



Stratham Zoning Board of Adjustment
Meeting Minutes
June 8, 2021
Municipal Center/Virtual Meeting/Conference Call
Time: 7:09 PM

Members Present: Drew Pierce, Chairman
Bruno Federico, Full Time Member
Amber Dagata, Full Time Member
Garrett Dolan, Full Time Member (arrived 7:20 pm)
Richard Goulet, Alternate

Members Absent: Phil Caparso, Vice-Chair

Staff Present: Shanti Wolph, Code Enforcement Officer/Building Inspector

1. Call to Order/Roll Call

Mr. Pierce called meeting to order and took roll call. Mr. Pierce asked Mr. Goulet to be a voting member in place of Mr. Caparso for this meeting. Mr. Goulet agreed.

2. Approval of Minutes

a. May 25, 2021

Ms. Dagata made a motion to accept the May 25, 2021 meeting minutes as submitted. Ms. Goulet seconded the motion. Motion passed unanimously.

3. Public Hearing(s)

a. Case #660, Brent Eastwood, 17 Gifford Farm Road, Map 18, Lot 98, Residential Agricultural Zoning District.

Pursuant to Section 17, Article 17.8.1 of the Stratham Zoning Ordinance the applicant is appealing an Administrative decision that play sets are not structures as defined by Section 2, Article 2.1.67 of the Stratham Zoning Ordinance, therefore setbacks are not required. The applicant asserts that the definition of structure includes play structures and must adhere to setbacks in Section 4, Article 4.1 through 4.2 in the Stratham Zoning Ordinance.

Mr. Pierce stated the Board will decide whether to approve or deny an Administrative Appeal:

Amongst other responsibilities, the board of adjustment decides cases where a claim is made that the administrative officer has incorrectly interpreted the terms of the ordinance such as a

45 district boundary or the exact meaning of an article or term. Most zoning ordinances contain
46 terms that may be confusing and are, therefore, open to interpretation. An ordinance may fail
47 to define what is meant by such requirements as “distance from a road.” Does this mean
48 distance from the pavement, shoulder, side ditch, or right-of-way? An honest difference of
49 opinion may easily occur as to the exact meaning when applied to specific circumstances.

50
51 The zoning board of adjustment does have the power to hear and decide appeals if it is alleged
52 there is error in any order, requirement, decision, or determination made by an administrative
53 official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and in
54 exercising its powers, the zoning board of adjustment may reverse or affirm, wholly or in
55 part, or may modify the order, requirement, decision, or determination appealed from and
56 may make such order or decision as ought to be made and, to that end, shall have all the
57 powers of the administrative official from whom the appeal is taken.

58
59 The process that we’ll be following is to first hear the applicant present his case, afterwards
60 the Board will have an opportunity to ask questions. Then the Board will hear from anyone
61 that would like to speak in opposition to the applicants appeal, and from anyone that is in
62 support of the applicant’s appeal. When speaking to the Board please first state your name
63 and address.

64 Brent Eastwood, 17 Gifford Farm Road, stated he feels his neighbor placed a play structure in
65 an inappropriate place where there were many other options. Mr. Eastwood stated he has no
66 he is not familiar with planning boards or zoning board of adjustment boards and has become
67 more familiar. Mr. Eastwood explained he called the building department at the beginning of
68 construction and a site visit was scheduled. Once the site inspection took place, Mr.
69 Eastwood received information that the play structure was exempt from building permits
70 because the NH code does not require building permits. Mr. Eastwood then received
71 information that the definition of “structure” in the zoning ordinance sounded like a play
72 structure or playset. Mr. Eastwood stated he believes a playset to be an “A” frame with just
73 swings and play structures have become quite large over the years. Mr. Eastwood explained
74 the play structure in question is average, not huge, and does not have a concrete foundation
75 but it is fixed into the ground. Mr. Eastwood read the definition of structure in the current
76 zoning ordinance. Mr. Eastwood explained there are examples given and play structure are
77 not included, but the zoning ordinance states the examples “are not limited to”. Some of the
78 examples are smaller in size than the play structure in question (i.e. platforms, shelters,
79 greater than 6 foot fences). Mr. Eastwood questioned at what point does a play structure
80 becomes a structure that should adhere to the setbacks. Mr. Eastwood stated the play
81 structure is within 6 feet of his garden fence on the lot line. Mr. Eastwood explained he had a
82 conversation with his neighbor, Mr. Zabel at 15 Gifford Farm Road, and explained the safety
83 aspect of the swing set being so close to trees and his garden fence. According to Mr.
84 Eastwood, Mr. Zabel stated the play structure is on his property and that is where it is. Mr.
85 Eastwood stated Mr. Connors, Stratham Town Planner, made an Administrative Decision that
86 playsets are not considered structures per the definition of 2.1.67. Mr. Eastwood stated he is
87 before the board for a second opinion to that decision. Mr. Eastwood stated the structure is
88 closer to his house than their own house. Mr. Eastwood submitted pictures and diagrams for
89 the board to review.

90
91 Mr. Pierce opened the hearing to board questions. Ms. Dagata asked Mr. Eastwood to
92 confirm the location of the play structure. Mr. Eastwood explained the location noted on the
93 plan and stated the play structure’s closest point is to the neighbor’s garage and the closest
94 point to his house is the screened in porch. Mr. Pierce asked Mr. Eastwood is suggesting the

neighbor relocate the play structure 14 feet to the interior of their property. Mr. Eastwood stated yes, that would be 20 feet. Mr. Pierce asked if it was moved whether Mr. Eastwood would no longer see the play structure. Mr. Eastwood stated it would be tolerable.

Mr. Pierce asked if there was guidance being offered by the Code Enforcement. Mr. Wolph asked Mr. Eastwood to confirm the measurements of the structure. Mr. Federico asked Mr. Eastwood if there were conversations with the neighbor while the structure was being assembled. Mr. Eastwood stated he did not see the neighbor that day but he did communicate via text regarding the location. Mr. Eastwood explained on the left post of the tower section the posts on the far back corner were dug in. Mr. Federico questioned if the play structure is attached to the ground with spikes or footings. Mr. Eastwood stated no. Mr. Federico questioned why it is being considered permanent if it is not attached to the ground. Mr. Federico explained his length of service in planning and zoning and stated a permanent structure is when there are footings or attached to something holding it on the ground.

Mr. Wolph stated a structure can be considered temporary or permanent. Mr. Wolph explained the question is whether a structure needs to meet setbacks.

Mr. Wolph, Town of Stratham Building Inspector & Code Enforcement Officer, introduced Mark Connors, Town Planner, and explained they reviewed the situation on the applicant's property and together made a joint administrative decision. In this scenario the applicant is appealing a decision of the Stratham Building Inspector and the Stratham Town Planner, respectively the Municipal Officials. The decision was made that playsets or playground equipment do not constitute structures and therefore do not meet the criteria to require they meet the minimum setback distances from wetlands and property lines.

In Stratham we do not have language in our Zoning Ordinance that specifically allows or disallows swings or other playground equipment to be located within the property line setback area. Historically and without conflict, playsets or playground equipment have not been required to meet the structural setbacks. The setbacks for the properties involved in this application are 30-feet from the front property line and 20-feet from the side and rear property lines.

The Zoning Ordinance (not building) does offer the following definition of a structure:

2.1.67 Structure: *Anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. Structure includes, but are not limited to, buildings, mobile home, bridges, trestles, towers, framework, hoop houses, tanks or group of tanks exceeding a total of 500 gallons (excluding septic tanks), tunnels, stadiums, platforms, shelters, piers, wharfs, signs, fences and retaining walls over six feet (6') in height, swimming pools, or the like. Where Stratham Zoning Ordinance is silent, then the most current edition of the State Building Code shall be assumed to apply. (Revised 3/90, 3/11, 3/20)*

The definition includes a number of very specific and less common uses, including hoop houses (which are greenhouses), stadiums, signs, piers, and wharfs, but is silent on playsets or playground equipment. Mr. Eastwood argues that playsets or playground equipment includes towers and platforms and must therefore be considered structures. The Zoning Ordinance does not include zoning "definitions" for platforms or towers, as zoning definitions can sometimes differ from their more commonly understood definitions. The Ordinance does include over 100

other references to the term ‘tower’, but all of those references are specific to small wind energy systems, airport control towers, meteorological towers, or most frequently for telecommunications or cellular phone towers. All of these uses are a great deal more expansive and intrusive than playsets and playground equipment.

There are no other references to the term ‘platform’ in the Ordinance, apart from under the definition for structures. The Merriam-Webster Dictionary defines platform as “a usually raised horizontal surface.” Mr. Eastwood is correct that playsets do typically incorporate these features, however this definition is so broad that it would encapsulate virtually all common household yard equipment, including steps, walking paths, tables, benches, and several other items.

Playsets are very common features of residential properties. Staff believes it is much more likely that if the intent was for playsets or playground equipment to be considered structures (and meet the structural setbacks), they simply would have been included in the definition, among the 18 other specific items (hoop houses, wharfs, stadiums, etc.) referenced in the zoning definition.

Moreover, Stratham’s definition of structure includes a key sentence: “*Where Stratham Zoning Ordinance is silent, then the most current edition of the State Building Code shall be assumed to apply.*” Considering that “playsets or other playground equipment” are not listed, they would be considered silent, and we would be directed to the most current edition of the State Building Code for guidance.

R105.2 Work exempt from permit. *Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:*

Building:

8. Swings and other playground equipment.

Granted, this is from the Building Code and does not address Zoning setbacks, but recall we were sent here directly from our Zoning Ordinance. Considering that a permit is not required, and without it being specified in Zoning, “swings or other playground equipment” wouldn’t be required to meet the typical structural setback requirements. Enforcement would be very challenging since the Town does not require any permits or approvals to install a playset or playground equipment and therefore does not have any accounting of where these items are located in town. Essentially without a permit requirement, the Town would need a separate approval process for residents intending to install a playset for their children.

Mr. Wolph stated staff reached out to several other New Hampshire communities for clarification in how they treat playsets and playground equipment. All of the municipalities included on the following pages do not consider playsets structures and do not require them to meet the structural setbacks. Although Stratham’s definition is not perfectly identical to any other community, it does include very similar language to many of the communities who do not regulate playsets in this manner. For example, Durham’s definition is very similar and Hudson includes references to towers and platforms.

Mr. Goulet questioned where the 100 foot come into play. Mr. Wolph explained there is an exemption from the building permit requirements for shed's under 100 square feet. Mr. Wolph explained once a structure is over 100 square feet and requires a permit the setback requirement needs to be followed. Mr. Connors explained there was a consultation with the Town Attorney and whether the town interpretation was correct. The Town Attorney agreed the interpretation was reasonable and accurate. Mr. Connors also reached out the NH Municipal Association and they agreed the way the definition of structure is written it does not include playsets or playground equipment.

There were no comments in favor or opposition of this Appeal for Administrative Decision.

Mr. Eastwood questions blow up swimming pools, chicken coops, etc. Mr. Wolph stated swimming pools are listed in the NH State Building as non-exempt swimming pools. Any pool that has 24 inches of water or greater requires a permit, any pool that has electricity going to it requires a permit.

Mr. Federico made a motion to close the public hearing to further comments. Mr. Dolan seconded the motion. Motion carried unanimously.

Mr. Dolan made a motion to approve the Administrative Decision that playsets are not structures as defined by Section 2, Article 2.1.67 of the Stratham Zoning Ordinance, therefore setbacks are not required. Ms. Dagata seconded the motion. Motion has been approved by a vote of 5:0.

Mr. Pierce reminded the applicant there is a 30 day appeal process to the Board's decision.

The Board would like to thank you coming out this evening. Next we'll move on to New Business.

4. New Business:

- a. Mr. Pierce stated Member Phil Caparso has opted to resign from vice chair. A motion is in order, from one of the voting members, to elect a new vice chair. Mr. Dolan made a motion to nominate Amber Dagata as Vice Chair. Mr. Goulet seconded the motion. Motion carried unanimously.

5. Other Business:

- a. At their next meeting the Select Board will need to accept Mr. Caparso's resignation as a regular member and then appoint him as an alternate member. The Board will then need to appoint Mr. Goulet as a regular member. Respectively the two members will carry out each other's terms.

6. Mr. Dolan made a motion to adjourn at 8:10 pm. Mr. Goulet seconded. Motion passed unanimously.

Note(s):

1. Materials related to the above meeting are available for review at the Municipal Center during normal business hours. For more information, contact the Stratham Building/Code Enforcement Office at 603-772-7391 ext.180.
2. The Zoning Board of Adjustment reserves the right to take items out of order and to discuss and/or vote on items that are not listed on the agenda.