



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70450849				
CASE OFFICER	Erhard Pienaar				
CASE OFFICER PHONE NO	021 444 7507				
DISTRICT	Tygerberg				
REPORT DATE	4 June 2019				
INTERVIEW REQUESTED	APPLICANT	YES		NO	✓
	OBJECTOR(S)				✓

ITEM NO **MPTNE18/07/19**

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 8388, 17 BOSTON STREET, BELLVILLE

1 EXECUTIVE SUMMARY

Property description	Erf 8388
Property address	17 Boston Street, Boston
Site extent	495 m ²
Current zoning	Single Residential (SR 1)
Current land use	Residential/shop/coffee shop(unauthorised)
Overlay zone applicable	No

Submission date	04 April 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	No
Has owner applied for the determination of an administrative penalty	Yes
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No
Has the City served a	No

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?	382
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

The subject property is zoned Single Residential (SR1) and located within a mixed use area.

The property currently has a non-conforming use right to operate the current shop from the property.

A land use application was submitted in November 2018 for the rezoning of the property from SR1 to LB2 to permit the coffee shop.

As a result of the unauthorised coffee shop (restaurant) operating from the property the applicant was instructed to apply for an Administrative Penalty, hence this application.

4 SUMMARY OF APPLICANT'S MOTIVATION

- There is no external illegal or unauthorized building work.
- The gravity is considered of a medium impact given the fact that no safety or health certificates could have been obtained due to the unauthorized land use.
- No internal conversions have been made which means that the structural integrity of the building, for which building plans have been approved, has not been undermined.
- The owners have not contravened the by-law previously and upon discovery of the illegal use they have submitted an administrative penalty application to council.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorized use is in contravention of the Development Management Scheme. The surrounding area is located within a mixed use area, consisting of businesses, flats and single dwellings.

- 5.2 The property is located along Boston Road within the southern precinct of the Boston Policy precinct, relatively close to Voortrekker Road.
- 5.3 This office is of the opinion that the unauthorized use on the property is not considered to be in contravention of the said policy.
- 5.4 In terms of section 129(7)(a) of the By-Law, an administrative penalty for the administrative offices 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

$$\frac{R1\,900\,000}{522m^2} \times 25m^2 = R90\,996.00$$

An amount which is not more than 100% of R90 996.00 may be imposed as an administrative penalty.

The table below shows the penalty values per scales based on the calculations above.

Current Municipal Property value (R)		0.5%	1%	2%	5%	10%
R1900000						
Total size of property (m2)	522 m2					
Size of the unauthorised structure(m2)						
Land use contravening area (m2)	25m2	R2 394	R909.96	R1 819.92	R4 549.80	R9 099.60

- 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 – The property owner is currently operating the coffee shop, which is considered an active business operation without the necessary land use approval or Health and Safety compliance certificate in place.

Duration: The property owner indicates at the time of submission in March 2019 that the unauthorized use has only been in operation for 2 months.

Extent: The property measures 522 m² and the extent of the unauthorized land use is 25m².

b) The conduct of the person involved in the contravention

Full access to the unauthorized coffee shop is possible. The owners claim that the purchase of the property, they were advised that it was possible to expand the existing business component of the property.

c) Whether the unlawful conduct was stopped

The activity is operational and is therefore ongoing.

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 a land use violation.

- 5.4 Having considered the factors mentioned above, I am of the opinion that an administrative penalty fee of 2.0% 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 activity is in operation for a relatively short period.
- The proposal is not expected to be impacting significantly on the surrounding area which has a combination of residential and business activities.

7 RECOMMENDATION

In view of the above, it is recommended that:

That an administrative penalty for the land use contravention in the amount of R1819.92 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 8388, 17 Boston Street, Bellville

ANNEXURES

Annexure A Locality Plan
Annexure B Site development plan
Annexure C Applicant's motivation

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M. K. M.

**Section Head : Land Use
Management**

Comment

Name T.R. Kotze

Tel no 021 444 7506

Date 12.06.2019

[Signature]

District Manager

Name

W. Smit.

Comment

Tel no

021 444 7840

Date

12/06/2019

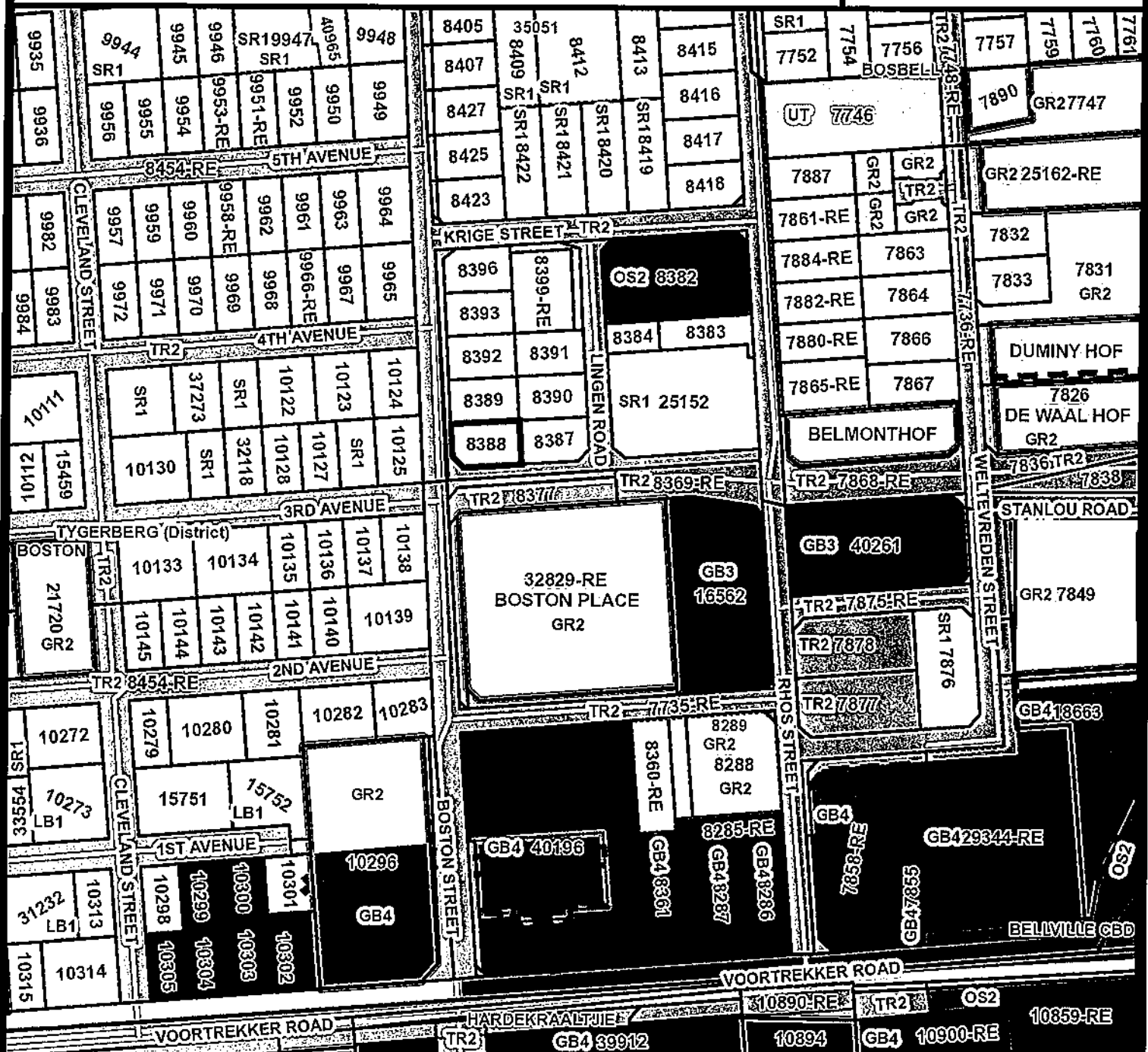
Annexure

A

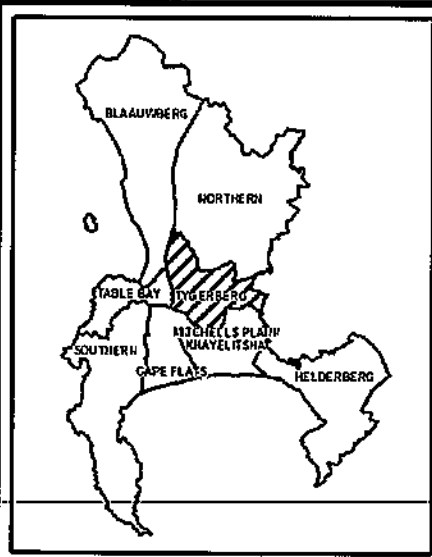
PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

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ANNEXURE :



Overview



Erf: 8388

Allotment: BELLVILLE

Ward: 2

District: TYGERBERG

Suburb: BOSTON

Sub Council: Subcouncil 6



1:2 400

Notices Served



Support
Received



Petition
Signatory



Objections
Received



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CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Annexure

B

SOUTH ELEVATION

Annexure

C

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APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF SECTION 42(r) OF THE MPBL

ON ERF 8388
Corner of Boston Avenue & Davies Street
Boston, Bellville

OWNERS:
Sweffto Foods Cc

March 2019

1. Preamble

My clients purchased the property in question, namely Erf 8388 in 2016 and has therefore owned the property for the last two and a half years. At the time of the acquisition the current building including the house shop were all legal and approved by the council. The attached building plan indicates the latest approved building layout, which includes the house shop and an area of approximately 25m² that was initially approved as a lounge with an external door access onto Davies Avenue. A Land Use application was submitted in November 2018 requesting the rezoning of the property to local business 2 to allow the continuation of the house shop with the introduction of a small office to be used for micro lending purposes.

In January, this year my client was ill advised by his agent that he could open a coffee shop in the originally intended office space. My client was under the impression by submitting a rezoning application last year he could proceed with utilizing this space as a coffee shop, which is incorrect. The City has not issued a notice but this contravention needs to be addressed in the form of an administrative penalty application as the coffee shop has been operating for the last two months. In meetings with the local councilor and the Boston Rates Payers Association there was no objection in principle to the low key, small scale nature of the coffee shop which measures 25m². The primary use of the property remains a three bedroom dwelling i.e. 55% residential.

2. MOTIVATION

The relevant Land Use application for rezoning from single residential to local business B2 to allow for a house shop and an office was submitted in November 2018. The application in question was circulated to all the council departments and was also advertised to the community and two objections were received from the Boston Rates Payers Association and one of the local residents. The TIA, transport department has requested changes to the site development plan. I am currently engaged in discussions with the Boston Rates Payers Association, which have been facilitated by councilor Leonore Van Der Walt. Please see attached email.

At the request of council, I conducted a site inspection on the 11th of March which revealed the following:

- The proposed office which measured approximately 25m² has been converted into a coffee shop from January this year. The total space which is unauthorized is 25m².
- There is no external illegal or unauthorized building work and the latest plans approved by council dated 16th of May 2013 show the shop, the dwelling and a proposed lounge, which takes direct access from a door facing Davies Street. The original rezoning application shows a proposed office and the tenant intended for this office cancelled in December and my client introduced a small coffee shop from January onwards. The owners have regrettably contravened a by-law by allowing the coffee shop to operate. The unauthorized use has not ceased and has been operating for two months since a application was submitted in November 2018.

- The owners have not contravened the by-law previously and upon discovery of the illegal use they have submitted an administrative penalty application to council.

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

Section 129(8)(a)					
	Land Use		Building Work		
Nature	Yes		No		
Comment	Conversion of existing lounge into a coffee shop.		No alterations to existing buildings		
Duration	2 months				
Comment:	A rezoning application was submitted to allow for a local business (B2) in November 2018.				
Extent	25m ²		Internal conversion no alterations		
Comment:	With respect to building work, there is no contravention. With respect to the land use, contravention the area is approximately 25m ²				
Gravity	Safety	Fire		Health	Other
	No	No		No	No
					None
					X
Comment:	The gravity is not serious as the buildings comply with council requirements.				
	Section 129(8)(b)				
	Misleading		Forthcoming		
Conduct	X				
Comment:	My client was ill advised, although ignorance is not an excuse. There was never an intention to mislead council				
	Section 129(8)(c)				
	Yes		No		Other
Unlawful conduct ceased			X		X
Comment:	The coffee shop has been operating for 2 months.				
	Section 129(8)(d)				
	No				
Previous contraventions	X				
Comment:	My clients have an impeccable conduct with no previous contraventions.				

4. PROPERTY SPECIFICS AND ANALYSIS

Ownership	:	Sweffto Foods Cc
Registered Description	:	Erf 8388, Corner Boston & Davies Avenue, Bellville
Location	:	Boston, Bellville
Extent	:	519m ²
Zoning	:	Single Residential
Zoning scheme	:	Development Management Scheme
Site Characteristics	:	Site is improved by a dwelling and a shop in the eastern Portion of the building.
Applicant	:	D. Cristallides Town & Regional Planners
Title Deed Number	:	T76517/16
Jurisdiction	:	Tygerberg District of the City of Cape Town

5. CONCLUSION

5.1 My client applied to rezone the property from single residential to local business B2 to allow the permanent use of business rights and a further conversion of the lounge into a office. Unfortunately, my client acted pre-maturely and has allowed the space allocated for a office be used for a coffee shop prior to the approval of the rezoning that is being considered. He regrets this decision and in discussion with the Boston Rates Payers Association and the local councilor there is no objection in principle to the coffee shop due to the low key and small scale of the coffee shop that is only i.e. 25m².

5.2 The gravity is not considered serious given the fact that there are no safety or health risks and the original buildings were approved and occupation certificates were issued by the building inspector. No internal conversions have been made which means that the structural integrity of the building has not been undermined.

5.3 My clients have had an exemplary conduct prior to this application. There has been no previous contraventions to this by-law or any other planning laws.

5.4 In the light of the above circumstances we recommend that council impose the minimum administrative penalty of R5000 in terms of Section 129 of MPBL of 2015 in respect of Erf 8388, Corner Boston & Davies Avenue.