

**RESOLUTION
LAND USE BOARD
BOROUGH OF ALLENDALE
BERGEN COUNTY, NJ**

DATE: AUGUST 15, 2018

RESOLUTION# LUB 18-20

Land Use Board	Motion	Second	Yes	No	Abstain	Absent
Bergen						
Daloisio	✓		✓			
Davis						
Kistner		✓	✓			
O'Toole						
Sasso						
Sirico			✓			
White						
Quinn						
Kearl – Alternate						
Lovisolo - Alternate						

Carried ☒ Defeated ☐ Tabled ☐

**LAND USE BOARD OF THE BOROUGH OF ALLENDALE
RESOLUTION DENYING APPLICATION FOR INTERPRETATION AND
APPLICATION FOR VARIANCE OF BANK OF AMERICA
BLOCK 1808, LOT 2
(a/k/a 22 MAPLE STREET)**

WHEREAS, the applicant, Bank of America, the owner of the property located at 22 Maple Street, known as Block 1808, Lot 2 on the Tax Map, in the Borough of Allendale, County of Bergen and State of New Jersey, applied to the Land Use Board of the Borough of Allendale in an application dated March 23, 2018 for interpretation of an existing use, or in the alternative for approval of a variance for the premises to allow the continued use of a drive-thru Automated Teller Machine (“ATM”) on the premises, which is located in the C-1 zone, from the Allendale Code, Zoning; and

**RESOLUTION
LAND USE BOARD
BOROUGH OF ALLENDALE
BERGEN COUNTY, NJ**

DATE: AUGUST 15, 2018

RESOLUTION# LUB 18-20

WHEREAS, the Land Use Board considered the matter at the July 18, 2018 regular public meeting of the Land Use Board at which the applicant was represented by counsel, and at which the applicant's Professional Engineer and Planner, Jonathan Istranyi, P.E., P.P., personally appeared and testified;

NOW THEREFORE BE IT RESOLVED by the Borough of Allendale Land Use Board that it hereby makes the following findings of fact and conclusions:

1. Notice of the public hearing was given by the applicant in accordance with applicable law.

2. The property is located at 22 Maple Street, known as Block 1808, Lot 2, on the Tax Map of the Borough of Allendale. The property is located in the "C-1" Central Business Zone. The application was in evidence.

3. The applicant submitted a Zoning Analysis/Site Plan prepared by Stonefield Engineering and Design, dated March 16, 2018 (marked A-1 in evidence); several site photographs (marked A-2 in evidence); and the Planning Evaluation report prepared by Jeffrey Martell, PE, PP, CME, LEED AP, of Stonefield Engineering and Design, dated June 7, 2018 (marked A-3 in evidence). The Board also reviewed the letter from Diane Hickey, Esq., counsel for the applicant, dated June 8, 2018.

4. In connection with the interpretation of the existing use, the applicant's Professional Engineer and Planner, Jonathan Istranyi, P.E., P.P., testified that the ATM today functions as a bank in and of itself. Since a bank is a permitted use in the zone, the unattended ATM should also be considered a permitted use in the Zone. Mr. Istranyi testified that the Ordinance relating to the application was drafted over twenty years ago, and that the nature of the banking industry and banking customer experience has evolved and changed dramatically since the adoption of the relevant Ordinance. He also testified that the ATM is actually covered by a permanent canopy and monitored 24/7, thereby in reality the ATM is not unattended and not outdoors.

5. In connection with the variance application, the applicant's Professional Engineer and Planner, Jonathan Istranyi, P.E., P.P., again testified that the ATM today functions as a bank in and of itself. He testified that the site has been in use for the past 43 years as a remote banking

**RESOLUTION
LAND USE BOARD
BOROUGH OF ALLENDALE
BERGEN COUNTY, NJ**

DATE: AUGUST 15, 2018

RESOLUTION# LUB 18-20

use, and has evolved over time to a single ATM, without pneumatic tubes or live tellers. The ATM itself has been in use for 22 years, and it is suitable for the site as it promotes the health, safety and welfare of the community, and promotes providing sufficient space in appropriate locations for a variety of uses and open space. It also promotes a desirable visual environment, and the free flow of traffic. He testified that the positive criteria had been met, and that the negative criteria had also been met since there was no detrimental impact on the neighboring community, the zone, or the Master Plan, in that the use was compatible with the downtown Central Business District. He also testified as to the mitigation efforts that would be undertaken by the applicant, i.e., landscape buffering and landscape modifications, reduced lighting when not in operation, limited hours of operation, and fencing.

6. In connection with the interpretation of the existing use and the variance application, Borough Planner, Edward Snieckus, P.P., L.L.A., A.S.L.A. reviewed the submissions by the applicant and prepared a Memorandum dated July 16, 2018. The Memorandum was in evidence and reviewed and examined by the members of the Land Use Board. Mr. Snieckus also asked questions of the applicant's planner, and testified that the ATM is outdoors, and is an unattended business, both of which are prohibited in the C-1 Central Business Zone. He also testified that the only permitted out of doors use in the zone was licensed outdoor cafes, and that the existing Ordinance did not intend for the unattended outdoor use of an ATM in the zone. This is consistent with the 1995 Resolution of the Allendale Zoning Board of Adjustment, which determined that the existing ATM was an unattended use at the facility, but permitted subject to several specific conditions and limitations, which could not be met at present. He also testified as to the impact of the use on the existing site and the zone, as well as the impact and interplay of the use with the Master Plan, in particular that the recent Master Plan reexamination which sought to discourage drive thru uses which could conflict with pedestrian safety and circulation.

7. The Borough's Engineer, Michael Vreeland, P.E., reviewed the submissions by the applicant and prepared a Memorandum dated June 14, 2018. The Memorandum was in evidence and reviewed and examined by the members of the Land Use Board.

8. Land Use Board members asked questions of the applicants' Planner, the applicant's counsel, and the Borough professionals relative to the merits of the application.

9. Members of the public appeared in connection with the application and asked questions of the applicant's Planner, and provided testimony related to the merits of the application.

**RESOLUTION
LAND USE BOARD
BOROUGH OF ALLENDALE
BERGEN COUNTY, NJ**

DATE: AUGUST 15, 2018

RESOLUTION# LUB 18-20

NOW THEREFORE, BE IT RESOLVED, based upon the factual and legal evidence, testimony and contentions set forth herein, that the Allendale Land Use Board hereby denies the applicant's request for interpretation of the existing Ordinance that the existing drive-thru ATM is a permitted use in the zone, and denies approval of the requested use variance for the continued use of the drive thru ATM at the premises; and

BE IT FURTHER RESOLVED that the Allendale Land Use Board hereby specifically determines that the existing ATM use is out of doors, and it is an unattended business, both of which are prohibited in the C-1 Central Business Zone; and

BE IT FURTHER RESOLVED that the Allendale Land Use Board specially rejects the testimony of the applicant's Professional Engineer and Planner, Jonathan Istranyi, P.E., P.P. that an unattended ATM not connected with an existing bank functions today as a stand-alone bank, and that the fact that the pertinent Ordinance was drafted over 20 years ago, and that in combination with the changes in the banking industry, the present ATM use should be permitted under the existing Ordinance; and

BE IT FURTHER RESOLVED that the Allendale Land Use Board specially rejects the testimony of the applicant's Professional Engineer and Planner, Jonathan Istranyi, P.E., P.P., and concludes that the site is not suitable for the proposed use, or continued use, as the proposed use does not promote the health, safety and welfare of the community, does not promote a desirable visual environment, and does not promote the provision of sufficient space in appropriate locations

**RESOLUTION
LAND USE BOARD
BOROUGH OF ALLENDALE
BERGEN COUNTY, NJ**

DATE: AUGUST 15, 2018

RESOLUTION# LUB 18-20

for a variety of uses and open space, even with the proposed conditions referenced in his testimony;
and

BE IT FURTHER RESOLVED that the Allendale Land Use Board specially adopts and accepts the testimony of the Borough Planner, Edward Snieckus, P.P.. L.L.A., A.S.L.A., in connection with his testimony that the proposed use is out of doors and unattended, thereby making the use prohibited in the C-1 zone. It further adopts his testimony that the Master Plan discourages such uses in the C-1 zone; and

BE IT FURTHER RESOLVED that the Allendale Land Use Board hereby determines that the requested variance does not meet the factual or legal criteria for a use variance under N.J.S.A. 40:55D-70(d)(1); and

BE IT FURTHER RESOLVED that the Allendale Land Use Board finds and concludes, based on the accepted testimony of Borough Planner, Edward Snieckus, P.P.. L.L.A., A.S.L.A., that no "special reasons" exist for the granting of the variance, and that the grant of the variance would not advance the purposes of the Municipal Land Use Law. The Board further finds that approval of the variance would result in a substantial detriment to the public good, and that the benefits of the proposed deviation do not substantially outweigh any detriment. The Board also concludes that the grant of the variance will substantially impair the intent and purpose of the Allendale zone plan and zoning Ordinances. In fact, there is no zoning benefit to the proposed use variance since it would allow a use in the district which is specifically not permitted by the Ordinance, and specifically discouraged in the Master Plan.

**RESOLUTION
LAND USE BOARD
BOROUGH OF ALLENDALE
BERGEN COUNTY, NJ**

DATE: AUGUST 15, 2018

RESOLUTION# LUB 18-20

BE IT FURTHER RESOLVED that the applicant shall cease and desist such use of the unattended, out of doors ATM at the premises within forty five (45) days of the adoption of this Resolution.

BE IT FURTHER RESOLVED that the Land Use Board Secretary shall mail a copy of this Resolution within ten days from the date of adoption thereof to the applicant or to their attorney, if any, without charge; and to all other persons who request the same and pay the required fee therefore. The Secretary shall also file a copy of this Resolution in the offices of the Borough Clerk, Building Inspector, Construction Code Official, Tax Assessor and the Borough Attorney and shall publish a brief notice of the decision in the official newspaper, the cost of which shall be paid for by the applicant.


Approved:

ALLENDALE LAND USE BOARD



KEVIN QUINN, Chairman

Attest:



JOSEPH DALOISIO, SECRETARY

Adopted: August 15, 2018