



CITY OF CONCORD

REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Craig Walker, Zoning Administrator

DATE: July 26, 2016

SUBJECT: Alicia Mailhot – Application for Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa

Recommendation:

It is recommended that Council accept this report which would deny the application submitted by Alicia Mailhot for the restoration of involuntarily merged properties pursuant to RSA 674:39-aa.

Background:

In 2010, the State of New Hampshire amended RSA 674:39-a, to prohibit any city, town, county, or village district from merging preexisting subdivided lots or parcels without the consent of the owner. Prior to this amendment, municipalities were permitted to merge adjacent, undeveloped, or non-conforming lots without the consent of the owner.

In 2011, the legislature also adopted RSA 674:39-aa, to allow an owner of a property which was involuntarily merged prior to September 18, 2010, to request the “governing body” to unmerge the property. In response to a property owner’s request to restore involuntarily merged properties, the governing body is required to determine whether the lots were voluntarily merged. *See* RSA 674:39-aa.

On January 9, 2012, the City Council adopted the following procedure for reviewing such an application:

- A property owner requesting the restoration of an involuntarily merged property must submit an application for restoration of involuntarily merged lots with supporting documents to the City Clerk’s office who will place the item on the next available Council agenda. The application is then referred to the Legal Department.
- Upon a referral from City Council, the Legal Department distributes the application for review and comment to the City Planner, Zoning Administrator, Code Administrator, City Engineer, and the Director of Real Estate Assessments.
- The Zoning Administrator will prepare and submit a written memorandum to the City Council with a recommendation.

- If the request is granted by Council the Legal Department will prepare and record a Notice of Lot Restoration at the Merrimack Registry of Deeds. The property owner will be required to pay the recording fee.

Discussion:

Alicia Mailhot is seeking to unmerge two contiguous parcels located at 2 Lawrence Street, Map 115, Block 2, Lot 17. Ms. Mailhot acquired the parcels by a single warranty deed dated May 28, 2010, from Brian L. and Rosemary J. Hirst, and recorded at the Merrimack County Registry of Deeds (“MCRD”) on June 7, 2010, at Book 3197, Page 84. The deed references two tracts, which are shown on the attached tax map as parcels 4325-D and 4325-G.

The property was purchased by Margaret J. Bennie in 1922. In 1927, Parcel 4325-D was first conveyed in a deed dated March 26, 1927, to Antonia F. Graziano. In 1928, Parcel 4314-G was conveyed in a deed from Margaret J. Bennie to Antonia F. Graziano dated May 14, 1928. At the time these conveyances occurred, planning board approval was not required to subdivide properties.

The property at 2 Lawrence Street was subsequently conveyed in 1943 to Ordell Graziano in a single deed that references both of the lots by their legal descriptions. Since that time, the property at 2 Lawrence Street has remained under common ownership and has been conveyed by a single deed to all subsequent owners. The two lots do not conform to current zoning requirements for property size and setback requirements.

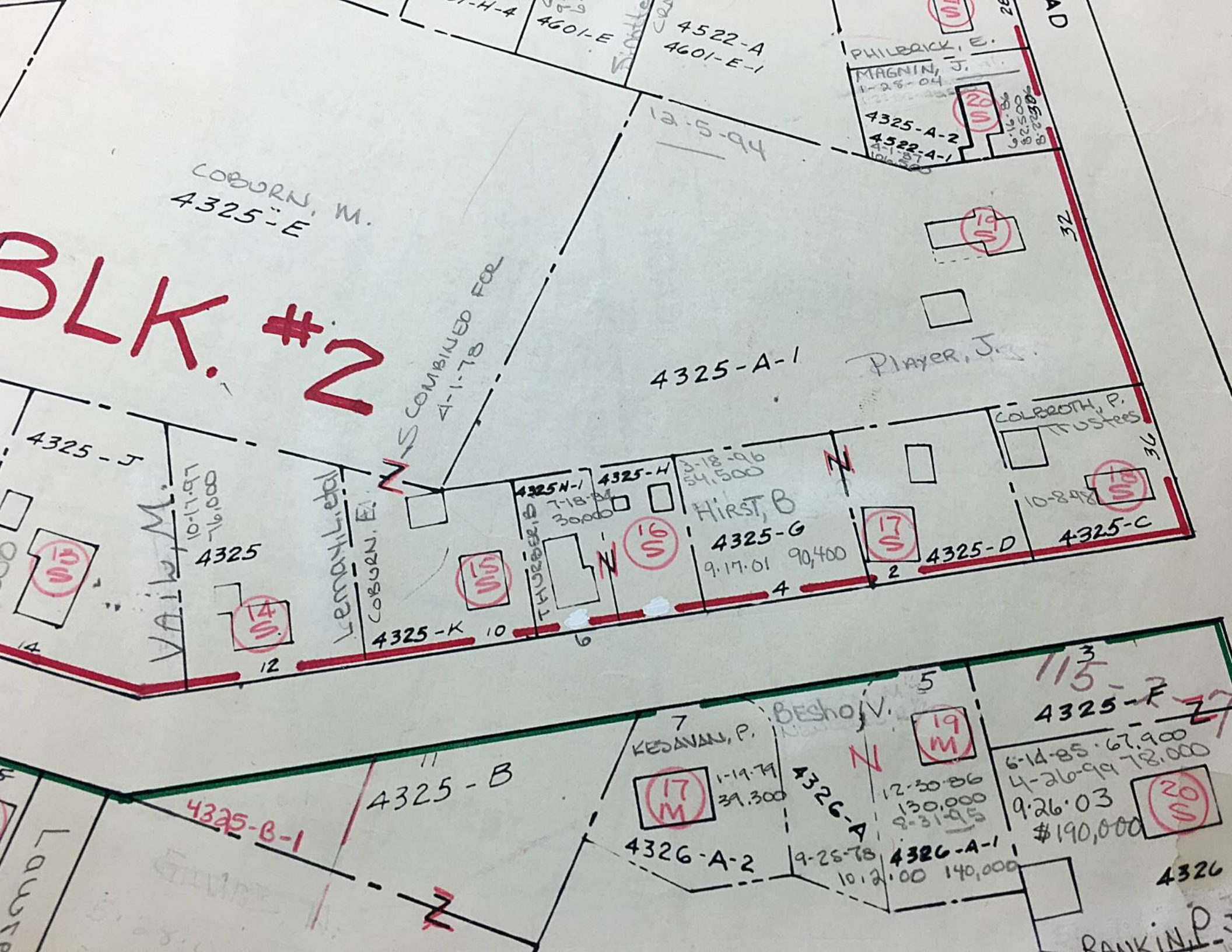
The two lots have been administratively merged into a single lot for tax purposes and given a single street address, which is 2 Lawrence Street. Although the current tax maps show both lots, there is a Z-shaped line between the parcels to denote common ownership. (Attachment A, Current Tax Map). The records show that a single tax bill has been issued for valuing both the lots as one parcel since approximately 1929. It should be noted that prior to 1995 voluntary mergers of properties did not require special approvals by Planning Boards so a merged lot may not have a written record of the merger. It should also be noted that when lots are merged, whether the merger is requested or not, the deed is not normally rewritten to describe a single lot and may continue to describe a single lot as “Lot #1 & Lot #2.”

RSA 674:39-aa considers a lot “voluntarily merged” “if there is an overt action or conduct that indicates an owner [*in the property’s entire chain of title*] regarded said lots as merged, such as, but not limited to, abandoning a lot line.” In 1943, the property owners built a one car garage and henhouse that crossed the boundary line. (Attachment B, Photograph and 1970’s Tax Map). At the time that the garage was built, accessory structures such as garages were only allowed on the same lot as a primary structure. (Attachment C, Overview of Zoning). In New Hampshire, a lot may not be “unmerged” when the actions of the owner indicate that they have treated the lots as one parcel, which results in “merger by conduct.” These actions can include: (1) building structures over lot lines; (2) building one home with assorted outbuildings on both lots; or (3) setbacks calculated from the overall boundary rather than each lot. See *Roberts v. Town of Windham*, 165 N.H. 186 (2013); *Town of Newbury v. Landrigan*, 165 N.H. 236 (2014) (holding

that the doctrine of “merger by conduct” has not been abrogated). Based on this evidence, it is recommended that the City Council deny the request.

ATTACHMENT A

BLK. #2



ATTACHMENT B

**2 Lawrence Street
Aerial Photo 1948**

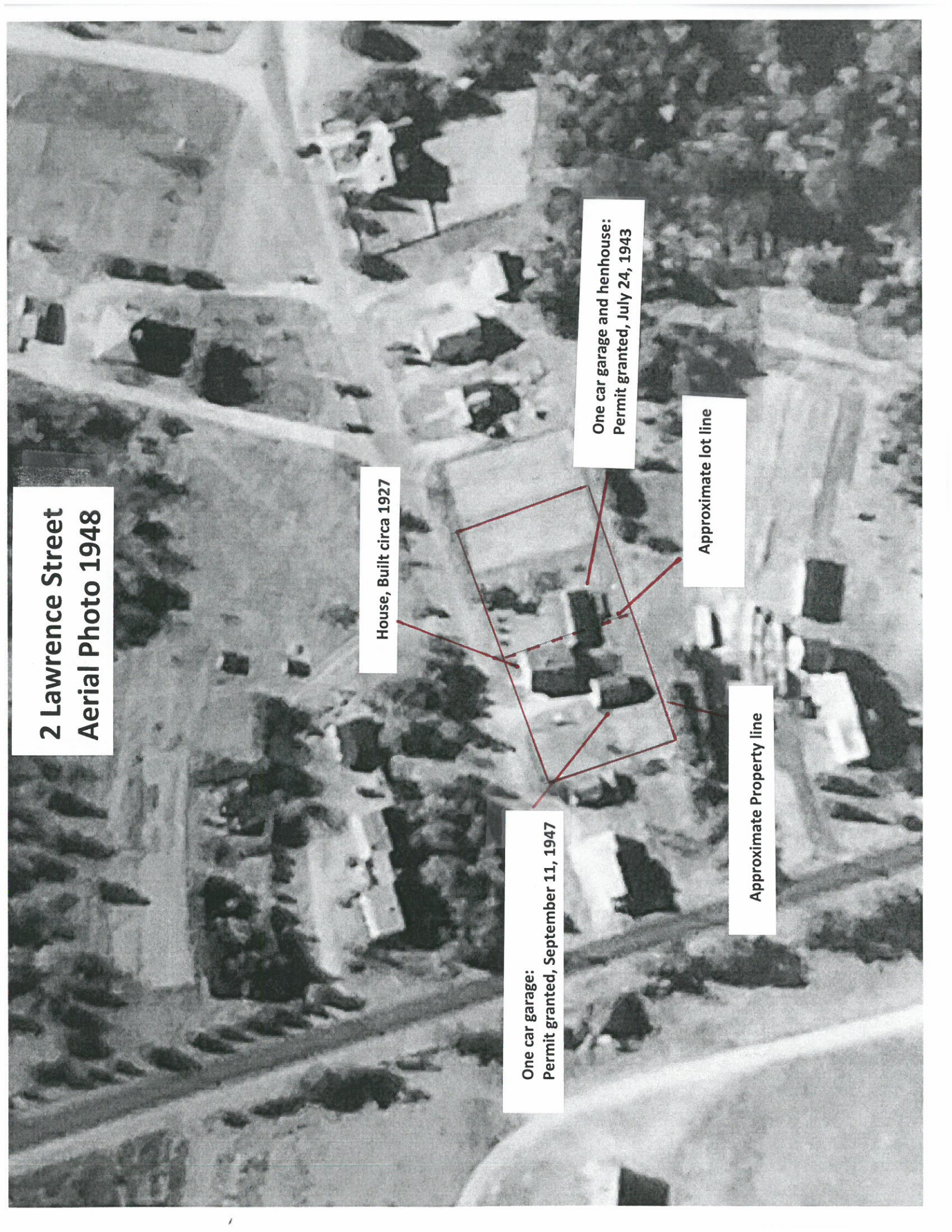
House, Built circa 1927

One car garage and henhouse:
Permit granted, July 24, 1943

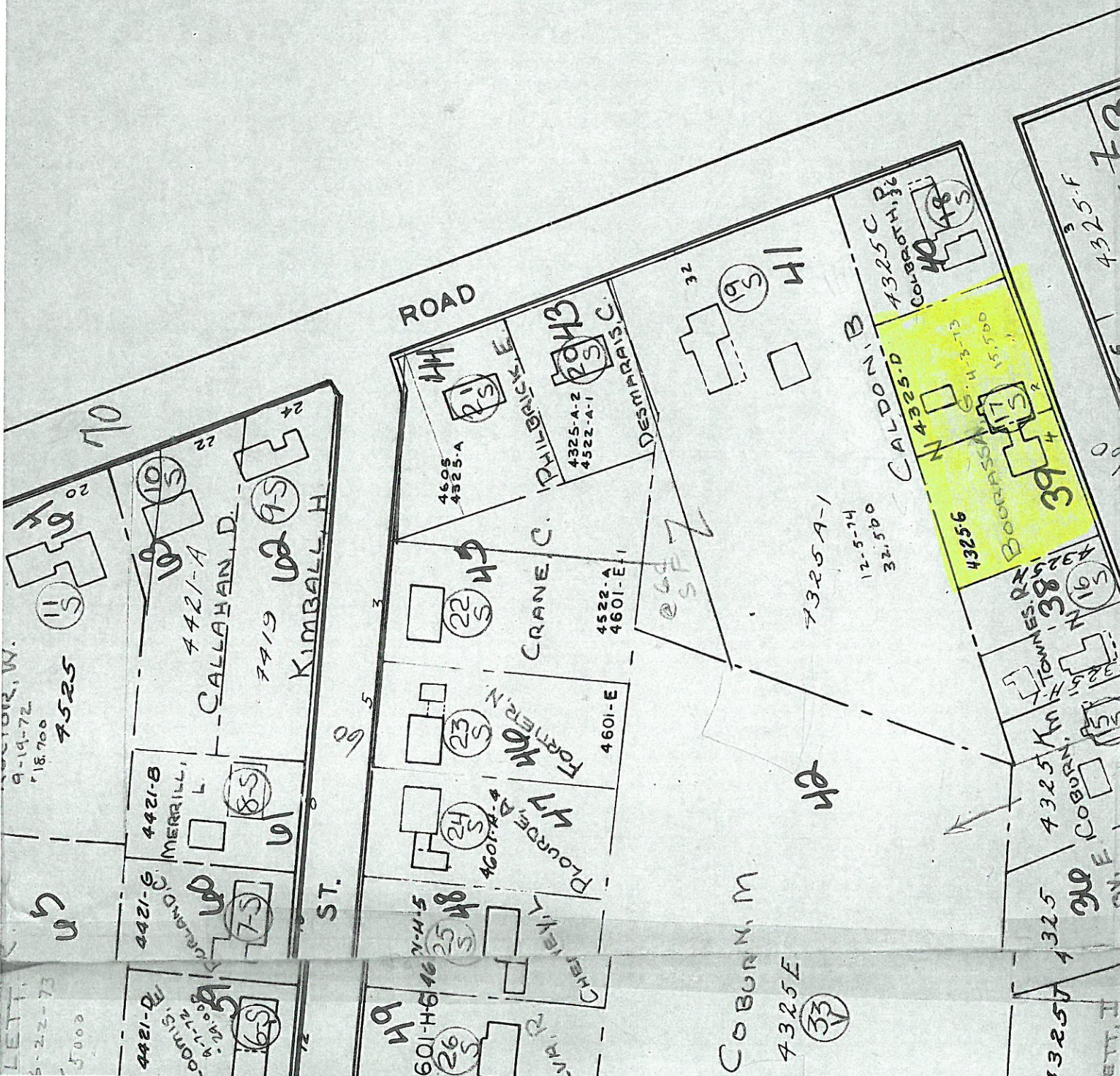
Approximate lot line

One car garage:
Permit granted, September 11, 1947

Approximate Property line



1970's Tax Map



ATTACHMENT C

Year	Zoning District	Minimum Lot Size	Minimum Frontage	Setbacks (feet)		
				Front	Rear	Side
1941	R General Residence	5,000 Square Feet	50 Feet	15	30*	5**
1962	R General Residence	8,000 Square Feet	80 Feet	15	30*	5**
1969	R2 General Residence	10,000 Square Feet	80 Feet	15	25	10
1972	R2 General Residence	10,000 Square Feet	80 Feet	15	25	10
1974	R1 Single Residence	12,500 Square Feet	100 Feet	20	25	15
1977	RC Suburban District	12,500 Square Feet	100 Feet	25	25	15
1999	RC Suburban District	12,500 Square Feet	100 Feet	25	25	15
2001	RM Residential Medium Density	12,500 Square Feet	100 Feet	25	25	15
	* Or 1/4 the depth of the lot, whichever is less.					
	** Or within 10 feet of an adjacent building (on an adjacent lot)					
Year	Zoning District	Accessory Structure (Private garage)	Accessory Structure (Tool shed / Hen house)	Keeping of poultry		
1941	R General Residence	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	Permitted		
1962	R General Residence	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	Permitted		
1969	R2 General Residence	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	Not Permitted		
1972	R2 General Residence	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	Not Permitted		
1974	R1 Single Residence	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	Permitted		
1977	RC Suburban District	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	Special Exception		
1999	RC Suburban District	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	Special Exception		
2001	RM Residential Medium Density	Permitted - Must be on same lot as primary structure.*	Permitted - Must be on same lot as primary structure.*	5 hens on a lot < 1 acre in size		