

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

D18214  
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\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 29, 2007

PETER B. SKELOS, J.P.  
ROBERT A. LIFSON  
FRED T. SANTUCCI  
EDWARD D. CARNI, JJ.

2006-06077

DECISION & ORDER

In the Matter of Peter Caltagirone, et al., appellants,  
v Zoning Board of Appeals, et al., respondents.

(Index No. 2196/06)

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Peter Caltagirone, Pleasantville, N.Y., and Patricia Innis, James Moore, and Jennifer Moore, Newburgh N.Y., appellants pro se (one brief filed).

Carolyn L. Martini, Newburgh, N.Y., for respondents Zoning Board of Appeals, Chairperson Grace Cardone, and Town of Newburgh, N.Y.

Jeffrey Russell Werner, Newburgh, N.Y., for respondent Schoonmaker Homes-John Steinberg, Inc.

In a proceeding pursuant to CPLR article 78 to review a determination of the Zoning Board of Appeals of the Town of Newburgh dated February 27, 2006, which, after a hearing, granted an application for variances with respect to real property owned by Gilbert Halstead and Jeanne Halstead, the petitioners appeal from a judgment of the Supreme Court, Orange County (Lubell, J.), dated May 3, 2006, which dismissed the proceeding for failure to join necessary parties.

ORDERED that the judgment is affirmed, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

A person whose interest may be adversely affected by a potential judgment must be made a party in a CPLR article 78 proceeding (*see* CPLR 1001[a]; *Matter of Martin v Ronan*, 47 NY2d 486, 490; *Matter of Cybul v Village of Scarsdale*, 17 AD3d 462, 463; *cf. Matter of Red*

March 18, 2008

Page 1.

MATTER OF CALTAGIRONE v ZONING BOARD OF APPEALS

*Hook/Gowanus Chamber of Commerce v New York City Bd. of Stds. & Appeals*, \_\_\_\_\_AD3d \_\_\_\_\_ [decided herewith]). Here, the Supreme Court, after correctly balancing the factors articulated in CPLR 1001(b) (see *Matter of Red Hook/Gowanus Chamber of Commerce v New York City Bd. of Stds. & Appeals*, 5 NY3d 452), properly dismissed the proceeding for failure to timely join the landowners as necessary parties (see *Matter of Cybul v Village of Scarsdale*, 17 AD3d 462, 463; *Matter of East Bayside Homeowners Assn., Inc. v Chin*, 12 AD3d 370, 371; *Matter of Ferruggia v Zoning Bd. of Appeals of Town of Warwick*, 5 AD3d 682; *Matter of Long Is. Pine Barrens Socy. v Town of Islip*, 286 AD2d 683; *Matter of Karmel v White Plains Common Council*, 284 AD2d 464, 465).

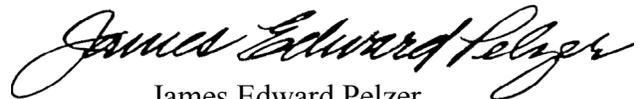
The petitioners' remaining contentions are unpreserved for appellate review, without merit, or need not be reached in light of our determination.

SKELOS, J.P., SANTUCCI and CARNI, JJ., concur.

LIFSON, J., concurs and votes to affirm the judgment with the following memorandum:

I join in the determination of my colleagues to affirm the judgment appealed from. Under the circumstances presented herein, I can discern no basis to conclude that the Supreme Court either abused or improvidently exercised its discretion in determining that the proceeding could not continue in the absence of a necessary and indispensable parties, to wit, the owners of the land benefitting from the grant of the variance under attack. The Supreme Court gave due deference and properly weighed the factors set forth in CPLR § 1001(b) (*cf. Matter of Red Hook/Gowanus Chamber of Commerce v NEW York City Bd. of Stds. & Appeals*, \_\_\_\_\_AD3d \_\_\_\_\_ [decided herewith]).

ENTER:



James Edward Pelzer  
Clerk of the Court