

# DECISION AND ORDER

**Decision Issue Date**      **Tuesday, September 27, 2022**

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MARY ANNE DE MONTE-WHELAN (BABY POINT HERITAGE FOUNDATION)

Applicant(s): CULMONE AND ASSOCIATES

Property Address/Description: 61 BABY POINT CRES

Committee of Adjustment File

Number(s): 21 232387 STE 04 MV

TLAB Case File Number(s): 22 121254 S45 04 TLAB

**Hearing date: August 12, 2022**

**DECISION DELIVERED BY TLAB Panel Member G. Swinkin**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	CULMONE AND ASSOCIATES
Appellant	BABY POINT HERITAGE FOUNDATION
Appellant's Legal Rep.	ZACHARY FLEISHER
Party (TLAB)/Owner	LUCIA IACOVELLI
Party (TLAB)	JEFFREY LUNDY
Party's Legal Rep.	MARY FLYNN-GUGLIETTI
Party's Legal Rep.	KAILEY SUTTON
Expert Witness	TOM BRADLEY

Expert Witness

FRANCO ROMANO

## **INTRODUCTION AND CONTEXT**

Lucia Iacovelli and Jeffrey Lundy (the “Owners”) are the owners of 61 Baby Point Crescent (the “Property”). The Property is improved with a single family detached dwelling but the Owners wish to demolish it in order to construct a new dwelling.

The design of the proposed dwelling requires certain variances from Zoning By-law 569-2013 (the “Zoning By-law”). There were six heads of relief sought from the Committee of Adjustment (the “Committee”) including an excess of Floor Space Index, a reduction in front yard setback, permission for a larger second floor balcony, a rear deck higher from grade and deeper than permitted and two variances related to intrusion into a regulated slope.

A number of letters of objection and support were filed with the Committee.

The Committee approved the application and authorized the requested variances subject to conditions.

An appeal of the decision to the Toronto Local Appeal Body (the “Tribunal”) was filed by an incorporated resident association known as Baby Point Heritage Foundation.

At the outset of the Tribunal hearing, the Tribunal was informed by counsel that the Parties had arrived at the classic “11th hour” settlement.

Counsel requested that the hearing be converted into a settlement hearing with the Tribunal hearing consent evidence from the Owners’ land use planning consultant, Frank Romano. Modified plan and elevation drawings were filed along with a sheet of the modified variances and conditions.

The Tribunal assented to proceeding in this fashion.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body (‘TLAB’) must be consistent with the 2020 Provincial Policy Statement (‘PPS’) and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area (‘Growth Plan’).

### **Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

## **ISSUES AND ANALYSIS**

Mr. Romano underlined that as a result of discussions preceding the consideration by the Committee of the application and modifications made as a result, there were no issues with City departments or with the Toronto and Region Conservation Authority (“TRCA”), especially in light of the Owners’ acceptance of the conditions proposed.

Mr. Romano set forth in his Witness Statement a summary of what he understood to be the concerns and issues raised by the public through the application process. As part of his testimony in this proceeding, Mr. Romano adopted the statements made in his Witness Statement.

That summary, along with his commentary, was as follows:

- In terms of front yard setback, the existing dwelling does not comply. The proposal is to have a portion of the dwelling located up to 2.74m closer to the front lot line. The proposed front yard setback continues to maintain an appropriate undulating front yard setback relationship, both upon the Subject Site (the Property) and to neighbouring dwellings. In my opinion, the proposal will continue to contribute to a substantively generous, landscaped and mature tree-lined streetscape.

- With respect to trees, I rely upon the evidence of Mr. Tom Bradley and the approval recommendations of both Urban Forestry and RFNP (Ravine and Natural Feature Protection). The proposal appropriately organizes the site development to incorporate trees within the site design and limit their impacts.

- From an FSI perspective, it is important to remember that the mathematical calculation is based on a reduced lot area due to the LTSSC (Long Term Stable Slope Crest). The proposed FSI is compatible, and within the prevailing densities found in proximity to the Subject Site. (the Property) The proposed FSI is within a size and massing that is in keeping with dwellings within the immediate and broader contexts.

- In terms of the erosion hazard, I rely upon the technical review that has been undertaken and accepted by the TRCA along with the Owner’s technical team. In my

opinion, there is no negative impact on the erosion hazard.

- As it relates to the heritage conservation district comments, I rely upon the City Heritage Preservation Services 'Staff review which provides no heritage related concerns or issues. I note that neither the dwelling nor the Subject Site (the Property) are listed or designated as a heritage resource. Furthermore, it is premature and difficult to speculate on any heritage conservation district- related subject that may or may not arise in the future for the area. In my opinion, the proposal does not raise concerns of a heritage nature.

- The proposed variances reflect an order of magnitude that is well represented in the redevelopment activity that continues to take place within the neighbourhood. I have prepared a summary of variance decisions, within the accompanying neighbourhood document, which illustrates that the proposal is reasonable within the Subject Site's (Property's) physical context.

## **SUMMARY OF EVIDENCE**

The following items were taken in as Exhibits as follows:

EXHIBIT 1 - Document Book of the Owners

EXHIBIT 2 - Witness Statement of Franco Romano

EXHIBIT 3 - Responding Witness Statement of Franco Romano

EXHIBIT 4 - Settlement Plans and Revised Variances and Conditions

Mr. Romano described the location of the Property as being within the Lambton Baby Point neighbourhood, which is bounded by the Humber River valley and is accessed through a prominent stone gate entrance at Jane Street.

In keeping with the direction found in Policy 4.1.5 of the City Official Plan ("OP"), Mr. Romano established a study area consisting of a general neighbourhood (or broader context) and an immediate context.

For his exercise, the broader context is bounded by the Humber River valley and Humbercrest Boulevard. There are 322 properties, including the Property but excluding Bridgeview Road.

His immediate context includes all properties that are on either side of Baby Point Crescent and Baby Point Road. Given the looping nature of the street, as he delineates it, this includes 29 properties. The balance of the Street is identified by him as the Immediate Adjacent area, containing 106 properties.

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For the purpose of applying the criteria in Policy 4.1.5 of the OP, his opinion is that the lot fabric emanating from the varied street network and topography contributes to producing an overall prevailing differentiation in, rather than uniformity of, streetscapes, lots, site designs and dwelling layouts. Boulevards may be entirely landscaped or contain sidewalks. The experience one has of the physical character of streetscapes, and the buildings contained therein, is of a generously landscaped, tree-lined, stately neighbourhood. It is not a homogeneous or uniform area. There is a mixture of physical characters.

Mr. Romano provided an explanation of the requested variances, again along with commentary, in his Witness Statement. That description and commentary is as follows:

There are six variances to Toronto Zoning By-law 569-2013 in order to permit construction of the new dwelling. There are no variances to York Zoning By-law 1-83. The variances are as follows, as authorized by the Committee of Adjustment:

1. Floor Space Index of 0.859 times the area of the lot (594.12m<sup>2</sup>) whereas maximum 0.40 (276.57m<sup>2</sup>) is permitted. The floor space index is accommodated within the proposed three storey dwelling approximately as follows:

Third Storey 152.20m<sup>2</sup> of which 69.86m<sup>2</sup> is habitable.

Second Storey 246.25m<sup>2</sup>.

First Storey 195.67m<sup>2</sup>.

The lot area that is included within the FSI calculation is limited to the lands above the LTSSC, namely 691m<sup>2</sup>.

By comparison:

0.205 FSI is the mathematical calculation for the proposed dwelling based on the total lot area of 2903m<sup>2</sup>.

0.597 FSI is the mathematical calculation for the existing dwelling based on the lands above the LTSSC.

2. Second storey balcony area of 12m<sup>2</sup> whereas maximum 4m<sup>2</sup> is permitted. The proposed platform is located within the nook that is positioned in the middle of the rear walls. It is not located on the furthest rear wall. The platform is accessed from bedrooms at the second storey level.

3. Front yard setback of 10.61m whereas a minimum 16.64m is required. The 16.64m measurement is based on the average of the minimum front yard setback of neighbouring dwellings. In this instance, the existing dwelling has a front yard setback that is smaller, providing a minimum setback of 13.35m. The proposal is to permit a portion of the new façade to be located 2.74m closer to the front lot line. Beyond this discrete area, due to the curvilinear nature of the front lot line, the front yard setback widens where the front façade approaches the sides of the proposed dwelling. This

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provides a transition in the setback relationship next to neighbouring properties.

4. Rear deck which is 1.6m above the ground level projects 4.25m from the rear main wall whereas it may project a maximum 2.5m and may be no higher than 1.2m from ground level. The ground floor rear deck is located within the nook that is positioned towards the middle of the rear walls. It is not located on the furthest rear wall. The deck is accessed from the kitchen at the first storey level.

5. The new dwelling will be located on the portion of the lot below the stable top of bank.

6. The new dwelling will encroach 4.3m into the stable top of bank whereas a minimum setback of 10.0m is required.

Both of these Toronto Zoning By-law 569-2013 standards rely upon the TRCA for the determination of the top of bank. The TRCA has confirmed that the existing dwelling encroaches 4.3m in its location on the portion of the lot below the stable slope line. This coincides with the LTSSC in this instance. The proposed dwelling does not expand beyond the encroachment measurement. In terms of building footprint, the proposal includes a rear wall extension behind the garage to align with the 4.3m encroachment.

The Tribunal sought greater clarity on this new encroachment into the area below the LTSSC. Mr. Romano advised that there had been extensive involvement with the TRCA during the consultation on the proposal and as this portion of the proposed construction lies within the TRCA regulated area, a permit from the TRCA will be required. He had had discussions with a staff person from TRCA and was satisfied that there was a high level of confidence that the construction could be effected without risk of hazard. In this regard, Jeff Lundy, one of the Owners, who is a building designer and had prepared the plans and drawings that set out the proposal, also advised that the proposal will necessarily require that the footings and foundation will rest upon a stable base lying outside of the potential hazard area.

As noted above, as a result of the settlement, the Owners have agreed to step back a portion of the front main wall by what is described as a width of two feet. Although this does not alter the front yard setback measurement since it is taken from a different point on the front wall, it does step back a significant portion of that front wall and creates an articulation of that wall which lends a perception of greater depth from the front lot line.

This step back does modestly shrink the footprint of the building and there is thus a concomitant minor reduction in gross floor area and resultant FSI. That adjustment is reflected on the drawings submitted for settlement purposes, which will be referenced in the approval herein and the figures for FSI and actual floor area in the first listed variance have been adjusted accordingly in the final approval.

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Mr. Romano refers to the redevelopment proposal as a context suitable development arising from the modulating front yard setbacks that characterize the streetscape.

He is of the opinion that the requested and granted variances, as modified before the Tribunal, are in keeping with the general intent and purpose of the OP as well as the general intent and purpose of the Zoning By-law.

Based upon the facts and opinions set out in his witness statement material, along with his oral testimony in the hearing, the Tribunal understood it to be the opinion and position of Mr. Romano that the proposal was desirable for the appropriate use and development of the Property and that the variances were fairly characterized as minor.

Further, based upon the evidence before the Tribunal, the Tribunal was of the view that the variance relief does not trigger any inconsistency with the Provincial Policy Statement 2020 nor any issue of conformity with the Growth Plan for the Greater Golden Horseshoe, 2020. Mr. Romano and counsel for the Parties affirmed this view of the Tribunal.

## **CONCLUSION**

In light of the resolution of issues between the Owners and the Appellant, and the uncontroverted evidence of Mr. Romano as canvassed above, the Tribunal is satisfied that, as modified, the variances meet the four tests laid out in Subsection 45(1) of the *Planning Act* and should be approved.

In order to implement the settlement, the Tribunal will allow the appeal in part, and by its Order will effect the necessary modifications to the relief granted and conditions imposed along with referencing the intended plans/drawings.

## **DECISION AND ORDER**

The Tribunal Orders that the appeal by Baby Point Heritage Foundation is allowed in part and the variances modified as set forth below are approved. Further, the Tribunal Orders that the conditions imposed by the Committee in its decision are modified as set forth below.

61 BABY POINT CRESCENT

LIST OF VARIANCES TO THE ZONING BY-LAW

Chapter 10.20.40.40.(1)(A), By-law 569-2013  
The maximum permitted floor space index is 0.4 times the area of the lot (276.57m<sup>2</sup>).

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The new building will have a floor space index equal to 0.859 times the area of the lot (594.12m<sup>2</sup>).

Chapter 10.20.40.50.(1)(B), By-law 569-2013

The maximum permitted area of each platform at or above the second storey of a detached house is 4m<sup>2</sup>.

The area of the balcony at the second storey will be 12m<sup>2</sup>.

Chapter 10.20.40.70.(1), By-law 569-2013

The minimum required front yard setback is 16.64m.

The new building will be located 10.61m from the front (north) lot line.

Chapter 10.5.40.50.(4)(C), By-law 569-2013

In the Residential Zone category, the level of the floor of a platform, such as a deck or balcony, permitted in accordance with 10.5.40.50.(2) and located at or below the first storey of a residential building other than an apartment building, may be no higher than 1.2m above the ground at any point below the platform, except where the platform is attached to or within 0.3m of a rear main wall, any part of the platform floor located 2.5m or less from the rear main wall may be no higher than the level of the floor from which it gains access.

In this case, the rear deck will be located 4.25m from the rear main wall and will be 1.6m above the ground.

Chapter 5.10.40.1.(3), By-law 569-2013

On lands under the jurisdiction of the Toronto and Region Conservation Authority, if a shoreline hazard limit or a stable top-of-bank crosses a lot, no building or structure may be located on the portion of the lot below that shoreline hazard limit or stable top-of-bank.

The new building will be located on the portion of the lot below the stable top of bank.

Chapter 5.10.40.70.(6), By-law 569-2013

If the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10 m from that shoreline hazard limit or stable top-of-bank.

The new building will encroach 4.3 m into the stable top-of-bank.

The Decision is subject to the following Conditions:

(1) Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove a City owned tree(s) under Municipal Code Chapter 813, Trees Article II, Trees on City Streets, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.



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(2) Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove a City owned tree(s) located within a ravine protected area and/or submit a complete application for a permit to place or dump fill or refuse or alteration of grade on any land within a ravine protected area, under Municipal Code Chapter 658, Ravine and Natural Feature Protection, Urban Forestry.

(3) The driveway shall be constructed substantially in accordance with the TRCA Plan, with cobblestone pavers (drawing Z.5, prepared by Jeffrey Lundy, September 15, 2022).

(4) The dwelling shall be constructed substantially in accordance with the following drawings (which are on file with the Tribunal):

- a) Site Plan (drawing Z.4, prepared by Jeffrey Lundy, September 15, 2022.
- b) TRCA Plan (drawing Z.5, prepared by Jeffrey Lundy, September 15, 2022.
- c) North Elevation (Front) (drawing Z.11, prepared by Jeffrey Lundy, September 15, 2022.
- d) East Elevation (drawing Z.12, prepared by Jeffrey Lundy, September 15, 2022.
- e) South Elevation (Rear) (drawing Z.13, prepared by Jeffrey Lundy, September 15, 2022.
- f) West Elevation (drawing Z.14, prepared by Jeffrey Lundy, September 15, 2022.

(5) The building wall materials will be stone and stucco.

(6) The roof materials will be slate shingles.

(7) Prior to the issuance of a building permit, the applicant/owner shall, to the satisfaction of the Heritage Planner, Urban Design, City Planning:


a) The applicant shall retain a consultant archaeologist, licensed by the Ministry of Heritage, Sport, Tourism and Culture Industries, under the provisions of the Ontario Heritage Act (R.S.O 1990 as amended) to carry out a Stage 1- 2 archaeological assessment of the entire development property and follow through on recommendations to mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. The assessment is to be completed in accordance with the Ministry of Heritage, Sport, Tourism and Culture Industries' 2011 Standards and Guidelines for Consultant Archaeologists.

b) Should the archaeological assessment process continue beyond a Stage 1-2 assessment, any recommendations for Stage 3 - 4 mitigation strategies must be reviewed and approved by Heritage Planning prior to commencement of the site mitigation.

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c) The consultant archaeologist shall submit a copy of the relevant assessment report(s) to the Heritage Planning Unit in both hard copy format and as an Acrobat PDF file. All archaeological assessment reports will be submitted to the City of Toronto for approval concurrent with their submission to the Ministry of Heritage, Sport, Tourism and Culture Industries.

d) No demolition, construction, grading or other soil disturbances shall take place on the subject property prior to the City's Planning Division (Heritage Planning Unit) and the Ministry of Heritage, Sport, Tourism and Culture Industries (Archaeology Programs Unit) confirming in writing that all archaeological licensing and technical review requirements have been satisfied.

A handwritten signature in black ink, appearing to read 'Gerald Swinkin', enclosed within a rectangular border.

Gerald Swinkin