

Restoration of Involuntarily Merged Lots Policy

In accordance with RSA674:39-aa, a property owner can request that involuntarily merged lots be restored to their premerger status, under certain conditions.

This policy sets out the conditions, forms and processes that the Town of Rye will use to process requests to restore these lots to their prior status.

Until 2012 the Rye Zoning Ordinance had a merger clause by which adjacent substandard nonconforming lots in common ownership were merged for planning and zoning purposes. Over the years, tax maps were changed to reflect the merger of many old substandard lots.

In 2011 the legislature enacted RSA 674:39-aa (attached) which makes involuntary merger by zoning ordinances illegal. The law states that the request must be submitted to the governing body prior to December 31, 2021. Accordingly, in 2012 the Rye Zoning Ordinance was amended to remove the merger clause.

RSA 674:39-aa also provides that until December 31, 2021, owners of involuntary merged lots may request the Board of Selectmen to unmerge the lots. RSA 674:39-aa requires that a request to unmerge be granted unless the lots were previously voluntarily merged by an owner in the chain of title.

Lots or parcels that were involuntarily merged prior to September 18, 2010

.....shall at the request of the owner, be restored to their premerger status.....

Provided:

(a) Omitted.

(b) No owner in the chain of title voluntarily merged his or her lots. **If an owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration.**

RSA 674:39-a (Emphasis added).

Voluntary merger is defined as:

... a merger under RSA 674:3 9-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.

RSA 674:39-aa, I. (c)

The owners of lots which have been merged on the tax maps may have benefited from reduced taxes over the years. Additionally the law mandates that if any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners are barred from requesting restoration. Thus, it is reasonable and equitable for the Board of Selectmen to explore whether there has been a voluntary merger before approving an application to unmerge.

Application Process:

- 1 The applicant must first file a letter of request to restore the involuntarily merged lots under RSA 674:39-aa. The letter shall attest to the fact that no owner within the chain of title voluntarily merged the lots, including by any overt action or conduct that indicated that the owner regarded said lots as merged (such as, but not limited to, abandoning a lot line). See sample letter attached.
- 2 The applicant will file, along with the letter of request:
 - A Copies of all deeds and plans in the chain-of-title for the land involved.
 - B Current photographs of the lots.
 - C Abutters List: Include a list of all abutters as defined under **RSA 672:3 Abutter**. – *"Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. Include three (3) sets of labels for each abutter so that the Town may notify all abutters of the request by certified Mail – Return Receipt.*
 - D A check for \$525.00 to cover administrative and legal expenses associated with processing the request plus \$8.00 per abutter.

These documents, and any others deemed necessary, shall be reviewed by Town Counsel, the Town Planning Administrator and the Town Assessor, who shall also review town files on the said property and shall make a recommendation to the Board of Selectmen.

Prior to any decision by the Board of Selectmen the applicant will be provided an opportunity to be heard by the Board, at the next convenient meeting. Due process and fundamental fairness requires that the abutters to the property be notified of the meeting and be provided an opportunity to be heard on the matter.

If approved by the Board of Selectmen, the restoration of these lots to their premerger status shall not be deemed to cure any non-conformity with the Town's Zoning Ordinance or other existing local and use ordinances. Any development or redevelopment of either lot shall conform to land use ordinances unless relief has been granted in accordance with such ordinances and state law.

The decision of the Board of Selectmen may be appealed in accordance with the provisions of RSA 676. RSA 674:39-aa, III.

Approved by the Board of Selectmen at their meeting on June 9, 2014