



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Charlie Hales, Mayor  
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**Date:** March 22, 2013  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto:Sylvia.Cate@portlandoregon.gov)

## **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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 13-113829 AD**

#### **GENERAL INFORMATION**

**Applicant/Owners:** Donald B and Karen S Livingstone  
2697 SW Vista Ave / Portland, OR 97201-1794

**Representative:** Don Livingstone / Livingstone Studios Architecture And Planning LLC  
2697 SW Vista Ave / Portland OR 97201

**Site Address:** 2653 SW TALBOT RD  
**Legal Description:** BLOCK G S 1/2 OF LOT 2, GREENWAY  
**Tax Account No.:** R343102500  
**State ID No.:** 1S1E08AA 04100  
**Quarter Section:** 3326  
**Neighborhood:** Southwest Hills Residential League, Nancy Seton at 503-224-3840.  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.  
**Zoning:** R5, Single Dwelling residential 5,000  
**Case Type:** AD, Adjustment  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes to add a detached, single-car [346.5 square feet] garage to the site. The applicant is eligible for the front setback averaging regulation at 33.110.120, and is therefore proposing a 3 foot 9 inch front setback, the average of the two garage setbacks on abutting properties. This setback is allowed by right. The applicant also proposes to locate the new garage 1 foot from the south [side] property line. Garages in the R5 zone are allowed to be at a 0 foot side and rear setback, if they meet certain requirements [size, height, and distance from the front property line]; however, because the lot is a through lot, the garage does not meet the distance requirement from the front property line to allow the garage to not meet the required 5 foot setback. Therefore, the proposed garage is subject to the required 5 foot side setback for structures in the R 5 zone is 5 feet. The applicant requests an Adjustment to reduce the side setback from 5 feet to 1 foot. Attached to this Decision is a zoning map and plans depicting the proposal.

#### **Relevant Approval Criteria:**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

## ANALYSIS

**Site and Vicinity:** The site is a 5,500 square foot lot in the R5 zone, with frontage along SW Talbot Road and SW Summit Drive, which makes the site a ‘through lot’ [i.e. a lot that has frontage on two streets, and where the lot frontages do not intersect.] The site is steeply sloping with an average slope of 34.8%. The site is developed with a 2,298 sq ft house built circa 1921. The 2 story house is centrally located on the lot. Surrounding development is single dwelling residential, with lots and parcels zoned R5 to the north, west and south, and R10 zoned lands to the east. Many lots in this area are steeply sloped and are designated within a Potential Landslide Hazard Area. Both SW Talbot Road and SW Summit Drive are designated Local Service Streets for all modes.

**Zoning:** The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **February 25, 2013**. The following Bureaus have responded with no issues or concerns:

- *Fire Bureau* responded with no concerns
  - *Bureau of Parks-Forestry Division* responded with no concerns
- The *Bureau of Environmental Services* responded with no concerns, but provided information for the applicant in preparation for building permit review
- The *Bureau of Transportation Engineering* responded with no concerns
- The *Water Bureau* responded with no objection and notes that water service is already available to the site.
- The *Site Development Section* of BDS responded with no objections, but notes that a geotechnical engineer report maybe required at time of building permit review.
- The *Life Safety Section* of BDS responded with no objections, but notes that a building permit is required for the proposed project.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on February 25, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. An adjacent neighbor called city staff with no objections, but had general questions about the zoning and building code as it applies to the project. The neighbor also noted that the applicant had discussed the project with her and had agreed to locate the garage 18-inches from the property line to provide additional separation of the structures for maintenance purposes. The applicant has confirmed this agreement.

## ZONING CODE APPROVAL CRITERIA

### Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

### 33.805.010 Purpose (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 Approval Criteria**

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

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The purpose of the regulation proposed to be Adjusted is found at 33.110.220.A. *Purpose*, which states:

The building setback regulations serve several purposes:

- They maintain light, air, separation for fire protection, and access for fire fighting;
- They reflect the general building scale and placement of houses in the City's neighborhoods;
- They promote a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties;
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- They 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; and
- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

Given the proposed placement of the new garage in relation to adjacent development, the proposed reduced side setback will not impinge on air or light. The Fire Bureau notes no objections to the proposal. The proposed scale and placement of the garage is similar to existing garages in the immediate area; in fact the garage has a reduced front setback due to the Setback Averaging provision at 33.930.120, which allows the applicant to set back the garage at 3 feet 9 inches, the average setback between the two garages adjacent to the north and the south of the site.

The applicant notes that the general 'front yard' of the site is approximately 50 x 38 feet. By offsetting the garage to the south and closer to the side property line, the open yard is preserved while locating the garage similarly to many other garages in the neighborhood. Many nearby garages appear to be placed much closer to the side property line than the required 5 feet, thus the proposal results in a reasonable relationship between structures. Because the site is steeply sloping, the proposed reduced side setback provides flexibility to locate the new garage in such a way as to keep an open front yard which is slated to have an outdoor seating area in the future.

Summit Drive has a sidewalk along the eastern edge of the ROW, with a curb only along the western edge. However, the proposed garage is proposed to match the front setback through setback averaging, which allows the garage to be placed at 3 feet 9 inches. This dimension is so close to the edge of the public right of way, that any car trying to park in front of the garage door would not only block the sidewalk, but project out into the roadway and travel lane, which is extremely unlikely unless a vehicle is so parked for unloading. However, the proposed Adjustment is to reduce

the required 5 foot side setback to 1 foot, which will have no impact on parking or the public right of way. For all these reasons, this criterion is met.

- 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

**Findings:** The proposed reduced side setback is for a new garage that is designed to compliment the existing residence. The addition of a garage will improve livability for the applicant as well as adjacent neighbors because a parking space will be provided on the site and thereby reducing the pressure on available on street parking. For these reasons, this criterion is met.

- 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

**Findings:** Only one adjustment is requested. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- 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:** The site is not within an environmental zone. This criterion is not applicable.

## 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 proposal to reduce the side setback for a new garage from 5 feet to 18 inches meets all of the applicable approval criteria and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.110.220 to allow a new garage to reduce the required 5 foot side setback to 18 inches along the southerly property line, in substantial conformance with

the approved site plan, Exhibit C-1, signed and dated March 19, 2013, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-113829 AD."

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on March 19, 2013**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 22, 2013**

**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 February 7, 2013, and was determined to be complete on February 20, 2013.

*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 February 7, 2013.

*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: June 20, 2013.**

**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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 5, 2013** 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](http://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 Adjustment Committee 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 Adjustment Committee 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 **April 8, 2013.**
- 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.

**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**

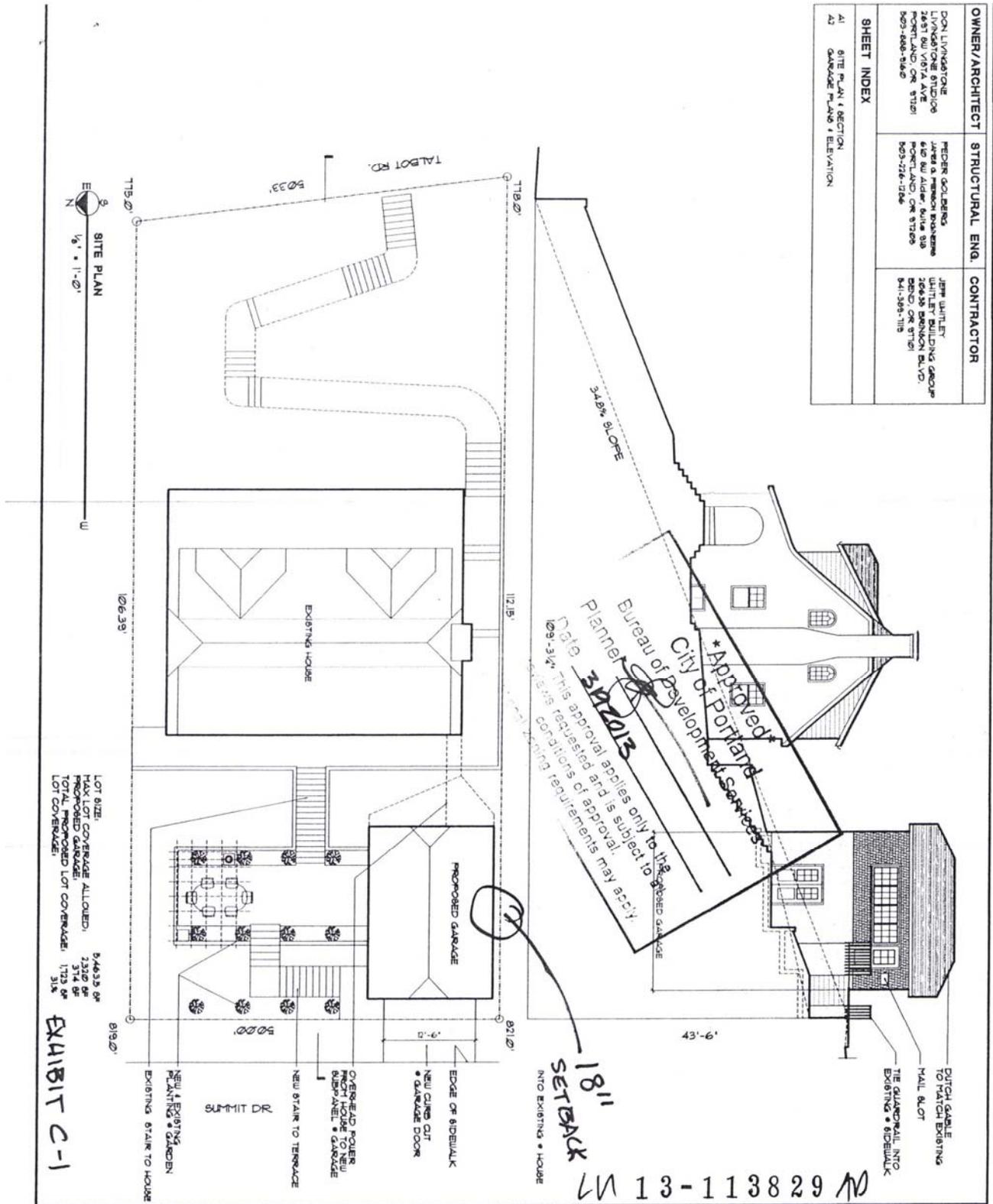
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Floor plan and Elevations
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Review Section of BDS
- F. Correspondence:
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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).**



<b>OWNER/ARCHITECT</b>	<b>STRUCTURAL ENG.</b>	<b>CONTRACTOR</b>
DON LIVINGSTONE LIVINGSTONE STUDIO 2651 SW VISTA AVE PORTLAND, OR 97201 503-888-9160	PEDER SOLBERG Jared & Mariah Robinson 610 SW Alder, Suite 210 PORTLAND, OR 97205 503-226-1706	JPM QUINCY UTILITY BUILDING GROUP 26635 BUSHON BLVD. BEND, OR 97101 541-388-1115
<b>SHEET INDEX</b>		
A1	SITE PLAN & SECTION	
A2	GARAGE PLAN & ELEVATION	



<b>A1</b>	Sheet No.	<b>TALBOT HOUSE ADDITION</b> <b>KAREN &amp; DON LIVINGSTONE</b> <b>2653 SW TALBOT RD</b> <b>PORTLAND - OREGON - 97201</b>	<b>Date:</b> 1 FEB 2013 <b>Revision:</b>	<b>LIVINGSTONE STUDIOS</b> <b>ARCHITECTURE &amp; PLANNING, LLC</b> 2667 SW VISTA AV. PORTLAND, OR 97201 tel 503.888.9160 fax 503.293.8901
		W 13-113829 18" SETBACK INTO EXISTING HOUSE		