



## CONSERVATION ADVISORY COMMISSION REPORT

To: Town of Washington Planning Board

Date: August 30, 2022

Re: Wolf/Clark Site Visit: 590 Verbank Rd, Millbrook, NY 12545

### **Background**

- On August 11, 2022 an on-site visit was conducted. Present were Planning Board Member Susan Meaney, CAC Chair Margaret Schneible, CAC members Lisa Conger, Howard Schuman. Also present was owner Michael Clark and three of his representatives.
- The applicant wishes to add to or expand upon a lawful, preexisting, grandfathered structure that predates the Wetlands Law and is located almost entirely in the wetland buffer, with a significantly larger structure, which appears to also be partially in the wetlands buffer.
- Town Zoning Code Section 396 -Section VII. Pre-Existing Lawful Activities B. *"The provisions of this Section 396 shall not apply to pre-existing lawful activities including uses and structures established prior to the effective date of this Section 396. "In no event shall any pre-existing lawful activity be expanded, changed, enlarged, or altered except in accordance with the provisions of this Section 396".*
- The application requires an approved Wetlands Permit as per Zoning Code Section 396.
- As per Wetlands and Water Course Law Section IX.C.4 Permit Requirements and Procedures:  
***A written explanation of why the proposed activity cannot be located at another site, i.e., out of the wetland, watercourse, water body or controlled areas***  
The operative word in the language is "cannot." Webster defines it as "unable to do otherwise." To the best of CAC's knowledge, the detailed, verifiable, documented, factual explanation to corroborate "cannot"— requested in IX.C.4, may not have been met. The fact that a project as submitted cannot be done elsewhere or is not wanted by the applicant elsewhere, does not grant automatic acceptance to be done in the wetland's areas. This language is there to protect the Town's interest, not the property owner's
- Observations indicated the 7.3-acre parcel has what appeared to be several suitable building sites located outside the protected wetlands. See illustrations on pages 3-9.
- The existing structure, as seen in the illustrations as Area 1, is almost entirely in the Wetlands Buffer. As seen in the applicant's site plan shown on page 2, the proposed addition would greatly increase the amount of construction in the buffer.
- It appears from the on-site observations and the construction plan submitted by the applicant that the proposed building plan might be reconfigured so that the requested new construction could be moved outside the wetland buffer.

- The applicant may also be seeking relief from the restrictions herein by applying under Zoning Code Section 391.7: *"Nonconforming structures or structures containing nonconforming uses may be enlarged, extended, reconstructed, or altered by a maximum of twenty-five percent (25%) of the aggregate gross floor area of the structure sought to be enlarged as it existed on May 13, 1971."* This not only raises the question of what is the definition of the aggregate floorspace of the structure as it existed in 1971, and where is that verifiable record. According to Dutchess County Parcel Access (See page 9) it appears that only one applicable building structure, Site 1 -- 1940, was on the property prior to 1971, with an Sfla of 840 sq ft. - <https://gis.dutchessny.gov/parcelaccess/propertyCard.asp?parcelgrid=13588900666400004374730000&parcelid=105037>
- Section 391.7 does imply it may be possible for a nonconforming structure to be eligible to be enlarged by up to 25%, but it does not exempt any possible nonconforming enlargement from conforming to the provisions of the rest of the town zoning code, which in this case would be Section 396, but not limited to.

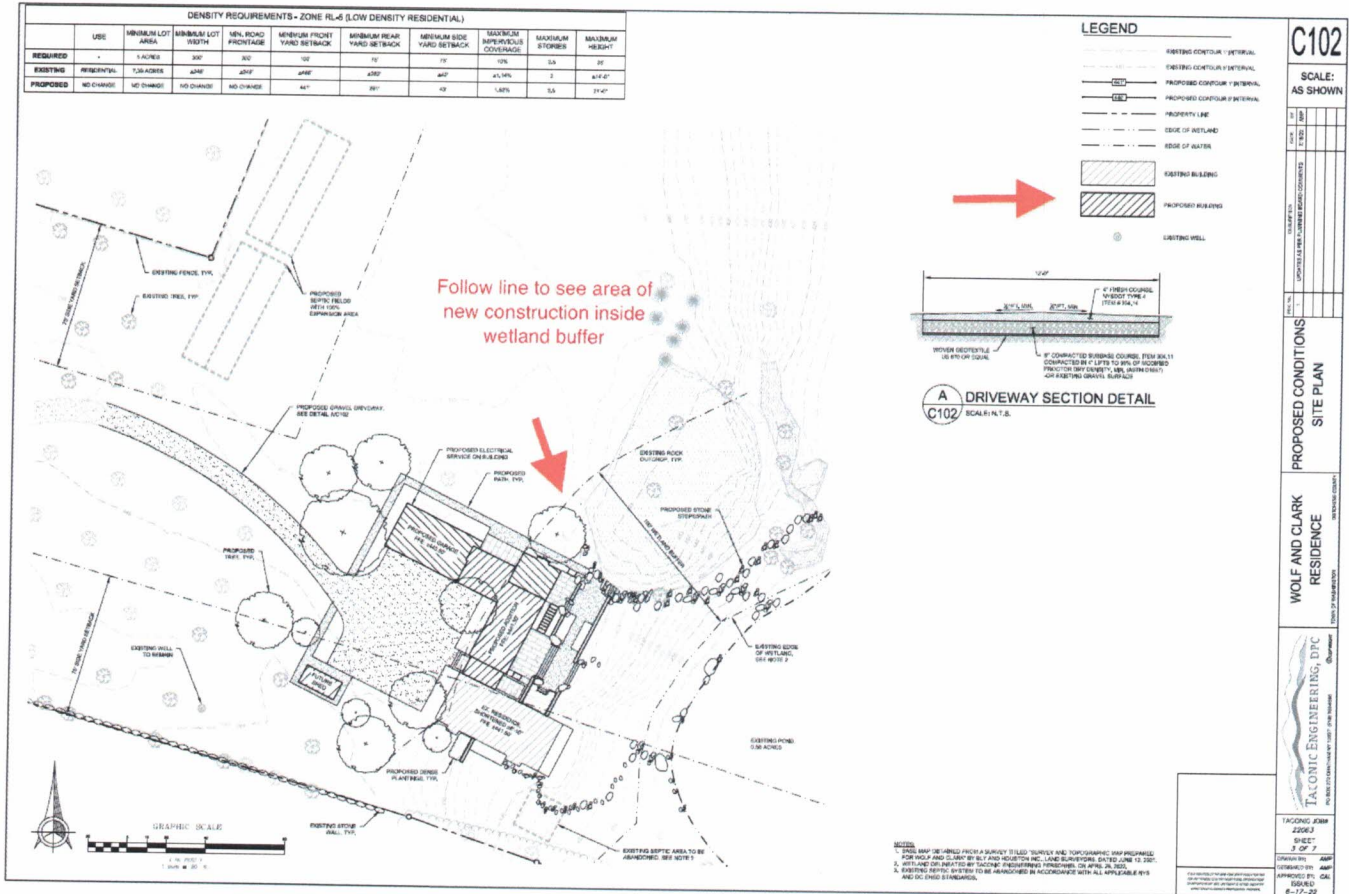
### **Discussion**

- As submitted, it appears the applicant is requesting to construct a much larger new dwelling than the presently existing one, and wants to attach the new dwelling to the existing dwelling. If the new dwelling construction were allowed to be partly or wholly placed in the wetlands buffer, as indicated in the applicant's present site plan submission, this would constitute by far the largest intrusion into a wetlands buffer since the inception of the wetland law in 2011.
- Most likely, most if not all of the existing construction presently in the regulated areas would not be there if the wetlands law was in effect at the time they were built
- The CAC strongly advises against now making exceptions to long standing policy by now allowing construction of new buildings in protected wetland features, simply because it is something a property owner would like to do and chooses not to construct elsewhere.
- The CAC is concerned that if this request is now allowed as is, the Planning Board may be unintentionally changing long standing policy and setting precedents for constructing future new buildings in a protected wetlands and/or buffer.

### **Recommendations**

- Since the application has not satisfied the "cannot" provision of Section IX.C.4 and since there appears to be ample room on this 7.3-acre property elsewhere for the new construction with or without modifications, therefore it should not be approved for a wetlands permit and should only be considered for placement outside the protected wetlands lands and buffers, as per Town Zone Section 396. Section IX.C.4. The wetlands permit application should be denied and the applicant could submit a new application to the Planning Board for new construction outside the protected areas.





Applicant's proposal plans showing almost all the existing building and a significant part of the requested new construction to be in the wetlands buffer. The delineation of the buffer was based on information from a site visit by Town of Washington Wetlands Delineator Steve Marino



Area 1: Existing - shown almost all the present building to be within the 100-foot buffer





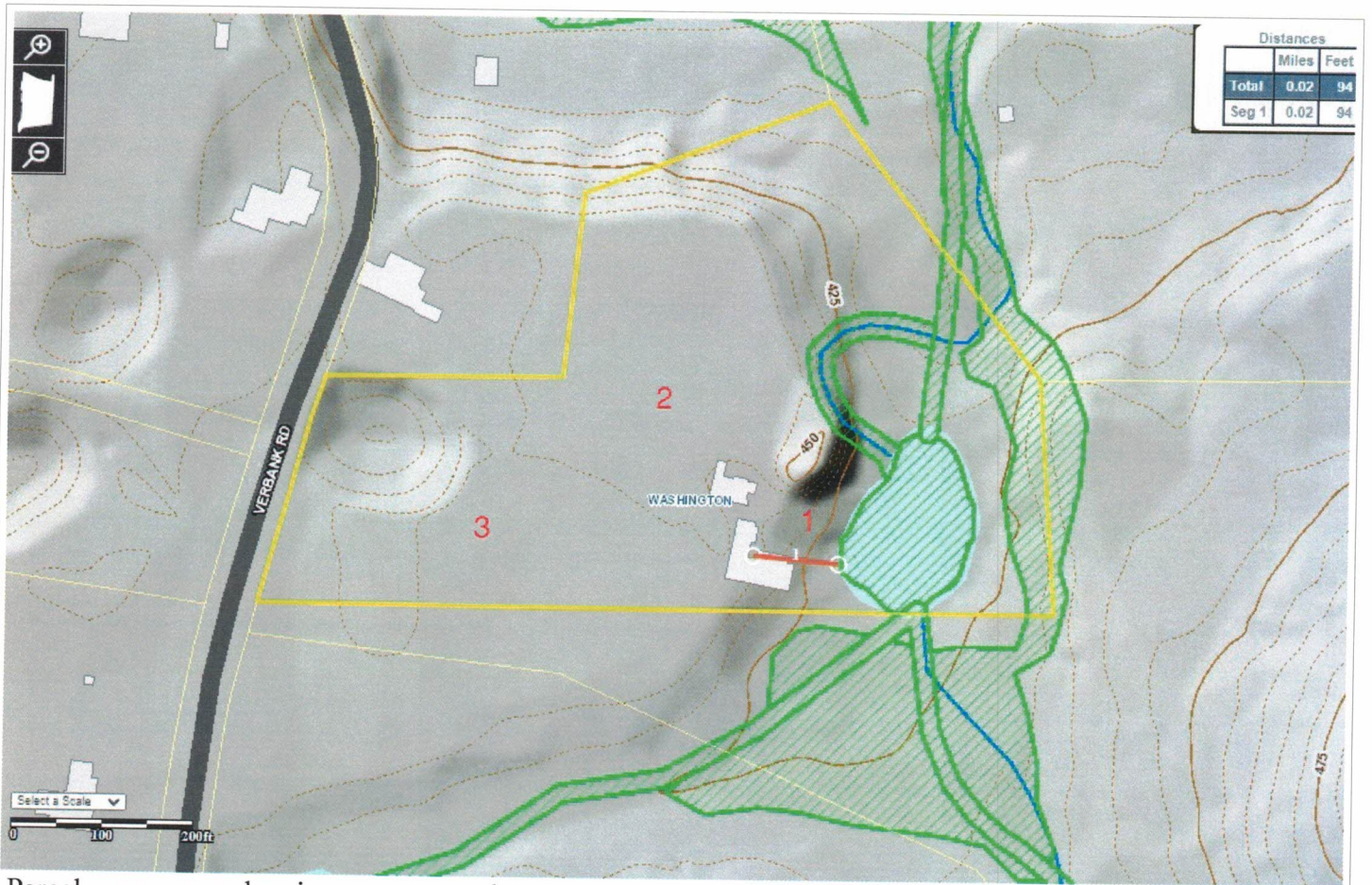
Area 2: View from road - showing ample level building areas





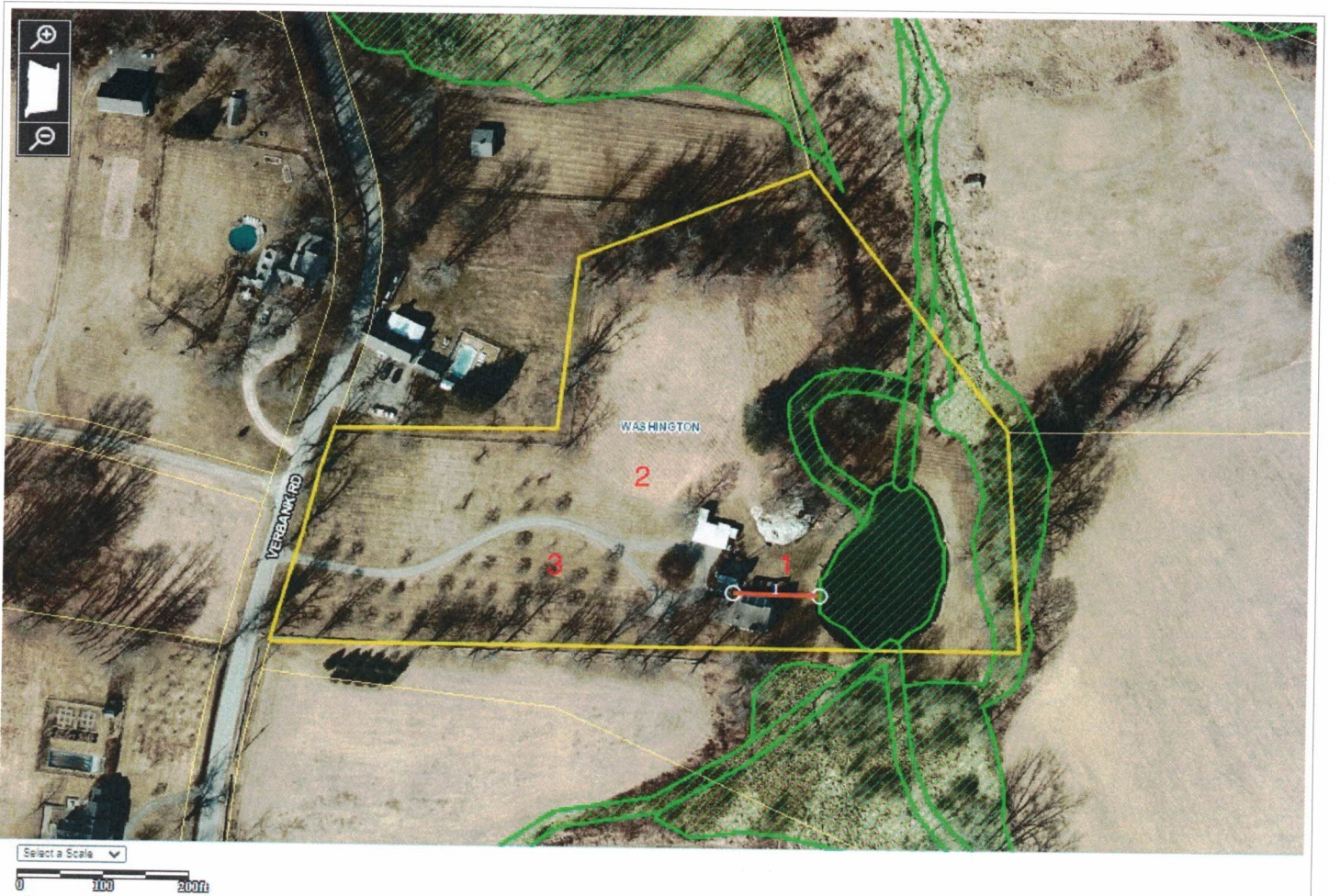
Area 3: Large open area outside buffer - near existing driveway - close to existing house





Parcel access map showing contours and wetland features and indicating large sections level terrain





Parcel access map showing aerial view with wetland features in green and a 100-foot buffer line at 1



Residential Building Information:

Site Number: 2

Year Built: 1976	Year Remod.: 0	Building Style: (06) Contemporary	No. Stories: 1	Sfla: 3794	Overall Cond.: (4) Good
No. Kitchens: 1	No. Full Baths: 2	No. Half Baths: 1	No. Bedrooms: 4	No. Fire Places: 1	Basement Type: (3) Partial
Central Air: 0	Heat Type: (2) Hot air	Fuel Type: (4) Oil	First Story: (4) 1897	Second Story: (4) 0	Addl. Story: (4) 0
Half Story: 0	3/4 Story: 0	Fin. Over. Gar.: 0	Fin. Attic: 0	Unfin 1/2 Story: 0	Unfin 3/4 Story: 0
Fin Rec Room: 0	No. Rooms: 0	Grade: (C) Average	Grade Adj. Pot.: 110		

Site Number: 1

Year Built: 1940	Year Remod.: 0	Building Style: (08) Old style	No. Stories: 1.5	Sfla: 840	Overall Cond.: (3) Normal
No. Kitchens: 1	No. Full Baths: 1	No. Half Baths: 0	No. Bedrooms: 1	No. Fire Places: 1	Basement Type: (4) Full
Central Air: 0	Heat Type: (2) Hot air	Fuel Type: (4) Oil	First Story: (4) 560	Second Story: (4) 0	Addl. Story: (4) 0
Half Story: 280	3/4 Story: 0	Fin. Over. Gar.: 0	Fin. Attic: 0	Unfin 1/2 Story: 0	Unfin 3/4 Story: 0
Fin Rec Room: 0	No. Rooms: 0	Grade: (C) Average	Grade Adj. Pot.: 100		

Improvements:

Site Number: 2

Improvement Number: 1

Parcel access Full Property Card: Only one site with Year Built before ay 13, 1971 and an Sfla of 840 sq ft.