

**CHARLOTTE ZONING BOARD OF ADJUSTMENT  
APPEAL TO ZONING ADMINISTRATOR (ZA) LETTER OF DENIAL  
FINDINGS OF FACT AND DECISION**

**In Re: ZBA-18-46-AP Appeal by Lee and Deborah Minkler (and Attorney Roger Kohn) of the letter of denial issued by Interim ZA Bloch on 15 Mar 2018 regarding Home Occupation II status (based on the 23 Oct 2017 advisory letter issued by ZA Rheume). The property is located at 1158 Roscoe Road in the Town of Charlotte.**

**I. Introduction and Procedural History**

On March 28, 2018, Lee and Deborah Minkler (the property owners and proprietors of *Logical Machines*) submitted an appeal to Interim Zoning Administrator (Dean Bloch) for a determination letter issued on 15 Mar 2018, which is based on the Zoning Administrator (Joseph Rheume) 23 Oct 2017 advisory letter pertaining to the operation of *Logical Machines*, which is located on a 13.48 acre property at 1158 Roscoe Road within the Rural (RUR) zoning district.

Public notification for the joint public hearing was carried out via electronic posting of the notice on the Town website; publication in “The Citizen” newspaper on May 3, 2018; posting hardcopies of the notice at the Town Office, the Brick Store, and Spear’s Corner Store on April 30, 2018; and by issue of direct correspondence to adjoining property owners on that May 1, 2018.

The public hearing was held at the ZBA meeting on May 23, 2018 at 7:00 PM. Present at the hearing were the following members of the ZBA Frank Tenney (Chair), Jonathan Fisher, Matt Zucker, and Andrew Swayze (Stuart Bennett recused himself from the proceedings). Additional participants included: Daryl Benoit and Aaron Brown (ZBA staff), Stuart Bennett, Pati Naritomi, Dean Bloch, Deborah Minkler, Lee Minkler, Roger Kohn (Attorney representing appellant Minkler), Heather Manning, et al.

**II. Exhibits**

The following exhibits were marked and considered:

1. A detailed application, including –
  - A. Zoning Administrator Advisory Letter to Minkler – 23 Oct 2017 (but recorded 15 Mar 2018);
  - B. Zoning Administrator Denial of Application for Home Occ. II Letter to Minkler – 15 Mar 2018;
  - C. Appeal by Bennett-Naritomi to Charlotte Zoning Administrator Letter – 15 Mar 2018;
  - D. Minkler Appeal to Zoning Administrator for Denial of Home Occ. II – 28 Mar 2018;
  - E. Minkler – Incomplete application for a Home Occupation II permit – 15 Sep 2017 / No permit #;
  - D. Letter to Charlotte ZBA from Roger E. Kohn, Esq. Attorney for Lee and Debby Minkler – 17 May 2018;
2. Zoning Board of Adjustment (ZBA) Minutes of the meeting held May 23, 2018;
3. Letter from the Charlotte Zoning Administrator to Lee Minkler – Re: Clean Slate Designation for 1158 Roscoe Road (Parcel ID 00031-1158), dated June 5, 2018: The letter determines that the Minkler home occupation operation qualifies for an exemption as per § 1-304(a)(1) of the State of Vermont, Agency of Natural Resources, Wastewater System & Potable Water Supply Rules, 2007;

4. Affidavit in Support of “Clean Slate” Determination, submitted by Lee Minkler, owner of Logical Machines, dated June 5, 2018;
5. Zoning permit (#18-95-ZP) issued by the Charlotte Zoning Administrator for Home Occupation II for *Logical Machines* at 1158 Roscoe Road (dated June 8, 2018);

### III. Standard of Review

The application requires review under the following sections of the Land Use Regulations for the Town of Charlotte (Approved March 1, 2016), hereafter referred to as “the Regulations”:

1. **Chapter II, Section 2.3** – Table 2.5 – Application of District Standards; Rural District (E);
2. **Chapter IV, Section 4.11** – Home Occupation;
3. **Chapter IX, Section 9.3** – Zoning Permit;

### IV. Findings

Based on the application, testimony, exhibits and other evidence, the Zoning Board of Adjustment makes the following findings:

1. On 23 October 2017, the Charlotte Zoning Administrator (Joe Rheume) issued an [advisory letter](#) (see Exhibit 1A above) to the applicant (Lee Minkler) declining to grant a Home Occupation II permit, but offering guidance to attain conformance with the Regulations on four (4) issues:
  - A. **Septic Capacity**: The septic system is designed for a single family dwelling. The number of non-residential employees that are on site requires a permit amendment, which is required before a zoning permit can be issued.
  - B. **Unpermitted Outdoor Storage Unit**: The 20’x30’ structure was constructed without a zoning permit.
  - C. **The Home Occupation** shall be carried out within the principal dwelling and/or within an accessory structure to the dwelling as provided for in Section 4.18 of the Regulations; the total area used for the home occupation is not to exceed 2,500 square feet (as per Section 4.11(B)(2) of the Regulations – see below).
  - D. **Parking areas** shall be located in side or rear yard areas (as per Section 4.11(B)(5) of the Regulations – see below).

Furthermore, the Zoning Administrator advised that the Home Occupation might be considered to be a Home Occupation III category.

2. On 15 March 2018, the Interim Zoning Administrator (Dean Bloch) issued a [determination letter](#) (see Exhibit 1B above) to Lee Minkler formally stating the denial of the Home Occupation II status (based on the information stated within the [23 Oct 2017 advisory letter](#)) while providing a 15-day notice to appeal this decision. On that same date, Stuart Bennett filed [an appeal \(ZBA-18-37-AP\)](#) to record the Zoning Administrator advisory letter (inaccurately characterizing it as a formal denial) and to appeal to the Zoning Board of Adjustment for the “failure to act” of the Zoning Administrator (as per **Sections 9.6 and 9.9** of the Regulations). Also on that same date, in response to Bennett’s appeal, Interim Zoning Administrator Bloch erroneously recorded the advisory letter within the land records under the auspices of it being a “decision”.

3. On 28 Mar 2018, [Lee Minkler filed an appeal](#) (**ZBA-18-46-AP**) to the 15 March 2018 Interim Zoning Administrator (Bloch) determination letter. The letter states that [an application for a Home Occupation II](#) permit was submitted on 15 September 2017, and that the 23 October 2017 advisory letter exceeded the 30-day response period and therefore (as per 24 VSA § 4448 and **Section 9.3(C)(5)** of the Regulations), the Home Occupation II permit should automatically granted. However, the incomplete application that was found has no ledger entry indicating that a payment had ever been received, nor a permit ID # being assigned to it. Thus, the application was incomplete and therefore no permit could be granted or denied.
4. Although the 23 Oct 2017 [advisory letter](#) was not a Zoning Administrator “decision” (as characterized by Bennett), the 15 March 2018 [determination letter](#) effectively was a “decision” by the Interim Zoning Administrator (Bloch) that invoked the four (4) issues stated in the 23 Oct [advisory letter](#), and stipulated a 15 day appeal period for Minkler. As a way forward, the ZBA may consider the issues related to the submitted appeals by both parties, and could answer the appeals within a single decision (e.g. In re: ZBA-18-37-AP and ZBA-18-46-SP).

5. **For ZBA-18-37-AP Bennett-Naritomi –**

The [specific relief requested from the appellant](#) was: *“That the Zoning Administrator record the October 23, 2017 denial of the September 15, 2017 Home Occupation II application in the Charlotte Land Records as required by Section 9.9(F)(1) of the Charlotte Land Use Regulations.”*

The 23 Oct 2017 letter (incorrectly characterized as a decision) was recorded on 15 March 2018 in the Charlotte land records (*Volume 232, Page 258*). However, the ZA “decision” letter was actually issued by Interim ZA Bloch on 15 March 2018, but was not recorded. The ZBA should mandate that the 15 March letter be recorded as the ZA decision.

6. **For ZBA-18-46-AP Minkler-Logical Machines –**

The [specific relief requested from the appellant](#) was: *“Confirm issuance of home occupation II permit, or in the alternative withdraw the denial or reverse the decision of zoning administrator dated October 23, 2017, noticed on March 15, 2018, and issue a permit with or without conditions for home occupation II, and/or provide as necessary a variance or waiver of the applicable restrictions.”*

First, the appeal states that the denial of home occupation II status occurred more than 30 days after the application was filed, and therefore the permit is issued by default according to 24 VSA § 4448 and Section 9.3(C)(5) of the Regulations). However, no application was ever filed (see above), and no permit was issued or denied by the ZA. The ZBA should confirm this fact within their decision and therefore nullify the appellant’s assertion on this matter.

Second, the appeal asserts:

*“Even if the permit did not already issue, according to the engineer application consulted, sewer capacity can be amended without a septic system upgrade and therefore the zoning requirements are being met; the outdoor storage unit is a movable structure located in its current location because of conditions on the ground and a variance should be granted; home occupation in its proposed configuration does not*

*exceed 2500 feet, and parking is located to the side of the building which comports with the Charlotte zoning regulations.”*

The ZBA should evaluate the **Home Occupation** status as either *Home Occupation II* or *Home Occupation III*. If *Home Occupation III* is determined to be the use, the decision should require the appellant to apply for a Conditional Use application. Further the notion of granting a Variance would be a separate application to which the appellant would not likely obtain as any “hardship” may not be self-created. Nevertheless, the ZBA should affirm the status of the **Unpermitted Outdoor Storage Unit** existing within the setback, and the **Parking area** requirement raised within the 23 Oct 2017 [ZA advisory letter](#) is located within the side of rear yards depending what they consider the front of the property.

## V. Conclusions of Law

### 1. **Chapter IV, Section 4.11 – Home Occupation**

- (1) **Home Occupation I.** This includes home occupations that employ only the resident(s) of a dwelling; that occurs within a portion of the dwelling and/or within an accessory structure to the dwelling; and generates no more than 12 business-related vehicle trips per day. This type of home occupation does not require a zoning permit.
- (2) **Home Occupation II.** This includes home occupations that employ one (1) or more residents of a single family dwelling and no more than five (5) nonresident employees on-site at any time; occur within the dwelling or an accessory structure to the dwelling, and generate no more than 20 business related vehicle trips per day. A zoning permit is required. Prior to the issuance of a permit, the Zoning Administrator shall find that the proposed home occupation also meets the requirements of Subsection (B), which are:
  - (1) The home occupation shall be conducted by residents of the dwelling and not more than five (5) nonresident employees on-site at any time.
  - (2) The home occupation shall be carried out within the principal dwelling and/or within an accessory structure to the dwelling as provided for in Section 4.18; the total area used for the home occupation is not to exceed 2,500 square feet.
  - (3) The storage of hazardous materials anywhere on the premises is prohibited, with the exception of materials customary and characteristic of residential uses (e.g., heating oil).
  - (4) The home occupation shall generate no more than 20 business-related vehicle trips per day.
  - (5) Parking areas shall be located in side or rear yard areas.
  - (6) Outdoor storage and uses are limited to those materials, goods, equipment, or activities that are typical of a residential use and meet the requirements of Section 3.10 – Outdoor Storage.
  - (7) The home occupation shall not change the character of the neighborhood.
- (3) **Home Occupation III.** This type of home-based business may be allowed as an accessory to a single family dwelling in designated zoning districts subject to conditional use review under Section 5.4, site plan review under Section 5.5, and the following provisions.

- (1) The home business shall be conducted in the principal structure or an accessory structure by residents of the dwelling, and no more than nine (9) nonresident employees on-site at any time.
  - (2) The home business shall be carried out primarily within the principal dwelling and/or an accessory structure to the dwelling as provided for in Section 4.18.
  - (3) Outdoor areas for the storage of materials and equipment, and activities associated with the home business, may be approved by the Board of Adjustment provided that such areas are clearly designated and located or adequately screened so that they are not visible from public rights-of-way or neighboring properties. Designated storage areas at minimum shall meet all district setback requirements. The Board of Adjustment may also require increased setbacks and/or additional landscaping and screening to avoid impacts to neighboring properties.
  - (4) The storage of hazardous materials anywhere on the premises is prohibited, with the exception of materials customary and characteristic of residential uses (in terms of type and quantity).
  - (5) The home business shall not generate traffic, including delivery traffic, in excess of volumes characteristic of other uses allowed in the district in which the home business is located.
  - (6) Parking areas shall be located in side or rear yard areas unless otherwise approved by the Board of Adjustment as a condition of approval under Section 5.4. The Board of Adjustment may also limit the number of commercial vehicles that may be parked on-site.
  - (7) The home business shall not change the character of the neighborhood.
- (4) **Chapter IX, Section 9.3 – Permit**  
Within 30 days of receipt of a complete application, including all application materials, fees and required approvals, the Zoning Administrator shall either refer the application to the appropriate municipal panel, or issue or deny a permit in writing, in accordance with the Act [§4448(d)]. If the Zoning Administrator fails to act within the 30-day period, whether by issuing a decision or making a referral, a permit shall be deemed issued on the 31st day.

## VI. **Decision and Conditions**

Thus far the appellant has addressed three of the four issues discussed in **Finding #1** above:

1. **Septic Capacity:** The septic system is designed for a single family dwelling. The number of non-residential employees that are on site requires a permit amendment, which is required before a zoning permit can be issued.
  - The applicant supplied an affidavit confirming that the residence on site has been used for Home Occupation serving at least four employees prior to January 1, 2007 and thereby qualifies for a "Clean Slate" exemption as per § 1-304(a)(1) of the 2007 Wastewater System & Potable Water Supply Rules (see Exhibits 3 and 4 above).
2. **Unpermitted Outdoor Storage Unit:**
  - The applicant will need to apply for a building permit for the structure.

- The applicant will need to either move the structure out of the 50' sideyard setback, or apply for a Boundary Adjustment with the Planning Commission.
- 3. The Home Occupation** shall be carried out within the principal dwelling and/or within an accessory structure to the dwelling as provided for in Section 4.18 of the Regulations; the total area used for the home occupation is not to exceed 2,500 square feet (as per Section 4.11(B)(2) of the Regulations).
- The applicant was approved for a Home Occupation II permit by the Zoning Administrator, permit # **18-95-ZP** (see Exhibit 5 above).
- 4. Parking areas** shall be located in side or rear yard areas (as per Section 4.11(B)(5) of the Regulations).
- The Zoning Administrator and Town Planner conducted a site visit on June 11, 2018, where it was determined that the parking configuration meets the requirement, as the employee vehicles were observed to be within a side yard area.

Based on the foregoing Findings of Fact and Conclusions of Law, a Motion to overturn the 15 Mar 2018 determination letter issued by ZA Bloch (as a Home Occupation II permit has since been issued to the appellant), but uphold the items discussed in the 23 Oct 2017 advisory letter issued by ZA Rheume (see Exhibit 1A above) was made, and seconded to enforce, where the appellant remains subject to the following requirements:

1. The appellant shall apply for a building permit for the outdoor 20'x30' unpermitted storage structure (as per **Finding 1B**);
2. The appellant shall address the non-conforming setback of the outdoor 20'x30' unpermitted storage structure (as per **Finding 1B**) by either: **A.** removing this structure, **B.** moving it out of the 50' sideyard setback, or **C.** applying for a Boundary Adjustment with the Planning Commission to meet the required 50' setback.

**Vote: 4 Ayes. 0 Nays. 0 Absent. 1 Recused**

Dated at Charlotte, Vermont this \_\_\_\_ day of July 2018.

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Frank Tenney, Chairman

**Reconsideration:** At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B) of the Regulations.

**Appeals:** Decisions of the Zoning Board of Adjustment and Planning Commission may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeals must be taken within 30 days of the date that the permit is issued, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.