

# STAFF REPORT FOR Z19-03

## CONDITIONAL USE ZONING DISTRICT APPLICATION

### CONDITIONAL USE ZONING OVERVIEW

- According to David Owens with the UNC School of Government, a conditional use district (CUD) is a zoning district “that has no permitted uses, only special or conditional uses.” There are no by-right uses within a conditional use district. Due to this, the County’s Zoning Ordinance requires that applications to rezone land to a conditional use district must include the proposed land use(s) as failure to do so would create a zoning district without any permitted uses. The proposed land use(s) would then be subject to the process for reviewing a special use permit.
- Applications for conditional use district are broken down into two decisions. The first being on the rezoning to the conditional use district (a legislative decision), and the second on the special use permit for the proposed use (a quasi-judicial decision).
- Decisions which are legislative are policy decisions made by the Board of Commissioners. The Board may take into account both opinions and facts when considering legislative rezoning proposals. In making a decision on a legislative rezoning, the Board must state whether the proposal is or is not consistent with the Comprehensive Plan, and if the Board’s action of approving or denying the request is reasonable and in the public interest.
- Quasi-judicial decisions, on the other hand, must be based only on competent, material, and substantial evidence presented at the hearing. Only parties with standing should present evidence to the Board, and that testimony should relate to the four conclusions required for a special use permit to be granted. In some situations, the only competent evidence is provided by someone regarded as an expert in the subject field.
- In order for a conditional use district to be approved, the Board of Commissioners must approve both the rezoning and special use permit for the proposed use.

### APPLICATION SUMMARY

**Case Number:** Z19-03

**Request:**

- A) Rezoning to a Conditional Use R-10 Zoning District
- B) Special Use Permit for a high density development consisting of 324 dwelling units

**Applicant:**

Hill Rogers – Cameron Management

**Property Owner(s):**

Drypond Partners, LLC

**Location:**

4400 block of S. College Road

**Acreage:**

25.94

**PID(s):**

R07100-004-004-000

**Comp Plan Place Type:**

General Residential

**Existing Land Use:**

Undeveloped

**Proposed Land Use:**

Multi-family (“high density” development)

**Current Zoning:**

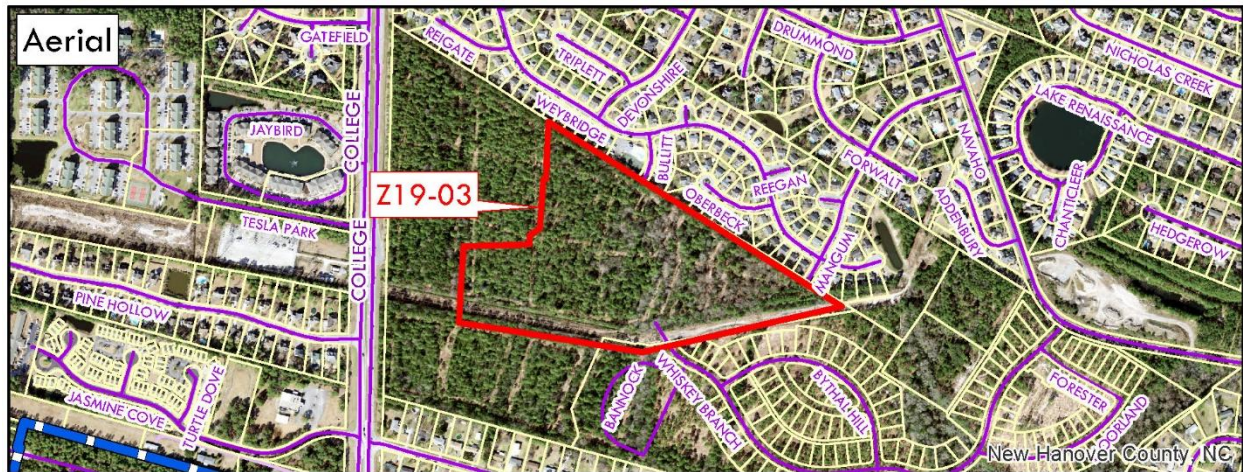
R-15

**Proposed Zoning:**

(CUD) R-10



SURROUNDING AREA		
	LAND USE	ZONING
North	Single-Family Residential (Fox Run)	R-15
East	Single-Family Residential (Whiskey Branch)	R-15
South	Single-Family Residential, proposed Townhome Units (Whiskey Branch)	R-15
West	Undeveloped, S. College Road, Multi-Family Residential	R-15



ZONING HISTORY	
October 15, 1969	Initially zoned R-15 (Area Masonboro)

<b>COMMUNITY SERVICES</b>	
<b>Water/Sewer</b>	Water and sewer services are available through CFPUA.
<b>Fire Protection</b>	New Hanover County Fire Services, New Hanover County Southern Fire District, New Hanover County Station Myrtle Grove
<b>Schools</b>	Bellamy Elementary, Codington Elementary, Myrtle Grove Middle, and Ashley High Schools
<b>Recreation</b>	Hugh MacRae Park, Trails End Park

<b>CONSERVATION, HISTORIC, &amp; ARCHAEOLOGICAL RESOURCES</b>	
<b>Conservation</b>	No known conservation resources
<b>Historic</b>	No known historic resources
<b>Archaeological</b>	No known archaeological resources



## A. Z19-03 REZONING REQUEST

- The subject property is part of an approximate 133-acre parent parcel under unified-ownership. The Whiskey Branch performance residential development, located on the eastern 71 acres of the tract, consists of 74 single-family dwellings, 56 duplexes, and 26 townhomes for a total of 156 dwelling units. That development is currently under construction with 118 lots being platted at this time. A Traffic Impact Analysis completed for the entire property in 2017, included the 156 dwelling units, 250 multi-family units, and indicated that 150,000 sq. ft. of retail and 50,000 sq. ft. of general office is planned for the western portion of the property fronting S. College Road. The commercial development is not being proposed at this time and would require a rezoning prior to any construction.



- The applicant proposes to rezone approximately 26 acres of the 133-acre tract from R-15 to a Conditional Use R-10 district in order to develop a multi-family project consisting of 324 dwelling units. As currently zoned, the subject site would be permitted 65 dwelling units under the performance residential standards and 265 units with a high density special use permit.

	R-15	R-10	Proposed CUD
<b>Min Lot Size</b> (Conventional)	15,000 sf	10,000 sf	N/A
<b>Max Density</b>	2.5 du/ac (Performance) 10.2 du/ac (High Density)	3.3 du/ac (Performance) 17 du/ac (High Density)	12.5 du/ac
<b>Max Dwelling Units for Subject Property</b>	65 (Performance) 265 (High Density)	86 (Performance) 441 (High Density)	324

## TRANSPORTATION

- Access is provided to the subject property by S. College Road (NC 132). Roadway connections will also be made to existing stub streets in Whiskey Branch (Whiskey Branch Drive) and Fox Run (Bullitt Lane), however gates are either installed or planned at both connections. The proposed gate at Bullitt Lane will be within the proposed multi-family development and will restrict access to allow for only emergency vehicles. The gate at Whiskey Branch Drive is existing and will be controlled by the subdivision's Home Owners' Association to provide for emergency vehicle access.

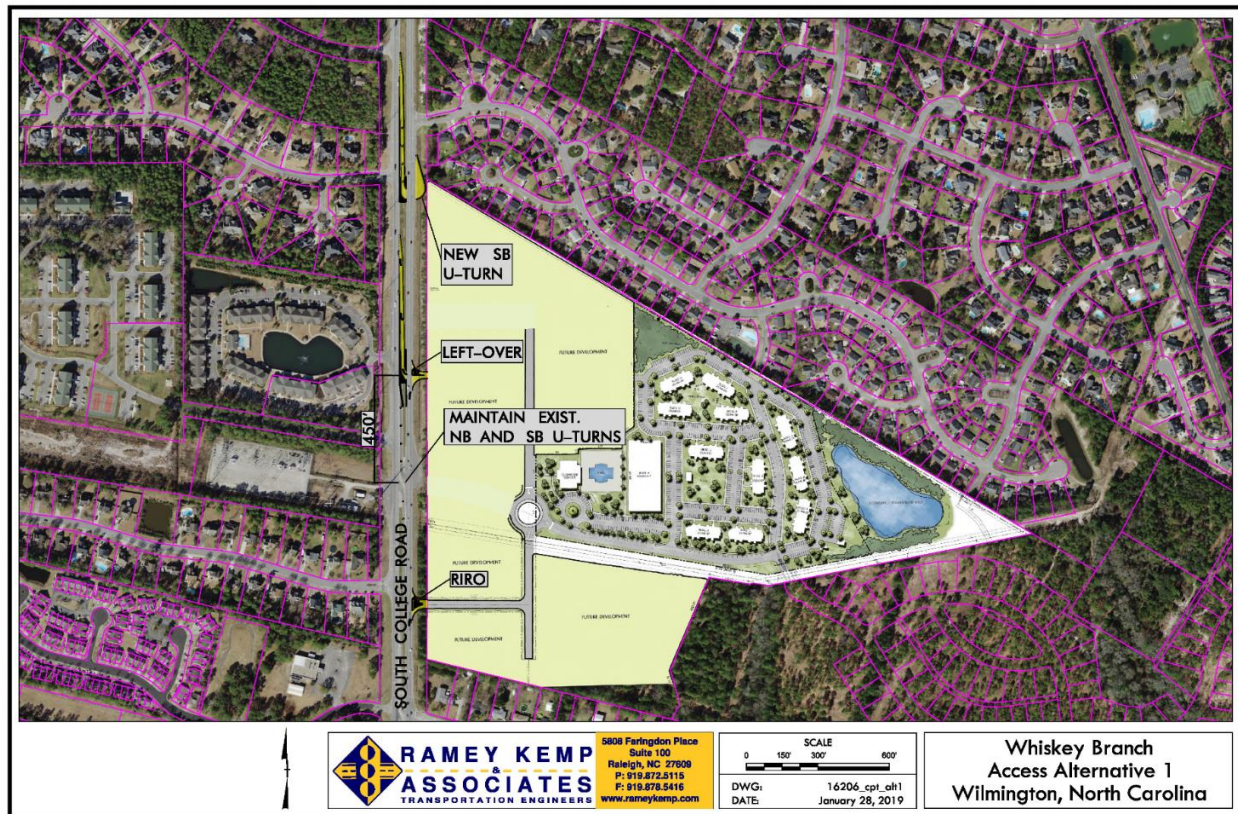
### **Traffic Counts – 2018**

Road	Location	Volume	Capacity	V/C
S. College Road	5200 block (approx. quarter mile north of Carolina Beach Road)	32,452	29,300	1.11
S. College Road	3700 block (south of 17 <sup>th</sup> Street)	47,124	43,700	1.08

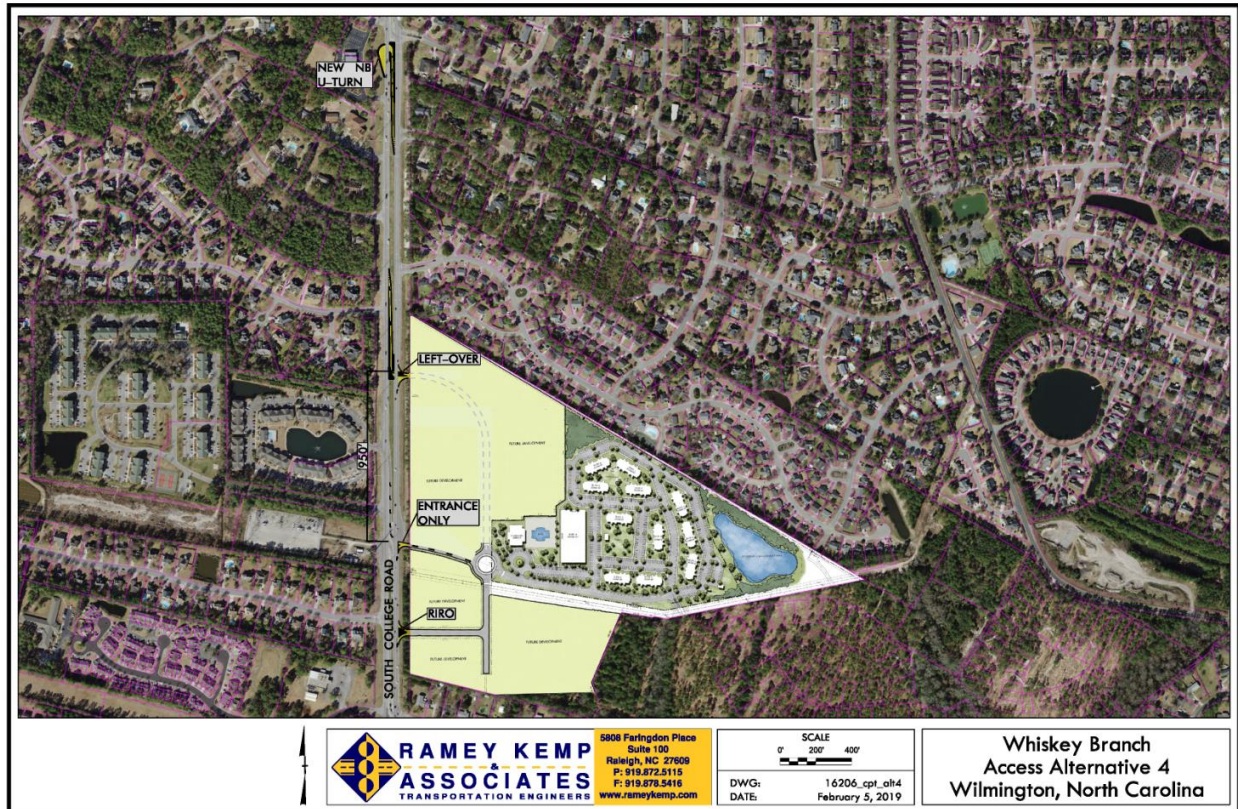
Trip Generation				
LAND USE (ITE Code)	INTENSITY	AM PEAK	PM PEAK	DAILY
Multi-Family Housing – Mid Rise (221)	325 dwelling units	137	143	1,770

- As currently zoned, R-15, the subject site would be permitted a maximum of 65 dwelling units under the performance residential standards. A detached single-family dwelling typically generates about one trip during the peak hours. With this zoning, the property is estimated to currently generate approximately 65 trips during the peak hours. The proposed rezoning to allow 324 multi-family units is estimated to increase the number of trips generate for a total estimated 137 AM peak hour trips and 143 PM peak hour trips.
- A Traffic Impact Analysis (TIA) was completed and approved by the WMPO and NCDOT for the entire Whiskey Branch project consisting of single-family dwellings, townhomes, multi-family units, and commercial development. That TIA is currently being updated to adjust the phasing of the project and to analyze alternative access points on S. College Drive. The TIA can be found online at the County's Development Activity Page: <http://planningdevelopment.nhcgov.com/development-activity/>
- The updated TIA examines two scenarios with different access points to S. College Road and provides recommended improvements for each scenario. While the recommended improvements vary per scenario, both contain the installation of multiple turn lanes along S. College Road, including new u-turn lanes near Weybridge Lane in Fox Run (see exhibits on the next page). The TIA recommends improvements be made for the proposed multi-family project, including the installation of a right turn lane(s) on S. College Road at the access points proposed in each scenario.
- NCDOT and the WMPO are currently reviewing the TIA and have not yet determined the approved scenario or required roadway improvements. If this application is approved, the project must install all applicable roadway improvements in accordance with NCDOT's standards prior to final approvals being issued.





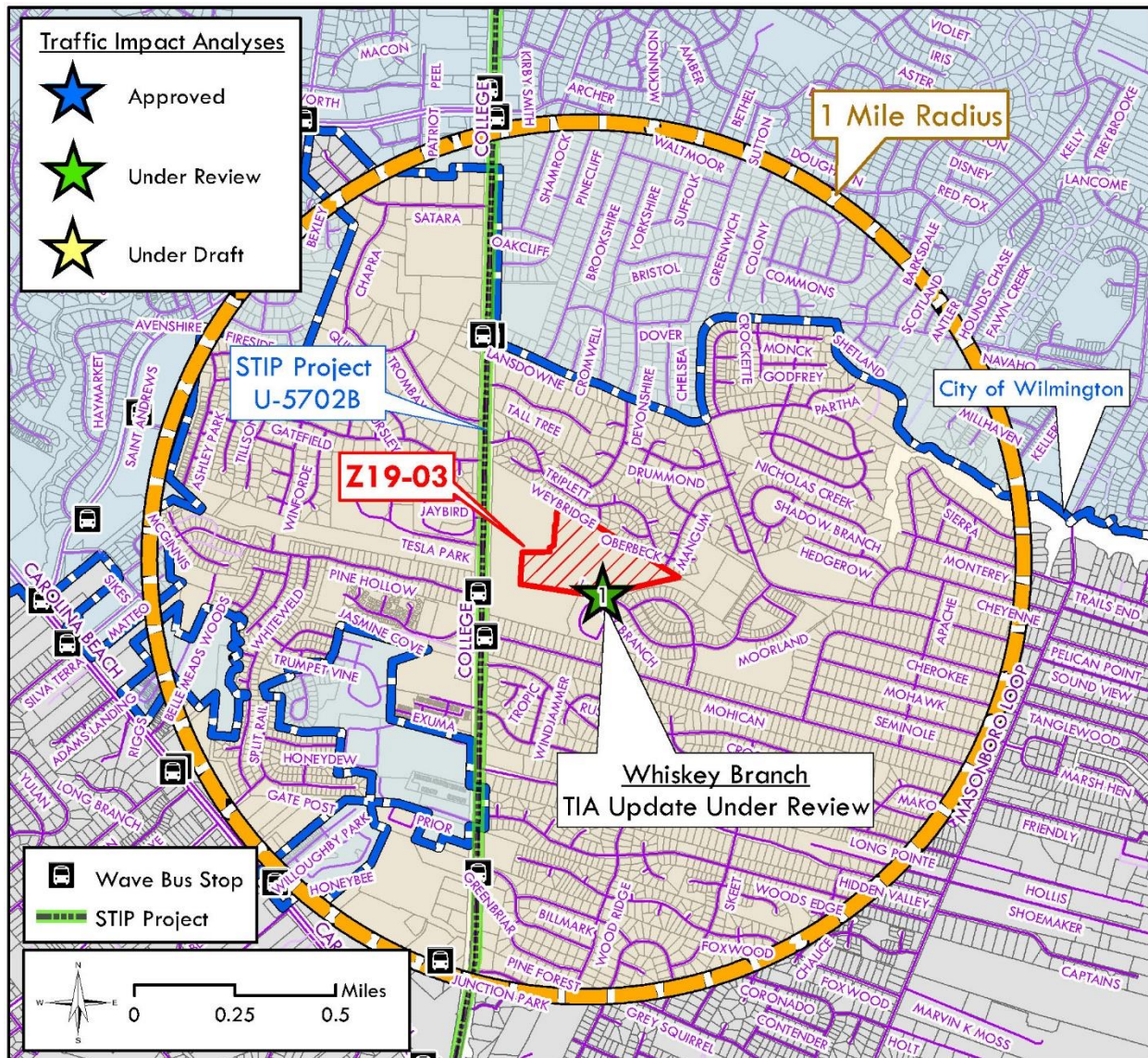
*Alternative #1 (Previously Approved by NCDOT)*



*Alternative #4 (Proposed by Applicant & Under Review by NCDOT)*



## Nearby Planned Transportation Improvements and Traffic Impact Analyses



### Nearby NC STIP Projects:

- STIP Project U-5702B
  - Proposal that will install access management and travel time improvements to S. College Road from Shipyard Boulevard to Carolina Beach Road. This project is currently unfunded.
- STIP Project U-5790
  - Proposal that will convert the intersection of Carolina Beach Road/Piner Road and College Road to a continuous flow intersection and widen a portion of Carolina Beach Road south of that intersection. Continuous flow intersections permit more efficient travel movements and help alleviate congestion by allowing more of the main street's traffic to move through the intersection. Construction of the project is expected to start in 2025.

**Nearby Traffic Impact Analyses:**

*Traffic Impact Analyses are completed in accordance with the WMPO and NCDOT standards. Approved analyses must be re-examined by NCDOT if the proposed development is not completed by the build out date established within the TIA.*

Proposed Development	Land Use/Intensity	TIA Status
<b>1. Whiskey Branch</b>	<ul style="list-style-type: none"><li>• Phase 1A: 88 Single-Family Dwellings, 82 Townhomes</li><li>• Phase 1B: 325 Apartments</li><li>• Phase 2: 50,000 sq. ft. of General Office, 150,000 sq. ft. of Shopping Center</li></ul>	<ul style="list-style-type: none"><li>• TIA originally approved August 25, 2017</li><li>• <b>Update of TIA is currently under review</b></li></ul>
<p>The TIA recommended improvements be completed at certain intersections in the area. The notable recommendations consisted of:</p> <ul style="list-style-type: none"><li>• Installation of turn lanes on S. College Drive at the site's access points.</li><li>• Installation of u-turn lanes north of the site's access points near Weybridge Lane.</li><li>• Monitor certain turning movements for signalization and install once warranted and approved by NCDOT.</li></ul>		
<b>Nearby Proposed Developments included within the TIA:</b>		
<ul style="list-style-type: none"><li>• None.</li></ul>		
<b>Development Status: Phase 1A is under construction. 118 lots have been platted. All improvements required at this time have been installed.</b>		

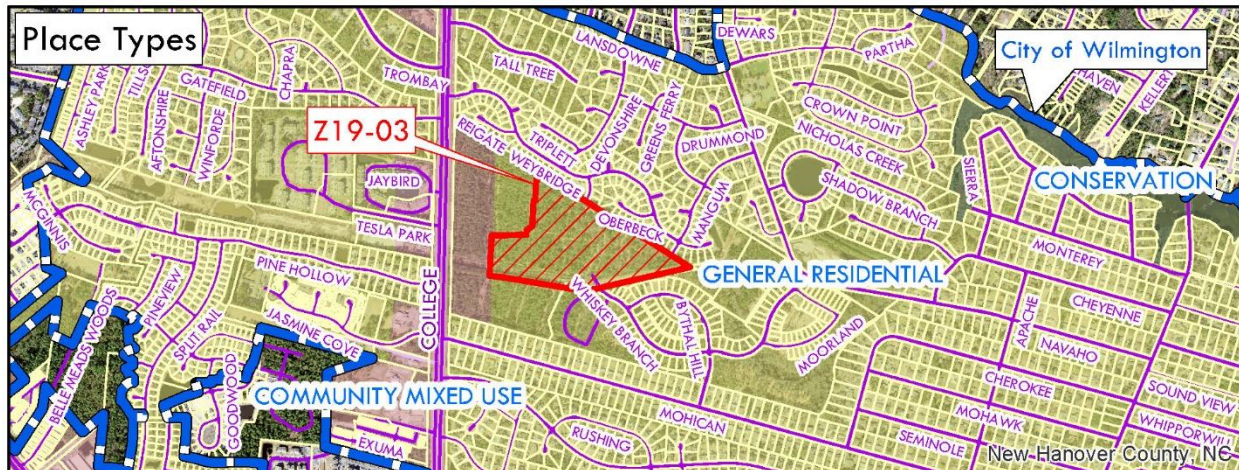
**ENVIRONMENTAL**

- The property is not within a Natural Heritage Area or Special Flood Hazard Area.
- The property is within the Whiskey Creek (SA;HQW) watershed.
- Per the Classification of Soils in New Hanover County for Septic Tank Suitability, soils on the property consist of Class II (moderate limitation) and Class III (severe limitation) soils, however, the project will connect to available CFPWA sewer services.



## 2016 COMPREHENSIVE LAND USE PLAN

- The New Hanover County Future Land Use Map provides a general representation of the vision for New Hanover County's future land use, as designated by place types describing the character and function of the different types of development that make up the community. Specific goals of the comprehensive plan are designated to be promoted in each place type, and other goals may be relevant for particular properties.



Future Land Use Map Place Type	General Residential
Place Type Description	Focuses on lower-density housing and associated civic and commercial services. Typically, housing is single-family or duplexes. Commercial uses should be limited to strategically located office and retail spaces, while recreation and school facilities are encouraged throughout. Types of uses include single-family residential, low-density multi-family residential, light commercial, civic, and recreational.
Analysis	<p>The subject parcel is located along the S. College Road corridor roughly halfway between the major commercial node at the Monkey Junction intersection and the commercial node at 17<sup>th</sup> Street within the City of Wilmington. It is the largest undeveloped tract remaining in the unincorporated county north of Monkey Junction, and the Comprehensive Plan designates the portion of it closest to S. College Rd. as a Community Mixed Use place and the eastern portion as General Residential.</p> <p>Unlike many of the highway corridors in New Hanover County, this portion of S. College Rd. is not uniformly designated as Community Mixed Use along the roadway due to historic residential development patterns that limit opportunities for mixed use development. This parcel is one of the few properties on the east side of S. College Rd. between Monkey Junction and the city where the type of community-scale mixed use project envisioned for Community Mixed Use places is possible.</p>

	<p>The subject property is designated as General Residential, the intent of which is to preserve existing residential neighborhoods and provide opportunities for similar lower density residential development and supportive commercial, civic, and recreational development. Because of the general nature of place type borders, sites located in proximity to the boundaries between place types could be appropriately developed in accordance with either place type.</p> <p>The proposed development site is located in a transitional area, and the moderate density development proposed in this rezoning could function as an orderly transition between the existing low intensity uses and the potentially high-intensity uses along the corridor. Its densities are in line with those recommended for residential developments in Community Mixed Use areas, and the project is designed to ensure adequate buffers and separations from adjacent residential neighborhoods. In addition, this type of development more efficiently uses the limited land resources available in the county and can provide opportunities for more affordable and diverse housing types.</p>
<b>Consistency Recommendation</b>	<p>The proposed development, which is located in a transitional area between the General Residential and Community Mixed Use place types, is generally <b>CONSISTENT</b> with the Comprehensive Plan's intent of providing an orderly transition of uses from higher intensity to lower intensity areas and providing for a range of housing types.</p>

## PLANNING BOARD ACTION ON REZONING

The Planning Board considered this application at their June 6, 2019 meeting. Six residents spoke in opposition during the hearing, citing concerns over infrastructure, traffic, density, crime, and lack of harmony with the area.

The Planning Board recommended approval (4-3) finding that the application is consistent with the purposes and intent of the Comprehensive Plan because it will provide an orderly transition of uses from higher intensity areas located along major roadways to lower intensity areas. The Board also found their action of recommending approval of the rezoning request is reasonable and in the public interest because the proposal assists with providing a range of housing types to the area and supports opportunities for more affordable housing.

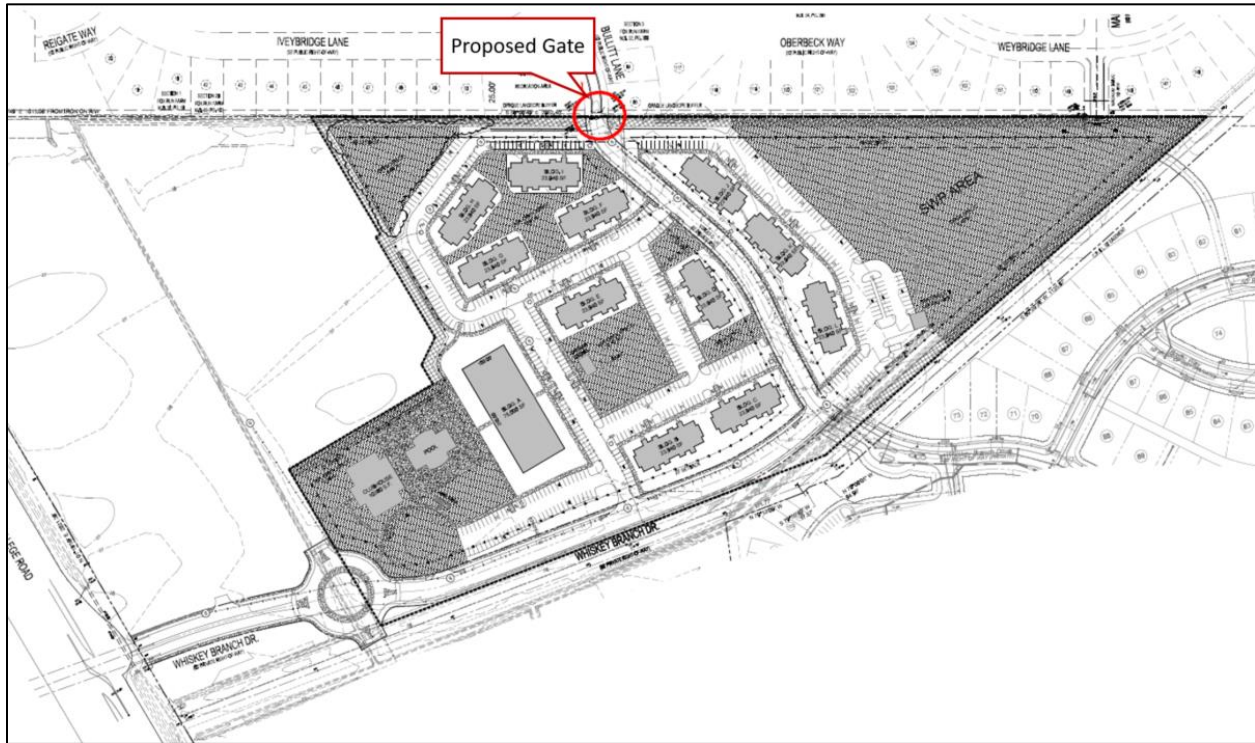
## STAFF RECOMMENDATION

**Staff recommends approval of the application as stated in the Planning Board's action.** Staff concurs with the Planning Board's statements that the application is consistent with the Comprehensive Plan.



## B. Z19-03 SPECIAL USE PERMIT REQUEST

### PROPOSED SITE PLAN



*Proposed Site Plan*

- The application proposes to develop an apartment complex containing 324 units. The units will consist of 162 one-bedroom units and 162 two-bedroom units.
- The Zoning Ordinance requires opaque buffers to be provided along property lines that abut residential uses and zoning. In addition, the apartment buildings must be setback a distance equal to the building's height (not to exceed 40 feet) where adjacent to existing detached residential development. The closest proposed building to a single-family lot is over 80 feet away, which is more than double the required distance.
- The site plan was reviewed by the Technical Review Committee and it complies with the applicable zoning regulations.
- The site is required to access S. College Road. The exact location of the access points is dependent on NCDOT's review of the updated TIA for the development. The site and its access must be constructed in accordance with the approved TIA and NCDOT and County standards.

## **STAFF PRELIMINARY CONCLUSIONS AND FINDINGS OF FACT:**

Staff has conducted an analysis of the proposed use and the information provided as part of the application package and has created preliminary findings of fact for each of the conclusions required to be reached to approve the special use permit request. These preliminary findings of fact and conclusions are based solely on the information provided to date, prior to any information or testimony in support or opposition to the request that may be presented at the upcoming public hearing at the Board meeting.

### **Conclusion 1: The Board must find that the use will not materially endanger the public health or safety where proposed and developed according to the plan as submitted and approved.**

- A. The site is accessed from S. College Road, an arterial street and North Carolina highway (NC 132).
- B. The subject property is located in the New Hanover County South Fire Service District.
- C. Traffic impacts are reviewed by NCDOT through the Traffic Impact Analysis process, and any required roadway improvements must be installed in accordance with NCDOT's standards prior to final zoning approval being issued.
- D. Based on the Institute of Traffic Engineers Trip Generation Manual, the proposed use is estimated to generate 137 trips in the AM peak and 143 trips in the PM peak.
- E. The site is not located within any Special Flood Hazard Area.
- F. Water and sewer services must be provided and designed in accordance with CFPUA's standards.

### **Conclusion 2: The Board must find that the use meets all required conditions and specifications of the Zoning Ordinance.**

- A. The site is proposed to be zoned R-10, Residential District.
- B. High density developments are allowed by special use permit in the R-10 zoning districts.
- C. The site plan has been reviewed by the Technical Review Committee and complies with all applicable technical standards including Zoning Ordinance Section 72-43: High Density Development.

### **Conclusion 3: The Board must find that the use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity.**

- A. The surrounding area contains single-family housing. The Whiskey Branch development also contains duplexes, and is proposing to construct townhomes. Multi-family projects (Tesla Park Apartments, The Gardens Condos) are located on the west side of S. College Road.
- B. Bufferyards must be provided between the development and adjacent residential property.
- C. The applicant provided a report prepared by a real estate appraisal and consulting firm (JC Morgan - Jack C. Morgan III, MAI, SRA, AI-GRS, R/W-AC). In the report, Mr. Morgan concluded that "there was no market data that [he] found that suggested the proposed project would have any impact on the values of the adjoining or abutting properties."



**Conclusion 4: The Board must find that the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Land Use Plan for New Hanover County.**

- A. The property is located in an area that transitions between the Community Mixed Use and General Residential place types, as classified in the 2016 Comprehensive Plan.
- B. While the property is located within the General Residential place type, it is located immediately adjacent to the Community Mixed Use place type.
- C. The proposal is not consistent with the preferred density range of the General Residential place type, which recommends multi-family housing to be developed from 2-6 dwelling units an acre.
- D. The proposal is consistent with the recommended uses and densities of the Community Mixed Use place type.
- E. Place type borders are not intended to be absolute and fixed like zoning districts, parcels located in proximity to the boundaries between place types could be appropriately developed in accordance with either place type.
- F. The proposal is generally consistent with the Comprehensive Plan's intent of providing an orderly transition of uses from higher intensity areas located along major roadways to lower intensity areas and providing for a range of housing types.
- G. The applicant provided a report prepared by a real estate appraisal and consulting firm (JC Morgan - Jack C. Morgan III, MAI, SRA, AI-GRS, R/W-AC). In the report, Mr. Morgan stated that "within the market area, comparable infill sites have been developed with mixed uses, generally consisting of commercial uses located at the front of the development and single-family land uses located at the rear of the developments. These two land uses are often (and preferably) transitioned by multi-family or office uses. The proposed project maintains this trend, suggesting it is in harmony with the area it is located."

#### **PLANNING BOARD ACTION ON SPECIAL USE PERMIT**

During the hearing for the special use permit, one resident spoke in opposition, citing concerns over traffic and density.

The Planning Board recommended approval (7-0) finding that the application meets the four conclusions required for a special use permit.

## EXAMPLE MOTIONS

### Example Motion for Approval:

Motion to approve, as the Board finds that this application for a Special Use Permit meets the four required conclusions based on the findings of fact included in the Staff Summary.

[OPTIONAL] Note any additional findings of fact related to the four required conclusions.

[OPTIONAL] Also, that the following conditions be added to the development:

*[List Conditions]*

### Example Motion for Denial:

Motion to deny as the Board **cannot** find that this proposal:

1. Will not materially endanger the public health or safety;
2. Meets all required conditions and specifications of the Zoning Ordinance;
3. Will not substantially injure the value of adjoining or abutting property;
4. Will be in harmony with the surrounding area, and is in general conformity with the Comprehensive Land Use Plan for New Hanover County.

*[State the finding(s) that the application does not meet and include reasons why it is not being met]*

\*The Board shall immediately rescind their approval of the Conditional Use District if the companion SUP is denied.