



## **Granting Floodplain Development Variances: Things to Consider for Compliance in the NFIP**

Flooding is Mississippi's number one natural disaster potential and as such, many of our communities have been proactive in ensuring that new development within their floodplain is done in compliance with both federal and local regulations. Mississippi communities that participate in the National Flood Insurance Program (NFIP) agreed to adopt and enforce flood damage prevention regulations in order to reduce future flood risks to new construction in the community's Special Flood Hazard Areas. However, from time to time a developer or homeowner may wish to seek a variance to the requirements of the community's local floodplain regulations.

**What is a variance?** A variance is a grant of relief by a community from the terms of a land use, zoning or building code regulation. Because a variance can create an increased risk to life and property, variances from flood elevation or other requirements in the local flood ordinance should be rare. The local review board must consider the fact that every newly constructed building adds to the local government's responsibilities and remains a part of the community for the indefinite future.

**What are valid conditions for floodplain variances?** Local flood damage prevention ordinances specify what can qualify for a variance; however, in general, variances must pertain to a piece of property and not be personal in nature. Local boards should seek the advice of the community's floodplain administrator and review their local floodplain management regulations prior to the issuance of a variance. It is very important to note that a community considering the granting of a variance in an identified Special Flood Hazard Area (flood zones beginning with the letter 'A' or 'V') must first consider the following points:

### **Variances:**

- Must not be issued in a floodway if any increase in flood levels would result;
- Granting will not increase flood heights in the Special Flood Hazard Area;
- Will not create additional threats to public safety and create nuisances;
- Will not cause fraud on or victimization of the public;
- Will not create a conflict with existing local laws or ordinances;
- Will be the minimum necessary to afford relief to the property owner, and;
- Will not be issued as an after-the-fact variance for noncompliant structures.

### **Exceptional Hardships: The Applicant has the burden of proof, including:**

- Loss of ALL beneficial or productive use;
- Deprivation of any reasonable return on property;
- Deprivation of all or any reasonable use;
- Property rendered valueless;
- Inability to develop property in compliance with regulations, and;
- Reasonable use cannot be made consistent with regulations.

The proof must be compelling and reasons for granting the variance extraordinary. The following six items are insufficient reasons for the granting of a variance:

- Significant depreciation of property value;
- Convenience of property owner;
- Circumstances of owner, not land;
- To obtain a better financial return;
- Property similar to others in the neighborhood, and;
- Hardship created by the owner's own actions.

#### **If a Variance is Issued:**

- Community must notify applicant in writing:
  - Higher insurance premiums will result (\$25 for \$100 of coverage)
  - Greater risk to life and property
  - Amount of elevation variance (i.e. 1 foot, 2 feet, etc)
- Maintain detailed records of granted variances, this will assist the community in lawsuits after damage occurs to structure. Examples are:
  - Variance request
  - Notification to applicant
  - All variance actions/procedures, including denials, and justifications
- Variances are reported to FEMA in the community's Biennial Report. Your variance records will also be perused during Community Assistance Visits by FEMA and MEMA.

**Note:** Any variance granted in a floodway will also require that the applicant provide a 'No Rise' certificate to the community prior to any consideration. If you do grant a variance, remember to document all actions, this documentation is your community's only protection after a flood that causes damages to the structure. Remember the reason for your floodplain regulations is for public safety and to reduce future flood losses in your community.

**What is a Community's liability for issuing improper variances?** The issuance of variances to local floodplain regulations can have a negative impact to a community's participation in the National Flood Insurance Program. A pattern of unjustified variances can lead to **probation** or even **suspension** from the NFIP. This can lead to the loss of flood insurance and many forms of disaster assistance for the community. The loss of availability of flood insurance can have a direct impact on future sales or re-sales of properties located in your community's floodplains.

Unjustified variances by review boards circumvent the goals of reducing future flood loss that your community is trying to accomplish through its floodplain regulations. In addition, it can result in increased costs to the community for emergency response. Another consideration is the liability that a variance may place on the local community. Variances must not defraud or victimize the public. Any building permitted below the base flood elevation is subject to increased risk of damage from floods. Local boards should ask themselves what is the potential of future litigation for the community for issuing an unjustified variance.

**Variances and Flood Insurance Rates:** While a variance may allow deviation from building standards specified in your local ordinance, flood insurance rates and the flood insurance purchase requirements – which must be enforced by lending institutions- cannot be waived. One of the most common requests a board may get is to waive the elevation requirements for the lowest floor of a new or substantially damaged building. The following examples illustrate how elevation and insurance works on structures in floodplains.

Example: Flood Insurance Premiums shown for the next series of illustrations were computed based on \$100,000 in building coverage. Note: insurance rates vary, based on location, date of

construction and lowest floor elevation, and should be computed case-by-case when rating structures for flood insurance. *(The community should ask a local agent to provide insurance premium information to be included in the variance packet.)*



Figure 1. Pre-FIRM – insurance annual premium: \$655.00 (A zone) or \$1,040.00 (V zone)



Figure 2. Pre-FIRM – substantially damaged by flood

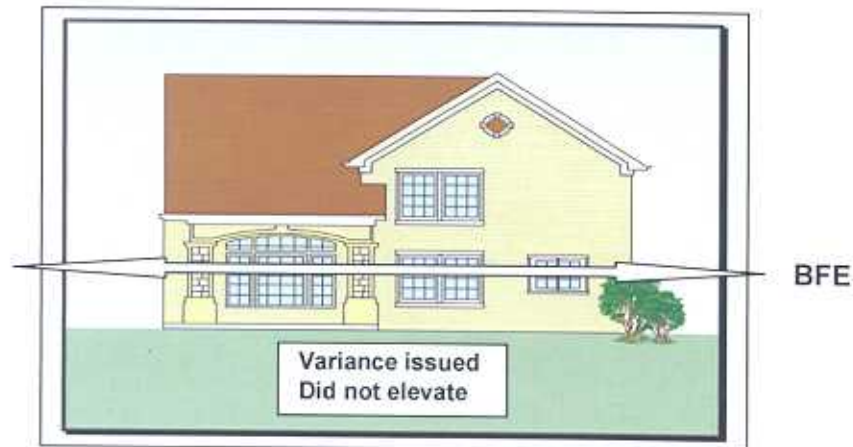


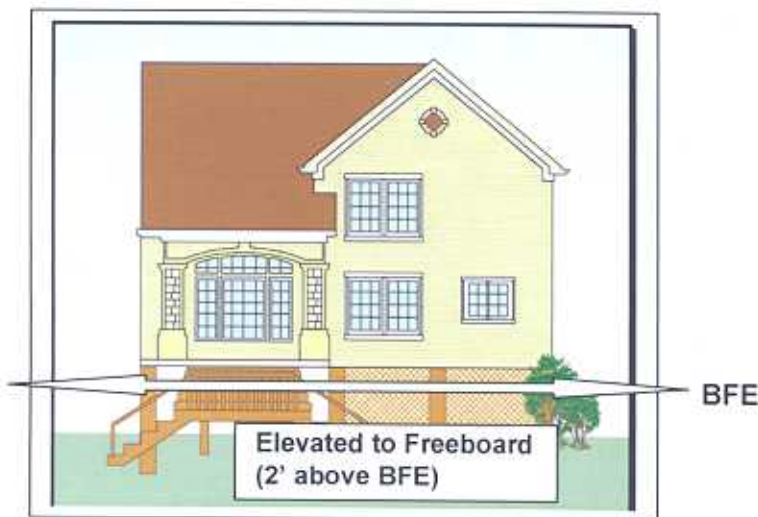
Figure 3. Repaired – variance allowed  
No elevation (5 ft below BFE); actuarial premium: \$4,630.00 (A zone) or \$6,550.00 (V zone)



**Figure 4. Repaired – variance allowed**  
 Elevated to 2 feet below BFE; actuarial premium: \$1,930.00 (A zone) or \$2,460.00 (V zone)



**Figure 5. Repaired – no variance allowed**  
 Elevated to BFE; actuarial premium: \$566.00 (A zone) or \$1,440.00 (V zone)



**Figure 6. Repaired – no variance allowed**  
 Elevated to 2 feet above BFE; actuarial premium: \$236.00 (A zone) or \$800.00 (V zone)

**What Variances are allowed?** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- A variance may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehab will not preclude the structure's continued designation as a historic structure.
- A variance may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use and the development is protected by methods that minimize flood damages during the base flood and creates no additional threats to public safety.

### **Conclusion**

Granting variances to a community's floodplain regulations is a local decision that must be based on not only NFIP criteria, but also on state law and other provisions the community may wish to require. In general granting variances to floodplain regulations should be discouraged. Before considering granting a variance to floodplain regulations contact the MEMA Floodplain Management Bureau for advice and guidance. Your community's floodplain regulations are designed to reduce flood loss and make your community more disaster resistant. Few situations merit the granting of a variance to those regulations.