

Comments on DOB Proposed Rule:
Rules relating to Ancillary Dwelling Units in 1 and 2 Family Dwellings

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Submitted By: Nimrod Ginsburg, Second Key LLC

via email to dobrules@buildings.nyc.gov and posted on rules.cityofnewyork.us

Comment 1 – Primary Residence at the time of Initial Occupancy

Proposed DOB Rule §105-08(d)(2) states, “The owner of the property must maintain their primary residence in any of the primary dwelling units on the zoning lot at the time of application for a TCO or final CO, whichever is earlier.” An Ancillary Dwelling Unit (“ADU”) is not considered a primary dwelling unit, and therefore this language prevents property owners who intend to live in the ADU from obtaining TCO or CO.

Furthermore, this language conflicts with the definition of ancillary dwelling unit in Section 12-10 of Zoning Resolution, which states, “at the time of initial occupancy for an ancillary dwelling unit, the zoning lot on which the ancillary dwelling unit is located must be the primary residence of an owner of such zoning lot.”

Suggestion 1: Amend the language to indicate that property owners must maintain their primary residence in any of the dwelling units on the zoning lot, including the ADU.

Comment 2 – BC U203, U204 and U205 and the Definition of Backyard ADUs

Proposed DOB Rule §105-08(f)(3) refers to ADUs that are not backyard ADUs (as defined in the Zoning Resolution) and are constructed in accordance with section U203, U204 or U205 of the Building Code. However, it appears as if any ADU constructed in accordance with section U203, U204 or U205 would fit the definition of a “backyard ancillary dwelling unit” per ZR 12-10.

Suggestion 2: Provide clarification and clear examples for instances in which an ADU constructed in accordance with Building Code Section U203, U204, or U205 is not defined as a “backyard ancillary dwelling unit” per ZR 12-10.

Comment 3 – Clarify Rules Pertaining to Use of Manufactured Homes as ADUs

Building Code Section U205 allows the use of manufactured homes as an ADU, but there is no further guidance provided in the Building Code or in this Proposed Rule. Can property owners

purchase Manufactured Homes built according to HUD Code and have them installed on permanent foundations on their zoning lots to be used as ADUs?

Suggestion 3: Clearly state whether Manufactured Homes constructed in accordance with HUD Code are allowed to be installed in New York City for use as an ADU and indicate whether additional code requirements outside of BC Sections U103, U203 and U204 apply to HUD Manufactured Home ADUs.