

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 121-17
APPLICANT/OWNER: MAUREEN B. KELLY of Falmouth, Massachusetts
SUBJECT PROPERTY: 25 Harbor Avenue, Falmouth, Massachusetts
Assessor's Map: Map 46B Section 11 Parcel 010 Lot 000
DEED/CERTIFICATE: Book 27505 / Page 111
SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 21, 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 commercial accommodations to operate a Bed and Breakfast on subject property known as 25 Harbor Avenue, 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 8, 2018.
4. The public hearing was closed on March 1, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Alternates Gerald Potamis and Robert Dugan (sitting as voting members) made a decision to direct the Zoning Administrator to draft a positive Decision for the Board's review and possible vote. Zoning Administrator Budrow stated that she will draft a decision and post it in the open meeting for March 15, 2018 for Board review.
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

A substantial amount of emails and letters were been submitted to the file as follows (see file for names and addresses):

Received in Support of proposed Bed & Breakfast - 64

Received in Opposition of proposed Bed & Breakfast - 19
 Received comments concerning proposed Bed & Breakfast - 13

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

- 12/21/2017 Applicant submitted photos of existing dwelling and garage structures on subject property to be used for proposed Bed and Breakfast and a note stating additional buffering in the form of a Leyland Cyprus' as secondary to existing six foot (6') fence
- 01/12/2017 Applicant submitted a response to the Falmouth Fire Rescue referral submitted to the file
- 01/18/2018 Applicant submitted a revised "Site Plan" for Proposed Parking with a revision date of 8/7/2017
- 01/30/2018 Applicant submitted a letter to the Board of Appeals regarding comments in letters submitted regarding a 'zoning change' and gave addresses of rentals in the neighborhood and reviews and lists existing commercial entities that have existed for several years in the neighborhood that is stated to be only 'residential'
- 02/05/2018 Applicant submitted a map of the general neighborhood of subject property showing traffic patterns to the areas diners, bars and businesses existing currently
- 02/05/2018 Applicant submitted a map of the general area showing the Business 3 Districts in the area of the subject property as well as transient rental homes (14 total) in the area noting the mixed use in said neighborhood
- 02/06/2018 Applicant submitted information sheet dated February 5, 2018 that notes density and lot size by other Bed & Breakfasts in the general area in comparison with subject property
- 02/11/2018 From 02/11/2018 to 02/26/2018 Applicant submitted several emails with photos of the site relative to lighting and water concerns raised by abutters
- 02/27/2018 Email letter from applicant to Zoning Board regarding issues brought up at previous hearing: lighting, water, screening/buffering and noise

Letters/Referrals/E-mails from Town Departments

- 12/21/2017 ZBA staff submitted to the file a copy of an Appeal of the Building Commissioner's determination regarding the garage – the Appeal was upheld and a garage was allowed to be constructed with a setback of no less than 25' from the house – Appeal Decision dated 11/25/1974
- 12/21/2017 ZBA staff submitted to the file a copy of an Administrative Approval dated February 29, 2016 for covered porches to the front and rear of the existing dwelling on subject property

- 12/22/2017 ZBA staff submitted to the file a copy of an Administrative Approval dated December 21, 2017 for construction of dormers and a deck addition to the existing detached garage structure on subject property
- 01/03/2018 Referral submitted to the file from Water Superintendent with no comment
- 01/03/2018 Referral submitted to the file from the Director of Assessing with no comment
- 01/04/2018 Referral submitted to the file from Lt. Mel Trott of Falmouth Fire Rescue Department that states the building has to comply with Chapter 9 of the Massachusetts Building Code Fire Protection Systems.
- 01/05/2018 Referral submitted to the file from the Planning Department staff that has no comment
- 01/18/2018 Referral submitted to the file from the Town Engineering Department with standard comments and noting that the house number must be posted clearly
- 01/29/2018 ZBA staff submitted to the file a copy of a Quitclaim Deed conveying subject property from Falmouth Heights Corporation (H. Williams) to applicants dated 6/27/2013

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

“Site Plan Proposed Parking” prepared for Maureen Kelly 25 Harbor Ave. Falmouth Village Falmouth, MA as drawn by Warwick & Associates Inc. on a plan dated 3/22/2016 with a revision date of 1/18/2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 1/22/2018 and has a Board date ‘received’ stamp of January 25, 2018;

“Site Plan Proposed Parking for Maureen Kelly 25 Harbor Ave. Falmouth Village, Falmouth, MA” plan drawn by Warwick & Associates Inc. with a revised date of 1/18/2018 – the applicant has drawn landscape plan on this “Site Plan” with ‘key’ of plan at top of page – plan has a Board date ‘received’ stamp of February 28, 2018;

“Interior Renovation Design Tim Kelly, 25 Harbor Ave. Falmouth, MA” Drawing A1 drawn by Architecture by SPB dated 6/29/2016 with a Board date ‘received’ stamp of December 21, 2017; and

“Custom Remodel Kelly Garage Dormer Design 25 Harbor Falmouth, MA” drawn by Designs by SPB consisting of: Drawing A1 Elevations, Drawing A2 Floor Plans, Drawing S1 Framing Plans, Drawing D1 Construction Details – all Drawings have a revision date of 12/21/17 and a Board date ‘received’ stamp of December 29, 2017.

Hearing February 8, 2018:

Maureen Kelly, applicant and owner of subject property reviewed the application requesting to operate a Bed and Breakfast on subject property. The existing dwelling has four (4) bedrooms and the detached garage structure will have two (2) bedrooms for the commercial accommodations if approved by the Board. She noted proposed parking for customers and said there will be no dumpsters on site (dumpster existing for construction materials currently). She reviewed the proposed Leyland Cypress trees that will buffer proposed parking spaces so as not to shine lights on adjacent properties; the existing 6' fence along the property lines around subject property for additional screening of lighting on the property that will be maintained. She stated that the proposed Bed and Breakfast Inn would not be part of the existing motel on adjacent property that they also own, but that this Bed and Breakfast would be a separate entity. Traffic will be minimal as some of the clientele will come from the nearby ferry service which is within walking distance; or by taxi. The proposed Bed and Breakfast is two lots off from Falmouth Heights Road which is a well-traveled road regardless of the season, but is more traveled in the summer season because of its proximity to the ocean and restaurants along the shoreline. She responded to comments made by abutters to the effect that this commercial use would impact the residential neighborhood. She then noted that all properties abutting the west of subject property are zoned Business 3 and that the majority of the properties along Falmouth Heights Road (2 properties over from the west of this property) are commercial uses [she named MacDougall's Marina, Shanty Restaurant, Residential Inn, Island Queen Ferry Service, and a condominium complex). The properties on the east side of the subject property are primarily residential although quite a few are rented during the summer season. Mrs. Kelly stated that they have been in the hospitality service for over 20 years and the motel adjacent to subject property has been in existence and cohabitating with the neighbors for over 50 years.

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

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

Mark Cilfone of 58 Davis Road in Falmouth spoke in support of the proposed Bed and Breakfast. He is the owner of La Cucina Sul Mare and has known the applicant for several years.

Linda Connors of 33 Harbor Avenue in Falmouth spoke in opposition to the project. She cited that out of the sixty (60) letters in support of the project, most do not live in the neighborhood. She spoke on lights from subject property, dumpster on site and concern of noise and traffic that a Bed and Breakfast would generate.

Marjorie Johnson of 49 Harbor Avenue in Falmouth spoke in opposition stating that there is a requirement in the State of Massachusetts for a Bed and Breakfast owner to be owner occupied. Ms. Johnson stated that the applicant owns a nearby parking lot as well and wanted to make sure that none of that parking will be on subject property.

Zoning Administrator Budrow informed Ms. Johnson that the property owned by the applicant to the south of subject property, known as 0 Grand Avenue, has a Special Permit to allow parking of boats during winter months and vehicles during spring and summer.

Daniel Roy of 22 Harbor Avenue in Falmouth stated opposition to the project stating that they do not get along with the applicant and he believes the Bed and Breakfast will impact their quality of life. He

further suggested that the dwelling is being converted into four apartments. He further stated concern with traffic and parking on site. He had concern with letters of support.

Member Bielan explained that Mr. Roy has stated apartments, dwelling and living areas; she clarified that there are four bedrooms in the principal dwelling not dwelling units or apartments.

Eleanor Hickey of 20 Central Park Avenue stating opposition citing this is a residential neighborhood and should not be turned into commercial use. She asked about stormwater management on site as several trees on the one acre site were removed.

Susan Donahue of 39 Harbor Avenue questioned six (6) bedrooms noting that the dwelling has four (4). She stated that they take pride in their neighborhood.

Paula Lichter of Deacons Avenue in Falmouth stated she is neutral to the proposal but worried about future commercial use as it appears to be large.

Margaret Murphy of 36 Grand Avenue stated opposition noting that this is a residential area and we are all year round residents.

Member Bielan stated that the proposed is not a 'springboard' for every commercial use. If approved it will be a Bed and Breakfast use only, which is allowed in a residential district through a special permit granted by this Board.

The Board discussed the proposed and asked the applicant for more information on stormwater containment on site, lighting, landscaping and Board of Health referral or comment regarding six (6) bedroom use.

Member Bielan made a motion to continue the hearing to March 1, 2018 at 6:00 pm. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Hearing March 1, 2018:

Maureen Kelly, applicant and owner, reviewed the items the Board requested more information on. She said that the lighting has been changed from 60 watts to 40 watt bulbs, all lights are shining down and that all motion detectors have been repaired. She stated that she will affix the standard sized sign on the front of the structure (rather than have a freestanding sign) and has a landscape plan showing Leyland Cypress trees around the west and south property lines as additional buffering to the existing 6' fence. She noted that there are two (2) French drains at the back of the garage building, gutters will be added to the garage building as well and there is a drywell to the left of the driveway; the front building already has French drains and gutters. She informed the Board that she has hired an on-site manager who will reside in one of the bedrooms of the Bed and Breakfast, that she is anticipating staying operational year-round and that 'quiet time' for the business will be from 10:00 PM to 9:00 AM.

Attorney Laura Moynihan was present on behalf of the applicant and reviewed the state and local regulations of a Bed and Breakfast and the different criteria of a lodging house, inn or bed and breakfast. It was noted at previous hearing that an abutter stated that the State requires a Bed and Breakfast to be owner occupied. Attorney Moynihan explained that that is not the case and reviewed Chapter 140

Section 23 and Chapter 64 G of M.G. Laws, pursuant to which the Board of Selectmen license uses such as this. Attorney Moynihan noted for the record that there are condominiums, motels, boatyards, home occupations, homes being rented out seasonally all in close proximity to this particular property and neighborhood. She stated that residential zoning itself is not a guarantee of single-family dwelling uses only; there are many other potential business uses allowed in a residential district by right such as group day care homes, child care centers, sober houses, schools, churches, museums, libraries, nonprofit educational institutions.

Member Bielan informed the attending public that the licensing of the Bed and Breakfast is not within the purview of the Board of Appeals.

Chairman Hurrie asked if there was any public comment in support or opposition.

Linda Connors, abutter at 33 Harbor Avenue, reiterated that she wants to make sure the applicants keep the yard nice and that she is concerned as the applicant is in Florida part of the year.

David Lions of 4 Montgomery Court spoke in favor of the project noting that 'The Heights' is a place of destination and small cottages are being removed with large houses put in their place. New people come into the area, but in this case this is someone that has history with 'The Heights' and has been responsible. He further stated he is speaking for himself and not of an employee of the limousine service of the applicant's husband.

Marjorie Johnson of 49A Harbor Avenue (condominium complex) stating her concern is the request for commercial accommodations. She noted the definitions of a Bed and Breakfast in Mass General Law and just wants to make sure what is being permitted is regulated. She is also concerned of owner living off site.

Attorney Moynihan stated in response that in terms of looking at all the uses that are going on in this particular neighborhood, the submission that the Board has received is that of a quiet single-family neighborhood, which is really not correct. You have other rental uses going on in the neighborhood; there has been a lodging house use at 8 Harbor Avenue that went on for twenty (20) or more years and operated during that time by an abutter in opposition to this application. Attorney Moynihan stated that the Zoning Board's role is to apply the bylaws and in this application you have the standards of density being met – you have a lot that is over an acre in size; and you have other rental uses existing in the neighborhood – including seasonal rentals of dwellings. The bylaw standard is that the proposed use will not have adverse effects which over balance its beneficial effects on either the neighborhood or the Town. Are there adverse effects? We are submitting that there are no adverse impacts. The applicants have greatly improved the integrity and character of the dwelling and garage structure on subject property; they have operated and owned a nearby motel for many years; and this commercial accommodation will be an economic benefit to the Town, the tax base and the economic vitality of this neighborhood and the Town as a whole. Attorney Moynihan said in closing that they ask the Board to grant the special permit as requested.

The Board members discussed the application and plans for the proposed Bed and Breakfast.

Member Bielan made a motion to close the hearing. Member Van Keuren 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 25 Harbor Avenue in Falmouth (Falmouth Heights) contains 49,036 square feet of Residential C zoned land that is not located within any coastal overlay district. The existing structures on subject property (dwelling and detached garage) are in compliance with Sections 240-68 A. and B. of the Code of Falmouth (setbacks), and the lot coverage on subject property is in compliance with Section 240-69 A. and of the Code of Falmouth. The applicant applied under Section(s) 240-23 A. of the Code of Falmouth to allow commercial accommodations as a Bed and Breakfast in an existing dwelling and detached garage on subject property. The dwelling has four (4) existing bedrooms and the applicant is proposing two (2) additional bedrooms within the detached garage structure. The detached garage structure was constructed after the previous owner, Howard Williams, filed an Appeal/Variance in 1974 with the Board of Appeals (refusal from Building Inspector) for permission to erect a detached garage with storage space on subject property. The Board voted in favor of the applicant with only one (1) condition: "Garage must be setback from the house at least 25'." The applicant gave history from 1965 of the property wherein Mr. Williams (previous owner) constructed the existing dwelling and after construction of the detached garage in 1974/75, made soft balls and did mechanical and other repairs within the garage structure for many years.

Section 240-23 of the Code of Falmouth – "Special permit uses." states: *The special permit granting authority for the following uses shall be the Board of Appeals except where noted otherwise in this Chapter: A. Commercial accommodations. (See Article XXVII.)*

The Board finds that the application is appropriately before the Board of Appeals based on Section 240-23 of the Code of Falmouth. The Board further finds that they have reviewed and considered Section 240-142 "Cooking Facilities" under Article XXVII before making a determination on this application. Furthermore, the Board finds that the proposed guest rooms within the Bed and Breakfast may have a coffee pot, refrigerator and sink, but the guest rooms, as conditioned herein, will not be allowed any cooking facility which shall include a microwave, hot plate, toaster oven or any other food preparation appliances.

The Board finds that the proposed Bed and Breakfast operation on subject property will not adversely impact the neighborhood as there are other nearby and abutting businesses in the general neighborhood (see file for establishments listed by applicant and submitted on January 30, 2018). The Board further finds through research that some of the properties in close proximity to the proposed Bed and Breakfast have seasonal rentals; this fact was also noted by the applicant in the same document noted herein. Furthermore, the Board finds, as noted by applicant's attorney (Laura Moynihan), that 8 Harbor Avenue (owned by S. Livingston since 1984) that is located across the roadway and one property down from subject property, had previously operated a lodging house for more than twenty (20) years (until approximately 2013) on a lot that is smaller than the subject property and that said lodging house co-existed with the neighborhood.

The Board finds that the traffic impacts will be only negligible, if any, given the preponderance of pedestrian use in the area, the location of the site, and general traffic conditions existing on the street and surrounding area. The Board further finds that principal dwelling has been a four-bedroom dwelling historically with commercial use of the detached garage. Furthermore, the Board finds that the additional of two (2) bedrooms within the detached garage for commercial accommodations is modest. The previous commercial use within the detached garage structure will be eliminated and there shall be no home business or other commercial activity on the subject property except that as approved herein.

The Board finds the applicant will have an on-site manager for the year round use of the proposed Bed and Breakfast. The Board further finds that other than guests, there will be no other residents except for the owner/manager and his/her partner/family within the Bed and Breakfast operation.

The Board finds that the parking proposed on site is adequate for the proposed Bed and Breakfast use on subject property and that the buffering of the parking spaces shown on the plan submitted and noted herein is appropriate for said parking. The Board further finds that the architecture of the dwelling and detached garage structure is within the architectural integrity of the surrounding neighborhood. The structures on the subject property have the appearance of a single-family dwelling. It is also noted that at the time of the hearing process for this special permit, the applicant had received a building permit for work to be completed on the detached garage and dwelling on subject property. Furthermore, the Board finds that the applicant is amenable to additional landscaping and has proposed installation of Leyland Cypress trees along the westerly and southerly property lines for additional buffering of the site to address concerns by abutters.

The Board finds that the applicant has addressed all issues regarding stormwater on subject property through the existing French drains and drywells, as well as additional drywells and gutters proposed.

The Board finds that the applicant is proposing to adhere to quiet hours for the Bed and Breakfast operation from 10:00 PM to 9:00 AM daily.

The Board finds that the applicant has listened to all of the abutters and Board members remarks and concerns and has herein submitted additional landscaping, quiet hours for the Bed and Breakfast operation, addressed concerns of stormwater drainage on site, changed the lighting and motion sensors on site and will have an on-site manager at all times for the Bed and Breakfast operation.

In addition to the above findings, the Board finds that the proposed 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 Bed and Breakfast as all dimensional requirements on subject property are in compliance with the Code of Falmouth under Sections 240-68 A. and B. and Section 240-69 A. The Board finds that the size of the subject property (1+ acre) is substantially large for the neighborhood.

B. The site is suitable for the proposed use as the property is zoned residential and a commercial accommodation operation is approvable under Section 240-23 A. of the Code of Falmouth by the Board of Appeals.

C. There will be minimal impact on traffic flow to the subject property through the proposed Bed and Breakfast. There is appropriate parking on site and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property has been 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 sewage disposal system is in place and will be approved by the Board of Health prior to occupancy for the proposed Bed and Breakfast operation.

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

G. The proposed Bed and Breakfast operation 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 Bed and Breakfast for commercial accommodations at 25 Harbor Avenue in Falmouth as discussed herein and finds that the beneficial effects to the neighborhood or Town in granting this permit outweigh any negative or adverse 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.

Open Meeting 3/15/2018: Clerk Bielan absent – remains quorum for application of four (4) members. Board reviewed the affirmative draft decision prepared by Zoning Administrator as requested.

Member Potamis 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 **4 to 0 to Grant a Special Permit** to Maureen B. Kelly (herein referred to as Applicant) under Section(s) 240-23 A. of the Code of Falmouth to allow a six-bedroom commercial accommodations (Bed and Breakfast) operation on subject property known as 25 Harbor Avenue, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The commercial accommodations on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Site Plan Proposed Parking" prepared for Maureen Kelly 25 Harbor Ave. Falmouth Village Falmouth, MA as drawn by Warwick & Associates Inc. on a plan dated 3/22/2016 with a revision date of 1/18/2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 1/22/2018 and has a Board date 'received' stamp of January 25, 2018;
 - "Site Plan Proposed Parking for Maureen Kelly 25 Harbor Ave. Falmouth Village, Falmouth, MA" plan drawn by Warwick & Associates Inc. with a revised date of

1/18/2018 – the applicant has drawn landscape plan on this “Site Plan” with ‘key’ of plan at top of page – plan has a Board date ‘received’ stamp of February 28, 2018;

- “Interior Renovation Design Tim Kelly, 25 Harbor Ave. Falmouth, MA” Drawing A1 drawn by Architecture by SPB dated 6/29/2016 with a Board date ‘received’ stamp of December 21, 2017; and
 - “Custom Remodel Kelly Garage Dormer Design 25 Harbor Falmouth, MA” drawn by Designs by SPB consisting of: Drawing A1 Elevations, Drawing A2 Floor Plans, Drawing S1 Framing Plans, Drawing D1 Construction Details – all Drawings have a revision date of 12/21/17 and a Board date ‘received’ stamp of December 29, 2017.
2. There shall be no more than six (6) bedrooms allowed on subject property.
 3. The applicant shall install the additional French drains and drywells as shown on the “Site Plan” revised on 1/18/2018, with a Board date ‘received’ stamp of February 28, 2018 and marked as a Landscape plan by the applicant. Additional drainage is noted as three (3) additional drains/drywells in orange on said plan (see key at top of plan – color coded).
 4. All stormwater/run off shall be maintained on site.
 5. There shall be no cooking facilities of any kind allowed in the guest rooms within the commercial accommodations approved herein. This includes, but not limited to, a microwave, a hotplate, a toaster oven or any nu-wave cooking (food preparation) appliance. A coffee pot and refrigerator in a guest room is allowed.
 6. The twenty (20) Leyland Cypress trees as shown on the Landscape plan noted in condition 1 and 3 above, shall be no less than 5’ in height and shall be installed prior to occupancy of the commercial accommodations approved herein.
 7. All lighting on subject property shall be low level lighting and shall not shine or flow onto adjacent properties or roadway.
 8. There shall be no off-site parking from this commercial accommodation. All parking on subject property shall be for staff and guests of this commercial accommodation only.
 9. Testimony was that a sign for the commercial accommodations will be affixed to the main dwelling structure. Said sign shall be approved according to the Sign bylaws of the Town Code.
 10. There shall be no home occupation or other commercial activity on subject property except for the commercial accommodations as approved herein.
 11. 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.

12. 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.)
13. 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: **121-17**

Applicant: **MAUREEN B. KELLY of Falmouth, Massachusetts**

Subject Property: **25 Harbor Avenue, Falmouth, Massachusetts
Map 46B Section 11 Parcel 010 Lot 000**

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

Vote: 4 - 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 16 2003

FALMOUTH TOWN CLERK

APC 845am

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.