



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

2738

REPORT TO: MUNICIPAL PLANNING TRIBUNAL

ITEM NO MPTSW30/05/19

WARD 61: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 2377 OCEAN VIEW, 4 KINGFISHER STREET

Case ref:	70444757
Case Officer:	P Absolon
Case Officer phone number:	021 444 7728
District:	Southern
Ward:	61
Ward Councillor:	S Bell-Cock
Report date:	2019-05-03

1. EXECUTIVE SUMMARY

Property description	Erf 2377 Ocean View
Property address	4 Kingfisher Street
Site extent	198m ²
Current zoning	Single Residential Zone 2
Current land use	Dwelling house and unauthorised liquor shop
Overlay zone applicable	None
Submission date	2019-02-08
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	The use of a portion of the property for a liquor shop is unauthorised.
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 in terms of 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 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?	No

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

- 3.1 An application for a temporary departure to permit a portion of the subject property to be used for a liquor shop was refused by the then South Peninsula Subcouncil on 2010-09-23. The applicant then submitted an appeal in terms of the Municipal Systems Act that was declared invalid by the General Appeals Committee 2010-11-12 as it was received late. A subsequent appeal to the Western Cape Government was also declared invalid. Council's final notification letter was issued on 2011-11-14.
- 3.2 A main land use application for the liquor shop has not yet been submitted.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation (see Annexure C) may be summarised as follows:

- The owner was under the impression that the appeal was successful and therefore continued to operate.
- The owner was misled by the previous agent who was dealing with her application.
- The area was previously zoned as Informal Residential and therefore did not require a land use application.
- The liquor shop has been in operation since 2011.

5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for the ±60m² portion of the property that is currently used as a liquor shop. No land use approval has been granted for this. The liquor shop is in contravention of Item 26 of the Development Management Scheme.
- 5.2 In terms of section 129(7)(b) of the MPBL, 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.
- 5.3 The municipal valuation for the property is R440 000 as per GV2015 (see Annexure D).
- 5.4 The maximum administrative penalty is calculated as follows:
$$\frac{\text{R}440\,000.00 \times 60\text{m}^2}{198\text{m}^2} = \text{R}133\,333.33$$
- 5.5 An amount which is not more than R133 333.33 may be imposed as an administrative penalty.
- 5.6 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 nature of the contravention relates to the use of a portion of the property as a liquor shop that is not permitted as of right in Single Residential Zone 2.

Duration - According to the operator, the activity has been operating on this property since 2011. However, this date is questioned as it was clearly already in operation in 2010 when the previous application was being processed. Furthermore, the objector to that application stated in the objection that the liquor shop had been operating since "prior to 2006". Thus the duration of the contravention is long.

Gravity - The gravity of the contravention is serious. In this regard it must be noted that liquor shops can have a significant negative impact on neighbouring properties, especially when embedded into the heart of residential areas as is the case in this instance. In this regard it must be noted that there was an objection to the previous application for the liquor shop from an adjacent property owner.

Extent – At 60m², the extent of the contravention is large, especially considering the small property size.

b) the conduct of the person involved in the contravention

The explanation of the applicant for her conduct is questioned. The current owner was the applicant in the previous application and all correspondence was referred to her (ie she did not use an agent to make the application on her behalf). It is thus difficult to accept that she thought that that application was approved and that her appeal was successful. Furthermore, after the previous application has been finalized, the owner contacted this Department and enquired as to whether or not the new Cape Town Zoning Scheme allowed her to operate a house shop as of right. This Department sent her a letter stating that this was not a permitted use (see Annexure E).

The unauthorized conduct cannot be condoned.

c) Whether the unlawful conduct was stopped

The unlawful conduct has not stopped.

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 ascertained, the operator has not previously contravened this By-Law or any other planning law.

- 5.7 In view of the abovementioned considerations, and in particular the serious gravity of the contravention, the conduct of the owner, and the intention that administrative penalties, in part at least, serve as a deterrent, this Department recommends that an administrative penalty of R10 000.00 be imposed.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The use of the property for a liquor shop is unauthorized and contravenes Item 26 of the Development Management Scheme.

- 7.4.1
- 6.2 The gravity of the contravention is serious. In this regard it must be noted that liquor shops can have a significant negative impact on neighbouring properties, especially when embedded into the heart of residential areas as is the case in this instance.
 - 6.3 The duration of the contravention is long.
 - 6.4 At 60m², the extent of the contravention is large, especially considering the small property size.
 - 6.5 The conduct of the applicant cannot be condoned. It is clear that the current owner was well aware that the liquor shop was not lawful and that her previous application was unsuccessful.
 - 6.6 As far as can be ascertained, the owner of the property has not previously contravened the By-Law or any other planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

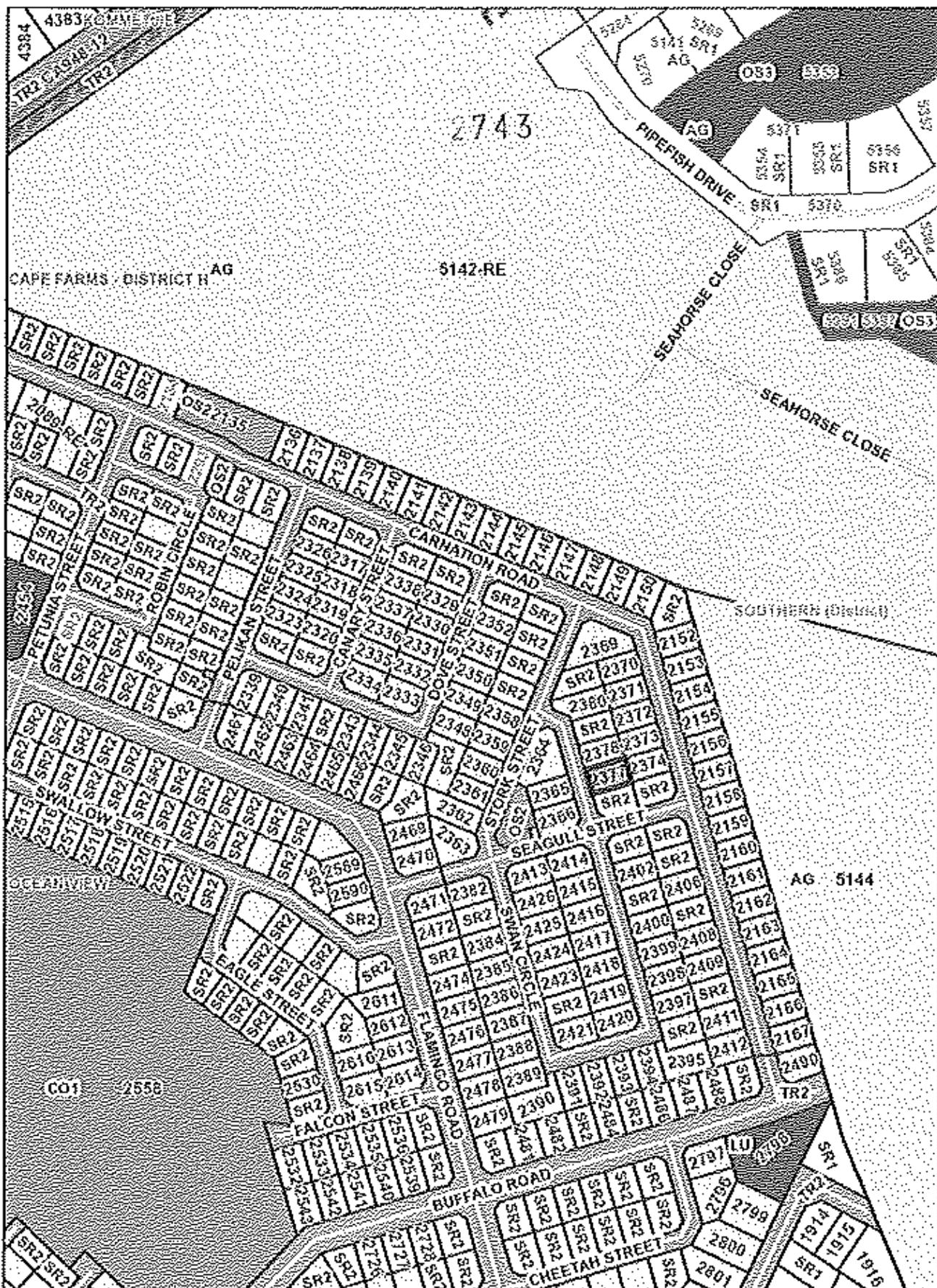
- a) An administrative penalty in the amount of R10 000.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of the 60m² unauthorised liquor shop on Erf 2377 Ocean View.

ANNEXURES

- | | |
|------------|--------------------------------------|
| Annexure A | Locality plan |
| Annexure B | Plan showing location of liquor shop |
| Annexure C | Applicant's motivation |
| Annexure D | Municipal valuation |
| Annexure E | Letter to the owner dated 2012-05-24 |

Section Head : Land Use Management		Comment
Name	P Hoffa	
Tel no	021 444 7724	
Date	2019-05-03	

District Manager		Comment
Name	U. Gonsalves	
Tel no	021 444 7720	
Date	2019-05-03	



Map Title: Cape Town Environmental & Social Planning

Legend:

- SG Approved
- Sub Councils
- Registered
- P&BDM Total Deed Restriction Areas
- Confirmed
- P&BDM Suburbs
- P&BDM Districts
- Public
- Corporate GIS Wards (2011)
- Private

CITY OF CAPE TOWN
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PLEASE NOTE: Jurisdictional boundaries shown on this map are subject to change.

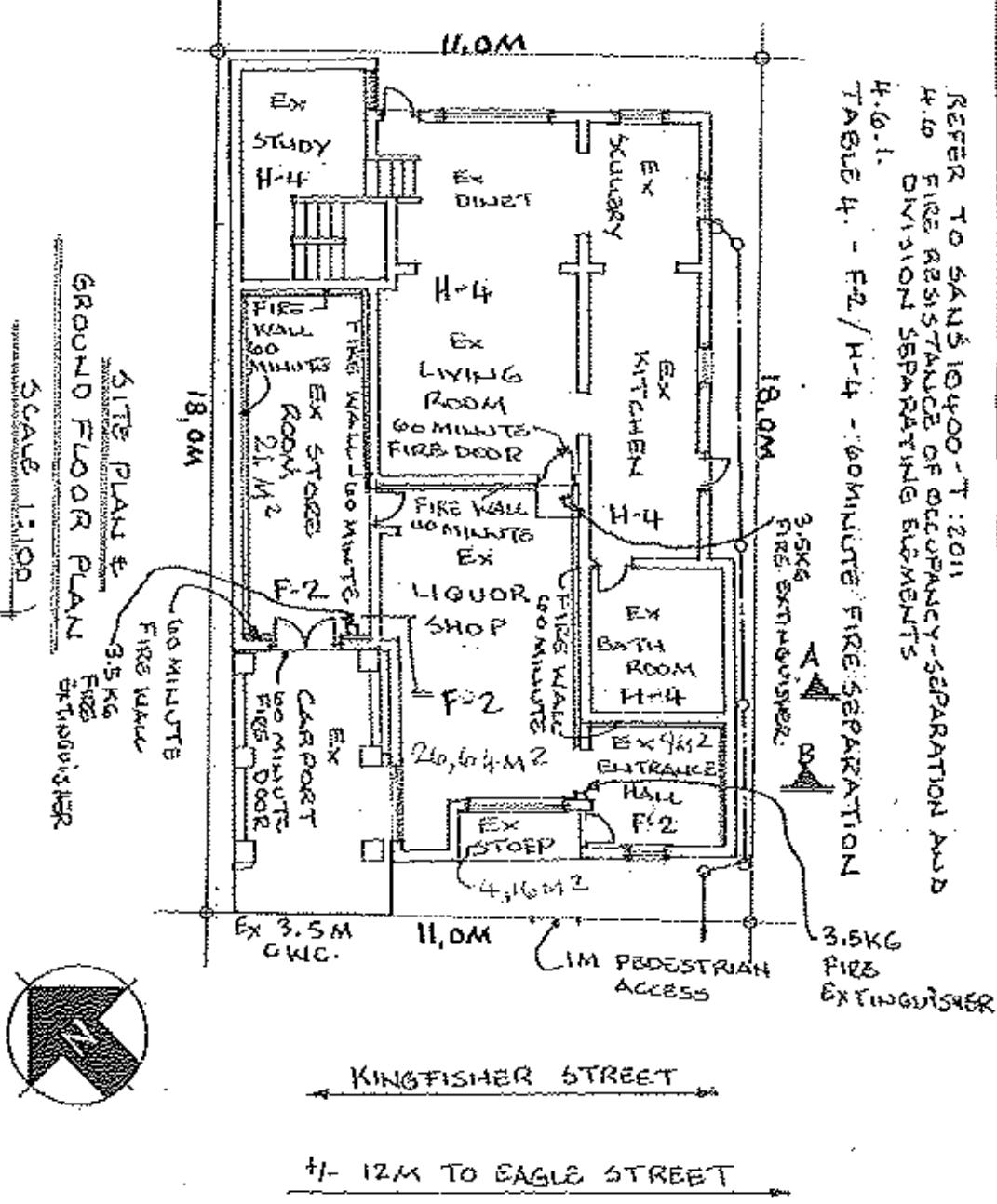
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PLEASE NOTE: This is a draft version of the
Final Circular Economy Directive proposed by the European
Commission and is available online via the Office of
the European Union.

2744

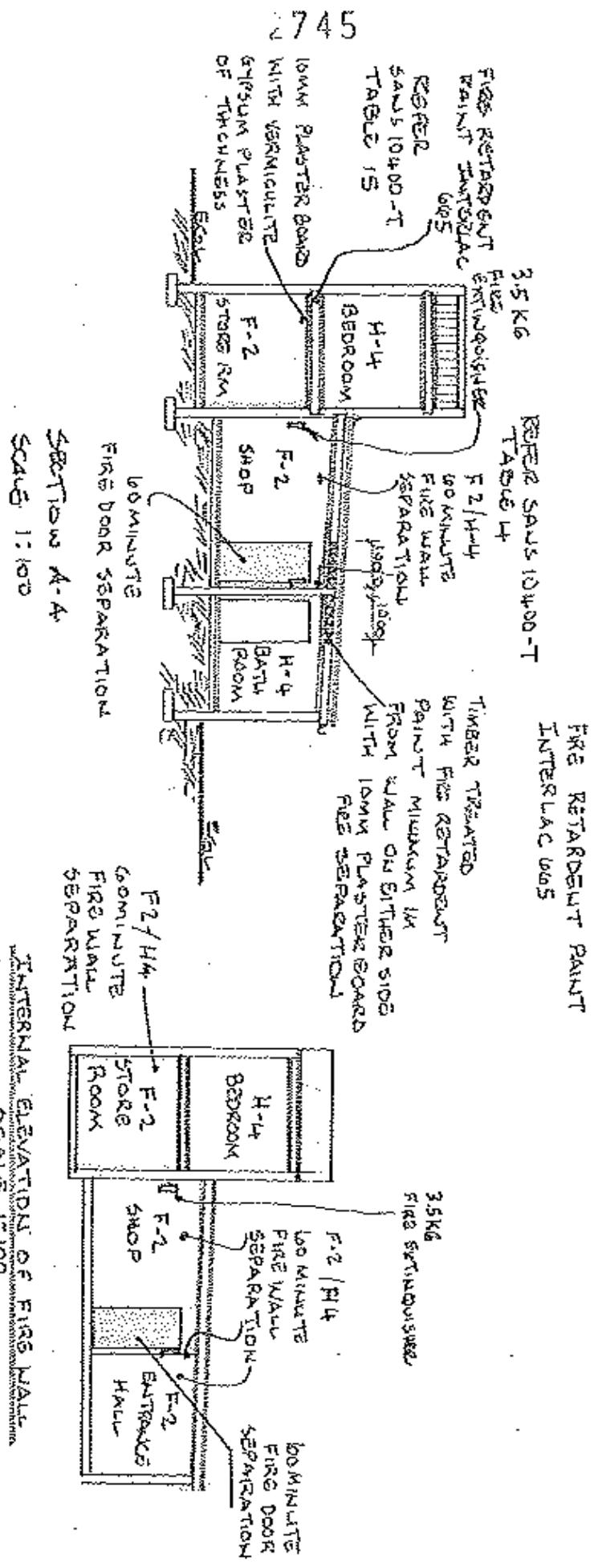
REFER TO SANS 10400-T:2011
FIRE RESISTANCE OF OCCUPANCY-SEPARATION AND
DIVISION SEPARATING ELEMENTS



COVERAGE
SUIT AREA 12342
EXISTING 123,2542

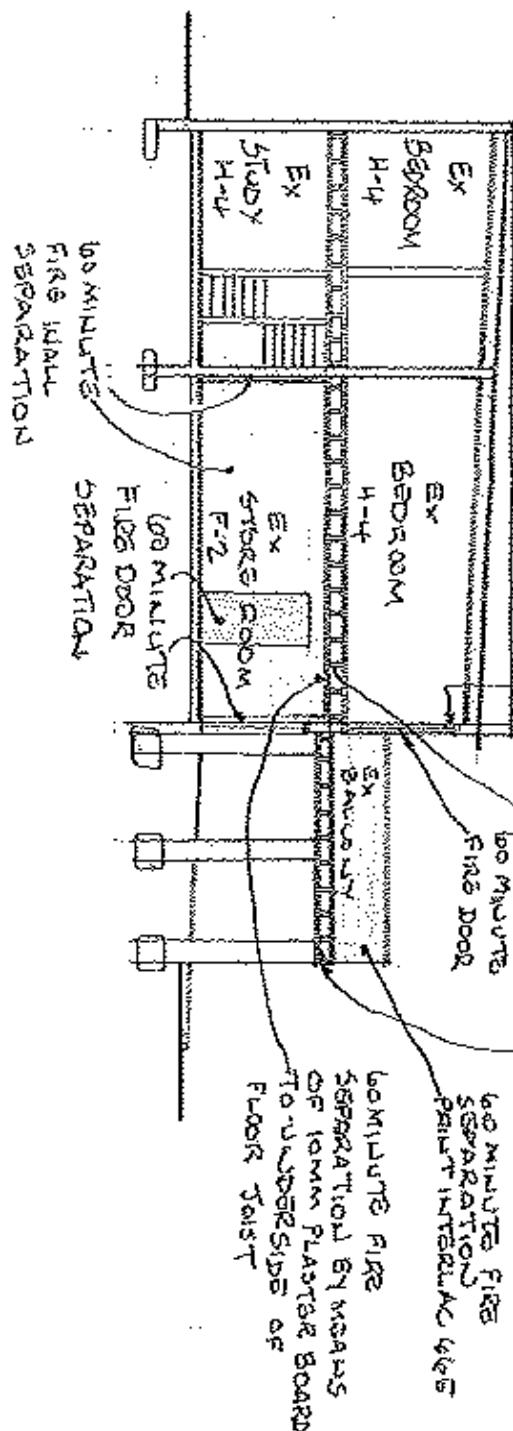
ADDITIONS AND ALTERATIONS ON EBF NO: 2377
AT NO: 4 KINGFISHER STREET - OCEAN VIEW

P 5000
PROE ASSTK TECH
SACAP REG NO 1143
DRAKEVILLE, ARKANSAS
CELL: 0710 276 9742
SIGNATURE



ADDITIONS AND ALTERATIONS ON ERE No: 2377
AT NO. 4 KUNGELEHNER STREET - OREGON VIEW
FOR MRS. S. CALLEGARI
LICENED OREGON ENGINEERS
DATE: 19 NOV 1923
DRAWN BY: OLV OCW 2377-3

2746



REMEMBER TO BE TREATED
WITH FIRE RETARDANT PAINT
INTERIOR & EXTERIOR

TIMBER TO BE TREATED
WITH FIRE RETARDANT
PAINT INTERLAC 465

FIRST FLOOR PLAN
SCALE 1:100

ADDITIONS AND ALTERATIONS ON ERE NO: 23-
AT NINETEEN KINGSFISHER STREET - OCEAN VIEW
B&B MRS S. CALLAGHAN
SIGNED: S. CALLAGHAN
DATE: 10/11/2019
DRAWN BY: S. CALLAGHAN

卷之三

P. SPOOR

MOTIVATION.

1747

- 1) THE NATURE OF DURATION OF OPERATION SINCE 2011 TO PRESENT.

REFERENCE NUMBER OF PREVIOUS APPLICATION LUM 68 2377

- 2) THE AREA OF OPERATION - EXTENT 60,08 M²

- 3) OPERATING A LIQUOR SHOP.

OWNER OF ERF 2377 WAS UNDER THE IMPRESSION THAT THE APPEAL OF THE PREVIOUS APPLICATION WAS DEALT WITH AND WAS WON BUT WAS MISLEAD BY THE PREVIOUS AGENT HANDLING THE APPLICATION.

- 4) THE OPERATION WAS NOT STOPPED AND IS STILL IN OPERATION AT PRESENT.

- 5) THE OWNER HAS NOT PREVIOUSLY CONTRAVENED THIS BY-LAW.

THE AREA WAS PREVIOUSLY ZONED INFORMAL AND THEREFORE NEVER REQUIRED A LANDUSE APPLICATION.

SECTION G: FURTHER APPLICATION DETAIL

Nature of departure / amendment / approval required:

2748

<input checked="" type="checkbox"/>	Building line encroachment			
Street		From	[REDACTED] m	To [REDACTED] m
Street		From	[REDACTED] m	To [REDACTED] m
Common		From	[REDACTED] m	To [REDACTED] m
Common		From	[REDACTED] m	To [REDACTED] m
Common		From	[REDACTED] m	To [REDACTED] m
<input checked="" type="checkbox"/>	Exceeding permissible site coverage			
<input checked="" type="checkbox"/>	Exceeding maximum permitted floor area	From	[REDACTED] m ²	To [REDACTED] m ²
<input checked="" type="checkbox"/>	Exceeding maximum permitted floor factor	From	[REDACTED]	To [REDACTED]
<input checked="" type="checkbox"/>	Exceeding height restriction / permissible no. of storeys	From	[REDACTED] m/st	To [REDACTED] m/st
<input checked="" type="checkbox"/>	Exceeding height restriction related to wallplate	From	[REDACTED] m	To [REDACTED] m
<input checked="" type="checkbox"/>	Relaxation of window and door placement setback requirement	From	[REDACTED] m	To [REDACTED] m
<input checked="" type="checkbox"/>	Relaxation of on-site parking / loading bay requirements	From	[REDACTED] bays	To [REDACTED] bays
<input checked="" type="checkbox"/>	Erection of second / additional dwelling unit			
<input checked="" type="checkbox"/>	Work in Heritage Protection Overlay Zone (please specify)			
<input checked="" type="checkbox"/>	Other (please specify)			
<input checked="" type="checkbox"/>	Administrative penalty			

Additional description of departures / amendments / approval required (if necessary)

[REDACTED]
[REDACTED]
[REDACTED]

SECTION H: ADMINISTRATIVE PENALTY

The following is required for an application for the determination of an administrative penalty made in terms of section 42 (i) of the MPBL.

Give a description of the land use or building work / structure(s) that are in contravention on the property.

OPERATING LIQUOR SHOPProvide the extent(s) in m² of the property used for the unlawful use activity, and unlawful building work / structure(s) that contravene the MPBL. (Indicate extent(s) on a building plan / map / plan / diagram)**(0,08 M²)**

Describe the duration of the contravention(s).

2011 - TO DATE 2019

Has the unlawful activity ceased?

If yes, provide the date when the activity ceased

Has the owner / person previously contravened the MPBL, or a previous Planning Law?

If yes, please provide more details below

[REDACTED]
[REDACTED]

Provide the municipal valuation of the erf.

R

State your determination of the value of the building work / structure(s) and engineering work unlawfully carried out, that is in contravention of the MPBL.

R

 N/A

Note: Provide supporting documentation for your determination.

City of Cape Town

2749



Usage Code	A01
Usage	One dwelling residential
Area (Calculated)	198.01 m2
Total Value	440000
Valuation Year	20160701
Approval Date	0000-00-00
Registered Date	1999-09-27
Purchase Date	1999-01-07
Purchase Price	10000,0
Title Deed Number	T77387/1999
Business Partner Nr	1000788783
Owner Title	Mrs.
Owner Name	SHAKIRAH CALLAGHAN
Owner First Name	SHAKIRAH
Language	EN
Owner Postal Address	4 KINGFISHER STREET OCEAN VIEW 7975
ID Number	6009280290086(SA Identity Doc, expired)
Rate payer Name	SHAKIRAH CALLAGHAN
Rate payer Street Address	KINGFISHER STREET 4 OCEAN VIEW ZA
Rate payer Postal Address	4 KINGFISHER STREET OCEAN VIEW 7975
key	382456
Physical Address	4 KINGFISHER STREET, OCEAN VIEW
Erf No	2377



BRIEF OF COUNSEL | LETTERS SIGNATURE | STUS XAPET03

Plumstead Office
3 Victoria Road
Plumstead 7800
Private Bag X5, Plumstead 7801
Ask for: Mr S Poswa
Tel: 021 710 8293
Fax: 021 710 8263

Plumstead Office
3 Victoria Road
Plumstead 7800
Private Bag X5, Plumstead 7801
Cabs: Mr S Poswa
Umrebra: 021 710 8293
Tel: 021 710 8263

ANNEXURE E

Plumstead Office

3 Victoria Road

Plumstead 7800

Private Bag X5, Plumstead 7801

Vicvia: Mr S Poswa

Tel: 021 710 8293

Fax: 021 710 8263

Ref: LUM582377
Application no: 183818

2750

STRATEGY & PLANNING

Department: Planning & Building Development Management

24 May 2012

REGISTERED MAIL

Ms Shakirah Callaghan
4 Kingfisher Street
Ocean View
7975

Dear Ms Callaghan

USE OF ERF 2377 OCEAN VIEW, 4 KINGFISHER STREET

Your recent over-the-counter enquiry into whether the use of the above-mentioned property as a liquor shop can occur in terms of the provisions of the Informal Residential zone refers.

The provisions relating to Informal Residential zone does allow any occupier of a unit of accommodation to utilize such unit for social, educational, religious, occupational or business purposes subject to the following conditions:

- (i) The dominant use of the property shall remain residential.
- (ii) The use concerned shall not be disturbing to neighbours, and
- (iii) The use concerned shall not interfere with the amenity of the direct neighbourhood.

On 2010-09-23 the South Peninsula Subcouncil refused your application for a temporary departure to permit a liquor shop, and one of the reasons given was that "the proposal will detract from the residential amenity of the residential neighbourhood". It is thus clear that Council does not consider that the liquor shop satisfies conditions (ii) and (iii) above. As a result, you cannot use the provisions of the Informal Residential zone to claim that you have a right to use the property for a liquor shop.

Yours faithfully

(P. Hoffa)
for DIRECTOR: PLANNING & BUILDING DEVELOPMENT MANAGEMENT

cc Land Use Inspectorate