



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

TO: Zoning Board of Appeals
FROM: Planning, Preservation & Zoning (PPZ) Staff
SUBJECT: 35 McGrath Hwy, P&Z 21-156
POSTED: May 4, 2022

RECOMMENDATION: None

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from PPZ staff to the Review Board members.

This memo summarizes the Hardship Variance request(s) submitted for 35 McGrath Hwy, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on April 5, 2022, and is scheduled for a public hearing on May 18, 2022. Any Staff recommended findings, conditions, and decisions in this memo are based on the information available to date prior to any public comment at the scheduled public hearing.

LEGAL NOTICE

35 McGrath Highway Realty Trust seeks variance from the following requirements of the High Rise (HR) district: front setback requirements, driveway in the frontage area, and façade not parallel to the front lot line.

SUMMARY OF PROPOSAL

35 McGrath Highway Realty Trust is proposing to construct a 9-story Lab Building which requires Hardship Variances for the following items:

- The required minimum front setback is two (2) feet (SZO §5.1.9.b). The minimum distance that the building is setback from the front lot line is zero (0) feet.
- The required maximum front setback is fifteen (15) feet (SZO §5.1.9.b.). The maximum distance that the building is setback from the front lot line is thirty-two feet, four inches (34' 4").
- The façade of the building must be built parallel to the front lot line for at least 80% of the lot width (SZO §2.4.4.a.i.a.). The façade will not be built parallel to the front lot line.
- Driveways are not permitted in the frontage area between the building and the front lot line (SZO §5.1.17.c.ii.). A driveway is proposed in this area.

ADDITIONAL REVIEW NECESSARY

35 McGrath Hwy is located in the 0.5mi Transit Area in the High Rise (HR) zoning district in the Twin City neighborhood represented by Ward 2 Councilor JT Scott. The Zoning Board of Appeals is the decision-making authority for all Hardship Variances, regardless of zoning district.

Following a decision on the requested Hardship Variances, the proposed building at 35 McGrath Hwy will require Site Plan Approval. Site Plan Approval is the administrative review and approval of conforming development to address any potential impacts as necessary. The Planning Board is the decision-making authority for all (non-variance) discretionary or administrative permits required for the HR zoning district.

ANALYSIS

The Applicant has provided an argument for each of the required findings for each requested Hardship Variance; those arguments are attached at the end of this memo.

To the casual viewer it might appear that 35 McGrath fronts onto McGrath Hwy, but this is not technically correct. When Squires Bridge was being built, MassDOT carved out a portion of the 35 McGrath property in order to provide vehicular access to the properties to the left (west) of this one that would otherwise be blocked off by the new bridge. Now, 35 McGrath technically fronts onto this “MassDOT Taking,” which runs at an angle from McGrath. The three variances for minimum and maximum front setbacks and the façade not being parallel to the front lot line are closely related to each other and are all due, in part, to this situation.

The City is actively working with MassDOT and property owners along McGrath Hwy to plan the future of McGrath Hwy as an at-grade boulevard, rather than a raised highway. While Squires Bridge would not be removed as part of the grounding of McGrath, the properties surrounding Squires Bridge will still be an important part of creating a consistent street wall along the north side of McGrath. A clear and consistent street wall, particularly along major corridors, helps achieve the Ordinance’s intent to “reinforce Somerville as a walkable, human-scaled urban environment.” If the Ordinance were to be strictly followed in this case, the proposed building would need to be parallel to the MassDOT Taking which would cause a perceived break in the McGrath street wall. While future conditions cannot provide a basis for granting variances, Staff believes it is important to understand the larger context that surrounds the current request.

The fourth variance (for a driveway in the frontage area) is also connected to the fact that MassDOT took a portion of this property for use as an access way to other lots. The Applicant argues that there is no other location on the lot that a driveway could be placed other than between the building and the front lot line due to the impacts of the MassDOT taking. Staff have not evaluated whether this is true, but regardless of how this Applicant designs the proposed building the MassDOT Taking will make it appear that there is a driveway separating this building from McGrath Hwy. Staff believes that permitting a driveway in the frontage area between the building and the front lot line in

this situation will not cause a more significant deviation from the intent of the Ordinance than already exists under current conditions. In addition, by having the driveway to the left-most side of the property (further away from McGrath), the Applicant has attempted to minimize any effect the driveway may have on pedestrians and bicycles traveling along McGrath Hwy itself.

Upon analysis of the material submitted by the Applicant, PPZ Staff do not believe that the granting of the requested hardship variances would cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the HR district, copied here:

Intent

- To implement the objectives of the comprehensive plan of the City of Somerville.
- To accommodate the development of areas appropriate for an intense mix of multi-story multi-unit, mixed-use, and commercial buildings; neighborhood-, community-, and region-serving uses; and a wide variety of employment opportunities.

Purpose

- To permit the development of multi-unit, mixed-use, and commercial high-rise buildings.
- To provide quality commercial spaces and permit small and medium-scale, neighborhood-, community-, and region-serving commercial uses.
- To create dwelling unit types, sizes, and bedroom counts ideal for larger households in apartment buildings.
- To create dwelling unit types, sizes, and bedroom counts ideal for smaller households in general buildings.
- To permit increased residential density for buildings that are sustainable or that provide 100% affordable housing.
- To permit increased residential density for buildings that meet the definition of a Net Zero Ready Building or 100% affordable housing.

Additionally, PPZ Staff believe that granting the requested hardship variances would support the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- To require the platting of land so that lots have frontage upon and buildings are properly oriented toward the public realm of an abutting thoroughfare or civic space.
- To preserve and enhance the design of Somerville's public realm.
- To encourage contemporary architectural design for new construction that compliments the established character of existing buildings.
- To increase commercial tax base in support of the fiscal health of the City.
- To capture a fiscal return on investments made in transportation infrastructure by locating higher intensity development, employment opportunities, and a broad mix of uses along major corridors and within walking distance of transit stops.

Massachusetts courts have stated that variances will naturally deviate from the intent and purpose of a zoning ordinance to some degree and that the discretionary approval of a variance is defensible if the deviation is not substantial or significant in comparison to the intent and purpose for the district in appraising the effect of the proposal on the entire neighborhood, including future impacts and other development approved or denied in the general vicinity of the development site.

CONSIDERATIONS & FINDINGS

In accordance with the Somerville Zoning Ordinance, the Zoning Board of Appeals may grant a Hardship Variance only upon deliberating and finding all of the following at the public hearing for each requested variance:

Hardship Variance Considerations

1. Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the HR zoning district in which the land or structure is located;
2. Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant, 35 McGrath Highway Realty Trust, due to said special circumstances; and
3. Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the HR district in this Ordinance or the Ordinance in general.

PERMIT CONDITIONS

Should the Board approve one or more of the requested Hardship Variances, PPZ Staff recommends the following conditions:

Permit Validity

- This Decision must be recorded with the Middlesex South Registry of Deeds.

Public Record

- A copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation & Zoning Division for the public record.
- One (1) physical copy of the original application materials and one (1) digital and (1) physical copy of all required application materials reflecting any physical changes required by the Board, if applicable, must be submitted to the Planning, Preservation & Zoning Division for the public record.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Primary Front Setback**

Hardship Review Criteria:

The Petitioner is seeking a Hardship Variance from Section 5.1.9.b of the Somerville Zoning Ordinance (the “SZO”), which requires that the front façade (s) of its proposed mixed-use office, laboratory, research/development building be located at or behind any required minimum Front Setback and at or in front of any maximum Front Setback from the Front Lot Line of its property site at 35 McGrath Highway (the “Proposed Project” and “Property Site,” respectively). Situated in Ward 2 of the City’s newly adopted High Rise Zoning District, which allows the Proposed Project’s underling uses, size and building height, the Property Site includes approximately 20,605 s/f of land and an outdated commercial/industrial building, surrounded by unimproved asphalt surface areas (the “Parcel”). The proposed project plans a varied Front Setback ranging from 32 feet 4 inches on the ground floor to zero (0) feet on floors two (2) through nine (9). Section 5.1.9.b of the SZO requires a Front Setback of at least two (2) feet but no more than fifteen (15) feet. As further detailed by the Review Criteria below, the Parcel includes certain unique and peculiar land conditions which support and justify the grant of the requested Variance from Section 5.1.9.b of the SZO.

Review Criteria A*

Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the zoning district in which the land or structure is located. Please briefly describe the special circumstances existing on this site.

Consistent with the required findings for this Review Criteria A, the Petitioner submits that the Property Site is uniquely constrained and burdened by the following special land conditions and unusual characteristics:

- An irregular shaped rectangular lot, with asymmetrical frontage along and beneath the on-ramp section of McGrath Highway (at the front yard of the Parcel).
- Abutting properties on each side of the Parcel, which are owned and controlled by unrelated and independent ownership, including the Massachusetts Bay Transportation Authority’s rail lines at and along the rear portion of the Parcel.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Primary Front Setback**

- Prior land taking by the Metropolitan District Commission for the Commonwealth of Massachusetts, and now through its successor Department of Transportation, which removed and altered a portion of the Parcel's land area at its southwest frontage along McGrath Highway (the "MassDOT Taking").
- The Parcel's sole means of vehicular access at the southern front of the Property Site.

As shown on the Petitioner's marked-up site survey identified as Exhibit A hereto, the combined effect of these unique and unusual conditions is to limit the available land area for proper and compliant Front Setback. This portion of the Property Site is also constrained by the incongruent alignment of the Parcel's front lot line along and beneath the on-ramp of McGrath Highway.

The prior MassDOT Taking created a new thoroughfare distinct from McGrath Highway and relocated the Parcel's front lot line. This impacted the lack of symmetry at the Parcel's front yard and constrains its available land area for proper and compliant Front Setback (as required by the SZO). As a result of the combined effect of the other unique and unusual land conditions (above), the Parcel's sole means of vehicular access is relegated to its southern corner, where it further limits the available land area for proper and compliant façade alignment (as required by the SZO). The MassDOT Taking is enforceable against the Parcel as recorded in the Middlesex Registry of Deeds¹.

The special conditions and unusual characteristics detailed above are unique to the property site itself, and their combined effect results in an undue hardship (as further described herein). Thus, the Proponent's appeal meets the requirements of Review Criteria A for the Variance requested.

Review Criteria B*

Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant due to said special circumstances. Please briefly describe your hardship.

¹ For MassDot Taking, see Book 8745, Page 350 dated May 24, 1956, registered on June 14, 1956 as Document No. 307151, with Plan of Taking dated April 17, 1956 and recorded as plan number 972 of 1956.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Primary Front Setback**

Taken together, the unique and special land conditions detailed in Review Criteria A (above) significantly impact the shape and characteristics of the Parcel, resulting in limited available land area for compliant building siting and justifying the grant of relief under the circumstances. Literal enforcement of the SZO would create substantial hardship on the Petitioner, by precluding its redevelopment of the Property Site, for a use, scale and building height which allowed by the City's newly adopted High Rise Zoning District at this location. In particular, the Proponent notes that strict compliance with this section of the SZO would result in an unusual building design and illogical site placement, contrary to the City's planning principals and new zoning allowances for development and future mobility along McGrath Highway. Specifically, the Front Setback of a compliant building would result in a misaligned front façade along the asymmetrical front lot line of the Property Site, which is also constrained by the on-ramp to McGrath Highway and its sole mean of vehicular access at the southern front corner of the Parcel. The practical effect of enforcing this section of the SZO would also negatively impact the City and State's planned removal and replacement of the elevated ramp sections along McGrath Highway, which is contemplated to be replaced by a new boulevard with widened sidewalks, greater pedestrian access and active street fronts (See MassDOT Project#608482). Attached as Exhibit B hereto is a mock-up of this incongruent result overlayed with current planning and future visioning for this section of McGrath Highway. Finally, the Petitioner submits that literal enforcement of the SZO would create substantial undue financial hardship on it, by requiring a new building siting which is unlikely to be allowed by the City's Site Plan Review authority, with excessive costs and engineering, of custom steel fabrication and a resulting development program which is unsuitable for the Petitioner's proposed commercial office, laboratory, research/development Uses (as Allowed by the SZO at this location). As a result, the Petitioner would be deprived from the reasonable use of its land, for a purpose more in keeping with City planning and the required findings of this Review Standard B.

Review Criteria C*

Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of a specific district in this Ordinance or the Ordinance in general. Please briefly describe the relief requested.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Primary Front Setback**

The Petitioner also submits that the relief requested is entirely consistent with the intent and purpose of the newly adopted High Rise Zoning District at this location, and it will not result in any detriment to the public good. Rather, the grant of the required Variance would allow for a more proper building façade alignment at the Parcel's asymmetrical and incongruent front yard, to better comply with the City's planning and future growth at this location.

Notwithstanding the legal effect of the MassDOT Taking², observers and passersby would assume that the taken parcels along McGrath Highway were part of the Parcel, rendering the Project with a building façade not aligned with McGrath Highway and apparent setback greater than the SZO's allowance. Literal enforcement of the SZO would result in a setback and alignment of the Project that does not meet with the City's planning goals. Again, the Petitioner is proposing a commercial office, laboratory and research/development building which complies with the use, scale, building height and other applicable requirements of the SZO at this location. Relief is necessitated based on the Parcel's unique constraints, the dimensional requirements for the proposed project and context of the existing conditions and future expansion along this section of McGrath Highway. Thus, the question is whether the relief for this limited and specific purpose can be granted in a manner which is consistent with this finding. In this regard, the Petitioner notes that the primary elevation massing of its proposed new building will be oriented towards McGrath Highway, in a logical manner and with an appropriate building footprint that correlates with the Parcel's irregular shape and related restrictions. Its front façade will activate the street edge along McGrath Highway and generally align with City's approved development at the adjacent property site of 15 McGrath Highway. The Petitioner's new building will also be sited to require the minimum amount of relief necessary for the Front Setback Variance and that the overall site plan will also include new open space, landscape, public realm, and pedestrian connectivity upgrades to properly accommodate its location on the Parcel. As a result, the relief requested will not result in any detriment to the community, and the basis for the Variance is justified under the circumstances.

² Although Petitioner is also seeking title relief for the issues resulting from the MassDOT Taking, any relief granted pursuant to these title related requests as a title matter may have the potential effect of reducing, but not eliminating, the zoning deficiencies that necessitate this variance petition.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

Hardship Review Criteria:

The Petitioner is seeking a Hardship Variance from Section 2.4.4.b.i.a of the Somerville Zoning Ordinance (the “SZO”), which requires that the front façade (s) of its proposed mixed-use office, laboratory, research/development building is parallel to the Front Lot Line of its property site at 35 McGrath Highway (the “Proposed Project” and “Property Site,” respectively). Situated in Ward 2 of the City’s newly adopted High Rise Zoning District, which allows the Proposed Project’s underling uses, size and building height, the Property Site includes approximately 20,605 s/f of land and an outdated commercial/industrial building, surrounded by unimproved asphalt surface areas (the “Parcel”). As further detailed by the Review Criteria below, the Parcel includes certain unique and peculiar land conditions which support and justify the grant of the requested Variance from Section 2.4.4.b.i.a of the SZO.

Review Criteria A*

Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the zoning district in which the land or structure is located. Please briefly describe the special circumstances existing on this site.

Consistent with the required findings for this Review Criteria A, the Petitioner submits that the Property Site is uniquely constrained and burdened by the following special land conditions and unusual characteristics:

- An irregular shaped rectangular lot, with asymmetrical frontage along and beneath the on-ramp section of McGrath Highway (at the front yard of the Parcel).
- Abutting properties on each side of the Parcel, which are owned and controlled by unrelated and independent ownership, including the Massachusetts Bay Transportation Authority’s rail lines at and along the rear portion of the Parcel.
- Prior land taking by the Metropolitan District Commission for the Commonwealth of Massachusetts, and now through its successor Department of Transportation, which removed and altered a portion of the Parcel’s land area at its southwest frontage along McGrath Highway (the “MassDOT Taking”).

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

- The Parcel's sole means of vehicular access at the southern front of the Property Site.

As shown on the Petitioner's marked-up site survey identified as Exhibit A hereto, the combined effect of these unique and unusual conditions is to limit the available land area for proper and compliant building façade(s) alignment at the Parcel's front lot line. This portion of the Property Site is also constrained by the incongruent alignment of the Parcel's front lot line along and beneath the on-ramp of McGrath Highway.

The prior MassDOT Taking created a new thoroughfare distinct from McGrath Highway and relocated the Parcel's front lot line. This impacted the lack of symmetry at the Parcel's front yard and constrains its available land area for proper and compliant façade alignment (as required by the SZO). As a result of the combined effect of the other unique and unusual land conditions (above), the Parcel's sole means of vehicular access is relegated to its southern corner, where it further limits the available land area for proper and compliant façade alignment (as required by the SZO). The MassDOT Taking is enforceable against the Parcel as recorded in the Middlesex Registry of Deeds¹

The special conditions and unusual characteristics detailed above are unique to the property site itself, and their combined effect results in an undue hardship (as further described herein). Thus, the Proponent's appeal meets the requirements of Review Criteria A for the Variance requested.

Review Criteria B*

Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant due to said special circumstances. Please briefly describe your hardship.

Taken together, the unique and special land conditions detailed in Review Criteria A (above) significantly impact the shape and characteristics of the Parcel, resulting in limited available land area for compliant building siting and justifying the grant of relief under the circumstances. Literal enforcement of the SZO would create substantial hardship on the Petitioner, by precluding its redevelopment of the Property Site, for a use, scale and building

¹ For MassDot Taking, see Book 8745, Page 350 dated May 24, 1956, registered on June 14, 1956 as Document No. 307151, with Plan of Taking dated April 17, 1956 and recorded as plan number 972 of 1956.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

height which allowed by the City's newly adopted High Rise Zoning District at this location. In particular, the Proponent notes that strict compliance with this section of the SZO would result in an unusual building design and illogical site placement, contrary to the City's planning principals and new zoning allowances for development and future mobility along McGrath Highway. Specifically, the front façade of a compliant building would result in a misaligned front façade along the asymmetrical front lot line of the Property Site, which is also constrained by the on-ramp to McGrath Highway and its sole mean of vehicular access at the southern front corner of the Parcel. The practical effect of enforcing this section of the SZO would also negatively impact the City and State's planned removal and replacement of the elevated ramp sections along McGrath Highway, which is contemplated to be replaced by a new boulevard with widened sidewalks, greater pedestrian access and active street fronts (See MassDOT Project#608482). Attached as Exhibit B hereto is a mock-up of this incongruent result overlayed with current planning and future visioning for this section of McGrath Highway. Finally, the Petitioner submits that literal enforcement of the SZO would create substantial undue financial hardship on it, by requiring a new building siting which is unlikely to be allowed by the City's Site Plan Review authority, with excessive costs and engineering, of custom steel fabrication and a resulting development program which is unsuitable for the Petitioner's proposed commercial office, laboratory, research/development Uses (as Allowed by the SZO at this location). As a result, the Petitioner would be deprived from the reasonable use of its land, for a purpose more in keeping with City planning and the required findings of this Review Standard B.

Review Criteria C*

Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of a specific district in this Ordinance or the Ordinance in general. Please briefly describe the relief requested.

The Petitioner also submits that the relief requested is entirely consistent with the intent and purpose of the newly adopted High Rise Zoning District at this location, and it will not result in any detriment to the public good. Rather, the grant of the required Variance would allow for a more proper building façade alignment at the Parcel's asymmetrical and incongruent front yard, to better comply with the City's planning and future growth at this location.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

Notwithstanding the legal effect of the MassDOT Taking², observers and passersby would assume that the taken parcels along McGrath Highway were part of the Parcel, rendering the Project with a building façade not aligned with McGrath Highway and apparent setback greater than the SZO's allowance. Literal enforcement of the SZO would result in a setback and alignment of the Project that does not meet with the City's planning goals. Again, the Petitioner is proposing a commercial office, laboratory and research/development building which complies with the use, scale, building height and other applicable requirements of the SZO at this location. Relief is necessitated based on the Parcel's unique constraints, the dimensional requirements for the proposed project and context of the existing conditions and future expansion along this section of McGrath Highway. Thus, the question is whether the relief for this limited and specific purpose can be granted in a manner which is consistent with this finding. In this regard, the Petitioner notes that the primary elevation massing of its proposed new building will be oriented towards McGrath Highway, in a logical manner and with an appropriate building footprint that correlates with the Parcel's irregular shape and related restrictions. Its front façade will activate the street edge along McGrath Highway and generally align with City's approved development at the adjacent property site of 15 McGrath Highway. The Petitioner's new building will also be sited to require the minimum amount of relief necessary for the alignment of the façade Variance and that the overall site plan will also include new open space, landscape, public realm, and pedestrian connectivity upgrades to properly accommodate its location on the Parcel. As a result, the relief requested will not result in any detriment to the community, and the basis for the Variance is justified under the circumstances.

² Although Petitioner is also seeking title relief for the issues resulting from the MassDOT Taking, any relief granted pursuant to these title related requests as a title matter may have the potential effect of reducing, but not eliminating, the zoning deficiencies that necessitate this variance petition.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Driveway located in the Frontage Area**

Hardship Review Criteria:

The Petitioner is seeking a Hardship Variance from Section 5.17.c.ii of the Somerville Zoning Ordinance (the “SZO”), which prohibits the placement of driveways in the Frontage Area of its proposed mixed-use office, laboratory, research/development building at 35 McGrath Highway (the “Proposed Project” and “Property Site,” respectively). Situated in Ward 2 of the City’s newly adopted High Rise Zoning District, which allows the Proposed Project’s underling uses, size and building height, the Property Site includes approximately 20,605 s/f of land and an outdated commercial/industrial building, surrounded by unimproved asphalt surface areas (the “Parcel”). As further detailed by the Review Criteria below, the Parcel includes certain unique and peculiar land conditions which support and justify the grant of the requested Variance from Section 5.17.c.ii of the SZO.

Review Criteria A*

Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the zoning district in which the land or structure is located. Please briefly describe the special circumstances existing on this site.

Consistent with the required findings for this Review Criteria A, the Petitioner submits that the Property Site is uniquely constrained and burdened by the following special land conditions and unusual characteristics:

- An irregular shaped rectangular lot, with asymmetrical frontage along and beneath the on-ramp section of McGrath Highway (at the front yard of the Parcel).
- Abutting properties on each side of the Parcel, which are owned and controlled by unrelated and independent ownership, including the Massachusetts Bay Transportation Authority’s rail lines at and along the rear portion of the Parcel.
- Prior land taking by the Metropolitan District Commission for the Commonwealth of Massachusetts, and now through its successor Department of Transportation, which

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Driveway located in the Frontage Area**

removed and altered a portion of the Parcel's land area at its southwest frontage along McGrath Highway (the "MassDOT Taking").

- The Parcel's sole means of vehicular access at the southern front of the Property Site.

As shown on the Petitioner's marked-up site survey identified as Exhibit A hereto, the combined effect of these unique and unusual conditions is to limit vehicular access via the MassDOT Taking. The prior MassDOT Taking created a new thoroughfare distinct from McGrath Highway and relocated the Parcel's front lot line. As a result of the combined effect of the other unique and unusual land conditions (above), the Parcel's sole means of vehicular access is relegated to its southern corner. The MassDOT Taking is enforceable against the Parcel as recorded in the Middlesex Registry of Deeds¹

The special conditions and unusual characteristics detailed above are unique to the property site itself, and their combined effect results in an undue hardship (as further described herein). Thus, the Proponent's appeal meets the requirements of Review Criteria A for the Variance requested.

Review Criteria B*

Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant due to said special circumstances. Please briefly describe your hardship.

Taken together, the unique and special land conditions detailed in Review Criteria A (above) significantly impact the shape and characteristics of the Parcel, resulting in limited available land area for compliant access to the Site and justifying the grant of relief under the circumstances. Literal enforcement of the SZO prohibition on the placement of driveways in the Frontage Area would create substantial hardship on the Petitioner, by precluding its redevelopment of the Property Site, for a use, scale and building height which allowed by the City's newly adopted High Rise Zoning District at this location. In particular, the Proponent notes that strict compliance with this section of the SZO would preclude vehicular access to the

¹ For MassDot Taking, see Book 8745, Page 350 dated May 24, 1956, registered on June 14, 1956 as Document No. 307151, with Plan of Taking dated April 17, 1956 and recorded as plan number 972 of 1956.

**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Driveway located in the Frontage Area**

Property Site, contrary to the City's planning principals and new zoning allowances for development and future mobility along McGrath Highway. Specifically, its sole mean of vehicular access is at the southern front corner of the Parcel across the MassDOT Taking. Finally, the Petitioner submits that literal enforcement of the SZO would create substantial undue financial hardship on it, by preventing vehicular access to the Property Site for the Petitioner's proposed commercial office, laboratory, research/development Uses (as Allowed by the SZO at this location). As a result, the Petitioner would be deprived from the reasonable use of its land, for a purpose more in keeping with City planning and the required findings of this Review Standard B.

Review Criteria C*

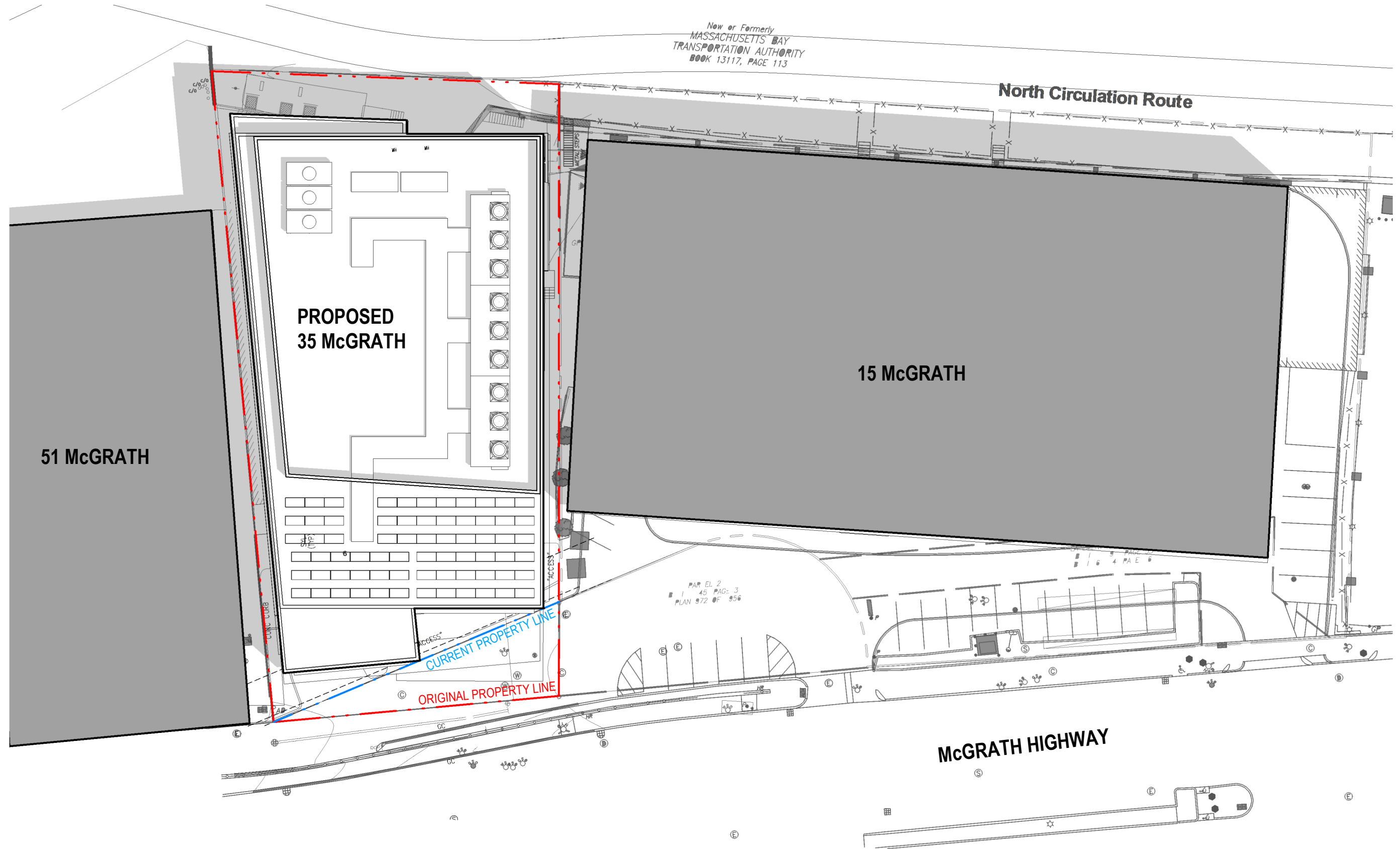
Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of a specific district in this Ordinance or the Ordinance in general. Please briefly describe the relief requested.

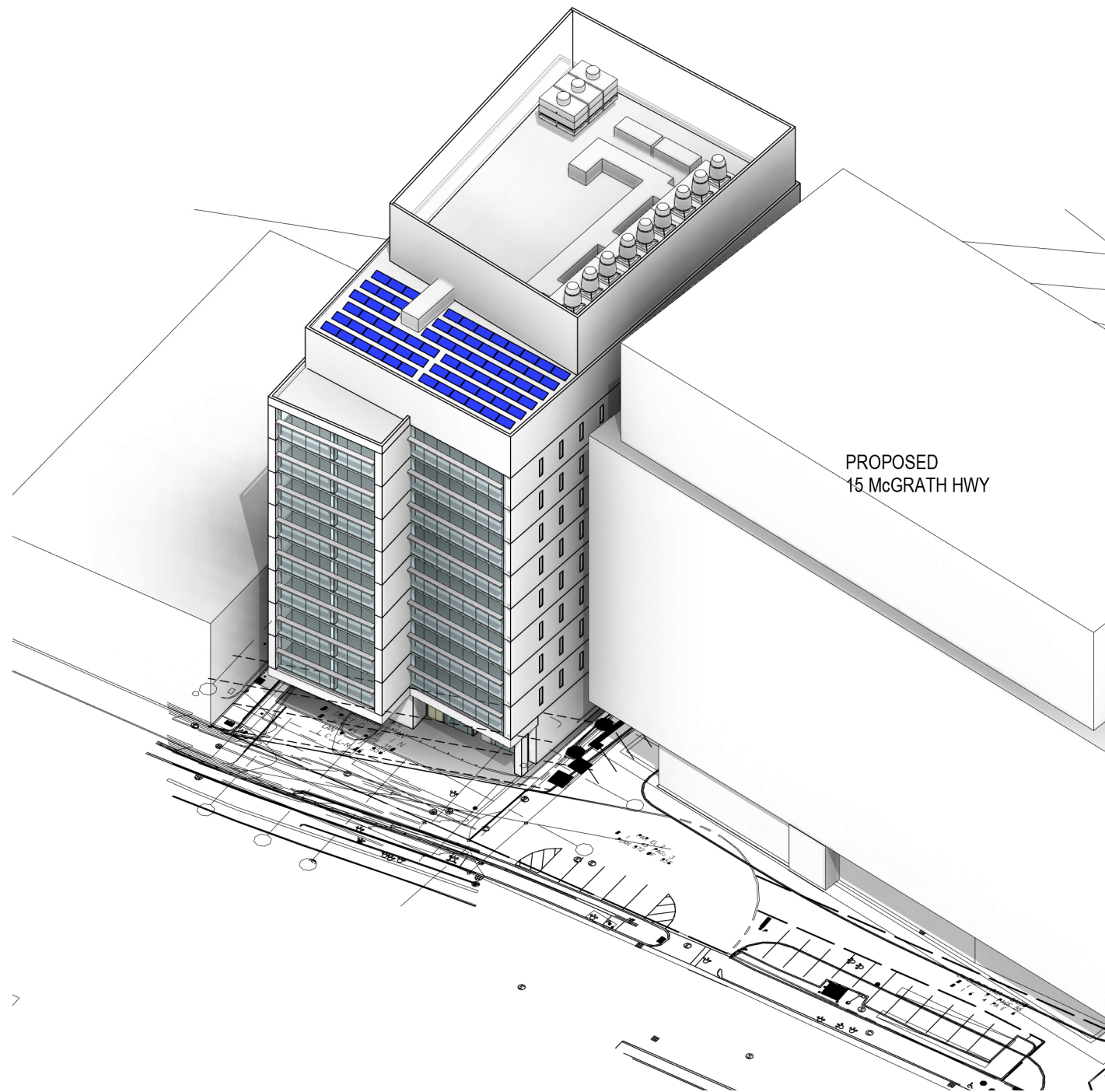
The Petitioner also submits that the relief requested is entirely consistent with the intent and purpose of the newly adopted High Rise Zoning District at this location, and it will not result in any detriment to the public good. Rather, the grant of the required Variance would allow for vehicular access to the Property Site through the only reasonable means available.

Literal enforcement of the SZO would result in a Parcel and a proposed project with no access to a thoroughfare and therefore would create a parcel that cannot be upgraded and not meeting with the City's planning goals. Again, the Petitioner is proposing a commercial office, laboratory and research/development building which complies with the use, scale, building height and other applicable requirements of the SZO at this location. Relief is necessitated based on the Parcel's unique constraints, the dimensional requirements for the proposed project and context of the existing conditions and future expansion along this section of McGrath Highway. Thus, the question is whether the relief for this limited and specific purpose can be granted in a manner which is consistent with this finding. The Petitioner's new building will also be sited to require the minimum amount of relief necessary for the location of the driveway and that the overall site plan will also include new open space, landscape, public realm, and pedestrian connectivity upgrades to properly accommodate its location on the Parcel. As a result, the relief

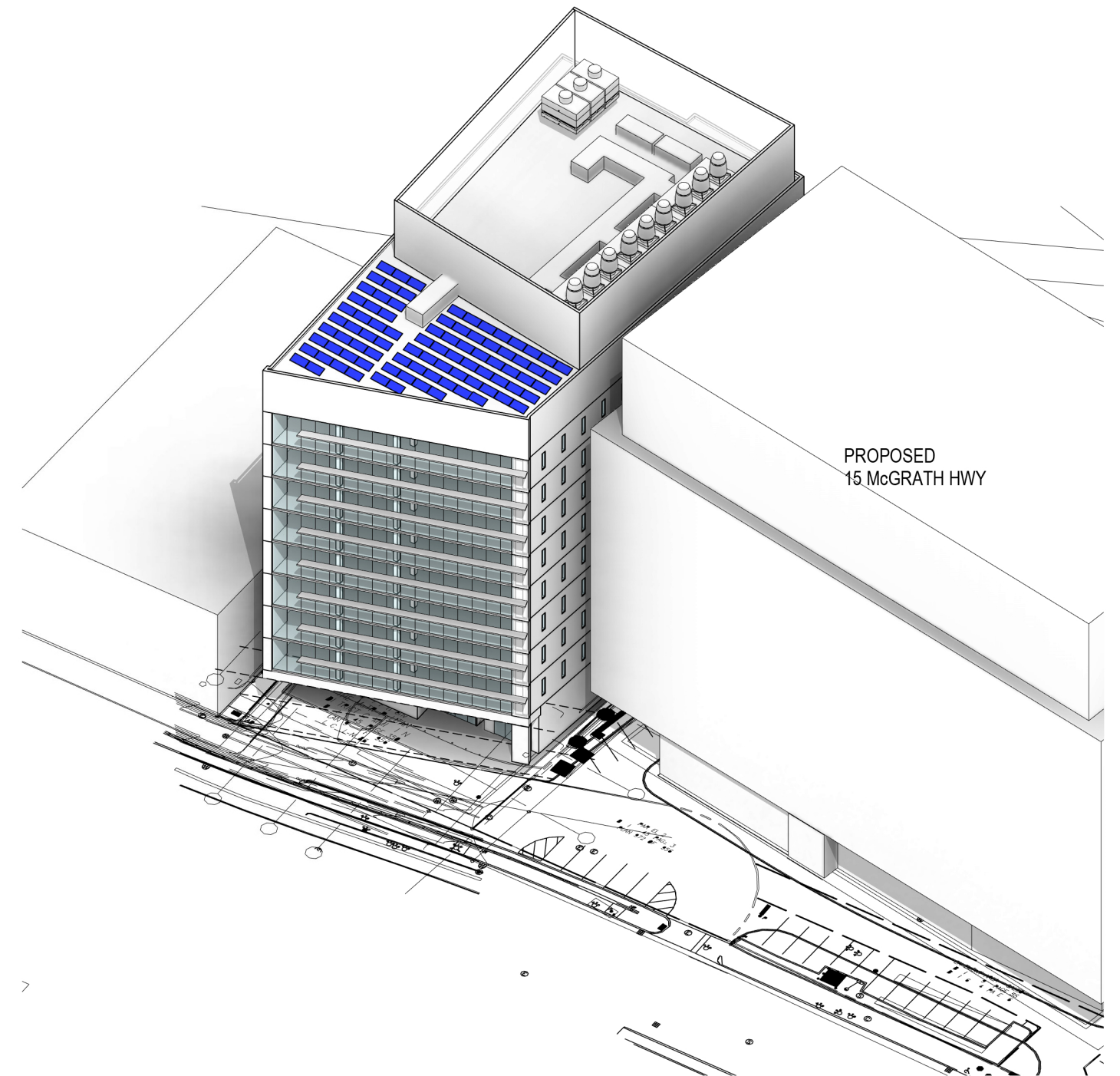
**P&Z 21-151: 35 McGrath Highway
Hardship Variance Review Criteria
Driveway located in the Frontage Area**

requested will not result in any detriment to the community, and the basis for the Variance is justified under the circumstances.





PROPOSED FRONT FACADE (PARALLEL)



ZONING COMPLIANT FRONT FACADE (DIAGONAL)