

February 24, 2023

VIA HAND DELIVERY TO TOWN OF RAYMOND, ME TOWN OFFICE

Town of Raymond Maine Board of Appeals
c/o Alex Sirois, Code Enforcement Officer
Town of Raymond
401 Webbs Mills Road
Raymond ME 04071

RE: Administrative Appeal Regarding Land Use Violations at 402
Webbs Mills Road, Raymond, Maine (Parcel ID 010-027-000)

Dear Board Members:

We represent Salli Cheever, who resides at 406 Webbs Mills Road. On December 28, 2022, following repeated and ongoing harms arising from a years-long series of land use violations originating from and occurring on property at 402 Webbs Mills Road, Parcel ID 010-027-000, owned by Nicole Starrett (the “Subject Property”), my office delivered a letter to Code Enforcement Officer (“CEO”) Alex Sirois, requesting that the CEO determine, as a matter of interpretation of the Town of Raymond’ (“Town’s”) Land Use Ordinance (“LUO”), that the Subject Property was in violation of the LUO by undertaking a series of unlawful and/or unpermitted uses—namely, (1) commercial firewood processing; (2) mineral extraction and associated earthmoving, excavation and stockpiling; (3) commercial uses that are not construction-related such as snow removal and bulk sand-salt storage; (4) contractor uses that exceed the Construction Vehicles/Equipment Limitation; and (5) junkyards, including the stockpiling and burial of construction and demolition debris—which are not a “contractor” use and are prohibited in the RR district (the “Prohibited Uses”). *See* December 28, 2022 Letter, attached hereto as **Exhibit 1**.

The submission of the December 28, 2022 Letter followed a series of separate, ongoing violations on the Subject Property, which date back to at least 2020, and have been the subject of several Notices of Violation (“NOVs”) issued from the CEO’s office. *See* **Exhibit 1-A**, **Exhibit 1-B**, **Exhibit 1-D** and **Exhibit 1-E** attached hereto. The Subject Property has been used for a series of commercial and industrial uses, none of which have been fully permitted by the Town, and is subject to an after-the-fact Conditional Use Permit issued by this Board on December 29, 2020 which permitted a “contractor” use on the Subject Property, *see* **Exhibit 1-C-1** attached hereto, and which noted that an after-the-fact Site Plan approval would also need to be received from the Planning Board prior to lawful operation of a contractor use on the Subject Property (which to date has not been issued, more than two years after this Board’s issuance of its permit).

On January 25, 2023, the CEO issued an inspection report following a reinspection of the Subject Property, and while the report noted the continuing violations on the Subject Property, the CEO did not determine that any additional violations existed on the Subject Property, and no NOV was issued which referenced any of the Prohibited Uses. See **Exhibit 2**, attached hereto.

This present appeal follows. For the reasons outlined below, the CEO erred in determining that no additional violations exist on the Subject Property, and there is sufficient evidence for this Board to determine that the Prohibited Uses are present on the Subject Property.

JURISDICTION, STANDING, TIMING & STANDARD OF REVIEW

The Board of Appeals has jurisdiction “to hear and decide appeals, on a de novo basis, from orders, decisions, determinations or interpretations made by the Code Enforcement Officer or the Building Inspector.” LUO, § 300-6.2(A)(1).

A CEO’s determination that a land use violation does not exist is a “decision” for the purposes of appeal. See *Raposa v. Town of York*, 2019 ME 29, ¶ 11, 204 A.3d 129. Therefore, the Board has jurisdiction to hear the present appeal challenging the CEO’s determination that there are no additional violations on the Subject Property.

The CEO’s determination was made on January 25, 2023. Per the LUO, appeal may be made to this Board within 30 days of the date of the underlying decision. The present appeal is therefore timely.

Appellant Salli Cheever is a direct abutter of the Subject Property, and therefore has standing to challenge an adverse decision by the CEO as to the Subject Property. See *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 18, 973 A.2d 735.

Per the LUO, appeals of decisions made by the CEO are heard by this Board on a *de novo* basis, meaning that the Board is empowered the take new evidence, create its own record, and make findings of fact and conclusions of law independent of the CEO’s decision. LUO, § 300-6.2(A)(1). The Board should not be deferential to the CEO’s own findings and conclusions, and is responsible for making its own, independent decision, based on the evidence that this Board collects and reviews.

ARGUMENT

As explained in more detail below and as demonstrated by the evidence attached to this appeal, the land use activities occurring on the Subject Property are in clear violation of the LUO for two distinct reasons: (1) Some of these activities are plainly prohibited in the Rural Residential zoning district (the “RR district”) where the Subject Property is located (“Prohibited Uses”), and (2) some of these activities exceed the LUO’s limitations on conditional “contractor” use and the Starretts have not secured the required approvals to conduct such “contract” use on the Subject Property (“Unauthorized Contractor Use”). Nonetheless, despite the Town’s repeated admonitions to bring

the Subject Property into compliance with the LUO requirements, the Starretts have demonstrated a pattern of disregard for the rule of law and have continued—and, in some cases, expanded—the Prohibited Uses and the Unauthorized Contractor Use on the Subject Property.

In light of the Starretts' egregious land use violations—which have had a profoundly adverse impact on the health, safety, and quality of life of our client—and the Starretts' indifference to timely and fully resolving these violations, we respectfully request that the Board determine that the Prohibited Uses and Unauthorized Contract Use constitute violations of the LUO, to remand this matter back to the CEO for the issuance of an NOV on these bases, and to recommend that the Town immediately undertake a Rule 80K proceeding against the Starretts for their failure to comply with the Notices of Violation already issued by the Town and for the additional violations found to exist by this Board.

In support of our request, we detail, in Part I, below, the full history and context of the Unauthorized Contractor Use occurring on the Subject Property, the enforcement actions taken by the Town to date to attempt to bring this use into compliance with LUO requirements, and the multi-year history of noncompliance and foot-dragging by the Starretts. In Part II, below, we describe in detail the Prohibited Uses occurring on the Subject Property.

I. UNAUTHORIZED CONTRACTOR USE: Despite a two-year (and counting) window for the Starretts to secure after-the-fact approval for a conditional “contractor” use and come into compliance with LUO standards for such a use, the Unauthorized Contractor Use continues—daily and unrelentingly—on the Subject Property.

Sometime after the Starretts' purchase of the Subject Property in 2015, abutters of the Subject Property observed a pervasive pattern of unpermitted land use activities on the Subject Property. In a letter dated September 11, 2020 (the “September 11, 2020 Letter”), an attorney for the previous owners of 406 Webbs Mills Road sent a letter to your office stating that:

1. Sometime around 2018—*over four years ago*—significant portions of the Subject Property were cleared of trees well in excess of the limits imposed by Article 9.Y of the LUO without any required local permits, and significant portions of wetland on the Subject Property had been filled, likely in violation of the Natural Resources Protection Act (“NRPA”);
2. As of at least September 2020, a business called Starrett Snow & Landscape Services (the “Business”) was openly operating¹ on the Subject Property, far exceeding the construction vehicle and equipment limits applicable to conditionally allowed “contractor” uses in the RR district pursuant to Article 4.D of the LUO and without having secured a conditional use permit for such a use from the Town's Board of Appeals; and
3. The expansive Business operations on the Subject Property failed to meet many of the minimum standards applicable to a conditional “contractor” use set forth in Article 9 of the LUO, including compatibility of the use with the surrounding area and a prohibition on

¹ Based on later findings made by the Town's Board of Appeals, it appears that the Business has in fact been operating on the Subject Property since 2015.

excessive noise, vibrations, fumes, odors, dust, and glare detectable from property boundary lines.

See September 11, 2020 Letter (attached hereto as **Exhibit 1-A**).

On October 7, 2020, your office issued a Notice of Violation (the “First NOV”), which confirmed many of the complaints raised in the September 11, 2020 Letter, including that the Subject Property was in violation of Article 4.3.h (limiting a contractor use to no more than 5 construction vehicles or pieces of equipment not screened from view); Article 5.B (requiring a building permit for the unpermitted construction of multiple structures); Article 9.Y (clearing of vegetation in excess of 25% of the lot area); and Article 10.B.1 (failure to receive site plan approval prior to the construction of nonresidential structures and/or creates more than 10,000 square feet of impervious surface) of the LUO. See First NOV (attached hereto as **Exhibit 1-B**).

The First NOV stated that the Starretts’ failure to comply with these LUO requirements by November 6, 2020—*more than two years ago*—would result in a referral to the Town’s Select Board for legal enforcement action. The First NOV also noted that the Starretts had the right to appeal the First NOV within 30 days or they would lose the right to challenge your office’s findings. No appeal was taken.

Instead, on October 30, 2020, the Starretts filed an application to the Town’s Board of Appeals for an after-the-fact conditional use permit for a “contractor” use (the “Conditional Use Application”). In their application, the Starretts committed to do “everything in our power to comply with town ordinances,” but simultaneously stated that they would continue to operate the Business—in clear violation of the LUO. See Conditional Use Permit Application (attached hereto as **Exhibit 1-C**).

On February 12, 2021, the Town’s Board of Appeals granted approval for a conditional “contractor” use on the Subject Property (the “Conditional Use Permit”). See Conditional Use Permit (attached hereto as **Exhibit 1-C-1**). The Board of Appeals specifically stated that it based its approval on the conclusion and condition that “the contractor use shall not generate noise, vibrations, fumes, odors, dust, or glare which could be detectable at the lot boundaries, and all aspects of the use will be carried on within the structures associated, or off site.” *Id.* The Board of Appeals further stated that failure to meet the “requirements” contained in the “conclusion of law” section of the Conditional Use Permit would prevent the Starretts from obtaining the necessary site plan approval to lawfully operate a contractor use in the RR district. *Id.*

On June 3, 2022—nearly *sixteen months* after the Starretts’ hollow promise that they would do “everything in our power to comply with town ordinances”—your office issued a second Notice of Violation (the “Second NOV”) that reiterated the findings of the First NOV and stated that the Starretts had yet to submit a site plan review application to seek after-the-fact approval from the Town’s Planning Board for the conditional “contractor” use on the Subject Property, as required by the LUO and the Conditional Use Permit. See Second NOV (attached hereto as **Exhibit 1-D**).

The Starretts effectively ignored the Second NOV.

On August 17, 2022, the Town Attorney notified the Starretts that the Town's Select Board had authorized the advancement of a Rule 80K judicial enforcement action against them. *See* Town Attorney Letter (attached hereto as **Exhibit 1-E**). It was only then that the Starretts took the barest of actions in a transparent attempt to delay judicial enforcement of the multi-year, ongoing land use violations on the Subject Property: Sometime after the delivery of the Town Attorney Letter, the Starretts submitted a skeletal after-the-fact site plan review application (the "Site Plan Application"), in blatant disregard of the application requirements that are plainly set out on the Town's application form and in the LUO. *See* Article 10.D of the LUO (detailing site plan review submission requirements). Not surprisingly, on November 9, 2022, the Town's Planning Board voted to deem the application incomplete.

To date, more than *two years* after the Starretts were first directed to secure after-the-fact site plan approval for their conditional "contractor" use and despite the Select Board's authorization to advance a judicial enforcement action against the Starretts some six months ago, the Unauthorized Contractor Use continues—daily and unrelentingly—on the Subject Property.

II. PROHIBITED USES: Many of the land use activities on the Subject Property are plainly prohibited in the RR district and fall outside of any reasonable interpretation of a conditional "contractor" use.

The Cheevers (as well as the prior owners of their property) have observed and documented numerous land use activities on the Subject Property that are plainly prohibited in the RR district. As described in Part II.A, using large swaths of the Subject Property that were illegally cleared of vegetation (as noted in the First NOV and Second NOV), the Subject Property is an active site for numerous uses that are prohibited in the RR district, including: (1) commercial-scale firewood processing; (2) earthmoving, excavation, and mineral extraction; (3) commercial snow removal operations and bulk storage of sand and salt; (4) active, nearly constant, on-site operation of a fleet of heavy vehicles and machinery; and (5) on-site storage and burial of construction and demolition debris—in effect, a junkyard. As explained in Part II.B, these Prohibited Uses far exceed the scope of any conditional "contractor" use that may be allowed in the RR district.

A. The land use activities occurring on the Subject Property are Prohibited Uses in the RR district.

As described next, the photographs and videos collectively attached hereto as **Exhibit 3 and Exhibit 4 (videos contained in thumb drive)** amply demonstrate that the Starretts are using the Subject Property in a manner that is prohibited in the RR district.

1. Commercial Firewood Processing

The Subject Property is being used for an ongoing, large-scale commercial firewood processing operation. Based on the Cheevers' documented observations, this operation includes hauling unprocessed logs or trees onto the Subject Property using large commercial trucks, unloading the logs or trees, and then cutting and processing them using commercial-grade wood splitters to create firewood. The firewood is then wrapped and palletized for distribution to third parties for use off-site of the Subject Property. The Exhibits contain video footage taken by Ms. Cheever from her

property depicting the stacking of unprocessed trees on the Subject Property, after dark, with a backhoe. The Exhibits further include photographs taken by Ms. Cheever from her property that depict the stacks of raw wood next to two commercial-grade wood splitters, with two dozen or more pallets of split wood, each appearing to hold at least one-half cord (approximately 64 cubic feet) of split wood, and additionally depict several of the commercial vehicles and equipment on the Subject Property, in plain view from the property line. This operation predated the issuance of the Second NOV on June 3, 2022, and based on Ms. Cheever's observations has continued unabated.

The processing of firewood for commercial sale or third-party distribution is not listed as either a permitted or conditional use in the RR district. *See* LUO, Article 4.D. Indeed, firewood processing appears fit squarely within the definition of "Industrial Use," which is defined in the LUO as "the making of goods and articles by hand or machinery including assembly, fabrication, finishing, packaging and processing." *See* LUO, Article 12. Such Industrial Uses are unequivocally prohibited in the RR district.

The CEO's Decision states that the Starrett's have represented that this operation is intended for "personal use," and use by an indeterminate number of family members, and that the CEO could not prove that the Starretts are selling the countless cords of firewood processed on the Subject Property. *See Exhibit 2*. This belies the sheer observed scale of the operation, and the character of the use, which is clearly associated with the commercial operations occurring on the Subject Property, and go far beyond what could be reasonably construed as a personal use. According to the CEO, the Starretts went so far as to admit that the wood is collected from job sites as part of the Starrett's commercial operation, and are then transported to the Subject Property for processing and distribution to an unspecified number of third parties. The commercial or industrial character of this use (in a residential neighborhood, and without any permit). Indeed, the LUO's definition of "Industrial Use" does not even require that the products produced by industrial processes be held for commercial sale. *See* LUO, § 300-12.2.

The commercial/industrial firewood processing operation on the Subject Property is therefore clearly prohibited in the RR as a matter of law, and the Starretts are in violation of the LUO by virtue of the use of the Subject Property for this purpose. These noisy, industrial activities are plainly visible from the Cheever property, and the noise at seemingly all hours generated by this use are source of continued discomfort from the Cheever property.

2. Earthmoving, Excavation, and Mineral Extraction

The Subject Property is being used for the moving and long-term stockpiling of earthen materials including gravel and dirt. Based on the Cheevers' observations of loud, banging and grinding sounds emanating regularly from the Subject Property and the presence of a skid-steer loader on the Subject Property, it is highly probable that the Subject Property is also being used for on-site crushing or processing of rock. On-site earthmoving operations are clearly depicted in the video evidence included in this Appeal, and the videos also depict the skid-steer loader operating on-site accompanied by constant, loud grinding noises. Piles of gravel can be seen in one of the photographs attached as **Exhibit 3**.

“Mineral Extraction” is broadly defined in the LUO to include the removal of any “top soil, rock, sand, gravel, and similar earth materials,” and such use is only allowed as a conditional use in the RR district subject to exceedingly strict performance standards. *See* LUO Article 9.E. To our knowledge, no conditional use permit for mineral extraction has been sought by the Starretts or issued for the Subject Property and, indeed, it is not likely that the earthmoving, excavation, and mineral extraction activities on the Subject Property could meet the strict conditional use requirements set forth in the LUO.

The CEO, notwithstanding the evidence provided, stated that he could locate no gravel on-site at the time of his inspection, and appeared to take at face value the representations made by the Starretts that no processing of earthen materials occurs on-site, notwithstanding the fact that the CEO documented evidence of construction aggregates being used as fill throughout the Subject Property. Again, the CEO states that the Starretts admit that these materials are extracted from job sites operated by the Starretts and then transported to the Subject Property—which necessarily means that the Starretts are engaging in the removal of earthen materials and are utilizing the Subject Property as part of that use. Nevertheless, the CEO refused to decide that an unlawful use was being undertaken.

3. Commercial Snow Removal Operations and Bulk Storage of Sand and Salt

The Subject Property has been used to dump and store snow that the Starretts have been delivering from off-site locations during the winter months as part of the Starretts’ snow removal operations. During these snow removal operations, dump trucks enter and exit the Subject Property at all hours, day and night. The trucks load up salt and sand that is stored on the Subject Property and dump snow that has been plowed and collected off-site.

Although Nicole Starrett stated to the Planning Board at its November 9, 2022 meeting that “we’ve gone away from snowplowing” and are “no longer providing commercial or residential snowplowing,” salted sand is still being stored within 500 feet of the Cheevers’ drinking water well, raising a serious risk of environmental contamination in violation of the MDEP Waste Discharge License requirements in 38 M.R.S. § 413.

Neither the operation of a commercial snow removal business nor the associated storage of sand and salt is a permitted or conditionally allowed use in the RR district. Moreover, as explained in Part II.B, these unlawful activities go well beyond any reasonable definition of a “contractor” use because they in no way relate to off-site construction work. Finally, and most alarmingly, these Prohibited Uses create a serious risk of harm to the Cheevers’ drinking water and, consequently, their health, safety, and welfare. Even if the Starretts’ assertion that their commercial snow removal operations have ceased is to be believed, the remnant impacts of those operations remain and their former operations nonetheless are violations of the LUO.

Paradoxically, the CEO observed that there are plows, and other snow removal equipment on-site, but appears to contort these observations into support for a finding that snow removal operations are no longer occurring on the Subject Property. The opposite conclusion must be necessarily reached—the presence of snow removal equipment on the site is in fact smoking-gun evidence that the Starretts are engaged in this unlawful use.

4. On-Site Operation of Heavy Vehicles and Machinery

As depicted in several of the videos and photos in the attached exhibits, the Subject Property is home to a fleet of commercial and industrial vehicles and heavy equipment that operates on the premises at all hours of the day, including mornings, evenings, and weekends. The Cheevers have regularly observed at least the following equipment and vehicles on the Subject Property in various states of operation:

- Two large dump trucks, possibly three²
- Three excavators
- A John Deere tractor
- A skid-steer loader
- Two industrial wood splitter machines
- A multitude of trailers, pickup trucks, and personal vehicles

The vehicles are often left loudly idling on the Subject Property when not in active use. Notably, the prior owners of the Cheevers' property also "consistently observed roughly a dozen construction vehicles and pieces of equipment at the [Subject] Property at any given time . . ." September 11, 2020 Letter. The noise and vibrations emanating from the on-site operation of these vehicles and equipment, including from dump trucks constantly backing up as they move about on the Subject Property, is relentless.

The Starretts have been on notice since at least September 11, 2020 that the LUO only allows a contractor use "not having more than five (5) construction vehicles and pieces of equipment that are not screened from view from the surrounding property and street" (the "Construction Vehicles/Equipment Limitation"). *See* LUO, Article 4.D. Nonetheless, there exists a rich depository of evidence documenting the Starretts' repeated violation of the Construction Vehicles/Equipment Limitation at the Subject Property. It also bears mention that several of the vehicles and equipment actively operating and stored on-site are not even construction vehicles/equipment, and are therefore not allowed at all as part of any "contractor" use on the Subject Property.

5. On-Site Stockpiling and Burial of Construction and Demolition Debris

During the site walk of the Subject Property conducted by the Town's Planning Board on December 3, 2022 and attended by Ms. Cheever, Ms. Cheever observed construction and demolition debris, including visible asphalt, concrete chunks, rebar, and clay pipes, stockpiled and partially buried on the Property.³ *See* Site Walk Notes (attached hereto as **Exhibit 5**). Any

² Nicole Starrett stated to the Planning Board at its November 9, 2022 meeting that the Starretts have three dump trucks on the Subject Property.

³ Ms. Cheever was unlawfully prohibited from videotaping or photographing during the site walk—a public meeting subject to the Freedom of Access Act—by Nicole Starrett and by the Chair of the Planning Board. *See* 1 M.R.S. §404. Consequently, at our request, Ms. Cheever prepared a written summary reflecting her immediate recollection of the

stockpiling or burial of discarded scrap and junked construction materials and other scrap material renders the Subject Property an unlicensed junkyard and a nuisance, in plain violation of Article 5.H.2 of the LUO and 30-A M.R.S. §§ 3751 *et seq.*

The CEO, as noted above, observed the storage and use as fill of discarded construction aggregates, but, notwithstanding the evidence provided, did not determine that scrap was intermixed with the fill being used at the Subject Property. The use and burial of construction materials on the site nevertheless constitutes a clear violation of the Town's ordinances and state law.

B. The Prohibited Uses fall outside of any reasonable interpretation of a conditional “contractor” use that is allowed in the RR district.

Even if the Starretts were authorized to operate a “contractor” use on the Subject Property (which they are not), the Prohibited Uses described above go far beyond any reasonable definition or interpretation of a “contractor” use that is conditionally allowed in the RR district.

While the term “contractor” is not defined in the LUO, the LUO provides that “all [undefined] words in this Ordinance shall carry their customary dictionary meanings.” LUO, Article 12. The Cambridge Dictionary defines “contractor” as “a person or company that arranges to supply materials or workers for building or for moving goods.”⁴ Likewise, the American Institute of Architects (AIA), the creator of contract documents that are recognized as industry standard documents for construction projects, uses the term “contractor” to refer to the person or entity responsible for performing the “Work”—that is, *construction* services, including labor, materials, and equipment provided by the contractor to fulfill his/her contractual obligations. *See, e.g.,* AIA Document A201-2017, *General Conditions of the Contract for Construction*. Indeed, the “contractor” use in Article 4.D itself refers, in the Construction Vehicles/Equipment Limitation to *construction* vehicles and pieces of equipment. *Id.*

These definitions comport to the common understanding that a “contractor” is one who is hired to provide *construction* services to a customer at the *customer's* project site. The “contractor” use conditionally allowed in the RR district can therefore be fairly interpreted to mean “the use of land to temporarily store construction equipment and materials, which are utilized at an offsite construction project site.”

This interpretation of a “contractor” use—limited in size, scope, and impact—is reasonable when considering its context: First, a “contractor” use is only allowed in the RR district as a *conditional* use, not a use permitted as of right. A “conditional use” is defined in the LUO as “[a] use that would not be appropriate generally or without restriction throughout the land use district but which, *if controlled as to number, area, location, or relation to the neighborhood*, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.” LUO, Article 12 (emphasis added). Second, in furtherance of the stated purpose of the RR district to “maintain[] the basic rural orientation of the community,” *see* LUO, Article

observations and conversations that transpired during the site walk, which we have attached to this letter for your reference.

⁴ *See* <https://dictionary.cambridge.org/us/dictionary/english/contractor>.

4.D(1), a “contractor” use must meet strict performance standards set forth in Article 9 of the LUO. Finally, as discussed above, a “contractor” use is only allowed in the RR district if that use meets the Construction Vehicles/Equipment Limitation. *See* LUO, Article 4.D(3)(h). In other words, for a conditional “contractor” use to be allowed in a rural residential area of the Town, it must be a *substantially limited* commercial use.

Under this reasoned definition, a “contractor” use conditionally allowed in the RR district does not include:

- (1) *Industrial uses*, such as commercial firewood processing;
- (2) *Mineral extraction operations*, including related earthmoving, excavation, and stockpiling of extracted materials such as gravel and dirt, which are recognized as separate and distinct conditionally allowed uses in the RR district (such uses may be allowed subject to receipt of a conditional use approval and only if they can comply with the exceedingly strict performance standards of Article 9.E);
- (3) *Commercial uses that are not construction-related*, such as commercial snow removal operations and bulk storage of sand and salt;
- (4) *Contractor uses that exceed the Construction Vehicles/Equipment Limitation*, including by storing or using commercial vehicles and equipment that are not used for construction; or
- (5) *Junkyards*, including the unlawful stockpiling and burial of construction and demolition debris.

Indeed, even if these Prohibited Uses fell within the scope of a “contractor” use (which they do not), they clearly violate the Conditional Use Permit issued by the Board of Appeals. Specifically, the Board of Appeals conditioned its approval on a finding that “[t]he contractor use *shall not generate noise, vibrations, fumes, odors, dust, or glare which could be detectable at the lot boundaries, and all aspects of the use will be carried on within the structures associated, or off site.*” **Exhibit 1-C-1** (emphasis added). As amply demonstrated by the evidence provided by the Cheevers, as well as by the former abutting property owners, the Prohibited Uses are not carried on within the structures located on the Subject Property or off-site; rather, they occur on-site and outside, generating a steady stream of noise, vibrations, fumes, dust, and glare that is readily detectable not only at the lot boundaries but from the interior of the Cheevers’ home. The Cheevers are subjected to these nuisances throughout the day, morning and night, on the weekends, and throughout the year. Moreover, the Prohibited Uses are plainly visible to the Cheevers from their property and even from the inside of their home, in large part due to the illegal vegetation clearing that has occurred on the Subject Property. In short, the unchecked expansion of the multitude of commercial and industrial uses on the Subject Property is precisely the sort of unrestricted activity that is at odds with the plain meaning of a conditional use and the purpose of the RR district. A conditional use operated without restriction or account of the impacts on neighbors is no conditional use at all.

Indeed, even with conditions or restrictions, these intensive commercial and industrial uses inevitably create substantial nuisances beyond their borders that erode “the basic rural orientation of the community.” For this reason, these Prohibited Uses do not belong in a rural residential neighborhood and are expressly not allowed in the RR district.

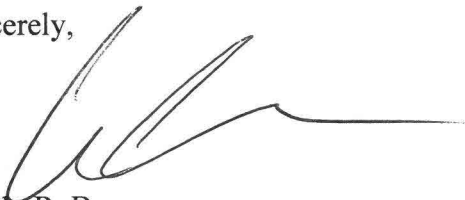
Conclusion

For all of the foregoing reasons, we respectfully request that this Board determine, as a matter of LUO interpretation, that the five above-identified Prohibited Uses—namely, (1) commercial firewood processing; (2) mineral extraction and associated earthmoving, excavation and stockpiling; (3) commercial uses that are not construction-related such as snow removal and bulk sand-salt storage; (4) contractor uses that exceed the Construction Vehicles/Equipment Limitation; and (5) junkyards, including the stockpiling and burial of construction and demolition debris—are not a “contractor” use and are prohibited in the RR district.

Based on the evidence included in the present Appeal—and in light of the ongoing serious harm that these violations are causing to our clients—we also request that the Board direct the CEO to issue a third Notice of Violation accompanied by a Stop Work Order directing the Starretts to (1) immediately and permanently cease all Prohibited Uses occurring on the Subject Property, and (2) immediately cease the Unauthorized Contractor Use occurring on the Subject Property until such time that *all* required state and local permits and approvals are secured for such use. The Notice of Violation and Stop Work Order herein requested should also reflect that the Subject Property is in violation of the conditions of the Board’s Conditional Use Permit.

Finally, based on the above, we request that the Board recommend to the Town Board of Selectmen that a Rule 80K enforcement action should be undertaken immediately to compel the Subject Property’s compliance with the LUO.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Grady R. Burns', with a long horizontal flourish extending to the right.

Grady R. Burns
Counsel for Salli Cheever

cc: Phil Saucier, Esq. (via e-mail)



**TOWN OF RAYMOND
APPLICATION TO THE
ZONING BOARD OF APPEALS**

Staff Use Only:		Received Date
Application Fee	\$ _____	
Notice Fee \$8.00/abutter	\$ _____	
Publishing Fee	\$ _____	
Escrow	_____	
TOTAL	_____	
<i>Fees will be calculated after application is submitted prior to being scheduled for Hearing</i>		

Name of Applicant Salli Cheever
Mailing Address 406 Webb's Mills Road, Raymond, ME 04071
Primary Phone (207) 699-8372 C ☒ H ☐ W ☐ email salli.chever@gmail.com
Date property acquired: (month and year) _____
Name of Owner (if different than applicant) N/A
Mailing Address _____
Town: _____ State _____ Zip Code _____
Primary Phone _____ C ☐ H ☐ W ☐ email _____
Property Address (street number and name): 406 Webb's Mills Road
Town of Raymond Map 10 Lot 28 Zone RR
Deed Reference Book 37439 Page 329

The undersigned applies for the following:

- X 1. ADMINISTRATIVE APPEAL. Applicant requests relief from the decision, or lack of decision, of the Code Enforcement Officer. The undersigned believes that (check one)
_____ An error was made in the denial of the permit
_____ Denial of the permit was based on the misinterpretation of the ordinance
_____ The permit was not approved or denied within a reasonable period of time
X Other: Appeal of non-enforcement decision by code enforcement officer
- _____ 2. VARIANCE (the information listed on page 3 must be submitted)
- _____ 3. CONDITIONAL USE PERMIT For _____ (use) in _____ Zone
- _____ 4. VARIANCE PROVISION(S) FOR NON-CONFORMING Lot ☐ Structure ☐ Use ☐

I have read, understand and agree to the above instructions and conditions. I also authorize any Board Member or other Town Officials to enter onto the site. I certify that the information contained in this application and its supplement is true and correct.

Date: 2/24/2023

Appellant: _____

Date: _____

Property Owner: _____

Grady W. Burns, Esq.
For: Salli Cheever

VARIANCE CRITERIA

- a. Nature of variance: Describe the nature of the variance.

N/A

NOTE: Eight (8) copies of a sketch plan of the property **must** accompany this application showing the dimensions and shape of the lot, the size, setbacks and location of **existing** buildings, the location and dimensions of proposed buildings or alterations, the location of any buildings within 100 feet of the lot, and any natural or topographic peculiarities of the lot in question.

- b. Justification of variance: In order to be granted, the Appellant **MUST DEMONSTRATE** to the Board of Appeals that the strict application of the zoning ordinance would cause **UNDUE HARDSHIP**. **MAINE STATE LAW REQUIRES FOUR CRITERIA, WHICH MUST BE MET** before the Board of Appeals can find that the hardship exists. Please explain how your situation meets **EACH** of these criteria listed below: (If these are not answered, the appeal will not be scheduled.)

1. The land in question cannot yield a reasonable return unless the variance is granted.

N/A

2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.

N/A

3. The granting of the variance will not alter the essential character of the locality.

N/A

4. The hardship is not the result of action taken by the appellant or a prior owner.

N/A

December 28, 2022

Delivery by email to ceo@raymondmaine.org

Alex Sirois, Code Enforcement Officer
Town of Raymond
401 Webbs Mills Road
Raymond ME 04071

RE: Land Use Violations at 402 Webbs Mills Road, Raymond, Maine
(Parcel ID 010-027-000)

Dear Mr. Sirois:

We represent Salli and Eddie Cheever, who reside at 406 Webbs Mills Road. As you are aware, the Cheevers and several of their neighbors have been subjected to repeated and ongoing harms arising from a years-long series of land use violations originating from and occurring on property at 402 Webbs Mills Road, Parcel ID 010-027-000, owned by Nicole and Ben Starrett (the “Subject Property”). Some, though not all, of these land use violations have been previously documented by your office.

As explained in more detail below and as demonstrated by the evidence attached to this letter, the land use activities occurring on the Subject Property are in clear violation of the Town of Raymond Land Use Ordinance (the “LUO”) for two distinct reasons: (1) Some of these activities are plainly prohibited in the Rural Residential zoning district (the “RR district”) where the Subject Property is located (“Prohibited Uses”), and (2) some of these activities exceed the LUO’s limitations on conditional “contractor” use and the Starretts have not secured the required approvals to conduct such “contract” use on the Subject Property (“Unauthorized Contractor Use”). Nonetheless, despite the Town’s repeated admonitions to bring the Subject Property into compliance with the LUO requirements, the Starretts have demonstrated a pattern of disregard for the rule of law and have continued—and, in some cases, expanded—the Prohibited Uses and the Unauthorized Contractor Use on the Subject Property.

In light of the Starretts’ egregious land use violations—which have had a profoundly adverse impact on the health, safety, and quality of life of our clients—and the Starretts’ indifference to timely and fully resolving these violations, we respectfully request that the Town of Raymond (the “Town”) take immediate enforcement action against the Starretts. We specifically ask the Town to institute a Rule 80K proceeding against the Starretts for their failure to comply with the Notices of Violation already issued by your office and/or for your office to forthwith issue a third Notice of Violation—this time, accompanied by a Stop Work Order directing the Starretts to (1) immediately and permanently cease all Prohibited Uses occurring on the Subject Property, and

(2) immediately cease the Unauthorized Contractor Use occurring on the Subject Property until such time that *all* required state and local permits and approvals are secured for such use.

In support of our request, we detail, in Part I, below, the full history and context of the Unauthorized Contractor Use occurring on the Subject Property, the enforcement actions taken by the Town to date to attempt to bring this use into compliance with LUO requirements, and the multi-year history of noncompliance and foot-dragging by the Starretts. In Part II, below, we describe in detail the Prohibited Uses occurring on the Subject Property.

I. UNAUTHORIZED CONTRACTOR USE: Despite a two-year (and counting) window for the Starretts to secure after-the-fact approval for a conditional “contractor” use and come into compliance with LUO standards for such a use, the Unauthorized Contractor Use continues—daily and unrelentingly—on the Subject Property.

Sometime after the Starretts’ purchase of the Subject Property in 2015, abutters of the Subject Property observed a pervasive pattern of unpermitted land use activities on the Subject Property. In a letter dated September 11, 2020 (the “September 11, 2020 Letter”), an attorney for the previous owners of 406 Webbs Mills Road sent a letter to your office stating that:

1. Sometime around 2018—*over four years ago*—significant portions of the Subject Property were cleared of trees well in excess of the limits imposed by Article 9.Y of the LUO without any required local permits, and significant portions of wetland on the Subject Property had been filled, likely in violation of the Natural Resources Protection Act (“NRPA”);
2. As of at least September 2020, a business called Starrett Snow & Landscape Services (the “Business”) was openly operating¹ on the Subject Property, far exceeding the construction vehicle and equipment limits applicable to conditionally allowed “contractor” uses in the RR district pursuant to Article 4.D of the LUO and without having secured a conditional use permit for such a use from the Town’s Board of Appeals; and
3. The expansive Business operations on the Subject Property failed to meet many of the minimum standards applicable to a conditional “contractor” use set forth in Article 9 of the LUO, including compatibility of the use with the surrounding area and a prohibition on excessive noise, vibrations, fumes, odors, dust, and glare detectable from property boundary lines.

See September 11, 2020 Letter (attached hereto as **Exhibit A**).

On October 7, 2020, your office issued a Notice of Violation (the “First NOV”), which confirmed many of the complaints raised in the September 11, 2020 Letter, including that the Subject Property was in violation of Article 4.3.h (limiting a contractor use to no more than 5 construction vehicles or pieces of equipment not screened from view); Article 5.B (requiring a building permit for the unpermitted construction of multiple structures); Article 9.Y (clearing of vegetation in excess of

¹ Based on later findings made by the Town’s Board of Appeals, it appears that the Business has in fact been operating on the Subject Property since 2015.

25% of the lot area); and Article 10.B.1 (failure to receive site plan approval prior to the construction of nonresidential structures and/or creates more than 10,000 square feet of impervious surface) of the LUO. *See* First NOV (attached hereto as **Exhibit B**).

The First NOV stated that the Starretts' failure to comply with these LUO requirements by November 6, 2020—*more than two years ago*—would result in a referral to the Town's Select Board for legal enforcement action. The First NOV also noted that the Starretts had the right to appeal the First NOV within 30 days or they would lose the right to challenge your office's findings. No appeal was taken.

Instead, on October 30, 2020, the Starretts filed an application to the Town's Board of Appeals for an after-the-fact conditional use permit for a "contractor" use (the "Conditional Use Application"). In their application, the Starretts committed to do "everything in our power to comply with town ordinances," but simultaneously stated that they would continue to operate the Business—in clear violation of the LUO. *See* Conditional Use Permit Application (attached hereto as **Exhibit C**).

On February 12, 2021, the Town's Board of Appeals granted approval for a conditional "contractor" use on the Subject Property (the "Conditional Use Permit"). *See* Conditional Use Permit (attached hereto as **Exhibit C-1**). The Board of Appeals specifically stated that it based its approval on the conclusion and condition that "the contractor use shall not generate noise, vibrations, fumes, odors, dust, or glare which could be detectable at the lot boundaries, and all aspects of the use will be carried on within the structures associated, or off site." *Id.* The Board of Appeals further stated that failure to meet the "requirements" contained in the "conclusion of law" section of the Conditional Use Permit would prevent the Starretts from obtaining the necessary site plan approval to lawfully operate a contractor use in the RR district. *Id.*

On June 3, 2022—nearly *sixteen months* after the Starretts' hollow promise that they would do "everything in our power to comply with town ordinances"—your office issued a second Notice of Violation (the "Second NOV") that reiterated the findings of the First NOV and stated that the Starretts had yet to submit a site plan review application to seek after-the-fact approval from the Town's Planning Board for the conditional "contractor" use on the Subject Property, as required by the LUO and the Conditional Use Permit. *See* Second NOV (attached hereto as **Exhibit D**).

The Starretts effectively ignored the Second NOV.

On August 17, 2022, the Town Attorney notified the Starretts that the Town's Select Board had authorized the advancement of a Rule 80K judicial enforcement action against them. *See* Town Attorney Letter (attached hereto as **Exhibit E**). It was only then that the Starretts took the barest of actions in a transparent attempt to delay judicial enforcement of the multi-year, ongoing land use violations on the Subject Property: Sometime after the delivery of the Town Attorney Letter, the Starretts submitted a skeletal after-the-fact site plan review application (the "Site Plan Application"), in blatant disregard of the application requirements that are plainly set out on the Town's application form and in the LUO. *See* Site Plan Application (on file with your office); *compare with* Article 10.D of the LUO (detailing site plan review submission requirements). Not surprisingly, on November 9, 2022, the Town's Planning Board voted to deem the application incomplete.

To date, more than *two years* after the Starretts were first directed to secure after-the-fact site plan approval for their conditional “contractor” use and despite the Select Board’s authorization to advance a judicial enforcement action against the Starretts some five months ago, the Unauthorized Contractor Use continues—daily and unrelentingly—on the Subject Property.

Given this history, we have no reason to believe (and we put zero confidence in any promises made by the Starretts) that the Starretts will ever (1) file a complete site plan review application; (2) comply with the conditions imposed on the “contractor” use by the Conditional Use Approval; (3) secure after-the-fact site plan approval from the Planning Board for the Unauthorized Contractor Use (because, as described more fully in the September 11, 2020 Letter, the Unauthorized Contractor Use does not currently meet the limitations on conditional “contractor” uses or many of the applicable site plan review standards); or (4) obtain after-the-fact permits for any of the other numerous state and local permits and approvals that are necessary to bring the Unauthorized Contractor Use into compliance with state laws and local ordinances.²² Consequently, we respectfully request that the Town stop accommodating the Starretts’ delay tactics (which only serve to enrich the Starretts and harm our clients) and instead take such enforcement actions as necessary to immediately cause all Unauthorized Contractor Use on the Subject Property to cease.

II. PROHIBITED USES: Many of the land use activities on the Subject Property are plainly prohibited in the RR district and fall outside of any reasonable interpretation of a conditional “contractor” use.

The Cheevers (as well as the prior owners of their property) have observed and documented numerous land use activities on the Subject Property that are plainly prohibited in the RR district. As described in Part II.A, using large swaths of the Subject Property that were illegally cleared of vegetation (as noted in the First NOV and Second NOV), the Subject Property is an active site for numerous uses that are prohibited in the RR district, including: (1) commercial-scale firewood processing; (2) earthmoving, excavation, and mineral extraction; (3) commercial snow removal operations and bulk storage of sand and salt; (4) active, nearly constant, on-site operation of a fleet of heavy vehicles and machinery; and (5) on-site storage and burial of construction and demolition debris—in effect, a junkyard. As explained in Part II.B, these Prohibited Uses far exceed the scope of any conditional “contractor” use that may be allowed in the RR district.

A. The land use activities occurring on the Subject Property are Prohibited Uses in the RR district.

²² In addition to site plan approval, these permits and approvals include: building permits for multiple unauthorized structures on the Subject Property; a Maine Department of Transportation (“MDOT”) entrance permit (the Starretts secured a residential driveway permit from MDOT but not a commercial entrance permit required for their “contractor” use); a NRPA permit for unlawfully filling a wetland; a State Fire Marshall permit for installing a diesel fuel tank, which is an on-site consumption motor fuel tanks; and potentially also implementation of an SPCC Plan in accordance with federal SPCC law if the diesel tank exceeds 1320 gallons, a Maine Emergency Management Authority (“MEMA”) annual inventory reporting and registration for above-ground storage tanks that store more than 1570 gallons of diesel fuel, and a Maine Department of Environmental Protection (“MDEP”) registration for any underground piping associated with a diesel fuel tank.

As described next, the photographs and videos collectively attached hereto as **Exhibits F and G** amply demonstrate that the Starretts are using the Subject Property in a manner that is prohibited in the RR district.

1. Commercial Firewood Processing

The Subject Property is being used for an ongoing, large-scale commercial firewood processing operation. Based on the Cheevers' documented observations, this operation includes hauling unprocessed logs or trees onto the Subject Property using large commercial trucks, unloading the logs or trees, and then cutting and processing them using commercial-grade wood splitters to create firewood. The firewood is then wrapped and palletized for commercial sale. **Exhibit F-1** contains video footage taken by Ms. Cheever from her property depicting the stacking of unprocessed trees on the Subject Property, after dark, with a backhoe. **Exhibits F-2 and F-3** are photographs taken by Ms. Cheever from her property that depict the stacks of raw wood next to two commercial-grade wood splitters, with two dozen or more pallets of split wood, each appearing to hold at least one-half cord (approximately 64 cubic feet) of split wood. **Exhibit F-2** additionally depicts several of the commercial vehicles and equipment on the Subject Property, in plain view from the property line. **Exhibit F-4** provides a closer photo of the two commercial-grade wood splitters along with the hundreds of tree-sized logs awaiting processing on the Subject Property. This operation predated the issuance of the Second NOV on June 3, 2022, and based on Ms. Cheever's observations has continued unabated.

The processing of firewood for commercial sale is not listed as either a permitted or conditional use in the RR district. *See* LUO, Article 4.D. Indeed, firewood processing appears fit squarely within the definition of "Industrial Use," which is defined in the LUO as "the making of goods and articles by hand or machinery including assembly, fabrication, finishing, packaging and processing." *See* LUO, Article 12. Such Industrial Uses are unequivocally prohibited in the RR district.

2. Earthmoving, Excavation, and Mineral Extraction

The Subject Property is being used for the moving and long-term stockpiling of earthen materials including gravel and dirt. Based on the Cheevers' observations of loud, banging and grinding sounds emanating regularly from the Subject Property and the presence of a skid-steer loader on the Subject Property, it is highly probable that the Subject Property is also being used for on-site crushing or processing of rock. On-site earthmoving operations are clearly depicted in the video attached as **Exhibit F-5**, and the video attached as **Exhibit F-6** depicts the skid-steer loader operating on-site accompanied by constant, loud grinding noises. Piles of gravel can be seen in the photograph attached as **Exhibit F-7**.

"Mineral Extraction" is broadly defined in the LUO to include the removal of any "top soil, rock, sand, gravel, and similar earth materials," and such use is only allowed as a conditional use in the RR district subject to exceedingly strict performance standards. *See* LUO Article 9.E. To our knowledge, no conditional use permit for mineral extraction has been sought by the Starretts or issued for the Subject Property and, indeed, it is not likely that the earthmoving, excavation, and

mineral extraction activities on the Subject Property could meet the strict conditional use requirements set forth in the LUO.

3. Commercial Snow Removal Operations and Bulk Storage of Sand and Salt

The Subject Property has been used to dump and store snow that the Starretts have been delivering from off-site locations during the winter months as part of the Starretts' snow removal operations. During these snow removal operations, dump trucks enter and exit the Subject Property at all hours, day and night. The trucks load up salt and sand that is stored on the Subject Property and dump snow that has been plowed and collected off-site.

Although Nicole Starrett stated to the Planning Board at its November 9, 2022 meeting that "we've gone away from snowplowing" and are "no longer providing commercial or residential snowplowing," salted sand is still being stored within 500 feet of the Cheevers' drinking water well, raising a serious risk of environmental contamination in violation of the MDEP Waste Discharge License requirements in 38 M.R.S. § 413. If the sand-salt pile is greater than 100 cubic yards in size, which appears to be the case here, this on-site storage may also violate the state law and MDEP registration, siting, and operation rules.

Neither the operation of a commercial snow removal business nor the associated storage of sand and salt is a permitted or conditionally allowed use in the RR district. Moreover, as explained in Part II.B, these unlawful activities go well beyond any reasonable definition of a "contractor" use because they in no way relate to off-site construction work. Finally, and most alarmingly, these Prohibited Uses create a serious risk of harm to the Cheevers' drinking water and, consequently, their health, safety, and welfare. Even if the Starretts' assertion that their commercial snow removal operations have ceased is to be believed, the remnant impacts of those operations remain and their former operations nonetheless are violations of the LUO.

4. On-Site Operation of Heavy Vehicles and Machinery

As depicted in several of the videos and photos in **Exhibit F**, the Subject Property is home to a fleet of commercial and industrial vehicles and heavy equipment that operates on the premises at all hours of the day, including mornings, evenings, and weekends. The Cheevers have regularly observed at least the following equipment and vehicles on the Subject Property in various states of operation:

- Two large dump trucks, possibly three³
- Three excavators
- A John Deere tractor
- A skid-steer loader
- Two industrial wood splitter machines
- A multitude of trailers, pickup trucks, and personal vehicles

³ Nicole Starrett stated to the Planning Board at its November 9, 2022 meeting that the Starretts have three dump trucks on the Subject Property.

The vehicles are often left loudly idling on the Subject Property when not in active use. Notably, the prior owners of the Cheevers' property also "consistently observed roughly a dozen construction vehicles and pieces of equipment at the [Subject] Property at any given time . . ." September 11, 2020 Letter. The noise and vibrations emanating from the on-site operation of these vehicles and equipment, including from dump trucks constantly backing up as they move about on the Subject Property, is relentless.

The Starretts have been on notice since at least September 11, 2020 that the LUO only allows a contractor use "not having more than five (5) construction vehicles and pieces of equipment that are not screened from view from the surrounding property and street" (the "Construction Vehicles/Equipment Limitation"). *See* LUO, Article 4.D. Nonetheless, there exists a rich depository of evidence documenting the Starretts' repeated violation of the Construction Vehicles/Equipment Limitation at the Subject Property. It also bears mention that several of the vehicles and equipment actively operating and stored on-site are not even construction vehicles/equipment, and are therefore not allowed at all as part of any "contractor" use on the Subject Property.

5. On-Site Stockpiling and Burial of Construction and Demolition Debris

During the site walk of the Subject Property conducted by the Town's Planning Board on December 3, 2022 and attended by Ms. Cheever, Ms. Cheever observed construction and demolition debris, including visible asphalt, concrete chunks, rebar, and clay pipes, stockpiled and partially buried on the Property.⁴ *See* Site Walk Notes (attached hereto as **Exhibit G**). Any stockpiling or burial of discarded scrap and junked construction materials and other scrap material renders the Subject Property an unlicensed junkyard and a nuisance, in plain violation of Article 5.H.2 of the LUO and 30-A M.R.S. §§ 3751 *et seq.*

B. The Prohibited Uses fall outside of any reasonable interpretation of a conditional "contractor" use that is allowed in the RR district.

Even if the Starretts were authorized to operate a "contractor" use on the Subject Property (which they are not), the Prohibited Uses described above go far beyond any reasonable definition or interpretation of a "contractor" use that is conditionally allowed in the RR district.

While the term "contractor" is not defined in the LUO, the LUO provides that "all [undefined] words in this Ordinance shall carry their customary dictionary meanings." LUO, Article 12. The Cambridge Dictionary defines "contractor" as "a person or company that arranges to supply materials or workers for building or for moving goods."⁵ Likewise, the American Institute of Architects (AIA), the creator of contract documents that are recognized as industry standard

⁴ Ms. Cheever was unlawfully prohibited from videotaping or photographing during the site walk—a public meeting subject to the Freedom of Access Act—by Nicole Starrett and by the Chair of the Planning Board. *See* 1 M.R.S. §404. Consequently, at our request, Ms. Cheever prepared a written summary reflecting her immediate recollection of the observations and conversations that transpired during the site walk, which we have attached to this letter for your reference.

⁵ *See* <https://dictionary.cambridge.org/us/dictionary/english/contractor>.

documents for construction projects, uses the term “contractor” to refer to the person or entity responsible for performing the “Work”—that is, *construction* services, including labor, materials, and equipment provided by the contractor to fulfill his/her contractual obligations. *See, e.g.,* AIA Document A201-2017, *General Conditions of the Contract for Construction*. Indeed, the “contractor” use in Article 4.D itself refers, in the Construction Vehicles/Equipment Limitation to *construction* vehicles and pieces of equipment. *Id.*

These definitions comport to the common understanding that a “contractor” is one who is hired to provide *construction* services to a customer at the *customer’s* project site. The “contractor” use conditionally allowed in the RR district can therefore be fairly interpreted to mean “the use of land to temporarily store construction equipment and materials, which are utilized at an offsite construction project site.”

This interpretation of a “contractor” use—limited in size, scope, and impact—is reasonable when considering its context: First, a “contractor” use is only allowed in the RR district as a *conditional* use, not a use permitted as of right. A “conditional use” is defined in the LUO as “[a] use that would not be appropriate generally or without restriction throughout the land use district but which, *if controlled as to number, area, location, or relation to the neighborhood*, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.” LUO, Article 12 (emphasis added). Second, in furtherance of the stated purpose of the RR district to “maintain[] the basic rural orientation of the community,” *see* LUO, Article 4.D(1), a “contractor” use must meet strict performance standards set forth in Article 9 of the LUO. Finally, as discussed above, a “contractor” use is only allowed in the RR district if that use meets the Construction Vehicles/Equipment Limitation. *See* LUO, Article 4.D(3)(h). In other words, for a conditional “contractor” use to be allowed in a rural residential area of the Town, it must be a *substantially limited* commercial use.

Under this reasoned definition, a “contractor” use conditionally allowed in the RR district does not include:

- (1) *Industrial uses*, such as commercial firewood processing;
- (2) *Mineral extraction operations*, including related earthmoving, excavation, and stockpiling of extracted materials such as gravel and dirt, which are recognized as separate and distinct conditionally allowed uses in the RR district (such uses may be allowed subject to receipt of a conditional use approval and only if they can comply with the exceedingly strict performance standards of Article 9.E);
- (3) *Commercial uses that are not construction-related*, such as commercial snow removal operations and bulk storage of sand and salt;
- (4) *Contractor uses that exceed the Construction Vehicles/Equipment Limitation*, including by storing or using commercial vehicles and equipment that are not used for construction; or

- (5) *Junkyards*, including the unlawful stockpiling and burial of construction and demolition debris.

Indeed, even if these Prohibited Uses fell within the scope of a “contractor” use (which they do not), they clearly violate the Conditional Use Permit issued by the Board of Appeals. Specifically, the Board of Appeals conditioned its approval on a finding that “[t]he contractor use *shall not generate noise, vibrations, fumes, odors, dust, or glare which could be detectable at the lot boundaries, and all aspects of the use will be carried on within the structures associated, or off site.*” **Exhibit C** (emphasis added). As amply demonstrated by the evidence provided by the Cheevers, as well as by the former abutting property owners, the Prohibited Uses are not carried on within the structures located on the Subject Property or off-site; rather, they occur on-site and outside, generating a steady stream of noise, vibrations, fumes, dust, and glare that is readily detectable not only at the lot boundaries but from the interior of the Cheevers’ home. The Cheevers are subjected to these nuisances throughout the day, morning and night, on the weekends, and throughout the year. Moreover, the Prohibited Uses are plainly visible to the Cheevers from their property and even from the inside of their home, in large part due to the illegal vegetation clearing that has occurred on the Subject Property. In short, the unchecked expansion of the multitude of commercial and industrial uses on the Subject Property is precisely the sort of unrestricted activity that is at odds with the plain meaning of a conditional use and the purpose of the RR district. A conditional use operated without restriction or account of the impacts on neighbors is no conditional use at all.

Indeed, even with conditions or restrictions, these intensive commercial and industrial uses inevitably create substantial nuisances beyond their borders that erode “the basic rural orientation of the community.” For this reason, these Prohibited Uses do not belong in a rural residential neighborhood and are expressly not allowed in the RR district.

Conclusion

For all of the foregoing reasons, we respectfully request that your office determine, as a matter of LUO interpretation, that the five above-identified Prohibited Uses—namely, (1) commercial firewood processing; (2) mineral extraction and associated earthmoving, excavation and stockpiling; (3) commercial uses that are not construction-related such as snow removal and bulk sand-salt storage; (4) contractor uses that exceed the Construction Vehicles/Equipment Limitation; and (5) junkyards, including the stockpiling and burial of construction and demolition debris—are not a “contractor” use and are prohibited in the RR district.

Based on the evidence summarized in this letter and your own observations—and in light of the ongoing serious harm that these violations are causing to our clients—we also request that your office forthwith issue a third Notice of Violation accompanied by a Stop Work Order directing the Starretts to (1) immediately and permanently cease all Prohibited Uses occurring on the Subject Property, and (2) immediately cease the Unauthorized Contractor Use occurring on the Subject Property until such time that *all* required state and local permits and approvals are secured for such use. The Notice of Violation and Stop Work Order herein requested should also reflect that the Subject Property is in violation of the conditions of the Board of Appeals’ Conditional Use Permit,

and we request that your office make this affirmative finding based on the evidence provided here and your own investigation.

Because interpretive decisions made by your office are decisions subject to appeal and finality, *see Raposa v. Town of York*, 2019 ME 29, ¶ 11, 204 A.3d 129, we request a written response to this letter with a determination that the above-described Prohibited Uses and Unauthorized Contractor Use constitute violations of the Town's LUO and specifying what enforcement actions are being taken in response to these violations and on what timetable. If no response to this letter is received within 30 days, we will treat that silence as a decision not to take action, and will file an appeal to the Board of Appeals pursuant to LUO Article 6.B(1)(a) within 60 days of the date of this letter to protect our clients' rights to appeal. *See* LUO Article 6.C(5).

Finally, we ask that you present this letter to the Town's Select Board so that the Select Board can reconsider whether or not to institute a Rule 80K judicial enforcement action against the Starretts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Grady R. Burns".

Grady R. Burns
Agnieszka A. Dixon
Counsel for Salli and Eddie Cheever

cc: Phil Saucier, Esq. (via e-mail)

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September 11, 2020

VIA E-MAIL AND REGULAR MAIL

Alex Sirois, CEO
Town of Raymond
401 Webbs Mills Road
Raymond, ME 04071
cco@raymondmaine.org

**Re: Land Use Violations at 402 Webbs Mills Road
Tax Map 10, Lot 27**

Dear Alex:

I am writing on behalf of my clients, Amanda and Aaron Kamba, to follow up on their prior requests for assistance regarding several persistent land use violations currently ongoing at the abutting property located at 402 Webbs Mills Road, and designated by the Assessor as Map 10, Lot 27, (the "Property"). According to assessing records, the Property is owned by Nicole Curtis-Bray, but it is also the location of a contracting business, Starrett Snow & Landscape Services. We are respectfully requesting you to inspect the Property for violations and, if you confirm that there are any, to send a notice of violation to Ms. Curtis-Bray and any other responsible individuals, all in accordance with your duties under the Town of Raymond Land Use Ordinance.

Amanda and Aaron live at 406 Webbs Mills Road, and have owned that property for three years. During that time, they have observed a number of violations of the Raymond Land Use Ordinance ("LUO") occurring at the Property, as follows:

1. Approximately two years ago, vegetation was cleared from a very large, previously wooded portion of the Property, leaving a significant open area that removed much of the natural buffer between the two lots. Compare the attached Google Earth aerial photos from 2016 and 2018. This is a clear violation of LUO Art. 9, Sec. Y: "In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25% of the lot area or fifteen thousand (15,000) square feet, whichever is greater,

~ Over 60 Years of Service ~

Jensen Baird
Gardner Henry

September 11, 2020

re 2

including land previously developed." The Property is four (4) acres in size (174,240 square feet); therefore, the owners of the Property would be limited to clearing one (1) acre (43,560 square feet). In addition, my clients have observed that the areas of the Property that previously had been wet or "swampy" appear to have been filled in following the clearing of vegetation described above. This is a potential violation of the Natural Resources Protection Act ("NRPA"), 38 M.R.S. § 480-C, if such work was performed without a permit.

2. A commercial contracting business, Starrett Snow & Landscape Services ("Starrett"), operates from the Property, which is located in the Rural Residential ("RR") district. In fact, there is a sign on the Property—visible from Webbs Mills Road—that identifies the business location. (The sign is not currently visible because it blew down in a recent storm.) Under LUO Art. 4, Sec. D, a contractor is a conditional use in the RR district, not a permitted use. Starrett has been operating its business at the Property despite never having applied for, nor received, a conditional use approval from the Board of Appeals as is required under Article 9 of the LUO. Moreover, even if there were an approved conditional use for the business, the ordinance only allows contractors "not having more than five (5) construction vehicles and pieces of equipment that are not screened from view from the surrounding property and street." LUO Art. 4, Sec. D. My clients have consistently observed roughly a dozen construction vehicles and pieces of equipment at the Property at any given time (including the present time)—far exceeding the limit in the LUO.

3. Looking to the ordinance requirements, Starrett would be unable to meet many of the minimum standards for conditional uses set forth in Article 9 with respect to its contractor business at the Property:

- *"Will be compatible with permitted uses within the zone as determined by population; density; design; scale and bulk of any proposed new structures; and intensity of use." LUO Art. 9, Sec. A(2).*

As likely may be observed from the Town Office across the street, Starrett's use of the Property is quite intense, and is not compatible with many of the other permitted uses in the RR district, including the residential use of my clients on the adjacent parcel. The business involves the comings and goings of a number of loud construction vehicles and heavy machinery, and the storage of the same on the Property. In addition, Starrett has used its construction equipment to clear and grade the wooded areas of the rear portion of the Property without approval, as described in #1 above.

- *"Will not generate noise, vibrations, fumes, odors, dust, or glare which are detectable at the lot boundaries, and all aspects of the conditional use will be carried on within the structure." LUO Art. 9, Sec. A(3).*

Jensen Baird
Gardner Henry

September 11, 2020

3

All of these "nuisance" elements are produced by Starrett's business and are detectable by my clients at the lot boundary on an ongoing basis. Moreover, the contractor use is not carried on within the structure at the Property; rather, the business is operated entirely outdoors, with the deployment and storage of a large number of vehicles, equipment and materials relating to the contractor business.

- *"Will not cause water pollution, sedimentation, erosion, contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result." LUO Art. 9, Sec. A(4).*

My clients have a well for their drinking water, and have significant and justifiable concerns that the activities related to Starrett's construction operation at the Property could contaminate their drinking water. This includes the cleaning and power-washing of vehicles and equipment and storage of materials related to the contractor business on site.

- *Art. 9, Sec. A(7): "Will not depreciate the economic value of surrounding properties."*

My clients are currently trying to market and sell their house, but the presence of Starrett's business at the adjacent Property, with all of the above-described nuisance conditions present, has made it very difficult to attract any prospective purchasers. Even if my clients are able to sell their property, it will likely be at a deep discount due to the ongoing, illegal use of the abutting Property.

4. Finally, under the letter of the LUO, the above land use violations mean that the Property is a "nuisance." Article 5, Sec. H provides: "Any violation of this Ordinance shall be deemed to be a nuisance." As provided under the LUO, the Town is required to order the "abatement of nuisance conditions" by the owner and operator of the Property.

For all of these reasons, my clients are requesting you to exercise your authority under the LUO to investigate these violations and notify the persons responsible. See LUO Art. 5, Sec. I:

If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, the Code Enforcement Officer shall notify, in writing, the person responsible for such violation indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions.

Jensen Baird
Gardner Henry

September 11, 2020

4

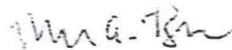
Moreover, to the extent you discover violations at the Property, my clients request that the Board of Selectmen take appropriate legal action to enforce them, as is required under the LUO:

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen is hereby authorized and directed to institute any and all actions and proceedings either legal or equitable, including seeking injunctions of violations and the imposition of fines that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.

LUO Art. 5, Sec. J. Given these two provisions, the Town is required to investigate and prosecute all land use violations under the LUO.

If you need any further information from me or my clients as you investigate this matter, please do not hesitate to ask. Thank you for your attention to this matter.

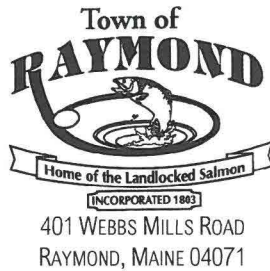
Sincerely,



Mark A. Bower

MAB/gw
Enclosure

cc: Amanda and Aaron Kamba



ALEX SIROIS
CODE ENFORCEMENT OFFICER
(207) 655-4742 x161
alex.sirois@raymondmaine.org

401 WEBBS MILLS ROAD
RAYMOND, MAINE 04071

EXHIBIT B

MARY QUIRK
ADMINISTRATIVE ASSISTANT
(207) 655-4742 x161
mary.quirk@raymondmaine.org

NOTICE OF VIOLATION

DATE: October 7, 2020
OWNER: Nicole Starrett
402 Webbs Mills Road
Raymond, ME 04071
LOCATION: 402 Webbs Mills Road
PARCEL ID: 010-027-000
ZONING: Rural Residential (RR)
SENT VIA CERTIFIED MAIL & US FIRST CLASS MAIL

Dear Mr. and Mrs. Starrett,

An evaluation of the above-referenced property on 09/24/2020 shows that the property fails to comply with Articles 9. § Y, 5. § B, 4. § 3.h, 10. § B.1 of the Land Use Ordinance of the Town of Raymond, Maine.

On September 11, 2020, I received a citizen complaint stating that you have numerous land use violations on your above-mentioned parcel. The complaint appears to be centered around a significant amount of clearing that took place sometime between 2016 and 2018, and your contracting business that is run out of the cleared area and existing single-family dwelling.

After reviewing the parcel file and Google aerial imagery it is clear that more than twenty-five percent (25%) of your lots four (4) acres have been cleared. An approximate measurement shows that an area of about 96,000 square feet was cleared (55% of the lot).

In addition to the cleared area, I did find contractor equipment and supplies on-site. This use requires conditional approval within the Rural Residential Zone, and then Site Plan approval by either the Planning Board or Planning Staff. I was unable to find evidence that you have obtained these approvals in my review of the parcel file.

Below is a list of the violations and the related ordinance sections:



ALEX SIROIS
CODE ENFORCEMENT OFFICER
(207) 655-4742 x161
alex.sirois@raymondmaine.org

MARY QUIRK
ADMINISTRATIVE ASSISTANT
(207) 655-4742 x161
mary.quirk@raymondmaine.org

1. Unpermitted Contractor Use. The rear portion of your lot is being used to store various pieces of excavation/construction equipment, materials, and supplies. This use does require a conditional use permit per Article 4(3)(h) of the Land Use Ordinance.

Land Use Ordinance

Article 4. District Regulations

§ 3.h. Conditional Uses

Contractors, not having more than five (5) vehicles and pieces of equipment that are not screened from view from the surrounding property and street. When a piece of equipment is located on a trailer or truck, the combination shall be considered a vehicle and an additional piece of equipment. [Adopted 5/21/88]

2. Unpermitted construction (building permit required). Multiple temporary storage structures have been erected on-site, in association with the contractor use. These structures do require a building permit, and I was unable to find an approved permit in the parcel file.

Land Use Ordinance

Article 5. Administration

§ B. Building Permit Required

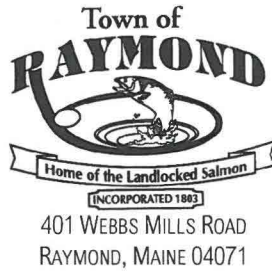
It shall be unlawful to start any work for the purpose of construction, alteration, or removal of any building unless a building permit has been issued in conformity with this Ordinance. The provisions of this Ordinance shall apply to new construction, alterations, additions, relocation, replacement of any building or part thereof, and to any work designed to convert a seasonal dwelling to a permanent, year-round dwelling as provided in Article 8, Section E. The Town of Raymond applies and enforces the Maine Uniform Building and Energy Code ("M.U.B.E.C."), as required by 10 M.R.S.A. § 9724. Administration and enforcement of M.U.B.E.C., including fees, permits, certificates of occupancy, violations, penalties and appeals, shall be in accordance with this Ordinance and pursuant to 30-A MRSA § 4452. [Adopted 5/21/98, Amended 6/5/12]

3. Excess of 25% of the lot clear of vegetation. Visible from Google aerial imagery, approximately 55% of the lot has been cleared of vegetation since 2016.

Land Use Ordinance

Article 9. Minimum Standards

§ Y. Clearing of Vegetation for Development



ALEX SIROIS
CODE ENFORCEMENT OFFICER
(207) 655-4742 x161
alex.sirois@raymondmaine.org

MARY QUIRK
ADMINISTRATIVE ASSISTANT
(207) 655-4742 x161
mary.quirk@raymondmaine.org

In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25% of the lot area or fifteen thousand (15,000) square feet, whichever is greater, including land previously developed. [Adopted 3/21/98]

4. No site plan approval for non-residential use or structures. Following conditional approval for a contractor use, site plan approval would be required before construction of any non-residential structure and/or any project that creates more than 10,000 square feet of impervious surface.

Land Use Ordinance

Article 10. Site Plan Review

§ B.1. Authority and Classification of Site Plans [Amended 06/02/09]

Except for single-family dwellings, duplex dwellings, accessory uses to single family or duplex dwellings, maintenance of an existing building or facility, or interior renovations to an existing building or facility which do not change the use(s) or increase the amount of parking required under Article 9, Section C, no building permit shall be issued for a new building, a new facility, an exterior renovation to an existing building or facility, any alteration to or addition of impervious areas, or any substantial change to the use of an existing building or facility until the plans, drawings, sketches, and other documents required under this section have been reviewed and approved in accordance with the Site Plan Review provisions set out in this section below.

Land Use Ordinance

Article 12. Applicability and Definitions of Terms Used in This Ordinance

Conditional Use - A use that would not be appropriate generally or without restriction throughout the land use district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in said land use districts as conditional uses, where specific provision for such conditional use is made in this Ordinance. Any land use not listed in the Ordinances must go to the Board of Appeals before approval. [Adopted 5/20/89]

In order to correct the existing violations, you will need to either remove the existing contractor use, equipment, structures, and materials on-site, or, go through the necessary process to obtain the required after the fact approvals for this use in the Rural Residential Zone. I have attached a copy of the Board of Appeals application for a conditional use permit, which would be the first required approval.



ALEX SIROIS
CODE ENFORCEMENT OFFICER
(207) 655-4742 x161
alex.sirois@raymondmaine.org

MARY QUIRK
ADMINISTRATIVE ASSISTANT
(207) 655-4742 x161
mary.quirk@raymondmaine.org

This is a notice of violation pursuant to Article 5 § I of the Land Use Ordinance of the Town of Raymond, Maine, and 30-A M.R.S.A. § 4452. All referenced violations shall be corrected within thirty (30) days of the date of this notice. A follow-up inspection will be completed on or around 11/6/2020. Failure to comply will result in this office referring the matter to the Selectboard who may consider legal action or fines, as provided for in Article 5 § J of the Land Use Ordinance of the Town of Raymond, Maine, and 30-A M.R.S.A. § 4452. Fines of \$100.00 to \$5,000.00 per violation per day may be imposed. This constitutes an appealable decision pursuant to Article 6 § B.1.a of the Land Use Ordinance; however, filing an appeal to the Board of Appeals does not relieve you of your responsibility to correct the violations. If you wish to appeal this decision the applications are available at the Town Office and we are open Tuesday through Friday. You must file the appeal within thirty (30) days of the date of this Notice; if you fail to appeal the decision within that time period, you will lose your right to challenge the decision included in this letter. Please feel free to contact me if you wish to discuss the matter or have any questions. I can be contacted by phone at (207) 655-4742 ext. 161, or by email at ceo@raymondmaine.org.

Sincerely,

Alexander L. Sirois
Code Enforcement Officer
Town of Casco, Maine

cc via email:

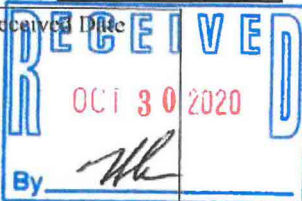
Don Willard, Town Manager
Select Board
Mark A. Bower, Jensen Baird Gardner Henry

enc: Inspection photo (09/24/2020), Letter from Mark A. Bower (09/11/2020), Google Aerial Photos (2016/2018)

EXHIBIT

C

**TOWN OF RAYMOND
APPLICATION TO THE BOARD OF APPEALS**

Staff Use Only:		Received Date
Application Fee	\$ 75.00	
Recording Fee	\$ N/A	
Notice Fee	\$ 120.00	
\$8.00/abutter	\$ 300.00	
Publishing Fee	\$ 0	
Escrow-if required	\$ 0	

Name of Applicant Nicole Starrett
Mailing Address 402 Webb's Mills Rd. Raymond ME 04071
Primary Phone (207) 561-0638 C ☒ H ☐ W ☐ email ncurtisbray@gmail.com
Date property acquired: (month and year) June 2015

Name of Owner (if different than applicant) _____
Mailing Address _____
Town: _____ State _____ Zip Code _____
Primary Phone _____ C ☐ H ☐ W ☐ email _____

Property Address (street number and name): 402 Webb's Mills Rd.
Town of Raymond Map 10 Lot 27 Zone Rural Residential
Registry of Deeds Book 32349 Page 237

The undersigned applies for the following:

- ___ 1. ADMINISTRATIVE APPEAL. Applicant requests relief from the decision, or lack of decision, of the Code Enforcement Officer. The undersigned believes that (check one)
___ An error was made in the denial of the permit
___ Denial of the permit was based on the misinterpretation of the ordinance
___ The permit was not approved or denied within a reasonable period of time
___ Other: _____
- ___ 2. VARIANCE (the information listed on the following page must be submitted)
- ☒ 3. CONDITIONAL USE PERMIT For Contractor (use) in RR Zone
- ___ 4. VARIANCE PROVISION(S) FOR NON-CONFORMING Lot ☐ Structure ☐ Use ☐
- ___ 5. SETBACK REDUCTION

I have read, understand and agree to the above instructions and conditions. I also authorize any Board Member or other Town Officials to enter onto the site. I certify that the information contained in this application and its supplement is true and correct.

Date: 10/30/2020

Appellant: [Signature]

Date: _____

Property Owner: _____

Nicole Starrett
402 Webbs Mills Rd.
Raymond, ME 04071
(207)561-0638

October 30th, 2020

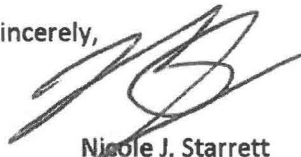
Town of Raymond
401 Webbs Mills Rd.
Raymond, ME 04071

To Whom it May Concern,

My name is Nicole Starrett and I am writing to request a conditional use permit use for my property located at 402 Webbs Mills Rd. Raymond, ME. This permit would allow my husband Ben and I to continue to operate our family business Starrett Snow and Landscape Services as a contractor in the Town of Raymond. We purchased the property in June of 2015 and have operated the business from the property since then. Though our business has grown we do our best to cooperate with town ordinances as we are able and be conscious of those around us to create as little disruption as possible.

It was brought to our attention this year by code enforcement that one of our neighbors had filed a complaint with the town about our property citing violations of the land use ordinances. We never spoke to the neighbor directly about their complaints and were unaware they had any issues until the town notified us. Starting with this application for a conditional use permit we will do everything in our power to comply with town ordinances while keeping our business running. Our business allows us to provide for our family and raise our two children in Raymond and we hope that we will be allowed to continue to do so. Thank you for your consideration for conditional land use, if you have any questions, I can be reached at the phone number listed at the top of this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'NJ Starrett', written over a horizontal line.

Nicole J. Starrett



**Town of Raymond, Maine
Zoning Board of Appeals
December 29, 2020
Conditional Use Application**

FINDINGS OF FACT AND DECISION

FINDINGS OF FACT

1. The applicant is Nicole Starrett, with a mailing address of 402 Webbs Mills Road, Raymond, ME 04071, and a phone number of (207) 561-0638.
2. The property in question is located at 402 Webbs Mills Road, Raymond, ME 04071, also identified as Tax Map 010, Lot 027-000, which is a four (4) acre lot in the Rural Residential (RR) District.
3. The applicant has demonstrated legal right, title, or interest in the property, by providing a copy a Warranty Deed, recorded in Cumberland County Registry of Deeds book 32349, page 237.
4. The Board of Appeals has determined that the applicant has sufficient standing in the application.
5. A completed Conditional Use Application was received on October 30, 2020.
6. The applicant has proposed after the fact approval for an existing Contractor Use, in order to continue to operate their family business, Starrett Snow and Landscape Services.
7. A public hearing regarding the application was held on December 29, 2020 via a publicly accessible Zoom meeting.
8. The relevant sections of the Town of Raymond Land Use Ordinance are: Article 4D § 3.h, Article 6B § d, and Article 9A.
9. The Board of Appeals has determined that they have jurisdiction to hear the application due to Article 6B § d of Land Use Ordinance of the Town of Raymond, Maine.
10. A site walk was completed on December 19, 2020.
11. Abutters located within 300' of the parcel in question were notified of the meeting and opinions in favor of approval or against were heard during the hearing.
12. Other relevant factors are as follows:
 - a. The business has been operating on the property since 2015.
 - b. In September of 2020, the Code Enforcement Officer received a complaint from an abutter, which prompted an investigation into the use of the lot. At that time, a Notice of Violation was issued by the Code Enforcement Officer for the illegal use and excess removal of vegetation.
 - c. The abutter that had originally submitted the complaint has since moved.

- d. If the Board approves the application, the Starretts will need to go before the Planning Board with an application for Site Plan approval as well.
- e. Testimony from Mr. John Levitre of 370 Webbs Mills Road is read into the record. Mr. Levitre was not able to attend the Zoom meeting because of health problems. Mr. Levitre strongly opposes the application and does not think the Board of Appeals should approve.

CONCLUSIONS OF LAW

Based on the above stated facts and provisions of the ordinance cited, the Board of Appeals concludes:

- I. The contractor use located at 402 Webbs Mills road will not depart from the general purpose and intent of the Land Use Ordinance and Comprehensive Plan.
- II. The contractor use will be compatible with permitted uses within the zone as determined by population, density, design, scale, and bulk and any proposed new structures and intensity of use.
- III. The contractor use shall not generate noise, vibrations, fumes, odors, dust, or glare which could be detectible at the lot boundaries, and all aspects of the use will be carried on within the structures associated, or off site.
- IV. The contractor use will not cause water pollution, sedimentation, erosion, or contamination of any water supply, nor reduce the capacity of the land to hold water, so that a dangerous condition may result.
- V. The contractor use will not adversely impact any deer wintering area or other important plant or wildlife habitat or scenic area such as views of Sebago Lake or mountains from public places.
- VI. The contractor use will not deny light and air to surrounding properties.
- VII. The contractor use will not depreciate the economic value of surrounding properties.
- VIII. The contractor use will have sufficient potable water available for its needs.
- IX. The contractor use will not create a hazard to either pedestrian or vehicular traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and also vehicles, and the visibility afforded to pedestrians and the operators of motor vehicles.
- X. Will not overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.

The applicant will be unable to obtain the required Site Plan approval, and approval from the Department of Environmental Protection, without meeting any of the above requirements, and therefore the Zoning Board of Appeals feels they can approve the application.

DECISION

Based on the above Findings of Fact and Conclusion of Law, the Town of Raymond Board of Appeals votes to approve your application for a conditional use permit. Any aggrieved party may appeal from the decision of the Board to the Superior Court within forty-five (45) days of the date of the vote on the original decision.

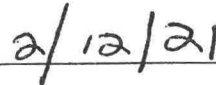
The Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony.

After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be entertained by the Board until one (1) year has elapsed from the date of said decision, except that the Board may entertain a new appeal if the Board believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done, or it finds that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.

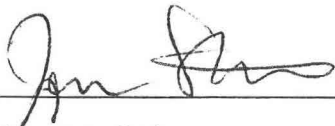
This approval is conditioned upon continued operation of the business by the Starretts. This conditional use permit will expire if a contractor use does not take place on the lot for one (1) year.



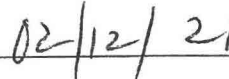
Len Cirelli, Chairman



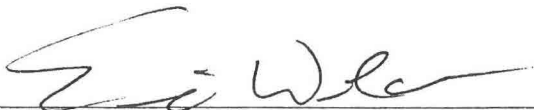
Date



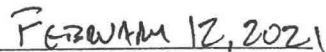
Joanne Stinson



Date



Eric Welch



Date



SECOND NOTICE OF VIOLATION

06/03/2022

**STARRETT, NICOLE J.
402 WEBBS MILLS ROAD
RAYMOND, ME 04071**

Location: 402 WEBBS MILLS ROAD
Parcel ID: 010027000000
Zoning: Rural Residential (RR)

SENT VIA CERTIFIED MAIL & US FIRST CLASS MAIL

Dear Ms. Starrett,

An evaluation of the above-referenced property on May 17, 2022, shows that the property still fails to comply with Articles 9.(Y), 5.(B), 4.(3)(h), and 10.(B)(1) of the Land Use Ordinance of the Town of Raymond, Maine.

You may recall that on September 11, 2020, I received a citizen complaint stating that you have numerous land use violations at your property located at 402 Webbs Mills Road, and after my review, I issued a Notice of Violation to you on October 7, 2020. On December 29, 2020, following the receipt of the first Notice of Violation, you received conditional use approval by the Raymond Zoning Board of Appeals for a Contractor Use. Item 12(d) of the Findings of Fact approved by the Zoning Board of Appeals states, "If the Board approves the application, the Starrett's will need to go before the Planning Board with an application for Site Plan approval as well."

To date, we have not received a Site Plan application for your contractor use, and it has been more than a year since the initial Zoning Board of Appeals approval. That should have been a sufficient amount of time to consult with the necessary professionals and prepare an application to the Planning Board.

Below is a list of the violations and the related ordinance sections:

Excess of 25% of the Lot Cleared of Vegetation

Visible from Google aerial imagery, approximately 55% of the lot has been cleared of vegetation since 2016.

Land Use Ordinance

Article 9. Minimum Standards

§ Y. Clearing of Vegetation for Development

In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways, and sewage disposal areas, exceed in the aggregate, 25% of the lot area or fifteen thousand (15,000) square feet, whichever is greater, including land previously developed, without Site Plan approval from the Planning Board for any clearing, removal of vegetation, stumps, or regrading above this threshold.

If the development wishes only to cut or harvest trees, in excess of the threshold then a permit must be obtained from the Code Enforcement Officer for cutting trees, or vegetation.

1. When proposing to cut or harvest trees in excess of two (2) acres, a copy of a Maine Forest Service - Forest Operations Notification (FON) form shall be provided to the Town Code Enforcement Officer.

2. When proposing cutting or tree harvesting areas under two (2) acres, a written notification shall be provided to the Town Code Enforcement Officer indicating the proposed area(s) to be cut or harvested, along with the parties undertaking the tree cutting operation, a listing of the equipment used, schedule for the operation to be completed, with dated signatures of the landowner and tree removal operations supervisor responsible.

This standard shall not supersede any restrictions or conditions of approval for development previously required for residential subdivision lots, or commercial site plans, nor apply to property in Shoreland Zones. Exemptions from this standard shall be granted for agricultural purposes, personal utility equipment, and for private solar power generation or panel installations. [Amended 2021]

No Site Plan Approval for Non-Residential Use or Structures

Following conditional approval for a contractor use, site plan approval would be required before construction of any non-residential structure and/or any project that creates more than 10,000 square feet of impervious surface.

Land Use Ordinance

Article 10. Site Plan Review

§ B.1. Authority and Classification of Site Plans [Amended 06/02/09]

Except for single-family dwellings, duplex dwellings, accessory uses to single family or duplex dwellings, maintenance of an existing building or facility, or interior renovations to an existing building or facility which do not change the use(s) or increase the amount of parking required under Article 9, Section C, no building permit shall be issued for a new building, a new facility, an exterior renovation to an existing building or facility, any alteration to or addition of impervious areas, or any substantial change to the use of an existing building or facility until the plans, drawings, sketches, and other documents required under this section have been reviewed and approved in accordance with the Site Plan Review provisions set out in this section below.

Structure Built Without a Permit

Multiple temporary storage structures have been erected on-site, in association with the contractor use. These structures do require a building permit, and I was unable to find an approved permit in the parcel file.

Land Use Ordinance

Article 5. Administration

§ B. Building Permit Required

It shall be unlawful to start any work for the purpose of construction, alteration, or removal of any building unless a building permit has been issued in conformity with this Ordinance. The provisions of this Ordinance shall apply to new construction, alterations, additions, relocation, replacement of any building or part thereof, and to any work designed to convert a seasonal dwelling to a permanent, year-round dwelling as provided in Article 8, Section E. The Town of Raymond applies and enforces the Maine Uniform Building and Energy Code ("M.U.B.E.C."), as required by 10 M.R.S.A. § 9724. Administration and enforcement of M.U.B.E.C., including fees, permits, certificates of occupancy, violations, penalties and appeals, shall be in accordance with this Ordinance and pursuant to 30-A M.R.S.A. § 4452. [Adopted 5/21/98, Amended 6/5/12]

Unpermitted Contractor Use

The rear portion of your lot is being used to store various pieces of excavation/construction equipment, materials, and supplies. This use does require a conditional use permit per Article 4(3)(h) of the Land Use Ordinance.

Land Use Ordinance

Article 4. District Regulations

§ 3.h. Conditional Uses

Contractors, not having more than five (5) vehicles and pieces of equipment that are not screened from view from the surrounding property and street. When a piece of equipment is located on a trailer or truck, the combination shall be considered a vehicle and an additional piece of equipment. [Adopted 5/21/88]

In order to correct the existing violations, you will need to do the following:

You will need to either remove the existing contractor use, equipment, structures, and materials on-site, or, go through the necessary process to obtain the required after the fact approvals for this use in the Rural Residential Zone. The next step to obtain approval for this use would be Site Plan approval by the Raymond Planning Board.

This is a second notice of violation pursuant to Article 5 § I of the Land Use Ordinance of the Town of Raymond, Maine, and 30-A M.R.S.A. § 4452. All referenced violations shall be corrected within thirty (30) days of the date of this notice. A follow-up inspection will be completed on or around 07/03/2022. Failure to comply will result in this office referring the matter to the Selectboard who may consider legal action or fines, as provided for in Article 5 § J of the Land Use Ordinance of the Town of Raymond, Maine, and 30-A M.R.S.A. § 4452. Fines of \$100.00 to \$2,500.00 per violation per day may be imposed. Please feel free to contact me if you wish to discuss the matter or have any questions. I can be contacted by phone at (207) 655-4742 ext. 161, or by email at alex.sirois@raymondmaine.org.

Sincerely,



Alex Sirois
Code Enforcement Officer
Town of Raymond, Maine

cc via email:
Don Willard, Town Manager

enc: NOV (10.7.2020), ZBA Findings of Fact (12.29.2020)



**EXHIBIT
E**

**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200
F (207) 774 - 1127

Philip R. Saucier
(207) 228-7160 direct
psaucier@bernsteinshur.com

August 17, 2022

SENT VIA FIRST CLASS AND CERTIFIED MAIL

Nicole J. Starrett
402 Webbs Mills Road
Raymond, ME 04071

Re: **IMPENDING ENFORCEMENT ACTION**
Property Located at 402 Webbs Mills Road
Parcel ID: 010027000000

Dear Ms. Starrett:

I am writing to you in my capacity as Town Attorney for the Town of Raymond. If you are represented by an attorney, please have your attorney contact me directly.

As you know, the Raymond Code Enforcement Officer issued Notice of Violations ("NOV") to you on October 7, 2020 and June 3, 2022 (second notice of violation) that outlined numerous land use violations related to the property listed above. A copy of the NOVs referenced above are attached to this letter.

In light of the continuing land use violations on your property, the Board of Selectmen has authorized this firm to proceed with an enforcement action in the Maine Courts and to seek civil penalties for the violation. As the CEO advised you in the NOVs, the Court can require you to pay fines from a minimum of \$100 up to \$2,500 for undertaking a land use activity without a required permit, and between \$100 and \$5,000 for specific violations, for every day the Property is in violation. In addition, the court can require you to pay the Town's costs and attorney fees.

Although the Town is prepared to proceed with an enforcement action, I renew the Town's request for you to comply with the NOV. The Town is willing to work with you to address the violations.

Nicole Starrett
August 17, 2022
Page 2

However, if you do not make satisfactory arrangements with the Town by August 31, 2022, to bring your property into compliance, the Town will proceed to file a complaint in court.

If you have any questions about what you need to do to comply with the NOV, please contact me at (207) 774-1200 or Alex Sirois, Raymond Code Enforcement Officer CEO, at his office number (207) 655-4742 ext. 161 at your earliest convenience.

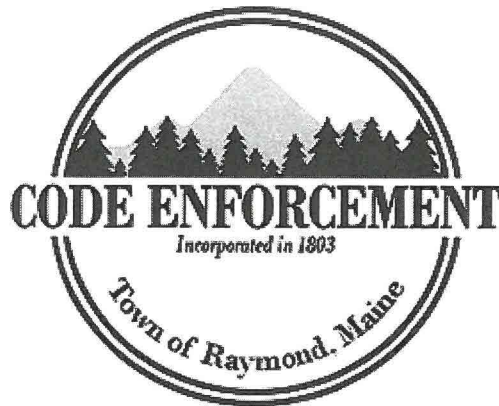
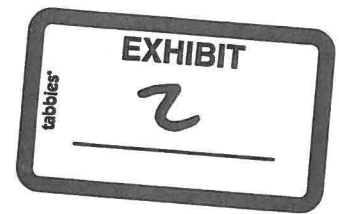
Sincerely,

A handwritten signature in blue ink, appearing to read 'P. Saucier', with a stylized flourish extending to the right.

Philip R. Saucier

PRS/ree
Enclosure

cc: Board of Selectmen
Don Willard, Town Manager
Alex Sirois, Code Enforcement Officer



Activity Information

Case #: 20200001

Case Date: 09/11/2020

Activity
Date: 01/13/2023

Activity
Type: Inspection

Scheduled
Date: 01/13/2023

Scheduled
Time: 11:00

Completion
Date: 01/13/2023

Description: Inspected the site with the property Nicole Starrett and Code Enforcement Officer Chris Hanson. We walked the rear of the property with Ms. Starrett and discussed what is being done. 1. The fire wood comes from trees cut at other job sites. They will occasionally split and process this firewood for their own personal use, and for use of family members. She mentioned their father. She said they do not advertise the sale of this firewood, and did not admit to selling firewood. I am not sure what evidence the neighbor has that they are selling this firewood, but I cannot prove that it is a commercial use. 2. Materials have been stockpiled on the lot brought in from other jobs. Loam and rock mostly. Nicole claims no processing of material is done on site. No machinery is on site to process gravel. I was unable to find evidence of gravel stored on site. They have been filling a portion of the lot with aggregate material. The section of the ordinance referenced in the complaint is for mineral extraction and they are doing the opposite. This is certainly not a commercial gravel pit. 3. According the Nicole they are no longer providing snow removal services, which is understandable considering they have plows and other snow removal equipment stored on the site. I was unable to find any recently stored snow on site, however, the ground and large piles of dirt were covered with a layer of snow. They do have a small pile of sand that has some salt mixed into it, however, this is for their own personal use, is covered, and is approximately 2-4 yards of material. 4. Large equipment is still being stored on site in large, unpermitted, accessory storage structures. Some are stored outside. There is a large (approximately 500 gallon) fuel storage tank in one of the temporary structures. This tank is stored inside half of 1,000 gallon septic tank. This tank is not permitted by the State. Nicole is going to contact the State today to see what she needs to do to make sure she is in compliance

with the fuel storage rules. Some minor fuel spillage was noticed near the tank. 5. They have been stockpiling clean aggregate material/discarded wood/materials used to fill what may have been a forested wetland.

Activity
Status: Closed

Assigned
To: Alex Sirois

Hours: 0.0

Property Information

Parcel#: 010027000000

STARRETT, NICOLE J.

402 WEBBS MILLS ROAD

RAYMOND

Zoning: Rural Residential (RR)Lot: 027Block: 000

STARRETT, NICOLE J.

402 WEBBS MILLS ROAD

RAYMOND, ME 04071

Uploaded Files

Date	File Name
01/13/2023	14000874-IMG_0762.JPEG
01/13/2023	14000875-IMG_0763.JPEG
01/13/2023	14000876-IMG_0764.JPEG
01/13/2023	14000877-IMG_0765.JPEG
01/13/2023	14000878-IMG_0766.JPEG
01/13/2023	14000879-IMG_0767.JPEG
01/13/2023	14000880-IMG_0768.JPEG
01/13/2023	14000868-IMG_0755.JPEG
01/13/2023	14000869-IMG_0756.JPEG
01/13/2023	14000870-IMG_0757.JPEG
01/13/2023	14000871-IMG_0758.JPEG
01/13/2023	14000872-IMG_0759.JPEG
01/13/2023	14000873-IMG_0760.JPEG



ALEX SIROIS
CODE ENFORCEMENT OFFICER
(207) 655-4742 x161
alex.sirois@raymondmaine.org

401 WEBBS MILLS ROAD
RAYMOND, MAINE 04071

JANET STAPLES
ADMINISTRATIVE ASSISTANT
(207) 655-4742 x161
janet.staples@raymondmaine.org

DATE: January 25, 2023

Grady R. Burns
84 Marginal Way, Suite 600
Portland, Maine 04101-2480

RE: 402 WEBBS MILLS ROAD, RAYMOND, MAINE

Dear Mr. Burns,

Please see the attached inspection report, following my reinspection of 402 Webbs Mills Road conducted in response to your complaint dated December 28, 2022. At this time the parcel remains in violation of Articles 9(Y), 5(B), 4(3)(h), and 10(B)(1) of the Land Use Ordinance for the Town of Raymond, Maine.

Sincerely,

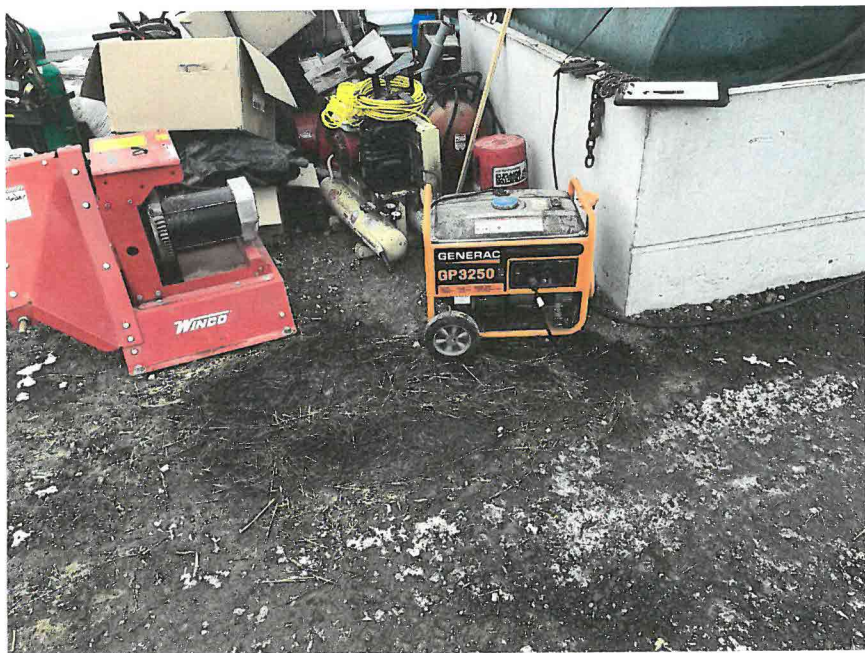
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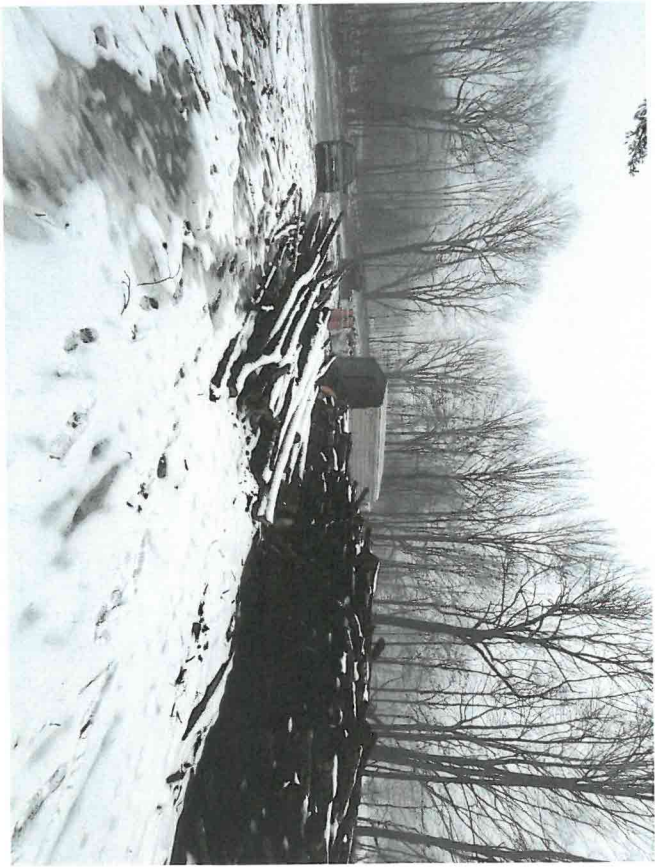
Alexander L. Sirois
Code Enforcement Officer
Town of Raymond, Maine

cc: Don Willard, Town Manager
Phil Saucier, Esq.
Nicole Starrett, Property Owner

enc: Inspection Report (1-13-2023)



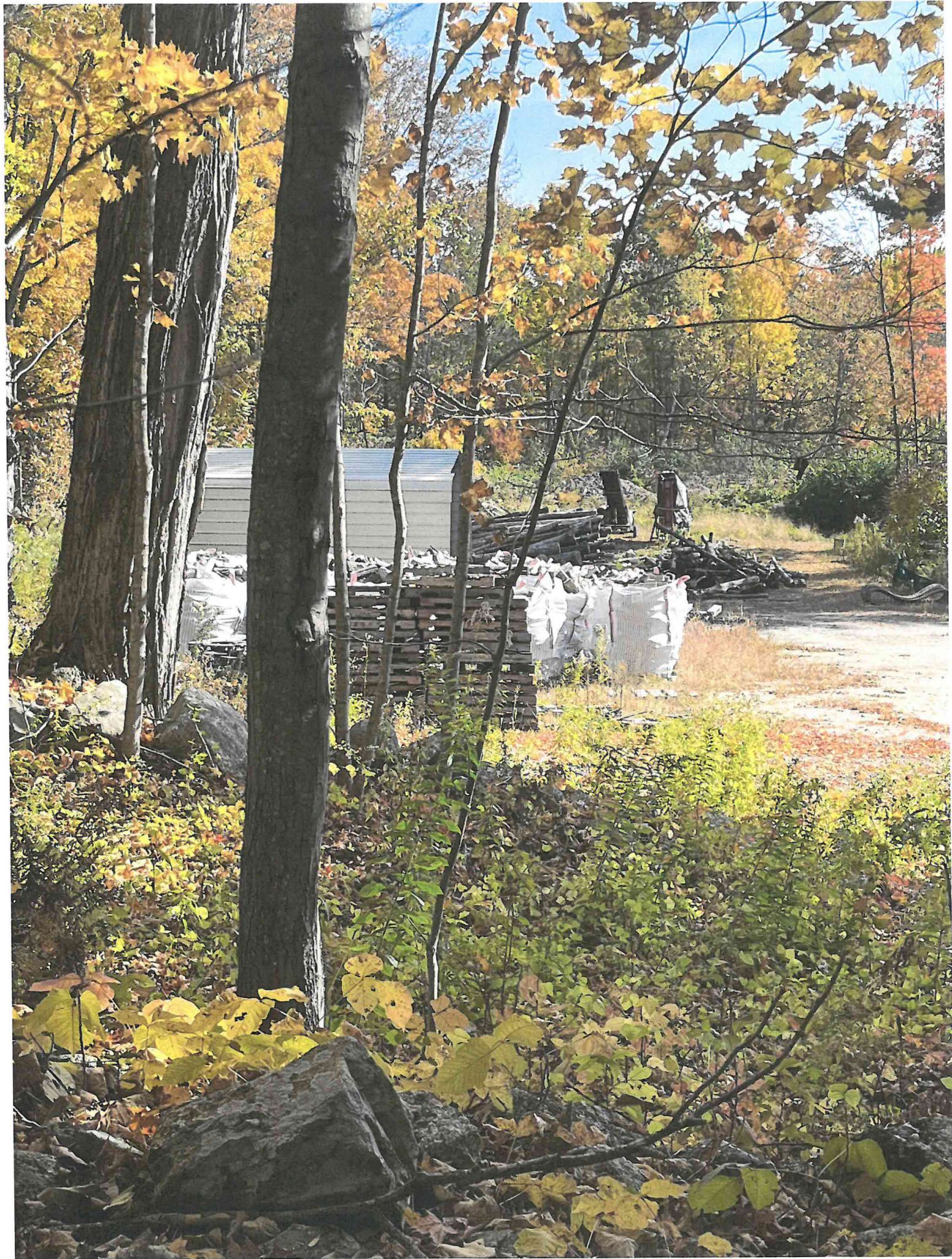




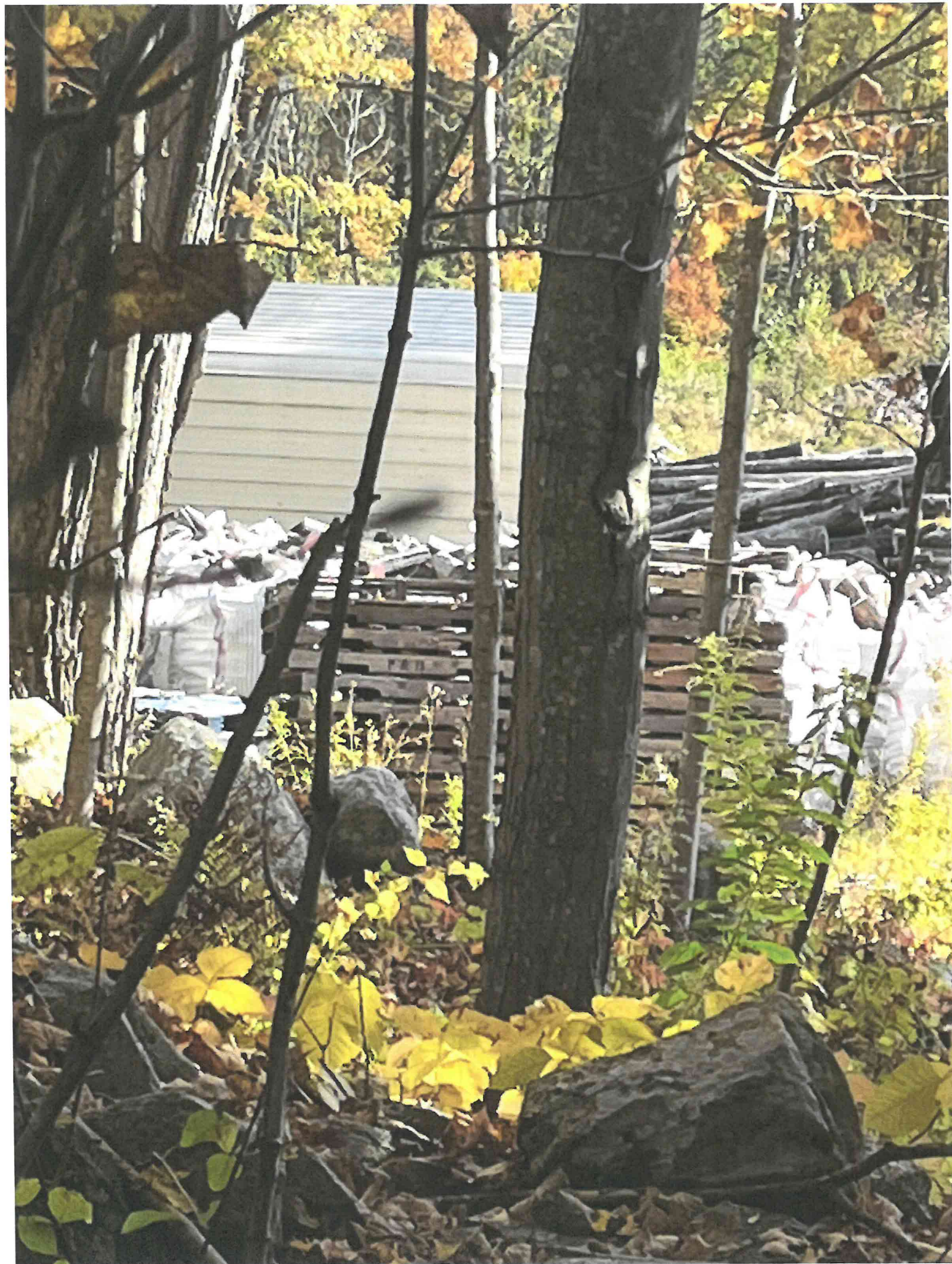


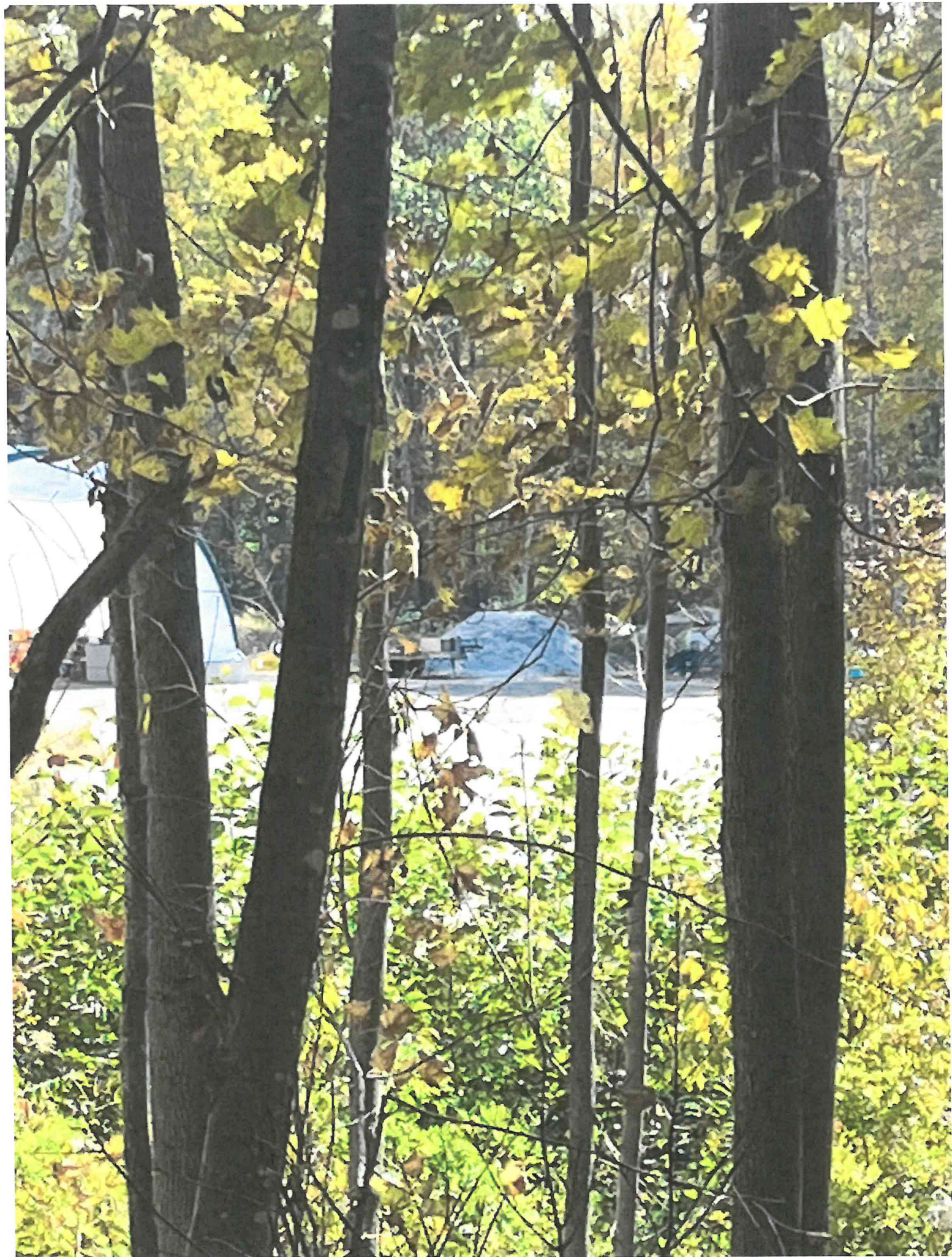


























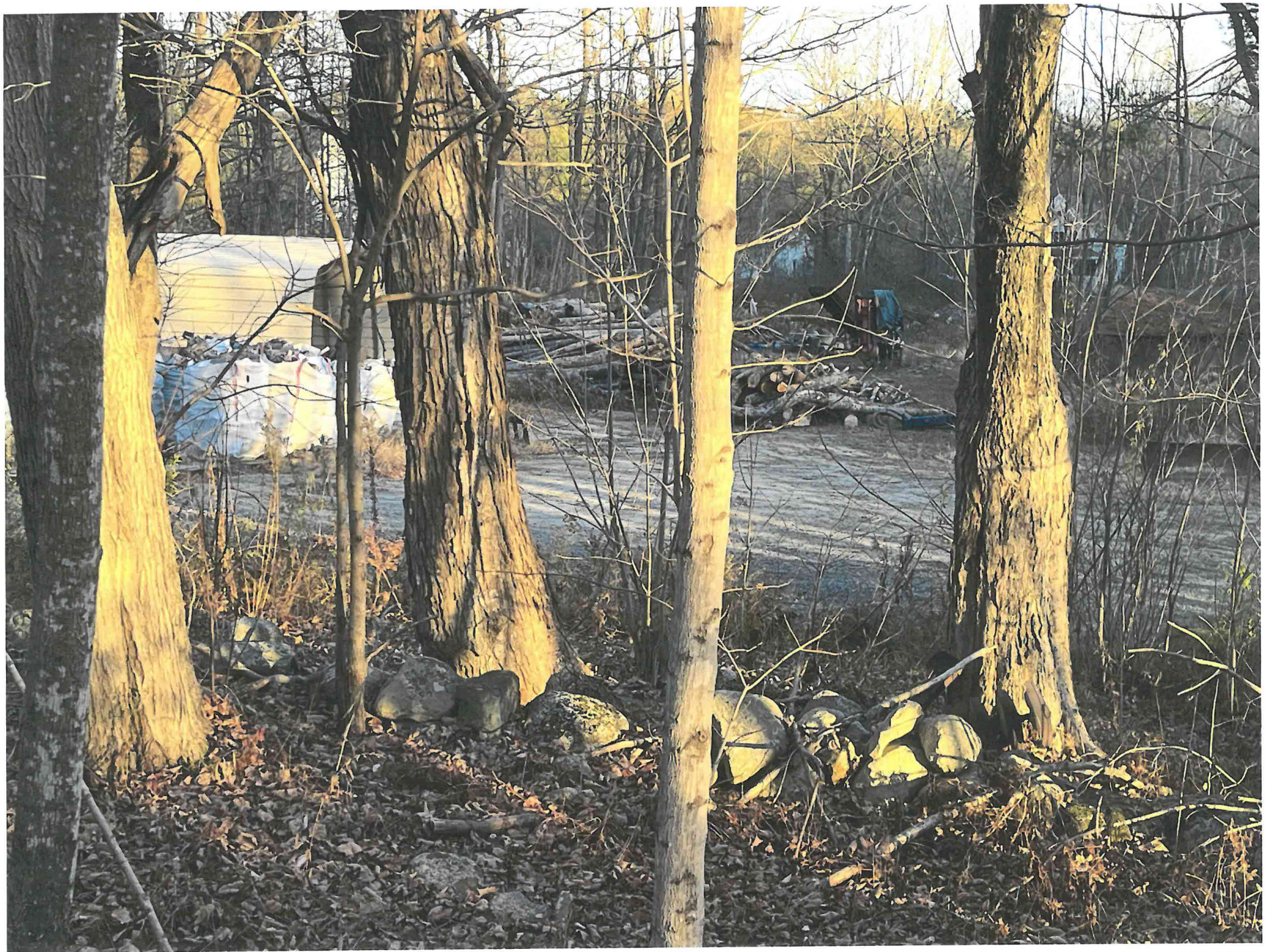


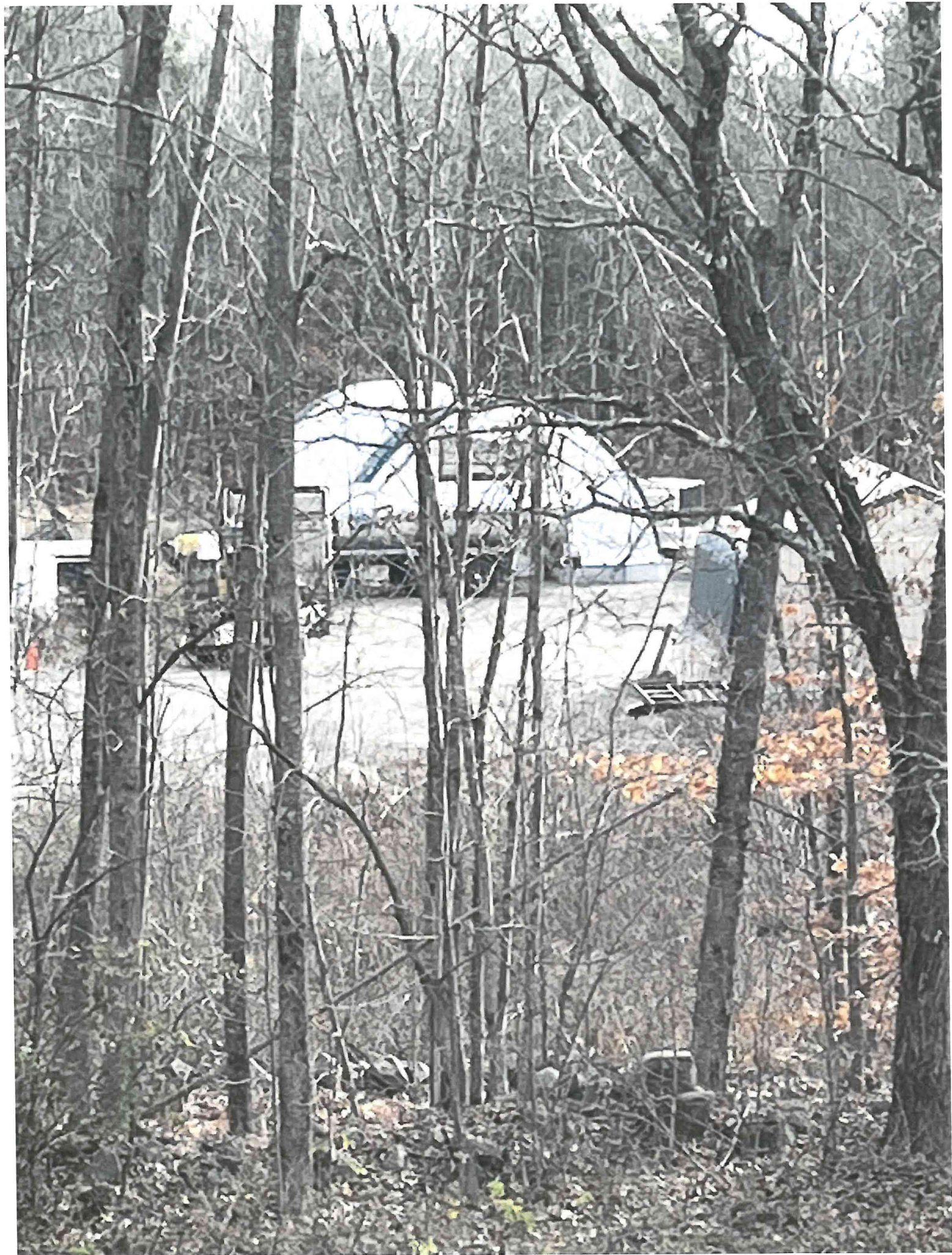








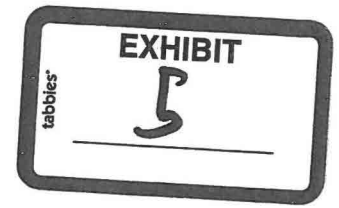








**Raymond Planning Board Site Walk
Contemporaneous Notes Prepared by Salli Cheever
December 3, 2022**



Planning Board Chair: Asked property owner, Nicole Starrett, for permission for us to take photos – denied

Firewood operation: includes a “firewood processor” which is dependent on a running tractor to operate

Large pile of tree length logs (20 feet long by 8 feet high)

Palletized firewood ready for transport

Nicole stated that the firewood is a “side thing , not part of the business. Only used by father-in-law, camp, and we do sell some to close friends and customers, not a business.” Also said wood is only loaded for transport about one day per year. *This is not a true statement.*

Fuel Tank: for storing diesel fuel for heavy equipment

Tank is within a rectangular concrete container that is slightly larger than the cylindrical (approx. 500 gal.) tank. This is inside of a canvas dome structure with a dirt floor. Fuel filling takes place over ground surface. Nicole didn’t know she needed a permit for this.

Salted Sand Pile: Located in one of the “temporary” structures. Nicole could not say how much they store and couldn’t answer any questions about the salted sand storage.

Equipment Storage: All (operational) heavy equipment had been removed from the site. Nicole tried to say that this was representative of day-to-day operations. *This is not true.*

When walking property boundary, noticed the following:

1. Construction debris is being used for fill/is buried in some areas. Fill includes visible asphalt, concrete chunks (some with rebar), clay pipe. *Nicole stated that “no materials are brought onsite” which is a direct contradiction to evidence and previous statements made by her.*
2. From every property corner looking back into the property there is no vegetation taller than a person. There are only grasses and scrub bushes in wet areas or along edges of traveled areas and buildings. The property has been cleared to all property lines.
3. Our main property line with them does have a few larger trees, but with no leaves this time of year visibility is clear.
4. There is a stream of water that runs right through the property and down towards the lakes. This is directly under the firewood processing area where the heavy equipment runs constantly.