NO. CV15 604 98 33 S	:	SUPERIOR COURT
BROOKLAWN DISCOUNT LIQUOR, LLC, ET AL	:	JUDICIAL DISTRICT OF
V.	:	FAIRFIELD AT BRIDGEPORT
ZONING BOARD OF APPEALS, ET AL	:	DECEMBER 30, 2015

MEMORANDUM OF DECISION

FACTS

It is a cardinal principle of land use jurisprudence, that municipal zoning authorities are authorized to zone property, not people. Decisions must be based on property conditions, because the identity of the applicant is irrelevant. Dinan v. Board of Zoning Appeals, 220 Conn. 61, 66-67 (1991); Garibaldi v. Zoning Board of Appeals, 163 Conn. 235, 239 (1972).

This case highlights that rule of law, and the continued vitality of the words famously uttered by John Adams, the second President of the United States, when he declared that ours is "a government of laws, and not of men."

The Defendant, Michael DeFillipo, is the owner of 1044 Brooklawn Avenue, Bridgeport. He purchased the commercial property in February of 2015 (ROR 2).

1044 Brooklawn Avenue consists of approximately one-third of an acre. It is located in an Office Retail (OR) Zone, and contains a single story commercial building. Current tenants include a variety store, a barber shop and a laundromat.

mailed to all parties regd R/R 12/30/15

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In October, 2014, Michael DeFillipo initiated efforts aimed at utilizing 1,880 square feet in the building as a package store. He completed a liquor permit application, and brought the application to the Bridgeport Zoning Office, requesting a zoning compliance "sign-off" from the City of Bridgeport (ROR 17, TR 4-14-15, p. 3-4).

On October 2, 2014, Zoning Enforcement Officer Dennis Buckley issued the zoning certification "sign-off" on the liquor permit application.

Having obtained over-the-counter approval, the application was submitted by one Linda Troiano to the Connecticut Department of Liquor Control Licensing Division (ROR 2).

On December 1, 2014, Russell Reith, the owner and operator of Brooklawn Discount Liquor, LLC, learned from a salesman that a package store was proposed at 1044 Brooklawn Avenue, Bridgeport. Brooklawn Discount Liquors, LLC is located at 752 Brooklawn Avenue, Fairfield, in close proximity (less than 1,500 feet) to 1044 Brooklawn Avenue (ROR 2).

Russell Reith, on behalf of Brooklawn Discount Liquor, LLC, appealed the October 2, 2014 decision of the Zoning Enforcement Official, Dennis Buckley, which decision had approved the zoning certification for the package store at 1044 Brooklawn Avenue. In the written appeal (ROR 2), notarized on December 11, 2014, Reith claimed that his establishment is within 1500 feet of 1044 Brooklawn Avenue. He also alleges that Congregation B'Nai Israel, a synagogue located at

2710 Park Avenue and St. Margaret's Shrine, a church and place of worship at 2523 Park Avenue, were also located within 1,500 feet of the proposed package store (ROR 2).

Section 12-10(a) of the Zoning Regulations of the City of Bridgeport, provides:

> "Package Store: No use for which a package store permit is required under Chapter 545, Section 30-1 through 30-115 of the Connecticut General Statutes, may be located so that an entrance to such use is within a 1,500 foot radius of a Lot containing a house of worship, school, hospital, commercial day care center, or any other use requiring an all-alcohol liquor package store permit. Notwithstanding this limitation, a use for which a package store permit was issued and valid at the time of the adoption of these Regulations, may move to another building or premises within a 750 foot radius of the building or premises containing the use for which the package store permit was issued."

On December 12, 2014, Dennis Buckley, having received the appeal, wrote to the Department of Liquor Control, and rescinded his October 2 Zoning Certification (ROR 2). In his letter of official recision, he informed the State of Connecticut "... the subject premises is within 1,500 feet of a house of worship and therefore the applicant would need Zoning Board of (sic) approvals to operate a package store at this address." (ROR 2)

Following Buckley's recision of his over-the-counter zoning certification, Michael DeFillipo applied to the Bridgeport Zoning Board of Appeals for variances, involving two provisions of the Bridgeport Zoning Regulations (ROR 1). In addition to requesting a variance of S. 12-10a of the

Regulations, the applicant also requested a variance of the provisions of S. 12-10(b). The section reads:

> "Separation of Liquor Permits: No building or premises with a liquor permit issued by the State Liquor Control Commission, other than a full service restaurant as defined by the State Liquor Control Commission, shall be used in whole or in part for the sale of alcoholic liquor if any entrance to such building or premises within the territorial limits of the City of Bridgeport, shall be within 1,500 feet in any direction from the entrance to any other building or premises which shall be used for the sale of alcoholic liquor whether it is of the same or a different class or permit."

The variance of S. 12-10(b) was requested, because Grocery Village, a tenant in the same shopping center, possesses a grocery beer permit issued by the State of Connecticut Liquor Control Commission (ROR 12).

In his application (ROR 1) for the variances, the applicant, Michael DeFillipo, described the alleged hardship impacting the premises, stating:

> "The hardship associated with the property is found in the application of the Regulations to the proposed use. There are no other liquor establishments in Bridgeport within a 1,500 foot radius."

In his statement of appeal (ROR 2), Russell Reith identified two houses of worship within 1,500 feet of 1044 Brooklawn Avenue. Counsel for Michael DeFillipo represented, at the hearing, that the zoning certification was rescinded after Zoning Enforcement Official Dennis Buckley

verified the claim (ROR 17, TR 4-14-15, p. 4-5). Two additional properties, Congregation Rodoph Sholom, and the Lil Blessings Day Care Center, it was acknowledged, are also located within the 1,500 foot radius of 1044 Brooklawn Avenue (ROR 17, TR 4-14-15, p. 12-13).

Counsel for the applicant explained that a package store is a permitted use in an Office Retail (OR) Zone, and argued that a hardship was present, because the 1,500 foot rule prevents the building from being used for the desired purpose. He also claimed hardship based on the "need for this type of use." (ROR 17, TR 4-14-15, p, 10-11).

Twelve letters (ROR 12) were presented in support of the variance, including three of the houses of worship, and the day care center located within 1,500 feet of the premises. Grocery Village, Brooklawn Laundry Mart, and the Etna Barber Shop, tenants in the shopping center, also expressed written support.

A letter of support was read from Mario Testa, chairman of the Bridgeport Democratic Town Committee and a principal of Testo's Pizzeria. The Pizzeria is located in Fairfield, across the street from 1044 Brooklawn Avenue. Testa stated that he had known the applicant for over ten (10) years "as an employee and a friend."

Testa described his former employee as "an honest, hard working individual and a reputable businessman." (ROR 12; ROR 17, TR 4-14-15, p. 14).

Letters were also submitted by members of the Bridgeport City Council, and by Dennis Scinto, who identified himself as the Democratic Party District Leader in the 134th District. City Council President Thomas McCarthy and Howard Austin, who represent the 133rd District, submitted letters, as did former mayor John Fabrizzi.

McCarthy's letter stated that the proposed liquor store "is located near my district (the 133rd), and it represents a "service needed in the 132nd District."[1]

During the public hearing, City Council members Amy Marie Vizzo-Paniccia and Michelle Lyons, who represent the 134th District, gave testimonials to the applicant, his family, and the need for economic development, as did Tom Lyons, a member of the Bridgeport Police Commission (ROR 17, TR 4-14-15, p. 22-25).

Former Mayor Fabrizzi supplemented his written testimony praising "the DeFillipo family" and extolling the economic benefits a package store would produce. (ROR 17, TR 4-14-15, p. 25-27).

Opponents claimed that the variances could not be justified, based on the absence of any hardship arising out of the application of the Bridgeport Zoning Regulations to the property (ROR 17, TR 4-14-15, p. 30-36).

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[1] Neither of the City Council members who represent the 132nd District, where 1044 Brooklawn Avenue is located, submitted written or oral testimony concerning the proposed variances.

Following the public hearing, the Board discussed the variance applications. City attorney Edmund Schmidt, who advises the Zoning Board of Appeals, provided a detailed analysis of the legal issues involved. He opined that the facts as presented failed to establish a legitimate hardship (Supplemental ROR, TR 4-14-15, p. 1-9).

A motion was made to approve the variance by Commissioner Carolan. The motion received the necessary super-majority vote, and passed with four (4) in favor (Carolan, Perez, Brown, Grace), and one (1) opposed (Russo).

Reasons given in support of the granting of the variances (ROR 16, p. 16), were:

1. Three of the four houses of worship within 1,500 feet of the subject premises wrote letters of support.
2. 186 City of Bridgeport residents signed a petition in favor of this variance.
3. The lot shall be improved and will be more conforming to the zoning regulations.
4. Improvements to the building and property will result in more activity and pedestrian safety.
5. Attorney Willinger presented case law which supported a liquor variance in another community in Connecticut.

The Zoning Board of Appeals also listed (ROR 16) reasons in opposition to the granting of the requested variances, although the statute does not require the minority to state reasons for its conclusions.

From the decision approving the granting of the requested variances, the Plaintiffs Brooklawn Discount Liquor, LLC, Stephen Grinvalsky, Susan Cole, Jonathan Baum, and John Broadcannon, LLC, instituted this timely appeal.

While this appeal has been pending, the Defendant, Michael DeFillipo, has opened a package store at 1044 Brooklawn Avenue for business, based upon the variances awarded by the Bridgeport Zoning Board of Appeals.

AGGRIEVEMENT

The Plaintiff, Jonathan Baum, is the owner of property in the City of Bridgeport at 2625 Park Avenue, Unit 95. This unit is part of an apartment complex known as Embassy Towers. The Plaintiff has owned the property since May 30, 2001 (Ex. 1), and has owned it throughout the time this appeal has been pending. He pays real property taxes to the City of Bridgeport.

Susan Cole is also a taxpayer in the City of Bridgeport. She is the owner of real property known as 187 Suburban Avenue (Ex. 2), which she acquired in 2003. She has been the owner since 2003.

The Plaintiff, Stephen Grinvalsky resides at 187 Suburban Avenue. He does not own any real property in the City of Bridgeport, but does pay motor vehicle property tax. Those personal property taxes are current.

John Broadcannon, LLC is a member of a real estate partnership which owns property known as 1087 and 1057 Broad Street, Bridgeport. (Ex. 3) The entity is a taxpayer in the City of Bridgeport, and has owned an interest in the Broad Street real estate since 1998 (Ex. 3).

Each of the Plaintiffs, with the exception of Brooklawn Discount, Liquor, LLC, claims to be aggrieved by the decision of the Bridgeport Zoning Board of Appeals, based upon their status as taxpayers in the City of Bridgeport.

Pleading and proof of aggrievement are jurisdictional requirements, and a prerequisite for maintaining an appeal. Winchester Woods Associates v. Planning Zoning Commission, 219 Conn. 303, 307 (1991); Lewin v. United States Surgical Corporation, 21 Conn. Supp. 629, 631 (1996). The question of aggrievement is one of fact, to be determined by the trial court. Primerica v. Planning & Zoning Commission, 211 Conn. 85, 93 (1989).

Two broad categories of aggrievement have been recognized: 1) statutory aggrievement, and 2) classical aggrievement.

Statutory aggrievement exists by virtue of legislative fiat, rather than through an analysis of the facts of a particular case. Weill v. Lieberman, 195 Conn. 122, 124-25 (1985); Pierce v. Zoning Board of Appeals, 7 Conn. App. 633, 635-36 (1986).

In the context of an appeal from the decision of a municipal land use agency, S. 8-8 (1) of the General Statutes defines "aggrieved person" to include:

"... any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board..."

Although three of the named Plaintiffs own real property in the City of Bridgeport, none owns property that abuts, or is within one hundred feet of 1044 Brooklawn Avenue. Therefore, no finding of statutory aggrievement can be supported as to any Plaintiff in this case.

Classical aggrievement, requires a party claiming to be aggrieved to satisfy a well established two-fold test: 1) the party must show a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest such as concern of all members of the community as a whole, and 2) the party must show that the personal and legal interest has been specifically and injuriously affected by the decision of the agency. Cannavo Enterprises v. Burns, 194 Conn. 43, 47 (1984).

None of the Plaintiffs who testified at trial claimed to be classically aggrieved by the decision of the Bridgeport Zoning Board of Appeals, and no finding of classical aggrievement is made as to any Plaintiff, based upon the two-fold analysis.

The only basis for claiming aggrievement advanced by Jonathan Baum, Susan Cole, Stanley Grinvolsky and John Broadcannon, LLC, concerns the "automatic standing rule." The Connecticut Supreme Court has consistently affirmed this rule, which holds that a municipal taxpayer, appealing a zoning decision involving the sale of liquor, is a priori an aggrieved person, for

purposes of an appeal. Alliance Energy Corp. v. Planning & Zoning Board, 262 Conn. 393, 403 (2003); Jolly, Inc. v. Zoning Board of Appeals, 237 Conn. 184, 186-87 (1996); M & R Enterprises, Inc. v. Zoning Board of Appeals, 155 Conn. 280, 281-82 (1967); Cowles v. Zoning Board of Appeals, 153 Conn. 116 (1965); Zuckerman v. Board of Zoning Appeals, 144 Conn. 160, 164 (1956); O'Connor v. Board of Zoning Appeals, 140 Conn. 65, 71-72 (1953); Beard's Appeal, 64 Conn. 526, 534 (1894).

In Jolly, the Supreme Court disregarded both a trial court decision not to apply the automatic standing rule, and a solitary dissent which urged abandonment of the rule as anachronistic. Jolly, Inc. v. Zoning Board of Appeals, supra, 204-05 (Berdon, J. dissenting).

Jolly was not the first time the automatic standing rule had been attacked as "anachronistic."; Macalusco v. Zoning Board of Appeals, 167 Conn. 596, 600-01 (1975) ; and the claim was again raised, post-Jolly, in Alliance Energy Corp. v. Planning & Zoning Board, supra, 401-03.

However, in each instance, the Connecticut Supreme Court has consistently rejected elimination of the "automatic standing rule," opting instead to apply stare decisis.

Since Beard's Appeal in 1894, our courts have recognized that in liquor traffic there is a possible source of danger to the public, which is not inherent in other businesses, and which justifies distinctive and particular treatment. Alliance Energy Corp. v. Planning & Zoning Board,

supra, 401. As the Jolly Court reasoned, the sale and use of alcohol poses significant risks of criminal activity and an increased risk to the well being of the entire community. This, coupled with an increased need for policing and regulation, and an increased risk of pecuniary loss to the taxpayer, accounts for the distinctive and special treatment accorded one who challenges a decision which involves the potential sale and use of alcohol. Jolly, Inc. v. Zoning Board of Appeals, supra, 198-99.

Faced with the unambiguous affirmation of the automatic standing rule by the Connecticut Supreme Court, and the absence of any legislative initiative designed to change or repeal the rule, it is found that the Plaintiffs, Jonathan Baum, Susan Cole and John Broadcannon, LLC, due to their ownership of real property in the City of Bridgeport, are aggrieved by the decision which generated this appeal.

The plaintiff, Stephen Grinvalsky, is also found to be aggrieved, since the rule does not distinguish between the payment of real property taxes, and personal or automobile properly taxes.

No evidence of aggrievement was introduced as to Brooklawn Discount Liquor, LLC, which owns a package store at 752 Brooklawn Avenue, in Fairfield.

Brooklawn Discount Liquor, LLC does not own real or personal property in the City of Bridgeport, and does not pay taxes to the city. The mere fact that the package store is located in close proximity to 1044 Brooklawn Avenue, Bridgeport, gives this Plaintiff no special standing.

Although Brooklawn Discount Liquor, LLC is a competitor of the newly-opened package store at 1044 Brooklawn Avenue, its status as a competitor is not sufficient to warrant a finding of either statutory or classical aggrievement. Farr v. Zoning Board of Appeals, 139 Conn. 577, 583 (1953); Kamerman v. LeRoy, 133 Conn. 232, 237 (1946); Benson v. Zoning Board of Appeals, 129 Conn. 280, 284 (1942).

It is therefore found that the Plaintiff, Brooklawn Discount Liquor, LLC, is not aggrieved by the decision which generated this appeal.

However, because four (4) of the Plaintiffs have established aggrievement pursuant to the automatic standing rule, the court has jurisdiction to hear the appeal.

STANDARD OF REVIEW -- ZONING BOARD OF APPEALS

The powers of a municipal zoning board of appeals, unless exercised pursuant to a Special Act adopted by the General Assembly, are derived from S. 8-6 (3) of the General Statutes. This section provides authority to:

> "(3) determine and vary the application of the zoning by laws, ordinances or regulations in harmony with their general purpose and intent, with due consideration for conserving public health, safety,

> convenience and property values soley with regard to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such by laws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done, and the public safety and welfare preserved."

The standard for judicial review of an appeal from a decision to grant or deny a variance, is well established. A zoning board of appeals is endowed with liberal discretion, and its decisions are subject to review by a court only to determine whether the board acted arbitrarily, illegally or unreasonably. Moon v. Zoning Board of Appeals, 291 Conn 16, 23-24 (2009); Torsiello v. Zoning Board of Appeals, 3 Conn. App. 47, 56 (1988). The burden of demonstrating that the board has acted improperly, is upon the party seeking to overturn the board's decision. Adolphson v. Zoning Board of Appeals, 205 Conn. 703, 707 (1988); Whittaker v. Zoning Board of Appeals, 179 Conn. 650, 654 (1980).

The Plaintiffs' appeal to the trial court is based solely on the record compiled before the municipal zoning board of appeals. Hescock v. Zoning Board of Appeals, 112 Conn. App. 239, 244 (2009). Under the applicable standard of review, a court may not substitute its judgement for that of the zoning board of appeals, so long as the board's decision reflects an honest judgement, arrived at after full hearing. Bloom v. Zoning Board of Appeals, 233 Conn. 198, 206 (2005). The question is not whether another decision maker, such as the trial court, would have made a different

decision, but whether the record supports the decision reached. Calandro v. Zoning Commission, 176 Conn. 439, 440 (1979).

However, where, as here, the question is whether the Bridgeport Zoning Board of Appeals had authority to grant a variance pursuant to S. 8-6(a), when the property does not lack economic value if a variance is denied, a question of law is presented, and the review is plenary. Hosychak v. Zoning Board of Appeals, 296 Conn. 434, 442 (2010).

A decision must he upheld, if it is supported by substantial evidence in the record. Smith Bros. Woodland Management LLC v. Zoning Board of Appeals, 108 Conn. App. 621, 628 (2008). Substantial evidence is enough evidence to justify, if the trial were to a jury, the refusal to direct a verdict if the conclusion sought to be drawn is one of fact. Sampieri v. Inland Wetlands Agency, 226 Conn. 529, 588 (1993). The possibility of drawing two inconsistent conclusions does not prevent a decision from being supported by substantial evidence. Property Group, Inc. v. Planning & Zoning Commission, 226 Conn. 684, 697 (1993).

Section 8-7 of the General Statutes, requires a municipal zoning board of appeals to state reasons for its decision to grant a variance, and to identify the hardship on which its decision is based. The statute reads:

> "... Whenever a zoning board of appeals grants or denies any ... variance in the zoning regulations applicable to any property... it shall state upon the record the reason for its decision and... when a

variance is granted, describe specifically the exceptional difficulty or unusual hardship on which its decision is based... "

Where, as here, a municipal land use agency has stated collective reasons for its decision, a court should not go beyond the collective reasons of the agency, but should determine whether any reason is supported by substantial evidence in the record. Gibbons v. Historic District Commission, 285 Conn. 755, 770-71 (2008); Vine v. Zoning Board of Appeals, 281 Conn. 553, 559-60 (2007).

However, because the Board made no finding concerning any exceptional difficulty or unusual hardship supporting its decision to grant the requested variances, the court is obligated to search the record, in an attempt to determine a basis for the decision of the Zoning Board of Appeals. Grillo v. Zoning Board of Appeals, 206 Conn. 362, 369 (1988); Ward v. Zoning Board of Appeals, 153 Conn. 141, 144 (1965).

THE RECORD FAILS TO DISCLOSE ANY SUPPORT FOR THE GRANTING OF VARIANCES BY THE BRIDGEPORT ZONING BOARD OF APPEALS

In order to grant a variance, a municipal zoning board of appeals must find that two conditions have been satisfied: 1) the variance must be shown not to affect substantially the comprehensive plan of the municipality, and 2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the comprehensive

plan. Moon v. Zoning Board of Appeals, supra, 23-24; Francini v. Zoning Board of Appeals, 227 Conn. 785, 790 (1994); Smith v. Zoning Board of Appeals, 174 Conn. 323, 326 (1978). The comprehensive plan consists of the zoning regulations, and the zoning map. Burnham v. Planning & Zoning Commission, 189 Conn. 261, 267 (1983); Pike v. Zoning Board of Appeals, 31 Conn. App. 270, 277 (1993).

Because the granting of a variance permits a propertv owner to use his property even though a violation of the zoning regulations will result, it is reserved for exceptional or unusual circumstances. Bloom v. Zoning Board of Appeals, supra, 206-07; Burlington v. Jencik, 168 Conn. 506, 508 (1978); Krejpko v. Zoning Board of Appeals, 152 Conn. 657, 661-62 (1965). Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a variance. Tine v. Zoning Board of Appeals, 308 Conn. 300, 310 (2013).

A variance, if granted, runs with the land, and is not personal to the property owner. Reid v. Zoning Board of Appeals, 235 Conn. 850, 859-60 (1996). Section 8-6(b) of the General Statutes, clarified and codefied this rule. The statute reads:

> "(b) Any variance granted by a zoning board of appeals shall run with the land and shall not be personal in nature to the person who applied for and received the variance. A variance shall not be extinguished soley because of the transfer of title to the property or the invalidity of any condition attached to the variance that would affect the transfer of the property from the person who initially applied for and received the variance."

A hardship must arise from a condition different in kind from one generally affecting properties in the same zoning district, and must be imposed by conditions outside the control of the person seeking the variance. Smith v. Zoning Board of Appeals, supra, 239-40; Norwood v. Zoning Board of Appeals, 62 Conn. App. 528, 533 (2001). If a hardship is self-inflicted, arising from the voluntary act of the applicant, the board does not have authority to grant a variance. Pollard v. Zoning Board of Appeals, 186 Conn. 32, 39 (1982): Archambault v. Wadlow, 25 Conn. App. 375, 384 (1991).

Hardships which are personal to the applicant, however compelling from a human standpoint, do not provide a sufficient basis for the granting of a variance. Garibaldi v. Zoning Board of Appeals, supra, 239-40; Gangemi v. Zoning Board of Appeals, 54 Conn. App. 559, 564 (1999). Disappointment in the use of property, does not constitute exceptional difficulty or unusual hardship. Green Falls Associates, LLC v. Zoning Board of Appeals, 138 Conn. App. 481, 494 (2012).

Considerations of financial advantage, or the denial of a financial advantage, do not constitute hardship, unless the zoning restriction greatly diminishes, or practically destroys, the value of the property for any of the uses to which it could reasonably be put. Rural Water Co. v. Zoning Board of Appeals, 287 Conn. 284, 295 (2008); Carlson v Zoning Board of Appeals, 158 Conn. 86, 89-90 (1969). A regulation which prevents land from being used for its greatest

economic potential, does not create exceptional financial hardehip, and cannot provide the justification for a variance. Grillo v. Zoning Board of Appeals, 206 Conn. 262, 270 (1988).

The Bridgeport Zoning Board of Appeals sought to rationalize its granting of the variances, by claiming that the work to be performed in connection with the package store, would render 1044 Brooklawn Avenue "more conforming" with the zoning regulations applicable to an Office Retail (OR) Zone.

The applicant committed to reducing the blacktop parking lot, and to replacing a portion of the macadam with landscaping, thus eliminating a nonconformity on the property. He therefore seeks to shoehorn his proposal, into a narrow exception to the strict hardship requirement, where a proposed use will eliminate, or substantially reduce, the offensiveness of a legally existing nonconforming use of the property in question. Adolphson v. Zoning Board of Appeals, supra, 710; Verrillo v. Zoning Board of Appeals, 155 Conn. App. 657, 725-26 (2015).

This attempt, and the Defendant's reliance upon Adolphson, is unavailing.

Adolphson concerned an existing nonconforming use, an aluminum foundry on the premises. The applicant sought a variance, in order to locate an automotive repair shop on the property, a use which the trial court determined was "less offensive" even though it too would be nonconforming under the existing regulations. Adolphson v. Zoning Board of Appeals, supra, 713-14.

The Connecticut Supreme Court, in a 3-2 decision, upheld the granting of the use variance, in the context of a trial court finding that a failure to grant a variance would likely cause the property to become useless, and would therefore be confiscatory. Adolphson v. Zoning Board of Appeals, supra, 715-16.

Here, there can be no credible claim that 1044 Brooklawn Avenue would be rendered valueless, in the absence of the requested variances. The property can be rented to a commercial tenant, and is capable of being used for any of a myriad of uses which are permitted in an Office Retail (OR) Zone.

The Appellate Court decision in Stancuna v. Zoning Board of Appeals, 66 Conn. App. 565 (2001), where the narrow exception was found to apply, is of no assistance to the Defendant.

In that case, a side yard setback variance was granted. The failure to grant the variance would have limited the property owner to building a ten foot wide commercial building in a commercial zone. The granting of the variance had the additional affect of eliminating a nonconforming residential use. Stancuna v. Zoning Board of Appeals, supra, 571 72.

No extraordinary factual situation is present here, which would even remotely implicate the narrowly crafted exception found in Adolphson and Stancuna.

At trial, the Defendant relied upon Plumb v. Board of Zoning of Appeals, 141 Conn. 595 (1954), in support of his claim of hardship. This claim fails to resonate.

Plumb concerned a residentially zoned parcel, which the applicant desired to utilize for the storage of lumber. The court held that the proximity of the property to other commercial property, and the railroad tracks, rendered it unsuitable for residential purposes. The hardship resulted from the fact that the location was not suitable for any residential use, permitted in the zone. Plumb v. Zoning Board of Appeals, supra, 600-02.

Here, 1044 Brooklawn Avenue is suitable and appropriate for many uses permitted as of right in an Office Retail (OR) Zone.

Recently, the Supreme Court underscored the hurdle one seeking a variance must surmount, in order to establish a legitimate hardship.

In E & F Associates, LLC v. Zoning Board of Appeals, 320 Conn. 9 (2015), the Court held that the inability of a property owner to put his property to a particular use permitted under the zoning regulations, cannot justify the granting of a variance, where the property would have economic value if the variance was denied. E & F Associates, LLC v. Zoning Board of Appeals, supra, 21.

E & F Associates involved a parcel containing a single story structure, located in a commercial zone, at the intersection of Sanford Road and the Post Road (US 1) in Fairfield. The building was constructed prior to the adoption of zoning regulations, and was built on the property

line. The setback requirements in the zoning regulations, both front and side, rendered the property legally nonconforming.

The zoning board of appeals granted a variance, to permit the construction of a second story, an addition which could not be built without encroaching on the front and side setbacks. The second story would not violate applicable height restrictions.

The owner of the property hoped to attract a "quality restaurant," in a zone where restaurants constitute a permitted use.

The Fairfield Zoning Board of Appeals granted the requested variance, a decision with which this court agreed. The Supreme Court reversed, holding that the applicant had failed to show that the property could not be utilized for some other use permitted in the zoning district. E & F Associates, LLC v. Zoning Board of Appeals, supra, 17. In the process, the Supreme Court overruled the Appellate Court decision in Stillman v. Zoning Board of Appeals, 25 Conn. App. 631 (1991) "and its progeny."

In this case, 1044 Brooklawn Avenue is not rendered valueless, in the absence of the requested variances. It can be dedicated to other uses permitted in the zone. The inability of Michael DeFillipo to utilize the property as a package store, represents a personal disappointment, which cannot provide a basis for a finding of hardship. Garlasco v. Zoning Board of Appeals, 101 Conn. App. 451, 462 (2007).

Concern for pedestrian safety, and a desire for increased commercial activity in the area, are unable to supply the basis for a legally cognizable hardship.

PUBLIC AND POLITICAL SUPPORT FOR THE APPLICANT AND HIS PROPOSED PACKAGE STORE DO NOT SUPPLY ANY BASIS FOR A FINDING OF HARDSHIP

The Bridgeport Zoning Board of Appeals cited, in support of its decision to approve the variances requested by Michael DeFillipo, that three of the four houses of worship located within 1,500 feet of the property wrote letters in support of the application, and that 186 residents of Bridgeport signed a petition (ROR 13) supporting the application.

The written submissions (ROR 12) and the transcript of the April 14, 2015 public hearing, (ROR 17, TR 4-14-15, p. 12-16; p.22-26), prominently showcase elected and appointed Bridgeport officials, offering testimonials to the character and entrepernerial spirit of Michael DeFillipo. The officials also called for greater economic development and tax base enhancement, concerns which are more appropriately addressed to the Bridgeport Planning and Zoning Commission.

None of the speakers who addressed the Zoning Board of Appeals during the public hearing, or the many officials who sent letters supporting the variances to Dennis Buckley, presumably in his capacity as clerk of the Zoning Board of Appeals, presented any information which might serve as a basis for a finding of hardship.

While all citizens have a right to he heard during a public hearing conducted by a municipal land use body, the parade of preening politicians endorsing this application, orchestrated on April 14, 2015, may have the unintended consequence of convincing the already cynical that "the fix was in," even if the record does not conclusively establish that finding.

This is particularly true, where the Supplemental Record reveals that a super majority of the Zoning Board of Appeals cavalierly disregarded the advice of the experienced and knowledgable land use attorney who was present to provide legal guidance.

Adopting a "no harm, no foul" approach to variance applications, disserves the public. It also fuels the perception, too common in municipal government, that political machinations and the politics of personality, are sufficient to trump the rule of law.

CONCLUSION

The appeal of the Plaintiffs is SUSTAINED.

Because the variances granted by the Bridgeport Zoning Board of Appeals are a condition precedent to the lawful operation of a package store at 1044 Brooklawn Avenue, Bridgeport, the Defendant, Michael DeFillipo, is ordered to immediately cease and desist from the use of any portion of 1044 Brooklawn Avenue, as a package store.

It is found, that the continued use of 1044 Brooklawn Avenue, Bridgeport as a package store violates the Zoning Regulations of the City of Bridgeport, and is not authorized, as a nonconforming use of the property.

Radcliffe, J.

RADCLIFFE, J.