

## Comments on Flood Risk Map Rule for ADUs

*Submitted June 27, 2025, by Wil Fisher on behalf of Unit Two Development LLC*

Thank you for the opportunity to submit comments on the proposed rule concerning flood risk mapping for ancillary dwelling units (ADUs). Unit Two Development supports the City's efforts to protect life and safety in the face of accelerating climate volatility, including increased rainfall and urban flooding. However, we believe that the proposed rule, as written, is overly restrictive in ways that limit the development of backyard ADUs without materially advancing public safety.

### Legal Basis for Comment

Section 1043(d) of the New York City Charter requires that all rules be:

- “Narrowly drawn to achieve [their] stated purpose,” and
- Include a “clear explanation of the rule’s basis and purpose.”

We contend that the proposed rule fails these tests, primarily due to its overbroad application of buffers that were not required in the zoning text and the lack of technical justification for such buffers.

### Concerns with the Proposed Rule

**(1) Uniform Treatment of Basement and Backyard ADUs:** While basement ADUs rightly warrant stringent protections, backyard ADUs are above-grade, new construction built to current code and should not be treated identically. These differing risk profiles deserve distinct regulatory treatment.

**(2) Arbitrary 50-Foot Buffer:** The addition of a 50-foot buffer around mapped flood hazard areas lacks technical justification and is not specified in Zoning Resolution §12-10 “Ancillary Dwelling Units,” which clearly and explicitly defines which hazard areas should apply.

**(3) Lot-Based Disqualification:** Under the rule, if *any* portion of a tax lot intersects the flood map or buffer, *the entire lot* is disqualified, even if the proposed ADU footprint does not intersect the hazard area or buffer at all. Furthermore, this approach discounts ADU opportunities on large lots, irregular lots, and sloped lots where the condition overlapping the hazard area differs significantly from the condition in the proposed building footprint.

### Differentiating Basement vs. Backyard ADUs

ZR §12-10 prohibits both basement and backyard ADUs in flood hazard areas. We do not contest the text of the Zoning Resolution, nor do we contest the additional restrictions recommended by DEP for basement ADUs in this proposed rule, given the well-documented life safety risks associated with below-grade occupancy during flooding events.

In contrast, backyard ADUs are above-grade structures, must comply with stringent NYC Building Code requirements, can incorporate flood-resistant design features where required (e.g., elevation, permeable landscaping), and will often present lower flood risk than the existing primary structure on the lot. Applying a 50-foot buffer to flood hazard areas and applying lot-based disqualification of

backyard ADUs goes beyond what is required by ZR §12-10, is not “narrowly drawn,” and lacks a “clear explanation of the rule’s basis,” without meaningfully improving public safety.

### Examples

- 138-30 102nd Avenue, Queens
- 88 Dalemere Road, Staten Island
- 1815 East 21st Street, Brooklyn

Each of these sites – with visuals included in Appendix A – includes a tax lot that partially intersects the 50-foot buffer, but with sufficient space to build a compliant backyard ADU safely outside the actual flood risk area *and* outside the proposed buffer area. Under the proposed rule, these lots would be entirely excluded, despite no flood hazard being posed to the potential ADU. As such, the proposed rule adds significant restrictions not originally contemplated by ZR §12-10, reducing the production of housing without delivering any additional public safety benefit.

### Recommendations

We do not contest the proposed rule as it applies to basement ADUs. However, to achieve the City’s safety goals while enabling climate-resilient housing production, we respectfully recommend the following changes:

- (1) Treat backyard ADUs separately from basement ADUs**, based on their distinct risk characteristics; AND
- (2) In the case of backyard ADUs, apply the rule based on proposed structure footprint**, not entire lot area; AND/OR
- (3) In the case of backyard ADUs, remove or substantially reduce the 50-foot buffer** to avoid an overly conservative approach that does not impact public safety; AND
- (4) Publish shapefiles for final mapped flood hazard areas on NYC Open Data**, to allow building professionals to demonstrate in filing documents that the proposed structure’s footprint does not intersect with a mapped flood hazard area.

These targeted adjustments would still prohibit construction in truly hazardous areas while allowing hundreds of additional New Yorkers to avail themselves of the benefits of City of Yes for Housing Opportunity without compromising safety.

Thank you for your consideration.

*Wil Fisher*

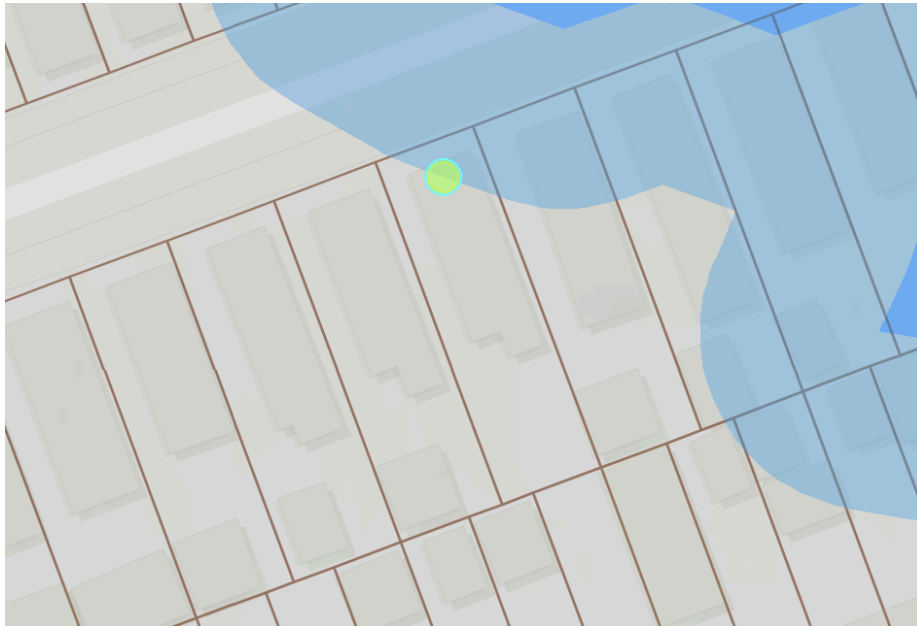
*Principal, Unit Two Development LLC*

[www.unit2dev.com](http://www.unit2dev.com)

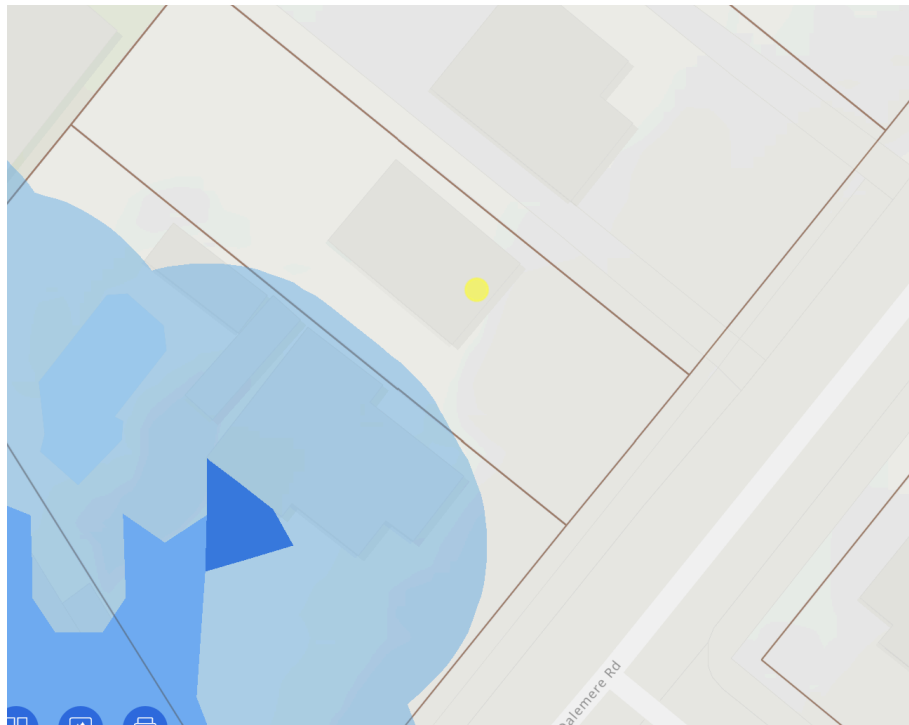
## Appendix A: Examples of Lots Adversely Affected by Rulemaking

Each of these sites includes a tax lot that partially intersects the 50-foot buffer, but with sufficient space to build a compliant backyard ADU safely outside the actual flood risk area. Under the proposed rule, these lots would be entirely excluded, despite no flood hazard being posed to the potential ADU footprint. As such, the proposed rule adds significant new restrictions not originally contemplated by ZR §12-10, which do not deliver any additional public safety benefit.

### 138-30 102 Avenue, Queens



### 88 Dalemere Road, Staten Island



1815 East 21 Street, Brooklyn

