

APPLICATION NUMBER

5596/5457/4570

A REQUEST FOR

**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.**

LOCATED AT

810 DAUPHIN ISLAND PARKWAY

(Southwest corner of Dauphin Island Parkway and Halls Mill Road)

APPLICANT

CHARTERSOUTH, INC

OWNER

OLLIE GOMILLION

BOARD OF ZONING ADJUSTMENT

February 2010

The applicant is requesting a 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.

This site came before the Board in May 2008 to allow the construction of both the convenience store and a pump canopy within the front setback. After much discussion, the Board denied the canopy setback waiver and approved a 0' front setback for the convenience store, subject to several conditions. It should be noted, however, that the approval expired in November 2008; the applicant has now resubmitted the site plan as previously approved.

The site is located at the intersection of Halls Mill Road and Dauphin Island Parkway, both proposed major streets. The 1.41 acre lot is roughly triangular in shape with significant frontage on both streets. The applicant plans to demolish the existing structures (car wash, auto parts store, miscellaneous retail) and construct a modern Texaco Convenience Store with gasoline pumps under a canopy. The site was approved in the past for a two-lot subdivision to separate the existing Telecommunications Tower from the subject site and avoid a Planned Unit Development application. Conditions of the subdivision approval included the dedication of 50' from the centerline of Halls Mill Road. The applicant maintains that, given the unusual shape of the lot and the right-of-way dedication, they are still unable to meet the required setback from Halls Mill Road for the convenience store.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

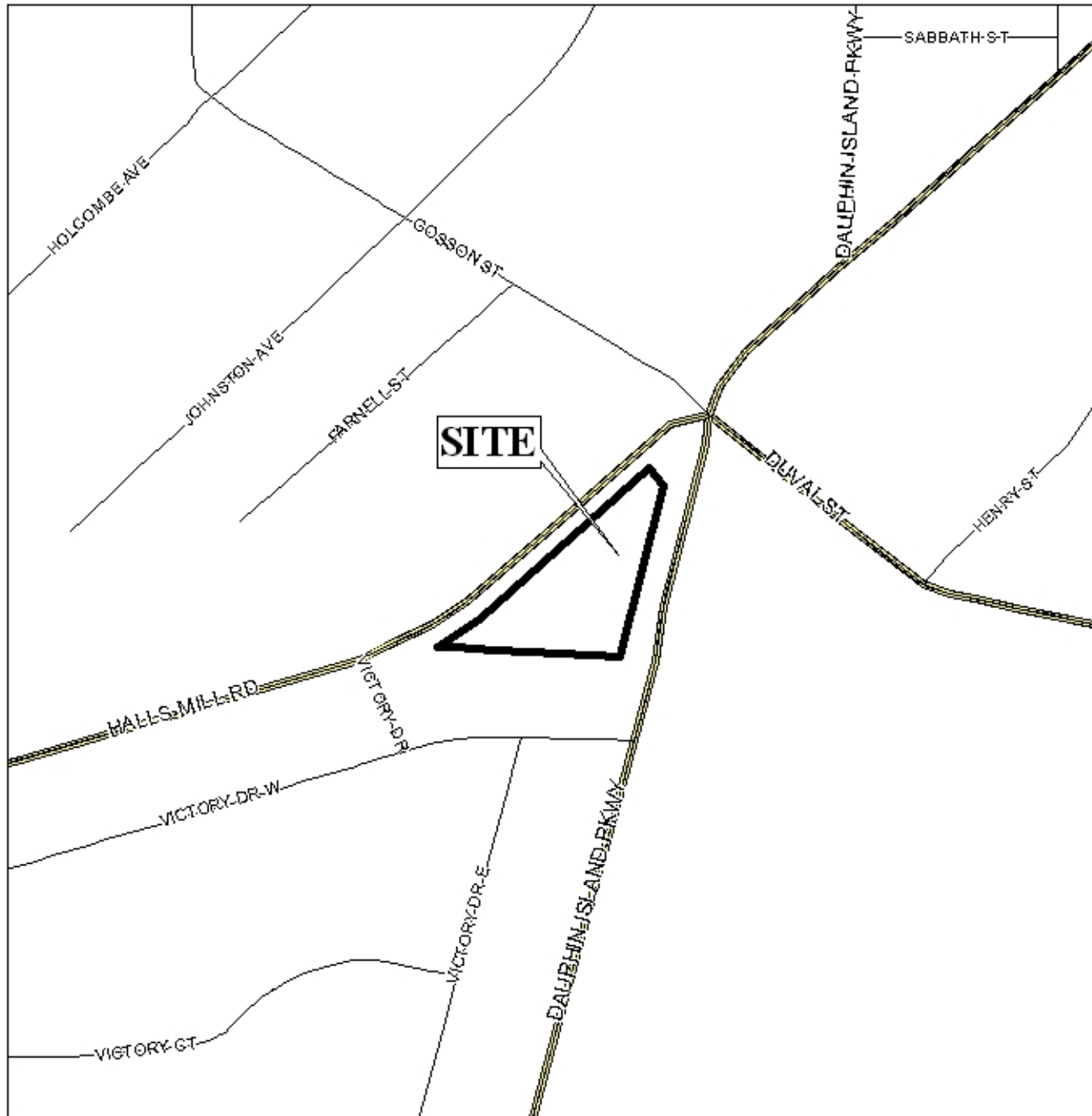
With regards to the applicant's request, staff cannot ignore a previous approval by the Board; this should justify re-approval, subject to the original conditions of approval. However, staff has a few concerns with this site in general. First, while the right-of-way dedication appears to have been provided (per Subdivision condition of approval), the site plan still illustrates Halls Mill Road with only 55' of right-of-way. Second, the final

subdivision plat for the site has been signed but not yet recorded. Finally, as illustrated on the site plan, some of the maneuvering area for the site is located within the right-of-way; this is typically not allowed. The applicant should remove this area or obtain a right-of-way use agreement through the Engineering Department. No permits shall be issued until these concerns have been addressed.

Based on the preceding, this application is recommended for approved, 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.

LOCATOR



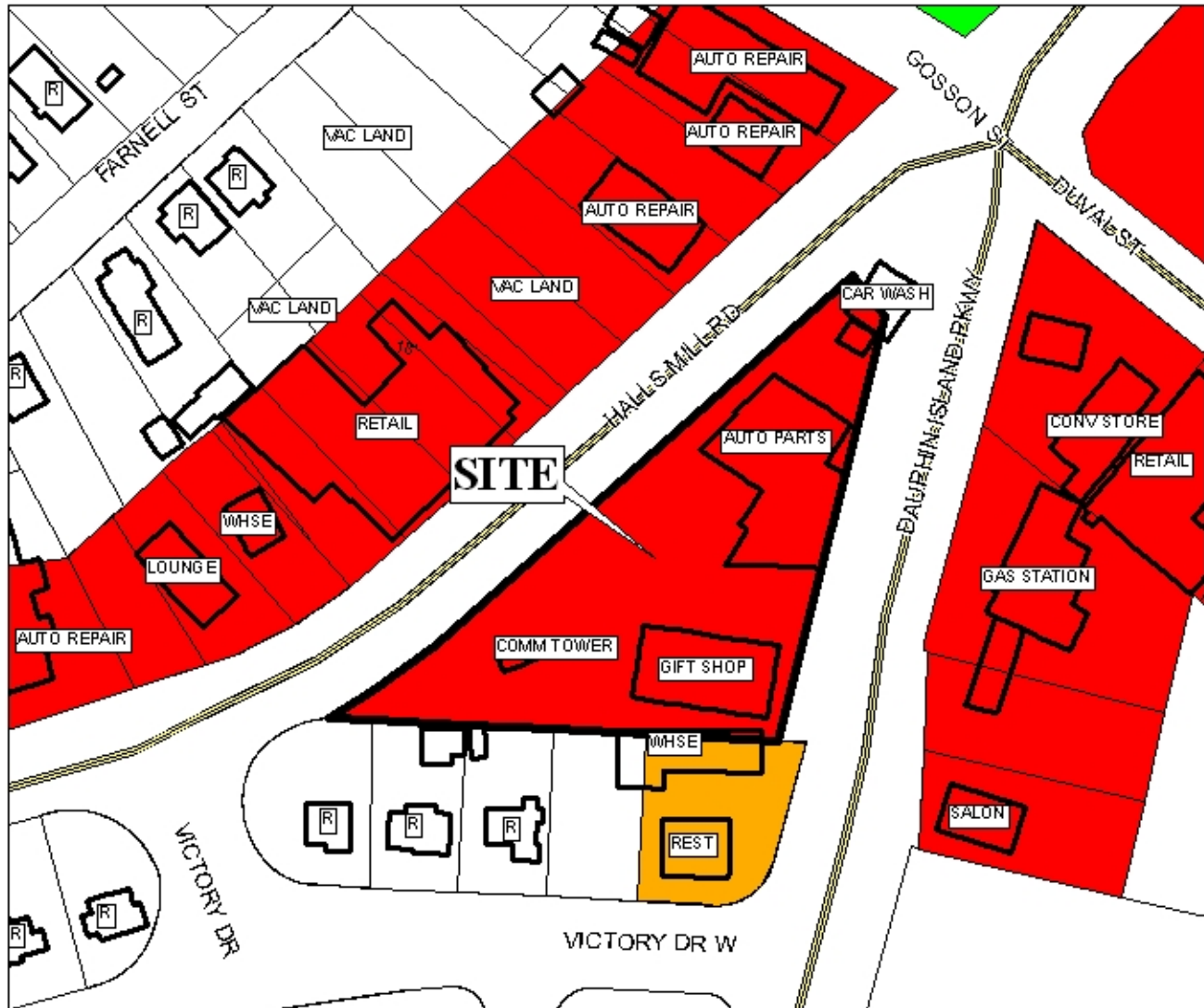
APPLICATION NUMBER 5596/5457/4570 DATE February 1, 2010

APPLICANT Charter South, Inc.

REQUEST Front Yard Setback Vaiance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by miscellaneous land use.

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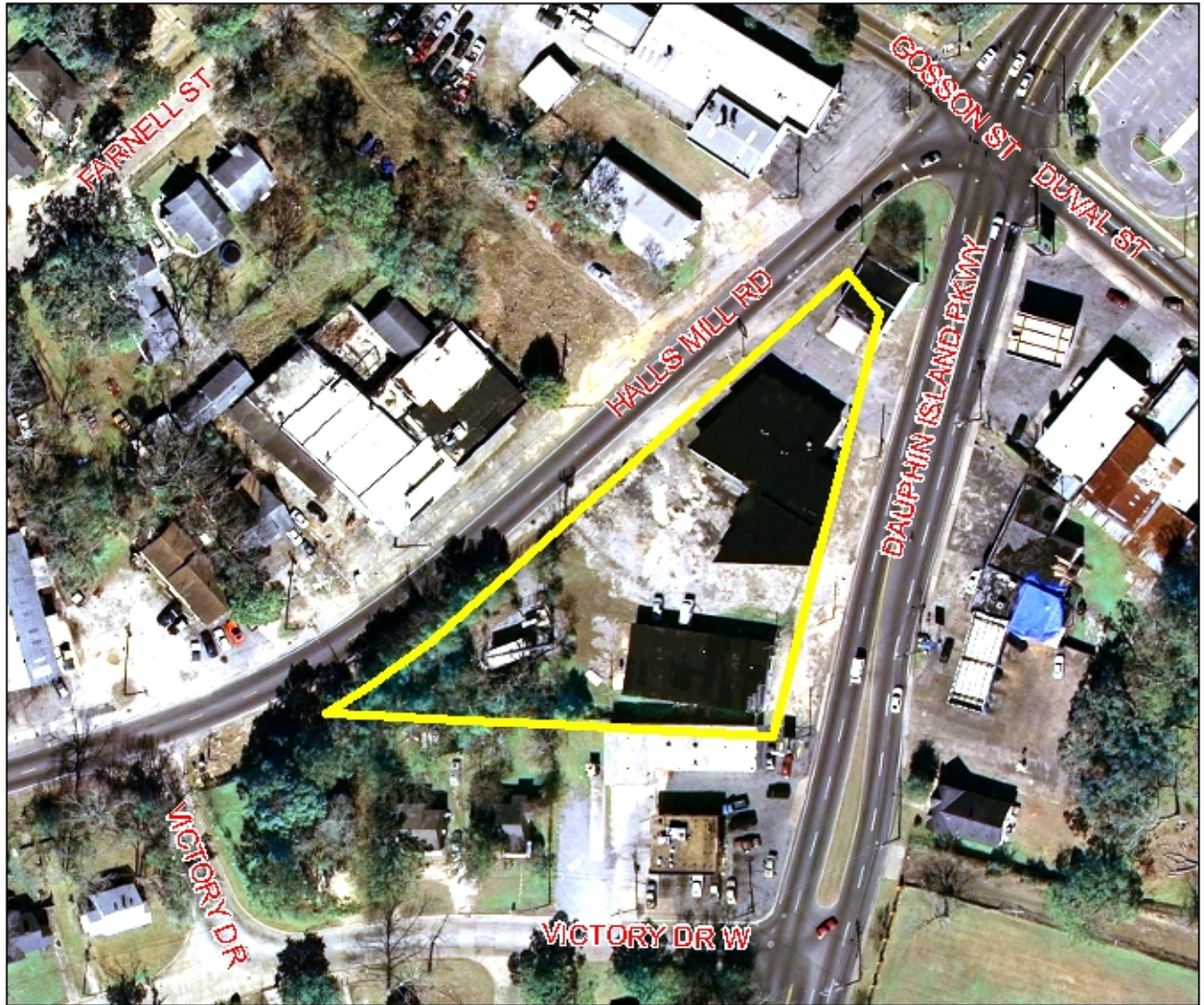
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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2
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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by miscellaneous land use.

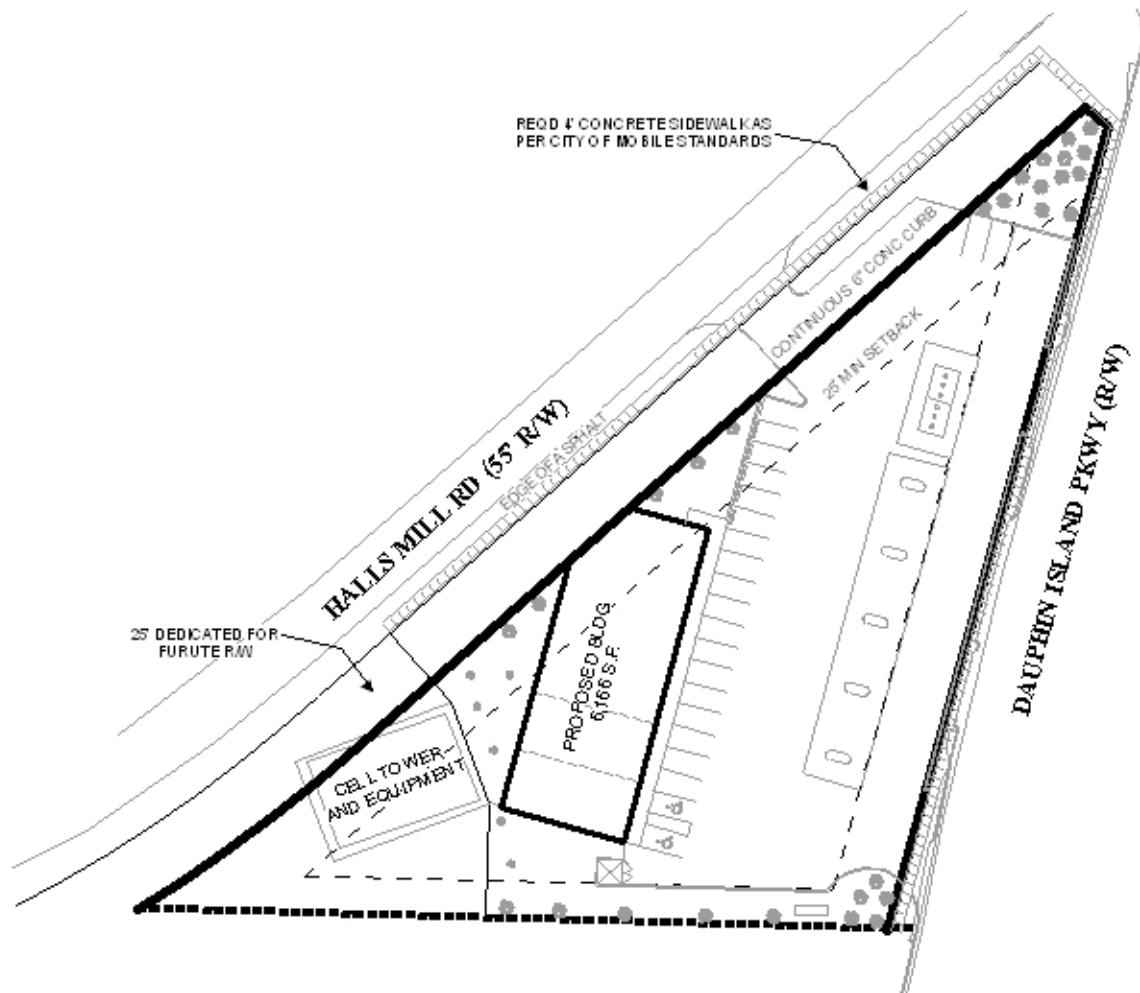
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SITE PLAN



This site plan illustrates the proposed convenience store and canopy. Minimum building setback is shown.

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