

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

D34998
Y/kmb

_____AD3d_____

Argued - April 20, 2012

WILLIAM F. MASTRO, A.P.J.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2011-06648

DECISION & ORDER

In the Matter of Prel 32 Realty, LLC, appellant, v
Richard I. Scheyer, etc., et al., respondents.

(Index No. 16543/09)

Eugene L. De Nicola, Sayville, N.Y. (Andrea De Nicola of counsel), for appellant.

Robert L. Cicale, Town Attorney, Islip, N.Y. (John R. DiCioccia of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the Board of Zoning Appeals of the Town of Islip dated April 14, 2009, which, after a hearing, denied the petitioner's application to establish a legal nonconforming use on the subject premises, the petitioner appeals from a judgment of the Supreme Court, Suffolk County (Farneti, J.), dated May 2, 2011, which, upon an order of the same court dated March 17, 2011, denying the petition, dismissed the proceeding on the merits.

ORDERED that the judgment is affirmed, with costs.

Contrary to the petitioner's contention, a rational basis supports the determination of the Zoning Board of Appeals of the Town of Islip (hereinafter the ZBA) that the petitioner impermissibly changed the use of the subject premises from residential to both residential and commercial by fencing off a garage on the premises and permitting it to be used as an accessory structure by a business conducted from an adjacent parcel (*see* Code of Town of Islip §§ 68-3[B], 68-15[A]; *see generally* *Matter of Zupa v Zoning Bd. of Appeals of Town of Southold*, 31 AD3d 570, 571; *Matter of Androme Leather Corp. v City of Gloversville*, 1 AD3d 654, 656; *Verstandig's Florist v Board of Appeals of Town of Bethlehem*, 229 AD2d 851, 852). Accordingly, the Supreme Court

June 13, 2012

Page 1.

MATTER OF PREL 32 REALTY, LLC v SCHEYER

properly denied the petition to annul the ZBA's determination (*see generally Matter of Palm Mgt. Corp. v Goldstein*, 29 AD3d 801, 803, *affd* 8 NY3d 337), and dismissed the proceeding on the merits.

MASTRO, A.P.J., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court