

Town of Austerlitz  
Planning Board Meeting  
December 1, 2022

The Planning Board meeting was held in-person.

Present: Deborah Lans, Chair, Eric Sieber, Chris Ferrone. Steve Lobel and Dale Madsen, Members. Joseph Catalano, Attorney for the Town, also present.

By consensus of the Board, J. Catalano will take notes of the meeting and prepare the minutes.

**Public Hearing for Planning Board Application PL-2022-17 Hi Roc, LLC Minor Subdivision**

Public Hearing called to order at 7:05 p.m.

David Hammon and Kevin Hartka presented the application on behalf of Hi Roc. Additional documents were received: confirmation from the Highway Superintendent that the road would meet the Town specifications for private roads and driveways once pull-offs as drawn on the map were constructed and from the Fire Department that it found the road suitable; receipts from the mailing of notices of the hearing to the owners of neighboring properties; and, an email supporting the application from neighbor Gwendolyn Sherman. Members of the Board asked questions to clarify the application. A number of members of the public were present and also asked questions and raised concerns about the intended use of the land; the extension of the private road onto a neighboring property that is used on occasion; the use of abutting land for commercial purposes; and the registration of a business at the applicant's property address. The applicant answered all questions and confirmed that the land would be used solely for residential purposes. After all questions and comments had been heard and answered, the public hearing was closed.

As no further comments were made, a motion to close the Public Hearing for the Hi Roc, LLC application was made by E. Sieber and seconded by D. Madsen.

Roll Call

Deborah Lans: yes

Eric Sieber: yes

Chris Ferrone: yes

Steve Lobel: yes

Dale Madsen: yes

Motion carried 5:0 Public Hearing closed at 7:36 p.m.

**Regular Meeting called to order by the Chair at 7:36 p.m.**

**Minutes**

A motion to approve and accept the November 2022 Planning Board Meeting minutes as presented, was made by C. Ferrone and seconded by S. Lobel.

Voice vote

Deborah Lans: yes  
Eric Sieber: yes  
Chris Ferrone: yes  
Steve Lobel: yes  
Dale Madsen - yes  
Motion carried 5:0

**Old Business - Planning Board Application PL-2022-07 Oleynek Minor Subdivision and Boundary Line Change**

At the November meeting, the Board decided that they wanted to memorialize the Board's decision in this matter with a resolution prepared by the attorney Catalano given the long history of this application, the requirements for findings of fact as specified by the Town Code for private road waivers and to distinguish this decision from other future applications concerning similar circumstances. The Board considered and discussed the written resolution drafted by Mr. Catalano to reflect the Board's approval of the application by the Oleynek family for one additional subdivision and four boundary line adjustments.

A motion was made by E. Sieber, to adopt Resolution #2-2022 as presented to the Board which approves the subdivision and boundary line adjustment map, and seconded by C. Ferrone.

Roll Call

Deborah Lans: yes  
Eric Sieber: yes  
Dale Madsen: yes  
Chris Ferrone: yes  
Steve Lobel: yes  
Motion carried 5:0

Planning Board Resolution #2-2022

Whereas, the subdivision of lands of Fred and Gloria Oleynek was approved by the Planning Board in 2008 and that subdivision consisted of 8 lots with 5 of those lots having access off of a cul-de-sac private road (known as Indian Trail Road); and

Whereas, that approved subdivision map contained a restriction that none of the lots in the 5-lot could be further subdivided; and

Whereas, one lot was retained by Fred and Gloria Oleynek and the other 4 lots were conveyed to certain of their children; and

Whereas, in 2021, Paula Bednarcek, daughter of Fred and Gloria Oleynek, along with her siblings appeared before the Planning Board with a proposal to realign some of the approved lots and to create a new lot from the original subdivision for purposes of estate purposes and equitable conveyance to family members due to the death of Gloria Oleynek who had survived her husband; and

Whereas, the Planning Board after research and discussion over several meetings advised that the restriction on further subdivision of lots in the original subdivision would have to be addressed since that restriction is also a restriction set forth in the Town Code (section 160-3) for private driveways that have only one access point on a public road such as Indian Trail Road; and

Whereas, in June 2022, Marguerite Gauthier as executor of the estate of Gloria Oleynek, submitted an application for a minor subdivision and lot line adjustment on behalf of the owners of the 5 lots with access on India Trail Road (said individuals being collectively referred to as the “Applicant” or the “Oleynek Family”) and the Planning Board accepted that application for the limited purpose of referring the issue of allowing more than 5 lots off of Indian Trail Road to the Town Board and Town Highway Superintendent pursuant to the private road and waiver requirements in section 160-3 of the Town Code; and

Whereas, the Highway Superintendent in a report dated, July 11, 2022, advised that Indian Trail Road was suitable for providing access to an additional residential lot and recommended that a waiver of the 5-lot restriction was acceptable provided that certain improvements to the road were made; and

Whereas, at the Town Board meeting held on July 12, 2022 the Town Board reviewed and discussed the Highway Superintendent’s report and then adopted a resolution that approved the Oleynek Family’s waiver request for the 5-lot maximum by allowing one additional lot to be accessed by Indian Trail Road provided that no further subdivision is authorized, the conditions set forth in the Highway Superintendent’s report are completed and that the Planning Board must approve the waiver and the additional lot per its subdivision review process; and

Whereas, the Applicant submitted a revised subdivision application with a proposed subdivision and boundary line adjustment map at the Planning Board’s October 6th meeting; and

Whereas, after review of the application and the survey map the Planning Board suggested some changes to the map notes to clearly reference the notes from the 2008-approved subdivision map; and

Whereas, the Applicant also submitted a Short Form Environmental Assessment Form, with Part 1 completed, and the Planning Board, at its meeting held on October 6, 2022, determined the Application complete for purposes of scheduling the public hearing and determined that the proposed project constituted an Unlisted Action under the State Environmental Quality Review Act (SEQRA); a public hearing on the application was scheduled for November 3, 2022; and

Whereas, the public hearing regarding the application was held on November 3, 2022, at which time the Applicant’s representatives, Paula Bednarcek and Fred Haley surveyor, were present and made a presentation to the Planning Board; there were no members of the public in attendance who spoke with respect to the application and no written comments were received for the hearing; and

Whereas, after the Applicant and representatives answered all of the questions that were posed by the Planning Board, the floor was open to the public of which all that were present were given a full and fair opportunity to be heard, and after further questioning of the Applicant by the Board and acknowledgement that no written comments that were received up to the present time, the Planning Board closed the hearing by motion; and

Whereas, after consideration and review of the above, the Planning Board completed the SEQRA review process and decided that it wanted to memorialize its decision in a written resolution that could be reviewed prior to a formal decision on this Application;

Whereas, this resolution was prepared by the Board's counsel and reviewed by the Planning Board at its December 1st meeting:

Now, Therefore, Be It Resolved as follows:

1. The Planning Board makes the following findings:

- a. Proposal: This minor subdivision and boundary lot line adjustment application proposes to realign certain lots and create one new lot in a previously approved 8-lot subdivision of which 5 lots are accessed off of a private cul-de-sac road called Indian Trail Road. The original subdivision approved in 2008 contained a note that prohibited any further subdivision of the lots. Section 160-3 of the Town Code also prohibits more than 5 lots to be accessed by a private road that has only one point of ingress and egress with a public road.
- b. Proposed Use: The Applicant proposes to subdivide the large 35-acre lot originally retained by Fred and Gloria D. Oleynek (Lot 2) and where their residence was located on the east side of Indian Trail Road so that the residence is on a 5-acre lot and then create a new lot on the southern side of Indian Trail Road to be conveyed to their daughter Gloria Oleynek. Lot 2 would further be divided and annexed to existing lots 5, 7 and 8. The stated purpose of the proposal is equitable distribution of the lands in the estate of Gloria D. Oleynek. The end result will be 6 large residential lots accessed by Indian Trail Road.
- c. Zoning and Private Road Requirements: The Property is in the Rural Residential district of the Town. All lots far exceed the minimum area requirement. Section 160-3 of the Town Code prohibits more than 5-lots to be accessed by Indian Trail Road unless the Road is improved to the specifications for a Town Road. This involves significant widening of the Road and paving it. The Oleynek Family has asserted that such improvements would be cost-prohibitive and unnecessary for the addition of a single-lot. The Planning Board referred the Applicant to the Highway Superintendent and Town Board as required for a waiver of the private road requirements. Both the Highway Superintendent and Town Board determined that a waiver of the private road specifications for one additional lot was appropriate and should be allowed provided that the road was widened in the 300 feet in from the public road (Bloody Hollow Road); that additional material be added to the road in certain spots; that the lots accessed by Indian Trail Road not be further subdivided; and that the Planning Board approve the waiver per its subdivision review process. (The report of the Highway Superintendent, dated July 11, 2022 and Resolution #41 of the Town Board dated July 12 2022 are included herein by reference.) The Planning Board has been informed

by the Highway Superintendent that he inspected Indian Hill Road and found that the improvements made to the Road as required in his report were completed and acceptable.

- d. Public Comment: The public hearing on the Application was held and closed on November 3, 2022. At the public hearing, the Applicant (and representatives) made a presentation detailing the various components of the proposal and the Planning Board asked the Applicant questions and received satisfactory responses to those questions. No comments were made by neighbors of the property and the general public. All the information provided by the Applicant and all of the public comments have been taken into consideration by the Planning Board in its deliberation on this matter.
2. SEQRA: Along with the application form and materials, the Applicant submitted a short environmental assessment form (EAF) pursuant to SEQRA. The Planning Board reviewed the EAF at its meeting held on November 3, 2022. The Planning Board had made the initial determination that the Application is considered an Unlisted Action under SEQRA and there are no other involved agencies as that term is defined under SEQRA. The Planning Board decided to await further information that may be gathered at the public hearing before making a SEQRA determination. The Planning Board has reviewed the EAF with Part 1 prepared by the Applicant together with all of the application submissions. At its meeting on November 3rd, the Planning Board discussed and answered the questions on Part 2 of the EAF. In so doing, the Planning Board did not find any moderate or large or potential adverse environmental impacts that would result from the proposed improvements and use as it is proposed by the Applicant.
  3. The Planning Board hereby approves the minor subdivision and boundary lot line adjustment application and authorizes the Planning Board Chair to endorse the subdivision map as approved. The Planning Board also hereby grants the waiver to the private road requirements set forth in section 160-3 of the Town Code based on the following findings and conclusions:
    - a. This is a unique situation in that this is a subdivision where all lots are owned or will conveyed to family members. Although these family members are not prohibited from conveying their lots to non-family individuals, the design and use of the original subdivision and now the amended subdivision clearly evidences an intent to be kept in the family.
    - b. Indian Trail Road has been thoroughly inspected by the Highway Superintendent and has been found to be in good condition with adequate width for the limited use of the Road by the residential lots currently existing and that the addition of a single lot off of that Road would not create any significant difficulties with respect to the Road's suitability and safety.
    - c. The Town Board has determined that the waiver of the 5-lot restriction to allow 6 lots will "serve the interests of justice without impairing the public health, safety and general welfare." TB Resolution # 41 - 2022.
    - d. The Road has been widened and improved pursuant to the direction of the Highway Superintendent.
    - e. Based on the foregoing, the Planning Board finds and concludes that the waiver to allow a sixth lot on Indian Trail Road is warranted.
    - f. Said waiver is based on the unique facts and circumstances of this application and shall not establish a precedent for other applications that may request a waiver of private road requirements as set forth in the Town Code.

- g. The Planning Board has received a written consent and approval from each lot owner of the existing lots on Indian Trail Road with respect to the proposed subdivision and boundary line adjustment map as well as modifying the note on the original subdivision map that prohibited further subdivision of the original 5 lots on Indian Trail Road. As such, the Planning Board finds that such note can be modified as set forth on the proposed map to allow one additional lot to be created and accessed by Indian Trail Road.

**Planning Board Application PL-2022-17 Hi Roc, LLC Minor Subdivision**

There was discussion of the extension of the private road and its use as access to an abutting property (even though that property has its own driveway). The Board reviewed Part 2 of the SEQRA form and resolved that it would issue a negative declaration inasmuch as the subdivision did not present any significant environmental impacts.

A motion was made by E. Sieber, to accept the SEQRA EAF as completed by the Planning Board with the conclusion that the application did not result in any significant adverse environmental impacts, and seconded by C. Ferrone.

Roll Call

- Deborah Lans: yes
- Eric Sieber: yes
- Dale Madsen: yes
- Chris Ferrone: yes
- Steve Lobel: yes

Motion carried 5:0

Having deliberated on the application the Board approved the application which permits residential use only, subject to the applicant completing the road modifications to conform to the survey and erecting a barrier to eliminate access from the private road to the abutting property. Once those conditions have been met, the Chair is authorized to sign the survey.

A motion was made by E. Sieber, to approve the 3-lot subdivision application and to authorize the Chairperson to sign the subdivision maps as approved once the above-referenced conditions are completed (road improvements and physical barrier of some method at discretion of applicant that limits the private road to access the 3 lots in the subdivision) and that prior to, or simultaneous with, conveyance of lots a written easement and road maintenance agreement is recorded with the County Clerk and a copy filed with the Town, and seconded by S. Lobel:

Roll Call

- Deborah Lans: yes
- Eric Sieber: yes
- Chris Ferrone: yes
- Steve Lobel: yes
- Dale Madsen: yes

Motion carried 5:0

There were no other items of old business on the agenda.

### **New Business**

#### **Graham Stone and Alexendra Jensen: 104 East Hill Road Proposal**

Mr. Stone and Ms. Jensen appeared per a violation notice received from the Town Code Enforcement Officer which stated they were required to apply to the Planning Board for use of their property for non-residential purposes. The Planning Board informally discussed the steps that would be necessary to obtain site plan approval for the use of their property as a recording studio and design studio. Issues were generally discussed as to the requirements for the site plan and special use permit applications and they were advised to make a detailed proposal as to all the various uses or activities they wish to establish on their property. They will proceed to take those steps and bring an appropriate application to the Board.

#### **Karl Gabosh: Discussion of Possible Minor Subdivision Proposal**

Karl Gabosh presented the possibility of a minor subdivision of his parcel into two parcels for estate planning purposes so that each of his children would inherit one lot. His driveway is 50 feet wide (grandfathered as such but not meeting the now-required 75 feet at the public road junction), and he raised the question whether, because the proposed new lot could have 75 foot access elsewhere, a second, new driveway would be required to access the second (new) lot. No determination was made and Mr. Gabosh is aware that the question would require a formal application which the Board might refer to the ZBA if he sought a waiver of the requirement (if one was found) to create a new driveway.

### **Public Comment**

There were no members of the public present and accordingly no public comments were heard.

### **Adjournment**

The regular meeting of the Board was adjourned at 9:15 by motion and voice vote.

### **Training**

The Board then entered into a training session with the attorney Catalano. This session addressed the Planning Board's jurisdiction and authority under the Town's Zoning Code and Subdivision Law. Discussion included the methodology of having various uses being allowed in theory by the zoning use table and only a few zoning districts but not allowed until Planning Board review and approval of specific proposals. Training session time was approximately 40 minutes.

Respectfully Submitted,  
Joseph Catalano, Attorney for Town