



4502 east moonlight way
paradise valley, arizona



variance request

site location



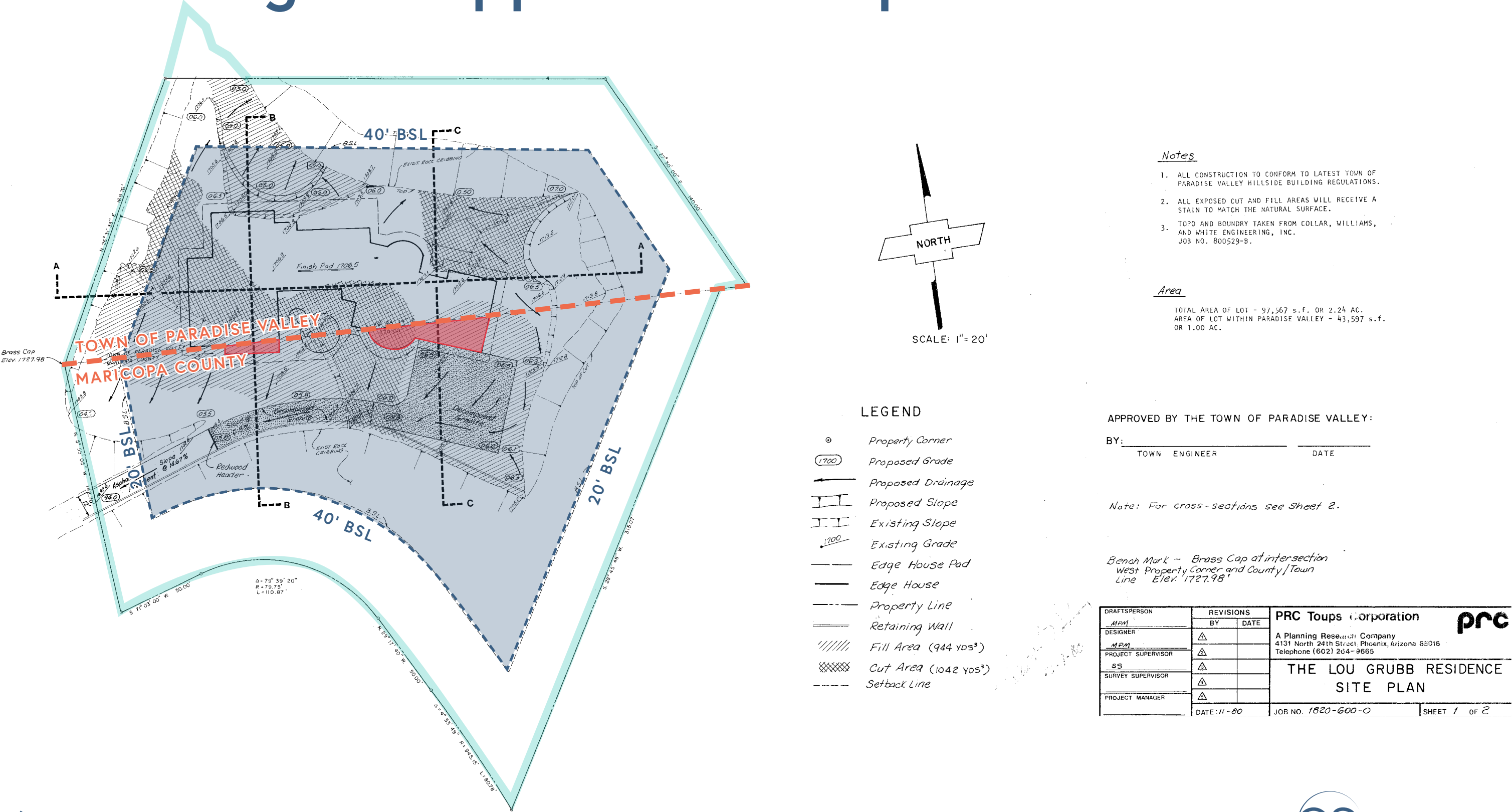
existing south slope conditions



existing north slope conditions



1980 original approved site plan

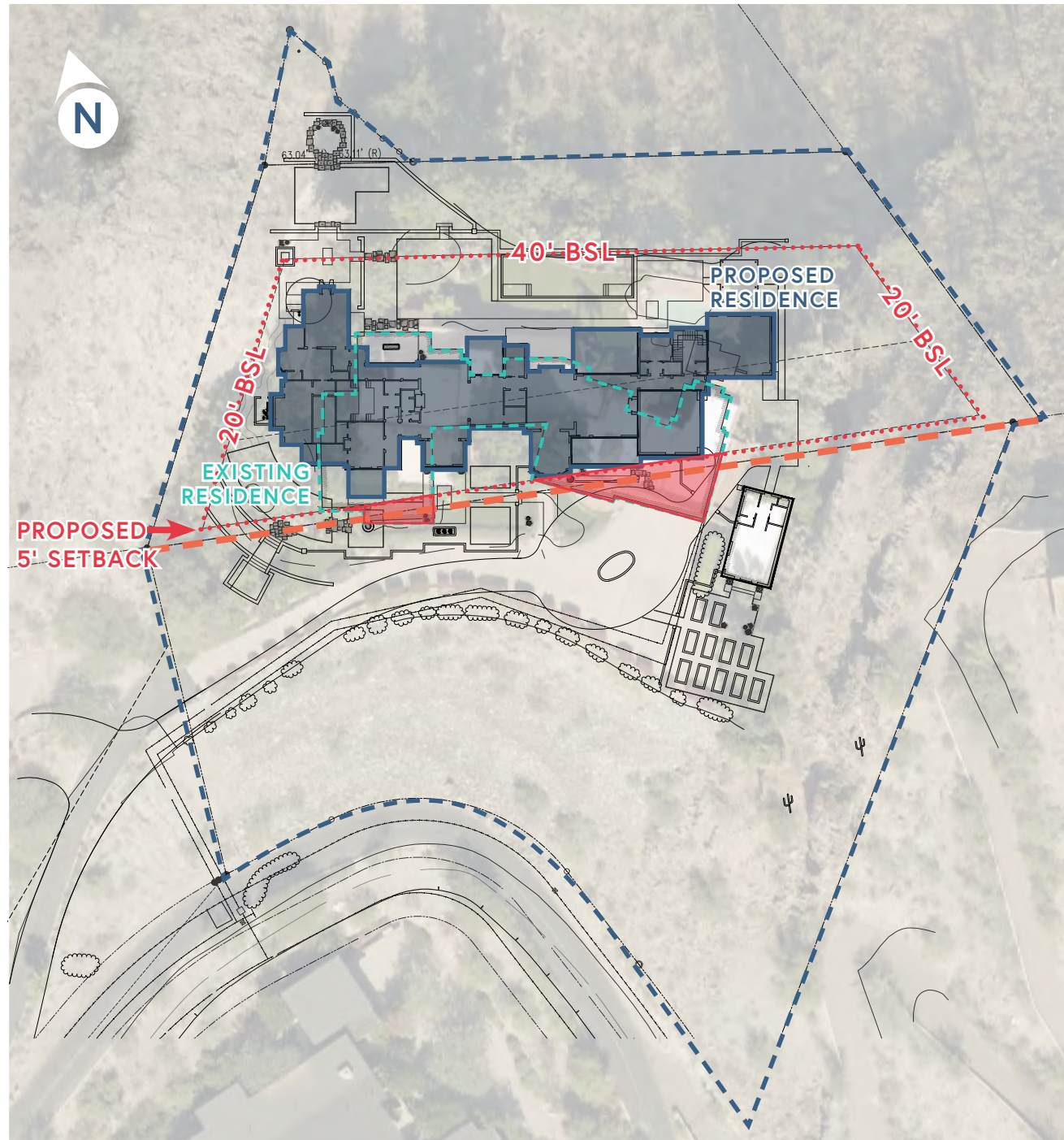


This aerial map displays a residential development in Paradise Valley, Arizona, divided into four parcels. The map includes detailed survey data, setbacks, and existing structures.

- Parcel No. 1:** LOT 5 - CLEARWATER HILLS, BK. 64, PG. 42, MCR 4502 E MOONLIGHT WY, PARADISE VALLEY, AZ 85253, APN 169-16-005B, ZONING RU-43. It features a 40' setback and a 40' SETBACK line.
- Parcel No. 2:** APN 169-11-003D, ZONING R-43. It contains an EXIST. SINGLE FAMILY RESIDENCE and an EXIST. POOL.
- Parcel No. 3:** APN 169-11-003E, 63.04' (M), 63.11' (R). It includes a FOUND REBAR W/ TAG ILLEGIBLE and a SET REBAR W/ CAP RLS# 35694.
- Parcel No. 4:** LOT 4 - CLEARWATER HILLS, BK. 64, PG. 42, MCR 4524 E MOONLIGHT WY, PARADISE VALLEY, AZ 85253, APN 169-16-004, ZONING RU-43. It features an EXIST. ROCK OUTCROP (TYP.) and a FOUND 60d NAIL DISTURBED.

The map also shows the TOWN OF PARADISE VALLEY and MARICOPA COUNTY boundary, a 40' SETBACK line, and various survey points and bearings. A north arrow is located in the top left corner.

proposed site plan with existing conditions



SITE HISTORY

The property located at 4502 E. Moonlight Way currently consists of 3 parcels. The South parcel APN 169-16-005B (lot 1) is 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 2 North parcels were annexed into the Town of Paradise Valley. 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 booklet. 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 3 parcels in the 1980's. This home was designed and built over the boundary line between the two jurisdictions (see plan page 8). The current home, which straddles the property line, does not meet the following requirements: front building setback for lot 2, primary ridge line, and site and retaining wall requirements.

PROPERTY HARDSHIPS

The current owners of this property want to build a new home. Their surrounding Clearwater Hills neighbors are all in Maricopa County and are not required to comply with Paradise Valley hillside requirements. Based on the current Paradise Valley hillside requirements that did not exist when the pad was created and the existing lot divisions which are in two different jurisdictions, a new comparable home is not buildable on any of the individual 3 lots. It is even impossible to remodel the current home because if more than 50% of the structure is remodeled it will have to meet current requirements, which cannot be done. The lack of ability to build or remodel at this location and comply with current zoning requirement is considered a property hardship unless a variance is granted for three items listed on the following sheet.

proposed variances

1 • 40' SETBACK

The existing building was designed with a 40' front setback line from the portion of the lot 1 running along Moonlight Way (see site plan page 6). As lot 1 is a separate jurisdiction, we believe the building setback should be measured from the south edge of lot 2. Zoning requires a 40' front set back. The current home encroaches 6,600 sf over this lot 2 front setback. On the north side, at the rear 40' setback the existing spill slope make it unsafe to build anything on it, in effect making most of the second lot unbuildable. Without relief from the front yard setback requirement, there is not enough room on the lot to build a similar house on the existing pad and comply with setbacks on each lot. For this reason, we are requesting a variance be granted for lot 2 front setback to be changed to 5'. Current building codes require a structure to be placed no closer than 5' to a property line (IBC 705.2.3).

2 • RIDGE LINE PROTECTION

When the current home was built on the property the regulations requiring the protection of ridgelines were not in place. The ridgeline was removed to build a home on the property in the 1980's. It is not possible to replace the natural ridge. It is also not possible to comply with the Paradise Valley Primary Ridge Line requirements. As shown on the proposed elevations and site sections the ridge was removed to create the building pad. The entire roof of the current home is above the historic natural ridge or natural grade. 17% of the proposed new roof is below original natural grade (see page 20 and 21). As it is not possible to replace the original ridge, it is impossible to comply with this requirement in its entirety. The new home has been designed to comply where it can with to the primary ridge line, while the existing home does not comply at all. Consequently, we are asking for an exception to the Primary Ridgeline requirements.

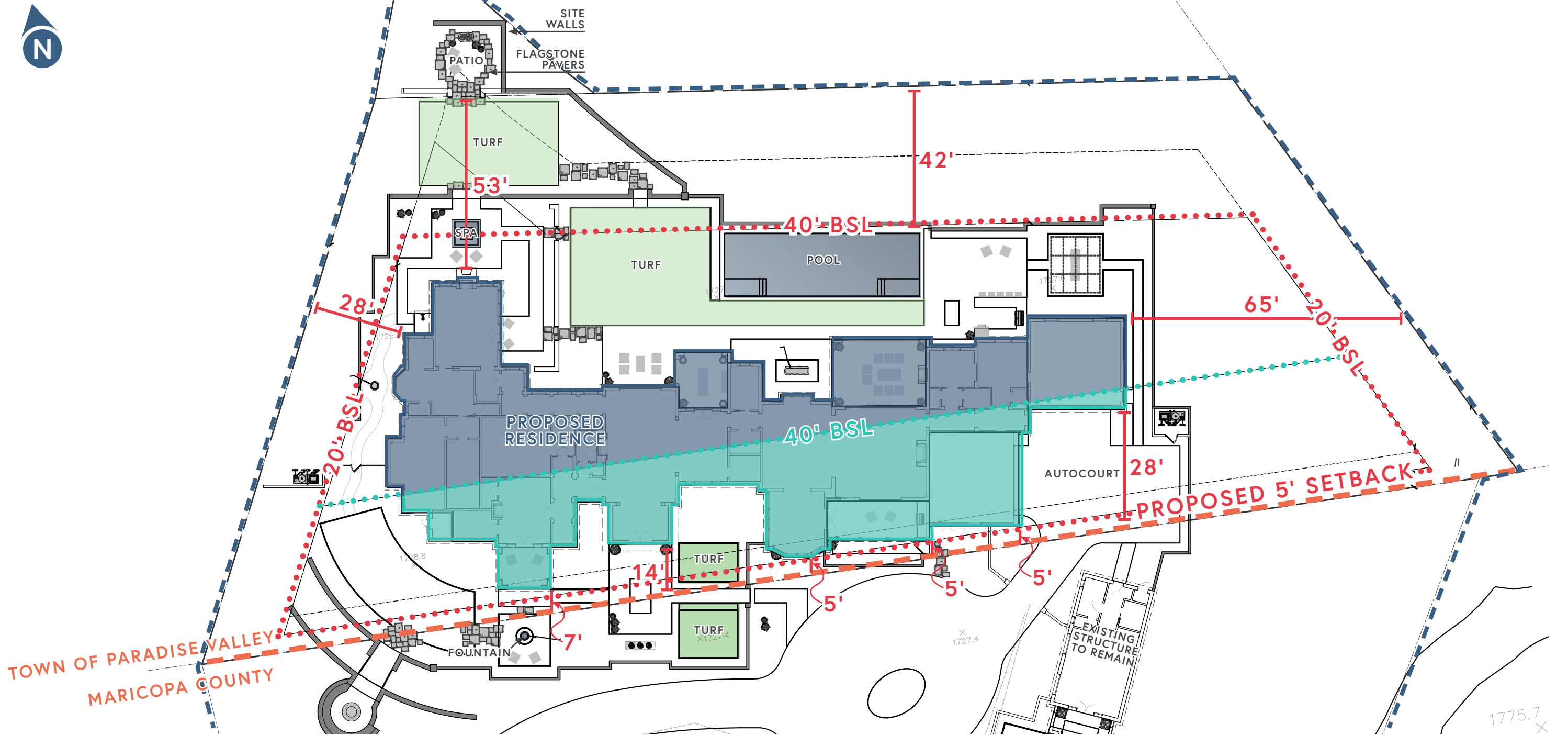
3 • RETAINING WALLS

There are several retaining walls that cross from one lot to another and so are not in compliance with the current zoning codes (see plan on page 22). In order to keep the disturbance on the lot to a minimum, we would also request that retaining walls be allowed to cross over the boundary lines between the two parcels. The site will require minor retaining walls in the front setback in order to limit disturbance on the lot and utilize the existing building pad. If these three variances are granted it will allow the owner to enjoy the same privileges on their lot as any other homeowner with a similar lot with the same zoning.

CONCLUSION:

By granting the three minor proposed variances, a new home can be built on the current pad which has existed since at least 1980, reducing any further disturbance to the site. The very unique circumstance of a lot with a home that is built over an existing property line within two different jurisdictions makes it impossible to build a home on the site without approval of the requested variances.

proposed site plan



site data

EXISTING FLOOR AREA – 10,300 S.F.
PROPOSED FLOOR AREA – 11,500 S.F. (INCREASE OF 800 S.F.)

House Encroachment into 40' Front Setback

EXISTING RESIDENCE – 6,600 S.F.
PROPOSED RESIDENCE – 4,400 S.F. (REDUCTION OF 2,200 S.F.)

HISTORIC PRIMARY RIDGELINE WAS REMOVED AND WAS APPROXIMATELY AT 1730

EXISTING FINISHED FLOOR – 1728.37
PROPOSED FINISHED FLOOR – 1728.5

BUILDING PAD SLOPE – 19.39%
EXISTING DISTURBED AREA – 76,185 S.F.
PROPOSED DISTURBED AREA – 50,269 S.F.

LOT SIZE – 99,313 S.F.
ALLOWABLE FLOOR AREA – 24,830 S.F. (25%)
EXISTING FLOOR AREA RATIO – 10.4%
PROPOSED FLOOR AREA RATIO – 11.6%

Encroachment into Ridgeline Requirement

EXISTING RESIDENCE – 10,143 S.F. (0% COMPLIANT)
PROPOSED RESIDENCE – 8,662 S.F. (17.4% COMPLIANT)*
* IF RIDGELINE HAD NOT BEEN REMOVED

BOTH THE PROPOSED AND EXISTING RESIDENCE ARE JUST BELOW WHAT WAS THE HISTORIC PRIMARY RIDGELINE THEREFORE MAKING BOTH STRUCTURES SIT WELL ABOVE THE CURRENT ALLOWED RIDGELINE HEIGHT.

Existing vs. New Disturbance by Lot

LOT	APN#	SIZE (S.F.)	EXISTING DISTURBANCE (S.F.)	%	NEW DISTURBANCE (S.F.)
1	169-16-005B	54,040	38,649	71.5	18,745
2	169-11-003D	43,597	35,870	82.3	30,608
3	169-11-003E	1,681	1,666	99.1	943
TOTAL	-	99,318	76,185	76.7	50,296

Parcel 1: LOT 5 - CLEARWATER HILLS BK. 64, PG. 42, MCR 4502 E MOONLIGHT WY PARADISE VALLEY, AZ 85253 APN 169-16-0058 ZONING RU-43. Area: 16,549 sq ft.

Parcel 2: PARCEL NO. 2 APN 169-11-0030 ZONING R-43. EXIST. SINGLE FAMILY RESIDENCE FFE: 1728.37.

Parcel 3: PARCEL NO. 3 APN 169-11-003E ZONING R-43. Area: 15,844 sq ft.

Parcel 4: LOT 4 - CLEARWATER HILLS BK. 64, PG. 42, MCR 4524 E MOONLIGHT WY PARADISE VALLEY, AZ 85253 APN 169-16-004 ZONING RU-43.

Survey Data: The map includes numerous bearings and distances for the boundaries of the parcels and the disturbance areas. For example, the boundary between Parcel 1 and Parcel 2 is S89°45'19"E (M) 382.42' (M).

Legend:

- EXIST. DISTURBANCE AREA (Red dashed line)
- NEW DISTURBANCE AREA (Blue dashed line)
- 100% CONTAINED INSIDE EXISTING DISTURBANCE (Blue dashed line)

Other Features: The map shows the 'TOWN OF PARADISE VALLEY' and 'MARICOPA COUNTY' boundaries. It also includes a north arrow and a scale bar.

variance criteria

- 1 • ***“Such variance... will serve not merely as a convenience to the applicant, but [is] necessary to alleviate some demonstratable hardship or difficulty so great as to warrant a variance under the circumstances.” (Town Code Section 2-5-3(C)2).***

The current home built on these parcels treats the parcels as one and does so without regard to the property lines. The current home straddles the property line which is evident in the 1980 site plan approved by the Town. The owners desire to remove the old structure and build a new home on the lot. Without variances from the front setback and Primary Ridge Line requirements, it would be impossible to build a similar size home on this lot, which is of a size consistent with other homes in the neighborhood. The house is currently in bad repair and more than 50% would need to be remodeled in order to adequately update the home. If the new owners were to remodel more than 50% of the home, it would also have to comply with the current setbacks and Primary Ridge Line requirements, which would mean it would have to almost be completely removed anyway. If variances are not granted, the existing home cannot be remodeled more than 50% and a new home cannot be built on this property without considerable hardship.

The current “pad” on which the home was built straddles two parcels. Both the north slope of the North parcel and the south slope of the South parcel are very steep. Just as was done 40 years ago when the current house was approved and built, utilizing this existing pad would certainly alleviate a demonstratable hardship or difficulty.

- 2 • ***The “special circumstances, hardship, or difficulty [do not] arise out of misunderstanding or mistake...” (Town Code Section 2-5-3(c)4(b)).***

The hardship is not caused by a misunderstanding or mistake. In fact, the hardship is the direct result of the unique topography of the two parcels, the existing pad that creates a logical homesite, and current ordinances that make utilization of the property extremely difficult without the requested variances. When the new owners purchased the property, the current home already straddled the two parcels in two different jurisdictions with its challenging topography.

- 3 • ***“Such variance from ... the strict application of the terms of [the Zoning Ordinance]...are in harmony with its general purpose and intents ...” (Town Code Section 2-5-3(C)2).***

If the variances are granted, the new home will comply with all other Town codes and will be in harmony with the intent of those codes. Given the recorded covenant with Clearwater Hills that says the two parcels have to be treated as a single parcel, the parcels cannot be separated

and no other home could be built within 40' of the lot line if the variances are approved. In fact, if the parcels are treated as one, the new home would have a much greater setback than 40' in the front.

- 4 • ***“The special circumstances, hardship or difficulty applicable to the property are [not] self-imposed by the property owner, or predecessor...” (Town Code Section 2-5-3(C)4) (Arizona Revised Statutes 9-462.06(H)(2)).***

The existing structure was permitted by the Town and built in the early 1980s. The current owners purchased the property and through conversations with the Town and Maricopa County determined that no one could explain how the home was permitted and allowed to be built over the property line. The current state of the parcels and home on the property make it impossible to remodel more than 50% of the home or build a new home without variances to the front setback and Primary Ridge Line requirements.

- 5 • ***“Because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.***

The strict application of the zoning ordinance on the front setback will not allow the owners to construct a home on the property of the same size and caliber of homes in the surrounding neighborhood, decreasing the value of the property and depriving the owners from being able to develop the property like any other property in the same zoning district and surrounding neighborhood. The steep slopes on the north and south sides of the combined parcels, along with the existing pad that straddles two parcels, are special circumstances unique to this property.

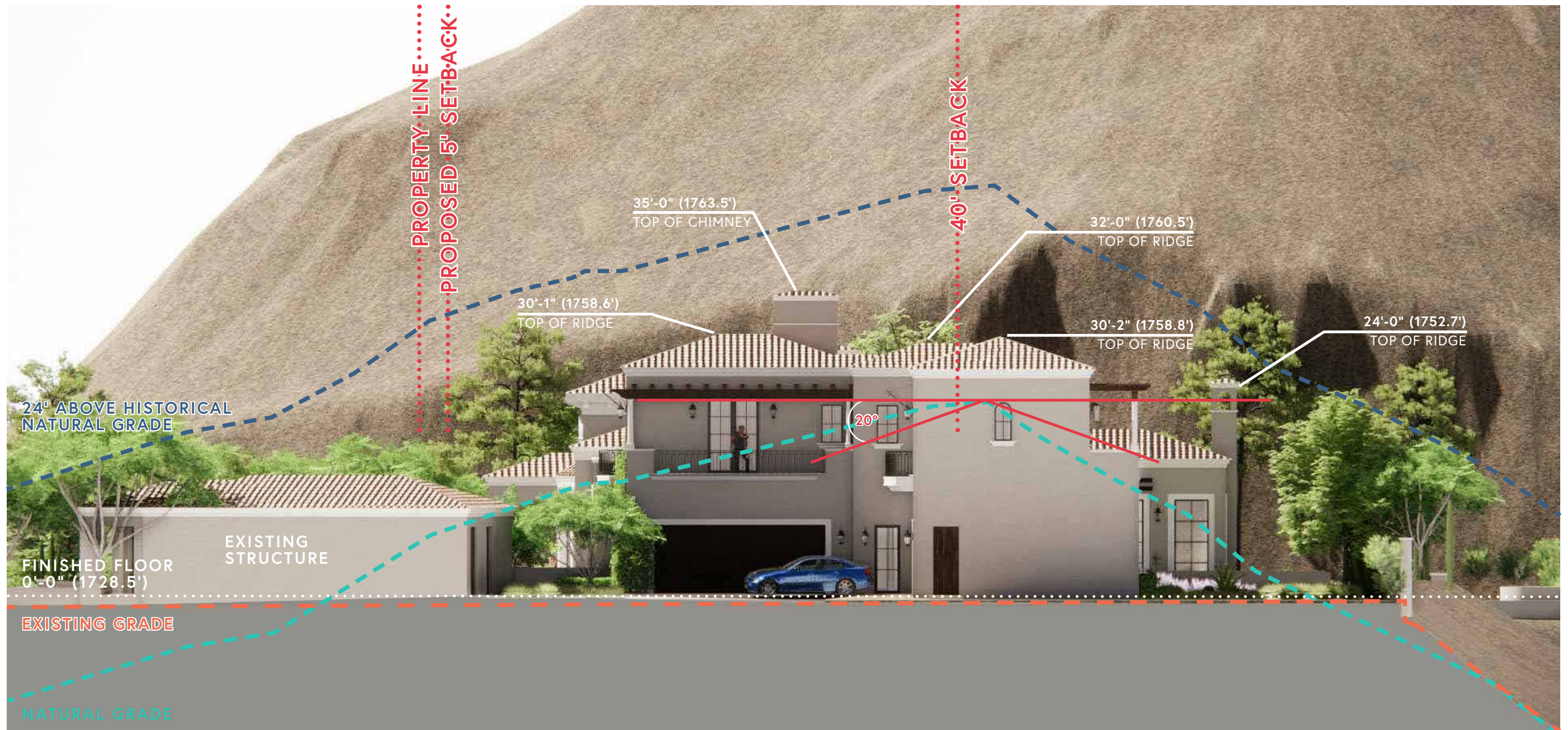
- 6 • ***The variance would not “constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and one in which such property is located.” (Arizona Revised Statutes 9-462.06(G)(2)).***

The variances will not grant any special privilege but would only allow the owners to build a home similar to others in the area. If the variances are not granted, the owners would not be able to build a home like others in the community.

south conceptual elevation



east conceptual elevation



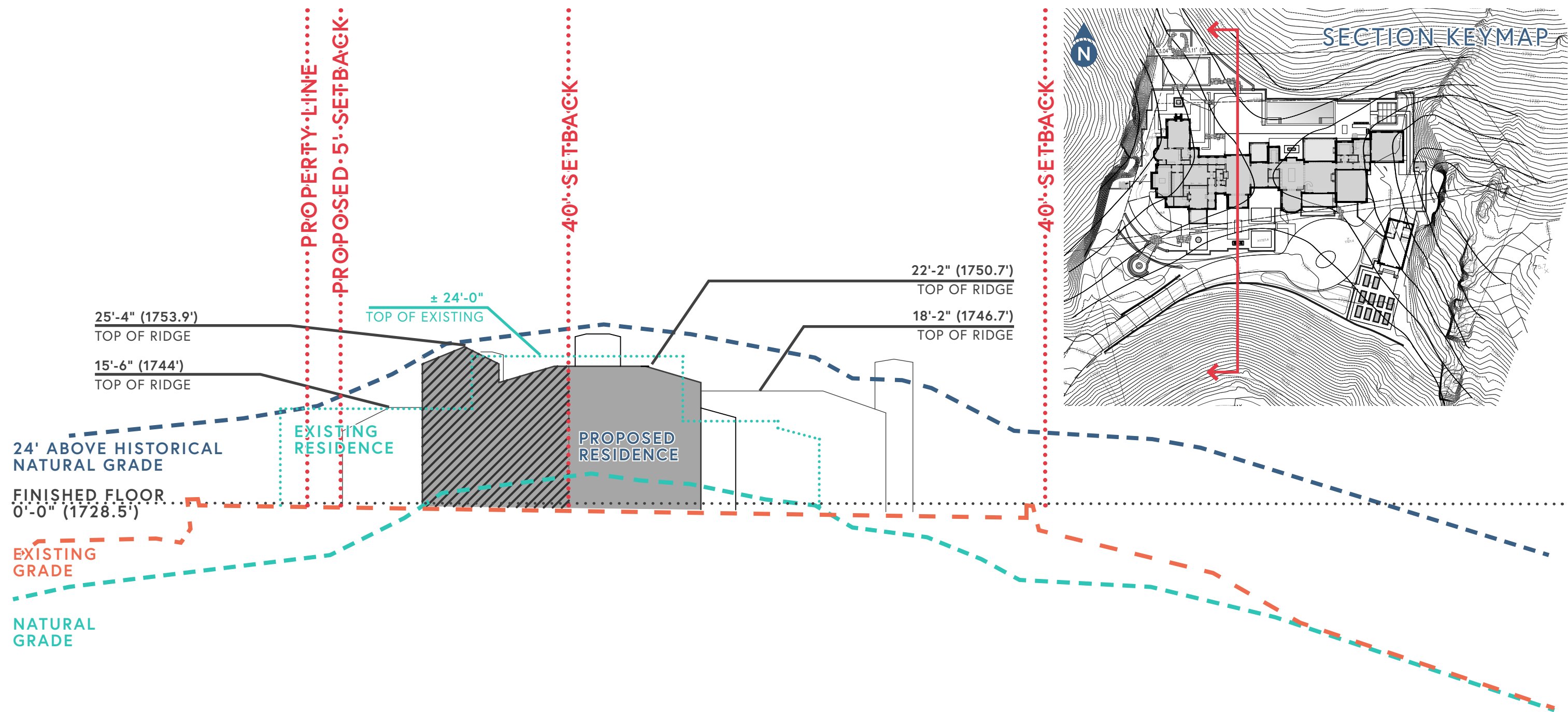
north conceptual elevation



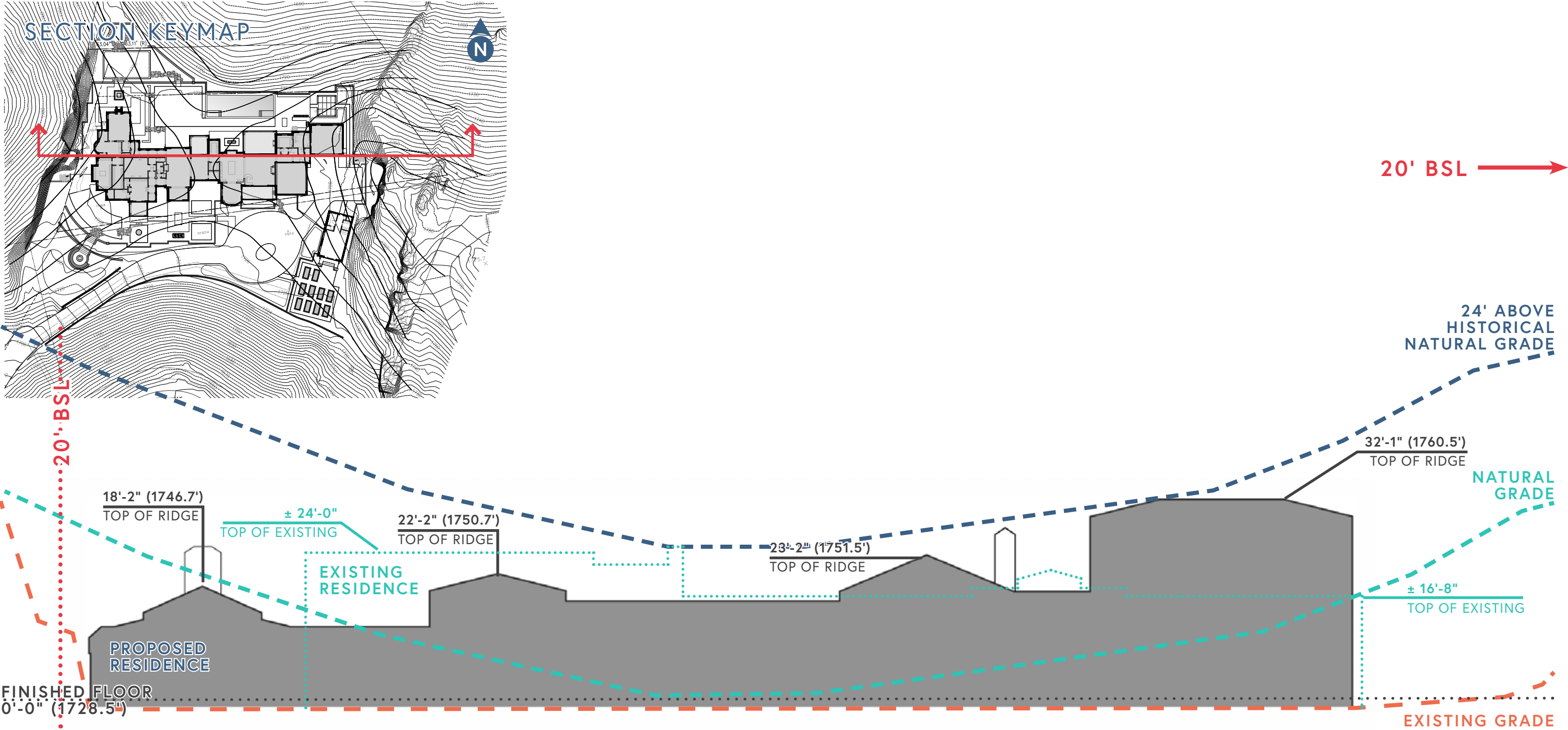
west conceptual elevation



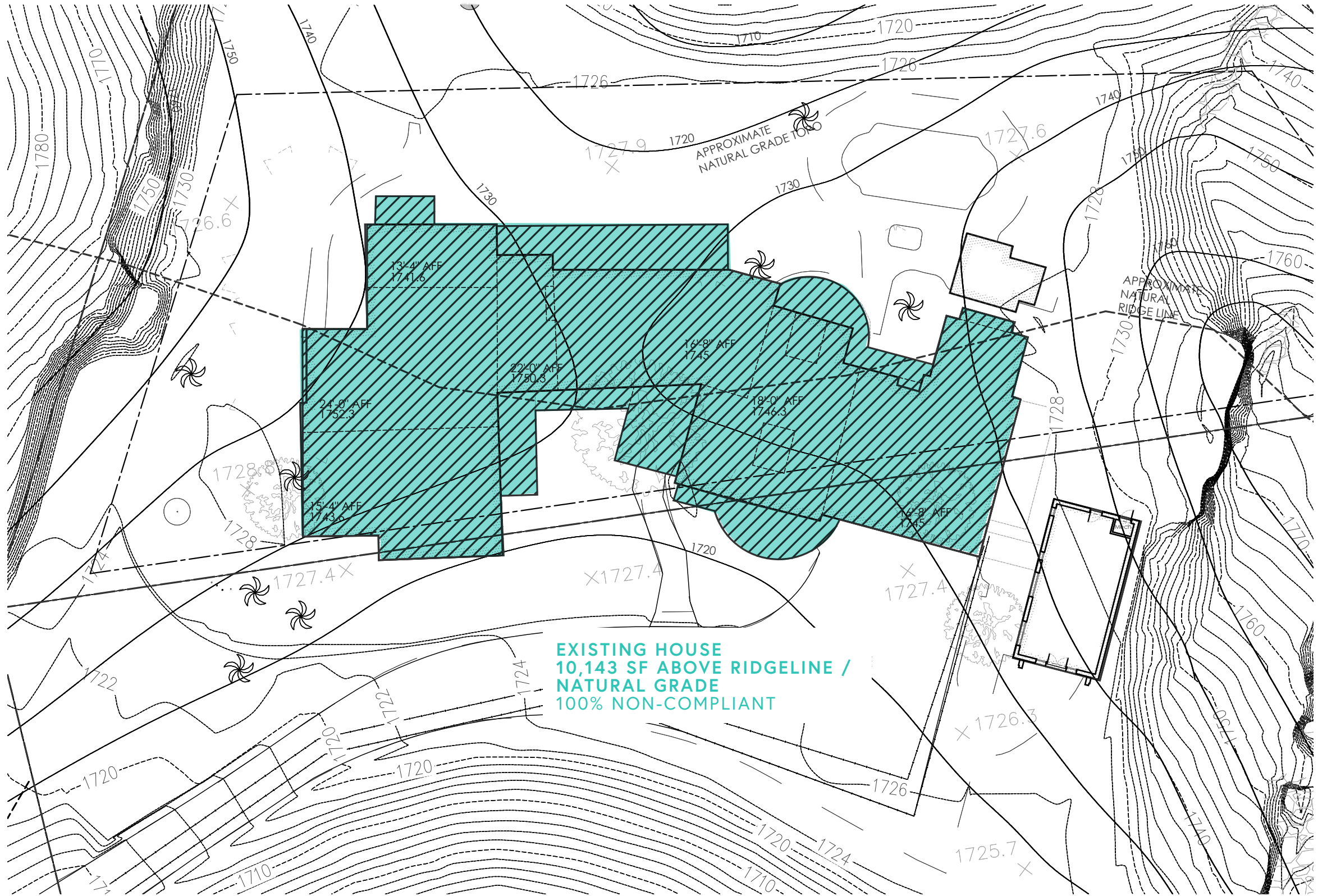
east section



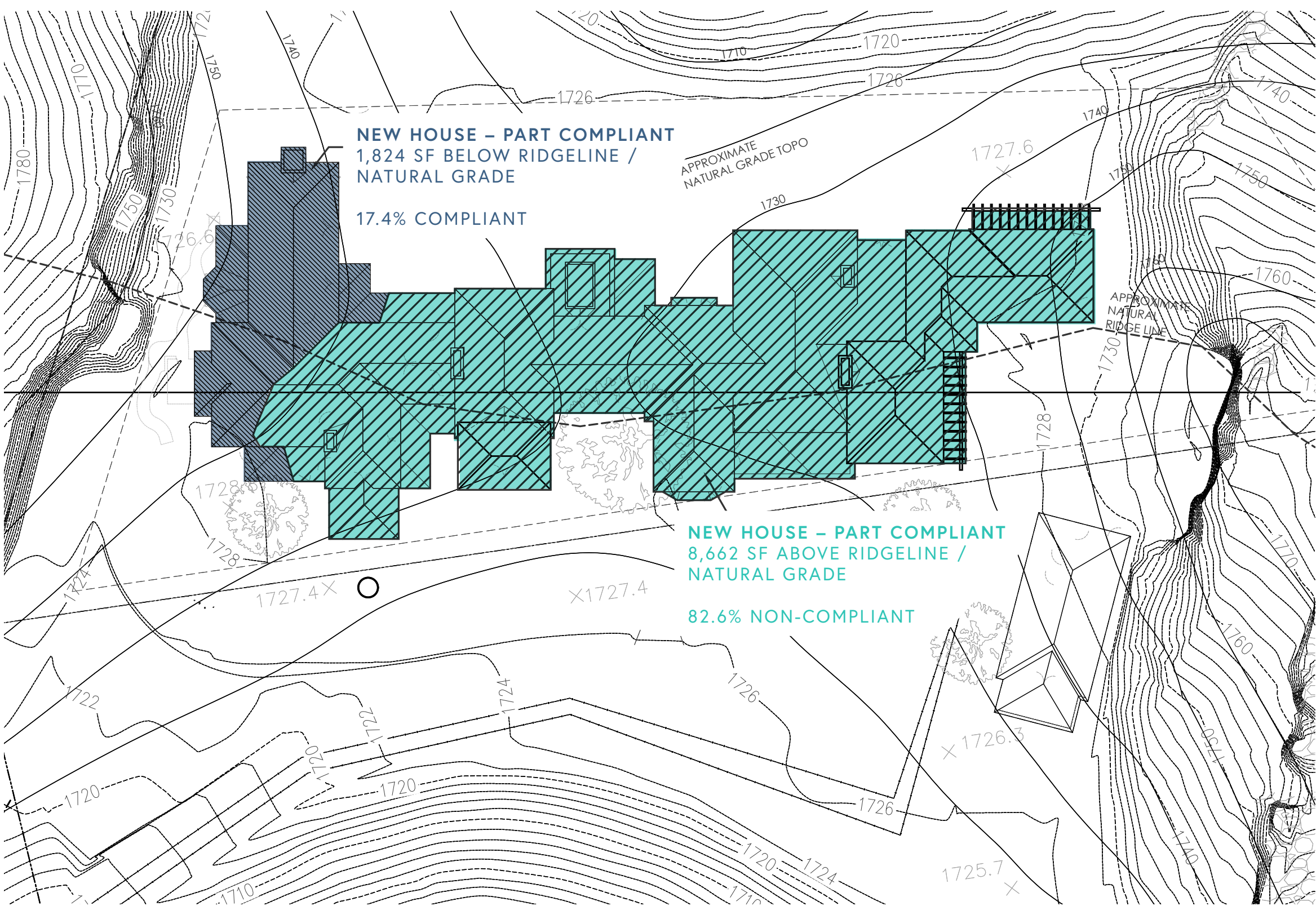
south section



ridgeline plan – existing building

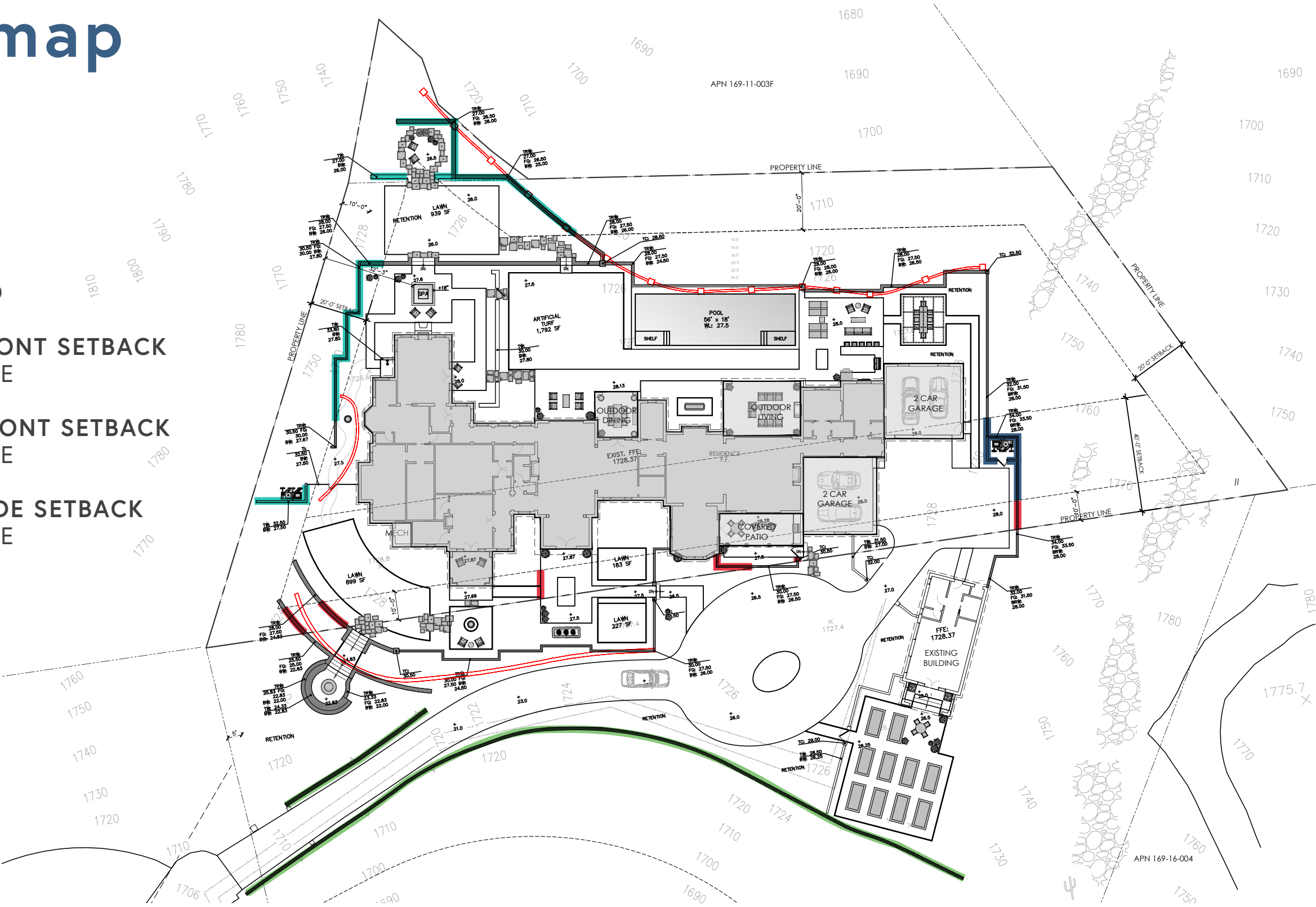


ridgeline plan – proposed building

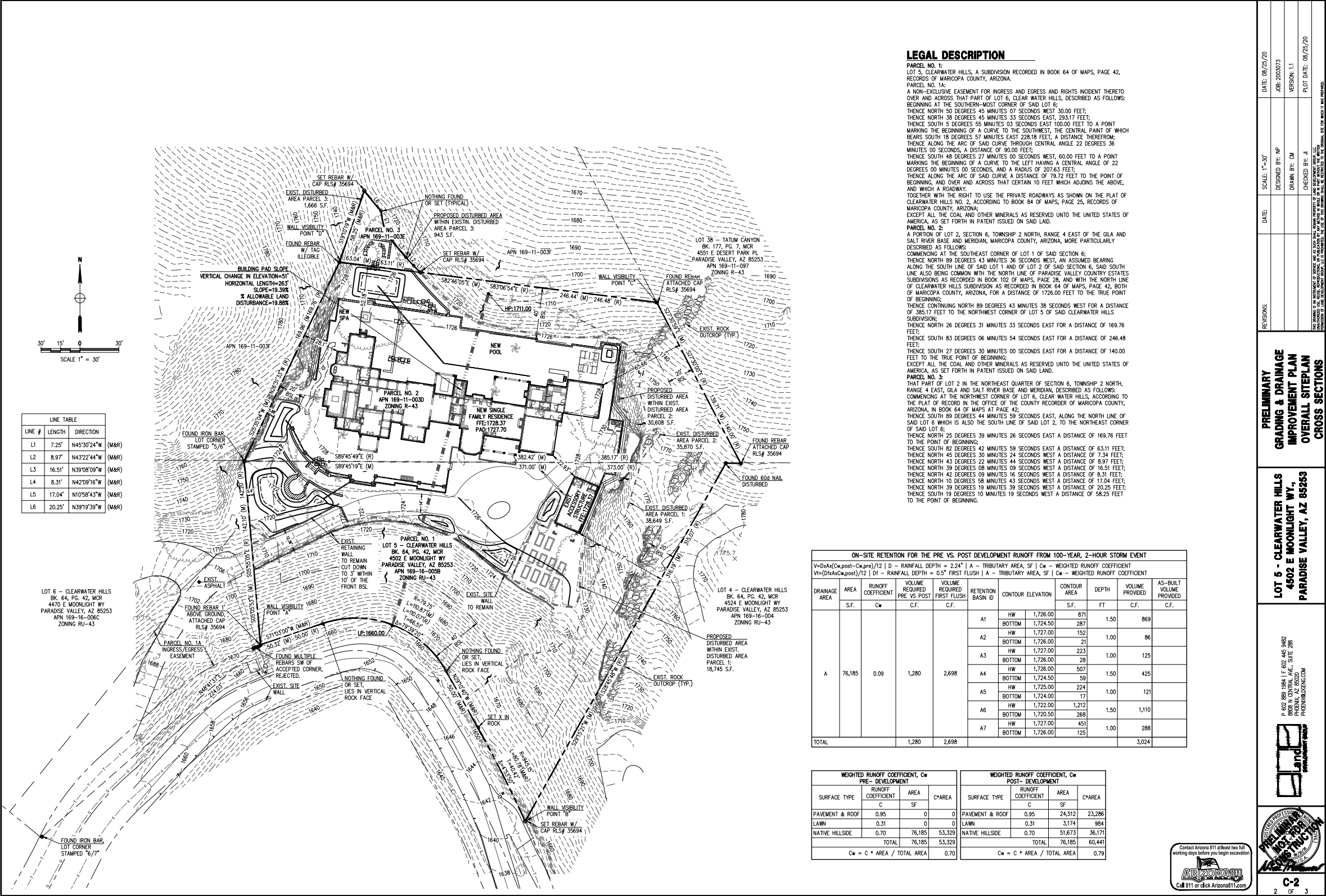


site walls map

- EXISTING WALL TO REMAIN
- EXISTING WALL TO BE DEMOLISHED
- <3' WALL IN 10' FRONT SETBACK REQUIRES VARIANCE
- >3' WALL IN 40' FRONT SETBACK REQUIRES VARIANCE
- >3' WALL IN 20' SIDE SETBACK REQUIRES VARIANCE



preliminary
grading &
drainage
plan



preliminary
grading &
drainage
plan



lots 5 & 5a, clearwater covenant

WHEN 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

STATE OF ARIZONA } ss
County of Maricopa }
I hereby certify that the wit
in instrument was filed and re
corded pursuant to
Self-Attest
JUL 6 - 1978 - 4 02
130101438

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

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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

-2-

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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

-3-

lots 5 & 5a, clearwater covenant

Doc 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.

-4-

Doc 1301061441

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

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

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

ACCEPTED:
CLEARWATER HILLS IMPROVEMENT
ASSOCIATION, a corporation
By Thomas J. Trimble
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

-5-

Doc 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
Pauline D. Mundy
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
Pauline D. Mundy
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. 17, 1979
Pauline D. Mundy
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
Carol Leaver
Notary Public

-6-

lots 5 & 5a, clearwater covenant

