Submited for Feb. 2, 2022 ZOC Discussion
by ZOC Member, Maura Walsh-Copeland

ZOAM-2020-0001-Zoning Ordinance Rewrite -- ATTAINABLE HOUSING Draft Text

	GENERAL / INTRODUCTORY COMMENTS
8.01	8.01 ATTAINABLE HOUSING -- PARKING. 5.05.03 C. PARKING REQUIREMENTS FOR ADUS, USE & POLICY AREA. When discussing Parking Ratios previously for Chapter 5 (Dev. Stds, Parking), the discussion of Parking Ratios for ADUs/AHUs was put off until the drafting of Section 8.01. This important component is missing from this draft for review and discussion. When will proposed text for Parking Ratios for ADU/AHU buildings be presented?
8.01	The January 28, 2022 WASHINGTON BUSINESS JOURNAL article, "*Why Loudoun County's Development Strategy is Not Working Out as Planned* ," directly relates to this week's ZOC subject of Attainable Housing. It also quotes a number of people including: Supervsor Matt Letourneau, Supervisor Mike Turner, Chair Phyllis Randall, ZOC members Colleen Gillis and Gem Bingol, DED Director Buddy Rizer, Chamber CEO Tony Howard, industry experts Mike Romeo, Kim Hart and Stewart Schwartz, and Planning Commissioner Chair Forest Hayes. Reference: Washington Business Journal: www.bizjournals.come/washington/news/2022/01/28/loudoun-county-development-plan.html For anyone unable to access the article online a copy is attached, and is well worth reading before our ZOC discussion.
8.01	Comment from kowledgeable resident: “c. Simplifying the Zoning Ordinance to make it more user friendly.” This section of the rewrite could not be further from that goal.

*LCPCC Patricipating Organizations: Aldie Heritage Association, Bike Loudoun, Bluemont Citizens Association, Blue Ridge Mountain Civic Association, Catoctin Coalition, Farm Bureau of Loudoun, Friends of the Blue Ridge Mountains, Goose Creek Association, Goose Creek Scenic River Advisory Committee, LCPCC Executive Committee, LCPCC Finance Cte, Leesburg Garden Club, Loudoun Climate Project, Loudoun County Equine Alliance, Loudoun Historic Village Alliance, Loudoun Preservation Society, Loudoun Rural Landfills, Loudoun Soil & Water, Loudoun Walking Club, Loudoun Wildlife Conservancy, Piedmont Environmental Council, Potomac Heritage Trail Association, Save Rural Loudoun, Sterling Foundation, Transition Area Alliance, Unison Preservation Society, Virginia Native Plant Society (Piedmont Chapter), and Virginia Piedmont Heritage Area Association

Section	COMMENTS TO DRAFT TEXT
	INPUT -- FEBRUARY 2, 2022 MEETING
8.01.001	8.01. AFFORDABLE DWELLING UNIT PROGRAM. Have the proposed specific requirements of when, where, and how many “attainable housing units” are required from the private sector development applications been analyzed as to their cost and impact on overall project costs?
8.01.0011	8.01. AFFORDABLE DWELLING UNIT PROGRAM, PURPOSE. The bullet points in the PURPOSE refer to “moderate” income and “moderately priced dwelling units," and the last bullet refers to housing for between 30% and 70% of AMI. Is there are a difference in the AMI target between “moderate” priced housing and income and the 30%-70% range listed? If so, what is the difference?
8.01.0011	8.01 AFFORDABLE DWELLING UNIT PROGRAM, PURPOSE. The last bullet in Purpose refers to “areas currently served by or planned for mass transit and proximate to major employment centers.” Why is there this limitation placed on project location when the objective is to maximize the total number of attainable housing in Loudoun? How can it be justified to require private developers to provide affordable housing in their projects wherever they are located at the same time limiting the location of one type of affordable housing to these very small land areas?

Section	COMMENTS TO DRAFT TEXT
8.01.A.4	8.01.A.4. AFFORDABLE DWELLING UNIT PROGRAM, APPLICABILITY, EXEMPTIONS. What factual grounds have been established to justify the proposed "Exemptions"?
8.01.D	8.01.D AFFORDABLE DWELLING UNIT PROGRAM, ADU Requirements and Optional Increases in Density. Has any analysis been done to compare the "life time cost" of the market rate house allowed through increased density with the value of the ADU? Would it be cheaper for the County and taxpayers to provide alternative incentives to increase ADU's without increasing density beyond the limits of the Loudoun 2019 Plan Place Type?
8.01.D.3.	8.01.D.3. AFFORDABLE DWELLING UNIT PROGRAM, ADU Requirements and Optional Increases in Density for SFD, SFA and MF Stacked Dwelling Units: There has been confusion on this point at recent TLUC meetings. This text makes it clear that the required number of ADUs for these building types is 15% (and not 15% on top of the previous ADU requirement). With this requirement clear, how are developers expected to reach the goal of 20% ADUs per project, as stated in the UHN Strategic Plan?
8.01.D.4	8.01.D.4. AFFORDABLE DWELLING UNIT PROGRAM, ADU Requirements and Optional Increases in Density for MF Attached Dwelling Units: There has been confusion on this point at recent TLUC meetings. This text makes it clear that the required number of ADUs for this building type is 10% (and not 10% on top of the previous ADU requirement). With this requirement clear, how are developers expected to reach the goal of 20% ADUs per project, as stated in the UHN Strategic Plan?
8.01.E.2.c.	8.01.E.2.c. AFFORDABLE DWELLING UNIT PROGRAM - STANDARDS FOR ADU CALCULATION. How can/will the County assure the locations of the donated land will not negatively impact the quality of life of the clients by being proximate to data centers? Reference: Washington Business Journal: www.bizjournals.come/washington/news/2022/01/28/loudoun-county-development-plan.html
8.01.H.1	8.01.H.1 AFFORDABLE DWELLING UNIT PROGRAM, Approved Site Plans & Subdivision Plans. Should the ordinance empower ADUAB, an advisory body, to set the specifications without some form of review or appeal process?
8.01.H.3	8.01.H.3 AFFORDABLE DWELLING UNIT PROGRAM. Are the requirements for "dispersion" of ADU's within a project so restrictive that they limit good overall design options and add to construction costs? Is there any analysis on the proposed regulations as to cost and design limitations?
8.01.J.4	8.01.J.4 AFFORDABLE DWELLING UNIT PROGRAM. MODIFICATIONS. The text is somewhat ambiguous: "The Board of Supervisors must find, upon recommendation of the Planning Commission…" This suggests that the Board must follow the recommendations of the Planning Commission which is not correct. Suggest new language:"…after consideration of the recommendation of the Planning Commission…"
8.01.J.6.c	8.01.J.6.c. AFFORDABLE DWELLING UNIT PROGRAM. MODIFICATIONS. Can the applicant propose land for affordable housing that is not contiguous to their market rate project? If not, why not?
8.01.J.6.c	8.01.J.6.c. AFFORDABLE DWELLING UNIT PROGRAM. MODIFICATIONS. The implication appears to that land made available in lieu of ADU's would be utilized at the same density. Assuming this land could be sold to an alternative affordable housing developer, should a potential increase in density be allowed?
8.01.J.6.c.3	8.01.J.6.c.3. ATTAINABLE HOUSING. MODIFICATIONS. States "construction cost of a prototypical SFD ADU must be the "vertical cost" of an ADU as established on a semiannual basis by the ADUAB." Where is this information made available on a semiannual basis?

Section	COMMENTS TO DRAFT TEXT
8.01.J.6.c.4	8.01.J.6.c.4 AFFORDABLE DWELLING UNIT PROGRAM - MODIFICATIONS. How can/will the County assure that the environmental impact of the land will follow the protocol for the applicable section of the 2019 General Plan?
8.01.K.5.b.	8.01 K.5.b. AFFORDABLE HOUSING UNIT (AHU) PROGRAM 5.b. Attainable units provided with AHU funding are typically in one building or, at most, two. The "linkages" proposed here, between AHU Occupancy Permits and Market Rate Occupancy Permits are an artifact of when ADUs were provided by the developer as affordable for-sale units within a market rate development. In AHU buildings, Occupancy Permits go from 0% to 100% within 2-3 months. When an AHU building receives funding, construction and occupancy are on a schedule set by the AHU funder. As proposed in Section K.5.c (below) AHUs are verified when the applicant provides proof of funding to the Zoning Administrator. The Market Rate developer no longer has any control over the delivery of the AHUs. Therefore -- Why not let proof of AHU funding be sufficient to release the Market Rate developer from any further linkages between AHU and Market Rate Occupancy Permits?
8.01.K.5.b.4.	8.01 K.5.b.4. AFFORDABLE HOUSING UNIT (AHU) PROGRAM: 5.b.4. If, as proposed, the county permits proof of AHU funding be sufficient to release the Market Rate developer from any further linkages between AHU and Market Rate Occupancy Permits, then the level of reporting required for each Market Rate Occupancy Permit is very burdensome both for the applicant and for staff and unnecessary. Can the county eliminate this reporting completely and if not, why not?
8.01.K.5.d.	8.01 K.5.d. AFFORDABLE HOUSING UNIT (AHU) PROGRAM: 5.d. In the case of AHU funding provided by Virginia Housing, each project must meet minimum building standards required by Virginia Housing and, in many cases, meet even higher standards for building materials used in order to win points in the funding competition. Per AHU experts, in some cases, these materials are of higher quality than materials used by the market rate developer. It is not reasonable to require "similar" building materials from both developers. In cases where the master developer has proffered design criteria or sample elevations, it is reasonable to require that the ADU building(s) be in "substantial conformance with the proffered design guidelines." However, in instances where there are no proffered design guidelines, this requirement cannot be implemented. AHU funders will not close on any project that requires future approval (or not) by County officials against unspecified design guidelines.
8.01.K.5.d.1.	8.01 K.5.d.1. AFFORDABLE HOUSING UNIT (AHU) PROGRAM: 5.d.1. In an AHU project, building plans and elevations are prepared in parallel with other entitlement steps. It is not reasonable to demand that architectural plans be complete to a high level of detail, sufficient to confirm "substantial conformance" before other key steps can proceed. Instead, can/will Staff revise this so that the Zoning Administrator must confirm "substantial conformance" (via an informal determination) prior to the issuance of Building Permits?
8.01.L	8.01.L. AFFORDABLE DWELLING UNIT PROGRAM. VIOLATIONS AND PENALTIES. All the penalties listed essentially provide no disincentive to the applicants as they are no worse off than their previous situation. Why are there no cash fines or other penalties included? Are they included in Chapter 7?

Section	COMMENTS TO DRAFT TEXT
	8.02 UNMET HOUSING NEEDS UNIT PROGRAM
8.02.001	8.02 UNMET HOUSING NEEDS UNIT PROGRAM. PURPOSE: bullet one creates the impression that there are two separate programs. Is this the intention or should the County be clear there is one Attainable Housing program with separate program implementations?
8.02.002	8.02 UNMET HOUSING NEEDS UNIT PROGRAM. PURPOSE: bullet one creates two parts of the AMI to be the focus (under 30% and 70% to 100% of AMI). Although not directly a zoning issue, is it the intent for (or should) the county subsidies and funds be used for those households already capable of renting market rate housing? Is the County's objective to provide “safe, decent, and sanitary” housing to all or to facilitate wealth accumulation for upwardly mobile young families?
8.02.C.2.	8.02 C.2. UNMET HOUSING NEEDS UNIT PROGRAM: C.2. Does Chapter 1450, as currently written, includes provisions on how many UHNUs are to be provided? It is very difficult to review the entire section without that information. Can those calculation formulas be provided?
8.02.C.3	8.02.C.3 UNMET HOUSING NEEDS PROGRAM. UHNU Requirements point 3. Is a covenant in the land records sufficient protection for a 30 year constrain on price appreciation? How will that be enforced? What if any are the penalties for not abiding by the covenants?
8.02.C.3.a & b	8.02.C.3.a & b UNMET HOUSING NEEDS UNIT PROGRAM - UHNU REQUIREMENTS. Does the County see housing conditions getting better in the future? In other words, why is the control for a finite period of time (i.e., 30 and 20 year control period)?
8.02.D.5.a	8.02.D.5.a UNMET HOUSING NEEDS UNIT PROGRAM - DENSITY BONUS/ADD'L REGULATORY ADJUSTMENT - PD-MUB Zoning District How does the density bonus affect the budget, housing, and population projections? Does this increase counter the guidelines and projections of the 2019 General Plan?
8.02.D.6, 7, & 8	8.02.D.6, 7, & 8 UNMET HOUSING NEEDS UNIT PROGRAM - Density Bonus Calculation, Calculation of Required UHNUs. Does adding ADUs to the allowable density create disproportionally create more need for ADUs? In other words, does not an increase in housing density create the need a corresponding exponential need for more affordable housing?

From the Washington Business Journal:
https://www.bizjournals.com/washington/news/2022/01/28/loudoun-county-development-plan.html

Cover Story

Why Loudoun County's development strategy is not working out as planned

Jan 28, 2022, 5:00am EST

WBJ ILLUSTRATION; GETTY IMAGES

Six hundred housing units and no new retail for the Shops at Arcola Center? Matt Letourneau could hardly believe it.

Loudoun's Dulles District supervisor had followed the Westbrook Properties project for years, watching it trade hands among developers, add a Google data center, even win — and then, painfully, lose — a Wegmans. But through it all, Letourneau remained hopeful that the development would become a mixed-use center rivaling One Loudoun or Loudoun Station for people living just to the west of the airport.

That's why this summer's proposal for a massive residential rezoning was so jarring for Letourneau, who represents many of the communities surrounding Arcola Center. He expected some new homes there, of course, but also a retail anchor to prevent the project from being yet another contributor to Route 50's traffic congestion.

“I get it — retail is hard right now,” said Letourneau, a Republican and the Loudoun Board of Supervisors' longest-tenured member. “And we’ve been very open to housing as components of projects. But we have to move the ball forward for existing residents as well.”

That sort of position leaves developers like Westbrook feeling a bit stuck. County officials of all stripes have explicitly called for more housing construction to help ease the region's tight inventory and fulfill demand, now pegged at roughly 50,000 homes within 20 years. They passed changes to the county’s Comprehensive Plan two years ago specifically designed to make more residential possible in places like Arcola. What’s more, the area is replete with retail-heavy shopping centers, potentially suppressing demand for new shops and restaurants. Throw in Covid’s heavy hit to the sector, and developers aren’t clamoring to build more.

It all adds up to a dispute that’s emblematic of Loudoun’s current development conundrum. The county has spent the last few years trying to pivot away from its rural-suburban roots and embrace a more urban future in time for Metro’s much-delayed arrival. But Loudoun’s planning documents still aren’t generating the sort of results local politicians expected. It's perhaps a predictable result — a new comp plan, as mighty a first step it may be, can't transform the county alone — but one that is prompting serious consternation in Loudoun.

It's also raised plenty of questions. If new construction is just more townhomes built near suburban highways, will the county really evolve? Also, will any of that housing actually be affordable? Loudoun earned a reputation for spacious McMansions as the Washington region grew 40 years ago, but where will people of more modest incomes live as the county grows? The comp plan has seemed to ironically open up new quandaries to bedevil county leaders these days, perhaps even more so than in its neighboring jurisdictions.

“It’s like when you’re two months into your freshman year of college,” said Colleen Gillis, a land use attorney at Cooley LLP who represents Westbrook and a host of other prominent developers in the county. “At first, you’re having a good time and you think: ‘This is awesome!’ But then you look around and say, ‘Wait a minute, I’m going to start failing out of college if I don’t grow up.’ The board is grappling with all these new applications right now in the exact same way.”

Scratching the mixed-use itch

When supervisors passed the new comprehensive plan in June 2019, ending a contentious and lengthy debate, their intentions seemed clear.

Officials wanted to see a lot more housing, and they wanted it concentrated around major transportation nodes. That meant allowing more construction near the three future Silver Line stations, but also along Loudoun’s major highway corridors — chiefly, Route 7, Route 50 and Route 28. Those particular areas were previously zoned for “keynote employment” uses, or a mix of office and retail. The new plan instead acknowledged less demand for commercial and a need to add residences next to existing shopping centers, though legislators still deemed many "suburban mixed-use" to prevent retail from disappearing from blueprints.

Nevertheless, the county's recent flood of applications are for dense new residential developments that rely on existing nearby retail rather than building new space — Arcola is one example, but Toll Brothers, Lennar Corp., Peterson Cos., G.J. Malt Corp. and others all embraced similar arguments in residential applications in the past year alone, all targeting the Route 7 and Route 50 corridors. Many of those companies declined to comment directly or didn't return requests for comment.

“If they’re trying to drop a new neighborhood a mile from a retail core, that’s not our vision,” said Supervisor Mike Turner, D-Ashburn, chair of the board’s influential transportation and land use committee. “That’s just trying to get extra density.”

Yet, as Gillis puts it, wanting “every project to scratch all the itches” just isn’t realistic. Buddy Rizer, the county’s economic development director, said Loudoun “already has twice as much retail per resident as some would consider healthy," so there's no way to expect residential-over-retail at every project.

"The biggest demand in the county today is still for data center and flex industrial uses," said Mike Romeo, a land use planner at Walsh, Colucci, Lubeley and Walsh who represents several developers. "But if you are going for residential, it's best to build around an existing shopping center and complement it. Many are already primed for that infusion of pedestrian walkability and vitality."

Turner recognizes that reality begrudgingly. His committee has started meeting to discuss other amenities that make sense for these projects in lieu of retail — or as Board Chair Phyllis Randall, D-At large, has summed up regarding modern Loudoun: "What can we do that's not retail and not data centers?"

That's not to say that the county won't still demand retail in some places — Rizer said the Route 50 corridor "is a good example of a place where we could use some real mixed-use," an assessment that's gained Letourneau's hearty agreement.

But Rizer also recommends a more "case-by-case" approach than the comp plans' more rigid standards. Maybe these projects could be required to center on a public facility, like a library or community center, or avoid a retail requirement only if they include large amounts of affordable housing, Randall suggested.

Turner said he's especially keen on a mandate for developers to include new shared-use trails as part of these projects. Perhaps that can connect new communities to existing shopping centers without forcing people back inside their cars.

"This was all designed 25 years ago as autocentric Washington suburbia," Turner said. "Now we're trying to shoehorn this in to create a multimodal, integrated community. It's hard to do."

Where does the housing go?

But are new bike paths going to be enough to alter Loudoun's car-heavy transportation patterns? Smart growth advocates aren't so sure.

Instead, they believe the county hasn't done enough to radically reshape its land use and transit strategies. The county may be succeeding in spurring new housing construction — broadly seen as a key way to boost supply and drive rents down — but they fear it may cause more pain if done the wrong way.

"Loudoun needs more grids of streets, more pedestrian-friendly development ... and where's the funding and allocation of space to dedicated bus lanes?" said Stewart Schwartz, executive director of the Coalition for Smarter Growth. "While this problem persists, too much housing tied to this transportation network will just create additional problems for the county, and the region as a whole."

Part of the problem is the county just doesn't have a lot of room around its Metro stops available for new construction. Romeo notes that the two main stations available for infill development — Ashburn and Innovation Center, just across the Fairfax County line in Sterling — "already have existing approvals" for projects. So there may be more units on the way, but there isn't much space for more.

What's on the boards? There are nearly 17,000 housing units proposed for those two stations, more than a third, 6,005, at Ashburn's Moorefield Station alone.

Schwartz believes the county itself is partially to blame for restricting development opportunities at those stations. For instance, he faults the large Metro parking garage at the Ashburn station for eating up valuable developable land and notes the county cut off virtually all potential residential construction around the Loudoun Gateway station, largely due to concerns over aircraft noise. That blocks areas zoned for the kind of dense multifamily housing that makes affordable units economical to build.

That makes policy changes necessary for Loudoun to realize its "very high goal for supplying badly needed attainable housing," said Kim Hart, a leading local builder of affordable homes with Good Works Development. The county's forecasts suggest it will need to build nearly 51,000 new homes, including 16,000 affordable units, by 2040 to meet demand.

“The aspiration is great, but we don’t know where to put it,” Hart said. “We need to see that analysis before we know if their goals are realistic.”

Gem Bingol, a land use officer focused on Loudoun for the Piedmont Environmental Council, eyes potential dense construction in corridors with existing bus service, such as along Route 28 as it approaches the Metro. And Schwartz notes that expanding bus options will make more homes viable in more places. But Bingol said the solution doesn't just fall on more housing supply.

“Loudoun experienced more housing growth over the last 20 years than any other jurisdiction and didn’t end up with a big stock of affordable housing,” Bingol said. “Just saying ‘yes’ to residential hasn’t proven to be the answer. The county needs to take steps to bring its own resources to bear.”

Affordable interventions

As the county prepares to add all this new housing, it still lacks the resources to make those homes more affordable.

Loudoun remains Northern Virginia's only jurisdiction that doesn’t regularly contribute to its affordable housing loan fund, a key financing source for developers to fill gaps and pay for complex projects. For now, the county only ponies up funds when existing affordable units are sold and converted to market rate. In contrast, neighboring Fairfax County doles out around $20 million annually, while D.C. leads the region with annual investments regularly topping $100 million.

The county also lacks robust requirements for the inclusion of new affordable units in large projects — Virginia localities can't yet follow D.C.’s lead in creating such inclusionary zoning policies, but many of Loudoun’s neighbors negotiate for affordable units as a condition of zoning approvals.

“If we’re going to actually achieve the vision of the comp plan, we still need more, and more creative, ways to bring about workforce, attainable housing,” said Tony Howard, president and CEO of the Loudoun County Chamber of Commerce.

Board Chairman Randall is optimistic on that front, arguing that this is “the first time the board has really become serious about meeting our unmet housing need.” The board passed a strategic plan to that effect this fall, outlining new construction targets and dozens of potential solutions, though progress remains slow as supervisors spend months hashing out how to budget for the trust fund.

Supervisors have debated dedicating money from a new cigarette tax toward affordable housing, but estimates suggest that will only generate about $2 million each year and likely dip over time, should it successfully dissuade people from smoking. Randall said she's also advancing plans to allot more money from the county’s general fund — somewhere between $3 million and $5 million — as an initial step to provide developers more certainty. Both Turner and Randall say they're confident such measures will reach the 2023 budget.

“This has never happened before in Loudoun,” Randall said. “It’s still not nearly what other counties are doing ... but I don’t believe any county can talk honestly about meeting the unmet housing need if they’re not putting money into their trust fund.”

Loudoun’s strategic plan also recommends, and Randall said the board is seriously considering, setting a broad goal of 20% of each major residential project dedicated to affordable housing. Supervisors could, for instance, direct staff to discuss with developers what that standard would take for development applications, she said.

Rizer cautioned that a 20% mark may be high for builders hoping to turn a profit, arguing the county should simply look to “get as much as we can each time.” “We’re not going to make up for our lack of affordability and product in the next five projects or developments,” he said.

Though, such a goal could send a strong message, supporters say: If the county is really going to make all this new residential possible, then it expects some help from the industry to make it affordable and viable.

“We have developers putting forward applications right now where they’re meeting the letter of the law in terms of providing affordable units, or exceeding it by some nominal number,” said Forest Hayes, chair of Loudoun’s planning commission. “They truly and honestly think they’ve exceeded our expectations, but they need to consider the spirit of the policy too. … There needs to be a recognition on the side of the developer that they have to go much further.”

Alex Koma
Staff Reporter
Washington Business Journal