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December 15, 2025

Via FEDEX, Facsimile, and hand delivery

Town of Warrenton Board of Zoning Appeals
Warrenton Department of Community Development
21 Main Street
Warrenton, VA 20188
bza@warrentonva.gov

Via FEDEX and Facsimile:

Copy to:

Gordon D. Todd, Esq.
c/o Amazon Data Center Services, Inc.
Sidney Austin, LLP.
1501 K Street N.W.
Washington, D.C. 20005

Re: Response to Amazon Petition for appeal of Zoning Administrator's Determination

Ms. Maybach and Members of the Board of Zoning Appeals:

I represent the Town of Warrenton, VA ("Town") as the Town Attorney. We are in receipt of a November 24, 2025, letter ("Petition") from counsel for Amazon Data Services, Inc. ("Amazon"), Gordon D. Todd, petitioning the Town of Warrenton Board of Zoning Appeals ("Board"). This Petition is an appeal of an October 24, 2025 determination ("the Determination") by the Town's Zoning Administrator, Heather E. Jenkins, in response to Amazon's request for recognition of certain vested property rights. Ms. Jenkins denied that any such property rights exist, thereby triggering the Petition.

We respond to the Petition on behalf of the Town and ask the Board to uphold Ms. Jenkins' Determination. We state our reasons below.

I. Background and facts concerning the subject property.

(a) Amazon's purchase of the Property and the arising judicial action.

The Determination concerns certain property within the Town's corporate limit which is designated as local Tax Parcel No. 6984-69-2419-000 ("Property"). On August 10, 2021, the Town Council ("Council") passed an ordinance, containing a zoning text amendment ("ZOTA") amending Articles 3, 9, and 12 of the Town's Zoning Ordinance to allow data centers to be built and operated within the Town's industrial zoning district upon the Town Council's approval of a special use permit. This had not been a pre-existing use allowed within the Town.

On or around September 21, 2021, a month after the ZOTA was enacted, Amazon purchased the Property at issue. On April 13, 2022, Amazon applied for a special use permit to build a data center on the Property ("SUP-22-3"), which was located in the industrial zoning district. On February 14, 2023, after months of contested debate, the Town Council formally voted to approve SUP-22-3 on a 4-3 vote.

Shortly thereafter, on March 16, 2023, a group of Warrenton citizens timely filed a civil action, *Charles Cross et al. v. Town of Warrenton, VA, et al.* CL23000128-00 ("the Rezoning Challenge" or "Action") challenging the validity of SUP-22-3, seeking *inter alia*:

- (i) declaratory judgment that the ZOTA is *void ab initio*;
- (ii) declaratory judgment that SUP-22-3 is *void ab initio*; and
- (iii) the issuance of a writ of mandamus compelling Town Officials to deny any permits or approvals related to SUP-22-3.

The Rezoning Challenge has been pending for the last three years. It is set to go to trial on the merits in March 2026, as explained *infra*.

On April 18, 2024, while the Rezoning Challenge was pending, the Town approved a Site Development Plan ("Site Plan") submitted by Amazon related to the development of the data center – SDP-23-6. On June 14, 2024, a second circuit court action was filed, CL24000303, seeking a writ of mandamus requiring the Board to review the legality of the Site Plan. That action is also currently pending; meanwhile, the Town has issued no further permits for development.

(b) Current posture of the judicial Action.

On January 14, 2025, the Circuit Court entered a **consent** order (“the Consent Order”) on parties’ request to maintain *status quo* of the property and prohibiting further approvals from the Town related to Amazon’s development of the data center, while the Rezoning Challenge was pending. *See attached*, Exh. A. The consent order decreed:

“Amazon shall not seek, nor shall the Town approve, further permits or approvals related to the construction of a data center on the Property, including without limitation, land disturbance permits or building permits, nor shall Amazon otherwise further construction of the data center on the Property, until a Final Order has been entered.”

The matter is set for trial on March 9, 2026 for seven (7) days, at which time the validity of SUP-22-3 will be determined by the Court. Presumably, a Final Order will be entered at that time; until then, the Consent Order governs.

(c) Amazon’s request under Va. Code §15.2-2307 and Ms. Jenkins’ Determination

Despite the Consent Order and ongoing injunction maintaining the *status quo* and restricting the Parties from furthering the data center construction, Amazon has now submitted a request for a zoning administrator’s determination under Va. Code §15.2-2307 to Ms. Jenkins requesting that the Town “recognize the development activities, financial commitments and sustained pursuit of project implemented [omitted], and confirm that vested rights have accrued for [Amazon] data center project pursuant to the SUP and Site Plan.” *See attached*, Amazon’s request letter as Exh. B (“Request”).

Ms. Jenkins responded to Amazon’s request on October 24, 2025, incorporating a number of procedural events that have transpired in the Action as a part of her Determination. Specifically, Ms. Jenkins cited the underlying litigation and the Consent Order between Amazon, the Town, and the Plaintiffs of the Action to maintain the *status quo* as the Court determines the vested rights of Amazon. *See attached*, the Determination as Exh. C.

Ms. Jenkins asserted that she could not affirm Amazon’s vested rights under SUP-22-3 and the Site Plan “until the Circuit Court actions referenced herein have been fully and definitively resolved, as the legality of the [] the [approval of such permits] are wholly dependent on those determinations”. *Id.* For that reason, Ms. Jenkins concluded that Amazon does not “currently possess” vested rights under Va. Code §15.2-2307 related to the Property, notwithstanding the Town’s prior (now challenged) approvals. Amazon now appeals this Determination.

II. The Board's Jurisdiction

The Board has jurisdiction over Ms. Jenkins' Determination under Va. Code §15.2-2311 to review an appeal to a decision made by the Zoning Administrator, i.e. the Determination, which was issued pursuant to Va. Code §15.2-2307.

III. Argument

The Board should uphold Ms. Jenkins' Determination, considering the Parties' current agreement under court order to maintain *status quo*. Ms. Jenkins' decision to do otherwise is barred by the Court's standing injunction. For the Town to, through its public officer, affirmatively recognize vested property rights under Va. Code §15.2-2307 and §15.2-2311 would put it at risk of violating a direct order from the Circuit Court.

In light of the foregoing facts and particularly the entry of a "consent" order staying development, Amazon's appeal under Va. Code §15.2-2307(a) and (b) to secure its vested rights under question is not well-taken. The Town, in protection of the rights of its citizens – particularly those adversely affected by SUP-22-3 – anticipates a Court determination on the merits of the Rezoning Challenge and will not act to frustrate or complicate the facts before the Court before a final determination. Any decision to find "vested rights" would frustrate that litigation and short-circuit the legal relief available under Va. Code Title 15.2. *Hladys v. Commonwealth*, 235 Va. 145, 148-49 (1988)(there is a presumption of correctness in a zoning administrator's interpretation of a zoning ordinance and the issuance of permits in the absence of bias and improper conduct).

(a) The Court's Injunction Order is a bar to this action and militates against any "reliance" by Amazon

The existing injunction prohibits the Town from issuing approvals or permits related to the construction of a data center. It also prohibits Amazon from furthering construction of the data center until a final order is issued by the Fauquier Circuit Court. The Town reads this injunction as including a prohibition of *aiding* Amazon in furthering construction through ministerial means. Such is the crux of Ms. Jenkins' Determination.

Ms. Jenkins is a public officer, the Town's Zoning Administrator for the purposes of Va. Code §15.2-2307. As such, she is bound by the Court's orders in her official capacity. The Court's injunction is binding on public officers operating in their ministerial capacity. *Hutchins v. Carrillo*, 27 Va. App. 595, 610 (1998)(citing *Yoder v. Givens*, 179 Va. 229, 235 (1942)). *Cardenas Flores v. Commonwealth*, 84 Va. App. 459, 509 (2025)("[a] judge [...] orders must, when otherwise right and proper be recognized as valid and binding.").

The Action currently challenges the validity of SUP-22-3, submitting that the permit is void *ab initio*, primarily due to the failure of the ZOTA to be properly enacted.

If this is the case, no determination from the Town's zoning administrator can change this fact. The term "void *ad initio*" is defined as an instrument null from its inception. Otherwise stated, a void instrument is a complete nullity. *Singh v. Mooney*, 261 Va. 48 (2001). This has been recognized doctrine in cases concerning the validity of local government ordinances. *See e.g.*, *Berry v. Board of Supervisors*, 302 Va. 114 (2023); *Calway v. city of Chesapeake*, 79 Va. App. 220 (2023); *Glazebrook v. Bd. of Supervisors*, 266 Va. 550 (2003); *City Council of Alexandria v. Potomac Greens Assocs. Partnership*, 245 Va. 371 1993).

The circumstances around the validity of the SUP-22-3 are currently before the Circuit Court of Fauquier County, which has jurisdiction over the Town and Amazon as parties to that Action. There is no doubt that a factual determination will be determined by the Court through its fact-finding role, whether Amazon's rights are vested, regardless of SUP-22-3's validity. Such analysis will be necessary to determine whether the petitioners' prayer to enjoin the Town and Amazon from furthering the development of the Property is permitted from a Va. Code §15.2-2307 standpoint.

Amazon's recent request is a manufactured attempt to create a new basis for it to rely on a government act on which to base its vested rights claims in the Action. This presents Amazon with the ability to "circumvent" the entire judicial process. Va. Code §15.2-2307(B) names among the enumerated "governmental acts" that a landowner may rely "in good faith" to establish a vested right is a "zoning administrator['s] [...] written [...] determination regarding the permissibility of a specific use [...] of the landowner's property [...]."

That request is both a violation of the Consent Order and expressly defies the purpose of Va. Code §15.2-2307, which recognizes and requires "good faith reliance" on governmental acts.

Here, a determination that recognizes SUP-22-3 and the Site Plan vests rights with Amazon – without any legal determination of the ZOTA or other governmental acts – would illegally circumvent the litigation and could even be binding on the Town.

"[W]hen a zoning administrator has acted within the scope of his employment and made a "decision" or "determination" within the meaning of Code §15.2-2311(C), he or she has also bound the [Council]". If they were not binding, "it would afford scant, if any, protection to the property owner, and would not serve to "remedy the mischief at which [the statute] is directed." *Manu v. GEICO Cas. Co.*, 293 Va. 371, 389 (2017)(changes in original); *Bd. of Supervisors v. Bowman*, 2025 Va. App. LEXIS 202, *10 (finding that in limited circumstances a land owner can rely on the determinations of a zoning administrator even if erroneous to acquire vested rights); *Lynch v. Spotsylvania County Bd. of Zoning Appeal*, 42 Va. Cir. 164 (1997).

Indeed, regardless of whether the Circuit Court determines SUP-22-3 and the Site Plan were valid and vested rights, it is possible that Amazon could potentially rely on Ms. Jenkins'

determination – as an independent governmental act – under Va. Code §15.2-2307. If so, the legal questions surrounding the ZOTA, SUP-22-3 and the Site Plan could be rendered moot. Again, that cannot be the correct result.

Taking the Consent Order substantively, the Parties agreed to maintain status quo for the remainder of the Action. *See supra*. Amazon is correct that the Consent Order does not apply to any rights or privileges that may have already vested. *See Petition at pg. 12* (“[i]t did not put the parties back to a status quo *ex ante*; it merely locked the parties into the status quo as it existed on January 14, 2025”). But the order does more. It prohibits affirmative acts from either party in connection with permits or approval, or furtherance of the construction of the data center. Now, Amazon has done just the opposite – it has asked the Town for an affirmation that its property rights in the data center are “vested.”

The Town interprets an affirmative recognition of vested rights as further “approval” by the Town in connection with the Property. This is prohibited by the Consent Order. Further, even if the Determination would not be considered a permit or approval under the language of the order, it would still be an action “further[ing] the construction of the data center on the Property”. The Virginia Supreme Court has stated:

“Though an injunction may have been erroneously granted, unless it is absolutely void, it is the duty of the parties enjoined to obey it scrupulously, and they will be held to a strict observance of it. If they violate the order themselves, or assist or encourage others to violate it, they may be punished by the court for their contempt.” (emphasis added).

United Marine Div. of International Longshoremen’s Ass’n v. Commonwealth, 193 Va. 773, 783 (1952)(citing *Deeds v. Gilmer*, 162 Va. 157 (1934)).

The Town has rightly elected not to aid Amazon in breaching the Court’s order.

(b) An affirmative determination cannot be retroactively applied on past substantial reliance.

Amazon claims there is no serious dispute before the Zoning Administrator prohibiting her from recognizing vested rights. *See Petition at pg. 6*. This ignores the nature of the Action entirely, and the Town’s obligations under the Consent Order until permitted to do otherwise. But as part of its argument for recognition - Amazon claims that it had “engaged in significant affirmative governmental acts by approving Amazon’s SUP”, as well as approving the Site Plan. These comprise of numerous alleged obligations and expenses in reliance of the Town’s prior passing of SUP-22-3 and the Site Plan, for example:

- Performed tree felling on-site;

- Engaged a general contractor;
- Performed property management activities; and
- Began designing and procuring long lead-time equipment.

See Request at pg. 3-4.

All these examples are Va. Code §15.2-2307(a) obligations and expenses incurred in reliance on the Town’s previous actions – the approval of SUP-22-3 and the Site Plan respectively. None of these activities are dependent on this new governmental act (the Determination) on which it may rely. As such, Amazon’s reference to these activities is not relevant to Ms. Jenkins’ Determination. None of these activities, obligations, or costs incurred are attributable to Ms. Jenkins’ October 24, 2025 letter. These obligations were incurred prior to Amazon’s Request. They cannot be construed as obligations “incurred” in “good faith” a reliance on the Town’s activities. *See* Va Code. 15.2-2207(A).

Further, all of these activities occurred with knowledge that the Rezoning Challenge had been filed and was occurring. It would be impossible for Amazon to “rely” on zoning decisions and other actions, which it knew were being challenged in Court. To allow a litigant in such case to simply obtain a “vested rights” determination from the locality would nullify all the legal rights pertaining to citizen-plaintiffs under Va. Code §15.2-2285 or otherwise.

(c) Amazon’s references to the Town’s removal of the Zoning Text Amendment in July 2025 is a red herring; and is irrelevant to whether Amazon has vested rights in the Property.

Amazon has referenced the Town’s July 2025 ordinance amending the Zoning Ordinance Arts. 3, 9, and 12 removing the 2021 language allowing data centers as a permitted use within the Town’s Industrial Zoning District. *See* Petition at pg. 5. Amazon claims:

“The Town’s about-face put at risk Amazon’s substantial investment in the Project, to say nothing of its \$550 million-plus planned future investment in construction, job creation, and technical skills education in Warrenton and Fauquier County. This uncertainty compelled Amazon to forgo its immediate right to build in Warrenton and instead to lease data center space in another locality to fulfil its customers’ needs [...].”

Reference to the July 2025 Zoning Ordinance text amendment – which occurred over two years after the Rezoning – does nothing to bolster Amazon’s claim that its rights vested in approval of the SUP-22-3 and the Site Plan. Indeed, the Minutes from the Council’s passage of that zoning ordinance amendment made it plain that it was prospective only in effect.

As Amazon has stated throughout its Petition – Va. Code §15.2-2307 states “a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance”. Va. Code §15.2-2311(C) states:

“[i]n no event shall a written order [...] decision [...] made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud.”

Neither the Town Council’s July 2025 “about-face” nor the Determination affected any rights that may have legally vested in the time of the Town’s approval of SUP-22-3 or the Site Plan – and which will be on trial in March 2026. The Town’s latter actions are neither “a change, modification, or reversal” of any *valid* decision issued by the Town. Amazon’s statement that the July 2025 ordinance amendment compelled Amazon to “forgo” its immediate rights in the Property is not credible and casts doubt on its reasons for its Request – especially as the Consent Order had already been entered six (6) months earlier. The legality of the ZOTA and the 2023 Rezoning will be determined by the legal outcome of the Rezoning Challenge – not by a Town Council action taken years afterwards. For these reasons the Board should disregard any reference to the July 2025 Ordinance change.

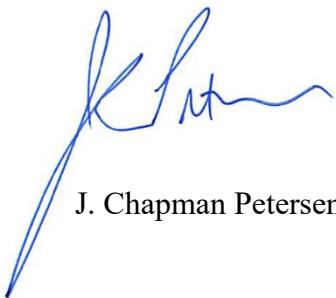
IV. Conclusion

In light of the pending litigation, the Town is unable to recognize any vested rights Amazon may have in Property as they relate to the construction of a data center. This is due to the valid Consent Order currently in force by Fauquier County, which prohibits the Town from issuing any further approvals or permits to Amazon related to the construction of a data center, as well as the requirement of “reliance” as articulated in Virginia law. To do otherwise would potentially render the Action moot and thus cause injury to the Town’s constituents whose interests lies in the fair administration of justice from the Courts.

The Board should uphold Ms. Jenkins’ Determination and permit the questions to be tried in Fauquier County Circuit Court.

Letter to Warrenton Board of Zoning Appeals
December 15, 2025
Page 9 of 9

Thank you,

A handwritten signature in blue ink, appearing to read "J. Chapman Petersen".

Enclosures as stated
cc: Mayor and Town Council
Acting Town Manager
Zoning Administrator

EXHIBIT A

VIRGINIA:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY

CHARLES AND MARYGAY CROSS, *et al.*)
Plaintiffs-Petitioners)
v.) Case No. CL 23-128
TOWN COUNCIL FOR THE)
TOWN OF WARRENTON, *et al.*)
Defendants-Respondents)

CONSENT ORDER

THIS MATTER is before the Court on the Parties' request for entry of an Order maintaining the status quo and staying further approvals related to the construction of a data center by Defendant Amazon Data Services, Inc. ("Amazon") on certain property described herein until a final order has been entered by this Court fully resolving the claims remaining in the First Amended Petition (the "Final Order") or upon further Order of the Court; and

IT APPEARING that this case involves a challenge to the Town Council of the Town of Warrenton's approval of Amazon's application for Special Use Permit #22-03 (the "Amazon SUP"), which authorizes the construction of a data center on property located in the Town of Warrenton identified as Parcel ID 6984-69-2419 (the "Property"), subject to further approvals from the Town of Warrenton; and

IT FURTHER APPEARING that following the approval of the Amazon SUP and the filing of the First Amended Petition by Plaintiffs-Petitioners (the “**Citizens**”) in this case, Amazon filed a Site Development Plan (“**SDP**”) for the construction of a data center on the Property, which **SDP** was approved by the Town of Warrenton on or about April 18, 2024 (the “**SDP Approval**”); and

IT FURTHER APPEARING that on May 16, 2024, the Citizens sought to appeal the SDP Approval to the Board of Zoning Appeals of the Town of Warrenton (the “BZA Appeal”), and on May 29, 2024, filed a Motion for Preliminary Injunctive Relief in this Court (the “Preliminary Injunction Motion”), which addressed the BZA Appeal and requested, among other things, “that all proceedings in furtherance of the Amazon SUP be stayed … throughout the duration of the Amazon SUP Case to final judgment;” and

IT FURTHER APPEARING that the SDP Approval and BZA Appeal, among other acts, are the subject of two other proceedings in this Court, Case Nos. CL24000303-00, and CL24000305-00 (the “SDP Approval Cases”); and

IT FURTHER APPEARING that the Preliminary Injunction Motion is scheduled for a two-day evidentiary hearing on January 21 and 22, 2025; and

IT FURTHER APPEARING that, without prejudice to the Parties’ arguments regarding the Amazon SUP, the SDP Approval or the Preliminary Injunction Motion, or any arguments in the SDP Approval Cases or in this Amazon SUP Case, the Parties have agreed to maintain the status quo and Amazon has agreed not to pursue further approvals, to seek development permits related to construction or to further construction of the data center on the Property until a Final Order has been entered; and

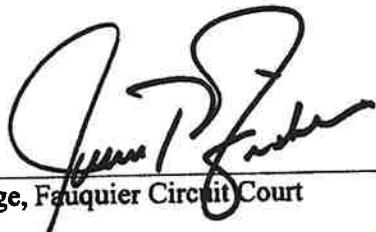
IT FURTHER APPEARING that the entry of this Order is just and proper in all respects, it is hereby

ORDERED, ADJUDGED, and DECREED that Amazon shall not seek, nor shall the Town approve, further permits or approvals related to the construction of a data center on the Property, including, without limitation, land disturbance permits or building permits, nor shall Amazon otherwise further construction of the data center on the Property, until a Final Order has been

entered. This Order is entered on the joint request of the Parties and shall not constitute a decision on the merits of the Preliminary Injunction Motion or any issue remaining in the Amazon SUP Case, or any issue relating to the BZA Appeal in the SDP Approval Cases, with all Parties expressly reserving all arguments related thereto. Any Party may seek the dissolution or extension of this Order and, in the event that all Parties do not consent to its dissolution or extension, then before this Order is dissolved or extended the Preliminary Injunction Motion shall be scheduled for a hearing, and ruled upon. The hearing on the Preliminary Injunction Motion currently scheduled for January 21 and 22, 2025, is hereby removed from the docket without prejudice and may be reset as set forth herein.

THIS MATTER SHALL CONTINUE.

ENTERED January 14⁵, 2025.



Judge, Fauquier Circuit Court

James P. Fisher, Judge

WE ASK FOR THIS:



John H. Foote, VSB No. 14336
Matthew A. Westover, VSB No. 82798
Brooke N. West, Esq., VSB No. 99595
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Counsel for Amazon Data Services, Inc.

E: WESTOVER
BRADY
CLM
1-14-25
P

SEEN AND CONSENTED TO AS STATED, RESERVING ALL ARGUMENTS AND
OBJECTIONS IN THIS CASE, THE BZA APPEAL, AND SDP APPROVAL CASES


Dale G. Mullen (VSB No. 48596)
Michael H. Brady (VSB No. 78309)
Michelle E. Hoffer (VSB No. 97029)
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Counsel for Plaintiffs-Petitioners


SEEN AND CONSENTED TO AS STATED, RESERVING ALL ARGUMENTS AND
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Counsel for Defendant-Respondent, Town of Warrenton, Virginia

EXHIBIT B



**WALSH COLUCCI
LUBELEY & WALSH PC**

John H. Foote
(703) 680-4664 Ext. 5114
jfoote@thelandlawyers.com
Fax: (703) 680-2161

July 25, 2025

Via E-Mail & First Class Mail

Heather Jenkins, Zoning Administrator
Town of Warrenton
21 Main Street
Warrenton, Virginia 20186

Re: Vesting Determination

Dear Ms. Jenkins:

On behalf of Amazon Web Services (“AWS”), and in accordance with Sec. 11-1.1 (3) of the Town of Warrenton Zoning Ordinance (the “Zoning Ordinance”), we respectfully submit this letter requesting a determination of vested rights for the data center development project located on Blackwell Road (Parcel Number 6984-69-2419-000) in the Town of Warrenton (the “Project”) and approved under Special Use Permit SUP 22-03 (the “SUP”) and Site Development Plan SDP-23-6 (the “Site Plan”). The Project has advanced significantly since the Town Council’s approval of the SUP on February 14, 2023. AWS has performed substantial steps in reliance on the SUP and Site Plan, and we submit that vested rights have accrued consistently with Virginia Code § 15.2-2307.

In 2021, the Town initiated and approved a Zoning Ordinance Text Amendment to allow data centers in the Industrial District by Special Use Permit. Following this amendment, AWS submitted its SUP application in May 2022. Over the course of that year, the application underwent a full public process, including multiple work sessions, several submissions, and multiple public hearings before both the Planning Commission and Town Council. On February 14, 2023, the Town Council voted 4-3 to approve the SUP subject to specific plans, elevations, and conditions of approval.

In reliance on the SUP approval by the Town Council, AWS implemented steps to advance the Project. These efforts have included environmental due diligence, site design, agency coordination, and contractual commitments, among others. Additionally, and in accordance with Sec. 11-3.7.1 of the Zoning Ordinance, AWS submitted the Site Plan in March 2023. After receiving staff comments, AWS submitted a revised Site Plan in October 2023. The

ATTORNEYS AT LAW

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4310 PRINCE WILLIAM PARKWAY ■ SUITE 300 ■ WOODBRIDGE, VA 22192-5199

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Site Plan was reviewed and ultimately approved by the Zoning Administrator on April 18, 2024. Pursuant to Virginia Code § 15.2-2261 and 15.2-2209.1, and as referenced in Sec. 10-7.8 of the Zoning Ordinance, the Site Plan remains valid for a period of five years from the date of approval.

Since the approval of the Site Plan, AWS has undertaken the following actions consistent with, and in furtherance of, both the SUP and Site Plan:

- Completed environmental soil sampling and early-stage physical work.
- Tree felling on-site (no land disturbance permit is required at this stage).
- Design and procurement planning for long-lead time equipment.
- Contracts with a general contractor.
- Property management activities.
- Design engineering.
- Execution of Letter of Authorization (LOA) with Dominion Energy.
- Significant coordination with Town staff through biweekly meetings related to Site Plan approval, community engagement efforts, and FOIA procedures.

All of these activities have resulted in AWS incurring costs in excess of \$3,500,000. These activities demonstrate continuous project engagement and diligent pursuit of the data center development in material reliance on the approved SUP and Site Plan.

Under Virginia Code § 15.2-2307, a party obtains vested rights when a significant affirmative governmental act has occurred (such as approval of a Special Use Permit or Site Plan), the owner has materially and substantially changed position in good faith reliance on that act, and has incurred significant obligations and expenses pursuing the project in reliance on such governmental act. Approval of the SUP and the Site Plan, combined with the substantial post-approval development activity, investment, and planning undertaken by AWS meet this standard. As noted previously, Sec. 11-1.1 (3) of the Zoning Ordinance authorizes the Zoning Administrator to make findings of facts and, with the concurrence of the Town attorney, conclusions of law regarding determinations of rights accruing under Virginia Code § 15.2-2307.

Accordingly, we respectfully request that the Town of Warrenton recognize the development activities, financial commitments, and sustained pursuit of project implementation as described herein, and confirm that vested rights have accrued for the AWS data center project pursuant to the SUP and Site Plan. If you request any additional information in furtherance of this determination, please do not hesitate to contact us. We look forward to continuing to coordinate with the Town and to provide ongoing updates as the project advances toward construction.

Very truly yours,

WALSH, COLUCCI,
LUBELEY & WALSH, P.C.

John H. Foote

John H. Foote

cc: Rob Walton, Director of Community Development
Frank Cassidy, Town Manager
Marnina Cherkin, Esq.

JHF/jf

N

EXHIBIT C



TOWN OF WARRENTON
Community Development Department

PO BOX 341
WARRENTON, VIRGINIA 20188
<http://www.warrentonva.gov>
LandDevelopment@warrentonva.gov
(540) 347-2405

October 24, 2025

Applicant:

John H. Foote
Walsh Colucci Lubeley & Walsh P.C.
4310 Prince William Parkway, Suite 300
Woodbridge, VA 22192-5199
jfoote@thelandlawyers.com

Property Owner:

Amazon Data Services, Inc.
Attn: Real Estate Manager (AWS) DCA62
PO Box 80416
Seattle, WA 98108-0416
marninac@amazon.com

Registered Agent:

Corporation Service Company
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Richmond, VA 23219-4100

Registered Agent – Principal Office:

Kerry Person, President
Corporation Service Company
410 Terry Ave. N.
Seattle, WA 98109-5210

RE: Zoning Determination Letter – ZNG-25-31 – Amazon Vested Rights Determination – 719 Blackwell Road (PIN 6984-69-2419-000)

All,

On July 31, 2025, the Town received a written request from Amazon Data Services, Inc. ("Amazon" or "Landowner") and accompanying payment of \$375.00 for a determination of vested rights under Code of Virginia §15.2-2307, to wit:

[...] we respectfully request that the Town of Warrenton recognize the development activities, financial commitments, and sustained pursuit of project implementation... and confirm that vested rights have accrued for the AWS data center project pursuant to the SUP and Site Plan.

Background for the Request:

- On August 10, 2021, Town Council adopted a Zoning Ordinance Text Amendment ("ZOTA") to Articles 3, 9, and 12 to allow data centers within the Industrial District with the approval of a Special Use Permit, case number ZNG 2021-0321;
- On February 14, 2023, upon an application duly filed by Amazon, the Town Council approved a Special Use Permit ("SUP") for a data center on the 41-acre subject property located at 719 Blackwell Road (PIN 6984-69-2419-000), within the Industrial District, case number SUP-22-3;
- On March 16, 2023, a civil action, Case No. CL23000128-00 ("the Rezoning Circuit Court Action"), was filed in Fauquier County Circuit Court by citizens of the Town to enjoin the development of the data center based *inter alia* upon the invalid adoption of the ZOTA and SUP;

- On February 24, 2024, the Circuit Court overruled the Demurrer and Plea In Bar filed by the Defendants in the Rezoning Circuit Court Action and agreed that the matter should proceed to trial for a determination on the merits;
- On April 18, 2024, the Town staff approved a Site Development Plan filed by Amazon for the Warrenton Data Center project on the subject property, subject to Conditions of Approval, case number SDP-23-6;
- On June 14, 2024, a second civil action, Case No. CL24000303 (“the Site Plan Circuit Court Action”), was filed in the Circuit Court of Fauquier County by citizens of the Town seeking a Writ of Mandamus to require the Board of Zoning Appeals’ intervention in regard to the Site Plan adoption;
- On January 14, 2025, the parties in the Rezoning Circuit Court Action entered a “Consent Order,” whereby Amazon agreed generally to “*maintain the status quo*” and specifically to “*not pursue further approvals, to seek development permits related to construction or to further construction of the data center on the Property until a Final Order has been entered*”;
- On July 8, 2025, Town Council adopted a Zoning Ordinance Text Amendment to Articles 3, 9, and 12 to remove data centers as a permissible use within the Industrial District, case number ZOTA-25-1;
- The Rezoning Circuit Court Action is scheduled to be heard for a two-week trial beginning on March 9, 2026;
- The Site Plan Circuit Court action is not yet set for trial.

State Code Considerations:

Vesting of a Landowner's Rights

Code of Virginia §15.2-2307(A), states that … a *landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner*

- (i) *obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project,*
- (ii) *relies in good faith on the significant affirmative governmental act, and*
- (iii) *incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.*

In determining what constitutes a significant affirmative governmental act, Code of Virginia §15.2-2307(B), lists seven (7) actions:

- (i) *the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment;*
- (ii) *the governing body has approved an application for a rezoning for a specific use or density;*
- (iii) *the governing body or board of zoning appeals has granted a special exception or use permit with conditions;*
- (iv) *the board of zoning appeals has approved a variance;*
- (v) *the designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;*

- (vi) *the designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or*
- (vii) *the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.*

Validity of an Approved Final Site Plan

Code of Virginia §15.2-2261(A) states that:

[...] an approved final site plan... shall be valid for a period of not less than five years from the date of approval thereof...

Code of Virginia §15.2-2261(C) allows for an approved final site plan to remain valid even if the regulations of a local jurisdiction are amended subsequent to that approval, stating:

For so long as the final site plan remains valid in accordance with the provisions of this section, or in the case of a recorded plat for five years after approval, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval of the recorded plat or final site plan shall adversely affect the right of the subdivider or developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the recorded plat or site plan unless the change or amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare.

Appeals of Decisions

Code of Virginia §15.2-2285(F) allows for appeals of decisions made by local governing bodies for those persons that are aggrieved*, to include appeals of zoning ordinance amendments and special use permits, where subsection (F) states:

Every action contesting a decision of the local governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of a local governing body

*Note – A determination of whether a person challenging a decision of the local body is aggrieved, and therefore has standing to bring forward an appeal, is a legal matter subject to judicial review and thus cannot be determined by this opinion.

Determination:

Per Section 11-1.1.3 of the Town of Warrenton Zoning Ordinance I hereby determine that:

WHEREAS the Property has on its face received a significant affirmative governmental act through the approval of Special Use Permit SUP-22-3 by the Town Council of the Town of Warrenton on February 14, 2023, as regulated by the Town of Warrenton Zoning Ordinance Section 11-3.10 *Special Use Permits and Waivers* and as authorized by Code of Virginia §15.2-2286(A)(3), in conformance with Code of Virginia §15.2-2307(B)(iii); and

WHEREAS the Property owner subsequently obtained the approval of a Site Development Plan SDP-23-6 by the Town of Warrenton Zoning Administrator on April 14, 2024, as regulated by the Town of Warrenton Zoning Ordinance Section 11-3.7 *Site Development Plan* and as authorized by Code of Virginia §15.2-2286(A)(8), in conformance with Code of Virginia §15.2-2307(B) subsections (v) and/or (vi); and

WHEREAS the foregoing approvals were granted under (and subject to the legality of) both the ZOTA and the SUP per Town of Warrenton Zoning Ordinance Section 11-3.9 *Zoning Amendments* as well as Code of Virginia §15.2-2286(A)(7), *inter alia*; and

WHEREAS the underlying rezoning has been subject to the Rezoning Circuit Court Action which was filed within thirty (30) days of the date of the SUP approval; and

WHEREAS the underlying site plan approval has been subject to the Site Plan Circuit Court action which was filed within sixty (60) days of the date of the Site Plan approval; and

WHEREAS any actions taken by the Landowner, pursuant to the Rezoning and Site Plan approval, have been done with knowledge of the above-referenced Circuit Court Actions and, indeed, Landowner has entered a “Consent Order” to not pursue further development until the Rezoning Circuit Court Action is finalized, all of which militates against its “good faith reliance” on the above approvals by the Landowner as required by the Code of Virginia §15.2-2307(A); and

WHEREAS the Zoning Administrator cannot rule affirmatively on the Landowner’s request as described in the July 25, 2025, letter requesting a vesting determination for the subject property, as required by Code of Virginia §15.2-2307(A), **until the Circuit Court actions referenced herein have been fully and definitively resolved, as the legality of the above approvals are wholly dependent on those determinations**; therefore

With the concurrence of the Town Attorney per the Town of Warrenton Zoning Ordinance Section 11-1.1.3 and Code of Virginia §15.2-2286(A)(4)(iii), as copied herein; therefore it is determined that

The property owner does not currently possess a vested right per Code of Virginia §15.2-2307, et seq., to develop and use the subject property (PIN 6984-69-2419-000) as a Data Center, notwithstanding the approvals associated with the Special Use Permit (SUP-22-3) and the Site Development Plan (SDP-23-6).

Amazon Vested Rights Determination – 719 Blackwell Road
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October 24, 2025

This is a formal decision by the Zoning Administrator of the Town of Warrenton, Virginia. Any person aggrieved by any decision of the Zoning Administrator may take an appeal to the Board of Zoning Appeals. Such appeal shall be taken within thirty (30) days of the date of this letter by filing with the Zoning Administrator a notice of such appeal specifying the grounds thereof. The decision shall be final and unappealable if not appealed within thirty (30) days. The fees for filing an appeal are \$400.00 plus the cost of advertising and property notice mailings. Classified advertising is placed in the local paper for two consecutive weeks prior to the meeting with costs averaging around \$800.00. The cost for property notice mailings varies and depends on the number of adjacent owners. The adjacent property notices are sent via first class mail at the current first-class postage rate. The Zoning Office is located at 21 Main Street within Town Hall. Hours of operation are from 8:30 AM until 4:30 PM Monday through Friday. If you have any questions regarding this notice or would like additional information about the appeal process, please contact me at (540) 347-2405. I would also advise that you contact our Town Attorney, Chap Petersen, at (571) 459-2510.

Thank you.

Sincerely,



Heather E. Jenkins, Zoning Administrator

Copy: Town Manager
Town Attorney