

REPORT TO: MUNICIPAL PLANNING TRIBUNAL

ITEM NO

WARD 66: APPLICATION FOR CONSENT IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: ERF 5292 GRASSY PARK, 5 IVAN ROAD, LOTUS RIVER

#### MPTSW58/11/19

| Case ID                   | 70459762          |
|---------------------------|-------------------|
| Case Officer              | Quanitah Savahl   |
| Case Officer phone number | 021 684 4348      |
| District                  | Cape Flats        |
| Ward                      | 66                |
| Ward Councillor           | William John Akim |
| Report date               | 2019-10-28        |

#### 1. EXECUTIVE SUMMARY

| Property de          | Property description    |        | Erf 5292 Grassy Park                             |  |  |
|----------------------|-------------------------|--------|--|--|--|
| Property address     |                         |        | 5 Ivan Road, Lotus River                         |  |  |
| Application          | componer                | nts /  | Consent to permit a House Shop to operate from a |  |  |
| description          |                         |        | portion of the property.                         |  |  |
| Site extent          |                         |        | 275m²  |  |  |
| Current zon          | ing                     |        | Single Residential 1                             |  |  |
| Current land use     |                         |        | Dwelling house                                   |  |  |
| Overlay zor          | Overlay zone applicable |        | None   |  |  |
| PHRA or SAI          | IRA heritag             | e      | None   |  |  |
| Public partion       | cipation out            | come   | Notice to neighbours. 1 objection received       |  |  |
| Recommended decision |                         |        |  |  |  |
| Approval             | 4                       | Refuso | Approval in part & Refusal in part               |  |  |

#### 2. BACKGROUND FACTS

2.1 The house shop was in operation but ceased operating after being served with a Notice by the Property Inspector.

#### 3. SUMMARY OF APPLICANT'S MOTIVATION

- 3.1. The applicant's motivation of the proposed development (see Annexure D) may be summarised as follows:
  - House shop needed as an income.
  - It is safer for the elderly and young.

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- Operating times are 07h00 until 21h00, Mondays to Saturdays and 08h00 until 13h00 on Sundays and public holidays.
- Two people will run the shop.
- Only foodstuff and cool drinks will be served.

#### 4. PUBLIC PARTICIPATION

|             |                                     | Applicable | Dates / Comments          |
|-------------|-------------------------------------|------------|---------------------------|
|             | Notice in the media (s81)           |            | N/A                       |
|             | Notice to a person (s82)            | <b>Y</b>   | 10 June 2019              |
| D0          | Notice to Community organization    | (\$83)     | No community organisation |
| Advertising | Notice to Ward Councillor (\$83)    |            | 10 June 2019              |
| erti        | Notice of no objection (s84)        |            | N/A                       |
| À           | Notice to Provincial Government (s8 | 36)        | N/A                       |
| ٧           | Notice to an Organ of State (s87)   |            | N/A                       |
|             | Public meeting                      |            | N/A                       |
|             | On-site disptay                     | Ì          | N/A                       |
|             | Objections                          | <b>V</b>   | 1                         |
| me          | Objection petition                  | *          | None                      |
| 95,         | Support / No objection              | ·          | None                      |
| Outcome     | Comments                            |            | None                      |
| )           | Ward Councillor response            | <b>✓</b>   | Objection                 |

#### Summary of objection / comment received

4.1. Objection / comment received in respect of the application (see Annexure E) may be summarised as follows:

#### Objection from Ward Councillor

- Residents complained about the illegal tuck shop.
- The garage is being leased/rented.
- Do not support the application

#### Summary of applicant's response to public participation

- 4.2. The applicant's response to the objections received (see Annexure F) may be summarised as follows:
  - Trying to earn a living and have a family to support.
  - Objection has nothing to do with the shop.

The applicant submitted a petition of support along with the response to the objection received.

#### 5. BACKGROUND TO PROPOSAL

#### **Background**

5.1. The Property Inspector served a Notice on the owners and operators to cease operating the house shop by 21 September 2019. A follow up inspection by the

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Property Inspector on 26 September 2019 confirmed that the house shop has ceased operating until the outcome of the land use application.

#### Description of the area / surrounding land uses

5.2. The subject property is located in Ivan Road in Lotus River in the area bounded by the commercial area of Ottery in the north, Strandfontein Road in the east, Klip Road in the south and a canal in the west. The area can be considered to be a low to medium income area. On the opposite side of Ivan Road, to the west, are 4-storey high, blocks of flats owned by the Municipality. The remaining surrounding area is mainly single residential properties with a Place of Worship (church) located further south west and a large Place of Instruction (Early Childhood Development centre) located to the south east. Further south is a large open space utilised as a play park, soccer pitch and netball/basketball courts.

#### Property description

5.3. The subject property is small and consists of a single storey, semi-detached dwelling house with a single garage. There are two structures at the rear of the property. The front section is hard surfaced/paved and except for an overhanging tree from the neighbouring property there is no vegetation/garden on the property. There is a low wall on the street boundary.

#### Proposed development

5.4. The proposal is for Council's Consent to operate a House Shop from the existing garage on the subject property. There will be two staff members. The size of the house shop is ±18m². The applicant has proposed hours of operation to be 07:00 until 21:00 from Mondays to Saturdays and from 08:00 until 13:00 on Sundays and public holidays. Foodstuffs and cooldrinks will be sold.

#### PROPOSAL ASSESSMENT

#### Criteria for deciding application

- 6.1. Consideration of criteria in terms of Section 99(1):
- 6.1.1 Compliance with the requirements of the MPBL
  - The application requires a Consent application only.
  - The decision maker is the Municipal Planning Tribunal.
  - Public Participation was correctly undertaken as per the requirements of the Notification Policy.
  - No Administrative Penalty is required as the contravention is no longer taking place.
- 6.1.2 Compliance or consistence with the municipal spatial development framework

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6.1.3 Consideration in terms of Section 99(3) of the desirability of the following criteria:

The proposal is considered to be desirable for the reasons given in Section 6.2.4 below.

6.1.4 Would approval of the application have the effect of granting the property the development rules of the next subzone within a zone?

No

I am satisfied that the decision making criteria in Section 99(1) have been complied with.

I am satisfied that the considerations in Section 99(3) have been assessed and that the proposed land use is desirable.

- 6.2 Consideration of criteria in terms of Section 99(2)
- 6.2.1 Any applicable spatial development framework

Not applicable

6.2.2 Relevant criteria contemplated in the DMS

|     | Development Management Scheme:<br>House Shop conditions  | Discussion   |
|-----|--|--|
| (a) | The extent and position of the retail component must be clearly defined on the plan, and excluding any toilet or change room, shall not exceed 40m <sup>2</sup> or 40% of the total floor space of the dwelling, whichever is the lesser area; | The size of the House Shop is ±18m <sup>2</sup> . The Dwelling House will be used for residential purposes and will remain the dominant use on the property.                 |
| (b) | In addition to the house shop, the property shall contain a dwelling which shall be occupied by the proprietor of the house shop;  | Complies. The property contains a dwelling house. A condition has been included in Annexure A stipulating that the house shop proprietor needs to occupy the dwelling house. |
| (c) | Any new structure, or alteration to the existing dwelling house, second dwelling or outbuilding, shall conform to the residential character of the area;   | No new additions or alterations are proposed.  |
| (d) | No more than three persons in total shall<br>be engaged in retail activities on the<br>property, including the occupant or<br>occupants and any assistants;  | Two persons will be working in the shop in addition to the property owner.   |

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| e)         | Only one un-illuminated sign is permitted in accordance with Council's Outdoor Advertising and Signage by-law, which shall be affixed to the wall of the house shop or boundary wall, and shall not exceed 0,5 m² in area;  | No proposal has been made with respect to signage. A condition has been included in Annexure A.   |
|------------|---|---|
| <b>(f)</b> | The following are not permitted in a house shop: sale of alcoholic beverages, storage or sale of fireworks, storage of gas for sale, sale of gas containers, vending machines, gaming machines, video games or pool tables; | No proposal has been made with respect to these items. A condition has been included in Annexure A.   |
| (g)        | The area used for a house shop may not open directly onto a bedroom or toilet, and no goods which will be sold from the house shop may be stored in a bedroom or toilet;  | Complies – The House Shop will operate from a garage.   |
| (h)        | No animals are permitted in the area used for a house shop.   | The House Shop will operate from a garage.  |
| (i)        | The house shop shall be adequately ventilated and illuminated, and if perishable food is sold, the City may require refrigeration to be provided.   | Approved building plans exist for the garage. A condition has been included in Annexure A that a building plan for a change in use must be submitted. |
| Ø          | The house shop shall not operate outside the hours of 07:00 to 21:00 on Mondays to Saturdays and 08:00 to 13:00 on public holidays or Sundays.  | Complies  |
| (k)        | Not more than one vehicle may be used in connection with a house shop and shall not exceed 3500kg gross weight, including delivery vehicles.  | No proposal has been included. A condition has been included in Annexure A.   |

6.2.3 Applicable policy or strategy approved by the City to guide decision making

#### **Economic Growth Strategy, 2013:**

Approval of the house shop will allow for the opportunity for economic activity on the property. The house shop, albeit small will contribute to the economic activity in the area while creating employment for two individuals as well as generating an income for the owner and family.

- 6.2.4 Consideration in terms of Section 99(3) of the extent of desirability of the following criteria:
  - a. Socio-economic impact

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The City's Integrated Development Plan seeks to create an economically enabling environment that is conducive to job creation (i.e. the Opportunity City). House Shops and other small businesses arise as a response to the social needs and economic demands of the community. The informal sector not only reduces unemployment levels, but also supplements household incomes, raises standards of living and improves the level of accessibility to convenience goods and services in residential areas. In this case, a local outlet for retail goods is being provided, economic activity is being created and entrepreneurship is being encouraged.

The City's Social Development Strategy further encourages entrepreneurship in that the strategy supports the creation of income-generating opportunities. Broadly, the proposal is consistent with the City's socio-economic objectives.

#### b. Compatibility with surrounding uses

For a house shop to be viable, it needs to operate within a residential area as this is the customer base of the shop. The scale of the operation will be low key and limited to a portion of the property only. The dwelling house will remain for residential purposes.

#### c. <u>Impact on the external engineering services</u>

Not applicable

#### d. Impact on safety, health and wellbeing of the surrounding community

In general, house shops do not generate excessive noise levels which would affect the neighbours. The residential based shop sector also offers a convenience that is not necessarily offered by the formal sector. The house shop would be operating in accordance with the parameters of the Development Management Scheme and other applicable legislation. The presence of a home based occupation allows for increased security during the day when nearby property owners are away, leaving their properties unattended. Although the garage will be used for the house shop, there is still space available on-site for the property owner's vehicle thereby preventing on-street parking. The operation of the house shop and its impact on the surrounding community can be controlled by means of conditions of approval.

#### e. Impact on heritage

Not applicable

#### f. Impact on the biophysical environment

Not applicable

#### g. Traffic impacts, parking, access and other transport related considerations

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The Transport Planning (Transport Impact Assessment and Development Control) department has indicated that the proposal will have a nominal impact on the surrounding road network. It is expected that the majority of trips will be done by pedestrian traffic and on-street parking is available, if required.

At most times, local neighbourhood shops sell limited goods and customers seldom spend in excess of 10-15 minutes inside these shops. The location of the property is not close to busy roads which would attract many people with cars to visit the shop.

h. Conditions that can mitigate an adverse impact of the proposed land use

These have been contained in Annexure A.

#### 6.2.5 Impact on existing rights (other than the right to be protected against trade competition)

It is not envisaged that the existing rights of surrounding properties will be impacted upon as the proposal is small scale and complies with the parameters of the Development Management Scheme for house shops.

#### 6.2.6 Other considerations prescribed in relevant national or provincial legislation.

The proposal is considered to be aligned with both the SPLUMA and LUPA development principles, particularly as it relates to the principles of spatial sustainability, efficiency, spatial resilience and good administration for the following reasons:

- The house shop will operate from a portion of a residential property, thereby promoting the diversified use of land in a sustainable location without creating urban sprawl.
- Existing land resources are optimised in operating a business from home and jobs will be created. The criteria set out in the Economic Growth Strategy have been met.
- The application has been processed according to the procedures and timeframes set by the Municipal Planning By-Law.

I am satisfied that the decision making criteria in Section 99(2) have been complied with.

#### 6.3 Regarding the objections

The Property Inspector conducted a site inspection and confirmed that the house shop no longer operates. The Development Management Scheme does not stipulate that the house shop owners need to be the property owners as well

The petition submitted by the applicant indicates the support of many local residents and this contradicts the objector's submission.

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#### 7. REASONS FOR DECISION

- 7.1. Reasons for the recommended decision for **approval** relating to the application for the Consent may be summarised as follows:
- 7.1.1 The proposal will enable small business growth and therefore complies with the Economic Growth Strategy (2013).
- 7.1.2 The proposal complies with the criteria, including operating hours and number of employees, for House Shops as specified in Development Management Scheme.
- 7.1.3 The Transport Planning (Transport Impact Assessment and Development Control) department supports the proposal.
- 7.1.4 The proposed house shop would be of an appropriate scale for a residential area.

#### 8. RECOMMENDATION

In view of the above, it is recommended that:

8.1. The application for Consent to permit a House Shop on Erf 5292 Grassy Park be approved in terms of Section 98 (b) of the Municipal Planning By-law, 2015, subject to the conditions contained in Annexure A.

#### **ANNEXURES:**

| Annexure A    | Application details and Conditions of approval to be imposed |
|---------------|--|
| Annexure B-B1 | Regional & Locality maps / Public participation map          |
| Annexure C    | Layout plan  |
| Annexure D    | Applicant's motivation                                       |
| Annexure E    | Objection/comment received                                   |
| Annexure F    | Applicant's response to objection /comment received          |
| Annexure G    | List of Relevant Parties                                     |

all'Can

| Section<br>Manage |            | :   | Land | Use | Comment |
|-------------------|------------|-----|------|-----|---------|
| Name              | A McCann   |     |      |     |         |
| Tel no            | 021 684434 | 1   |      |     |         |
| Date              | 30 Octobei | 201 | 9    |     |         |

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Newman

Name <u>Chad Newman</u>
Tel no <u>021 684 4310</u>

Date 30 October 2019

Comment

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A

Application Details
& Conditions of

Approval

#### ANNEXURE A

2818

In this annexure:

**CASE ID:** 70459762

#### 1. APPLICATION GRANTED IN TERMS OF SECTION 98 (b) OF THE BY-LAW

1.1 Item 21(c): Consent to permit a House Shop on a portion of the property.

#### 2. CONDITIONS OF APPROVAL IMPOSED IN TERMS OF SECTION 100 OF THE BY-LAW

#### 2.1 DEVELOPMENT MANAGEMENT

- 2.1.1 This permission is only valid as long as the proprietor permanently resides on the property.
- 2.1.2 The extent of the House Shop shall not exceed 18m² and shall be substantially in accordance with the plan submitted by the applicant attached as Annexure C to the Departmental Report with Case ID 70459762, dated 23 October 2019.
- 2.1.3 Within three (3) months of this approval, the owner shall submit a building plan application for the change in use of the garage into a House Shop.
- 2.1.4 The House Shop shall only operate between 07:00 and 21:00 from Mondays to Saturdays and between 08:00 and 13:00 on Sundays and Public Holidays.
- 2.1.5 A maximum of three employees in connection with this activity shall be permitted, whether or not such person ordinarily resides on the premises at any one time.
- 2.1.6 The following are not permitted in a house shop: sale of alcoholic beverages, storage or sale of fireworks, storage of gas for sale, sale of gas containers, vending machines, gaming machines, video games or pool tables.
- 2.1.7 Not more than one vehicle may be used in connection with a house shop and shall not exceed 3 500 kg gross weight, including delivery vehicles.
- 2.1.8 Only one un-illuminated sign is permitted in accordance with Council's Outdoor Advertising and Signage by-law, which shall be affixed to the wall of the house shop or boundary wall, and shall not exceed 0,5m² in area.

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<sup>&</sup>quot;City" means the City of Cape Town

<sup>&</sup>quot;The owner" means the registered owner of the property

<sup>&</sup>quot;The property" means Erf 5292 Grassy Park, 5 Ivan Road, Lotus River

<sup>&</sup>quot;Bylaw" and "Development Management Scheme" has the meaning assigned thereto by the City of Cape Town Municipal Planning Bylaw, 2015 (as amended)

<sup>&</sup>quot;Item" refers to the relevant section in the Development Management Scheme

- 2.1.9 Should the business activity be significantly changed or altered after approval where Council is of the opinion that the activities conducted become a source of nuisance to adversely detract the amenity of the neighbourhood, Council reserves the right to review the situation and serve a notice in writing on the person conducting the activity calling upon him to
  - a) Comply with such instruction set out in such notice; and
  - b) Cease using the premises in question by a date specified in such notice.

#### **NOTES**

#### **CITY HEALTH - ENVIRONMENTAL HEALTH**

Compliance with the Western Cape Noise Control Regulations P.N. 7141/2013 as promulgated under the Environment Conservation Act, 1989 (Act 73 of 1989) by not creating a disturbing noise and/or noise nuisance to surrounding property owners.

An application must be made for a Certificate of Acceptability for food premises in terms of Regulation R926 dated 23/11/2012 promulgated under the Foodstuffs, Cosmetics and Disinfectant Act (54 of 1972).

The premises must be made to comply with the requirements of the Tobacco Control Act, 1993 (Act No. 83 of 1993) and Notice Relating to Smoking of Tobacco Products in public places, Regulation No. R975 dated 29 September 2000. No tobacco products are to be sold to under-aged individuals.

#### FIRE AND RESCUE SERVICES

The development must comply with the By-law relating to Community Fire Safety.

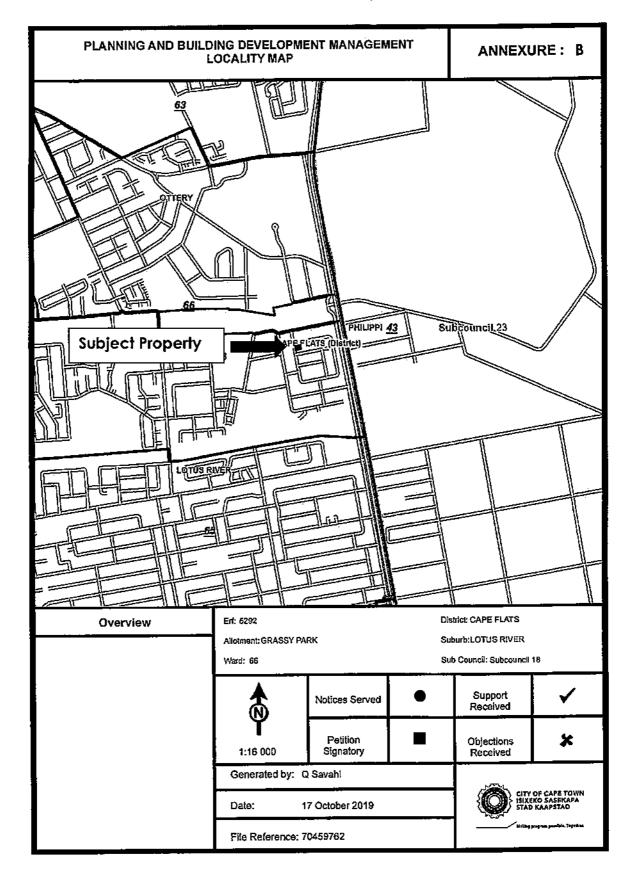
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B-B 1

Regional & Locality

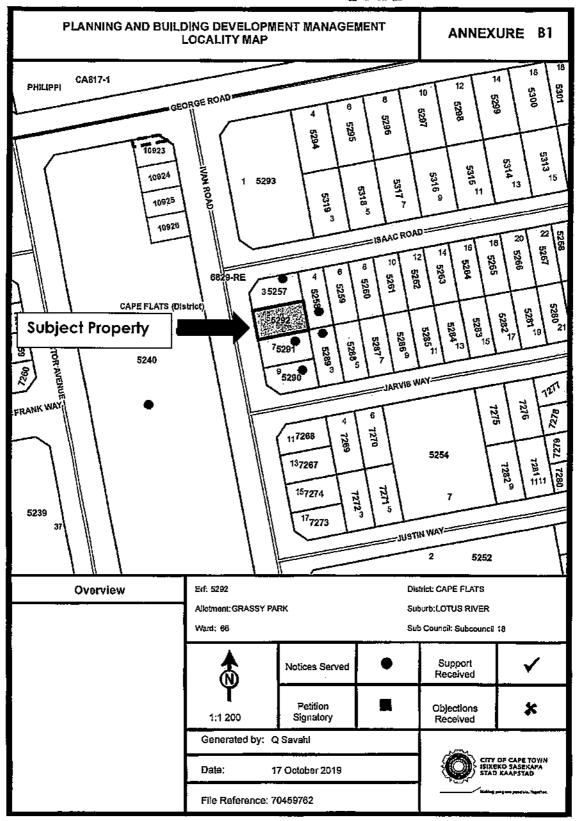
Maps

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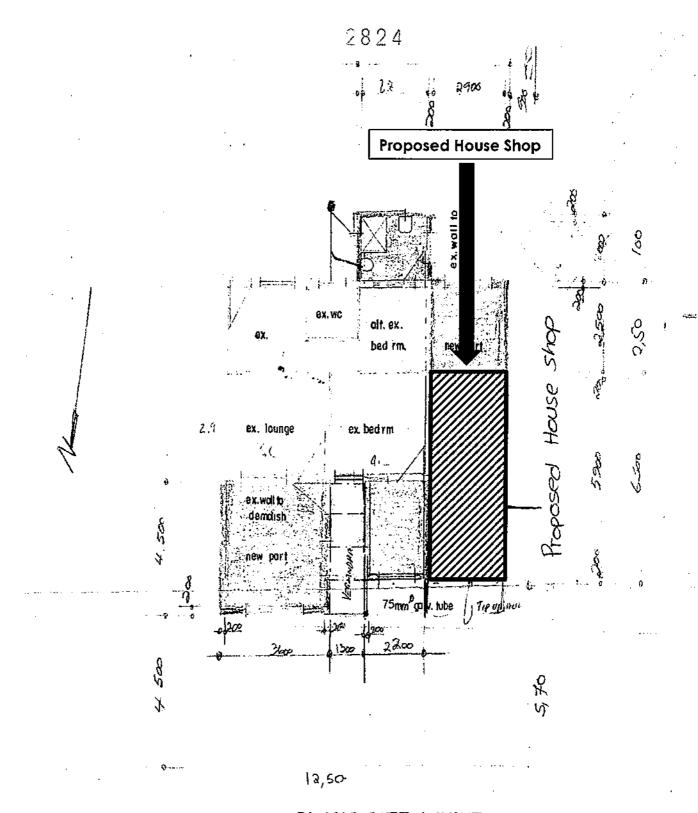


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2822



Layout plan



PLANS SITE LAYOUT

2825

# Annexure

D

Applicant's motivation

#### **Motivation Letter**

I Simon Nock, executor of the Late Estate of Ms A. M. Nock at 5 Ivan Way, Ottery and my sisters is applying for registration for a Tuck-shop in our Garage.

This is with the help of our council as things stand we struggling as only my two sisters are working.

This will help with the schooling of the young ones. We also don't want to go in arears with our water and other bills.

There is a lot of elderly people around and it will help them and the young kids. They don't need to go where it is dangerous. There are no parking bays in the area, however it currently is in walking distance for the public.

I am imploring our Municipality to help us.

Operating times for the shop will be as follow:

07h00 until 21h00, Mondays to Saturdays and 08h00 until 13h00, Sundays and Public Holidays.

Two people will be running the shop, only foodstuff and cool drinks will be served.

We thank you sincerely

Simon Peter Nock

BIANCA FRANCISCA NOCK

ROBYNE MONIGA NOCK

Desiree Sherlun Nouk

E

Objection/comment received

#### Mark Florus

From: William Akim

Sent: 09 June 2019 11:12 AM

To: Mark Florus Cc: Quanitah Sayahl

Subject: RE: APPLICATION FOR CONSENT USE IN TERMS OF SECTION 42(1) OF THE CITY OF

CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 IN RESPECT OF ERF 5292, NO 5

IVAN ROAD, LOTUS RIVER / GRASSY PARK- Notice

#### Good day

Hope you are well today thank you for notification I want to inform your office that residents from Ivan Road came to our office to complaint about illegal tuck shop at above mention address its alleged that they are leasing / renting the garage I am not in support of this application

#### Regards

Clir William John Akim Ward 66: Grassy Park, Parkwood, Offery Economic Opportunities & Management Portfolio Committee william.akim@capetown.gov.za Cell

0822161833 Offery 0214447794













PHOLUMNY CITY

From: Mark Florus < Mark.Florus@capetown.gov.za>

Sent: Friday, 07 June 2019 1:07 PM

To: William Akim < William. Akim@capetown.gov.za> Cc: Quanitah Savahl < Quanitah Savahl@capetown.gov.za>

Subject: APPLICATION FOR CONSENT USE IN TERMS OF SECTION 42(I) OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 IN RESPECT OF ERF 5292, NO 5 IVAN ROAD, LOTUS RIVER / GRASSY PARK- Notice

#### Dear CLLR

1) Councillor: Att Clir William Akim: WARD 66 (For your information and comment -attached Advertising letter)

F

Applicant's response to objection / comment received

2830

To Quanita Savahl

5 Ivan Way Ottery 7800 11 September 2019

My name is Shanaaz Johnson. I'm a mother of two children who is trying my best to keep the pot going. My son finished matric last year and is struggling to find work. My daughter just started High school this year.

Starting this Business would be the best thing for me and my family with the unemployment rate that is so high. I'm asking as a mother with tears in my eyes to help me and my family to earn an honest living.

Melanie Arendse (074 704 1849) was last year's ward counselor. I will attach a petition with some of my happy customers. This is a chance for me and my family to start a new beginning. Melanie will tell you that the objection is not intended for me

Your Faithfully

Shanaaz Johnson

### **PETITION**

Shanaaz Johnson

084 381 9646

| PETITION SUMMARY &<br>BACKGROUD | This business is essential and beneficial, not only the employer as profit will be earned but the employer will provide basic needs to the community at an affordable price. With the availability of all staple foods, less family's will go to bed hungry. |
|---------------------------------|--|
| ACTION PETITION FOR:            | We, the undersigned, are the customers and supporters of Alif shop situated at 5 Ivan way, Ottery. We urge our leaders to act now to grant permission for trading.   |

| Name &<br>Surname: | Address:        | Signature:   | Date:         |
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| Jelmin Ficks 3     | 15990 Way        |                     | 4/9/2019        |
| 1/18 Hope          | Ivon-Way         | Flife               | 4 9 2019        |
| Tiema EngelloleOto | Ivan Way         | F Engelone Ott      | 4 9 2019        |
| 1/cole Josephus    | Lyan Way         | ASSESSED !          | 4/19/2019.      |
| Courses Milliam C  | burt             | f. will own         | 4/9/19          |

| Name &          | Address:                              | Signature: 3 |                            |
|-----------------|---------------------------------------|--------------|----------------------------|
| 'Surname:       | Address:                              | Signature:   | Date:                      |
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| <u> </u>        | Ivan rd                               | (Jakett)     | 04/09/19                   |
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| Amie.           | 18 Say Way                            | after        | 04/09/19                   |
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| SADAM           | 9 Ivan WAY                            | 1st          | 4919                       |
| ARENDEL         | 1 VICTOR 72.                          |              | 12-9-19                    |
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| Naadhirdh       | Thompson                              | Alpen.       | 4.19/2019.                 |
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# List of Relevant Parties

#### **Applicant**

Simon Peter Nock 5 Ivan Road Lotus River 7800 Cell: 084 381 9646

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#### Objector:

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