

Southwest Harbor Board of Appeal

Minutes and Findings of Fact

The Southwest Harbor Board of Appeal met in the evening of June 4, 2025. Present were John Izenour, Chair; Adam Babbitt, Theodore G. Fletcher, Secretary (recused), James Geary, Alyson Meiselman, and Scott Preston. John Larson, Code Enforcement Officer, was present for the Town. The Appellants, the MacIntoshes, were present and the Trustees of the Martha H. MacIntosh Living Trust was represented by Patrick Larson, Esq. Jason Podjasek, Esq., represented the Appellee, 72 Clark Point Road, LLC, of which Mr. Podjasek and his wife are owners. There were approximately 25 visitors in attendance.

1. Chairman Izenour opened the meeting at 6 PM, with a general introduction of the work of the Board of Appeal for the parties and visitors.
2. The Agenda was approved as presented. Fletcher/Babbitt
3. The Minutes for the last working meeting in February, including the election of officers, were not fully prepared and will be presented at the next meeting.
4. Fletcher raised with the parties and the Board the issue of whether he should recuse in view of his participation in prior hearings concerning the subject properties and his drafting Findings and Minutes in 2012 that are part of the record submitted by the Appellants. In view of the response from one of the attorneys of the parties, he recused.
5. The Board heard the appeal of the Trustees of the Martha H. McIntosh Living Trust (MacIntoshes), starting with preliminary matters of standing, the standard of review, and
 - a. The Board recognized the standing of the parties
 - b. In as much as this was an appeal from the issuance of a building permit by the Code Enforcement Officer, the Board determined that under the ordinance it should hear the appeal de novo.
6. The Board then turned to the issue of the timeliness of the appeal.
 - a. The Appellant was sent notice of the pending permit on December 11 and Code Enforcement Offices issued the permit seven days later on December 18, 2024.
 - b. The Appellant filed this Appeal before the Board of Appeal on May 6, 2025.
 - c. The appeal was filed 138 days after the issuance of the permit and 108 days after the end of the 30-day appeal period.

- d. Chairman Izenour invited argument from the appellant and then the appellee on whether the appeal was timely and whether there might be any good cause exception for the delay in filing the appeal.
 - e. Chairman Izenour also read out parts of an opinion letter from the town's attorney, in which the attorney explained the need to address timeliness first before going on to address the merits of the appeal.
 - f. Appellants argued that the CEO's issuance of the Permit was ultra-vires because it was not in conformity with LUO or the Shoreland Zoning Ordinance and for that reason met the third prong in *Brackett*.
 - g. Much of the discussion focused on the precedential effect of *Brackett v. Town of Ranglely*, 2003 ME 109, 821 A.2d 422 (2003). The Appellants recognized the place of *Brackett* but also cited other cases where filing deadlines had been excused for good cause. Appellees noted the similarities of this case to that in *Brackett* but noted differences that argued for the result in *Brackett* that are not present here.
 - h. John Larson, CEO, explained his process and reasoning in issuing the permit.
 - i. Board Members asked the parties clarifying questions, including asking for a detailed explanation for the delay on the part of MacIntoshes.
7. Motion: The Appeal brought by Trustees of the Martha H. MacIntosh Living Trust be dismissed as time barred and untimely. Motion: Geary, Second, Preston. After further discussion the vote was 3-2 in support of the Motion.
8. The Board concluded the meeting with minor housekeeping items, including a view towards the next appeal at the end of the month, and a brief discussion about proposed ordinance changes – this was not a formal hearing about those changes.

The Board adjourned at 7:50.

Findings:

1. The Appellant MacIntoshes were sent notice of the pending permit on December 11 and Code Enforcement Offices issued the permit seven days later on December 18, 2024.
2. The Appellant filed this Appeal before the Board of Appeal on May 6, 2025.
3. The appeal was filed 138 days after the issuance of the permit and 108 days after the end of the 30-day appeal period.

Conclusion: The MacIntosh appeal is untimely, and time barred.

Respectfully submitted,

/s/ Theodore G. Fletcher, Secretary of the Southwest Harbor Board of Appeal