STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-25-153

HAROLD MacQUINN, INC., et al

Petitioners/Appellants

v.

TOWN OF MOUNT DESERT ISLAND

Respondent/Appellee

And

GERALD SHENCAVITZ, et al.

Parties in Interests/Appellees

ON APPEAL FROM BUSINESS AND CONSUMER COURT
DOCKET NO.: BCD-APP-2024-0012

BRIEF OF APPELLEES /PARTIES-IN-INTEREST GERALD SHENCAVITZ, LAURIE SHENCAVITZ AND JAN COATES

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STATEMENT OF FACTS

Gerald and Laurie Shencavitz and Jan Coates are the owners of properties directly abutting the land in Mt. Desert, Maine, for which Appellants sought municipal approval to operate a granite quarry. The subject property, identified by municipal Tax Map 007/075/000, is located near Crane Road in Mt. Desert. Intervenors are directly affected by the subject application, seeking a license to quarry granite. Impacts of the proposed development on them include lost property value, vastly increased noise, dust and other consequences.

All intervenors have participated in municipal Planning Board, Board of Appeals, and judicial proceedings related to the quarry application, and all have submitted extensive materials to the municipal boards and Superior Court. Each has been granted standing by the Town at related municipal hearings before the Planning Board, Board of Appeals and Selectboard. Each has also been granted intervenor status in each Superior Court proceeding related to the application.

The Town's consideration of Appellants' effort to re-open a long-closed granite quarry has been both remarkably detailed and convoluted. In 2014, Appellants applied to the Mt. Desert Planning Board for a license to operate a granite quarry in a residential zoning district within the village

of Hall Quarry, pursuant to standards expressed in the Town's Quarrying License Ordinance ("QLO"). *(App., pp. 71-105).* The initial application sought approval to license a two-phase, six-acre quarry, with an active quarry area well in excess of two acres. *(R., pp. 8-154).* Initial proceedings before the municipal planning board involved submissions related to that application, that is in many respects dramatically different from the revised plan that is the subject of this appeal. Indeed, over the years between 2014 and 2023, Appellants submitted multiple revised plans to the municipal board, containing changes to development scope and boundaries, stormwater runoff mitigation, boundary setbacks, noise reduction, and screening, among other substantive revisions. *(R., pp. 187-321, 330- 503, 558, 563, 746-787).* In 2021 and 2022, Appellants submitted additional plan revisions relating to their access easement, road construction and drainage plan, and municipal street design standards compliance, all of which again substantively revised the proposed development, including, for example, stormwater management infrastructure. *(R., pp. 901-904, 924, 926-929, 931-934, 936-939, 943-955, 997-998. 1004-1005).* Appellants' proposed development plan that the Planning Board denied in 2022 differs substantially from that described in its 2014 application. The Planning Board has not yet fully reviewed the most recent site plan incarnation in

connection with most QLO review standards, that were initially addressed in connection with earlier plan incarnations.

Throughout the process, the Planning Board took preliminary votes as to whether the then-current development plan met various QLO review standards. Prior to the application's denial on other grounds, the Planning Board never voted to assess whether or not any particular preliminary vote remained applicable to Appellants' "final" development plan, as revised since the date on which any particular preliminary vote was taken. *(R., pp. 1090-1092).* On several occasions over the years between 2015 and 2019, the Board's counsel advised members that the Planning Board could change its mind on any review standard pending a final vote. *(R., pp. 182, 185, 535-536, 548, 1142).* At least twice in 2021, the Board Chair indicated the Planning Board's intent to "revisit the entirety" of its QLO standards checklist for "review and possible revision," as part of a "final vote" on the quarry license application. *(R., pp. 918, 998).* Because of the Board's vote to deny the application due to its failure to meet QLO standards under Section 6.2(A)(2), it never reached that intended stage. The Board's

decision denying the application references no final assessment or vote on any other review standard.[1]

When the Planning Board denied the quarrying license application, its action imposed no conditions or restrictions in connection with any other ordinance review standards. Appellants' appeal incorporates a number of perceived grievances with the Planning Board process unrelated to the denial grounds, including purported *conditions* for boundary line setbacks and other issues that may have been attached to a quarry license permit, had it been granted. Appellants' lengthy summary of their activity at the site fails to reference a wealth of testimony and exhibits refuting those assertions. Without conceding that any of these ancillary concerns are ripe for the Court's consideration, Intervenors note that the record supports the following:

In 1978, the Town enacted a Land Use and Zoning Ordinance ("LUZO") that made "excavation" a permitted use in the zoning district at issue in this appeal only with a conditional use permit that Appellants' predecessor never obtained. Following several LUZO amendments that minimally addressed "mineral extraction" activities, in 2013, Mt. Desert

[1] The record contains an incomplete, unsigned "checklist" of sorts, apparently created by the municipal Code Enforcement Officer, that was never reviewed nor approved by Planning Board vote. No such checklist was ever adopted, and the document does not accurately reflect Planning Board action.

voters enacted a Quarry Licensing Ordinance, in order to regulate mining activities. *(App., pp. 71-106).*

Plaintiff Harold MacQuinn, Inc. purchased the property in 1983, and presented no evidence that it ever obtained or possessed any land use permit to excavate granite at its Mt. Desert property. Extensive testimony, site photographs, and other evidence of vegetative cover, except for two small areas of actual excavation noted on the site plan application, support the conclusion that Appellants never conducted quarrying activity of any sort on the property for decades, including within 50 feet of the Shencavitz and Coates property boundaries, or that of their neighbors' abutting land. *(R., pp. 595, 597, 602-605).* Appellants' representative Paul MacQuinn had acknowledged that, to the extent that any work within 50 feet of those boundaries, it had occurred in the 1970s, before Appellants acquired the land. The land had essentially remained unused for decades, including throughout the entire duration of Appellants' ownership. *Id.* Based upon that evidence, the Board preliminarily found that Appellants could not meet their burden of proving that they engaged in active quarrying activity within 50 feet of property boundaries, except for two small areas of active excavation. *(R., p. 574).* Had it granted a permit, the Planning Board may

have imposed a 50-foot setback requirement upon Appellants' operations, consistent with QLO Section 6.2(F).

Over time, and in connection with various revised development plans, the Planning Board received extensive evidence relating to other QLO review and performance standards, including noise remediation, groundwater protection, stormwater management, and dust control. The Board preliminarily considered most of those standards under no more than one of Appellants' many revised quarrying plans. As the Board denied the license application based upon other grounds, no permit was ever approved, and no conditions were ever imposed upon Appellants.

With respect to the bases of the Planning Board's decision, Appellants submitted evidence that their property lacks direct access to a public way, and that vehicles entering and exiting must pass over a private road accessing several other lots, that crosses over land owned by Michael Musetti.[2] In March, 2021, Appellants provided the Planning Board with a copy of an easement from Mr. Musetti, to address two QLO requirements. *(App., pp. 142-145).* QLO Section 6.1(C) requires that a quarry license applicant prove title, right and interest sufficient to allow the property's use. *(App., p. 88).* QLO Section 6.2(A)(2) requires an applicant to prove

[2] Appellants have not operated the unpermitted industrial quarry, and have not used the access road for industrial purposes, while their application has remained pending.

that a quarry owner and operator will be jointly and severally responsible for "ensuring the maintenance of all infrastructure, structures and their sites." *(App., p. 90)*. The initial document prohibited Appellants' ability to build, repair, service or maintain the access road without Mr. Musetti's permission. *(R., pp. 901-904)*.

After municipal representatives and the public noted the easement's insufficiency, in August, 2021, Appellants submitted a slightly revised easement containing the following limitation: "Except for in an emergency, Grantee shall not undertake any construction or maintenance on the easement area without prior consent of Grantor, such consent not to be unreasonably withheld." *(App., pp. 146-148)*. In the event that the Town was ever compelled to enforce Appellants' road maintenance, upkeep and drainage obligations, its Code Enforcement Officer could not compel Mr. Musetti, a non-licensee, to allow the improvements to occur. At its October 20, 2021 meeting, Planning Board members expressed concerns that the easement denied Appellants the unfettered ability to repair and maintain the access road, and agreed to Appellants' counsel's request for an

extension of time to obtain and record a revised easement. *(App., p. 162)*. No such document was ever produced.[3]

The Planning Board determined that Appellants had failed to meet their burden of proof under QLO section 6.2(A)(2), as they lack sufficient legal rights to ensure the maintenance of all infrastructures, structures and their sites. *(App., pp. 64-65, 69-70)*. Notably, in Section 8.6(D), the ordinance expressly includes roads within its broad definition of "infrastructure" development. *(App., pp. 90, 98)*.

Based upon Appellants' failure to meet their burden of proof under QLO Sections 6.1(C) and 6.2(A)(2), in 2022, the Board voted to deny Appellants' application. *(App., pp. 63-66)* After conducting additional factfinding based upon the existing record, in 2024, the Board again denied the application, for a failure to meet Section 6.2(A)(2) standards. *(App., pp. 68-70)*. At its April 3, 2024 hearing, the Planning Board carefully reviewed the voluminous record of its lengthy and in-depth application consideration history, and made specific supplemental factual findings tied to identified record evidence, all of which were later reflected in its May 22, 2024 decision denying the application. *Id.* Appellants' list of perceived

[3] Appellants attempted to submit evidence of a new easement document at the Planning Board's 2024 remand proceeding, that the Board rejected due to the closure of evidence more than two years earlier. To date, Appellants have elected not to submit a new application for a quarry license.

slights and grievances notwithstanding, the Board's action was entirely consistent with its discretion after closing the evidentiary record years before; and it was fully consistent with this Court's directive.

The Board premised its 2024 denial on the following grounds: that Appellants failed to demonstrate adequate right to maintain "all infrastructures, structures and their sites" associated with their proposed development, as set forth in QLO Section 6.2(A)(2). *(App., pp. 69-70).* As it did in 2022, the Planning Board denied the application without addressing the evidentiary sufficiency of Appellants' proof as to any other ordinance review or performance standard. *Id.* Specifically, the Board's additional findings focused upon the fact that the Appellants' industrial quarry access was exclusively over private property owned by others, requiring a right of way easement. *(App., pp. 68-70).* Appellants' right to build, repair, service or maintain that access is expressly limited to instances in which they first obtain express permission from the fee owner. *(R., pp. 1340-1341).*

Further, the Planning Board referred to its experience in witnessing the brutal impact of heavy trucks, trailers, and snow plowing on gravel roadways like that in question, requiring substantial and frequent maintenance that the fee owner had exclusive power to prevent. *(App., p.*

69). Notably, over the years Board members had engaged in several site visits, with the opportunity to personally observe road conditions at the quarry site. *(App., p. 69; R., pp. 551, 1111-1112).*

The Board also observed the well-known impact of severe storms on the Town's gravel and paved roads, noting that the Applicant did not have the ability to promptly repair storm damage, untethered from the fee owner's freedom to deny permission for such work. *(App., p. 69).* Contrary to Appellants' contention, the Board's findings specifically refer to a December 21, 2023 engineering report offered by Mark Bergeron, P.E. as a partial basis for its finding. *(App., p. 69; R., pp. 1013-1015, 1341).*

On March 21, 2025, the Superior Court Business and Consumer Division upheld the Planning Board's permit denial, noting that boundary line setback conditions were not ripe for appellate consideration. *(App., pp. 40-50).* This appeal followed.

STATEMENT OF ISSUES

I. Whether the Planning Board Abused its Discretion in Determining Appellants' Failure to meet Quarry Licensing Ordinance Section 6.2(A)(2).

II. Whether the Planning Board Abused its Discretion in 2024 by Refusing to Re-open its Proceedings to Accept New Evidence from Appellants and Other Interested Parties.

III. Whether the Planning Board's Denial of Appellants' Quarry License Application Renders Their Claims About Purported Boundary Setback Limitations Unripe.

IV. Whether the Planning Board's Exclusive Factfinding Jurisdiction may be Stripped from it on Appeal.

SUMMARY OF ARGUMENT

Intervenors Shencavitz and Coates adopt the arguments of the Town of Mount Desert and the Intervenor Neighbors' Group, as set forth in their briefs, to the extent that they deviate from, or expand upon, the following argument.

As the Superior Court's decisions recognize, the municipal Planning Board conducted exhaustive proceedings, and afforded Appellants numerous opportunities over the course of several years to satisfy the requirements of QLO Section 6.2(A)(2), before closing the record to new evidence in 2022. The Board properly compared Appellants' restricted easement rights to the very real impacts of heavy truck traffic, storms and other factors on gravel access roads like that associated with the proposed development, and properly denied the application. In its 2024 decision, the Board did not find that Appellants lacked title, right or interest sufficient to use the access road, but that they could not adequately assure necessary repairs and maintenance, as required.

Appellants' additional arguments are either unripe for appellate consideration, or are otherwise legally and factually unsupported. The appeal should be denied, and the Planning Board's action affirmed.

ARGUMENT

I. The Planning Board Did Not Abuse its Discretion in Determining Appellants' Failure to meet Quarry Licensing Ordinance Section 6.2(A)(2)

A. Standard of Review

In general, this Court may reverse a municipal board's decision only "for abuse of discretion, errors of law, or findings not supported by substantial evidence in the record." Wyman v. Town of Phippsburg, 2009 ME 77, ¶ 8. With respect to factual findings, the Court may not substitute its own judgment for that of the municipal board. Perrin v. Town of Kittery, 591 A.2d 861, 863 (Me. 1991). Substantial evidence exists "when a reasonable mind would rely on that evidence as sufficient support for a conclusion." Wister v. Town of Mt. Desert, 2009 ME 66, ¶ 27 (citing Camp v. Town of Shapleigh, 2008 ME 53, ¶ 9). In other words, a board's factual determinations must be upheld if there is any competent evidence in the record to support them. York v. Town of Ogunquit, 2001 ME 53, ¶ 14.

Questions of law involving ordinance language interpretation are reviewed *de novo*. Banks v Maine RSA No. 1, 1998 ME 272, ¶4. However, in construing an ordinance the Court must look to its plain meaning, considering the ordinance's language as a whole. Wister, at ¶ 17.

B. The Planning Board's Determinations are Supported by Substantial Evidence

The Planning Board was entitled to rely upon the evidence presented, clearly demonstrating Michael Musetti's retention of veto power over Appellants' ability to build, maintain and repair the quarry's only access road. In the many years during which the Planning Board accepted evidence regarding Appellants' evolving quarry plan, Appellants offered successive easement documents, each of which preserved that power in a non-licensee, and precluded them from exercising unfettered responsibility to conduct that construction, repair and maintenance. The Board was also entitled to rely upon Appellants' August, 2021 *recognition* of that limitation, and promise to obtain additional right, title and interest to perform the work required by QLO Section 6.2(A)(2). Appellants' failure to keep their promise, and their inability to purchase or otherwise obtain the required unfettered rights, was properly interpreted as proof that Appellants' limited interest in the road infrastructure was insufficient to meet its burden of proof.

The Planning Board correctly interpreted Mr. Musetti's retained veto power as evidence that Appellants cannot maintain and repair the quarry access road under all circumstances, including those that Mr. Musetti might feel are "unreasonable." In order to obtain a quarrying license to

conduct ongoing industrial activity in a residentially zoned district, the QLO imposes a substantial burden upon owners and operators that must be intact and enforceable under all circumstances, including those that might interfere with Mr. Musetti's own property use and enjoyment, or that might damage Mr. Musetti's underlying or adjacent land. The Planning Board properly concluded that Appellants had not met, and could not meet, that burden, given the limited easement rights presented.

Among the obligations required of a quarry owner and operator are those expressed in Section 6.2(A)(2), as discussed above. The Planning Board correctly found that Appellants' easement was insufficient to meet that burden. The Board's 2024 findings demonstrate its acceptance of record evidence of specific harm, and QLO standards violations, that Appellants are not able to mitigate, given their limited easement rights.

This Court has affirmed a municipal planning board's authority to review and either approve or deny a land use application based upon an applicant's easement's sufficiency. Although the decision involved standing issues that are not directly on point here, in Tomasino v. Town of Casco, 2020 ME 96, the Court held that a planning board could, and should, determine an applicant's sufficient "legally cognizable expectation of having the power" to use a site in ways authorized by the desired permit. *Id. at ¶ 11*

(quoting Murray v. Inhabitants of the Town of Lincolnville, 462 A.2d 40 (Me. 1983)). The Court clarified an applicant's burden of proof before a municipal board, holding that it includes a specific obligation to demonstrate "a right, title, or interest in the property that allows the property to be used in the manner for which the permit is sought." *Id. at ¶ 12*. In Tomasino, the Court went on to affirm a municipal board's obligation, when presented with an applicant's easement, to determine not only that the easement exists, but also to ensure that it allows the type of activity required of the proposed use. *Id. at ¶ 15*. The Court determined that the Tomasinos' easement did not grant them the right to cut trees necessary to build a road, and that the Town properly denied the application. *Id. at ¶¶ 4, 7.*

With respect to QLO performance standards expressed in Section 6.2(A)(2), the Mt. Desert Planning Board was empowered to consider the scope of Appellants' easement, and to make a basic determination of whether or not it conveyed the rights necessary to obtain a license and meet the performance standards necessary to operate the quarry for which they applied. Private way access to an industrial granite mining quarry is not trivial; and the unfettered ability to promptly maintain that access is critical to surrounding properties' safety, and neighbors' health, welfare and safety.

The Board properly determined that Mr. Musetti's veto power over Plaintiff's ability to build, maintain and repair the road denied them the unfettered rights required by QLO Section 6.2(A)(2). The Board also correctly found that the Town has no jurisdiction over Mr. Musetti to *compel* him to allow Appellants to repair and maintain the road and its foundation and drainage. Mr. Musetti is not a co-applicant; and Appellants presented no evidence that he has any interest in the quarry owner or operating entity. His retention of rights necessary to Plaintiff's burden of proof under the QLO is fatal to the application.

Because of the easement's limitations, and Mr. Musetti's retained exclusive rights, the Town cannot compel Appellants to maintain and repair road infrastructure, including drainage and stormwater management. As in Tomasino, Plaintiff was unable to meet its burden of proving its ownership of all rights that the QLO requires to meet applicable standards; and the Planning Board appropriately denied the application based upon Appellants' restricted repair, maintenance and upkeep rights. Its decision should be upheld.

II. The Planning Board Did Not Abuse its Discretion in 2024 by Refusing to Re-open its Proceedings to Accept New Evidence from Appellants and Other Interested Parties

Over the course of several years while the record was open to new and additional evidence, and beyond, the Planning Board provided Appellants multiple opportunities to provide proof of an easement or license sufficient to meet the requirements of QLO Section 6.2(A)(2), which Appellants either failed or refused to do. In its January 9, 2024 decision remanding the matter, the Superior Court empowered the Planning Board to "determine the nature of any additional proceedings on the issue of the sufficiency" of Appellants' ability to meet Section 6.2(A)(2) standards. *(App., p. 12)*. It neither required nor recommended that the Board accept additional evidence, leaving it to the Board's discretion as to the manner in which it would make additional factual findings sufficient to allow judicial review.

Contrary to Appellants' assertions, there is no constitutional due process consideration supporting the Board's denial of their effort to insert new facts into a closed record. In Lane Construction Corp. v. Town of Washington, 2008 ME 45, this Court upheld a planning board's decision to accept supplemental evidence clarifying "a discrete technical issue" to correct a mistake that was based upon information existing at the time of

the initial application. *Id.* at ¶ 34. That decision did not endorse or mandate a board's acceptance of evidence created by an applicant long after an application's denial, and after two levels of appeal.

Contrary to the facts in Lane, here the Appellants were unable to meet their burden of proof despite being granted numerous opportunities while the record was open over several years, and then later created new evidence that they now vigorously pronounce should have been considered. Such conduct is antithetical to due process, and insupportable under Maine law. In every other instance in which new facts allegedly arise after an application's denial, an applicant's remedy is to reapply for the desired permit, allowing the municipal permitting board to assess the application based upon current standards and fresh evidence. Despite Appellants' protestations to the contrary, the Planning Board properly applied the same standard here.

In considering Appellants' argument, it is important that the Planning Board closed proceedings to new evidence in December, 2022, well more than a year before Appellants sought to introduce yet another easement. Admitting that evidence would have substantially delayed proceedings concerning the pending application, as it likely would have compelled the Board to allow other parties to submit additional evidence

concerning the evolved application and review standards including noise, stormwater management and other issues.[4]

In short, the Planning Board acted well within its discretion, and the Superior Court's mandate, in confining its remand review to the existing record. Appellants' argument to the contrary is not supported.

III. The Planning Board's Denial of Appellants' Quarry License Application Rendered Their Claims About Purported Boundary Setback Limitations Unripe

The Planning Board denied Appellants' application based upon their inability to meet the infrastructure repair, upkeep and maintenance obligation set forth in Section 6.2(A)(2). That denial precluded the Board from approving the application subject to conditions, including setbacks from property boundaries. Therefore, Appellants' arguments about the propriety of a 50-foot boundary setback condition are not ripe for this Court's consideration. While QLO Section 6.2(F)(2) includes a 50-foot setback requirement upon which Appellants' ire is focused, the Planning Board's application denial on other grounds prevented any final decision regarding that setback's application.

[4] The 2024 easement contains the many of the same flaws as its predecessors, limiting Appellants' right to maintain or repair the road only to those circumstances in which they received fee owner permission. Intervenors do not concede that it meets QLO Section 6.2(A)(2) standards, even if it had been considered.

On appeal, this Court may review only the bases articulated in a decision in determining that decision's sufficiency. See, Palian v. Dep't of Health & Human Servs., 2020 ME 131, ¶ 41. Neither the March 24, 2022 nor May 22, 2024 Planning Board decisions articulate any factual findings, conditions or other determinations beyond the application's denial for failure to meet Section 6.2(A)(2) requirements. Appellants' focus upon setback concerns is premature, and is not ripe for appellate consideration.

Here, the only articulated bases of the Mt. Desert Planning Board's decision are Appellants' failures to prove compliance with QLO standards expressed in Section 6.2(A)(2). The Board *did not* deny Appellants' application on the basis of any preliminary conditions or votes on any issue, including boundary setbacks or noise, just as it did not approve a quarrying license under any circumstances, with or without conditions. As is discussed above, the Planning Board members and Planning Board Counsel repeatedly indicated that the none of the Board's preliminary actions were final; and all were subject to reconsideration at the time of the application's ultimate denial or approval.

Even if this Court somehow determined that it has the present authority to review the Planning Board's preliminary decision enforcing the QLO's articulated 50-foot boundary setback, the record contains

substantial evidence and testimony from area residents and the Appellants' own representative to support a finding that its pre-application quarrying operations did not invade the setback, except in the two small areas that the Board identified in its meeting minutes. The Planning Board was entitled to accept that evidence as more persuasive than Appellants' contrary claims, and its decision may not be overturned.

The Planning Board did not vote favorably, or finally, on all performance standards required for a permit under the QLO. Even the unsigned, undated checklist upon which Appellants rely is incomplete, and reflects no Board consideration of QLO Sections 6.2(A) (General Requirements), or Article 7 (Performance Guarantees). *(R, pp. 1049-1065).* The Board took no action to adopt the checklist, and repeatedly made clear its intent to revisit its prior preliminary determinations, some of which were based upon a vastly different and earlier site plan than the most recent version for which Appellants sought a permit. Additionally, the Board has not yet reviewed the application concurrently with the Town's Land Use Zoning Ordinance, as required by QLO Section 2.8.[5]

In Carroll v. Town of Rockport, 2003 ME 135, ¶¶ 18-19, in the context of a municipal appeal, this Court noted decision-making bodies' prerogative

[5] Appellants' Argument that the QLO provides exclusive review standards is contradicted by Section 2.8, which expressly incorporates LUZO standards.

to change minds, membership and potentially results between preliminary and final decisions. While QLO review and performance standards have not changed, Appellants' quarry plan has changed dramatically, and impact mitigation technology has undoubtedly improved over the years. Presumably with this in mind, Planning Board counsel and members themselves repeatedly advised Appellants and the public of the Board's intent to revisit all of the preliminary votes before taking a final vote to grant a permit. Because it denied the application based upon its determination that Appellants lacked sufficient rights to ensure access road repair and maintenance, the Board never took a final vote on any other standard.

As the Planning Board's final decision denying the application on other grounds did not address any other licensing criteria, including property boundary setbacks, the imposition of potential permit conditions is not ripe for review. Appellants' argument in this regard should be rejected.

IV. The Planning Board May Not be Divested of its Exclusive Factfinding Jurisdiction on Appeal

In its January 9, 2024 decision, the Superior Court expressly noted the "Planning Board's diligent attention to this matter over many years and the hard work and time committed" to the application's review. *(App., p.*

38). The enormous municipal record clearly contradicts Appellants' assertions of municipal bias against the complex, ever-changing industrial granite quarry site plan that they have proposed. As the Superior Court justice quoted with approval, the Board Chair specifically expressed the lengths to which the Board went to fairly accommodate the applicant and all parties, in a "human", "fair and thoughtful manner." *(App., p. 39).*

Appellants improperly urge the Court to make factual determinations and licensing criteria applications that are expressly reserved to the Planning Board, wrongly propelling the Court "'into the domain…set aside exclusively for the administrative agency.'" Cannon v. Town of Mt. Desert, 2025 ME 86, ¶ 28 (quoting In re Me. Motor Rate Bureau, 357 A.2d 518, 526-27 (Me. 1976); Sec. & Exch. Comm'n v. Chenery Corp., 332 U.S. 194, 196 (1947)).

The Superior Court decisions and municipal record reflect no determination or indication of Planning Board bias. Aside from delays caused by a pandemic that essentially shut down most government activities for an extended period, Appellants have faced no procedural roadblocks or improprieties not caused by their own development plan modifications or repeated requests for delays to produce an easement or

road use and maintenance license that they were unable to present over a span of years.

Appellants' permit application contemplates the licensure of a heavily industrial, noisy and potentially contaminating mining operation within the confines of a small, residentially zoned community adjacent to a national park. Even relatively small alterations to the proposed development carry potentially significant changes to impacts upon surrounding properties. The municipal Planning Board has demonstrated levels of diligence and openness in applying QLO standards that are entirely appropriate under the circumstances. Appellants' claims of bias and a lack of due process are unsupported.

As Appellants have not met their burden of proving Planning Board improprieties, their effort to divest the Board of its exclusive jurisdiction is unfounded and should be denied. Even if the Court determines that the Board's permit denial was an abuse of discretion, the matter should be remanded for further municipal proceedings. No other result is just, proper, or in accordance with Mt. Desert's statutory home rule authority.

CONCLUSION

The Planning Board correctly interpreted the Town's Quarrying License Ordinance standards, and properly applied them to Appellants' license application, at least on the limited grounds by which it based its application denial. As the 2024 record-based findings demonstrate, Appellants' access road easement does not grant the necessary unfettered rights required to build, maintain and repair the road and its infrastructure, as is required by Quarrying License Ordinance Section 6.2(A)(2).

The record contains unrefuted testimony and evidentiary submissions regarding the severe and unmitigated negative consequences associated with Appellants' failure to obtain adequate rights in the private road providing exclusive access to the development property, some of which were expressly adopted in the Planning Board's 2024 order. The Planning Board's ordinance interpretation is legally supportable, and its factual determinations are supported by competent record evidence. Accordingly, Appellants cannot meet their burden of proof, and the appeal must be denied.

CERTIFICATE OF SERVICE

I, Daniel A. Pileggi, hereby certify that an electronic copy of the foregoing Brief of Appellees/Party-In-Interest was electronically served on counsel of record as follows: Patrick I. Marass, Esq., of Bernstein, Shur, Sawyer & Nelson, P.O. Box 9729, Portland, ME 04104, e-service address: pmarass@bernsteinshur.com; Joshua D. Dunlap, Esq. and Brian M. Rayback, Esq. of Pierce Atwood, LLP, Merrill's Wharf, 254 Commercial St., Portland, ME 04141, e-services address: jdunlap@pierceatwood.com; and brayback@pierceatwood.com and to Patrick W. Lyons, Esq., of Viridian Law, P.C., 204 Main Street, Ellsworth, ME 04605, e-service address: plyons@viridian.law on this 8th of September, 2025.

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