

To: **Antigonish County Planning Advisory Committee
Antigonish County Council**

From: **Planning Staff (EDPC)**

Date: **January 30, 2023**

Reference: **Amendment request to the Central Antigonish Plan Area Land Use By-law to rezone a portion of the property identified by PID 01261379, 306 Pomquet Monks Head Road, Upper Pomquet, Antigonish County from the Rural Development (RD-1) Zone to the Rural Commercial (RC-1) Zone**

Recommendation:

Planning Staff recommend that Municipal Council approves an amendment to the Central Antigonish Plan Area Land Use By-law to rezone a portion of the property identified by PID 01261379, 306 Pomquet Monks Head Road, Upper Pomquet, Antigonish County from the Rural Development (RD-1) Zone to the Rural Commercial (RC-1) Zone to allow for a County Market on the property.

Background Information:

The Eastern District Planning Commission received a Planning Application on July 10th 2022, from Jeffrey Agnew requesting an amendment to the Central Antigonish Plan Area Land Use By-law to rezone a portion of the property on Pomquet Monks Head Road in Upper Pomquet from the Rural Development (RD-1) Zone to Rural Commercial (RC-1) Zone.

The request for the amendment of the Land Use By-law to rezone was submitted to allow the applicant to have a Country Market on the property. The applicant plans to renovate an existing building on the property into the Country Market. The applicant plans to sell local products such as vegetables, fruits, honey, eggs, meat etc., baked goods, and some everyday needs/wants (convenience store products).

Site Visit:

The subject property, PID 01261379, is located off Pomquet Monks Head Road. A long driveway runs along the southern side lot line and branches off into the parking area of an existing accessory building located in the front half of the property and a home with a spacious backyard in the rear half of the property (Figure 1).

Description	
Designation:	Rural Development
Zoning:	Rural Development (RD-1)
Proposed Zone:	Rural Commercial (RC-1)
PIDs:	01261379
Size:	3.5 Acres
Site Visit:	September 29, 2022



Figure 1. Photo of the existing accessory building and drive way



Figure 2. Photo of the topography from the road to the accessory building

Since the proposed area to be rezoned is the front half of the property, the Staff Report will focus on the topography of that section of the property. The driveway is gradually sloped and a portion of the land immediately off the road is flat. Towards the back of that first flat section is a hill that flattens out to the parking area of the accessory building shown in Figure 2.

A large stand of trees and brush acts as a visual barrier to the area the accessory building is located from the home further back on the property (Figure 1).

Adjacent property uses include the railway, vacant land, single detached dwellings and personal farms. The rear abutting property is owned by Cape Breton & Central Nova Scotia Railway Limited and the northern abutting property is vacant land owned by Ms. Shirley Forbes. Along the southern lot line is three abutting properties privately owned: the lot closest to the road is owned by Ms. Anne Benoit, the middle flag lot is owned by Ms. Noreen Wall and Mr. Lee-Irwin Benoit, and finally the rear lot is owned by Ms. Mary Walsh and Mr. Kelvin Hickerson.

Analysis:

Policy I-1.8 of the *Central Antigonish Plan Area Municipal Planning Strategy (MPS)* states:

“It shall be the intent of Council that the following uses, within the designations specified, shall be considered only by amendment to the land-use by-law:

rural commercial uses according to Policies L-3.2 and I-1.10; ...”

Where Policy L-3.2 of the Central Antigonish Plan Area MPS states:

“It shall be the policy of Council to permit rural commercial uses in areas designated Rural Development as shown on the Generalized Future Land Use Map by amendment to the Land Use Bylaw...”

These policies support the consideration of an amendment to the Land Use By-law to rezone from Rural Development (RD-1) to Rural Commercial (RC-1). The amendment is consistent with and enabled by the *Municipal Planning Strategy* provided that it does not contradict any other policies within the *Municipal Planning Strategy* or the *Land Use By-law*. There are no known conflicts with other By-laws or policies regarding this proposal.

Policy L-3.2 (a) maintains that Council shall have regard to whether the proposed development is compatible with adjacent rural development uses with respect to scale, mass and use. While there are no other Country Markets in the immediate area, there are plenty of personal and private farms around. The Country Market would be located within a small existing accessory building that is roughly 12 feet tall and 480 ft². The structures small footprint makes it quite compatible with other buildings in the area in terms of scale and mass including but not limited to single detached dwellings, farm buildings, garages and sheds.

Policy L-3.2 (b) looks at *“whether the lot on which the proposed development is sited is adequately served by a centralized sewer system and/or central water system, or if on-site services are to be used, whether their services are adequate for RC-1 Zone uses”*. The proposed development will not be using municipal water and sewer. The proposed development will be using on-site water and sewer services which are under the jurisdiction of the Department of Environment. However, an On-Site Sewage Notification or Approval Receipt will be required prior to the issuance of a Building Permit. This also satisfies Policy I-1.10 (b) ii *“the adequacy of sewer and water services to support the development”*.

Policy L-3.2 (c) examines whether the proposed development is consistent with the criteria to amend the Land Use By-law, found in Policy I-1.10. Appendix A provides a succinct summary of how this proposed development meets the criteria in Policy I-1.10. A detailed review of the Policy in relation to this development can be found in the Staff Report below.

On November 3, 2022, Staff received a letter from the Antigonish County CAO stating:

“In conformance with Policy I-1.10 (b) i of the Central Antigonish Plan Area Municipal Planning Strategy, I can confirm that this proposal is not premature or inappropriate by reason of the financial capability of the Municipality to absorb any cost relating to the development. Specifically, the property owner is responsible for any and all costs associated with this development.”

This statement means that the proposal complies with Policy I-1.10 (b) i. Therefore, the proposal is not premature or inappropriate by reason of the financial capability of the Municipality to absorb any costs relating to the development.

In accordance with Policy I-1.10 (b) iv *“the adequacy of road networks adjacent to, or leading to the development”*, Staff requested comment from the Nova Scotia Department of Public Works (NS DPW). On December 29, 2022, Staff received comment from NS DPW. According to NS DPW:

“The Department does not have any concerns currently with the surrounding road networks nor public street access for the proposed development identified. A completed Working Within Highway Right-of-Way Permit will be required prior to any construction activities.”

Based on this comment, the proposed development satisfies Policy I-1.10 (b) iv.

Concerning, Policy I-1.10 (b) v *“the potential for the contamination of watercourses or the creation of erosion or sedimentation”*, Nova Scotia Department of Environment and Climate Change (NSECC) does not comment on rezonings. The applicant has stated that water and sewer systems for the country market would be private if constructed. Private Water and Sewer Systems must meet Nova Scotia Department of Environment and Climate Change regulations. Other construction activities would also have to meet NSECC regulations. For these reasons, the proposed rezoning is in compliance with Policy I-1.10 (b) v.

Regarding Policy I-1.10 (b) iii *“the adequacy and proximity of school, recreation, and other community facilities”* and vi *“the potential for damage to or destruction of historical buildings and sites”*, neither criterion are applicable due to the nature of the development and that there are no historical buildings or sites nearby that could be impacted by the development.

In conformity with Policy I-1.10 (c), Council shall have regard to whether the proposal conforms to the requirements contained in the Land Use By-law relating to several matters. The proposal complies with Policy I-1.10 (c) i and ii by meeting the Land Use By-law for type of use, setbacks, height, and lot coverage. For Policy I-1.10 (c) iv and vi, the proposal automatically meets the Land Use By-law since those regulations only apply if the property abuts a hamlet residential zone, which it does not.

The proposal is to use an existing building for this development, which location does not obstruct any natural drainage channels or watercourses, therefore Policy I-1.10 (c) vii is not applicable. There is currently no proposed signage for this development, but future signage would be regulated under Part B of the *Central Antigonish Plan Area Land Use By-law*.

While there is no Land Use By-law provision which specifically addresses sufficient building separations to permit access to firefighting equipment and to prevent the spread of fire, this is a regulation in the Building Code. A Building Inspector working for the Eastern District Planning Commission stated this existing standalone building is quite far from other buildings and property lines, therefore it does not require any additional fire separation regulations. Thus, the proposed development meets Policy I-1.10 (c) viii *“sufficient building separations to permit access to firefighting equipment and to prevent the spread of fire”*.

Conclusion:

Analysis of the site completed through a review of the *Central Antigonish Plan Area Municipal Planning Strategy* and *Land Use By-law* show that the rezoning of a portion of the property identified by PID 01261379 is in-line with the policy of both documents. After thorough consideration, Staff are advising that the Municipality approve an amendment to the *Central Antigonish Plan Area Land Use By-law* permitting the rezoning of a portion of the property identified as PID 01261379 from the Rural Development (RD-1) Zone to the Rural Commercial (RC-1) Zone.

Proposed Motion for PAC

Based upon the staff recommendation, the proposed motion for PAC is as followed:

That the Planning Advisory Committee recommends to Municipal Council to approve the proposed Land Use By-law amendment to rezone a portion of the property identified as PID 01261379 from the Rural Development (RD-1) Zone to the Rural Commercial (RC-1) Zone to allow for a Country Market, and;

That Municipal Council give First Reading and set a Public Hearing date.

Proposed Motion for Council

Based on a positive recommendation from the PAC, the proposed motion for Council is as followed:

That Municipal Council give First Reading and set a Public Hearing date to approve the proposed Land Use By-law amendment to rezone a portion of the property identified as PID 01261379 from the Rural Development (RD-1) Zone to the Rural Commercial (RC-1) Zone to allow for a Country Market.

Appendices

Appendix A: Evaluation Criteria and Policy

Appendix B: Location Map

Appendix A: Evaluation Criteria and Policy

Policy I-1.4	
It shall be the intention of Council to require amendments to the policies and maps of the Municipal Planning Strategy under the following circumstances:	
a. where a policy intent is to be changed;	N/A
b. where the Municipal Planning Strategy is in conflict with applicable provincial land use policies or regulations in accordance with the Municipal Government Act;	N/A
c. where a requested amendment to the Land Use By-law is in conflict with this planning strategy and there are valid reasons for the amendment; or	N/A
d. where a secondary planning strategy is to be incorporated into the Municipal Planning Strategy.	N/A

Policy L-3.2	
It shall be the policy of Council to permit rural commercial uses in areas designated Rural Development as shown on the Generalized Future Land Use Map by amendment to the Land Use Bylaw. In evaluating such proposals, Council shall have regard to the following:	
a. whether the proposed development is compatible with adjacent rural development uses with respect to scale, mass and use;	Complies - See Staff Report
b. whether the lot on which the proposed development is sited is adequately served by a centralized sewer system and/or central water system, or if on-site services are to be used, whether there services are adequate for RC-1 Zone uses; and,	Complies - See Staff Report
c. whether the proposed development is consistent with the criteria to amend the Land Use By-law, found in Policy I-1.10.	Complies - See Table Below

Policy I-1.10	
In considering amendments to the Land Use By-law, in addition to all other criteria as set out in various policies of this planning strategy, Council shall have regard for the following matters:	
(a) Whether the proposal conforms with the intent of this Strategy and with the requirements of all other Municipal by-laws and regulations;	Complies No known conflicts with other By-laws or policies
(b) Whether the proposal is premature or inappropriate by reason of:	
i. the financial capability of the Municipality to absorb any costs relating to the development;	Complies See Staff Report
ii. the adequacy of sewer and water services to support the development;	Complies See Staff Report
iii. the adequacy and proximity of school, recreation, and other community facilities;	N/A
iv. the adequacy of road networks adjacent to, or leading to the development;	Complies See Staff Report
v. the potential for the contamination of watercourses or the creation of erosion or sedimentation; or	Complies See Staff Report
vi. the potential for damage to or destruction of historical buildings and sites.	N/A
(c) Whether the proposal conforms to the requirements contained in the Land Use By-law relating to the following:	
i. the type of use;	Complies Part 10 of LUB [p.28]
ii. setbacks, height, and lot coverage of a proposed building or expansion to an existing structure;	Complies Part 10 of LUB [p.28 - 29]

<p>iii. traffic generation, access to and egress from the site and parking;</p>	<p>Complies Department of Public Works (Provincial) Part 6.A.23 of the LUB [p.14 - 15]</p>
<p>iv. open storage;</p>	<p>Complies Part 10.B of LUB</p>
<p>v. signs;</p>	<p>No proposed signage currently Part B of LUB [p.19 - 22]</p>
<p>vi. provisions for buffering, landscaping, screening and access control to reduce potential incompatibility with adjacent land uses and traffic;</p>	<p>Complies Part 10.A of LUB [p.29]</p>
<p>vii. the location of the development so as not to obstruct any natural drainage channels or watercourses;</p>	<p>Existing building N/A</p>
<p>viii. sufficient building separations to permit access to firefighting equipment and to prevent the spread of fire.</p>	<p>Complies Building Code</p>
<p>(d) Suitability and costs of the proposed development in terms of steepness of grades, soil and geological conditions, marshes, swamps, or bogs, and proximity of highway ramps, railway rights-of-way and other nuisance factors.</p>	<p>Complies See Staff Report</p>

Appendix B: Location Map

