

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

D33020
Y/ct

_____AD3d_____

Argued - November 3, 2011

JOHN M. LEVENTHAL, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-03502

DECISION & ORDER

In the Matter of Robert P. Lynn III, et al., appellants,
v Planning Board of the Town of East Hampton, respondent.

(Index No. 26820/09)

Lynn, Gartner & Dunne, LLP, Mineola, N.Y. (Kenneth L. Gartner of counsel), for appellants.

John C. Jilnicki, Town Attorney, East Hampton, N.Y. (Kathryn N. Santiago of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the Planning Board of the Town of East Hampton dated June 17, 2009, which denied the petitioners' application to modify a subdivision plat to enlarge an accessory building envelope and permit the construction of a principal dwelling in that envelope, the petitioners appeal from a judgment of the Supreme Court, Suffolk County (Pastorella, J.), dated March 16, 2011, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

There is no evidence in this record that the respondent's determination was illegal, arbitrary, or an abuse of discretion (*see Matter of Fairway Manor, Inc. v Bertinelli*, 81 AD3d 821, 823; *Matter of Commercial Real Asset Mgt. v Kessler*, 38 AD3d 542, 543). The petitioners failed to demonstrate a material change of circumstances since the time of the initial approval of the plat or submit new evidence which would warrant modification of the subdivision plat approved in 1995 (*Matter of 1066 Land Corp. v Planning Bd. of Town of Austerlitz*, 218 AD2d 887, 887; *Matter of*

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Marx v Planning Bd. of Vil. of Mill Neck, 185 AD2d 348, 349).

The petitioners' remaining contentions are without merit.

Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

LEVENTHAL, J.P., HALL, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court