

## **GUIDANCE ON GRANTING VARIANCES TO FLOODPLAIN MANAGEMENT REQUIREMENTS**

A variance, for National Flood Insurance Program (NFIP) purposes, is a grant of relief by a community from floodplain management regulations. It is granted for floodplain management purposes only; hence flood insurance will still be rated according to risk. A variance pertains to a piece of property and must not be personal in nature. A properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the ordinance would create exceptional hardship on the applicant or surrounding property owners. The unique characteristics must pertain to the land itself, not the structure, its inhabitants, or the property owners.

The NFIP does not provide any absolute criteria for granting a variance, except in the cases cited below. The best policy is not to grant any variance to the NFIP minimum regulations unless it fits into the categories below, or there are compelling reasons. Individual discretion may be used when considering a variance to ordinance criteria which are more stringent than the NFIP requirements unless those criteria are established by State law or regulations. Specifically, NFIP regulations provide for the granting of a variance in the following situations:

- 1) A structure individually listed on the Federal or State Register of Historic Places is not required to meet the elevation requirement when it is substantially improved, provided the modifications do not preclude the structure's continued designation as a historic structure.
- 2) A functionally dependent use, in which the use of the building is absolutely dependent on its close proximity to water, may be excluded from the elevation requirement, provided that acceptable methods of wet floodproofing are incorporated into the design.
- 3) A new structure or substantial improvement on a lot of one half acre or less in size and contiguous to and surrounded by existing structures below flood level, provided all other variance criteria are met. The assumption is that a larger lot will allow enough flexibility to meet all of the NFIP requirements. This variance situation is not consistent with State regulations, and is not a recommended criterion.

### **CRITERIA FOR GRANTING VARIANCES**

In granting a variance, the following factors must be considered:

- 1) Applicant must show good and sufficient cause for a variance. The cause must pertain to constraints of the property which would not allow reasonable use while meeting the requirements of the ordinance. The variance must not grant special benefits to the applicant not enjoyed by other floodplain residents.
- 2) Applicant will suffer hardship if denied the variance. Again, the hardship must pertain to the characteristics of the land itself, not personal hardship. Any physical characteristic of the land that would justify a variance to the flood elevation requirement is difficult to imagine. Therefore, a variance would be very difficult to grant in the case of #3 above, since other options must be exhausted.
- 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 other State and local laws or ordinances.
- 4) The variance granted must be the minimum necessary, considering the flood hazard, to afford relief. The greater the hazard, the less the relief that can be afforded. The variance must be modified to be the minimum that will both provide relief and preserve the integrity of the local ordinance. The resulting variance issued may be considerably less than that requested.
- 5) Additional conditions may be added to mitigate any possible detrimental effects of granting the variance. Other property owners cannot be adversely affected in any material way.

## **HARDSHIP AND VARIANCES**

Hardship is the least understood and hardest to establish criterion for granting a variance. To determine whether an applicant has established an exceptional hardship sufficient to justify a variance, the local appeals board must weigh the hardship against the purpose of the ordinance. The floodplain ordinance is based on public safety and damage reduction. If the variance requested is to waive or reduce the elevation requirement, the individual hardship must be weighed against the community's need to protect its citizens against the dangers and damages due to flooding. Only a truly exceptional and unique hardship should persuade a local board to set aside provisions of an ordinance designed with the entire community's safety in mind. In many cases, the applicant may be better advised to seek a variance to other standards that have less impact on public safety, such as lot line setbacks or height requirements. In many cases, the personal circumstances evoke compassion, but the hardship is not sufficient to justify deviation from the flood damage prevention requirements. A variance cannot be based on the personal circumstances of the applicant. The effects of the variance often survive long after a personal hardship ceases to exist, and can create unforeseen flooding problems. Even if flooding does not occur, the salability of the property may be affected.

A variance to provide access for a handicapped person cannot be granted as an exceptional hardship because the problem is personal in nature and can be solved in other ways than not elevating. In addition, granting a variance in this case raises a critical public safety concern. A disabled person may be unable to evacuate the building during flooding, but may be able to survive the flood by remaining at home safely above the level of the flood waters, if the building is elevated properly. A variance would postpone, and perhaps increase, the personal hardship.

## **INSURANCE RATES**

In considering a variance, the effects on flood insurance premiums should not be minimized. A structure at greater risk to flooding than the ordinance allows will be rated according to the risk. Premiums may be as high as \$25 for each \$100 of coverage. The community must notify the applicant in writing that the issuance of a variance to construct a structure below the BFE will result in increased premium rates and that such construction increases risks to life and property. This notification shall be maintained with a record of all variance actions. Since flood insurance is required by lenders, prohibitively high rates can result in a structure which is difficult or impossible to sell.

## **FRAUD AND VICTIMIZATION**

Buildings that are constructed below the elevation of the 100-year flood will probably remain part of the community for 50 to 100 years. During this time they remain subject to increased risk of damage from flooding and to higher flood insurance premiums. Fraud and victimization may occur if future owners who purchase the building are unaware that it is subject to increased risk and can be insured only at very high flood insurance rates. Therefore, variances should be recorded on the deed to the property so that a title search will disclose these facts.

## **STATE REGULATIONS AND VARIANCES**

Local authorities cannot grant variances to more restrictive State requirements or regulations. State criteria for granting variances differ from NFIP requirements. Therefore, all variance requests must be reviewed and commented on by the Maryland Department of the Environment's State NFIP Coordinating Office.

## **SUMMARY**

The duty of local governments to protect their citizens from flooding is so compelling, and the implications of the cost of insuring a structure below flood level are so serious, that variances from the 100-year flood elevation requirement should not be granted. A grant of relief from the one foot freeboard may be considered, provided all variance criteria are met. Requests for variances to ordinance requirements must be evaluated according to the public safety function that the requirement serves and the additional risk granting a variance would generate. In some cases, variances to other zoning or code requirements may satisfy the need of the applicant, but have less public safety impact. The applicant should be advised to seek relief from these other requirements first.