



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	TD433779			
CASE OFFICER	BABAY			
CASE OFFICER PHONE NO	021 444 7843			
DISTRICT	TYGERBERG			
REPORT DATE	18/04/2019			
INTERVIEW REQUESTED	APPLICANT	YES		NO
	OBJECTOR(S)			

ITEM NO **MPTNE27/05/19**

APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 10102, KUILS RIVER (24 MIMOSA STREET, SAREPTA)

1 EXECUTIVE SUMMARY

Property description	10102, Kuils River
Property address	24 Mimosa Street, Sarepta
Site extent	243m²
Current zoning	General Residential 1 (GR1)
Current land use	Dwelling house and house shop
Overlay zone applicable	No

Submission date	2/04/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Operation of a house shop from the premises without Council's approval
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 notice on the owner or	No

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?	1193
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

The property is zoned General Residential 1 (GR1) with the primary use permitted being for residential purposes only in terms of the Cape Town Development Management Scheme. An application for a temporary land use departure to permit a house shop on the property was approved by the City on 30 May 2013, which application has lapsed on 30 May 2018. Subsequently, the owner applied for a reinstatement of the house shop. The applicant was requested to apply for the determination of an administrative penalty.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The applicant opened the shop as she is unemployed and need to provide for her family.
- The garage is currently being used for the house shop, which only sells daily necessities.
- The house shop has no negative impact on the surrounding properties.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorized use is in contravention of the Development Management Scheme. The surrounding area is predominantly General Residential in nature.
- 5.2 In terms of section 129(7)(b) of the By-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 Unauthorised land use

$$\frac{\text{Total Municipal Value of property (370 000)}}{\text{Total area of property (244m}^2\text{)}} \times \text{Total Unlawful Area (36m}^2\text{)} = R54 590$$

An amount which is not more than 100% of R54 590 may be imposed as an administrative penalty.

- 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 house shop operates between 7:30 and 22:00 and is open during weekends and public holidays. The owner uses the existing garage for house shop purposes.

Duration – the contravention started from 30 May 2018, after the previously approved temporary land use departure has lapsed. The house shop has therefore been in illegally operation for the past 11 months.

Extent – the property measures 244m² and the extent of the unauthorized house shop is 36m².

b) The conduct of the person involved in the contravention

The owner of the property concerned is involved in the contravention. The owner submitted an Administrative Penalty and land use application to rectify the unauthorized use. The owner therefore co-operated to rectify the unauthorized use.

c) Whether the unlawful conduct was stopped

No, the unauthorized land use is still operating from the property.

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

As far as can be determined, the owner of the property has not previously contravened this By-Law or any other planning law.

- 5.4 The dominant use of the property is residential and the house shop of 36m² is considered of a small scale and no negative impact is foreseen to the surrounding neighbours in term of traffic generation and noise. In addition there is no indication that the owner knowingly and willfully continued with the authorized activity after the land use right lapsed.

In view of the above mentioned considerations, this office recommends that an administrative penalty equal to 1% (R546) of the value of the portion of the property used for the unlawful activity be charged.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

1. The extent of the unlawful activity is considered small in scale in relation to the remaining property area.
2. This office has no record that the owner of the property has previously disregarded any planning law.


6 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of R546 **be determined** in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 10102, Kuils River.


ANNEXURES

- Annexure A Locality Plan
 Annexure B Site map / building plan / site development plan
 Annexure C Applicant's motivation



Section Head : Land Use Management

	Comment
Name <u>T.R. Kotze</u>	
Tel no <u>021 444 7506</u>	
Date <u>25.04.2019</u>	

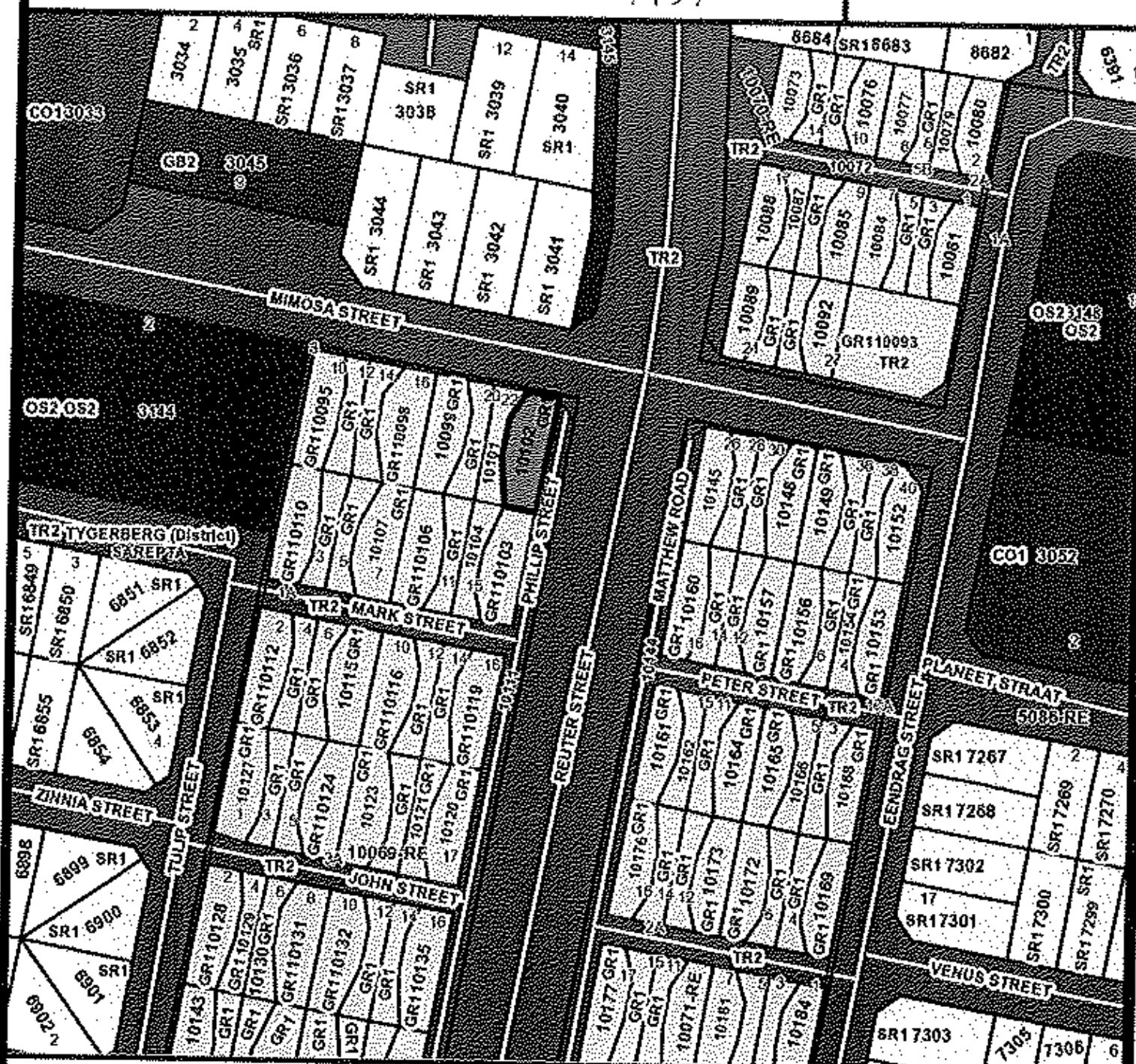


District Manager

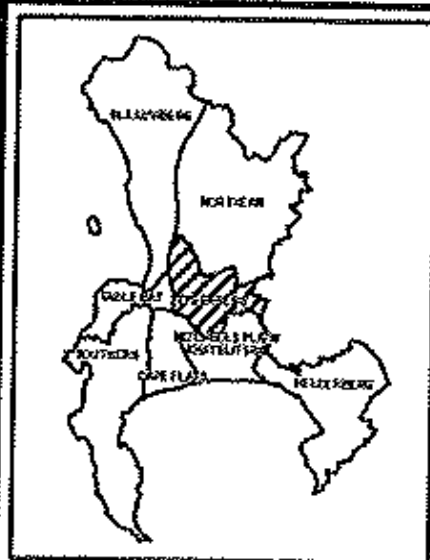
	Comment
Name <u>D. Smit</u>	
Tel no <u>021 444 7840</u>	
Date <u>26/04/2019</u>	

Annexure

A



Overview



Ert: 10102

Allocation: KULS RIVER (S)

Ward: 11

District: TYGERBERG

Suburb: SAREPTA

Sub Council: Subcouncil 21



1:1 286

Notices Served



Support Received



Petition Signatory



Objections Received



Generated by: B Abay

Date: Thursday, April 18, 2019

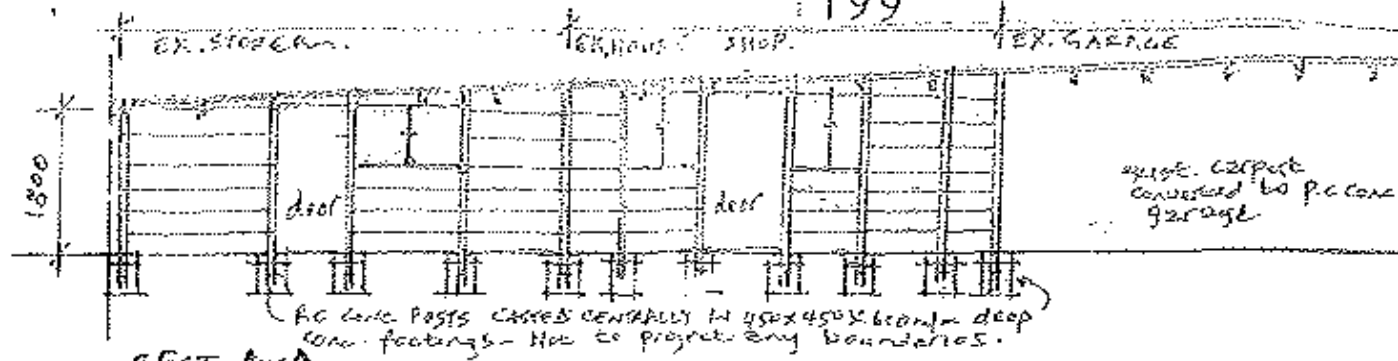
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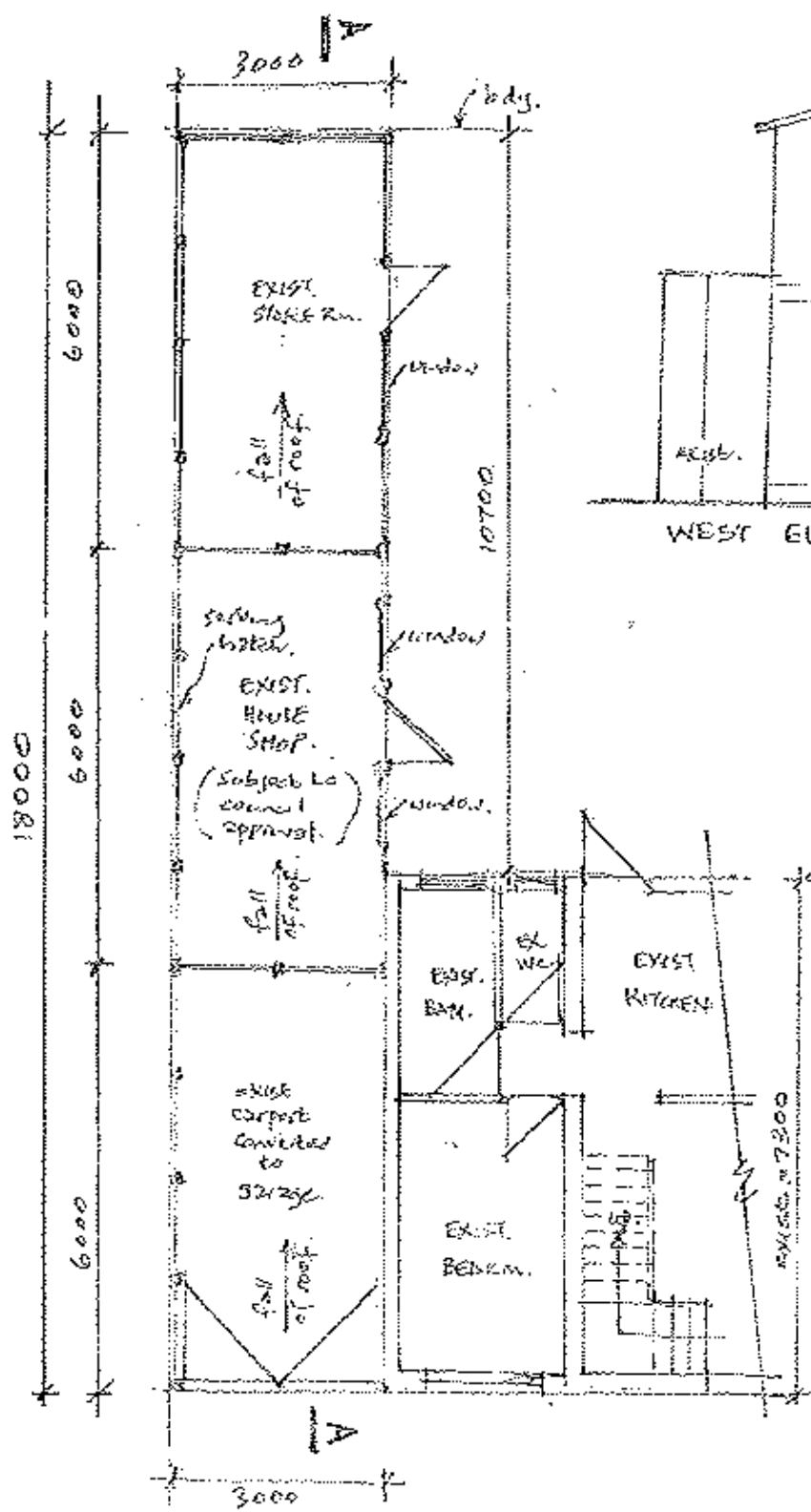
CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress together

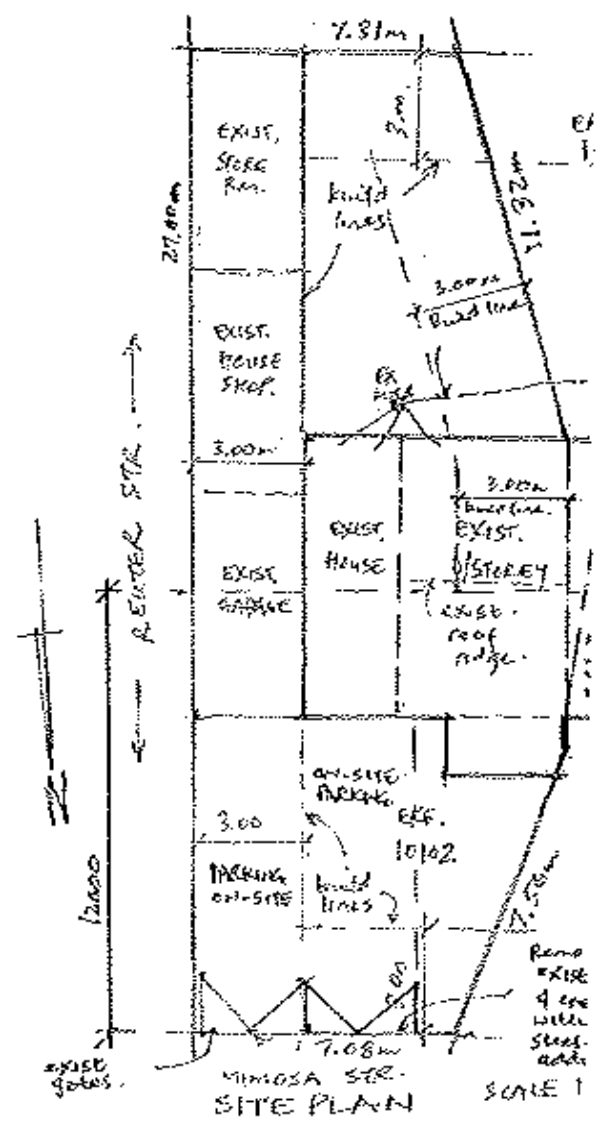
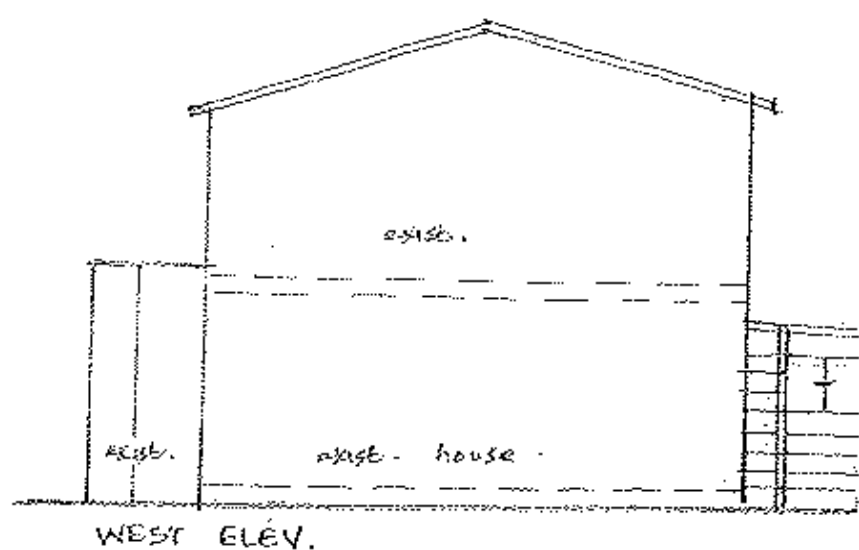
Annexure B

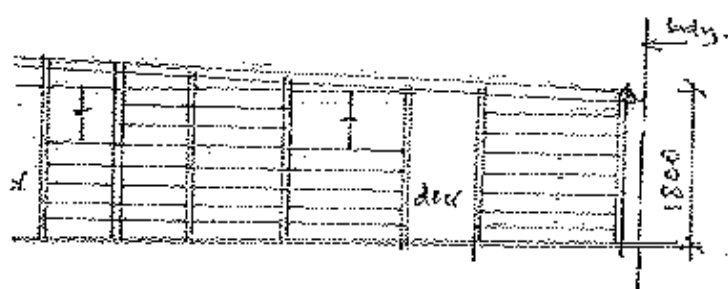
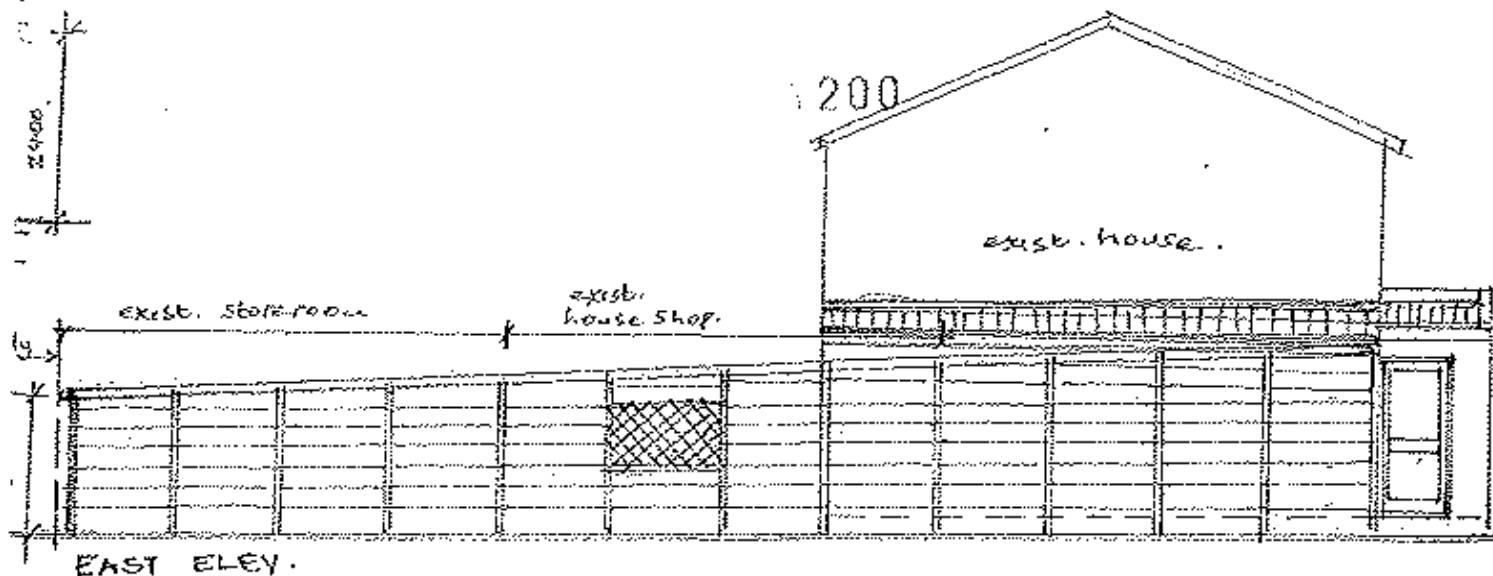


SECT. A-A



PART GROUND FLOOR PLAN
SCALE 1:100





Construction of P.C. Conc. Structures

Roof : 3° fall

Galv. I.B.R. sheeting on 150x50 P/Rafters @ 1000 c/c's having both ends secured in galv. taco brackets & further secured to p.c. conc. posts/ p.c. conc. slabs according fall.

All doors & windows to be supplied as per Rutenfranz's catalogue or equal.

All p.c. conc. posts & slabs to be supplied as per Concretelex or equal.

P.c. conc. posts to be casted centrally in 450x450x600mm deep mass conc. footings & not to project beyond site boundary points.

All other fixtures, finishes & fittings to owners choice.

Air bricks/ventilation to all rooms. Min. 10% light & min. 5% ventilation.

Per floor area & to comply with XA SANS 10400 regs.

part of a conc. wall opening 10m high as per 2nd on site 10 parking spaces.

TITLE:

AS-BUILT P.C. CONC. STRUCTURES FOR MRS. L. FRANKÉ OF 24 MIMOSA STREET ON ERF. 10102 - SAREPTA

owners sign

date

phone : 021 9031300

LEGEND :

SITE	: 243,60m ² .
EXIST. HOUSE	: 89,48m ² .
EXIST. GARAGE	: 18,60m ² .
AS-BUILT STORE RM	: 18,00m ² .
AS-BUILT HOUSE SHOP	: 18,00m ² .
TOTAL GROUND FLOOR COVER	: 110,63m ² .
% GROUND FLOOR COVER	: 45,33%.
TOTAL m ² COVER.	: 143,48m ² .

NOTE: REQUIRED PARKING FOR 2 VEHICLES ON SITE.

LINEAR CALCULATIONS:

15,00 + 7,31 + 11,32 + 5,80	= 27,43m
60% permissible width	= 22,458m
AREAS EXCEEDING 300m BUILD LINES	
EXIST. SHOP = 2,40m	
EXIST. STORE = 6,20m	
	= 8,60m
	= 7,10m = 38,14%

SCALE 1:100 1:200 or as indicated.

Drawn by: Mr. J.J. da Silva

48 Old Neerastfontein Road

Kuils River

7580

Cell ph. 0824127542

ph/fax 021 9037330

Reg no. D0520

P.22nd draught.

Annexure C

1202

24 MIMOSA STREET
KUILSRIVER
SAREPTA
7580
19 OF OCTOBER 2018

THE CITY OF CAPE TOWN'S TRANSPORT
AND URBAN DEVELOPMENT AUTHORITY

DEAR SIR/MADAM:

RE: MOTIVATION FOR TUCKSHOP

FURTHER OUR APPLICATION, I RUWEIDA FRANCKE HERBY NOTIFY YOU THAT THE PC CONCRETE STRUCTURE HAD BEEN USED FOR A TUCKSHOP SERVING THE COMMUNITY FOR THE PAST 10 YEARS.

PREVIOUSLY WE OBTAINED A PERMIT TO TRADE BUT IT WAS ONLY FOR 5 YEARS. MY MOM WAS AT THAT TIME THE OWNER OF THE TUCKSHOP AND SHE SUPOSED TO RENEW THE PERMIT IN FEB 2018. DUE TO SERIOUS ILLNESS SHE COULDN'T RENEW IT AND PASSED AWAY 3 MONTHS AGO. I RUWEIDA FRANCKE HER ELDEST DAUGHTER DIDN'T KNOW OF ANY OF THESE DEVELOPMENTS DOINGS. I HAVE TRIED TO DO IT AND END UP HERE TYPING THIS TO RECTIFY EVERYTHING THAT'S SUPOSED TO BE DONE. I HERBY SEEK YOUR CONSENT TO CONTINUE TO TRADE WITH THE TUCKSHOP DUE TO THE FACT THAT THIS IS OUR ONLY INCOME NOW. IM CURRENTLY LOOKING AFTER THE OWNER OF THE HOUSE AND MY 4 CHILDREN.

THE STRUCTURE THAT IM USING FOR A TUCKSHOP IS ALONG REUTER STREET AND IS CONNECTED ONTO A FIELD. THE STRUCTURE DOES NOT IMPACT NEGATIVELY ON SURROUNDING PROPERTIES AND ADDS TO PROPEY VALUES AND ALSO CONTRIBUTES TO SAFETY FACTORS. THERE IS AMPLE ON SITE PARKING.

TRUST YOU FIND THIS REQUEST FAVOURABLE AND IN ORDER.

THANKING YOU

YOURS SINCERELY,

RUWEIDA

FRANCKE