



Agenda

September 21, 2010
6:30 PM
Council Chambers

Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

- I. INVOCATION - Tim Randall
- II. ROLL CALL
- III. APPROVAL OF MINUTES - August 17, 2010
- IV. NEW BUSINESS

TEXT AMENDMENTS

- 1. Request by Phoenix Redevelopment, LLC to amend the dining and entertainment establishment criteria to allow dining and entertainment establishments located in the CD (downtown commercial) zoning district to have amplified audio entertainment after 11:00 p.m. on any Thursday in addition to Friday and Saturday as permitted under the current code.
- 2. Request by Alicia Speight Hawk to amend the CH (heavy commercial) and CG (general commercial) zoning districts public street right-of-way building setback from not less than 50 feet to not less than 20 feet.

- V. ADJOURN

DRAFT OF MINUTES PROPOSED FOR ADOPTION BY THE GREENVILLE PLANNING
AND ZONING COMMISSION

August 17, 2010

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

Mr. Allen Thomas - *
Mr. Dave Gordon - X Ms. Linda Rich - *
Mr. Tony Parker - * Mr. Tim Randall - *
Mr. Bill Lehman - * Mr. Godfrey Bell, Sr. - X
Ms. Shelley Basnight - * Mr. Hap Maxwell - *
Mr. Charles Gardener - * Ms. Cathy Maahs - Fladung - *

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

VOTING MEMBERS: Thomas, Parker, Lehman, Basnight, Rich, Randall, Maxwell

PLANNING STAFF: Harry Hamilton, Chief Planner; Merrill Flood, Director of Community Development; Gwen Turnage, Administrative Secretary; and Valerie Paul, Secretary

OTHERS PRESENT: Dave Holec, City Attorney; Tim Corley, Civil Engineer; Marion Blackburn, City Council Representative; Jonathan Edwards, Communications Technician

MINUTES: Motion was made by Mr. Lehman, seconded by Mr. Parker, to accept the June 15, 2010 minutes as presented. Motion carried unanimously.

NEW BUSINESS

Other

Petition to close a portion of Pennsylvania Avenue and Jones Street.

Mr. Tim Corley, Engineer, said that this petition is to close a portion of Pennsylvania Avenue and Jones Street, which is near Sadie Saulter School. He said the portion of Pennsylvania Avenue that will be closed will become a private road and the school will be responsible for its maintenance. Mr. Corley said that all easements for utilities will be retained upon abandonment of the right of way on Pennsylvania Avenue and Jones Street. He said that Jones Street will be reconnected to Pennsylvania Avenue upon completion of all the work so that there will be adequate access to those properties that maintain access through Jones Street. He said that the request was made by the Pitt County School Board. Mr. Corley said that the City will not be responsible for the maintenance of that section of the street once it's abandoned. He recommended that the Board approve the request and to forward it to City Council.

Mr. Lehman asked if the request was made due to the fact that they are doing an expansion as well as an addition to the school.

Mr. Corley said that was correct, the request is needed for the work being done to Sadie Saulter.

Chairman Thomas opened the Public Hearing.

Item # 2

Mr. John Dominy, an employee of Spruill & Associates, introduced himself to the Board and said that his company is responsible for the technical aspects of the project. He offered to answer any questions that the Board may have.

No one spoke in opposition to the request so Chairman Thomas closed the Public Hearing.

Mr. Lehman made the motion to approve the request and Mr. Randall seconded it. The motion carried unanimously.

Chairman Thomas called for any other business.

There being no other business, the meeting adjourned at 6:38 p.m.

Respectfully submitted,

Merrill Flood
Secretary



City of Greenville, North Carolina

Meeting Date: 9/21/2010
Time: 6:30 PM

Title of Item: Request by Phoenix Redevelopment, LLC to amend the dining and entertainment establishment criteria to allow dining and entertainment establishments located in the CD (downtown commercial) zoning district to have amplified audio entertainment after 11:00 p.m. on any Thursday in addition to Friday and Saturday as permitted under the current code.

Explanation: Under the current dining and entertainment establishment ordinance (see full text below) late night amplified audio entertainment (after 11:00 p. m.) is limited to Friday and Saturday night only, except as provided for the "special periods of operation" (New Year's Eve). This requirement is applicable to all dining and entertainment establishments regardless of zoning district.

The ordinance creating the dining and entertainment establishment use category was adopted in April 2009. Dining and entertainment establishments are currently a permitted or special use option in all districts that include restaurants - standard and/or fast food. Dining and entertainment establishments must have sales of food in a ready-to-consume state in excess of 30 percent of total gross receipts for the establishment during any month, as opposed to a public/private club that does not have any food sales requirement.

The proposed amendment is only applicable for those properties zoned CD (downtown commercial) now or in the future. Attached is a map that illustrates the current CD districts and a map that illustrates the general areas recommended for CD zoning pursuant to the current Future Land Use Plan.

All dining and entertainment establishments located within the CD district are subject to special use permit approval of the Board of Adjustment. A public hearing is required for each request and newspaper advertisement, on-site sign notice, and individual mail notice to area property owners are provided in advance to insure the public is aware of the particulars of the application. The public is invited to attend the special use permit public hearing, and anyone wishing to speak and provide information and comments as to the appropriateness of the specific request will be provided opportunity at the

hearing.

Dining and entertainment establishments are currently allowed in the following districts - permitted (P) by-right, or special use permit (S) dependent, as indicated:

MS (medical-service) - special use (S)

MO (medical-office) - special use (S)

MCG (medical-general commercial) - special use (S)

MCH (medical-heavy commercial) - special use (S)

OR (office-residential) - special use (S)

CD (downtown commercial) - special use (S)

CDF (downtown commercial fringe) - special use (S)

CG (general commercial) - permitted by-right (P)

CN (neighborhood commercial) - special use (S); plus spacing requirement in CN only

CH (heavy commercial) - permitted by-right (P)

IU, PIU, I, PI (all industrial) - permitted by-right (P)

Special use permit dependent establishments may also be subject to additional reasonable conditions of approval deemed appropriate and necessary by the Board of Adjustment.

All dining and entertainment establishments and public/private clubs are subject to the noise ordinance and litter and trash regulations of the city code. The owner(s) and operator(s) of such establishments 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.

Currently, there is a 200-foot spacing (minimum separation) requirement between dining and entertainment establishments in the CN district only. There is no spacing requirement between dining and entertainment establishments in the CD or other district.

All dining and entertainment establishments are subject to a security requirement during and after the period of amplified audio entertainment when a dining and entertainment establishment having an occupancy limit greater than 50 total persons is (i) 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 (ii) the establishment provides or utilizes amplified audio entertainment after 11:00 p.m. on any day. Establishments having an occupancy limit greater than 50 but less than 200 must provide one uniformed security officer/guard, and establishments having an occupancy of more than 200 must provide two uniformed security officer/guards. See the attached zoning ordinance excerpts for specific security requirements. With respect to the CD district, most locations, and all those within the core area bound by First, Green and Washington Streets, are located more than 500 feet from the nearest residential zoning district boundary. Therefore, any dining and entertainment

establishments located in the "core area of the downtown" will not be subject to the security requirement described above.

By comparison, there is no ordinance-based security officer/guard requirement for public/private clubs, although the Board of Adjustment may impose security requirements as a condition of special use permit approval when determined necessary by the Board in the particular case. Security personnel (bouncers) for public/private clubs do have to qualify for and complete a training program conducted by the Greenville Police Department. This public/private club "bouncer qualification" and training requirement is in addition to any zoning regulation. In addition, public and private clubs are subject to a 500-foot spacing (minimum separation) requirement that prohibits new or expanded clubs in close proximity to other existing principle use clubs. This club spacing requirement in conjunction with the Downtown Subdistricts Overlay effectively restricts additional clubs in the heart of the central business area. Dining and entertainment establishments on the other hand are not restricted from, and may be located within, the Downtown Subdistricts Overlay per Board of Adjustment approval.

Restaurants often share some similar operational characteristics with dining and entertainment establishments such as a minimum food sales requirement and bar/entertainment facilities. All restaurants (standard and fast food) are defined as "eating establishments" and must have sales of food in a ready-to-consume state in excess of 50 percent of total gross receipts for the establishment during any month. By comparison, dining and entertainment establishments must have 30 percent food sales and public and/or private clubs do not have any food sales requirement. Restaurants may have amplified audio entertainment without day/time restriction or additional security requirement. Restaurants, by the minimum food sales requirement (greater than 50 %), are qualified as a principal use eating establishment, that may also have entertainment. Dining and entertainment establishments, by their lesser food sales requirement (not less than 30 %), and public/private clubs, by the absence of any food sales requirement, are considered to be principal use places of "entertainment", that may also sell food. Another primary difference between a restaurant and both a dining and entertainment establishment or public/private club is the restaurant's inability to charge a fee for admittance (i.e., no cover charge allowed) during regular or special periods of operation. Dining and entertainment establishments and public/private clubs may charge a fee for admittance at any time.

The downtown area (current and future CD district) is unique in several respects - the CD district: (i) is a compact well-defined commercial area with finite boundaries, (ii) is generally remote (more than 500 feet) to single-family residential areas, (iii) is specifically recommended by the Horizons Plan to serve as the "cultural, recreational, and entertainment center of the city", (iv) is both an employment center and commercial focus area, and (v) contains the highest concentration of principal use entertainment venues in the city - 16 public/private clubs. The proximity of a high number of existing public/private clubs in the CD district that may utilize late-night amplified entertainment on any night (specifically Thursday night in this case), already creates an environment of late night activity now customary to the area.

In consideration of the special use permit approval requirement, the operational (minimum food sales) standard for dining and entertainment establishments, and the unique attributes of the CD district, the Planning and Zoning Commission may determine that the requested amendment, to allow dining and entertainment establishments located in the CD district to have late night audio entertainment on Thursday, will not materially or negatively affect the downtown environment or area uses. Staff is of the opinion that dining and entertainment establishments, which by definition are required to have substantial food sales in comparison to a club, provide a greater variety of services to both day and night time downtown workers, dining, and entertainment patrons, than do single-use establishments. The inclusion and facilitation of businesses that provide services and trade throughout the day are encouraged by the Horizons Plan and the Center City Redevelopment Plan.

A dining and entertainment establishment is defined as follows:

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 establishments 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 establishments 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, convention" 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.

Late night entertainment is currently limited as follows (excerpt from section 9-

4-86(F)(6), (7) and (8) - same requirements for both special use dependent and permitted by-right uses):

(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 entertainments 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 entertainments 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. 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).

Attached are excerpts from the zoning ordinance which include all minimum conditions and requirements for both permitted by-right and special use permit dependent dining and entertainment establishments.

Fiscal Note: No additional cost to the city.

Recommendation:

In staff's opinion, the request 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 the statutory requirement, 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.

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

Attachments / click to download

- [Commercial zoning in downtown](#)
 - [Future expanded CD district](#)
 - [Dining_and_entertainment_establishment_minimum_requirements_876702](#)
 - [Dining_and_entertainment_establishment_ordinance_876771](#)
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Dining and Entertainment Establishment Requirements

MS, MO, MCG, MCH, OR, CD, CDF and CN Districts

9-4-86(F)1. *Dining and entertainment establishment – Article E special use permit requirements.*

- (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. 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).
- (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.

CG, CH and all INDUSTRIAL DISTRICTS

9-4-103(U). *Dining and entertainment establishments not subject to Article E.* – no Special Use Permit required

- (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 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.
- (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) The allowable period of amplified audio entertainment 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.

ORDINANCE NO. 10 - ____
AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the North Carolina General Statutes, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on October 14, 2010 at 7:00 p.m., in the Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance amending the City Code; and

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council does hereby find and determine that the adoption of the ordinance involving the text amendment is consistent with the adopted comprehensive plan and that the adoption of the ordinance involving the text amendment is reasonable and in the public interest due to its consistency with the comprehensive plan and, as a result, its furtherance of the goals and objectives of the comprehensive plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That Title 9, Chapter 4, Article E, Sections 9-4-86(F)1(6) and (7), of the Code of Ordinances, City of Greenville, North Carolina, are hereby amended by deleting said subsections in their entirety and substituting the following:

- “(6) Weekdays. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments located in any zoning district 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 located in any zoning district 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 for any dining and entertainment establishment located in any zoning district 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 not later than 2:00 a.m. the following day;"

Section 2: That Title 9, Chapter 4, Article F, Section 9-4-103(U)(4) and (5) of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by deleting said subsections in their entirety and substituting the following:

- “(4) Weekdays. Except as further provided under subsection (U)(6) below, dining and entertainment establishments located in any zoning district 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 located in any zoning district 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 located 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);
- (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 (U)(4) on each Thursday night to not later than 2:00 a.m. the following day;”

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 5. This ordinance shall become effective upon its adoption.

Patricia C. Dunn, Mayor

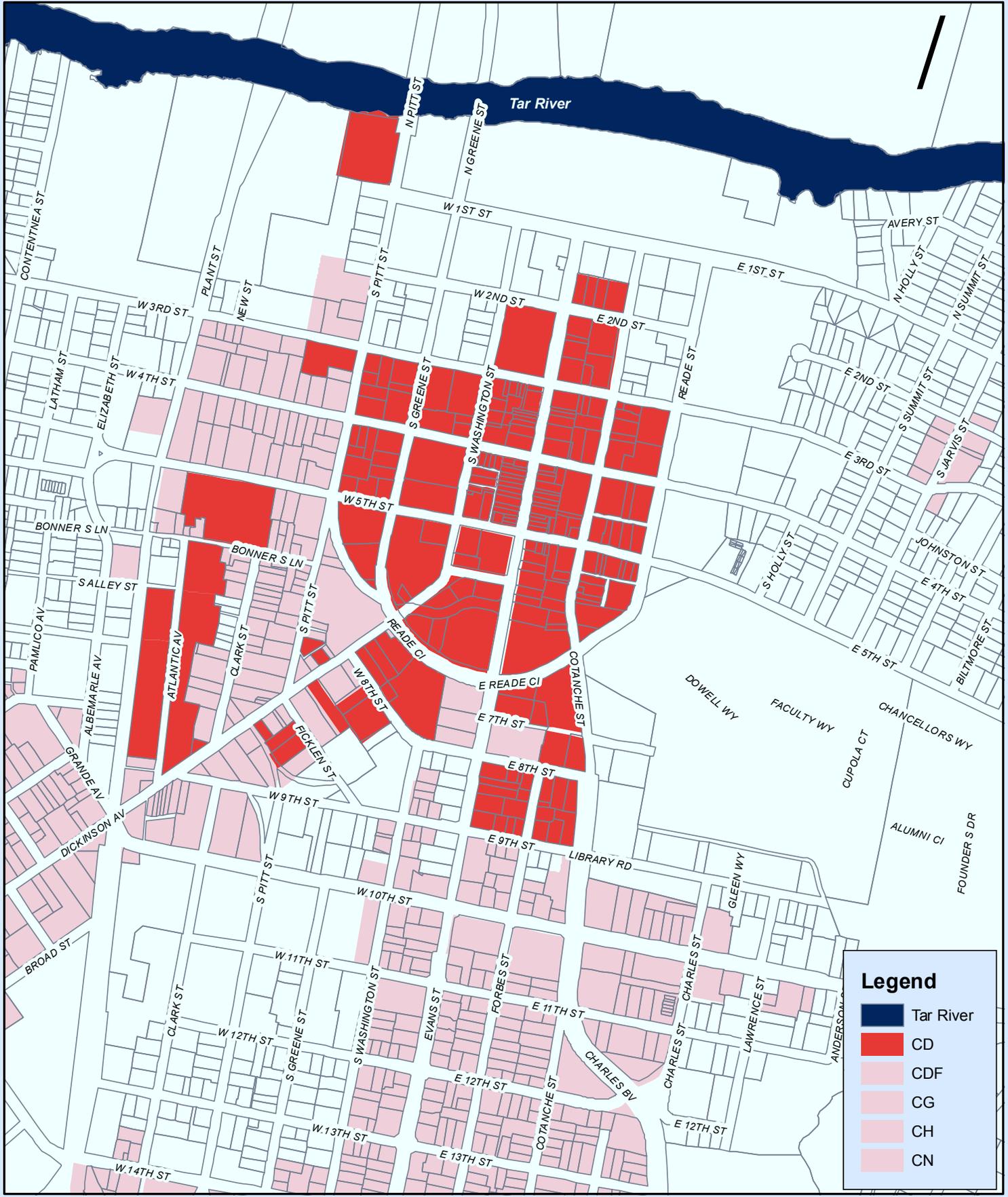
ATTEST:

Carol L. Barwick, City Clerk



Commerical Zoning In the Downtown Area

City of Greenville



Legend

- Tar River
- CD
- CDF
- CG
- CH
- CN



Item # 3



City of Greenville, North Carolina

Meeting Date: 9/21/2010
Time: 6:30 PM

Title of Item: Request by Alicia Speight Hawk to amend the CH (heavy commercial) and CG (general commercial) zoning districts public street right-of-way building setback from not less than 50 feet to not less than 20 feet.

Explanation: The public street setback is the minimum distance between the street right-of-way line (front property line) and the exterior wall of the building or structure. Parking lots and other improvements are subject to the bufferyard regulations and must be setback 4 to 10 feet (depending on lot size) along the street frontage of development sites. The resulting 4 to 10 foot (minimum) bufferyard is located immediately adjacent to the street right-of-way, within the minimum public street setback, and is designed to accommodate required plant materials.

Certain setback encroachments are permitted by the current ordinance. Parking lots and drives may encroach into the public street setback in the area between the minimum bufferyard (4 to 10 feet) and the building. Open unenclosed canopies, such as those of convenience stores, may also encroach into the public street setback to within 10 feet of the street right-of-way. Additionally, minimum street right-of-way building setbacks may be reduced by up to 10 percent, at the option of the owner, where the reduction is necessary to retain an existing ten-inch-plus caliper large tree. In the case of the current minimum 50 foot setback this "tree retention" reduction exemption would equal 5 feet, thus allowing a 45 foot setback in unique circumstances.

The proposed ordinance does not reduce any street or perimeter bufferyard area (width) or reduce the minimum vegetation and screening (plant material) requirement.

In the case of designated thoroughfare streets, the minimum public street setback and associated bufferyard is measured from the future thoroughfare right-of-way as required by the plan. This additional thoroughfare street setback will allow for future unimpeded expansion of the road right-of-way and will insure that the minimum building and bufferyard setbacks are maintained after ultimate street construction.

It is important to remember that the paved section of the roadway is typically located in the center of the right-of-way; therefore, most streets have an open strip of right-of-way extending from the paved section or back-of-curb to the right-of-way (property) line. This open strip, dependent on the location of the street improvements, right-of way total width, and street section width, is typically 7 to 12 feet in width. Street (and future thoroughfare) setbacks and bufferyards are measured from the outside limit of this "open strip", which is concomitant with the property line. This open space strip gives the impression of an additional green space, however such space may be used for roadway improvements including paving and sidewalks now or in the future and should not be regarded as fulfilling any setback purposes.

Currently, the minimum public street right-of-way setback varies by zoning district and ranges from zero (0) feet in the CD (downtown commercial) district to seventy-five (75) feet in the PIU (planned unoffensive industry) district.

Current commercial district public street setbacks are as follows:

CN (neighborhood commercial) - 40 feet
CD (downtown commercial) - none
CDF (downtown commercial fringe) - 10 feet
CG (general commercial) - 50 feet (proposed 20 feet)
CH (heavy commercial) - 50 feet (proposed 20 feet)
MCG (medical general commercial) - 50 feet
MCH (medical heavy commercial) - 50 feet

Other non-residential districts that currently allow public street setbacks of less than 50 feet include: MS (medical services) - 40 feet; MO (medical office) - 40 feet; OR (office component only) - 10 feet; O (office) - 35 feet; IU (unoffensive industry) - 25 feet; and I (industry) - 25 feet.

The original zoning ordinance adopted in 1947 included only 3 districts: residential, business and industrial. The business and industrial district did not include any public street setback requirement, which explains how older non-residential buildings are often located close to, if not directly on, the front property line.

The current public street setback requirements for the non-residential districts including the subject CG and CH districts have been in place since 1969, more than 40 years. At that time (1969) the center city areas (CD and CDF districts) retained zero or reduced setbacks (CDF - 10 feet) due to the customary and historical desire to accommodate dense urban re/development of a "built environment" consisting of fixed public improvements (streets, utilities, etc.), often irregular parcels, and typically limited space. In 1969, the suburban development areas projected for the new CG and CH districts were largely seen as easy to build "green spaces" and auto dependent development with its exclusive front yard parking arrangement was encouraged as the desired (modern) urban form. This was the preferred style of development of the vast majority of cities in the decades between the 1950's and today, and still is an inadvertent result due to the operation of ordinances which require excessively

deep setbacks to this day. In 1969, a generally universal decision was made that transformed the future street scape from building facades and human activity (old style) to rows of vehicles separating often distant and less visible sign dependent establishments.

Since 1970, the Greenville city limits have increased from approximately 20 square miles to 35 square miles today. During that time, the available "green space" designated appropriate for commercial development has significantly decreased, and areas once regarded as suburban have evolved into urban centers.

In recognition of this trend, Greenville has adopted comprehensive plan-based policies to encourage redevelopment and reinvestment in the previously built urban/suburban areas, while discouraging remote green site development and associated urban sprawl.

In order to facilitate desirable redevelopment of the built environment, in many older areas zoned CG and CH since 1969, the modification of minimum standards, such as street setbacks, is not unexpected. To accommodate changing development patterns and encourage redevelopment of urban "hard to build sites", many cities have reduced street setbacks, the effect of which has been a return to the earlier style of development, when building facades and human spaces took precedent over expansive parking lots. Some cities, to further encourage this result, have gone to maximum "built-to" setbacks - in those cases buildings must be constructed to a predetermined setback such as 10 or 20 feet effectively forcing parking areas to the side and rear of development sites.

Staff has researched this subject, and there is no accepted benchmark standard on which to base a minimum public street setback requirement. Cities across the country have a vast variety of minimum commercial setbacks ranging from zero to 50 plus feet. For example, various cities base setbacks on such conditions as adjacent street type - i. e. width of setback proportional to the number of travel lanes, or on actual right-of-way width - i.e. width of setback equal to a predetermined distance from the roadway centerline. As an alternative to more complex methods, most cities have relied on a fixed minimum (and/or maximum) setback based on the applicable zoning district - same method as Greenville. As mentioned above some cities even require specific or maximum build-to lines which mandate bringing buildings closer to the street. In those cases, the developer has fewer options than allowed in "minimum setback" style ordinances. Some cities require both minimum and maximum setbacks, i. e. not less than 10 feet or more than 20 feet. Reduced setbacks as proposed, in conjunction with minimum requirements, offer the greatest flexibility in site design and are generally preferred by the development community in most cities.

Reduced minimum street setbacks will encourage more buildings to be constructed closer to the travel way, and building facades will become more noticeable which will alter street views. Due to this concern, some cities have adopted various types of architectural controls to insure the integrity of the streetscape. Architectural controls vary greatly from city to city and include, (i) wall material type, i. e. require brick facades when located close to the street and/or (ii) minimum articulation of facades, i. e. require wall offsets, windows, and the like. Most cities do not require additional requirements.

Reduced public street setback often adds to a sense of activity, which can create a more interactive relationship between the public and commercial activities within the buildings and on the lot. Buildings create and define an edge to the street, establish community character and promote human scale environments much more so than does the alternative - the standard intervening parking lot.

Fiscal Note: No additional cost to the city.

Recommendation: In staff's opinion, the request 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 the statutory requirement, 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.

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

Attachments / click to download

 [CG_and_CH_setback_reduction_ordinance_876555](#)

ORDINANCE NO. 10 - ____
AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the North Carolina General Statutes, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on October 14, 2010 at 7:00 p.m., in the Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance amending the City Code; and

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council does hereby find and determine that the adoption of the ordinance involving the text amendment is consistent with the adopted comprehensive plan and that the adoption of the ordinance involving the text amendment is reasonable and in the public interest due to its consistency with the comprehensive plan and, as a result, its furtherance of the goals and objectives of the comprehensive plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That Title 9, Chapter 4, Article F, Section 9-4-94(W)(3), of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by deleting said subsection in its entirety and substituting the following:

“(3) Public street setback (MBL). All uses: 20 feet and per Article G.”

Section 2: That Title 9, Chapter 4, Section 9-4-94(X)(3), of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by deleting said subsection in its entirety and substituting the following:

“(3) Public street setback (MBL). All uses: 20 feet and per Article G.”

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 5. This ordinance shall become effective upon its adoption.

Patricia C. Dunn, Mayor

ATTEST:

Carol L. Barwick, City Clerk