



City of Somerville

ZONING BOARD OF APPEALS

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

2021 MAY 11 P 2:09

DECISION

PROPERTY ADDRESS: 15 McGrath Highway
CASE NUMBER: DRA #2020-0334
OWNER: 15 McGrath Hwy Owner, LLC
OWNER ADDRESS: c/o Leggat McCall Properties, LLC
10 Post Office Square, 13 Floor, Boston, MA 0210
DECISION: Approved with Conditions (Hardship Variances)
DECISION DATE: April 28, 2021

CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals regarding the development review application submitted for 15 McGrath Highway.

LEGAL NOTICE

15 McGrath Hwy Owner, LLC, proposes to construct a lab building in the High Rise District. The proposal requires hardship variances: primary front setback, a driveway in a frontage area, a building not parallel to the front lot line, and forward upper story projection.

RECORD OF PROCEEDINGS

On April 28, 2021 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 Susan Fontano, Josh Safdie, Anne Brockelman, Elaine Severino, and Katherine Garavaglia.

After a brief presentation from the Applicant, the Board accepted public testimony with many of the speakers in support of the project. However, there were concerns expressed by the adjacent property owner regarding access, the need for the coordination between property owners work with MassDOT, and nearby residents were worried about shadowing. In response to the public comments and the Board's concerns, the Applicant explained that multiple meetings had been held to show the abutters the potential impacts (including shadows) but more design detail will be provided during the required subsequent Site Plan Approval process. P&Z Staff explained that ongoing communication is taking place with MassDOT and the City of Cambridge regarding the McGrath Highway improvements which includes coordination between the primary property owners in this area. The Board acknowledged that this is the first step in a longer public process and more detail regarding the architectural design and actual shadow impacts will be shared at neighborhood meetings and refined by the Urban Design Commission.

HARDSHIP VARIANCE FINDINGS

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

- 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 HR district;*
- b. *Literal enforcement of the provision of this Ordinance for the HR district would involve substantial hardship, financial or otherwise, to the petitioners, due to said special circumstances; and*
- 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 the HR district or the Ordinance in general.*

Relief from the primary front setback per Article 5.1.9.a.:

- a. The Board finds that there are special circumstances related to the shape of the parcel that make it unusual to the HR zoning district. A portion of the Property was taken as part of the reconstruction of McGrath Highway and is currently owned by MassDOT, as successor to the Metropolitan District Commission (the "MDC taking parcel"). The MDC taking parcel provides for traffic circulation at the property and abutting properties but separates a portion of the property from the line of McGrath Highway resulting in an irregularly shaped front lot line. In addition, easements providing access to the MBTA at the rear of the property and resulting in a substantial change in topography at the rear of the property. To build to the primary front setbacks would result in a building type that is undesirable for a desired use in the district.
- b. The Board finds that literal enforcement of the ordinance would result in substantial financial hardship by forcing the building into an undesirable location on the lot burdening the easement and creating a building type product that is not suitable for lab tenants who prefer rectilinear open layouts.
- c. The Board finds that the desired relief can be granted without substantial detriment of the public good. McGrath Highway will always take on a unique urbanism because of access needs and abutments of the Squire Bridge both on this side of the street and at Twin City Mall. The setback proposed for the project is an improvement on existing conditions and allows for the proposed building to be aligned with McGrath Highway, a goal of the SZO.

Relief from a driveway in a frontage area per Article 5.1.17.c.ii:

- a. The Board finds that there are special circumstances related to the shape of the lot because of the MDC taking parcel and access easement on the property to assure proper egress from 51 McGrath Highway.

- b. The Board finds that literal enforcement of the ordinance would result in substantial hardship by putting the property owners in violation of the legal obligations of the access easement.
- c. The Board finds that the desired relief can be granted without substantial detriment of the public good by designing the access easement area as secondary to the primary circulation around the building.

Relief to allow for the upper story facades of a building to project over the façade of the ground story per Articles 2.3.a.iv and 2.4.4.a.:

- a. The Board finds that there are special circumstances related to the lot because of the access easement, MBTA easement, and MDC taking parcel. Without relief the project would either have to decrease the size of the upper stories to comply and therefore substantially under-build or increase the size of the ground story and encroach on the access easement or use an oddly shaped floor plate.
- b. The Board finds that literal enforcement of the ordinance would result in substantial hardship by reducing the size of the project by over 100,000 SF which does not meet the intent of the High Rise district.
- c. The Board finds that the desired relief can be granted without substantial detriment of the public good because the desired massing is minimized on the front façade and visually screened because of building placement on the sides.

Relief to allow a building façade to not be parallel with the front lot line per Article 2.4.4.b.i.a.:

- a. The Board finds that there are special circumstances related to the lot because it is not rectilinear and has two front lot lines. To make the front façade parallel would result in an undesirable building footprint.
- b. The Board finds that literal enforcement of the ordinance would result in substantial hardship because the front façade would be irregularly shaped with curves and multiple corners, resulting in a detrimental design not desired by the intended tenants.
- c. The Board finds that the desired relief can be granted without substantial detriment of the public good because the desired massing is generally oriented towards McGrath Highway in a rational fashion that both meets desired building footprints and makes the front façade present along the street edge.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Mr. Safdie moved to approve the *Hardship Variance for the primary front setback (Article 5.1.9.a.)* with the conditions included in the staff memo. Ms. Garavaglia seconded. The Board voted 5-0 to **APPROVE** the permit subject to the conditions listed below.

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Mr. Safdie moved to approve the *Hardship Variance for a driveway in a frontage area (Article 5.1.17.c.ii.)* with the conditions included in the staff memo. Ms. Severino seconded. The Board voted 5-0 to **APPROVE** the permit subject to the conditions listed below.

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Mr. Safdie moved to approve the *Hardship Variance to allow the upper story façade of building to project over ground floor story façade (Articles 2.3.a.iv and 2.4.4.a.)* with the conditions included in the staff memo. Ms. Severino seconded. The Board voted 5-0 to **APPROVE** the permit subject to the conditions listed below.

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Mr. Safdie moved to approve the *Hardship Variance to allow the façade to not be parallel with front lot line (Article 2.4.4.b.i.a.)* with the conditions included in the staff memo. Ms. Severino seconded. The Board voted 5-0 to **APPROVE** the permit subject to the conditions listed below.

The Board applied the following conditions to each of the four Hardship Variances:

Perpetual

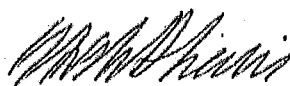
1. This Decision must be recorded with the Middlesex County Registry of Deeds.
2. Relief granted is a maximum and cannot exceed the dimensions detailed in Figure 2 dated September 23, 2020.
3. Upper stories may not project beyond any story below with the exception of the relief granted at the ground and second story.

Prior to Building Permit

1. A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted for the public record.
2. Physical copies of all submittal materials as permitted by the Review Boards must be submitted for the public record in accordance with the document format standards of the ISD/PB/ZBA Submittal Requirements.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Josh Safdie
Elaine Severino
Anne Brockelman
Katherine Garavaglia, *Alternate*



Attest, by the Planning Director: _____

Sarah Lewis

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 _____