



# CITY OF CONCORD

## REPORT TO THE MAYOR AND CITY COUNCIL

**FROM:** Danielle Pacik, Deputy City Solicitor

**DATE:** August 31, 2016

**SUBJECT:** Alicia Mailhot – Application for Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa (Supplemental Report)

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During the City Council meeting on August 8, 2016, the City Council voted to hold a public hearing on the Application for Restoration of Involuntarily Merged Lots pursuant to RSA 674:39-aa that was submitted by Alicia Mailhot. In anticipation of the hearing on September 12, 2016, a notice will be sent to all abutters within 300 feet of the property located at 2 Lawrence Street, Penacook, New Hampshire. A notice was also published in the Concord Monitor newspaper.

The purpose of the upcoming hearing is to determine whether there are sufficient facts to support a determination that Ms. Mailhot's property was voluntarily merged by the previous owners.

The following supplemental report provides additional information and documents.

### **Legal Background:**

By way of legal background, the legislature 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 had been voluntarily merged. *See* RSA 674:39-aa.

The statute prohibits the restoration of lots to their premerger status in the event a previous owner in the chain of title voluntarily merged the lots. RSA 674:39-aa, II(b). The statute states that lots can be restored to their premerger status provided:

No owner in the chain of title voluntarily merged his or her lots. *If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration.* The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

*Id.*

The terms “voluntary merged” and “voluntarily merged” are defined in the statute to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.” RSA 674:39-aa, I(c).

The New Hampshire Supreme Court has further stated that 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.” See *Roberts v. Town of Windham*, 165 N.H. 186 (2013). 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. *Id.*

For the City Council’s convenience, a copy of RSA 674:39-aa is attached to this report. (Attachment D, RSA 674:39-aa).<sup>1</sup>

### **Factual Background:**

Alicia Mailhot is seeking to unmerge two contiguous parcels located at 2 Lawrence Street, Map 115, Block 2, Lot 17. The ownership history of the parcels is set forth in the report submitted by Zoning Administrator Craig Walker dated July 26, 2016.<sup>2</sup>

By way of a brief overview, Ms. Mailhot acquired the two contiguous parcels by a single warranty deed dated May 28, 2010. (Attachment E, Warranty Deed). The tracts are shown on the City’s tax map as Parcels 4325-D and 4325-G, and there is a Z-shaped line between the parcels to denote common ownership. (Attachment A, Current Tax Map). The two tracts were administratively merged and given a single street address, which is 2 Lawrence Street. The two tracts do not conform to current zoning requirements for property size and setback requirements.

The history of the two parcels show that the prior owners in the chain of title treated them as one lot. In 1943, the property owners obtained a building permit to construct a one car garage and henhouse at 2 Lawrence Street. (Attachment F, Building Permit). The garage and henhouse were constructed over the property line. (Attachment B, Photograph and 1970’s Tax Map). At the time that the garage was built, accessory structures such as garages and henhouses were only allowed on the same lot as a primary dwelling structure. (Attachment C, Overview of Zoning).

The conduct by the previous owners demonstrates that, beginning in 1943, they were treating the two parcels as merged. The previous owners abandoned the lot line by constructing the garage and henhouse over the boundary line, as well as by building one dwelling home with assorted outbuildings on both lots. The tax maps indicate that these structures remained on the property until the 1970’s. (Attachment B, 1970’s Tax Map).

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<sup>1</sup> Attachments A-C were included in the report submitted by Zoning Administrator Craig Walker dated July 26, 2016.

<sup>2</sup> It has come to the City’s attention that the report contained a typographical error. The report states that Parcel 4314-G was conveyed in 1928. The report intended to state that *Parcel 4325-G* was conveyed in 1928.

The garage and henhouse have since been removed, and a current photograph of the property is attached as Attachment G.

Although the garage and henhouse have been removed, the two parcels were nevertheless voluntarily merged by previous owners in the chain of title. As a result, in accordance with RSA 674:39-aa, II(b), the lots do not qualify for premerger status through City Council action.

Based on the conduct of the previous owners in the chain of title, it is recommended that the City Council deny the application.

# ATTACHMENT D

# TITLE LXIV PLANNING AND ZONING

## CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

### Regulation of Subdivision of Land

#### Section 674:39-aa

##### **674:39-aa Restoration of Involuntarily Merged Lots. –**

###### I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2021.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

**Source.** 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.

# ATTACHMENT E

Grantee

Doc#: 763502  
Book: 3197 Pages: 0081 - 0083  
06/07/2010 11:36AM

MCRD Book 3197 Page 81



18-44  
20  
21

1949.00

WARRANTY DEED

STATE OF NEW HAMPSHIRE			
DEPARTMENT OF REVENUE ADMINISTRATION			REAL ESTATE TRANSFER TAX
1 THOUSAND		9 HUNDRED AND	49 DOLLARS
MO.	DAY	YR.	AMOUNT
06	07	2010	\$ 1,949
VOID IF ALTERED			

KNOW ALL MEN BY THESE PRESENTS, That, We, **Brian L. Hirst and Rosemary J. Hirst, husband and wife**, with a mailing address of 7 Sunrise Drive, Sutton, Massachusetts 01590, for consideration paid, grant to **Alicia M. Mailhot, unmarried**, with a mailing address of 2 Lawrence Street, Concord, New Hampshire 03301, with **WARRANTY COVENANTS**, the following described property:

A certain tract or parcel of land with the buildings thereon, situated in the City of Concord, County of Merrimack, State of New Hampshire, being more particularly described in Exhibit A attached hereto and made a part hereof.

Meaning and intending to describe and convey the same premises conveyed to the within grantors by Warranty Deed dated September 13, 2001 and recorded in the Merrimack County Registry of Deeds in Book 2296, Page 282.

We, Brian L. Hirst and Rosemary J. Hirst, husband and wife, hereby release any rights of homestead and all other interests therein.

Executed this 28<sup>th</sup> day of May, 2010.

\_\_\_\_\_  
Brian L. Hirst

\_\_\_\_\_  
Rosemary J. Hirst

STATE OF NEW HAMPSHIRE  
COUNTY OF Merrimack

May 28<sup>th</sup>, 2010

Personally appeared the above, Brian L. Hirst and Rosemary J. Hirst, known to me or satisfactorily proven to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before Me, Karen F. Kelley  
Notary Public/Justice of the Peace  
My Commission expires:



I, Alicia M. Mailhot, hereby certify that all additional provisions to the Purchase and Sales Agreement dated April 20, 2010, as amended, have been met to my satisfaction.

Executed this 28<sup>th</sup> day of May, 2010.

Alicia M. Mailhot 5/28/10  
Alicia M. Mailhot

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

May 28, 2010

Personally appeared the above, Alicia M. Mailhot, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

Before Me,

Karen F. Kelley  
Notary Public/Justice of the Peace  
My Commission expires



MCRD



Exhibit A

Two certain tracts of land, with the buildings thereon, situate on Lawrence Street, so-called, in said Concord, County of Merrimack and State of New Hampshire, bounded and described as follows:

A certain tract of land with the buildings located two hundred (200) feet westerly of the South Pembroke Road on the Concord Plans in said Concord, bounded and described as follows:

Beginning at an iron pipe driven in the ground at the southwest corner of land now or formerly of Margaret J. Bennie; thence westerly one hundred (100) feet by the north line of a proposed street; thence northerly on a line parallel with the South Pembroke Road one hundred (100) feet to land now or formerly of one Landry; thence easterly by said Landry land one hundred (100) feet to the northwest corner of said Bennie land; thence south by said Bennie land one hundred (100) feet to the bound begun at.

Also another certain tract of land with the buildings thereon located one hundred (100) feet westerly of the South Pembroke Road on the Concord Plains in said Concord, bounded and described as follows:

Beginning at an iron pipe driven in the ground at the southwest corner of land now or formerly of Joseph Modano; thence westerly one hundred (100) feet by the north line of a proposed street; thence northerly on a line parallel with South Pembroke Road one hundred (100) feet to land of one Landry; thence easterly by said Landry land one hundred (100) feet to the northwest corner of said Modano land; thence southerly one hundred (100) feet to the bound begun at.

MERRIMACK COUNTY RECORDS

*Kath L. Gray*, CPO, Register

# ATTACHMENT F

Street	Lawrence	No.	2	Ward	8	Serial No.	17	Permit No.	8-B
Owner	Miss Josephine Martel			Address	2 Lawrence Street				
Architect				Address					
Builder	Charles Martel			Address	Bridge Street				
Permit Granted	July 24, 1943								
Purpose of Bldg.	One Car Garage and Henhouse								
Type	Wooden								
Est. Cost	\$150.00			Final Insp.	11/26/43				
<b>PLUMBING</b>									Permit No.
Plumber				Address					
Permit Granted				Plumbing Insp.					
Water Tested				Septic Tank Insp.					
Final Inspection				Fixtures:					
Est. Cost									

# ATTACHMENT G





Lawrence St

Airport Rd

2

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