

**PILICY & RYAN, P.C.**  
**ATTORNEYS AT LAW**

FRANKLIN G. PILICY  
[fpilicy@pilicy.com](mailto:fpilicy@pilicy.com)  
Also Admitted in MA

DONALD J. RINALDI  
[drinaldi@pilicy.com](mailto:drinaldi@pilicy.com)  
As of Counsel to the Firm

365 Main Street  
P.O. Box 760  
Watertown, Connecticut 06795  
Ph: 860-274-0018  
Fax: 860-274-0061  
[www.pilicy.com](http://www.pilicy.com)

CHARLES A. RYAN  
[crvan@pilicy.com](mailto:crvan@pilicy.com)  
Also Admitted in MA

JEFFREY M. GEORGE  
[jgeorge@pilicy.com](mailto:jgeorge@pilicy.com)  
Also Admitted in RI

JILLIAN A. JUDD  
[jjudd@pilicy.com](mailto:jjudd@pilicy.com)

July 13, 2021

Via: US Mail  
Email: [Lavalleed@southington.org](mailto:Lavalleed@southington.org)

Zoning Board of Appeals  
David J. Lavallee, Assistant Town Planner  
196 North Main Street  
Southington, CT 06489

**RECEIVED**

**JUL 13 2021**

**SOUTHINGTON  
PLANNING & ZONING DEPT.**

RE: Zoning Board of Appeals Variance Application  
Appeal #6524A Application of Ryle Builders LLC for lot area variances of 5,280 sq. ft. for Parcel C & 2,100 sq. ft. for Parcel A under Sections 7A-00 & 15-04 of the Zoning Regulations, 34 Williams Street, property of Ryle Builders LLC in an R-12 zone.  
Statement of Opposition to Requested Variances by Angelo & Maria Calandra

Zoning Board of Appeals (“ZBA”),

This office represents Angelo & Maria Calandra (“Calandra”) of 59 Howard Avenue. Calandra submitted a letter in opposition to this variance. Said letter is dated May 28, 2021 and is incorporated by reference. This Statement of opposition will focus on a legal argument in opposition to the subject variances.

Requested Variances

Nature and description of application: “Lot Area” variance of 5,280 square feet +/- for proposed Parcel C (40 Matthews Street); “Lot Area” variance of 2,100 square feet +/- for proposed Parcel A (34 Williams Street).

Legal Argument Against a Finding of Hardship

It is the position of Calandra that the subject property cannot meet the legal standard of a hardship required for a variance. Connecticut law has a strict requirement that in order to qualify for a variance, the Applicant bears the burden of demonstrating that because of some unusual characteristic of the property a literal enforcement of the zoning regulations would result in unusual hardship to them. The hardship complained of must arise directly out of the application of zoning regs to circumstances or conditions beyond the control of the property owner. A personal hardship means the property owner has a preference to go beyond what the zoning

regulations allow. A legal hardship is an exacting standard. Disappointment in the use of property does not constitute an unnecessary hardship within the meaning of zoning law.

A variance may only be granted under Connecticut law when the application of the regulations to the property would destroy the value of the property for all reasonable uses, “as the personal preferences of the applicants were irrelevant to the hardship determination and disappointment in the use of their property did not constitute legal hardship.” *Verrillo v. Zoning Board of Appeals of Branford*, 155 Conn. App. 657 (2015)

“As our Supreme Court has explained a variance constitutes ‘authority extended to the owner to use his property in a manner forbidden by the zoning enactment.’ *Burlington v. Jencik*, 168 Conn. 506, 508 (1975). ‘It is well established...that the granting of a variance must be reserved for unusual or exceptional circumstances... An applicant for a variance must show that, because of some peculiar characteristic of his property, the strict application of the zoning regulation produces an unusual hardship, as opposed to the general impact which the regulation has on other properties in the zone...Accordingly, we have interpreted... §8-6 to authorize a zoning board of appeals to grant a variance only when two basic requirements are satisfied: (1) the variance must be shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause usual hardship unnecessary to the carrying out of the general purpose of the zoning plan...Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance’ *Bloom v. Zoning Board of Appeals*, 233 Conn. 206-208. The granting of a variance is no insignificant matter, as it runs with the land in perpetuity. See General Statutes §8-6(b)”. *Verrillo v. Zoning Board of Appeals of Branford*, 155 Conn. App. 657, 678-679 (2015).

“Variance power should be sparingly exercised.” *Id.* at 680.

“Accordingly, ‘[t]he basic zoning principle that zoning regulations must directly affect land, not the owners of land...limits the ability of zoning boards to act for personal rather than principled reasons, particularly in the context of variances.’ *Reid v. Zoning Board of Appeals*, 235 Conn. 857-58 (1996). As this court has recognized, an applicant’s ‘disappointment in the use of the subject property, namely, the *inability to build a larger structure*,’ is personal in nature and not a proper basis for a finding of hardship. *Michler v. Planning & Zoning Board of Appeals*, 123 Conn.App. 182, 187 (2010). Our Supreme Court similarly has recognized that ‘the fact that an owner is prohibited from adding new structures to the property does not constitute a legally cognizable hardship’. *Bloom v. Zoning Board of Appeals*, 233 Conn. 210-11 (1995).” *Id.* at 692-693.

“In the present case, the Superior Court rejected the applicants’ claim of practical confiscation, noting that the 2010 assessor’s card, which is part of the administrative record, indicates that the property’s assessed value at the time of the public hearing was \$221,000. Equally significant, the applicants presented no evidence that a denial of the requested variances would preclude any reasonable use of the property. Instead, they argued that their proposed expansion of the existing nonconforming structure would be a more reasonable use of the property. In so doing, they fail to appreciate that applicable legal standard, as it was incumbent upon them to offer ‘proof that denial of the variance would practically destroy the value of the property for all reasonable uses.’” *Id.* at 702.

“It therefore is hardly surprising that we can uncover no authority in which our Supreme Court has found sufficient hardship present where an applicant presently enjoyed a reasonable use of the property under the regulations, but nevertheless preferred an alternate one. The defendants likewise have no furnished any such authority. *Contra Rural Water Co. v. Zoning Board of Appeals*, 287 Conn. 296-97 (2008) (applicant ‘had not met its burden to show unusual hardship’ when it ‘failed to prove that it could not continue to use the property as it had been used for many years’). *Id.* at 711.

“A variance is not a tool of convenience, but one of necessity. They are to be granted when the strict application of the regulations results in unusual hardship peculiarly affecting the property. They are not to be granted when a reasonable use already is present, or plainly is possible under the regulations, but an owner prefers otherwise.” *Id.* at 716.

On December 22, 2016, approximately nine months after *Verrillo*, 155 Conn. App. 657, the Connecticut Supreme Court stated that:

“Moreover, *Stillman* is inconsistent with our cases holding that when a property would have economic value even if the zoning regulations were strictly enforced, the fact that a peculiar characteristic of the property would make compliance with the zoning regulations exceptionally difficult if the property were put to a more valuable or desirable use does not constitute either an ‘exceptional difficulty’ or an unusual hardship for purposes of §8-6(a). *Krejpcio v. Zoning Board of Appeals*, supra, 152 Conn. 662 (“[d]isappointment in the use of property does not constitute exceptional difficulty or unusual hardship”); see also *Rural Water Co. v. Zoning Board of Appeals*, supra, 287 Conn. 295 (denial of financial advantage generally does not constitute hardship); *Grillo v. Zoning Board of Appeals*, supra, 206 Conn. 370 (regulation preventing land from use for greatest economic potential does not create exceptional financial hardship); *Miclou v. Zoning Board of Appeals*, supra, 173 Conn. 423 (no hardship when landowner made no showing that property could not reasonably be developed for some other use permitted in zone); *Dolan v. Zoning Board of Appeals*, supra, 156 Conn. 430-31 (application of zoning regulations not varied merely because they hinder landowners from putting property to more profitable use). We continue to find the reasoning of these cases persuasive. ‘This court has many times held that the power to grant variances must be exercised sparingly . . .’ *E & F Associates, LLC v. Zoning Board of Appeals*, 320 Conn. 9, 19-20 (2015).

### Conclusion

The subject property has a present and reasonable use, and a significant value as an existing lot with a dwelling. It appears said lot and dwelling conform to the Zoning Regulations. The Connecticut Supreme Court and Appellate Court have recently concluded that a property cannot demonstrate a hardship when the property has a reasonable use and a reasonable value when operated in accordance with the zoning regulations. On this Record, the Applicants cannot demonstrate the necessary hardship required to support the two requested variances.

Angelo & Maria Calandra

BY   
Franklin G. Dilicy, Esq.  
Its Attorney