

**Portland Zoning Board of Appeals  
Meeting Minutes  
February 23, 2023  
Buck-Foreman Room, 2<sup>nd</sup> Floor  
265 Main Street, Portland, CT  
Public Access via Zoom A – Link on [www.portlandct.org](http://www.portlandct.org)**

**ZBA Members Present:** Bob Casati (via Zoom), Joan Giesemann, Kurt Peterson (alternate), Cynthia Roman, Barbara Sequenzia (Alternate)

**Absent:** Victoria Short (alternate), Michael Lastrina, Jack Sterry

**Staff Present:** Dan Bourret, Atty. Kary Olson, John Guskowski (ZEO)

**Others Present:** Atty. Richard Carella, Members of the public and media

Note: Some public comments made without using the microphone are not captured in these minutes and some remarks were inaudible via Zoom.

**I. CALL MEETING TO ORDER**

Chairwoman Joan Giesemann called the Zoning Board of Appeals meeting to order at 7:01 p.m. on Thursday, February 23, 2023.

Note: The actual meeting was delayed approximately 25 minutes due to a technical problem with Zoom.

**II. ROLL CALL AND SEATING OF ALTERNATES**

Roll call took place. Barbara Sequenzia and Kurt Peterson were seated.

**III. ACCEPTANCE OF AGENDA**

Cynthia Roman made a motion to accept the agenda, it was seconded by Barbara Sequenzia, all were in favor, motion carried.

**IV. READING OF LEGAL NOTICE & EXPLANATION OF PROCEDURES**

Joan Giesemann read the legal notice.

**V. PUBLIC HEARING AND POTENTIAL ACTION**

**Application #22-02:** 43 Goodrich Lane. Request to appeal a Zoning Permit denied by the Zoning Enforcement Officer to construct a single family dwelling. Application and property of John and Sally Anderson. Assessor's Map 76, Lot 15-1. Zone R-25.

The hearing was opened and seconded, all were in favor, motion carried.

Atty. Richard Carella spoke on behalf of the applicants, John and Sally Anderson, regarding a denial of a Zoning Permit based on a lot for which they are looking for approval. It lacks frontage on a town road. Atty. Carella went through the history of Goodrich Road and why it should be approved. The Andersons bought Parcel A. Atty. Carella showed the subdivision back in 2,000. There was a question even then as to the status of Goodrich Lane and who owned it but it was a road to get back to the parcels referred to on the map. He read part of a letter from Atty. Roberts of Halloran & Sage pertaining to this lot. The borders of the property in question are bordered by Goodrich Lane. It has always been a road designated to get back to the parcels. Based on that, Parcel A can use Goodrich Lane as a boundary and it was approved in 2000 as part of the subdivision. He then showed what it looked like in 2022 and the lot was approved in May of that year. At that time, John and Sally sought a building permit to sell the lot and that was when it was denied. The ZEO felt that there was not enough frontage because they feel that this is a private road or a discontinued road. There is no evidence that the road was ever discontinued or abandoned. Over many years, the town approved development and properties were developed along this road. It is not a private road. There's nothing in the town records showing that it was discontinued. It is a road dedicated for public travel and properties have been developed around it. He then referred to definitions of what a road is in the zoning regulations and said that's what you have here. They have a lane dedicated for the movement of vehicles. It is also reflected on the town road list that shows all the town-accepted roads. This parcel meets the description of a building lot. It is an approved lot because it has frontage on a town road. Atty. Carella explained the two ways a road is established.

The problem is that no one knows who owns Goodrich Road. Kurt thinks it wouldn't have been an approved subdivision if it was a private road and asked who maintains it. The road is maintained by John Anderson. It is a gravel road and the town plows to the driveway and the house across the street. The question was raised as to whether the Town will have to pave it. Atty. Carella maintains that the Town has determined that it is a public road based on the list of roads from the Dept. of Transportation. Kurt Peterson asked how the Town determines whether it is public or private.

Dan Bourret, as Town Planner, he gave the denial and this goes back about five years. There was a foundation for a house and that goes back to when there was a permit for a house and that permit was revoked when the Dykases owned that property. It was initially shown by the Land Use Department that it was a Town road and we found out later that it was not. We know that Atty. Carella said it was on a DOT list of town roads. This list is partially compiled for funding for purposes for the Town to maintain it and that is only for 800'. The Town does not plow or maintain that road beyond the 800'. He referred to the DOT documents and said that the Town does not claim all of that for a Town road (he pointed it out on the map). They do turn around but it is maintained privately and does not guarantee services. It meets zoning in every other way but it doesn't have footage on a town road. Again, the Town does not consider it a public road. This has been going back and forth for five years.



Atty. Olson said the foundation was installed and neighbors objected to construction on that site and the town determined because of the configuration if they used the old Wassail(sp?) driveway access the foundation, there would be spirited intent of the regulation and that was the first iteration that she was aware of. She told of several iterations after that. The position of the Town has always been that it has to have public access to Goodrich Lane. The Town always maintained that position with every iteration and proposal and she has a major concern that there would be an assumed dedication that would not meet the Town standard and then the Town would have to maintain it. Regarding the tower, the Town staff does not know how the tower got put in without approval. The Town portion ends before that and this was the position always taken. Attempts were made to try to accommodate them to meet the spirit of the zoning but it spun in circles. She agrees with everything that Dan has said that where the foundation lies and where they intend to use for access, it is not a portion of the Town road. They tried to accommodate the Dykases and Andersons. When Susan Bransfield was selectwoman, they tried construction on that foundation and the neighbor literally sat down and blocked off the bulldozers and she got a call on Monday morning because things were blowing up there and they were not allowing the trucks to access the foundation to continue construction. Not long after that, they sold the property and moved. The town's position has always remained consistent. Beyond the DOT 800' line, the Town has never taken the position that this is a public road beyond that.

Kurt asked how the Andersons access their property without the frontage and why were they able to build and these people not allowed. Dan thinks it was a mistake made by the Land Use Department back then and it was presented as a town road. Dan explained the policy regarding shared driveways. An interior lot has a dedicated access way. Again, it is not known who owns Goodrich Lane. Atty. Olson said she disagrees with Atty. Carella's opinion. Her critical issue is that there should be no assumption that the town has accepted this road beyond the point that is declared by DOT. The decision tonight is up to the ZBA Board but there is no legal justification and no legal basis for the town accepting Goodrich Lane beyond the 800'. They never declared or accepted it. The State can circumvent zoning for the cell phone tower. Probably a judge did that. They use Goodrich Lane to get to the tower but the town does not maintain it.

Atty. Carella said the Andersons opened up the roadway for public travel. He disagrees with Atty. Olson. It is a public road. It has been developed on both sides. But if the town doesn't want to ask for reimbursement from the state, it doesn't take away the rights of the public. The definition of "street" does not say anything about dedication. Atty. Olson and Atty. Carella disagree. He read the whole definition. It is not abandoned, discontinued, and the Andersons can't block it off.

Atty. Olson said that is not true. The town has no obligation beyond the 800' and never accepted responsibility for it. Just because others go up there, it does not make it a public road. There has been no formal acceptance of the road beyond the 800'. Kurt Peterson asked about the approved subdivision and how it got approved without access regardless of when it was done. There should have been access somehow from the road. Whether it was a mistake or not, they did approve the subdivision. Atty. Olson said none of them were involved at that time. Dan said



the property in question was not one of the subdivision parcels. Dan showed on the map how the parcel was reconfigured. Dan again said the lot in question was not part of the subdivision. Atty. Carella said the land hasn't moved. He disagrees with Dan and Kary.

Atty. Olson said her main concern, and she cautions, it creates a huge problem for anything beyond that point and the requirement to plow, grade and pave it. This has been going on for years. The Andersons have prescriptive rights but it does not in fact make it a public road. It has only been recently that they released the Rivera's rights to get to their own property. From her perspective, and she cautions, it could have a huge impact if the Board assumes it to be a public road.

Cynthia Roman asked if it hinges entirely on a public road. The response was that you must have access on a public road. Atty. Carella said it is complicated but the bottom line is that it has been approved by others. Kurt Peterson asked if a solution has been put on the table to consider it a private road and why hasn't it been suggested to the Andersons. If the Town is correct regarding the 800', then they need to look for a solution to try to figure this out. Atty. Olson said they have tried to work with them to legalize this foundation. There have been iterations back and forth and there is another 20 acres beyond it. Just because people use it, plow it and grade it, does not make it a public road. You cannot discontinue something that was never accepted. To get beyond the Riveras, it would be a huge burden on the town to bring it up to road standards. She appreciates what Rich and the owners are saying but it was never accepted by the town. Atty. Carella disagrees with Atty. Olson 100% and he read from a document from Susan Bransfield back in 2021, when they were not opposed to the lot line on the map. Atty. Olson explained that there were about five different maps and she doesn't know which map 2021 pertains to.

Kurt Peterson again asked if there is a solution to this? They own the land. The regulations could be changed. Why haven't they been able to do that? Dan's concern is that the town cannot guarantee access to this. Kurt does not believe the Board should act on this at all until someone can come up with a plan and make it work. Atty. Olson disagrees but appreciates where Kurt is coming from. They have tried to come up with a way to make it work. The Dykeses built the foundation and at one time had the permit to build as Dan explained. Kurt asserts that this should not be before this Board and they shouldn't vote on it at all. Dan said they could come back for a variance to build a house without the necessary frontage or they could get an access strip from the Goodrich's. Attempts were made to find a solution but nothing was acceptable. Dan would still work with the Andersons to get to their goal. A decision does not have to be made tonight. They could leave the hearing open.

Bob Casati thinks the hearing should be left open. Kurt asked if it was as simple as asking for a variance. Atty. Carella said they thought this approach was better because getting a hardship is difficult. But he thinks it is a hardship as well. Atty. Olson said to be careful to not prejudice an application that is not in front of you. The Board could put themselves in peril again. That is another avenue but cannot suggest that they are entitled to a variance. If they want to leave it open, Dan will try to work on it with the Andersons. It is up to the Board.



After much discussion, Cynthia Roman made a motion to leave the public hearing open until the next meeting scheduled for March 23<sup>rd</sup>, seconded by Kurt Peterson, all were in favor, none opposed, no abstentions, motion carried.

**Application #22-03:** 117 High Street. Request to appeal a Zoning Cease and Desist Order by the Zoning Enforcement Officer that roosters are not allowed on property per zoning regulation 9.7.1. Application and property of David Rutter. Assessor's Map 39, Lot 70. Zone 15.

Joan Giesemann made a motion to open the hearing, it was seconded by Kurt Peterson, all were in favor, motion carried.

David Rutter, 117 High Street, said his property was bought from the original owner. He said it was not rezoned. It was a pre-existing zone and has always been farmed and is still being farmed. He referred to a decision that was made by the Board in the past to allow a horse at 138 High Street. His property should never have been zoned R-15 because it never stopped being a farm. The farm was never shut down. Sara Sterry Rutter said the high school property was a farm. The 138 High Street property was allowed a horse and theirs is the same situation and they are looking for the same decision. It was never intended to not be a farm. The owner became too old to take care of the animals. It was not a discontinued use. You can't expect someone old to still take care of animals. David is still farming the property now. It shouldn't be R-15 because it was pre-existing. Kurt Peterson told what he remembers about the decision regarding the horse on 138 High Street.

Mr. Rutter continued that he doesn't understand when it says that Butler Lane must adhere to R-15, it was only the subdivided parcels taken over by the Town. He is still farming the property now. His is still a working farm. He asked why should they have to get a variance? The ZEO said the Rutters own a 1.5 acre property which was subdivided from a much larger farm. The regulation couldn't be clearer. You need three acres for a rooster. The public health safety is their concern. It is in a residential area and roosters shouldn't be allowed. Kurt Peterson asked for confirmation from the ZEO that the ordinance allows chickens. What was the basis for the complaint? It was confirmed that it was based on a neighborhood complaint. Mr. Rutter said he has one rooster that can take care of about 40 chickens. His brother-in-law is his neighbor. All of the property was owned by three relatives. It was given to the kids so each kid had a piece of land of the farm. It wasn't subdivided to not be a farm. It was done so each kid could have a part of the farm. It has been a continuous farm ever since. The 1-1/2 acre for a rooster shouldn't matter.

Jay Stemmler, 89 High Street, said the farm has been there for over 100 years. It has always been the Stemmler Farm. He remembers chickens and roosters running around there when he was in high school.

Salvatore Carta, 4 Butler Lane, said the Rutter property is too close to have roosters. His wife works from home and his daughter takes UCONN classes. The rooster screams all the time and makes a lot of noise. It is very inconsiderate and is too close to his property. Chickens are allowed but not roosters.



Mr. Rutter said the chickens are the issue because they make a ruckus when they are laying eggs. Also, he runs heavy equipment for a long time that makes more noise than the chickens and rooster. The land was given to the kids and was not subdivided.

John Sterry Jr., 119 High Street, has the original farm at 119 and will be moving to it. He understands the ZEO had multiple complaints but they only heard about one. He told of a terrible windstorm that caused damage and how David cleared it and made it better. He also told how the others have done things to make the farm better. The ZEO said moving the rooster would not be allowed. The Town has benefited from the Stemmlers.

Atty. Olson said she takes no position but said this was conveyance to family members. It really is a subdivision because there are separate lots and can be conveyed to someone outside the family. Whatever decision is made, that decision can follow the properties into perpetuity. They are separate lots and a legal subdivision. Kurt Peterson asked if they have separate property lines. Atty. Olson said they are abutting properties. They are distinct lots and not owned by the original family. The other situation with the horse was family-owned the whole time. These lots can be conveyed to anyone. It is a true subdivision.

David Rutter again referred to an earlier decision made by ZBA regarding a horse being allowed on the property at 138 High Street. If they sell the parcel, it will still be a horse farm. The variance stays with the property and they can sell it as a horse farm. Did the ZEO properly determine if there was a violation and that they should cease and desist? What if they come back with a variance. They are unique to every property and no precedent when it comes to variances. His lawyer said they were still farming it and he bought it from the farm. He is asking to decide if this pre-existed zoning and the zoning doesn't apply to his farm animals. If it stays with the property that was continuously farmed and he bought it from them, then the animals should be allowed to stay because it pre-exists the zoning rules. The property has never stopped farming.

John Guszkowski (ZEO) said when the farm was subdivided, the parcels were smaller, one of them being a church. It doesn't mean that the smaller parcels could have animals if they didn't have the required acreage. Without the three acres, you cannot have a rooster.

David Rutter said when he cleared the lot, everyone said they hadn't seen the house in 30 years because he cleared all the trees away so they didn't know what was over there. All three kids had a decent share of the farm.

After much discussion, Kurt Peterson made a motion to close the public hearing, seconded by Bob Casati, all were in favor, motion carried.

Joan Giesemann thinks it is great to have chickens but feels you must have three acres in order to have a rooster. She told how they got a rooster by mistake and how the rooster would get the neighbor's dog barking at four in the morning. She agrees with John that this is a more densely populated part of town. If the property had 25-30 acres and one property, she might feel differently. She thinks maybe the Rutters could go to P&Z and have the R-15 zoning status changed or maybe talk to the CT Farm Bureau to come up with a solution. Based on what she

experienced with the rooster, she doesn't think a rooster should be allowed on the Rutter property.

Cynthia Roman's comment was inaudible.

Kurt Peterson said the farm is now subdivided and the ordinance is clear about the amount of acreage necessary to have a rooster. Kurt believes the cease and desist order should be upheld.

Bob Casati's comment was inaudible.

Kurt Peterson made a motion that the Zoning Board of Appeals denies the appeal and upholds the cease and desist order. It was seconded by Bob Casati. All were in favor, none opposed, no abstentions, motion carried.

## **VI. REGULAR MEETING**

A. New Business None

B. Old Business

### **1. Adoption of Minutes: 10/27/22 Regular Meeting**

Kurt Peterson made a motion, seconded by Bob Casati, to adopt the 10/27/22 Regular Meeting Minutes, Cynthia Roman and Barbara Sequenzia abstained, none opposed, motion carried.

### **1. Correspondence**

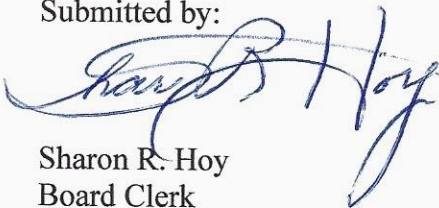
## **VII. PUBLIC COMMENT**

None

## **VIII. ADJOURNMENT**

Barbara Sequenzia made a motion to adjourn the meeting, seconded by Cynthia Roman, all were in favor; the meeting was adjourned at 9:31 p.m.

Submitted by:



Sharon R. Hoy  
Board Clerk

cc: TC, ZBA & Clerk, ZEO, Bd., Book, Applicant(s), Extras (10)  
Email to KA, DK, FS & BOS, Library