

DRAFT Minutes

BOARD OF ADJUSTMENT

Regular meeting

6 p.m. Feb. 12, 2025

Board Meeting Room of Town Hall Annex, 105 E. Corbin St.



Present: Chair Sean Kehoe, Vice Chair Raul Herrera, Jenn Sykes, Eddie Sain, Robert Iglesias and Dave Blankfard

Absent: Richard Chapple

Staff: Town Attorney Bob Hornik and Senior Planner Tom King

1. Call to order and confirmation of quorum

Chair Sean Kehoe called the meeting to order at 7 p.m. Senior Planner Tom King confirmed the presence of a quorum stating that, because only 5 members were needed to conduct business, and Member Eddie Sain is an Extraterritorial Jurisdiction Alternate member, Sain would not be participating of voting at this meeting.

2. Agenda changes and approval

There were no changes to the agenda.

Motion: Member Jenn Sykes moved to adopt the agenda without changes. Vice Chair Raul Herrera seconded.

Vote: 5-0. Motion passed.

3. Minutes review and approval

Minutes from the regular meeting on Nov. 13, 2024.

Motion: Sykes moved approval of the Nov. 13, 2024, minutes as submitted. Herrera seconded.

Vote: 5-0. Motion passed.

4. Quasi-judicial hearings

- A. Case BA-01-2025: Financial Institution on Paliouras Court - Appeal from a staff determination relating to the proposed development of property located at the southeast corner of the I-85 and NC 86 South intersection (Orange County PIN 9873-69-2876). The appellant is DNB Ventures, LLC c/o Michael D. Kaney. The property owner is Paliouras Enterprises, LLC. The appeal is from a staff determination that a building mounted, drive-up/drive-through ATM (Automated Teller Machine) is not allowed in association with a bank or financial institution.

Motion: Sykes motioned to open the hearing. Herrera seconded.

Vote: 5-0. Motion passed.

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Kehoe confirmed no ex parte communication regarding the case and no conflict of interest with the board members existed. Kehoe swore in the witnesses, King and Michael Kaney.

King, having previously been sworn, stated the case number, BA-01-2025, the case name, Financial Institution on Paliouras Court, and the appellant, DNB Ventures, LLC, represented by Michael Kaney. A representative of the property owner, Paliouras Enterprises, LLC, was also present at the hearing.

King stated that this case stems from potential development of the property at the intersection of I-85 and NC 86 South next to Scheetz. A pre-application meeting regarding the potential project was held with town staff sometime in 2024. On Dec. 4, 2024, Kaney asked Planning and Economic Development Division staff if a building-mounted, drive-up ATM would be governed by the same standards applicable to drive-up windows. King researched the question and, on Dec. 5, 2024, replied to Kaney that a building-mounted, drive-up window would not be permitted. The determination was based on the following two definitions found in Unified Development Ordinance (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]

Based on the two definitions, King determined:

1. ATMs are treated differently than drive-up windows in the definitions of the two uses.
2. The Bank and Financial Institution definition language is more restrictive than the ATM use definition language, so this language governs.

In follow-up to King’s determination, on Dec. 6, 2024, Planning and Economic Development Division Manager Shannan Campbell informed Kaney she would evaluate the matter to see if there was room for interpretation.

One Dec. 16, 2024, Campbell informed Kaney and King that she agreed with King’s Dec. 5, 2024, interpretation. Campbell included that she believed a freestanding, drive-up/through ATM in the parking lot would be allowed.

At this point King offered his staff report into the record of the case, stating that it contained a summary of the appellant’s arguments in support of their position as well as staff’s thoughts on those positions.

Hornik inquired about the appellant's proposal. King stated the proposal involved a bank with an unstaffed, drive-up ATM with no drive-up bank teller window. He then clarified to Kehoe that the ATM would be mounted on the side of the building. However, King stated, Campbell’s interpretation of the UDO only allows freestanding drive-up ATMS but not building-mounted ATM’s.

The board discussed various building-mounted, drive-up ATMs in town and questioned their existence based on the UDO. King stated all the current ATMs, to his knowledge, predate adoption of the UDO. King stated staff cannot find the origins of the UDO reasoning and suggested the definitions may have been borrowed from another town's regulations during the drafting of the current UDO.

Member Robert Iglesias inquired about any practical application of the definitions to a project. King stated that he believes the UDO simply contains dated language.

Sykes wondered if the ordinance was based around keeping drive-up ATMs out of downtown and the historic district because of traffic. Sykes then suggested that maybe an option for permitting a drive-up, unstaffed ATM would be via a special use permit issued by the board. King responded that, while there may be other avenues the appellant could pursue for relief, the board must focus on the question before them at this hearing.

Town Attorney Bob Hornik added that the board should wait to comment until after they have heard all the arguments.

Michael Kaney, representing the appellant, DNB Ventures, LLC, having been previously sworn, addressed the board. Kaney is appealing the Planning and Economic Development Division staff's final interpretation of the UDO as supplied to him on Dec. 16, 2024. The project proposed for the property is a financial institution that wants a wall-mounted, drive-up ATM, but not drive-up teller window. Kaney stated financial institutions prefer wall-mounted ATMs so they can be maintained from inside the building for safety, and security of employees and customers. He stated the UDO excludes drive-up ATM versus a drive-up window with tellers, but the UDO does not clearly distinguish between the two. He stated drive-up teller windows can be more disruptive to adjacent property owners because of noise from speakers. Also, other drive-up sites like restaurants sometimes have the same disruptive hours as a drive-up ATM. He then offered to answer any questions from the board.

Kehoe found no error in staff's interpretation of the UDO wording, citing a poorly worded definition. He also acknowledged the safety risk created by a freestanding, drive-up ATM and the benefit of a smaller footprint from a building mounted ATM. He also noted a 24-hour gas station, and an interstate were adjacent to the subject property so noise should not be a factor.

Hornik advised the board only consider the language of the UDO and not a particular site in making their decision on this matter.

Herrera read "affirm, reverse, or modify" as one of the actions the board may take in deciding an appeal.

Sykes drew attention to the word "only" in the bank & financial institution definition in the UDO and said there may be other actions to take after their decision on the case.

Iglesias asked about the repercussions of reversing the decision.

Hornik stated the board's reversal of the staff decision would stand and apply to similar future cases. King stated a reversal of the staff decision would result in staff's proposing an amendment to the ordinance to reflect the board's decision. UDO amendment s are decided by the Town Board of Commissioners.

Iglesias stated he is looking for solutions for all involved. Hornik reminded the board other options exist for the appellant to pursue their plans.

Sykes stated the board would probably recommend a change to the UDO.

Kehoe pointed to the conflicting language in the two definitions reading the ATM definition. Sykes stated the bank and financial institution language is more restrictive than that in the ATM definition, so it governs.

Iglesias asked why the language of the bank definition supersedes the ATM language. King stated that when one law or ordinance conflicts with another, the more restrictive law or ordinance applies. This is a general legal standard.

Hornik suggested closing the hearing and holding deliberations on the case.

Member Dave Blankford asked if this situation had arisen before. King responded that, to his knowledge, this issue has not been raised before.

Motion: Iglesias motioned to close the hearing. Sykes seconded.

Vote: 5-0. Motion passed.

Kehoe summarized that he believed the board intends to uphold staff's determination and would recommend a wording change to the UDO.

Motion: Sykes moved to uphold and affirm the staff's decision. Iglesias seconded.

Vote: 5-0. Motion passed.

King asked for the board's findings regarding their decision.

Sykes stated the UDO wording regarding bank and financial institutions as it stands currently is the more restrictive definition and does not allow a drive-up ATM attached to a bank.

The board and staff then discussed exact language to recommend regarding a UDO amendment.

The board recommended the following change to the wording of the definition of "Banks & Financial Institutions" 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 circulations 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. Financial institutions may include drive-up windows."

The word "only" after "customers" is to be removed.

Motion: Sykes motioned that the recommend the amended language to the Planning Board and Town Board of Commissioners. Herrera seconded.

Vote: 5-0. Motion passed.

King noted that Kehoe and Sykes' terms end April 30, 2025. He explained they will continue to serve on the board until a replacement has been appointed. At present there are two potential applicants, neither of whom attended tonight's meeting as King had suggested.

5. Committee and staff reports

King reported that the town has hired a new Planning Technician who he was hoping could attend this meeting but, King said, he was currently attending another town meeting.

King stated the town has identified a consultant, Inspire Placemaking Collective, from Durham, to assist in the upcoming rewrite the UDO.

6. Adjournment

Motion: Sykes motioned to adjourn. Herrera seconded.

Vote: 5-0. Motion passed.

Kehoe adjourned the meeting at 6:39 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tom King', with a stylized flourish at the end.

Tom King, AICP, CZO
Senior Planner
Staff support to the Board of Adjustment

Approved: Month X, 202X