



By Rebecca Quinn, CFM

Q&A on Variances and Accessory Structures

Variances – do we really need that section in our regulations?

"We've never issued a variance...we never will issue a variance. Why do we need a variance section in our floodplain management regulations?"

The National Flood Insurance Program regulations for variances are in 44 CFR § 60.6. While you might read that section and conclude that having variance provisions is not required for participation in the NFIP, the NFIP definition of "program deficiency" indicates otherwise. A program deficiency means a defect in a community's regulations or administrative procedures that impairs effective implementation of those regulations. That definition also lists the specific requirements for community regulations, citing Sec. 60.3, which has the requirements based on flood zone, and Sec. 60.6, which is variances and exceptions.

Now let's take a look at whether FEMA P-993, [Floodplain Management Bulletin: Variances](#), has anything to say about it. Sure enough, it's right up front in Section 1.2, Background and Meaning of Variance: variances are intended to provide relief while preserving the purpose and intent of the regulations; minimizing legal challenges (related to unconstitutional taking of private property without compensation), and protecting safety, health and welfare. Courts have held that regulations can, at least in part, represent an uncompensated taking, especially if those regulations do not have variance provisions that provide an avenue for consideration of relief.

But what about CRS – don't our points get docked if we issue a variance?

The CRS does not provide credits for the simple presence of a requirement of the NFIP in local regulations, such as having a variance section. However, credits for higher standards may be affected if a CRS community grants a variance to those higher standards. Section 232.d Verification Thresholds, of the [2017 CRS Coordinator's Manual](#) explains:

Credit for any element is prorated if the sampling finds instances in which the element is not fully implemented. It does not matter why it is not fully implemented. For example, if the lack of freeboard in the [Elevation Certificate review] was due to legally-issued variances, the credit is still prorated (or denied if the verification threshold is not met).

Should CRS communities be concerned about variances? Sure, but then ALL communities should be extra careful when someone requests a variance, even if the variance has nothing to do with how high buildings have to be elevated. Look at the variance section in your community's floodplain management regulations (or your state's model ordinance) and you'll see the bar is deliberately set high for an applicant to successfully meet the conditions and considerations. That said, as specified in 44 CFR § 60.6, variances may be granted for historic structures when they are substantially improved or repaired after incurring substantial damage, and variances may be granted for functionally dependent uses (be sure to check out the definition of those terms, it's not as broad as you might expect).

Answering Some Questions about FEMA's Accessory Structure Policy & Guidance

In 2020, FEMA issued a formal policy establishing requirements and conditions under which communities can authorize certain agricultural structures and accessory structures to be wet floodproofed. FEMA's guidance, [FEMA P-2140](#), has all the details, explanations, and sample ordinance language. Be sure to work with your state floodplain manager or FEMA Regional Office before amending your ordinance!

As part of my work for Florida's Office of Floodplain Management, I helped prepare guidance for communities to amend their regulations. Since FEMA P-2140 was published, we've helped more than 100 communities to do just that. I'll share my answers to the most common questions we're asked. Please note

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these are my answers – you should talk to your state floodplain manager or FEMA Regional Office to see if they have different interpretations.

Does the one-story, 600-square-foot limit mean we can't have accessory dwelling units?

Of course you can have accessory dwelling units, you just have to require them to meet the requirements for elevated residential buildings (which can have enclosures underneath, used only for parking, storage, and building access). I agree it's somewhat confusing, but this is another case where definitions matter. When space under an elevated building is enclosed by walls, it is an "enclosure," not a garage. It is only by policy that FEMA allows detached accessory structures to be wet floodproofed rather than elevated or dry floodproofed, and for this purpose, accessory structures must be used only for parking or storage.

Suppose the upper floor is just storage? Or not habitable (e.g., exercise and rec room)?

Okay, and suppose the Tooth Fairy is real? I understand the original owner who gets a permit that states the upper floor will ONLY be used for those purposes might remember that, even years later. But who believes that storage space or rec room wouldn't be tempting for an illegal conversion and rented as a dwelling or temporary home-stay? That's why the structure, including the upper floor, must meet the requirements for elevated residential buildings.

In Zone V, why is the size limited to 100 square feet? And why aren't breakaway walls required?

I don't know, and there are few clues in the policy and P-2140. The only other guidance we've had for years is Technical Bulletin 7, published in 1993 (An update to TB 7 is expected to be released any day). Read the 1993 version and you find it says communities may allow wet-floodproofed accessory structure **only by variance**. When FEMA establishes a policy to allow something that is not in strict compliance with the NFIP regulations, FEMA can set specific conditions. And that's what FEMA does when it specifies the 100 square foot limit and does not require breakaway walls.

What building diagram should be selected when a surveyor prepares an Elevation Certificate for a wet floodproofed accessory structure?

Why require an Elevation Certificate? Surveyed building elevations are necessary when buildings are elevated because inspectors can't just look at a building and tell how high it is relative to datum. But you can look at a non-elevated, wet-floodproofed building and determine whether it complies with the requirements. That said, communities might require ECs, without survey, to have documentation about size and flood openings. If that's the case, the contractor or owner could complete those fields on the EC.

Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at rcquinn@earthlink.net. Comments welcomed! Explore back issues of the [Floodplain Manager's Notebook](#).

"Variance" is not the same as "waiver." A significant difference between a variance and a waiver is who initiates the action: a variance is requested by an applicant and a waiver is at the discretion of the permit official.

Applicants who request variances seek official permission to do something that is not otherwise allowed. The NFIP regulations provide for variances in 44 CFR § 60.6, but communities process variance requests as specified in their regulation. Of note, variances are to be the minimum necessary to afford relief—not wholesale permission to ignore all aspects of flood resistance. Communities must issue variances only upon a showing of good and sufficient cause, a determination that not granting a variance would result in exceptional hardship to the applicant, and a determination that the proposed action will not increase flood heights; create additional threats to public safety, extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with existing local laws and ordinances.

To waive something means to give it up or relinquish it voluntarily. For example, building codes typically allow building officials to waive or modify requirements for site plans for applications for interior work on existing buildings and when otherwise warranted.

By Ray Carroll, MAI, SRA, CFM

The Timely Advantage of Actual Cash Value

This month I'll explore another advantage of Actual Cash Value appraisals, an advantage that's particular to current real estate market conditions.

Extreme Real Estate Markets

When real estate market supply and demand are out of balance (think strong demand and an undersupply), when there are shortages of construction materials and labor, when there are delays in manufacturing of components and equipment, or when the market is affected by inflation, then strange things can happen.

Sound familiar? Well, for much of the U.S. today, especially coastal communities that continue to draw people and development, those are the prevailing conditions. Consequently, whole-property market values have risen dramatically, and appraisers are challenged to keep up.

The Traditional Appraisal Method

When a whole-property traditional appraisal is made to estimate the "market value" to support a permit application for work on a floodplain building so the local official can make a substantial improvement determination (or substantial damage if the building was damaged), an appraiser must answer several questions:

1. What is the conventional market value of the whole property?
2. What is the value of the land (the site) as though vacant?
3. What is the contribution value of the improvements to the site that are other than the under-roof portion of the building (think accessory structures, decks, fences, pools, etc.)?
4. Are there any occupancy or use factors that skew the value?

We know how this works, where the formula is:

[Market Value of the Whole Property] – [Land Value] – [Contribution Value of Other Improvements]
= the Building "market value" for the SI/SD determination

Usually, the whole property market value is estimated by the sales comparison approach. Of course, that means there must be plenty of good comparable sales. In many markets the last couple of years has seen an undersupply of product (especially residential properties), which means sometimes there aren't enough comparable sales to allow the appraiser to develop the whole property market value. That undersupply, coupled with a strong desire of some people to move away from urban centers and toward warmer climates and the coast, is part of the reason for dramatic price increases. Another part of price increases is that new construction is not keeping up with demand because construction is shackled by supply chain and labor shortages. With limited options, some home buyers pay much more to get a house than can be rationalized by the traditional appraisal method.

So, are recent dramatic price increases a function of increasing land value, increasing building value, or a temporary aberration? When there aren't enough sales of buildable land to analyze, it's difficult to know how much land value contributes to the overall price increase. These days, it seems like the availability of a home, especially one that's move-in ready, is the crucial factor, not the availability of land.

Deciding how to allocate the purchase price between land and improvements is challenging for appraisers using the traditional appraisal method, especially when some sales make it appear a home is worth more than it would have cost to build just a few years ago. Appraisers should not make unsupported value allocations

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between land and buildings. To be a valid subtraction from the whole property value, the valuation of the land should be supported by analysis of comparable land sales.

The same problems occur when an appraiser tries to figure out the contribution value of site improvements and accessory buildings. To be a valid subtraction from the whole property value, what value should be allocated to those improvements when it is already hard to explain the contribution value of the home?

What's a property owner to do when they need a market value for SI/SD purposes? Look for an appraiser who is well versed in ACV, which also means they probably keep a finger on the pulse of local construction costs.

All licensed appraisers know how to prepare appraisals using the traditional appraisal method. But figuring out supportable values that must be subtracted to result in the "market value" the NFIP requires local officials to use for SI/SD determinations takes extra work that most appraisers are not accustomed to doing. Coupled with a lack of comparable land and home sales, that means risk is introduced at every step in the process, increasing the likelihood that the final value conclusion might be unreliable.

When good market data are not available, or when the data available don't seem rational, how reliable is the resulting estimate of building value? Do we have alternatives?

Actual Cash Value Appraisal Method

Yes – the alternative is the Actual Cash Value (ACV) appraisal method (you knew that was coming, right?). ACV is **only** about the building, which means we don't have to be concerned with lack of comparable land sales.

To develop the ACV, an appraiser has to answer only two questions:

1. What would it cost to reproduce a replica or copy of the existing building (sometimes called "in-kind replacement cost")?
2. How much physical depreciation should be subtracted from the reproduction cost?

We know how ACV works, where the formula is:

[Building Reproduction Cost] – [Physical Depreciation] = Building "market value" for the SI/SD determination

The ACV appraisal method isn't immune to extreme real estate market conditions. However, the challenge for the appraiser is solely one of tracking construction costs. Otherwise, applying the method is the same no matter how extreme the real estate market conditions.

The difficulty of tracking construction costs should not be dismissed lightly. Under normal conditions cost estimating services like Marshall & Swift, RSMeans, or CoreLogic's Commercial Express run three or more months behind the construction industry activity, and those companies can take another four to six weeks to compile the information before publication. When you factor in the impact of supply chain delays, rapidly rising labor rates, materials shortages, and emerging inflation, construction costs can increase faster than those services can publish the data. Delays in data publication introduces a complication for appraisers during extreme markets like we see today. When so many homes are constructed on speculation and often sold before construction is complete, there are few fixed-price construction contracts that appraisers can use to validate the data from the cost estimating companies.

Conclusion

What's a property owner to do when they need a market value for SI/SD purposes? Look for an appraiser who is well versed in ACV, which also means they probably keep a finger on the pulse of local construction costs. Despite the challenge of tracking costs, ACV provides a more stable, reliable estimate of building value. The process is simple and direct because it focus only on the building, and there is no threat that value associated with use and occupancy will skew results.