

STAFF UPDATE MEMO

TO: Planning Commission

FROM: Kinsey O'Shea, AICP

DATE: September 1, 2023

SUBJECT: RZN 23-0002/ORD 2035 Request to Rezone approximately 1.1 acres from R-4 Low Density Residential to PR Planned Residential in the 1200-block of Airport Road (PID 001702/TM 317- 2 31, 32, 34A and PID 001703/TM 317- 2 32A, 33, 34) by Balzer & Associates, Inc. (applicant); on behalf of Habitat for Humanity of the New River Valley, (contract purchaser) for Blacksburg Fire Safety Foundation (owner).

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).

At the August 15, 2023 Planning Commission work session, there were several items of discussion regarding the site design and layout for the proposed townhome development:

- Recreation areas, trail width, & open space
- Exception needed to not require a specific recreation area
- Exception needed for orientation of townhome units
- Buffering and landscaping
- Stormwater concept plan

In response, the applicant has submitted a revised application, proffer statement, and plan dated August 21, 2023. The applicant also provided a summary of the changes in their revision letter. Several changes with staff analysis are provided below:

Recreation, Trail Width & Open Space

The applicant has revised the plan to show the individual square footages of each of the open space areas. In total, the open space meets the 20% minimum requirement. It was noted in the staff report that an exception would be needed to Townhome Use & Design Standard §4231(b)(11) which requires a specific recreation amenity for developments with more than five units. The applicant has submitted an exception request to not require a specific recreation amenity area on site, with the justification that the Dehart Street park is adjacent to the proposed development. The applicant has revised the plan to show that a 10' asphalt trail will be constructed to connect the development to the park. *Staff is supportive of the exception request in conjunction with the proposed 10' trail connection.*

Exception for Townhome Orientation

It was noted in the staff report that an exception would be needed to Townhome Use & Design Standard §4231(b)(5) that requires all townhome units to face the street or parking area. The applicant included a request for an exception request to allow the interior units to face each other across the central green space. As noted in the staff report, the only townhomes oriented to the street or parking are the front two units facing Airport Road. All other units are oriented inward toward the central greenspace. As

mentioned in the staff report, *staff can support the exception request in favor of the layout of the remaining units in a courtyard style oriented toward a greenspace instead of parking or a street, which may encourage community interaction.*

Buffering & Landscaping

The staff report pointed out that no buffering was proposed along any property line, to mitigate the impact of the development on the surrounding area, or to mitigate the impact of the airport on the development. The application has been revised to show a row of evergreen shrubs between the drive aisle and the adjacent property to the north of the development. This area will be a public utility easement (PUE), and thus no trees should be planted. Additionally, the tree that was near the dumpster, in the PUE, has been removed. All other trees have been moved out of PUE areas as well.

Public Utility Easements

The applicant also included an easement exhibit as a part of the revised application. Fifteen-foot-wide public utility easements are provided as required around the perimeter of the parent parcel. Additionally, PUEs are provided in the center of the development to cover the water and sanitary mains that will be constructed as part of the development. Additional easements are provided for the existing utilities and drainageways as well.

Stormwater Concept Plan

The stormwater concept plan was resubmitted with the additional required information, and has been **approved**. The memo from engineering staff is attached.

Additional Changes

The applicant revised the plan to show that the bike parking will be covered as recommended by staff and the Corridor Committee. Infrastructure for a future EV charging station has also been added to the plan. Lastly, the applicant has chosen not to have a sign for the development. As this is a binding plan, this means that there will be no future signage for the development unless submitted, reviewed, and approved as a part of this public hearing, or a future amendment.

Attachments

Updated application materials dated August 21, 2023
Stormwater memo dated September 1, 2023
Additional public correspondence
Town Attorney response to public correspondence

ROW23-0002 CONDITIONS

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

The following conditions must be met on or before one (1) year from Town Council's adoption of this ordinance:

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

Friday, September 01, 2023

Balzer and Associates
Attn: James Taylor
80 College Street, Suite H
Christiansburg, VA 24073

RE: RZN23-0002 Habitat for Humanity Airport Road PRD – Stormwater Concept Plan Letter of Approval

Dear James:

The Engineering Department has completed the review of the Habitat on Airport PRD rezoning request Stormwater Concept Plan. The Concept Plan is **approved** at this time. This 1.10 acres of land is proposed to be re-developed into a Habitat for Humanity affordable townhome complex. In the post-development condition, stormwater quantities will increase due to the addition of a higher amount of impervious coverage.

To mitigate this increase, this site proposes one underground stormwater facility located under the parking lot. All water quality requirements are intended to be met using offsite nutrient credit purchase. *The Town **recommends** that this development provide some on-site stormwater quality treatment instead of only off-site methods. An on-site facility will provide lasting beneficial water quality value to the Stroubles Creek watershed, whereas the current layout may degrade our local water quality.*

This Stormwater Concept plan can be approved because it has shown that all water quality and quantity requirements can be met with this site design in its current configuration. As an alternative, the client desires to connect directly to the downstream inlet on the Virginia Tech Airport property, but has not secured permission for this connection at this time. In the event that permission is given from Virginia Tech and the connection is made on the adjacent property, the footprint of the stormwater facility will likely shrink. This could occur because this change would determine that a different stormwater management criteria will apply, since there would be no risk of erosion from the discharge of the system.

Items to be addressed later for Site Plan Approval:

1. Confirmation of Nutrient Bank Availability must be confirmed.
2. VSMP permit coverage will be required for this site.
3. Access to the underground stormwater facility will need to be addressed (in detail).
4. **Note:** The Town of Blacksburg Town has implemented a stormwater utility fee based on total impervious lot coverage. This proposed development area would generate a stormwater fee of **\$6** dollars per month for each unit on this site.

Please contact Kafi Howard with the Engineering Department at (540) 443-1354 or via email khoward@blacksburg.gov if you have questions or concern regarding this review. If you would like to schedule a post review meeting please also contact me.

Sincerely,

Town Engineer – Stormwater
400 S Main St., Blacksburg VA 24060
khoward@blacksburg.gov
(540) 443-1354

From: [Troy Brown](#)
To: [Lawrence Spencer](#)
Cc: [Kali Casper](#); [Kinsey O'Shea](#); [Matt Hanratty](#); daricupp@aol.com
Subject: Re: FW: OBJECTION TO RZN 23-0002/ORD 2035 AND ROW 23-0002/ORD 2033
Date: Thursday, August 17, 2023 1:13:19 PM
Attachments: [Sec 7 105 Effect of vacation of plat after lot has been sold .docx](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mr. Spencer,

I have received your responses and am not following what you are saying.

Based on information you have provided the previous vacation occurred in 2003 and created the current 20 foot ROW that is being requested to be vacated of which I am requesting to purchase my half.

When the owner in 2003, Ms Dober, declined to purchase the 20 foot ROW in writing it created a new Town ROW that has been in existence for 20 years. Now a request for a ROW vacation has come in for the current ROW. The statute attached should be in effect for this ROW vacation. I am not a lawyer but I believe it says both property owners should have right to purchase their half of the right of way if they so choose when the ROW vacation occurs. I choose to purchase the half attached to my property.

Not sure I understand your logic on not offering me the ability to purchase my portion. Vacated lines have occurred in this subdivision for many years, do we go back further to a previous action and say that now relates to this one and prohibits x or y. Is there a time limit on when this would become just like any other [Town ROW? 40](#) years? 60? 100? The current 20 foot ROW was created 20 years ago and as such needs to be handled like every other ROW vacation that occurs.

Isn't the Virginia Ave ROW 20 feet? Why is that different than Airport Rd? It isn't. I also believe that if Va Tech wanted to buy 10 foot of the Virginia Ave ROW they would be allowed. But somehow you are making up rules to not allow me to purchase my portion of the ROW in question. Not sure I understand why that is? Are there other considerations in play here? If so I would love to understand.

I attended the Planning Commission meeting on Tuesday, 8/15 and saw the diagrams at issue here. If the issue is lot sq footage then allow them to purchase more of the Airport Rd 40 ROW where the park is? That should be more than enough to get them to the acreage they need.

On Mon, Aug 7, 2023 at 6:02 PM Lawrence Spencer <L.Spencer@blacksburg.gov> wrote:

Mr. Brown,

With regard to your e-mail below, please find attached the records of an earlier vacation of the alley in question. In 2003 your predecessors in title, James and Judy Smith, obtained half of the alley through the council action shown in the attachment (illustrated by the Anderson & Associates sketch).

The current vacation request is for the other half of the alley that remained public after the 2003 council action. Given that your predecessors in title already acquired half of the alley, you, as the current owner are not eligible to participate in this vacation action.

Lawrence Spencer

Town Attorney

Town of Blacksburg

Blacksburg,VA

(540) 443-1016

From: Troy Brown <trkbrown@gmail.com>

Sent: Monday, August 7, 2023 12:35 PM

To: DARI CUPP <daricupp@aol.com>; Kinsey O'Shea <KOShea@blacksburg.gov>; Planning And Building <PlanningAndBuilding@blacksburg.gov>

Subject: RE: OBJECTION TO RZN 23-0002/ORD 2035 AND ROW 23-0002/ORD 2033

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To whom it may concern,

Item 1:

I am Troy Brown the owner of 1102 Airport Rd, 501 and [503 Dehart Street](#) in Blacksburg. These properties share a Town Right of Way (ROW) referenced in the proposed Request to Vacate above. We were not able to make the public hearing held on July 27, 2023 due to a planned and paid for vacation during that week. We have reviewed some of the documents related to the request above and see errors within them including who owns the properties.

The biggest item I saw was that there was no objection to the vacating the ROW proposed. I OBJECT to the vacation of the ROW and summarily being offered to the owner of the property related in the above Habitat for Humanity projects. Normal protocol for the vacating of a ROW has been to offer the impacted property owners to ability purchase the vacated ROW at market value. Half is offered to one land owner and half to the other. This was not done in this case and I would like to purchase the half of the ROW that "touches" my properties and expect to be given the same opportunity that the owner of the adjacent property is being offered.

I will be attending future meetings and expect to be treated with the same communications and offerings as the impacted property for the above requests.

Item 2:

I OBJECT to the density proposed in the attached zoning change. The density proposed is totally out of proportion with the amount of land in the project and is way out of line with the neighborhood. There is no way to make that safe or attractive with that many people living in that small of space and right on top of my properties. Also it was my understanding that there is a requirement that the structure(s) footprint, driveway, and parking lot can only cover 50% of the property with the remaining "green" space. The proposal above goes beyond that ratio and should be reduced to fit that standard. There is

no separation being offered between the 2 properties and I am not interested in having a driveway for that many structures, bedrooms and cars running directly adjacent to my properties it is unsafe and unattractive for the neighborhood. Find another way into the property that is not adjacent to the properties I own. If you have that much space for that many structures you surely have enough space to put the driveway somewhere else.

Thank you and please feel free to contact me at 704-277-5439 or Dari Cupp at 540-250-1839, same address below.

[2520 Ranger Island Rd.](#)

[Denver, NC 28037](#)

Thank you and look forward to hearing from someone soon.

Troy Brown and Dari Cupp

Sec. 7-105. Effect of vacation of plat after lot has been sold.

The recordation of the instrument as provided in section 7-103 or of the ordinance as provided in section 7-104 shall operate to destroy the force and effect of the recording of the plat or part thereof so vacated, and to vest fee simple title to the centerline of any streets, alleys or easements for public passage so vacated in the owners of abutting lots free and clear of any rights of the public or other owners of lots shown on the plat, but subject to the rights of the owners of any public utility installations which have been previously erected therein. If any street, alley or easement for public passage is located on the periphery of the plat, the title for the entire width thereof shall vest in the abutting lot owners. The fee simple title to any portion of the plat so vacated as was set apart for other public use shall be revested in the owners, proprietors and trustees, if any, who signed the statement of consent to the subdivision, on the final recorded subdivision plat, free and clear of any rights of public use in the same.

(Ord. No. 1217, § 2, 12-14-99)

State law reference(s)—Va. Code § 15.2-2274.

From: [Lawrence Spencer](#)
To: [Troy Brown](#)
Cc: [Kali Casper](#); [Kinsey O'Shea](#); [Matt Hanratty](#); [daricupp@aol.com](#)
Subject: RE: FW: OBJECTION TO RZN 23-0002/ORD 2035 AND ROW 23-0002/ORD 2033
Date: Thursday, August 17, 2023 8:38:42 PM

Mr. Brown:

The current vacation request is for part of the unbuilt right that was created by the recordation of the Airport Terrace subdivision in 1939; by that action "Airport Drive," with a forty foot width, was created.

As mentioned earlier, your predecessors in title, Mr. and Mrs. Smith, acquired half of the area of Airport Drive, as created by the 1939 plat, that abutted their property. Common law principles as to the title of vacant streets create the presumption that title to a former street, **as created by plat**, vested one half in each of the abutting landowners. *Bond v. Green*, 189 Va. 23, (1949). Your predecessors in title **only had an interest in to the centerline of Airport Drive as shown on the plat recorded in 1939.**

After your predecessors in title acquired their portion of Airport Drive in 2003, no subsequent subdivision plat for this area has been recorded. Thus, in determining the centerline of Airport Drive for this vacation request, **the centerline is determined by the right of way as it was created by the 1939 plat**, not by the unbuilt right of way that still remains in 2023.

Lawrence Spencer
Town Attorney
Town of Blacksburg
Blacksburg, VA
(540) 443-1016

From: Troy Brown <trkbrown@gmail.com>
Sent: Thursday, August 17, 2023 1:13 PM
To: Lawrence Spencer <LSpencer@blacksburg.gov>
Cc: Kali Casper <KCasper@blacksburg.gov>; Kinsey O'Shea <KOShea@blacksburg.gov>; Matt Hanratty <mhanratty@blacksburg.gov>; daricupp@aol.com
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