

ERF 425, CORNER OF JINGI STREET AND MFUNDO STREET, ZWELIHLE, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE EXTENSION OF THE PERIOD OF VALIDITY OF AN EXISTING APPROVAL, AND THE AMENDMENT OF CONDITIONS OF EXISTING APPROVALS: MESSRS WRAP PROJECT OFFICE ON BEHALF OF MC BHALA

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law), as well as the provisions of the Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA) of the following application applicable to Erf 425, Zwelihle (the property):

- **Extension of the period of validity of an existing approval** in terms of Section 16(2)(i) of the Bylaw to extend the temporary departure for a further three (3) years to operate a bottle store from the property; and
- **The amendment of the conditions of existing approvals** in terms of Section 16(2)(h) of the By-Law, as well as the provisions of SPLUMA, to extend the temporary deviation from the Zwelihle Business Corridors for a further three (3) years to operate a bottle store from the property.

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 comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) on or before **19 April 2024**, quoting your name, address and contact details, interest in the application, as well as the reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr. H Boshoff** 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 425, HOEK VAN JINKISTRAAT EN MFUNDOSTRAAT, ZWELIHLE, OVERSTRAND MUNISIPALE GEBIED: AANSOEK OM VIR DIE VERLENING VAN DIE GELDIGHEIDSTYDPERK VAN 'N BESTAANDE GOEDKEURING, EN DIE WYSIGING VAN VOORWAARDES VAN BESTAANDE GOEDKEURINGS: MNRE WRAP PROJECT OFFICE NAMENS MC BHALA

Kennis word hiermee gegee ingevolge Artikel 48 van die Wysigingsverordening op Munisipale Grondgebruikbeplanning, 2020 (Verordening), asook die bepalings van die Wet op Ruimtelike Beplanning en Grondgebruikbestuur No. 16 van 2013 (SPLUMA) van die volgende aansoek van toepassing op Erf 425, Zwelihle (die eiendom):

- **Verlenging van die geldigheidstydperk van 'n bestaande goedkeuring** ingevolge Artikel 16(2)(i) van die Verordening om die tydelike goedgekeurde adwyking met drie (3) jaar te verleng, om voort te gaan met die bedryf van 'n bottelstoor vanaf die eiendom; en
- **Die wysiging van die voorwaardes van bestaande goedkeurings** ingevolge Artikel 16(2)(h) van die Verordening, asook die bepalings van die "Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA)" om die tydelike goedgekeurde afwyking van die Zwelihle Besigheidskorridors met drie (3) jaar te verleng, om voort te gaan met die bedryf van 'n bottelstoor vanaf die eiendom.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weekdae 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 / (f) 0283132093 / loretta@overstrand.gov.za) voor of op **19 April 2024**, 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. H. Boshoff** 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 425, IKONA YESITALATO JINGI KUNYE MFUNDO STREET, ZWELIHLE, INDAWO KAMASIPALA YASE-OVERSTRAND: ISICELO SOKWANDISA IXESHA LOKUVUMELEKILEYO LWEMVUMELELO EKHOYO, KUNYE UKULUNGISWA KWEMIQATHANGO YEMVUMELELO EKHOYO: MESSRS WRAP PROJECT OFFICE EMANGENI LIKA MC BHALA

Isaziso siyanikezelwa ngokweCandelo lama-48 loMthetho kaMasipala woLungiso loMthetho kaMasipala kuCwangciso lokuSetyenziswa koMhlaba kaMasipala, ka-2020 (uMthetho kaMasipala), kwakunye nezibonelelo zoMthetho woCwangciso lweSithuba kunye noMthetho woLawulo lokuSetyenziswa koMhlaba onguNombolo 16 ka-2013 (SPLUMA) kwesi sicelo silandelayo sisebenza kwiSiza 425, Zwelihle (kwipropati):

- Ukwandiswa kwexesha lokuba semthethweni kwemvume ekhoyo ngokwemigaqo yeCandelo 16(2)(i) lomthetho kamasipala ukwandisa ihambo yethutyana eminye iminyaka emithathu (3) yokuqhuba ibottle store kwipropati; kwaye
- Ukulungiswa kwemiqathango yolwamkelo olukhoyo ngokweCandelo 16(2)(h) loMthetho kaMasipala, kwakunye namalungiselelo eSPLUMA, ukwandisa ukutenxa okwethutyana kwiZwelihle Business Corridors kwezinye ezintathu (3)) iminyaka yokusebenzisa ivenkile yebhotile ukusuka kwipropati.

linkcukacha ezipheleleyo malunga nesi sindululo ziyafumaneka ukuze zihlolwe ngeentsuku zokusebenza ngamaxesha okusebenza phakathi kwentsimbi ye-08:00 neye-16:30 kwiSebe: Zicwangciso ngeDolophu, ePaterson Street, eHermanus. Naziphi na izimvo mazibhalwe phantsi ukuze zifike kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) ngomhla okanye phambi kuka- **19 UTshazimpunzi-2024**, ucaphula igama lakho, idilesi kunye neenkcukacha zoqhagamshelwano, umdla kwisicelo, kwakunye nezizathu zokuhlomla. Imibuzo ngomnxeba ingenziwa kuCwangciso weDolophu, uMnu. H Boshoff kule nombolo 028-313 8900. UMasipala unokwala ukwamkela izimvo ezifunyenwe emva komhla wokuvala. Nabani na ongakwaziyo ukufunda okanye ukubhala angandwendwela iSebe loCwangciso lweDolophu apho igosa likamasipala liya kuthi limncedise ukuze abhale ngokusesikweni izimvo zakhe.

1. Locality Plan

ERF 425 - ZWELIHLE



Subject property

Plan prepared by: Thian Jansen

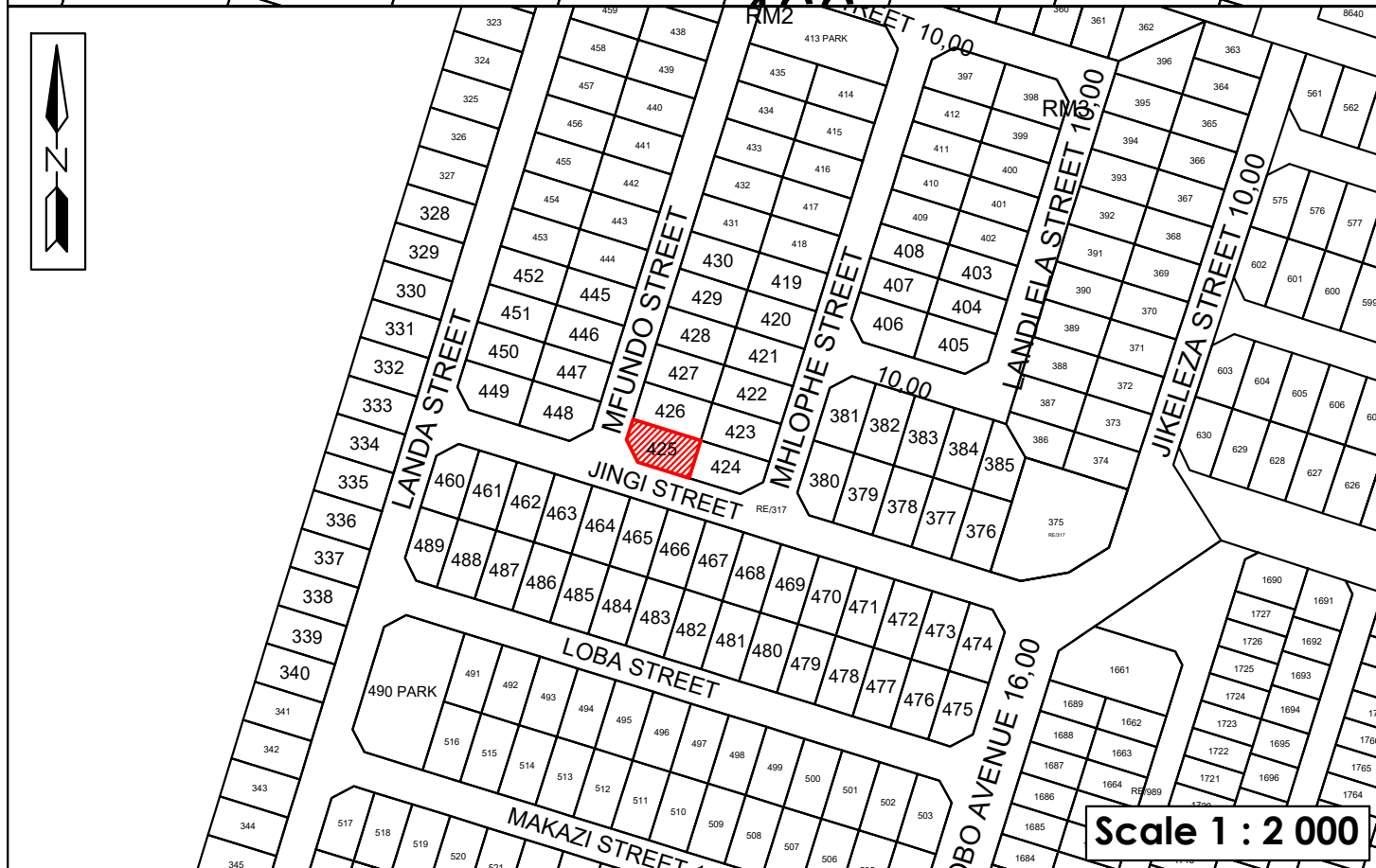
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Project Office



1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SR1	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 425 Zwelihle
Extent	207m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

The letters of approval from Overstrand Municipality for the temporary and permanent departures on Erf 425, Zwelihle, with reference 425 HZW / App ID 3506/2019, dated 13 April 2021, as well as the Council's decision letter to the applicant with reference 425 HZW, dated 6 September 2021, pertain to the following:

Overstrand Municipality granted a temporary departure approval for a period of three (3) years, allowing the property owner to operate a bottle store on Erf 425 Zwelihle. This property, hereinafter referred to as the subject property, is a corner plot situated at 425 Jingi Street in Zwelihle (see Plan 1 – Locality Plan). The property owner, Monwabisi Caswell Bhala, has authorized the WRAP Project Office to submit this land use application (see **Annexure A – Power of Attorney**).

The proposal is to request an extension of the validity period for the aforementioned approvals. While these approvals have not yet expired, the property owner is taking proactive steps to ensure compliance with relevant policies and legislation. In terms of the by-law, it is possible to apply for an extension of the validity periods of such applications.

To attain the desired outcome, a land use application must be submitted in accordance with Section 16(2) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020:

- The extension of the validity period of the approval on Erf 425 Zwelihle with three (3) years (new expiry date 6 September 2027); and
- Amendment of conditions in respect of an existing approval.

4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

WRAP compiled this report to ensure the property owner's requirements are met. The following is proposed:

4.1 Extension of the period of validity of an approval in terms of section 16(2)(i) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

When the Municipality considers an application for the extension of the validity period of an approval Section 68(2) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning states it must have regard to the following:

- a) *if the circumstances prevailing at the time of the original approval have materially changed; and*
- b) *if the legislative or policy requirements applicable to the approval which prevailed at the time of the original approval, have materially changed;*
- c) *whether there is a pending review application in court which may have an effect on the date of implementation of the approval.*

a) *if the circumstances prevailing at the time of the original approval have materially changed; and*

The property owner's primary objective remains to sustain the operation of the approved bottle store at its current location until a suitable replacement property becomes available. The owner is committed and driven to establish a bottle store within the designated business corridors throughout Zwelihle, depending on availability of a suitable property.

The OMLUS defines a bottle store as the following: "*bottle store*" means an establishment where the main purpose is the retail sale of alcoholic beverages for off-site consumption.

Establishing a bottle store within these business corridors involves several steps, including the acquisition of property or properties large enough to meet all prescribed parking standards and accommodate vehicle manoeuvring space. Additionally, the submission of any necessary planning applications and building plans is required to ensure compliance with relevant legislation. Lastly, the property must be strategically situated in proximity to the target market.

As word has spread to property owners about the development of these business corridors, they have increased their property prices and are holding onto their properties, making it more challenging and time-consuming to persuade them to sell.

The circumstances surrounding the original approval have not significantly changed, as the property owner still intends to relocate his business but requires an extension of time to secure suitable space for relocation. This proposal underscores the property owner's commitment to adhere to all the regulations of the OMLUS and local by-laws. Approving this extension would, therefore, create a supportive environment for the property owner to continue operating a legal bottle store.



b) if the legislative or policy requirements applicable to the approval which prevailed at the time of the original approval, have materially changed;

Since the approval of this application, the Overstrand Municipality has sanctioned amendments to the Spatial Development Framework (SDF), By-Law, and OMLUS in 2020. These revisions in the SDF have designated Zwelihle as the most densely populated area in the Greater Hermanus region, with a population density of 8615 individuals per square kilometre. This places heightened pressure on the property owner to identify a suitable replacement site for the bottle store. It's essential to note that there have been no significant amendments to any planning policies.

Furthermore, it's worth mentioning that the Western Cape Provincial Government has obtained an exemption from Section 43 of the Spatial Planning and Land Use Management Act (SPLUMA), which typically restricts validity periods to a maximum of 5 years. This exemption has been extended to 10 years. Overstrand Municipality has accordingly amended the Municipal Land Use Planning Bylaw to align with this extension, allowing validity periods of up to 10 years.

In light of these developments, the request to extend the period of validity for an additional three (3) years is consistent with the provisions of the by-law.

c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.

There is no pending review application in court.

After reviewing the three conditions which the OM must consider when an application is received to extend the validity period of the application it is clear that the application is not in contradiction in any one of the circumstances.

The extension of the validity period of the subdivision approval on Erf 425 Zwelihle with three (3) years (new expiry date 6 September 2027).

Bottle stores, unlike places of entertainment do not emit excessive noise which would ensure that neighbouring property owners are not exposed to loud noise until the early hours of the morning. This would be a huge discomfort and adversely alter the valued residential character in the area where the subject property is located. The bottle store operates only within the allowed timeframes as per the historic approval which is:

Monday - Saturday: 10:00 – 20:00
Sunday: 10:00 – 13h00

The operational hours are therefore intended to ensure that there is no conflict between the utilisers of the residential land uses as well as the bottle store.

The main purpose of this application is to ensure that the property remains in compliance with the municipality's legislation and policies while being able to operate while the property owner receives an income and allow him to continue looking for a new property.



MOTIVATION

4.2 Amendment of the conditions of existing approvals in terms of Section 16(2)(h) of the By-Law, as well as the provisions of SPLUMA, to extend the temporary deviation from the Zwelihle Business Corridors for a further three (3) years to operate a bottle store from the property.

The previous approvals attached as Annexure C indicated that the approval for temporary departure is only valid for three years. Therefore, it is requested that these specific conditions be amended to allow for an additional three years, as motivated in Section 4.1 above.

The previous application was approved by both the authorized official and the council; both approvals indicated that the operation of the bottle store would be temporarily approved for a period of three years.

5. APPLICATION

Considering the above, application is made for the following:

5.1 Extension of the period of validity of an approval in terms of section 16(2)(i) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

5.2 Amendment of the conditions of existing approvals in terms of Section 16(2)(h) of the By-Law, as well as the provisions of SPLUMA, to extend the temporary deviation from the Zwelihle Business Corridors for a further three (3) years to operate a bottle store from the property.

6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned for single residential purposes. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). There have not been any concerns or objections received in the past 2 years and the surrounding area has become accustomed to the bottle store in the area.

7. TITLE DEED

Title deed (refer **Annexure B – Title Deed**) was perused and there are no restrictive conditions that prohibit the bottle store.



8. ZONING

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:

Residential Zone 1: Single Residential			
	Parameters	Proposal	Comply or deviate
Primary use	Dwelling house , day care centre, guest rooms, home occupation and second dwelling unit.	Dwelling house	Comply
Consent use	Crèche, guest house, green house, house shop, institution, place of instruction, place of worship, residential building and tourist accommodation.	N/A	N/A
Land Use Restrictions			
Coverage	65%	The coverage: $\pm 44\%$	Comply
Street building line	A 2-meter street building line.	The bottle store area is located 0m from the street boundary; The existing house is located 1m from the street boundary;	Approval received.
Side and Rear building line	Side and rear building lines	The existing toilet is located 0m from the side boundary.	Approval received.
Height	8 m measured from the base level to the top of the roof.	3,5m	Comply
Garages and carports	Garages and carports may be constructed within the building lines in accordance with 16.1.2.	N/A	Comply
Parking	Parking and access shall be provided on the land unit in accordance with Section 17.1 of the Overstrand Municipality Zoning Scheme, 2013. One onsite parking bays	Two onsite parking bays are indicated.	Comply



9. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Solid waste

Solid waste is collected by the OM on a weekly basis in Zwelihle and the subject property derives the same benefit.

Electricity

The subject building is connected to the existing electricity network in Zwelihle and the approval and implementation of this proposal will not alter this.

Water

The subject property is connected to the existing reliable water network which is provided by the OM and the approval and implementation of this proposal will not alter this.

Sewage

Sewage on the subject property is disposed of into the municipal sewer network and the approval and implementation of this proposal will not alter this.

Access and egress

Access and egress will continue to be gained from Jingi Street and Mfundo Street.

10. POLICIES AND REGULATIONS

10.1 Spatial Planning Policies

This proposal as motivated in the original application is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014, Overstrand Spatial Development Framework, 2020 or the Overstrand Municipality Growth Management Scheme, 2010.

11. EVALUATION

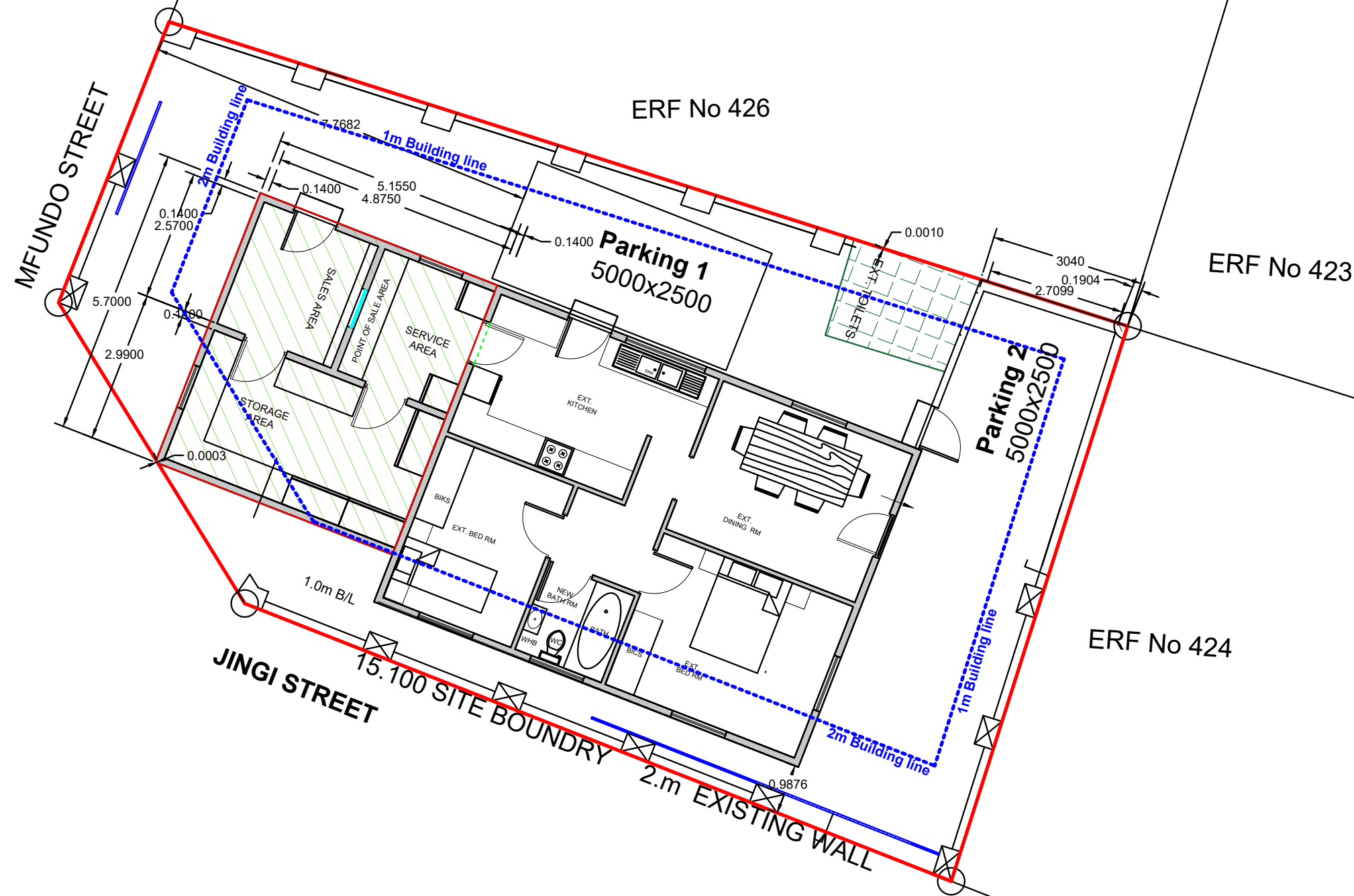
We are of the opinion that:

- The temporary departure's approval on Erf 425, Zwelihle, is still desirable and consistent with the existing legislation and spatial planning policies.
- The owner is still committed to the relocation of the bottle store, however, is unsure if he will be able to find a suitable premises before the approval lapses.
- The extension of the validity is not in contradiction of the following requirements:
 - a. if the circumstances prevailing at the time of the original approval have materially changed; and
 - b. if the legislative or policy requirements applicable to the approval which prevailed at the time of the original approval, have materially changed;
 - c. whether there is a pending review application in court which may have an effect on the date of implementation of the approval.
- Therefore, the application for the extension of the validity of the existing approval can be granted.

12. RECOMMENDATION

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

- 12.1 Extension of the validity of the approval** on Erf 425 Zwelihle with three (3) years (new expiry date 6 September 2027) in terms of section 16(2)(i) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 12.2 Amendment of the conditions of existing approvals** in terms of Section 16(2)(h) of the By-Law, as well as the provisions of SPLUMA, to extend the temporary deviation from the Zwelihle Business Corridors for a further three (3) years to operate a bottle store from the property.



SCALE 1 : 100

Site Plan
Erf 425 Zwelihle

- Erf 425 Zwelihle
- Bottle store

Plan prepared by: Thian Jansen on 2023/10/23
Based on plans by CHF Designs & Drafts

Plan Number - 23/133 (001)

All distances are approximate
and subject to a survey

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