



## Agenda

### Planning and Zoning Commission

November 15, 2011

6:30 PM

Council Chambers, City Hall, 200 West Fifth Street

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- I. CALL MEETING TO ORDER -
- II. INVOCATION - Linda Rich
- III. ROLL CALL
- IV. APPROVAL OF MINUTES - October 18, 2011
- V. NEW BUSINESS

#### REZONINGS

1. Ordinance requested by Michael Overton to rezone 1.0172 acres located at the southwest corner of the intersection of Arlington Boulevard and Dickinson Avenue from RA20 (Residential-Agricultural) to OR (Office-Residential [High Density Multi-family]).

#### TEXT AMENDMENTS

2. Modifications to standards for dining and entertainment establishments

#### OTHER

3. Scheduling of the Planning & Zoning Commission meeting for December 2011

- VI. ADJOURN

DRAFT OF MINUTES PROPOSED FOR ADOPTION BY THE GREENVILLE PLANNING  
AND ZONING COMMISSION  
October 18, 2011

The Greenville Planning and Zoning Commission met on the above date at 6:30 p.m. in the Council Chambers of City Hall.

Mr. Tim Randall - \*  
Mr. Godfrey Bell - \*                      Mr. Dave Gordon - \*  
Mr. Tony Parker - \*                      Ms. Linda Rich - \*  
Mr. Hap Maxwell - \*                      Ms. Ann Bellis - \*  
Ms. Shelley Basnight - \*                      Mr. Brian Smith - \*  
Mr. Doug Schrade - \*                      Mr. Jerry Weitz - \*

The members present are denoted by an \* and the members absent are denoted by an X.

**VOTING MEMBERS:** Bell, Parker, Maxwell, Basnight, Gordon, Rich, Bellis, Smith

**PLANNING STAFF:** Merrill Flood, Community Development Director; Chris Padgett, Chief Planner; Chantae Gooby, Planner; Valerie Paul, Secretary

**OTHERS PRESENT:** Dave Holec, City Attorney; Rik DiCesare, Traffic Engineer; Jonathan Edwards, Communications Technician

**MINUTES:** Motion was made by Mr. Bell, seconded by Mr. Smith, to accept the September 20, 2011 minutes as presented. Motion carried unanimously.

**OLD BUSINESS**  
**Text Amendment**

Zoning Ordinance Text Amendment - Modifications to Article P. Vegetation Requirements

Mr. Chris Padgett presented the item to the Commission. One of the Action Items assigned to the Community Development Department from the current year's City Council Goals is to "Analyze the comments received from landscape professionals on the vegetation requirements as part of the review process and recommend changes to the landscape regulations as appropriate."

In an effort to meet City Council's directive, Staff contacted twelve landscape professionals and requested that they review the City's Vegetation Requirements located within Article P of the Zoning Ordinance and provide comments related to potential modifications. The individuals contacted included landscape architects, nursery operators, and landscapers; the individuals that are typically involved in landscape design and using the City's existing vegetation standards. The responses received could generally be placed into two categories:

1. Bufferyard Vegetation Requirements;

- Reduce the amount of vegetation required for a Bufferyard when a qualifying fence, evergreen hedge, or berm is provided.
- When a qualifying fence, evergreen hedge, or berm is provided within a bufferyard, allow some portion of the required vegetation material to be deciduous.

## 2. Approved Vegetation List;

- Update the Approved Vegetation List (as provided in Section 9-4-267 of the Zoning Ordinance) to remove tree and shrub species that, for various reasons, do not thrive in this area, and add new tree and shrub species that do thrive in this area and will add to the community's vegetative diversity.

Staff presented a report outlining the process used to solicit input from landscape professionals and their general recommendations to the Planning and Zoning Commission at their July 19, 2011, meeting. The Planning and Zoning Commission voted to move forward with initiating a Zoning Ordinance Text Amendment.

Subsequent to the Planning and Zoning Commission initiating the Zoning Ordinance Text Amendment, staff created an initial draft of said amendment and provided it to the same twelve landscape professionals that had originally provided input regarding the substantive modifications needed. The initial draft amendment was also provided to the Tree Preservation Work Group, a group consisting of citizens, developers and landscape professionals that are currently working with the Public Works Department to develop tree preservation strategies for the city. The initial draft was then modified based upon comments and input provided by the two before mentioned groups. The first requirement addressed states:

1. Bufferyard Vegetation Requirements
  - A. Reduce the amount of vegetation required for a Bufferyard when a qualifying fence, evergreen hedge, or berm is provided.

The rationale is that when of the qualifying items are provided, the bufferyard is typically reduced by 50% but you would still have 100% of the planting requirements. The landscape professionals that staff has spoken with say that if the planting is that dense it can cause problems where the plants are competing for resources and the trees are not reaching their mature size. The suggested text amendment reads:

### Proposed Text Amendment: Section 9-4-266

(2) Minimum vegetation material:

- (e) Where the fence, evergreen hedger where the fence, evergreen hedge or berm option is utilized within the bufferyard in accordance with the provisions of Section 9-4-119, then the minimum vegetation material required by this subsection is reduced by 25% for Type D, E and F bufferyards.

The second requirement addressed states:

1. Bufferyard Vegetation Requirements

- B. When a qualifying fence, evergreen hedge, or berm is provided within a bufferyard, allow some portion of the required vegetation material to be deciduous.

The current standards require that 100% of the vegetation must be evergreen; under this rule you're creating an opaque screen to the height of 6 ft. with the qualifying items. By allowing some percentage of the vegetation to be non-evergreen in nature, you are not reducing the effectiveness of the screens that go up to a height of 6 ft; for vegetation that reaches heights of 6 ft. – 12 ft., you would receive a filtered view rather than an opaque view, which the landscape professionals feels is appropriate. It is their opinion that the visual benefits would outweigh any negative impacts. The suggested text amendment for this section reads:

Proposed Text Amendment: Section 9-4-266

(2) Minimum vegetation material:

- (f) Where the fence, evergreen hedge or berm option is utilized within the bufferyard in accordance with the provisions of Section 9-4-119, then up to 25% of the minimum vegetation material required by this subsection for Type C, D, E and F bufferyards may be deciduous (non-evergreen).

The final requirement addressed is:

2. Approved Vegetation List

- A. Update the Approved Vegetation List (as provided in Section 9-4-267 of the Zoning Ordinance) to remove tree and shrub species that, for various reasons, do not thrive in this area, and add new tree and shrub species that do thrive in this area and will add to the community's vegetative diversity.

This list has not been updated in over a decade; since that time we have learned that some of the plants on the list are prone to disease or insects, some are not ideal to the area's climate or soils, or they are not commercially available in the area; these plants have been removed from the area. There are some new species that thrive in this environment and they have been added to the list. Mr. Padgett specifically thanked Myriah Shewchuk, Marsha Wiley and Todd Williams for their help in amending this list.

Ms. Basnight asked why bufferyard C was not included in the first one.

Mr. Padgett answered that there is minimal landscaping requirements in that bufferyard to begin with so they felt that it would not necessitate any type of reduction since it was a deviation of about 2 ft.

There were no speakers for or against the proposed text amendment so Chairman Randall closed the public hearing and opened Board discussion.

Mr. Gordon made a motion to approve the proposed text amendment to advise that it is consistent with the Comprehensive Plan and other applicable plans, and to adopt staff's report

which addresses plan consistency and other matters. Ms. Basnight seconded and the motion carried unanimously.

## **NEW BUSINESS**

### **Rezoning**

Ordinance requested by Ward Holdings, LLC et al to rezone 3.87 acres located at the southeast corner of the intersection of Greenville Boulevard and East 14th Street from R9S (Residential - single-family [medium density]) to CG (General Commercial).

Ms. Chantae Gooby presented the item to the Commission. This property was involved in a Land Use Map Amendment that had been presented to the Commission a few months prior. She delineated its area on the map and she noted that Hardee Road is a right-of-way, but it does not connect with Leon Hardee Road. There are a variety of different uses in this area. This rezoning could generate a net increase of 4,320 extra trips with 2,160 going one way and 2,160 going the other way. This request is in compliance with the Land Use Plan Map.

Mr. Jim Ward spoke on behalf of his application. He said that the Eastwood neighborhood is in complete support of the proposal. He noted that it is compliance with the City's Future Plan Map and it has the city's recommendation; he offered to answer any questions that the Commission may have.

With no further speakers, Chairman Randall closed the Public Hearing and he called for Board discussion.

Mr. Weitz said that it looks like it is a done deal, but he wanted to point out a few things. He said that it is not just a matter if the request is consistent with the Land Use Plan Map, but also with the Comprehensive Plan. He did not see anything in the report addressing the policies that the request is consistent or inconsistent with; he believes that there are more inconsistencies than consistencies. Other things that need to be considered are the surrounding zoning patterns, the range of uses permitted in the zoning district requested, the impact on streets and the purpose of the zoning code. He said that the Land Use Plan is specific so you cannot assume that every commercial zoning category is appropriate based on the fact that there is a commercial land use designation on the Future Land Use Map. This is a neighborhood focus area and it is only intended to allow 40,000 sq. ft. of floor space and this proposal is already 38,000 sq. ft; there is already commercial at other corners so this request is not really consistent with a neighborhood focus area. He read a footnote from the 2010 amendment to the Comprehensive Plan that states that the designation of an area with a particular land use category does not mean that the most intensive zoning district used in the land use definitions is automatically recommended. He said it looks like strip development to him and he did not think that there would be anything to prevent the owner from selling off the properties individually if the rezoning is approved; he said that it would be developed individually and it would look like a piece-meal development, which is discouraged by several policies. He said that the Commission is trying to preserve

neighborhood livability and he understands that there is no opposition from the neighborhood group for this request; he feels that the neighborhood may have been worn out by the process. He said that if the request is approved, there will not be a buffer between the commercial zone and the single-family residential zone.

Chairman Randall reminded the Commission that although Mr. Weitz was addressing them from the podium, he is a member of the Commission and they should feel free to contribute their comments at any point because Board Discussion had been opened up.

Mr. Bell asked if Mr. Weitz concern with this request was personal or just as a Board member.

Mr. Weitz answered that it was not personal and he was concerned as a Board member.

Mr. Weitz continued on and said that he was concerned about the uses that would be allowed under this rezoning such as bowling alleys, theaters, circuses, athletic clubs, funeral homes, hotels, motels, television stations and their towers, fast food restaurants, major repair, limousine services, storage areas and others; all of these would have to be considered under this rezoning and it would not be good for the neighborhood.

Mr. Gordon said that the size of the land precludes that some of the uses that he listed would not be possible.

Mr. Weitz allowed that the property does have some limitations as to which uses may or may not go up there, but the Commission is asked to consider all uses by the ordinance.

Mr. Gordon said that plans would still have to come back before the Commission. He said that they are not giving the applicant carte blanche to do whatever he would like with that property.

Mr. Weitz said that they are giving him the right to use any of the uses listed in the commercial zoning district; they would not have the authority to deny him through administrative processes.

Mr. Schrade noted that the President of the neighborhood association had attended a past meeting and said that they were favor of the request.

Mr. Gordon asked if Mr. Weitz knew for a fact that the neighborhood was worn down or if it was an assumption.

Mr. Weitz said that he did not know it as a fact but he had based his comments on the two times that the City Council had denied the request and he believed that the neighborhood had been in opposition at some point.

Mr. Schrade addressed Mr. Weitz's comment about individual driveways. He said that someone had spoken to the Commission about the roads and they would be able to control driveways and entrances up there to a certain point.

Chairman Randall said that Mr. Rik DiCesare, the City's Traffic Engineer, had done a good job addressing the issue. He said that it will hopefully improve that intersection there and he noted that there is restriction on the distance between driveways and intersections.

Mr. Weitz continued on to streets and thoroughfares. He said that there is not really an option for access to the properties besides Greenville Boulevard. Policy suggests that you try to improve traffic flow through the process and he does not see how commercial development will improve the situation. He addressed the living conditions there; he does not see how commercial general uses will promote desirable living conditions. He feels that if commercial is appropriate at this site, then it would be the neighborhood commercial that is consistent with the Comprehensive Plan; the land that is involved is more than necessary for a neighborhood commercial node.

Mr. Gordon asked if the Commission would approve site plans to make sure that there is connectivity from the subdivision to the property that is being developed.

Mr. DiCesare answered that they would.

Mr. Gordon said that whatever plan the applicant will present will have connectivity.

Mr. DiCesare said that the NCDOT is adamant about connectivity.

Mr. Parker asked if he was saying that Hardee Road would be connected to Leon Hardee Road.

Mr. DiCesare said that was not necessarily the case.

Mr. Parker asked what kind of scenario would achieve that connectivity.

Mr. DiCesare said that he would have to see a site plan before he could answer that. He reiterated what he said when they were amending the Land Use for this property; he said that the review process would be both City and State, and a traffic impact assessment would be required due to the level of traffic there. The State and City would have the authority to order an analysis of the other intersections close to the original intersection; mitigation measures include limiting access onto Greenville Boulevard, constructing turn lanes into the development, and intersection improvements at the Greenville Boulevard-14<sup>th</sup> Street intersection. Having a site plan come in opens up the area for all improvements; what is determined will be based on the impact of the site and what the State and City feel is a proper mitigation package.

Chairman Randall said that they may be able to get more with this deal than what is available now.

**Mr. Bell made a motion to recommend approval of the proposed amendment to advise that is consistent with the Comprehensive Plan and other applicable plans and to adopt the staff report which addresses plan consistency and other matters. Mr. Smith seconded the motion and it passed unanimously.**

With no further business, a motion was made, seconded and unanimously voted on to adjourn at 7:08 p.m.

Respectfully Submitted,

Merrill Flood, Secretary





# City of Greenville, North Carolina

**Meeting Date:**  
**11/15/2011**  
**Time: 6:30 PM**

**Title of Item:** Ordinance requested by Michael Overton to rezone 1.0172 acres located at the southwest corner of the intersection of Arlington Boulevard and Dickinson Avenue from RA20 (Residential-Agricultural) to OR (Office-Residential [High Density Multi-family]).

**Explanation:**

**Required Notices:**

Planning and Zoning meeting notice (property owner and adjoining property owner letter) mailed on October 31, 2011.

On-site sign(s) posted on October 31, 2011.

City Council public hearing notice (property owner and adjoining property owner letter) mailed - N/A.

Public hearing legal advertisement published - N/A.

**Comprehensive Plan:**

The subject area is located in Vision Area F.

Arlington Boulevard is designated as a connector corridor. Connector corridors are anticipated to contain a variety of higher intensity activities and uses. Dickinson Avenue is designated as a residential corridor between Arlington Boulevard and Greenville Boulevard/Allen Road. Along residential corridors, office, service and retail activities should be specifically restricted to the associated focus area, and linear expansion outside of the focus area should be prohibited.

The Future Land Use Plan Map recommends office/institutional/multi-family (OIMF) at the southwest corner of the intersection of Arlington Boulevard and Dickinson Avenue transitioning to conservation/open space (COS) in the interior area.

The Future Land Use Plan Map identifies certain areas for conservation/open space uses. The map is not meant to be dimensionally specific, and may not

correspond precisely to conditions on the ground. When considering rezoning requests or other development proposals, some areas classified as conservation/open space may be determined not to contain anticipated development limitations. In such cases, the future preferred land use should be based on adjacent Future Land Use Plan designations, contextual considerations, and the general policies of the comprehensive plan.

**Thoroughfare/Traffic Report Summary (PWD- Engineering Division):**

Based on possible uses permitted by the requested rezoning, the proposed rezoning classification could generate 106 trips to and from the site on Dickinson Avenue, which is a net increase of 68 additional trips per day.

During the review process, measures to mitigate the traffic, if required, will be determined.

**History/Background:**

In 1972, the subject property was incorporated into the City's extra-territorial jurisdiction (ETJ) and zoned RA20 (Residential-Agricultural).

**Present Land Use:**

Currently, the property is vacant.

**Water/Sewer:**

Water is located in the right-of-way of Dickinson Avenue. Sanitary sewer is located in the right-of-way of Arlington Boulevard.

**Historic Sites:**

There are no known effects on designated sites.

**Environmental Conditions/Constraints:**

There are no known environmental conditions/constraints.

**Surrounding Land Uses and Zoning:**

North: O - Burton Family Dental and Associates  
South: OR - Thomas Professional Office; RA20 - vacant  
East: R6 - Pecan Grove Apartments and one duplex residence  
West: MO - Vacant

**Density Estimates:**

Under the current zoning (RA20), the site could yield four (4) single-family lots.

Under the proposed zoning (OR), the site could yield no more than 16 multi-

family units.

The anticipated build-out time 1-2 years.

**Fiscal Note:** No cost to the City.

**Recommendation:** In staff's opinion, the request is in compliance with Horizons: Greenville's Community Plan and the Future Land Use Plan Map.

"In compliance with the comprehensive plan" should be construed as meaning the requested zoning is (i) either specifically recommended in the text of the Horizons Plan (or addendum to the plan) or is predominantly or completely surrounded by the same or compatible and desirable zoning and (ii) promotes the desired urban form. The requested district is considered desirable and in the public interest, and staff recommends approval of the requested rezoning.

Note: In addition to the other criteria, the Planning and Zoning Commission and City Council shall consider the entire range of permitted and special uses for the existing and proposed zoning districts as listed under Title 9, Chapter 4, Article D of the Greenville City Code.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [Location Map](#)
- [Survey](#)
- [Bufferyard and Vegetation Standards and Residential Density](#)
- [Rezoning Case 11 10 Michael Overton 911687](#)
- [List of Uses RA20 and OR 911650](#)

**Case No:** 11-10

**Applicant:** Michael Overton

**Property Information**

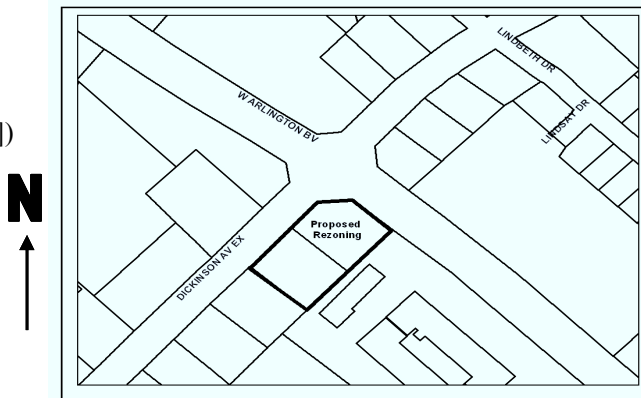
**Current Zoning:** RA20 (Residential-Agricultural)

**Proposed Zoning:** OR (Office-Residential [High Density Mult-Family])

**Current Acreage:** 1.0172 acres

**Location:** Corner of Arlington Boulevard & Dickinson Avenue

**Points of Access:** Dickinson Avenue



**Location Map**

**Transportation Background Information**

**1.) Dickinson Avenue- State maintained**

	<u>Existing Street Section</u>	<u>Ultimate Thoroughfare Street Section</u>
Description/cross section	4-lane with curb & gutter	5-lanes curb & gutter with sidewalks
Right of way width (ft)	80	100
Speed Limit (mph)	45	45
<b>Current ADT:</b>	14,850 (*)	Ultimate Design ADT: 33,500 vehicles/day (**)
<b>Design ADT:</b>	30,000 vehicles/day (**)	
<b>Controlled Access</b>	<b>No</b>	
<b>Thoroughfare Plan Status:</b>	Major Thoroughfare	

**Other Information:** There are no sidewalks along Dickinson Avenue that service this property.

**Notes:** (\*) 2008 NCDOT count adjusted for a 2% annual growth rate  
(\*\*) Traffic volume based an operating Level of Service D for existing geometric conditions  
ADT – Average Daily Traffic volume

**Transportation Improvement Program Status:** No planned improvements.

**Trips generated by proposed use/change**

**Current Zoning: 38** -vehicle trips/day (\*)                      **Proposed Zoning: 106** -vehicle trips/day (\*)

**Estimated Net Change: increase of 68 vehicle trips/day (assumes full-build out)**

(\* - These volumes are estimated and based on an average of the possible uses permitted by the current and proposed zoning.)

**Impact on Existing Roads**

**The overall estimated trips presented above are distributed based on current traffic patterns. The estimated ADTs on Dickinson Avenue are as follows:**

**1.) Dickinson Avenue , East of Site:**                      **“No build” ADT of 14,850**

Estimated ADT with Proposed Zoning (full build) – 14,914

Estimated ADT with Current Zoning (full build) – 14,873

**Net ADT change = 41 (<1% increase)**

Case No: 11-10

Applicant: Michael Overton

**2.) Dickinson Avenue , West of Site:****“No build” ADT of 14,850**

Estimated ADT with Proposed Zoning (full build) – 14,892

Estimated ADT with Current Zoning (full build) – 14,865**Net ADT change = 27 (<1% increase)****Staff Findings/Recommendations**

Based on possible uses permitted by the requested rezoning, the proposed rezoning classification could generate 106 trips to and from the site on Dickinson Avenue, which is a net increase of 68 additional trips per day.

During the review process, measures to mitigate the traffic, if required, will be determined.

## **EXISTING ZONING**

### **RA20 (Residential-Agricultural)**

#### ***Permitted Uses***

*(1) General:*

- a. Accessory use or building
- c. On- premise signs per Article N

*(2) Residential:*

- a. Single-family dwelling
- f. Residential cluster development per Article M
- k. Family care home (see also section 9-4-103)
- q. Room renting

*(3) Home Occupations (see all categories):*

\*None

*(4) Governmental:*

- b. City of Greenville municipal government building or use (see also section 9-4-103)

*(5) Agricultural/ Mining:*

- a. Farming; agriculture, horticulture, forestry (see also section 9-4-103)
- c. Wayside market for farm products produced on site
- e. Kennel (see also section 9-4-103)
- f. Stable; horse only (see also section 9-4-103)
- g. Stable; per definition (see also section 9-4-103)
- h. Animal boarding not otherwise listed; outside facility, as an accessory or principal use

*(6) Recreational/ Entertainment:*

- f. Public park or recreational facility
- g. Private noncommercial park or recreational facility

*(7) Office/ Financial/ Medical:*

\* None

*(8) Services:*

- o. Church or place of worship (see also section 9-4-103)

*(9) Repair:*

\* None

*(10) Retail Trade:*

\* None

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

\* None

*(12) Construction:*

- c. Construction office; temporary, including modular office (see also section 9-4-103)

*(13) Transportation:*

\* None

*(14) Manufacturing/ Warehousing:*

\* None

*(15) Other Activities (not otherwise listed - all categories):\* None*

**RA20 (Residential-Agricultural)**  
***Special Uses***

*(1) General:*

\* None

*(2) Residential:*

- b. Two-family attached dwelling (duplex)
- g. Mobile Home
- n. Retirement center or home
- o. Nursing, convalescent center or maternity home; major care facility

*(3) Home Occupations (see all categories):*

- a. Home occupation; including barber and beauty shops
- c. Home occupation; including manicure, pedicure or facial salon

*(4) Governmental:*

- a. Public utility building or use

*(5) Agricultural/ Mining:*

- b. Greenhouse or plant nursery; including accessory sales

*(6) Recreational/ Entertainment:*

- a. Golf course; regulation
- c.(1). Tennis club; indoor and outdoor facilities

*(7) Office/ Financial/ Medical:*

\* None

*(8) Services:*

- a. Child day care facilities
- b. Adult day care facilities
- d. Cemetery
- g. School; junior and senior high (see also section 9-4-103)
- h. School; elementary (see also section 9-4-103)
- i. School; kindergarten or nursery (see also section 9-4-103)
- ee. Hospital Deleted

*(9) Repair:*

\* None

*(10) Retail Trade:*

\* None

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

\* None

*(12) Construction:*

\* None

*(13) Transportation:*

\* None

*(14) Manufacturing/ Warehousing: \* None*

*(15) Other Activities (not otherwise listed - all categories): \* None*

## **PROPOSED ZONING**

### **OR (Office-Residential)**

#### ***Permitted Uses***

##### *(1) General:*

- a. Accessory use or building
- b. Internal service facilities
- c. On- premise signs per Article N
- f. Retail sales incidental

##### *(2) Residential:*

- b. Two-family attached dwelling (duplex)
- c. Multi-family development per Article 1
- k. Family care home (see also section 9-4-103)
- n. Retirement center or home
- o. Nursing, convalescent center or maternity home; major care facility
- p. Board or rooming house
- q. Room renting

##### *(3) Home Occupations (see all categories):*

\*None

##### *(4) Governmental:*

- b. City of Greenville municipal government building or use (see also section 9-4-103)
- c. County or state government building or use not otherwise listed; excluding outside storage and major or minor repair
- d. Federal government building or use

##### *(5) Agricultural/ Mining:*

- a. Farming; agriculture, horticulture, forestry (see also section 9-4-103)

##### *(6) Recreational/ Entertainment:*

- f. Public park or recreational facility
- g. Private noncommercial park or recreation facility

##### *(7) Office/ Financial/ Medical:*

- a. Office; professional and business, not otherwise listed
- b. Operational/processing center
- c. Office; customer service not otherwise listed, including accessory service delivery vehicle parking and indoor storage
- d. Bank, savings and loan or other savings or investment institutions
- e. Medical, dental, ophthalmology or similar clinic, not otherwise listed

##### *(8) Services:*

- c. Funeral home
- e. Barber or beauty shop
- f. Manicure, pedicure, or facial salon
- g. School; junior and senior high (see also section 9-4-103)
- h. School; elementary (see also section 9-4-103)
- i. School; kindergarten or nursery (see also section 9-4-103)
- j. College or other institutions of higher learning
- k. Business or trade school
- n. Auditorium
- o. Church or place of worship (see also section 9-4-103)
- p. Library
- q. Museum



- r. Art Gallery
- u. Art studio including art and supply sales
- v. Photography studio including photo and supply sales
- w. Recording studio
- x. Dance studio
- bb. Civic organizations
- cc. Trade or business organizations

*(9) Repair:*

\* None

*(10) Retail Trade:*

- s. Book or card store, news stand
- w. Florist

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

\* None

*(12) Construction:*

- a. Licensed contractor; general, electrical, plumbing, mechanical, etc. excluding outside storage
- c. Construction office; temporary, including modular office (see also section 9-4-103)

*(13) Transportation:*

\* None

*(14) Manufacturing/ Warehousing:*

\* None

*(15) Other Activities (not otherwise listed - all categories):*

\* None

**OR (Office-Residential)**

***Special Uses***

*(1) General:*

\* None

*(2) Residential:*

- d. Land use intensity multifamily (LUI) development rating 50 per Article K
- e. Land use intensity dormitory (LUI) development rating 67 per Article K
- i. Residential quarters for resident manager, supervisor or caretaker; excluding mobile home
- o.(1). Nursing, convalescent center or maternity home; minor care facility
- r. Fraternity or sorority house

*(3) Home Occupations (see all categories):*

\* None

*(4) Governmental:*

- a. Public utility building or use

*(5) Agricultural/ Mining:*

\* None

*(6) Recreational/ Entertainment:*

- c.(1). Tennis club; indoor and outdoor facilities
- h. Commercial recreation; indoor only, not otherwise listed

*(7) Office/ Financial/ Medical:*

- f. Veterinary clinic or animal hospital (also see animal boarding; outside facility, kennel and stable)

*(8) Services:*

- a. Child day care facilities
- b. Adult day care facilities
- l. Convention center; private
- s. Hotel, motel, bed and breakfast inn; limited stay lodging (see also residential quarters for resident manager, supervisor or caretaker and section 9-4-103)
- ff. Mental health, emotional or physical rehabilitation center

*(9) Repair:*

- \* None

*(10) Retail Trade:*

- h. Restaurant; conventional
- j. Restaurant; regulated outdoor activities

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

- \* None

*(12) Construction:*

- \* None

*(13) Transportation:*

- h. Parking lot or structure; principle use

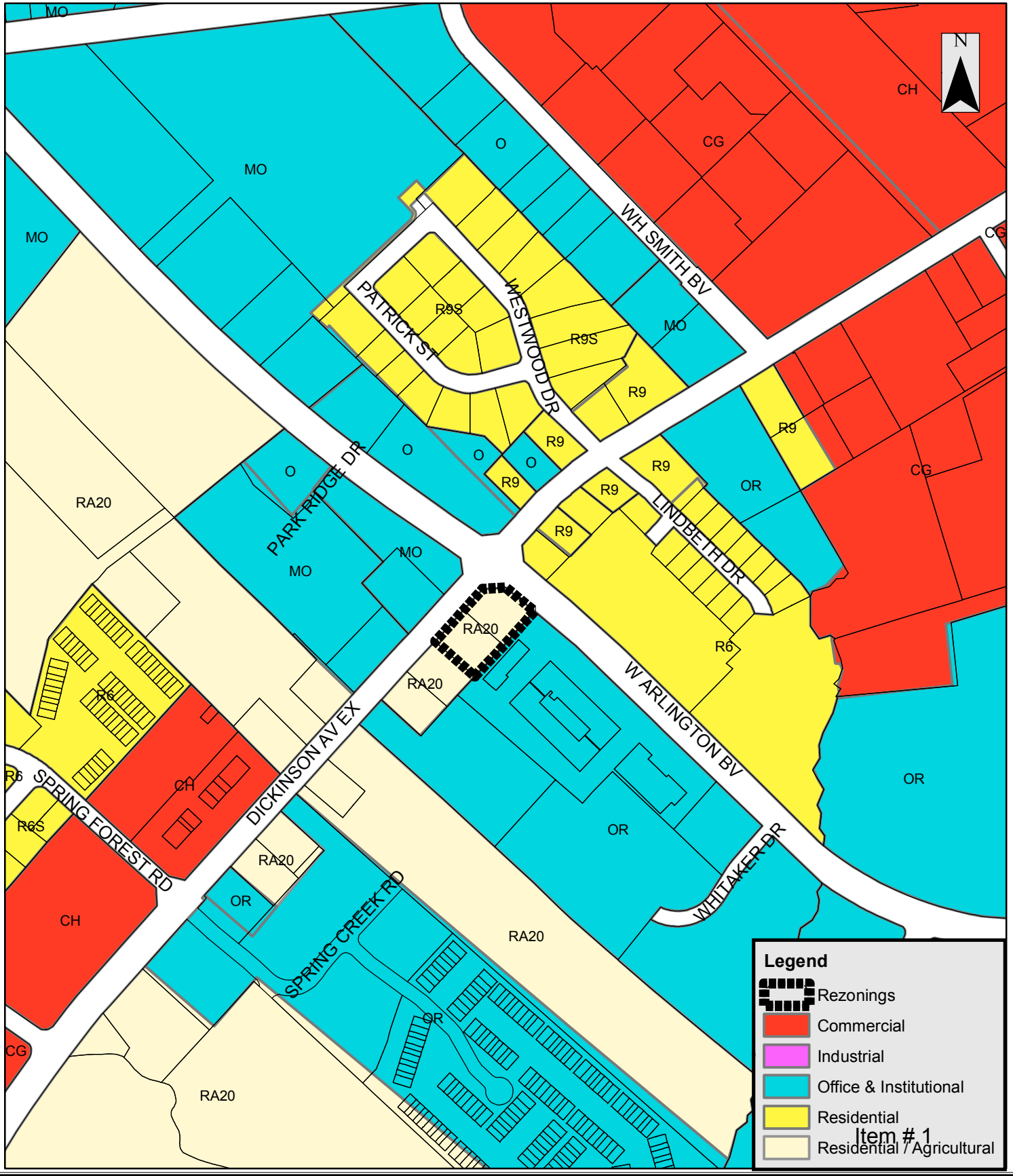
*(14) Manufacturing/ Warehousing:*

- \* None

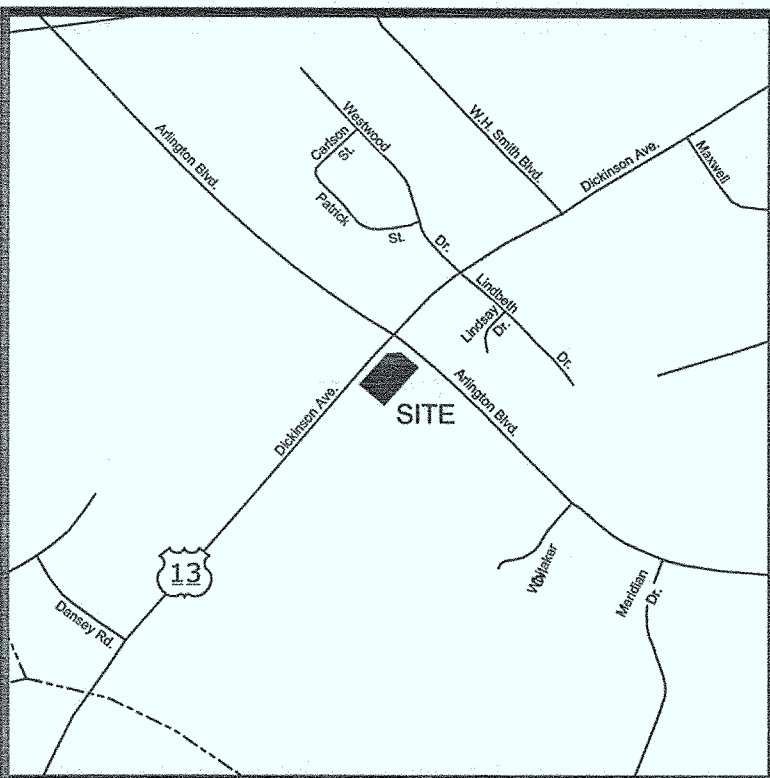
*(15) Other Activities (not otherwise listed - all categories):*

- a. Other activities; personal services not otherwise listed
- b. Other activities; professional services not otherwis

Michael Overton (11-10)  
From: RA20 To: OR  
1.0172 acres  
October 31, 2011



Item # 1



VICINITY MAP  
1" = 1000'

DPD PROPERTIES, LLC  
DB 917, P 230

R6  
MULTIFAMILY

Attachment number 4  
Page 1 of 1

JARVIS J. &  
DORLIS B. MILLS  
DB S-45, P 638

R6  
MULTIFAMILY

W. ARLINGTON BLVD.  
(100' PUBLIC R/W - 69' BC/BC)

S 48°14'30" W  
0.68'

S 48° 44' 05" W 267.56'

EXISTING ZONING RA-20  
PROPOSED ZONING OR  
(1.0172 ACRES)

①

②

GEORGE T.  
SAVAGE  
DB 2064, P 262

RA-20  
SINGLE FAMILY

N 43°22'19" W 170.62'

N 48° 45' 14" E 217.39'

U.S. HWY 264 ALT. & U.S. HWY 13  
DICKINSON AVE. EXTENSION  
(80' PUBLIC R/W - 60' BC/BC)

DIAMOND POINTE  
PROPERTIES, LLC.  
DB 1984, P 856

O  
MEDICAL OFFICE

AMOS J.  
EVANS  
DB 226, P 01

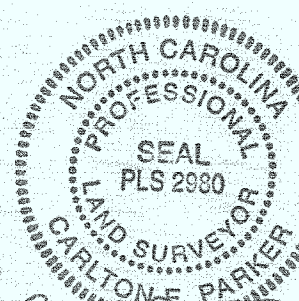
MO  
VACANT

AMOS J.  
EVANS, ETALS  
DB 467, P 814

MO  
VACANT

JAMES A.  
EVANS, ETAL  
ESTATE BOOK 92, P 249

MO  
SINGLE FAMILY



CARLTON E. PARKER, PLS 2980

REZONING MAP FOR  
MICHAEL OVERTON

REFERENCE DEED BOOK 2506, PAGE 801 AND DEED BOOK,  
2784, PAGE 311 OF THE PITT COUNTY REGISTRY

GREENVILLE TOWNSHIP PITT COUNTY NORTH CAROLINA

OWNER: TFW COMMERCIAL  
PROPERTIES, LLC.  
ADDRESS: 105 E. VICTORIA COURT, STE. D  
GREENVILLE, NC 27858  
PHONE: (252) 375-6622

DESIGNED: CEP

DRAWN: WCO

APPROVED: CEP

DATE: 09/01/11

SCALE: 1" = 40'

SHEET 1 OF 1



MALPASS & ASSOCIATES  
NC LICENSE NO. C-1289  
1645 EAST ARLINGTON BLVD., SUITE D  
GREENVILLE, N.C. 27858  
(252) 756-1780



Item # 1

04/30/07

## BUFFERYARD SETBACK AND VEGETATION SCREENING CHART

For Illustrative Purposes Only

**Bufferyard Requirements:** Match proposed land use with adjacent permitted land use or adjacent vacant zone/nonconforming use to determine applicable bufferyard.

PROPOSED LAND USE CLASS (#)	ADJACENT PERMITTED LAND USE CLASS (#)					ADJACENT VACANT ZONE OR NONCONFORMING USE		PUBLIC/PRIVATE STREETS OR R.R.
	Single-Family Residential (1)	Multi-Family Residential (2)	Office/Institutional, light Commercial, Service (3)	Heavy Commercial, Light Industry (4)	Heavy Industrial (5)	Residential (1) - (2)	Non-Residential (3) - (5)	
Multi-Family Development (2)	C	B	B	B	B	C	B	A
Office/Institutional, Light Commercial, Service (3)	D	D	B	B	B	D	B	A
Heavy Commercial, Light Industry (4)	E	E	B	B	B	E	B	A
Heavy Industrial (5)	F	F	B	B	B	F	B	A

Bufferyard A (street yard)		
Lot Size	Width	For every 100 linear feet
Less than 25,000 sq.ft.	4'	2 large street trees
25,000 to 175,000 sq.ft.	6'	2 large street trees
Over 175,000 sq.ft.	10'	2 large street trees

Street trees may count toward the minimum acreage.

Bufferyard B (no screen required)	
Lot Size	Width
Less than 25,000 sq.ft.	4'
25,000 to 175,000 sq.ft.	6'
Over 175,000 sq.ft.	10'

Bufferyard C (screen required)	
Width	For every 100 linear feet
10'	3 large evergreen trees 4 small evergreens 16 evergreen shrubs

Where a fence or evergreen hedge (additional materials) is provided, the bufferyard width may be reduced to eight (8) feet.

Bufferyard D (screen required)	
Width	For every 100 linear feet
20'	4 large evergreen trees 6 small evergreens 16 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

Bufferyard E (screen required)	
Width	For every 100 linear feet
30'	6 large evergreen trees 8 small evergreens 26 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

Bufferyard F (screen required)	
Width	For every 100 linear feet
50'	8 large evergreen trees 10 small evergreens 36 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

**Parking Area:** Thirty (30) inch high screen required for all parking areas located within fifty (50) feet of a street right-of-way.

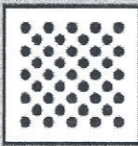
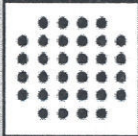
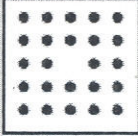
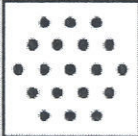
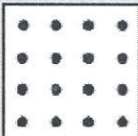
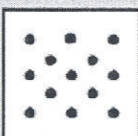
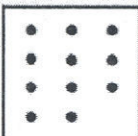
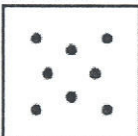
Residential Density		
Maximum density allowed by Zoning District based on average of 2.67 persons per dwelling unit		
<b>High Density</b>		
R6 R6-N R6-MH OR CDF	17 units per acre yields 45 persons per acre	
PUD	12 units per acre yields 32 persons per acre	
<b>Medium Density</b>		
R6-A	9 units per acre yields 24 persons per acre	
R6-S	7 units per acre yields 19 persons per acre	
R9	6 units per acre yields 16 persons per acre	
R9-S	5 units per acre yields 13 persons per acre	
<b>Low Density</b>		
RA-20 MRS	4 units per acre yields 11 persons per acre	
R15-S	3 units per acre yields 8 persons per acre	

Illustration: Maximum allowable density in Residential Zoning Districts



# City of Greenville, North Carolina

Meeting Date:  
11/15/2011  
Time: 6:30 PM

**Title of Item:** Modifications to standards for dining and entertainment establishments

**Explanation:**

**Background**

At their August 22, 2011, meeting, City Council voted to direct staff to develop a report on the city's current standards for dining and entertainment establishments (D&E's). This request was initiated by Council Member Joyner, who stated that he was interested in amending the weekday time restrictions for amplified audio entertainment applicable to D&E's. More specifically, Council Member Joyner was interested in amending said standards so as to differentiate between those establishments located within close proximity to existing single-family residences and districts and those that are located within commercial areas, not within a set distance of single-family residences and districts.

Staff developed and presented the requested report to City Council at their September 8, 2011, meeting. After some discussion, City Council directed staff to draft a specific text amendment for their review and consideration.

Staff developed a specific text amendment and presented it to City Council at their October 10, 2011, meeting. After some discussion, City Council voted to initiate the Zoning Ordinance Text Amendment and requested that the Neighborhood Advisory Board review and provide a recommendation on the same.

**Current Standards**

D&E's are currently not permitted to have amplified audio entertainment, such as bands or karaoke, after 11 p.m. on Monday, Tuesday, Wednesday and Thursday (classified as weekdays) or after 2 a.m. Friday and Saturday or 11 p.m. on Sundays (classified as weekends). Two exceptions to these standards include:

- On December 31st (New Year's Eve), the time may be extended to 2 a.m.; and
- D&E's located in the CD (Downtown Commercial) district may have amplified audio entertainment until 2 a.m. on Thursdays.

### **Draft Modifications**

Staff developed the following draft modifications to the current D&E standards modeled after the current separation standards for public or private clubs from single-family dwellings and districts. Those D&E's that meet the specified spacing requirements would qualify for extended hours of amplified audio entertainment on Thursdays. Those that do not meet the specified spacing standards would continue to abide by the current standards.

*"The allowable period of amplified audio entertainment for any dining and entertainment establishment that meets the following separation requirements may be extended, at the option of the owner/operator, from the times specified under subsection (F)1.(6) on each Thursday night to no later than 2:00 a.m. the following day. To qualify for this provision, the dining and entertainment establishment shall not be located within a 500-foot radius, including street rights-of-way, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the dining and entertainment establishment to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this section, the term "single-family residential zoning district" shall include any RA20; R15S; R9S; R6S; and MRS district."*

City Council also discussed the possibility of allowing D&E's that meet the specified spacing requirements above to qualify for extended hours of amplified audio entertainment on additional holidays (extended hours are already permitted until 2 a.m. on New Year's Eve). Additional holidays and/ or observances that are generally known to generate night activity include:

- St. Patrick's Day (March 17)
- Cinco de Mayo
- Independence Day (July 4)
- Halloween (October 31);

### **Impact of Draft Modifications on Existing D&E's**

Four of the five existing D&E's located within the City's territorial jurisdiction meet the new spacing requirements proposed above, which would qualify them to have amplified audio entertainment on each Thursday night to no later than 2:00 a.m. the following day if the draft modifications were adopted. These establishments include:

AJ McMurphys	1914 Turnberry Drive
Japan Inn	739 Red Banks Road
Upper Deck Sports Bar and Grill	703 SE Greenville Boulevard
Tipsy Teapot	409 S. Evans Street

The only existing establishment that would not qualify for extended hours of amplified audio is Christy's Europub located at 301 S. Jarvis Street.



**Fiscal Note:** No fiscal impact is anticipated.

**Recommendation:** In staff's opinion, the proposed Zoning Ordinance Text Amendment is in compliance with Horizons: Greenville's Community Plan.

If the Planning and Zoning Commission determines to approve the request, in order to comply with statutory requirements, it is recommended that the motion be as follows:

Motion to approve the proposed text amendment, to advise that it is consistent with the comprehensive plan and other applicable plans, and to adopt the staff report which addresses plan consistency and other matters.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Report on Standards for Dining and Entertainment Establishments\\_905346](#)

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## **Report on Standards for Dining and Entertainment Establishments**

### Contents:

- Section I. City Council Directive – Page 2
- Section II. History and Background Information – Page 2
- Section III. Summary of Existing Standards – Page 4
- Section IV. Identification of Existing Dining and Entertainment Establishments – Page 16

**Report Developed by the City of Greenville  
Community Development Department - Planning Division  
August 24, 2011**

## **SECTION I – City Council Directive**

City Council voted to direct staff to develop a report on the city's current standards for Dining and Entertainment Establishments (D&E's) at their August 22, 2011, meeting. This request was initiated by Council Member Joyner, who stated that he was interested in amending the weekday time restrictions for amplified audio entertainment applicable to D&E's. More specifically, Council Member Joyner was interested in amending said standards so as to differentiate between those establishments located within close proximity to existing single family residences and districts and those that are located within commercial areas, not within a set distance of single family residences and districts.

## **SECTION II – History and Background Information**

The Dining and Entertainment Establishment land use category and its associated standards were originally adopted in April 2009. Until then, the city had land use categories for conventional restaurants and public or private clubs. A conventional restaurant was defined as an eating establishment in which food sales had to account for more than 50% of the establishment's gross sales. A public or private club was defined as an entertainment establishment that had no restrictions or requirements related to gross sales.

The need for a new land use category was recognized when a local business permitted as a conventional restaurant contested the requirements because the restaurant was unable to meet the local zoning requirement for food sales (greater than 50% gross sales), but did meet the state's requirement (greater than 30% gross sales). This difference between city and state requirements, and the fact that the business could not qualify as a public or private club because it was located in a CN (Neighborhood Commercial) zoning district, led to a year-long process of evaluating the city's standards and creating a new land use category, dining and entertainment establishments. This new category, which was intended to be an eating and entertainment establishment, must have food sales in excess of 30% of the establishment's gross sales, and was intended to fill the gap that previously existed between conventional restaurants and public or private clubs.

The standards applicable to dining and entertainment establishments have been amended once since initial adoption. That amendment, Ordinance 10-83, allowed dining and entertainment establishments located in the CD (Downtown Commercial) district to have amplified audio entertainment on each Thursday night until 2:00 a.m. the following day (previously limited to 11:00 p.m.

See Description (below) for ordinance/amendment explanation.

<b>Year</b>	<b>Applicant</b>	<b><u>Description</u></b>	<b>Ord. # And Approval Date</b>
2009	CDD (Planning); initiated by City Council 12/08	Amend the definition section, table of uses, special use permit standards, etc., to establish a dining and entertainment establishment use and associated standards.	09-27 4/9/09
2010	Phoenix Redevelopment (Don Edwards)	Amend the special use permit standards for D&E's in the CD (Downtown Commercial) district to allow amplified audio entertainment on each Thursday night until 2:00 a.m. the following day.	10-83 10/14/2010

## **SECTION III – Summary of Existing Standards**

### **Section 9-4-78: Table of Uses**

Dining and Entertainment Establishments are permitted by-right in the following zoning districts:

- CG (General Commercial)
- CH (Heavy Commercial)
- IU (Unoffensive Industry)
- I (Industry)
- PIU (Planned Unoffensive Industry)
- PI (Planned Industry)

Dining and Entertainment Establishments are subject to special use permit approval of the Board of Adjustment in the following zoning districts:

- MS (Medical Support)
- MO (Medical Office)
- MCG (Medical – General Commercial)
- MCH (Medical – Heavy Commercial)
- OR (Office Residential)
- CD (Downtown Commercial)
- CDF (Downtown Commercial Fringe)
- CN (Neighborhood Commercial)

### **Section 9-4-22. Definitions.**

*Dining and entertainment establishment.* An eating and entertainment establishment open to the general public and which meets all of the following:

- (1) May require a membership, cover or minimum charge for admittance or service during special periods of operation in accordance with this chapter;
- (2) Has sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
  - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishment's kitchen and served as a meal to

be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.

- (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
  - (c) A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance under this subsection (2), the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the state;
- (3) Does provide sit-down dining area(s);
  - (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
  - (5) May offer food in disposable containers;
  - (6) May offer carry-out and/or off-site delivery services;
  - (7) Does not offer drive-in attendant services;
  - (8) May exhibit one but not both of the following operational functions or characteristics:
    - (a) Drive-through service; or
    - (b) Over the counter service. For purposes of this section, the term over the counter service shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils and the like, from an order/delivery station or counter remote to the on-site place of consumption.
  - (9) May have one or more of the following activities or services, which is open to the establishment's patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation

and on-premises food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premises food consumption services may be suspended at the option of the owner/operator not less than one hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 a.m. (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premises food consumption shall be provided until not less than 11:00 p.m. of the same day;

- (10) Shall be limited to a maximum mechanically conditioned floor area requirement and shall comply with a minimum separation and security requirement as specified under sections 9-4-86 and 9-4-103;
- (11) Does not qualify under the definition of restaurant, fast food or restaurant, conventional as contained herein; and
- (12) Any dining and entertainment establishment that does not meet the aforesaid requirements shall be classified as a public or private club for purposes of zoning regulation.

**Section 9-4-103(U). Specific Criteria:**

The following requirements are applicable to all D&E's that are not special use permit dependent (i.e. permitted by right).

(U) *Dining and entertainment establishments not subject to Article E.* Shall comply with all of the following:

- (1) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary; and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after the period of amplified audio entertainment as follows:
  - (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession

licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all times. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

- (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all times. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.
  - (3) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation;
  - (4) Weekdays. Except as further provided under subsection (U)(6) below, dining and entertainment establishments shall not have amplified audio entertainment after



11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided; however; televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;

- (5) Weekends. Except as further provided under subsection (U)(6) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;
- (6) Special period of operation and amplified audio entertainment exemption.
  - (a) The allowable period of amplified audio entertainment for any dining and entertainment establishment in any zoning district may be extended, at the option of the owner/operator, from the times specified under subsections (U)(4) and (5) above to not later than 2:00 a.m. and before 11:00 a.m. of the next day on the following day: December 31 (New Year's Eve);
- (7) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
  - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
  - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic

beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.

- (c) A membership, cover or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.
  - (d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, subsection of a department, or agency of the State of North Carolina;
- (8) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (U)(7) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations;
- (9) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104; and
- (10) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development, or authorized agent for site plan review

and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not apply to a dining and entertainment establishment and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.

**Section 9-4-86(F)1. Specific Criteria:**

The following requirements are applicable to all D&E's that are special use permit dependent. In addition to these requirements, these establishments are also subject to any reasonable conditions of approval required by the Board of Adjustment.

*(F)1. Dining and entertainment establishments.*

- (1) (a) A special use permit for a dining and entertainment establishment is subject to revocation in accordance with the provisions of this subsection (F)1. Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a dining and entertainment establishment which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes, and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)1.(4) below shall be provided notice of the meeting and a copy of the staff report.

- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
    - 1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
      - a. The use of the property is inconsistent with the approved application;
      - b. The use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code;
      - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
      - d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
    - 2. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F)1. and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.
  - (e) The requirements and standards set forth in this subsection (F)1. are in addition to other available remedies, and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and

entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.

- (3) In addition to subsection (F)1.(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
- (5) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
- (6) Weekdays. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment@ shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (7) Weekends. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment@ shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (8) Special period of operation and amplified audio entertainment exemption.

- (a) The allowable period of amplified audio entertainment may be extended, at the option of the owner/operator, from the times specified under subsections (F)1.(6) and (7) above to not later than 2:00 a.m. and before 11:00 a.m. of the next day on the following day: December 31 (New Year's Eve).
  - (b) The allowable period of amplified audio entertainment for any dining and entertainment establishment located in the CD (downtown commercial) zoning district may be extended, at the option of the owner/operator, from the times specified under subsection (F)1.(6) on each Thursday night to no later than 2:00 a.m. the following day.
- (9) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
- (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
  - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
  - (c) A membership, cover or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.
  - (d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.
- (10) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable

hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (F)1.(9) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations.

- (11) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval, and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (12) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not apply to a dining and entertainment establishment, and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.
- (13) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall contain more than 7,000 total square feet of mechanically conditioned floor area, including but not limited to any activity area, kitchen, restroom, interior walk-in storage room, hallway, foyer, bar and serving station, seating area, dance floor and sound stage.
- (14) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall be located within a 200-foot radius of an existing or approved dining and entertainment establishment located within any CN (Neighborhood Commercial) District as measured from the nearest lot line.

- (15) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary; and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:
- (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.



**SECTION IV. Identification of Approved Dining and Entertainment Establishments**

The below table identifies all of the dining and entertainment establishments approved by the city since establishing the land use category in April 2009. Those establishments classified as Special Use Permit Dependent have been issued a special use permit by the Greenville Board of Adjustment. See the map on the following page for the location of these establishments based on ID field in the below table.

<b>ID</b>	<b>Name</b>	<b>Location</b>	<b>Date Approved</b>	<b>Special Use Permit Dependent</b>	<b>Status</b>
1	Unk's	201 S. Jarvis St.	5/28/2009	Yes	Not Active
2	AJ McMurphys	1914 Turnberry Dr.	9/9/2009	No	Active
3	Christy's Europub	301 S. Jarvis St.	9/24/2009	Yes	Active
4	Japan Inn	739 Red Banks Rd.	10/1/2009	No	Active
5	Eddie's Sports Bar	2713 E. 10 <sup>th</sup> St.	1/23/2010 and 2/9/2010	No	Not Active
6	Tipsy Teapot	409 S. Evans St.	5/27/10	Yes	Active
7	Upper Deck Sports Bar and Grill	703 SE Greenville Blvd.	12/28/2010	No	Active
8	El Paraiso 2	2713 E. 10 <sup>th</sup> St.	4/26/2011	No	Not Active

