

LEE COUNTY BOARD OF ADJUSTMENTS AND APPEALS Community Development/Public Works Center 1500 Monroe Street, 1st Floor Conf. 1B

Thursday, April 14, 2016 10:00 A.M.

AGENDA

CASE TO BE HEARD

Case #ADM2016-00003, Creekside Preserve

D. R. Horton, Inc. represented by Jonathon Pentecost of D.R. Horton, Inc.

The applicant is requesting a variance from Sec. 1612.4 of the Florida Building Code and by reference ASCE 24 Section 2.3 elevation requirements.

- 1. Call to Order/Review of Affidavit of Publication
- 2. Roll Call
- 3. Swearing in of all Testifying
- 4. Hearing
- Call the Vote
- Adjournment

Persons with disabilities who need an accommodation to participate in the Land Development Code Advisory Committee meeting should contact Pam Hendry, 1500 Monroe Street, Fort Myers FL 33901 (239-533-8348 or Phendry@leegov.com). To ensure availability of services, please request accommodation as soon as possible but preferably five or more business days prior to the event. Persons using a TDD may contact Pam Hendry through the Florida Relay Service, 711.



MEMORANDUM

FROM THE

DEPARTMENT OF

COMMUNITY DEVELOPMENT

DEVELOPMENT SERVICES DIVISION

DATE: April 8, 2016

Board of Adjustments and

Appeals Members To:

FROM:

Robert Stewart **Building Official**

RE: Case #ADM2016-00003 (RE: Bldgs. 12-17 & 24-32) - Creekside Preserve

This is a request for a variance from Sec. 1612.4 of the Florida Building Code and by reference ASCE 24 Section 2.3 elevation requirements.

This property is located in a special flood hazard area with an established elevation of AE-EL 10 NAVD.

In the 2014 edition of the Florida Building Code, flood design and elevation requirements were included. A reference is made in FBC Section 1612.4 to the requirements of ASCE 24. Section 2.3 of ASCE 24 has "freeboard" requirements based on a building's classification.

As category II buildings, the subject structures (4-unit condos) are required to be elevated 1ft. above the required FEMA base flood elevation requirement.

The engineer for the project has established in his narrative that the parcels are constrained and are too small to meet the freeboard requirement and still be developable.

This is NOT a variance from the minimum FEMA requirement of 10 NAVD. The variance request is from the additional 1 ft. freeboard requirement of the Florida Building Code and ASCE 24. The elevation requirement from the building code is 11.0 NAVD. The variance request is for the elevation to be set at 10.0 NAVD.

In reviewing requests for variances, the Board of Adjustment and Appeals will consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this article, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;

- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles:
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site: and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(Ord. No. 15-09, § 1, 5-19-15)

Variances may be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;
- (2) Determination by the Board of Adjustment and Appeals that:
- a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
- b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and articles; and
- c. The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(Ord. No. 15-09, § 1, 5-19-15)

Staff recommends approval of the variance with the condition that the property owner provides the County with a Hold Harmless Agreement.

cc: Terry Lenick, Esquire
Neysa Borkert, Assistant County Attorney

LEE COUNTY BOARD OF ADJUSTMENTS AND APPEALS APPLICATION	
Name: Jonathon Pentecost	zi
Address: 10541 Ben C. Pratt Six Mile Cypress Pkwy, Fort Myers, Florida 33966	
Phone #: 239-225-2651 Email: TWMclean@drhorton.com	
STRAP #: 18-46-25-28-0000A.0000, 0010, 0020, & 0030	
STRAP #: 18-46-25-28-0000A.0000, 0010, 0020, & 0030 Representing: DR Horton for Creek Side Preserve ADM 2016-00	
IS THIS A VARIANCE OR APPEAL? (PLEASE SELECT ONE) Please provide specific sections of the code or ordinance to which the variance or appeal appl	¢
BUILDING CODE ASCE 24-05 COASTAL PLAIN MANAGEMENT ASCE 24-05 FIRE CODE FLOOD PLAIN MANAGEMENT ASCE 24-05 LIFE SAFETY CODE MAR 2 8 2016	
L.D.C. MECHANICAL PLUMBING COMMUNITY DEVELOPM	ENT
If this is an appeal of an administrative decision, please indicate the official who made the decision. I Request that this matter be scheduled for a hearing before the Lee County Board of Adjustment and Appeals. My reason for this request is as follows: (Provide additional sheets if needed.)	
Please see the attached memorandum of variance justification.	
	,
I hereby certify that to the best of my/knowledge, the information submitted for this hearing is tr correct. Signature Authorization:	ue and
NOTE: Provide ten (10) copies of all backup information for BOAA members. If there are sealed plans/drawings for the project for which the appeal/variance is requested, the architect/enginee sealed the plans or drawings MUST be present at the hearing.	ed r who
The applicant's presence is required for a case to be heard by this board. Hearing dates are usually arranged for Thursday morning at 10:00 a.m. Applications must be received at least 10 WORKING DAYS before the hearing date.	
FEE: \$100.00 - Make check payable to Lee County Board of County Commissioners This application must be submitted to the Lee County Community Development Permit Center.	
Revised 12/8/14	

s:\committees\boaa\boaa.doc



March 28, 2016

Robert Stewart Building Offical Lee County Community Development 2301 McGregor Boulevard Fort Myers, Fl 33901

RE:

Creekside Preserve

Buildings 12-17 & 24-32

Dear Mr. Stewart:

Pursuant to our recent discussion please find attached an application for a Variance from the Florida Building Code, 5th Edition (2014), from section ASCE 24-05. Please review the application and supporting documentation and schedule a hearing before the Board of Adjustment and Appeal

Should you have any questions or need further documentation please contact me at (239) 470-7321.

Sincerely.

Thomas W. McLean, P.E.

Land Development Project Manager

D.R. Horton Inc.

DECEIVED MAR 2 8 2016

COMMUNITY DEVELOPMENT

ADM 2016-00003



To:

Lee County Board of Adjustments and Appeals

From:

D.R. Horton, Inc.

Re:

Creekside Preserve-Building Code FFE Variance Justification

Date:

April 6, 2016

Background

The Creekside project was initiated in 2013 with a design based on 42 buildings with an amenity and roadway infrastructure. The project was designed in accordance with the Lee County, SFWMD and FEMA rules and regulations including the following elevation requirements:

- Minimum Roadway EL. 5.75 NAVD
- Minimum FFE 10.0 NAVD
- Lake Control Elev. 2.8 NAVD
- Existing Perimeter Grades 2 5 NAVD

The project was originally conceived as a single phase and all of the infrastructure including roadway, drainage system, sanitary sewer, and potable water were designed to accommodate the above design elevations. The site is constrained with low lying preserve areas around the west and north project limits. The great difference between the control elevation, existing perimeter grades, and required minimum finished floor elevations made for significant challenges during the grading design for the project, especially with respect to driveway grading and accessibility. The project design is such that the building elevations and site grading function as a unit. The approved site plans include the setting of the minimum finished floor elevation for each of the buildings based on the 2008 FEMA base flood elevation of 10.0' NAVD. All of the site grading and infrastructure was designed around this central elevation requirement. Currently 27 buildings have been constructed or are under construction, leaving 15 buildings to be constructed.



Variance Request

Lee County formally adopted the 2014 Florida Building Code in June of 2015, two years after the project design was completed and permitted. ASCE 24-05 requires a 1 foot freeboard elevation above the base flood elevation for setting the minimum finished floor elevation. This would place the minimum finished floor elevation at 11 NAVD, 8.2 feet above the wet season water table and 10.2 feet above the dry season water table.

This request is for a variance from ASCE 24-05 to not provide the 1 foot freeboard over the base flood elevation, in accordance with Chapter 6, Article IV, Division 1, Subdivision VII of the Lee County Land Development Code.

Considerations for issuance of variance

In reviewing requests for variances, the Board of Adjustment and Appeals will consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this article, and the following:

(1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;

The variance request seeks relief from the requirement for a 1 foot freeboard over and above the FEMA base flood elevation, for the remaining 15 buildings. No buildings will be placed lower than the base flood, nor will any of the buildings be placed within a floodway, which will prevent material and debris being swept onto other lands.

(2) The danger to life and property due to flooding or erosion damage;

The variance request seeks relief from the requirement for a 1 foot freeboard over and above the FEMA base flood elevation, for the remaining 15 buildings. No buildings will be placed lower than the base flood elevation which will prevent danger to life and property due to flooding or erosion damage.

(3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;

The variance request seeks relief from the requirement for a 1 foot freeboard over and above the FEMA base flood elevation, for the remaining 15 buildings.

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No buildings will be placed lower than the base flood elevation which will prevent flood damage on current and future owners.

(4) The importance of the services provided by the proposed development to the community;

The project is a residential community and provides housing for its residents. The project does not provide services of importance to surrounding community.

(5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;

This request is for the remaining 15 buildings of a 42 building residential condominium project. The project exists, the building locations are fixed and the majority of the infrastructure has been constructed. There is no opportunity to provide an alternate location.

(6) The compatibility of the proposed development with existing and anticipated development;

This project is a 168 unit multi-family residential project with RM-2 zoning. The project has been designed and permitted and found compatible with the surrounding land uses.

(7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;

This project is included in the Suburban Future Land and has been found in compliance with the Lee Plan. The project has received a development Order and SFWMD permit and was found not create impacts to the floodplain.

(8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;

This request will not alter the currently designed, permitted and constructed project access. The access was found to be in compliance with the LDC and will provide a safe access for emergency vehicles.

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(9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

The project is not located in a coastal area and as such wave action is not applicable.

(10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

This project is a private/gated 168 unit multi-family residential project and the request will not increase costs for provision of governmental services.

Conditions for issuance of variance

Variances may be issued only upon:

(1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;

The variance request seeks relief from the requirement for a 1 foot freeboard over and above the FEMA base flood elevation, for the remaining 15 buildings within an existing residential development containing a total of 168 units in 42 buildings. The existing 27 buildings and the project infrastructure including lake, berms utilities and roadways have been constructed in accordance with the Florida Building Code current at the time of the construction. The project is surrounded by offsite conservation/preservation areas, and includes on site conservation areas as well. The buildable area is confined with respect to both its horizontal extents as well as the surrounding existing elevations. In addition the project has been recorded with the State as a condominium which eliminates the ability to modify the location, appearance or shape of the buildings. The current project design around the 10.0 NAVD base flood elevation (Zone AE) resulted in the infrastructure construction at maximum allowable slopes. The addition of a 1 foot freeboard cannot be accommodated based upon the above noted unique circumstances.



- (2) Determination by the Board of Adjustment and Appeals that:
 - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;

As noted above the requirement for an additional foot of freeboard above the base flood elevation will render the remaining building areas undevelopable. The additional foot would cause alterations of the building design including shape, appearance and location which are not allowable by the recorded condominium documents. Further, raising of the buildings would result in site slopes that are incompatible with the existing portions of the site and steeper than the maximum allowable slopes.

b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and articles; and

The project currently exists and was designed, permitted and constructed in compliance with the local and state requirements at that time. The buildings and site have been designed in accordance with the current FEMA base flood elevation for the AE zone at 10.0' NAVD. The project was found in compliance with the local and state codes with respect to projected flood heights. Continuance with the original approvals will not cause any change to the projected flood heights. As such no extraordinary public expense, creation of nuisance, fraud or victimization of the public nor conflict with existing local laws will occur as a result of approval of this variance request.

c. The variance is the minimum necessary, considering the flood hazard, to afford relief;

As noted above the project site design was conducted based upon the requirement for finished floors to be at the base flood elevation of 10.0 NAVD. The proximity of surrounding existing preserve areas, as well as the projects wet season water table caused the site to be designed developed at maximum permissible slopes. Any increase in the finished floor elevation would result in slopes steeper than allowable. Therefore this request for relief from the 1 foot freeboard is considered the minimum variance necessary.



(3) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

The request is for relief from the requirement of 1 foot of freeboard above the base flood elevation. All buildings will be constructed at the minimum base flood elevation of 10.0 NAVD. Therefore this section is not applicable.

Justification for the variance request

The request is to allow relief from the requirement for 1 foot of freeboard above the base flood elevation of 10.0 NAVD for the finished floor elevations for the remaining 15 buildings of an overall 42 building (168 units) condominium development. Twenty seven of the buildings have been constructed along with the project's backbone infrastructure. The additional elevation requirement will place significant burdens on the project including: the requirement to adjust or revise the building locations, shape and/or appearance, including aesthetics; significant cost prohibition for the structures and site fill; alteration of the community feel and appearance; and the requirement for steeper than allowable slopes around the perimeter of the buildings. These burdens would render the remaining project undevelopable.

- The project is a residential condominium recorded with the State. The documents do not allow for any alteration of the site plan locations, shape, design or appearance of the buildings. In order to accommodate the additional 1 foot height the building locations would be required to be adjusted to allow for compliant site slopes. The building facades would be altered due to redesign of the unit and garage orientation.
- The project driveways are currently designed at the maximum slopes. This is due to the extreme difference in base flood elevation and wet season water table elevations as well as existing perimeter grades. The garages cannot be raised. Provision of the additional foot of elevation would require the provision of stairs in the garages. The internal garage area is not large enough to accommodate stairs and allow for parking of cars within. This would force cars to be parked outside violating the LDC parking requirement/provision for the project.

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- Due to the above mentioned disparity in elevations between the base flood and wet season water table, the buildings are located a specific distance from the lake control elevation line. This distance is based on maximum allowable slopes. The addition of one foot would cause an exceedance of the allowable slopes.
- For the buildings located along the project perimeter and along existing offsite conservation/preserve areas, the buildings are located a certain distance away from the perimeter. Again, this distance is based on maximum allowable slopes. The additional height would result in noncompliance with the maximum slope requirement.
- The additional foot in height will stand out drastically especially where newer buildings are directly adjacent to existing buildings, fostering a divide in the community and creating a feeling of difference. Site grading between the buildings would be required to be altered and would result in either steeper than allowable slopes or inadequate lot drainage.
- The additional foot will result in thousands of dollars of increase in construction costs, for pad fill, stem walls, stairs, railings, etc. In order to be competitive in the homebuilding environment, DR Horton must trim budgets and manage margins. These additional costs must be passed on to the consumers, dramatically affecting the viability of the remaining buildings based on the current demographics of the buyers.
- The extreme difference in grades especially between the perimeter grades/lake control elevation and the proposed higher finished floor elevation will affect the views that the residents pay so dearly for. For comparison sake, the typical lot grading places the finished floor elevation approximately 3-4 feet above the lake control elevation. With the additional 1 foot elevation the difference at Creekside is over 8 feet. This effectively eliminates any use of the rear lots. The much sought after view of the sun setting over the lake will be substantially altered.
- The current base flood elevation of 10.0 NAVD was based on an overly conservative modelling approach and is considered not realistic by many in the design community so much so that Map Revisions are a common place. The addition of the foot over the base flood makes the unrealistic elevation that much worse.

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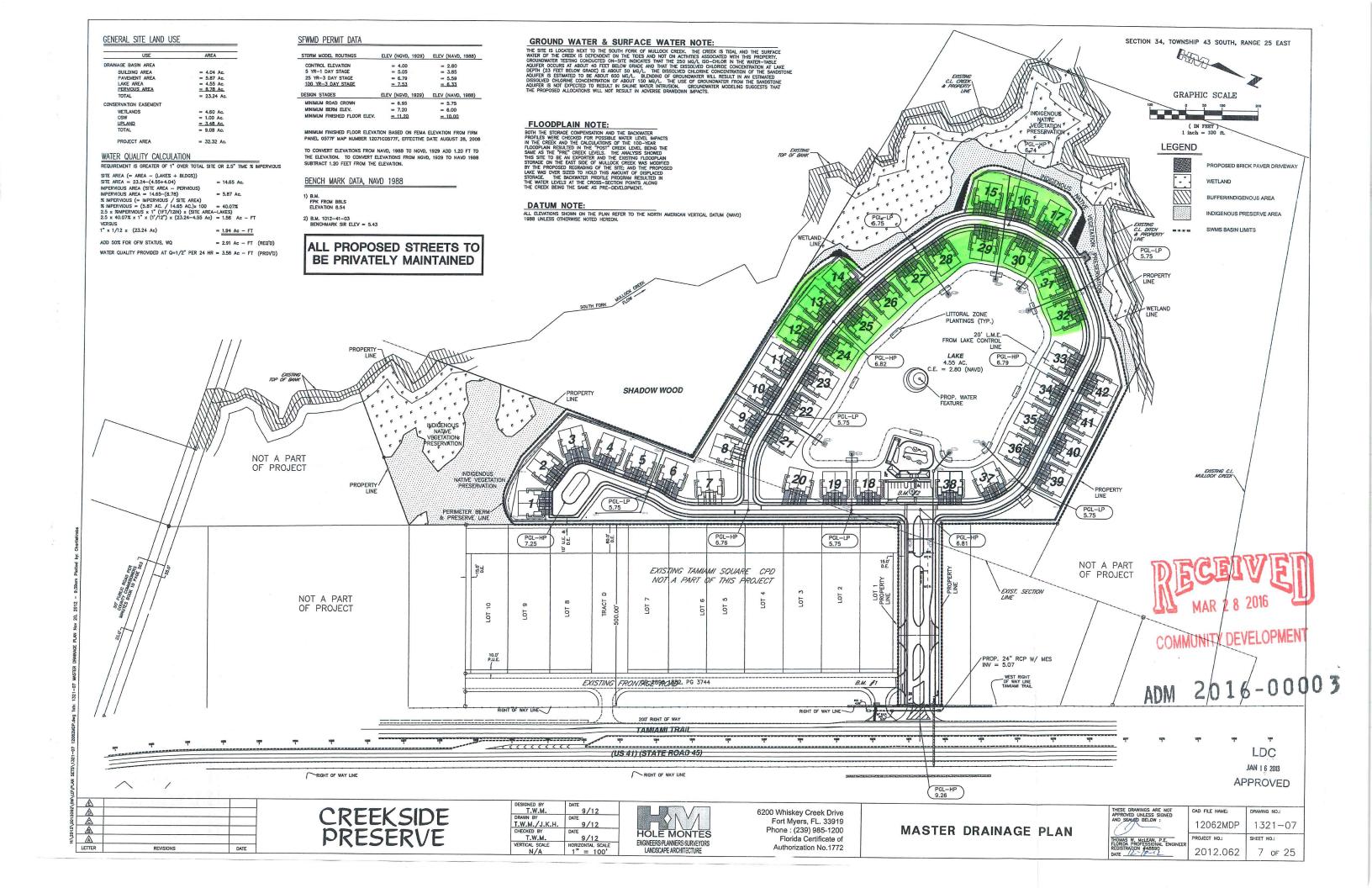
• The project was designed and later constructed under the premise of a Lee County Development Order approval. DR Horton acted in good faith in abiding by the rules and regulations in place at the time of the approval and relied upon the approvals of Lee County including the building finished floor elevations and site grading in the construction of the community infrastructure. The project has been substantially completed in accordance with these approvals. This significant change creates definite difficulties, hardships and a competitive disadvantage in the continuation of the project. Enforcement of this new regulation could be considered an equitable estoppel issue.

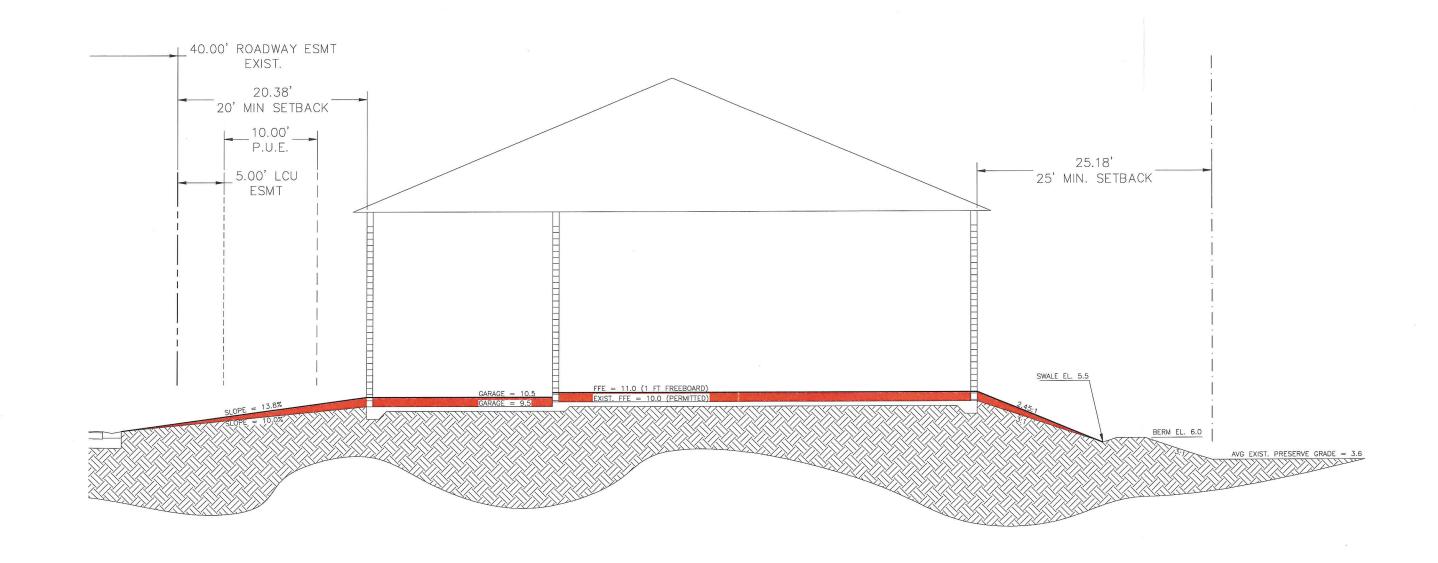
In Summary

The Creekside Preserve project is a quaint smaller project that is tucked into a very beautiful little corner of native Fort Myers Florida. The project limits are established with most being adjacent to preserves under the protection of conservation easements. The project is substantially compete and has been designed and constructed under an earlier code provision that allowed for the quaint design. There simply is not enough room to safely and aesthetically adhere to the new regulations. This new requirement could effectively eliminate the viability of moving forward.

Thank you,

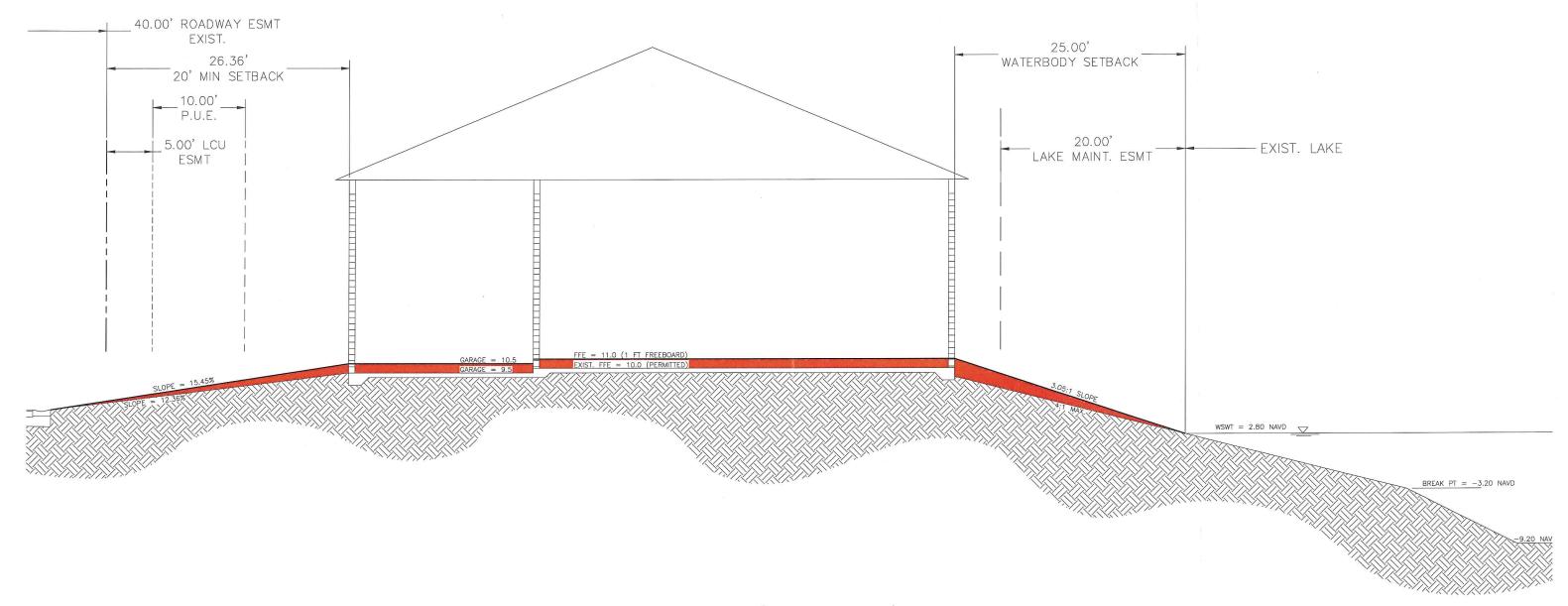
D.R. Horton, Inc.



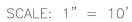


TYPICAL PRESERVE SECTION (BLDG 15)
scale: 1" = 10'





TYPICAL LAKE SECTION (BLDG 24)





COMMUNITY DEVELOPMENT

ADM 2016-00003