

# Agenda

## Board of Adjustment Regular Meeting

6:00 PM February 12, 2025

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



**1. Call to order and confirmation of quorum**

**2. Agenda changes and approval**

**3. Minutes review and approval**

A. Minutes from regular meeting on November 13, 2024

**4. Quasi-judicial evidentiary 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.

**5. Committee and staff reports**

**6. Adjournment**

Interpreter services or special sound equipment for compliance with the American with Disabilities Act is available on request. If you are disabled and need assistance with reasonable accommodations, call the Town Clerk's Office at 919-296-9443 a minimum of two business days in advance of the meeting.

101 E. Orange St., PO Box 429, Hillsborough, NC 27278  
919-732-1270 | [www.hillsboroughnc.gov](http://www.hillsboroughnc.gov) | @HillsboroughGov

# DRAFT Minutes

## BOARD OF ADJUSTMENT

### Regular meeting

6 p.m. Nov. 13, 2024

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



Present: Chair Sean Kehoe, Vice Chair Raul Herrera, Richard Chapple, Eddie Sain and Jenn Sykes

Absent: Member Robert Iglesias

Staff: Senior Planner Tom King

Others: Board of Adjustment Attorney Brian Ferrell, Town Attorney Bob Hornik (representing the applicant), and representatives for the applicant, Town Environmental Engineering Supervisor Bryant Green, Architect David Daniel, Chuck Hill and Eric Wennerstrom

#### 1. Call to order and confirmation of quorum

Chair Sean Kehoe called the meeting to order. Senior Planner Tom King confirmed the presence of a quorum.

#### 2. Minutes review and approval

Minutes for the regular meeting on April 10, 2024.

Motion: Member Jenn Sykes moved approval of regular meeting minutes from April 10, 2024, as written. Member Raul Herrera seconded.

Vote: 5-0. Motion passed.

#### 3. Adoption of the 2025 meeting schedule

Draft 2025 meeting schedule.

Motion: Herrera motioned to approve the 2025 meeting schedule. Member Eddie Sain seconded.

Vote: 5-0. Motion passed.

#### 4. Quasi-judicial evidentiary hearings

Case BA- 02-2024: Adron F. Thompson Addition/Renovation Project- Variance request at 711, 715 & 719 Dimmocks Mill Rd (Orange County PIN 9864-23-7369). The applicant is Marie Strandwitz, Utilities Director. The owner of the property is the Town of Hillsborough, North Carolina. The request is for a maximum 80-foot variance from the required 100-ft setback applicable to certain public utility structures. The request specifically relates to the requirement as applied to the property's Dimmocks Mill Road frontage.

King provided details of the 13.5-acre site, noting it's located in the town's Extraterritorial Jurisdiction (ETJ) and zoned Office/Institutional (OI). King stated that the applicant, Marie Strandwitz, is an employee of the property owner. The property is currently home to the town's water treatment plant and other buildings associated with its operation.

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Board of Adjustment Attorney Brian Ferrell introduced himself and instructed the board on evidentiary hearing procedures.

Kehoe swore in the speakers as a group, including King.

Motion: Sykes motioned to open the evidentiary hearing. Sain seconded.

Vote: 5-0. Motion passed.

Ferrell suggested that the board disclose any ex parte communication they may have had regarding the application including any site visits; potential conflicts of interest they may have or other associations with the applicant. Kehoe surveyed the board members.

Sykes acknowledged she is the Chair of the town's Water and Sewer Advisory Committee, and that town Environmental Engineering Supervisor Bryant Green had informed the committee of the potential for a town Utilities department application proceeding to the Board of Adjustment, but she had no biases one way or the other regarding the project. Ferrell asked her if she could be impartial in this matter and Sykes agreed. The board determined Sykes had no ex parte communication or conflict of interest in the matter.

Ferrell polled people present in the audience as to whether they had standing to participate in the proceedings. The applicant was not present but was represented by their representatives. No others were present to participate in the hearing

King, having previously been sworn, offered the staff report into the record and stated he requested variance is from UDO (Unified Development Ordinance) Section 5 (Use Standards), Subsection 5.2 (Use-specific Standards), Paragraph 5.2.40 (Public Utilities), Sub-paragraph 5.2.40.1 (Standards of Evaluation): "The following specific standards shall be used to evaluate an application for approval of these uses: ...5.2.40.1.g - All structures except public water storage facilities are set back at least one hundred (100) feet from the property line. Elevated public water storage facilities shall observe a setback equal to the greater of the height of the storage facility or the setback required in the district where the facility is located."

The variance would allow a proposed vehicle storage building to be set back 20-ft from the road right-of-way and a proposed building addition built approximately 62-feet from the road right-of-way.

Town Attorney Bob Hornik, representing the applicant, introduced project architect Daniel and town staff member Green. Hornik stated town management deputized Green to represent the town since Green has been primarily involved in the project's plan development. Hornik reminded the board that the purpose of a variance is to grant relief from ordinance requirements when an ordinance standard, as applied to a specific property, causes unnecessary hardship that isn't suffered by similarly situated properties. The matter before the board this evening is a request for relief from complying with a UDO requirement that structures used for public utility land uses be set back 100 feet from property lines as they concern proposed improvement to be made at the Adron F. Thompson facility. Hornik stated the 100-foot setback from Dimmocks Mill Road, an overhead utility easement and mapped floodplain along the Eno River all create a situation specific to this property that prevents the proposed vehicle storage building to be constructed on site and impedes construction of a needed addition to the Adron F. Thompson building. Hornik explained the setback and flood plain requirements did not exist during the original site's construction. Also, allowing improvements to the facility in the setback instead of the floodplain follows adopted town policy in limiting substantial development in floodplain areas. With the board's allowance, the town's utilities and water and treatment services can continue using the facility to serve the town without encroaching into the floodplain. Hornik reiterated the purpose of the variance is to allow for the modernization of the water treatment plant.

David Daniel of RND architects introduced himself, architect Eric Wennerstrom, and Chuck Hill of Thomas and Hutton Civil Engineering. Daniel, having previously been sworn, presented a MicroSoft PowerPoint presentation giving an overview of the project site plan, site constraints applicable to the property and some of the pertinent existing and proposed building locations. He described the architecturally historic building, dating to 1936, and the sustainability in reusing the existing historic water treatment building. He provided pictures showing the street view of the site, including employee parking, existing buildings and a current vehicle and apparatus storage building.

Daniel detailed the following exhibits in the application:

- Exhibit A depicts the proposed development of a vehicle storage building and an addition to the Adron F. Thompson building. It includes the 100 and 500 yr floodplain areas. Daniel expressed the town's desire not to build in the floodplain, noting it would necessitate a variance from the town's Flood Damage Prevention Ordinance.
- Exhibit B depicts the 100-ft setback applied along Dimmocks Mill Road and showed that half of the existing buildings in the area are partially or wholly within the setback.
- Exhibit C depicts the proposed building's placement in front of the setback.
- Exhibit D depicts the proposed buildings built to the UDO standards behind the setback. The vehicle storage building would be in the floodplain. The proposed building addition would be offset in a manner resulting in inefficient use of space for staff.
- Exhibit E depicts the buildable land outside the floodplain and behind the setback, which limits site accessibility.

Daniel expressed environmental concerns in building in the floodplain and his firm's adamant opposition to building in areas of known environmental impact. He cited recent flooding from Hurricane Helene in western North Carolina, adding that a building with essential town equipment located in the floodplain could compromise critical town operations in protecting the health and welfare of residents.

Daniel stated that a risk assessment required by the "America's Water Infrastructure Act of 2018" was necessitated since the site is an active water treatment facility. Meeting the 100-foot setback could cause security issues due to lessening of building visibility from law enforcement and the public. A less secure building could be detrimental to future funding opportunities for improvements to the site. Continuing with risk assessment analysis, Daniel noted a North Carolina General Statute makes it a Class 1 felony to trespass on an active water treatment plant. He purported buildings nearer Dimmocks Mill Road would provide better visibility for the plant to detect illicit activity.

Next, Daniel highlighted town sustainability concerns alleviated by reusing the historic building. Renovations would bring the historic building up to code. However, if the setback is enforced, the proposed building would likely be used for storage or vacated, leading to degradation. Daniel stated unused buildings often are not well maintained.

Finally, Daniel stated the need for the variance is a public concern and need.

Member Richard Chapple inquired the reasoning behind a 100-ft setback. King suggested the reasoning could be to mitigate visual, noise, odor or dust associated with public utility uses. He noted the ordinance requirement was written before his employment with the town. Daniel interpreted the spirit of the UDO as keeping unaesthetically pleasing utilities back from property lines to avoid loss in adjacent property values. He added that the proposed building's design features will be subject to building design standards found in the UDO.

Then, after determining that Green had been employed by the town over two years, Kehoe inquired about historic flooding on the property. Green stated utilities staff have that information and noted the upstream Lake Ben Johnston's overflow weir mitigates flooding on the site. Ferrell confirmed that Greene had been sworn in.

Chapple inquired about buffering for noise and dust. The architecture described the improved visuals for the neighbors with staff parking being located by an ordinance-required landscape buffer.

Hornik pointed out the high voltage power lines as another hardship on the site.

Sain inquired about trees on the northwest corner of the site. Daniel stated some trees will be removed to make an additional entrance. He stated it will be safer ingress/egress for larger trucks and trailers entering the site from the west. Sain and King noted the town owns the property to the west.

Chapple asked about materials used for paving. Answering, Daniel stated most of the parking will remain gravel with select areas paved with asphalt and meeting town UDO standards.

Hornik stated that adjacent property owners were notified of the hearing. Then, King noted he had received one phone call and two emails inquiring about the proposed variance. One emailer had concerns about landscaping along the road frontage.

The board discussed materials and design used for the proposed site, and Ferrell informed the board that these details will be revisited during a hearing on the Special Use Permit required for the project. He reminded the board that currently the variance is the only matter before them for consideration.

Hornik added that he hopes the board is satisfied to approve the variance request.

King asked the applicant if his provided summary of unnecessary hardships found in the staff report is adequate for the final order document that will be prepared for the variance, if approved. Hornik stated it was.

Ferrell clarified the role of the board in issuing a variance and instructed them procedurally. This included that all UDO standards must be met to allow the variance with discussion and a vote for each finding to be made. Hornik confirmed the applicant sufficiently presented the need for the variance.

Farrell read and summarized the findings. He instructed the board on wording regarding the hardships and consideration of staff findings in the report. King added staff notes and recommendations.

**Finding #1: Unnecessary hardship would result from the strict application of the ordinance.**

The board found as fact that, based on the applicant's reasons as presented in their application and summarized in the staff report, that unnecessary hardship will result if the variance is not granted.

Issues raised by the applicant were that failure to grant the variance could lead to potential future environmental and fiscal damage to town equipment and property, damage to downstream properties; a situation could be created where town staff are hindered or unable to respond in a flooding situation; and failure to grant the variance could hinder the applicant's ability to continue use of the historic Adron F. Thompson building.

Motion: Herrera motioned to affirm Finding #1. Sykes seconded.  
 Vote: 5-0. Motion passed.

**Finding #2: The hardship results from conditions that are peculiar to the property such as location, size or topography.**

The board found as fact that, based on the applicant's reasons as presented in their application and summarized in the staff report, that the hardship complained of results from conditions peculiar to their property; specifically: (i) the property's irregular shape; being narrow at the west end and widening to the east; (ii) approximately 50% of the property is located within federally mapped floodplain; (iii) an approximately 70-foot-wide high tension electric line easement crosses east to west through the central portion of the property; and (iv) that the required 100-foot setback applies specifically to the subject property because of its land use and not to other properties in the neighborhood.

Motion: Sykes motioned to affirm Finding #2. Herrera seconded.  
 Vote: 5-0. Motion passed.

**Finding #3: The hardship did not result from actions taken by the applicant or the property owner.**

The board found as fact that no evidence was presented proving the hardships complained of are self-created.

Motion: Sykes motioned to affirm Finding #3. Sain seconded.  
 Vote: 5-0. Motion passed.

**Finding #4: The requested variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved.**

The board found as fact that, based on the applicant's reasons as presented in their application and summarized in the staff report, allowing the vehicle storage building to be built within the 100-foot setback from Dimmocks Mill Road ensures public safety will be secured from the effects of potential flood damage if it were allowed to be placed within the floodplain area on the property.

Motion: Sykes motioned to affirm Finding #4. Chappell seconded.  
 Vote: 5-0. Motion passed.

**Decision**

Ferrell instructed the board on what actions they must take in rendering a decision on the approval.

Motion: Sykes motioned to approve the variance with no conditions. Herrera seconded.  
 Vote: 5-0. Motion passed.

**Close the evidentiary hearing**

Motion: Sykes motioned to close the evidentiary hearing. Herrera seconded.  
 Vote: 5-0. Motion passed.

**5. Committee and staff reports**

King reported that the recently hired planning technician had resigned to take a job with a Raleigh consulting firm. King also went over upcoming board members' term statuses, noting that Kehoe's term is expiring in late

April 2025. Former member Portia Made-Jamison resigned earlier in the month because she's moved outside the town's planning and zoning jurisdiction. Lastly, King also needs to examine Sykes' eligibility for reappointment as well, but her term may also end in late April 2025 as well.

**6. Adjournment**

Motion: Sykes motioned to adjourn. Herrera seconded

Vote: 5-0. Motion passed.

Kehoe adjourned the meeting at 6:55 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tom King".

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

Approved: Month X, 202X

**PLANNING & ECONOMIC  
DEVELOPMENT DIVISION  
STAFF REPORT**

Tom King, AICP, CZO - Senior Planner  
Secretary to the Board of Adjustment



101 East Orange Street  
P.O. Box 429  
Hillsborough, NC 27278

**Report Date:** February 5, 2025

**BOARD OF ADJUSTMENT**

**Agenda Item #: 4.A**

| CASE NUMBER       | CASE NAME                                | APPLICANT/PROPERTY OWNER  |
|-------------------|--|---|
| BA-01-2025        | Financial Institution on Paliouras Court | DNB Ventures, LLC c/o Michael D. Kaney/Paliouras Enterprises, LLC |
| HEARING DATE      | PARCEL ID NUMBER                         | PROPERTY ADDRESS/LOCATION   |
| February 12, 2025 | 9873-69-2876                             | Southeast corner of I-85 & NC 86 South intersection               |

**BRIEF SUMMARY OF REQUEST**

Appeal 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.

| EXISTING ZONING | EXISTING LAND USE                                | SURROUNDING ZONING/LAND USE  | FUTURE LAND USE CATEGORY | SIZE OF PROPERTY |
|-----------------|--|--|--------------------------|------------------|
| ESU             | Vacant lot containing stormwater control measure | <i>North:</i> R-1 (County)/I-85<br><i>South:</i> ESU/Paliouras Court & convenience store/gas station<br><i>East:</i> ESU/Car dealership<br><i>West:</i> R-1 (County)/NC 86 South | Retail Services          | 2.908 acres      |

**DISCUSSION OF STAFF FINDINGS**

**COMPLIANCE** with the UDO (UNIFIED DEVELOPMENT ORDINANCE)

Not applicable to appeals.

**COMPATIBILITY** with the COMPREHENSIVE SUSTAINABILITY PLAN

Not applicable to appeals.

**GENERAL STANDARDS/FINDINGS OF FACT SUMMARY**

Not applicable to appeals.

**ATTACHMENTS:** 1. Appeal materials 2. Correspondence generating appeal



## BACKGROUND:

The appellant contacted Planning and Economic Development Division staff on December 4, 2024, asking if drive-up ATMs are regulated in the same manner as drive-through windows. The question was related to a financial institution interested in building on the subject property. A building-mounted, drive-up ATM is desired. A drive-up teller window isn't proposed.

Senior Planner Tom King investigated the matter on December 5, 2024, and determined that a drive-up/drive-through ATM associated with a bank or financial institution is not permitted under current UDO provisions. The determination was based 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]

King based the determination on the following:

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.

In response, on December 6, 2024, Planning and Economic Development Division Manager Shannan Campbell informed the appellant she would review King's response and investigate the possibility of a different interpretation.

On December 16, 2024, Campbell responded to the appellant concurring with King's determination and advising a freestanding drive-up/drive-through ATM not connected with the building's façade may be an option.

Attachment #2 is the electronic mail correspondence associated with staff's determination.

## APPELLANT'S POSITION:

The Appellant's arguments (see Attachment #1) may be broken down into the following points. Staff responses to each argument are provided as noted.

1. Staff erred in the interpretation of the intent of the UDO in their review of the two conflicting definitions, and the fact that drive-up windows associated with banks and financial institutions are allowed, but drive-up ATMs attached to a bank building are not.

Staff Response: The UDO allows and regulates drive-up windows that are accessory to banks/financial institutions. However, by definition, ATMs are treated separately and distinctly from drive-up windows in the Banks & Financial Institution definition. Based on staff's reading of this definition, it appears the intent of the UDO is that ATMs and drive-up windows be regulated differently.

2. 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.

Staff Response: While "attached to a bank branch" can be read to mean physically attached to a bank building, it may also be read to mean the ATM is associated with a specific bank branch (e.g., the State Employees Credit Union ATM in the parking lot of the Hillsborough Commons Shopping Center on Mayo Street). It seems odd that the definition would refer to a bank "branch" to recognize one could be attached to a bank building (i.e., is the "branch" a "building"?).

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

Staff Response: The language found in the Bank & Financial Institution definition is more restrictive than that found in the ATM definition. Courts have recognized that where there is conflict among regulation provisions, "the more restrictive provision shall apply" (Westminster Homes, Inc. v. Town of Cary Zoning Bd. of Adjustment, 354 N.C. 298, 554 S.E.2d 634 (2001)).

4. The UDO allows drive-up windows for banks/financial institutions but doesn't 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.

Staff Response: It isn't known why the definitions are worded the way they are but agree the land use impacts are different with the exception that drive-up ATMs may be used 24/7, 365 days a year. Banks/financial institutions with drive-up tellers normally only operate during weekday, daytime business hours (i.e., Monday- Friday, 8:00 AM – 6:00 PM).

## **DIRECTIVES FOR HEARING APPEALS:**

1. The official who made the decision shall be present at the hearing as a witness.
2. The appellant shall not be limited to matters stated in the notice of appeal. The board shall continue the hearing if any party, or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal.
3. After closing the hearing, the board shall consider the application, relevant support material, and any testimony or evidence given at the hearing and included in the record, and take one of the following actions:
  - (a) Affirm, wholly or partly, the determination being appealed, or
  - (b) Reverse, wholly or partly, the determination being appealed, or
  - (c) Modify the determination being appealed.

4. The board shall have all the powers of the official who made the decision being appealed.
5. The board's decision shall resolve any contested facts, and be based on competent, material and substantial evidence submitted into the record.
6. The board may instruct staff regarding how staff should carry out the board's direction, if necessary.

**VOTING REQUIREMENT:**

A majority vote of the board members eligible to vote is required to grant an appeal (overturn a determination).

## ATTACHMENT #1

**Tom King**

---

**From:** Tom King  
**Sent:** Monday, January 13, 2025 4:21 PM  
**To:** Michael Kaney  
**Subject:** RE: PIN 9873692876 - Appeal to the Board of Adjustments for Interpretation

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Will do.



**Tom King, AICP, CZO**

Senior Planner

[Town of Hillsborough](#)

101 E. Orange St., Hillsborough, North Carolina

Office: [919-296-9475](tel:919-296-9475)



Email correspondence to and from this address may be subject to the North Carolina public records law and may be disclosed to third parties.

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**From:** Michael Kaney <michael@bellcommercial.net>  
**Sent:** Monday, January 13, 2025 4:20 PM  
**To:** Tom King <Tom.King@hillsboroughnc.gov>  
**Subject:** RE: PIN 9873692876 - Appeal to the Board of Adjustments for Interpretation

Thank you. If upon review there is any additional information required for the Board of Adjustments, please let me know.

Thank you,  
Michael



120 Wind Chime Ct  
Raleigh, NC 27615  
O: 919-917-7298  
C: 919-610-2583  
[Michael@BellCommercial.net](mailto:Michael@BellCommercial.net)

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**From:** Tom King <[Tom.King@hillsboroughnc.gov](mailto:Tom.King@hillsboroughnc.gov)>  
**Sent:** Monday, January 13, 2025 4:12 PM

**To:** Michael Kaney <[michael@bellcommercial.net](mailto:michael@bellcommercial.net)>

**Subject:** RE: PIN 9873692876 - Appeal to the Board of Adjustments for Interpretation

Good afternoon. I've received the appeal. Thank you.



**Tom King, AICP, CZO**

Senior Planner

[Town of Hillsborough](http://TownofHillsborough.com)

101 E. Orange St., Hillsborough, North Carolina

Office: [919-296-9475](tel:919-296-9475)



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**From:** Michael Kaney <[michael@bellcommercial.net](mailto:michael@bellcommercial.net)>

**Sent:** Monday, January 13, 2025 4:06 PM

**To:** Tom King <[Tom.King@hillsboroughnc.gov](mailto:Tom.King@hillsboroughnc.gov)>

**Subject:** PIN 9873692876 - Appeal to the Board of Adjustments for Interpretation

Tom:

Good afternoon. Please receive this email as a request to please file an appeal to the Board of Adjustments associated with an interpretation by staff of the UDO and proposed development of the parcel identified as PIN 9873692876. Please see the receipt for payment of the \$300 fee. Attached please find the BOA General Application form, the BOA Appeal Supplemental Form and the BOA Owner Authorization Form.

Please review the attached information and if you require any additional information, please let me know.

Thank you,  
Michael



120 Wind Chime Ct

Raleigh, NC 27615

O: 919-917-7298

C: 919-610-2583

[Michael@BellCommercial.net](mailto:Michael@BellCommercial.net)

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**From:** [noreply@municipalonlinepayments.com](mailto:noreply@municipalonlinepayments.com) <[noreply@municipalonlinepayments.com](mailto:noreply@municipalonlinepayments.com)>

**Sent:** Monday, January 13, 2025 3:59 PM

**To:** Michael Kaney <[michael@bellcommercial.net](mailto:michael@bellcommercial.net)>

**Subject:** Payment Receipt - Routine Planning Fee (plan reviews, zoning and sign permits, including historic)



## Town of Hillsborough

This is your payment receipt.

Confirmation Number  
DWQR6N53KK

Payer Contact Info  
[michael@bellcommercial.net](mailto:michael@bellcommercial.net)

Payment Method  
\*\*\*\*\*8665

### **Routine Planning Fee (plan reviews, zoning and sign permits, including historic)**

Please tell us what you are paying for (provide name or address of project, permit number, or type of review):

Appeal to Board of Adjustments associated with the property at the north east corner of NC Highway 86 South and Paliouras Court, adjacent to Sheetz, Orange County PIN 9873692876

Base Price \$300.00

**Total \$300.00**

[Municipal Online Services](#)

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TOWN OF  
HILLSBOROUGH

**GENERAL APPLICATION**  
**Special Use Permit, Variance or Appeal**  
**Board of Adjustment Hearing**

Planning and Economic Development Division  
101 E. Orange St., PO Box 429, Hillsborough, NC 27278  
919-296-9475 | Fax: 919-644-2390  
www.hillsboroughnc.gov

This application is for a special use permit (including modifications), variance or appeal.  
Incomplete applications will not be accepted or processed.

|  |                             |                                    |  |
|--|-----------------------------|------------------------------------|--|
| <b>OFFICIAL USE ONLY</b>                 |                             |                                    |  |
| Case Number: <u>BA-01-2025</u>           | Fee: \$ <u>300.00</u>       | Receipt No.: <u>DWQR6N53KK</u>     |  |
| FLUM Designation: <u>Retail Services</u> | Zoning District: <u>ESU</u> | Overlay Zone: Select One <u>NA</u> |  |

|   |
|---|
| Permit or Relief Requested: <u>Appeal</u> |
|---|

|   |   |
|---|---|
| <b>PROJECT LOCATION AND DESCRIPTION</b>   |   |
| Project Name: <u>Financial Institution on Paliouras Court</u>   | Project Type: <u>Business/Commercial</u>            |
| Property Address/Location: <u>Paliouras Court</u>   |   |
| PIN(s): <u>9873692876</u>   | Size of Property (Acres/Sq. Ft.): <u>2.91 Acres</u> |
| Current Use of Property: <u>Vacant</u>  | Proposed Use of Property: <u>Commercial</u>         |
| Use Class (from UDO Sections 5.1.7 and 5.1.8): <u>Proposed Use - Bank &amp; Financial Institution</u> |   |
| Number Existing Buildings to Remain: <u>0</u>   | Number Proposed Buildings: <u>1</u>                 |
| Gross Floor Area Existing Buildings: <u>0 sf</u>  | Gross Floor Area Proposed Buildings: <u>3500 sf</u> |
| Number Lots Proposed: <u>1</u>  | Number Dwelling Units Proposed: <u>0</u>            |
| Brief Summary of Request (use separate sheet if necessary): <u>See Separate Sheet</u>                 |   |

|  |  |
|--|--|
| <b>CERTIFICATION AND SIGNATURES</b>  |  |
| <b>Applications will not be accepted without signature of legal property owner or official agent.</b>  |  |
| I certify that the information presented by me in this application and all accompanying documents are true and accurate to the best of my knowledge, information, and belief; and I acknowledge that the processing of this application may require additional town, county and/or state permits, approvals and associated fees. |  |
| Applicant: <u>DNB Ventures LLC</u>   | Legal Property Owner: <u>Paliouras Enterprises LLC</u> |
| Mailing Address: <u>120 Wind Chime Court</u>   | Mailing Address: <u>PO Box 715</u>                     |
| City, State, ZIP Code: <u>Raleigh, NC, 27615</u>   | City, State, ZIP Code: <u>Chapel Hill, NC 27514</u>    |
| Telephone: <u>919-610-2583</u>   | Telephone: <u>919-942-5356</u>                         |
| Email: <u>michael@bellcommercial.net</u>   | Email: <u>Globaltravelnc@yahoo.com</u>                 |
| Signature: <u>[Signature]</u>  | Signature: <u>[Signature]</u>                          |
| Date: <u>01/13/25</u>  | Date: <u>01/13/25</u>                                  |
| Legal Relationship of Applicant to Property Owner: <u>Acquiring Entity/Developer</u>   |  |





TOWN OF  
**HILLSBOROUGH**

**AUTHORIZATION FORM**  
**Owner's Authorization for Agent**  
**Board of Adjustment Hearing**

Planning and Economic Development Division  
101 E. Orange St., PO Box 429, Hillsborough, NC 27278  
919-296-9475 | Fax: 919-644-2390  
www.hillsboroughnc.gov

This form must accompany any application to go before the Board of Adjustment in which the application will not be represented by the legal property owner. Each owner shown on the property owner's deed must sign this authorization form.

I/We Paliouras Enterprises LLC  
(print names of legal property owners)

hereby authorize DNB Ventures LLC  
(print name of agent)

to represent me/us in processing an application for Appeal  
on my/our behalf. In authorizing the agent to represent me/us, I/we as owner/owners attest that:

- The application is made in good faith.
- All information contained in the application is accurate and complete.
- The agent is authorized to accept any and all conditions that may be placed on the approval.
- I/we as the property owner(s) am/are bound by any decision of the board, including any and all conditions attached to board approvals.

James Paliouras  
Signature of Owner

\_\_\_\_\_  
Signature of Owner

James Paliouras  
Print Name of Owner

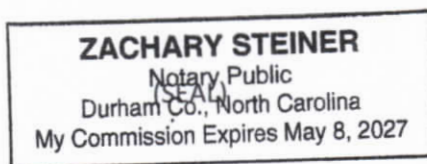
\_\_\_\_\_  
Print Name of Owner

NORTH CAROLINA

Orange COUNTY

Sworn to and subscribed before me on this 13 day of January 2025 by

James Paliouras  
Print Name of Person Making Statement



[Signature]  
Signature of Notary Public

ZACHARY STEINER  
Print Commissioned Name of Notary Public

MAY 8, 2027  
Commission Expiration Date

The individual(s) making the above statement is/are personally known X or identification was produced \_\_\_\_.





TOWN OF  
HILLSBOROUGH

## SUPPLEMENTAL FORM Appeal

Planning and Economic Development Division  
101 E. Orange St., PO Box 429, Hillsborough, NC 27278  
919-296-9475 | Fax: 919-644-2390  
www.hillsboroughnc.gov

To the Hillsborough Board of Adjustment:

I, Michael D. Kaney on behalf of DNB Ventures LLC, hereby appeal to the Board of Adjustment from the following adverse decision of the Planning and Economic Development Division staff:

Interpretation that drive-up ATMs are not permitted on the exterior walls of bank branches.

This adverse decision with respect to property described in the attached General Application was made on 12/16/2024 (date).

### STATEMENT BY APPELLANT

*Below or on a separate sheet, present your reasons for believing the decision, determination or order is erroneous and your reasons for believing your interpretation is the correct one. In addition, state the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude the decision of the Planning and Economic Development Division staff was erroneous. Attach a plot plan if needed to illustrate appeal:*

Please refer to attached Statement by Appellant.

I certify that all the information presented by me in this application is true and accurate to the best of my knowledge, information, and belief.

Michael D. Kaney  
Signature of Applicant

Digitally signed by Michael D. Kaney  
Date: 2025.01.13 15:55:11 -0500

01/13/2025  
Date

### **STATEMENT BY APPELLANT**

This appeal to the Hillsborough Board of Adjustments is being submitted to appeal an interpretation staff has made regarding Automated Teller Machines and Bank & Financial Institution, and the determination an ATM attached to the exterior wall of a Bank & Financial Institution are not allowed for drive-up customers, while multi-lane drive-up windows are permitted.

As the applicant to this appeal, it is our belief that staff has erred in their interpretation of the intent of the UDO in their review of the definition of “Bank & Financial Institution” per Section 9.2 of the UDO, which is in conflict with the definition of an ATM in this same section of the UDO, as well as in conflict with the general concept that multi-bay drive-up windows are clearly permitted per the UDO for Banks and Financial Institutions, but drive-up ATMs attached to the building are not permitted per the interpretation.

Per the UDO Section 9.2, an “Automated Teller Machine (ATM)” is defined as “*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.***”

Section 5.5.2 of the UDO that provides Use-Specific Standards for “Bank and Financial Institutions” identifies that drive-up windows are permitted and outlines the requirements and quantity for multiple drive-up bays and drive-up windows.

The UDO specifically states that ATMs may be attached to a bank branch for drive-up customers. Therefore, an ATM should be allowed to be installed onto the exterior wall of a bank branch for drive-up customers.

Furthermore, Banks & Financial Institutions are permitted to have multiple drive-up bays and drive-up window. The UDO does not provide differentiation between a drive-up window versus a drive-up ATM and why one is specifically permitted for Bank & Financial Institutions, but another would not be allowed per staff’s interpretation. Also, please note that multi-bay drive-up windows use loudspeakers for communications between the tellers and patrons, which is much more intrusive to adjoining properties than a single drive-up ATM attached to an exterior building wall.

Financial Institutions prefer ATMs mounted onto the building exterior walls versus free-standing, as these ATMs mounted on the exterior wall of bank branches but may be loaded and maintained internally for safety reasons. In addition, a person in their car accessing an ATM is safer and significantly less exposed than parking their vehicle in an assigned parking space, walking to an ATM, accessing their funds, and then returning back to their vehicle

Due to the changes in technology and mobile banking, bank branches have been moving away from traditional Tellers and drive-up windows manned by tellers, and certain financial institutions do not use drive-up windows and prefer for convenience and safety the use of drive-up ATMs, which as noted above, are less intrusive than the permitted, multi-bay drive-up windows.

## ATTACHMENT #2

Tom King

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**From:** Shannan Campbell  
**Sent:** Monday, December 16, 2024 11:42 AM  
**To:** Michael Kaney; Tom King; Molly Boyle  
**Subject:** Re: Drive-Up ATM - Proposed Development of PIN 9873692876 in Hillsborough

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Michael,

I had a chance to look over what you had sent and what Tom had analyzed and I believe he was correct in answering your questions as posed:

"Are drive-up ATMs subject to the same rules and provisions in the UDO as drive-throughs?" Yes, that is the way the intent of the ordinance reads, that ATMs served by cars are treated similarly.

"I know, drive-through lanes cannot face the primary street, NC-86 in our case, per the UDO, but can we have an ATM mounted on the side of the building facing NC-86 that cars can pull up to?" No, there cannot be drive-throughs oriented to the street AND per the definition ATMs attached to the building should serve walk-up customers only.

I've read and re-read the definitions and requirements for drive-throughs (and bank teller windows) and I believe what the UDO envisions based on these regulations is the possibility of a walk-up ATM on the front or side and drive through services like a teller window on the back with an optional detached drive through ATM lane. The UDO does not envision a scenario where the teller window is an ATM instead of a person in the window.

One work around could be that the ATM could be a drive through service that is not connected to the building facade, though I recognize that the client may want it as part of the facade so that it can be serviced from the interior. Detaching it a few feet from the building and not having a teller window may be the easiest option.

Otherwise, the options that Tom outlined for an appeal or text amendment would be the best route. Staff would support a text amendment to the UDO for this, as it sounds as though moving away from staffed teller windows to only having ATMs is probably something that the banking industry as a whole is heading towards vs. this being a change needed just for this project.

Let me know if you have any questions.

Thanks,



**Shannan Campbell** | AICP, CZO

Planning and Economic Development Manager

[Town of Hillsborough](#)

101 E. Orange St., Hillsborough, North Carolina

Office: [919-296-9477](tel:919-296-9477) | Mobile: [919-491-9639](tel:919-491-9639)



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**From:** Michael Kaney <michael@bellcommercial.net>

**Sent:** Tuesday, December 10, 2024 10:06 AM

**To:** Shannan Campbell <Shannan.Campbell@hillsboroughnc.gov>; Tom King <Tom.King@hillsboroughnc.gov>; Molly Boyle <molly.boyle@hillsboroughnc.gov>

**Subject:** RE: Drive-Up ATM - Proposed Development of PIN 9873692876 in Hillsborough

Shannan:

Good morning. I wanted to touch base with you regarding the drive-up ATM per our correspondence below, and ascertain what you determined after evaluating this matter in more detail. Please let me know. If you prefer we jump on a call to discuss, I am happy to do so.

Thank you,  
Michael



120 Wind Chime Ct

Raleigh, NC 27615

O: 919-917-7298

C: 919-610-2583

[Michael@BellCommercial.net](mailto:Michael@BellCommercial.net)

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**From:** Shannan Campbell <Shannan.Campbell@hillsboroughnc.gov>

**Sent:** Friday, December 6, 2024 9:21 AM

**To:** Tom King <Tom.King@hillsboroughnc.gov>; Michael Kaney <michael@bellcommercial.net>; Molly Boyle <molly.boyle@hillsboroughnc.gov>

**Subject:** Re: Drive-Up ATM - Proposed Development of PIN 9873692876 in Hillsborough

Hi all,

Let me take a closer look at this today and see if there's any room for a planning director determination given that there are a few different scenarios at play between stand alone vs attached ATMs, drive-throughs, etc.

Thanks,



**Shannan Campbell** | AICP, CZO

Planning and Economic Development Manager

[Town of Hillsborough](#)

101 E. Orange St., Hillsborough, North Carolina

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**From:** Tom King <[Tom.King@hillsboroughnc.gov](mailto:Tom.King@hillsboroughnc.gov)>

**Sent:** Friday, December 6, 2024 9:19 AM

**To:** Michael Kaney <[michael@bellcommercial.net](mailto:michael@bellcommercial.net)>; Molly Boyle <[molly.boyle@hillsboroughnc.gov](mailto:molly.boyle@hillsboroughnc.gov)>

**Cc:** Shannan Campbell <[Shannan.Campbell@hillsboroughnc.gov](mailto:Shannan.Campbell@hillsboroughnc.gov)>

**Subject:** RE: Drive-Up ATM - Proposed Development of PIN 9873692876 in Hillsborough

You're welcome.

I guess what "drive-up customer" in the ATM definition (pull up to side of building & stay in your car vs. park in parking space & walk up to ATM on the building) is open for debate. Both situations exist & I've used both in my lifetime.

I don't know the reason why the bank/financial institution definition is written the way it is.

There is always the option apply for an amendment to the ordinance (requiring Town Board of Commissioners approval), or an appeal from the determination could be made to the town's Board of Adjustment. I believe a variance request would not be the correct route.



**Tom King, AICP, CZO**

Senior Planner

[Town of Hillsborough](#)

101 E. Orange St., Hillsborough, North Carolina

Office: [919-296-9475](tel:919-296-9475)



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**From:** Michael Kaney <[michael@bellcommercial.net](mailto:michael@bellcommercial.net)>

**Sent:** Thursday, December 5, 2024 6:15 PM

**To:** Tom King <[Tom.King@hillsboroughnc.gov](mailto:Tom.King@hillsboroughnc.gov)>; Molly Boyle <[molly.boyle@hillsboroughnc.gov](mailto:molly.boyle@hillsboroughnc.gov)>

**Cc:** Shannan Campbell <[Shannan.Campbell@hillsboroughnc.gov](mailto:Shannan.Campbell@hillsboroughnc.gov)>

**Subject:** RE: Drive-Up ATM - Proposed Development of PIN 9873692876 in Hillsborough

Tom:

I greatly appreciate the information and your response.

However, as you identified, the definitions in your code are contradicting. Under the ATM section it states they may be attached to a bank branch for drive up customers, but under the Bank & Financial Institutions definition, ATMs can only serve walk up. Do you know the reason behind the Bank & Financial Institution definition as to why the ATMs can only serve walk-up customers, but they can have drive-up windows, which are more invasive to the general public? I agree the Bank & Financial Institution definition is more restrictive and hence will typically govern as you point out, but per the definition for ATMs, they can be attached to a bank branch for drive up customers, but that condition is never permitted per the definition of the Bank & Financial Institution.

Not permitting a drive-up ATM on the building will likely prohibit one of the largest financial institutions in the Country from opening a bank branch on our property, or anywhere else in Hillsborough. Is there a way to amend the UDO definition or request a variance to the requirements for a drive-up ATM since the UDO has conflicting definitions and includes a definition for a situation that is prohibited from ever occurring per a different definition?

Thank you,  
Michael



120 Wind Chime Ct

Raleigh, NC 27615

O: 919-917-7298

C: 919-610-2583

[Michael@BellCommercial.net](mailto:Michael@BellCommercial.net)

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**From:** Tom King <[Tom.King@hillsboroughnc.gov](mailto:Tom.King@hillsboroughnc.gov)>

**Sent:** Thursday, December 5, 2024 12:15 PM

**To:** Michael Kaney <[michael@bellcommercial.net](mailto:michael@bellcommercial.net)>; Molly Boyle <[molly.boyle@hillsboroughnc.gov](mailto:molly.boyle@hillsboroughnc.gov)>

**Cc:** Shannan Campbell <[Shannan.Campbell@hillsboroughnc.gov](mailto:Shannan.Campbell@hillsboroughnc.gov)>

**Subject:** RE: Drive-Up ATM - Proposed Development of PIN 9873692876 in Hillsborough

Good afternoon, Michael:

I've taken a closer look into this question because I often think I know what the UDO says, & usually do for routine questions but, for the non-routine questions such as this, I sometimes read it & find I'm wrong.

Based on my review of the UDO, a drive-up ATM would not be permitted. This is based on the following two definitions found in UDO Section 9 (Definitions), Subsection 9.2 (Definitions):

1. “Automated Teller Machine (ATM)” is defined as “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.”
2. “Bank & Financial Institution” is defined as “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.”

Based on these two use definitions, it appears ATMs are treated differently than drive-up windows. The bank & financial institution language is more restrictive than the ATM language, so the bank/financial institution provisions govern in this case.

While I’m not a fan of placing regulations within definitions, this is where they lie in this case.

Now for what I know will be the next question: How were the ones that already exist permitted? There haven’t been any new banks approved/constructed in the town’s zoning jurisdiction since around 2007-9. The last one constructed (2009-2010) was approved under a previous town zoning ordinance. Neither of the two definitions cited above were in that ordinance. They appeared with the adoption of the UDO in late February 2011.

Let me know if you have any other questions.



**Tom King, AICP, CZO**

Senior Planner

[Town of Hillsborough](#)

101 E. Orange St., Hillsborough, North Carolina

Office: [919-296-9475](tel:919-296-9475)



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**From:** Michael Kaney <[michael@bellcommercial.net](mailto:michael@bellcommercial.net)>

**Sent:** Wednesday, December 4, 2024 4:20 PM

**To:** Molly Boyle <[molly.boyle@hillsboroughnc.gov](mailto:molly.boyle@hillsboroughnc.gov)>; Tom King <[Tom.King@hillsboroughnc.gov](mailto:Tom.King@hillsboroughnc.gov)>

**Subject:** Drive-Up ATM - Proposed Development of PIN 9873692876 in Hillsborough

Tom & Molly:

Good afternoon. We are continuing to work on the proposed development of PIN 9873692876 at the north corner of NC-86 and Paliouras Court, next to the Sheetz, in Hillsborough. As you know, the site has multiple development constraints, and we have continued to work with our potential tenant for a financial institution that satisfies their needs while working within the site constraints.

One layout option that functions for their purposes has their drive-up ATM facing NC-86. This financial institution has no traditional drive-through lanes with drive-up tellers as most financial institutions, but on the building, they have an ATM that vehicles can pull up to. In reviewing your UDO, a drive-up ATM is not defined nor referenced (at least I was unable to find it) and your section regarding drive-throughs makes no reference to drive-up ATMs. My question for you is since a drive-up ATM functions differently than traditional drive-through lanes, does not include menu boards, nor loud speakers for two-way communications, etc., is it subject to the same rules and provisions in the UDO as drive-throughs?

I know drive-through lanes cannot face the primary street, NC-86 in our case, per the UDO, but can we have an ATM mounted on the side of the building facing NC-86 that cars can pull up to?

Thanks,  
Michael



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