

**RE : ERF 349, 10 MAIN ROAD, SANDBAAI - REMOVAL OF RESTRICTIVE TITLE DEED CONDITION**

I : Craig G Garden, owner of Erf 348, 12 Main Road, Sandbaai, telephone number (083)477-9400 would hereby like to raise Objection to the above application.

Reasons of concern being :

1. Existing covered porch at ground floor level and existing Balcony on the first floor is a very bothersome invasion of privacy and disturbance of the peace to our first floor living area due to the constant usage of the said balconies.
2. We may not be "entitled to a sea view" - but strongly believe that our sea view has been greatly affected by an illegal construction of the first floor balcony.

Regards,  
Craig Garden.

FILE NO.	Er 349
	Sandbaai
SCAN NO.	01
COLLABORATOR NO.	1770428

28 OCT 2022



TOWN & REGIONAL PLANNERS  
STADS-EN STREEKSBEPLANNERS



ANNEXURE F 1/10

6 Magnolia St / Str  
PO Box / Posbus 296  
HERMANUS

7200  
Tel: (028) 313 1673  
Fax / Faks: (028) 312 1351  
Email:

planactive@hermanus.co.za  
Website: www.planactive.co.za

Our reference: PA22016/ML  
Your reference: 349 HSB  
Case ID: 4188/2022

28 November 2022

THE MUNICIPAL MANAGER  
OVERSTRAND MUNICIPALITY  
P.O. BOX 20  
HERMANUS  
7200

FOR ATTENTION: MR H BOSHOFF

Sir

**PROPOSED DETERMINATION OF AN ADMINISTRATIVE PENALTY, DEPARTURE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: ERF 349 SANDBAAI**

- C.B. & J.A. VAN WYK

Reference is made to our application dated 27 June 2022 and your email with objections attached thereto dated 3 November 2022.

Four (4) letters of comment were received. The location of the property owners that object to the application is indicated in the image below. The one objector (T.K. Williams) merely indicated that he is a resident of Sandbaai (no reference to his address or erf number); therefore we can assume that he is not an immediate neighbour.

TP- n. /heard  
(H. Boshoff)

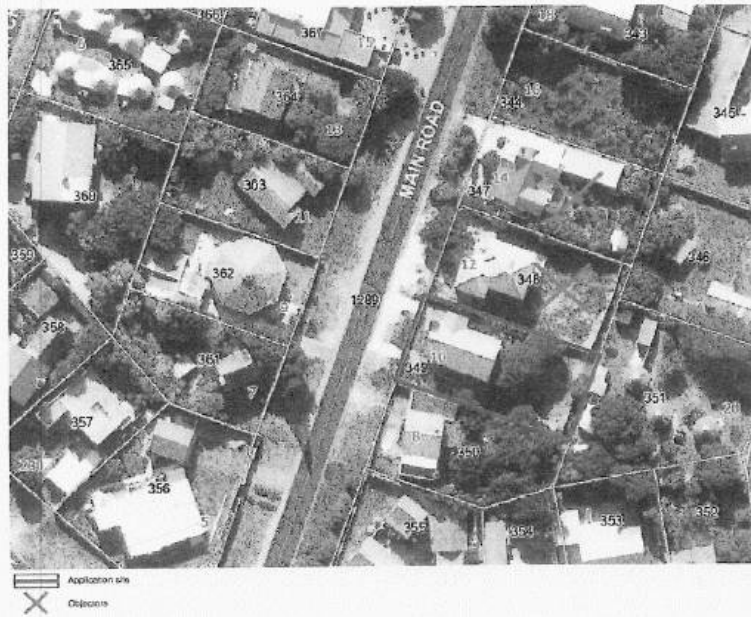
FILE NO.	ERF 349
	Sandbaai ✓
SCAN NO.	HSB 349
COLLABORATOR NO.	1781269

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active  
Reg. No. 2006/030921/07  
Vat No. 4770250340

John Mc Lachlan: Ndiip (Town Planning) Tech Witwatersrand; MSAPI Nr.10908; SACPLAN Tch.Pln B/8250/2014  
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)  
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pt.Pln A/158/2009

TP

28 NOV 2022



**Image 1: Aerial photograph indicating the application site and location of objectors.**

#### **1. General remarks**

Cornelius Benjamin van Wyk and Johanna Adriana van Wyk ("the owners") purchased Erf 349 Sandbaai, also known as 10 Main Road, Sandbaai, on 17 October 2017. At the time of the purchase of the property the balcony, as per the application, was in existence in the exact same position as it is currently. The current owners are not aware in which year the balcony was constructed, or by which previous owner, however they can confirm that it was constructed prior to the property being advertised, and prior to them purchasing the property. The current owners did not construct the balcony. It was however the main attraction and reason for purchasing the property.

At the time of purchase the owners visited the building department of the municipality to view the approved plans of the property. The approved plans reflected the complete property structure including the balcony. Once the owners were informed of a complaint lodged in respect of their property's balcony, they visited the building department again and obtained a copy of the approved plans of their property. Upon collection at the building department they specifically enquired whether the balcony is illegal and was advised that the balcony was previously approved and included on the approved plans dated 11 July 2016, which predates their ownership. However, only after our client purchased erf 349 Sandbaai it became evident that the previous owner did in fact deviate from the approved building plan when the dwelling with patio and balcony was constructed – placing the structures inside of the applicable building lines. The owners never hesitated to immediately give

instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure and removal of restrictions application and submitting a determination of an administrative penalty application.

The current owners have upgraded and renovated the property since they purchased same. The balcony itself has been sanded, varnished, stained, and the previous railings were removed and replaced with neat, expensive, white stained wood to enhance the aesthetic of the balcony. We also indicated in the motivation report that the subject property has the potential to accommodate the As Built structures based on the following:

- The visual impact will be kept to a minimum since the structures have been on the property for a few years now and no new additions / alterations are proposed.
- The visual impact of the existing covered patio and balcony is considered minimal and merely an extension of the dwelling. Main Road is an exceptionally wide road (25,19m) with wide road reserves on both sides of the tarred road. The existing covered patio and balcony are positioned  $\pm 10,8\text{m}$  from the edge of the tar road, thus keeping the views down the street unobstructed and the impact low.
- The massing and scale of the As Built structures are compatible with the area.
- Except for the building line deviations, all other land use parameters are met.
- The As Built covered patio, balcony and pergola are an integral part of the design of the dwelling thus to demolish the structures to make it compliant with the street building line, will diminish the aesthetic and property value of the dwelling.

It is important to note that the owners of 12 Main Road, Sandbaai (Mr and Mrs. Garden), who lodged the complaint or dispute, has sold their property, and it is not clear whether the new purchasers or already new owners take any issue with the balcony, as they also, similar to Mr. and Mrs. Garden, purchased 12 Main Road, Sandbaai with the knowledge of the position of the balcony at 10 Main Road, Sandbaai.

The owners appointed a land surveyor due to the complaint lodged, who critically compared the approved plans to the existing property structure and boundary walls. The land surveyor discovered that not only the boundary walls of 10 Main Road, but also 8 and 12 Main Road and numerous other surrounding properties, do not coincide with the approved plans. They all exceed the building line on the side of the Main Road. The boundary walls which separate the properties also do not coincide with the approved plans. The balcony complaint has therefore caused havoc as Mr. Boshoff (Town Planner: Overstrand Municipality) has advised the owners and their architects that all boundary walls will have to be rectified in accordance with approved plans. This is especially of concern to the owners of 8 Main Road (erf 350 Sandbaai), who would have to demolish their swimming pool which currently falls inside the building line.

It is also placed on record that the owners of 8 Main Road (erf 350 Sandbaai) take no issue with the position of the balcony as per the application. 8 Main Road is the property situated to the south of erf 349 and is thus situated in the line of sight towards the ocean, from the balcony.

It is further evident from the content and date of all four objections that Mr. and Mrs. Garden requested their neighbours and friends to lodge objections. It was made in bad faith especially

in light of the fact that they are busy passing transfer or have already passed transfer of their property to new purchasers.

**1. Response to the respective comments / objections:**

**1.1 Ken Meade (16 Main Road – erf 344 Sandbaai):** *The title deed street building line is 4,57m. To reduce the building line to 1,975m will be a significant reduction that will have a significant impact in terms of views, privacy, noise, neighbourhood degradation and property value degradation. The following concerns are raised:*

- *The existing balcony blocks the view from erf 344 towards the ocean.*
- *To allow the balcony in its current position will set a precedent for the neighbouring properties and they will subsequently apply for the same departures to encroach the street building line.*
- *The balcony is an unsightly spectacle right on the street front – there are no aesthetic or architectural merits to keep this deck.*
- *The distance of the structure to the street boundary is misrepresented. The wall encroaches into the street and makes it appear that the distance to the structure is much larger than it actually is.*
- *The municipality is responsible to protect views against illegal structures (as is the case with this application).*
- *Neighbouring properties should not be forced to accommodate illegal structures where prospective buyers neglected to undertake a due diligence prior to buying the property.*
- *The objector suggests that the balcony be moved to the side of the structure (where it will have no impact on title deed conditions or neighbours' property rights).*

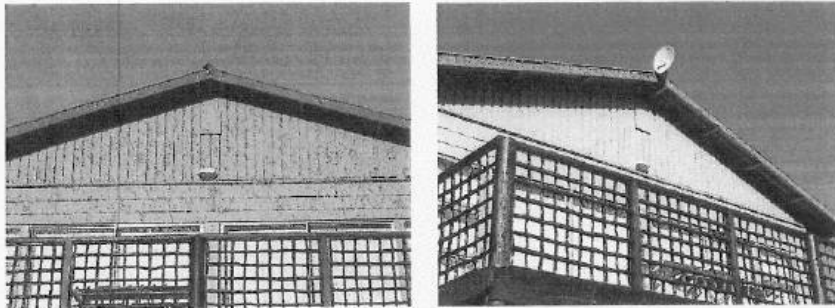
The title deed street building line condition is more restrictive than the zoning scheme regulations' building lines. The Overstrand Land Use Management Scheme development parameters govern development in Sandbaai and not necessarily the title deed conditions as suggested by Mr Meade.

The owners submit that the balcony was the main attraction and reason for them purchasing the property. It furthermore increases the value of the property and they would not have purchased the property, nor paid the purchase price they did, had the property not have the balcony. Due to the increased value of the property it also naturally increases the values of the surrounding properties. The owners take note of Mr. Meade comments on views, privacy, noise and neighbourhood degradation and submits that this is based on hearsay from Mr. Garden and vehemently denies that this is the case. The owners of both 8 and 12 Main Road purchased their properties years after the owners of 10 Main Road purchased their property. They therefore had full knowledge of the position of the balcony, yet decided to purchase their respective properties irrespective. The owners of 8 Main road further take no issue with the position of the balcony, even though the balcony is utilised to view the ocean which is in the direction of their property.

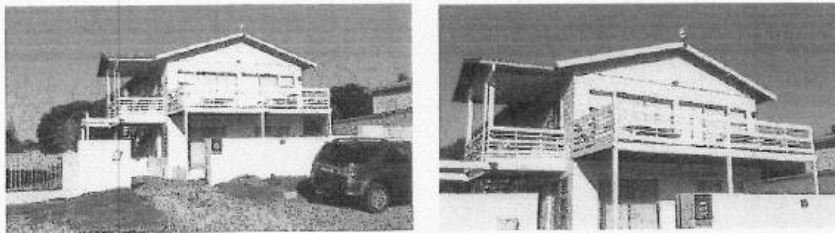
Mr. Meade repeatedly comments on the view from 16 Main Road being negatively impacted by the balcony of 10 Main Road. The owners submit that it is a vacant erf, and such contention does not hold water. Even if Mr. Meade develops his property there would in any event be no ocean view, similar to 14 Main Road which has no view, as trees block the view (see aerial image above), and certainly not the balcony of 10 Main Road. It is mala fide and dishonest to

state that the balcony has any effect on 16 Main Road. The balcony in absolutely no way affects the vacant erf at 16 Main Road. It will also not affect it even if a double storey is constructed on 16 Main Road.

Regarding the aesthetic or architectural merits to the deck comment, the only response the owners could offer in response is that they have constantly been upgrading the property. Pictures of how the balcony appeared prior to them purchasing it may have been unsightly, but since they purchased the property it has been neat, tidy and renovated. Refer to the photographs below:



*Images 2 and 3: The balcony when the current owners purchased the property.*



*Images 4 and 5: Images of the current neat, tidy and renovated balcony.*

Mr. Meade is clearly aware that the construction of the balcony predates the current owners. The owners were aware that the property had approved plans and viewed same at the municipality. The building department also placed their minds at ease, in confirming that the balcony is approved and on the approved plans. The owners therefore fulfilled the responsibility Mr. Meade suggests they should bear, and did indeed perform the necessary due diligence. They could not have known that the placement / development of the structures on site were not done in accordance with the approved building plan – with the balcony developed inside of the street building line and not as indicated on the approved building plans.

The balcony certainly is not a simple nor a cheap construction. Neither is the balcony impinging on the rights of surrounding property owners.

The owners of 8 and 12 Main Road only purchased their respective properties years after the owners of 10 Main Road (our clients), and did not take any issue with the balcony at the time of purchase. The owners of 8 Main Road still do not take issue. The owners appreciate the suggestion that the structure be moved, but it is not plausible. The structure cannot simply be moved. It is further not the size of the area to which Mr. Meade proposes it simply to be moved and the issue arises that there is then no access to the balcony. There is also a structure on the inside of the property against the wall to which Mr. Meade proposes the balcony be moved. It is therefore for this reason also not possible to move it to the suggested location. Further, any move of the balcony will cause damage to the property, including but not limited to the walls, and the paint finishes. The property has already been renovated and repainted. There is further also no ocean view from that positioning which was the reason for purchase.

The owners tender to replace the fireplace with a more expensive looking fireplace, alternatively should the municipality find it to be unsightly, to remove it all together.

**1.2 T.K. Williams (resident of Sandbaai): he objects to legalising the structure that should never have been there in the first place.**

The objection does not make mention which property Mr. Williams owns or resides at. The owners repeat their submissions as above.

**1.3 Fai Furney (14 Main Road – erf 347 Sandbaai) has the following concerns:**

- *The balcony obscures the views toward the ocean and should be removed or moved.*
- *They are negatively affected by the structures built in violation of the title deed and zoning scheme building lines.*

The owners submit that the view to the ocean from 14 Main Road is not affected or obscured by the balcony at 10 Main Road. The view is in fact affected and blocked by the trees surrounding 14 Main Road. The existing Milkwood Tree on / in front of erf 348 Sandbaai clearly already obscures the views of 14 and 12 Main Road as is evident of the photographs taken on 20 November 2022 below:



**Images 6 and 7: Milkwood tree in front of erf 348 (12 Main Road) as seen from erf 349 Sandbaai's balcony and covered stoep.**



**Image 8: Existing trees and bushes next to Main Road already obscuring the views from 14 and 12 Main Road towards the ocean. This clearly has a larger impact on the views of the objectors than what the As Built balcony and covered stoep have.**

**1.4 Craig Garden (12 Main Road – erf 348 Sandbaai) has the following concerns:**

- *The covered porch on the ground floor and balcony at first floor level are considered an invasion of their privacy and disturbance of the peace to their first floor living area due to the regular use of the said balconies.*
- *Their sea view has been greatly affected by the illegal balcony.*

Firstly, it should be noted that Craig Garden is not the owner of the subject property. The property is owned by his son that currently resides in Australia. It is unclear if the property owner actually signed the letter. A power of attorney did not accompany the letter (authorizing Mr Garden to act on behalf of his son).

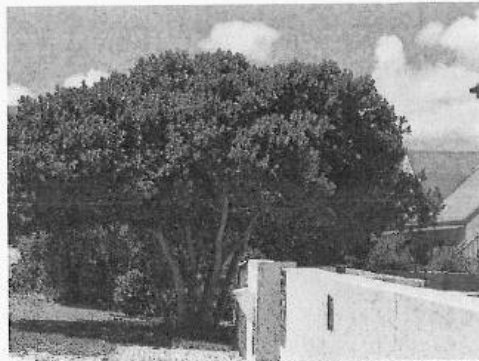
In response to Mr. Garden's objection the owners submit that Mr. Garden and / or his spouse only purchased the property situated at 12 Main Road, Sandbaai, in 2021 and were aware of the position of the balcony at 10 Main Road, Sandbaai. It is opportunistic of Mr. Garden to now aver that the balcony is a bothersome invasion of privacy after purchasing his property - full well knowing that there is a balcony at 10 Main Road. The balcony is utilised to view the ocean.

The statement that a disturbance of the peace is caused due to the constant usage of the said balconies is false and untruthful. 10 Main Road is a holiday house and is only visited on some weekends and during the school holidays. There is no constant usage and no disturbance of peace. Mr. Garden also does not qualify his statement to explain what disturbance of peace he is insinuating and therefore one cannot truly respond to the bold unqualified statement.

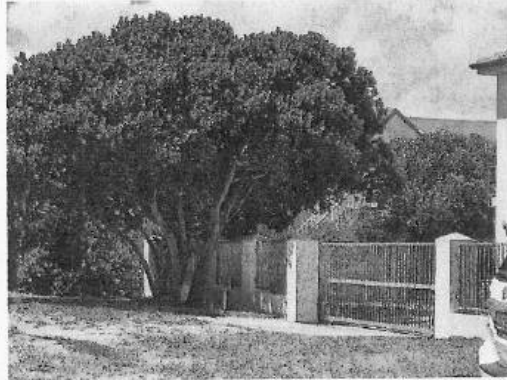
It is placed on record that not once has a disturbing the peace complaint or any similar complaint been lodged by anyone against 10 Main Road. Furthermore, it is placed on record that Mr. Garden has installed cameras overlooking 10 Main Road, infringing the owners' right to privacy which will be taken up amicably with the new owners of 12 Main Road. The only invasion of privacy is the cameras installed at 12 Main Road.

It seems from the second paragraph of the objection that Mr. Garden himself also applied for approval to construct a structure for a sea view, which was clearly unsuccessful and caused him to lodge a complaint against the owners of 10 Main Road. Mr. Garden does not explain what he means by his sea view being affected by the owner's balcony and it is therefore not possible to respond. The owners however place it on record that they purchased the property as it stands today which had approved plans including the balcony at time of purchase. The owners collected the approved plans in December 2021 and was again assured by the building department of the municipality that the balcony is legal and was previously approved and very clear on the approved plans dated 11 July 2016. However, the approved building plan indicates the same dwelling layout / shape with patio and balcony. However, the previous owner deviated from the approved building plan when the dwelling with patio and balcony was constructed.

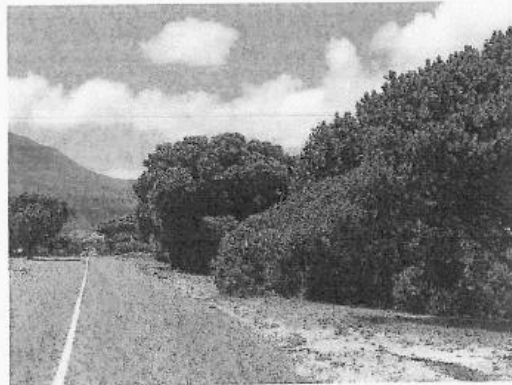
It should be noted that the existing Milkwood Tree on / in front of erf 348 Sandbaai clearly already obscures the views of 14 and 12 Main Road as is evident of the photographs taken on 20 November 2022 included on the previous page and indicated on the images below:



***Image 9: Milkwood tree in front of erf 348 (12 Main Road) as seen from the side walk / road reserve in front of erf 349 Sandbaai (10 Main Road).***



**Image 10: Milkwood tree in front of erf 348 (12 Main Road) as seen from Main Road of erf 349 Sandbaai (10 Main Road).**



**Image 11: Existing trees and bushes next to Main Road already obscuring the views from 14 and 12 Main Road towards the ocean. This clearly has a larger impact on the views of the objectors than what the As Built balcony and covered stoep have.**

To conclude: We would like to emphasize the following:

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification status quo of the area will remain unchanged;
- The zoning and primary land use of the subject property will remain unchanged;
- The deviations from the applicable scheme regulations building lines are to accommodate As Built structures only (As Built balcony, covered patio and pergola);
- The proposal is compatible with the existing built character of the area;

- Impact on the traffic and services will be kept to a minimum;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);

The development history of the site, the real impact on views (with reference to existing trees already affecting the views and the width of Main Road), adherence to the spatial planning policies for the area and meeting the planning principles as stipulated by the planning legislation are important factors that the application meets for positively considering the application.

We trust that you find the above in order. Please proceed with the processing of the application.

Yours faithfully



M. LERM Pr. Pin. (A/158/2009)  
PLAN ACTIVE



TP-A Theart  
(Holivier)

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive  
Pinelands  
7404

I Peters  
Tel: 021 414 5614  
Fax: 086 480 0617  
Email: ihlaamp@openserve.co.za

Our Ref.: WWIP\_WONR4119\_22  
Your Ref.: ERF 349

24 October 2022

Attention: Alida Conradie  
Overstrand Municipality  
Town Planning  
Hermanus

Dear Sir /Madam

SERVICES AFFECTED

APPLICATION FOR WAYLEAVE – ERF 349, SANDBAAI

With reference to your application dated September 2022.

FILE NO. EL 349-HSB
SCAN NO.
COLLABORATOR NO. 1766633

As important cables are affected, please contact our representative MELT VAN AS at telephone number 0813637876/MeltVA@openserve.co.za at least 48 hours prior of commencement on construction work.

I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is valid for 6 months only, after which reapplication must be made if the work has not been completed.

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

Approval is granted, subject to the following conditions.

As per sketch attached, Open Serve infrastructure will be affected, consequently the conditions below and on the attached legend will apply.

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,  
Private Bag X881, Pretoria, Gauteng, 0001

25 OCT 2022

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

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

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

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

Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Open Serve rights remain reserved.

Yours faithfully



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**Ihlaam Peters**  
FOR  
**Selwyn Bowers**  
Operations Manager  
Wayleave Management: Western Region



TELEKOM REGIONAL EXECUTIVE	
Client	1818
Client ref	WVWP_WONR1512_22
Details	SERVICES AFFECTED
Page 3 of 3	A4

Existing Manhole	Existing SBC	Existing Unimproved Route
Planned Manhole	Planned SBC	Planned Unimproved Route
To Be Abandoned Manhole	To Be Abandoned SBC	To Be Abandoned Unimproved Route
Existing Jacking Pit	Existing D/C	Existing Overhead Route
Planned Jacking Pit	Planned D/C	To Be Recovered Route
To Be Abandoned Jacking Pit	To Be Recovered D/C	To Be Recovered Overhead Route
Existing P. all	Existing Fiber Joint	Splicing Manhole
Planned P. all	Planned Fiber Joint	Planned Manhole
To Be Abandoned P. all	To Be Recovered P. all	Existing Drive and Bay

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,  
DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE PENALTY: ERF  
349, SANDBAAI (4188/2022)**

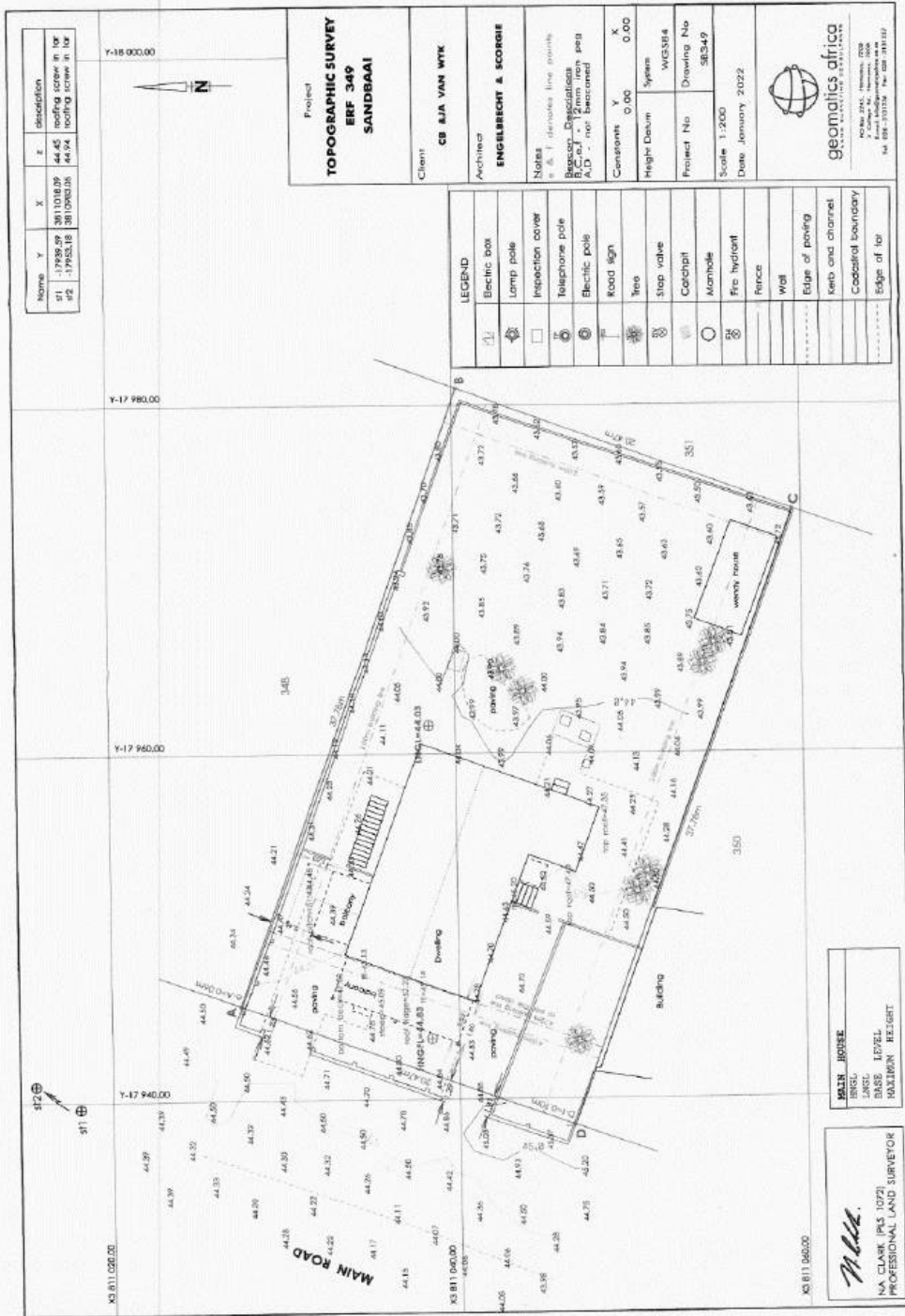
Stormwater (SW) : In Order  
Electricity : In Order  
Water : In Order  
Sewer : In Order  
Roads and traffic : In Order

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that, 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 349, Sandbaai, unobstructed;
7. that no on-street parking be allowed.

*D.P. Hendriks*  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

*02/03/2023*  
**DATE**



MAIN HOUSE  
 WINDMILL  
 BASE LEVEL  
 MAXIMUM HEIGHT

*M.A.*  
 N.A. CLARK (P.L. 1072)  
 PROFESSIONAL LAND SURVEYOR

## INFRASTRUCTURE AND PLANNING

Enquiries: Liezl Lubbe  
 Tel: 028 313 8944  
 E-mail: [liezllubbe@overstrand.gov.za](mailto:liezllubbe@overstrand.gov.za)  
 Reference: 349 HSB



PERSON/REGISTERED OWNER OF PROPERTY	CB van Wyk		
ADDRESS	Eksteen Street 46 Loevenstein 7530		
ID NO/REG NR	610075005083	DATE	23 November 2021

**NOTICE TO OBTAIN WRITTEN APPROVAL FOR THE UNAUTHORISED BUILDING WORK**

An inspection conducted on 22 November 2021 reveals that you have erected a structure on Erf No 349 at 10 Main Road, Sandbaai

The work being the enclosure of a previously approved Carport and the erection of a wooden patio/deck over the street and Title Deed building lines in the area of Overstrand Municipality (being the local authority in question) which is in contravention of Section 4(1) read with Section 4(4) of the National Building Regulations and Building Standards Act No 103 of 1977 (the Act), as no prior written approval for the erection of such building has been obtained from the said local authority.

**In terms of Section 4(1) of the Act, no person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this said Act.**

**In terms of Section 4(4) of the Act, any person erecting any building in contravention of the provisions of Section 4(1) shall be guilty of an offence.**

Acting under delegated powers, I hereby order you in terms of Regulation A25 (10) of the National Building Regulations promulgated under Section 17(1) of the said Act, to obtain written approval for the said unauthorised building work, by submitting and having building plans approved within 60 days from the date the recipient signed for this notice (see below).

FAILURE TO COMPLY WITH THIS NOTICE CONSTITUTES A CRIMINAL OFFENCE IN TERMS OF REGULATION A25(11) OF THE NATIONAL BUILDING REGULATIONS. Overstrand Municipality may, without further notice, institute legal proceedings against you.

**The submission of building plans in compliance with this notice does not place any obligation on the Overstrand Municipality to approve such building plans for the building work set out above. Should written approval not be granted, you will be required to either rectify or demolish the abovementioned unauthorised building work.**

SIGNED: (Delegated Official)	<i>Liezl Lubbe</i>		ADDRESS (Where served)	
SERVED:	DATE:		TIME:	
SERVER:	NAME:		SIGN:	
RECIPIENT:	NAME:		SIGN:	

Navrae:  
Enquiries: H Boshoff (Town Planner)

Lêerverwysing:  
File Reference: 90 HSB

Aansoek ID:  
App ID: 3559/2019

Datum:  
Date: 30 October 2020



**TOWN PLANNING / STADSBEPLANNING  
HERMANUS**

PlanActive Town- and Regional Planners  
Attention : J Mc Lachlan  
PO Box 296  
**HERMANUS**  
7200  
email : [planactive@hermanus.co.za](mailto:planactive@hermanus.co.za)

**REGISTERED MAIL**

Dear Sirs

**DECISION LETTER TO APPLICANT**

**ERF 90, 54 KUS ROAD, SANDBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF SS WESSELS**

1. The application received 12 December 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 27 October 2020.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

**RESOLVED**

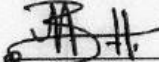
1. *that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law), applicable to Erf 90, Sandbaai in order to relax the street building line from 4m to 1,74m and 1,71m to accommodate a wooden deck, as well as the western lateral building line from 2m to 1,63m and 1,50m respectively to accommodate the wooden deck and a portion of the existing dwelling unit, be approved in terms of the provisions of Section 61 of the By-Law, subject to the following conditions;*
  - (a) *that building plans be submitted to the Building Department for approval and that all requirements of the Building- and Fire Services Department at the time, be complied with;*
  - (b) *that the boundary walls in front of the dwelling be demolished to such a degree that it does not extend beyond any property boundaries;*
  - (c) *that the conditions of the Engineering Services and Telkom (attached as Annexures D and E), be complied with;*
  - (d) *that the wooden deck may not be enclosed in any way whatsoever;*
  - (e) *that all other development parameters as prescribed in the Zoning Scheme be complied with, and*

Tel: 028 313 8900  
Fax: 028 313 2093  
E-mail : [alida@overstrand.co.za](mailto:alida@overstrand.co.za)

PO Box 20 / Posbus 20  
**HERMANUS**  
7200

- (f) that the approval does not absolve the landowner from compliance with any other applicable legislation.
2. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 regarding the above conditions of approval.
4. Reasons for the above decision are as follows:
- ❖ The application has followed due procedure.
  - ❖ No internal or external objections were received.
  - ❖ It is not regarded as being undesirable from a town planning point of view.
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 (R3 351-00).
- 5.2 The appeal form is available at request or alternatively on the Municipal website ([www.overstrand.gov.za](http://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 :   | <a href="mailto:alida@overstrand.gov.za">alida@overstrand.gov.za</a> |
6. Kindly note that the rights are still not in place until the prescribed 21 days of registration of this letter have passed and it is confirmed by our offices that there has been no appeal received against the proposal.

Yours faithfully

  
S. MULLER

DIRECTOR : INFRASTRUCTURE AND PLANNING