

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 029-18

APPLICANT/OWNER: BRIAN MOORE MCGOURTY, TRUSTEE of the Brian Moore
McGourty Revocable Living Trust of Braintree, MA

SUBJECT PROPERTY: 18 Cypress Street, Teaticket, Massachusetts
Assessor's Map: Map 39A Section 28 Parcel 000 Lot 123

DEED/CERTIFICATE: Certificate 182796 – Lots 123 and 124 – Plan 4286-A (Plate 8)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 10, 2018, 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 raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 18 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 May 17, 2018.
4. The public hearing was closed on May 17, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate Gerald Potamis sitting as voting member, 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 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

05/08/2018 Email from abutter Trent Toran-Sandlin of 191 Maravista regarding submission of letter dated May 7, 2018 citing concerns about applicant's parking on their property and the increase to 4 bedrooms increasing dwelling with parking on the subject property (received original in mail). Sandlins' also submitted several photos of applicant's vehicles parking on Sandlin property

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

04/10/2018 Applicant submitted to the file a "Lot Coverage / Bulk Calculations" sheet and photos of homes in the neighborhood for Board review

05/10/2018 Letter from applicant Laura & Brian McGourty in response to abutter's (Sandlin's) submission of letter and photos

05/15/2018 Above letter (same letter) from Brian & Laura McGourty with different date of 5/15/2018 was emailed to ZBA and submitted to file

Letters/Referrals/E-mails from Town Departments

04/11/2018 Referral email from Amy Lowell, Wastewater Superintendent, was submitted to the file and informed the Board that the subject property is within the Town sewer district and requires updated plans and application before connecting to said sewer

04/11/2018 Referral submitted to the file by Planning Department staff with no comment

04/19/2018 Referral submitted to the file by Falmouth Fire Rescue Department with no comment

04/19/2018 Referral submitted to the file from Board of Health Agent that notes the property is on sewer – no health Department issues

04/19/2018 Referral submitted to the file from Water Department that states: *Property has existing 1" service off a 6" main.*

04/20/2018 Referral submitted to the file from Director of Assessing that states: *Includes lots 123 & 124*

05/07/2018 Referral submitted to the file from Town Engineering Department with standard comments and recommendation that applicant add drywells, rain garden or other stormwater measure for the roof

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

Plans submitted by Applicant/Applicant's Representative

"Certified Plot Plan 18 Cypress Street Falmouth, MA" prepared for Brian McGourty 15 Colby Road, Braintree, MA 02184 as drawn by Collins Civil Engineering Group, Inc. on a plan dated 2/8/18 with a final revision date of 4/11/18 – plan is stamped, signed and dated on 4/11/18 by Steven W. Rumba, PLS and has a Board date 'received' stamp of April 24, 2018; and

"McGourty Residence 18 Cypress St. Falmouth, MA 02540" plan drawn by Rockwood Design, Inc. and consisting of:

- Drawing A2 of A5 'Existing Elevations' dated 3/23/2018 with a Board date 'received' stamp of April 27, 2018;
- Drawing A3 of A5 'Existing Floor Plans' dated 3/23/2018 with a Board date 'received' stamp of April 10, 2018;
- Drawing A2.1 of A5 'Proposed Elevations' dated 3/23/2018 with a Board date 'received' stamp of April 27, 2018;
- Drawing A4 of A5 'Proposed Floor Plans' dated 3/23/2018 with a Board date 'received' stamp of April 10, 2018;
- Drawing A5 of A5 'Building Section A-A' dated 3/23/2018 with a Board date 'received' stamp of April 10, 2018; and
- Drawing S1 of S1 'Existing & Proposed Foundation Plans' dated 3/23/2018 with a Board date 'received' stamp of April 10, 2018.

Hearing:

Brian McGourty was present and reviewed the pre-existing nonconforming three-bedroom, one and one-half story dwelling that has nonconforming setbacks to the front yard and both side yard property lines. He explained that the reconstructed home, using existing foundation with addition of 8' to said foundation, will become a two-story, four-bedroom dwelling. He reviewed the plan showing the 4,800 square foot lot that has a nonconforming setback of 8.8' to the easterly property line that will be made conforming with a 12.5' setback due to the removal of the existing deck (even with the 8' addition to the foundation) and that the existing nonconforming lot coverage by structures of 26.1% will be reduced to 23.5% through the proposed reconstruction and removal of one (1) of the shed located in the northeast corner of the dwelling (the other shed in the northwest corner will remain). He noted that the existing 1.5 story dwelling to be razed has a height of 19.4' and the proposed two-story dwelling will have a height of 25'. The front yard nonconforming setback of 11.4' and the northwesterly side yard setback of 8.8' will remain as existing with no increase to the nonconformity.

The Board discussed plans with Mr. McGourty, including the parking issue that was raised by the owner of the property across on Cypress Street. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed project.

Trent Sandlin of 191 Maravista Avenue stated his concern that the applicant has historically parked his vehicles on Sandlin property. He noted that if they are increasing the bedrooms in the dwelling then will the traffic and parking increase.

Discussion regarding whether this portion is a private road or Town accepted. Cypress Street west of Maravista Avenue is found to be a private road. Trent Sandlin noted Land Court decision.

Louis Damelio of 24 Cypress Street stated that one of the issues he would like the Board to understand is that all the houses on this street are nonconforming and substandard size – there has been parking on the majority of the side streets in the Maravista area.

Board discussed parking concern with applicant and made a recommendation to create additional parking space at the front of his property and his side of private road.

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

Chairman Foreman 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 18 Cypress Street in Teaticket contains 4,800 square feet of Residential C zoned land located in the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze the pre-existing nonconforming 1.5 story, three-bedroom dwelling and construct a new two-story, four-bedroom single-family dwelling with improved nonconformities on subject property. The nonconforming front yard setback of 11.4', which requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth, will remain as currently existing and the nonconforming setback to the westerly side yard property line will remain at the existing 8.8' setback, which requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The nonconforming setback of 8.8' to the easterly side property will become 12.5',

bringing it into conformance with 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming at 26.1%, as the maximum by right is 20% by structures since Town Meeting in 2002 voted to reduce the then lot coverage by structures from 35% to 20%. The proposed reconstruction of the dwelling, removal of the exiting deck and removal of one (1) shed will reduce this nonconformity to 23.5% (Note: Section 240-69 E. of the Code of Falmouth allows lot coverage by structures to increase to not more than 25% through special permit from Board of Appeals).

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 reconstruction of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as one (1) nonconforming setback will be eliminated and the nonconforming lot coverage by structures now exceeding 25% will be reduced to 23.5% (within Section 240-69 E. requirements); and a shed at the northeast corner of the property that appears to have nonconforming setbacks will be removed, and not relocated. The Board further finds that the reconstruction of the dwelling will enhance the utilization of the property and dwelling by its occupants. Furthermore, the front yard and westerly side yard nonconforming setbacks, along with the shed in the northwest corner of the lot, will remain as existing with no increase to nonconformity.

The Board finds that the plan is to utilize the existing foundation and extend it easterly 8' for new dwelling. The Board further finds that there are no plans or stated intention to have a deck on subject property. It will be conditioned that any extension of an existing structure or addition of an accessory structure will be required to be filed as a modification of this special permit with the Board of Appeals.

The Board finds that the subject property is served by Town sewer. The Board further finds that the increase from three (3) bedrooms to four (4) bedrooms, as proposed, is allowed due to being served by the Town sewer.

The Board finds through testimony by an abutter and letter submitted to the file that there are concerns about parking along the roadway or on adjacent property by the applicant (including business trucks). The Board further finds that this area of Cypress Street is a private road and recommended to the applicant that parking of his vehicles be on his property or along the front of his property. Furthermore, the Board finds and stated that issues with the parking on adjacent property or within the roadway are civil issues between the parties and their legal counsel.

In addition to the above findings, the Board finds that the proposed reconstructed 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 single-family dwelling as it will eliminate one nonconforming setback, not increase existing nonconforming setback and reduce lot coverage by structures to below 25%.
- B. The site is suitable for the proposed use as the property is zoned residential and will be used and maintained as a single-family dwelling through the approval of this special permit.
- C. There may be minimal impact on traffic flow and safety as there will be an increase in bedrooms from three (3) to four (4) within the proposed dwelling; there is no change proposed 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 as verified by Board of Health referral.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed dwelling reconstruction 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 raze and reconstruction of the 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 Brian Moore McGourty, Trustee (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 18 Cypress Street, Teaticket, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of existing dwelling and deck, addition to foundation, removal of existing northeasterly shed, all setbacks, lot coverage, height of dwelling 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 18 Cypress Street Falmouth, MA” prepared for Brian McGourty 15 Colby Road, Braintree, MA 02184 as drawn by Collins Civil Engineering Group, Inc. on a plan dated 2/8/18 with a final revision date of 4/11/18 – plan is stamped, signed and dated on 4/11/18 by Steven W. Rumba, PLS and has a Board date ‘received’ stamp of April 24, 2018; and
 - “McGourty Residence 18 Cypress St. Falmouth, MA 02540” plan drawn by Rockwood Design, Inc. and consisting of:
 - Drawing A2 of A5 ‘Existing Elevations’ dated 3/23/2018 with a Board date ‘received’ stamp of April 27, 2018;
 - Drawing A3 of A5 ‘Existing Floor Plans’ dated 3/23/2018 with a Board date ‘received’ stamp of April 10, 2018;
 - Drawing A2.1 of A5 ‘Proposed Elevations’ dated 3/23/2018 with a Board date ‘received’ stamp of April 27, 2018;
 - Drawing A4 of A5 ‘Proposed Floor Plans’ dated 3/23/2018 with a Board date ‘received’ stamp of April 10, 2018;
 - Drawing A5 of A5 ‘Building Section A-A’ dated 3/23/2018 with a Board date ‘received’ stamp of April 10, 2018; and
 - Drawing S1 of S1 ‘Existing & Proposed Foundation Plans’ dated 3/23/2018 with a Board date ‘received’ stamp of April 10, 2018.
2. There shall be no occupancy of the fourth bedroom until such time that the property has been hooked to the Town sewer.

3. There shall be no more than four (4) bedrooms on subject property.
4. The shed at the northeasterly corner of the property shall be removed and not replaced. There shall only be the one existing shed in the northwest corner of the subject property.
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. 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.)
7. 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: **029-18**

Applicant: **BRIAN MOORE McGOURTY, TRUSTEE of Braintree, MA**

Subject Property: **18 Cypress Street, Teaticket, MA
Map 39A Section 28 Parcel 000 Lot 123**

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, Vice Chairman, Board of Appeals

RECEIVED

MAY 29 2018

EXHIBIT TO TOWN CLERK

add: 15am

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.