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Formstack Submission For: **4202**

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**Indiana
Code You
Are
Commenting
On:** Rule 5, 675 IAC 12 - General Administrative Rules

Proposed change to Rule 5, Section 9(d), to read as follows:

**Comment or
Proposal:** (d) An order granting or denying a variance shall be issued following the requirements of IC 4-21.5-3-4 as required by IC 22-12-7-3. The department shall not issue an order denying a variance, but may place the variance on the commission's agenda if unable to determine satisfactory demonstration of evidence for the variance as enumerated in Rule 9, Section (b)(3).

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September 23, 2020



BUILDING CODES



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JCAHO/CMS/HFAP

**Proposed Code Change to Rule 5, Section 9(d),
General Administrative Rules**

This is to provide rationale for the proposed code change to Rule 5, Section 9(d), GAR.

The proposed change to this section is as follows:

(d) An order granting or denying a variance shall be issued following the requirements of IC 4-21.5-3-4 as required by IC 22-12-7-3. The department shall not issue an order denying a variance, but may place the variance on the commission's agenda if unable to determine satisfactory demonstration of evidence for the variance as enumerated in Rule 9, Section (b)(3).

The rationale for this code change is as follows:

1. As the process of department review of variances is inherently opaque to public debate, the variance process will gain integrity by having borderline or questionable variances (as determined by the department) heard by the commission where there is opportunity for open debate.
2. The process of department review of variances has been on the whole a positive development by providing a more expedient process of approving variances that are either routine or otherwise compelling. However, the transfer of authority to deny variances from a democratic process in front of an impartial commission to an opaque administrative agency authority is a potentially adverse step in favor of government fiat.
3. In addition to the transfer of power inherent in the Emergency Rule 5 language, there is the risk of arbitrariness and caprice involved in this type of decision making where certain individuals in government agencies have unchecked power to deny variances.
4. Lastly, there is no language in IC 22-13-2.11 which requires the commission to adopt language in Rule 5 which gives explicit authority to the department to deny variances. There is explicit language allowing the department to approve variances.