

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: October 4, 2010**

<b><u>CASE NUMBER</u></b>	5633 / 5596 / 5457 / 4570
<b><u>APPLICANT NAME</u></b>	Charter South Inc.
<b><u>LOCATION</u></b>	810 Dauphin Island Parkway (Southwest corner of Dauphin Island Parkway and Halls Mill Road)
<b><u>VARIANCE REQUEST</u></b>	<b>SETBACK:</b> Front Yard Setback Variance to allow the construction of a convenience store to the front property line
<b><u>ZONING ORDINANCE REQUIREMENT</u></b>	<b>SETBACK:</b> 25' minimum front yard building setback from the front property line in a B-3, Community Business District.
<b><u>ZONING</u></b>	B-3, Community Business District
<b><u>AREA OF PROPERTY</u></b>	41,809 square feet/0.96 ± Acre
<b><u>TRAFFIC ENGINEERING COMMENTS</u></b>	None received
<b><u>CITY COUNCIL DISTRICT</u></b>	District 3

**ANALYSIS** 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, and February 2010, to allow the construction of both a convenience store and a pump canopy within the front setback.

In 2008, after lengthy discussion, the Board denied the canopy setback waiver and approved a 0' front setback for the convenience store, subject to several conditions. This approval expired in November 2008, and the applicant subsequently resubmitted the application, and it was approved by the Board. The applicant failed to submit for a building permit until just after the variance had expired, and have thus made this application. It should be noted that the applicant discovered that the variance had expired after the submittal for a land disturbance permit was

made. The applicant has now resubmitted the site plan as previously approved in what amounts to essentially a request for extension, as nothing on the site plan has changed, and there have been no changes to the conditions in the area.

The site is located at the intersection of Halls Mill Road and Dauphin Island Parkway, both proposed major streets. The 0.96± acre lot has significant frontage on both streets. The applicant plans to demolish the existing structures (car wash, auto parts store, miscellaneous retail) and construct a modern 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. This subdivision has since been recorded, and 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; and, unless the Board is presented with 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 the previous two approvals by the Board; this should justify re-approval, subject to the conditions of approval for both the May 2008, and the February 2010, approvals with the exception of the completion of the Subdivision process, which has already been addressed.

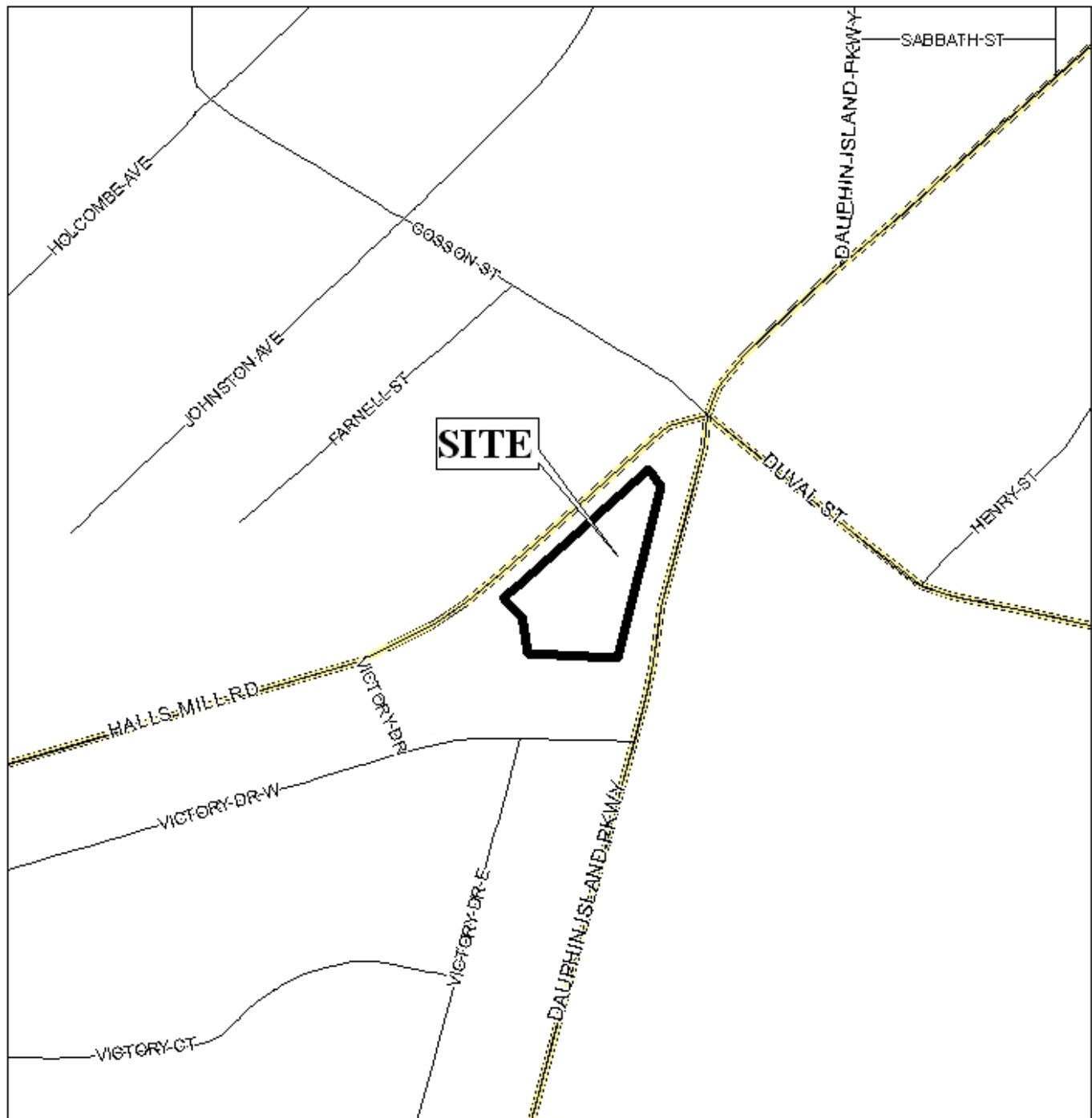
The February 2010 staff report did reference some staff concerns for the site. First, while the right-of-way dedication has been provided, the site plan still illustrates Halls Mill Road with only 55' of right-of-way, this should be updated on the site plan to reflect the actual right-of-way now existing. Finally, as illustrated on the site plan, some of the maneuvering area for the site is located within the right-of-way and 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.

**RECOMMENDATION**

Based upon the preceding, this application is recommended for approval subject to the following conditions:

- 1) revision of the site plan indicating the actual right-of-way width (after dedication) of Halls Mill Road;
- 2) 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;
- 3) 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;
- 4) the provision that the developer make a donation to the tree bank for all frontage trees waived; and
- 5) full compliance with all other municipal codes and ordinances.

## LOCATOR



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APPLICANT Charter South, Inc.

REQUEST Front Yard Setback Variance



NTS

# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by miscellaneous land use.

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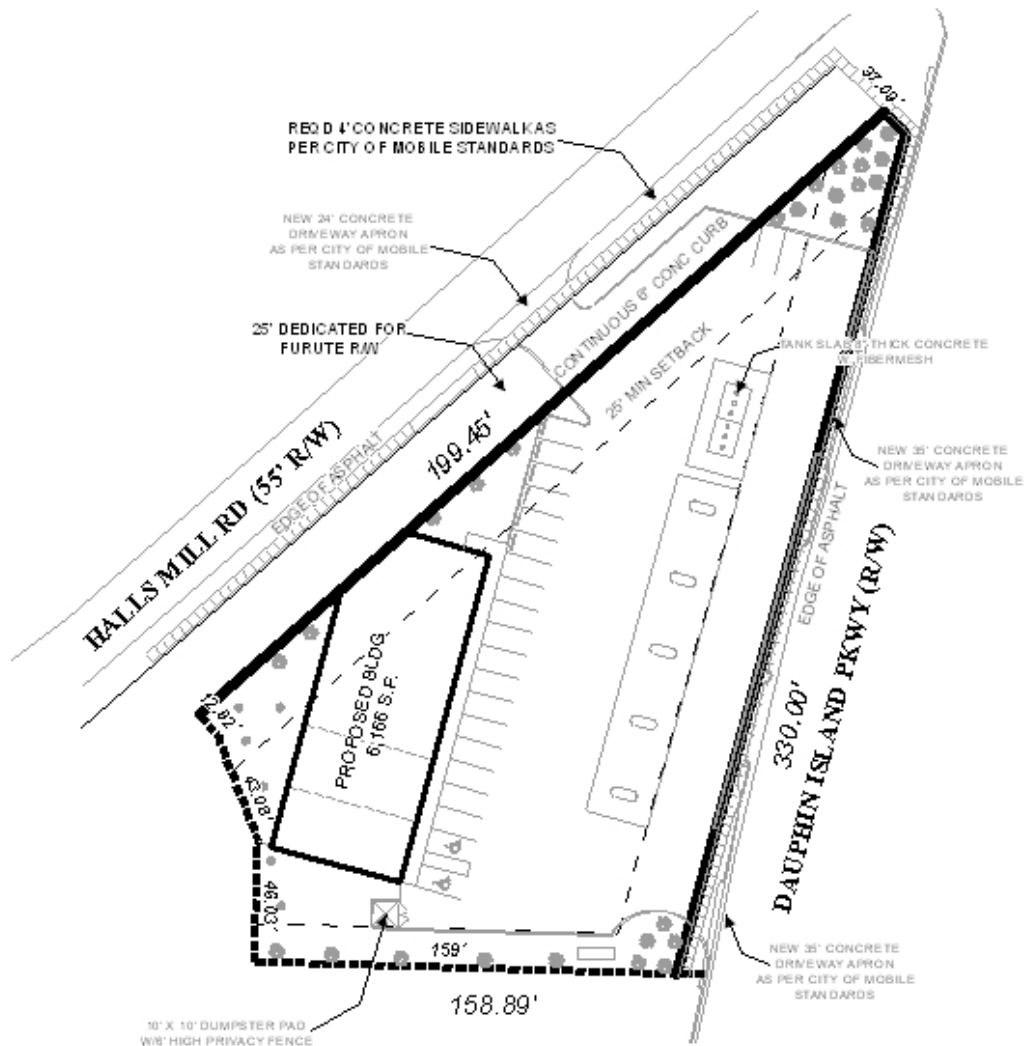
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# SITE PLAN



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

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