

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 09, 2019

CASE NO(S): PL170420
PL180001

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	World Team
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	7575 Danbro Crescent
Municipality:	City of Mississauga
Municipal File No.:	A127/17
OMB Case No.:	PL170420
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OMB Case Name:	World Team v. Mississauga (City)

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

Applicant and Appellant:	Al Kitab Academy Inc.
Subject:	Minor Variance
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Property Address/Description:	7575 Danbro Crescent
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Municipal File No.:	A 371/17
OMB Case No.:	PL180001
OMB File No.:	PL180001
OMB Case Name:	Al Kitab Academy Inc. v. Mississauga (City)

Heard: January 16 to 18, 2019 in Mississauga, Ontario

APPEARANCES:**Parties**

Al Kitab Academy Inc.

Kevin and Carol Mahoney

Counsel

Jennifer Meader

Ronald Webb
Hannah Bahmanpour**DECISION DELIVERED BY HELEN JACKSON AND ORDER OF THE TRIBUNAL**

BACKGROUND

[1] The Al Kitab Academy Inc. (“Applicant”) currently operates a school in a portion of the one-storey office building on their property at 7575 Danbro Crescent (“subject property”), which is within the Meadowvale Business Park, a designated employment area north of Highway 401. The property is zoned E2-19—Employment under Zoning By-Law No. 0225-2007. The surrounding area includes a mix of office and industrial uses, and there is a TransCanada pipeline located immediately behind the property.

[2] There have been two separate applications for minor variances in order to permit the school use; both were refused by the City of Mississauga (“City”) Committee of Adjustment (“COA”) and both refusals were appealed as is described further herein. This hearing dealt with both appeals.

[3] The first minor variance application was filed by the previous owner of the property in February 27, 2017 (File No. A-127/17). Based on advice from their planning consultant, the previous owner requested a minor variance in order to operate a private school. The E2-19—Employment zone does not permit a private school. The COA denied this application on April 6, 2017 on the basis that the requested variance was not minor. This decision was appealed to the Ontario Municipal Board on April 13, 2017 (PL170420, “First Appeal”).

[4] The Applicant purchased the subject property shortly thereafter and filed the second minor variance application on July 26, 2017 (File No. A-371/17), to operate a commercial school with a maximum of 23 parking spaces. The application was initially set down for a hearing before the COA in September 2017 but was deferred first to October 2017 and then to November 2017. Based upon discussions with Tim Gallagher, the City's Manager of Zoning, the Applicant ultimately amended the variance request for the use as a "Cultural and Academic Learning Facility", along with a request for relief from the parking standard.

[5] Zoning By-law No. 0225-2007 does not define a "Cultural and Academic Learning Facility".

[6] The COA received comments from the City's Planning and Building Department and Transportation and Works Department, as well as the Regional Municipality of Peel and several property owners in the vicinity. A considerable number of the comments reflected opposition to the application. Notably, the City's Planning and Building Department recommended that the application be refused on the basis that the proposed use was a 'sensitive use' and therefore not appropriate development for the subject property, which is "in close proximity to major facilities such as industries, oil and gas pipelines, transportation corridors and transmission systems".

[7] The COA denied the application at the hearing on November 30, 2017. In its decision, the COA stated:

The Committee believes that the use does not constitute a similar use to a Commercial School as defined under By-law 0225-2007 and believes that approval of this application would result in undue stress and limitations on existing and potential future permitted uses. The approval of this application would not represent good planning in the opinion of the Committee.

[8] On January 2, 2018, the Applicant filed an appeal of the COA's decision of December 7, 2017 (PL180001 "Second Appeal"). The Second Appeal was to the Local Planning Appeal Tribunal ("Tribunal"), the successor to the Ontario Municipal Board. The Applicant assumed the First Appeal from the previous owner. The Applicant

requested that the Tribunal hear the two appeals concurrently and requested that the Tribunal dismiss the First Appeal and allow the Second Appeal.

[9] The Tribunal held a three-day hearing on this matter starting on January 16, 2019. The City did not appear at the hearing.

[10] Kevin and Carol Ann Mahoney own and operate Weed A Way Ltd. (“Weed A Way”), a commercial fertilizer and pesticide storage facility at 7595 Danbro Crescent immediately adjacent and to the southeast of the subject property. Weed A Way and the school share driveway access to the rear of their respective properties. Weed A Way requested and were granted party status to these appeals. Morgan Mahoney testified as to Weed A Way operations.

[11] Weed A Way opposes the subject applications because of concerns related to the incompatibility of the proposed school use, agreed by the parties to be a sensitive land use, adjacent to their operation. Specifically, Weed A Way is concerned about the safety of young children being near their operations, as well as safety issues due to the presence of tractor trailer trucks that use the shared driveway making deliveries to their facility. Weed A Way also expressed concern that there was inadequate parking for the proposed school use. Counsel for Weed A Way submit that it is not good planning to permit a school for young children in an area that is otherwise an industrial area.

[12] Jeff Nunn, CFO of Roar Engineering Inc. (“Roar”), appeared as a participant, also in opposition to the requested variances. Roar is located at 7565 Danbro Crescent, immediately adjacent and to the northwest of the subject property. Mr. Nunn testified that Roar does forensic testing of equipment both indoors and outdoors and the operation runs 24 hours a day. Roar’s position is that it is not appropriate to have children in the vicinity as there is significant truck traffic and because of the testing equipment that occurs on site, such as X-ray machines.

Expert Witnesses

[13] David Brown provided land use planning opinion evidence on behalf of the Applicant, and Mark Rogers provided land use planning opinion evidence on behalf of Weed A Way. Both land use planners provided competent and credible evidence. Steward Elkins provided expert evidence on behalf of the Applicant in relation to the parking issue, and Jim Anderson provided expert evidence in relation to air, noise, odour and vibration issues for the Applicant. Based upon the Tribunal's finding that the proposed use fails the threshold test, as is discussed further in this decision, the Tribunal determined that it was not necessary to delve into the evidence provided by Mr. Elkins and Mr. Anderson.

The Proposal

[14] The Applicant wishes to operate a cultural and academic learning facility on the subject property, as a like use to a commercial school, with an attendance of four teachers and 40 students on weekdays and two teachers and 20 students on the weekends. The students are about 8 to 13 years old. Children are not permitted to leave the facility during the day and must stay indoors. The hours of operation are Monday to Thursday 7:30 a.m. to 2:45 p.m.; Friday 7:30 a.m. to 11:15 a.m. It is proposed that the facility will expand to evening classes from 5 p.m. to 8 p.m. and weekend classes from 10 a.m. to 12 (noon).

[15] The facility includes classrooms, offices, a computer room, a cafeteria, washrooms, a multi-purpose room, and a gym. No structural changes to the building are required. The existing parking lot on the subject property has 19 spaces and will be re-stripped to provide 23 parking spaces.

[16] The proposed school use is for the study, memorization, and recitation of the Koran; and other instruction in music, dance, ethics, poetry, and the Arabic language, all in the context of Muslim values. As a requirement of attendance, the students must be home-schooled and have written confirmation to that effect from their School Board. It

is not intended that the provincial curriculum will be taught; however, evening and weekend classes may include tutoring of English, Science and Math, and adults may attend for tutoring.

[17] It is the nature of the school use that is at the heart of the dispute.

REQUESTED VARIANCES

[18] As described above, the amended application requests relief from Zoning By-law No. 0225-2007, as amended:

to permit the operation of a cultural and academic learning facility on the subject property, as a like use to a Commercial school proposing a total of 23 parking spaces for all uses on site; whereas By-law 0225-2007, as amended, requires a total of 34 parking spaces for all uses on site in this instance.

ISSUE

[19] Pursuant to s. 45 of the *Planning Act* ("Act"), a COA has the authority to authorize a minor variance to the zoning by-law, as follows:

Powers of committee

45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

Other powers

(2) In addition to its powers under subsection (1), the committee, upon any such application,

(a)

(b) where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, **conforms with the uses permitted in the by-law.**
[Emphasis added]

[20] Section 45(2)(b) provides that where the uses in the by-law are defined in general terms, the COA, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee conforms with the uses permitted in the by-law.

[21] Upon appeal to the Tribunal, pursuant to s. 45(18), the Tribunal may dismiss the appeal and may make any decision that the committee could have made on the original application.

[22] As described above, a “cultural and academic learning facility” is not defined in Zoning By-law No. 0225-2007. Therefore, the threshold issue, as agreed by the parties, is:

- Does the proposed cultural and academic learning facility ‘use’ conform with the uses permitted in the by-law?

[23] Now that there is an appeal to the Tribunal, if the Tribunal finds the cultural and academic learning facility use to be ‘like a commercial school use’ then the Tribunal may authorize this use as a like use to a commercial school as a variance to the by-law. If the Tribunal finds that this is not a like use to a commercial school; then this is a ‘new’ use and requires a zoning by-law amendment to be permitted.

[24] As is described further in this decision, the Tribunal finds that the proposed use is not a commercial school use, nor is it ‘like a commercial school use’ and therefore it does not conform to a commercial school use. The Tribunal finds that the proposed use, as described by the evidence and in this hearing, fails s. 45(2)(b), the threshold test, and therefore must be refused.

[25] At the hearing, the Applicant also provided evidence to support their assertion that the requested variances met the four-part test under s. 45 (1) of the Act in relation to the authorization of minor variances to the by-law. By contrast, Weed A Way provided evidence to support their contention that the application fails the four-part test for a minor variance. Based on the Tribunal's findings that the threshold test has not been met, the Tribunal finds that it is not necessary to make any findings regarding the authorization of minor variances to the by-law under s. 45 (1); either for relief for the proposed use, or for relief from the parking standards.

[26] The Tribunal's reasons regarding the threshold test follow.

EVIDENCE

Planning Context

[27] As described earlier, the Meadowvale Business Park is designated as Employment Area and the subject property is zoned E2-19—Employment under Zoning By-Law No. 0225-2007. The E2-19 zone permits all industrial uses except for power generating. Within the E2-19 zone, a commercial school is permitted; however, a private school is not permitted.

[28] Under the City's Official Plan, Chapter 10 is entitled "Foster a Strong Economy". Section 10.3 refers to specific policies regarding industrial uses in Employment Areas, as follows:

Section 10.3 —Industry

Industrial uses include manufacturing, assembling, processing, fabricating, research and development, warehousing, distributing, and wholesaling, and sales and service accessory to these uses.

Industrial activities contribute significantly to the city's economic base. Industrial uses should locate in appropriate areas, such as Employment Areas. It is a priority for Mississauga to ensure that sensitive land uses remain separated from industrial uses.

10.3.1 Industrial uses will be permitted to locate within Employment Areas. Character Area policies may identify sites permitting industrial uses outside of Employment Areas.

10.3.2 Mississauga will protect lands within Employment Areas for industrial uses.

10.3.3 Development will minimize land use conflicts between industrial uses and sensitive land uses.

[29] Mr. Rogers testified that, as is evident by these Official Plan policies, it is a priority for the City to ensure that industrial uses remain separated from sensitive land uses. The intent of the zoning by-law, which implements Official Plan policies, is to segregate or keep similar uses together and to discourage non-compatible uses from situating in close proximity to one another.

[30] It is Mr. Rogers's strong opinion that the proposed use is not compatible with the existing surrounding land uses or the future permitted land uses.

[31] Mr. Brown acknowledged that the proposed school use could be classified as a 'sensitive land use'; however, it was his opinion that the school use could be situated as proposed based on assessment of air, noise and vibration study results undertaken by qualified consultants on behalf of the Applicant. He testified that notwithstanding that s. 1.2.6 of the Provincial Policy Statement calls for the separation of sensitive land uses and major facilities, such as airports, sewage treatment facilities, rail facilities, oil and gas pipelines, transportation corridors, etc., the proposal promotes efficient land use and wisely manages change. He also testified that the Growth Plan for the Greater Golden Horseshoe directs that care must be given to the placement of a sensitive land use.

Type of School

[32] Both parties concur that the threshold issue is, does the proposed cultural and academic learning facility use conform with the uses permitted in the by-law. Put another way, does the proposed school fall within the definition of a commercial school,

or the intent of a commercial school in the zoning by-law? To assist, the Tribunal looks to the following key definitions extracted from Zoning By-law No. 0225-2007:

Education and Training Facility

Means a building, structure or part thereof, where specialized instruction is provided for a particular skill or profession and may include a science and technology facility.

Commercial School

Means a building, structure or part thereof, where **specialized** instruction is provided and may include a business school, a trade school, a driving school, a dance school, a music school, a martial arts school, or a tutoring school. [Emphasis added]

Private School

Means a building, structure or part thereof, where **academic** instruction in a full range of the subjects of the elementary or secondary school courses of study and any other educational activity is provided, and may include a nursery school. [Emphasis added]

Tutoring

Means the provision of supplementary academic instruction.

[33] Mr. Brown was unequivocal in his opinion that the proposed use fits squarely within the definition of a commercial school, as defined above, and therefore is permitted as of right. Notwithstanding this position, he testified that the Applicant amended their request to permit the operation of a 'cultural and academic learning facility', as a like use to a commercial school, based on discussions with the Manager of Zoning, and in an effort to ensure that no problems would arise if and when any permits were required.

[34] Mr. Brown's opinion is that the definition of a commercial school is broadly written. He states that the words, 'may include a business school, a trade school, a driving school, a dance school, a music school, a martial arts school, or a tutoring school', indicates that a commercial school is defined in a manner to include a broad and varied range of subjects. Mr. Brown states that the 'may include' informs the reader

that the list provided is not exhaustive but is merely for the purposes of providing examples of types of school uses that would be considered commercial. Mr. Brown also noted that the definition of a commercial school places no limits on the age of students or the time of day for operation. Mr. Brown is of the opinion that the crux of the commercial school definition is that it offers 'specialized instruction', which in this case, is instruction in cultural and religious matters specific to the Muslim faith.

[35] Mr. Brown states that the proposed school use does not fit within the definition of a 'private school' use because, in his opinion, a private school is for instruction in the provincial curriculum, which this is not.

[36] Mr. Rogers disputes Mr. Brown's interpretation that proposed teaching at the school falls under specialized instruction. His opinion is that 'specialized' means concentration on a small area of study, or a specific topic, as defined by the Oxford on-line dictionary. He states that the evidence and description of what is to occur at the school reflects a broad scope of study and does not specifically provide 'specialized instruction' in one specific topic. The scope of study ranges from music, poetry and dance through to language and religious instruction as well as tutoring in English, Math and Science.

[37] Mr. Rogers' interpretation is that the examples listed in the definition of a commercial school provide an indication of what specialized instruction is intending. He contends that 'specialized' refers to what one might encounter in a trade school, such as welding, carpentry, or driving; but also, may be a specific skill such as dance, or martial arts. He asserts that the intent of a commercial school is to provide instruction in a particular type of activity that one 'specializes' in.

[38] Mr. Rogers acknowledged that the component parts of what is proposed to be taught at the facility, if taught exclusively, could be considered to be taught at a 'commercial school'. For example, a dance school where only dance is taught would be a commercial school; and a school teaching the Arabic language could also be considered commercial school, amongst other examples that were provided.

[39] In Mr. Rogers's opinion, the proposed school use is more like a private school because of the type of teaching that is proposed. There is a strong component of reading and language instruction in the proposed school which, he is of the view, is academic in nature. The 'academic' nature of the instruction aligns with the definition of a private school which is for 'academic' instruction. This is also reflected in the amended application which requests 'the operation of a cultural and academic learning facility'; notwithstanding that the basis of such education is within the Muslim culture.

[40] Mr. Rogers stresses that one must also look beyond what is being instructed at the facility to the hours of operation and the context of that operation. It is his opinion that this leads to the interpretation of the school more as a private school with the intention of academic instruction rather than commercial instruction based on the fact that the children are present all day; five to six days per week; much like what would occur in a public school or a private school teaching the provincial curriculum.

ANALYSIS AND FINDINGS

Principles of Statutory Interpretation

[41] The Tribunal considered two cases provided by Counsel for the purposes of elucidating the principles of modern statutory interpretation to assist in the determination of whether the proposed use is a 'commercial school' or 'like a commercial school'. Ms. Meader cited *Sarnia (City) v. River City Vineyard Christian Fellowship of Sarnia (Trustees of)*, [2015] O.J. No. 3527 ("*Sarnia*"), as a case to guide the Tribunal. Ms. Bahmanpour cited *Rooney v. ArcelorMittal S.A.*, 2016 ONCA 630 ("*Rooney*"), which follows *Sarnia*.

[42] In *Sarnia*, the court was tasked with determining the intent of a zoning by-law to establish whether a soup kitchen could be considered as a part of "church-sponsored community activities and projects". Ms. Meader took the Tribunal to *Sarnia* at paragraph [23] to lay out the principles of statutory interpretation, as follows:

The general approach to statutory interpretation requires the words of the provision here to be read in their entire context and according to their grammatical and ordinary meaning, harmoniously with the scheme and object of the By-law as a whole and the intention of the drafters: *John Doe v. Ontario (Finance)*, 2014 SCC 36, [2014] 2S.C.R. 3 at para. 18.

[43] The court provided a more fulsome explanation of the by-law in the *Sarnia* case, as cited in paragraphs [39] to [41]:

In my opinion, River City's homeless shelter falls within the scope of the words "church-sponsored community activities and projects", when these words are properly interpreted. I begin by outlining the scheme and object of the By-law. I then assess the grammatical and ordinary sense of the words "church-sponsored community activities and projects" and the intention the drafters in choosing these words. Finally, I conclude that these words are broad enough to permit River City to operate the Harbour Inn Mission without contravening the By-law.

In my view, the scheme and object of the By-law is to regulate the use of lands in the City of Sarnia with a certain degree of specificity. This intention is reflected in the long title of the By-law, which refers to the By-law's purpose as "to regulate the use of lands and the character, location and use of buildings and structures within the City of Sarnia". The preamble to the By-law similarly describes it as intended "to ensure proper and orderly development within the corporate limits of the City of Sarnia". This intention is also reflected in the detail with which permitted land uses are set out in the By-law as a whole.

The scope of "church-sponsored community activities and projects" must be interpreted in a manner consistent with the object of the By-law, which is to circumscribe the use of land in Sarnia. In other words, these words must have an internal limit and are not a license for a church to undertake whatever activities or projects it wishes. At the same time, the drafters chose fairly broad and permissive language to describe the uses churches were entitled to make of their premises.

[44] The court then goes on to describe the grammatical and ordinary sense of the key phrases in the subject by-law for the purposes of interpreting the by-law in that specific instance.

[45] Ms. Bahmanpour took the Tribunal to the *Rooney* case, which follows *Sarnia*. She submits that *Rooney* provides a more current view of statutory interpretation, as it links to the intention of Council in the drafting of the by-law. This is elucidated at paragraph [13] as follows:

The modern principle takes a more holistic view. As Justice Iacobucci explained in *Rizzo Shoes*, at para. 21, the modern principle “recognizes that statutory interpretation cannot be founded on the wording of the legislation alone.” Sullivan expands on this idea, at s2.18: “Today, as the modern principle indicates, legislative intent, textual meaning and legal norms are all legitimate concerns of interpreters and each has a role to play in every interpretive effort.

Specialized vs. Academic Instruction

[46] In support of Mr. Brown’s interpretation that the definition of a commercial school is defined in a sufficiently broad manner to include the proposed activities at the subject ‘cultural and academic learning facility’, Ms. Meader cites paragraph [28] of *Sarnia*:

The specificity of the words “shall not include a soup kitchen or food bank” implies that the express prohibitions were intended to be exhaustive. If the drafters had intended to prohibit uses ... they could have either expressly prohibited these analogous uses or used words in the nature of “shall not include accessory uses such as a soup kitchen or food bank”. There is no indication that analogous activities are to be read in. ...

[47] Ms. Meader states that the corollary in this case is ‘may include’ in the commercial school definition provides that this is a broad definition, and therefore the ‘specialized instruction’ proposed by this school use would fit in to that broad definition. Ms. Meader submits that Mr. Brown’s interpretation that the activities at the school fit the definition of a commercial school accord with this principle of applying the ordinary meaning to the phrase ‘specialized instruction’.

[48] Ms. Bahmanpour takes the position that though Mr. Brown gave evidence of specialized instruction, ‘specialize’ is not provided in a definition. She submits that ‘specialize’ is ambiguous, and therefore one must look to the Oxford dictionary for guidance, as was done by Mr. Rogers, and one must look at the intent of Council, as directed by the court in the above cited decisions.

[49] For guidance in the interpretation of the intent of the zoning by-law in this instance, the Tribunal looks to the legislative intent, the textual meaning and the legal norms to determine whether the proposed use is ‘like a commercial school’ use.

[50] The Tribunal notes that it has been established by the evidence that one intent of the zoning by-law is to separate industrial uses from sensitive land uses. If one takes as a starting point that the intent is to avoid placing such incompatible uses together, this assists in divining the objective of Council when interpreting the by-law that permits commercial schools to be located in this E2-19—Employment zone where industrial uses are permitted.

[51] To reiterate, the definition of a commercial school in the zoning by-law includes: a business school, a trade school, a driving school, a dance school, a music school, a martial arts school, or a tutoring school. Though not explicitly stated, the Tribunal finds that this presumes that Council would consider that a business school or a trade school would not be incompatible with the surrounding industrial uses and would reflect and be complementary to the activities that one would expect in an industrial area.

[52] However, when one looks to the examples of a dance school, a music school, a martial arts school, or a tutoring school where it is expected that children would attend, the Tribunal notes that Council must have had in mind some mitigating factors in order to permit such uses within an area that also permitted industrial uses. The Tribunal notes that these schools would not be operating all day long, during daytime hours, or in a manner where an individual child would attend the facility all day, five to six days a week. Though it is acknowledged that there are no restrictions on the age of attendees or the hours of operation in the definition of a commercial school, the presumption is that a dance school or a tutoring school would not be operating all day long, during daytime hours, which are the same hours as many industrial operations. The hours of operation of a dance school or tutoring school would not be expected to be coincident with the hours of operation of an industrial use. The Tribunal finds this to be a reasonable explanation for the intent of Council when they permitted a commercial school that allows dance, etc., to be located in an otherwise industrial area.

[53] With this in mind, the Tribunal finds that the word 'specialized' in the commercial school definition is provided to limit the school uses to those that are compatible with the surrounding industrial area either in terms of the 'use' or the operational aspects,

such as hours of operation or intensity of attendance. The use of the term ‘specialized’ is to direct the reader to school uses where there is not likely to be an issue of incompatibility, such as a business school or a trade school, and rather, these types of schools would be complementary to the industrial uses. Similarly, a dance school or tutoring school, where young children would be expected, the hours of operation are of necessity generally outside the regular day-time school hours of operation, and therefore the issue of incompatibility with the industrial uses is significantly mitigated.

[54] The Tribunal finds that the interpretation of the word ‘specialized’ in the commercial school definition provided by Mr. Rogers more closely aligns with the court’s direction that requires that one must look to the entire context and intent of the drafters when interpreting the legislation. When the Tribunal considers the word ‘specialized’ with that in mind, it leads to the interpretation that ‘specialized’ in the context of the zoning by-law means: ‘specific instruction in a particular topic’. Therefore, the inclusion of the term ‘specialized’ instruction provided in the definition of a commercial school is to signal that it is intended by the drafters of the zoning by-law, to mean ‘specific instruction in a particular topic’. The Tribunal finds that this accords more appropriately with the principle of ‘ordinary meaning’ and with the Oxford definition of “specialize”.

[55] A parallel analysis of the word ‘academic’ instruction in the definition of a private school leads to an analogous conclusion. Again, if one acknowledges that the intent of the zoning by-law is to separate industrial uses from sensitive land uses; it is clear that the by-law does not permit a private school in this E2-19 zone.

[56] As was described by Mr. Brown, a private school is generally for the instruction of the provincial curriculum in a private setting. The Tribunal notes that the provision of the word ‘academic’ identifies to the reader that the school will be for the instruction of children, likely during regular school hours, and likely five days a week, in line with what a school in the public-school system provides. This gives guidance to the term ‘academic’ in the definition of the private school in the by-law. The term ‘academic’ signals to the reader that this school is for children, and operates during the day, five days a week.

[57] The Tribunal finds that the proposed school, being a 'cultural and academic learning facility' use, in terms of its operation with respect to hours of operation and intensity of attendance by each student, aligns more closely with what one would expect in the operation of a private school, as testified by Mr. Rogers.

[58] Ms. Meader submits that each component of the instruction that is proposed at the school, when parsed out, if it were to be taught exclusively, would meet the definition of a commercial school. She gave examples such as dance, or creative writing, or language instruction (e.g. Arabic), as examples of topics that would be considered as instruction in a 'commercial' school.

[59] In this situation the proposed school is to provide instruction in a broad range of topics, such as religion, language, poetry and moral and ethical studies. On their face the Tribunal finds these subjects to be more academic in nature than commercial, even though these subjects may not be included in the provincial curriculum, and if taught separately, could be considered commercial.

[60] The Tribunal finds that one must consider the nature of the proposed topics of instruction and the context of that instruction. When aggregating the components of the proposed instruction, the Tribunal finds that it cannot be considered commercial instruction. The entire context of the proposed school must be considered along with the intent of the zoning by-law. The subject matter for the proposed school is broad and does not fit into the intent of a commercial school, where the intent is to learn a specific skill or a specific topic of instruction to the exclusion of others.

[61] The Applicant provided many examples of other school uses in the Employment zone for the purposes of indicating the compatibility of the proposed school use within this Employment zone. In particular, the Applicant referenced the Al Amarate Academy, which is also focused on teaching Koran. Mr. Brown indicated that this existing use is also in the E2 zone and was permitted by the City as a commercial school without the need for a variance. The Applicant's position is the two schools should be treated consistently, as in Mr. Brown's opinion, the two uses are the same.

[62] However, as was opined by Mr. Rogers, and agreed by the Tribunal, the proposed facility may be appropriate in some business employment areas, but not specifically at this location based on the existing land uses and the as of right land uses envisioned by the Official Plan.

[63] The Tribunal acknowledges that the Al Amarate Academy and the proposed school uses in this matter appear similar; however, absent information regarding the specific instruction at the Al Amarate Academy, the Tribunal is not persuaded that the proposed school use in this matter conforms with the commercial school use on the basis that the Al Amarate Academy was found to conform with a commercial school use. As well, the Tribunal has insufficient evidence regarding the context of the Al Amarate Academy and its surrounding land uses in regard to compatibility in that instance.

[64] Ms. Meader cited a 2016 Decision by Vice Chair Schiller, *Talenta Inc. v Toronto (City)*, 2016 CanLII 48812 (ON LPAT) (Ontario Municipal Board PL151167) in a similar matter related to a minor variance application to permit a tutoring facility that was not permitted by the zoning by-law. In this case the Applicant did a D-6 Compatibility between Industrial Facilities analysis; however, Vice Chair Schiller attached “no weight to the speculation regarding impacts on existing and future industries in the surrounding area and their respective requirements for environmental compliance.” The Tribunal distinguishes the facts of the case from the current matter. In the current matter, there is no need to address the question of the D-6 guidelines, because the threshold test has not been met.

Summary

[65] The Tribunal has carefully considered the evidence and submissions in this matter. The totality of the proposed instructional activity, along with the context in which it is being provided, gives guidance to the interpretation of the type of school use that is proposed.

[66] The school is intended to provide a range of instruction in subjects that include study of the Koran (memorization and recitation), language instruction in Arabic (reading and writing), moral guidance and instruction, religious instruction, poetry instruction, and dance. This instruction is provided in a cultural and religious Muslim setting. There is no contention that the students would receive instruction in the provincial curriculum; in fact, the students are required to be home schooled and have a certificate from the School Board to that effect to be enrolled in this school. The students are of ages 8 to 13 years old and attend all day, five days a week.

[67] No matter that these students are receiving instruction that is outside of the Provincial curriculum, the Tribunal finds that instruction they are receiving is clearly academic in nature. It is intended to develop the individual, increase their knowledge of the topics as laid out above and result in responsible citizens with a good grounding in the Muslim faith and their obligations to their fellow citizens. This is not a commercial venture; these students are developing themselves to be equipped to face the world with a positive, moral, religious purpose. The students attend all day, five days a week. That is immersive instruction intended to develop the individual comprehensively, and completely, and over about a three-year period. The Tribunal find this is more like an academic setting than a commercial setting where the student concentrates on a specific course of study to attain a specific skill, which is what is contemplated by the by-law for a 'commercial school'.

[68] In the case here the Tribunal finds the proposed use does not meet the definition of a commercial school or the intent that Council had for this area in permitting commercial schools to locate in the E2-19 zone.

[69] The Tribunal finds that the intention of Council, as described in the Official Plan and the implementing zoning by-law, is to allow industrial uses in this area and to protect those uses. The zoning by-law is intended to separate sensitive land uses from employment uses; in this instance, the Tribunal finds that the proposed school is a sensitive land use that is not compatible with the employment uses.

[70] The Tribunal agrees with the submissions of Weed A Way and the decision of the COA that the proposed school use does not meet the intent of the zoning by-law. The Tribunal finds that the proposed use is not a commercial school use, nor is it 'like a commercial school use' and therefore it does not conform to a commercial school use. The Tribunal finds that the proposed use, as described by the evidence and in this hearing, fails s. 45(2)(b), the threshold test, and therefore must be refused.

[71] The Tribunal finds that the application to permit the proposed school at this location does not represent good planning and is not in the public interest.

ORDER

[72] The Tribunal denies the appeals. The requested variances are not authorized.

"Helen Jackson"

HELEN JACKSON
MEMBER

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Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Divisio
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