

## Zoning Board of Appeals Decisions Decisions for: 09-15-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 087-16

APPLICANT/WNER(S): ALAN C. MCCOY, Trustee of the Alan C. McCoy Trust  
and SHEILA A. MCCOY, Trustee of the Sheila A. McCoy Trust

SUBJECT PROPERTY: 29 Alcott Road East Falmouth, Massachusetts  
Assessor's Map: Map 40, Section 02B, Parcel 000, Lot 141

DEED/CERTIFICATE: Book 27225 / Page 108

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 5, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to construct an 18' x 20' addition for habitable space to the pre-existing nonconforming single-family dwelling on subject property known as 29 Alcott Road, East Falmouth, MA.
2. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was opened on September 15, 2016.
4. The public hearing was terminated on September 15, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

None

Letters/E-mails/Information from Applicant/Representative(s)

None

Letters/Referrals/E-mails from Town Departments

Referrals, with no comments, received from the Planning Department Staff, Conservation Commission, Assessor and Falmouth Fire Rescue Department were submitted to the file

Referral from the Engineering Department was submitted to the file with standard comments and with a recommendation for the applicant to add dry wells, rain garden, or other stormwater measure for roof runoff.

Plans submitted by Applicant/Applicant's Representative

"Certified Plot Plan 29 Alcott Road in East Falmouth, Massachusetts" prepared for Alan C. & Sheila A. McCoy, Trustees as drawn by Cape & Islands Engineering – Sheet 1 of 1 dated 1/11/2016 – stamped, signed and dated by Matthew C. Costa, PLS on 9/8/2016, with a Board date 'received' stamp of September 8, 2016 on said plan;

Hand drawn plans of first and second floor plan and a third page with computer generated floor plan of proposed addition – all with a Board date 'received' stamp of August 5, 2016; and

Plans drawn by David McLean Architectural Design Services consisting of Drawing 1 of 5 'Elevations' dated 4/13/2016, Drawing 2 of 5 'Foundation & Cross Section' dated 4/3/2015 – both with a Board date 'received' stamp of August 5, 2016 and a single sheet 'Proposed Elevation' showing fireplace bump-out (juts out about 2' from building) with a Board date 'received' stamp of September 8, 2016.

#### Hearing:

Alan McCoy reviewed the existing site conditions and the proposed addition of a family room. The family room will remain open to the dining/kitchen area with a four foot opening. There will be no increase in bedrooms; all remain the same except for the family room addition to the west side of the existing dwelling.

The Board discussed plans with Mr. McCoy and the referral from the Engineering Department regarding the recommendation of a drywell or other measure to insure roof runoff be maintained on site. Mr. McCoy was amenable to installing a dry well. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 5 – 0.

Chairman Bielan closed the hearing.

#### FINDINGS

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 29 Alcott Road in East Falmouth contains 12,700 square feet of Residential B zoned land that is located within the Green Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an 18' x 20' addition of a family room onto the existing single-family dwelling on subject property. The existing dwelling structure has a nonconforming setback to the front property line off Alcott Road of 24.2' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The proposed addition meets the required setbacks and does not create any new nonconforming setback. The lot coverage by structures and by structures, parking and paving, existing and proposed, are in compliance with the lot coverage requirements under Section 240-69 A. of the Code of Falmouth. The proposed addition to the one and a half-story single-family dwelling will have a height that is no taller than the existing ridge height on the dwelling.

Section 240-3 C. of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed addition to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the existing nonconforming front yard setback will not be impacted by the proposed addition and the proposed addition does meet all setback requirements of Section 240-68 A. and B. as shown in the plans submitted and reviewed by the Board [noted below]. Furthermore, The Board finds that the proposed addition is an enhancement to the existing single-family dwelling and to utilization of the dwelling by the residents of

said dwelling.

The Board finds through testimony by the applicant that the proposed bay window in the dining room area shown on the floor plan of the proposed addition will not encroach into the front yard setback as it only extends 6" out from the foundation of the dwelling. The Board finds through testimony by the applicant that the access to the family room from the dining/kitchen area will be through a four foot (4') cased opening as shown on the plans submitted and reviewed by the Board [noted below].

The Board finds through testimony by the applicant (as it is not shown on the plans but scales to approximately 14') that the height of the proposed addition will be of less height than the existing dwelling roof. The Board further finds through testimony by the applicant, that he is amenable to installing a drywell as recommended by the Engineering Department in a referral submitted to the file.

The Board finds that there will be no new bedrooms created or added through this special permit approval; that the existing bedroom count of four remains as four.

In addition to the above findings, the Board finds that the proposed addition of a family room onto the existing single-family dwelling will be in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as follows:

- A. The site is adequate in terms of size for the proposed 18' x 20' family room addition as the addition does not increase the existing nonconforming front yard setback, it does not create any new noncomplying setback and lot coverage by structures will remain under the 20% maximum allowed in this residential zoned district.
- B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as a single family residence through this special permit approval.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. There was no referral from the Board of Health verifying a four-bedroom sewage disposal system is in place, but the process will require sign off by the Board of Health prior to a building permit being issued for the proposed addition discussed herein.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. G. The proposed addition to the existing dwelling discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the proposed addition of a family room to the pre-existing nonconforming single-family dwelling as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Hurrie made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 5 – 0 to Grant the Special Permit to Alan C. McCoy and Sheila A. McCoy (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an 18' x 20' addition to the pre-existing nonconforming dwelling on subject property known as 29 Alcott Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the 18' x 20' addition to the dwelling, all setbacks, height of addition, lot coverage and use of addition shall be as represented to the Board and as shown on plans submitted and reviewed

by the Board entitled as follows:

- "Certified Plot Plan 29 Alcott Road in East Falmouth, Massachusetts" prepared for Alan C. & Sheila A. McCoy, Trustees as drawn by Cape & Islands Engineering – Sheet 1 of 1 dated 1/11/2016 – stamped, signed and dated by Matthew C. Costa, PLS on 9/8/2016, with a Board date 'received' stamp of September 8, 2016 on said plan;

- Hand drawn plans of first and second floor plan and a third page with computer generated floor plan of proposed addition – all with a Board date 'received' stamp of August 5, 2016; and

- Plans drawn by David McLean Architectural Design Services consisting of Drawing 1 of 5 'Elevations' dated 4/13/2016, Drawing 2 of 5 'Foundation & Cross Section' dated 4/3/2015 – both with a Board date 'received' stamp of August 5, 2016 and a single sheet 'Proposed Elevation' showing fireplace bump-out (juts out about 2' from building) with a Board date 'received' stamp of September 8, 2016.

2. The applicant shall maintain the four foot (4') opening between the proposed family room and the dining/kitchen area at all times. The proposed family room discussed and approved herein shall not be enclosed by a door.

3. There shall be no bedroom or sleeping accommodations created within the proposed family room approved herein.

4. The applicant shall install a drywell near the northwest corner of the addition to insure that stormwater runoff or roof runoff from the addition are maintained on site.

5. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

6. The Applicant shall meet the requirements of the DPW Water Division.

7. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)

8. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk's office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 087-16

Applicant: Alan C. McCoy, Trustee of Alan C. McCoy Trust and  
Sheila A. McCoy, Trustee of Sheila A. McCoy Trust

Subject Property: 29 Alcott Road, East Falmouth, Massachusetts  
Map 40, Section 02B, Parcel 000, Lot 141

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 5 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

---

Terrence J. Hurrie, Clerk, Board of Appeals

\_\_\_\_\_ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

**Notes:**

SP 087-16 McCoy, filed with Town Clerk 9/21/16