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August 27, 2020  
119182-7

**Via Hand Delivery and Email**

City of Somerville Zoning Board of Appeals  
c/o Melissa Woods, Senior Planner  
Office of Strategic Planning & Community Development  
93 Highland Avenue, City Hall Third Floor  
Somerville, MA 02143

Re: Variance Application – 15 McGrath Highway, Somerville, MA

Dear Ms. Woods:

On behalf of 15 McGrath Hwy Owner LLC, (the “Applicant”), we request that the City of Somerville Board of Appeals grant Variances pursuant to Section 15.2.3 of the Somerville Zoning Ordinance (“SZO”) (i) to vary the Primary Front Setback set forth in Section 5.1.9.a of the SZO, (ii) to allow a driveway in the frontage area (Section 5.1.17.c.ii), (iii) to allow the façade of the upper stories of a building to project over the façade of the ground floor story (Sections 2.4.3.a.iv and 2.4.4.a), and (iv) to allow a building façade to be built in manner that will not make the façade parallel with the front lot line (Section 2.4.4.b.i.a), all in order to allow for the development of a Lab Building at 13-21 McGrath Highway (referred to as 15 McGrath) in Somerville (the “Property”).

As discussed below, the Applicant proposes to construct a nine-story laboratory building containing approximately 251,924 rentable square feet and 384,331 square feet of gross floor area (including the underground parking and a portion of the mechanical penthouse), with four levels of underground parking providing 245 total parking spaces (the “Project”). As shown on the Site Plans (Exhibit B), due to the unusual shape of the Property resulting from the taking of a portion of the Property by the Metropolitan District Commission (the “MDC Taking Parcel”) and the location of an access easement serving abutting parcels which have no direct access to McGrath Highway and an MBTA easement impacting the grade at the rear of the Property, the Project cannot comply with certain provisions of the SZO as cited above. We note that the additional review by the Planning Board will be required prior to development of the Project.

The Applicant provides the following materials in support of this request:

1. Development Review Application Form (Exhibit A);

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2. Certified Abutter List for properties in Cambridge within 300 feet of the property. We understand that the City of Somerville will prepare the abutters list for Somerville separately (Exhibit B);
3. Site Plans detailing the Property, Easements and Proposed Improvements (11x17 copies) (Exhibit C);
4. Hardship Letter from Leggat McCall Properties, LLC (Exhibit D); and
5. One check, one in the amount of \$250.00 (ISD Plan Review fee). We understand the variance application fee and public notice fee will be calculated and paid following review of the application (Exhibit E).

I. The Project and Relief Requested.

A. The Project and the Property.

The Property, which consists of an approximately 44,607 square foot parcel of land, is in the High Rise (HR) Zoning District governed by Article 5 of the SZO. The Property is presently developed with a two-story building used for retail uses with associated parking located in the frontage between the building and McGrath Highway. The existing location of the building is preexisting non-conforming with respect to the Primary Front Setback and parking/drives in the frontage area. This existing building would be razed as part of the Project.

As depicted in the Site Plans, the Project as proposed by the Applicant includes a nine-story building containing office or laboratory/research and development uses at the Property within a Lab Building Type (governed by Section 5.1.9 of the SZO). In the HR District, General Office and Research and Development or Laboratory are allowed “by right” subject to Site Plan Approval from the Planning Board. Access to parking will be located on the side of the proposed building and loading will occur at the rear of the building.

The frontage of the Property is affected by the curved MDC Taking Parcel situated between the Property and McGrath Highway. The MDC Taking Parcel, which we understand may have been taken as part of the reconstruction of McGrath Highway in the 1950s, is currently owned by the Massachusetts Department of Conservation and Recreation (“DCR”), as successor to the MDC, and provides for traffic circulation at the Property and abutting properties, and as a potential secondary means of egress (right turn only onto McGrath Highway). The MDC Taking Parcel separates a portion of the Property from the line of McGrath Highway resulting in an irregularly shaped Lot and Front Lot Line.

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The Property is also subject to an access easement benefiting the property at 51 McGrath Highway, Somerville, MA ("51 McGrath") pursuant to an Easement Agreement dated September 12, 2008 and recorded with the Middlesex South District Registry of Deeds (the "Registry") in Book 51691, Page 55, as amended by First Amendment to Easement Agreement dated September 19, 2016 and recorded with the Registry in Book 68114, Page 166 (collectively, the "Access Easement"). The Access Easement, shown on the Site Plans, runs along the front of the Property across the existing parking lot at the Property and provides for required ingress and egress from 51 McGrath onto McGrath Highway using the existing curb cut located in the southeast corner of the Property. Because McGrath Highway elevates as it passes the Property, 51 McGrath would otherwise be landlocked without the benefit of the Access Easement except for a right hand only turn through the MDC Taking Parcel.

In addition to the Access Easement, an approximately 16-foot wide railroad easement established on March 2, 1926 and recorded with the Registry in Book 4943, Page 565 (the "MBTA Easement") runs parallel with the Property's rear lot line and provides the MBTA and the owner of 35 McGrath Highway with the right to lay down and maintain a sidetrack within the easement area. The location of the MBTA Easement limits development at the rear of the Property as the area is set off by a retaining wall and the grade in the MBTA Easement area is approximately 12 feet higher in elevation than the rest of the Property. Thus, the elevation change in this portion of the Property creates a challenging topography, but is necessary in order to maintain the conditions necessary for a functioning siding as required by the MBTA Easement.

B. Relief Requested.

First, a variance is required for the front yard setback. Due to the unique contours and shape of the front lot line as impacted by the MDC Taking Parcel and the location of the Access Easement, the Project cannot comply with the Primary Front Setback requirements of Section 5.1.9.a of the SZO for a Lab Building. Section 5.1.9.a requires a minimum two foot and maximum fifteen foot setback from the front lot line long McGrath Highway.<sup>1</sup> As shown on the Site Plans and detailed in the letter attached at Exhibit D, in order to provide for a viable Lab Building with adequate floor plates and to properly align the building façade with McGrath Highway, the Primary Front Setback, measured from the front lot line along McGrath Highway

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<sup>1</sup> Although the stated Front Setbacks are 2 ft./15 ft. (min./max), these setbacks must increase to accommodate expansion of the abutting sidewalk along McGrath Highway to at least 18 feet wide pursuant to Section 5.18.a.i of the SZO. It appears that the existing sidewalk is between 8-11 feet wide, which in turn would mean that an additional 7-10 feet must be added to each required setback. Accordingly, the minimum and maximum front setbacks could actually range from 9-12 ft. and 22-25 ft., respectively, which also could not be met by the Project.

to the exterior façade of the upper stories of the Project, ranges from approximately two to three feet along the MDC Taking Parcel to up to approximately 39.9 feet.

Second, a variance is required for a driveway in the frontage area at the Property. In order to provide access as required by the Access Easement, the Project provides a driveway in the frontage area between the building and McGrath Highway. Although the driveway will be landscaped and incorporated into the Project design in order to limit any visual impact, Section 5.1.17.c.ii prohibits such driveways in the front setback of any property. This prohibition impacts the Project as the location of a driveway in the frontage area is necessary to accommodate the Access Easement.

Third, a variance is required to allow for the façade of the upper stories of the Project to project over the façade of the ground story. To accommodate the Access Easement in the frontage area and to provide for access to parking, traffic circulation and loading along the sides and rear of the proposed building, while also providing for adequate floor plates for the proposed Lab Building, the Project's upper stories are designed to provide additional gross square footage than the ground story, causing the upper story façade to project over the façade of the ground story. Sections 2.4.3.a.iv and 2.4.4.a of the SZO prohibit such a projection.

Finally, a variance is required as the façade of the Project will not be built parallel with the front lot line. Although the Project is designed as a "block" type building that the SZO requires with respect to Lab Buildings, the unique shape of the MDC Taking Parcel requires aligning the Project to be non-parallel with the Property's front lot line along McGrath Highway.

## II. Compliance with Variance Standard.

Pursuant to Massachusetts General Laws, Chapter 40A, Section 15 and Section 15.2.3 of the SZO, the Board of Appeals has the authority to hear this application where the Applicant seeks variances from the SZO, showing that: (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 zoning district in which the land or structure is located; (2) literal enforcement of the provision of the SZO 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; 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 a specific district in the SZO or the SZO in general.

In the present matter, approval of the variance requests is proper as the unique shape of the front lot line and the location of the MDC Taking Parcel affects this particular Property in contrast to other properties in the surrounding HR District. Further, the Access Easement, which

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is necessary to provide access to the landlocked abutting property impacted by the elevated McGrath Highway, uniquely impacts the Property versus other properties in the HR District. And although other properties in the HR District about the MBTA and GLX rail corridor, they are not similarly subject to the MBTA Easement burdening the Property, which uniquely restricts development in the rear portion of the Property. Essentially, the MBTA Easement creates a 16 foot minimum rear setback requirement where no rear setback is required under the SZO. The MBTA Easement also impacts the topography at the rear of the Property due to the existing retaining wall and grade change. The combination of these conditions relating to the shape and topography of the Property require an increased maximum setback, front yard drive, projecting upper story floor plates and aligning the building to be off parallel of McGrath Highway.

As detailed in the letter attached at Exhibit D and the Site Plans, the requested variances are imperative for this location in order to construct an allowed building type generally aligned with McGrath Highway and to provide for adequate upper story floorplates to serve future lab tenants. Positioning the building within the Primary Front Setback and parallel with McGrath Highway and the MDC Taking Parcel would result in an oddly shaped floorplate with multiple angles, corners and rounded walls which may not support the proposed lab use. Further, the increased Primary Front Setback, upper story projections and location of the driveway in the frontage area are necessary to accommodate access over the Property to users of the Property and pursuant to the Access Easement. It is an absolute necessity in order to provide access to the abutting landlocked property.

A substantial hardship exists because of the above conditions. The granting of the variance request will not violate the purpose of the SZO. A literal enforcement of the provisions of the Ordinance would create substantial hardship, financial or otherwise, because the Applicant has the need to design the proposed building in a manner that is useable and marketable for future tenants. Designing the building to comply with the front setback, remove upper story projections and to be parallel with the front lot lines would result in inadequate floorplates for lab tenants as it would require a staggered façade design necessary to meet the setback as well as limited floor space on the upper stories. As described in Exhibit D, an irregularly shaped floorplate, versus the rectangular lab building proscribed by the SZO, may not appeal to potential lab tenants and would reduce the rentability of the Project and impact the Project's financial feasibility.

The proposed upper story projections along the sides and rear of the Project also allow for onsite traffic circulation, access to the underground parking and access to loading at the rear. This design allows for an increased upper story floorplate while providing safe access and turning radii at the sides and rear of the Property. Further, because of the restrictions placed on the Property by the MBTA Easement and associated topography changes at the rear of the Property, it is necessary to locate this access and loading beneath the building's upper story

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floorplates. As described in Exhibit D, reducing the projections or relocating the parking entrance or loading would impact the safe circulation and access around the Project, and would reduce the Project, impacting the Project's financial feasibility.

Further, aligning the building with the Primary Front Setback, requiring the building to be parallel with the front lot line, requiring the ground story façade to align with the façade of the upper stories and prohibiting the front drive would negate the Access Easement and limit or prevent safe access to the abutting property. Due to the location of the Property and location of the proposed building, the proposed design of the building provides safe access to the Property and abutting property. Therefore, a strict interpretation of the ordinance will create a substantial hardship by impacting the usefulness of the proposed building and requiring a project which would block the Access Easement.

The desired relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the SZO. Here, the current configuration of the Property is preexisting non-conforming, resulting in a significantly larger front setback with parking areas and drive aisles between the existing buildings and McGrath Highway. The Project will significantly improve this condition and include landscaping to limit visual impacts of the front drive. Moreover, the massing of the building in the upper stories and the façade design features will minimize the impact of the building projecting over the ground story and focus its footprint to be aligned along McGrath Highway as much as possible.

In addition, because the Project is located on McGrath Highway, a busy thoroughfare, rather than a smaller City street, the proposed variances will not impact the pedestrian experience along McGrath Highway and will not otherwise disrupt a continuous streetscape as the neighboring properties are preexisting and do not comply with the current setback requirements of the SZO. The impact of the drive is further reduced as it will not serve as the access to the Property, as the Property's own parking, egress and loading will take place at the side and rear of the Project. Rather, the drive, setback and ground story design of the building is intended primarily to accommodate the Access Easement and serve as a drop-off/pick-up location for the building's front entrance.

Finally, revising the floorplate to potentially comply with the front setback, parallel alignment requirement, and prohibition on drives in the frontage area and projections over the ground story may further derogate from the SZO. The façade buildout would not be a typical "block" building type that the SZO calls for with respect to Lab Buildings.

For the reasons stated above, the Applicant requests that the Board of Appeals grant the variances requested.

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Please docket and advertise this request for a public hearing at your earliest available hearing date. Please do not hesitate to contact this office to discuss this filing

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew Snell", written in a cursive style.

Matthew Snell

MHS:dal

Enclosures

cc: Mike Gerhardt, LMP

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**EXHIBIT D**  
**Hardship Letter**



Development | Project Management | Advisory | Investment

August 27, 2020

City of Somerville Zoning Board of Appeals  
c/o Melissa Woods, Senior Planner  
Office of Strategic Planning & Community Development  
City Hall  
93 Highland Avenue, Third Floor  
Somerville, MA 02143

Re: Variance Application – 15 McGrath Highway, Somerville, MA

Dear Ms. Woods:

Leggat McCall Properties, LLC via its entity 15 McGrath Hwy Owner LLC (the “Applicant”) is requesting relief pursuant to Section 15.2.3 of the Somerville Zoning Ordinance (“SZO”) (i) to vary the Primary Front Setback set forth in Section 5.1.9.a of the SZO, (ii) to allow a driveway in the frontage area (Section 5.1.17.c.ii ), (iii) to allow for the upper stories of a building to project over the ground floor story (Sections 2.4.3.a.iv and 2.4.4.a), and (iv) to allow a building façade to be built in manner that will not make the façade parallel with the front lot line (Section 2.4.4.b.i.a), all to allow for the development of a Lab Building at 13-21 McGrath Highway (referred to as 15 McGrath) in Somerville (the “Property”).

Each of the foregoing provisions of the SZO provides a hardship for the Applicant. The proposed laboratory project (the “Project”) is located on a site within the High Rise (HR) Zoning District. As the HR Zoning District allows the proposed use, the constraints imposed by the above sections of the SZO uniquely and negatively impact the Project at this particular Property.

**5.1.9.a – Primary Front Setback**

Section 5.1.9.a requires a minimum two foot and maximum fifteen foot setback from the front lot line long McGrath Highway. However, due to a historic taking (the “MDC Taking Parcel”) by the Metropolitan District Commission (MDC”), the front lot line of the Property is curved and uniquely shaped. Further, an access easement benefiting the property at 51 McGrath Highway, Somerville, MA (“51 McGrath”) runs along the front of the Property across the existing parking lot at the Property and provides for required ingress and egress from 51 McGrath onto McGrath Highway using the existing curb cut located in the southeast corner of the Property.

Compliance with Section 5.1.9.a.1 for the Primary Front Setback would require locating the building in an impractical location aligned with McGrath Highway creating an inadequate floorplate. Due to the curved shape of the front lot line, the floorplate would need to be angled or consist of several jut outs to extend into the range of the required setback. In our experience, lab tenants are particular in requiring open layouts and this irregularly shaped floorplate would constrain the usefulness of the building and impact its rentability. Coupled with that impairment,

structural complexities and associated costs would impact the Project's financial feasibility and proforma.

The desired relief may be granted in this case without substantial detriment to the public good and without nullifying or substantially deviating from the intent of the SZO because the front setback can be designed and landscaped to reduce the visual impact of the extended setback. Further, as the Property is located on a busy thoroughfare and surrounding properties are not located in harmony with this front setback requirement, the location of the building will not disrupt a continuous street front in this area.

#### **5.1.17.c.ii – Prohibition on Drives in the Frontage Area**

Section 5.1.17.c.11 prohibits driveways in the frontage area at the Property. In order to provide access as required by the Access Easement, the Project provides a driveway in the frontage area between the building and McGrath Highway. Without a drive in the frontage area, the Project would face a hardship as it would be in violation of its legal obligations to provide access to the abutting property. Further, as the abutting property is landlocked by the elevated nature of McGrath Highway, adequate and safe access could not otherwise be provided.

By relieving the Project of the above prohibition, the City creates no detriment to the public good and, in fact, enhances the public good by allowing the continuation of safe access to the abutting property. Further, any visual impacts of the drive will be limited by landscaping and the design of the drive.

#### **2.4.3.a.iv and 2.4.4.a – Prohibition on Upper Story Projections**

Section 2.4.3.a.iv prohibits the facade of upper stories from projecting forward of the facade of the ground story, and Section 2.4.4.a similarly prohibits the upper stories of a building from projecting, in any direction, beyond the exterior wall plane of the stories below. To accommodate the Access Easement in the frontage area while also providing for adequate floor plates for the proposed Lab Building, the Project's upper stories are designed to provide additional gross square footage than the ground story, causing the upper story facade to project over the facade of the ground story. Without this relief, the Project would have to either decrease the size of the upper stories to comply, and thereby provide inadequate floor plates for future lab users, or increase the size of the ground story to align its facade with the upper stories, thereby encroaching into the Access Easement.

First, reduction of the projections would decrease the proposed area of the Project by up to approximately 136,000 sf. This halving of the Project would make it financially infeasible.

Second, the proposed upper story projections along the sides and rear of the Project also allow for safe onsite traffic circulation, access to the underground parking and access to loading at the rear. Without the projections, tenants and trucks would need to access the parking and loading at the front of the Project, potentially disturbing the pedestrian experience along the frontage.

Granting relief from these provisions of the SZO will create no detriment to the public good and will not derogate from the intent of the SZO. The impact of the upper story projections will be minimized by the general massing of the building on the side and rear of the building and still

further the intent of the SZO to create “block” type buildings for Lab Buildings in the HR District.

**2.4.4.b.i.a – Parallel Alignment with Front Lot Line Requirement**

Section 2.4.4.b.i.a requires a building façades to be built parallel to the front lot line for the minimum facade build out. As proposed, although the Project’s façade is not parallel with either the Property’s front lot line along McGrath Highway or the secondary front lot line along the MDC Taking Parcel, it is designed to be generally aligned to McGrath Highway will not encroaching into the MDC Taking Parcel. If the Project had to comply with this requirement, the proposed building façade would be odd and irregularly shaped with curves and multiple corner.

Varying this requirement would allow the building to be built as a “block” building type for Laboratory Buildings in the HR District in furtherance of the SZO. It will also enhance the public good by allowing for the continued use of the Access Easement by the abutting neighbors and creating large, rectangular floor plates for lab users.

If you have any questions, please do not hesitate to call or email me. We look forward to meeting with you.

Sincerely,



Robert M. Dickey