

APPROVED

**VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
AUGUST 24, 2016 MINUTES**

**Call to Order**

Chairperson Majauskas called the meeting to order at 7:03 PM.

**Roll Call**

**Present:** Mr. Domijan, Ms. Eberhardt, Mr. Kulovany, Mr. McCann, Mr. Werner, Ch. Majauskas

**Absent:** None

**A quorum was established.**

**Staff:** Rebecca Leitschuh, Senior Planner  
Swati Pandey, Village Planner

**Also Present:** Don Rickard, 4735 Main St., Downers Grove, IL  
Amy Gassen, 5320 Benton, Downers Grove, IL

**Minutes of July 27, 2016 meeting**

Mr. McCann referred to the draft minutes that ask for clarification as to the speakers. On Page 3 of the draft minutes, the speaker is Mr. Kulovany. At the bottom of page 3 the speaker is Mr. McCann. At the top of Page 4 the speaker is Mr. McCann. Mr. Werner is the speaker at the bottom of Page 4.

**Mr. McCann moved, seconded by Mr. Domijan, to approve the minutes of the July 27, 2016 meeting as amended.**

**All in favor. The Motion passed unanimously.**

**Meeting Procedures**

Chairperson Majauskas asked those in attendance to silence their phones. She explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published with regard to the case on the Agenda. She noted that members of the Zoning Board of Appeals have had an opportunity to review the materials provided by Staff and in some cases have visited the site in question. In order for a requested petition to be approved there must be a majority of four votes in favor of approval. Chairperson Majauskas added that the Zoning Board of Appeals has authority to grant petitions without further recommendations being made to the Village Council. She called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing and comments made during this portion of the meeting are considered testimony. She said that Staff would make its presentation first, followed by comments by the Petitioner. She added that if anyone in the audience wishes to speak either in favor of or in opposition to the petition, they would be able to do so following the Petitioner's presentation. When the public participation portion of the meeting is closed, the Board will deliberate on the information provided and vote to either approve or deny the petition.



**16-ZBA-0007:** A petition seeking a variation to allow a 6-foot open fence in the street yard of a residential district. The property is currently zoned R-2, Residential Detached House 2. The property is located at the northwest corner of Maple Avenue and Dunham Road, and is commonly known as The Avery Coonley School at 1400 Maple Avenue, Downers Grove, IL (PINs 09-07-402-033, 09-07-405-001, 09-07-405-008, 09-07-405-011, 09-07-405-012, 09-18-200-002). Peter Brown on behalf of The Avery Coonley School, Petitioner and Owner.

**Staff's Presentation:**

Ms. Swati Pandey, Planner for the Village, stated that The Avery Coonley School is seeking permission to construct a six-foot tall fence in the street yard where only a four-foot open design fence is permitted. She showed a site plan for the property. The six-foot open design metal fence would be continuous along Maple Avenue for a total length of 387 feet, and it would be installed in the same location as the existing six-foot and four-foot fences. She showed photographs from Maple Avenue depicting the existing fencing on the property. Ms. Pandey pointed out that most of the area along Maple Avenue has a natural berm. The buildings on the property are significantly set back from Maple Avenue, so safety and security are not a major issue. Another photograph was shown of the fence from within the property line.

Ms. Pandey noted that the request does not meet most of the Standards for Approval including physical hardship, practical difficulty or unique circumstance. Therefore Staff recommends denial of the requested variation. She noted that the Community Development Department received a letter from the Forest Preserve District of DuPage County after the Board's packets were prepared and distributed. The letter expressed appreciation for notification of this petition and states that "the District staff does not have any comments at this time."

Mr. Kulovany asked about the conditions that allow the existing six-foot fence. Ms. Pandey said that initial research was done and Staff could not establish when that fence was installed. It is assumed that it was installed prior to the current regulations. Mr. Kulovany said this also can relate to the fences surrounding Downers Grove North High School at its parking lot on Main Street. Ms. Pandey said that case was basically based on it being a busy arterial street. There were many streetlights associated with multiple intersections at that parking lot as well. In the subject site, the playground and building are significantly set back from the arterial street, which is Maple Avenue. Mr. Kulovany said that the entire area is a play area and the children do use it as a play area.

Senior Planer Rebecca Leitschuh said that the 2012 ZBA petition was requested by the high school for a fence variation for height on two parts of their property including the stand-alone parking lot across Main Street, and for the interior parking lot behind the main building. They were both recommended for denial by the Board. She noted that there was a Zoning Ordinance amendment put into place after the stand-alone parking lot was denied by the ZBA. The new section says that when there is a stand-alone parking lot with no structures on it, is in a residentially zoned district with street frontage on multiple sides, it is a permitted use to have a six-foot tall fence. It was written to specifically meet the high school parking lot. The interior

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parking lot still only has a four-foot fence. The six-foot fence is partially to protect those both on site and off site.

Ch. Majauskas asked why the Board's exception does not apply here because there is a soccer field and a pool that is off the street as well. Ms. Leitschuh said that based on setback distances, the amenities are within the front yard of the school. Also, it is not a standalone lot.

Mr. McCann said he thought that the amendment to the Code for the North High School standalone parking lot was approved by the Village Council.

Mr. Kulovany asked how the Village goes about making changes to the Zoning Ordinance. He said he was surprised that fencing for a school, and all the safety issues particularly on a busy road would not be different than any other normal residential area.

Mr. McCann noted that this is the same as what was considered regarding North High School because they are governed by the rules applicable to residential housing. And the question becomes that in a house you have many kids running around and unique circumstances exist. He said he was going to bring that question up as well.

Mr. Kulovany said that the question specifically to Staff is why isn't there a differential between a fence around a school and all that's involved with that, versus a fence that's in front of someone's residence.

Ms. Pandey replied that it is the hope of the Village to have a separate zoning designation for schools, but this has to come from the applicant to have a process of rezoning initiated and go through the Public Hearing process to rezone the property and to allow as much as an 8-foot high fence. The residential districts are bound by a maximum of six foot in the rear yard and side yard, and four foot maximum for the street yard.

Ch. Majauskas said that she read in the paper that most of the schools are in residential areas, and she asked if Staff had a percentage of how many of the public schools are in residential areas. Ms. Pandey said all of Downers Grove public schools are in residentially zoned districts.

Mr. Kulovany then asked what the fence requirements were around the pool area. Ms. Leitschuh replied that it is a four-foot height, and is more of a Building Code requirement than a Zoning Code requirement. Four feet is the minimum required by Building Code. For the most part the Code makes regulations specific to schools. In this particular situation, there is no accommodation for increased fence heights. There was a question as to how this would change, and Ms. Leitschuh said it usually comes from directions from Council, residents, business owners, anyone who wishes to have a Zoning change request.

Mr. Domijan then asked about the institutional zoning. Ms. Leitschuh said that would be INP-1 or INP-2. INP allows for taller standards; however to be compatible to the surrounding properties it has a point that says if you are adjacent to residential districts, you have to follow whatever is the most conservative regulation. She said in this particular situation they would still have to follow the residential fence height requirement.

Mr. Domijan then asked what the timing is as to when this might come to fruition as a concept, and what would be the advantage to seeking an INP 1 or 2 zoning classification. Ms. Leitschuh said for this property, zoning to INP would have no benefit with regard to the fence regulation,

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so it doesn't make sense for that specific requirement. In further response, she said that the INP already exists as a zoning district, but not for this property.

There being no other questions for Staff, Ch. Majauskas called upon the Petitioner to make his presentation.

### **Petitioner's Presentation:**

Mr. Peter Brown, CFO for the Avery Coonley School, said he was appearing for the school on this request. He said that safety is one of the prime concerns for this request. Maple Avenue is a busy street with cars going 45 mph or faster, and children regularly use the playground, playing in the area all the way up to the fence, so they do sledding on the hill and the kids are outside regularly. They have two supervisors for 150 children going outside regularly for recess. They are watching a lot of children in a very large area up to the fenced area. He is a parent with three children and he recognizes the big difference between a four-foot fence and a six-foot fence in terms of climbing. So if a child were to have a ball go over a four-foot fence, even though they were told not to, it just takes a moment for those supervisors watching the children to avert their eyes while a child goes over the fence onto a very busy street to try and retrieve that ball. Children do think twice about climbing a six-foot fence, which indicates a big difference between a four-foot fence and a six-foot fence in terms of safety.

Mr. Brown then addressed the School's second concern, which is security. Parents who drop their children off at school want to be certain that their child is secure and that nothing is going to happen to them. With a four-foot fence a person who is up to no good can very easily hop that fence and gain access to the school property. A six-foot fence is a much more significant deterrent. He said that in their packet their security expert indicates that a six-foot fence is more in keeping with the Criminal Prevention to Environmental Design Principles than a lower fence with shrubbery. Village Staff has recommended that they put bushes in front, but that causes a problem because it blocks visibility and creates more places where people can hide and wait. He said then that safety and security are the two most important things they have considered in their request.

Mr. Brown then addressed the points raised by the Zoning Staff.

#### **1) The subject property cannot yield a reasonable return if required to comply with the regulations that apply to it.**

Mr. Brown explained that the Zoning Staff is not fully aware of the finances at the Avery Coonley School. Like many other private schools in the area they are seeing a reduction in enrollment and have fewer students this year than five or ten years ago. As a result they have not been able to replace employees who have left and have had to reduce raises for faculty and staff to record low levels. Just because they have been in business in Downers Grove for many years, that is not an indication for future success. They respectfully disagree with the findings of the Zoning Staff, and believe that having a safe and attractive business is important for their continued success.

#### **2) The plight of the owner is due to unique circumstances.**

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Mr. Brown said that they want to replace a six-foot chain link fence with a six-foot black aluminum fence. All they want to do is replace something that detracts from the aesthetics of the neighborhood and put in something that is much more appealing.

### **3) The variation, if granted, will not alter the essential character of the locality.**

Staff says “the school is located in a residential neighborhood where the expectation is to have open yards with shorter open design fences.” Mr. Brown showed a photo of a house located directly across from the school, and distributed it to the Board. The house directly across has a tall barrier with retaining walls and a six-foot privacy fence at the top. He also showed the Board a photograph of the house directly across from the School’s entrance that has an eight-foot high set of bushes, which is what the Zoning Staff is recommending for the School. Another home to the east of the School has a six-foot privacy fence. He then showed a photo of the School’s current fence and what they intend to install. They actually agree with Staff that this will alter the character of the locality by installing a fence that is different than the surrounding homes. They would provide an open design fence, something that is in keeping with the apparent intent of this Ordinance.

### **4) That the particular physical surroundings, shape, or topographical conditions of the subject property would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.**

Mr. Brown stated that security and safety are two very important and visible features that families look for when selecting and staying at a school. He noted that last year parents insisted that the school examine the safety and security of its facilities and determine what could be done to improve them in the school. Mr. Brown said they had to use their limited funding and spend \$5,000 to hire RETA Security to perform a security audit for the school. The letter from RETA was submitted with the School’s application to the Zoning Board of Appeals and it stated that the Crime Prevention Through Environmental Design principles recommends having greater visibility around schools to protect everyone. The School has had the Downers Grove Police Department come to the school twice to work on training and running an intruder drill. They have also upgraded their security cameras to run better coverage and pull up recorded video. Having a six-foot fence along the busiest frontage of the school is very important to their security.

### **5) That the conditions leading to the need of the requested variation are not applicable, generally, to other properties within the same zoning classification.**

Mr. Brown responded that the zoning classification is applicable to residences and not to schools. You cannot compare a residence with two or three children, to a school that has more than 350 students during the school year and over 700 students during the summer. These conditions are not applicable to other properties within the same zoning classification.

### **6) That the alleged difficulty or hardship was not created by the current property owner.**

Mr. Brown said as stated in their application they have been allowed to have six-foot fences since they purchased the property in 1929. The zoning change that no longer allows for a six-foot fence to be installed is a hardship that was not created by the current property owner.

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**7) That the proposed variation will not impair an adequate supply of air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood.**

Mr. Brown stated that they agree with Staff on this Finding of Fact, that the height of the fence will not significantly impact the adequate supply of air or increase the danger of fire, public safety or property values within the neighborhood.

**8) That the proposed variation will not alter the essential character of the area.**

Mr. Brown said this seems to relate to the immediate area, and he believes the photos that he has shared with the Board of the immediately surrounding homes with six-foot fences or eight-foot hedges show that replacing an old rusting six-foot chain link fence with a six-foot aluminum fence will not alter the essential character of the area.

**9) That the granting of the variation will not confer on the subject property owner any special privilege that is not available to other properties or structures in the same district.**

Mr. Brown noted that the school already has a six-foot fence in place. Replacing a six-foot fence with a six-foot fence does not confer on the subject property owner any special privileges. All they want to do is replace something that is an eyesore with something that is more aesthetically pleasing to everyone.

Mr. Brown concluded by respectfully requesting that the Zoning Board of Appeals grant their request to help beautify the neighborhood as supported by numerous letters of support submitted with their application. If the request is denied they would be forced to keep the existing fence and repair it as necessary. The safety and security of the children of Downers Grove is their #1 priority. They cannot ignore the recommendations of an expert security consultant and their experienced insurance agent to unreasonably put children into danger by installing a four-foot fence that could endanger their lives.

Mr. McCann asked when the existing fence was installed, and Mr. Brown said he did not know, but expected perhaps 15-20 years ago.

Mr. Werner commented that he understood they were going to replace the six-foot sections of fence, but asked what will happen to the four-foot split fence section. Mr. Brown replied they originally intended to only replace the six-foot section; however, after meeting with Village Staff they determined it would be best to replace the entire fence so all the fencing matched along the property line.

Mr. Kulovany asked Mr. Brown to expand on the parents' expectations raised to the school about safety. Mr. Brown replied that a number of parents have specifically expressed safety concerns to the School and administration. It is current parents as well as new parents that either choose to go to Avery Coonley School or make a decision to go someplace else. You can have parents dropping out because they want to make sure that their child is in a secure environment. He said that the School gets a lot of questions about what would happen if a child were to start to wander off, or if a child gained access to the street. They began to discuss what would happen if someone came behind the property, which is surrounded by woods. On the north end they allow residents to pass through their property to gain access to the Forest Preserve from the Denburn

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Woods area. A lot of parents look at their school, and other schools and specifically ask how sure the school is that when the parent drops off their child they will be in the same condition when the parent comes to pick them up.

Mr. Kulovany then asked what the annual tuition at Avery Coonley School is, and Mr. Brown replied that it varies by grade level but is in the area of \$21,000 per year. Mr. Kulovany asked if it was fair to say that the parents were high network individuals. Mr. Brown responded that a number of the parents are, while approximately 50 of their students are on financial aid ranging from a small amount up to almost full tuition. So they do have a number of families who cannot afford tuition, but they are the right students for Avery Coonley School.

Mr. Kulovany questioned whether it was the feeling of the School, after having done risk assessment, that the School's students could be at a higher risk. Mr. Brown noted that kidnapping has been brought up as a concern by the security consultants and by parents concerned that their child could be kidnapped for ransom. Mr. Kulovany asked if Mr. Brown was aware that some of their children actually jumped over the four-foot fence to retrieve a ball on Maple Avenue. Mr. Brown said he was not personally aware of it, and asked if Mr. Kulovany was aware of it. Mr. Kulovany said in speaking with neighbors he was told that they had seen kids jump over the four-foot fence right onto Maple Avenue to retrieve their ball. Mr. Brown replied that in the year and a half he has been at the school, he has not witnessed that himself.

Mr. Brown responded to Mr. Kulovany that west of the school is Forest Preserve, and east of the school are residential homes and Denburn Woods. He said that the homes in Denburn Woods are higher quality, and in further response to Mr. Kulovany said that the residents of Denburn Woods would expect a higher quality fencing at the school than the six-foot rusty fence. If they do not get the variation, Mr. Brown said from a liability standpoint it would be extremely unwise to go against the recommendation of the security consultant and their insurance agent without having some legitimate reason to take and reduce the safety standards.

There being no further questions from the Board, Chairman Earl called upon anyone from the public who wished to make a statement. There being none she closed the opportunity for future public comment.

### **Board Deliberation:**

Mr. Werner stated that his son worked at the summer program at Avery Coonley School. He doesn't think it will affect how he sees this request.

Ch. Majauskas said she thinks the Board has to get over a couple of hurdles. First is the residential issue, and if they choose to pass this they have to differentiate between this property and other residential property in that there are 350 students at this location throughout the year that need supervision. If other residential properties have 300+ kids they can come in. Secondly, as far as differentiating it from other schools, she is aware of the school as her children did attend there some time ago. She sees several issues. This is private property, while other schools are public schools. There is a playground at the front of this property. There has to be some sort of signal sense that this is private property, and that is how she would differentiate this from a public school. The second thing regarding Downers Grove North being a lighting issue, the only lights are at Ogden and Main Street, and the pedestrian crossing. The same issue exists here with a relatively dangerous Y-type intersection with a light at the corner. Another issue is that there are kids that go here from the age of three years old in the building up at the corner of

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the property, which is very close to the street. The playground is not near the older kids in the back, but close to the fenced area. She said she rides her bike past there and often when the school is closed she has seen people playing and in the pool area and she has called the police to report people who should not be there. For all those reasons and differentiating between the Downers Grove North case she would recommend approval of the variation.

Mr. McCann agreed with many of the reasons given, and said he voted to approve the Downers Grove North fence request. He thinks there should be a separate school designation. He noted that the Board voted not to approve North's petition, and they went to the Plan Commission to change the Zoning Ordinance to meet the needs of their specific property. He felt at the time just a narrow change to the fence question would be important. The fact that North High School is on a busy street is similar to this situation, which is also on a busy street. He sees this as common sense. He thinks this petition is valid and there is a need, unique circumstance, and a safety need. Avery Coonley could go to the Plan Commission to change their zoning designation, but they can pursue that if they choose to do so. There may be other repercussions from getting rezoned. He noted that this is a unique circumstance and the safety issues are legitimate. He is in favor of this.

Mr. Domijan said if you look at the Ordinance, Sec. 10.10b, the language inserted in Paragraph d specifically says that six-foot fences are permitted in an R-zoned lot occupied by a principal non-residential use, if the lot has multiple street frontages and contains a parking lot without a structure. In this case they have a grassy area separated by a parking area but they meet all the other requirements. This was written specifically for North High. He said that he was also in favor of granting the variation because of the safety issue, and from the issue that it is a school.

Mr. Werner commented on the Findings of Fact in Staff's report, saying that Staff's comment is quite an assumption that Staff is making regarding the property yielding a reasonable return. He doesn't agree with that comment. As for the plight of the owner being caused by unique circumstances, he also disagrees with Staff's interpretation. He also reviewed Finding #3 on page 3 of Staff's report, saying that he thinks not granting this will essentially alter the character. There are many of the conditions that he just does not agree with Staff's recommendation. He thinks the variation should be granted.

Ms. Eberhardt said that one of the things she looks at, as a homeowner, is the maintenance of property in the area. The perception is that if you are looking at a school for children, you look at how it is maintained. She thinks the existing fence is an eyesore and she would hate to see it remain there even if it is repaired. She can understand how it would impact a parent's decision to send their children there. Regarding a four-foot versus a six-foot fence, the extra two feet keeps the balls in the playground and out of traffic. That is a very busy intersection with the curve as well.

Mr. Kulovany said that the intersection was changed since 1929. He went to about ten houses in the neighborhood, and most were in favor of this requested variation. One neighbor said they saw kids jump the four-foot fence to get a ball. He said that Maple Avenue is now much busier and much faster than it was when originally thought out. The idea that someone with ill intentions could park a car and be across the fence within thirty seconds, snatch a kid and be on I-355 within five minutes and out of the State an hour later boggles the mind and could result in a national tragedy. He noted that they are in the National Historic Register. The Village makes Ordinances and often grants variances or exceptions. Soon if granted frequently the variances become the norm. The photos shown are deceiving as the swimming pool is a lot closer to the

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road than it appears to be. That is why he asked the question as to how to go about changing an Ordinance that doesn't make sense. He would be hard pressed to vote against this. He will be voting in favor of this.

Ch. Majauskas said that the fence variance they gave was because it was in the person's backyard that had a drastic grade change. She called for a Motion.

**Mr. Kulovany moved to approve the variation for Case 16-ZBA-0007 as requested. Mr. Werner seconded the Motion noting that the fence shall comply with the plans and documents submitted by The Avery Coonley School, dated July 15, 2016, and/or as amended by the Zoning Board of Appeals.**

**AYES: Mr. Kulovany, Mr. Werner, Mr. Domijan, Ms. Eberhardt, Mr. McCann, Ch. Majauskas**

**NAYS: None**

**The Motion to approve the requested variation passed unanimously.**

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Ms. Leitschuh noted that the November meeting date is on Thanksgiving. Due to a conflict with other dates prior to Thanksgiving, if there is a meeting in November, it will be held on November 30<sup>th</sup>. She indicated that notifications would be sent to the Board.

Ms. Leitschuh also announced that former Chairperson Marge Earl has been appointed to fill in a vacancy on the Village Council. It is hoped that should there be a meeting in October, the vacancy left by Ms. Earl on the Zoning Board of Appeals will be filled.

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**ADJOURNMENT:**

**Mr. Domijan moved to adjourn the meeting, seconded by Mr. McCann.**

**All in favor. The Motion carried unanimously.**

Chairperson Majauskas adjourned the meeting at 7:58 PM.

Respectfully submitted,

Tonie Harrington  
Recording Secretary