WIRE GILL LLP

Heather Dlhopolsky
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301-263-6275

Community Planning &
Development Services
Received 09/22/2022
WAV2023-0003

September 19, 2022

Via Email (cpds@rockvillemd.gov)
Mr. James Wasilak, Chief of Planning
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: One Preserve Parkway, Rockville, Maryland (the "Property") – Waiver Application

Dear Mr. Wasilak:

On behalf of Rockville One Preserve LLC (the "Applicant"), we hereby submit this Waiver Application (the "Application") pursuant to Section 25.09.06.c of the City of Rockville Zoning Ordinance (the "Zoning Ordinance"). This Section allows the City of Rockville Planning Commission (the "Planning Commission") to permit a waiver from any or all of the restrictions set forth in subsections b.1. through b.3. of Section 25.09.06 related to height encroachments, upon finding that the size, scale, and dimensions of any non-habitable architectural structure listed above are: (a) architecturally compatible with both the building on which it is to be erected and the adjacent buildings; and (b) not contrary to the intent and purpose of the plan or this chapter.

As explained in further detail below, the Applicant proposes minor changes to the existing building and parking garage on the Property, which will be the subject of a separately filed Minor Site Plan Amendment. Specifically, the Applicant plans to convert the current office use to research and development, which necessitates the following site and building changes:

- Addition of a generator inside the existing parking garage.
- A new sewer house connection.
- A new gas line.
- Installation of additional rooftop mechanical equipment.

It is the installation of additional rooftop mechanical equipment that triggers this Application. Specifically, Section 25.09.06.b.1.a states that "[t]he height exemptions provided in subsection 25.09.06.a. above, are subject to the following restrictions: [a]rchitectural elements exempted from the height computation: [m]ust have a total area less than twenty-five (25) percent of the roof area." In this instance, the existing rooftop mechanical equipment on the building covers approximately 10% of the roof area. With the revisions that the Applicant is proposing, rooftop mechanical equipment will cover approximately 30% of the roof area, exceeding the requirement by approximately 5%.

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Further, Section 25.17.02.d provides with respect to screening of mechanical equipment required in all zones other than single dwelling unit residential zones, that "all air conditioning equipment, transformers, emergency generators, elevator equipment, and similar mechanical equipment on any roof, ground, or building must be screened from public view at ground level from the edge of the property. Such screening must be done in such a manner and with such materials as may be reasonably required. Mechanical equipment on roofs should be limited to the extent possible, and in no case can it exceed the coverage provisions of subsection 25.09.06.b." Here, while the rooftop mechanical equipment itself is screened from public view at the ground level from the edge of the Property, the exhaust stacks themselves are just barely visible above the screen wall. Perspective views have been included in the Application demonstrating the tips of the exhaust stacks that would appear from various vantage points along the Property line.

As noted above, the Planning Commission can approve a waiver of the subject 25% roof area coverage requirement and the requirement that all equipment be screened from public view at ground level from the edge of the Property, upon finding that the size, scale, and dimensions of any non-habitable architectural structure listed above are: (a) architecturally compatible with both the building on which it is to be erected and the adjacent buildings; and (b) not contrary to the intent and purpose of the plan or this chapter.

Here, the size, scale, and dimensions of the rooftop features are architecturally compatible with both the building on which they will be located and adjacent and nearby buildings. The new screen wall matches the existing screen wall in height, material, color, and detail, in order to maintain the existing overall design choices. The screen wall's gray color is harmonious with the overall building material color and picks up on the horizontal accent color above the punched windows. The screen wall's neutral color is also similar to rooftop screen walls of other buildings in the vicinity on Tower Oaks Boulevard. The horizonal ribbed pattern of the screen wall reinforces the horizontal expression of the curtainwall on the primary façade. The screen wall is in keeping with the main façade expression but is also differentiated from the smooth precast and glass somewhat to create a "top band" that does not compete with the current main façade composition.

Further, the proposed rooftop revisions are not contrary to the intent and purpose of Comprehensive Planned Development Detailed Application No. CPD2005-0001L (the "Detailed Application"), approved for the Property by the Planning Commission on December 14, 2005. The Detailed Application permitted construction of a 189,273 square-foot office building, structured and surface parking facilities, and related site improvements, with building height of up to 125 feet. Since then, the building was constructed and has been operating as an office building, albeit over the past several years as an almost entirely vacant office building. City Planning Staff has determined that the proposed research and development use is permitted as it is encompassed by the previous approvals for office use, and the proposed rooftop revisions are necessary to accommodate this research and development use. Research and development uses have a more robust need for rooftop mechanical equipment than the previous office building use. Further, all of the rooftop mechanical equipment will be within the 125-foot height limit for the site; none of the features encroach above 125 feet in height. And, the waivers requested are very minimal: only a 5% increase in rooftop coverage from the permitted 25%, and the visibility of just the very tips

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of the exhaust stacks. Therefore, this Application is not contrary to the intent and purpose of the prior approvals, including the Detailed Application.

And lastly, the proposed rooftop revisions are not contrary to the intent and purpose of this chapter (in other words, the Zoning Ordinance). Section 25.01.02 states the Zoning Ordinance's purposes, and provides that they are to "provide for appropriately scaled, designed, and sited buildings and other structures that are compatible with the natural and built environment; promote environmentally sustainable developments and otherwise provide for the conservation of natural resources and the environment; promote the City as an inclusive community by facilitating diversity in housing, building design, and land use; promote alternative modes of transportation by providing convenient, safe, and connected accessibility to public transportation, pedestrian and bicycle systems, inviting streetscapes, and a mixture of uses; ensure that development occurs in an orderly fashion consistent with the master plan (the 'plan') and the availability of adequate infrastructure capacity and other public facilities; ensure the most appropriate use of land throughout the City; protect and enhance the aesthetic and visual character of the City and its residential neighborhoods; preserve sites, structures, and districts of historical, archeological, or architectural significance, and their appurtenances and environmental settings; secure the public safety; provide adequate light and air; foster innovative, creative, sustainable, and flexible building and site design; provide attractive, high quality development and design that enhances the community's quality of life; and otherwise protect and promote the health, safety, comfort, convenience, welfare, and happiness of the Rockville community through the comprehensive regulation of the use and development of land and structures."

The proposed rooftop revisions are compatible with the building itself and adjacent buildings, as described in detail above. Further, the rooftop revisions will allow the Applicant to take a previously almost entirely vacant office building and transform it into research and development uses, making much better use of an existing building with a use that is vitally important particularly as of late. The rooftop revisions will have no impact on residential neighborhoods, the environment, or sites of historical, archaeological, or architectural significance, nor will it have any impacts on public safety, light, air, healthy, comfort, convenience, welfare, or happiness of the Rockville community. With respect to transportation, the research and development use actually generates significantly fewer vehicle trips in the peak hours than the previous office use, which will be more fully evaluated as part of the Minor Site Plan Amendment. In short, the Application is not only not contrary to the intents and purposes of the Zoning Ordinance, but it helps to fulfill the intents and purposes by making the highest and best use of an existing but largely vacant and underutilized building, and transforming it into a vital use that will contribute to the economic development of the Rockville community.

For the reasons outlined above, we respectfully request that the Planning Commission approve the Application. Approval of the Application will allow the Applicant to convert what had been a mostly vacant and significantly underutilized office building, to a thriving research and development use, with minor changes to the rooftop mechanical equipment to accommodate this use change. In support of this Application, we hereby submit the following plans and materials:

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- Waiver Application Form (and fee in the amount of $513)
- Preliminary Building Elevations, Roof Plans, and Perspective Views

Thank you for your consideration of this Application. Please do not hesitate to contact me should you have any questions or require any additional information.

Sincerely,

Wire Gill LLP
Heather Dlhopolsky

Heather Dlhopolsky

Community Planning &
Development Services
Received 09/22/2022
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WAV

Application for **Waiver Request**

City of Rockville

Department of Planning and Development Services

111 Maryland Avenue, Rockville Maryland 20850
Phone: 2401 3141 8200 * Fax: 2401 3141 8210 * **Email:** pds@rockvillemd.gov * **Website:** www.rockvillemd.gov.

Purpose: The Zoning Ordinance, and the Landscape and Lighting Manual, identify specific standards that may be waived by the Approving Authority. The process is intended to provide flexibility to address constraints unique to a particular site or project. Each of the following waiver types is unique in terms of submittal requirements and criteria for approval. Please refer to the applicable Zoning Ordinance section (provided on this form) for more information.

It is strongly encouraged that you meet with Planning Division staff in CPDS prior to submitting an application.

Waiver Type: Please identify the type of waiver requested

Zoning Ordinance

- ☐ **25.08.08.c.2.b.vi** Planning Commission waiver of current parking requirements for non-conforming alteration approvals
- ☒ **25.09.06.c** Planning Commission waiver of restrictions placed on height exemptions for certain architectural elements.
- ☐ **25.10.05.d** Approving Authority waiver of impervious surface requirements for institutional uses in single dwelling unit residential zones.
- ☐ **25.14.07.d.4** Approving Authority waiver of the application of one or more development standards of the designated equivalent zones for Planned Developments.
- ☐ **25.16.02.b.3** Approving Authority waiver of the requirements of Section 25.16.02.b.3; 25.16.04.b; and Section 25.16.07.a and b for projects within the MXTD Zone.
- ☐ **25.16.03.h.1 & 3** Parking reductions within the MXTD, MXCD, MXE, MXNC and PD Zones.
- ☐ **25.17.03.c** Planning Commission waiver of the requirement to underground, or enclose, utility equipment.
- ☐ **25.17.05.b** Approving Authority waiver of private sidewalk widths for short portions.

☐ **25.17.08.b.3** Approving Authority waiver of building restriction line requirements.

Landscaping and Lighting Manual

☐ **4.d.3.c** Buffering and / or Screening Requirements. The Board of Appeals or Planning Commission has the authority to grant a waiver of the buffering and / or screening requirements of the Manual.

Please Print Clearly or Type

Property Address Information 1 Preserve Parkway, Rockville, MD 20852

Subdivision 0201 Lot(s) Block E

Zoning PD-TO (Tower Oaks Tax Account(s) 03322108

Applicant Information:

Please supply name, address, phone number and e-mail address for each.

Applicant Longfellow Real Estate
260 Franklin Street, Suite 1920 Boston, MA 02110 617.303.2900 lchen@lfrep.com

Property Owner Rockville One Preserve LLC
260 Franklin Street, Suite 1920 Boston, MA 02110 617.303.2900 lchen@lfrep.com

Architect HOK
Canal House 3223 Grace Street, NW Washington, DC 20007 202.944.1548 aaron.altman

Engineer VIKA MD, LLC
20251 Century Blvd, Suite 400 Germantown, MD 20874 301.916.4100 khouri@vika.com

Attorney Wire Gill LLLP
4800 Hampden Lane, Suite 200 Bethesda, MD 20814 301.263.6275 hdlhopolsky@wiregill

LEED AP

Project Name One Preserve Parkway

Project Description: Provide a written narrative that fully describes the project; the nature of the waiver requested; and the justification for the requested waiver. Please refer to the applicable section of the Zoning Ordinance for the waiver type and provide a response to any and all findings that might be associated with the waiver. Additional information such as reports and / or studies that provide justification of the waiver request are encouraged.

STAFF USE ONLY

Application Acceptance:

Application # WAV2023-0003

Date Accepted 09/22/2022

Staff Contact Shaun Ryan

OR

Application Intake:

Date Received

Date of Checklist Review

Deemed Complete: Yes ☐ No ☐

Zoning Ordinance

25.08.08.c.2.b.vi

vi. ***For nonconforming alteration approvals*** that trigger conformance with current parking requirements pursuant to Article 16, the Planning Commission may waive the current parking requirement and allow the maintenance of the existing nonconforming parking status through the grant of the nonconformity alteration approval, if the Commission finds that:

A. It is not practicable to provide the required parking onsite in a manner that preserves neighborhood character;

B. Preserving the nonconforming parking status is the best solution to provide consistency with the goals, policies, and intent of the Plan.

25.09.06.c

c. ***Waiver***

1. The Planning Commission may permit a waiver from any or all of the restrictions set forth in subsections b.1 through b.3 of this section upon finding that the size, scale, and dimensions of any non-habitable architectural structure listed above are:

   (a) Architecturally compatible with both the building on which it is to be erected and the adjacent buildings; and

   (b) Not contrary to the intent and purpose of the Plan or this Chapter.

2. In granting any such waiver, the Planning Commission may impose such conditions as may be reasonable and necessary so that the non-habitable architectural structures are consistent with the Plan, including, but not limited to, the screening of rooftop structures and the shadow regulations set forth in Section 25.17.06.

3. The person requesting the waiver must provide notice of the request in accordance with Section 25.05.03 of this Chapter.

25.10.05.d

d. ***Exclusions from Impervious Surface Requirements*** – Institutional uses in the Single Dwelling Unit Residential Zones must normally meet the requirements set forth in Section 25.10.05.a, above for the maximum impervious surface area in a front yard. However, through site plan review in accordance with the provisions of Article 7, the Approving Authority may waive this requirement if it finds that such a waiver will reduce impacts of paved areas on adjoining residential uses, provide more efficient on-site traffic circulation, or address practical difficulties.

25.14.07.d.4

4. ***Waiver of Equivalent Zone Standards***- The Approving Authority may waive the application of one (1) or more of the development standards of the designated equivalent zone upon a finding that the applicant has shown good cause as to why the development standard should not apply to any portion of the Planned Development project. In determining whether the burden of establishing good cause has been met, the Approving Authority must consider the following:

   (a) Whether the development standard of the equivalent zone is compatible with the completed portions of the Planned Development;

   (b) Whether applying the development standard of the equivalent zone is consistent with good planning and design principles;

   (c) Whether applying the development standard of the equivalent zone is reasonable and practically feasible. The cost of applying the standard may, but does not necessarily, demonstrate that applying the development standards of the equivalent zone is reasonable or practically feasible, and;

   (d) Such other factor as the Approving Authority reasonably deems appropriate.

25.16.02.b.3

3. ***MXTD Zones*** - In the MXTD Zone, limited off-street parking of motor vehicles between the front building line and the front lot line may be allowed by the Approving Authority in accordance with the provisions of Section 25.13.07.a.6. The Approving Authority also has the authority to waive the requirements of this Section, Section 25.16.04.b, and Section 25.16.07.a and b provided that:

(a) A previously existing single unit detached dwelling is being converted to a permitted use in the MXTD Zone;

(b) Due to the location of the existing structure or structures on the lot, compliance with the parking, loading, and access requirements of this Sections 25.16.02, cannot be reasonably accomplished; or

(c) Such a waiver would enable the proposed use to better satisfy the parking space requirements of Section 25.16.03.

25.16.03.h.1

h. ***Flexible Parking Standards*** – The Approving Authority may permit reductions in the number of parking spaces required, if certain standards and requirements are met as set forth below.

1. Mayor and Council and Planning Commission Reductions The Mayor and Council, in the approval of a Project Plan, or the Planning Commission in the approval of a site plan within the MXTD, MXCD, MXE, MXNC and PD Zones, have the authority to reduce the required number of parking spaces for uses in the building or buildings to be constructed provided that:

   (a) A major point of pedestrian access to such building or buildings is within seven-tenths of a mile (3,696 feet) walking distance of a transit station entrance shown on the Washington Metropolitan Area Transit Authority Adopted Regional Rail Transit System; or

   (b) There are three (3) or more bus routes in the immediate vicinity of the building or buildings; or

   (c) There is a major public parking facility available to the public within 1,000 feet of a building entrance; or

   (d) Where the size of the lot is so small that meeting the parking requirement would prevent redevelopment; or

   (e) Where there is a bikeway in close proximity to the site and the applicant demonstrates that the uses in the proposed development are conducive to bicycle use; or

   (f) For any other good cause shown.

25.16.03.h.3

3. ***Reductions with Proximity to a Transit*** Station - Within any mixed-use zone where the building entrance is more than seven-tenths of a mile (3,696 feet) walking distance from a transit station entrance as shown on the Washington Metropolitan Area Transit Authority Adopted Regional Rail Transit System, a reduction of not more than ten (10) percent of the required parking spaces may be approved if a parking management plan approved by the Approving Authority will be implemented with occupancy of the building or buildings using such features as car and van pooling and public or private transit. A Transportation Demand Management strategy must be submitted with the goal of reducing parking demand by the building to meet the amount of reduction requested. The effectiveness of this plan must be demonstrated periodically after the use has been operating, as determined by the Approving Authority.

25.17.03.c

c. ***Waiver of Requirements***

1. Upon finding that installing utility equipment within an enclosed building is not feasible, the Planning Commission may grant a waiver of any requirement of this Section for any of the following reasons:

   (a) A unique or peculiar site condition provides a physical impediment to installing equipment underground; or

   (b) It would be unsafe to locate the equipment underground; or

   (c) The equipment cannot successfully operate below ground.

25.17.05.b

1. Minimum widths may be waived by the Approving Authority for short portions of a private sidewalk for a good cause shown.

25.17.08.b.3.(b)

(b) Where the applicable master plan recommends a greater or lesser building restriction line than set forth herein, the plan recommendation takes precedence over the requirements set forth in subsections a and b above. Where there is no master plan recommendation, the Approving Authority may waive building restriction line requirements if the waiver will result in a better form of development consistent with the intent of the master plan and the development standards for mixed-use zones set forth in Article 13.

<u>Landscaping and Lighting Manual</u>

4.d.3.c

The Board of Appeals or Planning Commission has the authority to grant a waiver of the buffering and / or screening requirements of the Manual.

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Zoning and Development Application Fee Schedule

City of Rockville
Get Into It

Planning Division
Fee Schedule

As of February 7, 2022

Administrative Adjustment (VAR)	
Application	$750
Annexation (ANX)	
Annexation Petition	$1,500 per lot for Single Family Residential Lots $10,250 plus $205 per acre or part thereof, no limit for all others
Historic District Application (HDC)	
Certificate of Approval*	No Charge
Map Amendments (MAP)	
Local Map Amendment (Zoning) Applications*	$2,250 plus $103.00 per acre or part thereof, no limit
Non-Conforming Alterations	
Chief of Planning Review*	$750
Planning Commission Review*	$1,500
Notification Signs	
Where written notification is responsibility of the City	$51.25
Where written notification is responsibility of the applicant for Site Plan (Level 1 and Level 2), Project Plan and Special Exception applications	$256

Other Fees	
Zoning Compliance Verification Letter	$308
Application Resubmission Fee – 3rd and Subsequent	$513
Project Plan Resubmission Fee - 3rd and Subsequent	$2,050
Plats (PLT)	
Preliminary Plan	$2,255 plus $51.25 per lot
Final Record Plat – Existing Single Unit Detached Residential Lot	$205
Final Record Plat – All Others	$790 plus $51.50 per lot
Ownership Plat	$3,385 per plan plus $113 per Ownership lot
Project Plan (PJT)	
New Application*	$10,250 plus $20.00 for each 1,000 square feet of non-residential an $20.50 for each dwelling unit
Minor Modification	$2,255
Major Modification**	Same as Initial Fee
Pre-Application (PAM)	
PAM Submittal (Where required; non-refundable)	$513
Sign Permits (SGN)	
All signs	$100
Investigation of erection of a sign without a permit:	
In a single unit detached residential zone	$180
In all other zones	$358.75

Site Plan (STP)	
Level 1*	$2,565 plus $20.50 for each 1,000 square feet (GFA) of non-residential use or portion thereof and $20.50 for each dwelling unit
Level 2*	$3,075 plus $20.50 for each 1,000 square feet of non-residential use or portion thereof and $20.50 for each dwelling unit
Major Amendment**	Same as Initial Fee
Minor Amendment	$1,540
Mobile Use	$308
Renew Mobile Use	$308
Minor Amendment for Commercial Redevelopment	$2,565 plus $20.50 for each 1,000 square feet (GFA) or portion thereof
Special Exception (SPX)	
Minor Amendment to Existing SPX**	½ of Initial Fee
Major Amendment to Existing SPX**	Same as Initial Fee
Tier 1*:	
Accessory Apartment;	$500
<u>All others (listed below)</u> Swimming Pool (non-accessory); Home based business (major); Taxicab Service; Charitable and philanthropic institutions; Veterinarian office; Bed and breakfast lodging; Child care center (9 – 12 children).	$2,500
Tier 2*: Adult day care; Personal living quarters; Pawnbroker; Child care center (more than 12 children); Group home (large); housing for senior adults with disabilities; Life care facility; Nursing home; Outdoor and Indoor recreational establishment (commercial, except shooting gallery or range); Restaurant in the I-L zone; Shooting	$5,000

gallery or range; Sports facility (Multi-purpose, indoor commercial); Private club; Animal hospital.	
Tier 3*: Automobile filling station (Class I and II); Educational institutions (private); Hospital; Hotel; Public utility buildings and structures; Restaurant with drive-through; Wireless communication (freestanding ground mount antenna support structure).	$5,000
Tier 4*: Adult oriented establishments	$15,375
Temporary Uses	
Temporary Use Permit *Refundable Cash Bond*	$154 for 6 months *$1,000*
Temporary Use Permit for Portable Storage Unit *Refundable Cash Bond*	$154 *$250*
Text Amendments (TXT)	
Application	$3,075
Time Extensions	
Single Dwelling Unit	$51.25
All Others	$308
Variance (VAR)	
Variance and Appeals Application* – Single unit detached, semi-detached, attached and townhouse	$359
Variance and Appeals Application* - All others	$2,565
Sign Variance	$300
Waivers (WAV)	
Waiver of certain development standards as allowed by the Zoning Ordinance and Landscape & Lighting Manual (including parking reductions)	$513

**** Notification Sign Required***
***** "Initial Fee" for amendment / modification is based on the cost of the current applicable fee***

COMPONANTS	SUBTOTAL	TOTAL	% OF ROOF
Total Roof Area		26,270	
Measured to outer perimeter			
Rooftop Equipment		4,650	18%
Gen/Lab Exhaust 1	963		
Gen/Lab Exhaust 2	963		
Lab AHU 1	1054		
Lab AHU 2	1054		
Haz Exhaust	153		
Cooling Tower, Existing	153		
Cooling Tower, New	310		
Enclosed Rooftop Areas		3,077	12%
Existing Penthouse	2530		
Shaft Enclosure 1	334		
Shaft Enclosure 2	213		
TOTAL		7,727	29%

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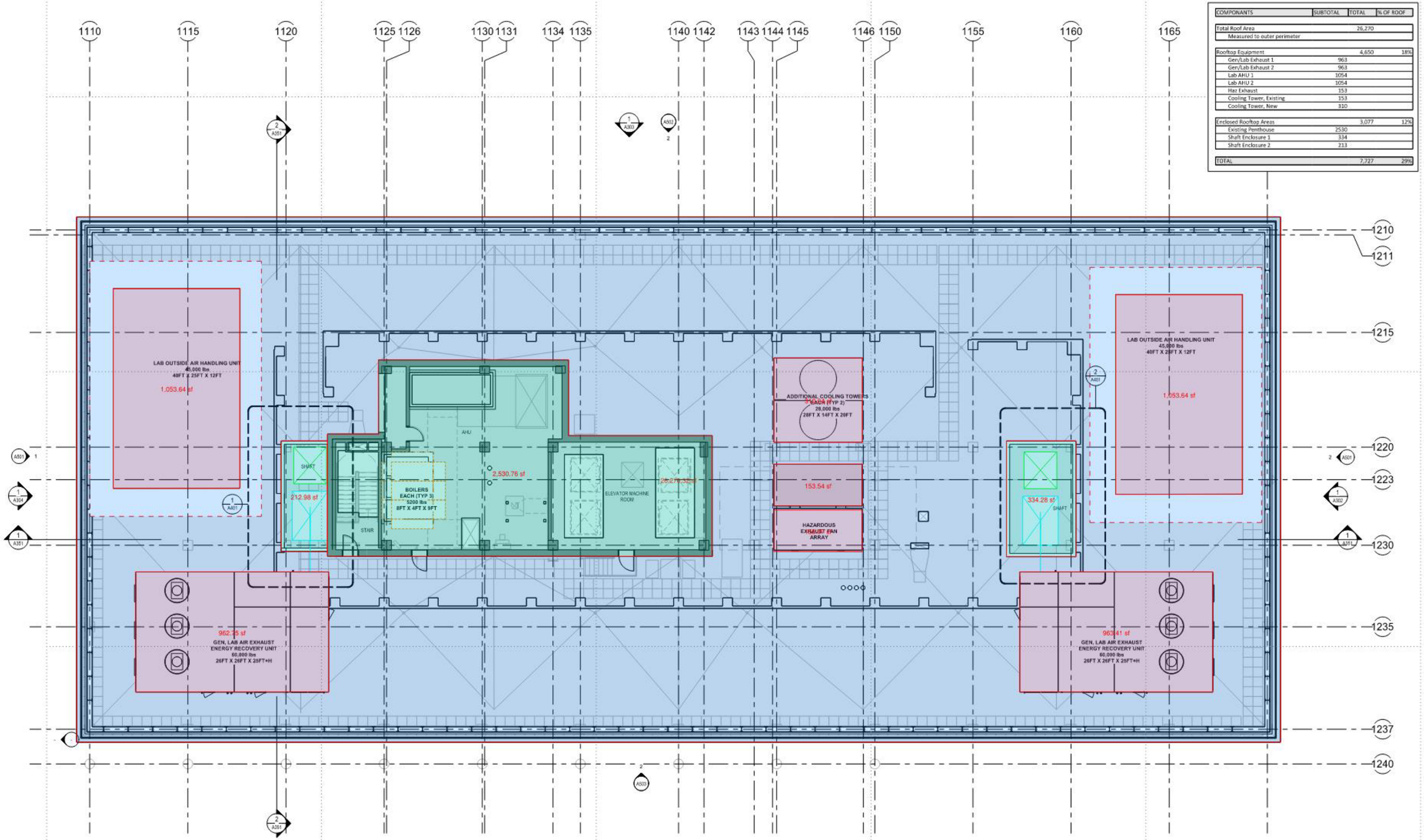

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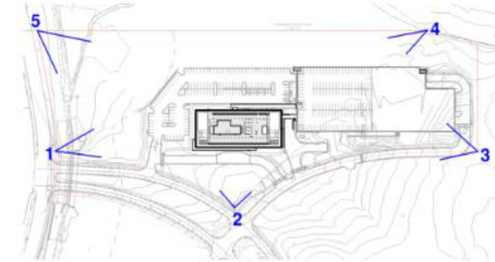
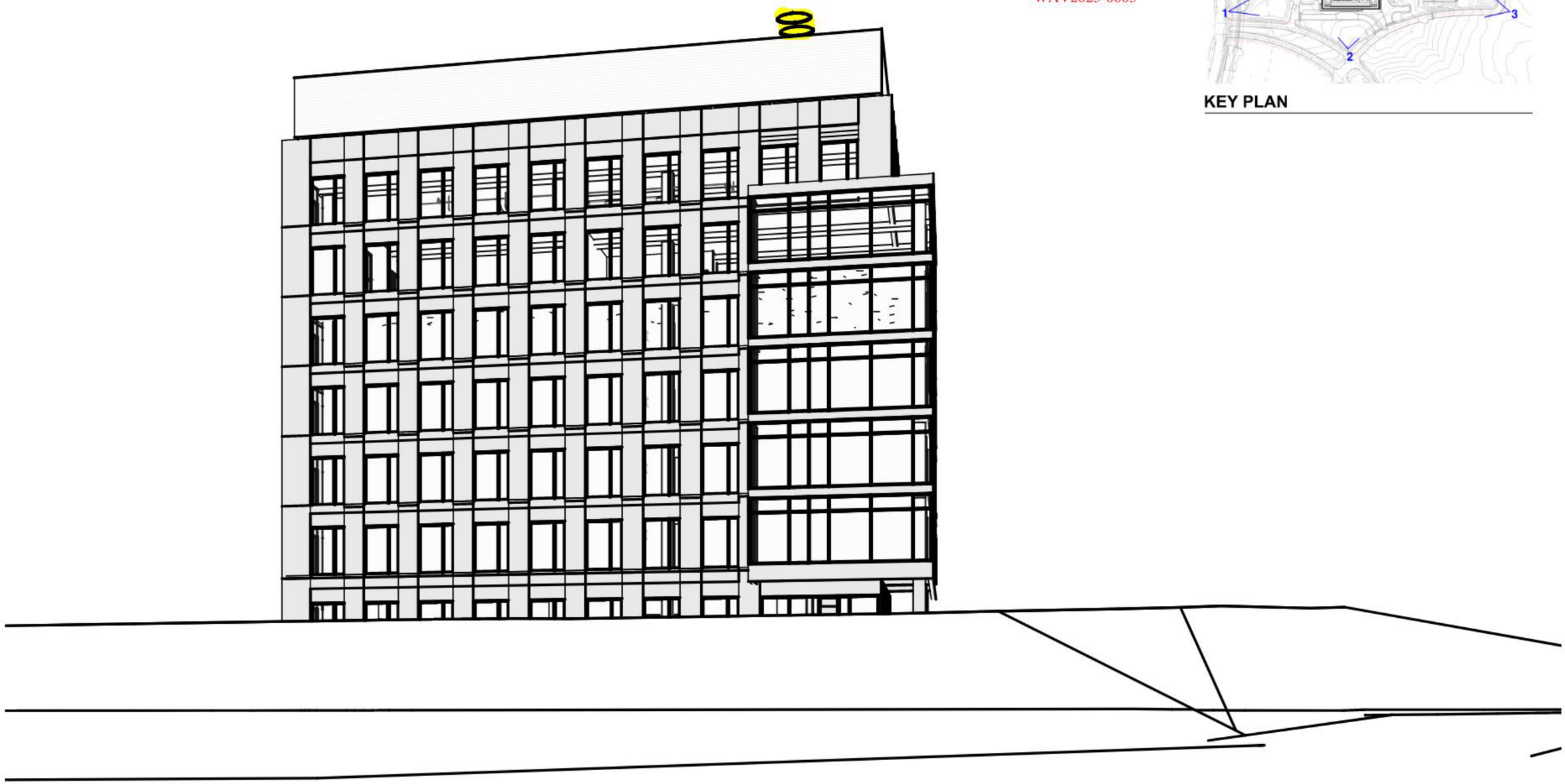


KEY PLAN



LEGEND

STACK VISIBILITY

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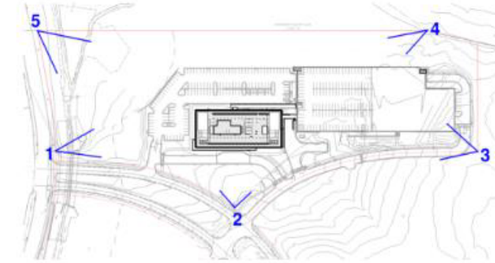

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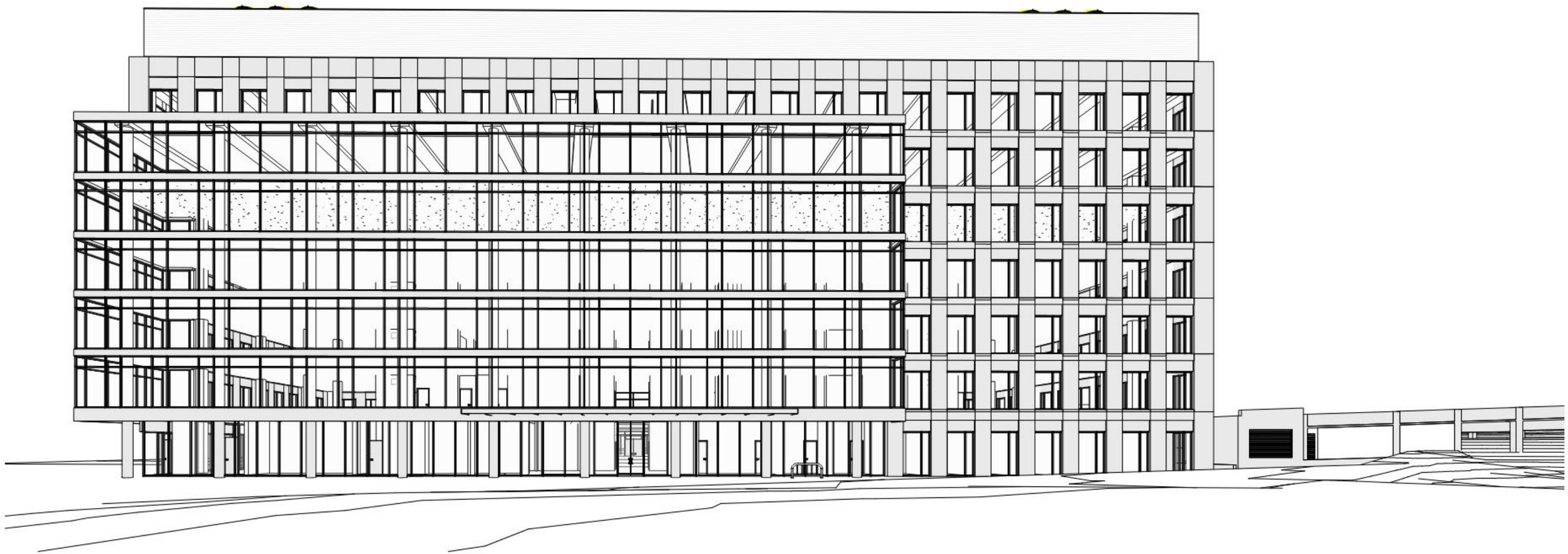

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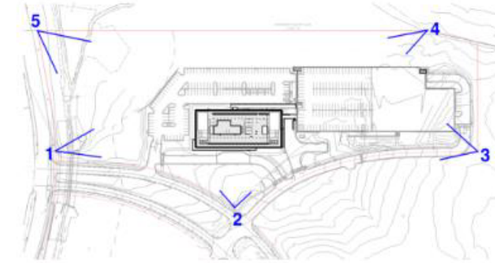

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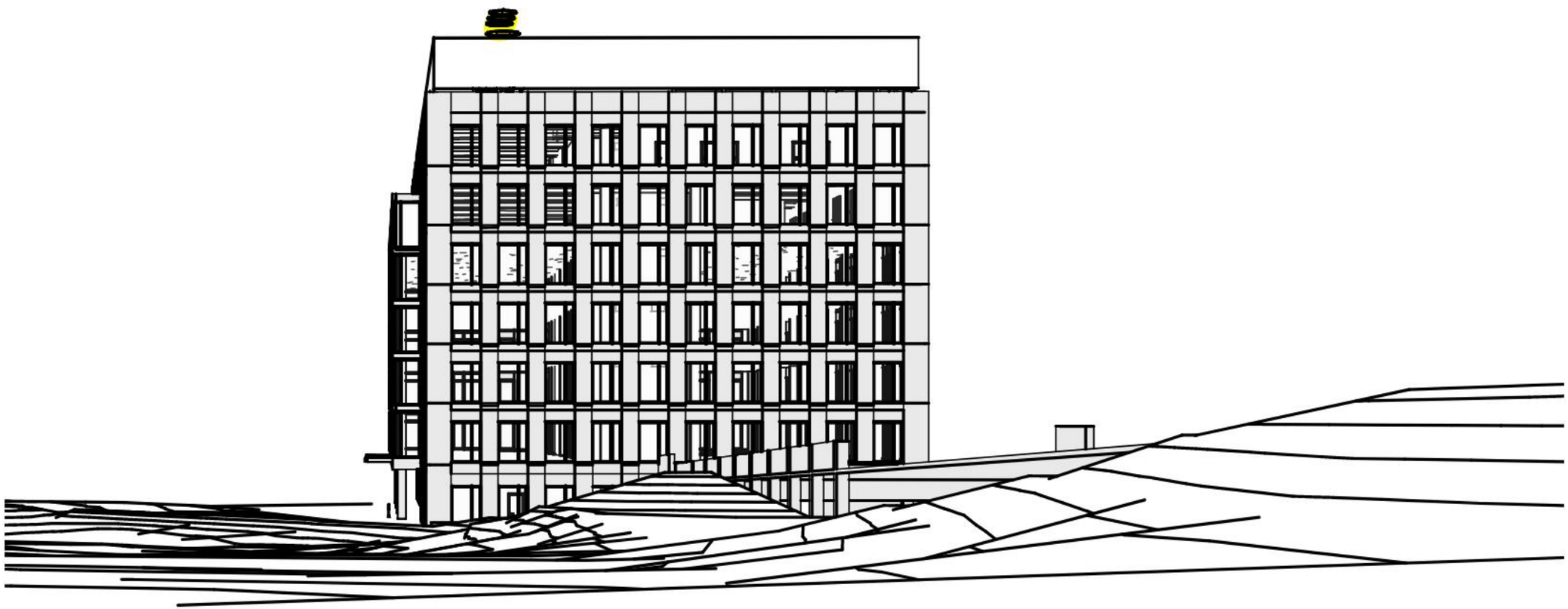

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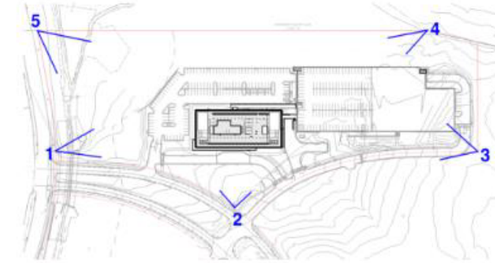

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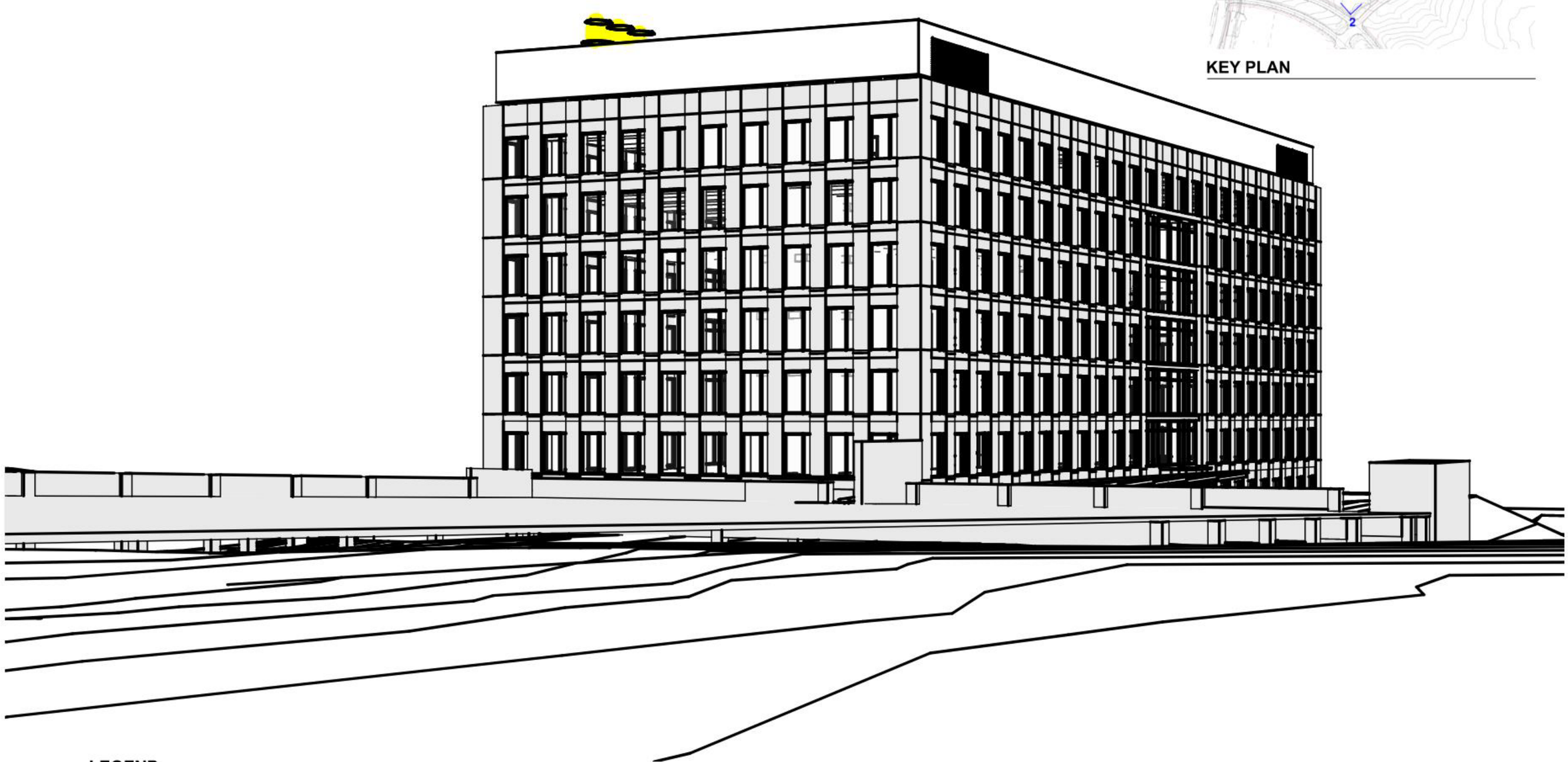

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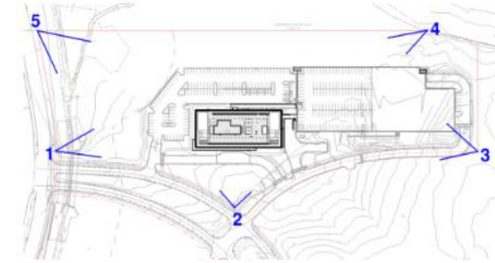
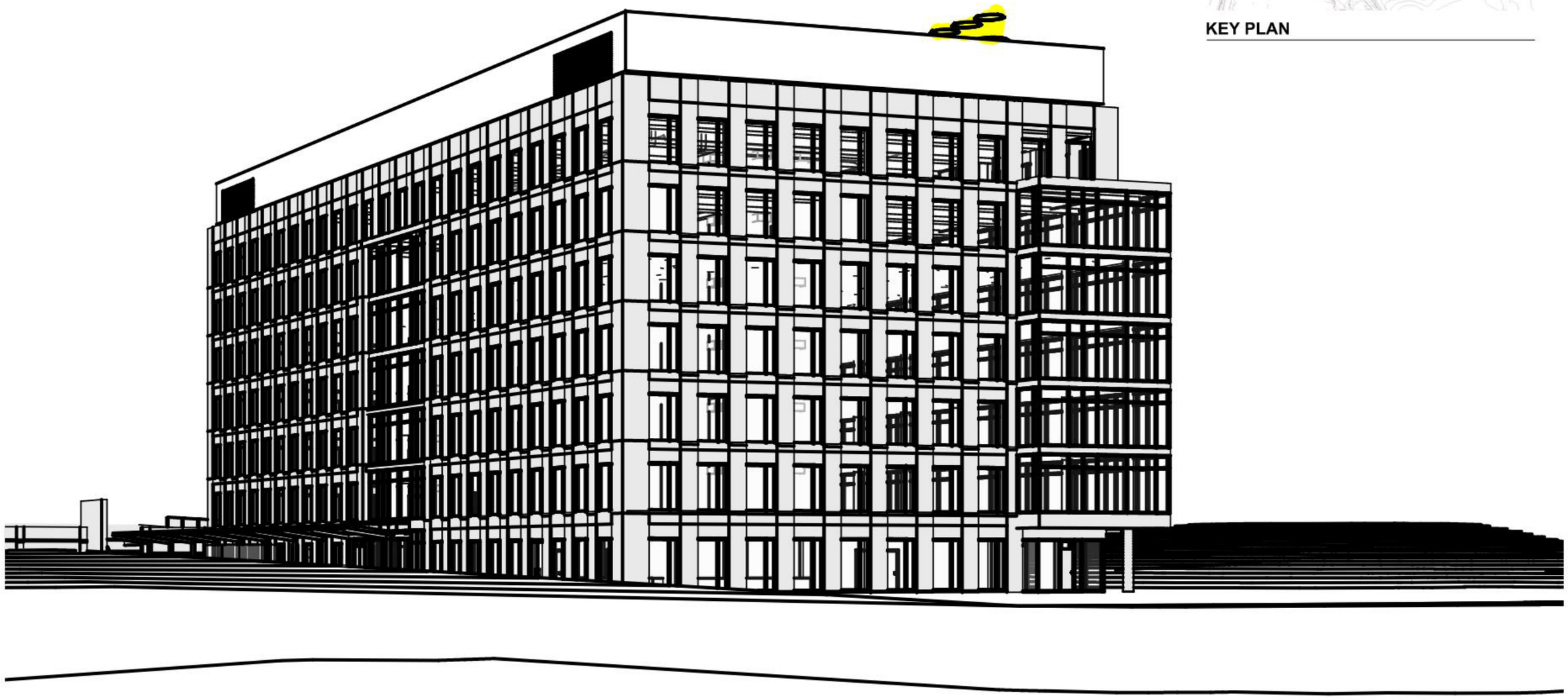


KEY PLAN



LEGEND

STACK VISIBILITY

One Preserve Parkway