



# TOWN OF FALMOUTH

## ZONING BOARD OF APPEALS

59 TOWN HALL SQUARE, FALMOUTH, MA 02540  
508-495-7460 – FAX 508-495-7463

February 20, 2018

Zoning Board of Appeals  
Attn: Board Members  
59 Town Hall Square  
Falmouth, MA 02540

**RE: Minutes for Open Meeting held on February 8, 2018 at 6:30 PM in the Selectmen's Meeting Room in Town Hall.**

Dear Board Members:

The attached minutes as referenced above are respectfully submitted for the Board's approval and to be filed with the Town Clerk:

**Continuations – 6:30 PM:**

#099-17 - Maguire, 38 Worcester Ct., Falmouth (KF, TJ, KB, EVK, PM)

**Hearings:**

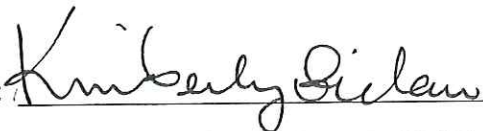
#121-17 - Kelly, 25 Harbor Avenue, Falmouth

#001-18 - Granite City Electric, 133 East Falmouth Highway, East Falmouth

**Open Meeting:**

1. Minutes – January 18, 2018 and January 25, 2018
2. Board discuss and review Draft Decision for #091-17 - Bogosian Development, 661 Main Street, Falmouth (KF, TJ, KB, EVK, PM)
3. "Procedural Rules" and "Policies"
4. Board Discussion/Update – Workshop 3/24/18 Agenda
5. Future Agenda Items

Kimberly Bielan, Clerk, Board of Appeals:



RECEIVED

MAR - 2 2018

Date Minutes filed with Town Clerk:

Town Clerk Stamp WITH TOWN CLERK

DOC 935 am

Respectfully submitted  
Ashley DeMello (Zoning Assistant), Recorder  
Sari Budrow, Zoning Administrator

Falmouth Zoning Board of Appeals  
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Selectmen's meeting Room, Falmouth Town Hall

Present: Terrence Hurrie (Acting Chair), Kimberly Bielan (Clerk), Ed Van Keuren, Robert Dugan, Gerald Potamis

Absent: Kenneth Foreman, Paul Murphy  
Sari Budrow-Zoning Administrator

*Continuations:*

**#099-17 Maguire, 38 Worcester CT., Falmouth**

Voting Members: Terrence Hurrie, Kimberly Bielan, Ed Van Keuren, Paul Murphy (Absent), Kenneth Foreman (Absent), R. Dugan (Alternate for P. Murphy), G. Potamis (Alternate for K. Foreman)

Received correspondence from Jonathan Polloni stating it will take more time for him to prepare the revised plans in time to submit to the board for review and asking to be extended from the February 8, 2018 to February 15, 2018. Revised plans will be submitted in time for February 15<sup>th</sup>.

K.Bielan mad a motion to continue application #099-17 to February 15, 2018 @ 6:30 PM. E. Van Keuren seconded the motion. Motion carried 5-0

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Sari Budrow-Zoning Administrator

*Hearings:*

**#121-17 Kelly, 25 Harbor Avenue, Falmouth  
Special Permit for commercial accommodations (B&B)**

Voting Members: T.Hurrie, K.Bielan, E.Van Keuren, R.Dugan, G.Potamis

K.Bielan read the "Notice of Public Hearing" and the following referrals into the record:

Engineering- Standard comments. The project must not direct any storm water runoff to any public property or abutters. Please post house number clearly.

Planning- No Comment

Fire Department- Must Comply with Chapter 9 of the mass building code.

Assessors- No Comment

Water Department- No comment

Correspondence-

- 18 letters in opposition.
- 7 letters with concerns comments.
- 5 letters with no opposition comments.
- 60 letters in support

Maureen Kelly is the applicant and the owner of the property. I am not here looking for a commercial zone change. I am before you asking for a special permit to operate a six room B & B on residential land in Falmouth at 25 Harbor Ave. The top concerns that have been brought to my attention are noise, trash and traffic. Trash will be in secured barrels that are underneath the back deck and out of the view of the abutters. You can see that on page three of the packet I distributed. There will be no dumpsters on property. A six-foot fence was erected in 2013 as a buffer to the neighbors. An additional group of Leyland Cypresses, approximately eight to ten plants, will be planted as a secondary buffer for the abutters. Shielding them from the parking area in addition to the existing trees on the left-hand side of the driveway. That's shown on page

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four of the packet. I've submitted a traffic map, page 2, which shows that Harvard Ave services several neighborhoods on Falmouth Heights and is often used as a connector to the beaches, ball park, Maravista Ave. and beyond. My family has run the Falmouth Heights Motor Lodge for over 50 years. We have coexisted with these neighbors for all these years without issue. Because we live on property we have opted to operate the lodge minimally. Thus, it remains seriously underdeveloped. I have received building permits for all the work being done. I've had the chance to research several B & B's in Falmouth. Most if not all, operate on residential zoned land, which is significantly lesser in size. We have two right here in Falmouth Heights that operate on residential land with special permit. One has ten rooms on approximately 1/4 acre. One operates four rooms on approximately 1/10 of an acre. I'm proposing six guestrooms on over an acre. The use is significantly less dense than other Inns and the property as a whole is being used minimally. Further, the structures are under 20% of the lot coverage and overall 40% thereby meeting the zoning bylaw requirements in a residential zone. A quick history. Mr. Williams, the previous owner of the subject property ran a business in the Falmouth Heights Corporation with the use of variance permit. He worked on motors of all types and manufactured softballs at one time. Most of what my family owns currently was owned by Mr. Williams. In fact, he built the motor lodge. One abutters stated there are dwellings on property. There is only one kitchen and then the proposed guest rooms. Lighting will not shine on two adjacent properties. As a single-family home owner, we had several options available to us. Transient rental for unrelated borders for dwelling units as apartment rentals or a B&B with special permitting. When we read the bylaws the special permit for a B&B suited us best. Falmouth guest rooms are diminishing. At one time there were over 2,000 guest rooms in the town. Now we have just over a thousand. This 50% decrease means less taxes for the town. Guests rooms generate tax dollars for the town. The bed tax pays into the general fund. As a licensed B&B we will be contributing to the overall tax base. Many of the residents are unaware of the definition of a transient rental. Transient rentals are rentals that rent nightly and are booked out over third party booking sites. The difference between me as an innkeeper and that of a transient rental operator is that they are almost always absentee owners. As an innkeeper there is control, management and oversight. Most of the time transient rentals do not contribute to the bed tax. Yet they enjoy all the luxuries of the town like curbside trash pickup, clean beaches, and manicured public lawns. Like ballparks for example. Speaking as a resident this is not good for our community. As someone who is before the ZBA asking for permission through the proper channels and contributing to the tax base. I am proposing to run a business that is registered, licensed and regulated. We have found it vital to maintain the character of the neighborhood by using light characteristics as those of our neighbors. Please see pages five and six of the packet. It's the before and after of the front house. Page seven of the packet shows the expansive backyard. There is 125 feet from the back building to the six foot fence which surrounds our entire property on the backside. Falmouth Heights is an area of historical mixed use as shown on page one. There is a marine district, a business district, and a residential district all coexisting for longer than I've been here. Falmouth Heights is being portrayed as this solely single-family

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residential neighborhood. It is not that. There are over 14 businesses operating in Falmouth Heights amongst single-family residences and condominiums. When I think of a solely single-family residential neighborhood Ballymeade is what comes to mind. I have many years of experience in hospitality. Having a regulated and licensed property allows me the ability to control occupancy, number of vehicles, and any other issues that may arise. We will be contributing to the tax base and we have a proven track record coexisting with our neighbors for over 50 years. I ask the board to approve this application for a special permit to operate a B&B at 25 Harbor Ave.

G.Potamis- Will you be living there or will anyone else be?

M.Kelly- No we don't plan on having anyone but I do live within 90 ft.

G.Potamis- There isn't a requirement for someone to live at the B&B?

M.Kelly- Not that I am aware of.

G.Potamis-The secured trash cans will be available?

M. Kelly- Yes.

K.Bielan- Can you walk us through day to day use? How you will anticipate renting it out? What services you'll use, marketing things like that. Also can you explain the layouts of each room?

M.Kelly- There will be a mix. The ones over the garage are a little bit larger so they will have two beds. Everything in the main house will have king size beds. It will have its own website and a link to the motor lodge so it's known both ways.

K.Bielan- Is it part of the motor lodge?

M.Kelly- Absolutely separate.

K.Bielan- Your staff at the motor lodge, will they be the ones performing housekeeping services?

M.Kelly- Probably not.

K.Bielan- There is only one kitchen in the main house?

M.Kelly- Correct.

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K.Bielan- Any exterior lighting besides what's on the structures?

M.Kelly- Only the ones that will be shining down on the staircase and parking for safety. Nothing else.

R.Dugan- What is the current capacity for the septic system?

M.Kelly- 6 bedroom capacity.

R.Dugan- Are there going to be any signs involved?

M.Kelly- Yes I would like to have a sign in front of the house.

G.Potamis- Would the sign be lighted?

M.Kelly- Yes. It would probably not be on 24 hours. If people find that distracting we can put it on the building.

G. Potamis- How will you be advertising? This is not a transient?

M. Kelly- Transient generally means operating under a different set of guidelines and regulations, very little in fact. No, not considered transient.

K.Bielan- How many garages are proposed?

M. Kelly- None. They are already existing There are 3 doors down on the first floor.

K.Bielan- What is the use?

M. Kelly- Currently it will be used for us.

K.Bielan- Will you maintain the garages?

M. Kelly- Yes.

K.Bielan- Will there be trash pickup, a dumpster?

M. Kelly- No dumpster, I intend to put the trash out each week.

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K. Bielan- Will it be open year round?

M. Kelly-Probably not.

T.Hurrie- The property is located on a decent amount of land. Will the outside be used for anything?

M.Kelly- Just lounge chairs and table. No intentions for anything else right now.

S.Budrow- Transient are homes in the area that rent out their own home on B&B. In the town of Falmouth your supposed to have a special permit from the Board of house in order to rent your house. But there is a substantial amount and that is what Ms. Kelly is talking about. That is what we are looking at. They are not licensed and not inspected.

M. Kelly- These are also already close to many of our neighbors already.

T.Hurrie- Touching base on the referrals. Engineering made the comment to contain all storm water on property. With your current plans do you think that will be so.

M. Kelly- It should.

T. Hurrie- From the Fire Department they made a note to comply with Chapter 9 of the Mass building code regarding fire protection.

M. Kelly- We replied to them and if they need us to do anything we will continue to talk to them regarding what they want.

Mark Cillphone, 58 Davis Road Falmouth. My wife and I are owners of La Cucina. We are in favor of the projects. They are very conscientious operators.

Linda Connors, 33 Harbor Ave. Opposed to the project. The 24 names opposed that I just handed you are all surrounding the property. Out of the 60 that are in favor of the project almost all do not live in the area. I wanted to know why they have waited three years before they applied for this permit? I took pictures of where they started. They put this door here. They put a dormer on and then I went to the town. After that they closed down for a couple months to get a permit. They always told us they were going to live there. They are trying to extend the motel. Do you see all this water here? The lights start at 4 and end at 7 am and they shine into my house. They have one on every single door. Garbage has been overflowing from a dumpster. The reason I am concerned is only permitted for a 4 bedroom septic. Seems like a Continuation of a hotel to me.

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M.Kelly- There are more than just one that are ok with the project. We didn't know what we wanted to do for some time. That is correct about the door but we went back to the town and got it corrected. The dormer was pre-existing it was before we have pictures. They asked us to correct the lights and we did. They asked us to take care of trash. Within one day that dumpster was moved. In order to build we need to have the equipment. There is a 6 bedroom septic on file. The trash cans I am proposing are on the opposite side of her. I can attest to the fact there are other B &B's in the area. One being 110 feet from Mrs. Connors.

G.Potamis- Would you be open to motion sensor lights minus any safety requirements?

M.Kelly- Of course.

G. Potamis- The picture I have does not show a dormer?

S. Budrow- Picture is in the file of the existing dormer.

M. Kelly- It has been existing since the house was built.

K.Bielen- You have not been using as a Bed and Breakfast yet?

M.Kelly- No.

Marjorie Johnson, 49 Harbor Ave. In opposition to the project. Is there a requirement for Bed and breakfast to be owner occupied and mass general laws do in fact state that.

K.Bielen- That is state general law and she will have to be licensed . That is not in our zoning purview. We don't maintain or enforce the general bylaws. We are here concerning the zoning aspect.

S. Budrow- If this is approved the board can condition that all other guidelines be followed.

M. Johnson-My understanding is that the parking is rented out for ferry parking. I want to make sure that this does not happen at this property. Where are they going to park the cars for six units?

T. Hurrie- Just for clarification on the parking for the ferry. Where do you say. That is occurring.

M.Johnson- My understanding is that they rent out spaces and I want to make sure it isn't on the property.



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S. Budrow- They rent out spaces at 0 Grand Ave. They have a special permit.

M.Kelly- If it is a law that I need to have someone live there I will address with whoever requires that. Regarding parking we intend to have on car. It is rare for guest to bring two cars. We ask them to park in the permitted parking lot.

T.Hurrie- How many parking spaces are there proposed?

M. Kelly-Eight plus one handicapped spot. Nine total.

Dan Roy, 22 Harbor Ave. Opposed to the project. We do get along with the applicant. I do believe this impacts our quality of life though. Is it ok to convert a garage into a living room?

S. Budrow- It is up to the board and has been done before.

D.Roy- The existing main dwelling was a single family will now be converted into apartments. I don't how many there are?

K. Bielan- You've said apartments, dwelling and living areas. I just want to clarify that these are bedrooms.

D. Roy- Do they have a separate bathrooms and entrances?

S. Budrow-This is not a dwelling. A dwelling unit is considered habitable space with a kitchen. It is the general structure that a bed and breakfast is. These are bedrooms.

D. Roy- Regarding safety with car traffic. By my count there are 6 spots per dwelling on Harbor Ave. You add more 4 more spots and the traffic will increase. The state laws talks about parties and interest. You mention that there were 60 in support but they are not parties in interest. Some did not have addresses on them. By my count there are 24 in interest.

K. Bielan- Parties and Interest has to do with who we notify. We notify everyone within 300 feet. We have received 60 letters and by no means are being misleading in saying so.

S. Budrow- Mass general law is that we have to notify people within 300 feet. They get the notified. It doesn't mean we can't take letters from any distance into consideration.

D. Roy- I'd ask that you consider the people who live nearby. I have a problem with the garage being used as units.

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Eleanor Hickey, My family has owned 20 Central Park Avenue for 50 years. My parents purchased our cottage and I'm here in opposition. My family and I are opposed to granting this special permit. This is a residential neighborhood and should not be turned commercial. I also believe that the door is a fire safety hazard.

Susan Donahue, 39 Harbor Ave. The neighborhood is beautiful we take pride of the property. We have three pages going back to 2005. There is no permit stating 6 bedrooms is allowed. Only 4 bedrooms, so why are we talking about 6 bedrooms when it clearly states only 4. This paperwork is through 1/16/2018 so I do not think it was missed.

M.Kelly- Originally we did not know what we wanted to do with the house. We started with 4 bedrooms. Things changed and we realized that we are good operators of a hotel. We decided we would go again to add 2 bedrooms and that is how we got to 6 bedrooms.

G.Potamis- Do you have a certificate for a 6 bedroom septic?

M.Kelly- Yes. The paperwork should be there. It was signed off by the board of health.

Denise Harley, 6 Central Park court- Opposed to the project. There is what appears to be a deck off the back I would like to know what the use is going to be. I would like to know what the access will be like for people getting to the beach. There is already a ton of foot traffic. The fence does not appear to go all the way around.

M.Kelly- There is a fence that surrounds all three sides. We would propose for them to walk out onto Central Avenue. The deck is on the far side of this neighbor's house.

Paul Connors, 33 Harbor Road- Opposed to the project. I want to mention that the lights are still on even after we asked for them to be taken care of it and they said they would.

M. Kelly-My husband did say that we did address that lights. If there is something else that we need to do we are willing. We have responsiveness. These folks bought in a mixed use area. They have transient rental within 100 feet. There is a 3 bedroom that is sleeping 10 people. I have some control.

Paula Lictor, Davis avenue. I am speaking for myself not the Falmouth Heights Association. I am neutral to the project. It is confusing because of the commercial. I am worried about future commercial use since it is so large. It was filed under 240-23a which is commercial. Is there a better code that this might be accomplished under. If approved under 240-23A would you condition it against commercial use? It will protect.

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S. Budrow-There is not a better code. The town has grouped that together.

K. B-This isn't a spring board to every commercial use. It is not a zoning change. This is a special permit use. If we allow we condition all of our special permit uses.

M. Kelly-We have put in all grass and sprinklers so we are not asking for permission to do anything else.

E. Hickey- Regarding the storm water. Will there be a engineer that will looking at it. There were alot of trees taken down and I was surprised because of the fence. The garage is overwhelming as well as all the pavement. I was surprised about the board of health. How many septic's are there?

T. Hurrie- One.

S. Budrow- It will need to be approved by the Board of Health.

T. Hurrie - We do go by other department referrals . We do require drywells to be installed on the property.

E. Hickey- I was taken aback when I saw the fence. There is a door above the garage. It is a very different look and feel. We need to be cautious about the quality of water. Adding commercial pressure in a residential area then we need to the water supply is precious.

M.Kelly- Fence been up since 2013. The brush has been gradually cleared out. The front house is cottage style. We are keeping in style of the neighborhood. We do not change the water pressure for guest rooms.

G. Potamis- Are you okay with to drywall?

M. Kelly- Yes there is plenty of room.

Margaret Murphy-36 Grand Avenue. In opposition to the project. This is a very residential area. My neighbors, we are all year round residents. We have not been served.

K. Bielan- I want note in regards to storm water. Proposed 9.5% where 20% is allowed. Proposed total lot coverage of 18.3% where 40% is allowed. Fairly low for what we see in Falmouth heights. Would like to see a landscape plan with more greenery. I would like some more detail on separation between the motel and the Inn. I would like to see something certifying

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the referral from the board of health. I also would like to see the applicant review storm water containment and contact an engineer.

R. Dugan- The size of the lot in the heights which is not usually seen in the heights. When you turn down Harbor Ave. you see that it fits in with the neighborhood. It is not a commercial zoning change. There are rentals in the area. The screening idea is a good idea. Make sure the lighting go down on site. Work on the lighting. I think there is a lot of minimal changes. I don't see anything wrong with engineering on the water run-off. There is nothing major. This is minimal. There is enough parking. They have stayed on the minimal side. Landscape, storm water and sign information would be good to see.

K. Bielan made a motion to continue to March 1st at 6pm. E. Van Keuren seconded the motion.  
Motion carried 5-0

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**#001-18- Granite City Electric, 133 East Falmouth Highway, East Falmouth  
Special Permit for Temporary storage container (yearly permit)**

Voting Members: T.Hurrie, K.Bielan, E.Van Keuren, R.Dugan, G.Potamis

K.Bielan read the "Notice of Public Hearing" and the following referrals into the record:

Engineering- Standard Comment

Fire Department- No Comment

Assessor- No Comment

Planning- No Comment

John Druly is representing the applicant. The applicant would like to have an outdoor storage in a trailer for special delivery things that cannot be stored inside. New tenant the building has been empty. We have applied under 240-50 which we are hoping to be able to use. If not we also applied under 240-160.

K.Bielan- Why is it located there?

J.Druly-It is where it was put when it was dropped. We can move it anywhere but it is convenient because the doors are there to the building.

K.Bielan- Employee Parking?

J.Druly- 32 spaces. Also they are concerned about theft if they did move the trailer out back.

K.Bielan- Any other storage outside?

J.Druly- No

K. Bielan- What are the Hours of operation?

J.Druly- Hours are 7:00 AM-5:00 PM, Monday – Friday.

G.Potamis- The trailer is pretty unattractive. Could there be a stockade fence or a shed?

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J. Druly-I would have to ask. I don't think they could build a fence or shed because of the size of the trailer. I think worse case would be to put it in the back.

T.Hurrie- I believe the trailer is taking up 2-3 places. Is there adequate parking?

J. Druly- Yes.

T. Hurrie- People that come do not have trouble navigating the parking lot?

J. Druly- No. Also regarding where the trailer is they have a substantial nightlight which the like for security.

S. Budrow- I don't see how you can do it under 240-50 unless the built a shed. They would have to come back every year under 240-160.

K.Bielan-How long is the lease?

J.Druly- 10 years.

E.Van Keuren- If they built the shed. Would that be easier?

K.Bielan- I think a shed would be more attractive.

E. Van Keuren- It would be more appealing.

K.Bielan- Approve for a year under 240-160. It is a good location for them but I would like to see it further back in the property .

S. Budrow- I do understand his concern with lighting.

K. Bielan- It is locked and not open at night though.

E.Van Keuren- There is not a lot of traffic.

G.Potamis- I can see giving it a year and not having moved it.

K.Bielan- No one feels strongly about the location?

E. Van Keuren- There isn't a lot of traffic.

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G.Potamis made a motion to close the hearing. E.Van Keuren seconded the motion. Motion carried 5-0.

G. Potamis made a motion to approve hearing #001-18 pursuant to 240-160A. Motion seconded by K. Bielan. Motioned carried 5-0

Findings:

- 1) Testimony was that increased utilization for the tenant.
- 2) Current location it's near the light for security and ease of access.
- 3) Sufficient parking.
- 4) Applied under 240-50 as well as 240-160. The Board determined it more appropriate to approve under 240-160A for one year.

Conditions:

- 1) Per plans.
- 2) Reapply in one year and submit application 3 months before the expirations.

Motion Carried 5-0

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**Open Meeting:**

- 1) Minutes of January 18, 2018 and January 25, 2018;  
R. Dugan made a motion to approve minutes from January 18, 2018 and January 25, 2018. E. Van Keuren seconded the motion.
- 2) Board discuss and review Draft Decision for #091-17- Bogosian Development, 661 Main Street, Falmouth

Voting Members: T. Hurrie, K. Bielan, E. Van Keuren, R. Dugan, P. Murphy (Absent)

S. Budrow-I gave all of you the draft decision. I had emailed all the members on the parking and the striped spaces. All looks good Kevin?

Kevin Klau- Yes.

K. Bielan- For 7 can we say they will stripe all spaces?

S. Budrow- Yes I will correct. I think I captured everything else. Please make sure findings are all set.

K. Bielan made a motion to approve application #091-17 as written by Sari Budrow. E. Van Keuren seconded the motion. Motion carried 4-0 with the absence of P. Murphy.

- 3) "Procedural Rules and Polices"-Tabled
- 4) Board Discussion Update- Workshop 3/24/18 Agenda
  - A. T. Hurrie- Read an email that K. Foreman received by Jean Sousa asking if there is any if the board would email Jim fox with any questions or concerns that you would deem to be important regarding the search for a Town planner by Feb 9th.  
  
R. Dugan- I think it is important for the planner to have residency in the town. I think it should be required within six months to obtain residency in Falmouth.  
  
K. Bielan- From a zoning stand point I know I haven't had much contact with the Town Planner and we are fortunate to have a Zoning Administrator. There are



Falmouth Zoning Board of Appeals  
Minutes of February 8, 2018 @ 6:30 PM  
Selectmen's meeting Room, Falmouth Town Hall

Present: Terrence Hurrie (Acting Chair), Kimberly Bielan (Clerk), Ed Van Keuren, Robert Dugan, Gerald Potamis  
Absent: Kenneth Foreman, Paul Murphy  
Sari Budrow-Zoning Administrator

certain things that concern Falmouth that are going to be different from other towns.

S. Budrow- I'm sure they will take in to concern someone that is familiar with the housing production plan. Especially 40B's . I'm sure every town planner is aware

E.Van Keuren-We don't have a housing production pan.

K. Bielan- It is so crucial because we have this accessory department bylaw.

S. Budrow- The housing coordinator has been helping with that. It is so crucial and we hear so much, we need a game plan. Please send me an email with all of your questions tomorrow and I will forward.

B. Proposed speaker for March 24th.

S. Budrow- I do believe that we need more 40B education and to get our procedures updated. It's not happening and a few things need to be changed. Foreman and I are working on an agenda for March 24<sup>th</sup>.

5) Future Agenda Items- None

Respectfully Submitted,  
Meghan Petitti, Recording Secretary