



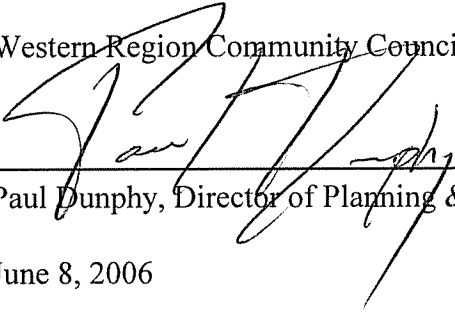
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8.1.

Western Region Community Council
June 26, 2006

TO: Western Region Community Council

SUBMITTED BY:


Paul Dunphy, Director of Planning & Development Services

DATE: June 8, 2006

SUBJECT: Case 00867: Rezoning of 2321 St. Margarets Bay Road

ORIGIN

Application by Gaylene Strickland to rezone 2321 St. Margarets Bay Road, Timberlea, from R-1 (Single Unit Dwelling) Zone to C-1 (Local Business) Zone to permit a hair and tanning salon.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Give First Reading to the proposed rezoning and schedule a public hearing.
2. Approve the rezoning of 2321 St. Margarets Bay Road, Timberlea, as shown on Map 1, from R-1 (Single Unit Dwelling) Zone to C-1 (Local Business) Zone.

BACKGROUND

Application

The subject property is located within the R-1 (Single Unit Dwelling) Zone and is designated Urban Residential under the Generalized Future Land Use Map for Timberlea/Lakeside/Beechville. A hair and tanning salon, defined as a “personal service shop”, was established on this property on February, 9, 2006, in contravention of the Land Use By-law and after the rezoning application had been filed with Planning Services. Legal action has been brought forward against the applicant and she has plead guilty to the charges. Sentencing is to occur on August 21, 2006.

The use occupies the entire basement (990 square feet) of a house on the property. A personal service shop of this size is only permitted in the C-1 (Local Business) Zone. Should the rezoning application from R-1 to C-1 be refused by Council, HRM will pursue its legal action to bring the property in conformity to the Land Use By-law.

DISCUSSION

Municipal Planning Strategy Policies

The Timberlea/Lakeside/Beechville Municipal Planning Strategy (MPS) recognizes that neighbourhood commercial services such as corner stores and personal service shops can conveniently serve the public from locations in residential areas. However, as such uses have the potential to create compatibility concerns with adjacent residential development, the MPS provides that new local commercial uses will only be considered through the land use amendment process. More specifically, Policy UR-19 allows for a rezoning to a C-1 Zone within the Urban Residential Designation (see Attachment “A”). The C-1 Zone permits single unit dwellings, variety and food stores, as well as service and personal service shops.

In assessing applications for rezoning to the C-1 Zone, Council must consider the following evaluation criteria:

- (a) that the proposed development does not exceed a maximum gross floor area of two thousand (2,000) square feet exclusive of any area devoted to an accessory dwelling unit, and is primarily intended to serve the local neighbourhood;
- (b) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- (c) that no open storage or outdoor display shall be permitted;
- (d) direct access to a minor or major collector as identified on Map 3 - Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;
- (e) the impact on traffic circulation and, in particular, the suitability of access to and from the site; and
- (f) the provisions of Policy IM-12.

Since the hair and tanning salon is already operational, staff have been able to accurately measure the impact of the proposed rezoning on neighbouring residential properties. In a site visit, staff were able to determine that the operation is well under the maximum 2,000 square feet of area that can be dedicated to the business use. The operation also does not involve any open storage or outdoor display, nor has it impacted on the height, bulk, lot coverage and appearance of the building in which it is located. In terms of impact on traffic circulation, a qualified expert in the field of Traffic Engineering has determined that the access to the property adequately meets the minimum stopping sight distances specified in the *Municipal Service Systems* (Red Book). Finally, Policy IM-12 outlines a broad range of land use concerns, which are met through this proposal.

Therefore, staff feel that the proposal satisfies the applicable policies of the Municipal Planning Strategy (Attachment "A"). As such, it is recommended that Western Region Community Council approve the rezoning application.

Public Information Meeting/Area of Notification

A public information meeting for this application was held on April 26, 2006. Minutes of this meeting are provided as Attachment "B" of this report. Community attendees were generally in support of the application. Should Community Council decide to hold a public hearing, in addition to published newspaper advertisements, property owners in the area shown on Map 1 will be sent written notification.

BUDGET IMPLICATIONS

There are no budgetary implications.

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 approve the rezoning application. This is the recommended course of action.
2. Alternatively, Council may choose to reject the proposed rezoning, and in doing so, should provide reasons. Council's decision should be based upon the MPS policy conditions and not on the basis that this is a LUB violation. This alternative is not recommended as staff is satisfied that the proposed rezoning is consistent with the policies and intent of the MPS.

ATTACHMENTS

| | |
|----------------|---|
| Map 1 | Location, Zoning and Area of Notification |
| Map 2 | Generalized Future Land Use |
| Attachment "A" | Excerpts from the Timberlea/Lakeside/Beechville MPS |
| Attachment "B" | Minutes form the April 26, 2006, Public Information Meeting |


Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.


Report Prepared by: Luc Ouellet, Planner I, 490-3689



Map 1 - Location and Zoning

2321 St. Margarets Bay Road
Timberlea

 Property to be rezoned from
R-1 (Single Unit Dwelling) to
C-1 (Local Business)

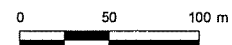
 Area of notification

Timberlea/Lakeside/Beechville Plan Area

Zone

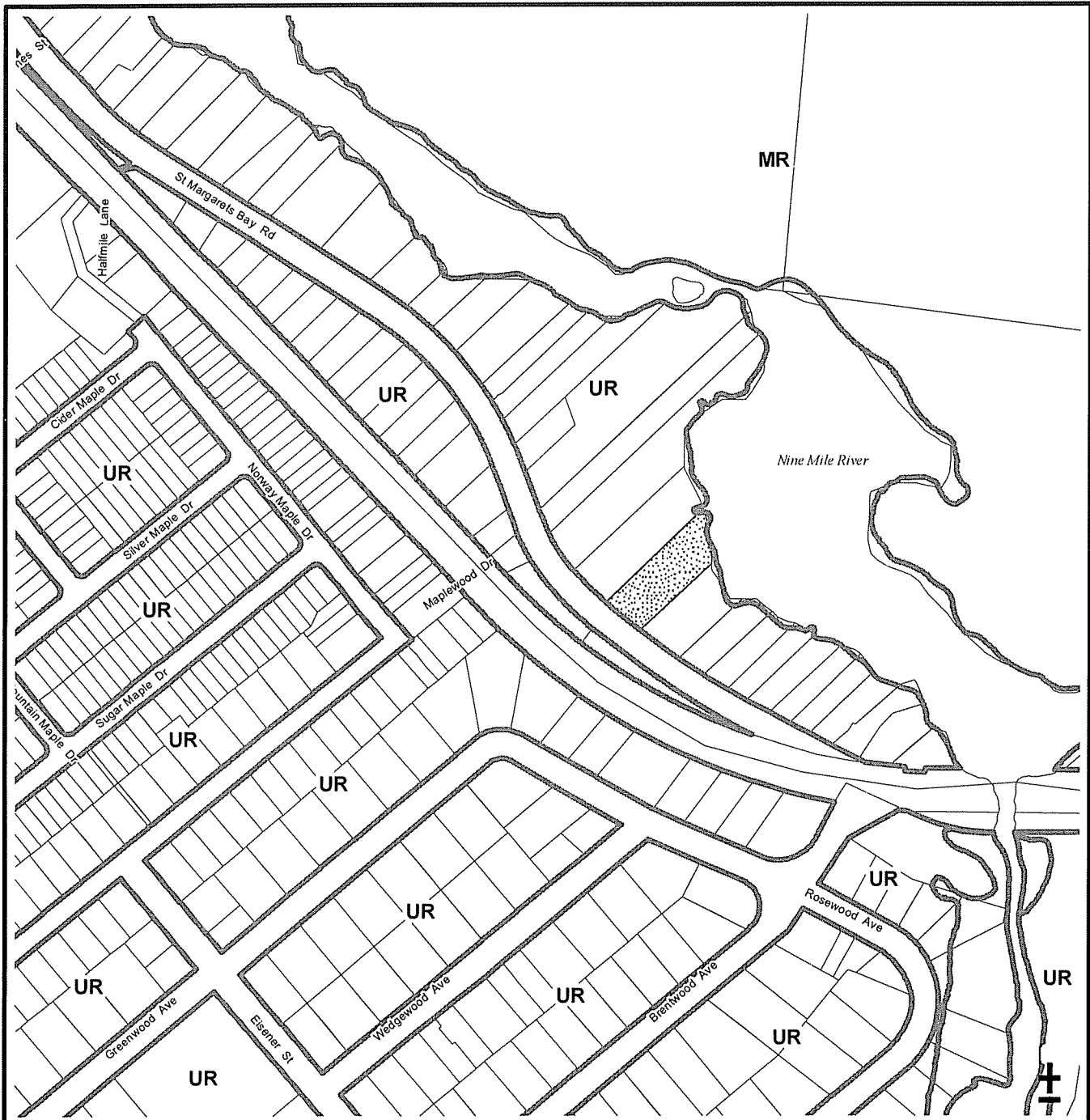
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|------|-------------------------|
| R-1 | Single Unit Dwelling |
| R-2 | Two Unit Dwelling |
| R-3 | Mobile Dwelling |
| C-2 | General Business |
| C-3 | Service Business |
| MR-1 | Mixed Resource |
| P-1 | Open Space Zone |
| P-2 | Community Facility Zone |
| P-4 | Conservation |

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This map is an unofficial reproduction
of a portion of the Zoning Map for the
Timberlea/Lakeside/Beechville Plan area.

HRM does not guarantee the accuracy of
any representation on this plan.

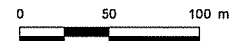


Map 2 - Generalized Future Land Use
2321 St. Margarets Bay Road
Timberlea



Property to be rezoned from
R-1 (Single Unit Dwelling) to
C-1 (Local Business)

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Designation

| | |
|-----|-------------------|
| UR | Urban Residential |
| C | Commercial Core |
| IND | Industrial |
| MR | Mixed Resource |

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Timberlea/Lakeside/Beechville Plan area.

HRM does not guarantee the accuracy of any representation on this plan.

Timberlea/Lakeside/Beechville Plan Area

Attachment A: Extracts from Timberlea/Lakeside/Beechville Municipal Planning Strategy

Local Commercial Uses

Although general commercial development is not permitted in the Urban Residential Designation, neighbourhood commercial services such as corner stores and personal service shops can conveniently serve the public from locations in the general residential area. However, as with medical clinics and larger day care facilities, such uses have the potential to create compatibility concerns with adjacent residential development. Care must be taken to protect neighbouring residential properties. Therefore, in order to provide an appropriate level of control over local commercial uses, such uses will be considered by rezoning to a local business zone. Although preference will be given to sites which have direct access to the major street systems, this zone will also be applied to existing local business uses, including the Harmony School of Music, located on Fraser Road.

UR-19 Notwithstanding Policy UR-2, it shall be the intention of Council to establish a local business zone to be applied to existing local business uses. This zone will permit single unit dwellings, variety and food stores, as well as service and personal service shops. In addition, the zone shall control parking, commercial floor area, the screening of refuse containers and prohibit outdoor display and storage. In considering amendments to the land use by-law to a local business zone, Council shall have regard to the following:

- (a) that the proposed development does not exceed a maximum gross floor area of two thousand (2,000) square feet exclusive of any area devoted to an accessory dwelling unit, and is primarily intended to serve the local neighbourhood;
- (b) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- (c) that no open storage or outdoor display shall be permitted;
- (d) direct access to a minor or major collector as identified on Map 3 - Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;
- (e) the impact on traffic circulation and, in particular, the suitability of access to and from the site; and
- (f) the provisions of Policy IM-12.

IM-12 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 strategy, Council shall have appropriate regard to the following:

- (a) that the proposal is in conformity with the intent of this 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 to school, recreation or 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.
 - (vi) the proposed means of handling storm water and general drainage within and from the development. RC - October 30, 2001 E / December 8, 2001**
- (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 and outdoor display;
 - (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) **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.
(RC July 2, 2002 / E - August 17, 2002)**

Attachment B
Public Information Meeting
Case 00867
April 26, 2006

In attendance: Councillor Rankin
Luc Ouellet, Planner, Planning & Development Services
Gail Harnish, Planning & Development Services

Mr. Luc Ouellet called the public information meeting (PIM) to order at approximately 7:00 p.m. at the Beechville, Lakeside, Timberlea Elementary P-2 School.

Mr. Ouellet reviewed the rezoning process:

- we received the application and did a preliminary review
- we are now at the PIM which is basically an informal exchange of information between staff, the applicant and members of the public
- we will take the comments from tonight's meeting and do a detailed review of the application
- a staff report is prepared and tabled with Western Region Community Council
- Community Council will decide whether or not to proceed and will either schedule a public hearing or refuse the application
- at the public hearing, everyone has a chance to speak for five minutes
- Community Council will make a decision
- there is an appeal process

Mr. Ouellet advised the application is to rezone 2321 St. Margarets Bay Road from R-1 (Single Unit Dwelling) Zone to C-1 (Local Business) Zone. The business started before approval was received and we are proceeding in the courts against the applicant. We do not have a choice. We have to entertain the application but we have two parallel processes ongoing at the same time (an application for rezoning and are pursuing it through the courts for infractions to the land use by-law).

Ms. Gaylene Strickland stated she is at 2321 St. Margarets Bay Road. They want to continue having their hair/tanning salon there. She opened her business before getting permission and is being prosecuted. It is just her working there. She wanted to hire people but could not do anything until this is straightened out. What she had there is what she will have there.

Ms. Cecilia Payne said she has been going to Gaylene's business. As a taxpayer she did not think she should have to drive to the City to have her hair done. The staff is wonderful there. She saw no reason for her not being able to stay there.

Mr. Conrad Marsh stated he was a resident for roughly forty years. He would like to speak on behalf of her business. It is unfortunate that she had to move from her previous space and open up early. She has to make a living. She employs four people and it could be more. In a number of cases where there are zoning applications, what you're hearing is what they promise to do. In this case,

they can see what will be done with the premises. There is no problem with the staff or Gaylene. She is a good citizen and she has a good business going and is providing employment. As well, she is providing an additional commercial tax base for their community.

Mr. Brian Lynch said he was a business owner in Timberlea and ran the business across the street from her. His residence was three doors up and he owned the business next door to that. He felt more business, especially on the main street area of Timberlea, is needed. Development in Timberlea is needed. Tax dollars are needed. They do not have the services out here they should have. They have been waiting for sidewalks which will come faster with more development and a commercial tax base. They need more people to pay those taxes. He felt this application should be approved.

Mr. Donnie MacDonald indicated he lived next to the establishment and could see the driveway turning into it. He would like to support the applicant 100 percent. They need places where people can walk to. There was talk earlier in the community that it might be a traffic hazard. Her business is located on the front of two large subdivisions where people can walk to her business and another one less than 1 km up the road. Taxpayers are what we need.

Ms. Laura Lee Evans stated it is great to have her out here. With the price of gas, they cannot afford to drive to Halifax to get their hair cut. She did not think it was a traffic hazard. She would be able to walk there and home.

Councillor Rankin asked if there were concerns related to traffic.

Mr. Ouellet advised they received a traffic impact statement from a consultant on behalf of the applicant. They meet HRM standards in terms of the stopping site distances. Their engineer does not have a problem with the access and the impact in the area. It is not considered a problem at this point. As well, Traffic Services did a preliminary assessment and came to the same conclusion that it is not a dangerous access. The traffic impact was our main concern at the beginning.

Councillor Rankin questioned when this would proceed to a public hearing.

Mr. Ouellet responded probably the end of May or June, depending on his workload. He noted his email address and telephone number are at the bottom of the handout should anybody wish to contact him. The minutes of tonight's meeting will be attached to the staff report.

The meeting adjourned at approximately 7:15 p.m.