



*Town of Pepperell*  
**BOARD OF APPEALS**  
One Main Street  
Pepperell, Massachusetts 01463  
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**Zoning Board of Appeals Meeting Minutes of August 13, 2008**

**PRESENT:** Thomas McGrath, Sherrill Rosoff, Annette McLean, Sean McCaffery; and Cheryl Lutzca (ZBA Assistant). Also present, Pepperell Town Counsel, Attorney Edward Richardson

**6:30P.M.** Chair announces that the first agenda item is a continuation of a hearing previously heard on June 18, 2008, regarding an application submitted by Keith and Deborah Bartelson, requesting a Zoning Board of Appeals Special Permit, under Section 3400 of the Town of Pepperell Zoning By-Law, which if granted, would allow an accessory apartment in the existing structure, for the property located at 27 Plainfield Road, Pepperell, MA, as shown on Assessor's Map 14 as Parcel 87.

Applicants addressed the Board and submitted a written statement, dated August 13, 2008 (Exhibit Z), into the record.

Clerk read responses from the following Town Boards/Departments and/or concerned parties into the record:

- Letter from Building Inspector that was attached to ZBA Application
- Response from Assessor's Office
- Response from Board of Health
- Response from Conservation Commission
- Response from Highway Department
- Response from Planning Board
- Response from Police Department
- Response from Town Engineer
- Response from Water Department
- Response from Town Counsel
- Opposition Letter from David & Elaine Anderson, dated August 5, 2008

Sherrill Rosoff explained that it appeared the accessory apartment met the 800 square foot maximum requirement, as closets, stairways and basements are excluded from the square footage.

Chairman inquired if there was anyone in the audience who would like to speak in favor of, or opposition to the application.

- Tom Bartelson - 94 Park Street: Stated that he is the Applicant's brother, and that he does not believe that the accessory apartment is over 800 square feet.
- Robert Perry - 30 Plainfield Road: Had concern if property was sold in the future. Town Counsel responded that the intent of the By-law is if property is sold, the new owner would have to apply for a new special permit for an accessory apartment.
- Steve Forgiel – 29 Plainfield Road: Had concern that accessory apartment will affect value of his property.
- Robert Erb – 35 Plainfield Road: Inquired as to how square footage is calculated. Town Counsel responded that the calculation of square footage is defined in the Massachusetts State Building Code. Discussion ensued.

Sherrill Rosoff inquired about parking. Applicants identify parking area on plan submitted with the application.

Sherrill Rosoff motioned to close record and hearing. Annette McLean seconds. All concur.

Discussion ensued among Board Members.

Applicants submitted an Affidavit of Owner Occupancy.

Sherrill Rosoff motioned to grant relief requested. Annette McLean seconds. All concur.

**7:00P.M.** Chairman announces that the Board of Appeals has a new Associate Board Member, Sean McCaffery, who is present at this evening's hearings, and that he would like to welcome Mr. McCaffery to the Board...

**7:05P.M.** Second Agenda item is a continuation hearing previously heard on June 18, 2008 regarding an application submitted by Everett Cole, requesting a Zoning Board of Appeals SPECIAL PERMIT, under Section 3400 of the Town of Pepperell Zoning By-Law, which if granted, would allow an accessory apartment in the existing structure, for the property located at 43 Mt. Lebanon Street, Pepperell, MA, as shown on Assessor's Map 33 as Parcel 57.

Clerk reads legal notice into the record.

Applicant, Everett Cole, is present and addressed the Board as follows:

- Gave a history of property, and explained that when they purchased the property it was listed as “two houses for the price of one, with an in-law apartment.”
- They had asked previous owner, Larry Miner, if the in-law apartment was legal, and he said that it was.
- Assessment of property was listed as a 2-family home.
- Attorney they used for the closing, when purchasing the property, was a former member of the Town of Pepperell Zoning Board of Appeals.
- When they purchased the property, they were under the assumption that the apartment was legal.

Mr. Cole also supplied a written statement of the above.

Clerk read responses from the following Town Boards/Departments and/or concerned parties into the record:

- Response from Assessor’s Office
- Response from Board of Health
- Response from Conservation Commission
- Response from Highway Department
- Response from Planning Board
- Response from Police Department
- Response from Town Engineer
- Response from Water Department
- Response from Town Counsel
- Letter from Building Inspector

Town Counsel requested that Applicant withdraw documents attached to application relevant to Annette and Timothy McLean. Applicant agrees to withdraw those documents from the application.

Annette McLean commented that plan submitted for septic system shows plan for a 4-bedroom house. Applicant responded that only a total of four bedrooms exist in both units.

Sherrill Rosoff inquired about parking. Applicant responded that the parking area can accommodate nine cars.

Chairman inquired if there was anyone in the audience who would like to speak in favor of, or opposition to the application.

- Janet Marple – 45 Mt. Lebanon Street: Main concern is parking, as she shares a common driveway with the subject property. Has concerns with wetlands; current amount of traffic on driveway is already causing damage; 9 cars on driveway would be a disaster; 4 cars would be okay; driveway is gravel and cannot be paved due to wetlands.

Chairman inquired as to how many homes share the common driveway. Mrs. Marple replied two homes.

Chairman invited Mrs. Marple and the Applicant, Mr. Cole, to review the plan for the Board and indicate where the common driveway is in relation to the two properties.

Applicant explained that Joan Lemire, his mother-in-law, who is also present, also owns the subject property, and is currently the only occupant at 43 Mt. Lebanon Street.

Applicant explained that both the Marples and owners of 43 Mt. Lebanon Street are required to maintain the common driveway.

Town Counsel explained statute of limitations regarding structures being built without proper permits.

Annette McLean inquired as to when the shared driveway was installed. Mrs. Marple replied that it was 1992.

Discussion ensued regarding dirt driveway and number of vehicles traveling on it.

- Martin Beck – 39 Mount Lebanon Street: Read and submitted letter of opposition, dated July 31, 2008, into the record.

Town Counsel responded that documents attached to the application relevant to Annette and Timothy McLean are 12 to 15 years old and are irrelevant in this matter.

Discussion ensued between Town Counsel and Mr. Beck regarding above and also Planning Board Special Permits relative to common driveways.

Town Counsel inquired if the second story was added more than 10 years ago, did anyone know when the addition was built? Unidentified member of the audience stated it was built 7 years ago.

Town Counsel commented that the Planning Board offered “no comments” on this application.

Lynn David – 47 Mt. Lebanon Street: Asked if when subject property, which is currently for sale, is sold, what happens if new owner has multiple cars? Town Counsel responded that they would have the right to use the driveway.

Discussion ensued among Board Members and it was agreed that the Board would request that Harry Cullinan, Inspector of Buildings/Zoning Enforcement Officer inspect the premises to verify the square footage of floor space and conduct reasonable inspections similar to those done prior to the issuance of a use and occupancy permit. Joan Lemire requested that Mr. Cullinan contact her directly to set appointment.

Sherrill Rosoff motioned to leave record and hearing open and continue hearing to September 17, 2008 at 7:00p.m., in order to allow time for the Inspector of Buildings/Zoning Enforcement Officer to verify the square footage of floor space and conduct the above-referenced inspections. Annette McLean seconds. All concur. Extension Agreement to continue hearing to above-referenced date was signed by Applicant and the Board.

**8:00P.M.** Third Agenda item is a continuation hearing previously heard on June 18, 2008, regarding an application submitted by Penny Batchelder, regarding an ADMINISTRATIVE APPEAL of the determination of the Inspector of Buildings/Zoning Enforcement Officer, in his letter dated April 7, 2008, rejecting a request to build a home on Lot #21 Tucker Avenue, Pepperell, MA. Subject property is located at 22-1/2 Tucker Avenue, Pepperell, MA, as shown on Assessor's Map 14 as parcel 253.

Clerk reads legal notice into the record.

Applicant, Penny Batchelder was present, and was represented by Attorney Thomas Gibbons, Ayer, MA, who was also present.

Town Counsel addressed Board regarding legal issues relative to common ownership and title to property. He explained that the Applicant owned title to one lot but had been maintaining land on another lot, and subsequently filed for adverse possession. He further commented that he had never seen a case like this before. Town Counsel referred to his letter to the Board of June 10, 2008 (Exhibit Q), and explained that he now had facts that he did not have when he wrote that letter. He further explained that the Board could treat the Court Decision as if it were a Deed.

Discussion ensued regarding adverse possession.

Attorney Gibbons addressed the Board and gave a history of Lot 19 and explained that he went back to 1948 to examine the title. He further explained that Lot 21 is what we are discussing tonight and that he went back to 1899 to examine the title. He explained that a key issue is that there was no common ownership.

Chairman inquired if there was anyone in the audience who would like to speak in favor of, or opposition to the application. No one speaks.

Sherrill Rosoff motioned to close the record and hearing. Annette McLean seconds. All concur.

Annette McLean motioned to grant an administrative appeal to the applicant. Sherrill Rosoff seconds. All concur.

Board requests that Town Counsel assist the Board in the drafting of the language of the findings and conditions of the Decision.

**8:22P.M.** Annette McLean motioned to enter into Executive Session to discuss pending litigation relative to 49 South Road. Sherrill Rosoff seconds. All concur.

Sherrill Rosoff motioned to close executive session. Annette McLean seconds. All concur.

Sherrill Rosoff motioned to hold hearing on 49 South Road Remand on Wednesday, September 17, 2008 at 8:00p.m. Annette McLean seconds. All concur.

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of June 18, 2008. Annette McLean seconds. All concur.

**The Board of Appeals reorganized as follows:**

- Thomas McGrath will remain as Chairman.
- Annette McLean will act as Clerk.

Annette McLean motioned to adjourn the meeting. Sean McCaffery seconds. All concur.

Meeting Adjourned at 9:00P.M.

ZBA Minutes of August 13, 2008 filed with Town Clerk: September 29, 2008

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**Cheryl Lutcza**  
**Assistant, Zoning Board of Appeals**

cc: Town Clerk  
Building Inspector  
ZBA Minutes file  
ZBA Members  
ZBA Application Files