

ISSUE DATE:

October 3, 2012



PL111104

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Fung Loy Kok Institute of Taoism 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 Zoning By-law 1767, as amended, of the Town of Markham for the purpose of adding a place of worship to the list of permitted uses in the "Single Family Special Residential Third Density (SR3)" zone category on an approximately 0.18 hectare (0.44 acres) parcel of land located at 378 Steeles Avenue East in order to permit the demolition of the existing dwelling and to construct a new 304 square metre (3,272 square feet) flat roof building cantilevered one (1) storey above the existing grade with a total height of 8 metres (26 feet) above the existing grade to allow the development of a place of worship
Town of Markham File No. ZA 08 125376
OMB File No. PL111104

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:	Fung Loy Kok Institute of Taoism
Subject:	Site Plan
Property Address/Description:	378 Steeles Avenue East
Municipality:	Town of Markham
OMB Case No.:	PL111104
OMB File No.:	PL111051

RECEIVED

APR - 3 2013

CITY OF MARKHAM
CLERKS DEPT.

BEFORE:

M.A. SILLS
MEMBER

) Wednesday, the 3rd day of
)
) October, 2012

THIS MATTER having come on for public hearing and the Ontario Municipal Board (the "Board"), in its Decision issued on June 26, 2012, having withheld its Order pending notification that the parties have finalized the conditions of Site Plan Approval;

THE BOARD ORDERS that the appeal with respect to the zoning by-law amendment is allowed, and Zoning By-law No. 1767 of the Town of Markham (now the City of Markham) is hereby amended in the manner set out in Attachment "1" to its Decision issued on June 26, 2012. The Board authorizes the municipal clerk to assign a number to this by-law for record keeping purposes;

AND THE BOARD ORDERS that in accordance with its Decision issued on June 26, 2012, the site plan is approved.

A handwritten signature in black ink, appearing to read "Jeanne Hogg". The signature is fluid and cursive, with a large initial "J" and "H".

SECRETARY

RECEIVED

2012

ISSUE DATE:

JUNE 26, 2012



Ontario Municipal Board

Copy: Legal
Gary Sellers
Lucy
PL111104

Fung Loy Kok Institute of Taoism 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 Zoning By-law 1767, as amended, of the Town of Markham for the purpose of adding a place of worship to the list of permitted uses in the "Single Family Special Residential Third Density (SR3)" zone category on an approximately 0.18 hectare (0.44 acres) parcel of land located at 378 Steeles Avenue East in order to permit the demolition of the existing dwelling and to construct a new 304 square metre (3,272 square feet) flat roof building cantilevered one (1) storey above the existing grade with a total height of 8 metres (26 feet) above the existing grade to allow the development of a place of worship

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Fung Loy Kok Institute of Taoism

Site Plan

378 Steeles Avenue East

Town of Markham

PL111104

PL111051

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JUN 28 2012

**TOWN OF MARKHAM
CLERKS DEPT**

APPEARANCES:

Parties

Fung Loy Kok Institute of Toaism

Town of Markham

Counsel

A. Brown

B. Ketcheson

Participants

Brian Finer

Jinwei Zhang

Toinette Bezant

Louis Koutsaris

Marion Matthias

DECISION DELIVERED BY M. A. SILLS AND PARTIAL ORDER OF THE BOARD

The matter before the Board is an appeal by Fung Loy Kok Institute (FLKI) of Taoism (Applicant/Appellant) resulting from the refusal of the Council of the Town of Markham (Town) to enact a proposed amendment to Zoning By-law 1767 (ZBL), and failure to make a decision with respect to its application for Site Plan Approval for the property located at 378 Steeles Avenue East, in the Town of Markham.

Background

The subject property is located on the north side of Steeles Avenue East, east of Valloncliffe Road and west of Laureleaf Road. This L-shaped parcel has a lot area of approximately 0.18 hectares and is currently occupied with a two-storey, single detached dwelling.

Surrounding land uses include single detached dwellings to the north and east and across Steeles Avenue to the south. A newly constructed lane-based townhouse project is located further west at Steeles Avenue and Valloncliffe Road. An eight-lot single detached subdivision was recently registered for the lands to the west. Other uses on this stretch of Steeles Avenue include a retail plaza and gas station (southeast corner of Laureleaf Road and Steeles Avenue), and a gas station, place of worship, and garden centre (north side of Steeles Avenue near Bayview Avenue). Currently, there are four places of worship in the vicinity of the subject property; three on Bayview Avenue and one on Steeles Avenue, east of Bayview Avenue.

The property is designated Urban Residential – Low Density Housing by the Thornhill Secondary Plan. This designation permits low density housing and a range of public, institutional and recreational uses. The Town's Official Plan (OP) permits places of worship within the Urban Residential designations subject to certain criteria. The property is zoned Single Family Special Residential Third Density (SR3) under Zoning By-law 1767.

The Applicant is seeking a Zoning By-law Amendment (ZBA) to permit a place of worship on the property. The purpose and effect of the proposed ZBA is to add "place of worship" to the list of permitted uses on the subject property. The ZBA limits the use of the proposed premises to a place of worship for the practise of religious rites and appropriate accessory uses, and specifically prohibits a commercial fitness centre use.

A Stormwater Management Report, Traffic/Parking Assessment Study, Acoustical - Noise Impact Study and Planning Rationale Reports have been submitted in support of the proposal.

The Town Engineering Department and the City of Toronto have reviewed the proposed stormwater control system and site servicing and grading plans, and have advised that these are acceptable.

Steeles Avenue is a City of Toronto arterial roadway. Both the Town's Engineering Department and the City of Toronto Transportation Services Department have reviewed the Traffic Study and advised they have no objection to the proposal from a traffic operations perspective.

The Acoustical - Noise Impact Study concluded that no noise attenuation measures would be required. An updated Study will be required as a condition of site plan approval.

Town planning staff recommended approval of the ZBA, and approval in principle of the site plan. On October 4, 2011, Town Council rejected the staff recommendation and denied the proposed ZBA. The Minutes of the Council Meeting (Exhibit 2 – Tab 20) do not disclose any reasons for refusal of the application.

The Board granted participant status to local residents Brian Finer, Jinwei Zhang, Toinette Bezant, Louis Koutsaris and Marion Matthias.

The proposal

The Applicant proposes to establish as a Taoist temple and shrine that will carry on the teachings and practises of the Taoist religion, including Taoist Tai Chi, Taoist Chanting, Taoist Meditation and Ceremonies. The services associated with these practises are conducted at varying times, on various days throughout the week. The number of

participants expected at any given session is 15 to 20. As all special festivals/significant days of worship ceremonies are held at the Fung Loy Kok International Centre near Orangeville, no large gatherings are expected to occur at the Steeles Avenue location.

The Applicant originally intended to establish the proposed place of worship within the existing dwelling on the property. A small addition was to be added to the home, and 18 parking spaces were to be provided at the rear of the property.

A public information meeting was held on April 15, 2009, at which time local residents expressed several concerns including overflow parking, noise, air and light pollution, traffic congestion and use of the building for commercial purposes. As a result of these concerns, the Applicant revised the proposal in consultation with Town planning staff. The revised proposal includes the demolition of the existing 482 square metre dwelling in favour of constructing a new 304 square metre, two-storey, flat roof building. At the request of Town planning staff, 30 on-site parking spaces are to be provided.

Ms. Brigitte Shim, a multi-award winning architect and principle of the Shim-Sutcliffe Architects firm, provided a detailed description of the building design and landscape plan. She submitted that her firm was intentionally retained by FLKI ~~FYI~~ in September 2008 due to their expertise and extensive experience with designing sacred spaces.

The proposed new building will be centrally located on the property and have a footprint similar to that of the existing dwelling. The structure will be cantilevered one-storey above grade by six concrete piers, and provide a column-free worship space area of approximately 192 square metres (includes the vestibule spaces). The open area under the building will be used for parking; the open space directly beneath the worship area will serve as an alley to allow vehicles to access the parking spaces.

Access to the building will be via two sets of exterior stairs and an exterior elevator. An open air terrace of approximately 120 square metres is to be located on the east side of the building. Ms. Shim contended that the terrace area will not be used for worship space, but rather, is a design element which is necessary in order to balance the building from both a visual and a structural perspective.

The front and rear building cladding includes sets of four vertical fins with windows in-between. Lighting for the parking area will be installed on the underside of the building and on low level bollards. Solar panels, to be located on the roof of the building, will generate electric power for the municipal grid.

The landscape plan includes a contemplative garden at the rear of the property which will also serve as a privacy buffer. A grass paving system to accommodate 6 additional parking spaces is to be located adjacent to this garden; however, it is not anticipated that these spaces will need to be utilized.

Existing trees will be retained and additional vegetation and landscaping is to be added. Landscape buffers (comprised of indigenous plant species) include a 2.3 metres buffer adjacent to the west property line; a 3 metre buffer adjacent to the east property line; and, a 12.19 metre wide buffer in the form of a landscaped garden adjacent to the north property line. A 1.8 metre wood privacy fence will be provided on the west, east and north property lines and a 1.2 metre screening wall will be provided adjacent to Steeles Avenue. The existing circular driveway access from Steeles Avenue will be replaced with a single driveway to allow for increased landscaping across the frontage of the property.

Ms. Shim submitted that in developing the proposed design, they have been involved in several meetings/consultations with municipal staff, Town Council and local residents. She contended that as a result of concerns expressed by local residents, many design changes have been made in an attempt to mitigate impacts on the community and to ensure the proposal is a good fit for the neighbourhood. She contended they have “worked hard to address” all impact concerns of area residents, particularly with respect to privacy and overview. Ms. Shim views the proposal as an exemplary project from both a design and sustainability perspective.

Issues

The parties have a difference of opinion with respect to three aspects of the proposal; parking requirements, compatibility with the surrounding neighbourhood (particularly with respect to the open terrace), and the requirement for an Official Plan Amendment (OPA).

Ms. Lindsay Dale-Harris (land use planner) and Mr. Nick Poulos (traffic engineer) provided expert opinion evidence on behalf of the Applicant/Appellant. Mr. John Bousfield (principle of Bousfield's Inc.) was originally retained by the Applicant in 2008. Ms. Dale-Harris (Bousfield's Inc.) took carriage of this matter in November 2011. Mr. Poulos was retained by the Applicant/Appellant in May 2008 for the purpose of completing a Traffic and Parking Study.

Mr. Franco Romano (land use planner) and Mr. Ralph Bond (traffic engineer) provided expert opinion evidence on behalf of the Town. Mr. Romano was retained by the Town in November 2011, while Mr. Bond was retained in February 2012.

Evidence and findings

Parking

Mr. Poulos told the Board that while he recommended 26 parking spaces based on anticipated usage, the Applicant/Appellant is prepared to provide 30 spaces in accordance with the standards established by the existing by-law. While he conceded that should the "clerical error" in the by-law be corrected, 53.5 spaces would be required, he "has no concerns what-so-ever" that 30 spaces will be sufficient to accommodate the needs of this or any future place of worship that could reasonably be expected to be accommodated in the building. Mr. Poulos contended that he "has never seen a place of worship this small before." In his opinion "this space is just too small for other religious groups."

The Town contends the number of parking spaces the Applicant/Appellant is proposing (30 spaces) is not sufficient, and fails to meet the standard that was intended by the ZBL.

The purpose of the parking by-law is to establish the number of spaces required based on the building's maximum capacity. However, a clerical transcription error which occurred in the administrative processing of the ZBL document resulted in the by-law adopted by Council incorrectly containing the word 'multiple' instead of 'divide'. This error resulted in a miscalculation of maximum capacity.

In this case, in accordance with the by-law, the maximum capacity has been determined to be 120 (160 multiplied by 0.75), requiring that 30 parking spaces be provided. However, if the clerical error had not been made, the maximum capacity would be 214 (160 divided by

0.75). Based on a maximum capacity of 214, the parking requirement would be 53 spaces.

Mr. Bond submitted that while he agrees the parking needs of this particular place of worship is "very low", it is important to consider future development and/or user of the site. Considering a permitted capacity of 214 persons, the provision of 53 spaces is appropriate and will allow flexibility for the future.

Under cross-examination, Mr. Poulos affirmed it was his opinion that establishing the number of parking spaces required based on maximum capacity is appropriate. Based on the correct calculation, 30 parking spaces would be required where the maximum capacity is 120.

In response to the opinion evidence of Mr. Poulos, Mr. Brown subsequently introduced a revised ZBA (Exhibit 15). The effect of the revision is to restrict the maximum capacity to 120, thereby establishing that 30 parking spaces will be provided in accordance with the "corrected" by-law. Mr. Brown submitted that this revision puts an end to the parking issue. The Board agrees.

It is worthy of note that at the time of this hearing, the impugned by-law remains in-force. Despite the error having been identified in about August or September of 2011, it was not until February 2012 that Council approved a resolution to go forward with changing/correcting the by-law. That aside, the Board accepts that the calculation error effectively misrepresents the intent and purpose of the parking by-law, and should not be relied upon.

The Board is satisfied that a maximum occupancy of 120 persons is sufficient for the expected activity level of the proposed place of worship. In view of this, the provision of 30 parking spaces is appropriate. In the event some future use leads to a greater demand for parking, the property owner will have to seek the requisite approvals.

Compatibility

Ms. Dale-Harris is of the opinion that there are no issues with respect to compatibility. The proposal represents a modest religious institution which has been tastefully designed by an award-winning architect. The structure will be constructed to a sustainable design

which is sensitive to surrounding uses and the landscape buffering and privacy fencing will mitigate privacy, overlook and nuisance impacts.

Ms. Dale-Harris's submitted the proposed ZBA is consistent with the guiding principles established by Provincial planning legislation and is consistent with the intent of the OP.

The proposal has undergone an extensive review process which has resulted in the proposed ZBA being more restrictive in nature than would normally occur, largely as a result of the physical and functional concerns expressed by local residents. She contended that if the structure as proposed was intended to be used as a residential dwelling, there would be no restrictions with respect to architectural design, patio usage or parking.

The proposed structure has less gross floor area than many other buildings in this area, and conforms to all other standards of the ZBL with the exception of building length. In contrast, reduced side yard and rear yard setbacks, and no restrictions with respect to gross floor area, have been approved for a new subdivision in the immediate vicinity of the subject property.

Ms. Dale-Harris submitted that the development proposal is consistent with policies of the Provincial Policy Statement (PPS) respecting the efficient use of lands and promoting a mix of uses (section 1.1.3). The subject property is located along a mixed corridor section of Steeles Avenue and the proposed development represents a good infill project. The proposal is an efficient use of lands and existing infrastructure and is consistent with the land use pattern in this area (section 1.1.3.2). The site is fully serviced and both the massing and architectural design of the building will fit in well from a physical and functional perspective. The building will feature rooftop solar panels, which will generate electric power for the municipal grid (section 1.8.2).

The property can be easily, conveniently and safely accessed from/to Steeles Avenue, and the number of on-site spaces being provided is anticipated to be more than adequate to accommodate the parking need generated by facility. The increase in traffic volumes resulting from this development will be very minor and is not expected to interfere with the traffic functioning on either Steeles Avenue or area roadways.

Ms. Dale-Harris submitted that the development proposal supports and encourages the guiding principles of the Growth Plan (GP) with respect to managing growth. In particular, the proposal encourages the development of “complete communities” (section 2.2.2 h). Locating the proposed facility on a roadway which serves as a major transit corridor promotes the objective of “reducing dependence on the automobile” (section 2.2.2 d).

Mr. Romano was of the opinion that the architectural design of the proposed place of worship, particularly the open terrace, presents issues with respect to compatibility. It was his opinion that the OP did not intend for this type of built-form to be accommodated within the centre of a residential neighbourhood. The ZBL does not permit a cantilevered building, and the open terrace has the potential to result in noise, overlook and privacy impacts to neighbouring property owners. He further contended that enforcement officials would have a “difficult time policing” the use of the terrace.

Several area residents made submissions to the Board in opposition to the proposed place of worship.

Ms. Toinette Bezart spoke on behalf of the Bayview Glen Residents Association. She told the Board their primary concerns relate to parking and built-form compatibility. For more than 20 years this neighbourhood has had to live with serious grid lock and overflow parking issues created by four places of worship in this area. The Town’s parking by-law is flawed and local residents “should not have to suffer the consequences of a clerical error.” She told the Board they also do not believe a cantilevered building design is compatible with the surrounding neighbourhood, nor is it sympathetic to the character of this residential neighbourhood. Approval of this project would set an undesirable precedent not only in this neighbourhood, but throughout the Town of Markham.

In reply to a question from the Board, Ms. Bezart stated she would not have an issue with the proposed building design if the structure was intended to be used as a residential dwelling.

Mr. Brian Finer contended that the proposed building design is akin to “a parking lot with a structure built over it.” The on-site parking will result in noise pollution from snow removal equipment, the sounds of motor vehicle engines, the honking of horns, the beeping of

alarm systems, and the slamming of doors. Carbon monoxide emissions and light pollution were also of concern to Mr. Finer.

Mr. Louis Saris spoke on behalf of the residents of Mark V Developments and Mr. Parichehr Missaghi, who recently purchased the property at 2 Laureleaf Road. He also expressed concerns about privacy, built-form, compatibility, and stormwater management.

Ms. Marion Mattias lives in the Heritage District of Thornhill. She has a keen interest in the planned functioning of the area and has attended several meetings dealing with planning matters. Her issues include parking, compatibility, built-form, road capacity and stormwater management. It is her view that the proposed built-form does not fit in with this community.

Mr. Jinwei Zhang spoke on behalf of his family who purchased the property at 4 Laureleaf Road in May 2010. Their home is a bungalow with a swimming pool in the backyard. The rear yard boundary line of their property abuts the furthestmost east side yard of the subject property, and they are concerned that their privacy will be compromised by the proposal's parking area and open terrace. Mr. Zhang told the Board that his family was "stunned by this proposal that appeared from nowhere."

The Board is satisfied that the concerns of local residents have either already been addressed, or will be addressed in the site plan approval process. For the most part, the same concerns were expressed about the original proposal at the public meeting in April 2009. Despite the Applicant having devised a completely different proposal, many building design changes, and the completion of several technical studies/reports, these same concerns were repeated at this hearing.

While it is apparent that some local residents are not convinced that their concerns have been or will be adequately addressed, the Board cannot ignore the evidence. For example, while some of the local residents still contend that the proposed place of worship will impact traffic, the Traffic Study (which has been reviewed by Town and City of Toronto transportation experts) indicates otherwise. Similarly, despite the findings of the Noise Study, the Stormwater Management Study, the Parking Assessment Study, and the requirement for site plan approval, residents continue to insist the proposal will present problems with respect to noise, parking, and stormwater management.

Much of the argument related to incompatibility was premised on the fact that there are no other cantilevered buildings in this area. In my view, uniqueness and innovative design does not equal incompatibility. The subject property is located within a mixed use corridor on the periphery of a residential neighbourhood. Photographs of the surrounding area clearly reveal that both the single-detached and the multi-residential component of this neighbourhood is comprised of various sized buildings featuring a variety of design elements. The height, massing and footprint of the proposed building are similar to that of the existing structure and many other residential dwellings in this area. The evidence before the Board was that if this structure were to be used a residential dwelling the only approval that would be required is a minor variance for building length. In fact, Ms. Bezant stated she would not have an issue with the proposal if the building was to be used as a residential dwelling. It is also worth noting that aside from providing a privacy buffer and beautifying the site, the elaborate landscaping and privacy fencing planned for the property will likely shield the under portion of the structure from the view of the public.

The Board is satisfied that the proposal is sensitive to the surrounding neighbourhood and will not result in the creation of unacceptable impacts. The building has been designed in a tasteful manner which is considerate of the abutting properties and the neighbourhood as a whole. Places of worship are commonly located in residential areas and have long been considered an acceptable component of a residential neighbourhood.

Requirement for an Official Plan Amendment

Ms. Dale-Harris submitted that the Urban Residential designation permits the property to be used as a place of worship (section 3.3.1 b), subject to the policies established in section 2.17 – Places of Worship. In accordance with this policy, an OPA would only be required if the subject site was greater than 2.5 hectares (section 2.17.1 b), which is not the case.

Ms. Dale-Harris takes the position that the only planning approvals required are a zoning by-law amendment and site plan approval. She testified that at no time prior to this hearing did the municipality ever state that an OPA was required. In fact, Town planning staff has consistently taken the position that an OPA is not required. In support of this contention, she referred the Board to the planning report dated January 13, 2009 and September 13, 2011, which states:

The Town's Official Plan permits places of worship within the URBAN RESIDENTIAL land use designations subject to certain criteria (i.e. appropriate access, impact of traffic, built form, location, etc.) and requires an Official Plan amendment for sites greater than 2.5 hectares. The property has an area of approximately 0.18 hectares and therefore an Official Plan amendment is not required.

Ms. Dale-Harris contended that the proposal has been scrutinized in accordance with the Places of Worship policy and the intent and purpose of the locational criteria has been satisfied. In support of this contention, she again referred the Board to the staff planning report:

The subject property is located on an arterial road (Steeles Avenue) one lot away from the intersection with Laureleaf Road. The intent of this criterion is to allow for potentially two accesses to a site; one from the arterial road and one from a local road. In the existing context it would be problematic to have an access from Laureleaf Road due to the existing configuration of the road with a central median and proximity to the Laureleaf and Steeles Avenue intersection. The City of Toronto has advised that they have no objection to the proposed location of the place of worship with access limited to Steeles Avenue and the Traffic Study supports this. It is also noted that the proposed place of worship will be relatively small in scale, with limited traffic impacts.

Mr. Romano submitted that the requirement for an OPA is triggered by the following provisions of the Places of Worship policy:

Planning Approvals required to Permit Places of Worship

s. 2.17.1 b) vii) – Proposals for places of worship that do not comply with the locational criteria identified in s. 2.17.1 c) i) shall require an amendment to this Plan.

Criteria for Evaluating Applications for Place of Worship Approval

s. 2.17.1 c) i) - where the place of worship site is located in the URBAN RESEDENTAL or COMMERCIAL (Community Amenity Area) designation it shall be located:

- on a major collector road at the intersection with an arterial road; or
- on a major collector road at the intersection with an arterial road; or
- on a major collector road at the intersection with a collector road and at a location which is in proximity to other institutional, commercial, mixed use or higher density residential uses; or
- at a location specifically identified in this Plan or an approved implementing Secondary Plan

Mr. Romano argued the policy direction is indisputable; a place of worship must be located at an intersection. The Places of Worship policy clearly establishes that additional evaluation criteria, including restrictions on location is necessary in order to ensure greater compatibility with respect to traffic and parking. The purpose of this particular criterion is to ensure that two accesses to/from the site can be provided. Mr. Romano contended that this locational criterion is a prerequisite in the consideration of a proposal to establish a place of worship in an urban residential area; this policy "cannot be overridden by interpretation."

In this instance, while the subject property fronts onto an arterial road, it is not located at an intersection. Under the circumstances, an OPA would be required in order to allow a place of worship on the subject property. In was his professional opinion that it is entirely reasonable for the Town to want to limit the amount of properties which can be used for other than residential purposes and to have a policy which sets out that places of worship must be located at an intersection.

Under cross-examination, Mr. Romano conceded there is no issue with respect to access to the site. In response to a question from the Board, Mr. Romano acknowledged that generally, having a point of access located at or near an intersection, could interfere with the efficient flow and/or movement of traffic through that intersection. However, he countered that for this very reason, an argument could be made that it is important to locate a place of worship at an intersection in order to ensure the potential exists for an alternate access.

Notwithstanding section 2.17.1 b) vii), the Board can find no evidence which could support the need for a formal OPA. The Board wants to make it clear that it came to this conclusion based on a very studied analysis. This Member did not come to the conclusion lightly. Mr. Romano took the position that the OP prevents the site from being used for a place of worship; therefore, an OPA would be required before the proposed ZBA can be considered. In taking this position, Mr. Romano relies entirely and solely on section 2.17.1 vii). The Board does not agree that any particular provision, in this case section 2.17.1 c) i) of the Places of Worship policy must be strictly adhered to for the application to be in compliance with the OP. Rather, the test is whether or not the proposal meets the overall intent and purpose of the policy. If the test is met, there is no planning purpose or justification for requiring an OPA.

OP policies are not statutes; rather, these are intended to provide a framework to guide future development within a municipality in accordance with the principles of good land use planning. The Board has long held that OP policies should be given liberal interpretation with a view to furthering policy objectives (*Bele Himmell Investments Ltd. v. City of Mississauga et al* [1982] 13 O.M.B.R. 17).

The Town's OP permits places of worship within the Urban Residential designation subject to certain criteria. The Places of Worship Study recognized that places of worship must be located in a manner that respects good planning principles. The objective of the Places of Worship policy is to mitigate the potential for impacts related to traffic, parking and compatibility with surrounding land uses. The evaluation criteria set out in section 2.17.1 c) was intended to provide a means to assess the planning merits of a proposal to develop a new place of worship.

The locational criteria (section 2.17.1 c)) is for the purpose of minimizing traffic functioning impacts; being sited at an intersection allows the potential for two accesses. In my view, the true intent of the evaluation criteria is clearly defined by section 2.17.1 c) – iv), v), vi) and vii), as follows:

- iv) The impact of the proposed place of worship can be effectively managed to mitigate any negative effects on the amenity of the surrounding area to an acceptable level, having regard for the type and character of surrounding uses and the possible impacts of the proposal on these uses with respect to factors such as ... traffic and parking;
- v) The place of worship site has adequate and appropriate access for vehicles and is accessible by pedestrians, and there is existing or future availability of public transit, within short walking distance;
- vi) The impact of traffic generated by the proposed place of worship on the surrounding uses can be effectively managed to mitigate any negative impacts;
- vii) Off-street parking and internal traffic circulation on the place of worship site is consistent with the Town's requirement or is justified to the Town's satisfaction based on submission of a traffic study and a parking study.

The evidence before the Board was that the proposed place of worship is small in scale and not expected to have more than 15 to 20 persons attend at the site at any given time. The maximum number of vehicles that can be accommodated on-site is 30 and this number is sufficient to accommodate a maximum capacity of 120. The revised ZBA limits the maximum capacity to 120.

The Traffic Study indicated that the traffic volume expected to be generated by the facility is negligible. The Town's Engineering Department and the City of Toronto Transportation Department have reviewed this Study and advised they have no objections with respect to the proposed location of the place of worship from a traffic operations perspective, or with access being limited to Steeles Avenue. Town planning staff further concluded that "it would be problematic to have an access from Laureleaf Road due to the existing configuration of the road with a central median and proximity to Laureleaf and Steeles Avenue intersection."

From a traffic functioning perspective, while the Board can agree that it may be appropriate to require a large place of worship with high activity levels to have two accesses, the same is not true of a smaller religious institution which experiences low activity levels, such as the Fung Loy Kok Institute of Taoism

Mr. Romano took the position that the purpose of the policy is definitive; a place of worship "must be located at an intersection" as a prerequisite in the approval of a place of worship within an urban residential area. The Board finds that such a notion fails to take into account the true essence of the policy intent. In fact, the planning evidence on both sides identified that having a site access(es) located in close proximity to an intersection, particularly a signalized intersection, could potentially result in the creation of the very impacts to traffic that the policy intended to mitigate.

Ultimately, I find it more reasonable to conclude that the locational criteria in section 2.17.1 c) i) is directly related to section 2.17.1 b) i). In other words, where the place of worship is expected to serve a large congregation and experience high activity levels, it may be necessary to provide two accesses in order to ensure that traffic functioning is not adversely impacted. Setting aside the foregoing, the Board finds that the purpose for requiring a formal OPA has not been established. The policy sets out that an application for an OPA and an application for a ZBA is to be evaluated under the exact same criteria. It then follows that the OPA exercise has in effect been performed in substance; if the traffic/transportation functioning is satisfied for the purpose of a ZBA, it is also satisfied for the purpose of an OPA and the intent of the policy is met.

While not significantly determinative with respect to this matter, the Board finds that the history of this proposal also cannot be ignored. From the pre-consultation stage (2008),

up until the time that the ZBA application went before Town Council (October 2011), Town planning staff took the position that an OPA was not required. Ms. Dale-Harris testified that at no time prior to this hearing had the municipality ever stated that an OPA was required. The issue related to the requirement for an OPA only arose after the Town retained an outside planning consultant as a result of this appeal.

The Board is satisfied that the intent and purpose of the locational criteria is being met. Both Town and City of Toronto transportation experts have evaluated the site and concluded that the location is satisfactory from a traffic functioning perspective. The traffic impact is benign, the access onto Steeles Avenue is satisfactory, and a second access is neither warranted nor desirable. Accordingly, the intent of the policy is satisfied, and a formal OPA is not required.

THE BOARD ORDERS the appeal is allowed and Zoning By-law No. 1767 of the Town of Markham is amended as set out in Attachment "1" to this Order.

THE BOARD ALSO ORDERS that the site plan is approved.

The final Order of the Board will be withheld pending notification that the parties have finalized the conditions of Site Plan Approval, to occur no later than 60 days from the date of this disposition.

"M. A. Sills"

M. A. SILLS
MEMBER

A by-law to amend Zoning By-law 1767, as amended

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM HEREBY
ENACTS AS FOLLOWS:

1. By-law 1767, as amended, is hereby further amended as it applies to the lands outlined on Schedule 'A' attached hereto as follows:

Notwithstanding and other provisions of By-law 1767, as amended, the following provisions in the By-law shall apply to those lands shown on Schedule 'A' to this By-law. All other provisions of the By-law, unless specifically modified/amended by this section, continue to apply to the lands subject to this By-law.

- 1.1 For the purposes of this By-law, the following definitions shall apply:

- a) **PLACE OF WORSHIP** means a premises used by a registered charitable religious group(s) for the practice of religious rites, including *accessory uses*.
- b) **COMMERCIAL FITNESS CENTRE** means a premises in which facilities are provided to the general public for recreational or athletic activities.
- c) **ACCESSORY USE** means a use naturally and normally incidental, subordinate and exclusively devoted to a main use and located on the same lot, and the area of the accessory use shall exclude any assembly areas with potential occupancy greater than the worship area(s).
- d) **WORSHIP AREA** means the *net floor area* whether above or below established grade, within the walls of sanctuary(s), halls(s) or meeting room(s) that a religious group uses for the practices of its religious rites, including any balcony or other area that, by the removal or opening of any walls or partitions, can expand the area of the sanctuary, hall or meeting room(s), and any choir or musicians area. *Net floor areas* intended solely for the use of the worship group leader, such as alter or pulpit areas are not included in the *worship area*.
- e) **WORSHIP AREA CAPACITY** means the number of persons who may occupy the *worship area* in accordance with the provisions of Section 1.4 of this By-law.
- f) **WORSHIP AREA FLOOR AREA** means the *net floor area* of all floors in a *building* used as *worship area(s)*.

- 1.2 Additional Permitted Uses

The following additional use is permitted:

a) *Place of Worship*

1.3 Prohibited Uses

The Following use is prohibited:

a) *Commercial Fitness Centre*

1.4 Zone Standards

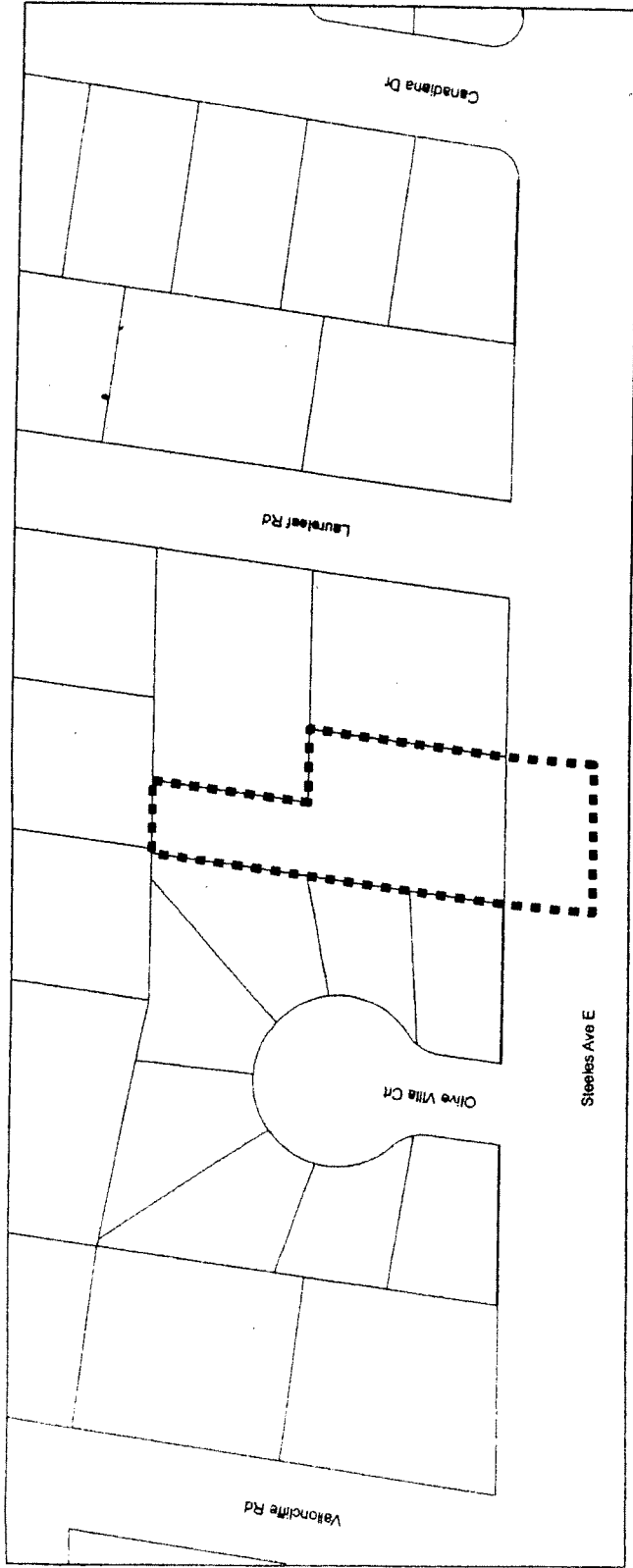
The following specific zone standards apply to a *place of worship*:

- a) Minimum required *front yard* – 9.0 metres
- b) Minimum required *rear yard* – 43.0 metres
- c) Minimum required westerly *interior side yard* – 7.0 metres
- d) Minimum required easterly *interior side yard* – 3.0 metres
- e) Maximum Gross Floor Area – 310 square metres
- f) Maximum Height – 8 Metres
- g) Minimum *landscape buffer* adjacent to rear lot line – 12 metres
- h) Minimum *landscape buffer* adjacent to westerly lot line – 2.3 metres
- i) Minimum *landscape buffer* adjacent to easterly lot line – 1.2 metres
- j) Maximum *Building Depth* – 19.8 metres
- k) Maximum number of persons who may occupy the *worship area* – 120
- l) Minimum number of parking spaces required – 30 *parking spaces*

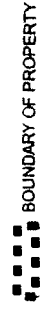
1.5 Special Site Provisions

The following additional provisions apply:

- a) All *place of worship* uses and *accessory uses* shall be permitted only within a wholly enclosed building.
 - b) The *rear lot line* is deemed to be the *lot line* furthest from Steeles Avenue.
- 2 The provisions of By-law 1767, as amended, with respect to parking standards for *places of worship* shall not apply.
- 3 All other provisions of By-law 1767, as amended, not inconsistent with the provisions of the by-law shall continue to apply.



BY-LAW SCHEDULE "A" TO AMEND BY-LAW 1767



BY-LAW AMENDMENT NO. 1767 PASSED
DEVELOPMENT SERVICES COMMISSION

(MAYOR) (CLERK)
Checked By: DATE

NOTE: This Schedule should be read in conjunction with the signed original By-Law filed with the Town of Markham Clerk's Office