

ISSUE DATE:

January 9, 2009



PL081041

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Consulate Ventures Inc.  
Appellant: RRVP Niagara Square Inc.  
Subject: Proposed Official Plan Amendment No. 83  
Municipality: City of Niagara Falls  
OMB Case No.: PL081041  
OMB File No.: PL081041

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Consulate Ventures Inc.  
Appellant: RRVP Niagara Square Inc.  
Subject: By-law No. 2008-107  
Municipality: City of Niagara Falls  
OMB Case No.: PL081041  
OMB File No.: PL081042

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Consulate Ventures Inc.  
Appellant: RRVP Niagara Square Inc.  
Subject: By-law No. 2008-108  
Municipality: City of Niagara Falls  
OMB Case No.: PL081041  
OMB File No.: PL081043

**APPEARANCES:**

**Parties**

Oakwood Place Shopping Centre Inc.

City of Niagara Falls

Consulate Ventures Inc.

**Counsel**

M. Bull  
C. Estrela

Q. Annibale

P. Patterson

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA ON  
DECEMBER 8, 2008 AND ORDER OF THE BOARD**

December 8, 2008, had been scheduled for the first Pre-hearing of this matter and Counsel for Oakwood Place Shopping Centre Inc. ("OPSC") had brought a Motion to Dismiss returnable on this date to dismiss the appeal launched by RRVP Niagara Square Inc. ("RRVP"). That Motion was abandoned given RRVP's letter to the Board withdrawing its appeal.

Therefore at the outset, the Board was advised that the remaining parties were diligently working on a settlement. The Board stood down the proceedings in order for progress to be made on a potential settlement. That was ultimately achieved and Minutes of Settlement duly executed by OPSC and Consulate Ventures Inc. ("Consulate") were filed with the Board as Exhibit 2, Tab 13.

Counsel for Consulate withdrew his client's appeal of Official Plan Amendment 83 ("OPA 83") on the basis of this settlement and as such, there will be no Order from the Board with respect to OPA 83. Therefore, the only remaining matters before the Board are Consulate's appeals against Zoning By-Laws 2008-107 and 2008-108.

The settlement provides for the lands located south of McLeod Road and on the north and south side of Oakwood Drive, in the City of Niagara Falls, to be rezoned to permit a new format Walmart store of 20,500 m<sup>2</sup> in area, a home improvement store of 14,000 m<sup>2</sup> and the balance of 7,000 m<sup>2</sup> for other retail commercial use. The property is approximately 34.6 acres and is bisected into north and south parcels by Oakwood Drive, which runs east-west through the property. Proposed by-laws for both the north and south parcels were presented to the Board as part of the settlement. They were filed as Exhibit 2, Tabs 14 (By-Law 2008-107 for the north parcel) and 7 (By-Law 2008-108 for the south parcel).

Mr. Ken Mech, Planner with the City of Niagara Falls, was qualified and accepted as an expert in land-use planning and provided opinion evidence supporting the proposed by-law amendments. His testimony was presented on consent by the parties and was unchallenged. Mr. Mech reviewed the location and history of the proposal; he reviewed the materials submitted in support; and referenced relevant provincial policy,

Official Plans of both the Region of Niagara and the City of Niagara Falls to conclude that the proposed amended by-laws, which he recommended for approval by this Board, were consistent with the 2005 Provincial Policy Statement, conformed to the operative official plans, represented good planning and were in the public interest. The Board accepts his evidence as a basis for its decision and determines that the proposed By-Laws 2008-107 and 2008-108 represent good planning and are in the public interest.

Therefore, the Board allows the appeal against Zoning By-Law 2008-107 of the City of Niagara Falls in part and By-Law 2008-107 is amended, as set out in Attachment "1", to this Order. In all other respects, the Board orders that this appeal is dismissed.

Further, the Board allows the appeal against Zoning By-Law 2008-108 of the City of Niagara Falls in part and By-Law 2008-108 is amended, as set out in Attachment "2", to this Order. In all other respects, the Board orders that this appeal is dismissed.

These are the Board's Orders.

"J. V. Zuidema"

J. V. ZUIDEMA  
VICE-CHAIR

# ATTACHMENT "1"

## CITY OF NIAGARA FALLS

### By-law No. 2008-107

A by-law to amend By-law No.79-200, to permit a shopping centre development on the north and west sides of Oakwood Drive.

#### **THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:**

1. Sheets B6 and C6 of Schedule "A" to By-law No. 79-200 are amended by redesignating from TC to SC and numbered 832, the land on the north and west sides of Oakwood Drive, being Pt Twp Lt 178 Stamford; Pt Twp Lt 187 Stamford Pts 6 and 7, 59R11584; T/W RO775517; Niagara Falls and shown hatched and designated SC and numbered 832 on the plan Schedule 1, attached to and forming part of this by-law.

2. Notwithstanding the provisions of section 2.31, Table 1 of clause (a) of section 4.19.1 and sections 4.20.1, 8.4.1 and 8.4.2 of By-law No. 79-200, no person shall use the land described in section 1 of this by-law and shown hatched and designated SC and numbered 832 on the plan Schedule 1 attached hereto, or erect or use any building or structure thereon, except for one or more of the uses listed in section 8.4.1 of By-law No. 79-200, plus the additional permitted uses and required use listed below, and except in compliance with the following regulations:

- |     |   |  |
|-----|---|--|
| (a) | Additional permitted uses   | Car rental establishment<br>Hotel<br>Motel<br>Place of worship   |
| (b) | Required use  | Department store or home improvement store   |
| (c) | Prohibited uses   | Freestanding supermarket having a floor area greater than 1,860 square metres  |
| (d) | Deemed lot  | for the purpose of determining compliance with this by-law and By-law No. 79-200, notwithstanding ownership, all the land described in section 1 of this by-law and shown hatched and designated SC and numbered 832 on the plan Schedule 1 attached hereto, shall be considered one lot, save and except for any part that may be required to be dedicated for the purpose of road widening |
| (e) | Minimum yard depth from any lot line abutting Oakwood Drive for any building or structure with a gross leasable floor area greater than 2,800 square metres | 12 metres  |

- |     |   |   |
|-----|---|---|
| (f) | Minimum yard depth from any lot line abutting Oakwood Drive for any building or structure with a gross leasable floor area of less than 2,800 square metres   | 6 metres  |
| (g) | Minimum yard depth from any lot line abutting the Queen Elizabeth Way for any building or structure   | 3 metres or Ontario Ministry of Transportation setback, whichever is lesser |
| (h) | Minimum yard depth from the north lot line for any building or structure  | <b>6.5</b> metres   |
| (i) | Maximum horizontal length of a wall facing and within 30 metres of Oakwood Drive  | 120 metres  |
| (j) | Maximum lot coverage  | 35 %  |
| (k) | Maximum height of a building or structure   | 18 metres subject to section 4.7 of By-law No. 79-200                       |
| (l) | Maximum total aggregate gross leasable floor area on the land described in section 1 of this by-law and shown hatched and designated SC and numbered 832 on the plan Schedule 1 attached hereto together with the land described in section 1 of By-law No. 2008-108 and shown hatched and designated SC and numbered 833 on the plan Schedule 1 attached thereto | 40,000 square metres  |
| (m) | Maximum gross leasable floor area of a department store   | 20,500 square metres  |
| (n) | Minimum gross leasable floor area of a department store   | 13,500 square metres  |
| (o) | Maximum gross leasable floor area of a home improvement store   | 14,000 square metres  |
| (p) | Minimum gross leasable floor area of a home improvement store   | 4,800 square metres   |

- |       |   |   |
|-------|---|---|
| (q)   | Maximum total aggregate gross leasable floor area of all retail stores other than a department store or a home improvement store on the lands described in section 1 of this by-law and shown hatched and designated SC and numbered 832 on the plan Schedule 1 attached hereto together with the land described in section 1 of By-law No. 2008-108 and shown hatched and designated SC and numbered 833 on the plan Schedule 1 attached thereto | 7,000 square metres   |
| (r)   | Parking and access requirements for all uses, save and except for a hotel, motel, and place of worship  | 1 space per 23 square metres of gross leasable floor area, in accordance with the parking space dimensions and access requirements contained in clauses (b) through to (h) of section 4.19.1 of By-law No. 79-200 |
| (s)   | Parking and access requirements for a hotel, motel and place of worship   | in accordance with section 4.19.1 of By-law No. 79-200  |
| (t)   | Minimum number of loading spaces  | in accordance with section 4.20.1 of By-law No. 79-200, except that the required number of loading spaces shall be as follows:  |
| (i)   | for a building or structure with a gross leasable floor area up to and including 2,300 square metres  | none required   |
| (ii)  | for a building or structure with a gross leasable floor area over 2,300 square metres but not exceeding 3,700 square metres   | 1   |
| (iii) | for a building or structure with a gross leasable floor area over 3,700 square metres   | 2   |

- (u) **Loading spaces, service areas and waste disposal areas for any building or structure with a gross leasable floor area greater than 2,800 square metres** **may be located within any yard, except a required yard, and shall be screened from the north and east lot lines by a masonry wall, having a height no less than 4 metres, and attached to the building**
- (v) **Open storage** no person shall use any land for the open storage of goods and materials, provided that this shall not apply to the storage of garden and sporting equipment and supplies, lumber and building materials in an outdoor shop or screened area operated as an accessory use to a retail store, department store or a home improvement store
- (w) **Minimum yard for an open storage use, as identified in clause (v) of this section** in accordance with clauses (e), (f), (g) and (h) of this section
- (x) **Minimum landscaped open space** 15% of the lot area which shall include:
  - (i) a 6 metre wide landscape strip along and adjacent to Oakwood Drive after any required dedication for the purpose of road widening, save and except for any driveways; and
  - (ii) a landscape strip along and adjacent to the Queen Elizabeth Way where the Ontario Ministry of Transportation has prohibited locating buildings or structures
  - (iii) **A landscape strip along and adjacent to the north lot line, save and except for areas used for driveways, retaining walls, or emergency or fire exits from buildings.**

3. For the purposes of this by-law the following definitions shall apply:

“Department store” means a retail store where a wide range of merchandise is sold, including but not limited to: general merchandise, drugs and medicines, food, wine, lottery products, and garden centre; and where a wide range of services may be provided, including but not limited to: photographic services, restaurant, including take-out and drive-through facilities, optical services, medical, dental and pharmaceutical services, banking, financial and real estate services, telecommunications services, automotive rental, service and repair, gas bar, car wash, children’s amusement facility, travel agency, and personal services.

“Home improvement store” means a retail store devoted to the sale and/or rental from time to time of material, equipment, tools and supplies for home improvements including, lumber,

building supplies and fixtures, lighting, kitchen and bath materials, supplies and fixtures, tools, plumbing supplies and fixtures, paint and wallpaper, décor and storage materials and supplies, flooring materials and supplies, wall, door or window coverings, paneling and ceilings, seasonal items including lawn mowers, snowblowers, barbecues, pool equipment and chemicals and nursery and landscaping plants, equipment and supplies, and may include ancillary retail sales including a restaurant and may include the sale of services related to the enjoyment, improvement or decoration of the home or to the use of any other goods sold in the store and garden centre. Open storage may be permitted as an accessory use.

“Freestanding supermarket” means a retail store devoted to the preparation and sale of food which may include ancillary retail sales and services including, but not limited to, a florist shop, a pharmacy, home electronics, a wine shop, financial services, photo finishing, a coffee shop, home office supplies, clothing, housewares, a garden centre, a health centre and seasonal merchandise.

4. Section 19 of By-law No. 79-200 is amended by adding thereto the following:

19.1.832 Notwithstanding the provisions of section 2.31, Table 1 of clause (a) of section 4.19.1 and sections 4.20.1, 8.4.1 and 8.4.2 of By-law No. 79-200, no person shall use the land on the north and west sides of Oakwood Drive, designated SC and numbered 832 on Sheets B6 and C6 of Schedule “A”, or erect or use any building or structure thereon, except in compliance with By-law No. 2008-107.

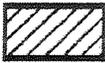
Passed this seventh day of July, 2008.

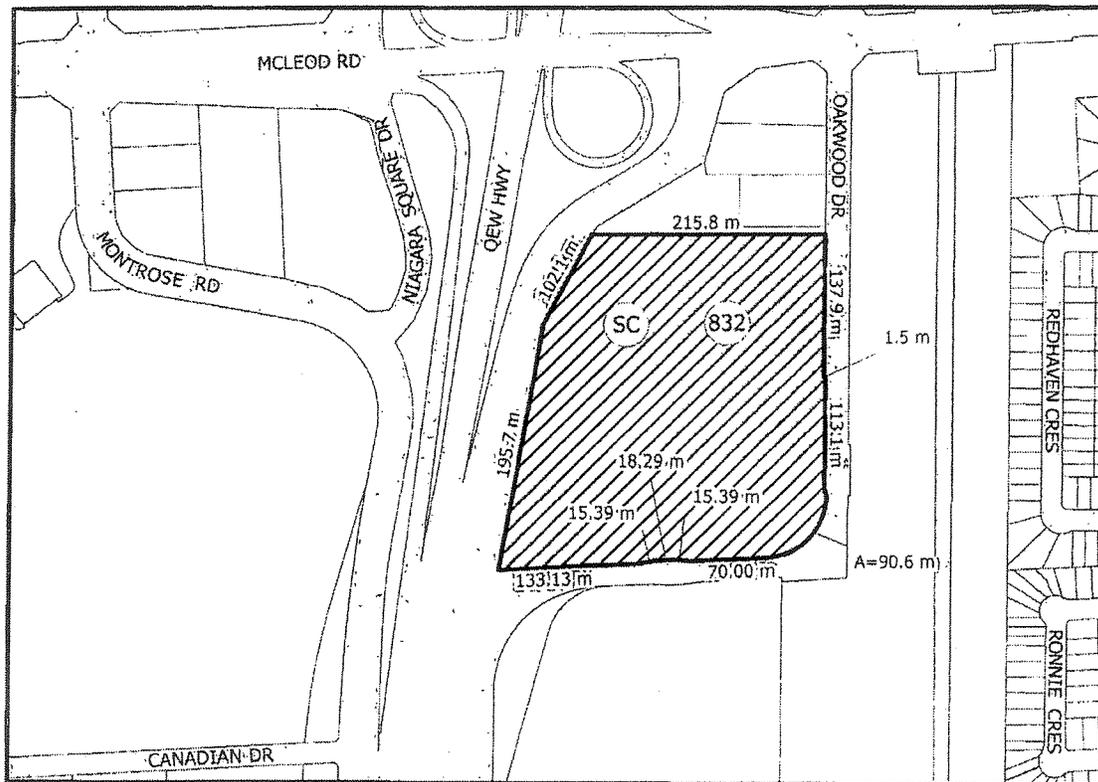
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DEAN IORFIDA, CITY CLERK

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R. T. (TED) SALCI, MAYOR

First Reading: July 7, 2008  
Second Reading: July 7, 2008  
Third Reading: July 7, 2008

# SCHEDULE 1 TO BY-LAW No. 2008-107

Subject Land 



## Amending Zoning By-law No. 79-200

Description: Pt Twp Lt 178 Stamford; Pt Twp Lt 187 Stamford  
Pts 6 and 7, 59R11584; T/W RO775517; Niagara Falls

Applicant: Oakwood Place Shopping Centre Inc.

Assessment #s: 272511000205400



1:NTS  
AM-46/2006

## ATTACHMENT "2"

### CITY OF NIAGARA FALLS

#### By-law No. 2008-108

A by-law to amend By-law No. 79-200, to permit a shopping centre development on the south and east sides of Oakwood Drive.

#### THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:

1. Sheets B6 and C6 of Schedule "A" to By-law No. 79-200 are amended by redesignating from TC to SC and numbered 833, the land on the south and east sides of Oakwood Drive, being Pt Twp Lt 187 Stamford as in RO735420; S/T RO260293; Niagara Falls and shown hatched and designated SC and numbered 833 on the plan Schedule 1, attached to and forming part of this by-law.

2. Notwithstanding the provisions of section 2.31, Table 1 of clause (a) of section 4.19.1 and sections 4.20.1, 8.4.1 and 8.4.2 of By-law No. 79-200, no person shall use the land described in section 1 of this by-law and shown hatched and designated SC and numbered 833 on the plan Schedule 1 attached hereto, or erect or use any building or structure thereon, except for one or more of the uses listed in section 8.4.1 of By-law No. 79-200, plus the additional permitted uses listed below, and except in compliance with the following regulations:

- |     |   |  |
|-----|---|--|
| (a) | Additional permitted uses   | Car rental establishment<br>Hotel<br>Motel<br>Place of worship<br>Department store<br>Home improvement store   |
| (b) | Prohibited uses   | Freestanding supermarket having a floor area greater than 1,860 square metres  |
| (c) | Deemed lot  | for the purpose of determining compliance with this by-law and By-law No. 79-200, notwithstanding ownership, all the land described in section 1 of this by-law and shown hatched and designated SC and numbered 833 on the plan Schedule 1 attached hereto, shall be considered one lot, save and except for any part that may be required to be dedicated for the purpose of road widening |
| (d) | Minimum yard depth from any lot line abutting Oakwood Drive for any building or structure with a gross leasable floor area greater than 2,800 square metres | 12 metres  |

- |     |   |   |
|-----|---|---|
| (e) | Minimum yard depth from any lot line abutting Oakwood Drive for any building or structure with a gross leasable floor area of less than 2,800 square metres   | 6 metres  |
| (f) | Minimum yard depth from the east lot line for any building or structure   | 2 metres  |
| (g) | Minimum yard depth from the west and south lot line for any building or structure   | 3 metres  |
| (h) | Maximum lot coverage  | 35 %  |
| (i) | Maximum height of a building or structure   | 18 metres subject to section 4.7 of By-law No. 79-200 |
| (j) | Maximum total aggregate gross leasable floor area on the land described in section 1 of this by-law and shown hatched and designated SC and numbered 833 on the plan Schedule 1 attached hereto together with the land described in section 1 of By-law No. 2008-107 and shown hatched and designated SC and numbered 832 on the plan Schedule 1 attached thereto | 40,000 square metres                                  |
| (k) | Maximum gross leasable floor area of a department store   | 20,500 square metres                                  |
| (l) | Minimum gross leasable floor area of a department store   | 13,500 square metres                                  |
| (m) | Maximum gross leasable floor area of a home improvement store   | 14,000 square metres                                  |
| (n) | Minimum gross leasable floor area of a home improvement store   | 4,800 square metres                                   |
| (o) | Maximum total aggregate gross leasable floor area of all retail stores other than a department  | 7,000 square metres                                   |

store or a home improvement store on the lands described in section 1 of this by-law and shown hatched and designated SC and numbered 833 on the plan Schedule 1 attached hereto together with the land described in section 1 of By-law No. 2008-107 and shown hatched and designated SC and numbered 832 on the plan Schedule 1 attached thereto

- |     |  |   |
|-----|--|---|
| (p) | Parking and access requirements for all uses, save and except for a hotel, motel, and place of worship   | 1 space per 23 square metres of gross leasable floor area, in accordance with the parking space dimensions and access requirements contained in clauses (b) through to (h) of section 4.19.1 of By-law No. 79-200 |
| (q) | Parking and access requirements for a hotel, motel and place of worship  | in accordance with section 4.19.1 of By-law No. 79-200  |
| (r) | Minimum number of loading spaces   | in accordance with section 4.20.1 of By-law No. 79-200, except that the required number of loading spaces shall be as follows:  |
|     | (i) for a building or structure with a gross leasable floor area up to and including 2,300 square metres   | none required   |
|     | (ii) for a building or structure with a gross leasable floor area over 2,300 square metres but not exceeding 3,700 square metres                                   | 1   |
|     | (iii) for a building or structure with a gross leasable floor area over 3,700 square metres  | 2   |
| (s) | Location of loading spaces, service areas and waste disposal areas for any building or structure with a gross leasable floor area greater than 2,800 square metres | prohibited in any yard abutting Oakwood Drive   |

- (t) Open storage no person shall use any land for the open storage of goods and materials, provided that this shall not apply to the storage of garden and sporting equipment and supplies, lumber and building materials in an outdoor shop or screened area operated as an accessory use to a retail store, department store or a home improvement store
- (u) Minimum yard for an open storage use, as identified in clause (t) of this section in accordance with clauses (d), (e), (f) and (g) of this section
- (v) Minimum landscaped open space 15% of the lot area which shall include:
  - (i) a 6 metre wide landscape strip along and adjacent to Oakwood Drive after any required dedication for the purpose of road widening, save and except for any driveways; and
  - (ii) a 3 metre wide landscape strip along and adjacent to the west lot line, save and except for any driveways

3. For the purposes of this by-law the following definitions shall apply:

“Department store” means a retail store where a wide range of merchandise is sold, including but not limited to: general merchandise, drugs and medicines, food, wine, lottery products, and garden centre; and where a wide range of services may be provided, including but not limited to: photographic services, restaurant, including take-out and drive-through facilities, optical services, medical, dental and pharmaceutical services, banking, financial and real estate services, telecommunications services, automotive rental, service and repair, gas bar, car wash, children’s amusement facility, travel agency, and personal services.

“Home improvement store” means a retail store devoted to the sale and/or rental from time to time of material, equipment, tools and supplies for home improvements including, lumber, building supplies and fixtures, lighting, kitchen and bath materials, supplies and fixtures, tools, plumbing supplies and fixtures, paint and wallpaper, décor and storage materials and supplies, flooring materials and supplies, wall, door or window coverings, paneling and ceilings, seasonal items including lawn mowers, snowblowers, barbecues, pool equipment and chemicals and nursery and landscaping plants, equipment and supplies, and may include ancillary retail sales including a restaurant and may include the sale of services related to the enjoyment, improvement or decoration of the home or to the use of any other goods sold in the store, and garden centre. Open storage may be permitted as an accessory use.

“Freestanding supermarket” means a retail store devoted to the preparation and sale of food which may include ancillary retail sales and services including, but not limited to, a florist shop, a pharmacy, home electronics, a wine shop, financial services, photo finishing, a coffee shop, home office supplies, clothing, housewares, a garden centre, a health centre and seasonal merchandise.

4. Section 19 of By-law No. 79-200 is amended by adding thereto the following:

19.1.833 Notwithstanding the provisions of section 2.31, Table 1 of clause (a) of section 4.19.1 and sections 4.20.1, 8.4.1 and 8.4.2 of By-law No. 79-200, no person shall use the land on the south and east sides of Oakwood Drive, designated SC and numbered 833 on Sheets B6 and C6 of Schedule "A", or erect or use any building or structure thereon, except in compliance with By-law No. 2008-108.

Passed this seventh day of July, 2008.

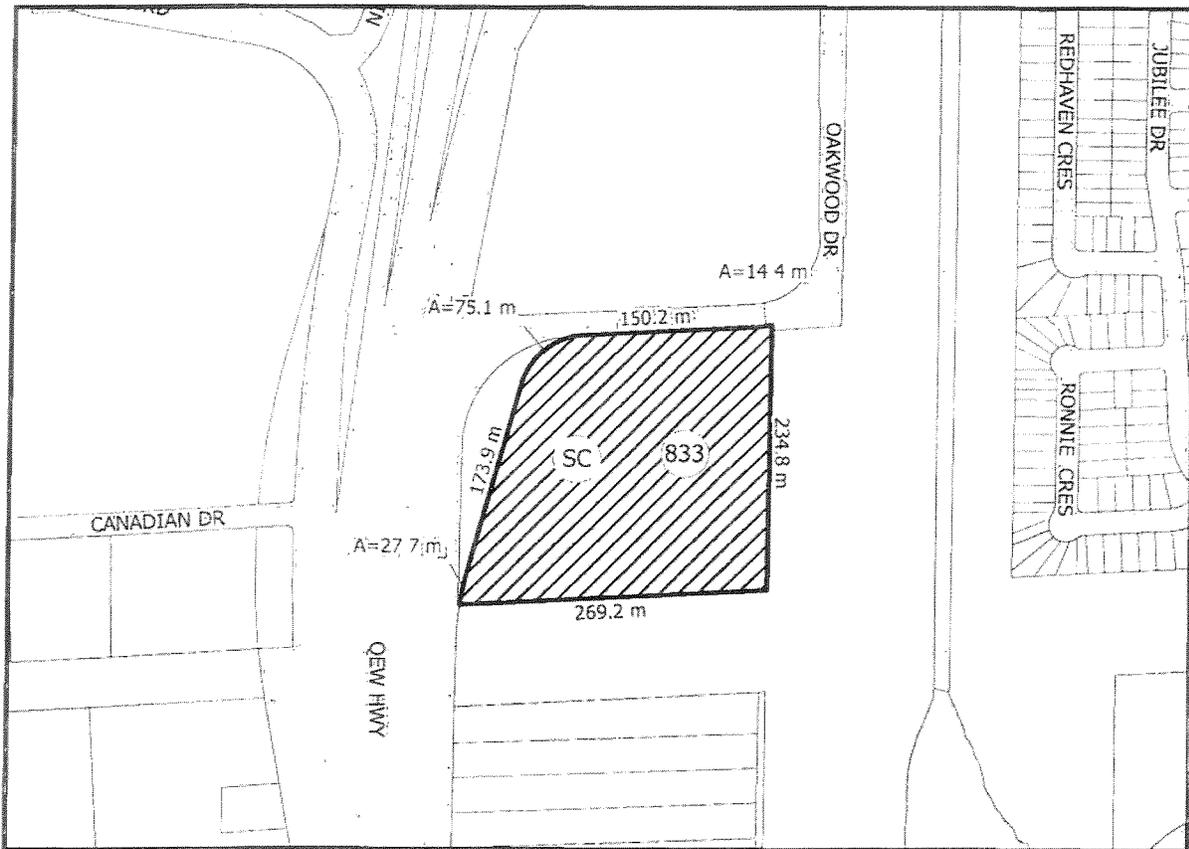
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DEAN IORFIDA, CITY CLERK

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R. T. (TED) SALCI, MAYOR

First Reading: July 7, 2008  
Second Reading: July 7, 2008  
Third Reading: July 7, 2008

# SCHEDULE 1 TO BY-LAW No. 2008-108

Subject Land 



## Amending Zoning By-law No. 79-200

Description. Pt Twp Lt 187 Stamford as in RO735420;  
S/T RO260293; Niagara Falls

Applicant: Oakwood Place Shopping Centre Inc.

Assessment #: 272511000205300



1.NTS

AM-46/2006