

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(22 Marshfield court)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
SREIT Kelso Drive, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Amazon.com Services, LLC		
<i>Lessee</i>	*	Case No: 2020-0297-SPHA
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of SREIT Kelso Drive, LLC, legal owner and Amazon.com Services, LLC, lessee (“Amazon”) for two (2) properties: 8416 Kelso Drive (the “8416 Kelso Dr. Property”) and 22 Marshfield Ct. (“22 Marshfield Ct. Property”). The Special Hearing is requesting relief from the Baltimore County Zoning Regulations (“BCZR”), §500.7 to: (1) permit the parking and storage of personal vehicles and vans as a parking lot/garage as more particularly shown on the site plan attached to the Petition; (2) In the alternative, to permit the parking and storage of personal vehicles and vans as a warehouse as more particularly shown on the site plan attached to the Petition; (3) In the alternative, to permit the parking and storage of personal vehicles and vans as a trucking facility as more particularly show on the site plan attached to this Petition; and (4) approve the location and configuration of the existing site improvements as more particularly shown on the site attached to the Petition.

Variance relief if necessary from BCZR: (1) §410.2 to permit a trucking facility within 300 ft. of a residence; (2) If necessary, from BCZR § 410.2 to permit a trucking facility within 200 ft. of a wetland; and (3) If necessary, from BCZR § 410.3.B. to permit a trucking facility with a floor

area ratio greater than 0.1. The remaining requests for Variance relief (Nos. 4, 5, 6 and 7) were withdrawn at the hearing by Counsel who indicated that the building at the 8416 Kelso Dr. Property already meets those setbacks.

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Samantha Mazo, MidAtlantic Entitlements Manager for Amazon appeared on behalf of the Petitioners along with Jose Lazo, PE. with BL Companies who prepared a 2-sheet redlined site plan (the “Redlined Site Plan”). (Pet. Ex.1). Lawrence E. Schmidt of Smith, Gildea & Schmidt, LLC, represented the Petitioner. There were no Protestants or interested citizens in attendance. Zoning Advisory Committee (“ZAC”) comments was received from the Department of Planning (“DOP”) who did not oppose the requested relief.

The case proceeded by way of modified proffer by Mr. Schmidt. Jose Lazo, PE was accepted as an expert professional engineer. (Pet. Ex. 4). The 8416 Kelso Dr. Property is 21.36 +/- acres, is zoned manufacturing, heavy-industrial major (MH-IM), and is improved with a vacant building and a surface parking lot. The 22 Marshfield Ct. Property is 7.173 +/- acres, is also zoned MH-IM, and is improved with a surface parking lot. Adjacent to the Properties is an Amazon distribution facility located at 8411 Kelso Drive which accepts packages delivered from the airport and sorts those packages for delivery by Amazon delivery vans (“Amazon Facility”). (Pet. Ex. 2B, 2C). Amazon has a long-term lease for 8411 Kelso Drive with legal owner SREIT Kelso Drive, LLC. (Pet. Ex. 5J). The Amazon Facility is designated as a ‘Trucking Facility (Class I)’ under BCZR, §101.1, §410.1 *et seq.* per a letter from OZR dated May 17, 2019. (Pet. Ex. 6) which use is permitted by right in the MH-IM zone.

As reflected in the street view photographs provided, the proposal here is to use the Properties to park Amazon delivery vans as well as personal vehicles of Amazon delivery drivers and/or Amazon employees. (Pet. 5A-5O). As Mr. Schmidt explained, when Amazon drivers and employees arrive for designated shifts, they will park their personal vehicles in the building or parking lot on the 8416 Kelso Property, or in the parking lot at 22 Marshfield Property. At that point, the driver would pick up an Amazon delivery van which has been parked on one of the Properties, and drive over to the Amazon Facility to load up the packages in the van.

To the northwest boundary of the Properties, beyond the rear, lies a CSX railroad track with mature forest buffers on either side of the track. Those forest buffers are located on an elevated berm providing a noise barrier. Also adjacent to the Properties is the Golden Ring Forty trailer park and mobile home community. On the northern side of the 8416 Kelso Drive Property is a small vegetated area identified as a wetland between the Properties and I-695. The Golden Ring Forty mobile home park is 233 ft. to the 22 Marshfield Ct. Property (Pet. Ex. 3A) and 206.7 ft. to the 8416 Kelso Dr. Property (Pet. Ex. 3B).

As Mr. Schmidt explained, each of the uses requested by Special Hearing ('trucking facility', 'warehouse', and 'parking lot') are all permitted by right in the MH zone because all uses permitted in the manufacturing, light (ML) zone and the manufacturing, light restricted (MLR) zone are permitted in the MH zone.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall

include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005).

Based on the evidence, I find that the Special Hearing relief to permit the 22 Marshfield Ct. Property to permit the parking and storage of personal vehicles and Amazon vans as a parking lot will be granted. The 22 Marshfield Court Property is already a surface parking lot.

With regard to the 8416 Kelso Drive Property, I find that it meets the definition of 'Trucking Facility I':

A trucking facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels.

DOP commented that the 8416 Kelso Dr. Property had the design capacity to be a trucking facility. This comment is in keeping with the CRG Plan for this industrial park with manufacturing uses near CSX railroad tracks and I-695. (Pet. Ex. 8). As such, the Special Hearing request for a Trucking Facility, Class I for the 8416 Kelso Dr. Property to permit the storage and parking of personal vehicles and Amazon vans will be granted.

VARIANCE

Given the designation of Trucking Facility Class I for the 8416 Kelso Dr. Property, BCZR, §410.2 and §410.3B prescribe certain setbacks and area requirements. BCZR, §410.2 prohibits a Trucking Facility Class I from being located within 200 ft. of a wetland and within 300 ft. of a dwelling or residential zone. In this case, Mr. Lazo testified that there is a manmade wetland

created by drainage which is located on the 8416 Kelso Dr. Property and therefore has zero setback to the building. (Pet. Ex. 1). Additionally, this Property is within 206.7 ft. of the Golden Ring Forty trailer and mobilehome park. (Pet. Ex. 3B). With regard to BCZR, §410.3B, a Trucking Facility Class I's floor-area-ratio (FAR) may not exceed 0.1. In this case, the FAR is .55.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The 8416 Kelso Drive Property is unique due to its odd shape, manmade drainage wetlands, proximity to CSX railroad tracks through forest buffer and location next to a mobile home park surrounded by industrial uses. Accordingly, the Petitioner would suffer a practical difficulty and unreasonable hardship if it were denied operating a Trucking Facility Class I which is permitted by right in the MH-IM zone. Moreover, Amazon would suffer an unreasonable hardship if it were unable to use adjacent vacant building and parking lots to park Amazon vans and employee personal vehicles because the Amazon facility cannot accommodate the parking. I find that the requested variances can be granted within the strict harmony with the spirit and intent of the BCZR. Additionally, I find the variances can be granted without injury to public health, safety and general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED this **23rd** day of **March, 2021**, by this Administrative Law Judge that the Special Hearing relief pursuant to (“BCZR”), §500.7 to:

(1) permit the parking and storage of personal vehicles and vans as a parking lot on the 22 Marshfield Ct. Property as more particularly shown on the site plan attached to the Petition be, and it is hereby **GRANTED**.

(2) permit the parking and storage of personal vehicles and vans as a parking lot/garage on the 8416 Kelso Dr. Property as more particularly shown on the site plan attached to the Petition be, and it is hereby **MOOT**.

(3) permit the parking and storage of personal vehicles and vans as a warehouse on the 22 Marshfield Ct. Property and the 8416 Kelso Dr. Property as more particularly shown on the site plan attached to the Petition be, and it is hereby **MOOT**.

(4) permit the parking and storage of personal vehicles and vans as a trucking facility, class I on the 22 Marshfield Ct. Property as more particularly shown on the site plan attached to this Petition be, and it is hereby **MOOT**.

(5) permit the parking and storage of personal vehicles and vans as a trucking facility, class I on the 8416 Kelso Dr. Property as more particularly shown on the site plan attached to this Petition be, and it is hereby **GRANTED**.

(6) approve the location and configuration of the existing site improvement as more particularly shown on the site attached to the Petition, be and it is hereby **MOOT**.

IT IS FURTHER ORDERED, Variance relief from BCZR:

(1) §410.2 to permit a trucking facility at the 8416 Kelso Dr. Property 300 ft. of a residence be, and it is hereby **GRANTED**.

(2) §410.2 to permit a trucking facility at the 8416 Kelso Dr. Property within 200 ft. of a wetland be, and it is hereby **GRANTED**.

(3) §410.3.B. to permit a trucking facility at the 8416 Kelso Dr. Property with a floor area ratio greater than 0.1, be, and it is hereby **GRANTED**.

IT IS FURTHER ORDERED, Variance relief Nos. 4, 5, 6 and 7 be and they are hereby

WITHDRAWN.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can

be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. Petitioner must comply with the DOP ZAC comment, a copy of which are attached hereto and make a part thereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm