

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

BEFORE THE TOWN OF HILLSBOROUGH
BOARD OF ADJUSTMENT
CASE NO. BA-01-2025

In the Matter of:)
)
Appeal Submitted by)
)
DNB VENTURES, LLC,)
C/O MICHAEL D. KANEY,)
Appellant)

ORDER
INTERPRETING THE
UNIFIED DEVELOPMENT ORDINANCE

This matter came before the Town of Hillsborough Board of Adjustment for a quasi-judicial evidentiary hearing on February 12, 2025, pursuant to proper notice published in accordance with the Town of Hillsborough UDO (Unified Development Ordinance) and North Carolina General Statute 160D-406(b).

Members of the Board present and participating in this matter were Chair Sean Kehoe, Vice Chair Raul Herrera, David Blankfard, Robert Iglesias, Eddie Sain and Jenn Sykes. Sain did not participate or vote in the matter.

Town of Hillsborough Senior Planner Tom King was present representing the Town's Planning and Economic Development Division.

Town Attorney Bob Hornik of The Brough Law Firm, PLLC, represented the Board of Adjustment.

Michael D. Kaney representing DNB Ventures, LLC, was present on behalf of the appellant.

Nick Paliouras of Paliouras Enterprises, LLC, was present on behalf of the property owner. Paliouras did not participate in the hearing.

No members of the public or other witnesses were present at the hearing.

In accordance with quasi-judicial procedures, all parties intending to testify and present

evidence were sworn. The Board heard a verbal staff report presentation from King, and a verbal presentation from Kaney. In addition to the verbal staff report and presentation, the Board was provided with and viewed King's staff report containing the appellant's application materials.

There was no factual dispute between the parties. The issue presented was a legal question – the proper interpretation of the UDO.

After carefully considering all the evidence and arguments, engaging in deliberation among the Board, and based upon testimony and arguments presented during the hearing, the Board renders the following FINDINGS OF FACT, draws the following CONCLUSIONS OF LAW and makes the following DECISION:

FINDINGS OF FACT

1. Kaney represents a client who is interested in constructing a bank or financial institution on property owned by Paliouras Enterprises, LLC. The client desires a building-mounted, drive-up ATM (Automated Teller Machine) as part of their project. No drive-up teller window is desired.

2. Kaney contacted Planning and Economic Development Division staff on December 4, 2024, via electronic mail asking if drive-up ATMs associated with banks and financial institutions are regulated in the same manner as drive-up windows.

3. King investigated the matter on December 5, 2024, and determined that a drive-up ATM associated with a bank or financial institution is not permitted under current UDO provisions.

4. King based the determination on the following two definitions found in UDO Section 9 (Definitions), Subsection 9.2 (Definitions):

“Automated Teller Machine (ATM): An unstaffed machine for accessing financial accounts. *These may be attached to a bank branch or independently located for walk up or drive up customers.*” [emphasis added]

“Bank & Financial Institution: An establishment that provides retail banking services, mortgage lending, or similar financial services to individuals and businesses. Financial institutions include those establishments engaged in the on-site circulation of cash money and check-cashing facilities but shall not include bail bond brokers. *Financial institutions may also provide Automated Teller Machines (ATM) services, located within a fully enclosed space or building, or along an exterior building wall intended to serve walk-up customers only.* Financial institutions may include drive-up windows.” [emphasis added]

5. King’s determination concluded that:

(a) ATMs are treated differently than drive-up windows in the definitions of the two uses.

(b) The “Bank & Financial Institution” definition language is more restrictive than the “Automated Teller Machine (ATM)” use definition language.

(c) In interpreting conflicting ordinance language or provisions, the more restrictive language or provision governs.

6. King transmitted the determination to Kaney via electronic mail on December 5, 2024.

7. Planning, Tourism and Economic Development Manager Shannan Campbell responded to King’s determination on December 6, 2024, via electronic mail informing both King and Kaney that she would review King’s determination and investigate the possibility of a different interpretation.

8. On December 16, 2024, Campbell responded to Kaney via electronic mail stating her concurrence with King’s determination.

9. Kaney filed a timely appeal of the determination on January 13, 2025, in accordance with the UDO and North Carolina General Statute 160D-405(d).

10. Kaney posed the following arguments in support of the appeal:

(a) Staff erred in their interpretation of the intent of the UDO in their review of

the two conflicting definitions; in that drive-up windows associated with banks and financial institutions are allowed, but drive-up ATMs attached to a bank building are not.

(b) The definition of ATM states they “may be attached to a bank branch...for...drive up customers.” Therefore, ATMs should be allowed to be installed on the exterior wall of a bank or financial institution for drive-up customers.

(c) The UDO specifically states that ATMs may be attached to a bank branch for drive-up customers.

(d) The UDO allows drive-up windows for banks and financial institutions but does not differentiate between drive-up windows and drive-up ATMs, and why one is specifically allowed and the other not. Drive-up windows use loudspeakers for communication between tellers and patrons, which is much more intrusive to adjoining properties than a single drive-up ATM attached to a bank’s exterior building wall.

CONCLUSIONS OF LAW

The resolution of this case depends on the interpretation of the ordinance language as applied to the foregoing facts. It is the Board’s conclusion that:

11. Staff’s determination was proper.
12. Staff’s decision was based on a strict reading of the definitions of “Automated Teller Machine (ATM)” and “Bank & Financial Institution” as found in UDO Section 9.2.

DECISION

THEREFORE, based upon all the foregoing IT IS ORDERED that the staff’s decision is hereby AFFIRMED.

In addition, IT IS FURTHER ORDERED that the following action be taken: The Board recommends staff prepare an amendment to the UDO changing the definition of “Banks &

Financial Institution” found in Subsection 9.2 (Definitions) to read as follows:

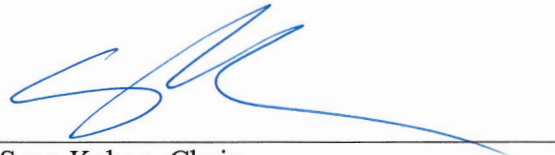
“An establishment that provides retail banking services, mortgage lending, or similar financial services to individuals and businesses. Financial institutions include those establishments engaged in the on-site circulation of cash money and check-cashing facilities but shall not include bail bond brokers. Financial institutions may also provide Automated Teller Machines (ATM) services, located within a fully enclosed space or building, or along an exterior building wall intended to serve walk-up or drive-up customers only. Financial institutions may include drive-up windows only.” [Note: new wording is underlined; existing wording to be removed is denoted by a strikethrough]

Typo Error: This "only" should be strikethrough. TK 2/25/2025

Typo Error: This "only" did not ever exist in the definition. TK 2/25/2025

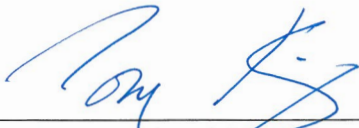
This Order is final and effective as of the date of filing in the office of the Planning, Tourism and Economic Development Division Manager as indicated below.

DONE AND APPROVED BY A UNANIMOUS VOTE OF ALL THE BOARD MEMBERS
PRESENT AND VOTING AT THE QUASI-JUDICIAL EVIDENTIARY HEARING ON THIS
MATTER on the 12th day of February 2025.



Sean Kehoe, Chair
Town of Hillsborough Board of Adjustment

Filed this 18th day of February 2025.



Tom King, AICP, CZO
Senior Planner
Secretary to the Board of Adjustment
Town of Hillsborough Community Services Department
Planning and Economic Development Division

NOTE: An aggrieved party may appeal a decision by the Board of Adjustment to the Superior Court of Orange County. Appeals shall be in *certiorari* pursuant to North Carolina General Statutes 160D-1402 and must be filed within the time provided by North Carolina General Statute 160D-1405(d).