

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 13, 2017

CASE NO(S): PL150486

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Jamia Islamia Canada Ltd
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	2380 Tedlo St
Municipality:	City of Mississauga
Municipal File No.:	A138/15
OMB Case No.:	PL150486
OMB File No.:	PL150486
OMB Case Name:	Jamia Islamia Canada Ltd V. Mississauga (City)

Heard: March 22, 2017 by telephone conference call

APPEARANCES:

Parties

Counsel

Jamia Islamia Canada Ltd.

Arif Raza

City of Mississauga

Marc Kemerer

DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD

[1] This hearing was convened by a telephone conference call and was scheduled as a consequence of an earlier decision of the Board heard on February 11, 2016.

[2] That decision which is appended as Schedule 1, found that a private school use is a permitted ancillary activity to a place of religious assembly at 2380 Tedlo Street in

the City of Mississauga ("City"). However, the order was deferred pending confirmation from the City that municipal authorities were satisfied that compliance existed with the remaining provisions of the City's Zoning By-law No. 0225-2007 ("ZB") and the municipality's fire, building and property standards codes.

[3] The Board heard that a series of municipal inspections over the course of years had resulted in violations and orders to comply, that Jamia Islamia Canada Ltd. ("Applicant") had haphazardly attempted to satisfy in a largely, "after the fact" fashion.

[4] The City was granted 60 days from the date of that decision, March 8, 2016, to conclude investigations and forward their investigations/conclusions to the Board. This deadline was at various times extended for that purpose, but in December 2016 the City was directed to summarize their investigations which it did in their report dated December 23, 2016 (Exhibit 1). That report was also to be made available to the Applicant who was directed to provide a reply to the report within two weeks following its receipt. That time line exceeded by several weeks because the Applicant was out of the country.

[5] The report and the Applicant's response informed the submissions presented to the Board by the City's solicitor, Marc Kemerer, and Arif Raza, solicitor for the Applicant. The respective positions of the two solicitors were starkly different regarding the nature, scope and validity of the violations that mirrored last year's presentations by these same solicitors. Throughout the hearing, there was hardly a single point of agreement despite the fairly objective character of the evidence, which involved the reports and letters arising from City inspections that resulted in findings of non-compliance incurred by the Applicant.

[6] In one instance, cited in Exhibit 1, City inspectors found that the play area associated with the school use had expanded beyond the limits of the ancillary school area which is restricted to occupy no more than 20 percent of the principle use, which in this instance is a mosque. This infraction occurred in May of last year following the

Board's March decision which expressed particular concern about the over spill of the play area in violation of the zoning by-law. The play area was subsequently removed according to Exhibit 1.

[7] Additionally, Exhibit 1 indicated that the Applicant is facing two prosecutions for failing to comply with the Orders to Comply regarding the Ontario Building Code. One prosecution involves construction that failed to accord with a building permit for a place of religious assembly, and the second prosecution involved interior alterations carried out without benefit of a building permit.

[8] Exhibit 1 notes that the fire code was contravened, resulting in a Fire Notice of Contravention issued in April 2016, and as of December 2016, the Applicant had still not submitted drawings pertinent to fire routes, as required. The exhibit also observed that a Fire Order to Comply issued in 2012 regarding interior renovations had still not been complied with.

[9] With regard to property standards matters, City staff had identified a number of infractions relating to unlawful storage of unlicensed vehicles, an unused trailer and several motor vehicles, a situation however, later rectified by the removal of the vehicles.

[10] Based on the foregoing, counsel for the City, argued that the Board's final decision order the dismissal of the variance because of "significant impacts on the surrounding community and the students themselves."

[11] In response, Mr. Raza stated that the violations noted by Mr. Kemerer were either resolved and no longer relevant to the variance application, or were related to the north part of the building (previously occupied by a tenant), in isolation of the mosque and school which occupy the south part of 2380 Tedlo Street. The Applicant owns both north and south parts of the industrial building.

[12] Mr. Raza was adamant that every violation and every order had been satisfied, many of which have nothing to do with the application before the Board in any event. He submitted that the safety of the students had always been his client's highest priority and Mr. Kemerer was "completely wrong" to assert otherwise. He advised the Board that the Applicant's relationship with municipal inspectors was constructive and still ongoing, in contrast to Mr. Kemerer's account which characterized the situation as a never-ending series of infractions.

FINDINGS

[13] Despite the polarity in the submissions, several findings are made:

[14] The Board will not reverse its finding of last March 2016, on the basis of an alleged failure of the Applicant to comply with municipal inspection orders. The Planning evidence was uncontested and compliance with s. 45(1) of the *Planning Act* is not diminished by the character of the submissions raised during this hearing. The final order was held last year in an effort to effect a reconciliation of the two parties on matters, which had mutual interest, particularly the health and safety of the students. The extended timeline was not made out of a desire to contrive a new, fifth test to be added to s. 45(1) of the *Planning Act* by tying a variance dismissal to a violation-prone inspection history. The four tests were met and planning evidence affirmed the appropriateness of the variance. However, the Board acknowledges that the delayed issuance of the final order to allow for a productive period of reconciliation, particularly on matters of health and safety, was not in the end, helpful. A common understanding of facts, let alone intention, remained as polarized as it did last year between the parties, but the Board's opinion regarding the variance remains unchanged as noted

[15] Furthermore, the Board cannot compel compliance with municipal and provincial codes no more than it can police ongoing adherence to the thousands of orders authorized by this tribunal over the last many decades. Enforcement of those codes resides with the municipality and the Board in this instance, to paraphrase a well-known

statement: cannot stand in those particular shoes. The Board does not doubt the seriousness of the City's representations and actions in its past and on-going efforts to bring the subject lands into regulatory conformity. The inspection reports and the letters of Exhibit 1 were crystal clear in this regard and illustrate a dogged effort on the part of municipal officials to bring the subject lands into alignment with current standards and codes. Although the Board cannot fine or suspend the actions of code transgressors, the City in partnership with the courts are able to do so and should actively apply those powers when regulations are breached. The Board's decision does not stand in the way, nor does it dissuade efforts by the City to enforce those ordinances under its control by authorizing the variance.

ORDER

[16] The Board orders that the appeal is allowed and authorizes the variance recognizing an accessory private school use subordinate to the principle use of a place of religious assembly with regard to the property known municipally as 2380 Tedlo Street in the City of Mississauga. This order assumes strict compliance with the standards of Zoning By-law No. 0225-2007, and in particular, compliance with the existing provision that the accessory use shall occupy no more than 20 percent of the principle use, which includes interior space devoted to recreation/play area uses.

"Richard Jones"

RICHARD JONES
MEMBER

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Ontario Municipal Board

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ISSUE DATE: March 08, 2016

CASE NO(S): PL150486

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Jamia Islamia Canada Ltd.
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	2380 Tedlo Street
Municipality:	City of Mississauga
Municipal File No.:	A138/15
OMB Case No.:	PL150486
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OMB Case Name:	Jamia Islamia Canada Ltd. v. Mississauga (City)

Heard: February 11, 2016 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Jamia Islamia Canada Ltd.

Arif Raza

City of Mississauga

M. Kemerer

DECISION DELIVERED BY RICHARD JONES

INTRODUCTION

[1] The matter before the Board was to permit a private school use ancillary to an existing place of religious assembly in the City of Mississauga ("City"). The City's Zoning By-law No. 0225-2007 ("the ZB") does not make specific provision for such a use.

[2] The application by the Applicant/Appellant, Jamia Islamia Canada Ltd. ("Applicant") to permit the accessory use was denied by the City's Committee of Adjustment ("COA") and subsequently appealed. The application to the COA requested approval for a minor variance.

[3] The subject lands are situated on the west side of Tedlo Street, north of Queensway West and are part of a well-established industrial area. The west boundary of the subject lands adjoins the rear yards of single family residential uses which front onto Hensall Street. Accordingly, the subject property, including industrial lands to the north and south of the Applicant's ownership, were rezoned in a special industrial category (E2-18) by eliminating certain industrial uses which may have imposed an impact on the residential area. In this respect the E2-18 lands form somewhat of a transitional corridor between the R3 zoned lands to the west, and the E2 zoned lands to the east.

[4] 2380 Tedlo Street consists of a single storey building which at present contains a mosque, or as defined in the ZB, a place of religious assembly, and an accessory private school. The private school is fully affiliated with the primary, place of religious assembly use.

[5] The ZB does not make explicit reference to a private school use as an accessory activity but the Planning and Building Department in their recommendation to the COA expressed no objection to the COA with regard to the application for variance to permit a private school as an accessory use.

REQUEST FOR ADJOURNMENT

[6] At the outset of the hearing, the solicitor for the Applicant requested an adjournment. Mr. Raza argued that final architectural drawings were not yet available and these drawings would assist in providing more precision and detail regarding the

description of the interior space. He believed that the materials would be available shortly and the adjournment would not be a lengthy one.

[7] The Board denied the request.

[8] In November 2015, this same Board Member, allowed an adjournment as the Applicant lacked legal and planning assistance at the time, but that decision clearly stated that further delays would not be tolerated. The Applicant may have lacked final drawings of an architectural type, but their absence would not have been of material benefit to the Board in consideration of the topic at hand. Further, the Applicant had retained experienced legal and planning assistance and; therefore, would not be disadvantaged by the denial of the adjournment.

THE PLANNING CASE

[9] The City of Mississauga did not provide professional planning evidence.

[10] The Applicant retained Mark Bradley, an experienced planning consultant who was qualified to provide planning opinion, which he did within the context of the four tests of s. 45(1) of the *Planning Act* ("Act"), pertinent to variance applications. Mr. Bradley was of the opinion that the proposed public school maintained the general intent and purpose of the Official Plan ("OP") and the ZB, was desirable for the appropriate use and development of the subject property, and was minor in relationship to impact.

[11] More specifically the planner opined that:

- The OP gives permission to the establishment of community infrastructure projects (a definition which includes private schools) as part of the City's mandate to provide complete communities. The concept of a complete community encourages compact, mixed use development that will reduce travel

needs by integrating residential, commercial, employment, community and recreational land uses. Although, community infrastructure is preferred outside of Employment Areas, which is the OP designation of the subject lands, such uses are permitted along the periphery of Employment Areas, a location applicable to the application. The OP also stipulates that accessory uses to a community infrastructure use shall be limited to 20% of the total gross floor area. According to the planner, the private school accessory use utilizes approximately 17% of the building's footprint, thus conforming to this additional policy provision.

- With regard to the application's compliance with the City's ZB, Mr. Bradley noted that an accessory use is defined as a use that is naturally and normally incidental, subordinate and exclusively devoted to, and is located on the same lot as the permitted use, which in this instance is a place of religious assembly; a permitted EA activity.
- In the planner's view, the test of desirability is achieved because the accessory use complies with the policies of the OP and ZB and is located in an accessible location suited to its function and purpose.
- The variance is construed as minor because the private school activity is small in size and fully enclosed within an existing building where there are no exterior related impacts.

[12] Under cross-examination, the planner acknowledged that a private school use is not explicitly recognized as a permitted use within Employment Lands in accordance with the Provincial Policy Statement ("PPS"), although he added that the OP itself conforms to the PPS and the private school conforms with the OP thus establishing a chain of planning policy compliance in his view. He stated that 55 students attended the school, in classrooms from kindergarten to Grade 8 and acknowledged that outdoor

green space was very limited and recreational space was confined to the interior of the building.

[13] The planning evidence was uncontroverted and conforms to the opinion of the City's planning department.

OTHER TESTIMONY AND FINDINGS

[14] In testimony heard from Mr. Alwi Azaz, a director of Jamia Islamia Canada Ltd., and a teacher at the school, who were both in support of the appeal, and several neighbours who opposed the variance, a number of issues were revealed which were interesting, if not a little troubling:

- The Board heard from the director that indoor recreational play and activities overspilled the walls of the private school into the mosque itself which in the Board's view is in breach of an accessory use definition which is restricted to only 20% of the permitted, principle use. In testimony, Mr Azaz described that a large area of the mosque itself was used for recreational activity which, in the Board's view, would inflate the percentage from 17% to beyond 20%.
- The Board heard that there has been a history of zoning violations, beginning with the place of religious assembly which was established in 2004 but not approved until much later by a rezoning application. .
- The Board heard from Mr. Azaz that 85 students attended the school, not 55 students which was the planner's testimony.
- The Board heard that property standards violations, concerns about compliance with the fire code etc. had characterized the subject property for some time. The Board was also informed that the Jamia Islamia

administrators had sought to rectify every deficiency in an “after the fact” manner, but nevertheless, this pattern of violation-prosecution followed by applications proposing to seek compliance, became a repeated theme throughout the hearing. In this regard the various participants who testified were very helpful in providing this additional information.

[15] In consideration of the aforementioned, two issues are clear to the Board.

[16] Firstly, the Board agrees with the collective planning opinion, municipal and consultative, that an accessory use in the form of an accessory private school use, subordinate to the principle use of a place of religious assembly is permitted by both the OP and ZB. In the Board’s experience, this combination of activities is certainly not unknown and further, does occur in specific Employment Areas of other municipal jurisdictions where there has been similar initiatives to strip away more noxious industrial/business uses. The subject lands do adjoin a large, established residential neighbourhood and the provision of both religious and academic studies in this precinct is a valid part of a complete community concept, clearly a current planning notion driving Mississauga planning policy as well as provincial planning policy. In this regard, this application serves to make explicit, a use which at present is implicit in the OP and ZB.

[17] In this regard of the four tests of s. 45(1) of the Act are satisfied.

[18] Secondly, however, the Board heard of too many “loose ends” in testimony to affirm immediate authorization of the variance at this time. The attendance of 85 students, confirmed by the director, not 55 students; is a considerable discrepancy. Moreover, the use of the mosque space, outside the designated school space breaches the restriction that only 20% of the floor area can be devoted to the accessory use. . Overspill violates the permission in the ZB and would perhaps be a hazard for students with regard to property standards, fire protection and even sanitation related deficiencies who are undertaking activities outside the prescribed, school walls.

[19] As a consequence, the Order will be withheld until a satisfactory state of affairs exists in the subject property.

DECISION

[20] The variance is authorized and the appeal is allowed; however, the Board's order is withheld pending receipt of a report from the City of Mississauga that municipal authorities are satisfied that the operation of a private school as an accessory use complies with the balance of Zoning By-law 0225-2007, as well as the City's building and fire codes and its property standards by-law.

[21] Furthermore, the City of Mississauga has sixty days from the date of this decision to conclude its inspections and forward its recommendations to the Board and the Applicant/Appellant will be concurrently advised of those recommendations. The Board can be spoken to with regard to those recommendations prior to the imposition of conditions if required.

“Rick Jones”

RICK JONES
MEMBER

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