

**FILED BEFORE**

**FIRE PREVENTION AND BUILDING SAFETY COMMISSION**

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**GRATEFUL CARE ABA,**

**Petitioner,**

**vs.**

**WHITE RIVER TOWNSHIP FIRE  
DEPARTMENT,**

**Respondent.**

**ADMINISTRATIVE CAUSE NO.:  
DHS-2405-001267**

**RESPONDENT’S MOTION FOR ORAL ARGUMENT AND ADMISSION OF  
ADDITIONAL EVIDENCE**

Respondent, White River Township Fire Department (“White River”), by the undersigned counsel and pursuant to Indiana Code § 4-21.5-3-29(e), hereby files its motion for oral argument and admission of additional evidence, namely Respondent’s Exhibits 8 and 9. In Support of this Motion, Respondent states the following:

1. On December 20, 2024, Administrative Law Judge Vanessa Voigt Gould (“ALJ”) issued the Non-Final Administrative Order (“Non-Final Order”), in favor of Petitioner Grateful Care, ABA (“Grateful Care”) and against Respondent White River.

2. On January 6, 2025, Respondent White River timely filed its objection to the Non-Final Order with the ultimate authority, the Fire Prevention and Building Safety Commission (“FPBSC”).

3. Pursuant to the Administrative Procedures Act (“AOPA”), “the ultimate authority or its designee shall conduct proceedings to issue a final order.” Ind. Code § 4-21.5-3-28(b).

4. AOPA also states the following:

- (e) In the conduct of its proceedings, the ultimate authority or its designee shall afford each party an opportunity to present briefs. The ultimate authority or its designee may:
- (1) afford each party an opportunity to present oral argument;
  - (2) have a transcript prepared, at the agency's expense, of any portion of the record of a proceeding that the ultimate authority or its designee considers necessary;
  - (3) exercise the powers of an administrative law judge to hear additional evidence under sections 25 and 26 of this chapter; or
  - (4) allow nonparties to participate in a proceeding in accordance with section 25 of this chapter.

Ind. Code § 4-21.5-3-28(e).

5. The FPBSC would benefit from oral argument presented by counsel for the Respondent and Petitioner.

6. The FPBSC would benefit from hearing additional evidence in support of Repondent’s objection, namely Exhibit 8 and 9, which are attached to this motion. These exhibits are publicly available documents demonstrating that at least one (1) other ABA therapy provider in Greenwood, Indiana, Circle City ABA, has previously sought an exemption from the fire safety measures required for I-4 Occupancies. Circle City ABA planned to convert “an existing office building (B Occupancy) into an Autism Clinic (I-4 Occupancy),” which was non-sprinkled. [See Resp. Ex. 8 at 4.] In October 2022, Circle City ABA sought a variance from the Indiana Department of

Homeland Security (IDHS), requesting exception from the requirements that it (a) install a 2-hour fire wall between its building and an adjoining building, pursuant to 2014 IBC 706, and (b) install a sprinkler system, pursuant to 2014 IBC 903.2.6. [Resp. Ex. 8.] On November 1, 2022, the IDHS granted Circle City ABA's variance request as to the 2-hour fire wall requirement, permitting a 2-hour fire barrier instead. [Resp. Ex. 8 at 3; Resp. Ex. 9.] But the IHDS denied the variance from the requirement to install a sprinkler system. [Resp. Ex. 9.]<sup>1</sup>

7. The FBPSC may also benefit from additional briefing on all issues or a particular issue raised in the Non-Final Order and/or having a transcript prepared of the 3 hour and 46 minute evidentiary hearing that occurred and was recorded before the ALJ.

WHEREFORE, Respondent White River respectfully requests that the FBPSC schedule oral argument at a time when counsel for all parties are available, admit Respondent's Exhibits 8 and 9, order such additional proceedings permitted by Ind. Code § 4-21.5-3-28(e) that it deems just and proper, and order all other such relief that is just and appropriate under the circumstances.

Date: January 6, 2025

Respectfully submitted,

**KROGER, GARDIS & REGAS, LLP**

/s/ Brian Bosma

Brian Bosma, Atty. No. 4180-49

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<sup>1</sup> In the alternative, the FBPSC may overrule the ALJ's order denying the admission of Exhibits 8 and 9 for the reasons discussed in Respondent White River's objection. See *Objection* at Section C.

Justin R. Olson, Atty. No. 31450-49  
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Email: [bbosma@kgrlaw.com](mailto:bbosma@kgrlaw.com)  
[jolson@kgrlaw.com](mailto:jolson@kgrlaw.com)

ATTORNEYS FOR RESPONDENT WHITE RIVER  
TOWNSHIP FIRE DEPARTMENT

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Motion for Oral Argument and Additional Evidence* was served via service method indicated below on this 6<sup>th</sup> day of January 2025.

### **Opposing Party:**

Grateful Care ABA  
c/o Jeffrey Bellamy  
Attorney  
Thrasher Buschmann & Voelkel, P.C.  
8440 Woodfield Crossing Boulevard  
Suite 310  
Indianapolis, IN 46240  
[bellamy@indiana-attorneys.com](mailto:bellamy@indiana-attorneys.com)  
VIA EMAIL

### **Ultimate Authority:**

Fire Prevention and Building Safety Commission  
Indiana Department of Homeland Security  
302 W. Washington Street, Room E-208  
Indianapolis, IN 46204.  
[buildingcommission@dhs.in.gov](mailto:buildingcommission@dhs.in.gov)  
VIA EMAIL

### **Office of Administrative Law Proceedings:**

Indiana Office of Administrative Law Proceedings  
100 N. Senate Ave., Room N802  
Indianapolis, IN 46204  
[OALP@Oalp.in.gov](mailto:OALP@Oalp.in.gov)  
VIA EMAIL

Signature: /s/ Justin R. Olson  
Served by: Justin R. Olson

# EXHIBIT 8

Owner / Applicant Information

Gregory Gurnik  
CGMP, LLC.  
5820 N 400 W

BARGERSVILLE IN 46106

Phone 3179794892

Email GREG@GURNIK.NET

Submitter Information

Derek Holman  
RTM Consultants, Inc.  
6640 Parkdale Pl Suite J

Indianapolis IN

Phone 3173297700

Email dholman@rtmconsultants.com

Designer Information

Todd Buerger  
Architectural Solutions Consulting, LLC.  
941 Rosalind Pl

Carmel IN

Phone 3175012230

Email tbuerger@hotmail.com

Project Information

Circle City ABA  
1777 W Stones Crossing Rd

Greenwood IN 46143

County JOHNSON

Project Type New  Addition  Alteration  Existing  Change of Occupancy

Project Status  U F=Filed U or Null=Unfiled

IDHS Issued Correction order?  Has Violation been Issued?

Violation Issued by: NA

Local Building Official

Phone:  Email:

Local Fire Official

Phone:  Email:

Variance Details

Code Name: Other Code (Not in the list provided)  
2014 InBC Section 706

Conditions: A 2 hour fire barrier will be provided in lieu of a 2 hour fire wall in order to create separate buildings. The code requires that a 2 hour, structurally independent, fire wall be provided in order to create separate buildings. The existing building is a B Occupancy, Type VB construction, non-sprinklered and approximately 15,254 SF. Approximately 6,951 SF of the building is being converted into an Autism Clinic, I-4 Occupancy, which would be a change of occupancy. The allowable area, of the total building, per current rules is permitted to be a maximum of 11,250 SF. By creating a separate building for the Autism Clinic, this would allow both sides of the fire rated separation to be within the allowable area.

DEMONSTRATION THAT PUBLIC HEALTH, SAFETY, AND WELFARE ARE PROTECTED:

1=Non-compliance with the rule will not be adverse to the public health, safety or w

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2= Applicant will undertake alternative actions in lieu of compliance with the rule to ensure that granting of the variance will not be adverse to public health, safety, or welfare. Explain why alternative actions would be adequate (be specific).

Facts: 1. The Autism Clinic will be provided with a fire alarm system.  
2. Smoke detection will be provided throughout the Autism Clinic and connected to the fire alarm system - not required by code.  
3. Similar variances have been granted in the past to allow the use of fire barriers in lieu of fire walls.

DEMONSTRATION OF UNDUE HARDSHIP OR HISTORICALLY SIGNIFICANT STRUCTURE:

Y

Imposition of the rule would result in an undue hardship (unusual difficulty) because of physical limitations of the construction site or its utility services.

Imposition of the rule would result in an undue hardship (unusual difficulty) because of major operational problems in the use of the building or structure.

Y

Imposition of the rule would result in an undue hardship (unusual difficulty) because of excessive costs of additional or altered construction elements.

Imposition of the rule would prevent the preservation of an architecturally or a historically significant part of the building or structure

Facts: This is an existing building that is currently over allowable area per current rules of the commission. The hardship would be to construct a structurally independent fire wall with required vertical extensions, horizontal extensions and exterior wall intersections into an existing building. The cost of the fire wall requirements is a financial hardship to the project.



Variance Details

Code Name:

2014 InBC Section 903.2.6

Conditions: A sprinkler system will not be provided in the newly converted Autism Clinic. Code requires that buildings with an I Occupancy be provided with an automatic sprinkler system throughout. The project involves the conversion of approximately 6,951 SF of an existing office building (B Occupancy) into an Autism Clinic (I-4 Occupancy). The existing building is non-sprinklered and Type VB construction.

DEMONSTRATION THAT PUBLIC HEALTH, SAFETY, AND WELFARE ARE PROTECTED:

1=Non-compliance with the rule will not be adverse to the public health, safety or w

2

2= Applicant will undertake alternative actions in lieu of compliance with the rule to ensure that granting of the variance will not be adverse to public health, safety, or welfare. Explain why alternative actions would be adequate (be specific).

Facts: 1. The Autism Clinic will be provided with a fire alarm system.  
2. Smoke detection will be provided throughout the Autism Clinic and connected to the fire alarm system - not required by code.  
3. Therapy is delivered on a 1:1 Technician to Patient ratio. Additional staff is also on site putting the staff to patient ratio greater than 1:1 overall. Please refer to Circle City ABA letter provided.  
4. Three means of egress are provided from the Autism Clinic - above the code required 2 means of egress.  
5. Maximum egress travel distance from the Autism Clinic will be approximately 102' - code permits up to 200'.

DEMONSTRATION OF UNDUE HARDSHIP OR HISTORICALLY SIGNIFICANT STRUCTURE:

Y Imposition of the rule would result in an undue hardship (unusual difficulty) because of physical limitations of the construction site or its utility services.

Imposition of the rule would result in an undue hardship (unusual difficulty) because of major operational problems in the use of the building or structure.

Y Imposition of the rule would result in an undue hardship (unusual difficulty) because of excessive costs of additional or altered construction elements.

Imposition of the rule would prevent the preservation of an architecturally or a historically significant part of the building or structure

Facts: The hardship would be the physical limitations of installing an automatic sprinkler system throughout an existing building that is already partially occupied. Also, the financial cost to provide an automatic sprinkler system would be a hardship to the project when the facility is operated similar to a medical office space, which would be classified as a B Occupancy and not be required to have a sprinkler system. The clinic operates on at least a 1:1 ratio.

# EXHIBIT 9



**ERIC J. HOLCOMB, GOVERNOR**  
**STATE OF INDIANA**  
**DEPARTMENT OF HOMELAND SECURITY**

**JOEL M. THACKER, EXECUTIVE DIRECTOR**

INDIANA DEPARTMENT OF HOMELAND SECURITY  
INDIANA GOVERNMENT CENTER-SOUTH, ROOM E208  
302 W. WASHINGTON ST.  
INDIANAPOLIS, IN 46204  
317-232-2222

Gregory Gurnik  
CGMP, LLC.  
5820 N 400 W

November 1, 2022

BARGERSVILLE, IN 46106

Dear Gregory Gurnik,

This letter provides notice of the action taken on your application(s) for a variance(s) from the Commission's rules under IC 22-13-2-11.

Project Number	Project Name	Variance Number
0	Circle City ABA	22-10-27

**Conditions**

Edition	Code	Code Section	Action & Date
	Other Code (Not in the list provided)	2014 InBC Section 706	Approved as submitted 11/01/2022
		2014 InBC Section 903.2.6	Not Approved 11/01/2022

If you have any questions regarding this order, you may contact that Department at (317) 232-2222.

**ADMINISTRATIVE REVIEW**

If you desire administrative review of this order, you must comply with the requirements of Indiana Code IC 4-21.5-3-7 and file a written petition for review within fifteen (15) days after receiving notice of this order. Your petition for review must state facts demonstrating that you are: (1) a person to whom the order is specifically directed; (2) aggrieved or adversely affected by the order; or (3) entitled to review under any law. You may submit your petition by one of the following methods:

**U.S.MAIL OR PERSONAL SERVICE**

Indiana Department of Homeland Security  
Fire Prevention and Building Safety Commission  
302 W.Washington Street, Rm. E208  
Indianapolis, IN 46204

**ONLINE**

By completing the form at  
<https://www.in.gov/dhs/appeals.htm>

For additional information about the administrative review process and applicable templates that may be used for filings, visit the following link  
<https://www.in.gov/dhs/appeals.htm>