



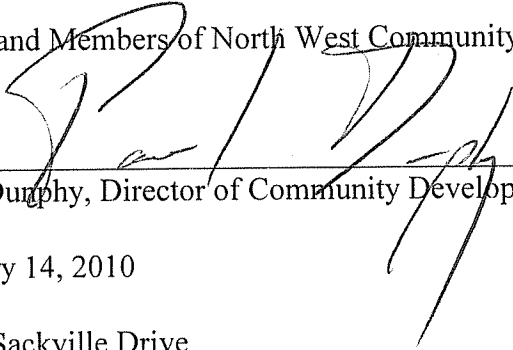
PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5, Canada

4.1.4

North West Community Council  
January 28, 2010

**TO:** Chair and Members of North West Community Council

**SUBMITTED BY:**

  
\_\_\_\_\_  
Paul Dugphy, Director of Community Development

**DATE:** January 14, 2010

**SUBJECT:** 1053 Sackville Drive  
\_\_\_\_\_

**ORIGIN**

September 24, 2009 - Motion of North West Community Council:

*Moved by Councillor Johns, seconded by Councillor Outhit, that North West Community Council request a staff report clarifying the zoning of 1053 Sackville Drive and provide recommendation on how to limit the current and future uses on this property including potential rezoning without the possibility of future nonconforming status. MOTION PUT AND PASSED.*

**RECOMMENDATION**

It is recommended that North West Community Council:

- (1) Instruct staff to maintain status quo on the 1053 Sackville Drive and with the land use provision of the Sackville Land Use By-law.

## BACKGROUND

### *Subject Property*

The subject property is in the commercial area located along the north east side of Sackville Drive between Beaver Bank Road and Millwood Drive (see Map 1). The subject property is approximately 12,000 square feet in area. The lands are designated Community Commercial under the Municipal Planning Strategy (MPS) for Sackville and are zoned C-2 (Community Commercial) under the Land Use By-law (LUB) for Sackville. The majority of the neighbouring properties are zoned residential. However, there are several adjacent properties zoned C-2 and one property zoned P-2 (Community Facility) (see Map 1).

The current uses at 1053 Sackville Drive include a billiard/social club and a pizza shop in conjunction with a convenience store. Up until a couple months ago a U-haul rental facility and a small used car lot were also located on the site. The local councillor feels these uses are too varied and are incompatible with each other and the neighbouring residential uses.

### *Land Use Compliance*

A land use compliance investigation was completed on the property and had shown that all of the uses including the U-haul rental facility and the used car lot were all permitted as-of-right and had proper permits from the HRM. The building on this site is older therefore some provisions of the LUB, such as parking, were not be required as parking requirements only need to be met if a building is being constructed or added to. Further, some provisions of the National Building Code, such as requirements for bathrooms, are not be required if the general use has not changed.

### *Non Conforming Uses*

The *HRM Charter* states that a non-conforming use may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend the land use by-law. Therefore, even if the zoning or land use provisions for the property at 1053 Sackville Drive was to change today, the current uses could continue to exist. The *HRM Charter* permits a non-conforming use to change ownership and although the structure containing a non-conforming use cannot expand the use may expand throughout the existing structure. The use may not continue if the use is discontinued for more than 6 months or if damaged or destroyed by fire to the amount of 75% or more.

Further, the Sackville Municipal Planning Strategy supports the existence of non-conforming uses through Policy CC-3 which allows the expansion of non-conforming uses through a development agreement.

## DISCUSSION

This report discusses three potential alternatives that deal with the current situation at 1053 Sackville Drive:

- (1) take no action and keep the current zoning as is, this is the recommendation of staff;
- (2) amend the existing provisions of the C-2 Zone, and;
- (3) create a new Community Commercial Zone.

### **Keep the Current Zoning**

The C-2 Zone was created under the Community Commercial Designation of the MPS for Sackville. The designation's intent is to provide an intermediate level of commercial service to the community, secondary to those commercial uses permitted through the Sackville Drive Secondary Plan and the Sackville Business Park Designation. Policy CC-2 discusses the creation of a community commercial zone that permits a range of commercial and office uses with controls to address compatibility concerns with adjacent residential properties.

The C-2 zone permits a wide variety of commercial uses, which range from offices to motels and hostel to service stations. Staff believe that the C-2 Zone meets the intent of Policy CC-2 as it provides a range of commercial uses that are secondary to those permitted in the Sackville Drive Secondary Plan and the Sackville Business Park Designation and a range of uses that can serve residents within the surrounding area. The C-2 Zone also has various controls on commercial development such as a maximum gross floor area that is dependant on the use and more stringent requirements for outdoor storage, buffers and parking for properties that abut residential or community facility zoned properties.

It is the opinion of staff the current C-2 zone should remain on the subject property. Further, staff feel the issues and concerns surrounding this property can not be addressed through a zoning changes. Any zoning change would render the land use non-conforming and this would not address the concerns raised by Council.

### **Amend the Existing Provisions of the C-2 Zone**

Policy CC-2 of the MPS for Sackville discusses controls on maximum size, outdoor storage and display, parking and loading areas, landscaping and signage to address compatibility concerns with adjacent residential and community facility development. It is the opinion of staff the current provisions in the C-2 Zone are adequately addressing compatibility issues.

To amend the provisions of the C-2 Zone an amendment to the LUB would be required. It is important to note, even if the provisions are amended they cannot be enforced until the type of use is changed or the existing use ceases to exist for 6 months. However if any changes to the C-2 Zone or Community Commercial Designation are proposed they should apply to a larger commercial area and not one particular property.

### **Create a New Community Commercial Zone**

The Community Commercial Designation allows for one Community Commercial Zone; the C-2 Zone. As already discussed the C-2 Zone offers a range of uses. The Community Commercial Designation does not contain provisions that would allow a second community commercial zone nor does the designation provide the opportunity to enter into a development agreement to limit the uses on a property.

To create a new zone in the Community Commercial designation a new policy would need to be created which would address the need for a second community commercial zone. This would require an amendment to the MPS and is not recommended by staff.

### **Conclusion**

As discussed within this report, staff believe the current C-2 Zone meets the intent of the Community Commercial Designation and that the current zoning at 1053 Sackville Drive should remain.

### **BUDGET IMPLICATIONS**

None.

### **FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

### **ALTERNATIVES**

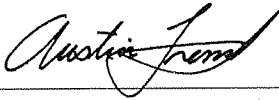
1. Council may choose to keep the zoning at 1053 Sackville Drive as is. This is the staff recommendation.
2. Council may choose to amend the provisions of the C-2 (Community Commercial) in the Land Use By-law for the Sackville Planning Area. This would require a Land Use By-law amendment.
3. Council may choose to create a new Community Commercial zone in the Land Use By-law for the Sackville Planning Area. This would require an amendment to the Municipal Planning Strategy for the Sackville Planning Area.

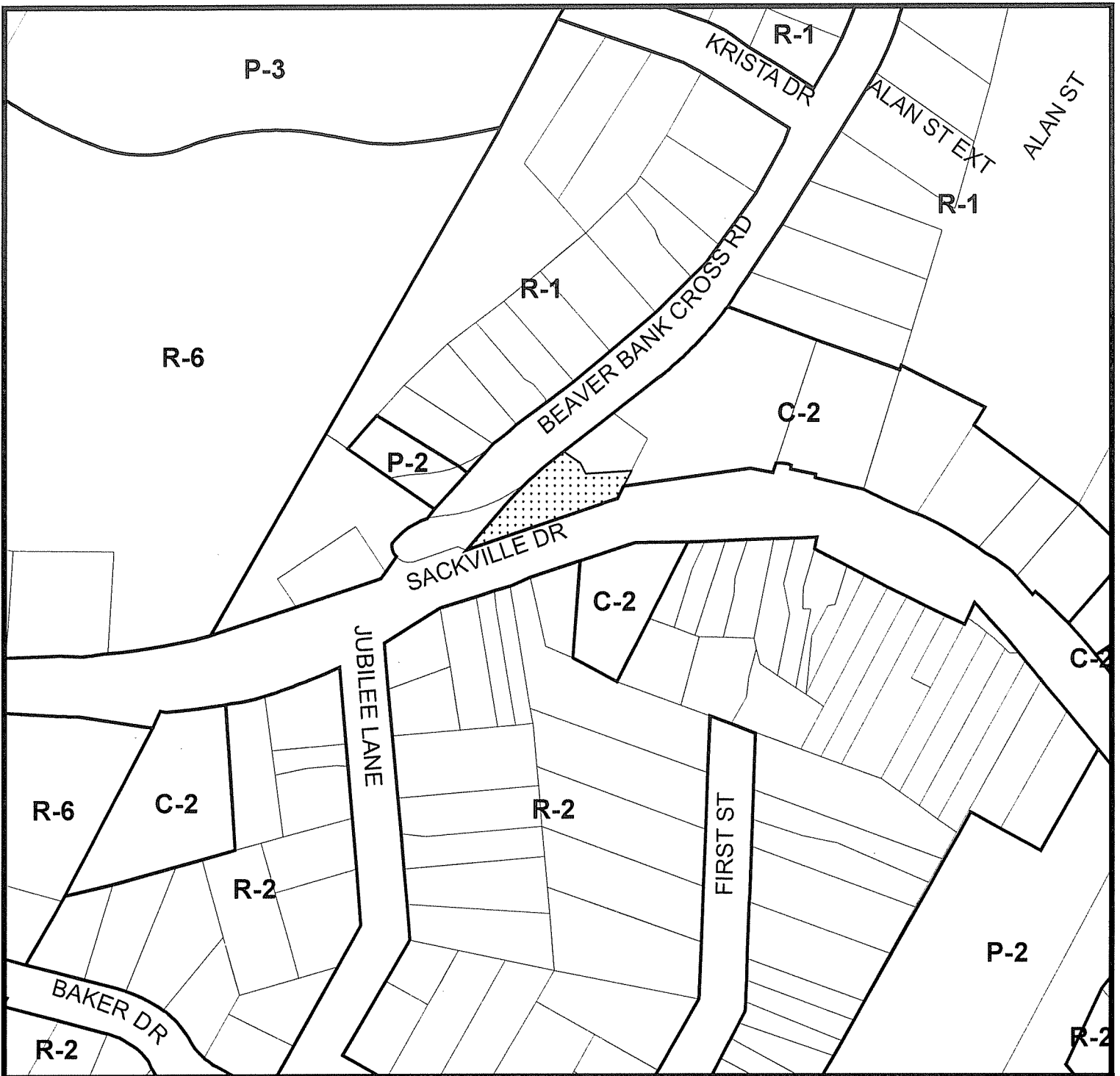
ATTACHMENTS

Map 1: Location Map  
Map 2: C-2 Zoned Properties (located on Sackville Drive between Beaver Bank Rd and Millwood Dr.)  
Attachment A: Applicable Sections of MPS  
Attachment B: Applicable Sections of LUB

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Jillian MacLellan, Planner 1, 490-3999

Report Approved by:   
Austin French, Manager, Planning Services, 490-6717



**Map 1**  
**Location and Zoning**

- |     |                           |     |                           |
|-----|---------------------------|-----|---------------------------|
| R-1 | Single Unit Dwelling Zone | C-2 | Community Commercial Zone |
| R-2 | Two Unit Dwelling Zone    | P-2 | Community Facility Zone   |
| R-6 | Rural Residential Zone    | P-3 | Floodplain Zone           |

**HALIFAX**  
 REGIONAL MUNICIPALITY  
 Community Development  
 Planning Services

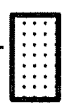


 **Subject Property**





Map 2



C-2 Zoned Properties



Subject Property (1053 Sackville Dr.)



Attachment A  
Applicable Sections of the MPS

**COMMUNITY COMMERCIAL DESIGNATION**

The Community Commercial Designation is applied to secondary commercial areas located outside of the Sackville Drive Secondary Plan Area. Five distinct areas are contained within this designation. These areas include lands along the north east side of Sackville Drive between the Beaver Bank Road and Millwood Drive, lands at the intersection of the Cobequid Road and Glendale Avenue, lands at the intersection of Glendale Avenue and the Beaver Bank Road, lands at the intersection of the Beaver Bank Road and Stokil Drive/Millwood Drive and the Sackville Town Centre on First Lake Drive. (RC-May 7, 2002; Effective-June 29, 2002)

The intent of this designation is to provide an intermediate level of commercial service to the community, as well as to support all existing uses. The areas included within the designation currently exhibit considerable commercial development as well as the potential for future commercial development and redevelopment.

The range and scale of uses permitted in the Community Commercial Designation is not as extensive as that permitted in the Sackville Drive Secondary Plan. The objective of the Community Commercial Designation in limiting the uses and scale of development is twofold. Firstly, this designation is supportive of the Sackville Drive Secondary Plan and the Sackville Business Park as the areas of commercial focus for a larger region, rather than in competition with that area's development. Secondly, it is recognized that potential conflict with adjacent residential developments is greater in the Community Commercial Designation. Limits on the scale of permitted uses will be established to address potential conflicts. (RC-May 7, 2002; Effective-June 29, 2002)

There are a number of residential and undeveloped properties within the Community Commercial Designation which will retain the residential zoning established under the previous planning strategy. Proposals for commercial development will be considered through the rezoning process.

**CC-1** It shall be the intention to establish a Community Commercial Designation as shown on the Map 1 - Generalized Future Land Use. Within this designation, it shall be the intention of Council to support and promote a secondary level of commercial development in the specific designated areas within the community. These areas are intended to provide commercial services to residents of surrounding areas.

**CC-2** Within the Community Commercial Designation it shall be the intention of Council to establish a community commercial zone which permits a range of commercial and office uses,



community facility uses and existing deletion - June 16, 1994) dwellings. Controls on maximum size, outdoor storage and display, parking and loading areas, landscaping and signage will be established in order to promote well-designed commercial development and to address compatibility concerns with adjacent residential and community facility development. When considering amendments to the land use by-law to permit new commercial uses within the Community Commercial Designation, Council shall have regard to the following:

- (a) the impact of the proposed use on traffic circulation, and in particular, sighting distances and entrance to and exit from the site;
- (b) the potential impact of the proposed use on adjacent residential and community facility use; and
- (c) the provisions of Policy IM-13.

Although limits will be placed on the scale of new developments within the Community Commercial Designation, existing uses which exceed the maximum permissible size will be permitted to continue, and expansion may be considered by development agreement. Among these uses is the Sackville Town Centre shopping mall on First Lake Drive, which was developed under prior commercial zoning.

In addition to the expansion of existing uses, new commercial uses in excess of the maximum size may also be considered by development agreement. Through this mechanism, site design details will be evaluated in order to address concerns with the impact of any expansion on adjacent residential and community facility uses. The objective of the development agreement process is to encourage a high quality of site design including attention to the exterior appearance of the building, parking areas, landscaping and signage.

**CC-3** Notwithstanding Policy CC-2, within the Community Commercial Designation, Council may consider the expansion of existing uses and the establishment of new commercial uses in excess of the maximum size permitted in the community commercial zone, according to the development agreement provisions of the Planning Act. In considering any such development agreement, Council shall have regard to the following:

- (a) an evaluation of the appropriateness of the proposed use in terms of its effect on the development of the Sackville Drive Secondary Plan as the major commercial focus within the plan area; (RC-May 7, 2002; Effective-June 29, 2002)
- (b) that no development agreement for office uses in excess of the maximum size permitted in the community commercial zone be considered;
- (c) that municipal central services are capable of supporting the development;
- (d) that site design features, including landscaping, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent development and to provide for the needs of users of the development;
- (e) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;

- (f) that appropriate controls are established to address environmental concerns, including stormwater controls;
- (g) the impact on traffic circulation and, in particular, sighting distances and entrances and exits to the site;
- (h) general maintenance of the development;
- (i) hours of operation; and
- (j) the provisions of Policy IM-13.

Although it is generally intended that commercial development be contained within the Community Commercial Designation, there is an area where allowing further expansion or redevelopment may be appropriate. This area is in the vicinity of the Beaver Bank Road-Glendale Drive intersection. However, site-specific controls are needed to ensure that any expansion will not unduly impose upon abutting residential neighbourhoods and that the site design is compatible with the surrounding community infrastructure and natural environment.

**CC-4** Notwithstanding Policy CC-3, Council may consider new commercial uses or expansion of existing uses on lands beyond the Community Commercial Designation in the vicinity of the Beaver Bank Road-Glendale Drive intersection in accordance with the development agreement provisions of the Planning Act. In considering any such agreement, Council shall have regard to the following:

- (a) that a portion of the new or expanded use is located within the Community Commercial Designation;
- (b) the location, scale and general design of structures;
- (c) the adequacy of separation distances and landscaping measures to protect abutting residential properties;
- (d) the extent and location of outdoor storage and display areas and signage;
- (e) that the site layout has proper regard for community infrastructure and the natural environment; and
- (g) the provisions of Policy IM-13.

While, automotive repair outlets are permitted within the Community Commercial Zone, new auto body shops shall be excluded. New auto body shops may only be considered by development agreement because of the industrial characteristics of such operations and the public concerns to which they give rise. The development agreement mechanism provides the opportunity for a site specific evaluation of the proposed development, in order to address the impact on adjacent land uses and to establish an appropriate level of control. Existing autobody shops will be specifically permitted within the Community Commercial and Commercial Corridor zones, in recognition of the fact that such uses were established prior to adoption of the planning strategy. (RC-May 7, 2002; Effective-June 29, 2002)

**CC-5** Notwithstanding Policy CC-2, within the Community Commercial Designation, Council may consider new autobody shops according to the development agreement provisions of the Planning

Act. In considering any such agreement, Council shall have regard to the following:

- (a) that the height, bulk, lot coverage and appearance of any proposed structure is compatible with adjacent land uses;
- (b) that site design features, including outdoor storage areas, parking areas and driveways are adequately designed to address potential impacts on adjacent developments;
- (c) appropriate vehicular access and egress;
- (d) general maintenance of the development;
- (e) hours of operation; and
- (f) the provisions of Policy IM-13.

Existing multiple unit dwellings will be permitted within the community commercial zone as existing uses. Any expansion of existing multiple unit dwellings or the development of new multiple unit dwellings, however, will be considered by development agreement.

**CC-6** Notwithstanding Policy CC-2, within the Community Commercial Designation, Council may consider the expansion of existing multiple unit dwellings and the development of new multiple unit dwellings according to the development agreement provisions of the Planning Act. In considering any such development agreement, Council shall have regard to the following:

- (a) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- (b) that site design features, including landscaping, amenity areas, parking areas and driveways, are of an adequate size and design to address potential impacts on adjacent development and to provide for the needs of residents of the development;
- (c) that municipal central services are available and capable of supporting the development;
- (d) that appropriate controls are established to address environmental concerns, including stormwater controls;
- (e) the impact on traffic circulation and, in particular, sighting distances and entrances and exits to the site;
- (f) general maintenance of the development; and
- (g) the provisions of Policy IM-13.

## **IMPLEMENTATION**

**IM-9** The following uses or zones shall only be considered by amendment to the land use by-law.

- (c) Within the Community Commercial Designation:
  - (i) commercial uses according to Policy CC-2.

**IM-10** The following uses shall only be considered subject to the entering into of a development agreement.

- (d) Within the Community Commercial Designation:
  - (i) commercial uses with greater than ten thousand (10,000) square feet according to

- Policy CC-3;
  - (ii) commercial uses or expansion of existing uses in the vicinity of the Beaver Bank Road and Glendale Drive intersection according to Policy CC-4;
  - (iii) autobody shops according to Policy CC-5;
  - (iv) multiple unit dwellings according to Policy CC-6; and
  - (v) commercial, office, service industrial and community-related re-development of the former Sackville Fire Department property, according to Policy CC-7.
- (e) Within any Designation:
- (i) residential care facilities according to Policy UR-16; and
  - (ii) deleted - June 16, 1994

**IM-13** In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, the Sackville Community Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the Municipality to absorb any costs relating to the development;
  - (ii) the adequacy of sewer and water services;
  - (iii) the adequacy or proximity of school, recreation and other community facilities;
  - (iv) the adequacy of road networks leading or adjacent to, or within the development; and
  - (v) the potential for damage to or for destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
  - (i) type of use;
  - (ii) height, bulk and lot coverage of any proposed building;
  - (iii) traffic generation, access to and egress from the site, and parking;
  - (iv) open storage;
  - (v) signs; and
  - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding;
- (e) any other relevant matter of planning concern; and
- (f) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the

“Infrastructure Charges” Policies of this MPS.

## URBAN RESIDENTIAL DESIGNATION

The Middle Sackville area has seen commercial activities established in the area adjacent the Lively subdivision. Although many properties in the area are appropriately zoned for commercial uses, many are not. With the planned connection between Highway 101 and Sackville Drive, there may be other properties in the area which are suitable for commercial development. But given the mixed use nature of the area there are concerns regarding the compatibility of commercial uses with existing residential uses.

**UR-31** Notwithstanding UR-2 and RR-2, Council may consider permitting Community Commercial (C-2) Zone land uses and auto body shops on lands not currently zoned for such uses according to the development agreement provisions of the Municipal Government Act on properties in Middle Sackville located on Sackville Drive and to the east of Rosemary Drive and west and north of the Atlantic Gardens Properties (PID# 40150856, 40150815). In considering such uses, Council shall have regard to the following:

- (a) site has frontage on and direct access to Highway No. 1;
- (b) proposed use, height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- (c) site design features, including landscaping, signage, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent development, and to provide for the needs of users of the developments;
- (d) appropriate controls are established to address environmental concerns, including stormwater controls;
- (e) site meets the minimum zone standards for the Community Commercial Zone;
- (f) general maintenance of the development;
- (g) hours of operation; and
- (h) provisions of Policy IM-13.

(RC-Dec 4/07;E-Jan 19/08)

**Attachment B**  
**Applicable Sections of the LUB**

**PART 15: C-2 (COMMUNITY COMMERCIAL) ZONE**

**15.1 C-2 USES PERMITTED**

No development permit shall be issued in any C-2 (Community Commercial) Zone except for the following:

**Commercial Uses**

- Retail stores
- Food stores
- Service and Personal Service Uses
- Offices
- Commercial schools
- Banks and financial institutions
- Restaurants and drive-in and take-out restaurants
- Outdoor display courts
- Shopping plazas and malls
- Motels and hostels
- Commercial recreation uses
- Service stations
- Taxi and bus depots
- Parking lots
- Greenhouses and nurseries
- Veterinary hospitals and kennels
- Welding, plumbing and heating, electrical and other special trade contracting services and shops
- Local fuel distribution facilities
- Re-cycling depots within wholly enclosed buildings
- Automotive repair outlets
- Funeral parlours and undertaker establishments
- Existing auto body shops
- Existing transport facilities and maintenance yards
- Existing construction yards and maintenance facilities

**Residential Uses**

- Existing dwellings
- Existing multiple unit dwellings
- Boarding and rooming houses

Community Uses

Open space uses  
Institutional uses

15.2 C-2 ZONE REQUIREMENTS: COMMERCIAL AND RESIDENTIAL USES

In any C-2 Zone, where uses are permitted as Commercial Uses or Residential Uses, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	central services	6,000 square feet (558 m <sup>2</sup> )
	on-site services	20,000 square feet (1,858 m <sup>2</sup> )
Minimum Frontage:	central services	60 feet (18.3 m)
	on-site services	100 feet (30.5 m)
Minimum Front or Flankage Yard		30 feet (9.1 m)
Minimum Rear or Side Yard		15 feet (4.6 m)
Maximum Lot Coverage		50 per cent
Maximum Height of Main Building		35 feet (10.7 m)

15.3 OTHER REQUIREMENTS: SERVICE STATIONS

Notwithstanding the provisions of Section 13.2, where any service station is erected in any C-2 Zone the following shall apply:

- (a) Minimum Lot Area 30,000 square feet (2,787 m<sup>2</sup>)
- (b) Minimum Frontage 150 feet (45.7 m)
- (c) No portion of any pump island shall be located closer than twenty (20) feet (6.1 m) from any street line.
- (d) The minimum distance between ramps or driveways shall not be less than thirty (30) feet (9.1 m).
- (e) The minimum distance from a ramp or driveway to a road intersection shall be fifty (50) feet (15.2 m).
- (f) The minimum angle of intersection of a ramp to a road line shall be forty-five (45) degrees.
- (g) The width of a ramp shall be a minimum of twenty (20) feet (6.1 m) and a maximum of twenty-six (26) feet (7.9 m).

15.4 OTHER REQUIREMENTS: COMMERCIAL FLOOR AREA

- (a) The gross floor area of all commercial buildings on a lot in any C-2 Zone shall not exceed ten thousand (10,000) square feet (929 m<sup>2</sup>).
- (b) Notwithstanding the provisions of Subsection 13.4(a), where welding, plumbing and heating, electrical and other special trades contracting services and shops are permitted in any C-2 Zone, no such shop shall exceed thirty-five hundred (3,500) square feet (325 m<sup>2</sup>) of gross floor area.

(c) Notwithstanding the provisions of Subsection 13.4(a), where offices are permitted in any C-2 Zone, no office building shall exceed five thousand (5,000) square feet (465 m<sup>2</sup>) of gross floor area.

#### 15.5 OTHER REQUIREMENTS: OPEN STORAGE AND OUTDOOR DISPLAY

Where any portion of any lot in any C-2 Zone is to be used for open storage or outdoor display, the following shall apply:

- (a) Any area devoted to open storage shall not exceed fifty (50) per cent of the lot area.
- (b) No open storage shall be permitted within any required front yard.
- (c) No outdoor display shall be located within ten (10) feet (3 m) of any front lot line.
- (d) No open storage or outdoor display shall be permitted within any yard in a C-2 Zone where such yard abuts any Residential or Community Uses Zone, except where a fence or other visual and physical barrier is provided within the abutting yard.

#### 15.6 OTHER REQUIREMENTS: PARKING LOTS

Where parking lots are permitted in any C-2 Zone, whether in conjunction with other uses or as a separate use of land, the following shall apply:

- (a) Where any C-2 Zone abuts any Residential or Community Uses Zone, no portion of any parking space within the C-2 Zone shall be permitted within ten (10) feet (3 m) of any side or rear lot line.
- (b) No portion of any parking space within any C-2 Zone shall be located within ten (10) feet (3 m) of any front lot line.

#### 15.7 C-2 ZONE REQUIREMENTS: COMMUNITY USES

In any C-2 Zone, where uses are permitted as Community Uses, no development permit shall be issued except in conformity with the provisions of Part 19 and Part 20 as are applicable.

#### 15.8 OTHER REQUIREMENTS: EXISTING USES

Existing uses which are in excess of the maximum gross floor area requirements of Section 15.4 shall be permitted as existing uses. Any expansion to such existing uses may only be considered by development agreement.

#### 15.9 OTHER REQUIREMENTS: SACKVILLE TOWN CENTRE

Notwithstanding the provisions of Section 15.1, and 15.4, the existing Sackville Town Centre Shopping Centre, located on the lot identified by LRIS Number 362442, may be used for any of the uses listed below. In conformity with Section 15.8, expansion of the Shopping Centre may only be considered by development agreement. (RC-May 7, 2002; Effective-June 29, 2002)

#### Commercial Uses

- Retail stores
- Food stores



Service and Personal Service Uses

Offices

Commercial schools

Banks and financial institutions

Restaurants and drive-in and take-out restaurants

Outdoor display courts

Shopping plazas and malls

Theatres and cinemas

Entertainment uses

Motels, hotels and hostels

Commercial recreation uses

Service stations

Taxi and bus depots

Parking lots

Greenhouses and nurseries

Veterinary hospitals and kennels

Welding, plumbing and heating, electrical and other special trade contracting services and shops

Local fuel distribution facilities

Re-cycling depots

Automotive repair outlets

Funeral Parlours and undertaker establishments

Wholesale bakeries

Printing and publishing establishments

Existing auto body shops

Existing transport facilities and maintenance yards

Residential Uses

Up to two (2) dwelling units in conjunction with commercial uses

Existing dwellings

Boarding and rooming houses

Community Uses

Open space uses

Institutional uses (RC-May 7, 2002; Effective-June 29, 2002)

**PART 4: GENERAL PROVISIONS FOR ALL ZONES**

**4.9 NON-CONFORMING USES**

Non-conforming uses shall be subject to the provisions of the Planning Act of Nova Scotia, which is included in this by-law as Appendix "A".

## APPENDIX "A"

### NO EXTENSION OF NON-CONFORMING USE

(2) For greater certainty, no extension of a non-conforming use not contained within a structure shall be made beyond the limits that the use occupies.

### CHANGE IN USE

(3) A non-conforming use shall not be changed to any other use unless the use is permitted for that property by the land use by-law.

### CHANGE OF OCCUPANT

(4) A change of tenant, occupant or owner of any land or structure shall not of itself be deemed to affect the use or structure for the purposes of this Section.

### REPAIR OR MAINTENANCE

(5) Subject to Section 93, this Act does not preclude the repair or maintenance of a structure. 1983, c. 9, s. 85; 1987, c. 51, s. 81.

### DESTRUCTION OR DAMAGE

93 (1) If a non-conforming structure or a structure containing a non-conforming use is destroyed or damaged by fire or otherwise

(a) to an extent of less than seventy-five per cent of the market value of the structure, it may be rebuilt, repaired or reoccupied if the structure is substantially the same as it was before the destruction or damage and it is used for the same non-conforming use; or

(b) to an extent of seventy-five per cent or more of the market value of the structure, it shall not be rebuilt, repaired or reoccupied except in conformity with the requirements of the land use by-law applicable to the property.

### DISCONTINUANCE

(2) A non-conforming use of land or a structure shall not be recommenced if it has been discontinued for a continuous period of six months, and in such event the land or structure shall not thereafter be used except in conformity with the requirements of the land use by-law applicable to the property. 1983, c. 9, s. 86.

### VARIATION IN SECTION 92 OR 93 RESTRICTIONS

94 (1) A municipal planning strategy may provide for the variation of the provisions of Section 92 or 93, but no variation shall increase the restrictions in Sections 92 and 93.

### POLICIES

(2) The policies adopted pursuant to subsection (1) may provide for:

(a) the extension, enlargement or alteration of non-conforming structures or structures

- containing non-conforming uses;
- (b) the extension of a non-conforming use of land;
- (c) the rebuilding of a non-conforming structure, or structures containing a non-conforming use, after destruction;
- (d) the recommencement of a non-conforming use of land or a structure after it has been discontinued for a continuous period in excess of six months.
- (e) the change in use on a non-conforming structure to another use in the non-conforming structure, or of a non-conforming use of land or a structure to another non-conforming use.

#### IMPLEMENTATION

(3) The policies adopted pursuant to this Section may be carried out through the land use by-law, or by development agreement, and where the council has provided for the latter, Sections 73 to 80 apply mutatis mutandis to any agreement entered into pursuant to this Section. 1983, s. 9, s. 87; 1987, c. 51, s. 19.