



BOARD OF ZONING APPEALS MEETING

Tuesday, February 03, 2026 at 5:00 PM

AGENDA

CALL TO ORDER.

DETERMINATION OF A QUORUM.

APPROVAL OF MINUTES.

1. Draft Minutes- January 6, 2026
2. Draft Minutes- January 20, 2026

PUBLIC MEETING.

3. BZA-25-3- Application for an Appeal pursuant Article 11-3.12 of the Town of Warrenton 2006 Zoning Ordinance, of a Zoning Determination made by the Zoning Administrator rendered on October 24, 2025, as to any alleged vested rights obtained under SUP-22-3 and approved SDP-23-6 related to the construction of a data center on property located at 719 Blackwell Road.

UPDATES.

4. 2026 Board Meeting Schedule- Adoption
5. By laws discussion
6. 2025 Board of Zoning Appeals Annual Report

ADJOURN.



**BOARD OF ZONING APPEALS OF THE TOWN OF WARRENTON
TOWN HALL
21 MAIN STREET
WARRENTON, VIRGINIA 20186**

MINUTES

**A REGULAR MEETING OF THE BOARD OF ZONING APPEALS WAS HELD ON JANUARY 6, 2026,
AT 5:00 P.M. IN WARRENTON, VIRGINIA**

PRESENT Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair, Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin; Ms. Heather Jenkins, Zoning Administrator; Ms. Amber Heflin, Zoning Official

ABSENT

CALL TO ORDER AND DETERMINATION OF A QUORUM

The meeting was called to order at 5:00pm. There was a quorum of members present.

Mr. Baggett moved to amend the Board's agenda to add a closed session after the Rules of Procedure Adoption agenda item during their work session. Ms. Helander seconded. All in favor. The vote was as follows:

Ayes:

Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin

Nays:

Absent During Vote:

ELECTION OF OFFICERS

Ms. Maybach asked for discussion.

Ms. Helander asked if the current Chair and Vice Chair had interest in remaining in their positions.

Ms. Maybach indicated she was happy to remain as Chair if it was the will of the Board but was also open to changing roles.

Mr. Mulliss moved to nominate Ms. Maybach as Chair of the Board. Ms. Helander seconded. All in favor.

The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth “Charlie” Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

Ms. Helander moved to nominate Mr. Baggett as Vice Chair of the Board. Mr. Mulliss seconded. All in Favor. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth “Charlie” Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

Ms. Maybach thanked the Board.

Ms. Helander asked staff if a secretary was needed.

Ms. Heflin confirmed the Board would need to appoint a secretary and advised the position has been previously filled by the Zoning Administrator or her designee.

Ms. Maybach motioned to appoint the Zoning Administrator or her designee as the secretary to the Board. Mr. Baggett seconded. All in favor. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth “Charlie” Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

Ms. Maybach thanked the staff for their willingness to support the Board.

APPROVAL OF MINUTES

Draft Minutes – November 6, 2025, Meeting

Mr. Baggett motioned to approve the minutes as presented, and Ms. Helander seconded. All in favor. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth “Charlie” Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

WORK SESSION

Board of Zoning Appeals By Laws Adoption

Ms. Heflin advised the By Laws have not changed since the Board's previous adoption. She added that staff noticed an issue with Article 3-2 of the current By Laws as it pertains to when a regular meeting falls on a legal holiday.

Ms. Heflin added the By Laws currently require the meeting falling on a holiday be rescheduled to the following Tuesday, which is in conflict with the regular meeting date for the Town Council.

Ms. Heflin stated that correcting the By Laws would also correct an issue with the November 2026 meeting date, as that meeting would fall on Election Day. She added the staff suggests changing the corrected meeting date to the next available business day, which would require the meeting be held on Wednesday of the same week.

Ms. Heflin reiterated that changing to a Wednesday would eliminate scheduling conflicts with other Boards due to their regular meeting dates.

Ms. Scullin asked if staff had proposed language for Article 3-2.

Ms. Heflin advised she did not prepare draft language but reiterated the change would reflect a Wednesday meeting make-up date rather than the following Tuesday.

Ms. Maybach stated she had a conflict with the proposed Wednesday meeting date due to her participation on the Fauquier County Architectural Review Board, and asked staff if the Board would be bound to the Wednesday date.

Ms. Heflin advised the way the By Laws are currently written allows for flexibility in giving the Chair the ability to move the meeting date.

Ms. Maybach asked if the Wednesday make-up date would also apply to inclement weather closures.

Ms. Jenkins advised the Wednesday date would only apply to meetings that are scheduled for a legal holiday per the By Laws.

Ms. Scullin asked about the process for weather-related closures.

Ms. Jenkins advised the Board would need to discuss a revised meeting date if necessary due to weather closures.

Ms. Scullin pointed out Article 3-9 of the By Laws states if a meeting were canceled due to weather, the items on the agenda would get pushed to the following month.

Ms. Jenkins advised pushing an item to the following month could present an issue if there are time constraints on that particular item. She added that in these cases, the Board would need to call a special meeting to alleviate this issue.

Mr. Mulliss pondered about changing the date to Thursday of the same week.

Ms. Heflin advised the conflict is due to Ms. Maybach's involvement with Fauquier County's Architectural Review Board. She noted the Board could consider a Thursday meeting date, but staff would need to verify there are no conflicting meetings with other Boards.

Ms. Jenkins stated it comes down to not being able to set a specific day of the week within the By Laws, but stating "next available business day" provides the Board with flexibility.

Ms. Maybach asked if there were time limitations in place for the public during a public hearing.

Ms. Jenkins advised the time limitations should be included within the procedures for appeals, which gives the Town and the appellant 20 minutes each. She added generally speaking, the By Laws do have a section for procedure for applicants to speak during a public hearing.

Ms. Heflin stated Article 6-1 of the By Laws do currently follow the same standards as a Town Council meeting, which provides three minutes for the public to speak unless they are speaking on behalf of an organization, which provides five minutes.

Ms. Maybach thanked the staff for providing clarification.

Ms. Scullin asked if the By Laws were required to be adopted at the Board's January meeting.

Ms. Heflin stated the By Laws adoption is not a requirement if there are changes the Board would like to make. She advised the document could be revised and brought back to them next month for adoption.

There were no further questions or discussion.

Mr. Baggett motioned to table the adoption of the By Laws until the February meeting, and Ms. Scullin seconded. All in favor. No discussion. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

Remote Participation Policy- Adoption

Ms. Heflin stated the policy has been brought back for re-adoption annually as required. She added the policy was originally drafted by the former Town Attorney and has not been edited since the original discussion and adoption.

There were no further questions or discussion.

Ms. Helander motioned to approve the remote participation policy as presented, and Mr. Baggett seconded. All in favor. No discussion. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

Rules of Procedure- Adoption

Ms. Heflin gave a brief description of the rules of procedure, noting they are required to be submitted signed with each application to the Board.

Ms. Helander asked if staff have any changes or recommended changes to the document.

Ms. Jenkins advised staff had no recommendations for changes to the document at this time. There were no further questions or discussion.

Ms. Helander motioned to approve the rules of procedure as presented, and Mr. Mulliss seconded. All in favor. No discussion. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

CLOSED SESSION

Mr. Baggett moved to convene in closed session As permitted by Virginia Code § 2.2-3711 (A)(1), a personnel matter involving:

Discussion, consideration or interviews of prospective candidates for employment or appointment; OR assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the Town.

Specifically dealing with Board of Zoning Appeals legal representation.

Ms. Helander seconded. All in favor. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

The Board returned from closed session and reconvened in open session at 5:49pm.

Mr. Baggett moved that the Board of Zoning Appeals certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion. Mr. Mulliss seconded. All in favor. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote:

Ms. Helander motioned that the Town of Warrenton Board of Zoning Appeals retain Matthew A. Crist, LLC, as the Board of Zoning Appeals attorney, and Mr. Mulliss seconded. All in favor. No discussion. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin*

Nays:
Absent During Vote:

Ms. Maybach asked the staff for clarity regarding the timeline for securing their selected attorney.

Ms. Jenkins stated staff will need the attorney's contact information so that the Town's finance department is able to get a contract signed.

Ms. Scullin asked if the Council is required to approve the attorney selection.

Ms. Jenkins advised Council approval is not required.

Ms. Maybach asked for an estimated timeframe for getting the contract signed so that the attorney could begin meeting with the Board.

Ms. Jenkins advised she did not have an estimated timeframe but was hopeful it would be a quick process. She noted she was aware the Board would like to meet with their selected counsel prior to the appeal hearing next month.

Ms. Maybach stated the Board would also like to schedule a special meeting the week of January 20th or January 27th.

Ms. Scullin asked if the meeting would need to be a closed session to ask questions of the attorney.

Ms. Jenkins advised yes, the special meeting would first need to be scheduled, but the closed session would need to be added to ask legal questions of Mr. Crist.

There were no further questions from the Board.

UPDATES FROM STAFF

2026 Board Meeting Schedule- Discussion

Ms. Heflin advised the Board staff created the meeting schedule to lay out the regularly scheduled Board meeting dates for formal adoption similar to the Planning Commission and the Town Council.

Ms. Heflin noted there was an issue with the regularly scheduled November 2026 meeting date, as it would fall on a holiday. She stated there is conflict with how the current By Laws require an alternative meeting date due to the requirement that the Board meeting be held on the following Tuesday, which is the same date as the Town Council meeting.

Ms. Heflin stated the Board could make changes to their by-laws to correct this issue, or they could examine an alternative meeting date altogether, which is also permitted in the current by-laws.

Ms. Heflin stated the board meeting schedule would be brought back at the Board's next meeting in February for formal adoption by resolution.

There were no further questions.

Pending Application Updates

Ms. Heflin advised the Board they will have an application for an appeal of the Zoning Administrator's

Determination for the Amazon Data Center that will be heard in February. She added that all documents that have been submitted are available for public view and have been distributed to the Board as well.

Ms. Maybach asked if the Town would have legal representation present for the meeting in February.

Ms. Jenkins stated staff were hopeful to have the former Town Attorney, Mr. Petersen, present but staff could not confirm if the Town would have legal representation present at this time.

There were no further questions.

ADJOURNMENT

Ms. Helander motioned to adjourn the meeting, and Mr. Mulliss seconded. All in favor. No discussion. The vote was as follows:

Ayes:

Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin

Nays:

Absent During Vote:

Ms. Maybach adjourned the meeting at 5:55pm.

I hereby certify that this is a true and exact record of actions taken by the Board of Zoning Appeals of the Town of Warrenton on January 6, 2026.

Melea Maybach, BZA Chair



Motion for Convening a Closed Session

BZA Meeting Date: January 6, 2026

Agenda Title:

I move that the Board of Zoning Appeals convene in closed session to discuss the following:

As permitted by Virginia Code § 2.2-3711 (A)(1), a personnel matter involving: Discussion, consideration or interviews of prospective candidates for employment or appointment; OR
 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the Town. specifically dealing with Board of Zoning Appeals legal representation

Votes:

Ayes: Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss; Ms. Elizabeth Scullin

Nays:

Absent from Vote: None

CERTIFICATION MOTION AFTER RECONVENING IN PUBLIC SESSION:

(requires a recorded roll call vote)

I move that the Board of Zoning Appeals certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion.

Votes:

Ayes: Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss; Ms. Elizabeth Scullin

Nays:

Absent from Vote: None

For Information:

Town Clerk

Effective date: 1/06/2026

Heather Jenkins, BZA Secretary



**BOARD OF ZONING APPEALS OF THE TOWN OF WARRENTON
TOWN HALL
21 MAIN STREET
WARRENTON, VIRGINIA 20186**

MINUTES

**A SPECIAL MEETING OF THE BOARD OF ZONING APPEALS WAS HELD ON JANUARY 20, 2026,
AT 5:00 P.M. IN WARRENTON, VIRGINIA**

PRESENT	Ms. Melea Maybach, Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin; Ms. Heather Jenkins, Zoning Administrator; Ms. Amber Heflin, Zoning Official; Mr. Matthew Crist, Esquire
ABSENT	Mr. Van Baggett, Vice Chair

CALL TO ORDER AND DETERMINATION OF A QUORUM

The meeting was called to order at 5:00pm. There was a quorum of members present.

CLOSED SESSION

Discussion with the Board's Legal Counsel regarding BZA case 25-3

Ms. Helander moved to convene in closed session at 5:01pm as permitted by Virginia Code § 2.2-3711 (A)(7), for consultation with legal counsel or briefing by staff members or consultants pertaining to the pending case of BZA-25-3, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Town.

Mr. Mulliss seconded. All in favor. The vote was as follows:

Ayes:	<i>Ms. Melea Maybach, Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin</i>
Nays:	
Absent During Vote:	<i>Mr. Van Baggett, Vice Chair</i>

The Board returned from closed session and reconvened in open session at 6:11pm.

Ms. Helander moved that the Board certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene

in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion.

Mr. Mulliss seconded. All in favor. The vote was as follows:

Ayes: *Ms. Melea Maybach, Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin*

Nays:

Absent During Vote: *Mr. Van Baggett, Vice Chair*

Ms. Jenkins advised the Board that Mr. Baggett has declared a conflict of interest, and that explains his absence. She stated he would also not participate in the public meeting process for the appeal next month.

There were no further questions.

ADJOURNMENT

There being no further business, Ms. Maybach adjourned the meeting at 6:12pm.

I hereby certify that this is a true and exact record of actions taken by the Board of Zoning Appeals of the Town of Warrenton on January 20, 2026.

Melea Maybach, BZA Chair



Motion for Convening a Closed Session

Board Meeting Date: 1/20/26

I move that the Board of Zoning Appeals convene in closed session to discuss the following:

----- As permitted by Virginia Code § 2.2-3711 (A)(7), consultation with legal counsel or briefing by staff members or consultants pertaining to the pending case of BZA-25-3, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Town.

CERTIFICATION MOTION AFTER RECONVENING IN PUBLIC SESSION:
(requires a recorded roll call vote)

I move that the Board certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion.

Votes:

Ayes: Ms. Melea Maybach, Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin

Nays:

Absent from Vote: A. Van Baggett, Vice Chair

For Information:

Town Clerk

Effective date: 1/20/26

Heather Jenkins, BZA Secretary



TOWN OF WARRENTON

Department of Community Development

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

Land Development Application

Type of Development [select type(s) below]	Permit #			
Planning				
<input type="checkbox"/> Commission Permit (\$2232) <input type="checkbox"/> Comprehensive Plan Amendment <input type="checkbox"/> Special Use Permit <input type="checkbox"/> Rezoning	Zoning <input checked="" type="checkbox"/> Administrative Appeal <input type="checkbox"/> As-Built <input type="checkbox"/> Bond Release/ Reduction <input type="checkbox"/> Bond Extension <input type="checkbox"/> Boundary Adjustment	<input type="checkbox"/> Concept Plan Review <input type="checkbox"/> Easement Plat <input type="checkbox"/> Final Plat <input type="checkbox"/> Preliminary Plat <input type="checkbox"/> Re-approval of Plat	<input type="checkbox"/> Record / Vacate Plat <input type="checkbox"/> Site Development Plan <input type="checkbox"/> Variance <input type="checkbox"/> Waiver, Administrative <input type="checkbox"/> Waiver/Exception, Legislative	
<input type="checkbox"/> Amendment to Existing Approved Application? If Yes, List Application _____				

Project Description

Project Name: Amazon Vested Rights Determination - 719 Blackwell Road

Property Address (if no address, give closest cross street): 719 Blackwell Road

Purpose of Request: Appeal of Zoning Determination dated October 24, 2025

Zoning District: Industrial	Total Acres: 41.7	Acres for Proposed Use:
Parcel Identification Number(s): 6984-69-2419-000		

Contact Information (Attach separate page if necessary)

All Current Owners

Name & Company: Amazon Data Services, Inc.

Address: P.O. Box 80416, Seattle, WA 98108

Phone: _____ **Email:** _____

All Current Applicants (if different than owner):

Name & Company: Same as Owner

Address: _____

Phone: _____ **Email:** _____

Representative (if different than owner/applicant):

Name & Company: Gordon Todd, Esq., Sidley Austin LLP,

Address: 1501 K. Street, N.W., Washington, DC 20005

Phone: (202) 736-8760 **Email:** gtodd@sidley.com

OWNER(S) AFFIDAVIT (Original Signatures Required)

I have read this application, understand its intent and freely consent to its filing. Furthermore, I have the power to authorize and hereby grant permission for Town of Warrenton officials and other authorized government agents on official business to enter the property to process this application.

APPLICANT(S) AFFIDAVIT (Original Signatures Required)

The information provided is accurate to the best of my knowledge. I acknowledge that all tests, studies, and other requirements of the Town of Warrenton Zoning Ordinance and Subdivision Ordinance and other requirements of review/approval agencies will be carried out at my expense. I understand that the Town may deny, approve or conditionally approve that for which I am applying.

Owner's Signature & Date:

Applicant's Signature & Date:

Print Owner's Name: Amazon Data Services, Inc.

Print Applicant's Name: Amazon Data Services, Inc.



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November 24, 2025

VIA FEDEX, E-MAIL, AND HAND DELIVERY

Town of Warrenton Board of Zoning Appeals
 c/o Heather E. Jenkins
 Zoning Administrator
 PO Box 341
 Warrenton, Virginia 20188

c/o Melea Maybach
 Chair
 Town of Warrenton Board of Zoning Appeals
 21 Main Street
 Warrenton, VA 20186

Re: Statement of Justification in Support of Appeal Pursuant to Virginia Code § 15.2-2311(A)

Dear Ms. Jenkins, Ms. Maybach, and Members of the Board of Zoning Appeals:

The undersigned, as counsel to Amazon Data Services, Inc. (“Amazon”), hereby files pursuant to Virginia Code § 15.2-2311 this Statement of Justification in support of its appeal of the zoning determination letter dated October 24, 2025 (the “Zoning Determination”) for the reasons set forth below.

I. Executive Summary

The Town of Warrenton (“Warrenton”) gave Amazon unequivocal permission and assurances that Amazon could build a data center on its property in Warrenton: the Warrenton Town Council (the “Council”) revised its zoning ordinance to allow data centers to be built on industrial district land by Special Use Permit (“SUP”); it then legislatively approved an SUP authorizing Amazon to build one such data center; and the Zoning Administrator then approved Amazon’s detailed site plan for that data center. Relying on these actions, Amazon moved with its development: it engaged contractors; began testing and preparing the land for future construction; coordinated with utility, security, and other land management companies; and performed many other activities and incurred other obligations oriented towards construction of its data center. These were not small steps. They required real money, long-term commitments, and a genuine investment in Warrenton’s future. Amazon was comfortable making these investments precisely because of Warrenton’s actions and assurances.

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Virginia law is clear that a landowner who makes significant investments in its land in good faith reliance on governmental action is protected against subsequent adverse changes in the law. That is what happened here. While the Council further amended the Town's zoning laws to no longer permit data centers in such industrial zones, Amazon's previously approved and started project is unaffected. Amazon's rights in its project have "vested."

Yet when asked to confirm those vested rights, the Zoning Administrator demurred on the grounds that third parties had initiated litigation challenging the Special Use Permit and Site Plan, and noting that Amazon had paused its development pending resolution of the litigation. The Zoning Administrator erred. Nothing in the Virginia Code makes the vesting of property rights contingent on the absence of litigation. Indeed, reading such a requirement into the Code would gut these legal protections. And in fact, Virginia law is clear that rights may vest even where the relied-upon governmental action it later determined to have been contrary to law as an initial matter. What is more, Amazon's rights had vested prior to any litigation being filed and long before Amazon voluntarily agreed to pause its development in deference to first resolving community concerns.

For all these reasons, and more discussed below, we respectfully ask that the Board of Zoning Appeals recognize and affirm Amazon's vested rights.

II. Background

Amazon is the owner of a 41-acre industrial-zoned property (Parcel Number 6948-69-2419-00) located on Blackwell Road in the town of Warrenton (the "Property"). On August 10, 2021, the Council adopted a Zoning Ordinance Text Amendment ("ZOTA"), the express purpose of which was to allow data centers to be built in industrial districts, but only pursuant to a subsequently-approved SUP.

Amazon is the infrastructure side of Amazon Web Services ("AWS"), a comprehensive cloud computing platform that provides storage, compute, and database services globally. To support its cloud services, Amazon constructs and operates network data centers at geographically-appropriate locations. The Property meets Amazon's location parameters, including its location in relation to other Amazon data centers. On September 21, 2021, more than 30 days after the Council adopted the ZOTA and without a legal challenge brought concerning the ZOTA, Amazon purchased the Property. It thereafter began discussions with Town officials about pursuing a SUP to authorize a data center on the Property. In April 2022, in reliance on the ZOTA and its subsequent discussions with Town officials, Amazon submitted its SUP application to build a data center (the "Project") on the Property. The Project, once approved, would be a major driver of economic revenue, employment, and economic investment in Warrenton. Amazon's SUP application was complete and made clear its intention to use the Property as a data center.

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While awaiting approval, Amazon engaged with Town residents and staff regarding the Project. In response to feedback, Amazon made a number of significant changes to the Project, including agreeing to bury power lines, perform sound tests at every stage of construction, and add a brick façade to the data center to improve its aesthetic appeal. Amazon also requested and obtained a zoning determination related to application of the Town's noise ordinances. On February 14, 2023, after nine months of review by Town staff, a public hearing before the Town Planning Commission, multiple public comment sessions at public meetings, and careful consideration, the Council approved Amazon's SUP (Case Number SUP-22-3) for the Project.

In reliance on that approval, Amazon immediately began taking steps to advance the Project. These steps included contracting with engineering and construction firms, performing environmental due diligence on the site, preparing its Site Plan submission, and engaging with the Town, the State, and other public and private partners on the development of the Project. Amazon also immediately began active development of the site itself in February 2023, initiating tree removal and soil work to ready it for future building.

Within thirty days of the SUP approval, and after Amazon had already incurred legal obligations in connection with the Project and invested significant time and resources in reliance on the SUP approval, some Warrenton residents filed civil litigation to enjoin the development of the Project (the "ZOTA Action"). The ZOTA Action raised a number of challenges, almost all of which were based on concerns and objections that had already been heard at numerous and comprehensive public hearings. The Town was served on March 21, 2023, and Amazon filed a motion to intervene on April 13, 2023. On December 13, 2023, the Circuit Court dismissed as legally baseless almost all of the plaintiffs' claims, leaving for trial only the question whether the ZOTA underlying the SUP had been properly adopted. Trial on that sole remaining issue is scheduled for March 2026.

In the meantime, Amazon submitted an initial site plan on March 22, 2023 and a subsequent revised Site Plan in October 2023, which was reviewed and ultimately approved by the Zoning Administrator on April 18, 2024. In reliance on that approval, Amazon began taking additional steps to develop the Project. In particular, Amazon:

- Engaged outside sound modelers to evaluate the noise impact of the Project;
- Performed environmental soil sampling, due diligence, and early-stage physical work;
- Performed tree felling on-site;
- Engaged a general contractor;

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Melea Maybach

November 24, 2025

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- Performed property management activities, including providing security at the Property and ensuring the Property was mowed, clean, and garbage-free;
- Continued to engage with design and engineering firms regarding construction of the Project;
- Executed a Letter of Authorization with Dominion Energy;
- Participated in biweekly meetings with Town officials, where Amazon addressed questions from the Town and coordinated with the Town on development activities;
- Began designing and procuring long lead-time equipment such as generators, HVAC systems, and steel; and
- Engaged with the Virginia Department of Environmental Quality and other State agencies regarding construction activities for the Project.

In all, Amazon incurred at least \$3.5 million in expenses in reliance on the SUP and Site Plan approvals.

On June 14, 2024, a second civil action was filed by ten residents of Warrenton and an organization called “Citizens for Fauquier County.” That action sought a writ of mandamus to require the Board of Zoning Appeals (“BZA”) to intervene regarding the Site Plan approval (the “Site Plan Action”). That case is not yet set for trial.

On January 14, 2025, the parties to the ZOTA Action entered into a consent order whereby Amazon agreed generally to “maintain the status quo” with respect to development of the Project—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.” The consent order did not undo any of the steps Amazon had taken prior to January 14, 2025, nor did it preclude Amazon from seeking a determination of vested rights in the Property as of the date of the consent order.

In July 2025, the Council reversed course, adopting a second ZOTA to Articles 3, 9, and 12 of the Town of Warrenton Zoning Ordinance, which removed data centers as a permissible use within the Industrial District, thereby undoing the original ZOTA.¹ The Town’s about-face put at risk Amazon’s substantial investment in the Project, to say nothing of its \$550 million-plus planned

¹ Tate Hewitt, *Town Council Votes to Ban Data Centers from Warrenton*, Fauquier Times (Jul. 8, 2025), https://www.fauquier.com/news/town-council-votes-to-ban-data-centers-from-warrenton/article_0f58d64e-f89e-4dbd-8825-c06e65f1a4b7.html.

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Heather E. Jenkins

Melea Maybach

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future investment in construction, job creation, and technical skills education in Warrenton and Fauquier County.² This uncertainty compelled Amazon to forgo its immediate right to build in Warrenton and instead to lease data center space in another locality to fulfill its customers' needs—costing Amazon tens of millions more than the Warrenton location, and depriving Warrenton of substantial economic benefits.

To secure its investment-backed expectations, on July 25, 2025, Amazon applied to the Zoning Administrator for a determination of its vested rights in the Property (the “Determination Request”). In the Determination Request, Amazon detailed the efforts it had taken to develop the property, including considerable expenditures and time. Amazon argued that under Virginia Code § 15.2-2307, it substantially changed its position in good faith on a significant affirmative governmental act, and thus had obtained vested rights.

There was, and could be, no dispute that Amazon had incurred extensive obligations or substantial expenses in reliance on the ZOTA and SUP. However, the Zoning Administrator erroneously concluded that she could not make a vested rights determination due to the pendency of the ZOTA Action and the Site Plan Action. Amazon thus brings this appeal to the BZA pursuant to Virginia Code § 15.2-2311(A), for a determination that Amazon has vested rights in the Property.

III. Argument

The BZA has the power to hear Amazon’s appeal of the Zoning Administrator’s decision. Va. Code § 15.2-2311. “Whether a landowner has acquired a vested right in property is a question of law.” *Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 581 (2019). The BZA should reverse the conclusion of the Zoning Administrator and declare that Amazon has vested rights under both Virginia Code §§ 15.2-2307(A) and 15.2-2311(C).

A. Amazon Has Vested Rights Under Virginia Code § 15.2-2307(A).

Under Virginia Code § 15.2-2307(A), a landowner “shall” be deemed to have vested rights in a land use that “shall not be affected by a subsequent amendment to a zoning ordinance when the landowner:

² See Town of Warrenton Community Development Staff Analysis at B-20 (the “proposal invests approximately \$550,000,000”); B-26 (detailing employment opportunities and programs for local schools that will be available as part of the Project), <https://mccmeetingspublic.blob.core.usgovcloudapi.net/warrntonva-meet-ffcaa83e9b3a4963a8f97c5f54f4ed09/ITEM-Attachment-001-1f79b33c886b4ce89145bdfb295ca6f1.pdf>.

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(i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing the 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.”

Va. Code § 15.2-2307(A) (line breaks added). Each of those elements is met here. *See Purcellville W., LLC, v. Bd. of Supervisors of Loudoun Cnty.*, 75 Va. Cir. 284 (2008).

First, Amazon is the beneficiary of multiple significant government acts under § 15.2-2307(A)(i) and § 15.2-2307(B), including but not limited to the following:

- The Council engaged in a significant affirmative governmental act under (B)(iii) when it granted an SUP to Amazon, which expressly recognized that a data center was to be built on the Property.
- The Zoning Administrator engaged in a significant affirmative governmental act under (B)(vi) when she, as the designated agent of the Council, approved Amazon’s final Site Plan. That written Site Plan approval again recognized no fewer than 19 times that the Property was to be used for a data center.
- The Zoning Administrator engaged in a significant affirmative governmental act under (B)(vii) when she approved Amazon’s Site Plan, which specified that Amazon was permitted to build a data center on the Property.

This issue is not in serious dispute. Indeed, the Zoning Administrator’s vested rights determination itself recognized that the Council had engaged in significant affirmative governmental acts by approving Amazon’s SUP. Further, while not specifically addressed by the Zoning Administrator’s vested rights determination, the Site Plan approval also is independently a significant affirmative governmental act in multiple respects, as Virginia Code §15.2307(B) expressly provides that “the designated agent[’s approval of] a final subdivision plat, site plan or plan of development for the landowner’s property” constitutes a significant governmental act, as does any other “written order, requirement, decision or determination” regarding the same. Va. Code §§ 15.2-307(B)(vi)-(vii).

Second, pursuant to § 15.2-2307(A)(iii), Amazon incurred extensive obligations and substantial expenses, totaling at least \$3.5 million not including the hundreds or thousands of hours Amazon personnel invested, in diligent pursuit of the Project in reliance on the foregoing affirmative governmental acts. As summarized in part above, these obligations and expenditures

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included engaging sound modelers to evaluate the noise impact of the Project, engaging with state and local officials regarding the Project, performing environmental soil-sampling and due diligence, felling trees, contracting with a general contractor, performing property management activities, engaging design and engineering firms, executing a letter of agreement with Dominion Energy, participating in biweekly coordination with Town officials, and designing and procuring long lead-time equipment. These expenditures were both substantial and performed in diligent pursuit of the Project—Amazon would not have made any of these commitments or expenditures absent the SUP and Site Plan approval.

Third, Amazon relied in good faith on the significant affirmative governmental acts. That reliance was objectively reasonable: Amazon proceeded only after the Council granted an SUP and the Zoning Administrator approved a Site Plan, precisely the sorts of governmental actions that § 15.2-2307(B) deems sufficient to support vested rights. Amazon moreover coordinated with Town officials and community members, including by, as discussed above, agreeing to bury power lines, to conduct sound testing, and to make architectural changes. This demonstrates Amazon’s transparent, good-faith pursuit of the approved Project, in material reliance on governmental actions. Indeed, Amazon’s expenditures exceeding \$3.5 million and ongoing project advancement demonstrate a non-speculative, bona fide commitment to build in reliance on the SUP and Site Plan—precisely what Virginia’s vested-rights doctrine is designed to protect.

Accordingly, Amazon’s right to develop a data center on the Property has vested pursuant to Virginia Code § 15.2-2307(A).

B. The Zoning Administrator Erred by Declining to Recognize Amazon’s Vested Rights Merely Because There Were Pending Lawsuits.

Although the Zoning Administrator recognized that the Town had engaged in significant affirmative governmental acts, she took the position that Amazon could not have relied on those acts in good faith because the SUP and Site Plan were both challenged in court. This conclusion rested on three flawed assumptions: that Amazon’s rights could not have vested prior to filing of the ZOTA Action; that the mere filing of the ZOTA Action precluded a vesting of Amazon’s rights; and that the consent order precluded Amazon from seeking a determination of vested rights. Each of those assumptions is contrary to the record and to the applicable law. Worse, adopting the Zoning Administrator’s conclusion would endorse a type of heckler’s veto where the mere filing of a lawsuit, no matter how frivolous or nakedly obstructionist, would forestall important and appropriate property development, and thereby frustrate the very purpose of the vested rights laws. These errors, independently and collectively, require reversal of the Zoning Administrator’s decision.

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1. *Amazon's Rights Vested Before the ZOTA Action Was Filed.*

The Zoning Administrator concluded that the ZOTA Action put Amazon's vested rights in limbo. This assumes that Amazon's rights could not have vested before the ZOTA Action was served. That is incorrect. The Town's first relevant significant affirmative governmental act was the approval of Amazon's SUP on February 14, 2023, and the ZOTA Action was not filed until March 16, 2023. In the intervening period, Amazon performed tree felling on the site, contracted with engineering and construction firms, performed environmental due diligence on the site, prepared its Site Plan submission, and engaged extensively with the Town, the State, and other public and private partners on the development of the Project.

Accordingly, even if the filing of the ZOTA Action could have cut off Amazon's ability to rely in good faith on the SUP approval (which it could not, as explained below), that is irrelevant as Amazon's rights in the Property had already vested *before* filing of the ZOTA Action. The Zoning Administrator therefore should have declared Amazon's rights in the Property to have vested regardless of whatever effect intervening litigation has on a party's vested rights.

2. *The Mere Filing of the ZOTA Action Did Not Cut Off the Vesting of Amazon's Rights in the Property.*

The Zoning Administrator was also wrong in her assumption that the mere filing of litigation cuts off a landowner's ability to rely in good faith on previously-taken governmental action and in so doing to vest its rights in the property.

a. A Landowner May Rely on Significant Governmental Acts that Are "In Effect," Whether or Not They Have Been Challenged.

The plain language of the vested rights statute makes clear that subsequent litigation is irrelevant to the vested rights determination. Section 15.2-2307(A) speaks only to whether "a significant affirmative governmental act" "remains in effect" at the time it is relied on. Accordingly, the only requirement with respect to the status of the governmental act is that it "remains in effect" while the property owner incurs expense. That is true here—when the Zoning Administrator ruled (and today), the ZOTA, the SUP, and the Site Plan approval all "remain[] in effect."

To be sure, the General Assembly could have chosen to exclude significant affirmative governmental actions that have been *challenged*—whatever the merits of the challenge—from serving as predicates for vested rights. Or the General Assembly could have otherwise qualified the requirement that the affirmative government act be in effect to permit the type of considerations the Zoning Administrator took into account here. *Cf., e.g.*, Va. Code § 2.2-4362 (mere filing of a bid protest precludes "further action to award the contract"). But it did not, and that choice should

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be assumed to have been deliberate. *See Jackson v. Fidelity & Deposit Co. of Maryland*, 269 Va. 303, 313 (2005) (“Courts cannot add language to the statute that the General Assembly has not seen fit to include.”) (internal quotations omitted). The Zoning Administrator disregarded the plain text of the statute and instead added a qualification not present in the law: the significant governmental act must be in effect *and not subject to legal challenge*. As the Supreme Court of Virginia has stated, “[w]hen the language of a statute is unambiguous, we are bound by the plain meaning of that language.” *Bd. of Supervisors v. Rhoads*, 294 Va. 43, 49 (2017). The Board thus can, and the Zoning Administrator should have, resolve this issue based solely on the text of § 15.2-2307(A).

In addition to being contrary to the plain text of the governing statute, the rule announced below is not administrable and will have deleterious effects on land use policy. In virtually no context is the mere filing of a lawsuit sufficient to interfere with another party’s rights. In fact, Virginia Code §8.01-189 is expressly to the contrary: “The pendency of any action at law or suit in equity brought merely to obtain a declaration of rights or a determination of a question of construction,” which the ZOTA Action is, “shall not be sufficient grounds for the granting of any injunction.” That is because a complaint is merely an allegation, and its existence does not establish or even suggest the plaintiff’s entitlement to relief. To the contrary, anyone can file a lawsuit for virtually any reason. Thus, the mere fact that a lawsuit had been filed is not a basis to conclude that Amazon’s subsequent investments were not made in good faith reliance.³

The Zoning Administrator’s reliance on the mere filing of a lawsuit also conflicts with the “presumption of regularity.” Virginia courts, like all federal and state courts in this country, operate from a presumption that “public officials have acted correctly.” *See Hladys v. Commonwealth*, 235 Va. 145, 148 (1988); *accord, e.g., Robertson v. Commonwealth*, 12 Va. App. 854, 856–57 (1991) (“In the absence of clear evidence to the contrary, courts may presume that public officers have properly discharged their official duties.”); *Smith v. Commonwealth*, 219 Va. 554, 559 (1978); *Murdock v. Nelms*, 212 Va. 639, 641–42 (1972). The Zoning Administrator, though, flipped that presumption on its head: she presumed that, because the ZOTA and Site Plan have been challenged in court, each is presumptively invalid unless and until a court concludes otherwise.

³ At best, a finding that the ZOTA Action meant that subsequent investments could not have been made in good faith would have to be based on a determination that Amazon did so solely or primarily to lock in rights it knew or expected it would not have when the litigation concludes. But the record here does not support such a conclusion. To the contrary, the record shows that Amazon has for several years worked diligently towards the development of the data center.

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The Zoning Administrator, in short, fashioned a new rule out of whole cloth—that investing in a property while a lawsuit is pending cannot be done in good faith, and thus the lawsuit per se makes vested rights inapplicable. The statute says no such thing.

b. The Zoning Administrator’s Decision Contravenes the Purpose of the Vested Rights Statute.

Beyond the statute’s plain text, the Zoning Administrator’s decision also contravened its manifest purpose. The Legislature enacted the vested rights laws to enable landowners to receive clear, expeditious declarations of their rights when those rights are being called into question, to facilitate investment and development. Landowners, in the ordinary course, do not seek vested rights determinations when their rights are clear and free from legal or political challenge; rather, the statute is invoked when third parties or governmental entities question or seek to claw back the governmental action the landowner relied on to develop its property. *See Town of Leesburg v. Long Lane Assocs. Ltd. P’ship*, 284 Va. 127, 134 (2012) (“The purpose of Code § 15.2–2307 is to provide ‘for the vesting of a right to a permissible use of property against any future attempt to make the use impermissible by amendment of the zoning ordinance’” (quoting *Goyonaga v. Bd. of Zoning Appeals*, 275 Va. 232, 244 (2008) (emphasis omitted)).

Given that, the possibility a zoning law may later be revoked or challenged in court does not and cannot affect a landowner’s vested rights. In *Rhoads*, 294 Va. 43, the Supreme Court of Virginia ruled that a sister statute to § 15.2-2307(A), Virginia Code § 15.2-2311(C), “manifestly creates a legislatively-mandated limited exception to the judicially-created general principle that a building permit issued in violation of applicable zoning ordinances is void.” *Id.* at 52. That is because “Code § 15.2-2311(C)... provide[s] for the potential vesting of a right to use property in a manner that ‘otherwise would not have been allowed.’” *Id.* Accordingly, the Supreme Court held that “[t]he circuit court did not err in rejecting the Board’s claim that the Certificate was *void ab initio* because the Certificate granted a right to use property in a manner that otherwise would not have been allowed under the Zoning Ordinance.” *Id.*

The Court of Appeals recently reaffirmed *Rhoads*: “[*Rhoads*] stands for the proposition that a building permit is an order, requirement, decision or determination for purposes of Code § 15.2-2311(C) even where it is issued in violation of a local zoning ordinance.” *Bd. of Supervisors v. Bowman*, 2025 WL 1033993, at *6 (Va. Ct. App. Apr. 8, 2025). The Court of Appeals also discussed good faith reliance in the context of § 15.2-2311(C): A “property owner’s ‘good faith reliance’ is measured by whether he materially changes his position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage.” *Id.* at *9.

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The reasoning of *Rhoads* and *Bowman* applies with equal force to § 15.2-2307(A). The Supreme Court in *Rhoads* characterized § 15.2-2311(C) as a “remedial statute” because its purpose was “to provide relief and protection to property owners who detrimentally rely in good faith upon erroneous zoning determinations and who would otherwise suffer loss because of their reliance upon the zoning administrator’s error.” 294 Va. at 51. Like § 15.2-2311(C), § 15.2-2307(A) is remedial in nature. As discussed above, the purpose of § 15.2-2307(A) is “to provide ‘for the vesting of a right to a permissible use of property against any future attempt to make the use impermissible by amendment of the zoning ordinance... .’” *Town of Leesburg*, 284 Va. at 134 (emphasis omitted). It therefore serves the same function recognized in *Rhoads*: it “provide[s] relief and protection to property owners who detrimentally rely in good faith[,]” *Rhoads*, 294 Va. at 51, upon significant governmental acts, against “any future attempt to make the use impermissible by amendment of the zoning ordinance,” *Town of Leesburg*, 284 Va. at 134. Remedial statutes are “liberally construed so that the purpose intended may be accomplished.” *Rhoads*, 294 Va. at 51 (internal quotation omitted). Because § 15.2-2307 is remedial in nature, it must be liberally construed to protect Amazon’s vested rights, even if the SUP or Site Plan were *void ab initio*.

Likewise, “good faith” in § 15.2-2307(A) must be understood in precisely the same way the Court of Appeals interpreted it in *Bowman*: a “material[] change[] [in] position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage.” 2025 WL 1033993 at *9. Because § 15.2-2307(A) does not define “good faith,” established interpretive principles require looking to related provisions. The most obvious place from which to glean the meaning of good faith is § 15.2-2307’s sister zoning statute, § 15.2-2311(C), because “when a term is used in different sections of a statute, we give it the same meaning in each instance unless there is a clear indication the General Assembly intended a different meaning.” *Eberhardt v. Fairfax Cnty. Emps.’ Ret. Sys. Bd. of Trs.*, 283 Va. 190, 195 (2012). And if that were not enough, Black’s Law Dictionary, cited in *Bowman*, defines good faith as a “state of mind consisting [of] honesty in belief or purpose” or the “absence of the intent to defraud or to seek unconscionable advantage.” *Good Faith*, *Black’s Law Dictionary* (11th ed. 2019). There is no principled basis to assign “good faith” in § 15.2-2307(A) anything other than that settled meaning. Thus, “good faith” in § 15.2-2307 and § 15.2-2311(C) must be construed identically.

The record is clear and undisputed that Amazon honestly and in good faith relied on Warrenton’s actions permitting the development of a data center. There is no doubt that Amazon “materially change[d]” its “position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage.” *Bowman*, 2025 WL 1033993, at *9; *see Robertson*, 12 Va. App. at 856–57 (applying presumption of regularity “that public officers have properly discharged their official duties.”).

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3. *The Consent Order Did not Deprive the Zoning Administrator of the Ability to Declare Vested Rights.*

To the extent the Zoning Administrator’s decision can be read as relying on the entry of the consent order in the ZOTA Action as cutting off the ability to declare vested rights, that was also incorrect. The purpose of the consent order was to maintain status quo *as it existed on the date it was entered*. It did not put the parties back to a status quo *ex ante*; it merely locked the parties in to the status quo as it existed on January 14, 2025. Thus, if Amazon had vested rights as of January 14, 2025, the Zoning Administrator was free—indeed, required—to say so.

Nor did the consent order bar Amazon from seeking a vested rights determination, as evidenced by the fact that the ZOTA Action plaintiffs did not bring a motion to enforce the consent order. That order simply required Amazon to agree 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.” In other words, Amazon was limited from taking additional steps that would further entrench its vested rights, but it was not barred from seeking a determination of its rights.

4. *Accepting the Zoning Administrator’s Logic Would Create a Heckler’s Veto.*

Lastly, the Zoning Administrator’s ruling endorses a heckler’s veto, allowing anyone opposing a zoning decision to displace the vested rights scheme simply by filing suit. Prior to enactment of the vested rights laws, landowners bore the risk of a subsequent change in zoning. A municipality could “downzone” or otherwise change the zoning laws and undercut a landowners’ investment-backed expectations in its land. The legislature adopted Section 15.2-2307 to protect landowners against such municipal whims. The Zoning Administrator’s application of the statute, however, would create a backdoor to delay or undermine the recognition of vested rights. Under the reasoning below, those opposed to a proposed land use need only file a lawsuit, regardless of its merit, to buy itself months or (as is the case here) years to obtain a change in the relevant zoning laws. In the interim, any development undertaken by the landowner would be at its own risk. That cannot be. For one, that deprives the developer of the benefit of the statute. *See Town of Leesburg*, 284 Va. at 134 (“The purpose of Code § 15.2–2307 is to provide ‘for the vesting of a right to a permissible use of property against any future attempt to make the use impermissible by amendment of the zoning ordinance’”)(emphasis omitted). Further, the Zoning Administrator’s theory will create an incentive for frivolous litigation. Opponents of land development will file lawsuits not in the hope or expectation of winning, but to buy time for a change in views in the local governing board—during which time, development will be at the developer’s substantial risk.

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Accordingly, the BZA should not countenance the Zoning Administrator's flawed theory that the mere filing of a lawsuit can cut off the vesting of rights. That theory is contrary to the statute, to principles of statutory construction and administrative decision making, and would create a foolproof method opponents of development could use to halt the vesting of rights.

C. Amazon has Vested Rights Under Virginia Code § 15.2-2311(C).

The Board should rule in Amazon's favor for an entirely independent and separate reason. Even if the Zoning Administrator was correct that Amazon's rights were not yet vested under Virginia Code § 15.2-2307(A), the Zoning Administrator still erred by failing to recognize Amazon's vested rights under Virginia Code § 15.2-2311(C). That section provides:

In no event shall a written order, requirement, decision or determination 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

Those elements are met here.

First, the Zoning Administrator issued a written decision and/or determination on Amazon's Site Plan. As the Zoning Administrator herself acknowledged in the Zoning Determination, Amazon "obtained approval of a Site Development Plan SDP-23-6 by the Town of Warrenton Zoning Administrator." Nor could she very well deny the fact: the Zoning Administrator sent Amazon a document, signed by her, on April 18, 2024, that was titled "Site Plan Approval." This written approval with the official imprimatur of the Zoning Administrator may be characterized as a "decision" or a "determination"; in either case this writing meets the requirements of the statute. *See Determination*, *Black's Law Dictionary* (12th ed. 2024) ("[t]he act of deciding something officially; esp., a final decision by a court or administrative agency."); *Decision*, *Merriam-Webster Online Dictionary* ("a determination arrived at after consideration."); *Arogas, Inc. v. Frederick Cnty. Bd. of Zoning Appeals*, 280 Va. 221, 229 (2010) (failure to approve site plan was a "determination."); *cf. Ripl v. Westmoreland Cnty. Indus. Dev. Auth.*, 82 Va. Cir. 69, at *10 (2010) (a zoning administrator's statement that a tower was a "by-right" permitted use was "a decision" within the meaning of § 15.2-2311(C)). The Site Plan approval was thus a "decision or determination made by the zoning administrator[.]" § 15.2-2311(C).

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Second, more than sixty days have elapsed from the date of the written decision or determination. The Site Plan was approved 585 days ago, on April 18, 2024.

Third, Amazon materially changed its position in good faith reliance on the Zoning Administrator's Site Plan approval. As discussed above, in the context of § 15.2-2311(C), a "property owner's 'good faith reliance' is measured by whether he materially changes his position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage." *Bowman*, 2025 WL 1033993, at *9. Amazon has indeed changed its position by making the substantial expenditures and incurring the obligations set out in the determination request and herein. Finally, Amazon did not intend to defraud, deceive, or obtain an unconscionable advantage by relying in good faith on the Site Plan approval.

Here too, the filing of the ZOTA and Site Plan Action have no impact on Amazon's vested rights. *Rhoads* and *Bowman* both considered § 15.2-2311(C) and found that "Code § 15.2-2311(C) manifestly creates a legislatively-mandated limited exception to the judicially-created general principle that a building permit issued in violation of applicable zoning ordinances is void." *Rhoads*, 294 Va. at 52; *see Bowman*, 2025 WL 1033993, at *6 ([*Rhoads*] "stands for the proposition that a building permit is an order, requirement, decision or determination for purposes of Code § 15.2-2311(C) even where it is issued in violation of a local zoning ordinance.").

Accordingly, because Amazon materially changed its position in good faith reliance on the Zoning Administrator's Site Plan approval, and because more than sixty days has passed, Amazon has vested rights under § 15.2-2311(C).

IV. Conclusion

For the reasons set forth herein, Amazon has been grieved by the Zoning Determination. Amazon asks the BZA to affirm that Amazon has vested rights in the development of the Property as a data center.

Please schedule this appeal for presentation to the BZA. Amazon respectfully requests the right to present additional argument and evidence to the BZA at the time this matter is scheduled for consideration.

Sincerely,

Gordon D. Todd
Counsel to Amazon Data Services, Inc.

SPECIAL USE PERMIT CONDITIONS OF APPROVAL**Applicant: AMAZON DATA SERVICES, INC. (the "Applicant")****Owner: AMAZON DATA SERVICES, INC.****SUP2022-0003, Amazon Data Center****PIN # 6984-69-2419 (the "Property")****Special Use Permit Area: ± 41.79 acres****Zoning: INDUSTRIAL (I)****Date: February 14, 2023**

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards, and restrictions as may be necessary to avoid, minimize, or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. The Council may require a guarantee or bond to ensure that compliance with the imposed conditions. All required conditions shall be set out in the documentation approving the Special Use Permit (SUP). These conditions shall run with the land so as to bind future landowners. Any party or officer identified by title shall mean and include any successor to that person or entity's powers or responsibilities.

1. **Site Development:** The Property shall be developed in substantial conformance with these conditions and the Special Use Permit Plan entitled, "Special Use Permit Plan for Amazon Data Services, Inc.," prepared by Bohler Engineering, dated July 10, 2022 and revised through January 10, 2023, and consisting of 3 sheets, subject to minor modifications approved by the Town in connection with final Site Plan review and final engineering, and except as otherwise provided in these Conditions (the "SUP Plan"). The building and other structures to be constructed on the Property are referred to herein as the "Facility."
2. **Site Plan:** The Applicant shall produce a site development plan that delineates the external noise emitting equipment that is to be installed and activated at each phase of the building. No phase or set of phases will begin operation until the Town has issued a conditional Certificate of Occupancy for such phase or phases. A final Certificate of Occupancy will be granted upon completion of all phases.
3. **Use Parameters. Use Limitation:** The use approved with this SUP shall be limited to a data center as set forth in § 3-4.12.3 of the Town of Warrenton Zoning Ordinance.
4. **Electric Substation:** There shall be no electric substation constructed on the Property.
5. **Undergrounding of Electrical Lines from a Substation to the Facility:** Pursuant to Warrenton Zoning Ordinance § 9-26.1(C), the distribution lines from the off-site substation serving the data center are required to be underground. Applicant will ensure payment of the undergrounding of these distribution lines with the utility company in accordance with its requirements.
6. **Building Design and Elevations:**
 - a. The architectural design of the data center shall substantially conform to

the "Illustrative Building Elevations"; prepared by Corgan; February 14, 2023". The Elevations shall be subject to minor modification approved by the Town in connection with Site Plan review. Additional changes to the design and materials may be made provided that any such changes are approved by the Director of Community Development prior to the issuance of a building permit.

- b. At time of Site Plan, the Applicant shall provide all elevations for the building in compliance with the Town of Warrenton Zoning Ordinance Article 9-26.1.F. In addition, the Applicant shall orient the building along Lee Highway to reduce the visible impact using architectural details such as a perceived reduction in massing and scale, fenestration and windows, exterior colors and materials, overhangs, canopy or porticos, recesses and/or projections, arcade, raised corniced parapets, and varying roof lines.
- c. The Facility shall be no greater than 37 feet in height, as that term is defined in the Town Zoning Ordinance. The mechanical equipment installed on the roof of the building shall be screened.
- d. Noise mitigation measures, including but not limited to, silencers, sound walls, acoustical wraps, and/or low noise equipment, shall be utilized to meet § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise.

7. Signage: There shall be no signage except for a street address; provided that if any further signage is sought it shall comply with applicable sign ordinance requirements.

8. Fencing: All fencing on the Property shall be as depicted on the SUP Plan, and shall not exceed 8 feet in height. Security fencing shall be the style and type as shown on Page 2 of the Special Use Permit Plan produced by Bohler dated July 10, 2022 and updated through October 28, 2022. Chain link fencing, with or without slatted inserts, and/or barbed wire or other similar visible deterrence devices shall not be permitted where visible from the public.

9. External Fuel Storage Tanks: The Applicant shall install above-ground double-walled fuel tanks that meet the definition of secondary containment under the DEQ LPR-SRR-2019-03 - Storage Tank Program Compliance Manual, Volume V - AST Guidance, and pursuant to 40 CFR Part 112, Section 8.1.2.2, in the general locations shown on the SUP Plan, for the storage of fuel supplies necessary to maintain an Uninterruptible Power Supply in the event of a loss of external electrical power.

10. Parking: The Applicant shall provide not fewer than 56 parking spaces as shown on the SUP Plan, one of which shall be a loading space.

11. Site Maintenance: The Applicant shall maintain the Property in a clean and orderly manner, and shall provide an on-site masonry screened refuse container station in the location generally shown on the SUP Plan.

12. Access: Access to the site shall be provided as shown on the SUP Plan, subject to changes approved by the Town in consultation with the Virginia Department of Transportation. Mountable curbs shall be provided as required by the Town. There shall be no access from either Routes 17 or 29.
13. Access for Town Staff: The Town is obliged to report annually to the Virginia Department of Environmental Quality as to the ongoing operation and maintenance of stormwater management facilities installed on the Property. The Applicant shall provide the Town Manager with an on-site employee who shall serve as the sole point of contact for arranging access to the Property for the Town's conduct of such inspections, and shall keep that point of contact current at all times.
14. Water & Public Sewer Connection: The Property shall connect to public water and public sewer at the Applicant's expense. The Applicant shall limit its water use to internal domestic uses such as service to bathrooms, kitchens, humidification, and external irrigation. It shall not use public water for the general purposes of cooling the data center but may use it for the initial charging of the cooling system. It shall consult with the Director of the Department of Public Works and Utilities as to the scheduling of the initial charging of the system so as to minimize the impact on the Town's water system. This condition does not exclude or prevent the property owner from utilizing the Town's water for fire suppression.
15. Emergency Services:
 - a. The Applicant shall coordinate training between the Town's fire and rescue companies and those other companies and departments that have experience with data centers after commencement of operations at the Property and when convenient for the Town's first responders. Furthermore, upon commencement of operations at the Property, the Applicant will provide the Town's first responders its "Data Center Response Manual" for use in training for emergencies at its Facility, and shall assist in advising those first responders how to implement its provisions.
 - b. The Applicant shall assure that the water line systems at the Facility have sufficient fire flows, as determined by the Town Fire Marshal.
 - c. The Applicant shall maintain Facility security personnel 24 hours a day, and each day of the year.
16. Pedestrian access: The Applicant shall construct a five-foot sidewalk on the east side of Blackwell Road along its frontage on that Road.

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- a. Each phase shall receive a conditional Certificate of Occupancy upon demonstrating conformance with the requirements of § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise. The Applicant shall provide and pay for a third-party sound test prepared by a qualified full member of Acoustical Society of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved by the Director of Community Development. The purpose of such test is to demonstrate the operation of each distinct phase as noted in Condition #2 after completion of the construction and prior to the issuance of the conditional Certificate of Occupancy. If the test finds the use does not meet § 9-14.2 of the Town of Warrenton Zoning Ordinance, then there shall be no commencement of use for that phase and no conditional Certificate of Occupancy shall be issued.
- b. The Applicant shall pay for an annual sound test prepared by a qualified full member of Acoustical Society of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved and procured by the Director of Community Development, for the life of the data center use. The Applicant shall provide a point of contact, to be maintained and kept up to date at all times, for the Town to bill for reimbursement of the annual sound test. The Applicant shall reimburse the Town for all costs related to the sound test within 30 days receipt of an invoice for reimbursement.
- c. If the use violates § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise, then the Applicant shall have 48 hours to mitigate the violation of the use or the Certificate(s) of Occupancy are automatically suspended and the Applicant shall cease the use until such time that the Applicant can demonstrate the use meets said section of the Zoning Ordinance.

For reference, the Town of Warrenton Zoning Ordinance § 9-14.2 states:

9-14.2 The sound pressure level of sound radiated from an establishment, measured at the lot line of the site thereof that is the nearest thereto, shall not exceed the values in any octave band of frequency that are specified in Table 9-1 below, or in Table 9-1 as modified by the correction factors set forth in Table 9-2. The sound pressure level shall be measured with a sound level meter and an associated octave band analyzer conforming to standards prescribed by the American National Standards Institute.

Table 9-1 Maximum Permissible Sound Pressure Levels Measured re 0.0002 dyne per CM ²		
Frequency Band Cycles per Second	Along Residential District Boundaries – Maximum Permitted Sound Level In Decibels	At Any Other Point on the Lot Boundary – Maximum Permitted Sound Level In Decibels
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8000	30	44

Table 9-2 Correction Factors	
Condition	Correction in Decibels
On a site contiguous to or across a street from the boundary of any R-district established by this chapter.	Minus 5
Operation between the hours of 10:00 p.m. and 7:00 a.m.	Minus 5
Sound of impulsive character (e.g., hammering)	Minus 5
Sound of periodic character (e.g., sawing)	Minus 5
Tone (e.g., hum or screech)	Minus 5
Sound source operated less than:	
20% in any one hour period	Plus 5 ¹
5% in any one hour period	Plus 10 ¹
1% in any one hour period	Plus 15 ¹

1. Apply only one of these corrections. All other corrections (including any one of the footnoted) are cumulative.

18. **Lighting:** The Applicant shall submit a Lighting Plan pursuant to the provisions of § 9-8 et seq. of the Town of Warrenton Zoning Ordinance in connection with its Site Development Plan. All exterior lighting shall utilize LED and be designed and constructed with cutoff and fully shielded fixtures that direct light downward and into the interior of the property and away from adjacent roads and adjacent properties. All building mounted lighting shall have a maximum height of 25', and the Applicant shall install controls on the site fixtures such that they dim to 50% output between 11 PM and dawn. Freestanding parking lot lights shall be a maximum of 20.'
19. **Tree Save:** The Applicant shall provide a tree preservation plan at time of Site Plan that seeks to minimize land disturbance and maximize on-site vegetation.
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21. Landscaping: The Applicant will follow the Zoning Ordinance Article. In addition, the Applicant will provide double the Town of Warrenton Zoning Ordinance required landscaping requirements (existing and proposed) along the side of the building facing Lee Highway and Blackwell Road with coniferous trees that provide four season visual coverage. All plantings must consist of native, drought tolerant species appropriate for the Town of Warrenton climate.
22. Termination of Use: If the site becomes inactive for 30 consecutive days or for 30 days in any 180-day period, the property owner shall empty all fuel storage tanks and take all other reasonable steps to prevent any soil or water contamination, to the satisfaction of the Town. Within one year of the termination of the use, the owner shall deliver a letter from the Virginia Department of Environmental Quality that certifies that the owner has removed all hazardous materials, underground tanks and pumps, and any environmentally sensitive materials and has ensured that the soils and environmental features of the site are clean and free of hazardous materials.
23. Employment Opportunities: The Applicant shall provide outreach to qualified persons residing in the Town of Warrenton who may be interested in employment at the data center through a variety of media such as the conduct of a job fair, the inclusion of a direct link to potential opportunities on the Town website, or on other websites for the purpose. Such outreach shall be made reasonably in advance of the construction of the Project so that interested persons may make application for positions, not less than six months prior to the anticipated completion of construction.
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25. Violation of Conditions: Violation of any of the conditions of this SUP may result in appropriate enforcement action by the Town, including issuance of a Notice of Violation and Corrective Order and, after notice and an opportunity to be heard, revocation of the SUP. This statement does not limit the remedies of the Town in the event of a violation of the conditions in this SUP nor does it imply any limitation in the Town's enforcement of conditions in unrelated SUP's.



TOWN OF WARRENTON

Community Development Department

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

Item 3.

SITE PLAN APPROVAL

April 18, 2024

Project Name	Warrenton Data Center
Project Number	SDP-2023-6
Location	719 Blackwell Road (6984-69-2419-000)
Use	Data Center per Zoning Ordinance Section 3-4.12.3
Zoning	Industrial (I)
Engineer/Applicant Representative	Owner
John Wright, P.E. Bohler Engineering 28 Blackwell Park Lane, Suite 201 Warrenton, VA 20186 jwright@bohlerengineering.com	Michael Gore Amazon Data Services, Inc. 410 Terry Ave., N. Seattle, WA 98109 C/o jonnorg@amazon.com

CONDITIONS OF APPROVAL

1. Development of the subject property shall conform to all notes and design layouts on the approved plan. This approval shall be for this Site Plan only; any change or increase in use or intensity may require the submittal of a new or amended site plan.
2. Development and use of the property is subject to all conditions of approval as associated with the Special Use Permit, case number SUP-22-3, as approved by Town Council on February 14, 2023.
3. Any revisions or changes to the site conditions depicted within this Site Development Plan shall require the submission and approval of a Site Development Plan Amendment. This shall include any necessary modifications to the electrical service to the property, including but not limited to, off-site distribution or service lines.
4. Electrical service lines that serve the data center facility and any other accessory or appurtenant structure or use within the property boundaries must be located underground from the substation that serves the facility to the subject property per Special Use Permit #22-3 approval condition #5. Proof of conformance with this condition shall be provided to the Zoning Administrator for review and concurrence prior to the issuance of any Certificate of Occupancy and/or commencement of the data center use.
5. Public water shall not be used for the general purposes of cooling the data center, but may be used for the initial charging of the cooling system. The property owner and/or site operator shall consult with the Director of Public Works and the Director of Public Utilities to the scheduling of the initial charging of the system per Special Use Permit approval condition #14.
6. A noise study must be provided for each phase of construction to demonstrate compliance with Article 9-14.2 of the Ordinance prior to receiving a conditional certificate of occupancy per Special Use Permit approval condition #17a.
7. An annual sound test shall be required and paid for by the property owner and/or site operator for the life of the data center use per Special Use Permit approval condition #17b. This test must be prepared by a qualified full member of the Acoustical Society

of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved and procured by the Director of Community Development.

8. If at any time the data center use violates Article 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise, then the property owner shall have 48 hours to mitigate the violation of the use or the certificate(s) of occupancy will be automatically suspended and the data center use shall cease until such time that the property owner can demonstrate the use meets said section of the Zoning Ordinance per Special Use Permit approval condition #17c.
9. All exterior lighting shall conform to Section 9-8 of the Ordinance; all lights shall consist of fully-sheilded, full cut-off fixtures, where no light is emitted above a horizontal plane passing through the lowest point of the light-emitting element. All site lighting shall be turned off at the close of business; or, where business hours extend after 11:00 p.m., site lighting shall be reduced by at least 50% from 11:00 p.m. until dawn.
10. Tree preservation areas shall remain in a wooded condition, where no woody vegetation is removed except for periodic maintenance as necessary to remove dead, dying or diseased trees and the removal of noxious and/or invasive plant species. Should necessary maintenance activities remove vegetation so that the buffering and screening function of the wooded area is impacted, replacement vegetation shall be planted by no later than the next suitable planting season, at a replacement rate equal to or greater than the replacement/restoration rates as detailed in Appendix D – Vegetative Replacement Standards, as published in the Buffer Modification and Mitigation Guidance Manual (DCR, 2003).
11. The proposed sewer gas interceptor structure at the building connection, sheet C511, will function as a solids collection tank, and shall be routinely emptied as needed.
12. The temporary construction entrance shall be removed, and the area permanently stabilized, prior to issuance of any certificate of occupancy.
13. A separate Sign Permit is required for all site signage in conformance with Article 6 of the Ordinance.
14. An Easement Plat and Deed is required for this project, as associated with case number ESMT-23-2; proof of recordation must be provided prior to release of this site plan.
15. A Stormwater Management/BMP Maintenance Agreement is required for this project; The Maintenance Agreement must be recorded, and the recordation information provided to Community Development prior to the release of this site plan to authorize construction.
16. A Right-of-Way permit must be obtained from the Department of Public Works prior to the release of this Site Development Plan to authorize construction activities.
17. A separate Zoning Permit is required prior to the placement of a temporary construction trailer(s). Any temporary trailer or other construction-related support infrastructure must be removed prior to the issuance of any certificate of occupancy for the data center facility.
18. Nutrient credit purchase equivalent to a minimum of **7.50 lb/yr TP** is required for this project; a certified letter of nutrient credit purchase is required prior to release of this Site Development Plan for construction.
19. A Bond in the amount of **\$2,869,834.78** is required for this project in conformance with Section 10-8 of the Ordinance; the Bond must be provided prior to release of this site plan.

20. A Land Disturbance permit is required for this project. A complete application for a Land Disturbance Permit must be submitted for review and approval to include:
 - o A Land Disturbance Permit Application
 - o A Registration Statement for a State General Permit for Stormwater Management
 - o A Stormwater Pollution Prevention Plan (SWPPP)
 - o Offsite soil tracking forms
 - o Copy of the recorded Stormwater Management Maintenance Agreement.
 - o Copy of a certified nutrient credit purchase of no less than 7.50 lb/yr TP.
 - o Land Disturbance Permit Fee
21. A registration statement must be provided. The applicant should be aware of timing for the state permit application, if submittal for land disturbance permit is received prior to June 30, 2024, submittal will be required for the 2019 and 2024 registration statement to be covered for the new 2024 permit cycle. The stormwater fee of **\$4,500.00**, based on the total disturbed acreage of 32.90 acres, must be provided with the registration statement.
22. A Pre-Construction meeting is required prior to commencement of any on-site work or land disturbance activity; Please contact Kerry Wharton, Stormwater Administrator, at kwharton@warrentonva.gov or 540-347-1101 extension 135.
23. Any off-site land disturbance requires evidence of agreement by the adjoining property owner(s), to consist of a signed and notarized letter of permission, to include an exhibit that demonstrates the location and extents of any work.
24. An As-Built Plan is required for this project. The As-Built Plan must be submitted within one year of issuance of the first occupancy permit for review and approval. Final approval of the As-Built Plan is required prior to the final release of the Bond per Section 10-9 of the Ordinance.
25. Closed-Circuit TV video of the sanitary sewer system (including laterals and sanitary mains) shall be submitted to and approved by the Utilities Department in a .mpg format compatible with Windows Media Player prior to bond release. The documenting video media shall be recorded in compliance with NASSCO & PACP standards.
26. A final Zoning inspection is required prior to the issuance of any Certificate of Occupancy. Please contact Zoning at 540-347-1101 to schedule the inspection at least two weeks prior to the anticipated commencement of the use.
27. The approval of the subject site plan shall expire five (5) years after the date of approval unless building permits have been obtained for construction, per 10-7.8 of the Zoning Ordinance.

Remainder of page purposely left blank

ZONING ADMINISTRATOR APPROVAL:

This Site Development Plan is approved subject to all conditions and requirements noted above.

ZONING ADMINISTRATOR SIGNATURE:

DATE:

4-18-2024

CONDITIONS OF RELEASE:

NOTE: Site work/construction cannot commence until the site plan has been released!

- The Easement Plat (ESMT-23-2) must be recorded.
- The Stormwater Management/BMP Maintenance Agreement must be recorded.
- Nutrient Credit Purchase letter must be provided.
- The Bond must be provided.
- The Right-of-Way Permit must be issued.
- The Land Disturbance Permit must be issued.

THIS SITE DEVELOPMENT PLAN HAS BEEN RELEASED:**STAFF SIGNATURE:****DATE:**

SPECIAL USE PERMIT CONDITIONS OF APPROVAL

Applicant: AMAZON DATA SERVICES, INC. (the "Applicant")

Owner: AMAZON DATA SERVICES, INC.

SUP2022-0003, Amazon Data Center

PIN # 6984-69-2419 (the "Property")

Special Use Permit Area: ± 41.79 acres

Zoning: INDUSTRIAL (I)

Date: February 14, 2023

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards, and restrictions as may be necessary to avoid, minimize, or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. The Council may require a guarantee or bond to ensure that compliance with the imposed conditions. All required conditions shall be set out in the documentation approving the Special Use Permit (SUP). These conditions shall run with the land so as to bind future landowners. Any party or officer identified by title shall mean and include any successor to that person or entity's powers or responsibilities.

1. **Site Development:** The Property shall be developed in substantial conformance with these conditions and the Special Use Permit Plan entitled, "Special Use Permit Plan for Amazon Data Services, Inc.," prepared by Bohler Engineering, dated July 10, 2022 and revised through January 10, 2023, and consisting of 3 sheets, subject to minor modifications approved by the Town in connection with final Site Plan review and final engineering, and except as otherwise provided in these Conditions (the "SUP Plan"). The building and other structures to be constructed on the Property are referred to herein as the "Facility."
2. **Site Plan:** The Applicant shall produce a site development plan that delineates the external noise emitting equipment that is to be installed and activated at each phase of the building. No phase or set of phases will begin operation until the Town has issued a conditional Certificate of Occupancy for such phase or phases. A final Certificate of Occupancy will be granted upon completion of all phases.
3. **Use Parameters. Use Limitation:** The use approved with this SUP shall be limited to a data center as set forth in § 3-4.12.3 of the Town of Warrenton Zoning Ordinance.
4. **Electric Substation:** There shall be no electric substation constructed on the Property.
5. **Undergrounding of Electrical Lines from a Substation to the Facility:** Pursuant to Warrenton Zoning Ordinance § 9-26.1(C), the distribution lines from the off-site substation serving the data center are required to be underground. Applicant will ensure payment of the undergrounding of these distribution lines with the utility company in accordance with its requirements.
6. **Building Design and Elevations:**
 - a. The architectural design of the data center shall substantially conform to

the "Illustrative Building Elevations"; prepared by Corgan; February 14, 2023". The Elevations shall be subject to minor modification approved by the Town in connection with Site Plan review. Additional changes to the design and materials may be made provided that any such changes are approved by the Director of Community Development prior to the issuance of a building permit.

- b. At time of Site Plan, the Applicant shall provide all elevations for the building in compliance with the Town of Warrenton Zoning Ordinance Article 9-26.1.F. In addition, the Applicant shall orient the building along Lee Highway to reduce the visible impact using architectural details such as a perceived reduction in massing and scale, fenestration and windows, exterior colors and materials, overhangs, canopy or porticos, recesses and/or projections, arcade, raised corniced parapets, and varying roof lines.
- c. The Facility shall be no greater than 37 feet in height, as that term is defined in the Town Zoning Ordinance. The mechanical equipment installed on the roof of the building shall be screened.
- d. Noise mitigation measures, including but not limited to, silencers, sound walls, acoustical wraps, and/or low noise equipment, shall be utilized to meet § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise.

7. Signage: There shall be no signage except for a street address; provided that if any further signage is sought it shall comply with applicable sign ordinance requirements.

8. Fencing: All fencing on the Property shall be as depicted on the SUP Plan, and shall not exceed 8 feet in height. Security fencing shall be the style and type as shown on Page 2 of the Special Use Permit Plan produced by Bohler dated July 10, 2022 and updated through October 28, 2022. Chain link fencing, with or without slatted inserts, and/or barbed wire or other similar visible deterrence devices shall not be permitted where visible from the public.

9. External Fuel Storage Tanks: The Applicant shall install above-ground double-walled fuel tanks that meet the definition of secondary containment under the DEQ LPR-SRR-2019-03 - Storage Tank Program Compliance Manual, Volume V - AST Guidance, and pursuant to 40 CFR Part 112, Section 8.1.2.2, in the general locations shown on the SUP Plan, for the storage of fuel supplies necessary to maintain an Uninterruptible Power Supply in the event of a loss of external electrical power.

10. Parking: The Applicant shall provide not fewer than 56 parking spaces as shown on the SUP Plan, one of which shall be a loading space.

11. Site Maintenance: The Applicant shall maintain the Property in a clean and orderly manner, and shall provide an on-site masonry screened refuse container station in the location generally shown on the SUP Plan.

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J. Chapman Petersen+*

Sharon Kim Petersen

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*also admitted in MD

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Federico J. Zablah

Christopher T. Robertson+

Dylan M. Phillips

Patrick R. Corish+

Janice M. Jang^+

October 24, 2025

VIA EMAIL

John H. Foote
Walsh Colucci Lubeley & Walsh PC
4310 Prince William Pkwy
Suite 300
Prince William, VA 22192
jfoote@thelandlawyers.com

Re: Vesting Determination

Dear John:

Our office is in receipt of the letter dated July 25, 2025 requesting a “vested rights” determination from the Town Zoning Administrator.

Enclosed is the response. I would appreciate if you would contact me directly with any follow-up matters, as there is litigation involved and this is a disputed matter.

Many thanks as always,

Sincerely,

CP

J. Chapman Petersen

JCP

Cc: Frank Cassidy



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
100 Shockoe Slip, FL 2
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;

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

- 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;*

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- (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.

Amazon Vested Rights Determination – 719 Blackwell Road
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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).

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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



**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

703 680 4664 ■ WWW.THELANDLAWYERS.COM
4310 PRINCE WILLIAM PARKWAY ■ SUITE 300 ■ WOODBRIDGE, VA 22192-5199

ARLINGTON 703 528 4700 ■ LOUDOUN 703 737 3633

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.

A handwritten signature in blue ink that reads "John H. Foote".

John H. Foote

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

JHF/jf

NOV 25 2025

BZA-25-3

Community Development

TOWN OF WARRENTON BOARD OF ZONING APPEALS'

RULES OF PROCEDURE REGARDING APPEALS

Adopted October 5, 2021

The following procedural rules govern appeals before the Town of Warrenton's Board of Zoning Appeals ("BZA"):

A. Definitions:

Appellant: Any person aggrieved or any officer, department, board, commission, or authority of the Town affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Town of Warrenton's Zoning Ordinance.

Appeal: Action taken to contest a decision of the Zoning Administrator or to contest any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Town of Warrenton's Zoning Ordinance

B. Appellant to receive copy of Rules:

Town staff shall provide the appellant a copy of the BZA's Rules of Procedure Regarding Appeals upon appellant's request or no later than at the time appellant files its land development application noting its appeal. All appeals shall include as an Addendum, a statement by the appellants acknowledging receipt of these Rules of Procedure.

C. Submission requirements of written materials:

- (1) The appellant shall file a land development application and filing fee noting its appeal, along with a detailed statement of justification of the grounds for the appeal, in accordance with the relevant provisions of the Code of Virginia and the Town of Warrenton Zoning Ordinance, with the Town's Department of Community Development located at 21 Main Street, Warrenton, Virginia 20186. The appellant shall file eight (8) complete copies plus a digital copy of the statement of the justification, including copies of all exhibits, at the time of filing.
- (2) The appeal shall be placed on the BZA's next agenda for which it can be properly advertised, consistent with the legal notice requirements of the Code of Virginia and the Town of Warrenton Zoning Ordinance. There may be instances in which an appellant must file an appeal to protect its rights but appellant and Town staff are actively pursuing a resolution to the issue which resulted in the appeal. In those instances, appellant and Town staff can consent to postpone scheduling of the appeal. In those instances, the appeal will not be placed on the BZA's public meeting agenda until either party notifies the Secretary

of the BZA of the need to schedule it; however, both parties' consent to the postponement of the appeal shall be placed on the BZA's agenda.

- (3) Town staff shall file seven (7) copies plus a digital copy of its written response to the appeal, including copies of all exhibits, with the Secretary of the BZA within fourteen (14) business days of the date appellant filed its appeal. Staff shall also transmit by hand delivery, facsimile, or email a complete copy of its response to the appeal, including copies of all exhibits, to the appellant, so that the appellant receives its copy by 4:30 p.m. the same day staff files its response with the Secretary of the BZA.
- (4) The appellant may, but is not required to, file a written reply to staff's submission with the Department of Community Development. If appellant elects to file a written reply, it shall be filed within five (5) business days of the date staff filed its response to the appeal. The appellant shall file eight (8) complete copies plus a digital copy of its reply, including copies of all exhibits, at the time of filing.
- (5) If appellant raises new or different arguments in its written reply to Town staff's submission, staff may, but is not required, to file a reply with the Secretary of the BZA. If staff elects to file a reply, it shall be filed within three (3) business days of the date appellant filed its reply. Staff shall file seven (7) copies plus a digital copy of its reply, including copies of all exhibits, at the time of filing. Staff shall also transmit by hand delivery, facsimile, or email a complete copy of its reply, including copies of all exhibits, to the appellant, so that the appellant receives its copy by 4:30 p.m. the same day staff files its reply with the Secretary of the BZA.
- (6) There is no page limit for written submissions.
- (7) Untimely submission of written materials may preclude or hinder the BZA's consideration of them but shall not be grounds for delay of consideration except at the discretion of the BZA.

D. Oral argument at the public meeting:

- (1) Order of oral argument:
 - a. Town staff shall explain the basis for his/her determination; such determination is presumed to be correct. Town staff shall have twenty (20) minutes for this presentation.
 - b. Appellant or the appellant's representative has the burden to rebut the presumption of the determination's correctness by a preponderance of the evidence. Appellant shall have twenty (20) minutes to present their arguments.
 - c. Town staff shall have the opportunity to rebut the issues presented by Appellant. Staff's rebuttal is limited to five (5) minutes.
 - d. Appellant may only reply to Town staff's rebuttal if Town staff raises new issues during its rebuttal. Appellant's reply is limited to five (5) minutes.

- (2) The time periods set forth regarding presentation of appeals at the public meeting may be modified at the discretion of the BZA. The Chairperson shall enforce the time limitations so that the hearing is held in a fair and orderly manner.
- (3) Appeals will be heard in the order in which they appear on the agenda unless a majority of the membership of the BZA votes to modify the agenda.
- (4) If either party presents an exhibit at the public meeting which was not submitted with its written submission, then a copy shall be submitted to the Secretary for the BZA at the public meeting. That copy shall be included in the BZA's official record relating to the appeal. Untimely submission of exhibits may preclude or hinder the BZA's consideration of them but shall not be grounds for delay of consideration except at the discretion of the BZA.

E. Requests for deferral of appeals:

- (1) A request for a deferral of an appeal shall be in writing, shall be addressed to the BZA, and delivered to the Secretary of the BZA. The party requesting the deferral shall transmit a copy of the request for a deferral to the opposing party or its representative by hand delivery, facsimile, or email so that the opposing party receives its copy by 4:30 p.m. the same day the request for deferral is delivered to the Secretary of the BZA.
- (2) A request shall include the reason(s) why deferral is necessary.
- (3) A decision regarding a deferral shall be made by the BZA at the public meeting at which the case is scheduled to be considered.
- (4) The parties shall be prepared to proceed with argument of the appeal in the event the request for deferral is denied.

TOWN OF WARRENTON'S BOARD OF ZONING APPEALS**Addendum to Land Development Application**

I hereby acknowledge receipt and have read the Town of Warrenton Board of Zoning Appeals' *Rules of Procedure Regarding Appeals*.

Applicant



Applicant

Amazon Data Services, Inc.

Printed Name

11/20/2025

Date



J. Chapman Petersen+*

Sharon Kim Petersen

+also or ++only admitted in DC

*also admitted in MD

^admitted in NY

J. Chapman Petersen

jcp@petersenfirm.com

Direct: 571-459-2510

Federico J. Zablah

Christopher T. Robertson+

Dylan M. Phillips

Patrick R. Corish+

Janice M. Jang^+

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.

Letter to Warrenton Board of Zoning Appeals
 December 15, 2025
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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.

Letter to Warrenton Board of Zoning Appeals
December 15, 2025
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(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.

Letter to Warrenton Board of Zoning Appeals
 December 15, 2025
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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.

Letter to Warrenton Board of Zoning Appeals
 December 15, 2025
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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’

Letter to Warrenton Board of Zoning Appeals
 December 15, 2025
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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;

Letter to Warrenton Board of Zoning Appeals
 December 15, 2025
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- 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.

Letter to Warrenton Board of Zoning Appeals
December 15, 2025
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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.

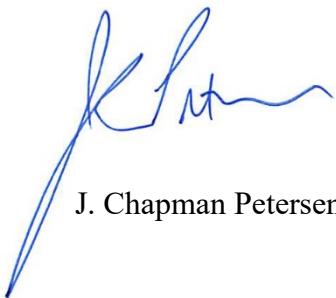
IV. Conclusion

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,



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, <i>et al.</i>)
)
<i>Plaintiffs-Petitioners</i>)
)
v.)
)
TOWN COUNCIL FOR THE)
TOWN OF WARRENTON, <i>et al.</i>)
)
<i>Defendants-Respondents</i>)
)

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

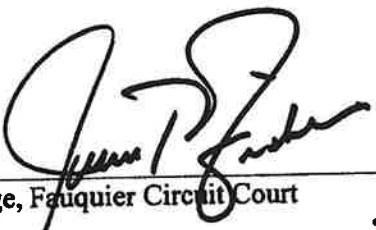
IT FURTHER APPEARING that the entry of this Order is just and proper in all respects, it is hereby

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:

Matthew A. Westover

John H. Foote, VSB No. 14336
 Matthew A. Westover, VSB No. 82798
 Brooke N. West, Esq., VSB No. 99595
 WALSH, COLUCCI, LUBELEY & WALSH, P.C.
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 jfoote@thelandlawyers.com
 mwestover@thelandlawyers.com
 bwest@thelandlawyers.com

Counsel for Amazon Data Services, Inc.

E: WESTOVER
 BRADY
 CM
 1-14-25
 pg

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)
 Zanas D. Talley (VSB No. 97736)
 WHITEFORD, TAYLOR & PRESTON L.L.P.
 Two James Center
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 ztalley@whitefordlaw.com

Counsel for Plaintiffs-Petitioners


 SEEN AND CONSENTED TO AS STATED, RESERVING ALL ARGUMENTS AND
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 Heather Bardot, Esq. (VBS No. 37269)
 William W. Miller (VSB No. 97125)
 McGAVIN, BOYCE, BARDOT, THORSEN, & KATZ, PC
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 jmcmcav@mbbtklaw.com
 hbardot@mbbtklaw.com
 wmmiller@mbbtklaw.com

Counsel for Defendant-Respondent, Town of Warrenton, Virginia

EXHIBIT B



**WALSH COLUCCI
LUBELEY & WALSH PC**

John H. Foote
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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

ARLINGTON 703 528 4700 ■ LOUDOUN 703 737 3633

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
100 Shockoe Slip, FL 2
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).

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

Attachment A
Pattern Motions to Overturn/Affirm Appeal
February 3, 2026

Item 3.

PATTERN MOTION TO OVERTURN

APPEAL

BZA #2025-3

BZA MEETING DATE:
February 3, 2026

In Application BZA #2025-3, I move to overturn the decision of the Town of Warrenton Zoning Administrator, after due notice and hearing as required by Code of Virginia §15.2-2204 and Article 11-3.12 of the Town of Warrenton Zoning Ordinance, based upon the following Board findings:

1. _____
2. _____
3. _____

Attachment A
Pattern Motions to Overturn/Affirm Appeal
February 3, 2026

Item 3.

PATTERN MOTION TO AFFIRM

APPEAL

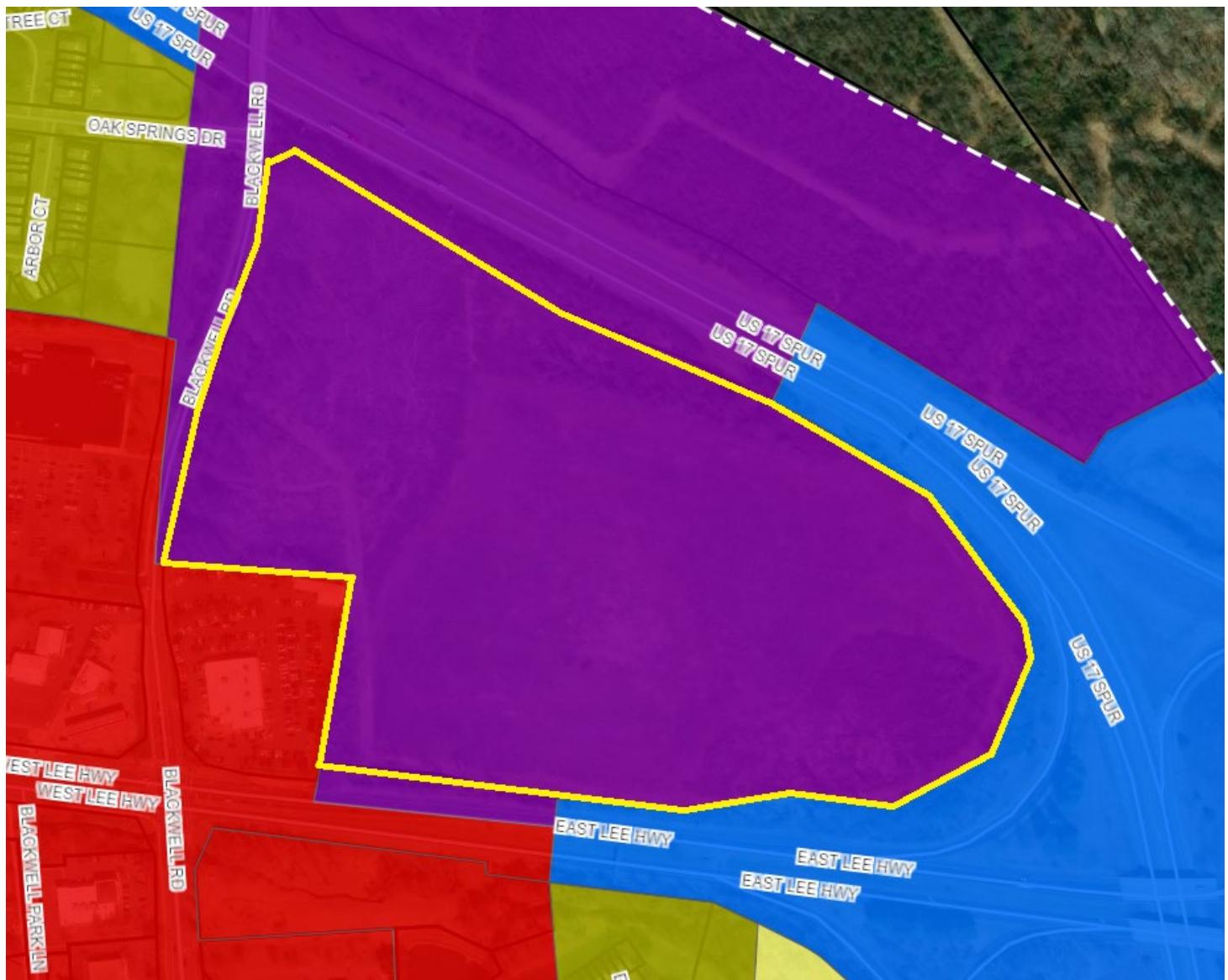
BZA #2025-3

BZA MEETING DATE:
February 3, 2026

In Application BZA #2025-3, I move to affirm the decision of the Town of Warrenton Zoning Administrator, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Article 11-3.11 of the Town of Warrenton Zoning Ordinance, based upon the following Board findings:

1. There are two ongoing litigation cases challenging the validity of the Special Use Permit (SUP-22-3) and Site Development Plan (SDP-23-6) approvals as defined in case numbers CL23000128-00 and CL24000303.
2. The Board of Zoning Appeals recognizes and will abide by the consent order governing the Town of Warrenton and the Amazon data center development placed by the Fauquier County Circuit Court.
3. _____
4. _____

Zoning and Location





Board of Zoning Appeals- 2026 Meeting Calendar

Month	Regular Meeting 5:00 PM Regular Meeting (1 st Tuesday of the Month)
January	6 th
February	3 rd
March	3 rd
April	7 th
May	5 th
June	2 nd
July	7 th
August	4 th
September	1 st
October	6 th
November	5 th *
December	8 th

**Rescheduled date due to regular meeting date falling on a holiday.*

February 3, 2026
 BZA
 Regular Meeting

**RESOLUTION OF THE ORGANIZATIONAL MEETING
 OF THE BOARD OF ZONING APPEALS FOR THE TOWN OF WARRENTON**

WHEREAS, Warrenton, VA (Hereinafter "the Town") is a municipal corporation located within the County of Fauquier; and

WHEREAS, the Board of Zoning Appeals for the Town of Warrenton is meeting in its organizational session and desires to adopt certain resolutions to establish a regular meeting schedule; and

WHEREAS, the Board of Zoning Appeals met at its regularly scheduled meeting on February 3, 2026 and, pursuant to the general laws of the Commonwealth, desires to adopt the following resolution; and

NOW, THEREFORE BE IT RESOLVED by the Board of Zoning Appeals for the Town of Warrenton that the members of the Board of Zoning Appeals shall meet in regular session on the first (1st) Tuesday of each month at 5:00 p.m. at Town Hall, 21 Main Street, Warrenton, Virginia, unless otherwise provided, pursuant to Section § 15.2-1416 of the Code of Virginia, 1950, as amended, and the current Board of Zoning Appeals By Laws, to wit

Tuesday, January 6, 2026
 Tuesday, February 3, 2026
 Tuesday, March 3, 2026
 Tuesday, April 7, 2026
 Tuesday, May 5, 2026
 Tuesday, June 2, 2026
 Tuesday, July 7, 2026
 Tuesday, August 4, 2026
 Tuesday, September 1, 2026
 Tuesday, October 6, 2026
 Wednesday, November 5,
 2026
 Tuesday, December 8, 2026

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Clerk

ATTEST: _____

 Town Recorder

TOWN OF WARRENTON, VIRGINIA
BOARD OF ZONING APPEALS
BY-LAWS

ARTICLE 1 – MEMBERSHIP

- 1-1 The Board of Zoning appeals of the Town of Warrenton, known hereafter as "The Board", adopts the subsequent articles in order to facilitate its powers and duties in accordance with Article 15-2, Section 2309 of the 1950 Code of Virginia as amended and Article 11-2 Board of Zoning Appeals of the Town of Warrenton Zoning Ordinance.
- 1-2 The Board shall consist of five members who are residents of the Town and who shall be appointed by the Circuit Court of Fauquier County. The term of office shall be for five years. One of the five members appointed may be an active member of the Planning Commission. Members may be removed for just cause by the appointing authority upon written charges and a public hearing.

ARTICLE 2 – ANNUAL MEETING; DUTIES OF OFFICERS

- 2-1 The first meeting of the Board in the calendar year, to be held in January, shall be its annual meeting, and the first items of business shall be as follows:
 - a. Election of Officers.
 - b. Appointment of persons to accept service on behalf of the Board.
- 2-2 If no items are to be considered in January, the nominations shall take place at the next regularly scheduled meeting.
- 2-2 The officers elected from the Board membership consist of a Chairman, Vice-Chairman, and a secretary. The Board secretary may be a member of staff.
- 2-3 Each candidate for office shall be nominated and seconded by two members of the board. A majority vote shall be required to be elected to office.

2-4 In the event any officer's position becomes vacant at any time during the year, an elections must be held at the earliest opportunity to fill the vacancy.

2-5 The Chair presides at all meetings and hearings of the Board. The Chair decides all points of order and procedure, subject to appeal to the full Board. The Chair shall:

- a. announce the business before the assembly in its proper order;
- b. preserve order and decorum;
- c. state and put all questions properly before the assembly;
- d. rule on all procedural questions;
- e. be informed immediately of any official communication and report same at the next regular meeting; and
- f. affix his signature to all orders issued by the Board as evidence of such approve.

2-6 The Vice-Chair assumes the duties of the Chair in the Chair's absence.

2-7 The secretary may be appointed by the Board in accordance with the Code of Virginia. The duties of the secretary are as follows:

- a. prepare official correspondence at the direction of the Board;
- b. send out notices of hearings as required by these By-laws, the Town of Warrenton Zoning Ordinance, and the Code of Virginia;
- c. keep minutes and records of the Board's proceedings and other official actions;
- d. keep a file on each case which comes before the Board;
- e. send copies of appeals and applications to the Planning Commission as required by the Zoning Ordinance;
- f. maintain and certify other Board records;
- g. in response to Writs of Certiorari served upon the Board, prepare and file with the court, in a timely fashion, certified copies of the record of any Board decision that has been appealed;
- h. prepare for the Board's review and approval the Annual Report of the Board with the Town Council and file it when approved by the Board; and
- i. notify the Board promptly of any appeals filed from actions of the Board, any legal challenges to the Board's actions, and any notices to the Board.

2-8 The secretary must notify the Circuit Court of any vacancies on the Board and must perform duties as assigned by the Board.

2-9 The Board shall submit a report of its activities to the Town Council at least once each year per Article 11-2.3.6 of the 2006 Zoning Ordinance.

ARTICLE 3 – MEETINGS, QUORUM, VOTING, AND MINUTES

3-1 The Board shall hold its regular meetings on the first Tuesday of the month at 5:00pm except when a meeting is cancelled as provided in these By-laws.

3-2 If the regular meeting date falls on a legal holiday, the meeting shall be held ~~on the following Tuesday unless otherwise designated by the Chairman~~ on the next available business day or as designated by the Chairman.

3-3 When there are no cases pending, no meeting shall be held.

3-4 All meetings are open to the public in accordance with the requirements and exceptions of Title 2.2, Chapter 37 of the 1950 Code of Virginia as amended unless a closed meeting is held pursuant to the Virginia Freedom of Information Act.

3-5 Quorum

- a. A quorum is necessary to transact any Board business. In the absence of a quorum, the Board may not vote on any Board business except adjournment. However, the Board may engage in discussion of internal matters such as training, procedures, or personnel in open session without a quorum. The secretary must record such discussion in the meeting minutes.
- b. Except as otherwise provided by law, a quorum consists of three (3) members (i.e., a majority) of the Board assembled in person.

3-6 Voting

- a. Except when the Board adopts a different method of voting, all votes will be by roll call, with the Chairman calling the roll.
- b. The concurring vote of three (3) members (including any members participating remotely, to the extent provided in these By-laws) is required to:
 - i. grant variances;
 - ii. reverse decisions or determinations of the Zoning Administrator (i.e., appeals);
 - iii. grant a rehearing;

- iv. reject an appeal;
- v. amend these By-laws

c. The concurring vote of a majority of all members present and voting, or such other greater number as may be required by the Code of Virginia, is required to effect all other actions of the Board.

d. Disclosure by a Board member.

- i. A member must make a disclosure of the member's interest in a specific matter before the Board when required by law.
- ii. Any disclosure must be announced and made part of the record of the Board prior to the case being heard or as soon as the basis for disclosure is discovered, except as otherwise provided by law.

e. Disqualification and recusal of a Board member

- i. A member is disqualified to act on a specific matter before the Board only as provided by law. The reason for disqualification must be made a part of the record of the Board.
- ii. Members may recuse themselves from voting under any circumstance which in the opinion of the individual member would create an appearance of impropriety or unfairness. The decision to recuse must be entered into the record of the Board, but a member need not disclose the reasons for the recusal.
- iii. Any disqualification or recusal must be announced and made a part of the record of the Board prior to the case being heard or as soon as the basis for disqualification or recusal is discovered.

3-7 The Order of business at all regular meetings of the Board is as follows unless adjusted by majority vote of the Board members present and voting:

- a. Call to Order by Chairman
- b. Determination of a Quorum
- c. Adoption of Minutes
- d. Public Hearings
 - i. Unfinished Business
 - ii. New Business
- e. Board Member's Discussion

f. Adjournment

3-8 Special provisions addressing remote participation by the Board members are addressed in the separate "Remote Participation" document adopted by the Board on October 3, 2023.

3-9 In the event of inclement weather or other conditions that require closure of the Town of Warrenton Town Hall building, or if the Chair finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting, all agenda items scheduled to be heard must be rescheduled promptly to be heard at the next available meeting.

3-10 The Board may approve as its minutes any of the following document formats: (a) the video recording of its meeting, (b) a transcript thereof, (c) a set of resolutions, (d) a summary of its meetings, or (e) any combination of formats (a) through (d). It may adopt such formats for any meeting, including meetings held prior to adoption of these By-laws. If the Board approves one format of minutes, it may later approve a different format as the official minutes of that meeting.

ARTICLE 4 – DUTIES

4-1 It is the duty of the Board, in accordance with the provisions of the Code of Virginia to hear and decide cases involving the following:

1. Variances in accordance with the provisions of the Zoning Ordinance and Code of Virginia.
2. Appeals from a decision of the Zoning Administrator, or other administrative officer, in accordance with the provisions of the Zoning Ordinance and the Code of Virginia.
3. Applications for the interpretations of the district map where there is any uncertainty as to the location of the district boundary.

ARTICLE 5 – APPLICATIONS TO THE BOARD

5-1 All applications to the Board for appeals, variances, and district map interpretations must be made on forms supplied by Town staff. All other applications or requests, for which there is no required form, must be made in writing. The Board may make, alter, or rescind these forms, consistent with the Zoning Ordinance and general laws of the Commonwealth.

5-2 All applications must include all of the information required by the Zoning Ordinance before being scheduled for public hearing.

- 5-3 All applications must be filed with Town staff. The processing and scheduling of applications must comply with the requirements of the Town of Warrenton Zoning Ordinance and the Code of Virginia.
- 5-4 The secretary of the Board must, in accordance with the Code of Virginia and the Zoning Ordinance, cause to be advertised by publication, in a newspaper of general circulation in the area of the application, the required legal notice of the application.
- 5-5 The secretary of the Board must, in accordance with the Code of Virginia and the Zoning Ordinance, send applicable property notification letters to adjacent and vicinity property owners at the expense of the applicant for the appeal/variance request.
- 5-6 The Board, Town staff, and applicants must comply with the Code of Virginia with respect to ex parte communications.

ARTICLE 6 – PROCEDURES FOR HEARING CASES

- 6-1 The following is intended to serve as a general guideline for Public Hearing procedures of the Board:
 - 1. Call to Order
 - 2. Chairman calls the item with the starting time of the hearing item
 - a) The Chairman may, in its discretion, remind all parties present that the Code of Virginia requires a concurring vote of three (3) members of the Board to approve a variance, and, in an appeal, to reverse the determination of the Zoning Administrator or other officer.
 - 3. Comments/Presentations from the Town staff
 - 4. Comments/Presentations from the applicant
 - 5. Questions on Staff report from Board Members
 - 6. Questions of Applicant presentation from Board Members
 - 7. Comments from the public.
 - a) When the last person from the public has finished speaking, the Chairman shall declare the public hearing closed.
 - b) This testimony is limited to three (3) minutes for individuals and five (5) minutes for representatives of groups, e.g., civic, condominium, and homeowner's associations.
 - 8. The hearing item reverts back to the Board at this point.
 - a) No comments from anyone other than the Board and Staff are permitted.
 - 9. Discussion and motions are made
 - 10. Discussion of main motion and amendments, if necessary

11. Chairman repeats motion and question is called
12. Vote on motion

ARTICLE 7 – AMENDMENTS

7-1 These by laws may be amended by affirmative vote of the majority of the members of the Board at a regularly scheduled meeting, provided that the proposed amendment to these By-Laws be delivered to members of the Board at least 30 days prior to the meeting at which the vote on the amendment is to be taken.

ADOPTED: July 2, 2024



TOWN OF WARRENTON

Community Development Department

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

February 3, 2026

TO: Members, Board of Zoning Appeals
FROM: Heather E. Jenkins, PLA, CZA; Zoning Administrator
SUBJECT: Annual Report, 2025

Dear Board Members:

The Town Zoning Ordinance requires that the Board submit a report of its activities to the Town Council at least once per year. This letter is the summary of the Board's activities for calendar year 2025, serving as the annual report that will be transmitted to Town Council at their next regular meeting.

2025 Cases

During the period from January 1, 2025, to December 31, 2025, the Board held five meetings, where two Variance cases were heard. One of the Variance requests heard by the Board was to increase the maximum height of a fence from a maximum height of 4 feet, up to 6 feet in height within a secondary front yard setback. The other case was for a Variance of setback requirements to allow reconstruction of a pre-existing three-family structure on Haiti Street. The Variances and their case numbers are listed below:

Case Number	Location	Z.O. Section	Decision
BZA-25-1	579 Pineview Court	2-19.1	Approved
BZA-25-2	130-134 Haiti Street	3-4.3.4	Approved
BZA-25-3	719 Blackwell Road	11-3.12	Scheduled for hearing February 3, 2026

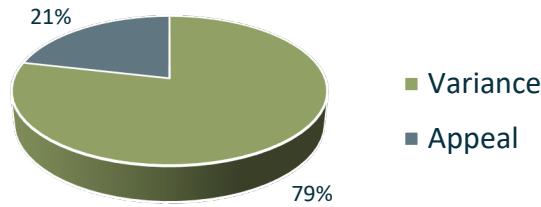
As noted above, the Board also received an appeal application, BZA-25-3, an appeal of a determination made by the Zoning Administrator as it relates to the Amazon Data Center property and the property owner's alleged vested right to develop the property as a data center. This appeal hearing is scheduled to be heard at the Board's February 3, 2026, meeting.

Five-Year Trends

Over a five-year period, the Board has heard fourteen cases, consisting of eleven Variances, and three* Appeals of a Zoning Administrator's decision.

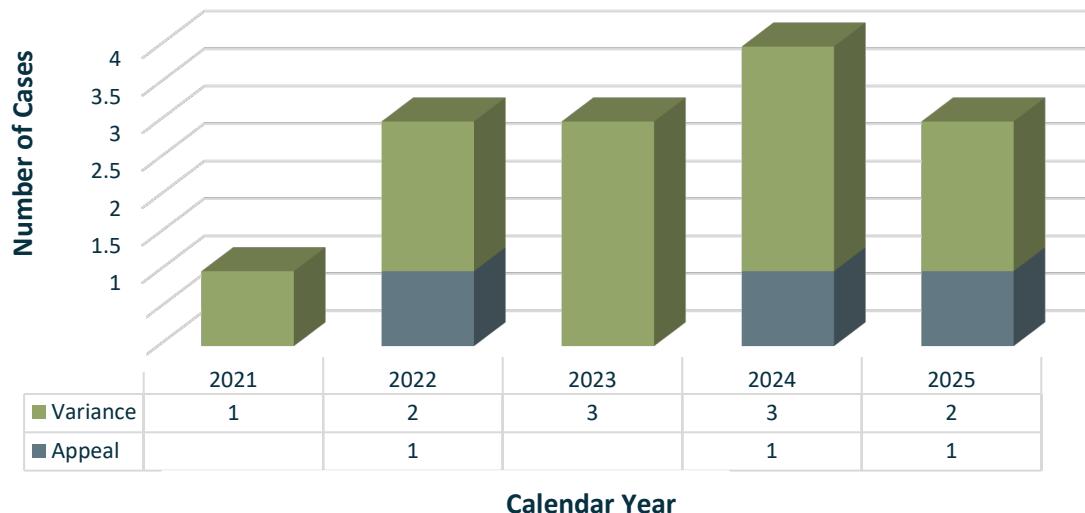
*One of the appeals noted here has not been heard by the Board but has instead been deferred until the Court renders a decision in the legal proceedings relevant to the appeal request.

2021-2025 Board of Zoning Appeals Cases



The Variance cases heard by the Board include five reductions in required setbacks for residential structures and six variances to increase the height of a fence. The three appeal cases received by the Board in the past five years consist of appeals of a Zoning Administrator's determination of the official zoning district for an existing parcel, for the approval of a site development plan for the Amazon Data Center project, and for the alleged vested rights of development for the Amazon Data Center project.

2021-2025 Board of Zoning Appeals Cases



2025 Outlook

Membership

The Board began the 2025 calendar year with four members, due to the former chair's resignation to serve on the Town Council. The Board later had another resignation, leaving two vacancies. These positions were quickly advertised and filled by the Circuit Court. The Board has maintained five members since May of 2025.

Member Name	Term End
Melea Maybach, Chair	April 2026
A Van Baggett, Vice Chair	March 14, 2029
Susan Helander	June 19, 2029
Kenneth "Charlie" Mulliss	March 14, 2028
Elizabeth Scullin	January 1, 2031



Zoning Ordinance

The Town is continuing to work with the consulting firm, Clarion, to update the Zoning Ordinance. Staff has held several meetings to discuss the Ordinance updates with the consultant and expects to release a first draft to the update committee in the coming months. This process is expected to take approximately two years to complete, including multiple public outreach opportunities and review and revision of the draft ordinance. Should any Board members wish to discuss specific Ordinance provisions or concerns with the Clarion project manager, I am happy to forward those comments or coordinate a discussion opportunity.

Conclusion

Thank you for the opportunity to provide you with a brief summary of Board activities. This report will be transmitted to the Town Council at the next available meeting for that body. Should you have any questions or concerns, please feel free to contact me.

Sincerely,



Heather E. Jenkins, PLA, CZA
Zoning Administrator
Secretary to the Board of Zoning Appeals
Community Development Department