

1 RCNY §105-08

CHAPTER 100

Subchapter E Miscellaneous Provisions

§105-08 Ancillary Dwelling Units outside the Temporary Residence Program associated with a single – or two-family residence.

(a) **Scope.** This rule establishes requirements for the occupancy and use of all ancillary dwelling units (“ADU”) not enrolled in the Temporary Residence Program covered in Article 507 of Title 28 of the New York City Administrative Code (“Administrative Code”) and that are associated with a single- or two-family residence.

(b) **Definitions.** For the purposes of this section, the following terms have the following meanings:

ADU. An “ancillary dwelling unit” as defined in section 12-10 of the New York City Zoning Resolution (“Zoning Resolution”).

Alt-CO. An application for alteration permit pursuant to Article 105 of Title 28 of the Administrative Code leading to a new or amended certificate of occupancy issued pursuant to Article 118 of Title 28 of the Administrative Code.

Building Code. The New York City Building Code.

CO. A certificate of occupancy issued pursuant to Article 118 of Title 28 of the Administrative Code.

TCO. A temporary CO issued pursuant to Article 118 of Title 28 of the Administrative Code.

(c) **References.** Appendix U of the Building Code, Chapter 10 of the Building Code and the Zoning Resolution.

(d) **Eligibility.** An ADU must comply with the Zoning Resolution and paragraphs (1) through (4) of this subdivision.

- (1) No more than one ADU per single- or two-family residence is permitted on the same zoning lot.
- (2) 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, in accordance with subdivision (f) of the definition of ancillary dwelling unit in section 12-10 of the Zoning Resolution. The department may require submission of the same evidence of primary residence as required in section 46-03 of Title 19 of the Rules of the City of New York.
- (3) In accordance with section U202.3 of the Building Code, no ADUs may be permitted in a basement or cellar where the portion of the tax lot containing an ADU constructed in accordance with Appendix U of the Building Code is located within the special flood hazard area, 10-year rainfall flood risk area, or costal flood risk area. These prohibited areas are set out as follows:
 - (i) Special flood hazard area: Defined in section 202 of the Building Code.
 - (ii) 10-year rainfall flood risk area: Set out in the map established by the New York City Department of Environmental Protection in accordance with section 24-809 of the Administrative Code and Chapter 66 of Title 15 of the Rules of the City of New York.
 - (iii) Coastal flood risk area: Set out in the map established by Department of Environmental Protection in accordance with section 24-809 of the Administrative Code and Chapter 66 of Title 15 of the Rules of the City of New York.
- (4) An ADU may be permitted to be constructed in the basement or cellar in conjunction with the erection of a single-family residence, if all of the following conditions are met:

- (i) Such ADU is permitted by the Zoning Resolution, and the entire tax lot is outside the prohibited area set forth in this paragraph (3) of this subdivision.
- (ii) The basement or cellar ADU is within the same building as the primary dwelling unit, in accordance with section 12-10 of the Zoning Resolution and paragraph (2) of this subdivision.
- (iii) Occupancy of such ADU in a basement or cellar, as defined by section 202 of the Building Code, must be in accordance with section 27-2087 of the Housing Maintenance Code, as applicable.
- (iv) Both the ADU and the primary dwelling unit must be classified as Group R-3 occupancy and must comply with all applicable requirements of a two-family residence and Group R-3 occupancy in the New York City Construction Codes, New York City Fire Code and Housing Maintenance Code.
- (v) Such ADU must be indicated as “ADU Apartment U” in the CO.
- (vi) The application and the comment of the CO must indicate that the “Ancillary Dwelling Unit is being constructed in accordance with section 12-10 of the Zoning Resolution and 1 RCNY 105-08(d)(4).”
- (vii) For ADUs located in the cellar, all of the following requirements apply:
 - (A) Cellar ADUs must be provided with two independent means of egress in accordance with Chapter 10 of the Building Code.
 - (B) Cellar ADUs must be provided with an automatic sprinkler system throughout the ADU in accordance with NFPA 13D as modified by Appendix Q of the Building Code. A building that consists of three stories or more and a cellar ADU must be sprinklered in its entirety in accordance with section 903.2.8 of the Building Code.
 - (C) Any yards, courts or other open spaces required by the Zoning Resolution must be no higher than 6 inches below the windowsill of any required window in any room of such cellar ADU.
 - (D) Applications for the construction of an ADU in a cellar may not be submitted unless and until section 27-2087 of the Housing Maintenance Code provides for such occupancy in cellars.

Except for sections U202.8, U202.9, U202.10 and U202.11, the provisions of Appendix U of the Building Code do not apply to an ADU constructed pursuant to this paragraph (4).

(e) Application. All ADU applications must be filed under the house number assigned by the Topographical Bureau of the appropriate Borough President’s office.

- (1) The ADU types below that share the same CO with the primary dwelling must be filed as an Alt-CO application:
 - (i) Attic ADUs constructed in accordance with section U201 of the Building Code.
 - (ii) Basement or cellar ADUs constructed in an existing building in accordance with section U202 of the Building Code.
 - (iii) All other above grade ADUs, except for attic ADUs, such as vertical enlargements, horizontal enlargements, and subdivisions from the bulk of the existing single-family residence and constructed in accordance with section U201 of the Building Code.
- (2) The ADU types below must apply for a new CO and obtain a new Building Information Number (BIN).
 - (i) Detached ADUs constructed in accordance with section U204 of the Building Code.

- (ii) Manufactured homes constructed in accordance with section U205 of the Building Code.
 - (iii) ADUs abutting the primary dwelling and separated from the primary dwelling with a fire wall in accordance with section U203 of the Building Code. To obtain a new house number, the address verification application to the Borough Topographical Bureau must indicate the location of the fire wall.
- (3) ADUs converted from an existing detached garage:
- (i) If the detached garage is recorded on the same CO as the primary dwelling, one no-work Alt-CO application must be filed for the primary dwelling and another Alt-CO application must be filed for the ADU.
 - (ii) If the detached garage is recorded on a CO separate from the primary dwelling or is not recorded on a CO, the ADU must be filed as an Alt-CO application under a different BIN than the primary dwelling. A new BIN may be required for the ADU.

(f) Technical Requirements

- (1) **ADU Entrance Identification.** Where the eligible basement or cellar residence entrance is not apparent from the street, a permanent directional sign with red letters at minimum of 5 inches tall over white background must be mounted on the primary dwelling, stating in sentence form: “Basement (or Cellar) ADU entrance is located on Exposure [#], as viewed from street-facing side (Exposure 1).” For purposes of this section, building sides shall be numbered as follows: Exposure 1 is the side facing the street on which the building’s official address is assigned; Exposure 2 is the side to the left when standing in the street facing Exposure 1; Exposure 3 is the side opposite Exposure 1; and Exposure 4 is the side to the right when standing in the street facing Exposure 1.

(2) Water sensors and alarms.

- (i) **Installation.** Pursuant to item 1 of section U202.11 of the Building Code, water sensors and alarms must be installed in every habitable space, as defined in section 202 of the Building Code, in an ADU located in a basement or cellar to provide warning to the occupants in the event of a flood and must be installed in accordance with the requirements of this section.
- (ii) **Water sensor and alarm units.** In each habitable room, one water sensor and alarm with alternating current (AC) power of a type acceptable to the department must be installed in addition to one water sensor and alarm with battery power to satisfy the requirements of section U202.11 of the Building Code. One AC power water sensor and alarm that also has battery backup power will be deemed compliant with this requirement.
- (iii) **Locations.** Water sensors and alarms must be installed in every habitable space at the following locations:
 - (A) Any interior space or area immediately adjacent to flood water ingress points, such as windows, doors, and other wall openings. However, no more than two are required for each habitable room.
 - (B) On the finished floor, or in accordance with the manufacturer’s instructions.
- (iv) **Visual Notification.** The water sensors and alarms must have a visual notification function when requested by the tenant.
- (v) **Average sound pressure.** The water sensor and alarm must provide a minimum sound pressure level of 75 dBA.

(vi) Owner's responsibility. The owner is responsible to inspect all of the water sensors and alarms and replace the battery as necessary, but at least once a year, prior to a tenant's occupancy, and after a flood event.

(3) Flood mitigation for ADUs above grade. ADUs that are not backyard ADUs as defined in the Zoning Resolution and are constructed in accordance with section U201, U203 or U204 of the Building Code, may be created within buildings that lawfully existed on or prior to December 5, 2024, provided that such ADUs are elevated as described below:

- (i) Where the tax lot is located within the Special Flood Hazard Area defined in section 202 of the Building Code, the lowest floor of the ADU must be elevated to the design flood elevation in accordance with Appendix G of the Building Code. The CO must include all applicable statements in accordance with Appendix G of the Building Code.
- (ii) Where the tax lot is located within the coastal flood risk area defined in section U202.2 of the Building Code, to be determined as described in paragraph (3) of subdivision (d) of this section, but not located in the Special Flood Hazard Area defined in section 202 of the Building Code, the lowest floor of the ADU must be elevated to a minimum of 3 feet above the highest adjacent grade to such ADU.
- (iii) Where the tax lot is located is within the 10-year rainfall flood risk area defined in accordance with section U202.2 of the Building Code, to be determined as described in paragraph (3) of subdivision (d) of this section, but not located in the Special Flood Hazard Area defined in section 202 of the Building Code, the lowest floor of the ADU must be elevated to a minimum of 2 feet above the highest adjacent grade to such ADU.