

ISSUE DATE:

**April 19, 2011**



PL101434

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

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Theresa Oliveira  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 4928 Natkarni Crescent  
Municipality: City of Mississauga  
Municipal File No.: A-394/10  
OMB Case No.: PL101434  
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**APPEARANCES:**

**Parties**

Theresa Oliveira

**DECISION DELIVERED BY S. J. SUTHERLAND AND ORDER OF THE BOARD**

Theresa Oliveira (Applicant/Appellant) applied to the City of Mississauga (City) for the following minor variances to Zoning By-law 0225-2007 (ZBL) to permit the existing below grade entrance to the basement of her dwelling at 4928 Natkarni Crescent (Subject Property):

1. A basement entrance located within the side yard of the property with a side yard of 0.7 m, where the by-law does not permit stairwells located in the front, interior or exterior side yards to facilitate an entrance located below grade or direct entrance only to the basement. The required minimum side yard is 1.2 m
2. A lot coverage of 42.6% of the lot area, where the by-law permits a maximum coverage of 40%.
3. The existing accessory structure (a shed) to remain, with a side yard of 0.29 m, where the by-law requires a minimum side yard of 1.2 m.

The Committee of Adjustment (COA) denied the application, and Ms Oliveira appealed this decision to the Board pursuant to s.45 (12) of the *Planning Act*. The Planning Report upon which the COA based its decision did not object to the second variance, but recommended that the COA refuse the first and third variance.

The City did not appear at the hearing, and the Board heard no expert land use planning evidence. The only input the Board received from the City in relation to this appeal was from Ron Starr, Councillor, Ward 6, who informed the Board by a letter delivered to the hearing that, following a review of the file, a site visit to the Subject Property, and an extensive discussion with the applicant, he was in support of the application. He felt it to be “minor in nature and appropriate.”

Ms Oliveira presented a petition to the Board (Exhibit 3) signed by 21 neighbours, including those to the immediate right, left and directly in front of her home, in support of the basement walkout in its current location. No one appeared in objection to the application.

Ms Oliveira testified that she and her husband, Manuel Calcada, do not have a basement apartment on the property which, as part of the building permit process, was inspected by Michael Foley, a by-law enforcement officer for the City. Ms Oliveira said Mr. Foley indicated that he was satisfied that no secondary unit exists, as did the Ward 6 Councillor, Mr. Starr, when he visited the home recently. She said she and her husband are prepared to sign an affidavit to the effect that they will not build such an apartment.

Ms Oliveira said the basement entrance would facilitate the construction of a lift mechanism for her elderly father, who is in a wheelchair. She said her father currently has easy and safe access to the main floor of the house and to the backyard, but not to the basement. She said the configuration of the interior staircase to the basement does not permit easy access for him, and that the construction of a lift mechanism on this interior staircase is many times more expensive than an exterior lift (Exhibit 4). She said she and her husband are finishing the basement in order to provide additional family space, and that she wants both her 78-year-old parents to have easy and safe access to that space.

In addition, Ms Oliveira told the Board that her husband is a licensed hunter and having direct access to the basement from the street facilitates and confines the transportation of his rifle, other hunting equipment, and the resulting game from the street directly to the basement. Also, it is their custom to make their own wine each fall, and a basement entrance also facilitates this process.

Ms Oliveira testified that a minimum of two direct basement entrances in side yards already exist on her street within a 200 m radius of the Subject Property – at 4924 and 4956 Natkarni Crescent.

Ms Oliveira said the shed was in existence in its current location when she and her husband purchased the property. She said she had been informed by the zoning department that there are no by-laws requiring more than one direct access to the backyard from the street. She presented pictures (Exhibit 2) showing full and direct access to the backyard from the street via a gate on the left side of the house. She did not see restricted access to the backyard on the right side of the house as a valid safety concern. Neither, clearly, did the ward councillor.

In the absence of any testimony or evidence from the City to the contrary, the Board finds that the application meets the tests of s. 45(1) of the *Planning Act* in that it is desirable for the appropriate use of the building or structure, and meets the general intent and purpose of the OP, which permits a single family dwelling, and the ZBL. By by-law, neither Ms Oliveira nor any subsequent owner of the dwelling on the Subject Property is permitted to have a basement apartment. It is the responsibility of the City to enforce this by-law. The Board considers the variances minor. They have no negative impact on the neighbours, as witnessed by the neighbourhood support of the application, or on the Subject Property. The shed was there when the Subject Property was purchased, and has not been complained about by the abutting neighbour. There is adequate access to the back yard from the other side of the house. In case of an emergency, exit from the basement via the exterior stairs would be to the front of the house and not the back.

The Board Orders the appeal is allowed and variances to By-law 0225-2007 are authorized.

So Orders the Board.

“S. J. Sutherland”

S. J. SUTHERLAND  
MEMBER