

## The Municipal Corporation of the Town of Fort Erie

### By-law No. 25-2022

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**Being a By-law to Amend Zoning By-law No. 129-90,  
Niacon Construction - Agent  
575 Garrison Road Inc. – Owner  
0-10389 Helena Street and 625 Garrison Road**

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**Whereas** an application was received from Niacon Construction, (Agent) on behalf of 575 Garrison Road Inc. (Owner) to amend the Town's Comprehensive Zoning By-law No. 129-90 as amended, for the lands described as 0-10389 Helena Street and 625 Garrison Road, and

**Whereas** a Public Meeting pursuant to Section 34(12) of the Planning Act, R.S.O. 1990, c.P.13 was held on October 5, 2020, and

**Whereas** it is deemed desirable to amend the Comprehensive Zoning By-law No. 129-90 as amended, pursuant to the order of the Ontario Land Tribunal dated February 25, 2022;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** Schedule "A" of By-law No. 129-90 as amended, is further amended by changing the zoning of the lands as described above and shown on the attached Appendix "1" from "Highway Commercial (C3-489) Zone" to "Highway Commercial (C3-742) Zone".
2. **That** By-law No.129-90 as amended, is further amended by adding to "Section 22 – "Highway Commercial (C3) Zone" Subsection – "Exceptions to the Highway Commercial (C3) Zone" the following exceptions:

#### **C3-742 (25-2022) 0-10389 Helena Street and 625 Garrison Road**

These lands are zoned "Highway Commercial (C3-742) Zone", and all of the provisions of By-law No. 129-90 as amended that relate to lands zoned "Highway Commercial (C3) Zone" by this by-law shall apply to those lands zoned "Highway Commercial (C3-742) Zone" subject to the following special regulation:

- a) In addition to the uses permitted in Section 22.2, the following uses shall also be permitted:
  - i. Department Store
  - ii. Commercial and Public Storage

- b) Commercial and Public Storage shall be defined as a Public Storage use that also permits the lease or rental of storage units to other businesses, contractors, tradespeople and other such commercial entities and permits outdoor storage spaces.
  - c) The lands subject to this amendment shall be accessed via a primary access from Garrison Road and via a secondary access from Helena Street, which shall be constructed to the satisfaction of the Town and the Region of Niagara.
3. That the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

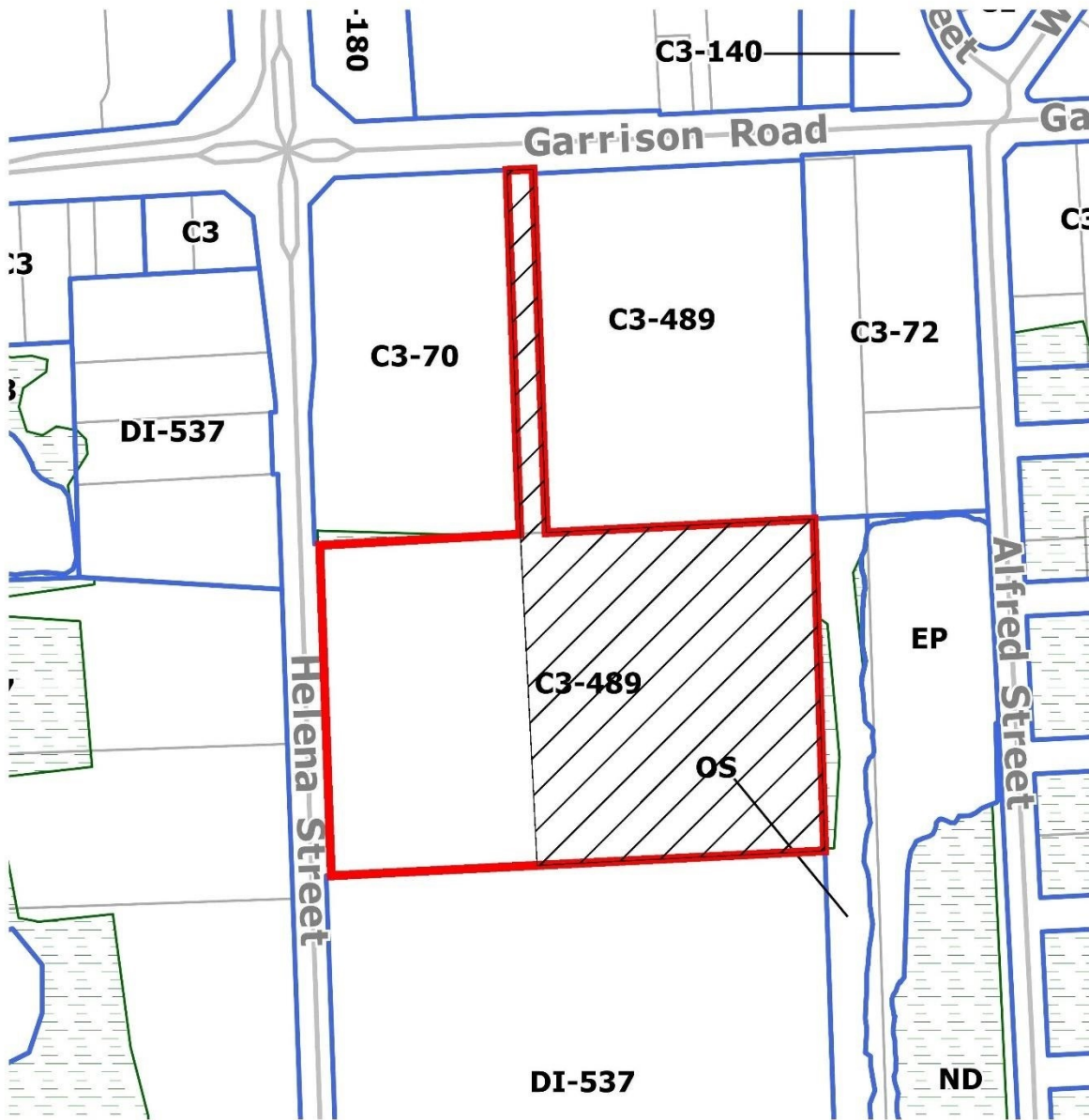
**Read a first, second and third time and finally passed this 28th day of February, 2022.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Carol Schofield, Clerk of The Corporation of the Town of Fort Erie, certify the foregoing to be a true copy of By-law No. 25-2022 of the said Town. Given under my hand and the seal of the said Corporation, this       day of       , 20

\_\_\_\_\_



Data Source: Town of Fort Erie

# Appendix 1

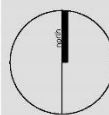
## By-law 25-2022

### LEGEND

- Subject Lands
- Modification of Zoning from C3-489 to C3-742 zone

DATE: October 6, 2021

SCALE: N.T.S.



625 Garrison Rd & 0 - 10389 Helena St,  
Fort Erie, Ontario

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**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** February 25, 2022

**CASE NO(S):**

PL210047

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Niacon Limited Construction Company
Subject:	Request to amend the Official Plan – Failure of the Town of Fort Erie to adopt the requested amendment
Existing Designation:	Commercial
Proposed Designation:	Special Policy Area
Purpose:	To permit the construction of a self-storage facility
Property Address/Description:	625 Garrison Rd. & 0-10389 Helena St.
Municipality:	Town of Fort Erie
Approval Authority File No.:	350309-0507
OLT Case No.:	PL210047
OLT File No.:	PL210047
OLT Case Name:	Niacon Limited Construction Company v. Fort Erie (Town)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Niacon Limited Construction Company
Subject:	Application to amend Zoning By-law No. 129-90 – Refusal or neglect of the Town of Fort Erie to make a decision
Existing Zoning:	Highway Commercial (C3-489) Zone
Proposed Zoning:	Highway Commercial (C3) Zone, site specific
Purpose:	To permit the construction of a self-storage facility
Property Address/Description:	625 Garrison Rd. & 0-10389 Helena St.
Municipality:	Town of Fort Erie
Municipality File No.:	350309-0507
OLT Case No.:	PL210047
OLT File No.:	PL210048

**Heard:** October 6 to 8, 2021 by Video Hearing

**APPEARANCES:**

**Parties**

**Counsel**

Town of Fort Erie

Thomas Hanrahan

Niacon Limited Construction  
Company

Jennifer Meader

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN COOKE ON  
OCTOBER 6, 2021 AND ORDER OF THE TRIBUNAL**

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[1] The matter before the Tribunal was a settlement hearing for Niacon Limited Construction Company (the “Applicant”) for the failure of the Town of Fort Erie (the “Town”) to make a decision within the legislative prescribed timelines under s. 22(7) for an Official Plan Amendment (the “OPA”) and s. 34(11) of a Zoning By-law Amendment (the “ZBA”) applications for the property municipally known as 625 Garrison Road (the “Subject Site”).

[2] The Applicant proposed to construct a 9,996 square metre (“sq m”) indoor and outdoor storage facility, located within 19 buildings, with 83 outdoor vehicle storage spaces.

[3] The Subject Site is an irregular shaped lot that has a long driveway from Garrison Road, and has a frontage on Helena Street as shown in the diagram, on page 3 of the Decision, taken from the Visual Evidence marked as Exhibit 3.



## PLANNING EVIDENCE

[4] Gerry Tchisler was qualified by the Tribunal to give expert land use planning evidence and opinion.

## PLANNING ACT

[5] In addressing s. 2 of the *Planning Act*, Mr. Tchisler testified that the Subject Site had previously gone through an Environmental Impact Study (the “EIS”) in 2013 for a previous development application. The EIS indicated that there is no significant woodland, wildlife habitat or wetlands on the Subject Site. The Subject Site does have a 24 metre setback of provincially significant wetlands. The setback between the Subject Site and the wetlands includes a retired rail line that has been converted into part of the Town trail system.

[6] The Tribunal was informed that a lot of the Town urban area is designated as Petroleum Resource Area. It was the opinion of Mr. Tchisler that the proposed development has no impact on active petroleum wells.

[7] Mr. Tchisler proffered that the Subject Site is located in an existing urban area that is designated for development and would utilize municipal infrastructure and utilities that are already there.

[8] It was the expert opinion of Mr. Tchisler that the applications conforms to the *Planning Act*.

### **Provincial Policy Statement (“PPS”)**

[9] Mr. Tchisler gave his opinion that the proposed is consistent with various policies of the PPS.

[10] Policy 1.1.1 states that healthy, liveable and safe communities are sustained by:

- a) promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term;
- b) accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;
- c) avoiding development and land use patterns which may cause environmental or public health and safety concerns.

[11] It is the opinion of Mr. Tchisler that the proposed development promotes the efficient development of land. As the Subject Site is located behind the existing commercial uses, it will continue to maintain the streetscape.

[12] Mr. Tchisler stated that while the direct creation of employment would be limited, a storage facility of this size would support the economy by providing storage spaces for other local businesses that generate employment in the area. The proposed development would consist of larger units that are designed for the trades industry.

[13] As previously indicated, the EIS that was completed, addresses Policy 1.1.1 c), and that this development should not cause environmental, public health or safety concern.

[14] Mr. Tchisler testified that although the proposed development would have the sole purpose of being a storage facility, the mixture of commercial and public sized storage units contributes to the objectives of mix of uses, in an existing built-up area as desired under Policy 1.1.3.6.

[15] While the Subject Site is currently vacant lands, it is within a settlement area and has access to municipal infrastructure. Mr. Tchisler states that the proposed development is consistent with Policy 1.6.6.2 that states:

Municipal sewage services and municipal water services are the preferred form of servicing for settlement areas to support protection of the environment and minimize potential risks to human health and safety. Within settlement areas with existing municipal sewage services and municipal water services, intensification and redevelopment shall be promoted wherever feasible to optimize the use of the services.

[16] It was the recommendation from Mr. Tchisler that the proposed OPA and ZBA application should be approved as it is consistent with the PPS.

### **Growth Plan for the Greater Golden Horseshoe, 2020 (“Growth Plan”)**

[17] The Growth Plan set out broad policies for development within urban areas. It is the opinion of Mr. Tchisler that the Subject Site is located within a settlement area that has a delineated built boundary, serviced by existing municipal infrastructure. Storage for residents and businesses provide opportunities for more compact housing by providing opportunities for off-site storage that will contribute to support the achievement of complete communities.

[18] It is his opinion that based on the proposed developments and contribution to the support of achieving complete communities, the OPA and ZBA applications conform to the Growth Plan.



## **NIAGARA REGION OFFICIAL PLAN**

[19] The Tribunal was informed that the Niagara Region Official Plan (the “ROP”) designates the Subject Site as being within an Urban Area Boundary and Designated Greenfield Area. The objectives of these policies are that growth management is directed to existing urban area, compact built transit supportive, efficient use of existing municipal sewage and water services, and a mix of land uses for complete communities.

[20] Mr. Tchisler testified that the proposed development represents an orderly use of existing roads and municipal services, on a vacant lot that is within an existing urban area. It is his opinion that the creation of a storage facility supports the ROP objectives of a complete community.

## **TOWN OF FORT ERIE OFFICIAL PLAN**

[21] Mr. Tchisler outlined the general goals and objectives of the Town’s Official Plan (the “TOP”). It was his opinion that the proposed development represents an efficient and orderly use of vacant lands in an existing urban area. The vacant lands are located over 100 metres from the main commercial street of Garrison Road that will allow for the Town to maintain a streetscape marketed for commercial uses.

[22] It was the opinion of Mr. Tchisler that the proposed development on underutilized vacant lands represents an economic investment in supporting employment opportunities and an increase to the Subject Site’s property taxes.

[23] Schedule “A” of the TOP designates that the Subject Site as Commercial and is within a Site Specific Policy Area No. 5 (the “SSPA 5”). SSPA 5 requires the completion of an EIS for properties before they may proceed with development. Mr. Tchisler informed the Tribunal that the previously conducted EIS has satisfied the Town of this requirement.

[24] The SSPA 5 also called for the completion of the Frenchman's Creek Trunk Sanitary Sewer Project. Mr. Tchisler informed the Tribunal that the Region has completed the project throughout the entire SSPA 5 area.

[25] The Subject Site is zoned Highway Commercial. The Tribunal was told by Mr. Tchisler that the Highway Commercial category is primarily used for commercial uses that depend on vehicular traffic and the travelling public as the source of their businesses.

[26] While the Subject Site only has a 15 metre frontage on Garrison Road with the majority of the Subject Site lands setback 100 metres from the road, it is the opinion of Mr. Tchisler that the nature of a storage facility is economically viable. While a storage facility is vehicular dependent for those living and working in the area, it is not dependent on business from the travelling public.

[27] The proposed development will utilize the existing access from Garrison Road. The Town has requested that an additional access from Helena Street be created. Mr. Tchisler confirmed that the Parties have agreed to include the new access point.

[28] Mr. Tchisler testified that the proposed development addresses the Urban Design Policies within the TOP by providing landscaping along the perimeter of the entire Subject Site.

[29] It was the opinion of Mr. Tchisler that the proposed OPA and ZBA applications represent good planning, that it is in the public interest and conforms to the TOP.

## **ANALYSIS AND FINDINGS**

[30] In determining this matter, the Tribunal accepts and adopts the uncontested land use planning evidence and expert opinions provided Mr. Tchisler. The Tribunal is persuaded by the evidence that the proposal promotes efficient development of land, accommodates a range of supportive uses for the area, intensifies uses within the

settlement area, maximizes the use for existing municipal infrastructure, and supports complete communities as desired by the Region and the Town.

[31] The Tribunal finds that the proposal is consistent with the policy direction established by the PPS and conforms to the relevant directives established by the GP, and as maintained by the ROP and the TOP. The Tribunal is further satisfied that the proposal has due regard for matters of Provincial interest, is consistent with the principles of good land use planning and is in the greater public interest. More significantly, the proposal furthers the goals and objectives of the Provincial planning regime by providing infrastructure support to businesses that allows for increase employment opportunities.

## **ORDER**

[32] **THE TRIBUNAL ORDERS** that the appeal is allowed, and the Official Plan for the Town of Fort Erie is amended as set out in Attachment “1” to this Order.

[33] **THE TRIBUNAL ORDERS** that the appeal is allowed, and By-law 129-90 is hereby amended in a manner set out in Attachment “2” to this Order. The Tribunal authorizes the municipal clerk to assign a number to this by-law for record keeping purposes.

*“Steven Cooke”*

STEVEN COOKE  
VICE-CHAIR

### **Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

## ATTACHMENT 1



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

By-law No. xx-2021

**Being A By-law To Enact An Amendment To The Official  
Plan Adopted By By-law No. 150-06 For The Town Of Fort  
Erie Planning Area**

**Amendment No. xx  
Niacon Construction - Agent  
575 Garrison Road Inc. – Owner  
0-10389 Helena Street and 625 Garrison Road**

The Municipal Council of the Corporation of the Town Of Fort Erie in accordance with the provisions of Section 17 of the Planning Act R.S.O. 1990 enacts as follows:

1. **That** amendment No. xx to the Official Plan for the Town of Fort Erie consisting of the attached explanatory text is hereby adopted and approved.
2. **That** this by-law shall come into force and take effect on the day of the final passing thereof.
3. **That** the Clerk of the Town of Fort Erie is authorized to effect any minor modifications, corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this xx day of October, 2021.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true copy of By-law No. xx-2021 of the said Town. Given under my hand and the seal of the said Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 20

**AMENDMENT NO. xx TO THE  
OFFICIAL PLAN FOR THE  
CORPORATION OF THE TOWN OF FORT ERIE**

**CONTENTS****PART "A" - THE PREAMBLE**

- Section 1            -     Title and Components
- Section 2           -     Purpose of Amendment
- Section 3           -     Location of this Amendment
- Section 4           -     Basis of this Amendment
- Section 5           -     Implementation and Interpretation

**PART "B" - THE AMENDMENT**

Introductory Statement Details of the Amendment

- Appendix 1        -     Mapping amendment to Schedule A – Land Use Plan of  
                                 the Official Plan

## **PART "A" - THE PREAMBLE**

### **SECTION 1**

#### **TITLE AND COMPONENTS**

This document, when approved in accordance with Sections 17 and 21 of The Planning Act, 1990, shall be known as Amendment No. xx to the Official Plan adopted by By-law No. 150-06 of the Fort Erie Planning Area.

Part "A", the Preamble does not constitute part of this amendment.

Part "B", the Amendment, consisting of the following text and map (designated Appendix 1) constitutes Amendment No. xx to the Official Plan adopted by By-law No. 150-06 for the Fort Erie Planning Area.

### **SECTION 2**

#### **PURPOSE OF THIS AMENDMENT**

The purpose of this Amendment is to add a site specific policy area as shown in Appendix 1 to facilitate the development of a Commercial and Public Storage facility.

### **SECTION 3**

#### **LOCATION OF THIS AMENDMENT**

The lands, which are the subject of this amendment, are located at 0-10389 Helena Street and 625 Garrison Road shown on Appendix "1" attached hereto.

### **SECTION 4**

#### **BASIS OF THIS AMENDMENT**

The proposed Commercial and Public Storage facility represents an efficient development pattern that will utilize existing services. The proposed use will support local businesses and residents by offering off-site storage opportunities, supporting both business operations as well as the achievement of more compact housing forms.

**SECTION 5**  
**IMPLEMENTATION AND**  
**INTERPRETATION**

The relevant policies of the Official Plan adopted by By-law No. 150-06 of the Fort Erie planning area shall apply to the implementation and interpretation of this Amendment.



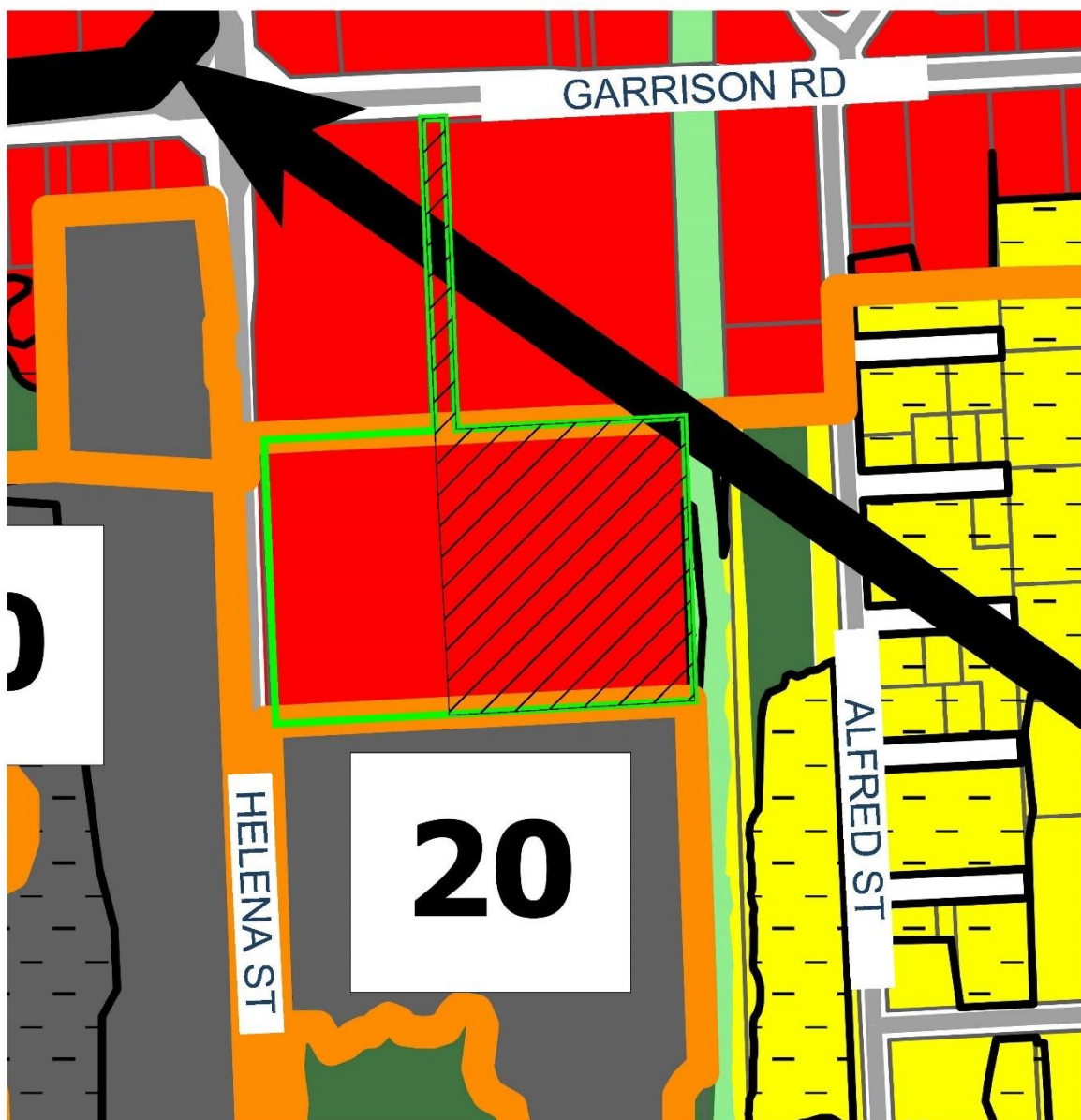
## **PART "B" - THE AMENDMENT**

All of this part of the document entitled "Part "B" - The Amendment" consisting of the following policies and attached maps designated as Appendix 1, constitute Amendment No. xx to the Official Plan adopted by By-law No. 150-06 for the Fort Erie Planning Area. The Official Plan adopted by By-law No. 150-06 for the Fort Erie Planning Area is hereby amended as follows:

1. Site Specific Policy Area xx shall be added to Schedule A – Land Use Plan of the Official Plan for the subject lands as shown on the attached Appendix 1.
2. The following Subsection shall be added to Section 4.14 – Site Specific Policy Areas:

### **4.14.xx 0-10389 Helena Street and 625 Garrison Road (Site Specific Policy Area xx)**

1. In addition to the uses permitted in the Commercial designation, a Commercial and Public Storage facility shall also be permitted on the subject property.
2. The lands subject to this amendment shall be accessed via a primary access from Garrison Road and via a secondary access from Helena Street, which shall be constructed to the satisfaction of the Town and the Region of Niagara.



Data Source: Town of Fort Erie

## Appendix 1

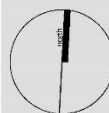
Official Plan  
Amendment No. XX

## LEGEND

- Subject Lands
- Add Site Specific Policy Area XX

DATE: October 6, 2021

SCALE: N.T.S.

625 Garrison Rd & 0 - 10389 Helena St,  
Fort Erie, Ontario
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## ATTACHMENT 2



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

**By-law No. xx-2021**

---

**Being a By-law to Amend Zoning By-law No. 129-90  
Niacon Construction - Agent  
575 Garrison Road Inc. – Owner  
0-10389 Helena Street and 625 Garrison Road**

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**Whereas** a Public Meeting pursuant to Section 34(12) of the *Planning Act*, R.S.O. 1990, c.P.13 was held on October 5, 2020, and

**Whereas** it is deemed desirable to amend the Comprehensive Zoning By-law No. 129-90 as amended, pursuant to the order of the Ontario Land Tribunal dated **October 6, 2021**;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** Schedule "A" of By-law No. 129-90 as amended, is further amended by changing the zoning of the lands as described above and shown on the attached Appendix "1" from "Highway Commercial (C3-489) Zone" to "Highway Commercial (C3-xxx) Zone".
2. **That** By-law No. 129-90 as amended, is further amended by adding to "Section 22 – "Highway Commercial (C3) Zone" Subsection – "Exceptions to the Highway Commercial (C3) Zone" the following exceptions:

**"C3-xxx (xx-2021) 0-10389 Helena Street and 625 Garrison Road**

These lands are zoned "Highway Commercial (C3-xxx) Zone", and all of the provisions of By-law No. 129-90 as amended that relate to lands zoned "Highway Commercial (C3) Zone" by this by-law shall apply to those lands zoned "Highway Commercial (C3-xxx) Zone" subject to the following special regulation:

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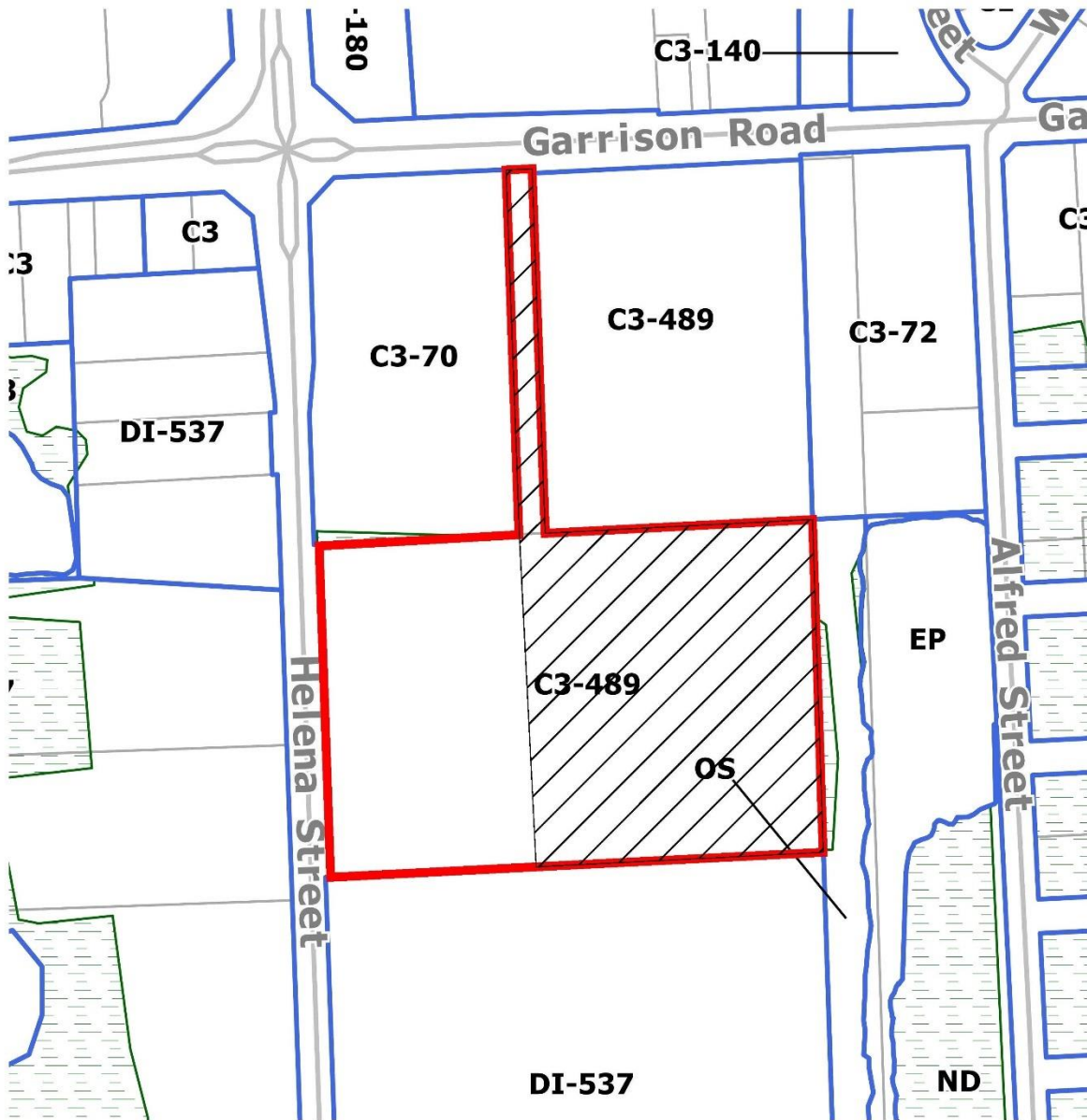
3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this xx day of October, 2021.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Carol Schofield, Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. xx-2021 of the said Town. Given under my hand and the seal of the said Corporation, this day of \_\_\_\_\_, 20



Data Source: Town of Fort Erie

# Appendix 1

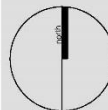
## By-law XX-2021

### LEGEND

- Subject Lands
- Modification of Zoning from C3-489 to C3-XXX zone

DATE: October 6, 2021

SCALE: N.T.S.



625 Garrison Rd & 0 - 10389 Helena St,  
Fort Erie, Ontario

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