

October 21, 2013 (Board of Appeals)

**ALLOUEZ BOARD OF APPEALS
MONDAY, OCTOBER 21, 2013
5:15 P.M., ALLOUEZ VILLAGE HALL**

CALL TO ORDER

Harris called the meeting to order at 5:17 pm

Present: Jaekels, Scheidenhelm, Ewald, Harris,
Straughan (withdrew from proceedings)
Also Present: Flucke, Attorney Duffy

APPROVAL OF MINUTES FROM 09/09/13

**Straughan / Scheidenhelm moved to approve minutes dated September 9, 2013.
Motion carried.**

Straughan withdrew from proceedings due to conflict of interest.

CONVENE INTO CLOSED SESSION

Also Present: Flucke, Attorney Dennis Duffy, Attorney Joe Wirth and President Vanden Avond

Jaekels / Ewald moved to convene into closed session pursuant to Section 19.85(1)(G), Wis. Stats., for conferring with Special Counsel and Legal Counsel of the Village of Allouez who is rendering oral or written advice concerning strategy to be adopted by the Allouez Board of Appeals with respect to litigation in which it is likely to become involved to-wit: evaluation of claim of substantial burden (RLUIPA by Ascension Lutheran Church). Roll call vote: Jaekels – aye, Scheidenhelm – aye, Harris – aye, Ewald – aye. Motion carried.

RECONVENE INTO OPEN SESSION

Jaekels / Ewald moved to reconvene into open session. Roll call vote: Jaekels - aye, Scheidenhelm - aye, Ewald - aye, Harris - aye. Motion carried.

PETITION FROM PROPERTY OWNER AT 2911 LIBAL STREET REQUESTING A 33.5' VARIANCE OF THE HEIGHT REGULATION TO ADD A FIBERGLASS CHURCH STEEPLE ON THE CHURCH SANCTUARY ROOF AT 2911 LIBAL STREET (Village Ordinance 11.07(B), in an "A" Residence District no principal building shall be hereafter erected or structurally altered to exceed 35 feet or 2½ stories in height.)

Petition was received from David McAninch on behalf of Ascension Lutheran Church requesting a 33.5' variance to allow the addition of a fiberglass church steeple on the church sanctuary roof that exceeds the building height restriction of 35 ft.

DISCUSSION AND DECISION ON VARIANCE PETITION

David McAninch, Building Task Force Chair for Ascension Lutheran Church stated the addition of a steeple was planned as part of the original building design and its location was clearly marked on the building plans that were approved during the site plan review with the Village. The steeple was intended to be done separately after completion of the main building since it was funded as a special project. The steeple would address comments received that their building did not appear to be a church.

Stuart Kostoven, Council President for Ascension Lutheran Church (resides at 3732 Libal Street) explained the association between steeples and churches. A steeple is a symbol that marks a place of worship. It is an expression of their religious identity and belief. They are seeking to use a commonly recognized architectural symbol as a way of marking their identity and mission.

Lou Barone stated, as a retired architect, he believes it's not a church without a steeple and asked that the board consider that point in their decision.

Paul & Patricia Bachhuber, 3013 Ridgeview Court were concerned with what the steeple is going to look like, it's height and whether it's going to have any bells or lights. Why wasn't the variance requested with the original building permit?

Attorney Duffy clarified that there had not been any prior approval by any village committee, body or board for a steeple which McAninch confirmed (plans showed the location it could go and the restrictions, but not a picture). Duffy also explained that the Board of Appeals met in closed session to discuss the procedure of handling the steeple request in context to requirements of Federal Law and a showing by the church that the enforcement of this height restriction imposes a substantial burden on religious operations.

Flucke stated the church is located in an "A" Residential District and believes the height restriction was put in place to keep the character of the neighborhood.

Discussion:

- Does the village interest in having a 35 ft height restriction in our zoning ordinance outweigh the substantial burden of the church (based on testimony)? If so, proceed with testimony on the variance standards. If the determination of zoning ordinance vs substantial burden is equal or if substantial burden is demonstrated, the variance would be granted without variance analysis because it would be determined that the Federal RLUIPA Law applies.

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- how long has the church been at that this location (approx. 1966)
- number of parishioners (approx. 1050 to 1100)
- days of the week the building is used (various)
- lighting of the steeple (would only be projected upward)
- sound in the steeple (used for call to worship - chimes or music before service)
- how does the churches mission change if there is no steeple (its mission does not change but its ability to identify itself and communicate its mission changes) (comments received was it did not look like a church)
- have other options been considered (Erecting a masonry bell tower to meet the villages requirement would be a much more substantial undertaking and impose much greater financial burden on the congregation.)
- other churches have a small spire or cross at the top rather than a steeple. Why wasn't that option considered? (Architect and committee chose the steeple because of its proportion to the size of their building and for its symbolic meaning)

Jaekels / Scheidelhelm moved to grant the steeple variance because the compelling Village interest in zoning enforcement did not outweigh the church's showing why the enforcement of the height restriction imposes a substantial burden on its religious operations. Motion carried 3 – 1 (Harris voted nay).

ANNOUNCEMENTS

- none

ADJOURNMENT

Ewald / Scheidenhelm moved to adjourn at 6:45 pm. Motion carried.

Minutes submitted by Debbie Baenen, Clerk-Treasurer