



City of Somerville

ZONING BOARD OF APPEALS

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

2023 NOV 17 A 10:36

DECISION

PROPERTY ADDRESS: 35 McGrath Highway
CASE NUMBER: ZP23-000044
OWNER: Lohnes Paul R & Lavery Jr C R Trs
OWNER ADDRESS: 75 Cambridge Parkway, Cambridge, MA 02142
APPLICANT: 35 McGrath Highway Realty Trust
APPLICANT ADDRESS: 75 Cambridge Parkway, Cambridge, MA 02142
DECISION: Approved with Conditions (Hardship Variance)
DATE OF VOTE: November 15, 2023
DECISION ISSUED: November 17, 2023

CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the Hardship Variance application submitted for 35 McGrath Highway.

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.

RECORD OF PROCEEDINGS

On November 15, 2023, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Vice-Chair Anne Brockelman, Clerk Katherine Garavaglia, Ann Fullerton, Alternate Brian Cook, and Alternate Sisia Daglian. At the meeting, the Applicant explained that they previously received Hardship Variances for the same zoning relief in May of 2022. After receiving the variances, the Applicant started preparing an application for Site Plan Approval during which, the Hardship Variances expired. In order to submit an Application for Site Plan Approval, new variances needed to be obtained. The Applicant also provided an overview of the proposed lab building and their arguments for why zoning relief is needed for this project.

After the presentation by the Applicant, the Chair opened up the public testimony portion of the public hearing. There was no public comments in support or opposition of this application. The Board asked some clarifying questions about the site, including how far apart the proposed building is from the proposed building next door at 15 McGrath Highway. After a brief discussion, the Board discussed how the application meets the three (3) required Hardship Variance criteria and moved to approve the requested Hardship Variances.

PLANS & DOCUMENTS

Application plans, documents, and supporting materials submitted and incorporated are identified below.

| Document | Pages | Prepared By | Date | Revision Date |
|----------------------------------------------------|-------|------------------------------------------------------------------------|------------------|------------------|
| 35 McGrath Hwy Plans | 12 | Stantec | October 26, 2021 | n/a |
| 35 McGrath Hwy Land Title Survey | 1 | Control Point Associates, Inc, 352 Turnpike Rd, Southborough, MA 01772 | November 3, 2021 | n/a |
| 35 McGrath Hwy Applications for Hardship Variances | 22 | McDermott, Quilty & Miller LLP | October 10, 2023 | October 31, 2023 |

HARDSHIP VARIANCE FINDINGS

The Applicant requested three (3) variances for relief front setback requirements (SZO §5.1.9.b), relief from the requirement to have the façade parallel to the front lot line (SZO §2.2.4.b.i.a), and relief from the driveway in the frontage area (SZO §5.17.c.ii). The Board determined that their findings for each of the three (3) variances were the same, and so addressed them together.

In accordance with M.G.L. 40A and the Somerville Zoning Ordinance, the Board may grant a hardship variance only upon finding all of the following for each hardship variance:

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;*

For each of the three (3) requested Hardship Variances, the Board finds that there are special circumstances related to the shape of the lot due to strange triangular piece that was taken through eminent domain from the front portion of the lot.

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*

For each of the three (3) requested Hardship Variances, the Board finds that due to the shape of the lot, a literal enforcement of the zoning code would result in a triangular building with a very narrow path to get to the public right of way.

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.*

For each of the three (3) requested Hardship Variances, the Board finds that designing the building to follow the frontage, rather than following the street, would make the

building look out of place. Therefore, the Board finds that not only would granting the variances not cause harm, but is it desirable to grant each of the requested variances.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Clerk Garavaglia moved to approve the three (3) **Hardship Variances** to the front setback requirements, driveway in the frontage area, and façade not parallel to the front lot line with the conditions included in the staff memo dated October 26, 2023. Member Fullerton Seconded. The Board voted **5-0** to approve the permit, subject to the following conditions:

Perpetual

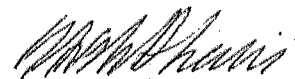
1. This Decision must be recorded with the Middlesex South Registry of Deeds.

Prior to Building Permit

2. 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.
3. 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.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Anne Brockelman, *Vice-Chair*
Katherine Garavaglia, *Clerk*
Ann Fullerton
Sisia Daglian, *Alternate*



Sarah Lewis, Director of Planning, Preservation, & Zoning
Office of Strategic Planning & Community Development

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 15.5.3.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

FOR SITE PLAN APPROVAL(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____