



Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at rcquinn@earthlink.net. Comments welcomed!

Here's Something You Might Find Interesting . . .

How does your community handle applications to do work on historic structures? Did you know there's more than one answer to that question?

Let's review the two options and I think you'll quickly see which option I think is best. The best guidance is found in "Substantial Improvement / Substantial Damage Desk Reference" (FEMA P-758).

But first, let's be sure everyone understands that when it comes to regulating flood hazard areas, "historic structure" has a very specific definition that is in NFIP regulations. Buildings that are merely old, those that residents refer to as historic, and those that happen to be located in a historic district are not "historic structures" unless they are also individually listed. To receive the special consideration allowed by the NFIP regulations, historic structures must meet the definition in 44 CFR § 59.1 (see below).

But there's one more important test – proposed work must not preclude the structure's continued listing as a historic structure. This means that no matter which of the two options for handling historic structures your community uses, the local official must first require evidence that the building is, indeed, a historic structure under the NFIP definition.

Then, with that evidence in hand, the next question is whether the proposed work to improve or repair the structure will preclude its continued listing. How does a local official answer that question? Well, most local floodplain administrators aren't qualified to make this call and shouldn't even attempt it. The only entities that are qualified are those that can put buildings on the list in the first place. This means that for any work other than the most minor work, the applicant must provide evidence from an appropriate entity that clearly states that the proposed work will not adversely affect the historic integrity of the structure that would otherwise cause it to lose its designation as a historic structure. Importantly, in order to demonstrate proper enforcement of the regulations, the community must retain this evidence of continued listing in its permanent records (see SI/SD Desk Reference, Sec. 5.6.14).

Now, let's look at the two options: (1) granting variances and (2) excluding historic structures from the substantial improvement and substantial damage requirements. Based on all the local floodplain management regulations I've looked at over the years, most actually have provisions that allow either option. That's not necessarily a good thing. Communities must decide which approach to use and then use the same approach every time improvements or repairs are proposed for historic structures. So, if you haven't already done so, take the time now to figure out which option is best for your community.

Granting Variances. This option is found in the variance criteria which come from NFIP regulations (44 CFR § 60.6). It states that: "*Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.*"

For my money, the key phrase is "the minimum necessary." Applying this criterion allows communities to evaluate individual proposed renovations, restorations, improvements and additions and place protective conditions on the variance that will minimize future damage to important historic resources (isn't preserving these valuable structures part of the objective?). Examples of such conditions include installing new HVAC equipment on a raised platform, requiring an addition to be elevated, moving service equipment out of flood-prone basements, using flood damage-resistant materials below the BFE, and making modifications to "wet floodproof" the building to minimize possible structural damage. But don't stop there – there are plenty of cases where historic buildings have been elevated-in-place or retrofit floodproofed, achieving a high degree of flood mitigation while also preserving historic character. For examples, see "Floodplain Management Bulletin: Historic Structures (FEMA P-467-2).

Excluding historic structures from the SI/SD requirements, by definition. The NFIP definition for “substantial improvement” includes the following exclusion for historic structures: “Any alteration of a ‘historic structure,’ provided that the alteration will not preclude the structure’s continued designation as an ‘historic structure.’” Because the definition of substantial improvement includes substantial damage, this exclusion also applies to historic structures that have been substantially damaged.

So, what does the exclusion really mean? Well, on the face of it, it looks like owners of these structures simply don’t have to get permits – after all, their structures are “excluded” from the definition of “substantial improvement.” But hold on – should that assertion be taken on faith? No. An application for a permit must still be submitted and evidence of the structure’s listing or eligibility for listing as a historic structure must be provided.

Then what about assuring that the structure will continue to be listed? Again, the local official must have in-hand the evidence from a qualified historic preservation program or professional before deciding that the structure – and the proposed work – will not preclude the structure from continued listing and is therefore justifiably “excluded” from having to meet flood protection requirements. Only then can the local official make a decision about whether a permit is required or if the work is excluded from the SI/SD requirements, by definition.

From 44 CFR §59.1: Historic structure means any structure that is:
(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

On another matter, I’ve recently been surprised and quite puzzled by something I’d never given a thought to before. The NFIP regulations specifically state that participating communities must require permits for all proposed construction and other development [§ 60.3(a)(1)] and obtain the elevation of the lowest floors of all new and substantially improved structures [§ 60.3(b)(5)(i)]. But the regulations do not have an explicit requirement that communities perform inspections. What do you think – are inspections required to fulfill the commitment to the NFIP? I’ll report on readers’ responses in the next column. [RCQ]

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CFM® Corner

This section will appear in each issue of the Insider. Email for certification questions is cfm@floods.org. For suggestions on specific topics or questions to be covered, please send an email to Anita at this address in the ASFPM Office.

Recently some members of the Certification Board of Regents (CBOR) rotated off CBOR and new individuals were appointed to these CBOR positions.

Effective January 1, 2011, the following changes took place:

- Mike DePue, CFM, replaces Cleighton Smith, CFM as the CBOR Private Sector representative. Mr. DePue also sits on the ASFPM Foundation Board of Trustees and is employed by PBS&J.

