

**Albemarle County Planning Commission
December 5, 2017**

The Albemarle County Planning Commission held a public hearing on Tuesday, December 5, 2017, at 6:00 p.m., at the County Office Building, Room #241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Andrew Knuppel, Senior Planner; Cameron Langille, Senior Planner; Bill Fritz; Manager of Special Projects; Leah Brumfield, Senior Planner; Andrew Gast-Bray, Assistant Director of Community Development/Director of Planning; Amelia McCulley, Director of Zoning/Zoning Administrator; David Benish, Chief of Community Development; Sharon Taylor, Clerk to Planning Commission; and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum

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

The Planning Commission took a five-minute break at 7:53 p.m. and the meeting reconvened at 8:00 p.m.

Mr. Keller called the meeting back to order at 8:00 p.m.

Public Hearing Items.

SP-2017-00020 Re-Store'N Station Amendment

MAGISTERIAL DISTRICT: White Hall

TAX MAP/PARCEL: 055B0000000100

LOCATION: 6115 Rockfish Gap Turnpike

PROPOSAL: Amend fuel-dispensing conditions, hours of operation and update condition to reflect compliance with approved site plan. No change in permitted water use is proposed.

PETITION: Amend the existing conditions of SP200900034, which was 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. The site contains 4.06 acres.

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)

Mr. Fritz introduced Andrew Knuppel who is a new planner with the county, he helped work on this project, and you will be seeing more and more of him.

Mr. Keller welcomed Andrew.

Mr. Fritz summarized the staff report in a PowerPoint presentation.

This is a special use permit for Re-Stores' Station located on Route 250 West in Crozet.

What is this request?

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

- Extend permitted store hours from 16 to 20 hours a day;
- Allow 24 hour a day fuel sales, and;
- Modify fueling stations restrictions.

Last year a special use permit was submitted and denied by the Board of Supervisors. The Commission has that action in the packet. It included these features but it also included significant building expansion and some additional parking area. This request does not do any of that and there is no building expansion.

What is not requested?

- No change in the amount of water that may be consumed.
- No change in metering requirements.
- No change in the requirement for a flow restriction device to limit water consumption.
- No change in requirements for rainwater use.
- No change in impervious area or increase of building size.

There are some limitations on the scope of the review. The original special use permit issued restricted the property to consume no more than 400 gallons per acre per day. That works out to 1,624 gallons by right and the applicant applied for 1,625 gallons and that is what the special use permit was issued for. Therefore, that has been done and if the Board of Supervisors denies this special use permit the applicant will still have 1,625 gallons and the applicant is not requesting to increase that number now, they are asking to have some of the conditions modified within it.

Mr. Fritz noted the other thing that is going on is that the property is zoned Highway Commercial (HC) and staff is very aware that this property being zoned Highway Commercial is inconsistent with the Comprehensive Plan. He said the property is outside the development area, adjacent to residential development and inconsistent with the Comprehensive Plan but zoned Highway Commercial. He said that has not been changed since 1980; there has been no proposal to change the zoning ever on this property by the county or by any owner. Therefore, those are just given facts that we need to work with.

Mr. Fritz noted that the Commission has the report; he is not going to go through all the aspects of the report and would be happy to answer any questions. He explained that a significant part of the review in the previous year of the special use permit that was denied was some concern that the numbers of that water usage was based on averages. The applicant was taking weekly meter readings and then averaging that out for a daily reading. The applicant took daily readings and got those numbers to try to fix that. He said the average daily numbers were probably right based on the daily readings or close enough that it makes no difference.

Mr. Fritz said what the data indicates is that water consumption does not exceed 400 gallons per day; it is actually less; there is no peak that goes over 400 gallons a day but it is less than 400 gallons per day. With the extended hours of operation if they consume the same amount of water in those hours of operation that they are, proposing as they are consuming now it is going to raise it to about 450 gallons a day. Out of the 1,625 gallons, they are permitted that is 28 percent of the permitted consumption. Staff does not see that the change in fueling stations will impact water use at all. There is no change in the impervious area as there was previously so there is no impact on the recharge as there may have been in the previous special use permit. It is a low percentage of the overall.

Mr. Fritz said based on our review of all the provisions of the Zoning Ordinance staff is able to support this and is recommending approval of the special use permit. He said that concludes my presentation and he wanted to save some time to have you ask some questions as the staff report is rather lengthy. He pointed out it is limited to the water usage and that is where it is. He said two pieces of information that was received today was distributed, one from the applicant and one from an adjacent owner. In addition, there were comments from the public in the packet. If there were any questions, he would be happy to answer them.

Mr. Keller invited questions for staff. Hearing none, he opened the public hearing and invited the applicant to address the Commission.

Ms. Jo Higgins said she was a consultant working for the property owner on this very important project that has been around for some time. She noted she had made up a set of slides that she was going to go through quickly since Bill gave us the basics. She presented a series of slides and pointed out the front view of Re-Store'N Station that was taken very close up and a photo taken from Free Town Lane at the southeastern corner of the site. She pointed out as you are looking up you can see a board on board fence and then a white object and that is actually the edge of the small fuel canopy located at the rear of the site. She said that gives you a perspective from the rear and a perspective from the front. She said this met ARB approval and the site plan was approved and met all the regulations in the Site Plan Ordinance.

Ms. Higgins said we are asking to amend two conditions that were imposed with the special use permit. The permit was for one gallon added to the 1,624 making it 1,625 and no change to that is requested. There is no change to the building size or the site plan as Bill said. The special use permit was originally because zoning determined the water usage would likely be exceeded and required it as a condition of site plan approval. She explained that the one gallon was requested because no additional water was needed, we could not agree and so with all the comparative analysis without a site plan approval we could not get a building permit. The water is needed now to prove the one gallon was not needed and was only to enable the process to get the site plan approved and open this door to prove water usage and makes these points to reinforce Highway Commercial zoning provides for the existing uses and the sole purpose of the special use permit is water use.

Ms. Higgins said after three years of operation, leaving out the first one because that was start up, we took the two years of actual water usage that is about 250, the peak is 383. She said Bill had a slightly lower number and it is actually 24 percent of the water of the 1,625. Therefore, three-quarters of the water allowed has not been used and more importantly, the one gallon added under the special use permit has not been used. This application is to request to amend two of the nine conditions that imposed unreasonable and disproportional restrictions, which limited the ability of Re-Store'N Station to compete in the market and operate consistent with other convenient stores in Albemarle County. She

asked why the conditions are not reasonable or proportional; the one gallon of water that was anticipated to generate the impact has not been used and therefore, there is no impact to address. In addition, it is physically impossible to withdraw more than the allowed amount of water with a flow valve limiting the well water we withdraw so there is no risk of any impact to occur.

Ms. Higgins noted in your package that there is a section of the Albemarle County Land Use Law Handbook, Kamptner, June, 2017 Addition Section 12. It is very important key principles in the center of the first page she that just wanted to bring to your attention. She said special use permits must be evaluated under reasonable standards based on zoning principles. Impacts from special uses are addressed through conditions, conditions must be reasonable related to the impacts to be addressed and the extent of the conditions must be roughly proportional to the impacts. She said the one-gallon per day has not been used; therefore no impact and the conditions imposed are not conditional and this was only proven after operation was started. The two requested conditions do not correct this disparity when the key principles are considered but this is all that this request at this time is about. The Land Use Handbook key principles are relevant if you consider this request.

Ms. Higgins said the evaluation of the actual amendment requested as it pertains to water use that in condition 5 we are asking that the rewording be the convenient store shall not operate between 12:30 a.m. and 4:30 a.m. except the fuel pumps may remain operational. These hours are consistent with condition 8 that we are not asking to change. Currently the wording states a limit of 16 hours and with 4 additional hours added it is 20 and this should not be construed to mean there is a requirement to remain open the entire 20 hours. She said this range is intended to provide flexibility to be open based on customer demand. She said it is important to be able to unlock the doors when staff is cooking early in the morning and to be able to flex to stay open later on the weekend with customers leaving the brewery and Western's sports events. She said that currently closing at 10 p.m. does not allow for this.

Ms. Higgins said water calculation assuming the worst-case scenario in early morning late evening hours we use the same as Bill said and assume you use the peak water not the average. She said the peak is 383, divide by 16, gives you 23.9 gallons per hour and multiple by 20 is 478 gallons per day; that is only 29 percent of the water used or a potential increase of 95 gallons per day. She said allowing the fuel pumps to operate without restriction when the store is closed does not relate to water usage in any way; it does not use one drop. The standing operating procedure for the store allows for credit card sales after hours for late night travelers especially in rural areas.

Ms. Higgins said condition 6 allows two additional pump stations, change the total from 7 to 9 and delete the nozzle wording to allow multiple types of fuel to be dispensed from the same pump as industry regulations require more than one hose nozzle. She said it is obvious when you pull up to a pump you will see a couple of nozzles hanging there but only one can dispense fuel at any one time. The two pump stations will be installed under the existing large canopy with no change to the site. It will provide for Volvos, Mercedes and various passenger trucks that might want to get bio-diesel. She said currently they have to line up at the rear pump, since there is only one pump that is intended for truck use.

Ms. Higgins said the water calculation, again assuming the worst case, peak of 383 divided by 7 multiplied by 9 is 492, that is 30 percent of the allowable water usage, and that is a potential increase of 109. She said so when you add these two together you look at the worst-case scenario again 95 gallons added by 4 additional hours with 2 pumps a potential of 109 and add that to the peak and you get 587. She said this is 36 percent of the allowed water usage and so it is not even touching the special use

permit. She noted there is no impact caused or related to the amended conditions and there is no reason based related to the special use permit key principles to deny this request.

Ms. Higgins said although this amendment is strictly about water usage based on the recent feedback from the Crozet Community Association she would like to go over some of the history on this. She said it is a difficult situation when the county imposes regulations and even when the site meets the regulations the neighbors are not satisfied. She said the timeline of the history of this project going back to 2008 all the boxed events were opportunities for that input. After the first round of input from the Freetown Lane neighbors, we actually made some very drastic changes to the site. The site was designed to downsize the building as shown in the slide; it was 6,000 square foot with 1,000 foot of office for a total of 7,000 and we actually revised it totally to move the building away from Free Town Lane and save the existing vegetative buffer. After more meetings with VDOT and letters were sent out to each Free Town Lane property owner about the access options at Free Town Lane. VDOT was pushing to close their entrance. Ms. Higgins said she only received a little feedback from a few, regardless, the site plan was revised to include improvements at the Free Town Lane entrance and a deeded easement was provided across the front of the site, as shown in the slide.

Ms. Higgins said more input in a meeting with Ms. Mallek to mitigate impact to the neighbors at the rear by reducing the rear fuel canopy and 50' of pavement was cut off, which was to increase the separation distance between the back property line and the development, which is five times the required setback. Because we are making numerous changes to satisfy the Free Town neighbors and she has not heard from the neighbors in the southwest corner she sent letters to two neighbors, met at their property with a cut section to show them how the development laid; we changed the style and location of the fence based on their feedback. She said therefore we feel like we have done a lot in working with neighbors and so if anyone suggests the lack of effort to work with neighbors she would ask that they review the facts and history in the file.

Ms. Higgins said in conclusion special use permits must be roughly proportional based on the actual water usage. She said over an extended period of time they are not, and this request is for minor changes to two conditions to provide the relief needed for this market to have flexible hours, dispense fuel more efficiently and provide fuel service to customers after hours. She asked the Commission for a recommendation of approval to go to the Board.

Mr. Keller invited questions for the applicant.

Ms. Firehock said you attached the reading from the daily notations of water use from the meter and one of them was strange with a column of numbers that was not in alignment.

Ms. Higgins replied what they actually did on the side of the handwritten data sheet is actually typed it so it is more readable. She said this meter reading could never be altered because it is the same meter that the Albemarle County Service Authority uses; you cannot turn it back or reset it; it is always an accumulation so you have to do a subtraction that is on the right hand edge. She said if the lines did not line up it was just the subtractions were done for the benefit of anyone reviewing it. She said we attached it on the side so that you would see the actual weekly and daily readings. She said if someone was able to turn it back and reset it every time there could be a claim that it was altered but it is a sealed meter that is used for public use and was installed at this site per the condition of the special use permit.

Mr. Keller opened the public hearing and turned it over to Ms. Firehock.

Ms. Firehock invited public comment.

Bruce Kirtley, resident and adjacent property owner to Re-Store'N Station, also known as Legacy Market, said my comments today are my own but reflect the sentiments of the residents in the immediate area and he believed the citizens of Crozet at large. He said that he was opposed to any changes proposed in the special use permit, which guides and informs the use of this property. The county staff is correct in stating that there were and continue to be questions about current and future water use at this site but their focus on this issue as a sole guiding principle is an error. He said if you look back at staff, Planning Commission and Board of Supervisors meetings which lead up to the issuance of this special use permit you will note questions about other concerns as well. There were concerns about lighting, overnight parking, noise and traffic. These are but a few but they cut to the issue of quality of life.

Mr. Kirtley said from a safe distance the request for extended hours of operation, the addition of another island, etc. seem innocuous but from ground zero where he lives, they take on a different meaning. He said if you live within sight or sound of this operation there is a big difference between closing at 9 p.m. or 10 p.m. versus 12:30 a.m. He noted a primary fear is that this will become less a service station and more of a gathering place for people with ill intent. He said there is still no guarantee that the upstairs will not be transformed into a bar; the applicant initially applied for an on premise permit with the Virginia ABC and staff will tell you this is in general accord but the community disagrees. With the extended hours come lighting and noise issues all things that were taken into consideration when the special use permit was created. In closing, he believed this Commission must focus exclusively on the special use permit as it exists today. There are nine points and it does not say if number one, which addresses water use, then not numbers 5 or 6. He said more specifically the special use permit does not say if number 2 is not exceeded then all other points become irrelevant. Each point of the special use permit is equally material with no contingency contemplated. The Crozet Community Advisory Committee voted unanimously to reject this request and he too employs the Planning Commission to consider the special use permit in its entirety and reject this request.

Mary Rice said she lived in White Hall a suburb of Crozet and she was saddened but not surprised that there only a handful of us here still available to come to this meeting about Re-Store-N Station. She said the community has been working on this issue for almost 10 years and there have been other meetings where there have been many people here but frankly, she thinks the community is just pretty much worn down at this point. She agreed with what Mr. Kirtley said that while the staff recommendation has only focused on water and Ms. Higgins also was trying to make a point that this is only about water that she would encourage you to look at conditions 5 and 8 of the nine points of the original special use permit. She said condition 8 is about overnight customer parking saying that it is not permitted between 12:30 a.m. and 4:30 a.m. She said if this special use permit was only about water why that would have been included. In addition, condition 5 the hours of the business operation shall not exceed 16 hours a day. She said that was not exclusively about water and the other ones are.

Ms. Rice urged the Commission to look at the points about no substantial detriment and the character of the district unchanged. She suggested if you have not driven down there that there has been some mitigation to the adjacent neighbors but if you drive down into Freetown, an historical black neighborhood, and you look up the lights, the idling of the trucks that it has a huge impact on this neighborhood. She said to increase the hours to open up those fuel pumps to 24 hours would have a huge impact on this neighborhood. Ms. Rice encouraged the Commission to look at all of the points and

not just focus on water. She agreed that the changes that are being requested would not make the project exceed the 1,625 gallons a day.

Jason Crutchfield, an adjacent neighbor, said that is correct we are very tired and we have two property owners in this area that are encroaching and being disrespectful to the neighbors. However, that is not the point we are talking about water. He said that he finds it interesting how staff can make a recommendation off facts that they did not collect so for them to stand by things that were collected by the owner that they cannot guarantee. He said that was based on the creditability issues that surround the other special use conditions such as the overnight parking, the use of the second floor and maybe one or two other violations that occurred since the special use permit conditions have been in place. He said he can't say as a neighbor who passes that every day that he has not been able to get a clear answer on whether the light is on or off at the well and if it is working. He said the water use is still in question and it would be nice to get some confirmed facts about the water as opposed to just what the owner says.

Erica Hastkins said she lived in the neighborhood behind this development and was here representing the 10 or 12 houses and families that surround this development that would be directly affected and did not have anything to do with Ms. Higgins contact with the one property owner. She said it is funny the picture Ms. Higgins put up to show you of the view from Free Town Lane is during the day but all the changes they want are at night. Therefore, she did not see a picture of that to show you what that looks like with all the bright lights that shine on all the surrounding neighbors. In addition, she did not show you a picture from the other side where she lives and it is up and we can see everything so there is no fence that is covering it. She noted there was a small fence and it was not covering anything. She said we also have fears and concerns about noises besides the late night hours and overnight parking that they want. She said we are fearful about the noise and disturbance that comes with 24-hour pump hours especially along the back of the property that is closest to our houses. She said this is where we clearly hear tractor trailers downshifting when they get their diesel and revving back up when they leave. She said Crozet is a sleepy town and it is quiet after hours and it will probably stay true for most of Crozet but from my community we more and likely will be kept up all night from the noise. She said she hoped this was not approved but if it was what they would come back for next year and why are they allowed coming back repeatedly.

There being no further public comment, Mr. Keller invited the applicant back up for rebuttal.

Ms. Jo Higgins, applicant, said she can address a few of the comments. She said Bill Fritz has actually visited the site to view where the meter sets in relation to the well and it is very close to the driveway that serves Ms. Hastkins and Mr. Crutchfield's house. She noted that she did not know what the light means but she will confirm that it has been calibrated and certified by an engineer. She said there is also another letter in your packet about his judgement about the water use that the well can run 24 hours a day and never withdraw more than 1,620 gallons; it is set on one gallon per minute. She said there is no way to physically pull more than that out of the ground so whether the light is on or off has to do with pressure and float but that being said it cannot exceed the amount. She said it was verified by engineering, inspected when the site was opened, still in place and she believed Mr. Fritz knows where it is at and has visually seen the meter.

Ms. Higgins agreed that we all have dwelled on water but the only reason this site is subject to a special use permit is because of the decision that was made at the beginning; otherwise, this is a by-right use, a convenience store in a Highway Commercial property. She said it is not a popular thing; it is stale zoning

and so she does understand about the neighbors. She said for the past seven years, and most of it during the first four-year period, we met numerous times and she provided them the list. She pointed out there were buffers on this property that do not apply to any other Highway Commercial properties. She said there is no requirement for one along Free Town Lane, but we moved the building, kept the trees, did not grade it and did what they requested. Now that was early on and there were many changes.

Ms. Higgins pointed out this is a by-right site plan and the site plan is not something the Planning Commission or the Board had control of; the only control is the special use permit. She said that is the only evaluation point and why she took Section 12 of the Land Use Law Handbook to suggest that everybody be up to date on that because the conditions are clear what they must pertain to and is the only way we can approach it legally. She said we have complied with every lighting ordinance and the noise ordinance. She said a truck enters each night; it makes a round; dumps fuel into the tanks and then it leaves. She said between 12:30 a.m. and 4:30 a.m. nobody is parking there that is a customer; that is a delivery vehicle and it happens at all convenience stores that are under the program to keep their tanks full. So regrettably, she said there is a lot of activity going on along here that is a disruption.

Ms. Higgins said immediately to the east the whole yard as shown in the picture is a truck parking lot. She said some of the trucks start up 4:30 a.m. and we have seen them leave between 4:30 a.m. and 5:00 p.m. – they are the clearing trucks that the power company uses. She said that immediately across the road is an Exxon and next door there is a brewery which she does not know how late it stays open but it is past when the store is closed. Immediately to the west on the other side is an office that very soon might be converted to a restaurant; there is another office under construction and then there is Yancey's Mill. She said during the daytime you can hear the log strippers going and it is a very noisy location. In addition, this backs up to Interstate 64 and at night, you can hear the vehicles. She said the noise ordinance is very purposeful and the lighting and noise is all meeting the ordinance. It is part of the site plan approval and not part of the special use permit. Therefore, she has not deviated from that because that is the element of evaluation that has to be applied here. She said the purpose is not to stay open for 20 hours; it is just now the workers arrive in the morning and they have to keep the door locked while they are cooking whereas someone could come in and could buy some prepackaged food and early morning breakfast. At night and on weekends they are not going to stay open if there are no customers, but we do not know what the future of Crozet is and there are a lot more people coming. She said it was that flexibility to compete in the market. She said none of the other convenient stores has any restrictions such as this. She said lighting is an issue but the ordinance should be changed; it should not be imposed irregularly on different Highway Commercial sites. Therefore, she is not sure what other questions she can ask but that no one ever acknowledges the extra buffers and distances in setbacks that were increased on this site voluntarily. She noted there is a board on board fence; it looks good on both sides; it is the most expensive fence you can install and it was not done for the owner's benefit. Therefore, these things were taken into consideration. She said the elevations were not helpful, of course, with where the viewpoints are and in the photos, you can see looking up there is that issue and she cannot make that go away. However, this is about water, that is the jurisdiction that the county has, and we are really asking the flexibility to operate that way. She offered to answer questions.

Mr. Keller invited questions.

Ms. Spain said you mentioned that you want to stay competitive with other businesses along that road and asked if you know what their operating hours are.

Ms. Higgins replied that there are actually four and five if you include the one at Routes 240/250. She said she did not know what time they open in the morning but here we do from 6 a.m. to 10 p.m. However, on weekends sports events get out after 10 p.m. and they might go somewhere else. However, that flexibility does not mean if there are no customers that there is no one going to be working in the store. However, right now, they have to stay open to keep the pumps on; it is a separate issue and she did not want to make a big deal out of it. During the first two years of opening, the pumps were always on because the conditions do not say the pumps cannot operate. However, it was an interpretation of the ordinance after a complaint was filed. She said we get complaints all the time but none of the other convenient stores is complained against. She said we do not know what those hours are but we know the community is growing and you are approving developments all the time. There are events out there now that have never occurred before. When traveling at night on the interstate when you get off looking for a gas station that being able to refuel with a well-lit site is very important for safety and security.

Ms. Spain said she finds it difficult to believe that the Re-Store'N Station is not the biggest player out there and does not have competition to worry about. She said she would not be surprised if the people who live in the Free Town neighborhood look at the station perhaps like other towns look at Walmart. She said it is that you have come in and despite some of the accommodations that you have made it still does not speak to the quality of the neighborhood. She said Ms. Higgins generously pointed out Chapter 12 of the Land Use Handbook to us and the part she is focusing on is the five reasonable grounds to deny a special use permit.

Ms. Spain said one of those was that the proposed use would have adverse impacts on the character of the neighborhood or on the abutting property. She said that was what we have heard from citizens who have spoken and written in that there are adverse effects. In addition, she would like to ask about one other thing in one of the letters we received that the resident said that there already have been violations of the permit about the number of hours the pumps can be open and that they were only stopped once they were reported. She said trucks have been allowed to park and idle in the parking lot at all hours of the night in violation of the permit and the concern is that increasing the hours of operation and keeping the pumps open 24 hours of day will simply solidify that type of behavior. So she was concerned about what the neighbors are saying and the continued drip, drip, drip that they have asked about how many times we would be coming back to ask for other types of exceptions.

Ms. Higgins said when this initial site plan was submitted it was a phased site plan and it actually showed future phases. She said the special use permit did not come into play until almost six months after the original site plan was submitted. The only governess the county has on a by-right use on this zoning is the special use permit. The wording that you are referring to in the Law Handbook, and maybe Mr. Blair can explain this, is when you ask for a use, for example a veterinary office, would that be detrimental to a neighborhood because of barking dogs or such. She said this special use permit is about water so we went through a thorough review about impervious area, well recharge, tier studies of the ground water to make sure that one gallon per minute, which is the 1,600 minutes in a day, actually would have no effect on adjacent wells so that is the area that she was trying to concentrate on.

Ms. Spain asked if there was any clarification from staff since my understanding is that this is not about water; this request is to allow expanded business hours and fuel sales.

Mr. Fritz replied that there is a special use permit on this property and the convenience store is a by right use on the property; therefore, the only thing we are reviewing as a special use are the impacts of water consumption. He said that is what happened in 2010 when the original special use permit was done when we were analyzing what the adverse impacts would be it was of the special use permit water consumption. He said would it adversely impact the adjacent property by virtue of mining water, for lack of a better term, so it was based on that. During the review Larry Davis, the County Attorney at the time, was trying to be clear with the Board of Supervisors that any condition they were placing on their needed to be somehow related to the water consumption. Therefore, hours of operation was put on there as a water consumption and the totality of the conditions were ensuring that the 1,625 gallons was not exceeded. The conditions, for example, like lights don't have anything to do with water so you could not rationally connect those.

Ms. Spain asked why the hours of operation are in the points.

Mr. Fritz replied because the hours of operation if you operate for 10 hours a day you are going to consume less water than if you operate for 24 hours a day; so that is why that condition was put on there. He said what has been requested is to extend those hours of operation and what we have looked at is whether or not extending those hours of operation will likely result in the 1,625 gallons being exceeded. He pointed out there has already been a determination that the consumption of 1,625 gallons does not result in adverse impacts on the adjacent property or any of those other features in the Zoning Ordinance because that permit has been issued. He said so what we are looking at is whether the condition changes would likely result in the 1,625 being exceeded.

Mr. Keller asked if there were any further questions for the applicant. Hearing none, he closed the public hearing to bring the matter before the Commission for discussion and action.

Ms. More said she would like to make a couple points and have a brief statement. She said we have the handout Ms. Higgins sent to Bill and it talks about a source of gasoline odor. She said it was great that it appears that when the person went out to review the complain about gasoline odors they found no odor of gasoline present and the dispensers actively dispensing fuel to vehicles and all equipment observed appeared to be functioning properly. She clarified that unless she misread the email and comments she has heard from community members we are speaking more about fumes from vehicles, trucks idling not necessarily gasoline fumes per say. She pointed out that Brownville Market closes at 10 p.m. every night: PRN are closed on Monday and Tuesday; Wednesday and Thursday, they stay open to 10 p.m., Friday and Saturday at 11 p.m. and Sunday at 9 p.m. She pointed out since those were questions that came up; she thought she would answer them. Ms. More said she attended the community meeting and CCAC passed a resolution she did not see anywhere.

Mr. Fritz noted that staff never received it.

Ms. More said she feels comfortable reading it into the record because it was unanimously voted on and passed at the meeting that the Crozet Community Advisory Committee opposes the proposed SUP amendment for the reasons stated and offers the following comment to the Planning Commission and the Board of Supervisors. Number one, nonconformity to the Crozet Master Plan, one of the key tenants of the Crozet Master Plan, is that further development on the Route 250 West Corridor should be limited and discouraged that expanding hours of operation of this facility is inconsistent with that and will result in more traffic over expanded hours. Number two, impact to the neighborhood, concerns about visual impact, light pollution, noise and fumes from the facility especially during nighttime hours

have previous been raised by neighbors and remain unresolved. Expanding hours of operation would only serve to exacerbate those nuisances. CCAC encourages the applicant and the county to address those concerns by additional mitigation measures: turning off lights after hours, additional screening vegetation, fence, lighting, deflectors, etc. Number three was a point that there was a prior resolution where many of these same concerns were brought up previously when there was their request for the expansion of the facility.

Ms. More said the main point she would like to make is the Board of Supervisors issued a special use permit in November 2010 with these conditions in place; the owner has a reasonable use of the property and she does not support or recommend amending the conditions that were originally put in place by the Board of Supervisors.

Ms. Firehock said unfortunately this is just documenting tonight the reason why Highway Commercial is not recommended to be in a rural area. She said the county zoned it for Highway Commercial and so this is the problem that it does not purport to what our Comprehensive Plan says but zoning trumps the Comprehensive Plan and zoning has already been passed. So unfortunately this use is by right and we don't have the ability to limit the hours of operation; they could operate a by right Highway Commercial use 24 hours a day and the only reason that their uses are constrained, the hours of operation, is because of the water issue. She said we rejected their request last time they were before us because we said that we could not confirm that the water use was not going to be exceeded. She said they have now come back with data and in terms of voting on whether they are or are not exceeding their water based provisions of their special use permit, they are clearly not. Therefore, she did not feel like she has much of a choice in this matter except to look at the water and data and say they have shown that they are not going to suddenly exceed that special use permit by adding some additional hours of operation. However, she does find it very unfortunate because, again, she thinks it is the wrong zoning for this area.

Ms. More agreed since she thinks the staff's report outlines that we have these conflicting things happening here with the Comprehensive Plan and its rural area, but it does carry the zoning. She said going back to the Board's originally issuing the special use permit with those conditions she feels there is this inherent inconsistency with the Comprehensive Plan; however, the conditions are in place and removing some of those conditions only further exacerbates the inconsistency that it has with the Comprehensive Plan. She said that is why she would support having them remain.

Mr. Keller asked if anyone cared to make a motion.

Motion: Ms. More moved to recommend denial of SP-2017-00020 Re-Store'N Station Amendment with the findings it is inconsistent with the Comprehensive Plan and that the Board of Supervisors approved the prior special use permit November of 2010 with these conditions in place. Ms. More said that the owner has a reasonable use of the property and she does not recommend amending the conditions that were originally put into place by the Board of Supervisors in 2010.

Ms. Spain seconded the motion.

Mr. Keller invited further discussion.

Ms. Riley concurred with Commissioner Firehock in that she thinks this is a very uncomfortable position to be in in that she very much feels for the residents that are next to this business and thinks it was

probably inappropriately zoned. She noted but legally we are in a position that this has come back to us and we have the data that shows with these amended conditions they are not going to exceed their water consumption and that is the basis by which the Commission has to make a decision to recommend or not. Ms. Riley said this is a very hard thing to do, but she has to agree with Commissioner Firehock this is our situation.

Mr. Keller asked Mr. Blair to give us the grounds for not voting again on an issue.

Mr. Blair suggested taking a recess so he can look at the by-laws. He asked Mr. Keller if he meant for not voting that he is not talking about a conflict of interest, and Mr. Keller replied that was correct.

The Planning Commission recessed at 8:55 p.m. and the meeting reconvened at 8:58 p.m.

Mr. Blair said the Commission's by-laws do not require any substantive reason to abstain and he would read the abstention portion of the by-laws it simply states, "If any member abstains from voting on any motion the member shall state the member's abstention, the abstention shall be announced by the Chair and recorded by the recording secretary." He noted that is all that is stated. Mr. Blair said as he mentioned before we went into the brief recess, there is one provision in State law that if the Conflict of Interest Act were to apply to an abstention, then there has to be a formal recognition of the conflict of interest. However, if it is not a conflict of interest situation your by-laws are what would control on abstentions and they do not require any substantive reason to abstain from a vote.

Mr. Keller said that he will not support this and would refer to the comment in the staff report that if the Board of Supervisors disagrees with the staff interpretation of the meeting and intent of the Comprehensive Plan this application may be considered inconsistent with the Comprehensive Plan. He said he would hang onto his rationale although he certainly agrees with Ms. Firehock and the way she outlined the situation. There being no further discussion, Mr. Keller asked for a roll call vote.

The motion to recommend denial was approved by a vote of 3:2. (Firehock, Riley no) (Lafferty, Dotson absent).

Mr. Keller said the Commission's recommendation for denial would be forwarded to the Board of Supervisors.

The meeting moved to the next item.