

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

SPECIAL PERMIT NO: 119-17

APPLICANT/OWNER: JAMES M. TRODDEN of Falmouth, MA

SUBJECT PROPERTY: 51 Main Street, Falmouth, Massachusetts
Assessor's Map: Map 47A Section 07 Parcel 059 Lot 007

DEED/CERTIFICATE: Certificate 169791 – Lot 7, Plan 16512-F

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 19, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 A. of the Code of Falmouth to allow the continued use of an existing Bed and Breakfast operation on subject property known as 51 Main Street, 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 February 15, 2018.
4. The public hearing was closed on February 15, 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

12/26/2017	E-mail submitted to the file received from Kevin and Trish Robinson of 27 Main Street stating support of the proposed application
01/05/2018	E-mail submitted to the file received from James Johnson of 57 Main Street stating support of the proposed application
01/17/2018	E-mail submitted to the file received from Nan Casselbury of 47 Main Street endorsing the proposed application
02/01/2018	E-mail submitted to the file received from Alice Town of 31 Siders Lane support of the proposed application

02/02/2018 E-mail submitted to the file received from Colonel James L. Tow of 31 Siders Lane to the ZBA stating support of the proposed "Inn at Siders Lane" applicant

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

None

Letters/Referrals/E-mails from Town Departments

12/21/2017 Referral submitted to the file from Historical Commission stating: *If applicant is proposing any exterior changes/work, he needs to apply to the Historical Commission.*

12/22/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment

01/03/2018 Referral submitted to the file from Director of Assessing 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, Historical Commission and Water Department

Plans submitted by Applicant/Applicant's Representative

"Plot Plan" prepared for Ron and Barbara Stutzman in Falmouth, MASS as drawn by Holmes and McGrath, Inc. dated September 22, 1992 – plan is stamped and signed by Michael B. McGrath, PE and PLS with a Board date 'receive' stamp of December 19, 2017; and

"Sketch Addendum" showing first and second floor plan of subject structure as a B & B with a Board date 'received' stamp of December 19, 2017 – attached are photos of the existing structure.

Hearing:

James Trodden, applicant and owner of subject property and existing four room Bed and Breakfast, reviewed the property noting that he and his wife are fulltime residents of subject property, that it has been in existence for fifteen (15) years and that the Bed and Breakfast operates from May to October. He stated that the property is within a Residential District and they have on-site parking.

The Board discussed the Bed and Breakfast operation with Mr. Trodden. Zoning Administrator explained that the applicants did not have previous special permit approval and that the Town is reviewing all commercial accommodations for appropriate permitting. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed project. Kevin Robinson of the Captain's Manor (27 Main Street) spoke in support of the application.

Member Van Keuren made a motion to close the hearing. Member Murphy 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 51 Main Street in Falmouth contains 18,394 square feet of General Residence zoned land that is located within the Siders Pond Coastal Pond Overlay District and the Historic District. The applicant applied under Section(s) 240-23 A. of the Code of Falmouth to allow continued use of the existing Bed and Breakfast [commercial accommodations] on subject property. The Bed and Breakfast has been existing and operating for approximately fifteen (15) years by the applicant. The applicant was unaware the Town requires a special permit for this use. The four bedroom Bed and Breakfast operates from May to October every year. There is appropriate parking on site behind the structure. There were five letters of support from abutters in the file. There are no proposed changes to the structure or use through this application.

Section 240-23 A. of the Code of Falmouth allows the Board of Appeals to approve a special permit for commercial accommodations pursuant to Section 240-216 and other relevant sections of the chapter.

The Board finds that the Bed and Breakfast has been existing and operating for fifteen (15) years by the applicant without any violation or complaint. The Board further finds that the applicants reside on subject property and maintain the operation.

In addition to the above findings, the Board finds that the Bed and Breakfast 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 as it is located in the downtown area, the proposed will not create any nonconformity on site and has on-site parking.
- B. The site is suitable for the proposed use as the property is zoned General Residence in the downtown of Falmouth and is allowed through a special permit from the Board of Appeals.
- 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 unchanged 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. The sewage disposal system is in place and unaffected through this special permit approval.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The Bed and Breakfast 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 continued use of the Bed and Breakfast on subject property 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 Murphy made a motion to Grant the Special Permit with conditions. Member Hurrie 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 a Special Permit** to James M. Trodden (herein referred to as Applicant) under Section(s) 240-23 A. of the Code of Falmouth to allow a Bed & Breakfast operation on subject property known as 51 Main Street, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The Bed and Breakfast and number of bedrooms on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plot Plan” prepared for Ron and Barbara Stutzman in Falmouth, MASS as drawn by Holmes and McGrath, Inc. dated September 22, 1992 – plan is stamped and signed by Michael B. McGrath, PE and PLS with a Board date ‘receive’ stamp of December 19, 2017; and
 - “Sketch Addendum” showing first and second floor plan of subject structure as a B & B with a Board date ‘received’ stamp of December 19, 2017 – attached are photos of the existing structure.
2. The applicant and all heirs or designees shall insure that the Bed and Breakfast will comply with all permitting as required by the Town of Falmouth.
3. 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.
4. 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.)
5. 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: **119-17**

Applicant: **JAMES M. TRODDEN of Falmouth, MA**

Subject Property: **51 Main Street, Falmouth, Massachusetts
Map 47A Section 07 Parcel 059 Lot 007**

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

FEB 22 2018

FALMOUTH TOWN CLERK

ape410pm

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.