

**Village of Cazenovia  
Zoning Board of Appeals  
April 18, 2013**

5 Members Present: Phil Byrnes, Chair; Howard Hart; Sally Ryan; William Keiser; and Tara Hartley.

Others present: John Langey, Special Counsel to the Zoning Board of Appeals; Kevin Bernstein; James Stokes; Robert Cowherd; Janet Cowherd; Jason Emerson; David Widrick; Donna Widrick; Dorothea LaGinestra; Thomas Pratt; Virginia LaRose; Mark Dennis; and a few more who did not sign in.

P. Byrnes called the meeting to order at 7:00 p.m. and introduced the Board.

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15 P. Byrnes asked if anyone had any additions or corrections to the minutes of March 26, 2013. H. Hart made the motion to approve the minutes. T. Hartley seconded. The motion carried.

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20 **Cazenovia College, Appeal of Zoning/Code Enforcement Officer’s determination.**  
P. Byrnes: The first item tonight is a resolution regarding the Cazenovia College appeal for the Zoning Enforcement Officer’s decision to them regarding the fence project. After discussion with John Langey, he drafted a resolution based on the comments and facts that came before the Board. I will read that. It is a long resolution, so bear with me.

**DETERMINATIONS AND RESOLUTION  
OF THE ZONING BOARD OF APPEALS  
OF THE VILLAGE OF CAZENOVIA**

30 **In the Matter of the Appeal of CAZENOVIA COLLEGE (Appellant)  
from a Determination of the Village of Cazenovia Zoning  
Enforcement Officer Dated November 5, 2012 Regarding a Denial of  
an Application for a Building Permit for a Perimeter Fence on  
35 Premises Owned By the Appellant at 18 Liberty Street, Village of  
Cazenovia, New York**

**April 18, 2013**

**WHEREAS,** Cazenovia College (hereinafter the “Appellant,” “Owner” and/or “College”) as owner of property located at 18 Liberty Street, Cazenovia, New York, and more particularly described as Tax Map No. 94.36-01-18, appealed on January 2, 2013 to the Village of Cazenovia Zoning Board of Appeals (hereinafter the “ZBA” or the “Board”) from certain determinations contained in correspondence dated November 5, 2012, issued by the Village of

Cazenovia Zoning Enforcement Officer (“ZEO”) all in relation to the Appellant’s property located in a College (C-2) District in the Village pursuant to the Village’s Zoning Regulations (Chapter 180 - Zoning), as amended (the “Zoning Regulations”); and

45           **WHEREAS**, the ZBA has reviewed the records of all of the proceedings previously had hereto; and

**WHEREAS**, a public hearing was conducted on February 5, 2013 and continued to March 26, 2013 on the matters concerning the appeal; and

**WHEREAS**, the above-referenced hearing was duly noticed by publication in the Village’s official newspaper and due notice to the Appellant and all others as required under and in accordance with the Zoning Regulations has been provided; and

**WHEREAS**, the Board determined that with respect to State Environmental Quality Review (“SEQR”) the proposed action is a Type II Action for purposes of SEQR review (6 NYCRR §617.5(31)); and

55           **WHEREAS**, the Appellant’s appeal has been fully considered by the ZBA; and

**WHEREAS**, the ZBA has reviewed all of the documents and correspondence provided by the Appellant, the ZEO and the public, has reviewed the previous record relating to the various uses and approvals associated with the subject property, and upon such consideration, the ZBA hereby finds, among other things, the following facts supported in the record presented to the Board:

**I.       FINDINGS OF FACT**

- The subject parcel is located in the Village of Cazenovia and is more commonly known as a portion of the Cazenovia College Campus located at 18 Liberty Street, Cazenovia, New York (Tax Map No. 94.36-01-18).
- 65   •       The premises are located on the campus of the College, specifically located West of Lincklaen Street; South of Lincklaen Terrace; East of Sullivan Street; and Northeast of Liberty Street.
- The premises are zoned C-2 (College District).
- The premises are owned by Cazenovia College.

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- The parcel in question consists of buildings and structures incidental to the College Campus, along with athletic playing fields and associated lands.
  - The premises are bordered by parcels located in the following Village Zoning Districts:
    - R-6 (Residential District)
    - 75 ○ R-20 (Residential District)
    - R-10 (Residential District)
    - Historic Preservation Overlay District
  - The premises are currently utilized by the College for athletic purposes incidental to the various athletic programs offered by the College.
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- The premises were previously the subject of a site plan approval granted by the Village of Cazenovia Planning Board on or about August 22, 2011 (the “Previous Planning Board Approval”).
  - The Previous Planning Board Approval was in relation to a proposed site plan for the establishment of an artificial turf athletic field replacement project presented
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- by the Applicant to the Village.
  - The site plan approval request for the Previous Planning Board Approval was supported by a site plan drawing and various other submissions provided by the Applicant to the Planning Board.
  - At the time of the previous approval, records from the Planning Board review
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- indicate that issues discussed with the Planning Board included “the use of the athletic field, size, drainage and stormwater management, erosion and sediment control, potential associated improvements, DEC approval, and local approvals needed.” (See August 22, 2011 site plan approval of the Village of Cazenovia Planning Board).
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- The record shows that the Previous Planning Board Approval was subject to a detailed State Environmental Quality Review Act review and a Negative Declaration was issued at that time.

- 100 • The record of the Previous Planning Board Approval and review indicated public comments, both in favor and in opposition to the site plan, were received with specific concerns regarding the project including stormwater, traffic, maintenance, lighting, seating and proximity of the use to the Village’s Historic District and potential impacts on neighborhood character.
- 105 • The record of the Previous Planning Board Approval indicates that with respect to “plantings/fencing” the “project application does not include provisions for planting or fencing.”
- Further, the approval of the Planning Board indicated that the project application “does not include a request to build a stadium structure” and did not include any request for field lighting.
- 110 • The previous site plan application received a Negative Declaration by the Planning Board based upon a series of specific findings supported in the record.
- Among the findings supporting the Negative Declaration were the representations by the Applicant to simply replace “the existing grass field with artificial turf for the purpose of providing an adequate playing field for the College’s intercollegiate athletic teams consistent with its current use, and therefore there will be no adverse impact to the character and integrity of the adjacent neighboring residential area or the Village Historic District.”
- 115 • Also supporting the Negative Declaration were findings relating to the scope of the project and items which were not requested as part of the application, including lighting, new seating or additional parking.
- 120 • A further finding supporting the Negative Declaration was the following:  
“Based on the additional (not otherwise referenced above) commitments made by the College (including those contained in Applicant’s August 5, 2011 letter) indicate that this turf replacement Project will not result in any significant adverse impacts on the environment.”
- 125 • The approval of the site plan on August 22, 2011 by the Planning Board provided for the following conditions:  
“Site plan approval is granted solely for, and is expressly limited to the installation and construction of the artificial turf surface and the associated

- 130 subsurface and drainage improvements and scoreboard as expressly  
proposed by the Applicant and approved by the Village Engineer and this  
Planning Board.” (Emphasis supplied).
- The improvements as approved by the Planning Board were subsequently  
135 constructed with no issues.
  - Subsequently, sometime in February of 2012, the College requested and received  
a permit from the Village to construct a small section of fencing on the most  
westerly portion of the turf fields.
  - The fence section constructed consisted of a six (6) foot chain link fence located  
140 on the interior of the site to protect balls from striking cars parked in the College’s  
parking lot. The fence had an approximate length of 150 feet.
  - No site plan application was submitted by the College at that time.
  - The Applicant has stated that a number of other fence building permits have been  
issued by the Village ZEO without site plan approval.
  - Those fences include the following:
    - A request from April 2006 for a building permit for a fence of  
approximately 250 feet installed on the edge of the parking lot portion of  
the premises. This fencing is described as an extension of the fencing that  
150 was included in the approved project site plan. (The ZBA hereby finds  
that this fencing is distinguishable from the present matter in that it was  
fencing entirely contained within the College property and is of  
significantly smaller dimension and an extension of previously approved  
fencing).
    - An August 2006 application for fencing in the vicinity of the College  
155 parking lot. (This section of fencing is distinguishable as the record shows  
that this section of fencing was pursuant to a separate project which  
underwent Planning Board review, as well as ZBA review and is also  
significantly smaller in size (240 linear feet) and impact).
    - Improvement to existing fencing in August of 2007 to add height to an  
160 existing fence as an increase from six (6) feet to nine (9) feet.

The Zoning Board of Appeals finds that each of these fence segments are distinguishable insofar as they were not perimeter fences associated with the larger project and, in most instances, had received previous review by the Planning Board and/or Zoning Board of Appeals for various aspects. In addition, other than the fencing associated with the College President's house, none of the referenced fences significantly border anything other than College property. With respect to the extension of the fencing near the President's home, it was pointed out that the fencing existed in this area previously.

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- In summary, any prior fence applications are factually distinguishable from the instant case. As referenced, the application for the pending fence approval relates to a six (6) foot high chain link perimeter fence consisting of approximately 1,400 linear feet to be placed three (3) feet from residential property lines of approximately sixteen (16) residences, including residences in a Zoning District containing homes on the National Register of Historic Places and contained in the Village's Historic Preservation Overlay District.
- The fence in question would be visible from numerous residences, including those on the National Register and existing in the Historic Preservation Overlay District.
- As referenced by the Appellant, the most recently "approved" fence was less than 150 linear feet in length and was located in an interior portion of the College's property (between the parking lot and the new turf field).
- Other previously authorized fences related to much smaller fences (150 foot, 250 foot and 240 foot fence segments) and those which were previously considered through prior site plan or Zoning Board of Appeals review and/or approval.
- On or about July 25, 2012, the College submitted an application for a building permit on Village application forms to construct a perimeter fence around the turf fields and athletic areas, which proposed fence is the subject of this appeal.
- Submissions in the Record include materials describing the project as "Perimeter Fencing of Turf Field." The project also was described by the Applicant to

190 include clearing vegetation as necessary in an area of 72” to 84” for erection of  
the fence.

- The building permit application indicates the fence to have a total estimated cost of \$40,000.
- The proposed perimeter fence consists of a chain link black vinyl coated fencing system to be installed at a height of six (6) feet.
- The proposed fencing would be installed in a manner so as to entirely enclose the athletic facility (*i.e.* not simply the area of the turf field itself, but the area used by the College for athletic contests and spectators) and connecting to existing fencing in areas otherwise under the control of the College.
- In its application, the College indicates that the fencing will be set back three (3) feet from surrounding property boundaries.
- As part of its application for a building permit for the proposed perimeter fence, the Applicant indicated that “[t]o accommodate the installation of [the] fencing[s] a landscaping contractor will be clearing brush, scrub trees and debris while leaving as much greenery (vegetative barrier) as possible in a 72” to 84” wide path.”
- A drawing depicting the location of the proposed perimeter fencing was submitted with the building permit application.
- The depiction of the proposed fencing shows approximately 1,400± linear feet of perimeter fencing is requested.
- The record indicates that the Village Zoning Enforcement Officer, upon receiving the application for the building permit, notified representatives of the College on July 26, 2012 that an amended site plan would be required.
- In and around August 10, 2012, the College provided notice to neighboring property owners of the Applicant’s plan to install perimeter fencing around portions of the College’s property, including the College’s athletic fields.
- A copy of the correspondence was provided as a part of the record of this Appeal. That correspondence from the President of the College notified the neighbors of

220 the College’s plan to install a new fence around the College’s property at the  
“Athletic Complex.”

- In the August 10, 2012 letter, the President of the College indicated to neighboring property owners that it was:

225 “. . . vitally important that we take every measure possible to protect our  
\$1 million investment and to encourage appropriate uses and scheduling of  
Christakos Field and the surrounding College facilities. . . . Consequently,  
the College is planning to install a 6-foot high, black vinyl coated, chain  
link fence starting at the northeast corner of the existing tennis courts. . . .  
230 In addition, it is worth noting that other historic communities use this type  
of fencing because of its ability to blend in with the landscape.”

- The letter went on to further indicate:

235 “The College is well aware of the importance and benefits of vegetation  
and existing landscaping. Hence, we sought advice regarding the clearing  
of vegetation based on the goal to remove as little vegetation as possible.  
In some cases, the planned fence line was redrawn in order to preserve  
vegetation. However, there are some areas that will be cleared due to  
overgrown vegetation or where yard debris has been dumped or  
accumulated. . . . The College is currently in consultation with Village  
240 officials about the application process and plans to submit a site plan  
application later this month in anticipation of appearing before the  
Planning Board in September.”

- On September 12, 2012, the College withdrew its July 25, 2012 building permit application.
- 245 • On or about October 1, 2012, the College again resubmitted a building permit application for its requested perimeter fence.
- With its October 1, 2012 submission, the College additionally explained that the proposed perimeter fence would serve the purpose of preventing trespass, ensuring security and providing added safety around the stormwater ponds and the athletic field itself.
- 250 • Testimony from residents indicate that issues of unauthorized field use, grass and leaf dumping, and other uses of the fields sought to be avoided by the College have existed for decades.

- 255 • On October 17, 2012, the College requested in writing that the ZEO provide a written interpretation as to the need to obtain a site plan approval for the proposed fence.
- On November 5, 2012, the ZEO provided his written determination that a site plan approval from the Planning Board was necessary prior to the issuance of a building permit for a perimeter fence as requested by the College.
- 260 • On January 2, 2013, the College filed a written Notice of Appeal of the ZEO’s interpretation of November 5, 2012.

**II. AUTHORITY OF THE ZONING BOARD OF APPEALS**

- Pursuant to Section 180-136 of the Zoning Regulations, the ZBA has appellate powers with respect to interpretations.
- 265 • As set forth under Section 180-136(A)(1) - Interpretation.:  
 “Upon application appealing an interpretation, decision or determination by the Zoning Enforcement Officer and following a public hearing, to decide any question involving the interpretation of any provision of these regulations[.] (sic) [T]he Board may reverse or affirm, wholly or partly, or may modify any interpretation, order, requirement, decision or determination made by the Zoning Enforcement Officer in the enforcement of these regulations, and shall have the power to make such interpretation, order, requirement, decision or determination which, in the opinion of the Board, ought to have been made in the matter.” (Emphasis supplied).
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**III. RELEVANT SECTIONS OF THE ZONING REGULATIONS**

- The ZBA, upon review of Chapter 180 of the Zoning Regulations of the Village of Cazenovia Village Code, has carefully considered same and finds the following provisions to be relevant in its analysis of the Appeal:
- 280 ○ Section 180-42. C-2 College District purpose and intent.  
 “The C-2 District is intended to recognize the unique character and needs of post-secondary educational uses, and to allow the development of such uses within the district in a manner compatible with surrounding properties. This district includes parcels that have historically been devoted to post-secondary educational use but which are adjoined by established residential neighborhoods, which necessitates particular precautions to ensure the compatibility of the post-secondary educational use with
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290 adjoining residential uses, so that new and modified post-  
secondary educational uses may be established without adversely  
impacting residential neighborhoods and the character of the  
Village.” (Emphasis supplied).

- 295 ○ Section 180-43. Uses permitted upon grant of site plan approval by  
Planning Board (C-2).

300 “The following structures and uses are permitted in this district  
upon prior site plan approval by the Planning Board and the  
issuance of a building permit and/or zoning permit by the Zoning  
Enforcement Officer:

- 305 A. Religious facility.
- B. Post-secondary educational uses.
- C. School, private.
- D. School, public.”

(Emphasis supplied).

- 310 ○ Section 180-45. Supplemental regulations (C-2).

315 “A. All construction, reconstruction, development and/or  
redevelopment shall include a landscaped buffer area at least 25  
feet in width as required pursuant to § 180-110 of this chapter.

B. Each use shall comply with all regulations of Article IV  
(Supplemental Regulations) applicable to the use.”

- 320 ○ Section 180-110.<sup>1</sup> Landscaped buffer requirements.

“A. Buffer requirement and purpose.

325 (1) Where any nonresidential land use, whether in a  
residential district or a nonresidential district, adjoins one  
or more residential district lot(s), a strip of land at least 25  
feet in width shall be established and maintained as a  
landscaped buffer in the front, side and rear yards adjoining  
the residential district lot(s).

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<sup>1</sup> Article IV titled “Supplemental Use and Site Regulations” encompasses §180-96 through §180-131 inclusive of the Zoning Regulations.

330 (2) The purpose of the buffer is to minimize the impact  
of the nonresidential use on the adjacent residential, or  
future residential use, with the intent that the landscaped  
buffer shall be a complete buffer consisting of overstory,  
335 understory and ground cover vegetation that is  
environmentally sound, visually attractive and effectively  
mitigates against adverse light and sound impacts.

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340 E. Alternative methods of compliance.

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345 (2) The Planning Board may approve an alternate plan  
that proposes different plant materials or methods provided  
that such alternative plan provides quality, effectiveness,  
durability, and performance equivalent to that required by  
this section.”

350 ○ *Section 180-111. Screening devices.*<sup>2</sup>

355 “A. Permit. No fence, wall or other screening device, except  
natural vegetation plantings, shall be installed without a building  
permit. The Zoning Enforcement Officer may issue a building  
permit in accordance with Subsection B(3) below.” (Emphasis  
supplied).

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360 • *Article VI. Administration and Enforcement.*

○ *Section 180-132. Enforcement; summary of application and  
review procedures.*

365 “C. Building permit applications: Planning Board review  
procedures.

370 (1) A complete application for a building permit for a  
permitted use or for a special use shall be filed with the  
Village Clerk and then referred by the Zoning Enforcement

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<sup>2</sup> It is noted that §180-111 relates to “screening devices.” It is unclear if the College considers the proposed perimeter fence as a “screening device.”

Officer to the Planning Board. Applications must be submitted at least seven days prior to a regular Planning Board meeting to be on the Board's agenda.

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(1) The Planning Board review procedure includes any or all of the following reviews, depending on the location, nature, scale, and complexity of the project proposed in the application:

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(a) All projects are subject to review for basic compliance with the regulations of the district in which the activity is located.

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(b) All projects are subject to architectural review for reasonable compatibility and harmony of scale, materials, colors, and other design features of proposed building or other structures with surrounding buildings and settings.

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(c) Many projects are subject to site plan review and, in certain locations, may also have to be reviewed for compliance with Village rules and regulations dealing with protection of the public water supply and with floodplain protection and management.

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(h) Finally, projects which involve a special permit are subject to a public hearing. Certain projects may also require a public hearing under SEQ. In addition, the Planning Board may elect to conduct a public hearing on any other application where it deems a hearing to be in the public interest.

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- o *Section 180-133. Building permit.*

“A. No building or other structure or part thereof shall be erected, enlarged, moved, demolished or structurally altered until a building permit authorizing such actions has been issued. The

415 issuance of any permit or any other authorization or approval by  
 any other agencies having jurisdiction over use of lands and waters  
 in the Village shall not in any way diminish the requirements for a  
 building permit under these regulations. Issuance of a permit, or  
 420 any prior action by the Board of Trustees, Planning Board, and/or  
Board of Appeals favorable to an application, site plan, or other  
documents submitted to the Village for use, construction,  
development, redevelopment, subdivision, rehabilitation or  
expansion of land and buildings shall not be construed to waive,  
 425 modify or otherwise affect any rights of any other agencies having  
any jurisdiction over general or specific use and development of  
land and waters in the Village. (Emphasis supplied).

430 B. The Village of Cazenovia shall not grant any building  
permit for any building or structure which does not comply with  
these regulations, and, where prior authorization or other action of  
the Planning Board or the Board of Appeals is required, such  
permit shall be granted only upon written approval and  
authorization of such Board.” (Emphasis supplied).

435 ○ *Section 180-135. Planning Board.*

“A. . . . The Planning Board shall have the following powers and duties:

440 (1) Site plan review. The Planning Board is hereby  
 authorized to review and approve, approve with  
 modifications or disapprove site plans as provided in these  
 regulations.

445 . . . . .

450 (3) Architectural review. The Planning Board is hereby  
 authorized to review and approve, approve with  
 modifications, or disapprove an application for a permit for  
 new construction or exterior alteration of buildings and  
 other structures, including swimming pools and signs, in  
 terms of reasonable compatibility of the proposed  
 architectural design, colors and materials of such structures  
 with the character of adjoining and surrounding structures  
 455 and settings in accordance with these regulations.

. . . . .

- *Section 180-142. Site plan review and approval.*

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“A. Intent.

(1) The intent of site plan review and approval is to further promote the purposes of these regulations by reviewing and regulating all aspects of proposed use and development of land within the Village which relate to the health, safety and general welfare of the community. Such review and approval is designed to safeguard and maintain a clean, wholesome and attractive environment, ensure conservation, protection, and preservation of the Village’s natural and man-made resources, and prevent any adverse impacts on such environment and resources which would be detrimental to the general welfare and to the continued development and economic stability or growth of the Village. (Emphasis supplied).

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B. Uses subject to review and approval. The Planning Board shall conduct site plan review for all land use activities in the Village requiring a building permit, except the following uses which otherwise comply with all other requirements of these regulations:

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(1) New construction of individual one-family or two-family dwellings and accessory structures.

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(2) Reconstruction of or interior alterations to existing structures.

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(3) Exterior alterations or additions to existing structures which do not increase the total floor area of the structure by more than 25% and which do not involve any new street access or off-street parking expansion.

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(4) Any resumption of prior use and occupancy of a building which has been vacant for less than two years.

(Emphasis supplied).

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C. Site plan review criteria and procedures.

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505 (2) The Planning Board shall review all site plans as appropriate in terms of the following criteria:

510 (a) Location, arrangement, pattern, size, design and general site compatibility of buildings, vehicular and pedestrian systems, signs, lighting, open spaces and other facilities and features within the site and in relation to surrounding uses and vacant land. Site compatibility deals with reasonable placement and arrangement of buildings and other facilities on the site in relation to existing topography, natural features and other existing conditions, taking into account the scope and resulting stability, drainage and visual implication of proposed earthmoving and grading. (Emphasis supplied).

525 (b) Adequacy and safety of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.

(c) Location, arrangement, appearance, safety, and sufficiency of off-street parking and loading.

530 (d) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience. (Emphasis supplied).

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540 (g) Adequacy, type, size, and arrangement of trees, shrubs and other landscaping constituting visual and/or noise buffers between the site and adjoining lots, including the maximum retention of existing vegetation.

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D(2)(b). Site plan submissions - Submission requirements shall be as follows:

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[1] Site plan.

[m] Location, design and type of construction of existing and proposed site improvements, including storm drains, culverts, retaining walls, **fences**, flag poles, signs, lighting, tanks and outdoor storage areas. (Emphasis supplied).

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[4] Landscaping plans.

[h] The landscaping plan shall include a note committing the owner to the permanent maintenance and replacement of all plant materials depicted on the landscaping plan, including lawn areas, **fences** and retaining walls. (Emphasis supplied).

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[8] Other information. The above lists shall not limit the type of information required nor the right of the Planning Board, Board of Trustees, Board of Appeals, or the Zoning Enforcement Officer acting on behalf of such Boards, to request additional site plan and other information, particularly where the project is of significant scope, complexity, and environmental and community sensitivity and impact. (Emphasis supplied).

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E. Planning Board findings.

(1) Based upon the above considerations, in order to approve a site plan for purposes of authorizing a building permit, the Planning Board shall make the following findings:

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590 (b) The proposed use and site plan are to be  
developed in such a way as to provide maximum  
land use efficiency and amenity within the site and  
in relation to surrounding uses, based upon a  
reasonable consideration of the site plan and  
595 functional requirements of the proposed use.

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600 (d) The proposed use and site plan will not have  
an adverse impact upon the character or integrity of  
any land use within the immediate neighborhood  
having unique recreational, cultural, historical,  
architectural, or other special community values,  
including those inherent in any conservation areas  
605 identified on the Zoning Map.

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610 (f) The site plan provides and permits adequate  
supporting services such as fire and police  
protection, public and private utilities and all other  
supporting governmental services necessary and  
appropriate to the proposed use.

615 (g) The site plan design and control of vehicular  
and pedestrian traffic provide for the maximum  
safety of the general public and the occupants,  
employees, visitors, and other persons using the  
620 site.”

○ *Section 180-9. Definitions.*

**“BUILDING**

625 A structure having a roof and wholly or partially enclosed  
by exterior walls, used to shelter persons, animals or  
property. Where such a structure is vertically divided into  
entirely separate parts and utility systems intended for  
separate uses, each part is an attached building.”

**“FENCE**

630 Any artificially constructed barrier of any material or  
combination of materials erected to enclose, isolate or  
screen a lot or portion of a lot.”

635                   **“FLOOR AREA**  
                          The sum of the square foot area of the floors of a building  
                          or portion of a building, calculated on the basis of  
                          dimensions between the interior faces of the walls,  
                          excluding basement or attic floor area.”

640                   **“POST-SECONDARY EDUCATIONAL INSTITUTION**  
                          Any college, university or other institution devoted  
                          primarily to post-high-school educational activities, not  
                          including commercial schools of beauty, business, dance,  
645                   driving, music or similar establishments.”

**“PROJECT**  
                          Any activity involving use, development, construction,  
                          reconstruction, alteration or other action affecting land and  
650                   structures regulated herein and proposed in an application  
                          for a building or other permit or for any other Village  
                          approval or authorization required by these regulations.”

**“SCREENING DEVICE**  
655                   An accessory structure intended to serve as a visual, noise,  
                          security and privacy barrier, including a fence, wall, screen  
                          or similar structure or improvement.”

**“STRUCTURE**  
660                   A building or anything else constructed or erected with a  
                          fixed location on or in the land or on or in a body of water,  
                          not including pavements and vegetation.”

**“STRUCTURE, ACCESSORY**  
665                   A structure other than a building generally associated with  
                          and incidental and subordinate to the principal use of a lot,  
                          including but not limited to fences, walls, flagpoles, signs,  
                          antenna, fireplaces, trellises, swimming pools, tennis or  
                          basketball courts or similar structures. A structure erected  
670                   on a building such as an antenna shall be an accessory  
                          structure.”

**“USE**  
675                   The activity or activities for which a lot and principal and  
                          accessory buildings and structures on a lot are being or are  
                          to be used and occupied.”

**“USE, NONRESIDENTIAL**

All uses of land and buildings and other structures other than residential use as defined in this chapter.”

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**IV. POSITION OF THE APPLICANT IN THE APPEAL**

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- The Applicant has taken an appeal from the November 5, 2012 determination of the ZEO stating that the request for the 1,400 linear foot perimeter fence around the College athletic field property requires only the issuance of a building permit and not the issuance of either site plan review or an amended site plan review as expressed by the ZEO.
- Included in this position is the College’s statement that a building permit was issued for smaller sections of fencing relating to the College’s property on various occasions, including February of 2012.
- The Applicant contends that there was no evidence that the building permit for the requested perimeter fence is associated with the previous approval of the athletic facility turf field and supporting improvements granted on August of 2011.
- The College further states that the ZEO must issue the fence permit since the proposed fence complies with the provisions of Section 180-111 (“Screening devices”).
- The College further states that the proposed fence is necessary to prevent trespass, ensure security and provide added safety in the area of the stormwater ponds and athletic field which was the subject of the previous site plan approval of August 11, 2011.
- The College disagrees with the ZEO’s conclusion that the proposed perimeter fence is an after-the-fact component or feature of the College’s overall plan of development for the athletic field property.
- The College does agree that the athletic field renovations were properly the subject of a site plan review and approval in August of 2011.
- The College’s statement of its position focuses on aspects of the New York State Environmental Quality Review Act and upon the alleged suggestions by the ZEO

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that the College misrepresented its plans in 2011 in order to avoid a more stringent review process at that time.

- 710 • The College states that when asked in 2011, the College represented that there were no plans for a fence to be installed on the premises as part of the overall site plan.
- The College further states that the ZEO’s determination is beyond his statutory authority.
- 715 • The College has expressed its opinion that Section 180-111 of the Code is the sole provision upon which the issuance of a building permit for a fence must be considered.
- The College argues that the perimeter fence necessary to protect the athletic fields associated with its earlier request for site plan does not necessitate a review by the
- 720 Planning Board.
- The College further states that there is “no overriding site plan to which this fence attaches.”

#### **V. PUBLIC COMMENTS/SUBMISSIONS**

- 725 • Numerous comments have been received from the public regarding the proposed appeal.
- Members of the public addressing the Board through written submissions and oral testimony made the following arguments and comments:
  - At the time of its original August 22, 2011 site plan approval and during the review process leading up to same, the College had been asked
  - 730 numerous times whether fencing was a portion of its proposal and each time the College indicated that no fencing was planned or proposed.
  - The College’s appeal materials include its July 25<sup>th</sup> application titled “Perimeter Fence of Turf Field” and includes a description to erect a 1,400
  - 735 linear foot, six (6) foot high chain link fence three (3) feet from certain historic residential properties and other residential properties in the Village and the clearing of a 72” to 84” path to erect the fence.

- It is contended by members of the public that the ZEO’s authority with respect to building permits for fences is not a directive (or mandatory).
- Reference was made by the neighbors to that portion of the record wherein, previously, as part of the Previous Planning Board Approval, when asked if the College had plans for a fence for the field, the College President stated “I don’t know how people would react to that. We are trying to have as little impact as possible . . . we don’t have any plans relative to a fence or plantings, but we can converse about it. It is my assumption that people that have a view want to keep it.”
- Members of the public (and the ZEO) contend that the proposed perimeter fencing is a “feature” or “characteristic” of the site and should not be separated from other site features and characteristics.
- Members of the public argue that the ZEO’s previous issuance of building permits to prior fence applications does not obligate him to issue a building permit for the instant application due to the permissive language of §180-111 and §180-114 of the Zoning Regulations.
- Members of the public have argued that the previously issued fence permits are not precedential and are distinguishable due to the location of the proposed perimeter fence and the size of same. It was further stated that the previous fence applications are significantly different “in terms of scope, length, materials, visibility and location” and that the subject fence serves a different purpose, is located in a difference context than any of the other fence applications cited by the College and it is “dramatically different in terms of impact on and reaction from abutters.”
- Members of the public further argued that the fence cannot be seen as anything other than part and parcel of the overall athletic facilities, citing to a mailer provided by the College relating to its capital campaign which states the following concerning the athletic complex:  
“[w]hile the project is well under way, significant giving opportunities remain for the new field. Plans for a press box and

bleachers are part of the overall aim to make Christakos Field consistent with student, parent and coaching staff expectations for sporting facilities at the collegiate level.”

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- Further, members of the public have cited to College President Tierno’s August 10, 2012 letter stating that the fence is needed to protect the new athletic facility from various potential harms and is therefore a feature of the overall site.

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**NOW, THEREFORE**, on motion of Member Hart and seconded by Member Keiser, it is hereby

**RESOLVED** that the Village of Cazenovia Zoning Board of Appeals hereby makes the following determination, based upon all of the findings of fact, the record presented to the Board and the Board’s review of the Zoning Regulations, as follows:

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- **The Appeal of Cazenovia College with respect to the determination of the Village of Cazenovia Zoning Enforcement Officer denying the issuance of a building permit without the submission and approval of an amended site plan application is hereby DENIED in total for the following reasons:**

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I. Pursuant to Section 180-136(A)(1) (Interpretation), the ZBA “may reverse or affirm, wholly or partly, or may modify any interpretation, order, requirement, decision or determination made by the Zoning Enforcement Officer . . .” Further, pursuant to the same Section, the ZBA has “. . . the power to make such interpretation, order, requirement, decision or determination which, in the opinion of the Board, ought to have been made in the matter.”

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- Pursuant to Section 180-9, a fence is a structure.
- Pursuant to Section 180-132, a structure requires the issuance of a building permit.
- Section 180-142 governs the requirements for and issuance of site plan reviews and approvals. The intent of said Section is to “promote the purposes of these regulations by reviewing and regulating all aspects of proposed use and development of land

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within the Village which relate to the health, safety and general welfare of the community.” (Emphasis supplied).

800 ○ Pursuant to the same Section at Subdivision B, the requirement for site plan approval is explicit: “The Planning Board shall conduct site plan review for all land use activities in the Village requiring a building permit,” except for certain matters which are deemed to be exempt. (Emphasis supplied).

805 ○ A review of the exempt matters are not applicable to the instant building permit application.

○ Therefore, on its face and pursuant to the provisions of the Zoning Regulations, it is clear that the issuance of a building permit for a perimeter fence at the subject premises requires site plan review and approval by the Village of Cazenovia Planning Board.

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II. Separately, this determination is further supported by Section 180-42 and the subject property’s zoning within the C-2 College District. The Regulations recognized that properties in the C-2 District are parcels which are adjoined by established residential neighborhoods and which

815 “necessitate[s] particular precautions to ensure the compatibility of post-secondary educational uses with adjoining residential uses.” Indeed, all uses located in the C-2 College District are required to undergo site plan approval by the Planning Board. (See §180-43).

820 ○ The ZBA recognizes the significance of developments in the C-2 College District. Combined with the requirements of this Section and the site plan review requirements under Section 180-142, the site plan review of the perimeter fence is appropriate and necessary by its terms.

III. Further, the ZBA finds that the fence itself, separately, is an “aspect” of

825 the proposed use and is the development of land as referenced under Section 180-142.

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- Based upon all of the findings noted above, it is clear to the ZBA that the perimeter fence, which is the subject of the building permit application, is a feature, aspect and characteristic of the overall use of the athletic facilities at Cazenovia College.

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- This determination is specifically supported in the records of the Previous Planning Board Approval insofar as the issue of inclusion of a fence was questioned by the Planning Board at that time.
- Further support for this determination is found in the statements made by both the College President, the publications by the College, the application itself, the affidavits submitted by the College and the above-referenced provisions of the Zoning Regulations.

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IV. This determination is further supported by a reading of Section 180-142(C) (Site plan review criteria and procedures), which pursuant to Subdivision 2 notes that all site plans will include a review of: “(a) Location, arrangement, pattern, size, design and general site compatibility of buildings, vehicular and pedestrian systems, signs, lighting, open spaces and other facilities and features within the site . . .” (Emphasis supplied).

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- The same Section (relating to site plan review criteria and procedures) requires the Planning Board to consider the following: “(d) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.” (Emphasis supplied).

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- It cannot be argued that a fence, particularly a 1,400 linear foot perimeter fence, which pursuant to the stated request was necessary for the protection of the College’s \$1,000,000 investment and to protect from trespass and other unauthorized uses of the College premises, is not a

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“feature” of a site plan pursuant to the regulations relating to pedestrian and other walking traffic.

- The ZBA hereby rejects the argument that Section 180-111 must be read in a vacuum and without regard to other relevant sections of the Zoning Regulations. Rather, the ZBA determines that site plan review is mandatory in instances such as this where a perimeter fence will control access and usage of an athletic facility which has undergone a recent previous exhaustive site plan review.
  - Section 180-111 is titled “Screening devices.” That Section authorizes (by use of the term “may”) the Zoning Enforcement Officer to issue a building permit in accordance with that Section but does not direct or mandate the Zoning Enforcement Officer to do so. That Section relates to “screening devices” to be utilized by property owners and the criteria relating to same.
- V. Furthermore, with regard to the College’s concerns that previous fence requests have been issued without the benefit of site plan review, the ZBA finds each of the stated examples to be distinguishable for the reasons set forth in the findings of fact above. In this instance, the perimeter fence is a significantly larger fencing system, resulting in the potential destruction of significant vegetation necessary for its installation. It will be erected on the perimeter boundary line of various Zoning Districts, including the Historic Preservation Overlay District and requires site plan review. In addition, the examples of other fence segments provided by the College in a number of instances did undertake some level of Planning Board and Zoning Board review and acknowledgement.
- Finally, the contention by the College that the provisions of Section 180-111 are “ambiguous” is rejected. As noted above and addressed in the findings of fact and conclusions contained herein, the Zoning Regulations are explicit that a site plan review and approval is necessary for all land use activities in the Village

requiring a building permit, except where expressly exempt. Since none of the items specifically exempted are applicable, in this instance the requirement for a site plan review is mandatory.

- The ZBA in this decision is hereby exercising its authority pursuant to Section 180-136 in affirming the ZEO's determination of November 5, 2012 that site plan review by the Village of Cazenovia Planning Board is necessary upon the reasons and conclusions stated herein.

890 Mr. Langey (to the Board members): That is a reading of the entire draft Resolution. I want to be very clear here. This draft is for purposes of discussion and consideration. This is your document. You can change it, modify it, add, subtract, throw it out, do whatever you want to do. It's a proposal that Phil and I talked about and is presented to you for your consideration and for a discussion. But before you would discuss it, somebody would move it and second it. But before we get to that, I just want to be on the record for one last thing with Kevin (Bernstein). I had advised Counsel for the College, about a week ago I called, and said that two of the Board members during conference with me, with Counsel, had indicated that they wanted to make me aware that in one instance one of the Board members had advised me that her ex-husband lived on a parcel that adjoined the College property. That Board member did not feel that it would impact her ability to weigh the evidence and vote with any problems. And, secondly, another Board member raised to me the fact that she has a son-in-law who signed one of those petitions that came to the Board last time. She likewise indicated to me that she did not believe that fact had any impact or bearing on her ability to fairly weigh the evidence and participate in the vote. I mentioned that to Kevin and he indicated he would take it under advisement. I had not heard back from Counsel on that. (Directed to Mr. Bernstein): If there is something you want to speak to before we proceed, I would like to hear about it.

905 Mr. Bernstein: I acknowledge that you advised me of that. I will just let the Board members make their decision based on your advice.

915 Mr. Langey: So no objection to them participating in the vote?

Mr. Bernstein: I didn't say that. I said I will just let them make their decision based on your advice to them.

920 Mr. Langey: In that circumstance, I would ask that the two Board members referenced, Tara and Sally, not move or second the motion, but if you still feel that you can participate without any bias, then I encourage you to do so. If you don't feel like you can, then you don't have to. But I would ask that the motion come from members other than yourselves.

925 H. Hart: I would like to make a motion. I make a motion that we accept the Resolution as proposed.

W. Keiser: I will second the motion.

930 P. Byrnes: A motion has been made and seconded that the Resolution be accepted as proposed. Is there any discussion amongst the Board? Are there any comments, any changes, deletions, etc., you wish to make at this time?

935 T. Hartley: I will just say that I think it was clearly part of the original site plan. It involves, as mentioned, a National Registry. I think it deserves tremendous detail and review. I don't think it is as easy as a yes or no by the Zoning Enforcement Officer. I think it needs to be looked at very closely to maintain integrity of our Village.

940 P. Byrnes: Anyone else?

H. Hart: I have a question. I have no problem with voting for the Resolution, which is to affirm the Zoning Enforcement Officer's decision. Part of the Zoning Enforcement Officer's letter in response mentioned segmentation. Does this Resolution cover segmentation?

945 Mr. Langey: This Resolution does not specifically get into a discussion about segmentation, but it does reference the objection by the College as to that part of the reasoning of the Code Officer that relates to segmentation. It does cover it in that sense, yes.

950 P. Byrnes: If there are no other comments, I will call the roll for the vote. A vote of aye is obviously in favor of the Resolution.

H. Hart: A vote of yes is to uphold the decision of the Zoning Enforcement Officer?

955 Mr. Langey: And to adopt the Resolution.

Upon a canvass of the Board, the votes of its members upon the above Resolutions as follows:

<b>Tara Hartley, Member</b>	<b>Voting</b>	<b>Yes</b>
<b>Sally Ryan, Member</b>	<b>Voting</b>	<b>Yes</b>
<b>William Keiser, Member</b>	<b>Voting</b>	<b>Yes</b>
<b>William Howard Hart, Member</b>	<b>Voting</b>	<b>Yes</b>
<b>Philip Byrnes, Chairman</b>	<b>Voting</b>	<b>Yes</b>

960 The Chairman, Mr. Byrnes, then declared the above-referenced Determinations and Resolutions to be duly adopted, pursuant to the votes recorded therein.

965 **PHILIP BYRNES**, Chairman of the Zoning Board of Appeals of the Village of Cazenovia, hereby certifies that the foregoing Determinations and Resolution was duly adopted at a meeting of the Village of Cazenovia Zoning Board of Appeals duly convened and held on April 18, 2013, a quorum being present.

**PHILIP BYRNES, CHAIRMAN**  
**Village of Cazenovia Zoning Board of Appeals**

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**KATHERINE A. BURNS**, Village Clerk of the Village of Cazenovia hereby certifies that the foregoing Determinations and Resolutions were duly filed in her office on **April \_\_,** 2013.

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**KATHERINE A. BURNS, VILLAGE CLERK**  
**Village of Cazenovia**

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**Heritage Family Medicine, Atwell Mill Annex, Three Signs.**

985 Thomas Pratt came forward on behalf of Heritage Family Medicine that is located in the Atwell Mill Annex. He presented a representation of the request. It is an aerial photograph of the location of the facility. The office is in the northern part of the Atwell Mill Annex. Mr. Pratt stated that the request is for a variance for the signage. He commented that this location is zoned B-1, which is the same as downtown Cazenovia. He pointed out that this is a very different area from downtown. He noted that in the B-1 district, a 1-foot high sign the total width of the building is allowed. But he is requesting three signs; one on the front of the Annex, one on the west face of the Atwell Mill main building, and one on the east face of the Atwell Mill main building. He said that the signs on the Atwell Mill main building are really more for direction so that people will know Heritage Family Medicine is in the back of the area. He is looking for relief from Section 180-117G, the signage requirement for B-1. Mr. Pratt claimed that the Annex is 350 feet back from the street, which is quite a ways for it to be seen, and it is unusual because that condition does not exist in the downtown area. He continued that when he went through the requirements, the sign on the face of the Annex (sign #1) could be 1 foot high by 55 feet wide, which is 55 square feet. The sign he is proposing is 4 feet by 5 feet, which is 20 square feet. With that, he is suggesting that he is allowed 55 square feet and he is under the 55 square feet with this sign. He believes he would be putting it in a better, more concentrated area where people can see it and it would be more applicable to this particular situation. The sign is blue at the top on a white field with blue letters on it. He thinks it fits in fairly sensitively with the set up. Sign #2 and sign #3 would be on the Atwell Mill main building. Sign #2 would be on the east side and is for traffic coming down the hill from the Tops Market side. People

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1005 could see a sign directing them around the main building to get to the Annex. Sign #3 would be  
on the west face of the main building and would direct people back to the Annex--giving them  
direction. Sign #2 and sign #3 are 1 foot by 6 feet, which is 6 square feet each. Each one would  
have a logo and a directional arrow on a blue field that would contrast against the building.  
None of the signs would be illuminated in any way. Mr. Pratt said there are other signs in this  
category. In looking around, Mr. Pratt noticed that KeyBank has a larger sign and there are  
1010 larger signs across the street, which are typical of the area. He reiterated that this is zoned the  
same as downtown, but this is an exception to the area itself. He commented that he does not  
anticipate any State Environmental Quality Review (SEQR) issues. His client looked at the  
possibility of a monument sign, but it would require such a large setback due to the street  
right-of-way that it would not be very visible. Also, due to some trees next to the Great Wall  
1015 Chinese Restaurant, visibility of the sign would be hindered. Furthermore, the sign would be in  
the access way. Therefore, a monument sign would not work out. Mr. Pratt summarized that  
neither of these signs is greater than 1 foot high and lettering is smaller than that. Mr. Pratt  
pointed out that people think about their doctor as an individual, but they do not necessarily  
know what group their doctor is with and these signs would provide that information. The other  
1020 part is that when people need medical services, they need to be able to find them. The signs  
would provide that connection.

In reading the Code, P. Byrnes observed that they are entitled to a sign on the public side of the  
building. He then posed the question: If this is the annex to the main building, can they put a  
1025 sign on the main building?

Mr. Stokes answered that in the B-1 district, the Code allows business identification signs,  
directory signs, and directional signs. He stated that his interpretation of the application is that  
the sign on the Annex is the business identification sign, but it also has elements of a directory  
1030 sign, which is allowed in that location. It is a question of the size. It exceeds the height  
limitation. If they consider it to be a directory sign, then they are allowed up to 10 square feet.  
They are proposing a 20-square foot sign, which is twice what is allowed for a directory sign.

Mr. Pratt said there is an existing sign on the Atwell Mill main building.  
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Mr. Stokes noted that if the signs on the main building are considered as business identification  
signs, a variance would be needed for the location because the Code says the business  
identification sign must be on the building in which the business is located. He indicated that he  
views those as directional signs. But two variances would be required; one is because only  
1040 2 square feet for directional signs is allowed and the other is because the signs are not supposed  
to be more than 4 feet above grade level. This proposal has the signs approximately 10-13 feet  
above ground level. These proposed signs are of excessive size and too high above the ground.  
They would be considered directional signs and not business identification signs.

1045 H. Hart stated that he does not believe a directional sign can have a logo.

Mr. Stokes clarified that Section 180-117G(2) of the Code says that business names and logos only shall be allowed, excluding all other advertising messages.

1050 P. Byrnes raised the concern that sign #2 on the east side of the main building might cause confusion because of the one way exit of traffic on that side of the building and is only asking for trouble because drivers might think they should pull in there—right into oncoming traffic. He mentioned that the applicant is entitled to a sidewalk sign.

1055 Mr. Stokes responded that there are special provisions for sidewalk signs. Mr. Pratt indicated that his client has a sidewalk sign, but it has been fairly unsuccessful, probably because it is too low. H. Hart added that people can't read that fast while they are driving.

1060 S. Ryan inquired about putting up a sign across the street. Mr. Pratt stated that the property does not belong to his client.

H. Hart asked about a hanging wall sign. P. Byrnes replied that a hanging wall sign would need to be on the Annex.

1065 Mr. Stokes acknowledged that they do have a practical difficulty being so far back from the road.

W. Keiser questioned if they could have a street sign. Mr. Stokes answered that the State probably would not allow it on State property.

1070 T. Hartley asked if the Board would consider a variance for all three signs at the same time or if each sign should be considered one at a time. Mr. Stokes advised the Board to consider each sign individually.

1075 P. Byrnes commented that there is already signage on the west face of the Atwell Mill main building.

1080 W. Keiser inquired if there had been any previous signs directing people to the Annex. H. Hart recalled that a previous healthcare provider had no signs to the Annex and that people had to learn their way there. No one could recall any previous signs to the Annex.

The group discussed some design changes for the signs. Mr. Pratt pointed out that his client wants and needs this particular information on the signs. Mr. Stokes advised that the Board needs to act on what is proposed.

1085 As a group, the Board felt that proposed sign #1 on the front of the Annex and sign #3 on the west face of the Atwell Mill main building should not be a problem, but the proposed sign on the east face of the Atwell Mill main building would be troublesome.

1090 P. Byrnes explained that the Board is required to go through five points that must be contemplated when considering a variance. He read from the Code book:

[1] The Board may grant an area variance permitting an applicant to deviate from one or more area and/or dimensional standards set forth in these regulations for a use permitted by these regulations in the district in which a lot is located.

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[2] In making its determination, the Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; whether the requested area variance is substantial; whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance. The Board, in granting of an area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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Regarding sign #1 on the face of the Atwell Mill Annex, the Board went through the criteria:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance? All agreed that no undesirable change would be produced.
2. Could the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? All agreed there was no other method.
3. Is the requested area variance substantial? The Board members agreed that it is not substantial, considering the square footage of the sign.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All agreed there would not be any.
5. Is the alleged difficulty self-created? All agreed it is self-created because they chose that building being fully aware of its location.

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H. Hart made the motion to declare this an unlisted action under State Environmental Quality Review (SEQR) since no other agency is involved and approval will not have any significant adverse effect on the environment. No further SEQR action is required. It is recommended that a negative declaration be prepared and filed for this project. P. Byrnes seconded. The motion carried.

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Regarding sign #1, P. Byrnes made a motion to approve a variance for Section 180-117G(1) to allow a business identification sign more than 2 feet in height. The variance will be limited to the sign as presented 5 feet by 4 feet, as depicted by the applicant, with the condition that no other business identification sign is on the face of building, except by approval of the Zoning Board of Appeals. H. Hart seconded and the motion carried.

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Regarding sign #2 on the east face of the Atwell Mill main building, the Board went through the criteria:

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1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance? All agreed that an undesirable change, in fact, would be produced. The Board believes it would cause confusion and possibly cause an accident.

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2. Could the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? All agreed there was no other method.

3. Is the requested area variance substantial? The Board members agreed that it is substantial because it would be creating a hazard.

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4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All agreed that the sign would have an adverse effect because it would create a hazard and possible accidents.

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5. Is the alleged difficulty self-created? All agreed it is self-created.

H. Hart made a motion to **deny** a variance for Section 180-117G(2) because the proposed sign is in excess of the 2 square foot area limitation, it is more than 4 feet above grade level, and it is a potential hazard. T. Hartley seconded the motion. The motion carried unanimously. The requested variance was denied.

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Regarding sign #3 on the west face of the Atwell Mill main building, the Board went through the criteria:

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1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance? All agreed that no undesirable change would be produced.

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2. Could the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? All agreed there was no other method.

3. Is the requested area variance substantial? The Board members agreed that it is substantial because the square footage of the sign is larger than allowed for a directional sign and it is more than 4 feet grade level.

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4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All agreed there would not have any adverse effect.

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5. Is the alleged difficulty self-created? All agreed it is self-created.

Regarding sign #3 on the west face of the Atwell Mill main building, P. Byrnes made the motion to grant a variance for Section 180-117G(2) for a directional sign that exceeds the 2 square feet area limitation and it will be located more than 4 feet above grade level. The sign shall be limited to the size as presented, which is 6 feet wide by 1 foot high and includes a directional arrow. A condition of the variance approval is that the St. Joseph's logo shall be removed. The sign will have Heritage Family Medicine with an arrow and no other verbiage. T. Hartley seconded the motion. The motion carried unanimously.

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P. Byrnes asked if there was any other business to be brought before the Board. Hearing none, he made the motion to adjourn the meeting. T. Hartley seconded and the motion carried. The meeting was adjourned at 8:54 p.m.

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Respectfully submitted,

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Marlene A. Westcott  
Recording Secretary