

Albemarle County Planning Commission
June 7, 2016

The Albemarle County Planning Commission held a regular meeting on Tuesday, June 7, 2016, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Karen Firehock, Vice Chair; Mac Lafferty, Jennie More, Pam Riley, Bruce Dotson and Tim Keller, Chair. Absent was Daphne Spain and Bill Palmer, UVA representative.

Other officials present were Chris Perez, Senior Planner, Rebecca Ragsdale, Senior Planner; Elaine Echols, Acting Chief of Planning; Bill Fritz, Manager of Special Projects, Ron Higgins, Deputy Zoning Administrator, J.T. Newberry, Planner, David Benish, Acting Director of Planning; Mark Graham, Director of Community Development; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum.

a. SP-2015-00032 ReStore N Station (amendment of SP 200900034)

MAGISTERIAL DISTRICT: White Hall

TAX MAP/PARCEL: 055B0000000100

LOCATION: 6115 Rockfish Gap Turnpike

PROPOSAL: Construct approximately 20,000 square feet of additional commercial space and amend fuel dispensing conditions. Proposed uses include Convenience/Retail, Food retail, Retail Auto Parts, Auto Repair Shop, Office and a drive-through window.

PETITION: Amend the existing conditions of SP200900034 to allow approximately 20,000 square feet of additional building, amend conditions related to fuel dispensing and amend conditions limiting overnight parking to allow vehicles awaiting repair to be parked onsite overnight. The conditions of SP200900034 were established during the review of a request to permit water consumption exceeding four hundred (400) gallons per site acre per day as permitted under Section 24.2.2(13) of the zoning ordinance. No change in permitted water use is proposed.

ZONING: HC, Highway Commercial– retail sales and service; residential by special use permit (15 units/ acre)

OVERLAY DISTRICT: EC- Entrance Corridor

PROFFERS: No

COMPREHENSIVE PLAN: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/residential density 0.5 unit/acre in development lots.

Bill Fritz presented a PowerPoint presentation to summarize the staff report on SP-2015-00032 ReStore N Station (amendment of SP-2009-00034). Mr. Fritz said he was not going to go through the entirety of the report since the Commission has it; it is rather long; and he thinks best to sort of frame this application and then try to answer any questions you might have.

What is being requested?

The applicant is proposing to amend the conditions of SP 2009-34 to:

- eliminate restrictions on hours of business activity;

- eliminate prohibition on overnight parking,
- eliminate limitations on fuel dispenser types and numbers, and.
- Allow additional construction.

What is not being requested?

- No change in the amount of water that may be consumed. (That is by a prior change)
- No change in the metering requirements. (A meter is required and still would be required.)
- No change in the requirement for a flow restriction device to limit water consumption. (It is in place now and it is a condition of the previous approval.)
- No change in the requirements for rainwater use.
- The issue of increased water use is not under review. The decision to authorize the use of up to 1,625 gallons per day has been made. If this application is denied the applicant will still have the right to consume that much water.
- The appropriateness of the HC zoning designation on the property is not under consideration. The property was rezoned in 1980 and no action has been taken to amend or modify the zoning of the property.

The issue that is under review:

The review is limited to the impact on water resources of increased building size, increased impervious area, expanded hours of operation and an increase in the types of fueling stations.

In the next slide he included a photo so you can see what the surrounding area looks like. The proposed area of development is the grass area between the existing development and Route 250 and the grass area to the west. In the next slide Mr. Fritz pointed out development on the concept plan.

This project, like all special use permit requests, was reviewed using the provisions of Section 33.8 of the Zoning Ordinance. Staff's analysis is that the request is consistent with the provisions of the Zoning Ordinance. The report addresses each provision individually. I am not going to present the analysis in detail now but would be happy to answer any questions you may have about a particular provision of Section 33.8. I will however summarize some of the findings.

Staff is very aware that commercial development of this site is not in keeping with the comprehensive plans goal of directing development into the development areas and that the designation of this property as highway commercial is inconsistent with the intent of the highway commercial district. However, the property is zoned and the decision to grant the original SP has been made. Therefore, the issue of using 1,625 gallons of water a day has been made and because of this the scope of the review is limited.

One issue is how the change in impervious area might impact water resources. We have reviewed information submitted by a Professional Engineer. Based on this review it is our opinion that the rate of recharge exceeds the rate of water removal. After the approval of the original SP in 2010 the ordinance was amended to add a provision for the review of Special Use Permits. That provision requires the proposal to be consistent with the Comprehensive Plan. We have analyzed the comprehensive plan. One statement in the plan is that new uses in the rural areas should be supportive of the rural areas. The use, as listed in the zoning ordinance is "Uses permitted by right, not served by public water, involving water consumption exceeding four hundred (400) gallons per site acre per day." This use has already been authorized. Therefore, there is no change

in use which triggers an inconsistency with the comprehensive plan. Therefore, staff is recommending approval of this application.

Again, I would like to remind you that the issue that is before you tonight is limited to the impact on water resources of the increased building size, increased impervious area, expanded hours of operation and an increase in the types of fueling stations. He would be happy to answer any questions you might have.

Mr. Keller invited questions for staff.

Ms. Firehock said she understands that the review is limited to the impact on water resources. The only impact we have discussed so far is the rate of groundwater recharge. She asked does that mean that there is no review on the impact of the quality of water because this is a substantial impervious area.

Mr. Fritz replied that you could consider that because that is a water related issue. We looked at that and in discussing an area surrounding the recharge with the engineer, our engineer who unfortunately is not here today, we believe that it is adequate, it is infiltrating into the soil, is being suitably treated, and water is going to run off the property and there will be some infiltration there also. So, yes, we believe that the quality of the water is adequate.

Mr. Lafferty said he would like to get an understanding here. As he remembers the original request when it came up there was a fact in the staff report that run off was considered water. But, aside from that we are talking about water usage and there is no change in water usage. It is just building more parking lot and a repair station and more pumps. So he can't see why they are not separate issues since there is nothing about additional water.

Mr. Fritz replied as you said the impervious area is an issue and we looked at that. He saw some heads sort of tilt so maybe he can discuss that. He noted that one of the things when recharge is looked at they look at and is included in the recharge is infiltration from landscaped area and even infiltration from the drain field areas on all properties. The soil is doing work to purify the water also. So you have the drain fields and infiltration; but, there is also green area left on the property. So to answer your question, the increased impervious area we looked at that to see whether or not it was going to; and, our initial analysis was that the additional impervious area was going to result in basically water mining from this property. We asked the applicant to clarify some of the information that we had. There weren't numbers associated with it, and they went back and gave us those numbers. The engineer and our engineer looked at it and the methodology was appropriate, the conclusions were supported by the analysis and we accepted that. But, we had the very same questions you are having is the increased impervious area going to cause water mining; and we asked those questions we are satisfied that it is not.

Mr. Lafferty asked what is going to happen to the water that has oil in it from the repair shop.

Mr. Fritz replied that any facility like that, a repair shop, they have to use oil water separators, they have special provisions that are associated with them and that will be done as part of the building permit. He pointed out that is not just for this business; it is for all of them.

Ms. More said she had a question because it is difficult for me to not refer to the expansion as new uses. She understands they are asked to look at the special use permit and the water usage; but, she does look at the request for the expansion and the new businesses and spaces that are proposed as new uses just from a personal standpoint. She wondered if he could explain to us a little bit about she does not see that in our packet as much as we have talked about in conversation. She thinks some things that were included from the applicant like what sort of tools do you use to predict water usage when you have you before you this large expansions of not new uses how are we assured by the tools that you have and that the applicant is referring to; how are you predicting water usage to ensure us that they would stay under the amount that has been allowed.

Mr. Fritz replied that the primary tool that we use to ensure that they would stay under the 1,625 is the two conditions that are already in place. One is a flow restriction device, which we the county monitored being installed' it physically will not allow the consumption of more than 1,625 gallons. If the applicant were to turn on all their water devices and leave them running 24 hours a day they physically cannot pass 1,625 gallons of water through the system. He suggested that they think of it as a small pipe, it can't accommodate that much water. So that was our first and pretty good starting point we thought. There was also then a meter which allows you to then monitor the actual water consumption. The applicant then also submitted information based on both EPA and Virginia Department of Health regulations which are very different. The Virginia Department of Health regulations are much older and show higher numbers. The EPA numbers are much lower because they take into account changes in the law that require water saving devices. Both of those brought it in under 1,625 gallons.

Ms. More said she understands the restriction that is in place physically does not allow them to use more water and you kind of address this. She asked how are we to understand the impacts to water usage or to predict those accurately. Is the EPA tool the tool you use today because we have fast food, increased office space and auto repair?

Mr. Fritz replied that the EPA tool would be the best tool. But, where we really settled on this let's assume the EPA tool and the Virginia Department of Health tools are completely erroneous that they have no value whatsoever; they are estimates based on averages. Let's assume that the business is a 100 fold increase it does not matter the system still can't consume more than 1,625 gallons. It just physically without any monitoring, without any maintenance cannot exceed the 1,625 gallons.

Ms. More said so the suggestion is that buildings could be built and potentially not be able run if they don't have no water.

Mr. Fritz replied no, they would have to then alter their business model or find users that were able to accommodate less. For example, there are some uses which require no water such as storage, which are permitted in the highway commercial district.

Ms. More said her last question just about predictions with water usage is that my understanding is previously with the original special use permit and she would still feel strongly that to get an accurate prediction pulling comps from similar businesses and historical data would be a tool that in addition to this prediction from the EPA, which in the other list that your referred to, is that a tool that has been used in this situation to help us understand what might be drawn from.

Mr. Fritz replied we did not ask for that other than the information that we were given; we

were using models basically. Again, because of the physical limitations on the system that using comps was not going to give us any new information because when we get those comps it is giving some ideas of what the averages can be. The applicant has told us, and they may want to speak to this, that they have looked at other comps and they believe that they have a mixture of uses that will work within their water limitations. But, as a regulatory entity we are limiting them to 1,625 and then they will need to figure out how to run their business within the 1,625.

Ms. Riley said she had a basic question about why this is not a new application as opposed to an amendment. She was wondering about that in particular because of all the previous conditions that were placed on the original permit. It seems like there is a pretty drastic change in those restrictions. So can you please explain why it is not a new application and an amendment and sort of what is the discretion administratively in these cases?

Mr. Fritz replied that he would start with the discretion, the discretion is that the review, which is outlined in the report, needs to have reasonable conditions that are directly related to the activity, which is water consumption. He suggested that Mr. Kamptner could step in if necessary because he was paraphrasing. But, reasonable conditions that are directly related to the activity which is water consumption. The other question of why this is an amendment he explained is because they have a special use permit for 1,625 they have this existing special use permit with a set of conditions. This not actually unusual at all; it is very common that we get amendments to special use permits. The most notorious ones, of course, are private schools and churches who come back to amend their special use permits so that they can do a building addition or more students. So it is actually a pretty common practice because they already have the special use permit for a church or in this case for water consumption. So what you are doing is amending the conditions and not applying for a new special use permit, and that is the reason why.

Mr. Lafferty said if the additional requirements wanted to have overnight truck parking would you promote this or say it is a valid reason.

Mr. Fritz said he was not sure he followed the question exactly.

Mr. Lafferty said instead of doing a repair shop and some more gas pumps say you wanted to offer a place for tractor trailers to pull off the road and stay overnight. He said they would not be using any more water or anything.

Mr. Fritz replied then we would say they are not using any more water and the condition is therefore not related to compliance with 1,625 gallons per day; if it is not consuming water it is not related.

Mr. Lafferty said then he had a problem with why the Board of Supervisors put a restriction on it when it first went through.

Mr. Fritz said we can talk about that, but the applicant agreed to that condition so it never got discussed. So that was a thing done and we are starting from this review to see whether or not should it be removed or not. Applicants can propose or accept conditions which are more restrictive and may have less of a link between the special use permit. But, it has to be somehow related and there was some relationship. You also have to realize that at that time there was some questions about whether or not they were going to be able to operate; in how was it going to operate; how was that flow

restriction device going to work, and so forth. But, now that we know we have learned quite a bit since 2010.

Mr. Lafferty said yes, but this is not about water and you say regardless of what is put there you can only use the maximum amount of water that valve will let through.

Mr. Fritz said that was right.

Mr. Lafferty said so anything could go in there basically that will be highway Commercial.

Mr. Fritz replied that in large part that is what we are saying yes, there are no uses that we can identify that are permitted in the highway commercial district that would go onto that property given other conditions the flow restriction device, metering and the like and the limitations on the area of impervious based on the condition that has the plan linked to it; that there are no uses that could go on that site which would exceed the 1,625 gallons per day or would generate a problem of run off or something that would then cause a groundwater problem. As an example, auto repair has a requirement when we do the building permit how do you deal with any spills; how do you deal with oil run off. So we have those other mechanisms that are just in place all the time. So, yes that is what we are saying.

Mr. Lafferty said if they had a spill and then a fire and you have a throttled hose. He asked what you do if you are going to put water on it to try to put out the fire.

Mr. Fritz replied that could be the case anywhere. He noted that could be the case in the existing Brownsville Market or any of the other adjacent or nearby businesses or houses, which also will store to some extent other materials.

Ms. More pointed out that specifically that thought occurred to me with the restriction of the flow that you talked about or the overriding restriction that won't allow more than that. But, there is also the restriction that can only allow so much per minute so in the event of an emergency or some situation where they would need a larger amount of water.

Mr. Fritz said they physically would not be able to from this property. They would have to fight the fire like they do any rural fire where they don't have access to water and they have to truck it in. The advantage is that there is fire hydrants just to the west at the lumber yard, to the east and across the street. This area, for a rural area, has good access to water supplies where they can run their tanker trucks, set up a water supply and a shuttle.

Mr. Dotson said he had a half a dozen or so informational questions because he was just trying to understand because it is confusing initially of why this both now and previously back in 2009/2010 was a special use permit. He asked if he was correct that the staff looked at the potential water usage and concluded that they could not say it would be 400 or less; therefore, the applicant was told they had to come in for a special use permit. He asked is that correct.

Mr. Fritz replied as a simple version, yes that is correct.

Mr. Dotson said even though we are dealing with one gallon it is anything that pushes it over.

Mr. Fritz replied that is right. So in order to address that concern by zoning the applicant did two simultaneous actions; one they filed the special use permit for one gallon more, and they said okay there is your special use permit. They also filed an appeal that said we don't need more than 400 gallons per day, and then they deferred that and it has never been heard by the Board of Zoning Appeals.

Mr. Dotson said thank you that clarifies that. He asked on the flow restriction device is that a flow restriction of water coming out of the well or waste water going out into the septic system.

Mr. Fritz replied out of the well.

Mr. Dotson asked will this amended special permit be subject to further ARB review, and Mr. Fritz replied yes, the site plan and building permits will be subject to ARB review.

Mr. Dotson asked if there a specific standard for the amount of landscaping that the ARB can impose or is it discretionary depending on the lay of the land and other conditions.

Mr. Fritz replied that the ARB have the regulations of the zoning ordinance; but, they have their own guidelines that would be along the front of the property or the areas visible from the Entrance Corridor.

Mr. Dotson pointed out one of my reactions in viewing the site today is there is not very much vegetation there, and it is not just that it is useful vegetation there is just not very much screening the area. So he would hope that ARB would look carefully at that. The staff report mentions that as part of the site plan review that various protections, if that is the right thing to call it, will be imposed as requirements in the county ordinance. These are standard requirements. He asked Mr. Fritz to give three or four examples, perhaps for the audience, of the kinds of requirements that will be imposed on this no matter how it goes forward

Mr. Fritz replied sure and these comments came very early on and they are sort of not very detailed in my mind because we were focused on the special use permit and not the site plan. But, he does know that John Anderson, the county engineer who was working on the project, actually provided some preliminary comments to the applicant. He believed it was done orally because a he remembers sitting there talking about them about how to design the storm water system to better capture it and filter it and so forth when the site plan came in how you are going to direct it this way and that. He provided a comment to the applicant about a small portion of the property and where they were paving and whether or not that made sense in that particular way. But, those kinds of things. We will have to look at all the curvatures and make sure all the radiuses work as well as parking spaces. He has looked at it real quick to make sure from just doing it for a long time and if anything really looked out of place; and nothing really looked out of place. But, staff has not dotted all the i's and crossed all the t's at all. For example, staff has not looked at a lighting plan or landscape plan so all those things will still have to be done.

Mr. Dotson added and to comply with the county ordinance. In terms of noise he was thinking that a tire shop that was mentioned the new lug nut devices are almost like a gunshot; it is loud but very brief noise and then another loud but brief noise. He asked how our noise ordinance deals with noise since there are houses nearby.

Mr. Fritz replied that he did want to answer that question; but, again he wants to bring

this back to water and that these questions are really obviously directed towards the site plan and not the water just for the purposes of the record and the conversation. He said yes, the noise standards will apply. The zoning ordinance has performance standards contained within it. He can't remember if this automatically requires a certified engineers report; however, he believes it does for that type of business. He said they have to give a certified engineers report before the issuance of the zoning clearance; what types of equipment; and, then of course there is the performance standards for the hours of operation and the like.

Mr. Dotson said the purpose of asking these questions while they don't necessarily directly pertain to water they may pertain to some of the concerns of nearby property owners and so he was just trying to have people understand what else goes on.

Mr. Fritz said he was happy to answer the questions and he did not mean to try to stifle them at all; it is just for the record that is all.

Mr. Dotson said in looking at the site today it is not designed and he went back and read the 2010/11 minutes from the Board of Supervisors and there was some concern about this becoming a truck stop and there was assurance that was not what was intended. In looking at the site there is not really much room for being a truck stop, which made me think did VDOT have any concerns about tractor trailers parking on the shoulder and walking in to the site.

Mr. Fritz replied no, they have stated no such concern to me. He said the only thing they stated to me was that as part of the site plan review they will want the revised traffic analysis to verify that the turn lane is the appropriate length and then whether improvements that need to be made out on 250; but they would be directly related to the volume of traffic anticipated based on the final site plan and the mix of uses that go in. But, no, VDOT did not state anything like that; they stated no specific concerns at all.

Mr. Dotson said one last question that on the concept plan since if we approve this tonight we are recommending adherence to that plan. You may want to think about this, and the applicant might want to answer it too, is are there any things reflected in that concept plan then that provide less than the minimum ordinance protections. That is part A. Then part B, he asked are there any things on that concept plan that provide greater than minimum ordinance protections. He asked why we have a concept plan.

Mr. Fritz replied that the big thing for this is the impervious area and knowing where those impervious areas are for purposes for the water impact. But, there are some things on the concept plan that do have greater protection. A quick one is the building setback; it is greater than the minimum required. Acceptance of the condition does not waive any waiver, special exceptions or variations from any standard that is in the ordinance. They would have to come back and apply for those separately.

Mr. Dotson thanked Mr. Fritz.

Mr. Keller said he had a question for counsel before we open this. He asked what if the Commission disagrees with staff over the decision to amend the special use permit as opposed to requiring a new special use permit.

Mr. Kamptner replied that the first thing he would say is that the Commission has to make the recommendation that is in front of them.

Mr. Keller pointed out that is why he wanted to ask this question before we open the public hearing.

Mr. Kamptner said the application in front is merely to amend conditions; they are not proposing any new uses that are not otherwise allowed by right. The only reason it is in front of the Commission is because of the original special use permit connected to the water usage.

Mr. Keller said if, for instance, we went back and we have been given these specific pieces of the Code of Albemarle Chapter 18 and if we felt that there were specific pieces of that that these pieces would be in conflict with that Code of Albemarle would that be grounds for us to make that recommendation.

Mr. Kamptner said if he understands the question correctly that could be included as part of the Commission's recommendation to the Board. You do have the ability to interpret the zoning ordinance reasonably; but in the execution of your duties.

Mr. Keller thanked Mr. Kamptner. He opened the public hearing for public comment and invited the applicant to address the Commission.

Jo Higgins, with Project Development, said she was the land consultant working with the property owner on this application to amend the existing special permit. The concept plan before you has no change to the one gallon per day that is already approved. We keep talking about 1,625 and the one gallon was simply to enable the special use permit. You have already been given some history and background so she would just restate a few things. The 4 acre parcel is HC zoning; it is old zoning that was assigned and it has never been rezoned. If you check the GIS it was designated for public water to the existing building, and this property along with many properties in this same area have that designations. But, the building was taken down by the owner because he did not understand the consequences at the time he purchased the property. Although the growth area limits do not extend to this property she would like to refer you to Attachment C of the staff report which shows the existing zoning in the vicinity as predominantly commercial and industrial; labor; lumberyard and office space to the west; heavy truck storage; lawn mower, auto body shop, convenience store to the east and commercial storage directly across the road in close proximity to Old Trail just east of that. The property is also adjacent to the Moose Club property which looks and feels commercial although developed as a brewery in RA zoning. The existing special use permit was required because the county would not process the site plan for a convenience store once a determination was made that the water usage could exceed the by right amount.

Ms. Higgins pointed out that comparable water usage water usage data extensively was submitted studying other convenience stores both on 250 and other cities with relationship to interstate being the same with appliance analysis being submitted. But, none of this was considered adequate proof and this is all in the file. We did not agree, but applied for the one gallon per day above the allowed amount to enable the special use permit. It was consistently stated that once the water usage is proven and factual phase 2 would be submitted. The store opened in September of 2014 and we had a pre-application in October; but, zoning advised that a full year of meter data was needed after a few months of start up to document the water usage, which we agreed to. So September of 2015 we started the process with more than a year and a half of water meter data as shown now that we are using 16% of the allowed amount. The amendment does not request to change the water allowance as you know. The water

usage projections using both the USEPA design based on number of employees, Virginia Department of Health design volume based on square footage both show are adequate to support the proposed development. There are no high water uses in there. There is not a McDonald's, for example, they would not go to the site because they are a high water user. This is based upon peak quantities that were used in the analysis and it is part of your report. There is actually a couple hundred gallons of extra quantity included in addition to the fact that the design charts are conservative. Phase 1 construction included the well water and septic systems designed and installed to serve the full site because we intended the full site to be developed. These will not be changed. The well water system, of course, has the flow valve and a water meter, which actually Bill Fritz visited the site, viewed the meter and took his own meter to verify the status of the amount on the meter. The final step will be to remove the sediment control basin and install underground storm water detention pipes so there will be no open standing water at this site once the work is completed.

Ms. Higgins said actually, instead of picking apart the staff report, she wanted to bring up a few other issues that probably no one wants to hear. The Planning Commission and the Board has new members since the special use permit was approved in 2010. She very much appreciates anyone to take the time to read the minutes of that report. I don't know each of you, but I did serve on the Planning Commission for White Hall District, and I understand the position you are in. Prior to that I was the Director of Engineering and Public Works for Albemarle County and I truly respect the position that staff is in. Not just this parcel, but using only the comp plan any commercially zoned parcel in any area outside the designated growth area is typically deemed inconsistent with the comp plan. That is because the parcels were assigned specific zoning districts based on the use at the time when the comp plan was not in place nor would it made any difference. It was the practice at the time. The comp plan came later. The comp plan is just that, a tool, a plan to guide development, but does not regulate the grandfathered existing zoning that has been in place prior to its adoption, 250, a primary road that existed prior to the interstate the zoning of parcels along this segment of 250 have commercial and industrial for a very long time. This is upsetting to property owners with homes in the proximity to commercial districts. But, there are regulations in place to address this.

Ms. Higgins said that buffers and setbacks have been imposed and they are shown on this concept plan and will be on the site plan to mitigate impacts. The site design reflects the 20' undisturbed buffer along the west and the south. This actually takes up .36 acres of the site to provide that buffer. There is a 50' setback to buildings, which we have exceeded. There is fencing and there will be more fencing, and there is screening and landscaping. Another sore subject for commercial property owners has been that the real estate tax for highway commercial zoning, such as this parcel, is the same for parcels located in RA and in the growth area. The taxes are paid and the property owner should have the same rights to develop regardless. A significant effort has been expended to limit this development because it is outside the growth area. Maybe somebody back 30 years ago should have asked the property owner to give up the HC zoning and not pay so much real estate state. That would have been a fair way to do it and it would have been voluntary. At this point the assessment for this property, since taxes seem to be a minor concern, in 2002 it was \$288,000 and it was doubled in 2003 to \$450,000, and in 2005 it went to \$632,000; in 2007 it went to 1.5 million and 2009 to 1.3 million. Then after Restore N' Station opened it jumped to 3 million dollars. This property generates real estate taxes of about \$23,000 a year and also business tax revenue. The Sprouses pay 2 million; it is in the tax records and there is no mystery there. In 2006 they assumed as they had operated the Brownsville Market for so long, almost 17 years, but did not own that property that they would be treated no differently

than other property owners. In the meantime two other special use permits have been granted for water usage with very large volumes and with no condition to even impose a meter or a restriction to measure or control the water volume that withdrawn. The county has been putting forth a large of effort to express support for business, job creation and business revenue. This is an actual business that does do that. The Sprouses did not move here to make money. They are not Wegman's or Target; they are a third generation Albemarle County family that has operated a convenience store in Crozet for more than 20 years. In order to have the capital investment required to meet the extensive regulations imposed such as ARB, storm water management the full 4 acres need to be developed to pay for it all, pay the employees and make a living. We have made this clear in 2009.

Ms. Higgins said she has always understood that tax revenue generated from successful businesses is important for the county. Living in Augusta it is amazing how many people I see from Crozet shopping at Walmart, Lowe's and Target and buying gas in Waynesboro. Albemarle is losing tax dollars because it is easier to drive across the mountain for services. More services are needed for the growing Old Trail community and if located between 64 and the growth area makes sense because they pass by on their way to the interstate. The last thing when they approved the special use permit the county attorney repeatedly advised the board that only conditions related to water uses may be imposed. The water data proves that only a small percentage, less than 20% of the by right amount; and we have not even touched the one gallon that was approved. There is no physical way for the water to be exceeded and we are asking for a recommendation of approval. Based on your questions tonight she would be happy to answer any of those questions. However, we feel like the county requirements have been met; it is very expensive to meet those; and at this point the balance of the site is being developed to meet regulations with the storm water system that will meet water quantity and quality controls as required by the 2014 Storm Water Management regulations. Some of the collection off of the roofs is used to replenish the water on the land by watering landscaping and the businesses are very marginal and have low flow fixture; they operate 3 seconds when you wash your hands; they have low flow toilets and a new toilet these days will use far less water than anything that was previously built. If I can answer questions, I would appreciate the opportunity.

Ms. Higgins said she knows it is a troubling things about many of the parking questions and that sort of thing; but, we have spoken to some property owners and there are things at site plan that they have considered. She has spoken to the ARB Coordinator about the style of the fence back at the rear to potentially provide more screening. We are considering how best to do the photometric plan to possibly use on building lighting at the rear instead of pole lights which might be helpful. That is part of the photometric plan and the ARB. In the last letter that they might have received today brings to attention that Restore N' Station meets entrance requirements; it does have turn lanes; we will do the traffic analysis to confirm that they are adequate; but, it is the safest and best entrance along 250. They don't use any of the state right-of-way, which is 120' wide, to park any of their customers and had VDOT thought that was an issue they would have required us to put no parking signs out in front. But, we have had no tractor trailers at all parking back there. It is not large enough if any tractor trailers were there because they would impede the customer.

Mr. Keller thanked Ms. Higgins very much. He said he thinks we will hold any questions for you until after the public has spoken. He pointed out Vice Chair Firehock is going to handle this part.

Ms. Firehock said one person has signed up and others are welcome to also approach and speak. She invited John Savage to come forward and speak. She asked all speakers to state their name into the microphone before giving comments.

John Savage, a member of the Crozet Community Advisory Committee, said he was here to reiterate certain points which you have already received in a resolution that we passed in February when we first were presented with this proposal for the SUP. He was going to highlight a few of those. The first, the original approval of the initial Restore N' Station project was a drawn out and contentious process and opposed by many in the Crozet community. Conditions in the previous SUP, which the applicant now seeks to amend, were crafted specifically to mitigate the impact of this project. The requested changes including expansion of the project size, doing away with the operating hour restrictions and others directly contradict what was previously agreed and implemented by the applicant. As such we requested the county reject this proposal at this time.

Mr. Savage asked what the use considerations are since we have talked an awful lot about that and he was not going to get into the water side of the thing. The size and scale of the proposed development though are not in keeping with trying to preserve the Route 250 West Corridor. The prior approval and subsequent court decision specifically limited the building size to 3,000 square feet on the first floor and 1,000 square feet on the second story. The proposal almost quadruples the size of the development by adding an additional 12,000 square feet and expanding the site plan will specifically cause additional congestion, water use, visual impact, noise and light pollution in this area that the Crozet Master Plan is specifically trying to protect. As such the proposal should be rejected or as a minimum significantly more frontal vegetation buffering should be provided along the scenic Route 250 West. Similarly the requested SUP for the drive through window, if it is still included, will just add to traffic and congestion in the area and should be rejected. Finally, and it is one of the most important points he would like to bring the operating hour restrictions. It already was mentioned the possibility of overnight truck parking. Right now that is not allowed with the operating hour restrictions. However, if you take those off there is that possibility. Directly behind this proposed site is a residential area that is part of the history of Albemarle County. It is referred to as Free Town and was initially the home of freed slaves following the end of the civil war. This project will drastically impact the quality of life for the residents of Free Town. Thank you.

Jason Crutchfield, 6133 Rockfish Gap, said he was a neighbor to these guys and it really hurts because they are my neighbors and it is hard to come up here and talk like this. He has tried numerous times to talk with them, but they send me Jo and Jo uses a lot of tricky language. Just like Mr. Fritz, I was really surprised at you because you emailed us with supportive type emails, but you did not tell us that you were going to come here and testify on their behalf. So that is really interrupting. What is also interesting is you also checked Mr. Dotson about his questions that did not relate to water, but Ms. Higgins spoke 75 percent or more about things that were not related to water. It is very interesting. But, he was going to start with the water issue, which is how much he is using. For me this is a creditability issue because he has made promises and is supposed adhere to things such as the overnight parking. But, he guarantees if you have laptops use google maps right now and there will be a truck cab that has been there until we called in the complaints. When they called in the complaints in March that is when it stopped. So creditability is an issue for me because he had been allowed to test his own water and so how are we supposed to trust his water readings. If it was a county agreement how come they were not testing it? Also, Mr. Fritz if the water issue you were studying a lot during this issue, too. If the water runoff and all that stuff is an

issue there is a natural spring that is owned by him, too, that I share once it comes onto my property line. There is a natural spring right behind that he pointed out on the map that is a direct flow into a creek, Stockton Creek that goes right into the Rivanna. There are other issues. He hopes you do push forth on that comprehensive bill issue because it seems like there are major issues in the comprehensive plan that are not even being addressed. He complains how he is being treated in the community. It is like the gentleman said here they won't talk to us so he is not a member of the community. It is just like the Wegman's, Kmart or another franchise coming in. Thank you.

Mike Marshall said he was for years the Chairman of the Crozet Advisory Committee. You may not recall exactly a battle field was fought over Restore N' Station in 2009 and 2010. The special use permit is basically an exception the county granted an exception. In exchange for granting the exception the applicant agreed to the terms. Those are the conditions. The people representing the applicant have no interest in reopening their deal. He wants to change the conditions he accepted as part of the deal. He wants an exception to the exception that we granted to them. It is just open and shut in my mind this should not go any farther than him making a request and you politely saying no. But, he cannot imagine that you going to let him. The whole thing is about water and it is not really about water he is going to triple the building size, triple the number of parking spaces and it is a whole new use just like you say. It is a very cynical application, in my opinion, and it just ought not to go anywhere.

Morgan Butler, with Southern Environmental Law Center, said the special use permit conditions that are at issue tonight were thoroughly worked through between the applicant, the public and the Board of Supervisors in 2010. They were carefully designed to limit activity on this site to ensure that water consumption did not exceed a certain amount per day and to indirectly address many of concerns from the public. Now the applicant is requesting that several of those protected conditions be dropped to allow for a development five times larger including an entirely new auto repair use, a use that was not part of the proposal approved in 2010; and, therefore could trigger a new review for comp plan consistency. As everyone tonight seems to acknowledge the new proposal flies in the face of the comprehensive plan's rural area designation for this parcel and its clear call for limiting commercial uses along Route 250 West.

Mr. Butler said in assessing the impacts of eliminating those conditions the staff report seems to suggest that the only impacts that should be considered are those from any additional water consumption and since the applicant is not asking for more water usage than what they were granted before there are not really any new impacts to evaluate. One of the problems with this approach is that it ignores the risk that the new development will end up needing more water than is currently allowed to be withdrawn on the site. Once those uses are up and running it would be very hard to deny a request to change the SUP to allow more water if they start running out. In those circumstances there would also be heavy pressure to extend public water into the site under the argument that a public safety emergency has been created. In the face of that pressure the current limitations on the amount of water that can be withdrawn in the valve would offer little protection. To make sure that we don't create that situation it is essential for the county to provide an affirmed assessment of how much water the proposed uses could potentially use. All we have to go on at this point is a water usage analysis the applicant provided the CCAC back in December. This analysis was not included as an attachment to the staff report and we have not seen anything indicating that staff has done its own independent analysis. Of note we took the formula the applicant used to predict water usage for the new retail and office square footage and we applied it to the retail office square footage already existing on the site. That resulted in an estimate for

its existing uses that is far below the actual water usage rates the applicant has reported. So if that formula significantly underestimates the water usage of what has already been built it is hard to have much confidence in what it is predicting a major expansion would use. In short, we have an existing special use permit with conditions that were carefully worked between the board and the applicant in order to keep water usage on this site at or below the amount the board deemed acceptable. We urge you to recommend denial of this request and keep those protective conditions in place. At the very least we urge you to recommend deferral of the request to allow for a thorough evaluation of the water usage for what the applicant is proposing. Thank you.

Kim Connelly, resident of Crozet and a former member of the Crozet Community Advisory Council, said as a member of the Crozet community she has been following this issue since it first came up. But, she remembers coming to this Planning Commission meeting back when this was originally discussed. The reason she got out of work early and came here tonight, and she was not an adjoining neighbor, is she is bothered by the use of water as a leverage tool to try to get this passed. This is a spot zoning grandfathered in from years ago and we all agree it is zoned highway commercial – understood. It is surrounded by rural zoning and is on a road that is designated a Scenic Byway. The Crozet Master Plan and the comprehensive plan does not want more development on 250. She said their representative or paid consultant came up and she did not talk to us about water, she talked about economic development. One of the neighbors stood up and she has not heard discussion about the impacts of the neighbors about the increased water use, the increased water runoff. She understands there is storm water and drainage; but, she also understand that it already has impacted the adjoining neighbors who are very close by already. To expand the impervious surfaces, to increase the water usage she thinks if you want to waive economic development and profit motive over the health and safety of the citizens who you are here representing that is a choice that has already been represented here by their paid consultant to talk about economic development over the quality of life for our residents.

Ms. Firehock asked if there was anyone else present to speak. There being none, she invited the applicant for rebuttal.

Jo Higgins thanked the Commission for the opportunity to address some of the concerns. Your staff report she believed as an attachment has the water analysis and it was thorough and done from two different agencies. It is a standard formula used for the design of septic systems and water volumes. So she did not speak about that because that is in your staff report. The existing development is using approximately 16% of the by right amount and not touching the one gallon that the special use permit granted. That is a very important aspect. We are not close here and it is not 1,600 and asking to double the development and taking a chance. It is a very difficult and expensive venture and that is an economic issue for the property owner. But, there is no intent here to exceed the amount of water. High water uses are excluded from this application. The concept plan shows the buildings and it has been calculated based on employees that will occupy that space and square footage of the uses that are applied for. Highway commercial has many uses by right. If you refer to the section in the ordinance for the highway commercial district there are many uses. They are not represented here if they are high water uses. It is very critical to this application. There is no change to the water use and literally 1,625 gallons is one gallon per minute every day. That is less than a residential withdrawal rate. If anybody has a house they usually have a well pump that is 7, 10, or 15 gallons a minute. It is quick withdrawals that affect the water table. Long slow withdrawals actually cause a depression in the ground water. There has been no impact to wells around there.

Ms. Higgins pointed out as a matter of fact a lot of the users along the road are getting public water. There is a water line that runs directly down 250 and if there was a real concern about wells and water the county has the authority to grant using the public water line. There is a fire hydrant directly across the street. You brought up issues potentially about fire and limited water resources. The fire hydrants exist. There has never been an issue to my knowledge of any of the fire departments having issues in that area with the ability to fight fires. The water line actually runs out to the Yancey yard there on public water. The residences in the village across the street from them for many of them there is a map that will show the connections to the public water. She did not include that in the staff report. This property had it until the building was removed because vagrants were occupying it and the property owner did not understand that if he took down the building he could not get his water tap. She could speak about water at great length. We actually met with engineering after our February submittal directly and spoke about his concerns and had the design engineer submit the data for the ground water recharge to make sure that was sufficient. The system that is designed for the underground storm water management system actually has perforated pipe set in stone so it will percolate back into the ground. All of the runoff will be collected and treated. The issue about potential fires and that sort of thing from a gas station there is an emergency system where you have on the building is there is any spill or a hose is left running you have to go and hit that. Spills are actually addressed with dry products these days. If someone were to spill a small quantity they actually use like a kitty litter and it is called a spill kit. That was also provided to Mr. Anderson in the engineering department so he would know what that process is. So we feel like all those basics are covered.

Ms. Higgins said she knows the perception is that the applicant agreed to certain conditions. At the time she can tell you absolutely honestly if you have your land and you are trying to develop it and you submit a site plan, which we did, we were cut down on numerous occasions to a very minimum and the very fact is we had to prove the water usage to be able to fully develop the site. It has been proven now and we are talking 16% of 1,625 gallons. The water analysis that was submitted was extensive. There were 12 convenience stores included in annual data and it went as far as Richmond. But, no one could say well what if they just leave the spiker running. So the flow valve was calibrated by an engineer and installed. The meter is a sensor meeting, the same as a public meter. She pointed out Bill Fritz witnessed this; it is a sealed meter and it is tamper proof; and it is the same as the Albemarle County Service Authority uses for a public meter. So that is in place and can't be removed. She thinks that the water issues is the most important here. She did not mean this was about economic development. Being able to fully develop the site will only just allow the property owner to use the water he has by right without using the one gallon granted under the special use permit. Thank you. If you have any questions she would be happy to answer them.

Mr. Keller invited questions for the applicant.

Ms. More said she wanted to ask that you made a statement that the applicant's intention has always been to expand. With regards to landscaping that still is not complete and she had asked zoning about this and it seemed to be the answer was at this time the landscape would not move forward because if you were to expand then you would just tear up landscape. My question is if you were issued your final CO she thinks it was September 8, 2014 and you don't have some of the landscaping and screening in place that was required. She asked can you explain that.

Ms. Higgins replied that she did not know how recently that was; but, the way the county works with the site plan is that when you get your CO you have the opportunity. You have to go through an inspection and all safety items have to be in place. But, things such as landscaping can be bonded so there is a financial guarantee to the county. In this case the property owner did the landscaping and Lisa Green has actually been to the site. She is not sure if the whole bond has been released; but, all the landscaping across the front is according to ARB standards for an Entrance Corridor. The trees are 35' on center and the caliper of the trees are appropriate for the Entrance Corridor. It was not just on the east side of the property the landscaping across the entire front has been installed. She believed there might be a few trees along the western edge that were not and that is because they would be in conflict with potential parking spaces. But, we will also be required in the site plan to provide 1 tree per 10 spaces. We will have to provide bushes 5' on center in front of parking spaces. Those is no way to get around those requirements, and they absolutely will be adhered to when we do the site plan. The concept plan has to be in general accordance with the site plan.

Ms. More said right, but from the time you were issued the final CO. She said landscaping can be done prior to that if site work is done. You have a year is my understanding to have that landscaping in place some of which she thought was to offer some screening and protection to the adjacent property owners. It is my understanding that it was well over a year without having those things in place. She asked has your bond been released.

Ms. Higgins replied that there is still a portion of the bond in place and actually they keep it for a year after they are installed to make sure if anything dies you have to replant it. She pointed out the majority of it has been done. The fencing is also included in that. If the fencing is not done you can bond it. There are certain things the county will allow you to bond. We knew there was going to be a second phase and met with the county shortly after opening to discuss the second phase, but they wanted the year of data to have that in hand before they could analysis and make sure where we were with respect to the water usage. It is very low. There is no way around those rules and she was not sure what you are asking me. The landscaping is either financially guaranteed or installed. The majority of it now is installed, but it has not been completely released.

Ms. More said she can move on from landscaping; but, just thought the statement was interesting that you always intended to expand and with questions about the timing of the landscaping it seems to me that it was never meant actually be put in place because expansion has always been a desire.

Ms. Higgins pointed out that Bill Fritz might be able to address this. But, we actually submitted plans to the ARB showing phase 2 with additional buildings because their concern was whether the layout was going to be compatible with our second phase. So we actually submitted elevations of the eventual building. We have since submitted those elevations again with this as a special use permit and we got feedback back that at site plan we would have to do a formal submittal. But, not only did we submit, we submitted a site plan with a much larger store. Our initial one was on the east side of the site right along the edge and it was designed like a train station. The ARB did not like that. We went through probably four submittals and as we were reduced in size we said well we will have to bring that back as phase 2. We can produce those submittals; they are in the county file. But, they were basically each time we worked with people and we revised and revised. We went through numerous revisions and it was always clear that there would be another phase. We had to agree to those conditions to get approved to get opened. It was not a willing thing to do.

Ms. Firehock said she had asked this of Mr. Fritz and she would ask if of you since you are obviously a past public works director and probably an engineer. Of all the things we have heard tonight we are talking about the amount of water that can be used at the site; the amount of water that will likely be used at the site and the amount of water that will be returned to the aquifer. The question she wants to ask is about water quality because as you know gas stations even just with the traditional just dribbling of gas as you move the pump handle into your car and back and how they add up over the years. She has worked on a lot of gas stations so she has some professional knowledge and she would just like to know a little more from you on what you plan to do. A lot of time has elapsed in terms of engineering practices for water quality and treatment and she did look at the attachment and don't see anything particularly innovative. She knows this is not the site plan review tonight but she would like to hear a little more on how you plan to ensure the quality of the water beyond just simply saying it shall percolate through the soil and become purified.

Ms. Higgins replied that was a comment and has to do with ground water. What you are particularly referring to is there are regulations in place that are imposed upon any fueling stations and there are regulations that affect that. The method now is to use dry material to deal with those; it is not to wash them with a liquid and wash them into your storm drains. There are filteras on the site now. The filteras have a medium in them and should they become contaminated where they are specifically filtering the runoff from the pavement the material has to be removed and replaced. It is basically a sand filter. The value of filteras was reduced in 2014 in the storm water quality regulations and so the design of the balance of the site will have to compensate for that. But, there is two levels of protection; the dry removal of surface drips that gas users do and also the median that actually filters that water before it gets to the sediment basin which will be converted to an underground perforated pipe storage system in a filtered stoneware so to speak before it leaves the pipe and runs to the back where the outfall is located. The engineering review here is absolutely excruciating. The 2014 regulations don't give you any movement on that, and no one is allowed to not meet those regulations. But, she was not sure what other guarantees you would want with that.

Ms. Firehock said there are a lot of options and variations in how you treat runoff and the technology has evolved significantly in the last several decades so she just wanted to hear from you on what particularly you were doing. But, she could not believe from your part and she read that document.

Ms. Higgins noted the engineer actually did and this is the evaluation of the ground water study.

Ms. Firehock pointed out that she was not hearing to my satisfaction enough about quality we were mostly talking about volume. She said you have answered my question.

Mr. Lafferty said since the proposal before us does not really address water and is mainly building more buildings and putting more gas pumps in and things like that when the owner negotiated with the Board of Supervisors in their officers they came up with some conditions and you are asking for those conditions to be dropped. The first one was eliminate restrictions on hours of business operation. That was a restriction that was placed on you.

Ms. Higgins replied at that time the discussion was related to water use. The idea was both two-fold. If you limit the hours to 16 hours a day it would limit the water use. There

is not any intention here that a station in Crozet, for example, would stay open 24 hours. But, should the community grow it was unfair and not equitable to put a restriction on one particular location and not the others. But, it was related to water usage and we are now at 16% of the amount.

Mr. Lafferty asked if the operations operated more than 16 hours a day with the pumps on.

Ms. Higgins replied the store operated 16 hours a day and as all gas stations and ever since the Spouses have operated a gas station the pumps operate by credit card at night. Zoning actually came out and spoke with us and we put in a request for a determination because, again, the pumps being on uses zero water because no customers get into the building.

Mr. Lafferty said no, but it makes noise and that is what the neighbors have complained about. He sees these restrictions as trying to be good neighbors more than he sees restrictions on water use.

Ms. Higgins said that she understands, but the highway commercial zoning is a by right zoning for the use and the restriction was related to water and there was no water being used.

Mr. Lafferty asked so why do you want to drop these restrictions.

Ms. Higgins replied because if in the future Old Trail grows and maybe a Saturday night the convenience store here and Brownsville Market or the one across the street needs to stay open overnight to serve those customers. It is imposing a restriction on this business that is not imposed on the others and they have the same proximity to residential and traffic on 250. So it was just an equity issue. The pumps being turned off is a financial impact because that produces income. The expansion of the pumps is just to insert the two pumps that would have the alternative diesel alternative fuel that we are not allowed to have because the way they wrote the condition. That condition is very troublesome.

Mr. Lafferty said so the pumps are not a business activity.

Ms. Higgins replied that the pumps do generate revenue, but they don't use water. The special use permit limitations are supposed to be general.

Mr. Lafferty pointed out the hours of operation would be limited to 16 hours and not all night regardless of whether they were using water or not.

Ms. Higgins pointed out according to the county attorney in the public hearing at that time the conditions are supposed to reasonably relate to water usage.

Mr. Lafferty said this was from the Board of Supervisors so he assumed that if we say we are going to limit these we are going against the wishes of the Board of Supervisors. He asked how about the overnight parking. He understands from one of the previous speakers that there has been overnight parking.

Ms. Higgins replied that in some of the vehicles coming and going at night when the store was closed had been perceived in my opinion to be overnight parking. There was one cab truck there, it was not a customer's vehicle, but that was removed when

someone complained. Again, it was not an intent to upset anybody. There is a lot of truck traffic and the noise of truck traffic virtually we are right next to a heavy equipment storage yard for tree trucks that leave at about 5 a.m. in the morning. At the time this was going on before the Moose was turned into a brewery the site was leased to an asphalt driveway company and they left very early in the morning and came back in the afternoon.

Mr. Lafferty said that was not a restriction placed on them; there was a restriction placed on you. He asked for the limitation on the fuel dispenser types and numbers. He could see why you want that and that has nothing to do with water as he can see it, but you want to amend that so you can put in as many as you want to.

Ms. Higgins said it was two additional pumps that were withheld. It was the two that would go under the existing canopy, but they would have two hoses so that you could actually sell alternative fuels. You can't run two different fuels through for the same rubber hose. The way that was written we could not put in the alternative fuel stations.

Mr. Lafferty pointed out that eliminating these conditions is part of the proposal.

Ms. Higgins pointed out that one of the reasons that overnight parking is an issue is that the auto repair theoretically could have a car that needs to be worked on parked in the back lot and if they don't have the part they might have to park it there overnight. With an overnight parking restriction the auto repair would have to remove every car every night. That is also impactful to that auto repair business.

Mr. Lafferty thanked her.

Ms. More said she was not going to bring this up at this time, but since Commissioner Lafferty questioned specifically about the hours of operation she would like to first point out that the applicant accepted the conditions whether they had to do with water use or not that was the final decision of the board; it was accepted by the applicant and it did speak to the hours of operation. You have been using the store 16 hours a day, but running the pumps 24 hours a day to my knowledge since you originally opened. When code enforcement looked into this my understanding is they looked into this very carefully and they consulted with the attorney; they went back and listened to audio and while it may have been confusing to you what they found was it was clear that it spoke to all activities on the property and that as of February 18th of this year you were asked to stop running the pumps 24 hours a day. So since your original CO the final certificate of occupancy was issued you have been running those pumps and when you are approached about it you say you don't think it has anything to do with water uses. She said you accepted the original condition.

Ms. Higgins noted but we submitted a request for a determination from the zoning administrator about this because it was not until we submitted this application that complaint came in and we did not understand it the same.

Ms. More said so the zoning directed by code enforcement to stop running the pumps 24 hours a day based on the original agreement in the conditions that was set forth by the original special use permit from the Board. She asked if it was correct that you have stopped using the pumps based on code enforcement's ultimate determination.

Ms. Higgins replied yes, on the zoning administrator's ultimate determination the pumps were turned off.

Ms. More said she just wants to clarify that.

Ms. Higgins said they were turned off immediately when the zoning determination was received.

Mr. Keller asked Mr. Dotson if he had questions.

Mr. Dotson said yes he did. He suggested that Ms. Higgins take a deep breath and relax. We really have been peppering you.

Ms. Higgins pointed out that conditions are really not voluntary; they are not really negotiated; they are imposed.

Mr. Dotson said he had three informational questions. Back in the 2010 approval there was a phase 2 shown on the plans and he did not remember the square footage. But, he had the impression that the square footage of what you are proposing now would add up to more than what was being proposed then. He asked if she would clarify that.

Ms. Higgins replied yes, sir, we looked at the volume of water that the convenience store uses and it was predicted to be a high water user. We have spoken to other uses that wanted to locate here that were high water users, and they could not be accommodated. But, with an expansion of the convenience store with no additional fixtures two small literally shop spaces in the front building and then the auto repair with four bays in the rear building and an office above that, again, we had to work to the water calculation based on employees and square footages to set what we could ultimately do. That is the application that is before you.

Mr. Dotson said his question was is phase 2 now larger than phase 2 was in 2010.

Ms. Higgins replied actually it was about the same. She pointed out we actually had a business that wanted to go there, she did not want to mention a name, with their offices in two story and we replaced that with auto repair. But, we were always going to have three buildings, instead it is two buildings one expanded and then a 30' gap and then the rear building. So originally it was going to be three buildings.

Mr. Dotson said the second question is on your groundwater study one of the things that has happened fairly recently, and he assumes this is a fairly intensive water user, is the farm brewery next door.

Ms. Higgins replied oh yes, they are in RA zoning.

Mr. Dotson said so did your groundwater study take into account that there is this major user there.

Ms. Higgins replied that there is concern. There should have concern for all the users of wells in the area; but, that building also has the right to tap the public water system to existing building only. If she is not mistaken she saw them digging; they might have tapped for water system because they have the right to. They would with producing beer and washing vats and that sort of thing maybe it would be a high water user. But, they are RA zoning and they have no restrictions on their water use or water withdrawal.

Mr. Dotson asked does staff know whether they are public or private.

Mr. Benish said that he can check.

Ms. More said my understanding is they are public and they are hooked up to the public.

Mr. Keller suggested that they hear from the staff.

Ms. Higgins pointed out the Moose was never hooked up; but, they might have hooked up since then.

Mr. Benish noted that he can check to see; but, Mr. Fritz believes they are connected.

Mr. Fritz said he did not know for certain, but can check

Mr. Dotson said it would be of interest to the board so you could report that. The other question has to do with the well on the site and the Department of Health approval, which is not our concern, but he was just wondering have they approved it because it would appear from the concept plan that some of the well lot is now going to be on a fill area that is necessary to allow you to expand the parking.

Ms. Higgins replied that she will refer you to in the report we have an existing well summary. She said when this well was installed we anticipated the rules changing so it was constructed to 2 piece standards of 3. There is a memo from the design engineer saying what we would need to do if the new standards are imposed. They have not been imposed on other locations like this; but, they very likely will and we stand ready to meet them. We can't not meet health department regulations on septic and well. She pointed out that he basically did a report about this, and she believed it was in the staff report.

Mr. Dotson thanked her.

Ms. Higgins pointed out they did the thicker casing and the deeper casing at the time we did it anticipating that, but we only had to do the 3b.

Mr. Dotson said okay.

Mr. Keller thanked the applicant. There being no further questions he closed the public hearing to bring it back for discussion. He suggested that we frame our discussions in two ways. First, we talk about the water as has been presented by staff and before we make a decision we have a discussion about the amendment to the special use permit as opposed to a new one and whether we think the changes that have been proposed are significant enough that that should have been the case..

Ms. More requested to ask a question. She understand that we are here to talk specifically about water usage; but, part of the request is to lift conditions. Those conditions in my mind open the door for discussion because the conditions they are asking to lift are about size and scale.

Mr. Keller pointed out that is why he proposed the second discussion.

Ms. More said but it is about the original special use permit, which dealt with water usage, but we have these conditions so she wants to be sure that's a part of the discussion.

Mr. Keller said that he thinks that it should be; but, he thinks it should be pulled into this other piece because we have been asked to deal with the water and he feels that we should do that. Personally, as he has personally reflected on this and he feels after this evening he thinks the Code of Albemarle, Chapter 18 1.4 Purpose and Intent that we need to be looking at 1.4.3, 1.4.6 and 1.4.10 and thinking about that and whether this is a significant enough change that it should have been a new special use permit that would allow us to delve into those matters as well as social and environmental justice issues.

Ms. Firehock said she would like to ask the county attorney, Mr. Kamptner a question. My question is really trying to get my head around what we are doing tonight. We are talking about water supply and we are talking about the meter that will be on the fixture that will prevent them from ever taking more than they are allowed. My understanding of the prior rezoning so far is that those restrictions were all to limit the size of the operation. There are some things that have to do with hours of operation which are less about size but they have to do with maybe water use. So are all of the earlier special use permit requirements all to do with water supply and use and that is why that is all we can talk about tonight. She asked Mr. Kamptner to shed some light on that or just reiterate with better clarity.

Mr. Kamptner replied that the special use permits dealing with water consumption the conditions were imposed to control water consumption. The ones that are being requested to be removed some of those deal with the intensity of the use, the scale and the scope of the impervious surface that are all in the interest of making certain that the water issue was adequately addressed. So that is the issue in front of you. Specifically, it is really just limited to whether or not those conditions should be removed or not. The uses themselves that might otherwise be allowed are otherwise by right uses. Recognize that the comprehensive plan says a lot about uses and activities along 250 and outside of the master plan; but, those uses are by right uses. The issue that is in front of you is the water consumption use and the conditions that are tied to that, and all of those conditions are tied to that.

Ms. More said so can we talk about water use and does that answer your question, and Mr. Keller replied yes.

Ms. More said that they would talk about the water use first. She has read through the self-reporting from the applicant about the water use which is low and seems to be getting lower and lower and staff gave an initial set of reports and from that point forward.

Mr. Fritz said there was one in the staff report and then there was one that was submitted as a follow up that added a couple of additional weeks on to it.

Ms. More said the only information she has as far as comps and she knows in the original application there were comps that were pulled and historic data that was provided. She would guess that she would encourage for a more vetted look at what we can do as far as predicting water usage with expansion she thinks comps should be provided. She thinks there needs to be a further more intense analysis of the predictions, overall impacts and impacts of the water quality should be considered. She thinks comps pulling current comps and more historical data of the other types of businesses that you are proposing for the site would be appropriate. She said she only know the Brownsville Market and she knows there are some variables there that are probably different from the business that the applicant has now; they use about 1,000

gallons a day. So it is very different than what your business is reporting. She would like to suggest that there is a variable that is the customer and a low customer base could be a factor in some of your numbers being pretty low. That is a concern for me because she thinks they run the risk if more water is needed if your customer base picks up if that is in fact part of that has to be a variable of water and you have these expanded uses that we get into a situation that others have referred to where we have allowed for this expansion that may or may not be able to be supported. So she would guess my suggestion would be a more critical and thorough look at how we can accurately predict water use on the site that could support these type of functions.

Mr. Kamptner said he needs to ask and maybe Mr. Fritz can elaborate conditions 1, 2 and 3 that physically already cap the amount of water that can be consumed and what this additional data would provide. If you could elaborate the extent to which county staff monitors the consumption.

Mr. Fritz asked first to go back to the comparables and that is part of the reason why we have the special use permit in the first place. They gave us comparables and those comparables showed that they were going to be consuming less than 1,624 gallons. But, we could not prove beyond any shadow of a doubt that they might not go over that 1,624 and that is why the special use permit is there. So that is part of the reason why staff has not put a lot of emphasis on doing any new comparables because we have done it before and we have said we can't rely upon them. So what we are relying on instead are the conditions that limit the physical design of the system so that it can't consume more than that much water and then a metering process so we can see what the water consumption numbers are. We have those water consumption numbers; we watch and monitor the installation of the flow restriction device. So that is the answer that he can give you is we have tried the comparables before and that is why we are where we are. The best place to actually have the discussion about how valid the comparables is actually not here it would probably be with the Board of Zoning Appeals whether they are going to need a special use permit.

Ms. More said my line of question is trying to be about water usage and she does not want to get away from that topic if that is what we are supposed to specifically talk to them about now. But, she finds it a little backwards that a business could be built there and find that they actually can't find the water to support that type of business. So she thinks it is important to consider with this that it is an extreme expansion to stay within. She knows they cannot physically go over it. However; she would refer to an email we got from Marcia Joseph which points out the situation we would be in if this expansion was allowed and then water can't support those businesses what do we tell the neighbors that could be affected by that. What do we tell the applicant when they come back if that were the case? That is why she thinks those restrictions are so important. She understands they physically cannot use more; but, she would guess that was what her line of questioning is. She would stop talking about water use and simply point out that they have been through this discussion and the board made a finding and they put special conditions on it. Then she would sort of assert that the decision been made and the applicant has been given their answer.

Mr. Fritz pointed out that part of our response would be in why the comparables are so difficult is they say they are going to have uses A, B and C and look at that and say okay you are right you are going to be below the 1,625 and then low and behold they go in there and they keep bumping up against that 1,625 and they don't have enough to use. So they tell user A you either need to change your operation of business or you need to go somewhere else. This is highway commercial zoning and it is the broadest and the

most expansive of the by right districts we have in terms of the permitted activities. So they could find another user who could go in there that could operate under that water restriction or have no water. It could be a use that has no or very low water usage. That is part of the reason we have difficulty with those comparables because the users could change too over time.

Ms. Firehock pointed out she had questions for the two commissioners who were on the Planning Commission when the comprehensive plan was redone. She asked why this area wasn't looked at during comp plan review. She asked was it because it was just so many large parts of the county? When you are doing a comp plan normally what you also do is go look for conflict in zoning and then amend the comp plan to reflect what the zoning is. So here we have this weird comp plan that says it should be something different from what it is, and now she did not know how to use the comp plan. So it is not like she is throwing down the gauntlet at you, but she just wanted to understand and asked if you can shed some light on why that is. She asked why we are in this situation.

Mr. Dotson said he did not think that the recent comp plan analysis looked carefully at this because the Crozet Master Plan has been revised quite recently just before that. He was not involved in the master plan review; but, he thinks the reason probably is that the message that both the master plan and the comp plan want to send is that though we may have some existing highway commercial zoning and perhaps other zoning that is not consistent with the plan on those areas where someone might propose a change in zoning it would only be changed consistent with the plan. So there are some grandfathered highway commercial sites and you just have to look up the road to Harris Teeter and across the road there are a number of patches along 250 that had prior zoning. He thinks the plan probably accepted them and was trying to address the land that might come for rezoning the next step down.

Ms. More said she just wanted to clarify that because that was the most recent adoption of the comprehensive plan and the current Crozet Master Plan was worked on in 2009 and adopted in 2010. This is actually outside of the growth area so as far as the Crozet Master Plan it is outside the growth area and considered rural area.

Ms. Firehock noted that they would not have looked at that anyway.

Ms. More pointed out certainly the CCAC has asked to uphold the master plan and has an opinion. However, as far as the timing the Crozet Master Plan it would have been done in 2009 and your question was specifically about the most recent comprehensive plan revision. So she just wanted to clarify the timing.

Mr. Dotson said upon the topic of water he had sort of an arm chair analysis. One of the reports we received recently was about the existing usage and the number was 251 gallons per day over a 52 week period. So kind of using that he said well what may we be talking about since the existing development is just under 4,000 square feet; the proposed development is just under 24,000 square feet, and so that is a 1 to 6 ratio. So the rule of thumb says you would expect 6 times whatever today's usage is. That would be 1,500, which is less than 1,625 but not much. So that is just a fact to keep in mind. One of the statements that has been made is that customers using gas pumps today hardly get out of their car. They get out of the car, pump the gas and leave. Therefore, they did not use any water. Well as a 72 year old he would like to point out that tanks last 7 hours and bladders last 2 to 3 hours. So there would be people perhaps stopping there particularly as you had a drive through who might not even be buying gas or if you had a drive through he thinks that you would probably find that more people would come

there to buy gas. So that sort of 1 to 6 assumption he thinks you are going to find more intensity of use of water on the site as a result of the additional uses. You are also adding office use that is people who are there all day. So that is going to be a more intensive water use than the casual kind of walk up user. He thinks one of the concerns if we were to come so close to the 1,625 is even though the applicant is sort of accepting that it is sort of like a self-imposed hardship and if that became an issue it would be very difficult just from an economic development or an empathy standpoint to say no to either changing that number or allowing the hook up to the public water supply. So he thinks that there are good reasons to think that the water might exceed the 1,625. Looking at the conditions, the ones that are contested, 4, 5, 6 and 8 he thinks that my feeling is that the square footage based on the fact that we do now have some reliable data of actual experience that we did not have before the site could probably stand more than what it has got right now; but, he does not have any idea how much more and nobody has proposed how much more. The hours of business operation he thinks needs to be clarified; but he thinks that a stipulation of 16 hours needs to continue. The number of gas pumps the applicant has requested a clarification saying that it is not adding pumps but really just being able to realize what was originally intended. That would be okay. The overnight customer parking the applicant points out if you took it too literally you could not leave cars on the site that were being repaired; that could be clarified through language. So he could see some room for clarification, some possible adjustment upwards given that the water usage isn't perhaps what was once imagined, but that is not the plan before us. So he cannot in good faith support the plan that is before us, but he might be able to support some other plan.

Mr. Lafferty said he thinks the water is a given. The probability that they may come back and say we want to hook up to public water is certainly a possibility and would probably be an embarrassment for us and for them. So he goes on the conditions that is the turning point for me. If the conditions were put in place and he knows they wanted to separate it, but he is just saying the water is not an issue for me. But, if the conditions were put into place by the Board of Supervisors to limit the water use, then they should be still valid and so we should just keep those conditions as a minimum. So given that and given that they are part of the proposal he cannot support it.

Mr. Keller invited other discussion of if there is a motion.

Mr. Dotson said he was not sure what that other discussion involves. He is always wanting to get closure on that which is fresh on the table.

Mr. Keller agreed and that is why he has not pushed the second point and may be it is a discussion that happens under new business or something like that. We need to have a clarification for the difference between when a special use permit amendment is recommended or when a new special use permit completely is required and what the degree of change would affect that. So he can pull that back and stay with the water discussion for now the way staff and our counsel has asked us to do.

Ms. Riley said she would like to make a comment. She said she finds Mr. Dotson's thought process and your comments about the conditions and its relationship to the overall water use very compelling. One part of that she finds hard to agree with and that is that there is this assumption that this additional amount of square footage unnecessarily creates the 1 to 6 ratio and therefore tipping us over the edge because it is all contingent on what uses go in there. On the other hand the applicant is saying the argument is we are going to be mindful of that uses and we are going to be looking at

uses that have the combined impact in terms of water usage. So she just wants to add that she did not think it is easy to predict until we know what the uses are.

Mr. Dotson said he would like to follow up on that. He thinks the purpose of the conditions, as he sees it, is some useful redundancy between the number 1,625 and these conditions that will help to achieve the 1,625.

Mr. Lafferty moved to recommend denial of SP-2015-00032 ReStore N Station due to the fact that the request is to remove the conditions from the original approval.

Ms. More seconded the motion.

Mr. Keller invited discussion.

Mr. Kamptner said just a little further clarification of the reasons for the recommendation. He will take that as the motion maker desiring to retain all of the conditions in place because they control the assisted recharge, the intensity of the use on the property, which was tied to the water consumption.

Mr. Lafferty said that was said much better than he would say it. He said yes, he did not see any reason why the conditions should be lifted.

Ms. Firehock asked staff had the Board of Supervisors had the ability to have this wonderful device that would absolutely limit the water withdrawal to the number that we have talked about plus the one gallon would then therefore there have been none of these other conditions because we did not need them because we just need the device to keep us from withdrawing.

Mr. Fritz replied no, because that was a condition in 2010 and they worked to develop these other conditions which the applicant agreed to at the time. So just on its face they had that very same condition. They did not have experience with that device or the metering so maybe that is a little bit different; but, just on its face that condition was there in 2010 and all these other conditions were also put in place in 2010.

Ms. Firehock asked if the other conditions were a safeguard against whether or not the device did or did not work properly.

Mr. Fritz replied that Mr. Kamptner read the minutes more recently than he did; but, he thinks it is fair to say it was a combined attempt to try to address the impacts created by the water usage and to minimize the potential for exceeding the water usage and maintaining recharge and all those other things.

Ms. Firehock said so the Board's wisdom was to use both a combination of technology and actual land use/practices on the site, and Mr. Fritz agreed at the time.

Ms. More asked to add that based on some of what Commissioner Dotson said she reads some of those conditions and the intent of the original special use permit and the question that is before us that based on some of what you said about getting pretty close to or possibly over that limit. As good stewards to the community and to our natural resources she thinks it is against my better judgment to support approval or to remove any of the conditions that were placed on the original special use permit. So she did not know if that could be a friendly amendment to allow if you need more reasons.

Mr. Kamptner pointed out that is part of the record so it is fine and the Commission does not need to amend the motion.

Ms. More asked Mr. Kamptner if he was looking for the “no” reasoning to be a more specific then.

Mr. Lafferty said that would be for me that makes their motion as he understands it.

Mr. Keller said he thinks the way it was a suggestion from our counsel to the modification that ties it back to the water makes that very clear. There being no more discussion, he asked for a roll call.

Mr. Dotson asked just to clarify the motion is to deny.

Mr. Lafferty agreed that was correct.

Ms. Taylor called the roll.

The motion for denial carried by a vote of 6:0. (Spain, absent)

The meeting moved to the next agenda item.

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning)