



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

Carmen Rubio, Commissioner  
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**Date:** March 15, 2023  
**To:** Interested Person  
**From:** Leah Dawkins, Land Use Services  
503-865-6734 / Leah.Dawkins@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 mailed copy of this document is only a summary of the decision. 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 22-214444 AD**

**GENERAL INFORMATION**

**Applicant:** Virginia Bowers, Bureau Of Environmental Services  
1120 SW 5th Ave #613  
Portland OR 97204  
(503) 823-6471 / virginia.bowers@portlandoregon.gov

**Owner:** City of Portland  
1120 SW 5th Ave, #1000  
Portland, OR 97204-1912

**Site Address:** 8729 SE MALDEN ST

**Legal Description:** BLOCK 3 LOT 3&4 TL 1400, EDGE O'TOWN VILLAS  
**Tax Account No.:** R236000690  
**State ID No.:** 1S2E21CA 01400  
**Quarter Section:** 3839

**Neighborhood:** Lents, contact at lentsneighborhood@gmail.com  
**Business District:** Lents Grown Business Association, contact lentsgrown@gmail.com. & Eighty-Second Ave of Roses Business Association, contact at 82ndaveba@gmail.com

**District Coalition:** East Portland Community Office, contact at info@eastportland.org

**Plan District:** Johnson Creek Basin  
**Zoning:** Residential Multi-Dwelling 1 (RM1); Environmental Conservation overlay (c); Environmental Protection overlay (p)

**Case Type:** Adjustment (AD)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:** The applicant is proposing to eliminate the front lot line of the subject site in order to vacate an approximately 440-foot unimproved segment of SE Malden Street located just east of SE Malden Court and SE 87<sup>th</sup> Avenue. The site is adjacent to the Springwater Corridor Trail. The site is owned by the City of Portland and is part of the larger West Lents Floodplain Restoration project to be constructed in 2024. There is no future development proposed for the site other than the natural restoration project, and the site will remain open space.

The current zoning on the site, RM1, requires a front lot line of 15-30 feet, depending on development type. The proposed street vacation of SE Malden Street will eliminate the front lot line of the subject site, triggering an adjustment to the lot dimension standards of 33.612.200, Lot Dimension Standards for Lots in Multi-Dwelling and IR Zones. This site is proposed to be rezoned to Open Space in the future, but in order to approve the street vacation request, the applicant must obtain an Adjustment to the lot dimension standards for the current RM1 zoning on the site.

**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, below, of Section 33.805.040, Adjustment Approval Criteria, have been met.

## ANALYSIS

**Site and Vicinity:** The subject site is 34,700 square feet and bounded by SE Malden Street to the south and the Springwater Corridor Trail to the west. The site is an irregular triangular shape. The site is currently vacant. The site was previously developed with a single dwelling structure and accessory structures which were removed in 2014. The site is relatively flat and contains several trees and undergrowth. The surrounding development consists of vacant open space to the south of the site and multi-dwelling development to the east of the site.

**Zoning:** The **RM1 zone** is a low-scale multi-dwelling zone that is generally applied in locations intended to provide a transition in scale to single-dwelling residential areas, such as the edges of mixed-use centers and civic corridors, and along or near neighborhood corridors. Allowed housing is characterized by one to three story buildings that relate to the patterns of residential neighborhoods, but at a somewhat larger scale and building coverage than allowed in the single-dwelling zones. The major types of new development will be duplexes, triplexes, rowhouses, courtyard housing, small apartment buildings, and other relatively small-scale multi-dwelling and small-lot housing types that are compatible with the characteristics of Portland's residential neighborhoods.

The **Environmental Protection "p" zone** provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

The **Environmental Conservation "c" zone** conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

The **Johnson Creek Basin plan** district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions. This plan district is intended

to be used in conjunction with environmental zoning placed on significant resources and functional values in the Johnson Creek basin, to protect resources and functional values in conformance with Goal 8 of the Comprehensive Plan and Statewide Planning Goal 5.

**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 2, 2023**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Portland Bureau of Transportation (Exhibit E.2);
- Water Bureau (Exhibit E.3); • Fire Bureau (Exhibit E.4);
- Site Development Section of the Bureau of Development Services (BDS) (Exhibit E.5); and
- Life Safety Review Section of BDS (Exhibit E.6).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated 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 applicant proposes to change the lot dimensions of the subject site by eliminating the front lot line of the property in order to facilitate the vacation of SE Malden Street. The purpose of the Lot Dimension Standards in Multi-Dwelling zones (33.612.200) is as follows:

*A. Purpose. These standards ensure that:*

- *Each lot has enough room for development that meets all the requirements of the zoning code;*
- *Lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible.*
- *The multi-dwelling zones can be developed to full potential; and*
- *Housing goals for the City are met.*

Staff finds that the proposal equally meets the purpose of the lot dimension standards because the subject site will no longer be available for residential development. For all intents and purposes, the site will be open space and no longer function as multi-dwelling property. Therefore, retaining a front lot line with frontage on a street, which is intended to facilitate residential development, is not needed.

The subject site itself will become part of a larger environmental restoration project encompassing the subject site and several surrounding lots, thus rendering the multi-dwelling lot dimension standards for the subject site no longer applicable. Additionally, SE Malden Street is proposed to be vacated and become part of the restoration project. The subject site is expected to be rezoned to Open Space in the future, however the street vacation is proposed to occur prior to any rezoning of the site, triggering the need for an adjustment to remove the front lot line requirement for the RM1 zone.

The applicant has provided a deed restriction document, to be recorded against the subject site, which requires the property to be maintained in perpetuity for open space, passive recreational, or wetlands management. The deed restriction will ensure that even if the site

is not eventually rezoned to Open Space, the site cannot be developed as a residential property.

Removing the front lot line requirement and restricting the development potential of the site has a negligible impact Citywide housing goals because the site have very little development potential. A large portion of the site is constrained by 100 year floodplain and environmental protection zoning. The remainder of the site is within the environmental conservation overlay zone. With a condition requiring the recording of the deed restriction ensuring that no future residential development can be proposed for the site, this criterion can be 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 proposal will not detract from the livability or appearance of the residential area and will likely enhance the appearance of the area for the adjacent remaining residential properties. Because the site is part of a larger resource enhancement project and will be retained as open space, the site will eventually be replanted with native plants and trees, becoming an attractive open area resource for the adjacent residential neighborhoods and users of the Springwater Corridor Trail. The proposal will become consistent with the OS zone characteristics and will not detract from the appearance of the adjacent residential area. 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:** There is only one adjustment being requested, therefore this criterion does not apply.

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

**Findings:** This site is not within the boundaries of a Historic, Conservation, or National Register District. This criterion is not applicable.

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

**Findings:** The primary impact from the adjustment will be the reduction of lots available for multi-dwelling development in the area. However, as this site is primarily in the 100-year flood plain, it is not an appropriate site for multi-dwelling development and is better suited to its proposed use as open space in a Johnson Creek restoration area. The tangible impact from removing the development potential of this site is minimal. 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:** This proposal will have no detrimental environmental impacts on the resource and will in fact increase the value of the resource by allowing the site to become part of the larger resource enhancement area. The overall area will become undeveloped open space and will be enhanced through the West Lents Floodplain Restoration Project. This criterion is met.

## **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

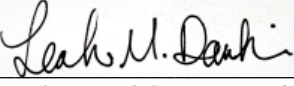
Staff finds that the proposed Adjustment is consistent with the purpose of the lot dimension standards and for the expected use of the site as open space. No significant negative impacts are expected, and the proposal will not detract from the appearance or livability of the surrounding environmental or residential areas. With a deed restriction recorded against the subject site, the Adjustment approval criteria can be met, and this proposal must be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to the minimum front lot line dimension standards of the RM1 zone (33.612.200), resulting in the elimination of the front lot line for the subject site, per the approved street vacation plan (Exhibit C.1), signed and dated March 13, 2023, subject to the following condition:

- A. Prior to the recording of the street vacation of SE Malden Street, a deed restriction matching or substantially similar to Exhibit A.3 must be recorded against the subject site, preventing any future residential development of the subject site and maintaining the site as open space in perpetuity.

**Staff Planner:** *Leah Dawkins*

**Decision rendered by:**  **on March 13, 2023**  
By authority of the Director of the Bureau of Development Services

**Decision mailed:** *March 15, 2023*

**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 December 28, 2022, and was determined to be complete on January 30, 2023.

*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 December 28, 2022.

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 May 30, 2023.**

**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 March 29, 2023** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents.

**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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 will be recorded with the Multnomah County Recorder. *Unless appealed*, the final decision will be recorded after **March 29, 2023** by the Bureau of Development Services. The applicant does not need to record the final decision with the County Recorder.

**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
  - 1. Original Narrative
  - 2. Revised Narrative-submitted 1/30/23
  - 3. Draft Deed Restriction Document
- B. Zoning Map (attached)
- C. Plans/Drawings
  - 1. Proposed Street Vacation Map (attached)
- 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. Life Safety Review Section of BDS
- F. Correspondence: (none received)
- 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).**