

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

D20817  
C/kmg

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Submitted - September 16, 2008

ROBERT A. SPOLZINO, J.P.  
ANITA R. FLORIO  
HOWARD MILLER  
JOHN M. LEVENTHAL, JJ.

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2007-08527

DECISION & ORDER

In the Matter of Louis Cutalo, respondent, v Zoning  
Board of Appeals of Town of Huntington, appellant.

(Index No. 05-19086)

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John J. Leo, Town Attorney, Huntington, N.Y. (James F. Matthews of counsel), for  
appellant.

In a proceeding pursuant to CPLR article 78 to review so much of a determination of the Zoning Board of Appeals of the Town of Huntington dated July 14, 2005, as, after a hearing, denied that branch of the petitioner's application which was for an area variance for a second-story deck, the appeal is from a judgment of the Supreme Court, Suffolk County (Emerson, J.), dated January 25, 2006, which granted the petition, annulled the determination, and remitted the matter to the Zoning Board of Appeals of the Town of Huntington for the issuance of the requested area variance.

ORDERED that the judgment is reversed, on the law, with costs, the petition is denied, and the proceeding is dismissed.

The petitioner commenced this proceeding to review so much of a determination of the Zoning Board of Appeals of the Town of Huntington (hereinafter the Board), dated July 14, 2005, as, after a hearing, denied that branch of his application which was for an area variance for a second-story deck. However, the proceeding was commenced more than 30 days after the determination of the Board was filed in the office of the Town Clerk (*see* Town Law § 267-c [1];

October 21, 2008

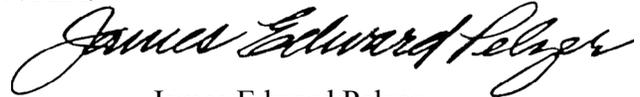
Page 1.

MATTER OF CUTALO v ZONING BOARD OF APPEALS OF TOWN OF HUNTINGTON

*Matter of Vega v Scheyer*, 18 AD3d 664). Thus, the proceeding is time-barred and should have been dismissed (see *State of New York v Hampton Sand Corp.*, 281 AD2d 536; *Matter of McHoul v Sellick*, 153 AD2d 721; General Construction Law § 20).

SPOLZINO, J.P., FLORIO, MILLER and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court