

INDIANA FIRE PREVENTION AND BUILDING SAFETY COMMISSION

STAFF RECOMMENDED CHANGES TO PROPOSED RULE AND REVIEW OF PUBLIC COMMENTS LSA DOCUMENT #20-626 VARIANCE RULE

Following receipt and review of all timely filed public comments on the proposed rule (LSA Document #20-626), staff provides the below recommended changes to the proposed rule and responses to public comments.

RECOMMENDED CHANGES

1. **Recommendation:** In 675 IAC 12-5-6.2(d), between the words “be” and “as”, add the word “issued”.

Reason: In incorporating nonsubstantive style changes made during the rule review process, this word was unintentionally deleted and needs to be reinstated in order for the language to make sense.

As currently drafted, the language in 675 IAC 12-5-6.2(d) states:

(d) An order granting or denying a variance shall be as required by IC 22-12-7-3.

As proposed, the language would read:

(d) An order granting or denying a variance shall be **issued** as required by IC 22-12-7-3.

2. **Recommendation:** In 675 IAC 12-5-6.2(a), change the word “submission” to “posting” and after the word “application” insert “to the public portal.”

Reason: This modification was previously approved by the Commission prior to submitting the moratorium request, however, was not modified in submission of the proposed rule. This modification also addresses one of the items of concern mentioned in the written comment received from Ron Ritchey that the five (5) day waiting period should be initiated upon posting of the completed variance application, not submission. However, it should also be pointed out, that posting and submission in effect are one in the same due to the method in which the computer system currently processes variance applications.

As currently drafted, the language in 675 IAC 12-5-6.2(a) states:

(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 and payment of the variance application fee before making a determination on a variance request.

As proposed, the language would read:

(a) The department or the commission (whichever body is making the determination) shall wait at least five (5) business days following ~~submission~~ **posting** of a completed variance application **to the public portal** and payment of the variance application fee before making a determination on a variance request.

RESPONSES TO PUBLIC COMMENTS

1. **Response to Oral Comments Made at Public Hearing:** In general, no substantive oral comments were presented at the public hearing and therefore staff has no response to the oral comments made at the public hearing.
2. **Response to Written Comment Submitted by Ron Ritchey, NFSA Great Lakes Field Service Coordinator:** Reject the comment as written. However, adopt the modified language, as recommended in Recommendation 2 above, regarding the change from posting to submitting.

Reason: It is recommended that the change from the requirement that the five (5) day period of delay should start to run from the date of *submission* of a completed application to the date of *posting* of a completed application as the Commission has previously approved this change, and, to afford the full five (5) days of delay for public comment, this period should not start to run until a completed application is posted. However, as provided above, this modification will have no practical impact as submission of a variance application results in automatic posting on the portal.

It is recommended that the additional modifications not be incorporated as the reporting issue has also already been addressed by the Commission in subsection (f) of the proposed rule, and the taking of Commission meeting minutes is a statutory requirement under the open door law. Additionally, among other issues that would need to be addressed if this language was adopted, Commission meetings are not required to occur monthly, therefore no mention in rule should be to “monthly” minutes as there is no guarantee a meeting will occur monthly.

In response to the reasoning provided by the commentor, staff provides the following:

Posting of applications to the variance database is completely transparent. All documents reviewed by staff are included on the database immediately upon submission by an applicant. The public is able to view substantially similar, if not the same, documents as staff in the same or a substantially similar manner. However, saying this, staff recognizes the DFBS system is out of date, however, staff uses the same system that the public uses and is required to access the information in the same way. The user-friendly issues of the system cannot be addressed through rulemaking – these issues must be addressed in a system upgrade. All applications are posted to the variance database and accessible by the public, and rules requiring the reporting of all determinations made by the Department to the Commission have already been included in this rule. Additionally, all determinations have been made publicly available, as of the date of issuance, since the Department began issuing variance determinations.