



TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT
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Town of Durham
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Planning, Assessing
and Zoning

\$ 821.⁰⁰
Pd. 1/23
Check #
5530

VARIANCE

Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or an approval by the Planning Board.

Name of Applicant Elliott Sidewalk Communities

Address: 909 Ridgebrook Road, Suite 216, Sparks, MD 21152

Phone # (443) 391-8420 Email: jflannery@elliottsidewalk.com

Owner of Property Concerned University of New Hampshire
(If same as above, write "Same")

Address: 105 Main Street, Durham, NH 03824
(If same as above, write "Same")

Location of Property: 105 Main Street
(Street & Number)

Tax Map & Lot number Tax Map 13, Lot 7-3 UNH

A Variance is requested from Article(s) 175 Section(s) 53 of the Zoning Ordinance to permit:

use of property as hotel and ancillary uses and surface or structured parking

ADDENDUM A
APPLICATION FOR HEIGHT VARIANCE
ELLIOTT SIDEWALK- UNH PROPERTY

A variance is requested from Article XII, Use and Dimensional Standards, Section 175-53, Table of Uses of the Town of Durham Zoning Ordinance to permit the construction of an addition to the existing building known as Hetzel Hall in the Residence A zone where a 30 foot maximum height is allowed as of right and a 35 foot height is allowed by conditional use. As set forth on the attached Exhibit A, the applicant seeks to construct an addition to the existing Hetzel Hall building for the purpose of constructing a hotel per the Variance granted by this Board on September 11, 2018. The proposed addition will have a height of 49 feet, 3 inches.

1. No decrease in value of surrounding properties would be suffered because:

No decrease in surrounding property values would be suffered because this is a proposed expansion of an existing building currently used as a dormitory. The currently existing building has been in existence since approximately 1920, significantly predating Durham zoning and also has an average height of 49.3. The immediately surrounding properties include apartments and other commercial uses and have existed adjacent to Hetzel Hall for decades. All other surrounding buildings on the subject lot are University of New Hampshire ("UNH") buildings and all significantly exceed RA zone height requirements and the existence of these buildings has caused no decrease in the value of surrounding buildings. The expansion of Hetzel Hall into an area currently occupied by Alexander Hall which also exceeds RA zone height requirements will not cause any decrease in value to surrounding properties. For all these reasons the value of surrounding properties would not suffer.

2. Granting the variance would not be contrary to the public interest because:

Hetzel Hall and Alexander Hall are zoned RA but for practical purposes it has never been subject to Town of Durham zoning as the lot where they sit is owned by the University of New Hampshire and have thus never been subject to Durham zoning restrictions. In fact, every building on this University owned lot exceeds the height restrictions for the RA zone and many of those buildings predate Durham zoning. The public interest in creating and protecting the RA zone lies in maintaining or protecting the public from a use or dimension which is contrary to the nature and history of the surrounding properties. Here, the property has historically been dormitory and is surrounded by other dormitories, dining halls and other University buildings. The future use as a hotel is substantially similar to those uses and the addition to the existing Hetzel Hall will be substantially similar in size and style to the existing Hetzel Hall. The use is consistent with the adjacent uses of both the other University properties and the other commercial ventures and would not be contrary to the public interest.

3. Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

A. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:

- The general public purpose of the ordinance can be found at the definition of the RA Zone at Section 175-39 of the Durham Ordinances where it states: "The purpose of the Residence A District is to maintain the integrity of existing high density residential areas that are predominantly served by public water and sewerage while ensuring that new development, redevelopment, or expansions of existing buildings and structures are consistent with and maintain the established character of those neighborhoods." The subject building and lot consist entirely of UNH buildings and consist of and are not directly adjacent to any residential areas whatsoever. The public purpose of protecting and maintaining residential neighborhoods within the RA zone is fair and reasonable but there is no fair and substantial relationship between those purposes and the specific application of a 30 or 35 foot height requirement, especially when every other building on the lot already significantly exceeds those requirements. In short, Hetzel Hall and the entire UNH owned property existing in the RA zone exists wholly and completely outside of any high density residential area or purpose. For the foregoing reasons there is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application to the subject property.

B. The proposed use is a reasonable one:

- The proposed use here consists of the razing of one dormitory and the expansion of an existing one. The use is generally consistent with the historical use of the property and the applicant has already been granted an unappealed variance by this board allowing the use of a hotel in the RA zone. The subject of this application is solely to achieve the height required to extend the existing Hetzel Hall in conformance with the existing height of the building. For these reasons the proposed use is a reasonable one.

4. By granting the variance substantial justice would be done because:

The existing Hetzel Hall, Alexander Hall and the entirety of the rest of the UNH owned RA zoned property are non-compliant with zone requirements and have always been. The proposed repurposing of Hetzel Hall into a hotel is a reasonable use of the building and the property and as there is no relationship between the purpose of the ordinance and either the current or future use of the property substantial justice would be done by the granting of this variance request.

Substantial justice would also be done by allowing UNH to partner with a private entity to improve and revitalize Durham's downtown.

5. **The use will not be contrary to the spirit and intent of the ordinance because:**

The spirit and intent of the RA zone is to protect Durham's high density residential areas while ensuring that development maintains the established character of such neighborhoods. The subject property, while zoned RA, does not exist in any "high density residential area" and to permit the expansion of Hetzel Hall to be consistent with existing building height would not offend the spirit or intent of the ordinance as it would have no effect on any such neighborhood.