

CHAPTER 9: ATTAINABLE HOUSING

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9.01 Affordable Dwelling Unit Program

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

- *Administer and regulate an Affordable Dwelling Unit (ADU) Program enabled pursuant to § 15.2-2304 of the Code of Virginia.*
- *Assist in the provision of housing to persons of moderate income.*
- *Promote the development of a full range of housing choices.*
- *Require the construction and continued existence of moderately priced dwelling units.*
- *Provide for optional increases in density to reduce land costs for the construction of moderately priced dwelling units.*
- *Encourage the provision of affordable housing meeting the needs of households with incomes between 30% and 70% of the area median income (AMI), including in areas currently served by or planned for mass transit and proximate to major employment centers.*
- *Implement the Housing Policies of the General Plan.*

A. **Applicability.** The requirements of the ADU Program apply as follows:

1. To any site, or portion thereof, at one location that is:

- a. Served by public water and sewer; and
- b. The subject of a development application for Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat that yields 24 or more dwelling units.

2. **Definitions.** For the purposes of these ADU Program requirements:

- a. "Development" refers to an application or proposal meeting subsections A.1.a. and A.1.b. above, to the subject property to which such application or proposal refers to, or to the act of developing such subject property.
- b. "Site, or portion thereof, at one location" includes all adjacent developable land of the property owner, under common ownership and/or control of the owner.

1. "Owner" includes applicants or members of the owner's and/or applicant's immediate family.

- a. "Immediate family" includes the owner's and/or applicant's spouse, children, parents, and siblings.

A. **Exception.** Adjacent parcels of developable land owned by immediate family members are exempt from the provisions of the ADU Program when the separate ownership has existed for a period of 5 or more years.

2. "Common ownership and/or control" includes, but is not limited to land owned and/or controlled by separate partnerships, land trusts, trusts, or corporations and other such forms of

business entities in which the owner owns 1% or more of the stock, partnership, membership, or is the trustee or beneficiary.

- a. In determining applicability of this ADU Program, the acquisition of a fee interest by a lending institution, such as a pension fund, bank, savings and loan, insurance company, or similar entity due to foreclosure or project participation is considered as ownership.

- A. *Exception.* The acquisition of an equity interest by a lending institution, such as a pension fund, bank, savings and loan, insurance company, or similar entity solely by virtue of its agreement to provide financing does not constitute ownership in determining applicability.

3. *Phased Development.* An owner will not be exempt from the ADU Program requirements by submitting phased development applications for a site, or portion thereof, at one location for Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat for less than 24 dwelling units at any one time.

- a. *Exception.* An owner may apply for a Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat of a site, or portion thereof, at one location for less than 24 dwelling units if the owner agrees, in writing, that any following development application for the site, or portion thereof, at one location must meet the requirements of the ADU Program when the total number of dwelling units in the development application and/or site, or portion thereof, at one location meets or exceeds 24 dwelling units.

- b. The agreement referenced in subsection A.3.a must be:

1. Included on the approved Concept Development Plan, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat for the development; and
 2. Recorded among the Loudoun County Land Records and must be indexed in the names of all owners of the site, or portion thereof.

4. *Exemptions.* The requirements of the ADU Program do not apply to the following:

- a. Any multistory structure of which a minimum of 4 stories are composed entirely of multifamily dwellings and/or facilities (excluding parking) restricted for the exclusive use and enjoyment of the residents of such multifamily dwellings, and has an elevator(s) that serves 2 or more dwelling units in the structure. **Note:** *The County directed staff to commence a study to determine the feasibility of deleting the ADU Program exemption for multifamily (MF) dwelling structures and develop new regulations for MF dwelling structures under the ADU Program as a priority of the Zoning Ordinance Rewrite. Findings of that study could result in changes to this exemption. See June 2, 2020 Board Business Item - TLUC Report: ZOAM-2017-0001 Housing Affordability ZOAM.*

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. Administration and Enforcement. The administration and enforcement of the ADU Program is as follows:

1. The Zoning Administrator administers and enforces the provisions of the ADU Program.
2. In addition to the ADU Program provisions of Section 9.01, all ADUs must comply with Chapter 1450 of the Codified Ordinances of Loudoun County (Codified Ordinances).
 - a. The administration, establishment of ADU prices, price controls, eligibility requirements for the ADU Program, and the structure and operation of the Affordable Dwelling Unit Advisory Board (ADUAB) are governed by the Codified Ordinances.

C. ADU Income Requirements. The ADUs must be provided based on the Area Median Incomes (AMI) and type of tenancy in Table 9.01-1.

TABLE 9.01-1. ADU PROGRAM INCOME REQUIREMENTS

Area Median Income (AMI) Tier ¹	Type of Tenancy
30% up to 50%	For Rent
30% up to 70%	For Purchase

¹The current AMI must be used to determine income requirements for the ADUs.

D. ADU Program Requirements and Optional Increases in Density. The ADU Program requirements and optional increases in density apply as follows:

1. *ADUs Required for SFD, SFA, MFS Developments.* When a development subject to the ADU Program pursuant to subsection A.1 above requests approval of single-family detached dwelling units (SFD), single-family attached dwelling units (SFA), and/or multifamily stacked (MFS) dwelling units, a minimum of 15% of the total number of dwelling units approved for the development must be ADUs.
2. *ADUs Required for MFA Developments.* When a development subject to the ADU Program pursuant to subsection A.1 above requests approval of multifamily attached (MFA) dwelling units, a minimum of 10% of the total number of dwelling units approved for the development must be ADUs.
3. *Optional Density Increase.* When a development meets the ADU Program requirements by providing 15% of the total number of SFD, SFA, and/or MFS dwelling units and/or 10% of the MFA dwelling units approved for the development as ADUs, the development, at the discretion of the owner, is permitted an optional 20% maximum density increase, including the required number of ADUs, as provided in Table 9.01-2.
4. *Voluntary Provision of ADUs for an Exempt Development.* In the case where ADUs are provided pursuant to subsection A.4 above, the following provisions apply:
 - a. The ADU requirements of subsections D.1 and D.2 and the density increase in subsection D.3 do not apply. The ADU requirement and density increase are as follows:
 1. The density of a development subject to voluntary provision of ADUs may be increased between 10% to 20%.
 2. Of any dwelling units approved pursuant to the 10% to 20% density increase, not less than a percentage equal to the density increase percentage must be ADUs.
 - b. The applicant is not permitted to request cash or land in lieu of SFD ADUs pursuant to subsection J.7 below.

Sample ADU Calculation for Voluntary Provision of ADUs for a 150-Acre Development

<i>Permitted Density:</i>	<i>1 Dwelling Unit (DU) per Acre</i>
<i>Dwelling Units (DU) Permitted:</i>	<i>150 DUs</i>
<i>Total DUs Due to Voluntary ADUs</i>	<i>172 DUs</i>
<i>Additional DUs</i>	<i>22 DUs</i>
<i>Density % Increase</i>	<i>22 Additional DUs/150 DUs =14.6% density increase</i>
<i>ADUs Required:</i>	<i>14.6% of Additional DUs</i>
<i>Total ADUs Required:</i>	<i>22 x 14.6% = 4 ADUs Required (rounded up from 3.12)</i>

Table 9.01-2. Maximum Optional Density Increase by Zoning District¹

Zoning District	Permitted Density ²	Maximum Permitted Density ² 20% Density Increase with 15% SFD, SFA, and/or MFS ADUs	Maximum Permitted Density ² 20% Density Increase with 10% MFA ADUs
PD-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
SN-4	4	4.8	N/A
SN-6	6	7.2	N/A
SCN-8/R-8	8	9.6	N/A
SCN-16/R-16	16	19.2	19.2
SCN-24/R-24	24	28.8	28.8
PD-TC	1.0 FAR	1.2 FAR	1.2 FAR
PD-AAAR	30	36	36
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
TR-1	1 du per 40,000 sf	1.2 du per 40,000 sf	N/A
TR-3	1 du per 3 acres	1.2 du per 3 acres	N/A
TR-10	1 du per 10 acres	1.2 du per 10 acres	N/A
TSN	4	4.8	N/A
TCN	5	6	N/A
TR-2	1 du per 20,000 sf	1.2 du per 20,000 sf	N/A
CR-1/R-1	1 du per 40,000 sf	1.2 du per 40,000 sf	N/A
CR-2/R-2	1 du per 20,000 sf	1.2 du per 20,000 sf	N/A
CR-3/R-3	1 du per 15,000 sf	1.2 du per 15,000 sf	N/A
CR-4/R-4	1 du per 10,000 sf	1.2 du per 10,000 sf	N/A
JLMA-1	1 du per 40,000 sf	1.2 du per 40,000 sf	N/A
JLMA-2	1 du per 20,000 sf	1.2 du per 20,000 sf	N/A
JLMA-3	1 du per 3 acres	1.2 du per 3 acres	N/A
JLMA-20	1 du per 20 acres	1.2 du per 20 acres	N/A

(du = dwelling unit; sf = square feet; SFD = single-family detached; SFA = single-family attached; MFS = multifamily stacked; MFA = multifamily attached)
¹If the optional density increase 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% pursuant to Table 9.01-2 for the purposes of calculating the potential density that may be approved by the Board of Supervisors.
²Density is in dwelling units per acre unless otherwise noted.

E. Standards for ADU Calculations. Each development subject to the ADU Program must calculate required ADUs and optional density increase, as well as demonstrate the calculations, as follows:

1. Determine the maximum number of dwelling units proposed, including any dwelling units allowed by the optional density increase in subsection D.3.
2. Calculate the ADUs required pursuant to subsections D.1 and/or D.2, whichever is applicable, using the total number of dwelling units proposed.
 - a. When the calculation of required ADUs results in a requirement of a fractional ADU, any fraction is interpreted as 1 whole ADU.
 - b. The required number of ADUs may be modified pursuant to the provisions of subsection J below.
3. Demonstrate the optional density increase, total number of dwelling units proposed, and total number of ADUs required on each Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat application.

Sample ADU Calculation for 22.5-Acre Parcel in the SN District.

Permitted Density:	4 Dwelling Units (DU) per Acre
Dwelling Units (DU) Permitted:	22.5 x 4 = 90 SFD, SFA, and/or MFS DUs
ADUs Required:	15% of Total DUs
No Optional 20% Density Increase:	90 x 15% = 14 ADUs Required (Rounded Up from 13.5)
Optional 20% Density Increase:	90 + (90 x 20%) = 108 Total DUs
Permitted Density:	108/22.5 = 4.8 DUs per Acre
Total ADUs Required:	108 x 15% = 17 ADUs Required (Rounded Up from 16.2)

F. Calculating Required ADUs by Dwelling Unit Type. Each development subject to the ADU Program must provide required ADUs by dwelling unit type, as well as demonstrate the calculations, as follows:

1. When a development includes a mix of dwelling unit types, the required ADUs must be provided proportionately to the dwelling unit types of market rate dwelling units proposed in the development.
2. When a development application for MFS or MFA dwelling units includes a mix of dwelling unit sizes, the required ADUs must be provided proportionately to the sizes of market rate dwelling units proposed in the development. In MFS and MFA dwelling units, dwelling unit size is determined by the number of bedrooms.
 - a. "Dwelling unit type" as used in subsections F and G also includes "dwelling unit size."
3. ADUs are not permitted to be provided in a dwelling unit type that is not also provided as a market rate unit in the development.
 - a. *Exception.* If AHUs are substituted for ADUs pursuant to Section 9.03, then this requirement does not apply. However, the proposed AHU dwelling unit type must be permitted in the district in which it will be located.
4. When the calculation of ADUs by dwelling unit type results in a requirement of a fractional ADU, any fraction up to and including ½ will be disregarded, and fraction over ½ will be interpreted as 1 whole ADU.
 - a. If the total of the ADUs by dwelling unit type is less than the total number of required ADUs, then the applicant must increase the number of ADUs by dwelling unit type to equal the total number of required ADUs.
 1. The applicant may elect which dwelling unit type will be increased to provide the remaining required ADUs.
 - b. If the total of the ADUs by dwelling unit type exceeds the total number of required ADUs, then the applicant may decrease the number of ADUs by dwelling unit type to equal the total number of required ADUs.
 1. The applicant may elect which dwelling unit type will be decreased to achieve the required ADUs.
5. Demonstrate the required ADUs by dwelling unit type on each Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat.

Sample Calculation of ADUs Provided Proportionately to Dwelling Unit Types Proposed: SFD, SFA, and MFS Dwelling Units.

Total Dwelling Units Proposed:	110 SFD, SFA, and MFS DUs
Total ADUs Required:	17 (Rounded up from 16.5)
Dwelling Units by Unit Type:	10 SFD, 65 SFA, 35 MFS
Dwelling Unit Type Percent of Total:	9% SFD, 59% SFA, 32% MFS

<i>ADUs Required by Type:</i>	<i>17 x 9% = 2 SFD (Rounded up from 1.53)</i> <i>17 x 59% = 10 SFA (Rounded down from 10.03)</i> <i>17 x 32% = 5 MFS (Rounded down from 5.44)</i>
<i>Total ADUs:</i>	<i>17 ADUs</i>

Sample Calculation of ADUs Provided Proportionately to Dwelling Unit Sizes Proposed: MFA Dwelling Units.

<i>Total Dwelling Units Proposed:</i>	<i>300 MFA DUs</i>
<i>Total ADUs Required:</i>	<i>30</i>
<i>Dwelling Units by Unit Size:</i>	<i>30 Studio, 110 1-Bedroom (BR), 120 2-BR, 40 3-BR</i>
<i>Dwelling Unit Size Percent of Total:</i>	<i>10% Studio, 37% 1- BR, 40% 2-BR, 13% 3-BR</i>
<i>ADUs Required by Unit Size:</i>	<i>30 x 10% = 3 Studio</i> <i>30 x 37% = 11 1-BR (Rounded down from 11.1)</i> <i>30 x 40% = 12 2-BR</i> <i>30 x 13% = 4 3-BR (Rounded up from 3.9)</i>
<i>Total ADUs Required:</i>	<i>30 ADUs</i>

G. Designation of ADUs on Site Plans or Subdivision Plats. ADUs must be designated on Site Plans or Subdivision Plats as follows:

1. Approved Site Plans and/or Subdivision Plats must identify the specific number and/or percentage of for-sale dwelling units and for-rent dwelling units that are to be regulated as ADUs pursuant to the ADU Program.
 - a. All Site Plans and Subdivision Plats for a development containing for-rent ADUs must include a tabulation that demonstrates the percentage of dwelling units and the number of each dwelling unit by type that will be maintained as ADUs.
 - b. All Site Plans and Subdivision Plats for a development containing for-sale ADUs must identify the specific dwelling units that will be provided as ADUs.

H. ADU Compatibility and Interspersion. Approved Site Plans and Subdivision Plats must demonstrate that the ADUs are compatible with and interspersed among market rate dwelling units in the development by meeting the following requirements:

1. *ADU Compatibility.* To be considered compatible, ADUs must be similar in width, depth, height, and exterior architectural treatment to market rate dwelling units in the development.
 - a. To be considered similar in width, the ADUs must meet at least 1 of the following criteria:
 1. SFD, SFA, or MFS ADUs may be identical in width to market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 2. If a development includes identically-sized market rate dwelling units equaling at least 25% of the number of ADUs provided with the same Site Plan or Subdivision Plat, then SFD, SFA, and MFS ADUs may have widths as follows:
 - a. The minimum width of the SFA or MFS ADUs must be no less than 70% of the average width of SFA or MF stacked market-rate dwelling units provided with the same Site Plan or Subdivision Plat.
 - b. The minimum width of the SFD ADUs must be no less than 75% of the average width of SFD market-rate dwelling units provided with the same Site Plan or Subdivision Plat.
 - b. To be considered similar in depth, the ADUs must meet at least 1 of the following criteria:

1. SFD, SFA, or MFS ADUs may be identical in depth to market rate dwelling units provided with the same Site Plan or Subdivision Plat.
2. SFA and MFS ADUs may vary in depth along the entire rear façade by up to 15% if the rear of other market rate dwelling units provided with the same Site Plan or Subdivision Plat of the SFA or MFS building are staggered.
3. SFD ADUs may have a minimum depth of 75% of the average depth of SFD market-rate dwelling units on lots adjoining either side of the ADU lot.
- c. To be considered similar in height, the ADUs must meet at least 1 of the following criteria:
 1. SFD, SFA, or MFS ADUs may be identical in height to market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 2. SFA or MFS ADUs may have a height that is at least 90% the height of market rate dwelling units provided with the same Site Plan or Subdivision Plat when heights of SFA and MFS market rate dwelling units in the same building are staggered vertically.
 3. SFD ADUs do not have a minimum height but must have the same number of stories as SFD market rate dwelling units provided with the same Site Plan or Subdivision Plat.
- d. Smaller ADUs may be provided if the same number of market rate dwelling units provided with the Site Plan or Subdivision Plat are the same size as the smaller ADUs.
- e. To be considered similar in exterior architectural treatment, ADUs must meet the following criteria:
 1. ADUs must have front façade construction materials that are identical to those used in adjacent market rate dwelling units.
 2. ADUs may have front façade construction materials that are identical to market rate façades when at least 25% of market rate dwelling units provided with the same Site Plan or Subdivision Plat have the same façade materials.
 3. ADUs must have varying roof pitches and orientation, gables, dormers, decorative elements, window arrangements, trims, materials, varying setbacks, etc. when market rates dwelling units provided with the same Site Plan or Subdivision Plat use the same design elements, or where there is no readily identifiable pattern associated with ADUs.
 4. ADUs must have exterior features, such as decks, fences, or balconies if they are provided as a standard option on market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 5. Exterior doors for ADUs must be provided on the same level(s) as provided in market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 6. Rear and side construction materials for ADUs must be comparable to market rate dwelling unit rear and side construction materials provided with the same Site Plan or Subdivision Plat.
 7. Garages must be provided in all ADUs that are adjacent to market rate dwelling units that have a garage. Garages in ADUs must be of the same size as the adjacent market rate dwelling unit.
2. *ADU Interspersion*. To be considered interspersed among market rate dwelling units in the development, the ADUs must meet 1 or more of the following criteria:
 - a. Not be abutting in SFA or MFS building.
 1. *Exception*: When 2 SFA dwelling units are designed to appear as 1 larger SFA market rate unit in the same SFA building.
 - b. Be provided in SFA and MFS buildings so that there is no more than 1 ADU per building or 38% of the total number of dwelling units in that building, whichever is greater.

- c. ADUs may be located directly across a road or travelway from each other or may back directly to each other across rear yards or common areas if the ADUs meet the requirements in subsection H.1.
- d. *Creative Design*. The Zoning Administrator may permit deviations from the interspersion requirement on a case-by-case basis when a creative design proposal is determined to meet the intent of the ADU Program. Requests for deviations from the interspersion requirement must demonstrate:
 1. Where the required ADUs will be located in the development, and
 2. The creative design showing how ADUs will be integrated into the development without meeting the interspersion requirement.
3. Bedrooms in MFS and MFA ADUs must be similar in size to equivalent market rate dwelling units in the development.

Note: Graphics will be added to future draft versions of the Zoning Ordinance:

Provide graphic example of 2 ADU townhouses in a row are designed to look like 1 larger townhouse in a row of SFA dwelling units (Section 9.01.H.2.d).

Provide graphic example of creative design: Condominiums provided in a building designed to appear as one SFD dwelling unit. This would only be permitted where both an SFD and some sort of MF or SFA unit type is allowed in the district.

- I. **Timing of Construction/Availability of ADUs.** In a development that contains SFD, SFA, or MF dwelling units, the timing of construction and availability of ADUs must be as follows:
 1. Occupancy permits for 50% of the ADUs must be issued prior to issuance of more than 50% of the market rate dwelling units occupancy permits for the development.
 2. Occupancy permits for 75% of the ADUs must be issued prior to issuance of more than 75% of the market rate dwelling units occupancy permits for the development.
 3. Occupancy permits for 100% of the ADUs must be issued prior to issuance of more than 90% of the market rate dwelling units occupancy permits for the development.
 4. The following information must be submitted with each occupancy permit application for a market rate dwelling unit within the development:
 - a. The total number of dwelling units, market rate dwelling units, and ADUs proposed for the development.
 - b. The number of occupancy permits issued for market rate dwelling units within the development.
 - c. The number of occupancy permits issued for ADUs within the development.
 - d. The lot number or unit number of each ADU for which an occupancy permit has been issued.
- J. **Modifications.** Modifications to the ADU Program requirements are permitted as follows:
 1. Notwithstanding modifications permitted in Section 2.07, only modifications to the requirements of subsections D.1 and D.2 and I.1 through I.3 of the ADU Program are allowed.
 2. Requests for modifications as applied to a specific development must be submitted in conjunction with the specific development application for Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat, whichever is required first.
 3. The ADUAB will review requests for modifications and make its recommendation to the Planning Commission within 60 days of receipt of a complete application.
 4. The Board of Supervisors must consider, upon recommendation of the Planning Commission, whether the proposed alternative will achieve the objective of providing a full range of housing choices in Loudoun County, as well as the criteria in subsections J.6.d or J.8.c below.

5. 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 filed pursuant to subsection J.
6. *Modifications to Subsection D.1 and D.2.* If a modification to subsections D.1 or D.2 is requested:
 - a. The ratio of ADUs proposed to the optional density increase approved must be no less than 15% : 20% for SFD, SFA, and MFS dwelling unit developments, and 10% : 20% for MFA dwelling unit developments.
 - b. The total ADUs proposed must be no less than 5% of the total number of dwelling units within the development.
 - c. The applicant must provide a written justification that addresses subsection J.6.d with the modification request.
 - d. The ADUAB, Planning Commission, and Board of Supervisors must consider the following criteria in reviewing a request for modification to subsections D.1 or D.2:
 1. The ability for the public facilities and services already developed to accommodate the maximum density increase permitted for provision of ADUs.
 2. Existing unique or unusual site constraints, including but not limited to potential adverse impacts on environmental resources and features on the subject parcel and adjacent parcels, and soil conditions that make development financially burdensome.
 3. Unusual costs associated with development of the subject property.
 4. 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.
 5. In the case of a request for a concept development plan amendment, consideration must also be given to whether the amendment would result in a reduction in the previously approved zoning map amendment's impact on public facilities and whether the existing proffer commitments for the previously approved zoning map amendment exceed current adopted capital facility guidelines established in the General Plan.

Sample Calculation Showing the Ratio of Proposed ADUs to the Optional Density Increase is No Less than 15% : 20%.

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

7. *Cash or Land in Lieu of ADUs in SFD Developments.* Notwithstanding subsections J.6.a and b. above, any application for Zoning Map Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat that contains only SFD dwelling units may request a modification to subsection D.1 to provide developable land within the development or cash in lieu of the ADUs. If an applicant requests a modification to make such cash payment or land dedication, the following criteria applies:
 - a. The request to provide cash or dedicate land in lieu of ADUs must be submitted in conjunction with the specific development application for Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat, whichever is required first.

- b. *Cash in Lieu.* Cash provided in lieu of SFD ADUs required pursuant to subsection D.1 must be a per ADU cash contribution of 100% of the construction cost of a prototypical SFD ADU.
 1. The construction cost of a prototypical SFD ADU must be the vertical cost of an ADU.
 2. The minimum number of bedrooms of the prototypical SFD ADU used to determine the vertical cost must be equal to the number of bedrooms provided within the predominant market rate SFD dwelling unit in the development as determined by the Zoning Administrator.
 - c. *Land in Lieu.* Land dedicated in lieu of SFD ADUs required pursuant to subsection D.1 must:
 1. Have a minimum land value equal to or greater than the value of the total per ADU cash in lieu contribution required pursuant to subsection J.7.b.
 2. Be within the development and able to accommodate construction of the required number of ADUs.
 - a. Accommodate construction includes provision of adequate lot sizes and required road access, pedestrian and bicycle network, and utilities for the required ADUs.
 - b. Documentation demonstrating that the land dedicated in lieu can accommodate construction of the required number of ADUs must be provided with the request to dedicate land in lieu of providing ADUs.
 - d. The request to provide cash or dedicate land in lieu of ADUs may include a modification that would allow the applicant to provide any combination of ADUs, land, or cash to Loudoun County.
 - e. All cash provided or land dedicated in lieu of SFD ADUs made pursuant to subsection J.7 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. Paid or dedicated prior to the issuance of the first zoning permit for the development unless another time is approved by the Board of Supervisors at the time the modification is approved.
 3. Deposited in the Loudoun County Housing Trust Fund for cash in lieu and dedicated to the County Economic Development Authority for land until such time as a County land bank is established.
8. *Modifications to Subsection I.1 through I.3.* If a modification to subsections I.1 through I.3 is requested:
- a. The development application must demonstrate the modified timing of construction and availability of ADUs compared to market rate dwelling units.
 - b. The applicant must provide a written justification that addresses the criteria listed under subsection J.8.c. with the modification request.
 - c. The ADUAB, Planning Commission, and Board of Supervisors must consider the following criteria in reviewing a request for modification to subsections I.1 through I.3:
 1. The modified timing of construction and availability of ADUs compared to market rate dwelling units.
 2. Existing unique or unusual site constraints, including but not limited to the availability of utilities or infrastructure that require a modified development schedule.
 3. Unusual costs associated with development of the subject property due to the development schedule required by subsections I.1 through I.3.
- K. **Violations and Penalties.** In addition to enforcement under Section 11.14 et seq., the following apply whenever any person, whether owner, lessee, principal, agent, employee, or otherwise, violates any provision of the ADU Program, or permits any such violation, or fails to comply with any of the requirements hereof:
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.
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 (UHNU) 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.*
- *Implement the Housing Policies of the General Plan.*
- *Establish regulations for UHNUs provided:*
 - *As an incentive for an adjusted floor area ratio (FAR) in the Transit-Designed Supportive Area (TDSA) of the Transit Related Center (TRC) Zoning District and Town Center (TC) District.*
 - *To meet the Suburban Compact Neighborhood (SCN) Alternative Location Criteria.*
 - *When a building is adaptively reused.*
 - *To meet the requirements in the Planned Development-Mixed Use Business (PD-MUB) Zoning District.*

A. **Applicability.** The requirements of the UHNU Program apply to UHNUs provided as part of a development application for Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat:

1. To achieve an adjusted FAR in the TDSA of the TRC Zoning District pursuant to Section 2.01.01.D.
2. To achieve an adjusted FAR in the TC Zoning District pursuant to and Section 2.02.03.E.
3. To meet the Suburban Compact Neighborhood Alternative Location Criteria for locating the SCN Zoning District in the Suburban Neighborhood or Suburban Mixed Use Place Types of the General Plan pursuant to Section 2.02.02.H.1.
4. As a permitted adaptive reuse of a building or structure pursuant to Section 4.09.D.
5. When the residential density exceeds 30 dwelling units per acre in the PD-MUB Zoning District pursuant to Section 2.02.05.11.I.

a. UHNUS provided to meet the requirements of the PD-MUB Zoning District are also subject to subsection J. When the requirements of subsections B through I conflict, subsection J applies for UHNUs provided to meet requirements of the PD-MUB Zoning District.

6. An applicant may provide affordable housing units (AHU) in lieu of the UHNUs required by the UHNU Program in accordance with Section 9.03.

B. **Administration, Enforcement.** The administration and enforcement of the UHNU Program is as follows:

1. The Zoning Administrator administers and enforces the provisions of the UHNU Program.
2. In addition to the provisions of the UHNU Program, all UHNUs must comply with Chapter 1450 of the Codified Ordinance of Loudoun County (Codified Ordinances) except for Sections 1450.01, 1450.03.b, and 1450.05.c regarding income requirements and Section 1450.08 regarding covenant periods.

C. **UHNU Program Income Requirements.** The UHNUs must be provided based on the AMI and type of tenancy in Table 9.02-1.

1. UHNUs in the PD-MUB Zoning District must also meet the following requirements:
 - a. 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.
 - b. If for purchase UHNUs are provided, a minimum of 1/3 of the for purchase UHNUs must be affordable to each of the following:
 1. Households earning greater than 30% but less than 70% of the AMI; and
 2. Households earning 70% or greater but no more than 100% of the AMI.

TABLE 9.02-1. UHNU PROGRAM INCOME REQUIREMENTS¹

Area Median Income (AMI) Tier	Type of Tenancy
0% up to 30% PD-MUB Only: 0% up to 60%	For Rent
Above 70% up to 100% PD-MUB Only: Above 30% up to 100%	For Purchase

¹The current AMI must be used to determine income requirements for UHNUs.

- D. **Standards for UHNU Calculations.** Each development subject to the UHNU Program must calculate required UHNUs, as well as demonstrate the calculations, as follows:
3. To achieve an Adjusted FAR, calculate the UHNUs required by multiplying the applicable UHNU percentage requirement in Section 2.02.01.E, Table 2.02.01-2 or 2.02.03.F, Table 2.02.03-2 by the total number of dwelling units proposed.
 4. To meet the Alternative Locational Criteria in Section 2.02.02.L.1:
 - a. Calculate the UHNUs required pursuant to the percentage required in Section 2.02.02.L.1, using the total number of dwelling units proposed.
 - b. Determine the maximum number of dwelling units proposed, including any dwelling units permitted by the optional density increase for providing ADUs pursuant to Section 9.01.
 - c. When the calculation of required UHNUs results in a requirement of a fractional UHNU, any fraction is interpreted as 1 whole UHNU.
 - d. Demonstrate the total number of dwelling units proposed and total number of UHNUs required on each Zoning Map Amendment, Zoning Concept Plan Amendment, Special Exception, Site Plan, Subdivision Plat, or Preliminary Subdivision Plat application.

Sample UHNU Calculation for Adjusted FAR in the TDSA of the TRC Zoning District.

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

- E. **Designation of UHNUs on Site Plans or Subdivision Plats.** UHNUs must be designated on Site Plans or Subdivision Plats as follows:

5. Approved Site Plans and/or Subdivision Plats must identify the specific number and/or percentage of for-sale dwelling units and for-rent dwelling units that are to be regulated as UHNUs pursuant to the UHNU Program.
 - a. All Site Plans and Subdivision Plats for a development containing for-rent UHNUs must include a tabulation that demonstrates the percentage of dwelling units and the number of each dwelling unit type that will be maintained as UHNUs.
 - b. All Site Plans and Subdivision Plats for a development containing for-sale UHNUs must identify the specific dwelling units that will be provided as UHNUs.
- F. **UHNU Compatibility and Interspersion.** Approved Site Plans and Subdivision Plats must demonstrate that the UHNUs are compatible with and interspersed among market rate dwelling units by meeting the following requirements:
 1. To be considered compatible, UHNUs must be similar in width, depth, height, and exterior architectural treatment to market rate dwelling units in the development:
 - a. To be considered similar in width, the UHNUs must meet at least 1 of the following criteria:
 1. SFD, SFA, or MF stacked UHNUs may be identical in width to market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 2. If a project included identically-sized market rate dwelling units equaling at least 25% of the number of UHNUs provided within the same Site Plan and Subdivision Plat, then SFD, SFA, or MF stacked UHNUs may have widths as follows:
 - a. The minimum width of SFA or MF stacked UHNUs must be no less than 70% of the average width of SFA or MF stacked market-rate dwelling units provided within the same Site Plan and Subdivision Plat.
 - b. The minimum width of SFD UHNUs must be no less than 75% of the average width of SFD market-rate dwelling units provided within the same Site Plan and Subdivision Plat.
 - b. To be considered similar in depth, the UHNUs must meet at least 1 of the following criteria:
 1. SFD, SFA, or MF stacked UHNUs may be identical in depth to market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 2. SFA and MF stacked UHNUs may vary in depth along the entire rear façade by up to 15% if the rear of other market rate dwelling units provided with the same Site Plan or Subdivision Plat of the SFA or MFS building are staggered.
 3. SFD UHNUs may have a minimum depth of 75% of the average depth of SFD market-rate dwelling units on lots adjoining either side of the UHNU lot.
 - c. To be considered similar in height, the UHNUs must meet at least 1 of the following criteria:
 1. SFD, SFA, or MF stacked UHNUs may be identical in height to market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 2. SFA, or MF stacked UHNUs may have a height that is at least 90% the height of market rate dwelling units provided with the same Site Plan or Subdivision Plat when heights of SFA and MF stacked market rate dwelling units in the same building are staggered vertically.
 3. SFD UHNUs do not have a minimum height, but must have the same number of stories as SFD market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 - d. Smaller UHNUs may be provided if the same number of market rate dwelling units provided with the same Site Plan or Subdivision Plat are the same size as the smaller UHNUs .
 - e. To be considered similar in exterior architectural treatment, UHNUs must meet the following criteria:

1. UHNUs must have front façade construction materials that are identical to those used in adjacent market rate dwelling units.
 2. UHNUs may have front façade construction materials that are identical to market rate facades when at least 25% of market rate dwelling units provided with the same Site Plan or Subdivision Plat have the same façade materials.
 3. UHNUs may have varying roof pitches and orientation, gables, dormers, decorative elements, window arrangements, trims, materials, varying setbacks, etc. when market rates dwelling units provided with the same Site Plan or Subdivision Plat use the same design elements, or where there is no readily identifiable pattern associated with UHNUs.
 4. UHNUs must have exterior features, such as decks or fences, if they are provided as a standard option on market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 5. Exterior doors for UHNUs must be provided on the same level(s) as provided in market rate dwelling units provided with the same Site Plan or Subdivision Plat.
 6. Rear and side construction materials for UHNUs must be comparable to market rate dwelling unit rear and side construction materials provided with the same Site Plan or Subdivision Plat.
 7. Garages must be provided in all UHNUs that are adjacent to market rate dwelling units that have a garage. Garages in UHNUs must be of the same size as the adjacent market rate dwelling unit.
2. To be considered interspersed among market rate dwelling units in the development, the UHNUs must meet 1 or more of the following criteria:
- a. Not be abutting in SFA or MF stacked building.
 1. *Exception:* When 2 SFA dwelling units are designed to appear as 1 larger SFA market rate unit in the same SFA building.
 - b. Be provided in SFA and MF stacked buildings so that there is no more than 1 UHNU per building or 38% of the total number of dwelling units in that building, whichever is greater.
 - c. UHNUs may be located directly across a road or travelway from each other or may back directly to each other across rear yards or common areas if the UHNUs meet the requirements in subsection F.1.
3. Bedrooms in MF stacked and MF attached UHNUs are the same dimensions and number of bedrooms in equivalent market rate dwelling units in the development.
- G. Timing of Construction/Availability of UHNUs.** In a development that contains SFD, SFA, or MF dwelling units, the timing of construction and availability of UHNUs must be as follows:
1. Occupancy permits for 50% of the UHNUs must be issued prior to issuance of more than 50% of the market rate dwelling units occupancy permits for the development.
 2. Occupancy permits for 75% of the UHNUs must be issued prior to issuance of more than 75% of the market rate dwelling units occupancy permits for the development.
 3. Occupancy permits for 100% of the UHNUs must be issued prior to issuance of more than 90% of the market rate dwelling units occupancy permits for the development.
 4. The following information must be submitted with each occupancy permit application for a market rate dwelling unit within the development:
 - a. The total number of dwelling units, market rate dwelling units, and UHNUs proposed for the development.
 - b. The number of occupancy permits issued for market rate dwelling units within the development.
 - c. The number of occupancy permits issued for UHNUs within the development.
 - d. The lot number or unit number of each UHNU for which an occupancy permit has been issued.

- H. **UHNU Covenants.** All UHNUs must be encumbered by restrictive covenants that are recorded among the land records of Loudoun County, Virginia, run with the land, in a form approved by the County and in favor of the County or its designee, and control the sales or rental price of the UHNUs for the following periods of time:
 1. Rents for rental UHNUs must be controlled for a period of at least 30 years from the date of the issuance of the occupancy permit for each rental UHNU.
 2. Sales prices for UHNUs for purchase must be encumbered for an initial period of at least 20 years and an extended control period and regulations pursuant to the control period for for-sale units included in Section 1450 of the Codified Ordinances.
- I. **UHNU Adjustments.** Upon the request of an applicant, the Board of Supervisors may adjust the following:
 1. The percentage of UHNUs required by Sections 2.01.0.E, 2.02.03.F, or 2.02.02.K.1 when a higher proportion of UHNUs in the lowest AMI tier are provided; and/or
 2. The AMI tiers in Table 9.02-1 when a minimum of 10% more accessible dwelling units than required by the applicable building code and/or the applicable AHU financing program used pursuant to Section 9.03 to be accessible are provided as UHNUs.
- J. **Density Increase and Additional Regulatory Adjustments in the PD-MUB Zoning District.** When UHNUs required pursuant to Section 2.02.05.11.I are provided, the development is permitted a density increase pursuant to Table 9.02-2, Column B and Additional Regulatory Adjustment pursuant to Table 9.02-2, Column D.
 1. The Zoning Concept Plan Amendment materials submitted in association with the application for the density bonus must designate which dwelling unit type(s) will receive the density bonus and Additional Regulatory Adjustment.

Column A	Column B	Column C	Column D
Dwelling Unit Type	Density Increase	Required Percentage of Dwelling Units to be Provided as UHNUs	Additional Regulatory Adjustment
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 Single-Family Attached Dwellings and Single-Family Detached Dwellings under Section 2.02.05.11.I by 2% of total district size

(SFD = single-family detached; SFA = single-family attached; MFS = multifamily stacked; MFA = multifamily attached)

6. **Calculation of Density Increase.** Multiply the number of each type of dwelling unit (Column A of Table 9.02-2) proposed for the PD-MUB district prior to compliance with Section 9.01 times the corresponding Density Increase (Column B of Table 9.02-2) for that dwelling unit type. The resulting number is the total number of bonus dwelling units permitted for that dwelling unit type.
 - a. Bonus dwelling units are only permitted to be provided as the dwelling unit type for which the Density Increase percentage was calculated.
 - b. In no event are the bonus dwelling units permitted to cause the residential density to exceed 54 dwelling units per acre (including any density bonuses that may be provided pursuant to Section 2.02.05.11.J and/or Section 9.01).
7. **Calculation of Required UHNUs.** Multiply the number of each type of dwelling unit (Column A of Table 9.02-2) proposed for the PD-MUB Zoning District prior to compliance with Section 9.01 times the Required

Percentage of Dwelling Units to be Provided as UHNUs (Column C of Table 9.02-2). The resulting number is the number of dwelling units that must be provided as UHNUs for that dwelling unit type.

- a. In the event that bonus 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 rezoning application will be increased by the total number of bonus dwelling units calculated pursuant to subsection J.
 - b. Nothing in subsection J will be construed to prohibit an applicant's voluntary provision of ADUs pursuant to Section 9.01 to include providing additional ADUs and receiving density increases pursuant to Section 9.01, or to prohibit an application from providing more than the required number of UHNUs addressing the income ranges specified in subsection C.1 provided the application is in conformance with Section 2.02.05.11.J and Section 9.01, and the maximum density of the district does not exceed 54 dwelling units per acre.
- K. **Violations and Penalties.** In addition to enforcement under Section 11.14 et seq., the following apply whenever any person, whether owner, lessee, principal, agent, employee, or otherwise, violates any provision of the UHNU Program, or permits any such violation, or 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.
 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 ADUs or UHNUs.*

- A. **Affordable Housing Unit (AHU) Program.** The Applicant may provide AHUs in lieu of ADUs or UHNUs in accordance with the following requirements:
1. A development that provides the same number or more AHUs as the number of ADUs required pursuant to Section 9.01.D. or UHNUs required pursuant to 9.02.A will satisfy the ADU Program requirements.
 - a. ADUs and UHNUs may be provided collectively as AHUs within the same development as long as the number of AHUs provided is the same number or more than the total number of required ADUs and UHNUs.
 2. A development that provides AHUs to satisfy the ADU Program requirements is permitted an optional density increase in accordance with Section 9.01.D.3. A development that provides AHUs to satisfy the UHNU Program requirements is permitted the additional benefits associated with Sections 9.02.A.1-5.
 3. A development that provides a fewer number of AHUs than the number of ADUs required under Section 9.01.D or UHNUs required under Section 9.02.A must provide additional ADUs or UHNUs necessary to augment the shortage and achieve the total required ADUs or UHNUs as applicable.
 4. The rents and sales prices for AHUs provided must be in accordance with the rules and regulations governing the AHU funding programs and AHUs must be marketed in accordance with the AHU funding program rules and regulations.
 5. The following requirements apply to any development that provides AHUs pursuant to this Section:

- a. The applicant must provide written verification to the Zoning Administrator from the applicable affordable housing program of the approval of funding to provide AHUs. Until such written verification is provided by the applicant, only ADUs are permitted to be provided to meet the requirements of the ADU Program or UHNUs are permitted to be provided to meet the requirements of the UHNU Program, as applicable.
- b. Approved Site Plans and/or Subdivision Plats must:
 1. Identify the specific number and location of buildings that are to contain AHUs.
 2. Include a tabulation demonstrating that the number of AHUs and ADUs or UHNUs provided satisfies the number of ADUs required by Sections 9.01.D or the number of UHNUs required by Section 9.02.A.
- c. In a development that contains SFD, SFA, or MF dwelling units, the timing of construction and availability of AHUs must be as follows:
 1. For AHUs provided in MF Attached structures:
 - a. All inspections, including base building and individual units, necessary to allow close-in of the MF Attached AHU structure must be completed prior to issuance of more than 50% of the market rate dwelling units occupancy permits for the development.
 - b. Occupancy permits for 100% of the AHUs must be issued prior to issuance of more than 75% of the market rate dwelling units occupancy permits for the development.
 2. For AHUs provided in SFD, SFA, or MF Stacked structures:
 - a. Occupancy permits for 50% of the AHUs must be issued prior to issuance of more than 50% of the market rate dwelling units occupancy permits for the development.
 - b. Occupancy permits for 75% of the AHUs must be issued prior to issuance of more than 75% of the market rate dwelling units occupancy permits for the development.
 - c. Occupancy permits for 100% of the AHUs must be issued prior to issuance of more than 90% of the market rate dwelling units occupancy permits for the development.
 3. The following information must be submitted with each occupancy permit application for a market rate dwelling unit within the development:
 - a. The total number of dwelling units, market rate dwelling units, and AHUs proposed for the development.
 - b. The number of occupancy permits issued for market rate dwelling units within the development.
 - c. The number of occupancy permits issued for AHUs within the development.
 - d. The lot number or unit number of each AHU for which an occupancy permit has been issued.
- d. Buildings containing AHUs must utilize exterior building materials similar to or higher quality than and be of an architectural style compatible with the market rate dwelling units within the development in which they are located.
 1. Written documentation and/or plans demonstrating that the AHUs are in conformance with this requirement must be provided to the Zoning Administrator prior to approval of the first Site Plan, Construction Plans and Profiles, and/or Subdivision Plat for the AHUs.
 - a. Written documentation and/or plans may include associated exterior design and construction requirements or commitments for the associated AHU funding source that demonstrate conformance with the building materials and architectural style requirements.