



Federal Emergency Management Agency

Region VII

**2323 Grand Boulevard, Suite 900
Kansas City, Missouri 64108-2670**

General Principles of Variances and the Variance Criteria of the National Flood Insurance Program

Community participation in the National Flood Insurance Program (NFIP) is based upon a mutual agreement with identified flood prone communities. In return for the local adoption and enforcement of floodplain management regulations that meet the minimum criteria of the NFIP, the Federal Emergency Management Agency (FEMA) provides the availability of flood insurance coverage within that community.

Participating communities in which the local floodplain management regulations meet the minimum criteria of the NFIP are responsible for administering and enforcing their local floodplain management requirements pursuant to their own authority and through their own procedures. However, FEMA periodically evaluates the administration and enforcement of local floodplain management programs in relation against those communities whose overall floodplain management programs are found to be inadequately administered or enforced.

In circumstances where compliance requirements set out in the local floodplain management regulations pose an exceptional hardship, the community may, after examining the applicant's hardship, approve or disapprove a request for a variance. Although FEMA does not set forth absolute criteria for granting variances from the provisions of 44 CFR Sections 60.3, 60.4, and 60.5, the following general standards have been established in Section 60.6 (a):

1. An applicant has good and sufficient cause for requesting a variance;
2. An applicant will suffer exceptional hardship should a variance be denied;
3. A variance will not cause increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
4. A variance is the minimum necessary, considering the flood hazard, to afford relief.

Variance Guidance & Criteria

Nature of Variances

The NFIP variance criteria are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. Though standards vary from State to State, in general, a properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the ordinance would create an exceptional hardship to the applicant or the surrounding property owners. Those characteristics must be unique to that property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

Examples of the kinds of characteristics that might give rise to a hardship that might justify a variance to certain other building or zoning ordinances would include an irregularly shaped lot, a parcel with unstable soils, or a parcel with an unusual geologic condition below the ground surface. It is difficult, however, to imagine any physical characteristic that would give rise to a hardship sufficient to justify a variance to a flood elevation requirement. A frequently encountered example is the case of a very small undeveloped lot completely surrounded by lots on which buildings have been constructed at grade, and an ordinance that requires that new buildings be constructed at a level several feet above grade. If the owner were to elevate the house on fill, the lot might drain onto the neighbors' property. In this case, the size of the lot and its status as the only undeveloped lot in the vicinity are the characteristics that could result in a hardship. However, this situation still probably would not warrant a variance because, as is discussed below, the owner does not face an exceptional hardship since there are many other ways to alleviate the drainage problem (elevation on pilings or a crawl space, grading the fill to drain away from adjoining properties, etc.). The FEMA manual, *Elevated Residential Structures* and the Corps of Engineers' *Floodproofing Systems and Techniques* report illustrate ways in which various site-specific problems can be overcome when designing and building houses that must be elevated.

Individual Hardship vs. Community Goals

In determining whether or not an applicant has established an exceptional hardship sufficient to justify a variance, the local board weighs the applicant's hardship against the purpose of the ordinance. In the case of variances from a flood elevation requirement, this would mean asking which is more serious: the hardship that this individual applicant would face, or the community's need for strictly enforced regulations that protect its citizens from the dangers and damages of flooding? Only a truly exceptional, unique hardship on the part of an individual property would persuade local officials to set aside provisions of an ordinance designed with the whole community's safety in mind. The hardship might not have to be so severe if the applicant were seeking a variance to setback ordinance, for instance, which was intended merely to simplify street repair and modifications. In the course of considering variances to flood protection ordinances, however, local boards continually must face the more difficult task of frequently having to deny requests from applicants whose personal circumstances evoke compassion, but whose hardships are simply not sufficient to justify deviation from community-wide flood damage prevention requirements.

Variance Guidance & Criteria

Hardship [Section 60.6(a)(3)(ii)]

The hardship that would result from failure to grant a requested variance must be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as exceptional hardships. All of these problems can be resolved through other means, without granting a variance. This is so even if the alternative means are more expensive or complicated than building with a variance, or if they require the property owner to put the parcel to a different use than originally intended, or to build his or her home elsewhere.

For example, a situation in which it would cost a property owner several thousand dollars more to elevate a house to comply with the ordinance and an additional several thousand to build a wheelchair ramp or an elevator to provide access to that house for a handicapped member of the family might at first glance seem like the sort of problem that could be relieved by a variance. However, while financial considerations are always important to property owners and the needs of the handicapped person certainly must be accommodated, these difficulties do not put this situation in the category of "exceptional hardships" as they relate to variances. This is because, first, the characteristics that result in the hardship are personal (the physical condition and financial situation of the people who propose to live on the property) rather than pertaining to the property itself. Second, the problem of day-to-day access to the building can be alleviated in any one of a number of ways (going to the additional expense of building a ramp or an elevator) without granting a variance. Third, the situation of handicapped persons occupying flood prone housing raises a critical public safety concern. If a variance is granted and the building is constructed at grade, it will be absolutely critical that the handicapped or infirm person evacuate when flood waters begin to rise, yet he or she may be helpless to do so alone. Not only does this pose an unnecessary danger to handicapped persons but it places an extra demand on the community's emergency services personnel who may be called upon during the early stages of the flood to rescue them. In contrast, if the building is properly elevated, the handicapped person can still be evacuated if there is sufficient warning and assistance available. If there is not, that person can, in all likelihood, survive the flood simply by remaining at home safely above the level of the flood waters.

Public Safety and Nuisances [60.6(a)(3)(ii)]

Variances must not result in additional threats to public safety or create nuisances. As mentioned above, local flood damage prevention ordinances (including elevation requirements) are intended to help protect the health, safety, well-being, and property of the local citizens. This is a long-range community effort usually made up of a combination of approaches such as adequate drainage systems, warning and evacuation plans, keeping new property--especially homes--above the flood levels, and participating in an insurance program. These long-term goals can only be met if exceptions to the laws are kept to a bare minimum.

Variance Guidance & Criteria

Fraud and Victimization [60.6(a)(3)(iii)]

Properly granted variances must not cause fraud on or victimization of the public. In examining this requirement, local boards should consider the fact that every newly constructed building adds to local government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damages, and can be insured only at very high flood insurance rates.

Minimum Necessary to Afford Relief [60.6(a)(iv)]

The variance that is granted should be for the minimum deviation from the local requirements that will still alleviate the hardship. In the case of variances to an elevation requirement, this means the board need not grant permission for the applicant to build at grade, for example, or even to whatever elevation the applicant proposes, but only to that level that the board believes will both provide relief and preserve the integrity of the local ordinance.

Insurance Rates

While the building standards in a local ordinance may be altered by means of a variance, the flood insurance purchase requirement, which must be enforced by lending institutions, cannot be waived and thus may create severe financial consequences for the property owners. Insurance rates for structures built below BFE can be substantially higher than those for elevated structures. In many instances the rates will be so high as to make the structure essentially uninsurable because the owners cannot afford the premium. This may not matter to the original owner who applied for the variance in the first place, but it may matter a great deal to subsequent potential owners who must forego purchase of the property, or to subsequent owners who cannot find buyers because of the high insurance rates, or to the community that finds itself with large numbers of noncompliant houses. In addition, if the property is not insured and cannot be insured due to high actuarial rates, there may be no funds available to repair the structure if it is seriously damaged by a flood. Even disaster loans may not be obtainable if the flood insurance coverage required as a condition of the loan was available only at very high rates. The result may be that the present owner or a future owner may choose to abandon the damaged house rather than repair it since the damages may exceed the equity in the house. The local government and/or the holder of the mortgage are then left with the problem of one or more vacant, flood-damaged, and essentially uninsurable houses.

Variance Guidance & Criteria

Summary

Because the duty and need of local governments to help protect their citizens from flooding is so compelling, and the implications of the cost of insuring a structure built below flood level are so serious, variances from the flood elevation or from other requirements in the flood ordinance should be quite rare. This is why the NFIP variance guidelines at Section 60.6 are so detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate. It is not surprising that, when these guidelines are followed, very few situations qualify for a variance.

For assistance in tailoring this guidance to meet your community's specific needs, a Community Mitigation Programs Specialist may be contacted at the following address:

*FEDERAL EMERGENCY MANAGEMENT AGENCY
Mitigation Division
2323 Grand Boulevard, Suite 900
Kansas City, Missouri 64108-2670*

Phone: (816) 283-7002