

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Matter of Lilly Pad, LLC v. Zoning Board of Appeals of Village of
East Hampton

Matter of Lilly Pad, LLC v. Zoning Bd. of Appeals of Vil. of E. Hampton, 120 A.D.3d 686 (2d Dep't 2014) · No. 2012-08638 · Decided August 20, 2014

SUMMARY

The New York Appellate Division, Second Department dismissed as academic an appeal from a judgment dismissing a CPLR article 78 proceeding challenging a zoning board determination approving a residential addition without certain setback variances. The court held that the challenged determination had been superseded by a subsequent determination and construction permit, so the appeal would not affect the parties' rights and no exception to the mootness doctrine applied.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Per Curiam; Mark C. Dillon, J.P.; L. Priscilla Hall, J.; Robert J. Miller, J.; Sylvia O. Hinds-Radix, J.
JURISDICTION	New York
DECIDED	August 20, 2014
DOCKET	2012-08638
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a judgment of the Supreme Court, Suffolk County, denying a CPLR article 78 petition and dismissing the proceeding; respondents cross-moved to dismiss the appeal as academic or barred by laches.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Lilly Pad, LLC v. Zoning Board of Appeals of Village of East Hampton, Sheri Kersch-Schultz, Residence Trust No. 1, Howard D. Schultz, Residence Trust No. 1

TOPICS

mootness

appellate procedure

judicial review of agency action

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QUESTIONS PRESENTED

1. Whether the appeal should be dismissed as academic because the challenged ZBA determination was superseded by a subsequent determination and new construction permit.
2. Whether the appeal should be dismissed under the doctrine of laches.

HOLDINGS

1. The appeal was moot and had to be dismissed as academic because the challenged ZBA determination was superseded by a subsequent determination pursuant to which a new construction permit was issued, so a determination by the court would not affect the parties' rights.
2. The court denied as academic the branch of the cross motion seeking dismissal based on laches because the appeal was dismissed on mootness grounds.

KEY QUOTATIONS

“Generally, an appeal “will be considered moot unless the rights of the parties will be directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment”
([*2])

“Since the determination challenged in this proceeding was superseded by a subsequent determination by the ZBA, pursuant to which a new construction permit was issued, any determination by this Court will not affect the rights of the parties, and the matter does not otherwise warrant invoking an exception to the mootness doctrine” ([*2])

FACTUAL BACKGROUND

The Zoning Board of Appeals of the Village of East Hampton granted the Schultz respondents' application to construct an addition to their residence without requiring certain setback variances. During the appeal, the construction permit issued pursuant to that determination expired. The Schultz respondents then submitted a new application, after which the ZBA held another hearing, issued a new determination relying in part on an additional ground, and issued a new construction permit.

PROCEDURAL HISTORY

Lilly Pad, LLC commenced a CPLR article 78 proceeding challenging the Zoning Board of Appeals' determination granting the Schultz respondents permission to construct a residence addition without certain setback variances. The Supreme Court, Suffolk County, denied the petition and dismissed the proceeding. While the appeal was pending, the original construction permit expired, the Schultz respondents filed a new application, and the ZBA issued a superseding determination and new permit. The Appellate Division dismissed the appeal as academic and did not reach the merits.

DISPOSITION

dismissed

CASES CITED

- Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714
- Matter of Richmond County Dist. Attorney v. Staten Is. Univ. Hosp., 109 A.D.3d 620, 620
- Yuelys v. Grigonis, 112 A.D.2d 157

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