



**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

Case ID 1500125742

Erf 121379, 19 Herslett Street, Retreat

Development Management

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APPLICATION FOR THE REZONING OF ERF 121379, 19 HERSLETT STREET, RETREAT FROM RESIDENTIAL 1 TO LOCAL BUSINESS 2, IN TERMS OF SECTION 42(a), PERMANENT DEPARTURES IN TERMS OF SECTION 42 (b) AND A CONSENT USE FROM THE RESTRICTIVE TITLE CONDITIONS PERTAINING TO THE BUILT ENVIRONMENT IN TERMS OF SECTION 42 (h) OF THE MUNICIPAL PLANNING BY – LAW.

Introduction

The owner of Erf 121379, 19, Herslett Street, Retreat has appointed Mrs Terblanche to make the necessary planning applications inclusive of a consent use to obtain the necessary planning permission to conduct a liquor store on the property concerned.

The following motivation is submitted in support of the applications.

Completeness of the application

The following documentations are accompanying the application.

- Application form duly completed;
- Power of attorney from the owner to submit the necessary application on his behalf;
- Copy of the deed of transfer confirming that there is no title deed conditions preventing the proposed use of the property to sell alcoholic beverages; Consent from Council attached.
- Copy of a locality plan showing the location of the property.

Background

It is perhaps appropriate to provide a short overview of applications submitted to the local authority to obtain planning permission for the unauthorised liquor store.

An application for a land use departure to permit a liquor store was previously submitted but refused by Sub Council 18 on 21-01-2016. Subsequently an appeal was submitted, and the appeals authority approved the land use departure for a period of five years. This land use departure was valid until 2021-08-11. It is important to note that the liquor shop was not permitted to operate during the Coved period and the shop remained closed during 2019 and 2021.

An application for a rezoning and consent use to obtain the necessary planning permission for the liquor store was submitted on 21-02-2022 but could not be processed as a result of outstanding information. It needs to be mentioned that the owner appointed and paid a consultant to make the necessary submission only to learn that the consultant has disappeared with his money and left the application unattended.

The owner recently visited the District Planning office to enquire about progress of his application since he received no feedback from his planning consultant. He was informed by the case officer that his application could not be progressed due to a number of outstanding information as well as the need for an administrative penalty

submission. Such application for an administrative penalty was submitted and the MPT at their meeting on 21-02-2023 imposed a penalty of R 5000 on the owner. The owner appealed the administrative penalty imposed by the MPT but his appeal was dismissed by the appeal authority on 28-07-2023. The owner paid the administrative penalty and appointed a new consultant to obtain the necessary planning permission. A further administrative penalty application was submitted for unauthorised work carried out by the owner. The necessary administrative penalty of R 7 500 was paid on the 29 October 2025.

Site and context

Erf 121379, 19, Herslett Street, Retreat, is zoned for Single Residential I purposes with the development control parameters of Residential 1 use applicable. The site measures 286m² and is developed with a double storey single residential structure measuring 131m² currently being used for residential purposes as well as a liquor store measuring 24m² in extent and a storage area measuring 41m² in extent. There is also a second dwelling built on the property measuring 58m². The second dwelling complies with the approved building plan. The plans for the second dwelling are attached. The property and the improvements are shown below. Access to the property is currently taken off Erf 121378 as can be seen on the plan below. An application to lease the adjacent property for access purposes has been submitted to Economic Development. However, a departure from the parking requirements is included should the lease application not be successful.



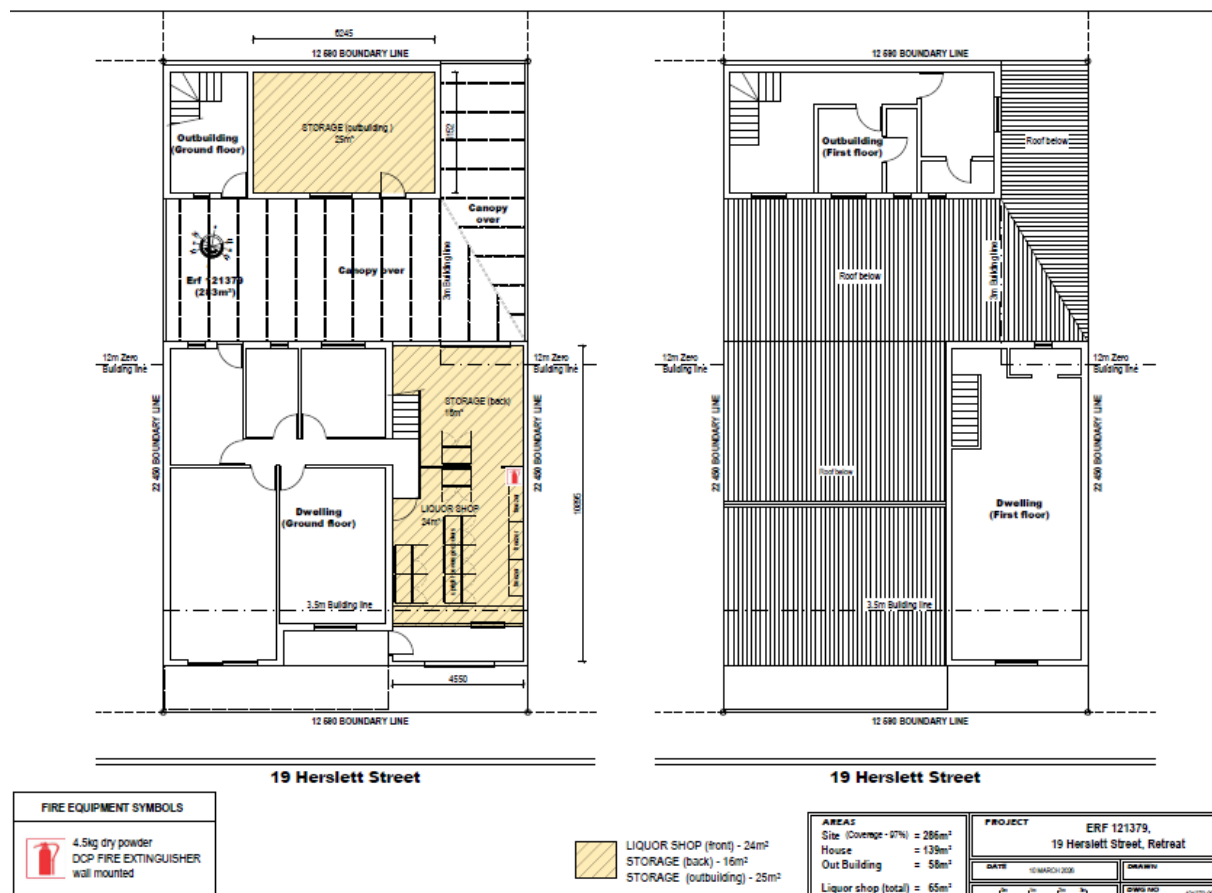
The site is located in a medium density residential neighbourhood with an enclosed road network. Most owners have extended their houses using a variety of building materials. Notwithstanding the relative large road reserves, Peter Charles Street measuring 15,5 m and Herslett Street measuring 8,8 meters, the absence of vehicles in the area is noticeable. In terms of the social vulnerability mapping of the City, the property area scores high i.e. in excess of 70 points. The social vulnerability index shows the degree to which households in Cape Town exhibit certain social conditions, including poverty (low income), are socially vulnerable (youth, aged, disabled, female headed), live in vulnerable conditions (non-formal dwellings/and limited personal mobility (low percentage of private vehicle access which may affect households' ability to respond and manage suffering and financial loss in the event of disaster.

The aerial map below provides a good overview of the residential character of the area. It is perhaps appropriate at this stage to motivate the request for Council consent in terms of the title deed condition requiring the consent of Council for any changes and alterations to the existing build fabric on the property. It would be suggested that an aerial image of the area clearly demonstrates that there is a lack of a coherent built image present in the area. Owners are using different architectural styles and different building materials. It would be suggested that this title deed condition was not very strong policed in the area in the past. Even for the recent approval of the second dwelling in terms of the NBR no request was made by the local authority to apply for the consent of Council. It would be suggested that the proposed additions, covered canopies and structures will not detract from the character of the surrounding area and that Council should grant its consent for the proposed building improvements.



Development proposed

It is proposed to rezone the property to Local Business 2 with a consent use to permit a liquor store on the ground floor and with residential use on the first floor. The



Policy context of the property

Spatial Development Framework and District Plan

At the scale of the Spatial Development Framework and the District Plan, the application is of such a minor nature that both these policy documents do not provide direct guidance for the proposed application. At the level of the District Plan much emphasis is placed on the diversification of land uses in residential areas. The proposed liquor shop which measures only 24 sq meters is considered part of the land use diversification proposed within residential areas by the District Plan.

Social Development Strategy

The Social Development Strategy articulates the role of the City in promoting and maximising social development. Social development is broadly understood as the overall improvement and enhancement in the quality of life of all people, especially people who are poor or marginalised. At its core is a focus on addressing poverty, inequality and social ills while providing for the participation of people in their own development.

The Social Development Strategy is structured around five high-level objectives;

- Maximise income generation opportunities for people who are excluded or at risk of exclusion.
- Build and promote safe households and communities.
- Support the most vulnerable through enhancing access to infra structure and services.
- Promote and foster social integration.
- Mobilise resources for social development.

The application speaks to a number of the high-level objectives of the Social Development Strategy particularly the maximisation of income for people who are excluded and support for the most vulnerable.

Economic Growth Strategy

The economic growth strategy recognises that inclusive growth can contribute to the alleviation of existing poverty and inequality as well as the livelihoods for current and future generations. The economic development strategy recognises that key developments at both a global and national level have altered the economic landscape with the most prominent of these the Covid -19 pandemic. The pandemic has had an indelible impact on the local economy, with widespread job losses and business closures. Nevertheless, it must be emphasised that the pandemic merely compounded a pre-existing downturn.

It is emphasized in the Economic Growth Strategy that Cape Town is facing serious economic challenges characterised by declining economic growth, inadequate employment growth and job creation and entrenched inequality in an already unequal

society. The economic growth strategy aimed at supporting sectors, businesses, household or individual growth in a meaningful and sustainable manner. In the context of inclusive growth, this application is compliant with this policy of the City.

The Alcohol and Other Drug Harm Minimization and Mitigation Strategy

The Alcohol and Other Drug Harm Minimization and Mitigation Strategy acknowledges the harm from substance abuse. It is stated that the strategy should assist in;

- Prevention of the misuse and abuse of alcohol and drugs;
- Intervention for those misusing, abusing or addicted to alcohol and other drugs;
- Suppression of alcohol, drugs and drug related criminal activity; and
- Co-ordination of stakeholders and role-players involved in prevention, intervention and suppression activities.

The strategy identifies the role the City should play in addressing this problem. The strategy certainly does not suggest that there should be a ban on liquor sales. From a design perspective, the policy is advocating the proactive rezoning of areas based on the “high street model” to enable business to formalise in specific township areas and thus facilitate the formalisation of business and potentially the licencing of previously unlicensed shebeens. The application is considered compatible with this policy. Alcohol is not a banned substance; it is a highly regulated commodity and for many good reasons.

It is necessary to note that alcohol is fairly readily available in most of the supermarket stores found in the larger area. Therefore, rejecting the application for a land use departure to permit the property to be used to sell alcohol in an attempt to limit the number of facilities selling alcohol will not limit people from using alcohol. Not only is alcohol available from existing major supermarkets found in the area, but statistics have shown the banning of the sale of liquor in terms of the COVID regulations had the effect that the sale of illegal alcohol has skyrocketed.

The point which is being made is that alcohol or access to alcohol will always be available to individual members of society. It would be argued that to regulate the disposal of alcohol from an identifiable regulatory approved property is far better than selling alcohol and associated substances from illegal premises. In addition selling alcohol close to the source of use will ensure personal safety of clients from robbery and mugging attempts travelling between place of purchase and place of use.

Whilst it will be suggested that to have a moral view on the use of alcohol and the known social impacts resulting from an abuse of alcohol, such moral views cannot be used as a valid reason for rejecting a land use departure application to permit a liquor shop.

Assessment of the application in terms of the criteria specified in section 99(3) of the Municipal Planning By Law

Socio –Economic Impact

The proposed liquor store measures only 24m² and would not have a substantial socio economic impact on the community. It is too small in scale to have an impact. However, for the applicant it is important as it can mean the difference between earning an income and having no income. However, this application once again stressed the importance for the City to promote township economic development and the establishment of local and small-scale businesses in township areas to prevent income leakages from these areas.

Compatibility with surrounding area

An application to establish a liquor shop of 24m² and 41m² storage for the off-site consumption of alcoholic beverages needs to be evaluated at a number of levels. Perhaps a very important point to be made is that a temporary land use departure was previously submitted and approved for a period of five years. During this period of five years the liquor shop did not give rise to any complaints from the surrounding owners or community. It can only be assumed that the owner conducted himself in a responsible manner ensuring that his activity did not give rise to any negative impacts on the surrounding community. The purpose of this application is to regularise the land use rights previously enjoyed under the temporary land use departure.

At the level of desirability the development and strengthening of townships economies needs to be promoted. Simultaneously the development of a culture of responsible use of liquor in targeted communities should also be an important objective of the City. Attempts to ban liquor have a history of failure. Perhaps the best example of these failures can be found in the prohibition rules in America. Governments across the world have introduced a regulation regime for alcohol and such need is undeniable.

Many township areas lack suitable located sites with the correct zoning to conduct businesses. The township areas due to residential demand and the residential compaction of the areas make vacant land a scarce commodity in townships. Traditional policies advocating the establishment of liquor outlets along higher order roads are simply not realistic and achievable. The property under consideration is located at the intersection of Peter Charles Street and Herslett Street with Peter Charles Street performing a higher order road function linking with Retreat Road and the latter linking into Prince George Drive , a road of metropolitan significance carrying high volumes of metropolitan traffic. From a locational point of view, the location of the property at this intersection justifies the use of more intensive uses.

Research undertaken in townships has shown that there are more illegal liquor outlets than legal outlets. It cannot be denied that the regulatory regime is also failing. It is against this background that it will be suggested that liquor stores which have demonstrated that they can operate within a community without impacting negatively on the surrounding community be supported. The current property under consideration has demonstrated that it has a record of accomplishment of responsible trading and can operate without impacting negatively on the surrounding community.

At a site level the following factors need to be taken into consideration in the motivation of the application. The larger portion of the site will remain being used for resi-

dential purposes whilst only a portion on the ground floor will be made available for a liquor store. The owner /operator of the liquor store will reside on the property. It is in his interest to ensure that the liquor store is properly managed and not impacting negatively on the surrounding area.

The following conditions are proposed to be made conditions of approval to ensure that the liquor store does not impact negatively on the surrounding area.

Advertising – only limited advertising should be permitted notwithstanding that the facility will only serve a limited catchment area.

Littering – the owner should be made responsible to ensure that no littering takes place in the immediate public/street environment within a radius of 25m from the property by providing additional waste bins and appointing a staff member to ensure that the area is kept clean from any littering on a daily basis.

Music and games – no loud music or electronic games will be permitted as part of the liquor store and no activities will be permitted to encourage loitering.

Deliveries – deliveries will not take place with vehicles with an axle load in excess of two tons and such deliveries will take place outside peak traffic periods.

Temporary storage – no temporary storage of crates on sidewalks will be permitted during loading and off-loading of liquor.

It should be noted that most visitors to the liquor store arrive on foot and that the service catchment of the liquor store is limited to serving the immediate community. Vehicle access to the site is limited as a result of the insular nature of the lay out of the neighbourhood and it is unlikely that clients from other areas will make use of the facility.

It will be suggested that given the scale of the activity, the location and the fact that the majority area of the property will be used for residential purposes by the owner will limited any impact on the surrounding area. The owner also has a proven record of accomplishment for managing a liquor store on site without any negative impacts or complaints from the surrounding area or adjacent neighbours.

Impact on external engineering services

The proposed rezoning to permit a small-scale liquor shop will not impact negatively on external engineering services. As was stated previously the property has been used previously for a period of five years to run a small liquor store without affecting existing services. The necessary bulk and linking services are in place to accommodate the proposed development.

Impact on safety, health and wellbeing of the surrounding community

The proposed small-scale liquor shop will not impact negatively on the safety, health and wellbeing of the surrounding community. The liquor shop will service a relative small catchment area and will act as a convenience facility for the surrounding community.

Community members wishing to acquire alcoholic beverages will not need to visit formal shopping centres in the nearby area to acquire their liquor needs. It is a known fact that individuals visiting these formal shopping centres on foot to acquire alcoholic beverages are often attacked. Having a facility locally will ensure that people from the community will have safe access to a local facility in close proximity to where they stay. Having an approved facility will also ensure that the necessary inspections are carried out by local and provincial inspectors to ensure that the facility is complying with all the conditions of approval imposed by health, law enforcement and safety officials. The activity will also be conducted from a building with the necessary building plan approval in place reinforcing the fact that the facility and use do not act as a threat to the surrounding community.

Impact on heritage and the biophysical environment

The proposed redevelopment and use of the property for a small scale liquor shop will not impact negatively on the heritage and biophysical environment of the area. There are no elements of heritage value within the larger area or on site. From a biophysical perspective, the area is fully developed with little or no areas of natural value or biophysical importance.

Traffic impacts, parking, access and other transport related considerations

The property is located on the intersection of Peter Charles Street and Herslett Street. The property only measures 286m². It needs to be stated that the small-scale liquor shop and storage measuring less than 65m² is not a major traffic generator. Most clients to the liquor shop arrived on foot and have no access to private vehicles. The liquor shop will also only serve a small catchment area given its floor area and the fact that the street layout of this area of Retreat is highly insular in nature. Access for external traffic cannot easily be navigated or penetrate the area. Looking at areal maps, it is interesting to note the absence of vehicles within the urban fabric of the residential neighbourhood. No off site or on street vehicles are visible in the area. This confirms the social vulnerability index of the area which clearly makes the lack of access to private vehicles one of the reasons to rank this area highly.

Four parking bays will be required to accommodate the development on site. Parking is required as follows, 1 for the main house, 1 for the second dwelling and two for the liquor shop. As indicated above this part of Retreat is characterised by the absenteeism of car ownership. It is suggested that given the size of the site that on-site provision of parking will make it impossible to accommodate the current uses found on site. The owner has been using the adjacent vacant site for parking but that site may be developed in future. Whilst there should not be any objection to the use of the site for limited parking it must be made clear that this parking could be removed as a result of the future redevelopment of the site. It is against this background, the fact that the surrounding area has a low car ownership factor as well as the fact that people visiting the liquor shop will arrive on foot that a departure is requested from the parking requirement of 4 bays to 0.

Parking is not provided on site, but the lack of parking provision is not only limited to the site under discussion. Parking will be required for loading purposes but it will be suggested that the road reserve provides adequate space to accommodate parking for loading purposes. From a loading perspective, it should be a condition of approval that loading takes place outside peak traffic time and that the maximum size of the delivery vehicle is limited to an axle weight of 2 tons.

It is also important that an application has been submitted to the City for the lease of the adjacent vacant site for parking purposes. It is understood that this site accommodates major underground services which will make the development thereof nearly impossible.

Conclusion and recommendations

It is necessary to note that alcohol is readily available in most of the supermarket stores found in the larger surrounding area. Therefore, rejecting the application to prevent the property to be used to sell alcohol in an attempt to limit the number of facilities selling alcohol will not limit people from using alcohol. Not only is alcohol available from existing major supermarkets found in the area, but statistics have shown that the banning of the sale of liquor in terms of the COVID regulations had the effect that the sale of illegal alcohol has skyrocketed.

The point which is being made is that alcohol or access to alcohol will always be available to individual members of society. It would be argued that to regulate the disposal of alcohol from an identifiable regulatory approved property is far better than selling alcohol from illegal premises.

Whilst it will be suggested that to have a moral view on the use of alcohol and the known social impacts resulting from an abuse of alcohol, such moral views cannot be used as a valid reason for rejecting a land use application to permit a liquor shop.

It has been submitted in the motivation that the small-scale liquor will not have a negative impact on the surrounding area. The majority portion of the site will remain residential in use and the owner/operator will reside on the property. Certain conditions have also been proposed to ensure that the impact of the liquor shop is minimised.

It is against this background that it is recommended that the application to rezone Erf 121379, 19 Herslett Street, Retreat from Residential 1 to Local Business 2 use for the sale of alcoholic beverages be approved. It is also recommended that Council grants its consent from the restrictive conditions requiring the approval of Council for the proposed building improvements affected on the property. It is further recommended that the permanent departure to exempt the owner from providing four on-site parking bays as well permitting coverage of 97 % in lieu of 75% be approved.