

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

4.4

**ERF 8395, 65 LAVENDER STREET, KLEINMOND, OVERSTRAND MUNICIPAL AREA :
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND CONSENT USE :
M MOHAMUD ON BEHALF OF YP MBALI**

**8395 KKM (3341)
H van der Stoep
7 September 2017**

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

Applications have been received on 29 June 2016 from M Mohamud on behalf of YP Mbali on Erf 8395, Kleinmond 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 with reference to Clause D.1 of Title Deed T56782/2015 applicable to Erf 8395, Kleinmond, to enable the owners to operate a house shop on the subject property.

The restrictive title condition Clause D.1. reads as follows:

“1. The Company reserves to itself and its successors in title the sole right to all Hotels and Liquor licences and no purchasers of erven or their successors in title shall erect any hotel or hold any liquor licence or general dealer’s licence without the written consent of the directors of the company or its successors in title first had and obtained, and no shop, store or business shall be erected or opened on any stands herein sold without the written permission of the company by its directors or its successors in title first had and obtained thereto.”

- ❖ Consent use in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 on Erf 8395, Kleinmond in order to utilize a portion of the existing dwelling as a house shop.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The application served before the Municipal Planning Tribunal on 26 April 2017 and was referred back.

The erf measures 128m² in extent and is held under Title Deed No T56782/2015. The erf is located in the residential area known as Riemvasmaak in Kleinmond.

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4. SUMMARY OF APPLICANT'S MOTIVATION

- An application has been received for the consent use for a house shop.
- The house shop will be to the benefit of the community.
- The shop will be in walking distance from the houses.
- The erven are very small and the houses are close to each other.
- The shop will be part of the house and the physical character of the property will remain intact.
- The tuck shop will provide for people who do not have a car.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	4 August 2016	16 September 2016
Ward councillor	Yes	4 August 2016	16 September 2016
Total comments	NONE		
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	18/09/16	In terms of requirements of National Fire Protection Regulations SANS 10400T: 2011 any occupancy category F2 – Small Shop must be separated from a dwelling H4 occupancy by a 60 minute fire wall. Any pedestrian opening must also therefore be protected with a 60 minute SANS1253-Class A self-closing fire door. A minimum of 1 x 4.5kg Dry Chemical Powder fire extinguisher must be provided in addition to the above requirements.	Not supported

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		This application does not currently meet the requirements therefore Fire Safety is unable to support the approval of this application until such time that there is full compliance with the regulation.	
Engineering Services	15/08/16	See Annexure D.	Supported
Traffic	15/08/16	All in order. Will not have any effect on Traffic.	Supported
District Health	08/08/16	No additional requirements. If this application is approved the owner need to apply for a Certificate of Acceptability for a Food Premises.	Supported
Building Control	05/08/16	Not supported. Non-compliance with National Building Regulations.	Not supported
Senior Manager : Kleinmond Admin	05/08/16	Support application.	Supported
Ward Committee	15/09/16	<i>“Dat die aansoek nie goedgekeur word nie omdat die eienaars van die huise dit onderverhuur aan persone afkomstig buitekant die dorpsgebied om besighede uit hulle huise te bedryf. Daardie huise is aan persone wat in behuising nood verkeer het, toegeken.”</i>	Not supported

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) objection was received before the application was lodged, which will be dealt with as an early objection for completeness of the application. The objector indicated that the whole house will be used for a shop and that the owners do not reside there. Other surrounding owners have signed the letter, but none of the aforementioned objected during the comment period.

8. SUMMARY OF APPLICANT’S REPLY TO COMMENTS

N/A

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9. MUNICIPAL ASSESSMENT OF COMMENTS

Town Planner's comment on objection received:

No objections were received during the comment period. The early objection made reference to foreigners, which is not the mandate of the Municipality to verify the legal status of immigrants. Should the property be let, the lessee can with the owner's consent live and apply for the house shop.

Internal Departments:

The Building Control Department did object to the application due to non-compliance with the National Building Regulations whereby it states that the house as a dwelling unit has to be 35m² internal dimensions.

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

10.1 Background

N/A

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

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

The objectives relating to:

Spatial Justice

The residential area does not have any business erven in close proximity to accommodate small shops catering for basic food stuff. The application addresses the injustice of the past planning practices that did not provide for commercial erven within the townships.

Spatial sustainability

The application is to make the subject property more compact still within the character of the area. The erf belongs to a South African and the partnership of a business and the renting of the house will provide a much needed income to the owner, especially in the present economic environment and in the future.

Efficiency

The building is used as such and thus makes optimal use of the development parameters as defined in the Overstrand Zoning Scheme. The application will minimize the negative effect of illegal activities, which may impact on the resale value of the property.

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Spatial Resilience

The application is in line with policies and caters for maximum use of the property. The application will enable the applicant to optimise his assets should it be necessary due to economic and or financial reasons.

Good administration

Procedure was followed and full public participation was applicable.

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

Same.

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

Same.

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

N/A

10.6 Impact on Municipal engineering services

N/A

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The structure remains residential as per the zoning. The proposed use can be accommodated in terms of the Zoning Scheme, subject to compliance of other applicable legislation.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

There is financial and other value of the rights, since the owner will be able to exercise the rights as per the Zoning Scheme.

The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

The personal benefit is to make the dwelling more liveable.

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The social benefit of the restrictive condition remaining in place, and/or being removed / amended

The owner will be able to provide an amenity to the community.

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

No.

12 THE DESIRABILITY OF THE PROPOSAL

The erf is located in a residential area known as “Riemvasmaak” in the Kleinmond area. The area has few erven available for commercial opportunities due to the lack of business erven. Residents have limited vehicle ownership and thus have to walk quite a distance to the shops, especially children and older persons. The latter is depended on friends and family to acquire basic food stuffs.

The erf measures 128m² in extent and the layout did not make provision for parking on-site. The erf can accommodate one (1) parking bay on-site. The market for house shops is built on pedestrians from the surrounding area.

The Overstrand Zoning Scheme does make provision for house shops as a consent use to address the abovementioned. The erf measures 128m² in extent with a dwelling of 41m² external dimensions. The minimum standard for a dwelling house in terms of the National Building Regulations is 30m². The internal dimensions of the application dwelling are 36m², of which the house shop will be 10m². This leaves the household with 26m² and is not in line with the 30m², which is required for living area of a dwelling. The application is thus 4m² short of complying with the National Building Regulations.

The removal of Conditions D.1., D.7. and D.8. of Title Deed T56782/2015 prohibits the house shop and any other primary rights attached to the Residential Zone 1 as per the Overstrand Zoning Scheme. Conditions (7) and (8) stipulate restrictions with regard to the building lines applicable to the erf. The restriction of the 3,15m street building line and the street building lines of 9,45m and 6,30m pertaining to outbuildings are not possible to adhere to due to placement of the existing dwelling and extent of the erf.

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13. RECOMMENDATION

1. that the application for the removal of title deed restriction in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 (By-Law) as per Clause D.1 of Title Deed T56782/2015 applicable to Erf 8395, Kleinmond, **be approved**;
2. that the application in terms of Section 16(2)(o) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 for a consent use in order to utilize a portion of the existing dwelling on Erf 8395, Kleinmond, as a house shop, **be approved**, subject that the house shop be lessen with 4m² or the dwelling be enlarged with 4m² to comply with the National Building Regulations, and
3. 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, 2016 with regard to the above conditions of approval.

12. REASONS FOR RECOMMENDATION

- ❖ The house shop cannot comply with the National Building Regulations.

13. Annexures

Annexure A:	Locality Plan
Annexure B:	Site Development Plan
Annexure C:	Motivation Report
Annexure D:	Title Deed T56782/2015
Annexure E:	Services Report

SIGNATURES

REGISTERED PLANNER

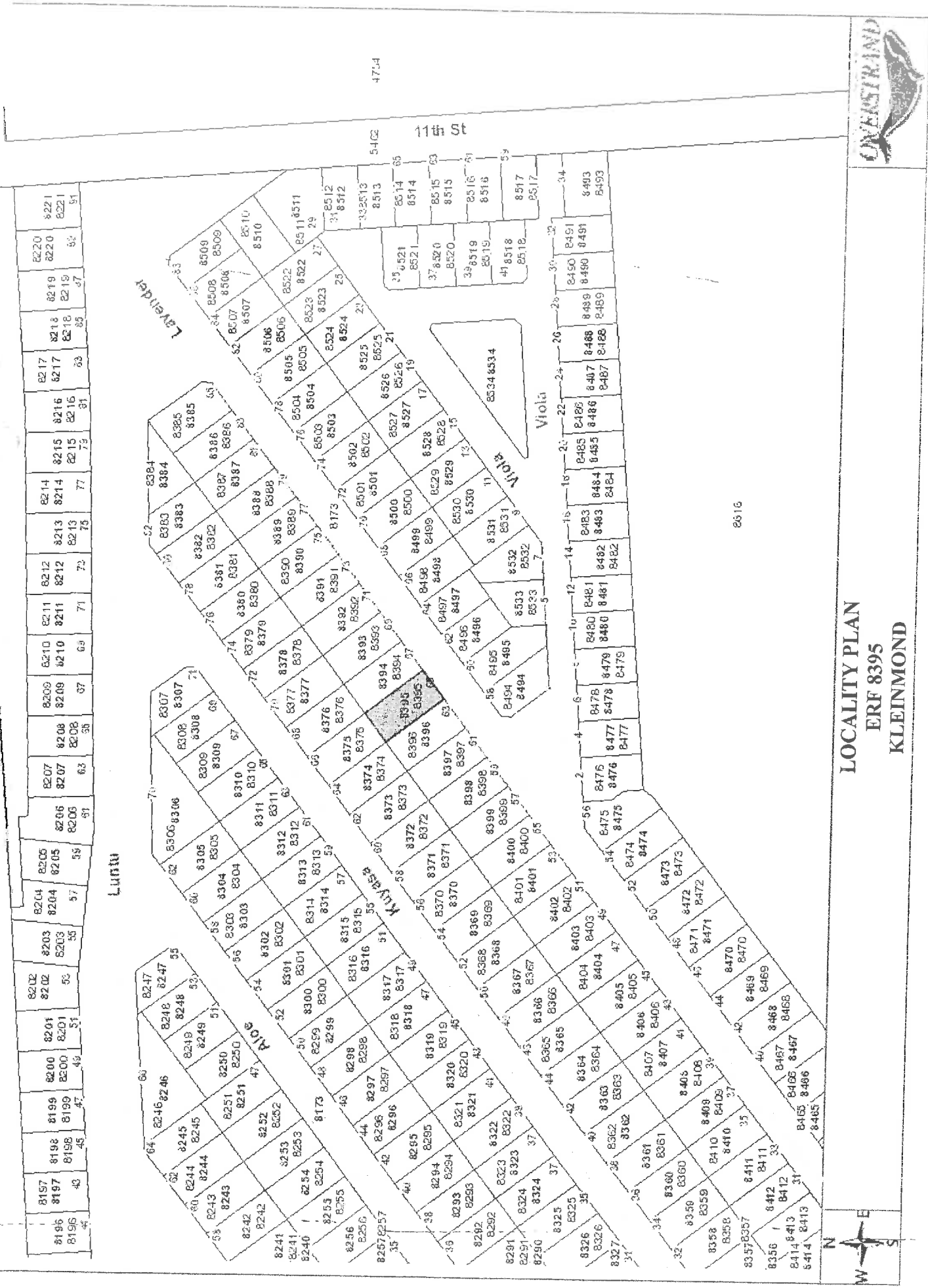
Name : **HANNEEN VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

Signature : _____

Date: _____

0403



LOCALITY PLAN
ERF 8395
KLEINMOND



47.4

11th St

Viola

2616

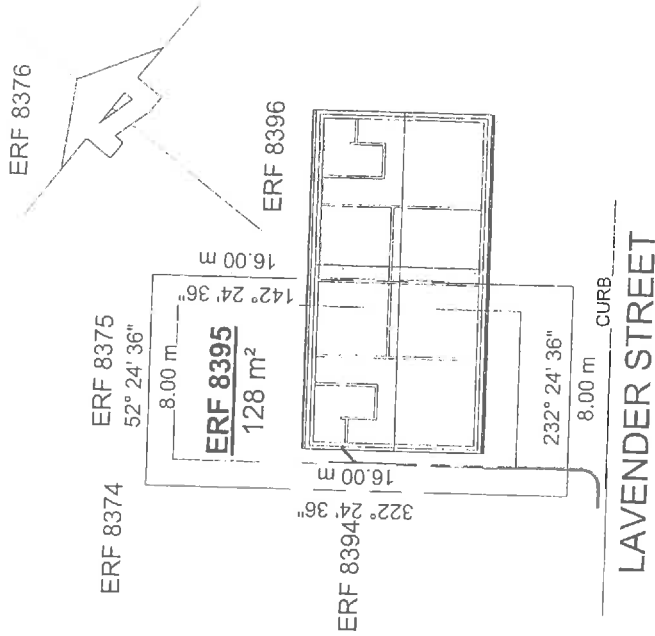
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AREA OF ERF - 128m²
 AREA OF HOUSE - 40,38m²
 COVERAGE 31,55%



2 SITEPLAN A3

1 : 200

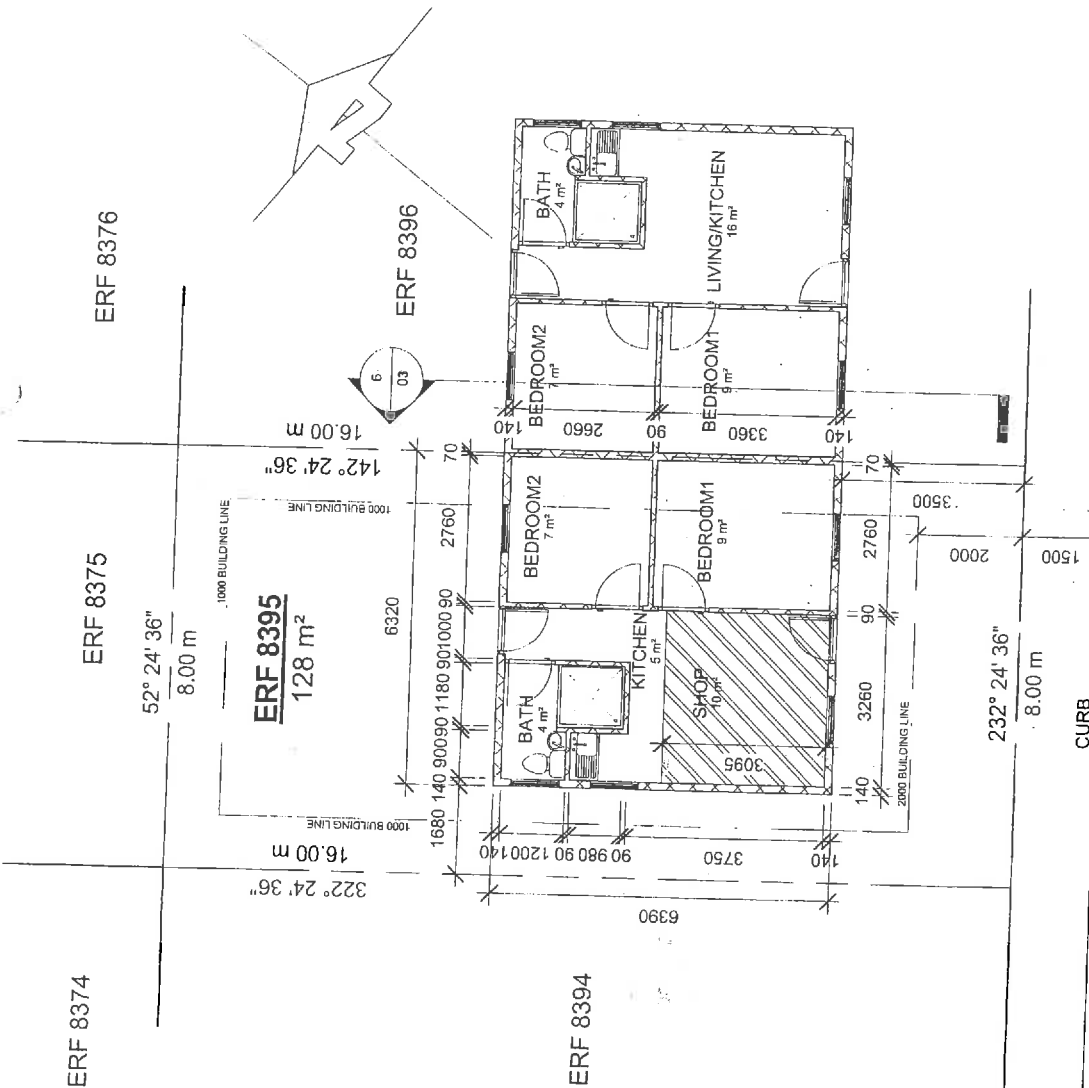
GROUNDSTOREY PLAN

Projektnommer: B6037
 Datum: 2016.06.22
 Getekendeur: Author

02

APPLICATION FOR SMALL SHOP

FOR MS. MBALI



1 1GROUNDSTOREY A3

1 : 100

No.	Description	Date

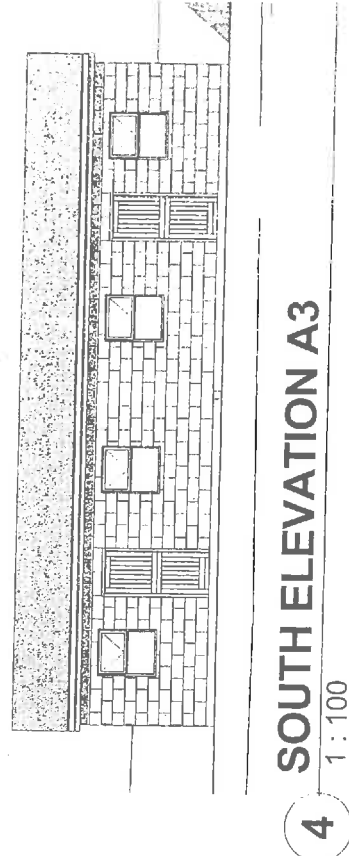
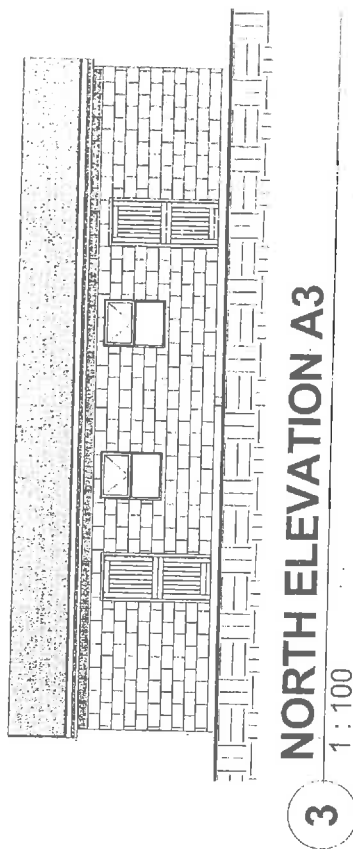
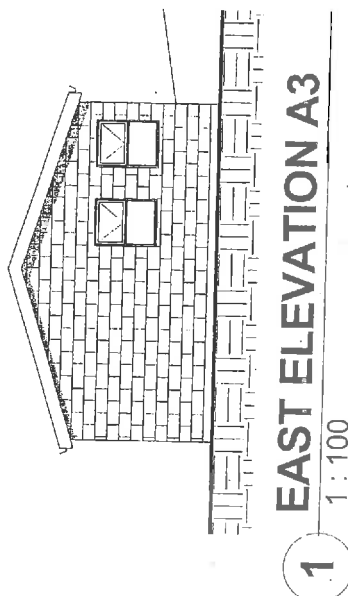
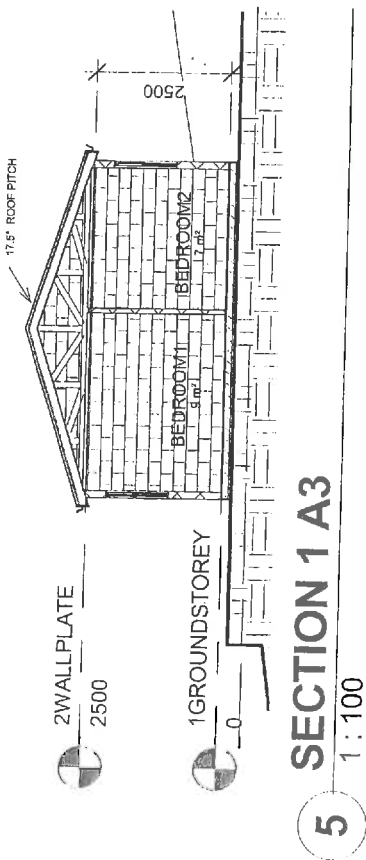
PROF. SENIOR ARGITEKSTEGNOLOG

SAARP REG. NR. ST2385

JH BLIGNAUT

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No.	Description	Date

APPLICATION FOR SMALL SHOP
FOR MS. MBALI

ELEVATIONS

Projektnommer
Datum
Gefleken deur
Author

03

MOTIVATIONAL LETTER

The changes requested in the rezoning of this property will have little impact on the environment. It is an application for a small erf to obtain business rights so a legal Tuck-Shop can be managed by an individual to be able to earn a living and provide for his family.

PHYSICAL CHARACTERISTICS OF THE PROPERTY

The erven are small and close to one another. The proposed change will have no impact on the physical characteristics of the property. No topography, geological changes will be necessary.

EXISTING PLANNING IN THE AREA

It is an already developed residential area.

CHARACTER OF THE SURROUNDING AREA

It is a residential area. The changes are 100% compatible with the area. The tuck-shop will provide a shop for people without vehicles that have to walk to shops, to purchase necessities.

POTENTIAL OF THE PROPERTY

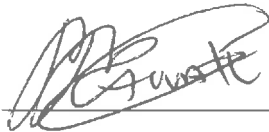
The property is a small residential erven. The erven can not be used for agriculture, conservation, mining or recreation. The small tuck-shop will not influence any potential of the property.

LOCATION AND ACCESSIBILITY OF THE PROPERTY

The property can be accessed on foot. It will not have the effect of additional traffic.

PROVISION OF SERVICES

All infrastructure are in place and all services such as water, electricity etc., is already supplied to the erf. No new services will be needed and there will be no effect on the environment.



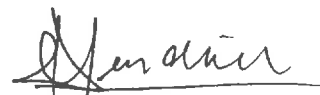
M MOHAMUD

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS &
CONSENT USE: ERF 8395, KLEINMOND (3341)**

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

Conditions:

1. 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 developer's cost;
2. 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 developer's cost;
3. that no on-street parking be allowed;
4. that stormwater be allowed to discharge through Erf 8395, Kleinmond, unobstructed.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

15/8/2016
DATE