



**CITY OF OPELIKA
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA**

300 Martin Luther King Blvd.

April 9, 2024

TIME: 9:00 AM

A. APPROVAL OF MINUTES

B. VARIANCE

1. Kelly Hitchman, 2504 2nd Avenue, VR-2 zoning district, Requesting a 10-foot variance from the minimum 10-foot side yard setback to replace a carport damaged in a storm.

“In compliance with the Americans with Disabilities Act, the City of Opelika will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the ADA Coordinator 72 hours prior to the meeting at (334)705-5130.”



ZONING BOARD OF ADJUSTMENT MINUTES

300 Martin Luther King Blvd.

March 12, 2024

TIME: 9:00 AM

A. APPROVAL OF MINUTES

The City of Opelika Zoning Board of Adjustments held the regular meeting March 12, 2024 in the Meeting Chambers located at the Opelika Municipal Court, 300 MLK Boulevard. Certified letters were mailed out to all adjacent property owners for related issues for meeting dates.

MEMBERS PRESENT: Chairman Wilbert Payne, Mrs. Raven Harvis, Mr. Brandon Hilyer, Mr. Chris Anthony, and Mrs. Angela George.

MEMBERS ABSENT: Mr. Chris Nunn and Mrs. Tipi Miller.

STAFF PRESENT: Mr. Matt Mosley, Planning Director
Mr. Marty Ogren, Planning Assistant Director
Mrs. Rachel Dennis, Planner
Mrs. Claire Barber, Planning and Zoning Technician

CALL TO ORDER: Chairman Payne called the meeting to order at 9:02 a.m.

ROLL CALL: Payne, Harvis, Hilyer, Anthony, George.

Approval of Zoning Board of Adjustment Minutes January 9, 2024

RESULT:	Passed
MOVER:	Brandon Hilyer
SECONDER:	Raven Harvis
AYES:	Hilyer, Harvis, George, Payne, Anthony
NAYS:	None
ABSTAIN:	None

B. ELECTION OF ZONING BOARD OF ADJUSTMENT OFFICERS (Chair and Vice Chair)

Mr. Mosley opened the nominations for Chair position.

Mr. Hilyer made a motion to nominate Mr. Payne as the returning Chairman.

Mr. Anthony seconded the motion.

Ayes: Payne, Harvis, Hilyer, Anthony and George.

Nays: None.

Abstain: None.

Mr. Mosley closed the nominations for the Chair position.

Mr. Mosley opened the nominations for the Vice Chair position.

Mrs. Harvis made a motion to nominate Mr. Hilyer as the Vice Chair.

Mrs. George seconded the motion.

Ayes: Payne, Harvis, Hilyer, Anthony and George.

Nays: None.

Abstain: None.

Mr. Mosley closed the nominations for the Vice Chair position.

C. VARIANCE

1. Brian Lee, agent for property owner, Hara LLC, 1534 2nd Avenue. Requesting two setback variances and two landscape buffer variances for a building recently constructed in the C-2, GC-S zoning district.
 - (a) Requesting a 2' variance from the minimum 10' side yard setback requirement (east side).
 - (b) Requesting a 0.5' variance from the minimum 20' rear yard setback requirement.
 - (c) Requesting an 8' variance from the minimum 15' buffer requirement along 2nd Avenue.
 - (d) Requesting a 1.5' variance from the 10' buffer requirement along 16th Street.
 - (e) Requesting a variance to not have any planted parking lot islands or peninsulas within the parking lot as required by Section 10.6.C.3.

Mr. Mosley presented the staff report to the Zoning Board for the requested two setback variances and two landscape buffer variances for a building recently constructed in the C-2, GC-S zoning district. (a) Requesting a 2' variance from the minimum 10' side yard setback requirement (east side). (b) Requesting a .5' variance from the minimum 20 foot rear yard setback requirement. (c) Requesting a 8' variance from the minimum 15' buffer requirement along 2nd Avenue. (d) Requesting a 1.5' variance from the 10' buffer requirement along 16th Street. (e) Requesting a variance to not have any planted parking lot islands or peninsulas within the parking lot as required by Section 10.6.C.3. He stated that **(a) Staff cannot recommend approval of a self-created hardship. However, not granting the variance would require the building to be substantially altered by removing almost two (2) feet from the northeast side. (b) Staff cannot recommend approval of a self-created hardship. This variance is extremely minor, less than 1 foot, and unlikely to substantially impact the adjoining property. (c) Staff recommends approval of a variance of five (5) which would require a 10 foot buffer as shown on the original site plan. Staff does not recommend a full eight (8) foot variance. (d) Staff cannot recommend approval of a self-created hardship. Staff recommends the denial of this variance. (e) Staff cannot recommend approval of a self-created hardship. Staff recommends the denial of this variance.**

Mr. Mosley stated that staff has not heard from any adjacent property owners.

Chairman Payne opened the public hearing.

Manish Desai, applicant, stated that as the owner of the building he takes responsibility and that this project was delayed because he was working on another project. He stated that the Water Board recommended that the water line needed to be in the middle of the parking lot so that they could have a better water flow. He stated that this changed the drawing which was submitted to the City. He stated that the sewer was supposed to be hooked up behind the building on 16th Street, but Michael Hilyer with ESG told him that the sewer on the back of 16th street was not deep enough and so he had to run the sewer on 2nd Avenue. He stated that it

was not the right decision to remove the islands. He stated that the concern was the island causing problems with trucks coming off 16th Street to unload. He stated that he was told by his contractor that if he left one island the parking lot would look lopsided. He stated that this was right before Christmas and that he tried to speak with Planning staff but that he was not able to speak with someone about this. He stated that he was not aware of the other issues with the property until after the building survey was done. He stated that he can add an island if he is not allowed a variance. He stated that the 2-feet on the 2nd Avenue side is because of the water and sewage clean out being in front of the building so he had to extend the walkway.

Mrs. George asked if this was a retail or office location?

Manish Desai stated that it was retail and offices. He stated that there are two curb cuts, one on 16th Street and one on 2nd Avenue. He stated that he is concerned the islands will break when the trucks come to unload. He stated that the stakes were not put up right and that the construction company hired somebody who did not do his job right. He stated that he was not aware that the building was off by two feet.

Mrs. Harvis stated that according to the plans that were approved there were two trees in the parking lot area. She asked if a central island could be done instead of two separate ones?

Mr. Mosley stated that a central island is a possibility and that it could have two trees on it.

Chairman Payne closed the public hearing.

Mr. Hilyer asked if variance (c) came about because of the sewage and water hookups?

Mr. Mosley stated that the sewer connection runs underneath that sidewalk and in order to make it large enough for it to be accessed it was extended from 5 feet to 7 feet which pushed the whole parking lot out.

Mr. Hilyer stated that the back of the building is pushed back as far as it can be, so what would staff's recommendation have been if this had come up during construction?

Mr. Mosley stated that staff would have evaluated what that would have done to the rest of the development and if a variance request was necessary or if there was an alternative. He noted that a standard parking lot is 18 feet deep and an aisle between those two is 24 feet deep, so pushing it two feet on one end is going to push it into the buffer yard more. He stated that those two feet pushed everything out towards 2nd Avenue.

Mr. Hilyer asked if the parking lot was made bigger or just shifted?

Mr. Mosley stated that it shifted. He stated that if the variance is not granted, the parking spaces will have to be shifted in or the whole row of spaces will need to be changed. He stated that shorter spaces probably wouldn't work or the drive aisles would have to be reduced to below what we require for two way traffic. He stated that they would likely be required to have one way traffic with angled parking spaces. He noted that this is a private sewer.

Manish Desai elaborated on the sewer cleanout being in front of the building and how this affected the sidewalk.

Mrs. Harvis stated that she didn't have an issue with the variances that occurred because of the shift. She stated that variance (e) is an issue because there have been other cases requiring

greenspace in the parking lot. She stated that if there are two islands on the plan there need to be two islands or at least accomodation for what would have been two islands.

Mr. Hilyer stated that this needed to be addressed before it ended up as a variance request. He stated that he felt there had to be something in regard to the islands.

Mrs. George asked if these islands are also for safety reasons?

Mr. Mosley stated that there are multiple reasons for islands in parking lots including creating a space for pedestrians to avoid traffic and a place for water to go. He stated that this is what was submitted to Planning, but the islands don't have to look exactly the same.

Mr. Hilyer asked if the flexibility was with the placement or the square footage of the islands?

Mr. Mosley stated that each island looks like it takes up 2.5 spaces. He stated that if the Zoning Board was comfortable with it, staff could work with the applicant on doing a central island instead.

Manish Desai stated that he can put in the island with the landscaping parallel to the 2nd Avenue entrance.

Mrs. Harvis stated that she wanted Planning staff to have a hands on look at the changes so that the plan is adhered to as close as possible.

Mr. Hilyer asked if the 1.5 foot variance on 16th Street was the parking lot or the building?

Mr. Mosley stated that it is the parking lot. He stated that this encroachment only runs about 50 feet. He stated that the Zoning Board could either grant the variance, require that the applicant bring it back to the required buffer, or have an additional island put in on the last parking spots.

Mr. Hilyer asked if we don't approve the variance will they have to cut the concrete? He noted that it was only two feet.

Mr. Mosley stated yes they would.

Mrs. George asked what the importance of this buffer was?

Mr. Mosley stated that staff wants to see greenspace between the parking area and the roadway. He stated that there are plantings out there now and that this buffer is the most heavily planted right now with a few Crepe Myrtles and some bushes.

Mrs. George asked if there was a fire hydrant outside of this building on 2nd Avenue?

Manish Desai stated that there is a catch basin there with a landscaping island.

Mr. Hilyer asked if variances could be granted on the building with the condition that the parking lot be brought into compliance?

Mr. Mosley stated that the Board has the ability to do that, but that they are separate issues. He stated that the Board can condition variances as long as the condition is related to the variance. He stated that the landscaping plan Mr. Munn has will mostly fill up the green areas on the property. He showed the Board the landscape plan as it is currently without the islands.

Motion to approve a 2' variance from the minimum 10' side yard setback requirement (east side).

RESULT:	Passed
MOVER:	Brandon Hilyer
SECONDER:	Raven Harvis
AYES:	Hilyer, Harvis, George, Payne, Anthony
NAYS:	None
ABSTAIN:	None

Motion to approve a 0.5' variance from the minimum 20' rear yard setback requirement.

RESULT:	Passed
MOVER:	Brandon Hilyer
SECONDER:	Raven Harvis
AYES:	Hilyer, Harvis, George, Payne, Anthony
NAYS:	None
ABSTAIN:	None

Mrs. Harvis made a motion to approve a 5' variance from the minimum 15' buffer requirement along 2nd Avenue.

Mrs. George seconded the motion.

Mrs. Harvis stated that she felt they would need to break up concrete for variances (c), (d), and (e) either way, and so they should stay as close to the staff recommendation as possible.

Mr. Hilyer stated that he also wanted to stay close to staff recommendation, but that his concern was that this would significantly change the parking lot.

Mr. Mosley noted that if variance (c) is denied it will move the whole line of parking spaces.

Mrs. Harvis asked if denying variance (e) would also affect the parking spaces?

Mr. Mosley stated that (e) would only affect a few spaces, while (c) would shift the entire line of parking spaces. He stated that it might also compromise the storm inlet.

Mr. Hilyer stated that if we deny variance (d) and (e) it would affect 5 or 6 spaces. He stated that if variance (c) is denied it would affect 11 spaces. He asked Mr. Mosley if denying variance (d) would cause any engineering or water problems?

Mr. Mosley stated that he wasn't aware of any problems.

Mrs. Harvis rescinded her motion.

Motion to approve the 8' variance from the minimum 15' buffer requirement along 2nd Avenue.

RESULT:	Passed
MOVER:	Brandon Hilyer
SECONDER:	Raven Harvis
AYES:	Hilyer, Harvis, George, Payne, Anthony
NAYS:	None

ABSTAIN: None

Motion to deny the 1.5' variance from the 10' buffer requirement along 16th Street.

RESULT: Passed

MOVER: Brandon Hilyer

SECONDER: Chris Anthony

AYES: Hilyer, Harvis, George, Payne, Anthony

NAYS: None

ABSTAIN: None

Motion to deny the variance to not have any planted parking lot islands or peninsulas within the parking lot as required by Section 10.6.C.3.

RESULT: Passed

MOVER: Brandon Hilyer

SECONDER: Angela George

DISCUSSION: Mrs. Harvis stated that she wanted the applicant to work with Planning staff on the islands.

AYES: Hilyer, Harvis, George, Payne, Anthony

NAYS: None

ABSTAIN: None

D. ADJOURN

Motion to adjourn at 10:18 a.m.

RESULT: Passed

MOVER: Raven Harvis

SECONDER: Chris Anthony

AYES: Hilyer, Harvis, George, Payne, Anthony

NAYS: None

ABSTAIN: None

_____ Wilbert Payne, Chairman

_____ Matt Mosley, Secretary

CITY OF OPELIKA - BZA
STAFF REPORT
April 9, 2024

Applicant: Kelly Hitchman, property owner

Property: 2504 2nd Avenue

Existing Zone: VR-2

Request: Side Yard Setback Variance

The applicant is requesting a 10 foot side yard setback variance to replace an 18'x 28' open carport (no walls) that was destroyed in a storm in January 2024. See photos in packet. The metal carport was attached to the applicant's home. The home is in the Pepperell Mill Village constructed in 1928. This area of Pepperell Village is zoned VR-2 (Village Residential-2) with minimum setbacks of 12' front, 10' side and 35' rear yard. The applicant's home insurance determined the carport was a total loss. A contractor requested a building permit to rebuild the carport at the same size and in the same location. The carport was built on the side property line. In reviewing aerial photos, a structure has been at this same location at least since 1999.

The Zoning Ordinance states that after removal of a nonconforming structure the reconstruction of the structure must follow requirements concerning minimum setbacks. The open carport meets the minimum 12 foot front setback (front setback is 16 feet), but the minimum 10 foot side yard setback is not met. Staff discussed with applicant about installing the open carport in the larger rear yard area so the 10 foot side yard setback can be met. However, the applicant explained a rear yard carport would be impractical and difficult for a vehicle to maneuver and position when entering and exiting the rear yard.

The proposed carport is 100% metal, a non-combustible material, so a minimum 10 foot separation from another structure to meet Fire Codes is not required if the variance is approved. The home on the adjacent property along the side property line is at least 20 feet from the proposed carport.

From staff's inspection of this VR-2 neighborhood (primarily from aerial photos), several home additions are 5 feet or less from side property lines. However, Staff did not find homes or home additions that were built on the property line.

Recommendation

There are no reasons based on physical conditions of the property that warrant a hardship to approve the variance. The proposed carport could meet side yard setbacks if installed in the rear yard. However, the cost of removing trees and other site improvements would be required of the applicant. If the variance is approved as requested by the applicant the carport will be reconstructed on the side property line as it has been for the past 25 years. **Staff does not have a recommendation on this request and appeals to the Zoning Board for a decision.**

Certified letters were mailed to all the adjacent property owners and a sign was posted on the applicant's property about the ZBA public hearing for at least 7 days. At this writing, staff has not been contacted about the variance request.



000125-2024
**APPLICATION FOR
VARIANCE (Section 4.2A)**
PLANNING DEPARTMENT
700 Fox Trial, Opelika, AL 36801
(334) 705-5156 Fax (334) 705-5159

DATE:	Zoning Board of Adjustment Meeting Date: April 9, 24
Case Number:	Meeting Deadline:

PART I. OWNER / APPLICANT INFORMATION

Owner Name: Kelli Hitchman / Patrick Craig Address: 2504 2nd Ave, Opelika Phone: 678-777-7442
kelli.hitchman@gmail.com

Agent Name (if applicable) Address Phone

PART II. PARCEL INFORMATION

Street Address: 2504 2nd Ave, Opelika, AL 36801

Current Zoning: Residential

Current Land Use: Residential

Type of Variance Sought: _____ Sign _____ Parking ☒ Setback _____ Other

PART III. Provide a Brief Description and Reason for the Variance (attach a zoning map or site plan) Reconstruction of attached carport after storm damage.

Setback	Required	Proposed	Amount of Variance
Front			
Side	10ft.	10ft.	10 ft.
Side			
Rear			

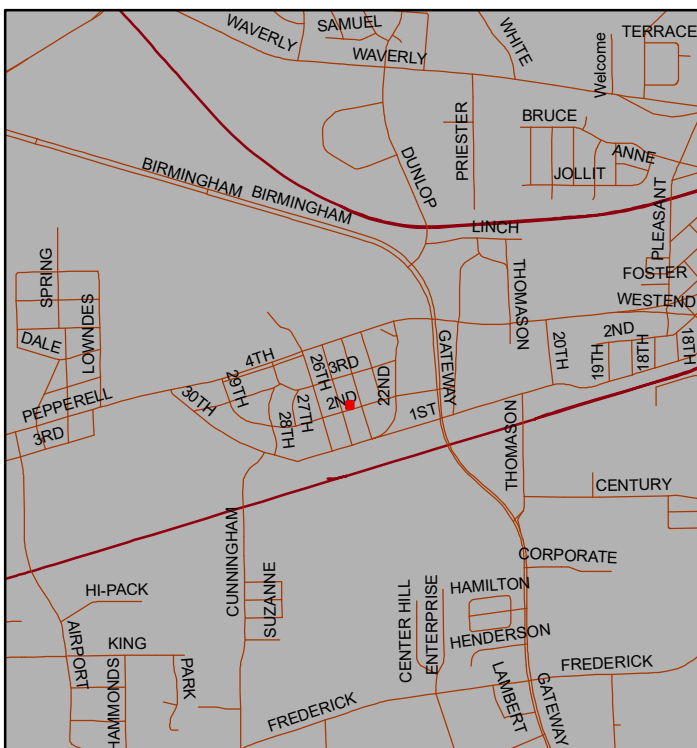
PART IV.

1) Are there extraordinary and/or exceptional conditions to the particular property, which make a variance necessary? The structure in question is not new—it is the re-construction of a carport, which has been part of the residence for at least 25 years. The original was damaged in a storm.

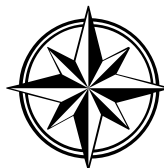
HITCHMAN VARIANCE REQUEST

2504 2ND AVENUE

SETBACK VARIANCE



The applicant is requesting a 10 foot variance from the minimum 10 foot side yard setback. A carport was destroyed in a storm and the applicant is requesting the carport be reconstructed in the same location. The property is in Pepperell Village in a VR-2 zoning district (Village Residential).



Subject Property

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