

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

D12937  
G/mv

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

Argued - November 6, 2006

ROBERT W. SCHMIDT, J.P.  
THOMAS A. ADAMS  
FRED T. SANTUCCI  
ROBERT A. LIFSON, JJ.

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2005-08578

DECISION & ORDER

In the Matter of Josato, Inc., appellant,  
v Gerald G. Wright, et al., respondents.

(Index No. 8428/04)

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Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn, LLP, Mineola, N.Y. (William F. Bonesso of counsel), for appellant.

Berkman, Henoah, Peterson & Peddy, P.C., Garden City, N.Y. (Leslie R. Bennett of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to review determinations of the Board of Zoning Appeals of the Town of Hempstead dated April 21, 2004, which, after a hearing, denied the petitioner's applications for certain area variances, the petitioner appeals from a judgment of the Supreme Court, Nassau County (Alpert, J.), entered July 28, 2005, which, upon a decision of the same court dated May 13, 2005, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

In July 2003, the petitioner Josato, Inc. (hereinafter Josato), filed applications seeking depth-of-lot variances of 15 feet for 16 building lots within a proposed development of 20 single-family residences that would front on a 50-foot wide street. Following a public hearing held on January 14, 2004, the Board of Zoning Appeals of the Town of Hempstead (hereinafter Board) issued a decision dated April 21, 2004, unanimously denying each of Josato's applications. Considering the factors required by the balancing test set forth in Town Law § 267-b(3), the Board concluded that

the requested variances would “produce an undesirable change in the character of the neighborhood and a detriment to nearby properties.” For the reasons set forth in the related appeal (*Matter of Josato v Wright*, \_\_\_\_\_AD3d\_\_\_\_\_ [Appellate Division Docket No. 2005-08576, decided herewith]), we conclude that the Supreme Court correctly determined that there is no basis in the record for the court to interfere with the Board’s exercise of its broad discretion in considering applications for area variances (*see Matter of Pecoraro v Board of Appeals of the Town of Hempstead*, 2 NY3d 608, 613). Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

SCHMIDT, J.P., ADAMS, SANTUCCI and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court