



City of Somerville

# ZONING BOARD OF APPEALS

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

## DECISION

2024 JUL 22 P 1:55

**PROPERTY ADDRESS:** 35 McGrath Highway  
**CASE NUMBER:** ZP24-000040  
**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:** July 17, 2024  
**DECISION ISSUED:** July 22, 2024

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 curb setback requirement of the High Rise (HR) district, which require a Hardship Variance.

### RECORD OF PROCEEDINGS

On July 17, 2024 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, Ann Fullerton, Alternate Brian Cook, and Alternate Sisia Daglian. At the meeting, the applicant explained that they have previously received Hardship Variances from the Board in 2022 and again in 2023. The applicant provided an overview of the proposed lab building through renderings and graphics and their arguments for why zoning relief from the curb setback requirement 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. After the close of the public testimony portion of the hearing, the Board asked the applicant to explain again the Hardship Variance argument in relation to the proposed plans. After a brief discussed with the applicant, the Board discussed how the application meets the required Hardship Variance criteria and moved to approve the requested Hardship Variance.

### PLANS & DOCUMENTS

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

Document	Pages	Prepared By	Date	Revision Date
35 McGrath Hwy Architectural Plans	19	Stantec	December 20, 2023	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	May 17, 2024	May 24, 2024
35 McGrath Hwy Exhibit A	1	Stantec	March 15, 2022	n/a

## HARDSHIP VARIANCE FINDINGS

The Applicant requested a Hardship Variance for relief from the curb setback requirement (SZO §5.1.9.b). 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;*

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 and that the lot line and curb line are the same, therefore no public property provides buffer for the curb setback.

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*

The Board finds that due to literal enforcement of the provision of the zoning ordinance, there would be a substantial hardship to the applicant both financially and with time due to a ripple effect caused by the provision, which would impact the building design and structural system.

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.*

The Board finds that relief can 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. The Board finds that relief from the curb setback requirement creates a more even geometry to the building's massing and façade design.

## DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Vice Chair Brockelman moved to approve the **Hardship Variances** for relief from the curb setback requirement with the conditions included in the staff memo dated July 2, 2024. Member Cook 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.
2. The minimum curb setback must be no less than eight (8) feet.

Prior to Building Permit

3. 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.
4. 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 and acting Clerk*  
Ann Fullerton  
Sisia Daglian, *Alternate*  
Brian Cook, *Alternate*

**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 \_\_\_\_\_