

**TOWN OF MONTVILLE**  
**Land Use & Development Department**  
**310 Norwich-New London Turnpike, Uncasville, CT 06382**  
**Telephone: (860) 848-6779**

**MEMORANDUM FOR THE RECORD**

June 25, 2024 PZC Meeting

Prepared by *Meredith Badalucca*, Asst. Planner

**Application:** 24 ZC 3 – Zone Change with respect to 879 Chesterfield Road (Parcel ID: 005-015-00C) and 1665 Route 85 (Parcel ID: 012-007-000)

**Applicant(s):** Roger L. Phillips & Rachel M. Belardo

**Attorney:** Harry Heller, Esq. & Andrew McCoy, Esq., Heller, Heller & McCoy

**Legal:** Date of Receipt by PZC: 5/28/2024. Public Hearing Scheduled for 6/25/24. Decision Required Date (DRD): 35 days from close of PH.

**Proposal:** Zone Change from current zone of WRP-160 to proposed zone of C-2

**Reference Plans and Application Materials:**

1. Application dated received, May 9, 2024.
2. Plan entitled “Plan to Accompany Application for Zoning Map Amendment Prepared for Roger L. & Linda F. Phillips, 1665 Route 85 & 879 Chesterfield Road – Oakdale, Connecticut dated May 2024, Prepared by Boundaries, LLC”.

**Background:**

The property owner of 1665 Route 85 has filed a voluntary petition in bankruptcy with the United States Bankruptcy Court for the District of Connecticut. Attorney Bonnie Mangan has been appointed by the United States Bankruptcy Court. Attorney Harry Heller per his letter dated May 3, 2024 has conferred with Attorney Mangan and she has requested that the property at 1665 Route 85 also be included in the request for the zone change from WRP-160 to C-2.

Research of prior zoning maps shows 879 Chesterfield Road partially zoned C-2 from 1997 through October of 2007. Research of 2007 PZC meeting minutes and files did not show that there was an approved change to WRP-160 for that portion of the parcel in 2007. However, the zoning map dated 10/23/2007 and the current zoning map both have all of 879 Chesterfield Road zoned WRP-160.

Staff raises this only to suggest that there may be some historical basis for at least part of the subject property (879) being zoned C-2. It is likely the 2007 change to all WRP-160 was an inadvertent GIS error. An argument can also be made that absent documentation showing the change to WRP-160 in 2007 was legally done, the change never legally occurred and a portion of the property remains C-2. That said, the applicant has agreed to not make an issue of this and to seek a rezone for the all of 879 to C-2.

The abutting property to the east (875 Chesterfield Road - lot 15-D), is also zoned WRP-160 and currently contains a Single-Family Residence. The attached GIS map, which includes the state wetlands layer, indicates there is a band of wetlands between 879 and 875 Chesterfield.

This band of regulated area, taken together with the applicant's intent to access 879 via the frontage of 1645 Route 85 (already owned by the applicant and already C-2), presents an opportunity

1. to manage future access via the 879 frontage on Chesterfield;
2. to limit or even perhaps avoid the need to address potential future stormwater drainage along the Chesterfield frontage;
3. to address potential use conflicts between the abutting residential at 875 Chesterfield and 879; and,
4. to protect the wetland/watercourse system that separates 879 from 875.

In light of the nature of the change (WRP-160 to C-2), locating the new easterly zone boundary between the WRP-160 and the C-2 along the west side of the extent of the 50' Upland Review Area associated with the wetlands/watercourse, together with a conservation easement over this portion of 879 (perhaps with allowances for an emergency access via the Chesterfield frontage), would seem to balance or mitigate certain concerns which might arise as a consequence of development under the C-2 zone regulations.

The new location of the zone boundary is completely within the Commission's authority however, a conservation restriction would need to be accomplished via any subsequent site plan approval.

#### **Staff Comments:**

This application before the commission is a legislative action. Legislative decisions establish the foundation for policy implementation through zoning, the Capital Improvement Plan, CGS 8-24 reviews, etc. The courts typically give municipal zoning commissions substantial discretion in legislative actions.

No Zoning Commission can condition a zoning map amendment, but they can, if they choose, consider hearing testimony regarding the applicant's intentions, as part of their analysis, findings and decision. That said, if the uses allowed in the proposed zone are allowed as of right (via site plan), the Commission needs to understand that any such testimony would not be legally binding on a future site plan applicant, should the map amendment be approved. This is one basis for Special Use Permits ("SUP"), in that a SUP would allow some degree of discretion when acting on a site plan application for a specific project. For a SUP, a Commission can determine whether or not a proposed application for a specific project meets adopted SUP criteria on a case by case basis. In the present case, a SUP would allow (for instance) the PZC to reach back to the hearing

testimony (during the map amendment) and apply that discussion, as necessary, to the deliberations and action on the SUP, assuming the subject matter had a clear relationship to adopted (and presumably legal) SUP criteria.

There are also a number of additional considerations the Commission should evaluate in this or in any request for a zoning map (or regulation) amendment. These include, but are not necessarily limited to:

- The character of the subject land (topography, etc.)
- Abutting uses/zones (current and permissible future under current zoning)
- Bulk standards (lot area minimums, setbacks, etc.)
- Application procedures (e.g. site plan versus special permit)
- Environmental resources (IW, floodplain, aquifer, NDDB, archaeological, etc.)
- Access and capacity of the impacted road system
- Availability and capacity/condition of infrastructure (water/sewer)
- Proximity to public facilities/services (as or if relevant)
- Other relevant policy plans (CIP, Econ Dev, Housing, Open Space, etc.)
- Consistency with the POCD

The analysis should focus on the “delta” or the change in what could be done under current zoning versus what could be done under the proposed zoning and how those changes relate to the topics listed above. The emphasis should be on “orderly development” as relates to the comprehensive plan. In lay terms, the question is - will the zoning map amendment, if approved, substantially undermine the comprehensive plan in fundamental ways, such that approving the change would make it more difficult for the community to accomplish the policy objectives established in its POCD? Or, will the change likely create a net positive? Or will the impacts of the change in zoning be more or less “neutral” on orderly development? The answers to these questions generally define what is meant by “consistency” with the POCD, a mandatory finding the Commission must address in approving a zoning map (or regulation) amendment.

It is also important to note that the POCD is more than just the future land use map (“FLUP”). Although the FLUP is clearly an important element of any POCD, it is not the only reference to consider. The members should not simply refer to the FLUP as the basis for their opinion and vote. A proper interpretation of a POCD is to take a “holistic” view to its content. In that context, the role of the PZC is to balance competing policy objectives and to achieve a consensus that a given legislative action is, on the whole, supportive of the POCD, before it is approved.

Therefore, it can be rational for a Commission to approve a map amendment, which, facially appears to be inconsistent with the POCD. In fact, as we explain in this report, staff feels this application is an example of an application which possibly falls within that category. Our only reservation is that all C-2 uses are permitted as of right. Coupled with this is staff’s concern regarding the language used in section 11.2.1, which states that:

*“Activities involving the sale of goods or services carried out for profit”* are allowed in the C-2 (and in other zones) as of right (by site plan only).

This language replaced the prior more conventional reference to retail (e.g. the direct sale of goods or services to consumers). It is unclear what the intent was when this text change was made, however, the current language is, in staff's opinion, far too broad and vague and would seem to permit as of right arguably ANY “activity” that involves the sale of goods or services “carried out for a profit.”

The second concern about this language is that it seems to imply that a zoning commission has some authority to deny a business or to deem it non-compliant if it does not make a profit. That cannot be what was intended. Finally, the language would also seem to prohibit any non-profit that provides a service from being allowed in the C-2 (churches, a VFW or American Legion, a daycare operated by a non-profit social services agency, etc.).

If this application is approved, there are perhaps uses that would be allowed as of right, which could, depending on the specifics, create conflicts between land uses and/or have other negative impacts on “orderly development.” Therefore, this application essentially breaks down to our ability to trust this applicant. That said, circumstances beyond the control of a present owner and/or the Town can and do occur and those can result in changes, despite all good intentions.

The applicant's intended uses include a commercial child daycare and a “doggie daycare.” Under section 11.2.5, a “child care center” would clearly be permitted in a C-2 as of right and is already permitted in the WRP as of right, however, the “doggie daycare” use could only be done in the C-2 via a “friendly” interpretation of section 11.2.1, **although**, oddly, Kennels are allowed as of right in the WRP, subject to the standards in 4.11.7.

Staff believes the Commission should consider reverting back to the conventional language used for retail goods and services. As a legislative matter, if the Commission believes a “doggie daycare” is an appropriate use for the C-2, subject to perhaps some relevant standards and a permit application process that can consider the use on a case by case basis (if necessary), then the Commission should amend its regulations accordingly.

With the above as context, staff feels the application could be supported, subject perhaps to an amendment to adjust the location of the proposed easterly zone boundary as described above. Staff's evaluation of the factors listed above suggests that application approval (with the modification) will likely result in a net positive. If the parcels are developed as intended, the zone amendment will result in actions that support the POCD and orderly development principles.

The following provides details on what we think are the most elements of our analysis.

### 1. Access/Road Capacity

It is understood that the applicant, Cricket's Corner LLC also owns 1645 Route 85 which is currently zoned C-2 and that Cricket's Corner LLC intends to combine 879 Chesterfield Road and 1645 Route 85 and access the subject property from Route 85.

The current access of 879 Chesterfield Road is from Chesterfield Road and would require an approval from the IWC for a wetland crossing. Also, as indicated below the Public Works Director has sight line concerns.

In this respect, the rezone, coupled with the common development/use of 1645 and 879, will result in substantive benefit to the Town, not only in terms of safety, but in terms of environmental protection.

It could be argued that, based on the uses allowed in each zone, anticipated trip generation and associated impacts are not in any material way, different whether development occurs under the WRP or the C-2. The WRP allows uses that could result (at a given scale) in substantial impacts and there are certainly C-2 uses that could have the same impact.

Therefore, impacts on SR 85 would need to be identified and mitigated, regardless of the zone.

Chesterfield certainly has significant drainage, icing and vertical alignment issues, so to the extent this rezone can help the community avoid exacerbating those, the rezone would seem to be a net benefit.

### 2. Use/Application Process

Comparing the list of permissible uses allowed in the C-2 with those listed in the WRP-160, it does not appear that there are major qualitative or operational differences, with the following possible exceptions:

- None of the uses in the C-2 require a special permit, while certain WRP zone uses do (e.g. wineries, stables, cluster development, senior housing and active adult housing all require a special permit in the WRP).
- In terms of uses (and setting aside the application processes), the WRP allows some as of right, some by special permit and some are explicitly prohibited. As of right uses allowed in the WRP that could have considerable impact include single family subdivisions (however the lot size minimum is 4 acres); farms (use of pesticides/fertilizers and animal waste); and the excavation of earth materials.

- Prohibited uses in the WRP include types of uses that might have some negative impact on groundwater, such as salt storage, USTs, landfills and hazardous waste storage.
- As of right uses in the C-2 (that are not permitted in the WRP) include hotels and conference centers, micro-breweries and micro distilleries, technical schools, gasoline filling and repair stations (presumably auto repair) and convenience/gas sales establishments. The prohibitions in the WRP are not included in the C-2. Other than trusting the applicant with respect to his intended uses, staff is uncertain how to address this potential conflict.

### 3. Bulk Standards

Clearly the WRP has much more rigorous bulk standards:

|     | Frontage | Lot Area | FY  | SY  | RY  | Height            |
|-----|----------|----------|-----|-----|-----|-------------------|
| WRP | 200'     | 160k sf  | 75' | 30' | 75' | 35' (residential) |
| C-2 | 80'      | 40k sf   | N/A | N/A | N/A | N/A               |

- The WRP also includes additional setback standards as follows:
  - Min 150' to PL for farm building or manure pile
  - Min 75' (building) to regulated IW or watercourse/body
- Per section 11.5, C-2 lot frontage can be reduced to 60' under certain circumstances.

### 4. Design Standards

The parcels are located within the Town's Sewer Avoidance Area and are within the Latimer Brook Drainage Basin. The parcels are located outside of the New London Dept. of Public Utilities Drinking Water Watershed. The sewer avoidance (use of septic) would apply regardless of the zone.

The WRP includes the following special design standards that apply to all WRP uses. These standards do not apply to C-2 development.

- The ability to require special drainage facilities
- Limits on land clearing
- The ability to require an "environmental impact study" for any special permit or subdivision

## 5. FLUP

The parcels are indicated on the Future Land Use Map as Residential Lots greater than 80,000 square feet.

## 6. Character of the Land

The land is mostly wooded, sloping and presumably contains shallow depth to ledge in places, however, given the range and type of uses allowed in both the WRP and the C-2, this factor does not appear to be relevant. The site is also not in the mapped water supply watershed.

## 7. Abutting Zones/Uses

In addition to the aforementioned SF home, abutting uses include developed commercial along SR 85 and a major powerline to the north. Assuming potential impacts on the SF home land/zone can be mitigated, there should be no potential conflicts with either existing or abutting uses/zones. In fact, as noted, the ability to access via the existing C-2 along SR 85 is a major benefit for all the reasons stated.

### Referrals:

The application was referred to the Building Department, Fire Marshal, Public Works, Police Department and Uncas Health District on May 13, 2023.

The application and plan entitled "Plan to Accompany Application for Zoning Map Amendment Prepared for Roger L. & Linda F. Phillips, 1665 Route 85 & 879 Chesterfield Road – Oakdale, Connecticut dated May 2024, Prepared by Boundaries, LLC" was posted in the office of the Town Clerk on May 13, 2024. The public hearing was noticed in The Day on June 11 & 19, 2024 as required.

### Staff and Agency Comments received:

*Building Department:* Doug Colter dated May 13, 2024: The Town of Montville Building Official has no adverse comments on the proposed application.

*Fire Marshal Office:* Paul Barnes dated May 13, 2024: The Fire Marshal's Office has no comments at this time.

*Public Works:* John Carlson, Public Works Director dated May 21, 2024: My concern is 879 Chesterfield Road driveway is not suitable for commercial access. Due to the steep incline it would make it hard for drivers coming down Chesterfield Road toward Route 85 to make a right turn onto the property. If used as the only access to the property it would make it difficult for anyone turning on to the property from either direction off Chesterfield Road. Site line pulling out of driveway on to Chesterfield Road would also be of concern due to the steepness of where it meets Chesterfield Road.

*Police Department:* Chief Blanchette dated May 13, 2024: No obvious issues from the Police Department.

*Uncas Health District:* Michael Kirby, dated May 13, 2024: The Uncas Health district has no comments.

**Motions:**

The following MOTION is suggested for approval: “I make a MOTION to APPROVE application 24ZC3 with the following modification, findings and reasons for approval:

**Modification:**

The easterly zone boundary between the existing WRP-160 and the proposed C-2 shall be coincident with a line running generally north/south and 50 feet west of the limit of the regulated inland wetland or watercourse located in the easterly portion of 879 Chesterfield Road.

**Findings:**

1. With the modification included herein and based on the Commission’s assessment of the hearing record, the relevant factors and staff’s recommendations, the Commission finds the application to be generally consistent with the Montville POCD.
2. The zoning map amendment, as modified herein will not conflict with or undermine the Town’s comprehensive plan or otherwise compromise orderly development objectives.
3. These findings are based in part of the representation by the applicant that access to serve future development of 879 Chesterfield will be located along the frontage of 1645 Route 85 and not from Chesterfield Road.

Effective date: 12:01 am, July 15, 2024

NOTE: Should the Commission vote to deny the application, it shall state its reasons for denial on the record.



## **SECTION 5: WATER RESOURCE PROTECTION ZONE – WRP 160 DISTRICT**

### **5.1 PURPOSE**

The Commission recognizes the direct correlation between the overall level of development that exists in a drainage basin or aquifer recharge area and water quality. The water resources protection zone is designed to protect public water supply watersheds and groundwater sources which are capable of yielding a long term water supply. The clearing of natural ground cover and the filling of wetlands should be kept to an absolute minimum in this district. Public sewers should be extended to correct existing pollution problems only, not for the purposes of accommodating new development at increased density. The intent of the district is to limit land use to low density uses.

### **5.2 PERMITTED USES**

The following uses shall be permitted within the district:

- 5.2.1 Single-family dwelling
- 5.2.2 Farm, as defined in these Regulations
- 5.2.3 Parks and playgrounds
- 5.2.4 Government offices, libraries, schools, public safety facilities and public utilities
- 5.2.5 Seasonal roadside stands for farm produce
- 5.2.6 Accessory buildings and uses
- 5.2.7 Nursery schools, family child care home and group child care home facilities
- 5.2.8 Home occupations in accordance with Section 4.11.2 of these Regulations
- 5.2.9 Churches and other places of worship
- 5.2.10 Telecommunications tower in accordance with Section 4.11.6 of these Regulations
- 5.2.11 Excavation of earth materials in accordance with Section 4.11.11 of these Regulations
- 5.2.12 Interior lots in accordance with Section 4.11.4 of these Regulations
- 5.2.13 Kennels in accordance with Section 4.11.7 of these Regulations
- 5.2.14 Temporary gatherings such as fairs or outings

### **5.3 SPECIAL PERMITS**

The following uses may be permitted if approved by the Commission in accordance with the provisions of Section 16 of these Regulations.

- 5.3.1 Wineries
- 5.3.2 Recreational camps and other large scale uses such as riding academies, stables, sportsmen's clubs and reserved open space.
- 5.3.3 This section left intentionally blank

5.3.4 Cluster development

5.3.5 Senior housing in accordance with Section 16.11 of these Regulations

5.3.6 Active adult housing community in accordance with Section 16.12 of these Regulations

#### **5.4 MINIMUM LOT SIZE**

The minimum lot size in this district is 160,000 square feet

#### **5.5 MINIMUM LOT FRONTAGE**

Each lot in this district shall have at least two hundred feet (200') of frontage on a street

#### **5.6 MINIMUM SETBACKS**

5.6.1 FRONT YARD 75 FEET

5.6.2 SIDE YARD 30 FEET

5.6.3 REAR YARD 75 FEET

5.6.4 No farm building or manure pile may be located within one hundred fifty feet (150') of any property line.

#### **5.7 MAXIMUM BUILDING HEIGHT**

No residential building shall exceed thirty-five feet (35') in height.

#### **5.8 ENVIRONMENTAL PROTECTION**

5.8.1 The following uses and/or activities are prohibited within this district:

- a. Underground storage tanks
- b. Salt storage
- c. Hazardous waste storage
- d. Septage lagoons
- e. The use of pesticides within one thousand feet (1,000') of the high-water mark of a public water supply reservoir.
- f. Sewage disposal systems within one hundred feet (100') of a high water mark of a public water supply reservoir or within seventy-five feet (75') of a watercourse flowing into a reservoir.
- g. Cemeteries
- h. Sanitary landfills
- i. The location of any building within seventy-five feet (75') of any regulated wetland, body of water, or watercourse.

5.8.2 The Commission may require special drainage facilities to insure groundwater recharge and/or non-point source pollution containment for stormwater runoff or hazardous materials spills. Land clearing activity for new construction shall be kept to the minimum necessary for building and road development. The Commission may require

the submission of an environmental impact study for any special permit or subdivision activity in this district.

**5.9 OFF-STREET PARKING**

Off-street parking shall be provided for each lot in this district in accordance with the provisions of Section 18 of these Regulations.

**5.10 SIGNS**

All signs in this district shall conform to the provisions of Section 19 of these Regulations.

## **SECTION 11: COMMERCIAL-2 (C-2) DISTRICT**

### **11.1 PURPOSE**

This zone allows for a full range of commercial uses. It is the intention of the Commission to require traffic access management within this District.

### **11.2 PERMITTED USES**

The following uses shall be permitted within this district:

- 11.2.1 Activities involving the sale of goods or services carried out for profit.
- 11.2.2 Hotels
- 11.2.3 Conference centers
- 11.2.4 Recreation facilities, museums
- 11.2.5 Child care center, twelve (12) or more children
- 11.2.6 Accessory buildings and uses
- 11.2.7 Residential, apartment/condominium units may be on levels above the primary first floor retail/business/office use
- 11.2.8 Micro-Breweries allowing for the manufacture, storage, bottling, sale and distribution of beer with an on premise tasting room, food service and gift shop
- 11.2.9 Micro-Distilleries allowing for the manufacture, storage, bottling, sale and distribution of alcoholic liquor with an on premise tasting room, food service and gift shop.
- 11.2.10 Gasoline filling and repair stations
- 11.2.11 Convenience/gasoline sales establishments in accordance with Section 4.11.10 of these Regulations.
- 11.2.12 Water dependent uses
- 11.2.13 For profit, trade and technical schools and facilities of higher learning.
- 11.2.14 Telecommunication towers in accordance with Section 4.11.6 of these Regulations.

### **\* 11.3 SPECIAL PERMITS: NONE**

### **11.4 MINIMUM LOT SIZE**

The minimum lot size in this district is 40,000 square feet.

### **11.5 MINIMUM LOT FRONTAGE**

Each lot in this district shall have at least eighty feet (80') of frontage on a street. The minimum frontage may be reduced to sixty feet (60') by vote of the Commission for contiguous commercial developments that combine driveways.

#### **10.7 MAXIMUM BUILDING HEIGHT**

There is no height limitation in this zone.

#### **10.8 ENVIRONMENTAL PROTECTION**

Any improvements proposed to be located within a regulated area, as set by the Montville Inland Wetlands and Watercourses Commission, or that may have any impact on the regulated wetlands or watercourses, shall require approval by the Montville Inland Wetlands and Watercourses Commission and meet the requirements of the health code of the State of Connecticut.

#### **10.9 OFF-STREET PARKING**

Off-street parking, including shared parking, shall be provided for each lot in this district in accordance with the provisions of Section 18 of these Regulations.

#### **10.10 SIGNS**

All signs in this district shall conform to the provisions of Section 19 of these Regulations.



