

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 8 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

**Appeal for Applicant**

State of New Hampshire

Strafford, SS

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: Elliott Sidewalk Communities

Address: 909 Ridgebrook Rd Suite 216 Phone # 443-391-8420

Email: Sparks, MD 21152 jflannery@elliottsideshow.com

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

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

Location of Property: Tax Map 13 Lot 7-3 UNH  
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information)

Tax Map 13, Lot 7-3 UNH - Hetzel Hall, Alexander Hall  
Campus Crossing Parking Lot

**Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.**

**SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION**

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: \_\_\_\_\_  
Number \_\_\_\_\_ Date \_\_\_\_\_

Article \_\_\_\_\_ Section \_\_\_\_\_ of the Zoning Ordinance in question.  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 2: APPLICATION FOR SPECIAL EXCEPTION**

\*\*Any Special Exceptions granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.\*\*

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article \_\_\_\_\_ Section \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 3: APPLICATION FOR EQUITABLE WAIVER**

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SECTION 4: APPLICATION FOR A VARIANCE**

**STANDARD OF REVIEW:** Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

\*\*Any Variances granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.\*\*

A Variance is requested from Article 175 Section 53 of the Zoning Ordinance to permit \_\_\_\_\_

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

The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Please answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

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

\_\_\_\_\_  
*See attached*  
\_\_\_\_\_

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

\_\_\_\_\_  
*See attached*  
\_\_\_\_\_

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

\_\_\_\_\_  
*See attached*  
\_\_\_\_\_  
\_\_\_\_\_

and

b. the proposed use is a reasonable one because:

\_\_\_\_\_  
*See attached*  
\_\_\_\_\_  
\_\_\_\_\_

**Or**

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

*See attached*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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See attached

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

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See attached

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**ADDENDUM A**  
**APPLICATION FOR VARIANCE #1- PARKING**  
**ELLIOTT SIDEWALK- UNH PROPERTY**

A variance is requested from Article XII, Section 175-53, Table of Uses of the Town of Durham Zoning Ordinance to permit Surface Parking or Structured Parking in the RA zone as an accessory to a proposed Hotel, also subject to variance application. Per Article XII, Section 175-53, Table of Uses of the Town of Durham Zoning Ordinance Surface Parking is permitted as an accessory use to an allowed use and structured parking is not.

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

No decrease in surrounding property values would be suffered because the variance area is currently a parking area and has been in its current configuration for decades. The immediately surrounding properties include apartment and other commercial uses and have existed adjacent to this proposed parking area for many decades. Neither continued surface parking or structured parking would make any significant change in the profile of the existing parking area. Further, most of the other “abutting” parcels area are a very significant distance from the proposed structure would not be affected by it in any way. 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:**

The area proposed for the surface parking or structured parking is currently zoned RA but for practical purposes it has never been subject to Town of Durham zoning as the property is owned by the University of New Hampshire. Both the proposed surface parking or structured parking and the hotel area currently consist of uses that are prohibited in the RA zone. In fact the current Campus Crossings lot, in its current configuration and use is non-compliant with RA zone requirements along with the Memorial Union Building, Holloway Commons Dining Hall and Hetzel and Alexander Halls. The public interest in creating and protecting the RA zone lies in maintaining or protecting the public from a use which is contrary to the nature and history of the surrounding properties. Here, the property has historically been a parking lot and will continue to be so either in its current configuration or with the addition of a structured parking. The use is consistent with the adjacent uses of both the other University properties and the other commercial ventures, including parking.

**3(B).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.**

This portion of the property is currently a large parking lot and has been in its current or similar configuration for at least the last 50 years. There are significant other commercial property uses both within the larger UNH parcel and on the many adjacent lots in the CBD district, including

significant parking. The proposed surface or structured parking exists in the RA zone but has never complied with the zone requirements similarly to all other UNH owned properties on the lot. If the lot is used for parking in any way it can never be strictly compliant with RA zone requirements. It is reasonable to grant a variance recognizing that the proposed future use consists of the same use as has existed there since at least the 1960s.

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

Both this proposed parking area along with the entirety of the rest of the UNH owned RA zoned property are non-compliant with zone requirements and have always been. The proposed surface lot or structured parking would still be owned by the University of New Hampshire subject to a lease to the applicant or its assigns. Absent the lease the University would be within its rights to construct a parking lot, deck, garage or any other University building so long as it had some relation to the its core purpose. The parking lot (and every other building and use) currently in the RA zone fail to comply with RA requirements and have, in some cases for well over 100 years. Substantial justice would be done by allowing the University to partner with outside private entities to improve the downtown Durham core and to revitalize and maximize this existing parking area.

**4. 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 property proposed for the parking use, either surface or structured parking, while zoned RA, does not exist in any "high density residential area" and allowing a continuation of and existing parking area would not offend the spirit or intent of the ordinance as it would have no effect on any such neighborhood.

**ADDENDUM A**  
**APPLICATION FOR VARIANCE #2- HOTEL**  
**ELLIOTT SIDEWALK- UNH PROPERTY- HETZEL AND ALEXANDER HALLS**

A variance is requested from Article XII, Section 175-53, Table of Uses of the Town of Durham Zoning Ordinance to permit a hotel in the RA zone.

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

Both Alexander and Hetzel Halls are UNH dormitories which lie in the RA zone. In a practical sense the subject lot has never been subject to zoning despite its inclusion in the RA zone as it is UNH property and not subject to Town Zoning. As a result all of the uses of UNH property in the RA zone would be in violation if zoning truly applied. Both Alexander and Hetzel Halls are not permitted and neither are any of the adjacent uses including the Campus Crossings parking lot and the Memorial Union Building. The proposed use is adjacent to multiple CBD zoned properties and the proposed hotel and ancillary uses are not directly adjacent to any residential property as set forth in the RA zone. Moreover, the proposed use of Hetzel Hall as a hotel is substantially similar to its current use as a dorm where many people live communally in a single large building. Both Hetzel and Alexander have also existed in their current locations for decades. For these reasons there should be no decrease in value of surrounding properties.

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

The application of the RA zone to any University owned land including Hetzel and Alexander Halls has been without any true effect or impact since the adoption of Durham zoning as the parcel where both buildings sit literally contains no uses compliant with the RA zone. The public interest in the RA zone can be found at Article XII, Section 175-39 which describes “high density residential areas” and seeks to “maintain the established character of these neighborhoods.” Neither Hetzel nor Alexander Halls could reasonably be described to be in any neighborhood and the closest “abutting” properties, while RA zoned, are used, at least partially for commercial purposes today. Further, the proposed hotel would be separated from even these properties by the parking area. As the proposed use of the parcel maintains the character of its current use and configuration and does not exist in a residential area granting the variance would be in the public interest. The applicant will also partner with the UNH Paul School Hospitality program and to provide training and educational opportunities for UNH students which will be a significant benefit to the University, the town and state of New Hampshire.

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

The proposed hotel along with ancillary uses would exist in the current footprint of Hetzel Hall along with some expansion toward what now is Alexander Hall. Neither Hetzel Hall, Alexander Hall or any of the adjoining buildings on this RA zoned lot are compliant with any RA zone requirement in any way. Hetzel Hall significantly predates zoning in Durham and Alexander Hall has served as University dormitory for many decades. There is no use of this property that will ever be in strict conformance with any RA zone requirement. This is true whether the property is used for a non-governmental use as contemplated here or whether used by the University for a continuation of current purposes. The use of the property as a hotel is reasonable as the property is surrounded by the CBD district and because the use of the property as a hotel is substantially similar to its current and historic use as a dormitory.

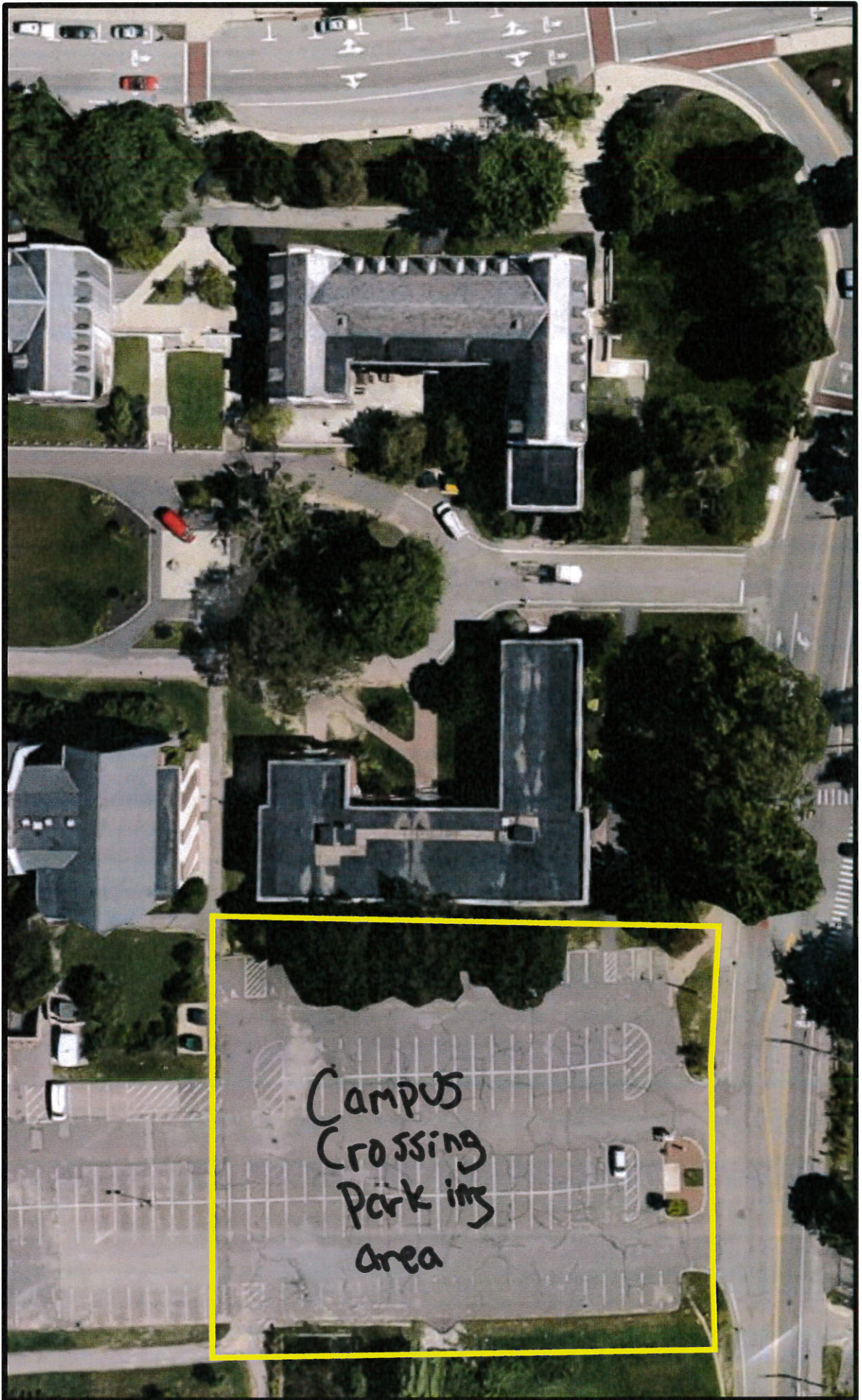
4. **By Granting the variance substantial justice would be done because:**

Hetzel and Alexander Halls exist in the RA residential zone seemingly only because there is no other zone applicable to other University properties. Historically the zone designation here and elsewhere on the UNH campus has been largely irrelevant given the inapplicability of local zoning to University property. As a result the zone which applies here bears little to no relation to either the subject property or to the abutting properties. Substantial justice would be done by granting this variance as it would recognize the historic use of the property while also allowing a reasonable future use that would benefit the Town of Durham.

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 those neighborhoods. The property proposed for the hotel use, while zoned RA, does not exist in any "high density residential area" and allowing a hotel would not offend the spirit or intent of the ordinance as it would have no effect on any such neighborhood.





Campus  
Crossing  
Parking  
Area

