



City of Somerville

# **ZONING BOARD OF APPEALS**

City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

**TO:** Zoning Board of Appeals  
**FROM:** Planning, Preservation, & Zoning (PPZ) Staff  
**SUBJECT:** 35 McGrath Hwy, ZP23-000044  
**POSTED:** November 2, 2023

**RECOMMENDATION:** Approve (Hardship Variances)

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 requests 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 October 16, 2023 and is scheduled for a public hearing on November 15, 2023. 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 zoning relief from the following requirements of the High Rise (HR) district, all of which require Hardship Variances: 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 proposed minimum distance that the building is setback from the lot line is zero (0) feet.
- The required maximum front setback is fifteen (15) feet (SZO §5.1.9.b). The proposed maximum distance that the building is setback from the front lot line is thirty-two feet, four inches (32' 4").
- The façade of the building must be parallel to the front lot line for at least eight percent (80%) of the lot width (SZO §2.4.4.a.i.a). The proposed 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.

## BACKGROUND

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 the Board's decision regarding the Hardship Variance(s), the proposal 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.

35 McGrath Highway previously received Hardship Variances for the items mentioned above from the Zoning Board of Appeals on May 18, 2022, in case number P&Z 21-156. The Hardship Variances expired while the Applicant was pursuing Site Plan Approval for the lab building. The Applicant tried to apply for an extension, but State law only allows Applicants to apply prior to the expiration of the Hardship Variances. Staff informed the Applicant that the only way for them to proceed with development was for them to apply again for the same zoning relief.

Staff will note that though this application is identical to P&Z 21-156, this is a new application and must be treated as such. Staff do not have any new information to provide to the Board regarding the requested relief and most of the content included in this Staff Memo is identical to the Staff Memo dated May 4, 2022, for case number P&Z 21-156.

## ANALYSIS

To the casual viewer it might appear that 35 McGrath Hwy 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 Hwy 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 Hwy 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 Hwy. 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 Hwy), 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 digital 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.
- If the Board requires any changes to the submitted plans, digital copies of all applicable application materials reflecting those changes must be submitted to the Planning, Preservation & Zoning Division for the public record. Materials must be submitted in accordance with the document format standards of relevant Submittal Requirements.