

INDIANA FIRE PREVENTION AND BUILDING SAFETY COMMISSION

COMMISSION MEETING MINUTES

Indiana Fire Prevention and Building Safety Commission
Video/Teleconference Cisco Webex Format

Wednesday, November 4, 2020

1. Pursuant to IC 22-12-2-6, the Indiana Fire Prevention and Building Safety Commission's (the Commission) regular monthly meeting was called to order by Chairman Robin Nicoson at 9:00 a.m. EST on Wednesday, November 4, 2020. The meeting was conducted electronically by videoconference call through Webex.

(a) Commissioners present at the meeting:

Jameson Berry, representing the Commissioner, Indiana Department of Labor
Michael Corey
Gregory Furnish
James Greeson
Joseph Heinsman
David Henson
Todd Hite, representing the Commissioner, Indiana State Department of Health
James (Wes) Jordan
Robin Nicoson, Chairman
Michael Popich, Vice-Chairman

(b) The following department (IDHS) staff were present during the meeting:

Douglas Boyle, Director of the Fire Prevention and Building Safety Commission
Bryston Sprecher, Administrative Assistant to the Fire Prevention and Building Safety Commission
Craig Burgess, Indiana State Building Commissioner
Alan Blunk, IDHS Plan Review Section Chief
Denise Fitzpatrick, IDHS Code and Variance Specialist
Kim Hyten, IDHS Code and Variance Specialist
Marcus Ballenger, IDHS Code and Variance Specialist
Philip Gordon, Deputy Attorney General & Legal Counsel to Fire Prevention and Building Safety Commission
Justin Guedel, IDHS Deputy General Counsel
Kevin Troy, IDHS Code Enforcement Assistant Section Chief (State Fire Marshal's Office)
Karla Vanblaricum, IDHS Variance Coordinator

2. Roll Call – Douglas Boyle, Director of the Fire Prevention and Building Safety Commission

Director Boyle conducted roll call and noted that quorum was present with nine (9) members in attendance at the beginning. Commissioner Henson was delayed but joined the call shortly after the meeting began. Commissioner Pannicke was absent from the meeting.

	Present	Absent
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
James Jordan	X	
Robin Nicoson	X	
Scott Pannicke		X
Michael Popich	X	

3. Commission Review and Action on Meeting Minutes

a. Tuesday, October 6, 2020

Director Boyle asked the Commission’s members if any corrections needed to be made to the Tuesday, October 6, 2020 meeting minutes. The commissioners stated that everything appeared to be correct. As such, Commissioner Corey motioned to approve the meeting minutes as submitted. Commissioner Popich made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson		
Todd Hite	X	
James Jordan		
Robin Nicoson	X	
Michael Popich	X	

The October 6, 2020 meeting minutes were **approved as submitted**, with a vote of 10-0.

4. IDHS/Commission Staff Reports and Updates

- a. Status Update on Indiana Open Door Law and Public Meeting Requirements during the State of Indiana's COVID-19 Public Health Emergency – Douglas Boyle, Director of the Fire Prevention and Building Safety Commission & Justin Guedel, IDHS Deputy General Counsel

Director Boyle advised the Commission that Governor Holcomb's Executive Order 20-47 has extended the State of Indiana's public health emergency declaration through December 1, 2020. All relaxed requirements pertaining to the open-door law and electronically conducted public meetings will continue until further notice.

- b. State Building Commissioner's Report – Craig Burgess, State Building Commissioner

State Building Commissioner Craig Burgess stated that no written interpretations were published in time for today's meeting. In other news, Mr. Burgess informed that the 2020 edition of the IDHS-Purdue University Building Academy has been postponed due to the pandemic. A virtual event was attempted, but it could not be adequately organized. Mr. Burgess advised that he still has hope that the 2021 event will take place next year, as scheduled.

5. Rulemaking Update(s)

- a. Indiana Elevator Code Committee Meeting

- i. Next Meeting: Tuesday, November 17, 2020 beginning at 9:00 a.m. EST, Webex Electronic Meeting

Director Boyle advised that the Indiana Elevator Code Committee will continue reviewing model code ASME A17.3-2017 at its next meeting.

Public notice and meeting access details will be provided on the Committee's web page (<https://www.in.gov/dhs/4200.htm>) in advance of the meeting.

- ii. Commission Appointment of Brian Smith (Indiana University Facility Operations – Elevators & Generator Shop Supervisor) to the Indiana Elevator Code Committee

Director Boyle stated that he contacted Brian Smith, from the Indiana University Elevator Shop, to serve as the newest member on the Indiana Elevator Code Committee. Mr. Smith briefly explained his background to the Commission's members. Commissioner Corey motioned to approve Mr.

Smith's appointment to the Indiana Elevator Code Committee. Commissioner Heinsman made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson		
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

Brian Smith was **approved as a member of the Indiana Elevator Code Committee**, by a vote of 9-0.

b. Indiana Boiler and Pressure Vessel Rules Rewrite Committee

- i. Update on Submission of Request for Exception to the Regulatory Moratorium

Director Boyle reminded the Commission that he emailed a copy of submission to them a short time ago. Justin Guedel emailed the Office of Management and Budget (OMB) a week ago, and the Department hopes that this request is granted within the next week or two.

c. Variances Proposed Rule [to Replace Current Emergency Rule (LSA Document #19-333(E)) and Become New Final Rule under 675 IAC 12-5] – **see IDHS' revised draft proposed rule provided in meeting materials**

- i. Final Comments/Considerations

Director Boyle reminded the Commission that an additional month was afforded to the members for further concerns to be gathered, but after discussion with Chairman Nicoson, the Department decided that it is now time to voice any final concerns, approve the proposed rule, and submit the exception request. Below is a list of all errors or areas/concerns identified by the Commission:

- 1) Concern over language, which appeared to put the Department and the Commission on equal footing – Commissioner Heinsman
- 2) In § 12-5-4, “form” should only be mentioned once to allow for conciseness; all instances of “must” should be changed to “shall” for

- purposes of consistency – Commissioner Popich
- 3) In § 5(b)(9), “*manufacturer’s*” was incorrectly written as “*manufacturers*” – Commissioner Jordan
 - 4) In § 12-5-5.1(e), “*if delivered*” was rewritten to read “*upon delivery*” – Commissioner Popich
 - 5) In § 12-5-9, “*local fire department*” was reworded to read “*local fire official*” – Commissioner Jordan

Justin Guedel stated that he will need time to review the *determination section* of the public comment submitted on behalf of Ron Ritchey. Jacob German stated that the goal of this section was simply to furnish a report to the Commission for public awareness regarding variances acted on by the Department. Director Boyle reminded that Department decisions are made based on the facts of the application available at the time of submittal. Nevertheless, Christina Collester implored the Commission to reconsider the reviewal process, specifically the appeals process due to its long-drawn-out nature. Chairman Nicoson reminded Director Boyle it was time to move on. Before moving on, Justin Guedel added that written reports would be time consuming and unnecessary. In lieu of this, he advised that the Department can simply issue a summary of all action taken on variances and provide it to Commission staff and stakeholders in advance of each meeting.

Breaking & Reconvening: The Commission recessed for a short break at 10:00 a.m. EST. The meeting was called back to order at 10:10 a.m. EST.

ii. Commission Review and Action on Proposed Rule

Staff recommended adoption of the draft rule, so that it may move on to the regulatory process. Mr. Guedel reminded the Commission that a public hearing for additional comments will be held during the formal rulemaking process before the final rule is adopted. Commissioner Popich motioned to approve the proposed rule with its added amendments and tasked staff with filing the exception request to the regulatory moratorium. Commissioner Heinsman made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson		X
Todd Hite	X	
James Jordan	X	

Robin Nicoson	X	
Michael Popich	X	

The proposed rule was **approved with amendments**, by a vote of 9-1. A copy of the Commission’s approved rule with the additional amendments included is attached to the end of this document, for reference.

6. Commission Action on Third Party Inspection Agency Annual Renewals

a. Expert Modular Consultants, LLC

Kevin Troy, State Fire Marshal’s Office, recommended approval. Commissioner Heinsman motioned to approve. Commissioner Corey made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite		
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The annual renewal for Expert Modular Consultants, LLC was **approved**, with a vote of 9-0.

7. Variances

a. Tabled

20-07-24 Knapp Supply Company, Muncie

Christina Collester spoke as the proponent. She stated that though improvements were made to reach maximum possible scoring, the building still would not pass with the installation of sprinklers. Ms. Collester elaborated that the deficit in scoring was due to exceeding allowable area and a wood-based construction. Given that a sprinkler system would cost between \$265,000-\$400,000 and would not contribute to a passing score, the request is to forego the sprinkler requirement. Muncie Fire Chief, Aaron Wood, indicated that the State Fire Marshal’s Office felt comfortable with this proposal and would accept any determination made by the Commission. Per the Commission’s inquiry, the

owner stated that a maximum of four (4) employees would be in the storage facility at given time. Commissioner Jordan motioned to approve variances (a) and (b) with conditions. Commissioner Greeson made the second. It was voted on and carried. Commissioner Hite abstained from the vote.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite		
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

Variances (a) and (b) were approved on the condition that storage height of all stored materials shall not exceed eight (8) feet above the floor, by a vote of 9-0.

20-09-38 185 Madison Ave, Peru

Jerry McClure spoke as the proponent. The project involves the refurbishing of a building and converting it from manufacturing to warehouse space – all of which has been city approved. Due to the costly nature to update the sprinkler system coupled with the site’s close proximity to the Peru Fire Department, Mr. McClure asked that this requirement be removed from the facility. Costs that Mr. McClure believed to be a hardship included: an update to the most current software of between \$1,700-\$4,700 along with a \$42-\$56 fee per month to operate the system, and one (1) year and five (5) year inspection fees of \$150 and \$850, respectively. He noted that insurance premiums would increase a couple hundred dollars but would still net him a savings based on no longer having a monthly utility fee of \$132, as well as the aforementioned service-related expenses. The commissioners ultimately stated that they would like to see a proper code analysis presented to ensure that there were no combustible areas of the facility that would require a sprinkler system. With that, Commissioner Corey motioned to table. Commissioner Heinsman made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	

Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **tabled**, with a vote of 10-0.

20-09-48 (a)(b) The Barn at Sioux-Monti, Idaville

Carrie Ballinger spoke as the proponent. She stated that a structural engineer provided additional analysis, including inspections of both the stairways and guardrails and found the overall condition of the structure to be satisfactory. Handrails will be installed on either side of the stairs, and additional posts or floor extensions will make up for the gap at the edge of the second floor. Commissioner Jordan motioned to approve variances (a) and (b). Commissioner Heinsman made the second. It was voted on and carried.

	(a)		(b)	
	Y	N	Y	N
Jameson Berry	X		X	
Michael Corey	X		X	
Greg Furnish	X		X	
Jim Greeson	X		X	
Joe Heinsman	X		X	
David Henson	X		X	
Todd Hite	X		X	
Wes Jordan	X		X	
Robin Nicoson	X		X	
Michael Popich	X		X	

Variance **(a) was approved**, with a vote of 10-0.

Variance **(b) was approved on the condition that it shall expire November 30, 2021 (11/30/2021)**, by a vote of 10-0.

b. New

20-10-33 Brown County Music Center, formerly known as Maple Leaf Performing Arts Center, Nashville

Doug Harden spoke as the proponent. He sought clarification to determine whether cited code applies to single entrance seating format of this facility. Per the Commissioners' inquiry, Mr. Harden stated that the lower level exits found on the diagram are purely for emergency purposes only. Commissioner Henson inquired whether an NVR was necessary. Mr. Burgess recommended that the Commission grant the variance for the following reasons: 1) the definition of an assembly space is poorly worded because such a facility generally begins at a single level, and 2) the location of the accessible seating space already seems to be in a reasonable location. With that, Commissioner Henson motioned to approve. Commissioner Jordan made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **approved as submitted**, with a vote of 10-0.

20-10-34 (a)(b) Kinser Flats Apartments, Bloomington

Christina Collester spoke as the proponent. Variance 20-08-06 was approved last month regarding partitions of membrane ceilings by interior walls. The project involves construction of a 4-story apartment building. The building will be classified as R-2 Occupancy and Type VA Construction.

In variance (a), the interior partitions of the wet walls of the shower and tub enclosures are not sheathed with drywall between the fiberglass surrounding and the stud wall. In lieu of a sheathing, Ms. Collester stated that a membrane constructed rated shaft will be installed inside the walling, which will allow for void space where plumbing pipeage can run through. In addition, to offset the fiberglass finish adjacent to bathrooms, all bathrooms will be sprinklered. Tim Clapp, Bloomington Fire Department, had advised Director Boyle that he was okay with these plans.

In variance (b), the double top plate of 1-hour rated partitions interrupts the fire-rated ceiling membrane of a 1-hour floor-ceiling assembly. Ms. Collester stated that a 1-5/8-inch gap between the top plates of the double stud walls will be filled with three (3) inches of compressed mineral wool insulation. The code exception

for rated walls penetrating rated ceiling membranes does not address a double stud wall with a space between the top plates. Ms. Collester stated that variance 20-08-06 was approved last month, which also dealt with membrane partitions.

Commissioner Heinsman motioned to approve variances (a) and (b). Commissioner Jordan made the second. It was voted on and carried.

	(a)		(b)	
	Y	N	Y	N
Jameson Berry	X		X	
Michael Corey	X		X	
Greg Furnish	X		X	
Jim Greeson	X		X	
Joe Heinsman	X		X	
David Henson	X		X	
Todd Hite	X		X	
Wes Jordan	X		X	
Robin Nicoson	X		X	
Michael Popich	X		X	

Variances (a) and (b) were approved, with a vote of 10-0.

Breaking & Reconvening: The Commission recessed for lunch at 12:04 p.m. EST. The meeting was called back to order at 12:45 p.m. EST.

20-10-35 Overstock Central LLC, Mishawaka

Melissa Tupper and Micah Zehr spoke as the proponents. The project involves a warehouse addition to an existing building. The existing building is retail sales for consumer fireworks and the warehouse is for the storage of 1.4G consumer-grade fireworks. The variance request is to permit the warehouse to be set back less than fifty (50) feet. Based upon the quantities stored in the warehouse the warehouse is required to be a detached building with a setback not less than fifty (50) feet. Emergency alarm as required by code and smoke detectors will be installed. Additionally, the warehouse will be separated from the existing building by a 3-hour masonry fire wall. The hardship is the construction of the building is nearly complete. To comply with code, the building would have to be completely torn down. The issue was brought up on an RFI for the sprinkler system, but not during the architectural review. Commissioner Greeson and Mr. Burgess were concerned that the local fire official had not been contacted to provide a recommendation. The proponent asked whether it would be possible for the variance to be approved, contingent on approval of the local fire official. Mr. Burgess interjected by recalling a written interpretation he had issued over the summer – CEB-2020-20-2014IBC-T415.5.2 – in which he stated that fireworks of 1.4G class are not subject to the detached building requirement. Ms. Tupper advised that she and her client will withdraw the variance request, based on

Commissioner Burgess' written interpretation. The variance was **withdrawn**, and no further action was needed. Commissioner Burgess apologized for failing to notify State Plan Review of this written interpretation when the project was reviewed during the construction design release process.

20-10-36 Victor Polen, Celestine

Victor Polen spoke as the proponent. These cabins are planned to be seasonal rentals primarily in the Summer with a short Spring and Fall Market. They are not in use during the winter months and would plan to be winterized. As of now, the plans only include three (3) one-bedroom cabins and three (3) two-bedroom cabins, but Mr. Polen stated there could potentially be two (2) additional units built in the future. These are considered industrialized buildings, as they are manufactured in Kentucky and placed on the property in a portable fashion. The request is to not include sprinklers in each of the units, as the cost would equate to 10% of the construction cost of a single cabin once installation, waterline supply, and risers for heating are accounted for. In addition, none of the nearby cabins include sprinklers either. Mr. Polen stated that this will be mitigated through a relatively short egress distance coupled with the use of all electric kitchen appliances. There was some confusion regarding the code that was used during the design process. Commissioner Popich pointed out that the application indicated it was built in coordination with the 2014 Indiana Residential Code (IRC), but upon further review, Kevin Troy stated that the official design release performed by the engineer was done with regard to the 2014 IBC. Because the units could be viewed as tourist cabins, they may need to be built in accordance with the IRC; thus, it was recommended that the Commission table this to allow for Plan Review to make the necessary CDR revisions. Commissioner Corey motioned to table. Commissioner Popich made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **tabled**, with a vote of 10-0.

20-10-37 Common Grounds, Hartford City

Christina Collester spoke as the proponent. The project involves the use of the first-floor tenant space of approximately 4,000 square feet as a coffee shop to be classified as a change of occupancy – from B/M use to A-2. The variance request is to permit the occupancy of the tenant space without complying with rules for new construction, nor a complying Chapter 34 evaluation. This is due to the cost to sprinkler the building of \$100,000 being significantly higher than the original estimate of \$15,000.00.

The building was constructed in 1893 of Type III-B construction, which includes steel columns and beams with brick exterior walls with wood floors and roofing. The second floor will remain vacant. Due to the relatively short egress distance of sixty (60) feet, as well as two (2) remote exits, Ms. Collester stated that the lack of sprinklers should not pose a risk to public safety. Commissioner Heinsman motioned to approve with conditions. Commissioner Popich made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich		X

The variance was approved on the condition that: 1) no occupants shall be permitted on the second floor of the structure, and 2) the maximum occupancy of the first floor shall be posted at fifty (50) persons, by a vote of 9-1.

20-10-38 Borto Building Renovation, Merrillville

No proponent for the variance was present during the initial consideration of the variance. Mick Graham (LFO) stated that upright pendants have already been installed; thus, the facility should not be in violation of any code, based on new information he had received regarding the specific scope of the project. After some discussion, the Commission decided that it needed to table the variance until the applicant/submitter could be available. Commissioner Heinsman motioned to table. Commissioner Corey made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **tabled**, with a vote of 10-0.

William Hutton interrupted at a later point to provide additional information. As such, Commissioner Corey motioned to **un-table** the variance. Commissioner Heinsman made the second. The motion was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **un-tabled**, with a vote of 10-0.

Per the code, concealed spaces connected to the ceiling or within six (6) inches of wood-joiced or similar solid member construction shall not be required to be sprinklered, so it was proponent's opinion that the second phase of the project did not have to be sprinklered. Duct work and piping are covering much of the ceiling space, so above ceiling sprinklers may prove to be inefficient. The commissioners disagreed stating that there are void spaces throughout the ceiling that should include sprinklers, and that the project hardship does not prove to be any worse than past buildings which were required to be sprinklered. After further discussion, Commissioner Greeson motioned to deny. Commissioner Heinsman made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **denied**, with a vote of 10-0.

20-10-39 Samira Apartments, Bloomington

Melissa Tupper and Doug Bruce spoke as the proponents. The project involves converting the second floor of an existing building from offices to apartments. In the original design the stairway, on the other side of the horizontal exit in the adjacent building, was going to be enclosed with 1-hour construction. There is a deed from 1919 that allows this building to use the stair in the adjacent building. Ms. Tupper stated that the owner of the adjacent building, where the stairway is located, will not allow it to be enclosed. As this is the only means of exit from the second floor, a fire escape ladder will be provided on the outside of each apartment window. Tim Clapp and the local fire officials were not opposed to this variance. Commissioner Corey motioned to approve. Commissioner Henson made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan		X
Michael Popich		X

The variance was **approved as submitted**, with a vote of 8-2.

20-10-40 Carroll County Sheriff's Office and Jail

Ralph Gerdes spoke as the proponent. Building code requires jails to have a smoke control system to provide a tenable environment for the relocation of occupants. Mr. Gerdes stated that the math for such a system is not feasible. When considering detection of fire and time to start fans, the smoke is still within six (6) feet of the floor after using prescribed formulas or other fire models. In lieu of following these regulations, Mr. Gerdes proposes to follow suit of the American Correctional Facilities Association, which only mandates sprinklers. Additionally, the prison will comply with NFPA 101 standards in requiring six (6) air changes per hour. This should suffice, as deaths related to prison fires are relatively rare across the country. Commissioner Jordan motioned to approve. Commissioner Heinsman made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **approved as submitted**, with a vote of 10-0.

20-10-41 (a)(b) Spiceland Event Center, Spiceland

Crystal Kent spoke as the proponent. The project involves the conversion of an existing barn, of Class 2 structure, into an event space. The request of variance (a) is to permit portable toilets to be used for a period of two (2) years due to a lack of a sewer system. The request is to utilize Chapter 34 analysis to permit the conversion even though the building is two (2) stories above grade. Ms. Kent stated that the engineer provided a letter which indicates that the building has met all live and lateral load requirements. Commissioner Heinsman pointed out that there was no indication of lateral load requirements. Ms. Kent stated that she was under the assumption that live and lateral loads were one-in-the-same. As such, the Commission requested that the engineer be contacted to correct this discrepancy in the letter.

Commissioner Hite then inquired about the timeline for the installation of a sewer system. Ms. Hite stated that the owners now have a six (6) inch sewer line that runs through the property, but the estimate to connect bathrooms to this sewer line is too costly right now. Commissioner Hite stated that he did not have a

problem with this two (2) year timeframe as the owners work to generate the necessary revenue to install permanent sewer pipelines. Commissioner Popich motioned to table both variances. Commissioner Berry made the second. It was voted on and carried.

	(a)		(b)	
	Y	N	Y	N
Jameson Berry	X		X	
Michael Corey	X		X	
Greg Furnish	X		X	
Jim Greeson	X		X	
Joe Heinsman	X		X	
David Henson	X		X	
Todd Hite	X		X	
Wes Jordan	X		X	
Robin Nicoson	X		X	
Michael Popich	X		X	

Variances (a) and (b) were tabled, with a vote of 10-0.

20-10-42 Bottleworks Garage 2 and 3 Food Hall Tenants, Indianapolis

Ed Rensink spoke as the proponent. He stated that this facility received a variance at last month’s meeting for the restrooms. Recently, the inspector cited sinks in the food service areas due to the walls failing to meet smooth service requirements. Mr. Rensink questioned the legitimacy of the violation because the Indiana State Department of Health allows for brick, so long as it is filled with a surface coating that can be easily cleaned. Commissioner Popich briefly interrupted to recuse himself, as Mr. Rensink confirmed that the violation was only relayed in a verbal manner from the City of Indianapolis. Commissioner Hite agreed with Mr. Rensink’s evaluation that a sealer is a permissible alternative but stated that local health inspectors could have a different opinion. Ultimately, Commissioner Jordan motioned to approve. Commissioner Berry made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	

James Jordan	X	
Michael Popich		

The variance was **approved as submitted**, with a vote of 9-0.

20-10-43 Ellie’s Loft, Nashville

Melissa Tupper spoke as the proponent. The project includes a renovation and addition to the first floor of a two-story facility. There is a candy store and a series of retail stores located on the first floor, as well as overnight rentals on the second floor. The addition will consist of a laundry and storage facility on the first floor of approximately one hundred and eighteen (118) square feet. Ms. Tupper stated that this increase of occupancy will require a sprinkler system to be installed throughout the entirety of the facility. In lieu of a sprinkler, a smoke detection system tied to the fire alarms will be installed. Commissioner Greeson asked whether a quote for a 13D system had been obtained instead. Ms. Tupper stated that it would be too costly to install any sort of fire mitigation system for such a small addition and that the renovation plans would be halted if this variance were not approved. With that, Commissioner Greeson motioned to approve. Commissioner Corey made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich		X

The variance was **approved as submitted**, with a vote of 9-1.

Breaking & Reconvening: The Commission recessed for a short break at 3:25 p.m. EST. The meeting was called back to order at 3:35 p.m. EST.

20-10-44 Lawrence North HS Additions and Renovation, Indianapolis

Ed Rensink spoke as the proponent. The project scope involves demolition and renovation of portions of the existing building, construction of a three-story classroom wing, news media center, and a pool addition. Mr. Rensink stated that existing means of egress will be altered during construction, which began in the fall of 2020 and will end in overlapping phases by the fall of 2023. Sprinklers will

be provided in all classroom areas, and fire drills will take place based on the revised egress pathways. Commissioner Greeson motioned to approve with conditions. Commissioner Corey made the second. It was voted on and carried. Commissioner Heinsman recused himself from the vote.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman		
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **approved on the condition that it shall expire December 31, 2023 (12/31/2023)**, by a vote of 9-0.

20-10-45 Lawrence Central HS Additions and Renovations, Lawrence

Ed Rensink spoke as the proponent. The project involves a three-story addition, which is virtually identical to the previous variance. There are some differences in the overall building configuration, as well as a longer egress distance. Mr. Rensink stated that three (3) exits will be closed off to south; thus, other doors will be wired open. The Lawrence Fire Department is in support of these plans. In lieu of providing tunnels for students to utilize, sprinklers will be maintained in all construction sites, as tunnels will significantly disrupt construction, and the construction type poses a safety hazard to students. The project is scheduled to be completed prior to the 2022 school year, and Mr. Rensink informed that the project is on schedule. Commissioner Greeson motioned to approve with conditions. Commissioner Furnish made the second. It was voted on and carried. Commissioner Heinsman recused himself from the vote.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman		
David Henson	X	
Todd Hite	X	

Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **approved on the condition that it shall expire December 31, 2022 (12/31/2022)**, by a vote of 9-0.

20-10-46 Hoosier Hardwood Floors, Goshen

Carrie Ballinger and the owner, Merle Miller, spoke as the proponents. The project involves a partial second story addition inside an existing structure. The request is that two (2) doors be installed at a height of seventy-one (71) inches to avoid this protrusion. One of the doorways is between multiple showroom areas with independent means of egress; thus, it would be for convenience purposes only. The other doorway provides access to a small office area. Commissioner Henson asked if there had been any discussion of installing a cushion on the protruding beams to prevent patrons from accidentally hitting their head. Ms. Ballinger stated that signage will be provided to alert patrons of the low ceiling clearance, and office workers will already be familiar with the facility's layout. Due to overhead hazards, Commissioner Berry stated he would not be able to approve the variance. The Commissioners were interested in seeing pictures of the existing conditions, as well as investigating the possibility of lowering the floor height. Commissioner Jordan motioned to table. Commissioner Berry made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The variance was **tabled**, with a vote of 10-0.

8. Petitions for Administrative Review

a. Granted and Forwarded to the Office of Administrative Law Proceedings (OALP)

i. IDHS Sanctions Order No. 205-286 – AMC Elkhart 14

Director Boyle stated that this petition was submitted in a timely manner of six (6) days, has been granted, and has been submitted to the Office of Administrative Law Proceedings (OALP) for assignment to the ALJ to begin administrative review proceedings.

b. Commission Determination (Recommendation for Denial for Untimeliness)

i. IDHS Construction Design Release Project No. 416937 – Daniel’s Vineyard

Director Boyle stated that the original design release that is the basis for the petition was submitted to the owner on August 21, 2020. As such Director Boyle advised that the petition for administrative review was submitted fifty-five (55) days after the order was issued and is untimely. As such, Director Boyle recommended denial of the petition for administrative review for untimeliness. Commissioner Berry made a motion to deny. Commissioner Heinsman seconded the motion. The motion was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The petition for administrative review was **denied**, with a vote of 10-0. Director Boyle stated that he will follow up with the petitioner regarding the separate, revised construction design release that was recently issued for this project.

9. Commission Review and Action on Non-Final Orders/Non-Final Orders of Dismissal

a. Non-Final Orders of Dismissal

i. IDHS Sanctions Order No. 187-258 – Sublime Cause No. DHS-0920-0000785

Commissioner Popich motioned to affirm. Commissioner Jordan made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The ALJ's Non-Final Order of Dismissal was **affirmed**, with a vote of 10-0.

- b. Commission Consideration and Action on Delegating Ultimate Authority Powers to the Administrative Law Judge (ALJ)/Office of Administrative Law Proceedings (OALP) for Certain Final Orders and Final Orders of Dismissal

The Commission began discussion at last month's meeting regarding instances in which the ALJ would serve as the ultimate authority in certain cases. Director Boyle reiterated that the primary objective of doing this is to condense the Commission's agenda relating to administrative reviews. As such, IDHS staff drafted a letter to be submitted to the Office of Administrative Law Proceedings (OALP) detailing this process. Director Boyle outlined the document and provided an explanation of the conditions that must be met before the ALJ can assume ultimate authority in such matters. A copy of the letter and its conditions are attached below.

<https://www.in.gov/dhs/files/FPBSCs-Authorization-of-ALJ-to-Serve-as-Ultimate-Authority-in-Certain-Administrative-Review-Proceedings.pdf>

Ultimately, Chairman Nicoson recommended that this matter be tabled until the Commission can receive further guidance from legal counsel, Philip Gordon. Director Boyle advised that he was okay with this plan, and everything will remain status quo for now regarding the processing on non-final orders and non-final orders of dismissal. Commissioner Popich motioned to table. Commissioner Hite made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	

Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The matter was **tabled** by a vote of 10-0.

10. Commission Review of Local Ordinances

a. Pre-Adoption

- i. City of Martinsville, Indiana Fire Prevention Code Ordinance (second draft) – **received by Commission via electronic mail on Wednesday, October 21, 2020**

As always, this was included on the agenda for the Commission’s awareness only. No further action is needed.

b. Adopted

- i. Ordinance No. 2020-4 (Amending Ordinance No. 1976-3) – Burn Code of the City of Greensburg, Indiana – **received by Commission via electronic mail on Thursday, September 10, 2020, and tabled by the Commission at 10/6/2020 meeting**

Per staff’s review memo that was provided to the Commission as part of its meeting materials, identifying the conflicts and defects with the ordinance, Commissioner Heinsman motioned to deny. Commissioner Jordan made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The ordinance was **denied**, with a vote of 10-0.

- ii. Ordinance No. 2020-17 – Unified Development Ordinance of the Town of Whitestown, Indiana – ***received by Commission via electronic mail on Tuesday, September 15, 2020, and tabled by the Commission at 10/6/2020 meeting***

Director Boyle stated that Kevin Troy, IDHS Code Enforcement/State Fire Marshal’s Office had already identified some conflicts, but legal had not yet completed its review. Director Boyle advised that he will work with Mr. Troy and Mr. Guedel to finish department staff’s review and provide a memo to the Commission in the case that any further conflicts are identified. As such, Director Boyle requested that the Commission table this ordinance. Commissioner Hite motioned to table. Commissioner Berry made the second. It was voted on and carried.

	Yes	No
Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The ordinance was **tabled**, with a vote of 10-0.

- iii. Ordinance No. 20-40 – Fire Prevention Ordinance of the City of Westfield, Indiana – ***received by Commission via electronic mail on Monday, September 28, 2020***

Director Boyle stated that he will be collaborating with Fire Chief Jim Roberts and legal staff to complete a review of this ordinance. Additionally, on Monday, November 2, 2020, Director Boyle received a letter from the Indiana Apartment Association detailing some concerns that they had identified in the ordinance. These concerns will be review by the Department before providing the Commission with an informed recommendation. As such, Director Boyle asked that this ordinance be tabled. Commissioner Popich motioned to table. Commissioner Berry made the second. It was voted on and carried.

	Yes	No

Jameson Berry	X	
Michael Corey	X	
Greg Furnish	X	
Jim Greeson	X	
Joe Heinsman	X	
David Henson	X	
Todd Hite	X	
Robin Nicoson	X	
James Jordan	X	
Michael Popich	X	

The ordinance was **tabled**, with a vote of 10-0.

11. Final Comments/Closing Remarks from Chairman Nicoson

Chairman Nicoson thanked everyone for their time and wished everyone a happy Thanksgiving.

12. Next Meeting – Tentatively scheduled for Tuesday, December 1, 2020, beginning at 9:00 a.m. in History Reference Room 211 of the Indiana State Library, 315 W. Ohio Street, Indianapolis, IN 46202

If the Commission’s meeting must be conducted electronically/remotely due to the ongoing COVID-19 public health emergency, details will be provided on the Commission main web page (<https://www.in.gov/dhs/2375.htm>) in advance of the meeting date.

13. Adjournment

The meeting was adjourned at 5:10 p.m. EST.

APPROVED: _____
 Robin Nicoson, Chairman

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule

LSA Document # 20-XXX

DIGEST

Amends and repeals sections of 675 IAC 12-5, amends sections 675 IAC 12-3-4 and 675 IAC 12-3-13, and repeals 675 IAC 30-2 to implement the statutory changes made to IC 22-13-2-11 (the law governing variances to rules of the Fire Prevention and Building Safety Commission) by Public Law 249-2019, Section 24. Effective July 1, 2021.

675 IAC 12-3-4; 675 IAC 12-3-13; 675 IAC 12-5; 675 IAC 30-2

SECTION 1. 675 IAC 12-3-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-4 Variance application fees

Authority: IC 22-12-6-6

Affected: IC 22-13-2-11

Sec. 4. (a) **Except as provided in subsection (b)**, every application for a variance from the rules of the commission shall be accompanied by payment to the Fire and Building Services Fund in an amount as follows:

Variance application filing fee:	\$138
plus	
Plan examination and processing fee:	
Single code provision	\$138
Each additional unrelated code provision	\$69

(b) An application for a variance from a requirement in 675 IAC 30 shall be accompanied by a fee of two hundred dollars (\$200). An additional five hundred dollars (\$500) shall accompany the application when engineering calculations are included for review.

~~(b)~~ (c) As used in this section, "unrelated code provision" means a provision of an adopted code or standard that covers subject matter that is not contingent upon or directly affecting the requirements of a different code provision for which a variance is being sought by the same applicant at the same time. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-4; filed Jul 17, 1987, 2:45 p.m.: 10 IR 2701, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the secretary of state. LSA Document #87-54 was filed Jul 17, 1987.]; filed Jun 3, 1988, 2:15 p.m.: 11 IR 3556, eff Aug 1, 1988; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2234; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2286; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Apr 16, 2002, 9:05 a.m.: 25 IR 2732; readopted filed Aug 6, 2008, 9:02*

a.m.: 20080827-IR-675080433RFA; readopted filed Aug 8, 2012, 8:08 a.m.: 20120905-IR-675120260RFA; readopted filed Jul 3, 2018, 2:22 p.m.: 20180801-IR-675180204RFA)

SECTION 2. 675 IAC 12-3-13 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-13 Boiler and pressure vessel inspection, permitting, and licensing fees

Authority: IC 22-12-6-6; IC 22-13-2-13

Affected: IC 22-12-7-5; IC 22-15-6

Sec. 13. (a) The division may not charge an owner or user more than two (2) of the fees described in subsections (b) through (e) for inspections of regulated boilers and pressure vessels during a particular calendar year. However, a fee of twenty-five dollars (\$25) shall be paid by an owner or user who has failed to do either of the following:

(1) Prepare a boiler or pressure vessel for the required inspection on the date specified by the inspector.

(2) Make repairs or otherwise correct conditions of noncompliance applicable to regulated equipment within the time frame specified in a correction order under IC 22-12-7-5.

Verification of the conditions noted in either subdivision (1) or (2) shall be documented on the inspection report form mandated by the boiler and pressure vessel safety section (BPVSS) to report inspection activities relating to equipment regulated by BPVSS.

(b) The fees for the internal inspection of regulated boilers shall be as follows:

Heating Surface Area (in square feet)	Amount
0–100	\$24
101–500	\$36
501–1,000	\$48
1,001–10,000	\$90

Fees for internal inspection of regulated boilers exceeding ten thousand (10,000) square feet of heating surface shall be charged at the rates specified in subsection (i).

(c) The fees for the external inspection of regulated boilers shall be as follows:

Heating Surface Area (in square feet)	Amount
0–50	\$18
51–150	\$24
151 or more	\$40

(d) The fees for the internal or external inspection of regulated pressure vessels shall be based on the sectional area of the vessel (overall length head to head times the width or outside diameter) expressed in square feet as follows:

Area (in square feet)	Amount
0–50	\$15
51–150	\$30
Greater than 150	\$60

(e) The fee for internal or external inspection of a service water heater shall be ten dollars (\$10).

(f) The operating permit processing fee for all certificates of inspection (operating permits) issued by the division shall be twenty-five dollars (\$25). In all cases, this fee is in addition to fees for inspection activities.

(g) A request to recreate an operating permit that has been lost shall be accompanied by a payment of fifteen dollars (\$15).

~~(h) An application for a variance from a rule adopted by the boiler and pressure vessel rules board shall be accompanied by a fee of two hundred dollars (\$200). An additional five hundred dollars (\$500) shall accompany the application when engineering calculations are included for review.~~

(~~h~~) **(h)** The fees for inspection or audit, or both, activities requested that are not otherwise listed in this section shall be either of the following:

(1) Three hundred dollars (\$300) per day, not to exceed four (4) regular working hours.

(2) Six hundred dollars (\$600) per day exceeding four (4) regular working hours, plus seventy-five dollars (\$75) per hour exceeding eight (8) regular working hours in a particular day, plus actual expenses incurred, such as:

(A) travel;

(B) lodging; and

(C) dining;

expenses.

A fee computed under this subsection must cover the period from the time the inspector leaves the inspector's regular work schedule to the time the inspector returns to the inspector's regular work schedule and is payable upon receipt of an invoice.

(~~h~~) **(i)** A payment of twenty dollars (\$20) per object inspected shall accompany the annual report of inspection of owner or user inspection agencies.

(~~k~~) **(j)** An application for an owner or user inspection agency certificate shall be accompanied by payment of five hundred dollars (\$500).

(~~h~~) **(k)** An application to sit for an inspector examination shall be accompanied by payment of one hundred dollars (\$100).

(~~m~~) **(l)** The annual renewal of an inspector license shall be accompanied by payment of twenty-five dollars (\$25).

(~~n~~) **(m)** All payments to the office are payable to the fire and building services fund. The state fire marshal or the building law compliance officer may authorize the refunding of any fee specified in this section that was paid or collected in error. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-13; filed Dec 9, 2002, 11:15 a.m.: 26 IR 1556, eff Apr 1, 2003; filed Aug 30, 2006, 2:25 p.m.: 20060927-IR-675050108FRA; readopted filed Aug 8, 2012, 8:08 a.m.: 20120905-IR-675120260RFA; readopted filed Jul 3, 2018, 2:22 p.m.: 20180801-IR-675180204RFA*)

SECTION 3. 675 IAC 12-5-1 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-1 Purpose

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 1. The purpose of this rule (675 IAC 12-5) is to establish administrative procedures and general provisions for the ~~Commission in the exercising of its variance authority under implementation of IC 22-13-2-11.~~ *(Fire Prevention and Building Safety Commission; 675 IAC 12-5-1; filed Jul 17, 1987, 2:30 pm: 10 IR 2685, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the secretary of state. LSA Document #87-53 was filed Jul 17, 1987.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; readopted filed Sep 21, 2007, 9:20 a.m.: 20071010-IR-675070388RFA; readopted filed Oct 10, 2007, 9:16 a.m.: 20071031-IR-675070388RFA; readopted filed Aug 8, 2012, 8:08 a.m.: 20120905-IR-675120260RFA; readopted filed Jul 3, 2018, 2:22 p.m.: 20180801-IR-675180204RFA)*

SECTION 4. 675 IAC 12-5-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-2 Definitions

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11; IC 25-4; IC 25-31

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Applicant" ~~or "applicant for a variance"~~ means the person who would be in violation of a rule of the commission if ~~he or she~~ **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.

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

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

~~(f)~~ **(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.

~~(g)~~ **(g)** "Staff" or "commission's staff" means personnel of the department who serve as staff for the commission.

(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. However, where enforcement of the building laws of the commission, upon the property related to the variance application, is within the sole authority of the state or the scope of the variance applies statewide, "local building official" means the state building commissioner.

(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. However, if the scope of the variance applies statewide or no chief serves the jurisdiction in which the property related to the variance is located, "local fire official" means the state fire marshal.

~~(h)~~ (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.

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-2; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2685, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2085; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Aug 30, 2006, 2:25 p.m.: 20060927-IR-675050108RFA; readopted filed Sep 21, 2007, 9:20 a.m.: 20071010-IR-675070388RFA; readopted filed Oct 10, 2007, 9:16 a.m.: 20071031-IR-675070388RFA; readopted filed Aug 8, 2012, 8:08 a.m.: 20120905-IR-675120260RFA; readopted filed Jul 3, 2018, 2:22 p.m.: 20180801-IR-675180204RFA)

SECTION 5. 675 IAC 12-5-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-4 Application process

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 4. (a) A **request for a** variance from the rules of the commission may be applied for at any time.

(b) ~~An~~ **To apply for a variance from a rule adopted by the commission, the applicant, or the applicant's representative, for a variance** shall do the following:

(1) submit ~~an~~ **a completed** application to the ~~commission or~~ **department in a manner, and on a form, a:**

~~(A) form~~ **provided approved** by the ~~commission staff; or on a~~

~~(B) reasonable facsimile;~~

~~the information required by section 5 of this rule.~~ **department; and**

(2) pay the **variance application** fee required under 675 IAC 12-3-4 ~~by a check or money order payable to the fire and building services fund.~~

~~(e) An application may be submitted:~~

~~(1) by the applicant; or~~

~~(2) on the applicant's behalf by a representative.~~

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-4; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2686, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2086; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1000; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Aug 30, 2006, 2:25 p.m.: 20060927-IR-675050108FRA; readopted filed Sep 21, 2007, 9:20 a.m.: 20071010-IR-675070388RFA; readopted filed Oct 10, 2007, 9:16 a.m.: 20071031-IR-675070388RFA; readopted filed Aug 8, 2012, 8:08 a.m.: 20120905-IR-675120260RFA; readopted filed Jul 3, 2018, 2:22 p.m.: 20180801-IR-675180204RFA).

SECTION 6. 675 IAC 12-5-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-5 Application

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 5. (a) **All information and documentation an applicant wishes to be considered as part of the applicant's variance request must 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 ~~completed~~ complete application for a variance shall mustshall include the following information ~~either on the application form or, if appropriate, as an attachment:~~

(1) The name and address of the following:

(A) The applicant.

- (B) The person submitting the application if it is not submitted by the applicant.
- (2) The address and county of the premises **or equipment** for which the variance is being sought. **If an address does not exist, a specific identifiable description of the location of the property which is acceptable to the department.**
- (3) If the variance involves a project for which plans and specifications have been filed for a design release under 675 IAC 12-6, the division's project number.
- (4) Identification (by specific citation) of the rule of the commission from which the applicant requests a variance.
- (5) Specific description of the rooms, equipment, ~~etc., involved~~ **items, and location affected by the variance request.**
- (6) A ~~specific description of either of the following~~ **statement of facts and supporting evidence detailing:**
- (A) the undue hardship that compliance with this 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 ~~and the information required by section 7 of this rule.~~
- (7) A **statement of facts and supporting evidence detailing:**
- (A) ~~that~~ **how** noncompliance with the rule will not be adverse to the public health, safety, or welfare ~~and a specific explanation as to why that is so;~~ or
 - (B) alternative actions that the applicant ~~would be willing to~~ **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 ~~and a specific explanation as to why it or they would be adequate.~~
- (8) ~~One (1) set of~~ **A copy of** plans or drawings (~~eleven (11) inches × seventeen (17) inches or smaller~~) and supporting data that describe the area **or equipment** affected by the requested variance ~~and any alternatives proposed by the applicant.~~ **For boiler or pressure vessel variance requests, the drawings of the equipment must shall have all materials and dimensions identified in the English language and USA units of measurement.**
- (9) **If the variance concerns a regulated boiler or pressure vessel, the applicant must shall also include the following:**
- (A) ASME B&PVC required calculations, including relief device 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.
- (10) **If arguing that similar variances have been granted, a citation to the previously granted variances relied upon and an explanation of how this request is similar to the previously granted variances.**
- (11) **Any other reasonable data and information that the department or commission may require to make an informed decision on the request for a variance.**

~~(9) Any information that the applicant believes may be helpful to the commission and its staff in evaluating a variance request, such as photographs.~~

~~(10) Written documentation that the:~~

~~(A) local fire department; and~~

~~(B) local building official;~~

~~are aware of the nature of the variance.~~

~~(11) Written documentation that each of the local fire official and local building official is aware of the variance shall consist of one (1) or more of the following:~~

~~(A) A letter from each of the local fire official and the local building official on their respective official stationery stating that a copy of the variance application has been received.~~

~~(B) A copy of any of the following:~~

~~(i) A certified mail return receipt from each of the local fire official and the local building official, together with a copy of the variance application, signed by the local fire official or local building official, as applicable, or their respective authorized representatives.~~

~~(ii) Any one (1) of the following stating that a copy of the variance application has been received:~~

~~(AA) An electronic mail communication from an authorized representative of the local fire official or local building official.~~

~~(BB) A facsimile communication, on the local fire official's or local building official's letterhead, from the local fire official or local building official.~~

~~(CC) A letter from the applicant to each of the local fire official and local building official, signed by the local fire or building official, as applicable, showing receipt of a copy of the variance application.~~

(12) The email address of the local building official and local fire official. However, if filed on a paper application, the application will not be considered complete until it has been uploaded into the public portal.

~~(12) (13) If the requested variance involves a project for which plans and specifications have been, or must are required to be, filed for a design release under 675 IAC 12-6, a signed statement **an affirmation** by the design professional (if there is one **or is required**) that the information contained in the application is accurate.~~

~~(13) (14) If the application is submitted on the applicant's behalf, a signed statement **an affirmation**, under penalty of perjury, by the applicant of the following:~~

~~(A) That ~~he or she~~ **the applicant** is aware of the variance request.~~

~~(B) That ~~it~~ **the application** is **being** made on ~~his or her~~ **the applicant's** behalf.~~

~~(14) (15) A signed statement **An affirmation**, under penalty of perjury, by the:~~

~~(A) person submitting the application; or~~

~~(B) applicant;~~

that the information contained in the application is **true, accurate, and complete.**

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-5; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2686, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30

days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Aug 10, 1994, 10:40 a.m.: 17 IR 2859; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2086; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1000; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Aug 30, 2006, 2:25 p.m.: 20060927-IR-675050108FRA; readopted filed Sep 21, 2007, 9:20 a.m.: 20071010-IR-675070388RFA; readopted filed Oct 10, 2007, 9:16 a.m.: 20071031-IR-675070388RFA; readopted filed Aug 8, 2012, 8:08 a.m.: 20120905-IR-675120260RFA; readopted filed Jul 3, 2018, 2:22 p.m.: 20180801-IR-675180204RFA)

SECTION 7. 675 IAC 12-5-5.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 12-5-5.1 Notice to local officials

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 5.1 (a) An applicant for a variance shall provide notice to the local fire official and local building official of the filing of a variance application. 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) Notices under subsection (a) are deemed properly served if delivered upon delivery to the address maintained under subsection (c).

SECTION 8. 675 IAC 12-5-5.2 IS ADDED TO READ AS FOLLOWS:

675 IAC 12-5-5.2 Written Comments

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 5.2 (a) Any interested party may submit written comments concerning an application for a variance to the department.

(b) Written comments shall be submitted in a manner, and on a form, approved by the department and must shall contain:

(1) the variance number of the application commented on;

(2) the name and contact information for the interested party; and

(3) information concerning whether the interested party is opposed to, unopposed to, or in ~~favor~~ support of approval of the variance request.

SECTION 9. 675 IAC 12-5-5.3 IS ADDED TO READ AS FOLLOWS:

675 IAC 12-5-5.3 Referring Variances to the Commission

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 5.3 (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 rule, 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 may make a 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 10. 675 IAC 12-5-6.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 12-5-6.1 Consideration of Applications

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 6.1 (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 a meeting prior to making a determination.

SECTION 11. 675 IAC 12-5-6.2 IS ADDED TO READ AS FOLLOWS:

675 IAC 12-5-6.2 Determinations

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 6.2 (a) The department or the commission (whichever body is making the determination) shall wait at least five (5) business days following posting of a completed variance application to the public portal 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;
- (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 to compliance, 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, and shall be posted to the electronic database created under IC 22-13-5-4(c).

(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.

(f) The department shall submit a report to the commission of all variance determinations made by the department since the commission's last meeting.

SECTION 12. 675 IAC 12-5-9 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-9 Sanctions imposed on previously issued variances

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 4-21.5-4; IC 22-12-7-6; IC 22-12-7-7; IC 22-13-2-11

Sec. 9. (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) ~~division~~ **department**;
 - (2) **commission**
 - (2) (3) local fire ~~department~~ official;
 - (3) (4) local building official; and
 - (4) (5) individuals affected by the variance;

may submit information to the commission concerning the desirability of the imposition of such a sanction. ~~At the commission's meeting at which the sanction is on the agenda, participation by the interested party or representative of the interested party is at the discretion of the commission.~~

(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 required by section ~~5(40)~~ **5.1** of this rule 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. (*Fire Prevention and Building Safety Commission; 675 IAC 12-5-9; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2687, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2088; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1001; errata filed Jan 31, 2001, 9:22 a.m.: 24 IR 1670; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Aug 30, 2006, 2:25 p.m.: 20060927-IR-675050108FRA; readopted filed Sep 21, 2007, 9:20 a.m.: 20071010-IR-675070388RFA; readopted filed Oct 10, 2007, 9:16 a.m.: 20071031-IR-675070388RFA; readopted filed Aug 8, 2012, 8:08 a.m.: 20120905-IR-675120260RFA; readopted filed Jul 3, 2018, 2:22 p.m.: 20180801-IR-675180204RFA*)

SECTION 13. THE FOLLOWING ARE REPEALED: 675 IAC 12-5-3; 675 IAC 12-5-6; 675 IAC 12-5-8; and 675 IAC 30-2