

## CHAPTER 9: ATTAINABLE HOUSING

---

### Contents:

#### 9.01 Affordable Dwelling Unit Program

#### 9.02 Unmet Housing Needs Unit Program

#### 9.03 Affordable Housing Unit Program

### 9.01 Affordable Dwelling Unit Program

---

**Purpose.** The purpose of the Affordable Dwelling Unit Program is to:

- Establish an Affordable Dwelling Unit Program pursuant to Code of Virginia § 15.2-2304;
- Assist in the provision of housing to persons of moderate income identified as incomes between 30% and 70% of the area median income;
- Promote the development of a full range of housing choices;
- Implement the Housing Policies of the General Plan;
- Require the construction and continued existence of moderately priced dwelling units; and
- Provide for optional increases in density to reduce land costs for the construction of moderately priced dwelling units.

A. **Applicability.** The County implements the Affordable Dwelling Unit (ADU) Program pursuant to Section 9.01 and the regulations of Chapter 1450 of the Codified Ordinances. All ADUs must comply with both Section 9.01 and Chapter 1450. The requirements of the ADU Program apply to any subject property that is:

1. Served by public water and sewer; and
2. The subject of 1 or more applications for Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision, or Preliminary Subdivision that either individually or collectively will yield 24 or more dwelling units:
  - a. For any such application that will individually yield fewer than 24 dwelling units, the owner must provide a written agreement that any subsequent application(s) that would cause the development to have a collective yield of 24 or more dwelling units will meet the requirements of the ADU Program; and
  - b. Such owner's written agreement must be:
    1. Recorded among the land records of Loudoun County, Virginia, and indexed in the names of all owners of the subject property; and
    2. Included on all approved Concept Development Plans, Special Exception Plats, Site Plans, Subdivision Plats, and Preliminary Subdivision Plats for the development.

3. **Definitions.** For the purposes of Section 9.01 the following definitions apply:

- a. "Development" means a proposal to develop land or an act of developing land that meets, and thereby is subject to, Section 9.01.A.1. above; and
- b. "Subject property" means any site, or portion thereof, at a single location and includes all adjacent developable land of the owner, or under common ownership with and/or control of the owner:
  1. "Owner" includes the owner of the subject property, an applicant for development of the subject property, or members of the owner's and/or applicant's immediate family, and/or a lending institution that has acquired a fee interest in the subject property due to foreclosure or project participation; and does not include a lending institution that has acquired an equity interest in the subject property solely by virtue of its agreement to provide financing;

- a. "Immediate family" includes the owner's and/or applicant's spouse, children, parents, and siblings. **Exception.** Adjacent parcels of developable land that have been under separate ownership by immediate family members for a period of 5 or more years are not considered part of the subject property; and
- b. "Lending institution" means a pension fund, bank, savings and loan, insurance company, or similar entity; and
2. "Common ownership with and/or control of the owner" includes, but is not limited to, land owned and/or controlled by a separate partnership, corporation, or other business entity in which the owner has ownership of 1% or more of the equity, or a land trust or trust in which the owner is a trustee or beneficiary.
4. **MFA Building Exemption.** The requirements of the ADU Program do not apply to dwelling units in any multistory building that has a minimum of 8 stories composed entirely of multifamily attached (MFA) dwelling units and/or facilities (excluding parking) restricted for the exclusive use and enjoyment of the residents of such MFA dwelling units, and an elevator(s) that serves 2 or more dwelling units in the building.
5. **AHU Program.** An applicant may provide affordable housing units (AHU) in lieu of the ADUs required by the ADU Program in accordance with Section 9.03.
- B. **ADU Program Income Requirements.** ADUs are only permitted to be provided for the Area Median Income (AMI) ranges and tenancies in Table 9.01-1.

Table 9.01-1. ADU Program Income Requirements	
AMI Range <sup>1</sup>	Tenancy
30% up to 50%	For Rent
30% up to 70%	For Purchase
<b>TABLE NOTES:</b> <sup>1</sup> The current AMI must be used to determine income requirements for the ADUs.	

- C. **Required Number of ADUs and Optional Density Increase.** The required number of ADUs according to dwelling unit type and optional density increase for a development are as follows:
  1. **Required Number of ADUs for SFD and SFA Developments.** A development, or portion thereof, composed of single-family detached dwelling units (SFD) and/or single-family attached dwelling units (SFA) must provide a minimum 15% of the approved total number of SFD and/or SFA dwelling units, including any dwelling units to be provided pursuant to the optional density increase allowed under Section 9.01.C.3., as ADUs. Calculate the required number of SFD and/or SFA ADUs under Section 9.01.C.1. by multiplying the total number of SFD and/or SFA dwelling units by 15%;
  2. **Required Number of ADUs for MFA and MFS Developments.** A development, or portion thereof, composed of multifamily stacked (MFS) dwelling units and/or MFA dwelling units, must provide a minimum of 10% of the approved total number of MFS and/or MFA dwelling units, including any dwelling units to be provided pursuant to the optional density increase allowed under Section 9.01.C.3., as ADUs. Calculate the required number of MFS and/or MFA ADUs required under Section 9.01.C.2. by multiplying the total number of MFS and/or MFA dwelling units by 10%; and
  3. **Optional Density Increase.** When a development provides the applicable number of ADUs required by Sections 9.01.C.1. and/or 9.01.C.2., the development, at the discretion of the owner, is permitted an optional 20% maximum density increase as provided in Table 9.01-2.
    - a. Calculate the optional density increase as follows:
      1. Determine the base density by multiplying the maximum permitted density (dwelling units per acre or FAR) by the area of the development;

2. Determine the maximum density permitted with the optional density increase by multiplying the base density by 20% and adding the result to the base density; and
3. For density in dwelling units per acre, when the calculation results in a fraction or decimal, round down to the nearest whole number to determine the maximum number of dwelling units permitted; and
- b. If a density increase pursuant to Sections 9.01.C.3. or 9.01.C.4.a.1. exceeds the maximum residential density set forth in the General Plan, then the maximum residential density set forth in the General Plan applicable to the development will be increased up to 20% for the purposes of calculating the potential density that may be approved by the Board of Supervisors.
4. **Voluntary Provision of ADUs for MFA Building Exemptions.** ADUs provided in exempt MFA buildings pursuant to Section 9.01.A.3. above, are subject to the following:
  - a. The ADU requirements of Sections 9.01.C.1. and 9.01.C.2. and the density increase in Section 9.01.C.3. do not apply; and
  - b. The ADU requirement and density increase are as follows:
    1. Maximum density in dwelling units per acre (residential density) or floor area ratio (FAR) is permitted to be increased by up to 20%;
    2. If the voluntary provision of ADUs results in an increase in residential density, then of the additional dwelling units approved pursuant to Section 9.01.C.4.b.1., at a minimum, a percentage of dwelling units equal to the percentage that the density was increased by must be provided as ADUs; and
    3. If the voluntary provision of ADUs results in an increase in FAR, then of the additional dwelling units provided in the increased FAR approved pursuant to Section 9.01.C.4.b.1., at a minimum, a percentage of dwelling units equal to the percentage that the FAR was increased by must be provided as ADUs.
5. **Additional Requirements.** When calculating the required number of ADUs and optional density increase, the following applies:
  - a. When the calculation under Sections 9.01.C.1., 9.01.C.2., 9.01.C.4.b.2., or 9.01.C.4.b.3. results in a fraction or decimal, such fraction or decimal is interpreted as requiring 1 whole ADU; and
  - b. Calculations for the total number of dwelling units proposed, including any additional dwelling units provided pursuant to the optional density increase, and total required number of ADUs must be included on each Concept Development Plan, Special Exception Plat, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat for the development.

**Figure 9.01-1. Sample ADU Calculation Pursuant to  
Section 9.01.C.1. for 22.5-Acre Parcel in the SN District.**

<i>Permitted Density:</i>	<i>4 Dwelling Units (DU) per Acre</i>
<i>Dwelling Units (DU) Permitted:</i>	<i>22.5 x 4 = 90 SFD and/or SFA DUs</i>
<i>ADUs Required:</i>	<i>15% of Total DUs</i>
<i>Without Optional 20% Density Increase:</i>	<i>90 x 15% = 14 ADUs Required (Increased from 13.5 Pursuant to Section 9.01.C.5)</i>
<i>Optional 20% Density Increase:</i>	<i>90 + (90 x 20%) = 108 Total DUs</i>
<i>Permitted Density:</i>	<i>108/22.5 = 4.8 DUs per Acre</i>
<i>Total ADUs Required:</i>	<i>108 x 15% = 17 ADUs Required (Increased from 16.2 Pursuant to Section 9.01.C.5)</i>

**Figure 9.01-2. Sample ADU Calculation for Voluntary Provision of ADUs Pursuant to Section 9.01.C.4.b.1. for a 80 MFA 8-Story Building on 2.67 Acres in the PD-AAAR Zoning District**

<i>Permitted Density:</i>	<i>30 Dwelling Unit (DU) per Acre</i>
<i>Dwelling Units (DU) Permitted:</i>	<i>80 DUs</i>
<i>Total DUs Due to Voluntary ADUs:</i>	<i>92 DUs</i>
<i>Additional DUs:</i>	<i>12 DUs</i>
<i>Density % Increase:</i>	<i>12 Additional DUs/80 DUs = 15% density increase</i>
<i>ADUs Required:</i>	<i>15% of Additional DUs</i>
<i>Total ADUs Required:</i>	<i>12 x 15% = 2 ADUs Required (rounded up from 1.8)</i>

**Table 9.01-2. Maximum Optional Density Increase by Zoning District**

	Zoning District	Permitted Density <sup>1</sup>	Maximum Permitted Density <sup>1</sup> 20% Density Increase with 15% SFD and/or SFA ADUs	Maximum Permitted Density <sup>1</sup> 20% Density Increase with 10% MFS and/or MFA ADUs
1	TRC	Inner and Outer Core: No Maximum TDSA: 1.5 FAR	Inner and Outer Core: No Maximum TDSA: 1.8 FAR	Inner and Outer Core: No Maximum TDSA: 1.8 FAR
2	SN-4, TSN, RC	4	4.8	N/A
3	SN-6	6	7.2	N/A
4	SCN-8, R-8	8	9.6	N/A
5	SCN-16, R-16	16	19.2	19.2
6	SCN-24, R-24	24	28.8	28.8
7	TC	No Maximum FAR	No Maximum FAR	No Maximum FAR
8	PD-AAAR	30	36	36
9	PD-MUB	Prior to Establishment of Bus Service: 20 After Establishment of Bus Service: 30	Prior to Establishment of Bus Service: 24 After Establishment of Bus Service: 36	Prior to Establishment of Bus Service: 24 After Establishment of Bus Service: 36
10	TR-1, JLMA-1, R-1, CR-1	1 du per 40,000 sf	1.2 du per 40,000 sf	N/A
11	TR-3, JLMA-3	1 du per 3 acres	1.2 du per 3 acres	N/A
12	TR-10	1 du per 10 acres	1.2 du per 10 acres	N/A
13	TCN	5	6	N/A
14	JLMA-2, R-2, TR-2, CR-2	1 du per 20,000 sf	2.4	N/A
15	R-3, CR-3	1 du per 15,000 sf	3.6	N/A
16	R-4, CR-4	1 du per 10,000 sf	4.8	N/A
17	JLMA-20	1 du per 20 acres	1.2 du per 20 acres	N/A
18	PUD	Determined at time of PUD application. Must be consistent with residential density or FAR for the Place Type where the PUD will be located	If SFD and/or SFA dwelling units are proposed, then 20% increase of maximum residential density for the Place Type where the PUD will be located	If MFS and/or MFA dwelling units are proposed, then 20% increase of maximum residential density or FAR for the Place Type where the PUD will be located

**TABLE KEY:**

du = dwelling unit and sf = square feet

SFD = single-family detached, SFA = single-family attached, MFS = multifamily stacked, and MFA = multifamily attached

**TABLE NOTES:**

<sup>1</sup>Density is in dwelling units per acre unless otherwise noted.

**D. Required ADUs by Dwelling Unit Type.** Required ADUs must be provided as follows:

1. The percentage of ADUs provided as SFD, SFA, MFS, and/or MFA dwelling unit must be the same as the percentage of market rate dwelling units provided as SFD, SFA, MFS, and/or MFA dwelling units, respectively, in the development;
  - a. Each SFD ADU provided will be calculated as 1.25 ADUs for purposes of Section 9.01.C.1. and as 1.25 SFD ADUs for purposes of Section 9.01.D.1.; and
  - b. For MFS and MFA dwelling units, the percentage of ADUs provided with a certain number of bedrooms must be the same as the percentage of market rate dwelling units with the same number of bedrooms in the development;
2. ADUs are only permitted to be provided as a dwelling unit type that is provided as a market rate unit in the development. **Exception.** If AHUs are substituted for ADUs pursuant to Section 9.01.A.4. and Section 9.03, then this requirement does not apply. However, the dwelling unit type for the proposed AHUs must be permitted in the Zoning District where such AHUs will be located;
3. **Rounding.** When the calculation of dwelling unit types for required ADUs under Section 9.01.D. results in a number that ends in a fraction or decimal, any number ending in a fraction or decimal up to and including  $\frac{1}{2}$  or 0.5, respectively, will be rounded down to the nearest whole number, and any number ending in a fraction or decimal over  $\frac{1}{2}$  or 0.5, respectively, will be rounded up to the nearest whole number:
  - a. If the calculation results in a number that is less than the total number of required ADUs under Section 9.01.C., then a sufficient number of ADUs, which may be of any dwelling unit type provided in the development, must be provided to make up the difference; and
  - b. If the calculation results in a number that is greater than the total number of the ADUs required under Section 9.01.C., then the number of ADUs provided for any dwelling unit type may be reduced until the total number of required ADUs under Section 9.01.C. is provided; and
4. Calculations for the required ADUs by dwelling unit type must be included on each approved Site Plan and Subdivision Plat and associated Construction Plans and Profiles for the development.

**Figure 9.01-3. Sample Calculation of ADUs Provided Proportionately to Dwelling Unit Types Proposed Pursuant to Section 9.01.D.: SFD, SFA, and MFS Dwelling Units.**

<i>Total Dwelling Units Proposed:</i>	130 SFD, SFA, and MFS DUs
<i>Dwelling Units by Unit Type:</i>	20 SFD, 65 SFA, 45 MFS
<i>Dwelling Unit Type Percent of Total:</i>	15% SFD, 50% SFA, 35% MFS
<i>Total SFD and SFA ADUs Required Pursuant to Section 9.01.C.1.:</i>	$20 \text{ SFD} + 65 \text{ SFA} = 85 \text{ SF} \times 15\% = 13 \text{ SF ADUs (Rounded up from 12.75)}$
<i>Total MFS ADUs Required Pursuant to Section 9.01.C.2.</i>	$45 \times 10\% = 5 \text{ MF ADUs (Rounded up from 4.5)}$
<i>Total ADUs Required</i>	$13 \text{ SF ADUs} + 5 \text{ MF ADUs} = 18 \text{ Total ADUs}$
<i>Required SFD ADUs (No Reduction):</i>	$18 \times 15\% = 3 \text{ SFD (Rounded up from 2.7)}$
<i>Required SFD ADUs (Reduced Pursuant to Section 9.01.D.1.a.):</i>	$3 \text{ SFD ADUs} / 1.25 = 2 \text{ SFD (Rounded down from 2.4)}$
<i>Required SFA ADUs:</i>	$\text{Total required ADUs reduced by 1 (3 SFD ADUs - 2 SFD ADUs = 1), resulting in 17 required ADUs (18 ADUs - 1 = 17 ADUs)}$
<i>Required MFS ADUs:</i>	$18 \times 50\% = 9 \text{ SFA}$ $18 \times 35\% = 6 \text{ MFS (Rounded down from 6.3)}$
<i>Total ADUs by Unit Type:</i>	$17 \text{ ADUs (2 SFD ADUs + 9 SFA ADUs + 6 MFS ADUs = 17)}$
<i>Total ADUs Required (Reduced Pursuant to Section 9.01.D.1.a.):</i>	17 ADUs

**Figure 9.01-4. Sample Calculation of ADUs Provided Proportionately to Dwelling Unit Types Proposed Pursuant to Section 9.01.D.: MFA Dwelling Units.**

Total Dwelling Units Proposed:	300 MFA DUs
Total ADUs Required Pursuant to Section 9.01.C.:	30
Dwelling Units by Number of Bedrooms Pursuant to Section 9.01.D.1.b.:	30 Studio, 110 1-Bedroom (BR), 120 2-BR, 40 3-BR
Dwelling Unit by Number of Bedrooms Percent of Total:	10% Studio, 37% 1- BR, 40% 2-BR, 13% 3-BR
ADUs Required by Number of Bedrooms:	$30 \times 10\% = 3$ Studio $30 \times 37\% = 11$ 1-BR (Rounded down from 11.1) $30 \times 40\% = 12$ 2-BR $30 \times 13\% = 4$ 3-BR (Rounded up from 3.9)
Total ADUs Required:	30 ADUs (3 Studio + 11 1-BR + 12 2-BR + 4 3-BR)

- E. **Designation of ADUs on Site Plans and Subdivision Plats and Associated Construction Plans and Profiles.** Each approved Site Plan and Subdivision Plat and associated Construction Plans and Profiles for the development must demonstrate that the required number and/or percentage of for-rent dwelling units and for-purchase dwelling units are being provided as ADUs, and that such ADUs meet the requirements of Section 9.01.F. below.
1. If a development contains for rent ADUs, a tabulation must be included that demonstrates the percentage of dwelling units and number of each dwelling unit type that will be maintained as ADUs.
  2. If a development contains for purchase ADUs, the specific dwelling units that will be provided as ADUs must be identified.
- F. **ADU Compatibility and Interspersion.** ADUs must be compatible with and interspersed among market rate dwelling units in the development. To demonstrate conformance with this requirement, each approved Site Plan and Subdivision Plat and associated Construction Plans and Profiles for the development must demonstrate:
1. **ADU Compatibility.** ADUs of a particular dwelling unit type must be similar to market rate dwelling units of the same dwelling unit type in width, depth, height, size, and exterior architectural treatment:
    - a. **Width.** For the purposes of Section 9.01.F.1.a., width is the distance across the front façade of a SFD, SFA, or MFS dwelling unit. To be considered similar in width, SFD, SFA, and MFS ADUs are permitted to have a width that is a minimum of 70% of the average width of SFD, SFA, or MFS market-rate dwelling units adjacent to the sides of the ADU or ADU lot. SFA ADUs must have a 14-foot minimum width;
    - b. **Depth.** To be considered similar in depth, SFD, SFA, and MFS ADUs are permitted to have depth that is a minimum of 75% of the average depth of SFD, SFA, or MFS market-rate dwelling units adjacent to the sides of the ADU or ADU lot. The rears of SFA or MFS market rate dwelling units in the same building as the SFA or MFS ADU with a reduced depth must be staggered;
    - c. **Height.** To be considered similar in height, ADUs must meet the following criteria for the applicable dwelling unit type:
      1. SFA and MFS ADUs are permitted to have a height that is a minimum of 90% of the height of SFA, or MFS market rate dwelling units adjacent to the sides of the ADU or ADU lot. Stories required to provide access to rooftop decks are not included in the height calculation; or
      2. SFD ADUs must have the same number of stories as the SFD market rate dwelling units adjacent to the sides of the ADU or ADU lot;



- d. **Size.** To be considered similar in size, ADUs must meet the following criteria for the applicable dwelling unit type:
  1. SFD, SFA, and MFS ADUs must comply with Section 9.01.F.1.a.1., Section 9.01.F.1.b.1., and Section 9.01.F.1.c.1.; or
  2. ADUs that do not comply with Section 9.01.F.1.d.1. are permitted if the same number of market rate dwelling units of the same dwelling unit type have the same square footage of livable space as the ADUs that do not comply with Section 9.01.F.1.d.1.; and
- e. **Architectural Treatment.** To be considered similar in exterior architectural treatment, ADUs must meet the following criteria:
  1. ADUs must have front façade construction materials that are the same as those used in adjacent market rate dwelling units. Alternatively, ADUs may have front façade construction materials that are identical to market rate front façades when at least 25% of market rate dwelling units have the same front façade construction materials;
  2. ADUs must have the same variation in design elements, (e.g., varying roof pitches and orientation, gables, dormers, decorative elements, window arrangements, trims, materials, varying setbacks, etc.) as those used in adjacent market rates dwelling units. Alternatively, ADUs may have the same variation in design elements that are the same as market rate dwelling units when at least 25% of market rate dwelling units have the same variation of design elements;
  3. ADUs must have the same exterior features, (e.g., decks, fences, balconies) that are provided as a standard option for market rate dwelling units;
  4. Exterior doors for ADUs must be provided at the same story as the exterior doors for market rate dwelling units;
  5. Rear and side construction materials for ADUs must be comparable to rear and side construction materials used for market rate dwelling units; and
  6. Garages must be provided for all ADUs that are adjacent to market rate dwelling units that have a garage.
2. **ADU Interspersion.** ADUs must be interspersed among the market rate dwelling units in a development. To be considered interspersed, ADUs must meet the following criteria:
  - a. SFD ADUs must not be located on lots adjacent to other SFD ADUs;
  - b. No more than 2 SFA and MFS ADUs are permitted to abut other SFA and MFS ADUs, respectively;
  - c. No more than 41% of the SFA or MFS dwelling units in an SFA or MFS building are permitted to be ADUs; and
  - d. ADUs may be located directly across a road from each other or may back directly to each other across rear yards or common areas.
3. **Alternative ADU Design Option:** The Zoning Administrator may allow an Alternative ADU Design to meet the ADU Compatibility requirements in Sections 9.01.F.1.a., 9.01.F.1.b., 9.01.F.1.c., and 9.01.F.1.d. and/or ADU Interspersion requirements in Section 9.01.F.2. on a case-by-case basis when a design proposal is determined to meet the intent of the ADU Compatibility and Interspersion requirements in Section 9.01.F (Figure 9.01-5 and Figure 9.01.6).
  - a. Requests for an Alternative ADU Design to meet of the compatibility and/or interspersion requirements must provide the following information:
    1. A plan that identifies the location of the ADUs that are subject to the Alternative ADU Design and the remaining required ADUs;
    2. Elevation and plan view drawings of the ADUs that are subject to the Alternative ADU Design that depict the building materials, design elements, and building dimensions;

3. Elevation and plan view drawings of the of the market rate dwelling units that depict the building materials, design elements, and building dimensions;
  4. A written justification that addresses the criteria in Section 9.01.F.3.b.; and
  5. Additional information that the Zoning Administrator deems necessary to evaluate the Alternative ADU Design request; and
- b. To approve the Alternative ADU Design request of the compatibility and/or interspersion requirements, the Zoning Administrator must find that the following criteria are met for the ADUs that are subject to the Alternative ADU Design request. The Zoning Administrator may forward a Alternative ADU Design request to ADUAB for comment and recommendation prior to issuing a decision.
1. **Integration:** The ADUs are integrated into the development and not isolated and/or physically separated from the market rate dwelling units in the development.
  2. **Location:** The ADUs are located in the same general area as the market rate dwelling units, preferably proximate to transit, Commercial uses, and other essential services.
  3. **Building Materials and Design Elements:** The ADUs are designed with building materials and design elements that are consistent with the market rate dwelling units. The quality of construction and materials used in the ADUs is comparable to that of the market rate dwelling unit.
  4. **Size and Layout:** The ADUs are not significantly smaller or awkwardly shaped compared to the market rate dwelling units. Significantly smaller in this case is no more than 70% smaller than the average size of the market rate dwelling units that generated the required ADUs subject to the Alternative ADU Design request.
  5. **Amenities:** The ADUs have access to similar amenities as the market rate dwelling units. This could include access to common areas, open space, parking, and any other amenities provided to the residents of the market rate dwelling units.

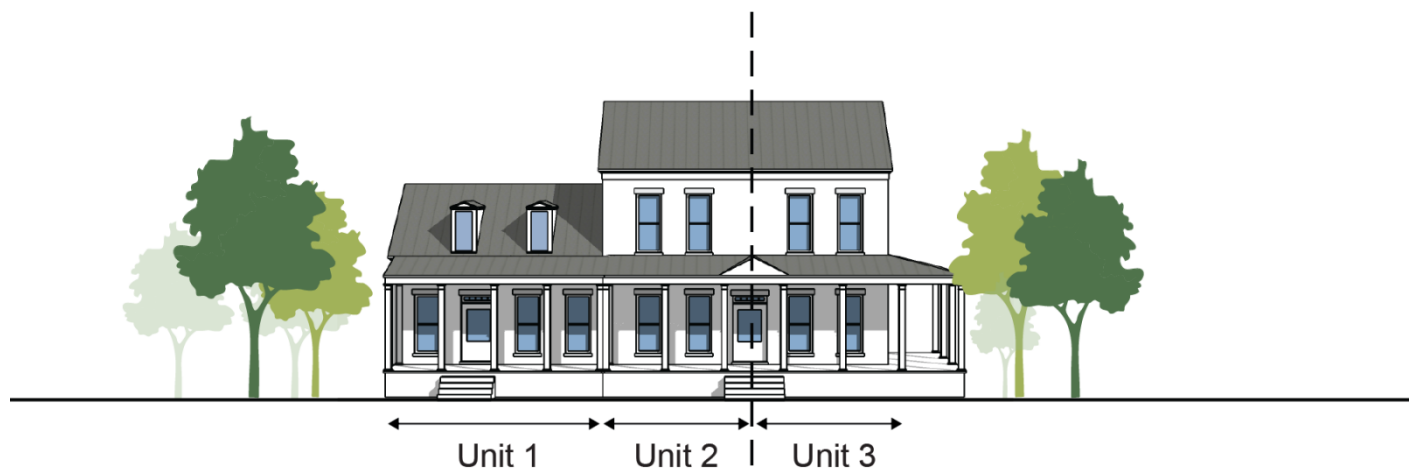


**Figure 9.01-5. Example of Alternative ADU Design Option Showing 2 Single-Family Attached Townhouse ADUs that Appear as 1 Wider Single-Family Attached Townhouse<sup>1</sup>**



<sup>1</sup>Only allowed in Zoning Districts that permit single-family attached dwelling units.

**Figure 9.01-6. Example of Alternative ADU Design Option Showing 3 Condominium ADUs that Appear as 1 Single-Family Detached Dwelling Unit<sup>1</sup>**



<sup>1</sup> Only allowed in Zoning Districts that permit single-family attached dwelling units.

- G. **Timing of Construction/Availability of ADUs.** The timing of construction and availability of ADUs in a development must be as follows:
1. Certificates of Occupancy for 50% of the ADUs must be issued prior to issuance of more than 50% of the Certificates of Occupancy for the market rate dwelling units in the development;
  2. Certificates of Occupancy for 75% of the ADUs must be issued prior to issuance of more than 75% of the Certificates of Occupancy for the market rate dwelling units in the development;
  3. Certificates of Occupancy for 100% of the ADUs must be issued prior to issuance of more than 90% of the Certificates of Occupancy for the market rate dwelling units in the development; and
  4. The following information must be submitted with each request for final zoning inspection for a market rate dwelling unit in the development:
    - a. The total number of dwelling units, market rate dwelling units, and ADUs, UHNUs, and AHUs proposed for the development;
    - b. The number of Certificates of Occupancy issued for market rate dwelling units in the development;
    - c. The number of Certificates of Occupancy issued for ADUs, UHNUs, and AHUs in the development; and
    - d. The legal description or unit number of each ADU, UHNU, and AHU for which a Certificate of Occupancy has been issued.
- H. **ADU Modifications.** Modifications of Section 9.01 are permitted pursuant to Section 10.10.04.C. as follows:
1. Modifications to Sections 9.01.C.1., 9.01.C.2., 9.01.D.1., and 9.01.G.1., 9.01.G.2., and 9.01.G.3. are permitted as follows:
    - a. All applications for a modification must be submitted in conjunction with the first Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision, or Preliminary Subdivision application for the development;
    - b. The ADUAB will review the modification application, and the criteria of Sections 9.01.H.2.d., 9.01.H.3.b., and 9.01.H.4.a. below, as applicable, and make its recommendation to the Planning Commission within 60 days of receipt of a complete application;
    - c. The Board of Supervisors must consider, upon recommendation of the Planning Commission and ADUAB, the criteria in Sections 9.01.H.2.d., 9.01.H.3.d., and 9.01.H.4.a. below, as applicable;
    - d. The time limits set forth in Code of Virginia §§ 15.2-2259 and 15.2-2260 will be suspended during the pendency of an application for modification filed pursuant to Section 9.01.H; and
  2. **Modifications to Sections 9.01.C.1. and 9.01.C.2.** Modifications to Sections 9.01.C.1. or 9.01.C.2. are subject to the following:
    - a. The ratio of ADUs proposed to the optional density increase approved must be no less than 15% : 20% for SFD and SFA dwelling unit developments, and 10% : 20% for MFS and MFA dwelling unit developments;
    - b. The total number of ADUs proposed must be no less than 5% of the total number of dwelling units within the development;
    - c. In conjunction with modification of Sections 9.01.C.1. or 9.01.C.2., the Board of Supervisors may permit an applicant to request a modification to the Zoning Ordinance so as to allow them to provide any combination of ADUs, land, or contributions to Loudoun County equivalent to providing the required number of ADUs;
    - d. The applicant must provide a written justification that addresses Section 9.01.H.2.e. with the application for modification;
    - e. For applications for modification of Sections 9.01.C.1. or 9.01.C.2., the ADUAB, Planning Commission, and Board of Supervisors must consider and make findings regarding the following criteria:

1. Whether the proposed alternative will achieve the objective of providing a full range of housing choices in Loudoun County;
2. The ability for the public facilities and services already developed to accommodate the maximum density increase permitted for providing ADUs;
3. Whether there are any existing unique or unusual site constraints, including but not limited to potential adverse impacts on environmental resources and features on the subject property and adjacent parcels, and the effect of soil conditions on construction costs;
4. Whether there are any unusual costs associated with development of the subject property in strict accordance with Sections 9.01.C.1. or 9.01.C.2. that would necessitate the modifications;
5. Whether there are any overriding public needs, health issues, public safety issues, or public welfare issues that are better served by not providing the maximum number of ADUs otherwise required;
6. For Zoning Concept Plan Amendment applications, whether a reduction in the previously approved Zoning Map Amendment's impact on public facilities would result, and whether the previously approved Zoning Map Amendment's proffer commitments exceed current adopted capital facility guidelines established in the General Plan; and
7. All Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, and Preliminary Subdivision Plat applications for the development must provide the modified total number of ADUs to be provided; and

**Figure 9.01-7. Sample Calculation Showing the Ratio of Proposed ADUs to the Optional Density Increase is No Less than 15% : 20% Pursuant to Sections 9.01.I.2.a. and 9.01.I.2.b.**

<i>Total Dwelling Units:</i>	100
<i>ADUs Proposed =</i>	5%
	$15\%/20\% = 5\%/x, x = 6.67\%$
	$100 \times 6.67\% = 106.67 \text{ dwelling units at } 15\%:20\% \text{ increase}$
	$106.67 \times 5\% = 5.3 \text{ ADUs at } 15\%:20\% \text{ ADU requirement}$
<i>Total ADUs Required:</i>	6 (round up from 5.3)
<i>Maximum Dwelling Units Permitted:</i>	106 (round down from 106.67)

- f. **Modifications to Provide Cash in Lieu of ADUs in SFD Dwelling Unit Developments.** Notwithstanding Sections 9.01.H.2.a. and 9.01.H.2.b. above, developments that contains only SFD dwelling units may submit an application for a modification to Section 9.01.C.1. to provide cash in lieu of some or all of the ADUs required pursuant to Section 9.01.C.1. Cash provided in lieu of SFD ADUs must be:
1. Of a value calculated in current dollars, adjusted by the CPI, at the time the actual contribution is officially transferred to the County;
  2. Deposited in the Loudoun County Housing Trust Fund prior to the issuance of the first Zoning Permit for the development, or such other time that may be specified by the Board of Supervisors with the approval of the application for a modification; and
  3. A per ADU cash contribution of 100% of the construction cost of a prototypical SFD ADU, as follows:
    - a. The construction cost of a prototypical SFD ADU must be the vertical cost of an ADU; and
    - b. The minimum number of bedrooms of the prototypical SFD ADU used to determine such vertical cost must be equal to the number of bedrooms provided for the predominant market rate SFD dwelling unit in the development as determined by the Zoning Administrator; and

3. **Modifications to Section 9.01.D.1.** Modifications to Section 9.01.D.1. are subject to the following:

- a. A proportion of each type of market rate dwelling unit in a development must be provided as an ADU(s). The requirement for ADUs to be provided as a proportion of 1 or more market rate unit types in a development cannot be eliminated as part of a modification request;
  - b. ADUs of a certain dwelling unit type are not permitted to exceed 50% of any 1 dwelling unit type in the development unless that dwelling unit type exceeds 50% of the dwelling unit types in the development;
  - c. The total number of ADUs to be provided must use Section 9.01.C. to calculate total number of ADUs required. Section 9.01.D.1.a. is not applicable when a modification is requested;
  - d. The applicant must provide a written justification that addresses Section 9.01.H.3.e. with the application for modification;
  - e. For applications for modification of Sections 9.01.D.1., the ADUAB, Planning Commission, and Board of Supervisors must consider and make findings regarding, the following criteria:
    1. The proportion of each type of market rate dwelling unit included in a development that will be provided as ADU(s);
    2. Whether the proposed alternative will achieve the objective of providing a full range of housing choices in Loudoun County;
    3. The extent to which the proposed alternative supports ADU ownership; and
    4. Whether there are any unusual costs associated with development of the subject property in strict accordance with Section 9.01.D.1. that would necessitate the modifications; and
  - f. All Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, and Preliminary Subdivision Plat applications for the development must provide the modified proportion of ADUs by dwelling unit type to be provided; and
4. **Modifications to Section 9.01.G.1., 9.01.G.2., and 9.01.G.3.** Modifications to Sections 9.01.G.1., 9.01.G.2., and/or 9.01.G.3. are subject to the following:
- a. The applicant must provide a written justification that addresses Section H.4.b. with the application for modification;
  - b. For applications for modification of Sections 9.01.G.1., 9.01.G.2., and/or 9.01.G.3., the ADUAB, Planning Commission, and Board of Supervisors must consider and make findings regarding, the following criteria:
    1. Whether the proposed alternative will achieve the objective of providing a full range of housing choices in Loudoun County;
    2. How the modification will affect the timing of construction and availability of ADUs compared to market rate dwelling units, and the risk that all required ADUs will not be provided;
    3. Whether there are any existing unique or unusual site constraints, including but not limited to the availability of utilities or infrastructure, that necessitate the modifications; and
    4. Whether there are any unusual costs associated with development of the subject property in strict accordance with Sections 9.01.G.1., 9.01.G.2., and/or 9.01.G.3. that would necessitate the modifications; and
  - c. All Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, and Preliminary Subdivision Plat applications for the development must provide the modified timing of construction and availability of ADUs compared to market rate dwelling units.
- I. **Violations and Penalties.** In addition to enforcement under Section 10.13 the Zoning Administrator is authorized to pursue the following enforcement remedies whenever any person, whether an owner, lessee, principal, agent, employee, or otherwise, violates any provision of the ADU Program, or permits any such violation, or otherwise fails to comply with the requirements of the ADU Program:

1. Tenants of ADUs who fail to submit executed affidavits or certifications, as required by the ADU Program, are subject to lease termination and eviction procedures, as provided in the Codified Ordinances;
2. Tenants of ADUs who falsely swear or who execute an affidavit or certification required by the ADU Program knowing the statements contained therein to be false are subject to lease termination and eviction procedures, as provided in the Codified Ordinances; and
3. Owners of individual ADUs who falsely swear that they continue to occupy their respective ADU as their primary domicile will be subject to injunction or other suit, action, or proceeding to require such owner to either sell the ADU to someone who meets the eligibility requirements established pursuant to the ADU Program or to occupy such ADU as their principal domicile.

## 9.02 Unmet Housing Needs Unit Program

**Purpose.** *The purpose of the Unmet Housing Needs Unit Program is to:*

- *Complement the Affordable Dwelling Unit (ADU) Program by addressing housing affordable to families with incomes not addressed by the ADU Program to include 0% to 30% of area median income (AMI), which is the area of greatest need, and 70% to 100% of AMI;*
- *Promote the development of a full range of housing choices; and*
- *Implement the Housing Policies of the General Plan.*

### A. Applicability.

1. To Unmet Housing Needs Units (UHNUs) provided as part of an application for a Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision, or Preliminary Subdivision to comply with one or more of the following:
  - a. To achieve an adjusted FAR in the TDSA of the TRC Zoning District pursuant to Section 2.01.01.D.;
  - b. As a permitted adaptive reuse of a structure pursuant to Section 4.09;
  - c. As required when the residential density exceeds 30 dwelling units per acre in the PD-MUB Zoning District pursuant to Section 2.02.05.11.I. UHNUs provided to meet the requirements of the PD-MUB Zoning District also are subject to Section 9.02.G., and in the event of any conflicts between Section 9.02.G. and Section 9.02.B. through F, Section 9.02.G. supersedes such conflicting requirement; and/or
  - d. To fulfill proffers approved as part of a Zoning Map Amendment or Zoning Concept Plan Amendment.
2. "Development" means a proposal to develop land or an act of developing land that meets, and thereby is subject to, Section 9.02.A.1.
3. **AHU Program.** An applicant may provide affordable housing units (AHU) in lieu of the UHNUs required by the UHNU Program in accordance with Section 9.03, provided the dwelling unit type for the proposed AHUs is permitted in the zoning district where such AHUs will be located.

### B. Administration of Chapter 1450 of the Codified Ordinances.

All sections of Chapter 1450 of the Codified Ordinances apply to UHNUs except as follows:

1. For purposes of administering Chapter 1450 of the Codified Ordinances as applied to UHNUs, the terms "Affordable Dwelling Unit" and "ADU" are replaced with "Unmet Housing Needs Unit" and "UHNU," where appropriate;
2. **UHNU Program Income Requirements.** The income requirements referenced in Sections 1450.01, 1450.03.b., and 1450.05.c. are replaced with the following income requirements applicable to UHNUs:
  - a. UHNUs are only permitted to be provided for the AMI ranges and tenancies in Table 9.02-1; and
  - b. UHNUs in the PD-MUB Zoning District provided in accordance with Section 9.02.G. below must also meet the following requirements:

1. If for rent UHNUs are provided, a minimum of 1/3 of the rental UHNUs must be affordable to households earning 30% or less of the AMI;
2. If for purchase UHNUs are provided, a minimum of 1/3 of the for purchase UHNUs must be affordable to each of the following:
  - a. Households earning greater than 30% but less than 70% of the AMI; and
  - b. Households earning 70% or greater but no more than 100% of the AMI; and

Table 9.02-1. UHNU Program Income Requirements	
AMI Range <sup>1</sup>	Tenancy
0% up to 30% PD-MUB Only: 0% up to 60%	For Rent
70% up to 100% PD-MUB Only: 30% up to 100%	For Purchase

**TABLE NOTES:**  
<sup>1</sup>The current AMI must be used to determine income requirements for UHNUs.

3. **UHNU Program Declaration Control Periods.** The sale and rental price control periods referenced in Section 1450.08 are replaced with the following sale and rental price control periods applicable to UHNUs:
  - a. **For Rent UHNUs.** Rents for rental UHNUs must be controlled for a period of at least 30 years from the date of the issuance of the Certificate of Occupancy for each for rent UHNU; or
  - b. **For Purchase UHNUs.** Sales prices for UHNUs for purchase must be controlled for a period of at least 20 years after recordation of the deed from the initial sale of such UHNU, and an UHNU extended control period thereafter applies until the expiration of 50 years after such recordation.
- C. **Standards for UHNU Calculations.** To comply with the requirements in Section 9.02.A.1. above the required number of UHNUs is calculated as follows:
  1. **Section 9.02.A.1.a.** Calculate the minimum number of UHNUs required by multiplying the applicable UHNU percentage requirement in Section 2.01.01.D., Table 2.01.01-2 by the total number of dwelling units proposed, including any ADUs and additional dwelling units provided pursuant to the optional density increase provided pursuant to Section 9.01;
  2. **Section 9.02.A.1.c.** Pursuant to Section 4.09.D., Table 4.09-1, 100% of the dwelling units must be UHNUs;
  3. **Section 9.02.A.1.d.** Pursuant to Section 9.02.G. below;
  4. **Section 9.02.A.1.e.** Pursuant to the approved proffer to provide UHNUs;
  5. When the calculation under Section 9.02.C. results in a fraction or decimal, such fraction or decimal is interpreted as requiring 1 whole UHNU; and
  6. Calculations for the total number of dwelling units proposed and total required number of UHNUs must be included on each Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, or Subdivision Plat application.

**Figure 9.02-1. Sample UHNU Calculation for Adjusted FAR in the TDSA of the TRC Zoning District Pursuant to Table 2.01.01-2.**

<i>Dwelling Units (DU) Proposed:</i>	250
<i>UHNUs Required:</i>	15% of Total DUs
<i>Total UHNUs Required:</i>	200 x 15% = 38 UHNUs Required (Rounded Up from 37.5)
<i>Permitted FAR:</i>	1.5 FAR
<i>Permitted FAR with 15% Increase:</i>	1.5 + (1.5 x 15%) = 1.8 FAR



- D. **Designation of UHNUs on Site Plans and Subdivision Plats and Associated Construction Plans and Profiles.** Each approved Site Plan and Subdivision Plat and associated Construction Plans and Profiles must demonstrate that the required number and/or percentage of for-rent dwelling units and for-purchase dwelling units are being provided as UHNUs, and that such UHNUs meet the requirements of Section 9.02.E.
1. If for-rent UHNUs are provided, a tabulation must be included that demonstrates the percentage of dwelling units and the number of each dwelling unit type that will be maintained as UHNUs.
  2. If for-purchase UHNUs are provided, the specific dwelling units that will be provided as UHNUs must be identified.
- E. **UHNU Compatibility and Interspersion.** UHNUs must be compatible with and interspersed among market rate dwelling units in the development. To demonstrate conformance with this requirement, each approved Site Plan and Subdivision Plat and associated Construction Plans and Profiles must demonstrate the following:
1. **UHNU Compatibility.** UHNUs of a particular dwelling unit type must be similar to market rate dwelling units of the same dwelling unit type in width, depth, height, size, and exterior architectural treatment:
    - a. **Width.** For the purposes of Section 9.02.E.1.a., width is the distance across the front façade of a SFD, SFA, or MFS dwelling unit. To be considered similar in width, SFD, SFA, and MFS UHNUs are permitted to have a width that is a minimum of 70% of the average width of SFD, SFA, or MFS market-rate dwelling units adjacent to the sides of the UHNU or UHNU lot. SFA UHNUs must have a 14-foot minimum width;
    - b. **Depth.** To be considered similar in depth, SFD, SFA, and MFS UHNUs are permitted to have a depth that is a minimum of 75% of the average depth of SFD, SFA, or MFS market-rate dwelling units adjacent to the sides of the UHNU or UHNU lot. The rears of SFA or MFS market rate dwelling units in the same building as the SFA or MFS UHNU with a reduced depth must be staggered;
    - c. **Height.** To be considered similar in height, UHNUs must meet the following criteria for the applicable dwelling unit type:
      1. SFA and MFS UHNUs are permitted to have a height that is a minimum of 90% of the height of SFA or MFS market rate dwelling units adjacent to the sides of the UHNU or UHNU lot. Stories required to provide access to rooftop decks are not included in the height calculation; or
      2. SFD UHNUs must have the same number of stories as the market rate dwelling units adjacent to the sides of the UHNU or UHNU lot;
    - d. **Size.** To be considered similar in size, UHNUs must meet the following criteria for the applicable dwelling unit type:
      1. SFD, SFA, and MFS UHNUs must comply with Section 9.02.E.1.a., Section 9.02.E.1.b., and Section 9.02.E.1.c.; or
      2. UHNUs that do not comply with Section 9.02.E.1.d.1. are permitted if the same number of market rate dwelling units of the same dwelling unit type have the same square footage of livable space as the UHNUs that do not comply with Section 9.02.E.1.d.1.; and
    - e. **Architectural Treatment.** To be considered similar in exterior architectural treatment, UHNUs must meet the following criteria:
      1. UHNUs must have front façade construction materials that are the same as those used in adjacent market rate dwelling units. Alternatively, UHNUs may have front façade construction materials that are not identical to adjacent market rate dwelling unit front façades when at least 25% of the market rate dwelling units have the same front façade construction materials;
      2. UHNUs must have the same variation in design elements (e.g., varying roof pitches and orientation, gables, dormers, decorative elements, window arrangements, trims, materials, varying setbacks, etc.) as market rates dwelling units. Alternatively, UHNUs may have the same

- variation in design elements that are the same as market rate dwelling units when at least 25% of market rate dwelling units have the same variation of design elements;
3. UHNUs must have the same exterior features, (e.g., decks, fences, balconies) that are provided as a standard option for market rate dwelling units;
  4. Exterior doors for UHNUs must be provided at the same story as exterior doors for market rate dwelling units;
  5. Rear and side construction materials for UHNUs must be comparable to rear and side construction materials used for market rate dwelling units; and
  6. Garages must be provided for all UHNUs that are adjacent to market rate dwelling units that have a garage.
2. **UHNU Interspersion.** UHNUs must be interspersed among the market rate dwelling units. To be considered interspersed UHNUs must meet the following criteria:
- a. SFD UHNUs must not be located on lots adjacent to other SFD UHNUs;
  - b. No more than 2 SFA and MFS UHNUs are permitted to abut other SFA and MFS UHNUs, respectively;
  - c. No more than 41% of the SFA and MFS dwelling units in an SFA or MFS building are permitted to be UHNUs; and
  - d. UHNUs may be located directly across a road from each other or may back directly to each other across rear yards or common areas.
3. **Alternative UHNU Design Option.** The Zoning Administrator may allow an Alternative UHNU Design to meet the UHNU Compatibility requirements in Sections 9.02.E.1.a., 9.02.E.1.b., 9.02.E.1.c., and 9.02.E.1.d. and/or UHNU Interspersion requirements in Section 9.02.E.2. on a case-by-case basis when a design proposal is determined to meet the intent of the UHNU Compatibility and Interspersion requirements in Section 9.02.E.
- a. Requests for an Alternative UHNU Design to meet of the compatibility and/or interspersion requirements must provide the following information:
    1. A plan that identifies the location of the UHNUs that are subject to the Alternative UHNU Design and the remaining required UHNUs;
    2. Elevation and plan view drawings of the UHNUs that are subject to the Alternative UHNU Design that depict the building materials, design elements, and building dimensions;
    3. Elevation and plan view drawings of the of the market rate dwelling units that depict the building materials, design elements, and building dimensions;
    4. A written justification that addresses the criteria in Section 9.02.E.3.b.; and
    5. Additional information that the Zoning Administrator deems necessary to evaluate the Alternative UHNU Design request; and
  - b. To approve the Alternative UHNU Design request of the compatibility and/or interspersion requirements, the Zoning Administrator must find that the following criteria are met for the UHNUs that are subject to the Alternative UHNU Design request. The Zoning Administrator may forward a Alternative UHNU Design request to ADUAB for comment and recommendation prior to issuing a decision.
    1. **Integration:** The UHNUs are integrated into the development and not isolated and/or physically separated from the market rate dwelling units in the development.
    2. **Location:** The UHNUs are located in the same general area as the market rate dwelling units, preferably proximate to transit, Commercial uses, and other essential services.
    3. **Building Materials and Design Elements:** The UHNUs are designed with building materials and design elements that are consistent with the market rate dwelling units. The quality of

construction and materials used in the UHNUs is comparable to that of the market rate dwelling unit.

4. **Size and Layout:** The UHNUs are not significantly smaller or awkwardly shaped compared to the market rate dwelling units. Significantly smaller in this case is no more than 70% smaller than the average size of the market rate dwelling units that generated the required UHNUs subject to the Alternative UHNU Design request.
5. **Amenities:** The UHNUs have access to similar amenities as the market rate dwelling units. This could include access to common areas, open space, parking, and any other amenities provided to the residents of the market rate dwelling units.

**F. Timing of Construction/Availability of UHNUs.** Timing of construction and availability of UHNUs must be as follows:

1. Certificates of Occupancy for 50% of the UHNUs must be issued prior to issuance of more than 50% of the Certificates of Occupancy for market rate dwelling units in the development;
2. Certificates of Occupancy for 75% of the UHNUs must be issued prior to issuance of more than 75% of the Certificates of Occupancy for market rate dwelling units in the development;
3. Certificates of Occupancy for 100% of the UHNUs must be issued prior to issuance of more than 90% of the Certificates of Occupancy for market rate dwelling units in the development; and
4. The following information must be included with each request for final zoning inspection for a market rate dwelling unit within the development:
  - a. The total number of dwelling units, market rate dwelling units, and UHNUs, ADUs, and AHUs proposed for the development;
  - b. The number of Certificates of Occupancy issued for market rate dwelling units in the development;
  - c. The number of Certificates of Occupancy issued for UHNUs, ADUs, and AHUs in the development; and
  - d. The legal description or unit number of each UHNU, ADU, and AHU for which an Certificate of Occupancy has been issued.

**G. Density and FAR Increase for Required UHNUs in the PD-MUB Zoning District.** When UHNUs are required pursuant to Section 2.02.05.11.I., the development is permitted a density increase in accordance with Table 9.02-2, Column B, and an FAR increase in accordance with Table 9.02-2, Column D.

1. All applications submitted pursuant to Section 9.02.G. must designate which dwelling unit type(s) will receive the density increase and FAR increase.

**Table 9.02-2. PD-MUB Density Increase and FAR Increase for Required UHNUs**

Column A	Column B	Column C	Column D
Dwelling Unit Type	Density Increase	Required Percentage of Dwelling Units to be Provided as UHNUs	FAR Increase
MFA Dwelling Units	20%	6.25%	Increase maximum FAR permitted by 0.2
MFS Dwelling Units	10%	6.25%	Increase maximum FAR permitted by 0.1
SFD and SFA Dwelling Units	10%	6.25%	Increase maximum land area permitted for SFA dwelling units and SFD dwelling units under Section 2.02.05.11.I by 2% of total district size

**TABLE KEY:**

SFD = single-family detached, SFA = single-family attached, MFS = multifamily stacked, and MFA = multifamily attached

2. **Calculation of Density Increase.** Multiply the number of dwelling units proposed for a particular dwelling unit type (Column A of Table 9.02-2) prior to compliance with Section 9.01 by the corresponding Density

Increase (Column B of Table 9.02-2) for that dwelling unit type. The resulting number is the total number of additional dwelling units permitted for that dwelling unit type in the PD-MUB Zoning District

- a. The cumulative number of additional dwelling units is not permitted to cause the residential density of the PD-MUB Zoning District to exceed 54 dwelling units per acre, including any density increase that may be provided pursuant to Section 9.01.
- b. If additional dwelling units cause an application to exceed the upper density limit set forth in the General Plan, then the upper density limit set forth in the General Plan applicable to the area subject to the application will be increased by the total number of additional dwelling units calculated pursuant to Section 9.02.G.

3. **Calculation of Required UHNUs.** Multiply the number of dwelling units proposed for a particular dwelling unit type (Column A of Table 9.02-2) prior to compliance with Section 9.01 by the Required Percentage of Dwelling Units to be Provided as UHNUs (Column C of Table 9.02-2) for that dwelling unit type. The resulting number is the minimum number of dwelling units that must be provided as UHNUs for that dwelling unit type in the PD-MUB Zoning District.

4. Nothing in Section 9.02.G. will be construed to prohibit the following, provided the maximum density of the PD-MUB Zoning District does not exceed 54 dwelling unit per acre:

- a. An applicant's voluntary provision of ADUs pursuant to Section 9.01.C.4; and/or
- b. An application providing more than the number of UHNUs required for the income ranges specified in Section 9.02.B.1. provided the application is in conformance with Section 9.02.G and Section 9.01.

H. **UHNU Modifications.** Modifications to Sections 9.02.F.1., 9.02.F.2., and 9.02.F.3. are permitted pursuant Section 10.10.04.C. and as follows:

1. All applications for a modification must be submitted in conjunction with the first Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision, or Preliminary Subdivision application for the development;
2. The ADUAB will review the modification application, and the criteria of Section 9.02.H.5. below and make its recommendation to the Planning Commission within 60 days of receipt of a complete application;
3. The Board of Supervisors must consider, upon recommendation of the Planning Commission, the criteria in Sections 9.02.H.5.;
4. The time limits set forth in § 15.2-2259 and § 15.2-2260 of the Virginia Code will be suspended during the pendency of an application for modification filed pursuant to Section 9.02.H.;
5. The applicant must provide a written justification, and the ADUAB, Planning Commission, and Board of Supervisors must consider and make findings regarding, the following criteria:
  - a. Whether the proposed alternative will achieve the objective of providing a full range of housing choices in Loudoun County;
  - b. How the modification will affect the timing of construction and availability of UHNUs compared to market rate dwelling units, and the risk that all required UHNUs will not be provided;
  - c. Whether there are any existing unique or unusual site constraints, including but not limited to the availability of utilities or infrastructure, that necessitate the modifications; and
  - d. Whether there are any unusual costs associated with development of the subject property in strict accordance with Sections 9.02.F.1., 9.02.F.2., and/or 9.02.F.3. that would necessitate the modifications; and
6. All Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, and Preliminary Subdivision Plat applications for the development must provide the modified timing of construction and availability of UHNUs compared to market rate dwelling units.

- I. **Violations and Penalties.** In addition to enforcement under Section 10.13, the Zoning Administrator is authorized to pursue the following enforcement remedies whenever any person, whether an owner, lessee, principal, agent, employee, or otherwise, violates any provision of the UHNU Program, or permits any such violation, or otherwise fails to comply with any of the requirements hereof:
  1. Tenants of UHNUs who fail to submit executed affidavits or certifications, as required by the UHNU Program, are subject to lease termination and eviction procedures, as provided in the Codified Ordinances;
  2. Tenants of UHNUs who falsely swear or who execute an affidavit or certification required by the UHNU Program knowing the statements contained therein to be false are subject to lease termination and eviction procedures, as provided in the Codified Ordinances; and
  3. Owners of individual UHNUs who falsely swear that they continue to occupy their respective UHNU as their primary domicile will be subject to injunction or other suit, action, or proceeding to require such owner to either sell the UHNU to someone who meets the eligibility requirements established pursuant to the UHNU Program or to occupy such UHNU as their principal domicile.

### 9.03 Affordable Housing Unit Program

**Purpose.** *The purpose of the Affordable Housing Units (AHU) Program is to establish regulations for AHUs when an applicant provides AHUs in lieu of required Affordable Dwelling Units or Unmet Housing Needs Units.*

- A. **Applicability.** The requirements of the AHU Program apply to AHUs provided in lieu of required Affordable Dwelling Units (ADUs) and/or Unmet Housing Needs Units (UHNUs) as part of an application for a Site Plan or Subdivision pursuant to Sections 9.01.A.4. and 9.02.A.2. as follows:
  1. The total number of AHUs provided must be equal to or greater than the total number of required ADUs and UHNUs for the development:
    - a. "Development" means a proposal to develop land or an act of developing land that meets, and thereby is subject to, Section 9.03.A.1.; and
    - b. A development that provides a fewer number of AHUs than the total number of ADUs required under Section 9.01.C. and UHNUs required under Section 9.02.C. must provide a sufficient number of additional ADUs or UHNUs, as applicable, to make up the difference;
  2. A development that provides AHUs to satisfy the ADU Program requirements is permitted an optional density increase in accordance with Section 9.01.C.3.; and
  3. A development that provides AHUs to satisfy the UHNU Program requirements is permitted to count such AHUs as UHNUs for the purpose of compliance with the requirements listed in Section 9.02.A.1.
- B. **AHU Program Income Requirements.** The rents and sales prices for AHUs provided must be in accordance with the rules and regulations governing the applicable AHU funding programs and AHUs must be marketed in accordance with the applicable AHU funding program's rules and regulations.
- C. **AHU Program Development Requirements.** The following requirements apply to any development that provides AHUs pursuant to this section:
  1. The applicant must provide written verification to the Zoning Administrator from the applicable AHU funding program of the approval of funding to provide AHUs. Until such written verification is provided by the applicant and reviewed and approved by the Director of the Department of Housing and Community Development, only ADUs are permitted to be provided to meet the requirements of the ADU Program and only UHNUs are permitted to be provided to meet the requirements of the UHNU Program;
  2. **Designation of AHUs on Site Plans and Subdivision Plats and Associated Construction Plans and Profiles.** Approved Site Plans and Subdivision Plats and associated Construction Plans and Profiles must:
    - a. Identify the specific number and location of buildings that are to contain AHUs; and



- b. Include a tabulation demonstrating that the total number of AHUs, ADUs and/or UHNUs provided satisfies the total number of ADUs and UHNUs required by Section 9.01.D. and Section 9.02.C., respectively;
  3. **Timing of Construction/Availability of AHUs.** The timing of construction and availability of AHUs must be as follows unless a different trigger is accepted by the Board of Supervisors as part of the approval of a Concept Development Plan:
    - a. **For Developments with 100% or More of Required ADUs and/or UHNUs Substituted as AHUs.** The AHU builder must demonstrate that they have acquired the property where the AHUs will be constructed and closed on the AHU construction funding with the AHU funding program referenced in the written verification used to meet Section 9.03.C.1. prior to issuance of more than 50% of the Certificates of Occupancy for the market rate dwelling units in the development;
    - b. **For Developments with Less than 100% of Required ADUs and/or UHNUs Substituted for AHUs:**
      1. Certificates of Occupancy for 50% of the AHUs must be issued prior to issuance of more than 50% of the Certificates of Occupancy for the market rate dwelling units in the development;
      2. Certificates of Occupancy for 75% of the AHUs must be issued prior to issuance of more than 75% of the Certificates of Occupancy for the market rate dwelling units in the development; and
      3. Certificates of Occupancy for 100% of the AHUs must be issued prior to issuance of more than 90% of the Certificates of Occupancy for the market rate dwelling units in the development;
    - c. The following information must be submitted with each final zoning inspection request for a market rate dwelling unit within the development:
      1. The total number of dwelling units, market rate dwelling units, AHUs, ADUs, and UHNUs proposed for the development and the number of required ADUs and/or UHNUs provided as AHUs;
      2. The number of Certificates of Occupancy issued for market rate dwelling units within the development and the percentage of market rate dwelling units for which Certificates of Occupancy have been issued;
      3. The number of Certificates of Occupancy issued for AHUs, ADUs, and UHNUs within the development and the percentage of AHUs, ADUs, and UHNUs for which Certificates of Occupancy have been issued; and
      4. The legal description or unit number of each AHU, ADU, and UNHU in the development;
  4. **AHU Compatibility.** Buildings containing AHUs must not be discernable as attainable housing or from market rate dwelling units in the development. To ensure AHUs are not discernable, the following applies:
    - a. **MFA AHU Buildings.** When the AHU building is a MFA building, then the following applies:
      1. When 1 MFA building is provided in a development and it is the AHU MFA building, then the following applies:
        - a. Each elevation of such AHU MFA building must be similar in building materials, design, and architectural features. Elements used to differentiate the front façade of such buildings are not required on each elevation;
        - b. Each elevation of such AHU MFA building must be composed predominately of primary building materials, with secondary building materials limited to accents or subordinate elements of each elevation, as follows:
          - A. Permitted primary building materials include:
            1. Brick;
            2. Concrete masonry units, split faced or burnished;
            3. Glass - clear;



4. Glass - architectural panels;
  5. Metal panels;
  6. Stone or synthetic equivalent;
  7. Tile masonry or terra cotta;
  8. Stucco or EIFS (reinforced);
  9. Cementitious siding or cement fiber board; and
  10. Premium Grade vinyl siding. Premium Grade vinyl siding is defined as beaded vinyl siding with no less than a 6.5 inches exposed lap and a nominal wall thickness of 0.004 inches;
- B. Permitted secondary building materials that are limited to accents or subordinate elements include:
1. Brick - panel/veneer, imprint or overlay system;
  2. Concrete masonry units, flush/plain, split faced, or burnished;
  3. Cementitious siding or cement fiber board;
  4. Gypsum reinforced fiber concrete;
  5. Wood siding;
  6. Metal panels;
  7. Cast stone;
  8. Composite wood trim;
  9. Fiber reinforced plastic;
  10. Pre-cast concrete (trim and cornice elements only); and
  11. Premium Grade vinyl siding. Premium Grade vinyl siding is defined as beaded vinyl siding with no less than a 6.5 inched exposed lap and a nominal wall thickness of 0.004 inches; and
- C. Additional materials not listed in Section 9.03.C.4.a.1.b. are permitted if the Zoning Administrator determines that they are similar in appearance and quality to the listed materials; and
2. When more than 1 MFA building is provided in a development, the AHU MFA building(s) must meet 1 of the following:
- a. Utilize the same exterior building materials and be of a similar architectural style to the market rate MFA building(s) in the development; or
  - b. Meet the requirements of Section 9.03.C.4.a.1.;
- b. **SFD, SFA, and MFS AHUs.** When the AHUs are provided as a SFD, SFA, or MFS dwelling units, then the AHUs must utilize the same exterior building materials and be of a similar architectural style to the market rate dwelling unit(s) of the same dwelling unit type in the development;
- c. **AHUs Generally.** When AHUs are subject to design guidelines or AHU building designs approved with a Zoning Map Amendment or Zoning Concept Plan Amendment, the AHU building is not subject to Sections 9.03.C.4.a. or 9.03.C.4.b.;
- d. Plans demonstrating that the AHUs are in conformance with the requirement of Section 9.03.C.4. must be provided to the Zoning Administrator prior to approval of the first Site Plan and/or Subdivision Plat and associated Construction Plans and Profiles for the AHUs; and
- e. **Exception.** AHUs approved for certain funding sources are not required to meet the requirements of Section 9.03.C.4. as follows:

1. Written documentation demonstrating the approval of such funding source(s) must be provided prior to approval of the first Site Plan and/or Subdivision Plat and associated Construction Plans and Profiles for the AHUs; and
2. Applicable funding sources include:
  - a. AHUs approved for the Loudoun County Affordable Multifamily Loan Program; and
  - b. AHUs approved by one or more of the following AHU funding programs:
    - A. Low Income Housing Tax Credit (LIHTC); and
    - B. HUD 221(d)(4) Affordable.

**D. AHU Modifications.** Modifications to Sections 9.03.C.4.a. and 9.03.C.4.b. are permitted pursuant Section 10.10.04.C. and as follows:

1. All applications for a modification must be submitted in conjunction with the first Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision, or Preliminary Subdivision application for the development;
2. The ADUAB will review the modification application, and the criteria of Section 9.03.D.5. below and make its recommendation to the Planning Commission within 60 days of receipt of a complete application;
3. The Board of Supervisors must consider, upon recommendation of the Planning Commission, the criteria in Sections 9.03.D.5.;
4. The time limits set forth in § 15.2-2259 and § 15.2-2260 of the Virginia Code will be suspended during the pendency of an application for modification filed pursuant to Section 9.03.D.;
5. The applicant must provide a written justification, and the ADUAB, Planning Commission, and Board of Supervisors must consider and make findings regarding, the following criteria:
  - a. Whether the proposed alternative will achieve the objective of ensuring the AHU building is not discernable as attainable housing in the development;
  - b. Whether there are any existing unique or unusual constraints, including but not limited to the AHU funding source program requirements, that necessitate the modifications;
  - c. Whether there are any unusual costs associated with development of the subject property in strict accordance with Section 9.03.C.4.a. or Section 9.03.C.4.b. that would necessitate the modifications;
  - d. Whether there are any building materials and design review requirements associated with the proposed AHU funding source, builder, or investors that necessitate the modifications; and
  - e. Why Sections 9.03.C.4.a. or 9.03.C.4.b. are not viable options for achieving compatibility; and
6. All Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, and Preliminary Subdivision Plat applications for the development must provide the modified AHU compatibility requirements.