

REPORT FOR: Rural Municipality of Miltonvale Park
DATE: June 7, 2023
PREPARED BY: Samantha Murphy, RPP, LPP, MCIP
REPORT NUMBER: MVP-2023-01
SUBJECT: Zoning - Bylaw Amendment to Rezone PID 283325 From C1 & A1 to M1 and a portion of PID 658799 from A1 to M1 on Route 2

BACKGROUND

The Rural Municipality of Miltonvale Park is currently in receipt of an application for the following zoning changes:

- PID 283325 from a combination of General Commercial (C1) and Agricultural (A1) to Light Industrial (M1);
- A 1.8 portion of PID 658799 from Agricultural (A1) to Light Industrial (M1).

The application has been made in order to facilitate the severance of a 1.83-acre portion of PID 658799, to be consolidated/appended to PID 283325 (1.12 Acres) in order to increase the existing parking lot. The current use of PID 658799 is primarily agricultural, with one single-detached dwelling. An autobody shop (non-conforming) and residence are currently located on PID 283325. A portion of the area proposed to be appended to PID 658799 (0.45 acres) is currently being used for parking for the commercial enterprise located on PID 283325, albeit without a permit. The proposal is to consolidate the portion of PID 658799 to PID 283325 in order provide additional parking for vehicles awaiting repair. This would constitute an expansion (increase) in the lot area associated with the auto body shop use.

As auto body shops, referred to under the Development Bylaw as “automobile shops,” are not a permitted use in the General Commercial or Agricultural zones, the existing operation constitutes an existing non-conforming use. Under subsections 4.13(5) and (6) of the Municipality’s Development Bylaw, “No Intensification of Use shall be made while a non-conforming Use of the Lot, Building or Structure is being continued,” and “No increase in Lot Area or Floor Area occupied by the non-conforming Use shall occur while a non-conforming Use is being continued.” A change in zoning of the areas in question to Light Industrial (M1) would be required in order to make the autobody shop a permitted use that could be expanded.

This assessment was based on the information provided, namely the application details, the Rural Municipality’s 2021 Official Plan and 2021 Development Bylaw (both effective April 2022), unapproved minutes of the May 30th public meeting, and several historical reports relating to the property, as well as correspondence relating to the application from the Charlottetown Water & Sewer Corporation and the Department of Transportation and Infrastructure and from members of the public.

RECOMMENDATION

Upon review of the matters enumerated below and after weighing the applicable policies and bylaw requirements, the proposed rezoning appears to be largely consistent with sound planning principles and the Rural Municipality’s Official Plan and Development Bylaw, particularly where conditions are included in any subsequent subdivision and/or development agreement. As noted at the May 30th public meeting the process undertaken did not include reference to a redesignation of the property on the Future Land Use Map in the Official Plan, in particular in the public notice regarding the public meeting as required under subsection 18(2) of the Planning Act, and a separate meeting on associated official plan amendments is required.

ASSESSMENT SUMMARY

Section 3.16 of the Bylaw establishes criteria to be considered when reviewing applications for zoning amendments. These include:

Criteria under Development Bylaw ss 3.16	Compliance	Notes
a) conformity with all requirements of this Bylaw;	Consistent	The proposed severance and consolidation that would be enabled through this change in designation and zoning appears to be in compliance with the bylaw. Development-related considerations, including operational expansion and access would be considered at the development stage.
b) conformity with the Official Plan;	Generally Consistent	See assessment below - the primary consideration upon reviewing the official plan policies would be the potential impact of the loss of resource lands.
<i>Future Development Concept and Goals</i>	Generally Consistent	The future vision is to continue to be a rural agricultural community while supporting residential development in appropriate areas and promoting recreational and institutional services for its residents. The Official Plan includes several objectives, including as it pertains to this application, to preserve and enhance the rural character of the community, to support established businesses in the municipality, and to limit non-resource commercial and industrial development industrial development.
<i>8.1.3 Agricultural Protection</i>	Weighing required	Policy 8.1.3 prioritizes the protection of farm and forestry lands from conflicting land uses and discourages the conversion of primary resource lands into non-resource uses. Plan Action A-2 establishes requirements in the Bylaw for buffers between resource and non-resource land uses.
<i>8.2.1 Non-Resource Commercial and Industrial</i>	Weighing required	Policy 8.2.1 supports existing non-resource commercial and industrial uses within the Rural Municipality and the reasonable growth of those business while permitting the limited approval of new non-resource commercial and industrial uses. This policy seeks to balance modest commercial and industrial growth with minimizing the loss of primary resource lands to non-resource commercial and industrial uses, in accordance with subsection 63(10) of the Planning Act Subdivision and Development Regulations. Plan Action CI-1 states that the Bylaw will only permit the expansion of existing non-resource based commercial and industrial land uses where the proposed development will not involve the loss of existing resource land for a non-resource use. The applicant has submitted that the potential loss of resource land from this change in zoning would be mitigated by moving parking from other areas of PID 658799 to the area to be consolidated with PID 283325 and moving the horse paddock that would be displaced to other areas in the remaining agricultural area.
<i>8.2.5 Industrial Zone</i>	Generally Consistent	Policy 8.2.5 establishes a zone on land designated for industrial uses. Plan Action CI-7 includes establishing the zone where non-resource based industrial uses are already in existence. While the policy was a carry-over from the earlier official plan and M1 zoning was not applied to this parcel during the 2021 Plan Review, the plan action's retention indicates that Council contemplated the scenario that existing non-resource industrial uses would be supported through the application of the M1 zoning.
<i>9.2.1 Surrounding Land Uses Policy</i>	Generally Consistent	The policy sets out expectations for adequate buffers between commercial and industrial developments and nearby land uses to minimize negative effects on surrounding areas and uses. Plan Action P-4 establishes buffering around commercial and industrial developments in the Bylaw.

10.2.5 Wellfield Protection Policy	Consistent	The policy and plan action establish requirement to consider the impact of applications on the Charlottetown well field. Engagement with the City's utility has been undertaken – see below
c) suitability of the site for the proposed Development;	Generally Consistent	The existing use is already industrial but is non-conforming under the current zoning. An established access is already in place and no new access would be required. The potential impacts, if any, of a future transition to other uses permitted in the M1 zone should be considered, however those might be limited by provincial highway access requirements and buffering and other bylaw requirements.
d) compatibility of the proposed Development with surrounding land Uses, including both existing and other permitted Uses;	Weighing required	The surrounding area is generally agricultural in nature, with some rural residential uses. One adjacent property, PID 458190, is owned by the applicant, minimizing some of the potential impact on some neighbours. There are several residential properties owned by other parties to the west of PID 283325.
e) any comments from residents or other interested Persons;	Weighing required	A rezoning requires a public meeting with notification to neighbours within 500 ft. Letters were mailed on May 18, 2023, with the newspaper ad and sign undertaken in accordance with the bylaw. The public meeting was held on May 30, 2023 and comments were received until June 1, 2023.
f) adequacy of existing or proposed water supply system, Sewerage Disposal System, road access, storm water management, electrical services, Parkland for accommodating the Development, and any projected infrastructure requirements.	Consistent	No projected infrastructure requirements have been identified. As noted elsewhere, an existing access is in place. Further expansion on the property over time would require approval from the Department of Transportation and Infrastructure.
g) impacts from the Development on pedestrian/vehicular access and safety, including public safety generally;	Generally Consistent	Access would be via the existing driveway from Rte. 2 onto property 283325; no new access is required. Any subdivision (including consolidation) or development permit (including a change in use to other permitted uses under Bylaw subsection 3.1(1)(a)) would be subject to review by Department of Transportation and Infrastructure to assess the suitability of the access for any proposed new or expanded use under section 4.1 of the Bylaw.
h) compatibility of the Development with agricultural, environmental, scenic and heritage resources;	Generally Consistent	A subdivision agreement during consolidation dealing with parking lot configuration and location, setbacks, buffers and financial guarantees under 15.11(1)(e) could limit the degree to which the proposed zoning change might impact compatibility of the automobile shop use with agricultural, environmental, scenic and heritage resources. A subdivision agreement could include requirements and conditions regarding bringing the parcels into conformance with the Bylaw and other requirements. Moving parking to the back could enhance the scenic and landscape qualities. The City of Charlottetown has indicated there are no concerns about impact on the Water & Sewer Corporation's wellfield recharge area.
i) impact on municipal finances and budgets; and	Not applicable	None anticipated
j) other matters as considered relevant by Planning Board or Council.	Weighing required	The history of unpermitted uses associated with the existing operation, both in terms of siting of parking and encroachment onto adjoining properties, has been raised. Bringing the properties into conformity with the bylaw would be a consideration should the application not be approved.

ADDITIONAL DETAIL & DISCUSSION

Future Use Considerations

Applying the Light Industrial zone to the area in question could enable a transition to other industrial uses over time. Permitted uses in the M1 zone include activities permitted in the C1 Zone, as well as activities connected with an automobile shop; automobile service station or repair shop; concrete plant; contractor's yard; farm machinery and heavy equipment depot; dealership and repair shop; food processing; manufacturing and assembly; restaurant or cafeteria; storage of sand and aggregate; transport operations, including trailer storage; warehousing; wholesale operation; wind energy facilities; and accessory buildings. In the past, a building was erected for temporary use in soda blasting; this building was required to be removed due to the non-conforming status of the existing operation. With the new requested zoning, such additional or similar uses could be permitted, subject to meeting provincial access and municipal bylaw requirements.

It is noted that while non-resource uses are not permitted in the C1 zone or A1 zone, resource industrial uses are permitted in the A1 zone as-of-right and could conceivably be permitted in the area identified for consolidation with PID 283325 (subject to meeting access and other bylaw requirements). In terms of impact on adjoining properties, such uses represent the potential for a similar level of impact on adjoining areas, albeit of a nature more closely associated with agricultural and resource uses.

The residential use on PID 283325 would become a non-conforming use in relation to the M1 Zone and could face restrictions.

Loss of Resource Lands

0.45 acres from the portion of PID 658799 that is proposed to be consolidated with PID 283325 is currently used for parking, while 1.38 acres are used for agricultural uses (horses). According to the application, vehicles that are currently being stored on other portions of parcels 658799, 458190 and 283317, which are all owned by the applicant, would be consolidated at the back of the proposed new portion of 283325, and the present parking returned to agricultural/resource uses, along with a required landscaping buffer. The resulting movement of vehicular storage and agricultural uses would, according to the applicant, mitigate any significant loss of agricultural land.

Visual Impact and Community Character

The proposed movement of parking to the rear of the autobody shop operation that would be enabled by the requested change in zoning could reduce the visual impact of the existing operation on the adjoining residential property (PID 283358) in particular. Moving the vehicles parked in the front of the business to the rear would significantly improve the visual impact of the property and operation.

- A substantial hedge was planted previously to screen some of the business and would screen the moved parking, and additional buffering around the new parking area could be required under section 4.17 of the Bylaw.
- The Charlottetown Water & Sewer Corporation has indicated that moving other parking on PID 658799 to the rear of PID 283325, which would be facilitated by the change in zoning and property boundary reconfiguration, could also reduce parking that has recently expanded closer to the City's infrastructure.
- Movement of the parking would provide an opportunity to remove parking that has encroached onto the parcel 458190 (which appears to have taken place without approval). The proposed parcel and the

remaining portion of parcel 658799 to the rear are large enough to accommodate buffers between the uses and adjoining properties.

Other Considerations

Previous assessments of applications on this parcel gave consideration to special planning area requirements. As part of the 2021 review of the Official Plan and Bylaw, an alternate approach was taken to meeting the objectives of the Charlottetown Region Special Planning Area (SPA) as permitted under those regulations, embedding the objectives into the Plan's policy framework and bylaw standards. As a result, consistency with the official plan and bylaw are sufficient considerations.

PUBLIC COMMENTARY

Summary of Responses

Public feedback has been received and must be considered with the lens of sound planning principles and consideration of both the policies of the Municipality's Official Plan and the public interest. Responses from the public at the public meeting included statements both opposing and supporting the application. Several of the factors raised in the public meeting discussion were also submitted in the form of written feedback. Feedback as noted in the submissions and in the minutes of the public meeting included:

- Question about alternate ways to permit the proposed expansion and moving the parking of vehicles (through the boundary line adjustment) without applying a zoning that would open the door to other industrial uses over time, suggestion to move automobile shops from the light industrial zone to the commercial zone;
- Support for consolidating the parking behind the building and removing existing parking from in front of the building and on PID 458910, provided this does not expand the total number of vehicles parked on site;
- Support for bringing the zoning in line with a use that has been permitted on the property for 30 years and the expansion of a successful thriving business;
- Support for the application as a local business;
- No concerns about the expansion from the Charlottetown Water Utility and support for the movement of vehicles currently parked near the wellfield.

Concerns raised included:

- dust and air quality, noise, hours and days of operation and changes in use over time from the original autobody shop to what was described as a junkyard;
- the aesthetic impact of the existing operation on the rural character, and the right of residents to enjoy their property;
- questions about impact on soil quality, stormwater drainage, and groundwater;
- compliance with the objectives of the special planning area, in particular the loss of agricultural lands, and compliance with the Official Plan relating to the distance of subject property from the other existing industrial areas, the lack of discussion of industrial zoning in the vision statement in Section 5.1 of the Official Plan, the conversion of primary resource lands into non-resource uses, and the difference in policy and plan action language between the commercial and industrial sections of the Official Plan regarding amendments to commercial or industrial uses. It was noted that the

identified mitigation of the loss of agricultural land through the movement of parked vehicles and pasture was based on existing uses for which no permit had been issued;

- the potential for conflict between other permitted uses in the M1 zone, should the change be approved, with existing agricultural activities. Noted potential conflicts included noise and air pollution and the potential impact on crops and animals, although specifics of those latter impacts were not provided;
- a history of non-compliance on the subject property and adjoining parcels, where storage of vehicles is not a permitted use, and questions about compliance with the Highway Access Regulations and the 2008 permit that restricted parking to certain areas;
- the potential for resumption of sandblasting activities once the operation became a permitted use and a request that any soda blasting be confined to a building to mitigate dust and air quality;
- the potential for a change of use to a salvage yard over time;
- anticipated impact on property values.

Several comments referenced either previous version of the official plan or sections of the bylaw are not present (a requirement to provide a certain timeline for comments following the public meeting).

The applicant's son indicated that they were not looking to expand the business but to expand the area of the business in order to contain all of the vehicles that are brought to them, while improving the appearance of the front of the property. A commitment was made to plan additional trees in the back to contain dust and they noted that they no longer use soda dust for blasting.

Considerations of feedback

During the initial assessment summary, the public meeting had not yet taken place and thus did not include consideration of public feedback. The assessment has been updated to include this consideration.

Municipalities are expected to consider the official plan and bylaw in their entirety as they pertain to an application. Where there are conflicting goals, objectives, policies and plan actions, that they should be weighed and considered in the context of the public interest, individual impacts, and the right of property owners to reasonable use of their properties with clearly articulated policy objectives and restrictions where uses are being regulated.

With regards to the exclusion of references to industrial uses in the vision statement, the language has the impact of prioritizing resource and residential uses over other uses. However, it is reasonable to expect some commercial and industrial uses in rural areas, especially uses that might be less appropriate to a more urban environment and the other goals, objectives and policies in the Official Plan reference and enable other uses. While the language does differ slightly in the policies and plan actions between commercial and industrial sections of the Official Plan, the Plan speaks to new industrial uses while at the same time not pre-zoning non-industrial lands for those uses. This would imply that the absence of language regarding changes in zoning was not meant to signal that zoning changes could not be considered.

During the development of the 2021 Official Plan and Bylaw, consideration was given as to whether salvage yards would be permitted. A deliberate choice was made to define salvage yards but to not include them in the list of permitted uses for the M1 zone, as articulated in the April 22, 2021 summary of revisions and changes provided in association with the statutory public meeting (page 11). While that should be sufficient, if there are concerns about changes of use over time to a salvage yard, they could be more explicitly

prohibited in section 4.25 of the Bylaw. Listing more specific uses, however, might open the door to arguments that uses not listed in section 4.25 are not excluded or prohibited, notwithstanding the language of 4.25(1).

As noted by some of those providing comments, a change to the M1 Zone would open the door to other industrial uses over time. Such new uses would be subject to new permits and approvals from Highways and other provincial departments (depending on the proposed use), as well as landscape buffers and potential development agreements under section 3.13 to ensure proposed future uses are consistent with the official plan and bylaw.

While some concerns included impacts on property values, noise and air pollution, stormwater run-off, and soil and well contamination, no specific examples of instances of stormwater or soil and water contamination were provided. Other elements, such as stormwater run-off are less associated with the zoning and permitted uses and are typically more specifically addressed during a development permit stage.

The noted loss of agricultural land is limited to just under 2 acres and should be considered in the context of the visual improvements to the property enabled through the transition and that other space on PID 658799 has been identified for a return to agricultural uses in association with this application.

A larger question is whether the use as it is today with the expanded parking, permitted or otherwise, is generally appropriate to the property or whether the expansion of the business that has taken place through additional parking and storage of vehicles is, in balance, inconsistent with the goals and policies of the Official Plan, recognizing that a permit was previously issued for the autobody shop itself and the use can be continued within the parameters of the original permit(s) and other approvals.

If the use is determined to be appropriate and the requested amendment deemed to be in the public interest, it should be made legal through the requested change in zoning (or textual bylaw amendments as discussed below) in order to enable the movement of parking to a different location on the property as indicated in the application. A secondary question is whether certain criteria and conditions that can be implemented through a subdivision agreement and a development agreement specifically in relation to establishing the rear parking area and removing encroachment into the front yard and onto the adjacent property (PID 458190), to minimize the impacts noted in some of the public feedback.

If the use is determined to be, on balance, appropriate, after consideration of the goals and policies of the Official Plan, but other potential industrial uses are not, the textual bylaw amendments discussed below should be considered as an alternative.

If the use is determined by Council to be generally inconsistent with the goals and policies of the Official Plan, the request should be denied and enforcement undertaken with regards to the parking in the front yard and the encroachment of parking onto adjacent properties, recognizing again that a permit was previously issued for the autobody shop itself and the use can be continued within the parameters of the original permit(s) and other approvals.

OPTIONS

It is recommended that Council defer the decision until the associated amendment to the Official Plan is also considered.

A number of options are available to Council, as follows:

Option	Impact	Considerations
Approve a change in zoning to the front parcel only.	<p>The existing use becomes conforming, but parking cannot be expanded.</p> <p>Other industrial uses may be permitted over time on PID 283325.</p> <p>Assumes existing use remains appropriate and other industrial uses could be appropriate over time.</p>	<p>Enforcement of parking requirements (front yard) and encroachment onto adjacent A1-zoned parcels should be undertaken.</p> <p>Does not permit any limited expansion of an existing business beyond 283325, including through an expansion to parking.</p> <p>Does not address many of concerns associated with existing business, such as hours of operation, noise, and dust (notwithstanding that those factors may or may not be reasonable for the type of business).</p>
Approve a change in zoning for both parcels per application	<p>The existing use becomes conforming and parking can be moved.</p> <p>Other industrial uses may be permitted over time.</p> <p>Assumes existing use and its expansion remains appropriate and other industrial uses could be appropriate over time.</p>	<p>Undertaking may be needed from applicant that they would go through with the boundary adjustment (severance and consolidation) should the zoning change be approved to ensure that the portion of PID 658799 does not become used for a separate industrial use.</p> <p>Permit would be required to legitimize the expanded parking and should include a development agreement with stipulations re number and placement of vehicles, landscape screening, fence to stop further encroachment, stipulation on future uses being indoor (soda blasting).</p> <p>Permit to be required and provincial approvals where necessary if expansion to anything other than the expanded parking overtime and/or change of use to another permitted use.</p>
Deny application entirely	<p>The encroachment of parking and parking in front yard remains contrary to the Bylaw and expansion is not permitted.</p>	<p>Enforcement action about location of parking and encroachment should be undertaken on all three parcel (PIDs 658799, 283325, and 458190).</p>
<p>Consider bylaw amendments, including all or some of the following:</p> <ul style="list-style-type: none"> • permit automobile shop in C1 Zone and 	<p>If added as permitted use in C1 zone, automobile shops would be permitted on other commercially-zoned properties.</p> <p>If added as site-specific use in the C1 zone, that particular consideration would need to be</p>	<p>Any of the amendments and any associated change in the zone being considered for the property would need to be included in the ad for the meeting regarding changes to the Official Plan and associated supporting Plan policies would be needed.</p>

<p>zone all requested areas as C1.</p> <ul style="list-style-type: none"> • add site-specific amendment option for automobile shops in the C1 zone. • Clarify that salvage yards are prohibited in all zones. 	<p>made as part of the OP amendment meeting.</p>	<p>Adding the use as a site-specific amendment use in the C1 zone would introduce an area of discretion where the 2021 plan review process sought to limit areas of discretion. Including clear criteria would be important. Site specific amendment uses require a public meeting similar to any other bylaw amendment.</p> <p>The applicant’s position with regards to an amended outcome should be clarified, given that these options were not included in the original application.</p> <p>The prohibition of salvage yards was intended through the current bylaw drafting but could be made even more explicit if this is a concern.</p>
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It is recommended that should the change in designation and zoning be approved, any future application for a property boundary adjustment through a severance and consolidation should be subject to a subdivision agreement addressing, among other items, parking lot configuration, location, and setbacks, landscaping buffers, financial guarantees under clause 15.11(1)(e), and a requirement that a new deed expressing the perimeter boundary of the new parcel be registered in accordance with the *Registry Act*.

OFFICIAL PLAN AND BYLAW REFERENCES

Official Plan:

- 5.1 – Vision Statement
- 5.2 – Community Objectives
- 8.1.3 – Agricultural Protection Policies
- 8.2.1 – Non-Resource Commercial and Industrial Land Uses Policies
- 8.2.5 – Industrial Zone Policies
- 9.2.1 – Surrounding Land Use Policies
- 10.2.5 – Wellfield Protection Policy

Development Bylaw:

- 3.9 – other information: can require information on parking lot layout, stormwater management plan, landscaping, storage areas, and screening or fencing in relation to development permit applications.
- 3.10 – permits may include conditions that are directly related to the Municipality’s Plan or bylaws or other applicable enactments.
- 3.11 – criteria for denying development permits and development restrictions: provides parameters that would inform conditions to be included on permits, and where required, development agreements.
- 3.13 – development agreements: development agreements can be required in relation to a development permit and can include among other things, matters such as site design, landscaping and screening, vehicular accesses and exists, hours of operation, fencing, and other matters to ensure the health, safety and convenience of residents or other person (general expectation that such matters are

related to the bylaw or official plan). DA must be referenced as a condition of a permit where it will be required.

- 4.17 – Land Use Edges: landscaped buffer required between resource or non-resource commercial or industrial use abuts a residential, tourism establishment, or institutional use.
- 15.4 – Subdivision considerations: criteria include among others, suitability to topography and physical conditions, access, reasonable conformity with existing land uses in immediate vicinity, suitability with the intended use, frontage on a highway.
- 15.11 – Subdivision Agreement: may be required as a condition of subdivision approval and may refer to posting of a final guarantee, bond, or other security, provision of stormwater management plan, costs associated with the drafting, signing and enforcement of agreement, preservation of surface water drainage systems, and other matters deemed necessary to conform to this bylaw or to ensure health, safety, and convening of Municipality and residents (general expectation that such matters are related to the bylaw or official plan).
- 15.12 – Application and approval process: Application must include surface water drainage patterns and owner may be required to include a stormwater management plan.