Kemp Mill Beer and Wine U-Haul Conditional Use, CU 16-13

Description
- Request to add Light Vehicle Rental to an existing beer and wine store;
- Located at 1339 Lamberton Drive, Silver Spring;
- NR-0.75 H-45 Zone, Kemp Mill Master Plan;
- Property area: 6.5 acres;
- Applicant: Bharati Kunwar;
- Filing Date: May 24, 2016;
- Public Hearing by the Hearing Examiner: October 17, 2016.

Summary
- Staff recommends approval with conditions.
- The Applicant was issued a violation notice and civil citation from the Department of Permitting Services (DPS) for operating a U-Haul rental business out of the Kemp Mill Beer and Wine store. In response to the violation notice, the Applicant seeks conditional use approval to validate the existing light vehicle rental use.
- The Applicant proposes to rent out 10-foot long U-Haul trucks, but these trucks are classified as “Heavy Commercial Vehicles” in the Zoning Ordinance due to their height, and may not be rented out under the Light Vehicle Rental use.
- Staff recommends approval of a parking waiver for the four parking spaces required for the proposed use.
STAFF RECOMMENDATION

Staff recommends approval for CU 16-13 subject to the following conditions:

1) The Applicant may rent out no more than 21 vehicles or pieces of hauling equipment.
2) The following vehicles, classified as “Heavy Commercial” in Section 1.4.2. of the Zoning Ordinance are prohibited:
   - greater than 10,000 pounds gross vehicle weight;
   - rated by the manufacturer with a load capacity of more than one ton;
   - 21 feet long or longer, measured from the extremes of the vehicle, including any object on the vehicle; or
   - more than 8 feet high, with properly inflated tires, measured from the ground to the highest part of the vehicle, including any racks but excluding any antennas.
3) Vehicles and equipment must be stored in the parking area on the west side of the Shopping Center, or to the rear (north) of the Shopping Center.
4) The rental vehicle parking area in the rear of the Shopping Center must be striped as indicated in the conditional use plan.
5) The signage on the front window of the Kemp Mill Beer and Wine Store must be brought into conformance with Section 6.7.9. of the Zoning Ordinance, or the applicant must obtain a sign variance.
6) Vehicles and equipment must not be parked in the main Shopping Center parking lot.
7) Trailers and hitches must be stored in the parking spaces in the rear of the Shopping Center.

PROJECT DESCRIPTION

Site Description
The 6.5-acre Property is located at the western terminus of Lamberton Drive, approximately 330 feet northwest of the intersection of Lamberton Drive with Arcola Avenue (Figure 1). The Property comprises 1 parcel, described as Part of Parcel A Kemp Mill Shopping Center, in the NR-0.75 H-45 Zone. The Property is irregular in shape and relatively flat in grade, gradually sloping down to the west towards Sligo Creek Park.

The Property has one point of vehicular access, via the western extension of Lamberton Drive from its intersection with Arcola Avenue (Figure 2). All drive aisles within the parking lot allow two-way vehicle movement. Pedestrians can access the Property from the sidewalk along Lamberton Drive that connects Arcola Avenue to the walkway in front of the Shopping Center, or from the west via a paved trail that connects the Shopping Center’s parking lot to the Sligo Creek trail.
Figure 1: Vicinity Map

Figure 2: Site Map
The Property is improved with the Kemp Mill Shopping Center, a pad site with a drive-thru bank, and a large surface parking lot. According to the Maryland Department of Assessments and Taxation, the Property has 59,229 square feet of retail space built in 1970.
The 1,300-square-foot Kemp Mill Beer and Wine Store is located in the middle of the Shopping Center amongst other neighborhood serving retail businesses, and the store has a U-Haul sign in the front window (Figures 3 and 4). The Applicant currently uses two areas of the Property for parking U-Haul rental vehicles and equipment (Figure 5): One area is located to the west side of the Shopping Center and contains 13 marked parking spaces; the other is located to the north side (rear) of the Shopping Center, and does not have any marked parking spaces. These parking areas are not visible from the Shopping Center or from the majority of the Shopping Center’s parking lot.

Figure 5: Existing U-Haul Parking Areas

**Neighborhood Description**

For the purposes of analyzing this application, the defined neighborhood is generally bound by Kersey Road and the northern lot line of the Yeshiva High School property to the north, Monticello Avenue to the east, Kenbrook Drive and various property lines to the south, and the western lot line of the Sligo Creek Park parcel located adjacent to the Property to the west (Figure 6).

The neighborhood has a diversity of uses including a variety of neighborhood retail stores, restaurants, office buildings, two parks, several institutional uses, detached homes, and townhomes. The Kemp Mill Shopping Center complex is surrounded by the M-NCPPC’s Sligo Creek Park to the north and west, the M-NCPPC’s Kemp Mill Urban Park to the east, and the Parkland Pool Association and the Young Israel Shomrai Emunah Synagogue to the southeast.
The neighborhood includes two other approved conditional use/special exceptions. The Parkland Pool, a community swim club located at 1124 Arcola Avenue, was approved in 1967 (BA 624, 2207), and St. Luke’s House, a group home, was approved in 1978 at 1121 Arcola Avenue (BAS 629).

Figure 6: Staff Defined Neighborhood

Zoning and Land Use History
The 1967 Kemp Mill-Four Corners and Vicinity Master Plan rezoned the Property from the R-90 to the C-1 (Convenience Commercial) Zone. The 2001 Kemp Mill Master Plan, confirmed the C-1 Zone. The Property was rezoned to the NR -0.75 H -45 (Neighborhood Retail) Zone by District Map Amendment G–956 on October 30, 2014.

The Applicant has operated the Kemp Mill Beer and Wine store, a use permitted by right in the NR zone, for approximately 19 years, and the store has been in the present location for approximately seven years. Prior to the current location, the store was located in the strip shopping center on the other side of the parking lot. The Applicant has operated a U-Haul rental dealership out of the Beer and Wine store for the past year. Prior to that, he operated a Budget Rental Truck business for 17 years out of the store’s present location and the previous location at the shopping center across Lamberton Drive.
This Application was submitted in response to violation notices issued by the Department of Permitting Services on January 11, 2016, followed by a civil citation issued on March 10, 2016, because the Applicant failed to obtain a Use and Occupancy permit for the vehicle rental operation (Attachment 2).

Proposed Use
The Applicant seeks conditional use approval to validate the existing light vehicle rental facility along with the by-right Beer and Wine store. The Applicant does not propose any changes to the building, site design, or signage, but Staff recommends, as a condition of approval, striping the rear parking area as described later in this section. In the revised Statement of Operations (dated August 17, 2016), the Applicant proposes to rent out 21 vehicles and pieces of hauling equipment consisting of four cargo vans, one pick-up truck, eight 10-foot trucks, and eight trailers. Other moving equipment would also be available including furniture pads and hand trucks. The Applicant indicates that all of these vehicles and hauling equipment are under 10,000 lbs gross vehicle weight (GVW) and fall under the Zoning Ordinance definition of Light Vehicle Sales and Rental. However, the diagram of U-Haul’s 10-foot long truck (submitted by the Applicant) indicates that the height of the truck is over eight feet, and would meet the Zoning Ordinance definition of a heavy commercial vehicle (Attachment 3). Heavy commercial vehicles may not be rented out under the proposed light vehicle rental use, and heavy vehicle rental is not allowed in the NR Zone.

Section 59.1.4.2.C. Commercial Vehicle, Heavy: Any motor vehicle, tandem axle trailer, or semitrailer used for carrying freight or merchandise, or used in any commercial enterprise that is:

1. greater than 10,000 pounds gross vehicle weight;
2. rated by the manufacturer with a load capacity of more than one ton;
3. 21 feet long or longer, measured from the extremes of the vehicle, including any object on the vehicle; or
4. more than 8 feet high, with properly inflated tires, measured from the ground to the highest part of the vehicle, including any racks but excluding any antennas.

The Applicant submitted a copy of a Use and Occupancy permit from another U-Haul rental business located at Ethio Addis Beer and Wine store in Silver Spring with a note that says, “The 10ft truck meets the standard for light commercial vehicle” (Attachment 4). Planning Staff consulted the Department of Permitting Services (DPS) who clarified that in the case of the Ethio Addis Beer and Wine store, the 10-foot long truck met the definition of a light commercial vehicle. DPS explained that a 10-foot long U-Haul truck that is over 8-feet tall would not be allowed under the light vehicle rental use. The Applicant was informed of the DPS interpretation prior to submitting the application. Staff is recommending a condition of approval that prohibits Kemp Mill Beer and Wine from renting out any heavy commercial vehicle, as defined in the Zoning Ordinance.
The Applicant plans to continue use of the existing parking areas to the side and the rear of the Shopping Center. The conditional use plan indicates that eight parking spaces will be located in the rear of the Shopping Center for storage of hauling equipment (pieces of equipment may be double parked). Although walk-in customers can rent vehicles or equipment, the majority of customers make reservations in advance. The rental contract is completed inside the store, and a staff member walks with the client out the back door and across the drive aisle, or out the front of the store and around the corner, to obtain a vehicle or piece of equipment. Vehicles can be returned after hours, and a key drop box is located adjacent to the rear door of the Beer and Wine store.

![Conditional use plan](image)

*Figure 7: Conditional use plan (Property outlined in red)*

Three employees will work at both the Beer and Wine store and the vehicle rental business. The Applicant proposes to operate the vehicle rental business from 7:00 a.m.- 7:00 p.m., but upon request the Applicant indicates that he will meet a customer earlier than 7am. The Beer and Wine Store stays open until 9:00 p.m., but the Applicant indicated to staff that he does not rent out vehicles or equipment after 7:00 p.m. because the store only has one staff person on-site from 7:00–9:00 p.m. A sign in the store’s window instructs customers who drop vehicles off after 6:00 p.m. to drop keys in the key box located behind the store, and to park in one of the two designated parking areas on the side of, or behind, the Shopping Center. The Applicant currently rents out U-Haul vehicles and equipment to an average of 50-60 clients per week, and the busiest times of the week are Saturday and Sunday mornings.
ANALYSIS

Master Plan
The Property is within the 2001 Kemp Mill Master Plan (the “Master Plan”) area. The Master Plan includes language about the Kemp Mill Shopping Center and the neighboring commercial area, and recognizes the role of the commercial center “as a focal point for the surrounding residential neighborhoods.”

The proposed U-Haul facility is consistent with the Plan’s vision of a neighborhood commercial center. The vehicles and equipment are of an appropriate size and scale (limited to vans and pick-up trucks by Staff’s recommended conditions of approval) to be used by community members and small businesses. The vehicles and equipment will be stored out of sight, and they will not detract from the neighborhood retail experience of the Shopping Center.

While the Master Plan did not recommend any zoning changes for the Property, it contemplated the future redevelopment of the Kemp Mill Shopping Center:

> When redevelopment for the Kemp Mill Shopping Center occurs, it should include non-vehicular access through the parking lot from the sidewalk on Arcola Avenue to the trail in Sligo Creek Park. This access should be landscaped and separated from free flowing interior vehicular movements. Pedestrian access to the stores within the shopping center should be improved as well. (p. 24)

The Master Plan elaborates on the development process that would trigger the requirement for the non-vehicular improvements at the Kemp Mill Shopping Center:

> Whichever development process is triggered at the time of redevelopment, subdivision review or parking facility review, this Plan recommends that safe, paved access to the shopping center stores be provided at the periphery of the parking lot and that the paths, sidewalks and trails that today stop at the shopping center property boundary be connected to the paved pedestrian circulation within the shopping center. (p. 55)

Because this Applicant does not propose any redevelopment, the Master Plan’s recommended non-vehicular improvements are not relevant to this application.

Transportation

Master-Planned Roadway, Bikeway, and Transitway and Pedestrian Facilities
The Master Plan designates Arcola Avenue as a four-lane arterial, A-54, with a recommended Class I bikeway, PB-3, on the west side, within the 80-foot wide right-of-way. The segment of Lamberton Drive west of Arcola Avenue that serves as access to Kemp Mill Urban Park and the Kemp Mill Shopping Center is owned by the Maryland-National Capital Park and Planning Commission. This segment of
Lamberton Drive has an existing right-of-way that varies from 62 to 78 feet. East of Arcola Avenue, Lamberton Drive is designated as a primary residential street, P-2. The Master Plan recommends a Class I bikeway, PB 2, along both segments of Lamberton Drive.

Transit Service
The Ride On Route 9 operates along Arcola Avenue with 30-minute headways on weekdays and weekends. Bus stops are located at the intersection of Arcola Avenue and Lamberton Drive.

Pedestrian and Bikeway Facilities
There is a three-foot wide sidewalk with no green panel along the north side of Lamberton Drive leading to the Shopping Center from Arcola Avenue. It traverses the west side of the Kemp Mill Urban Park and connects to a 12-foot wide sidewalk along the store fronts of the Shopping Center.

Along the south side of Lamberton Drive (that fronts Young Israel Shomrai Emunah Synagogue), there is a seven-foot wide sidewalk/shared use path (PB-2) with a 14 to 21-foot wide green panel that terminates at the entrance into the Shopping Center.

The intersection of Lamberton Drive and Arcola Avenue has pedestrian crosswalks and handicap ramps. On Arcola Avenue and on Lamberton Drive east of Arcola Avenue, there are four-foot wide sidewalks with green panels between the sidewalk and curb in all but the northwest corner of the intersection. To the south, there are worn choice pedestrian paths connecting the Shopping Center with the residential developments to the south. To the west, there is a trail connection to the Sligo Creek Stream Valley Trail.

Transportation Adequate Public Facilities (APF) Review
For the Local Area Transportation Review (LATR) test, the Applicant proposes to operate the U-Haul rental business primarily between 7:00 a.m. and 7:00 p.m. on weekdays, with occasional extended hours based on customer requests. These hours of operation are within the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.).

Based on the Applicant’s traffic statement, the proposed U-haul rental facility will generate fewer than 10 additional peak-hour trips in the weekday morning and evening peak-hours. A traffic study is not required to satisfy the LATR test because the proposed use will generate fewer than the threshold of 30 additional total peak-hour trips for a traffic study.

The Property is located in the Kensington/Wheaton Policy Area, which has inadequate transit capacity. However, the Transportation Policy Area Review (TPAR) payment of 25% of the Development Impact Tax will not be required because no increase in the square footage of the existing building is proposed.
Environment

Environmental Guidelines
There are no forests, wetlands, or other environmental features on the Property.

Forest Conservation
This application is exempt from the Forest Conservation Plan requirements under Section 22A-5(q)(1) of the Forest Conservation Law (Plan #42016204E).

Community Outreach
During a site visit on June 17, 2016, Staff observed that the application sign was located in the front window of the Beer and Wine store rather than along the Property’s frontage as required under Section 7.5.2.C. The Hearing Examiner directed the Applicant to move the application sign to the required location, and the Applicant submitted a photograph showing the sign posted on Arcola Avenue, satisfying the noticing requirement.

The Applicant submitted a petition signed by 100 community members and business owners who support the continuation of the Applicant’s current U-Haul Rental business at this location. The Shopping Center property manager contacted Staff to ask if the Applicant’s proposed parking area in the rear of the Shopping Center would impact the Shopping Center’s parking requirement. Staff has received no other correspondence about this application.

Parks
The Property abuts two M-NCPPC owned parks, and Planning Staff contacted M-NCPPC Parks Staff, but received no formal comments on the application.

FINDINGS

Conditions for Granting a Conditional Use
Section 7.3.1.E Necessary Findings

To approve a conditional use application, the Hearing Examiner must find that the proposed development:

Section 7.3.1.E.1.a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

No applicable previous approvals exist.

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1 Section 7.3.1.E.2, Section 7.3.1.E.4, and Section 7.3.1.E are not applicable to this application and are not included in this report.
Section 7.3.1.E.1.b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds it necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

Use Standards for Light Vehicle Sales and Rental (Outdoor) in Article 59-3
Light Vehicle Sales and Rental is a conditional use allowed in the NR Zone. The use standards under Section 3.5.2.C.2 apply only if “the subject lot abuts or confronts a property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use.” Some of the lots that abut the Subject property are in a Residential Detached zone, but they are not vacant or improved with an agricultural or residential use, so the use standards do not apply to this Application.

Development Standards under Article 59-4
Section 7.7.1.A deems a legal structure or site design that existed on October 30, 2014 to be conforming and allows the structure and site design to be continued, renovated, repaired or reconstructed if the floor area, height, and footprint of the structure are not increased. On October 30, 2014, the Property was zoned C-1, and Staff has no evidence to suggest that the structure and site design were not legal on that date, so the existing structure and site design may be continued even if the Property does not meet the standards of the current NR zone.

General Development Requirements under Article 59-6
The Application has been reviewed for conformance with Article 6, General Development Requirements. Specifically, Staff has found the following Divisions apply in order to ensure the compatibility of the proposed conditional use: Division 6.2 Parking, Queuing and Loading; and Division 6.7 Signs. Unless otherwise noted, any sub-sections not listed were considered not applicable to the Application.

Because the Application does not propose any modifications to the existing building or the installation of any new outdoor lighting fixtures, Division 6.1 Site Access, Division 6.3 Open Space and Recreation, and Division 6.4 General Landscaping and Outdoor Lighting do not apply. The Property does not abut another property in an Agricultural, Rural Residential, or Residential zone that is vacant or improved with an agricultural or residential use, so the screening requirements in Division 6.5 do not apply. Division 6.6 Outdoor Storage does not apply to the outdoor sale, lease, or rental of motor vehicles and equipment as part of a properly allowed use.

Division 6.2. Parking, Loading, and Queuing
Section 6.2.4. Parking Requirements
The existing surface parking lot, which includes the parking spaces on the adjacent parcel to the east (Parcel B), is shared among all the businesses in the Shopping Center and the office building on Parcel B. The conditional use plan indicates that the parking
lot has 292 parking spaces. Thirteen of those spaces are proposed for use as U-Haul parking, so 279 spaces would be available for customer and employee parking.

Staff could not locate a record of the original approval for the Shopping Center to verify that the parking lot was approved for a sufficient number of spaces to accommodate the additional parking spaces required for the proposed use, so Staff calculated the parking requirement based on the 2014 Zoning Ordinance. The property manager provided Staff with information about the square footage of retail, office, and restaurant uses in the Shopping Center and the adjacent office building.

Parking Required for the Kemp Mill Shopping Center and the office building on adjacent Parcel B

<table>
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<th>Use</th>
<th>Metric</th>
<th>Gross floor area</th>
<th>Number of spaces required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail</td>
<td>5 spaces per 1,000 SF of Gross Leasable Area</td>
<td>57,760 sf</td>
<td>288</td>
</tr>
<tr>
<td>Office</td>
<td>2.25 spaces per 1,000 SF of Gross Leasable Area</td>
<td>8,600 sf</td>
<td>22</td>
</tr>
<tr>
<td>Restaurant</td>
<td>4 spaces per 1,000 SF for Patron Use</td>
<td>3,700 sf</td>
<td>15</td>
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</table>

| Total             | 279 spaces provided | 325 spaces required |

Parking Required for Proposed Use

<table>
<thead>
<tr>
<th>Use</th>
<th>Metric</th>
<th>Square Footage</th>
<th>Number of spaces required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Vehicle Rental</td>
<td>2.5 spaces per 1,000 sf of gross leasable area</td>
<td>1,300</td>
<td>4</td>
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</table>

Although the existing number of parking spaces (279) and the site design of the parking lot do not satisfy the requirement of the 2014 Zoning Ordinance, the existing Shopping Center parking lot is conforming ("grandfathered") under Section 7.7.1.A.1. However, given Staff’s calculation, the four additional spaces required for the proposed use cannot be accommodated within the existing parking lot. Staff supports a waiver of the four required spaces under Section 6.2.10 because the existing parking lot meets the intent of Division 6.2 to provide adequate parking in a safe and efficient manner. The Applicant indicates that the Shopping Center parking lot is relatively empty during the weekends, when the vehicle rental business is busiest, so the existing parking lot can accommodate the parking spaces required for the proposed use. Staff notes that some of the establishments in the Shopping Center, including the nearby grocery store, are closed on Saturdays.
No bicycle parking is required for the proposed use.

**Division 6.7. Signs**

*Section 6.7.9. Commercial/Residential, Employment, and Industrial Zones*

Section 6.7.9.A.2.a allows one sign for each customer entrance to a store, but Staff observed four signs on the front window of the Beer and Wine store (Figure 4). Therefore, Staff recommends a condition of approval requiring the Applicant to comply with Division 6.7. or obtain a sign variance under Section 7.4.4.

**Section 7.3.1.E.1.c.**

*substantially conforms with the recommendations of the applicable master plan;*

As discussed on page 9 of this report, the Property is located within the boundaries of the 2001 Kemp Mill Master Plan area, and the Application substantially conforms with the recommendations of the Master Plan.

**Section 7.3.1.E.1.d.**

*is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*

The proposed light vehicle rental facility, as conditioned in this report, will be harmonious with, and will not alter, the character of the surrounding neighborhood in a manner inconsistent with the plan. The proposed use is commercial in nature and as such fits in with the character of the strip Shopping Center. The vehicles will be stored out of sight to the side of and behind the Shopping Center, and the use will not detract from the neighborhood focus of the shopping area.

**Section 7.3.1.E.1.e.**

*will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Within the defined neighborhood, there are two approved special exceptions/conditional uses that are in the neighboring R-60 Zone. The proposed conditional use is in a commercial area, and it will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely, nor will the proposed use alter the predominantly residential nature of the surrounding neighborhood. As described on page 9, the conditional use application substantially conforms with the recommendations of the 2001 Kemp Mill Master Plan, and thus does not alter the nature of the area.

**Section 7.3.1.E.1.f.**

*will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate*
public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

A preliminary plan of subdivision is not required for this Application, and the Hearing Examiner must find that the proposed use will be served by adequate public services and facilities. Due to the nature of the proposed use, and because the Applicant will not expand the building or the parking lot, there will be no additional burden on schools, police and fire protection, water, sanitary sewer and storm drainage. The single area of increased demand on public facilities will be on transportation services. As discussed on pages 9-10 of this report, the transportation network can accommodate the proposed use. Therefore, the proposed use will be served by adequate public services and facilities.

Section 7.3.1.E.1.g
will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

Staff has identified the following inherent physical and operational characteristics of the proposed use: (1) the physical presence of rental vehicles and associated parking facilities; (2) lighting associated with the building; and (3) physical activity and traffic associated with employees and patrons traveling to and from the site. Non-inherent adverse effects may result from a situation unique to the physical location, operation, or size of a proposed use. There are no non-inherent impacts from this use. There is no expected undue harm to the neighborhood either as a result of the non-inherent adverse effects alone, or a combination of inherent or non-inherent adverse effects.

There are no adverse effects that will negatively impact the community above and beyond those inherent to the light vehicle sales and rental use. The Applicant is proposing to rent 21 vehicles or pieces of hauling equipment, and staff is recommending a condition of approval that will prohibit heavy vehicles. With these limitations, the operational and physical characteristics of the proposed light
vehicle rental use are consistent with the inherent characteristics of other light vehicles rental establishments.

The proposed use will not disturb the use, peaceful enjoyment, economic value, or development potential of abutting and confronting properties or the general neighborhood. No modifications are proposed to the existing building or site design. The Property abuts and confronts only non-residential properties and the proposed use will not have a detrimental impact to the use, peaceful enjoyment or economic value of those properties. Parking facilities for the rental vehicles and equipment are well screened from most vantage points, and will have minimal impact to the neighboring properties.

The proposed use will not have an adverse impact due to traffic, noise, dust, illumination, or a lack of parking. Traffic will be accommodated by the adjacent roadway network, with direct access to the Property from Lamberton Drive. The use will generate minimal noise, odors, or dust. The existing illumination for the Shopping Center will accommodate the proposed use. Parking is sufficient to accommodate rental vehicles, employees, and customers.

There will be no undue harm to the health, safety, or welfare of neighboring residents, visitors, or employees because the proposed Conditional Use meets all applicable development standards, has adequate and safe circulation in and around the site, and will be adequately served by public services and facilities.

Section 7.3.1.E.3  
The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Staff recommends approval with conditions.

Section 7.3.1.E.5  
The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

a. Filling Station;

b. Light Vehicle Sales and Rental (Outdoor);

c. Swimming Pool (Community); and

d. the following Recreation and Entertainment Facility use: swimming pool, commercial.

No other light vehicle rental businesses are located within the Staff defined neighborhood. The Applicant indicates that there are three similar rental businesses within a six to seven-mile radius, and that none of the other three locations opens earlier than 9:00 a.m. According to the Applicant, the Beer
and Wine store is the only light vehicle rental business that is open at 7:00 a.m. The Applicant states that the availability of vehicles as early as 7:00 a.m. (or earlier upon request) is crucial to the community. In addition, the Applicant submitted a sales report from U-Haul showing that during the year-to-date period ending on March 28, 2016, the Kemp Mill Beer and Wine store averaged 100 rentals per week. In the four-week period prior to March 28, 2016, the location averaged 46 rentals per week (Attachment 6).

Based on Staff’s Internet research, the Applicant’s statement about similar businesses located within a six to seven-mile radius is not accurate. Staff identified ten truck rental businesses within a seven-mile radius, not including the Applicant’s existing U-Haul rental business (Attachment 7). The closest truck rental business (Budget at White Oak located on New Hampshire Avenue) is 3.8 miles away from the Property. Seven out of the ten truck rental businesses within the seven-mile radius open before 9:00 a.m. on most days of the week. On Saturdays, five out of the ten truck rental businesses open before 9:00 a.m. On Sundays, however, only three out of the ten other business open before 9:00 a.m., and the closest (Budget Truck Rental located on Parklawn Drive) is over five miles away.

Although Staff research does not support the Applicant’s statement about the similar businesses within the defined seven-mile radius, it appears that the Kemp Mill Beer and Wine store offers vehicle rentals earlier than most of the other similar businesses in the general vicinity on Sundays. Given the nature of this business, Staff finds that a need exists in the general neighborhood for a vehicle rental service that opens early on both weekend days. In addition, the sales data (and the evidence of 46 to 100 rentals per week), along with the petition signed by 100 community members and business owners, provides evidence that the need exists at this location for a light vehicle rental business.

CONCLUSION

The proposed outdoor light vehicle rental use complies with the general conditions and standards for a conditional use. The proposed use is consistent with the goals and recommendations of the 2001 Kemp Mill Master Plan, and it will not alter the character of the surrounding neighborhood. Further, it will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval with conditions.

ATTACHMENTS
1. Conditional use plan
2. Violation & civil citation notice
3. Diagram of 10-foot-long U-Haul Truck
4. Ethio Addis Beer and Wine use and occupancy permit
5. Forest conservation exemption
6. U-Haul sales report
7. List of nearby truck rental businesses
ATTACHMENT 2

MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850-4166

NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer, being duly authorized, states that:

On, 11/11/16 the recipient of this NOTICE, Stephanie McQueeney

Recipient's Name

who represents the permittee/defendant, Kemp Hills Shopping Center Limited Partnership

Permittee's Name

is notified that a violation of Montgomery County Code, Section: 14-59-74.2.A.1

exists at: 1339 Lumberton Dr

Location

Case # 2000-495874-30281

The violation is described as: Failure to obtain a use and occupancy permit for light vehicle sales and rental

The following corrective action(s) must be performed immediately as directed, Obtain a use and occupancy permit for light vehicle sales and rental or cease use.

See attached Inspection Report(s) for additional violations and/or required corrective actions.

☐ An inspection fee of $ is required in addition to any application fee(s).

Compliance Time: 30 days Re-inspection Date(s): Feb 12, 2016 Permit Number: Code/Edition:

Failure to comply with this notice will result in the issuance of one or more $500.00 civil citations.

☐ A STOP WORK ORDER is also issued this date at the above referenced project. All construction activities on these premises must cease immediately. Only those activities required to correct violations may continue. Permission is required to resume construction.

ISSUED BY: Sergio Hurtado

Printed Name Signature Date

Phone No.: 240-447-3471

RECEIVED BY: Stephanie McQueeney

Printed Name Signature Date

Phone No.: 301-649-5300 Sent by Registered Mail/Return Receipt On:

RECIPIENT'S SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE OF VIOLATION
UNIFORM CIVIL CITATION

District Court of Maryland for MONTCOMER, COUNTY

County/Municipality/State of Maryland: Montgomery, MD in violation of: Municipal Infraction/County Ordinance/Public Local Law/Local Code: COMAR

Defendant's (Last) Name: Lamberton, Drive

DOB: 3-3-00

Telephone No.: 301-209-02

Height: 6'0"

Weight: 150 lbs

Sex: Male

Race: Caucasian

Hair: Black

Eyes: Brown

Location of Offense: Silver Spring, MD 20902

Day/Time: 3/19/16 3:30 PM

Document/Article: County Title Section: 59 Sub Section: 2.4.2 Paragraph: A.1

You may elect to stand trial by writing to the: Office of the County Attorney

and AVOID TRIAL. This will be deemed an admission of guilt and a trial date will not be set.

YOU MUST APPEAR IN COURT. A notice of trial date will be mailed to you.

YOU MAY PAY A FINE of $500 (entire amount required) by 3-21-16

Agency/Municipality: District Court. Payment of the fine will not close the case if abatement action is pending.

Payment Location: Office of the County Attorney

DO NOT SEND PAYMENT OF FINE. The District Court will mail you a notice of your trial date, time, and location. AT TRIAL the Court may impose a fine up to the maximum allowed by statute plus court costs.

IN ADDITION, is seeking abatement of this infraction.

You may be ordered to abate this infraction or be assessed the costs for the abatement, as well as a fine of up to $1,000, plus court costs. Payment of the preset fine will not satisfy the abatement action and an order of abatement may still be entered against you.

I solemnly affirm under the penalties of perjury, and based upon personal knowledge or the attached affidavit, that the contents of this citation are true and that I am competent to testify on these matters.

Sergio T. M. Date: 3-19-16

Issuing Officer's Signature

Officer's Printed Name: T. S. K. Date: 3-19-16

Agency: Sub-Agency: ID No.: Telephone: 240-447-3371

INSTRUCTIONS

PROSECUTOR'S COPY
ATTACHMENT 3

Features

- Fuel economy gauge
- Driver's side Air Bag
- Seats for 2 adults
- Automatic transmission
- Air conditioning
- Gentle-Ride suspension
- Disc brakes
- 29" Low Deck
- Fuel-efficient V-8
- Hitch with 2" ball
- Tie downs
- Rub rails

Capacity

- Volume: 402 cu. ft.
- Max load: 2,810 lbs.
- Gross vehicle weight: 8,600 lbs. max.
- Empty weight: 5,790 lbs.
- Towing capacity: Up to 6,000 lbs.

Fuel

- Unleaded fuel
- Fuel tank capacity: 31 gal.
- Miles per gallon: 12 mpg

All rental truck and trailer measurements are approximate. The equipment you receive may vary in size, based on the engineering/design specifications of multiple-production models.

The miles per gallon calculations are estimations for ideal driving circumstances. Many conditions can affect this number, including driving with a load, road grades, weather conditions and vehicle speed.

Loading and driving tips

How to Estimate How Much Fuel is Needed Before Returning a Moving Truck

Easily refuel your moving truck before returning it, using the

https://www.uhaul.com/Trucks/10ft-Moving-Truck-Rental/TM/

How to Load a Queen Mattress into a U-Haul Cargo Van

Learn how to load your mattress into a U-Haul Cargo Van. Cargo Van's can fit up to a Queen Size bed. Cargo vans are
Application for Use and Occupancy Certificate

Certificate AP#: 295684
Building AP#: 4-7

A: Type of Application:
- [ ] Use and Occupancy
- [ ] Open Land Use
- [ ] Home Health Practitioner
- [ ] Home Child Care Provider < 12 Children
- [ ] Shell and Core
- [ ] Change of Use
- [ ] Other [Light Vehicle Rental]

Principle Use: (Check One)
- [ ] Assembly
- [X] Business
- [ ] Educational
- [ ] Hotel
- [ ] Industrial
- [ ] Mercantile
- [ ] Misc. Structure
- [ ] Motel
- [ ] Place of Worship
- [ ] Public Utility
- [ ] Restaurant
- [ ] Storage
- [ ] Townhouses
- [ ] Construction Trailer
- [ ] Multi-Family -OR- [ ] Multi-Family Senior Building: # of Units
- [ ] Other

*If Business, please specify use:

B: Location of Building/Premises:
- Street Number: 14
- Street: Randolph Rd
- Town/City: Silver Spring, M.D.
- Zip: 20904
- Lot: Block:
- Parcel:

C: Owner/Developer Information:
- Property Owner's Name: H. I. D. Lew
- Address: 1507 Gainsborough Rd
- City: Potomac, M.D.
- State: Zip Code: 20854

D: Tenant Information:
- Tenant's Company Name: ETHAN BABAD PLAZA.
- Email: abbeke17@aol.com
- Tenant's Name: GUENET BEKELE
- Telephone No.: 301-785-2726
- Fax No.: 301-384-3984

E: Descriptive Occupancy Information:
- Hazardous Materials: [ ] YES [ ] NO
- Proposed Use: [Light Vehicle Rental]
- H.P.F.: [ ] YES [ ] NO
- Percent of Space: 80%
- Number of Company Vehicles: 3
- P.L.F.: 10 Feet
- Quantity of Space: 8
- Square Footage to be Occupied: 4000 sq.
- Number of Employees:

Person to contact to gain entry to space

Applicant's Signature: 3/17/15
Print Name: GUENET BEKELE
Date: 10/30/14

Zoning Use Only:
- Zoning Use Category: Light Vehicle Rental
- Zoning Type: CB
- Parking Required: 6
- Parking Provided: 6
- Special Exception Case Number:
- Secondary Use:

Reason for Disapproval:

Approved [ ] Disapproved

10 FT TRUCK MEETS THE STANDARD FOR LIGHT COMMERCIAL VEHICLE.
Development Applications and Regulatory Coordination Division

M-NCPPC
8787 Georgia Avenue, Silver Spring, MD 20910
301-495-4550, fax: 301-495-1306

Forest Conservation Law Applicability for Conditional Uses/Special Exceptions

Property Information

129 Emler Road Drive
Silver Spring, MD 20902

Aplicant (Owner, Contract Purchaser, or Owner’s Representative)

Bharati Kunwara

Name

129 Emler Road Drive

Street Address

Edithvorsy

City

240-843-1287

Phone Number

Email Address

Total Area of Property: 0.48 acres 282,584 square feet

Applicant attests that the following statements apply to the subject property conditional use/special exception application:

☑ The application does not propose any clearing or grading activities on or near the conditional use/special exception site. (Requires plan number and M-NCPPC signature below)

☑ The application applies to a property of less than 40,000 square feet. (Not subject to Forest Conservation Law; requires M-NCPPC signature below)

☑ The property is not subject to a previously approved Forest Conservation Plan. (Not subject to Forest Conservation Law; requires M-NCPPC signature below)

☑ The conditional use/special exception proposal will not impact any champion tree as defined by the Montgomery County Forestry Board.

PLEASE NOTE: If regulated activities occur on the property other than what is being attested to, the exemption immediately terminates without action by the Planning Board. The Planning Director may require the submission and approval of a Natural Resources inventory/Forest Stand Delineation and a Forest Conservation Plan, and may also issue a fine of up to $1,000 per day.

Applicant’s Signature
Bharati Kunwara

Printed Name

Date
1/29/2016

For Staff Use Only

M-NCPPC acknowledges that the conditional use/special exception for the above property:

☑ is not subject to the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code.

☑ is exempt from the Forest Conservation Plan requirements under Section 22A-5(a)(1) of the Forest Conservation Law.

Plan Name: Kemp Mill Beer and Wine U-Haul
Plan Number: 2015-2048

Date
06/07/2016

Printed Name
Stephen H. Findley
| DEALER NUMBER | DEALER NAME                | INVENTORY                      | WEEKLY AVERAGES - LAST FOUR WEEKS | WEEKLY AVERAGES - YEAR TO DATE | ACCOUNTING % | WEEKEND% | WEEKDAY% | TOTAL | LOCAL | ONE WAY | TOTAL | TOTAL | LOCAL | ONE WAY | TOTAL | LOCAL | ONE WAY | TOTAL | LOCAL | ONE WAY | TOTAL | LOCAL | ONE WAY | TOTAL | LOCAL | ONE WAY | TOTAL | LOCAL | ONE WAY | TOTAL | LOCAL | ONE WAY | TOTAL | LOCAL | ONE WAY | TOTAL |
|---------------|----------------------------|--------------------------------|-----------------------------------|--------------------------------|---------------|-----------|-----------|-------|-------|---------|-------|-------|-------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|---------|-------|-------|
| 03597         | PICK-UP (BP)-L             |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 03597         | *SPECIALTY TRUCKS          |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | AUTO TRANSPORT             |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | FURNITURE PADS             |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | APPLIANCE DOLLY            |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | UD-UTILITY DOLLY           |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | FURNITURE DOLLY            |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | * SPECIAL SRI              |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | *** TOTAL SRI              |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | *** ALL UMOVE EQUIP        |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |
| 04000         | **** GRAND TOTAL           |                                |                                   |                                |               |           |           |       |       |         |       |       |       |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |         |       |       |

56389 ETHE ADDIS BEER & W DATES RPTD 03/30 C/3/3 04/01 04/02 04/03 04/04 04/05

AA

* DA DEALER RENTING MOTOR VEHICLES.

** DATE OF LAST CSR CO/00/00

* CSR LAST FOUR WEEKS

14' VAN (DC)
10' VAN (TM)
* ONE WAY TRUCKS
14' VAN (DC)+L
10' VAN (TM)+L
* LOCAL TRUCKS
CARGO VAN (BE)
CARGO VAN (BE)+L
* SPECIALTY TRUCKS
** ALL TRUCKS
FURNITURE PADS
APPLIANCE DOLLY
UD-UTILITY DOLLY
FURNITURE DOLLY
* SPECIAL SRI
** TOTAL SRI
*** ALL UMOVE EQUIP
**** GRAND TOTAL

03548 NEW HAMPSHIRE BP DATES RPTD 03/30 C/3/3 04/01 04/02 04/03 04/04 04/05

** DATE OF LAST CSR 07/01/99

* CSR LAST FOUR WEEKS

26' VAN (JH)
20' VAN (TT)
10' VAN (CL)
14' VAN (DC)
10' VAN (TM)
* ONE WAY TRUCKS
CARGO VAN (BE)+L
** TOTAL TRUCKS
** ALL TRUCKS
FURNITURE PADS

OPEN SEP. 15

* DEALER RENTING MOTOR VEHICLES.

** DATE OF LAST CSR 07/01/99

* CSR LAST FOUR WEEKS

10' VAN (JH)
20' VAN (TT)
10' VAN (CL)
14' VAN (DC)
10' VAN (TM)
* ONE WAY TRUCKS
CARGO VAN (BE)+L
** TOTAL TRUCKS
** ALL TRUCKS
FURNITURE PADS

OPEN SEP. 15

* DEALER RENTING MOTOR VEHICLES.

** DATE OF LAST CSR 07/01/99

* CSR LAST FOUR WEEKS

10' VAN (JH)
20' VAN (TT)
10' VAN (CL)
14' VAN (DC)
10' VAN (TM)
* ONE WAY TRUCKS
CARGO VAN (BE)+L
** TOTAL TRUCKS
** ALL TRUCKS
FURNITURE PADS

OPEN SEP. 15

* DEALER RENTING MOTOR VEHICLES.

** DATE OF LAST CSR 07/01/99

* CSR LAST FOUR WEEKS

10' VAN (JH)
20' VAN (TT)
10' VAN (CL)
14' VAN (DC)
10' VAN (TM)
* ONE WAY TRUCKS
CARGO VAN (BE)+L
** TOTAL TRUCKS
** ALL TRUCKS
FURNITURE PADS
Truck Rental Businesses Within a 7-mile Driving Distance of Kemp Mill Beer and Wine (1339 Lamberton Drive)

This information was compiled by Planning Department Staff based on data from google maps, uhaul.com, budgettruck.com, and pensketruckrental.com.

1. Penske Truck Rental (Home Depot)- 6.1 miles  
   2300 Broadbirch Drive, Silver Spring  
   Monday- Saturday: 6am-10pm  
   Sunday: 7am- 8pm

2. Penske Truck Rental (Home Depot)- 5.3 miles  
   14000 Georgia Ave, Aspen Hill  
   Sunday: 8:00 AM - 8:00 PM  
   Monday – Saturday: 7:00 AM - 8:00 PM

3. Budget At White Oak- 3.8 miles  
   11259 New Hampshire Ave, Silver Spring  
   Monday- Friday: 8am-6pm  
   Saturday: 9am-2pm  
   Sunday: 10am- 2pm

4. Budget Truck Rental- 5.2 miles  
   1711 Parklawn Drive, Rockville  
   Monday-Friday: 8am-7pm  
   Saturday and Sunday: 8am-3pm

5. Budget of Silver Spring- 4.7 miles  
   619 Sligo Avenue, Silver Spring  
   Monday-Friday: 8 am-7 pm  
   Saturday: 9am-2pm  
   Sunday: 10 am-3 pm

   10226 New Hampshire Ave, Silver Spring  
   Monday-Sunday: 9am-5pm
7. U-Haul Moving and Storage of Takoma Park- 5.8 miles
   6889 New Hampshire Ave, Takoma Park
   Monday-Thursday: 7 am - 7 pm
   Friday: 7 am - 8 pm
   Saturday: 7 am - 7 pm
   Sunday: 9 am - 5 pm

8. AJ Enterprises LLC (U-Haul Neighborhood Dealer)- 5.3 miles
   2045 University Blvd #L11, Hyattsville
   Monday-Friday: 10 am - 7 pm
   Saturday: 9 am - 7 pm
   Sunday: Closed

9. U-Haul Moving and Storage at Randolph Road- 5.3 miles
   12025 Parklawn Drive, Rockville
   Monday- Thursday, Saturday: 7am- 7pm
   Sunday: 9am-5pm

10. Ethio Addis Beer & Wine Market (U-Haul Neighborhood Dealer)- 4 miles
    14 Randolph Rd, Silver Spring
    Monday-Saturday: 11am-7pm
    Sunday: 11am-5pm