

35 McGrath Highway
Applications for Hardship Variances

Applications for Hardship Variances:

- Driveway Located in Frontage Area
- Façade Parallel to Front Lot Line
- Primary Front Setback
- Exhibit A
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**35 McGrath Highway
Applications for Hardship Variances**

Driveway Located in Frontage Area

**35 McGrath Highway
Hardship Variance Review Criteria
Driveway located in the Frontage Area**

Introduction and Context:

This Project, as described below, was previously granted relief from the requirements of the Somerville Zoning Ordinance by the Board of Zoning Appeals on May 18, 2022, in case number P&Z 21-156. This application seeks to reinstate the very same relief, for the identical Hardship Variance as previously granted, which expired while the applicant was pursuing the City's Site Plan Review Process.

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Project's underling uses, size and building height, the Property Site includes approximately 20,605 s/f of land and an outdated commercial/industrial building, surrounded by unimproved asphalt surface areas (the “Parcel”).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

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Driveway located in the Frontage Area**

- 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 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 Deeds¹

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.

¹ 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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Driveway located in the Frontage Area**

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 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

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Driveway located in the Frontage Area**

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

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Applications for Hardship Variances**

Façade Parallel to Front Lot Line

**35 McGrath Highway
Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

Introduction and Context:

This Project, as described below, was previously granted relief from the requirements of the Somerville Zoning Ordinance by the Board of Zoning Appeals on May 18, 2022 in case number P&Z 21-156. This application seeks to reinstate the very same relief, for the identical Hardship Variance as previously granted, which expired while the applicant was pursuing the City's Site Plan Review Process.

Hardship Review Criteria:

The Petitioner is seeking a Hardship Variance from Section 2.4.4.b.i.a of the Somerville Zoning Ordinance (the "SZO"), which requires that the front façade (s) of its proposed mixed-use office, laboratory, research/development building is parallel to the Front Lot Line of its property site 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 2.4.4.b.i.a 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).

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Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

- 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 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 the available land area for proper and compliant building façade(s) alignment at the Parcel's front lot line. This portion of the Property Site is also constrained by the incongruent alignment of the Parcel's front lot line along and beneath the on-ramp of McGrath Highway.

The prior MassDOT Taking created a new thoroughfare distinct from McGrath Highway and relocated the Parcel's front lot line. This impacted the lack of symmetry at the Parcel's front yard and constrains its available land area for proper and compliant façade alignment (as required by the SZO). 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, where it further limits the available land area for proper and compliant façade alignment (as required by the SZO). The MassDOT Taking is enforceable against the Parcel as recorded in the Middlesex Registry of Deeds¹

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*

¹ 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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Façade Parallel to Front Lot Line**

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 building siting and justifying the grant of relief under the circumstances. Literal enforcement of the SZO 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 result in an unusual building design and illogical site placement, contrary to the City's planning principals and new zoning allowances for development and future mobility along McGrath Highway. Specifically, the front façade of a compliant building would result in a misaligned front façade along the asymmetrical front lot line of the Property Site, which is also constrained by the on-ramp to McGrath Highway and its sole mean of vehicular access at the southern front corner of the Parcel. The practical effect of enforcing this section of the SZO would also negatively impact the City and State's planned removal and replacement of the elevated ramp sections along McGrath Highway, which is contemplated to be replaced by a new boulevard with widened sidewalks, greater pedestrian access and active street fronts (See MassDOT Project#608482). Attached as Exhibit B hereto is a mock-up of this incongruent result overlayed with current planning and future visioning for this section of McGrath Highway. Finally, the Petitioner submits that literal enforcement of the SZO would create substantial undue financial hardship on it, by requiring a new building siting which is unlikely to be allowed by the City's Site Plan Review authority, with excessive costs and engineering, of custom steel fabrication and a resulting development program which is unsuitable 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*

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Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

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 a more proper building façade alignment at the Parcel's asymmetrical and incongruent front yard, to better comply with the City's planning and future growth at this location.

Notwithstanding the legal effect of the MassDOT Taking², observers and passersby would assume that the taken parcels along McGrath Highway were part of the Parcel, rendering the Project with a building façade not aligned with McGrath Highway and apparent setback greater than the SZO's allowance. Literal enforcement of the SZO would result in a setback and alignment of the Project that does not meet 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. In this regard, the Petitioner notes that the primary elevation massing of its proposed new building will be oriented towards McGrath Highway, in a logical manner and with an appropriate building footprint that correlates with the Parcel's irregular shape and related restrictions. Its front façade will activate the street edge along McGrath Highway and generally align with City's approved development at the adjacent property site of 15 McGrath Highway. The Petitioner's new building will also be sited to require the minimum amount of relief necessary for the alignment of the façade Variance 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

² Although Petitioner is also seeking title relief for the issues resulting from the MassDOT Taking, any relief granted pursuant to these title related requests as a title matter may have the potential effect of reducing, but not eliminating, the zoning deficiencies that necessitate this variance petition.

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Hardship Variance Review Criteria
Façade Parallel to Front Lot Line**

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

Primary Front Setback

**35 McGrath Highway
Hardship Variance Review Criteria
Primary Front Setback**

Introduction and Context:

This Project, as described below, was previously granted relief from the requirements of the Somerville Zoning Ordinance by the Board of Zoning Appeals on May 18, 2022, in case number P&Z 21-156. This application seeks to reinstate the very same relief, for the identical Hardship Variance as previously granted, which expired while the applicant was pursuing the City's Site Plan Review Process.

Hardship Review Criteria:

The Petitioner is seeking a Hardship Variance from Section 5.1.9.b of the Somerville Zoning Ordinance (the "SZO"), which requires that the front façade (s) of its proposed mixed-use office, laboratory, research/development building be located at or behind any required minimum Front Setback and at or in front of any maximum Front Setback from the Front Lot Line of its property site 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"). The proposed project plans a varied Front Setback ranging from 32 feet 4 inches on the ground floor to zero (0) feet on floors two (2) through nine (9). Section 5.1.9.b of the SZO requires a Front Setback of at least two (2) feet but no more than fifteen (15) feet. 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 5.1.9.b 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.

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Hardship Variance Review Criteria
Primary Front Setback**

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 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 the available land area for proper and compliant Front Setback. This portion of the Property Site is also constrained by the incongruent alignment of the Parcel's front lot line along and beneath the on-ramp of McGrath Highway.

The prior MassDOT Taking created a new thoroughfare distinct from McGrath Highway and relocated the Parcel's front lot line. This impacted the lack of symmetry at the Parcel's front yard and constrains its available land area for proper and compliant Front Setback (as required by the SZO). 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, where it further limits the available land area for proper and compliant façade alignment (as required by

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Hardship Variance Review Criteria
Primary Front Setback**

the SZO). The MassDOT Taking is enforceable against the Parcel as recorded in the Middlesex Registry of Deeds¹.

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 building siting and justifying the grant of relief under the circumstances. Literal enforcement of the SZO 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 result in an unusual building design and illogical site placement, contrary to the City's planning principals and new zoning allowances for development and future mobility along McGrath Highway. Specifically, the Front Setback of a compliant building would result in a misaligned front façade along the asymmetrical front lot line of the Property Site, which is also constrained by the on-ramp to McGrath Highway and its sole mean of vehicular access at the southern front corner of the Parcel. The practical effect of enforcing this section of the SZO would also negatively impact the City and State's planned removal and replacement of the elevated ramp sections along McGrath Highway, which is contemplated to be replaced by a new boulevard with widened sidewalks, greater pedestrian access and active street fronts (See MassDOT Project#608482). Attached as Exhibit B hereto is a mock-up of this incongruent result overlayed with current

¹ 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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Primary Front Setback**

planning and future visioning for this section of McGrath Highway. Finally, the Petitioner submits that literal enforcement of the SZO would create substantial undue financial hardship on it, by requiring a new building siting which is unlikely to be allowed by the City's Site Plan Review authority, with excessive costs and engineering, of custom steel fabrication and a resulting development program which is unsuitable 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 a more proper building façade alignment at the Parcel's asymmetrical and incongruent front yard, to better comply with the City's planning and future growth at this location.

Notwithstanding the legal effect of the MassDOT Taking², observers and passersby would assume that the taken parcels along McGrath Highway were part of the Parcel, rendering the Project with a building façade not aligned with McGrath Highway and apparent setback greater than the SZO's allowance. Literal enforcement of the SZO would result in a setback and alignment of the Project that does not meet 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

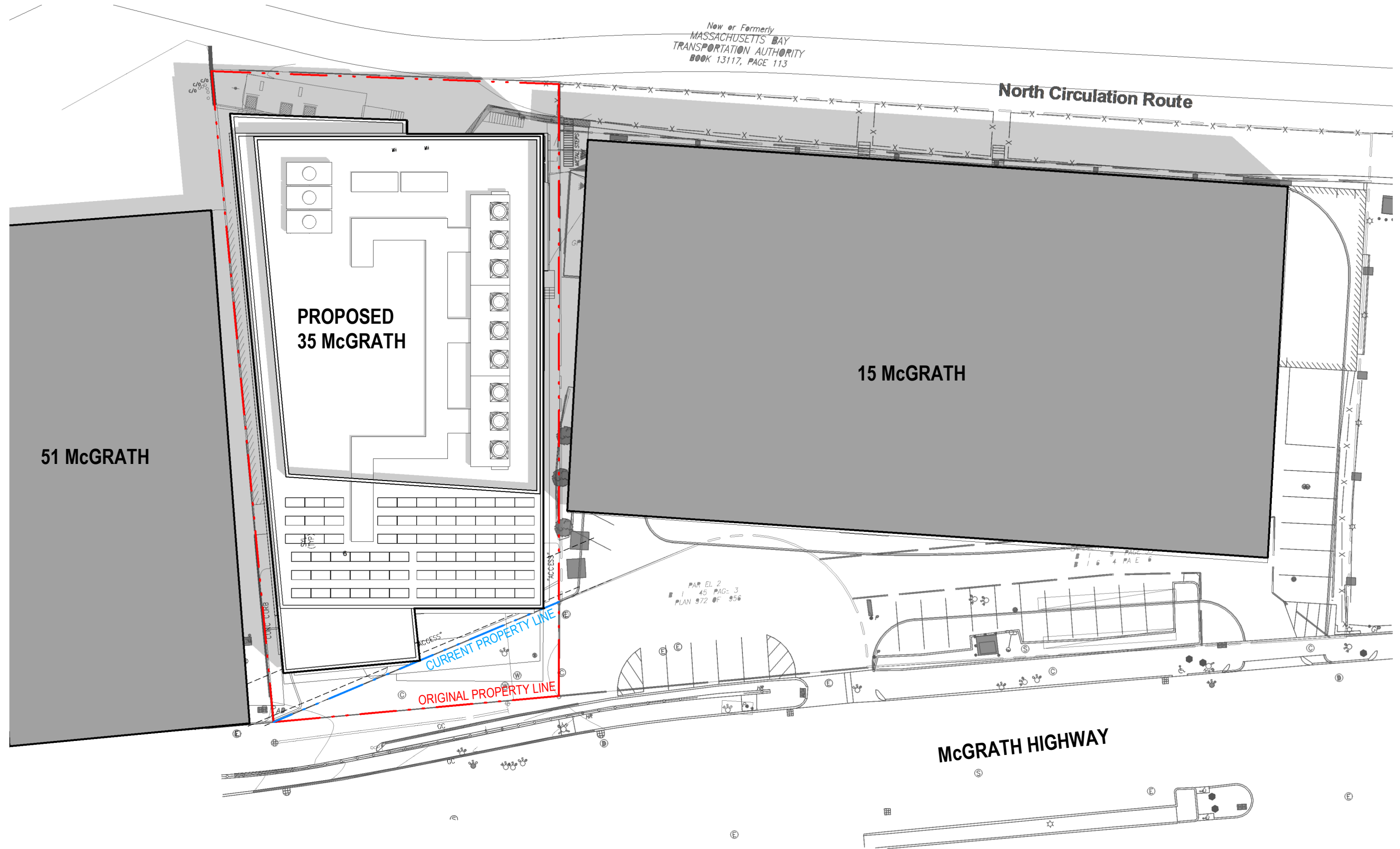
² Although Petitioner is also seeking title relief for the issues resulting from the MassDOT Taking, any relief granted pursuant to these title related requests as a title matter may have the potential effect of reducing, but not eliminating, the zoning deficiencies that necessitate this variance petition.

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Hardship Variance Review Criteria
Primary Front Setback**

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. In this regard, the Petitioner notes that the primary elevation massing of its proposed new building will be oriented towards McGrath Highway, in a logical manner and with an appropriate building footprint that correlates with the Parcel's irregular shape and related restrictions. Its front façade will activate the street edge along McGrath Highway and generally align with City's approved development at the adjacent property site of 15 McGrath Highway. The Petitioner's new building will also be sited to require the minimum amount of relief necessary for the Front Setback Variance 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 requested will not result in any detriment to the community, and the basis for the Variance is justified under the circumstances.

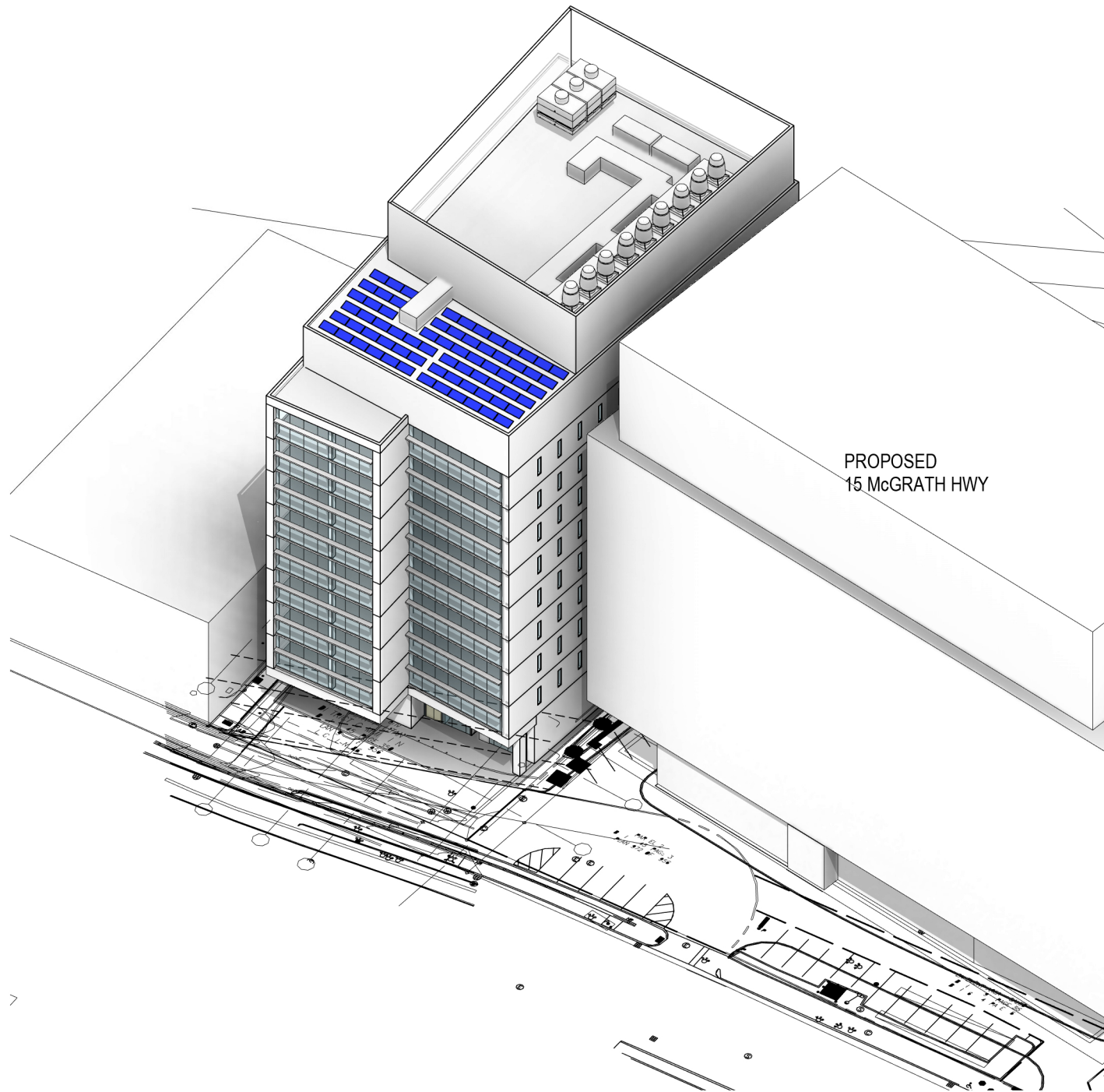
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Applications for Hardship Variances**

Exhibit A

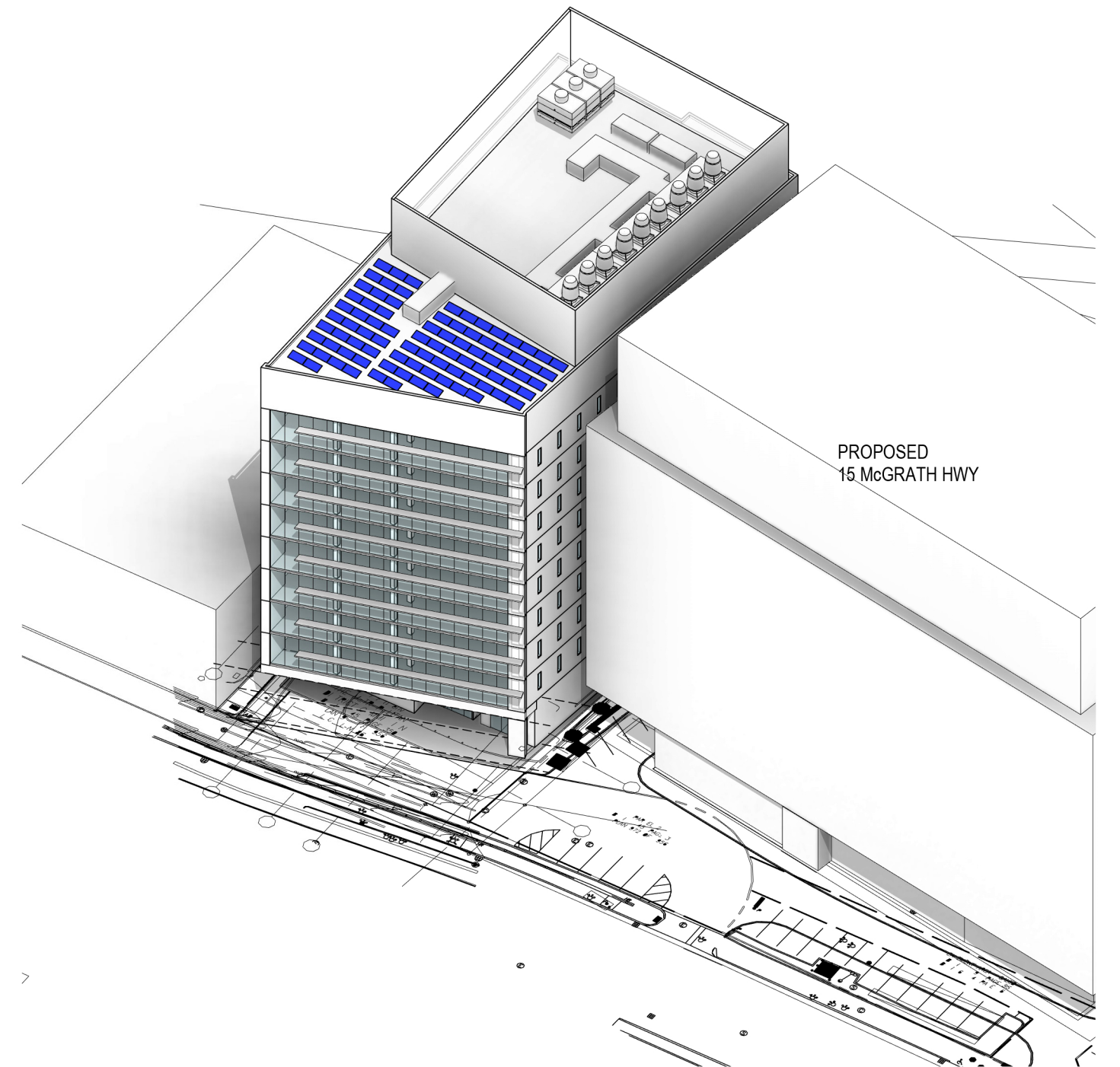


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Exhibit B



PROPOSED FRONT FACADE (PARALLEL)



ZONING COMPLIANT FRONT FACADE (DIAGONAL)