

BY-LAW NO. 26-10 AS AMENDED AND APPROVED PURSUANT TO THE ORDER/DECISION OF THE ONTARIO MUNICIPAL BOARD ISSUED JANUARY 28, 2011 IN BOARD CASE NO. PL100345



**The Municipal Corporation of the
Town of Fort Erie**

BY-LAW NO. 26-10

**BEING A BY-LAW TO AMEND ZONING BY-LAW 129-90
THE TOWN OF FORT ERIE AND
MOLINARO GROUP CRYSTAL BEACH WATERFRONT INC.
4155 ERIE ROAD, SOUTH SIDE OF ERIE ROAD
WEST OF SCHOOLEY ROAD
Part Private Road, Plan 368, Bertie, being Part 1 on 59R-11861;
Part Lot 1, Lots 2, 3 & 4, Plan 368, Bertie except RO564789 (1stly);
Part of Water Lot in front of Lots 1, 2, 3 and 4, Plan 368, Bertie
Town of Fort Erie**

350309-0328

WHEREAS an application has been received from the Town of Fort Erie and the Molinaro Group to amend the Town's Comprehensive Zoning By-law No. 129-90 for the lands shown on Appendix 1; and

WHEREAS authority is given to Council by Sections 34 and 37 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to enact this By-law; and whereas Council of the Town of Fort Erie has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*; and

WHEREAS Section 11(11)(b) of the Official Plan of the Town of Fort Erie contains provisions relating to the authorization of increases in height and density of development in return for the provision of certain facilities, services or other matters; and

WHEREAS pursuant to Section 37 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, the Council of the municipality may in a By-law enacted pursuant to Section 34 of the *Planning Act*, authorize increases in the height and density of development beyond that otherwise permitted on the aforesaid lands by the By-law in return for the provision of such facilities, services and matters as are set out in the By-law; and

WHEREAS a Public Meeting pursuant to Section 34(12) of the *Planning Act R.S.O. 1990, c.P. 13* was held on January 25, 2010; and

WHEREAS the Council of the Town of Fort Erie deems it desirable to pass an amendment to the Comprehensive Zoning By-law No. 129-90 pursuant to their decision at the March 1, 2010 Council Meeting; and

NOW THEREFORE the Municipal Council of the Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** Schedule “A” of By-law No. 129-90 is amended by changing the zoning of Part 1 from “General Commercial C2 Zone” to “General Commercial Holding C2-427(H) Zone, as shown on Appendix “1” attached hereto.
2. **THAT** By-law No.129-90 is further amended by adding to “Section 20 – General Commercial C2 Zone” Subsection – “Exceptions to the General Commercial C2 Zone” the following exception:

C2-427(H) These lands are zoned General Commercial Holding C2-427(H) Zone, and all of the provisions of By-law No. 129-90 as amended that relate to lands zoned General Commercial C2 Zone by this by-law shall apply to those lands zoned General Commercial Holding C2-427(H) Zone on Schedule A subject to the following special provisions:

- a) that notwithstanding the requirements of Subsection 6.20(A), not less than 110 parking spaces shall be provided on-site, and tandem parking shall be permitted in the parking structure;
- b) that notwithstanding the requirements of Subsection 6.21(b) and 6.47, the westerly landscape strip and the side yard setback for the parking garage shall have:
 - i) a minimum width of not less than 2.1m at the front lot line;
 - ii) a minimum width of not less than 4.5m at a point 45m from the front lot line measured along the westerly side lot line;
 - iii) a minimum width of not less than 6.0m at a point 73.5m from the front lot line measured along the westerly lot line;
- c) that notwithstanding the requirements of Subsection 6.47, a minimum setback of not less than 11m to the building face and not less than 8m to the nearest column shall be permitted from the 1-in-100 year flood elevation;
- d) that notwithstanding the requirements of Subsection 18.2(f), no open space for the exclusive use of each residential unit in the proposed building shall be required other than the balconies and terraces associated with each residential unit;
- e) that notwithstanding the requirements of Subsection 20.3 and 6.47:
 - i) a maximum building height of 12 stories above the parking garage level, shall be permitted;
 - ii) a minimum rear yard setback of not less than 8m to the building face and not less than 3 m to the nearest column shall be permitted;
 - iii) lot coverage requirements shall not apply to the parking structure, and yard setback requirements shall not apply to the parking structure except as noted in Section 2b) above


- iv) the minimum westerly side yard setback for the apartment building shall not be less than:
- a) 11 m for building on Floor 1 and 5 m for the arcade column;
 - b) 24m for Floors 2 to 10;
 - c) 27 m for Floor 11; and
 - d) 31 m for Floor 12.
3. **THAT** pursuant to Section 37 of the *Planning Act*, the heights and density of the development permitted in this By-law is permitted subject to compliance with the conditions set out in this By-law and in return for the provision by the owner of the lands of the facilities, services and matters set out in Appendix 2 hereof, to the Town of Fort Erie at the owners sole expense the provisions of which shall be secured by an agreement or agreements pursuant to Section 37(3) of the *Planning Act*.
4. **THAT** the Section 37 agreement required by this By-law shall be registered on title to the lands to which this By-law applies in accordance with the provisions of such agreement.
5. **THAT** upon execution and registration of an agreement or agreements with the owner of the lands pursuant to Section 37 of the *Planning Act* securing the provision of the facilities, services and matters set out in Appendix 2 hereof, the land is subject to the provisions of this By-law, provided that in the event the said agreement(s) requires the provision of a facility, service or matter as a precondition to the issuance of a building permit, the owner may not erect or use such building until the owner has satisfied the said requirements.
6. **THAT** notwithstanding the foregoing, the owner and the Town of Fort Erie may modify or amend the said agreement(s), from time to time and upon the consent of the Town of Fort Erie and the owner, without further amendment to those provisions of this zoning by-law which identify the facilities, services and matters to be secured.
7. **THAT** pursuant to Section 36(1) of the *Planning Act* the “H” Holding Symbol shall be removed for the lands shown on the attached Appendix 1 as C2-427(H) Zone upon completion of all of the following conditions:
- (i) the approval by the Council of the Town of Fort Erie of a Site Plan Agreement and a Section 37 Development Agreement”;
 - (ii) the issuance of a permit by the Ministry of Natural Resources, pursuant to Section 17 of the *Endangered Species Act, 2007*;
 - (iii) that appropriate natural hazard protection measures have been designed to the satisfaction of the Niagara Peninsula Conservation Authority; and
 - (iv) that the following items be completed to the satisfaction of the Niagara Peninsula Conservation Authority:
 - i. all building foundations facing lakeward be designed to resist hydrostatic and hydrodynamic loads of Lake Erie surging to the elevation of 178.0 m;

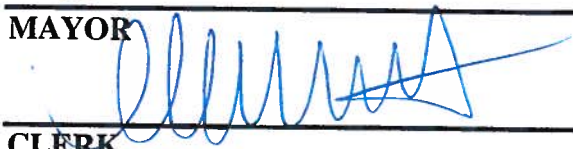
- ii. all proposed revetment shore protection works be situated above the 174.6 m elevation (the 80th percentile) used by the Federal Department of Fisheries and Oceans to assess impacts to fish habitat;
- iii. final design of the building and shore wall, as well as the proposed grades of the site be reviewed by a Coastal Engineer in order to ensure that they meet the recommendations of the Baird report and are sufficient to mitigate the Great Lakes hazards; and
- iv. the proposed public washroom/shower facilities to be located on the existing "dance hall" foundation be floodproofed.

8. THAT pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the *Municipal Act*, 2001, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 1st DAY OF MARCH 2010.

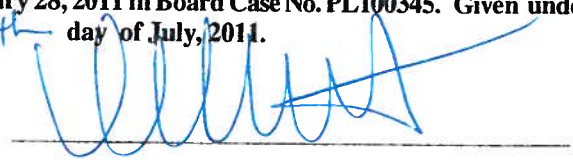
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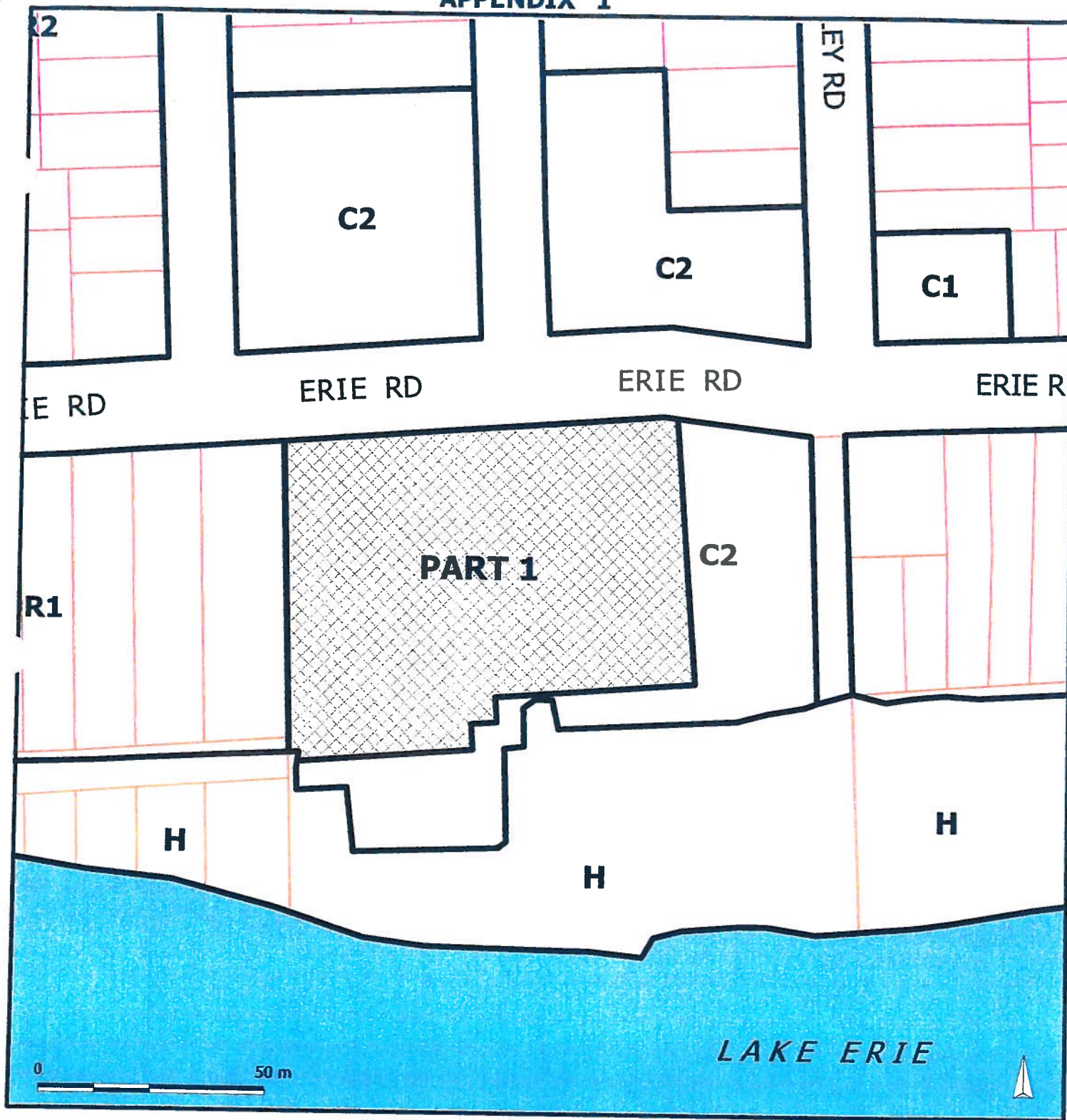
 MAYOR


 CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 26-10 of the said Town, as amended and approved pursuant to the Order/Decision of the Ontario Municipal Board issued January 28, 2011 in Board Case No. PL100345. Given under my hand and the seal of the said Corporation this 7th day of July, 2011.




APPENDIX "1"



By-Law No. 26-10

THIS SKETCH FORMS PART OF SCHEDULE "A" TO BY-LAW 129-90
PASSED THIS 1st DAY OF MARCH 2010

 Rezone Part 1 from General Commercial C2 Zone
to General Commercial Holding C2-427(H) Zone

Part Private Road, Part Lots 1, 2 and 4, All of Lot 3, Plan 368, formerly in the Township of Bertie,
now in the Town of Fort Erie, Regional Municipality of Niagara

Appendix "2"

Section 37 Provisions

The facilities, services and matters set out herein are all the facilities, services and matters required to be provided by the owner of the lands in accordance with an agreement or agreements, pursuant to Section 37(3) of the *Planning Act*, in a form satisfactory to the Town of Fort Erie with conditions providing for indexed escalation of all financial contributions, indemnity, insurance, GST/HST, termination and unwinding, and registration and priority of agreement.

The community benefits recommended to be secured in the Section 37 agreement are as follows:

To design and construct to the satisfaction of the Director of Infrastructure Services streetscape improvements to the street frontage along Erie Road between Beechwood Avenue and Schooley Road, inclusive but not necessarily limited to drop off area, sidewalks, street trees, street furniture, gateway feature, street lighting, and landscaping.

Provision of the public pedestrian easements to the full extent of the setbacks required by this By-law adjacent to Erie Road, to be secured as a condition of site plan approval.

Conveyance to the Town of Fort Erie of the lands located above the underground parking garage exterior to the building; or in the alternative, at the sole discretion of the Town of Fort Erie the provision of easements for public use of these lands satisfactory to the Town Solicitor.

To design and landscape the public open space on the east side immediately abutting the lands to the satisfaction of the Director of Community and Development Services.

Incorporate in the construction of the building, and maintain, design and exterior building and landscape materials satisfactory to the Director of Community and Development Services and in conformity with drawings as approved by the Town of Fort Erie, such that the architectural design and type of materials as shown thereon are secured to the satisfaction of the Town of Fort Erie.

To design and construct beach level washrooms/changerooms, vending machine/concession areas and associated features within the existing dance hall foundation structure, to the satisfaction of the Director of Community and Development Services.

Although the following matters are not considered to be Section 37 contributions or benefits, they will be secured in the Section 37 Agreement:

To design, construct and convey space within the building to be constructed on the lands for a community pavilion to the satisfaction of the Director of Community and Development Services. The location, size, use, exterior signage and level of finish to be set out in the Section 37 Agreement. Delivery and conveyance of the community pavilion shall be prior to the occupancy of any of the residential units in the building.

To design and construct shoreworks, including a new sea wall with associated revetment works and naturalization area, to the satisfaction of the Director of Infrastructure Services and external agencies with jurisdiction.

To undertake improvements to and/or reconstruction of the existing public parking lots north of Erie Road, to the satisfaction of the Director of Infrastructure Services.

Provide the Town with documentation as to LEED certification of the development and the marketing materials that will include information on LEED certification.

Enter into a Site Plan Agreement to the satisfaction of the Director of Community and Development Services under Section 41 of the *Planning Act*.