

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

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**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Project’s underling uses, size and building height, the Property Site includes approximately 20,605 s/f of land and an outdated commercial/industrial building, surrounded by unimproved asphalt surface areas (the “Parcel”).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

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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 Deeds<sup>1</sup>

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

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<sup>1</sup> 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.

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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

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