

TOWN OF RAYMOND ZONING BOARD OF APPEALS

FINDINGS OF FACT AND CONCLUSIONS OF LAW / NOTICE OF DECISION

Re: Administrative Appeal by Salli Cheever Concerning Code Enforcement Officer January 25, 2023, Inspection Report of Alleged Land Use Ordinance Violations at 402 Webbs Mills Road, Raymond, Maine (010-027-000)

Date of Decision: April 25, 2023

Date of Written Decision: April 27, 2023

This administrative appeal, brought by Salli Cheever (“Cheever”), who resides at 406 Webbs Mills Road, of a January 25, 2023, inspection report of the Town of Raymond Code Enforcement Officer (“CEO”) concerning alleged violations of the Land Use Ordinance of the Town of Raymond (“LUO”)¹ at 402 Webbs Mills Road (010-027-000), a property owned by Nicole Starrett (“Starrett”) (“Subject Property”).

The Board held a *de novo* public hearing on this appeal on April 3, 2023 after which the record was closed and the Board began deliberations, which were continued to April 25, 2023.

The following members heard this appeal: David Murch, Chair; Greg Dean, Vice Chair; Tom Hennessey, Fred Miller and Pete Lockwood.

On April 25, 2023, based on the following record, findings of facts, and conclusions of law, the Board voted to GRANT the appeal in part and DENY the appeal in part, as summarized below.

Contents of the Record

Report of March 18, 2023, Site Walk of 402 Webbs Mills Road.²

February 24, 2023, Cheever Administrative Appeal. Also included are Exhibit 4 A, 4 B, and 4 C, which are video recordings available on the Town’s website.

At the public hearing, the Board heard testimony from the CEO and legal arguments from Phil Saucier, on behalf of the CEO, and Aga Dixon and Grady Burns, on behalf of Cheever. The Board also heard public comments from Luann and John Levitre.

Record materials, minutes, and recordings of meetings and the public hearing are available on the Town website (<https://www.raymondmaine.org/boards-committees/zoning-board-appeals>).

¹ The codification of this ordinance was enacted December 13, 2022. References in record materials refer to prior section and subsection numbers. There appears to be no substantive difference between the version of the LUO cited by the parties that was in effect prior to December 13, 2022, and the present LUO.

² Per the advice of its legal counsel, over the objection of Cheever’s counsel, the Board Chair instructed participants of the site walk that no photography would be allowed without the consent of Starrett. Starrett did not consent to photography during this site walk.

Findings of Fact and Conclusions of Law

As a preliminary matter, the Board finds unanimously that Cheever filed a timely administrative appeal of a CEO action; has standing as a neighbor of the Subject Property; submitted a complete application and paid all required fees; and that this Board has jurisdiction pursuant to LUO Section 300-6.2.³

Cheever alleges five distinct alleged activities on the Starrett property constitute separate violations of the LUO and the CEO erred when he did not reach the same conclusion and issue a new or revised notice of violation identifying these violations.

1. Commercial Firewood Processing

Cheever alleges the Subject Property is being used for an ongoing, large-scale commercial firewood processing operation that includes hauling unprocessed logs or trees onto the Subject Property using large commercial trucks, unloading the logs, processing the logs into firewood, and wrapping and palletizing the logs for distributions to off-site properties. Cheever asserts processing firewood for commercial sale or third-party distribution is an industrial use that is not permitted in the RR district and is not part of the approved contractor conditional use. Cheever also emphasized that the activity is noisy, plainly visible from the Cheever property, and conducted at seemingly all hours—a source of continued discomfort for Cheever.

The CEO's Decision states that the Starretts 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. The CEO also said at the public hearing that Starrett claimed the wood came from job sites. The CEO also argued that a new violation was not necessary because the activity is characterized as part of the contractor use, which still requires site plan approval and is part of a violation that has already been addressed.

The Board finds, based on its review of the evidence and the site walk, that the Subject Property is the site of a significant amount of cut and uncut firewood. The evidence is clear Starrett is bringing the firewood to the Subject Property for processing. It does not appear any prior notices of violation accounted for the noise impacts of this activity. The Board concludes this activity constitutes an Industrial Use, which under the LUO is not permitted in the RR district. Further, the Board concludes that firewood processing is not a Contractor Use.

³ The parties agree this Board has jurisdiction to hear an appeal about a CEO's determination that a land use violation does not exist but disagree as to what relief this Board may grant. Cheever argues the Board has authority under the LUO and case law to instruct the CEO to take certain actions or issue or modify a notice of violation. The Town argues that while the case law is clear the Board has jurisdiction to consider the CEO's failure to take action, and determine if he acted correctly or not, it does not have any authority to remand this case with specific instructions to the CEO concerning enforcement. The Board, consistent with the advice of its legal counsel, agrees with the Town.

Therefore, the Board grants the appeal in part, concluding this firewood processing activity is a violation of the LUO that the CEO has not yet addressed.

Vote:

5-0-0

2. Earthmoving, Excavation, and Mineral Extraction

Cheever alleges the Subject Property is being used for moving and storing of earthen materials, including gravel and dirt. Cheever cites in support the observations of certain sounds emanating regularly from the Subject Property and the presence of a skid-steer loader. Cheever also points to video evidence of what she claims is earthmoving and concludes it is highly probably the Subject Property is also being used for rock crushing or processing. This activity, Cheever argues, constitutes Mineral Extraction, which is allowed only as a conditional use subject to strict performance standards. Cheever also argues the use cannot be considered part of the approved Contractor Use.

The CEO concluded in his January 2023 inspection report that there was not sufficient evidence of Mineral Extraction. He noted that no gravel was stored on the property; that materials of mostly loam and rock have been brought on the property from job sites, and there is evidence of filling but not extracting.

Having reviewed the evidence and examined for itself during the site walk, whether there was evidence of earth moving or other activities consistent with Mineral Extraction, the Board concludes there is not at this time sufficient evidence of such activities. The Board also found no machinery suggestive of rock crushing or processing. The activity and evidence suggestive of activating involving some moving of earth does not exceed the scope of Contractor Use. Therefore, the Board concludes the Subject Property is not the site of any unpermitted Mineral Extraction. The Board denies the appeal in part.

Vote:

5-0-0

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

Cheever claims the Subject Property has been used to dump and store snow that Starrett brings from off site. She further argues that 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. Finally, she states these unlawful activities go well beyond any reasonable definition of a Contractor Use because they do not relate to off-site construction work.

The CEO notes that Starrett claims she/her family is no longer snowplowing. The CEO found the stored plows is consistent with this claim.

The Board agrees with the CEO and found his testimony and conclusions more persuasive than Cheever's testimony and arguments. The evidence and site walk observations do not show evidence of ongoing commercial or residential snow removal. The moved piles of salt and sand are consistent with Contractor Use, which is covered by prior notices of violation.

Therefore, the activity does not amount to an unpermitted use and is consistent with Contractor Use.

Vote:

5-0-0

4. On-Site Operation of Heavy Vehicles and Machinery

Cheever presented evidence showing operation and presence of vehicles and heavy equipment operating at all hours of the day. Many such objects also do not appear, according to Cheever, to be in operational use. Cheever spoke extensively about the damaging effects of this activity on the use and enjoyment of her property. This, Cheever argues, exceeds the Contractor Use allowance of 5 construction vehicles and equipment that are not screened from view.

The CEO counters this activity is part of the second notice of violation and the Board agrees. None of the evidence presented suggests an activity that is not otherwise covered by past enforcement actions by the CEO.

Therefore, the appeal is denied in part.

Vote:

5-0-0

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

Finally, Cheever argues the Subject Property is being used for the storage and burial of various demolition debris, including asphalt, concrete chunks, rebar, and clay pipes. She argues that any stockpiling or burial of discarded scrap and junked construction material constituted an unlicensed junkyard and a nuisance, in plain violation of 30-A M.R.S. §§ 3751 *et seq.* and LUO Sections 300 -5.7 and -9.6.

Based on his inspection of the Subject Property following the Cheever complaint, the CEO did not conclude the Subject Property constitutes a junkyard in violation of the LUO and state statute.

Having reviewed the LUO and statutory definitions of junkyard, the Board concludes the evidence demonstrates the Subject Property is being used for a junkyard, without the requisite permits. Therefore, this is a violation of the LUO, and it has not been addressed by a prior notice of violation and is not part of an approved Contractor Use. The appeal is granted in part.

Vote:

5-0-0

Decision

Based on the above findings and conclusions, having held a public hearing, the Board voted 5-0-0 that the application for an administrative appeal be DENIED IN PART and GRANTED IN PART.


NOTICE: This decision may be appealed to the Superior Court within 45 days from the original Date of the Decision noted above by any aggrieved party who participated as a party during the proceedings before the Board of Appeals.

So ordered,

Town of Raymond Board of Appeals




David Murch, Chair



Greg Dean

Thomas Hennessey



Fred Miller

Pete Lockwood

