

Request: The applicant is proposing to redevelop a place of worship which is the subject of a separate Major Development Plan and Conditional Use application. There is an existing church on the site with a steeple which is approximately 33' high. The new church is below the 25' height restriction in the SF district. However, the new steeple is proposed to be 49.62 feet tall, or roughly 16' more than the existing legally non-conforming structure. Therefore, the applicant is requesting a height variance for 24.62 feet from the 25 feet allowed for structures without pitched roofs. The steeple will not be used for habitable purposes and therefore this variance if approved will not require affirmation through a public referendum.

Process:

Development Review Committee Meeting:	June 24, 2010
HARC Meeting:	Not Required
Planning Board Meeting:	June 17, 2010
Tree Commission Meeting:	July 12, 2010
Board of Adjustment Meeting:	August 3, 2010

Analysis – Evaluation for Compliance With The Land Development Regulations:

The criteria for evaluating a variance are listed in Section 90-395 of the City Code. The Board of Adjustment before granting a variance must find all of the following:

- 1. Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.**

A steeple is an architectural and cultural feature that is typical for a place of worship, and therefore special conditions may be peculiar to the church structure involved that are not applicable to other structures in the SF zoning district. City code allows legally nonconforming structures to be reconstructed if certain criteria are met; however, the applicant is requesting additional height beyond the legally non-conforming height, stimulating the need for a height variance which might not otherwise be required if the steeple was constructed at the existing steeple height. Therefore, though special conditions exist on this particular property which might promote a higher structure than now allowed by code, the applicant is seeking permission for a structure which exceeds preexisting height and therefore falls outside of the boundaries of what can be allowed. Further, height restrictions are uniformly applied to all the land, structures and buildings in the zoning district, regardless of use. Therefore, special conditions do not exist to support the request.

- 2. Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.**

Although a steeple is an architectural and cultural feature that is typical of a church or house of worship, it is the applicant's request to expand the existing nonconforming

height of the structure to the proposed height. There is no evidence to suggest that a lower steeple will interfere with the applicant's right to exercise religious freedom. Therefore, the proposed conditions are created by the applicant.

3. **Special privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district.**

Granting the height variance will confer special privileges upon the applicant denied by the land development regulations and the City Charter to other structures in the same zoning district.

4. **Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.**

The applicant has existing use of the church on the property which allows both reasonable use of the land and appears to satisfy the applicant's stated need for signification of the intended religious message. Therefore, hardship conditions do not exist.

5. **Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.**

The variance request does not establish that the proposed steeple height is the minimum necessary to accomplish the applicant's stated goals.

6. **Not injurious to the public welfare. That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.**

The request does not appear to be injurious to the public welfare or with the intent of the land development regulations. Staff finds that the land development regulations alone may waive height provisions for a spire, but that the city charter establishes stricter guidelines which must be met. Therefore, the applicant appears to meet this criterion.

7. **Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.**

The applicant is not proposing other nonconformities as the basis for their approval.

Concurrency Facilities and Other Utilities or Service (Section 108-233):

There are no concurrency provisions that are relevant to this proposal. However, the applicant has included a concurrency analysis as part of the Major Development Plan and Conditional Use request that meets concurrency requirements of Section 108-233.

The Planning Board shall make factual findings regarding the following:

- 1. That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.**

The applicant does not meet all the standards established by the City Code for a variance.

- 2. That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.**

The applicant has conducted a community meeting and mailed information to the surrounding neighbors regarding the proposed project. The department has not received any negative public comment for the variance request to date, and supports the applicant's efforts to meet the good neighbor policy.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for variance be denied.