

By Rebecca Quinn, CFM

How does your community handle applications to do work on historic structures? Did you know there are two answers to that question? Let's review the two options and I think it'll be obvious which option I think is best. For guidance, see "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, the NFIP has a very specific definition for "historic structure." Buildings that are merely old, referred to as historic, identified by historical societies, designated by local preservation programs that aren't certified, and buildings 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 sidebar at right).

There's another 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 a community uses, the local official should require evidence that the building is, indeed, a historic structure under the NFIP definition.

With that evidence in hand, the next question is whether the proposed work to improve or repair the structure would preclude its continued listing as a historic structure. How does a local official answer that question? Well, most local floodplain administrators aren't qualified to make this call and probably shouldn't attempt it. The only entities really qualified are those that can put buildings on the lists in the first place. This means that for any work other than the most minor work, the applicant should provide evidence from an appropriate entity that clearly states 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, the community should 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 local ordinances actually have both options. That's not a good

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.

thing. Communities should decide which approach to use and then use the same approach every time improvements or repairs are proposed for historic structures. And ideally, the regulations would be modified to remove the other approach. 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 in 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."* The reason the NFIP provides for special treatment of historic structures is to comply with the intent of the National Historic Preservation Act of 1966 by allowing historic structures to minimize the adverse impacts of NFIP requirements on the historic integrity of historic structures and to allow historic structures to maintain pre-FIRM subsidized insurance rates.

Simply allowing owners of historic structures to ignore sound flood mitigation measures is not contemplated by the NFIP variance provision. The key phrase is "the minimum necessary." Applying this criterion allows communities to evaluate each proposed renovation, restoration, alteration and any other improvements (regardless of what they're called) on a case-by-case basis. Applicants should identify which specific requirement(s) they want varied and should explain how the requests satisfy the minimum necessary requirement. Communities can then evaluate whether to grant variances to all or some of the requirements and, as part of that evaluation, can require conditions that will minimize future damage to important historic resources (isn't preserving these valuable structures part of the objective?). For guidance, see "Floodplain Management Bulletin: Variances and the National Flood Insurance Program" ([FEMA P-993](#)).

Keep in mind there are plenty of cases where historic buildings have been elevated-in-place, moved to higher ground, 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](#)). Other ways to reduce exposure to future damage while preserving historic character include such actions as installing new HVAC equipment on raised platforms, moving service equipment out of flood-prone basements, filling in below-grade spaces, using flood damage-resistant materials below the BFE, and making modifications to "wet floodproof" to minimize possible structural damage (see [Technical Bulletin 7](#), Wet Floodproofing Requirements).

Excluding historic structures from the SI/SD requirements, by definition. The NFIP definition for "substantial improvement" contains 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 by any cause.

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

Variance vs. Waiver

"Variance" is not the same as "waiver." A variance is official permission to do something that is not otherwise permitted. The NFIP requires variances to be the minimum necessary to afford relief—it is not wholesale permission to ignore all aspects of flood resistance. 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 interior work on existing buildings and when otherwise warranted. So one significant difference between variances and waivers is who initiates the action: a variance is requested by the applicant and a waiver is at the discretion of the code official.

be taken on faith? No. An application for a permit must still be submitted and evidence of the structure's listing as a historic structure must be provided.

As with variances, that's only half the answer. Next is assurance the structure will continue to be listed after the work is completed. Again, evidence from a qualified historic preservation program or professional should be provided 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, whether full compliance with the SI/SD requirements is required, or whether the work is excluded—by definition—from the SI/SD requirements. Community records should contain documentation to support these decisions.

Related Questions about Historic Structures and Additions. If the cost of an addition proposed for a historic structure is compared to the market value of the structures equals or exceeds 50%, then the addition is a substantial improvement. Let's assume the addition allows the historic structure to retain its designation. Is the addition subject to floodplain management requirements or can it be excluded? I say yes because the addition is new construction. This has been done successfully. The photograph shows a compliant addition to the rear of a historic structure in Chestertown, Maryland.

But when is an addition really a new building? Consider a historic structure listed on the National Register that is owned by a local historical society and run as a museum. The society wants to build an “addition” that is considerably larger than the original building, has an independent foundation and its own HVAC. Does the addition have to comply, or is it excluded from the substantial improvement determination because it's an “alteration” of a historic structure? Here, as in the first example, the addition is new construction, but it's also a separate building because it has its own foundation. So yes, it has to fully comply.

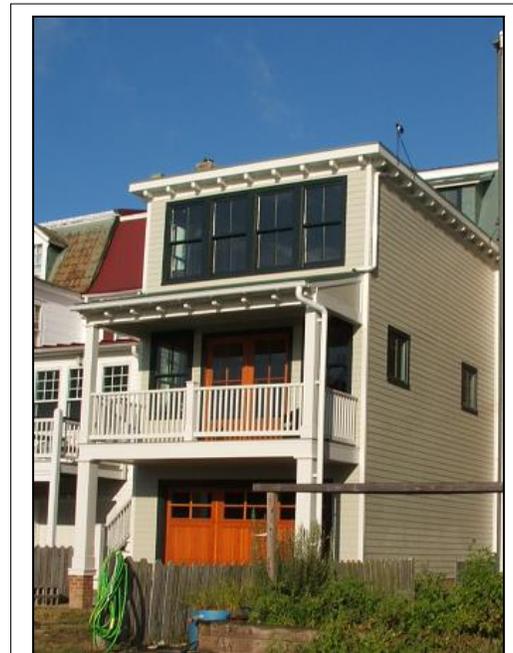


Photo by Rebecca Quinn.

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