

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 22-01716

PRESENT: WHALEN, P.J., BANNISTER, GREENWOOD, AND KEANE, JJ.

IN THE MATTER OF TODD TICKNER, AS TRUSTEE OF
THE DONALD R. TICKNER FAMILY WEALTH TRUST,
PETITIONER-PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

TOWN OF PERINTON, TOWN OF PERINTON ZONING BOARD
OF APPEALS, MICHAEL DOSER, MPA, IN HIS CAPACITY AS
TOWN OF PERINTON DIRECTOR OF PLANNING, LOCK 32 BREWING
COMPANY, LLC, DOING BUSINESS AS SEVEN STORY BREWING,
BOARDWALK DESIGN, INC., CANAL HOUSE PROPERTIES, LLC,
RESPONDENTS-DEFENDANTS-RESPONDENTS,
ET AL., RESPONDENTS-DEFENDANTS.

KNAUF SHAW LLP, ROCHESTER (ALAN J. KNAUF OF COUNSEL), FOR
PETITIONER-PLAINTIFF-APPELLANT.

JOSEPH H. LAFAY, TOWN ATTORNEY, FAIRPORT, FOR RESPONDENTS-
DEFENDANTS-RESPONDENTS TOWN OF PERINTON, TOWN OF PERINTON ZONING BOARD
OF APPEALS, AND MICHAEL DOSER, MPA, IN HIS CAPACITY AS TOWN OF
PERINTON DIRECTOR OF PLANNING.

REFERMAT & DANIEL PLLC, ROCHESTER (JOHN T. REFERMAT OF COUNSEL), FOR
RESPONDENTS-DEFENDANTS-RESPONDENTS BOARDWALK DESIGN, INC., AND CANAL
HOUSE PROPERTIES, LLC.

Appeal from a judgment (denominated order and judgment) of the
Supreme Court, Monroe County (Gail Donofrio, J.), entered September
22, 2022, in a proceeding pursuant to CPLR article 78 and declaratory
judgment action. The judgment dismissed the petition-complaint.

It is hereby ORDERED that said appeal is unanimously dismissed
without costs.

Memorandum: In this hybrid CPLR article 78 proceeding and
declaratory judgment action, petitioner-plaintiff (petitioner) appeals
from a judgment dismissing his petition-complaint, which sought, inter
alia, to annul the determination of respondent-defendant Michael
Doser, MPA, in his capacity as Director of Planning for respondent-
defendant Town of Perinton, that a brewery operating on the premises
at issue did not violate the Zoning Law of the Town of Perinton
(zoning code).

We dismiss the appeal as moot. It is well settled that "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" (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]; see *Matter of Brooks v Palmieri*, 187 AD3d 1680, 1681 [4th Dept 2020]). Here, it is undisputed that the brewery that petitioner alleges violated the zoning code is no longer in operation and has vacated the premises. Thus, adjudication of the merits will not "result in immediate and practical consequences to the parties" (*Coleman v Daines*, 19 NY3d 1087, 1090 [2012]; see generally *Matter of Gilbert v Endres*, 34 AD3d 1218, 1218 [4th Dept 2006]; *Guziec v Woods*, 171 AD2d 1082, 1082 [4th Dept 1991]). Contrary to petitioner's contention, we conclude that the exception to the mootness doctrine does not apply in this case (see *Hearst Corp.*, 50 NY2d at 714-715; see generally *Matter of Gannett Co., Inc. v Doran*, 74 AD3d 1788, 1789 [4th Dept 2010]).