



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-22-063**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Niall Oddie, Senior Planner  
**Date of Meeting:** September 19, 2022  
**Application for:** Minor Variance  
**File Number:** D13-045-2022  
**Address:** 40 Hyperion Court  
**Owner:** Hyperion Holdings (Kingston)  
**Applicant:** Boys and Girls Club of Kingston Inc. and Fotenn Consulting

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**Council Strategic Plan Alignment:**

Theme: 4. Strengthen economic development opportunities

Goal: 4.1 Support new and existing businesses

**Executive Summary:**

This report provides a recommendation to the Committee of Adjustment regarding an application for minor variances for the property located at 40 Hyperion Court. The applicant is proposing to establish a 'day care centre' as a complementary use within the Alcan Business Park, subject to a maximum of 25% gross floor area of the building. The applicant has also requested a variance to reduce the number of loading spaces from two (2) to one (1) to reflect existing site conditions and anticipated demands of the future use. The application has been submitted to Kingston Zoning By-Law 2022-62 and is conditional upon the relevant sections of Kingston Zoning By-law 2022-62 and Official Plan Amendment Number 82 being deemed in force and effect by the Ontario Land Tribunal. The proposed 'day care centre' use is not permitted under the current Zoning By-Law 8499.

The requested minor variances are consistent with the general intent and purpose of both the City of Kingston Official Plan, as amended, and Zoning By-Law Number 2022-62. The requested minor variances are desirable for the appropriate development or use of the land,

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building or structure and are minor in nature. As such, the proposed application meets all four tests under Subsection 45(1) of the *Planning Act* and is recommended for approval.

**Recommendation:**

**That** minor variance application, File Number D13-045-2022, for the property located at 40 Hyperion Court to Kingston Zoning By-Law 2022-62, be Approved; as described below:

**Variance Number 1:**

By-Law Number 2022-62:16.1.2 Permitted Uses in the Employment Zones (M1)

Requirement: 'Day Care Centre' is not identified as a permitted use in the M1 Zone

Proposed: Establish 'Day Care Centre' as a complementary use

Variance Requested: Establish 'Day Care Centre' as a complementary use in accordance with Section 16.2.2.5

**Variance Number 2:**

By-Law Number 2022-62:7.5.1 Minimum Loading Space

Requirement: 2 loading spaces

Proposed: 1 existing loading space

Variance Requested: 1 new loading space; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-22-063.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY PLANNER

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Niall Oddie, Senior Planner

**In 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 July 22, 2022, a minor variance application was submitted by Fotenn Consulting, on behalf of the prospective owner, Boys and Girls Club Kingston Inc., with respect to the property located at 40 Hyperion Court; the current owner is Hyperion Holdings (Kingston) who has consented to the minor variance application. The application seeks to enable 'day care centre' as a complementary use within the Business Park Industrial (M1) zone. The application also seeks a reduction in the minimum number of required loading spaces from two (2) spaces to one (1) existing space. The applicant will be submitting an application to modify the existing Site Plan Control agreement registered against the subject lands in the near future.

The proposed 'day care centre' would be operated by Boys and Girls Club Kingston Inc. (BGC South East), who provides a variety of children programming throughout the region. The 'day care centre' would occupy approximately 25% (929 square metres) of the existing 3,719 square metre building, providing seven classrooms with capacity for approximately 30 children in each room (approximately 210 children total, however the Ministry of Education would establish the maximum occupancy through subsequent regulatory approvals). BGC South East would also occupy approximately 25% of the building with their professional offices, while the remaining approximately 50% of the building is occupied as a professional office. The proposal involves the conversion of approximately 40 existing parking spaces along the southern boundary of the site into three (3) fenced outdoor play areas to support the day care use. There are approximately 8 short-term bike spaces currently provided and the applicant would be required to provide an additional four (4) short-term bike spaces through the subsequent Site Plan Control application.

This minor variance application has been submitted to Kingston Zoning By-Law 2022-62, which has been appealed and is not currently in effect. In addition, the Official Plan policies that enable complementary uses within an employment designation were amended through Official Plan Amendment Number 82, which was also appealed as part of the Kingston Zoning By-Law 2022-62 process. This application is being reviewed in the context of the amended Official Plan and Kingston Zoning By-Law 2022-62, which means the approval of the application would be conditional upon the relevant sections of Kingston Zoning By-law 2022-62 and Official Plan Amendment Number 82 being deemed to be in force and effect by the Ontario Land Tribunal. The proposed use is not permitted under the current Zoning By-Law 8499 and the applicant has not submitted an application to enable the use under the current regulations.

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

- Conceptual Site Plan (Exhibit G)
- Conceptual Floor Plans (Exhibit H)
- Planning Justification
- Owner Authorization

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

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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 40 Hyperion Court and occupies approximately 1.8 hectares of land within the Alcan Business Park. The subject lands are currently developed with a single-storey office building of approximately 3,719 square metres, 200 parking spaces and landscaping around the perimeter of the building and streetscape (Exhibit I). The property is situated at the corner of Hyperion Court and Lappan's Lane. The subject lands are located in close proximity to several bus routes accessible from the transit station on Leroy Grant Drive and active transportation infrastructure on John Counter Boulevard and Leroy Grant Drive. Sidewalks are provided throughout the Alcan Business Park, including a pedestrian connection from the terminus of Hyperion Court to Leroy Grant Drive to the east.

The subject property is designated Business Park Industrial in the Official Plan (Exhibit D) and zoned Business Park Zone 'M9' in Zoning By-Law Number 8499 (Exhibit E) and Business Park Zone 'M1' in Kingston Zoning By-Law 2022-62 (Exhibit F). The property is located in the southern portion of the Alcan Business Park and abuts an office building to the east, vacant Business Park Industrial designated lands to the south and west, with additional office and light industrial buildings to the north and northwest, as shown in Exhibit J. There are two larger industrial facilities each situated more than 300 metres from the subject lands to the south (Novelis) and northwest (Kimco) of the subject lands.

### **Application**

The review of an application for minor variances is not a simple mathematical calculation, but rather a detailed assessment of whether the variances requested, both separately and together, meet the four tests of a minor variance outlined in Subsection 45(1) of the *Planning Act*. The following provides this review:

### **Provincial Policy Statement**

In addition to the four tests of a minor variance detailed above, 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. Section 1.3.2 of the PPS provides direction to municipalities on Employment Areas, including the protection of employment lands from incompatible land uses, such as sensitive land uses that are not ancillary to the primary employment uses. Official Plan Amendment Number 82 revised the complementary use policies for Employment Lands within the municipality to ensure applications to establish sensitive uses are thoroughly reviewed to ensure compatibility. Accordingly, the proposal is considered consistent with the PPS.

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**1) The general intent and purpose of the Official Plan are maintained**

As noted above, this minor variance application has been submitted to Kingston Zoning By-Law 2022 and utilizes the Official Plan policies amended through Official Plan Amendment Number 82. The following discussion assumes that OPA 82 has been approved, however it remains in appeal to the Ontario Land Tribunal. The Recommended Conditions in Exhibit A would condition the approval of the application upon the relevant sections of Kingston Zoning By-law 2022-62 and Official Plan Amendment Number 82 being deemed in force and effect by the Ontario Land Tribunal.

The subject property is designated Business Park Industrial in the City of Kingston Official Plan. Section 3.6.7 provides general guidance to protect employment areas from fragmentation and the introduction of sensitive uses, such as 'day care centres'. This being said, more detailed guidance for the Business Park Industrial designation is provided in Section 3.6.A.2, which notes that complementary uses are permitted within the Business Park Industrial Designation and includes sensitive uses, such as day care centres, provided use "is compatible with the industrial uses in the area and located in such a manner (i.e., on the periphery of an *employment area*) so that it does not preclude the development potential of adjacent employment lands".

Amended Section 3.6.12 notes that complementary uses "improve the quality of life and reduce dependence on the private automobile for employees within the employment area by providing support and services in close proximity to employment uses." Further, subsection (a) confirms that a minor variance application can be utilized to establish complementary uses that occupy up to 25% of the total floor area of all buildings located on the parcel of land, subject to the following three review criteria:

- i. will provide a support or service to the employees within the employment area designations that are continuous to the subject parcel and that the support or service cannot be provided from an adjacent land use designation to such employment area;

The proposed complementary use of 'day care centre' could provide childcare to the employees of the Alcan Business Park and surrounding general industrial lands (i.e. Novelis, Kimco, etc.). The 'day care centre' use cannot be readily established within the surrounding lands as much of the land is designated General Industrial where the use is not identified as an appropriate complementary use. Further, the surrounding lands that are designated Business Park Industrial have not been developed in a manner that would permit a complementary use from being established (i.e. they are vacant).

- ii. will not hinder or preclude any employment uses from establishing on any lands in the employment area designations due to principles of land use compatibility, in accordance with Section 2.7; and

The applicant has indicated that the proposed 'day care use' is located a sufficient distance from larger industrial operations to the south and northwest of the subject

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lands to mitigate land use conflicts and that the proposed use is not anticipated to hinder or preclude employment uses from establishing within the employment area designations. Exhibit A recommends that the applicant be required to prepare a suitable noise study which will provide additional support to these statements and assist in confirming land use compatibility. Staff generally concur with these conclusions and note that the permitted uses within the surrounding Business Park (M1) zone require industrial uses to occur within the confines of a building to mitigate noise and odour emissions.

Section 2.7.5 identifies distance separation as an appropriate mitigation measure to achieve land use compatibility, with subsection (a) regarding separation distance for industrial facilities. The Province of Ontario has prepared the 'D-6 Guidelines' which provide further guidance on compatibility for industrial facilities. The existing uses within the Alcan Business Park appear to classify as 'Category I' uses, which have a minimum recommended separation distance of 20 metres. The two larger industrial uses to the south and northwest of the subject lands would be classified as either 'Category II' or 'Category III', which have minimum separation distances of 70 metres and 300 metres, respectively. The location of the proposed 'day care centre' exceeds these minimum separation distances. As noted above, the noise study recommended in Exhibit A would provide additional analysis on the surrounding uses and identify any recommended mitigation measures, such as noise attenuation fencing, that may be required for land use compatibility purposes. The municipality would use legal agreements with the applicant to ensure any recommendations in the noise study are effectively implemented.

iii. will be oriented towards the road frontage and contribute to an attractive and functional employment area.

The proposed complementary use of 'day care centre' would be oriented towards Hyperion Court and Lappan's Lane, including windows within the building and the outdoor amenity area in the southern portion of the site. The subsequent Site Plan Control application will require revised landscape and grading plans to ensure that the proposed modifications continue to contribute to an attractive and functional employment area in accordance with Sections 3.6 and 3.6.A of the Official Plan and the Site Plan Control Guidelines for development within business parks.

In considering whether this proposed variance is desirable, the Committee of Adjustment will have regard to the nine requirements included in Section 9.5.19 of the Official Plan. The following provides these nine requirements and an assessment of how the proposal is consistent with each.

1. The proposed development meets the intent of Section 2 Strategic Policy Direction, and all other applicable policies of this Plan;

Section 2 directs most growth within the municipality to occur within the urban boundary on full municipal services to help optimize infrastructure and achieve greater

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sustainability. Section 2.2.6 provides direction on 'Business Districts' with subsection (a) indicating that sensitive land uses are to be addressed to ensure no adverse impacts for the sensitive land use or the employment uses. Section 2.3.7 indicates that the municipality will protect employment areas and pursue diversified opportunities, while Section 3.6.12 acknowledges that complementary uses, such as appropriately located 'day care centres', help to support employment areas by improving the quality of life for employees by offering support and services in close proximity to the place of work. Section 2.7 identifies the principles of land use compatibility, which include noise and vibration, with Section 2.7.5 identifying spatial separation as a potential mitigation measure for compatibility. The proposed 'day care centre' appears to be located a sufficient distance from existing employment uses and is anticipated to be able to satisfy minimum separation distances for any new 'Category I' uses, as defined in the D-6 Guidelines from the Province of Ontario, permitted by the Business Park (M1) zone.

2. The proposed development will be compatible with surrounding uses, buildings or structures and development standards associated with adjacent properties, and if necessary, incorporate means of alleviating adverse effects on abutting land uses as recommended in Section 2.7 of this Plan;

This response is more thoroughly addressed in the preceding paragraphs relating to Section 3.6.12 of the Official Plan. Many of the land uses surrounding the subject lands would be classified as 'Category I' industrial uses, which have a minimum separation distance of 20 metres. The proposed location would satisfy these separation distances. The Business Park (M1) zone permits a variety of employment uses but requires those uses to generally operate within an enclosed building to reduce noise and odour emissions. This regulation will help ensure that future land uses in proximity to the proposed 'day care centre' will remain as 'Category I' industrial uses and therefore maintain the minimum 20 metre separation. There are two larger industrial uses located to the south and northwest of the subject lands, which would be categorized as either 'Category II' and 'Category III' industries and require larger minimum separation distances of 70 metres and 300 metres, respectively. The location of the proposed 'day care centre' would exceed the extended minimum separation distances for these 'Category II' or 'Category III' industries. Additional analysis would be completed as part of the noise study recommended in Exhibit A of this report, with mitigation measures being implemented through either a development agreement or the subsequent Site Plan Control agreement.

3. The ability of the site to function in an appropriate manner in terms of access, parking for vehicles and bicycles or any other matter and means of improving such function including considerations for universal accessibility;

The application would enable a 'day care centre' to operate within 25% of the gross floor area of the building, with the only exterior modification being the transition of approximately 40 parking spaces into outdoor amenity space for the 'day care centre'. The Kingston Zoning By-Law 2022-62 does not require minimum parking rates for non-residential uses and as such, the transition of these parking spaces into outdoor amenity



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area does not conflict with zoning. The remaining approximately 160 parking spaces is anticipated to exceed the parking demand for the site. The application has indicated that the existing loading space will be sufficient for both the office and 'day care centre' uses and that loading for the 'day care centre' will not occur within a fire route or other inappropriate location. The proposed variances are not anticipated to impact the functional design of the property, which will be further reviewed and confirmed through the subsequent Site Plan Control application.

4. The conformity of the proposal to any applicable urban design policies endorsed by Council, particularly if the site includes or could impact a built heritage resource or is within a Heritage District;

The subject lands are not located within a heritage district. Section 3.6.A.6 of the Official Plan provides criteria for new development within the Business Park Industrial designation. This application does not involve any significant exterior modifications to the existing building, which satisfies the policies regarding high quality architecture and landscaping. Detailed designs will be required through the subsequent Site Plan Control application to ensure the revisions to grading and landscaping required to provide the outdoor amenity area in the southern portion of the site are designed to provide a high level of quality that contributes to the overall aesthetics of the business park.

5. If the site is designated under the *Ontario Heritage Act*, the application shall be reviewed by Heritage Kingston for approval. If the property is adjacent to a designated property under the *Ontario Heritage Act* or shown as a Heritage Area feature, or is affected by the protected views shown on Schedule 9 of this Plan, then a Heritage Impact Statement may be required to assist staff to determine if the resulting development is desirable;

The subject lands are not designated under the *Ontario Heritage Act*, nor are the lands affected by the protected views shown on Schedule 9 of the Official Plan. A Heritage Impact Statement was not required for this application.

6. The resulting development has adequate municipal water and sewage services within the Urban Boundary, or is capable of providing individual on-site water and sewage services outside the Urban Boundary;

Utilities Kingston has reviewed the minor variance application and indicated that they have no concerns from a servicing perspective. Should any servicing concerns be identified through the detailed design of the proposal the municipality will be able to implement any works through the subsequent Site Plan Control application that will be required prior to Building Permits.

7. Whether the application and the cumulative impact of the proposed variances would be more appropriately addressed by a zoning amendment to the applicable zoning by-law;

The application seeks to reduce the minimum number of required loading spaces and to establish a complementary use, which Kingston Zoning By-Law 2022-62 specifically indicates can be established through a minor variance application in accordance with Official Plan policies. Both variances being requested by the applicant are appropriately

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dealt with through the minor variance application and do not require a zoning by-law amendment.

8. The Committee of Adjustment may attach such conditions as it deems appropriate to the approval of the application for a minor variance including any reasonable requirements, recommendations of City departments, or the submission of studies as listed in Section 9.12 of this Plan that may be required to properly evaluate the application;

Exhibit A of this report contains a series of recommended conditions to ensure effective and appropriate implementation of this minor variance application.

9. The degree to which such approval may set an undesirable precedent for the immediate area.

The proposed development is not anticipated to set an undesirable precedent as the Official Plan contemplates complementary uses, including appropriately located sensitive uses such as day care centres, within the Business Park Industrial designation. The application has demonstrated that the proposed development is not anticipated to generate compatibility concerns within the Alcan Business Park, which will be further confirmed through the recommended conditions contained within in Exhibit A of this report. Further, the variance to reduce the loading space requirement is appropriate for the proposed development and site functionality will be further reviewed and confirmed through the subsequent Site Plan Control application.

The proposal meets the intent of the Official Plan, as the proposed complementary use of 'day care centre' will be established to support the employees of the Alcan Business Park and surrounding employment lands. The proposed use is considered to be a sensitive land use and the applicant has demonstrated that it will be situated in an appropriate location to mitigate any compatibility concerns. Additional compatibility analysis would be completed through the noise study recommended Exhibit A, with any recommended mitigation measures being implemented through a legal agreement with the property owner or through the subsequent Site Plan Control application. The applicant has indicated that the variance to reduce the minimum number of loading spaces will not adversely impact traffic patterns internal or external to the site, which will be further confirmed through the subsequent Site Plan Control application.

## **2) The general intent and purpose of the zoning by-law are maintained**

The subject property is zoned Business Park (M1) Zone in the City of Kingston Zoning By-Law Number 2022-62, entitled "Kingston Zoning By-Law", as amended. The M1 zone permits a wide variety of low-impact employment based uses, such as offices, light industrial, research establishment, catering services and similar uses that are typically required to operate within the confines of an enclosed building to mitigate any noise, dust or odours associated with the use.

The proposal requires a variance to enable a 'day care centre' as a complementary use, in accordance with Section 16.2.2.5, as well as a variance to Section 7.5.1 to reduce the

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minimum number of required loading spaces based on floor area within an employment zone. The variances are discussed in greater detail below.

**Variance Number 1:**

By-Law Number 2022-62: 16.1.2 Permitted Uses in the Employment Zones (M1)

Requirement: 'Day Care Centre' is not identified as a permitted use in the M1 Zone

Proposed: Establish 'Day Care Centre' as a complementary use

Variance Requested: Establish 'Day Care Centre' as a complementary use in accordance with Section 16.2.2.5

The permitted uses within the Business Park (M1) zone are outlined in Section 16.1.2, and as noted above, include a variety of low-impact employment type uses. The majority of the subject lands, representing approximately 75% of the gross floor area of the existing building, would be used for 'office' uses, which are permitted within the M1 zone. This minor variance application seeks to add 'day care centre' as a complementary use to the M1 zone and would be limited to 25% of the gross floor area. Section 16.2.2.5 specifically contemplates the addition of complementary uses through a minor variance application, in accordance with the Official Plan policies and the provisions of the *Planning Act*.

With respect to the provisions of the *Planning Act*, Section 45(1) establishes the powers of the Committee of Adjustment and indicates that the Committee may authorize minor variances that relate to the use of land, subject to the standard four 'tests'. The relevant section of the *Planning Act* is provided below for convenience:

**45 (1)** The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the Official Plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11) (emphasis added)

The municipality has traditionally relied upon zoning by-law amendments to establish new uses on a property and has not frequently utilized the 'use' component of Section 45(1). The Kingston Zoning By-Law 2022-62 adopts a new approach, whereby complementary uses are specifically intended to be introduced through a minor variance when the application meets the corresponding policies of the Official Plan. This is reflected in Section 16.2.2.5, where the By-Law anticipates the introduction of new complementary uses that meet all policy tests through a minor variance application in the Business Park (M1) zone. The intent with this approach was to use the minor variance process to monitor and ensure effective

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and appropriate implementation of complementary uses, including through the use of conditions or development agreements to fulfill Official Plan policies.

As noted in the preceding section of this report, the Official Plan identifies 'day care centre' as a permitted complementary use within the Business Park Industrial designation, subject to land use compatibility with the employment uses. The preceding sections of this report provide a more detailed analysis, but in summary, the applicant has demonstrated that the 'day care centre' will not adversely effect any of the existing or future employment uses permitted by the Business Park (M1) zone and is located a sufficient distance from two larger industrial facilities to mitigate any land use impacts. The noise study recommended in Exhibit A of this report will provide further analysis and recommend any applicable mitigation measures, which the applicant would be required to implement through a legal agreement.

**Variance Number 2:**

By-Law Number 2022-62: 7.5.1 Minimum Loading Space

Requirement: 2 loading spaces

Proposed: 1 existing loading space

Variance Requested: 1 loading spaces

Section 7.5.1 of Kingston Zoning By-Law 2022-62 requires loading spaces within employment zones to be provided based on a ratio of gross floor area of the building. The existing building provides one (1) oversized loading space at the rear of the building, whereas the current requirement would be three (3) loading spaces for a building with a gross floor area of 3,719 square metres. However, Section 7.5.10 recognizes existing deficient situations and does not require the deficiency to be corrected prior to an addition or change of use. The single loading space would be considered compliant for the existing office use, however the applicant is required to satisfy the current requirements for the portion of the building subject to the new 'day care centre' use. The applicant is proposing a change in use for 25% of the gross floor area (929 square metres) to establish the 'day care centre' use, which would require a minimum of two (2) loading spaces within an employment zone.

It is recognized that office uses no longer receive the same number of deliveries as they did in the past owing to a reduction in office supplies due to electronic advancements and a shift towards hybrid working arrangements. 'Day care centres' do require frequent deliveries for food and related supplies for the children. The applicant has indicated that the existing loading space will be sufficient to support the two office uses, representing 75% of the gross floor area of the building, and the proposed 'day care centre', which would be limited to 25% of the gross floor area of the building. It is not yet clear how the loading space would be integrated with the 'day care centre' use, however the applicant has indicated that either an interior modification or exterior landscaping modifications will be provided to ensure there is a functional connection between the 'day care centre' use and the loading space. The details of this functional connection are appropriately dealt with through the subsequent Site Plan Control application.

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**3) The variance is minor in nature**

The variances are considered minor as the Business Park (M1) zone contemplates the addition of complementary uses in accordance with Official Plan policies and the applicant has demonstrated that the proposed ‘day care centre’, in accordance with Official Plan policies, is not anticipated to adversely impact the function of the employment area given the extent of existing development and uses permitted in the M1 zone. The recommended conditions contained in Exhibit A require the applicant to prepare a detailed noise study which will help to further ensure land use compatibility between the sensitive land use and surrounding employment uses. The municipality will request that the study provide recommendations for the ‘day care centre’ to address existing employment uses, but also to consider future employment uses and recommend potential mitigation measures to ensure the ‘day care centre’ does not hinder any future permitted employment uses.

The reduction in loading space requirements is also considered minor as the subject lands will continue to provide a loading space that the applicant has indicated will be sufficient to satisfy delivery demands. It is further recognized that delivery requirements for office uses, which will continue to occupy approximately 75% of the gross floor area of the building, have been reduced in recent years due to the transition of office supplies to electronic formats and a shift towards hybrid working arrangements. The proposed development will require a subsequent Site Plan Control application which will be used to ensure a functional connection between the existing loading space and the proposed ‘day care centre’ use.

**4) The variance is desirable for the appropriate development or use of the land, building or structure**

The variances are desirable and appropriate use of the land as they will facilitate a complementary use to provide support and service to the employees within employment lands, which can help to reduce dependence on automobiles by locating services that employees require close to their places of employment. The applicant has demonstrated that the location of the proposed ‘day care centre’ is appropriate from a land use compatibility perspective, acknowledging that the noise study recommended in Exhibit A would provide additional detailed analysis to further confirm compatibility. The applicant has indicated that the office and ‘day care centre’ uses can both utilize the same and existing loading space and that there is no requirement to provide an additional loading space on the property, which will ensure the site function and represents an efficient use of land.

**Technical Review: Circulated Departments and Agencies**

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering Department | <input type="checkbox"/> Heritage (Planning Services)            |
| <input type="checkbox"/> Finance                      | <input checked="" type="checkbox"/> Utilities Kingston     | <input type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue     | <input checked="" type="checkbox"/> Kingston Hydro         | <input checked="" type="checkbox"/> City’s Environment Division  |
| <input type="checkbox"/> Solid Waste                  | <input checked="" type="checkbox"/> Parks Development      | <input type="checkbox"/> Canadian National Railways              |

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- Building Services
- Housing
- KEDCO
- CRCA
- Parks Canada
- Hydro One
- Kingston Airport
- Engineering Department
- District Councillor
- Municipal Drainage
- KFL&A Health Unit
- Eastern Ontario Power
- Enbridge Pipelines
- Heritage (Planning Services)
- Ministry of Transportation
- Parks of the St. Lawrence
- Trans Northern Pipelines
- CFB Kingston
- TransCanada Pipelines

**Technical Comments**

This application was circulated to external agencies and internal departments for their review and comment. Staff have worked to prepare the Recommended Conditions in Exhibit A to ensure that the outstanding comments will be addressed through technical studies associated with the future Site Plan Control application prior to the minor variance coming into effect. 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 have been received. Any public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

**Previous or Concurrent Applications**

There are no concurrent or relevant historic planning applications on the subject property. However, the applicant will be required to submit an application to modify an existing Site Plan Control approval. The future application would be supported by technical studies.

**Conclusion**

The requested variance(s) maintain(s) the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 2022-62. The proposal is desirable for the appropriate development or use of the land, building or structure and the requested variances are minor in nature, provided the applicant fulfills the conditions outlined in Exhibit A to the municipality’s satisfaction. As such, the proposed application meets all four tests under Subsection 45(1) of the *Planning Act* and the application is being recommended for approval, subject to the proposed conditions.

Approval of this application will enable the subject lands to provide a complementary use, being a ‘day care centre’ to help support the employees of the Alcan Business Park and surrounding employment lands. It is anticipated that the ‘day care centre’ would also help support the surrounding community by providing additional childcare opportunities within the municipality.

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**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 (including Official Plan Amendment Number 82)

Zoning By-Law Number 2022-62

**Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on September 19, 2022. 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 6 property owners (according to the latest Assessment Roll) within 60 metres of the subject property (Exhibit C) and a courtesy notice was placed in The Kingston Whig-Standard.

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*.

**Accessibility Considerations:**

None

**Financial Considerations:**

None

**Contacts:**

James Bar, Manager, Development Approvals, 613-546-4291 extension 3213

Niall Oddie, Senior Planner, 613-546-4291 extension 3259

**Other City of Kingston Staff Consulted:**

None

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**Exhibits Attached:**

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Public Notification Map
- Exhibit D Official Plan Map
- Exhibit E Zoning By-Law 8499, Map 9
- Exhibit F Zoning By-Law 2022-62
- Exhibit G Proposed Site Plan
- Exhibit H Floor Plan
- Exhibit I Site Photographs
- Exhibit J Neighbourhood Context Map (2021)



## Recommended Conditions

### Application for minor variance, File Number D13-045-2022

Approval of the foregoing application shall be subject to the following recommended conditions:

#### 1. Limitation

That the approved minor variance applies only to enable 'day care centre' as a complementary use to the Business Park (M1) Employment Zone in Kingston Zoning By-Law 2022-62 and reduce the minimum number of required loading spaces, as shown on the approved drawings attached to the notice of decision for 40 Hyperion Court.

#### 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

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. Record of Site Condition**

Based on the current and previous industrial use, the conversion to a more sensitive land use (day care centre) is deemed a prohibited use per Ontario Regulation 153/04. Prior to obtaining building permits, the proponent will need to produce a Record of Site Condition (RSC) filed with Ontario's Ministry of Environment, Conservation, and Parks indicating that the site meets provincial standards for an institutional use. The RSC must be completed by a qualified person and in accordance with all requirements of O.Reg. 153/04, as amended. All supporting documents listed in the RSC must also be provided to the municipality for our review.

#### **6. Kingston Zoning By-Law 2022-62 and Official Plan Amendment Number 82**

This minor variance application has been submitted to Kingston Zoning By-Law 2022-62 which was enacted by Council on April 26, 2022 but appealed to the Ontario Land Tribunal and is not yet in effect. The minor variance application utilizes policies that were amended through Official Plan Amendment Number 82, which was appealed with the Kingston Zoning By-Law 2022-62. This decision is conditional upon the relevant sections of Kingston Zoning By-law 2022-62 and Official Plan Amendment Number 82 being deemed in force and effect by the Ontario Land Tribunal.

#### **7. Noise Study**

The applicant shall provide a noise study to demonstrate the day care centre, being a sensitive land use, can address potential noise impacts due to stationary and/or transportation noise sources in the vicinity. The study is to be prepared by a qualified individual with experience in environmental acoustics and demonstrate compliance with NPC-300. The study will be required to demonstrate that existing employment land parcels in proximity to the proposed development will not be negatively impacted as a result of the proposed sensitive land use on the subject lands. The study will provide recommended mitigation measures, as appropriate, and submitted no later than the initial submission of the subsequent Site Plan Control application. The noise study will be prepared to the satisfaction of the municipality with any recommendations implemented through a development agreement associated with this minor variance application or the subsequent Site Plan Control agreement.

#### **8. Day Care Centre Maximum Floor Area**

The requested 'day care centre' use will be limited to 25% of the gross floor area of the buildings on the property, as shown on the approved drawings attached to the notice of decision.


**9. Loading Space**

The existing loading will accommodate the office uses and the proposed 'day care centre' use. The applicant will demonstrate through the subsequent Site Plan Control application that the existing loading space will functionally support the 'day care centre' use, either through an interior modification to facilitate an internal connection between the loading space and the use, or through appropriate exterior landscaping modifications.

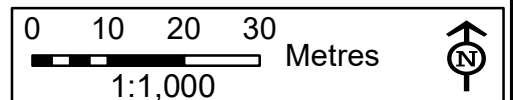
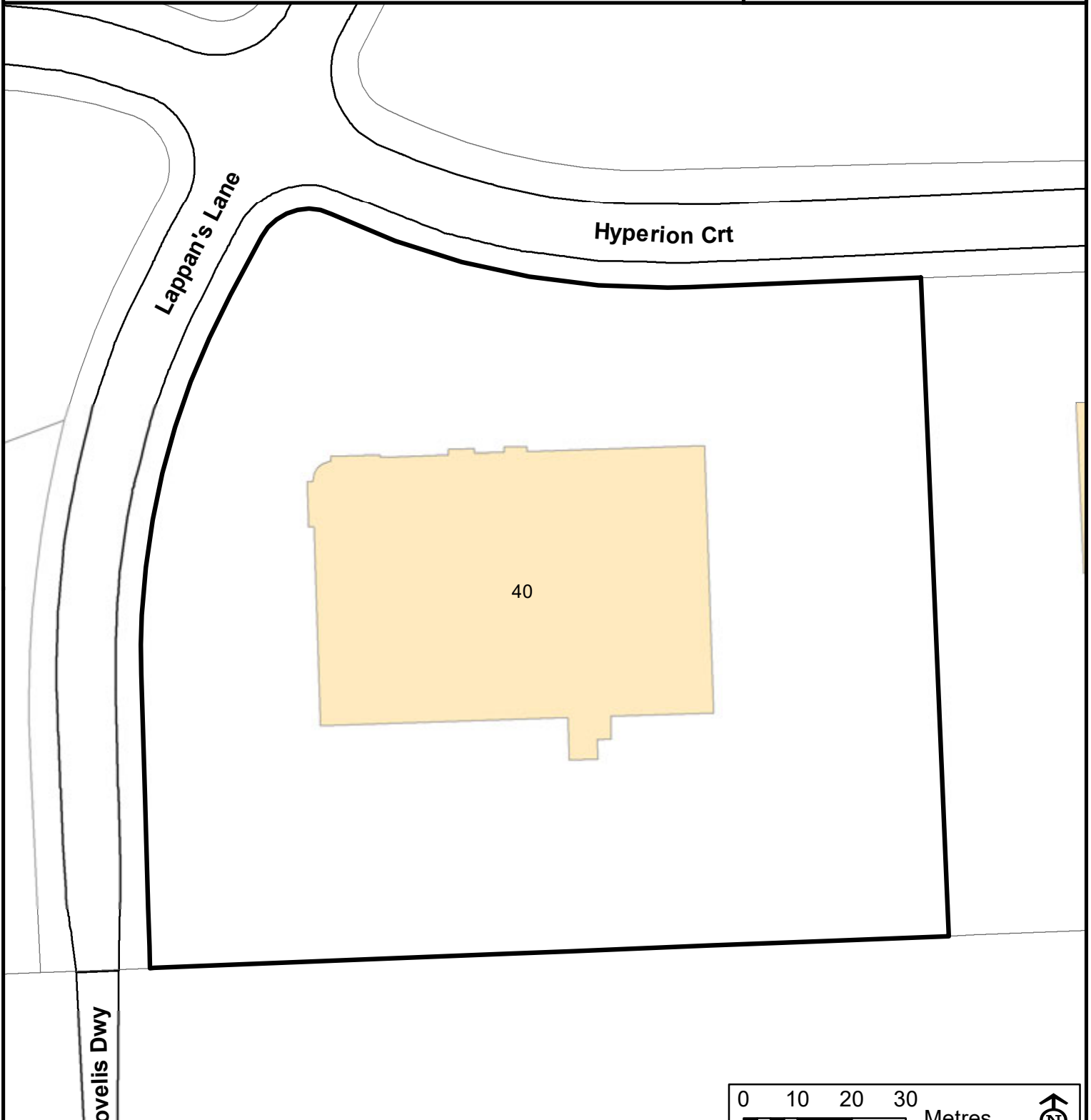
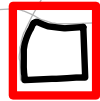


Committee of Adjustment  
**Key Map**

Address: 40 Hyperion Crt  
File Number: D13-045-2022

 Lands Subject to Minor Variance

John Counter Blvd

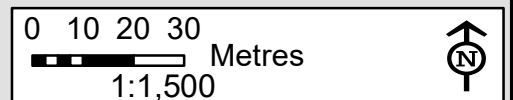
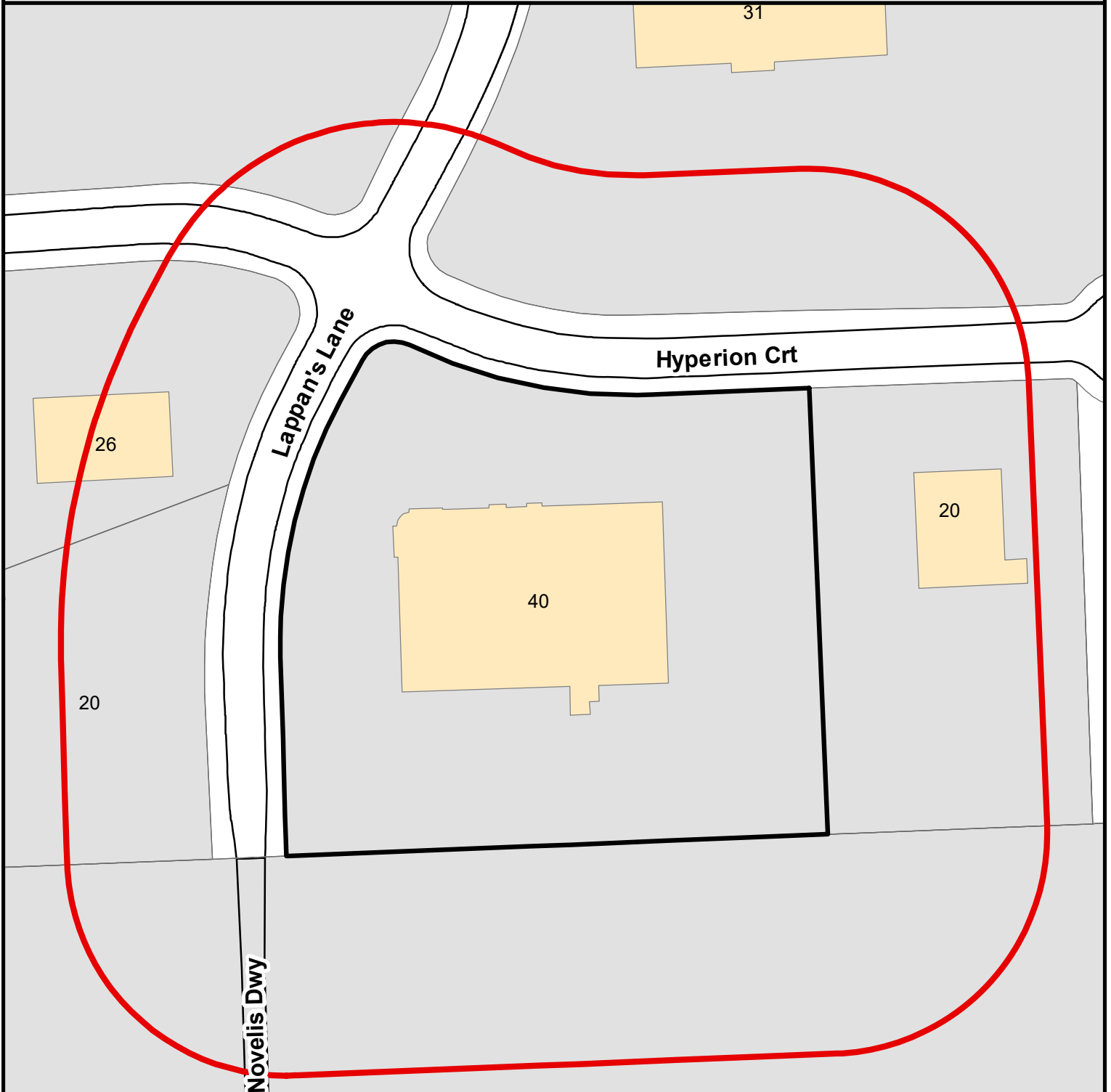




# Committee of Adjustment Public Notice Notification Map

Address: 40 Hyperion Crt  
File Number: D13-045-2022

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





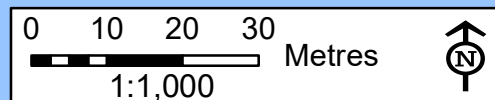
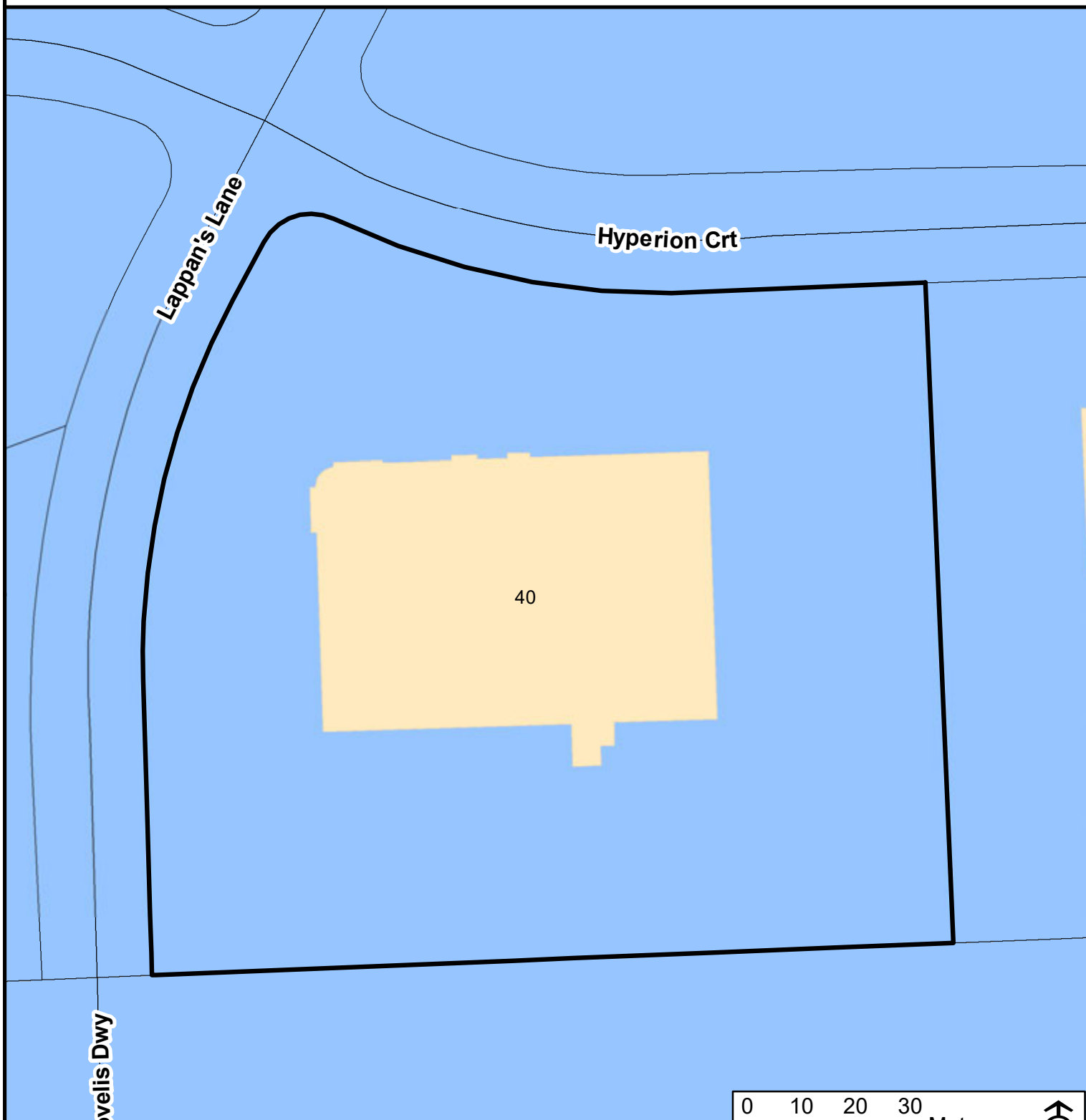


Planning Services

Committee of Adjustment  
Official Plan, Existing Land Use

Address: 40 Hyperion Crt  
File Number: D13-045-2022

-  Subject Lands
-  BUSINESS PARK INDUSTRIAL





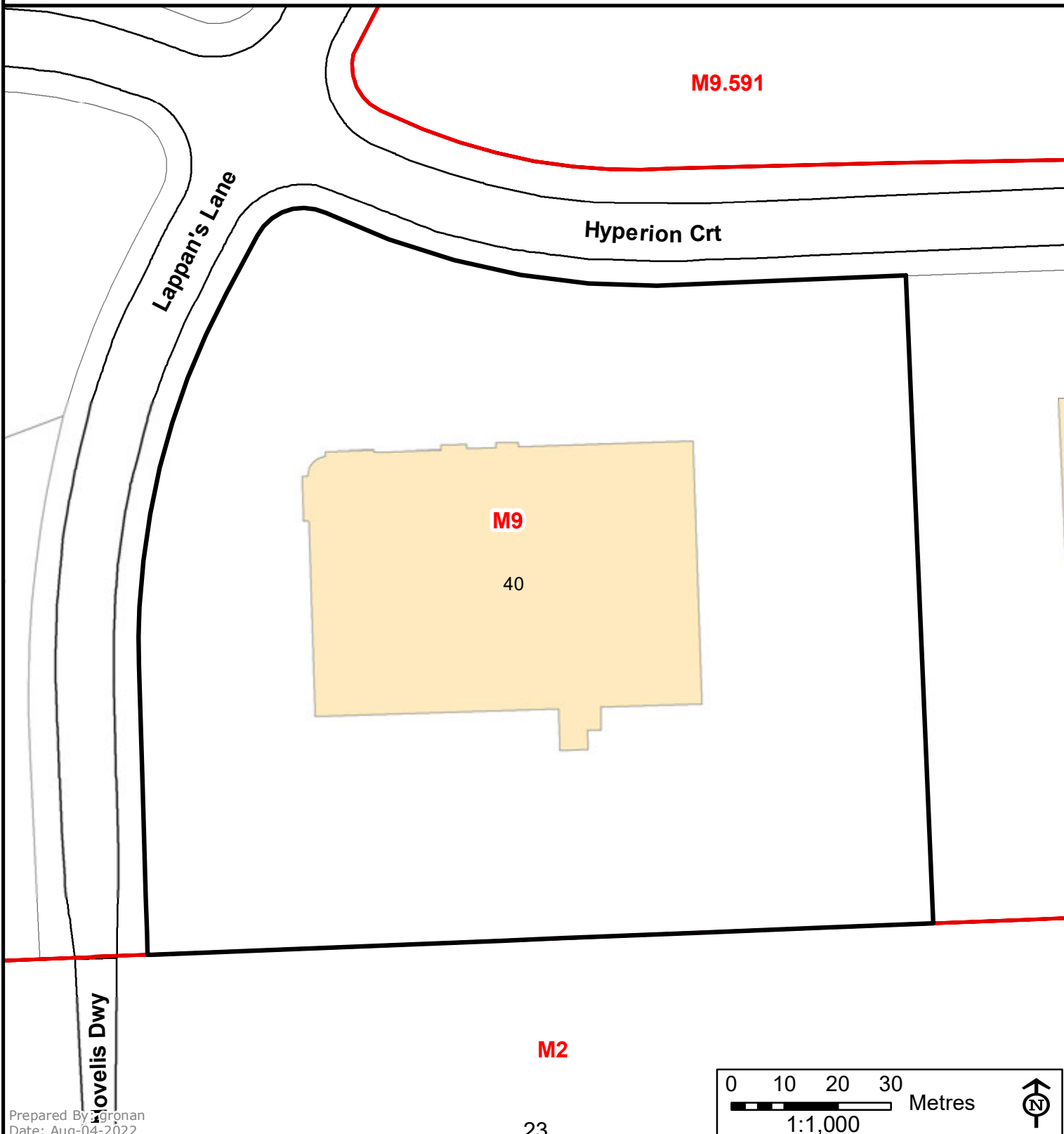


Planning Services

Committee of Adjustment  
Existing Zoning - By-law 8499, Map 9

Address: 40 Hyperion Crt  
File Number: D13-045-2022

-  Subject Lands
-  Consolidated Zoning





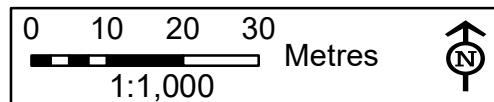
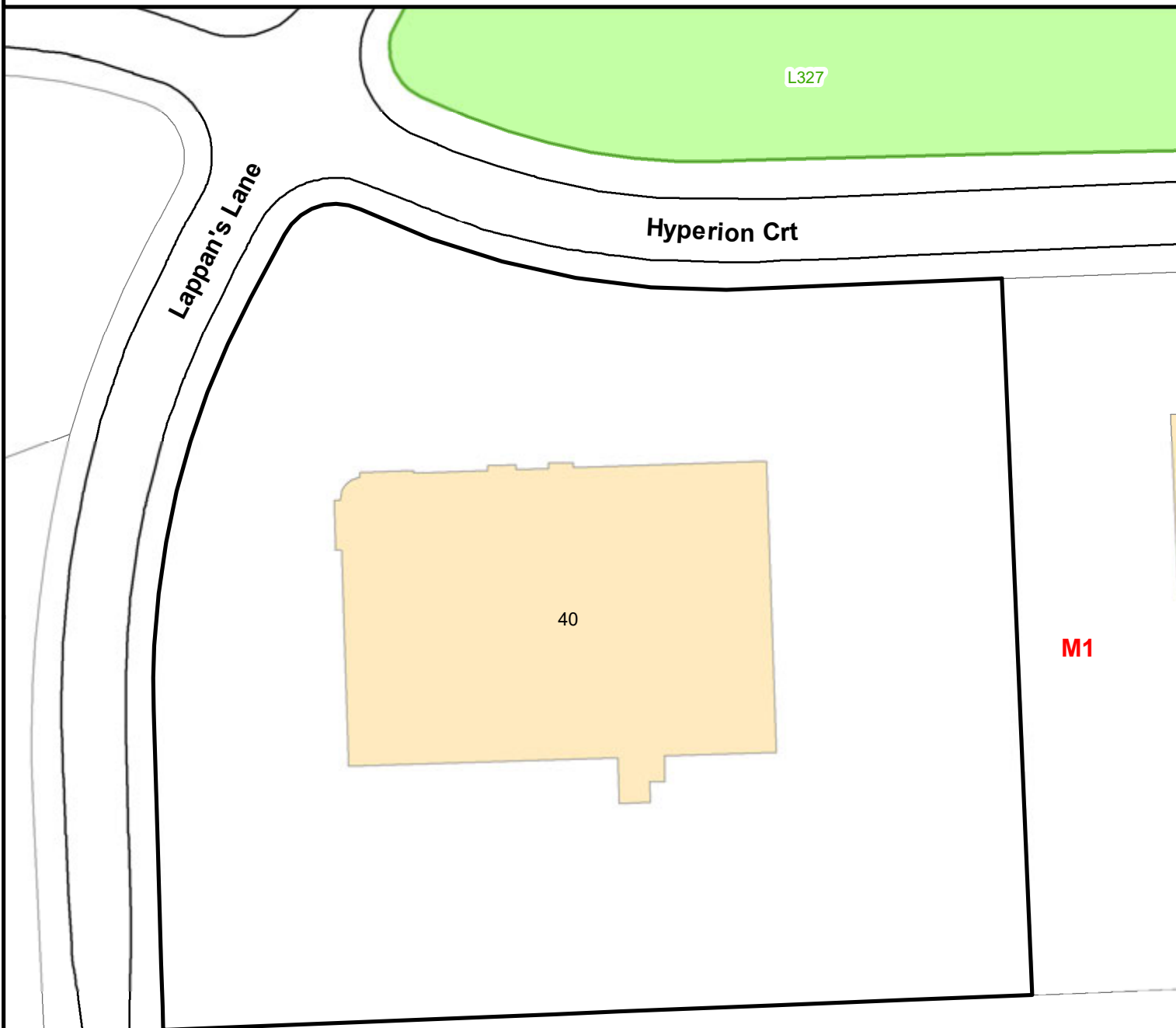
Planning Services

# Planning Committee Reference Kingston Zoning Bylaw

Address: 40 Hyperion Crt  
File Number: D13-045-2022

Subject Lands  
Schedule 1 Zoning Map  
 Zone

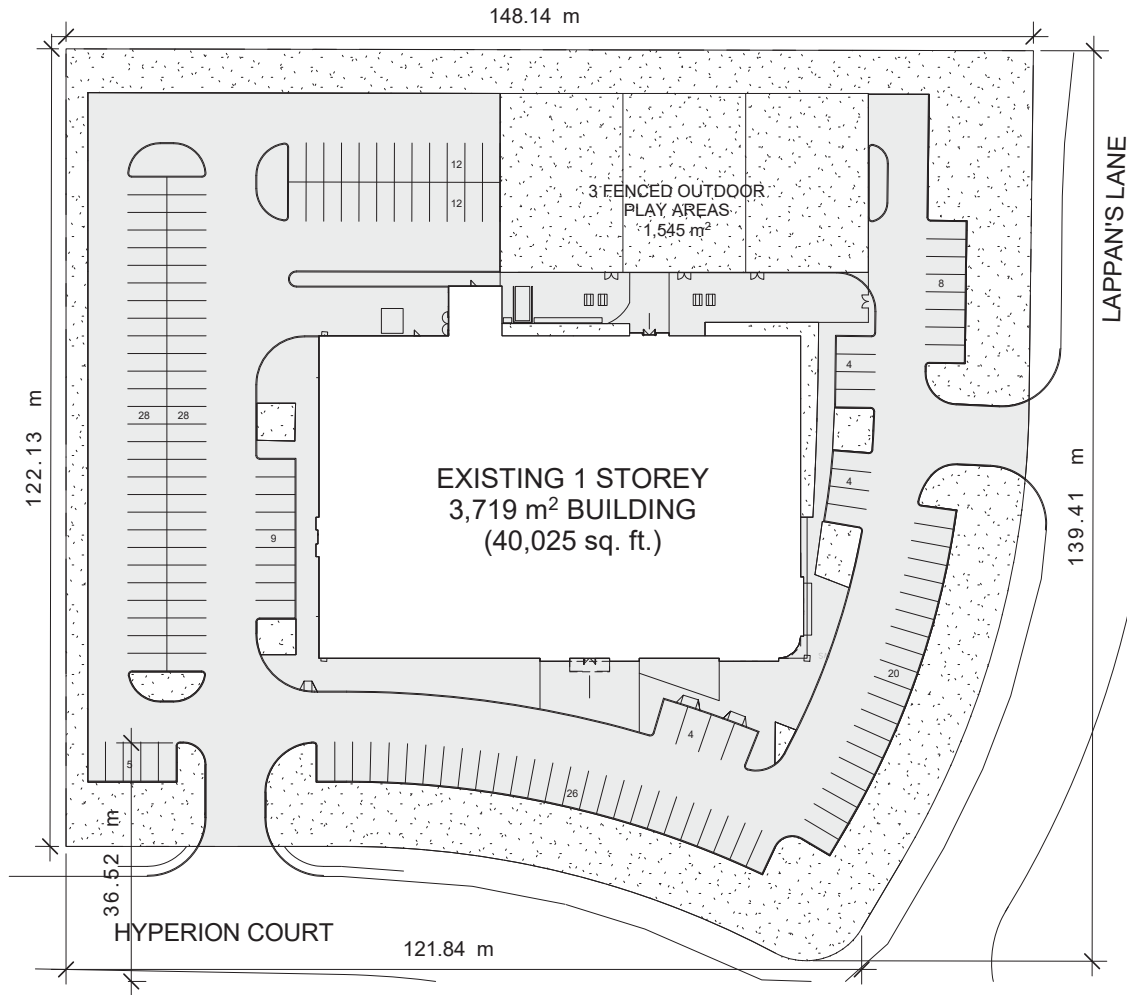
Schedule E - Exception Overlay  
 Legacy Exceptions (LXXX)  
 Exceptions (EXXX)  
Schedule F - Holding Overlay  
 Holding Overlay (HXXX)





DO NOT SCALE DRAWINGS  
CHECK AND VERIFY ALL DIMENSIONS BEFORE  
PROCEEDING WITH THE WORK.  
DRAWINGS NOT TO BE USED FOR CONSTRUCTION  
UNLESS STAMPED AND SIGNED BY THE CONSULTANT.  
THESE DRAWINGS HAVE BEEN DESIGNED IN  
CONFORMANCE WITH THE ONTARIO BUILDING CODE.

REV.	DATE	DESCRIPTION
------	------	-------------



PROPOSED SITE STATISTICS

SITE PLAN	18,211 m <sup>2</sup>	100%
BUILDING FOOTPRINT	3,719 m <sup>2</sup>	20%
LANDSCAPED AREA	5,820 m <sup>2</sup>	33%
PAVED AREA	8,672 m <sup>2</sup>	47%
PARKING SPACES	160	
ACCESSIBLE SPACES	4	
TOTAL	164	



BOYS AND GIRLS  
CLUB

441 HYPERION COURT,  
KINGSTON, ON

PROPOSED SITE PLAN

DATE	
AS ISSUED	07/19/22
2218	

A101

DO NOT SCALE DRAWINGS  
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REV.	DATE	DESCRIPTION
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EXISTING TENANT  
1887 m<sup>2</sup>  
20,307sq. ft.

PROPOSED AREAS

EXISTING TENANT	18,211 m <sup>2</sup>	51%
SHARED SPACE	55 m <sup>2</sup>	1%
OFFICE USE	432 m <sup>2</sup>	13%
EDUCATIONAL USE	529 m <sup>2</sup>	25%
SERVICE SPACES	139 m <sup>2</sup>	3%
CIRCULATION	260 m <sup>2</sup>	7%
TOTAL BUILDING AREA	3,719 m <sup>2</sup>	100%



BOYS AND GIRLS  
CLUB

44 WATSON COURT,  
BAGGOTON, ON

PRELIMINARY  
PROPOSED FLOOR  
PLAN

DATE: \_\_\_\_\_  
BY: \_\_\_\_\_

2218

A102

## Site Photographs

August 17, 2022



Figure 1 - 40 Hyperion Court – Front



Figure 2 - 40 Hyperion Court - Rear





Committee of Adjustment  
**Neighbourhood Context (2021)**

Address: 40 Hyperion Crt  
File Number: D13-045-2022

- Subject Lands
- Property Boundaries
- Proposed Parcels

