

**Village of Cazenovia
Zoning Board of Appeals
Meeting Minutes
September 19, 2016**

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Present: Jane Nicholson-Dourdas, Acting Chair; Sally Ryan, Lynn Hart, and Cindy Bell.

Absent: Phil Byrnes, Chair.

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Others present: James Stokes, Village Attorney; David Vredenburgh; David Katleski; R. Shain Emerson.

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In the absence of Chair, Phil Byrnes, C. Bell made the motion to nominate J. Nicholson-Dourdas to act as Chair at this meeting. S. Ryan seconded. J. Nicholson-Dourdas graciously accepted the nomination. The motion carried with 4 in favor, 0 opposed.

J. Nicholson-Dourdas called the meeting to order at 7:10 p.m. and introduced the Board.

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J. Nicholson-Dourdas asked for any changes to the minutes of August 22, 2016. There were none noted by anyone. C. Bell made the motion to approve the minutes as submitted. S. Ryan seconded. The motion carried with 4 in favor, 0 opposed.

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Empire Farmstead Brewery, 34 Rippleton Rd., Signs

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David Katleski came forward to explain. He wants his silo to act as a sign. The silo has already been painted with the sign. He was advised to cover it by the Zoning/Codes Enforcement Officer because it had not been approved. At the last meeting, the ZBA was waiting for Madison County Planning Department’s comments.

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Mr. Stokes stated that the County returned it for local determination.

Mr. Katleski explained that the “e” on the vestibule mounted right over the entrance would be 3 feet by 3 feet, but it could be adjusted to be smaller if necessary. It would only be seen from the parking lot. It would mark the entrance to the building.

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S. Ryan pointed out that the application says backlit. Mr. Katleski stated there would be no lighting at all.

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J. Nicholson-Dourdas inquired about the materials of the sign. Mr. Katleski answered it will be bronzed metal to be in keeping with the character of all the other metal.

C. Bell asked if the “e” would be solid or see through. Mr. Katleski said it would just be a piece of steel that is an “e” and it might be painted black.

50 J. Nicholson-Dourdas noted that the second request is for the silo sign and inquired about the dimensions of that one. Mr. Katleski answered 71.7 square feet.

J. Nicholson-Dourdas commented that she did some research on silo signs and this one is pretty subdued and simple compared to others she saw, however, it is very large.

55 Mr. Katleski stated that it will not be seen from the road and it will not be lighted.

S. Ryan asked about the purpose of the silo sign if it cannot be seen from the road. Mr. Katleski replied that painting the silo is typical for breweries across the United States. It's what breweries do. As you drive up, it's monumental. It's a signature piece. It's the brand. It's more like art.
60 Therefore, he did not think he needed permission for it.

J. Nicholson-Dourdas confirmed with Mr. Stokes that in addition to being a third sign, this will also exceed the height and dimensions.

65 All members were inclined to move forward and they went through the five criteria for the "e" sign over the entrance door.

- 70 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 four members in attendance answered no for the following reasons: The sign will be facing north and there would be no residential properties affected by it. It will not be lit. It will not be visible from anywhere but the applicant's parking lot.
- 75 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 four members answered no due to the existing conditions. It is necessary to mark the entrance.
- 80 3. *Is the requested area variance substantial?* All four members answered yes because it is going against the Code of one sign. The impact is minimal.
- 85 4. *Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* All four members answered no because it is only visible from the applicant's parking lot and will not affect any neighbors.
5. *Is the alleged difficulty self-created?* All four members answered yes because one sign is allowed and the applicant is asking for more.

90 The Board decided on the following conditions for the "e" sign over the entrance. It shall be no more than 3 feet by 3 feet, with no backlighting. Lighting is allowed by means of a downward gooseneck light or otherwise allowed by the Code. Any lighting shall be dark sky compliant. No internal lighting. Material to be bronzed metal, possibly painted black.

95 C. Bell made the motion to grant a variance for a second sign per the drawings initialed JND 9/19/16. It is an "e" over the entrance per the conditions stated. S. Ryan seconded. The motion carried with 4 in favor, 0 opposed.

100 The discussion moved on to the third sign. This would be for the Empire Brewing Company logo on the silo in front of the building. The Board referred to the dimensions presented on a drawing prepared by Meridian 10/23/15, Drawing SO984-965(C), initialed JND 9/19/16. The logo is 15 feet tall.

R. Shain Emerson, from the audience, asked: What is the maximum height allowed?

105 Mr. Stokes answered that signs allowed in a PD district are subject to site plan review by the Planning Board. The ground sign limitation is 5 feet in height and this would be considered a ground sign. It is not affixed to the building. The Code only differentiates between a building sign and a ground sign. The silo is a separate structure. It is more akin to a ground sign than being affixed to the building.

110 J. Nicholson-Dourdas noted that the sign is 25 feet, 8 inches off of the ground, so the variance would be 20 feet, 8 inches.

115 Mr. Emerson asked if a variance would be required for the height. Mr. Stokes replied that it would need variances because of its size, the height, and it is the third sign.

Mr. Emerson wondered if there were other signs in the Village with letters that tall. It was noted that the Hampton Inn has tall letters. Buyea's and McDowell Insurance that have 2-foot tall letters.

120 Mr. Stokes stated that those businesses are in a B-1 district, which limits the size of the letters to 2 feet. The brewery is in a PD district.

Mr. Katleski pointed out that the letters on his silo are sideways.

125 Mr. Emerson asked about the maximum height of a sign in the PD district. Mr. Stokes cited 180-117C(14):

130 *Sign heights. No sign shall be installed or maintained on the face of a building so that any portion of the sign extends above the base of the roofline or above the first story of a multistory building, and in no case shall any building-mounted sign extend more than 20 feet above the ground, measured to the top of the sign. Except as otherwise expressly permitted in this section, no ground sign shall extend more than eight feet above the ground, measured to the top of the sign.*

135 Mr. Stokes concluded that 20 feet is the maximum without a variance. He advised the Board to make a finding whether this is a building mounted sign or a ground sign so it is clear what the Board would be granting relief from.

140 C. Bell contended that this is a standalone structure because if the silo needed to be replaced, it could be replaced without touching the building. Mr. Stokes added that the silo can be removed without affecting the structural integrity of the building.

All agreed that this would be a ground sign. As submitted, the sign is 25 feet, 8 inches off of the ground. In that case, Empire is requesting a variance of 20 feet, 8 inches.

145 The Board went through the five 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 four members answered no because seasonally the hops will get in the way, so the whole thing will not be seen. It looks small from the road because it is 1,250 feet back from the road.

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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 four members answered no.

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3. *Is the requested area variance substantial?* All four members answered yes because it is a third sign and because of the height and size.

4. *Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* All four members answered no.

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5. *Is the alleged difficulty self-created?* All four members answered yes because one sign is allowed and the applicant is asking for more.

J. Nicholson-Dourdas made a motion to grant a variance for the Empire Brewing Company sign as submitted on Drawing SO984-985C, a supplemental drawing initialed JND and dated 9/19/16. The variance is for three things: It is a third sign on the premises, the height, and dimensions. The height variance is 20 feet, 8 inches as it is considered a ground sign. The sign shall not have any lighting. The color of the lettering shall be black as presented and not altered in any way in the future. S. Ryan seconded. The motion carried with 4 in favor, 0 opposed.

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Mr. Katleski was advised that he needs to return to the Planning Board for these signs.

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175 **Cazenovia Restoration Corp., Chenango Street, 3 Lot Subdivision, Area Variance**
David Vredenburgh was present and explained that the property is owned by Cazenovia Restoration.

Mr. Stokes noted, for the record, that for the last two meetings there was a hand marked modified version of the subdivision map dated May 27, 2016, that had been initially supplied to the Planning Board. Today, a revised map dated 9/19/16 was submitted which shows the lot line delineations coming from Lots 2 and 3 out to Chenango Street.

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J. Nicholson-Dourdas recalled that the public hearing was closed at the ZBA’s August 22nd meeting. Since that meeting, Madison County Planning Department’s comments have been received and the Board will be taking those into consideration.

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Mr. Stokes pointed out a copy of the tax map with two lots highlighted in yellow and the adjoining properties.

C. Bell inquired if the property goes down to the creek. She wondered if an area was separate because of the dashed lot line. Mr. Stokes answered yes. That has already been subdivided and is a separate tax map number.

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195 Mr. Stokes pointed out an older drawing dated November 22, 1999, by David A. Vredenburgh. It is an existing condition map, except that it shows the greenhouse and other commercial buildings that were removed. The Steinberg residence is still there, as well as another house.

C. Bell remarked that is a big lot for the Village—5.37 acres.

200 J. Nicholson-Dourdas inquired about former traffic to the site. Mr. Stokes replied that due to the greenhouse business back in there, there was a lot of traffic and it was two-way traffic.

205 J. Nicholson-Dourdas summarized: Cazenovia Restoration is asking for an area variance. There is currently one lot. The existing driveway is currently shared among three properties: The Steinberg residence, Dudley Johnson’s rental house, and the third lot.

Mr. Stokes added that each lot would have a 30-foot access. Each lot would have a 10-foot strip that they own outright, subject to the access easement that would benefit the others.

210 C. Bell questioned if Steinberg would still have access to the driveway, even if it changes in the mapping. Mr. Stokes answered that it would be, but it doesn’t have to be. He presented a copy of a deed from October 1936. It is a deed from Julia R. Burden to Herman P. Everts and Beryl H. Everts. The party of the first part reserves the right of ingress and egress on and over the driveway now constructed and maintained on said premises or as may hereafter be mutually changed in any
215 manner, westerly from Chenango Street to and as far as the point in the northerly line of the premises of the party of the second part. That establishes a permanent easement. No matter what anybody does after that, the successors are entitled to have the right. He has a copy of the deed from Charles and Barbara Pace from 1999 to Cazenovia Restoration Corp. He read from the deed. . . . *for right of use over the existing driveway for ingress and egress.* Mr. Stokes continued that it is
220 repeated in the deed that Cazenovia Restoration Corporation took title subject to the rights of the property owner to continue to use that driveway.

J. Nicholson-Dourdas pointed out that the Board is dealing with a lot that has insufficient frontage. Mr. Stokes commented that the survey shows it as one parcel and the tax map shows it as two.
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C. Bell wondered if everything was denied, if it would still be an issue because it still doesn’t have the frontage it needs. Mr. Stokes answered that it would not be an issue because it is grandfathered. They could do one subdivision, but they want two, which creates the need for the variance.

230 S. Ryan noted that it should be addressed that nobody can ever make the driveway a Village Street because it will always be an easement.

235 S. Ryan asked if the Planning Board would have the say on how the driveway would continue into the other two parcels. Mr. Stokes replied that if the ZBA thinks there is an issue there, this Board can impose a condition. The Planning Board may want to limit the number of lots and specifically say it will remain a private access.

C. Bell inquired if improvements could be made such as sewer, water, or widening the pavement. Mr. Stokes stated that it remains a private drive subject to the easement.
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S. Ryan asked who would be responsible for plowing the driveway. Mr. Stokes replied that the way the deed reads now is that Steinberg has the right to use it, but the obligation is on Cazenovia Restoration. He anticipates that if this comes to fruition, there would be an agreement for shared responsibility. The deed language might be expanded so it is clear.

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J. Nicholson-Dourdas asked Board members if they have enough information in order to consider the variance.

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Mr. Stokes suggested that the Board go through the County's comments and go through the draft resolution that has been prepared and then decide if there is enough information for a vote.

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J. Nicholson-Dourdas highlighted issues to discuss from the County's comments. The first issue is allowing flag lots and cautioning the Village about going against the flag lot law. The ZBA is interpreting this as an area variance. As it stands, one lot has insufficient frontage and needed to come before the Board for a variance so these lots could be developed. Another comment from the County is that they do not believe that a 10-foot easement is sufficient road frontage. The Village Land Use Law requires a 100-foot road frontage per parcel in an R-20 zone, thus a substantial 90-foot variance is required.

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Mr. Stokes believes the County misread the map. It would be a 10-foot strip of ownership for Lots 2 and 3 and a 46-foot frontage for Lot 1. The easement would be a total of 30 feet. They would all share in that 30-foot easement. The actual area for access is 30 feet and not 10 feet.

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J. Nicholson-Dourdas continued with another comment from the County was to create a Village road, which would allow for additional new homes to be located in this area. Just two new parcels are being proposed, each over 2.2 acres, which are very large lots for the Village. If a road were to be developed, it could allow for more homes on more typical Village-sized lots (minimum lot area is only 20,000 square feet in the R-20 zone). The road could simply be a cul-de-sac, but there may also be an opportunity to create a longer, connected road to increase access and connectivity, greatly lacking in the southern half of the Village. J. Nicholson-Dourdas disagrees with the County. It was her opinion that the Village does not want to encourage cul-de-sacs as that would go against the historic character of the Village, which is interconnected streets. By having a private shared driveway, a public road would not go through there. Public access would be tricky if the driveway were to become a public road in the future, considering there is a creek on one side and private properties on another side. There is no opportunity for future connection. This would not be a viable option in the future. In thinking about character, if there were to be 8-15 lots back there, that would be a detriment.

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C. Bell said that regarding the character of Chenango Street, the houses are set back more as opposed to other parts of the Village. This gives the illusion that yards are bigger and deeper. The other two lots are not visible from the street. One lot is in the back yard of one of the properties and they have the option to buy it.

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S. Ryan commented that the two lots are huge. J. Nicholson-Dourdas questioned if anybody would want to see it subdivided smaller. She believes not in this case as it is a sensitive area. It is on the edge or maybe even in an ag district.

290 Mr. Stokes interprets the County's comments as the Village should maximize development on this property. J. Nicholson-Dourdas voiced that she does not believe it is in the best interest of the Village to do that.

295 C. Bell noted that the property is in the Historic District. She wondered what kind of impact there would be to build two new homes in the Historic District. Mr. Stokes stated they would need Historic Preservation Commission (HPC) approval for architectural features.

C. Bell pointed out that the driveway easement only goes to a certain point. Everybody would need to share it where they all connect. The easement may need to be extended.

300 Mr. Stokes said there would need to be some agreement or the Planning Board would need to impose a condition to extend the driveway. The ZBA can add that as a condition if they feel it is important.

305 C. Bell thinks it should be defined so it does not get sticky later. She questioned if anything would need to be done environmentally since it was a greenhouse. Mr. Stokes replied that there are no special requirements for residential development as long as less than one acre is being disturbed. This is a Type II action under State Environmental Quality Review (SEQR) because it is only dealing with lot line variances.

310 S. Ryan asked how far back the lots are from Chenango Street. Mr. Stokes answered 150-175 feet off of the road. It is not likely that a house on either property would be seen from the road due to vegetation and other houses.

The Board discussed the draft resolution prepared by Mr. Stokes and made suggestions and changes. Then the Board went through the five criteria the Board must look at when considering a variance.

315 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 four members in attendance answered no. The benefit to the applicant in this instance outweighs any potential detriment to the health, safety and welfare of the community if the requested area variance is granted. In this regard, this Board finds that this application presents a special, if not unique, circumstance whereby limitations on the access to both

320 the subject premises and the adjoining Steinberg/Abbott premises was determined and limited by a subdivision that occurred in 1936 prior to the adoption of the Village's zoning code and subdivision regulations. Vehicular traffic currently using the private drive at issue is considerably less than when the premises were occupied by a commercial

325 greenhouse business, and the addition of one single family home to the three currently allowed to use the private drive as of right will not significantly add to the existing traffic on the private drive or create any adverse impacts.

330 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 four members answered no. There are no reasonable alternatives by which the applicant can achieve the desired benefit as the strip of land in question is the only land owned by the Applicant that can practically provide access to Chenango Street. To require use of Applicant's adjoining parcel to the north to be used to provide access to the subject premises is not only impractical given its

335 topography and proximity to Chittenango Creek, but would also destroy the utility of that
parcel for use as a public park.

3. *Is the requested area variance substantial?* All four members answered yes. The
340 granting of the variances is substantial in terms of a percentage of the total frontage
requirement, as the resulting frontage on Chenango Street for two of the three
reconfigured lots would be only 10% of the required 100 feet of frontage, but the Board
finds that this is not out of proportion in relation to the orderly development of the
neighborhood and the limited development of potentially two single family homes that
are contemplated upon the subject premises relative to the number of 20,000 square feet
345 lots that might otherwise be created on the 5.4 acre parcel.

4. *Will the proposed variance have an adverse effect or impact on the physical or
environmental conditions in the neighborhood or district?* All four members answered
350 no. Based on the record evidence, there will be no environmental problems with the
proposal and it will not unreasonably affect the neighborhood. The only questions raised
at the two public hearing sessions related to stormwater drainage and emergency vehicle
access. The Board finds that stormwater for two single family homes on two plus acre
lots can be adequately managed without creating any adverse effects, and the Village
Code Enforcement Officer will be in a position to further evaluate that issue at the time
355 building permits are applied for. The Board is aware of no indication of any instance in
which an emergency vehicle had difficulty accessing the premises or any adjoining
premises even though the existing private drive has been the sole vehicular access to all
such lots for many decades. Any type of runoff needs to be controlled through the
building permit process.

5. *Is the alleged difficulty self-created?* All four members answered yes. This Applicant's
360 difficulty is self-created by its desire to subdivide the subject premises; however, these
circumstances were created by a larger subdivision of land that occurred in 1936 prior to
the applicability of Village zoning, leaving Applicant with no practical alternative to
provide vehicular access to the lands in question.
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The Board addressed Mr. Steinberg's arguments: The ZBA rejects the arguments by Mr. Steinberg
that the Applicant's request constitutes a use variance rather than an area variance. While section
370 180-5 of the Zoning Code is clearly labeled "Prohibited Uses", "flag lot" is clearly, as defined in the
Code, a restriction on certain dimensional requirements for lots within the district, and as such is no
different than the minimum street frontage requirement stated in section 180-24(C) of the Zoning
Code, which prohibits lots with less than 100 feet of street frontage within the R-20 zone, regardless
of whether or not one were to classify the lot(s) in question as "flag lots". If the reference to flag lots
did not appear in section 180-5(E), the ZBA would nonetheless be faced with the same legal analysis
375 in determining whether to grant the relief herein requested by the Applicant. All other prohibitions
listed in section 180-5 of the Code relate to actual land uses, while the issue of flag lots is clearly and
solely a lot dimensional issue. The ZBA finds that the flag lot restriction (subsection E) is misplaced
within the Zoning Code, and the title of the section ("Prohibited Uses") does not control the plain
reading of the meaning of the term "flag lot", nor does it in any way alter the ZBA's authority under
380 section 180-136(C)(2)(a) of the Zoning Code to "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 in the district in which a lot is located." In this case the use is single family homes, and the flag lot is a dimensional standard.

385 The Applicant's request for a variance to reduce the lot frontage on lots 2 and 3 to ten feet and the lot frontage on lot 1 to 45 feet, as shown on the map prepared by David A. Vredenburgh, L.L.S. dated May 27, 2016 and last revised September 19, 2016 is hereby APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:

- 390 a. that the Planning Board shall require the recording of an updated right of way and easement instrument setting forth with more particularity the rights and obligations of the lot owners with respect to the shared driveway access and utility installation and maintenance, with all such instruments being subject to the approval of the attorney for the Village as to form;
- 395 b. that the subdivision be limited to three lots, substantially as shown on the map prepared by David A. Vredenburgh, L.L.S. dated May 27, 2016 and last revised September 19, 2016;
- c. that the private access drive is to remain private, subject to the contemplated easements, and is not to be dedicated as a public street;
- d. that the ZBA recommends to the Planning Board that it require a better definition of the extension of the existing paved drive to most effectively serve proposed lots 2 and 3.

400 Mr. Emerson inquired if the existing lot along the creek would become a viable building lot. Mr. Stokes answered no because most of it is in a flood plain and it has some other issues. Mr. Emerson asked if that would preclude further subdivision. Mr. Stokes replied yes.

405 C. Bell asked if it would become a public park. Mr. Stokes said that it is there as a private park. It has been proposed and discussed at Village Board meetings, but there has not been a formal offer of dedication. The owner has indicated that is his intention, but it has not been formally accomplished.

The resolution is as follows:

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IN THE MATTER OF APPLICATION FOR

APPLICANT: Cazenovia Restoration Corp.
GML Case No. 112-2016
Tax Map No. 94.68-1-1; 94.68-1-2

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11 Chenango Street

RESOLUTION Approving Area Variance

420 The Zoning Board of Appeals of the Village of Cazenovia met in Regular Session in the Municipal Building of the Village of Cazenovia, located at 90 Albany Street, Cazenovia, New York, on September 19, 2016, commencing at 7:00 p.m., local time at which time and place the following Resolution was moved, seconded and passed:

425 WHEREAS, a public hearing on the above captioned application, was duly called and held at the Municipal Building, 90 Albany Street, Cazenovia, New York, on August 2, 2016, and continued to August 22, 2016, at which time and place all persons desiring to be heard were heard; and

430 WHEREAS, notice of the public hearing was duly posted and published in the official newspaper of the Village of Cazenovia at least five (5) days prior to the date of commencement of the public hearing; and

435 WHEREAS, all Zoning Board of Appeals members had due notice of said public hearing and meeting, and, that pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and due and proper notice of the time and place thereof was duly given as required by law; and

440 WHEREAS, the application was duly referred to the Madison County Planning Agency, which returned a recommendation that the matter be returned to this Board for local determination; and

WHEREAS, all members of the ZBA have viewed the site and neighborhood surrounding the subject Premises, and accordingly have personal knowledge thereof; and

445 WHEREAS, David Vredenburg, licensed land surveyor, appeared on behalf of the applicant in support of the application, and Jim Steinberg, resident at 9 Chenango Street adjoining the subject premises, and, according to his testimony, actively involved in negotiations to purchase the subject premises from the Applicant, appeared in opposition to the application, with no other persons appearing in opposition; and

450 WHEREAS, no written comments were received by the ZBA regarding this application; and

455 WHEREAS, the subject premises are zoned R-20 Residential District, pursuant to the zoning map which is part of the Zoning Code of the Village of Cazenovia; and

WHEREAS, Section 180-24(C) of the Zoning Code establishes a minimum lot street frontage requirement of 100 feet in the R-20 zone; and

460 WHEREAS, Section 180-5(E) of the Zoning Code states "Flag lots are prohibited"; and

465 WHEREAS, the applicant seeks for relief from the minimum lot street frontage requirements set forth in sections 180-24(C) and 180-5(E) of the Zoning Code of the Village of Cazenovia with respect to the premises located at 11 Chenango Street, tax map parcels 94.68-1-1 and 94.68-1-2, in order to subdivide the premises to create three residential lots from the existing two tax parcels.

470 **NOW THEREFORE IT IS HEREBY RESOLVED** that this is a Type II action as defined by section 617.5(c)(12) of the implementing regulations of the New York State Environmental Quality Review Act ("SEQRA"), as it involves the granting of individual lot line variances. The ZBA is the only involved agency with respect to this variance application, and it is hereby

FURTHER RESOLVED that upon the application and upon the proofs and proceedings offered at the public hearing, which was or is hereby closed, the ZBA hereby makes the following:

475 **FINDINGS OF FACT**

1. The subject premises are located on the west side of Chenango Street, being known as tax parcel nos. 94.68-1-1; 94.68-1-2. The Applicant acquired the subject property on December 28, 1999. The total acreage subject to this application is 5.377 acres.
- 480 2. The premises are bordered on the west primarily by Chittenango Creek, on the north by other lands of the Applicant, on the east by Chenango Street and by four single family homes now or formerly owned by Steinberg/Abbott, Georgetown

- 485 Capital Partners, Kristen Wallace and Helen Cunney, and on the south by a single family residential property now or formerly owned by Michael Kellstrand.
- 490 3. The subject premises are improved by a single family residence upon tax parcel 94.68-1-2, which tax parcel currently consists of 0.72 acre of land. Tax parcel 94.68-1-1 is currently vacant and consists of 4.68 acres of land previously improved by two large greenhouses and a commercial building that for many years supported the operation of retail business on the premises. The commercial structures were removed by Applicant following its acquisition of the premises in 1999.
- 495 4. The existing single family home upon tax parcel 94.68-1-2, and the Steinberg residence adjoining the subject premises to the northeast are currently provided access to Chenango Street by an existing asphalt private drive located on tax parcels 94.68-1-2 and 94.68-1-1, which also formerly provided access to the greenhouse business on tax parcel 94.68-1-1 when it was in operation. This shared driveway and the existing easement providing for this shared driveway were created from a 1936 subdivision of the larger premises that pre-dated the adoption of zoning requirements within the Village.
- 500 5. The minimum lot size within the R-20 zone is 20,000 square feet, or slightly less than one-half of an acre. The relief sought by Applicant would retain the existing residence on tax parcel 94.68-1-2, expanding the size of that lot to approximately 0.8 acre, and would create one additional residential building lot on tax parcel 94.68-1-1, with each of the resulting two building lots being approximately 2.3 acres, or approximately 100,000 square feet, in size, which is approximately five times the minimum lot size required in the R-20 zone.
- 505 6. Lot sizes for the residential lots adjoining the subject premises are as follows: 0.21 acre (Wallace), 0.32 acre (Cunney), 0.59 (Kellstrand), 0.20 (Georgetown Capital Partners) and 1.47 acres (Steinberg/Abbott).
- 510 7. As currently configured, one single family residence could be constructed as of right on the 4.68 acre tax parcel 94.68-1-1. The granting of the requested variance would allow one additional single family residence. As such, the practical effect of the granting of the variance would be to allow for vehicular ingress and egress for four private residences rather than three across the existing paved drive that currently serves both the subject premises and the adjoining Steinberg/Abbott residence.
- 515 8. The separate 2.784 acre lot (tax parcel 94.68-1-3.1) bordering Chittenango Creek to the north is proposed to be dedicated to the Village as a public park with its own access to Chenango Street, and as such would be unaffected by the granting of the requested relief.
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CONCLUSIONS OF LAW:

- 530 1. The benefit to the applicant in this instance outweighs any potential detriment to the health, safety and welfare of the community if the requested area variance is granted. In this regard, this Board finds that this application presents a special, if not unique, circumstance whereby limitations on the access to both the subject premises and the adjoining Steinberg/Abbott premises was determined and limited by a subdivision that occurred in 1936 prior to the adoption of the Village's zoning code and subdivision
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regulations. Vehicular traffic currently using the private drive at issue is considerably less than when the premises were occupied by a commercial greenhouse business, and the addition of one single family home to the three currently allowed to use the private drive as of right will not significantly add to the existing traffic on the private drive or create any adverse impacts.

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2. Based on the record evidence, there will be no environmental problems with the proposal and it will not unreasonably affect the neighborhood. The only questions raised at the two public hearing sessions related to stormwater drainage and emergency vehicle access. The Board finds that stormwater for two single family homes on two plus acre lots can be adequately managed without creating any adverse effects, and the Village Code Enforcement Officer will be in a position to further evaluate that issue at the time building permits are applied for. The Board is aware of no indication of any instance in which an emergency vehicle had difficulty accessing the premises or any adjoining premises even though the existing private drive has been the sole vehicular access to all such lots for many decades.
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3. The granting of the variances is substantial in terms of a percentage of the total frontage requirement, as the resulting frontage on Chenango Street for two of the three reconfigured lots would be only 10% of the required 100 feet of frontage, but the Board finds that this is not out of proportion in relation to the orderly development of the neighborhood and the limited development of potentially two single family homes that are contemplated upon the subject premises relative to the number of 20,000 square feet lots that might otherwise be created on the 5.4 acre parcel.
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4. There are no reasonable alternatives by which the applicant can achieve the desired benefit as the strip of land in question is the only land owned by the Applicant that can practically provide access to Chenango Street. To require use of Applicant's adjoining parcel to the north to be used to provide access to the subject premises is not only impractical given its topography and proximity to Chittenango Creek, but would also destroy the utility of that parcel for use as a public park.
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5. This Applicant's difficulty is self-created by its desire to subdivide the subject premises; however, these circumstances were created by a larger subdivision of land that occurred in 1936 prior to the applicability of Village zoning, leaving Applicant with no practical alternative to provide vehicular access to the lands in question.
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6. The ZBA rejects the arguments by Mr. Steinberg that the Applicant's request constitutes a use variance rather than an area variance. While section 180-5 of the Zoning Code is clearly labeled "Prohibited Uses", "flag lot" is clearly, as defined in the Code, a restriction on certain dimensional requirements for lots within the district, and as such is no different than the minimum street frontage requirement stated in section 180-24(C) of the Zoning Code, which prohibits lots with less than 100 feet of street frontage within the R-20 zone, regardless of whether or not one were to classify the lot(s) in question as "flag lots". If the reference to flag lots did not appear in section 180-5(E), the ZBA would nonetheless be faced with the same legal analysis in determining whether to grant the relief herein requested by the Applicant. All other prohibitions listed in section 180-5 of the Code relate to actual land uses, while the issue of flag lots is clearly and solely a lot dimensional issue. The ZBA finds that the flag lot restriction (subsection E) is misplaced within the Zoning Code, and the title of the section ("Prohibited Uses") does not control the plain reading of the meaning of the term "flag lot", nor does it in any way alter the ZBA's authority under section 180-136(C)(2)(a) of the Zoning Code to *grant an area variance permitting an*
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590 *applicant to deviate from one or more area and/or dimensional standards set forth in these regulations for a use permitted in the district in which a lot is located.*". In this case the use is single family homes, and the flag lot is a dimensional standard.

595 7. The Applicant's request for a variance to reduce the lot frontage on lots 2 and 3 to ten feet and the lot frontage on lot 1 to 45 feet, as shown on the map prepared by David A. Vredenburg, L.L.S. dated May 27, 2016 and last revised September 19, 2016 is hereby APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:

- 600 e. that the Planning Board shall require the recording of an updated right of way and easement instrument setting forth with more particularity the rights and obligations of the lot owners with respect to the shared driveway access and utility installation and maintenance, with all such instruments being subject to the approval of the attorney for the Village as to form;
- 605 f. that the subdivision be limited to three lots, substantially as shown on the map prepared by David A. Vredenburg, L.L.S. dated May 27, 2016 and last revised September 19, 2016;
- g. that the private access drive is to remain private, subject to the contemplated easements, and is not to be dedicated as a public street;
- 610 h. that the ZBA recommends to the Planning Board that it require a better definition of the extension of the existing paved drive to most effectively serve proposed lots 2 and 3.

September 19, 2016

615 C. Bell made the motion to adopt the Resolution as edited by the Board for Cazenovia Restoration Corp. and grant the area variance as requested and submitted on the above-mentioned plans.

J. Nicholson-Dourdas seconded. L. Hart abstained. The motion carried with 3 in favor, 0 opposed.

J. Nicholson-Dourdas asked for any other business to be brought before the Board. Hearing none, the meeting was adjourned at 8:47 p.m.

620 Respectfully submitted,

625 Marlene A. Westcott
Recording Secretary