

**ROCKAWAY BOROUGH LAND USE BOARD**  
**DISPOSITIONAL RESOLUTION**  
**ISLAMIC CENTER OF MORRIS COUNTY**  
**APPLICATION #006 (2014)**

**WHEREAS**, Islamic Center Of Morris County (the “Applicant” or “ICMC”) has applied to the Borough of Rockaway Land Use Board (the “Board”) for an interpretation or ruling on a special question pursuant to N.J.S.A.40:55D-70b with respect to property located in the HT/LI (High-Tech/Light Industrial) and R-1 Residential Zones, which property is commonly known as 1 Mannino Drive and designated as Block 40.01, Lot 76.04, on the official Tax Map of the Borough of Rockaway, Morris County, New Jersey;

**WHEREAS**, the Applicant is the owner of the subject property;

**WHEREAS**, the subject property is located on the west side of Mannino Drive, and is improved with a 1-story brick building containing 14,850 s.f. and a related 92-space parking area;

**WHEREAS**, by Resolution adopted by the Rockaway Board of Adjustment on February 5, 2008 (which Resolution was erroneously dated “February 5, 2007”, and is hereinafter referred to as the “2008 Resolution”), the Applicant received conditional use approval to operate a mosque on the premises;

**WHEREAS**, the approval was subject to 19 conditions enumerated in the 2008 Resolution;

**WHEREAS**, the Applicant requests the Board to excise condition #11, which prohibited cooking on the premises, and to clarify and/or modify conditions #4, #5, #6, #15, and #19;

**WHEREAS**, the Applicant seeks no new variance relief in connection with the present application;

**WHEREAS**, the Board has also considered all testimony, reports, exhibits, and other evidence submitted in connection with the application;

**WHEREAS**, the application was the subject of duly noticed public hearings held on February 24, 2014 and April 1, 2014, during which the Board reviewed and considered all of the documentary evidence submitted by the applicant, the comments of the Borough Engineer, the Borough Planner, the testimony witnesses presented by the applicant and its

witnesses and the comments from the public, if any, from which the Board makes the factual findings and conclusions set forth below;

**WHEREAS**, pursuant to N.J.S.A. 40:55D-25c, the Class I and Class III members of the Board did not participate in the consideration of the requested modifications to the previously granted “d” variance approval;

**WHEREAS**, service of adjoiners, if required, and proof of publication has been prepared, served and filed by the applicant in conformity with N.J.S.A. 40:55D-12;

**WHEREAS**, the Applicant was represented by Alyse Hubbard, Esquire, in connection with the application;

**WHEREAS**, the Applicant presented testimony to the Board from Adam Kandil, a representative of the Applicant;

**WHEREAS**, in addition to the application and the documents submitted therewith, the Applicant entered into evidence the following exhibits:

- A-1 Weekly Activities at ICMC;
- A-2 ICMC Planned Activities;
- A-3 Final architectural plan, marked to show location of proposed kitchen area;
- A-4 Architectural plans, “Proposed Interior Alteration for ICMC”, prepared by Nassir Almukhtar, R.A., dated 3/5/2007, revised through 7/19/07, consisting of 3 sheets;
- A-5 2007 Agreement between ICMC and Weldon Quarry Co., L.L.C.;

**WHEREAS**, Tina Marie Green, who resides at 339 W. Main Street, Rockaway, offered into evidence as “G-1” material printed from the Applicant’s website stating that a school is a goal of the Applicant;

**WHEREAS**, Ed Barocas, a representative of the American Civil Liberties Union (“ACLU”) appeared in support of the application and offered into evidence a written statement dated February 24, 2014, which was marked as “ACLU-1”;

**WHEREAS**, Walter Ruby, of Montclair, New Jersey, and a representative of the Foundation for Ethnic Understanding and the New Jersey Muslim/Jewish Solidarity Committee, appeared in support of the application;

**WHEREAS**, the Board has made the following findings and conclusions based upon the evidence submitted:

1. The Applicant is the owner of the property and has standing to bring this matter before the Board.

2. The subject property is used as an Islamic house of worship with related religious instruction.

3. The Applicant seeks the Board's determination that certain activities conducted at the site in connection with its principal use do not violate the conditions of the 2008 Resolution. The conditions in question - #4, 5, 6, 11, 15 and 19 – relate to the instructional activities undertaken on the site, as well as use of the site for social events that include the service of food.

4. Condition #4 of the 2008 Resolution required that there be “no parochial education, i.e., no elementary, middle or high school or academic instruction.” Condition #5 of the 2008 Resolution provided that “Religious instruction only shall be permitted. A similar proscription is set forth in Condition #15 of the 2008 Resolution, which provides that the use of the site “shall be limited to a house of worship with related religious instruction”.

5. The Applicant's representative, Mr. Kandil, testified as to his belief that these conditions reflected the Board's essential concern that a full-time parochial school would not be operated on the site, but that other educational activities ancillary to the mosque would be permitted.

6. Mr. Kandil explained that the other educational activities ancillary to the mosque include weekly classes offering instruction in the Arabic language; small gatherings before and after daily prayers (5 times per day, at dawn, noon, afternoon, sunset and evening) at which the Imam speaks on various topics; religious classes on weekends offering instruction on the Koran and the Arabic language, in which the Koran is written; and secular sewing and computer classes. The classes are taught by members of the congregation and are open to all members of the public. No academic credits are associated with the classes and no tuition payments would be required to be made to the Applicant, except possibly a payment, in the case of certain types of classes, to cover the cost of supplies, etc. Mr. Kandil also indicated a desire to be able to use the facility for fellowship or community oriented classes, similar to the tutoring of children offered by the Big Brother/Big Sister organization.

7. The Applicant requests the Board to clarify that Conditions #4, #5, and #15 were intended to prohibit parochial school use only and that the above-described activities do not violate Condition #4, #5, or #15.

8. In response to a question from a member of the public concerning the Applicant's objective, as announced on its website, to have an “Elementary/Middle Islamic

School”, Mr. Kandil explained that the Applicant is interested in establishing such a school at another site. The subject property would not be used for parochial school purposes.

9. The Board notes that the 2008 Resolution recites (see p. 10, ¶16) that the terms and conditions of an agreement entered into in 2007 between the Applicant and Weldon Quarry Co., L.L.C. (the “Weldon Agreement”) were incorporated in the 2008 Resolution “as part of the conditions to the relief granted.”

10. Weldon operates two asphalt/concrete plants on Mannino Drive opposite the subject property. Pursuant to the Weldon Agreement, Weldon agreed to withdraw its objection to the application that resulted in the 2008 Resolution.

11. The Board finds that reference to the Weldon Agreement in ruling on the Applicant’s present application is appropriate because there is some internal ambiguity among Conditions #4, #5 and #15. Under these circumstances, the terms and conditions of the Weldon Agreement offer additional insight into the Board’s intentions and understanding in 2008 as to the nature of activities that would be permitted on the site. (It is noted that the Weldon Agreement is a private agreement that may be amended by the parties thereto, but that such future amendment would not alter the findings, terms and conditions of approval.)

12. Paragraph 8 of the Weldon Agreement recites that “The mosque and community center will contain no elementary, middle or high schools. The building will not be used for the instruction of academic subjects. The class rooms will be limited to religious instruction which will include instruction in Arabic.”

13. Attached to the Weldon Agreement as Exhibit A is a list of the Applicant’s planned activities, which were consented to by Weldon. Exhibit A to the Weldon Agreement was introduced as Exhibit A-2 at the February 24<sup>th</sup> hearing on the present application. Exhibit A-2 lists “religious and general education activities, including community outreach, interfaith connection and dialogue, language classes (English, Arabic etc.)”

14. The Board finds that the instructional activities described by the Applicant are consistent with the activities listed on Exhibit A to the Weldon Agreement and incorporated by reference in the 2008 Resolution. By its terms, the Weldon Agreement acknowledged that the activities described on Exhibit A did not fall within proscribed categories of “elementary, middle or high schools” or “instruction of academic subjects”.

15. The Board also recognizes that it is common for religious institutions to provide ancillary religious and community-related activities in addition to traditional worship services and religious instruction. Examples of such ancillary activities include parenting seminars, job search training, ESL classes, youth groups (including scout groups), senior citizen activities, religious study groups, guest speakers, discussion groups, fund raising activities for the congregation, health education, and other activities related to community

education and social services. The classes such as sewing, computer training, and Arabic language proposed by the Applicant likewise fall within the purview of the customary offerings of a religious institution. While activities normally and customarily incidental to a religious institution are permitted (unless strictly prohibited by Ordinance or Resolution), those activities must be conducted within the parking and occupancy regulations set forth in the Resolution of Approval and Site Plan. To the extent any of the permitted ancillary uses require the construction of outdoor improvements now shown on the approval site plan, an amended site plan is required.

16. In view of the foregoing, the Board finds that conducting on the subject property the types of activities set forth on Exhibit A-2 and as described by Mr. Kandil at the February 24<sup>th</sup> hearing on the present application are not in violation of Condition #4, #5, or #15 of the 2008 Resolution.

17. Condition #6 of the 2008 Resolution requires that “No outdoor activities shall be conducted by the Islamic Center.”

18. Paragraph 10 of the Weldon Agreement provides that, except as provided in paragraph 16 of that Agreement, “there will be no outdoor activities (sports, playground, games, etc.) with the exception of an outdoor playground associated with a day care center as provided for in paragraph 7 [of the Weldon Agreement].” Paragraph 16 of the Weldon Agreement provides that the restriction on outside activities will not apply to Sundays but will apply to all but 2 Saturdays each year. ICMC agreed to notify Weldon in writing at least 15 days prior to the days on which such outdoor activities are to occur. The notice is to state the nature of the activities and the hours for which they are planned.

19. The Board finds that although the Weldon Agreement contemplates certain limited outdoor activities, Condition #6 is nevertheless unambiguous as to its prohibition on outdoor activities. The available parking on the site is already limited. Outdoor activities could cause a loss of parking spaces while possibly increasing the demand for parking by attracting additional visitors to the site. Overcrowding of the outside areas could hamper firefighting on the site if the same became necessary. Additionally, because a portion of the site is located within a residential zone, it is appropriate to restrict the level of outdoor activities on the site so as to protect the integrity of the residential zone.

20. Accordingly, the general prohibition on outside activities set forth in Condition #6 of the 2008 Resolution will remain in place. The Applicant may apply for relief from the same for specific activities by filing a request for an amended site plan with the Board showing the exact nature of the activities that will take place, where they will take place, and demonstrating that the same can be safely accommodated on the site.

21. Condition #11 of the 2008 Resolution prohibits cooking on the premises. This condition is consistent with the representations made to the Board in connection with the

prior application. When describing the events that would occur at the mosque, the Applicant's witnesses explained that food would be served in connection with social events at the mosque, but that these would not include wedding receptions or similar functions, which would be held off-site. Additionally, the Applicant's witness testified at the July 10, 2007 hearing on the prior application that "There would be no cooking on the premises, only catered food."

22. In the years since the adoption of the 2008 Resolution, the Applicant has experienced two incidents in which the fire alarm at the premises was set off due to the use of a chafing dish and toaster oven being used to re-heat food provided by a caterer.

23. The Applicant desires to be able to cook food on the premises and has submitted as A-3, copy of a possible architectural floor plan, marked to show location of a proposed kitchen area. The Board finds that the Applicant must request approval of a specific plan, including an amended site plan approval before any cooking can be permitted on the premises. Accordingly, Condition #11 of the 2008 Resolution will remain without modification. The Board is satisfied, however, that the use of small appliances typically found in offices, (for example a microwave oven, toaster oven, or coffeemaker), as well as equipment typically used by caterers to keep food warm, (for example warming devices, chafing dishes and accessories, including chafing dish fuel), would not violate Condition #11 of the 2008 Resolution.

24. Condition #19 requires that there "shall be no receptions or similar events held on the premises." The Applicant requests clarification that these Conditions do not prohibit social events of the type described during the 2007 hearings that include the service of food. Mr. Kandil confirmed to the Board that wedding receptions would not be held on the premises and that the mosque's facilities would not be utilized as a catering hall. The service of catered food on the premises would be limited in nature and would only be auxiliary to social events sponsored by the mosque as described during the 2007 hearings and by Mr. Kandil during the hearings on the within application, which events are customary and incidental to a house of worship. Under no circumstances would the premises be offered as a hall for hire.

25. In view of the testimony and representations offered by the Applicant, the Board is satisfied that the service of food as an adjunct to social events otherwise permitted as customary and incidental to a house of worship will not violate Condition #19 of the 2008 Resolution. Condition #19 will continue to prohibit wedding receptions, parties, and similar events, and it will continue to prohibit the offering of the premises as a hall for hire. All food service permitted hereby will nevertheless remain subject to Condition #11 of the 2008 Resolution, as the same has been clarified herein.

**NOW, THEREFORE, BE IT RESOLVED**, that the application of Islamic Center Of Morris County for an interpretation pursuant to N.J.S.A. 40:55D-70b is hereby approved in part and denied in part, as described in detail in this Resolution.

**FURTHER RESOLVED**, that this interpretation shall not be deemed to amend or supersede any of the conditions of the 2008 Resolution, all of which remain in full force and effect, subject to the clarifications and interpretations set forth herein.

**I HEREBY CERTIFY** that this is a true copy of a resolution of the Borough of Rockaway Land Use Board (which Board is a nine-member planning board as authorized by N.J.S.A. 40:55D-25c, duly adopted at a regular public meeting held on May 6, 2014.

On motion of:

Seconded by:

The vote on the Resolution was as follows:

AYES:

NAYS:

ABSTAINING:

ABSENT:

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Chairman  
ROCKAWAY BOROUGH LAND USE BOARD

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Secretary  
ROCKAWAY BOROUGH LAND USE BOARD

Dated: May 6, 2014

*Prepared by: David Burton Brady, Esq.  
Brady & Correale, L.L.P.*

**BOARD OF ADJUSTMENT  
BOROUGH OF ROCKAWAY  
MORRIS COUNTY, NEW JERSEY  
FEBRUARY 5, 2007  
CASE # BOA 712-07  
PROPERTY: BLOCK 40.01, LOT 76.04  
1 MANNINO DRIVE, ROCKAWAY BOROUGH NEW JERSEY  
ISLAMIC CENTER OF MORRIS COUNTY**

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**RESOLUTION OF FINDINGS AND DETERMINATION**

**WHEREAS,** The Islamic Center of Morris County hereinafter (ICMC) has applied to the Board of Adjustment of the Borough of Rockaway, initially for a use variance to allow a Community Center/Public place of worship and the partial use of the building as office space, and;

**WHEREAS,** that application was later amended to delete the commercial use, and

**WHEREAS,** the proposed religious use would be contrary to the following provisions of the Rockaway Borough Zoning Ordinance: section 172-21A (1) lot size; 2.31 acres provided, 3 acres required; section 172 -21A (3) – impervious coverage 56.82 percent proposed, 50 percent permitted. Section 172-21 A 4-building setbacks (26 foot) front yard setback, 40.8 rear yard setback and 24 foot side yard setback existing, fifty feet required; section 172-21 A (4), parking area setback; zero feet and thirteen feet foot setback existing, twenty (25) feet required; section 172-44, free standing sign; existing free standing sign located within 5.5 feet from the right of way together with existing two sided 48 foot square façade sign, 15 sq. foot sign face is permitted.



**WHEREAS,** the Board of Adjustment did hold public hearings on said application on July 3, 2007; August 7, 2007; September 4, 2007; October 2, 2007; October 23, 2007; December 10, 2007; and January 22, 2008, upon notice to all parties required by statute to be served with notice, at which time the applicant and all parties in interest were given an opportunity to be heard, and

**WHEREAS,**

The Board has reviewed the following reports:

Report of the Morris County Planning Board dated October 17, 2007

Planning analysis reports prepared by Professional Planning and Engineering Associates, LLC dated May 21, 2007 and July 2007.

Traffic reports by Larry Kern dated August 29, 2007, September 26, 2007 and October 17, 2007.

Fire Officials report dated June 28, 2007.

Reports of township planner, Adrian Humbert, dated March 19, 2007, April 26, 2007 and June 4, 2007.

Reports of the Borough Engineer Michael J. Spillane, dated June 14, 2007, July 24, 2007, August 30, 2007, and November 8, 2007.

Report of Joseph Staigar Engineering, LLC dated September 17, 2007.

The report of the Rockaway Borough Police Department dated September 25, 2007.

The proposed interior alteration plans marked "received" March of 2007 and revised July 2007.

The variance map marked received April 2007 and revised July 2007.

The original application filed with the Board and all exhibits together with the other evidence have also been reviewed.

Report of Burgis Associates Inc., dated January 2, 2008.

**WHEREAS**, the Board of Adjustment after hearing all of the evidence presented by the applicant, the Board Witnesses, the Board Experts, and those members of the public wishing to be heard thereon has made the following findings of fact:

1. The property is located on Mannino Drive and Nichols Drive with a small bit of frontage on West Main Street in Rockaway Borough. The property has approximately of 390 feet of frontage on Mannino Drive and 343 feet of frontage along Nichols Drive. It is bordered on the Westerly side by two residences which themselves, have frontage on West Main Street.

The property is located in the HT/LI zone and partly in the R-1 zone.

The property is improved with an existing one story brick and masonry building consisting of 14, 850 sq. feet. Access is from Mannino Drive via a thirty foot wide entrance to the parking lot. The parking lot contains a total of 92 spaces.

There is a 96 sq. foot monument sign located on an Island near Mannino Drive. There is also a building façade sign.

The building is served by city water and city sewer.

The Board notes that the application is pursuant to section 172-21, as such, the variance relief needed is a use variance, however, the same is a (d) (3) variance for relief to allow a permitted conditional use of religious institution that does not meet all of the required conditions of the conditional use.

As set forth in the beginning portion of this resolution the required conditional use relief relates to a lot size, impervious coverage, setbacks for the building and setback for the parking lot. The "c" variance relates to the continuation of the use of the existing free standing sign and the façade sign.

The Board took the testimony of Mr. Adam Kandil. Although he is an engineer by training and degree, Mr. Kandil testified, throughout these proceeding as a member of the ICMC.

Mr. Kandil indicated that there are a number of Islamic Centers in and around the Morris County area, the purpose of the proposed site is to replace a site currently located in Budd Lake, New Jersey.

In the Islamic religion, there are five daily prayers at dawn, noon, afternoon, sunset and evening. The holy day is typically Friday and the busier time of year for religious activities is the religious holiday of Ramadan. Ramadan approximately occurs over the month of September and part of October. It is approximately one month in length. An exhibit was marked at the July 3, 2007 meeting. This exhibit was intended to reflect the attendance at the Mosque showing that the busiest time during the regular week would be on a Friday for the afternoon prayer occurring sometime between 1:00 PM and 1:30 PM. A revision to this exhibit was later Marked A-7. During the month of Ramadan the Friday noon prayer was projected to be more heavily attended and the proposal to address these issues was to have two prayer sessions instead of one from approximately 1:00 PM to 1:30 PM and again from 2:00 PM to 2:30 PM. All other prayer sessions and use for the adult religious educational classes were projected to be lightly attended, on the order of ten to twenty persons in the case of the prayers and twenty to thirty persons in the case of the youth and adult classes: The nightly devotional prayers are projected to draw ten to twenty persons between 8:30 and 9:00 PM Sunday through Saturday and during the month of Ramadan perhaps as many as fifty persons.

The testimony reflected that there will be no cooking or food preparation on the premises. There may be occasions when during special events such as holidays, weddings, funerals etc., the attendance may rise as high as one hundred and fifty people.

The testimony also reflected that the instruction given at the center will be limited solely to religious instruction there will be no parochial instruction of any kind.

The Board next heard from Mr. Scott E. Wyssling of the RBA Group Inc. who was accepted and qualified as a licensed professional engineer in the State of New Jersey. Mr. Wyssling testified, and the Board accepts that for Friday prayer, the maximum amount of people on the premises will likely be in the range of 150 people. The plans accepted into evidence by the Board show an occupancy of 191 persons which was used to calculate the parking requirement for this application.

The parking lot calculation (per ordinance) equates to (64) sixty-four spaces. The facility has (92) spaces available. These calculations were made based upon the requirements for a house of worship and also for a community center.

Mr. Wyssling opined that in the event the building (currently vacant ) were to be used as an office building in such a case the traffic would be more intense in the area of Mannino Drive and the Nichols Drive than the traffic which is projected to be generated by the ICMC.

The last revised Plan (July 19, 2007) shows the removal of the proposed commercial office space and was marked as A-4 which is sheet A-2 of the Plan, it shows two prayer rooms; one at 2,209 sq. feet and the other 649 sq. feet. Each of the prayer rooms is marked to show the prayer area for each of the Mosque members. The remaining portion of the plan shows the division of the floor space into recreation areas, classrooms, storage, toilets, and the like. No plans are proposed to enlarge or expand the facility and the only external modifications involve the installation of new aluminum glass entry doors to replace existing over head doors on the north elevation. While there may be occasions during the month of Ramadan wherein there are overnight prayers, those occasions will be exceptions and not the rule.

There will be no externally audible noises, sounds, calls to prayer, or similar external sound.

2. Mr. Joseph Staigar was accepted as an expert professional engineer before the Board and testified concerning his report containing a traffic impact analysis relative the application.

3. Mr. Staigar testified that the traffic studies concerned the two primary intersections on Main Street and Nichols Drive and Mannino at Route 46. These counts were taken morning, midday, and evening peak hours. The study concluded that peak traffic volume occurred between 7:30 and 8:30 AM and between 5:00 and 6:00 PM.

4. At Mannino Drive and Route 46 the traffic count was 1443 cars in the AM; 1739 midday and 1966 vehicles PM. At Main Street and Nichols Drive the AM peak hour saw 1185 cars, the midday peak saw 861 vehicles and the PM peak hour volume was 1443 cars.

5. Mr. Staigar projected that the ICMC will generate during its peak traffic time (1:30 to 2:30 PM) 87 trips in and 87 trips out for total of 174 vehicles. He projected that traffic will be oriented to both intersections and that the traffic will be generated between the midday peak hour and PM peak hour. The key however, according to Mr. Staigar is that the traffic would miss or not be generated and will not be co-incidental with the peak times. He opined that a permitted use at the site, which could be any number of uses, would generate its peak volumes during the morning and evening rush hours whereas the ICMC generates nominal traffic during morning and evening rush hours. He further testified that based upon the nature of the worship practice by Mosque members, the significant peak is on Fridays between 1:30 and 2:30 pm.

6. Mr. Staigar advised the Board that neither intersection functions well. In fact both intersections were graded with a level of service F during many of the traffic movements, meaning the volume exceeded capacity. He advised that this condition existed in AM peak hour, the middle day peak hour and the PM peak hour. He nevertheless concluded that the proposed use would have a significantly lesser impact than a permitted use at this site. A permitted use would operate five times a week, influencing ten traffic peaks.

7. Mr. Staigar applied his studies to Exhibit A-2, which was later revised to A-7, (the activity schedule). He advised that the sunrise prayer is at approximately 5:30 AM and would not coincide with peak traffic however even if that did occur there might

be a total of eleven vehicle trips. The normal noon time prayer attracts approximately ten to fifteen people between 1:00 and 1:30 PM. The afternoon prayer at 4:00 PM to 4:30 PM does co inside with a peak hour of the road way. However the projected attendance is by only ten to fifteen persons equating to approximately eleven vehicles per hour. The remaining activities occur after 7:00 PM, after the peak traffic times.

8. Mr. Staigar further opined that because the total traffic generation by the ICMC at its peak hour is projected at 120 representing 63 vehicles in and 57 vehicles out coming from four different directions and leaving by four directions translates to a vehicle impact of forty-five vehicles per hour in any given direction, a number substantially below the DOT and Morris County Guide Line. It should be noted that Mr. Staigar's figures are generated based upon the representations made by the ICMC and the limitations ultimately imposed in this resolution that the maximum number of worshipers will be 191. The Institute of Transportation Engineers calculations as applied to a 191 seat church show a trip generation of 87 worshipers entering and 87 worshipers exiting for a total of 174. The study performed at the Islamic facility located at Budd Lake showed that at its peak time, between 1:30 PM and 2:30 PM 75 trips entered and 82 exited.

9. The Borough of Rockaway had retained a traffic engineer, Mr. Larry Kern, he testified before the Board in conjunction with the series of reports he had issued (said reports dated August 29, September 26, and October 17, 2007).

10. Mr. Kern carefully reviewed the traffic counts supplied by Joseph Staigar Engineering, LLC and a prior traffic count prepared by firm indentified as Parragon. Mr. Staigar performed independent traffic counts at the Masonic Temple site in Budd Lake. Mr. Spillane also performed independent counts at the Masonic Temple site as well, during the last Friday of Ramadan. The site had a similar number of parking spaces ( 97 spaces as opposed 92 spaces here). Mr. Kern concluded that there were occasions when parking demand exceeded capacity by three to five vehicles. He also concluded that based upon these observations, particularly during the last two Fridays

of Ramadan it is likely that the parking lot at the proposed facility on Mannino Drive will not have sufficient capacity to meet the demands. Other than these observations Mr. Kern essentially concluded that the data set forth in Mr. Staigar's study was accurate.

11. The Rockaway Borough, Police Chief Douglas Scheer testified about his concerns relative to the high traffic volume, particularly with the intersection of Mannino Drive and Route 46 indicating that this intersection did see a number of motor vehicle accidents.

12. The Chief's study was a total vehicle count taken during the month of September 2, 2007. The study by the Police Department confirmed that in fact there are a high number of vehicles using Mannino and Nichols Drive with weekly totals during the sample period of 18,571 vehicles during the week beginning September 7, 2007 and 19,905 vehicles during the week beginning September 14, 2007.

13. The applicant explored certain parking alternatives for overflow parking in the community, particularly since there is no parking on Mannino Drive or Nichols Drive. The Board was advised by letter furnished to the applicant from two nearby establishments (Family Fitness Center and The Presbyterian Church) that these entities were offering the use of those sites as potential overflow parking. Since the entities owning the sites are not legally obligated by virtue of the instruments presented to the Board to furnish such overflow parking, the Board elects to refuse to consider such sites. The offering letters were marked as A 5 and A 6 under date of October 23, 2007.

14. The applicant offered as its planning witness Mr. John McDonough.

15. Mr. John McDonough was accepted by the Board as a professional planning expert. He testified as follows:

a. The proposed Islamic Center is located geographically almost in the center of the Morris County.

- b. The site is in an area of mixed uses including several residential uses within 200 feet. An asphalt plant other and other light industrial uses, and a commercial fitness facility are also nearby.
- c. The existing 14,800.00 sq. foot building has had a variety of uses over the years including a bingo hall and community center, an industrial warehouse, and office use for a surveillance company. The last occupant was a rehabilitation center for the hearing and learning impaired. The building was characterized by Mr. McDonough as a "warehouse flex type building".
- d. The building is 141 feet wide by 107 feet deep covering 14.7 percent of the lot and in that respect complies with the zoning ordinance.
- e. The proposal is to keep the building as it is with only some modest exterior changes to allow the installation exterior entry doors.
- f. There will be two prayer rooms. One of 2,209.00 sq. feet and another of 649.00 sq. feet , and the maximum number of attendees on is stipulated to be limited to 191.
- g. There will be no external changes to the aesthetics of the building, no bell towers, no spires, or any other symbolgy. Exterior changes will be limited to the modification of the exterior overhead doors on the north elevation of the building. The part of the building facing the residential and residential/commercial uses to the north on West Main street has absolutely no windows and there is a significant buffer both horizontally and vertically that is been established.
- h. Mr. McDonough advised that the property is well landscaped and six new trees will added on northerly side.
- i. There will be no changes in lighting or other site amenities. Mr. McDonough testified with respect to the various items of relief needed. He indicated that the lot size and lot coverage variance came about because of a taking or dedication of land along the Mannino Drive right of way, and that all of the bulk relief is for existing non-conformities.



j. The testimony reflected that there are no environmental constraints associated with the property. The high lands are not involved and the property is not located in an historic zone nor does it contain historic structures. There is a need for a d (3) use variance dealing with the conditional use.

k. Mr. McDonough indicated that this application falls under the Religious Land Use and Institutionalized Persons act which requires a compelling state interest in order to deny the application.

l. The Board was advised that the religious use qualifies as inherently beneficial use and that therefore the positive criteria of the statute dealing with use variances is satisfied. Further, with respect to the negative criteria Mr. McDonough summarized the testimony of the traffic experts indicating that there will be no substantial traffic impact on public safety, no impact on public health, no loss of habitat and no nuisance related issues. No external noises, no change in exterior illumination, no heat, vibration etc.

m. Mr. McDonough performed an analysis pursuant to Sica v. Wall Township, concluding that since the proposed use is less intensive than any number of the permitted uses that therefore the proposed use of the ICMC does not impair the intent and purpose of the zone plan nor would there be any detriment to the surrounding properties.

16. Mr Adam Kandil testified with respect to a certain agreement reached between Weldon Materials, Inc., and the ICMC. The terms and conditions of that agreement are incorporated in this resolution as part of the conditions attached to the relief granted.

17. The Board retained, in addition to Mr. Humbert, a land use expert with experience in the Religious Land Use and Institutionalized Persons Act of 2000. (RLUIPA) This expert from the firm of Burgis Associates, Inc. (Mr. Stephen Lydon) testified to the effect that he did not see any compelling reasons to deny the application.

**WHEREAS**, The Board finds the testimony of the Applicants witness credible and same was validated by the Boards independent experts, and

**WHEREAS**, the Board of Adjustment has determined that the evidence submitted by the applicant justifies a finding of hardship with respect to the bulk variance relief sought and in the alternative finds that the benefits of a deviation from the zoning ordinance outweigh any detriment for the following reasons:

1. The entirety of the relief required is generated by existing conditions of the site.
2. There are is no external modifications proposed which would in any way change the building footprint or other on site conditions.
3. While certain of the setbacks applicable to the conditional use are enhanced as required by ordinance over and above that required by the HT/LI zone, these nevertheless relate to existing conditions and are not worsened by the nature of the use.

**WHEREAS**, the Board finds that good and sufficient reasons have been advanced to support a grant of the use variance for the following reasons:

1. The use an inherently beneficial use and as such satisfies the positive criteria of NJSA 40:55D-70, d.
2. The use itself is permitted and it is only the conditions that are not satisfied which drive the relief that is required from NJSA 40:55D -70 d (3). In accordance with Coventry Square v. Westwood Board of Adjustment, the standard of review is a lesser standard than that which prevails when a use is flatly prohibited in a zone. The test is whether or not the site is an appropriate location for the use notwithstanding that it does not comply with all the conditions.

**WHEREAS**, the Board of Adjustment has determined that the relief can be granted without substantial detriment to public, good and without substantial detriment to the zone, plan and zoning ordinance. Borough of Rockaway for the following reasons:

1. The use is permitted in the zone as a conditional use.

2. There is adequate buffering by virtue of the existing yard and the proposed new plantings which will mitigate and avoid any negative impact upon adjoining neighbors.
3. The Board has determined that after applying the balancing test as required by the Sica case and in consideration of the limiting conditions agreed to by the applicant, that on balance, the relief can be granted without substantial detriment to the public good and without impairing the intent and purpose of the zone plan and zoning ordinance.
4. The onsite parking is adequate, any traffic impact will be less than that resulting from other permitted uses.
5. No exterior changes are proposed except for the renovation of an entry door.
6. There shall be no exterior noise, smoke, odors, activities or other external evidence of the use.
7. All bulk variance relief relates to existing site conditions.

**NOW THEREFORE BE IT HEREBY RESOLVED** that the Board of Adjustment of the Borough of Rockaway, State of New Jersey does hereby grant the relief requested by the applicant as follows:


Board Adjustment does hereby grant the relief requested by the applicant, in accordance with the application as filed and as amended, subject to the following conditions:

1. A maximum of 191 worshipers and not more than 200 persons overall, on the site at any one time.
2. There shall be no increase in the floor area used for worship which is 2,858.00 sq. feet.

3. There shall be no increase in the physical facility beyond the current dimensions of 14,258 gross sq. feet of floor area in a one story structure.
4. There shall be no parochial education, i. e. no elementary, middle or high school or academic instruction.
5. Religious instruction only shall be permitted.
6. No outdoor activities shall be conducted by the Islamic Center.
7. Effort will be undertaken to manage traffic and a written plan shall be developed. (manual or hand book to include any necessary plans for offsite parking)
8. No on street parking on Nichols or Mannino Drive unless approved by Borough Ordinance. Any such parking must be limited to one side of the street only.
9. There shall be no external noise such as bells, chimes, or other audible noises or calls to worship.
10. All signage is limited to that which currently exists.
11. No cooking on premises.
12. No exterior changes except for door repair or replacement.
13. During Ramadan, a minimum of two services shall be held.
14. The requirements of the Title 39 shall be applicable to the site.
15. The use shall be limited to that of a house of worship with related religious instruction
16. There shall be no parking outside of designated spaces.
17. Fire lanes shall be properly marked out on the pavement as designated by the Fire Marshall.
18. Six new trees shall be planted as a residential buffer for the properties on West Main Street.
19. There shall be no receptions or similar events held on the premises.

CERTIFICATION

I, Sylvia Banbor, hereby certify that the foregoing resolution is a true copy of the resolution adopted by the Board of Adjustment of the Borough of Rockaway at a regular meeting held on February 5, 2008.

  
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Sylvia Banbor, Secretary