

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

D27510
W/prt

_____AD3d_____

Argued - April 23, 2010

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-03925

DECISION & ORDER

Wallkill Cemetery Association, Inc., et al., appellants,
v Town of Wallkill, et al., respondents.

(Index No. 9755/08)

Joseph J. Haspel, Goshen, N.Y., for appellants.

Patrick S. Owen, PLLC, Goshen, N.Y., for respondents Town of Wallkill, Town of Wallkill Zoning Board of Appeals, and Town of Wallkill Building Inspector.

Rosemary Stack, Syracuse, N.Y., for respondents E. Tetz and Sons, Inc., Concrete Properties, LLC, and Tetz Asphalt, LLC.

In an action, inter alia, for a judgment declaring that extensions of the terms of certain area variances granted by the Town of Wallkill Zoning Board of Appeals to E. Tetz and Sons, Inc., Concrete Properties, LLC, and Tetz Asphalt, LLC, in connection with applications for a special use permit and site plan approval to construct an asphalt plant, were null and void, and to enjoin the defendants E. Tetz and Sons, Inc., Concrete Properties, LLC, and Tetz Asphalt, LLC, from proceeding with any construction work in reliance on the area variances, the plaintiffs appeal, as limited by their brief, from so much of an order and judgment (one paper) of the Supreme Court, Orange County (Nicolai, J.), dated March 19, 2009, as denied their motion for recusal, for a preliminary injunction enjoining the defendants E. Tetz and Sons, Inc., Concrete Properties, LLC, and Tetz Asphalt, LLC, from proceeding with any construction work in reliance on the area variances pending the resolution of the action, and for summary judgment declaring that the extensions of the terms of the area variances are null and void, granted the motion of the defendants E. Tetz and Sons, Inc., Concrete Properties, LLC, and Tetz Asphalt, LLC, and the cross motion of the defendants Town

May 25, 2010

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of Wallkill and Town of Wallkill Building Inspector, among others, to dismiss the complaint insofar as asserted against each of them pursuant to CPLR 3211(a)(5), upon searching the record, in effect, awarded summary judgment to the Town of Wallkill Zoning Board of Appeals declaring that the extensions of the terms of the area variances are valid, and declared that the Town of Wallkill Zoning Board of Appeals did not exceed its authority when it granted more than one extension of the term of the area variances to E. Tetz and Sons, Inc.

ORDERED that the appeal is dismissed as academic, without costs or disbursements.

The plaintiffs challenge determinations made by the Town of Wallkill Zoning Board of Appeals granting extensions of the terms of area variances it previously granted to E. Tetz and Sons, Inc., in connection with other approvals and permits necessary to the construction of an asphalt plant. We dismiss the appeal as academic for the reasons stated in our decision and order on a companion appeal (*see Matter of Wallkill Cemetery Assoc. v Town of Wallkill Planning Bd.*, ___ AD3d ___ [decided herewith]).

FISHER, J.P., BALKIN, ROMAN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court