



## Legislation Details (With Text)

<b>File #:</b>	18-286	<b>Version:</b>	1	<b>Name:</b>	P18-14F rezoning of property from CC - Community Commercial to CC/CZ Community Commercial Conditional Zoning
<b>Type:</b>	Public Hearing (Public & Legislative)	<b>Status:</b>			Agenda Ready
<b>File created:</b>	6/6/2018	<b>In control:</b>			City Council Regular Meeting
<b>On agenda:</b>	6/25/2018	<b>Final action:</b>			
<b>Title:</b>	P18-14F rezoning of property from CC - Community Commercial to CC/CZ Community Commercial Conditional Zoning District, located at 505 Middle Road (0447-34-8472) near the intersection of Middle and Dunn Road, containing less than 9 acres and being the property of JFS INVESTMENTS LLC.				
<b>Sponsors:</b>					
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. FCEDC Memo Supporting Re-zoning Request, 2. P18-14F zoning map, 3. P18-14F Current Landuse Map, 4. Cape Fear River Land Use Plan, 5. Application, 6. Site Photo, 7. UDO Use Table, 8. Concept Plan, 9. File Summary				

Date	Ver.	Action By	Action	Result
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**TO:** Mayor and Members of City Council

**THRU:** Jay Reinstein, Assistant City Manager

**FROM:** Craig Harmon, Senior Planner, AICP, CZO  
Gerald Newton, AICP Development Services Director

**DATE:** June 25, 2018

**RE:**  
P18-14F rezoning of property from CC - Community Commercial to CC/CZ Community Commercial Conditional Zoning District, located at 505 Middle Road (0447-34-8472) near the intersection of Middle and Dunn Road, containing less than 9 acres and being the property of JFS INVESTMENTS LLC.

**COUNCIL DISTRICT(S):**  
2

**Relationship To Strategic Plan:**  
Growth and Development

**Executive Summary:**  
This proposal implements a portion of the northeast section of the Cape Fear River Plan. The

conditioned rezoning actively furthers the city's mission to create a business friendly environment where citizens thrive and prosper by welcoming Horne Brothers Construction to the site while protecting the Cape Fear River and infilling a site for new and further business development east of the Cape Fear River.

**Background:**

This property is less than 9 acres and has an existing building that was previously used for the servicing of large/heavy trucks and equipment and is currently unused.

Applicant: Scott Brown, 4D Site Solutions, Inc.  
Owner: JFS INVESTMENTS LLC  
Requested Action: CC to CC/CZ  
Property Address: 505 Middle Road  
Council District: 2  
Status of Property: Unused  
Size: 8.7 acres +/-  
Adjoining Land Use & Zoning:  
North - SF-10 - Vacant  
South - HI - Industrial  
West - Cape Fear River  
East: CC & SF-10 - Commercial Business and Church.  
Letters Mailed: 88

Cape Fear River Overlay Plan - Commercial

**Cape Fear River Plan:**

The Cape Fear River Plan provides recommendations on how to improve the quality of life, strengthen the study area economically, support community health, and reverse negative trends in the area covered by the Plan. The Plan provides direction and guidance to the City of Fayetteville and to the community on future development, community programs, and infrastructure improvements that are tailored to the specific needs of the community.

The Plan provides guidance and recommendations for physical changes, programs, policies, and education. By adopting the Plan, City Council demonstrates the City's commitment to the Plan and its vision. It does not however, legally obligate the City to complete any particular action item. Rather, implementation will require a concerted effort by the neighborhood, the City, and by other agencies to undertake and fund specific actions. The plan is further discussed in the plan and zoning analysis.

**Strategic Plan:**

- 1) 2024 Goals, Goal IV: The City of Fayetteville will be a highly desirable place to live, work and recreate and is achieved by bringing in a business on the eastern side of the river near Business-95.
- 2) Economic Development is one of six top FY 2017-2018 priorities.
- 3) 2024 Goals, Goal III: High Quality Built Environment is achieved by the conditioning of the underlying zoning of this property.

**Fayetteville Cumberland County Economic Development Corporation:**

Please find attached a letter of support regarding Horne Brothers Construction Cape Fear River

Overlay Plan:

**Issues/Analysis:**

**Conditional Zoning.**

The request is for a conditional rezoning from Community Commercial to Community Commercial Conditional Zoning. The purpose of the CC District is to “accommodate a diverse range of medium- to high-intensity retail, service, and office uses that provide goods and services serving the residents and businesses in the community at large.”

The rezoning of land to a conditional zoning district is intended to provide a landowner and the City an alternative to rezoning the land to a standard base zoning district. The base zoning district allows certain uses and development that may be appropriate but also allows uses and development that may not conform to City plans or would have adverse impacts on public facilities or surrounding lands.

Reclassification of land to a conditional zoning district allows a landowner to propose, and the City Council to consider, additional conditions or restrictions on the range of allowable uses, use standards, development intensities, development standards, and other regulations applicable in the parallel base zoning district. This enables the City to tailor a zoning classification to accommodate desirable development while avoiding or addressing anticipated problems that may arise from development otherwise allowed by the base zoning district.

**Specifics of this Conditional Zoning.**

The initial request was for Heavy Industrial Conditional Zoning (HI/CZ). After discussions with the City’s Planning staff, the owners are in agreeance that a more restrictive rezoning to CC/CZ (Community Commercial Conditional) is more appropriate for this location as it allows a business to move in, protect the river, and provide an area of future commercial development as further identified in the land use plan. Being able to adjust the request is an allowable action of the applicant and consistent with city council’s prior actions. Therefore, as part of this application, the owner is requesting a conditional rezoning that accomplishes these plan points. The limitations to ensure consistency of this site to the city’s Cape Fear River Overlay and land use plan are established by the following conditions being folded in as the conditional zoning process. These remain with the property and are not dependent on the end user. The proposed limits to the property follow and are at the end of the report as part of the proposed conditions.

Below are recommended conditions of the rezoning, as agreed upon by the applicant:

1. A portion of the property will be used for storing, servicing construction equipment and will be limited to only the designated area, as shown on the conceptual plan.
2. All other existing uses within the City’s CC district still remain on the property.
3. The property shall maintain a 50-foot vegetated buffer along the northern property line to buffer the adjacent residentially zoned property. *Though presently underdeveloped, this wide, existing, dense buffer properly separates future residential development north of the site.*
4. The accessory storage area will be limited to the designated gravel yard, as shown on the conceptual plan and only for fleet equipment owned by those occupying the rezoned parcel. *This outside storage area, while permitted with limits by current zoning, is designed to be screened from general public street views.*
5. Repairs of equipment shall be limited to inside the existing building/garage to assist in the mitigation of potential environmental containments. As with condition #4, any and all work of

equipment is limited to those business uses of the parcel.

6. The hours of operation shall be limited to 7 am to 6 pm Monday through Friday and 7 am to 1 pm Saturday for any business on the property not designed as general retail or office as permitted in the underlying zoning designation of CC.
7. The property owners will maintain a minimum 100-foot buffer from the top of the river bank as required by the River Overlay District.

## **Cape Fear River Plan Analysis**

As mentioned, this property falls within the Cape Fear River Plan study and zoning overlay district. The Cape Fear River Plan Overlay District encompasses 6,941 acres and stretches over 11 miles within Fayetteville's city limits. It extends on all properties along the Cape Fear River or in near proximity. The river plan calls for maximizing the close proximity of the River Village to existing infrastructure and gateway corridors by combining a variety of land uses throughout the area.

The property in question falls within the River Village Character Area of the river plan. The River Village area is one of six areas presented in the plan. While this area is within the River Village Character Area, it is not listed as one of the focus areas of the plan specifically discussed. Nevertheless, by designing the site to protect the river, bring in business while affording frontage for future commercial usage, the site can foster new development in this part of the city. This parcel is on the east side of the Cape Fear River and generally thought of as removed from the central city. However, it is still close to the downtown, just across the river and north of Grove Street near the Cedar Creek Road area. As such, the parcel is identified as offering a location for businesses to be close to the downtown but able to establish its own identity with connections to Business 95. The land use portion of the plan calls for future residential use to the north of the site, business use to the south and a blend of commercial/business activity on this site. This is further explained.

The River Village area encompasses land on both sides of the river with northern limits around Business 95 on the east side of the river. The River Village Area is designed to serve as a "mixed use area with a broad range of uses arranged both horizontally and vertically" (p. 17) and "will serve as the heart of the River District much as the downtown serves as the City's heart" (p. 21). The overall land use of the overlay "respects the floodway and 100-year floodway areas as natural resources" (p. 21).

Most of the land immediately adjacent to the river is currently vacant. Areas that are currently developed are being used for low-density housing, parkland, and industrial uses. The land use map shown in the plan directs future growth in an appropriate way. The adopted plan addresses incompatible land uses such as salvage yards and woodlots of timbered logs.

The property under review is located on the north-eastern part of the River Village Area with access from Business-95 (Middle Road Exit) and Dunn Road (via Grove Street) to the south. The applicant's proposal is congruous with the types of zoning and development along Middle and Dunn roads as you travel north away from downtown.

The plan's impact is designed to encourage public and private investment in the entire corridor. One aspect of establishing the plan into action is the creation of the Cape Fear Overlay Zoning district.

## **Cape Fear River Overlay Zoning.**

The Cape Fear River Overlay District was placed in Chapter 30 as section 30-3.H.10 with “the intent of these standards to promote economic revitalization throughout the river area while providing for an opportunity for enjoyment of the river by a maximum number of citizens, neighbors, and guests” (Chapter 30-3.H.10 a. Purpose).

The approved overlay zoning district is designed to supplement the “underlying” or conventional zoning of the property. In this case under consideration, the underlying zoning is Community Commercial (CC). The CC zone’s purpose is “to accommodate a diverse range of medium- to heavy-intensity retail, service, and office uses that provide goods and services serving residents and businesses in the community at large” Chapter 30.3.E.5). Mixed use activity, both vertically and horizontally is encouraged by the traditional CC zone. Even with the overlay conditions, explained next, the CC zoning has potential conflicts if the site is developed straight Community Commercial.

This rezoning allows specific conditions to be placed on the site that allow the Cape Fear Overlay plan to begin to be achieved in one specific section of the plan while protecting the river and bringing in a new business as envisioned by the plan.

Property to the south is zoned Heavy Industrial and has industrial uses on the land. The proposed use of the property, as conditioned, finds a balance of the uses to the south and north (i.e. future residential). By applying reasonable conditions on the parcel, as proposed, the site constrains possible adverse effects on the river and sets opportunities for further development along Middle Road.

The Cape Fear River Overlay District allows all underlying zoning with its related standards for development while adding a river buffer and prohibiting twelve uses designed to create a control of the site design and use. One prohibition is “outdoor storage as a principle use” (Chapter 30-3.H.10.c.4., item 10).

The conditioned rezoning, as proposed, is designed to utilize an existing building to house and make equipment repairs for the primary user’s business. Secondly, vehicles and business related equipment will be parked and stored outside in a manner that shields views. The site, as proposed and conditioned by the rezoning application is not being used as the principal use of the overall property or even the initial use of the parcel.

The existing garage will operate similarly to other like uses throughout the city. This property will not be used as the main storage facility for Horne Brothers Construction. Horne Brothers operates a storage yard just off of Eastern Boulevard (Hwy 301), on Middle River Loop. The Middle River Loop location is the main location where their vehicles and construction materials are stored in the Fayetteville area. This property will not be used for intense outdoor storage and operations such as salvage yards and woodlots, which are specifically, noted as noxious use examples in the Cape Fear River Plan.

As indicated by the River Overlay, the entire back portion of the property is being conditionally zoned by this request to CC/CZ to further protect the river setback buffer. No development of any type will occur at least one hundred feet from the top of the river bank. There is a significance to adding this in the conditional zoning process. As presently written in Chapter 30, the standard exists for the entirety of the land under the overlay. When specific parcels are developed having the condition as a part of a rezoning creates site specific details.

This proposal, as conditioned to CC/CZ is consistent with the plan and zone to promote economic revitalization while being designed to be compatible with the river.

**Recap of the Zoning Commission meeting and de novo hearing.**

On April 10th the Zoning Commission held a public hearing regarding this case. There were two speakers in favor and none in opposition. Ms. Page Farrell (owner of the residential property to the north) did email city staff with concerns about the proposal and to notify staff that she could not make the Zoning Commission meeting. These concerns were shared with the Zoning Commission. The Commission voted 4-0 to recommend approval.

On April 20th, Ms. Farrell filed an appeal to the Zoning Commission's recommendation. Ms. Farrell had several questions and concerns regarding the proposed use. Over the course of the next three weeks, Ms. Farrell was able to get all of her questions answered sufficiently from the City's Planning staff, the project engineer, and Horne Brother's Construction. On May 11th, Ms. Farrell withdrew her appeal.

*Below is a summary of the Zoning Commission meeting:*

Speaking in favor:

**Scott Brown, Engineer, 4D Solutions, Fayetteville, NC**

Horne Brothers Construction is currently located as you enter Roseboro on Hwy 24, they wish to move their base of operation to the Fayetteville area. The property is currently zoned CC. The request will enable them to service their own equipment. The future land use plan does call for HI surrounding this property. It was a truck service center in the past. The existing building on the property will be used; the house on the property is owned by Horne Brothers also and they may use the building as an office at a later date. They are requesting the setback be reduced to 250-foot. If you do the current setback you lose half of the property use. There will be a 50-foot buffer with heavy trees and heavy undergrowth that is currently there. If a supplemental buffer is needed, it will be added. The gravel area will be used as a storage yard. The yard will be fenced off and secured.

Questions asked by the Zoning Commission:

*1) Do you have concern for water quality with the river right there?*

There is a concrete wash pad; it will be used to clean the trucks and will be using the runoff catch basin. There will also be a pond for stormwater issues. Very little additional runoff will be generated.

*2) Is there already an established truck route and will the trucks be running through the neighborhood?*

Interstate-95 is less than a mile away to the North and Hwy 24 is one stop light away to the South, and trucks will not be running through the neighborhood.

**Robert Van Geons, President & CEO, Fayetteville-Cumberland County Economic Development Corporation, Fayetteville, NC**

It is a pleasure to be here tonight in support of one of our local industries. This proposed project balances a number of competing interests exceptionally well. Economic development and job creation with protections in place to surrounding neighbors. An opportunity for the next generation emerging economy jobs will also facilitate the adaptive reuse of a vacant and underutilized structure. And an opportunity for a company who is growing nationally to create jobs and reinvest in the City's

core.

The Zoning Commission recommends APPROVAL of the rezoning based on:

1. The proposed rezoning is consistent with prior actions of the City Council to identify this portion of the city as appropriate for Heavy Industrial development.
2. The City's land use plan calls for Heavy Commercial; however, trends in the area and the properties to the north and south are shown to have a future use of Heavy Industrial.
3. This property is surrounded by Heavy Commercial and Heavy Industrial zoning and uses.
4. This rezoning is based on the conditions that have been offered by the applicant/owner.
5. The proposal includes a 50-foot vegetated buffer between this property and the residentially zoned property to the north.

**After the rezoning** was heard by the Zoning Commission, concerns were raised about the project being construed as inconsistent with the City's Cape Fear River Overlay plan and district. Through discussions with the city attorney's office and then the applicant, the application was modified to the case being presented to the city council. The city council is permitted to apply a more restrictive zoning than originally applied for by an applicant. In this case, the applicant is agreeing to the modification of the original request. Rather than removing the existing underlying zone and creating a zoning map change in conflict to the plan, the conditioning of the site as presented below was coordinated with various parties. These conditions allow a business to locate on the property, protects the river and its environment, and accommodates even further development of the eastern side of the Cape Fear River as contemplated by the Cape Fear River Plan.

**The City Planning staff recommends APPROVAL of a more restrictive rezoning to CC/CZ based on:**

1. The proposed rezoning is consistent with prior actions of the city council to identify this portion of the city as appropriate for Community Commercial development. This property was originally built for heavy truck repairs.
2. The City's Cape Fear River Plan calls for Commercial uses; however, many of the properties within close proximity to this one are currently used for industrial or storage purposes.
3. This property is mostly surrounded by Heavy Commercial and Heavy Industrial zoning and uses.

**This conditional rezoning is based on the following conditions** that have been offered by the applicant/owner as a result of a collaborative effort.

1. A portion of the property will be used for storing, servicing construction equipment and will be limited to only the designated area, as shown on the conceptual plan.
2. All other existing uses within the City's CC district still remain on the property.
3. The property shall maintain a 50-foot vegetated buffer along the northern property line to buffer the adjacent residentially zoned property. *Though presently underdeveloped, this wide, existing, dense buffer properly separates future residential development north of the site.*
4. The accessory storage area will be limited to the designated gravel yard, as shown on the conceptual plan and only for fleet equipment owned by those occupying the rezoned parcel. *This outside storage area, while permitted with limits by current zoning, is designed to be screened from general public street views.*
5. Repairs of equipment shall be limited to inside the existing building/garage to assist in the mitigation potential environmental containments. As with condition #4, any and all work of equipment is limited to those business uses of the parcel.
6. The hours of operation shall be limited to 7 am to 6 pm Monday through Friday and 7 am to 1

pm Saturday for any business on the property not designed as general retail or office as permitted in the underlying zoning designation of CC.

7. The property owners will maintain a minimum 100-foot buffer from the top of the river bank as required by the River Overlay District.

**Budget Impact:**

There is not an immediate budgetary impact but there is an economic impact to this conditioned rezoning. A business will move into the site and provide continued jobs and service to the Fayetteville area.

**Options:**

- 1) Approval of the rezoning to CC/CZ with the conditions listed above (recommended).
- 2) Approval of the rezoning to CC/CZ with additional conditions offered by the applicant.
- 3) Deny the request.

**Recommended Action:**

It is recommended that the City Council move to APPROVE the requested rezoning to CC/CZ - Community Commercial Conditional Zoning, as presented by the staff, with the conditions listed above. The amendment is consistent with applicable plans because: 1) the City's existing zoning and the Cape Fear River Plan call for this area to be used for a mixture of heavy commercial purposes and 2) that the uses surrounding this property are all compatible with the proposed zoning (as conditioned) and 3) the proposed zoning is reasonable and in the public interest because the proposed zoning does fit with the character of the development in this area.

**Attachments:**

Zoning Map  
Current Land Use Map  
Land Use Plan Map  
Application  
Letter of support from FCEDC  
Conceptual Plan  
Site Photo