

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

D26026
G/hu

_____AD3d_____

Argued - November 6, 2009

PETER B. SKELOS, J.P.
RANDALL T. ENG
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2008-08163

DECISION & ORDER

In the Matter of Barry Wetherall, et al., petitioners-respondents, v Town of Islip Zoning Board of Appeals, et al., respondents-respondents; Jerome Feder, et al., proposed intervenors-appellants.

(Index No. 30596/06)

J. Lee Snead, Bellport, N.Y., for proposed intervenors-appellants.

Shlimbaum and Shlimbaum, Islip, N.Y. (Lark J. Shlimbaum of counsel), for petitioners-respondents.

Robert F. Quinlan, Town Attorney, Islip, N.Y. (Erin A. Sidaras of counsel), for respondents-respondents.

In a proceeding pursuant to article 78 to review a determination of the Town of Islip Zoning Board of Appeals dated October 24, 2006, the proposed intervenors, Jerome Feder and Erica Fried, appeal from an order of the Supreme Court, Suffolk County (Pitts, J.), dated July 30, 2008, which denied that branch of their motion which was for leave to intervene and, in effect, denied that branch of their motion which was to vacate a stipulation dated December 3, 2007, which, among other things, provided that the matter would be remitted to the Town of Islip Zoning Board of Appeals for further proceedings.

ORDERED that the appeal is dismissed, without costs or disbursements, as no appeal lies as of right from a nonfinal order in a proceeding pursuant to CPLR article 78 and, under the circumstances of this case, we decline to grant leave to appeal (*see* CPLR 5701[b][1]; *Matter of DiMeglio v Village of Briarcliff Manor, New York*, 58 AD3d 840; *Matter of Pace v Pleus*, 306 AD2d 350, 350; *Matter of Young Israel of Merrick v Board of Appeals of Town of Hempstead*, 304 AD2d

834, 834-835; *Matter of Turek v Town of Clarkstown Zoning Bd. of Appeals*, 288 AD2d 479, 479; *Matter of Bartolomeo v Spain*, 286 AD2d 498, 499; cf. *Matter of Cohen v Board of Appeals of Vil. of Saddle Rock*, 297 AD2d 38, 44, *affd* 100 NY2d 395).

SKELOS, J.P., ENG, LEVENTHAL and CHAMBERS, JJ., concur.

2008-08163

DECISION & ORDER ON MOTION

In the Matter of Barry Wetherall, et al., petitioners-respondents, v Town of Islip Zoning Board of Appeals, et al., respondents-respondents; Jerome Feder, et al., proposed intervenors-appellants.

(Index No. 30596/06)

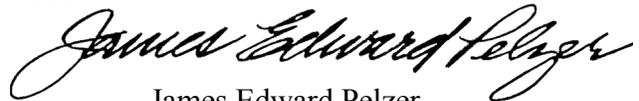
Motion by the petitioners-respondents to dismiss an appeal from an order of the Supreme Court, Suffolk County, dated July 30, 2008, on the ground that it has been rendered academic. By decision and order on motion of this Court dated April 28, 2009, the motion was held in abeyance and referred to the 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 relation thereto, and upon the argument of the appeal, it is

ORDERED that the motion is denied as academic in light of our determination on the appeal (*see Matter of Wetherall v Town of Islip Zoning Bd. of Appeals*, _____AD3d_____ [decided herewith]).

SKELOS, J.P., ENG, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court