

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**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**

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**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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### **Ontario Municipal Board**

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