



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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Date: October 14, 2011
To: Interested Person
From: Kathy Harnden, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 11-166895 AD

GENERAL INFORMATION

Applicant: Kevin Partain
Urban Visions
223 NE 56th Ave
Portland, OR 97213

Owner: Dorothy E. Brault
8805 SE 9th Ave
Portland, OR 97202-7007

Site Address: 8805 SE 9TH AVE

Legal Description: BLOCK 22 LOT 1&8, SELLWOOD
Tax Account No.: R752701680
State ID No.: 1S1E26BB 03700
Quarter Section: 3931

Neighborhood: Sellwood-Moreland, contact Ellen Burr at 503-234-2233.
Business District: Westmoreland, contact Tom Brown at 53-381-6543.
District Coalition: Southeast Uplift, contact Leah Hyman at 503-232-0010.

Plan District: None
Other Designations: None

Zoning: R5a – Residential 5,000, a high density, single-dwelling residential zone with the “a” (Alternative Design Density) overlay zone

Case Type: AD – Adjustments
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant proposes to construct a single dwelling residence on a newly created lot. The southeast corner of the proposed house will extend into the 10-foot wide front setback by

approximately 2 feet, 6 inches. Therefore, the applicant requests a reduced setback of 7.5 feet. This requires approval of an adjustment to the 10-foot setback standard of 2 feet, 6 inches.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33.805.040 A.-F., Adjustments, cited below.

ANALYSIS

Site and Vicinity: The property is located in SE Portland, approximately 630 feet east of the Willamette River and 390 feet north of Portland's south City Limits boundary. Existing development is a mix of attached and detached single and multi-dwelling residences. A rail line runs northwest to southeast approximately 150 feet east of the site.

Zoning: The site is located in the R5 zone, which is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet. Newly created lots must have a minimum density of 1 lot per 5,000 square feet of site area. The provisions of the "a" overlay are not relevant to this proposal.

Land Use History: City records indicate that a property line adjustment, LU 11-142971 PR, was recently completed on this site and created the current lot.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **September 16, 2011**. The following Bureaus have responded with no issues or concerns:

The Bureau of Environmental Services responded with general comments: Exhibit E.1 contains additional details.

The Bureau of Transportation Engineering responded with no concerns.

The Water Bureau responded that an existing 5/8" metered service (Serial #20242624, Account #2959988200) provides water to this location from the existing 6" DI water main in SE 9th Ave. This service may potentially be used to provide water to the proposed new house, but will need to adhere to City code 21.12.010. This requires all new building construction, or any construction that will need water, to have a water service and meter of appropriate size installed within the public right-of-way and within the specific property boundary/frontage that it will serve. Further, a Water Bureau review for fixture count must be completed at the time of building permit submittal to determine the appropriate services and meter size for this location. All applicable costs are the responsibility of the applicant. The estimated static water pressure range for this location is 64 psi to 81 psi at the existing service elevation of 83 feet. Exhibit E.3 contains additional details.

The Fire Bureau responded with no concerns.

The Site Development Section of BDS responded with no concerns.

Life Safety responded that a building permit for the proposal is currently under review.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 16, 2011. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose of Adjustments The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the

regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

The applicant requests an adjustment to the front setback standard, which requires a 10-foot wide, open area for the length of the property adjacent to SE Grand Street. The southwest corner of the proposed house will project into the setback approximately 2.5 feet. The requested setback would thus allow the southwest corner of the house to be 7.5 feet from the front property line. The front property line is located along SE Grand Street, which has not been developed by the City of Portland, although a portion of the street is paved and used as an access driveway to a housing development located southwest of the subject property.

SE Grand Street is considered the front property line, even though the street is not developed, because it is the shortest "street" adjacent to the new lot, and per Portland City Code, Title 33.910-22, the front lot line of a corner lot must be the shortest lot line abutting a street, regardless of the street's state of development.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and
- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and
- D.** City-designated scenic resources and historic resources are preserved; and
- E.** Any impacts resulting from the adjustment are mitigated to the extent practical.
- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

FINDINGS AND CONCLUSIONS

The applicant's proposal meets all the relevant approval criteria. The purposes of building setback requirements are to maintain light, air, separation for fire protection, and access for fire fighting. Setback standards also reflect the general building scale and placement of development in the City's neighborhoods and promote a reasonable physical relationship between residences. They promote options for privacy for neighboring properties and provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.

The applicants' request is to allow a small portion of the southwest corner of the house to be located within the required building setback, or 7.5 feet from the west property line. There will be no impacts on light or air from this proposal as this side of the building faces an under-developed street. Further, privacy will not be an issue, as the house on the adjacent property to the south is situated on the east side of that property and a wooden fence separates the lots.

Across the right of way from the proposed house is a multi-dwelling structure that faces SE Lynn.

There will be adequate separation for fire protection and access for fire fighting as this structure is located on a corner lot with access from both SE Lynn and SE Grand. The proposal will maintain the building's compatibility with the neighborhood and the existing architectural diversity of the area and will not have any effect on the outdoor areas on the site. Only one Adjustment has been requested, and there are no scenic or historic resources on this site. It is not located in an environmental zone, so the criteria related to these issues do not apply. Consequently, all of the relevant approval criteria are met and the proposal can be approved in substantial compliance with the proposed site plan.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant has demonstrated that the applicable approval criteria have been met. The request to allow a small corner of the proposed house to intrude 2.5 feet into the 10 foot front setback, located on an unimproved street frontage, meets the intent of the ADU design standards. The proposal will not detract from the livability or appearance of the surrounding multi-dwelling residential area, and there are no adverse impacts for which mitigation would be required.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Code Section 33.110.220, Front Building Setback, to reduce the minimum required building setback from the front property line from 10 feet to 7.5 feet (a 2.5 foot difference) in general compliance with the approved site plan, Exhibit C-1, signed and dated October 3, 2011, subject to the following conditions:

- A. As part of the building permit application submittal, the required site plan, C.1 and any additional drawings, must reflect the information approved by this land use review as indicated in Exhibit C.1. The sheet on which this information appears must be labeled, "Proposal as approved in Case File # LU 11-166895_AD.

Staff Planner: Kathy Harnden

Decision rendered by:  on **October 11, 2011**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 14, 2011

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on August 12, 2011, and was determined to be complete on **September 15, 2011.**

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on August 12, 2011.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: January 13, 2012.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on October 28, 2011** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days

of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **October 31, 2011 – (the first business day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

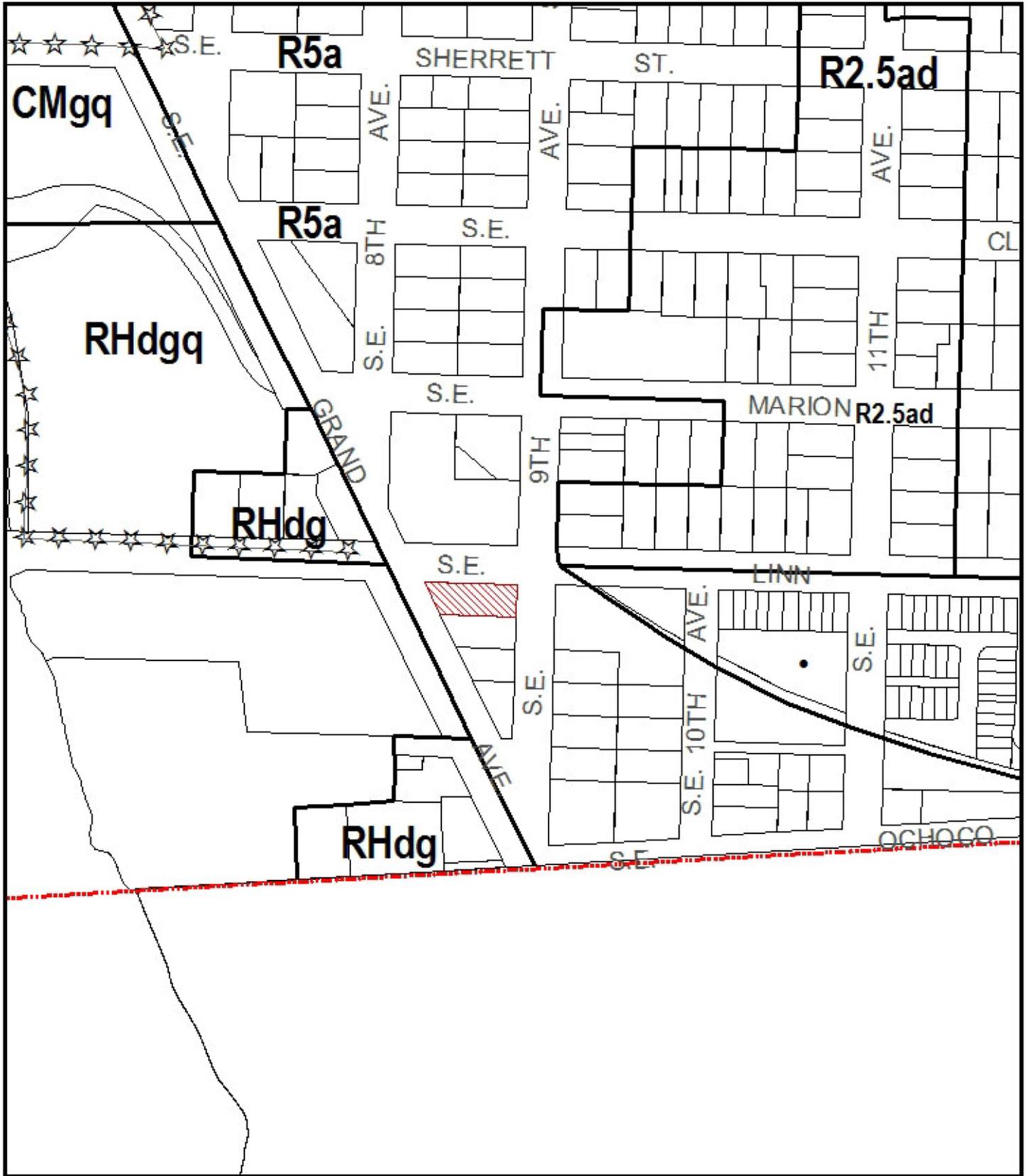
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Life Safety
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING



Site



Historic Landmark

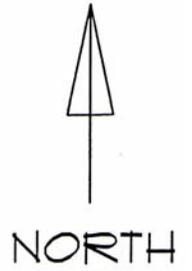


NORTH

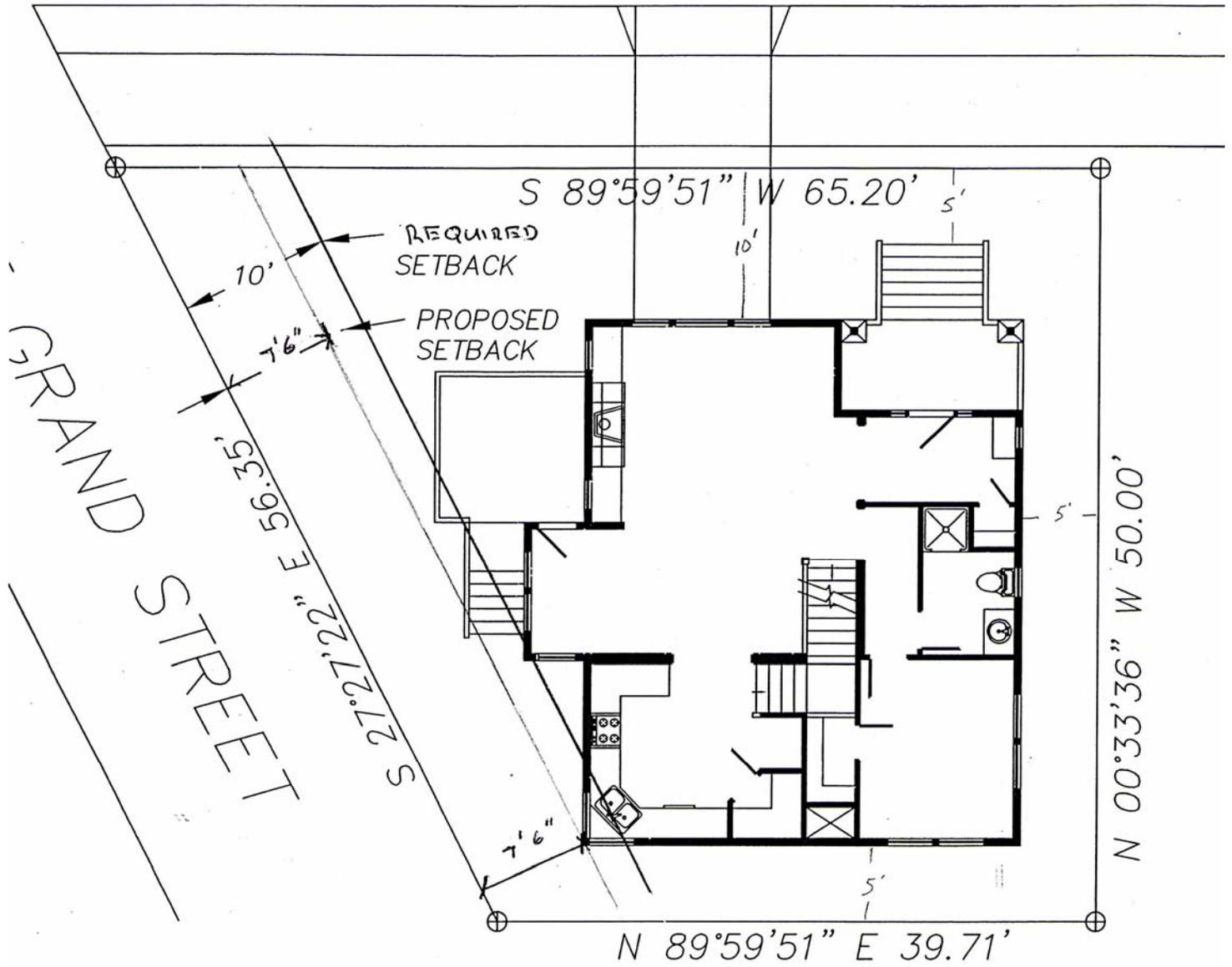
File No.	LU 11-166895 AD
1/4 Section	3931
Scale	1 inch = 200 feet
State_Id	1S1E26BB 3700
Exhibit	B (Aug 22, 2011)

SITE PLAN

1"=10'-0"



SE LINN STREET



Case No: LU-11-166895 AD
Exhibit: C.1