

Memorandum

To: Town of Washington Planning Board
From: AKRF Inc.
Aaron Werner, AICP; Alicia Moore, AICP
Date: January 31, 2025
Re: **119-125 Butts Hollow Road Subdivision (Millbrook Special Farm LLC)**
cc: Brendan Johnson, PLS (Applicant Representative)
Joseph P. Eriole, Vandewater & Vandewater (Planning Board Attorney)
Steve Marino, Tim Miller Associates (Town Wetland Consultant)
Town of Washington Conservation Advisory Commission

AKRF, Inc. has reviewed the following documents and plans for the above referenced application:

- Combined Planning Board Application dated January 20, 2025 including the following signed and/or notarized components:
 - Disclosure of Business Interest
 - Owner Affidavit
 - Agricultural Data Statement
 - Consent to Inspection
 - Owner's Endorsement (multiple)
- Property Deed
- Short Environmental Assessment Form and EAF Mapper output dated January 20, 2025
- Preliminary Subdivision Plat prepared by Johnson Surveying (Brendan Johnson, PLS) dated January 16, 2025

PROJECT DESCRIPTION

The Applicants and subject property owners Shepard and Jane Ellenberg (members of Millbrook Special Farm LLC) request approval to subdivide an approximately 205-acre lot into two lots, one new lot being approximately 21.473 acres and proposed at the southeast corner of the subject property (proposed Lot 1 on the plat) and the second lot comprising the remainder of the subject property (approximately 184 acres). The subject property is located at 119-125 Butts Hollow Road in the Town of Washington (tax parcel 6965-00-004125), is zoned RR-10 and also within Agricultural District 21 (APO Overlay). The subject property is described in the application (and Dutchess Parcel Access) as a "horse farm" and contains a primary residence, barns, several agricultural outbuildings, fenced paddocks, several fields, forests (some on slopes), a small pond, and a stream/possible fringe wetlands. The application indicates there are a total of six (6) existing structures on the property, all of which are found in the northeast corner of the property and proposed to be part of the approximately 184 acres remaining after the proposed subdivision. The approximately 21.473-acre Lot 1 contains three fenced paddocks, patches of trees separating the paddocks, a stream/possible wetlands, a dirt farm road, and portions of a forested slope. According to the application, no new development is proposed at this time on either of the two lots.

COMMENTS*APPLICATION COMPLETENESS*

1. While no new development appears to be proposed as part of this application, in their presentation to the Planning Board, the Applicant's representative should explain the purpose/intent for the new 21-acre Lot 1 (and remaining 184 acres) following the subdivision.
2. The submitted Agricultural Data Statement is missing the required list and marked up tax map showing all farm operations within 500 feet of the property. The application should be corrected and resubmitted for the file.
3. The zoning designation for the subject property is RR-10. The application lists the zoning designation as RS-10. The application should be corrected and resubmitted for the file.

PROCEDURAL / CODE CONSIDERATIONS

4. This subdivision application will require a public hearing.
5. The Applicants are proposing to divide the existing 205-acre subject property into two separate lots (21 acres and 184 acres). Therefore, the application meets the Town Code's definition of a "minor" subdivision (definition from Article VII provided below).

SUBDIVISION, MINOR:

A subdivision which requires no new road construction, and which creates three (3) or fewer new parcels, or six (6) or fewer new parcels if the average parcel size is at least five (5) times the minimum lot size in the zoning district. The number of new parcels shall be calculated based upon lots that were in existence on January 1, 1989 and all subdivisions since that date shall be treated as cumulative for purposes of determining the number of new parcels created.

Based on review of "Filed Map 10849" available in Dutchess Parcel Access (and included as an appendix hereto), the last known alteration to the subject property was a minor lot line adjustment in 1999 (approved by the Planning Board) to add approximately 5 acres to the subject property from the "lands of Fisher." This lot line adjustment occurred in the northeastern portion of the property where the existing residence and agricultural structures are found. The preliminary plat also references Filed Map 7098 entitled "Subdivision Plat of Migdale" filed in the Dutchess County Clerks office on December 19, 1984 (not available on Parcel Access). There do not appear to be any records of other subdivisions creating new parcels between 1989 and the present. The 1999 lot line adjustment did not create any new parcels (but only increased the size/acreage of the Ellenburg property), and the resulting size/acreage of the Ellenburg property (205.63 acres) matches the current size of the property. Therefore, it can be inferred that no new parcels have been created since 1989 and that the cumulative "number of new parcels created" by the proposed subdivision would be one, thus satisfying the definition of a "minor subdivision."

6. Procedural considerations for minor subdivisions are found at 137-10(B) of the Town Code, as follows:

B. Minor subdivisions and lot line adjustments.

(1) If the subdivision is a minor subdivision or lot line adjustment, as defined in Article VII, the applicant may request and the Planning Board may grant waivers from informational and procedural requirements in this chapter (Chapter 137), provided that such waivers do not violate the provisions of Sections 276 and 277 of the Town Law.^[]*

(2) The Planning Board may, in its discretion, adopt a list of standard waivers that will normally be granted for minor subdivisions and lot line adjustments, respectively.

(3) No lot created through a minor subdivision approval shall be treated as a minor subdivision again until 10 years after final approval.

* NOTE: Sections 276 and 277 of the New York Town Law relate to the development, approval and filing of plats and subdivisions.

7. Applicability of Subdivision Code Sections 137-26 – 137-30: Since this application meets the definition of a minor subdivision rather than a conventional subdivision, the Planning Board should discuss, with input from counsel, whether the procedures outlined in Sections 137-26 through 137-30 of the Subdivision Code – which pertain to open space subdivisions, the Planning Board’s option to require a cluster plan, etc. – should be applied to this application.

For example, Section 137-27(B)(1) (Procedures for Open Space Subdivisions) specifically references “application for a conventional subdivision” as a precursor for the Planning Board’s option to require a cluster plan.

In addition, as noted above, since the application meeting the definition of a minor subdivision, the Planning Board has the authority to grant waivers from informational and procedural requirements outlined in the Subdivision Law. These procedures include items listed in paragraphs A through P under Section 137-21 (Preliminary Plat), which include the “land inventory information relating to natural features on and within 500 feet of the property.” Therefore, as the application is a minor subdivision, the Planning Board may waive the requirement to provide a land inventory analysis.

For all subdivisions, any future new construction or alteration (on either lot) would be subject to the RR-10 district requirements and building permits issued by the Building Department. In addition, depending on the construction/alteration proposed, the Planning Board and/or Zoning Board of Appeals may be required to review future development proposals and, if applicable, complete a review under SEQRA, if the proposed development requires certain approvals (e.g., need for variances, wetland permits, special permits, etc.).

However, as noted in Comment 11 below, the Planning Board can request that the Applicants demonstrate the potential buildability on proposed Lot 1 in consideration of the information available through the NRI and other Town mapping.

PRELIMINARY PLAT

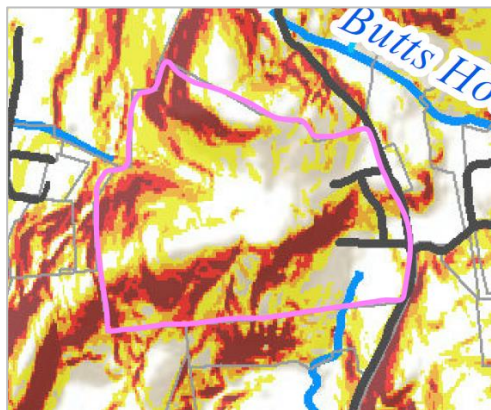
8. The preliminary plat does not show the full extent of the 205-acre property proposed for subdivision. Consistent with the Code’s provisions on minor subdivisions, the Planning Board may waive the requirement of having the plat depict the full surveyed boundary of the 205 acres. This should be discussed by the Board. If the Applicants have a survey available, it should be shared with the Board. If the Board opts to waive the requirement that all 205 acres are shown on the plat, it may be helpful for the vicinity map in the upper right of the plat to include a callout for the area where 21-acre Lot 1 is proposed to be created.
9. If the proposed subdivision is granted, both parcels would conform with the RR-10 requirements of minimum lot size (10 acres), lot width (400 feet) and minimum frontage (400 feet). However, in the absence of a full property survey showing the existing improvements, it is unclear whether the existing improvements found on the remaining 184-acre parcel would comply with the dimensional requirements (e.g., setbacks) of the RR-10 district. (Other than paddocks and a dirt farm road, there are no improvements on proposed Lot 1.) The Applicant should disclose whether any of the existing improvements are pre-existing nonconforming; a survey with the existing improvements may be required to confirm. More information is required to determine whether any new nonconformities would be created and if any variances would be needed.
10. It is assumed that no utilities, such as wells or septic fields, that serve the existing improvements on the proposed 184-acre lot are located within the proposed 21-acre lot. The Applicant should confirm.

11. While no construction is proposed as part of this application, the Planning Board can request the Applicants demonstrate that proposed Lot 1 (21 acres) is buildable without area variances or detrimental impacts to the designated scenic road of Butts Hollow Road, on-site wetlands, steep slopes, or agricultural soils. The subject property is within the APO district, and review of the NRI (see comments below) notes that the southeast corner where Lot 1 is proposed may contain “farmland of statewide importance.” In the APO district, residential structures shall be located on the property’s least fertile agricultural soils, and appropriate buffers shall be provided between residential and agricultural uses (see Zoning Code § 165-25(G)).

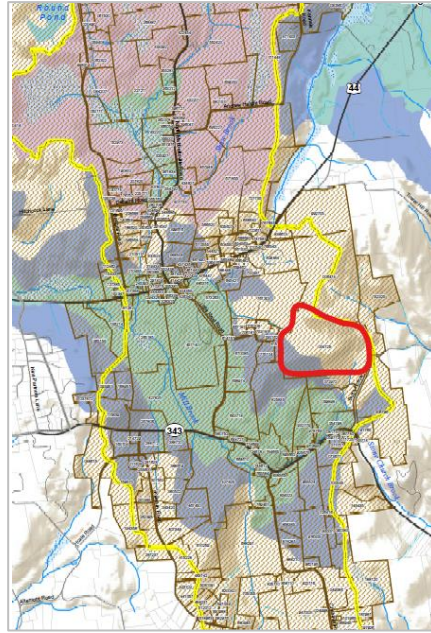
To demonstrate to the Planning Board that Lot 1 is buildable, the Planning Board can request the Applicant’s include a conceptual footprint of a house, driveway, well, and septic system on proposed Lot 1 that can be protective of agricultural soils (by providing enough land for continued agricultural activities) and other sensitive features while also in compliance with the RR-10 district requirements, the Town’s Wetlands Law and County/State health codes.

REVIEW OF NRI AND OTHER TOWN MAPPING

12. AKRF has reviewed the Town’s Natural Resource Inventory (NRI) and other publicly available mapping and notes the following in relation to the subject property.
 - a. NRI Map 4 (Steep Slopes) shows that the subject property contains steep slopes. However, the area of the proposed 21-acre Lot 1, in the southeast corner of the property, is relatively flat,. The Town Code defines “buildable land” as portions of a lot exclusive of slopes exceeding 20 percent. No slopes exceeding 20 percent appear to be within proposed Lot 1. While there are slopes exceeding 20 percent on the 184 acres to remain, the lot is large, contains buildable land, and there are no plans to develop either lot at this time.



- b. NRI Map 8 (Drinking Water Resources) shows that the subject property is within (and a contributing parcel to) the Village of Millbrook Water Source Watershed (yellow boundary below). This area is regulated by state law, NYCRR 112.5.¹ The southwestern extent of the property is also mapped as a “Secondary Recharge” area (blue shading) (less permeable deposits, up gradient from aquifer, contributes to recharge through infiltration and groundwater flow). While no development plans have been presented with the application, refer to later comments for the referral to the Village and NYS that is required pursuant to NYCRR 112.5(c).



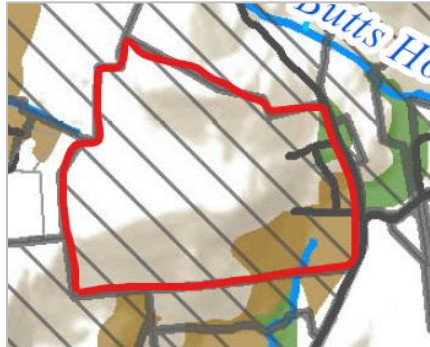
- c. NRI Map 12 (Wetlands) shows a stream and “probable wetlands” in the southeast portion of the subject property where new Lot 1 is proposed. As noted in later comments, absent a formal delineation of the pond/stream/possible wetlands on proposed Lot 1, AKRF recommends referral of the application to the Town Wetland Consultant for review and comment.



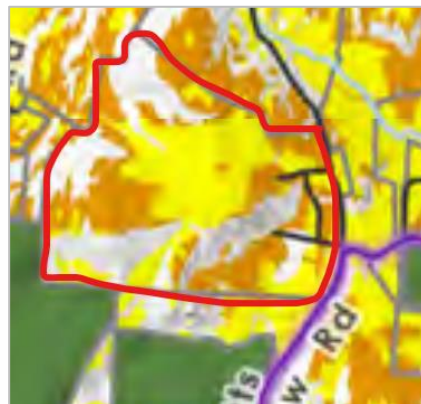
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- d. NRI Map 18 (Agricultural Resources) shows that the subject property is within AD 21 (and therefore, the APO Overlay) and receiving an agricultural tax exemption. The southeast corner of the property where Lot 1 is proposed is mapped as “farmland of statewide importance.” It should be noted that this area is not currently used as an active farm but only for fenced horse paddocks. Property in the Agricultural Protection Overlay (APO) district is frequently used for family farming or keeping of animals and for raising of crops.



- e. Figure 5 (Viewsheds and Buildable Land) from the Town’s Hospitality Evaluation Report (2022) (not part of NRI map set) shows that Butts Hollow Road is a designated scenic road in the Town (purple line). The yellow shaded area is identified as “buildable land,” and the orange shaded area is identified as “buildable land within viewshed of scenic roads.” Comparing the preliminary plat against this map reveals that the relatively flat areas (meadows/fenced paddocks) of proposed Lot 1 are not identified as “within the viewshed” of Butts Hollow Road, while the forested sloped area to the west of this flatter area is susceptible to viewshed impacts when viewed from the road. While no development is proposed as part of this application, the Planning Board may require that the buildability analysis (see Comment 11) shows that future development on Lot 1 can avoid the orange areas shown on this map.



13. No other NRI maps or other maps available from the Town illustrate conditions on the subject property that would warrant further consideration, including floodplains, stream habitats, large forests, regional forests, and important biodiversity areas.

RECOMMENDED REFERRALS

14. The application involves a non-realty subdivision within a farm operation in an agricultural district (AD 21). This subdivision application is therefore subject to General Municipal Law (GML) 239-n, which requires referral to Dutchess County. Typically, the Dutchess County Department of Planning and Development has not exercised the option to review subdivision applications that do not involve an application for a variance. The Applicant has not identified any needed variances for the proposed subdivision, but this should be confirmed.

Even if the subdivision application does not require variances, referral to the County under GML 239-m (rather than 239-n) can still occur at the Planning Board's discretion as it can be considered "other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law" (GML 239-m(3)(vi)). The County is required to respond within 30 days of receipt. Assuming no variances are required, the Planning Board should discuss whether to refer the application to the County under GML 239-m.

15. This application for a non-realty subdivision requires "permission to file" from the Dutchess County Health Department, which the Applicant must demonstrate has been received prior to the Planning Board Chair signing of the final plat.
16. Absent a formal delineation of the pond/stream/possible wetlands on proposed Lot 1, AKRF recommends referral to the Town Wetland Consultant for review and comment. Services of the Town Wetland consultant, including a site visit and confirmation/flagging of wetland features on Lot 1, if necessary, would be covered by the application's escrow funds.
17. Consistent with other subdivision applications that have come before the Planning Board, the application should be referred to the Town's Conservation Advisory Commission (CAC) for comments. The CAC shall submit its comments to the Planning Board within 25 days of receipt.
18. This application requires referral to the New York State Department of Health and the Village of Millbrook, as the subject property is located within the Village of Millbrook watershed protection zone, and an EAF was prepared for the application (as required for Unlisted SEQRA actions). Pursuant to NYCRR 112.5(c), "any person or entity preparing an EAF or an EIS for a project in zones I, II, or III shall file a copy with the Commissioner of Health and the supplier of water." There is no requirement in the law that either recipient of this referral (NYSDOH and Village of Millbrook) provide a response.

SEQRA CLASSIFICATION AND REVIEW

19. This application is considered an "Unlisted" action under the State Environmental Quality Review Act (SEQRA). The Applicant has submitted a Short Environmental Assessment Statement (SEAF), prepared in consultation with the EAF Mapper. Under SEQRA, use of the SEAF is acceptable for Unlisted actions. Depending on any additional information the Applicants can share regarding the intent of the subdivision, the Planning Board can either proceed with review of the SEAF or request a Full Environmental Assessment Form (FEAF) be completed.
20. The EAF Mapper database does not identify any Critical Environmental Areas, threatened or endangered species, historic / archaeological resources, floodplains, or remediation sites in connection with the subject property (entire 205-acre lot). However, possible wetlands are flagged, consistent with the findings of the NRI review above and the preliminary plat which shows the pond and stream in the area of proposed Lot 1. AKRF recommends the Town's Wetland Consultant review the application and visit the site. Refer to Comment 11 recommending that the Applicants demonstrate that Lot 1 is buildable without the need for a wetland permit.
21. Comments on the SEAF Part 1 submitted:
 - a. The Applicant should expand the "Description of the Proposed Action" box within the Part 1 of the SEAF as follows, assuming all information is acceptable and correct:

The Applicants and subject property owners Shepard and Jane Ellenberg (members of Millbrook Special Farm LLC) request approval from the Town of Washington Planning Board to subdivide an approximately 205-acre lot into two lots, one new lot being approximately 21.473 acres and proposed at the southeast corner of the subject property (proposed Lot 1 on the plat) and the second lot comprising the remainder of the subject property (approximately 184 acres). The subject property is located at 119-125 Butts Hollow Road (tax parcel 6965-00-004125), is zoned RR-10, and within Agricultural District 21 (APO Overlay).

- b. The response to question #2 should be “yes” with “permission to file from the Dutchess County Health Department prior to filing of the final plat.”
22. AKRF believes that the Planning Board has enough information to declare its intent to serve as Lead Agency for the subdivision’s review under SEQRA. Although no approval and permitting authority is required from any of agency at this stage, the following agencies may be considered SEQRA “Interested Agencies;” and therefore, the Notice of Intent to be Lead Agency and SEAF should be circulated:
- a. Town of Washington Town Board (jurisdiction over scenic roads)
 - b. Town of Washington Highway Superintendent (jurisdiction: future driveway permits, authority re: scenic roads)
 - c. Dutchess County Health Department (jurisdiction: permission to file for non-realty subdivision, approval of future individual well and septic)
 - d. NYSDEC Region 3 (jurisdiction: potential review of wetland delineation under new state wetland regulations – no disturbance proposed)

Once the notice of intent to serve as Lead Agency is circulated to the above Interested Agencies, the SEQRA regulations require the Planning Board to allow 30 days for a response, at which point the Planning Board can formally declare itself Lead Agency provided none of the agencies object.

RECOMMENDATIONS

At the February 4, 2025 Planning Board meeting, AKRF recommends that the Planning Board 1) discuss the application and consultant comments, 2) classify the application as an Unlisted Action under SEQRA, 3) circulate a notice of intent to be Lead Agency with application materials to the interested agencies identified, 4) refer the application to the Town’s wetland consultant and CAC for review and comment, 5) discuss referral to County Planning pursuant to GML 239-m(3)(vi), and 6) discuss readiness for a public hearing.