



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID		70578593			
CASE OFFICER		BABAY			
CASE OFFICER PHONE NO		021 444 7843			
DISTRICT		TYGERBERG			
REPORT DATE		25 March 2022			
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO MPTNE19/05/2022

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 14320, PAROW, 17 DELL STREET

1 EXECUTIVE SUMMARY

Property description	14320, Parow
Property address	17 Dell Street, Klipkop
Site extent	596m ²
Current zoning	Single Residential 1
Current land use	Dwelling house
Overlay zone applicable	None

Submission date	21 January 2022
Subject to PHRA / SAHRA	None
Any unauthorised land use / building work?	Yes The unauthorized use relates to utilization of the existing 2 bedrooms and lounge for office purposes. Office use is not a permitted use in the Single Residential 1 zone.
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	No

demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	
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, notice was served on 1 June 2021. See the attached annexure D.

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

Erf 14320, is located at 17 Dell Street in the residential area of Klipklop in Parow. The property is zoned Single Residential 1 (SR1) and measures 596m² in extent.

The property is developed with a dwelling house and a garage. A building plan for dwelling extension, garage extensions and second dwelling was approved on 5 October 2020.

A portion of the property has been used by the owner for offices purposes since April 2021 without the required land use approval, which is contradictory to item 21 of the Cape Town Development Management Scheme (DMS). The unauthorised use triggers a Land Use application.

The applicant submitted a temporary land use departure to permit offices on the property after a notice was served by Council. The applicant was however instructed by the LUM case officer to submit an application for determination of an Administrative Penalty in terms of Section 42 (r) of the MPBL, 2015 (see Annexure E). The applicant subsequently submitted an Administrative Penalty application.

With the submission of the temporary departure application, the applicant did not indicate on the application form that the use was operational (see extract of the application form below)

LAND USE MANAGEMENT APPLICATION In terms of the City of Cape Town Municipal Planning By-Law, 2015 (MPBL)

SECTION A: APPLICANT / AGENT DETAILS

First names	Phumeza	Surname	Owashu
Company / Trust Name	ASAPH Town Planners		
Business partner no.	1002834039	VAT no.	
Business address:	17 Wilkaree Street, Springbok Park		
	Brackenfell	Postal code	7560
		Contact number	0787252949
Email	info@asaphtownplanners.co.za	Cell number	0787252949

SECTION B: SUBJECT PROPERTY DETAILS

Ed / Erven / Farm no.	14320	Allocation area	KLIPKOP, PAROW
Street address	17 DELL STREET, KLIPKOP, PAROW		
Suburb	KLIPKOP, PAROW		
Current Zoning	SR1		
Title deed no. T	2 9 7 8	/	9 5
Title deed no. T		/	
Approximate age of existing buildings		Property Extent	596 m ² /ha
Any restrictive title deed conditions affecting development on the property?	<input checked="" type="checkbox"/>	If Yes, please specify	
Is property encumbered by a bond?	<input checked="" type="checkbox"/>	If Yes, bondholder?	
Any unlawful land uses on the property that relate to this application?	<input checked="" type="checkbox"/>	Yes, has owner / operator been served with a notice in terms of the MPBL to rectify?	<input type="checkbox"/>
Any other structures on the property that relate to this application?	<input checked="" type="checkbox"/>	If Yes, has owner / operator been served with a notice in terms of the MPBL to rectify?	<input type="checkbox"/>

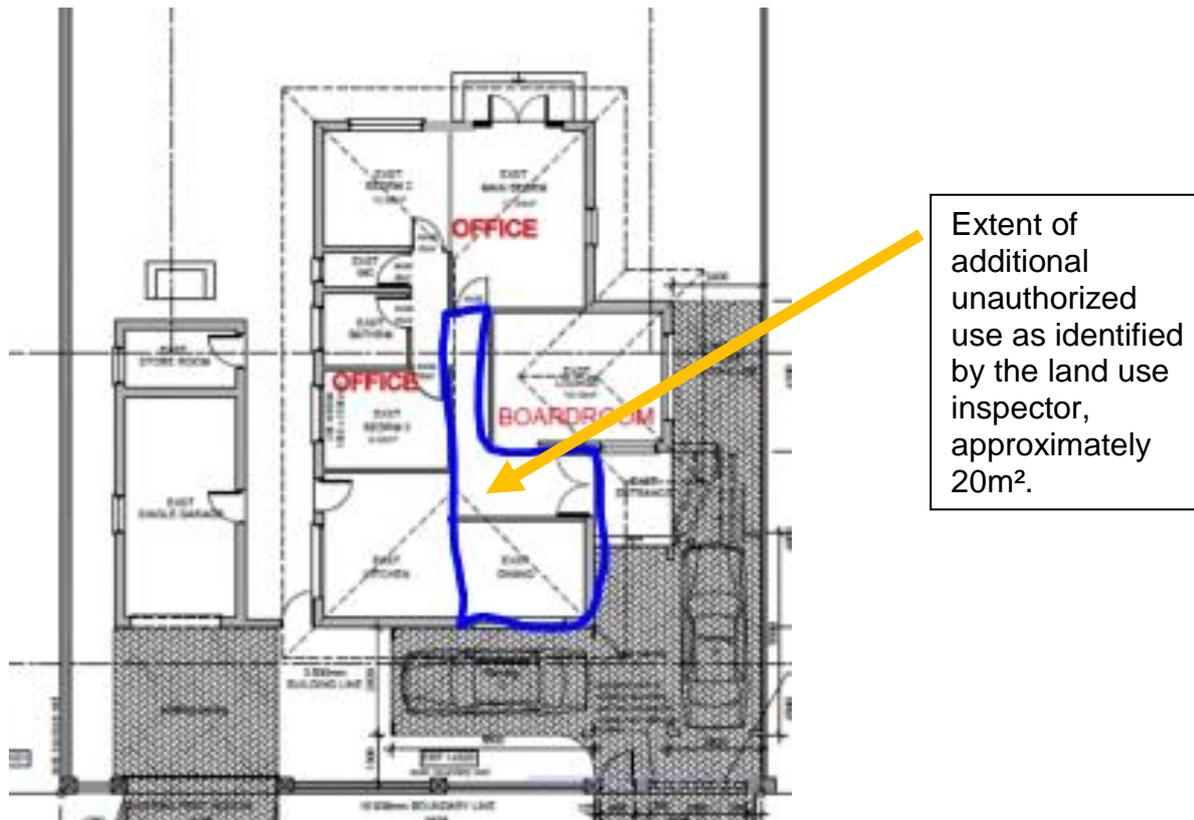
Note: If the purpose of this application to rectify a contravention in terms of the MPBL then an application must also be made for the determination of an administrative penalty in terms section 42(r) of the MPBL. A separate form (LUM016) must be submitted with this application.

The administrative penalty application is referred to the MPT for a determination.

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 unauthorized use relates to utilization of the existing 2 bedrooms and Lounge for offices purposes.
- The land use contravention commenced from the 1st April 2021 (9 months ago)
- The extent of the unauthorized use is 42.57m² (MPT to note that this is not a true reflection of the extent of the use as the report by the Land Use Inspector indicates the use of the existing dining area and entrance hall as part of the business. Including passageways, this adds another approximate 20m² to the area of the unauthorized use.)
- The unauthorized use has not stopped.
- The owner has not previously contravened this By-Law.



- 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

$$\frac{\text{Total Municipal Value of property (1 200 000)}}{\text{Total area of property (596m}^2\text{)}} \times \text{Total Unlawful Area (62.57m}^2\text{)} = \text{R125 979.86}$$

An amount, which is not more than 100% of R125 979.86, 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 contravention involves the operation of offices from a portion of the house by the owner of the property. The unauthorized use is not permitted as a primary or consent use right in a SR1 zoning, hence the applicant applied for a temporary land use departure.

Duration – the unauthorized use on the property has been in operation for 9 months, which is regarded as a short time period.

Gravity - The unauthorized use is of an office nature and contained within the existing residential structure. However, the change in use requires the submission of a building plan where the health and safety concerns can be addressed for the use changed. Currently staff is accommodated within the office space in the absence of the required health and safety checks that are associated with building plan scrutiny. The gravity of the contravention is therefore considered serious.

Extent – the extent of the contravention is approximately 62.57m², which is considered of small scale as compared to the size of the property but significant in comparison with the size of the existing residence. However, the area on the building plan indicated as a bedroom is not utilized for permanent residency with the owner indicating that it is utilized by a staff member from time to time.

b) The conduct of the person involved in the contravention

The applicant did not indicate on the initial temporary departure application form that the use was in operation prior to planning approvals. Owners also have to co-sign application forms to verify the correctness of information that is submitted with an application. The applicant also did not reveal the true extent of the unauthorized use as illustrated above.

c) Whether the unlawful conduct was stopped

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

After the owner was informed of the unlawful conduct by the Land Use inspector on the 1 June 2021, acting on complaints received, the owner submitted a temporary land use departure application and subsequently an application for determination of an administrative penalty.

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

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

- 5.4 considering the extent of the contravention, conduct of the owner, short duration and serious gravity, an administrative penalty to the amount of R5 000.00 is recommended that equate to approximately 4% of the municipal value of the area of contravention.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The duration of the unauthorized land use is regarded as short.
- 6.2 The extent of the unlawful use is regarded as significant in comparison with the size of the residence. There is no permanent residential component on the property.
- 6.3 The gravity of the contravention is regarded as serious with the conduct of an office on the property incorporating staff members and receiving members of the public in the absence of the necessary health and safety checks being executed with building plan scrutiny and land use management applications.
- 6.4 The conduct of the owner is problematic as the unauthorized nature of the business was not revealed with the submission of the Land Use application and the true extent of the unauthorized use was not indicated.
- 6.5 There is no evidence that the owner has previously contravened the MPBL or any other Planning Law

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R5 000.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 14320, Parow.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Site Layout Plan
Annexure C	Applicant's motivation
Annexure D	Notice served for the unauthorized use (offices)
Annexure E	Additional info letter



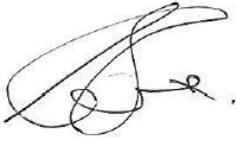
Section Head : Land Use Management

Name Tess Kotze

Tel no 021 444 7506

Date 21 April 2022

Comment

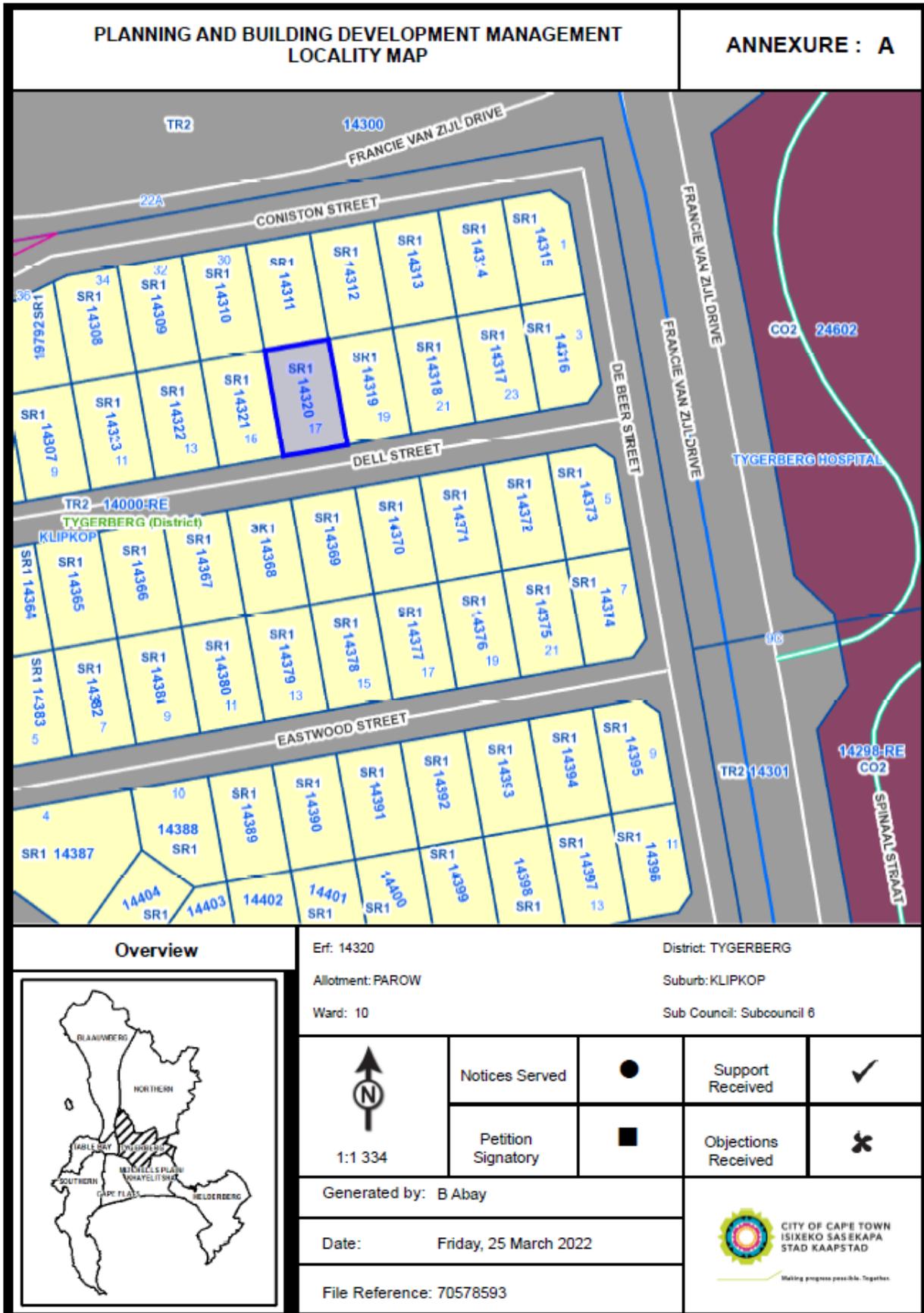


District ManagerName Dewaldt Smit

Comment

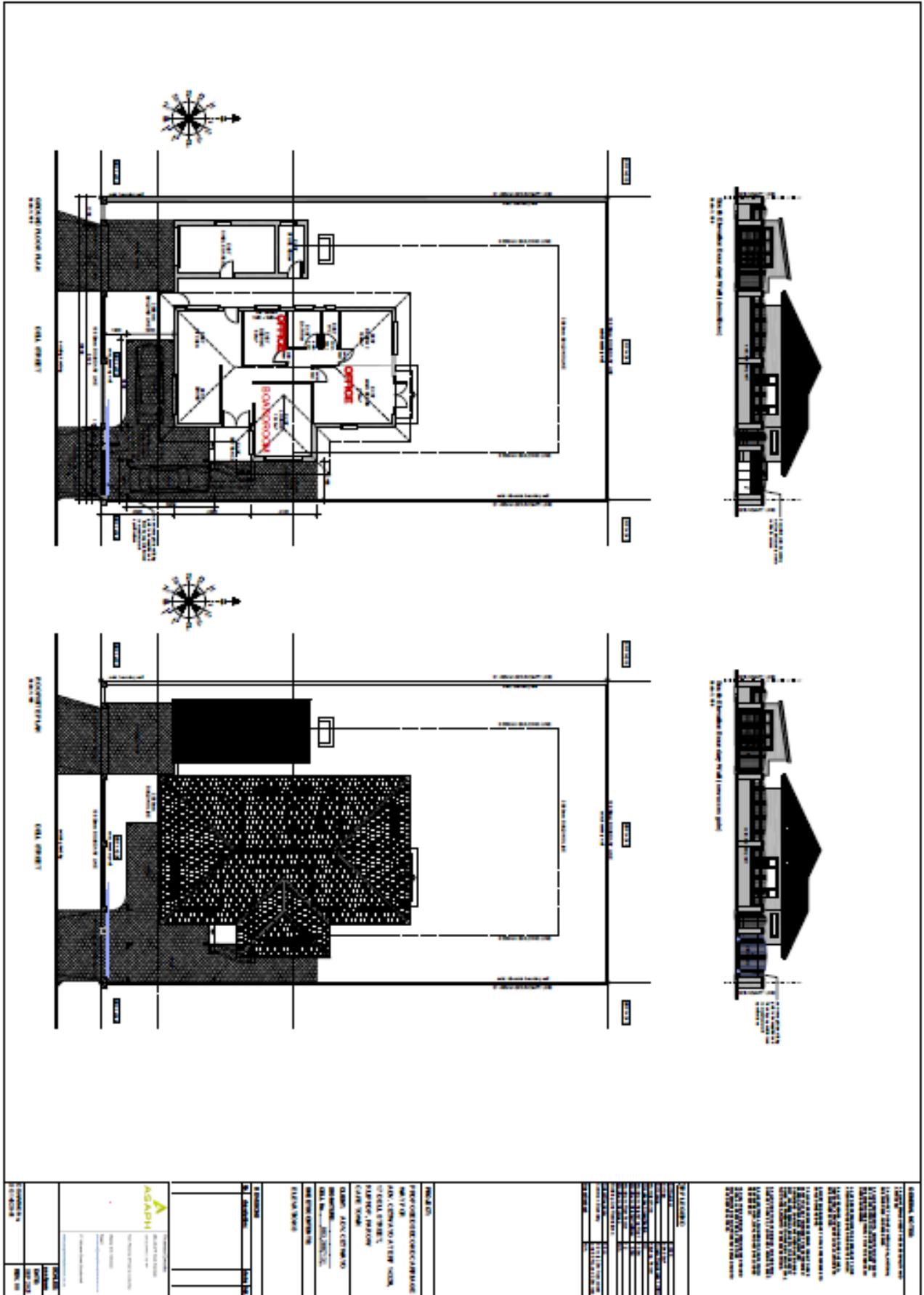
Tel no 021 444 7840Date 21 April 2022

Annexure A Locality Plan



Annexure B

Site Layout plan



Annexure C

Applicant's Motivation

APPLICATION FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF SECTION 42 (R) OF THE MUNICIPAL PLANNING BY-LAW, 2015

ERF 14320, 17 Dell Street, Parow

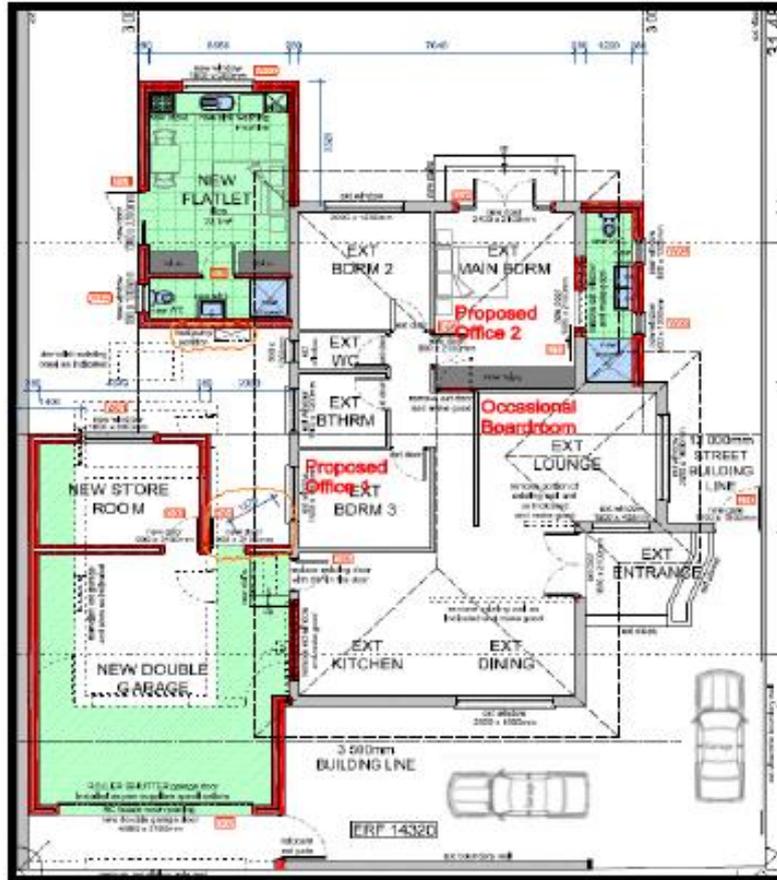


TABLE OF CONTENT

1. Executive summary
2. Introduction
3. Nature of application
4. Locality
5. Description of the property/area and surrounding land uses
6. Administrative Penalty
7. Conclusion

LIST OF ANNEXURES:

Annexure A: Application form
Annexure B: Power of Attorney
Annexure C: Motivation report
Annexure D: Building Plans

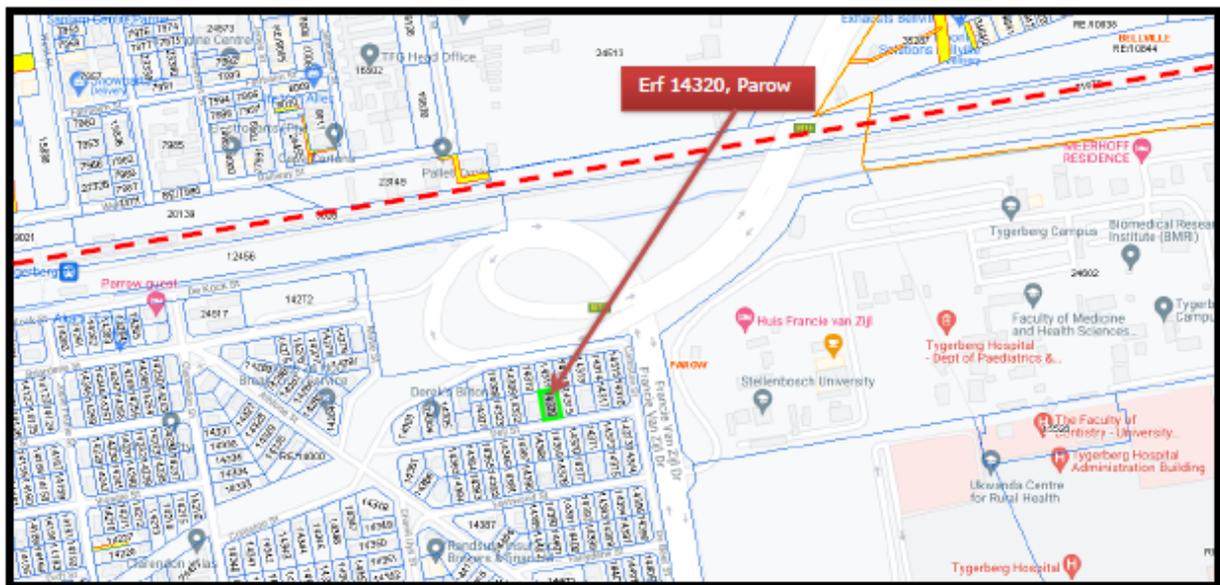
3. NATURE OF THE APPLICATION

Application is made in terms of the City of Cape Town Municipal Planning By-Law on Erf 14320, 17 Dell Street, Parow for:

- 1) **Administrative penalty** in terms of section 42 (r) of the City of Cape Town Municipal Planning By-Law, 2015.

4. LOCALITY

Erf 14320 is located along Dell Street, Parow. The site is well accessible, it can be accessible via Francie Van Zijl drive, De La Rey Street and Dell Street from Parow and the surroundings.



The proposed site is also located in close proximity to Francie Van Zijl Street which connects to Bellville and the rest of Parow area.

Erf 14320 is located adjacent to Tygerberg hospital which is a regional hospital facility. The proposed site is also located in close proximity to Tygerberg railway station.

5. DESCRIPTION OF THE PROPERTY/AREA AND SURROUNDING LAND USES

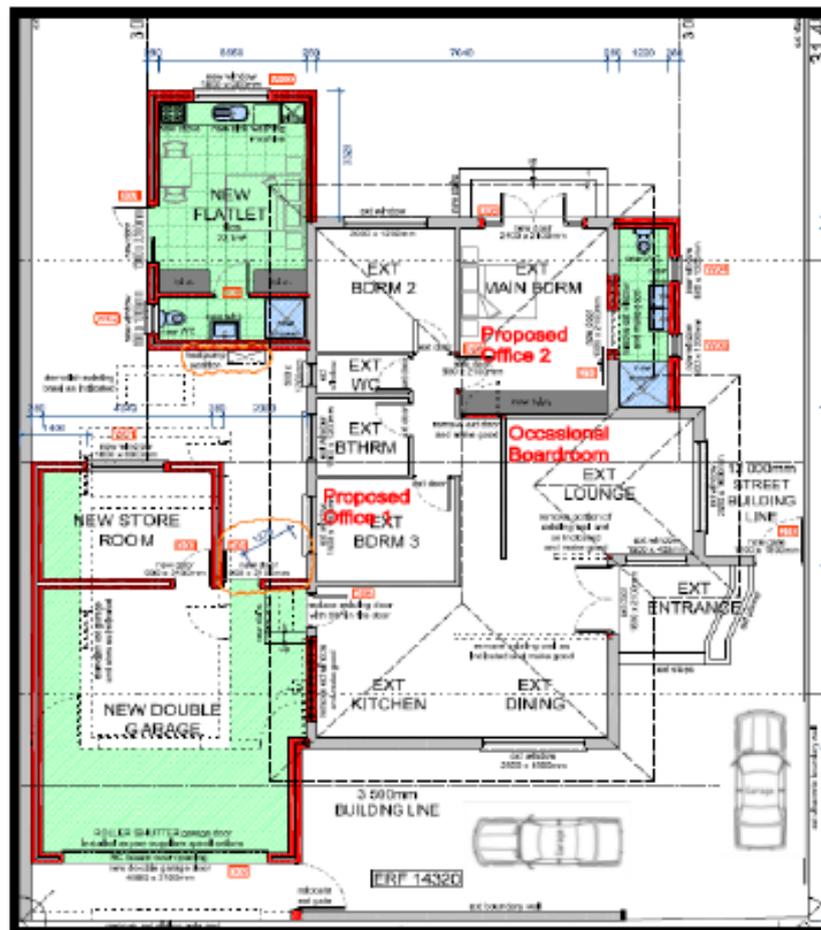


Erf 14320 is situated at Klipkop, Parow. The subject site is located in an established area and is located in one of the oldest suburbs in Parow. The surrounding properties vary in sizes ranging from 590 m² and more.

The subject site is currently utilised for dwelling purposes and is surrounded by mixed land uses. The predominant use on the opposite of the subject site is a regional hospital facility - Tygerberg hospital.

The property is located in close proximity to Parow industrial, railway station, block of flats and shops.

6. ADMINISTRATIVE PENALTY



In terms of section 129(8), the following factors need to be considered when determining an appropriate administrative penalty:

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

The owner has been operating offices on the property since 1st April 2021 from the existing house. The owner of the property was unaware that she must submit land use application for operating offices on the property. The owner was advised by city officials to submit application.

The unlawful use on the premises is for an office that is currently operational.

The size of the unauthorized land use for offices is **42.57 m²**.

The land use contravention relates to the operation of a business (office) that is currently operating without obtaining prior approvals.

b) The conduct of the person involved in the contravention

The owner has appointed ASAPH Town Planners to apply for a determination of an administrative penalty.

The owner of the property has submitted this application in order to rectify the unauthorized land use on the property. A land use application has been submitted under case ID 70556477 for Temporal departure.

The intention of the owner is to fully comply with all the requirements of the Bylaw.

(c) Whether the unlawful conduct was stopped

The owner of the property is currently operating the offices on the property and has not stopped the unauthorized activity. A Land Use application under case ID 70556477, for a Temporal departure in order to allow offices on the property has been submitted and is under consideration.

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

The owner of the property has not previously contravened the By-Law and the submitted application and temporal departure application is an indication that the owner is willing to comply with the bylaw requirements.

Municipal value of the property: R 1 185 000.00

Floor area of unauthorized office area: 42.57 m².

7. CONCLUSION

The owner of the property is regularising the unauthorized activity on the property. It is the intention of the owner to rectify the unlawful use, hence the owner appointed the Town planner to submit land use application for this property.

Annexure D

Notice served for the unauthorized Land uses



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

DEVELOPMENT MANAGEMENT

Natalie Molifie
Property Inspector

T: 021 444 7948

C: 062 356 0215

E: Natalie.Molifie@capetown.gov.za

LENF005

PERSONAL SERVICE

1 June 2021

Nonkosi Cetywayo
17 Dell Street, Klipkop

Notice number: 000070552024_002_001

Dear Nonkosi Cetywayo

COMPLIANCE NOTICE IN TERMS OF SECTION 126 OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015: ERF: 14320 PAROW, 17 DELL STREET, KLIPKOP:

You are the registered **owner** of Erf **14320 PAROW** situated at 17 DELL STREET KLIPKOP.

An inspection carried out on **24 May 2021** indicated that you are conducting Administrative offices from the abovementioned property.

The property is zoned **SR1 Single Residential Zone 1 : Conventional Housing** in terms of the development management scheme, which constitutes schedule 3 of the City of Cape Town Municipal Planning By-Law, 2015 ("the By-Law"). A list of the uses that are permitted in terms of this zoning is attached as Annexure A.

Sections 35(2) and (3) of the By-Law provides that:

35(2) *No person may use or develop land unless the use or development is permitted in terms of the zoning scheme or an approval is granted or deemed to have been granted in terms of this By-Law.*

and/or

35(3) *No person may contravene or fail to comply with a condition of approval imposed or deemed to have been imposed in terms of this By-Law.*

In terms of section 133 of the By-Law, a person is guilty of an offence if the person-

(a) *contravenes a -*

(i) *decision taken or a condition imposed or deemed to have been taken or imposed in terms of this By-Law;*

(ii) *provision of the development management scheme;*

(iii) *uses land in a manner other than permitted by the development management scheme;*

(iv) *compliance notice issued in terms of section 126; or*

(v) *directive issued in terms of section 128.*

You are hereby instructed to cease the unlawful conduct and to comply with the provisions of/ ensure compliance with (the By-Law/ zoning of the property) (within 30 days) on or before.....1 July 2021.....

Parow Administrative Building,
off Voortrekker Road and Talent Street, Parow, 7800
www.capetown.gov.za

In terms of section 133(2) of the By-Law, a person is liable to a fine of R800 000.00 or imprisonment not exceeding 20 years, or to both a fine and such imprisonment.

In terms of section 133(4) of the By-Law, an owner -

(a) who permits their land to be used, or fails to take reasonable steps to ensure that their land is not used in a manner which constitutes an offence in terms of this By-Law is guilty of an offence and upon conviction is liable to the penalties contemplated in subsection (2).

The City may, in the event of non-compliance with this notice, take one or more of the following measures -

- (i) if relevant, take steps contemplated in section 127 to withdraw an approval for a temporary departure or an approval granted for a limited period of time;
- (ii) take steps contemplated in section 128 to issue a directive in the terms specified in the notice;
- (iii) apply in terms of section 129 for the determination of an administrative penalty;
- (iv) apply to a competent court for appropriate relief including the costs of the application; and
- (v) institute a criminal prosecution.

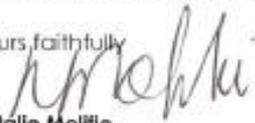
Note that in terms of section 130 of the By-Law, you may apply to the City for the necessary approval.

If you submit an application, you must submit an application for and pay an administrative penalty determined in terms of section 129 of the By-Law before the City may consider an application.

Kindly note that if you do not cease the unlawful conduct, this may increase the amount of the penalty determined in terms of section 129 of the By-Law

Note: In terms of section 130(4) of the By-Law the submission of an application for, determination of, or payment of an administrative penalty in terms of section 129, or the approval of an application does not limit the City's power to investigate an offence or institute a criminal prosecution.

Yours faithfully


Natalie Moliffe
DEVELOPMENT MANAGEMENT

If personal service:

Received by Patricia Salomo

Signature [Signature]

Capacity Reception

Date 01 June 2021

Served by at

Signature

Capacity

Date

Parow Administrative Building,
 cnr Vosstruiker Road and Talent Street, Parow, 7500
www.capetown.gov.za

Annexure E

Additional info letter



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

DEVELOPMENT MANAGEMENT

NNGXWASHULA
SENIOR PROFESSIONAL OFFICER

T: 021 444 7843 F: 021 444 7843
E: NTOMBOXOLO.NGXWASHULA@CAPETOWN.GOV.ZA
Case ID: 70556477

BLUM004

22 OCTOBER 2021

PHUMEZA QWASHU QWASHU
9 NEPTUNE STREET
PHOENIX
7441

Dear Sir / Madam

PROPOSED APPLICATION: Cape Town Municipal Planning BY LAW: SECTION 42(C) - TEMPORARY DEPARTURE: ERF 14320, PAROW, 17 DELL STREET KLIPKOP

Your application with reference 70556477 accepted on 09 JULY 2021, refers.

I wish to advise that your application is currently considered incomplete and cannot be processed any further. You therefore need to provide the City within 20 days from the date of notification (see footnote) with the following additional information and/or fees necessary to consider your application:

- It has been picked up while doing an assessment of this application that the land use applied for is in fact in existence, contrary to the the declaration in the application form that there is no unauthorised land use on the property.
- No trace of an administrative penalty application can be found on the system for the unauthorised land use on site. Please rectify this as soon as possible by making the said application.
- Your application and motivation needs to be extended to include the reality of the current land uses on site and be truthful.

In terms of section 75(5) of the City of Cape Town Municipal Planning By-Law, 2015 you may dispute the need for the additional information requested, by requesting an authorised official to make a determination on the decision to request additional information, within 21 days from the date of notification (see footnote read together with the Interpretation Act 1957).

Kindly note that the City may close the application if:

- all additional information as requested is not received by the City within 20 days from date of notification (*further note that in terms of section 75(1) of the City of Cape Town Municipal Planning By-Law, 2015 you may request an extension of time to provide the requested information. This motivated request must be received within 20 days of notification. The request will be considered by an authorised official who will confirm the decision in writing*), or
- you have not timeously requested an authorised official to make a determination if you dispute the decision to request additional information,

in which case any application fee paid will be forfeited and the application will be deemed to be refused.

Accordingly, this application is held in abeyance pending your attention to the abovementioned matters. Kindly note the application case ID allocated to your proposal and quote it in all future correspondence.

Yours faithfully

for DIRECTOR : DEVELOPMENT MANAGEMENT