

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

D19543  
X/kmg

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

Argued - May 1, 2008

ROBERT A. LIFSON, J.P.  
HOWARD MILLER  
MARK C. DILLON  
RANDALL T. ENG, JJ.

---

2007-07401

DECISION & ORDER

In the Matter of Nicholas Aliano, appellant,  
v Ruth D. Oliva, etc., et al., respondents.

(Index No. 06-23694)

---

Scheyer & Jellenik, Nesconset, N.Y. (Richard I. Scheyer of counsel), for appellant.

Smith, Finkelstein, Lundberg, Isler & Yakoboski, LLP, Riverhead, N.Y. (Frank A. Isler of counsel), for respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the respondent Zoning Board of Appeals of the Town of Southold dated September 1, 2006, which, after a hearing, denied the petitioner's application for an area variance, the petitioner appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Whelan, J.), dated June 10, 2007, as granted those branches of the respondents' motion which were to dismiss stated portions of the petition on the ground that they were time-barred and for failure to exhaust administrative remedies.

ORDERED that the appeal is dismissed, without costs or disbursements.

The order appealed from is not appealable as of right (*see* CPLR 5701[b]; *Matter of Coppola v Good Samaritan Hosp. Med. Ctr.*, 296 AD2d 460), and we decline to grant leave to appeal (*see* CPLR 5701[c]).

LIFSON, J.P., MILLER, DILLON and ENG, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

June 3, 2008

MATTER OF ALIANO v OLIVA