The Circuit Court for Prince George's County
Case No.: CAL 16-43867

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1145

September Term, 2017

JIM LORIMER

v.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND, SITTING AS THE DISTRICT COUNCIL

Meredith,
Eyler, Deborah S.**
Battaglia, Lynne
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: August 30, 2019

**Eyler, Deborah S., J., participated in the hearing and conference of this case while an active member of this Court; she participated in the adoption of this opinion as a specially assigned member of this Court.

In this appeal, Jim Lorimer, appellant, appeals from a judgment of the Circuit Court for Prince George's County which—upon judicial review of a zoning decision of the County Council of Prince George's County sitting as the District Council (hereinafter the "District Council"), appellee—upheld the District Council's decision to deny Mr. Lorimer's application for approval of a Detailed Site Plan that would permit two additional commercial uses on his property.

QUESTION PRESENTED

Mr. Lorimer presents the following question for our review: "Did the trial court err in affirming the District Council's arbitrary and capricious reversal of the Planning Board's decision when PGCC § 27-461(b)(1)(B) permits an applicant to add additional uses to an existing rental use without seeking a special exception?"

Because we conclude that the District Council did not err in interpreting PGCC § 27-417 as requiring Mr. Lorimer to obtain a special exception in order to operate his U-Haul rental business in conjunction with the proposed additional uses, we hold that the District Council did not err when it denied Mr. Lorimer's application for approval of a Detailed Site Plan. Accordingly, we shall affirm the judgment of the Circuit Court for Prince George's County.

FACTS AND PROCEDURAL HISTORY

Mr. Lorimer is the owner of a parcel of land 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 1983, he obtained approval of Detailed Site

Plan ("DSP") 83078, permitting him to use the property for a "truck rental operation with accessory office and retail land use." Since that time, the site has been used to conduct a business renting U-Haul trucks and trailers. In recent years, that business included selling miscellaneous moving boxes and materials. Pursuant to the Prince George's County Zoning Ordinance (the "Zoning Ordinance"), this site is located in the "C-M Zone," also known as the "Miscellaneous Commercial" zone.

In 2013, Mr. Lorimer filed a Detailed Site Plan application with the Planning Board, proposing to: (1) construct two warehouses on the property, each approximately 5,000 square feet; and (2) commence providing moving and storage services and sales of bottled propane gas, while continuing to rent U-Haul trucks and trailers.

The Planning Board staff recommended approval of Mr. Lorimer's application. In its report, the Planning Board recognized that the existing use of the site was for "[v]ehicle or camping trailer rental," as well as "[o]ffice [a]ccessory to an allowed use," and "[r]etail shop or store (not listed) similar to one permitted (P) in the C-M Zone." The Planning Board also noted that, pursuant to PGCC § 27-461(b), Mr. Lorimer's proposed additional uses—bottled gas sales and moving and storage operation—were permitted uses in the C-M Zone. It further explained that, pursuant to the language in PGCC § 27-

461(b)'s "Table of Uses," a property in the C-M Zone that is used for "[v]ehicle or camping trailer rental" is also "subject to [PGCC] Section 27-417(a), (b)(2) and (c)."[1]

[1] As will be discussed in greater detail herein, PGCC § 27-417 spells out certain requirements—that are the focus of this appeal—for sites used for "[v]ehicle and trailer rental display." PGCC § 27-417 provides:

> (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:
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> (1) Rental vehicles shall be parked on a hard-surfaced area, which is resistant to erosion and adequately treated to prevent dust emission;
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> (2) The gross weight of trucks shall not exceed twenty thousand (20,000) pounds each;
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> (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.
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> **(b) If the rental use is in conjunction with another use, it shall be subject to the following:**
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> **(1) A Special Exception is required to validate the rental use, irrespective of the commencement date of the use; and**
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> **(2) Off-street parking for the use shall be provided in addition to the off-street parking required for the other business.**
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> (c) If the use is a totally separate business (not in connection with any other business), it shall be subject to the following:
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> (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.

(Emphasis added.)

The Planning Board approved Mr. Lorimer's application for a Detailed Site Plan, but the District Council has discretion to review the action of the Planning Board, and, in this instance, the District Council chose to do so. Following a hearing, the District Council overruled the Planning Board and issued a Notice of Disapproval of Detailed Site Plan. The District Council found that the "Planning Board's approval of [the Detailed Site Plan] was illegal because, as a matter of law, a Special Exception [pursuant to PGCC § 27-417(b)(1) was] required to validate a rental use of motor vehicles if the rental use is in conjunction with another use." The District Council further explained:

> Rental of motor vehicles or camping trailers is a use permitted in the C-M Zone subject to the requirements of PGCC § 27-417.
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> * * *
>
> [The Detailed Site Plan] 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. [Mr. Lorimer'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) will further complement the business and serve customers. *See* Statement of Justification, 4/2/2014.

(Underlining in original.)

The District Council noted that sales of bottled propane gas had not been approved as a use upon the property when DSP 83078 was approved in 1983, and the current application was the "first attempt to add bottled gas sales as a use to the existing rental

use previously permitted in Detailed Site Plan 83078." (Underlining in original.) Referring to PGCC § 27-417, the District Council ruled that the proposed Detailed Site Plan could "only be approved if [it was] in accordance with an approved Special Exception site plan. *See* PGCC § 27-271." (Underlining in original.)

Mr. Lorimer filed a petition for judicial review in the Circuit Court for Prince George's County. After hearing oral arguments, the circuit court issued a ruling from the bench, upholding the ruling of the District Council, and explaining:

> [THE COURT]: I listened to both arguments and I must say that I am persuaded by the County's argument and the reason being is because it just makes logical sense. The permitted use . . . is vehicle or camping trailer rental which . . . in the C[-M] Zone[,] subject to Section 27-417(a), (b)(2) and (c)[,] is a permitted use.
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> So, obviously, you would not need a special exception for that. But in this particular scenario, it is – it's undisputed that what [Mr. Lorimer] is seeking to do is add two additional uses which is the bottle – what was it, the bottle storage, propane gas use and a rental – to the rental use. . . .
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> * * *
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> [THE COURT]: So that's being added to the original use which was, or is the rental U Haul use, which is the original use which is permitted without a special exception. When you read the code as it should be read, as a whole, then the rental of the motor vehicle or camping trailer in the C[-M] Zone [is] subject to the requirements of 27-417 and it is clear under that section that under 27-417(b) that it says if the rental use is in conjunction with another use it shall be subject to the following,[] and one, "A special exception is required to validate the rental use irrespective of the commencement date of the use."
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> So with that in mind, I find that interpretation is correct and that the decision of the administrative agency, District Council, is not erroneous, or arbitrary, and/or capricious and I will go on and affirm the decision of the District Council.

This appeal followed.

STANDARD OF REVIEW

In reviewing the decision of a circuit court that was conducting judicial review of the decision of an agency, this Court "looks through the circuit court's . . . decision[], although applying the same standards of review, and evaluates the decision of the agency." *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007). In *County Council of Prince George's County v. Zimmer Development Co*., 444 Md. 490, 573 (2015), the Court of Appeals explained:

> Judicial review of administrative agency action based on factual findings, and the application of law to those factual findings, is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is based on an erroneous conclusion of law." *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994). The reviewing court may not substitute its judgment for that of the administrative agency. *United Parcel Serv*., 336 Md. at 576–77, 650 A.2d at 230. Rather, the court must affirm the agency decision if there is sufficient evidence such that "a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 160, 874 A.2d 919, 939 (2005) (quoting *Christopher v. Dept. of Health*, 381 Md. 188, 199, 849 A.2d 46, 52 (2004)) (internal quotation marks omitted).
>
> Agency decisions receive an even more deferential review regarding matters that are committed to the agency's discretion and expertise. In such situations, courts may only reverse an agency decision if it is "arbitrary and capricious." *Spencer v. Maryland State Bd. of Pharmacy*, 380 Md. 515, 529–30, 846 A.2d 341, 349 (2004). "Logically, the courts owe a higher level of deference to functions specifically committed to the agency's discretion than they do to an agency's legal conclusions or factual findings." *Spencer*, 380 Md. at 529, 846 A.2d at 349.

In this case, we are called upon to determine whether the District Council made an error of law when it ruled that Mr. Lorimer's application must be denied due to the lack of a Special Exception as required by PGCC § 27-417(b)(1). We "will apply the same principles of statutory construction" to the Zoning Ordinance "as are required in the interpretation of any statute or regulation." *Harford County People's Counsel v. Bel Air Realty Associates Ltd. Partnership*, 148 Md. App. 244, 259 (2002). In *Bel Air Realty Associates Ltd. Partnership*, this Court explained:

> With respect to statutory interpretation, we will likewise defer in the appropriate case to an agency's interpretation and application of its organic statute. Thus, our scope of review is rather circumscribed. . . . Because this appeal requires us to construe the language of the [Harford County] Zoning Code, [t]he cardinal rule of [statutory construction] is to ascertain and effectuate the legislative intent. In order to ascertain the Council's intent, we begin with the pertinent language of the Zoning Code, and ordinarily will not venture beyond its clear and explicit terms.
>
> We owe no deference when the agency's conclusions are premised on an error of law. In such a case the Court's review is expansive . . . . But the administrator's expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was premised upon an erroneous conclusion of law.

Id. at 258-59 (internal citations and quotation marks omitted).

In *Lockshin v. Semsker*, 412 Md. 257, 274 (2010), the Court of Appeals reiterated that "[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature." The Court added, however, that, although we begin our analysis of the legislature's intent with the "normal, plain meaning of the language of the statute," we

> do not read statutory language in a vacuum, nor do we confine strictly our interpretation of the statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.

Id. at 275-76 (emphasis added) (internal citations omitted).

DISCUSSION

In *County Council of Prince George's County v. Zimmer Development Co.*, 444 Md. 490, 559-62 (2015), Judge Glenn Harrell, writing for the Court of Appeals, described the use of Detailed Site Plans in Prince George's County:

> Detailed Site Plans are required for "certain types of land development [that] are best regulated by a combination of development standards and a discretionary review . . . ." PGCC § 27–281[(a)(1)]. Where required, Detailed Site Plans generally must be approved before a final plat of subdivision or grading, building, or use of occupancy permits may be approved or issued. PGCC § 27–270 (specifying order of approvals); *see also* PGCC § 27–281.01 (stating generally the circumstances under which a Detailed Site Plan must be approved before permits are issued). The general purposes of Detailed Site Plans are:
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> > (A) To provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan;
> >
> > (B) To help fulfill the purposes of the zone in which the land is located;
> >
> > (C) To provide for development in accordance with the site design guidelines established in this Division; and
> >
> > (D) To provide approval procedures that are easy to understand and consistent for all types of Detailed Site Plans.
>
> PGCC § 27-281(b)(2). . . .

> . . . The District Council is authorized expressly to "review a final decision of the county planning board to approve or disapprove a detailed site plan." [Maryland Code (2012), Land Use Article ("LU"),] § 25–210(a). Parties of record . . . may appeal to the District Council a decision of the Planning Board, or the District Council may review the decisions on its initiative. LU § 25–210(a). The District Council's determination after review is "a final decision." LU § 25–210(d).

Detailed Site Plan applications must be submitted by those seeking approval for a "use" on a particular site. PGCC § 27-107.01(a)(244) defines a "use" as either "[t]he purpose for which a 'Building,' 'Structure,' or land is designed, arranged, intended, maintained, or occupied" or "[a]ny activity, occupation, business, or operation carried on in, or on, a 'Building,' 'Structure,' or parcel of land." According to PGCC § 27-461(a), "[n]o use shall be allowed in the Commercial Zones except as provided for in the Table of Uses," which appears in PGCC § 27-461(b). Mr. Lorimer's site is located in the C-M (Commercial Miscellaneous) Zone. *See* PGCC § 27-459(c)(1) ("The uses allowed in the C-M Zone are as provided for in the Table of Uses I (Division 3 of this Part).").

Mr. Lorimer's proposed Detailed Site Plan requested approval to add two additional "uses"—sales of bottled propane gas, and moving and storage operations—to the pre-existing U-Haul rental business, office, and retail use on the site. As noted above, PGCC § 27-417 (captioned "Vehicle and trailer rental display") sets forth some specific conditions that, on their face, appear to be applicable to Mr. Lorimer's business of renting U-Haul trucks and trailers. Subsection (a) provides conditions that apply to "[t]he display for rental purposes of motor vehicles (except dump trucks), trailers, . . . or other vehicles." There appears to be no dispute that Mr. Lorimer's business falls within that

description because it does "display for rental purposes" U-Haul vehicles. And subsection (c) imposes conditions that are applicable only "[i]f the use is a totally separate business (not in connection with any other business)." There appears to be no dispute that that subsection does not apply to the proposed Detailed Site Plan.

But subsection (b) is the source of the dispute that led to this appeal. PGCC § 27-417(b) adds two conditions that apply to the display of rental vehicles "if the rental use is in conjunction with another use." (Emphasis added.) Even though there is no dispute that Mr. Lorimer's proposed Detailed Site Plan sought approval to continue the U-Haul rental business "in conjunction with" two new uses, he nevertheless contends that subsection (b)(1) does not apply to his proposed site plan. Subsection (b)(1) states unambiguously: "A Special Exception is required to validate the rental use, irrespective of the commencement date of the use." The District Council denied approval of the proposed Detailed Site Plan because Mr. Lorimer did not seek and obtain a Special Exception to validate his rental use of the site.

If we restricted our review to PGCC § 27-417, and we applied the plain meaning of the words in § 27-417 subsections (a) and (b), there would be no doubt that Mr. Lorimer was required to obtain a Special Exception as a prerequisite to approval of a Detailed Site Plan adding uses to the existing rental use. Ultimately, that is our conclusion, although we recognize that a notation in the Table of Uses injects some fuzziness that caused Mr. Lorimer to believe that § 27-417(b)(1) was not applicable to his proposal.

The Table of Uses lists two uses permitting rentals of vehicles in the C-M Zone. Despite the District Council's best efforts to persuade us that there is a clear reason that only one of those two permitted uses is applicable to Mr. Lorimer's U-Haul rental business, the District Council has not persuaded us that there is no overlap between the two entries in the Table.

One entry in the Table of Uses, under "USE" "(1) COMMERCIAL" "(B) Vehicle, Mobile Home, Camping Trailer, and Boat Sales and Services," indicates that it is a permitted use in the C-M Zone to conduct the business of "Vehicle or camping trailer rental (In the C-M Zone, subject to Section 27-417(a), (b)(2), and (c))." *See* PGCC § 27-461(b)(1)(B).[2]

[2] We have no doubt that U-Haul trucks qualify as "Vehicles, Commercial" under the Zoning Ordinance. PGCC § 27-107.01(a)(247) defines "Vehicle, Commercial" as follows:

> **Vehicle, Commercial**: **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.

(Emphasis added.)

The term "Vehicle, Passenger," is defined in PGCC § 27-107.01(a)(248):

> **Vehicle, Passenger**: **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)

continued…

A separate entry under "USE" "(3) MISCELLANEOUS," indicates that it is a permitted use in the C-M Zone to conduct: "Rental business: (A) Rental of motor vehicles or camping trailers (in the C-M Zone subject to the requirements of Section 27-417)."

So one permitted use is "Vehicle or camping trailer rental" and the other permitted use is "Rental of motor vehicles or camping trailers." We have been directed to no textual definition that distinguishes these two entries in the Table of Uses. The similarity in the Table's description of these two permitted uses presumably led the Planning Board to conclude that Mr. Lorimer's U-Haul rental business is correctly described as "Vehicle . . . rental" even if it could also be described as "Rental of motor vehicles." But the parenthetical notations in the Table describing the first entry as being "subject to Section 27-417 (a), (b)(2), and (c)," and the second entry as being "subject to Section 27-417"

> of a ton or less, **which has no lettering on the vehicle exceeding four (4) inches in height and advertising a commercial enterprise**.

(Emphasis added.)

But neither of the two similar permitted uses pertaining to rental of vehicles in the Table of Uses distinguishes between the permitted vehicle types in this manner; rather, the two uses permit the rental of "vehicles" and "motor vehicles" respectively. (The PGCC does not appear to include a separate definition for "motor vehicle.") Pursuant to these definitions, the U-Haul trucks and trailers rented on Mr. Lorimer's site would fit best within the definition of commercial vehicles because it is common knowledge that U-Haul trucks invariably "advertis[e] a commercial enterprise [namely U-Haul rentals] with lettering exceeding four (4) inches in height." PGCC § 27-107.01(a)(247). In our view, however, this distinction is not helpful in determining whether Mr. Lorimer's rental business must be categorized under only one of the vehicle rental uses listed in the Table of Uses.

raise the possibility of differing requirements for gaining approval of one use versus the other.

Ultimately, we are not persuaded that either of the parenthetical notations overrides the plain meaning of the wording of PGCC § 27-417, which, as discussed above, clearly *requires* an applicant to seek a Special Exception *if* the rental use includes the display of vehicles "in conjunction with another use." PGCC § 27-108.01(a) offers these pertinent standards for statutory construction of the Zoning Ordinance:

> (a) Words and phrases are to be interpreted as follows:
>
> (1) The particular and specific control the general.
>
> (2) **In case of any difference of meaning or implications between the text and any** caption, illustration, **summary table, or illustrative table, <u>the text controls</u>**.
>
> *** * ***
>
> (7) Words and phrases not specifically defined or interpreted in this Subtitle or the Prince George's County Code shall be construed according to the common and generally recognized usage of the language. Technical words and phrases, and others that have acquired a peculiar and appropriate meaning in the law, shall be construed according to that meaning.

(Emphasis added.)

The text of § 27-417 is more particular and specific than the parenthetical notations in the Table of Uses referring to that Section and its subsections. Applying the above rules, we conclude that the plain meaning of § 27-417 controls our interpretation notwithstanding the parenthetical notations in the Table of Uses.

Moreover, we note that the Table of Uses lists summarily the many uses that are permitted in the C-M zone. Necessarily, each of the entries in the Table (quoted above) addressing rental of vehicles is stating that the rental of vehicles (as a sole use) is permitted in the C-M Zone. In the Table's entry for the use upon which Mr. Lorimer based his application—PGCC § 27-461(b)(1)(B)—the parenthetical notation mentions § 27-417 (a), (b)(2), and (c). Even Mr. Lorimer raises no issue relative to subsections (a) and (c). But he insists that the reference to only subsection (b)(2)—and not (b)(1)—must be interpreted to mean that a party operating a vehicle rental business is excused from obtaining a Special Exception as expressly required under subsection (b) even when that party proposes to operate the rental business in conjunction with another use. There is no sound reason to construe the entry in the Table of Uses in that manner. The entry in the Table of Uses is limited to stating that the rental use is a permitted use in the C-M Zone, *not* that it is always permitted in conjunction with another use without a Special Exception. Indeed, the referenced subsection (c) states on its face that subsection (c) is applicable *only* when the rental usage is the sole use.

When we read both PGCC § 27-417 and the entries in the Table of Uses together as part of the statutory scheme of the Zoning Ordinance, we conclude that (1) the rental of U-Haul trucks and trailers is a permitted use in the C-M Zone. (2) **If** the rental usage includes the on-site display of vehicles, then § 27-417 adds conditions that must be met. (3) Further, "**[i]f** the rental use is in conjunction with another use," § 27-417(b) adds two

additional conditions that must be met, *including* that "[a] Special Exception is required to validate the rental use, irrespective of the commencement date of the use."

The mention of subparagraph (b)(2) in the parenthetical notation in the Table of Uses entry in § 27-461(b)(1)(B) represents a drafting oddity. Why mention a provision that, on its face, appears to apply *only* if the rental usage is in conjunction with another use (when it is clear that this entry in the Table is describing only the requirements for the vehicle rental use)? We have considered whether the intent of this notation was to refer only to the sub-subparagraph (2) of (b), and not the introductory language of subparagraph (b). But that hypothesis fails because even sub-subparagraph (2) makes reference to an "other business." In the absence of any proffer of a more rational explanation for why the parenthetical notation makes reference to subparagraph (b)(2) only (and not subparagraph (b)(1)), we are left with an unsolved mystery of drafting.

But, regardless of our inability to discern why this entry in the Table of Uses was drafted in this manner, we do not agree with Mr. Lorimer's theory that the omission of any mention of (b)(1) in this entry in the Table of Uses was intended to override the unambiguously applicable text in PGCC § 27-417(b), which expressly requires a Special Exception "[i]f the rental use is in conjunction with another use." In our view, the text of § 27-417(b) is more specific than the reference in the Table of Uses, and is more directly applicable to the circumstances presented by Mr. Lorimer's request to continue the display of rental vehicles in conjunction with two additional uses.

In summary, we conclude that the District Council did not err in concluding that Mr. Lorimer's application for a Detailed Site Plan—that proposed to add a new use in conjunction with continuation of the U-Haul rental usage—was required to comply with PGCC § 27-417(b)(1). Accordingly, we affirm the judgment of the circuit court that affirmed the decision of the District Council.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.