

**STATE OF INDIANA  
BEFORE THE FIRE PREVENTION AND BUILDING  
SAFETY COMMISSION**

**IN RE:** ) **ADMINISTRATIVE CAUSE NO.**  
 ) **14-15**  
**8560 BROADWAY** )  
 )  
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 )

**NON-FINAL ORDER OF DISMISSAL**

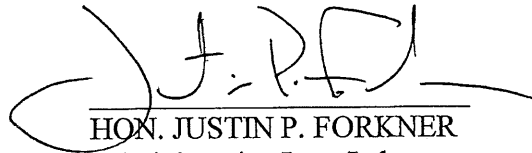
On November 26, 2014, the Respondent in this matter filed a motion to dismiss based on Indiana Rule of Trial Procedure 12(B)(6). After due consideration of the motion and the Petitioner's reply, on January 5, 2015, the ALJ granted the motion in a written order that included findings of fact and conclusions of law. The Petitioner was given ten days from the issuance of that order to amend his petition for administrative review. That time has passed.

**Accordingly, the Administrative Law Judge now enters this Non-Final Order of Dismissal.** The ultimate authority in this matter is the Indiana Fire Prevention and Building Safety Commission. Indiana Code § 4-21.5-3-29(d) requires any party seeking to preserve an objection to this order for judicial review to file a written objection that

1. identifies the basis of the objection with reasonable particularity; and
2. is filed with the Commission within fifteen days (or any longer period set by statute) after this order is served.

In the absence of an objection from a party or notice from the Commission of its intent to review any issue related to this order, the Commission shall affirm this order in accordance with Indiana Code § 4-21.5-3-29(c). **This order will be considered by the Commission on March 3, 2015, at 9:00 a.m. (EST), in Conference Center Room B, Indiana Government Center South, 302 West Washington Street, Indianapolis, IN 46204.**

Date: January 30, 2015



HON. JUSTIN P. FORKNER  
Administrative Law Judge  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Rm W246  
Indianapolis, Indiana 46204  
Telephone: (317) 234-8917  
Fax: (317) 232-0146  
E-mail: jforkner@dhs.in.gov

A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

Philip Topor; Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

and personally served on the following attorney of record:

Pamela M. Walters, Esq.; Staff Attorney  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Room W246  
Indianapolis, IN 46204

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
GRANTING RESPONDENT'S MOTION TO DISMISS**

The Respondent in this matter, the Indiana Department of Homeland Security, has filed a motion to dismiss pursuant to Indiana Trial Rule 12(B)(6). For the reasons explained below, the Administrative Law Judge hereby **GRANTS** the Respondent's motion.

**Procedural Background**

On April 27, 2014, Dr. Arshad Malik applied for a variance from the Indiana Fire Prevention and Building Safety Commission. On August 5, 2014, the Commission approved Dr. Malik's application with certain conditions. On August 15, 2014, the Petitioner in this matter, Fire Marshal Philip Topor, emailed the Respondent to file a petition for administrative review of Dr. Malik's variance. On September 4, 2014, the Commission granted the Fire Marshal Topor's petition and assigned it to the undersigned ALJ.

A telephonic prehearing conference was held in this matter on Wednesday, October 1, 2014. A subsequent telephonic status conference was held on October 29, 2014, during which the Respondent indicated its intent to file a dispositive motion to terminate this proceeding. The ALJ therefore issued an order setting a deadline of November 26, 2014, for the parties to file any dispositive motions and, pursuant to Indiana Trial Rules 12 and 56, providing that an adverse party would have twenty days to respond to a motion to dismiss or motion for judgment on the pleadings, and thirty days to respond to a motion for summary judgment. Additional briefing would only be permitted with leave from the ALJ.

On November 26, 2014, the Respondent filed a motion to dismiss with supporting memorandum and proposed order. The Petitioner timely filed a response.<sup>1</sup>

### Standard of Review

“A motion to dismiss under Ind. Trial Rule 12(B)(6) tests the legal sufficiency of the claim, not the facts which support it.” Collard v. Enyeart, 718 N.E.2d 1156, 1158 (Ind. Ct. App. 1999), trans. denied. In reviewing such a motion to dismiss, the ALJ takes as true all allegations upon the face of the complaint and may only dismiss if the Petitioner is not entitled to recover “under any set of facts admissible under the allegations of the complaint.” Huffman v. Ind. Office of Env'tl. Adjudication, 811 N.E.2d 806, 814 (Ind. 2004) (quoting Huffman v. Ind. Dep't of Env'tl. Mgmt., 788 N.E.2d 505, 510 (Ind. Ct. App. 2003)). The pleadings are viewed “in a light most favorable to the nonmoving party” and “every reasonable inference” must be drawn in favor of that party. Id.

### Findings of Fact

The ALJ hereby issues the following findings of fact, based solely on the pleadings in this matter.<sup>2</sup>

1. On April 27, 2014, Dr. Arshad P. Malik filed an application for variance with the Commission. The application related to a building owned by Dr. Malik and located at 8560 Broadway, Merrillville, IN 46410.

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<sup>1</sup> The Petitioner's response was emailed to the ALJ. This is permissible for a response to a motion to dismiss under the Indiana Administrative Orders and Procedures Act. See Ind. Code § 4-21.5-3-1(b)(3). It is *not*, however, a permissible means by which to serve a petition for administrative review under AOPA. See Ind. Code § 4-21.5-3-1(b)(2). Nevertheless, the Respondent treated the Petitioner's email as a petition for administrative review and set it on the Commission's agenda. The Commission granted the petition and assigned it to the undersigned for resolution, and the Respondent does not now challenge the petition as being improperly served.

Additionally, it was not immediately clear if the Petitioner filed his response solely with the ALJ, sent an identical email to the Respondent, or served the Respondent with a hard-copy of the response. The ALJ forwarded the Petitioner's response to counsel for the Respondent, without any substantive comment, to ensure all parties were served with all filings.

<sup>2</sup> The “pleadings,” such as they are in an administrative appeal, are considered here to be the Dr. Malik's application for variance, the Commission's order granting Dr. Malik's request, the Petitioner's email requesting administrative review of that order, counsel for the Respondent's subsequent email, and the Commission's letter granting the Petitioner's petition for review.

2. The application sought a variance from Section 901.6 of the 2008 Indiana Fire Code, which addresses the inspection, testing, and maintenance of fire detection, alarm, and extinguishing systems.<sup>3</sup> The application attested that the sprinkler system did not hold air pressure and would not function, and complying with Section 901.6's requirements would result in an undue financial hardship.
3. The Commission granted Dr. Malik's application for a variance at its August 5, 2014, meeting, and notified Dr. Malik of this result in an order sent on August 6, 2014. The order was addressed and sent only to Dr. Malik.
4. The order noted that the variance was granted with the conditions that "[s]igns are to be posted on the sprinkler risers and the fire department connection stating that the sprinkler system is nonfunctioning and the responding fire department shall be notified."
5. The Petitioner is the Fire Marshal for the City of Merrillville, Indiana.
6. On August 15, 2014, the Petitioner sent an email to Ms. Mara Snyder, then-counsel for the Indiana Department of Homeland Security, stating "Mara, I was told that Dr. Malik got a variance for keeping his sprinkler system out of service and leaving it in place. I would like to file an appeal because I don't agree with leaving it in place. Thank you."
7. On August 17, 2014, Ms. Snyder forwarded the Petitioner's email to an IDHS employee responsible for providing staff support to the Commission, with instructions to "[p]lease print out this e-mail as a timely appeal for the Sept. agenda."
8. On September 4, 2014, the Commission met at a regularly scheduled meeting and granted the Petitioner's petition for review. The Commission notified the Petitioner of this decision by letter sent on September 8, 2014.
9. Dr. Malik did not appeal the Commission's order granting his variance and has not been made a party to this action in any capacity, nor was he notified by the Commission that it had granted the Petitioner's petition for administrative review and assigned this matter to an administrative law judge.

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<sup>3</sup> See 2008 Ind. Fire Code § 901.6 (adopted by 675 Ind. Admin. Code 22-2.4-1).

## Conclusions of Law

Applying the law set forth in this decision to the factual findings supported by the evidence, the ALJ hereby reaches the following conclusions of law with respect to the issues presented:

1. The Indiana Code creates the Commission and requires it to adopt statewide building and fire safety laws. Ind. Code §§ 22-12-2-1, 22-13-2-2. The Commission is also authorized by statute to “grant a variance to a rule that it has adopted.” Ind. Code § 22-13-2-11(a). Such orders granting variances are subject to administrative review under the Indiana Administrative Orders and Procedures Act. Ind. Code §§ 22-12-7-1, -2; see also Ind. Code § 4-21.5-3-5(a)(3), -7(a); 675 Ind. Admin. Code 12-5-6(j).

This action arises out of an order issued by the Commission and granting, with conditions, a variance. It is therefore subject to the provisions of AOPA.

2. A motion to dismiss pursuant to Trial Rule 12(B)(6) seeks to dismiss an action for “[f]ailure to state a claim upon which relief can be granted.” The Petitioner here sought administrative review of an agency action. In the most generic and broadest sense, this is most certainly “a claim upon which relief can be granted.”

But the substance of the Respondent’s motion more specifically argues that the Petitioner is not qualified to pursue this administrative appeal—in a way, that he lacks standing. Thus, the ALJ concludes that Trial Rule 12(B)(6) still provides the proper framework for consideration of the Respondent’s motion. See Schulz v. State, 731 N.E.2d 1041, 1043 (Ind. Ct. App. 2000) (“An allegation that a party lacks standing is properly filed under Ind. Trial Rule 12(B)(6).”).

3. The aim of the standing doctrine, in courts of law, “is to insure that the party before the court has a substantive right to enforce the claim that is being made in the litigation.” Id. at 1044. “It is a key component of Indiana’s constitutional scheme of separation of powers” and “is a prudential limitation on the ability of individuals to seek redress in our courts and may be raised at any point during the litigation either by the parties or the court sua sponte.”<sup>4</sup> Id.

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<sup>4</sup> This statement aside, the better practice would be for this issue to be raised with some obedience to Trial Rule 12(B)’s requirements. “A motion making any of these defenses shall be made before pleading if a further pleading is permitted or within twenty [20] days after service of the prior pleading if none is required.” Trial Rule 12(B). This timeline does not correlate identically to the process for filing of a petition for administrative review, given that the petition must be granted as timely before a party may file dispositive motions. But certainly within twenty days of that latter occurrence a party could reasonably assert this defense.

But while the concept of standing is analogous to the Respondent's claim here—and permits its motion under the rubric of Trial Rule 12(B)(6)—the standards for this judicial doctrine do not directly apply in this case. Huffman, 811 N.E.2d at 809.

4. Instead, in an administrative proceeding the General Assembly “may dictate access to administrative review on terms the same as or more or less generous than access to file a lawsuit.” Id. And the General Assembly has done just this through the relevant AOPA provision, which states to qualify for review of an administrative order, a person's petition for review must do the following:

State[] facts demonstrating that:

- (A) the petitioner is a person to whom the order is specifically directed;
- (B) the petitioner is aggrieved or adversely affected by the order;
- or
- (C) the petitioner is entitled to review under any law.

Ind. Code § 4-21.5-3-7(a)(1).

In short, to qualify for administrative review of the Commission's order granting Dr. Malik's variance and survive the Respondent's Trial Rule 12(B)(6) challenge, the Petitioner's complaint—his petition for administrative review—must satisfy at least one of these three requirements.

5. The Respondent argues that the Petitioner is not the person to whom the Commission's order was specifically directed, and that the Petitioner's pleadings fail to demonstrate facts that he is aggrieved or adversely affected by the approval of the variance application or that he is entitled to review under any law. The ALJ agrees.
6. It is axiomatic that the Petitioner is not the person to whom the Commission's order was specifically directed—the order is addressed only to Dr. Malik, was mailed only to Dr. Malik, and relates only to a variance application filed by Dr. Malik. In other words, the order was specifically direct to Dr. Malik and no-one else. Thus, the Petitioner does not meet the requirement of Indiana Code § 4-21.5-3-7(a)(1)(A).
7. As for subsection (a)(1)(B), to be “aggrieved or adversely affected” sufficient to qualify for administrative review under AOPA, “a person must have suffered or be likely to suffer in the immediate future harm to a legal interest, be it a pecuniary, property, or personal interest.” Huffman, 811 N.E.2d at 810; Ind. Assoc. of Beverage Retailers, Inc. v. Ind. Alcohol & Tobacco Comm'n, 836 N.E.2d 255, 259 (Ind. 2005). This is different than the standard

for AOPA's predecessor—the Administrative Adjudication Act—which “allowed ‘all interested persons or parties’ the ability to seek administrative review of agency action.” Huffman, 811 N.E.2d at 810.

The current AOPA standard is therefore narrower than the prior AAA standard. Rather than simply being an “interested person” in the matter, to qualify for administrative review a petitioner must have suffered, or be likely to suffer, a distinct injury to either a pecuniary, property, or personal interest.

8. The variance and conditions underlying this matter permitted Dr. Malik to keep his sprinkler system out of service, but required him to leave the system in place with signs on the visible portions noting that the system was out of service. In his petition for administrative review, the Petitioner stated that “I would like to file an appeal because I don’t agree with leaving it in place.”

The Petitioner expressed disagreement with the Commission’s order, but as the Indiana Supreme Court in Huffman stated, “[t]he concept of ‘aggrieved’ is more than a feeling of concern or disagreement with a policy; rather, it is a personalized harm.” Id. at 812. The Petitioner’s initial pleading is therefore insufficient to satisfy the requirement of Indiana Code § 4-21.5-3-7(a)(1)(B).

9. In his response to the Respondent’s motion to dismiss, the Petitioner elaborated on why he disagreed with the variance.<sup>5</sup> He articulated the following points:
  - a. Leaving a broken sprinkler system in place “creates a false sense of safety” and is also a violation of a different provision of the Indiana Fire Code that prohibits any device that has the physical appearance of life safety or fire protection equipment but does not perform those functions.
  - b. Requiring a sign that the sprinkler system is out of service on the exterior of the building will result in him receiving “continuous phone calls and complaints because the public will see the system is out of service which looks bad.” Additionally, he asserts that the sign will lead other business owners in Merrillville to ask him why they are required to maintain their sprinkler systems but Dr. Malik is not.
  - c. The Indiana Fire Code requires fire detection, alarm, and extinguishing systems to be maintained in an operative condition, and replaced or repaired when not functioning. The variance violates this section.

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<sup>5</sup> The Petitioner presented the same concerns during the telephonic prehearing conference in this matter, when asked by the ALJ to clarify the nature of his petition.



- d. This variance “will continue to be an on going issue in the years ahead as new inspectors come about and as they see a system in place that is non functioning.” There might not be an issue while Dr. Malik owns the building, but “when he moves on records will get lost, moved or forgotten which will make this become an issue again.”
10. These statements might be construed as presenting matters outside the pleadings. Under Trial Rule 12, if these matters were not excluded then the Respondent’s motion would be treated as a motion for summary judgment and additional evidence could be presented.<sup>6</sup>
11. But it is not necessary to decide whether to exclude the statements as additional evidence or permit them and allow the Respondent to reply and present its own designated evidence. Because even if those statements were admitted—and even viewing them in a light most favorable to the Petitioner and drawing every reasonable inference from them—they still would not rise to satisfy the standard of being “aggrieved or adversely affected” as that phrase is defined.
12. The concerns that leaving the broken system in place would create a false sense of safety, look bad to the public, cause confusion amongst other business owners, or undermine the validity of enforcing fire safety laws in Merrillville, are likely legitimate. But there is nothing within AOPA that allows a public official’s generalized concerns or interest—even those of a local fire marshal charged with enforcing fire safety laws—to supplant the requirement of being aggrieved or personally affected.

At most these are examples of the doctrine of “public standing,” whereby “persons with no personal stake in a matter [may] bring suit when certain public rights are at issue.” Huffman, 811 N.E.2d at 812, 812 n.5. But the public standing doctrine does not apply within AOPA: “[t]he language of AOPA does not allow for administrative review based on a generalized concern as a member of the public. The statute says ‘aggrieved or adversely affected’ and this contemplates some sort of personalized harm.” Id.

And as discussed below, even a Fire Marshal presenting these concerns—rather than simply a general member of the public—does not have any broader right to qualification under AOPA.

13. Likewise, the Petitioner’s concern that the records might, or will, get lost, moved, or forgotten when Dr. Malik leaves the building—thereby causing confusion with new inspectors—is also probably legitimate. But even

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<sup>6</sup> If, in a motion to dismiss for failure to state a claim, “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. Ind. Trial Rule 12(B). “In such case, all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Id.; see also Huffman, 811 N.E.2d at 814.

assuming these were personal harms to the Petitioner, a person who is aggrieved or adversely affected “must *have suffered or be likely to suffer in the immediate future*” those harms. *Id.* at 810 (emphasis added).

There is no evidence that Dr. Malik is going to move from the facility in the immediate future, or that new inspectors are arriving soon, or that the records related to this variance are in immediate jeopardy.<sup>7</sup> In short, this concern is still speculative and too far removed from the immediate future to constitute a basis for qualification under Indiana Code § 4-21.5-3-7(a)(1)(B).

14. The Petitioner’s stated concern that the variance violates other sections of the fire safety code likewise cannot be evidence to support this provision. For one thing, as a general matter the Commission is allowed by statute to issue variances from the fire and building safety codes—that is the point of the variance in the first place.

As to the specific claims, the Petitioner first argues that the variance creates a violation of Section 901.6 of the Indiana Fire Code. But on its face, the variance states that it is a variance *from* Section 901.6. Thus, however broad Section 901.6’s scope actually is, the Commission saw fit to exclude Dr. Malik’s facility from those requirements. This is within its power.

With respect to the Petitioner’s claim that the variance creates a violation of Section 901.4.4 of the fire safety code, this may be correct. But that does not necessarily mean that a variance from Section 901.6 is invalid—nor does it constitute grounds for the Petitioner to seek administrative review of the issuance of that variance.<sup>8</sup>

15. This leaves the Petitioner’s concern that the effect of this variance will be that he will field numerous phone calls, questions, and complaints from the public and local business owners. And once again, this might very well be the likely outcome.

But responding to public inquiry must be part and parcel of service as a public official. *Cf.* Ind. Code § 5-14-1.5-1 (“this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state”). No matter how time-consuming it might be or burdensome it might feel to the official at times, this responsibility cannot be used as proof of an injury to a pecuniary, property, or personal interest.

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<sup>7</sup> Even assuming that poor record-keeping and a failure to pass along information somehow constitute a cognizable injury under AOPA.

<sup>8</sup> Certainly, however, as Fire Marshal the Petitioner is statutorily empowered to issue an inspection order with respect to any violation of Section 901.4.4 that might exist. See Ind. Code §§ 36-8-17-6, -8, -9.

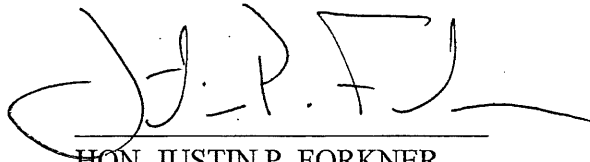
16. Finally, neither the Petitioner's petition for review nor his response to the Respondent's motion to dismiss present any arguments or evidence to show that the Petitioner is entitled to administrative review under any other law. Certainly none of the statutes governing local fire inspections or officials grant such a right. See Ind. Code 36-8-17. Not even the State Fire Marshal has such an entitlement. See Ind. Code 22-14-2.
17. The ALJ therefore concludes that the Petitioner is not the person to whom the order is specifically directed, the Petitioner is not aggrieved or affected by the order, and the Petitioner is not entitled to administrative review under any other law. Accordingly, the Petitioner does not meet the statutory requirements to seek administrative review of the Commission's August 5, 2014 order.
18. But because the Respondent's motion was invoked Trial Rule 12(B)'s framework, this conclusion does not necessarily terminate the proceeding. Trial Rule 12(B) provides that "[w]hen a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of this rule the pleading may be amended once as of right pursuant to Rule 15(A) within ten [10] days after service of notice of the court's order sustaining the motion." The Petitioner will therefore be given the opportunity to amend his petition for administrative review to comply with the requirements of Indiana Code § 4-21.5-3-7(a)(1).

### **Decision and Order**

The Respondent's motion to dismiss is **GRANTED**. The Petitioner has ten days from the service of this order to file with the ALJ a petition for administrative review that complies with Indiana Code § 4-21.5-3-7(a)(1); see also Ind. Code § 4-21.5-3-2(e). As an amended petition, this need not be filed by U.S. Mail; email is sufficient. But a copy *must* be served on the Respondent.

If no amendment is filed within that time, a non-final order of dismissal will be issued to be considered by the Indiana Fire Prevention and Building Safety Commission as the ultimate authority in this proceeding.

Date: January 5, 2015

A handwritten signature in black ink, appearing to read "J.P. Forkner", written over a horizontal line.

HON. JUSTIN P. FORKNER  
Administrative Law Judge  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Rm W246  
Indianapolis, Indiana 46204  
Telephone: (317) 234-8917  
Fax: (317) 232-0146  
E-mail: [jforkner@dhs.in.gov](mailto:jforkner@dhs.in.gov)

A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

Philip Topor; Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

and personally served on the following attorney of record:

Pamela M. Walters, Esq.; Staff Attorney  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Room W246  
Indianapolis, IN 46204

## **Forkner, Justin**

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**From:** Phil Topor <ptopor@merrillville.in.gov>  
**Sent:** Friday, December 19, 2014 6:37 PM  
**To:** Forkner, Justin  
**Subject:** Cause 14-15

Judge Forkner, I have received the states motion to dismiss in which some of what I read is inaccurate. The state motions to dismiss because I am not adversely affected by the order and that I simply disagreed with the variance that was issued. This is not the case, as I mentioned during the telephonic hearings, the reason why I am opposed to the variance allowing Dr. Malik to leave a broken sprinkler system in place is for the following reasons:

People have an expectation of safety upon seeing life safety devices in which they expect to work when needed. In this case, leaving broken fire and life safety systems in place creates a false sense of safety and is also a violation of the Indiana Fire Code 901.4.4 which states any device that has the physical appearance of life safety or fire protection equipment but that does not perform that life safety or fire protection function shall be prohibited.

In addition, the variance states to have a sign indicating that the sprinkler system is out of service on the exterior of the building. This presents a problem for myself because I will be receiving continuous phone calls and complaints because the public will see the system is out of service which looks bad. Furthermore, other business owners who also have systems will inquire why they have to maintain their systems but this one does not have to be maintained and can be kept out of service. I have worked hard to clean up my town after it being neglected. I have worked with owners to get systems back in service and up to date on inspections. This undermines the entire fire code relating to this subject.

In addition, Indiana Fire Code 901.6 states that fire detection, alarm and extinguishing systems shall be maintained in a operative condition at all times, and shall be replaced or repaired where defective. Nonrequired fire protection systems and equipment shall be inspected, tested and maintained, or removed. This variance also puts the location in violation of this section.

Finally, this will continue to be an on going issue in the years ahead as new inspectors come about and as they see a system in place that is non functioning. It may be OK in the time being while Dr. Malik owns the building however when he moves on records will get lost, moved or forgotten which will make this become an issue again.

I am not asking for the complete removal of the system, I am simply asking for the visible portions to be removed such as the FDC, sprinkler heads and riser. The rest of the piping can remain as is. Thank you for your consideration.

--  
Philip Topor, CFI, CFEI  
Fire Marshal  
Merrillville Fire Department

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STATE OF INDIANA  
BEFORE THE FIRE PREVENTION AND BUILDING  
SAFETY COMMISSION

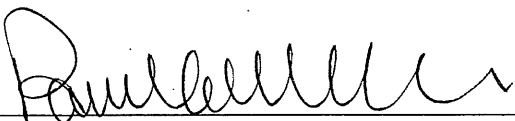
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BY: [Signature]

IN RE: ) ADMINISTRATIVE CAUSE NO.  
 ) 14-15  
8560 BROADWAY )  
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MOTION TO DISMISS

Respondent moves to dismiss the action under Rule 12(B)(6) of the Indiana Trial Rules as the Petitioner has failed to state a claim under which relief may be sought.

Date: November 26, 2014



Pamela M. Walters  
Indiana Department of Homeland Security  
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Telephone: (317) 233-6926  
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**Distribution:**

Philip Topor, Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410





Fire Marshal Philip Topor of the City of Merrillville sent an email to Mara Snyder, Director of Legal and Code Services for the Department of Homeland Security on August 15, 2014. The email stated that Marshal Topor “was told that Dr. Malik got a variance for keeping his sprinkler system out of service and leaving it in place.” (E-Mail from Fire Marshal Philip Topor, City of Merrillville to Mara Snyder, Director, Legal and Code Services, Indiana Department of Homeland Security (August 15, 2014)) The email further stated that Marshal Topor wished to file an appeal because he did not agree with leaving the sprinkler system in place. (E-mail from Marshal Topor to Mara Snyder)

The petition for review was submitted to the Commission at their September 4, 2014 meeting. (Letter from Mara Snyder, Director, Legal and Code Services, Indiana Department of Homeland Security, Fire Marshal Philip Topor, City of Merrillville (September 8, 2014)) The Commission granted the petition for review and assigned the matter to the Commission’s administrative law judge. Respondent now files a Motion to Dismiss.

#### Argument

Respondent’s Motion to Dismiss should be granted as the Petitioner has failed to state facts that would demonstrate that the petitioner is aggrieved or adversely affected by the approval of the variance application or that the petitioner is entitled to review under any law.

A motion to dismiss under Ind. Trial Rule 12(B)(6) tests the legal sufficiency of a complaint. *Trail v. Boys and Girls Clubs of Northwest Ind.*, 845 N.E.2d 130, 134 (Ind. 2006). It examines whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief. *Id.* So while it does not test the sufficiency of the facts alleged with regards to their adequacy to provide recovery, it does test the sufficiency with regards to whether or not the plaintiff has stated some factual scenario in which a legally

actionable injury has occurred. *Id.* The facts alleged in the complaint should be accepted as true. *Id.* The pleadings should be considered in a light most favorable to the plaintiff, but should also draw every reasonable inference in favor of the non-moving party. *Id.*

Indiana Code § 4-21.5-3-7(a) states that to qualify for review of an order under Ind. Code § 4-21.5-3-4, 5 or 6, a person must petition for review in a writing that states facts demonstrating that 1) the petitioner is a person to whom the order is specifically directed, 2) the petitioner is aggrieved or adversely affected by the order, or 3) the petitioner is entitled to review under any law.

It is undisputed that the party to whom the August 6, 2014 letter was addressed is Dr. Malik. Thus the Petitioner can not qualify to file a petition for review under Ind. Code § 4-21.5-3-7(a)(1). Even so, the Petitioner has failed to state any facts that would show that the petitioner is aggrieved or adversely affected by the approved variance application or that the petitioner is entitled to a review under any law.

The Commission approved a variance application at its August 5, 2014 for a project named "8560 Broadway Merrillville – Sprinklers." The application had requested a variance from 675 IAC 22-2.4, specifically section 901.6 of the Fire Code. The Commission approved the variance but stated that signs must be posted on all the sprinkler risers and fire department connection stating that the sprinkler system was nonfunctioning and the responding fire department needed to be notified. Marshal Topor responded to this approved variance application by submitting a petition for review. Marshal Topor sent an email to Mara Snyder and simply said that he disagreed with the approval of the application by the Commission.

Ind. Code § 4-21.5-3-7(a) identifies three types of petitioners that may submit a petition for review. The first being a person who can demonstrate they are the person to whom the order is addressed. The order is addressed to Dr. Malik and not Marshal Topor.

The second person may state facts that demonstrate that the person is aggrieved or adversely affected by the order. Marshal Topor's petition merely stated that he disagreed. This does not seem to rise to the level of being aggrieved or adversely affected by the approval of the variance application. Marshal Topor offers no facts to demonstrate how the approval of the variance application will affect either himself or the City of Merrillville. Marshal Topor's mere disagreement does not suggest that he will be adversely affected or aggrieved by the variance but only that he does not fully support the variance as it has been approved. The Petitioner fails to state facts which would demonstrate that the petitioner is aggrieved or adversely affected by the approval of the variance application.

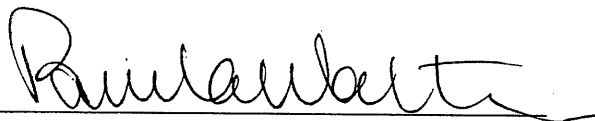
The third person must show facts that the person is entitled to review under any law. Marshal Topor does not state any law to which he might be entitled to review. The Petitioner has failed to state facts that would demonstrate any law under which the petitioner may file a petition for review.

The Petitioner has failed to demonstrate any facts that would demonstrate that the petitioner is aggrieved or adversely affected by the approval of the variance application or that the petitioner is entitled to review of the approved variance application under any law.

#### Petition for Relief

For the above reasons, the Administrative Law Judge should grant Respondent's Motion to Dismiss.

Date: November 26, 2014



Pamela M. Walters  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Rm W246  
Indianapolis, Indiana 46204  
Telephone: (317) 233-6926  
E-mail: [PWalters@dhs.in.gov](mailto:PWalters@dhs.in.gov)

**Distribution:**

Philip Topor, Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410



aggrieved or adversely affected by the order, or 3) the petitioner is entitled to review under any law.

#### Findings of Fact

1. Dr. Arshad Malik submitted an application for a variance to 675 IAC 22-2.4, specifically section 901.6 of the Fire Code to the Fire Prevention and Building Safety Commission ("Commission"). (Letter from Mara Snyder, Director, Legal and Code Services, Indiana Department of Homeland Security, to Dr. Arshad Malik (August 6, 2014))
2. The Commission reviewed the application at the August 5, 2014 meeting. (Letter from Mara Snyder to Dr. Malik at 1)
3. The Commission approved the variance with the following conditions: "Signs are to be posted on the sprinkler risers and the fire department connection stating that the sprinkler system is nonfunctioning and the responding fire department shall be notified." (Letter from Mara Snyder to Dr. Malik at 1)
4. Fire Marshal Philip Topor of the City of Merrillville sent an email to Mara Snyder, Director of Legal and Code Services for the Department of Homeland Security on August 15, 2014 which stated that Marshal Topor "was told that Dr. Malik got a variance for keeping his sprinkler system out of service and leaving it in place." (E-Mail from Fire Marshal Philip Topor, City of Merrillville to Mara Snyder, Director, Legal and Code Services, Indiana Department of Homeland Security (August 15, 2014)).

5. The email further stated that Marshal Topor wished to file an appeal because he did not agree with leaving the sprinkler system in place. (E-mail from Marshal Topor to Mara Snyder)
6. The petition for review was submitted to the Commission at their September 4, 2014 meeting. (Letter from Mara Snyder, Director, Legal and Code Services, Indiana Department of Homeland Security, Fire Marshal Philip Topor, City of Merrillville (September 8, 2014))
7. The Commission granted the petition for review and assigned the matter to the Commission's administrative law judge.
8. Respondent filed a Motion to Dismiss on November 26, 2014.

#### Conclusions of Law

1. Ind. Code § 4-21.5-3-7(a) identifies three types of petitioners that may submit a petition for review.
2. The first being a person who can demonstrate they are the person to whom the order is addressed. The order is addressed to Dr. Malik and not Marshal Topor.
3. The second person may state facts that demonstrate that the person is aggrieved or adversely affected by the order. Marshal Topor's petition merely stated that he disagreed. This does not rise to the level of being aggrieved or adversely affected by the approval of the variance application. Marshal Topor has not demonstrated how he or the City of Merrillville will be adversely affected or aggrieved by the approval of the variance.

4. The third person must show facts that the person is entitled to review under any law. Marshal Topor does not state any law to which he might be entitled to review. The Petitioner has failed to state facts that would demonstrate any law under which the petitioner may file a petition for review.

Order

For the above reasons, this Administrative Law Judge GRANTS the Respondent's Motion to Dismiss.

Date: \_\_\_\_\_

\_\_\_\_\_  
Justin P. Forker  
Administrative Law Judge  
Indiana Department of Homeland Security

**Distribution**

Philip Topor, Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

Pamela M. Walters  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Rm W246  
Indianapolis, Indiana 46204





A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

Philip Topor; Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

and personally served on the following attorney of record:

Pamela M. Walters, Esq.; Staff Attorney  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Room W246  
Indianapolis, IN 46204

STATE OF INDIANA  
BEFORE THE FIRE PREVENTION AND BUILDING  
SAFETY COMMISSION

IN RE: ) ADMINISTRATIVE CAUSE NO.  
 ) 14-15  
8560 BROADWAY )  
 )  
 )  
 )

**INITIAL PREHEARING ORDER AND  
ORDER SETTING STATUS CONFERENCE**

A telephonic prehearing conference was held in this matter on October 1, 2014, at 2:00 p.m. (EST). Present for the prehearing conference were the Petitioner, Fire Marshal Topor, and staff counsel for the Respondent, the Indiana Department of Homeland Security. **In accordance with Indiana Code § 4-21.5-3-19(c), the Administrative Law Judge issues this Initial Prehearing Order incorporating such matters as were determined during the prehearing conference.**

The Petitioner in this matter sought administrative review of the Fire Prevention and Building Safety Commission's grant of Variance Number 14-06-18, relating to a non-functioning sprinkler system in a building located at 8560 Broadway, Merrillville, Indiana 46410, and owned by Dr. Arshad Malik. Dr. Malik is not a party to this administrative appeal.

The variance was granted with the conditions that signs be posted on the sprinkler risers and fire department connection stating that the sprinkler system is nonfunctioning, and that the responding fire department be notified. During the prehearing conference, the Petitioner indicated that he was seeking a modification of the conditions: at a minimum, that the sprinkler heads for the sprinkler system, the fire department connection, and sprinkler risers be removed.

The parties mutually requested additional time to discuss the matter informally and explore the potential for settlement before seeking a hearing on the merits. **The Administrative Law Judge therefore sets this matter for a status conference on October 29, 2014, at 2:00 p.m. (EST).**

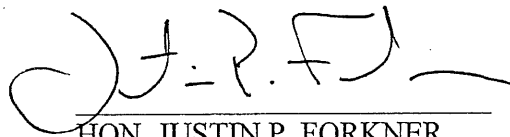
The status conference will be conducted by telephone. The ALJ will initiate the call, using the following telephone numbers:

Fire Marshal Topor: (219) 769-0010  
Ms. Pamela Walters: (317) 233-6926

If a telephone number is incorrect or a different number would be preferred, please advise the ALJ at the earliest opportunity.

Any party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have the proceeding dismissed pursuant to Indiana Code § 4-21.5-3-24.

Date: October 2, 2014



HON. JUSTIN P. FORKNER  
Administrative Law Judge  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Rm W246  
Indianapolis, Indiana 46204  
Telephone: (317) 234-8917  
Fax: (317) 232-0146  
E-mail: [jforkner@dhs.in.gov](mailto:jforkner@dhs.in.gov)

A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

Philip Topor; Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

and personally served on the following attorney of record:

Pamela M. Walters, Esq.; Staff Attorney  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Room W246  
Indianapolis, IN 46204

STATE OF INDIANA  
BEFORE THE FIRE PREVENTION AND BUILDING  
SAFETY COMMISSION

IN RE: ) ADMINISTRATIVE CAUSE NO.  
 ) 14-15  
8560 BROADWAY )  
 )  
 )  
 )

ORDER SETTING PREHEARING CONFERENCE

Pursuant to Indiana Code §§ 4-21.5-3-18 and -19, a Prehearing Conference has been set in the above-captioned matter on **Wednesday, October 1, 2014, at 2:00 p.m. (EST)**. The Prehearing Conference will be conducted by telephone. The ALJ will initiate the call, using the following telephone numbers:

Fire Marshal Topor: ~~(219) 769-0004~~ (219) 742-0010  
Ms. Pamela Walters: (317) 233-6926

If a telephone number is incorrect or a different number would be preferred, please advise the ALJ at the earliest opportunity.

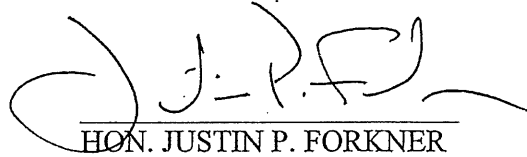
The purpose of the Prehearing Conference is to resolve or clarify issues and preliminary matters related to the proceeding, discuss the potential for settlement of issues, and prepare for a hearing if a settlement is not reached or possible. Additionally, any of the matters listed in Indiana Code § 4-21.5-3-19(c) may be discussed. A Prehearing Order incorporating the matters discussed will be issued following the Prehearing Conference.

As of this order, the Petitioner, Fire Marshal Topor, is not represented by counsel. The Respondent, the Indiana Department of Homeland Security, is represented by agency staff counsel.

The Petitioner has the right to be represented and advised, at his own expense, by counsel. Such counsel must be licensed to practice law in the State of Indiana or otherwise comply with the requirements of Rule 3 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys.

You are reminded that any party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have the proceeding dismissed pursuant to Indiana Code § 4-21.5-3-24.

Date: September 24, 2014



HON. JUSTIN P. FORKNER

Administrative Law Judge  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Rm W246  
Indianapolis, Indiana 46204  
Telephone: (317) 234-8917  
Fax: (317) 232-0146  
E-mail: [jforkner@dhs.in.gov](mailto:jforkner@dhs.in.gov)

A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

Philip Topor; Fire Marshal  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

and personally served on the following attorney of record:

Pamela M. Walters, Esq.; Staff Attorney  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Room W246  
Indianapolis, IN 46204



**STATE OF INDIANA  
BEFORE THE FIRE PREVENTION AND BUILDING  
SAFETY COMMISSION**

IN RE: )  
 ) ADMINISTRATIVE CAUSE NO.  
 ) 14-15  
8560 BROADWAY )  
 )  
 )  
 )

**NOTICE OF APPOINTMENT OF ADMINISTRATIVE LAW JUDGE;  
ORDER REQUESTING PREHEARING CONFERENCE AVAILABILITY**

The Petitioner, Mr. Philip Topor, Fire Marshall, Merrillville, Indiana, has filed a petition for administrative review with the Fire Prevention and Building Safety Commission. The Commission granted this petition on September 4, 2014. The filing begins a proceeding which is controlled by the Indiana Administrative Orders and Procedures Act, codified at Indiana Code 4-21.5. The undersigned has been appointed as the Administrative Law Judge in this matter.

The name, official title, mailing address, and phone number for the undersigned are as follows:

Hon. Justin P. Forkner  
Administrative Law Judge  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Room W246  
Indianapolis, Indiana 46204  
Telephone: (317) 234-8917  
Fax: (317) 232-0146  
E-mail: [jforkner@dhs.in.gov](mailto:jforkner@dhs.in.gov)

Motions and pleadings should be filed with the ALJ at the address shown above. As an alternative to the U.S. Mail, service may be made upon the ALJ by facsimile copy or by electronic mail. Parties are cautioned, however, that while service through the U.S. Mail may be perfected upon mailing, service by facsimile copy or by electronic mail is perfected only upon actual receipt.

**A copy of each motion or pleading must also be served upon all parties of record or their attorneys.** The parties to this action are the Petitioner, Fire Marshal Topor, and the Respondent, the Indiana Department of Homeland Security.

The ALJ would like to schedule a prehearing conference pursuant to Indiana Code §§ 4-21.5-3-18, -19. This is **not** the hearing on the merits of the Petitioner's appeal. As the Department is not a party to this matter, counsel for the Indiana Department of Homeland Security is not required to participate in this prehearing conference.

The prehearing conference will be conducted by telephone, with the ALJ initiating the call. Unless the parties advise otherwise, the prehearing conference is not expected to last longer than one hour. **To that end, please inform the ALJ as soon as possible of availability with respect to the following prehearing conference dates/times (all times are Indianapolis time zone):**

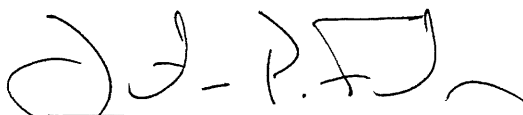
Wednesday, October 1: 10:00 a.m., 11:00 a.m., 1:00 p.m., 2:00 p.m., 3:00 p.m.  
Wednesday, October 8: 10:00 a.m., 11:00 a.m., 1:00 p.m., 2:00 p.m., 3:00 p.m.  
Wednesday, October 15: 10:00 a.m., 11:00 a.m., 1:00 p.m., 2:00 p.m., 3:00 p.m.  
Wednesday, October 22: 10:00 a.m., 11:00 a.m., 1:00 p.m., 2:00 p.m., 3:00 p.m.

To expedite scheduling, this requested information, **and this information only**, may be sent directly to the ALJ utilizing the email address provided below. For all other communications addressing issues in the case, please note the directive above concerning the filing of pleadings and the general prohibition on ex parte communications found in Ind. Code § 4-21.5-3-11.

After receiving this information, the ALJ will set the prehearing conference date and time and provide a Notice of Prehearing Conference to the parties with further details.

Any party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have the proceeding dismissed pursuant to Indiana Code § 4-21.5-3-24.

Date: September 17, 2014



HON. JUSTIN P. FORKNER  
Administrative Law Judge  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Rm W246  
Indianapolis, Indiana 46204  
Telephone: (317) 234-8917  
Fax: (317) 232-0146  
E-mail: jforkner@dhs.in.gov

A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

Mr. Philip Topor; Fire Marshal, Town of Merrillville  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

and personally served on the following attorney of record:

Pamela M. Walters, Esq.; Staff Attorney  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, Room W246  
Indianapolis, IN 46204



MICHAEL R. PENCE, Governor  
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY

JOHN H. HILL, EXECUTIVE DIRECTOR

*Indiana Department of Homeland Security  
Indiana Government Center South  
302 West Washington Street  
Indianapolis, IN 46204  
317-232-3980*

September 8, 2014

Fire Marshal Philip Topor  
Merrillville Fire Department  
26 W. 73<sup>rd</sup> Avenue  
Merrillville, IN 46410

RE: Variance 14-06-18  
8560 Broadway, Merrillville

Dear Fire Marshal Topor,

The Fire Prevention and Building Safety Commission, at its regularly scheduled meeting on September 4, 2014, granted your petition for review, and assigned it to the Commission's administrative law judge.

The judge's office will be contacting you soon.

Yours truly,

Mara J. Snyder, Director  
Legal and Code Services

MJS/bas  
file

Sutor, Beth

---

**From:** Snyder, Mara  
**Sent:** Sunday, August 17, 2014 1:53 PM  
**To:** Sutor, Beth  
**Subject:** FW: Variance appeal-14-06-18

**Importance:** High

Beth - Please print out this e-mail as a timely appeal for the Sept. agenda. Thank you.

---

**From:** Fire Marshal Philip Topor [ptopor@merrillville.in.gov]  
**Sent:** Friday, August 15, 2014 3:03 PM  
**To:** Snyder, Mara  
**Subject:** Variance appeal

Mara, I was told that Dr. Malik got a variance for keeping his sprinkler system out of service and leaving it in place. I would like to file an appeal because I don't agree with leaving it in place. Thank you.

Sent from my T-Mobile 4G LTE Device



MICHAEL R. PENCE, Governor  
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY

JOHN H. HILL, EXECUTIVE DIRECTOR

Indiana Department of Homeland Security  
Indiana Government Center South  
302 West Washington Street  
Indianapolis, IN 46204  
317-232-3980

DR ARSHAD MALIK  
OWNER  
8550-64 BROADWAY

August 6, 2014

MERRILLVILLE, IN 46410

Dear DR ARSHAD MALIK,

This letter provides notice below of the action taken by the Fire Prevention and Building Safety Commission on your application(s) for a variance(s) from the Commission's rules under IC 22-13-2-11 and 675 IAC 12-5. The Commission considered the application with all alternatives offered, as a part of its published agenda, at its regular meeting on August 5, 2014.

Project Number	Project Name	Variance Number
	8560 BROADWAY MERRILLVILLE-SPRINKLERS	14-06-18

Commission Conditions

Signs are to be posted on the sprinkler risers and the fire department connection stating that the sprinkler system is nonfunctioning and the responding fire department shall be notified.

Edition	Code	Code Section	Commission Action & Date
2008	IN FC (675 IAC 22-2.4)	901.6	Approved with Commission condition(s) 08/05/2014

You are advised that if you desire an administrative review of this action, you must file a written petition for review at the above address with the Fire Prevention and Building Safety Commission. Your petition must fully identify the matter for which you seek review no later than eighteen(18) calendar days from the above stated date of this letter, unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours; in which case the deadline would be the first day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this action will be final.



# APPLICATION FOR VARIANCE

State Form 44400 (R7 / 10-13)  
Approved by State Board of Accounts, 2013

INDIANA DEPARTMENT OF HOMELAND SECURITY  
CODE SERVICES SECTION  
302 West Washington Street, Room W246  
Indianapolis, IN 46204-2739  
[http://www.in.gov/dhs/fire/fp\\_bs\\_comm\\_code/](http://www.in.gov/dhs/fire/fp_bs_comm_code/)



**INSTRUCTIONS:** Please refer to the attached four (4) page instructions.  
Attach additional pages as needed to complete this application.

Variance number (Assigned by department)  
14-06-18

### 1. APPLICANT INFORMATION (Person who would be in violation if variance is not granted; usually this is the owner)

Name of applicant <b>ARSHAD P. MALIK</b>	Title <b>OWNER</b>
Name of organization	Telephone number <b>(219) 793-9248</b>
Address (number and street, city, state, and ZIP code) <b>8550 - 64 BROADWAY MERRILLVILLE, IN. 46410</b>	

### 2. PERSON SUBMITTING APPLICATION ON BEHALF OF THE APPLICANT (If not submitted by the applicant)

Name of applicant <b>NA</b>	Title
Name of organization	Telephone number ( )
Address (number and street, city, state, and ZIP code)	

### 3. DESIGN PROFESSIONAL OF RECORD (If applicable)

Name of design professional <b>NA</b>	License number
Name of organization	Telephone number ( )
Address (number and street, city, state, and ZIP code)	

### 4. PROJECT IDENTIFICATION

Name of project <b>NA</b>	State project number <b>NA</b>	County <b>LAKE</b>
Address of site (number and street, city, state, and ZIP code) <b>8550 BROADWAY MERRILLVILLE IN. 46410</b>		
Type of project <input type="checkbox"/> New <input type="checkbox"/> Addition <input type="checkbox"/> Alteration <input type="checkbox"/> Change of occupancy <input checked="" type="checkbox"/> Existing		

### 5. REQUIRED ADDITIONAL INFORMATION

The following required information has been included with this application (check as applicable):

- A check made payable to the Indiana Department of Homeland Security for the appropriate amount. (see instructions)
- One (1) set of plans or drawings and supporting data that describe the area affected by the requested variance and any proposed alternatives.
- Written documentation showing that the local fire official has received a copy of the variance application.
- Written documentation showing that the local building official has received a copy of the variance application.

### 6. VIOLATION INFORMATION

Has the Plan Review Section of the Division of Fire and Building Safety issued a Correction Order?

Yes (If yes, attach a copy of the Correction Order.)     No

Has a violation been issued?

Yes (If yes, attach a copy of the Violation and answer the following.)     No

Violation issued by:

Local Building Department   
 State Fire and Building Code Enforcement Section   
 Local Fire Department

**7. DESCRIPTION OF REQUESTED VARIANCE**

Name of code or standard and edition involved 2008 Int. Fire code	Specific code section 901.6
--	--------------------------------

Nature of non-compliance (Include a description of spaces, equipment, etc. involved as necessary.)  
 Building is old. Sprinkler system does not hold AIR pressure. Several repairs have been made. But system does not function. <sup>per 70009</sup> Have spent

**8. DEMONSTRATION THAT PUBLIC HEALTH, SAFETY, AND WELFARE WILL BE PROTECTED**

Select one of the following statements:  
 Non-compliance with the rule will not be adverse to the public health, safety or welfare; or  
 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 demonstrating that the above selected statement is true:

**9. DEMONSTRATION OF UNDUE HARDSHIP OR HISTORICALLY SIGNIFICANT STRUCTURE**

Select at least one of the following statements:  
 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.  
 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 demonstrating that the above selected statement is true:  
 See attached proposal

**10. STATEMENT OF ACCURACY**

I hereby certify under penalty of perjury that the information contained in this application is accurate.

Signature of applicant or person submitting application <i>[Signature]</i>	Please print name ARSHAD P. MACK	Date of signature (month, day, year) 4/27/14
Signature of design professional (if applicable)	Please print name	Date of signature (month, day, year)

**11. STATEMENT OF AWARENESS (If the application is submitted on the applicant's behalf, the applicant must sign the following statement.)**

I hereby certify under penalty of perjury that I am aware of this request for variance and that this application is being submitted on my behalf.

Signature of applicant <i>[Signature]</i>	Please print name	Date of signature (month, day, year)
--	-------------------	--------------------------------------





3/14/2014

Proposal No. : VFPS-351

By and Between

Valley Fire Protection Services  
 101 N. Raddant Rd.  
 Batavia, IL 60510  
 Cell: 219-895-5718  
 Office: 630-761-3168  
 Fax: 630-293-4338  
[pkistler@valleyfire.com](mailto:pkistler@valleyfire.com)

Submitted to: Arshad Malik  
 Internal Medicine & Cardio Diseases  
 8560 Broadway  
 Merrillville, In 46410  
 Phone: 219-793-9248  
 Fax: 219-793-9387

Services will be provided and the following location(s):

<input type="checkbox"/> Fire Alarm System	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input checked="" type="checkbox"/> Fire Sprinkler System	<input checked="" type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Non-Water Based	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Fire Pump	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Backflow Preventer	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Other	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection

**Scope of Work**

- The system is currently out of service due sprinkler main leaks.
- Provide (2) Union sprinkler fitters.
- Remove all of the existing sprinkler main starting at the top feed of the riser.
- All main located in the attic is to be replaced with new main and grooved fittings.
- Install new outlets on the main to make new tie-ins to the riser nipples that feed the system.
- Install new thread groove riser nipples to make tie-ins easier.
- All pipe must be cut into shorter sections, so the pipe can be placed in the attic.
- Install new hanger supports as needed.
- Cut down the removed sprinkler main so it can be removed from the attic.
- Put the system in service and check for leaks.

Note. Exclusions: Dumpster for removed materials. Removal of the dumpster. Painting of any pipe. Hydraulic calculations. Plans or State Release. Replacement of sprinkler lines or heads.

Valley Fire Protection Systems hereby proposes to furnish material and labor during normal business hours (Monday-Friday, 7 am-3:30 pm) in accordance with the above scope of work for the sum of: **\$28,890.00**

Sincerely,



Valley Fire Protection Services, LLC  
101 N Raddant Rd  
Batavia IL 60510  
630.761.3168 telephone  
630 293 4338 facsimile  
www.valleyfire.com

# INSPECTION SERVICE AGREEMENT

This Agreement is made by and between Arshad Malik, M.D., F.A.C.C. ("Client") and Valley Fire Protection Services, LLC ("Valley") and is effective as of Monday, March 04, 2013 (the "Effective Date"). Client agrees to purchase and Valley agrees to provide the Fire Protection System Inspection Service (the "Services") as set forth herein subject to the enclosed terms and conditions of this Agreement.

### LOCATION

Valley will provide the Services at the following location.

**8560 Broadway  
Merrillville, IN 46410**

### SCOPE OF WORK & SERVICE FEES

Services will be performed once during each twelve (12) consecutive month period. Client will pay to Valley the following service fees for performing the Services referred to below:

QTY	SERVICE	FREQUENCY	COST PER UNIT	TOTAL COST PER YEAR
1	Fire Sprinkler System Inspection Dry Pipe Valves*	Annual		\$650.00
	Backflow Device Certification			NOT TESTING
1	Fire Alarm System Inspection	Annual		\$275.00
	Fire Extinguisher Maintenance			NOT TESTING

*\* The inspection represents the use of a Union Sprinkler Fitter performing the inspection after the system has been repaired and put back in service.*

It is understood that the attached inspection terms and conditions shall prevail over any variation in terms and conditions in any purchase order or other document that the Client may issue. This inspection service is advisory only and is not a survey of your sprinkler needs or a loss prevention study.

**Arshad Malik, M.D., F.A.C.C.**

**Valley Fire Protection Services, LLC**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

\_\_\_\_\_  
Jill Nottke  
Account Manager  
jnottke@valleyfire.com  
101 N. Raddant Road  
Batavia, IL 60510  
630-761-3168  
630-293-4338



2/28/2013  
 Proposal No. : VFPS-35

By and Between

Valley Fire Protection Services  
 101 N. Raddant Rd.  
 Batavia, IL 60510  
 Cell: 219-895-5718  
 Office: 630-761-3168  
 Fax: 630-293-4338  
[pkistler@valleyfire.com](mailto:pkistler@valleyfire.com)

Submitted to: Arshad Malik  
 Internal Medicine & Cardio Diseases  
 8560 Broadway  
 Merrillville, In 46410  
 Phone: 219-793-9248  
 Fax: 219-793-9387

Services will be provided and the following location(s):

<input type="checkbox"/> Fire Alarm System	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input checked="" type="checkbox"/> Fire Sprinkler System	<input checked="" type="checkbox"/> Investigation	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Non-Water Based	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Fire Pump	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Backflow Preventer	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection
<input type="checkbox"/> Other	<input type="checkbox"/> Repair	<input type="checkbox"/> Installation	<input type="checkbox"/> Testing & Inspection

**Scope of Work**

- Provide two sprinkler fitters.
- Put the existing air compressor in service and tie in a second air compressor.
- Put air on the dry system. (System has been out of service since 2007)
- Have the fitters walk down the system to determine what pipe and fitting have been damaged.
- Provide a quote to repair the damaged sprinkler pipe and fittings, and recommendations to get the dry system back in service.
- Note: This quote is based on two fitters for 8 hours. If more time is needed to walk down the system we will submit a change order for approval.

Valley Fire Protection Systems hereby proposes to furnish material and labor during normal business hours (Monday-Friday, 7 am-3:30 pm) in accordance with the above scope of work for the sum of: \$1,995.00

Sincerely,

Patrick M. Kistler

# INVOICE

INVOICE NO

093202

VALLEY



101 N Raddant Rd  
 Batavia, IL 60510  
 telephone 630.761.3168  
 facsimile 630.293.4338  
 www.valleyfire.com  
 License # FSC0063

BILL TO Arshad Malik  
 8560 Broadway  
 Merrillville, IN 46410

JOB Dr. Malik Office  
 8560 Braodway  
 Merrillville, IN 46410

CUSTOMER NO.	PURCHASE ORDER NO.	BILL THRU	TERMS	INVOICE DATE	PAGE
005811	Dr. Malik	HT700107	1/30/14	Net 30	3/10/14 1

ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
		See attached work ticket: #01259 dated 12/18/13 #01254 dated 1/3/14 #01328 dated 1/30/14		
22	1	Service call - Investigate system not holding pressure. Found leaks in 4" main and fittings. Materials to be ordered for repair. System remains out of service. See notes on ticket.	925.00	925.00
22	1	Service call - Replaced rusted 4" main and bad fittings. Aired up system and checked for leaks. See notes on ticket.	1,702.00	1,702.00
22	1	1/30/14 Service call - Aired up dry system and checked that air compressor keeps up. Compressor is maintaining pressure. System returned to service. See notes on ticket.	535.00	535.00

Thank You for Choosing Valley Fire Protection  PLEASE REMIT PAYMENT TO: 101 N. Raddant Rd., Batavia, IL 60510	<b>SALE AMOUNT</b>	3,162.00
	<b>TOTAL</b>	\$3,162.00