



OVERSTRAND MUNISIPALITEIT
ERF 5781, AGSTELAAN 18, KLEINMOND:
AANSOEK OM OPHEFFING VAN BEPERKENDE
TITELAKTEVOORWAARDES, AFWYKING EN
BEPALING VAN 'N ADMINISTRATIEWE BOETE: MB
PLAN NAMENS T & BV SMITH

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoek van toepassing op Erf 5781, Kleinmond (die eiendom), naamlik:

Opheffing van Beperkende Titelaktevoorwaardes
Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaardes C.(8), D.(b) en D.(d) soos vervat in Titelakte T16978/2018 van die eiendom.

Afwyking

Aansoek ingevolge Artikel 16(2)(b) van die Verordening ten einde die volgende te verslap:

- westelike straatboulyn vanaf 4m na 2,99m om gedeeltes van die bestaande woonhuis, bestaande onderdakstoep, bestaande tweede woonhuis en 'n bestaande stoorkamer op die eiendom te akkommodeer.
- noordelike syboulyn vanaf 2m na 0,94m om gedeeltes van die bestaande onderdakstoep en bestaande tweede woonhuis op die eiendom te akkommodeer.

Bepaling van 'n Administratiewe Boete

Aansoek ingevolge die bepaling van Artikel 16(2)(q) van die Verordening vir die bepaling van 'n administratiewe boete vir ongemagtigde grondgebruik op die eiendom.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus en by die Kleinmond Biblioteek, Vyfdelaan, Kleinmond.

Enige kommentaar moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) voor of op **19 Julie 2024**, met u naam, adres, kontak besonderhede, belang in die aansoek en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Senior Stadsbeplanner, Me. H. van der Stoep** by 028-3138900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.

Dr. DGI O'Neill, Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, HERMANUS, 7200

Munisipale Kennisgewing Nr. 96/2024

OVERSTRAND MUNICIPALITY
ERF 5781, 18 EIGHTH AVENUE, KLEINMOND:
APPLICATION FOR REMOVAL OF RESTRICTIVE
TITLE DEED CONDITIONS, DEPARTURE AND
DETERMINATION OF AN ADMINISTRATIVE
PENALTY: MB PLAN ON BEHALF OF T & BV SMITH

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), of the following applications applicable to Erf 5781, Kleinmond (the property), namely:

Removal of Restrictive Title Deed Conditions

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions C.(8), D.(b) and D.(d) as contained in Title Deed T16978/2018 of the property.

Departure

Application in terms of Section 16(2)(b) of the By-Law to relax the following:

- western street building line from 4m to 2,99m to accommodate portions of the existing main dwelling, existing covered patio, existing second dwelling and an existing store room on the property.
- northern lateral building line from 2m to 0,94m to accommodate portions of the existing covered patio and existing second dwelling on the property.

Determination of an Administrative Penalty

Application in terms of the provisions of Section 16(2)(q) of the By-Law for the determination of an administrative penalty for unauthorized land uses on the property.

Full details regarding the proposals above are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus and at the Kleinmond Library, Fifth Avenue, Kleinmond.

Any comments must be in writing and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) on or before **19 July 2024**, with your name, address, contact details, interest in the application and the reasons for comment. Telephonic inquiries can be made to the **Senior Town Planner, Mrs. H. van der Stoep** at 028-3138900. The Municipality may refuse to accept comments after the closing date. Any person who cannot read or write can visit the Town Planning Department where they will be assisted by a municipal official in formulating their comments.

Dr. DGI O'Neill, Municipal Manager, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200

Municipal Notice No. 96/2024

UMASIPALA WASE-OVERSTRAND
ISIZA 5781, 18 EIGHTH AVENUE, KLEINMOND:
ISICELO SOKUSUSWA KWEMIQATHANGO
ENEZITHINTELO KWITAYITILE, UKUNYENYISWA
NOKUGQITYWA KWESOHLWAYO: U-MB PLAN
EGAMENI LIKA-T& BV SMITH

Kukhutshwa isaziso ngokumayela neCandelo 47 neCandelo 48 loMthetho Otshintshwayo woMasipala waseOverstrand ongokuSetyenziswa Nokucetywa koMhlaba kaMasipala, 2020 (uMthetho kaMasipala), ukuba kufunyenwe ezi zicelo zilandelayo ezimayela neSiza 5781, Kleinmond (ipropathi), ukuba:

Ukususwa Kwemiqathango Enezithintelo Kwitayitile

Isicelo ngokumayela neCandelo 16(2)(f) loMthetho kaMasipala ukuba kususwe imiqathango yetayitile C.(8), D.(b) nomqathango D.(d) miqathango leyo enezithintelo njengoko iqulethwe kwiTayitile T16978/2018 yepropathi.

Ukunyenyiswa

Isicelo ngokumayela neCandelo 16(2)(b) loMthetho kaMasipala ukuze kunyenyiswe oku kulandelayo:

- umgca wesakhiwo okwicala elingasentshona ukusuka ku-4m ukuya ku-2.99m ukulungiselela iinxalenye ezikhoyo kwindlu, iveranda eyogqunywayo ekhoyo, indlu yesibini ekhoyo kunye negumbi lokugcina izinto elikhoyo kwipropathi.
- umgca wesakhiwo okwicala elingasemntla ukusuka ku-2m ukuya ku-0.94m ukulungiselela iinxalenye ezikhoyo kwiveranda eyogqunywayo ekhoyo nendlu yesibini ekhoyo kwipropathi.

Ukugqitywa Kwesohlwayo

Isicelo ngokumayela neCandelo 16(2q) loMthetho kaMasipala ukuze kugqitywe ngesohlwayo ngenxa yokusetyenziswa komhlaba okwipropathi ngaphandle kwemvume yabasemagunyeni.

linkcukacha ezipheleleyo mayela noku kucetywayo ziyafumaneka ukuze zihlolwe phakathi evekini phakathi ko 08:00 no 16:30 kwiSebe: LokuCeba iDolophu, 16 Paterson Street, Hermanus nakwiThala Leencwadi laseKleinmond, Fifth Avenue Kleinmond.

Naziphi na izimvo mazibhalwe zize zingeniswe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngaphambi okanye ingadlulanga **i-19 kaJulayi 2024**, ubhale igama lakho, idilesi yakho kunye neenkukacha zoqhagamshelwano, umdla wakho kwisicelo nezizathu zokubhala izimvo zakho. Imibuzo ngefowuni ingabuzwa ku-**Senior Town Planner, Mrs. H. van der Stoep** ku 028- 8900. UMasipala angangavumi ukwamkela amagqabaza okuhlomla afunyenwe emva komhla wokuvula. Nabani na ongakwazi kufunda okanye ukubhala angatyelela iSebe lokuCeba iDolophu apho igosa lakwamasipala liya kumnceda afake amagqabaza akhe okuhlomla.

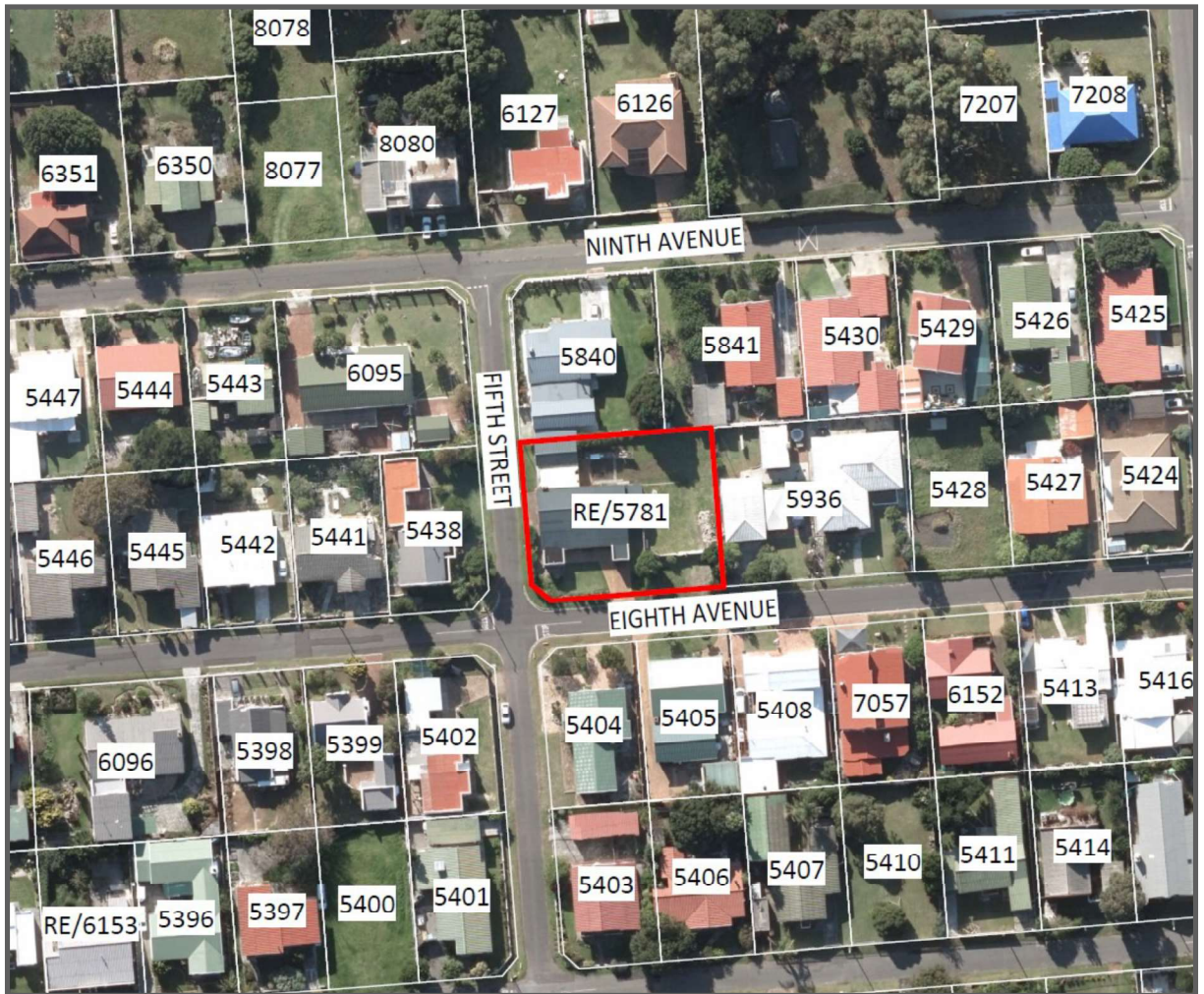
Dr. DGI O'Neill, uMphathi kaMasipala, uMasipala wase-Overstrand P.O. Box 20, HERMANUS, 7200

Isaziso sikaMasipala No. 96/2024



ERF 5781 KLEINMOND

Removal of Restrictive Title Deed Conditions, Building Line Departures & Determination of an Administrative Penalty



Melissa Buys

Email: mb.plan@yahoo.com

Contact number: 071 347 4844

MBPLAN
Town Planning

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1. Introduction

1.1 Brief

MB Plan Town Planning was appointed by the registered owners, Byron & Tonia Smith, to prepare and submit an application for the Removal of Restrictive Title Deed Conditions, Building Line Departures and the Determination of an Administrative Penalty for Erf 5781, Kleinmond, in terms of the relevant legislation.

Refer to Annexure B for Power of Attorney.

1.2 Background

1.2.1 History and Origin of Contraventions

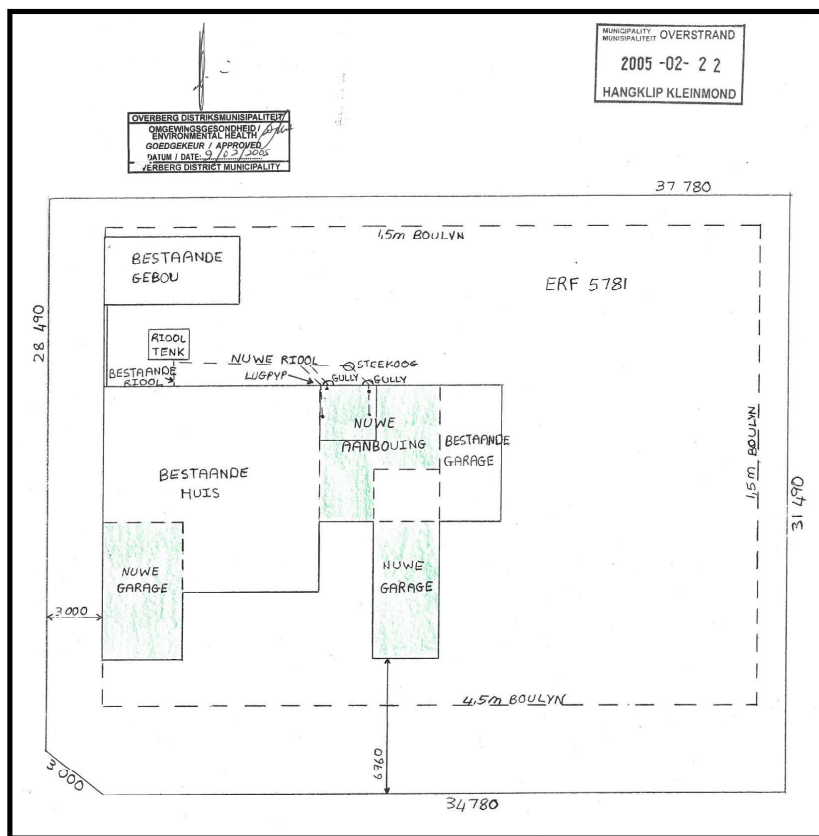


Figure 1: Latest Approved Building Plans (2005)

According to the approved building plans available, the original dwelling unit on the application area was approved in 1967 at a distance of 3.15m from the western boundary. However, the main dwelling was erroneously built at a distance of 3.065m from the western boundary at its furthest point and up to 3.029m at its closest point.

In 1968 a separate garage was approved on the northern side of the application area behind the dwelling, also at a distance of 3.15m from the western boundary and at 1.26m from the northern boundary.

However, the garage was erroneously built up to 3.130m from the western boundary at its closest point and up to 3.157m at its furthest point as well as up to 0.94m at its closest point to the northern boundary and up to 1.037m at its furthest point.

In 1991 a double garage was approved east of the dwelling unit and subsequently constructed slightly more to the south than what was approved.

In 1997, a covered walkway was approved on the southern side of the dwelling unit in front of the entrance and subsequently constructed slightly more to the south than what was approved.

As illustrated in Figure 1 above, various further additions to the dwelling house were approved in 2005. Additions consisted of two new single garages, a new bathroom and a study and the conversion of a portion of the double garage into a bedroom. The western garage was approved in line with the dwelling house at a distance of 3m from the western erf boundary but was built up to 2.99m at its closest point to the western boundary. No 3.15m title deed building line was indicated on the approved plan.

Refer to Annexure G for the approved building plans.

Without the required approval however, the previous owners also constructed a carport - used by the current owners as a covered patio - and a braai along the western boundary, as well as a covered stoep next to the covered walkway on the southern side of the dwelling. Furthermore, the previous owners also converted the northern approved garage and toilet into a bedroom and a bathroom, also without the required approval.

1.2.2 Contraventions by Current Owners

Subsequently in April, 2018, the subject property was sold and registered in the name of the current owners.

Between 2018 and 2023, the owners effected certain changes to the property without municipal approval. This included the conversion and extension of the garage along the northern boundary to create a second dwelling with an attached covered porch for the owners' elderly parents. Additional changes involved converting the southwestern garage into a store room and replacing the roof sheets over the previous carport - which the current owners converted into a covered patio - on the western side of the application area.

In 2019, the owners appointed an architect to draw as-built and proposal plans which were submitted but sent back by the municipality for amendments. Subsequently, a discussion took place between the municipality and the owners regarding the required building plan amendments. The architect also corresponded with the municipality in this regard. Due to miscommunication between the parties involved, the owners experienced difficulty in comprehending the municipal procedures and processes to be followed. Accommodating the owners' elderly parents was becoming a matter of urgency and the owners felt compelled to go ahead with the construction of the second dwelling without the required approval. The outbreak of the Covid pandemic at the beginning of 2020 served to further complicate attempts at effective communication regarding plan amendments.

The owners were served with a notice from Building Control on the 14th of November 2023 to obtain written approval for the unauthorised building work, being carport and conversion of garage to habitable space.

From a town planning point of view, Zoning Scheme and Title Deed building lines are exceeded by unapproved structures and the unapproved second dwelling land use is restricted by the Title Deed. The main dwelling which was erroneously built to slightly exceed the 3.15m title deed building line is also required to be legalised.

1.2.3 Rectification of Contraventions

In response to the municipal notice served, the owners appointed MBPLAN and an architect to assist in rectifying the existing contraventions. The owners expressed willingness to legalise transgressions caused by the previous owner/owners as well. In this respect, as well as at the request of Building Control, a land surveyor was appointed to ensure that updated building plans reflected all existing building positions accurately.

1.3 Development Objective and Proposed Application

The development objective therefore, is to legalise the unapproved existing structures exceeding building lines, to legalise the main dwelling which was erroneously built over the 3.15m title deed building line as well as to legalise the unapproved second dwelling on the application area. Refer to Figure 2 below for the departure plan which illustrates the structures and land uses requiring approval.

The application proposal therefore is to remove restrictive title deed conditions as well as for building line departures and waiving of the administrative penalty.

Refer to Annexure A for Completed and Signed Application Forms.

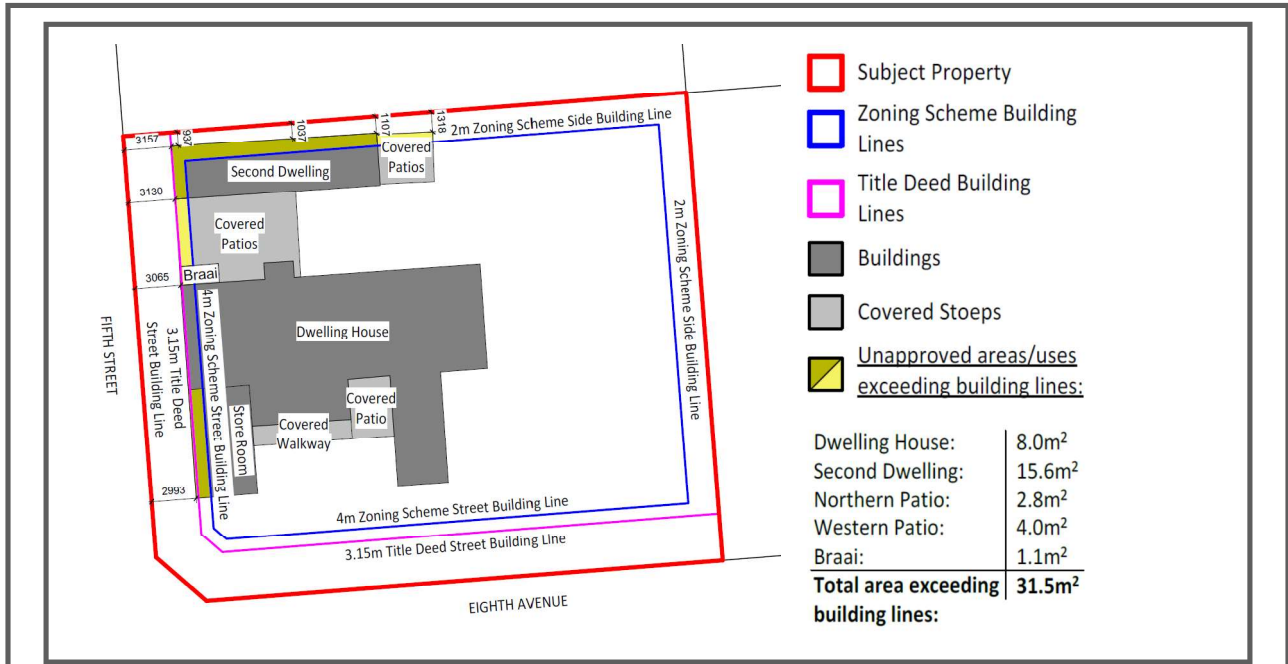


Figure 2: Departure Plan

Refer to Annexure I for Departure Plan

2. Contextual information

2.1 Property description & Ownership

Property Description: Erf 5781 Kleinmond

Owners: Byron & Tonia Smith

Title Deed: T16978/2018

Area: 1185m²

2.1.1 Title Deed

The Conveyancer Louis le Roux from Fairbridges Wertheim Becker issued a certificate confirming that three title deed conditions restrict the existing structures on the application area. The restrictive conditions C8, D(b) and D(d) from Title Deed: T16978/2018, read as follows:

“C. SUBJECT FURTHER to and with the benefit of the following conditions contained in the Special Conditions of Sale, marked Annexure “E” on Deed of Transfer No T 1295/1933 imposed in favour of Kleinmond Syndicate Limited:

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.

D. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No T 1295/1933, imposed by the Administrator:

(b) That not more than one dwelling be erected on the above lot and that not more than two-thirds of the area of the above lot be built upon.

(d) That all buildings to be erected on this Lot shall stand back not less than 3,15 metres from the line of any street or avenue on which the lot may abut. Such space may be used as gardens but shall not be built upon. That all outbuildings shall stand back not less than 9,45 metres from any street or 6,30 metres from any avenue on which the lot may front.

Refer to Annexure C for a copy of the Title Deed and the Conveyancer certificate.

2.1.2 Bondholder's Consent

An FNB bond is currently registered over the application area.

Refer to Annexure J for the Bondholder's Consent.

2.1.3 Surveyor General Diagram

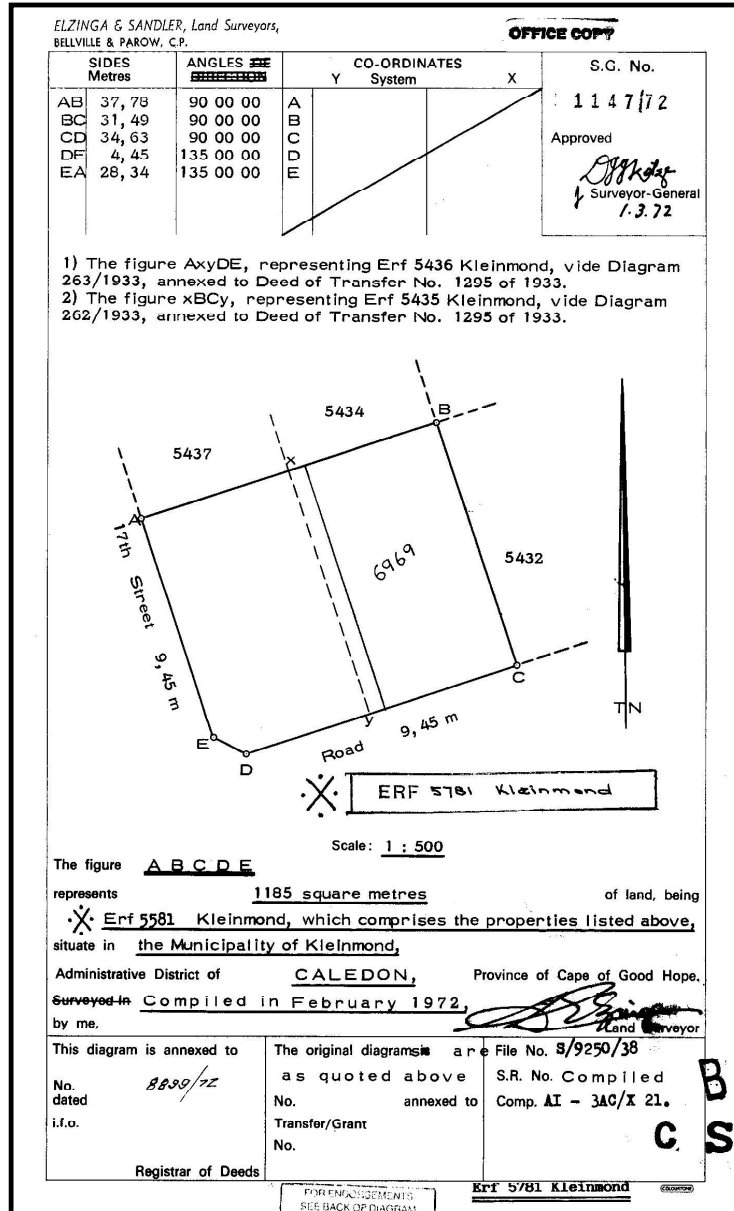


Figure 3: Surveyor General Diagram

Refer to Annexure D for the Surveyor General Diagram

2.2 Locality

2.2.1 Regional Context

Within the regional context, the application area is located within the town Kleinmond, within the Overstrand Municipal area. Kleinmond is approximately 20km west of Hermanus.

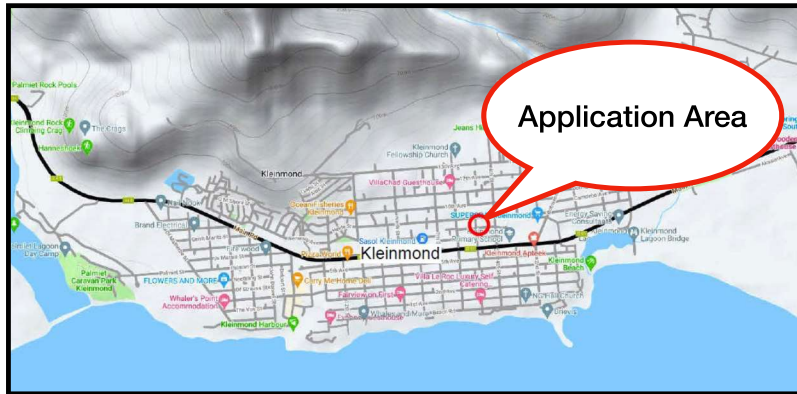


Figure 4: Regional Locality Plan

Refer to Annexure E for Locality Plan.

2.2.2 Local Context

From a local perspective, the application area is a residential erf within a residential area of Kleinmond. The application area street address is 18 Eighth Avenue.



Figure 5: Local Locality Plan

Refer to Annexure E for Locality Plan.

2.3 Zoning

2.3.1 Zoning Plan

The application area is zoned Single Residential Zone 1: Single Residential. The surrounding erven are zoned Residential Zone 1 as well. No change in zoning is proposed. The application area is consistent with the zoning of the area.

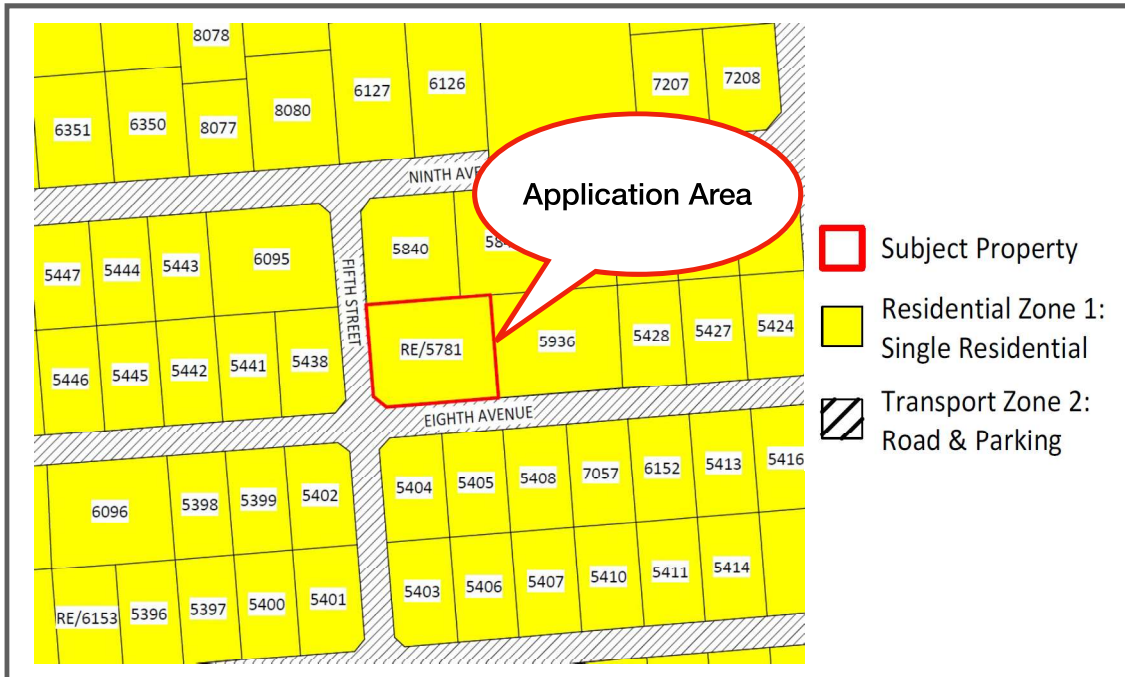


Figure 6: Zoning Plan

Refer to Annexure F for Zoning Map.

2.3.2 Zoning Criteria

The Zoning Criteria are presented in the table below and indicate that all Scheme criteria are adhered to except for two of the building lines which are slightly exceeded.

Criteria	Existing Zonings	Proposal	Comments
Zoning	Residential Zone 1: Single Residential	Residential Zone 1: Single Residential	Consistent
Primary Uses	Crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering	Dwelling house, second dwelling	Consistent
Consent Uses	Day care centre, green house, guest house, house shop, institution, place of instruction, place of worship, residential building and intensive horticulture	N/A	Consistent
Floor Space	50%	28.8%	Consistent
Height	8m	±3.5m	Consistent
Building lines	4m street 2m sides and rear	2.99 street 0.94m rear	Application includes departures
Parking	3 bays per dwelling unit	2 bays per main dwelling unit 1 bay per second dwelling unit	Consistent

2.4 Laws and Policies applicable to the application

2.4.1 Overstrand Municipal Spatial Development Framework, 2020

4.2.1 Overarching Spatial Planning Principles

Compaction and Densification

Growth should be managed so as to ensure that development pressures are, wherever possible, directed and absorbed within the defined urban areas.

Appropriate densification specific to each urban area must be encouraged to limited unwanted sprawl into the rural hinterland as outlined in detail in the Overstrand Growth Management Strategy.

5.5 KLEINMOND

5.5.2 Kleinmond 2020-2030 MSDF Spatial Proposal

Kleinmond predominantly functions as a retirement, residential and holiday destination.

The subject property is within an urban development area.

The application proposal is considered compatible with the Overstrand Municipal Spatial Development Framework, 2020.

2.4.2 Overstrand Municipal Growth Management Strategy, 2010

In terms of the Overstrand Municipal Growth Management Strategy, 2010, the subject property is within a 20 to 30 dwelling units per hectare area. The proposed density is 16.8 dwelling units per hectare which is lower than the densification targets.

The application proposal is considered compatible with the Overstrand Municipal Growth Management Strategy, 2010.

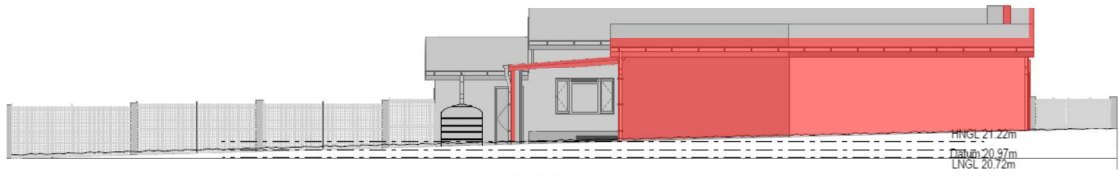
2.4.3 Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020

“90. Application for administrative penalty

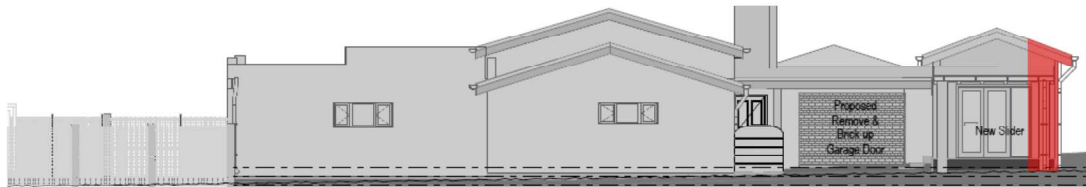
(1) A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.

(2) A person making an application contemplated in Subsection (1) must –
(a) submit an application;
(b) pay the prescribed fee;
(c) provide the information contemplated in Subsections (3); and
(d) comply with the duties of an applicant in Section 84.

(3) The applicant must, to the satisfaction of the Municipality, provide the following information such as-
(a) the nature, duration, gravity and extent of the contravention;
(b) the conduct of the person (allegedly) involved in the contravention;
(c) a report by a quantity surveyor in matters of unauthorised building/ construction;
(d) whether the unlawful conduct was stopped; and
(e) whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.”



North Elevation



East Elevation



West Elevation



South Elevation

Figure 8: Elevations Illustrating Building Line Contraventions to be Legalised

Refer to Annexure H for proposed building plans

3.1.2 The Application

Application is subsequently made in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- **Removal of restrictive Title Deed conditions** C.8, D.(b) & D.(d) from Title Deed T16978/2018 of Erf 5781 Kleinmond in terms of Chapter IV, Section (16)(2)(e).
- **Building Line Departure** to relax the northern side building line from 2m to 0.94m to allow for the new existing second dwelling and new existing covered patio in terms of Chapter IV, Section (16)(2)(b).
- **Building Line Departure** to relax the western street building line from 4m to 2.99m to allow for the new existing second dwelling, the new existing covered patio, the new existing braai and the new existing store room in terms of Chapter IV, Section (16)(2)(b).
- **Waiving of the Administrative Penalty** in terms of Chapter IV, Section 16(2)(q) for the existing unapproved structures and land uses as well as for amendments and additions.

3.1.3 Photos



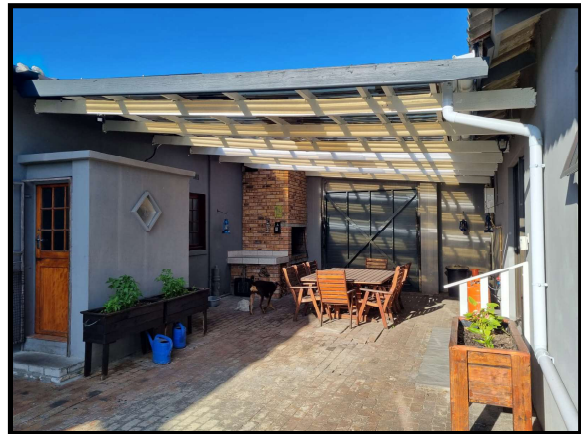
Second Dwelling and Covered Patio Exceeding Northern Building Line



Structures Exceeding the Western Street Building Line



Southern Elevation of Converted Store Room



Eastern Elevation of Covered Patio and Braai



Portion of Second Dwelling and Covered Patio



Street View of Application Area from 8th Avenue

3.1.4 Western street building line departure

The new existing second dwelling, the new existing covered patio, the new existing braai and the new existing converted store room exceed the 4m western street building line by up to 1.01m.

5th Street is barely used by any vehicles since it is a short street and has no connection to the main road, thus any vehicle that wants to travel north or south will use either 4th or 6th Street. Even the use of 5th Street by pedestrians is very rare, especially at the last block where the application area is located. The primary façade of the application area faces 8th Avenue. All departures are on the western side adjacent to 5th Street and to the north, thus not facing the primary façade on 8th Avenue which reduces potential impacts on the character of the area.

The original dwelling unit and garage were approved up to 3.15m from the western street boundary. The dwelling was erroneously built up to 2.99m from the western street boundary, thus 0.16m closer to the western street which is not noticeable unless measured and which will not negatively impact the character of the area, safety or access to services.

The change in land use from a garage to a storage area is not a significant change in land use since garages are often used for storage and a storage room is not representative of a habitable area. The garage door was bricked up and does not have any notable impact.

The braai and covered patio are in line with the approved dwelling. The patio roof and braai were built behind an approved wall, thus with the exception of the chimney, is barely visible from the road and will not have a notable impact in terms of the character of the area. The proposal includes to brick up the garage door leading to the covered patio and will also not have any notable impact.

3.1.5 Northern side building line departure

The new existing second dwelling as well as the new existing covered patio exceeds the 2m northern side building line by up to 1.06m. The second dwelling is adjacent to a carport of the property to the north, thus being approximately 3.5m from the dwelling to the north. The second dwelling unit does not have any doors or windows exceeding the building lines, thus not negatively impacting on the privacy of the neighbouring property. The solid wall also reduces potential noise. A minimum of 0.94m access is still available between the second dwelling and the northern boundary.

All structures exceeding building lines are on the ground floor, thus not impacting on views, privacy or light of neighbouring properties. Space is still available around the whole building for services, maintenance and emergency services.

The second dwelling was partially built from an approved garage and thus not having a visual impact from the road. The second dwelling furthermore provides the owners' elderly parents with a home. An alternative place to live would be costly and would result in significant negative emotional, physical and financial implications for the family members presently residing on the application area.

Densification improves the efficiency of settlements. Densification via second dwelling units is supported in terms of the relevant policy documents, as it contributes to preventing urban sprawl.

The 48.650m² floor area of the second dwelling adheres to the maximum allowable size of a second dwelling in terms of the Land Use Management Scheme, 2020.

3.1.6 Removal of Restrictive Title Deed Conditions

The title deed T16978/2018 includes building lines and does not allow for a second dwelling unit, thus restricting the existing structures and land use and reads as follows:

"C. SUBJECT FURTHER to and with the benefit of the following conditions contained in the Special Conditions of Sale, marked Annexure "E" on Deed of Transfer No T 1295/1933 imposed in favour of Kleinmond Syndicate Limited:

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.

D. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No T 1295/1933, imposed by the Administrator:

(b) That not more than one dwelling be erected on the above lot and that not more than two-thirds of the area of the above lot be built upon.

(d) That all buildings to be erected on this Lot shall stand back not less than 3,15 metres from the line of any street or avenue on which the lot may abut. Such space may be used as gardens but shall not be built upon. That all outbuildings shall stand back not less than 9,45 metres from any street or 6,30 metres from any avenue on which the lot may front."

The application proposal has been evaluated in terms of Section 35(4) of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020 regarding personal and social benefits which are foreseen to result from the amendment versus non-amendment of the three restrictive title deed conditions and the following conclusions were made:

(a) 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 financial benefit accrued by the owners - who are assisting their elderly parents with accommodation - manifests by removing the financial burden of finding suitable and (potentially) costly alternative accommodation for the parents.

Furthermore, the removal of the 3.15m title deed building line will legalise the portions of the existing structures exceeding this building line. This is considered to be the most cost-efficient and reasonable approach to these contraventions. The reasons for this consideration is that the structures only slightly exceed the title deed building line up to 0.16m at its nearest point to the western boundary and that no material impact on the surroundings or character of the area is evident or foreseen as a result of the removal of this condition.

(b) Personal benefits which accrue to the holder of rights in terms of the restrictive condition

No personal benefits which accrue to the holder of rights in terms of the restrictive conditions are apparent, as no material impact on the surroundings or character of the area due to the removal of restrictive conditions, is evident or foreseen.

(c) Personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if it is removed

Concern often exists regarding the quality of care which the elderly receive in government-funded old age facilities. Furthermore, the cost of a private old age facility is economically unfeasible for the owners. The second dwelling provides secure accommodation for the owners' elderly parents in close proximity.

By providing accommodation for the elderly parents in the second dwelling - as opposed to accommodating them in the main dwelling - assists in preserving the dignity and independence of the elderly parents and promotes harmony between family members. A further benefit of accommodating the elderly parents in the second dwelling, is that it provides the owners with the option of starting their own family should they wish to.

The conversion of the garage into a storage room allows the owners to optimise the liveable spaces of their dwelling more efficiently. The existing two garages and single parking bay on the property is sufficient for accommodating their vehicles.

The covered patio and braai facility create an enjoyable outdoor recreation area where the family can spend quality time together, benefitting the mental health and overall well-being of the residents.

(d) The social benefit of the restrictive condition remaining in place in its existing form

No material social benefits to the restrictive conditions remaining in place in its existing form, are evident.

(e) The social benefit of the removal or amendment of the restrictive condition

The development proposal contributes incrementally in relieving the financial burden on the community and government to provide for the homeless and elderly. Government and/or private funds are thus freed up to be utilised for the care of other indigent members of society. The removal of the restrictive condition prohibiting the second dwelling, will ensure that the elderly parents, which fall within the category of society's most vulnerable members, have access to safe and secure accommodation.

(f) 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?

The removal of restrictive conditions will result in the continuation of the safe and secure accommodation of the elderly parents, the enjoyment of an outdoor recreational area by residents and the efficient use of the interior space of the dwelling house for storage, without materially impacting on the surroundings or on the character of the area.

In support of the application for departure of the northern side building line and removal of the title deed condition restricting the second dwelling, *refer to Annexure K* for the northern neighbour's consent.

Conclusion

Therefore, the removal of the restrictive title deed conditions to allow for the new existing structures and land use, is considered not only desirable, but **essential** to preserving and promoting the physical, financial and mental well-being of the family members residing on the subject property.

3.1.7 Determination of an Administrative Penalty

Determination/waiving of administrative Penalty in terms of Chapter IV, Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The following information with regards to the administrative penalty is provided as required according to Chapter X, Section 90(3) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020:

3.1.7.1 The nature, duration, gravity and extent of the contravention

Second Dwelling Floor Area: 48.650m²

The areas exceeding building lines are as follows:

- Dwelling house: 8.0m²,
- Second dwelling: 15.6m²,
- Northern covered patio: 2.8m²,
- Western covered patio: 4.0m²
- Braai: 1.1m²
- Total: 31.5m²

The previous owners were responsible for converting the approved northern garage into a bedroom and a bathroom, which the current owners extended further to include a kitchen and a living room as well, in order to create a functional second dwelling. Furthermore, the current owners were responsible for constructing the northern covered patio, converting an existing carport into the western covered patio and converting the garage into a store room. These contraventions occurred between 2018 and 2023. All other contraventions occurred after the first plans were approved in 1967 and prior to 2018 when the property was registered in the current owners' names.

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

This application indicates the owners' co-operation and willingness to rectify the existing contraventions by following the correct statutory procedures. It is important to note that the current owners of the subject erf are only partly responsible for the contraventions.

Important to note is that the owners did initially attempt to follow statutory procedures for approval of the second dwelling. Due to the urgency of accommodating their elderly parents, the owners felt compelled to go ahead with the construction of the second dwelling. Their attempts to follow correct procedure were hampered by miscommunication with the municipality and the outbreak of the Covid pandemic.

3.1.7.3 Report by a quantity surveyor in matters of unauthorised building/construction

Due to the nature, scale and immaterial impact of the contraventions as well as the application to waive the administrative penalty, a report by a quantity surveyor is considered irrelevant.

3.1.7.4 Whether the unlawful conduct was stopped

Due to the nature of the building line contraventions, stopping the unlawful conduct, would imply demolishing the sections of buildings which exceed the building lines. This would be considered extreme, costly and destructive.

Relocating the owners' elderly parents from the second dwelling to the main dwelling would cause upheaval and emotional strain for the family members involved. Furthermore, it has been determined that it would not be feasible or sustainable for the elderly parents to be re-homed elsewhere.

Approval of this application to legalise the contraventions will enable the protection of the most vulnerable members of society, without resulting in a material impact on the surroundings or character of the area. Therefore, the most ethical, compassionate, reasonable and cost-efficient way to deal with the unlawful conduct is by legalising the contraventions.

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

No, the current owner has not previously contravened this by-law or a previous planning law.

3.2 Desirability

To summarise, the proposal is therefore considered desirable for the following reasons namely:

- In accordance with the relevant spatial planning legislation, policies and frameworks for the area.
- As opposed to the title deed, the more updated Land Use Management Scheme, 2020, allows for a second dwelling as a primary land use right on a single residential erf.
- The adjacent neighbour to the north has provided consent for the proposal for a second dwelling exceeding the northern rear building line.
- The owners are co-operative and willing to rectify all existing contraventions by following the correct statutory procedures.
- The proposal contributes to addressing an **essential need** for housing for the owners' elderly parents.
- The proposal will not have a material impact on the surroundings or on the character of the area.
- No obstruction to the application area for emergency purposes is caused by the proposal.
- Legalisation of the building contraventions is considered the most reasonable, humane, cost-effective and efficient solution to the existing contraventions.

Therefore, the land will be optimally utilised to provide a satisfactory residential environment which caters for the full range of residential needs on the application area.

3.3 Planning Principles

In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:

3.3.1 Spatial Justice

Spatial Justice which refers to the need for redressing the past apartheid spatial development imbalances and aims for equity in the provision of access opportunities, facilities, services and land.

Possible results of the development

The proposal will in no way contribute to the perpetuation of past apartheid spatial development imbalances as it will merely legalise the existing unapproved built structures exceeding building lines, the erroneously built main dwelling as well as the unapproved second dwelling on a single residential erf.

The application proposal is consistent with spatial justice.

3.3.2 Spatial Sustainability

Spatial Sustainability which refers to the fact that 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 landscapes and ultimately limits urban sprawl.

Possible results of the development

The proposal will permit the existing unapproved built structures which exceed the northern and western building lines, the erroneously built main dwelling as well as the unapproved second dwelling on a single residential erf within the urban edge.

Densification via second dwelling units is **supported** in terms of the relevant policy documents, as it contributes to providing much needed additional housing, without extending development into the rural hinterland.

Therefore, no impact on agricultural land, environmentally sensitive areas and biodiversity rich areas will occur.

The application proposal can thus be deemed to be spatially sustainable.

3.3.3 Spatial Efficiency

Spatial efficiency which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

Possible results of the development

The proposal for legalisation is considered the most reasonable, humane, cost-effective and efficient approach to the existing contraventions, considering that no material impact on the surrounding land or the character of the area is evident or foreseen.

The approved northern garage which was already converted into a bedroom and a bathroom by the previous owners, was efficiently converted and extended into a second dwelling for the owner's elderly parents who are unable to afford their own accommodation. Furthermore, the second dwelling allows the owners the option to use the two extra bedrooms inside the main dwelling for accommodating children, should they wish to start their own family.

The second dwelling represents a form of densification which improves the efficiency of settlements, as it optimises the application area to provide much needed additional housing, while limiting urban sprawl.

Therefore, the land will be optimally utilised to provide a satisfactory residential environment which caters for the full range of residential needs.

The application proposal is consistent with the efficiency principle.

3.3.4 Spatial Resilience

Spatial Resilience which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

Possible results of the development

The second dwelling accommodates the owners' elderly parents who are unable to afford their own accommodation. This contributes to relieving the government and community's financial burden of providing for the homeless and elderly. The result is that more financial aid is available for other members of the community requiring assistance in this regard.

The proposal for densification via the second dwelling on the application area contributes to providing additional housing without leading to urban sprawl and therefore prevents any environmental shocks to the community.

The application proposal is consistent with the principle of spatial resilience.

3.3.5 Good Administration

Good Administration which, 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 that a joint planning approach is pursued.

Possible results of the development

Consultive practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the Government and the general public to participate in the eventual decision-making process.

The application proposal is consistent with the principle of good administration.

3.3.6 Planning Principles Conclusion

The application proposal is therefore considered fully **consistent** with the planning principles of spatial justice, spatial sustainability, efficiency, spatial resilience and good administration.

4 Conclusion

The development proposal is considered to represent the optimal use of the application area to provide a satisfactory residential environment for the family members residing on the property.

The scope of the application as motivated in this report is considered the most humane, reasonable, cost-effective and efficient approach to rectify the contraventions for which no material impact on the surrounding properties or character of the area is evident or foreseen.

The application is considered **desirable** within its local context and **well-integrated** within the existing community land-use activities and it is therefore recommended that the application be approved as follows:

- **Removal of restrictive Title Deed conditions** C.8, D.(b) & D.(d) from Title Deed T16978/2018 of Erf 5781 Kleinmond in terms of Chapter IV, Section (16)(2)(e).
- **Building Line Departure** to relax the northern side building line from 2m to 0.94m to allow for the new existing second dwelling and new existing covered patio in terms of Chapter IV, Section (16)(2)(b).
- **Building Line Departure** to relax the western street building line from 4m to 2.99m to allow for a new existing second dwelling, a new existing covered patio, a new existing braai and a new existing store room, in terms of Chapter IV, Section (16)(2)(b).
- **Waiving of the Administrative Penalty** in terms of Chapter IV, Section 16(2)(q) for the existing unapproved building amendments and additions.

Company Title



WONDERWARE DESIGNS

Steven van der Merwe 0741027897

Monday, February 12, 2024

D2456 PArchDraught

steven.van.der.merwe@gmail.com

Erf 5781 Kleinmond

Job Title

Measured Drawings

Tonia Smith & Byron Victor Smith

064 272 8334

18 8th Ave,

Kleinmond

7200

toonsie@live.com

Drawing Name

Drawing Status

Survey

Submission Drawings Only

Drawn by

Date

Steven van der Merwe PArchDraught

Monday, February 12, 2024

Checked by

D2456 steven.van.der.merwe@gmail.com

Drawing Scale

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Layout ID

A.01.1

Job

2401 Tonia Smith & Byron

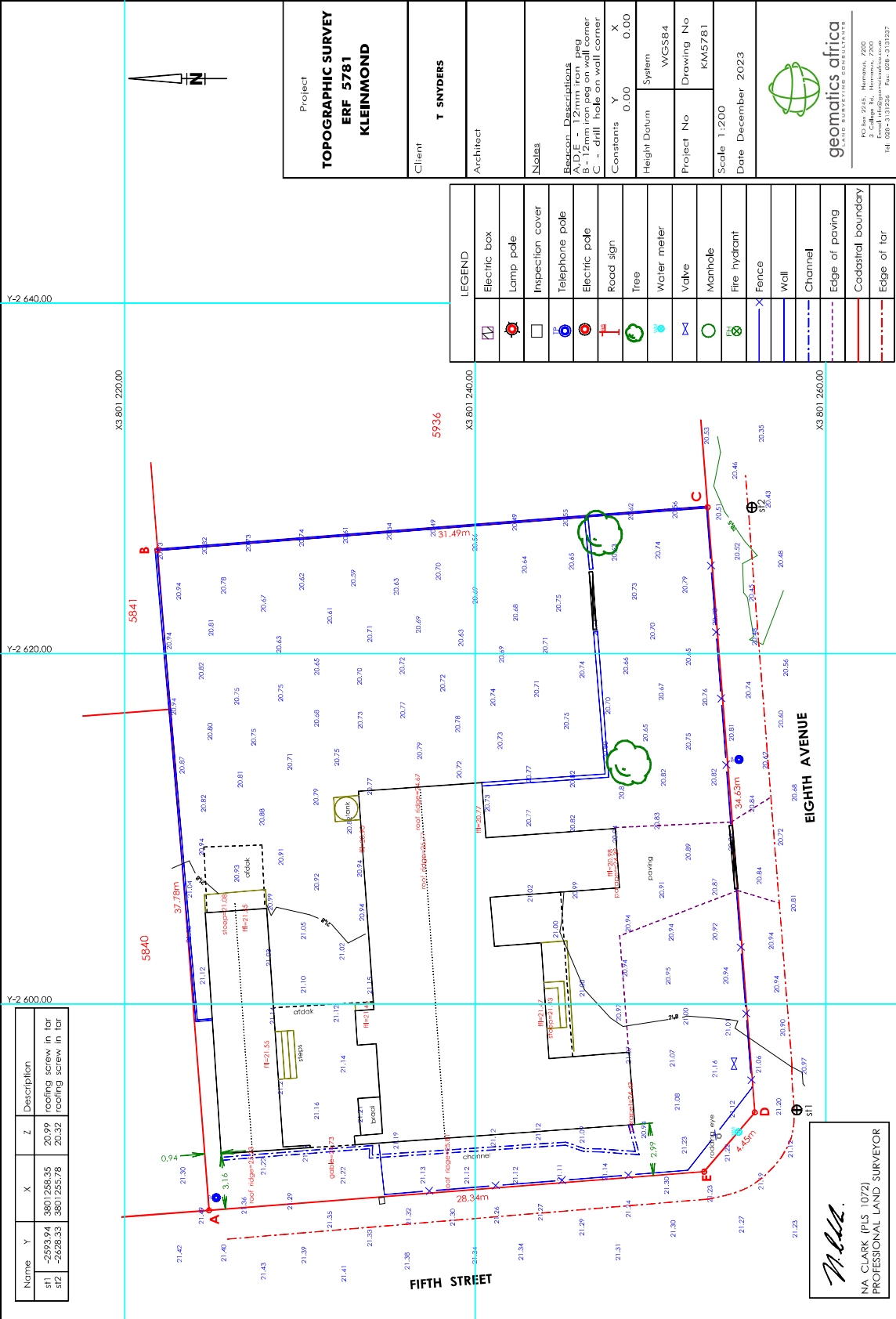
Victor Smith

Status

Revision

Job bag

Victor Smith



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sf2	-2628.33	3801255.78	20.32	roofing screw in tar

M.A.
 NA CLARK (PLS 1072)
 PROFESSIONAL LAND SURVEYOR

LEGEND	
	Electric box
	Lamp pole
	Inspection cover
	Telephone pole
	Electric pole
	Road sign
	Tree
	Water meter
	Valve
	Manhole
	Fire hydrant
	Fence
	Well
	Channel
	Edge of paving
	Coastal boundary
	Edge of tar

geomatrics africa
 100% SOUTH AFRICAN OWNED & OPERATED
 PO Box 2745, Hertzogsburg, 7200
 Email: info@geomatricsafrica.co.za
 Tel: 029-3131259 Fax: 029-3131227



Steven van der Merwe 0741027897
Monday, February 12, 2024
D2456 PArchDraught
steven.van.der.merwe@gmail.com
Ert 5781 Kleinmond

Job Title
Measured Drawings
Tonla Smith & Byron Victor Smith
084 272 8334
8 8th Ave,
Kleinmond
7200
boonsie@live.com

Drawing Name
Ground_Privysseal2023

Submission Drawings Only
Date
Steven van der Merwe PArchDraught
Checked by
D2456 steven.van.der.merwe@gmail.com

Drawing Scale
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Layout ID
A.01.3
Status
Revision
Job bag
2401 Tonla Smith & Byron
Victor Smith

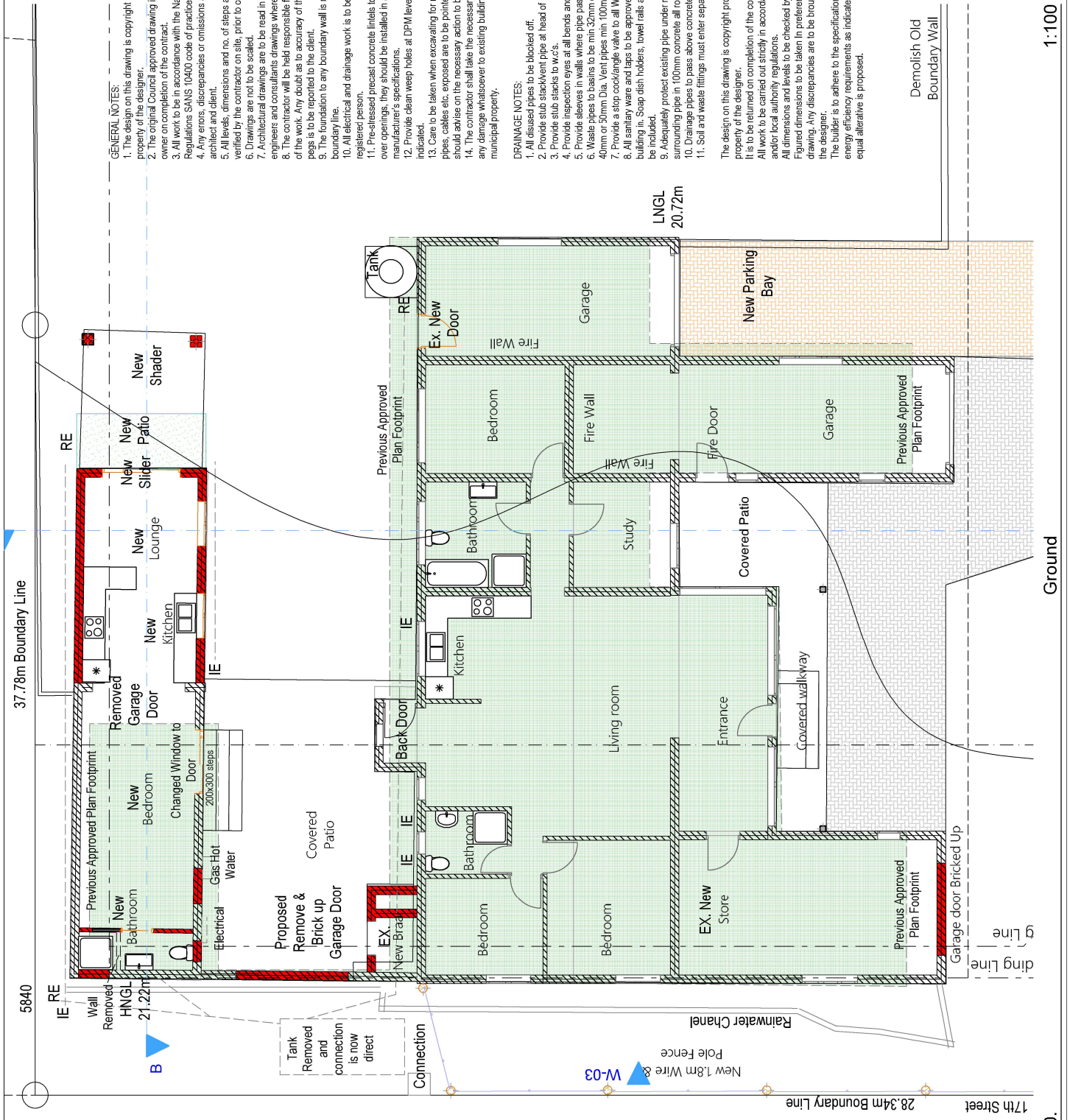
GENERAL NOTES:

- The design on this drawing is copyright protected and is the property of the designer.
- The original Council approved drawing is to be returned to the owner on completion of the contract.
- All work to be in accordance with the National Building Regulations SANS 10400 code of practice and local bylaws.
- Any errors, discrepancies or omissions are to be reported to the architect and client.
- All levels, dimensions and no. of steps are to be checked and verified by the contractor on site, prior to commencing any work.
- Drawings are not to be scaled.
- Architectural drawings are to be read in conjunction with engineers and consultants drawings where applicable.
- The contractor will be held responsible for the correct setting out of the work. Any doubt as to accuracy of the boundary lines or pegs is to be reported to the client.
- The foundation to any boundary wall is not to encroach over the boundary line.
- All electrical and drainage work is to be done by a qualified and registered person.
- Pre-stressed precast concrete lintels to be specified and used over openings, they should be installed in accordance with manufacturer's specifications.
- Provide clean weep holes at DPM level and air vents where indicated.
- Care to be taken when excavating for new work. All existing pipes, cables etc. exposed are to be pointed out to the client who should advise on the necessary action to be taken.
- The contractor shall take the necessary precaution to avoid any damage whatsoever to existing buildings, fences or any municipal property.

DRAINAGE NOTES:

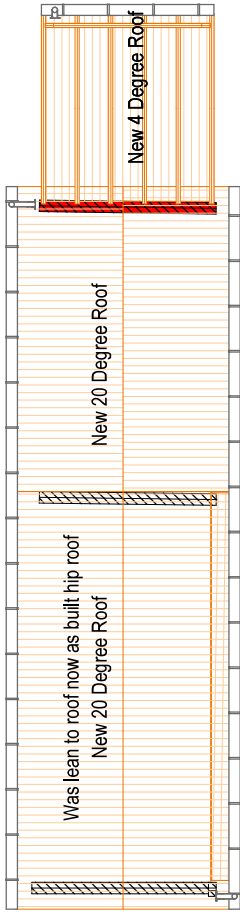
- All disused pipes to be blocked off.
- Provide stub stack/vent pipe at head of run - highest point.
- Provide stub stacks to W.C.s.
- Provide inspection eyes at all bends and junctions.
- Provide sleeves in walls where pipe passes through.
- Waste pipes to basins to be min 32mm dia and all other fixtures 40mm or 50mm Dia. Vent pipes min 100mm Dia.
- Provide a stop cock/angle valve to all W.C.s.
- All sanitary ware and taps to be approved by client prior to building in. Soap dish holders, towel rails and toilet paper holder to be included.
- Adequately protect existing pipes under new building load by surrounding pipe in 100mm concrete all round.
- Drainage pipes to pass above concrete footings.
- Soil or waste fittings must enter separately into stack.

The design on this drawing is copyright protected and is the property of the designer.
It is to be returned on completion of the contract.
All work to be carried out strictly in accordance with municipal and/or local authority regulations.
All dimensions and levels to be checked by the contractor on site. Figured dimensions to be taken in preference to scaling the drawing. Any discrepancies are to be brought to the attention of the designer.
The builder is to adhere to the specification and comply with energy efficiency requirements as indicated on the plan unless an equal alternative is proposed.

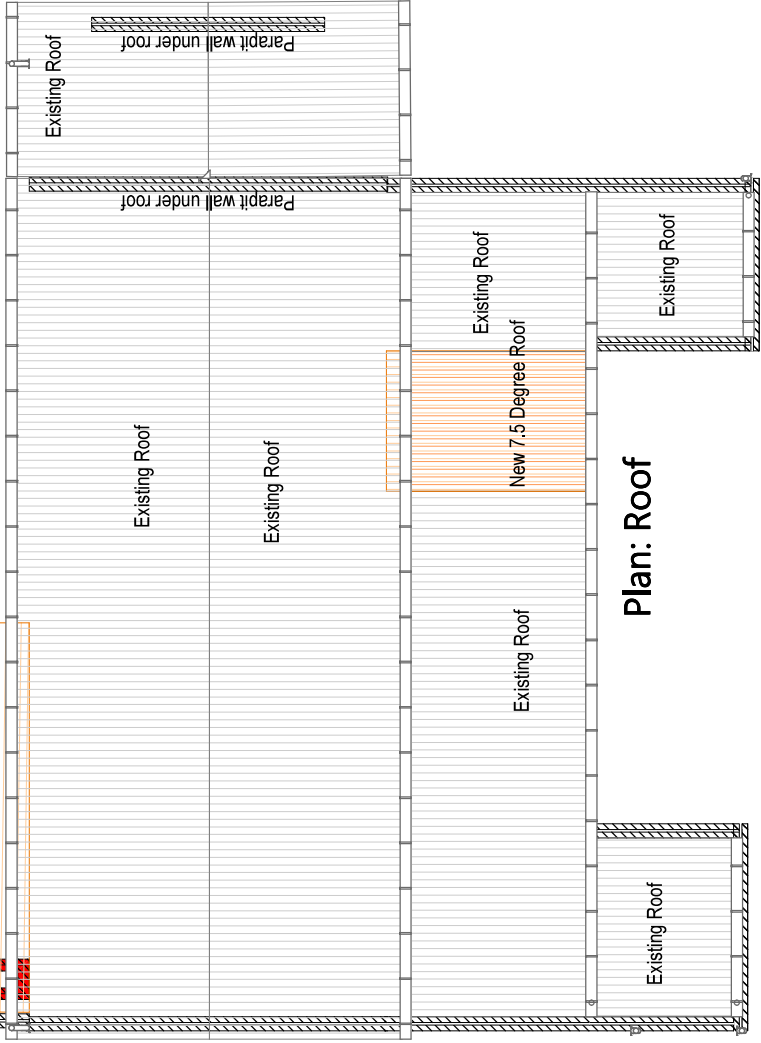


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ToniaV21 - Picture1.54



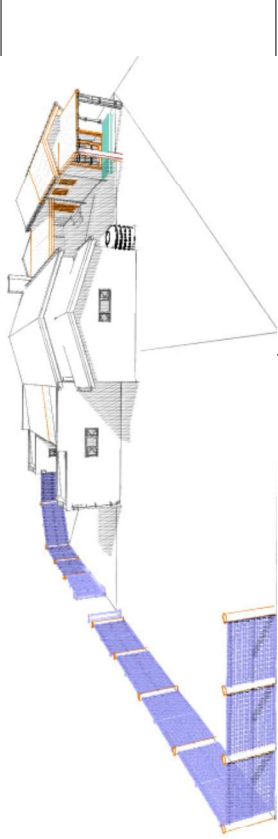
ROOF INSULATION: SANS 10400 XA requires all New Habital rooms to have the following:
 "Think Pink" Isover flexible Aerolite non-combustible lightweight fibreglas reinforced insulation blanket (Class 1 fire index rating), closely fitted with ends butted firmly between tie beams and laid loose on top of braneling between roof timbers, all in accordance with manufacturerea recommendations.
 25mm grooved Isoboard ceiling painted on brandering as per manufacturers Specification



1.

Roof (1)

1:100



Company Title



WONDERMARE DESIGNS

Steven van der Merwe 0741027897

Monday, February 12, 2024
 D2456 PArchDraught
 steven.van.der.merwe@gmail.com

Erf 5781 Kleinmond

Job Title
 Measured Drawings
 Tonia Smith & Byron Victor Smith
 064 272 8334
 18 8th Ave,
 Kleinmond
 7200
 toonsie@live.com

Drawing Name

Roof (1).Physseal2023_ToniaV21 - Picture1

Drawing Status

Submission Drawings Only

Drawn by

Steven van der Merwe PArchDraught

Checked by

Monday, February 12, 2024

D2456 steven.van.der.merwe@gmail.com

Drawing Scale

1:100

Layout ID

A.01.4

Status

Revision

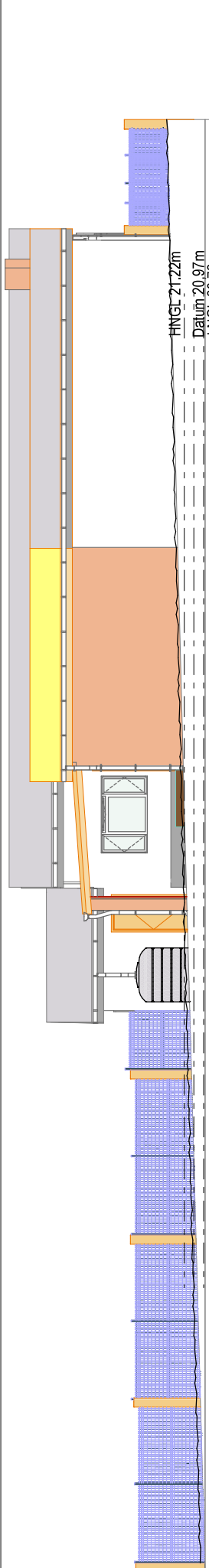
Job

2401 Tonia Smith & Byron

Job bag.

Victor Smith

PROFESSIONAL ARCHITECTURAL
 DRAUGHTSPERSON
STEVEN CHRIS VAN DER MERWE
 4:26 PM (Africa/Johnannesburg) on 09 Feb 2023



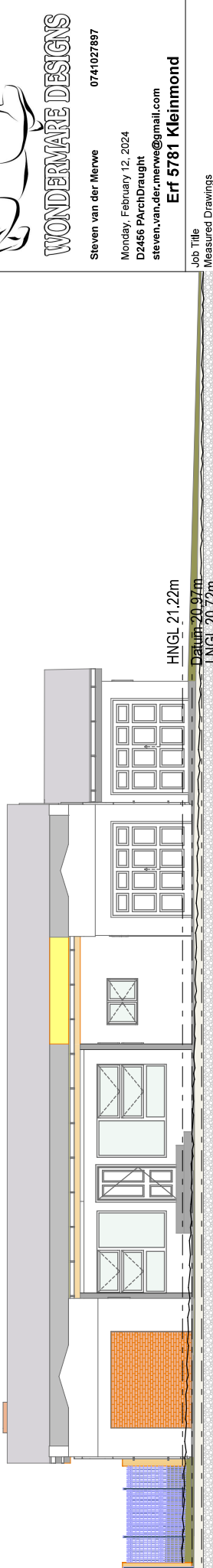
N-02

North Elevation

1:100

WONDERMARE DESIGNS
 Steven van der Merwe 0741027897
 Monday, February 12, 2024
 D2456 PArchDraught
 steven.van.der.merwe@gmail.com
Erf 5781 Kleinmond

8m Limit



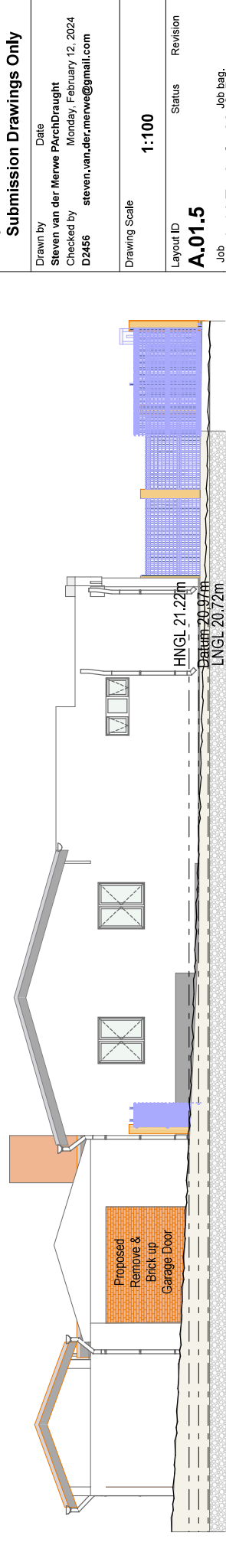
S-01

South Elevation

1:100

Job Title
 Measured Drawings
 Tonia Smith & Byron Victor Smith
 064 272 8334
 18 8th Ave,
 Kleinmond
 7200
 toonsie@live.com
 Drawing Name

8m Limit



W-03

West Elevation

1:100

North Elevation, South Elevation, West Elevation
 Drawing Status
Submission Drawings Only

Drawn by
 Steven van der Merwe PArchDraught
 Checked by
 D2456 steven.van.der.merwe@gmail.com

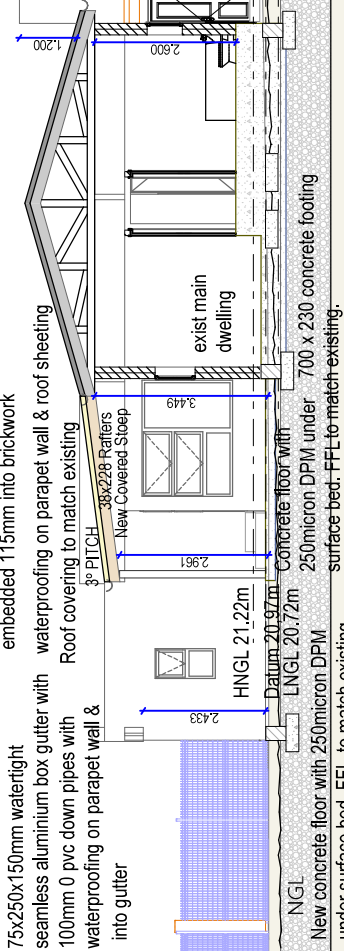
Date
 Monday, February 12, 2024
 Job No.
 2401 Tonia Smith & Byron
 Victor Smith

Drawing Scale
1:100

Layout ID
A.01.5
 Status
 Revision

ROOF ASSEMBLY TO ACHIEVE MINIMUM OF 3.7sqm KW
 ROOF TILES: R-VALUES: 0.35sqm KW
 SISILATION REFLECTIVE FOIL: R-VALUES: 0.75sqm KW
 ISOTHERM INSULATION: R-VALUES: 2.6sqm KW
 ISOBORD CEILING R-VALUES: 1.042sqm KW
 TOTAL R-VALUE: 4.742sqm KW

Klip-lok roof sheeting on 50x75 purlins at max. 900 c/c on exposed 50x220 PAR rafters at max. 1200 c/c tied down to 114x35 wall plate with 1.2x30mm galv. hoop iron straps embedded 115mm into brickwork



75x250x150mm watertight seamless aluminium box gutter with 100mm Ø pvc down pipes with waterproofing on parapet wall & into gutter

3° PITCH
 New Covered Steep
 38x228 Rafters
 500mm x 230 concrete footing
 250micron DPM under surface bed. FFL to match existing.

2.433
 2.961
 3.449
 2.800
 2.800

3m
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 2m

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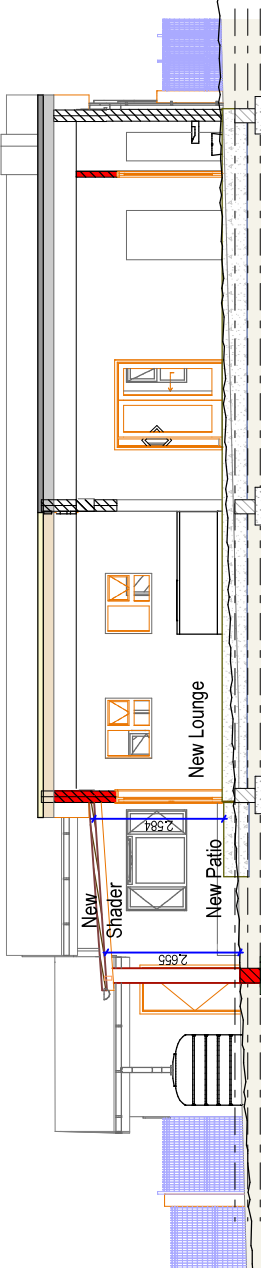
Building Section (1)

1:100

8m Limit

ROOF INSULATION: SANS 10400 XA requires all New Habital rooms to have the following:
 "Think Pink" Isover flexible Aerolite non-combustible lightweight fibreglass reinforced insulation blanket (Class 1 fire index rating), closely fitted with ends butted firmly between tie beams and laid loose on top of branding between roof timbers, all in accordance with manufacturee recommendations.

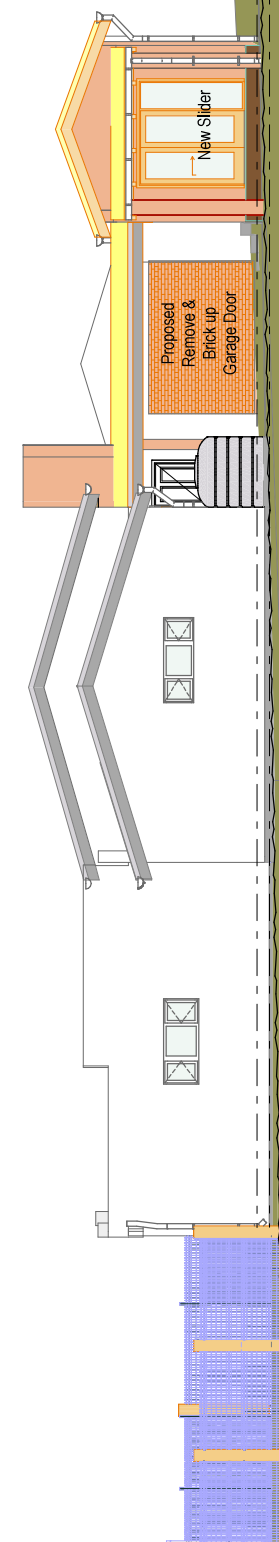
25mm grooved isoboard ceiling painted on branding as per manufacturers Specification



Building Section

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8m Limit



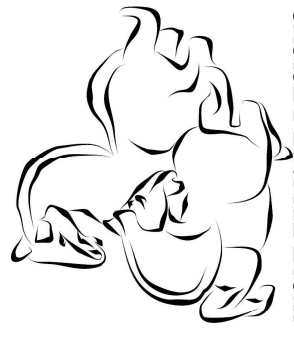
East Elevation

1:100

8m Limit

KLIP-LOK ROOF STRUCTURE: Proposed extension of 17 pitched roof with gable end walls, using renown cement tiles on 38x38 battens @320c/c on SABS approved sisalation 405 lapped minimum 150mm at joists on roof trusses @ minimum 760c/c with approved nailing plates, erected and braced in accordance with manufacturer's recommendation and supplied by recognized prefabricated truss manufacturer. 135mm Isotherm Insulation into roof space above new ceiling.

Company Title



WONDERMARE DESIGNS

Steven van der Merwe 0741027897
 Monday, February 12, 2024
 D2456 PArchDraught
 steven.van.der.merwe@gmail.com
Erf 5781 Kleinmond

Job Title
 Measured Drawings
 Tonia Smith & Byron Victor Smith
 064 272 8334
 18 8th Ave,
 Kleinmond
 7200
 loonsie@live.com

Drawing Name

Building Section (1), Building Section, East Elevation
 Drawing Status

Submission Drawings Only

Drawn by
 Steven van der Merwe PArchDraught
 Checked by
 D2456 steven.van.der.merwe@gmail.com
 Date
 Monday, February 12, 2024

Drawing Scale
 1:100

Layout ID
A.01.6

Status
 Revision
 Job
2401 Tonia Smith & Byron
 Job bag
Victor Smith

- Subject Property
- Zoning Scheme Building Lines
- Title Deed Building Lines
- Buildings
- Covered Stoeeps
- Unapproved areas/uses exceeding building lines:

Dwelling House:	8.0m ²
Second Dwelling:	15.6m ²
Northern Patio:	2.8m ²
Western Patio:	4.0m ²
Braai:	1.1m ²
Total area exceeding building lines:	31.5m²

PROJECT:
Erf 5781 Kleinmond

DRAWING TITLE:
Departure Plan

CLIENT:
Byron & Tonia Smith

ADDRESS:
18 Eight Street

DRAWN BY:

CHECKED BY:

SCALE:

SCALE: As indicated

DATE:

DATE: 2/22/2024

REVISION:

Rev5

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Departure Plan
Scale: 1 : 200

