

Staff Report – Agenda Item # 1			
Case number	BZA-2025-01	Property size	2 ac
Property address	620-690 W Pendleton Ave	Property zoning	C1 (gen. Commercial)
Applicant(s)	Jacob Gilliatte		
Property owner(s)	CIP Lapel, LLC		
Requested action:			
UDO V 6.2.6.D.iv Approval of the Variance of Development Standards to permit an accessory structure closer to the front property line than the setback established by the primary structure.			
Recommendation:			
APPROVE with conditions			

Exhibits:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Location map 2. Zoning map | <ol style="list-style-type: none"> 3. Submittal 4. Site Plan 5. Site & Neighborhood Pictures |
|--|---|

ABOUT PROJECT

Location

The subject site is two commercial lots located on the north side of W Pendleton Ave/Old Indiana 132. The subject site is 2 acres, and it’s currently zoned General Commercial C1 (see Exhibits 1 & 2). To the north and west is a County General Commercial district, directly to the east is another C1 property with residential zoning across W 11th Street, and to the south is a County General Industrial district.



Proposal

The petitioner would like to install a drive-through ATM on the southeast corner of the property. In addition to the machine itself, the petitioner would like to build a driveway leading from the existing parking lot to the ATM, and then connecting back to the driveway leading out to W 11th Street. To do so, the petitioner requests approval of a variance of development standard V 6.2.6.D.iv to allow the construction of an accessory structure closer to the street than the primary structure.

The specific proposal is for the following (see page 5 of Exhibit 3):

- Extend asphalt to create a new 12’ wide ATM drive aisle;

- Provide new paint and markings to identify new drive aisle, lanes for customer and delivery access to shopping center, and 'no traffic' areas;
- Install a new directional sign facing W Pendleton Ave and pointing to ATM.

ANALYSIS

Per Lapel UDO 6.2.6.D.iv, *"All accessory structures, with the exception of gazebos, and decks, shall only be located to the rear of the primary structure except in the case of corner or through lots; in which case, the structures may be placed to the side of the primary structure. In no case may any accessory structure be located closer to the front property line than the setback provided by the primary structure."*

A primary structure is *"the building or structure in which the primary use of the lot or premises is located or conducted"* which in this case is the shopping center building. An accessory structure *"is subordinate to a primary structure in area, intent, and/or purpose; contributes to the comfort, convenience, or necessity of occupants of the primary building, structure, or principal use; does not alter or change the character of the premises; is located on the same lot as the primary building, structure, or use."* The proposed ATM is subordinate to the shopping center in area and is intended to contribute to the convenience of visitors to the shopping center by providing customers with access to their money.

The standard for the location of accessory structures exists to ensure that the primary purpose and intent of a lot is clear from the street. By ensuring that accessory structures are never in front of the primary structure, people passing by on the street will always easily see what the primary structure is. However, banking services are also a commercial use that complement the retail uses in the primary structure, so the ATM as an accessory structure is unlikely to cause any confusion or detract from visitors' ability to identify the primary structure and its purpose.

The proposal will result in the elimination of 5 existing parking spaces. The minimum requirement for parking spaces based on the square footage of retail space is 24, and without knowing the number of employees at each of the businesses in the shopping center it is unclear how many additional spaces may be required. However, as the parking lot is rarely full now, it is unlikely that a reduction of 5 spaces will cause any harm.

Current site conditions and the need for a variance

Currently, the building and paved parking areas take up the majority of the 2-acre site. In front of the building facing W Pendleton Avenue, there is a parking area with 43 spots, and there are a further 9 spots on the side that faces W 11th Street. Behind the building is a loading area for the stores.

While there is space in the rear and side of the building to install a drive-through ATM, an ATM in either of these locations would interfere with the movement of delivery vehicles, especially if there is a queue for the ATM. People attempting to use the ATM may have to wait for trucks to maneuver, and trucks may be prevented from reaching the loading area by a queue of cars waiting for the ATM. Trucks will likely have less space to maneuver, even when there are no vehicles present as permanent infrastructure such as bollards may encroach on existing loading area. The ATM would therefore be more of a nuisance than a convenience if located where the ordinance allows.

Additionally, a location on the side or rear of the building would reduce the visibility of the ATM, which would require more signage to help visitors find the ATM.

The proposed location would avoid the circulation challenges presented by locating the ATM on the side or rear of the building. In the proposed location, the ATM would not obstruct or obscure visibility of the building or any of the shops it contains either.

Variance of Development Standards Criteria

In order to approve a variance of development standards, the BZA needs to find that three (3) criteria are met. The applicant proposes their findings to these criteria in the submittal (Exhibit 3, page 2). Staff proposes their findings of fact below.

VARIANCE OF DEVELOPMENT STANDARDS FINDINGS

AGENDA ITEM #1

If the Board should decide to APPROVE the requested Variance of Development Standards, please use the following findings of fact:

The Lapel Board of Zoning Appeals is authorized to approve or deny Variances of Development Standards by Indiana Code 36-7-4-918.5 and by Lapel UDO V1.6.3. The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standards may be approved upon a determination in writing that the following three (3) criteria are met (V1.6.9.A):

- **The approval will not be injurious to the public health, safety, morals, and general welfare of the community:**

Adding a drive-through ATM would provide area residents with a more convenient way to deposit and withdraw their money, which would improve the general welfare of the community. The proposed location would prevent conflict between delivery trucks and ATM users, which would improve public safety.

- **The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:**

It is likely that the use and value of real estate adjacent to the subject site will NOT be affected in a substantially adverse manner by allowing the requested variance. Nearby property owners may remonstrate against this petition if they believe this request will have significant adverse effects on adjacent properties. Should nothing contrary be brought to light by adjacent owners at the public hearing, it is presumed that the

approval of this variance request will not have a substantially adverse effect on the use and value of adjacent properties.

- **The strict application of the terms of this Ordinance will result in a practical difficulty in the use of the property.**

Locating the ATM in the rear or on the side of the building as required by the ordinance would likely require taking space currently dedicated to the loading and unloading of goods for the shops to use for the ATM and its drive aisle. This could make loading more cumbersome and create the potential for collisions between delivery trucks and vehicles queuing for the ATM. The proposed ATM location would expand on existing vehicle circulation patterns and minimize disruption to current operation and use of the property.

RECOMMENDATION

APPROVE the requested Variance of Development Standards based upon the following findings of fact:

- The approval **will not** be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance **will not** be affected in a substantially adverse manner;
- The strict application of the terms of this Ordinance **will** result in a practical difficulty in the use of the property.

With the following specific conditions:

1. The Applicant shall sign the Acknowledgement of Variance of Development Standards/Special Use document prepared by the Lapel Planning Staff within 60 days of this approval. Staff will then record this document against the property and file of stamped copy of such recorded document shall be available in the Lapel Town Hall.
2. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

MOTION OPTIONS

- Motion to **approve** the Variance of Development Standards to permit an accessory structure closer to the front property line than the setback established by the primary structure for the subject real estate as per submitted application BZA-2025-01 based upon the findings of fact listed by the applicant, and/or presented by staff, and/or any other findings of fact added during the BZA discussion with specific conditions proposed by staff.
- Motion to **deny** the Variance of Development Standards for the subject real estate as per submitted application BZA-2025-01 because... (List reasons, findings of fact)
- Motion to **continue** the review of the application BZA-2025-01 until the next regular meeting on *April 3, 2025*, because ... (list reasons).

EXHIBIT 1. LOCATION MAP AND SURROUNDING USES

 **Beacon**TM Madison County, IN | Assessor Larry D. Davis

Location of Subject Property and County Zoning

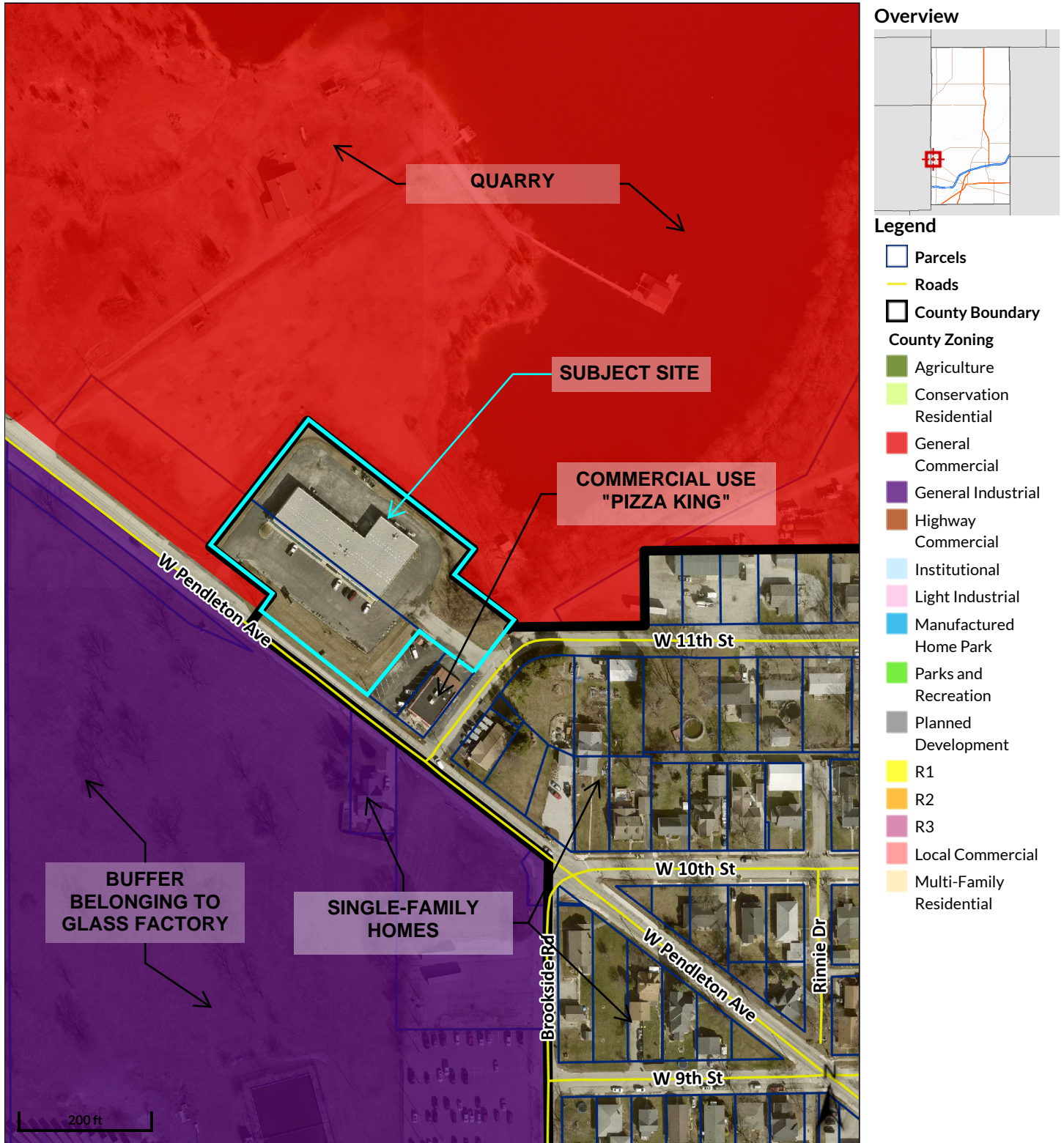
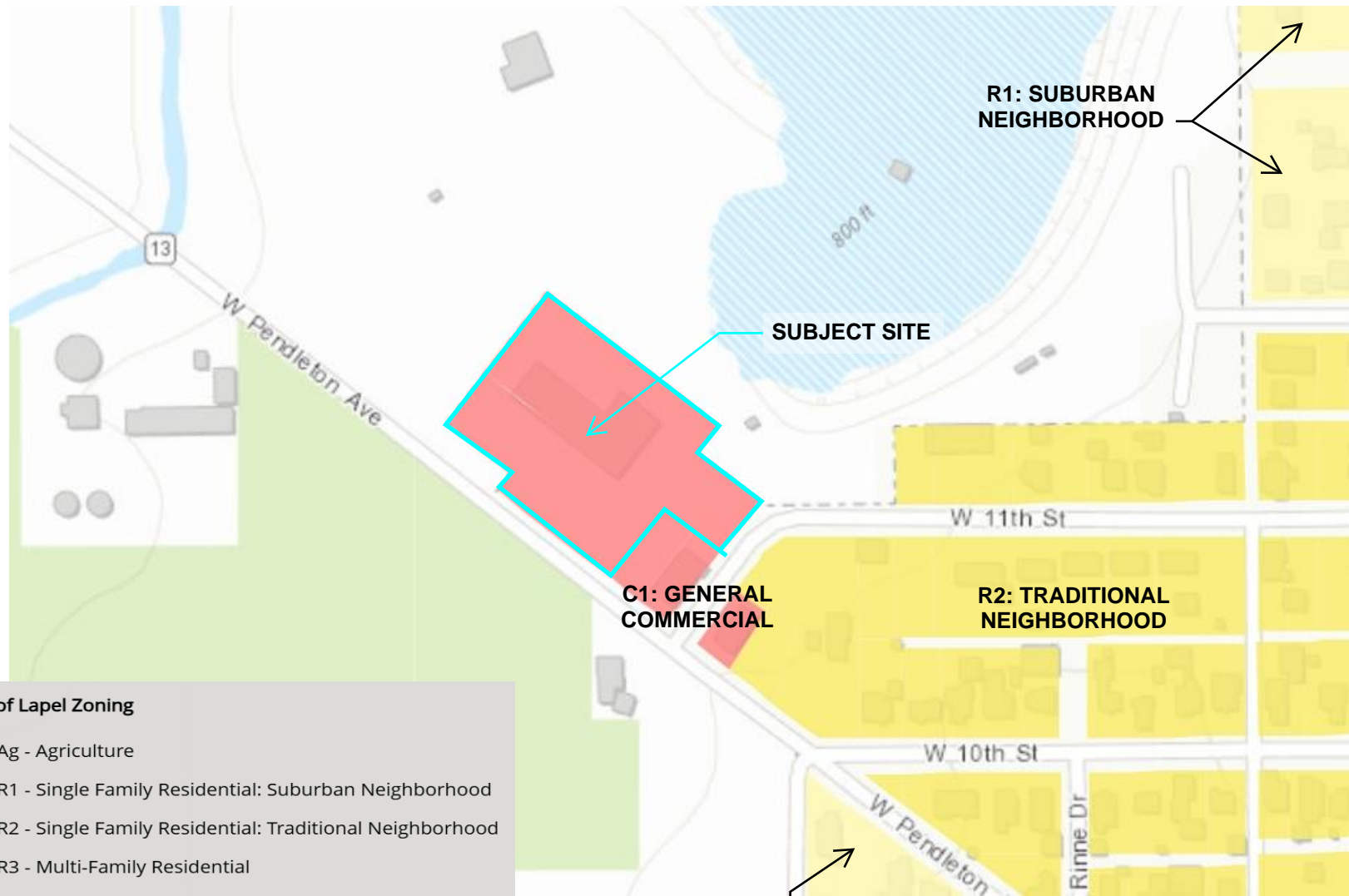


EXHIBIT 2. LAPEL ZONING



Town of Lapel Zoning

- Ag - Agriculture
- R1 - Single Family Residential: Suburban Neighborhood
- R2 - Single Family Residential: Traditional Neighborhood
- R3 - Multi-Family Residential
- C1 - General Commercial
- C2 - Downtown Commercial
- Is - Institutional and Social
- Il - Light Industrial
- Ig - General Industrial
- Po - Parks and Open Space

R1: SUBURBAN NEIGHBORHOOD



BZA APPLICATION

*Required sections to fill out

Application type*:

- Variance of Development Standard(s)
- Special Use
- Administrative Appeal

For office use only:

App No: _____

Date received: _____

App fee: _____

Fee paid by: Cash Check

Check #: _____

PROPERTY INFORMATION*

Address/Location: 620-690 W. PENDELTON AVE, LAPEL IN

Parcel(s)' ID(s): _____

Current use: RETAIL Current zoning: _____

Request code reference: _____ Project total size: 525.s.f. Acres

Request description: NEW ATM KIOSK

PROPERTY OWNER INFORMATION*

Name: CIP LAPEL, LLC PHIL BENSINGER

Mailing address: PO BOX 7385

City/Town: NORCO, CA Zip code: 92860

Email: PBENSINGER@CIPINC.COM Phone #: 951-454-8893

APPLICANT INFORMATION* Same as owner

Name: JACOB GILLIATTE Title: P.M.

Company name: GILLIATTE GENERAL CONTRACTORS, INC

Mailing address: 2515 BLOYD AVE

City/Town: INDIANAPOLIS, IN Zip code: 46218

Email: JGilliatte@Gilliatte.com Phone #: 317-281-4909

NOTE: The person listed as applicant will be contacted regarding all applications steps and payments, including being contacted by the newspaper publisher for Legal Notice payment.

COMPLIANCE WITH VARIANCE OF DEVELOPMENT STANDARDS CRITERIA*

The Lapel Board of Zoning Appeals (BZA) is authorized to approve or deny Variances of Development Standards from the terms of the Unified Development Ordinance. The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standards may be approved only upon a determination in writing that the following three (3) statements are true (see Indiana Code § 36-7-4-918.5):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because:

This will be a small ATM structure and will not be injurious to the public health, safety, morals, and general welfare of the community.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner by the approval of this variance request because:

This is a small commercial structure adjacent to other commercial structures.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property because:

There will be no difficulties in the use of the subject property.

APPLICANT AFFIDAVIT

STATE OF Indiana

COUNTY OF Marion S.S.

The undersigned, having been duly sworn on oath, states that the information in the Application is true and correct as they are informed and believe.

Applicant printed name: Jane Gilliatte

Applicant signature: [Handwritten Signature]

Subscribed and sworn to before me this 2 day of January, 2025

Notary printed name: Amy Gilliatte

Notary signature: [Handwritten Signature]

My commission expires: 10/20/2032



OWNER AFFIDAVIT

STATE OF _____

COUNTY OF _____ S.S.

The undersigned, having been duly sworn on oath, states that they are the Owner of the Property involved in this application and that they hereby acknowledge and consent to the forgoing Application.

Owner printed name**: _____

Owner signature**: _____

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the Property Owner, who having been duly sworn acknowledged and consents to the execution of the foregoing Application. Subscribed and sworn to before me this _____ day of _____, 20 ____.

Notary printed name: _____

Notary signature: _____

My commission expires: _____

*** A signature from each party having interest in the property involved in this application is required. If the Property Owner's signature cannot be obtained on the application, then a notarized statement by each Property Owner acknowledging and consenting to the filing of this application is required with the application.*

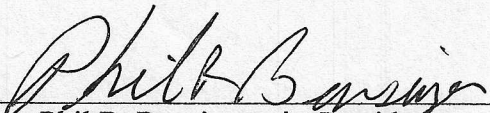
CONSENT

THIS (this consent) is made as of January 11, 2025, by, between and among: Capital Income Properties, Inc. a California Corporation, (collectively, "Existing as the Managing Member); and First Merchants Bank.

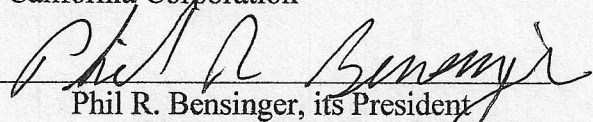
RECITALS

AGREEMENT

Owner Agrees to Installation of An ATM by First Merchants Bank at a location as shown on the attached Exhibit "A"

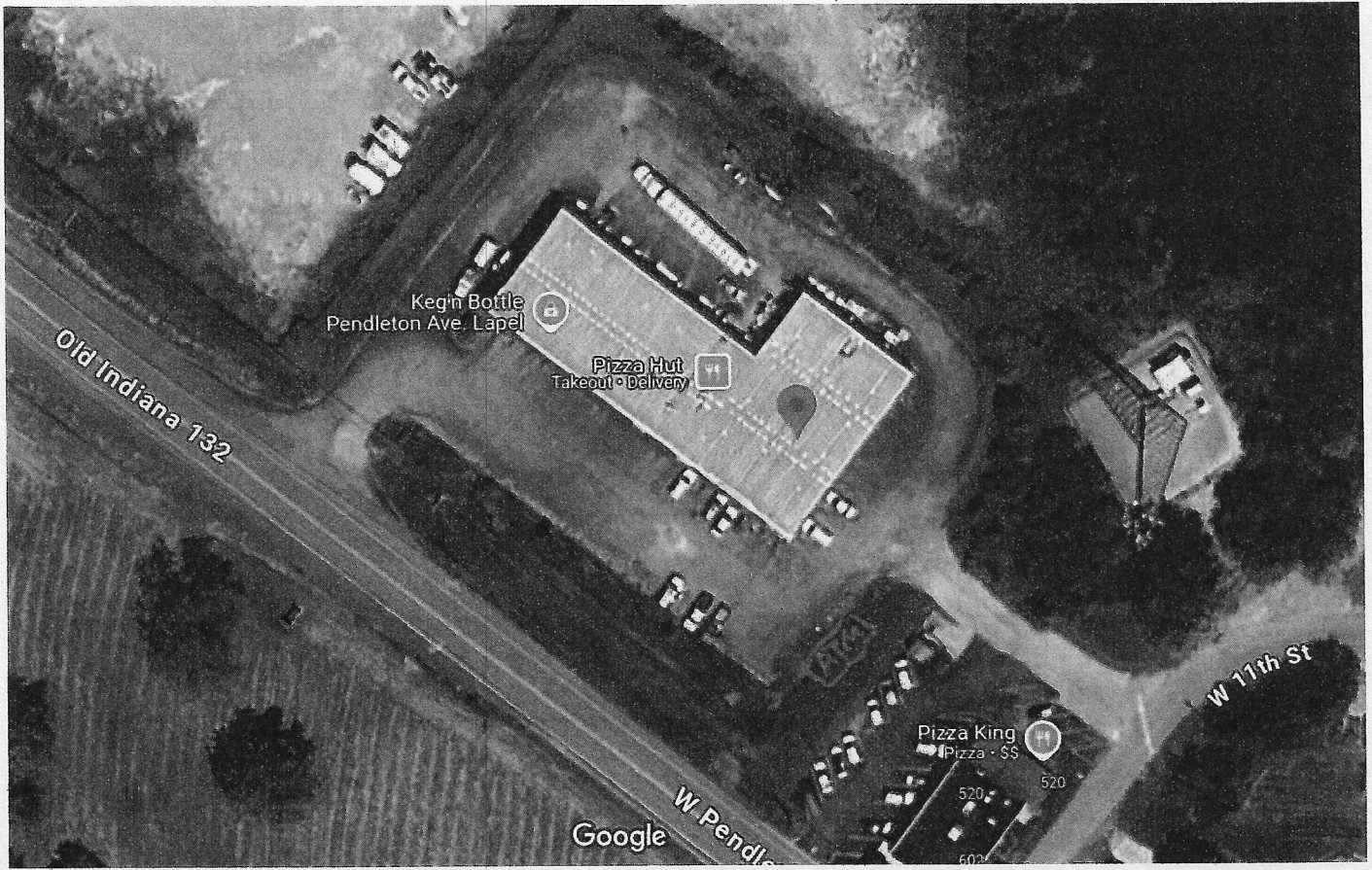
By: 
Phil R. Bensinger, its President

CIP LAPEL, LLC
A California Limited Liability Company
By Capital Income Properties Group
A California Corporation


Phil R. Bensinger, its President

Date: _____

Exhibit "A"



CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of RIVERSIDE }

On 1/11/2025 before me, S. VALENCIA, NOTARY PUBLIC,
Date Here Insert Name and Title of the Officer

personally appeared PHILIP R. BENSINGER
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Consent Agreement

Document Date: 1/11/2025 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____

Partner – Limited General Partner – Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: _____ Other: _____

Signer is Representing: _____ Signer is Representing: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA

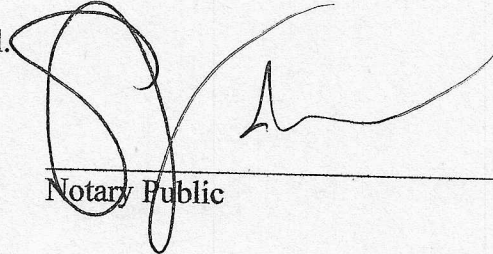
)
) ss.
)

COUNTY OF RIVERSIDE

S. VALENCIA

On 11/11/2025, 2025, before me, Notary Public, personally appeared **PHIL R. BENSINGER**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



Notary Public

[SEAL]

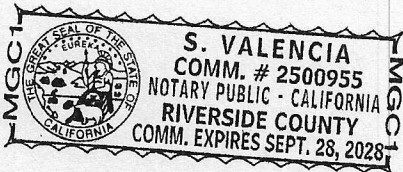
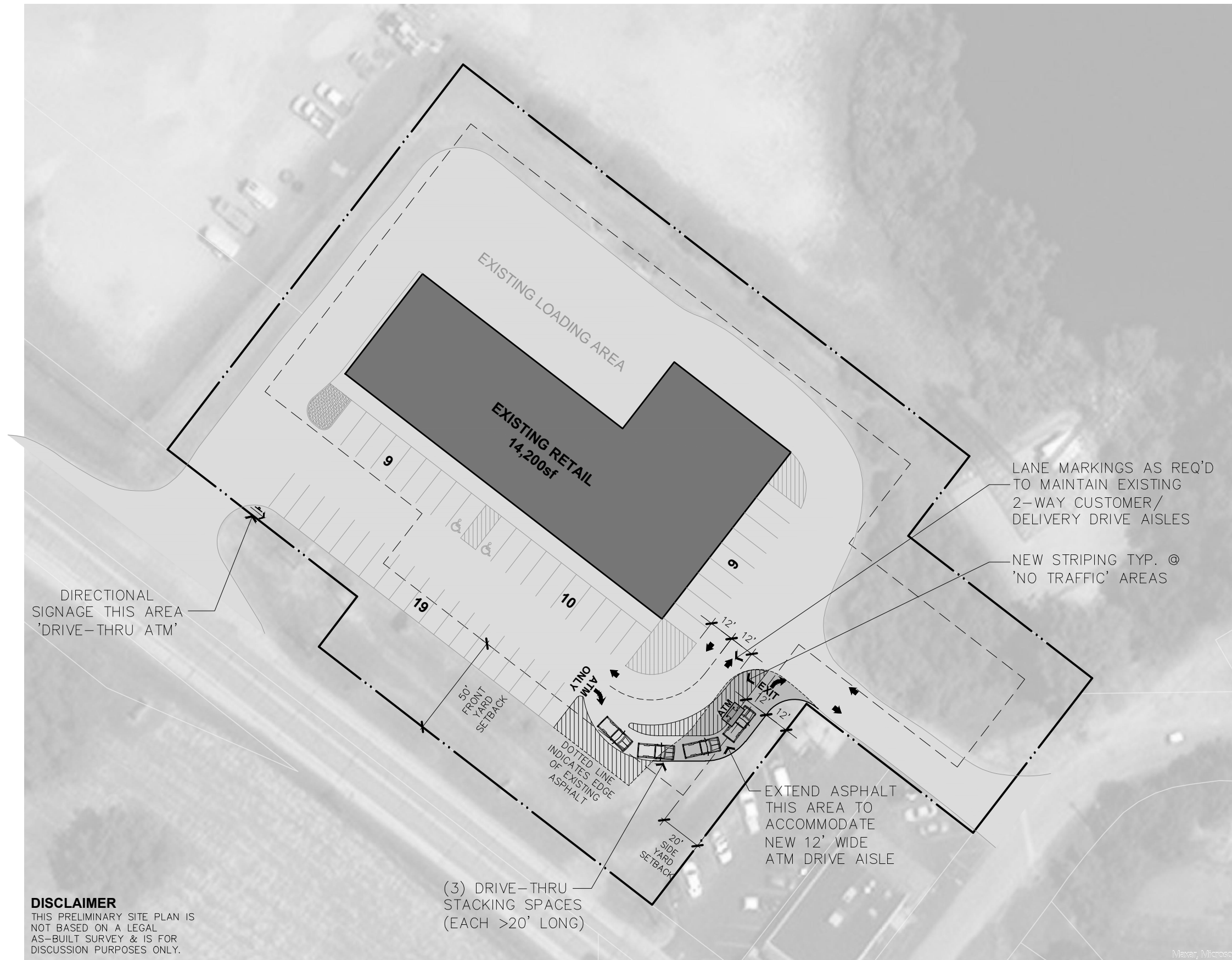


EXHIBIT 4. SITE PLAN



FIRST MERCHANTS BANK ATM
Lapel Commons
Lapel, IN



PRELIMINARY SITE CONCEPT
12-27-24
1"=50'-0"

EXHIBIT 5. SITE PHOTOS



Proposed ATM Location from W Pendleton Ave



Proposed ATM Location from sidewalk in front of building



Proposed ATM Location from adjacent parking lot