

**Village of Cazenovia
Zoning Board of Appeals
March 26, 2013**

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

Others present: John Langey, Special Counsel to the Zoning Board of Appeals; Kevin Bernstein; Carlos Gavilondo; Robert Cowherd, Janet Cowherd, Jason Emerson; Charles Macaulay; Virginia LaRose; June
10 Haley; Donna Widrick; David Widrick; Dorothea LaGinestra; Will Hartley; Fred Rogers; Mary Fedorko; Sean Reimann; Nick Kagey; Simon Hurley; Bee Tolman; and many others who did not sign in. There were approximately 40-50 people present.

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

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P. Byrnes asked if anyone had any additions or corrections to the minutes of February 5, 2013. There were none. H. Hart made the motion to approve the minutes. T. Hartley seconded. The
20 motion carried.

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

25 P. Byrnes read a letter aloud from Village Attorney, James Stokes to Phil Byrnes and the ZBA dated March 26, 2013, that was hand delivered to the Village Clerk’s Office for inclusion into the public record:

*This is to formally advise you and the Board that John R. Langey, Esq., a partner in the
30 law firm of Costello, Cooney & Fearon, PLLC, is being retained by the Village to represent and advise the ZBA for the remainder of the proceedings for this appeal, including tonight’s continuation of the public hearing. As you know, I generally represent and advise all boards and officers of the Village. The retention of Mr. Langey to represent and advise the ZBA in its consideration of the merits of this appeal is
35 intended to ensure that the Board has the benefit of independent and objective legal advice, untainted by any prior events and communications that may have occurred in the regular course of my representation of the Village and its officers.*

P. Byrnes entered into the record various exhibits that were given to the Village: 1) A letter of
40 February 27, 2013, from Bond, Schoeneck & King, which are comments from Mr. Bernstein. 2) A letter dated March 19, 2013, from Nicholas Kagey, a Village resident. 3) A letter dated March 20, 2013, from William and Beth Carroll. 4) A letter dated March 20, 2013, from Carlos Gavilondo. 5) A petition that is signed by some 20 or 30 people in the neighborhood who are opposed to the fence.

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P. Byrnes asked for any questions or comments from Board members regarding the comments from Mr. Bernstein in his letter of February 27. There were none.

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P. Byrnes invited Mr. Bernstein to make his remarks.

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Mr. Bernstein: As you know, we made our submission on February 27. I don't intend to go over that again. I think we tried to be responsive to questions and comments that were raised by the Board and by Mr. Gavilondo in his previous letter. We received the same three letters that you mentioned and the two-page petition. The first letter by Mr. and Mrs. Carroll basically stated that they believe the Zoning Enforcement Officer's decision was correct and they expressed concerns about the removal of trees in the buffer area. I think we have stated, and the college has stated, that it would work with property owners to preserve, where possible, such trees where the fence is proposed to be located. That's my one response to that letter. The next letter is Mr. Kagey's letter, which basically boils down to a series of questions concerning the college's proof regarding all of the alleged trespasses as to who exactly was the trespasser. In our view, even though we raised that as one of the reasons for the fence, we think that is kind of beside the point because it doesn't really matter who it is. A trespass is a trespass. Our view is that we have the right to try to prevent those trespasses, as any individual property owner should have the right to do. Mr. Kagey's letter also asked that the college show its need for the fence and financial proof. Again, that kind of thing is irrelevant. There is nothing in the Code regarding that. Again, property owners should be free to exclude those who trespass on their property without having to show financial harm. I am paraphrasing and I'm not going through it in detail, but he also expresses concern about the maintenance and growth of weeds and suggests that the college would have to give him some kind of advance notice before using a weed trimmer. I doubt that landowners do that anyway. We are just another landowner who would be trimming the weeds around the fence. The third letter is from Mr. Gavilondo, which is a little more involved since he is an attorney. Of course, we attorneys have a hard time saying anything on only one page, and I'm guilty of that as well. He talks about the use of the word "may" in the Code. I agree that it is somewhat odd to see that language—"may"—but in this case, I think that "may" should be construed as "must" where we comply with Section 180-111. The problem with the Code, as it is written, is that there would not be any rational reason to deny a building permit if the structure conforms with that Section. Our view is that denial would be, in and of itself, an arbitrary and capricious act, particularly when past practice shows the failure to issue a building permit for the fence application is inconsistent with what was done before.

Mr. Gavilondo also claims the Zoning Enforcement Officer is not interpreting State law and requiring the college to seek an amended site plan review and go through that process. If you read Mr. Carr's letter, it clearly focuses on segmentation, which is an element of the State Environmental Quality Review Act (SEQR), which is State law. It is improper for him to rely on that law. In any event, he misapplied it in terms of segmentation. In fact, interestingly enough, when adding the field itself and the college came to the Planning Board for a sign donated by Mr. Christakos, it did go through site plan review. A sign is treated differently than a fence in the Code. There was no reference then to go into an amended site plan review process. There was no reference then to segmentation. In fact, what happened then is that they actually did their

own SEQR. The Planning Board classified that action as an unlisted action and a negative
90 declaration under SEQR was issued. An amended site plan was not required. Again, our view is
that is inconsistent with how the term segmentation is being applied here by the Zoning
Enforcement Officer under SEQR. Mr. Gavilondo then asserts that Mr. Heberle's affidavit
demonstrates that but for the field, the college would not be seeking to install a fence. I think
last time I talked about the slippery slope of that logic. It seems to me then, if that's the case,
95 that any time someone sought a fence for something that had already been constructed on their
property, they would have to go through some kind of site plan review process and that, simply,
has not been the case as shown by the documents that we have provided and talked about last
time. Finally, Mr. Gavilondo claimed that the ZBA may rely on authority outside of the Zoning
Enforcement Officer's decision to make his determination. He talks about Section 180-136A(1)
100 and how he authorizes the ZBA (this Board) to make the interpretation or decision that ought to
have been made. He talks about the cases that we cite. We do have another case that I will give
to you, which you can then give to your attorney, who will be here shortly. That basically says
that the jurisdiction of the Board is limited to the issue presented and cannot encompass matters
on the subject of the appeal. Still, it is our view, as I have said before, and in summary, that if
105 you look at the provisions of the Code, and we went through this in our February 27 letter, we
think we have shown that there was no basis to deny the building permit and insist on an
amended site plan and apparently redo the SEQR that was done. I will give you this case.
(Mr. Bernstein handed out papers.) The case is McDonald's Corporation v Kern, 1999. It is a
short decision. When your attorney comes in, just simply provide that to him. Those are my
110 comments. I tried to make them brief. There were only three comment letters, so I don't think I
had any other choice but to keep them brief.

P. Byrnes: Are there any questions from the Board before we go to the public?

115 H. Hart: Yes, I have one. In Carlos Gavilondo's most recent letter on page 5 of 6, the third
paragraph down, here Mr. Gavilondo describes the powers of the ZBA. He says that the Board
shall have the power to make such interpretation, order, requirement, decision or determination
which, in the opinion of the Board, ought to have been made in the matter. Mr. Bernstein, do
you agree with that?

120 Mr. Bernstein: I particularly agree insofar as I think that the interpretation should have stated
that only a building permit was required. What we are saying is that we think that it was
inappropriate and improper for him to base his decision, at least in part—perhaps more than in
part, on the fact that it was segmentation because I think that term is well defined under SEQR,
125 under numerous cases under SEQR, and also in the SEQR Handbook. So I think that was
improper. This Board can certainly, in my opinion, make a decision based on what the Code
says. But in terms of the segmentation issue and going beyond what the Code says, then I think
that would not be appropriate.

130 H. Hart: I would like to go back to Mr. Gavilondo and his quoted language here which implies a
greater latitude allowed to the Board. My question to you was: Does the Board have that greater
latitude or not?

Mr. Bernstein: When you say greater latitude, how great are you describing?

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H. Hart: To make such interpretation, order, requirements, decision or determination which, in the opinion of the Board, ought to have been made.

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Mr. Bernstein: I think there are certain limitations on the ability of the Zoning Board of Appeals to act in its appellate capacity to make decisions on an appeal like this case. Initially, it has to look at the decision of the Zoning Enforcement Officer to determine whether or not the grounds upon which that Zoning Enforcement Officer made his decision were appropriate. So that's the first order of business for the Board. Beyond that, I think the ZBA cannot go beyond and start interpreting State law with regard to the reasoning for denial of the building permit. Mr. Carr did that and I think he did so erroneously.

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H. Hart: I understand your position, but that wasn't quite my question.

Mr. Bernstein: I think I have answered the best way I can.

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P. Byrnes: Does anyone else on the Board have any questions or comments?

W. Keiser: I would just like to read Chapter 11 of the site plan review stating additional plantings/fencing. The project application does not include provisions for plantings or fencing. That was what was approved by the Planning Board.

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Mr. Bernstein: For the field?

W. Keiser: Yes, that's correct. So then, could the Zoning Enforcement Officer be interpreting that he would like a reply from the Planning Board in making his decision?

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Mr. Bernstein: Implicitly, I would think that's what he was thinking because he required an amended site plan, not just a new site plan to look at just the fence. I'm assuming that. I don't think it is well explained in his November 5 letter, frankly. That's not a consistent application of things that have been proposed for in and around the field. Again, I think I explained last time that this is a perimeter fence, not just around the field itself, but along the property line. Putting that aside, in the recent past, for example, in the June 2012 minutes, a sign application was submitted. A site plan application was submitted. At that point, as far as I could see in the minutes, and we just got some of the materials from the minutes today, there was no indication that an amended site plan would be required. I think there probably were references in that record for the field with regard to signs and that we may be coming back for a sign. But it wasn't part of that approval, I don't believe. Therefore, they had to come back. But at that time, it wasn't required for the entire record to be reopened, for example, for the field and that an amended site plan be submitted. And then, a separate and independent SEQR was done for that sign. What I'm saying is that it doesn't make sense in that case to proceed in that manner, but yet say that failure to go through an amended site plan process here for the fence, which was

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180 specifically excluded from the approval for the field, somehow should be lumped in for a SEQR review. Again, there is an inconsistent application of how SEQR was handled and an inconsistent application of how the sign was handled on one hand and how this fence is being handled now. I don't know if that answers your question, but it's the best way I can.

P. Byrnes: In the C-2 Section, there is some verbiage about allowing the college some latitude on signs.

185 John Langey arrived. P. Byrnes: John is going to be sitting in with us in lieu of Jim Stokes. We will be looking to John for his opinion on this matter.

P. Byrnes: Personally, if I was interpreting the sign, and I was just talking about the sign . . .

190 H. Hart: What's the sign? Is that the Christakos Field sign that you walk underneath?

Mr. Bernstein: There was latitude given to the college in C-2 for the sign in terms of the Code itself. I'm really talking about how SEQR was characterized in the letter from which we are making an appeal for the fence here. I actually think that was done correctly for the sign. A
195 separate SEQR was done for the sign. There was a negative declaration and that was the end of it. An amended site plan was not required. A separate SEQR was done and appropriately so. All I'm saying is that in this case, it seems that Mr. Carr is saying, well, for the fence you have to go back and almost redo the SEQR or what you are trying to do constitutes segmentation. I don't think that is the case. And number two, that you need to do an amended site plan. That
200 was not phrased with regard to the sign. That's the only point I'm trying to make, not with regard to how signs are treated in the Code.

H. Hart: Does that sign border an historic district? The consensus of the Board was that it does not.
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Mr. Bernstein: I think I addressed that in my February 27 letter and showed you how SEQR treats that. There was a question last time as to whether or not the fence would turn into some other action because it borders an historic district. I believe that is a Type II action.

210 P. Byrnes (to Mr. Bernstein): Would you agree or disagree with Mr. Carr's opinion if the verbiage of President Tierno and some of the publications that the fence was originally there to protect the million dollar investment of the turf field? That was clearly stated. It was also stated in publications that the athletic complex is an ongoing process. Would you not think that in his opinion the perimeter fence is an ongoing extension of the athletic complex?
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Mr. Bernstein: Not necessarily. The publications are broad enough to demonstrate that, in part, the fence is meant to do that. But, in part, it is meant to also protect other property that the college owns. That is why it is a perimeter fence and not an extension of the field.

220 P. Byrnes: Was that not expressed originally as a fence for the turf field?

Mr. Bernstein: Not solely. I think the heading of the attachment may have said that, but in the verbiage underneath, it talks about how it is going to be on the perimeter and the justification and rationale for the fence.

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T. Hartley: I think the hard part for me is that the verbiage has changed over time when it seems to be convenient so that you guys can evade the whole segmentation heading. President Tierno's statements said it was to protect the investment, and now it is not because of the segmentation idea. He was implying that it was an ongoing project. So what's next? Will we see some idea with bleachers and a press box? If this is open to interpretation, it is convenient now that the words and headings are conveniently pushed aside at this point.

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Mr. Bernstein: There are bleachers there now. As far as I know, they are movable bleachers. I don't think there was any further description in the material that you received in terms of what kind of bleachers were planned in the future. If there is anything beyond what is there now, they would have to come back to the Planning Board. The whole point of segmentation is to avoid the Environmental Impact Statement. Segmentation, basically, is chopping projects up into smaller projects for the purpose of reducing environmental review. I would have to say, having sat through many meetings with the Planning Board, and I think this Board, for the athletic field, that there was a pretty comprehensive environmental review of that project. Of course, I can't put myself in your shoes or the Planning Board's shoes, but I don't believe that a fence would have raised that project in terms of SEQR review to the point where a positive declaration would have been issued requiring an Environmental Impact Statement. There were questions at that time regarding a fence and whether or not one was contemplated. At that time, one was not contemplated. I think, in part, the college has invested a lot of money, not just in this field, but in all of its properties, so I think it is a rational exercise to want to protect that investment. Again, not just the field as the investment, but all of its property. And that is what it is seeking here. We are willing to work with neighbors to try to make the fences work where it is intended to be located by saving bushes and vegetation where possible and maintaining it properly, and so on. Any property owner should have the ability to protect their property. Again, you are not going to prevent someone from jumping over a fence. But it is meant to be a deterrent, certainly, from the kind of things that we are seeing occur on the property—and not just on the field—but on the outskirts of the property, the woods in the back. And that is what we are trying to do here.

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S. Ryan: Is the college prepared to work with the neighborhood residents as far as what type of fencing or trees? Can they put up anything they want? Or is it guaranteed in writing? Or financially?

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Mr. Bernstein: The Code does provide some limitations in terms of how the fence has to look the same on both sides. It can't be over a certain height.

P. Byrnes: That is stated in the general Code, but if you go back to C-2 again, and I will point out in C-2 that there are some restrictions in the C-2 zone where other zones abut—nonresidential district abutting a residential district. There are some provisions in there that

265 require buffering. There is also a specific footage that is required for buffering, which I think we have to look at where the Code goes. Specifically, the college was given some latitude in the C-2 zone. There was also some verbiage put in there to protect the neighborhoods around the college. I think we have to look at those.

270 Mr. Bernstein: I agree that the Code should be reviewed carefully to see which sections apply and don't apply. I think in the February 27 letter, we responded in terms of those sections. I will also add that if there is any ambiguity, with regard to the applicability of those sections, you have to err on the side of the property owner and not on the side of the regulation when it talks about when you are dealing with limitation of property rights, in this case. That is probably the last
275 paragraph in our letter. If there is any question, in my mind, as to whether there is some vagueness or ambiguity as to what you are saying, due to the 25-foot buffer provisions, for example, which is one of the things you are referring to, the landscaping provisions, apply to just a fence as opposed to where you are putting in a residence or a structure. If there is ambiguity about that in the Code, then simply the Code needs to be clarified and rewritten. But when it is a
280 matter of an application before this Board and an interpretation, I think that would be, based on cases we presented, that ambiguity has to be resolved in favor of the landowner. It could be any landowner, not just the college. In any case, if there is ambiguity in the Code and where there is a matter of restriction of private property rights, in our view, that has to be resolved in favor of the landowner.

285 P. Byrnes: John, can I ask your opinion on that? If we have a specific provision for the C-2 zone for the college, would the college not be responsible to look at the provisions of their zone in regards to buffering, fencing, and lighting? Or just the general Code where there is a provision for fencing, would they not also be held to their own C-2 zone provisions?

290 Mr. Langey: You read the Code as the body of the document. You read the provisions of the Code. I understand there is a section that deals with fences. There is a provision that says that the Code Enforcement Officer "may" issue a building permit. I does not say he "shall" issue a building permit. But at this point it says he "may" issue a building permit. I think you also have
295 to look at the section that deals with site plan review and the Planning Board and when site plan review is required. So you are going to be looking at various portions of the Code. I did review the intent portion of the C-2 district. So I think the Board would want to take a look at what the intent of the district regulations are to begin with to see how to interpret the rest of the Code.

300 P. Byrnes: Does anybody else have any questions before I open this to the public?

H. Hart: He raised that question about ambiguity and it has to be resolved in favor of the landowner. My question is: Who decides whether there is ambiguity or not? Isn't that normally the function of the Planning Board? People go in with one idea and other people go in with
305 another. Then somebody takes that ambiguity out of it.

Mr. Bernstein: In the first instance, I'm asking this Board to look at that and make that determination. You may not be the ultimate arbitrator of that.

310 Carlos Gavilondo: I submitted a letter that was referred to earlier. I have additional copies.
There is one attachment with reference to additional developments planned by the college. I do
want to address briefly the issue that was raised of the ZBA's authority. I think if I understand
Mr. Bernstein correctly, what he is saying is that if the ZBA decides the Zoning Enforcement
Officer's decision is correct, but also decides that the logic was not correct that it can't uphold
315 the decision of the Zoning Enforcement Officer and has to overturn it because the logic was
incorrect. I would suggest that is not what the Village Code authorizes the ZBA to do. Whether
the college in its separate application for a fence was a calculated attempt to avoid review as part
of the turf field site plan, it doesn't really matter here. Whether the college has a right to erect a
fence to keep trespassers out or keep people from using the field, that is also really not an issue
320 here. What is at issue is whether or not there is going to be any review of the fence. The fact
that the Planning Board's approval of the field site plan specifically mentioned the fence, as
Board member Keiser mentioned, specifically mentioned the fence and relied upon the college's
explicit representations that there was no plan for a fence. The Zoning Enforcement Officer was
correct and within his rights to determine that allowing the erection of a fence in this case
325 without Planning Board review would seriously compromise the integrity of the Planning
Board's site plan review process. He also correctly decided that he was not in a position to issue
a permit to erect a fence without some Planning Board review. That is all that is at issue here.
The Planning Board's review of the fence. I respectfully request that the ZBA affirm the
decision of the Zoning Enforcement Officer and deny the appeal of the college. Thank you.

330 Will Hartley: I live at 115 Lincklaen Street. I have lived there for 14 years. My house backs up
to the field. My kids played on the field and sometimes still play on the field. I work at a high
school and I coach. I'm around places where they are always talking about building turf fields.
A couple of things jumped out at me. I'm trying to understand. Was Mr. Bernstein comparing
335 the approval of the sign in segmentation and the creation of the fence? That was an example of
why we shouldn't honor this and segmentation was okay because the sign was up? That was
basically the point of that, right? The sign was an example.

340 Mr. Bernstein: I wasn't saying that. I was saying that this doesn't constitute segmentation.

Mr. Hartley: The sign is about as big as that wall and it faces the athletic center. This is an old
town. It's a beautiful town. My understanding is that the decision tonight is to say, *do we want
to go ahead and let the Zoning Board look this over some more?* Lincklaen is a beautiful street
in a 200-year old town. What's the rush? Nobody is saying they can't put up a fence. If they
345 want to put up a fence, fine. But why not kick it back to the people who looked at the original
plans? *They said, no, we are not talking about a fence.* It is preposterous to think that Caz
College did not have a fence in mind. There is no way that they were going to put up a million
dollar field and not in their minds in some capacity say, *we're going to fence it at some point.*
It's not logical. If you build a garden in your back yard to grow tomatoes, you are planning on
350 building a fence around it. If you are putting up a million dollar something, you know you're
putting a fence up. It's just a matter of when. So the idea that they were not planning on that is
just silly. The space between the east end of the college field and the property line that abuts

Lincklaen is a hill. There is no athletic merit to that. They are not going to ever put stands in there. Caz College is never going to be a big enough athletic player to need stands at the end of the field. There is never going to be a need to put end zone stands at Caz College. Never. There is a good 80 yards. You could put a fence 40 yards from the end of the field and you would still have 40 yards between the college line. That is dead space. It is a little gentle sloping hill. There is nothing to be used. Nobody is hurting anything by putting a fence 40 yards in. I just don't know what the rush is. It is a beautiful old town. Let's kick it back to the people who are supposed to make this decision. There is no hurry. Caz College is not going anywhere. Lincklaen Street is not going anywhere. We don't need to do this right now. Thank you.

Sean Reimann: I just wanted to see if I could gain an understanding of which side the Board is on regarding Bill's (Carr, Zoning Enforcement Officer) decision of denying the permit or saying it needs more review. In what section are we dealing with the fence as a fence? What kind of permit are we being asked for as a community? Under what guidelines? What's the rule that says a big municipal nonprofit school can stick a sign here or a dumpster there or a building here? There are different rules than if I come in as a private citizen living in the neighborhood and saying I want to put up a garage and then I want a fence around my yard. Those are two different entities. Which one are we dealing with? I have been under the understanding that the college is asking for a permit to put up a fence. That means they have a shorter buffer, a tinier space they are dealing in. And they are going all the way to the edge of their property. That is residential use of a fence. The review, I think, is do you go back to the original plan of the field being put in an historic village? We have rules for a big entity like a college or a school when they put up a fence. The rules for that fencing are different. The border of that gap between residential and field use is buffered for a reason. It is not a protection issue of a million dollar facility. It's a protection of being impeded upon by a big institution onto a private back yard. That buffer zone is there to make sure that it coexists. My question to the Board is: What are you actually being asked to review? I would question that and make sure that we are all on the same page. This is not a fence going up between neighbors in a yard. This is not putting up a garden fence around tomato plants. This is a municipality deciding on letting a corporate nonprofit to make that same kind of determination. It goes here. This is my line. That's your line. That's why the Code book was written differently. That's why it has to go back under review, in my opinion, to the original planning and what was asked for to build this facility and to improve upon this facility. We need to say: *This is the rule. If you are going to do anything further with this kind of structure that you have already built, if you want to add to it or improve upon it, fine, the Village has to agree to that.* You agreed to a grass field that went to artificial. Fine. History moves on. The Village is no worse for wear. It won't be any worse for wear if we put up a fence. But the rules under which you put up the fence, what's the buffer zone. That's the difference. I think that is what we are up against. I don't think anybody can deny the college a fence. If they want to put it up, they can. What are the rules? What guidelines are we using?

W. Keiser: May I answer your question? The ZBA is here to determine whether to reaffirm or reverse the Zoning Enforcement Officer's decision not to issue a permit for the Cazenovia College to erect a 1,400-foot fence. That's what we are here for tonight.

Mr. Reimann: And that's a fence that falls under a certain guideline. It is not something that is going to go around a residential property. That falls under a guideline.

400 W. Keiser: That is not what we are trying to do here. We are here to reaffirm or reverse the Zoning Enforcement Officer's decision. That's what we are here for tonight. It's fairly simple as far as the answer goes. That's what we are here for. Do you agree attorneys?

Mr. Bernstein: Yes. Mr. Langey: Yes.

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Mr. Reimann: Billy's job is to say: Here's my handbook. He doesn't make the rules. He just takes the book, looks it up, turns to the page and says: Okay, the college applied for a permit, a big, long, big, huge fence permit. Not one that separates two yards. The rules that apply for putting it up, change. How do they change? I don't know. It goes back to the Board. If it goes
410 back to the Board, then it is not a simple decision. It is one that needs to be reviewed and go back through the books and look to see what the precedent is for putting up something like that. If it means it goes back under review to the beginning of the plans, we are assuming that the college had this as an intention from the beginning. So be it. That's how you resolve the issue. It is not whether or not there is going to be a fence. You can't stop that any more than you can
415 stop putting in an artificial turf field. It is inevitable. We are moving forward. Fine. But there are different rules for fencing areas out under certain conditions. I uphold Billy's decision in giving it back to you guys. The rule book says this, therefore it needs to go back under review, which means it has to go back into C-2. And that's where it goes.

420 P. Byrnes: Comments from anyone else?

Charles Macaulay: One extension that Mr. Keiser was just talking about. You have a specific objective. You, in your decision making, should take into consideration the potential
425 ramifications of your decision. In other words, if you uphold the Zoning Enforcement Officer, there is a clear path to take. And the opposite is also true. In your decision-making process, you take into account the adverse effect.

Mr. Langey: In this particular instance, this is a Code interpretation appeal for the ZBA. The ZBA will look at the language of the Code and apply all of the facts and all of the arguments
430 made by all parties. They will apply how the Code reads. In essence, that will determine what the next step is going to be. If they uphold the Code Officer's determination, it is probably on its way back to the Planning Board and the Planning Board will take it from that point. This Board takes itself out of that realm. If they overturn the Code Officer's decision, then presumably the applicant is left with the determination that Bill has to issue a building permit. And that will take
435 its own course.

Mr. Reimann: What recourse does Bill have?

440 Mr. Langey: Bill makes a decision and the applicant has the right to appeal it or decide not to appeal it. Bill has written his reasoning for it. He has made a determination. This Board is a

quasi-judicial Board. They are not wearing robes, but they are taking evidence. They are going to read the law and they are going to apply the facts to the law and make a decision. They are going to issue a resolution either upholding his determination or reversing it. Then Bill will know what to do from that.

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Mr. Reimann: A Village employee who has been charged with the responsibility of enforcement of Code will then be told to do something.

H. Hart: Sean, he is required to do what we tell him to do.

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Dave Widrick: I'm at 9 Lincklaen Terrace. My property backs up to the field. I have worked well with the college. We mow each other's lawns. I came home from work one day and there was an extension cord across my lawn and to my electric. The college was using my electric to run their score boards. We have gotten along good. They want to put that fence 3 feet from the line. I have a white picket fence and an arbor. That 6-foot fence is going to be right close to it. It is uncalled for. If they want to protect their property, they could put a laser on top of the 6-foot fence and electrify the fence and it will look like a prison.

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Mr. Reimann: I want to put in a last word. My dear father, who I'm sure a lot of you have known, he wrote a lot of the Codes and he did a lot of planning for the Village of Cazenovia. I will not lay claim to any of that. I give him his due for all the hard work that he put in. He would say that this is a situation where you would look at it and say, what is the best for both parties. When you create a larger buffer, you create a little bit more room for people to wiggle through and have a little bit more of a comfort level. He would do that with plants. He would do it naturally. He would do it in keeping with harmony of the environment. Part of Cazenovia's character is its environment. The college has its environment as well. It needs to improve its quality of environment so it attracts better students. That also improves our Village quality. Use plant materials. Never mind fences. Just use plant materials.

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P. Byrnes: If that is it for public comment, I'm going to make a motion that we close the public hearing. H. Hart: I second. The motion carried.

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P. Byrnes: That concludes the public portion of the meeting. As John indicated, we need to sit as a Board now to review the facts, discuss it among ourselves and see where we sit on this issue. It not something that we are going to sit and do in ten minutes. I am going to recommend to the Board that we meet in closed session with John for attorney-client privilege. We will then draft a resolution, which probably will not come out of the meeting tonight. So we are going to have a subsequent meeting in which we will then render our decision.

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Mr. Langey: Phil, I want to add to that. The purpose of meeting with me tonight is for me to provide strictly legal advice to you and not for the Board to enter into any determinations or to discuss specifically how this may result. The purpose of this is for me to provide legal advice to you as to what your role is and how the Code reads.

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485 P. Byrnes: That being said, we are going to need to schedule another meeting. We have a tentative meeting scheduled for another ZBA issue on April 18, which is a Thursday night. The Board members are all able to make that. Is that agreeable to you, Mr. Bernstein?
Mr. Bernstein: That's good.

490 P. Byrnes: That will give us time to converse. And at that time we will render our decision. At 7:00 p.m. We will put you first on the docket. We will have two hearings that night. We will go forward with the decision and then we will deal with the other matter that is coming before the Board.

495 Bee Tolman: On April 18, literally all you will do in this matter is state your decision?

P. Byrnes: Correct. The public hearing has been closed and we won't take any more public comment. We will, at that point, hopefully have a resolution and will render our decision whether or not we are going to confirm or deny the Zoning Enforcement Officer's letter. We
500 will let you know what we decide and move on to another issue on the agenda. Thank you all for coming.

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505 P. Byrnes made the motion to adjourn the meeting. S. Ryan seconded. The meeting was adjourned at 7:59 p.m.

Respectfully submitted,

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Marlene A. Westcott
Recording Secretary