

PART 4:

ORDINANCE ADMINISTRATION

Part 4 reviews how the local permit official does his or her job. Three sections cover the information needed for day to day administration of a floodplain management regulation program:

- ◆ Section 14 covers how to review and permit an application to develop in the floodplain and what to do when the applicant challenges the floodplain administrator.
- ◆ Section 15 reviews how to make sure the project is built according to the approved permit and the records that are needed.
- ◆ Section 16 discusses the special situation when existing buildings are improved or repaired.

SECTION 14: PERMIT REVIEW

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14.1. THE ADMINISTRATOR

The State grants communities the police powers to adopt, administer, and enforce local codes and regulations, including floodplain regulations. Generally, elected officials delegate authority for ordinance administration and enforcement to a subordinate officer.

A local floodplain administrator might be an existing local staff person, such as the building inspector, community zoning official, engineer, or planner. The community also might contract to have the job done by the county, regional planning agency, another jurisdiction or authority, or a private firm.

Throughout this desk reference, the person designated as responsible for administering the floodplain management ordinance is called “the floodplain administrator” or “the administrator.”

14.1.1. Duties

In general, the administrator is responsible for ensuring that development activities comply with the floodplain management regulations and other applicable codes and ordinances.

Duties of the administrator vary depending on the kind, size, and characteristics of the community. However, certain responsibilities are common to all ordinance administrators. Here is a list of such duties:

Understand the regulations: This is the most important of all of the duties and is the main subject of this desk reference. A sound working knowledge of the general and technical provisions of various Federal, State, and local regulations is essential. The floodplain administrator must be able to explain them to others, to review permit applications for compliance, and to provide adequate interpretations.

Ensure that permits are applied for: Often people do not realize that they need to apply for a permit for a project in the floodplain. The administrator must ensure that the public is informed as to when permits are needed and how they are obtained. Anyone engaged in a development project without a permit must be told to stop and apply for one.

Correct violations: The administrator must evaluate complaints, conduct investigations, and use legal recourse when necessary to correct violations.

Process permit applications: The administrator’s primary role is to review permit applications for compliance with applicable local regulations. This involves:

- ◆ Collecting permit fees, where applicable.
- ◆ Assessing the accuracy and completeness of the application.
- ◆ Evaluating site plans, topographic data, building design plans, and other technical data.
- ◆ Identifying deficiencies and devising ways to correct them.
- ◆ Issuing or denying the permit.
- ◆ Helping applicants pursue appeals or requests for variances.

Coordinate with other programs: Responsibility for permit review may reside in the administrator's office or be shared with other offices, such as public works, planning and zoning, code enforcement, or housing departments. Depending on the duties, the floodplain administrator may be involved in coordinating permit reviews.

The administrator must advise the applicant of any need for additional local, State, or Federal permits for the proposed development (see Section 10). The administrator's office could have copies of the permit application forms or advise applicants whom to contact.

One of the NFIP responsibilities is to notify adjacent communities and the IDNR/OWR prior to any alteration or relocation of a watercourse. The administrator must submit evidence of such notification to the FEMA Regional Office.

Adjacent communities should also be notified of plans for a substantial commercial development or large subdivision that could affect their flood hazard areas.

Ensure projects are built according to approved permits: The permit staff must perform periodic and timely on-site inspections to confirm visually that development is following the approved plans. The best way to do this is with a series of inspections at appropriate stages in the construction process, as discussed in the next section. A certificate of use or occupancy is a final permit that allows the owner to use the building. It should not be given until a final inspection confirms that everything was done according to the approved plans.

Take enforcement actions: When noncompliant activities are uncovered, the administrator must act to resolve the situation. This may involve issuing stop-work orders or other violation notices, coordinating enforcement procedures with the community's attorney, or appearing in court.

Keep records: The administrator should have on hand a sufficient supply of current permit applications, variance requests, and other administrative forms. A project file should be kept for each development permit application. Records are covered in more depth in Section 15.

Maintain and update flood data and maps: As noted in Section 7, a community should maintain an adequate supply of maps showing the regulatory floodplain for the administrator's office and the public to use. All map corrections and notices of map revisions should be recorded and denoted on administrative maps, with the details kept in an indexed file.

The floodplain administrator should also cooperate with Federal, State, and local agencies and private firms undertaking flood studies. The community must submit any new floodplain data to the FEMA Regional Office within six months of their development. Community staff should review revisions to maps (including Conditional Letters of Map Revision and Letters of Map Revision) to ensure they meet local regulations.

The administrator must notify the FEMA Regional Office and IDNR/OWR within one year of an annexation or when the community has assumed or relinquished authority to adopt or enforce floodplain management regulations for a particular area. The NFIP has special procedures that need to be followed to ensure that these areas are properly mapped and regulated and remain eligible for flood insurance.

44 CFR 59.22(a)(9)(v) Upon occurrence, [the community must] notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBMs and FIRMs accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

The floodplain administrator must notify the FEMA Regional Office and the State within six months of physical changes that can affect flooding conditions, such as channel modifications or upstream detention.

44 CFR 65.3. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

Update the ordinance: If a community is notified of changes in Federal or State laws and/or regulations that would require changing the floodplain management ordinance, then the ordinance must be revised within six months.

44 CFR 60.7. From time to time Part 60 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

Similarly, if FEMA provides new flood data, the community has six months to update their ordinance to adopt the data and the regulatory requirements appropriate for that level of data. The NFIP's Regulations - Community Types relates the level of data to the regulatory requirements.

44 CFR 60.2(a) A flood-prone community ... will be given a period of six months from the date the Administrator provides the data set forth in § 60.3(b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph.

A certified copy of any ordinance revision should be submitted to the FEMA Regional Office and to IDNR/OWR promptly after adoption.

14.1.2. Qualifications

Illinois does not set minimum requirements for the person who administers the floodplain management ordinance.

A few states are encouraging or requiring that the ordinance be administered by a “certified floodplain manager.” The Illinois Association for Floodplain and Stormwater Management has initiated a floodplain manager certification program, but there is no legal requirement that the ordinance administrator be certified.

The floodplain administrator needs to know the following at a minimum:

- ◆ The basic NFIP requirements.
- ◆ IDNR/OWR requirements.
- ◆ Additional requirements of the local ordinance.
- ◆ How to use the NFIP maps and regulatory flood data.
- ◆ How maps are reviewed and revised.
- ◆ When permits are needed.
- ◆ Whether a proposed project meets the ordinance’s standards.
- ◆ Whether a completed project complies with the approved plans.
- ◆ What records are needed.
- ◆ How to deal with citizens and builders.
- ◆ How to deal with violations.
- ◆ How floodplain development regulations and flood insurance rating are related.
- ◆ Where citizens and builders can get more information or help.

Most are not hired with all this knowledge. Training on these topics is explained in Sections 14.1.5. and 14.1.6.

14.1.3. Support for the floodplain administrator

Most often the permit office does not perform all the work. One of the administrator's job is to make sure he or she gets support from the people with the right qualifications. The administrator will probably need help from other professions including:

- ◆ A licensed professional engineer (P.E.) experienced in hydrologic and hydraulic studies to conduct tasks such as reviewing a developer's flood study before the administrator accepts new flood elevations. Some model ordinances require an engineer to review certain permits.
- ◆ A registered land surveyor or professional engineer may be required to complete an elevation certification once a building has been constructed in the floodplain.
- ◆ The community's attorney should always be consulted before initiating an enforcement action.

14.1.4. Dealing with the public

The floodplain administrator interacts with the residents, builders, developers, and public officials of the community. It is important that he or she convey to them the need to abide by the floodplain regulations for their safety and that of others in the community. This will encourage voluntary compliance and reduce the number of problems that may be faced.

The floodplain administrator is, in effect, the public relations manager for floodplain management in the community. If the rules are explained in a way that shows the positive side (i.e. flood damage prevented, lives saved), floodplain management will be more successful than if people think the administrator is grudgingly enforcing some unwelcome Federal mandate.

Brochures, newsletters, and newspaper articles are often used to help educate the general public and permit applicants. FEMA, IDNR/OWR, and some county stormwater management agencies have pamphlets that explain the flood hazards, flood insurance, and things to do after a flood. Some communities develop their own pamphlets or mailings to explain the reasons for their floodplain ordinances and the importance of protecting the floodplain and the drainage system from improper development.

The administrator may also want to consider educating council members or other public officials. The citizenry, elected officials, and members of a board of appeals should understand and support the regulatory program because they are the ones who decide whether variances will be issued or if the ordinance will be amended.

One place to start is to give them a copy of *Addressing Your Community's Flood Problems: A Guide for Elected Officials* from the Association of State Floodplain Managers.

14.1.5. Training

The qualifications listed in Section 14.1.2. are not taught at any high school or college. To learn these things the administrator needs additional training. Here are some ways to get it:

- ◆ Read this desk reference and make use of the certified floodplain manager learning checks found in section 25.
- ◆ Spend time with the floodplain administrator in a neighboring community.
- ◆ Check with the FEMA Regional Office and/or IDNR/OWR before issuing the first few permits or certificates of occupancy.
- ◆ Request a Community Assistance Visit whereby a FEMA or State person will visit and review procedures.
- ◆ Attend a workshop put on by IDNR/OWR or IAFSM.
- ◆ Attend a meeting or conference of IAFSM.
- ◆ Attend a recommended training or refresher course, if available, before taking a certificate test.
- ◆ Attend the Emergency Management Institute (see Section 14.1.6).
- ◆ Visit FEMA's website periodically (<http://www.fema.gov>).
- ◆ Review home study courses that are available through RedVector.com, a commercial operation that specializes in continuing education courses for architects, engineers, and code enforcement staff. The Association of State Floodplain Managers has reviewed and accredited those courses most useful to local permit officers.
- ◆ Order and review the publications listed in Section 22.

14.1.6. The Emergency Management Institute

The Emergency Management Institute (EMI) in Emmitsburg, Maryland, provides several courses related to the administrator's job. The courses are offered both on site and through home study.

On site courses: The introductory course is "Managing Floodplain Development Through the National Flood Insurance Program." However, it covers the same information as this desk reference (without the additional information on Illinois State programs).

EMI offers three other courses that would be helpful:

- ◆ National Flood Insurance Program/Community Rating System.
- ◆ Digital Hazard Data (how to use digital FIRMs and other data).
- ◆ Retrofitting Floodprone Residential Buildings.

These courses are designed to give step-by-step practical knowledge and experience. In addition, when attending an EMI course, local administrators meet from around the country and share the ins and outs of floodplain management administration.

EMI courses run Monday through Friday, two to four times a year. They are free for State and local officials. Generally FEMA will pay transportation to Emmitsburg and will house administrators in dormitories on campus.

For more information, upcoming course dates, or an application, call (301) 447-1000 or (800) 238-3358 or visit FEMA's website. To register, all applications must be submitted through the Illinois Emergency Management Agency's training office and the FEMA Regional Office.

Home study courses: EMI offers several home study courses, called Independent Study (IS). They can be accessed through the EMI website at <http://www.training.fema.gov/emiweb/>.

14.1.7. Certified Floodplain Managers

In 1999, the Association of State Floodplain Managers (ASFPM) established the Certified Floodplain Manager Program. The Program's emphasis is on knowing the fundamentals of flood mapping; managing floodplain development; and understanding national and state standards, and how to apply them to a locally administered program. CFMs have been defined as people "*who know their stuff.*"



Illinois has an ASFPM-accredited certification program so anyone living or working in Illinois must take the certification exam through the Illinois Association for Floodplain and Stormwater Management (IAFSM). The application for certification is available on the IAFSM website. People interested in professional certification submit the application form, which includes a signed code of professional conduct along with a fee at least two weeks prior to the exam. Once approved, the applicant is eligible to take the exam. Examinations are given at the annual IAFSM conference and at other times and locations throughout the State.

Note: Reviewing this desk reference is the best preparation for the certification exam.

The CFM designation is valid indefinitely, provided that the applicant complies with the biennial (every two years) renewal requirements: payment of a renewal fee and submittal of proof of continuing education credits. The continuing education requirement can be met through attendance at floodplain management conferences or workshops, formal courses, home study courses, and other approved technical meetings.

For more information on the CFM program, visit IAFSM's or ASFPM's websites.

14.2. DEVELOPMENT PERMITS

Once the ordinance is in force, any development or change in land use requires authorization, generally in the form of a permit from the local administrator or agency. This section discusses the permit review process that leads to approval or denial of an application.

Reviewing development permits is a standard process. It is not a mandatory process, but it does ensure that all of the State and NFIP requirements will be met.

Figure 14-1 shows the permit process that forms the organization for this section. A floodplain administrator should develop checklists to facilitate the work involved with reviewing local permits.

14.2.1. When a permit is required

A permit is required for almost any development-related change to the floodplain, including but not limited to:

- ◆ Construction of new structures
- ◆ Modifications or improvements to existing structures
- ◆ Reconstruction of damaged structures
- ◆ Fencing
- ◆ Excavation
- ◆ Filling
- ◆ Paving
- ◆ Drilling
- ◆ Driving of piles
- ◆ Mining
- ◆ Dredging
- ◆ Land clearing
- ◆ Grading
- ◆ Permanent storage of materials and/or equipment

While most communities have issued building permits for some time, many do not have a permit system that covers such a wide range of activities. The regulation of all development in floodplains is essential because fill or other material can obstruct flood flows just as structures can. This is discussed more in Section 10.

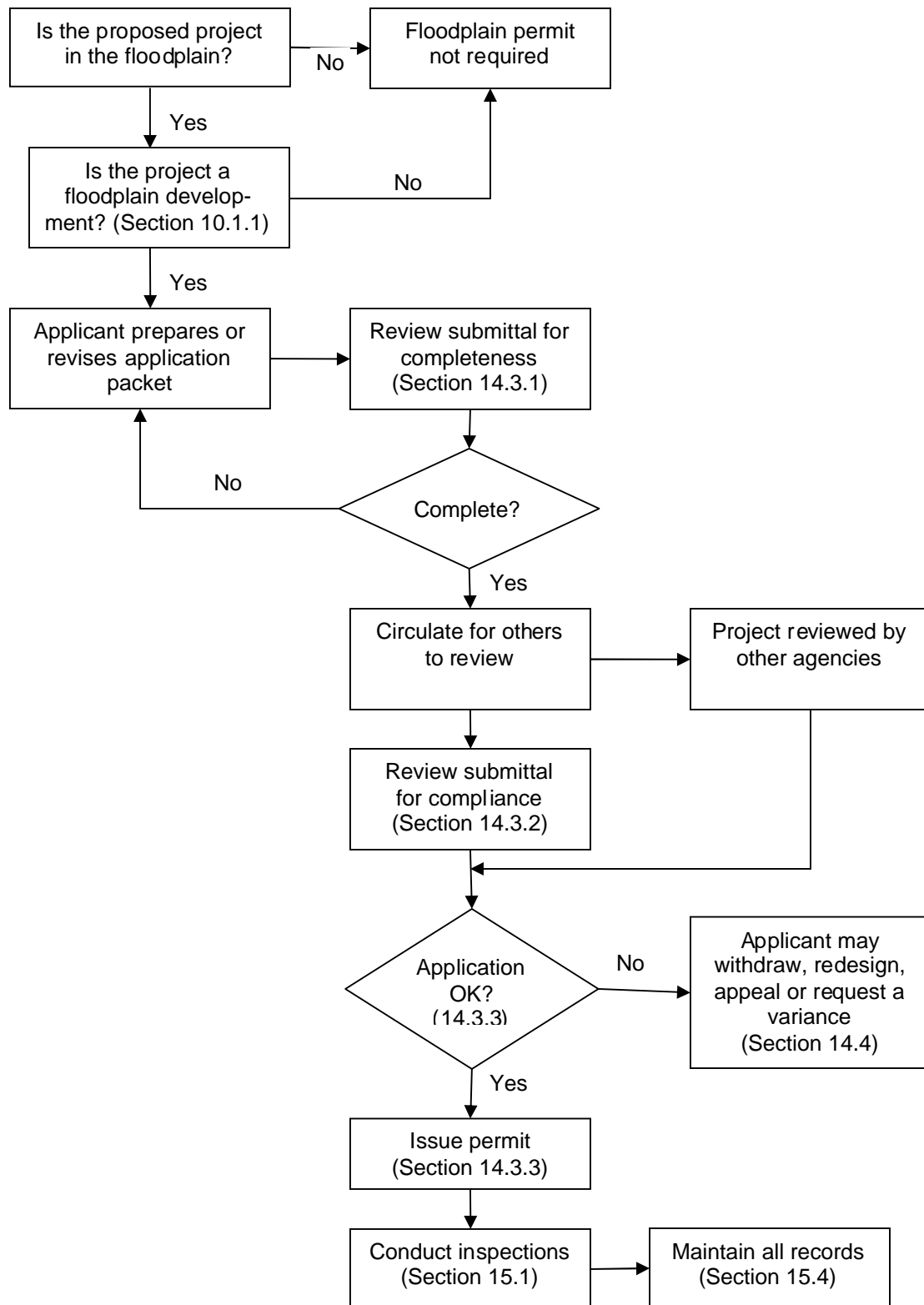


Figure 14-1: Permit review flow chart

14.2.2. Where permits are required

Section 8 reviews the minimum State and NFIP requirements and the floodplain administrator's statutory limitations to regulate some development.

44 CFR 60.1(b) *These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone ... areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes.*

A community government cannot exempt its own activities. Just because the public works department doesn't get a permit from the building department does not mean that it doesn't have to follow the NFIP rules that govern all development within the statutory authority. The local ordinance and agreement with the NFIP says that the community will ensure that all development within its jurisdiction will be regulated.

The floodplain administrator has some discretion to exempt obviously insignificant activities from the permit requirement — such as planting a garden, farming, putting up a mailbox, or erecting a flagpole. Other projects, such as reroofing and replacing siding, will not affect flood flows or be substantial improvements (see the discussion at the beginning of Section 10).

14.2.3. Permit application form

Forms are a valuable and necessary tool in reviewing development proposals for regulatory compliance. When designed properly, they can be the most efficient way to get information that is essential to conducting an effective and thorough review.

A good administrative form can serve as a checklist for identifying the kinds of information that should accompany a permit application. The forms should be revised periodically to remain current with changes in the floodplain management ordinance and to include pertinent information.

A community should have its own permit application form that includes all State and NFIP requirements. The floodplain administrator may want to develop a checklist of items that need to be reviewed.

Where a particular activity that is required by the NFIP regulations is mentioned in this section's text, the reference to 44 CFR Part 60 is included in brackets (e.g. [44 CFR 60.3(c)(5)]). These activities must be included in the permit process in order for the community to remain in full compliance with the NFIP.

14.3. APPLICATION REVIEW

Submission of a development permit application starts the permit process.

Before submitting an application, the prospective applicant often will contact the floodplain administrator to obtain a copy of the regulations, locate the proposed site in relation to the NFIP maps, determine flood elevations, or gather procedural and technical information needed to complete the application. This informal part of the permit process can be important in guiding the applicant to locate and design the development in compliance with local regulations. It also can help the applicant to prepare a complete application, avoiding unnecessary delays at the outset.

Some communities ensure that the permit process will go smoothly by having a formal pre-application meeting with a developer to review a preliminary plan.

14.3.1. Review for completeness

The application package should contain all the administrative forms, plans, blueprints, and technical documentation required to review the proposed project for regulatory compliance. If the application package is incomplete, the review should stop. The applicant should be advised of missing documents and told that the review will not start until the missing documents are submitted.

Some communities require that a permit be issued within so many days of receipt of the application. The floodplain administrator should not officially “receive” the application or log it in until it has been reviewed and determined to be complete.

The floodplain administrator should review the package in a timely manner. The review should include the following procedures:

1. Check all forms

Make sure all administrative forms are completed satisfactorily and properly signed. Scan the administrative forms to ensure that all questions have been answered. If important items are left blank or not addressed completely, bring them to the attention of the applicant for completion.

Inaccurate information also should be brought to the attention of the applicant. The review should be halted until deficiencies are corrected.

2. Check site plan for completeness

Depending on the specificity or detail of the administrative forms, the various plans that accompany the application will provide the technical data needed for a thorough review. At a minimum, there needs to be a site plan. Such a plan should show:

- ◆ Location of property lines.
- ◆ Required setback lines and easements.
- ◆ Topographic information, such as contour lines or spot elevations.
- ◆ Streets.
- ◆ Watercourses.
- ◆ Location of existing and proposed structures.
- ◆ All clearing, filling and other proposed changes to the ground.
- ◆ Floodway and floodplain boundaries.
- ◆ Base flood elevations.
- ◆ If there is more than one Flood Zone on the lot, the BFE and boundary locations should be depicted on the plans.

When a plan is prepared by a licensed professional architect, engineer, or land surveyor, it should be stamped with the license seal to certify technical accuracy.

3. Check building plan for completeness

If a building site is in the SFHA, all buildings must be protected to the BFE or higher (to the FPE if one exists). The application package must include building design plans that show:

- ◆ The kind and potential use of the structure.
- ◆ Proposed lowest floor elevations of all new construction and the existing lowest floor for substantially improved or substantially damaged buildings.
- ◆ Proposed elevations of adjacent grades.
- ◆ The type of foundation system.
- ◆ The existence of any enclosure below the lowest floor, along with electrical and plumbing plans for the area, location and dimensions of openings and materials proposed for use in an enclosure below the BFE.
- ◆ The height to which a nonresidential structure is to be floodproofed and the complete list of floodproofing techniques to be used, with detailed drawings.

In this desk reference, the term “**building**” is the same as the term “**structure**” in the NFIP regulations. Local ordinances may use either term. The terms are reviewed in more detail in Section 12.

4. Check certifications

Ensure that all necessary certifications are included and properly signed. The applicant must provide all completed certifications needed for the permit review.

Based on the minimum NFIP requirements, two situations would require the filing of certified documents with the permit application:

1. Floodproofed building: In the event a nonresidential structure is to be floodproofed, the applicant must submit a statement from a licensed professional engineer or architect certifying that the design and methods of construction meet these standards [44 CFR 60.3(c)(4)]. A second, as-built, certificate is also required to be submitted later.
2. Enclosures below the lowest floor: Section 12 covers the requirements for openings in enclosures. If an applicant designs an enclosure below the lowest floor using an alternative to the NFIP standard, a licensed professional architect or engineer must certify the design [44 CFR 60.3(c)(5)].

5. Check for Federal and State permits

Ensure that all necessary Federal and State permits are being obtained. The administrator must review the application package to determine whether Federal and State permits are necessary [44 CFR 60.3(a)(2)]. It may help to include the agency or program names as a checklist on the permit application form. See Section 10 for a list of other agencies that are likely to need to review the project.

When obtaining Federal and State approval takes a long time, the administrator may issue the local permit contingent on the applicant obtaining such permits later. The applicant should provide documentation to the administrator stating that the required Federal and State permits have been applied for and that the portion of the project affected by needed permits will not proceed until the permits are issued.

For example, getting a Section 404 wetlands permit from the Corps of Engineers may take several months. Under such circumstances, the administrator may issue a local permit with the stipulation that the applicant must obtain all required permits before beginning construction. The administrator can verify this at the first inspection.

6. Circulate for others to review

Submit copies of appropriate parts of the application package to other departments for review. Depending on the type and size of the proposed development and on the regulatory responsibilities of other departments or offices in the local community, the applicant should submit a sufficient number of copies to allow for others' review.

Here are some departments and agencies who might need to review a portion of the application:

- ◆ Building department
- ◆ Zoning department
- ◆ Planning department
- ◆ Engineer's office
- ◆ Health department (septic system approval)
- ◆ IDNR/OWR (state permit requirements)
- ◆ U.S. Army Corps of Engineers (Sections 404 or 10 permit)
- ◆ Illinois Environmental Protection Agency
- ◆ U.S. Fish and Wildlife Service (incidental take permits under Section 10 of the Endangered Species Act of 1973)
- ◆ Soil and water conservation district (impact of subdivisions and other large development on the natural resources of the area)
- ◆ Adjacent communities (alteration or relocation of a watercourse)
- ◆ County stormwater management agency

The floodplain administrator should contact these agencies, determine what, if anything, they need to review, and prepare a checklist for permit applicants that advises them of the other approvals that will be needed.

14.3.2. Review for compliance

After receiving a complete application package, the following recommended procedures can help verify that the project will meet all of the community's ordinance requirements.

1. Examine site information

Check the site plan to ensure that the plotted floodplain and floodway boundaries appear to be accurate. Look for possible obstructions in the floodway and other potential violations.

Inspect the plan carefully and compare it with the FIRM, floodway map, and profile. Some project sites may be located close to the boundaries of the SFHA. Because the map scale is small, or it is difficult to pinpoint the project site, the administrator may have trouble determining whether the project will be in or out of the SFHA. See Section 6 on reading maps and making floodplain and floodway boundary determinations.

Remember, a floodplain development permit is required only if the planned structure is located within the SFHA. For example, while the applicant's property may be located partially in the SFHA, the proposed structure would be built on land outside the SFHA. In this case, floodplain regulations would not apply and no special floodplain development permit is needed (unless regrading puts the structure in the floodplain). However, if clearing, grading, filling, or road or

bridge construction associated with erecting the structure is within the SFHA, a permit is necessary.

Note that while better ground elevation data can be used to determine that a building location is above the BFE (and therefore outside the SFHA), the property will remain in the SFHA on the FIRM. That means that it is still subject to the flood insurance purchase requirement and the rates will be set at SFHA rates. It is the owner's responsibility to submit a request for a Letter of Map Amendment (LOMA) in order to have the FIRM reflect the better data (see Section 7 for more information on LOMAs).

2. Review building plans

Any conflict or inconsistency with applicable regulations will require adjustments to the building plans. Check the proposed elevations against the community's flood protection elevation. Be sure to look at what's planned to be installed below the lowest floor, such as in a crawlspace. Items such ductwork must be elevated above the FPE or otherwise protected from flood damage.

3. Review engineering documents

Have the community's engineer review engineering documents. As listed previously, depending on the type and location of the structure being proposed, two engineering documents or certifications are needed to show compliance with NFIP requirements concerning floodproofing and enclosures below the lowest floor.

All engineering documents should be examined by the community's staff engineer, or a consulting engineer available to perform reviews, to ensure that acceptable technical standards were used and that calculations are correct. If the community does not have a staff engineer, IDNR/OWR or the FEMA Regional Office may be able to help review the data.

14.3.3. Application approval or denial

Once the permit application papers are reviewed for completeness and technical compliance with the ordinance, a decision on the application is due.

Approval - If the proposed development is in compliance with regulations, issue a permit (see example in Figure 14-2). The permit becomes the official authorization from the community allowing the applicant to proceed, based on the information submitted in the application package.

Somewhere in the permit record, such as the approved plans, the application form or the permit form itself, a record should be kept of the base flood elevation and the required floor elevation. There should also be a general statement that all construction will be in accordance with all codes and ordinances.

The day a permit is issued is the date of the "start of construction," provided construction begins within 180 days. Used for insurance rating purposes, this date determines what FIRM was in

effect when the building was built, regardless of when ground was broken or construction was finished.

For regulatory purposes, a permit may be effective or valid for a certain period of time, according to the standard used in other local regulations. If at the end of this period the project is not complete, the permit technically expires. However, ordinances routinely provide for the permit officer to issue written extensions to allow completion of the development under the conditions of the original permit.

Another approach is to require that work continue to proceed over a given period. If work stops for a certain length of time, the permit is withdrawn.

Note that a permit for the placement of a temporary structure should not receive an automatic renewal.

Denial - If the application is not in compliance with local regulations, the permit should be denied. The applicant then can choose to:

- ◆ Withdraw the permit application.
- ◆ Redesign the project to bring it into compliance with regulations.
- ◆ Appeal to the Board of Appeals.
- ◆ Ask for a variance to the regulations.

While the administrator may not be formally required to disclose the reasons for denying an application, it is good policy to do so in writing. This tells the applicant what areas are noncompliant so that if he or she wishes to resubmit the application, appropriate corrections can be made.

Appeals and variances are covered in the next section. Clarifying the deficiencies for the applicant also can help reduce the number of appeals of administrative and regulatory decisions.

No. _____

FLOODPLAIN DEVELOPMENT PERMIT

Specify for what purpose the permit is issued—
New construction, alterations, fill, excavation, other

ISSUED TO: _____

ADDRESS: _____

PROJECT ADDRESS: _____
(if different from permittee's address)

ISSUED BY: _____
Floodplain Management Administrator

DATE: _____
(This permit expires 180 days from this date)

THIS PERMIT MUST BE POSTED ON THE PREMISES IN A CONSPICUOUS PLACE SO AS TO BE
CLEARLY VISIBLE FROM THE STREET.

Figure 14-2: Sample permit form

14.4. APPEALS AND VARIANCES

Appeals, special uses, and variances require judgment calls involving several people as ordinances typically do not allow only one person to decide these issues. Here is when they can occur and how they are usually handled.

14.4.1. Appeals

Ambiguous language or differing interpretations can lead the applicant and permit office to disagree. The community's ordinance should have a process for referring these disagreements to a board of appeals or adjustment which will interpret the ordinance and settle the dispute.

14.4.2. Special uses

Some regulations require that certain situations be given a special review to determine if they should be allowed and, if so, whether conditions should be attached to the permit. While the NFIP sets construction standards for all buildings, a community may have decided that residences should not be allowed in a floodway and that floodproofed nonresidential buildings should be allowed only if certain conditions are met. Some ordinances include conditions for special or conditional uses. Otherwise, some official body needs to determine if a special use permit or if a conditional permit should be issued.

14.4.3. Variances

Zoning ordinances, building codes, and floodplain management regulations cannot be written to anticipate every imaginable situation. A process for issuing variances gives a builder a way to seek permission to vary from the letter of the rules because of a special situation.

A variance can mean that the minimum standards of the NFIP may not be met by a project due to a special local circumstance. Because of this, most of this section is devoted to variances.

14.4.4. Boards

In all three cases, the applicant submits a request to a knowledgeable board of arbiters. Typically, variances and special or conditional use permits are handled by the planning commission or other body that is responsible for writing and amending the ordinance. Appeals are usually handled by a separate board of appeals or board of adjustments. Sometimes all three processes are handled by the same body and sometimes, especially in smaller communities, that body is the city council or governing board.

These boards do not have authority to change the ordinance, just to apply or interpret the ordinance's provisions. They may or may not have authority to make a final decision. If not, they make recommendations to the governing board which makes the final decision.

14.5. VARIANCE GUIDANCE

14.5.1. Background

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 flood ordinance should be rare.*

Granting variances 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. The community's 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.

Variances are based on the general principal of zoning law that they pertain to a piece of property and are not personal in nature. Though standards vary from state to state, in general a variance is granted for a parcel with physical characteristics so unusual that complying with the ordinance would create an exceptional hardship to the applicant or surrounding property owners. Those characteristics must:

- ◆ Be unique to that property and not shared by adjacent parcels.
- ◆ Pertain to the land, not to any structure, its inhabitants or the property owners.

Characteristics that might justify a variance include a small irregularly shaped lot, a parcel with unsuitable soils, or a parcel with an unusual geologic condition below ground level. It is difficult, however, to imagine any physical characteristic that would give rise to a hardship sufficient to justify issuing a variance to a flood elevation requirement. There are usually alternative ways to construct a compliant building even in these situations.

The community should grant variances based only on a structure-by-structure review. A variance should never be granted for multiple lots, phases of subdivisions, or entire subdivisions.

14.5.2. NFIP requirements

NFIP regulations do not address appeals, special uses, or conditional permits. The procedures used in the community's zoning ordinance or building code should be followed as these are usually prescribed by State law.

Because variances may expose insurable property to a higher flood risk, NFIP regulations set guidelines for granting them. The guidelines, which are designed to screen out situations in which alternatives other than a variance are most appropriate, appear in 44 CFR 60.6(a) and are summarized in Figure 14-3.

(1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood height, additional threat to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and; (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a) (6) of this section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to the [Federal Insurance] Administrator.

(7) Variances 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 provided that (i) the criteria of paragraphs (a) (1) through (a) (4) of this section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Figure 14-3: NFIP variance criteria (44 CFR 60.6(a))

A review board hearing a variance request must not only follow procedures given in the NFIP criteria, it must consider the NFIP criteria in making its decision. When the NFIP guidelines are followed, few situations qualify for a variance.

If the ordinance includes provisions that are not minimum NFIP requirements, FEMA expects the community to enforce its complete floodplain management program. Issuing variances is not a good practice, even variances from a community's own higher local standard. FEMA considers a variance to the standards as a variance to the flood damage prevention ordinance.

If a community makes a practice of varying from its ordinance's standards, it could be subject to the sanctions for noncompliance (Section 3.8.5). If the community makes a practice of varying from its own higher standards (even though the projects meet the NFIP criteria), FEMA recommends that it revise its regulations rather than enforce them inconsistently.

Figures 14-4 and 14-5 are handouts that can be used by a review board when determining if a variance should be granted.

Should a Floodplain Variance Be Issued?

A community is authorized to approve variances from the letter of its floodplain regulations. A variance is a grant of relief to a person from a requirement of the community's ordinance when specific enforcement would result in unnecessary hardship.

A variance, therefore, permits construction or development in a manner otherwise prohibited by the community ordinance. Variations to flood protection regulations should be avoided and only issued because of special situations.

When considering a variance application, ask the following 11 questions:

1. Can the project be built in a flood-free location?
2. Is the variance requested on land that is unique? Each variance request must be considered on a structure-by-structure and lot-by-lot basis. The community must consider if the lot is unique. If it is not unique, other similarly situated land would also be eligible for a variance for the same reasons.
3. Would failure to grant the variance result in exceptional hardship to the applicant? The key word is "exceptional." For example, physical handicaps and financial hardship do not qualify. Here are some examples of what does *not* meet exceptional hardship:
 - The land value will drop
 - The owner does not have enough money to comply
 - The elevated house will look different from the neighbors' houses
 - The homeowner cannot walk up steps into an elevated addition

Remember, granting a variance because of an applicant's physical hardship may not only put the occupants at additional risk, but first responders as well.

4. Is the property in a floodway? If it is, no variance can be issued if any increase in flood levels would occur during the base flood. The developer's engineer must provide the data to the satisfaction of the floodplain administrator's staff.
5. Will granting the variance increase flood heights and velocities?
6. Will granting the variance increase the threat to public safety? Can people get to safety during a flood? Can emergency vehicles reach the property during flooding? Will there be hazardous materials or loose objects that will be swept downstream onto other properties?
7. Will the water supply and sanitation systems still be able to operate and prevent disease, contamination, and unsanitary conditions?
8. Will granting the variance result in extraordinary public expense? Every new floodplain building adds to a community's responsibility during a flood. Consider the costs of maintenance and repair of public utilities, streets, and bridges.
9. Will granting the variance create nuisances, or cause fraud on or victimization of the public?
10. Is the project compatible with existing local plans, laws, or ordinances? Is it compatible with existing and anticipated development?
11. Will the variation be the minimum necessary? A variance is a request to vary from the rules, not to ignore them. Any variance should allow only minimum deviation from local requirements.

Figure 14-4: Handout of 11 Questions for the Variance Review Board

Variance and Appeal Record

A variance is a waiver of one or more of the specific standards of the floodplain ordinance. Variance requests should be considered very carefully. Once granted, a variance can establish a dangerous precedent. Therefore, a variance should be granted only for a unique situation on a specific site. Under no circumstance should the granting of variances establish a pattern that is inconsistent with the intent of the floodplain regulations. Such a pattern could result in the community's suspension from the National Flood Insurance Program (NFIP).

Name of Applicant: _____

Property Address: _____

Type of structure and intended use: _____

1. Is structure located in the floodway?

If no, continue.

If yes, proceed with caution but only if State and Federal permits have been obtained.

The variance applicant must meet state and federal floodway permit requirements. The applicant should have a state permit or a "permit not required letter" from the Illinois Department of Natural Resources/Office of Water Resources. If the applicant does not have this documentation, DO NOT grant the variance.

2. Can the development be located outside of the floodplain?

If yes, then the variance should not be granted.

If no, continue.

Every effort must be taken to ensure that the development does not take place in the floodplain. This may involve relocating the actual building site on the parcel or revising construction plans to minimize the chances of flooding. In some cases, this may involve using a separate parcel that is not located in a floodplain.

Explain why the development cannot be located outside of the floodplain _____

Figure 14-5: IDNR's Record of Variance (page 1)

3. Has the applicant shown that there will be no additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public or conflict with existing laws or ordinances?

If no, then the variance should not be granted.

If yes, then continue.

Any building which is permitted below the flood protection elevation has an increased risk of flood damage. The building will add to the local government responsibilities for many years. Future owners of the property and the community as a whole are subject to all the cost, inconvenience, danger, and suffering that those increased flood risks may bring. In addition, future owners may purchase the property and be unaware that it is subject to flooding. Potential public expenses such as rescue costs, utility shut off costs, employee overtime, fuel costs, and road damage are all common during flood events.

Explain why the development will not increase flood heights, create additional threats to public safety, or cause additional public expense: _____

4. Has the applicant shown that the requirements of the floodplain ordinance will create an exceptional hardship?

If no, then the variance should not be granted.

If yes, continue.

The hardship that would result from failure to grant a requested variance must be exceptional, unusual, and peculiar to the property involved. Economic or financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences, the disapproval of one's neighbors, or homeowners association restrictions DO NOT, as a rule, qualify as exceptional hardship. As "heartless" and difficult as it may be, only physical characteristics and not personal matters (including additional cost) should be considered.

Please document what the exceptional hardship is: _____

Figure 14-5: IDNR's Record of Variance (page 2)

5. Do the conditions of the proposed variance provide the maximum practical flood protection to the proposed construction?

The variance board should consider every available means to ensure that the structure is not susceptible to flooding. This may involve partially or fully elevating the structure, dry floodproofing the building, raising all utilities to or above the base flood elevation, using flood resistant materials, designing openings for water to flow through the structure, or using watertight sealant.

What is the applicant required to do in order to provide the maximum practical flood protection?

6. Is the requested variance or exception for the construction or restoration of a structure listed on the National Register of Historic Places or the State Historic Register?

If no, continue

If yes, Attach a letter or appropriate documentation from either agency that shows that structure is an historic building.

IF a variance is granted, the community is required to notify the applicant in writing that a variance will lessen the degree of protection and will:

Increase the risk to life and property.

When flooding does occur, many people will look to place the blame on others and attempt some sort of compensation through liability. Any variance applicant should be made fully aware that they are located in a documented flood hazard area and assume all of the risks.

Result in increased premium rates for flood insurance up to \$25.00 for \$100.00 of coverage.

Flood insurance for non-compliant structures is VERY expensive. Flood insurance costs may be so high that the owner will be unable to afford coverage. Flood Insurance is required for any direct or federally insured loan. Although the present applicant may not be taking out a loan or want flood insurance, any potential future buyer will likely be required to carry flood insurance. The cost of the required flood insurance will make the home very difficult to sell.

Lastly, without flood insurance the homeowner may not be eligible for disaster assistance. Chances are high that if the structure is seriously damaged during flood, the result may be an abandoned or poorly repaired building creating an eyesore in your community.

Figure 14-5: IDNR's Record of Variance (page 3)

14.5.3. Variance concerns

Local authority. A local government does not have the authority to vary from the requirements of a U.S. Army Corps of Engineers permit or other Federal or State requirements. A community cannot issue a variance to an IDNR permit or to the standards required by IDNR.

Findings of fact. The board reviewing the request for a variance should make a written record of all the facts, including the rationale for granting the request. A careful process should be followed that reviews all of the criteria for granting or denying a variance so the decision does not appear arbitrary.

Half acre lots. 44 CFR 60.6(a)(2) relates to smaller lots. It does not say that variances can be readily granted in cases with small lots. It says that less justification is needed in built up areas where the applicant has a small lot surrounded by buildings that are not elevated.

Public safety and expense. Flood damage prevention ordinances are intended to help protect the health, safety, well-being, and property of the local citizens. Variances must not create threats to public safety or nuisances.

Floodways. Because it would increase damage to other property owners, no variance may be issued within a regulatory floodway that will result in any increase in 100-year flood levels (44 CFR 60.6(a)(1)).

Fraud and victimization. Variances must not defraud or victimize the public. Any buildings permitted below the BFE face increased risk of damage from floods, and future owners of the property — and the community — are subject to all the costs, inconvenience, danger and suffering that those increased flood damages may bring. Future owners may purchase the property unaware that because of a variance it is subject to potential flood damage and can only be insured at higher rates.

Minimum variation necessary. A variance is a request to vary from the rules, not to ignore them. Any variance should allow only minimum deviation from the local requirements.

For example, even if an applicant can justify not elevating a building to the FPE, the review board should not automatically allow the building to be built at grade. The board should still require as much elevation as possible, to provide some flood protection without causing exceptional hardship.

In considering variances, the review board should use local technical staff expertise and recommendations from the building, planning, zoning or engineering departments. The local technical staff should consider varying other requirements in order to provide the needed flood protection. For example, it may be more appropriate to issue a variance to the front yard setback requirement in order to get the building out of the floodway.

The review board's work should conclude with written findings of fact that address their decision (such as answers to each of the 11 questions noted in Figure 14-4 or 6 questions noted in Figure 14-5). If the local board finds that a variance is deserved, the applicant should be notified, in writing (see Figure 14-5), that granting the variance will result in:

- Increased risks to life and property, and
- Increased flood insurance premium rates, up to \$25 per \$100 of coverage. In many instances, the variance-induced rates will be so high as to make the building essentially uninsurable because the owners cannot afford the premium.

Points to remember:

- A local variance does not mean that the applicant receives a variance from flood insurance premium rates.
- The community does not have the authority to vary from the requirements of a State or Federal agency.
- The community does not have the authority to approve a project within a regulatory floodway that will result in any increase in the BFE.
- A variance is a request to vary from the rules, not to ignore them. Any variance should allow only minimum deviation from the requirements.
- Record the findings and conditions with the county deed records so future owners or occupants will be told of the terms and conditions.

14.5.4. Hardship

The concept of unnecessary hardship is the cornerstone of all variance standards. Strict adherence to this concept across the country has limited the granting of variances.

The applicant has the burden of proving unnecessary hardship. Reasons for granting the variance must be substantial; the proof must be compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

Financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do *NOT* qualify as exceptional hardships. Nor do problems caused by previous action of the applicant or property owner qualify.

The local board must weigh the applicant's plea of hardship against the purpose of the ordinance. Given a request for a variance from floodplain elevation requirements, the board must decide whether the hardship the applicant claims outweighs the long-term risk the owners and occupants of the building would face, as well as the community's need for strictly enforced regulations that protect its citizens from flood danger and damage.

When considering variances to flood damage prevention ordinances, local boards continually face the difficult task of 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.

These problems can be resolved through other means, even if the alternatives to a variance 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 elsewhere.

The following are common claims of hardship, but they are *not* good and sufficient causes for a variance:

- The value of the property will drop somewhat.
- It will be inconvenient for the property owner.
- The owner doesn't have enough money to comply.
- The property will look different from others in the neighborhood.
- The owner began building without a permit and now it will cost a lot to bring the building into compliance.

14.5.5. Hardship examples

Here are two examples:

Example 1. A small undeveloped lot is surrounded by lots on which buildings have been constructed at grade. The ordinance requires new buildings to be constructed at a level several feet above grade.

If the owner were to build a new house, it would look different, potential buyers would ask questions and find out about the flood problem in the area. If it were built on fill, the lot might drain onto the neighbors' property.

This situation probably would not warrant a variance because the owner does not face an exceptional hardship. Appearance is not a hardship and no action should be taken to hide the hazard from others. There are ways to elevate a building without creating a drainage problem, such as elevating the building on pilings or a crawlspace, or grading the fill to drain away from adjoining properties.

Example 2. A property owner seeks a variance because he or she would have to spend several thousand dollars to elevate a house to comply with the ordinance, and several thousand more to build a wheelchair ramp or an elevator to provide access for a handicapped member of the family.

While financial considerations are important to property owners and the needs of a handicapped person must be accommodated, these difficulties do not put this situation in the category of “exceptional hardships” because:

- ◆ The characteristics that result in the claimed hardship do not pertain to the property but are personal.
- ◆ A variance is not needed to provide day-to-day access to the building, which can be provided by building a ramp or elevator.
- ◆ Having a handicapped person occupy a floodprone dwelling raises a critical public safety concern to both the residents and the emergency responders.

If a variance is granted and the building is constructed at grade, the handicapped or infirm person must leave when floodwaters begin to rise, yet he or she may need help to do so. This poses an unnecessary danger to the handicapped person and places an extra demand on the community’s emergency services personnel, who may be called upon to rescue the resident in the event of a flood.

On the other hand, if the building is properly elevated, the handicapped person either can be evacuated or can survive the flood simply by remaining at home safely above the floodwaters.

In effect, the variance would not relieve the property owner of his or her difficulty, but likely only postpone and perhaps ultimately increase it. It would not help the community, either, as the building will be susceptible to damage long after the current owners are gone.

It would be more prudent for both the owner and the community if the variance were denied and the home built at the proper elevation with handicapped access. This would ensure the safety of all family members when floodwaters rise, as well as protect the property owner’s and the community’s investment in the property.

14.6. RELATED ISSUES

14.6.1. Flood insurance rates

While a variance may allow deviation from building standards specified in a local ordinance, flood insurance rates and the flood insurance purchase requirement — which must be enforced by lending institutions — cannot be waived.

This can create severe financial consequences for a property owner, as insurance rates for a building built below BFE can be substantially higher than those for elevated buildings. A variance from elevation requirements — the most common kind of variance requested — increases the risk to a building, and that increased risk is reflected in higher annual insurance premiums (See Section 17).

If a variance is requested to construct a building below the BFE, the floodplain administrator must notify the applicant (in writing) that granting the variance will result in increased flood insurance premium rates, up to \$25 per \$100 of coverage. In many instances, the variance-

induced rates will be so high as to make the building essentially uninsurable because the owners cannot afford the premium.

The original owner who applied for a variance may not care, but if approved, the variance’s impact may matter a great deal to subsequent potential owners who cannot afford the property’s high insurance rates. The result may be owner abandonment; the community could be left with a vacant, flood-damaged and essentially uninsurable building.

Figure 14-6 shows example premiums for a single-family home protected to different flood levels. If a variance were granted to allow a new home (or substantially damaged or substantially improved home) to be 2 feet below the base flood elevation, the rates would be more than six times greater than if the building met the ordinance’s requirements.

There are no published insurance rating tables for a building with the lowest floor more than 2 feet below the BFE. In those cases, the insurance agent has to conduct a “submit for rate.” A submit for rate is a procedure in which the insurance company collects more information about the structure and the risk and calculates a site-specific premium, which would be well more than \$4,000 per year.

Building Exposure	Premium
In the Special Flood Hazard Area (AE Zone)	
Pre-FIRM (“subsidized”) rate	\$1,372
Post-FIRM (actuarial) rates	
2 feet above the base flood elevation	\$400
1 foot above the base flood elevation	\$577
At the base flood elevation	\$924
1 foot below the base flood elevation	\$3,288
2 feet below the base flood elevation	> \$4,000
Premiums are for \$150,000 in building coverage and \$60,000 in contents coverage for a one-story house with no basement and a \$500 deductible. Premiums are lower in Community Rating System communities. <i>May 1, 2005, Flood Insurance Agent’s Manual.</i>	

Figure 14-6: Example flood insurance premiums

14.6.2. Historic buildings

A variance may be issued for the reconstruction, rehabilitation, or restoration of historic structures if the variance is the minimum necessary to preserve the historic character and design of the structure. “Historic structures” are those listed in the National Register of Historic Places or the State Inventory of Historic Places, or that contribute to a historic district.

Changes to the structure must not destroy or alter the characteristics that made it an historic building. A certified local historic board or staff of the Illinois Historic Preservation Agency must review and approve remodeling, renovations, and additions before granting a variance. Whatever mitigation measures can be taken to reduce future flood damage must be required — such as elevating an air conditioner or using flood-resistant materials.

The Illinois Historic Preservation Agency has authority to identify and protect certain prehistoric and historic properties. Contact the agency before permitting or issuing a variance for development, remodeling or reconstruction of historic sites or buildings.

14.6.3. Functionally dependent use

A variance may be issued for new construction, substantial improvements, and other development necessary for the conduct of a functionally dependent use. A functionally dependent use is one that must be located or carried out close to water — such as a docking or port facility necessary for the unloading of cargo or passengers, shipbuilding and ship repair.

A functionally dependent use variance could be issued provided that:

- ◆ There is good and sufficient cause for providing the relief.
- ◆ The variance will be the minimum necessary to provide relief.
- ◆ The variance does not cause a rise in the base flood level within a regulatory floodway.

The structure or other development must be protected by methods that minimize flood damage during the base flood and create no additional threats to public safety. One way of accomplishing this is to use wet-floodproofing techniques such as using flood resistant materials, elevating mechanical equipment, locating offices above the BFE, using ground fault interrupt electrical circuits, or developing an emergency plan to remove contents before a flood.

14.6.4. Records

The community must keep a record of all variances and the rationale for granting them. These are usually prepared as a “findings of fact” document. The findings are subject to review by FEMA or IDNR/OWR staff during a Community Assistance Visit.

The records must include a copy of the written notification to the applicant that the issuance of a variance to construct a building below the BFE will result in increased flood insurance premium rates as high as \$25 per \$100 of coverage, and such construction below the BFE increases risk to life and property.

It is recommended that the variance findings, conditions and authorization be recorded in the county deed records. This provides a means of permanently notifying future or prospective owners about the terms and conditions of the variance.