

Proposed Emergency Variance Rule

Emergency Rule to supersede 675 IAC 12-5; and 675 IAC 30-2

Purpose

Section 1. The purpose of this rule is to establish administrative procedures for the implementation of IC 22-13-2-11.

Scope

Section 2. The scope of this rule applies to all requests for variances from any rule of the commission. The commission cannot grant a variance to a statutory requirement, federal law, or an ordinance.

Definitions

Section 3. (a) The definitions in this section apply throughout this rule.

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

- (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.

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

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

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

(f) "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.

Application Process

Section 4. (a) A request for 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; and

- (2) File a complete application with the department, on a form approved by the department, containing the information required by section 5 of this rule.

Application

Section 5. (a) All information an applicant wishes to be considered as part of their variance request must be included in the initial application. Any additional information, unless requested by the department or the commission or in response to information submitted by the local building official, local fire official or another interested person, must be filed as a request for a new variance application, which shall include the requirement of paying the variance application fee.

(b) 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, 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:
 - (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 both (a) and (b):
 - (A) Either
 - (i) The undue hardship that compliance with the rule will impose on the applicant; or
 - (ii) How compliance with the rule will prevent the preservation of an architecturally significant part of a building or other structure; and
 - (B) Either
 - (i) How noncompliance with the rule will not be adverse to the public health, safety, or welfare; or

- (ii) 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.
- (9) A citation to any previously granted variances the applicant would like to be considered as precedent.
 - (10) A certification that the local fire official and local building official have been, or will be, provided notice of this variance application, as the date of its filing.
 - (11) If obtained prior to application, a copy of all public comments from the local building official and local fire official that shall be submitted on the form provided for in section 7 of this rule.
 - (12) If the requested variance involves a project for which plans and specifications have been, or must be filed for a design release, a signed statement by the design professional (if there is one) that the information contained in the application is accurate.
 - (13) Any other reasonable data and information that the department may require to make an informed decision on the request for a variance.
 - (14) 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.
 - (15) A signed statement under penalty of perjury by the:
 - (A) Person submitting the application; or
 - (B) The applicantThat the information contained in the application is true, accurate, and complete.

Notice

- Section 6. (a) All applicants for a variance must provide notice to the local fire official and local building official that serve the jurisdiction in which the variance is being requested. The notice shall include a copy of the variance request filed with the department.
- (b) Local fire officials and local building officials shall maintain up to date contact information with the department for receiving the notices required by subsection (a).
 - (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) Notices under subsection (a) are deemed properly served if delivered to the address maintained under subsection (c). If the local fire official or local building official fails to provide contact information as required by subsection (b), the local fire official or local building official consent to receipt of notice of variance applications by manually checking the department's variance database.

Public Comment

Section 7. (a) Any interested party may submit comments concerning an application for a variance to the department or the commission.

(b) 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) If applicable, any conditions the department or commission should place on the variance if approved.

Consideration

Section 8. (a) Completed variance applications and all properly submitted comments shall be reviewed by the department, unless placed on the Commission's agenda for consideration. The decision to place a variance on the commission's agenda is within the sole discretion of the department.

(b) During its consideration, the department or the commission, whoever is considering the variance, 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.

Determinations

Section 9. (a) The department or the commission must wait at least 5 business days following submission of a completed variance application before making an initial determination.

(b) The department or the commission 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 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.

Architecturally or historically significant structures.

Section 10. 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.

Sanctions on Previously Issued Variances

Section 11. (a) The department or the commission 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 department;
- (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, whomever 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.