
PROPOSAL: Request to rezone 28.01 acres of property, known as “Lot 1,” “Parcel B,” or “Economic Development Property” in various documents and plans

PROPERTY LOCATION: 8918 Charlotte Highway/ U.S. 521 (TM # 0010-00-029.00)

CURRENT ZONING DISTRICT: Light Industrial (LI) District

PROPOSED ZONING DISTRICT: Regional Business (RB) District

APPLICANT: Yates Dunaway, Crosland LLC on behalf of C4 OP Owner LLC

COUNCIL DISTRICT: District 7, Brian Carnes

STATUTORY NOTICES: Sign posted 4/27/2023 at 8918 Charlotte Hwy
Hearing notice published 4/29/2023 in The Lancaster News
Mailed notices 4/27/2023
Posted agenda in lobby 5/10/2023

OVERVIEW

Proposal

The applicant has requested to rezone a parcel 28.01 acres in size from Light Industrial (LI) to Regional Business (RB). The intent is to develop the property to construct a retail warehouse (Costco) and ancillary gas station. If approved, the accessory gas station would not need to go through the Conditional Use process since the use is permitted with review under the RB zoning district classification.

Site Information

The parcel proposed to be rezoned is currently zoned Light Industrial and located off U.S. 521, across from Hanover Drive and North of Crossridge Campus and McClancy Seasoning.

Summary of Adjacent Zoning and Uses

The properties are surrounded predominantly by Regional Business, Mixed Use, and Light Industrial zoned properties.

Adjacent Property	Jurisdiction	Zoning District	Use
North	Lancaster County	MX	Undeveloped Land
South	Lancaster County	LI/RB	McClancy Seasoning and Crossridge
East	Lancaster County	NB/UR	Undeveloped Parcel and Townhome Development
West	Lancaster County	MX	Undeveloped Land

PARCEL HISTORY

The parcel that is proposed to be rezoned is a 28-acre site located within a larger project called “The Exchange”. (The site has been referred to as “Parcel B” and “Lot 1” in various documents related to the project.) The Exchange is a 130-acre Mixed-Use Project that was approved by Ordinance 2021-1773 in October 2021. The plan incorporates several different uses, including multifamily apartments, townhomes and commercial. Prior to being rezoned to Mixed Use, the land was zoned Light Industrial (LI). The proposed Costco would be located in the front of the development along U.S. 521.

The parcel is also part of the original Exchange Development Agreement (DA) (Ordinance 2021-1773). The DA originally called for all 130 acres of the site being rezoned from LI to MX. After discussion with the County, it was decided that the developer would leave 28 acres of the site zoned Light Industrial to be categorized as “economic development property,” due to Council’s concern over dwindling industrial property options for future economic development projects.

The Development Agreement stated that a series of uses that would normally be allowed in the LI zoning district would be restricted in the economic development property. One of these restricted uses includes the “Vehicle Services - Minor Maintenance/Repair”. These include services such as gas stations and tire shops. An ancillary gas station is proposed on the Costco Site Plan and a tire shop within their building footprint (allowable uses under the Regional Business Zoning District). The DA states that this area can be rezoned if the County and Developer agree to adopt a different zoning classification. Below is the full excerpt to this section of the DA to provide further context (emphasis and paragraph breaks added for clarity):

Section 4.01 F. Economic Development Property. *In consideration of the County's approvals of the Developer's rezoning and MX Master Development Plan applications and the County's issuance of the development approvals as identified in Section 3.04, the Developer agrees to acquire Parcel B identified in Exhibit A-2 hereto, comprising approximately 28 acres ("Economic Development Property"). Developer agrees to acquire title to the Economic Development Property within ninety (90) days after it acquires title to the Property as called for in Section 5.19. **County and Developer agree that the Economic Development Property shall remain zoned Light industrial District ("LI") under the UDO unless the County and Developer agree to adopt a different zoning classification.***

Within ninety (90) days after Developer acquires title to the Economic Development Property and before Developer conveys any part of the Economic Development Property to another party, Developer agrees to record Covenants, Conditions and Restrictions (CCR's) with the Lancaster County Register of Deeds so as to preclude certain uses on the Economic Development Property that are otherwise allowed in the LI District. The form of the CCR s applicable to the Economic Development Property are attached hereto as Exhibit F and are subject to change by the attorneys for the County and Developer as to matters of form and recording only.

After execution and recording, the CCR's applicable to the Economic Development Property may not be changed without the consent of the County and Developer. Changes agreed to by the County and the Developer to the zoning or the CCR's applicable to the Economic Development Property shall not require amendment of this Agreement.

In the time since the Development Agreement was signed in 2021, CCRs were drafted and recorded for The Exchange and were applied to all properties in the project, including the subject parcel. The CCRs recorded in October 2022 seek to establish a right to install, in particular, a “Target, Costco, Sam’s Club, or BJ’s”. This report will refer to the CCRs established with the Development Agreement as “CCR 1,” and the CCRs recorded with the property as “CCR 2.”

ANALYSIS & FINDINGS

Current Zoning District - LI

Pursuant to UDO Chapter 2.3, the Light Industrial District “... *for activities that can be operated in a relatively clean and quiet manner, and which will not be obnoxious to adjacent residential or business districts. This includes warehousing and wholesaling activities with limited contact with the general public. It is designed to prohibit most heavy industry, which should be properly segregated, and to prohibit any other use which would substantially interfere with the development of industrial establishments in the district. Limited opportunities for retail sales and services are also provided.*” The list of uses in the LI district includes Wholesaling and Distribution (*not including establishments selling to the public*) and does not include General Commercial (*selling goods to the public that are available for immediate purchase*).

Requested District - RB

UDO Chapter 2.3 describes the requested Regional Business District “... *is generally located on the major thoroughfares in the community and provides opportunities for the provision of offices, services, and retail goods to meet the surrounding region. The regulations for this district are intended to accommodate the predominately auto-oriented pattern of existing development until such time that transportation network is retrofitted to accommodate more urban development patterns.*”

Compatibility with Surrounding Area

The subject property is predominately surrounded by Regional Business, Mixed Use, and Light Industrial Zoning Districts. The surrounding uses are primarily Commercial and Mixed Use.

RELATIONSHIP TO THE DEVELOPMENT AGREEMENT AND RESTRICTIVE COVENANTS

Development Agreement (DA):

- Was adopted October 25, 2021 and is still active.
- Allows for 105,000 sq. ft of nonresidential development (Section 1.a.), which would include Costco and any other potential commercial uses.
- Is the document that prevails if there is a conflict between the DA and the UDO.
- Addresses the subject parcel as “Economic Development Property,” and requires the property to remain zoned LI unless the County and Developer agree in writing to adopt a different zoning classification (Section 4.01F).
- Requires the developer to adopt Covenants, Conditions and Restrictions (CCRs) to cover the 28-acre tract, to preclude certain uses from the Economic Development Property (Section 4.01F).
- Has a severability clause that keeps the remainder of the DA in effect if one section is held invalid.

Covenants, Conditions and Restrictions (CCRs):

CCR 1, recorded with the DA in Oct 2021:

- 1.1 Development of the Economic Development Property shall be limited to uses permitted (whether permitted by right, permitted with review, permitted upon conditional use approval, or permitted by special exception) within the Lancaster County Unified Development Ordinance's (UDO) Light Industrial (LI) District only, which uses are described [in an exhibit].

CCR 2, recorded separately in Oct 2022:

- 6.6 Rezoning. No Owner shall rezone its portion of the Property or obtain any zoning variance or waiver without the prior written consent of Declarant, so long as Declarant shall own any portion of the Property, and thereafter, without the prior written consent of the Board of Directors; provided, however, **Lot 1 may be rezoned without further approval hereunder.**
- Exhibit H, Grocery Restriction: **...nothing herein [in Exhibit H] shall prevent a Target, Costco, Sam's Club or BJ's (a "Permitted Retail User") from operating on Lot 1 only**, provided such Permitted Retail User is occupying more than 25,000 square feet and is not operating exclusively as a grocery store.

RELATIONSHIP TO PUBLIC PLANS

The Future Land Use Category of the subject properties is Neighborhood Mixed Use, which corresponds to the Community Type of Walkable Neighborhood. The adopted Comprehensive Plan states that the Walkable Neighborhood Community Type *"is synonymous with the Place Type "Mixed-Use Neighborhood." This is due to its very specific characteristics that set it apart from most other Place Types by virtue of its deliberately structured mix of dwelling types in a development context that often operates through the separation of uses, densities and/or land value. This Place Type and Community Type has its roots in the traditional character of American communities during the early part of the 20th century, and has been revived in recent decades as a relevant option for future development."* The Comprehensive Plan further establishes several possible land use considerations representing typical development in this category which are depicted in the table below.

The Neighborhood Mixed-Use Future Land Use Category covers the upper half of the Panhandle, terminating at Waxhaw Highway (Route 75). The Neighborhood Mixed Use Future Land Use Category and Walkable Neighborhood Community Type are intended to be compatible with the existing suburban character of the area.

The requested RB District is consistent with the Neighborhood Mixed Use Future Land Use Category.

Walkable Neighborhood: Land Use Considerations		
Single-Family Detached Home	Restaurant	School
Single-Family Attached Home (Town Home / Duplex)	Professional Office	Community Park
Condominium / Apartment	Government Building	Pocket Park
Neighborhood Commercial	Church	Natural Area

The parcel also falls under one of the County's Specialty Centers, specifically a Pedestrian Center. The Pedestrian Center corresponds to the Community Type of Walkable Activity Center. The adopted Comprehensive Plan states that The Community Type "Walkable Activity Center" is synonymous with the Place Type "Mixed-Use Activity Center." This is due to its very specific characteristics that set it apart from most other Place Types by virtue of its deliberately structured mix of uses organized around a network of walkable streets, and it is supported by transit options. The Comprehensive Plan further establishes several possible land use considerations representing typical development in this category which are depicted in the table below.

The three Pedestrian Specialty Centers are located at the intersections of Fort Mill Highway and 521, between 521 and Henry Harris Road (North of Crossridge and South of Thousand Oaks Road), and North of Shelley Mullis Road and South of Cross Ridge. The Pedestrian Specialty Centers and Walkable Activity Center Community Type are, by default, intended to be compatible with the existing character of the area.

The requested RB District is consistent with the Pedestrian Specialty Centers Category.

Walkable Activity Center: Land Use Considerations		
Condominium / Apartment	Professional Office	Movie Theatre
Live/Work Unit	Government Building	Pocket Park
Community-wide Commercial	Church/School	Farmers' Market
Restaurant	Library	

In addition, alongside Smart Growth principles and planning best practices, the Comprehensive Plan encourages business growth to create "a strong, diverse economy that supports a wide variety of businesses and enterprise."

INFRASTRUCTURE CONSIDERATIONS

Transportation

A Traffic Impact Analysis (TIA) is required if a use generates greater than 50 peak hour trips, and the proposed store and accessory gas station meets the requirement for a TIA. From the initial TIA Scoping review, the County's Engineer does not agree with the need for a traffic light and median crossover with the existing Hanover Subdivision. This proposed signal would leave only a quarter of a mile between an existing signal south and a proposed signal north at Possum Hollow Road. Further analysis will take place throughout the Planning Process.

Public Utilities

The site has water and sewer access provided by the Lancaster County Water and Sewer District.

Public Schools

While there are concerns about capacity in the Indian Land schools, this project will not directly affect it.

STATE CODE REGARDING RESTRICTIVE COVENANTS

SECTION 6-29-1145. Determining existence of restrictive covenant; effect.

(A) In an application for a permit, the local planning agency must inquire in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity.

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

- (1) in the application for the permit;
- (2) from materials or information submitted by the person or persons requesting the permit; or
- (3) from any other source including, but not limited to, other property holders,

the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

(C) As used in this section:

- (1) "actual notice" is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;
 - (2) "permit" does not mean an authorization to build or place a structure on a tract or parcel of land; and
 - (3) "restrictive covenant" does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land.
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MAP AND PHOTOS OF PROJECT AREA:



An ariel view of the subject property is visible above.



Facing subject parcel



Facing North on 521



Facing South on 521

PLANNING STAFF COMMENTS:

- Staff is not opposed to commercial growth in the area, including the subject parcel. Commercial growth helps the community by providing jobs for the residents and increases the tax base, which provides funds that the County may use to improve the area.
- Staff is not opposed to the subject parcel project, and is working to ensure a clear path forward by addressing potential issues and conflicts in the regulatory documents.
- Staff notes that the issues regarding the Development Agreement and Covenants, Conditions and Restrictions are administrative issues that may be addressed as this petition moves forward to the County Council.

ATTACHMENTS:

1. Rezoning Application
2. Location Map/ Zoning Map
3. The Exchange DA (Ordinance 2021-1773)
4. The Exchange CC & R

STAFF CONTACT:

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