

**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.*