



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-24-060**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Jason Partridge, Planner  
**Date of Meeting:** July 15, 2024  
**Application for:** Permission  
**File Number:** D13-025-2024  
**Address:** 393-395 Earl Street  
**District:** District 10 - Sydenham  
**Owner:** Jooyun Kwan  
**Applicant:** Carlos Marques

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**Council Strategic Plan Alignment:**

Theme: Policies & by-laws

Goal: 5.3 Diversify Kingston's economic base.

**Executive Summary:**

This report provides a recommendation to the Committee of Adjustment regarding an application for permission for the property located at 393-395 Earl Street. The applicant is proposing to change a grocery store legal non-conforming use to permit a hair salon use. The one residential unit on the second floor of the building is not proposed to be changed.

The requested application for permission under Section 45(2)(a)(ii) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Kingston Zoning By-Law Number 2022-62. The proposed hair salon is similar to the existing legal non-conforming use. Therefore, it is recommended that this application for permission under Section 45(2)(a)(i) of the *Planning Act* be approved.

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**Recommendation:**

**That** the application for permission, File Number D13-025-2024, for the property located at 393-395 Earl Street to permit a hair salon use, be **Approved**; and,

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-24-060.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY PLANNER

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Jason Partridge, Planner

**Consultation with the following Management of the Community Services Group:**

Tim Park, Director, Planning Services

James Bar, Manager, Development Approvals

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**Options/Discussion:**

On March 23, 2024, an application for permission was submitted by Carlos Marques, on behalf of the owner, Jooyun Kwan, with respect to the property located at 393-395 Earl Street. The application for permission is requested to change the grocery store legal non-conforming use to permit a hair salon use. The one residential unit on the second floor of the building is not proposed to be changed.

In support of the application, the applicant has submitted the following:

- Floor Plans (Exhibit F)

All submission materials are available online through the Development and Services Hub (DASH) at the following link, [DASH](#), using "Look-up a Specific Address". If there are multiple addresses, search one address at a time, or submission materials may also be found by searching the file number.

**Site Characteristics**

The subject property is located at 393-395 Earl Street (Exhibit B – Key Map) with road frontages on Earl Street and Albert Street. The site is developed with an existing legal non-conforming ground floor grocery store and 1 residential unit on the second floor. The property abuts low density residential uses to the north, south and to the west. (Exhibit C – Neighbourhood Context Map). The subject property is also located in proximity to various community and open space uses, local schools and commercial uses. The property currently contains a legal non-conforming grocery store with 1 residential unit on the second floor.

The subject property is designated 'Residential' in the Official Plan (Exhibit D – Official Plan Map) and zoned Urban Residential 'UR5' in Zoning By-Law Number 2022-62(Exhibit E – Zoning By-Law Map).

**Permission Application**

Pursuant to Subsection 45(2)(a)(ii) of the *Planning Act*, the Committee of Adjustment may permit the use of any land, building or structure for a purpose that, in the opinion of the Committee, is similar to the purpose for which it was used on the day the zoning by-law was passed or is more compatible with the uses permitted by the zoning by-law than the purpose for which it was used on the day the zoning by-law was passed, so long as the use has continued until the date of the application to the Committee. In determining whether to grant a permission pursuant to Subsection 45(2)(a)(ii), the relevant test is:

- 1) Whether the proposed use is similar to the existing legal non-conforming use; or**
- 2) Whether the proposed use is more compatible with the uses permitted in the zoning by-law than the existing legal non-conforming use.**

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Similarity and compatibility are assessed according to the impacts, such as physical or social impacts, created by the proposed use as compared to the existing legal non-conforming use.

The proposed hair salon use is similar and compatible to the existing legal non-conforming grocery store use since the only changed to the existing building will be the signage out front of the building. The brick façade, entrance, windows and lighting will remain the same. Secondary, the City of Kingston's Official Plan 3.4.F describes neighbourhood commercial to permit local retail or personal services that are generally within walking distance of the market being served in the immediate residential neighbourhood. The existing grocery store and proposed hair salon both provide a similar service to immediate residential neighbourhood when compared to section 3.4. Lastly, since the hair salon will be located within the existing building and no modification to the building or the property is proposed, the proposed hair salon use will not create any additional new noise, odour, traffic conflict, or other nuisance.

### **Provincial Policy Statement**

Subsection 3(5) of the *Planning Act* requires that a decision in respect of the exercise of any authority that affects a planning matter shall be consistent with the Provincial Policy Statement (the PPS). The PPS provides policy direction on matters of provincial interest related to land use planning and development which are complemented by local policies addressing local interests. The application being considered is site specific to accommodate a specific proposal and does not involve any major policy considerations and as such, the proposal conforms to and is consistent with the PPS.

### **Official Plan**

The subject property is designated Residential (Exhibit D – Official Plan Map). The goal of the Residential designation to respond to the housing needs of the City's citizens by retaining and augmenting a broad range of housing at all levels of affordability within a safe, convenient and stable setting, organized primarily into neighbourhoods. Small-scale, local commercial uses such as a convenience shop, coffee shop, hairdresser or barber may be permitted within Residential designations, and in the zoning by-law.

In some circumstances it may be appropriate to grant a change from one non-conforming use to another if the Committee of Adjustment is satisfied that the proposed use complies with the six (6) criteria as per Section 9.5.17 of the Official Plan. The subject application, requesting permission introduce a hair salon as a permitted use in the Urban Residential 'UR5' in Zoning By-Law Number 2022-62, has been reviewed against these policies, provided below.

1. The proposed use is similar to the existing use or more in conformity with the planned use(s);

The proposed hair salon is similar to the existing legal non-conforming grocery store use because it would continue to serve the immediate residential neighbourhood with a service that is within a walkable distance. The proposed hair salon will also be located within the existing building and no modification to the building, or the property is

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proposed. The proposed use will not create any adverse impacts to the neighbouring properties. Additionally, the proposed hair salon conforms with the City of Kingston's Official Plan policies for a Neighbourhood Commercial as the hair salon will be located on the ground floor and is intended to serve the University district area and will require no changes to the exterior building or the one residential unit located on the second floor.

2. The site or building conditions will be substantially improved by the proposed change of use and can adequately accommodate the proposal;

Ground floor interior renovations are being proposed to accommodate the hair salon use and will improve the existing condition of the building. No external renovations are being proposed.

Building Services will require a Building Permits for the change of use and public health unit to be notified.

3. The proposed use is generally compatible with surrounding uses and can meet parking for vehicles and bicycles and other site standards of the general area with accessibility considerations as well as those standards necessary for the proposed use;

The proposed use is located in a residential designation which allows for a hair salon use as neighbourhood commercial use. The Neighbourhood Commercial section of the Official Plan permits convenience goods and services that are generally within walking distance of the market being served in the immediate residential neighbourhood. A hair salon use would serve the immediate residential neighbourhood with a walkable commercial use option. The proposed use will not create any additional noise, traffic or operational nuisance that cannot be mitigated to an acceptable level;

4. Municipal infrastructure, roads and access conditions can accommodate the proposed use; and,

The proposal will not have a negative impact on municipal infrastructure, service, and traffic. Utilities Kingston, Kingston Hydro, and Engineering Services reviewed the application and had no concerns with the application.

5. The proposed use will not negatively impact surrounding lands or building or inhibit them from developing for their intended use.

The application is not proposing any exterior modifications and therefore does not affect the character of the area. The proposed hair salon use is complementary and similar to an existing grocery store legal non-conforming use on-site. Additionally, the approval of the requested permission will not set a precedent in the immediate area, as the commercial use on-site was established since 1987 through the committee of adjustment file number A.2246-87.

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The subject property is not designated or listed on the City of Kingston's Heritage Property Register. Based on the City of Kingston archaeological potential mapping the property is in an area of "Composite Archaeological Potential". Heritage Planning was circulated and they noted that since there are no proposed changes to the property that will result in ground disturbance, an Archaeological Assessment is not required.

The requested permission for a hair salon use meets the general intent and purpose of the City of Kingston Official Plan.

**Zoning By-Law**

The subject property is zoned Urban Residential 'UR5' in Kingston Zoning By-Law Number 2022-62 (Exhibit E – Zoning By-Law Map), which does not permit either the grocery store or hair salon use. However, the existing grocery store use was recognized as a legal non-conforming use on July 17, 1987, the Committee of Adjustment approved application File Number COA-A.2246-87 to enlarge the existing legal non-conforming grocery store to allow the construction of an addition (7.7 metres by 19.83 metres in area). Therefore, the current grocery store has legal non-conforming rights.

**Technical Review: Circulated Departments and Agencies**

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering         | <input checked="" type="checkbox"/> Heritage Services    |
| <input type="checkbox"/> Finance                      | <input checked="" type="checkbox"/> Utilities Kingston  | <input type="checkbox"/> Real Estate                     |
| <input type="checkbox"/> Fire & Rescue                | <input checked="" type="checkbox"/> Kingston Hydro      | <input checked="" type="checkbox"/> Environment Division |
| <input type="checkbox"/> Solid Waste                  | <input checked="" type="checkbox"/> Parks Development   | <input type="checkbox"/> Canadian National Railways      |
| <input type="checkbox"/> Housing                      | <input checked="" type="checkbox"/> District Councillor | <input type="checkbox"/> Ministry of Transportation      |
| <input type="checkbox"/> KEDCO                        | <input type="checkbox"/> Municipal Drainage             | <input type="checkbox"/> Parks of the St. Lawrence       |

**Technical Comments**

This application was circulated to external agencies and internal departments for their review and comment and there were no comments or concerns raised that would preclude this application from moving forward. Any technical comments that are received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

**Public Comments**

At the time this report was finalized, no public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

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### **Previous or Concurrent Applications**

File Number COA-A.2246-87 to enlarge the existing legal non-conforming grocery store to allow the construction of an addition.

### **Conclusion**

The requested application for permission is consistent with the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 2022-62. The proposed hair salon is complementary and similar to the existing legal non-conforming use as it is intended to serve University District as well as the surrounding neighbourhoods. Additionally, the subject property is located in an area designated for Residential uses and no modification to the building or the property is proposed.

Approval of this application will permit a hair salon use on the subject site.

### **Existing Policy/By-Law:**

The proposed application was reviewed against the policies of the Province of Ontario and City of Kingston to ensure that the changes would be consistent with the Province's and the City's vision of development. The following documents were assessed:

#### **Provincial**

Provincial Policy Statement, 2020

#### **Municipal**

City of Kingston Official Plan

Kingston Zoning By-Law Number 2022-62

### **Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on June 15, 2024. Pursuant to the requirements of the *Planning Act*, a notice of Statutory Public Meeting was provided by advertisement in the form of signs posted on the subject site 10 days in advance of the meeting. In addition, notices were sent by mail to a total number of 33 property owners (according to the latest Assessment Roll) within 60 metres of the subject property and a courtesy notice was placed in The Kingston Whig-Standard (Exhibit H – Public Notification Map).

Once a decision has been rendered by the Committee of Adjustment, a Notice of Decision will be circulated in accordance with the provisions of the *Planning Act*.



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**Accessibility Considerations:**

None

**Financial Considerations:**

None

**Contacts:**

James Bar, Manager, Development Approvals, 613-546-4291 extension 1256

Jason Partridge, Planner, 613-546-4291 extension 3216

**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Neighbourhood Context Map (2024)
- Exhibit D Official Plan Map
- Exhibit E Zoning By-Law Map
- Exhibit F Floor Plans
- Exhibit G Site Photo
- Exhibit H Public Notification Map

## Recommended Conditions

Approval of the permission application, File Number D13-025-2024, to convert an existing ground floor commercial space to a hair salon shall be subject to the following recommended conditions:

### 1. Limitation

That the approved permission applies only to the property at 395 Earl Street for a ground floor hair salon use as shown on the drawings attached to the notice of decision.

### 2. No Adverse Impacts

The owner/applicant shall demonstrate to the satisfaction of the City that there are no adverse impacts on neighbouring properties as a result of any modifications to on-site grading or drainage.

### 3. Building Permit Application Requirements

A Building Permit is required for the Change of Use and notification to the public health unit prior to the issuance of a Business License.

The owner/applicant shall provide to the Building Services a copy of the decision of the Committee of Adjustment, together with a copy of the approved drawings, when they make application for a Building Permit.

The drawings submitted with the Building Permit application must, in the opinion of the City, conform to the general intent and description of the approved drawing(s), including any amendments and conditions approved by the Committee of Adjustment, as stated in the decision. It must be noted that additional planning approvals may be required should further zoning deficiencies be identified through the Building Permit application process.

### 4. Standard Archaeological Condition

In the event that deeply buried or previously undiscovered archaeological deposits are discovered in the course of development or site alteration, all work must immediately cease and the site must be secured. The Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132) and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries at the Ministry of Government and Consumer Services (416-212-7499), the Program and Services Branch of the Ministry of Heritage, Sport, Tourism and

Culture Industries (416-314-7132), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

#### **5. Development Engineering**

No parking is permitted on the Albert St Boulevard as it is owned by the City of Kingston.

#### **6. Utilities Kingston**

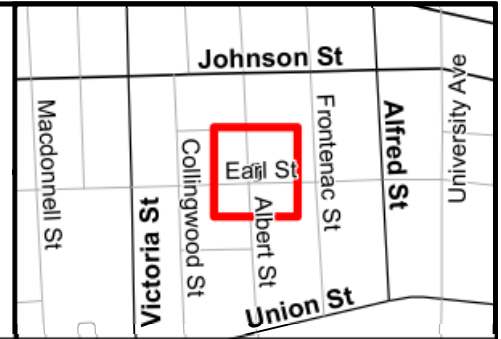
Prior to issuance of a building permit for the hair salon use Utilities Kingston will require a servicing brief for the proposed development assessing required and available domestic and fire flows as well as an evaluation of available existing sanitary capacity at the street and estimated loading on the immediate downstream sewer. System capacity will not be reviewed until a development application with all the required information is made. To service this location would require an Indirect Connection\* to a combined sewer. This will require a downstream sewer assessment to validate the capacity of the sanitary sewers.



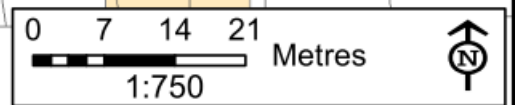
Committee of Adjustment  
**Key Map**

Address: 395 Earl Street  
File Number: D13-025-2024  
Prepared On: May-06-2024

Lands Subject to Minor Variance



Prepared By: ncameron  
Prepared On: May-06-2024










Planning Services

# Committee of Adjustment Neighbourhood Context

Address: 395 Earl Street  
File Number: D13-025-2024  
Prepared On: May-06-2024

-  Subject Lands
-  Property Boundaries
-  Proposed Parcels



Prepared By: ncameron  
Prepared On: May-06-2024

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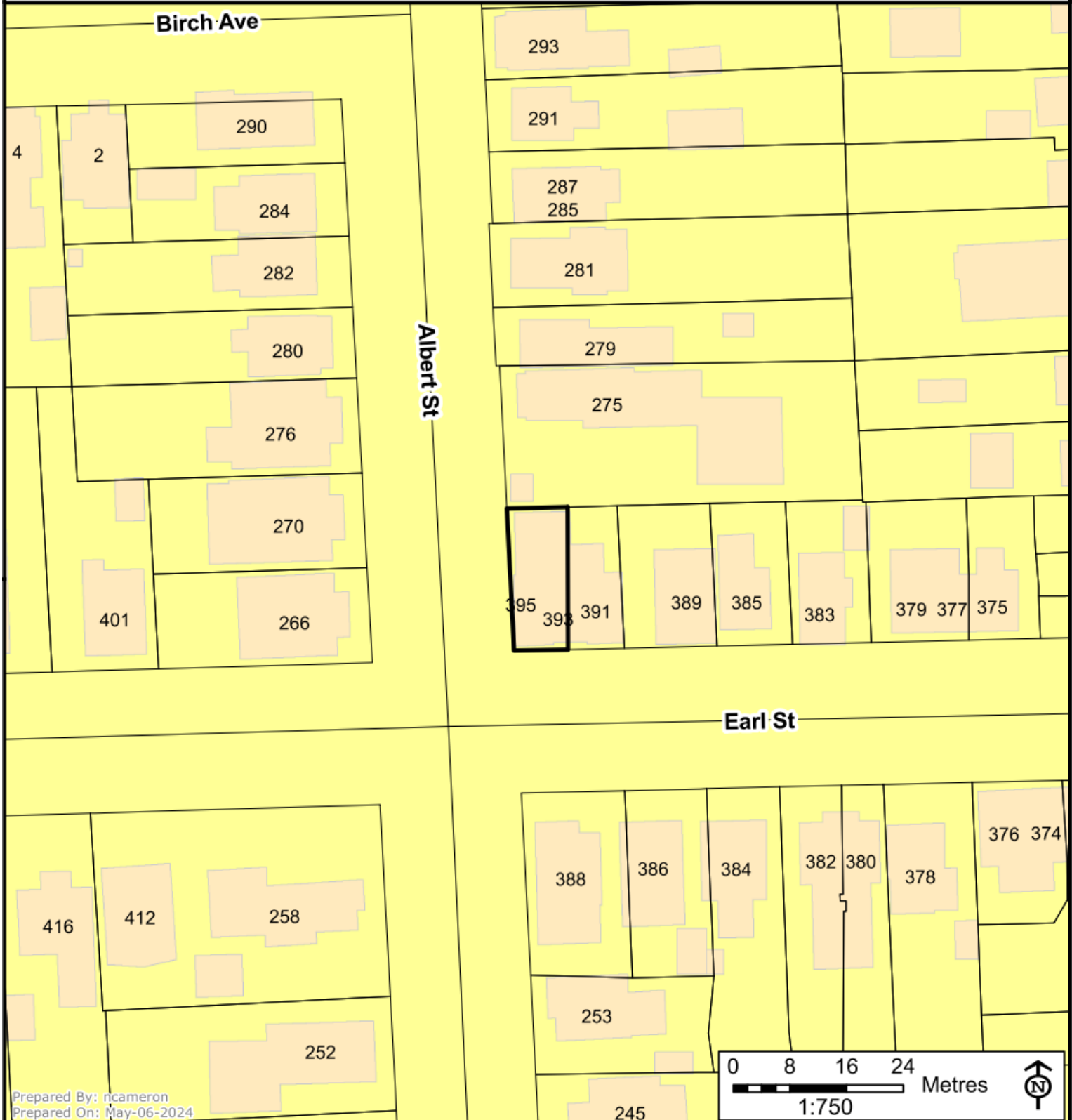




# Committee of Adjustment Official Plan, Existing Land Use

Address: 395 Earl Street  
File Number: D13-025-2024  
Prepared On: May-06-2024

Subject Lands  
 RESIDENTIAL



Prepared By: ncameron  
Prepared On: May-06-2024

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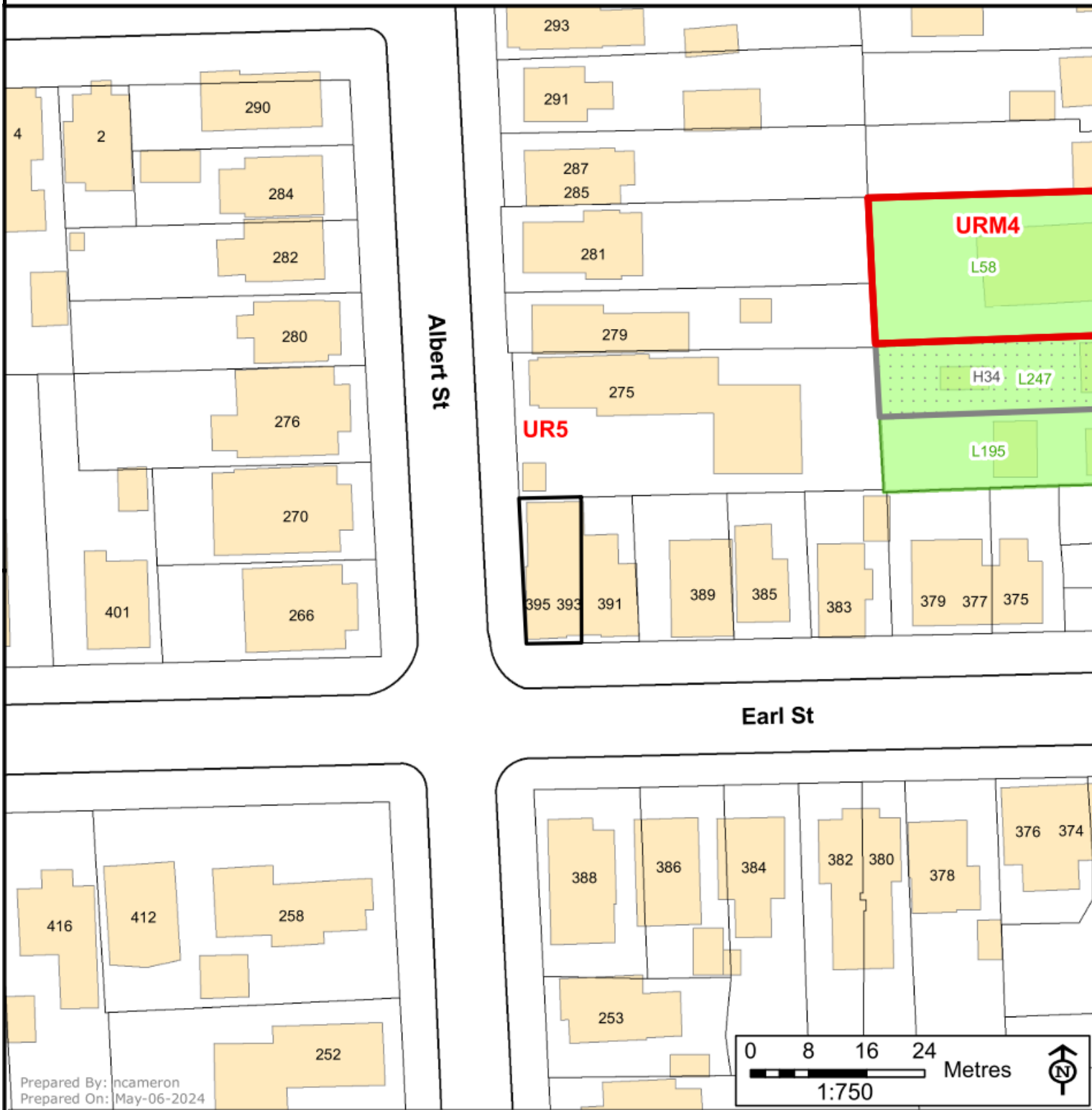
# Planning Committee Existing Zoning Kingston Zoning By-Law 2022-62

Planning Services

Address: 395 Earl Street  
File Number: D13-025-2024  
Prepared On: May-06-2024

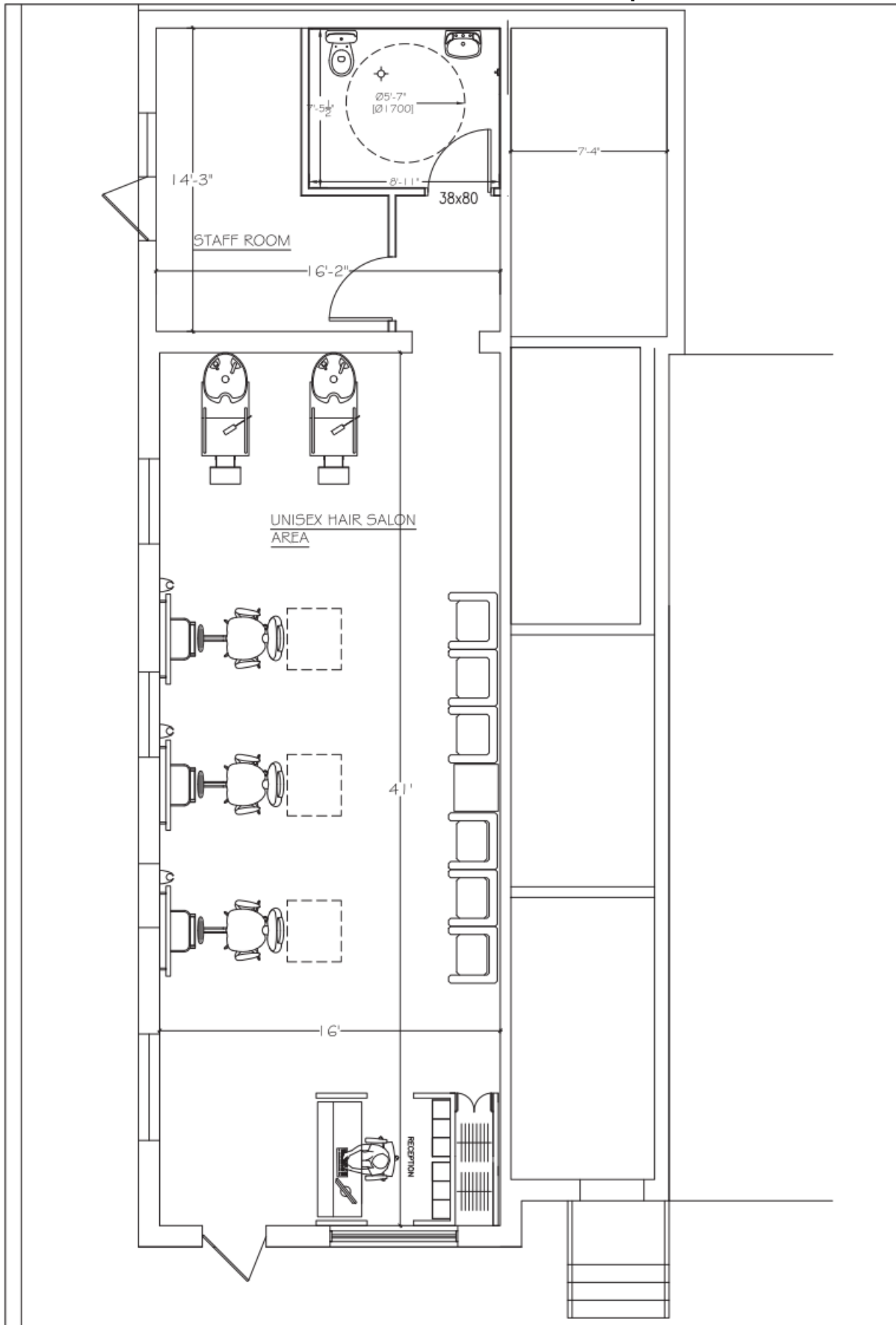
Subject Lands  
 Schedule 1 Zoning Map  
 Zone

Schedule E - Exception Overlay  
 Legacy Exceptions (LXXX)  
 Exceptions (EXXX)  
 Schedule F - Holding Overlay  
 Holding Overlay (HXXX)



Prepared By: Incameron  
Prepared On: May-06-2024

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<p>The undersigned has prepared and takes responsibility for this design and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown:</p> <p>QUALIFICATION INFORMATION</p> <p><b>CARLOS MARQUES</b> 202211 Name <b>BCMP</b></p> <p><b>CARLOS MARQUEL MARQUES</b> 202211 Name <b>BCMP REGISTRATION #</b></p>	<p><b>C.M.MARQUES</b> BUILDING CONSULTING SERVICES 107 Sutherland Drive Kingston, Ontario K7K 5W1 Phone: 613-325-8481 E-mail: carlos.marques@sympatico.ca</p>	<p>PROJECT: <b>393-395 EARL STREET NEW UNISEX HAIR SALON</b></p> <p>LOCATION: <b>KINGSTON, ONTARIO</b></p> <p>FOR: <b>HELEN SENIS</b></p>	<p>TITLE: <b>PROPOSED LAYOUT</b></p> <p>SCALE: <b>1/4" = 1'-0"</b></p> <p>DATE: <b>MAR. 2024</b></p> <p>DWG. NO: <b>A.1</b></p>
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393-395 Earl Street–June 14, 2024







(North facing view of the subject property)



Planning Services

# Committee of Adjustment Public Notice Notification Map

Address: 395 Earl Street  
File Number: D13-025-2024  
Prepared On: May-06-2024

-  60m Public Notification Boundary
-  Subject Lands
-  Property Boundaries
-  33 Properties in Receipt of Notice (MPAC)



Prepared By: incameron  
Prepared On: May-06-2024

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