

and Building Safety Commission; 675 IAC 12-4-12; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2684; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1274, eff Mar 1, 1988; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2085; filed Nov 20, 2000, 3:25 p.m.: 24 IR 999; 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; filed Oct 27, 2009, 2:36 p.m.: 20091125-IR-675090186FRA)

Rule 5. Variances

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 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)*

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:

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

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

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

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

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

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

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

history of the United States or of Indiana.

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

(h) "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.

(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)

675 IAC 12-5-3 Statutory authority

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

Sec. 3. As provided for by IC 22-13-2-11, the Commission may grant a variance to a rule it has adopted if the applicant pays the appropriate fee and submits facts demonstrating that:

- (1) compliance with the rule will impose an undue hardship upon the applicant or prevent the preservation of an architecturally significant or historically significant part of a building or other structure; and
- (2) either:

- (A) noncompliance with the rule; or
- (B) compliance with an alternative requirement approved by the Commission,

will not be adverse to the public health, safety, or welfare. *(Fire Prevention and Building Safety Commission; 675 IAC 12-5-3; 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)*

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 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 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)

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 completed 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 for which the variance is being sought.

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- (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.
- (6) A specific description of either of the following:
 - (A) The undue hardship that compliance with this rule will impose on the applicant.
 - (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:
 - (A) that 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 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 plans or drawings (eleven (11) inches × seventeen (17) inches or smaller) and supporting data that describe the area affected by the requested variance and any alternatives proposed by the applicant.
- (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) If the requested variance involves a project for which plans and specifications have been, or must be, filed for a design release under 675 IAC 12-6, a signed statement by the design professional (if there is one) that the information contained in the application is accurate.
- (13) If the application is submitted on the applicant's behalf, a signed statement under penalty of perjury by the applicant of the following:
 - (A) That he or she is aware of the variance request.
 - (B) That it is made on his or her behalf.
- (14) A signed statement under penalty of perjury by the:
 - (A) person submitting the application; or
 - (B) applicant;that the information contained in the application is accurate.

(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)

675 IAC 12-5-6 Consideration of applications

Authority: IC 22-13-2-13

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

Sec. 6. (a) A completed variance application may be reviewed by the commission's staff before its consideration by the commission. Accordingly, and to allow for mailing of the application to commission members for their review, no variance request shall be placed on the commission's agenda for any meeting of the commission scheduled for a date less than twenty-eight (28) calendar days subsequent to the receipt of the variance request, except where the applicant would be prejudiced by having to wait for a later meeting because of excessive loss of time or unreasonable cost. Otherwise, a completed variance application shall be placed on the agenda for the first meeting scheduled later than twenty-eight (28) calendar days subsequent to the receipt of the completed variance application. If an application is not properly completed within thirty (30) days of its receipt by the commission's staff, the application shall be placed on the agenda for the next scheduled meeting of the commission with a notation that the application is not complete.

(b) The commission's staff may hold informal meetings with the applicant or representatives, or both, in the course of its review of a variance application.

(c) At its discretion, the commission's staff may make a recommendation to the commission concerning a variance request.

(d) The applicant may submit additional information or materials before the mailing date on which meeting information is mailed by staff to members of the commission before the commission's meeting at which the variance will be considered in order to clarify either of the following:

(1) The nature of the hardship or difficulty of compliance.

(2) The equal alternative or alternatives being offered.

(e) At the commission's meeting at which the variance is on the agenda, participation by the applicant or representative is at the discretion of the commission.

(f) If any additional factors, not considered by the commission's staff in its review of the variance application, arise during consideration of the variance application at the meeting, the commission may table the variance until its next meeting to allow for further review.

(g) If the commission grants the variance, it may, if appropriate, impose requirements other than those suggested by the applicant.

(h) Any application for variance, pending or tabled for lack of information requested by the staff or the commission, after three (3) consecutive months, may be placed on the commission's agenda for determination. The commission shall base its determination on the written information provided by the applicant.

(i) The commission shall not grant a variance to any application that has been applied for, for which there is no violation of the commission's rules.

(j) An order granting or not granting a variance shall be issued following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, that order shall be deemed merely to have been a preliminary determination. (*Fire Prevention and Building Safety Commission; 675 IAC 12-5-6; 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.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2087; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1001; 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)*)

675 IAC 12-5-7 Architecturally or historically significant structures

Authority: IC 22-13-2-13

Affected: IC 14-21; IC 22-12-7-3; IC 22-13-2-11

Sec. 7. A structure shall be deemed as architecturally significant or historically significant if it has been placed on the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. § 470 et seq.) or if it has been placed on the

Register of Indiana Historic Sites and Structures under IC 14-21. A determination that a structure has been determined eligible for the Register of Indiana Historic Sites and Structures by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources creates a presumption that a structure is architecturally or historically significant. *(Fire Prevention and Building Safety Commission; 675 IAC 12-5-7; 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.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2088; 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)*

675 IAC 12-5-8 Fee refunds

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

Sec. 8. (a) The variance application filing fee provided for by 675 IAC 12-3-4 is not refundable. However, the variance plan examination and processing fee is refundable if the applicant withdraws the application prior to the variance request being placed on the commission's agenda, or one (1) week prior to the commission's meeting on which it has been placed on the agenda, whichever is later.

(b) When the commission determines that a variance is not required because there is no violation of the commission's rules, or any variance fee has been paid or collected in error, the fee is refundable. *(Fire Prevention and Building Safety Commission; 675 IAC 12-5-8; 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.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2088; 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)*

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 commission may impose a sanction concerning a variance it has previously issued under IC 22-12-7-7. Available sanctions are as follows:

- (1) Revocation.
- (2) Suspension.
- (3) Censure.
- (4) Reprimand.
- (5) Probation.
- (b) The:
 - (1) division;
 - (2) local fire department;
 - (3) local building official; and
 - (4) 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 commission 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) 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)

Rule 6. Design Releases

675 IAC 12-6-1 Purpose and scope

Authority: IC 22-13-2-13
 Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15-3

Sec. 1. (a) The purpose of this rule is to establish administrative procedures and general provisions for the filing of plans and specifications and the issuance of design releases under IC 22-15-3.

(b) This rule covers the filing of plans and specifications and the issuance of design releases for Class 1 structures. The filing of plans and specifications and the issuance of design releases for industrialized building systems and mobile structures are covered by the special administrative rules for industrialized building systems and mobile structure systems under 675 IAC 15. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-1; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2688, 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 Sep 13, 1988, 2:34 p.m.: 12 IR 319; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2089; errata filed Apr 15, 1998, 10:30 a.m.: 21 IR 3367; 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)*

675 IAC 12-6-2 Definitions

Authority: IC 22-13-2-13
 Affected: IC 22-12-1-5; IC 22-12-1-17; IC 22-15-3; IC 25-4; IC 25-31; IC 32-25-2-9

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

(b) "Class 1 structure" means the following:

- (1) Any part of the following:
 - (A) A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:
 - (i) The public.
 - (ii) Three (3) or more tenants.
 - (iii) One (1) or more persons who act as the employees of another.
 - (B) A site improvement affecting access by persons with physical disabilities to a building or structure described in this subdivision.
 - (C) Storage facilities, tanks, and dispensing equipment for flammable and combustible liquids or gases.
- (2) Subdivision (1) includes a structure that contains three (3) or more condominium units (as defined in IC 32-25-2-9) or other units that are as follows:
 - (A) Intended to be or are used or leased by the owner of the units.
 - (B) Not completely separated from each other by an unimproved space.
- (3) Subdivision (1) does not include the following:
 - (A) A building or structure that is as follows:
 - (i) Intended to be or is used only for an agricultural purpose on the land where it is located.
 - (ii) Not used for retail trade or is a stand used for retail sales of farm produce for eight (8) or fewer consecutive months in a calendar year.
 - (B) A Class 2 structure as defined by IC 22-12-1-5.
 - (C) A vehicular bridge.
 - (D) A structure that is intended to be or is occupied solely to provide periodic maintenance or repair of either of the following: