

GENERAL INFORMATION

APPLICATION TO THE AFFORDABLE DWELLING UNIT (ADU) ADVISORY BOARD FOR MODIFICATION OF THE REQUIREMENTS OF THE ADU PROGRAM

Introduction

The Fairfax County Affordable Dwelling Unit Advisory Board (ADUAB), was established in accordance with Chapter 112 (Zoning), Section 2-814 of the Code of the County of Fairfax, Virginia. The ADUAB's powers and duties are set forth in the Fairfax County Zoning Ordinance. Such powers and duties include hearing and deciding whether to grant requests for modifications to the requirements of the ADU Program pursuant to the provisions of Section 2-815 of the Ordinance.

The ADUAB consists of nine (9) members appointed by the Board of Supervisors for staggered four year terms. Of these members, 8 represent the public, private, and private non-profit sectors in Fairfax County with the remaining member being a citizen of the County. At least four of the 9 members of the ADUAB must be employed in the private sector.

Before the ADUAB will consider a request for modification of ADU requirements, a properly filed application must be submitted to the Fairfax County Department of Housing and Community Development (DHCD), along with a **\$2670 application fee**. Administrative support for the ADUAB is provided by the DHCD. DHCD offices are located at 3700 Pender Drive, Fairfax, Virginia, 22030 and the phone number is (703) 246-5164. The applicant or authorized agent is required to provide information, as may be required, to support the request for modification, and to present justification for the request at the hearing held by the ADUAB.

Types of Relief Which May Be Granted By The ADUAB

Instead of building the number of Affordable Dwelling Units required by Part 8 of the Zoning Ordinance, the ADU Advisory Board (ADUAB) may approve one or a combination of the following:

1. The ADUAB may approve a modification of the ADU requirements that results in a reduction in the number of bonus units and affordable units to be provided. However, if the bonus density is less than the 20% required (or 10% in the case of multifamily units), then the number of affordable units shall be reduced from 12.5% (or 6.25% in the case of multifamily units). In approving such a modification, the ADUAB may not alter the relationship of the 20% bonus and the provision of 12.5% affordable units. (For further discussion of these relationships, see Attachment 1).
2. In exceptional cases, the ADUAB may permit applicants to convey the amount of land which is needed in order to provide the required number of ADUs to the Fairfax County Redevelopment and Housing Authority (FCRHA). The land must be located within the same development for which the modification is sought. The number of units which the developer may build will be reduced by the number of units to be built on the land conveyed to the FCRHA. For example, in a 100 unit development which receives a 20% density bonus, yielding a total of 120 units, fifteen ADUs would be required. If the developer conveys sufficient land to build 15 units to the FCRHA, then the developer may build 105 units ($120-15=105$).

3. In exceptional cases, the ADUAB may permit an applicant to contribute to the 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.
4. In exceptional cases, the ADUAB may permit an applicant to provide any combination of affordable dwelling units, land or contribution to the Fairfax County Housing Trust Fund.

In the case of options 2, 3 and 4 the ADUAB can grant approval only if it finds that provision of all of the affordable units required is physically and/or economically infeasible, that the overall public benefit outweighs the benefit of the applicant constructing the ADUs on the site, and that the alternative will achieve the objective of providing a broad range of housing opportunities throughout Fairfax County.

The ADUAB does not have the authority to modify or reduce the ADU Adjuster required pursuant to Sect. 2-804, which is discussed in more detail in Attachment 1, to modify the unit specifications established by the DHCD, or to hear appeals or requests for modifications of ADU sales prices or rents.

Timing of Action By The ADUAB and Types of Decisions Rendered

The ADUAB will try to schedule hearings within 30 days after receipt of a complete application. Although the ADUAB may occasionally find it necessary to defer its decision on an application, it usually renders a decision immediately following the hearing.

A decision must be made, no later than 90 days after the filing of a complete application. Such decision is expressed by adoption of a formal resolution which may approve, approve-in-part, or deny the applicant's request. The concurring vote of a majority of those ADUAB members present at the meeting is required to approve a modification of the requirements of the ADU Ordinance.

Properly Filed Applications

In order for a request to be considered by the ADUAB, the applicant must have either, (1) submitted to the County an application for rezoning or special exception, or (2), have appropriately zoned land and have filed a site plan or subdivision plat with the County prior to the filing of an application with the ADUAB. The application must specify the precise requirement for which the applicant is seeking modification, a description of the requested modification and provide justification describing in detail how the request complies with the required findings of the ADUAB, referred to above.

In addition to the application form provided by HCD (Attachment 2), each application filed with the ADUAB must include:

1. A one page executive summary of the detailed written justification which specifies the requirements of the Ordinance which the applicant is seeking to modify, states what the applicant proposes in lieu of meeting the requirements, and summarizes the justification for the modification.
2. A detailed justification for the application including supporting documentation. Please provide a list of the documents included.

3. A Tax Map indicating the location of subject property, and;
4. An Affidavit disclosing ownership of the subject property and other essential professional data with respect to the application (Attachment 3).

Each application will be reviewed by staff of the Department of Housing and Community Development for completeness and a determination as to whether the application meets the requirements of the Ordinance for appeal. The applicant will be notified of any deficiencies within 10 business days of receipt. Applications must be considered complete before being scheduled for a hearing before the ADUAB.

Provisions Regarding Notice of Public Hearing

The Clerk to the Board of Supervisors may arrange for notice of any public hearing to be published once a week for two (2) successive weeks in a local newspaper having general circulation in the County. If the Clerk arranges for notice of a public hearing to be published, such notice should be published not less than six (6) nor more than twenty-one (21) days before the date of the hearing, and there should be a minimum of seven (7) days between the first and second publication. The notice should specify the time and place of the hearing, the name(s) of the applicants, and the location (by tax map reference number and street address, if known) of the subject property. The notice should also state that the applicant has requested a modification of the requirements of the Affordable Dwelling Unit Program as applied to a given development. The applicant shall bear the cost of publication.

Notice shall also be published in the Weekly Agenda two weeks before the public hearing utilizing the accepted format for notice of meetings of other Boards, Authorities, and Commissions. This paragraph regarding notice is intended to be permissive, and not mandatory. If notice in the manner herein described is not given, failure to give such notice shall not affect the proceedings of the ADUAB nor the validity of any of its actions.

Appeal of Sales Prices Or Rents

Appeals concerning the affordable dwelling unit for sale and rental prices established by the County Executive, pursuant to the provisions of the ADU Ordinance (including sales prices for conversion condominium units), are heard by the Board of Supervisors, not the ADUAB, as provided in Sect. 2-815 of the Ordinance. Such appeals shall be filed with the Clerk to the Board of Supervisors and shall specify the grounds for the appeal 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.

Appeal of ADU Decisions

Any person aggrieved by a decision of the ADUAB (or a decision of the Board of Supervisors, in the case of an appeal of the ADU sales prices or rents set by the County Executive) may appeal such decision to the Circuit Court for Fairfax County by filing a petition of appeal which specifies the grounds for the appeal. The appeal to the Circuit Court is to be filed within 30 days from the date of the decision which is being appealed.