MEMORANDUM

Date: September 15, 2015

To: Madbury Planning Board

From: Jack Mettee, AICP
Mettee Planning Consultants

Re: Lot Merger for Nonconforming Lots

At the last meeting of the Planning Board, Selectmen Hodsdon noted a potential conflict in the Zoning Ordinance with respect to the requirements for a lot merger for the purpose of creating conforming lots from nonconforming lots, i.e., less than 2 acres. That is, the ordinance requires an involuntary merger in one section and it voids that requirement in another section. The sections of the Zoning Ordinance in apparent conflict are:

> *Article IV General Provisions*
>
> *Section 1. Lot of Record*
> *Any building or use otherwise permitted in the district in which it is located shall be permitted on a lot of record regardless of frontage and area requirements, providing, however, that adjoining lots in common ownership shall be joined in such manner as to meet, or most nearly meet, such frontage and/or area requirements.*
>
> and
>
> *Article XIII Nonconforming Uses, Structures and Lots*
>
> *Section 3. Nonconforming Lots*
>
> *B. Deleted* [1]
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> 1 Requirement for involuntary merger voided by RSA 674:39-a, in 2010.

This apparent discrepancy was briefly discussed by the Planning Board at the last meeting and it was decided to defer any action until further research could be conducted and presented to the Board.

Legislative History

Prior to 2010, RSA 679-39 had been enacted in an effort by the legislature to ensure that nonconforming lots of record that were adjacent to parcels in the same ownership, be involuntarily merged to achieve lot size conformity. Because of this provision, numerous nonconforming lots were merged. I don’t know if this occurred in Madbury.

In 2010, the legislature deleted this provision in the RSA’s based on the rationale that nonconforming lots of record, whether or not they were adjacent to lots under the same ownership, should be treated

equally under community zoning codes. That is, if an owner of any nonconforming lot wished to build on said lot, such owner would need to follow the procedures for a nonconformance as stated in the zoning ordinance.

In 2010 the legislature modified RSA 679 39-a to allow for voluntary mergers to achieve conformity initiated by the owner, not by the community.

> **674:39-a Voluntary Merger. –** Any owner of 2 or more contiguous preexisting approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the planning board or its designee. Except where such merger would create a violation of then-current ordinances or regulations, all such requests shall be approved, and no public hearing or notice shall be required. No new survey plat need be recorded, but a notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by the planning board or its designee, shall be filed for recording in the registry of deeds, and a copy mailed to the municipality's assessing officials. No such merged parcel shall thereafter be separately transferred without subdivision approval. No city, town, county, or village district may merge preexisting subdivided lots or parcels except upon the consent of the owner.

<u>Time Limit on Mergers</u>

The legislature also enacted a provision that established a time period to allow property owners who had experienced an involuntary merger, to request the Planning Board to restore the original lot of record prior to the involuntary merger. However, a property owner must seek this restoration prior to 12/31/16.

> **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, 2016.
> (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.

Based on the changes to the RSA's, any individual with a nonconforming lot of record, even if it is adjacent to a parcel in the same ownership, may proceed with development under the current zoning procedures in the subject community.

Madbury's Situation

It would now appear that Section 1. Lot of Record, under Article IV, General Provisions, is no longer applicable. I believe there is no reason to keep this provision in the ordinance since all nonconformity is covered under Article XIII, Nonconforming Uses, Structures and Lots

Suggested Additional Language

Upon review of Article XIII, I believe it might be helpful to bring more clarity to an individual wishing to develop a nonconforming undeveloped lot. This clarity might be achieved by adding the below suggested language as part of Section 3 D.

A nonconforming Lot of Record which does not meet the requirements for area or Town requirements established by this Ordinance, may be used for the purposes provided in the district in which the property is located in the following manner:

a. The lot has frontage, as defined by this Ordinance, sufficient to provide access to the lot;
b. The Code Enforcement Officer determines that the use of the lot will not create potential health or safety problems due to inadequate areas or conditions for on-site waste disposal and water supply, access for police and fire protection or other factors.

I am not sure how many nonconforming lots (without structures) exist in Madbury, but it might be a useful exercise to determine how many there might be and how many might be affected by the provisions for nonconformance in the ordinance. If there are no such lots, then the suggested language change may not be necessary.