

TO: Charlotte Zoning Board of Adjustment

FROM: Roger E. Kohn, Esq., Attorney for Lee and Debby Minkler

DATE: May 17, 2018

RE: Hearing Scheduled May 23, 2018

Introduction

Lee and Debby Minkler's position with regard to the hearing which has been scheduled is as follows. Lee and Debby applied for a zoning permit for their home occupation on September 15, 2017. We believe that, by operation of law, that permit has been granted, as discussed more fully below. However, we plan to demonstrate to the zoning board at the meeting that in any event the home occupation is in compliance with the Charlotte Zoning Ordinance and should properly be granted. We will seek the advice of the zoning board as to how best to proceed. Relevant documents are attached.

It should be noted that we are informed that Stuart Bennett will express his concern to the zoning board about the procedure that the town followed in dealing with the Minklers' zoning application, but that Stuart and Pati are not opposing the Minklers application, but rather are taking no position with regard to the Minklers application or whether a permit has been or should be granted.

The History Of This Application

The Minklers filed a zoning permit application on September 5, 2017. On October 12, 2017 Joe Rheume, the zoning administrator, met with Lee at his house. On October 23, 2017 Mr. Rheume wrote a letter concluding: "At this point in time I will not be able to approve an application for a Home Occupation II." He addressed several issues as to which we think he was incorrect, and which will be discussed later in this memorandum.

On March 7, 2018, Stuart Bennett and Pati Naritomi, the Minklers neighbors, wrote a letter addressed to the current zoning administrator stating that the letter of October 23, 2017 denied the Minklers' application, and was not appealed, and was therefore a final decision.

On March 15, 2018 Dean Bloch, acting as interim zoning administrator, sent a letter to the Minklers saying their application for a Home Occupation II was denied and stating that because the October 23 letter had not been recorded in the town land records until March 15, 2018, the date of the determination was considered to be that date, and the Minklers had 15 days to appeal.

The Minklers subsequently timely appealed the decision, while also taking the position

that the home occupation was deemed granted by operation of law.

The Minklers Have Their Home Occupation II Permit By Operation Of Law

24 V.S.A. § 4448(d) provides that: “If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate panel, a permit shall be deemed issued on the 31st day.”

Whether the letter of the zoning administrator dated October 23, 2017, was in fact a final determination (as stated by Dean Bloch on March 15, 2018) or whether it was an advisory opinion, no decision on the Minklers’ application was made by the zoning administrator within 30 days, and accordingly the law provides that their application was deemed granted.

The Minklers Are Entitled To A Home Occupation Permit In Any Event

In his letter of October 23, Joe Rheume gave several reasons why he did not think he could grant a permit at that time. I will address each of these.

Joe was concerned whether there was a proper permit for the septic capacity. The home occupation takes place in an outbuilding, and the employees use the bathroom in the Minklers’ home. The Minklers have consulted with Spencer Harris of Lincoln Applied Geology, Inc. Mr. Harris in the process of taking the necessary action to confirm that the septic arrangements for this home occupation are in compliance with state regulations. Mr. Harris has either obtained confirmation that the septic capacity complies with what are known as the state’s “Clean Slate” rules, or the Minklers will obtain a revised wastewater permit.

The Minklers understand that a home occupation within an accessory structure must not use more than 2,500 square feet to qualify as a Home Occupation II. We will bring drawings to the hearing demonstrating that this requirement is met.

Joe Rheume pointed out that Home Occupation II standards requiring that parking areas “shall be located in side or rear yard areas.” This provision is presumably required so that parked cars will not be viewed from the street in front of the home. It is hard to find the applicability of this provision to the Minklers’ situation, because their house and the accessory building in which the home occupation takes place are located over 800 feet from Roscoe Road, and are not visible from the road. In any event, parking for this home occupation is in a side yard, not a front yard. The definition of “side yard” and “rear yard” are not set forth in the Charlotte Zoning Ordinance. However, since this is a standard for a home occupation, the proper interpretation of this provision is that we are talking about the side yard or the rear yard of the principal structure on the lot (the residence), not the accessory building. As an example, the definitions in Hinesburg’s zoning ordinance make this clear, and are offered just as an illustration. Hinesburg defines “Yard, Side” as “a yard situated between the principal

building and a sideline and extending from the front yard to the rear yard.” The definition then proceeds to talk about how that is measured. This makes a great deal of sense because the purpose of the provision is to provide that parking is not in front of the dwelling, which is the principal residence on the lot. In the Minklers’ case, the parking is located behind the dwelling in a side yard.

Finally, Joe Rheaume pointed out that there is a 20' x 30' storage unit on the lot which is closer than 50 feet from the property line with the neighbor, Debby Jipner. This is true, although the building is not visible from the road and the neighbor is not concerned about the issue. This could be considered “*de minimis*” (which is a legal principle meaning that issues which are too minor to be considered should be ignored) or the Minklers could request a variance if the planning commission deems it appropriate for them to do so. If their permit application had not been granted by operation of law, and the planning commission believes that a variance was necessary, but was unwilling to grant a variance, the Minklers would have no choice but to move the building, which they are most reluctant to do because this is expensive and there appears to be no practical reason to require this.

Summary

The Minklers have operated this home occupation for over 20 years (over 10 years in the outbuilding), and have attempted to be good neighbors and good citizens of the Town of Charlotte. They want to work with the Charlotte Zoning Board to satisfy any concerns the board may have. They believe they have met the requirements for a home occupation in accordance with the Charlotte Zoning Ordinance and the provisions of Vermont law.

We welcome any questions the board members may have during the hearing process.

Roger Kohn

To: Alexander J. LaRosa
Cc: Lee Minkler; Debby Minkler
Subject: Minkler zoning application

A.J.,

This will confirm the telephone conversation we had today.

I understand that at the town hearing on May 23, Stuart will complain about the procedure the town took in response to Lee's zoning application, but will take no position on Lee's application or whether a permit should be granted.

Roger

Roger E. Kohn
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P.O. Box 340
Hinesburg VT 05461
tel: (802) 482-2905
fax: (802) 482-2908
www.kohnrath.com
rogerkohn@kohnrath.com

Practice areas: General practice, employment law, real estate, personal injury, business law, litigation

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If you have received this e-mail in error, please notify us immediately by calling 1-802-482-2905 or by sending us a reply e-mail.

EMAIL to the ATTORNEY
for Stuart Bennett
AND PATI NARITOMI

Fee paid \$ _____ ZONING PERMIT APPLICATION Permit # _____
Recording paid \$10.00 Town of Charlotte, P.O. Box 119, Charlotte, VT 05445-0119

Owner(s) Lee & Deborah Minkler Phone (h) 425-2889 Application # _____
Address 1158 Roscoe Rd Phone (w) 2888

Applicant Same Phone (h) _____
Address _____ Phone (w) ✓

Note: An applicant who is acting as agent for the owner must submit a letter of authorization from the owner.

Property address 1158 Roscoe Rd Map _____ Block _____ Lot _____

Parcel ID # 00031-1158 Zoning district _____ Acres 13+ For office use only

Any conditions (subdivision, site plan, covenant, or conditional use approval) that apply to this property? Yes No _____

Summarize those conditions: Access Easements

Describe below the improvements to be made and their intended use:
Home Occupation in Existing Building
Design, assemble and distribute scales

Details provided on Attachments # _____ # _____ # _____ # _____ # _____ dated 1/17

No. of sq. ft. added to building footprint NA No. of sq. ft. of usable space added within building footprint NA

No. of bedrooms NA baths NA before construction. No. of bedrooms NA baths NA after construction.

*Attach to this sheet 1) a plot plan, 2) a floor plan, and 3) elevation drawings, drawn to scale, with North →, showing:
*Plan size submissions to be 8 1/2 X 11 or 11 X 17

- | | |
|--|---|
| <input type="checkbox"/> Road frontage and rear, width and side lines | <input type="checkbox"/> Building dimensions, including heights |
| <input type="checkbox"/> All existing and proposed building footprints | <input type="checkbox"/> Utilities, easements, and right-of-ways |
| <input type="checkbox"/> Building envelope, when applicable | <input type="checkbox"/> Water well(s) and septic system(s) |
| <input type="checkbox"/> Setback distances to front, rear, & side property lines | <input type="checkbox"/> Bodies of water, including unnamed streams |

This permit is subject to appeal of the Zoning Administrator's decision by an interested party within fifteen (15) days of the date of issue and shall NOT become effective UNTIL the appeal period has expired or, if appealed, until final adjudication of said appeal.

I/we will adhere to the zoning and sewage regulations of the Town of Charlotte. I/we agree to not to use these improvements until a certificate of occupancy has been issued. I/we agree to allow authorized Town officials access to the property to verify compliance with the terms and conditions of this permit, upon reasonable notice.

I/we acknowledge that my/our project may require a construction permit from the Vermont Department of Labor and Industry, and other State permits. I/we agree to contact the Department of Labor and Industry and the Regional Environmental Office to obtain any required permits prior to any work being done.

Signature(s) of applicants Lee Minkler Deborah Minkler Date 9/15/17

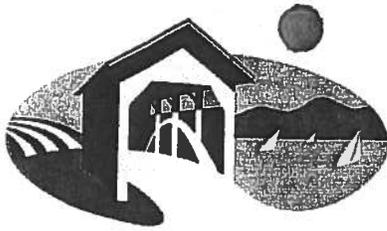
For use by Zoning Administrator/Sewage Officer

Date application received ___/___/___ Date permit issued ___/___/___ Date permit effective ___/___/___

Permit # _____ Certificate of Occupancy required? Yes _____ No _____

Application Approved _____ Denied _____

Signature of Zoning Administrator/Sewage Officer



Town of Charlotte

ESTABLISHED 1762

October 23rd, 2017

Lee Minkler
1158 Roscoe Road
Charlotte, VT 05445

Re: Home Occupation II review

CHARLOTTE TOWN CLERK'S OFFICE

RECEIVED FOR RECORD

This 15th day of March A.D. 2018
at 10 o'clock 0 minutes A m and
recorded in vol. 237 on page 1258
Attest *Christy Bl* Town Clerk

Dear Mr. Minkler,

Thank you for allowing me to visit your home occupation on 10/12/2017. At this point in time I will not be able to approve an application for Home Occupation II. On review of your home occupation there are several areas to be addressed.

- 1) Septic Capacity- The current set up of your septic system is designed for a single family dwelling. The number of non-residential employees you have on site requires a permit amendment for a septic system upgrade. This is required before a zoning permit can be issued. You must contact an engineer or wastewater designer to apply for this amendment on our behalf. A list of designers is included with this letter.
- 2) One of your outdoor storage units that is 20x30 was constructed without a zoning permit. Obtaining a building permit for this structure if it meets all other requirements will put it in compliance. However, if the building does not meet the 50 ft setback from the property line you will need to move, dismantled or obtain a variance from the Zoning Board of Adjustment to gain compliance.
- 3) Under Home Occupation II standards:
 - a. (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.
 - b. (5) Parking areas shall be located in side or rear yard areas.

The parking for employees is currently at the front of the accessory structure. In addition your current Home Occupation takes up more than 2,500 square feet including the main business building, three outside storage building and the bathroom facilities in the main dwelling. As your Home Occupation is outside the requirements for Home Occupation II, this project may be allowed as a Home Occupation III for which you will need to submit a conditional use application.

159 FERRY ROAD P.O. BOX 119 CHARLOTTE, VERMONT 05445-0119

TOWN CLERK: (802) 425-3071 ♦ PLANNING & ZONING: (802) 425-3533 ♦

LISTER: (802) 425-3855 RECREATION: (802) 425-6129 ♦ FAX: (802) 425-4713

4) As your current Home Occupation is out of compliance I am giving you 15 days to contact me with a plan and 30 days to begin to implement a plan for compliance in your current location, or to move to a location that is better suited to your business, or stop operations all together. I am happy to try and assist you with any applications.

Thank you for your attention,



Joe Rheaume
Zoning Administrator

STUART BENNETT
PATI NARITOMI
1154 Roscoe Road
Charlotte, Vermont 05445

RECEIVED

MAR 07 2018

CHARLOTTE
PLANNING & ZONING

Stuart Bennett
802-318-0364
stu.m.bennett@gmail.com

Pati Naritomi
802-343-5457
pbnaritomi@gmail.com⁴

To: Zoning Administrator
Dean Bloch/Lee Krohn
Town of Charlotte
159 Ferry Road
Charlotte, VT 05445

March 7, 2018

Dear Dean & Lee

As you know, Pati and I own property at 1154 Roscoe Road which is adjacent to the Debbie and Lee Minkler property at 1158 Roscoe Rd.

On September 15, 2017, the Minklers filed an application for a Home Occupation II for the business Logical Machines - <http://logicalmachines.com>. A copy of their application is attached.

The Town Zoning Administrator, Joe Rheume, reviewed the application, and he made a site visit.

On October 23, 2017, Joe Rheume, denied the Home Occupation II application for Logical Machines. A copy of Joe's letter denying the application is also attached. This decision was not appealed, and it is therefore final. 24 VSA 4472(a)(d).

In addition to denying the application, Joe raised several other issues related to presence of Logical Machines on the property.

1. Zoning permits requirements for buildings related to Logical Machines.
2. Set back encroachments by some Logical Machines buildings.
3. Logical Machines employee parking.
4. Septic capacity/requirements related to Logical Machines

Notwithstanding Joe Rheume's change of jobs, his October 23, 2017 letter clearly outlined the Town's expectations, and the course of action expected of the Minklers. This course of action included the filing of a Home Occupation III application.

The interim Zoning Administrator, Lee Krohn, corresponded with Lee Minkler on January 25, 2018, but apparently did not emphasize that Joe Rheume's October 23, 2017 decision was final.

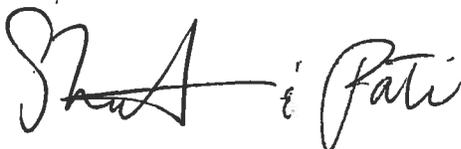
Lee Krohn and I traded the attached correspondence on February 26th and 28th. I pointed out Joe Rheume's October 23, 2017 final decision. That decision placed the burden on the Minklers to apply for a Home Occupation III, and to affirmatively address the other issues mentioned above.

The Town just has to insist on literal and timely compliance with Joe Rheume's decision. This should not be difficult, but so far as we are aware this has not happened. Therefore, Pati and I are asking that you confirm that Joe Rheume's October 23, 2017 denial of the Home Occupation II application was final. Please confirm this not later than March 15, 2018.

Pati and I are statutory "interested persons". As interested persons, we can appeal an action or in-action of the zoning administrator to the Zoning Board of Adjustment. 24 VSA 4465 (a) & Charlotte Land Use Regulations 9.6(A) & 9.9(A)(2).

Moreover, as citizens we just want the Town to consistently, and literally, apply the Town's Land Use Regulations. 24 VSA 4448(a)

Thank you. We look forward to hearing from you.



cc – A.J. La Rosa Esq. Murphy, Sullivan & Kronk

v3



Town of Charlotte

ESTABLISHED 1762

BY CERTIFIED MAIL

March 15, 2018

Lee and Deborah Minkler
1158 Roscoe Road
Charlotte, VT 05445

Re: Denial of Application for Home Occupation II

Dear Mr. and Mrs. Minkler,

Enclosed please find a letter from Joe Rheume, then-Zoning Administrator, dated October 23, 2017. This letter is a denial of your application for a Home Occupation II. In accordance with Section 9.6 of the Town of Charlotte Land Use Regulations, you may appeal this determination within 15 days. Since there is no record that the determination was recorded in the town land records until today, or that you were given notice of your right to appeal the determination, I am considering the date of the decision (starting the 15 day appeal period) to be today.

Please refer to Section 9.6 of the Town of Charlotte Land Use Regulations if you wish to appeal. The Land Use Regulations can be viewed on the town's website, and a copy can be obtained at the Town Office.

Please let me know if I can answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Bloch', is written over the word 'Sincerely,'.

Dean Bloch, Town Administrator and Interim Zoning Administrator/Sewage Control Officer/E-911
Coordinator/Health Officer

Paid
John Brown

RECEIVED

MAR 28 2018

CHARLOTTE
PLANNING & ZONING

March 27, 2018

Secretary of the Board of Adjustment/Town Clerk and
159 Ferry Road
Charlotte, VT 05445

Dear Secretary of the Board of Adjustment or Town Clerk,

Please find below a notice of appeal regarding the purported denial of my home occupation II application by the Town of Charlotte dated March 15, 2018.

NOTICE OF APPEAL

Name of Appellants

Lee and Deborah Minkler

Property Description

1158 Roscoe Road, Charlotte VT 05445, being more than 13 acres with single family dwelling and outbuildings

Applicable Zoning Provision

24 V.S.A. §4448(d). Charlotte Zoning Regulations Section 3.11 Parking; Section 3.16 Water and Wastewater Requirements; Section 4.11 Home Occupation II; Section 9.6 Appeals: Section 9.7 Variance.

Request for Relief

Confirm issuance of a 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.

Grounds

The application was submitted on September 15, 2017. The purported denial by the Zoning Administrator was dated October 23, 2017, more than 30 days after the application had been filed. A subsequent letter from the Town Manager on March 15, 2018 (6 months later), at the prompting of Stuart Bennett who sits on the Zoning Board of Adjustment and is an interested party, providing applicants with another untimely "denial" and an appeal period of 15 days.

Applicant's home occupation II permit issued according to statute. 24 V.S.A. §4448(d) provides that "If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referent to the appropriate panel, a permit shall be deemed issued on the 31st day." Because the administrative officer failed to act on the application within the necessary

timeframe, the home occupation permit has already *issued* and any appeal requirement here is moot.

Even if the permit did not already issue, according to the engineer applicant 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 moveable 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.

We hope to resolve any remaining issues relating to this matter to the Town's satisfaction with the Zoning Administrator and the Board of Adjustment.

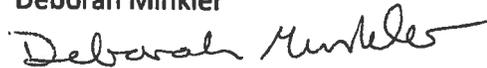
I would like to finally note that Stuart Bennett, a member of the Board of Adjustment, is an interested party and therefore must recuse himself from any and all deliberations by the Town on this matter.

Sincerely,

Lee Minkler



Deborah Minkler



cc: Zoning Administrator, Town of Charlotte

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RECEIVED
MAR 28 2018
CHARLOTTE
PLANNING & ZONING

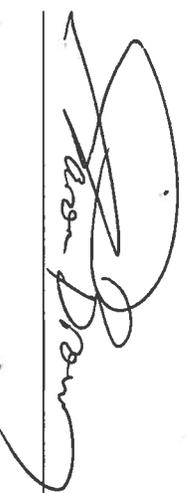
1846	250 -							
BANK TRANSIT NO.	\$ CHECKS	\$ CASH	NET	DATE	NAME	DESCRIPTION	RECEIVED BY	
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<small>IF (ENCIRCLED) INDICATES CASH RETURNED FOR ADJUSTMENT TO NET AMOUNT OF ACTUAL PAYMENT</small>								

TOWN OF CHARLOTTE
P.O. BOX 119 - FERRY ROAD
CHARLOTTE, VERMONT 05445

TEL. 802-425-3071

15048

INVALID WITHOUT SIGNATURE



SIGNATURE

RETAIN THIS RECEIPT FOR YOUR RECORDS

and habitat type in question. Smaller, unmapped wildlife corridors (particularly smaller stream/riparian corridors) should also be considered if their importance is substantiated by scientific study or field assessment by a qualified expert (e.g., VT Fish and Wildlife assessment, university research, etc.).

Yard: An open space on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Regulation. The required area of yards shall be determined with reference to the lot line and the "building face" in the same manner as the setback (see definition of setback).

Yard, Front: A yard on the same lot with a principal building, extending the full width of the lot and situated between the centerline of the street or right-of-way and the front line of the building extending to the side lines of the lot.

Yard, Side: A yard situated between the principal building and a side line and extending from the front yard to the rear yard. The distance between the principal building and the side line shall be measured from the building to the nearest point on the side line along a line parallel to the front lot line.

Yard, Rear: A yard on the same lot with a principal building between the rear line of the building and the rear line of the lot extending the full length of the lot. No lot shall have more than 1 rear yard with regard to setback requirements. For lots with multiple front yards, the rear yard shall be opposite the front yard that provides the primary access to the lot.

Zoning Permit: A document issued in accordance with this Regulation by the Zoning Administrator before any land development, other than usual repairs and except as herein exempted, may commence.

Hinesburg
ZONING
ORDINANCE

[View the 2017 Vermont Statutes](#) | [View Previous Versions of the Vermont Statutes](#)

2012 Vermont Statutes

Title 24 Municipal and County Government

Chapter 117 MUNICIPAL AND REGIONAL PLANNING AND DEVELOPMENT

§ 4448 Appointment and powers of administrative officer

Universal Citation: 24 V.S.A. § 4448.

§ 4448. Appointment and powers of administrative officer

(a) An administrative officer, who may hold any other office in the municipality other than membership in the board of adjustment or development review board, shall be nominated by the planning commission and appointed by the legislative body for a term of three years promptly after the adoption of the first bylaws or when a vacancy exists. The compensation of the administrative officer shall be fixed under sections 932 and 933 of this title, and the officer shall be subject to the personnel rules of the municipality adopted under sections 1121 and 1122 of this title. The administrative officer shall administer the bylaws literally and shall not have the power to permit any land development that is not in conformance with those bylaws. An administrative officer may be removed for cause at any time by the legislative body after consultation with the planning commission.

(b) The planning commission may nominate and the legislative body may appoint an acting administrative officer who shall have the same duties and responsibilities as the administrative officer in the administrative officer's absence. If an acting administrative officer position is established, or, for municipalities that establish the position of assistant administrative officer, there shall be clear policies regarding the authority of the administrative officer in relation to the acting or assistant officer.

(c) The administrative officer should provide an applicant with forms required to obtain any municipal permit or other municipal authorization required under this chapter, or under other laws or ordinances that relate to the regulation by municipalities of land development. If other municipal permits or authorizations are required, the administrative officer should coordinate a unified effort on behalf of the municipality in administering its development review programs. The administrative officer should inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist employed by the agency of natural resources in order to assure timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state permits.

(d) If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal panel, a permit shall be deemed issued on the 31st day. (Added 2003, No. 115 (Adj. Sess.), § 100.)



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