



**ERF 3670, 172 SECOND AVENUE, KLEINMOND: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: J DOUGLAS ON BEHALF OF EC VAN WILGEN**

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 that an application has been received for a **departure** in terms of Section 16(2)(b) as follows:

- to relax the eastern lateral building line from 2m to 0,52m to accommodate a proposed new garage;
- to relax the western lateral building line from 2m to 0,215m to accommodate the existing covered braai area;
- to relax the eastern lateral building and the rear building line from 2m to 0m respectively to accommodate the change of use from the existing garage into a storage room, and
- to exceed the 9m restriction of a building on one specific boundary to accommodate the proposed new garage and converted storage room.

Application has also been received for a **determination of an administrative penalty** in terms of Section 16(2)(q) for the unauthorised land uses as mentioned above.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town and Spatial Planning, Paterson Street, Hermanus and at the Kleinmond Library, Fifth Avenue, Kleinmond. 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 / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) on or before **25 October 2024**, quoting your name, address and contact details, interest in the application and reasons for comments. Telephonic enquiries can be made to **Mrs. H van der Stoep** 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 and Spatial Planning Department where a municipal official will assist them in order to formalize their comment.

**ERF 3670, TWEDELAAN 172, KLEINMOND: AANSOEK OM AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: J DOUGLAS NAMENS EC VAN WILGEN**

Kennis word hiermee gegee ingevolge Artikel 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 dat 'n aansoek om **afwyking** ingevolge Artikel 16(2)(b) soos volg ontvang is:

- om die oostelike syboullyn vanaf 2m na 0,52m te verslap om 'n voorgestelde nuwe motorhuis te akkommodeer;
- om die westelike syboullyn vanaf 2m na 0,215m te verslap om die bestaande onderdakbraai-area te akkommodeer;
- om die oostelike syboullyn en die agterboullyn onderskeidelik vanaf 2m na 0m te verslap om die gebruiksverandering van die bestaande motorhuis na 'n stoorkamer te akkommodeer, en
- om die 9m beperking van 'n gebou op een spesifieke grens te oorskry om die voorgestelde nuwe motorhuis en nuutgeskepte stoorkamer te akkommodeer.

Aansoek is ook ontvang vir 'n **bepaling van 'n administratiewe boete** ingevolge Artikel 16(2)(q) vir die ongemagtigde grondgebruike soos hierbo genoem.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stads- en Streekbeplanning, Patersonstraat 16, Hermanus en by die Kleinmond Biblioteek, Vyfdelaan, Kleinmond. 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 / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) voor of op **25 Oktober 2024**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan **Me. H van der Stoep** at 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 Stads- en Streekbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.

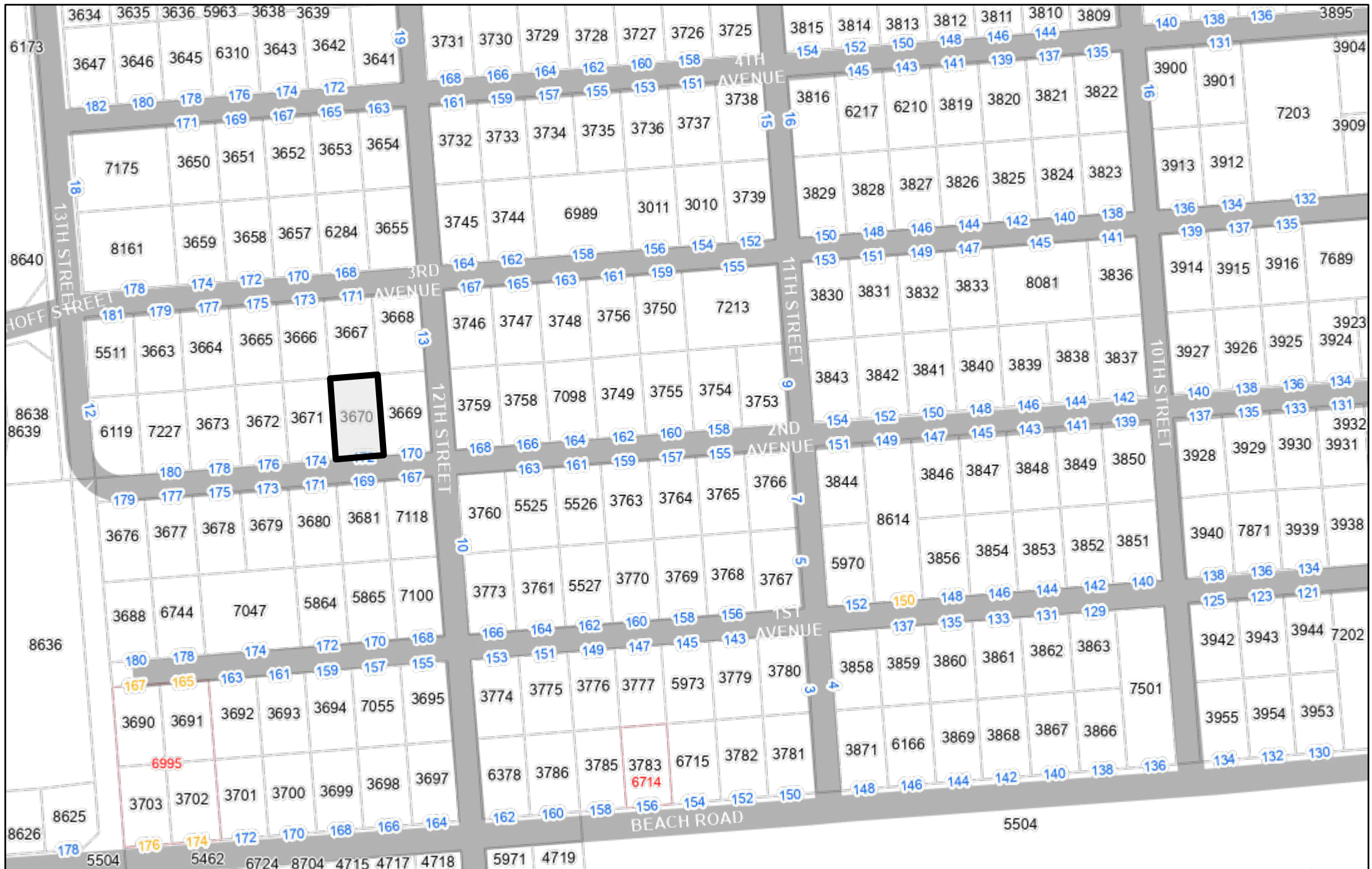
**ISIZA 3670, 172 SECOND AVENUE, E-KLEINMOND: ISICELO SOPHAMBUKO NESE NGQIKELELO SOKUMISELWA KWESOHLWAYO SOLAWULO: J DOUGLAS EGAMENI LIKA EC VAN WILGEN**

Kukhutshwe isaziso esimayela nemiba yeSolotyama lama48 loMthethwana kaMasipala osisiHlomelo soMthetho kaMasipala waseOverstrand ngeziCwangciso zokuSetyenziswa koMhlaba ku2020, ukuba isicelo sophambuko sifunyenwe ngokwemigaqo ye Candelo 16(2)(b) ngolu hlobo lulandelayo:

- **ukunyeniswa** komda wesakhiwo osecaleni ongasempuma ukusuka kwi-2m ukuya ku-0,52m ukulungiselela igaraji entsha ecetywayo;
- **ukunyeniswa** komda wesakhiwo osecaleni osentshona ukusuka kwi-2m ukuya ku-0,215m ukulungiselela indawo ekhoyo egqunyiweyo yokubraya inyama;
- **ukunyeniswa** komda wesakhiwo esisecaleni elisempuma kunye nomda wesakhiwo ongasemva ukusuka kwi-2m ukuya ku-0m ngokulandelelanayo ukulungiselela ukutshintshwa kokusetyenziswa ukusuka kwigaraji ekhoyo ukuya kwigumbi lokugcina, kunye
- **ukugqitha** kumda we-9m wesakhiwo kumda othile owodwa ukulungiselela igaraji ecetywayo entsha kunye negumbi lokugcina eliguquliweyo.

Isicelo sikwafunyenwe **sokumisela isohlwayo solawulo** ngokweCandelo le-16(2)(q) losetyenziso lomhlaba olungagunyaziswanga njengoko kukhankanyiwe ngasentla.

linkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze sihlolwe kwiintsuku zaphakathi evekini ukusukela kwintsimbi ye08:00 neye16:30 kwiSebe: Izicwangciso zeDolophu, Paterson Street, Hermanus, nakwiThala leeNcwadi elise-Kleinmond, Fifth Avenue, e-Kleinmond. Naziphi na izimvo ezibhaliweyo mazingeniswe ngokweziboneleleo zeSolotyama lama51 nelama52 loMthethwana ochazwe ngentla zifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) ngomhla okanye ngaphambi komhla wama-**25 Oktobha 2024**, uchaze igama lakho, idilesi neenkukacha zakho, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingabuzwa ku**Nkskz. H van der Stoep** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwaziyo ukufunda nokubhala angahambela iSebe Lezicwangciso zeDolophu apho igosa liza kumnceda ahlomle ngokusemthethweni.



# ERF 3670 KLEINMOND

MOTIVATIONAL REPORT: APPLICATION FOR DEPARTURE AND  
ADMINISTRATIVE PENALTY FEE



## ABSTRACT

Application for departure in order to accommodate the proposed garage, storage room and covered braai area

Application By: Jeane Douglas

Compiled for: E van Wilgen

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## 1. Background

The subject property Erf 3670 is situated in the residential neighbourhood of Kleinmond is located along second (2<sup>nd</sup>) Avenue with an extent of 595m<sup>2</sup>. According to the zoning map & Overstrand Municipal Land Use Scheme, 2020 the property is zoned as Residential Zone I: Single Residential (SRI). The property currently consists of a three (3) bedroom dwelling house and a garage with access gained from second (2<sup>nd</sup>) Avenue.

The property owner bought the property in 2023 and decided to extend the property by adding a new garage and a leisure room on top of the new garage on the street and lateral building line, whereas the existing garage will be converted into a storage room. The property owner recently submitted building plans to be approved for the new garage and leisure room. It was requested that the property owner apply for a change of use for the existing garage that will be converted into a storage room, the covered braai area encroaching the western lateral building line, the garage encroaching the eastern lateral building line and for the structures that will be longer than 9m on the eastern lateral building line.

Jeané Douglas is hereby duly appointed by the property owner (Estelle van Wilgen) to submit a land use planning application for the proposed development.

See Appendix-B for the Power of Attorney & Appendix- C for the Site Development Plan

## 2. Application

The following is proposed:

Application is hereby submitted in terms Section 16 (2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for departure for the following:

- Relaxation of the eastern lateral building line from 2m to 0.520m, in order to accommodate the new garage.
- Relaxation of the western lateral building line from 2m to 0.215m, in order to accommodate the existing covered braai area.
- Relaxation of the eastern lateral building line from 2m to 0m, in order to accommodate the change of use (conversion of the garage into a storage room).
- Relaxation of the rear building line from 2m-0m, in order to accommodate the change of use (conversion of the garage into a storage room).
- Relaxation of the 9m development parameters in order to accommodate the existing garage and the new garage in terms of section 16.1.1 (c) (iii) of the Overstrand Municipality Land Use Scheme 2020

### 3. Locality

The subject property is situated within the Overstrand Municipality, located at 172 second (2<sup>nd</sup>) Avenue, Kleinmond. The location of the property is shown as figure 1 below.

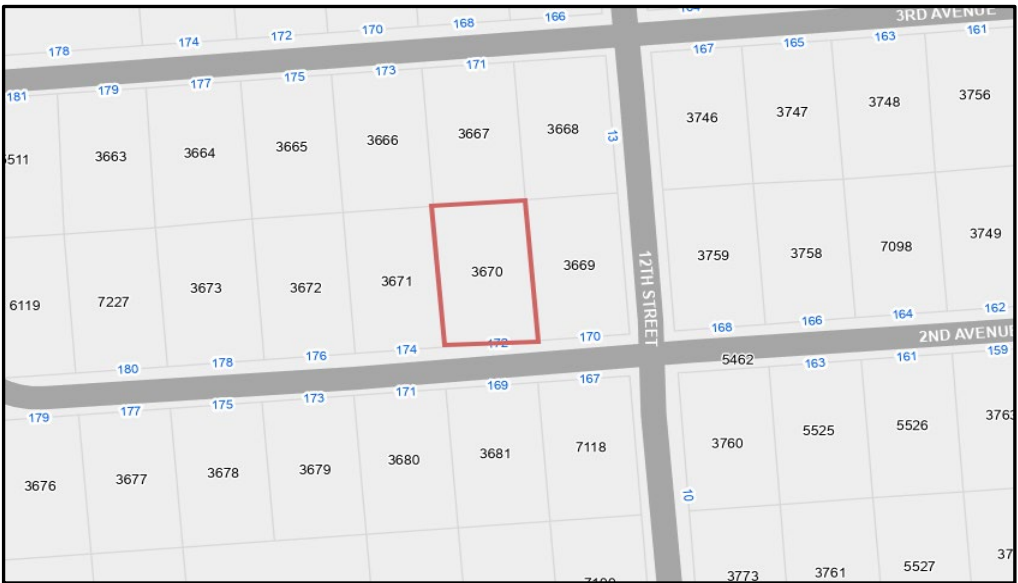


Figure 1: Locality Map

### 4. Land Use Environment

The property is situated in the residential neighbourhood of Kleinmond where the predominant use of the area is for residential purposes. The zoning of the subject erf and the surrounding properties are zoned Residential Zone 1: Single Residential Zone (SR1). The zoning in the area is shown below as Figure 2 and Appendix D.

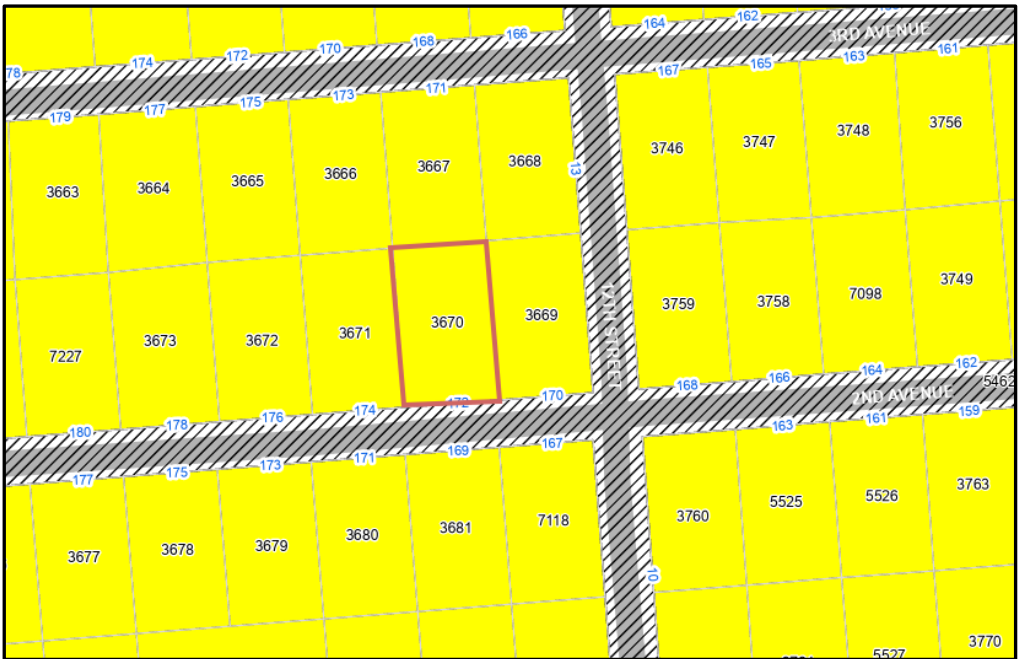


Figure 2: Surrounding Zoning

## 5. Land Use Scheme Parameters

The property is zoned Residential Zone 1: Single Residential Zone (SR1) in terms of the Overstrand Municipality Land Use Scheme, 2020. The table below indicates the applicable parameters in terms of the zoning and the proposed departure.

	Scheme Parameters	Proposed Development	Departure Required
Coverage	50%	46.5%	No
Street Building Line	4m	Not applicable	No
Western lateral Building Line	2m	Covered braai area encroaching the 2m western lateral building line to 0.215m.	Yes
Eastern Side Building Line	2m	New garage encroaching eastern lateral building line from 2m to 0.520m and existing garage that will be converted into a storage room from 2m to 0m	Yes
Rear Building Line	2m	Existing garage that will be converted into a storage room that will encroach the rear building line from 2m to 0m.	Yes

## 6. Title Deed

In terms of the Title Deed No T/ 12659/2023, Erf 3670 Kleinmond is registered in the name of Estelle Christina van Wilgen with no title deed conditions restricting the proposed development. The Title Deed is attached hereto as Appendix E.

## 7. Engineering Services

The subject property is connected to the existing Overstrand Municipality services network which includes electricity, water, sewage, and solid waste. No problems are anticipated.

## 8. Policies and Regulations

### Overstrand Municipal Spatial Development Framework, 2020 (MSDF)

The Municipal Spatial Development Framework is a sectoral component of the IDP that, in terms of the MSA, is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable and habitable regions, cities, towns and residential areas.

The proposed application is located within the urban edge and is indicated as part of the “urban development area”. The proposed changes and additions to the residential zoned property is therefore in line with this forward planning document.

### Overstrand Municipality Spatial Growth Management Strategy, 2010 (OMSGMS)

The Growth Management Strategy promotes the longer-term sustainability of the municipal area and its sub-regions. The property falls within the planning unit 19 which promotes incremental densification.

The proposal to convert the existing garage into a storage room, to erect a new garage closer to the house with entrance into the house with a leisure room on the first floor and have a covered braai area should be

considered in line with the residential nature of the area since the property is already situated within the existing established residential neighbourhood. The proposal should therefore be deemed in line with this forward planning document.

## 9. Planning Principles

### Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)

Section 7 of the "Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)" list 5 development principles based on which any development application must be evaluated.

The principles referred to are as follows:

#### 1. Spatial Justice

Spatial Justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for the departure does not perpetuate apartheid spatial development imbalances.

#### 2. Spatial Sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal for departure intends to ensure the subject property is utilized to its maximum capabilities.

#### 3. Spatial resilience

This proposal is not in conflict with any spatial planning policies or other regulations of the Overstrand Municipality.

#### 4. Efficiency

This proposal intends to maximize the usage of the subject property by converting the existing braai area into a covered braai area, converting the existing garage into a storage room and by adding a new garage with a leisure room on the first floor.

#### 5. Good administration

The Overstrand Municipality has a credible track record of good administration regarding the method of public participation which invites and accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.

## 10. Administrative Penalty

In term of Section 90 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 the following is applicable: " 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 land or building or part thereof concerned."

The administrative penalty applicable to the property is evaluated in terms of section 90 (3) (a-e), as follows:

#### (a) The nature, duration, gravity, and extend of the contravention.

The existing braai area was erected in 2014 at the time the braai area was approved as an open braai area and not a covered braai area. The property owner was not aware that the covered braai area was not approved when the owner bought the property in 2023.

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

After the submission of building plans for the new garage the property owner was informed that a departure application was required for the encroachments of the balcony, covered braai area and the conversion of the existing garage into a storage room. This also triggered a determination of administrative penalty application as the existing covered braai area was once approved as an open braai area.

**(c) a report by a quantity surveyor in matter of unauthorised building/construction.**

No report by a quantity surveyor is submitted and the property owner has opted to utilize the municipal tariff of 2023/2024 in order to calculate the administrative penalty.

**(d) whether the unlaw conduct was stopped.**

The property owner took ownership of the property in 2023 and the alterations was done by the previous property owner.

**(e) Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.**

The property owner took ownership of the property in 2023 with the alterations to the covered braai already done. The property owner has not previously contravened this By- Law or any other By-Law.

## 11. Need and Desirability

The proposal needs to be evaluated on the basis that the current situation is not utilizing the available space efficiently. The property owner required more storage space on the property and decided to convert the existing garage into a storage room. Seeing that the existing garage was converted into a storage room the property owner proposes to create a double garage that is connected to the main dwelling. By linking the house and the garage together the property owner is not encumbered by the unpleasant Kleinmond weather and also improves safety. In addition, the property owner decided to propose a sunroom on the ground floor next to the garage specifically for the cold and rainy days. The property owner also decided to create a leisure room on top of the garage for the enjoyment of family and friends.

The Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) makes provision for a departure applicable to relax the scheme building lines. The proposed conversion of the covered stoep into a braai area, and the existing garage into a storage room optimizes the utilization of the subject property in terms of the permitted primary land use rights.

The existing covered braai area encroaches the western lateral building line up to 0.215m from the erf boundary line. As discussed in the previous section the structure was erected by the previous owner and the current owner wishes to retain the structure at its current location. The existing structure at its current position is located adjacent to the neighbour's driveway approximately 3.3m from any habitable structure on the neighbour's property. In addition, the adjacent property provided their consent for the structure to be retained at its current position. Therefore, it is proposed that the existing covered braai area is desirable.

In terms of the scheme, there is a 9m development restriction along the lateral building line which is applicable to the subject property along the eastern portion of the property (proposed storeroom and proposed garage). The new garage is proposed over the 2m lateral building line which is positioned closer to the street. The reason for positioning the garage over the lateral building line as well as encroaching the 9m development restriction is due to it being the only suitable position for the garage.

It must be noted that the proposal allows the property owner to enhance their quality of life by ensuring privacy and safety by enclosing the braai area for both warmth and ambience, by having the proposed garage closer to the dwelling house for the owner's safety and converting the existing garage into a storage room.

With the above-mentioned stated, this proposal is in harmony with all relevant planning principles and forward planning documents and is therefore considered desirable from a town planning point of view.

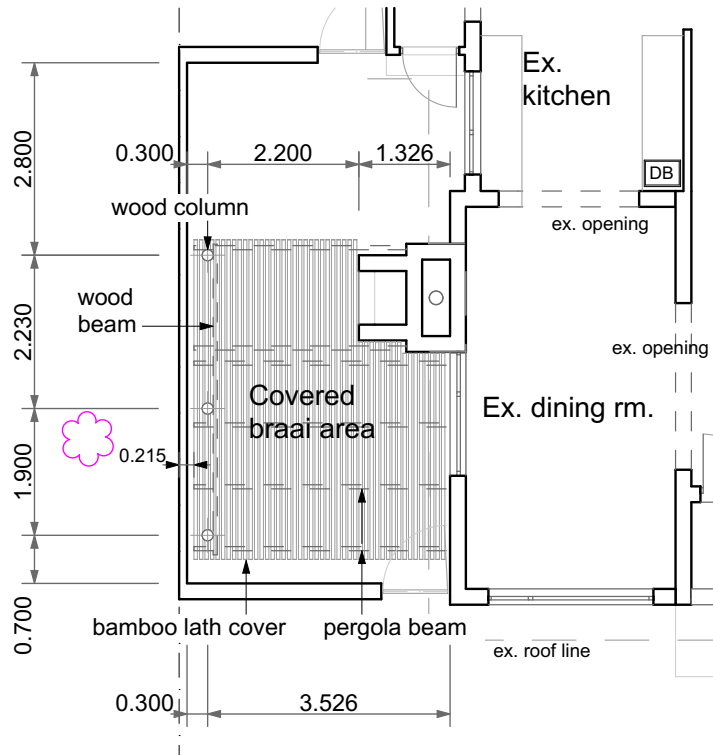
## 12. Recommendations

Based on the abovementioned motivation, it is recommended that the following be approved:

The following is proposed:

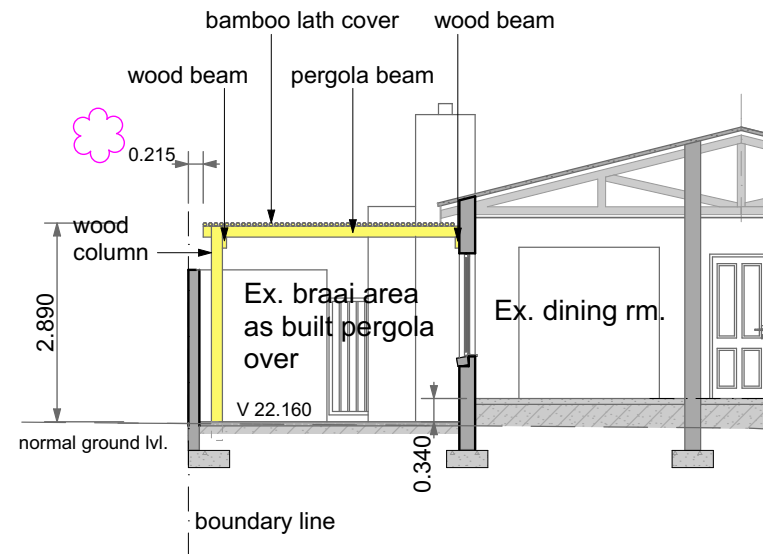
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- Relaxation of the rear building line from 2m-0m, in order to accommodate the change of use (conversion of the garage into a storage room).
- Relaxation of the 9m development parameters in order to accommodate the existing garage and the new garage in terms of section 16.1.1 (c) (iii) of the Overstrand Municipality Land Use Scheme 2020



### FLOOR PLAN

1 : 100



### SECTION

1 : 100

PROPOSED EXTENSION EXISTING RESIDENCE ERF 3670 KLEINMOND FOR ESTELLE VAN WILGEN