

**ST. MARY'S COUNTY BOARD OF APPEALS**

In the Matter of the Appeal Regarding  
The Application of Amerco Real  
Estate Company/U-Haul

BOA Cases 1702 & 17-03

I. Statement of the Case

Applicant, Amerco Real Estate Company/U-Haul (hereinafter Applicant) applied to the St. Mary's County Department of Land Use & Growth Management (hereinafter the Department) for a permit to operate a vehicle/equipment rental facility at 46075 Signature Lane in Lexington Park, Maryland. Applicant further proposed to offer storage space at the site as an accessory use. The subject property is located in the DMX zone pursuant to the St. Mary's County Zoning Ordinance, which zone permits equipment rental and accessory storage but does not permit stand alone storage. Upon review of Applicant's proposal, a zoning permit was issued by the Department for the intended use. This appeal was subsequently filed by Willows Road Business Park, LLC and Storage Mall Lexington LLC and heard before the St. Mary's County Board of Appeals on August 24, 2017.

II. Legal Standard

An appeal from an administrative decision of the Department, among others, is authorized both by the Zoning Ordinance of St. Mary's County and the Land Use Article of the Annotated Code of Maryland. Pursuant to the law of Maryland the Board of Appeals is authorized to exercise the authority of the official the decision of whom is being appealed. In the instant case the issue is whether the Department had sufficient evidence to conclude that Applicant's proposed storage met the Zoning Ordinance requirement that such storage be "clearly incidental and subordinate" to the rental of trucks and equipment.

III. Summary of Relevant Testimony

Mr. William Hunt, the Director of the Department of Land Use & Growth Management was called to testify by Appellants' counsel. Mr. Hunt testified that he reviewed the zoning application and additional drawings submitted by Applicant. He further testified that he did not know the date of the application as there was no date on it (Appellant Ex. 1) but did acknowledge reviewing drawings dated May 18, 2017 of improvements on the proposed site (Appellant Ex. 2). Mr. Hunt did not know whether the May 18, 2017 drawings were the same as those submitted with the application as he was appointed to his present position long after the application and review process began. Finally, Mr. Hunt testified that he approved the issuance of a zoning permit (Appellant Ex. 3) in order to provide for an anticipated appeal.

Mr. Peter Guinto, representing Storage Mall, LLC testified that his facility is located in close proximity to Applicant's site and that he operates in approximately twenty eight thousand square feet. Most of that space is devoted to storage with approximately ninety three percent of his revenue coming from storage. He testified that he has one to two trucks for rent and uses about one hundred twenty square feet of his space in connection with truck rental. Mr. Guinto also testified that rates for indoor storage are about double that for outdoor storage. Board member Mr. Brown inquired whether Mr. Guinto knew the zoning category for his facility and he replied he did not.

Appellant's counsel called Mr. Andrew Colevas to testify. Mr. Colevas indicated that his interest in the case was simply a matter of fairness in that his company, Willows Road Business Park, LLC, was required to obtain a zoning change to offer storage facilities and he felt Applicant should meet the same standard.

Mr. Pat Goodwin testified on behalf of Applicant and indicated that they had become interested in the subject property in 2014, particularly because of the acreage and storage area. He testified that he met with Mr. Phil Shire, at that time the Director of the Department of Land Use & Growth Management, and advised Mr. Shire that storage would be secondary to truck rental. Subsequent to that meeting, at which Mr. Goodwin stated he produced but did not leave with Mr. Shire financial projections for rental and storage, Applicant received a memorandum dated October 5, 2015, from the Department indicating that a zoning change would not be required for the intended use. (Applicant

Ex. 1). Based upon the Department's decision, Applicant purchased the subject property in February, 2016.

In response to questions from counsel, Mr. Goodwin testified that Applicant will store an average of fifty-five vehicles on site, requiring approximately 137,000 square feet, and will use an additional 4,800 square feet for retail display. Anticipated storage will require 76,000 square feet. No renovations have been made to the site other than the installation of a number of bay doors.

Applicant submitted an exhibit showing distribution of revenue between vehicle rental and storage at several sites. Chairman Hayden noted that the size of the various sites was not shown and declined to accept the exhibit for the record. Chairman Hayden also asked Mr. Goodwin if U-Haul operates stand alone storage facilities and Mr. Goodwin stated they do not. A number of photographs of buildings converted to rental and storage facilities were collectively submitted as Applicant Ex. 6.

In response to questions from Board member Mr. Miedzinski, Mr. Goodwin testified that small unit storage is proposed on the second floor and that 787 units are planned. Mr. Goodwin also testified that the subject facility is similar to those shown in Applicant Exhibit 6. Mr. Hayden asked the proposed rates for storage and Mr. Goodwin stated that heated units would rent for \$1.10 per square foot and climate controlled units would rent for \$1.20 per square foot.

Mr. Goodwin was cross examined by Appellants' counsel and testified that 80,000-100,000 square feet is a typical site size and that usually fifty per cent of the space is used for rental, boxes, and display. He was asked if the drawings identified as Applicant's Exhibit 4 were the same as those presented to the Department in 2015 and responded that he did not know. Mr. Goodwin was asked if he received anything from the Department other than Applicant Ex. 1 prior to purchasing the property and stated that he did not. He also stated that the purchase price for the subject property was four million dollars. Asked if it was usual to purchase property prior to receiving approvals, Mr. Goodwin said he thought Applicant Ex. 1 was approval.

Appellants' counsel re-called Mr. Hunt and showed him a copy of the Department's October 5, 2015 memorandum with a handwritten note and a date of

August 4, 2016. (Appellant's Ex. 6). Mr. Hunt was asked if he recognized the initials on the memorandum and he said he believed them to be those of his predecessor Mr. Shire.

Applicant's counsel re-called Mr. Guinto and asked if he thought Mr. Goodwin's testimony seemed reasonable to which the witness replied "maybe".

#### IV. Exhibits

##### Appellants

1. Zoning permit application
2. Site drawings
3. Zoning approval
4. Site drawings from CD
5. Application for U-Haul rental
6. Memo from Jeff Jackman with handwritten note dated August 4, 2016
7. Memorandum dated April 20, 2016 from Phillip Shire to applicant

##### Applicant

1. Memorandum dated October 5, 2015 from Jeff Jackman to Daniela Warren
2. Letter dated May 8, 2017 from County Attorney to Wesley T. Chadwick, Ass't. Gen. Counsel U-Haul
3. Letter dated May 15, 2017 from County Attorney to Wesley T. Chadwick, Ass't. Gen. Counsel U-Haul
4. Site drawing dated June 23, 2016
5. Not admitted
6. Photographs of various U-Haul sites

#### V. Findings of fact

The Board of Appeals finds that Applicant has purchased an approximate six acre site with improvements in the DMX zone in Lexington Park on which it proposes to rent vehicles, equipment, and supplies, and provide storage space for rent. The Board further finds that, pursuant to Applicant's testimony, approximately 142,000 square feet will be dedicated to vehicle storage, rental and display and that 76,000 square feet will be

used for storage. The Board also accepts Applicant's testimony and finds as a fact that facilities of this type typically use one-half of available space for rental and the remaining one-half for storage.

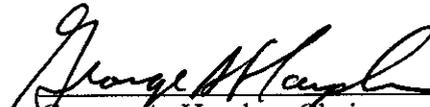
VI. Conclusion of Law

Based upon the evidence presented, the herein findings of fact and the language of the St. Mary's County Zoning Ordinance that accessory uses be clearly incidental and subordinate to the permitted use, the Board concludes that the storage proposed by Applicant is not permitted in the DMX zone.

Decision and Order

It is this 12 day of October, 2017, Ordered that the decision of the Director of the Department of Land Use & Growth Management in the matter of Amerco Real Estate Company/U-Haul, Application Number 17-00000977, be reversed.

Board of Zoning Appeals

  
George A. Hayden, Chairman

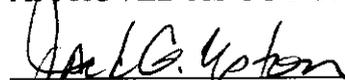
Voting for the Decision:

Mr. Payne, Mr. Hayden, Mr. Brown

Voting against the Decision:

Mr. Greene, Mr. Miedzinski

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
Jack G. Upton, Special Counsel