

INTERPRETATION OF VARIANCE EMERGENCY RULES

(please be advised this is for informational purposes only and is not an actual copy of the law)

SECTION 1. PURPOSE

The purpose of this document is to establish administrative procedures for the implementation of IC 22-13-2-11.

SECTION 2. SCOPE

The scope of this document applies to all requests for variances from any rule of the commission.

SECTION 3. DEFINITIONS

The definitions in this SECTION apply throughout this document.

(a) "Applicant" means the person who would be in violation of a rule of the commission if the person:

- (1) maintained the conditions sought to be legalized by a variance; and
- (2) did not obtain the variance.

This person is usually the owner of the premises in question.

(b) "Architecturally significant" means the same as historically significant.

(c) "ASME B&PVC" means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code as set forth in 675 IAC 30-1-1(a)(1) and as may be updated by emergency rules under IC 22-13-2-8(c).

(d) "Completed application" means an application for variance that contains all of the information and documentation required under SECTION 5 of this document.

(e) "Department" means the Indiana department of homeland security.

(f) "Design professional" means a registered architect or professional engineer who is registered under IC 25-4 or IC 25-31.

(g) "Historically significant" means any structure that is important to the:

- (1) general;
- (2) archaeological;
- (3) agricultural;
- (4) economic;
- (5) social;
- (6) political;
- (7) architectural;
- (8) industrial; or
- (9) cultural;

history of the United States or of Indiana.

(h) "Local building official" means the chief official of the county, city, or town responsible for enforcing the building laws of the commission that serves the jurisdiction in which the property related to the variance application is located, or the chief official's designee.

(i) "Local fire official" means the chief of the fire department serving the jurisdiction in which the property related to the variance application is located, or the chief's designee.

(j) “Undue hardship” means unusual difficulty in meeting the requirements of the rules of the commission because of any of the following:

- (1) Physical limitations of a construction site or its utility services.
- (2) Major operational problems in the use of a building or structure.
- (3) Excessive costs of additional or altered construction elements.

This definition does not apply to a request for a variance from the rules of the commission found in 675 IAC 30.

SECTION 4. APPLICATION PROCESS

- (a) A request for a variance from the rules of the commission may be applied for at any time.
- (b) To apply for a variance from a rule adopted by the commission, the applicant, or the applicant’s representative, shall:
 - (1) pay the variance application fee as follows:
 - (A) the fee in 675 IAC 12-3-13(h) shall be required for variances from any requirement in 675 IAC 30;
 - (B) the fee in 675 IAC 12-3-4 shall be required for variances from all other rules of the commission; and
 - (2) file a completed application with the department, on a form approved by the department.

SECTION 5. APPLICATION

- (a) All information and documentation an applicant wishes to be considered as part of the applicant’s variance request shall be included in the initial application.
- (b) Notwithstanding subsection (a), additional information or documentation may be submitted by the applicant if all the following conditions are met:
 - (1) The additional information or documentation:
 - (A) corrects an error or mistake on the application;
 - (B) is in response to a request from the department or the commission (whichever body is making the determination) for additional information;
 - (C) is in response to information submitted by the local building official, local fire official, or another interested party;
 - (D) is offered at a meeting with the department or the commission (whichever body is making the determination) at which the variance request is heard; or
 - (E) clarifies the nature of the hardship or the alternatives to compliance being offered.
 - (2) The additional information or documentation does not materially change the variance request.
 - (3) Unless offered at a public meeting, the applicant notifies the local building official and local fire official of the submission of the additional information or documentation.
- (c) A complete application for a variance must contain the following information:
 - (1) The name and address of the following:
 - (A) The applicant.
 - (B) The person submitting the application if not submitted by the applicant.
 - (2) The address and county of the premises or equipment for which the variance is being

sought.

- (3) If the variance request involves a project for which plans and specifications have been filed for a design release under 675 IAC 12-6, the project number for the design release.
- (4) Identification (by specific citation) of the rule of the commission from which the applicant requests a variance.
- (5) A specific description of the rooms, equipment, items, and location affected by the variance request.
- (6) A copy of plans or drawings and supporting data that describe the area or equipment affected by the requested variance. For boiler or pressure vessel variance requests, the drawings of the equipment must have all materials and dimensions identified in the English language and USA units of measurement.
- (7) If the variance concerns a regulated boiler or pressure vessel, the applicant must also include the following:
 - (A) ASME B&PVC required calculations, including relief devices calculations where applicable, certified by a professional engineer licensed in Indiana.
 - (B) Data for substitute materials, if the variance request involves the use of non-ASME B&PVC approved materials.
 - (C) A data sheet, similar to an ASME B&PVC manufacturer's data report, signed by the designated representative after construction is complete.
- (8) A statement of facts and supporting evidence detailing:
 - (A) the undue hardship that compliance with the rule will impose on the applicant; or
 - (B) how compliance with the rule will prevent the preservation of an architecturally significant part of a building or other structure.
- (9) A statement of facts and supporting evidence detailing:
 - (A) how noncompliance with the rule will not be adverse to the public health, safety, or welfare; or
 - (B) alternative actions that the applicant will undertake instead of compliance with the rule to ensure that the granting of the variance will not be adverse to the public health, safety, or welfare.
- (10) A citation to any previously granted variances the applicant would like to be considered as part of their variance application.
- (11) The email address of the local building official and local fire official.
- (12) If filed on a paper application, a signed statement that the local building official and local fire official have been provided a copy of the completed variance application as of the date of its filing with the department. This statement shall include the method in which the application was served and the address to which it was served.
- (13) If obtained prior to application, a copy of all written comments from the local building official, the local fire official, or any other interested party. These comments shall be submitted on the form mentioned in SECTION 7 of this document.
- (14) If the requested variance involves a project for which plans and specifications have been, or must be filed for a design release under 675 IAC 12-6, a signed statement by the design professional (if there is one) that the information contained in the application is accurate.
- (15) Any other reasonable data and information that the department or the commission may require to make an informed decision on the request for a variance.

- (16) If the application is submitted on the applicant's behalf, a signed statement by the applicant of the following:
- (A) That the applicant is aware of the variance request.
 - (B) That the application is being made on the applicant's behalf.
- (17) A signed statement under penalty of perjury by the:
- (A) person submitting the application; or
 - (B) the applicant;
- that the information contained in the application is true, accurate, and complete.

SECTION 6. NOTICE

- (a) All applicants for a variance shall provide notice to the local fire official and local building official of the filing of a variance application under SECTION 4 of this document. The notice shall include a copy of, or a variance identification number for, the completed variance application filed with the department.
- (b) For purposes of receiving the notice required by subsection (a), local fire officials and local building officials shall maintain up to date contact information with the department.
- (c) The department shall maintain the contact information for local fire officials and local building officials in a manner that is readily accessible to the public.
- (d) Local fire officials and local building officials shall immediately notify the department of any changes or discrepancies found in the contact information maintained in subsection (c). The department shall update the information within five (5) business days of receiving the notice of such changes.
- (e) After September 1, 2019, notices under subsection (a) are deemed properly served if delivered to the address maintained under subsection (c).

SECTION 7. WRITTEN COMMENTS

- (a) Any interested party may submit written comments concerning an application for a variance to the department.
- (b) Written comments shall be submitted on a form approved by the department and must contain:
 - (1) the variance number of the application commented on, if assigned;
 - (2) the name and contact information for the interested party;
 - (3) information concerning whether the interested party is opposed, unopposed, or in favor of approval of the variance request; and
 - (4) any conditions the interested party requests to be placed on the variance if approved.

SECTION 8. DETERMINATION AUTHORITY

- (a) Upon receipt of a completed variance application, the department shall either make a determination on the variance request, in accordance with the requirements of this document, or place it on the commission's agenda for determination.
- (b) If the department places a request for a variance on the commission's agenda for determination, only the commission shall make the determination on the variance request.
- (c) The decision to place a variance request on the commission's agenda for determination is within the sole discretion of the department. If the department places a variance request on the

commission's agenda, the department shall also provide a copy of all properly submitted written comments to the commission.

SECTION 9. CONSIDERATION

- (a) The department or the commission (whichever body is making the determination) shall consider the variance application and all properly submitted written comments prior to making a determination on a variance request.
- (b) The department or the commission (whichever body is making the determination) may request additional information or conditions be offered by the applicant, and may request an in person meeting or phone conference prior to making a determination.

SECTION 10. DETERMINATIONS

- (a) The department or the commission (whichever body is making the determination) shall wait at least five (5) business days following submission of a completed variance application before making a determination on a variance request.
- (b) The department or the commission (whichever body is making the determination) may grant a variance if the applicant:
 - (1) submits a complete application;
 - (2) pays the required fee; and
 - (3) is able to demonstrate by substantial and reliable evidence that:
 - (A) compliance with the rule would cause an undue hardship or would affect an architecturally significant part of the structure; and
 - (B) noncompliance with the rule, taking into account any alternatives ordered by commission staff, would not be adverse to the health, safety, or welfare of the public.
- (c) The department or the commission (whichever body is making the determination) may impose conditions on the variance other than those suggested by the applicant.
- (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.
- (e) All determinations on a variance request from a rule contained in 675 IAC 30 may only be made following consultation with an industry expert as defined in IC 22-13-2-14.1.

SECTION 11. ARCHITECTURALLY OR HISTORICALLY SIGNIFICANT STRUCTURES

A structure shall be deemed as architecturally significant or historically significant if it has been placed on the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. § 470 et seq.) or if it has been placed on the Register of Indiana Historic Sites and Structures under IC 14-21. A determination that a structure has been determined eligible for the Register of Indiana Historic Sites and Structures by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources creates a presumption that a structure is architecturally or historically significant.

SECTION 12. SANCTIONS

- (a) The department or the commission (whichever body made the determination on the variance) may impose a sanction concerning a variance it has previously issued under IC 22-12-7-7. Available sanctions are as follows:
- (1) Revocation.
 - (2) Suspension.
 - (3) Censure.
 - (4) Reprimand.
 - (5) Probation.
- (b) The:
- (1) department;
 - (2) commission;
 - (3) local fire official;
 - (4) local building official; and
 - (5) individuals affected by the variance;
- may submit information concerning the desirability of the imposition of such a sanction.
- (c) The department or the commission (whichever body issued the variance) may impose an appropriate sanction whenever one (1) or more of the following exists:
- (1) The variance was obtained by the applicant by fraudulent or misleading statements or information.
 - (2) Notification of the required local officials was not given.
 - (3) There has not been compliance with an alternative requirement contained in the variance.
 - (4) Circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety, or welfare will be adversely affected.
- (d) The order imposing a sanction shall be issued under the requirements of IC 4-21.5-3-6. If a petition for review is subsequently granted under IC 4-21.5-3-7, that order shall be deemed to have been merely a preliminary determination.
- (e) Sanctions under this SECTION may be imposed under IC 22-12-7-6 and IC 4-21.5-4 where appropriate.