

ISSUE DATE:

**May 1, 2012**



PL111131

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

Islamic Society of Willowdale has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to the L'Amoreaux Community North By-law No. 12466 of the City of Toronto to rezone lands respecting 3551 Victoria Park Avenue to permit a place of worship within a listed heritage house located within the Agricultural Uses (AG) zone  
OMB File No.: PL111131

**APPEARANCES:**

**Parties**

Islamic Society of Willowdale

City of Toronto

**Counsel**

Michael Vaughan

Brendan O'Callaghan

**DECISION DELIVERED BY J. de. P. SEABORN**

**Introduction**

The Islamic Society of Willowdale (Applicant) has appealed a refusal by the City of Toronto (City) Council to approve a by-law amendment to rezone a listed heritage property (Riseborough House) from a single family dwelling to a place of worship. Although the Applicant has been using the property as a mosque during the processing of the application and subsequent appeal, the City maintains its opposition to the rezoning. An application for site plan approval has been reviewed by the City; however, it is not before the Board, pending a decision on the rezoning. Participants testified both in support of, and opposition to, the application.

**Background**

In November 2009, the Applicant applied for a zoning by-law amendment seeking permission to convert a "Confederation" farmhouse to a place of worship. Situated at 3551 Victoria Park Avenue south of McNicoll Avenue, the property is about 1,525 square metres and consists of a two-storey dwelling with an attached two car garage.

Several mature trees surround the property. A subdivision is adjacent to the property and the rear yards of these homes (on Langrove Terrace) back onto the property and Victoria Park. Given its heritage qualities, the Applicant's property was "carved" out of the subdivision, situated to the east. At the north end of the property is a public walkway, allowing residents who live on Langrove Terrace and in the wider subdivision access to Victoria Park Avenue.

The property has been used as a mosque since its purchase and the Applicant is seeking to legalize the use. If the rezoning is approved, the Applicant's goal is to preserve the farmhouse and eventually have it designated as a heritage property. In this regard, a Heritage Impact Report was prepared by the Applicant confirming it would not object to future designation as a heritage property. Site plan approval is required and the concept plan filed in support of the rezoning indicates that the garage will be demolished and some trees will have to be removed to provide significantly more parking on site. The City's Preservation Services staff indicated in their report that if the rezoning is approved, there should be conditions of approval regarding further work to mitigate changes to the site plan and landscaping and enhance the heritage character of the property.

## **Issues**

The main issues are: first, whether there is sufficient parking to serve a place of worship at this location; and second, does the proposal constitute an over development of the site. Mr. Hall (land use planning) and Mr. Tedesco (traffic) provided opinion evidence. Employees of the City who provided opinion evidence included Mr. Mestyan (land use planning) and Mr. Au (transportation planning). Several participants, including some neighbours and several members of the mosque, provided evidence.

## **Evidence and Findings**

### **1. Parking**

The major objection from the City to the use is that there is inadequate parking to serve a place of worship use (following rezoning). The City argued that given the Applicant has been operating a mosque on site, there is sufficient evidence demonstrating the lack of on-site parking and its impact. In this regard, several photos were filed showing

cars parked on site as well as vehicles parked on surrounding residential streets, in particular on Langrove Terrace, Apache Trail and Navaho Drive and at a vacant "lot" in the adjacent hydro corridor. Both Mr. Mestyan and Mr. Au testified that because parking cannot be accommodated on site, or legally secured off-site, the number of worshipers travelling by car on a regular basis results in negative off-site impacts and safety concerns. The City's position was that parking should be contained on site and not spill over into local neighbourhood roads. Alternatively, the Applicant should secure offsite parking within 300 metres of the property. The City provided examples of places of worship which include large parking areas on site and pointed to these as more appropriate locations for new places of worship, such as mosques.

The issue of adequate parking must be considered in the context of the requirements for a place of worship. The parking standard under the by-law for the L'Amoreau Community (if the property is rezoned from Agriculture) is expressed as 7.7 spaces per 100 m<sup>2</sup> of gross floor area and the revised site plan prepared by the Applicant provides for 20 spaces, consistent with this requirement. The City's view was that even if the standard is met, there is simply inadequate parking available to serve the mosque. In addition, under the new City by-law (since repealed) the parking standard would have required approximately 34 spaces per 100 m<sup>2</sup> of gross floor area or 80 to 82 spaces. On this basis, the City indicated that the proposed on-site parking is inadequate. Moreover, as the photo evidence confirmed, worshipers do park on the side streets and vacant hydro corridor.

Both Mr. Au and Mr. Tedesco testified in great detail on the issue of parking and the relevant standard. Traffic counts were undertaken and there is no issue that at peak times for services at the mosque, there is considerable traffic around the site. However, when considering this issue in the context of impact, the Board finds that inadequate on-site parking to meet the demand for the mosque at peak hours is not a reason to reject the application. The side streets permit on-street parking. Parking restrictions, if any, in the adjoining subdivisions are within the control of the City. The evidence was clear that the overflow parking to adjacent side streets is normally confined to between 1 p.m. to 3 p.m. on Friday afternoons. Members of the mosque park their vehicles, attend prayers for about an hour and then leave. This is not a situation where cars are parked on side streets all day or even for several hours. The evidence did not suggest that there has been widespread complaint from the community with respect to parking. The

participants who testified were fair in their assessment and confirmed that typically they are not inconvenienced, albeit there have been instances of blocked driveways. Homeowners in the surrounding subdivisions largely park in their driveways.

The Board finds that the Applicant's revised draft site plan proposes a parking plan which can meet the by-law standard for a place of worship. The Applicant is not relying on off-site parking to meet the parking standard. The Board adopts and relies on the opinion of Mr. Tedesco who concluded first, that there is no basis for the City to require more parking than what is required under the by-law; and second, reliance upon off-site parking for places of worship is historically commonplace (Exhibit 5, Tedesco Conclusions).

While the new City zoning by-law may have proposed a more conservative standard for places of worship, that by-law was repealed. In 2009, the City produced a report which reviewed the City's zoning by-law parking standards for places of worship and formed the basis for the City-wide standard set out in the new by-law. The report observed that new places of worship for religious denominations such as Evangelical Christian, Muslim, Buddhist, Hindu and Sikh may have different activity patterns and parking demands than Roman Catholic or Protestant churches, which have been the basis of place of worship parking requirements (Exhibit 9, Tab 6, p. 47). So while the report and subsequent proposed by-law recommended a common parking standard that requires more parking be provided on site than has historically been the case in the City, it is clear that activity patterns, the encouragement of public transit and walking, as well as the actual intensity of use, are also considerations. On the facts of this case, the pattern of activity shows the greatest intensity of use (and therefore requirement for parking) on Friday afternoons and during Ramadan and other selected significant days of worship. This activity pattern is very different from a Protestant church, where overflow parking on side streets is typically found on Sundays. In this instance then, to the extent there is off-site parking in the adjacent neighbourhood (or at the vacant hydro corridor or plaza), it tends to occur on Fridays, as opposed to the weekends.

Considering the existing by-law requirements for parking, the pattern of activity at the site and the proposed modifications to the property as they relate to parking, access and landscaping, the Board finds that the applicant will be in a position to provide adequate parking to meet its obligations under the by-law. There is simply no ongoing

discernable impact other than the fact that public streets accommodate vehicles which are parked legally. The Board finds that the use of public streets for parking during limited hours is not a negative impact such that a place of worship should not be a permitted use.

## **2. Overdevelopment of the site**

The City said it was the intensity of the use related to the size of the site and the lack of parking which led staff to recommend refusal. Staff was fair in its assessment, indicating that the proposal was however consistent with the Provincial Policy Statement (PPS) and conforms to, and does not conflict with, the Growth Plan. In addition, under the Neighbourhoods designation of the City's official plan, there was no dispute that places of worship are a permitted use. It was nonetheless the position of the City that the intensity of the use within an area designated as Neighbourhoods creates a land use conflict. In particular, the City witnesses testified that changes in neighbourhoods must be sensitive, gradual and generally fit into existing physical character and reinforce the general pattern in the area. In the City's view, rezoning the property to permit a place of worship is simply not a good fit.

The City relied on policies in the official plan that indicate that in areas designated as Neighbourhoods, changes through rezoning should not be permitted that are out of keeping with the physical character of the neighbourhood. In particular, policy 3.1.2.1 requires that new development be located and organized to fit within its existing or planned context. In addition, new development should locate and organize vehicular parking and access to limit impact to surroundings properties. The City argued that because the mosque has been in operation for several years, it has experience with the intensity of use and the impacts associated with that use which includes off-site parking and a high level of activity at the site itself. On this basis, the City concluded that the property is not suited to new development in the form of a mosque.

The Board finds that rezoning the property to a place of worship constitutes good planning for several reasons. First, as indicated, following the rezoning, the parking standard under the governing by-law is achieved. Off-site parking for places of worship is commonplace and represents typical activity in a neighbourhood. The difference seems to be that the mosque generates the highest level of activity on Friday afternoons (and during Ramadan). Second, the evidence was persuasive that the

mosque serves the community and has become an important focal point for Friday prayers as well as other, far less intense community-based activities. Third, access from Victoria Park, a major arterial road, is less intrusive than many places of worship which are situated in the heart of an established neighbourhood. Fourth, the Board accepts the opinion of Mr. Hall that as an adaptive re-use of a heritage home, the mosque serves to protect a significant property. The Applicant is prepared to seek designation, a significant contribution to the character of the area. Finally, while the City argued that the experience with the operation of the mosque has been negative to date, the Board finds otherwise. The reconfiguration of the site in accordance with the draft plan will result in improved parking and landscaping. Changes in the draft plan have been made to address the City's concerns with impact to the Victoria Park streetscape. Further changes, if required by the City, can be pursued through the site plan control process. With respect to occupancy of the building itself, the Applicant will be expected to adhere to all fire and building code requirements and be subject to inspection, as would any other place of worship. In this regard, the Board was also persuaded that the owners of the mosque will work with City staff to ensure complete and ongoing compliance.

### **Decision**

**THE BOARD ORDERS** that the appeal is allowed and L'Amoreaux Community North By-law No. 12466 of the City of Toronto is amended in the manner set out in Attachment "1".

The Board's Order is withheld for a period of 60 days to allow the parties an opportunity to review the precise wording of the proposed by-law amendment in the event minor changes are required. Thereafter, the Board's Order will issue and the Clerk may assign a by-law number for record keeping purposes.

"J. de P. Seaborn"

J. de P. SEABORN  
VICE-CHAIR

**ATTACHMENT 1**

**Draft Zoning By-law Amendment**

Authority: Ontario Municipal Board Decision Order No. \_\_\_\_\_

**CITY OF TORONTO**

**BY-LAW NO. \_\_\_\_\_-2012**

**To amend the City of Toronto Zoning By-law, Scarborough, known as L'Amoreaux Community North By-law No. 12466 with respect to the lands known municipally in the year 2012 as 3551 Victoria Park Avenue**

WHEREAS the Ontario Municipal Board by way of Order issued on the \_\_\_\_\_ day of \_\_\_\_\_, 2012 determined to amend the former City of Toronto, Scarborough, L'Amoreaux Community By-law No. 12466 with respect to lands known municipally, in the year 2012, as 3551 Victoria Park Avenue;

WHEREAS as authority is given to the Ontario Municipal Board under Section 34 of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended;

THEREFORE the Ontario Municipal Board orders as follows:

1. On those lands identified as 3551 Victoria Park Avenue Toronto, in the year 2012, a Place of Worship is permitted, provided that:
  - (i) the existing building, except the garage, is maintained;
  - (ii) only all or part of the existing building shall be used as a Place of Worship; and
  - (iii) parking and landscaping is provided and maintained substantially in accordance with the attached site plan.

SCOPE OF WORK

- 1- RETURNING THE PROPERTY: CONVERT THE EXISTING BUILDING TO PLACE OF WAREHOUSE
- 2- SITE ATTENTION TO PROVIDE PARKING SPACES FOR NEW USE.

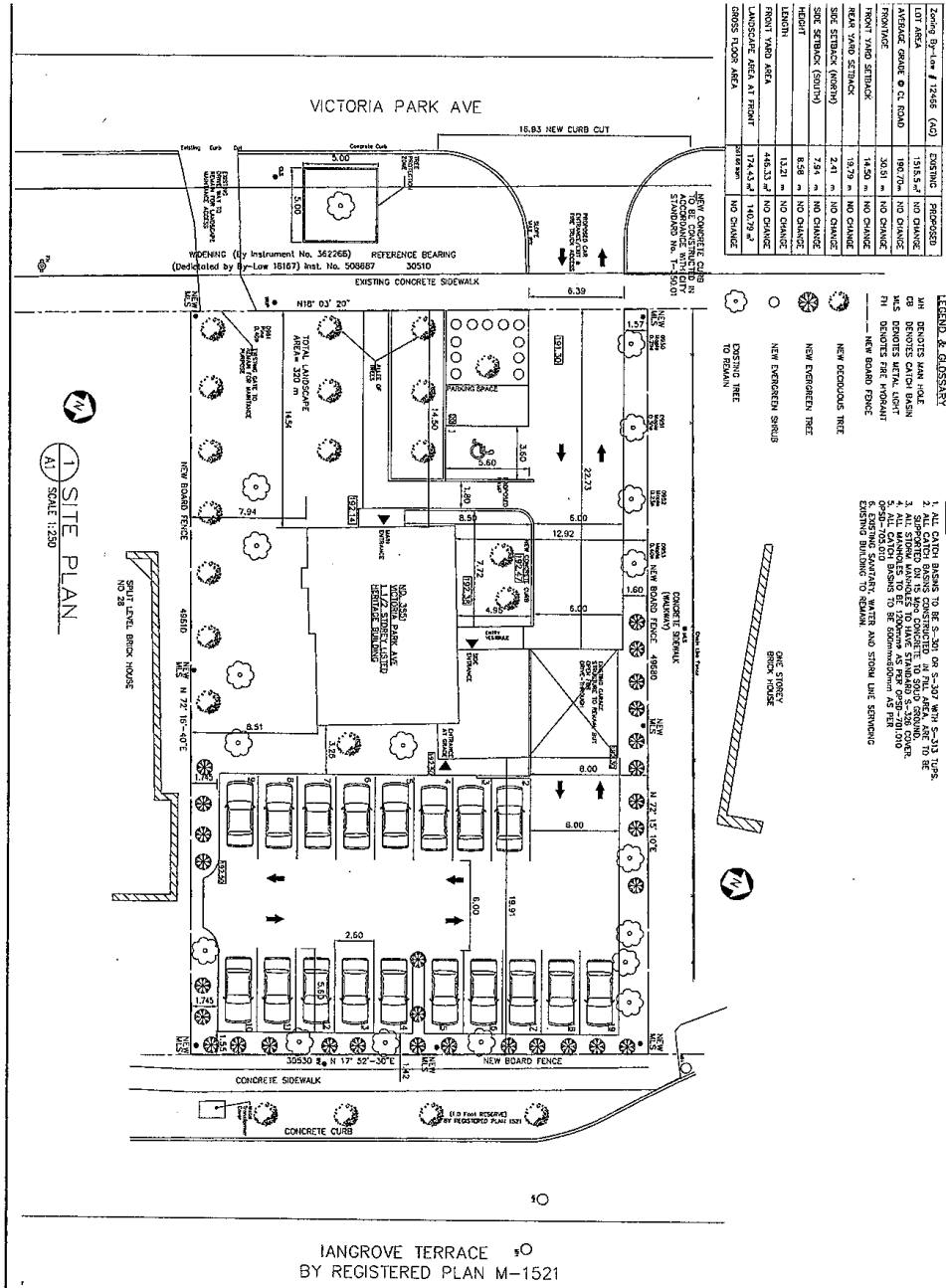
Zoning Data Matrix

Zoning By-law / Uses (A)	Existing	Proposed
LOT AREA	1515.51 sq. ft.	NO CHANGE
AREARATIO	190.70%	NO CHANGE
FRONTAGE	30.51 m	NO CHANGE
REAR YARD SETBACK	14.50 m	NO CHANGE
WEAR YARD SETBACK	13.29 m	NO CHANGE
SET SETBACK (GENERAL)	2.41 m	NO CHANGE
SET SETBACK (SCREEN)	2.54 m	NO CHANGE
HEIGHT	8.58 m	NO CHANGE
LENGTH	13.21 m	NO CHANGE
FRONT YARD AREA	442.33 sq. m	NO CHANGE
CROSS-COURT AREA	1785.83 sq. m	NO CHANGE
GROSS FLOOR AREA	NO CHANGE	NO CHANGE

- LEGEND & ABBREVIATION
- W/ DENOTES WALK-TOUR
  - OR DENOTES CARPOOL DENOMINATOR
  - FI DENOTES FIRE PROOF
  - NI DENOTES FIRE PROOF
  - NEW BOARD FENCE
  - NEW OCCULOUS NET
  - NEW EXPANDED NET
  - NEW ENLARGED SHELS
  - OPENING NET
  - TO REMAIN

NOTES:

1. ALL CATCH BASINS TO BE 5-300 OR 5-307 WITH S-213 TUBS, SPACED AT 15 M
2. ALL STORM WATER TO BE DRAINAGE TO STORM MAINS
3. ALL STORM WATER TO BE DRAINAGE TO STORM MAINS
4. ALL CATCH BASINS TO BE EQUIPPED WITH S-213 TUBS
5. ALL CATCH BASINS TO BE EQUIPPED WITH S-213 TUBS
6. EXPANDED SANITARY WATER AND STORM LINE BRIDGING EXISTING BUILDING TO REMAIN



1005 VICTORIA PARK AVE  
BY REGISTERED PLAN M-1521