

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF MAY 5, 2008 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM**

**MEMBERS PRESENT**

Reid Cummings, Chairman  
William Guess  
Vernon Coleman  
Sanford Davis  
Mack Graham  
Russell Riley\*  
\*supernumerary member

**MEMBERS ABSENT**

J. Tyler Turner\*

**STAFF PRESENT**

Caldwell Whistler, Planner I  
Derek Peterson, Planner I  
Joanie Love, Secretary II

**OTHERS PRESENT**

John Lawler, City Attorney  
David Roberts, Traffic Engineering

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

Chairman Cummings called the meeting to order and advised all in attendance as to the policies and procedures of the meeting. He noted the number of members present constituted a quorum and that all present would vote. He then called the meeting to order.

**HOLDOVERS**

**#5457/4570**

**(Case #ZON2007-02853)**

**Chartersouth, 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 gasoline pump canopy within 4' of a front property line in a B-3, Community Business District; a 25' front yard setback is required for all structures in a B-3, Community Business District.**

Mike Kinnard, 215 Distribution Drive, Birmingham, AL, spoke on behalf of CharterSouth and made the following points in favor of the variance:

- A. the property has been subdivided into two lots, with the cell tower was on one lot and other lot for separate use;
- B. the Department of Transportation had given them a letter stating that the 25 foot setback originally requested by the Department of Transportation would not be needed; and,

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- C. the applicant would like to have a 0 foot setback on the 25 feet that is located on Halls Mill Road.

The Chair stated the following:

- A. the case had been before the Board previously and the issue was the canopy extending into the right-of-way and that the applicant was going to relocate or reconfigure the location of the canopy; and,
- B. the other lot that was along Halls Mill Road which has been subdivided into one lot.

Mr. Kinnard stated that the lot had been subdivided into 2 lots. He stated that the purpose for the variance was to get a 0 setback on the 25 feet of frontage located on Halls Mill Road.

The Chair referenced the site plan and asked if the building extended beyond the black line as displayed. He also asked if the black line shown on the plan was the property line or was that line shown within the setback.

Mr. Kinnard stated the line was within the revised setback and indicated the edge of the building.

The Chair asked if the applicant was asking for an encroachment over the setback line as was advised yes.

Mr. Guess asked what the distance on the encroachment was and was told by the applicant it was about 25 feet.

Mr. Guess and Mr. Cummings asked for clarification on how much the building would be encroaching on the setback and how much it extended.

Mr. Kinnard stated that it was between 10 and 12 feet.

Mr. Coleman asked from where the distance was being measured and Mr. Kinnard replied that it was measured from the right-of-way to the center of the road and from right-of-way to right-of-way.

Mr. Peterson advised that the bold line mentioned on the site plan was actually the right-of-way because it was 50 feet from the center of the road and that they would encroach on the setback line. He added that the broken line represented the 25-foot setback line.

The Chair expressed his opinion that the applicant was encroaching on the right-of-way instead of the setback which Mr. Peterson confirmed as correct.

Justin Smith, Saad & Vallas, also representing the applicant stated that what appeared to be the building on the site plan was present only for illustrative purposes and that he did

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not believe it actually represented the building and was only on the site plan to show angles with Mr. Kinnard in agreement with those statements.

The Chair asked the building in question encroached upon the right-of-way as the applicant referenced it on the site plan to which Mr. Peterson responded yes.

Mr. Kinnard replied the building did not encroach upon the right-of-way.

The Chair then asked what the triangle shaped area depicted on the site plan represented.

Mr. Kinnard said that he did not know so it should not be present on the site plan.

The Chair asked if the building was shaped like a rectangle.

Mr. Kinnard replied that the building was shaped like rectangle with the back corner cut off at a 30 degree angle on the property line.

The Chair then stated that it was the Board's understanding then that the applicant wanted to have a zero lot line on their property line that ran parallel to the right-of-way adjacent to it to which Mr. Kinnard advised yes.

The Chair noted the difficult nature of working with the site due to its size and shape and that the applicant had done very well with it so far. He then asked if the cell tower located on one of the lots encroached on the right-of-way and was advised that the fence did encroach on the right-of-way.

Mr. Smith advised that the smaller lot where the cell tower was located was not part of the development his client was pursuing, and in as much he hoped that the Board would not regard it as a factor when considering approving the matter before them now.

The Chair after review the material further advised the Board that the smaller parcel should not be considered as part of the variance before them that day and said the Board should focus on the larger property with the building that appeared to have a corner that was located on City property.

Mr. Peterson added that not only was part of the building located on the City's right-of-way but there were parking spaces located there as well as some of their required landscaping trees.

The Chair expressed his frustration over how the site had been presented to the Planning Commission so that it received their approval, but that approval has basically made the property unusable because of the conditions stipulated by that approval.

Mr. Lawler advised the Board that based on all of the facts present this was a classic case of property needing a variance from the Zoning Ordinance to be useful to the property owner, specifically based upon the current shape of the lot.

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Mr. Coleman asked if the impact of the proposed use on the surrounding community could be considered as a factor and Mr. Lawler advised it could. Mr. Coleman then went on to say that as he lived in the area, the proposed development would have a very positive impact on the community as it will open that property up visually which will improve the traffic safety of the area.

David Roberts, City Traffic Engineering Department, stated that his department would like to see any trees or shrubbery located in the right-of-way removed to prevent any “line of sight” issues along Hall’s Mill Road.

Hearing that the Chair noted that the site had little to no space for the required landscaping and wondered how to provide for that as required by the City as well as allow the owner the ability to use their property to its best ability.

Mr. Whistler said that the Board could require as many trees as possible on site and the remainder of the trees could be donated to the City’s tree bank because he cannot give any specific number of trees without seeing a final site plan. He stated it was not the intent of the staff to “short change” the City in this regard nor was it their desire to cause the applicant to revise the site to make room for trees.

The Chair said that he could accept compliance with either on site or tree bank for the trees at the discretion of the Urban Forestry Department. He also stated that the trees could be placed on site with the remainder of the trees to go to the tree bank.

Mr. Kinnard responded they were agreeable with that condition.

Hearing no further opposition or pertinent discussion, a motion was made by Mr. Coleman, with a second by Mr. Davis, to approve the variance for the 0-foot Front Yard Setback along Halls Mill Road at the above referenced location, subject to the following conditions:

- 1) **the provision of all required parking be located on the site;**
- 2) **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;**
- 3) **the provision that the developer make a donation to the tree bank for all frontage trees waived; and,**
- 4) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**PUBLIC HEARINGS:**

**#5466/5399**

**(Case #ZON2008-00892)**

**R. D. Lowe's Painting**

**3221 Halls Mill Road**

South side of Halls Mill Road, 120'± West of Darwood Drive

**Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in a B-3, Community Business District; parking and access/maneuvering areas must be asphalt, concrete or an approved alternative paving surface in B-3, Community Business Districts.**

Don Williams, Williams Engineering, spoke on behalf of the applicant, R.D. Lowe, and gave the following points:

- A. Mr. Williams stated that the project had been previously approved last January, but the project was not started during the approval period.
- B. he stated that nothing had changed and that they were asking to be granted the previously approved variance.

Hearing no further opposition or pertinent discussion, a motion was made by Mr. Coleman, with a second by Mr. Graham, to approve the variance.

The motion carried unanimously.

**# 5467**

**(Case #ZON2008-00991)**

**Charles F. Hall**

**6505 Lighthouse Court**

South side of Lighthouse Court at its East terminus

**Side and Rear Yard Setback Variances to allow two storage sheds within 0.4' and 2.5' of a side property line, and to allow one of the sheds to within 4.4' of the rear property line; the Zoning Ordinance requires an 8' side yard setback and an 8' rear setback for structures in R-1, Single-Family Residential Districts.**

Mark Upton, 6401 Tokenie Trail, Mobile, AL, spoke on behalf of the property owners, Charles and Rita Hall, and made the following points in favor of the variance:

- A. the purpose for this variance was to request reduced side and rear yard setbacks to allow the construction of a second storage building which was ceased due to the Halls' attempting to get a building permit after starting construction and being told that they could not complete the building;
- B. he said that the building would be painted gray and be aesthetically the same as the existing building;

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- C. he stated that there were other buildings like it in the neighborhood and provided photos as proof for the Board.
- D. Referenced a photograph to note there was insufficient room due to the location of a tree and the position of the driveway which would not allow them to turn the building without being in violation of the setbacks, stating that he understood the Board has 3 different criteria to take into consideration when granting a variance, and added it would be necessary for the Board to see evidence that the variance would not be contrary to public interest.

The Chair asked what type of building was being discussed.

Mr. Upton said that it was a storage shed just like the one in the photograph which was 4 feet from the back property line. He commented that there were three different buildings, all located in Heritage Woods that existed in violation of the Zoning Ordinance or had been granted a variance, and that the applicants were simply asking the Board to approve their application, instead of selectively applying the Zoning Ordinance on a case by case basis. He added there was no opposition to his matter as none of their neighbors were there in opposition. He contended that each of the 3 criteria referenced earlier had been met and asked that the variance be granted.

The Chair asked if there was any proof of variances regarding the other exterior buildings Mr. Upton has indicated are in the area. .

Mr. Upton responded that he did not have any other evidence that variances were granted for the other storage buildings on surrounding properties.

The Chair said he did not think Mr. Upton should assume that a variance was granted in these instances. He stated that he should assume that the buildings were in violation and that the owners ordered them and had them placed on site without acquiring permits. He advised Mr. Upton that the pictures of the buildings do not prove that a variance was granted for the other surrounding properties.

Mr. Upton stated that he was not trying to make that assumption and that he would not represent to the court those as examples of granted variance.

The Chair asked if the staff had reviewed the pictures Mr. Upton had provided as proof of other exterior buildings in his neighborhood and if they knew of any variances being granted to properties in Heritage Woods for storage buildings in the last 10 to 12 years.

Mr. Whistler stated that he was not familiar with any, but that did not mean there were no variances granted.

The Chair advised that the Board did not want to appear to treat the applicant unfairly, but it was not know whether there were any variances for buildings of this type granted in his neighborhood. He stated that the Board was not aware of whether the buildings were

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there before the ordinance or if they were indeed in violation of the ordinance because they were placed on the site without permission. He commented that he appreciated what Mr. Upton had said and that the neighbors and the homeowner's association were all in favor of the application as that was not usually the case. He stated that the staff's contention would be that any hardship would be self imposed. He said that the issue did not arise until the new owners decided to construct another building on the site. He asked if the new owners remembered from conversations with the previous owners whether a variance was granted for the older building that was on the site when they purchased it, but commented that the existing building was not in compliance, either.

Mr. Upton responded that he had no knowledge of that.

The Chair asked if Mr. Upton wanted to add anything and was advised no, at which time the Chair stated that if there were any others in attendance who wished to speak on the matter to please do so at that time.

Mrs. Rita Hall, 6505 Lighthouse Court, Mobile, AL, owner of the property, addressed the Board and stated the pictures and information regarding other exterior buildings being in the neighborhood had been brought to the Board's attention due to being advised by the staff to do so.

The Chair responded the Board understood that the applicant wanted an exterior building and had received a permit to build it and that construction of the building had been stopped by a zoning official because the building had been placed in an area that was in violation of the setbacks imposed by the city. He said that completing and submitting an application for a variance did not guarantee it would be granted. He stated that the Board treated each case individually and tried to look at the whole body of evidence when making a decision, but the difficulty was determining the hardship for the property and that the hardship must be physical and economic. He added that the Zoning Ordinance is clear in stating that if the property cannot be used for anything other than what it is being used for it constitutes a hardship. He said that there was not a hardship for the property until the building was placed there.

Mr. Upton stated the following as points toward the issue of hardship:

- A. the loss of useable property by placing the building at the end of the driveway, as turning the building and putting it at the end of the driveway will effectively block off a lot of the property on that side; and,
- B. moving the building would not allow the Halls' to use their property as they wished to as well as making it difficult to maneuver out of their driveway.

Mr. Upton also commented that it seemed unfair that others in the area were allowed the continued use of their exterior buildings which it seems had been installed without permission while his clients were unable to have an exterior building because they had asked permission to do so.

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The Chair stated that due to this case, enforcement officials with the Urban Development Department had proof of other buildings in the neighborhood which were not in compliance and inasmuch would be writing municipal offense tickets to those property owners, who in turn would have to apply for variances for those buildings. He added that the Board applauded the Halls for doing it the right way. He said that the Halls' case made the City of Mobile aware of other buildings which are in violation. He then asked if any of the members of the Board had any questions for the applicant or the attorney.

Mack Graham commented that the staff report stated the building was built on the recorded drainage and utility easement which tied the Board's hands on their ability to grant the variance.

The Chair stated that Mr. Graham was correct in noting the building was built in the recorded easement and asked how the building was attached to the ground.

Mr. Upton responded it was attached to the ground by nine concrete blocks with four stakes holding it down.

The Chair asked for further questions from the Board, then asked Mr. Lawler whether he has any additions to what has been said and/or whether the Board was misinterpreting that case.

Mr. Lawler stated that it would be a judgment call on the part of the Board to determine whether or not this case posed a hardship. Mr. Lawler commented on the unusual shape of the property as grounds as had been used in previous cases, but stated that the Board could not approve a variance that involved a building placed in a utility easement. He said that hardship was determined when a property owner would not be able to utilize the property under the regulations that existed. He stated that a dimensional variance differs from a use variance because it focuses on health and safety and was not as high as a standard use variance. Mr. Lawler said that placing a storage building in a recorded drainage and utility easement would be a safety issue.

The Chair stated Mr. Lawler made a good point regarding the storage building being placed in an easement, but that he would entertain a motion to approve the variance subject to the building being relocated out of the easement.

Mr. Coleman commented if the motion were made to approve the variance, it would be subject to the building being located in a site other than the 6 inches that encroached on the easement. He also noted there was no opposition from the neighbors and that the building has already been constructed and moved to approve the variance subject to it being moved to clear the easement, with Mr. Davis seconding the motion.

The Chair stated a motion had been made to grant the variance, subject to the building being relocated to an area that did not encroach on the drainage and utility easement across the rear of the property and asked if there was a second.



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Mr. Davis asked if there were neighbors present and in favor of this case to please identify themselves.

Mrs. Janice Britton of 6517 Lighthouse Court, Mobile, AL, was present for this case, with the Chair noting such for the record.

Hearing no further opposition or discussion, the Chair called to vote to approve this application.

The motion carried unanimously.

**# 5468**

**(Case #ZON2008-01041)**

**Southern Earth Sciences, Inc**

**3500 Government Boulevard**

North side of Government Boulevard Service Road, 560'± West of West I-65 Service Road South

**Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in an I-1, Light Industry District; parking and access/maneuvering areas must be asphalt, concrete or an approved alternative paving surface in I-1, Light Industry Districts.**

The Chair called for the applicant or their representative and none was present, at which time Mr. Guess suggested that the case be held over.

The Chair stated the applicant, a former member of the Planning Commission, had received proper notification of the meeting and was aware of its occurrence, then asked who the engineer of record was for the project and if anyone had spoken with the engineer regarding the case.

Mr. Whistler and Mr. Peterson responded Frank Dagley, Frank A. Dagley and Associates, was the engineer of record and that Mr. Peterson had not spoken with Mr. Dagley that day.

Upon hearing this, Mr. Coleman moved, with second by Mr. Davis, to hold the application over for 30 days.

Hearing no opposition or discussion, the Chair called the vote on the matter.

The motion carried unanimously.

# 5469

(Case #ZON2008-01054)

Volkert and Associates, Inc.

1705 Conti Street

South side of Conti Street, 450' ± East of Hannon Avenue

**Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas at a waste water pumping station in an R-1, Single-Family Residential District; parking and access/maneuvering areas at a waste water pumping station must be asphalt, concrete or an approved alternative paving surface in R-1, Single-Family Residential Districts.**

Ray Miller, Volkert and Associates, spoke on behalf of the applicant and discussed the following points:

- A. Volkert and Associates was the consulting engineers for the Mobile Area Water and Sewer who planned to acquire this lot from Mr. Forrest and construct a waste pump station at the site;
- B. the applicant had received approval from the Architectural Review Board with Mr. Forrest permission to construct the lift station according to the requirements of the Architectural Review Board with the understanding that a gravel or crushed stone driveway would be suitable to the historic nature of the district, especially due to the non-routine access;
- C. the applicant had applied to the Planning Commission for and received approval, subject to the approval of the variance by the Board of Adjustment, for the driveway surface; and,
- D. the purpose of this variance is to resolve the differences between their understanding of the requirements of the Architectural Review Board and the Planning Commission on the driveway surface.

The Chair asked if there were any questions from the Board.

Mr. Coleman asked if the applicant would be required to have either an asphalt or concrete driveway surface if they were not approved to have a variance.

Mr. Whistler commented that they could use asphalt, concrete, or another approved alternative surface if the variance were not granted.

Mr. Coleman asked if the main concern regarding the aggregate surface was whether it would be porous and allow proper drainage without shifting.

Mr. Whistler stated that stated that an aggregate surface would be similar to the surfaces at the Mitchell Center or Ladd Stadium.

Mr. Coleman asked Mr. Miller if he was familiar with the type of surface being discussed.

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Mr. Miller stated that he was not familiar with the type of surface being discussed.

Mr. Coleman stated that it was a grid that allowed grass to grow through the grid.

Mr. Miller said that he and the Water Board had thought a crushed stone access drive would be more suitable for the district, but stated that they may have misunderstood. He stated that his firm and the Water Board felt they had been given conflicting guidance, but they were willing to do whatever the Board required.

The Chair asked Mr. Miller if they would be willing to pave the site if the Board required paving. He said that Mr. Miller felt that the Old Dauphin Way Historic District preferred an aggregate surface.

Mr. Miller said that was their understanding and it was the reason for the application being presented in this manner because it had been approved by the Architectural Review Board and the Planning Commission, with the condition of the approval of the variance by the Board of Zoning Adjustment.

Mr. Whistler said that the Zoning Ordinance allowed for gravel surfaces in the Hank Aaron Loop through a Planning Approval, but outside of the Hank Aaron Loop, except in I-2, the Architectural Review Board considered gravel for aesthetic purposes in the district.

Mr. Guess asked what size vehicles would be accessing the site.

Mr. Miller stated maintenance technicians that serviced the site would probably be driving pickup trucks.

Mr. Guess inquired if there would be any large vehicles on the site.

Mr. Miller stated when maintenance was required, there would be vehicles of a larger scale at the site such as a boom truck or a heavy piece of equipment to replace a pump, but routinely there would be pickup trucks or standard vehicles at the site.

Hearing no further opposition or discussion, a motion was made by Mr. Guess, with a second by Mr. Coleman, to approve this application, at which time the Chair called the vote.

The motion carried unanimously.

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**OTHER BUSINESS:**

There being no further business, the meeting was adjourned.

**APPROVED:**

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Reid Cummings, Chairman

jsl