

**Re-Store'N Station – SPECIAL USE PERMIT AMENDMENT REQUEST DATED 9/18/2017**

**DESCRIPTION OF THIS REQUEST:**

**This is a request to amend only the conditions of SP2009 – 00034.**

**No change to the amount of water allowed is requested. No expansion of the development is proposed and no change to the Site Plan approved 3/28/13.**

**After operating for a period of years to establish the water use, the water usage data (See Attachment C) proves that the 250 GPD average usage and a peak usage of 383 GPD is only 24% of the 1,625 GPD allowed for this site. This request is to modify the permit conditions to provide relief from the (involuntary\*) conditions as they are unreasonable and disproportionate\*\* to the water use. One (1) gallon of water was all the special use granted above the volume allowed for 4.06 acres - since it has not been used – there is no impact from the development on this site to mitigate.**

**To address the items per application instructions:**

- o **its public need or benefit;**

This 4.06 acre is zoned Highway Commercial and provides service to the community. There is no changes proposed to the site plan. This business is located on property zoned for uses as exist and it does generates significant tax revenue that is anticipated in the County budget. This business provides employment to 9 - 10 people in its operation.

- o **How the special use permit will not be a substantial detriment to adjacent lots;**

This property has been used for commercial purposes since before the ordinance was adopted and is designated as Highway Commercial zoning. Its current use as convenience store with gas sale and office meets current site development requirements. Specific measures were incorporated into the site design such as fencing, screening plantings, and buffers as required by the ordinance to site design standards. There is an existing 6ft high board-on-board privacy fence, an undisturbed buffer along the South and West edges where trees were protected during development, and screening trees planted along the rear (eastern border). The planted buffer trees and the original protected trees have grown significantly since 2013. Adjacent lots – to the East is HC zoned property current use is vehicle storage, to the North is HC zoned property current use is convenience store with gas sales, to the West is RA zoned property current use is brewer operation, to the South is RA zoned property current use is residential.

- o **How the character of the zoning district will not be changed by the proposal special use, and**

The character of this section of RT250 is substantially commercial although outside the growth area. The east abutting parcel is HC, with several other HC parcels to its east. The west abutting parcel is zoned RA currently a brewery operation with HC parcels on its west side, then industrial zoning properties more to the west. Directly across the road is HC zoning convenience store. The existing use on this parcel is convenience store/office will not change the character of the zoning district.

- o **How the special use will be in harmony with the following;**

- The purpose and intent of the Zoning Ordinance,

The intent of the ordinance is to provide measures such as setbacks and other regulations to dictate zoning buffers and screening requirements have all been met. The ordinance also dictates that under HC zoning it is necessary should any use not served by public water exceed 400 gallons per site acre per day to obtain a special use permit to allow an increase in the volume of water it exceeds by. In this case, this 4.06 acre site can use up to  $400 \times 4.06 = 1,624$  gallons per day. When proposed in 2008, water studies done at that time to show it will operate within the limit of 1,624 GPD. Regardless, Zoning determined it would "likely exceed" and obtaining a special use permit was a condition of the site plan approval. For the record, the special use permit request provided water data showing the 1,624 gpd would not be exceeded but in order to enable a permit – 1 single gallon per day was requested. SP2009-00034 was approved in 2010 with conditions.

- **The uses permitted by right in the zoning district,**

The underlying uses of convenience/retail/office uses are by right in this HC district. Over a period of years, it has been proven that the development uses only a fraction of the water allowed so this is to

request relief from a few of the conditions imposed. No change the water usage amount is requested. No change the site plan. The development remains in harmony with the HC zoning district.

- **The regulations provided in Section 5 of the Zoning Ordinance as applicable, and**  
All have been complied with.
  - **The public health, safety and general welfare.**  
The development of this site included improvements to the public road RT 250 for a VDOT approved entrance that provides safety measures that do not exist at the entrances to other commercial properties on this stretch of RT 250. It is the only convenience store of the 3 in proximity that meets the parking requirements on-site rather than having vehicles park in the state right of way.
  - **Impacts on Public Facilities & Public Infrastructure**  
There no impacts to the public facilities for the amendment to the SP conditions.
  - **Impacts on Environmental Features**  
There are no impacts on environmental features. Please refer to the map provides which shows there are no stream buffers or critical slopes on this property.
- 

\* Involuntary – The Albemarle County Land Use Law Handbook, Pg 12-6, Section 12-610: states -

"Unlike proffers that accompany a rezoning considered by the locality's governing body, special use permit conditions are not volunteered by the landowner ..." Only conditions 1, 2, 3, and 7 were voluntary in this case. All others were imposed by the BOS to mitigate impact which was anticipated but has not happened. There is no impact if the water usage is less than the 1,624 GPD. The involuntary conditions are not reasonable but rather excessive and not proportional to any impact.

\*\* The Albemarle County Land Use Law Handbook; Pg 12 – 8, Section 12 -- 620: state -

"... such as a condition to a special use permit, it must be certain that these conditions of approval; (1) have a nexus that is related to the impact of the proposed development; and (2) are roughly proportional to the extent of the impact".  
In this case, the Special Use is the granting of 1 gallon of water in excess of what can be used by-right. The only reason that 1 gallon of water was requested was NOT because Re-Store'N Station needed it to successfully operate so there was no choice but apply for the permit to complete the process for the site plan approval.

**DETAILED DESCRIPTION: Conditions 1, 2, 3, 4, 7, and 8 remain unchanged.**

**Request is to modify Condition 5 and Condition 6 to provide some relief from the restrictions as warranted.**

**Since there is an approved site plan, Condition 9 should be updated.**

**(See Attachment A - CONDITIONS of SP2009-00034 with requested changes incorporated dtd 9-18-17)**

**CONDITION 1, 2, 3 – NO CHANGE REQUESTED**

**DISCUSSION:** These conditions require a meter to measure the water usage, restrict the water usage to 1 GALLON above the by-right amount for a total of 1,625 GPD, and require a flow restriction device so the water limit of 1,625 GPD can never be exceeded.

The peak usage of 383GPD proves that the water allowed has not been used. It means that the one (1) gallon that was added by the special use permit has never been needed. With a flow restriction device, it is impossible to exceed the 1,625 GPD.

**CONDITION 4 – NO CHANGE REQUESTED:**

**DISCUSSION:** This was not a voluntary condition. At this time, there is no request to modify as no change to the site plan is proposed.

**CONDITION 5 – REQUEST IS TO ALLOW 4 ADDITIONAL HOURS OF OPERATION & NOT RESTRICT THE PUMP STATION OPERATION;**

**DISCUSSION:** This was not a voluntary condition. Currently the store operates 16 hours per day. This request is to allow 4 additional hours for a total of 20 hours AND to NOT restrict the fuel pump operation so service to credit card customers is allowed when store is closed.

As it relates to store hours, the store would not operate between 12:30am and 4:20am which is consistent with Condition #8. Allowing 4 additional hours will provide flexibility on weekends for customers after sporting events and other evening activities in the community. Although customer activity is least during the evening hours, the 16 hour limit currently prevents competition in the market and does not allow flexibility during the summer season. This does not mean the store would be required to stay open 20 hours but it lets the business owner decide. With water usage peak of 383 GPD which is 24% of what is allowed, 4 more hours of operation will have very little impact on water usage. (See Attachment D – Engineer Review-Letter). In relation to the fuel pump stations operation - It should be noted that since the store opened in 2013 through summer of 2016, the pumps were never turned off. After hours fuel sales is standard with all convenience stores that accept credit cards so that shift workers and travelers have an opportunity to purchase fuel. When the store is closed, there is zero water usage as customers have no access to restrooms. This wording must be added to make clear the pump operation is not restricted. If the pump station restriction is not removed, the condition imposes a restriction not related to water usage in any way, it is not reasonable or proportional to the "use" which is water – it is not lawful per the Albemarle County Land Use Law Handbook,, Kamptner/June 2017 – Chapter 12 – 12-100.

**Pre-App Mtg Comment: STAFF ASKED HOW WILL EACH REQUESTED RELIEF FROM CONDITIONS IMPACT WATER USAGE?**

**First – consider that Condition #3 – flow restrictor makes it impossible to exceed the allowed amount of water.**

**Second – The evening hours of the day have the lowest customer frequency.**

**Water Analysis of the WORST case scenario (as if customers use the same water at night as during daytime hours):**

Based upon Peak water usage of 383 GPD divided by the current 16 hours of operation = 23.9 gallons of water per hour.

Multiply 20 hours x 23.9 gallons per hour = 478 GPD. 383 – 478 equates to an additional 95 GPD

If this worst case applied - **A 20 hour operation may increase the water usage from 25% to 29% of the allowed water volume.**

**Allowing the fuel pumps to operate after hours – not one drop of water is used. Restricting the pump operation after store hours is NOT related to water usage in any way.**

**UNLESS THE 1,624 PDG IS EXCEEDED – THERE IS NO IMPACT.**

**CONDITION 6 – REQUEST IS TO ALLOW TWO (2) ADDITIONAL PUMP STATIONS & DELETE THE LANGUAGE RELATED TO NOZZELS SO THE PUMP STATION DESIGN CAN ACCOMMODATE ALTERNATIVE FUEL:**

**DISCUSSION:** This was not a voluntary condition. Seven (7) pump stations were allowed. Of these, only 5 serve vehicles. The other two (2) are one (1) for kerosene and one (1) for "off-road" fuel. The revised language changes the 7 to 9. The two (2) pump stations to be added will serve vehicles. More simple language to achieve the same result is to remove the nozzle quantities which is confusing. For a pump station to dispense alternative fuel, each type of fuel must have separate hose/nozzle pieces. This does not change the fact that only one vehicle can be served on each side of the pump station at any timer. Alternative fuel was specifically allowed but the language using "nozzle" quantities inadvertently prevented the installation of pumps meeting industry standards to dispense alternative fuel. Allowing 2 additional fuel pumps will not change the site layout or canopies. Fuel dispenser sheet – see Attachment E.

**Pre-App Mtg Comment: STAFF HAS ASKED HOW WILL EACH REQUESTED RELIEF FROM CONDITIONS IMPACT WATER USAGE?**

It should be stated that there is no water study that establishes a correlation between the number of pump stations and water usage. Pumps don't use water – customers use water. It is reasonable to understand that if a customer needs fuel and has to wait in line because a pump is not available, they spend more time on site and are more likely to come into the store to use the restroom. Having 2 additional pump

stations are to handle fuels sales efficiently. Modern fuel pump stations/ dispensers are point of service (POS) so each customer pays with a credit card at the pump – only a portion of the customers come inside to pay cash.

**First – consider that Condition #3 – flow restrictor makes it impossible to exceed the allowed amount of water.**

**Water Analysis of the WORST case scenario (as if each pump accounts for 1/7 of the water used):**

Based upon Peak water usage of 383 GPD divided by the 7 pump stations = 54.7 gallons of water per pump per day.

Multiply 9 pumps x 54.7 gallons per pump = 492 GPD. 383 – 492 equates to an additional 109 GPD

If this worst case applied - **2 additional pumps may increase the water usage from 24% to 30% of the allowed water volume.**

**UNLESS THE 1,624 GPD IS EXCEEDED – THERE IS NO IMPACT.** Special Use Permit "conditions must be reasonably related to the impacts to be addressed, and the extent of the condition must be roughly proportional to the impacts." Per AC Land Use Law Handbook – Kamptner/June 2017 – Chapter 12 – Section 12 – 100 under "Key Principles to Know About Special Use Permits". Not allowing the additional pumps would not meet the "reasonably relate to the impacts" which is criteria for conditions.

**CONDITION 8 - NO CHANGE REQUESTED:**

Discussion: There is no correlation between water usage and overnight parking at this site. Per the AC LU Handbook, "conditions must be reasonably related to the impacts to be addressed".

**CONDITION 9 – WORDING IS OUT OF DATE:**

There is no change proposed at this time so SDP2008 – 0154 approved March 28, 2013 is the applicable development plan.

**FOR COMPARISON PURPOSES - THERE ARE TWO (2) OTHER SPECIAL USE PERMITS FOR WATER USE AT PROPERTY NOT SERVED BY PUBLIC WATER THAT HAVE BEEN APPROVED IN THIS COUNTY: See Attachment F**

1) – SP2008 – 00033 – FOR Convenience Store was APPROVED 12/3/08 – WITH NO CONDITIONS. (Not even a condition stating the water limit) Allowing 1,000 gpd on this 1.18 acre site is equivalent to allowing 847 gallons per site acre per day.

This is more that 2 TIMES the by right amount of water of 400 gallons per site acre per day.

2) SP2015 – 00012 – FOR Restaurant was APPROVED 8/5/15 WITH TWO (2) CONDITIONS

Condition #1 is to install a water meter and Condition #2 restricts the water usage to 5,000 gpd.

Allowing 5,000 gpd on this 1.39 acre site is equivalent to allowing 3,597 gallons per site acre per day (5,000/1.39)

This is almost 9 TIMES the by right amount of water of 400 gallons per site acre per day.

**This request is for relief from unreasonable and disproportionate conditions that are excessively limiting the operation of its store on 4.06 acres. The MAJORITY of the water allowed has not been used. The one (1) GPD added by the Special Use Permit has not been used.**

**If the potential increase in water usage from the change to conditions is added together:**

**4 additional hours of operation (109 GPD) Plus additional 2 fuel pump stations (95 GPD)**

**Based upon peak usage of 383 GPD + 109 GPD + 95 GPD = 587 GPD.**

**The PEAK water volume will ONLY BE increased from the peak 25% to 36% of what is allowed.**

**This is still 1000 GALLONS PER DAY LESS THAN THE THRESHOLD OF 1,625.**

**With the historical water meter data over the past 2 years submitted, the reasonableness and proportionality of the conditions that were imposed can be clearly evaluated. The Albemarle County Land Use Law Handbook, Kamptner/June 2017 provides the legal reference(s) to rely upon that must be used in this consideration.**

**ATTACHMENTS:**

A – CONDITIONS of SP2009-00034 with requested changes incorporated dtd 9-18-17

B – SP2009 – 00034 Approved 11-3-2010 Action Letter dtd 11-12-10

C - WATER METER DATA dtd 9-11-17 (PERIOD OF TWO YEARS)

D – Letter – Engineer Review of Water Data dtd 9 – 15 – 17

E – Fuel Dispenser Product sheet

F - Other Special Permits – SP2015-00012 & SP2008-00033

G – The Albemarle County Land Use Law Handbook, Kamptner/June 2017 – Chapter 12 -Special Use Permits

CONDITIONS OF SP 2009-00034 WITH REQUESTED CHANGES INCORPORATED: dtd 9-18-17

1. The applicant shall install and maintain a meter on the well head to monitor water consumption. Prior to installation, the model of the meter shall be subject to approval by the Zoning Administrator in conjunction with the County Engineer. Results of daily water consumption shall be made available within forty-eight (48) hours of a request from the Zoning Administrator;
2. Water consumption from all wells on site shall not exceed one thousand six hundred twenty-five (1,625) gallons per day in the aggregate;
3. The applicant shall install and maintain a tamper-proof, flow restriction device limiting water flow to not more than one thousand six hundred twenty-five (1,625) gallons per day. Prior to installation, the model of the flow restriction device shall be subject to approval by the Zoning Administrator in conjunction with the County Engineer;
4. The total building footprint square footage shall not exceed three thousand (3,000) square feet;
5. ~~The hours of business operation shall not exceed sixteen (16) hours per day;~~ The convenience store shall not operate between 12:30 AM and 4:30 AM except the fuel pumps may remain operational;
6. There shall be not more than ~~seven (7)~~ nine (9) pump stations and ~~twelve (12)~~ nozzle dispensers, with not more than ~~eight (8)~~ nozzles for ~~four (4)~~ six (6) pump stations for gasoline (or equivalent fuel), with not more than ~~two (2)~~ nozzles for one (1) pump station for diesel fuel (or equivalent fuel), with not more than ~~one (1)~~ nozzle for one (1) pump station for off-road diesel fuel, and with not more than ~~one (1)~~ nozzle for one (1) pump station for kerosene fuel;
7. If rainwater is collected from roof tops of the pump station canopies or the building, it shall be stored in a lined underground storage tank and utilized for on-site landscaping purposes only;
8. Overnight customer parking on-site shall not be permitted between the hours of 12:30 a.m. and 4:30 a.m. The applicant shall post signs indicating no such overnight parking in such places designated by the Site Plan Agent as a condition of final site plan approval; and,
9. Development of the site shall be in general accord with ~~the SDP2008 - 0154 submitted preliminary site plan last revised 2/20/13 dated December 6, 2009 approved March 28, 2013.~~ Permitted modifications may include those required by the Architectural Review Board, those necessary to satisfy the conditions of this special use permit, and additional landscaping /screening approved by the Site Plan Agent;

A



**COUNTY OF ALBEMARLE**  
**Department of Community Development**  
401 McIntire Road, Room 227  
Charlottesville, Virginia 22902-4596

Phone (434) 296-5832

Fax (434) 972-4126

November 12, 2010

NP Engineering  
1850 Browns Gap Turnpike  
Charlottesville VA 22901

**RE: SP200900034 RE-STORE'N STATION**  
**Tax Map 55B Parcel 1**

Dear NP Engineering:

On November 3, 2010, the Albemarle County Board of Supervisors took action on SP #200800056 to allow use of more than 400 gallons of groundwater per site-acre per day for convenience store on Tax Map 55B, Parcel 1 in the White Hall District. This special use permit was approved based on the following conditions:

1. The applicant shall install and maintain a meter on the well head to monitor water consumption. Prior to installation, the model of the meter shall be subject to approval by the Zoning Administrator in conjunction with the County Engineer. Results of daily water consumption shall be made available within forty-eight (48) hours of a request from the Zoning Administrator;
2. Water consumption from all wells on site shall not exceed one thousand six hundred twenty-five (1,625) gallons per day in the aggregate;
3. The applicant shall install and maintain a tamper-proof, flow restriction device limiting water flow to not more than one thousand six hundred twenty-five (1,625) gallons per day. Prior to installation, the model of the flow restriction device shall be subject to approval by the Zoning Administrator in conjunction with the County Engineer;
4. The total building footprint square footage shall not exceed three thousand (3,000) square feet;
5. The hours of business operation shall not exceed sixteen (16) hours per day;
6. There shall be not more than seven (7) pump stations and twelve (12) nozzle dispensers, with not more than eight (8) nozzles for four (4) pump stations for gasoline (or equivalent fuel), with not more than two (2) nozzles for one (1) pump station for diesel fuel (or equivalent fuel), with not more than one (1) nozzle for one (1) pump station for off-road diesel fuel, and with not more than one (1) nozzle for one (1) pump station for kerosene fuel ;
7. If rainwater is collected from roof tops of the pump station canopies or the building, it shall be stored in a lined underground storage tank and utilized for on-site landscaping purposes only;
8. Overnight customer parking on-site shall not be permitted between the hours of 12:30 a.m. and 4:30 a.m. The applicant shall post signs indicating no such overnight parking in such places designated by the Site Plan Agent as a condition of final site plan approval; and,
9. Development of the site shall be in general accord with the submitted preliminary site plan dated December 6, 2009. Permitted modifications may include those required by the Architectural Review Board, those necessary to satisfy the conditions of this special use permit, and additional landscaping/screening approved by the Site Plan Agent.

**Please be advised that although the Albemarle County Board of Supervisors took action on the project noted above, no uses on the property as approved above may lawfully begin until all applicable approvals have been received and conditions have been met. This includes:**

- **compliance with conditions of the SPECIAL USE PERMIT;**
- **approval of and compliance with a SITE PLAN amendment; and**
- **approval of a ZONING COMPLIANCE CLEARANCE.**

**B**

"In the event that the use, structure or activity for which this special use permit is issued is not commenced within twenty-four (24) months from the date of Board approval, it shall be deemed abandoned and the permit terminated. The term "commenced" means "construction of any structure necessary to the use of the permit."

If you have questions or comments regarding the above-noted action, please do not hesitate to contact Ron Higgins at 296-5832.

Sincerely,



Summer Frederick  
Senior Planner  
Current Development Division

cc: Jeffries II LLC  
PO BOX 910  
Crozet VA 22932

Email CC: Elise Hackett, GDS  
Johnathan Newberry, Zoning

# SUMMARY OF WATER METER DATA

dtd 9/11/17

## WATER VOLUME USED OVER THE PAST TWO (2) YEARS

SHEET NO	DATES READING WEEKLY	PERIOD NO. WEEKS	GALLONS PER DAY (GPD)	Peak/Low GPD
1 OF 4	9.22.15 - 3.15.16	25 WEEKS	174	265/067
2 OF 4	3.22.16 - 9.20.16	27 WEEKS	185	206/144
3 OF 4	9.27.16 - 3.28.17	27 WEEKS	271	372/200
4 OF 4	4.4.17 - 9.4.17	23 WEEKS	266	383/143
224 GPD OVER 102 WEEKS				

SHEET NO	DATES READING DAILY	PERIOD NO. DAYS	GALLONS PER DAY (GPD)	PEAK/LOW GPD
1 OF 2	7.18.17 - 8.13.17	26 DAYS	265	292/188
2 OF 2	8.14.17 - 9.5.17	23 DAYS	235	289/174
250 GPD OVER 49 DAYS				

The existing store opened in Sept 2014. Zoning staff advised that due to the business start up period that early data could not be relied upon. The water meter readings attached are the most recent two (2) years. Annually, the GPD over the period April - Sept varies from the period Oct - March. Due to weather (such as snow) events, the GPD in Jan/Feb are lower than other months.

**FAQ: How do you figure out how much water per period has been used?**

The water meter reading is a measurement in gallons. It is accumulative so you take the previous reading and subtract the new reading. The difference is the quantity in gallons that has passed thru the meter.

**FAQ: Can the water meter reading be fudged or altered in any way?**

No, the water meter is tamper proof which is samed model used by ACSA for their customers. Since it is accumulative, there is no way to re-set to a lower reading or alter the reading in any way.

**FAQ: Why is the meter reading only logged once a week?**

Standard in the industry for water customers on public systems, a water meter reading is typically collected on a monthly basis for a monthly billing. To determine the usage per day, that reading is divided by 30. As a result, comparative water usage data is only available from locations that are served by public water and the monthly volume must be divided by 30 to determine the GPD. Weekly is equally accurate.

**FAQ: If the water meter reading is taken daily, will the result be different?**

In order to show that GPD based upon a weekly reading is equally accurate, daily readings have been logged for a period of two months. As you can see, the GPD is consistent with the weekly readings.

(SUMMARY + 4 SHEETS WEEKLY LOG + 2 SHEETS DAILY LOG)



**Water Meter Log**

TABLE D-1

6020 Rockfish Gap Turnpike Cross, VA 22932

**WEEKLY READINGS**

Date	Time	Water Meter Reading (gallons)				Name
9/22/15	9:00	1	2	8	063.0	J. Spruce
9/29/15	"	1	2	8	063.0	"
9/30/15	"	0	0	0	000.0	"
10/6/15	"	1	5	4	70.0	"
10/13/15	"	3	1	7	80.0	"
10/20/15	"	4	6	9	70.0	"
10/27/15	"	6	3	0	00.0	"
11/3/15	"	7	9	7	30.0	"
11/10/15	"	9	5	8	30.0	"
11/17/15	"	1	1	1	230.0	"
11/24/15	"	1	2	6	210.0	"
12/1/15	"	1	4	4	800.0	"
12/8/15	"	1	5	5	480.0	"
12/15/15	"	1	6	6	380.0	"
12/22/15	"	1	7	7	470.0	"
12/29/15	"	1	8	7	420.0	"
1/5/16	"	1	9	7	750.0	"
1/12/16	"	2	0	8	900.0	"
1/19/16	"	2	1	7	160.0	"
1/26/16	"	2	2	1	840.0	"
2/2/16	"	2	2	8	510.0	"
2/9/16	"	2	3	4	800.0	"
2/16/16	"	2	4	5	370.0	"
2/23/16	"	2	5	5	700.0	"
3/1/16	"	2	6	6	600.0	"
3/8/16	"	2	7	7	040.0	"
3/15/16	"	2	8	7	460.0	"

NEW meter  
started 9/30/15

(snow)

Week	Day
1670	238.6
0	0
0	0
1547	221
1631	233
1519	217
1603	229
1673	239
1610	230
1540	220
1498	214
1859	265.6
1068	152.6
1090	155.7
1109	158.4
995	142.1
1033	147.6
1115	159.3
826	118
468	66.9
667	95.3
629	89.9
1057	151
1033	147.6
1090	155.7
1044	149.1
1042	148.9

**AVERAGE GPD**  
174  
**OVER A 25**  
**WEEK PERIOD**  
9.22.15 - 3.15.16  
**SHEET 1/4**

# Water Meter Log

TM 05 B-1

6920 Reseach Gap Turnpike Crozer VA 22932

## WEEKLY READINGS

Date	Time	Water Meter Reading (Gallons)	Name	Week	Day
3/22/16	1:30	1099	W	1099	157
3/25/16	"	1100	"	1100	157.1
4/15/16	"	1085	"	1085	155
4/12/16	"	1011	"	1011	144.4
4/19/16	"	1205	"	1205	172.1
4/26/16	"	1194	"	1194	170.6
5/2/16	"	1224	"	1224	174.9
5/9/16	"	1195	"	1195	170.7
5/16/16	"	1233	"	1233	176.1
5/23/16	"	1248	"	1248	178.3
5/30/16	"	790	"	790	112.9
6/7/16	"	1385	"	1385	197.9
6/14/16	"	1399	"	1399	199.9
6/21/16	"	1409	"	1409	201.3
6/28/16	"	1411	"	1411	201.6
7/5/16	"	1401	"	1401	200.1
7/12/16	"	1431	"	1431	204.4
7/19/16	"	1348	"	1348	192.6
7/26/16	"	1425	"	1425	203.6
8/2/16	"	1419	"	1419	202.7
8/9/16	"	1444	"	1444	206.3
8/16/16	"	1395	"	1395	199.3
8/23/16	"	1387	"	1387	198.1
8/30/16	"	1444	"	1444	206.3
9/6/16	"	1439	"	1439	205.6
9/13/16	"	1421	"	1421	203
9/20/16	"	1415	"	1415	202.1

**AVERAGE GPD**  
**185**

**OVER A 27**  
**WEEK PERIOD**

**3.22.16 - 9.20.16**

**SHEET 2/4**

# Water Meter Log

TR 05 B-4

6200 Rockfish Gap Turnpike Court, VA 22992

## WEEKLY READINGS

Date	Time	Water Meter Reading (gallons)				Name	Week	Day
9/27/16	9:00	65	13	1	0	<i>[Signature]</i>	1429	204.1
10/4/16	"	66	56	5	0	"	1434	204.6
10/11/16	"	68	04	3	0	"	1478	211.1
10/18/16	"	69	46	6	0	"	1423	203.3
10/25/16	"	70	88	5	0	"	1419	202.7
11/1/16	"	72	37	8	0	"	1493	243.3
11/8/16	"	73	85	7	0	"	1479	211.3
11/15/16	"	75	32	3	0	"	1466	209.4
11/22/16	"	76	77	9	0	"	1456	208
11/29/16	"	78	25	7	0	"	1478	211.1
12/6/16	"	79	62	3	0	"	1366	195.1
12/13/16	"	81	02	2	0	"	1399	199.9
12/20/16	"	82	41	9	0	"	1397	199.6
12/27/16	"	83	88	0	0	"	1461	208.7
1/3/17	"	86	12	5	0	"	2245	320.7
1/10/17	"	88	42	4	0	"	2299	328.4
1/17/17	"	90	81	2	0	"	2388	341.1
1/24/17	"	93	21	3	0	"	2401	343
1/31/17	"	95	41	4	0	"	2201	314.4
2/7/17	"	97	80	4	0	"	2395	342.1
2/14/17	"	100	60	9	0	"	2200	314.3
2/21/17	"	102	18	5	0	"	2183	311.9
2/28/17	"	104	52	0	0	"	2335	333.6
3/7/17	"	107	01	4	0	"	2494	356.3
3/14/17	"	109	45	9	0	"	2445	349.3
3/21/17	"	112	06	0	0	"	2601	371.6
3/28/17	"	114	66	9	0	"	2609	372.7

**AVERAGE GPD**  
**271**  
**OVER A 27**  
**WEEK PERIOD**  
**9.27.16 - 3.28.17**  
**SHEET 3/4**

# Water Meter Log

TM 88 B-1

0080 Roadside Gap Turnpike Cross, VA 22882

## WEEKLY READINGS

Date	Time	Water Meter Reading (gallons)				Notes	Week	Day
4/4/17	9:00	1	1	7	1	50.0	2481	354
4/11/17	9:00	1	1	9	0	44	1894	270
4/18/17	"	1	2	0	8	38	1794	256
4/25/17	"	1	2	2	6	37	1799	257
5/2/17	"	1	2	4	5	31	1894	270
5/9/17	"	1	2	6	3	57	1826	260
5/16/17	"	1	2	8	2	78	1921	274
5/23/17	"	1	3	0	1	56	1878	268
5/30/17	"	1	3	2	0	92	1936	276
6/6/17	"	1	3	3	0	98	1006	143
6/13/17	"	1	3	5	7	85	2687	383
6/20/17	"	1	3	7	7	84	1999	285
6/27/17	"	1	3	9	6	76	1892	270
7/4/17	"	1	4	1	4	87	1811	259
7/11/17	"	1	4	3	4	13	1926	275
7/18/17	"	1	4	5	3	24	1911	273
7/25/17	"	1	4	7	2	22	1898	271
8/1/17	"	1	4	9	1	19	1897	271
8/8/17	"	1	5	1	0	17	1898	271
8/15/17	"	1	5	2	7	42	1725	246
8/22/17	"	1	5	4	3	97	1655	236
8/29/17	"	1	5	6	2	08	1811	259
9/5/17	"	1	5	7	6	30	1422	283

**AVERAGE GPD**  
**266**  
**OVER A 23**  
**WEEK PERIOD**  
**4.4.17 - 9.4.17**  
**SHEET 4/4**

# Water Meter Log

TM 63 B-1

6099 Rockfish Gap Turnpike Cross, VA 2293

## DAILY READINGS

Date	Time	Water Meter Reading (gallons)			Remarks	Day
7/18/17	9 w	1	4	5	3 2 4	265
7/19/17		1	4	5	5 8 9	272
7/20/17		1	4	5	8 6 1	279
7/21/17		1	4	6	1 4 0	266
7/22/17		1	4	6	4 0 6	255
7/23/17		1	4	6	6 6	285
7/24/17		1	4	7	2 2 2	276
7/25/17		1	4	7	4 7 7	255
7/26/17		1	4	7	7 4 6	269
7/27/17		1	4	8	0 3 7	291
7/28/17		1	4	8	3 2 9	292
7/29/17		1	4	8	5 9 0	261
7/30/17		1	4	8	8 8 2	292
7/31/17		1	4	9	1 1 9	237
8/1/17		1	4	9	3 9 5	276
8/2/17		1	4	9	6 8 4	289
8/3/17		1	4	9	9 5 0	266
8/4/17		1	5	0	2 3 9	289
8/5/17		1	5	0	5 0 0	261
8/6/17		1	5	0	7 9 8	298
8/7/17		1	5	1	0 1 7	219
8/8/17		1	5	1	7 8 6	269
8/9/17		1	5	1	5 7 1	285
8/10/17		1	5	1	7 5 9	188
8/11/17		1	5	1	9 8 1	222
8/12/17		1	5	2	2 2 0	239

<b>AVERAGE GPD</b>
<b>265</b>
<b>OVER A 26 DAY PERIOD</b>
<b>7.18.17 - 8.13.17</b>

**Water Meter Log**

TR 65 B-1  
6700 Piedmont Gap Turnpike Cross, VA 2203

**DAILY READINGS**

Date	Time	Water Meter Reading (gallons)					Remarks	Day				
		0	1	2	3	4						
8/14/17	9:00	0	1	5	2	0	4	5	3	0	Open	233
8/15/17		0	1	5	2	0	7	4	2	0		289
8/16/17		0	1	5	2	0	9	7	8	0		236
8/17/17		0	1	5	3	0	2	0	7	0		229
8/18/17		0	1	5	3	0	4	5	6	0		249
8/19/17		0	1	5	3	0	7	0	0	0		244
8/20/17		0	1	5	3	0	9	1	9	0		219
8/21/17		0	1	5	4	0	1	6	5	0		244
8/22/17		0	1	5	4	0	3	9	7	0		234
8/23/17		0	1	5	4	0	6	5	5	0		258
8/24/17		0	1	5	4	0	9	0	4	0	249	
8/25/17		0	1	5	5	0	1	5	3	0	249	
8/26/17		0	1	5	5	0	4	1	6	0	263	
8/27/17		0	1	5	5	0	6	6	3	0	247	
8/28/17		0	1	5	5	0	9	1	3	0	250	
8/29/17		0	1	5	6	0	2	0	8	0	295	
8/30/17		0	1	5	6	0	4	1	1	0	203	
8/31/17		0	1	5	6	0	6	1	0	0	199	
9/1/17		0	1	5	6	0	8	2	1	0	211	
9/2/17		0	1	5	7	0	0	2	1	0	200	
9/3/17		0	1	5	7	0	2	4	3	0	222	
9/4/17		0	1	5	7	0	4	5	6	0	213	
9/5/17		0	1	5	7	0	6	3	0	0	174	

<b>AVERAGE GPD</b>	<b>235</b>
<b>OVER A 23 DAY PERIOD</b>	<b>8.14.17 - 9.05.17</b>

Old Dominion Engineering

September 15, 2017

Albemarle County Community Development Department  
401 McIntire Rd  
Charlottesville, VA 22902

SUBJECT: SP2009-00034

Property: TM 55B-1, 6115 ROCKFISH GAP TPKE Crozet, VA 22932 4.06 Acres

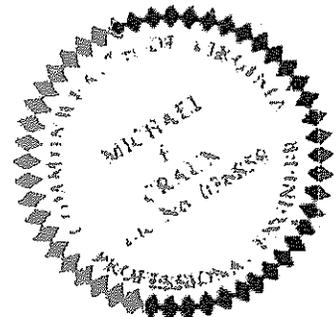
Based upon my review of the water usage readings from the last two years:

1. The water meter is tamper proof as used by utility companies for water billing. The readings cannot be altered without destroying the meter.
2. The flow control device installed makes it **impossible** to withdraw more than the by right amount of 1,624 gpd from the well. Based upon the actual water usage recorded at Restore N Station, the actual water usage was **significantly less** than the by right amount.
3. If the store hours are extended to 24 hours of operation, it will not cause a significant increase in the overall water usage. Food service and restrooms account for the majority of water usage during the day and night hours will be a very low water usage time.
4. Two additional fuel stations will cause only a slight increase in the overall water usage.

This letter serves to confirm that the water usage (and withdrawal) at the Restore N Station has been less than the maximum permitted by right amount of 1,624 gpd. There is **no risk** of exceeding the by right amount water withdrawal of 1,624 gpd with 24 hour operation and two additional pumps.

Sincerely,

Michael Craun PE



Old Dominion Engineering  
2036 Forest Drive • Waynesboro, VA 22980  
PHONE (540) 942-5600 • FAX (540) 213-0297

D



## Gilbarco® Flexible Fuel Dispensers

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E

Technology with a human touch.



COUNTY OF ALBEMARLE  
Department of Community Development  
401 McIntire Road, North Wing  
Charlottesville, Virginia 22902-4596

Phone (434) 296-5832

Fax (434) 972-4126

September 4, 2015

Mechum's Trestle  
Bill Mckenchnie  
99 Bloomfield Rd  
Charlottesville Va 22903

RE: SP201500012 Mechum's Trestle

Dear Mr. McKenchnie:

On August 5, 2015 the Board of Supervisors took action on your Special Use Permit application to allow Use of more than 400 gallons of groundwater per site-acre per day for a restaurant under Section 22.2.2 of Zoning Ordinance on TMP 05700000031A0 in the White Hall District. The Special Use permit was approved by the Board's adoption of the attached resolution and conditions.

Please be advised that although the Albemarle County Board of Supervisors took action on the project noted above, no uses on the property as approved above may lawfully begin until all applicable approvals have been received and conditions have been met. This includes:

- compliance with conditions of the SPECIAL USE PERMIT;
- approval of compliance with SITE PLAN; and
- approval of a ZONING COMPLIANCE CLEARANCE.

Before beginning uses as allowed by this special use permit or if you have questions regarding the above-noted action, please contact Rebecca Ragsdale at 296-5832.

Sincerely,

David Benish  
Acting Director of Planning

CC: Waterstreet Studio, Llc; Alan Franklin, PE  
418 East Main Street  
Charlottesville Va 22902

F

**RESOLUTION TO APPROVE  
SP 2015-12 MECHUM'S TRESTLE**

**WHEREAS**, Mechum's Trestle LLC (the "Owner") is the owner of Tax Map and Parcel Number 05700-00-00-031A0 (the "Property"); and

**WHEREAS**, the Owner filed an application for a special use permit to use more than 400 gallons of water per day on the property for a restaurant, and the application is identified as Special Use Permit 2015-00012 Mechum's Trestle ("SP 2015-12"); and

**WHEREAS**, the proposed use is allowed on the Property by special use permit under Albemarle County Code § 18-22.2.2; and

**WHEREAS**, on June 16, 2015, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2015-12 with the conditions recommended by staff; and

**WHEREAS**, on August 5, 2015, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-12.

**NOW, THEREFORE, BE IT RESOLVED** that, upon consideration of the foregoing, the Transmittal Report prepared for SP 2015-12 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code § 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2015-12, subject to the conditions attached hereto.

\*\*\*\*\*

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true and correct copy of a Resolution duly adopted by the Board of Supervisors of Albemarle County by a vote of six to zero, as recorded below, at a meeting held on August 5, 2015.

  
Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	<u>Y</u>	_____
Ms. Dittmar	<u>Y</u>	_____
Ms. Maliek	<u>Y</u>	_____
Ms. McKeel	<u>Y</u>	_____
Ms. Palmer	<u>Y</u>	_____
Mr. Sheffield	<u>Y</u>	_____

SP-2016-00015 Mechum's Trestle Conditions

1. The applicant shall install a meter on the well head to monitor water consumption. Results of daily water consumption monitoring will be made available within forty-eight (48) hours of a request from the Zoning Administrator.
2. Water consumption shall be restricted to a maximum of five thousand (5,000) gallons per day.

Site is 1.39 acres  
 $5000 / 1.39 = 3597 \text{ gpd}$   
per acre

8.99 X allowance  
of 400 gpd per  
site acre

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RECEIVED

COMMUNITY  
DEVELOPMENT



COUNTY OF ALBEMARLE  
Department of Community Development  
491 Robins Road, Room 227  
Charlottesville, Virginia 22902-4596

Phone (434) 256-4623

Fax (434) 971-4812

December 10, 2008

Lloyd Wood  
724 Chapel Hill Road  
Charlottesville VA 22901

RE: SP2008-00033 Shadowed Market (Sign @ & 20)  
Tax Map 79, Parcel 9

Dear Mr. Wood:

On December 9, 2008, the Albemarle County Board of Supervisors took action on SP 42009-00033 to allow the use of more than 400 gallons of groundwater per acre per day for convenience store on Tax Map 79 Parcel 9 in the Scottsville District.

Please be advised that although the Albemarle County Board of Supervisors took action on the project noted above, no uses on the property as approved above may lawfully begin until all applicable approvals have been received and conditions have been met. This includes:

- compliance with conditions of the SPECIAL USE PERMIT;
- approval of and compliance with a SITE PLAN amendment; and
- approval of a ZONING COMPLIANCE CLEARANCE.

In the event that the use, structure or activity for which the special use permit is issued is not commenced within twenty-four (24) months from the date of Board approval, it shall be deemed abandoned and the permit terminated. The term "commenced" means "commencement of any structure necessary to the use of the permit."

If you have questions or comments regarding the above-noted action, please do not hesitate to contact Sherri Proctor at 239-5832.

Sincerely,

V. Wayne Cillenberg  
Director of Planning

Email Copy: Tex Weaver, Chuck Proctor, Sherri Proctor  
FW



**COUNTY OF ALBERMARLE**  
Department of Community Development  
401 Mainline Road, North Wing  
Charlottesville, Virginia 22902-4296

Phone (434) 255-4333

Fax (434) 972-4136

November 21, 2008

Joyd Wood  
724 Chapel Hill Road  
Charlottesville VA 22901

**RE: 8P2008-19933 Shovelwood Rowed (Sign & 20)  
Tax Map 78, Parcel 8**

Dear Mr. Wood:

The Albemarle County Planning Commission, in its meeting on November 11, 2008, by a vote of 7-0 recommended approval of the above noted petition to the Board of Supervisors to allow the use of trees that are located on your property as shown on any of the accompanying sheets.

Please be advised that the Albemarle County Board of Supervisors will review this petition and receive public comment at that meeting on December 9, 2008.

If you should have any questions or comments regarding the above noted action, please do not hesitate to contact me at (434) 255-4332.

Sincerely,

SOAN CLARK  
Senior Planner  
Planning Division

SC/SLM

COUNTY OF ALBEMARLE STAFF REPORT SUMMARY

*Approved by PDS*

Project Name: SP 2008-00033 Shadwell Market	Staff: Scott Clark
Planning Commission Public Hearing: November 11, 2008	Board of Supervisors Public Hearing: December 3, 2008
Owners: Lloyd Wood, Jr	Applicant: Lloyd Wood, Jr
Acreage: 1.18 acres	Special Use Permit for: Groundwater use over 400 gallons per site-acre per day on C-1 zoned property not served by public water.
TMR: Tax Map 79 Parcel 10 Location: Intersection of Richmond Road (US 250) and Louisa Road (Route 22)	Conditions: No
Existing Zoning and By-right use: C-1 Commercial - retail sales and service uses and residential use by special use permit (15 units/acre); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access	Magisterial District: Rivanna
Requested # of Dwelling Units: N/A	DA RA X
Proposal: Use of more than 400 gallons of groundwater per site-acre per day for convenience store	Comprehensive Plan Designation: <u>RA - Rural Area</u> preserve and protect agricultural, forestal, open space, and natural historic and scenic resources/density (1.5 unit/acre)
Character of Property: This property is a small, cleared site used for a long-established gas station and convenience store	Use of Surrounding Properties: Surrounding properties include a quarry, a railroad, commercial uses, and the planned site of a church
<b>Factors Favorable:</b> The requested level of water use would not affect the water supply of nearby properties.	<b>Factors Unfavorable:</b> MTBE contamination has been found at a nearby site. However, it is not expected that the requested water use would lead to contamination on this site. If it did occur, MTBE can be easily detected and filtered out of the water.
<b>RECOMMENDATION:</b> Staff recommends approval of SP 2008-00033	



## Chapter 12

### Special Use Permits

#### 12-100 Introduction

Under Virginia Code § 15.2-2286(A)(3), a governing body is authorized to grant special exceptions “under suitable regulations and safeguards.” Special exceptions are also known as *special use permits* or *conditional use permits* (the term *special use permit* is used in this chapter, except as otherwise noted), though they may not all necessarily serve the same purpose in a particular locality, as discussed in section 12-200. See Virginia Code § 15.2-2201 (definition of special exception).

A governing body may delegate the authority to grant special use permits to the BZA. Virginia Code § 15.2-2309(6). For example, a BZA could be delegated the authority to consider special use permits for off-site signs. A governing body may also withdraw that authority. *Chesterfield Civic Association v. Board of Zoning Appeals*, 215 Va. 399, 209 S.E.2d 925 (1974) (BZA had no power or authority to consider an application for a special use permit where, after the application was filed but before it was considered by the BZA, the county’s zoning regulations were amended to withdraw the authority of the BZA to consider special use permits and to reserve that power in the board of supervisors).

#### Key Principles to Know About Special Use Permits

- Whether granted by the governing body or the BZA, special use permits are legislative in nature.
- Uses allowed by special use permit are considered to have a potentially greater impact than those allowed as a matter of right.
- Special use permits must be evaluated under reasonable standards, based on zoning principles.
- Impacts from special uses are addressed through conditions.
- Conditions must be reasonably related to the impacts to be addressed, and the extent of the conditions must be roughly proportional to the impacts.
- Decisions by a governing body granting or denying special use permits are presumed correct and reviewed under the fairly debatable standard; decisions by a BZA granting or denying special use permits are also presumed correct, but the presumption may be rebutted by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

#### 12-200 The nature of special use permits

Zoning district regulations typically delineate a number of uses that are allowed as a matter of right, and a number of uses that are allowed by special use permit. Uses allowed only by special use permit are those considered to have a potentially greater impact upon neighboring properties or the public than those uses permitted in the district as a matter of right. *Board of Supervisors of Fairfax County v. Southland Corp.*, 224 Va. 514, 297 S.E.2d 718 (1982). The special use permit procedure, by its very nature, presupposes that a given use may be allowed in one part of a zoning district, but not in another. *Bell v. City Council of City of Charlottesville*, 224 Va. 490, 297 S.E.2d 810 (1982) (rejecting claim that city’s zoning ordinance violated the uniformity requirement of Virginia Code § 15.2-2282).

Although by definition special exceptions pertain to *uses* (Virginia Code § 15.2-2201 (definition of special exception)), it appears that the meaning of *use* in this context may be broader. In *Board of Supervisors of Fairfax County v. Robertson*, 266 Va. 525, 587 S.E.2d 570 (2003), the county’s zoning ordinance allowed “deviations” from certain setback regulations with conditions, if approved by the board of supervisors. The deviation was an alternative procedure to obtaining a variance from the BZA. The Virginia Supreme Court classified the deviation as a special exception, “analogous” to a special use permit or a conditional use permit, and analyzed it the same way as it would those types of permits. In *Town of Ocoquan v. Elm Street Development, Inc.*, 2012 Va. LEXIS 104 (2012) (unpublished), the Virginia Supreme Court characterized a special exception to disturb steep slopes as a density-related permit.



A special use permit is different from a variance. *See chapter 13.* A special use permit cannot alter the provisions of a zoning ordinance. *Northampton County Board of Zoning Appeals v. Eastern Shore Development Corporation*, 277 Va. 198, 671 S.E.2d 160 (2009); *see also Board of Supervisors of Washington County v. Booher*, 232 Va. 478, 352 S.E.2d 319 (1987), discussed in the following paragraph; *Sinclair v. New Cingular Wireless*, 283 Va. 567, 727 S.E.2d 40 (2012) (though not deciding whether a county's regulations allowing the disturbance of steep slopes was a special exception, the waiver regulations were analogous to a special exception and were legislative in nature).

A special use permit also cannot be granted by implication. *Board of Supervisors of Washington County v. Booher*, 232 Va. 478, 352 S.E.2d 319 (1987). In *Booher*, the landowner obtained a rezoning of his land in 1975 from A-2 to B-2, and informed the board of supervisors of his intention to establish an automobile graveyard and junkyard. Neither of those uses was allowed by right or by special use permit in the B-2 zoning district. In 1981, the county amended its zoning regulations requiring a conditional use permit for those uses, but only in the M-2 zoning district. The board denied Booher's application to rezone his property to M-2 and ordered him to discontinue the use and remove the vehicles from his property. The Virginia Supreme Court concluded that the Booher's use did not have nonconforming status, adding that "[i]t may be that the Board intended . . . to grant Booher a special exception. But an automobile graveyard was not then and is not now a permitted use in the B-2 zone. Booher did not apply for a special exception in that zone [and] the Board had no power to grant an exception by implication. . ." *Booher*, 232 Va. at 481-482, 352 S.E.2d at 321.

Whether granted by the governing body or the BZA, special use permits are legislative in nature. *Board of Supervisors of Fairfax County v. McDonald's Corporation*, 261 Va. 583, 544 S.E.2d 334 (2001); *Richardson v. City of Suffolk*, 252 Va. 336, 477 S.E.2d 512 (1996); *Ames v. Town of Painter*, 239 Va. 343, 389 S.E.2d 702 (1990) (when granted by a BZA); *Koebne v. Fairfax County Board of Zoning Appeals*, 62 Va. Cir. 80 (2003).

Although zoning regulations may require that an approved special use begin within a certain period of time, Virginia Code § 15.2-2209.1(B) extends the period of validity for special use permits outstanding on January 1, 2011 until July 1, 2017 if the special use permit is related to "new residential or commercial development." This statutory extension pertains only to the date by which the use must be started, and does not apply to any requirement that a special use be terminated or ended by a certain date or within a specified number of years (*see discussion of that issue in section 12-510*).

A locality's special use permit regulations may allow the permit to be revoked if the use is found to be in violation with the permit's conditions, at least on activities directly connected to the permit. *Alexandria City Council v. Mirant Potomac River, LLC*, 273 Va. 448, 643 S.E.2d 203 (2007); *see Lawless v. Board of Supervisors of Chesterfield County*, 18 Va. Cir. 230 (1989). In *Mirant*, the Virginia Supreme Court held that the city could not revoke a special use permit for purported violations of certain emission control limits in its state-issued stationary source permit to operate because those purported violations were beyond those having a nexus to the purpose of the special use permit.

BZA's have express statutory authority to revoke a special use permit under the procedures provide by statute. *Virginia Code § 15.2-2309(7)*.

### 12-300 Limitations on the uses for which special use permits may be required

A special use permit may *not* be required within an agricultural zoning district for any production agriculture or silviculture activity (*Virginia Code § 15.2-2288*) and qualifying small scale biofuels production (*Virginia Code § 15.2-2288.01*). In the absence of a substantial impact, a special use permit also may not be required within an agricultural zoning district for *usual and customary* activities at farm wineries (*Virginia Code § 15.2-2288.3*), *usual and customary* activities at limited breweries (*Virginia Code § 15.2-2288.3:1*), *usual and customary* activities at limited distilleries (*Virginia Code § 15.2-2288.3:2*), and *usual and customary* activities at agricultural operations (*Virginia Code § 15.2-2288.6*). Activities as farm wineries, limited breweries, limited distilleries and agricultural operations that are not *usual and customary* may otherwise be subject only to *reasonable restrictions*, which may or may not warrant a special use permit.

A special use permit also may not be required for the following uses, provided that statutorily prescribed circumstances exist: (1) cluster developments (*Virginia Code § 15.2-2286.1*); (2) manufactured housing in agricultural zoning districts (*Virginia Code § 15.2-2290(A)*); (3) group homes of 8 or fewer persons or residential facilities for 8 or fewer aged, infirm or disabled persons, which must be allowed by right in zoning districts where single family residential use is allowed by right (*Virginia Code § 15.2-2291*); and (4) family day homes of five or fewer persons, which must be allowed by right in zoning districts where single family residential use is allowed by right (*Virginia Code § 15.2-2292*).

A special use permit also may not be required as a condition of approval of a subdivision plat, site plan or building permit for the development and construction of residential dwellings at the use, height and density permitted by right under a zoning ordinance. *Virginia Code § 15.2-2288.1*. These limitations do not prevent a locality from requiring a special use permit for: (1) a cluster or town center as an optional form of residential development at a density greater than that permitted by right, or otherwise permitted by local ordinance; (2) a use in an area designated for steep slope mountain development; (3) a use as a utility facility to serve a residential development; or (4) nonresidential uses including, but not limited to, home businesses, home occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, and shelters established for the purpose of providing human services to the occupants thereof. *Virginia Code § 15.2-2288.1*.

<b>Summary of the Uses for Which a Locality May Not Require a Special Use Permit</b>	
•	<i>Production agriculture, silviculture and small scale biofuels production, and certain activities at farm wineries, limited breweries, limited distilleries, and agricultural operations in an agricultural zoning district.</i>
•	<i>Cluster developments except where a cluster or town center is allowed as an optional form of residential development at a greater density than that permitted by right (see discussion of Virginia Code § 15.2-2288.1, below).</i>
•	<i>Manufactured housing in an agricultural zoning district.</i>
•	<i>Group homes of 8 or assisted living facilities for 8 or fewer aged, infirm or disabled persons in a zoning district where single family residential use is a by right use.</i>
•	<i>Family day homes of 5 or fewer persons in a zoning district where single family residential use is a by right use.</i>
•	<i>Tents serving as a temporary structure for 3 days or less used for activities such as weddings and estate sales.</i>
•	<i>As a condition of approval of a subdivision plat, site plan or building permit for a residential development where the dwellings meet the use, height and density requirements allowed by right, with exceptions in Virginia Code § 15.2-2288.1.</i>
•	<i>Temporary family health care structures established in compliance with Virginia Code § 15.2-2292.1.</i>
•	<i>To address solely aesthetic considerations outside of a historic district established under Virginia Code § 15.2-2306.</i>

In *Town of Occoquan v. Elm Street Development, Inc.*, 2012 Va. LEXIS 104 (2012) (unpublished), the developer was the contract purchaser of a 3.68 acre parcel zoned R-3, which allowed up to 16 multi-family units per acre. Approximately one-half of the parcel had slopes greater than 20% and the town regulations required a special use permit to disturb or develop on those slopes. Although staff recommended approval of the special use permit with 12 conditions, to which the developer agreed, the town council denied the permit. The developer sued. The town contended that Virginia Code § 15.2-2288.1 did not apply to the town's steep slopes regulations and that the entire parcel was not developable by right because the by right density could be calculated only in compliance with the steep slopes regulations.

The Virginia Supreme Court rejected the town's arguments, concluding that Virginia Code § 15.2-2288.1 "expressly prohibits a locality from requiring a special use permit as a precondition to development that is otherwise permitted under a zoning ordinance," and that the town's steep slopes regulations interfere "with residential development that is otherwise permitted within the zoning district." The Court also rejected the town's argument that the developer had no right to disturb the steep slopes in the absence of a special use permit, concluding that the town "cannot permit this development by right and simultaneously require an SUP as a condition of development on the property. . . . By requiring an SUP, the Town has politicized what should be a ministerial decision . . . [T]he steep slopes SUP requirement . . . has no bearing on any density calculation in this instance." To reach that conclusion, the Court characterized the special exception as a density-related permit which was therefore prohibited by the statute. Lastly, the Court rejected the town's argument that the Chesapeake Bay Preservation Act gave it the power to require a special use permit.

The requirement for a special use permit also may not be based solely on aesthetic considerations. *Allstate Development Co. v. City of Chesapeake*, 12 Va. Cir. 389 (1988) (finding that requirement for special use permit for modular houses in a district, but not for stick-built houses, arose solely because the neighbors did not like the appearance of modular houses); *but see Virginia Code § 15.2-2306*, allowing localities to require architectural compatibility within districts established under that section.

#### **12-400 Procedural requirements prior to and during a hearing on a special use permit application**

A number of procedural rules apply to the conduct of a hearing on a special use permit application, but the procedures differ depending on whether the special use permit is granted by the governing body or the BZA.

##### **12-410 Special use permits considered by the governing body**

Special use permits considered by the governing body are subject to “suitable regulations and safeguards” established by the governing body. *Virginia Code § 15.2-2286(3)*. These suitable regulations and safeguards should include the requirement that the planning commission, if its review and recommendation is required, and the governing body, take timely action. One approach is to impose the same timelines required for zoning map amendments, e.g., requiring a recommendation from the planning commission within 100 days (*Virginia Code § 15.2-2285(B)*) and requiring the governing body to act within 12 months. *Virginia Code § 15.2-2286(7)*.

In addition, notice must be provided as required by *Virginia Code § 15.2-2204(C)*. *See chapter 34*.

##### **12-420 Special use permits considered by the BZA**

Special use permits considered by the BZA are subject to the following procedures:

- *Scheduling the hearing on the special use permit application.* The BZA must “fix a reasonable time for the hearing” on a special use permit. *Virginia Code § 15.2-2312*.
- *Notice of the hearing.* The BZA must “give public notice thereof as well as due notice to the parties in interest.” *Virginia Code § 15.2-2312*. Notice of the hearing must be provided as required by *Virginia Code § 15.2-2204*. *Virginia Code § 15.2-2309(6)*.
- *At the hearing; the right to equal time for a party to present its side of the case.* The BZA must offer an equal amount of time in a hearing on the case to the applicant and the staff of the local governing body. *Virginia Code § 15.2-2308(C)*.
- *Decision.* If the BZA decides to grant a special use permit, it may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. *Virginia Code § 15.2-2309(6)*. *See section 12-500 for a discussion of the minimal standards that must guide the decision-making process; see section 12-600 for a discussion of conditions.*
- *Time for the decision.* The decision must be made within 90 days. *Virginia Code § 15.2-2312*. This time period is directory, rather than mandatory, and the BZA does not lose its jurisdiction to act on a variance after the time period has passed. *See Tran v. Board of Zoning Appeals of Fairfax County*, 260 Va. 654, 536 S.E.2d 913 (2000) (BZA did not lose jurisdiction to decide appeal after 550-day delay).
- *Required vote.* The concurring vote of a majority of the BZA’s members present and voting is necessary to grant a special use permit. *Virginia Code § 15.2-2308*.
- *Findings to support the decision.* Findings are not required unless they are required by the zoning ordinance. *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 740 S.E.2d 548 (2013).

## 12-500 Minimal standards must guide the decision-making process

A use allowed by special use permit is permitted “only after being submitted to governmental scrutiny in each case, in order to insure compliance with standards designed to protect neighboring properties and the public.” *Board of Supervisors of Fairfax County v. Southland Corp.*, 224 Va. 514, 521, 297 S.E.2d 718, 721-722 (1982); *Daniel v. Zoning Appeals Board of Greene County*, 30 Va. Cir. 312 (1993). An application for a special use permit must be examined by public officials, and be guided by standards set forth in the zoning ordinance, to determine the impact the proposed use will have if carried out on the property. *Southland Corp., supra*.

Special use permit regulations adopted pursuant to Virginia Code § 15.2-2286(A)(3) “need not include standards concerning issuance of special use permits where local governing bodies are to exercise their legislative judgment or discretion.” *Jennings v. Board of Supervisors of Northumberland County*, 281 Va. 511, 520, 708 S.E.2d 841, 846 (2011), quoting *Bollinger v. Board of Supervisors of Roanoke County*, 217 Va. 185, 186, 227 S.E.2d 682, 683 (1976). Thus, in *Jennings*, the Virginia Supreme Court upheld the county’s granting of “special exception permits” “subject to such conditions as the governing body deems necessary to carry out the intent of this chapter.”

In *Bollinger*, the Court upheld the county’s granting of a conditional use permit for a landfill under a zoning regulation that simply stated: “The location of commercial amusement parks, airports, borrow pits and sanitary fill method garbage and refuse sites shall require a conditional use permit. These permits shall be subject to such conditions as the governing body deems necessary to carry out the intent of this chapter.” In affirming the granting of the permit, the *Bollinger* Court was persuaded by the thorough review conducted by the county, even though the standard for granting the special use permit was broad, stating: “it appears the Board acted only after it had the benefit of thorough studies, numerous tests, and after due deliberation on its part. These studies and tests revealed that the land is suitable for landfill purposes. The terms and conditions imposed by the Board indicate that it was well aware of the uses of surrounding land and the characteristics of the property involved.”

In *Cole v. City Council of City of Waynesboro*, 218 Va. 827, 832, 241 S.E.2d 765, 769 (1978), the city’s zoning regulations allowed the city council to issue special use permits “whenever public necessity and convenience, general welfare or good zoning practice justifies such special exception or use permits which may be granted by the council adopting an ordinance granting the same after considering the recommendations of the city planning and zoning commission.” In holding that a special use permit for a 151-unit apartment complex on a 3/4-acre parcel was invalid, the Virginia Supreme Court said that the above-cited standards in the ordinance were “an open invitation for a special exception to be granted without any consideration being given to certain basic principles of law applicable in the zoning field. It permits a lack of adherence by City Council to a fundamental rule that zoning regulates the use of land.” *Cole*, 281 Va. at 833, 241 S.E.2d at 769. The critical distinction between *Jennings/Bollinger* and *Cole* is that the standard in *Cole* was stated in the disjunctive – the city council could consider “public necessity and convenience, general welfare or good zoning practice.” In other words, the city council was not tied to the zoning statutes or good zoning practice when it considered a special use permit, and this rendered the city’s regulations invalid.

At bottom, all that a zoning ordinance must provide is that the governing body’s consideration of a special use permit be taken within the framework of the zoning statutes and the principles that apply to zoning. In granting a special use permit, specific findings are not required unless mandated by the zoning ordinance. *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 740 S.E.2d 548 (2013) (“While a zoning ordinance must set forth standards under which applications for special exceptions are to be considered when local governing bodies delegate that legislative power, the ordinance need not do so when the local governing body has reserved the power unto itself”). Typical standards applicable to special use permits include consideration of: (1) the impacts of the special use on the character of the district; (2) the impacts of the special use on the welfare of the landowners and occupants of land in the district, see *Bell v. City Council of City of Charlottesville*, 224 Va. 490, 297 S.E.2d 810 (1982); and (3) consistency with the comprehensive plan. *National Memorial Park, Inc. v. Board of Zoning Appeals of Fairfax County*, 232 Va. 89, 348 S.E.2d 248 (1986) (upholding denial of special use permit to operate crematory based on the negative impact of the proposed use on neighboring properties and inconsistency with comprehensive plan). Other factors that may be considered include: (1) the character of the property; (2) the general welfare of the public; and (3) the economic development of the community. *Bell, supra*. These factors are also akin to those delineated in Virginia Code §§ 15.2-2283 and 15.2-2284. See *Laffoon v. Board of Zoning Appeals*, 91 Va. Cir. 391 (2015) (invalidating the

board of zoning appeals' approval of a special exception pertaining to setbacks where the board failed to make the required findings and, instead, based its decision on the fact that the city's commission of architectural review had approved the project; the zoning ordinance required that "*the board shall be satisfied*" that, among other things, "the departure from the applicable yard and/or lot coverage requirements is *the minimum necessary* to accommodate the intended purpose of the dwelling" (italics in original).

If specific standards are adopted, deference should be given to the governing body in determining whether the standards were considered when the action was taken. In *Shenandoah Mobile Co. v. Frederick County Board of Supervisors*, 83 Va. Cir. 113 (2011), the applicant challenged the board's denial of a conditional use permit contending that the board failed to give adequate consideration to the standards in the zoning ordinance. The circuit court rejected this argument, noting that the motion maker "touched on" four of the six standards and that it knew "of no requirement that each individual Board Member express the reasons for voting for or against the motion." *Shenandoah*, 83 Va. Cir. at 116. The court otherwise found substantial evidence in the record to support the board's decision. Another circuit court has held that the governing body is not required to make specific findings with respect to each and every potentially relevant clause in the comprehensive plan, nor each and every clause of the purpose and intent section of the zoning ordinance. *Koehne v. Fairfax County Board of Zoning Appeals*, 62 Va. Cir. 80 (2003) (county's special use permit regulations that the proposed special use be "in harmony with the adopted comprehensive plan" and "in harmony with the general purpose and intent of the applicable zoning district regulations"). Part of that analysis will depend on the language of the zoning ordinance.

As shown in *Bollinger*, the courts will look at the decision maker's analysis of the facts and how they are applied to the standards, even if the standards are broad as they were in *Bollinger* and *Jennings*. Compare to *Mutter v. Washington County Board of Supervisors*, 29 Va. Cir. 394 (1992), where a circuit court concluded that a special use permit issued without consideration to the locality's comprehensive plan and whose justification was devoid of any meaningful studies or analysis was unreasonable. In *Mutter*, the court concluded that the county's approval of a solid waste convenience station in an environmentally sensitive location with traffic safety issues was unreasonable, arbitrary and capricious. The court noted that the board failed to consider the county's comprehensive plan, conduct any site testing, consult with various environmental and other state agencies, and failed to even consult with the county's landfill manager for his assessment of the suitability of the site.

Lastly, a proposed special use permit need not necessarily be granted merely because an applicant adheres to the applicable zoning regulations. *County Board of Arlington County v. Bratic*, 237 Va. 221, 377 S.E.2d 368 (1989). Rather, a special use is prohibited unless an applicant obtains a permit. *Amoco Oil Co. v. Zoning Appeals Board of the City of Fairfax*, 30 Va. Cir. 159 (1993) (upholding the denial of special use permit because a number of the applicable special use permit criteria were not met).

#### **12-600 Impacts from special uses are addressed through conditions**

If a special use permit is granted, the potential impacts are addressed through reasonable conditions. *Byrum v. Board of Supervisors of Orange County*, 217 Va. 37, 225 S.E.2d 369 (1976). Under Virginia law, the conditions imposed must bear a *reasonable relationship* to the legitimate land use concerns and problems generated by the use of the property. *Cupp v. Board of Supervisors of Fairfax County*, 227 Va. 580, 318 S.E.2d 407 (1984). A special use permit may not be denied indirectly by approving the special use permit but imposing unreasonable and impossible conditions on its use. *Byrum, supra*; see also, *Virginia Code § 15.2-2208.1*. See section 10-540 for a discussion of *Virginia Code § 15.2-2208.1*, which applies to both proffers and special use permit conditions.

A BZA is authorized to "impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with." *Virginia Code § 15.2-2309(6)*.

#### **12-610 Conditions imposed by the governing body are to address impacts and are not voluntary**

Unlike proffers that accompany a rezoning considered by the locality's governing body, special use permit

conditions are not volunteered by the landowner and need not be developed through negotiation. Conditions may be imposed as the governing body or the BZA determines to be appropriate as "suitable regulations and safeguards" for special use permits. *Virginia Code* § 15.2-2286(A)(3). As explained by John H. Foote, Planning and Zoning, *Handbook of Local Government Law*, § 1-10.03, p. 1-61, (2015), the phrase "suitable regulations and safeguards" is "uniformly understood to mean that the locality may unilaterally impose reasonable conditions on the issuance of such permits or exceptions, in contrast to proffers that must come voluntarily from the applicant." See also *Staples v. Prince George County*, 81 Va. Cir. 308, 320-321 (2010) (condition imposing 14-day limit stay rule on campground was upheld because there is a reasonable basis to distinguish campgrounds from sites with permanent dwellings; a "local governing body is permitted to impose involuntary conditions on the grant of a special exception").

Special use permit conditions also may require administrative approvals by others. *Fuentes v. Board of Supervisors of Fairfax County*, 2000 Va. Cir. LEXIS 130, 2000 WL 1210446 (2000) (conditions imposed that required Health Department review and approval of a sewage treatment/disposal system and a groundwater monitoring system were not unlawful delegations of legislative authority; the board was authorized to delegate these administrative functions in a special use permit condition).

In connection with residential special use permits, if a landowner proposes affordable housing, any conditions imposed must be consistent with the objective of providing affordable housing; when imposing conditions on residential projects that specify the materials and methods of construction or specific design features, the governing body must consider the impact of the conditions upon the affordability of housing. *Virginia Code* § 15.2-2286(A)(3).

Special use permit conditions pertaining to uses involving alcoholic beverages have been the subject of both judicial review and additional legislation. In *County of Chesterfield v. Windy Hill, Ltd.*, 263 Va. 197, 200, 559 S.E.2d 627, 628 (2002), the Virginia Supreme Court held that a condition in a special use permit stating "[n]o alcoholic beverages shall be permitted" was not preempted by the Alcoholic Beverages Control Act (see *Virginia Code* § 4.1-128) because it was a "valid zoning ordinance . . . regulat[ing] the location of an establishment selling . . . alcoholic beverages," as permitted by the Act. Similarly, in *City of Norfolk v. Tiny House*, 222 Va. 414, 281 S.E.2d 836 (1981), the Court held that an ordinance requiring a special use permit for adult uses (such as sellers of alcohol and adult movie theaters) within 1,000 feet of one another did not violate *Virginia Code* § 4.1-128. The governing bodies of the cities of Norfolk and Richmond also are enabled under *Virginia Code* § 15.2-2286(A)(3) to impose other conditions on retail alcoholic beverage control licensees. Norfolk may impose conditions providing that the special use permit will automatically expire upon a change in the ownership, possession, management or operation of the property. Richmond may impose conditions requiring automatic review of the permit upon a change of ownership or possession of the property, or a transfer of majority control of the business, and may revoke the permit after notice and a public hearing.

One recurring issue of interest is whether a governing body may impose limitations on the life of a special use permit. BZAs have express authority to impose limitations on the life of a special use permit (*Virginia Code* § 15.2-2309(6)), local governing bodies do not have such express authority. The governing body of the City of Norfolk is enabled to impose a condition on any special use permit relating to retail alcoholic beverage control licensees which provides that the permit will automatically expire upon the passage of a specific period of time. *Virginia Code* § 15.2-2286(A)(3). No similar express authority exists for other governing bodies for general purposes, and a number of localities have accordingly concluded that they do not have implied authority to impose such a condition. Some localities conclude otherwise. Under a Dillon Rule analysis, governing bodies are enabled to grant special use permits under "suitable regulations and safeguards." *Virginia Code* § 15.2-2286(A)(3). The General Assembly has not directed how or what those suitable regulations and safeguards must be. Therefore, if a time limitation (or the authority in the zoning ordinance to impose such a condition) is reasonable, the condition should be considered to be within a governing body's authority. An alternative solution to this question is to obtain the agreement of the applicant for such a condition. See *Board of Supervisors of Prince William County v. Sto-Gray Developers, Inc.*, 230 Va. 24, 334 S.E.2d 542 (1985) (subdivider may voluntarily agree to make improvements to existing access roads and will be bound to that agreement, even if the county did not have the authority to otherwise require such improvements as a condition of subdivision approval).

## 12-620 Conditions must be reasonably and proportionally related to the impacts resulting from the use

When a locality seeks the dedication of land or other property (such as fees) as a condition of a land use approval, such as a condition to a special use permit, it must be certain that these conditions of approval: (1) have a nexus that is related to the impact of the proposed development; and (2) are roughly proportional to the extent of the impact. *Koontz v. St. Johns River Water Management District*, 570 U.S. \_\_\_\_, 133 S. Ct. 2586 (2013); *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309 (1994); see also *Virginia Code § 15.2-2208.1* (creating monetary remedy for imposition of unconstitutional conditions).

If this two-pronged test is not satisfied, the locality has imposed an unconstitutional *exaction*. This principle applies even when the locality denies the permit because the applicant is unwilling to agree to or accept such a condition. *Koontz, supra*. See section 6-440 for further discussion of exactions.

## 12-630 Developing condition language

Special use permit conditions typically originate from the locality's staff. Following are some suggestions for writing, reviewing, and revising proposed conditions:

- *State each condition clearly:* Each condition should be a declaratory statement, using clear and concise language as to what must be performed, when it must be performed, when it must be completed, and, if applicable, how it must be performed.
- *Write each condition with the dignity of a zoning regulation:* A condition becomes part of the zoning regulations applicable to the property. Therefore, it should be written with the dignity of a zoning regulation, using terminology found in the zoning ordinance.
- *Select words carefully:* The words in a condition must be carefully selected. Use the word "shall" rather than "should" or "may." If a condition requires that the owner cannot proceed until the county engineer approves a plan, the condition needs to state that "the owner shall obtain approval of the plan from the county engineer before . . .," rather than stating that the owner "shall submit a plan." Never use "etc." in a condition.
- *Consistently use the same word to refer to the same person, place or thing:* A person, place or thing always should be described or identified by the same word.
- *Use complete sentences:* Conditions should be written in complete sentences.
- *Ensure that each condition is comprehensive:* A condition should be written in comprehensive language that addresses the reasonably foreseeable issues that may arise from the condition.
- *Ensure that each condition imposes standards that are enforceable:* Every condition must be reviewed by the zoning administrator's office to ensure that the condition imposes standards that are enforceable. Part of the issue of enforceability pertains to the clarity of the language used, but the other part pertains to whether the language actually imposes a standard that can be enforced. Because the zoning administrator will have the task of enforcing the conditions, be certain that the zoning administrator has the opportunity to provide comments as to not only the language, but the subject matter (e.g., a condition that restricts a restaurant use to between the hours of 5:00 a.m. and 1:00 a.m. may require a zoning inspector to be in the field between 1:00 a.m. and 5:00 a.m. if the hours of operation become an enforcement issue).
- *Be careful not to make the condition too specific:* In providing clarity, conditions can become too specific so that they become overly restrictive. Examples of being too specific include referring to the applicant by name (because the special use permit runs with the land), providing a specific measurement for height, distance, or something similar in an absolute when you intend to establish a minimum or a maximum.

- *Ensure that each condition imposes only requirements that address identified impacts:* Conditions may only address impacts resulting from the use. Ensure that the conditions do not modify, waive, substitute or relax otherwise applicable zoning regulations.
- *Use similar language for similar situations:* The locality's staff should propose language that is similar to language previously approved for a similar type of condition.
- *Be certain that the time of performance is clearly stated:* Be certain that the language clearly states when the owner must do the promised or required acts.
- *Ensure that the conditions are well-organized:* Ensure that the conditions are well-organized by having conditions that are related to one another located next to one another.
- *Ensure that the conditions do not impose, or would not be perceived to impose, an obligation on the locality, VDOT, or any other public entity:* Conditions address impacts from a special use and they should be drafted so as not to impose, or be perceived to impose, an obligation on the locality, VDOT, or any other public entity. This problem often arises in the context of establishing the timing for performance. For example, a condition stating that the "final site plan shall be approved by the site plan agent prior to commencing the use" could be read to mean that the director must approve the site plan. Alternative wording to address this issue would be, for example, "The applicant is required to obtain approval of the final site plan by the site plan agent prior to commencing the use."
- *Consider requiring that conditions be satisfied before the application for a needed approval is submitted:* When a permittee requires additional approvals in the process, such as a site plan, there may be some conditions where it is best to require that a condition be satisfied before the permittee even applies for the site plan rather than some later point in the process, such as prior to issuance of a certificate of occupancy.
- *Be certain that referenced documents are properly identified:* References to plats or plans should identify the title, last revision, and the entity preparing the plat or plan. References to ordinances should be identified by section number and include language such as "as the section was in effect on [date of special use permit]." References to letters, memos, staff reports, and similar documents should clearly identify the recipient, the author, and the date.

#### 12-640 Ensure that the conditions make sense

Once a condition has been put to writing, the locality's staff must make certain that it is understandable, unambiguous, and enforceable:

- *Review draft conditions with a critical eye:* The locality's planner must ignore his or her insider's understanding of the application and put himself in the position of a reader who knows nothing about the project and: (1) ask whether the proposed conditions are clear, concise, and comprehensive in a way that a future reader will easily understand; (2) drop all assumptions and preconceived notions and be critical; (3) identify the ambiguities and eliminate them; (4) identify all superfluous text and eliminate it; and (5) ask whether each condition would make sense to somebody ten years from now.
- *Have a peer review the conditions:* The planner should ask others not directly involved with the application to review the conditions. It is important to have someone without an insider's knowledge of the application to see if he or she can understand the conditions and identify ambiguities.
- *All appropriate departments review the conditions:* The planner must ensure that all departments and the locality's attorney review and comment on the conditions. Because the zoning administrator will have the task of enforcing the conditions, be certain that the zoning administrator has the opportunity to provide comments as to not only the language, but the subject matter (e.g., a condition that restricts a restaurant use to between the

hours of 5:00 a.m. and 1:00 a.m. may require a zoning inspector to be in the field between 1:00 a.m. and 5:00 a.m. if the hours of operation become an enforcement issue).

- *Attach copies of referenced regulations.* Zoning regulations referenced in a condition should be attached so that there is no question about the identified regulation.

#### **12-700 Consideration of a special use permit application; reasonable and unreasonable grounds on which to base a decision**

A decision on an application for a special use permit is a legislative act and, as such, the governing body or the BZA has wide latitude in making a decision. The cases discussed below discuss reasonable and unreasonable grounds on which to base a decision.

#### **12-710 Reasonable grounds to deny a special use permit**

The decision to deny a special use permit is reasonable if the landowner fails to meet all of the requirements of the zoning ordinance for the granting of a permit. *County of Lancaster v. Cowardin*, 239 Va. 522, 391 S.E.2d 267 (1990), *discussed below*. Adverse impacts on the character of the neighborhood resulting from a proposed use are a common reason to deny a special use permit. *County Board of Arlington County v. Bratic*, 237 Va. 221, 377 S.E.2d 368 (1989), *discussed below*. Even if the landowner satisfies all of the technical requirements for the issuance of the special use permit, the decision-making body nonetheless retains discretion to approve or deny the permit. *Bratic, supra*. A special use permit also may be denied because the proposed use is inconsistent with the comprehensive plan. *National Memorial Park, Inc. v. Board of Zoning Appeals of Fairfax County*, 232 Va. 89, 348 S.E.2d 248 (1986). The decision-maker also should consider the factors delineated in Virginia Code § 15.2-2284.

In *Board of Supervisors of Rockingham County v. Sticklely*, 263 Va. 1, 556 S.E.2d 748 (2002), the board of supervisors denied a special use permit that would have allowed the applicant to raise and release game birds on his farm. The board was concerned about the risk posed by these birds carrying contagious diseases and transmitting them to poultry. In what boiled down to a battle of conflicting expert witnesses, the Virginia Supreme Court held that the board's denial of the special use permit was proper because its evidence demonstrated a "significant risk" to poultry from the release of pen-raised game birds, and that this evidence was amply sufficient to make that issue fairly debatable.

In *Board of Supervisors of Fairfax County v. Robertson*, 266 Va. 525, 587 S.E.2d 570 (2003), the board of supervisors denied a special exception that would have allowed the applicant to construct three houses within a 200-foot setback on his property. The applicant was required to submit a study addressing *projected* noise levels or projected traffic. The purpose for the study was to identify impacts and how to address them. The applicant's acoustical engineer based his conclusions on a noise study performed in 1997, but the study failed to address projected (future) noise levels. As a result, the applicant's proposed conditions failed to include measures to reduce exterior noise on the property. The county's acoustical engineer analyzed future noise levels and concluded that on some parts of the applicant's property, future noise levels would exceed those provided in the comprehensive plan by 2010. Not surprisingly, the Virginia Supreme Court found sufficient evidence of reasonableness to make the board's denial of the special use permit fairly debatable.

#### **Five Reasonable Grounds to Deny a Special Use Permit**

- The landowner fails to meet all of the requirements for the granting of the permit; even if all of the requirements satisfied, the decision-maker retains authority to deny the permit if sound zoning principles justify the decision.
- The proposed use is inconsistent with the comprehensive plan.
- The proposed use would have adverse impacts on the character of the neighborhood.
- The proposed use would have adverse impacts on roads or create a hazardous traffic situation.
- The proposed use would have an adverse impact on the abutting property.

In *Cowardin*, one of the county's prerequisites to obtaining a special use permit for two boathouses was the

issuance of a certificate of occupancy for the structures. Since the certificates had not been issued, the Virginia Supreme Court concluded that the board had established a reasonable basis to justify its denial of the permit.

In *Bratic*, the landowner claimed that he had satisfied all of the technical requirements for the granting of a special use permit to allow a two-family dwelling on his property and, therefore, the county board could not deny his application. The Virginia Supreme Court rejected this argument, stating that a governing body “is not stripped of all discretion in the issuance of a use permit merely upon a showing that the technical requirements of a zoning ordinance have been met.” *Bratic*, 237 Va. at 226, 377 S.E.2d at 370 (1989). In reaching that decision, the Court emphasized the legislative nature of special use permits. The Court found that even if the county’s technical requirements were satisfied, the board’s denial was supported by probative evidence that the area in question in the interior of a neighborhood was predominantly single family, though there was a mix of single family, two-family, triplexes, and even commercial, on the edge. The board’s evidence also explained that the area in question was “fragile,” meaning that it was subject to change, because of requests for two-family dwellings.

In *CAH Holdings LLC v. City Council of the City of Chesapeake*, 89 Va. Cir. 389 (2014), the trial court upheld the city council’s denial of a conditional use permit for a car wash even though the city’s planning staff and planning commission recommended approval, and the applicant’s noise expert stated that the car wash could comply with the city’s noise regulations. The trial court held that the city council based its decision on the conclusion that the proposed use was incompatible with the nearby residential neighborhoods.

In *Gittins v. Board of Zoning Appeals*, 55 Va. Cir. 495 (2000), a neighbor’s testimony that a proposed playground structure was an “eyesore” that detracted from the value of her property, and that a realtor had told her that the existence of the structure would affect the marketability of her home, was sufficient for the circuit court to sustain the BZA’s denial of a special use permit. In order to grant the permit, the BZA would have had to find that the structure would have had no detrimental impact on other properties in the immediate vicinity.

In *In re Hurley*, 2001 Va. Cir. LEXIS 64, 2001 WL 543793 (2001), the circuit court held that the BZA properly denied the applicants’ special use permit for a home business on the ground that the proposed use would be disruptive to a low density residential neighborhood. The home business was a commercial label-printing business with six employees that produced between 100,000 and 500,000 mailing labels per day on 30 computers. The court held that the BZA properly determined that the home business did not meet the requirements for a special use permit, including the requirement that the use not “constitute sufficient non-residential activity as might modify or disrupt the predominantly residential character of the area.”

Adverse impacts on roads resulting from the proposed use also may be a reasonable basis to deny a special use permit. In *FreezeLand Orchard Co. v. Warren County*, 61 Va. Cir. 548 (2001), the circuit court upheld the board of supervisors’ denial of a special use permit. The circuit court held that the fact that the applicant obtained VDOT approval of its entrances onto a public road did not preclude the board from exercising its legislative judgment in determining that the proposed use of the road would be “hazardous or in conflict with the existing and anticipated traffic in the area,” one of its criteria for evaluating special use permits. The court noted that the board received extensive public input at the public hearings. Similarly, in *Heater v. Warren County Board of Supervisors*, 59 Va. Cir. 487 (1995), the circuit court upheld the board of supervisors’ denial of a special use permit for a small subdivision in an agricultural zoning district on the ground that the proposed use would be hazardous or in conflict with the existing and anticipated traffic in the area. The fact that the applicant had obtained VDOT approval for the proposed entrances onto a public street because they met the minimum standards for sight distance did not preclude the board from exercising its legislative judgment.

#### **12-720 Unreasonable grounds to deny a special use permit**

The denial of a special use permit will be reversed if the governing body or BZA ignores its standards and then fails to present any evidence to justify its decision. In *Daniel v. Zoning Appeals Board of Greene County*, 30 Va. Cir. 312 (1993), the circuit court reversed the BZA’s denial of a special use permit for a mobile home park where the applicant produced evidence that the county’s applicable standards were satisfied and the county presented virtually no evidence and failed to demonstrate that the BZA’s decision was consistent with the applicable standards.

invalid, explaining that not only was the use not allowed by permit, but also that the use would create noise, smoke, particulate matter, and the possibility of spontaneous combustion that was incompatible with the surrounding residential and business properties, and that the proposed industrial use in an agricultural district was surrounded by single-family residential properties, multi-family residential properties, businesses and a resort. The court concluded by stating that “[r]easonable minds cannot differ that this is inappropriate.”

In *Laffoon v. Board of Zoning Appeals*, 91 Va. Cir. 391 (2015), the trial court invalidated the BZA’s approval of a special exception pertaining to setbacks because the board failed to make the required findings. The zoning ordinance required that “the board shall be satisfied” that, among other things, “the departure from the applicable yard and/or lot coverage requirements is the minimum necessary to accommodate the intended purpose of the dwelling” (italics in original). Rather than adhere to the standard in the zoning ordinance, the BZA based its decision on the fact that the city’s commission of architectural review had approved the project.

## 12-800 Appeals of decisions to the circuit court

Decisions to grant or deny a special use permit may be appealed to the circuit court.

### 12-810 Timeliness, standing, and compliance with applicable zoning regulations

A person aggrieved by a decision of the governing body may appeal the decision to the circuit court within 30 days. *Virginia Code* § 15.2-2285(F). A person aggrieved by a decision of the BZA, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may appeal the BZA’s decision to the circuit court by filing a petition for writ of certiorari within 30 days. *Virginia Code* § 15.2-2314.

Persons challenging a decision as a person aggrieved must allege that they are aggrieved within the meaning of the Virginia Supreme Court’s decision in *Friends of the Rappabannock v. Caroline County*, 286 Va. 38, 743 S.E.2d 142 (2013).

Once timeliness and standing are addressed, the next issue is whether the decision was made in compliance with the applicable zoning regulations. If the decision was made in violation of the zoning regulations (e.g., there was an express prerequisite for eligibility to obtain the permit, such as having a specific pre-existing underlying zoning designation), the action will be found to be arbitrary and capricious and not fairly debatable, thereby rendering the decision void and of no effect. *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 740 S.E.2d 548 (2013), quoting *Renkey v. County Board of Arlington County*, 272 Va. 369, 376, 634 S.E.2d 352, 356 (2006).

### 12-820 Evaluating a special use permit decision under the fairly debatable test

If it is shown that the decision was made in compliance with the applicable zoning regulations, the decision to grant or deny a special use permit is valid if the decision is *reasonable*, i.e., whether there is any evidence in the record sufficiently probative to make a fairly debatable issue of the decision to approve or deny a special use permit. *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 740 S.E.2d 548 (2013) (upholding approval of a special exception for a transit authority bus maintenance facility even though, among other arguments, the applicant failed to submit a list of hazardous or toxic substances as required by the county’s application requirements; the zoning regulations did not require the board to consider hazardous or toxic substances when considering a special exception); *Board of Supervisors of Rockingham County v. Stickley*, 263 Va. 1, 556 S.E.2d 748 (2002) (upholding denial of special use permit), followed in *Board of Supervisors of Fairfax County v. Robertson*, 266 Va. 525, 587 S.E.2d 570 (2003) (upholding denial of special exception); *CAH Holdings LLC v. City Council of the City of Chesapeake*, 89 Va. Cir. 389 (2014) (upholding denial of conditional use permit for a car wash even though the city’s planning staff and planning commission recommended approval, and the applicant’s noise expert stated that the car wash could comply with the city’s noise regulations, where the city council based its decision on the conclusion that the proposed use was incompatible with the nearby residential neighborhoods). This standard applies even if an applicant has produced evidence that a denial was unreasonable. *Robertson, supra*.

As applied to a denied special use permit, the courts will assume that the request for the special use permit is an appropriate use of the property and that the denial of the application is probative evidence of unreasonableness. *Board of Supervisors of Fairfax County v. Robertson*, 266 Va. 525, 587 S.E.2d 570 (2003); *County of Lancaster v. Cowardin*, 239 Va. 522, 391 S.E.2d 267 (1990); *County Board of Arlington County v. Bratic*, 237 Va. 221, 377 S.E.2d 368 (1989). At that point, “the dispositive inquiry is whether the [locality] produced sufficient evidence of reasonableness” to make the governing body’s denial of the permit fairly debatable. *Robertson*, 266 Va. at 533-534, 587 S.E.2d at 576; *Cowardin*, *supra*; *Bratic*, *supra*.

The fairly debatable test should be relatively easy to satisfy since the determination is not whether the applicant or the locality had more evidence supporting its position, but simply whether the locality’s decision was based on *probative evidence*. It is critical, therefore, that the legislative record contain evidence supporting the decision, and that the decision be based on probative evidence rather than opinion, fears, desires, speculation or conjecture.

From: Musxit@aol.com  
 To: davidastorner1@gmail.com  
 CC: blitz@albemarle.org, eivacorez@aol.com, crutchfieldjr@gmail.com, emallek@albemarle.org  
 Sent: 11/17/2017 12:14:13 P.M. Eastern Standard Time  
 Subj: Re: Agenda - Crozet CAC Meeting Wed Nov 15, Follow-Up Information

Dave -

I wanted to thank you for providing the opportunity to present the information about the pending application to amend the Re-Store'N Station Special Use Permit conditions #5 & #6 to the CCAC last night.

I have always made it a high priority to dedicate whatever time necessary to work with neighbors, listen and make adjustments to the extent possible and reasonable when involved with any land development project. I did it when building schools for Albemarle County and any development since that time. Most feedback is helpful to improve the design details for the property owner of the development property and the neighboring property owners.

At the CCAC meeting since the Special Use Permit "use" is well water and there is no site plan changes proposed, I focused on the water usage as the AC Land Use Handbook is clear and the revised conditions must be evaluated on that basis. I didn't present any information about the significant input and changes incorporated as a result of numerous meetings with neighbors and input received from staff, neighbors, ARB, PC and Board members throughout the process covering the past years. During the process prior to construction, the majority of revisions to the site plan design resulted from neighbor & public input. I regret this history was left out.

I am unable to just walk away from the CCAC meeting and leave out the significant history showing the evolution of the site layout over the duration of this process. A few individuals seemed intent that lack of addresses neighbor concerns should be reason to voice no support for the current application.

*If the CCAC members will take a bit of time to review the history, it hopefully will provide some understanding of how much effort was dedicated on both sides to working with the neighbors.*

I have attached the RS Time Line which started in 2008. I have boxed the events associated with specific input from all parties. Here is a summary of some of the most notable interaction with neighbors:

1. Initial Site Plan submitted in 2008-2010 - After meeting with the neighbors and hearing input at the ARB meeting:

- The site layout was totally re-designed to move the building from the east edge close to Free Town Lane & closer to RT250 to away from Free Town at central location. This was done to the extent possible respond to those neighbors even though the setback was less along Free Town Lane and there is no buffer strip required along that side.
- A buffer was created - as the vegetative strip along Free Town Lane was changed from being cleared of trees to preserving the existing trees (this is not a required buffer strip as the truck storage yard is also zoned HC). Initial Layout is included in the attachment.

Friday, November 17, 2017 AOL: Musxit

Friday, November 17, 2017 AOL: Musxit

Page 3 of 4

rather than RS. Regardless, the site plan was revised to cut off the pavement by approx. 40ft to create a distance of 85ft. The total distance from rear canopy to closest of the 5 neighbors that expressed concern is 295ft and ranges up to 479ft. Since the zoning required bldg set back is 50ft and this is approx doubled - this was voluntary. The store building is 185ft from rear property line. So double the setback to the canopy and almost 4 times the required set back to the main bldg exists today. This is greater than required even for industrial use. This was done as Ms. Malleck asked for the benefit of the neighbors at the rear.

5. Last year/ 2016 when Phase II was in process - I met with Ms. Haskins/Mr. Crutchfield at school then back at their house. Concerns were:

- Wanted to purchase a strip of land off the RS parcel where their driveway is located. (RS's water usage is calculated on acreage so this was not possible)
- Wanted the RS owner to fix the drainage culvert where driveway turns West. (Storm water runoff does not come from RS)

- The pole light at the rear East side was impacting their view.

This last concern was something that could be addressed with site plan revision.

To install a shorter pole with shielding and re-use the existing pole at the front when Phase II was built, reduce the hours the pole lights operated, and reduce use of the rear pump once the 2 were added under the front canopy with dual fuel. At the public hearing, they spoke in opposition. The BOS did not approve Phase II. These changes were not done.

Overall, the neighbor input resulted in changes that were compromises on both sides and all these changes did not relate to the Special Use Permit for water use but did pertain to site plan design. All done voluntarily as they did not relate to ordinance requirements.

The revisions were purposeful and all worthwhile to work with the neighbors. Regardless, there was support but not from the neighbors.

I don't have an expectation that this information will influence the CCAC to change their position but this is part of the public record and worth being considered.

I have worked with the Sprouse family on this project and others. Their family business of convenience store operation experience spans the past 30 some years and Michelle's parents did the same. At this point, it is 3 generations with their son, Logan, operating this store. The Sprouses go back several generations of Albemarle County residents. Navigating the development process in Albemarle County is one of the most complex. If they are not comfortable handling presentations/meetings and all the paperwork involved, this should in no way have negative impact on evaluating any application in process. Actually, consultants & land developers handle all the applications in AC and this is no different. I have many years of experience in the development process, site design, site construction, zoning & special use permits, understanding the rules and which apply in specific circumstances is what I do. We will continue to strive to comply with requirements that are imposed and hopefully receive relief from conditions that inhibit fair market competition as the water usage has been proven over a 2 year period to be 1/4 of what is allowed for this property. This warrants allowing the changes to conditions as requested.

If there are any questions I can answer or information I can provide, please advise.

Friday, November 17, 2017 AOL: Musxit

2. Mtg Jan 29, 2009 - At Old Trail & Follow up letter from Neighbors dated 2/3/11

- The feedback questions involved asking for more information on the "future" phase as it was info given at the mtg. This info was not hidden or left out - but since it was years in the future - there was no substantive info to provide. It was later required County Staff/ARB that the future phase notes/outline was to be removed from the site plan so it was clear that it would not be approved at that time. (note for ARB purposes only was not enough) See Attachment for Agenda & follow up letter

3. After SP approval in 2010 - During the Site Plan process when the more detailed design was started:

Mtg with VDOT and neighbors to address the Free Town Lane entrance at RT250.

- Working with VDOT & neighbors - VDOT pushed to consolidate the entrances. I actually defended the desires of the neighbors because it was not within their power to force their entrance to be removed. Two options were offered and I sent a letter to each asking for feedback. Four(4) property owners were not supportive to consolidate and provide access across RS so extending the decel lane past the RS entrance was a compromise. See 2nd Attachment - FreeTown-PropOwnerREsponses pdf file

- Regardless, an access easement to serve Free Town purposes was recorded in the land records and added to the site plan so a future connection was left open. (See Final site plan layout in attachment)

3. Mtg With Neighbors on West side: I sent a letter to request a meeting with 2 property owners on the other side (behind Moose Lodge) as it seemed the Free Town residents had lots of input but Ms. Haskins and Ms Whiting had a different view point. (Mr. Crutchfield was not a property owner at that time).

- We met on Saturday, Feb 19, 2011 - They preferred a privacy fence instead of trees and fence was added at edge of pavement to better address the visual screen at the higher grade instead of at the property line which was too low. In the follow up letter, the board on board fence was proposed and later approved by ARB. This style is most expensive but both sides look similar instead of looking at the backside of boards.

See Attachment - Rs.History includes Letter to Haskins/Whiting

4. Ms. Malleck mtg/more neighbor input: Ms. Malleck pushed for more changes to address the concerns of neighbors. This resulted in reducing the scale of the paved area, bldg changes, increased buffer at the rear by taking away paved area, delete 1 island under rear canopy, reduce scale/size of rear canopy, move recycle/dumpsters away from Free Town Lane. (Site plan BEFORE revision included in attachment and Final Site Plan)

Deleting island under rear canopy was to reduce service/view/noise at the rear canopy and increase clearance to homes. It was a compromise. I charted the home locations of the 5 property owners that had expressed specific concerns to get an idea of distance from home to rear property line. (Chart included in attachment)

7 homes are accessed via Free Town Lane. Only 2 parcels actually abut the RS parcel. There are 2 homes behind Moose Lodge/Pro-Renata and 1 of these touch the corner of RS parcel. There are also a few vacant parcels served by Free Town Lane.

The 200ft clearance to property line is the blue line. The distances to home location ranges from 200ft to 384ft. A couple homes are closer to and down gradient of commercial properties to the east

Best Regards - Jo

## Re-Store'N Station Time Line for HC Commercial Zoned Parcel

Summer 200 Sprouses demolished Existing Bldg because bldg repeatedly broken into to and could not be secured  
found camp fire inside where people slept there. Did not know water tap was tied to ext. bldg.

11/01/07 Request for Jurisdictional Area from Water Only to Existing Bldg to Water Only

04/02/08 BOS Mtg for Jurisdictional Area request - BOS decided to not take to Public Hearing.

Mar to Aug 20( Considered approx. 6 layouts, Did July Pre-Application Mtg, Mtg VDOT, Revised Site Layout 3 X

09/01/08 RS Site Plan Submitted - SITE DESIGN Reduced to 6KSF STORE W/OFFICE ABOVE/NE CORNER OF SITE

10/03/08 Tier III Groundwater Study to County - by Nick Evans Phd,CPG

11/04/08 Staff Comments - FROM WATER RESOURCE MGR/ J. Rubenstein 'EXCELLENT Tier III Groundwater Assess  
and CONFIRMED THAT NO SPECIAL USE PERMIT IS REQUIRED. (AFTER SUB TO HEALTH DEPT TOO)

11/16/08 MTG CCAC - present Project

11/17/08 Atty Zobrist letter (for Mr. Suh)Letter to PC & BOS/ StopReview/ non- compete clause in pvt contract

11/24/08 NEIGHBORS Mtg at Old Trail Club House

12/01/08 Staff coments fully addressed for Preliminary Site Plan Review

12/01/08 *First ARB Mtg - Didn't like bldg location & that area was reserved for future uses.*

12/03/08 **BOARD ACTION TO APPROVE SP2008-00033 SHADWELL MARKET TO ALLOW 1,000 GPD  
which equates to 847 GPD/acre on 1.18 acre. NO meter - No flow restriction device**

12/10/08 Water Resource Mgr - Josh Rubenstein - request for more water information (after neighbors input)

12/25/08 CCAC resolution to not support Yancey and not support Re-Store'N Station

01/15/09 ZONING Determination - R. Higgins Special Use Required

01/29/09 NEIGHBORS Mtg at Old Trail Club House

02/02/09 *Second ARB Mtg*

04/03/09 Attorney ZOBRIST letter to R. Higgins - good determination

04/13/09 Deferred BZA appeal of 1/15/2009 Determination (intention to work out new layout)

05/05/09 Jo Email to R. Higgins about intention to reduce store size & major site layout revision

05/18/09 *Third ARB Mtg - Work Session to totally revise the site layout*

09/19/09 ARTICLE IN CVILLE TOMORROW ABOUT CROZET POPULATION ISSUES

10/23/09 Major Site Plan change to Preliminary Site Plan -Moved Bldg, downsized canopies, downsized bldg.

11/17/09 ZONING Determination - R. Higgins Special Use Required eventhough all changes made

12/01/09 Preliminary Site Plan met staff comments except SUP - approved except for SUP & PC

01/20/10 Tier III Groundwater Study -letter amendment

02/01/10 *FOURTH ARB Mtg - Although improved worksession concept they liked - now issue with "scale"*

02/03/10 Ms. Joseph letter to PC/BOS/BZA - About the same info as Zobrist 11/17/08 & 4/3/09 letters

03/24/10 ZONING Determination - "domestic waste" and "by-right use" based upon 3/31/09 Determination

04/05/10 NEIGHBORS Mtg at site to look at view from rear & discuss

04/09/10 Attorney ZOBRIST filed appeal to BZA of 3/24

06/01/10 BZA upheld 3/24 Zoning Determination

06/08/10 PC Mtg re: Site waiver, Site plan, & Spec. Use - voted 4 to 2 to recommend denial

06/30/10 Attorney ZOBRIST filed appeal to Circuit Court of BZA decision 6/1/2010 (Zobrist represents Mr. SuH)

07/23/10 RESTRICTED Engineered Water system design submitted -reviewed by Engr, Zoning and Dep. Attorney

08/19/10 ZONING Determination - R.Higgins NO SPEC Use Required (as flow restriction is shown on Site Plan)

08/24/10 PC Mtg - where Mary Rice spoke under "matters not on the agenda" about R. Higgins

08/23/10 Attorney ZOBRIST letter for BOS to use influence /legal) filing against County and Staff (threaten tone)

08/27/10 ZONING Determination - withdrawn - Back on track for Spec Permit

09/01/10 Mtg Ms. Malleck/

11/03/10 BOS Approved Spec Use Permit for Water 1 GPD - with 9 Conditions

02/10/11 Free Town Lane - Letter to address entrance issues sent

02/19/11 Neighbor Mtg - Haskins/Whiting - Letter to follow up & changes made

02/21/11 Neighbor Letter to Follow up on issues - Whiting and Haskins

03/10/11 Neighbors-4 Responded to FTLane- Entrance options

03/14/11 AP2011-00002 Appeal to BZA by opponents to limit 2nd fir office to 1,000sf

05/03/11 BZA UPHELD ZONING DETERMINATION

06/08/11 BZA DECISION APPEALED TO COURT BY OPPONENTS (Suh V.Alb.Co)

08/31/11 ARB Certificate of Appropriateness Issued

07/13/12 Final Site Plan approved

12/17/12 Court Ruled that Second Floor office of 3000sf was not allowed so only 1000sf (could be built)

03/20/13 FINAL SITE PLAN APPROVED AGAIN WITH OFFICE DECREASED TO 1000SF

SEPT 2014 - STORE OPERATIONAL

10/01/14 PRE-APPLICATION MTG STAFF - ZONING ADVISED 1 YEAR OF WATER DATA REQUIRED

08/05/15 **BOARD ACTION TO APPROVE SP2015-00012 Mechum's Trestle to allow 5,000GPD  
which equates to 3,597 GPD/Acres on 1.39 acres -Only 1 condition - install meter.**

09/01/15 MANDATORY PRE-APPLICAION MTG FOR SP AMENDMENT (WITH 1 YR DATA)

12/04/15 SP AMENDMENT SUBMITTED & SP FOR DRIVE THRU (Drive thru revised & SP no longer required by Ord)

01/20/16 MANDATORY COMMUNITY MEETING

02/01/16 RESPONSE TO COMMENTS - REVISED SUBMITTAL

02/19/16 Requested Letter of Determination - Gas Pumps are not restricted by SP conditions

02/25/16 Notice of Violation - #5 - Store Hours limit - imposed on gas pumps & #8 - Overnight parking

3 /x/2 Determination - pumps are considered part of store operation (did not appeal as New App pending)

03/16/16 MTG WITH SW NEIGHBORS(CRUTCHFIELD/HASKINS)

06/07/16 PC MTG - STAFF RECOMMENDATION FOR APPROVAL - PC recommended denial to BOS

09/14/16 BOS - Motion to deny Failed 3-3 - deferred to Oct 12th for action item

10/12/16 BOS - Motion to deny Passed 6-0 (based upon non-water issues & idea that more water will  
be requested of future Board)

# RE-STORE'N STATION

Meeting 1 – 29 – 09 6:30 pm

## Guide

②  
Old Trail  
Golf Beds

### 1. Overview of Site Plan & Building Elevations

- a. Parcel boundary, septic fields
- b. Lighting – locations
- c. Building location – Entrance location
- d. Large Canopy – 5 islands
- e. Small Canopy - 3 islands
- f. Building Exterior Design Elevations
- g. Signage – monument, wall signs

### 2. Proposed Items to Address how to mitigate some of the negative affect to adjacent properties at rear

- a. Building footprint adjustment (ARB requested)
- b. Large Canopy – redesign, reduce islands down to 3
- c. Small Canopy – redesign, reduce islands down to 2
- d. Fence – Not required but discuss if desirable, type of fence, color, and potential locations
- e. Landscaping & Lighting – south & west buffer & buffer plantings and proposed east evergreen plantings – discuss if desirable
- f. Lighting – fixtures
- g. Storm water run off – Short term – sediment control & proposed design to eliminate an above ground sw detention basin.

### 3. Process & Timing –

- a. ARB and PC
- b. Site Plan

### 4. OTHER ITEMS - QUESTIONS

February 3, 2009

Ms. Jo Higgins  
Project Development Limited LC  
104 Ana Marie Blvd  
Waynesboro, Virginia 22980

Items boxed confirms that the information about future phase was presented. Since early in the process - the future phase was not fully designed or decided but that it was always intended was fully disclosed.

cc: Planning Commission, Board of Supervisors, ARB

Thank you for hosting an information session on January 29<sup>th</sup>, 2009 at Old Trail to review "Re Store 'n Station". The following points were covered during the meeting:

1. Convenience/grocery/deli store - 6,000 sq ft, 15 seats - no commitment to what it will be exactly
2. Upstairs office space - 1,000 sq ft
3. "Starbucks type" coffee bar
4. 58 parking spaces
5. 7 pumps, no change in pumps due to shorter canopy
6. A second building in the future parallel to the existing building on the west side of the site
7. A third building situated to the rear of the site directly next to Freetown property (offered only after questioned)
8. Water requirement for the total site to be less than 1,600 gallons per day (4 x 400)
9. All lighting to be "dark sky"
10. Underground storm water storage system - no size or calculations offered, document from supplier offered
11. Sprouse's willingness to put some sort of fence in the back proposed location closest to proposed store - with onset of future development this will be removed.
12. Issue of type of trees discussed - evergreen versus deciduous

The community of Freetown was offered for consideration point 2d and 2e, attached and identified above as 11. and 12. Until the site use and far more specific plans are available, feedback is impractical. The members would appreciate to have another session once this detail is available.

The following points were not answered:

1. Hours of operation?

4

2. Type of store and specific plans for interior layout and concessions/deli/restaurant/store?
3. With 7 pumps and 58 parking spaces, what will be the auto throughput expectation (traffic)?
4. Use of 2<sup>nd</sup> and 3<sup>rd</sup> building?
5. What level of noise will be created by delivery trucks and overnight parked tractor-trailers? Will overnight parking of tractor trailers be allowed?
6. Ownership - who will be the operator, Jeff Sprouse or someone else?
7. Does the architecture, since it is in the entrance corridor to Charlottesville, meet with the requirements of the ARB?
8. Are there outstanding issues to be resolved with the planning commission, the ARB or other governmental agencies for the approval of this project?

It is the request of the community to meet again once the open questions can be answered and when documentation and specific detail for the project can be offered.

The community is in the process of collecting comprehensive information on comparables to demonstrate that the site as proposed requires significantly more water and sewer than the requirements projected by the Store 'n Station proposal. The community intends to share this with the County staff as soon as this study is complete.

The community is totally against the project in the scale proposed and with the lack of detail of the specific use of the facility and the lack of detail on the use of the other space on the site.

We look forward to continuing the dialogue to find a solution that works for the Sprouse family and the community.

Sincerely,

Freetown Neighborhood Association & Yancy Mills Neighbors  
Crozet, Virginia

Project Development LLC

February 11, 2011

Ms. Erica Haskins  
6133 Rockfish Gap Turnpike  
Crozet, VA 22932  
RE: Property TM 55 - 107

Ms. Marilyn Whiting  
P. O. Box 577  
Crozet, VA 22932  
RE: Property TM 55 - 107A

Dear Ms. Haskins and Ms. Whiting:

We didn't get an opportunity to meet but I believe one or both of you may have attended the public meeting at the County Office Building on the Highway Commercial property, TM 55B-1, owned by Jeffries II LLC, that fronts on RT 250 that is being developed as Re-Store'N Station. I am the Project Manager on this project.

I believe you expressed concern about some interference with your existing driveway or how it may be impacted by the development plan for Re-Store'N Station.

Since your concerns and those of your adjacent neighbor may not be completely the same as the property owners located more to the East on Free Town Lane, I would like to meet with you directly to show you the development plan and explain what measures have been taken that pertain to your specific interests. We can go over any questions that you may have at this time or how things will be handled when the construction phase begins.

Please call me at 326 - 0334 and we can set a time and place to meet at your convenience. I will be happy to come to your property or possibly meet you in Crozet over a cup of tea.

I look forward to hearing from you.

Sincerely,

Jo Higgins, Project Manager  
Project Development LLC

Project Development LLC

February 21, 2011

Ms. Erica Haskins  
6133 Rockfish Gap Turnpike  
Crozet, VA 22932  
RE: Property TM 55 - 107

Ms. Marilyn Whiting  
P. O. Box 577  
Crozet, VA 22932  
RE: Property TM 55 - 107A

Dear Ms. Haskins and Ms. Whiting:

Thanks for taking the time to meet with me on Saturday. When we talked about the privacy fence, you wanted to know what it will look like. If you go to <http://woodshadesfencing.com>, there is a picture of the exact style and color that was submitted to ARB. The color is "rustic cedar" and style is shadowbox or "board-on-board" which is attractive from both sides. I printed that picture from the web site and enclosed it with this letter. This composite board product is intended to provide a maintenance free fence that will not deteriorate or need painting to keep it looking good. It is our hope that ARB will approve the color selection and style.

As we discussed, you indicated that you would prefer the 6ft privacy fence be installed along the left side of your driveway rather than planting trees. To make your preference known, please contact Summer Frederick at the County Planning Department. Her number is 296-5832 extension 3565 or email [sfrederick@albemarle.org](mailto:sfrederick@albemarle.org).

You can also call the County at 296-5832 and ask for David Benish. He may be able to talk with you about what is happening with the Yancey Industrial Park application. If access to public water and public sewer in the future is important to you for your property, David is the person to ask that your property be included in the "Growth Area". David indicated to me that the Moose Lodge has made a similar request.

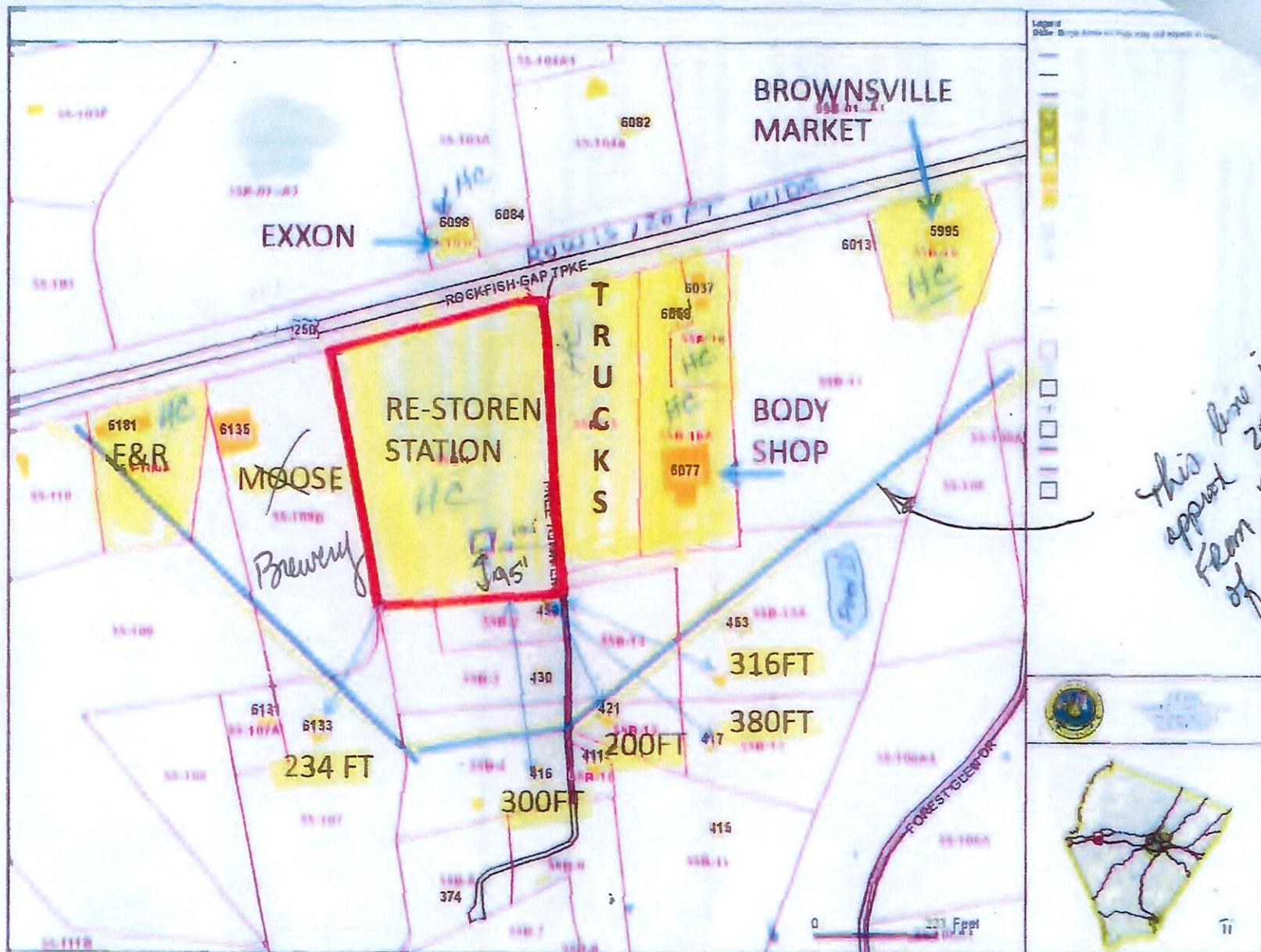
If you have any other concerns or questions, please feel free to call me.

Sincerely,

Jo Higgins, Project Manager  
Project Development LLC

*also concerned that mailbox is protected during construction of devel land.*

*met 2/19/11 @ Whiting yard*



Distances measured from Prop. Line to Neighbors that have raised issues





