

# FLOODPLAIN VARIANCES

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NH OPD Planning and Zoning Conference  
April 29, 2023



# Session Agenda

- Overview of the National Flood Insurance Program (NFIP)
- Community Floodplain Regulations
- Floodplain Variance Criteria
  - Definition, Intent, and Purpose
  - Variance Criteria Language
  - Key Issues to Consider
- Sample Scenarios
- Common Situation when a Floodplain Variance may be Needed
- Wrap Up and Resources

# Overview of the National Flood Insurance Program

# What is the National Flood Insurance Program (NFIP)?

- Created by Congress in 1968
- Voluntary partnership between FEMA and participating communities



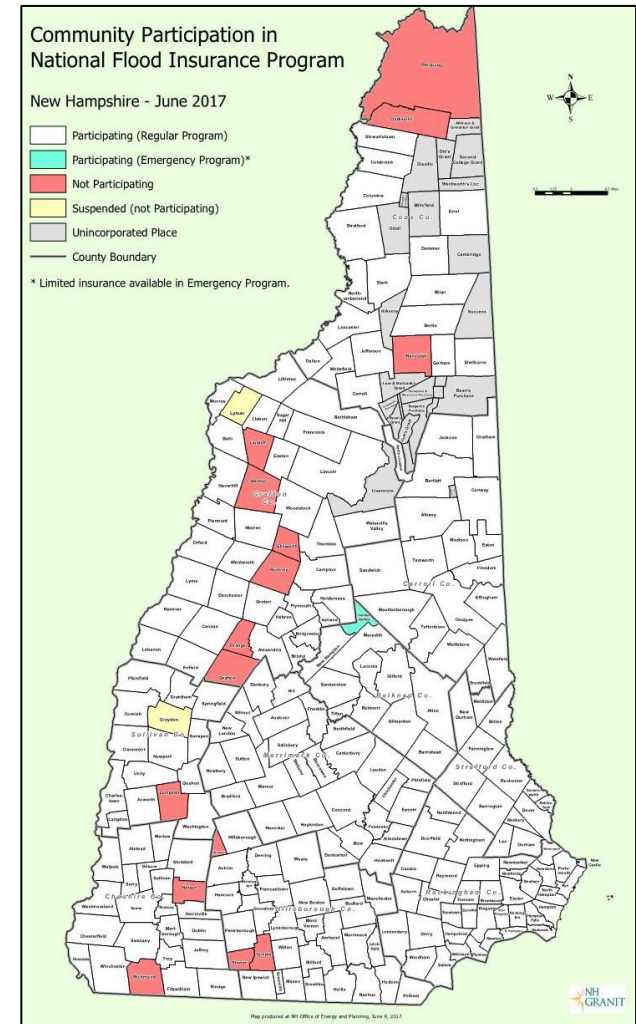
# NFIP Participation

- Community agrees to adopt local floodplain regulations and enforce them through a local permitting process.
- NFIP flood insurance is available for purchase, for all property owners and renters in the community.

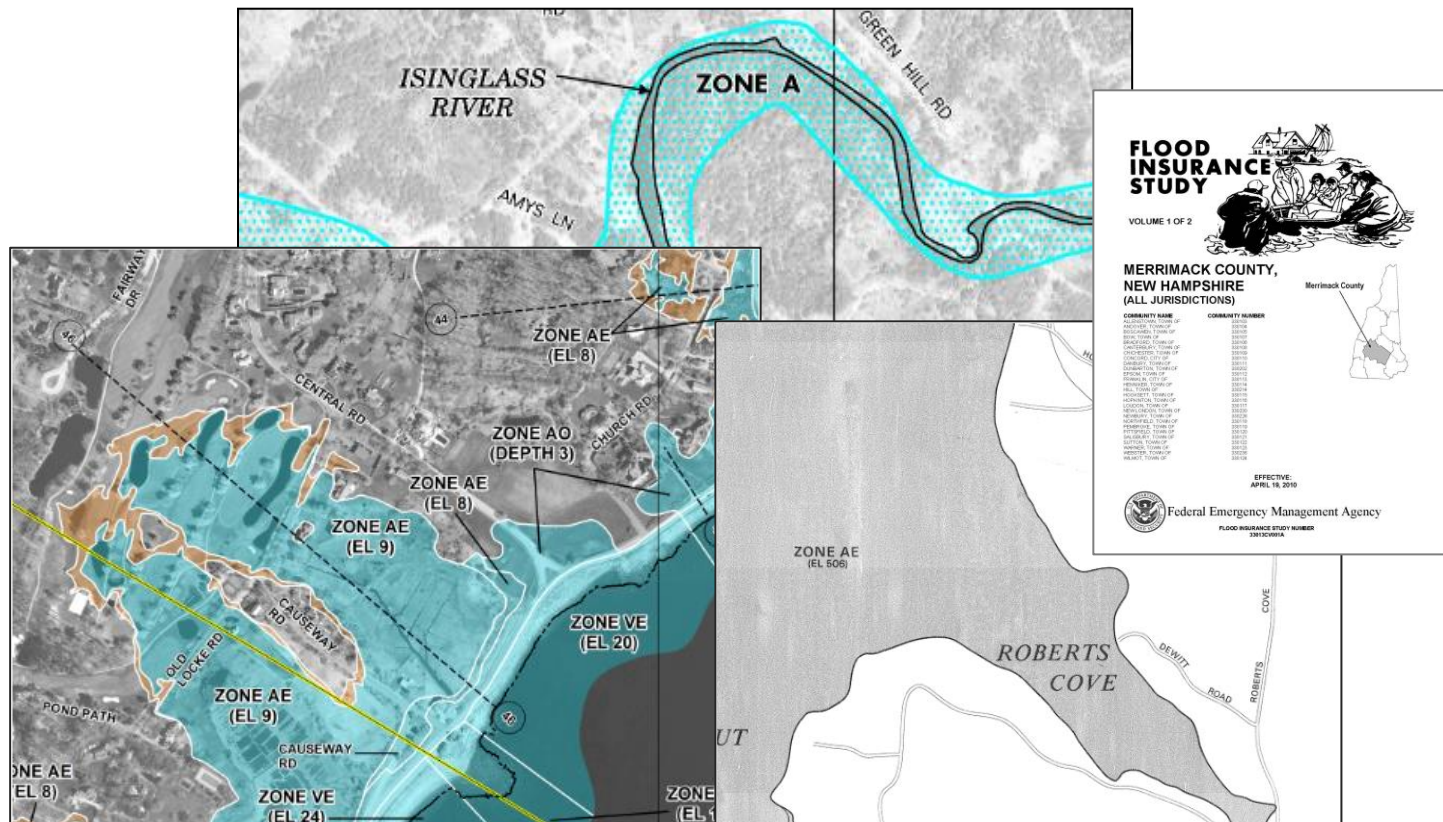


# NFIP Participation in New Hampshire

- 220 communities (93%) participate
- 16 communities (7%) do not participate



# FEMA Flood Insurance Rate Maps (FIRM) & the Flood Insurance Study (FIS) Report



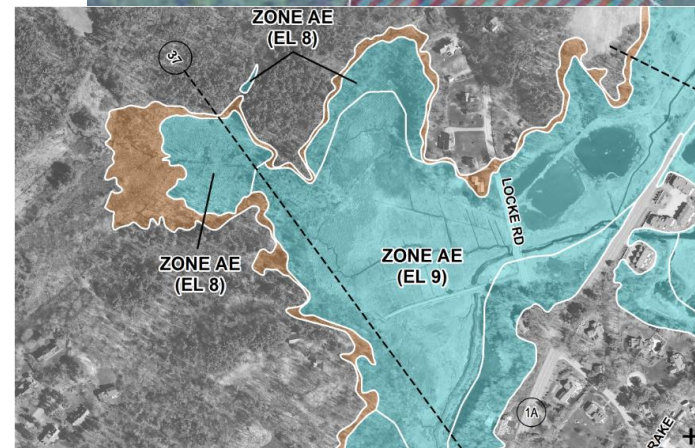
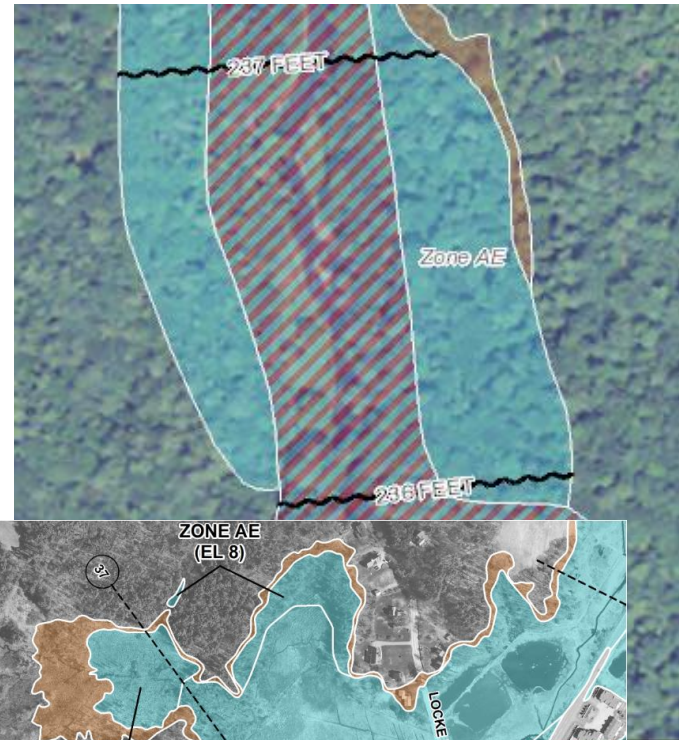
# The 1% Annual Chance Flood

- National standard used by the NFIP for regulating new development and flood insurance requirements.
- Sometimes called the base flood or the “100-year” flood.
- The area of the 1% annual chance flood on the FIRM is called the **Special Flood Hazard Area (SFHA)**.



# Base Flood Elevation (BFE)

- The height to which flood water would be expected to rise in a 1% annual chance flood event.
- Elevations rounded to the whole foot on maps.



# Community Floodplain Regulations

- Adoption and enforcement of floodplain regulations that **meet minimum NFIP standards\*** is required for a community to join and remain in good standing in the program.
- All 220 NH participating communities have a floodplain ordinance that contains these minimum NFIP standards including the required variance criteria.

*\*Minimum NFIP standards are contained in the Code of Federal Regulations (CFR) under Chapter 44, Section 60.3*

# Floodplain Ordinance State Statute

## **RSA 674:56 Flood Hazards, Section I**

- Municipalities may adopt floodplain ordinances as part of their enrollment in the National Flood Insurance Program.
- Such ordinances shall be adopted pursuant to the authority granted under RSA 674:16 and 17, and shall be adopted and amended pursuant to the procedures in RSA 675 for the adoption and amendment of zoning ordinances.
- Municipalities may adopt floodplain ordinances either as an amendment to an existing zoning ordinance or as a separate ordinance.
- A municipality which adopts a floodplain ordinance which is separate from its zoning ordinance or without otherwise having adopted a zoning ordinance, shall observe all legal and procedural requirements for the floodplain ordinance that would be required for a zoning ordinance, including the creation of a board of adjustment.
- If a municipality has adopted a zoning ordinance either before or after the adoption of a floodplain ordinance, the board of adjustment shall be the same for both ordinances.

# Floodplain Ordinance vs Zoning Ordinance

## Similarities

- Involve land use regulation and control
- Have benefits and performance expectations, and
- Are implemented under the same statutory authorities at the local level

## Difference

- Specifically addresses human safety and property protection in relation to a known and defined natural hazard

# Floodplain Variance Definition, Intent, and Considerations

# Floodplain Variance Definition and Intent

**Variance** means a grant of relief by a community from the terms of a floodplain management regulation  
(*44 CFR §59.1*)

Variances from floodplain regulations are meant to address unique, site-specific and individual circumstances where the strict application of the ordinance may result in an hardship to a property owner.

# A Floodplain Variance Granted Can Result in...

- A project that does not meet the minimum standards of the NFIP.
- A property owner with a high flood insurance premium for a non-compliant structure (regardless of the variance).
- Increased risk to life and property

Therefore, variances from flood elevation requirements or other floodplain management requirements should be granted **only rarely**.

# Floodplain Variance Considerations

## Hardship

- Related to the land, such as, unique physical and topographical conditions of the property; not related to the individual personal circumstances of the applicant.
- Related to the property and not caused by the applicant or is shared by adjacent parcels.
- A variance is required for the applicant to make reasonable use of the property.
- Should not be granted if the problem could be resolved through other means.

# Floodplain Variance Considerations

## Increased Risk

- Issuing the variance will not impair the adjacent properties or neighborhood.
- The variance will not be detrimental to public health, welfare, or safety.



# Floodplain Variance Considerations

## Minimum Action

- The variance will deviate from the overall zoning as little as possible to afford the necessary relief.



# Key Issues for Communities to Consider

- The community's liability,
  - If a variance is granted, documentation is a community's only protection after a flood that causes damages.
- The cumulative impacts on the floodplain of granting multiple similar variances,
- The variance decision will last for the life of the structure, and
- Whether granting a variance will jeopardize the community's participation in the NFIP.

# Floodplain Variance Criteria

# Floodplain Ordinance Variance Criteria Intent

The intent of the floodplain management variance criteria contained in the NFIP regulations are to:

- Provide specific floodplain management input to the community criteria for approving variances;
- Inform participating communities of FEMA's guidelines for evaluating local compliance with the standards required for participation in the NFIP;
- Ensure appropriate notification of the issuance of a variance; and
- Advise applicants and future owners of potentially high flood insurance rates.

# Floodplain Ordinance Variance Criteria Language

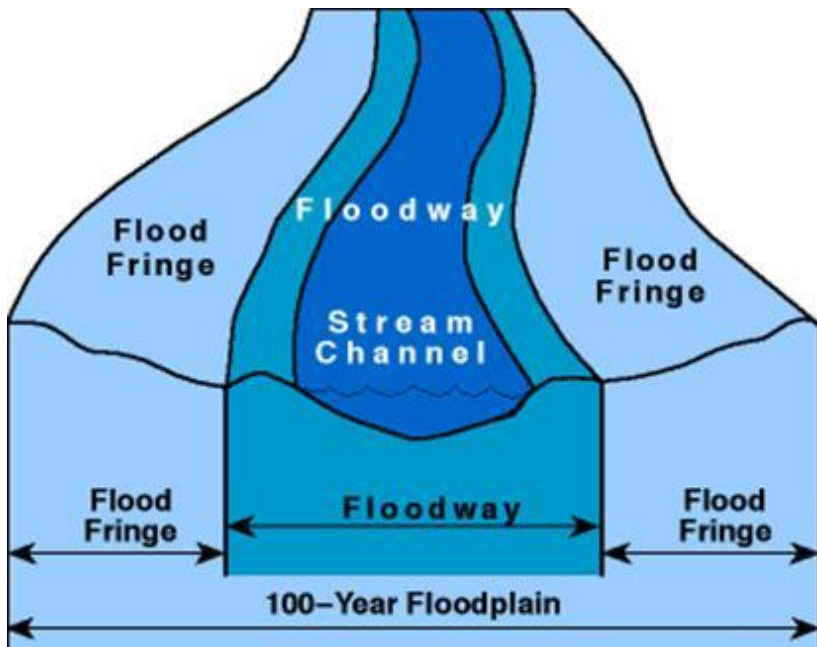
1. Any order, requirement, decision or determination of the Building Inspector (*or other permitting authority*) made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

# Floodplain Ordinance

## Variance Criteria Language

2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I, the applicant shall have the burden of showing in addition to the usual variance standards under state law that:
  - a) the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - b) if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
  - c) the variance is the minimum necessary, considering the flood hazard, to afford relief.

# Regulatory Floodway



# Floodplain Ordinance

## Variance Criteria Language

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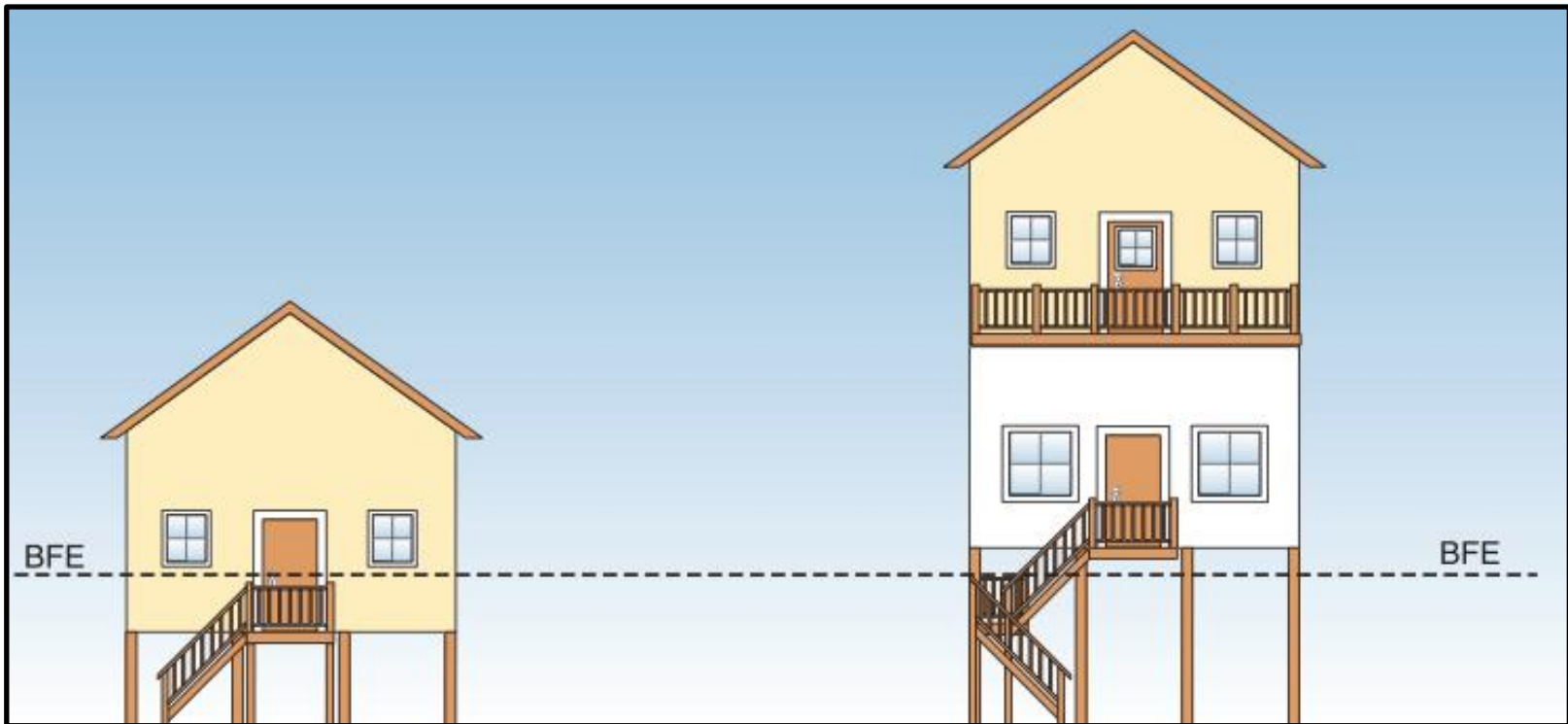
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# Floodplain Variance Criteria Language

3. The Zoning Board of Adjustment shall notify the applicant in writing that:
  - a. the issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - b. such construction below the base flood elevation increases risks to life and property.

Such notification shall be maintained with a record of all variance actions, including their justification for their issuance.

# Floodplain Variance Sample Scenarios



# Floodplain Variance Sample Scenarios



# Common Situation when a Floodplain Variance may be Needed

# Accessory Structures Defined

For floodplain management purposes, accessory structures are:

- structures that are on the same parcel of property as a principal structure,
- the use of which is incidental to the use of the principal structure
- must be used for parking or storage,
- be small (not larger than a one-story two-car garage) and represent a minimal investment by owners, and
- have low damage potential.



# Agricultural Structures Defined

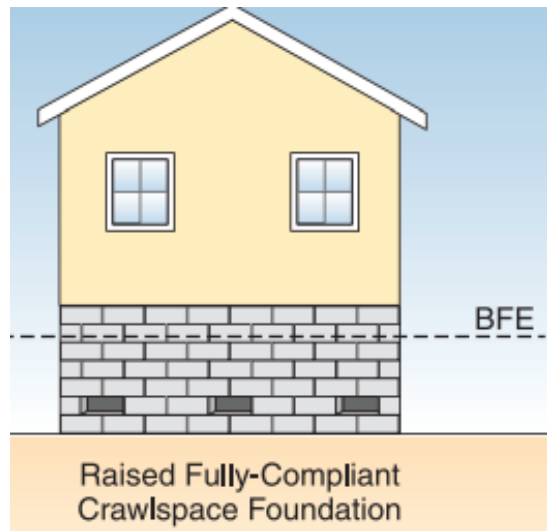
For floodplain management purposes, “agricultural structures” are structures that:

- are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including some structures used for aquaculture are considered agricultural structures



# Accessory/Agricultural Structures

- Minimum NFIP regulations require either elevation or dry-floodproofing for non-residential structures



# Accessory/Agricultural Structures

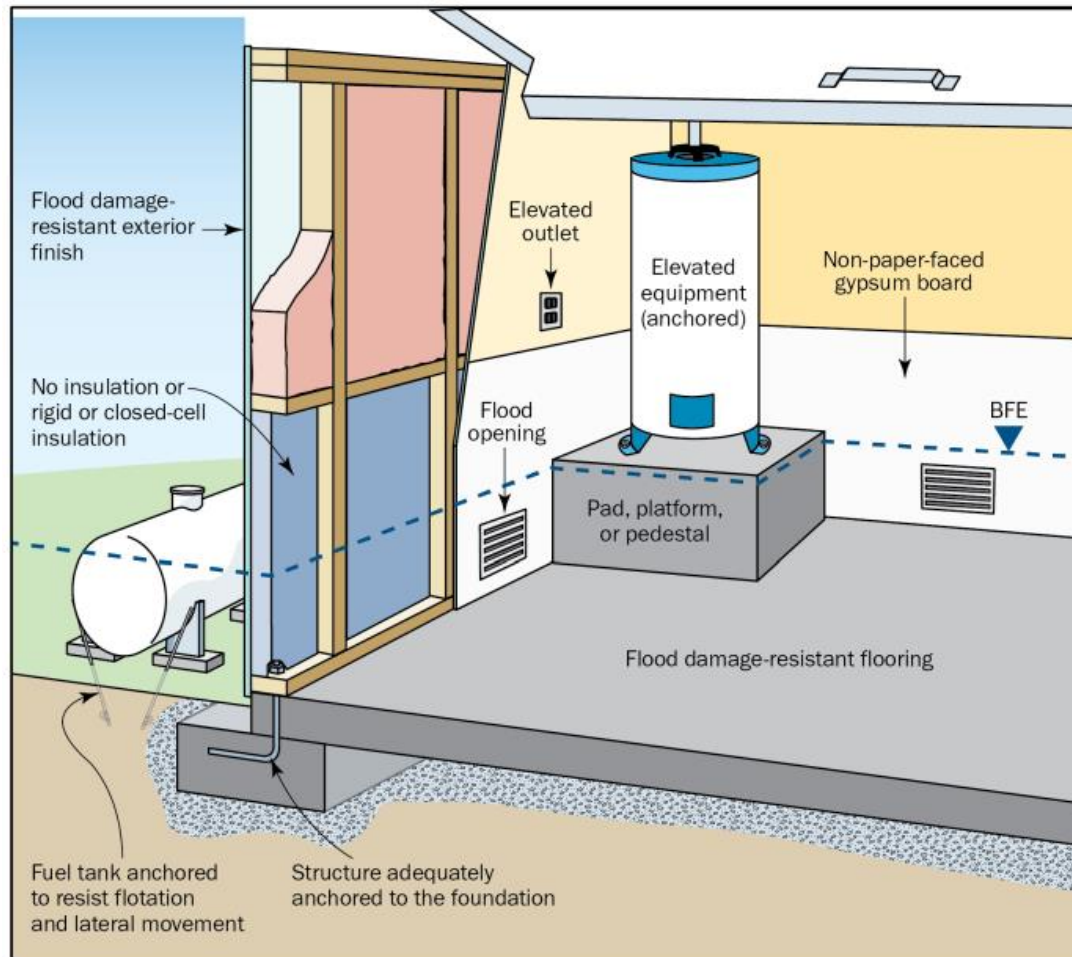
- FEMA recognizes that the types of construction and materials used to build many agricultural structures and accessory structures mean some of those structures inherently have low damage potential



# Wet Floodproofing Accessory/Agricultural Structures

- Wet floodproofing involves use of materials and construction techniques that allow structures or portions of structures to intentionally flood.
- Allowing floodwater to enter these areas counteracts hydrostatic pressure on walls and buoyancy from hydrostatic uplift forces.
- Although enclosure interiors and contents get wet, the risk of structural damage is reduced

# Wet Floodproofing Accessory/Agricultural Structures



# Variance Factors to Consider for Accessory/Agricultural Structures

- Variances must be for individual agricultural structures or accessory structures.
- Justification must be on a case-by-case basis.
- Document the floodway encroachment provisions in local floodplain management regulations are satisfied when structures are proposed to be located in floodways.
- Confirm that proposed:
  - Accessory structures are small, represent minimal investment, and have low damage potential
  - Agricultural structures have low damage potential, meet the exclusive use requirement, and will be restricted to such exclusive uses.

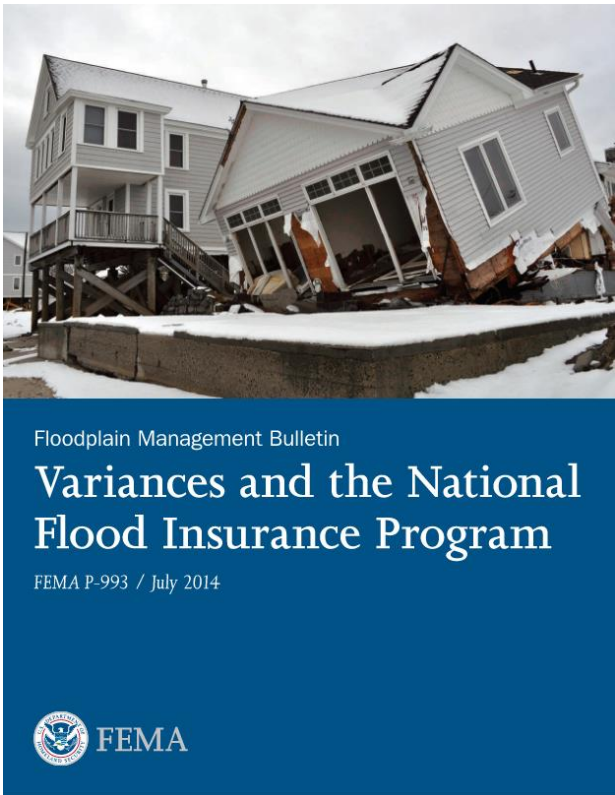
# Variance Factors to Consider for Accessory/Agricultural Structures

- Verify the proposed structures will meet the following wet floodproofing design and construction requirements
- Verify that applicants include descriptions of the exceptional hardships they would experience if variances are denied.
- Document that variances provide the minimum relief necessary, and if feasible, require consideration of combining elevation with wet floodproofing or dry floodproofing

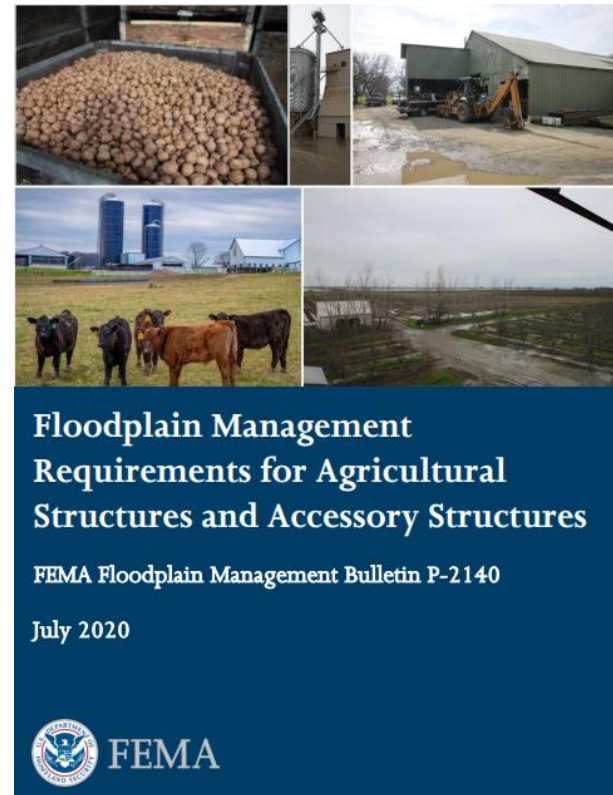
# Summary and Wrap Up

- Make sure all members are aware of the additional variance criteria in your community's floodplain ordinance.
- Remember the purpose of floodplain regulations is to specifically address human safety and property protection in relation to a known and defined natural hazard.
- Keep in mind the implications to both the community, the property owner, and neighboring properties if a variance is granted.
- Document and keep on file any floodplain variances.
- Seek guidance and assistance early.
- Learn more about floodplain management regulations through OPD's floodplain training events (live and recorded webinars).

# FEMA Resource Documents



[www.fema.gov/sites/default/files/2020-08/FEMA P-993 FPM-Bulletin Variance.pdf](http://www.fema.gov/sites/default/files/2020-08/FEMA_P-993_FPM-Bulletin_Variance.pdf)



[www.fema.gov/sites/default/files/2020-09/fema agricultural-structures policy-guidance\\_08-20-20.pdf](http://www.fema.gov/sites/default/files/2020-09/fema_agricultural-structures_policy-guidance_08-20-20.pdf)

# Contact Information

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<https://www.nheconomy.com/office-of-planning-and-development/what-we-offer/floodplain-management-program>

<https://www.nheconomy.com/office-of-planning-and-development/what-we-do/floodplain-management-program/training-and-education>

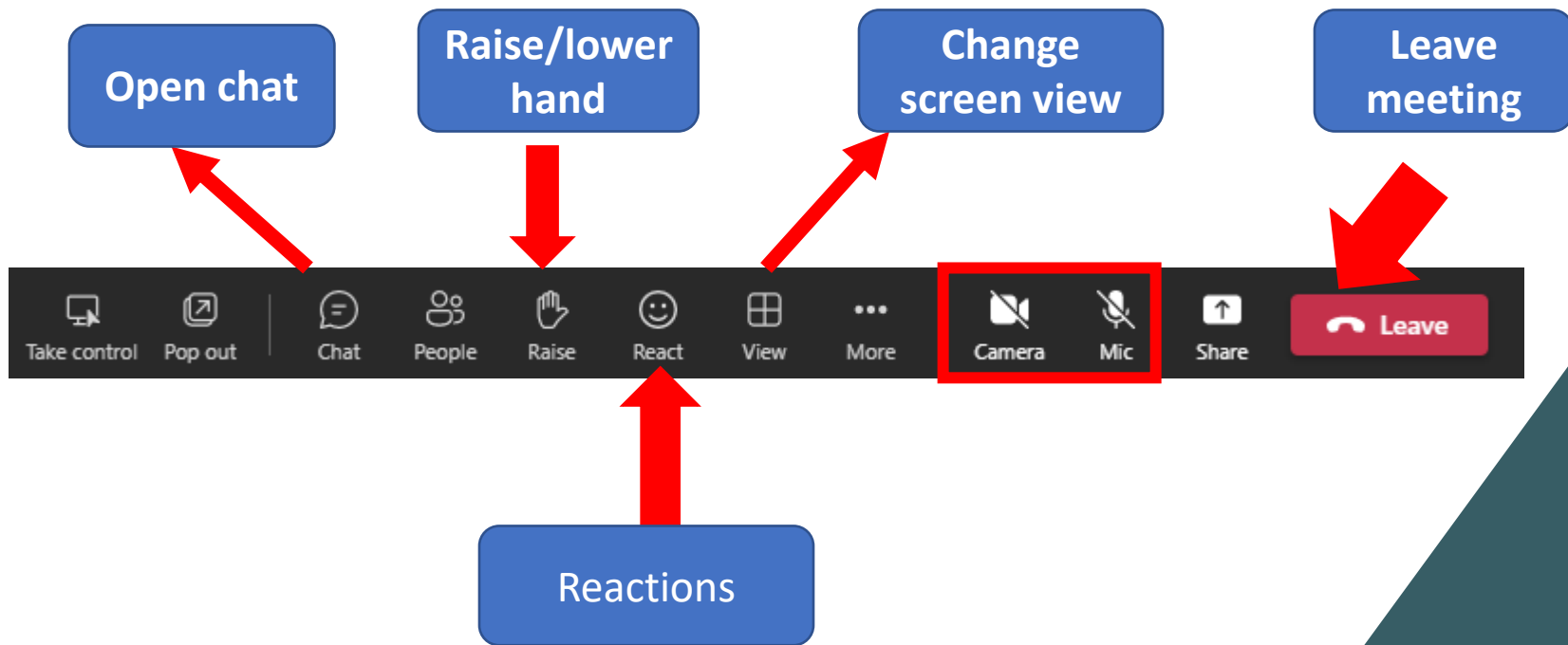


New Hampshire Department of  
**BUSINESS AND  
ECONOMIC AFFAIRS**

NH Office of Planning & Development

# Questions and Answer Section

- If you would like to ask a question, please either raise your hand and unmute yourself or type your question in the Chat box. If on the phone, lines have been unmuted



# Thank you!

- All Conference Session slides and recordings will be available next week

## **Feedback Encouraged!**

- Please fill out the anonymous evaluation form that can be found at link below

[Click Here for Feedback Survey](#)