



## Town of Charlotte Planning & Zoning

# Memo

**To:** Zoning Board of Adjustment  
**From:** Jeannine McCrumb, Town Planner / Zoning Administrator   
**cc:** Tom and Denise Kessler  
**Date:** July 17, 2014  
**Re:** Request for Reconsideration – Kessler Decision (ZBA-14-02)

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Pursuant to Section 9(E)(4)(b) of the Charlotte Land Use Regulations, I am asking for reconsideration of that portion of the above-mentioned decision in which the Board disagrees with my determination that a zoning permit cannot be issued for a duplex on a pre-existing small lot. I believe that the Board has misconstrued the existing small lot provision of the Regulations (Section 3.7) and that its interpretation has the potential to result in unintended negative consequences for the Town by undermining the intent and regulatory purpose of Section 3.7.

The Board's interpretation of Section 3.7 Nonconforming Lots (Existing Small Lots), as it relates to permitted density, creates an inequity in the Regulations by allowing for expanded uses on nonconforming lots that are not also available to conforming lots (see attached *Lubinsky vs. Fair Haven Zoning Board*). In the *Lubinsky* case, the Vermont Supreme Court very clearly held that the statutory function of the existing small lot provision of 24 V.S.A. § 4412(2) (formerly § 4406(1)) "is exhausted when it brings the 'small lot' within the zone as a basic unit and does not continue to operate to give such lots expanded privileges not available to standard lots" in the zoning district. The Board's decision gives existing small lots in Charlotte development privileges not available to standard lots in this District.

Thus, I respectfully request that the Board reopen and modify its decision by striking Section VI, paragraph 2 which reads:

"Regarding the Zoning Administrator's determination that the Appellants 'can not issue [sic] a zoning permit for duplex on preexisting small lot (0.74 acres). Minimum density needed is 5 acre/dwelling unit', the Board disagrees with this determination. Existing small lots may be developed on as little as one eighth of an acre (.125 of an acre)."

If the Board is willing to reopen the Kessler matter to reconsider its decision on the small lot issue, the reopened hearing should be warned in accordance with Section 9.9(C) of the Regulations.

Thank you for your consideration.



Supreme Court of Vermont.  
Robert and Jeanette LUBINSKY  
v.  
FAIR HAVEN ZONING BOARD.

No. 84-343.  
Feb. 28, 1986.  
Reargument Denied April 9, 1987.

Property owners appealed from decision of town zoning board denying permit to convert house to two-family dwelling. The Rutland Superior Court, David A. Jenkins, J., affirmed board's decision, and property owners appealed. The Supreme Court, Barney, C.J., (Ret.), Specially Assigned, held that, despite owners' lot qualifying as statutory "small lot" which was exempt from minimum lot size requirements, permit was properly denied due to owners' inability to comply with other zoning size limitations.

Affirmed.

West Headnotes

**[1] Statutes 361 1404**

361 Statutes

361IV Operation and Effect

361k1402 Construction in View of Effects, Consequences, or Results

361k1404 k. Unintended or unreasonable results; absurdity. Most Cited Cases  
(Formerly 361k183)

**Statutes 361 1405**

361 Statutes

361IV Operation and Effect

361k1402 Construction in View of Effects, Consequences, or Results

361k1405 k. Relation to plain, literal, or clear meaning; ambiguity. Most Cited Cases  
(Formerly 361k183)

Court's concern of giving effect to legislative intent is so fundamental that, although application of statute according to plain language is preferred when possible, letter of statute or its literal sense must yield where it conflicts with legislative purpose; moreover, court must presume that no unjust or unreasonable result was intended by legislature.

**[2] Zoning and Planning 414 1495**

414 Zoning and Planning

414IX Variances and Exceptions

414IX(A) In General

414k1489 Architectural and Structural Designs

414k1495 k. Family or multiple dwellings. Most Cited Cases  
(Formerly 414k503)

Statute permitting development of lot not less than one-eighth acre in area, with minimum width or depth dimension of 40 feet, even though lot is not conforming to minimum lot size requirements of local zoning regulation, does not operate to absolve such qualifying "small lots" from all zoning limitations that have some sort of size component; thus, owners whose property qualified as "small lot" within terms of statute were properly denied variance when they sought to convert house to two-family dwelling due to their inability to comply with zoning regulation's requirement that there be 10,000 square feet of lot area per family dwelling unit. 24 V.S.A. § 4406(1).

\*50 Thus it is apparent that all rules of construction rely on a determination of legislative intent or purpose. That intent is most truly derived from a consideration of not only the particular statutory language, but from the entire enactment, its reason, purpose and consequences. *Andrews v. Lathrop*, 132 Vt. 256, 261, 315 A.2d 860, 863 (1974). Only with such an examination can an interpretation be carried out that avoids unreasonable or unjust results, or that avoids dilution or defeat of legislative objectives. *Delaware & Hudson Railway v. Central Vermont Public Service Corp.*, 134 Vt. 322, 324, 360 A.2d 86, 88 (1976). Even the very words used by the legislature in the enactment must yield to a construction consistent with legislative purpose. *In re Preseault*, 130 Vt. 343, 348, 292 A.2d 832, 835 (1972). As that case points out, we operate on the presumption that no unjust or unreasonable result was intended by the legislature.

There is no disagreement that a basic purpose of 24 V.S.A. § 4406(1) is to provide that lots of sufficient size whose existence predates the enactment of zoning but whose size does not quite comply with the new zoning law will not go to waste unused, but must be allowed to be developed for purposes consistent with uses permitted in the zone where located. It seems plain that the aim is to allow the stated use of lots already existing and not yet developed or built upon. Perhaps in fact that truly defines the full scope of the statute, but that is not the issue presented to us nor the question argued, and so we must proceed further.

Does the statute in question absolve these small lots from all limitations that have some sort of size component? The plaintiffs would say, "Yes." Let us examine the consequences of that position.

Since the remodeling limitations in the Fair Haven Zoning Ordinance operate in terms of square footage per family unit, the plaintiffs' position requires

that a lot falling within the "small lot" exemption not be subject to any limitation on the number of dwelling units that can be created on that lot. In other words, any defined "small lot" not only qualifies for residential use, but also has unlimited prospects for multi-family development. This extraordinary result would place "small lots" in a situation of special and unique privilege not \*\*229 available to standard zoning lots in the district, and in derogation of the controlled use and growth concept of zoning.

\*51 Two inquiries must be made: First, is this the goal of the statute? Second, if not, is it a consequence so intertwined with the ends of the legislation that it must be endured to accomplish the purpose of the law?

The purpose of the statute is to retain for usefulness pre-existing lots of satisfactory size, even though they do not quite meet zoning limits as to size. It is a sort of limited grandfather clause allowing for limited development on previously laid-out lots that is not seen as unduly disruptive of the desired ends of zoning. It is with this concept in mind that we speak of the statute as more truly applying to not-yet-built-upon "small lots."

[2] In any event, given the limited purpose of qualifying such lots for basic use within the zoning division, and weighing the disarray to be brought about by unlimited application of the language, we hold that the statutory function is exhausted when it brings the "small lot" within the zone as a basic unit, and does not continue to operate to give such lots expanded privileges not available to standard lots in the division. For that to be the interpretation would be to stand the zoning law on its head and defeat its regulatory purpose.

The court below correctly so read the law, and we concur.

*Affirmed.*

This: 11<sup>th</sup> day of July A.D. 2014  
at 11 o'clock 00 minutes A m and  
recorded in vol. 214 on page 29-30  
Attest Mary A Mead Town Clerk

**In Re: Appeal by Denise and Thomas Kessler  
of the Zoning Administrator's Decision to Deny a  
Certificate of Occupancy**

ZBA-14-02

## OPINION

### I. Introduction and Issues Presented

This matter came before the Board of Adjustment by the appeal of Thomas and Denise Kessler. The Appellants' seek to appeal the decision of the Charlotte Zoning Administrator who denied issuance of a certificate of occupancy for the Appellants' property located at 1687 Church Hill Road.

### II. Meeting Attendance

The following participated in the hearing: Denise Kessler, Thomas Kessler, and Jeannine McCrumb.

### III. Exhibits

During the course of the hearing the following numbered exhibits were entered into the record:

- A completed appeal application form
- A list of abutters with addresses
- A sketch plan of the property
- A map of the property and surrounding properties
- A letter prepared by the appellants' describing the situation
- An application for certificate of occupancy
- A land use permit form stating the denial of the certificate of occupancy

### IV. Findings of Fact

1. The property is located at 1687 Church Hill Road and is owned by Denise and Thomas Kessler.

2. The parcel is approximately 0.74 acres and is located in both the Rural District and the Route 7 Scenic Overlay District. The zoning districts are established by the Charlotte Land Use Regulations adopted November 2, 2010.
3. The minimum density requirement in the Rural District is 5 acres per dwelling unit; however, for existing nonconforming lots, the minimum density is one eighth of an acre, as stated in Section 3.7 of the Charlotte Land Use Regulations.
4. A single family dwelling and a dwelling/two family are permitted uses in the Rural District.
5. It was the Appellants' intent to execute interior renovations to create two separate living spaces for renting purposes.
6. The Appellants' did not apply for or obtain a permit for the construction of the accessory dwelling.
7. The Zoning Administrator, Jeannine McCrumb, denied issuance of the permit on April 15<sup>th</sup>, 2014 stating "Can not issue CO for unpermitted work. Can not issue zoning permit for duplex on preexisting small lot (0.74 acre). Minimum density needed is 5 acre/ dwelling unit".

## V. Discussion

**Procedural Review.** As established by Section 9.6 in the Charlotte Land Use Regulations, Title 24 VSA §4466, and Title 24 VSA §4465, the Appellants' have met all three of the procedural appeal conditions. The applicants filed the appeal within the allotted 15 days of the Zoning Administrator's decision. The certificate of occupancy was officially denied on April 15, 2014, and the Appellants' filed their appeal with the Planning and Zoning office on April 18<sup>th</sup>, 2014. The Appellants' are considered interested persons (as defined by 24 VSA § 4465(b) (3) and have submitted a complete appeal application (as defined by Section 9.6 (A) (1) and 24 VSA § 4466).

**Substantive Review.** Having found the procedural requirements were met by the Appellants', the Board shall determine if the Zoning Administrator properly followed the applicable regulations when rendering her decision.

Section 9.1 Permits and Approvals states in part-

No development or subdivision of land may commence in the Town of Charlotte until all applicable municipal land use permits and approvals have been issued, unless the development is specifically exempted from these regulations under Section 9.2 of the Charlotte Land Use Regulations.

The Appellants' failed to obtain a zoning permit before beginning construction on the accessory dwelling, which requires a zoning permit as determined by Table 2.5 of the Charlotte Land Use Regulations. The Board finds that the failure to obtain the necessary permitting before beginning construction is in itself grounds for denying this appeal.

## **VI. Decision**

Based upon these findings, the Board has determined Zoning Administrator, Jeannine McCrumb, was correct in her decision to deny issuance of the certificate of occupancy. As stated in Section 9.1 of the Charlotte Land Use Regulations, no development requiring a zoning permit shall commence until a zoning permit has been issued by the Zoning Administrator. The Kessler's did not obtain a permit prior to beginning their project. The Zoning Administrator was correct to deny issuance of a certificate of occupancy for unpermitted work.

Regarding the Zoning Administrator's determination that the Appellants "can not issue a zoning permit for duplex on preexisting small lot (0.74 acres). Minimum density needed is 5 acre/dwelling unit", the Board disagrees with this determination. Existing small lots may be developed on as little as one eighth of an acre (.125 of an acre).

**Vote: 4 in favor, 0 opposed, 1 absent**

Dated at Charlotte, Vermont, this 9th day of July, 2014.



Benjamin Pualwan, Chairman

*NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*