

4.2**ERF 6201, 17 DE GOEDE STREET, WESTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA : REMOVAL OF RESTRICTONS AND DEPARTURE : MESSRS PLAN ACTIVE ON BEHALF OF PLASTIKA INVESTMENTS CC****6201 HWC (3542)****H van der Stoep****25 September 2017****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application has been received on 2 December 2016 from Messrs Plan Active on behalf of Plastika Investments CC on Erf 6201, Hermanus for the following:

- ❖ Removal of restrictive title conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 for the removal of the restrictive condition in Title Deed T28849/2015, Page 2, Paragraph A(a):

“(a) That the above erf be used for residential purposes only;”

- ❖ Departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 to depart from the Overstrand Zoning Scheme, to allow home occupation and in terms of Section 5.1.8, which restrict home occupation to 25% of the building.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf measures 2230m² in extent and is located in the Westcliff area of Hermanus. The existing structures on the property consist of a double storey dwelling, single garage and a double carport. All the mentioned structures have building plan approval.

4. SUMMARY OF APPLICANT’S MOTIVATION

The motivation for the application is as follows:

The applicant is a plastic and reconstructive surgeon with a practice in Bellville. He identified a need in Hermanus and extended his services to the town. A consultation room is being operated from the application site, which activity is considered a home occupation in terms of the Overstrand Zoning Scheme, and a primary right. The present facility does not adhere and conform to the parameters as per the Zoning Scheme on home occupation and is in contradiction with the Title Deed of the property.

In terms of the Zoning Scheme, a total amount of three (3) people can be accommodated on the property of which the owner and or a member of the practice resides permanently on the property, only 25% of all structures on the property to be utilised for the home occupation and on-site parking provided.

The proposed departure is to exceed the three (3) people involved in the practice and to depart from the 25% restriction utilisation of space of the structures. The proposal is that six (6) people be involved in the practice consisting of the owner, Dr van Deventer, two (2) other specialists and two (2) receptionists. The dwelling's first storey is being used occasionally for the applicant, Dr van Deventer, when working in Hermanus. The ground floor consisting of 51% of the structure is to be used for the home occupation.

At present the home occupation consists of Dr van Deventer and a dermatologist with receptionists. It is important to note that the doctors have a rotating schedule and consequently only two (2) doctors and the receptionists are on the premises at any given time. The owner still uses the property as single residential, residing not permanently on the property.

Simultaneously an application is lodged to remove a restrictive condition from the Title Deed to enable the applicant to practice the home occupation. The existing land use will change from single residential use to single residential and institutional use (home occupation). The allowable land use and the buildings (and possible future extension thereof) described in the Title Deed will therefore prohibit the proposed medical practice on Erf 6201, Hermanus.

Erf 6201, Hermanus is equal to two standard sized erven in the block it is located. The use of 51% is equal to 25% for home occupation on a standard sized single residential erf. The property is ideally located in Westcliff, close to Main Road and medical facilities such as the hospitals and new Oncology Unit. It is important that at the present moment there are no consulting rooms available at the existing institutional buildings in the area.

The property has an existing access point from De Goede Street and a total amount of twelve (12) parking bays are provided, in line with six (6) parking bays per 100m² GLA. De Goede Street has a road reserve of 15,74m and with only one (1) access and on-site parking, the home occupation will have no traffic impact.

In terms of the Overstrand Municipal Growth Management Strategy, 2010, the erf forms part of Planning Unit 11. The density of the subject property will remain unchanged. The property does however falls in an area which is earmarked for local economic opportunity purposes and therefore due consideration of the diversification of the land uses can be considered.

The planning principles of spatial injustice and spatial resilience do not apply to this application. The application does falls under the following principles:

Spatial sustainability

The existing structures and proposed land use are compatible with the character of the area and do not negatively impact on the property. The departure and removal of the restrictive condition application will allow the owner to exercise its primary right. The location and forward planning policies do not earmark the subject property for

commercial offices and therefore the rezoning of the subject property could not be considered. The area is earmarked for local economic opportunity and the application is in line with the spatial planning policy with regard to diversification of the area. The subject property complies with the development parameters of single residential zoning and thus would not have an adverse effect on the spatial sustainability of the area.

The anticipated impact of the home occupation with the relevant deviations from the scheme is considered low. The immediate area is characterised by medical and institutional facilities and the proposed land use is therefore compatible with the surrounding land uses.

Efficiency

The property is located in close proximity of the medical facilities, CBD and schools. There are no medical suites available at the local hospitals and the location proves to be more efficient since the need for this type of service exists close to the hospitals, frail care centres and old age homes.

Good Administration

The application was submitted in terms of the prescribed regulatory procedure.

5. ADMINISTRATIVE COMPLIANCE

| Methods of advertising | | Date published | Closing date for comments |
|---|----------------|------------------|---------------------------|
| Local newspaper | Yes | 16 February 2017 | 31 March 2017 |
| Gazette | Yes | 17 February 2017 | 31 March 2017 |
| Notices | Yes | 16 February 2017 | 31 March 2017 |
| Ward Committee | Yes | 14 February 2017 | 31 March 2017 |
| Total letters of support | ONE (1) | | |
| Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft By-Law on Municipal Land Use Planning? | | | Yes |
| Was the application processed correctly (if no, elaborate below): | | | Yes |
| Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below) | | | Yes |

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

| Name | Date received | Summary of comments | Recommendation |
|-----------------|---------------|--|------------------|
| Fire Department | 07/04/17 | Premises must be in compliance with the requirements of National Fire Protection Regulations SANS 10400T : 2011 – occupancy G1 office. | Supported |

| | | | |
|----------------------|----------|--|------------------|
| Engineering Services | 31/03/17 | See Annexure D. | Supported |
| Building Control | 20/02/17 | Supported subject to submission of building plans in compliance with SANS 10400. | Supported |

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

No negative comments were received during the public participation from the internal departments.

One (1) letter of objection was received from Mr M Wurbach on behalf of the Maree le Roux Familie Trust – owners of Erf 421.

The objection is summarized as follow:

There is no objection against the Removal of Restrictive conditions. The objection relates to the departure application and is as follows:

Introduction: The site development indicates the parking straddling both properties and in front of the dwelling and is not located should the erf be subdivided.

Para 3.3: The statement that the property is occasionally used for residential purposes is incorrect as there is a permanent occupant on the property. Whilst this may be right in terms of the Scheme, the information depicted in the motivation is incorrect.

Para 3.4: The mentioned parking is not located as per the Site Development Plan. The request for 51% of the structures will set a precedent and is unacceptable and the deviation is not seen as minor.

Para 4: Should the application be approved, a condition must stipulate that the property will not be used for business purposes.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

The objector, Mr. M Wurbach, objected to the application on behalf of a trust, however did not include a Trust Resolution and it is questionable whether it is his opinion or the trust's opinion.

Introduction :

It is the prerogative of the owner if the intends to pave the whole property. For the purpose of the application, the approval will be tied to the Site Development Plan submitted. Regardless of the position of the paved areas, we cannot comprehend how this will impact on the objector, since their property is situated at the back of Erf 6201, facing Fourie Street.

Para 3.3:

The home occupation is used on a permanent basis and the residential component occasionally. It was never implied that the home occupation will be used occasionally. In the report it states that the two (2) doctors, two (2) receptionists and a domestic worker will be on the premises at any given time during the day.

Para 3.4:

The subject property was previously two (2) separate erven and the owner has at this stage no intention to subdivide the property. Should it be two (2) erven, a 25% per erf would apply and therefore the 51% on a double erf is not excessive.

Para 4:

The present coverage of the erf is 11%. Coverage of 50 % is allowed in terms of the Zoning Scheme. The question of subdivision and future development on the erf is premature.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All the comments from the internal departments have been positive.

Para 3.3:

In terms of the motivation, the applicant did indicate that the residential use of the property is occasional and the home occupation is permanent at this stage and will be accepted as such.

Para 3.4:

The parking provided will as per the Site Development Plan. It is correct that it is the prerogative of the applicant to provide parking as long as it is on-site with enough manoeuvring space.

Para 4:

The application is not for a subdivision.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**10.1 Background**

N/A

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

the application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

This principle does not only reflect the previously disadvantaged groupings along racial lines, but also along age groupings. Services for older persons are located in the area and due to the restricted mobility of individuals, the

application property is ideally located to address the needs for this grouping of the community.

Spatial sustainability

The property as per the existing structures, complies with the National Building regulations. The development is residential of nature and thus do not retract from the area and its immediate environment. The discussion of sustainability by the applicant is not in dispute.

Efficiency

The application will optimize the use of property in terms of municipal services and infrastructure.

Spatial Resilience

N/A

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public 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 Point 10.2.

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

Consistent with the Zoning Scheme, Spatial Development Framework and the Overstrand Municipal Growth Management Strategy, 2010.

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

N/A

10.6 Impact on Municipal engineering services

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

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents. The departure is to apply for exceeding the development parameters of a primary right e.g. home occupation as per the Zoning Scheme.

11. THE DESIRABILITY OF THE PROPOSAL

The erf is located in the residential area of Westcliff. The area is located in Planning Unit 11, earmarked for densification and local economic opportunity. The land uses in the area varies from residential, medical facilities such as the oncology, provincial and private hospitals, frail care centres, old age homes, guesthouses and hotels. The trend of development in the area is a mixed land use and moves more towards medical related facilities. This is predominantly due to the easy access to the hospitals, CBD and schools.

The application is to depart from the three (3) people employed in home occupation on residential erven. The application refers to a plastic surgeon, the applicant, dermatologist and gynaecologist with two (2) receptionists, which equates to five (5) people. The sixth person is an employee providing domestic services. The latter in terms of this evaluation is not included, since should it have been used for residential purposes, domestic services would have most probably been provided.

The applicant did indicate that at any stage only four (4) people are on the premises and the practice works on a revolving system. The mitigating measure that appointments are scheduled with 15 minutes intervals to ensure patients leave before the next appointment arrives is not viable and or practical. The revolving system cannot be monitored or controlled as advocated in the motivation.

The application to deviate from the three (3) people can be accommodated on the erf due to its extent. It is also noteworthy that should it have been two (2) separate erven, the calculated area of 25% per erf, equates to 50%, which is a similar percentage the applicant proposes on the double erf. Against this background the departure to deviate from the three (3) people as per the Zoning Scheme, be supported, subject to that it be limited to three (3) specialists of which the owner are one of the specialists.

As indicated that two (2) separate erven would be allowed 25% home occupation and the application erf consist of two (2) single erven that was consolidated, and the impact of the 50% home occupation will have no impact. This is evident that only 11% of the erf is developed and of the 11% the ground floor consists of 50% of the building, which is to be used for a home occupation. The second departure is to deviate from the requirement that the owner and or employee of the practice resides permanently on the premises. The motivation indicted that it is only occasionally used for residential purposes. This aspect is not acceptable. It is clear that the owner never intended to reside permanently, but purchased the property for business purposes solely. In this regard if the property is not permanently occupied by the owner or a person involved in the practice, the application in total are not supported. There are business properties available for consulting rooms without any deviation.

The removal of the restrictive condition "*that the property may only be used for residential purposes*" is not supported, but should rather be amended to read as follows: "*the erf be used primarily for residential purposes and a home occupation for doctors' consulting rooms be allowed, subservient to the residential use*". The reasoning is to ensure that the owner and applicant do

not use the property primarily for business purposes. The home occupation on residential erven was specifically to cater for an owner to practice his professional occupation within a family setting and not for commercial ventures.

The restrictive condition referring to that only half the property may be built upon can be removed, since the Zoning Scheme has a restriction of 50% coverage.

One aspect that needs to be addressed is the fact that the 50% is supported on a double erf and should the owner and applicant intend to subdivide the property, the right for the deviation of the home occupation parameters will lapse. The home occupation is thus subject to that the erf is not subdivided and this condition may only lapse if the home occupation reverts back to the parameters applicable on a single erf and or should the erf be rezoned.

10. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 on Erf 6201, Hermanus for the removal of restrictive Condition A.(a) of Title Deed T28849/2015, **not be approved**, due to the following reasons:
 - (a) to ensure that the erf is used primarily for residential purposes and not used for speculation;
 - (b) the rotating system as proposed is not viable, since it is impossible to manage and control;
 - (c) that the character is still predominantly residential in nature and therefore it will be in the best interest of the community not to remove the condition, but rather amend.

2. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 on Erf 6201, Hermanus for the removal of restrictive condition A.(a) of Title Deed T28849/2015, **be amended**, to read as follows:

“the erf be used primarily for residential purposes and a home occupation for doctors’ consulting rooms be allowed, subservient to the residential use and that the home occupation not be transferrable.”

3. that the application in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 on Erf 6201, Hermanus to depart from the requirement of the development parameters of a home occupation, **be approved**, subject to the following conditions:
 - (a) that the home occupation depart from the stipulated 25% restricted to the ground floor (50%) as indicated on Drawing D.1077.H, Sheet 2 of 3 and 3 of 3, dated 2016/10/07, as submitted with the application;
 - (b) that the personnel of the practice be restricted to five (5) people at any given time on the property;

- (c) that the owner or assistant resides permanently on the property;
 - (d) that parking be provided as indicated on the site plan D.1077.H, Sheet 1 of 3, dated 2016/10/07, as submitted with the application;
 - (e) that the erf may not be subdivided, should the home occupation remain at 50% of the structures;
 - (f) should the erf be subdivided the Zoning Scheme requirements for occupation applies and the approval for 50% home occupation is null and void;
 - (g) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
 - (h) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (i) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
 - (j) that all the conditions in the Services Report (attached as Annexure E), be complied with.
4. that the applicant and objector be notified of its rights of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above decision.

11. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ Compliance with the National Building Regulations.
- ❖ The applicant was during consultation informed of the development parameters of a home occupation in terms of the Overstrand Zoning Scheme.
- ❖ The recommendation is to ensure that the erf is used primarily for residential purposes and not used for speculation.
- ❖ The rotating system as proposed is not viable, since it is impossible to manage and control.

12. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Title Deed T28849/2015
- Annexure E: Services Report
- Annexure F: Objection received
- Annexure G: Applicant's reply on objection

SIGNATURE**REGISTERED PLANNER**Name : **H VAN DER STOEP**SACPLAN registration number: **A/1708/2013**

Signature : _____

Date: _____

ANNEXURE A



Scale: NTS
 Drawing Nr: 1110201/000
 Date: NOVEMBER 2015

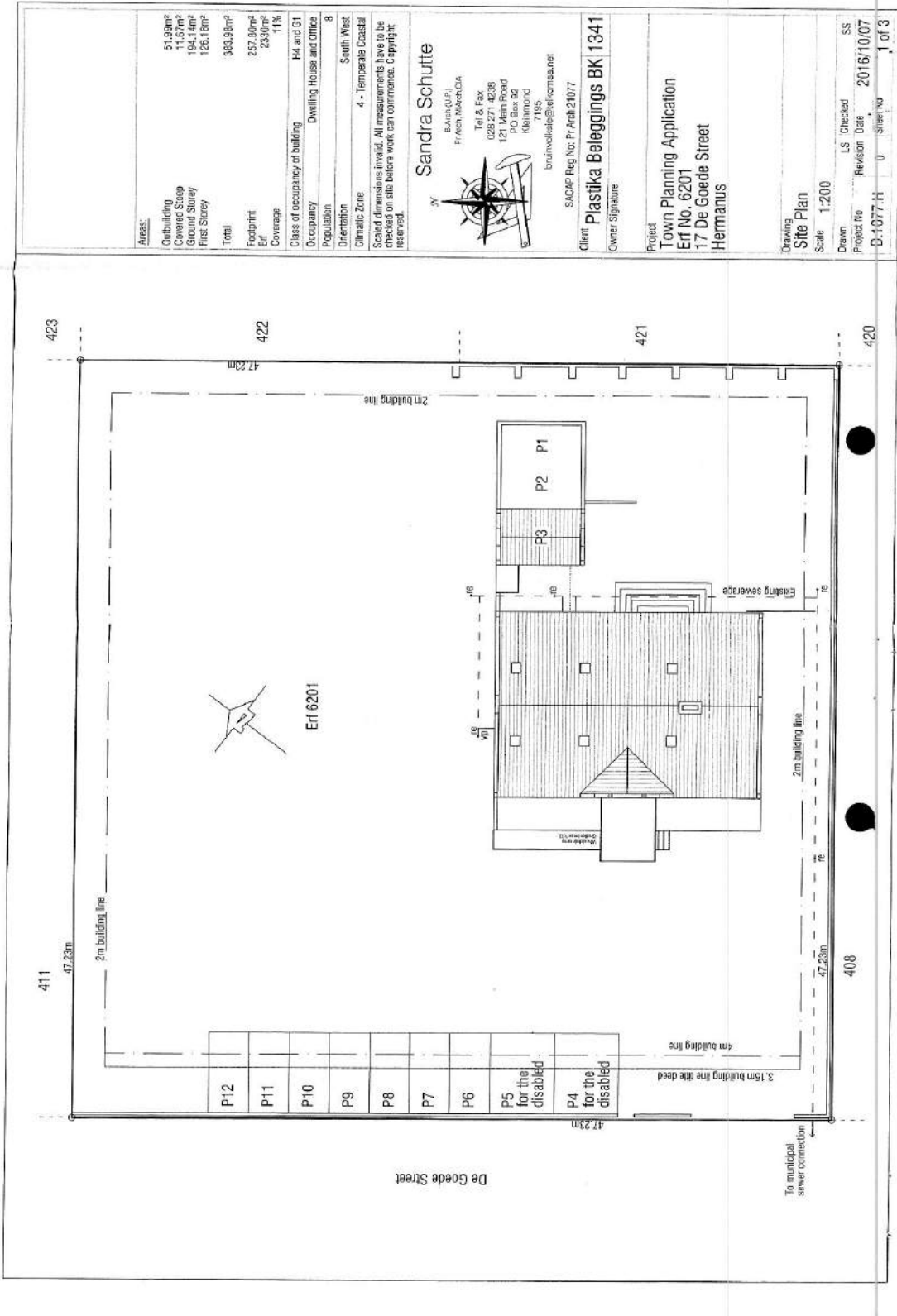
Plan Description:
LOCALITY MAP

Property Description:
**ERF 6201
 HERMANUS**

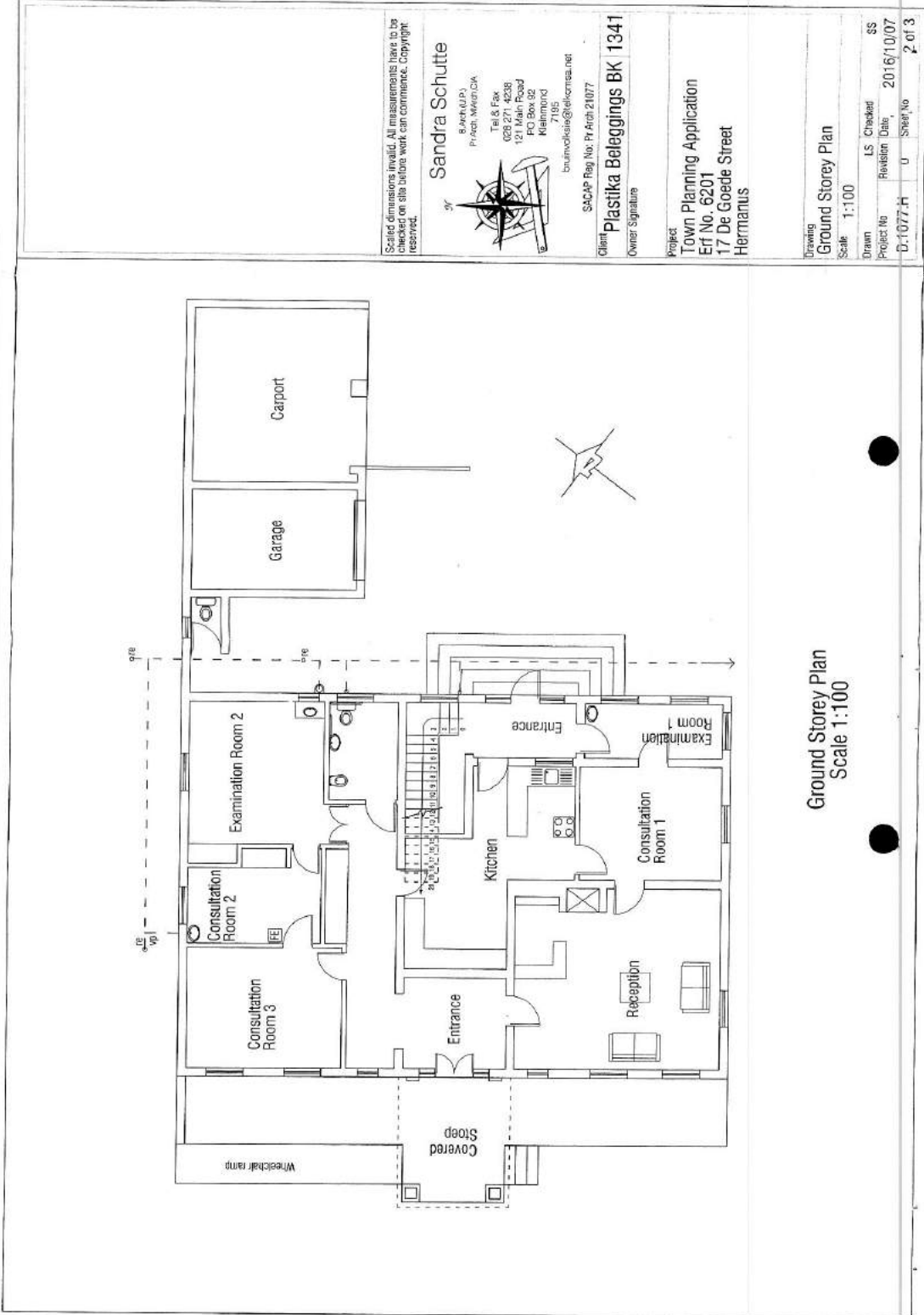
All distances approximate
 and subject to survey.
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Stads- en Sreksbeplanners
PLA Active
 Town & Regional Planners

ANNEXURE B 1/3



ANNEXURE B 2/3



Ground Storey Plan
Scale 1:100

Scaled dimensions in bold. All measurements have to be checked on site before work can commence. Copyright reserved.

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Client **Plastika Belegings BK 1341**

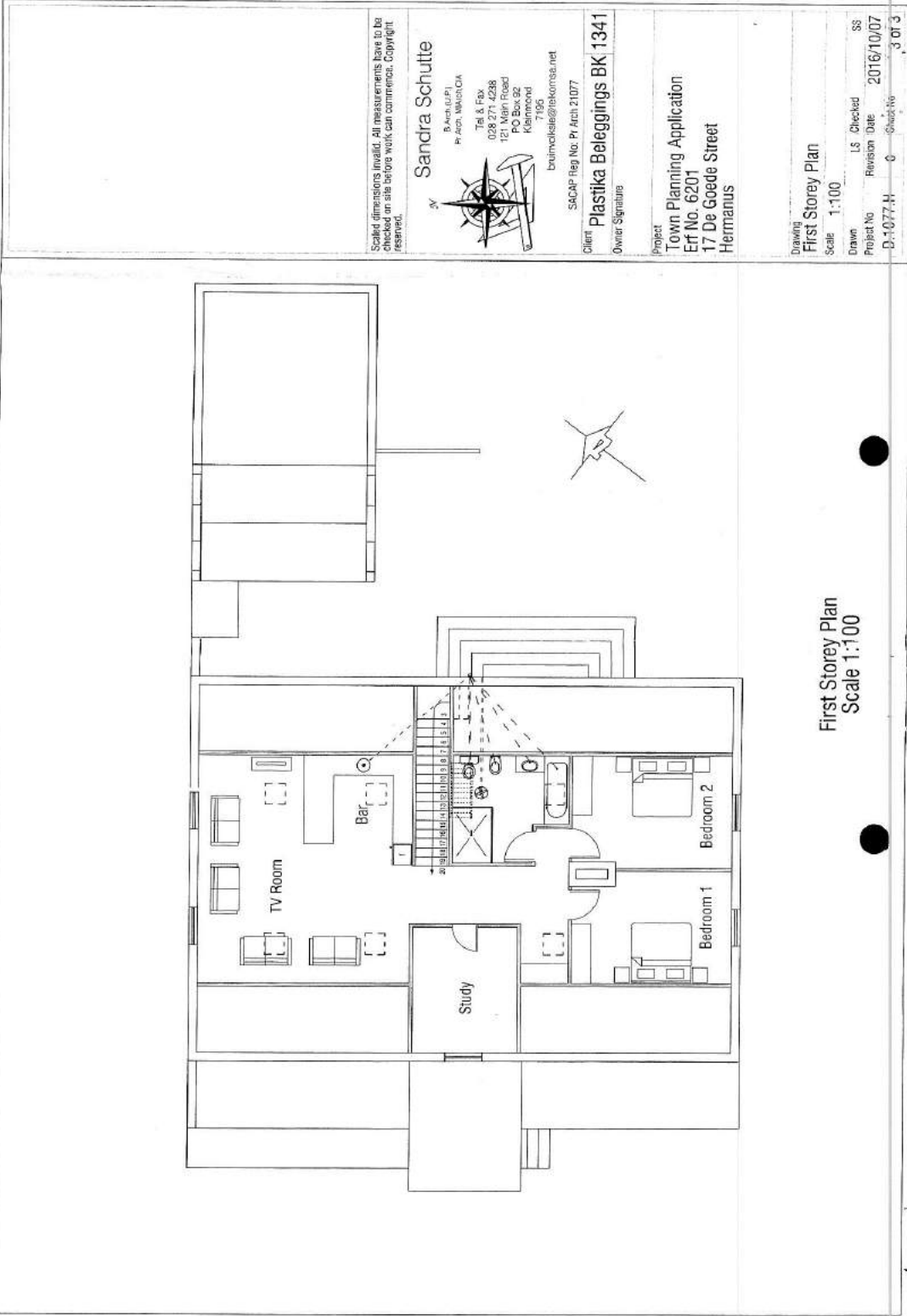
Owner Signature

Project
Town Planning Application
Erf No. 6201
17 De Goede Street
Hermanus

Drawing
Ground Storey Plan

Scale 1:100

| | | | |
|------------|----------|----------|------------|
| Drawn | LS | Checked | SS |
| Project No | Revision | Date | 2016/10/07 |
| D-1077-H | U | Sheet No | 2 of 3 |



First Storey Plan
Scale 1:100

**PROPOSED DEPARTURE & REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS**

ERF 6201 HERMANUS

**DIVISION: CALEDON
OVERSTRAND MUNICIPALITY**

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by Dr. P. van Deventer, on behalf of Plastika Beleggings BK, the owner of erf 6201 Hermanus, to apply for the departure and removal of restrictive title deed conditions of erf 6201 Hermanus.

Erf 6201 Hermanus is 2230m² in extent and held by title deed no. T28849/2015.

Dr. Peet van Deventer currently operates a doctor's practice (plastic surgery and dermatological practice) from the subject property. The doctors' consulting rooms are considered to be a home occupation as per the definition of a home occupation and as discussed with Mrs Hanneen van der Stoep at the Overstrand Municipality. However, the home occupation cannot conform to the restrictions of a home occupation as stipulated in the Overstrand Zoning Scheme Regulations (2013). A departure application is therefore submitted to allow Dr. van Deventer and his colleagues to practice a home occupation (doctors' consulting rooms) on the subject property.

The title deed's conditions restrict the use of the subject property for single residential purposes only and consequently prohibit any form of home occupational practice on the subject property. It is therefore proposed to remove the relevant restrictive title deed condition to allow Dr van Deventer to practice a home occupation (doctors' consulting rooms) on the subject property.



2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departure of erf 6201 Hermanus;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of the restrictive title deed conditions of erf 6201 Hermanus.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

Erf 6201 Hermanus is situated at 17 De Goede Street, Westcliff, Hermanus. Please refer to the locality plan attached. Erf 6201 Hermanus is 2230m² in extent and situated in a residential and medical environment.

3.2 ZONING

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

Surrounding properties are zoned for Residential Zone I: Single Residential purposes.

3.3 LAND USE

There is an existing double storey dwelling, a single garage and a double carport situated on the subject property. All the existing structures as shown on the site development plan were built in line with the approved building plans. The subject property is currently being used for home occupation (doctors' consulting rooms) and occasionally for single residential purposes.

Land uses that surround erf 6201 Hermanus are dwellings, the proposed new oncology unit, retirement village, hospitals, backpackers' establishment, guesthouses, vacant land, and public roads.

3.4 PROPOSED DEVELOPMENT

- Departure in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to allow a home occupation (doctors' consulting rooms) on erf 6201 Hermanus;
- The removal of the restrictive title deed conditions in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to allow a home occupation (doctors' consulting rooms) on erf 6201 Hermanus.

Dr. Peet van Deventer is a well known plastic and reconstructive surgeon with a successful practice in Bellville. He identified the need for his specialist services in Hermanus and extended his services to Hermanus. He currently operates a medical practice (doctors' consulting rooms) from the subject property. The doctors' consulting rooms are considered to be a home occupation as per the definition of a home occupation and as discussed with Mrs Hanneen van der Stoep at the Overstrand Municipality. A home occupation is a primary right on a Residential Zone I: Single Residential zoned property as stipulated in the Overstrand Zoning Scheme Regulations, 2013. However, the home occupation cannot conform to all the restrictions of a home occupation as stipulated in the Overstrand Zoning Scheme Regulations (2013). In addition the title deed of the subject property prohibits any

type of home occupational practice on the subject property. It is therefore proposed to remove the relevant restrictive title deed condition to allow Dr van Deventer to practice a home occupation on the subject property. This application intends to address the departure and removal of restrictive title deed conditions to allow Dr. van Deventer and his colleagues to practice a home occupation (doctors' consulting rooms) on the subject property.

As previously mentioned there are an existing double storey dwelling, single garage and double carport situated on the subject property. The subject property is currently occasionally being used for single residential purposes (some weekends and occasionally during the week).

The owner bought the subject property in 2015 to partially use the property for home occupation purposes (doctors' consulting rooms). The property will serve the function of doctors' consulting rooms and a second home for Dr. van Deventer when practising in Hermanus during the week and some weekends.

The Overstrand Zoning Scheme Regulations (2013) specifies the following primary rights for Residential Zone 1: Single Residential properties:

*Day care centre, dwelling house, guest rooms, **home occupation**, second dwelling unit.*

To practice a home occupation is therefore a primary right for Residential Zone 1: Single Residential properties. However, the existing doctors' consulting rooms cannot conform to the restrictions of a home occupation as described in the Overstrand Zoning Scheme Regulations (2013). Details pertaining to the doctors' consulting rooms are as follows:

- The whole ground storey (consisting of bedrooms, lounge / dining areas, a hall and a kitchen) will be used for the medical practice (consultation rooms, examination rooms, reception and kitchen).
- Consultations are booked at 15-30 minute intervals.
- Currently a plastic surgeon and dermatologist practice from the premises. A third specialist (gynaecologist & obstetrician) will join the practice in future.

- Only two specialists will be consulting at any time during the day. The doctors working on the premises will rotate shifts.
- Five (but in future six) people will work on the premises: Three doctors (with rotating schedules) and two receptionists. A domestic worker is also employed on a temporary basis.
- Operating hours: weekdays from 08:00 until 17:00 and Saturdays from 08:00 to 12:00.

The home occupation complies with some of the conditions for home occupation as specified in the Overstrand Zoning Scheme Regulations (2013):

- The doctors' consulting rooms are not associated with noxious trade, risk activities or the sale of alcoholic beverages;
- On-site parking must be provided (a minimum of two) and parking for clients must be provided to the satisfaction of the municipality. Provision is made for 12 parking bays on site. Further elaboration with regards to the provision of parking will follow later on in the report.

Application is made for a departure from the Overstrand Zoning Scheme Regulations (2013) to deviate from the restrictions of home occupation practice as follows:

- Dr. Peet van Deventer, two other specialist doctors and two receptionists are permanently employed on the premises. A domestic worker is also employed on a temporary basis. Application is therefore submitted to deviate from the maximum amount of three people to allow six people to actively participate in the home occupation. It is important to note that the doctors have a rotating schedule and consequently only two doctors, the receptionists (and occasionally the domestic worker) are on the premises at any given time during the day.
- Although the owner still uses the subject property for single residential purposes (occasionally during the week and weekends), the owner (Dr. Peet van Deventer) does not permanently reside on the subject property. It is therefore proposed to deviate from this condition.
- The dominant use of the subject property will be for the use of doctors' consulting rooms. The subject property will be used as second home when Dr van Deventer occasionally sleeps over during the week and on weekends. The property will however not be used for predominantly single residential use and therefore it is proposed to deviate from this condition.

- The total area to be used for home occupation purposes exceeds the allowable 25% of the total floor area of the structures on the subject property. The area currently used for home occupation (doctors' consulting rooms) is $\pm 194\text{m}^2$ which equates to $\pm 51\%$ of the total area of the existing structures ($\pm 384\text{m}^2$). It is therefore proposed to deviate from this condition to allow 51% of the dwelling to be used for doctors' consulting rooms.

Please refer to the site development plans (SDP) attached.

As previously mentioned a home occupation is a primary right for Residential Zone I: Single Residential properties. However, title deed no. T28849/2015 has a condition that prohibits any form of home occupation on the subject property. It is therefore proposed to remove the condition in the title deed that prohibit home occupational practices (in this specific case the doctors' consulting rooms) on erf 6201 Hermanus since the title deed conditions contradicts the primary land use rights allowed for on erf 6201 Hermanus.

To accommodate the doctors' consulting rooms on erf 6102 Hermanus as part of the subject property's primary right in terms of the Overstrand Zoning Scheme Regulations (2013) it is proposed to remove the following conditions in the title deed: Title deed no. T28849/2015, page 2, paragraph A.(a):

"SUBJECT to the conditions referred to in Deed of Transfer No. 10249/1930 and the following conditions mentioned therein, imposed by the Administrator at the time of his approval of the formation of the township (Section A Hermanus Extension No. 1 Township) namely:-

- (a) That the above erf be used for residential purposes only;*
- (d) That not more than one dwelling be erected on the above erf and that not more than one-half of the area of the above erf be build upon."*

The existing land use will change from single residential use only to residential and institutional use (home occupation for medical consulting rooms). The allowable land use and buildings (and the possible future extension thereof) described in the title deed will therefore prohibit the proposed medical practice on erf 6201 Hermanus.

The first storey of the dwelling will be used for single residential purposes by the owner. The coverage of erf 6201 Hermanus does not exceed the maximum coverage of 50% applicable to single residential erven. The coverage of erf 6201

Hermanus is $\pm 11\%$ ($\pm 258\text{m}^2$). Furthermore the existing structures were built in line with the approved building plans and no deviations from the zoning scheme regulations are required to accommodate the existing structures.

The zoning of erf 6201 Hermanus will remain unchanged (Residential Zone I: Single Residential). The subject property can also easily revert back to a predominant single residential land use.

The proposed departure and removal of restrictive title deed conditions of erf 6201 Hermanus is not in contrast to the existing land uses tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

3.5 CHARACTER OF THE ENVIRONMENT

Generally speaking doctors' consulting rooms are considered to be a low impact land use that can be accommodated in single residential areas. The immediate area is however characterised by medical and institutional facilities and the proposed land use is therefore compatible with the surrounding land uses. The subject property is also situated in De Goede Street enroute to the surrounding hospitals and medical facilities.

It is not proposed to change the primary land use of the subject property. It is simply proposed to legalize the existing medical practice by allowing the owner (and his medical associates) to practice a home occupation from the subject property. The impact on the character of the area will be kept to a minimum since the character will remain unchanged. It is foreseen that the vehicles travelling to the premises can have a slight impact on the immediate area if the vehicles were to park in the street. However, sufficient parking is provided for on site. It is also important to note that only two doctors will be at the medical practice at any time during the day.

The proposed land use is not associated with any noise levels. It is therefore concluded that the departure and removal of restrictive title deed conditions will not have a negative impact on the privacy of neighbours.

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

The subject property's zoning and primary land use will remain unchanged. The location of the subject property within a single residential and institutional area (surrounded by hospitals, institutional and medical facilities) allows the property to be developed (in future) for low impact land uses only such as a bed-and-breakfast, guesthouse, etc. The departure and removal of restrictive title deed conditions will not hinder any future land use applications on erf 6201 Hermanus.

Erf 6201 Hermanus is equal to two standard sized erven in the erf block it is situated in. The extent of the subject property should therefore also be considered when evaluating the potential of the subject property to use $\pm 51\%$ of the existing structures (instead of 25%) for home occupation (doctors consulting rooms) practices. This proposal is equal to 25% being used on a standard sized single residential property. It is therefore motivated that the subject property has the potential to use $\pm 51\%$ of the total extent of the existing structures for home occupation purposes due to the extent (two erven previously consolidated) of the subject property.

Since the zoning will remain unchanged the impact on the surrounding properties will be kept to a minimum. Property values of surrounding erven will therefore not be negatively affected by the proposed application.

In addition the subject property is ideally located in Westcliff, close to the Main Road and medical facilities (hospitals and new oncology unit) which also proof the subject property to be ideal to use as doctors' consulting rooms. It is also important to note that there are no available consulting rooms / suites available at the existing

institutional buildings in the area. The medical suites have reached full occupancy. A letter from the Hospital Manager at Mediclinic Hermanus dated 5 October 2016 confirms the need for specialists (the proposed gynaecologist that will join the practice in future) in the area and she also confirms that the consultation suites at the hospital have reached full occupancy. She also motivates the ideal position of erf 6201 Hermanus in close proximity to the neighbouring hospitals.

In addition the one neighbour (erf 408 Hermanus) has already given their consent for the proposed medical practice on erf 6201 Hermanus.

3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.7.1 PROVISION OF SERVICES

All services on the subject property already exist. Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

3.7.2 TRAFFIC IMPACT, PARKING AND ACCESS

Erf 6201 Hermanus takes access from De Goede Street and this will remain unchanged for the purposes of the application. Consequently no new access points are proposed and the existing access point will remain unchanged.

The Overstrand Zoning Scheme Regulations stipulates that a minimum of two parking bays are required for single dwellings. There is a single garage and double carport on the subject property. Furthermore the scheme regulations also stipulate that at least two parking bays have to be provided for home occupation purposes. Alternatively the Gross Leasable Area (GLA) will determine the amount of parking bays required. The GLA is $\pm 194\text{m}^2$. This would imply that 12 parking bays have to be provided for on site for the residential and home occupation use purposes. Provision is made for 12 parking bays on site. Since the extent of the subject



property is equal to two standard sized erven in the immediate vicinity ample space is available on site for the provision of parking and manoeuvre space.

It should be noted that De Goede Street has a wide road reserve (15,74m). The access to the subject property does therefore not pose a traffic risk and can therefore be considered for your favourable evaluation.

As previously mentioned it is foreseen that the vehicles travelling to the premises can have a slight impact on the immediate area if the vehicles were to park in the street. However, as mitigation measure sufficient parking can be provided on site.

The subject property will also used for single residential purposes. In the light of the above mentioned it is motivated that the proposed medical practice will have a low impact on the traffic flow in the area.

3.8 TITLE DEED

Title deed no. T28849/2015 has restrictive title deed conditions that needs to be removed in order for this application to be approved. Please refer to the conveyancer's certificate compiled by Lucas Steyn from Vorster & Steyn Attorneys dated 1 December 2016. For detail pertaining to the removal of the restrictive title deed condition application refer to Section 3.4 of this report.

There is no bond registered against the subject property.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 6201 Hermanus is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipal Growth Management Strategy (2010). The subject property also not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

The existing dwelling on the subject property was constructed in 1958. The subject dwelling is therefore 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.

Neither the subject property (existing structures) nor the proposed land use triggers Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999). In the light of the abovementioned it is evident that the proposed departure and removal of restrictive title deed conditions application will not have a negative impact on the heritage value of the Hermanus area.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

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

3.10 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2006)* earmarks the area where erf 6201 Hermanus is situated, for residential purposes. Please refer to the Spatial Development Framework Plan (2006) attached. The zoning of the subject property will remain unchanged (Residential Zone I: Single Residential) and therefore the proposed application falls within the existing planning for the Hermanus area.

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 6201 Hermanus forms part of Planning Unit no. 11. This application does however not propose to create any additional portions, nor does it propose the construction of an additional dwelling unit on the subject property. The density will therefore remain unchanged. It should however be noted that the subject property falls in an area that is earmarked for local economic opportunity purposes and therefore due consideration of the diversification of the land uses can be considered.

From the above it is evident that the proposed departure and removal of restrictive title deed conditions adhere to the spatial planning policies for the Hermanus area and consequently falls within the existing planning for the Hermanus area.

3.11 PLANNING PRINCIPLES

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

Spatial sustainability: The existing structures and proposed land use are compatible with the character of the area and do not impact negatively on the rights of anyone else. The departure and removal of restrictive title deed conditions applications are to allow the owner to exercise a primary right in terms of the existing zoning of erf 6201 Hermanus. The location and forward planning policies do not earmark the subject property for commercial (offices / doctors consulting rooms) purposes and therefore the rezoning of the subject property could not be considered (hence the application for the

departure to accommodate the medical practice). The fact that the subject property falls within an area earmarked for local economic purposes does however emphasize that the diversification of the land uses are not out of line with the spatial planning policies for the area.

The anticipated impact of the home occupation with relevant deviations from the scheme is considered low. The impact on the biophysical environment will also be kept to a minimum. Furthermore the extent of the subject property (size equal to two standard sized residential erven), low impact on the privacy of neighbours, compliance with the land use restrictions applicable concerning coverage, height, street building lines, etc. allows for the consideration and approval of the departure and removal of restrictive title deed conditions applications without having an adverse impact on the spatial sustainability of the area.

In addition the immediate area is characterised by medical and institutional facilities and the proposed land use is therefore compatible with the surrounding land uses.

Efficiency: The subject property is easily accessible and conveniently located close to the Hermanus CBD, Main Road, medical and institutional facilities, residential areas and schools.

The departure and removal of restrictive title deed conditions applications proof to be efficient since the proposed land use will be in close proximity to the medical facilities of Hermanus and old age homes / frail care centres. There are no medical suites available at the local hospitals and it proofs to be more efficient to accommodate the land use at erf 6201 Hermanus instead of closing down the practice / moving to another location / not accommodating these services at all since the need exist for these services in close proximity to the existing hospitals and old age / frail care centres.

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.

4. RECOMMENDATION

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

- A home occupation is a primary right on erf 6201 Hermanus. This application entails the described departures to allow the owner to exercise the primary right on a larger scale (i.e. to accommodate the existing land use on the subject property);
- All services on the subject property already exist. Additional services, if required, will be provided to the satisfaction of the Overstrand Municipality;
- The access point will remain unchanged and the impact on the traffic will be kept to a minimum;
- The subject property is the size of two standard sized residential erven, keeping the impact on the adjacent properties to a minimum and therefore the departure application can be considered for favourable evaluation;
- Provision is made for ample parking and manoeuvre space on site;
- The existing structures are compatible with the character of the area and do not impact negatively on the rights of anyone else;
- The proposed departure and removal of restrictive title deed conditions will not have a negative impact on the current character and land values of the surrounding erven;
- The proposal complies with the spatial planning policies of the area;
- There are no environmental aspects that will negatively impact the applications and the applications will not have a negative impact on any environmental factors;
- The zoning will remain unchanged (SR1);
- The applications are fully compliant with the applicable planning principles described in the LUPA (2014).



With regards to the above mentioned it would be appreciated if the delegated authority / the municipal planning tribunal would approve the departure and removal of restrictive title deed conditions of erf 6201 Hermanus.

And the appearer declared that his said principal had, on 28 January 2015, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

PLASTIKA BELEGGINGS BK
Registration number 1988/024717/23

or its Successors in Title or assigns, in full and free property

ERF 6201 HERMANUS, in the Overstrand Municipality, Division of Caledon, Western Cape Province

IN EXTENT 2230 (TWO THOUSAND TWO HUNDRED AND THIRTY) SQUARE METRES

FIRST REGISTERED by Certificate of Consolidated Title No T21866/1983 with Diagram SG No 2873/83 relating thereto, and held by Deed of Transfer number T23713/2007.

- A. SUBJECT to the conditions referred to in Deed of Transfer No 10249/1930 and to the following conditions mentioned therein, imposed by the Administrator at the time of his approval of the formation of the township (Section A Hermanus Extension No 1 Township) namely:-
- "(a) That the above erf be used for residential purposes only;
 - (b) That the above erf be not subdivided without the approval of the Administrator;
 - (c) That not more than one dwelling be erected on the above erf and that not more than one-half of the area of the above erf be build upon;
 - (d) That all buildings to be erected on this property shall stand back not less than 10 feet from the line of any street or avenue on which the lot may be abut, such space may be used as gardens but shall not be built upon."
- B. SUBJECT to the conditions mentioned in Deed of Grant dated 5th August 1922 (Caledon Freeholds Grants Vol 3 No 8) issued in terms of the provisions of Section 10 of Act 15 of 1887, namely:-
- "3.
 - 4. That the land hereby granted shall be subject to all rights and servitudes which now affect or at any time hereafter may be found to affect the title of the land hereby granted, or which may be binding on the Government in respect of the said land as at the date hereof."

NOT SUBJECT to condition B.3. on page 2 of Deed of Transfer number T23713/2007 by virtue of Section 53 of the Mining Titles Registration Amendment Act 24 of 2003.



WHEREFORE the said Appearer, renouncing all right and title which the said

The Trustees for the time being of R E J TRUST
Registration number TMP 1825

heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

PLASTIKA BELEGGINGS BK
Registration number 1988/024717/23

or its Successors in Title or assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R1 600 000,00 (ONE MILLION SIX HUNDRED THOUSAND RAND) plus Value Added Tax.

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.


THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at Cape Town on
 - 2 JUN 2015

2015



q.q.

In my presence



REGISTRAR OF DEEDS

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE & REMOVAL OF RESTRICTIONS: ERF
6201, WESTCLIFF (3542)**

Electricity : In order
Water : In order
Sewer : In order
Stormwater : In order
Roads and traffic : In order

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that stormwater be allowed to discharge through Erf 6201, Westcliff, unobstructed;
4. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

31/3/2017.
DATE

opes e-stationery

ANNEXURE F 1/2

Loretta Gillion - Fwd: Municipal Notice 22/2017

Re: Erf 6201, Hermanus

From: "Michael A. Wurbach" <michaelw@opes.co.za>
To: Loretta Gillion <loretta@overstrand.gov.za>
Date: 28/03/2017 02:52 PM
Subject: Fwd: Municipal Notice 22/2017

TRATheart
C Holivier

Hi,

Apologies - didn't see the tail email.

Re-sending.

Thanks



----- Forwarded Message -----

Subject: Municipal Notice 22/2017
Date: Tue, 28 Mar 2017 14:42:59 +0200
From: Michael A. Wurbach <michaelw@opes.co.za>
To: Loretta Gillion <loretta@overstrand.gov.za>

| | |
|------------------|----------|
| FILE NO: | EL 6201 |
| | Hermanus |
| SCAN NO: | 29 |
| COLLABORATOR NO: | 1009629 |



THE ART OF BUILDING WEALTH

Attention: H. van der Stoep

Objection - Application for the removal of title deed restrictions and departure of Erf 6201, Hermanus.

The aforesaid application and more particularly the objection of the Maree Le Roux Familie Trust (Your Ref : Erf 421, Hermanus) refers:

The applicants appointed agent Plan Active (M. Lerm) has made submissions which in certain respects are misleading and contain obvious flaws.

In this regard I will address these accordingly.

Introduction:

- The site development plan attached demarcating the parking area as straddling across what is essentially "both" properties is an incorrect reflection of an in loco inspection held of the site. The paving installed to the area is restricted to the area immediately in front of the dwelling / practice and is not located on what would / could become a second erf. There is an entrance created to illustrate access, however, this is not used at all by patients visiting this practice. Should an in loco inspection be carried out of the site, this would be confirmed.

TP

APR 07

file:///C:/Users/loretta/AppData/Local/Temp/XPgrpwise/58DA7892HermanusMunpo... 2017/04/03

opes e-stationery

ANNEXURE F 2/2

Para. 3.3:

- Para. 3 states that the subject property is "occasionally" used for single residential purposes. This statement is misleading and incorrect as there is a permanent occupant on the property. Whilst this may be a right in terms of the scheme it demonstrates the malfeasance of the applicant vis a vis the ability to be forthright and truthful in her submission.

Para. 3.4:

- Reference is made to the provision of on site parking for 12 parking bays - As mentioned before, these parking bays are not "placed" as illustrated on the site development plan - but are exclusively located in front of the building alone. No paving or drive way has been established on what would / could essentially be a second erf - should Erf 6201 ever be sub-divided in the future, this would render the basis for this adjudication of this application as being mute.
- The reference to the total "structure" area used for the express purpose of this "business" as exceeding the 25% permitted to that of 51% is inappropriate. This sets a precedent which is completely unacceptable, as the deviation is not minor, but is in excess of twice the permissible foot print.
- Reference to the total build coverage being 11% as opposed to the permitted 50% is also misguided, as should the property ever be sub-divided as is alluded to in Para. 3.8.

Para. 4:

- Whilst the application for the removal of the restrictive title deed restriction is not opposed, the departure in respect of the increase of the permissible footprint from 25% - 51% is vehemently opposed.
- The applicant states clearly in the application that the property extent is equal to that of 2 properties, which thus begs the question - does the applicant intend to sub-divide the property in the future? This is a legitimate question considering that the parking demarcated on the site development plan as straddling "both" properties does in fact not.
- At the very least, should this application be successful, the conditions of approval must contain the condition that at no time during this particular "use" of this property for "business purposes", may it be sub-divided as this would materially alter the appropriateness of this departure / relaxation since the context of the size of the erf against which comparisons are made is voided - thus rendering the application misleading in the extreme.

We trust that you find our objection relevant and that it will be afforded the consideration it deserves.

Please acknowledge receipt of this objection by return email?

Best regards

Michael Wurbach

T +2728 312 3150 | F +2728 312 3159 | C +2782 413 2874
 michaelw@opes.co.za | www.opes.co.za

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ANNEXURE G 1/3

PLAN Active
Town & Regional Planners
Stads- en Streeksbeplanners

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



TR A Theart
(Huld Stoep)

Our reference: PA16095/ML
Your reference: 4424 HNC (3542)

19 APRIL 2017

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

FOR ATTENTION: MRS HANNEEN VAN DER STOEP

| | |
|------------------|------------|
| FILE NO: | EL 6201 |
| | Hermanus ✓ |
| SCAN NO: | |
| COLLABORATOR NO: | 101544 |

Sir

PROPOSED DEPARTURE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: ERF 6201 HERMANUS

- **PLASTIKA BELEGGINGS BK**

Reference is made to our application dated 1 December 2016 as well as your email dated 4 April 2017 with one objection attached thereto.

An objection was received from Michael Wurbach on behalf of the Maree Le Roux Familie Trust (owners of erf 421 Hermanus). The objection from Michael Wurbach did not include a Trust Resolution stipulating that he may act on behalf of the trust and consequently it is questionable whether this is merely his opinion or indeed the trust's opinion. Regardless, the objection and our response can be summarized as follows:

- ***The site development plan is not a true reflection of the parking area and entrance as seen on site. Parking is only placed in front of the building and not on the northern vacant portion of the subject property.***

It is our client's prerogative if they intend to pave the whole property. For the purposes of the land use application the approval will be tied to the site development plan submitted. Consequently the owner has to comply with the approved site development plan.

Regardless of the position of the paved areas, we cannot comprehend how this will impact on the objector since their property is situated at the back of erf 6201 Hermanus (facing Fourie Street).

- ***The applicant states that the subject property is "occasionally" used for single residential purposes. This statement is misleading since there is a permanent occupant on the subject property.***

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

John Mc Lachlan: Ndip (Town Planning) Tech Witwaterstrand; MSAPI
Pauline Spronk: B (Soc Sc) U.S. BA Hon (UNISA)
Merike Lonn: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

ANNEXURE G 2/3

The home occupation can be used on a permanent basis. The use of the property for single residential living purposes is occasional. It was never implied in the application that the doctors' consulting rooms will be used on an occasional basis. It is evident that the objector misinterpreted the "occasional" use of the subject property.

As mentioned in our report the doctors have a rotating schedule and consequently only two doctors, the receptionists (and occasionally the domestic worker) are on the premises at any given time during the day.

- ***The objector states that the vacant portion of the subject property can potentially be a second erf – the subdivision of the subject property will have an impact on the application at hand. The applicant also refers to the extent of the subject property being equal to two properties – does this imply subdivision in future? The objector states that it be made a condition of approval that the subject property cannot be subdivided in future (since the extent of the property is used as motivation for the deviations being applied for). If the aforementioned is not enforced it would proof the existing application to be misleading.***

The subject property previously consisted of two erven and when considering the minimum and average erf sizes for the area it can easily revert back to two properties in future. It should however be noted that our client currently has no intention to subdivide the subject property. Reference to the extent of the subject property was only done to emphasize that this is not an averaged size property and considering that it is the extent of two erven in the vicinity, the deviation to use a larger portion of the dwelling for home occupational purposes can be motivated. It is motivated that the impact for the deviation from the maximum allowable percentage of 25% to 51% on this large property will have the same impact if the property consisted of two separate erven each with its own dwelling and 25% of these dwellings used for home occupational purposes. The aforementioned is a realistic comparison for considering the impact of the deviation from the maximum allowable home occupation space for this specific property.

- ***The objector states that he does not oppose the removal of the restrictive conditions. However, he states that the deviation from the 25% permissible area to practice a home occupation is inappropriate and will create a precedent for the area.***

As discussed in the above paragraph the deviation can be motivated for this specific property given the extent of the property, the location of the property, the low impact on the adjacent property owners, only one objection received, etc. It should be noted that similar applications will have to follow the same process and will be evaluated on merit. It is therefore ludicrous to state that this application will create a precedent. It is also worth noting that this part of Westcliff is characterized by home occupations and the aforementioned is increasing as the demand for doctors' consulting rooms in close proximity to the hospitals in the area rise.

- ***The coverage of 11% is also misguided if the property should ever be subdivided.***

The coverage of the subject property for the purposes of this application was correctly calculated and indicated on the plans. To discuss the possible impact that a subdivision will have on the coverage now is premature and irrelevant since we are not applying for a subdivision. The objector's concerns for future development of the subject property can be addressed with conditions of approval for this application as well as future applications. A subdivision application has to follow a similar land use process such as this and it is the municipality's prerogative to approve such an application in future subject to the home occupation complying with the maximum allowable area of

25% of the dwelling. Coverage etc. will also be recalculated for any future land use applications (if any). This statement of the objector is therefore irrelevant and should be dismissed.

To conclude, it is evident that the objector does not give substantial reasons why he is not in favour of the deviation being applied for. The objector based his whole objection on possible future land use applications – which has no relevance to this application. In addition his concerns can be addressed with conditions of approval for future applications. Consequently we request that the objection be dismissed and the application recommended for the Tribunal's favourable consideration.

Yours faithfully

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