

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

D27944  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 25, 2010

STEVEN W. FISHER, J.P.  
FRED T. SANTUCCI  
HOWARD MILLER  
PLUMMER E. LOTT, JJ.

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2009-05952

DECISION & ORDER

In the Matter of John G. Molloy, et al., appellants, v  
Mark Fraser, etc., et al., respondents.

(Index No. 235/09)

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John G. Molloy, Mahopac, N.Y., appellant pro se, and for appellant Michelle Thomas Molloy.

Curtiss & Leibell, P.C., Carmel, N.Y. (Timothy J. Curtiss of counsel), for respondents Mark Fraser, Rosemarie Fabiano, Richard Favicchia, James Ferrick, Lorraine Marianni, John Maxwell and John Lupinacci, as members of the Town of Carmel Zoning Board of Appeals, and the Town of Carmel Zoning Board of Appeals.

William A. Shilling, Jr., P.C., Carmel, N.Y., for respondent Putnam Arts Council.

In a proceeding pursuant to CPLR article 78, in effect, to review so much of a determination of the Town of Carmel Zoning Board of Appeals dated February 23, 2009, as, after a hearing, granted that branch of the application of the respondent Putnam Arts Council which was for a use variance, the petitioners appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Putnam County (O'Rourke, J.), dated May 8, 2009, as denied the petition and, in effect, dismissed the proceeding.

ORDERED that the appeal is dismissed as academic, with one bill of costs to the respondents appearing separately and filing separate briefs.

The appellants commenced this CPLR article 78 proceeding, in effect, to review so

much of a determination of the Town of Carmel Zoning Board of Appeals as granted that branch of the application of the Putnam Arts Council which was for a use variance permitting the continuation of a not-for-profit arts council in a residential zone. The Supreme Court, inter alia, denied the petition and, in effect, dismissed the proceeding.

It is undisputed that during the pendency of this appeal the new arts center was completed and a certificate of occupancy was issued. As the appellants failed to move in this Court for a preliminary injunction to preserve the status quo pending the determination of this appeal, they failed to preserve their rights pending appellate review. Under the circumstances of this case, the appeal must be dismissed as academic (*see Matter of Citineighbors Coalition of Historic Carnegie Hill v New York City Landmarks Preserv. Commn.*, 2 NY3d 727, 730; *Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach*, 98 NY2d 165, 173; *Matter of Dowd v Planning Bd. of Vil. of Millbrook*, 54 AD3d 339, 340; *Matter of Schaffer v Zoning Bd. of Appeals of Town/Vil. of Harrison*, 22 AD3d 501, 501; *Matter of Group for S. Fork v Planning Bd. of Town of Southampton*, 306 AD2d 281, 282; *Matter of Gorman v Town Bd. of Town of E. Hampton*, 273 AD2d 235, 236).

FISHER, J.P., SANTUCCI, MILLER and LOTT, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court