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REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE D	70429262		
CASE OFFICER	Tymela Kingsley Menoko		
CASE CEFFCER PHONE NO	021 400 <u>6</u> 849		
ÖSIR:CI	Northern		
REPORT DATE	2019-62-18		
MIERVIEW AFFLICANT	YES 150		
REQUESITO OBJECTORIS			

ITEM NO MPTNE25/03/19

WARD 111:APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 10619, 10 BERMAN STREET, PEERLESS PARK EAST, KRAAIFONTEIN.

1 EXECUTIVE SUMMARY

Property description	Erf 10619
Property address	10, Berman Street, Peerless Park East, Kraaifontein
Site extent	496m²
Current zoning	Single Residential 1: Conventional Housing (SR1)
	Residential & House shop
Overlay zone applicable	No

Submission date	2018-10-11
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, utilizing garage for an unauthorised activity(house shop)
Has owner applied for the determination of an administrative penalty	Yes
Has the City Manager applied to the MPI for an order that a person who is contravening the MPBL must pay an administrative penalty in	No

an amount determined by the MPT Has the City issued a demolition directive i.t.o section 128 of the MP8L? If yes, an administrative penalty may not be applied for.	No 144
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	Yes. A site inspection was conducted on 2018- 11-12 by a land use inspector and a notice was served on the owner for the unauthorised house shop.

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

Erf 10619 is located on the corner of Berman Street and Visser Street in the suburb of Peerless Park East. The subject property is zoned Single Residential Zone 1 and it is surrounded by similarly zoned properties. General Residential Zone 1 erven are located further north of the subject property and General Business subzone GB2 erven are located south of the subject property.

A site inspection of the subject property was conducted by the land use inspector, and it revealed that the garage was being utilized to operate a house shop without authorization.

A house shop is only permitted as a consent use under the current SR1 zone and the owner has also submitted a consent use application on 2018-11-13, which is currently being advertised to affected parties and circulated to internal departments for comments. The consent use application will only be finalised once the administrative penalty fee has been determined and paid.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation of the proposal is attached as Annexure C and may be summarised as follows:

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- The property is being used for residential purposes and a house shop.
- The current owner was not aware that Council consent was required to operate a house shop from her property.
- The house shop has been operational since 8 October 2018.
- In order to legalize the house shop the owner has cooperated fully in providing all relevant background information and making the necessary applications,
- The unlawful act has not stopped.
- The house shop is the only source of income for the applicant.
- A minimal administrative penalty has been requested due to the owner's tack of knowledge on the correct law.

5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorized house shop is operating from an approved garage with is attached to the existing dwelling house. This is in contravention of Item 21 of the Development Management Scheme.
- 5.3 There is adequate on-site parking, however based on past investigations in the area relating to house shops, clients mainly walk to the shop.
- 5.4 In terms of section 129(7)(b) of the 8y-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

Administrative Penalty: Calculation

5.2.1 Unauthorized land use

$$\frac{R630\ 000}{496\text{m}^2} \times 18\text{m}^2 = R22862.9$$

An amount which is not more than 100% of R22 862.9 may be imposed as an administrative penalty.

The table below shows the penalty values per scales based on the calculations above. Please note the applicant has not provided a cost estimate for the unlawful land use.

Current		1%	2%	5%	10%	15%
Municipal						
Property value	R630		ļ			•
(R)	600					İ
Total size of	496m²					
property (m²)						
Size of the	18m²				_	
structure(m²)	<u> </u>	_			}	E
Confravening	18m²					
orea (m²)						
Penalty value	R 22	R228.63	R457.26	R1 143.15	R2 286.29	R3 429.44
and scale (R)	862.9					

5.3 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

a) The nature, duration, gravity and extent of the contravention

Nature – A house shop is being operated from the said property. The owner is occupying the existing dwelling house.

Duration - The activity has been operating since October 2018.

Extent - The garage which measures 18m² is being utilized for the activity.

b) The conduct of the person involved in the contravention

The house shop is currently operated by the tenant who has shown a willingness to co-operate with the City to rectify the unauthorized activity.

c) Whether the unlawful conduct was stopped

The unauthorized house shop is currently still operating.

d) Whether a person involved in the contravention has previously contravened by this By-Law or any other planning law

Council records show that the property owner has never been charged for any land use violation.

5.4 Having considered the factors mentioned above, it is hereby recommended that an administrative penalty fee of R 1 200.00 of the total value of the use violation should be imposed.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- The properly owner has applied for consent to operate the house shop.
- A small administrative penalty is considered appropriate, considering the number of months that the business has been in operation and need of the community.
- Traffic generation is minimal and there is adequate parking on site.
- A house shop is considered a community need and its use is confined to an existing building.

6 RECOMMENDATION

In view of the above, it is recommended that:

a) That an administrative penalty in the amount of R 1 200.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 10619, Kraaifontein.

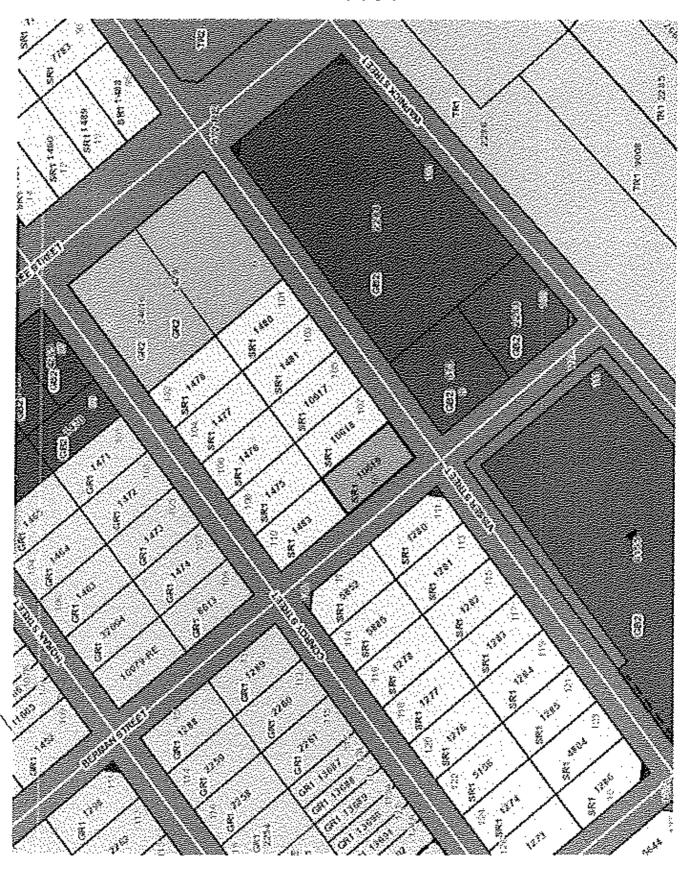
ANNEXURES

Annexure A Locality Plan

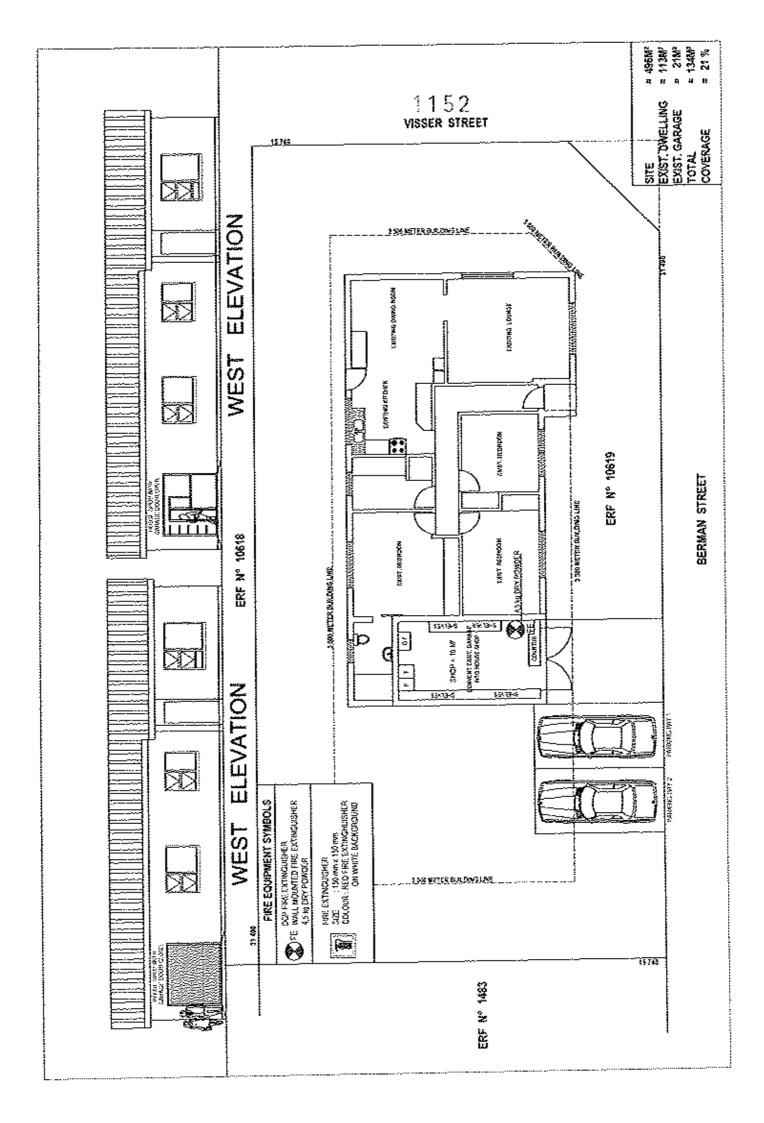
Annexure 8 Site development plan Annexure C Applicant's motivation

Section	Head : Land Use Management	/ 1	Adnager
Nome	Sean Van Rensburg	Name	Susanna Matthysen
Tel no	021 444 1044	fel no	021 444 1064
Oale	75-2-2019	Date	
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Annexure A



Annexure B



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Annexure C

TRANSPORT DEVELOPMENT MANAGEMENT

City of Cape Town - Northern District

Kraaifontein Administrative Building

Brighton Road

KRAAIFONTEIN

7570

10 October 2018

Dear Sir/Modom

DETERMINATION OF AN ADMINISTRATIVE PENALTY FOR OPERATING A HOUSE SHOP WITHOUT COUNCIL CONSENT: ERF 10619, CORNER OF BERMAN AND VISSER STREET, KRAAIFONTEIN

Please find attached our motivation and all the relevant information regarding a determination of an administrative penalty application for operating a house shop on Erl 10619, Corner of Berman and Visser Street, Kraaifontein.

Yours faithfully

MRS M H TERBLANCHE MTC CONSULTANTS

1 INTRODUCTION

Erf 10619, c/o Berman and Visser Street, Kraaifontein is zoned Single Residential Zone I in accordance with the Cope Town Zoning Scheme. This application is therefore for determination of an administrative penalty on Erf 10619, c/o Berman and Visser Street, Kraaifontein in terms of Section 42(r) of the City of Cape Town Municipal Planning By-Low (2015).

2 DESCRIPTION OF PROPERTY

The property is measuring 496m² in extent, the house shop 18m² in extent. According to the Cape Town Zoning Scheme Regulations the property is zoned, single residential zone 1 (SR1). The property is owned by Motsepo Trading (Pty) Ltd and is held under deed of transfer no T34602/2018. The property is currently used for residential use and a house shop. The property is situated in Peerless Park East, Kraaifontein.

3 SURROUNDING AREA

The area consists mainly of residential houses, flats and vacant land.

4 PROPOSAL - DETERMINATION OF AN ADMINISTRATIVE PENALTY

Background on this application – The owner is Molsepa Irading (PIy) Ltd were under the impression that she can operate a house shop from her property, she is registered with SARS and are operating as a registered company.

The nature, gravity and extent of the contravention:

The land use has been unauthorised since 8 October 2018. The owner did appoint a consultant to submit the application for administrative penalty for the operating of the house shap without Council's consent and a consent use application for the operating of a house shap will also be submitted separately.

The conduct of the person involved in the contravention:

An administrative penalty and a consent use application are submitted separately. The owner was not aware that a consent from Council for the operating of a house shop was required she was under the impression that her company Motsepa Trading

(Pty) Ltd, owner gives her the right to trade from her house. The owner gives her full co-operation in providing all the relevant background information and applications to tegotize her house shop.

Whether the unlawful conduct was stopped:

The land unlawful conduct has not stopped and are in operating since 8 October 2018. The business is the only source of income for the opplicant, there are family members whom the owner has to support.

Whether the person involved in the contravention has previously contravened this By-Law or a previous Planning Law

No

5 CONCLUSION

We would appreciate Council's discretion to impose a minimal administrative penalty due to my client lack of the knowledge of the correct law.