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**ERF 3921, 128 SECOND AVENUE, KLEINMOND, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE
AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: FVS TOWN & REGIONAL
PLANNERS ON BEHALF OF HEICH BELEGGINGSTRUST**

3921 KKM (4170/2022)

H van der Stoep

1 August 2023

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 7 June 2022 from FVS Town and Regional Planners on behalf of HEICH Beleggingstrust on Erf 3921, Kleinmond for the following:

- ❖ **Removal of Restrictive Title Deed Condition** in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Planning, 2020 for the removal of restrictive title deed condition C.8. as contained in Title Deed T013275/2001 of the property to accommodate a carport and pergola that encroach the street building line.

The restrictive title deed condition reads as follows:

“C. ONDERHEWIG verder aan die volgende voorwaardes vervat in Transportakte nr T14866/1970 opgelê ten gunste van Kleinmond Syndicate Limited en hul opvolgers in titel as eienaars van die restant van die grond gehou kragtens Transportakte nr T3729/1918, naamlik:

8. All buildings to be erected on the land herein sold shall stand back at least 3,15 metres from the line of the street or avenue on which the lot or lots herein mentioned may front.”

- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Planning, 2020 to relax the street building lines from 4m to ±0,45m to accommodate a carport and pergola.
- ❖ **Determination of an Administrative Penalty** in terms of Section 16(2)(q) of the Overstrand Municipal By-Law on Municipal Planning, 2020 for the unauthorized building line encroachments as stipulated above.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 3921 is located in Kleinmond. The application is to legalize the erection of a pergola and carport over the street building line. The title deed has restrictive conditions that restricts any development over the Title Deed Street building line of 3,15m and the Land Use Scheme Street building line of 4m.

4. SUMMARY OF APPLICANT'S MOTIVATION

REMOVAL OF RESTRICTIVE TITLE DEED CONDITION

The restrictive title deed condition reads as follows:

"C. ONDERHEWIG verder aan die volgende voorwaardes vervat in Transportakte nr T14866/1970 opgelê ten gunste van Kleinmond Syndicate Limited en hul opvolgers in titel as eienaars van die restant van die grond gehou kragtens Transportakte nr T3729/1918, naamlik:

8. *All buildings to be erected on the land herein sold shall stand back at least 3,15 metres from the line of the street or avenue on which the lot or lots herein mentioned may front."*

ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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 he owner of a dominant tenement.

The subject restrictive conditions do not have any significant value to person or entity. The conditions stipulated are deemed too restrictive taking into consideration the extent of the property (595m²). The removal of the conditions will not alter the character of the surrounding areas.

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

The owner will enjoy the added security of his vehicles being parked under a roofed structure, thus adding value to the existing dwelling and will further aid in the safety of his property.

The personal benefits which will accrue to the person seeking the removal of the restrictive condition if it is removed.

The property owner will possibly enjoy the benefit of an increase in property value which will then be in line with the retail prices of properties in the surrounding area.

The social benefit of the restrictive condition remaining in place.

There is no social benefit to be enjoyed should the condition remains in place. It serves no purpose in terms of the health, safety and well being of the surrounding community.

The social benefit of the restrictive condition remaining being removed / amended.

The property owner may enjoy the added benefit of an enlarged covered area that will provide added security for the property.

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

The application entails the removal of a condition, and no attempt is made to alter additional restrictive conditions. The removal of the condition will not negatively impact on the surrounding community.

NEED

- The proposed carport is mainly for the parking of friends and family.
- The proposal will aid in the protection of motor vehicles.
- The owner wants to protect his vehicles to inclement weather conditions.

DESIRABILITY

- The proposal is not deemed to impact negatively on the line of sight/ of Ninth Street nor Second avenue since the proposal is not situated on the corner of the aforementioned intersection, but towards the centre of the property.
- The proposal will add value to the existing property and dwelling.
- The proposal will aid in the safety and security of the property's owner's vehicles.
- The proposal is in line with any residential neighbourhood.
- It is not deemed that the proposal will impact negatively on the streetscape.
- The proposal will not further detract from the neighbours in terms of privacy and loss of sunlight.
- No additional services are required.

POLICIES AND REGULATIONS

The application site is subject to the Environmental Overlay Zone, Protected Area Buffer. The erf is located within the Buffer area and does not encroach onto the Nature Reserve.

SPATIAL PLANNING POLICIES

Municipal Spatial Development Framework (MSDF)

The application complies with the objectives in the document.

Overstrand Municipal Growth Management Strategy (2010)

The proposal does not entail the densification of Erf 3921.

Overstrand Municipality Amended By-Law on Municipal Land Use Planning (2020)

The proposal is not considered to be a deviation from the requirements of Section 66 of the By-Law.

PLANNING PRINCIPLESSpatial Justice

The proposed application will not contribute to past spatial injustices.

Spatial sustainability

The proposed development will continue to protect an environmentally sensitive areas and cultural landscapes, as it is in an already residential area and thus not alter any environmentally sensitive areas.

Efficiency

This proposal is intended to maximise the usage of the property to its full potential.

Spatial Resilience

The proposal is well aligned with the spatial plans and policies and that will enable the subject property to be able tot resist and absorb environmental and economic shocks.

Good Administration

The Applicant has followed due process as determined by the Overstrand Land Use Scheme.

DETERMINATION OF THE ADMINISTRATIVE PENALTY***(a) nature, duration, gravity and extent of the contravention***

The structures were erected recently, and the owners were not aware that the construction of the structure will have such a detrimental impact and has subsequently made all efforts to rectify the contravention.

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

The owner realised that his actions were not considered to be favourable and immediately made use of a professional team to address the issue.

(c) whether the unlawful conduct was stopped

Upon completion of the construction work, it was conveyed to the owner that the structures were illegal.

(d) a report by a quantity surveyor in matters of unauthorised building/construction

This office is of the opinion that such a report is not required at this stage but will be made available on request.

(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law

No

CONCLUSION

- The owner was not duly informed of the required process to be followed.
- No complaints have been received by the abutting owners.
- The dwelling is not a primary home and needed the construction be done before the oncoming winter season.
- No previous contravention notice has been issued against the owner.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Gazette	Yes	9 December 2022	27 January 2023
Local newspaper	Yes	8 December 2022	27 January 2023
Registered notices	Yes	9 December 2022	27 January 2023
Internal departments	Yes	9 December 2022	27 January 2023
Ward councillor	Yes	9 December 2022	27 January 2023
Total comments	TWO (2)		
Total letters of support	ONE (1)		
Was public participation undertaken in accordance with Section 46 - 50 of the 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
Engineering Services	07/02/2023	See Annexure G.
Building Control	09/12/2022	No objection. Building plan application to comply with all applicable law.
Fire Department	21/12/2022	No objection subject to compliance with provisions of SANS 10400-A:2016, SANS 10400-T:2020 and the By-Law relating to fire safety.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

The application was duly advertised in the local newspaper and Government Gazette. Registered letters were also sent out to interested and affected parties and the Kleinmond Ratepayers Association. A notice board was also placed on-site by the applicant's consultant.

Comments received forthcoming the public participation process are as follows:

OBJECTIONS

- *Messrs. Lizette, Wilhelm & Etienne Rabe*
- *Kleinmond Ratepayers Association*

LETTER OF SUPPORT

- *J Louis de Jager*

The applicant was provided with an opportunity to respond to the comments. See Annexures E and F respectively.

The objections are as follows:

OBJECTION 1 - Illegal construction

The carport has been erected without approved building plans and ignorance of the law is no excuse.

APPLICANT'S RESPONSE

Noted and will take full responsibility of his actions.

TOWN PLANNER'S RESPONSE

The applicant and the objector comments are correct, no building plan was submitted for the structures before erection and will be dealt with accordingly.

OBJECTION 2 - The size of the property

The applicant indicates that the building lines are too restrictive for a property with the size of only 595m². This has no bearing on the motivation that the erf is too small. The owner knew the size of the erf and should simply have built accordingly to scale to accommodate all present and future structures. Should an owner utilize too much of available surface initially and can therefore not accommodate new structures it is not acceptable to try to claim additional space.

APPLICANT'S RESPONSE

The owner does not claim more additional space but make use of the allowable 50% coverage on Residential 1 erven. The property's coverage is 44%.

TOWN PLANNER'S RESPONSE

The erf size was well known to the applicant and therefore cannot motivate the carports on this basis. The applicant should have bought a bigger erf.

The applicant is correct that no additional space is claimed, but rather the provision in terms of the Land Use Scheme that the Municipality may consider carports over the street building line. The Title Deed however makes no such provision and therefore the application for the removal of the restrictive condition.

OBJECTION 3 - Safety and security of vehicles

The motivation stipulates that the parking is mainly for friends and family and to protect the vehicles to weather elements. Secure parking is available inside the existing garages and well inside the existing perimeter fence on the property. All the owners in Kleinmond have to live with whatever infrastructure can be legally fit onto their perspective properties. No other similar waivers seem to have been allowed on other properties in the immediate area.

APPLICANT'S RESPONSE

The carports are to ensure safety and security against weather conditions. It would be more dangerous to park vehicles on the roadside that may impede traffic flow. The statement that no waivers have been approved of carports is not correct since numerous applications have been approved in the past.

TOWN PLANNER'S RESPONSE

The applicant and objector's comments are noted.

The only reason for the carports is to ensure that vehicles are protected from adverse weather conditions. The notion of the applicant that similar waivers have been approved by the Municipality is correct. However, should one consider the immediate area, the Municipality has not approved numerous waivers for transgressing the street building line.

OBJECTION 4 - Coverage

The coverage percentage of 50% will be exceeded.

APPLICANT'S RESPONSE

The coverage according to the site plan is 44%.

TOWN PLANNER'S RESPONSE

The site plan is incorrect and with the erection of the carport, the 50% coverage is transgressed. The Architect did not include the area from the post closest to the house to the wall of the building. The area of 6m, by 1,250m which equates to 7,5m², covered by a roof was not included in the calculations.

The actual coverage is 48,56%.

OBJECTION 5 - Sight distance

The proposed carport is too close to the intersection of two adjoining streets which can lead to the obstruction of views.

APPLICANT'S RESPONSE

The proposal is not deemed to impact negatively on the sight distances as the proposal is not directly onto the street boundary.

TOWN PLANNER'S RESPONSE

The erection of the pergola and or carports will have no impact on the sight distance at the intersection of Second Street and Ninth Avenue. The erf has no splay and the fence erected on the erf boundaries already impedes sight distances.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

See Paragraph 7 above.

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 proposal will not in any way contribute to the perpetuation of the past apartheid spatial development imbalances.

Spatial Sustainability

The property is located in the residential area, of Kleinmond, in a built-up area and will have no detrimental effect on any agricultural land or the environment sensitive areas.

Efficiency

All municipal services are available to the property. The building will be used optimally.

Spatial Resilience

The proposed development will not lead to any economical and/or environmental shocks. All structures on the erf comply with the National Building Regulations, 1977.

Good Administration

Good procedure was followed and with a good public participation process.

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

The principles advocated the densification of existing neighbourhoods to ensure optimal use of properties to ensure sustainability of the area.

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

The principles advocate viable communities that are more sustainable and resilient to economic and environmental shocks. The application relates to more optimal use of the property within the development guidelines of the Overstrand Land Use Scheme, thus ensuring the sustainable use of the property.

One of the key principles of the SDF is a liveable and viable Community and in this case one should consider the adjacent neighbour, especially if there are other options.

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

N/A

10.6 Impact on Municipal Engineering Services

Existing services will be used.

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.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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 he owner of a dominant tenement.

No person or entity will be affected financially by the removal of these restrictive conditions.

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

No person is personally benefitting from these conditions.

The personal benefits which will accrue to the person seeking the removal of the restrictive condition if it is removed.

The property owners will benefit from the removal of the restrictive condition as it will allow them to utilise their property to its full extent.

The social benefit of the restrictive condition remaining in place.

The restrictive conditions do have a social benefit for the objector since her way of life and doing is not disturb in any way.

The social benefit of the restrictive condition remaining being removed / amended.

The social benefit is that the owner can safeguard his vehicles and optimally use of the property, thus ensure maintenance of the structures.

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

The conditions applied for will not remove any rights enjoyed by the beneficiaries of Northcliff since the conditions relates to the property.

12. THE DESIRABILITY OF THE PROPOSAL

The property is situated in the residential area of Kleinmond.

The restrictive title deed condition of 3,15m setback for all development from the street boundary has led to the fact that Ninth Street has an open street view character. Carport and pergolas are usually viewed favourable in terms of the Overstrand Land Use Scheme, since it is not a closed structure that will enclose the street and create the perception of a tunnel. The carport and pergola have been erected on the street boundary with a length of 9,311m which impede on the present open street character.

The application for a carport of 28,2m² is indicated a new work on the building plan submitted with the application. This structure has a covered roof and forms part of the coverage calculations. The coverage with the initial application indicates coverage of 44%, which is not correct. A simple error occurred, and the architect rectified the situation, indicating that the actual coverage is 48,56%.

The pergola does not have a covered roof and thus exempted from the coverage calculations and has an area in extent of 15,56m².

This application does not conform to the present character of Ninth Street and does impede on the clean and open view street character of Ninth Street, especially in view of structures of more than 9m in length over the building line on the street boundary. In terms of the approved building plan, the owner does have a 3-vehicle garage and the proposal for an additional three (3) vehicle carport/pergola does seem excessive for visitors.

The applicant has an approval, dated 2018, for transgressing the height of the building and departure of the western lateral building line to accommodate the existing building and has full knowledge of planning procedures.

The departure of the 4m street building line to 0m building line to accommodate the carports and pergola is not supported. The reasons being, that the structures on the 0m erf boundary does impede and impact the street view and character of Ninth Street. The erection was done illegally, and the owner has full knowledge of planning procedures. The reasons for safety and security does not hold water since the erf has a security fence and the carports are open structures, thus does not provide any safety or security. The aspect of weather conditions can be accommodated, since it is very relevant in the Western Cape; however this is also only applicable to the carport since the pergola is a structure with no solid roof.

Evaluating the application, it is clear that the necessity of the pergola is not demonstrated in the motivation of the application. The carports will have an impact on the character of the street, and it is recommended that the carport be set back to 2m from the erf boundary.

The application for the removal of the restrictive condition is viewed favourably to align the Title Deed building lines with the Overstrand Land Use Scheme and will not be to the detriment of the surrounding community. The owner will still be required to adhere to the Land Use Scheme if any transgression over the street building line is proposed. The removal of the restrictive condition will also assist in the erection of the carports to the proposed 2m street building line.

It should be noted that the consultant did not address the 9m or third of the transgressions over a building line, whichever is the most restrictive, and will be dealt with accordingly. The erf is located on a corner, corner of Ninth Street and Second Avenue, and thus by implication has less developable area as to a normal erf with one street boundary due to the title deed street building lines. It does leave little room to make provision for carports as in this case.

The application for the request not to impose an administrative penalty is dismissed due to the following reasons:

- The owner was involved in an application during 2018 and thus has full knowledge of land use processes and the requirement to submit a building plan before construction.
- The fact that it is not a primary home does not exempt the owner of complying with applicable legislation.
- The same apply with regard to the construction of the carport and since it is not a primary residence, the construction of the carports was not essential to cater for weather conditions.
- It is not correct that no complaints have been received. The municipality did receive complaints with regard to the erection of the illegal structures.

- The applicant is correct that no previous notices were served against the applicant.

The determination of the administrative penalty is for the erection of illegal carport and pergola of 43,76m². The invoice received from the applicant indicates that the erection of the carport is to the amount of R59 000. In terms of the Overstrand Municipality Budget a percentage of the average of two quotes needs to be considered. However, in this case, the actual invoice was submitted, and the percentage allocated will be determined at 5%.

The administrative penalty determined is R2 950-00 including VAT.

13. RECOMMENDATION

1. that the application in terms of Section 16. (2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3921, Kleinmond for the removal of restrictive title deed condition C.8. as contained in Title Deed T013275/2001 of the property to accommodate a carport that encroach the street building line, **be approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the amended title deed be submitted for record purposes to the Municipality;
 - (b) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
 - (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (e) that all the conditions in the Services Report (attached as Annexure G), be complied with.
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3921, Kleinmond to relax the street building lines from 4m to ±0,45m to accommodate a carport and pergola, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
3. that the carport be set back to the **2m** street boundary and the pergola be **removed** within sixty (60) days from the final date of the decision of the application.
4. that the determination of an administrative penalty in terms of Section 16.(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3921, Kleinmond for the unauthorized building line encroachments as stipulated above was considered and that an administrative penalty of R2 950-00 including VAT (being 5% of the built cost as per budget requirements), **be applicable** in terms of Section 90.(4) of the By-Law which penalty must be paid within thirty (30) days from the final date of the decision of the application.

5. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

POINT 1: APPROVAL

- ❖ The application has followed due procedure.
- ❖ It is in line with the aims of the Overstrand SDF.
- ❖ The removal of the restrictive conditions to be in line with the Land Use Scheme is supported.

POINT 2 & 3: PARTIAL NON-APPROVAL

- ❖ The motivation does not address the pergola *per se*. The reason for increment weather does not coincide with a pergola without a solid roof.
- ❖ The carport be set back at least 2m from street boundary to lessen the impact on the street view and character of 9th avenue.

POINT 4: ADMINISTRATION PENALTY

- ❖ The applicant has erected the structures illegally but took immediate action to rectify the situation.
- ❖ The applicant has full knowledge of Planning and building procedures and the requirements thereof, since it is not the first time that he is involved in a Town Planning and Building procedures.
- ❖ The applicant will have to set back the structure to 2m street building line, which will entail some cost.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T013275/2001
Annexure E:	Objections/comments received
Annexure F:	Applicant's response to objections/comments received
Annexure G:	Services Report
Annexure H:	Invoice of construction of carports

SIGNATURES

REGISTERED PLANNER

Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: _____

Date: _____

Annexure A



OVERSTRAND
MUNICIPALITY

Locality Map
Erf 3921 Kleinmond

Date: 2022/12/06



Town and Regional Planners

Annexure B 1/17

1. SECTION 1: INTRODUCTION

FVS Town and Regional Planners is a professional town planning consultancy based in the Western Cape of South Africa, with project experience throughout the country. We strive to deliver town planning services to individuals, companies, and communities to create sustainable environments.

We have a combined experience of 10 years in both public sector and private sector. We can assist with all varieties of land - use related issues. With a dynamic and efficient team, we can assist with the management of both large and small-town planning projects and will be able to provide our consultation services where necessary.

1.1. BACKGROUND INFORMATION

The property owner recently consulted with this office and an architect on the possibility of constructing a carport in front of the existing garage for the sole purpose of storage of motor vehicles. It was advised that formal plans be drawn up for the construction and that an application be lodged to the Overstrand Municipality's Town Planning Department for their approval of proposed carport.

1.2. PLANNING BRIEF

Taking the aforesaid into consideration, application is hereby made in terms of Section 16 of the Overstrand Municipality By-law on Municipal Land Use Planning for the following:

1.2.1. Section 16 (2) (f) – Amendment, suspension, or deletion of restrictive conditions in respect of a land unit

1.2.2. Section 16 (2) (q) – Determination of an Administrative Penalty

Please refer to the following annexures for the Application Form and Power of Attorney:

Annexure A – Application Form

Annexure B – Power of Attorney

Section 3 of this motivation report will provide the reader with a full description of the application and proposed additions and alterations as proposed.

2. SECTION 2: PROPERTY DETAILS

Section 2 of this report consists of the details pertaining to the subject property, such as its locality and ownership details and the property.

2.1. OWNERSHIP DETAILS

Below are the details as contained in the subject Title Deed.

Property Description	Erf 3921, in the Municipality Overstrand, Division of Caledon, Province of the Western Cape
Deed Number	T13275/2001
Ownership	Die Heich Beleggingstrust
Extent	595m ²

A perusal of the subject title deed revealed that there are restrictive conditions registered on Erf 3921, specifically pertaining to the boundary building lines, and reads as follow:

Condition 8: "All buildings to be erected on the land herein sold shall stand back at least 3,15 metres from the line of the street or avenue on which the lot or lots herein mentioned may front."

This application is thus for the removal of the restrictive condition as indicated above.

Please refer to **Annexure C** for a complete copy of the Title Deed.

2.2. LOCALITY

The application site is situated at number 128 of Second Avenue in the coastal town of Kleinmond, in the Overberg District of the Western Cape Province. Kleinmond is approximately 90km east of Cape Town on the southern coast of the Western Cape.

Kleinmond is a small coastal town in the Overberg region of the Western Cape province, South Africa. It is situated inside a UNESCO-declared biosphere about 90km east of Cape Town between Betty's Bay and Hermanus. The town's name, meaning "small mouth" in Afrikaans, refers to its location at the mouth of the Bot River lagoon. Hermanus, being the main town of the Overstrand Municipal area, is host to numerous smaller settlements on this coastal strip and includes Rooi Els, Pringle Bay and Gansbaai.

Tourism plays a large role in the town's economy due to its popularity with holiday makers from across the Western Cape and Cape Town in particular.

Please refer to **Annexure D** for the Locality Plan.

2.3. CHARACTER OF THE SURROUNDING AREA

The application site is situated towards the southern part of Kleinmond, between the sea and the Main Road. The immediate surrounding erven are zoned as Single Residential Zone 1 and is thus predominately a residential area. Due to the high number of tourists that travel to, and through, the area it is regarded as understandable that numerous properties in the surrounding area are utilised as both residential erven and self-catering (or similar such as B&B, Lodge, or similar types of short-term holiday) accommodation.

Kleinmond, including other towns in the area, is mainly sustained by the tourism trade and offers a wide variety of activities such as golfing, hiking, and other tourist related activities such as fishing and kayaking. The surrounding area is further stimulated by various economic activities associated with the normal functions of any town.

The figures below should provide the reader with a relative understanding of the surrounding area. Figure 1 provides the reader with a simple zoning extract, while Figure 2 provides the reader with an aerial photograph of the application site and surrounding properties.

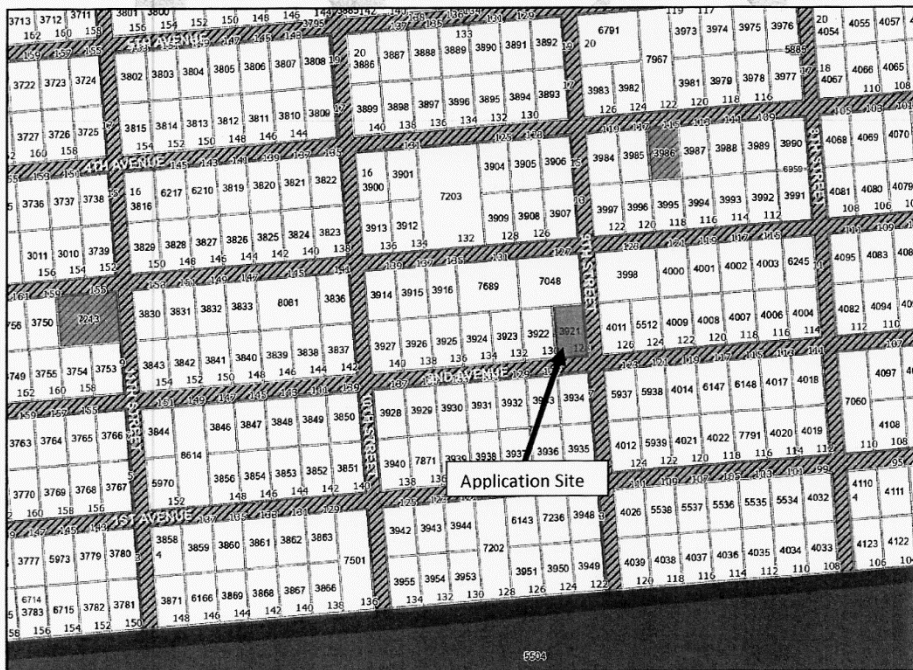


Figure 1: Surrounding Zonings (Overstrand Public Viewer, April 2022)

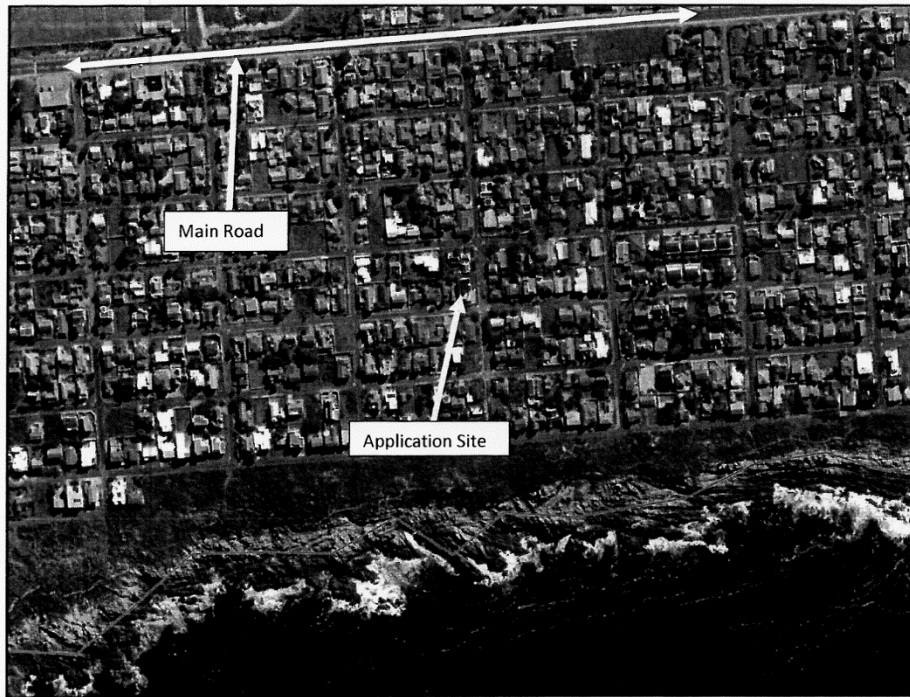


Figure 2: Aerial Photograph of application site and surrounding area (Cape Farm Mapper, April 2022)

2.4. ZONING

Erf 3921, Kleinmond is currently zoned as Single Residential Zone 1.

2.5. IMPACT ON MUNICIPAL SERVICES

The proposal is not deemed to have a negative impact on the municipal engineering services. The application site is well serviced, and the proposal is not deemed to have an additional impact on the municipal services. See hereunder the use of each of the services:

2.5.1. Access

Access to the application site is currently from 9th Street, as is currently the case.

Please note that the proposal will not lead to an increase in the existing services network as the current capacity is deemed to be sufficient.



Town and Regional Planners

3. SECTION 3: MOTIVATION

Section 3 of the motivation report deals specifically with the type of application and what will be applied for, as well as the development particulars.

3.1. THE APPLICATION

- Application is hereby made in terms Section 16 (2) (f) of the Overstrand Municipal Land Use Planning By-Law for the following:

"Amendment, suspension or deletion of restrictive conditions in respect of a land unit":

Application is hereby made for the removal of a restrictive Title Deed condition:

Condition 8.: "All buildings to be erected on the land herein sold shall stand back at least 3,15 metres from the line of the street or avenue on which the lot or lots herein mentioned may front."

- Application is hereby made in terms Section 16 (2) (q) of the Overstrand Municipal Land Use Planning By-Law for the following:

"Determination of an Administrative Penalty:"

Application is made for the determination of an administrative penalty in terms of Section 90 of the Overstrand Municipality Amended By-law on Municipal Land Use Planning.

3.2. THE PROPOSAL

The proposal entails the construction of a new carport and pergola as depicted on the Site Development Plan (Plan Number: JC6011/101 & JC6011/102)

Please refer to the figures on the following pages for extracts from the proposed site development plan, attached hereto as **Annexure E**.

3.3. THE ADMINISTRATIVE PENALTY

Application is hereby made in terms of Section 90 of the Overstrand Municipality Amended By-Law on Municipal Land Use Planning, 2020 for the determination of an administrative penalty. An administrative penalty is a direct contravention of the Overstrand Municipal Planning By-Law on Land Use Planning. The following measures must be addressed to the satisfaction of the Municipality to determine whether the imposition of an administrative penalty is applicable. The information required is stipulated as follow:

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

The administrative penalty application pertains to the illegal structure being built the specified street boundary building line. The proposed carport and pergola situated in front of the existing garage was recently constructed. Estimated at approximately four months ago. The owners were not aware that the construction of the structure will have such a detrimental impact and has subsequently made all efforts to rectify the contravention. The owner immediately made use of the services of an architect and the services of a town planner to compile the required plans and for the town planner to apply for the relevant applications, to the authorities.

- *The conduct of the person (allegedly) involved in the contravention.*



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The property owner realised that his actions were not considered to be favourable and should have done it in a different manner. The property owner has immediately made use of the services of professionals to assist in this matter.

- *A report by a quantity surveyor in matters of unauthorised building/construction.*
This office is of the opinion that a report by a quantity surveyor is not required at this stage. Should the Local Authorities, MPT, or any other governing body require a report by the quantity surveyor it will be requested and made available upon request, should a penalty be requested.
- *Whether the unlawful conduct was stopped.*
Upon completion of the construction work, it was conveyed to the property owner that the conducted undertaken was of an illegal nature. The property owner immediately contacted the relevant professionals to rectify the situation and has indicated that no further construction will take place prior to any further approvals.
- *Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.*
To our knowledge, the current owners have not been in contravention of this By-Law or any other previous planning law.

This office respectfully requests that a penalty be not imposed on the owners of Erf 3921, due to the following reasons:

- The property owner was not duly informed on the required processes to follow.
- No complaints have been received from the abutting neighbours, or surrounding community.
- Erf 3921 is a holiday home and is not the primary dwelling for the owners. The owner expressed that he wanted to finalise construction prior to returning to his primary dwelling elsewhere in the country.
- Construction was prioritised due to the influences of nature. In other words, the owner was rushed to finalise construction prior to the start of winter, which is typically the rainy season for this part of the country. It is common knowledge that rain, and wet weather can deter (and delay) a project by many months.
- To the best of our knowledge, no previous contravention has been done by the property owners.

We respectfully request your favourable consideration with this matter.

3.4. REMOVAL OF RESTRICTIVE TITLE DEED CONDITION:

To reiterate Section 3.1 of this motivation report, application is made for the removal of a restrictive title deed condition, contained in the subject title deed.

In terms of Section 35 of the Amendment By-Law on Municipal Land Use Planning, 2020, the Municipality must take into consideration a few aspects upon approving or refusing the removal, suspension, or amendment of a restrictive condition. The subject title deed contains a restrictive condition that will have to be removed. The condition is as follow:

Condition 8.: "All buildings to be erected on the land herein sold shall stand back at least 3,15 metres from the line of the street or avenue on which the lot or lots herein mentioned may front."

The application entails the construction of a carport and pergola over the prescribed 3.15m street boundary building line, pertaining to outbuildings. The proposed carport is approximately 0.45m from the street boundary line.

In order for the application to be considered, the following aspects have to be taken into consideration: The Municipality must have regard to the following:

- *The financial or other value of the rights in terms of the restrictive condition 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 subject restrictive conditions do not have any significant value to a person or entity. The conditions stipulate building lines that are deemed too restrictive taking into consideration the extent of the property (595m²). It is further deemed that the removal of these conditions will not alter the character of the surrounding area as the Municipal boundary building lines will remain intact.
- *The personal benefits which accrue to the holder of rights in terms of the restrictive condition.*
The owner will enjoy the added security of his vehicles being parked under a roofed structure, thus adding value to the existing dwelling and will further aid in the safety of his property.
- *The personal benefits which will accrue to the person seeking the removal of the restrictive condition if it is removed.*
The property owner will possibly enjoy the benefit of an increase in property value which will then be in line with the retail prices of properties in the surrounding area.
- *The social benefit of the restrictive condition remaining in place in its existing form.*
There is no social benefit to be enjoyed should the restrictive conditions remain in place. The restrictive condition serves no purpose in terms of the health, safety, and wellbeing of the surrounding community. The restrictive condition does not deter a change in land use, or similar deterrence that could have a detrimental impact on the surrounding community. In essence, the removal of the restrictive condition only limits the property owner in terms of development on their property.
- *The social benefit of the removal or amendment of the restrictive condition.*
The property owner may enjoy the added benefit of an enlarged covered area (carport and pergola) will provide added security for the property.
- *Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.*
This application entails the removal of a restrictive conditions and will not attempt to alter the additional conditions as pertained in the subject Title Deed. Therefore, not all restrictive conditions will be removed.

As per the above, the removal of Conditions 9 of the subject Title Deed is not deemed to impact negatively on the surrounding community or the abutting properties. This office requests the favourable consideration of this application.

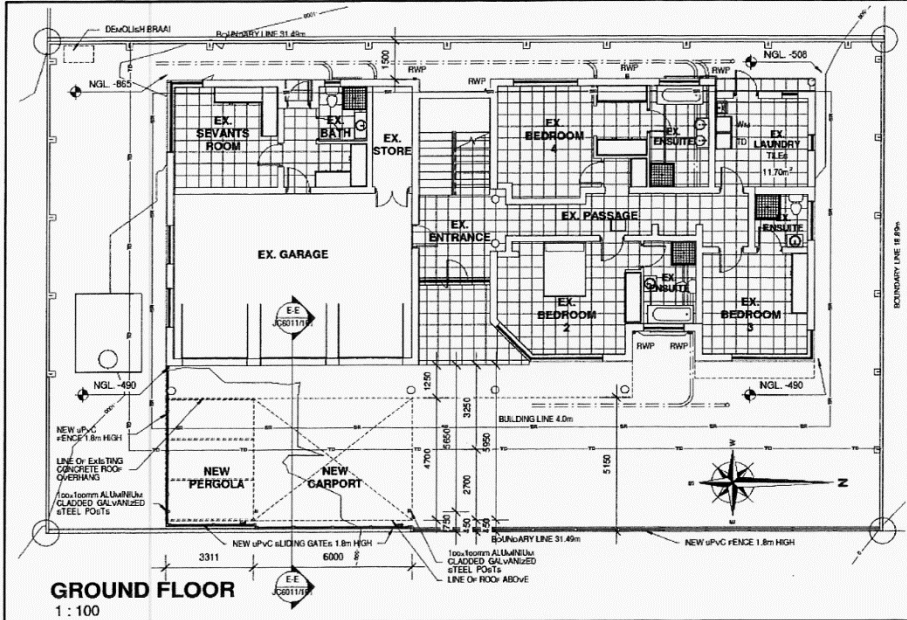


Figure 3: Ground Floor layout

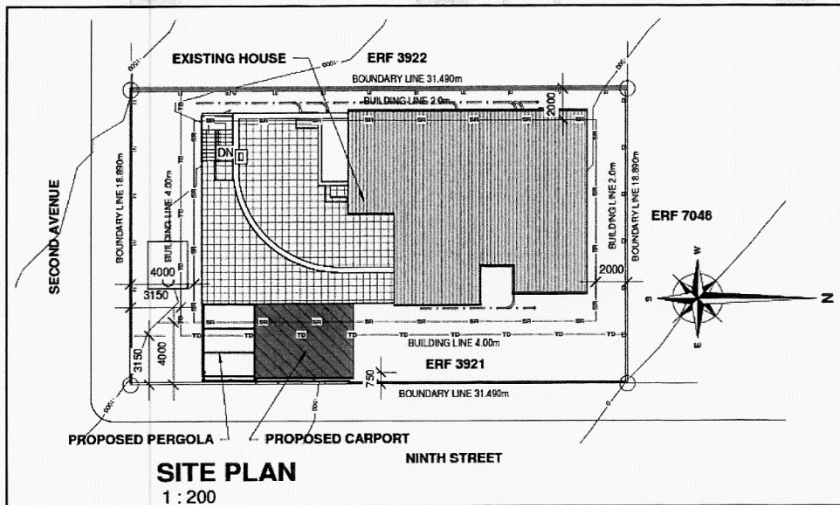


Figure 4: Site Plan

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Figure 5: Elevations

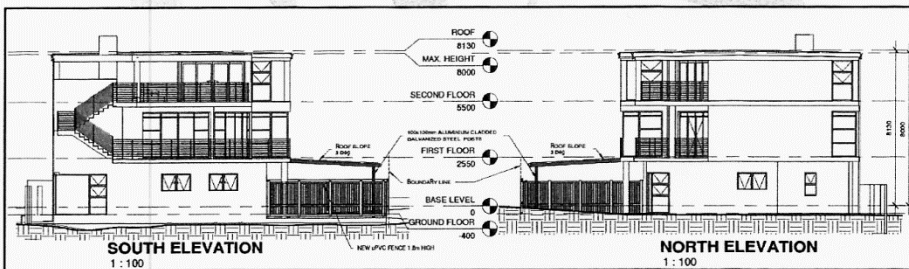
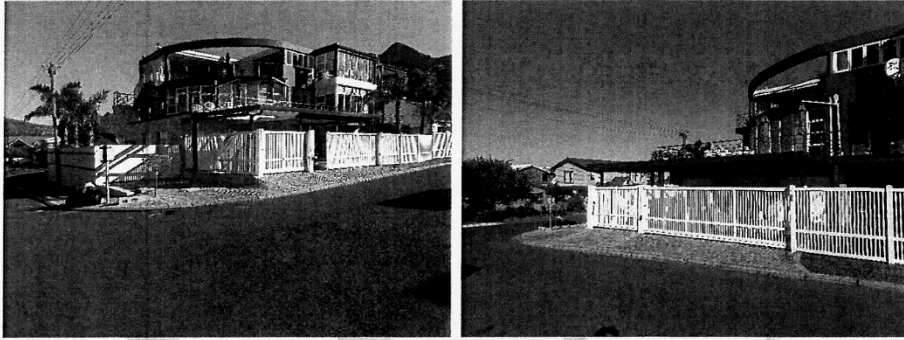


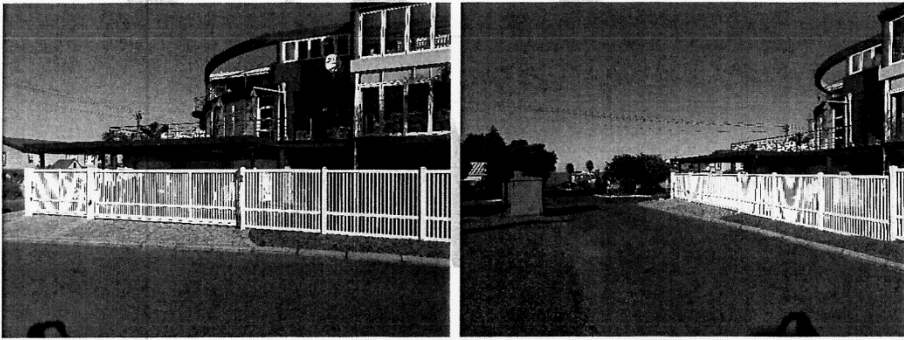
Figure 6: Additional Elevations

3.5. PHOTOS OF THE SITE

This office took photos during a site visit at the application site. The photos are for information purposes to assist the reader and to provide a feel for the proposed applications. Please see the photos on the following pages.



Photos 1 & 2: Carport and fence



Photos 3 & 4: Entrance and Line of Sight

3.6. NEED AND DESIRABILITY

For an informed decision to be made by the Authorised Official it is crucial to address the need and desirability of an application. This office has summarised a few key aspects that are site specific and should be taken into consideration before a decision is to be made. Herewith the need for the proposal:

- The proposed carport is mainly for the parking of motor vehicles when friends and family come to visit the property owners.
- The proposal will aid in the protection of motor vehicles.
- During summer times the sun can be harsh on motor vehicles and the owner wanted to protect his property (motor vehicles) against weather elements such as sun and rain.

The proposal is deemed desirable due to the following reasons:

- The proposal is not deemed to impact negatively on the line of sight / sight distances of Ninth Street nor on Second Avenue since the proposal is not situated on the corner of the aforesaid intersection, but towards the centre of the property.
- The proposal will add value to the existing property and dwelling.
- The proposal will aid in the safety and security of the property owner's vehicles.
- The proposal is in line with any residential neighbourhood.
- It is not deemed that the proposal will impact negatively on the streetscape of the existing dwelling.
- The proposal will further not detract from the abutting neighbours in terms of privacy and loss of sunlight.
- No additional Municipal services will be required for the proposal.
- The application site is situated within an existing residential area and is thus not deemed to impact negatively on any environmentally sensitive areas.

The following aspects are also crucial to take into consideration when determining the desirability of an application:

Section 66 of the Overstrand Municipality Amendment By-Law on Municipal Land Use planning of 2020:

- *When the Authorised Official or Municipal Planning Tribunal considers an application it must have regard to the following:*
 - *the application submitted in terms of this By-law;*
 - *the procedure followed in processing the application;*
 - *the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding proposed land uses;*
 - *the comments in response to the notice of the application and the comments received from organs of state and internal departments;*
 - *the response by the applicant to the comments referred to in paragraph (d);*
 - *investigations carried out in terms of other laws which are relevant to the consideration of the application;*
 - *a registered planner, or a planner eligible for registration, written assessment, which includes:*
 - *an amendment of a Spatial Development Framework or land use scheme*
 - *an approval of an overlay zone contemplated in the land use scheme*
 - *a phasing, amendment or cancellation of a subdivision plan or part thereof*
 - *a determination of a zoning*
 - *a rezoning*
 - *the integrated development plan and Municipal Spatial Development Framework;*
 - *the applicable Local Spatial Development Frameworks adopted by the Municipality;*
 - *the applicable policies of the Municipality that guide decision-making;*
 - *the Provincial Spatial Development Framework;*
 - *where applicable, the regional spatial development framework;*
 - *the policies, principles, planning and development norms and criteria set by national and provincial government;*
 - *the matters referred to in Section 42 of the Spatial Planning and Land Use Management Act;*
 - *the principles referred to in Chapter VI of the Land Use Planning Act; and*
 - *the relevant provisions of the land use scheme.*

- *An Authorised Official or Municipal Planning Tribunal must approve a site development plan submitted to the Municipality for approval in terms of applicable development parameters or conditions of approval if the site development plan—*
 - *is consistent with the development parameters of the zoning;*
 - *is consistent with the development parameters of the overlay zone;*
 - *complies with the conditions of approval; and*
 - *complies with this By-law.*
- *When a site development plan is required in terms of development parameters or conditions of approval—*
 - *the Municipality may not approve a building plan if the site development plan has not been approved; and*
 - *the Municipality may not approve a building plan that is inconsistent with the approved site development plan.*

Section 49 of the Western Cape Land Use Planning Act of 2014:

When a municipality considers and decides on a land use application, the municipality must have regard to at least—

- *the applicable spatial development frameworks;*
- *the applicable structure plans;*
- *the principles referred to in Chapter VI;*
- *the desirability of the proposed land use; and*
- *guidelines that may be issued by the Provincial Minister regarding the desirability of proposed land use.*

It is the opinion of this office that the proposed application is well motivated in terms of the legislation as provided for in this motivation report and is not deemed to impose an unusual risk to the surrounding community, due to the following reasons:

- The proposal is not deemed to impact negatively on the traffic flow of 9th Street.
- No negative visual impact on the abutting neighbours.
- The extension is of the same architectural style as the existing dwelling.
- Vistas and other rights, such as privacy, remain intact.
- Proposal will add value to Erf 3921 and surrounding area.
- No threat on the health and safety of the surrounding community is envisaged.

This office is thus of the opinion that the proposal can be deemed as desirable.

4. SECTION 4: LEGISLATION

Section 4 of this report consists of the applicable Legislation pertaining to this application.

4.1. FORWARD PLANNING

Overstrand Municipality Spatial Development Framework (May 2020)

The Municipal Spatial Development Framework is a sectoral component of the IDP that, in terms of the Municipal Systems Act, 2000 (Act No. 32 of 2000), is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable, and habitable regions, cities, towns and residential areas.

The key statutory requirements of the SDF are as follow:

- Give effect to the principles, norms, and standards.
- Include a written and spatial representation of a five-year spatial development plan for the Municipality.
- Include a longer spatial development vision statement.
- Identify current and future structuring elements of the Municipal spatial form (i.e., development corridors, activity spines, economic nodes, etc.).
- Include population growth estimates for the next five years.
- Include estimates for the demand of housing units and the planned location and density of future housing developments.
- Include estimates of economic activity and employment trends and locations in the Municipality for the next five years.
- Identify, quantify, and provide location requirements of engineering infrastructure and services provision for the next five years.
- Identify the designated areas where a national or provincial inclusionary housing policy may be applicable.
- Include a strategic assessment of the environmental pressures.
- Create opportunities (incl. spatial location of environmental sensitivities, high potential agricultural land, and coastal strips).
- Identify areas in which more detailed local plans must be developed and shortened land use procedures may be applicable.
- Provide spatial expression of integration of municipal sectoral policies.
- Determine a capital expenditure framework for the Municipal development programmes depicted spatially.
- Include an implementation.

The proposal is not deemed to be in contravention with the Overstrand SDF as it is not in contradiction with the abovementioned statutory requirements of the SDF. Further to the aforesaid is that the application site is in an urban development area, within the urban edge of Pringle Bay. The proposal is thus not in contravention with the SDF.

Overstrand Integrated Development Plan (May 2020)

The Overstrand Municipality Integrated Development Plan (IDP) is aimed towards addressing the development needs of our communities with clearly defined strategic objectives and performance indicators. These strategic objectives are as follows:

- The provision of democratic, accountable, and ethical governance



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- The provision and maintenance of municipal services
- The encouragement of structured community participation in the matters of the municipality
- The creation and maintenance of a safe and healthy environment
- The promotion of tourism, economic and social development.

The IDP is crucial to take into consideration in any planning related application. It is the opinion of this office that the proposal promotes social development and creates a safe and healthy environment, not only for the property owner, but also for the surrounding residents of the area.

Overstrand Municipal Growth Management Strategy (2010)

The Growth Management Strategy does not refer to individual erven, however it does provide a guideline in terms of densification and additional community facilities. This proposal does not entail the densification of Erf 3921 and would thus not be in contradiction with the Growth Management Strategy. The proposal adds to the character and natural landscape of the surrounding area as a holiday destination and would thus not impact negatively on the promotion of tourism, economic development, and job creation.

The application site is not within a Heritage Overlay Zone as defined in the Growth Management Strategy and will thus not constitute any heritage related aspects.

Overstrand Municipality Amended By-Law on Municipal Land Use Planning (2020)

It is important to consider Section 66 of the Overstrand Municipality Amended By-Law on Municipal Land Use Planning in terms of the "General criteria for consideration of applications":

- When the Authorised Official or Municipal Planning Tribunal considers an application, it must have regard to the following:
 - the application submitted in terms of this By-law;
 - the procedure followed in processing the application;
 - the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding proposed land uses;
 - the comments in response to the notice of the application and the comments received from organs of state and internal departments;
 - the response by the applicant to the comments referred to in paragraph (d);
 - investigations carried out in terms of other laws which are relevant to the consideration of the application;
 - a registered planner, or a planner eligible for registration, written assessment, which includes:
 - an amendment of a Spatial Development Framework or land use scheme
 - an approval of an overlay zone contemplated in the land use scheme
 - a phasing, amendment or cancellation of a subdivision plan or part thereof
 - a determination of a zoning
 - a rezoning
 - the integrated development plan and Municipal Spatial Development Framework;
 - the applicable Local Spatial Development Frameworks adopted by the Municipality;
 - the applicable policies of the Municipality that guide decision-making;
 - the Provincial Spatial Development Framework;

- where applicable, the regional spatial development framework;
- the policies, principles, planning and development norms and criteria set by national and provincial government;
- the matters referred to in Section 42 of the Spatial Planning and Land Use Management Act;
- the principles referred to in Chapter VI of the Land Use Planning Act; and
- the relevant provisions of the land use scheme.
- An Authorised Official or Municipal Planning Tribunal must approve a site development plan submitted to the Municipality for approval in terms of applicable development parameters or conditions of approval if the site development plan—
 - is consistent with the development parameters of the zoning;
 - is consistent with the development parameters of the overlay zone;
 - complies with the conditions of approval; and
 - complies with this By-law.
- When a site development plan is required in terms of development parameters or conditions of approval—
 - the Municipality may not approve a building plan if the site development plan has not been approved; and
 - the Municipality may not approve a building plan that is inconsistent with the approved site development plan.

The proposal is not considered to be a deviation from the aforesaid requirements, however, is substantially in accordance with any residential neighbourhood, and is not deemed to pose a significant threat to the surrounding community.

Planning Principles

The proposed development supports the principles of Chapter VI (Article 59) of the Land Use Planning Act (LUPA), Act 3 of 2014, and Chapter 2 (Article 7) of the Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013, as follows:

Spatial Justice

Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services, and land.

The proposed application will not contribute to the perpetuation of past apartheid spatial development imbalances.

Spatial Sustainability

A spatially sustainable settlement will be one which has an equitable land market while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity-rich areas, as well as scenic and cultural landscape and ultimately limits urban sprawl.

The proposed development will continue to protect any environmentally sensitive areas and cultural landscapes, as it is in an already developed residential area, and will thus not alter any environmentally sensitive areas.



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Efficiency

Efficiency refers to the need to create settlements that optimise the use of space, energy, infrastructure, resources, and land.

The proposed development will optimally harness the potential that sustainably exists on the subject property as is evident on the proposed SDP.

Spatial Resilience

Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems that should enable the communities to be able to resist, absorb and accommodate economic and environmental shocks and to recover from these shocks in a timely and efficient manner.

The proposed development is well aligned with the spatial plans and policies and that will enable the subject property to be able to resist, absorb and accommodate environmental and economic shocks and recover from shocks in a timely and efficient manner.

Good Administration

Good administration in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure a joint planning approach is pursued.

The proposed development will promote consultative planning as the Municipality will advertise the proposal to the public to allow the comments of the public to be taken into consideration. FVS Town and Regional Planners will also respond to the comments of the public and take the comments into consideration in the planning of the project.

This section outlines how the proposed development is aligned with the core planning principles as outlined in SPLUMA and LUPA. The proposed can therefore be viewed as encompassing and promoting all planning principles.



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5. SECTION 5: CONCLUSION

5.1. REASONS FOR APPROVAL

- *No additional Municipal Services will be required. The application site is already serviced and will thus not require the creation of additional services capacity. Please refer to Section 2 of this motivation report.*
- *The proposal is deemed desirable in terms of the Overstrand Municipality Land Use Scheme of 2020, as set out under Section 3 of this Motivation report.*
- *No negative impact is foreseen on the abutting neighbours in terms of privacy as the proposal does not entail the construction of a living space.*
- *The proposal is in line with any residential neighbourhood, and similar instances can be found throughout the town of Kleinmond and surrounds.*
- *The proposal is further deemed to add value to the application site as it will increase the resell value.*
- *The proposal will ensure the safety and security of the property owners' property (motor vehicles).*

Considering the above information, Council is respectfully requested to favourably consider the application for the following:

Approval for the proposed building line relaxations in terms of the Overstrand Municipality Land Use Planning By-law on Erf 3921, Kleinmond.

Kind Regards,

Jaco van Schaalkwyk
Director of FVS Town and Regional Planners

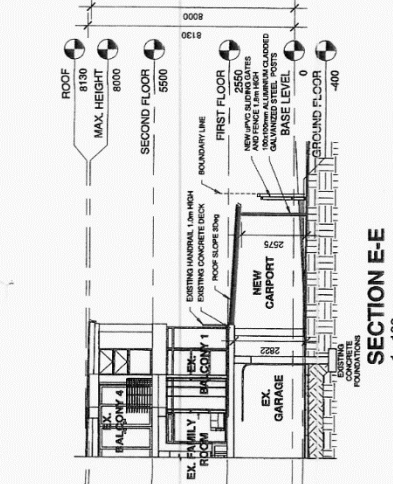
NOTES: (Read together with drawing No. JC6011/102)
 1. All work to be done in accordance with the National Building Regulations.
 2. ROOFING: To comply with SANS 10400 part 11. All roof slopes to be indicated on drawings. Do not assume any roof slope unless specifically stated. All dimensions are to be taken to the outer edge of the roof structure. All dimensions to be taken to the outer edge of the roof structure. All dimensions to be taken to the outer edge of the roof structure.
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 (Notes continued on Drawing No. JC6011/102)

Owner: _____
 Architectural Designer: _____
 Project: **HOUSE AGANBAG**
 PROPOSED ALTERATIONS AND ADDITIONS ON ERF 3921 NO 128 2ND AVENUE AND 9th STREET KLEINMOND FOR "DIE HEICH BELEGINGS TRUST"
 DRAWING TITLE: **COUNCIL DRAWINGS: GROUND FLOOR PLAN, SECTION, DETAIL & SITE PLAN**
 Date: MAY 2022
 Drawn by: JW
 Scale: As indicated
 SHEET SIZE: A2
 Project NUMBER: **JC6011/101**
 REV: _____
 J.C. WEIDEMAN
 P.O. BOX 41
 PRINGLE BAY
 T: 082 717 6188
 Cell: 082 717 618 8
 j.c.weideman@gmail.com

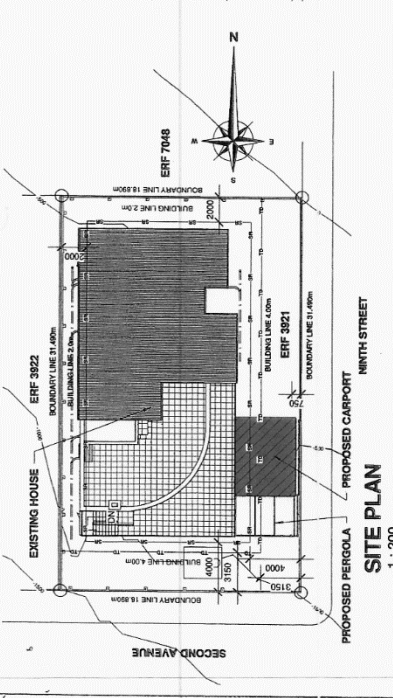
AREAS	MEASURE LETTERS
EXISTING BUILDING (ALL FLOORS)	157.71 Sqm
EXISTING DECK	157.71 Sqm
PROPOSED WORK	25.32 Sqm
NEW CARPORT	25.32 Sqm
TOTAL NEW WORK	25.32 Sqm
COVERAGE	16.06 %
SITE AREA	100.00 Sqm
% COVERAGE	16.06 %

AREAS	MEASURE LETTERS
EXISTING BUILDING (ALL FLOORS)	157.71 Sqm
EXISTING DECK	157.71 Sqm
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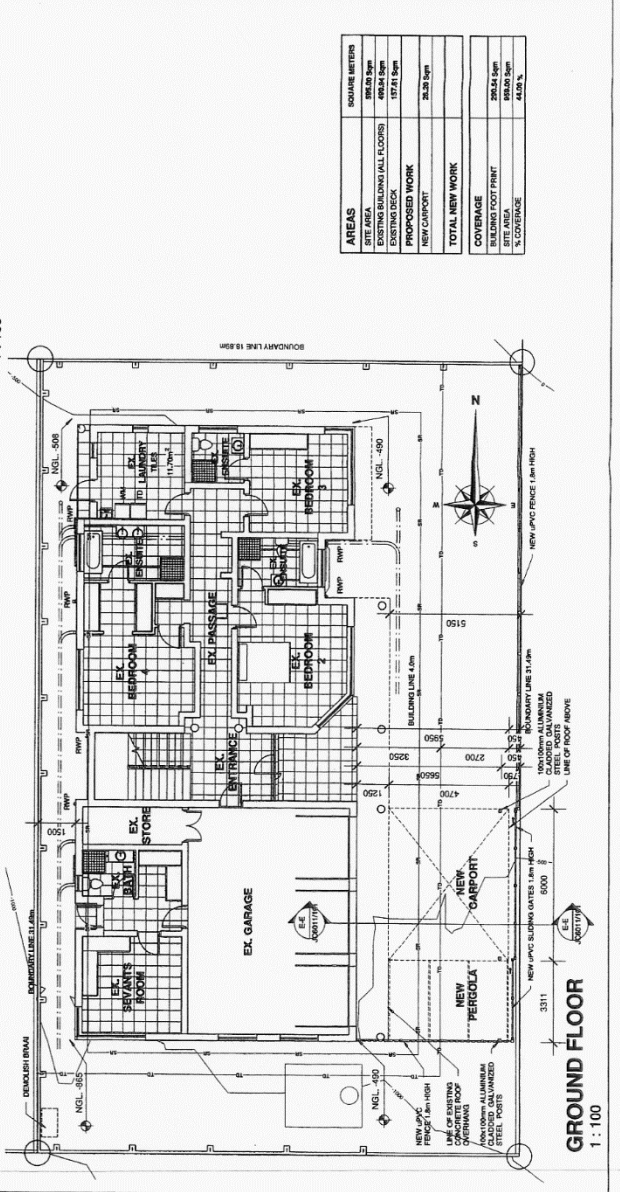
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COVERAGE	16.06 %
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% COVERAGE	16.06 %



SECTION E-E
1 : 100



SITE PLAN
1 : 200



GROUND FLOOR
1 : 100

Filed together with drawing No. JC6011/102

Owner: **HOUSE AGANBAG**

Architectural Designer: **Rep No ST1392**

Project: **PROPOSED ALTERATIONS AND ADDITIONS ON LOTS 3921 No 128 2nd Avenue and 9th Street, West Hill, Durban FOR 'DIE HEICH BELEGINGS TRUST'**

DRAWING TITLE: **COUNCIL DRAWINGS: ELEVATIONS**


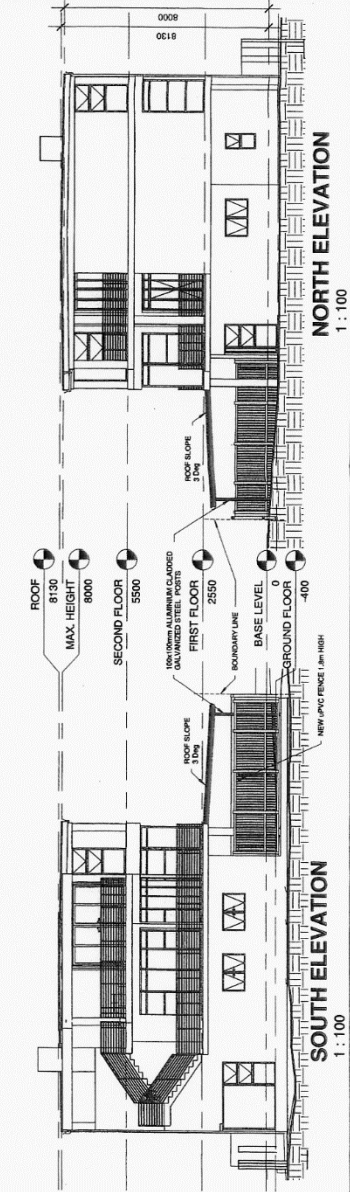
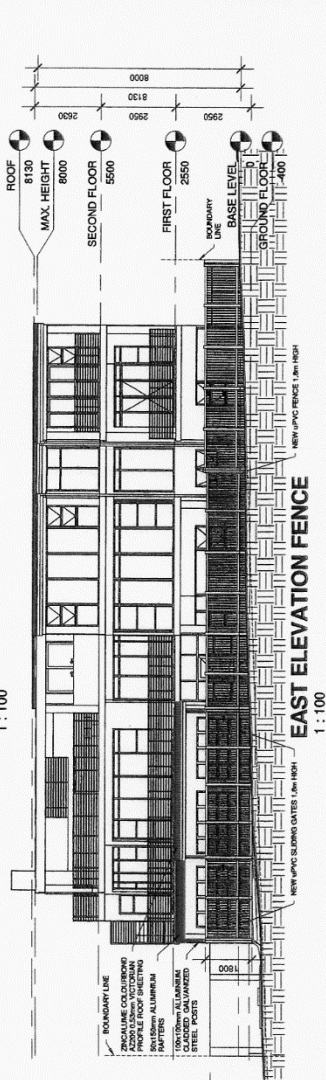
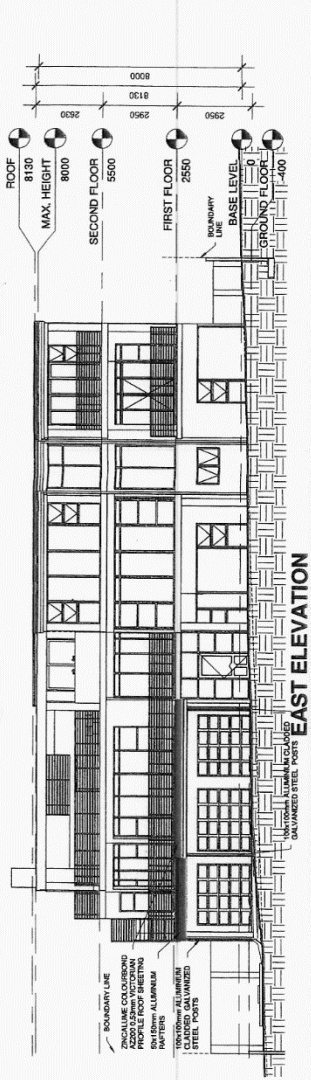
Date: **MAY 2022**

Drawn by: **JW**

Scale: **1 : 100** SHEET SIZE: **A2**

Project number: **JC6011/102** REV:

J.C. WEIDEMAN (PESACHT)
P.O. BOX 41
7195 SILE BAY
Tel. 028 273 8302
Cell. 082 717 616 8
jc.weideman@gmail.com

Annexure D 1/5

WED BARNARD B
14
Van der Spuy
en Vennote
Tel: 4703692

Opgestel deur my

[Handwritten Signature]
Transportbesorger

DE W ESTERHUYSE

SEB MED
DIEP
KOR
PER *[Handwritten Signature]*

[Handwritten Signature]

T 013275 *2.31

TRANSPORTAKTE

HIERMEE WORD BEKEND GEMAAK DAT

DE WAAL ESTERHUYSE

Transportbesorger, voor my, Registrateur van Aktes in Kaapstad, verskyn het, behoorlik daartoe gemagtig deur 'n volmag ten gunste van hom/haar geteken te Kleinmond op 11 Januarie 2001 deur

ELIZABETH BARNARD

Identiteitsnommer 361124 0007 08 9

Getroud buite gemeenskap van goed

EN die komparant aldus gemagtig het verklaar dat

NADEMAAL die ondervermelde eiendom verkoop is aan die hiernagelnde transportnemer/s op 8 JANUARIE 2001;

NOU DERHALWE sedgeer en transporteer die gemelde komparant, in sy hoedanigheid voormeld, hiermee in volkome en vrye eiendom aan en ten gunste van

**DIE TRUSTEES INDERTYD VAN
DIE HEICH BELEGGINGSTRUST
Nr IT 2094/98**

hul opvolgers in titel of regverkrygendes:

ERF 3921 KLEINMOND

In die Munisipaliteit Overstrand
Afdeling Caledon, Provinsie Wes-Kaap

GROOT vyfhonderd vyf en negentig (595) vierkante meter

AANVANKLIK oorgedra kragtens Transportakte nr T14866/1970 met kaart nr 1441/70 wat daarop betrekking het en gehou kragtens Transportakte nr T94182/1998.

- A. **ONDERHEWIG** aan die voorwaardes waarna verwys word in Transportakte nr T14866/1970.
- B. **ONDERHEWIG** verder aan die volgende voorwaardes van klousule 12 gemerk A gehou aan Transportakte nr T3729/1918, naamlik:

(12) Dege eiendom word verkocht volgens de rechte voorrechten en hindernisse van eienaars van erven gekocht van de tegenwoordige registreerde eienaar, welk rechte enz zijn volledig voorgezet in de kondities van verkoping bygevoegd aan de transporten van gesegde erven.

3

C. ONDERHEWIG verder aan die volgende voorwaardes vervat in Transportakte nr T14866/1970 opgelê ten gunste van Kleinmond Syndicate Limited en hul opvolgers in titel as eienaars van die restant van die grond gehou kragtens Transportakte nr T3729/1918, naamlik:

1. All purchasers of erven or their successors in title shall be subject to any rules, regulations and by-laws which the company or any board of management or municipality may hereafter see fit to promulgate for the good conduct and management of the township.
2. The company reserves to itself and its successors in title the sole right to all hotels and all 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.
3. Every purchaser of an erf, the successor in title of such purchaser, who shall have built thereon a dwelling house or other equivalent building to the satisfaction of the directors shall, whilst actually in occupation of such building, have the right of grazing upon such portion of the company's property as may for the time being or from time to time be set apart by the directors for that purpose, such large stock, cows, horses, oxen or mules, not exceeding four in number, as he shall keep in connection with such erf, such right being also granted to the occupier of such premises, other than the owner, it being understood however that the owner and occupier shall not both be permitted to exercise this right at one and the same time, and that not more than four head of cattle shall be allowed to graze by virtue of any one erf, provided that the directors may at any time after one month's notice in writing to such erfholder or publishing in the Gazette, withdraw the whole or any part of such portion of the property so set apart for the purpose of selling or otherwise disposing of the same and thereupon the said right of grazing shall cease and determine in respect of the property so withdrawn.
4. 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 any successors in title of the said company.
5. All owners of erven or their representatives shall have the right to divert any stream of water running on any of their erven so as to run alongside any of the avenues or streets as laid down on the general plan of the township.
6. 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 lot or lots herein described, with further right of causing them to be affixed to any building

4/5

4

or erection not less than 3,05 metres from the ground, with access at any time to such wires for the purpose of removal or maintenance.

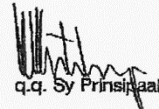
7. The company further reserves to itself and its successors in title the right at any time hereafter to lay and to maintain piping under any portion of the lot or lots hereby sold or elsewhere, and at all times to have access to such piping for removal, maintenance, extension or any other purpose, and 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.
8. All buildings to be erected on the land herein sold shall stand back at least 3,15 metres from the line of the street or avenue on which the lot or lots herein mentioned may front.
9. That all outbuildings to be erected on the land herein sold shall stand back at least 9,45 metres from any street or 6,30 metres from any avenue on which the lot or lots herein mentioned may front.
10. 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 any land within the township by means of wells or boreholes sunk on such land.

5

WESHALWE die komparant afstand gedoen het van alle eiendoms- en ander regte wat die gesegde transportgewer/s tot op hede op gemelde vaste eiendom gehad het en gevolglik ook erken dat hy/sy/hulle/dit daarvan heeltemal ontleen is, en geen eiendoms- en ander regte daarop besit nie; en dat, kragtens hierdie akte, die gesegde trustees indertyd van die transportnemer trust, hul opvolgers in titel of regverkrygendes tens is en voortaan op die volle eiendomsregte daarvan geregtig sal wees, ooreenkomstig plaaslike gebruik, onder voorbehoud nogtans van die regte van die Staat; en eindelik erken het dat die volle koopprys ten bedrae van R180 000,00 behoorlik betaal of verseker is.

TEN bewyse waarvan ek, die genoemde Registrateur, saam met die komparant, q.q. hierdie akte onderteken het en die ampseël daarop laat aanbring het.

ALDUS gedoen en uitgevoer in die kantoor van die Registrateur van Aktes te Kaapstad op *1 Maat* 2001.



q.q. Sy Prinsipaal

In my teenwoordigheid



REGISTRATEUR VAN AKTES

Loretta Gillion

Annexure E 1/5

From: Louis & Moira < >
Sent: Saturday, 07 January 2023 08:54
To: Loretta Gillion
Subject: carport on erf 3921 Kleinmond



Good day Loretta,
My name is Louis de Jager, the owner of erf 4011 at 126 2nd Avenue Kleinmond .
I have seen the carport in question and have no problem regarding the construction or location of this.
Regards
J Louis de Jager

TR N./iheart
(11. ud Sroep)

FILE NO.	Erf 3921
	Kleinmond
SCAN NO.	
	Louis
COLLABORATOR NO.	
	1798129

16 JAN 2023

2/5

Loriaan Isaacs



From: Chris Harding <chrisharding005@gmail.com>
Sent: Thursday, 15 December 2022 11:51
To: Loriaan Isaacs
Subject: ERF 3921, KLEINMOND: APPLICATION FOR DEPARTURE - COMMENTS KRPA

TP - N/heat
(H. Jd Stoop)

Sir / Madam,

Herewith please find the Kleinmond Ratepayers Associations's comments to the request as put to us on Friday, 9 December 2022.

WE AS THE KRPA CAN NOT RECOMMEND THIS REQUEST FOR APPROVAL ON THE TWO FOLLOWING CONDITIONS, NAMELY;

1. The coverage of percentage area ratio to that of the property will be exceeded and should not be allowed, and
2. The proposed carport will be too near to the meeting of two boundaries, at the corner of two adjoining streets, which can lead to a view obstruction to motorists.

Thank you
Chris Harding
KPA : Chairman

FILE NO.	EF 3921
	Kleinmond
SCAN NO.	18
COLLABORATOR NO.	1789706

TP - M. Theart
(N. Jod Skoop)



09 January 2023 3/5

To whom it may concern

Re: Notice 173/2022 – Removal of restrictive title deed condition & waiver of administrative penalty regarding Erf 3921 Kleinmond

Relevant building regulation in the Title Deed regarding Boundary building lines:
"All buildings to be erected on the land herein sold shall stand back at least 3.15m away from the line of the street or avenue on which the lot or lots herein mentioned may front."

The application as per Notice 173/2022 is for the removal of this restrictive Title Deed condition, as well as for the waiver of the administrative penalty with regards to the illegally completed construction of the car-port and pergola on the site.

The applicant argues that "The owners were not aware that the construction of the structure will have such a detrimental impact"

The structure was constructed without any formally approved building plans. In South Africa, (alleged) ignorance of the law is not a valid defense.

The applicant argues "The conditions stipulate building lines that are too restrictive taking into consideration the extent of the property (595m²)."

The size of the plot was known to the owners from the moment of ownership. Most/all residential Kleinmond plots are this size and owners simply build accordingly to scale to accommodate all present and future structures inside the stipulated boundary lines and according to existing building regulations. Should an owner utilize too much of the available surface (square meterage) initially and can therefore not accommodate new structures it is not acceptable to try to claim additional space.

Regarding shaded parking the applicant argues the "Proposed car-port is mainly for the parking of motor vehicles when friends and family come to visit." and to "protect his property (motor vehicles) against weather elements." and the "Proposal will aid in the safety and security of the property owner's vehicles".

Secure parking inside the existing garages are already available, as well as secure parking inside the existing perimeter fence on the property. All other Kleinmond property owners have to live with whatever infrastructure they can legally fit onto their respective properties. Many vehicles are parked outside in open areas on driveways or in streets.

No other similar waivers seem to have been allowed on other properties in the immediate area (refer to the attached aerial photograph) or on residential properties elsewhere in Kleinmond.

Conclusion:
The structure was constructed illegally and should be dismantled to a status where it will comply in full with the existing building restrictions. The penalty for the construction of an illegal structure should stand. Approval of the application will set a precedent which cannot be replicated on each and every other residential property in Kleinmond and therefore I as property owner in Kleinmond cannot support this application.

I am a recent owner of property in Kleinmond and am not privy to the history of the construction of the main building on Erf 3921. We have to comply to certain maximum height restrictions, and I also request that an official survey be conducted to confirm that the actual height of the main building on Erf 3921 is in compliance with the relevant official approval for this erf.

Signed in Kleinmond on 9 January 2023 by the owner of erf 3939 Kleinmond.

Lizette Rabe
Name
Contact detail: Ph. / email:

L Rabe
Signature

FILE NO. ERF 3921 ✓
Kleinmond
SCAN NO.
Lizette
COLLABORATOR NO.
1801186

19 8 JAN 2023
- TP

TP - n. / heart
(H. Ud Stoop)



To whom it may concern

Re: Notice 173/2022 – Removal of restrictive title deed condition & waiver of administrative penalty regarding Erf 3921 Kleinmond

Relevant building regulation in the Title Deed regarding Boundary building lines:
"All buildings to be erected on the land herein sold shall stand back at least 3.15m away from the line of the street or avenue on which the lot or lots herein mentioned may front."

The application as per Notice 173/2022 is for the removal of this restrictive Title Deed condition, as well as for the waiver of the administrative penalty with regards to the illegally completed construction of the car-port and pergola on the site.

The applicant argues that "The owners were not aware that the construction of the structure will have such a detrimental impact...."

The structure was constructed without any formally approved building plans. In South Africa (alleged) ignorance of the law is not a valid defense.

The applicant argues "The conditions stipulate building lines that are too restrictive taking into consideration the extent of the property (595m²)."

The size of the plot was known to the owners from the moment of ownership. Most/all residential Kleinmond plots are this size and owners simply build accordingly to scale to accommodate all present and future structures inside the stipulated boundary lines and according to existing building regulations. Should an owner utilize too much of the available surface (square meterage) initially and can therefore not accommodate new structures it is not acceptable to try to claim additional space.

Regarding shaded parking the applicant argues the "Proposed car-port is mainly for the parking of motor vehicles when friends and family come to visit." and to "protect his property (motor vehicles) against weather elements." and the "Proposal will aid in the safety and security of the property owner's vehicles".

Secure parking inside the existing garages are already available, as well as secure parking inside the existing perimeter fence on the property. All other Kleinmond property owners have to live with whatever infrastructure they can legally fit onto their respective properties. Many vehicles are parked outside in open areas on driveways or in streets.

No other similar waivers seem to have been allowed to date on other properties in the immediate area (refer to the attached aerial photograph) or on residential properties elsewhere in Kleinmond.

Conclusion:
The structure was constructed illegally and should be dismantled to a status where it will comply in full to the existing building restrictions. The admin penalty for the construction of an illegal structure should stand. Approval of the application will set a precedent which cannot be replicated on each and every other residential property in Kleinmond and therefore I as property owner in Kleinmond cannot support this application.

I am a new resident in Kleinmond and am not privy to the history of the construction of the main building on Erf 3921. All property owners have to comply to certain maximum building height restrictions, and I request that an official survey be conducted to confirm that the actual height of the main building on Erf 3921 is in compliance with the relevant official approval for this erf.

Signed in Kleinmond on 09 January 2023 by the owner of erf 6027 Kleinmond.

Wilhelm Rabe
Name
Contact detail: Ph. / email: _____
Signature

FILE NO. Erf 3921
Kleinmond
SCAN NO.
COLLABORATOR NO.
1799320

18 JAN 2023

TP. n. (Heart)
(H. Ud Sroep)



To whom it may concern

Re: Notice 173/2022 – Removal of restrictive title deed condition & waiver of administrative penalty regarding Erf 3921 Kleinmond

Relevant building regulation in the Title Deed regarding Boundary building lines:

"All buildings to be erected on the land herein sold shall stand back at least 3.15m away from the line of the street or avenue on which the lot or lots herein mentioned may front."

The application as per Notice 173/2022 is for the removal of this restrictive Title Deed condition, as well as for the waiver of the administrative penalty with regards to the illegally completed construction of the car-port and pergola on the site.

The applicant argues that *"The owners were not aware that the construction of the structure will have such a detrimental impact"*

The structure was constructed without any formally approved building plans. In South Africa (alleged) ignorance of the law is not a valid defense.

The applicant argues *"The conditions stipulate building lines that are too restrictive taking into consideration the extent of the property (595m²)."*

The size of the plot was known to the owners from the moment of ownership. Most/all residential Kleinmond plots are this size and owners simply build accordingly to scale to accommodate all present and future structures inside the stipulated boundary lines and according to existing building regulations. Should an owner utilize too much of the available surface (square meterage) initially and can therefore not accommodate new structures it is not acceptable to try to claim additional space.

Regarding shaded parking the applicant argues the *"Proposed car-port is mainly for the parking of motor vehicles when friends and family come to visit."* and to *"protect his property (motor vehicles) against weather elements."* and the *"Proposal will aid in the safety and security of the property owner's vehicles"*.

Secure parking inside the existing garages are already available, as well as secure parking inside the existing perimeter fence on the property. All other Kleinmond property owners have to live with whatever infrastructure they can legally fit onto their respective properties. Many vehicles are parked outside in open areas on driveways or in streets.

No other similar waivers seem to have been allowed on other properties in the immediate area (refer to the attached aerial photograph) or on residential properties elsewhere in Kleinmond.

Conclusion:

The structure was constructed illegally and should be dismantled to a status where it will comply in full with the existing building restrictions. The penalty for the construction of an illegal structure should stand. Approval of the application will set a precedent which cannot be replicated on each and every other residential property in Kleinmond and therefore I as property owner in Kleinmond cannot support this application.

Signed in Kleinmond on 14 January 2023 by the owner of erf 3944 Kleinmond.

Etienne Rabe
Name

Rabe
Signature

Contact detail: Ph. _____ email: _____

FILE NO.	ST 3921
	Kleinmond ✓
SCAN NO.	
	Rabe
COLLABORATOR NO.	
	1798154

TP 16 JAN 2023

Annexure F 1/3



Town and Regional Planners

TP: n.theo
(11. ud Stoop)



FVS Town and Regional Planners
175 Fifth Avenue
Kleinmond
7195

20 February 2023

Town Planning
Overstrand Municipality
16 Paterson Street / PO Box 20
Hermanus
7200

FILE NO. EF 3921
Kleinmond
SCAN NO.
COLLABORATOR NO. 1814510

To whom this may concern:

ERF 3921, 128 SECOND AVENUE, KLEINMOND, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: FVS TOWN & REGIONAL PLANNERS ON BEHALF OF HEICH BELEGINGSTRUST

On 10th of February 2023 this office received objections and a letter of support pertaining to the abovementioned application. This office has summarised the objections made and subsequently responded to the objections received:

<i>Objector: Lizette, Wilhelm & Ettiene Rabe</i>	
<i>Reason for Objection</i>	<i>Response to Objection</i>
The structure was constructed without any formally approved building plans. In South Africa, (alleged) ignorance of the law is not a valid defence.	Noted.
The size of the plot was known to the owners from the moment of ownership. Most/all residential Kleinmond plots are this size and owners simply build accordingly to scale to accommodate all present and future structures inside the stipulated boundary lines and according to existing building regulations. Should an owner utilise too much of the available surface (square meterage) initially and can therefore not accommodate new structures it is not acceptable to try to claim additional space.	The property owner is not claiming additional space. The owner is merely acting upon the allowable coverage. According to the Overstrand Municipality Land Use Scheme (OMLUS), Single Residential Zone 1 (SR1) erven is permitted a maximum coverage of 50% of the erf. The application site, with the proposed additions, is currently at 44% of the total extent of the subject erf and therefore within their right to act upon.
Secure parking inside the existing garages are already available, as well as secure parking inside the existing perimeter fence on the property. All other Kleinmond property owners have to live with whatever infrastructure they can legally fit onto their respective	The property owner has an extensive family and friend group. Secure parking is not always available as the existing garage can only accommodate a maximum of two motor vehicles. The carport further aids in the safety and security against weather elements. The

TP 21 FEB 2023

Cell: 071 331 9337 | e-mail: jaco@fvstowndplanners.co.za
175 5th Avenue, Kleinmond, 7195



Town and Regional Planners

properties. Many vehicles are parked outside in open areas on the driveways or in streets.	<p>proposed carport is not out of the ordinary for a residential property.</p> <p>Additionally, parking in the street/road reserve can pose a potential threat to motorists and pedestrians. Kleinmond, on average have a maximum width of 5m of road surface, with an approximate road reserve of 2m wide on each side. Taking this into consideration can prove to be a significant traffic nuisance in terms safety and traffic flow. Therefore, parking in the street can prove to be more dangerous than the proposal on Erf 3921.</p>
No other similar waivers seem to have been allowed on other properties in the immediate area or on residential properties elsewhere in Kleinmond.	This statement is not entirely correct. Numerous applications have been approved in the past for similar relaxations, not only in Kleinmond, but in surrounding areas as well.
The structure was constructed illegally and should be dismantled to a status where it will comply in full with the existing building restrictions. The penalty for the construction of an illegal structure should stand. Approval of the application will set a precedent which cannot be replicated on each and every other residential property in Kleinmond and therefore as property owner in Kleinmond we cannot support this application.	The property owner is willing to accept responsibility of his actions. This application serves as a rectification and should be evaluated as such.
An official survey to be conducted to confirm that the actual height of the main building on Erf 3921 is in compliance with the relevant official approval for this erf.	<p>The height of the structure has been scrutinised in the past but was constructed according to approved building plans.</p> <p>Lastly, objections should be limited to the proposal before hand.</p>
<i>Objector: Chris Harding (on behalf of the Kleinmond Ratepayer's Association)</i>	
<i>Reason for Objection</i>	<i>Response to Objection</i>
The coverage of percentage ratio to that of the property will be exceeded and should not be allowed	A maximum coverage of 50% is permitted on the subject erf. The existing dwelling, with the proposed additions, is currently at 44% of the total extent of the subject erf as is evident on the submitted Site Development Plan.
The proposed carport will be too near to the meeting of two boundaries, at the corner of two adjoining streets, which can lead to a view obstruction to motorists.	The proposal is not deemed to impact negatively on the sight distances as the proposal is not directly onto the street boundary, not situated directly on the intersection of roads.



Town and Regional Planners

This office further received a letter of support, in conjunction with the above objections. Please see herewith the summary of the letter of support:

<i>Support: Louis de Jager</i>	
<i>Reason for Support</i>	<i>Response to Support</i>
The person states that the proposed carport should not be a problem, nor a problem with its location	Noted

Additional Considerations:

- The proposal is not deemed to impact negatively on the streetscape of Second Avenue.
- The proposal does not impact negatively on the immediate property owners in terms of loss of privacy.
- The proposal is substantially in accordance with any residential property or neighbourhood.

Thank you for the favourable consideration of this application.

Kind Regards,

Jaco van Schaikwyk
FVS Town and Regional Planners

Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION,
DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE PENALTY: ERF
3921, KLEINMOND (4170/2022)**

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 developer'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 developer's cost;
3. that the developer investigates and determine the limitations of the site in terms of drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage;
4. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning;
5. that any additional and / or extended vehicle entrance will be for the owner's account;
6. that, 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 Senior Manager: Operational Services (Kleinmond) for written approval;
7. that stormwater be allowed to discharge through Erf 3921 Kleinmond, unobstructed.

p.p. R. Gade
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

07/02/2023
DATE

Annexure H



TAX INVOICE

Agentlag, Mnr (AGEN02(C))
126 Second Avenue
Klerksdorp

Invoice Date
28 Mar 2022

Account Number
AGEN02(C)

Invoice Number
IN409143

VAT Number
4870102151

Foldo Awnings (Pty) Ltd
Attention: Lize Du Plessis
P.O. Box 575
BELLVILLE 7535

Description	Quantity	Unit Price	VAT	Amount ZAR
1000007-Alumi IBF carpet	1,00	51.304.35	15%	51.304.35
			Subtotal	51.304.35
			TOTAL VAT	7.695.65
			TOTAL ZAR	59.000.00
			Less Amount Paid	59.000.00
			AMOUNT DUE ZAR	0.00

Due Date: 28 Apr 2022
Standard Bank
Account number: 071916091
Branch code: 050 410
admin@gobstformers.co.za

Received in good order

Signed _____ Date _____