

July 13, 2017

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 13<sup>th</sup> day of July 2017, at 7:00 P.M., and there were

PRESENT: DANIEL BEUTLER, MEMBER  
JOHN BRUSO, MEMBER  
JILL MONACELLI, MEMBER  
LAWRENCE PIGNATARO, MEMBER  
RICHARD QUINN, CHAIRMAN

ABSENT: FRANK SWIGONSKI, MEMBER

ALSO PRESENT: DIANE M. TERRANOVA, TOWN CLERK  
KEVIN LOFTUS, TOWN ATTORNEY  
MATTHEW FISCHIONE, CODE ENFORCEMENT OFFICER

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

**PETITION OF: PAUL TRYJANKOWSKI**

THE 1st CASE CONSIDERED BY THE ZONING Board of Appeals was that of the petition of Paul Tryjankowski, 33 St. Anthony Street, Lancaster, New York 14086 for one variance for the purpose of erecting a six [6] foot high fence in a required front yard area on premises owned by the petitioner at 33 St. Anthony Street, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50 Zoning, Section 35C. of the Code of the Town of Lancaster. The petitioner proposes to erect a six [6] foot high fence in a required front yard.

Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster limits the height of a fence or wall extending into a front yard area to three [3] feet in height. The petitioner, therefore, requests a three [3] foot fence height variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Paul Tryjankowski, Petitioner

Proponent

**IN THE MATTER OF THE PETITION OF: PAUL TRYJANKOWSKI**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. PIGNATARO, WHO MOVED ITS  
ADOPTION, SECONDED BY MS. MONACELLI  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Paul Tryjankowski and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 13<sup>th</sup> day of July 2017, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the applicant is the present owner of the premises in question.

**WHEREAS**, the property for which the applicant is petitioning is within a Residential District 1, (R-1) as shown on the Zoning Map of the Town of Lancaster.

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant(s) if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

That such fence will not unduly shut out light or air to adjoining properties.

**NOW, THEREFORE, BE IT**

**RESOLVED** that based upon these findings, the relief sought be and is hereby **GRANTED**-subject to the following condition which in the opinion of this board is an appropriate condition to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- Landscaping required between the fence & sidewalk.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. BEUTLER	VOTED	YES
MR BRUSO	VOTED	YES
MS. MONACELLI	VOTED	YES
MR. PIGNATARO	VOTED	YES
MR SWIGONSKI	WAS ABSENT	
MR. QUINN	VOTED	YES

The resolution granting the variance was thereupon **ADOPTED**.

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**PETITION OF: JEFFREY AND MICHELLE DERKOVITZ**

THE 2nd CASE CONSIDERED BY THE ZONING Board of Appeals was that of the petition of Jeff and Michelle Derkovitz, 6 Grace Way, Lancaster, New York 14068 for one [1] variance for the purpose of erecting an addition on property owned by the petitioners at 6 Grace Way, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 10C.(3)(c) of the Code of the Town of Lancaster. The proposed addition would result in a twenty [20] foot, six [6] inch rear yard set back.

Chapter 50, Zoning, Section 10C.(3)(c) of the Code of the Town of Lancaster requires a 35 foot [35] rear yard set back. The petitioners, therefore, request a fourteen [14] foot six [6] inch rear yard set back variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Jeffrey Derkovitz, Petitioner	Proponent
Michelle Derkovitz, Petitioner	Proponent
Kenneth Klapper, Petitioner	Proponent

**IN THE MATTER OF THE PETITION OF: JEFFREY AND MICHELLE  
DERKOVITZ**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MS. MONACELLI, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. PIGNATARO  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Jeffrey and Michelle Derovitz and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 13<sup>th</sup> day of July 2017, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the applicants are the present owners of the premises in question.

**WHEREAS**, the property for which the applicants are petitioning is within a Residential District 1, (R-1) as shown on the Zoning Map of the Town of Lancaster.

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicants if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

**NOW, THEREFORE, BE IT  
RESOLVED** that based upon these findings, the relief sought be and is  
hereby **GRANTED**.

The question of the adoption of the foregoing resolution was duly put to a vote on roll  
call which resulted as follows:

MR. BEUTLER	VOTED	YES
MR BRUSO	VOTED	YES
MS. MONACELLI	VOTED	YES
MR. PIGNATARO	VOTED	YES
MR SWIGONSKI	WAS ABSENT	
MR. QUINN	VOTED	YES

The resolution granting the variance was thereupon **ADOPTED**.

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**PETITION OF: JAGG ELECTRICAL & CONTROL**

THE 3rd CASE CONSIDERED BY THE ZONING Board of Appeals was that of the petition of Jagg Electrical & Control, 18 Lancaster Parkway, Lancaster, New York 14086 for one [1] variance for the purpose of erecting a ground sign on premises owned by Greg Golombek at 18 Lancaster Parkway, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning Section 30F.(2)(c)[2][a] of the Code of the Town of Lancaster to permit a sign height of five [5] foot eight [8] inches over finished grade.

Chapter 50, Zoning, Section 30F.(2)(c)[2][a] of the Code of the Town of Lancaster limits the height of a ground sign to four [4] feet above finished grade. The petitioner, therefore, requests a one [1] foot eight [8] inch ground sign height variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Grant Wooly, Representing Petitioner

Proponent



**IN THE MATTER OF THE PETITION OF: JAGG ELECTRICAL & CONTROL**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. BRUSO, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. PIGNATARO  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Greg Golombek of Jagg Electrical & Control and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 13th day of July 2017, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, duly authorized agent of the property owner.

**WHEREAS**, the property for which the applicants are petitioning is within a Light Industrial District, (LI) as shown on the Zoning Map of the Town of Lancaster.

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant(s) if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

**NOW, THEREFORE, BE IT  
RESOLVED** that based upon these findings, the relief sought be and is  
hereby **GRANTED**.

The question of the adoption of the foregoing resolution was duly put to a vote on roll  
call which resulted as follows:

MR. BEUTLER	VOTED	YES
MR BRUSO	VOTED	YES
MS. MONACELLI	VOTED	YES
MR. PIGNATARO	VOTED	YES
MR SWIGONSKI	WAS ABSENT	
MR. QUINN	VOTED	YES

The resolution granting the variance was thereupon **ADOPTED**.  
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**PETITION OF: M & B FLIX, LLC.**

THE 4<sup>TH</sup> CASE WAS THE TABLED APPEAL OF THE ZONING interpretation concerning the Notice of Violations/Order and Second Notice/Order to Remedy, 4901 Transit Road, Lancaster, New York, to wit:

The petition of M&B Flix, LLC, 388 Evans Street, Williamsville, New York, by attorneys Gross, Shuman, Brizdle and Gilfillan, P.C., calling upon the Zoning Board of Appeals for an interpretation concerning the Notice of Violations/Order and Second Notice/Order to Remedy of M&B Flix, LLC located at 4901 Transit Road, Lancaster, New York.

Pursuant to Chapter 50, Zoning, Section 45C(1) of the Code of the Town of Lancaster and Section 267-a(4) of New York State Town Law, the Board shall hear and decide appeals where it is alleged that there is an error or misinterpretation in any order, requirement, decision or determination by any administrative official of the Town charged with the enforcement of the Town Law. The Board may reverse, modify or affirm, in whole or in part, any such appealed order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as in its opinion ought to be made in strictly applying and interpreting the provisions of this ordinance, and for such purposes shall have all powers of the officer from whom the appeal is taken.

The petitioner hereby appeals to the Zoning Board of Appeals of the Town of Lancaster for an interpretation of the Notice of Violations/Order and Second Notice/Order to Remedy of M&B Flix, LLC, pursuant to the authority granted in Chapter 50, Zoning, Section 45.C(1) of the Code of the Town of Lancaster and Section 267-a(4) of New York State Town Law.

**IN THE MATTER OF: M & B FLIX, LLC**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. QUINN, WHO MOVED ITS  
ADOPTION, SECONDED BY MS. MONACELLI  
TO WIT:

**WHEREAS**, on April 3, 2017, M&B Flix LLC (“Flix”) submitted an appeal of the Code Enforcement Officer’s determination to issue violation notices for Flix’s use of a sign advertising business at its premises; and

**WHEREAS**, pursuant to Town Law § 267-b(1), Flix seeks an interpretation from the Town of Lancaster Zoning Board of Appeals (“ZBA) that its use of a sign is permitted under Section 30 of the Town of Lancaster Code (the “Code”) or, in the alternative, a variance from the requirements of Section 50-30; an

**WHEREAS**, pursuant to Town Law § 267-a(7), the ZBA held a hearing on Flix’s interpretation appeal, at which representatives of Flix and the public were heard; and

**WHEREAS**, the ZBA determined, and Flix’s representatives agreed, that the interpretation appeal should proceed first; and

**WHEREAS**, pursuant to 6 N.Y.C.R.R. § 617.5©(31), an interpretation appeal is a Type II action, not requiring further review under the New York State Environmental Quality Review Act (“SEQRA”);

**NOW, THEREFORE, BE IT RESOLVED** by the Town of Lancaster Zoning Board of Appeals that:

1. Flix’s interpretation appeal is hereby denied, for the reasons set forth in the attached decision, which is annexed hereto and incorporated herein by reference.
2. Flix is directed to supplement its application with a variance application form, the required fee, and additional information addressing the factors set forth in Town Law § 267-b(3), for area variances. Flix is also directed to submit an Environmental Assessment Form.
3. The Town Clerk shall notice the hearing on Flix’s application for the September 14, 2017 meeting pursuant to Town Law § 267-a(7), and the Town Clerk’s office shall, upon receipt of the supplemented application and Environmental Assessment Form, submit a referral to the Erie County Department of Environment and Planning, pursuant to General Municipal Law § 239-m.
4. This resolution is effective immediately.

The question of adopting the aforementioned petition was duly put to a vote on roll call which resulted as follows:

MR. BEUTLER	VOTED	YES
MR BRUSO	VOTED	YES
MS. MONACELLI	VOTED	YES
MR. PIGNATARO	VOTED	YES
MR SWIGONSKI	WAS ABSENT	
MR. QUINN	VOTED	YES

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## DECISION

M & B Flix LLC (“Flix”) operates a movie theater at 4901 Transit Road, in the Town of Lancaster, New York (the “Property”). Flix maintains and advertising sign at the Property, which is illuminated and has the ability to display graphics, words, animations, and even video clips. Flix operates the sign in such a way as to display movement, animation, and video clips. On or about December 29, 2016, the Town Code Enforcement Officer (“CEO”) issued. Flix a notice of violation/order to remedy under Section 50-30 of the Town of Lancaster

Code (the “Code”) because the Flix sign was displaying movement and animation. At the hearing, Flix did not contest that its sign had these capabilities, and that it was illuminated and was utilized to display movement, graphics, animation, and video clips. Rather, Flix asserts that the use of the sign in this manner is permitted under the Code. We disagree.

Section 50-30(D)(2) of the Code provides as follows:

Illumination. Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity, and no sign other than that part used to report time, temperature, stock market and/or news reports shall be illuminated

by or contain flashing, intermittent, rotating or moving light or lights. In no event shall any illuminated sign or lighting device be placed so as to permit the

beams and illumination therefrom to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance. The full number of illuminating elements

of a sign shall be kept in working condition or immediately repaired or replaced.

Overhead wires or exposed wires on a sign or its supporting members are prohibited.

Flix’s sign is illuminated, and when used for animation, graphics, video clips, or other movements/scrolling on the sign, it is flashing, intermittent, rotating, and/or moving in violation of the Code. The clear wording of the Code prohibits flashing, intermitted, rotating, and/or moving messages/graphics/videos on an illuminate sign. The ZBA upholds the CEO’s interpretation, notices of violation, and orders to remedy accordingly.

We note that Flix argued at the hearing, and in its papers submitted to the ZBA, that a former CEO issued a permit for the sign and determined that such signs were permitted under the Code.

As a first matter, the Town is not bound by a prior erroneous interpretation by a former code enforcement officer. And second, the evidence relied upon by the applicant does not indicate such determination was ever finally made. Specifically, by letter dated May 11, 2006, former Code enforcement officer Jeffrey Simme wrote that it was “this department’s opinion that a menu selection at the Forestview Restaurant or any other business that uses this type of sign to display their product is a permitted use.” However, he noted that he would “seek and interpretation from the Town Attorney on this matter and “[u]ntil I am informed of the Town Attorney’s Interpretation, no action will be taken against these types of signs.” There is no evidence an interpretation from the Town Attorney’s office was ever received or given. Thus, Mr.Simme’s position appeared to be an interim one, until he gathered further information.

For the foregoing reasons, Flix’s interpretation appeal is **DENIED** and the CEO’s interpretation, notices of violation, and orders to remedy are upheld.

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was adjourned in memory of Nicholas LoCicero at 7:35 P.M.

Signed \_\_\_\_\_  
Diane M. Terranova, Town Clerk and  
Clerk, Zoning Board of Appeals