

**Village of Cazenovia  
Zoning Board of Appeals  
February 5, 2013**

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

Absent: Phil Byrnes, Chair.

10 Others present: James Stokes, Village Attorney; William Carr, Zoning/Code Enforcement Officer; Kevin Bernstein; Donna Widrick; David Widrick; Carlos Gavilondo; Sean Reimann; June Haley; Trevor Hesh (sp?); Nick Kagey; Dorothea LaGinestra; Nitzi Bonney; Sue Macaulay; Chuck Macaulay; Mary Fedorko; Janet Cowherd; Robert C. Cowherd; Simon Hurley; David Navin; John F. Rogers; Tom Long; and many more who did not sign in.

15 H. Hart called the meeting to order at 7:00 p.m. and introduced the Board.

\* \* \* \* \*

20 W. Keiser made the motion for H. Hart to act as chair due to the absence of Phil Byrnes. T. Hartley seconded. The motion carried.

H. Hart asked if anyone had any additions or corrections to the minutes of October 23, 2012. There were none. W. Keiser made the motion to approve the minutes. T. Hartley seconded. The motion carried.

25 \* \* \* \* \*

**Cazenovia College, Appeal of Zoning/Code Enforcement Officer’s determination.**

30 H. Hart read the public notice aloud:

**NOTICE OF PUBLIC HEARING  
ZONING BOARD OF APPEALS OF THE  
VILLAGE OF CAZENOVIA**

35 **NOTICE IS HEREBY GIVEN** that a public hearing will be held by the Village of Cazenovia Zoning Board of Appeals on February 5, 2013 at 7:00 p.m. at the Municipal Building, 90 Albany Street, Cazenovia, New York, to consider the appeal of Cazenovia College from the determination of the Zoning Enforcement Officer of the Village of Cazenovia dated November 5, 2012 requiring Cazenovia College to obtain amended site plan approval from the Village Planning Board prior to erecting a fence around the College athletic field.

40

All interested persons shall have an opportunity to be heard at this time. A copy of the subject application is available for review at the office of the Village Clerk during the Clerk's regular business hours.

Dated: January 25, 2013

45 Philip Byrnes, Chairman  
Village of Cazenovia Zoning Board of Appeals

Kevin Bernstein, attorney for Cazenovia College, came forward and distributed copies of exhibits to be put into the record. He proceeded to go through the history of this case: We are  
50 here about a fence. It is a property perimeter fence. It is not just a fence around the athletic field. There are drawings attached to one of the exhibits to show that. It is really not unlike what the college has sought and received in the past. We are appealing the interpretation of November 5, 2012. I take some umbrage with the characterization in the Notice because it is not just a fence around the athletic field. It is along the property line of Cazenovia College. One of  
55 the exhibits will illustrate that. I think the original building permit application included a sketch which was not very legible. Having it in color will be helpful. It is really not unlike applications the college has made and received before, in terms of building permit applications, over the years. We think that because it is in the area of the athletic field and because we went through a lengthy comprehensive process for approval of the field replacement project that it is being  
60 lumped in unfairly and that the interpretation is wrong, legally and otherwise. It started July 25, 2012. This is Exhibit 1. That is the initial application for the building permit to install the fence. On the building permit application, it said it would not exceed 6 feet and both sides of the fence would be identical in appearance. And that's important. Attached to Exhibit 1 is a drawing. In red is the proposed fence. It shows it is inset somewhat from the property line, but it is along the  
65 property line.

T. Hartley: How many feet from the property line?

Mr. Bernstein: I believe 3 feet from the property line. That was the initial application back in  
70 July 2012. Soon thereafter, I'm not exactly sure of the date, the college was informed that an amended site plan would be required because it was near the athletic field, apparently. Again, that athletic field approval was issued by the Planning Board on August 11, 2011. I will get back to that in a little bit. No site plan application was pending at the time of submission of the building permit application. So we didn't submit to an amended site plan application, but the  
75 college president did try to be proactive and sent out a letter to the neighbors and actually had a meeting after that. I will get back to the letter in a moment. This is Exhibit 2. I actually highlighted some portions of it for you. That is an August 10<sup>th</sup> letter, which was after the July 25<sup>th</sup> application. I'm not certain whether there were some concerns expressed or what have you, but he sent the letter out to the neighbors. There actually was a meeting of the neighbors on  
80 September 4<sup>th</sup>. I was not there. It was an informal meeting to answer questions and so on. About a week after that, on September 12<sup>th</sup>, the application by the college was withdrawn because it was not willing to go through any kind of an amended site plan process. It did not think that the two were related. The college actually resubmitted its application on October 1, 2012, which is Exhibit 3, which is the actual building permit application. It is dated

85 September 28<sup>th</sup>. I think it was submitted that Monday. So submitted October 1, 2012. There  
actually was a work session—there may have been a work session of the Planning Board, I’m  
not certain, on October 2<sup>nd</sup>, maybe the next day. Again, the college was told of the need to  
submit an amended site plan application. Instead of doing so, the college requested an  
interpretation as to why that was necessary. I know you have this in your file, but this way  
90 everything is in front of you. We submitted a letter on October 17 directly to Mr. Carr asking for  
an interpretation and setting forth the reasons we believe why the building permit should be  
issued and why we believe that an amended site plan application was not necessary or  
appropriate. We also explained, by the way, the reasons for the fence, even though under  
Section 180-111, that is really not required. It doesn’t talk about requiring an explanation for  
95 why a fence is needed, but we provided that anyway. I will get into that in a little bit as well.  
Interpretation was issued on November 5, which is what we appealed. That interpretation did  
not address our arguments with regard to Section 180-111. It did not address the reasoning that  
we provided for the need for a fence. Even though, as I have said, I don’t believe we need to  
provide the reasoning. It only addressed the athletic field approval, in our view, in error. It  
100 stated that, in Mr. Carr’s view at least, that the fence was clearly a component of the athletic field  
development. He also referenced segmentation, which is a legal concept under the State  
Environmental Quality Review Act (SEQR), also known as I pronounce it, “seeker,” which we  
think was legally wrong. We then appealed that determination. This is Exhibit 5 on January 2<sup>nd</sup>  
this is our appeal letter. You will see, just to be complete, there are duplicates of some of the  
105 previous correspondence. We appealed under the rules of the Zoning Board of Appeals that  
interpretation that was provided by Mr. Carr. According to the Zoning Enforcement Officer, an  
amended site plan review process was necessary to avoid improper segmentation. I will address  
some of the other grounds as well that he stated under SEQR. The rationale he offered was that  
if not for the construction of the turf field, the college would not be proposing a fence. That is  
110 absolutely wrong. Relying on that, what we considered to be flawed logic, any new development  
for a project could seemingly be tied to previous projects no matter how tenuous the connection.  
I call that the slippery slope. I will talk about that a little later because I am sure, and we have  
not done the FOIL request for it, that there are other instances in this village where there have  
been projects that have been the subject of site plan approval and then some time later that same  
115 developer for that same project has sought approval for a fence and received a building permit.  
I will tell you that has actually happened in our case. I will get to that and other instances in a  
few moments. Mr. Carr also relied on that August 10<sup>th</sup> letter of the college president in support  
of his view that it was all related and just related to the athletic field. I have highlighted sections  
and passages, and that is Exhibit 2, from that letter. He did talk about the field, but he also talked  
120 about the surrounding college facilities in terms of the need for a fence. He talked about how the  
college was planning on installing a 6-foot high black vinyl-coated chain link fence starting at  
the northeast corner of the existing tennis courts and so on. It talked about the route, basically,  
this fence would take. He talked about how the fence is identical to the black chain link fence  
that already exists alongside the parking lot at the west end of Christakos Field. He also said that  
125 other historic communities use this type of fencing because of its ability to blend into the  
landscape. So thought was given to the kind of fence that was proposed. But it is clear that it is  
not just the field that was referenced in this letter. And that’s important. As the Zoning  
Enforcement Officer noted in his letter, the college had made numerous statements during the

130 site plan review process for the athletic field that it had no plans to construct a fence at that time. In fact, there is a provision right in that approval that says it doesn't cover any fencing, that fencing would not be part of the project. The need to put a fence in arose after, or in connection with, when the turf field was being constructed because of unauthorized use and other encroachments of the college's property. Not just the field. That's why I took umbrage with the notice a little bit because, as you notice on Exhibit 1, the fence is not just around the field. It is along the property line. I think that is a key distinction. The reason why the fencing became necessary was because—and I said this in the October 17<sup>th</sup> letter—according to the facilities manager, Chris Heberly, there are dogs on the field all the time, kids including bicycles on the field, and our property as well. There is dumping of yard waste and garbage on college property—not just on the field, but on the edges of the field near the property line. There are encroachments on the property. Again, along the property line. Folks apparently use the college's dumpsters to dispose of garbage. Those are the kinds of activities that the fence is . . . In addition to that, you have the two ponds at the southern part of the property. Those have been there before the field was ever put in. I think during that approval process there was some discussion about orange fencing and putting around some kind of snow fencing. We would like to put up something a little more significant, that is the fence that has been proposed, for safety purposes. Those are some of the reasons. Again, the reason for a fence is not required under Section 180-111. But those are some of the reasons that we have stated and our facilities manager has articulated to us, and I'm articulating to you, as the reasons for the fence. The proposed fence does not satisfy any legal criteria that would establish that it is part of an overall or larger plan, as suggested by Mr. Carr in support of his claim that there is segmentation. For example, the athletic field project and the fence that we want to install are not occurring at the same time. They are functionally independent. In other words, if there was never any field replacement project, we would still seek a building permit for that fence. If none of that happened, if none of that seven months review happened back in 2011, the college would have still sought a building permit to put in a fence. Certainly, the building permit for a fence does not commit the Village to anything else. The fence is not part of some kind of phased plan. That is pretty evident from the site plan approval. The Zoning Enforcement Officer nevertheless says that the failure to include that fence in the site plan approval at that time, when the site plan was approved and was being evaluated, prevented the Planning Board from performing a comprehensive review and violated the anti-segmentation provisions of SEQR. He concluded that an amended site plan was necessary to address the impacts of the entire athletic field project, including the fence, on the neighborhood and adjoining historical district. In our view, this logic is flawed because even if the fence was included as part of the athletic field project, the Village classified that project on the site plan as a Type I action under SEQR and conducted a seven-month review. In essence, it would have had no bearing on the determination to view that project as a Type I action. Therefore, it is not segmentation. My next exhibit is excerpts from the SEQR handbook, which is something that the Department of Environmental Conservation (DEC) uses and actually has authored, and a lot of different issues under SEQR. I have provided a couple of pages of that document which talks about what is segmentation. This demonstrates that the Zoning Enforcement Officer's understanding of what segmentation is is just wrong under the law. Segmentation is defined in the SEQR regulations as the division of the environmental review of an action so that various activities or stages are addressed as though

they were independent, unrelated activities needing individual determinations of significance. The classic case of segmentation is when you have two smaller projects that if they were presented at the same time would be a Type I action. But if you present them as two small projects, they do not rise to that level and therefore the environmental review is somehow reduced. That wasn't the case here because the Planning Board classified the field project as a Type I action. There was a seven-month very, very comprehensive environmental review with a lot of issues that were addressed. There is no objective evidence to demonstrate that the classic case of segmentation actually existed here. The whole purpose of it, in that case when you have two small projects that you submit separately, is to avoid the comprehensive environmental review. That is just not the case here. Another classic example is when you have phased projects—like for a subdivision—where a developer comes in and there are several different phases of the subdivision. The developer comes in and presents Phase I of the project, if you will, because it is just a few houses there. He or she thinks that if only a few houses are part of that project that is submitted, it will have a reduced environmental review. But really what they have in mind is a multi-phase project. But they know that if a multi-phased project is presented in the first instance, the environmental review would be that much more stringent, that much more complicated, that much more comprehensive. That is clearly not the case here. As we have said, right in the August 2011 site plan approval, it is stated that a fence was not part of the project. And it wasn't. There is nothing to suggest that it was. Contrary to what the Zoning Enforcement Officer said or his belief, approval of the athletic field project did not commit the college to undertaking a fence project. It is not as if, okay, the field project is approved, now we can go ahead and put a fence in. Again, the reason for the fence, even though we don't have to say it under Section 180-111, is for security reasons, because of encroachment, because people are dumping waste, because kids are encroaching on their bicycles on the property—not just the field—on the property—and they have to cross the property to get to the field—because people are using our dumpsters.

200 T. Hartley: Do you think it is residents of the village?

Mr. Bernstein: It might be residents. It is still private property. If someone walked onto your property and put garbage in the dumpster, it is the same difference. The facilities manager and his employees have seen people use the dumpsters. The college has certainly sought to establish a relationship with the village such that the facilities, as appropriate, should be shared and utilized by the public, but they are still private facilities. I think the field exacerbated the situation. I think that there has always been some encroachment at the edge of the boundary of the property line. There are security and safety reasons, for example, regarding the ponds. There are these two ponds at the southern part of the property and that is of concern in terms of kids playing there. Kids try to catch frogs in the ponds. We would like to put a fence up to at least provide some additional level of prevention. I'm not sure we will ever be able to prevent it, but we should at least try to prevent that from happening. Surely, none of us in this room want to get into a situation where because a fence isn't up, someone had ready access to that pond and fell in and God knows what might happen.

215

T. Hartley: How long have the ponds been there? Mr. Bernstein: They have been there for a while, I think. T. Hartley: Why didn't they put a fence around them sooner? Mr. Bernstein: There has been some fencing around the ponds, but nothing permanent. I think there is orange snow fencing. It has proved to be inadequate.

220

W. Keiser: Have any of these instances been reported to the local police department?

Mr. Bernstein: I don't know. I can find that out for you.

S. Ryan: When you are coming in off Liberty Street, going up to the field, are you still going to be able to access that or will the fence totally close off that area so that nobody can get in there? Will that gate be closed unless there is something happening? Mr. Bernstein: I don't believe this will be permanently closed. This is a gate that is meant to be open most of the time. S. Ryan: If kids did want to get in, they still could? Mr. Bernstein: I'm not saying it is going to be 100% preventative, but it is a deterrent. Part of it is to deter people from coming onto the property at night, or with bicycles, or actually utilizing part of the property—putting yard waste on the property and that kind of thing.

225

230

Mr. Bernstein: On its own, construction of a fence is what is called a Type II under SEQR and typically would not require any environmental review.

235

T. Hartley: Even though it borders a National Register Historic District? Is that originally why it was given the Type I determination?

Mr. Bernstein: That could be part of it. But I will say that it has been done before. There is a past practice here. I have with me four previous fence applications that the college has submitted to the building department in the past, for which building permits have been issued. One of which, I think, occurred soon after a fairly large project. I don't know the details of the project. It may have had to do with the college president's home.

240

T. Hartley: I thought the most recent project was the gate for the Christakos entrance way to the field. Mr. Bernstein: It went in front of the Planning Board. Maybe that was because of the nature of it. If it varies, if it is not identical from both sides, if it is more than 6 feet, it has to go to the Planning Board. There are certain standards of the 180-111 that if met, does not need to go to the Planning Board. It just needs a building permit. If it varies in any way under 180-111, it needs to go to the Planning Board. That's probably the reason why it did.

245

250

Mr. Bernstein: This is Exhibit 8, which is from 2006. That was a building permit for a fence after the completion of a project. I'm a little uncertain exactly what the project was, but there the college installed 240 feet of fence along the north edge of the parking lot portion of the project. The project, separately, had gone through a full Planning Board process, public hearing. The north fencing was an extension of the fencing that was included in the approved project site plan. An amended site plan was not required. The building permit was signed and the fencing was installed. That is Exhibit 8. That was around the athletic complex parking lot. This is another

255

260 one, April 2006. This was a 250-foot long chain link fence. That was the one that came after the comprehensive project and there the building permit was issued. No amended site plan required.

H. Hart: The second fence was entirely on college property and not near any boundary at all.

265 Mr. Bernstein: The August 2006 application was around a parking lot. T. Hartley: It was behind the president's house and borders the college property. Mr. Bernstein: That was a separate project that went before the Planning Board, I believe. H. Hart: And it came to the ZBA too. Mr. Bernstein: It was a modification of a wooden fence at the president's house.

270 S. Ryan: All of these fences do not border anything other than college property, except for the president's house. H. Hart: The one on Sullivan Street ran behind the houses on Sullivan Street. That was to block the light from the parking lot. W. Keiser: There was an existing fence there because there was discussion about dumping between the fences.

275 Mr. Bernstein: The one in August of 2007 was complete too. It was to add height to a fence, to increase the height to 9 feet from 6 feet. Just a building permit was issued. It wasn't required to go to the Planning Board. This is Exhibit 9. A year ago, there was another building permit for a fence. This was fencing for protection of the property at the west end of the field, a 6-foot high fence.

280 Mr. Bernstein: All this is intended to show that the college was a little surprised, to say the least, that it had to go through some kind of amended site plan process when it submitted the current building permit application for a fence because past practice that it had engaged in had been to simply submit the building permit application for a fence that complies with Section 180-111 and obtain a building permit. We believe that the past practice shows that. Again, as I mentioned  
285 before, I am certain that there are other instances where projects have undergone a site plan review process and then sometime later sought some kind of building permit for a fence and came in, just like you saw here, without having to go through some kind of amended site plan review, reopening in essence, which is the sense I get from the interpretation letter, reopening the entire process. That's what I call the slippery slope. That's what I call opening up Pandora's  
290 Box. That's why the college was surprised when it was told it needed to amend its site plan and get the Planning Board engaged in a very comprehensive environmental review process. In terms of the reasoning rationale in the interpretation letter, we think that how segmentation is described and how it is even applied to this situation is legally wrong and it has no merit. We also think that the subjective beliefs of the Zoning Enforcement Officer have no evidence to  
295 support them. That there was some grand plan to make the fence Phase II of the athletic field project. That is just absolutely not true.

300 T. Hartley: Surely you can understand that the residents are trying to maintain a certain aesthetic quality to the village and the Historic District. A chain link fence 3 feet from that district is a project around the field. Then are lights coming next? A driveway off of Lincklaen Terrace possibly to make access to the field easier? It seems like a slippery slope for the community members. Where does it end?

305 S. Ryan: I am concerned that all these exhibits that you gave us really do not seem, to me, the same as the fence that is being proposed now. It is against property lines. For the most part they were no big deal, in my mind, as compared to the fence that is in question here. It just seems to me that it is encroaching on other than college land.

310 Mr. Bernstein: How so? We are only putting it on our property. We are actually trying to avoid the reverse.

315 T. Hartley: Have you given any thought to the materials of the fence? What about the vegetation buffer that is within the Code? With that, when you construct a fence, you don't destroy all of the vegetation that is around it.

320 Mr. Bernstein: I think Dr. Tierno addressed that in his letter of August 10<sup>th</sup>. He said 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. He said that there are some areas that will be cleared due to overgrown vegetation or where yard debris has been dumped or accumulated. That is in Exhibit 2.

T. Hartley: I am more concerned about what the Code is as far as setback and vegetation buffer.

325 H. Hart: The Planning Board issued approval for the field on August 11, 2011. Prior to that, the Village adopted a Code on August 1, 2011, which includes some parameters and constraints that are not addressed on August 11, 2011. I come at it this way, the question is: Are we going by the Code as adopted August 1, 2011?

330 Mr. Stokes: The entire Zoning Code was recodified by local law in 2011. The editor's note in the Code book indicates that was done by the Village Board on August 1, 2011. There were previous significant amendments to the Zoning Code, one of which created the C-2 College District earlier than that. August 1, 2011, was when the entire Zoning Code was recodified as a single chapter. The C-2 District existed before then.

335 H. Hart: The codes are rather constraining and the fact there are three that you have not addressed: 180-43, 180-44, 180-45, and 180-110. Mr. Bernstein: I believe we do address that in our October 17<sup>th</sup> letter—180-43.

340 H. Hart: If you look at these portions of the Code and what you have proposed, the building application does not meet the Code requirements. Mr. Bernstein: We disagree that those Code sections actually apply to a fence. H. Hart: They are very specific—180-43. Mr. Bernstein: That one we actually addressed in our October 17<sup>th</sup> letter.

345 H. Hart: You did not address 180-44. You did not address 180-45, C-2 Supplemental Regulations. Mr. Bernstein: We will be happy to address all those sections, but we do not think



that they apply to a fence in and of itself. H. Hart: Take a look at those and see if they apply. If you read those, you get an entirely different interpretation of what the college proposed based on 180-111.

350

Mr. Bernstein: Was that zoning law in effect in February 2012? Mr. Stokes: Yes. As I said, the entire chapter was recodified August 11, 2011, Local Law 2011-3.

355

Mr. Bernstein: We disagree that those sections apply. That applies for certain uses. A fence does not constitute an educational use.

360

H. Hart: The C-2 Supplemental Regulations call for a landscape buffer area of 25 feet per 180-110. Mr. Bernstein: Specifically for fences? We will be happy to respond to those. We don't believe that they apply. 180-111 applies as it has with other applications that we have made for this kind of a fence. Obviously, it is not as straight forward as that from your point of view. I would appreciate an opportunity to respond to those sections separately. That is all I had.

365

H. Hart: Are there any more questions from the Board? We are open to comments and observations from the public. Carlos Gavilondo has written a brief. Carlos, would you like to start off?

370

Mr. Gavilondo: My name is Carlos Gavilondo. I live at 93 Lincklaen Street. I am a neighbor to the college and directly abut the college athletic property. I did submit a letter dated February 1. I submitted it electronically to the Zoning Board, the Village Clerk, and the Village Attorney, as well as a copy to the Planning Board Chair. I have hard copies here for your convenience. I am going to try to keep it as brief as I can. I want to point out some things in the letter, as well as respond to some matters that the college Counsel raised. First of all, the Zoning Board's job, as I understand it, is to act on the appeal that the college filed and either grant the appeal or deny the appeal and uphold and affirm the decision of the Zoning Enforcement Officer. By virtue of the fact that I am following Mr. Bernstein, we do recommend that the ZBA deny the college's appeal and affirm the Zoning Enforcement Officer's determination. The background I think we all know. The college filed a site plan proposal for its turf field and that was approved on August 22<sup>nd</sup> by a very comprehensive resolution by the Planning Board. In that resolution, the Planning Board addressed the issue of fencing because the college had been asked a number of times whether or not fencing was part of the proposal. The college unambiguously said it was not part of the proposal. Therefore, as Mr. Bernstein stated, the resolution said that the project does not include provisions for planting or fencing. Really, it was parroting back what the college had said during the meetings with the Planning Board. In its July 25<sup>th</sup> application, the college depicted the fencing on a map that is included as Attachment 2. The resolution is included as Attachment 1 of the letter that was previously submitted. Attachment 2 is the college's July 25<sup>th</sup> application entitled, "Perimeter Fencing of Turf Field" and it describes the erection of a 6-foot chain link fence 3 feet from historic residential properties and other residential properties in the village and the clearing of a 72- to 84-inch path to erect the fence. That is a 7- to 8-foot wide clearing to erect the fence. On August 10<sup>th</sup>, the college president

375

380

385

390

notified neighbors, presumably after being informed that there was a concern with the application, advising the neighbors of the proposed fence. In the letter, which is attached as Attachment 3, the college president goes to some lengths to say that since completion of the Christakos Field, the college and students have enjoyed the benefits of playing on the turf field.

395 I won't read it word for word, but I will read this part: "It is vitally important that we take every measure possible to protect our one million dollar 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 chain link fence." Consequently in my book means "therefore." I believe Mr. Bernstein said that it was flawed logic for the Zoning Enforcement

400 Officer to determine that the college was installing the fence because of athletic field. Whereas, the very letter that the college president wrote says, we're installing the fence because of the turf athletic field. The fence is part of a larger project. There is no denying it. To suggest otherwise really defies common sense. The college president's letter says as much, despite the fact that Mr. Bernstein now says we shouldn't rely on the college president's letter, which, by the way, he

405 also said we should rely upon for purposes of feeling comfortable about preservation of the landscaping. So I'm not sure which part of the letter we should rely upon. But apparently one part we should and the other part we shouldn't. I also think that failing to see this for what it is, which is a comprehensive project, would set a very dangerous precedent where applicants would be able to come in with a project and subsequently come in with another related phase and

410 because they have strategically timed it, would be able to avoid a proper review. Nowhere does the Zoning Enforcement Officer's determination state that no fence would be allowed. All the Zoning Enforcement Officer is saying in his determination is that this fence requires a review. I think that a determination by the ZBA to uphold the Zoning Enforcement Officer's determination would do that. It would allow for a proper review as opposed to evading review,

415 which granting the college's appeal would do. The Zoning Enforcement Officer was also within his authority to deny the fence application. The general fence provision cited by the college indicates that the Zoning Enforcement Officer may grant a building permit for a fence. It doesn't say "he shall" or "she shall." He has an obligation to undertake his own evaluation as to whether or not a permit should be granted. Under that evaluation, the Zoning Enforcement

420 Officer determined that it was part of a larger site plan and that under the C-2 zone that a review should be undertaken. The other thing that was recently discussed by Mr. Hart is the fact that we are talking about the C-2 zone here. The C-2 zone does have elevated standards. And the general fencing provisions relied upon by the college to erect a 6-foot fence 3 feet from the border of a National Register Historic District does not override the more stringent requirements

425 of the C-2 zone. Just to read some of the provisions within Section 180-42, the developments and uses within the C-2 district are supposed to be compatible with the surrounding properties and that necessitates particular precautions be taken when evaluating projects in the C-2 zone to avoid adversely impacting residential neighborhoods and the character of the Village. Everyone knows the character of this village is so important and the historic character of the village would

430 be adversely affected if people were allowed to put in fences 3 feet from the Historic District property lines. Again, we are just calling for proper review here. With respect to Sally Ryan's observation about the issue of precedent, the issue of precedent is important in the law, but the precedent has to be similar. You can't point to a case with distinguishable fact and say it establishes precedent for a later action. I believe there has been a lot of confusion and perhaps

435 some obfuscation going on with respect to describing prior cases to suggest that they somehow direct the outcome of subsequent cases. I would call the Board's attention to the letter and request that you deny the college's appeal.

H. Hart: Are there any other comments?

440

Charles Macaulay: I live at 111 Lincklaen Street. We abut the athletic field. I wasn't going to say anything tonight because I already talked to the college president and I expressed my dissatisfaction with his decision to go forward with this fence. I described it as not being a good neighbor. We have been in our neighborhood for 14 years and it has been a very cordial neighborhood with kids running across my property. Am I supposed to put up a fence now to keep them from walking across my property? I don't think so. It is part of being a good neighbor. We don't have any kids of our own in the neighborhood. There are a lot of young kids and we love having them come to our yard. Part of the attraction of that neighborhood was the college property. There is no question about that. Kids in the neighborhood love to build forts in the woods. The woods happen to reside on the college property. I dump lawn clippings on the college property. But I also mow the weeds and cut the weeds. I say that my side of the woods looks better than the other side of the woods, which is on the college property. All I'm saying is that it is part of being a good neighbor. Now what the college is expressing, loudly and clearly to us neighbors, is: "We don't want you. Get out and stay out." I think that is unfortunate. That is not a village neighborly way to act. What that has to do with your decision, I'm not sure. I don't agree that this is a separate action and that it is unrelated to the athletic field. We have been there 14 years. We have dumped clippings on their property for 14 years. The kids have played on their property a lot longer than that. But now all of a sudden they have to fence us out? I don't think they are unrelated.

460

Mary Fedorko: I live at 13 Lincklaen Terrace, William Lynch's property. I bought the property about a year and a half ago. Mr. Lynch built the house and lived there. He planted a rhododendron bush, which is now about 25-30 feet long and about 10 feet wide. It is the pride of the neighborhood. When I moved in everyone said, "Wait until April when that plant blooms. It is unbelievable." There are some pines behind it that contribute to the success of this rhododendron plant. I asked the gentleman from Cazenovia College to come and show me where the fence would be. We met out there at 6:45 a.m. one morning and he told me that his committee recognized how uncommon a rhododendron of that size and shape is in this area. They recognized that and they are going to work to preserve it, but they are also going to put the fence right through the middle of the rhododendron bush. He showed me how far in they are going to go. I said, "Really? You are going to put this fence right through the rhododendron bush? And they will. I thought too that once the other half of the rhododendron bush and those pine trees are on their property, they might cut down those trees because of the pine needles on their side of the fence. Once it is on their side of the fence, they can do whatever they want with it. I just wanted to mention my disappointment in learning that they would put a fence through what they recognize as being an uncommon plant. My kitchen window looks over the field. And I spend many, many hours at the sink. I honestly don't see much in the way of

475

neighborhood kids doing anything out of the ordinary or really spending that much time on the field. I see one neighbor tossing a softball with his son. There is nothing crazy going on there.

480

Nitzi Bonney: I live at 5 Lincklaen Terrace. At least they came and showed you. I haven't been shown my line yet, even though I asked. I asked them to take out a dead tree and they didn't take out the dead tree. The dead tree is still there. It could fall down and hit somebody someday. That is dangerous. Nobody has ever shown me where their line is.

485

Sean Reimann: I live at 8 Lincklaen Terrace. My father was Robert Reimann who did the Comprehensive Plan for Cazenovia. I am across the street. I do see the field. I grew up in the neighborhood. I have spent 50 years playing and crossing the college field. I grew up understanding who some of the neighbors on Sullivan Street were. We knew a number of the college presidents. I knew Mr. Christakos, whose parents ran the Chocolate Shop in the middle of town. This family was always inclusive, never exclusive, always looking to add to the community and adding to the enjoyment of the children in the community. He went out of his way many times. I knew him personally and grew up with his children. I saw his acts of kindness. This field was named for him because of his involvement. To be this exclusive and putting up fences and saying it has nothing to do with the project that happened before is ridiculous. There were more dangers when I was a kid growing up than there are now. There was an open ditch and it stayed an open ditch until just a few years ago. There were frogs in the pond and we crawled across the pond and nobody ever drowned. We are taking the word of the superintendent of grounds who says that somebody is dumping garbage. There must be some surveillance camera. If dumpsters are so important, put a lock on them. One college president decided to erect a chain link fence to keep children from going across the field through the back neighborhood of the college's property. That chain link fence got a hole in it somehow and kids went through it. He realized eventually that in order to get along in the village, if you are inclusive, you get more help. If you are exclusive, you trap people into corners and you make more enemies. There are ways to protect the field: Put shrubs together enough to make it difficult to get through it. They are worried about dogs running across the field. Dogs will dig under the fence. How deep will the fence go into the ground so kids and dogs won't go underneath? This could be dangerous as well. If there is a fence, people will encroach. It's not right, but that's what happens. It is going to get crossed, pulled on, jumped over—that's the game. I haven't seen children playing on the field. Jean Sidaras would turn over in her grave if she knew there was an athletic facility that was exclusive to the village children. I am dismayed at the way Dr. Tierno has gone about this. One of the issues brought up was that it was rushed to a meeting in the middle of February, when nobody was around, because they were in a hurry to get the project started. Then people started asking questions about stadium seating, lighting, and fencing. There were a lot of concerns. There was concern about the Historic District. There was never a concern for this million dollar investment that now has to be protected, and the dumpsters that now need to be protected, and the ponds that have never been protected. There was never any reason for security. If there is going to be a village, you have to include people. The college has always included people and has worked with the village. Dr. Tierno now decides it is our property, you don't belong here, stay out, stay off, we are protecting it, we are building something bigger and that is more important than the historic village that you call

510

515

520

525 Cazenovia. We are a four-year college and we are attracting better students and we have a  
wonderful athletic complex now. There wasn't going to be stadium seating and there isn't per  
se. There is a wagon they drag on wheels when they have a sporting event going on. This is a  
slight bending of the rules on stadium seating. But they drag it off the field and it's not there all  
the time. That gets around the general meaning of what we interpreted as no stadium seating.  
Fences create lines and then it becomes "we" versus "they." Lines are always going to be  
defended on both sides. You create that when you put up a fence. Creating a barrier causes  
problems. You don't want that. What you want is a win-win situation. You want to get along  
530 with your neighbors. The village will commit to college if the college commits to the village and  
not do things behind the scenes. I believe it is part of the college's comprehensive plan in terms  
of the college and its growth. It will get bigger. Lights and seating will be next. The problem  
will be that you won't have anybody from the village supporting the college.

535 Simon Hurley: I live at 68 Sullivan Street. I abut the college property. The fence doesn't go  
around the dumpsters. One of the points noted in one of Dr. Tierno's letters was that the fence  
has been redrawn to protect some of the vegetation. When I looked, the fence line is still 3 feet  
from the boundary line and has not been redrawn. One of the points made is that the fence is not  
about the athletic field. When I met with Dr. Tierno in his office, it was all about the athletic  
540 field. It was all about keeping dogs off, keeping kids from playing on it and damaging it, and  
other various things. I mentioned that they drive a tractor on the field, so kids playing on it  
probably wouldn't damage it. He talked about people walking their dogs to defecate. I argued  
that people I know in the village would not walk a dog out onto an athletic field, where kids play  
sports, and have it defecate. He said his athletic director had seen it. I was a soccer coach at the  
545 college 15 years ago. I understand the need for the plastic field. It was a mud bath. I don't  
understand the need for the fence. It is so close to the Historic District. If you put up a fence,  
you start the drip, drip drip, and then will come stadium seating and lights. You begin to wonder  
why bother having an Historic District if that's the way we are going to go. I'm with Carlos. I  
hope you deny this application and the fence does not get built.

550 Dorothea LaGinestra: I live at 11 Lincklaen Terrace. The back of my house overlooks the  
center of the field. I have a deck with glass doors and I have an unobstructed view of the field. I  
watch the field all day long. The situations that Mr. Bernstein mentioned just do not exist.  
There are no dogs running back and forth and ruining the field. That simply does not exist.  
555 Once in a while, I might see a father with his two children walk across the field. I do watch the  
lacrosse and soccer games and, believe me, the field takes a much worse beating than somebody  
just walking across the field. Those claims simply are not true. I went out in the fall and I  
measured from the edge of the field to the stakes that the college put up right by my backyard. I  
wanted to figure out why he needed this fence. I found that there was about 78 feet from the  
560 edge of the field to the stakes. I feel that they want to use that buffer zone perhaps for stadium  
seating or lighting. Everybody I have spoken to feels that is the next step and I believe it as well.

565 Nick Kagey: I live at 109 Lincklaen Street. I agree with my friends and neighbors on all their  
points. I have made hundreds of observations of the field since this issue came up in August. I  
have seen single digits of the field being used by what appeared to be unauthorized persons and

never anything that any reasonable person would think is dangerous to themselves or the field. I agree with Chuck. It is just a very unneighborly thing to do. I want children playing in my yard. My wife and I are concerned about the vegetation buffer. There are 20-30 feet between the field and our property. We don't understand how a fence can go through that area without there being some damage to those mature trees and vegetation. One of my sons's primary childcare providers is a member of the women's soccer team. We have friends and family over to watch the games. We would not be able to do that with a fence. The college strung yellow tape through the woods to mark where the fence would be. They never cleaned it up. They just left it. It is still hanging there in some areas. If that's how they treat the project now, what are they going to do to maintain the fence once it's there? Are they going to weed around it and make sure there is no debris left in it? I am concerned about if they do maintenance on it. What precautionary measures will be put in place? I have a young son who plays in the yard. Are they going to be weeding while he is playing? How will that work? Just the fact that the president said on September 4<sup>th</sup> that the fence was very clearly to protect the field. With regard to all of the problems the college has supposedly had—dumping of waste, children playing, and dogs—how do they know it's not their own students? I see students there all the time—some doing things that are permissible, sometimes not. If there is a fence, those activities will be an issue. Those are things the college should keep in mind. We haven't received any statistics or numbers. What is the real impact? We hear of dogs, and children, and waste. Is there some financial impact? I certainly don't want a fence 3 feet from my property regardless of what happens. It would be easier to swallow if they can show us there really is some issue. I agree with my neighbors and wanted to voice my concerns.

Sean Reimann: I have known Billy Carr my whole life. I believe in his ability to assess situations. I believe he has worked tirelessly on behalf of the village. I wholeheartedly support his decision. All he is saying is that it needs further review. He has not denied anybody anything. He brought it in front of the Board and has given the community a chance to come and speak. I think that is an admirable quality in Bill. He is being inclusive in terms of the village.

Janet Cowherd: 17 Lincklaen Terrace. I think we are all suffering from confusion from the college. The turf field is fine. The president said we are not putting up a fence. The next thing we knew the fence was going to be put around the athletic field. Now it has gotten bigger. It is going to go all the way around their property line. My neighbor abuts the college. I looked at my neighbor's yard and half way up is a stake with a pink ribbon on it. We all assumed that, via our surveyors, our property line went beyond that. Something is wrong and needs to be checked. These issues keep changing and I think that is why people are so terribly concerned. The next thing I know, they will be up sitting on my deck. I prefer not to have that happen.

Tom Long: I don't live in the village. I live at the north end of South Ten Eyck. I share the feelings of my neighbors. I recall the meeting with Dr. Tierno. There was a lot of discussion about why the fence had to be so close to the property lines. Pretty much his response was, "because we can do it." I didn't see any realistic attempt to mitigate the impact of the fence by moving it closer to the athletic field. I am disappointed in that. Even though I don't live in the village, I urge the ZBA to reject the college's appeal.

610

H. Hart: I want to read a portion of the Code that deals with the buffer zone. This might relieve some concern for some people. This is what the Code is, but it doesn't mean the Code will prevail, or at least that section. The new C-2 Code, which includes the college, seems to apply. Section 180-44 deals with the lot and structure requirements in the C-2 Zone. We are talking about the college, and Section 180-45 Supplemental Regulations (C-2) says:

615

*All construction, reconstruction, development and/or redevelopment shall include a landscaped buffer area at least 25 feet in width as required pursuant to Section 180-110 of this Chapter.*

620

H. Hart: Then you go to 180-110 Landscaped buffer requirements, which says:

625

*A. (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, understory and ground cover vegetation that is environmentally sound, visually attractive and effectively mitigates against adverse light and sound impacts.*

630

*B. (1) Required landscaping shall consist of a minimum of 6 large maturing trees (minimum 50% evergreen) and 40 medium shrubs (minimum 75% evergreen) for each 100 linear feet, to provide continuous coverage. For dimensions of less than 100 feet, plantings and spacing will be in proportion to the basic ratio described above. Where overhead utility lines exist, small maturing trees planted 1 per 15 linear feet may be substituted for large maturing trees with the approval of the Planning Board.*

635

*B. (2) New trees and shrubs should be evenly spaced at planting. At installation, shrubs shall have a 24 inch minimum installed height, evergreen trees shall not be less than 8 feet in height, large maturing trees shall be a minimum 2 ½ inch caliper, and small maturing trees shall be a minimum of 1 ¼ inch caliper.*

640

*B. (3) Where a natural buffer exists, it is to remain undisturbed, with no removal of lower limbs or undergrowth except as required to maintain the health and vigor of the vegetation.*

645

H. Hart: There is a rather extensive description of a buffer zone. There is more relief in the Code than you may have imagined.

650

Mr. Bernstein: I don't believe those Code sections you recited apply to a fence. It may apply to a structure or a home, but unless someone lives on a fence, it does not apply. I will respond to some of the questions, factual and otherwise, that have been raised. I appreciate the questions and the reference to the Code sections. I will respond in writing before the next meeting, whenever that will be.

H. Hart: Are there any other comments?

655 Mr. Stokes: Procedurally you have a couple of options. Under the Code, you have 62 days from  
the close of the public hearing to make a determination. Counsel for the applicant has requested  
time to submit further written comments. You could close the public hearing and grant him, or  
anyone else, further time to make written submissions, or you could continue the public hearing.  
The main significance is that if you close the public hearing, then you have started the 62-day  
660 clock, unless the applicant agrees to extend it. This is essentially a question of law. I will leave  
it up to the Board to decide if you feel you need further oral testimony.

665 Mr. Bernstein: I certainly wouldn't object to that clock starting once my submission is made, but  
not now. I am saying close it, but I would agree to extend the 62 days from the start of when my  
submission is made. Then you can set a date and let me know when you would like for that to be  
submitted—maybe two weeks. That is kind of a middle ground.

H. Hart: There are three comments on that point.

670 Carlos Gavilondo: Since the college chooses to submit additional comments, we would like an  
opportunity to respond to those comments and certainly not at the 11<sup>th</sup> hour of the 61<sup>st</sup> day.

675 Dave Navin: I live on South Ten Eyck about half way up. I came to the meeting to get some  
information. I still don't know what fence Mr. Bernstein is talking about. Is he talking about a  
fence just going around the college field or is he talking about a perimeter fence of the college  
property? It is a lot more extended if it is the college property. Is he talking about the main  
campus down the road as well? Mr. Navin came forward to discuss the maps. Mr. Navin: I was  
late for the fireworks last year. So, walking down Lincklaen Street, I thought, "I will cut through  
the college field." I have also put some stuff in the dumpster, but it was debris I found on the  
680 college field.

Simon Hurley: Please don't close the public comment. I believe a lot of people here would like  
to respond.

685 Mr. Stokes: I think you want to keep the public hearing open. That way, everybody is protected.  
You need to do a motion to adjourn to a specific date and time.

690 Carlos Gavilondo: For the record, I don't do this for a living. I don't get paid to submit  
comments and write responses. I do it from the time my kids go to bed at nine until about  
midnight. So, if I could have a little bit more time than the college has—three or four weeks  
maybe—to respond. I'm trying to respond to something in my off hours. I think everybody else  
here feels the same way. This is not our day job.

695 Mr. Bernstein: I think the appellate deserves the last word. I don't have a problem with that, but  
I would like to be able to respond.



Mr. Stokes: We should give the same time period to the public as we give the college. If we give the college three weeks, we should give the public three weeks. Hopefully the issues are narrowing as we go forward and that should be sufficient.

700 Various dates and timelines were discussed and this was the result:

Mr. Bernstein's comments are due by February 27.

Responses from the public are due March 20.

705

The public hearing to be held on Tuesday, March 26, at 7:00 p.m.

T. Hartley made the motion to continue the public hearing at 7:00 p.m. on Tuesday, March 26, 2013. W. Keiser seconded. The motion carried.

710

\* \* \* \* \*

S. Ryan made the motion to adjourn the meeting. T. Hartley seconded. The meeting was adjourned at 8:52 p.m.

715 Respectfully submitted,

720 Marlene A. Westcott  
Recording Secretary