

**MEMORANDUM**

To: Planning Commission

From: Kinsey O’Shea, AICP, Senior Town Planner

Date: August 11, 2023

Subject: ROW 23-0002/ORD 2033 Request to vacate approximately 0.13 and 0.09 acres (total 0.22 acres) of Town-owned Right-of-way in the 1200 block of Airport Road by Balzer & Associates, Inc. (applicant); on behalf of Habitat for Humanity of the New River Valley, (contract purchaser).

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**SUMMARY OF REQUEST**

**Nature of Request:** Vacation of Town-owned Right-of-Way

**Property Location:** Unbuilt street known as Airport Drive  
Unbuilt street known as Virginia Street

**Adjacent Tax Parcel Numbers:** 317- 2 31, 32, 34A and 317- 2 32A, 33, 34

**Parcel Size:** ±5,665 sf and ±3,745 sf (according to application)

**Present Zoning District:** R-4 Low Density Residential; Research & Development (R&D)

**Present Use:** Vacant/undeveloped

**Surrounding Uses:** North: Single-family residential; attached-unit residential  
East: Single-family residential  
South: Fire Station #2; Airport  
West: Vacant/undeveloped

**Proposed Zoning District:** Planned Residential

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**DEVELOPMENT APPLICATION AND BACKGROUND**

The property subject to this ROW vacation and rezoning request is currently occupied by two two-family dwellings (4 units) that would be demolished if the rezoning request is approved. The proposed development consists of two rows of townhome buildings oriented perpendicular to Airport Road and is discussed in the application and staff report for RZN23-0002.

This application is a request to vacate two portions of unbuilt town-owned right-of-way adjacent to the two rezone parcels. The portion of ROW on the north side of the development is approximately 5,666 square feet; while the portion of ROW on the south side of the development is approximately 3,745

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square feet. In total, approximately 9,410 square feet, or approximately 0.216 acres is proposed to be vacated. Currently, the ROW areas are grassy and wooded areas.

The proposed request to vacate town right-of-way accompanies the rezoning request, and would provide additional square footage to the development parcel. The application indicates that the space would be utilized for the drive aisle and back yard space for individual units.

#### Unbuilt Airport Drive History

A portion of unbuilt Airport Drive was the subject of a prior right-of-way vacation request. This was approved in 2003 by Town Council and the unbuilt right-of-way was incorporated into the properties currently addressed as 503 Dehart Street and 1102 Airport Road (page 11 of the application).

This vacation request is for the other half of the alley that remained public after the 2003 Council action. Given the previous vacation, the current owners for 503 Dehart Street and 1102 Airport Road are not eligible to participate in this vacation action.

#### **EVALUATION CRITERIA**

The Planning Commission is asked to evaluate the application based on the “Alley and Right-of-Way Vacation Process” in the Administrative Manual accompanying the Comprehensive Plan, particularly steps #2-5 listed below.

2. Vacate alleys and unbuilt rights-of-way only when the following three conditions are met:

- The alley or unbuilt right-of-way is judged as not important to the Town's neighborhoods in terms of providing rear access for residents, space for utilities, and a means to provide Town services; **and**
- The alley or unbuilt right-of-way is not important to the Town's present or future transportation network in terms of automobile, bicycle, or pedestrian traffic; **and**
- The alley or unbuilt right-of-way does not serve as the primary access to parcels.

3. Vacate built right-of-way only when all three conditions of Paragraph 2 are met, with the presumption that the built right-of-way is important to the Town's neighborhoods and the Town's present and future transportation network.

4. Assess whether or not the alley or right-of-way could be used for another public function such as park land or public open space.

5. If there is no other public function to which the property could be used, and the Town is able to claim an interest in the alley or right-of-way, and the applicant is willing to remit to the Town the value of the alley as computed in 1) above, consider disposition of the alley or right-of way.

#### **FINDINGS**

Staff has provided the following findings to assist in the evaluation of the application:

By filling out and signing the application, the owners have certified that they comply with Section 21-114 of the Town Code: “Purchase by applicant as condition to vacation of street or other public way.” The application can proceed through the public hearing process and will require Town Council approval.

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In discussion with the Town Attorney, staff have determined the value of the right-of-way by averaging the Montgomery County assessed land value of the adjoining parcels applied on a square foot basis (using deeded acreage information). The value of the Airport Drive request area is \$23,271.17 and the value of the Virginia Street area is \$9,842.90. The total value of both requested areas is \$33,114.07.

The right-of-way area is unbuilt and contains mixed vegetation. There are currently not any pedestrian trails or paths in the ROW areas, and rather the areas function more as a part of the adjacent properties' yards.

Town engineering staff have reviewed the request with respect to public infrastructure and provide the following comments. There is active public sanitary sewer in the Airport Drive ROW and along Airport Road. *Staff recommends that a minimum 15' public utility easement be dedicated centered on the existing public sewer, if the ROW vacation is approved.*

*Town engineering staff recommends that any public storm sewer crossing the proposed site must be contained within a public drainage easement and that no grading within the vacated right-of-way or within the developed site can interfere with the natural flow of surface or conveyed stormwater drainage across the property.*

There are no proposed routes for bicycle or pedestrian infrastructure on the Paths to the Future Map in either unbuilt ROW.

There are no transportation connections envisioned in the Comprehensive Plan as the property adjacent to the south and west is the Airport.

Corridor Committee reviewed the project and had two recommendations related to the ROW request:

- A trail easement should be dedicated along the northern property line to provide future access to the park
- The applicant should consider ways to connect the new greenspaces to the Airport Acres greenspaces and the woods and trails that exist behind the development on the airport property.

The rights-of-way do not serve as primary access for the rezoning parcels, or for other parcels that are not part of the airport.

### **Neighborhood Meeting**

In consideration of this request, a neighborhood meeting was held on July 27, 2023 in conjunction with the neighborhood meeting for the proposed rezoning request RZN23-0002. Notes and sign-in sheets are found with the staff report for RZN23-0002.

### **SUMMARY**

The Planning Commission is asked to consider and make a recommendation on the right-of-way vacation request. If approved by Town Council, the Mayor would execute a quit claim deed for the right-of-way and the right of way shall be vacated.

### **CONDITIONS**

Staff and the Town Attorney recommend the following conditions if the ROW vacation is approved:

1. The applicant shall dedicate a minimum 15' public utility easement centered on the existing public sewer.

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2. The applicant shall dedicate a minimum 15' public drainage easement centered on any existing or proposed public storm sewers.
3. The applicant shall dedicate 15' perimeter public utility easements along the property line.
4. The applicant shall dedicate private easements for any private utilities contained in the right-of-way, or otherwise demonstrate that the private utilities will not be affected.
5. The applicant shall vacate all existing interior lot lines.

**ATTACHMENTS**

Application with Exhibit  
Evaluation Criteria  
Sewer Engineering Memo  
Stormwater Engineering Memo

**Attachments provided with RZN23-0002 staff report:**

Aerial Map  
Neighborhood Meeting Notes and Sign-In Sheets  
Public Correspondence

## **Alley and Right-of-Way Vacation Process**

- 1) When requests for a vacation of an alley or unbuilt right-of-way are received by the Town,
  - ensure requirements for application contained in Town Code § 21-114 have been complied with.
  - make an assessment of the monetary value of the alley or unbuilt rights-of-way according to the general guidelines:
    - residential property value may be estimated according to current assessed values of adjacent property and square footage to be vacated; or
    - when the vacation allows for an additional buildable lot or when the property is non-residential, property value may be established by a formal appraisal; or
    - a formal appraisal may be required by Town Council; **and**
  - the applicant shall provide a statement of title concerning the alley or right-of-way (before and after the vacation), satisfactory to the Town Attorney; **and**
  - provide notification to all neighborhood representatives about the vacation request and associated public meetings; **and**
  - provide all adjacent property owners an opportunity to apply for an equal right-of-way; **and**
  - The cost of any formal appraisal or title research, as may be required, shall be the burden of the applicant.
- 2) Vacate alleys and unbuilt rights-of-way only when the following three conditions are met:
  - The alley or unbuilt right-of-way is judged as not important to the Town's neighborhoods in terms of providing rear access for residents, space for utilities, and a means to provide Town services; **and**
  - The alley or unbuilt right-of-way is not important to the Town's present or future transportation network in terms of automobile, bicycle, or pedestrian traffic; **and**
  - The alley or unbuilt right-of-way does not serve as the primary access to parcels.
- 3) Vacate built right-of-way only when all three conditions of Paragraph 2 are met, with the presumption that the built right-of-way is important to the Town's neighborhoods and the Town's present and future transportation network.
- 4) Assess whether or not the alley or right-of-way could be used for another public function such as park land or public open space
- 5) If there is no other public function to which the property could be used, and the Town is able to claim an interest in the alley or right-of-way, and the applicant is willing to remit to the Town the value of the alley as computed in 1) above, consider disposition of the alley or right-of way.
- 6) The disposition of an alley or right-of-way shall not be acted upon without public hearings before the Planning Commission and the Town Council, duly advertised, in accordance with the Virginia Code.
- 7) The disposition of an alley or right-of-way shall not be acted upon without public hearings before the Planning Commission and the Town Council, duly advertised, in accordance with the Virginia Code.

**MEMORANDUM**

TO: Kafi Howard

FROM: Shawn Veltman, Town Engineer

DATE: August 2, 2023

SUBJECT: ROW-0002 – Habitat for Humanity (Airport Road)

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This memo provides plan review comments on a Request for Vacation of portions of two Un-built Rights-of-Way (Airport Drive & Virginia Street) submitted by Balzer & Associates, with application date of June 2, 2023, on behalf of the Habitat for Humanity. The vacated ROW's would be used to support the development of 11 affordable townhomes on 1.1 acres of land at 1200 Airport Road (see RZN23-0002). This review is for sanitary sewers only.

**ROW23-0002 Review Comments**

The portion of the ROW for Airport Drive that would be vacated by this application currently contains a Town public sanitary sewer that enters the ROW from the north and then runs east through the ROW to Airport Road, before it continues south, ultimately entering the BVPISA sewer on the Airport property. It appears from the rezoning plans submitted for the planned development that vacation of the ROW for Airport Drive would result in portions of this sewer being located within the private property that would be created by the vacation. To preserve access to these sewers, the vacation should be conditioned upon the applicant providing the Town with a Public Utility Easement over the applicants property (including that created by this vacation) that, together with the existing ROW for Airport Road, provides the Town with at least 7.5 feet of access on either side of the sewer for necessary maintenance or repair.

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**MEMORANDUM**

TO: Kinsey O'Shea

FROM: Kafi Howard, Town Engineer

DATE: August 11, 2023

SUBJECT: ROW-0002 – Habitat for Humanity (Airport Road) - Stormwater

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This memo provides plan review comments on a Request for Vacation of portions of two Un-built Rights-of-Way (Airport Drive & Virginia Street) submitted by Balzer & Associates, with application date of June 2, 2023, on behalf of the Habitat for Humanity. The vacated ROW's would be used to support the development of 11 affordable townhomes on 1.1 acres of land at 1200 Airport Road (see RZN23-0002). This review is for the stormwater management system only.

**ROW23-0002 Review Comments**

- Any public storm sewer crossing the proposed site must be contained within a public drainage easement.
- No grading within the vacated right-of-way or within the developed site can interfere with the natural flow of surface or conveyed stormwater drainage across the property.

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