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 Allentown Town Clerk

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

In Re: **ZBA-19-186-AP Appeal by Lee and Deborah Minkler (and legal counsel Roger E. Kohn) of the Zoning Administrator's determination of a non-complying accessory Home Occupation II structure and the issuance of a zoning permit to modify the Home Occupation structure operated by Lee Minkler of *Logical Machines*. The property is located at 1158 Roscoe Road in the Town of Charlotte.**

**I. Introduction and Procedural History**

On September 26, 2019, Roger E. Kohn (Attorney representing the property owners and proprietors of *Logical Machines*, Lee and Deborah Minkler) submitted an appeal to Zoning Administrator (Daniel O. Morgan) for a determination letter issued on 9 September 2019, which denied Zoning Permit application 19-153-ZP to move a non-compliant 20' x 30' accessory structure out of the side yard setback to another location, and to continue its operation as part of *Logical Machines* under the Home Occupation standards of the Charlotte Land Use Regulations (LURs), hereafter referred to as "*the Regulations*". The Home Occupation operates on a 13.48 acre property located 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 Seven Days*" newspaper on October 30, 2019; posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store on that same date.

The public hearing was held at the ZBA meeting on November 14, 2019 at 7:30 PM. Present at the hearing were the following members of the ZBA: Frank Tenney (Chair), Jonathan Fisher, and Lane Morrison (Stuart Bennett and Matt Zucker were absent from the proceedings). Additional participants included: Daniel O. Morgan (Zoning Administrator), Daryl Arminius (Planner), Lee Minkler, Debby Minkler, and Roger Kohn (Attorney representing the appellants Minkler). A site visit with the Zoning Board commissioners was conducted before the public meeting at 5:00 PM at 1158 Roscoe Road with all of the aforementioned personnel in attendance (except for Debby Minkler and Roger Kohn).

**II. Exhibits**

The following exhibits were marked and considered:

**1. Permitting History –**

- A. 19-11-ZP:** permit to extend existing shop 16 feet to north; use is Home Occupation II – Issued by Zoning Administrator Aaron Brown – 5 Feb 2019;
- B. 19-10-ZP:** permit to move the non-compliant 20'x30' accessory structure (used as for storage) out of setback to compliant area and discontinue its use for Home Occupation II – Issued by Zoning Administrator Aaron Brown – 5 Feb 2019;

- C. [ZBA-18-46-AP](#): Minkler Appeal of Zoning Administrator's letter of denial regarding the Home Occupation II status for 1158 Roscoe Road – 27 Jul 2018;
  - D. [18-95-ZP](#): Home Occupation II permit for Logical Machines at 1158 Roscoe Road – 8 Jun 2018;
  - E. [05-95-ZP](#): Permit to 24'x36' detached garage/shop – 11 Oct 2005;
2. Zoning Board of Adjustment (ZBA) Minutes of the meeting held November 14, 2019 –
3. Related Documentation –
- A. [Appeal submitted by Minkler and Attorney Roger Kohn to the Town](#) – 26 Sep 2019;
  - B. [ZA Detailed notice of Denial for Zoning Permit #19-153-ZP](#) – 9 Sep 2019;
  - C. [Application and denial for Zoning Permit #19-153-ZP](#) – 26 Aug and 9 Sep 2019;
  - D. [Legal Opinion from the Town Attorney: \(deliberative\)](#) – 20 Aug 2019;
  - E. [Minkler letter to ZA](#): affirmation to follow the intent of the issued permit [18-95-ZP](#) – 31 Jul 2019;
  - F. [ZA Advisory letter to Minkler](#): 2-year sunset to conform with [19-10-ZP](#) and [19-11-ZP](#) – 8 Jul 2019;
  - G. Notice that [Bennett-Naritomi have withdraw their appeals](#) – 8 Jul 2019;
  - H. [ZA Advisory letter to Minkler](#): 2-year sunset to conform with [19-10-ZP](#) and [19-11-ZP](#) – 12 Jun 2019;
  - I. [ZA Notice of Appeal to Minkler](#) – 20 Feb 2019;
  - J. [Bennett Appeal of ZA \(ZBA-19-23-AP\)](#) – 20 Feb 2019;
  - K. [Zoning Permit determination letter from ZA \(re: 19-10-ZP and 19-11-ZP\)](#) – 5 Feb 2019;
  - L. [Bennett Appeal of ZA \(ZBA-19-05-AP\)](#) – 22 Jan 2019;
  - M. [ZA Follow-up Zoning Compliance Letter](#) – 16 Jan 2019;
  - N. [ZA Warning Letter to Minkler](#) – 9 Jan 2019;
  - O. [ZA Response to Bennett](#) – 9 Jan 2019;
  - P. [Bennett Home Occupation Questions to ZA](#) – 10 Dec 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 IV, Section 4.18** – Accessory Structure
- 4. **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 **8 June 2018**, the Charlotte Zoning Administrator (Aaron Brown) issued a Zoning Permit to Minkler ([18-95-ZP](#)) granting a Home Occupation II permit. The accompanying letter with the permit outlines further possible steps to comply with the Charlotte LUR with the non-conforming eastern setback of an accessory structure used for the Home Occupation. The ZA offered guidance to attain conformance with the Charlotte Land Use Regulations.

2. On **27 July 2018**, the ZBA denied an appeal ([ZBA-18-46-AP](#)) filed by Lee and Deborah Minkler (and their attorney Roger Kohn) to overturn a determination letter from the Charlotte Zoning Administrator (ZA) that advised specific steps forward to comply with the Regulations with respect to: **1.** Septic capacity; **2.** An unpermitted structure; **3.** The Home Occupation status, and; **4.** The siting of the parking area.
3. On **10 December 2018**, Stuart Bennett [submitted a letter to the Zoning Administrator](#) requesting him to evaluate if the buildings hosting the Home Occupation are accessory to the residential “use” (as per Charlotte LUR **Sections 4.11(B)(2)** and **10.1**).
4. On **9 January 2019**, the [Zoning Administrator responded to Bennett’s letter](#) with the determination that the home occupation is related and subordinate to the principal residential use of the lot. On that same date, the [Zoning Administrator sent a letter to Lee Minkler](#) warning of a possible issuance of a Notice of Violation (NOV) if compliance was not attained for three outstanding issues:
  - a. The accessory structure violates the Rural Zoning District fifty-foot (50’) setback dimensional requirement (as per **Table 2.5(E)** of **Section 2.3**).
  - b. The accessory structure exceeds the 250-square-foot permit exemption and requires an additional permit.
  - c. The Home Occupation II operation is required to be carried out within the principal dwelling and/or within an accessory structure (as per **Section 4.11(8)**).
5. On **16 January 2019**, a meeting in person between the Zoning Administrator, the Town Planner, and Lee Minkler was held for the purpose of crafting a way forward for Minkler to comply with the Charlotte LUR. Subsequently, on January 16, 2019, the [Zoning Administrator sent a follow up letter to Minkler](#) advising on steps toward compliance, including:
  - a. The total area dedicated for the Home Occupation should not exceed 2,500 square feet.
  - b. The footprint of the combined buildings does not exceed 2,000 square feet. Any additional area above that amount would require Conditional Use approval from the ZBA.
  - c. The relocated accessory structure is attached to the existing garage/shop that effectively uses only one accessory structure for the Home Occupation.
  - d. The relocated accessory structure does not fall within the required fifty-foot setback.
  - e. The successful completion of a Major Addition (250+ square foot) Zoning Permit application within 15 days (i.e. by February 1, 2019).

Lee Minkler then decided to move the non-conforming accessory structure, discontinue its use for Home Occupation, discontinue the use of two additional small sheds for Home Occupation,

and obtain a building permit to add storage to the existing, conforming shop used for the Home Occupation.

6. On **22 January 2019**, Stuart Bennett appealed the Zoning Administrator's determination that the Minkler Home Occupation II (*Logical Machines*) is being conducted in an accessory to the dwelling (e.g. In re: **ZBA-19-05-AP**). The [specific relief requested from the appellant](#) was:
  - a. Correctly answered all the issues raised within the Bennett Letter.
  - b. Correctly found specific facts related to the "use"/"specific purpose" of the four *Logical Machines* buildings.
  - c. Correctly determined that the four *Logical Machines* buildings comply with the requirement that a Home Occupation II be carried out in "*an accessory structure to the dwelling*".
  - d. Correctly determined that the four *Logical Machines* buildings are otherwise properly permitted, zoning compliant structures.
7. On **30 January 2019**, Lee and Deborah Minkler submitted an application for a building permit (**19-11-ZP**) to extend the existing building by 384 square feet to the west (outside of the setback to accommodate storage), and an application for a permit (**19-10-ZP**) to move the non-compliant portion of the building to another location, where it will no longer be utilized for the Home Occupation.
8. On **5 February 2019**, the Zoning Administrator granted permits for **19-10-ZP** and **19-11-ZP**, [accompanied by a letter stating his determination](#) that the permits satisfy the aforementioned outstanding non-compliance with the Charlotte LUR.
9. On **20 February 2019**, Stuart Bennett appealed the Zoning Administrator's issuance of Zoning Permit **19-11-ZP** to extend one of the *Logical Machines* buildings by 16 feet (e.g. In re: **ZBA-19-23-AP**). The [specific relief requested from the appellant](#) was that the Zoning Administrator:
  - a. Correctly find specific facts related to the "use"/"specific purpose" of the 16-foot extension of the *Logical Machines* building.
  - b. Correctly determine that the 52' x 24' extended *Logical Machines* building complies with the requirement that a Home Occupation II be carried out in "*an accessory structure to the dwelling*".
  - c. Correctly determined that the 52' x 24' extended *Logical Machines* building permitted by Zoning Permit **19-11-ZP** is otherwise a properly permitted, zoning compliant structure.
10. On **8 July 2019**, Zoning Administrator Brown sent an advisory letter to Lee Minkler indicating that the outstanding non-compliance issues addressed in permits **19-10-ZP** and **19-11-ZP** must be completed within two years, and that the Bennett appeal (**ZBA-19-23-AP**) [was withdrawn on](#)

[5 June 2019](#) as the result of a separate legal mediation proceeding between Bennett and Minkler.

11. On **31 July 2019**, [Lee Minkler sent a letter to the Zoning Administrator](#) affirming his intent to conform to the original permit **18-95-ZP**.
12. On **20 August 2019**, Town Attorney [David Rugh sent a legal opinion](#) to Zoning Administrator Daniel Morgan indicating that: **1.** The accessory structure should be discontinued for any use for the home occupation, as it is a condition of zoning permit **19-10-ZP**. **2.** As the 15-day appeal period had expired, the permit condition is binding. **3.** Although this permit was appealed by Bennett, the appeal had been withdrawn, and hence the permit condition remains in effect.
13. On **21 August 2019**, Zoning Administrator Daniel Morgan [sent a letter to Minkler](#) affirming the Town Attorney's opinion.
14. On **26 August 2019**, Lee and Deborah Minkler submitted an [application for zoning permit 19-153-ZP](#) to move the non-compliant building from its current location to a compliant location, continuing is business use.
15. On **9 September 2019**, Zoning Administrator Daniel Morgan [sent another letter to Minkler](#) denying zoning permit **19-153-ZP**, which re-affirmed the Town Attorney's opinion, and further indicated that the maximum 2,500 square foot standard for an accessory structure used for a Home Occupation II, would be exceeded by 195 square feet were the 20' x 30' accessory structure employed as part of the business (e.g.  $2094 + 600 = 2,694$  square feet).
16. On **26 September 2019**, Attorney Roger E. Kohn (representing Lee and Deborah Minkler) submitted [an appeal of the denial of zoning application 19-153-ZP](#). The appeal invokes the following reasons to approve the permit the storage shed: **1.** Use of the accessory structure for the Home Occupation would not cause the applicant exceed 2,500 square feet. **2.** The language in the Charlotte Land Use Regulations (LURs) does not explicitly preclude the use of more than one structure to conduct business for the Home Occupation, which is limited specifically only by a 2,500 square foot area maximum of the principal and/or an accessory structure, as per **Section 4.11(B)(2)** of the LURs.

*"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."*

17. In support of the appellant, Mr. Minkler's position that the Home Occupation II use would not exceed the required 2,500 square foot area maximum (as per **Section 4.11(B)(2)** of the Regulations):

- a. In the application for the permit **19-10-ZP**, the Home Occupation II use comprised two structures, including the purported 24' x 36' (i.e. 864 square foot) existing primary 'Garage' structure and the 20'x30' (i.e. 600 square foot) *accessory storage shed*; for a combined total of **1,464 square feet**.
- b. According to the application for the permit **19-11-ZP**, the primary 'Garage' structure is to be expanded 16 feet to the north (for a total of 384 square feet). This raises the total purported area for the Home Occupation II to **1,848 square feet**. However, what does not appear to have been included in this total area calculation for the offices and the conference room/cafeteria located on the second floor of the primary 'Garage'.
- c. However, according to permit **18-95-ZP**, the total area of the Home Occupation II was purported to measure **2,094 square feet**, where the Zoning Administrator's denial of permit application 19-153-ZP was based on the observation that the 20'x30' (i.e. 600 square foot) accessory structure "*would likely exceed the 2,500 square-foot limitation since the home occupation II would take up 2,695 square feet.*"
- d. As a result, the total floor area of the Home Occupation II is unclear and should be verified by the Zoning Administrator for the purposes of this decision.

## V. Conclusions of Law

1. **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:
  - a. The home occupation shall be conducted by residents of the dwelling and not more than five (5) nonresident employees on-site at any time.
  - b. 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.*" The current structure is a reported **2,094 square feet**, according to the Home Occupation II permit packet for 18-95-ZP. This was affirmed in the findings of fact of ZBA decision **ZBA-18-46-AP**. The applicant will be required to demonstrate the area of the Home Occupation (as per **Finding 17**, above) before constructing the expansion as part of permit **19-11-ZP**. This measurement will include the area of the accessory structure, as it has been contested that the Town's calculation of the structure may be made in error.

Regarding a possible ambiguity with the respect to the exclusion of a second accessory structure to be used for a Home Occupation II, discussed under **Finding 16** (above), the ZBA should consider that zoning ordinances are in derogation of common law property rights and that "*in construing land use regulations any uncertainty must be decided in favor of the*

*property owner.*" In re Vitale, 151 Vt. 580, 584, 563 A.2d 613, 616 (1989); see also Secretary v. Handy Family Enters., 163 Vt. 476, 481-82, 660 A.2d 309, 312 (1995).

- c. 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).
- d. The home occupation shall generate no more than 20 business-related vehicle trips per day.
- e. Parking areas shall be located in side or rear yard areas.
- f. 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**.
- g. The home occupation shall not change the character of the neighborhood.

## **2. 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**

The Zoning Board of Adjustment finds the appellant has:

1. Adhered to the guidance discussed with respect to permit **18-95-ZP** issued by the Zoning Administrator by applying for a building permit **19-10-ZP** to move the non-conforming (and unpermitted) 20' x 30' accessory structure to a conforming location outside of the side yard setback.
2. Adhered to the Zoning Board of Adjustment's determination (discussed on page 6 of their decision **ZBA-18-46-AP**) to move the unpermitted accessory structure out of the 50' sideyard setback.
3. Pursuant to **Finding 17** and **Conclusion of Law 1(b)** above, after the 30-day appeal period for this decision has expired, the appellant shall:
  - a. Submit an affidavit of compliance to the Zoning Administrator certifying that the Home Occupation II meets the 2,500 square foot maximum, and provide a floor plan with exact measurements of the area of the Home Occupation II use in each of the buildings, including the area of the second floor.
  - b. Reapply for a building permit to move the non-conforming and unpermitted 20' x 30' accessory structure to a conforming location that is outside of the side yard setback.

- c. The appellant may reapply for the expansion of the building extension, providing that the total area of the Home Occupation II does not exceed 2,500 square feet (pursuant to **Section 4.11(B)(2)** of the Regulations).

Based on the foregoing Findings of Fact and Conclusions of Law, a Motion to overturn the 9 September 2019 determination letter issued by Zoning Administrator Morgan (**Exhibit 3B**, above) was made and seconded to enforce, where the appellant remains subject to the requirements of **ZBA-18-46-AP** and **18-95-ZP**, and the above conditions.

**Vote: 3 Ayes. 0 Nays. 1 Absent. 1 Recused**

Dated at Charlotte, Vermont this 23<sup>rd</sup> day of December 2019.

  
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.