

SOUTHWEST HARBOR BOARD OF APPEAL

Minutes for Selmi Appeal:

Second Hearing¹ with Testimony, Exhibits, Argument: August 27, 2025

And

Third Hearing with Board Discussion of the Merits: September 3, 2025

Second Hearing on August 27, 2025.

The Southwest Harbor Board of Appeal met in the late afternoon of August 27, 2025, at the Southwest Harbor Fire House, to hear the appeal of Dan and Anne Selmi. Present were John Izenour, Chair; Adam Babbitt, Theodore G. Fletcher, Secretary, Alyson Meiselman, Vice-Chair (recused), Jim Geary, and Scott Preston. Town's attorney Grady Burns, Esq., was present. John Larson, Code Enforcement Officer, was present on Zoom videoconferencing.

The Swetz Appellants were present with their attorney Stephen Wagner, Esq. Chris and Anne Hopkins, defending property owners, were present with their attorney Daniel Pillegi, Esq.

The Selmi Appellants, Dan and Anne Selmi were present and represented by Daniel Selmi, Esq, (California). Justin Podjasek, Esq, 72 Clark Pt Road LLC, were present along with its attorneys, Andrew Hamilton, Esq. and Jonathan Pottle. William Hanley, architect and Stephen Salsbury, surveyor were present for defending Appellees.

Also present 45 or more neighbors and residents, along with members of the press. Present on zoom were another 25 people, including one or two journalists.

1. Chairman Izenour opened the meeting at 5:02 PM and called the roll of board members. Alyson Meiselman, alternate, was present but recused.
2. The Appellees objected to the seating of Meiselman at the table. The Town Attorney offered an opinion. Fletcher pointed out that he had sat at the table and took notes when he was recused in the McIntosh Appeal. Based in part on that precedent, Chairman Izenour agreed to the seating of Member Meiselman.
3. Geary moved and Meiselman second accepting the agenda as presented.
4. Chairman Izenour made some introductory remarks, noting the significant interest with this appeal and then reviewed the process going forward, including presentations and argument by the parties, and then the public hearing part allowing for public comment.
5. Chairman Izenour declared a quorum present.

¹¹ The first hearing on July 30, 2025, addressed whether the Selmis had made a compelling case that there was an exception to the 30-Day timeliness requirement for the Selmi Appeal. See those minutes that capture that meeting.

6. Chairman Izenour then asked if there were any conflicts of interest. Chairman Izenour disclosed his business interest that involves many restaurant patrons in town; all agreed that this does not rise to a level of conflict requiring recusal. Then Member Fletcher and Mr. Hamilton had an extended colloquy about the reasons for Fletcher's prior recusal in the McIntosh Appeal and why he believed he had no conflict of interest in this appeal. Fletcher noted that there was no attack on the 2012 variance as he had interpreted the prior appeal to raise. Attorney Hamilton was concerned about the interpretation of the variance. Both agreed that this could be raised later in the meeting, if the issue presented itself. No other members disclosed any potential conflicts.
7. Chairman Izenour then reviewed and read out the list of documents that had been received concerning this appeal. That document list is part of the record in a separate section of the record.
8. Chairman Izenour invited Dan Selmi to present the merits of his appeal. Mr. Selmi then handed out a bound summary of the issue they were raising on their appeal, focusing on four or five errors that the Code Enforcement Officer had made in issuing the permit, reviewing the application of particular sections of the Shoreland Zoning Ordinance and the Land Use Ordinance, and the intersection of this variance, setbacks, and use and dimensional variances.
 - a. Mr. Selmi responded intermittently to questions from the Town Attorney and the Board.
 - b. The Board engaged in significant discussion with Prof. Selmi on what effect the variance had on the set-back standard and who it implicated this project. Selmi took the position that the variance was not simply a dimensional standard but also a use-variance limited to the greenhouse, which had been removed.

Ten Minute Break

9. Chairman Izenour invited Mr. Hamilton representing the Appellee Property Owner 72 Clark Pt. Rd. LLC to present the case defending issuance of the permit.
 - a. In addition to providing a summary of Appellee's case, Mr. Hamilton asked Mr. Hanley, Mr. Salsbury, and Mr. Podajack, to give factual testimony about particular aspects of the design, survey and land inventory, and title search process that they individually went through in supporting this project. Mr. Podajack explained that as an attorney engaged in commercial real estate litigation in New York he was well aware and well acquainted with the importance of due diligence in purchasing property. He explained that he had done considerable research before deciding with his wife to purchase 72 Clark Pt. Road. In addition to their professional accounts of their work on this project, both Mr. Hanley (Mt Desert Planning Bd.) and Mr. Herrick (City of Ellsworth Bd of Appeal) noted their extensive experience in zoning matters and processes in their respective communities.

- b. Mr. Hanley and Mr. Salsbury shared exhibits with the Board and had large format exhibits of architectural plans and surveys for display and handouts.
 - c. The Board directed questions to all of Appellee's witnesses.
10. Chairman Izenour offered time to each of the parties for rebuttal and sur-reply.
11. Members of the Board inquired of the Town Attorney about the legal effect of the thirteen-foot variance issued in 2012. In what circumstances could there be a non-conformity in that situation, where the variance replaces the LUO's fifteen-foot set back requirement. The Board and the Town Attorney also queried the parties about the application of specific appellate case (e.g. Stiff v. Town of Belgrade), the definitions of "accessory" and "non-accessory" uses, and other definitions in the ordinances and statutes.
12. The parties closed the presentation of the cases and arguments.
13. Chairman Izenour opened the Public Hearing to members of the public for their remarks. Five people spoke for a total time of about forty minutes. All five members of the public spoke in opposition to the project at 72 Clark Point Rd.
14. Towards the end of the meeting, Mr. Hamilton for the Appellee insisted on providing further written briefing on the issue of a "Good-Cause Exception" to the timeliness requirement for appeals. Because the record remained open, the Board accepted Appellee's further briefing and then allowed some short time for the Selmi Appellants to respond in writing.
15. The extension of the brief extension necessitated a continuance of the hearing, and the Board. Motion to Continue the Selmi Appeal hearing until September 3rd at 6:30 at the Fire House. Preston/Babbitt. Vote: 5-0. Izenour, Babbitt, Fletcher, Geary, and Preston all in favor.
16. Motion to Adjourn at 9:21 PM: Vote 5-0: Fletcher/Preston. Izenour, Babbitt, Fletcher, Geary, and Preston all in favor.

Third Hearing on September 3rd at 6:30.

1. Chairman Izenour opened the meeting at 6:35 PM with a roll call; Babbitt, Fletcher, Geary, Izenour, and Preston all indicated their presence. The same parties were present and represented as at the August 27, 2025 hearing. Approximately the same number of attendees were present either in person or on Zoom.
2. The Agenda was approved after motion by Geary and second by Preston: Vote: 5-0

3. Attorney Hamilton for the Appellee handed out five exhibits of architectural drawings and surveys. He also noted the removal of a stove from the accessory dwelling until.
4. There was no motion to reconsider the July 30th decision to hear the Selmi Appeal, based on its determination that there was “good-cause exception” to the timeliness requirements for appeals.
5. The Board voted to close the Public Hearing. Preston/Geary Vote-5-0 Preston, Babbitt, Geary, Fletcher, and Izenour. Chairman Izenour, Babbitt, Fletcher, Geary, and Preston all voted in favor.
6. Chairman Izenour invited members of the Board to deliberate the merits of the Selmi Appeal. Member Fletcher started a recitation of proposed findings: 1) the variance is thirteen feet; the building is within the resulting two-foot setback; thus, the placement of the building causes a non-conformity with the structure.
7. Members of the Board initially tested and pushed back on each of these suggested findings.
8. The Board reached an initial consensus that the variance could not be read any other way than thirteen feet. This was what the Certificate filed in the Registry of Deeds read, and was the measurement provided by the landowner and variance applicant.
9. As the Board continued to deliberate and wrestle with the language of the ordinances and ordinance definitions – or in some cases, lack of definitions, three members of the Board (Babbitt, Fletcher, Geary) reached an agreement that whatever structure (whether the prior greenhouse or the replacement guest house) was within that resulting two-foot setback, would render that structure non-conforming.
10. Neither party contests that the current building is within a couple of inches of the property line that separates 72 and 76 Clark Pt Road.
11. Members of the Board then read aloud various sections of both the Land Use Ordinance and the Shoreland Zoning Ordinance that direct building permit applications for a non-conforming structure to go before the Planning Board and not the Code Enforcement Officer.
12. The Board determined that the permit for 72 Clark Pt Rd was issued in error, based on the foregoing analysis.
13. The remedy is to remand
14. The Chairman of the Board directed the Town Attorney, Grady Burns, Esq., to draft the proposed Findings and Decision in the Selmi Appeal.
15. The Board agreed to continue the hearing to September 16th at 6 PM at the Fire House to allow time to approve the Findings and Decision. Motion: Fletcher; Second: Geary.
Vote: 5-0
16. Motion to adjourn at 8:56 PM: Motion Preston; Second, Geary Vote 5 – 0
Respectfully submitted, Theodore G. Fletcher, Secretary for the Southwest Harbor Board of Appeal.