



## ZOAM-2020-0001-Zoning Ordinance Rewrite -- Round 3 Input

**REVIEWER INSTRUCTIONS:**

*Below are comments submitted to County DPZ/ZOR Staff as public input during Zoning Ordinance Committee review by organizations and citizens, being shared for your public input review.*

**Comments/questions not addressed can be submitted during Round 3 Public Input through July 18, 2022.**

-- Be aware that all comments will become part of the public record after submission via enCodePlus. Please be mindful to use language in an appropriate and professional manner.

-- **Please continue to use the draft text SECTION NUMBER REFERENCE** at the START of each comment, followed by ALL CAPS short heading (see sample on the template)

SORT	Section (for sorting only)	CHAPTER 8 -- ATTAINABLE HOUSING - 4-18-2022 Draft Text REVIEW
PRIORITY SHARED INPUT ITEMS		
No	8.01	<p>8.01 ATTAINABLE HOUSING -- PARKING. 5.05.03 C. PARKING REQUIREMENTS FOR ADUS, USE &amp; 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?</p> <p><b>2022 Round 3 Input: Staff has attempted to address this issue in Section 5.05.08 I. However, when the percent reductions presented in this section are applied to the Parking Ratios presented in Table 5.05.134-1, the resulting effect is so de minimis as to not at all reflect the true and measured parking ratios that apply to ADUs/AHUs.</b></p> <p><b>Consider this example</b></p> <p><b>For a 100-unit, 4% Bond Deal in the Suburban Policy Area with 20 1-BR units, 60 2-BR units, and 20 3-BR units. Applying the "Minimum" Parking Ratios from Table 5.05.134-1 would result in requiring 200 parking spaces for this property. Because this is a Bond Deal, all units will be affordable at 60% AMI. Applying the allowed parking reduction from Section 5.05.08.I (5%) to the required 200 parking spaces, would result in the reduction of 10 parking spaces. The Parking Ratio would be reduced from 2.0 parking spaces per DU to 1.9 spaces/DU.</b></p> <p><b>In contrast to this, actual application results include:</b></p> <p><b>A Parking Study submitted to the Board of Supervisors resulting in their approval of a reduction to 1.5 parking spaces/DU for an AHU project (M. Capretti).</b></p> <p><b>Further, a Parking Study put on records of three constructed AHU projects in Loudoun County, with over 300 dwelling units, where the average Parking Ration is 1.2 parking spaces/DU (K. Hart).</b></p> <p><b>Finally, the current 5th Edition of the Parking Generation Manual, published by the Institute of Transportation Engineers (ITE) states that for Land Use Code 223 (Affordable Housing) the Parking Demand Ration (parking spaces/DU) should be 0.99.</b></p> <p><b>Clearly this topic requires further review and further revision to the proposed Zoning Ordinance.</b></p>
NO	8.01	<p>Comment from knowledgeable resident: "c. Simplifying the Zoning Ordinance to make it more user friendly." This section of the rewrite could not be further from that goal.</p> <p><b>2022 Round 3 Input: Although the new software platform, enCodePlus, does provides a more user friendly GUI (graphical user interface) than the current 1100 page pdf document, the content for this chapter is more complex than the current Ordinance.</b></p>

No	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? <b>2022 Round 3 Input: To date, the County has hired a consultant to study and report on their cost burden on housing developers of eliminating the ADU exemption for 4-story, elevator buildings. However, as requested in this comment, staff has so far provided no study of the cost burden on housing developers of implementing this Zoning Ordinance rewrite. Staff did comment that they have requested data from developers to do this type of analysis but, so far, have not been successful in getting that data. How and will this be completed before ZOR is approved?</b>
No	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? <b>2022 Round 3 Input: This line in the statement of "Purpose" is implemented not here, in Section 8.0, but in other sections of the Zoning Ordinance. For example, in Table 2.02.01-3 Dwelling Unit Type Mix, it appears very clear in Reference 5 that SCN-24, with 100% "Attached Multifamily," is a very likely place to put ADUs/AHUs. However, a few lines later in Section 2.02.02 L., Criteria 2 makes it clear these multifamily units must be "located within 1/2 mile of a mixed use development or along a transit corridor...." This application of distance limitations will greatly reduce the land available for the construction of ADUs/AHUs, which is contrary to the stated purpose, throughout Chapter 8, of increasing the number of ADUs/AHUs. This proposed language must be further discussed, and impacts quantified, before it is accepted into the final Ordinance.</b>
No	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”? <b>2022 Round 3 Input: The Loudoun Board of Supervisors requested and TLUC has received and reviewed a study about the impact on developers of removing the current exemption for 4-story, elevator residential buildings from the requirement to provide 6.25% ADUs. However, at the TLUC discussion, Board members asked that this study be extended to look at the impact of removing the exemption to provide 10% ADUs, as proposed in this Zoning Ordinance rewrite. That study has not yet been provided, so this item must remain open pending that study.</b>
No	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? <b>2022 Round 3 Input: Staff commented in the responses to ZOC that they will consult with the Office of Housing and Community Development. What is the outcome and how/will it have any impact on Draft Zoning Ordinance text?</b>
No	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? <b>2022 Round 3 Input: Staff responded to ZOC that dispersion has been a longstanding regulation in the ADU Ordinance (though it does not apply to AHUs) and was further clarified by a memo dating back to 2007. However, to date, staff has provided no analysis of the impact of "dispersion" requirements on either good design or cost of construction. Nor has there been any analysis of the funding lost from Virginia Housing, and other funders, because of the policy of dispersion. This is a topic which deserves further analysis. How/will this analysis be done before finalizing ZOR and if so when?</b>
No	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...” <b>2022 Round 3 Input: Staff responds that this comment was under consideration before the 4/18/22 draft text. To date, language in the original DRAFT remains unchanged, but should be reviewed/considered before the second draft.</b>
No	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? <b>2022 Round 3 Input: Staff respond to ZOC that donating land in lieu of units is allowed only in single family detached (SFD) situations. This appears to limit it as a strategy to increase ADUs. This topic deserves more discussion as others in the community believe it is an ADU/AHU strategy worth pursuing.</b>

No	8.01.K.5.b.	<p>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.</p> <p>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?</p> <p><b>2022 Round 3 Input: The current DRAFT of Section 8.01.K.5.a. and c. is based upon a view looking backward to lessons learned from the County's administration of the County ADU program and does not reflect the realities of building AHUs with state and Federal funds. These sections need to be redrafted based on more detailed discussions of how Virginia Housing, HUD, and other state and Federal programs work. Consider the following three key points:</b></p> <p><b>1) It is reasonable and fair to require the master developer to be responsible for providing ADUs until the AHU financing is closed and Federal funds begin to flow. It is true that the "allocation" of funds does not confirm that AHUs will be delivered. Prior to closing, the AHU deal can still fall apart. For this reason, section K.5.a. should be revised to read..."The applicant must provide proof of closing....including state or Federal funding....."</b></p> <p><b>2) However, once this closing occurs, and state or Federal funds begin to flow, the milestones and schedules of those state and federal program administrators take over and the master developer no longer has any control whatsoever of the AHU project. At this point, it is unreasonable and unfair to require any linkage between the master developer's Occupancy Permits and the AHU's Occupancy Permits.</b></p> <p><b>3) So, what assurance does the County have that the AHUs will be provided? Take, for example, Virginia Housing. They now require a Letter of Credit from the project's General Contractor insuring completion. This is far more restrictive even than Performance Bonds, which the County still requires. If the General Contractor fails, Virginia Housing exercises the Letter of Credit and finishes the project. Because Federal funds have been expended, the County can be assured that Virginia Housing will not allow anything to happen that might reflect badly on them.</b></p> <p><b>For this reason, Section 5.c. should be removed from the DRAFT Ordinance.</b></p>
No	8.01.K.5.b.4.	<p>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?</p> <p><b>2022 Round 3 Input: Staff's concern is that AHUs actually be provided. As stated in the comment above, production of the AHUs is the responsibility of the AHU contractor responding to the requirements of the AHU funding program. The master developer has no part of this relationship. If the County wishes to have progress reports, they should be from the AHU developer.</b></p>
No	8.01.K.5.d.	<p>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.</p> <p>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.</p> <p><b>2022 Round 3 Input: The recent revision of this text recognizes that exterior building materials used in AHUs may be similar to or superior to the exterior materials used by the market rate developer. However, staff has not proposed any language to clarify how the Zoning Administrator may assess "an architectural style compatible with the market rate dwelling units within the development" if the master developer has not proffered any design guidelines. Virginia Housing will not allow this to be open ended. The text must clarify that if no design guidelines are proffered that no design approval is required from the Zoning Administrator. However, if design guidelines are proffered, approval of "compatibility" must be provided by the Zoning Administrator prior to the issuance of the AHU Building Permits.</b></p>

No	8.01.K.5.d.1.	<p>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?</p> <p><b>2022 Round 3 Input: In cases where the Zoning Administrator is required to opine on substantial conformance to design guidelines, the deadline for that opinion must be before the issuance of Building Permits for the AHUs. Staff comment to ZOC that it is standard practice to demonstrate compliance with material requirements at the time of Site Plan approval. However, recent experience at Building and Development has shown that tying this approval to Site Plans or Subdivision Plats can inadvertently mess up the AHU funding approval process at Virginia Housing. This is especially true for 4% Bond Deals, which run on a different approval schedule at Virginia Housing than do 9% or Hybrid deals. Please consult with B&amp;D staff as part of rewriting this part of the DRAFT Ordinance.</b></p>
Addressed	8.01	<p>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: Supervisor 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.</p> <p>Reference: Washington Business Journal: <a href="http://www.bizjournals.com/washington/news/2022/01/28/loudoun-county-development-plan.html">www.bizjournals.com/washington/news/2022/01/28/loudoun-county-development-plan.html</a></p> <p>For anyone unable to access the article online a copy is attached, and is well worth reading before our ZOC discussion.</p>
Addressed	8.01.0011	<p>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?</p> <p><b>Without revising the DRAFT Ordinance, staff provided a response making it clear that the terminology used here is in line with state code.</b></p>
Addressed	8.01.D	<p>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?</p> <p><b>Staff responds that, according to state enabling legislation, a density increase as the only incentive allowed in a local ADU program. This does, however, raise the follow on question: if the County wants to add more incentives, will this require amending the state enabling legislation?</b></p>
Addressed	8.01.D.3.	<p>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?</p> <p><b>The percentages of ADUs/AHUs required, by unit type, remains clear in this section of the DRAFT rewrite. In their response, staff confirms that the new policy goal is 15% ADUs for single family unit types and 10% for multifamily types. However, there is still confusion among many readers, because these specific Zoning Ordinance goals do not match the general goal of 20% ADUs/AHUs in the UHN Strategic Plan. The Board of Supervisors, probably through TLUC, should issue a policy statement clarifying this distinction and offering instructions for implementation.</b></p>

	<b>Addressed</b>	8.01.D.4	<p>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?</p> <p>The percentages of ADUs/AHUs required, by unit type, remains clear in this section of the DRAFT rewrite. In their response, staff confirms that the new policy goal is 15% ADUs for single family unit types and 10% for multifamily types. However, there is still confusion among many readers, because these specific Zoning Ordinance goals do not match the general goal of 20% ADUs/AHUs in the UHN Strategic Plan. The Board of Supervisors, probably through TLUC, should issue a policy statement clarifying this distinction and offering instructions for implementation. The goal of 20% affordable units is a combination of actions taken by developers to meet the 15% and 10% goals in the Zoning Ordinance and other actions taken through other County programs to achieve the 20% overall goal.</p>
	<b>Addressed</b>	8.01.E.2.c.	<p>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: <a href="http://www.bizjournals.com/washington/news/2022/01/28/loudoun-county-development-plan.html">www.bizjournals.com/washington/news/2022/01/28/loudoun-county-development-plan.html</a></p> <p>Staff has responded that any Use Specific Standards that apply to a residential development proximate to a data center would still apply in this case. Donated land for required ADUs cannot go onto land that would not allow other residential development.</p>
	<b>Addressed</b>	8.01.J.6.c	<p>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?</p> <p>Staff has communicated a strong objection to this proposal. They are concerned that it might lead to a "concentration" of affordable units in one location. Further, they believe that this could be logistically difficult, especially if the proposed site for the donation does not have appropriate entitlements. And, they are concerned the donated location might not be integrated into an existing community. Those proposing this option will need to mount a case in support of it to staff.</p>
	<b>Addressed</b>	8.01.J.6.c.3	<p>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?</p> <p>Staff points out that ADUAB findings and minutes are published regularly and are available upon request.</p>
	<b>Addressed</b>	8.01.J.6.c.4	<p>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?</p> <p>Staff responds that all applications must follow environmental regulations included elsewhere in the Zoning Ordinance. It is not necessary to repeat those here.</p>
	<b>Addressed</b>	8.01.L	<p>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 Procedures?</p> <p>Staff has commented that maximum penalties are set by Virginia Code and will be addressed in a different part of the DRAFT Ordinance.</p>
			<b>8.02 UNMET HOUSING NEEDS UNIT PROGRAM</b>

No	8.02.002	<p>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?</p> <p><b>2022 Round 3 Input: Staff commented to ZOC clarify that their goal is to create two UHNU programs: a rental program for families in the 0%-30% AMI income category and a for-sale program for families in the 70%-100% AMI income category. Staff does not address whether or not the goal of the second UHNU program is to facilitate wealth accumulation.</b></p>
No	8.02.C.2.	<p>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?</p> <p><b>2022 Round 3 Input: Staff pointed out in response to ZOC that the number of UHNUs required depends on the sub-area or the Residential Design Type where they will be applied. Staff provides the calculations in their response. It would be helpful if these calculations could be included as an example in the DRAFT text.</b></p>
No	8.02.D.5.a	<p>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?</p> <p><b>2022 Round 3 Input: Staff commented to ZOC that increasing density is a longstanding practice, especially as an incentive to increase ADUs in the SPA and UPA where increased density is anticipated.</b></p>
Addressed	8.02.C.3	<p>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?</p> <p><b>Staff comments that recording a covenant on deed is a common practice for enforcing affordability restrictions. Chapter 8 provides penalties for tenants or owners who violate the ADU covenants. These penalties will be added to the UHNU section.</b></p>
Addressed	8.02.C.3.a & b	<p>8.02.C.3.a &amp; 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)?</p> <p><b>Staff does not address the future of housing conditions. However, this does not seem the appropriate venue to do so. In general, the time restrictions are to prevent "flipping" the property in the short term.</b></p>
Addressed	8.02.D.6, 7, & 8	<p>8.02.D.6, 7, &amp; 8 UNMET HOUSING NEEDS UNIT PROGRAM - Density Bonus Calculation, Calculation of Required UHNUs. Does adding ADUs to the allowable density create disproportionately 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?</p> <p><b>Staff admits that this question is not clear. In short, it depends. If the density increase provided due to ADUs starts after a project meets 20 du/acre, than it could mean that the additional density will result in a requirement for more ADUs.</b></p>
Addressed	8.02.001	<p>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?</p> <p><b>Staff commented to ZOC that the goal is to bring together two separate programs into this DRAFT of the Ordinance: the ADU program, which is required, and the UHNUS program, which is optional.</b></p>