

Staff Report – Agenda Item # 1

Case number	BZA-2025-02a and b	Property size	0.2 ac
Property address	110 E 9 th St/922 John St	Property zoning	C1 (gen. Commercial)
Applicant(s)	Fraternal Order of Eagles Aerie 4323		
Property owner(s)	Fraternal Order of Eagles Aerie 4323		

Requested action:

- a) UDO V 6.2.4.B.ii Approval of the Variance of Development Standards to permit the primary structure to encroach upon the side setback.
- b) UDO V 6.2.4.B.ii Approval of the Variance of Development Standards to permit an addition to the primary structure to encroach upon the side setback.

Recommendation:

APPROVE with conditions

Exhibits:

- 1. Location map
- 2. Zoning map
- 3. Submittal BZA-2025-02a
- 4. Submittal BZA-2025-02b
- 5. Site Plan

ABOUT PROJECT

Location

The subject site is a commercial lot located on the northwest corner of the intersection of W 9th Street with John Street. The site is 0.2 acres, and it's currently zoned General Commercial C1 (see Exhibits 1 & 2). Immediately to the north, south, and west is more C1 zoning, and across John St are R3 Multi-Family Residential and C1 districts. There is also an R2 Traditional Neighborhood district extending within a block of the subject site.



Proposal

The petitioner would like to enclose a small patio on the north side of the property. The proposed location of the extension is within the setback required by Lapel UDO V 6.2.4.B.ii.

The specific proposal is for the following (see Exhibit 4):

- Enclose existing raised patio area with vertical wood siding and provide windows on the north and west elevations and a door to the exterior on the east elevation of the porch;
- Construct a shingled, single-pitch roof over the newly enclosed porch.

ANALYSIS

BZA-2025-02a

Per Lapel UDO V 6.2.4.B.ii, "*no building or structure shall be erected, altered, enlarged or reconstructed unless such alteration, enlargement, or reconstruction conforms with the lot/yard regulations of the district in which it is located.*"

In the C1 district, lots are required to maintain a 20-foot side setback when adjacent to non-residential uses (not counting any alleys). This requirement did not apply when the original structure was built in 2007, and as a result, the building is a legal non-conforming structure with a side yard on the west of only 2'6". In addition to the citation above, the code states that "*any legal nonconforming structure shall not be enlarged or altered in a manner that increases its nonconformity*" (V1.5.4.A).

The setback standards exist to create an amount of space between adjacent buildings that is deemed desirable and thereby contribute to a particular street "rhythm" of structures and open spaces. As the proposed addition would not be visible from W 9th Street, it would not disrupt the existing pattern as visible from that public view.

As the proposal involves enclosing an existing patio space, it will create no disruptions or alterations to parking on-site. The petitioner has also entered into an agreement with the owner of the adjacent property to use their gravel lot for overflow parking should parking on-site prove insufficient.

Although the proposal does not pose any harms or inconveniences, the fact remains that it contradicts the spirit of the ordinance to allow this encroachment into the setback and enlargement of a nonconformity.

BZA-2025-02b

The effect of approving this petition would be to eliminate the above concern by granting a variance to the original 2007 primary structure to encroach on the side setback. With this variance, the building would no longer be a legal nonconforming structure and thus V1.5.4.A would no longer apply. BZA-2025-02a could then be approved with no issue.

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; Exhibit 4, page 2). Staff proposes their findings of fact below.

VARIANCE OF DEVELOPMENT STANDARDS FINDINGS

BZA-2025-02a

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:**

The intended purpose of this porch is to create a smoking area for club patrons, enabling the larger main space to be designated as non-smoking. This would certainly improve public health by reducing visitors' and workers' exposure to second-hand smoke.

- **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.**

The proposed location and size of the porch takes advantage of an existing concrete pad. While another location or size would be possible, it would require moving existing mechanical equipment, reconfiguring parking, and altering the shape of the existing concrete pad, and a variance may still be required anyway.

BZA-2025-02b

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:**

The variance sought applies to a legal nonconforming structure that has existed for close to 20 years and will therefore have no bearing on public health, safety, morals, and general welfare.

- **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.**

There are few modifications that can be made to the building that would not require a variance. The strict application of the Ordinance would prevent many variances from being approved on the grounds that a legal nonconforming structure should not be enlarged in ways that do not reduce its nonconformity.

RECOMMENDATION

APPROVE the requested Variances 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

BZA-2025-02a

- 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-2025-02a 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-2025-02a because... (List reasons, findings of fact)

- Motion to **continue** the review of the application BZA-2025-02a until the next regular meeting on *May 1, 2025*, because ... (list reasons).

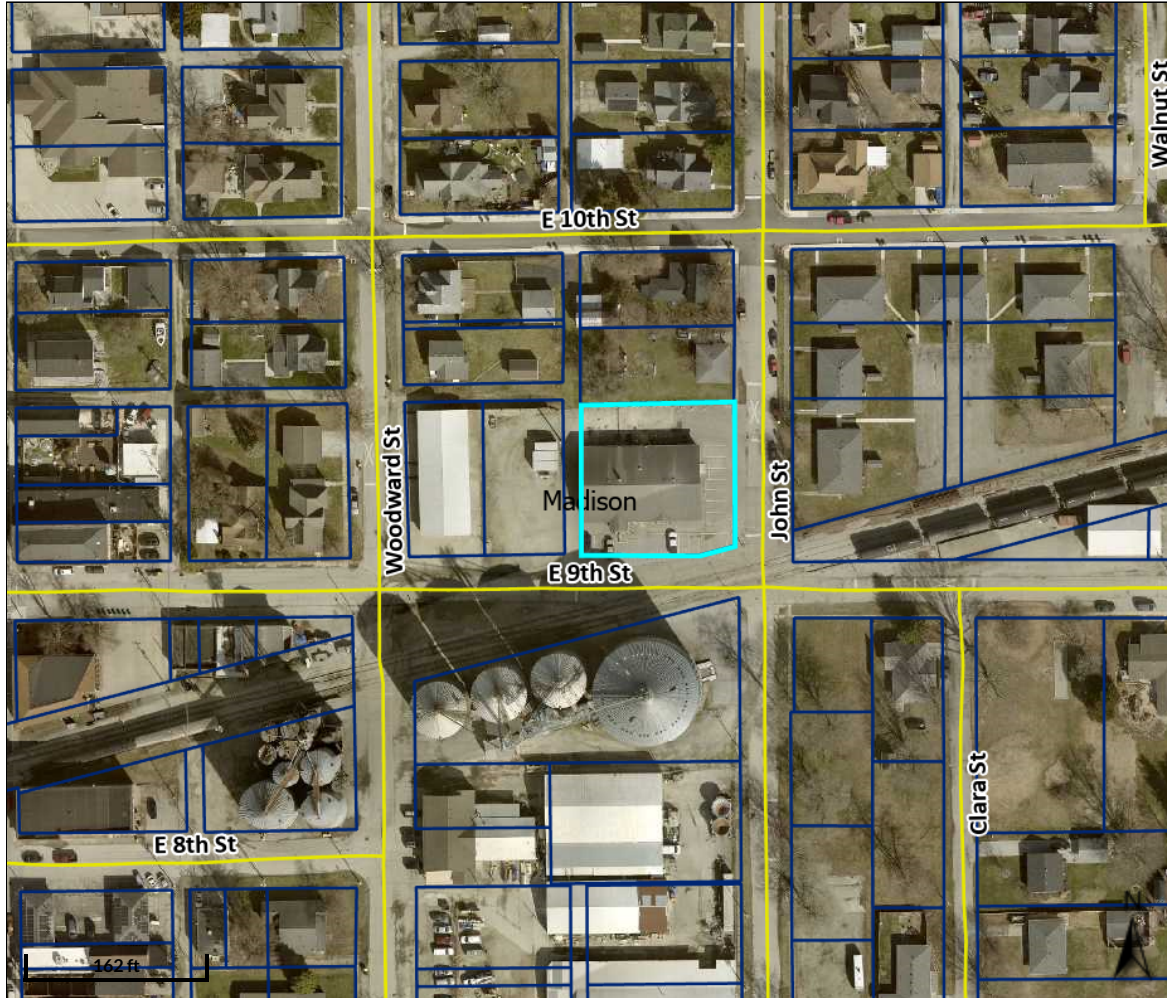
BZA-2025-02b




- 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-2025-02b 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-2025-02b because... (List reasons, findings of fact)

Motion to **continue** the review of the application BZA-2025-02b until the next regular meeting on *May 1, 2025*, because ... (list reasons).

EXHIBIT 1. LOCATION MAP

Location Map



- Legend**
-  Parcels
 -  Roads
 -  County Boundary

Parcel ID	48-10-28-104-059.000-032	Alternate ID	31-88-5	Owner Address	Fraternal Order Of Eagles Aerie 4323 PO Box 1064 Lapel, IN 46051
Sec/Twp/Rng	28-T19-R06	Class	EXEMPT PROPERTY OWNED BY A CHARITABLE ORG THAT IS GRANTED AN EXEMPTION		
Property Address	922 John St Lapel	Acreage	n/a		
District	Lapel		Lapel Town		
Brief Tax Description			WOODWARD BROS 1ST L 037 WOODWARD BROS 1ST L 037 WOODWARD BROS 1ST LOT 37 AND PT LOT 36		
			(Note: Not to be used on legal documents)		

Date created: 2/24/2025
Last Data Uploaded: 2/21/2025 9:25:03 PM

EXHIBIT 2. ZONING MAP

Lapel Interactive Zoning Map

[Overview](#) [AG](#) [R1](#) [R2](#) [R3](#) [C1](#) [C2](#) [IS](#) [IL](#) [IG](#) [PO](#)

Introduction

This Unified Development Code shall serve to guide future development in accordance to the goals and objectives outlined in the Town of Lapel's Comprehensive Plan. Specifically, its primary purpose to protect the general health, safety, and welfare of residents. The regulations and standards of the Code are meant to create stability within zoning districts, such that each zoning district allows a predictable range of compatible uses and building types.

Organization

This interactive map is organized in such a manner as to direct the user to the applicable Volume according to area of interest. For example, if your home is located in an R1 District, you would simply click the R1 tab, above, to navigate to the applicable standards for that district. The interactive map is divided into ten individual zoning districts:

Ag - Agricultural District

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

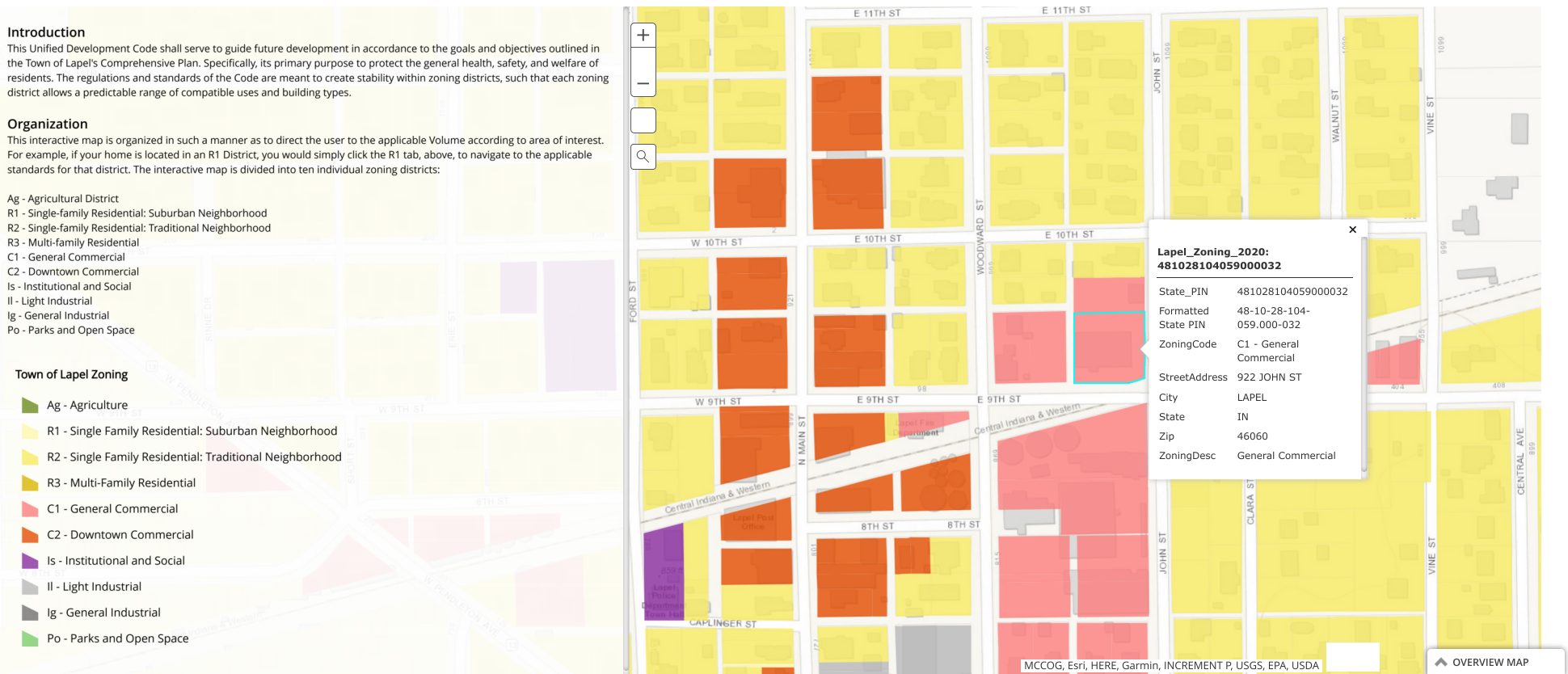
IL - Light Industrial

IG - General Industrial

Po - Parks and Open Space

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



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:

CONSTRUCTING AREA TO ALLOW THE CLUB TO CREATE A SMOKING AREA MAKING THE CLUB AREA NON SMOKING & HEALTHIER FOR PATRONS

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:

SIZE OF ADDITION IS NOT LARGE. TO MAKE IMPACT ON SURROUNDING AREAS

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

BECAUSE OF BEING NON COMPLIANT W/ RWA# OF NOT BEING ABLE TO ADD SQ FOOTAGE WE WOULD NOT BE ABLE TO ADD OUR SMOKING AREA TO CREATE A HEALTHIER ENVIRONMENT IN OUR CLUB AREA

APPLICANT AFFIDAVIT

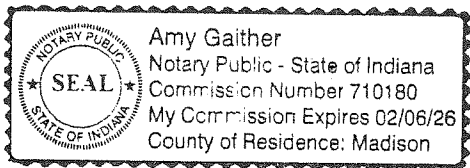
STATE OF INDIANA
COUNTY OF MADISON S.S.

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: KERRY O'CONNOR

Applicant signature: *Kerry O'Connor*

Subscribed and sworn to before me this 3rd day of February, 2025.



Notary printed name: Amy Gaither

Notary signature: *Amy Gaither*

My commission expires: 2/6/2026

OWNER AFFIDAVIT

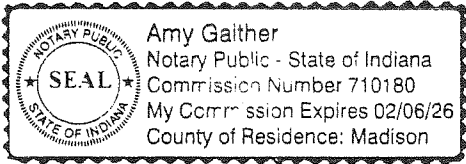
STATE OF Indiana
COUNTY OF Madison S.S.

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**: KERRY O'CONNOR

Owner signature**: *Kerry O'Connor*
SECRETARY

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 30th day of January, 2025.



Notary printed name: Amy Gaither

Notary signature: *Amy Gaither*

My commission expires: 2/06/2026

*** 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.*

EXHIBIT 4. BZA-2025-02b SUBMITTAL



TOWN OF LAPEL
825 Main St., Lapel, IN 46051
Planning@lapelindiana.org

BZA APPLICATION

* Required sections to fill out

Application type*:

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

For office use only:

App No: BZA-2025-02b

Date received: 3/20/25

App fee: \$50

Fee paid by: Cash Check

Check #: 1156

PROPERTY INFORMATION*

Address/Location: 922 JOHN STREET LAPEL INDIANA

Parcel(s) ID(s): 48-10-28-104-059.000-032

Current use: FRATERNAL ORGANIZATION Current zoning: COMMERCIAL/INDUSTRIAL

Request code reference: V6.2.4.B.ii.b Project total size: _____ Acres

Request description: ADDITION TO MAIN BUILDING FOR SMOKING ROOM
VARIANCE FOR ORIGINAL BUILDING
SETBACK

PROPERTY OWNER INFORMATION*

Name: FRATERNAL ORDER OF EAGLES AERIE 4323

Mailing address: PO BOX 1064

City/Town: LAPEL Zip code: 46051

Email: kerryfoconnor@comcast.net Phone #: (765) 534-4577

APPLICANT INFORMATION*

Same as owner

Name: _____ Title: _____

Company name: _____

Mailing address: _____

City/Town: _____ Zip code: _____

Email: _____ Phone #: _____

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*

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

CONSTRUCTING AREA TO ALLOW CLUB TO CREATE A SMOKING AREA/ROOM TO MAKE THE MAIN CLUB AREA NON SMOKING AND HEALTHIER FOR OUR MEMBERS

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:

SIZE OF ADDITION IS NOT LARGE ENOUGH TO MAKE AN IMPACT ON SURROUNDING AREAS

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

BECAUSE OF BEING A NON COMPLIANT AND NOT CURRENTLY UNABLE TO ADD SQUARE FOOTAGE WE WOULD BE UNABLE TO CONSTRUCT A SMOKING AREA TO PROMOTE A HEALTHIER ENVIRONMENT FOR OUR MEMBERS WHO HAVE REQUESTED THE CLUB GO NON SMOKING

EXHIBIT 5. SITE PLAN AND ELEVATIONS

← ONE WAY



JOHN ST

9TH ST
↓

P/L

P/L ↗

P/L ↙

6'6"

20' 38'

10'

GAS METER

AIR CONDITIONERS

99 FEET

PROPOSED ROOM
10' x 20'

EXISTING BUILDING

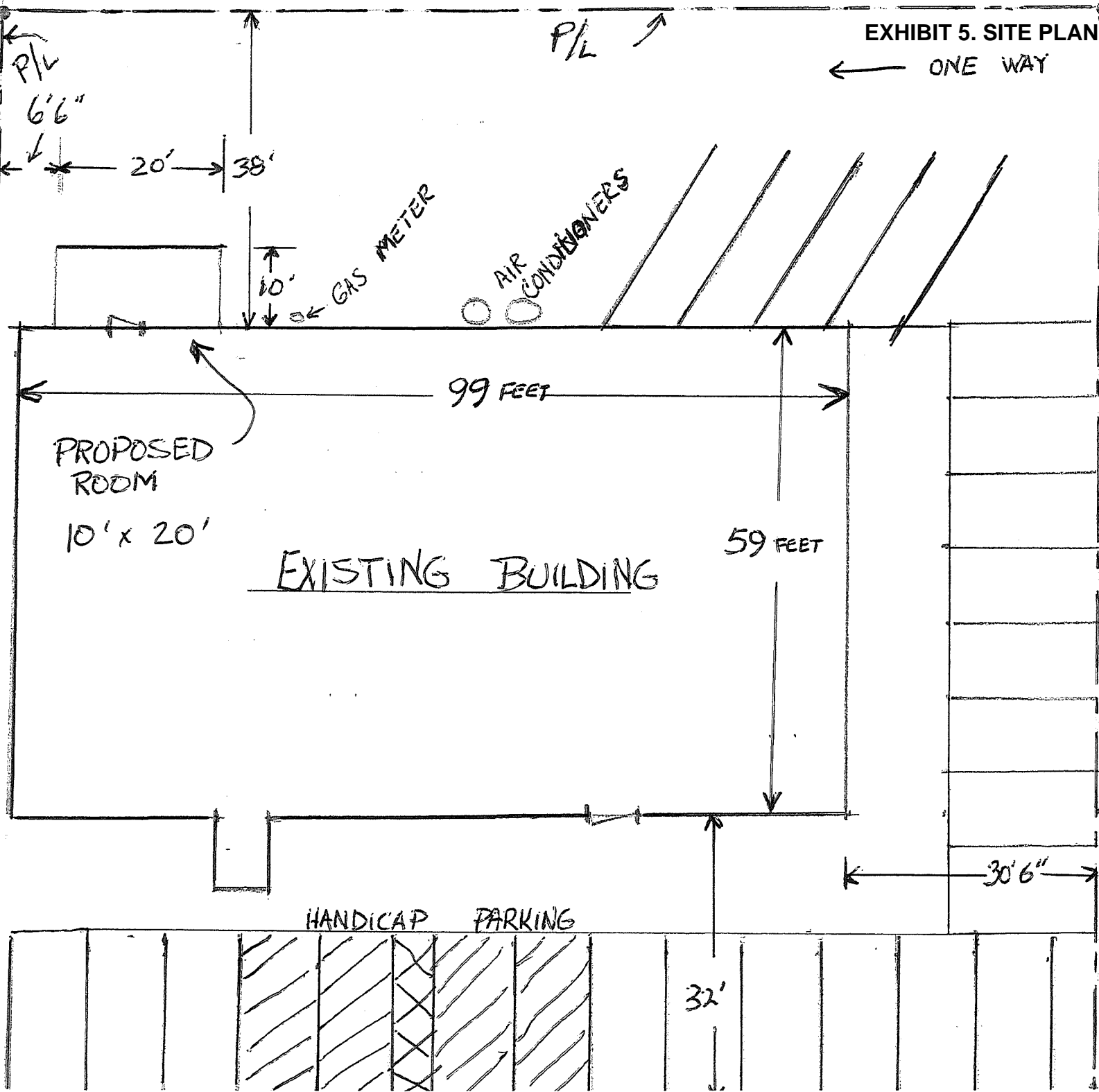
59 FEET

30'6"

HANDICAP PARKING

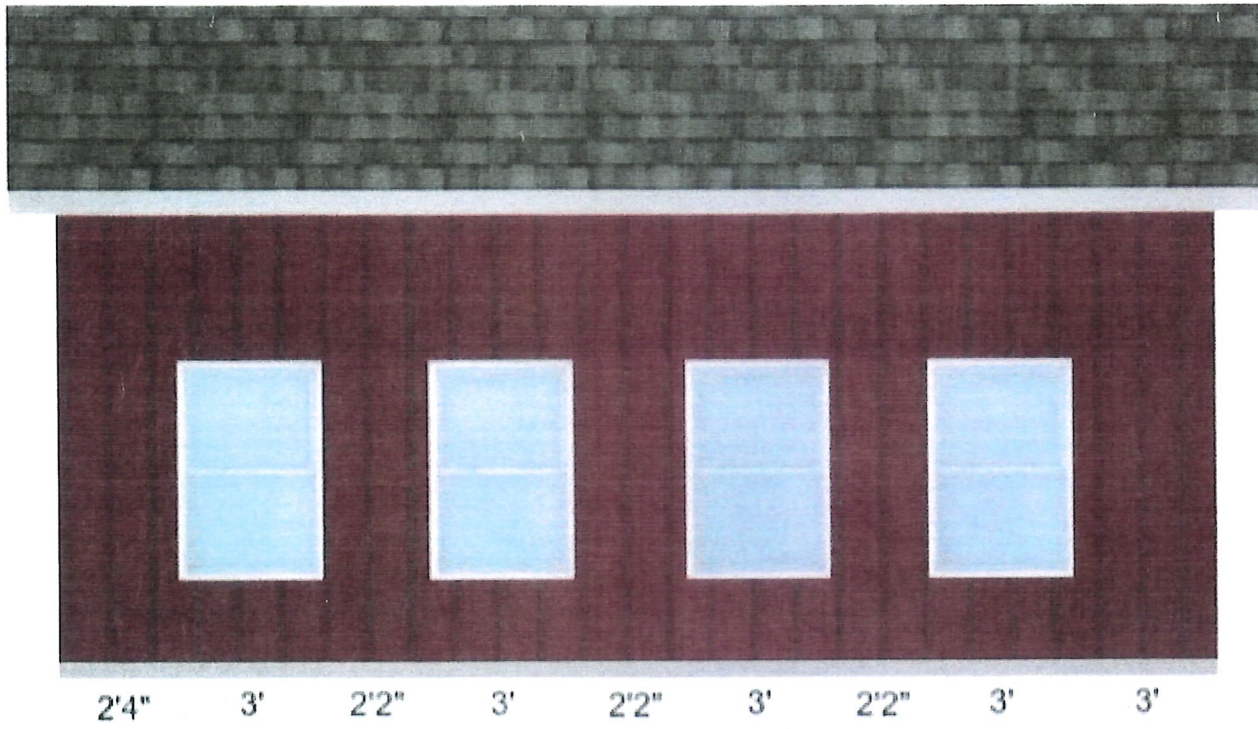
32'

ALLEY

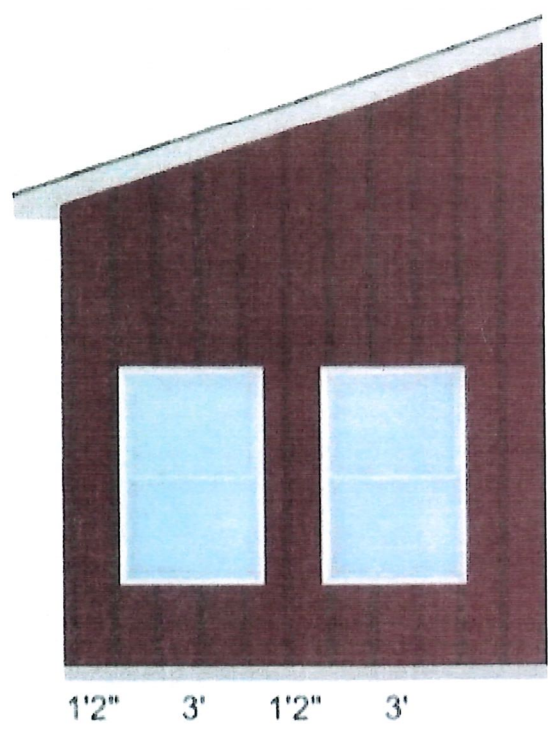


LAPEL EAGLES AERIE 4323 PATIO ADDITION

Sidewall



Endwall A



Endwall B

