



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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March, 17, 2025

**TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA**

SUBJECT: *Consider a request from Daniel W. and Nancy R. Brubaker Trustees to rezone (amend proffers) for a +/- 12-acre site addressed as 210, 290, and 280 West Mosby Road*

**EXTRACT FROM THE MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: February 18, 2025**

Chair Baugh read the request and asked staff to review.

Ms. Dang said on September 26, 2023, City Council approved a rezoning and special use permits to allow for a 164-unit multiple family development on property addressed as 210, 290, and 280 West Mosby Road, which are identified as tax map parcels 7-C-2 and 3. The site was rezoned from R-2, Residential District, R-2C, Residential District Conditional, and B-2C, General Business District Conditional to R-5C, High Density Residential District Conditional. The approved special use permits allow for multiple-family dwellings of more than 12 units per building and for multiple-family buildings to be greater than four stories and 52 feet in height. The applicant still plans to construct an “affordable residential community” that would not exceed 164 multi-family dwelling units, but would like to amend one of the current, regulating proffers. The approved 2023 proffers are attached herein and the 2023 staff memorandum and supporting documents are available

here:

[https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6339874&GUID=9FFDCB41-D913-4C14-8E99-17C1449F1880&Options=&Search=.](https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6339874&GUID=9FFDCB41-D913-4C14-8E99-17C1449F1880&Options=&Search=)

Currently, proffer number 3 from the 2023 approved rezoning states:

A minimum of 82 units will be age-restricted, in that at least one member of each household must be aged 55 or older and will comply with applicable laws and regulations relating to age restricted housing.

The applicant is requesting to amend this proffer so that they can apply for funding through the Section 811 Project Rental Assistance (PRA) program, which provides project-based rental

assistance for extremely low-income persons with disabilities linked with long-term services.¹ The applicant’s letter goes into more detail into why they are requesting to amend the proffer and they propose the following new proffer number 3:

A minimum of 82 units shall meet the federal regulations in the Fair Housing Act exemption for properties intended and operated for occupancy by persons 55 years of age or older.

All other proffers would remain the same as was approved in 2023.

The Fair Housing Act has provisions to allow exemptions of housing for older persons from liability for familial status discrimination. In order to qualify for the “55 or older” housing exemption, a facility or community must satisfy each of the following requirements:

- At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
- The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and
- The facility or community must comply with the U.S. Department of Housing and Urban Development’s regulatory requirements for age verification of residents.²

By amending the proffers, the applicant intends to align the approved rezoning with the definition of the Federal Fair Housing Act when providing housing for residents aged 55 and older. The proffer amendment does not alter the applicant’s objective of providing an age-restricted community, but rather would provide the flexibility for a percentage of the units to not meet the age restriction, which is already permissible through the Fair Housing Act. The new proffer, which references the Fair Housing Act’s exemption, would require a minimum of 66 dwelling units to be rented to households with one person who is aged 55 years or older (82 units x 80% = 65.6 units).

Additionally, the applicant had originally contemplated two 82-unit buildings for this site – one “family” building and one “senior” building. Since the 2023 rezoning, the applicant found that when competing for tax credits, it would be optimal for them to reduce the number of dwelling units in the family building by two units and increase the number of dwelling units in the senior building by two units. This is the reason why in their letter, the applicant describes they plan to apply for “811 Rental Assistance for disabled residents for 11 of the **84** total units”. Rental

¹ HUD Section 811 Project Rental Assistance Program, <https://www.virginiahousing.com/en/partners/rental-housing/hud811>.

² U.S. Department of Housing and Urban Development, “The Fair Housing Act: Housing for Older Persons,” https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_housing_older_persons

assistance may be provided to individuals who may be younger than 55 years but may not be older than 62 at the time they begin receiving this rental assistance (though they may continue to receive it after turning 62).

Staff recommends approval of the rezoning (proffer amendment) request.

Chair Baugh asked if there were any questions for staff.

Councilmember Dent said in that paragraph, where it talks about 811 rental assistance, why does it have the emphasis on 11 of the 84 total units? Where do those other two units come from? Look at the paragraph “811 Rental Assistance for disabled residents for 11 of the 84 total units emphasis added.”

Ms. Dang said thank you for bringing that up. Just a little minor thing. So what the applicants contemplated was two buildings, each of them would be 82 units for that total of 164 units. In their letter, they explain that they would increase the number of units in one building from 82 to 84 and adjust the other building still maintaining the 164 total. I wanted to call attention to that and maybe that made it more confusing, but I called attention to that because 84 does not match 82, and it tripped me up when I saw that.

Chair Baugh said instead 82 plus 82 it will be 84 plus 80.

Ms. Dang said yes.

Chair Baugh said the face to the outside would not be identical, but it would it be darn close?

Ms. Dang said right. I will add that the applicant is available on the phone.

Chair Baugh asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant’s representative to speak to their request.

Mark Slack, the applicant, called in to speak to the request. I listened to Thanh’s description of what we are trying to accomplish and that is to open up the opportunity to apply to Virginia Housing for 11 units of 811 certificates for residents who are disabled. The 811 certificate program taps out at age 62. What we are hearing from the Department of Behavioral Health is that the market for residents over the age of 55 is already pretty slim, but we are looking to add these units of rental assistance to the property to help, one addresses this constituency, and two, to help the economic viability of the property. We cannot apply for the rental assistance until we make sure that the land use is consistent with the 811 certificates.

Chair Baugh asked if there were any questions for the applicant’s representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Vice Chair Finnegan said Chair, I would support this. I understand why the adjustments are being made. It makes sense to me. I would be in support of this. I will move to approve.

Councilmember Dent seconded the motion.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Baugh	Aye

The motion to recommend approval of the rezoning request passed (5-0). The recommendation will move forward to City Council on March 11, 2025.