

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

D22423  
G/kmg

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

Argued - February 5, 2009

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
MARK C. DILLON  
RANDALL T. ENG, JJ.

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2008-00399

DECISION & ORDER

In the Matter of Johnny Ip, et al., appellants,  
v Village of North Hills, et al., respondents.

(Index No. 16972/07)

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Finder and Cuomo, LLP, New York, N.Y. (Matthew A. Cuomo and Sherri A. Jayson of counsel), for appellants.

Meyer, Suozzi, English & Klein, P.C., Garden City, N.Y. (A. Thomas Levin of counsel), for respondent Village of North Hills.

Forchelli, Curto, Crowe, Deegan, Schwartz, Mineo & Cohn, LLP, Mineola, N.Y. (Peter R. Mineo and Judy Simoncic Jacoby of counsel), for respondents Sal Gaudio and Stella Gaudio.

In a proceeding pursuant to CPLR article 78, inter alia, to compel the respondent Village of North Hills to hold a public hearing to determine whether the structure on the land of the respondents Sal Gaudio and Stella Gaudio is entitled to a rear-yard setback variance, the petitioners appeal from an order and judgment (one paper) of the Supreme Court, Nassau County (Mahon, J.), entered December 10, 2007, which denied the petition as time-barred and dismissed the proceeding.

ORDERED that the order and judgment is affirmed, with costs.

A CPLR article 78 proceeding challenging a determination of a village zoning board of appeals must be commenced within 30 days after the determination to be reviewed becomes final and binding on the petitioner (*see* Village Law § 7-712-c[1]). Here, the determination of the Zoning

April 7, 2009

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Board of Appeals of the Village of North Hills, inter alia, granting a variance to the respondents Sal Gaudio and Stella Gaudio, the owners of property adjacent to that of the appellants, was made on June 10, 2003. The petitioners took no action until they commenced this proceeding on September 24, 2007. Accordingly, the Supreme Court properly denied the petition as time-barred (*see Letourneau v Town of Berne*, 56 AD3d 880) and properly dismissed the proceeding.

MASTRO, J.P., SKELOS, DILLON and ENG, 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