

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF FEBRUARY 1, 2010 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM**

**MEMBERS PRESENT**

Reid Cummings, Chairman  
William Guess  
Vernon Coleman  
Adam Metcalf  
Russell Riley\*  
\*supernumerary member

**MEMBERS ABSENT**

Sanford Davis  
J. Tyler Turner\*

**STAFF PRESENT**

Bert Hoffman, Planner II  
Tony Felts, Planner I  
Sondi Galanti, Secretary I

**OTHERS PRESENT**

John Lawler, City Attorney  
Butch Ladner, Traffic Engineering  
David Daughenbaugh, Urban Forestry  
Gerard McCants, Urban Forestry

The notation *motion carried unanimously* indicates a consensus, with the Chairman voting.

**CALL TO ORDER:**

Chairman Cummings advised all in attendance as to the policies and procedures of the Board of Zoning Adjustment. He noted the number of members present constituted a quorum with the supernumerary member voting and called the meeting to order.

**APPROVAL OF MINUTES:**

The Chair announced that minutes had been presented for approval. Mr. Coleman moved, with second by Mr. Guess, to approve the minutes from the following, regularly held, Board of Zoning Adjustment meeting:

- July 7, 2008

The motion carried unanimously.

**PUBLIC HEARINGS:**

**February 1, 2010  
Board of Zoning Adjustment**

**#5596/5457/4570  
(Case #ZON2009-03042)**

**Charter South, Inc.**

810 Dauphin Island Parkway

Southwest corner of Dauphin Island Parkway and Halls Mill Road

**Front Yard Setback Variance to allow the construction of a convenience store to the front property line in a B-3, Community Business District; the Zoning Ordinance requires a minimum 25' front yard setback for all structures in a B-3, Community Business District.**

The Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Mike Kinard, Charter South Inc., 215 Distribution Drive, Mobile, AL, spoke on behalf of the applicant. He noted that in 2008, a variance for this matter had been granted; however, that variance had expired. He also noted they would like it re-instated for one year, rather than the six months previously stated.

The Chair asked the staff if the previous variance was only granted for six months.

Mr. Hoffman advised that typically variances were granted with a six month window for them to be acted upon, and if permits were not gotten within that time frame, then the variance did expire.

The Chair asked if the conditions for approval listed with the report were the same as for the previous approval and staff advised they believed they were.

The Chair stated that as the permits had not been pulled within the prior six month period, and based on his understanding of the issue, they might not be pulled within the next six months, what motivated the applicant to make the request now as opposed to wait until such time as they were actually ready to pull those permits.

The Chair asked if a time frame allowing the variance to remain valid for an entire year could be attached to the request, should the Board choose to approve the matter.

Mr. Lawler stated the six month period might be stipulated in the Board of Zoning Adjustment by-laws. He added that at the end of the six month period, the applicant was free to return to the Board to have it re-instated. He noted that might be an excellent way of monitoring the matter as well, to assure that some effort was being made to get the matter done.

The Chair noted that Mr. Lawler was correct in that assumption, and that being said was the applicant in agreement with the conditions as stated by the staff.

Mr. Kinard stated they were.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

**February 1, 2010  
Board of Zoning Adjustment**

A motion was made by Mr. Coleman, with second by Mr. Metcalfe, to approve a 0-foot front yard setback along Halls Mill Road for the standard six (6) months as stated in the by-laws, subject to the following conditions:

- 1) **completion of the subdivision process prior to the issuance of any permits or land disturbance activities;**
- 2) **revision of the site plan indicating the actual right-of-way width (after dedication) of Halls Mill Road;**
- 3) **revision of the site plan to remove all maneuvering area from the right-of-way, or the submission and approval of a right-of-way use agreement through the Engineering Department;**
- 4) **the provision that the percentage of landscaping and the number and location of tree plantings are required to the best degree possible to be approved by Urban Development, Urban Forestry, and Traffic Engineering;**
- 5) **the provision that the developer make a donation to the tree bank for all frontage trees waived; and,**
- 6) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

**#5597**

**(Case #ZON2010-00002)**

**Pete J. Vallas**

3700 Tuthill Place

West terminus of Tuthill Place extending to the East side of College Lane [unopened right-of-way]

**Rear Yard Setback Variance to allow the construction of a raised brick terrace with enclosed storage room and stairs within 5' of the rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum 8' rear yard setback for all structures in an R-1, Single-Family Residential District.**

The Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Pete Vallas, architect, spoke on behalf of his clients, the Radcliffs, and made the following points for the matter:

- A. the Radcliffs purchased the house which came with some existing negative conditions, the worst of which was an existing wooden deck, which they hope to get rid of, noting the existing deck extended over the eight foot setback line, almost touching the property line;
- B. would like to demolish the existing deck and replace it with something more permanent, and proposed a brick retaining wall with brick stairs and a terrace a top it; and,

**February 1, 2010**

**Board of Zoning Adjustment**

- C. it was noted that to do the proposed brick structure within eight feet of the property line, they would not have enough space for an adequate terrace, which is why the variance for a five foot setback was requested.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

A motion was made by Mr. Coleman, with second by Mr. Guess, to approve the above referenced request.

The motion carried unanimously.

**#5598**

**(Case #ZON2010-00016)**

**Paul Schwarzenberger**

4609 Bit and Spur Road

South side of Bit and Spur Road, 150'± West of the South terminus of Hawthorne Place

**Side Yard Setback Variance to allow an existing structure within 4' of a side property line after subdivision in an R-1, Single-Family Residential District; the Zoning Ordinance requires all structures be a minimum of 8' from a side property line after subdivision in an R-1, Single-Family Residential District.**

The Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Jerry Byrd, Byrd Surveying Company, spoke on behalf of the applicant. He noted that the two lot subdivision had been approved by the Planning Commission subject to the applicant getting a variance for the matter and that nothing would physically change about the property in question.

The Chair asked what would be done with the back piece of property.

Mr. Byrd advised that the applicant was trying to sell the entire property and that it was hoped that by creating the two lot subdivision, he could offer the house with property at a lesser price and retain the other lot to possibly sell as a buildable lot.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments.

Wayne Sirmon, 4617 Bit and Spur Road, Mobile, AL, spoke in opposition to the matter. He noted that when he purchased his home, one of the restriction listed in the neighborhood restrictive covenants was that no lot could be subdivided. He also questioned the validity of discussing and voting on the matter because as a neighbor, he had not been notified.

The Chair noted the subdivision had already been before the Planning Commission and had been approved subject to approval of the variance being heard that day.

**February 1, 2010**

**Board of Zoning Adjustment**

Mr. Hoffman stated, with regards to the restrictive covenants for the neighborhood, that the enforcement of private covenants was a matter for civil court and not within the purview of the Board of Zoning Adjustment or Planning Commission. He also stated that he did not remember anyone attending the Planning Commission meeting where the matter was heard to raise this issue, either. He noted that notification for Board of Zoning Adjustment variances was those neighbors within 300 feet from the site in question and for Planning Commission subdivisions; it was those neighbors adjacent to the site.

Mr. Metcalfe asked how old the Bit and Spur Wood subdivision was.

Mr. Byrd advised he believed it to be 1963.

Hearing no further opposition, the Chair opened the matter for a motion.

A motion was made by Mr. Metcalfe, with second by Mr. Coleman, to approve the above referenced request, subject to the following condition:

- 1) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**#5599**

**(Case #ZON2010-00027)**

**Charles Boggan**

175 2<sup>nd</sup> Avenue

Northwest corner of 2<sup>nd</sup> Avenue and Avenue C

**Use Variance to allow a mobile home in an R-1, Single-Family Residential District; the Zoning Ordinance allows mobile homes in an R-1, Single-Family Residential District with Planning Approval.**

The Chair announced the matter, advising it had been recommended for denial and that the applicant should address the Board regarding the subject at that time.

The Chair noted the Board had received a letter written January 4, 2010, and that all of the members should have a copy of that letter at their chairs. He noted after reading the letter that there were a number of the neighbors in support of the matter.

Dina Williams, 175 2<sup>nd</sup> Avenue, Mobile, AL, stated she moved her trailer, with the permission of Mr. Boggan, to the property some three months prior. She stated that move was made when her trailer park at the time was condemned and closed. She noted she currently lived in the trailer, but only part time.

The Chair asked if Ms. Williams had discussed with the utility companies whether or not it was possible to hook those up to her trailer.

Ms. Williams stated there were old physical hook ups in place as there had been a couple of trailers on the property a number of years before and to her knowledge those could be used at

**February 1, 2010**

**Board of Zoning Adjustment**

this time, as she was currently receiving power to the trailer via the service pole located on the property for just that.

Charles Boggan, and his daughter, Charlotte Boggan O'Connor also answered questions from the Board.

Mr. Boggan stated the property had been in his family for many years, noting that two of the previous trailers had been homes to his son and daughter respectively.

The Chair asked the last time a trailer unit was in place on the property.

Both Mr. Boggan and his daughter felt in within the last year.

The Chair asked if the wheels and axels were still attached to the trailer and Ms. Williams advised they were.

Mr. Felts advised the Board that though there were trailers located on the site previously, there was no trailer present on the property at the time of annexation. He also advised that the Planning Department had not signed off on any documents that would have authorized having power to the trailer.

Charles Ray, a neighbor, stated he hoped the Board would allow this. He added he owned a good bit of property in the area and hoped to be able to put trailers on his property and felt this would clear the way to do so.

The Chair asked the staff if this was also a matter to be heard by the Planning Commission and Mr. Felts advised it had already been heard and denied by them. He added that the Commission felt the Planning Approval request was not in keeping with the rest of the area and referred it to the Board of Zoning Adjustment for variance approval.

The Chair asked if there were any more questions from the Board. Hearing no further, he asked if there were those in opposition to the matter and opened the floor to their comments.

James E. Walker, 164 Third Avenue, Mobile, AL, and a neighbor of the property, expressed his opinion that the R-1 zoning classification was in place to protect property owners so that future development and expansion was planned in accordance with proper insight to the area. He stated it was his understanding that the R-1 classification would serve to protect from the influx of trailers in the area as such would deter others from building stick houses. He also noted that information shown on the aerials was incorrect as there were junk yards currently located in the area.

Mr. Hoffman noted the aerials were from 2006 and inasmuch might contain out-of-date materials. He also stated that prior to each case, staff went out to do a land use update, but that they only canvas within a few blocks of the site in question, so the information Mr. Walker had, they might not have received. He also advised that when an area was annexed, all of the known, existing uses at the time are grandfathered in.

**February 1, 2010**

**Board of Zoning Adjustment**

Mr. Metcalfe asked the applicant if the trailer in question was his trailer. He was advised it was the applicant's tenant's trailer.

Mr. Metcalfe expressed his sympathy for the tenant and asked if the Board, in its ruling, could allow the applicant some time to re-locate the trailer in question and was advised that was within the Board's discretion.

Mr. Guess asked the staff, with regard to the newly annexed area, if, because of the annexation, property immediately lost its non-conforming status, or if it continued for the standard duration.

Mr. Felts stated that the annexed property would enjoy its non-conforming status for the two year standard. He added that as there was no trailer in place at the time of annexation, the point of non-conforming status was moot.

Mrs. O'Connor, Mr. Bogan's daughter, stated they were diligently trying to make improvements to the trailer and property and begged the Board's indulgence in the matter. She added that the variance is only being requested for the specific trailer involved as the tenant has no other options for housing at this time. She stated that Mr. Boggan had also written a sworn statement that this would be the only trailer he allowed on his property and that once it was removed, no further trailers would be placed upon the lot.

Mr. Hoffman offered that rather than deny the case with a time limit on when the trailer was to be removed, that the Board could approve the variance with a time limit on the trailer. He reminded the Board that such a thing had been done by them before. He added that if the Board were in favor of doing such as that, the condition offered by staff would be being subject to all appropriate permits.

Ms. Williams read a heart wrenching plea to the Board in favor of the variance.

The Chair noted for the record Ms. Williams' situation, as well as noting the kindness and generosity of Mr. Boggan. He also reminded everyone that guidelines for granting a variance very clearly stated that financial hardship was not to be used as a reason for granting a variance.

Mr. Metcalfe asked if the matter was denied but the tenant was allowed a specified amount of time to find another lot for the trailer, could a permit be granted so that she might have running water at the trailer.

Mr. Hoffman stated being granted a permit on a denied matter would be very difficult.

Mrs. O'Connor stated there was water for the trailer at the site, however, due to financial reasons, the water had not been hooked up.

Mr. Hoffman brought out the fact that in the Mobile area, mobile homes had to meet certain wind zone requirements and that the mobile home in question had not been checked for that.

The Chair noted that all of the conditions discussed would require additional money, the very thing the tenant was lacking in and the major factor in why the situation had disintegrated to its current status.

**February 1, 2010**  
**Board of Zoning Adjustment**

Hearing no further discussion, the Chair opened the matter for a motion.

A motion was made by Mr. Guess, with second by Mr. Metcalfe, to approve the above referenced request for a limited time frame, to expire on August 15, 2010, subject to the following conditions:

- 1) provision of a copy of the receipt from the company utilized to move and setup the mobile home no later than at the time of permitting, required below;**
- 2) obtaining of Building, Electrical, Plumbing and Mechanical permits as required for the placement and hook-up of a mobile home; and,**
- 3) obtaining of approval from the Mobile County Board of Health if, in fact, the mobile home will be hooked up to a septic tank system.**

**OTHER BUSINESS:**

There being no further business, the meeting was adjourned.

**APPROVED:**            August 2, 2010

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Chairman of the Board

/jsl