

Case No. DSP-12018
U-Haul Moving and Storage
and Bottled Gas Sales

Applicant: Jim Lorimer

FINAL DECISION — DISAPPROVAL OF DETAILED SITE PLAN

Detailed Site Plan Application Number 12018, (“DSP-12018”), to add a moving and storage operation use and bottled gas sales use in conjunction with an existing rental use in the C-M (Miscellaneous Commercial) Zone, is DISAPPROVED.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Procedural and Factual Background²

On or about April 26, 2013, Jim Lorimer, a Principal Planner of AMERCO Real Estate (“Applicant”), filed an application for Detailed Site Plan with the Development Review Division of the County’s Planning Department. *See* Application Form, 4/26/2013, Statement of Justification, 4/2/2014.

DSP-12018 requested approval from the Planning Board to add a moving and storage operation use and bottled gas sales use to an already existing rental use in the C-M Zone. *See* PGCPB Resolution No. 16-92, 7/28/2016, Technical Staff Report, 6/21/2016.

¹ *See* the Land Use Article Section 25-210 (“LU § ___”), Md. Ann. Code (2012 Ed. & Supp. 2016), the Prince George’s County Code, Subtitle 27, Section 27-290 (2015) (“PGCC § 27-___”), and *Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490; 120 A.3d 677 (2015) (The District Council is expressly authorized to review a final decision of the county planning board to approve or disapprove a detailed site plan and the District Council’s review results in a final decision).

² The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. *See* PGCC § 27-141. The District Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. *See* District Council Rules of Procedure Rule 6(f).

On or about April 28, 2015 (approximately two years after Applicant filed DSP-12018), the Development Review Division of the Planning Department formally accepted the application for review. *See* Application Form, 4/26/2013.

In 2013 when DSP-12018 was filed, bottled gas sales was a permitted use in the C-M Zone but a moving and storage operation use was not. On April 27, 2016, a moving and storage operation use became a permitted use in the C-M Zone. *See* CB-2-2016.

On June 21, 2016 (after the adoption of CB-2-2016), the Development Review Division completed its Staff Report and recommended approval of DSP-12018—to add a moving and storage operation use and bottled gas sales use to an already existing vehicle rental use in the C-M Zone. *See* Technical Staff Report, 6/21/2016.

On July 7, 2016, a public hearing was held before the Planning Board to consider DSP-12018.³ *See* (7/7/2016, Tr.).

On July 28, 2016, the Planning Board approved DSP-12018—to add a moving and storage operation use and bottled gas sales use to an already existing vehicle rental use in the C-M Zone. *See* PGCPB Resolution No. 16-92, 7/28/2016. When Planning Board transmitted DSP-12018 to the Clerk of the Council, the District Council was in recess.

On September 19, 2016 (after reconvening from recess), the District Council elected to review DSP-12018. *See* Zoning Agenda, 9/19/2016.

On November 7, 2016, the District Council reviewed DSP-12018. *See* Zoning Agenda, 11/7/2016. At the conclusion of oral argument, the matter was taken under advisement.

For the reasons that follow, the District Council finds that Planning Board's approval of DSP-12018 was illegal because (as a matter of law), a Special Exception is required to validate a

³ Previously scheduled hearings before the Planning Board were continued at the Applicant's request. *See* PGCPB No. 16-92, p. 1, (7/16/2015, Tr.), (9/10/2015, Tr.), (10/29/2015, Tr.).

rental use of motor vehicles if the rental use is in conjunction with another use. Consequently, the site plan required to be submitted along with an application for a Special Exception shall not be approved (as Planning Board did in DSP-12018) in accordance with this Part 3, Division 9, of Subtitle 27, but shall be approved in accordance with Part 4 of Subtitle 27. Moreover, a Detailed Site Plan shall only be approved if it is in accordance with an approved Special Exception site plan. *See* PGCC §§ 27-317, 27-417, 27-461(b), 27-271.

II. Development Data Summary

The subject site is located in the southeastern quadrant of the intersection of New Hampshire Avenue (MD 650) and East-West Highway (MD 410) at 6889 New Hampshire Avenue, in the C-M Zone. The property to the east, zoned Multifamily Medium Density Residential (R-18) and Commercial Shopping Center (C-S-C), is improved with single-story residential dwelling, a gas station, and a store. The property to the south and west, zoned C-S-C, is developed with retail, commercial, and office.

In July 1980, Detailed Site Plan 83078 was approved for the subject site for truck rental operation with accessory office and retail land use. According to DSP-12018, which was submitted for the subject site in 2013, the building area of the existing development (rental business, rental of motor vehicles) is 15,818 square feet, which is to remain. As part of the proposed moving and storage use, Planning Board approved two storage facilities to the rear of the existing building, each measuring 4,987 square feet of building area for wholly enclosed storage as an accessory use. The architecture for the project is primarily utilitarian and composed of prefabricated metal panels, some using a contrasting color for the standing seam metal pitched roof and the entry doors, two of which are provided for each building, one for vehicular access and the other one for pedestrian access. *See* PGCPB No. 16-92, pp., 2-3, 8, Item Slides 1-14, Technical Staff

Report, pp. 4–5, 10, Memo of Subdivision Section, 6/15/2015, Exhibit 23.

III. Uses in the C-M Zone

No use shall be allowed in the Commercial Zones, except as provided for in the Table of Uses. Whenever the tables refer to an allowed use, that use is either permitted (P), permitted by Special Exception (SE), permitted by Special Permit (SP), or permitted as a (PA) or (PB) use, as listed in the zone in which it is allowed. *See* PGCC § 27-461. A “Use” is either (i) The purpose for which a “Building,” “Structure,” or land is designed, arranged, intended, maintained, or occupied; or (ii) Any activity, occupation, business, or operation carried on in, or on, a “Building,” “Structure,” or parcel of land. *See* PGCC § 27-107.01(a)(244). A “Use, Accessory” is the “Use” of a “Building,” “Structure,” or land which (A) Is subordinate to, customarily incidental to, and ordinarily found in association with, a principal “Use,” which it serves. (When a specific “Structure” or “Use” is allowed in the Tables of Uses accessory to another, the “Structure” or “Use” need not be customarily incidental to, or ordinarily found in association with, the principal “Use”); (B) Is subordinate in purpose, area (except in the case of a cemetery that is accessory to a church, convent, or monastery, provided both uses were existing as of January 1, 1991), floor area, intensity, and extent to, and located on the same “Lot” with, the principal “Use”; and (C) Does not change the character of the principal “Use.” *See* PGCC § 27-107.01(a)(245).

Vehicle or camping trailer rental is a use permitted in the C-M Zone subject to PGCC § 27-417(a),(b)(2), and (c). *See* PGCC 27-461(a–b), pp., 1–3. A trailer is defined as any vehicle designed to be towed by another vehicle and used for carrying objects or animals, or for human occupancy for business purposes. *See* PGCC § 27-107.01(a)(241). The Applicant is a U-Haul Center truck rental operation, including the storage and display of trucks and trailers. *See*

PGCPB No. 16-92, pp., 2–3, 8, DSP-83078, Item Slides 1–14, Exhibit 23 (Site Data: U-HAUL RETAIL/TRUCK RENTAL).

A commercial vehicle is any motor vehicle, including school buses but not passenger vehicles or camping trailers, used or designed and intended for hauling or carrying freight, merchandise, passengers, equipment, supplies, or other property for a commercial enterprise, or any motor vehicle advertising a commercial enterprise with lettering exceeding four (4) inches in height. This includes without limitation any vehicle defined in Subtitle 26 as a commercial bus or trailer, a heavy commercial truck, or a light commercial vehicle. *See* PGCC § 27-107.01(a)(247). A passenger vehicle is a motor vehicle licensed by the State of Maryland as a Class A or Class D motor vehicle, a panel van under 300-cubic-foot load space capacity, or a pickup truck with a capacity of three-quarters (3/4) of a ton or less, which has no lettering on the vehicle exceeding four (4) inches in height and advertising a commercial enterprise. *See* PGCC § 27-107.01(a)(248). A camping trailer is a vehicle originally sold to the consumer for recreational, travel, or vacation purposes, which is self-propelled or capable of being towed, and which provides facilities for temporary camping or sleeping. “Camping Trailer” includes a unit designed to be carried by an open pickup truck. The term “Camping Trailer” also includes “travel trailer,” “camper,” “recreational vehicle,” “motor home,” “truck camper,” and similar vehicles. *See* PGCC § 27-107.01(a)(39).

Rental of motor vehicles or camping trailers is a use permitted in the C-M Zone subject to the requirements of PGCC § 27-417.⁴ *See* PGCC § 27-461, as reproduced below.

⁴ PGCC § 27-417 is an additional requirement for a specific special exception. *See* PGCC §§ 27-317, 27-417.

(b) TABLE OF USES I.

| USE | ZONE | | | | | |
|--|------|-----|-------|-----|-----|-------|
| | C-O | C-A | C-S-C | C-W | C-M | C-R-C |
| Rental business: | | | | | | |
| (A) Rental of motor vehicles or camping trailers(in the C-M Zone subject to the requirements of Section 27-417) | X | X | SE | X | P | SE |

The requirements of PGCC § 27-417 are

(a) The display for rental purposes of motor vehicles (except dump trucks), trailers, boats, camping trailers, or other vehicles may be permitted, subject to the following:

(1) Rental vehicles shall be parked on a hard-surfaced area, which is resistant to erosion and adequately treated to prevent dust emission;

(2) The gross weight of trucks shall not exceed twenty thousand (20,000) pounds each;

(3) In addition to the buffering requirements in the Landscape Manual, the use shall be screened from existing or proposed residential development by a six (6) foot high opaque wall or fence. The fence or wall shall not contain any advertising material, and shall be maintained in good condition. This screening may be modified by the District Council where the parking area is already effectively screened from residential property by natural terrain features, changes in grade, or other permanent, natural, or artificial barriers.

(b) If the rental use is in conjunction with another use, it shall be subject to the following:

(1) A Special Exception is required to validate the rental use, irrespective of the commencement date of the use; and

(2) Off-street parking for the use shall be provided in addition to the off-street parking required for the other business.

(c) If the use is a totally separate business (not in connection with any other business), it shall be subject to the following:

(1) The area devoted to rental purposes shall not be more than sixty percent (60%) of the net lot area; and

(2) The display shall be set back at least thirty (30) feet from the street line. *See PGCC § 27-417 (Emphasis added).*

DSP-12018 expressly indicates that the existing use at the site is a RENTAL BUSINESS, RENTAL OF MOTOR VEHICLES, including the storage and display of trucks and trailers. *See* PGCPB No. 16-92, pp., 2–3, 8, Slides 1–14, Technical Staff Report, p. 10, Memo of Subdivision Section, 6/15/2015, Exhibit 23. The Applicant’s Statement of Justification stated that two proposed buildings (moving and storage operation use) will serve as an un-manned warehouse and will incorporate the use of a new proposed loading dock. The proposed use will complement the existing business (rental of motor vehicles use/retail use) and will allow for the storage of shipping boxes in a dry secure enclosure while removing them from the public streets. The added retail sales of propane (bottled gas sales use)⁵ will further complement the business and serve customers. *See* Statement of Justification, 4/2/2014.

Planning Board, in conjunction with the existing rental of motor vehicles use, approved a moving and storage operation use and a bottled gas sales use for the site in the C-M Zone. *See* PGCPB No. 16-92, pp., 1–2. Planning Board erred as a matter of law when it reviewed and approved DSP-12018 because unlike a vehicle or camping trailer rental use in the C-M Zone, which is not subject to all requirements of PGCC § 27-417, rental of motor vehicles or camping trailers in the C-M Zone is subject to all requirements of PGCC § 27-417. *See* PGCC § 27-461, p. 20.

Therefore, the site plan required to be submitted along with an application for a Special Exception shall not be approved (as Planning Board did in DSP-12018) in accordance with Part 3, Division 9, of Subtitle 27, but shall be approved in accordance with Part 4 of Subtitle 27, which

⁵ Even though bottled gas sales is a permitted use in the C-M Zone, the use was not approved in Detailed Site Plan 83078. DSP-12018 is the Applicant’s first attempt to add bottled gas sales as a use to the existing rental use previously permitted in Detailed Site Plan 83078. *See* PGCPB No. 16-92, Detailed Site Plan 83078, Statement of Justification, 4/2/2014. To the extent that the Applicant is currently using the site for bottled gas sales, it is a violation of Detailed Site Plan 83078 and such violation shall be subject to revocation procedures and proceedings in accordance with the County Code.

governs Special Exceptions. As such, all Conceptual Site Plans and Detailed Site Plans approved pursuant to Part 3, Division 9 of Subtitle 27 shall only be approved if they are in accordance with an approved Special Exception site plan. See PGCC § 27-271.

For the reasons stated herein, the District Council finds that Planning Board’s approval of DSP-12018 was illegal because (as a matter of law), a Special Exception is required to validate the Applicant’s rental of motor vehicles use, irrespective of the commencement date of the use, because the rental use is in conjunction with other uses. See PGCC §§ 27-317, 27-417, 27-461, 27-271.

ORDERED this 14th day of November, 2016, by the following vote:

In Favor: Council Members Davis, Glaros, Harrison, Lehman, Patterson, Taveras, and Turner.

Opposed:

Abstained:

Absent: Council Members Franklin and Toles.

Vote: 7-0

COUNTY COUNCIL OF PRINCE GEORGE’S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE’S
COUNTY, MARYLAND

By: _____
Derrick Leon Davis, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council