



DEVELOPMENT MANAGEMENT SCHEME COMPLIANCE ADVISORY: 1 OF 2023

INTERPRETATION OF ITEM 45 OF THE DEVELOPMENT MANAGEMENT SCHEME (DMS)

1. QUERY

Do shops on properties zoned GR2 – GR6, which are not integrated with and/or are not located on the ground floor of a block of flats, require an application for rezoning or would it be possible to apply for a permanent departure from item 45?

2. BACKGROUND IN TERMS OF THE DMS

2.1. Item 13: Consent uses

A consent use, as listed under a base zoning in the DMS, is permitted only if the City grants its approval for such consent use.

2.2. Item 40: Use of the property

A shop is permitted as a consent use in the GR2 – GR6 sub-zonings.

2.3. Item 45: Shops

"The City may grant its approval for a shop or shops to be provided within the ground floor of a block of flats, provided that:

- a) a policy plan for the area in which such property is situated makes provision for mixed or commercial uses; and*
- b) the gross leasable area of the shops does not exceed 1 000 m², or 25% of the floor space of the ground floor, whichever is the lesser."*

2.4. DMS definition of shop

A 'shop' or 'shops' means property used for the retail sale of goods and services to the public, and includes a retail concern where goods which are sold in such a concern are manufactured or repaired, provided that the floor space relating to such manufacture or repair shall not comprise more than 40% of the floor space of the shop; 'shop' does not include an industry, supermarket, service trade, motor repair garage, service station, restaurant, adult entertainment business, adult services, adult shop or sale of alcoholic beverages.

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3. INTERPRETATION OF WHEN A SHOP MAY BE PERMITTED IN THE GR2-GR6 SUB-ZONINGS

- 3.1. A shop is permitted as a consent use in the GR2 – GR6 sub-zonings.
- 3.2. Item 45 outlines the conditions and provisions under which the City may grant approval for a shop or shops to be provided and limits this consent use to be provided within the ground floor of a block of flats (therefore the intention is that it must form part of a residential component of a block of flats).
- 3.3. Item 45 is listed under the development rules of the GR2-GR6 sub-zones, which makes it possible to depart from these provisions.
- 3.4. The dominant use for these sub-zonings is intended to be residential, but limited mixed-use development is possible.
- 3.5. If it is thus proposed that a shop or shops that are not integrated with and/or are not to be located within the ground floor of a block of flats will require a departure application from item 45, together with the consent use application. This is necessary to further ascertain what the impact of a shop or shops will be on the property when it is not located within the ground floor of a block of flats, but somewhere else on the property, i.e. separate building or accommodated in an upper storey.
- 3.6. Such departure or consent application does not circumvent the possible need for a rezoning application, whenever the proposal (of shop(s)) will fully or largely eliminate any provision of 'flats' on the property, or if there are no flats in the building being used for shops and/or if the scale of the shop component warrants a rezoning. Therefore, it may be considered an evasion of the intent of the DMS if an applicant applies for a consent use for shops in a GR2-GR6 zoned property if no residential component or block of flats is to be developed or exist in the building being used for shops on the property, or if the scale of the shop component far exceeds the residential component. In such a case rezoning to an appropriate business / commercial zone should be required. The intension of Item 45 is to allow for a relatively small portion of the building containing flats to be used for shops, i.e. the flats still need to be the dominant use of the building.
- 3.7. Any existing conditions of approval, including approved site development plans (SDPs), and policy for the area must be considered to ascertain if the uses are limited or provision is made for mixed or commercial uses on the property.



PLEASE NOTE

Always consult the City of Cape Town Municipal Planning By-law, 2015 (as amended), before any land use application is submitted to the Department.