

**EXTRACTS FROM ADU PROVISIONS OF THE FAIRFAX ZONING ORDINANCE**

<http://www.fairfaxcounty.gov/dpz/zoningordinance/articles/art02.pdf>

**2-814 Affordable Dwelling Unit Advisory Board**

1. The Affordable Dwelling Unit (ADU) Advisory Board shall consist of nine (9) members appointed by the Board of Supervisors. Members shall be qualified as follows:
  - A. Two members shall be either civil engineers and/or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in Fairfax County.
  - B. One member shall be a representative of a lending institution which finances residential development in Fairfax County.
  - C. Four members shall consist of:
    - (1) A representative from the Fairfax County Department of Housing and Community Development.
    - (2) A residential builder with extensive experience in producing single family detached and attached dwelling units.
    - (3) A residential builder with extensive experience in producing multiple family dwelling units.
    - (4) A representative from either the Fairfax County Department of Public Works and Environmental Services or the Department of Planning and Zoning.
  - D. One member shall be a representative of a nonprofit housing group which provides services in Fairfax County.
  - E. One member shall be a citizen of Fairfax County.
  - F. At least four members shall be employed in the private sector.
2. Each member of the ADU Advisory Board shall be appointed to serve a four-year term. Terms shall be staggered such that the initially constituted Board shall consist of four members appointed to four-year terms; three members appointed to three-year terms; and two members appointed to two-year terms.
3. The ADU Advisory Board shall advise the County Executive respecting the setting of the amount and terms of all sales and rental prices of affordable dwelling units.

4. The ADU Advisory Board shall be authorized to hear and make final determinations or grant requests for modifications of the requirements of the Affordable Dwelling Unit Program, except that the ADU Advisory Board shall not have the authority to:
  - A. modify or reduce the Affordable Dwelling Unit Adjuster required pursuant to Sect. 804 above,
  - B. modify the unit specifications established by the Fairfax County Redevelopment and Housing Authority pursuant to Par. 1 of Sect. 809 above,
  - C. modify the eligibility requirements for participation in the ADU Program,
  - D. modify any proffered condition, development condition or special exception condition specifically regarding ADUs,
  - E. modify the zoning district regulations applicable to ADU developments,
  - F. hear appeals or requests for modifications of affordable dwelling unit sales or rental prices,
  - G. modify the provisions of Par. 5 of Sect. 802 above regarding the percentage of affordable dwelling units required or to allow the construction of affordable dwelling units which are of a different dwelling unit type from the market rate units on the site, or
  - H. modify the provisions of Paragraphs 2D and 2E of Sect. 807 above regarding the conversion of rental developments to condominium and the establishment of new condominium developments.
5. The ADU Advisory Board shall elect its Chairperson and may adopt rules and regulations regarding its formulation of a recommendation regarding the amounts and terms of sales and rental prices of affordable dwelling units and the procedures to be followed by an applicant seeking a modification of the requirements of the Affordable Dwelling Unit Program.
6. Any determination by the ADU Advisory Board shall require the affirmative vote of a majority of those present. A quorum shall consist of no less than five (5) members. All determinations and recommendations shall be rendered within ninety (90) days of receipt of a complete application.

#### **2-815 Modifications to the Requirements of the Affordable Dwelling Unit Program**

1. Requests for modifications to the requirements of the Affordable Dwelling Unit Program as applied to a given development may be submitted in writing to the ADU Advisory Board. Such application shall include an application fee as provided for in Sect. 18-106 and the applicant shall specify the precise requirement for which a modification is being sought and shall provide a description of the requested modification and justification for such request. In the case of a modification request filed pursuant to Par. 3 below, the applicant shall demonstrate in detail how such request complies with the required findings by the ADU Advisory Board for such modification and why the requirements of this Part cannot be met on the applicant's property.

2. An applicant shall promptly provide such additional information in support of the request for a modification as the Affordable Dwelling Unit Advisory Board may require.
3. In addition, in exceptional cases, instead of building the required number of affordable dwelling units, the ADU Advisory Board may permit an applicant to:
  - A. Convey the equivalent amount of land within the development for which a modification is sought to the Fairfax County Redevelopment and Housing Authority which would be necessary to provide the required number of affordable dwelling units. In such instances, the total number of dwelling units which the applicant may build on the remainder of the site shall be reduced by the number of affordable dwelling units required pursuant to Sect. 804 above; or
  - B. Contribute to the Fairfax County Housing Trust Fund an amount equivalent to the fair market value for the lot on which the affordable dwelling unit would otherwise have been constructed; or
  - C. Provide any combination of affordable dwelling units, land, or contribution to the Fairfax County Housing Trust Fund.

Permitting an applicant to meet the requirements of the Affordable Dwelling Unit Program by providing either land or contributions to the Fairfax County Housing Trust Fund is not favored. However, such modifications may be allowed upon demonstration by the applicant and a finding by the ADU Advisory Board that (1) the provision of all the affordable dwelling units required is physically and/or economically infeasible; (2) the overall public benefit outweighs the benefit of the applicant actually constructing affordable dwelling units on the particular site; and (3) the alternative will achieve the objective of providing a broad range of housing opportunities throughout Fairfax County.

4. The ADU Advisory Board shall act on requests for modifications within ninety (90) days of receipt of a complete application. The ninety (90) day time period shall be tolled during the time it takes the applicant to provide information requested pursuant to Par. 2 above.
5. The ADU Advisory Board may approve, deny, or may approve in part a request for a modification filed pursuant to this Section.
6. Persons aggrieved by the affordable dwelling unit for sale and rental prices established by the County Executive pursuant to the provisions of this Part to include decisions pursuant to Par. 2C of Sect. 807 above may appeal such prices to the Board of Supervisors. Such appeal shall be filed with the Clerk to the Board of Supervisors and shall specify the grounds upon which aggrieved and the basis upon which the applicant claims the established for sale or rental prices should be modified. The Board of Supervisors shall act within ninety (90) days of receipt of a complete application for appeal. An appeal to the Circuit Court is provided in Sect. 818 below.
7. The time limits set forth in Sections 15.2-2258 through 15.2-2261 of Va. Code Ann. shall be tolled during the pendency of an application filed pursuant to Paragraphs 1 or 7 above.

## **2-816 Compliance with Federal, State and Other Local Laws**

1. A development which provides, pursuant to federal, state or other local programs, the same or more number of affordable dwelling units as the number of affordable dwelling units required under Sect. 804 above, subject to terms and restrictions equivalent to the requirements of this Part, shall satisfy the requirements of the Affordable Dwelling Unit Program.
2. A development which provides, pursuant to federal, state or other local programs, a fewer number of affordable dwelling units required under Sect. 804 above, subject to terms and restrictions equivalent to the requirements of this Part, shall provide the additional number of affordable dwelling units necessary to make up the shortage.
3. The rents and sales prices for affordable dwelling units provided pursuant to federal, state or other local programs shall be in accordance with the rules and regulations governing such programs and these units shall be marketed in accordance with such rules and regulations provided rents and sale prices shall not exceed those set pursuant to this Part.

## **2-817 Violations and Penalties**

In addition to the provisions set forth in Part 9 of Article 18, the following shall apply whenever any person, whether owner, lessee, principal, agent, employee or otherwise, violates any provision of this Part, or permits any such violation, or fails to comply with any of the requirements hereof:

1. Owners of affordable dwelling units who shall fail to submit executed affidavits or certifications as required by this Part shall be fined fifty (50) dollars per day per unit until such affidavit or certificate is filed, but only after written notice and a reasonable time to comply is provided. Fines levied pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.
2. Renters of affordable dwelling units who shall fail to submit executed affidavits or certifications as required by this Part, shall be subject to lease termination and eviction procedures as provided in Sect. 813 above.
3. Owners and renters of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Part knowing the statements contained therein to be false shall be guilty of a misdemeanor and shall be fined \$1,000.00.
  - A. Fines levied against owners pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.
  - B. Renters of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Part knowing the statements contained therein to be false shall also be subject to lease termination and eviction procedures as provided in Sect. 813 above.
  - C. Owners of individual affordable dwelling units who shall falsely swear that they continue to occupy their respective affordable dwelling unit as their domicile shall be subject to mandamus or other suit, action or proceeding to require such owner to either sell the unit to someone who meets the eligibility requirements established pursuant to this Part or to occupy such affordable dwelling unit as a domicile.

## **2-818 Enforcement and Court Appeals**

1. The Board of Supervisors or designee shall have all the enforcement authority provided under its Zoning and Subdivision Ordinances to enforce the provisions of the Affordable Housing Dwelling Unit Program.
2. Notwithstanding the provisions of Section 15.2-2311 of Va. Code Ann., any person aggrieved by a decision of the ADU Advisory Board or by the Board of Supervisors in the case of a decision made by the latter regarding an appeal of affordable dwelling unit for sale and rental prices, or by any decision made by an administrative officer in the administration or enforcement of the Affordable Dwelling Unit Program, may appeal such decision to the Circuit Court for Fairfax County by filing a petition of appeal which specifies the grounds upon which aggrieved within thirty (30) days from the date of the decision.
3. Any petition of appeal properly filed pursuant to Par. 2 above shall not constitute a de novo proceeding and shall be considered by the Circuit Court in a manner similar to petitions filed pursuant to Section 15.2-2314 of Va. Code Ann.

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Setting of Application Fees: <http://www.fairfaxcounty.gov/dpz/zoningordinance/articles/art18.pdf>

## **18-106 Application and Zoning Compliance Letter Fees**

All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning.

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7. Modification to the requirements of the Affordable Dwelling Unit Program: \$2670