



4502 east moonlight way
paradise valley, arizona



variance request

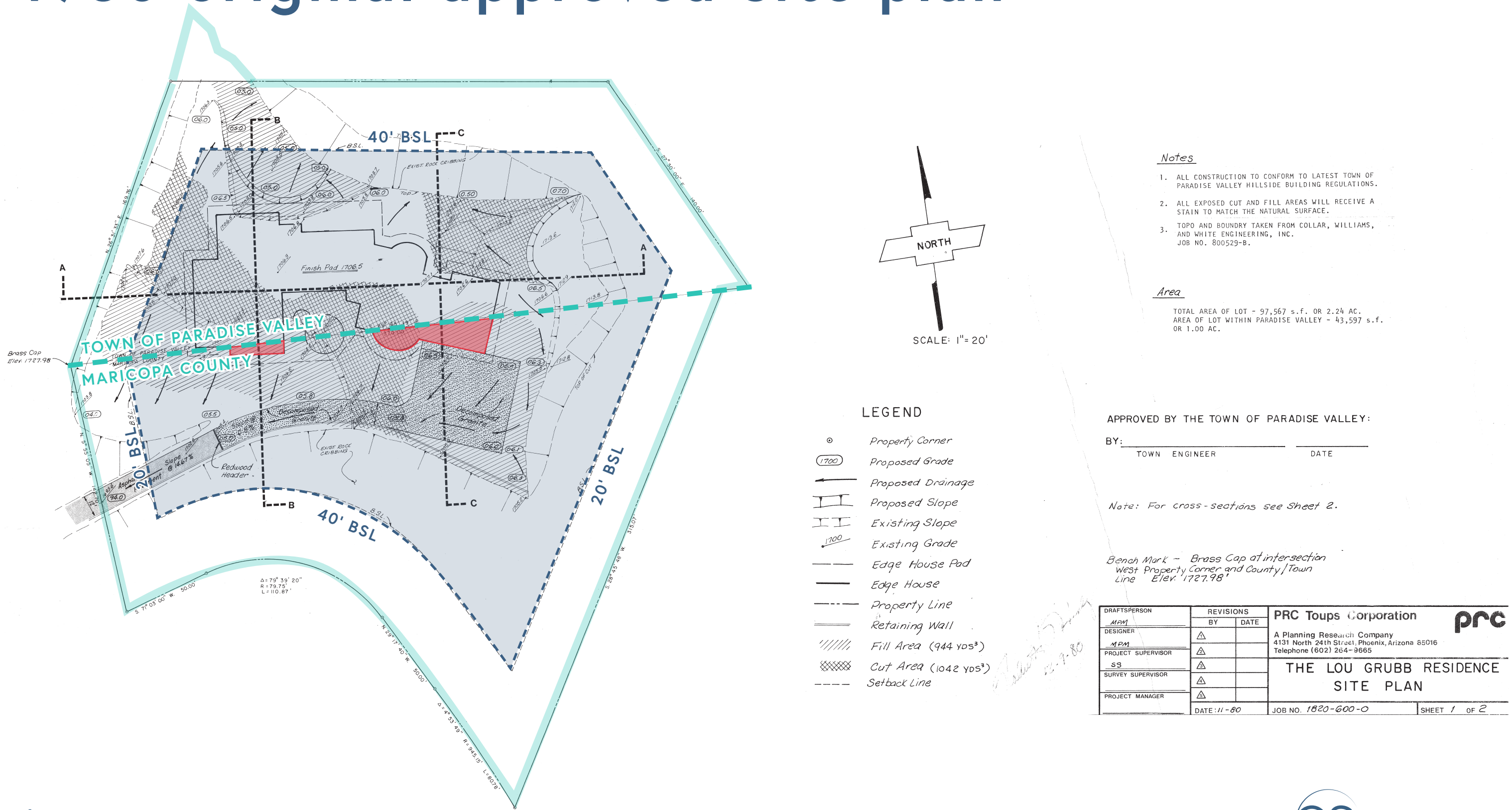
site location



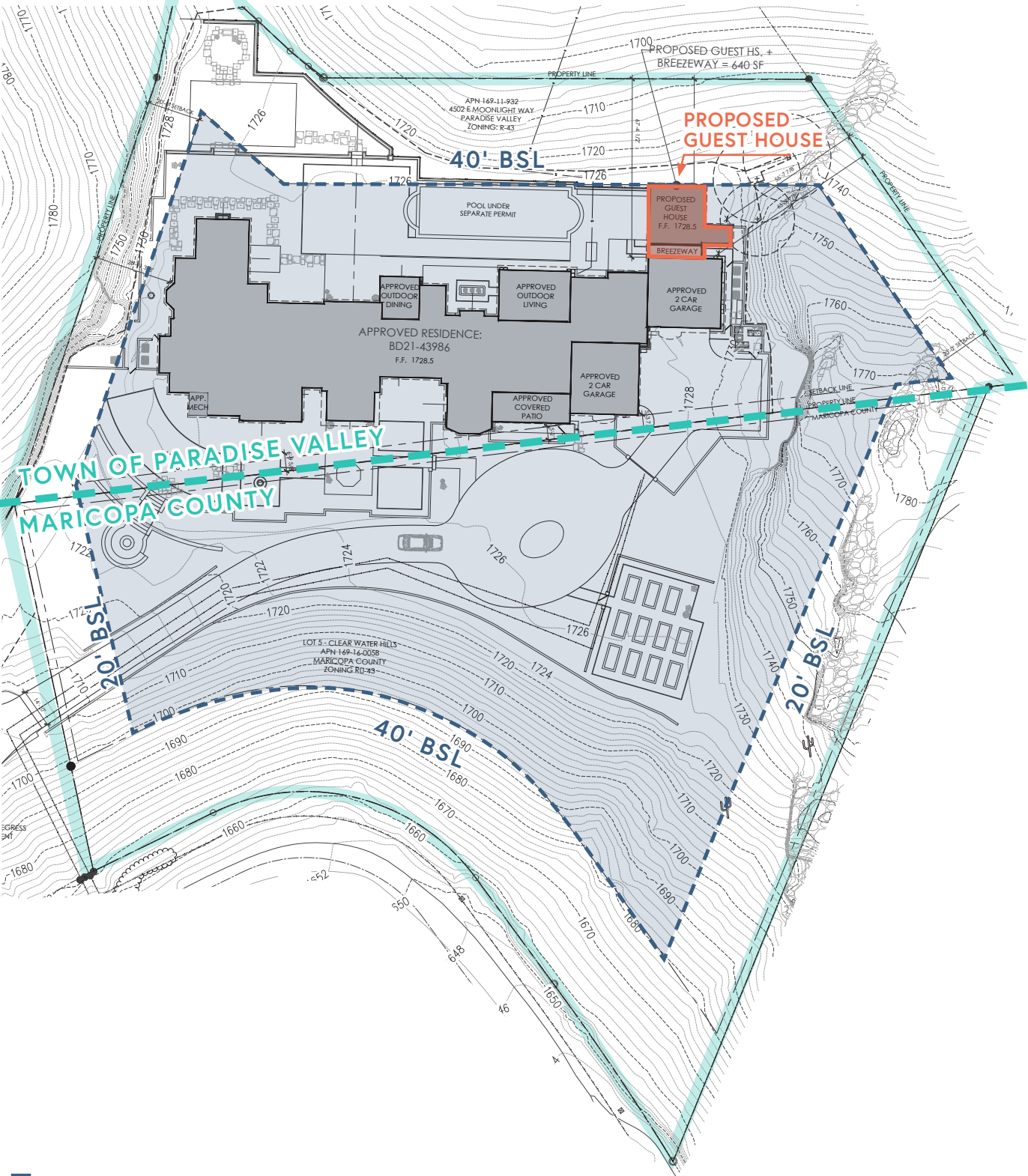
existing north slope conditions



1980 original approved site plan



proposed site plan



APPROVED / PERMITTED SITE INFO. BD21-43986

PROJECT DESCRIPTION:
PROPERTY INCLUDES 2 LOTS, 1 OF WHICH IS IN PARADISE VALLEY. REPLACE EXISTING HOME THAT SPANS 2 LOTS. NEW HOME TO SIT ENTIRELY ON P.V. LOT (169-11-932). ACCESSORY BUILDING, ON MARICOPA COUNTY LOT (169-16-005B), TO REMAIN.

SITE ADDRESS:	4502 E MOONLIGHT WAY PARADISE VALLEY, AZ 85253
PV LOTS APN:	169-11-932
MC LOT APN:	169-16-005B
PV ZONING:	R-43
PV HILLSIDE:	YES, APPROVED 4.14.21
PV LOT SIZES:	45,186 SF
EXISTING FLOOR AREA:	10,300 SF
PROPOSED FLOOR AREA:	11,297 SF
PV LOT SIZES:	45,186 SF
ALLOWABLE FLOOR AREA:	11,297 SF (25%)
EXISTING FLOOR AREA RATIO:	23.6%
PROPOSED FLR AREA RATIO:	25.0%
EXISTING DISTURBED AREA:	35,870 SF
PROPOSED DISTURBED AREA:	31,585 SF
NO NEW DISTURBANCE IS PROPOSED WITH THIS PLAN	
SETBACKS FOR 169-11-003D:	
BACK	40'
SIDE	20'
FRONT	5' PER PV VARIANCE 10.07.20

PERMITTED BLDG AREA

	LVL 1	LVL 2
LIVABLE	7,070	1,240
GARAGE	1,390	
MECHANICAL	60	40
COVERED PATIO	1,270	
WALLED COURTYARD	180	
TRELLIS		47
TOTAL	9,970	1,327
TOTAL APPROVED FLOOR AREA	11,297	

PROPOSED BLDG AREA

	LVL 1	LVL 2	TOTAL
GUSET HOUSE	538	0	538
BREEZEWAY	102	0	102
TOTAL	640	0	640
TOTAL PROPOSED FLOOR AREA	640		
TOTAL FLOOR AREA PERMITTED + PROPOSED	= 11,920		

PROPOSED SITE INFO GUEST HS. ON P.V. LOT

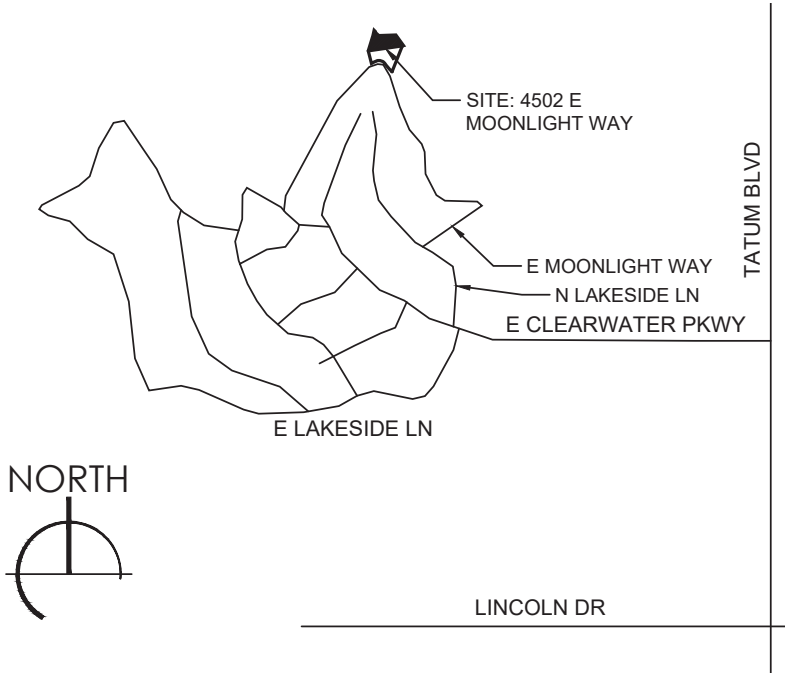
PROJECT DESCRIPTION:
PROPERTY INCLUDES 2 LOTS, 1 OF WHICH IS IN PARADISE VALLEY.

SITE ADDRESS:	4502 E MOONLIGHT WAY PARADISE VALLEY, AZ 85253
PV LOT (A) APN:	169-11-932
MC LOT (B) APN:	169-16-005B
PV ZONING:	R-43
PV HILLSIDE:	-
PV LOT SIZE (A):	45,186 SF
PERMITTED FLOOR AREA:	11,297 SF
GUEST HOUSE + BREEZEWAY:	640 SF
TOTAL PERMITTED + NEW:	11,937 SF
PV LOT SIZE:	45,186 SF
ALLOWABLE FLOOR AREA:	11,297 SF (25%)
PERMITTED FLR AREA RATIO:	25.0%
PROPOSED FLR AREA RATIO:	26.4%
EXISTING DISTURBED AREA:	35,870 SF
PROPOSED DISTURBED AREA:	31,585 SF
NO NEW DISTURBANCE IS PROPOSED WITH THIS PLAN	

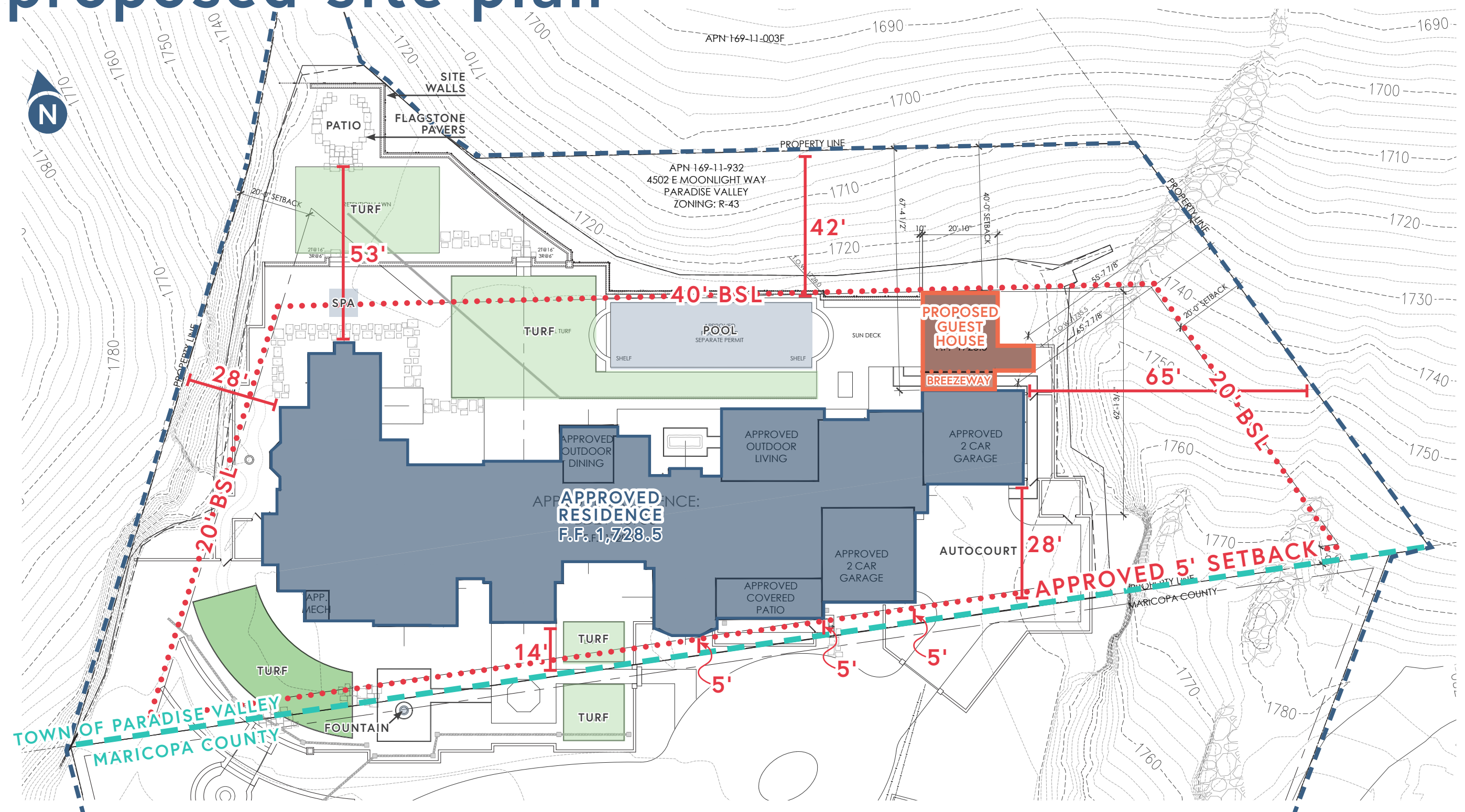
FUTURE ANNEX SITE INFO COMBINE LOT A+B

PROJECT DESCRIPTION:
PROPERTY INCLUDES 2 LOTS, 1 OF WHICH IS IN PARADISE VALLEY.

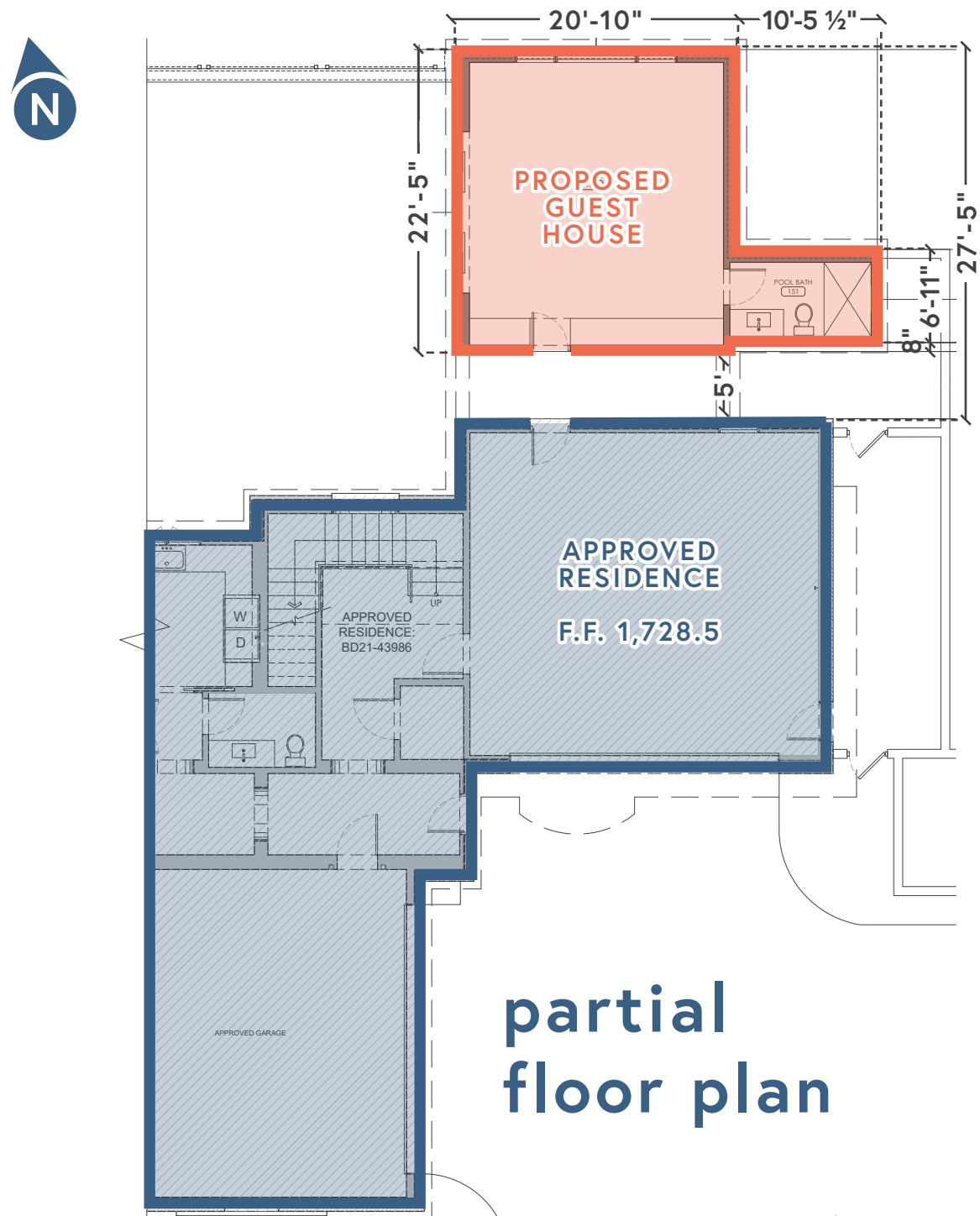
SITE ADDRESS:	4502 E MOONLIGHT WAY PARADISE VALLEY, AZ 85253
PV LOT (A) APN:	169-11-932
MC LOT (B) APN:	169-16-005B
PV ZONING:	R-43
PV HILLSIDE:	-
PV LOT SIZE (A):	45,186 SF
MC LOT SIZE (B):	54,132 SF
COMBINED ANNEXED LOTS:	99,318 SF
PERMITTED FLOOR AREA:	11,297 SF
GUEST HOUSE + BREEZEWAY:	640 SF
TOTAL PERMITTED + NEW:	11,937 SF
ADJUSTED TOTAL LOT SIZE:	99,318 SF
ALLOWABLE FLOOR AREA:	24,829 SF (25%)
PERMITTED FLR AREA RATIO:	25.0%
PROPOSED FLR AREA RATIO:	12.0%
EXISTING DISTURBED AREA:	35,870 SF
PROPOSED DISTURBED AREA:	31,585 SF
NO NEW DISTURBANCE IS PROPOSED WITH THIS PLAN	



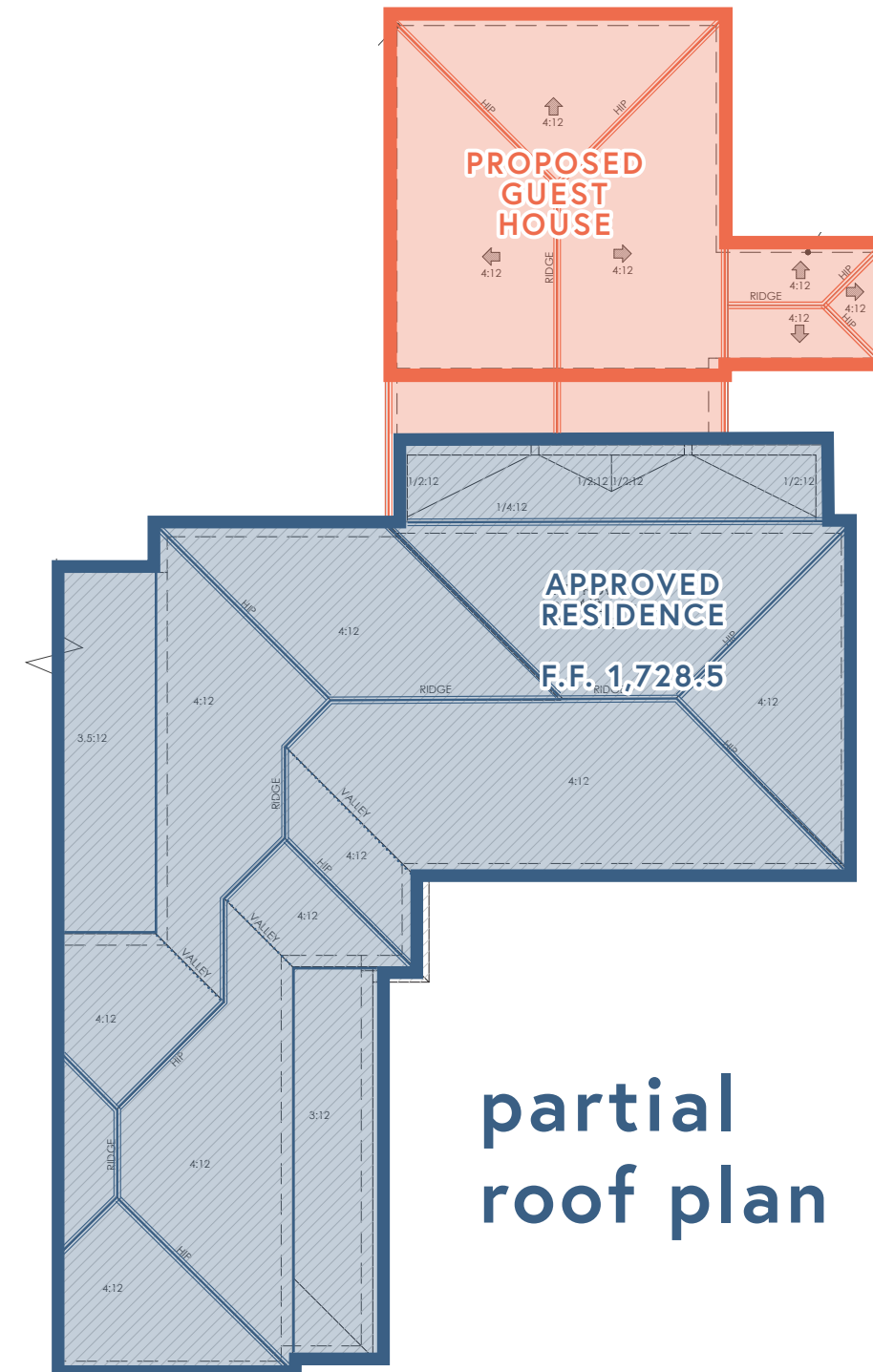
proposed site plan



proposed addition — guest house

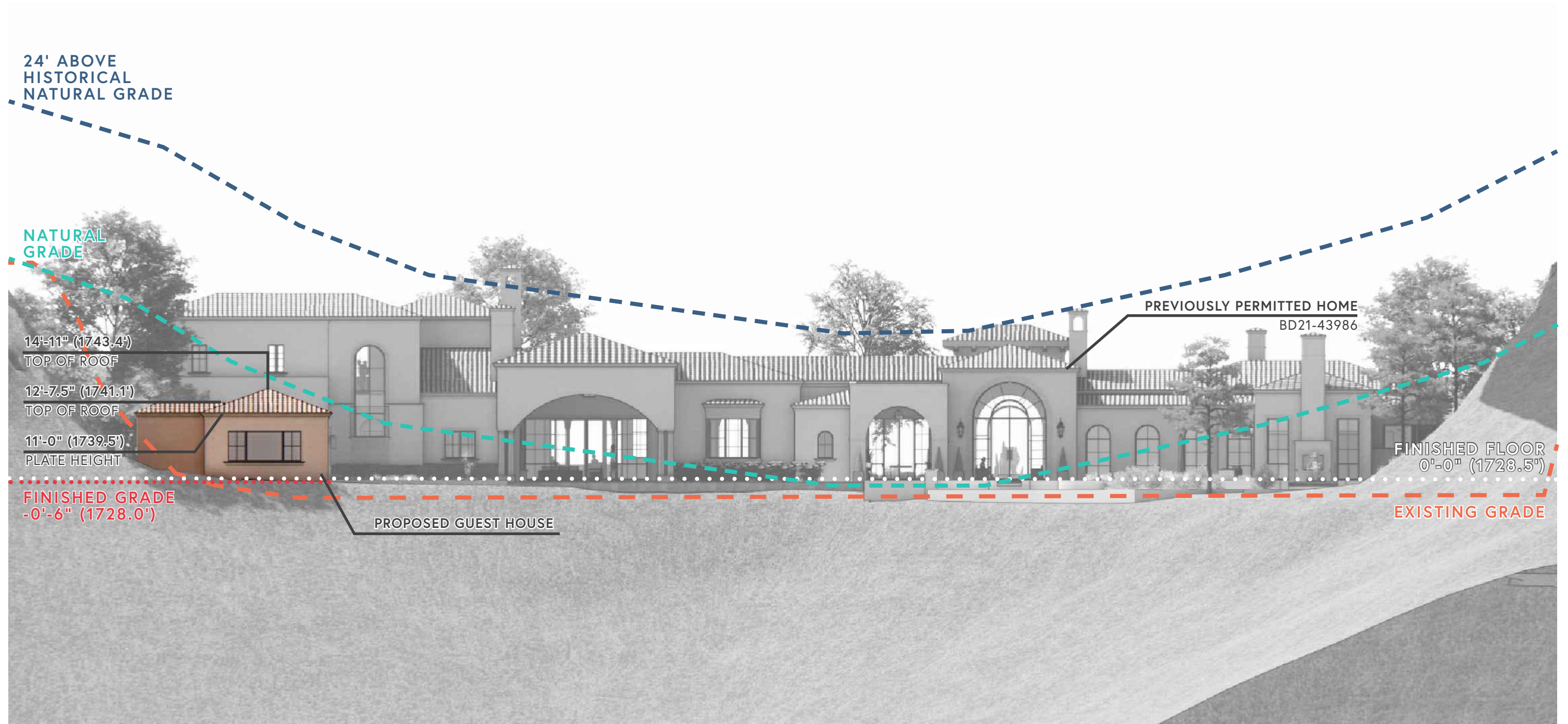


partial
floor plan

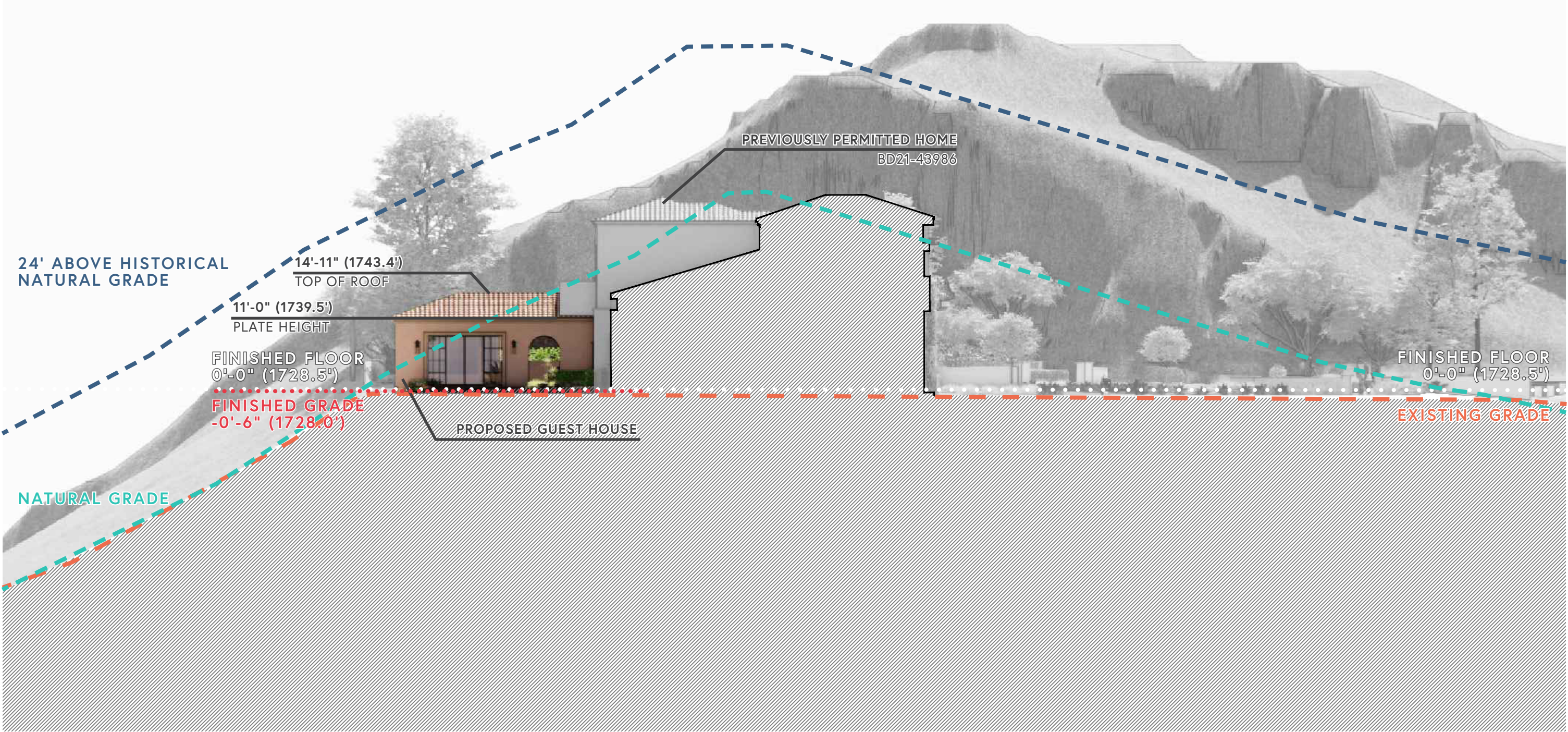


partial
roof plan

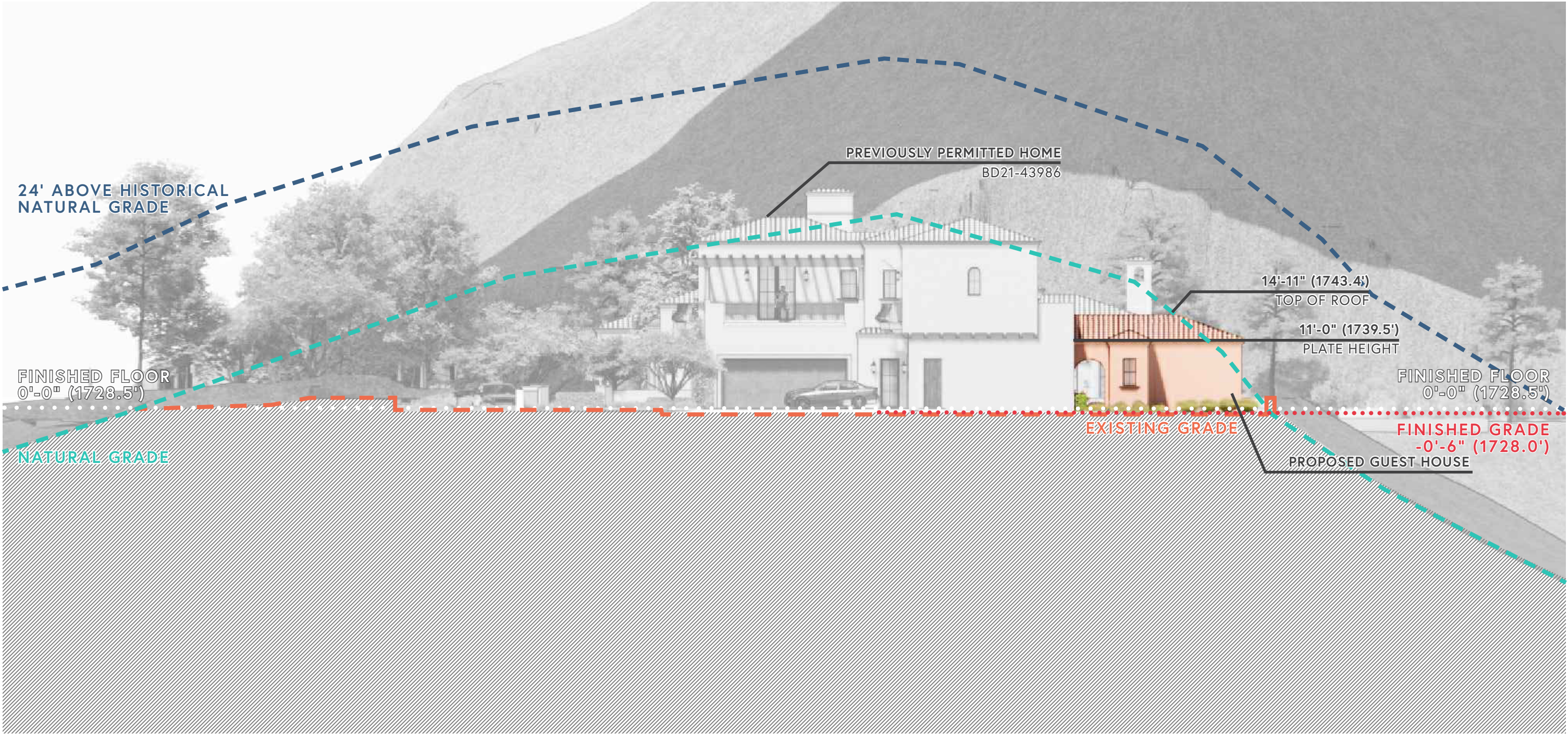
north conceptual elevation



west conceptual elevation



east conceptual elevation



variance criteria

- 1 • “That there are special circumstances applicable to the property, which may include circumstances related to the property’s size, shape, topography, location, or surroundings: and” (Town Code Section 2-5-3(C)4)**

Since the property currently consists of two parcels in two separate jurisdictions—one in the Town of Paradise Valley and one in Maricopa County—it cannot be developed like similar properties. Due to a covenant made in 1978 with the then owner of the property and any successors, the property must be treated as one property per the covenant. The Town of Paradise Valley however can only look at the property in Paradise Valley and the County can only consider the Maricopa County property. This creates a hardship because it only allows for a true FAR of 12% on the combined property instead of the allowable 25% if the properties are considered as one as the covenant requires. Maricopa County cannot allow for an accessory structure on their property without a Main House. Considering only one home and a guest house can be built on the property—per the covenant—the client is unable to build a guest house, depriving the owner from being able to develop the property like other properties in the same zoning district and surrounding neighborhood.

- 2 • “That the special circumstances applicable to the property were not self-imposed or created by the property owner: and” (Town Code Section 2-5-3(C)4).**

The hardship was not self-imposed or created by the property owner, it is the direct result of the existing pad that creates a logical homesite which straddles two different jurisdictions. Current ordinances make utilization of the current property difficult without the requested variance. The town allowed a structure to be constructed on the two properties in the 1980's and the property was developed legally, at the time, prior to the current codes and ordinances. The home under construction is also being constructed legally with all necessary approvals and permits on the Paradise Valley parcel. Considering only one of the parcels is in Paradise Valley, the owners are unable to build a home with a FAR of 25% for the entire parcel.

- 3 • “That the strict application of the zoning Ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district” (Town Code Section 2-5-3(C)4).**

Since the Town cannot recognize the parcel that is within the jurisdiction of Maricopa County, the homeowner cannot utilize the full allowable 25% FAR if the property were in the same jurisdiction and combined. Due to the fact that they are not in the same jurisdiction, they cannot be combined thus they are currently relegated to only being able to use 12% of the allowable FAR if the parcels were under the same jurisdiction and able to be combined into one lot.

The variance will in fact not grant any special privilege, but would only allow for the owner to build a home like others in the area. If the variance were not granted, the property owner would be allowed less than half the allowable FAR that would exist on a similar parcel. This does not allow the owner to take full advantage of their property, like other homeowners with similar size properties.

proposed variance

SITE HISTORY

The property located at 4502 E. Moonlight Way currently consists of two parcels, but had previously consisted of three parcels. The original three parcels included the South parcel APN 169-16-005B (Lot 1) under the jurisdiction of Maricopa County, while the two North parcels APN 169-11-003D (Lot 2) and 169-11-003E (Lot 3) are under the jurisdiction of the Town of Paradise Valley. Prior to 1980, the two North parcels were annexed into the Town of Paradise Valley and as required under the Town approval process for the new construction, were combined. The South Parcel remains in Maricopa County. In 1978, the owner of the parcels entered into a covenant with Clearwater Hills, that required the owner (and any successor owners) to treat the South parcel and the adjoining North parcel as a single lot. A copy of this recorded covenant is included at the back of this application. The two parcels can never be separated and only one single dwelling (and guest house) can ever be built on the combined parcels. A home was permitted and built on the original three parcels in the 1980's. This home was designed and built over the boundary line between the two jurisdictions (see original approved site plan on page 4). The previous home, which straddled the property line, did not meet current Hillside standards. That home has subsequently been removed from the lot and a new permitted home is currently under construction after obtaining several variances, hillside building approval, as well as a building permit from the Town of Paradise Valley.

PROPERTY HARDSHIPS

During construction of the new permitted residence the homeowners decided they would like to add an attached cabana to serve as a fitness room and future guest bedroom, as needed. Due to the fact that the parcels are in separate jurisdictions it has been deemed by the Town that the entire lot cannot be used in the FAR calculations. With this hardship, it is not possible to add any expansions or structures to the property. The current approved FAR is 25% and would increase to a total of 26.4% with the addition of the guest house to the Paradise Valley lot. If the properties were in the same jurisdiction the home would only have an FAR of 12% total, including the previously permitted residence and proposed guest house addition.

PROPOSED VARIANCE

Allow FAR of 26.4% on the Paradise Valley lot (12% on entire property)

If the variance is granted, it will allow for the owner to enjoy the same privileges on their entire property as any other homeowner with a similar lot, with the same zoning. Our variance request is to exceed the 25% FAR limit on the Paradise Valley lot, with a proposed total of 26.4% FAR. As the parcels cannot be divided or separated due to property deed restrictions, the entire property should be treated as a single, 99,318 square foot lot.

lots 5 & 5a, clearwater covenant

NOT RECORDED MAIL TO:
John McLoone, Jr., Esq.,
2627 E. Thomas Rd., Suite 2A
Phoenix, Arizona 85016

Unofficial Document
232256

COVENANTS AND AGREEMENTS
AFFECTING REAL PROPERTY

MOD RSTR

RECITALS:

WHEREAS, the undersigned ("Owner") owns certain real property located in Maricopa County, Arizona, which real property is more particularly described in Exhibit "A" attached hereto and which consists of two adjacent parcels of land, respectively referred to herein (and as described in said Exhibit "A") as "Parcel No. 1" and "Parcel No. 2", and collectively as the "Subject Property"; and

WHEREAS, Parcel No. 1 is presently situated in Clearwater Hills, a subdivision in Maricopa County, Arizona, according to plats recorded at Book 64 of Maps, page 42, and in Book 84 of Maps, page 25, records of the County Recorder of Maricopa County, Arizona (hereinafter called the "Subdivision"); and

WHEREAS, by virtue of a Declaration of Covenants, Conditions and Restrictions recorded in Docket 9444, page 467, records of the County Recorder of Maricopa County, Arizona (hereinafter the "Declaration"), all real property located in the Subdivision is subject to such Declaration and to the control, operation and assessment of the Clearwater Hills Improvement Association, an Arizona corporation (hereinafter the "Association"); and

WHEREAS, Parcel No. 2 is not presently subject to said Declaration, nor is it presently a part of said Subdivision, nor subject to the jurisdiction of said Association; and

WHEREAS, Owner, on behalf of itself, its assigns and each of its successors in interest to all or any portion of the Subject Property wishes Parcel No. 2 to be brought within and annexed to said Subdivision, and subject to the aforesaid Declaration and to the control, operation and assessment of the Association; and

STATE OF ARIZONA } ss
County of Maricopa }
I hereby certify that the within instrument was filed and recorded by request of
John McLoone, Jr.
in Docket 13010
on page 457-458
Witness my hand and official seal the day and year aforesaid.
JUL 6 - 1978 4 00
1301061438
County Recorder
Deputy Recorder

1301061438

WHEREAS, in consideration of the recitals stated herein and the covenants and representations of Owner set forth below, the Association is prepared to accept Owner's Parcel No. 2 into said Subdivision, therefore permitting Owner, and its successors in interest to the Subject Property, to enjoy the privileges and rights associated with such property being a part of the Subdivision;

NOW, THEREFORE, the undersigned Owner, on behalf of itself, its assigns, and each and every one of its successors in interest to all or any portion or interest in or with respect to the Subject Property, covenants and represents as follows:

1. Owner represents and warrants that it is the lawful owner of the Subject Property, a true description of which appears in Exhibit "A" hereto, and that it holds fee title thereto subject only to that certain construction mortgage to Continental Bank recorded at Docket 12829, page 692, in the office of the County Recorder of Maricopa County, Arizona, and represents and warrants that it is duly authorized and empowered to execute this instrument and to subject said Property to the provisions, agreements and covenants contained herein and in the aforesaid Declaration.

2. With respect to Parcel No. 1, Owner confirms, and with respect to Parcel No. 2, Owner covenants and agrees, that said property is and will be in all respects subject to the provisions of the aforesaid Declaration, as the same may be properly amended from time to time, and is also subject to the control, operation and assessment of the Association, all in accordance with the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations of said Association, as the same may be amended from time to time. By referring to the Declaration, Articles, By-Laws and Rules and Regulations of

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1301061439

the Association, the same are in all respects incorporated herein as though set forth in haec verba, and Owner hereby acknowledges having read and understood said documents and confirms that its signature and acknowledgment to this instrument shall have the same legal effect as if said signature and acknowledgment were affixed to the Declaration.

3. In addition to the foregoing, Owner further covenants and agrees to the following, each of which shall apply to the Subject Property as though specifically and expressly stated with respect thereto in the Declaration:

(a) Parcel No. 2 will be subjected to Association assessments as a separate lot within the Subdivision, so that the total annual assessment (and any other assessments provided for by the Declaration) for Parcels No. 1 and 2 will be equal to twice the assessment for any single improved lot within said Subdivision;

(b) Agrees that any assessment or other obligation imposed against the Subject Property will also be the personal obligation of the owner of said property to the extent such obligation accrues or is due during any such owner's ownership of such property;

(c) Agrees that the subject property will always be subject to the same common ownership, so that the ownership of either parcel will never be severed from ownership of the other;

(d) Agrees that there will never be more than one residential dwelling unit constructed on or across both parcels (exclusive of a guest house and other customary amenities associated with or ancillary to a single primary dwelling unit);

(e) Agrees that, without first having obtained prior written approval from the Association, the only roadway

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lots 5 & 5a, clearwater covenant

DLI 1301061440

or other means of providing ingress or egress to any portion of the Subject Property will be that roadway passing through the Subdivision (as described in the plat of record for Clearwater Hills No. 2, recorded in Book 84 of Maps, page 25, records of Maricopa County, Arizona), access to which roadway is monitored by and under the control of the Association through its common entrance gatehouse.

4. Each of the covenants and representations herein set forth are acknowledged by Owner to run with all the Subject Property, for all purposes, and shall be binding upon the undersigned Owner, its assigns and successors in interest with respect to all or any portion of the Subject Property and shall inure to the benefit of the Association and all other lots and all other owners of property located within the Subdivision, and their respective assigns, transferees and successors in interest. Without limiting any of the foregoing but in furtherance thereof, the undersigned agrees that, by affixing its signature to this instrument, it, on behalf of itself, successors in interest, transferees and assigns, binds itself and said representatives, transferees, assigns and successors in interest to the Subject Property to the provisions and covenants of this instrument and to the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Declaration and any amendments thereto. In addition, the undersigned, on behalf of itself and each such person, hereby acknowledges that the Declaration sets forth a general scheme for the improvement and development of the real property covered thereby, and hereby evidences its interest that the provisions of this instrument, and that the restrictions, conditions, covenants, rules and regulations contained in the Declaration, shall run with the Subject Property and be binding on all subsequent and future owners, grantees, purchasers, assignees and transferees thereof.

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DLI 1301061441

IN WITNESS WHEREOF the undersigned has executed this instrument as of this 22 day of June, 1978.

"Owner"
FLECK CONSTRUCTION, LTD.,
a corporation
By [Signature]
its President

APPROVED AND ACCEPTED AND AGREED TO:
[Signature]
Thomas G. Fleck
[Signature]
Darlene C. Fleck

ACCEPTED:
CLEARWATER HILLS IMPROVEMENT
ASSOCIATION, a corporation
By [Signature]
its President

CONSENT OF MORTGAGEE:
The undersigned Bank presently holds a construction loan secured by a mortgage (or deed of trust) against the above described Subject Property. By signing this instrument, said lender, on behalf of itself, assigns, and successors in interest with respect to said loan and/or the Subject Property, consents to the annexation of the above described Parcel No. 2 into the Clearwater Hills Subdivision, and consents to all of said Subject Property being made subject to the aforesaid Declaration, the covenants and agreements contained herein, and to the control, operation and assessment of the Clearwater Hills Improvement Association. Said lender further agrees that its lien against the Subject Property is subordinate and subject to the Declaration, and to the covenants and agreements made by Owner herein, all of which shall be binding upon said lender, and any person claiming an interest in the Subject Property by or through said lender (including any purchaser at a foreclosure or trustee's sale) if and when said lender and/or any such persons should become an owner of an interest in the Subject Property, provided, however, that said lender's lien against the Subject Property shall not be subordinate to any lien in favor of said Association which relates to assessments accruing prior to the date of any such foreclosure or trustee's sale, all as is more particularly set forth in Section 5.5 of the aforesaid Declaration.

CONTINENTAL BANK, an Arizona corporation
By [Signature]
Its ASST. VICE PRESIDENT

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DLI 1301061442

STATE OF ARIZONA) ss.
County of Maricopa)
The foregoing instrument was acknowledged before me this 27th day of June, 1978, by Thomas G. Fleck
as President of Fleck Construction, Ltd., a corporation.

My Commission Expires: Aug. 17, 1979
[Signature]
Notary Public

STATE OF ARIZONA) ss.
County of Maricopa)
The foregoing instrument was acknowledged before me this 27th day of June, 1978, by Thomas G. Fleck and Darlene C. Fleck, individually.

My Commission Expires: Aug. 17, 1979
[Signature]
Notary Public

STATE OF ARIZONA) ss.
County of Maricopa)
The foregoing instrument was acknowledged before me this 22d day of June, 1978, by THOMAS J. TRIMBLE
as President of Clearwater Hills Improvement Association, a corporation.

My Commission Expires: Aug. 15, 1982
[Signature]
Notary Public

STATE OF ARIZONA) ss.
County of Maricopa)
The foregoing instrument was acknowledged before me this 28th day of June, 1978, by Donald L. Link, as Assistant Vice President
of Continental Bank, an Arizona corporation.

My Commission Expires: June 16, 1980
[Signature]
Notary Public

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lots 5 & 5a, clearwater covenant

