

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 008-18

**APPLICANTS/OWNERS:** PAUL JOSEPH McGOURTY & LAUREN ANN McGOURTY, TRUSTEES  
of the P & L McGourty Trust of Braintree, MA

**SUBJECT PROPERTY:** 16 Cypress Street, Teaticket, Massachusetts  
**Assessor's Map:** Map 39A Section 28 Parcel 000 Lot 121

**DEED/CERTIFICATE:** Certificate 204985 – Lots 121 and 122, LC Plan 4286-A (Plate 8)

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of January 22, 2018, the applicants applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to remove existing deck and replace it with a sunroom and construct front and rear dormer for additional habitable space in the pre-existing nonconforming single-family dwelling on subject property known 16 Cypress Street, Teaticket, 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 March 15, 2018.
4. The public hearing was closed on March 15, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternates Gerald Potamis and Robert Dugan (sitting as voting members) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicants were 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)**

03/08/2018 Applicant submitted Lot Coverage/Bulk Calculations of general neighborhood properties

### Letters/Referrals/E-mails from Town Departments

- 01/23/2018 Referral submitted to the file from the Planning Department staff with no comment
- 01/25/2018 Referral submitted to the file from Water Superintendent Rafferty with no comment
- 02/29/2018 Referral submitted to the file from Director of Assessing with a comment of Lots 21 and 22 (ZBA Note: according to Registry of Deeds – Certificate 204958 is for lots 121 and 122)
- 01/30/2018 Referral submitted to the file Falmouth Fire Rescue Department with no comment

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

### Plans submitted by Applicant/Applicant's Representative

“Certified Plot Plan” for 16 Cypress Street Falmouth, MA as drawn by Collins Civil Engineering Group, Inc. dated 11/10/2017 – plan is stamped, signed and dated by Steven W. Rumba, PLS on 11/13/2017 and has a Board date ‘received’ stamp of January 22, 2018;

“Paul & Lauren McGourty 16 Cypress St Falmouth, MA” as drawn by Rockwood Design, Inc. consisting of:

- Drawing A2 ‘Existing Front Elevation’, Drawing A2.1 ‘Proposed Front Elevation’ – both dated 01/11/2018;
- Drawing A2.2 ‘Existing Right Elevation’, Drawing A2.3 ‘Proposed Right Side Elevation’, Drawing A2.4 ‘Existing Rear Elevation’, Drawing A2.5 ‘Proposed Rear Elevation’, Drawing A2.6 ‘Existing Left Side Elevation’, Drawing A2.7 ‘Proposed Left Side Elevation’, Drawing A3 ‘Proposed First & Second Floor Plan’, Drawing A4 ‘Existing First & Section Floor Plan’, Drawing A7 ‘Proposed Section A-A’ and Drawing A8 ‘Proposed Section B-B & C-C’ – Drawings dated 01/18/2017; and
- Drawing S1 ‘Existing and Proposed Foundation Plans’ – dated 11/09/2017 – all of the architectural plans have a Board date ‘received’ stamp of January 22, 2018.

Hearing:

Lauren McGourty reviewed the existing site and dwelling and explained proposed addition of dormers to increase the habitable space and to be able to relocate two of the four bedrooms currently on the first floor to the second floor along with the addition of a full bathroom, and to remove existing first floor deck and construct a sunroom in its place. The existing dwelling is a four-bedroom cape style dwelling that is on Town sewer and will remain a four-bedroom dwelling.

The Board discussed plans with Mr. and Mrs. McGourty. All concerns and questions were addressed.

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

Member Potamis made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 5 - 0.

Chairman Hurrie 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 16 Cypress Street in Teaticket contains 4,800 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to remove existing deck and replace with a sunroom and construct front and rear dormers for additional habitable space to the second floor of the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling has a nonconforming setback from the front porch of less than 25' which is required under Section 240-68 A. of the Code of Falmouth (Note: the setback to the front porch with three steps is not shown on the plan); and the existing deck has a nonconforming setback to the northwesterly side yard property line of 7.5' that requires a 10' setback under Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming as it currently exists at 26.4% which is greater than the 20% maximum allowed by right and the 25% maximum allowed by special permit. The applicant proposes to remove the existing nonconforming deck and construct a sunroom addition to the northwest corner of the dwelling that will be in compliance with the 10' setback, thus removing one nonconforming setback on the property. The proposed removal of the deck and construction of a sunroom will also decrease the nonconforming lot coverage by structures of 26.4% to 26.2% - a slight reduction.

The existing single-family dwelling has two (2) bedrooms located on the first floor and two (2) bedrooms on the second floor – four (4) bedrooms existing. The proposed plans show a renovation that will relocate the two first floor bedrooms to the second floor where head room will be added through the construction of dormers, and a full bathroom will be constructed on second level as well. The relocation of the two (2) bedrooms to the second floor will allow the creation of a den and a dining room where the two (2) bedrooms previously were located on the first floor. The den will be completely open to the dining area. The deck at the northwest corner of the dwelling will be removed and a sunroom constructed in its place.

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 removal of the existing deck and the addition of dormer(s) on the second floor on the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as the removal of the deck and construction of the sunroom will eliminate one (1) nonconforming setback (side yard) and slightly reduce the lot coverage by structures with no new nonconformities being created. The Board further finds that the proposed additions will improve and enhance the utilization of the dwelling for its occupants.

The Board finds that the subject property is served by the Town sewer and that there are four (4) bedrooms existing and four (4) bedrooms remaining in the dwelling through this special permit approval. The Board further finds that testimony by the applicants was that the basement is unfinished and there is no intent at this time to finish said basement.

The Board finds that there are several properties in the general area that are undergoing similar changes to existing dwellings and that the proposed changes to subject dwelling discussed herein are minimal with slight improvements to existing nonconformities and that said changes are in keeping with the neighborhood.

In addition to the above findings, the Board finds that the proposed deck removal, construction of a sunroom and dormer additions to the existing single-family dwelling is 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 changes represented herein as one (1) nonconforming setback to the side yard property line will be eliminated and the nonconforming lot coverage by structures will be slightly improved with no new nonconformities being created through said changes to subject dwelling.

B. The site is suitable for the proposed use as the property is zoned residential and the single-family dwelling on said property will remain a four-bedroom single-family dwelling 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 as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.

E. The subject property is served by Town sewer and plans submitted and reviewed by this Board show that the existing four-bedroom dwelling will remain a four-bedroom single-family dwelling.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed dwelling additions 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 additions to the existing 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 Potamis made a motion to Grant the Special Permit with conditions. Member Murphy 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 Paul Joseph McGourty and Lauren Ann McGourty, Trustees the P & L McGourty Trust (herein referred to as Applicants) under Section(s) 240-3 C. of the Code of Falmouth to remove existing deck and construct in its place a sunroom and construct front and rear dormers for additional habitable space in the pre-existing nonconforming single-family dwelling on subject property known as 16 Cypress Street, Teaticket, Massachusetts. This special permit shall be subject to the following conditions:

1. The removal of the existing deck, construction of a sunroom, addition of dormers to second level, all setbacks, lot coverage by structures and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Certified Plot Plan” for 16 Cypress Street Falmouth, MA as drawn by Collins Civil Engineering Group, Inc. dated 11/10/2017 – plan is stamped, signed and dated by Steven W. Rumba, PLS on 11/13/2017 and has a Board date ‘received’ stamp of January 22, 2018;
  - “Paul & Lauren McGourty 16 Cypress St Falmouth, MA” as drawn by Rockwood Design, Inc. consisting of:
    - o Drawing A2 ‘Existing Front Elevation’, Drawing A2.1 ‘Proposed Front Elevation’ – both dated 01/11/2018;
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    - o Drawing S1 ‘Existing and Proposed Foundation Plans’ – dated 11/09/2017 – all of the architectural plans have a Board date ‘received’ stamp of January 22, 2018.
2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no bedrooms or sleeping accommodations created within the basement space on subject property.
4. There shall be no bedrooms or sleeping accommodations created within the sunroom being constructed through this special permit approval.
5. The den shall remain open to the dining area with no less than a five foot (5’) opening.
6. 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.

7. The Applicant shall meet the requirements of the DPW Water Division.
8. 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.)
9. This permit shall lapse three (3) 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:

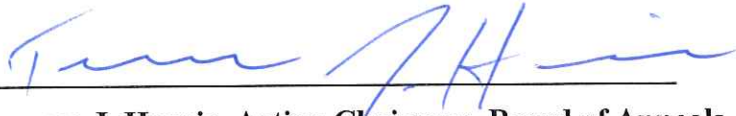
Special Permit Number:       **008-18**

Applicant:                       **PAUL JOSEPH McGOURTY & LAUREN ANN McGOURTY**  
  **Trustees of the P & L McGourty Trust**  
  **of Braintree, MA**

Subject Property:               **16 Cypress Street, Teaticket, Massachusetts**  
  **Map 39A Section 28 Parcel 000 Lot 121**

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, Acting Chairman, Board of Appeals**

RECEIVED

MAR 22 2018

FALMOUTH TOWN CLERK

*APC 12:05 pm*

**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.