

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D20467
W/prt

_____AD3d_____

Argued - September 8, 2008

REINALDO E. RIVERA, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2006-11025

DECISION & ORDER

Town of Riverhead, respondent, v Henry B.
Silverman, et al., appellants, et al., defendants.

(Index No. 14988/06)

Wickham, Bressler, Gordon & Geasa, P.C., Mattituck, N.Y. (Eric J. Bressler of counsel), for appellants.

Smith, Finkelstein, Lundberg, Isler & Yakaboski, LLP, Riverhead, N.Y. (Phil Siegel of counsel), for respondent.

In an action, inter alia, to enforce an easement and for injunctive relief, the defendants Henry B. Silverman and Melissa Silverman appeal from an order of the Supreme Court, Suffolk County (Cohalan, J.), dated October 25, 2006, which granted the plaintiff's motion for a preliminary injunction enjoining them from continuing the use and occupancy of the subject premises without a certificate of occupancy and/or further order of the court.

ORDERED that the order is affirmed, with costs.

“To obtain preliminary injunctive relief based on a violation of its zoning ordinances, a town need only show that it has a likelihood of success on the merits and that the equities are balanced in its favor” (*Town of Dover Town Bd. v Cascino*, 41 AD3d 834, 834; *see* Town Law § 268[2]; *Town of Thompson v Braunstein*, 247 AD2d 753, 754). Under the unique circumstances of this case, the Supreme Court properly found that the Town of Riverhead made such a showing.

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, JJ., concur.

September 30, 2008

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TOWN OF RIVERHEAD v SILVERMAN

2006-11025

DECISION & ORDER ON MOTION

Town of Riverhead, respondent, v Henry B.
Silverman, et al., appellants, et al., defendants.

(Index No. 14988/06)

Motion by the respondent to dismiss the appeal on the ground that the appeal has been rendered academic. By decision and order on motion of this Court dated February 11, 2008, the motion was held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the motion is denied.

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court