

ERF 11033, 21 MARINE DRIVE, WESTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE, AMENDMENT OF SITE DEVELOPMENT PLAN AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF ZELPHY 1776 (PTY) LTD

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) that an application has been received for the following:

- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to:
 - ✚ relax the north-eastern lateral building line from 4m to 1.59m and 1.91m to accommodate the change of land use from Health Spa to a staff quarter and the modification made to the windows;
 - ✚ relax the north-eastern lateral building line from 4.5m to 1.59m to accommodate the existing wooden deck on the first floor, and
 - ✚ relax the 4,5m building line to accommodate the proposed roof over the $\pm 15\text{m}^2$ wooden deck.
- ❖ **Amendment of site development plan** in terms of Section 16(2)(l) of the By-Law.
- ❖ **Determination of an administrative penalty** in terms of Section 90(5) of the By-Law.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, Paterson Street, Hermanus. Any written comments may be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law to the Municipality (16 Paterson Street, Hermanus / (e) alida@overstrand.gov.za) on or before **Friday 11 July 2025**, quoting your name, address and contact details, interest in the application and reasons for comments. Telephonic enquiries can be made to the **Town Planner, Mr. B Minnaar** at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

ERF 11033, MARINEWEG 21, WESTCLIFF, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING, WYSIGING VAN TERREINONTWIKKELINGSPLAN EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE PLAN ACTIVE STAD- EN STREEKBEPLANNERS NAMENS ZELPHY 1776 (PTY) LTD

Kennis word hiermee gegee ingevolge Artikel 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) dat 'n aansoek ontvang is vir die volgende:

- ❖ **Afwyking** ingevolge Artikel 16(2)(b) van die Verordening om:
 - ✚ die noord-oostelike lateraleboulyn vanaf 4m na 1.59m en 1.91m te verslap om die verandering van grondgebruik van gesondheidsspa na 'n personeelkwartier en die verandering wat aan die vensters gemaak is, te akkommodeer;
 - ✚ die noord-oostelike lateralboulyn vanaf 4m na 1.59m te verslap om bestaande houtdek op die eerste vloer te akkommodeer, en
 - ✚ die 4,5m boulyn te verslap om die voorgestelde dak oor die $\pm 15\text{m}^2$ houtdek te akkommodeer
- ❖ **Wysiging van die goedgekeurde terreinontwikkelingsplan** ingevolge Artikel 16(2)(l) van die Verordening.
- ❖ **Bepaling van 'n administratiewe boete** ingevolge Artikel 90(5) van die Verordening.

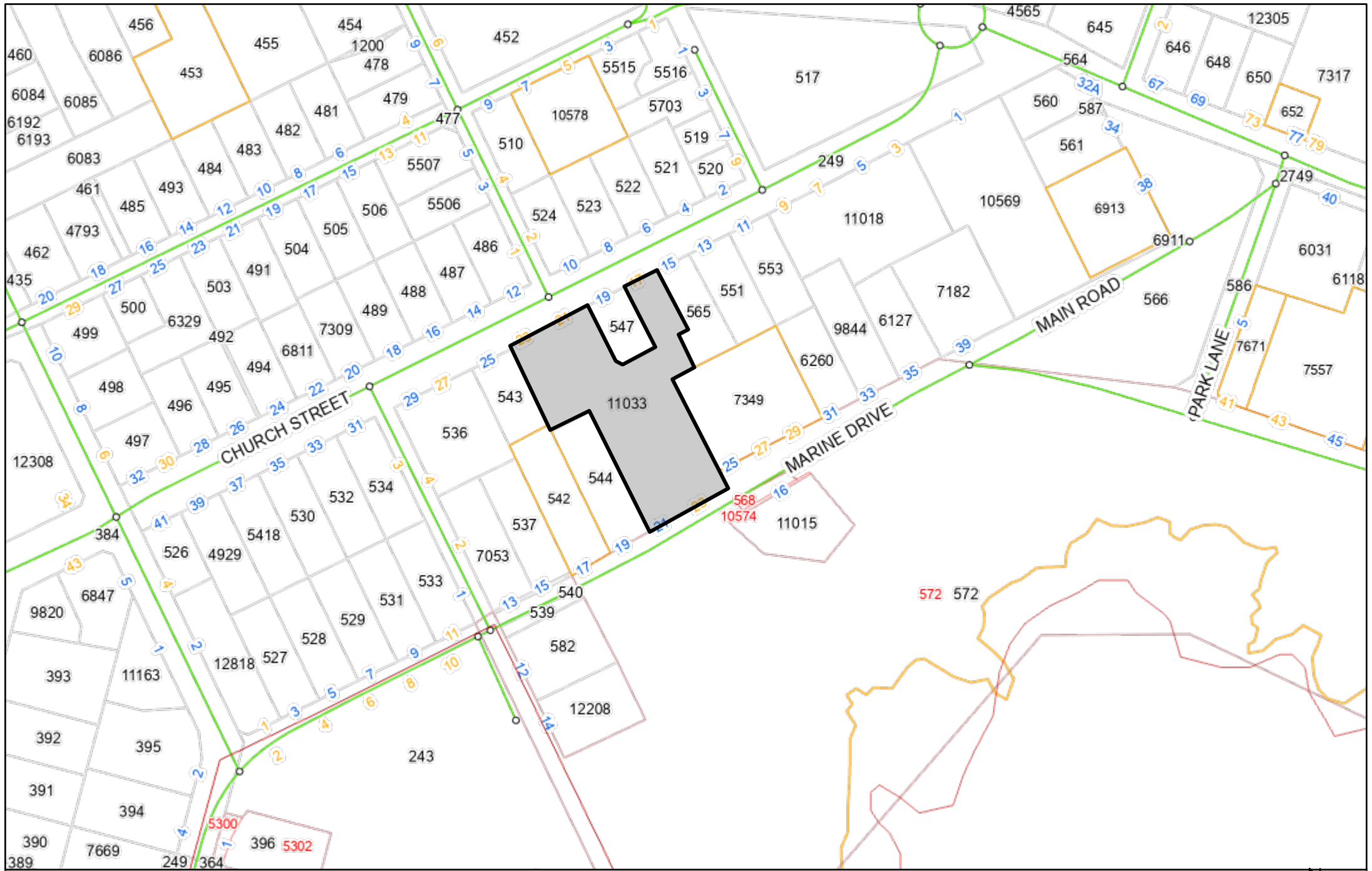
Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening na die Munisipaliteit (Patersonstraat 16, Hermanus / (e) alida@overstrand.gov.za) voor of op **Vrydag 11 2025**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. B. Minnaar** by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar 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 formaliseer.

ISIZA ESINGU-ERF 11033, 21 MARINE DRIVE, WESTCLIFF, HERMANUS, KUMMANDLA KAMASIPALA I-OVERSTRAND: ISICELO SOKWAHLULA, UYONDELELANISO LOPHUHLISO LWEPLANI YESAYITHI NENGIKHELELO YOMDLIWO WOBHALISO: MESSRS PLANACTIVE TOWN- AND REGIONAL PLANNERS EGAMENI LE ZELPHY 1776 (PTY) LTD

Kukhutshwe isaziso esimayela nemiba yeSoloty lama-48 loMthethwana kaMasipala wase-Overstrand OsisiHlomelo soMthethwana ongeziCwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana) isicelo esi sithi kufunyenwe isicelo esimayela nale miba ilandelayo:

- ❖ **Ukwahluka** ngokwemiba yeSoloty le16(2)(b) loMthethwana engo:
 - ✚ kunyenyisa umgca wesakhiwo kwicala elisemntla-mpuma wesakhiwo ukusuka kwiimitha ezi-4m ukuya kwi-1.59m ne-1.91m kulungiselela ukutshintsha umhlaba osetyenziselwa iHealth Spa/iSpa seMpilo ibe yindawo yokuhlala abasebenzi nokulungisa iifestile;
 - ✚ kunyenyisa umgca wesakhiwo kwicala lomntla-mpuma kwicala lesakhiwo ukusuka kwiimitha ezi-4.5m ukuya kwi-1.59m kulungiselela idekhi yomthi esele ikhona kumgangatho wokuqala, no
 - ✚ kunyenyisa umgca wesakhiwo ozimitha ezi-4,5m ukulungiselela uphahla olusisiphakamiso sophahla phezu kwedekhi yomthi ozizikwemitha ezi- $\pm 15\text{m}^2$.
- ❖ **Isihlomelo sophuhliso lwepani yesayithi** ngokweSoloty le16(2)(l) loMthethwana.
- ❖ **Ingqikelelo yobhaliso lomdlivo** ngokwemiba yeSoloty lama-90(5) loMthethwana.

linkcukacha ezipheleleyo ngesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini ukusukela phakathi kwentsimbi ye08:00 ukuya kweye-16:30 kwiSebe: Lezicwangciso zeDolophu, Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo mazingeniswe ngokwezibonelelo zeSoloty lama-51 nelama-52 loMthethwana kaMasipala ochazwe ngentla (16 Paterson Street, Hermanus / (e) alida@overstrand.gov.za) ngomhla okanye ngaphambi **uLwesihlanu 11 EyeKhala 2025**, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingabuzwa ku**Mcwangcisi weDolophu, Mnu. B Minnaar** kwa028-313 8900. UMasipala angala ukwamkela izimvo emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angaya kwiSebe Lezicwangciso zeDolophu apho igosa likamasipala liza kumnceda ukuhlomla ngokusemthethweni.



**PROPOSED BUILDING LINE DEPARTURE,
AMENDMENT OF THE SITE DEVELOPMENT
PLAN AND THE DETERMINATION OF AN
ADMINISTRATIVE PENALTY**

ERF 11033 HERMANUS

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

This application follows our previous submission on 3 December 2021, which sought approval for a building line departure and an amendment to the approved Site Development Plan to accommodate a Health Spa on the first floor. This application was subsequently approved on 27 July 2022, and for reference, the Decision Letter and the approved Site Development Plan are attached as Annexure A.

Prior to this, an application submitted on 23 February 2021 was also approved, introducing amendments to the Site Development Plan, which included:

- Retaining the existing conference/recreational building,
- Reducing the number of guestrooms from 36 to 32,
- Adding an additional penthouse, and
- Reducing the publicly accessible area within the restaurant to 50m².

Following the completion of the Health Spa, the boutique hotel faced challenges in securing the necessary work visas for the staff intended to operate the facility.

As a result, the Health Spa became redundant and was subsequently converted into a staff quarter. During these modifications, a wooden deck was constructed, inadvertently encroaching upon the eastern lateral building line.

To regularize these changes, the following approvals are now required:

- Amendment of the Site Development Plan to formally designate the former Health Spa as a staff quarter,
- Building line departure for the change of land use of the Health Spa into a staff quarter within a building line,
- Building line departure to accommodate the existing wooden deck,
- Building line departure to cover the existing wooden deck, and
- Determination of an administrative penalty for the unapproved modifications.

On behalf of Zelpy 1776 (Pty) Ltd, the registered owner of Erf 11033 Hermanus, Mr. H. Lerm and Mrs. M.D. Lerm have appointed Plan Active Town and Regional Planners to manage this application. It is important to emphasize that all other elements of the boutique hotel—including guestrooms, penthouses, the conference/recreational building, restaurant, parking areas, and access routes—will remain unchanged.

As detailed in the Motivation Report accompanying our 3 December 2021 application, Erf 11033 Hermanus was originally composed of Erven 545, 546, and 573, which were consolidated and rezoned to establish the Misty Waves Boutique Hotel. This 2002/2003 application also included a building line departure along the eastern boundary.

At that time, Mr. R.H. Kober, the owner of Erf 547 Hermanus, supported the application on the condition that a portion of the boutique hotel near the eastern boundary be limited to a single storey to preserve his view. The condition stated:

“I will agree to the above application request, provided the remaining building on that side is restricted to a GROUND FLOOR, WITH A SUITABLE FLAT ROOF only.”

To facilitate the building line relaxation for the first-floor Health Spa, it became necessary to revoke the prior agreement between Mr. Kober and Mr. Lerm, as the proposed spa was situated above the ground-floor structure referenced in Mr. Kober's condition.

Since then, both Mr. & Mrs. Kober have passed away. Mr. Anthony Charles Flint (ID: 5308035148031), acting as the Executor of the Estate of Mrs. O.H. Kober, has formally agreed to revoke the prior agreement, rendering it no longer applicable.

2. APPLICATION DETAILS

To accommodate the existing and proposed amendments to the Site Development Plan (SDP), an application must be submitted in accordance with the Amended Overstrand Municipality By-law on Municipal Land Use Planning, 2020, under the following provisions:

- Chapter 4, Section 16(2)(b): Application for permanent departures from the provisions of the land use scheme applicable to Erf 11033 Hermanus.
- Chapter 4, Section 16(2)(l): Application for the amendment of the Site Development Plan applicable to Erf 11033 Hermanus.
- Chapter 4, Section 16(2)(q): Application for the determination of an administrative penalty, as prescribed by the Amended By-law on Municipal Land Use Planning, 2020.

This application to ensure compliance with municipal regulations while formalizing the necessary modifications to the property.



3. DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 11033 Hermanus is situated between Church Street and Marine Drive. For reference, please refer to the enclosed locality plan. The property spans a total area of 4,651m² and is registered under Title Deed No. T53472/2008.

The Misty Waves Boutique Hotel was granted approval for the following facilities:

- 32 lettable rooms,
- Conference/recreational facility,
- Two penthouses,
- Health Spa, and
- Restaurant/dining room.

The restaurant/dining room is located within the Mon Desir building on the property and primarily serves guests of the boutique hotel, with 50m² of the restaurant space designated for public access.

To better meet the operational needs of the boutique hotel, the Health Spa has been repurposed into a staff quarter on the first floor.

3.2 ZONING

Erf 11033 Hermanus is zoned General Residential Zone 3 with consent use for a licensed hotel, which permits 32 lettable rooms, two penthouses, and the auxiliary uses previously outlined.

Furthermore, departures have been approved in the past to allow for building line relaxations and height restrictions adjustments.



3.3 LAND USE

Erf 11033 Hermanus is developed with the Misty Waves Boutique Hotel, which includes a conference facility, restaurant, and the required parking facilities.

The surrounding area comprises a diverse mix of land uses, including:

- Bed and breakfast establishments,
- Guesthouses,
- Apartments,
- Single dwelling houses,
- Public open spaces, and
- Public roads.

Adjacent properties are primarily utilized for single residential purposes, as well as apartment developments (notably Hermanus Breakwater) and guesthouse accommodations.

3.4 PROPOSAL

This application is submitted in accordance with the Amended Overstrand Municipality By-law on Municipal Land Use Planning, 2020, under the following provisions:

- Chapter 4, Section 16(2)(b): Application for permanent departures from the provisions of the land use scheme applicable to Erf 11033 Hermanus.
- Chapter 4, Section 16(2)(l): Application for the amendment of the Site Development Plan applicable to Erf 11033 Hermanus.

- Chapter 4, Section 16(2)(q): Application for the determination of an administrative penalty, as prescribed by the Amended By-law on Municipal Land Use Planning, 2020.

This proposal seeks to regularize the modifications made to the property while ensuring compliance with the applicable municipal regulations.

3.4.1 PROPOSED AMENDMENT TO THE SITE DEVELOPMENT PLAN

As previously noted, the owner elected to repurpose the approved Health Spa into a staff quarter due to the boutique hotel's inability to secure the necessary work visas for staff intended to operate the facility.

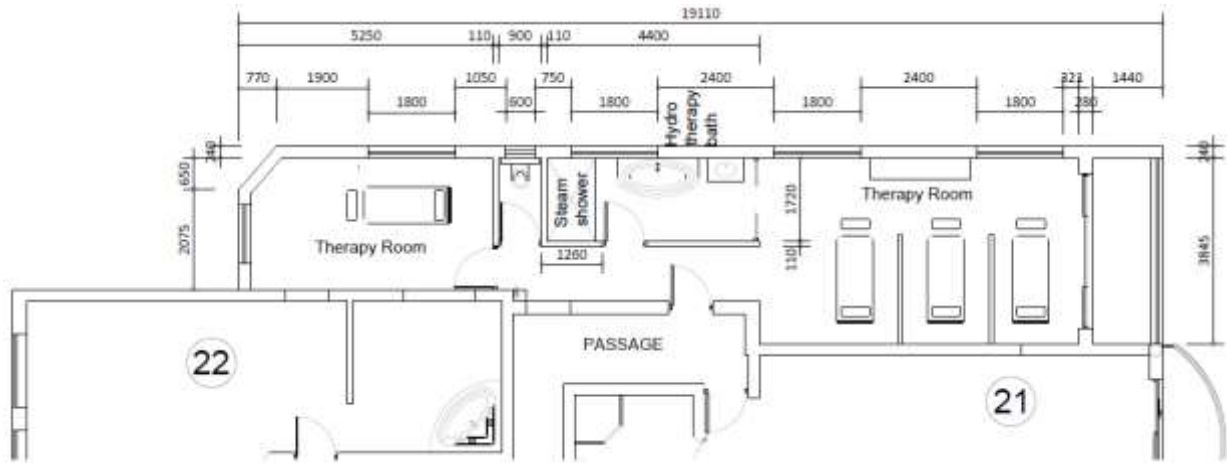
During this conversion, a wooden deck was constructed, which encroaches upon the lateral building line. To ensure compliance with municipal regulations, L.A Design Studio Architectural Practice was appointed to:

- Design the original Health Spa,
- Amend the building plan to accurately reflect the as-built staff quarter, and
- Indicate the as-built wooden deck, including a proposed roof over the existing wooden deck.

For reference, a copy of the architectural drawings has been enclosed.

Additionally, an excerpt from the approved plan for the Health Spa is provided alongside the as-built staff quarter, detailing the specific modifications made.





Approved Health Spa



As-built Staff Quarter

Based on the building plan abstracts, the following internal modifications have been implemented:

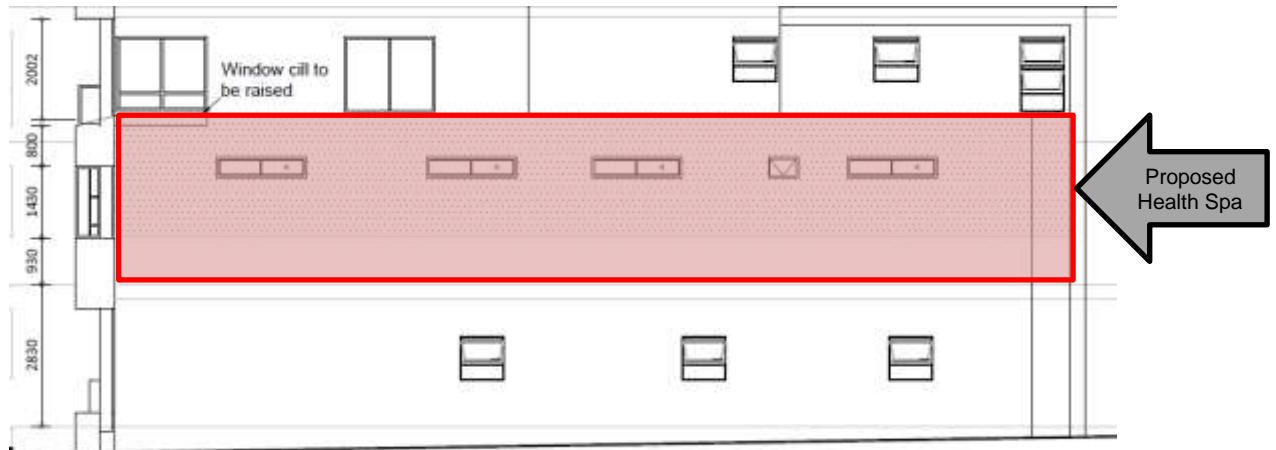
- The therapy room (originally containing one therapy bed, a bathroom, and a steam shower) has been converted into a small lounge and kitchenette.
- The bathroom has been repurposed as a changing room.
- The therapy room (originally containing three therapy beds) has been converted into a bedroom with an en-suite bathroom and shower.
- A wooden deck of approximately 15m² has been added to the north-western side of the staff quarter.
- A roof is proposed to cover the 15m² wooden deck.

To accommodate the conversion of the approved Health Spa into a staff quarter, modifications to the windows were necessary.



Previously, the eastern wall featured narrow, high-positioned windows designed to provide natural light while maintaining the privacy of the boutique hotel. These windows have been adjusted to enhance the functionality of the staff quarter.

For reference, please refer to the east elevation drawing below.



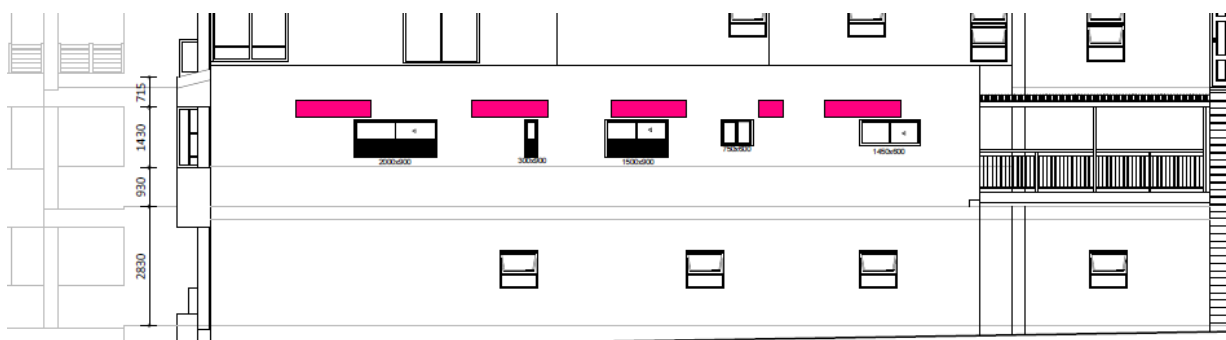
Approved East Elevation

The previously approved windows were modified to enhance natural light and ventilation, ensuring that the converted staff quarter remain both functional and comfortable.

For a clear comparison, please refer to the as-built building plan abstract below, where:

- The originally approved windows are highlighted in red, and
- The as-built windows reflect the modifications made.

This visual representation offers a comprehensive overview of the changes implemented.



EAST ELEVATION
SCALE 1:100



As-built East Elevation and proposed roof structure over wooden deck

Apart from the window alterations, the addition of an existing wooden deck, and the proposed roof over the deck, the exterior structure of the former Health Spa, now repurposed as a staff quarter, remains largely unchanged. These modifications are minor and do not compromise the architectural integrity or aesthetic appearance of the building.

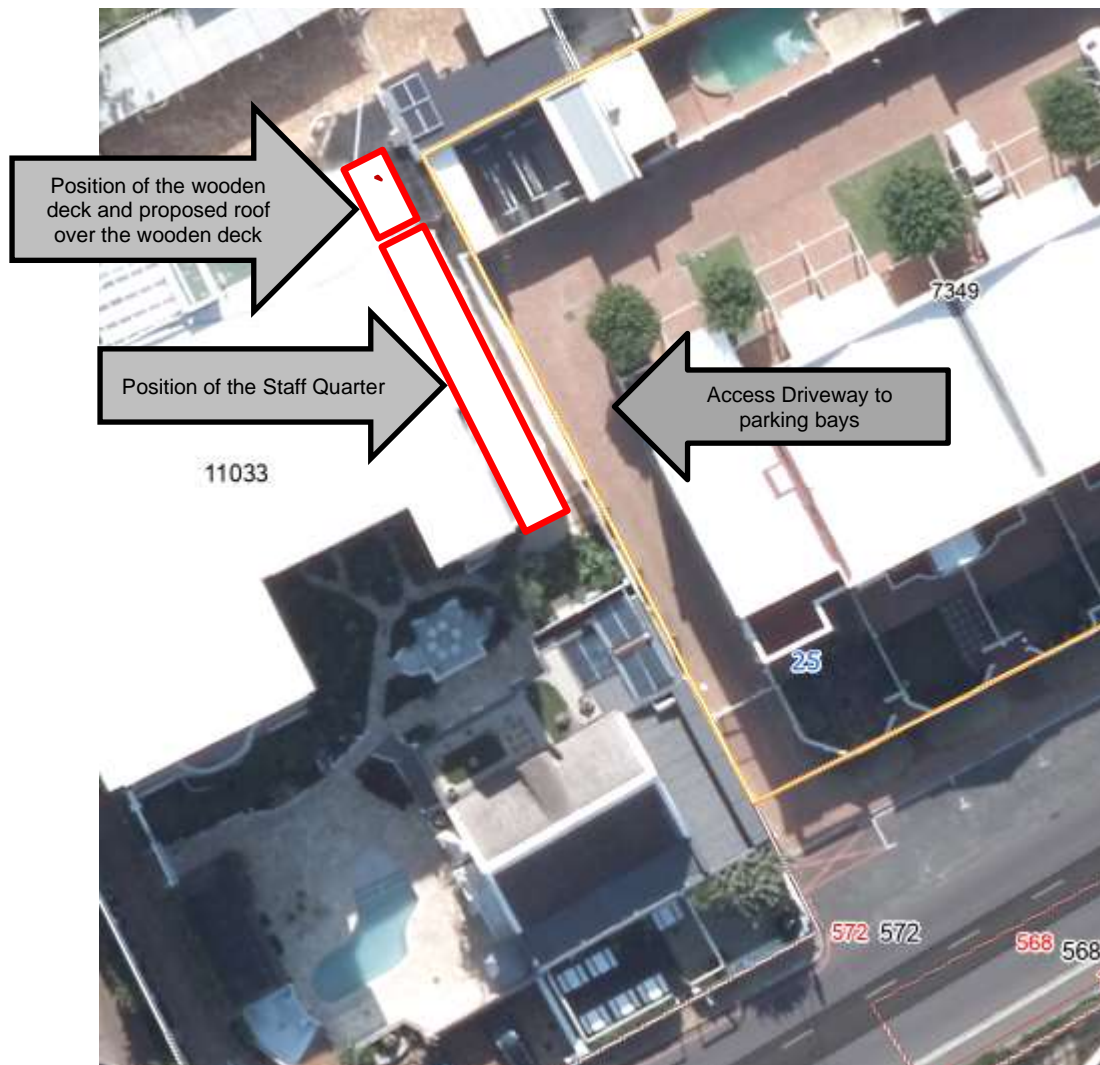
The conversion of the Health Spa into a staff quarter serves a functional purpose for the Misty Waves Boutique Hotel by ensuring that essential staff members are permanently onsite. This enhances operational efficiency and guest service, contributing to a seamless hospitality experience. By having staff readily available, the boutique hotel can respond efficiently to guest needs, ensuring a high standard of service delivery.

From a planning and land use perspective, the single-bedroom staff quarter do not pose any adverse impact on the surrounding properties. Specifically:

- The Hermanus Breakwater apartments, which are located adjacent to the site, will not be negatively affected, as their parking area access is positioned along the eastern boundary wall of the Misty Waves Boutique Hotel.
- The low-density nature of the staff quarter, comprising only one bedroom, ensures there is no significant increase in noise, traffic, or activity levels that could disturb neighbouring properties.

Given the negligible impact of these modifications, this amendment remains consistent with the original intent of the development while addressing the operational needs of the boutique hotel.

For a clearer understanding of the spatial layout and the relationship between the staff quarter and adjacent properties, please refer to the aerial photograph below.



3.4.2 PROPOSED BUILDING LINE DEPARTURE:

Under the current zoning regulations for Erf 11033 Hermanus (General Residential Zone 3), a lateral building line of 4.5m applies. The existing eastern single-storey ground-floor guestroom is positioned approximately 1.59m and 1.91m from the eastern lateral boundary.

As part of the original proposal, the Health Spa was approved for construction above the existing ground-floor guestroom, encroaching upon the 4.5m building line. A departure application was submitted to reduce the building line from 4.5m to ± 1.59 m



and $\pm 1.91\text{m}$, allowing the Health Spa to be constructed up to a height of $\pm 6.855\text{m}$ (measured from natural ground level to the roof). This departure was approved in accordance with the attached architectural plan.

Following the land use change from a Health Spa to a staff quarter, additional modifications were made, including:

- The construction of a wooden deck of approximately 15m^2 on the first floor.
- Alterations to the windows on the north-eastern elevation.

As these modifications were not part of the original approval, an additional departure application is now required. However, it is important to note that the previously approved building line departures (from 4.5m to $\pm 1.59\text{m}$ and $\pm 1.91\text{m}$) remain applicable, as the staff quarter remains within the original Health Spa footprint.

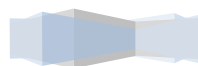
The current application seeks to:

- Formally recognize the change in land use from Health Spa to a staff quarter.
- Incorporate the modifications made to the windows on the eastern elevation.
- Obtain approval for a new building line departure to accommodate the existing wooden deck on the northern side of the staff quarter.
- Obtain approval for a proposed roof over the existing wooden deck.

As an example, the height of the staff quarter remains well below the 8m height restriction, which applies to single residential erven with a 2m lateral building line. The design, height, and window placement, along with the fact that the proposed roof over the existing wooden deck is lower than the originally approved Health Spa roof, ensure no negative impact on adjacent properties. The modifications align with the surrounding built environment, preserving privacy, aesthetics, and compatibility with neighbouring properties.

Requested Building Line Departures

This application seeks the following north-eastern lateral building line encroachments:



- A departure from 4.5m to 1.59m and 1.91m to accommodate the change of land use from Health Spa to a staff quarter and the modifications made to the windows.
- A departure from the 4.5m building line to 1.59m to accommodate the existing wooden deck on the first floor.
- A departure from the 4.5m building line to allow for the proposed roof over the $\pm 15\text{m}^2$ wooden deck.

Given these considerations, the proposed building line departures are reasonable and can be supported, ensuring both compliance with zoning regulations and operational functionality for the boutique hotel while maintaining harmony with the surrounding area.

3.4.3 THE DETERMINATION OF AN ADMINISTRATIVE PENALTY

As outlined earlier in this motivation report, the approved Health Spa has been converted into a staff quarter, and a $\pm 15\text{m}^2$ wooden deck was constructed within the prescribed 4.5m building line without the necessary approvals. The details of these modifications, as previously described, are as follows:

- Internal changes, including the conversion of therapy rooms, steam shower, and bathroom facilities into a small lounge, kitchenette, bathroom, dressing room, and a single bedroom with an en-suite bathroom.
- Modifications to the windows on the north-eastern elevation.
- Construction of a $\pm 15\text{m}^2$ wooden deck.

The accompanying as-built building plan demonstrates that these changes constitute minor encroachments into the building line.

In accordance with Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, this application is submitted for the determination of an administrative penalty to address:

- The unauthorized building work, and
- The building line encroachment resulting from the change of use of the approved Health Spa to a staff quarter and the construction of a wooden deck.



As stipulated in Chapter 10, Section 90(1) of the By-law, any party found in contravention of municipal land use regulations must apply to the Municipality for an administrative penalty determination, provided that no demolition directive has been issued under Section 85 for the affected land or structure.

Furthermore, in accordance with Chapter 10, Section 90(3) of the By-law, the applicant is required to submit the following information to the satisfaction of the Municipality:

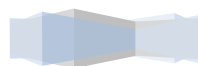
3.4.3.1 CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY

The Nature, duration, gravity, and extent of the contravention

A building plan was submitted and approved for the construction of the Health Spa. In March 2024, the Health Spa was converted into a staff quarter, and a ±15m² wooden deck was added, as outlined in this motivation report. Subsequently, modifications were made to the interior layout, along with changes to the windows. These modifications, including the addition of the wooden deck, were carried out within the 4.5m north-eastern lateral building line without obtaining the necessary approvals. For reference, please see the building plan abstracts under Section 3.4.1 and the attached copy of the proposed building plan.

These encroachments have been in place since the completion of the Health Spa's conversion into a staff quarter in March 2024. The impact of the encroachments, namely the change of land use, window modifications, and the addition of a wooden deck, are minimal and do not negatively affect surrounding properties or the overall character of the area.

This application seeks formal approval to regularize the encroachment, ensuring compliance with municipal regulations while maintaining the current use and layout of the building. The extent of the unauthorized building work is detailed as follows:



Structure	Extent of unauthorised building work	Date Constructed
The land use change of the Health Spa into a staff quarter	±59m ²	March 2024
The existing wooden deck	±15m ²	March 2024
Total Extent of unauthorised building work	±74m²	

The total unauthorized work amounts to ±74m², which includes:

- The change of land use of the former Health Spa into a staff quarter (±59m²).
- The construction of a ±15m² wooden deck.

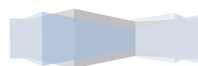
Distinction Between Habitable and Non-Habitable Space

To accurately assess the impact of these unauthorized modifications, it is important to distinguish between habitable and non-habitable space:

- Habitable space: The conversion of the Health Spa into a staff quarter (±59m²) constitutes liveable space essential for on-site staff accommodation.
- Non-habitable space: The wooden deck (±15m²) serves as an outdoor extension and does not contribute to additional enclosed living areas.

The position and nature of these modifications do not negatively affect surrounding properties. Specifically:

- The encroachments do not obstruct views, sunlight, or access for adjacent properties.
- The architectural design remains consistent with the surrounding neighbourhood, ensuring aesthetic continuity and minimal visual impact.
- The modifications align with the operational needs of the Misty Waves Boutique Hotel, while preserving the character and functionality of the property.



Given these considerations, this application seeks to regularize the encroachments, demonstrating that the modifications are reasonable, supportable, and do not pose any adverse effects on the surrounding environment.

The conduct of the person involved in the contravention.

The unauthorized construction and modifications, including the conversion of the Health Spa into a staff quarter and the addition of a wooden deck, were undertaken on the instruction of the property owner by a building contractor in March 2024. These modifications were implemented to address the operational needs of the Misty Waves Boutique Hotel, specifically ensuring on-site staff accommodation to enhance guest service and hotel management.

Upon becoming aware of the regulatory non-compliance, the owner has acted in good faith by:

- Acknowledging the unauthorized modifications and their implications.
- Engaging professional consultants, including L.A. Design Studio Architectural Practice, to ensure that all as-built structures are correctly documented and presented for municipal approval.
- Proactively applying for regularization through the required building line departure application, Site Development Plan amendment, and administrative penalty determination.
- Committing to full compliance with municipal land use planning laws and regulations moving forward.

The property owner recognizes the importance of adhering to municipal regulations and has taken responsible and corrective measures to remedy the contravention. The unauthorized modifications were not intentional violations of Planning Laws, but rather practical adjustments made to meet operational requirements.

Furthermore, the owner has fully cooperated with the Overstrand Municipality and has ensured transparency throughout the application process, demonstrating a clear commitment to rectifying and legalizing the encroachments in accordance with the applicable legal framework.



Cost Estimate by a Registered Builder for Unauthorized Building Works

Should the Overstrand Municipality find it necessary to impose an administrative penalty for the unauthorized construction, a cost estimate from a registered building contractor, Fourie Construction, is attached for consideration.

According to the cost estimate, the total cost of the unauthorized building works inclusive of VAT amounts to R85,100.00, broken down as follows:

- The habitable spaces that encroach upon the building lines are as follows:

Structure	Cost Estimate	Date Constructed
Change of use of the Heath Spa into a staff quarter	R56 000.00 + VAT	March 2024

- The non-habitable space that encroach upon the building lines are as follows:

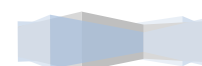
Structure	Cost Estimate	Date Constructed
Construction of a wooden deck	R18 000.00 + VAT	March 2024

Whether the Unlawful Conduct Was Stopped

The unauthorized modifications, including the conversion of the Health Spa into a staff quarter and the construction of the wooden deck, were completed in March 2024 and have remained in use since their completion.

Importantly, the owner is actively addressing the contravention by:

- Submitting this application for the determination of an administrative penalty and building line departures to ensure full compliance.
- Providing all necessary supporting documentation, including architectural plans and cost estimates.



- Engaging with professional consultants to guide the regularization process in accordance with the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

Whether the Owner Has Previously Contravened the By-law

To the best of the applicant's knowledge, and as confirmed by the landowner, several land use applications have been lodged and approved in the past to accommodate ongoing changes to the Misty Waves Boutique Hotel, ensuring that the establishment remains current, compliant, and aligned with applicable planning regulations.

This demonstrates the owner's general commitment to compliance and indicates that the current situation is an isolated case rather than a pattern of non-compliance.

Final Considerations

Given that the primary changes involved internal alterations, with the only external modification being the addition of a 15m² wooden deck, we appeal to the Overstrand Municipality to consider the minimal impact of these modifications on the surrounding area. Specifically:

- The modifications do not obstruct views, sunlight, or access for neighbouring properties.
- The character, scale, and aesthetics of the building remain intact, ensuring compatibility with the surrounding built environment.
- The boutique hotel's operations benefit significantly from on-site a staff quarter, improving service delivery and operational efficiency.

Furthermore, the Zoning Scheme Regulations and the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, will continue to guide any future development on the property.

Request for Consideration

Considering these factors, we respectfully request that an administrative penalty not be imposed on the property owner. The modifications were undertaken in good faith,

with no adverse impact on the surrounding environment, and the owner has demonstrated full cooperation in rectifying the situation.

ACCESS & PARKING

All existing access points, as approved per the previous Site Development Plan, will be retained, with no new parking access points created. The approved Site Development Plan has been updated to reflect the following modifications:

- The staff quarter,
- The existing wooden deck, and
- The proposed roof over the existing wooden deck, situated above the existing ground-floor guestroom on the eastern side of the boutique hotel.

The footprint of the boutique hotel has increased by approximately 15m², resulting in a total site coverage of ±1,756m² (37.79%). The staff quarter will be accessible exclusively to staff members.

Parking Provision

In terms of the parking provision schedule, no additional parking bays are required. However, should the municipality determine that a dedicated parking bay for the staff quarter is necessary, sufficient additional parking is available onsite. A detailed breakdown of the parking requirements and provisions is provided below.

Access to the Boutique Hotel

The primary access to the boutique hotel remains from Marine Drive, as indicated on the enclosed Site Development Plan.

- An access point on Church Street, located between the most western access and the access behind the recreational facility, has been permanently closed.

- The access directly north of the recreational facility will continue to be used on a temporary basis.

Parking requirements have been calculated in accordance with the Amended Overstrand Municipality Land Use Scheme Regulations, 2020.

- For guest accommodation, the parking ratio is one bay per guestroom. As the total number of lettable guestrooms has previously been reduced to 32, the site requires 32 parking bays for this use.
- The restaurant (Mon Desir) within the boutique hotel includes both private and public areas. Only 50m² of the restaurant is accessible to public patrons, requiring an additional 3 parking bays.
- The two penthouses require a total of four dedicated parking bays, and two disabled parking bays (Bays 25 & 26) have been provided to meet accessibility requirements.
- The recreational/conference facility does not require additional parking, as it is exclusively available to paying guests of the boutique hotel. Similarly, the converted Health Spa (now a staff quarter) does not generate additional parking demand, as it remains a private, non-public space.

Overall, the site requires 39 parking bays, while 42 parking bays are provided, ensuring sufficient capacity to accommodate all uses without causing congestion or negatively impacting the surrounding area.

The existing access points and parking provisions fully accommodate the operational needs of the boutique hotel without causing traffic congestion or requiring additional infrastructure changes. The proposed modifications do not introduce any new public access points or increase parking demand beyond what has already been approved.

Given that the property provides more parking bays than required, there is no need for additional parking provisions.



3.5 SERVICES

All existing services on the subject property are sufficient and fully operational. This application seeks to regularize the change of land use from Health Spa to a staff quarter, as well as the existing wooden deck and the proposed roof over the deck. These modifications will not impact the existing service infrastructure in any way.

Notably, the staff quarter is likely to require fewer services than the former Health Spa. The Health Spa would have consumed more water and electricity, given its operation of therapy rooms, steam showers, and other spa-related amenities. In contrast, the staff quarter will have lower water and electricity usage, as it is primarily used for residential purposes, rather than a commercial wellness facility.

As the proposed changes do not increase occupancy loads, water usage, sewage disposal, or electrical demand, no additional services will be required to accommodate the adjustments to the boutique hotel.

3.6 TITLE DEED

The Title Deed T53472/2008 has been reviewed, and no restrictive conditions exist that would prevent the approval of this application. There are no servitudes, height restrictions, land use limitations, or other encumbrances that require removal or amendment to facilitate:

- The change of land use from Health Spa to a staff quarter,
- The construction of the existing deck, or
- The proposed roof over the existing wooden deck.

As such, the proposed modifications comply fully with the title deed conditions, ensuring that the application aligns with all legal and regulatory requirements.

3.7 **FORWARD PLANNING**

The Overstrand Municipal Growth Management Strategy (OMGMS) identifies Erf 11033 Hermanus as part of Planning Unit 13, which encompasses the Hermanus CBD an area predominantly used for business purposes with a limited number of permanent residential units. The strategy promotes densification through site consolidation and three-storey gallery access simplex row housing, targeting 30% of the planning unit.

The Overstrand Municipal-Wide Spatial Development Framework (2006) designates the site as residential. Previous applications for the establishment and amendments of the boutique hotel have been approved, including modifications to the Overstrand Municipal-Wide Spatial Development Framework. This application specifically seeks:

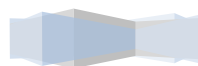
- Departures from the eastern building line, and
- An amendment to the approved Site Development Plan, as described earlier.

The proposed changes remain compatible with the existing land uses in the area.

The May 2020 Overstrand Municipality Spatial Development Framework (SDF) categorizes the boutique hotel's location as an urban area, with portions of the site falling within the Heritage Protection Overlay Zone.

The conversion of the Health Spa into a staff quarter, along with the existing deck and the proposed roof over the deck, remains in harmony with the surrounding built environment and residential land use. The amendments to the boutique hotel align with the architectural character of the area while maintaining a visually appealing design.


Therefore, the proposed amendment to the Site Development Plan and building line departure are consistent with the applicable Spatial Development Frameworks and the Growth Management Strategy.



3.9 HERITAGE VALUE

Erf 11033 Hermanus is situated within the Heritage Overlay Zone, as designated by the Overstrand Municipality Growth Management Strategy (2010). Additionally, the Mon Desir structure on Erf 11033 has been identified for heritage conservation in the Overstrand Heritage Survey Report (2009).

For reference, please see the relevant excerpt from the Overstrand Heritage Survey Report below.

Mon Desir	9910	Hermanus 21 Marine Drive	3B	<p>Architectural/ aesthetic: typical, period example with substantial alterations. Has landmark significance as the only surviving dwelling in close proximity to the historic Hermanus-Pieterfontein spring. Historical: Only surviving house on south side of side of Marine Drive. Example of one of earliest surviving fishermen's cottages in the town, albeit altered. Contains fabric said to date back to the 1860's.</p>	
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The building has a suggested 3B grading that is defined as follows:

Grade 3B

This grading is applied to buildings and/or sites of a marginally lesser significance than Grade 3A; and such marginally lesser significance militates against the regulation of internal alterations. Such buildings and sites may have similar significances to those of a grade 3A building or site, but to a lesser degree.

Like Grade 3A buildings and sites, such buildings and sites may be representative, being excellent examples of their kind, or may be rare, but less so than Grade 3A examples: as such they should receive less stringent protection than Grade 3A buildings and sites at local level and internal alterations should not be regulated (in this context).

Erf 11033 Hermanus is situated within the Heritage Overlay Zone, as designated by the Overstrand Municipality Growth Management Strategy (2010). Additionally, the Mon Desir structure on Erf 11033 has been identified for heritage conservation in the Overstrand Heritage Survey Report (2009).

No structural changes are proposed for the Mon Desir building as part of this application for the amendment of the approved Site Development Plan and building line departure. The modifications pertain solely to the main boutique hotel building, specifically the conversion of the Health Spa into a staff quarter, the existing wooden deck, and the proposed roof over the deck.



As such, the heritage significance of the Mon Desir structure remains unaffected, and the proposed amendments align with the conservation objectives of the Heritage Overlay Zone.

3.10 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed application does not trigger any listed activities as defined under the National Environmental Management Act (NEMA), 1998 (Act No. 107 of 1998).

As the amendments pertain solely to the conversion of an existing structure, the addition of a wooden deck, and a proposed roof, there is no significant environmental impact on the biophysical environment, and no environmental authorizations are required.

3.11 PLANNING PRINCIPLES

The proposed application aligns with key planning principles, including spatial justice, spatial sustainability, efficiency, and spatial resilience, as described below:

Spatial Justice: The proposed amendments support equitable land use by optimizing the existing built environment without displacing any vulnerable groups or negatively impacting surrounding properties. The conversion of the Health Spa into a staff quarter ensures on-site accommodation for essential hotel staff, contributing to fair access to housing opportunities within the urban area.

Spatial Sustainability: The reuse of an existing structure for staff accommodation promotes sustainable land use by minimizing the need for additional construction. The modifications do not place undue pressure on municipal services, and the repurposing of the former Health Spa into a private, low-impact space aligns with sustainability principles by reducing overall resource consumption.



Efficiency: The proposal makes efficient use of existing infrastructure, eliminating the need for additional municipal services or parking provisions. The boutique hotel remains operationally functional, with improved staff availability, enhancing guest service without expanding the overall building footprint beyond a minor deck addition.

Spatial Resilience: By adapting an existing facility to meet evolving operational needs, the proposal supports a resilient built environment capable of adjusting to economic and social demands. The changes maintain the aesthetic and functional integrity of the boutique hotel while ensuring long-term viability within the urban fabric.

This application upholds these core planning principles, ensuring that the amendments enhance functionality, promote sustainability, and remain compatible with the broader urban development strategy.

Good administration: Our company is committed to the principle of good administration and will cooperate fully with the Overstrand Municipality to ensure a time-efficient and straightforward land use planning process.

This land use application will follow due process as outlined in the relevant municipal bylaw and applicable provincial and national land use planning legislation. All necessary measures will be taken to ensure that the process remains efficient and streamlined, adhering to the applicable timeframes set forth in the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

We remain dedicated to transparency, compliance, and effective engagement with municipal authorities to facilitate a smooth and procedurally sound application process.



4. **RECOMMENDATION**

Based on the information provided, the following points support the approval of the proposed application:

- The application aligns with the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, ensuring regulatory compliance.
- The proposed amendments conform to the Overstrand Municipal Growth Management Strategy (OMGMS), 2010 and Spatial Development Framework (SDF), 2020, maintaining compatibility with the broader urban planning strategy.
- No title deed restrictions, servitudes, or height limitations prevent approval of the application.
- The conversion of the Health Spa into a staff quarter addresses the operational needs of the Misty Waves Boutique Hotel, ensuring on-site accommodation for essential staff.
- The modifications do not introduce new land uses but rather optimize existing infrastructure without increasing the building footprint significantly.
- The proposed building line departures do not obstruct views, natural light, or access to adjacent properties.
- The architectural design remains consistent with the surrounding area, preserving the aesthetic character of the Heritage Overlay Zone.
- The conversion and minor structural additions maintain compatibility with the existing land use pattern.
- The staff quarter are expected to use fewer municipal services (water and electricity) compared to the former Health Spa, reducing overall demand.
- All necessary services are already in place and no additional infrastructure is required.
- The existing parking provisions exceed municipal requirements, ensuring adequate capacity for all hotel operations.
- No new access points are required, maintaining the current traffic flow and site accessibility.

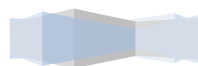
- The Mon Desir structure, identified for heritage conservation, remains unaffected by the proposed amendments.
- The application does not trigger any listed environmental activities under NEMA (Act No. 107 of 1998), ensuring no adverse environmental impact.
- The property owner has acted in good faith, proactively applying for regularization upon recognizing non-compliance.
- The company has engaged professional consultants to ensure full compliance with municipal regulations.
- On instruction from the landowner, several land use applications have been lodged and approved over time to accommodate ongoing modifications to the Misty Waves Boutique Hotel, thereby ensuring that the establishment remains up-to-date, compliant, and aligned with applicable planning regulations.

Conclusion

Given the minimal impact, alignment with planning policies, and commitment to compliance, the proposed amendment to the Site Development Plan and building line departures are considered reasonable and supportable.

Recommendation

It is recommended that the application be approved, subject to standard municipal conditions to ensure continued compliance with land use and building regulations.





Position of existing 15m² wooden deck and proposed roof over the wooden deck.

Main Building: Reception, Foyer, Offices Lounges, 2 Penthouses & Guest Rooms

Position of the Health Spa changed into a staff quarter on top of the existing ground floor guest room. ±59m² in extent.

Existing Dining room

NOTES:

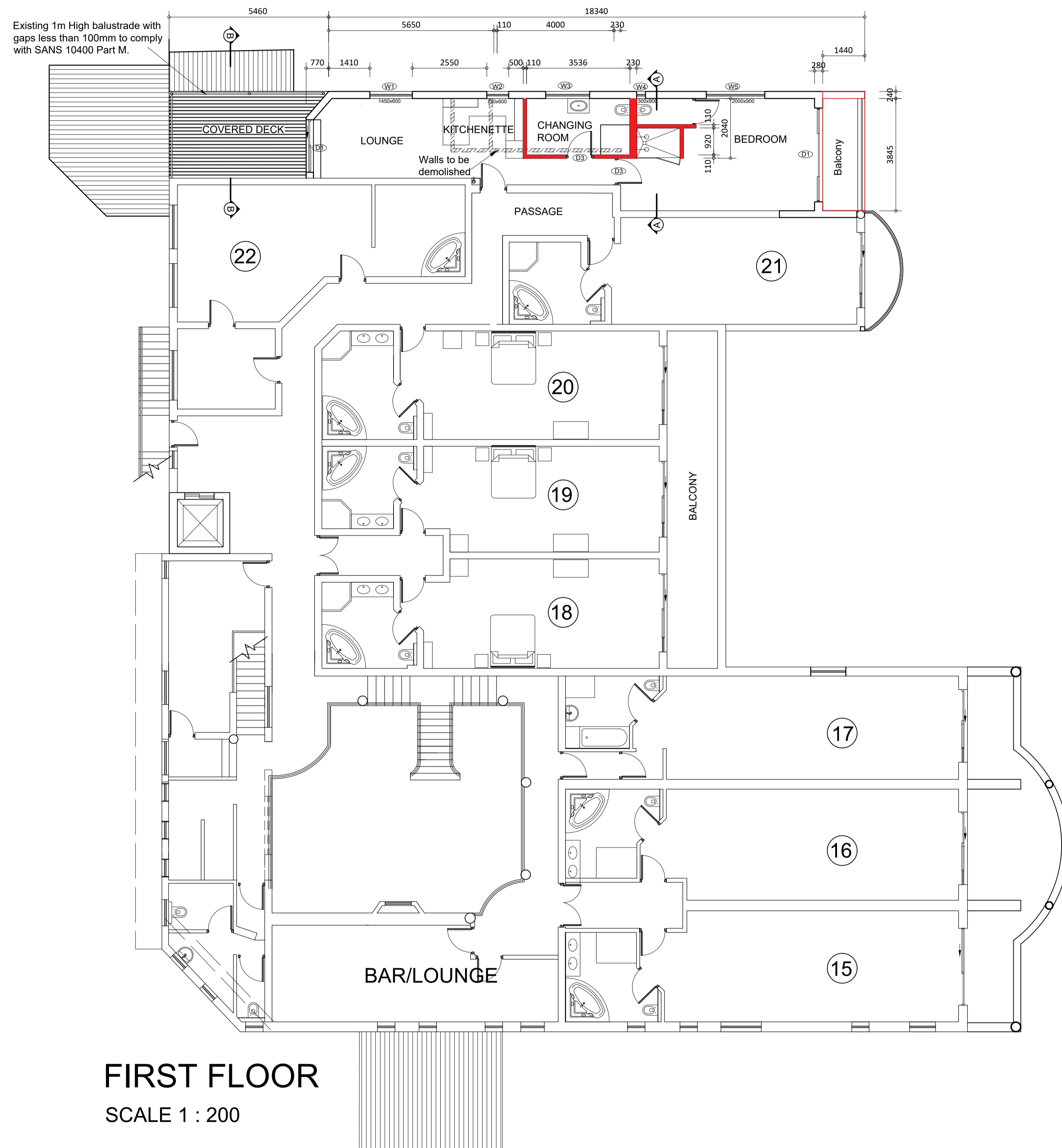
- Existing Structures
- Health Spa Changed to Staff Quarter
- Parking Bays
- Existing wooden Deck and proposed roof over the wooden deck.

PARKING SCHEDULE:

Total number of Guestrooms = 32
 Parking requirements = 1 Bay per guest room. 32 Parking bays required.
 174.5m² of the Restaurant is reserved for Hotel Guests.
 Parking Required = 0 Bays.
 50m² of the Restaurant is accessible to the General Public.
 Parking requirements = 6 bays / 100m²
 3 Parking Bays required.
 2 Penthouses = 4 Parking Bays

TOTAL NUMBER OF PARKING BAYS REQUIRED =39
TOTAL NUMBER OF PARKING BAYS PROVIDED =42





FIRST FLOOR
SCALE 1 : 200

AREA MAIN HOTEL BUILDING.
 GROUND STORY = 706,5sqm + Balconies = 63sqm
 FIRST STORY = 733,5sqm + Balconies = 53sqm
 SECOND STORY = 685sqm + Balconies = 36sqm
 THIRD STORY = 653sqm
 NEW SPA (First Story) = 60,9sqm + Balcony + 5,8sqm
 TOTAL BULK = 2996,7sqm
 AREAS (COVERAGE)
 PROPERTY = 4648m²
 EXTERNAL ACCOMMODATION = 233m²
 STAFF HOUSE = 171m²
 HOTEL = 786m²
 RESTAURANT (Ground floor) = 289m²
 STAFF/LAUNDRY = 74m²
 CONFERENCE VENUE = 164m²
 POOL LEANTO = 24m²
 TOTAL COVERAGE = 1741m² = 37,4%

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Revisions		
Rev.no.	Date	Description

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Project **ALTERATIONS**

Drawing title **GENERAL DETAILS** Date 19/11/2024
 Scale 1:-

Project No. **572-20** Drawing No. **C02** Revision

Designed L. Abbott Drawn Plotted