



February 12, 2025 Planning Commission Meeting

Title

Consider Rezoning (Proffer Amendment) at 210, 280, and 290 West Mosby Road — Thanh Dang, Community Development

Summary

Project name	N/A
Address/Location	Portions of 210, 290, and 280 West Mosby Road
Tax Map Parcels	Portions of 7-C-2 and 3
Total Land Area	+/- 12-acres
Property Owner	Daniel W. and Nancy R. Brubaker Trustees and Bluestone Land Company; D&N LLC
Owner's Representative	Beverly J. Searles Foundation, Inc. and Mark Slack, Kanawha Realty Advisors, LLC
Present Zoning	R-5C, High Density Residential District Conditional
Proposed Zoning	R-5C, High Density Residential District Conditional
Staff Recommendation	Approval
Planning Commission	February 12, 2025 (Public Hearing)
City Council	Anticipated March 11, 2025 (First Reading/Public Hearing) Anticipated March 25, 2025 (Second Reading)

Recommendation

Option 1. Recommend approval of the rezoning request.

Fiscal Impact

N/A

Context & Analysis

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=>.

The following land uses are located on and adjacent to the property:

Site: Vacant land and vacant buildings, zoned R-5C

North: Single-family detached dwellings, zoned R-1 and R-2C

East: Vacant land, zoned R-2 and R-2C

South: Across West Mosby Road, vacant land, townhomes, and multiple-family dwellings, zoned R-2, R-3, and R-3C

West: Across Pear Street, single-family detached dwellings and nonconforming vehicle repair, zoned R-1

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:

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

- 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” (emphasis added). Rental 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.

Options

1. Recommend approval of the rezoning request.
2. Recommend denial of the rezoning request.

Attachments

- Site maps
- Application and supporting documents
- 2023 Approved Proffers & Conceptual Layout

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