

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule

LSA Document #20-626

DIGEST

Amends 675 IAC 12-3-4, 675 IAC 12-5-1, 675 IAC 12-5-2, 675 IAC 12-5-4, 675 IAC 12-5-5, and 675 IAC 12-5-9 and adds 675 IAC 12-5-5.1, 675 IAC 12-5-5.2, 675 IAC 12-5-5.3, 675 IAC 12-5-6.1, and 675 IAC 12-5-6.2 to implement 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. Repeals 675 IAC 12-5-3, 675 IAC 12-5-6, and 675 IAC 12-5-8. Effective July 1, 2021.

675 IAC 12-3-4; 675 IAC 12-5-1; 675 IAC 12-5-2; 675 IAC 12-5-3; 675 IAC 12-5-4; 675 IAC 12-5-5; 675 IAC 12-5-5.1; 675 IAC 12-5-5.2; 675 IAC 12-5-5.3; 675 IAC 12-5-6; 675 IAC 12-5-6.1; 675 IAC 12-5-6.2; 675 IAC 12-5-8; 675 IAC 12-5-9

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 12-5-1 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 3. 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) "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, the term "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, the term "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-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 4. 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 applicant for a variance shall do the following:~~

~~(1) submit an application to the commission on a:~~

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

~~(B) reasonable facsimile;~~

~~the information required by section 5 of this rule.~~

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

~~(c) 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 5. 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 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 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 that 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 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 shall also include the following:

(A) American Society of Mechanical Engineers Boiler and Pressure Vessel Code (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 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.

~~(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.~~

(11) 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) 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) 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) ~~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 6. 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) 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.

(c) Local fire officials and local building officials shall notify the department of any changes or discrepancies found in the contact information maintained in subsection (b). The department shall update the information within five (5) business days of receiving the notice of such changes.

(d) Notices under subsection (a) are deemed properly served upon delivery to the address maintained under subsection (b).

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-5.1)

SECTION 7. 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 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 support of approval of the variance request.

(c) Written comments may contain any other relevant information.

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-5.2)

SECTION 8. 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.

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-5.3)

SECTION 9. 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.

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-6.1)

SECTION 10. 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; IC 22-13-2-14.1

Sec. 6.2. (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.

(b) The department or the commission (whichever body is making the determination) may grant a variance if the applicant:

(1) 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 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.

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

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-6.2)

SECTION 11. 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(10) 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 12. THE FOLLOWING ARE REPEALED: 675 IAC 12-5-3; 675 IAC 12-5-6; 675 IAC 12-5-8.