

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

D23562
W/cb

_____AD2d_____

Argued - May 11, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-04858

DECISION & ORDER

In the Matter of Andrew S. Weber, appellant, v
Patricia A. Baranello, etc., et al., respondents.

(Index No. 016441/07)

Goldstein & Avrutine, Syosset, N.Y. (Howard D. Avrutine of counsel), for appellant.

Sinnreich & Kosakoff, LLP, Central Islip, N.Y. (Vincent J. Messina, Jr., and Timothy F. Hill of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the Town of Oyster Bay Zoning Board of Appeals dated August 10, 2006, which, after a hearing, denied the petitioner's application for a special use permit, the petitioner appeals from a judgment of the Supreme Court, Nassau County (Phelan, J.), entered March 24, 2008, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The determination of the Town of Oyster Bay Zoning Board of Appeals (hereinafter the ZBA) denying the petitioner's application for a special use permit to maintain a home business was not arbitrary and capricious, or contrary to law (*see* CPLR 7803[3]; *Matter of Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608; *Matter of Sasso v Osgood*, 86 NY2d 374; *Matter of Halperin v City of New Rochelle*, 24 AD3d 768). The ZBA rationally determined that the petitioner did not meet the requirement of the Town Code of the Town of Oyster Bay that he reside on the subject premises (*see Matter of Falco Realty, Inc. v Town of Poughkeepsie Zoning Bd. of Appeals*, 40 AD3d 635; *Matter of Saglibene v Baum*, 246 AD2d 599). Accordingly, the Supreme

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Court properly denied the petition and dismissed the proceeding.

SKELOS, J.P., SANTUCCI, BELEN and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court