

**TOWN OF FALMOUTH**  
**SELECT BOARD**  
**AGENDA**  
**THURSDAY, JULY 2, 2020 – 7:00 P.M.**  
**SELECT BOARD MEETING ROOM**  
**TOWN HALL**  
**59 TOWN HALL SQUARE, FALMOUTH, MA 02540**

*In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, the July 2, 2020 public meeting of the Falmouth Select Board shall be physically closed to the public to avoid group congregation.*

*Alternative public access to this meeting shall be provided in the following manner:*

1. *The meeting will be televised via Falmouth Community Television.*
2. *Real-time public comment can be addressed to the Select Board utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.*
  - a. *Zoom Login instructions:*
    - i. *Instructions and the meeting link for this specific meeting can be found at the following web address: <http://www.falmouthmass.us/BOS>.*
    - ii. *Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.*
3. *Additionally public comments may be sent in advance of the meeting to [selectboard@falmouthma.gov](mailto:selectboard@falmouthma.gov) at least 5 hours prior to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.*
4. *Applicants, their representatives and individuals with enforcement matters before the Board may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Board may contact the Town Manager/Select Board's Office to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to the Town Manager's Office at [townmanager@falmouthma.gov](mailto:townmanager@falmouthma.gov) so they may be displayed for remote public access viewing.*

**AGENDA**

**OPEN SESSION**

1. Call to Order
2. Pledge of Allegiance
3. Recognition
4. Announcements
5. Public Comment

**BUSINESS**

1. Discussion/Update on COVID-19 Issues
2. Discuss Seafood Sam's Application for Temporary Outdoor Seating
3. Vote to Appoint Member to Assembly of Delegates to Fill Unexpired Term
4. Discuss and Vote to Approve Application for Special Event – Falmouth Village Association – Movies Under the Stars, Falmouth Public Library Lawn, 300 Main Street, Falmouth
5. Discuss and Vote to Approve Application for Special Event – Drive-in Movies, Barnstable County Fairgrounds, 1220 Nathan Ellis Highway, E. Falmouth
6. Beach Update

Megan English Braga, Chair  
Select Board



# TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

June 25, 2020

Seafood Sam's of Falmouth d/b/a Seafood Sam's  
Michael Lewis, Manager  
356 Palmer Avenue  
Falmouth MA 02540

RE: Application for Temporary Approval of Outdoor Seating License Amendment

Dear Michael Lewis:

The application submitted to the Office of the Selectboard does not meet the requirements for Temporary Outdoor Seating as provided by Governor Baker's Order #35 in that table service by waiters is not provided. No outdoor service of any kind may be conducted on the lawn or any area not on the original Patio approved in Special Permit No. 119-03.

Service on the original patio may continue under the following conditions:

- Carry-out service of food only is permitted.
- Effective immediately all service of alcohol in outdoor areas must cease as the patio is not part of the existing license. Any consumption of alcohol outdoors on this premises is a violation of the current Wine & Malt Beverages Common Victualler License.
- Tables must be located to ensure a minimum of 6' between seated patrons.

You may reapply for a Temporary Approval of Outdoor Seating License Amendment if table service by waiters is implemented. In order to serve alcohol outdoors contact the Selectboard Office to begin an Alteration of Premises application.

Sincerely,

Julian M. Suso  
Town Manager

JMS/pad

cc: Falmouth Board of Selectmen  
Edward Dunne, Chief of Police  
Frank Duffy, Town Counsel  
Scott McGann, Health Agent  
Rod Palmer, Building Commissioner

Temporary Outdoor Seating Application – Seafood Sam’s

**TOWN OF FALMOUTH SELECTBOARD**  
**Application for Temporary Administrative Approval of Outdoor**  
**Restaurant Service Pursuant to COVID-19 Order No. 35**

Date received:

**Section 1—Applicant & Business Information**

**A. Applicant Information**

- Applicant's Full Legal Name: MICHAEL P. LEWIS
- Applicant's Legal Home Address: 913 WEST FALMOUTH HWY.
- Applicant's Home and Mobile Telephone Numbers: [REDACTED]
- Applicant's Primary and Secondary Email Addresses: FALMOUTHSEAFODSAMS@GMAIL.COM  
[REDACTED]

**B. Business Information**

- Full Legal Name of the Business: SEAFODSAMS FALMOUTH INC
- Full Street Address of the Business: 356 PALMER AVE FALMOUTH
- Mailing Address of the Business (if different): P.O. BOX 1038 FALMOUTH 02541
- Telephone Number of the Business (if different): 508.540.7877
- Email Addresses of the Business (if different): JAME

**C. Premises Information**

- Does the applicant own the entire premises? Yes
- Does the applicant lease the entire premises? N/A
  - If yes, provide the name and address of the lessor and written evidence of approval of outdoor restaurant service: \_\_\_\_\_
- Does the applicant propose temporary use of areas not presently owned or leased by the applicant? NO
  - If yes, provide the name and address of the owner of each portion and written evidence of authority for temporary use for outdoor restaurant service: \_\_\_\_\_

**Section 2—Description of Outdoor Restaurant Service**

Please describe here and attach a detailed sketch or plan showing the changes the applicant wishes to make to restaurant service, as previously governed by existing licenses and/or permits identified in Section 3. All proposed outdoor restaurant service must comply with the requirements of all applicable Governor's orders, including COVID-19 Order No. 35, Massachusetts Department of Public Health orders and guidance documents for social distancing and for food service establishments.

Identify any portions of the proposed area which are publicly owned and/or controlled by another entity, including roadways, sidewalks, and parking lots. Please indicate the area currently used for table service and food preparation, as well as the proposed area of expanded table service. In addition, please show the location of each table and the measurements between, the location of all access and egress points, the location of all existing sidewalks and curb cuts, the location of clear passage for pedestrians including curb cuts if applicable, and the location of any parking spaces/loading zones impacted by the proposed changes. Please describe and show fencing or other barriers that will be used to separate patrons from non-patrons, as well as any tents or awnings placed in the outdoor table service area. Use additional sheets if necessary.

I CURRENTLY HAVE EXISTING PATIO  
AREA CONSISTING OF 10 PICNIC TABLES.  
I SIMPLY WANT TO MAKE THIS

AREA 5 TABLES TO ADHERE TO  
SOCIAL DISTANCE REGULATIONS & TAKE OTHER  
5 PICNIC TABLES AS WELL AS 4 I HAVE  
IN BACK OF MY PROPERTY ON EDGE OF  
BIKE PATH & HERE IN TAKING OUT 1 SECTION  
OF EXISTING FENCE (SKETCH ATTACHED) MAKING  
IT ENCLOSED & SOCIAL DISTANCED.

**Section 3—Existing Licenses, Permits, Special Permits, Variances, or Other Restrictions**  
 Please include identify and include a copy of any of the following existing licenses or permits held by the applicant and/or applicable to the premises.

**A. Alcohol Service License**

a. Current License: ANNUAL WINE & MALT  
 i. Present Capacity: 148 INSIDE & 10 PICNIC TABLES OUT  
 b. Request for Temporary Amendment? ADD 6 ADDITIONAL OUTSIDE TABLES  
 i. Proposed Capacity: OUTSIDE 65 PEOPLE  
 ii. Will any food or alcohol be prepared or stored outside? NO  
 1. If yes, describe: \_\_\_\_\_

**B. Common Victualer's License**

a. Current License: SAME AS  
 i. Present Capacity: AS BEFORE  
 b. Request for Temporary Amendment? \_\_\_\_\_  
 i. Proposed Capacity: \_\_\_\_\_  
 ii. Will any food be prepared or stored outside?  
NO  
 1. If yes, describe: \_\_\_\_\_

**C. Special Permit or Variance Issued by the Zoning Board of Appeals (if any)**

a. Current Permit/Variance: N/A

**D. Special Permit Issued by the Planning Board**

a. Current Permit: N/A

**Section 4—Temporary License to Use Public Property**

Any proposal to expand outdoor restaurant service onto public property, including portions of a closed roadway, sidewalks or parking spaces, must be accompanied by a signed temporary use license issued by the Town Manager. Applicants requiring such a license must separately obtain such a license from the Town Manager's office.

Does the applicant propose to use any public property for outdoor restaurant service? \_\_\_\_\_  
 If yes, has the applicant attached the license agreement, including the associated detailed sketch or plan? \_\_\_\_\_

**Section 5—Proof of Insurance**

Before operating any approved outdoor restaurant seating, the applicant must submit proof that insurance, including liquor liability insurance, covers any area of approved expansion or altered description.

Has the applicant provided proof of insurance coverage for all proposed areas? \_\_\_\_\_

**Section 6—Scope of Approval and Effective Dates**

The applicant certifies that the applicant understands and agrees that any approval and use hereunder is temporary and not precedent setting. Unless a termination date is specified or imposed by the Town in the future, or the Governor's COVID-19 Order No. 35 is rescinded or amended sooner, an approval hereunder will expire on November 1, 2020, and all pre-existing license/permit terms will return to force.

The applicant so certifies: \_\_\_\_\_ 6/5/20  
 (sign name) (date)

June 9, 2020

To whom it may Concern,  
My Name is Michael Lewis I have owned and operated  
Seafood Sam's Falmouth Inc. since the beginning and  
this location since Feb. 1991

I have held a annual beer and wine license since this  
date as well.

During the pandemic I have remained open for  
takeout.

Now as we move to phase 2 , I will prepare the food in  
the same manner as the takeout phase. All employees  
practicing sanitation I put multiple hand sanitizers in  
building, I am allowing only 5 people inside at time  
whether they are picking up a phone in order or  
ordering to sit outside.

I have attached photos of what I have set up in my  
front yard.

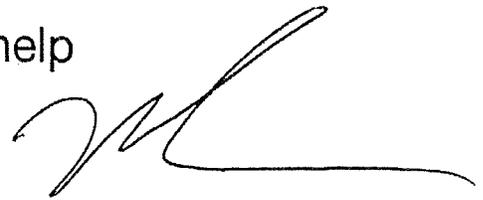
I have allowed plenty of distance between tables , and  
have a wide roped off pathway from ordering to  
outside as well as to restrooms.

We are sanitizing tables and restrooms after each use.  
My Current set up is 148 people inside and we have  
outside area with 10 picnic tables, which was  
approved in 2002 when building permit for front dining  
room was obtained.

I would move picnic tables to front lawn as shown in  
photos, properly distanced, and put a couple tables in

existing patio area, simply to accommodate more patrons properly distanced until the phase of indoor seating is allowed.

I appreciate your consideration and help

A handwritten signature in black ink, appearing to be 'Michael Lewis', written in a cursive style with a long horizontal flourish at the end.

Michael Lewis

Back Parking Lot

KITCHEN

Front House

Womens Bathroom

MENS Bathroom

Hallway to outdoor Seating

Dining room not in use

Front Lawn

Main Foyer

Dining Room NOT in use.

main ramp entry

Property Line 25'

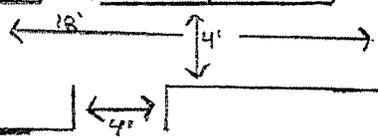
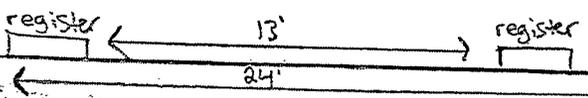
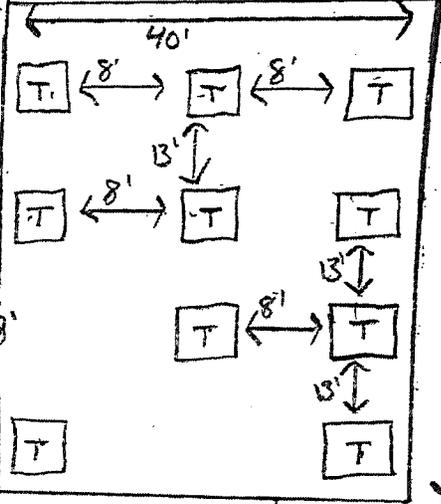
Additional Patio

Garden

Patio

10' 8'

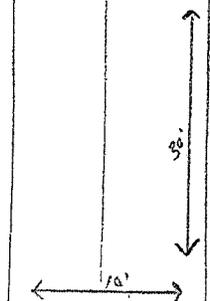
FEEDER



BLOCKED 7'

6 1/2'

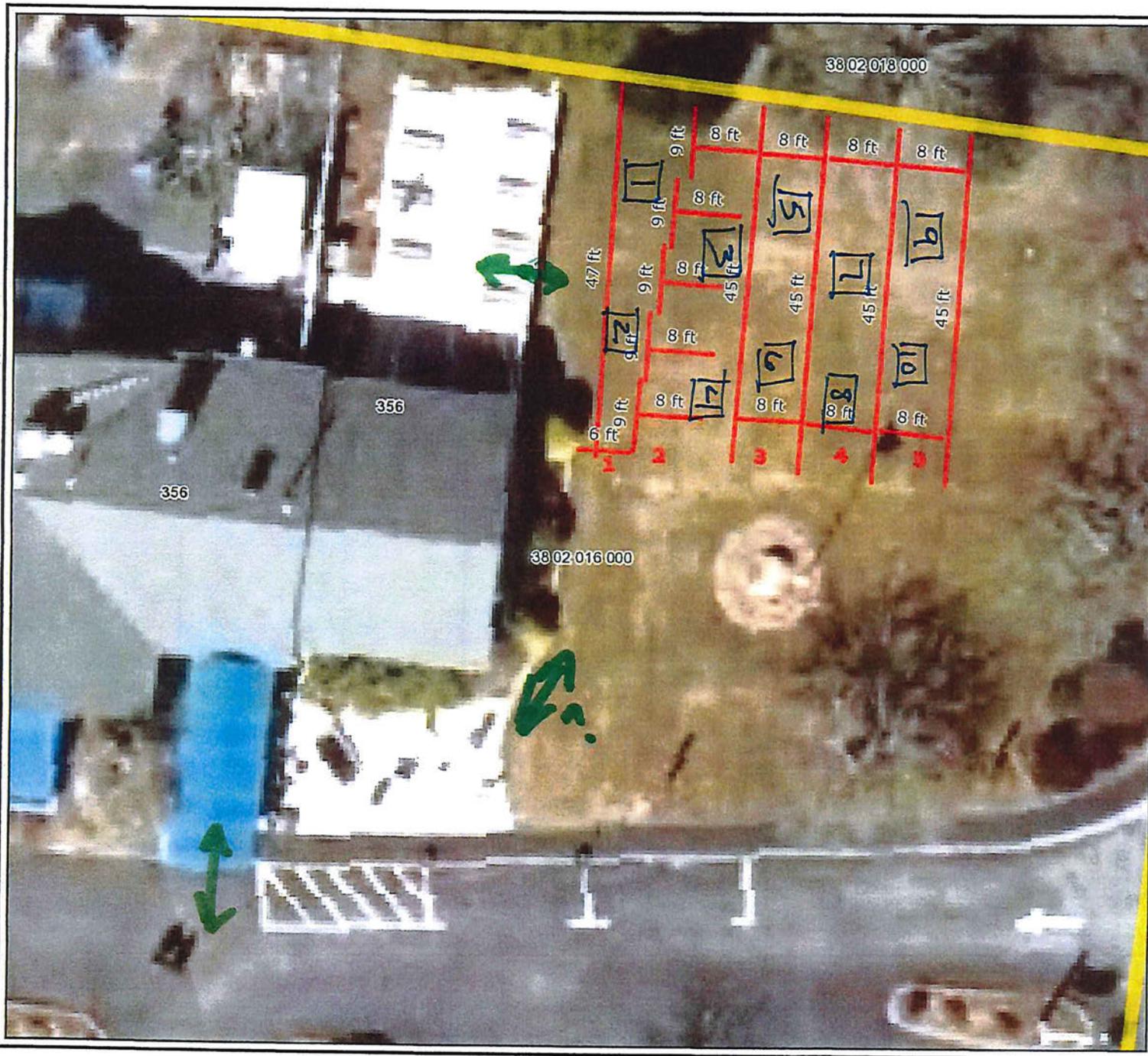
26'



PALMER Ave.

Palmer Ave.

Provided by Planning



### Seafood Sams Table Layout Area



- ▭ Parcels
- Road Ownership
  - < other values >
  - COUNTY; TOWN
  - PRIVATE
  - STATE
- Water Features
  - ▭ POND
  - ▭ STREAM

↔  
Travel/Server  
Paths

10 Table on lawn proposed

**Disclaimer**  
The Town of Falmouth makes no claims, no representations and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and/or GIS products furnished by the Town, including the implied validity of any uses of such data. Parcel lines are graphic representations only. Planimetric features derived from 305 Aerials. Prepared by Falmouth G.I.S.

1" = 18 ft



Town of Falmouth

June 8, 2020

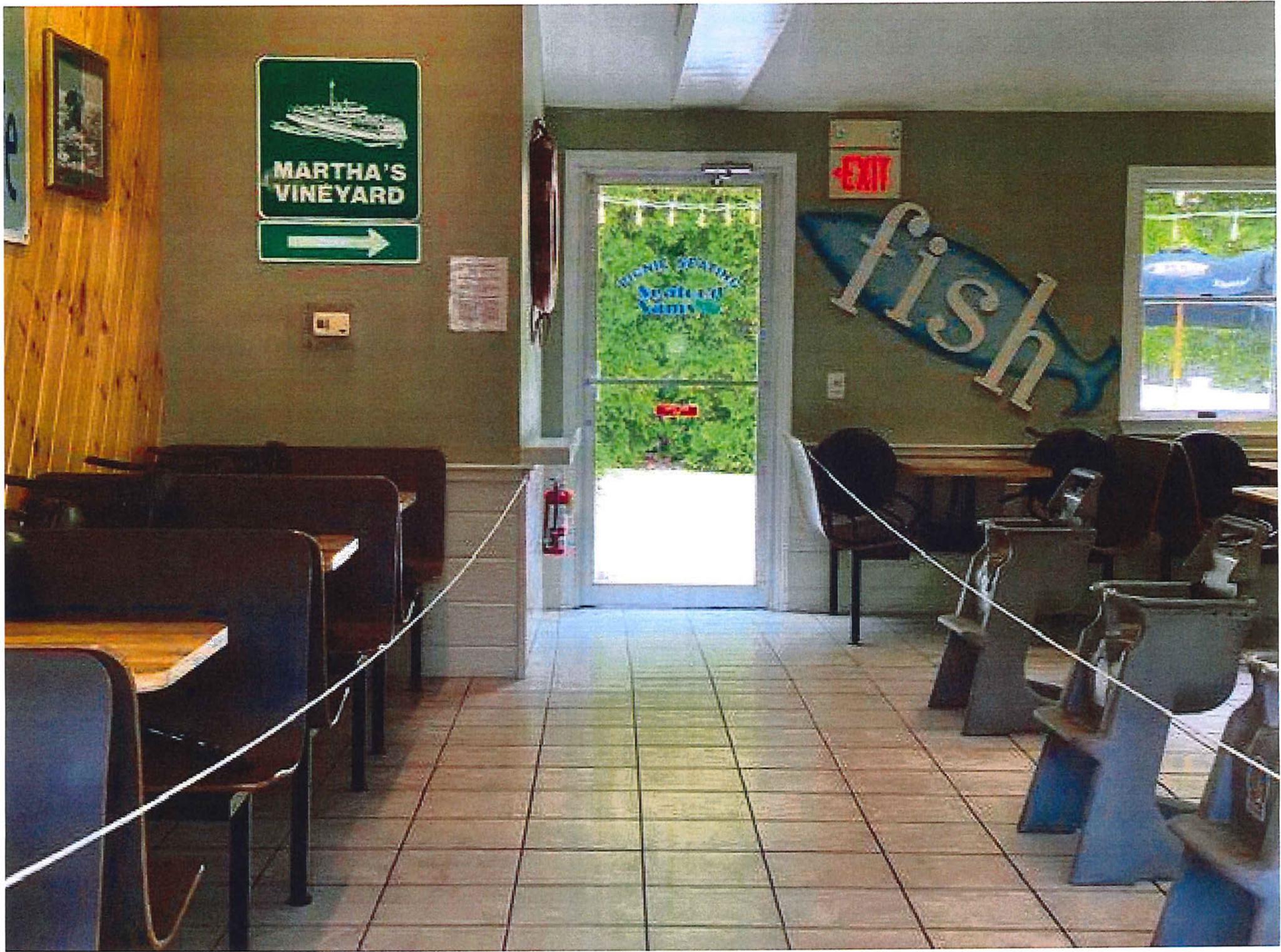


LANDING



OUT  
DOOR  
PATIO  
SEATING  
←





MARTHA'S  
VINEYARD  
→

EXIT

fish

MARTHA'S VINEYARD  
Seal of  
Fame

EXIT



"A Vacation

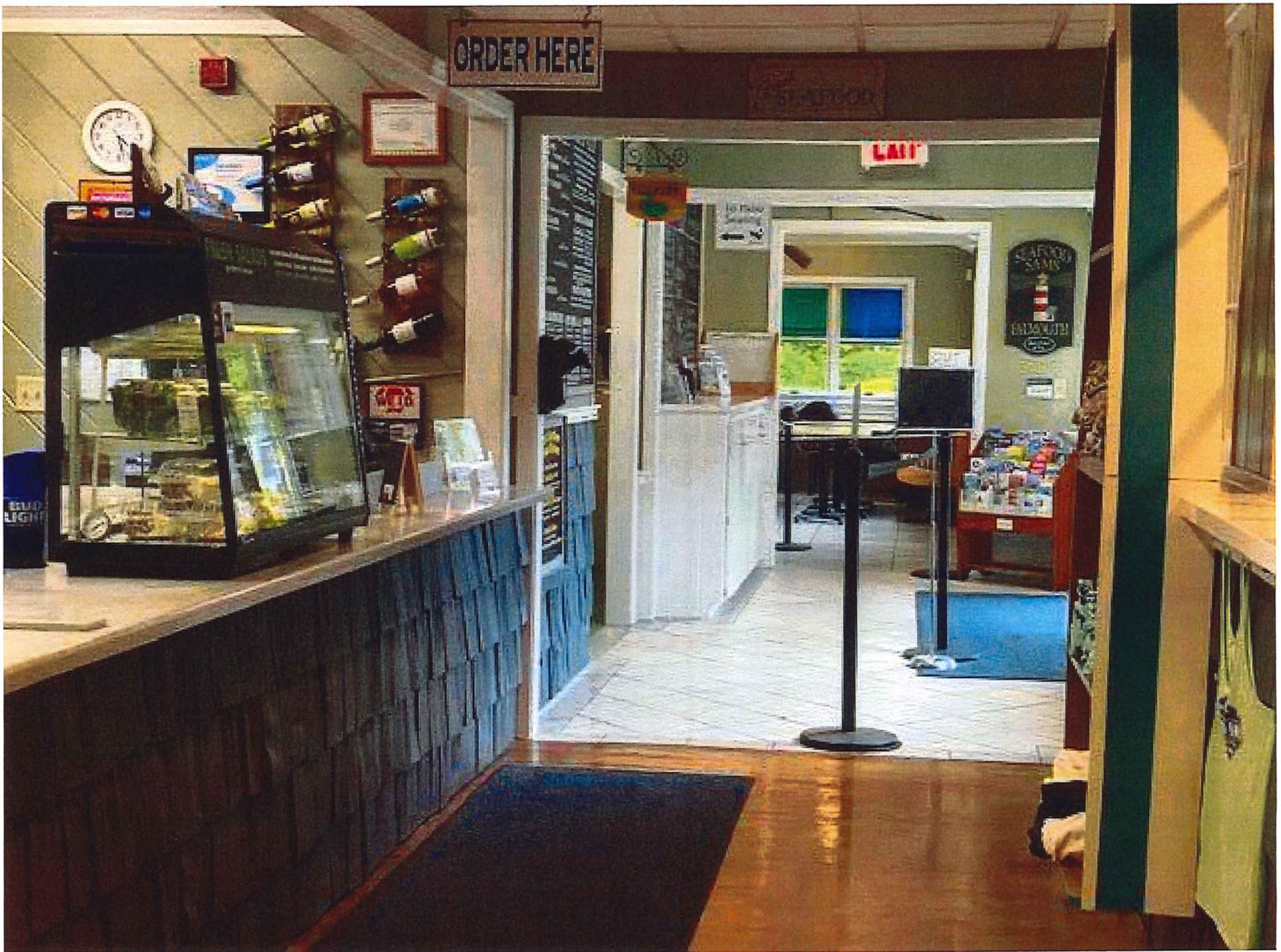
SANTITAS

SANTITAS

SANTITAS

SANTITAS

WATCH  
YOUR  
STEP



Temporary Outdoor Seating Application Legal Opinion – Seafood Sam’s

## **Diane Davidson**

---

**From:** Irie Mullin  
**Sent:** Friday, June 26, 2020 11:56 AM  
**To:** Julian Suso; Megan English Braga  
**Cc:** Frank Duffy; Kim Fish; Doug Brown; Diane Davidson  
**Subject:** RE: Seafood Sams

Julian, Megan and Doug,

In short, the Select Board's discretion under Order 35 is limited to approval of outdoor seating with table service by waiters, whether serving food-only or food-plus-alcohol. But, ultimately, the issuance of these temporary amendments is an executive decision by the Board as the LLA/licensing authority designated by Order 35. The detailed reasons for my conclusions, including the separate issues of alcohol, food, and "take out tables", are set out below.

### 1. Alcohol

The ABCC director, Ralph Sacramone, explicitly told me that any outdoor alcohol consumption under the Order 35 temporary amendment procedure must be through waiter service of seated patrons only, and only when served with a meal. He stated that it would be a violation of ABCC guidelines and Phase II standards to grant a temporary amendment under Order 35 to an existing alcohol service license to include outdoor premises where patrons would order at a window/counter and carry food/drinks back to an outside table. He stated that the health concern driving this order for seated table service was to avoid the risk posed by people congregating in lines waiting for food/drinks. This issue was raised by both myself and several other municipal lawyers across the state on several occasions, and the response was consistent.

Thus, from the ABCC's explicit and repeatedly articulated position on this subject, I conclude that the Select Board does not have discretion to permit counter service of alcohol for outside consumption where there is no present licensed outdoor area, and the activity would not meet the ABCC's guidelines for Order 35 outdoor seating. However, it is ultimately an executive decision of the Select Board as LLA, subject to future review by the ABCC.

### 2. Food Only

Food-only service would not implicate the ABCC or the temporary amendment of an alcohol service license. However, as discussed above, Ralph Sacramone reported that the state agencies involved in creating and promulgating the Phased Re-opening Standards told him that Order 35's reference to "outdoor restaurant service" and "tables" was intentional, and that the Order created specific exceptions for outdoor table service of seated patrons by waiters only. Again, the health concern reportedly driving this limitation is the congregation of parties waiting in line to order and pickup food, versus the stationary placement at separated tables by patrons waiting for the same with waiter service.

I therefore conclude that the Select Board's discretion in exercising its emergency powers granted through Order 35 to supersede zoning and other statutory restrictions to permit new outdoor restaurant seating is limited to permitting expanded outdoor table service by waiters, even when serving food only. This interpretation has been consistently applied to licensing conditions for several other restaurants throughout the town, who were required to hire waiters despite original requests for window/counter ordering. However, again, this is ultimately an executive decision by the Select Board as the designated licensing entity by Order 35.

### 3. On-Site Tables Used for Take Out

Under Phase II standards, restaurants may continue to sell take out from a counter or window, and food-only may be consumed on premises (not alcohol) if the restaurant has outside tables available to takeout patrons. Thus, if a restaurant has existing outside tables, or may place additional tables without violating a zoning bylaw or existing special permit from zoning/planning, it may sell food at a window for takeout and permit patrons to eat outside on premises. Some properties, by reason of their dimensions, zoning, and other individual details, may be able to add tables in this way without any permit from the Select Board.

Seafood Sam's has an existing outdoor patio by ZBA permit, which may be used for social-distant tables for take-out consumption of food only (alcohol consumption would be a violation of the existing alcohol service permit). Due to the existing ZBA special permit, more tables cannot be placed on the Seafood Sam's lawn without violating the existing ZBA permit. Modification of this permit requires a hearing unless the zoning bylaw is overridden by Order 35.

Thanks,  
Irie

-----Original Message-----

From: Julian Suso <julian.suso@falmouthma.gov>

Sent: Friday, June 26, 2020 11:15 AM

To: Megan English Braga <megan.english-braga@falmouthma.gov>

Cc: Irie Mullin <irie.mullin@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>; Kim Fish <kimberly.fish@falmouthma.gov>; Doug Brown <doug.brown@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>

Subject: RE: Seafood Sams

Thank you Megan. Frank/Irie - in your judgment does the Town indeed have discretion to exercise in this matter? If so, I would be pleased to find an accommodation under these challenging circumstances.  
Julian

-----Original Message-----

From: Megan English Braga <megan.english-braga@falmouthma.gov>

Sent: Friday, June 26, 2020 9:36 AM

To: Julian Suso <julian.suso@falmouthma.gov>

Cc: Irie Mullin <irie.mullin@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>; Kim Fish <kimberly.fish@falmouthma.gov>; Doug Brown <doug.brown@falmouthma.gov>

Subject: Re: Seafood Sams

I think a significant issue here is that many of his employees are high school students who are not eligible to carry alcohol outside and I don't think he even has the staff to wait on the tables outside.

I'm quite sure if it were easy fix he would have done it this is his livelihood.

They're really not set up as a place to do table service they don't have registers that are set up that way they don't have a POS system that operates in that way.

We are going to have to be creative about this Because this particular restaurant is not set up For service as described above.

I worked in restaurants for many years and I have a hard time seeing how they could Do what is described in Irie's email. They have two cash registers And I'm pretty sure that they don't have the ability to keep tickets open for the type of service being described.

I have to think that we have some discretion here?

Sent from my iPhone

> On Jun 26, 2020, at 8:46 AM, Julian Suso <julian.suso@falmouthma.gov> wrote:

>

> Thank you Irie. I am copying Megan and Doug as well, to ensure that they have this background information on our dilemma with this unfortunate situation. To date, the owner has been unwilling to make this adjustment in operations which would allow us to proceed as I understand it.

> Julian

>

> -----Original Message-----

> From: Irie Mullin <irie.mullin@falmouthma.gov>

> Sent: Friday, June 26, 2020 8:43 AM

> To: Julian Suso <julian.suso@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>

> Cc: Kim Fish <kimberly.fish@falmouthma.gov>

> Subject: RE: Seafood Sams

>

> Julian,

>

> If he were willing to do waitstaff service of seated patrons at tables, both the patio and the proposed new lawn seating area could easily be temporarily permitted under Order 35 for both alcohol and food service, so long as the area was rope-enclosed to the building.

>

> Otherwise, any outdoor alcohol service is an ABCC violation of the existing alcohol service permit which would need a normal-course premises amendment by the SB, and additional tables on the lawn would be a violation of the existing zoning special permit which would need a normal-course ZBA special permit hearing to change.

>

> The impasse here seems to be easily resolved through the use of waitstaff, although I recognize that is not the business' usual mode of operation (counter service only).

>

> Thanks,

> Irie

## Diane Davidson

---

**From:** Irie Mullin  
**Sent:** Friday, June 19, 2020 3:07 PM  
**To:** Julian Suso; Diane Davidson; Phyllis Downey  
**Cc:** Frank Duffy; Kim Fish  
**Subject:** RE: Seafood Sam's

Julian,

I'll break my response into two sections, as the issues between food and alcohol diverge.

### 1. Alcohol with Food

The executive director of the ABCC has been abundantly, repeatedly clear in multiple Mass Municipal Lawyers Association conference calls that consumption of alcohol without seated waiter service is not acceptable to the ABCC under Phase II reopening. He has done so explicitly and directly to me personally in response to specific questions I posed to him with regard to the proposed "lower" tents at the Yacht club which were proposed to be food and alcohol collected by patrons from a window on the deck and carried to picnic tables in the tents. This was explicitly rejected as an ABCC standards violation.

I cannot explain why such activity is being permitted by Sandwich and Yarmouth. They may not have consulted counsel with this question in the first instance. Further, I would note that the Yarmouth BOS voted earlier this week to refuse to enforce any Phase II reopening restrictions issued by the Governor, without apparent input of counsel, and Sandwich took no enforcement action against several retail stores which opened for indoor shopping in violation of the Phase I order before Phase II began, even when contacted by local news entities and following publication of an article about such activity. Using other towns' approvals/failure to enforce as a guide will be at our own peril.

In short, there is no way for alcohol to be legally consumed on Seafood Sam's premises, whether sold as "to go" or not, unless it is provided through seated table service by waiters, along with a meal.

### 2. Food Only

With respect to food, I will repeat the comments I sent to Phyllis regarding the Phase II option of providing "carry-out" food service with inside/window pickup, and the ability of "carry-out" customers to use seating available on premises. If alcohol is part of a carry-out order, it must remain in a sealed container (as required by the governor's order regarding take-out alcohol) until the patron is no longer in public, or it constitutes an open-container violation.

The Phase II Restaurant Safety Standards circular issued by the state requires the following: "all customers must be seated; eat-in service to standing customers . . . is prohibited" and while "restaurants [may] provide carry-out . . . service, all safety standards . . . must be maintained for indoor or outdoor table seating that is available to carry-out patrons. "Counter service" is "carry-out" under these definitions, not "table service."

Under these orders, customers picking up take-out food only at a counter, and bringing it outside to properly spaced/cleaned tables "available to carry-out patrons", is acceptable. However, this activity falls \*outside\* the expedited/streamlined authority granted under the Order 35, and the associated procedure approved by the Select Board. Thus, if a restaurant seeks to add \*new\* structures/tables to outdoor areas on its property for use by carry-out patrons, it must comply with any applicable zoning and planning procedures under normal standards. Noreen and Tom are the people to determine whether there are zoning or planning obstructions to placement of new picnic tables for carry-out patrons as described by Seafood Sam's.

In short, an application to add outdoor seating for takeout patrons does not properly fall within the Order 35 procedure as approved by the Select Board, as delegated to you. Either there are no zoning/planning restrictions that would apply to this change to the restaurant's property, and thus \*no\* approval is required \*at all\* for the restaurant to place these tables for carry-out, or an approval \*is\* required but must come from the \*appropriate Zoning/Planning entity\* (either administratively or by the respective board, depending on their own operating procedures) in due course (no expedited review under Order 35).

Please let me know if you have further questions.

Thanks,  
Irie

-----Original Message-----

From: Julian Suso <julian.suso@falmouthma.gov>

Sent: Friday, June 19, 2020 2:30 PM

To: Diane Davidson <diane.davidson@falmouthma.gov>; Phyllis Downey <phyllis.downey@falmouthma.gov>

Cc: Frank Duffy <frank.duffy@falmouthma.gov>; Irie Mullin <irie.mullin@falmouthma.gov>

Subject: FW: Seafood Sam's

FYI. Irie - your insight on this would be most welcomed. Thanks.  
Julian

-----Original Message-----

From: Michael Lewis [REDACTED]

Sent: Friday, June 19, 2020 11:30 AM

To: Falmouth Town Manager <townmanager@falmouthma.gov>

Subject: Seafood Sam's

Good morning sir ,

I am writing today as I am extremely confused on possible issues with how I am conducting business during Covid . I never closed completely, did take out via online ordering , phone order or order at the door without letting anyone inside.

When phase 2 was allowed I began allowing only 5 customers at a time inside and masks must be worn by all including all my staff. I felt continuing to pack all items to go rather than putting unwrapped products on trays to be carried was a safer way for all, it is considerably more expensive as well.

People pick up there order same as many, many locations in Falmouth and either go to car and leave or eat at picnic tables I have on premise I have done business in this location since 1991 and play by the rules and this town has been good to me my entire life .

I do not wish to have conflict or issue with anyone , I feel strongly I am doing things in a safe and professional manner. I do not believe waiting on tables helps anything in my set up.

I am unclear if it's the beer and wine aspect that is the issue? As many of my friends are doing exact same thing order at counter etc and eat outside or leave even the multiple chain restaurants doing same.

Lastly I don't believe it's a ABCC issue as we have been issued permits without hesitation in our Yarmouth and Sandwich locations and have had zero issues ?

Please advise me on my options , As we are at the time of busy and I surely do not want to be in violation of any regulations etc . Thank you

Mike Lewis

Sent from Michael P.Lewis

Special Permit & Licensed Premises for Alcohol Service – Seafood Sam’s

## Diane Davidson

---

**From:** Irie Mullin  
**Sent:** Friday, June 19, 2020 4:26 PM  
**To:** Phyllis Downey; Julian Suso  
**Cc:** Frank Duffy; Kim Fish; Diane Davidson  
**Subject:** RE: Seafood Sam's Zoning decision 10-27-2003  
**Attachments:** Scanned from a Admin Xerox 8055.pdf

Phyllis,

Based on this decision (assuming there is no subsequent modification) and the existing description of licensed premises on the alcohol license, Seafood Sam's must have a modification through the Order 35 process to serve alcohol anywhere outside, and such service must be seated table service by waiters along with a meal. Further, I conclude that placement of additional picnic tables on the lawn would require a modification of the existing special permit by the ZBA, through normal procedures, unless those tables were serviced by waiters under the Phase II outdoor restaurant table service guidelines.

Seafood Sam's may continue to use, without further approval, the number of picnic tables that can be fit (under safety standards) within the footprint of the patio as approved by the special permit decision. Seafood Sam's may not spread the total number of previously approved outdoor tables over a greater area than the previously approved patio footprint to achieve social distancing, without further approval from the ZBA. If the existing permitted outdoor tables within the patio footprint are not served by waiters, the tables must be deemed for carry-out patrons only, and used solely for the consumption of food and not alcohol, subject to appropriate cleaning under Phase II safety standards.

As a subject for future enforcement, it appears that the restaurant has had a long-standing practice of allowing counter-served patrons to take open alcohol containers out to the patio picnic tables, outside of their licensed premises, in violation of their existing alcohol service permit. The restaurant should either cease this practice permanently or apply to the Select Board and ABCC for a permanent expansion of the alcohol licensed premises through the ordinary liquor licensing process (not the Order 35 process).

Thanks,  
Irie

**From:** Phyllis Downey <phyllis.downey@falmouthma.gov>  
**Sent:** Friday, June 19, 2020 3:55 PM  
**To:** Julian Suso <julian.suso@falmouthma.gov>; Irie Mullin <irie.mullin@falmouthma.gov>  
**Cc:** Frank Duffy <frank.duffy@falmouthma.gov>; Kim Fish <kimberly.fish@falmouthma.gov>; Phyllis Downey <phyllis.downey@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>  
**Subject:** Seafood Sam's Zoning decision 10-27-2003

Good afternoon,

I have reviewed the Town Clerk's copies of Selectboard agenda from October 6, 2003 through April 4, 2005 but found no reference to an application for Alteration of Premises by Seafood Sam's, Inc. dba Seafood Sam's. When we inquired with the ABCC about such an application Ryan Melville confirmed that the description of the premises in their records is "ONE FLOOR; DINING ROOM WITH GREENHOUSE, KITCHEN, OFFICE- CELLAR FOR STORAGE". A patio is not mentioned.

Thank you,  
Phyllis

**DECISION OF FALMOUTH ZONING BOARD OF APPEALS**

**APPEAL NO: 119-03**

**APPLICANT: MICHAEL P. LEWIS of East Falmouth, MA**

**PROPERTY OWNER: LEWIS PALMER AVE REALTY TRUST of Falmouth, MA**

**LOCATION OF PROPERTY: 350 PALMER AVENUE, FALMOUTH, MA  
356 PALMER AVENUE, FALMOUTH, MA  
MAP 38, SECTION 2, PARCEL 15, LOT 0  
MAP 38, SECTION 2, PARCEL 16, LOT 0**

M.R. BOOK 10218 PAGE 157

Under a date of June 6, 2003, Michael P. Lewis of East Falmouth, MA, applied to the Zoning Board of Appeals for a Special Permit under Section 240-3 of the Code of Falmouth to allow modify the existing use to allow additional outside seating as an accessory to the existing restaurant. The subject property is located at 356 Palmer Avenue, Falmouth, MA.

A public hearing was held on August 20, 2003, and notice was duly given as required by Section 11, 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 all parties desiring to be heard were heard. The applicant has agreed to extend the statutory time that the Board of Appeals has to commence the public hearing by an additional thirty days.

Mr. Lewis explained that he received a special permit in 2001 to enclose his patio. At that time, he was told that outside seating does not count as seating on his occupancy permit because it is considered take-out. After enclosing the patio, Mr. Lewis moved the picnic tables away from the parking lot for safety reasons, and landscaped the area for better screening and aesthetics. Mr. Lewis spent more than \$4000 on these improvements, and now has a total of 10 tables in the picnic area.

Mr. Lewis stated that, in response to a request from the Building Commissioner, he removed a section of fence, and relocated tables to be at least 15 feet from the abutter's fence.

The Health Department referral indicates no objections to the proposal, provided that the picnic tables are only accessible from the outside of the building as "an alternative to leaving the property after having left the building." In response to a question from the Board, Mr. Lewis stated that most customers enter the picnic area from the building.

The Planning Board referral states that the Planning Board discussed the applicant's proposal for outside seating at its September 2, 2003 meeting, and understands that noise from the order announcement system is the primary concern of abutters. Therefore the Planning Board recommends that the applicant seek alternative systems of order announcement.

5

The Board questioned Mr. Lewis about his parking arrangements. Mr. Lewis stated that he leases 20 spaces from the Amvets, whose parking lot abuts his property. The Board requested that Mr. Lewis submit a parking plan showing which spaces are used.

Mr. Nolan, an abutter to the property, raised objections to the proposal. The light at the back of the property shines on his property, and he would like it moved. The restaurant also uses an intercom to announce when customers' orders are ready, and the noise from the outside speaker is a nuisance.

Michael Lewis addressed the concerns of the Nolans with regard to the lighting and speaker system noise. An electrician has removed the sodium vapor lights on the back of the building, ran electrical cable to the shed out back, and installed 2 smaller regular spot lights. One spot light faces the dumpster and the other faces the back parking area, both facing away from the abutters. He has also installed a smaller, shielded light where the sodium vapor light was and it shines on the grease removal area. He replaced the photo cell light with 2 flood motion sensor lights facing the freezer doors. Mr. Lewis has also tried to address the speaker situation by lowering the speakers to ground level.

Mr. Nolan stated that the lighting situation has improved quite a bit, with much less of an impact now. He stated that the noise seems to be more muffled although they have been away some and there seems to be less business now.

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property consists of two parcels. Parcel 15, located at 350 Palmer Avenue, contains 17,175 square feet of general residence zoned land. Parcel 16, located at 356 Palmer Avenue, contains 36,400 square feet of light industrial A zoned land. The existing restaurant is located in the light industrial zoned portion of the property. The building is nonconforming because it doesn't meet the required setback between the general residence zoned property and light industrial zoned property. However, at the time the building was constructed, it met all requirements of the bylaw as then existed. The building is therefore determined to be pre-existing, nonconforming. The applicant has applied to allow an outdoor seating area as an accessory to the existing restaurant. Section 240-3 requires a special permit to alter, change or extend any pre-existing, nonconforming structure or use.

The Board finds that the proposed outside seating does not substantially increase the nonconforming nature of the property and is therefore not substantially more detrimental to the neighborhood. The Board finds that the site is both adequate and suitable for the proposed use.

The Board finds there will be no adverse impact on traffic flow or safety by the granting of this permit. The occupancy of the restaurant is 140 seats requiring 47 parking spots. Fifty spaces are available on the subject property and Mr. Lewis has permission to utilize 20 parking spaces from the Amvet property. His operation pre-dated the current parking requirement, therefore he is under the requirement of one parking space for every three seats.

The applicant has demonstrated that there is adequate parking between the site and the spaces at the Amvet site to accommodate the additional outdoor seating. The outdoor seating consists of ten tables on the northerly side of the building. The 15 foot required side yard setback must be maintained at all times.

It is the opinion of this Board that the granting of this permit will have no adverse impact on the visual character of the neighborhood including views and vistas. The applicant maintains his property very well with landscaping and fencing. The Board finds there will be adequate utilities to the site including town water. The septic system will meet Title V or the requirements of the Health Agent.

There is no decision of the Planning Board to consider as this proposal is not subject to review by the Planning Board under Site Plan Review. This Board finds there will be no effect on the adequacy of the supply of affordable housing as this property has neither been designated for nor represented as affordable housing.

The Board 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 Bylaw.

**NOW THEREFORE**

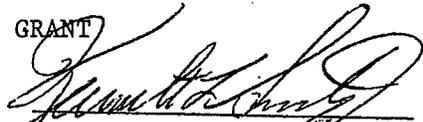
**BE IT RESOLVED**, that the Board of Appeals, being of the opinion aforesaid and acting under the provisions of the Code of Falmouth, hereby unanimously votes to GRANT a special permit under Section 240-3 of the Code of Falmouth to allow an outside picnic seating area, to consist of 10 picnic tables as an accessory to the existing restaurant located at 356 Palmer Avenue, Falmouth, MA. This special permit is subject to the following conditions:

1. The outside seating area shall be substantially as shown on submitted plans and as represented to this Board. There shall be no more than the ten picnic tables as represented.
2. The applicant shall maintain the required fifteen foot setback from the side property line at all times.
3. Applicant shall continue to control the lighting and speakers with consideration to the abutter.
4. The septic system shall meet Title V or the requirements of the Health Agent.
5. All applicable conditions in previously granted special permits shall remain in effect.
6. Applicant shall provide this Board with a plan of the Amvet property depicting the parking spaces that are designated for use for Seafood Sam patrons. Such plan should provide evidence that Amvet has the required parking for their own use.
7. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk's office if a substantial use thereof has not sooner commenced except for good cause as determined by the Board of Appeals.
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 has been filed in the office of the Town Clerk and no appeal has been filed, is recorded in Barnstable Registry of Deeds.

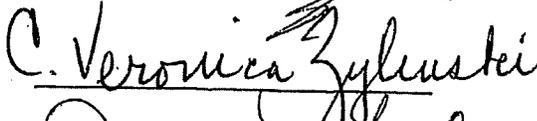
ACTION: The Board of Appeals, consisting of Kenneth L. Swartz, C. Veronica Zylinski, Patricia A. Favulli, being all present and voting as follows:

VOTE TO: GRANT

SWARTZ:

  
CLERK Patricia A. Favulli

ZYLINSKI:



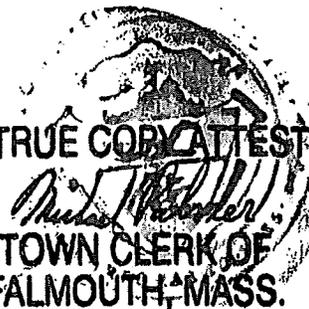
ZONING BOARD OF APPEALS

FAVULLI:



DATE: September 26, 2003

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 Town Clerk.



A TRUE COPY ATTEST  
  
TOWN CLERK OF  
FALMOUTH, MASS.

RECEIVED  
SEP 26 2003  
FALMOUTH TOWN CLERK  
FALMOUTH, MA 02541-0904



# TOWN OF FALMOUTH

MICHAEL PALMER  
TOWN CLERK

59 Town Hall Square, P.O. Box 904, Falmouth, MA 02540  
(508) 495-7353 Fax (508) 457-2511

## CERTIFICATION OF NO APPEAL

I Michael Palmer, Town Clerk of the Town of Falmouth, hereby certify that  
the Board of Appeals vote was filed in this office on September 26, 2003  
and that no Notice of Appeal on this vote was received during the twenty days  
next after such receipt and recording of said vote.

Michael Palmer  
Town Clerk

Date: October 23, 2003

Re: 119-03 Michael P. Lewis

A TRUE COPY ATTEST

*Michael Palmer*  
TOWN CLERK OF  
FALMOUTH, MASS.



BARNSTABLE REGISTRY OF DEEDS

2020

# License Alcoholic Beverages

00048-RS-0390

Fee: 1200

The Licensing Board of  
The Town of Falmouth  
Massachusetts  
Hereby Grants a

## Wine and Malt Common Victualler License to Expose, Keep for Sale, and to Sell Wines and Malt Beverages

### To Be Drunk On the Premises

To Seafood Sam's of Falmouth, Inc. dba Seafood Sam's  
Michael P. Lewis, Manager

356 Palmer Avenue, Falmouth, MA 02540

On the following described premises:

One floor: Dining room, greenhouse, kitchen, office, cellar for storage.

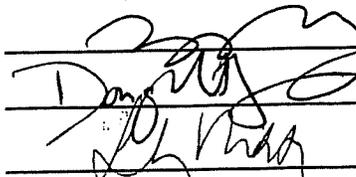
This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended, and any rules or regulations made thereunder by the licensing authorities.

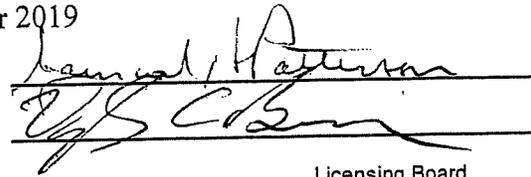
This license is valid from the 1st day of January 2020 until the 31st day of December 2020, unless earlier suspended, cancelled or revoked.

The hours during which Alcoholic Beverages may be sold are from:  
8 A.M. TO 11 P.M. WEEKDAYS / 110 A.M. TO 11 P.M. SUNDAYS  
AMENDED 8/16/10

WINE AND MALT BEVERAGES TO BE SERVED WITH FOOD ONLY! NO BAR.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their  
official signatures this 18th day of November 2019

  
\_\_\_\_\_  
Michael P. Lewis

  
\_\_\_\_\_  
Licensing Board

THIS LICENSE SHALL BE DISPLAYED ON THE PREMISES IN A  
CONSPICUOUS POSITION WHERE IT CAN EASILY BE READ

## Diane Davidson

---

**From:** Diane Davidson  
**Sent:** Tuesday, June 30, 2020 4:01 PM  
**To:** falmouthseafoodsams@gmail.com; [REDACTED]  
**Subject:** Invitation to Select Board Meeting  
**Attachments:** AGENDA - 2020-07-02.pdf

Dear Mr. Lewis,

The Falmouth Select Board has scheduled a meeting on Thursday, July 2 at 7:00 p.m. One of the topics for discussion will be your application for temporary outdoor seating. The Board invites you to join the meeting, which is being conducted via Zoom virtual meeting software. Attached is a copy of the agenda, and instructions for participation are included at the top.

If you have not yet participated in a town committee/board meeting via Zoom, please contact our I.T. Department by email at: [ithelp@falmouth.freshdesk.com](mailto:ithelp@falmouth.freshdesk.com). One of our I.T. staff members will contact you to arrange a time to provide you with instructions on logging in and navigating in advance of the meeting so you are prepared and comfortable.

I will also be providing the I.T. staff with the agenda and names of participants/presenters, so they will be expecting to hear from you.

Please let me know if you have any questions.

Thank you,

Diane

*Diane S. Davidson  
Office Manager/Licensing  
Office of the Town Manager and Select Board  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540  
[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)  
(508) 495-7321*



# TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

June 25, 2020

Ms. Janice O'Connell, Clerk  
Barnstable County Assembly of Delegates  
P.O. Box 427  
3105 Main Street – Route 6A  
Barnstable, MA 02630

Subject: Failure to Certify Falmouth Appointee to Assembly of Delegates by Deadline

Dear Ms. O'Connell,

Thank you for your May 21 notification letter to Town Clerk Michael Palmer of the resignation of Susan Moran as the Falmouth representative to the Assembly of Delegates. We are also in receipt of your June 24 letter regarding the "failure to (timely) certify."

The Town of Falmouth has a protocol which the Select Board routinely follows with regard to potential appointments to any Town or area Board or Commission which includes placing a legal advertisement in the weekly newspaper to allow all interested residents the opportunity to review and respond. At the Board's virtual meeting on June 1, there was a Board discussion of filling the Falmouth vacancy on the Assembly during which Select Board member Doug Brown indicated an interest in serving in this capacity to succeed Su Moran. While the Board appeared to have a consensus on this, unfortunately, they failed to have a formal vote to so appoint Mr. Brown to fill the unexpired term. During this same time, considerable attention was being spent by the Board in dealing with multiple pressing matters related to the COVID-19 pandemic, including the coming process for reopening restaurants to outdoor seating/licensing as per Governor Baker's emergency orders.

Also be advised that the Town was in the midst of dealing with the logistics of re-scheduling Falmouth's spring Town Meeting to address critical budget concerns – this process falling right at the same time as this Appointment Deadline as Town Meeting finally occurred on Monday, June 22. Furthermore, it is our belief that not having an individual recommended by the Select Board appointed to this Assembly would significantly impact Falmouth as this community would be disenfranchised from the important work that the Assembly conducts on behalf of all Barnstable County communities. We are convinced that Select Board member Doug Brown, with his long experience and passion in the areas of coastal resiliency, water quality, transportation, and community engagement would be an excellent advocate for Falmouth and indeed for the broader Cape at large.

I am writing to respectfully appeal to the Assembly that, under these circumstances, consideration be given for the appointment of Mr. Brown to this unexpired term in representation of the will of the Falmouth Select Board. Thank you.

Sincerely,

Megan English-Braga  
Chair, Falmouth Select Board

Julian M. Suso  
Falmouth Town Manager



CAPE COD REGIONAL GOVERNMENT  
BARNSTABLE COUNTY ASSEMBLY OF DELEGATES  
Barnstable County Complex  
P.O. Box 427  
3195 Main Street - Route 6A  
Barnstable, MA 02630  
(508) 375-6761

June 24, 2020

Falmouth Board of Selectmen  
Falmouth Town Clerk Michael Palmer  
Falmouth Town Manager Julian Suso  
59 Town Hall Square  
Falmouth, MA 02540

**RE: Failure to Certify Falmouth Appointee to Assembly of Delegates by Deadline**

Dear Selectmen, Town Clerk and Town Manager:

I am notifying you that the Town of Falmouth failed to certify, to the Assembly Clerk, an appointee to the Assembly of Delegates Falmouth seat vacant due to the resignation of Falmouth Susan Moran on May 21<sup>st</sup>, 2020. The Town of Falmouth was notified in letter electronically on 5/21/20 of the vacancy, the process, and timeframe to respond as specified in the Barnstable County Home Rule Charter Section 2-10. Certification of an appointee should have been made to the Assembly Clerk no later than June 21<sup>st</sup>, 2020.

Please be advised the Assembly of Delegates will place this item on its July 1<sup>st</sup>, 2020 agenda and determine the next course of action in accordance with Section 2-10 of the Barnstable County Home Rule Charter which reads as follows...**“If, at the expiration of thirty days following the issuance of notice by the clerk of the assembly of delegates that a vacancy from that municipality exists, no certificate has been received, the assembly of delegates may vote to fill such vacancy by electing any registered voter resident of the affected municipality for one year or more to fill such vacancy.”**

This is a courtesy notification regarding the current status of the vacant Falmouth Assembly Delegate seat. I will advise you on the Assembly’s course of action following its meeting on July 1<sup>st</sup>, 2020.

Respectfully,

Janice O’Connell, Clerk  
Assembly of Delegates

Notice of Vacancy  
Falmouth Representative to the Barnstable County Assembly of Delegates

The Falmouth Select Board is accepting applications for the interim appointment (until 12/31/20) of the Town of Falmouth representative on the Barnstable County Assembly of Delegates.

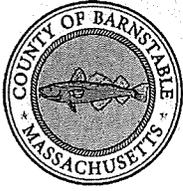
The Assembly of Delegates is the legislative branch of County government. This is the branch of County government responsible for adopting new legislation (ordinances) and maintaining checks and balances over the executive branch. Each town within Barnstable County is duly represented on the Assembly of Delegates. Delegates are elected by the voters in each of their municipalities. Delegates serve two-year terms (ending in even years).

Candidates under consideration for appointment will be required to complete a Statement of Financial Interest for CY19 with the State Ethics Commission within thirty days of being sworn-in as a delegate.

Application deadline for this vacancy is Friday, June 12, 2020. Interviews will be conducted by the Falmouth Select Board on Monday, June 15, 2020.

Applications are available on the Town website at: <http://www.falmouthmass.us/647/Town-Committees> , or by contacting the Town Manager's office by phone at (508) 495-7320 or by email at [townmanager@falmouthmass.us](mailto:townmanager@falmouthmass.us).

*Publication date: Friday, May 29, 2020; Falmouth Enterprise  
Account #: 2056*



CAPE COD REGIONAL GOVERNMENT  
BARNSTABLE COUNTY ASSEMBLY OF DELEGATES  
Barnstable County Complex  
P.O. Box 427  
3195 Main Street - Route 6A  
Barnstable, MA 02630  
(508) 375-6761

May 21, 2020

Town Clerk Michael Palmer  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540

RE: Resignation of Falmouth Assembly Delegate Susan Moran

Dear Clerk Palmer:

The Barnstable County Assembly of Delegates regrets the notice of resignation effective May 21, 2020 of its member from Falmouth, Susan Moran.

In accordance with Section 2-10 of the Barnstable County Home Rule Charter I am notifying you of this vacancy. The process and timeframe allowed to fill this vacancy for the balance of the unexpired term (12/31/20) is stated as follows:

***Section 2-10:***

“If a vacancy shall occur in the office of assembly of delegates with more than six months remaining of the term for which delegates are elected, a successor shall be chosen in accordance with the following procedure:

The clerk of the assembly of delegates shall cause a notice of vacancy to be sent to the clerk of the municipality in which the vacancy exists. The clerk of said municipality shall, forthwith, cause such notice to be posted on the municipal bulletin boards. Any voter, a resident of Barnstable county for at least one year, desiring to be considered to fill such vacancy shall, in writing, so advise the board of selectmen, town council in the town of Barnstable, or the officer or agency performing similar duties in such municipality. The board of selectmen or town council shall make provision for the interview, in public sessions, of all persons who have indicated such interest. Not more than twenty-one days following the date of the notice sent by the clerk of the assembly of delegates, the board of selectmen or town council shall, by a majority vote, choose one person from the municipality to fill such vacancy and shall issue a certificate of such selection to the clerk of the assembly of delegates. Upon receipt of the said

certificate the clerk of the assembly of delegates shall administer the oath of office to such person and shall enter such person name on the official list of assembly of delegates. If, at the expiration of thirty days following the issuance of notice by the clerk of the assembly of delegates that a vacancy from that municipality exists, no certificate has been received, the assembly of delegates may vote to fill such vacancy by electing any registered voter resident of the affected municipality for one year or more to fill such vacancy. The clerk of the assembly of delegates shall administer the oath of office to the person thus chosen who shall serve for the balance of the unexpired term.”

Please advise candidates under consideration for appointment they will be required to complete a Statement of Financial Interest for CY19 with the State Ethics Commission within thirty days of being sworn-in as a delegate. Candidates being considered for appointment may want to review the statement prior to being considered or appointed to this position. The Statement of Financial Interest (SFI) is not the same as filing or completing training associated with the Conflict of Interest Law with the State Ethics Commission.

If you have any questions, please give me a call or contact me via email.

Sincerely,

Janice O’Connell, Clerk  
Assembly of Delegates

cc: Falmouth Board of Selectmen  
Falmouth Town Manager



## TOWN OF FALMOUTH SPECIAL EVENT PERMIT

EVENT NAME Movies Under the Stars

NAME Falmouth Village Association; Donna Buckley, Secretary

MAILING ADDRESS P.O. Box 614, Falmouth, MA 02541

EVENT DAY & DATE Wednesdays: 7/8, 7/15, 7/22, 7/29, 8/5, 8/12, 8/19 and 8/26/20

RAIN DATE None.

EVENT LOCATION Falmouth Public Library Lawn, 300 Main Street

EVENT TYPE Free Family Movie Night

SET-UP ARRIVAL TIME 7:00 p.m. EVENT HOURS dusk – 10:00 p.m.

NUMBER OF ATTENDEES 50+ families

ADDITIONAL DETAILS Movies projected on a screen using LED audio-visual equipment; hired company to setup, run the movies, and take down the equipment. Attendees bring blankets and chairs for seating.

### CONDITIONS:

1. The COVID-19 safety rules and announcements about picking up trash and no alcohol will be projected on the movie screen.
2. Strong signage with social distance guidelines and safety rules will be posted.
3. Falmouth Village Association staff and volunteers will be on site to ensure social distance guidelines are followed.
4. Organizers to check the area following the events to ensure that no debris or litter is left behind in the park.

PERMIT FEE -- FILING FEE --

DEPOSIT -- (Deposit refundable at conclusion of event provided that no litter or damage has occurred)

### BOARD OF SELECTMEN:

_____	_____
_____	_____
_____	_____



# Town of Falmouth Application for Special Events



### CONTACT INFORMATION

Applicant's Name: Falmouth Village Association c/o Donna Buckley, Secretary  
 Mailing Address: 95 Bay Road, N. Falmouth, MA 02556  
 Phone: \_\_\_\_\_ Cell Phone: [REDACTED]  
 E-Mail: [REDACTED] Fax #: \_\_\_\_\_

### EVENT DETAILS

Name of Event: Movies Under the Stars  
 Type of Event: Family Movie Night - Free  
 Event Day & Date: Weekly on Wednesday evenings from 7-1-20 - 8-26-20  
 Rain Date: on unscheduled Wednesdays within the time frame  
 Event Hours: From: Dusk To: 10 PM  
 Set-up/Break-down Date(s): Before and after each movie Time(s): \_\_\_\_\_

### Location Requested:

1<sup>st</sup> Choice: Library Lawn - Trustee's voted to approve request on 6-4-20  
 2<sup>nd</sup> Choice: \_\_\_\_\_

Number of Attendees: 50± families Number of Vehicles: 0

Parking Plan: 0

Will event include chairs, barriers, tents? Yes or No (tent permit application, if necessary)

Will event include signs? Yes or No Temporary on night of event (sign permit application, if necessary)

Will event be a road race? Yes or No (a. include route map, b. see reverse side for road race rules, and sign)

Will event include use of Shining Sea Bike Path? Yes or No (see reverse side for bike path rules, and sign)

Will event include food or beverages? Yes or No (temporary food permit application)

Will event include alcoholic beverages? Yes or No (one-day liquor license application)

Will event include entertainment? Yes or No What type? Movies projected on a screen

### ADDITIONAL INFORMATION

Provide additional detail of your event including requests for use of restroom facilities, electricity, etc.

Please see attached Narrative

Applicant's Signature: Donna Buckley FVA Secretary Date: 6-11-2020

- References:
1. Linda Conner, Falmouth Public Library
  2. \_\_\_\_\_
  3. \_\_\_\_\_

### BOARD OF SELECTMEN

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## ATTACHMENT

The Falmouth Village Association is seeking permission to continue with its Movies Under the Stars, an annual family movie night. In the past, these movies were shown at Peg Noonan Park. In order to comply with the social distancing requirements the Village Association is partnering with the Falmouth Public Library to use the library lawn to create a safe and healthy place for families to spread out and enjoy a free movie in the Village.

The Board of Library Trustees voted on Tuesday June 9, 2020 to approve the use of the Library Lawn on Wednesday evenings from July 1, 2020 to August 26, 2020.

It appears the guidelines currently in place from the Town of Falmouth for gatherings at the beaches would be the most appropriate state and local COVID 19 guidelines for these events on the Library lawn.

We plan to schedule 6-7 Wednesday nights between July 1, 2020 and August 26, 2020, leaving 2-3 weeks open for rain dates.

The movies would be free, family friendly, and would begin around dusk.

We plan to use upgraded audio-visual equipment (LED) to show the movies and plan to hire a company to set up, run the movies, and take down the equipment.

The equipment has the capability to show announcements and we plan to use physical signage as well as display on the movie screen the COVID 19 Safety Rules, and the rules for use of the Library lawn, including specific reference to picking up trash and No Alcohol.

The event will be managed and attended by members of the Board of Directors of the Falmouth Village Association, along with volunteers recruited to assist. Management of the event will include making sure that the social distance guidelines are followed.

The Falmouth Village Association is looking to use these movie nights to draw attention to and create goodwill amongst residents and visitors to Falmouth Village and the Town of Falmouth as we try to recover from the devastating impacts being experienced by many of our businesses as a result of the COVID 19 shutdowns.

## Diane Davidson

---

**From:** Scott McGann  
**Sent:** Friday, June 26, 2020 4:52 PM  
**To:** Megan English Braga; Julian Suso; Diane Davidson  
**Subject:** RE: Application for Special Events

This is one of the cases where the guidance isn't clear as it allows outdoor activities and then states no to events. Irie stated that arguments could be made in either direction.

I'm fine with having the events with the following to help with social distancing:

- enhanced monitoring of the public
- strong signage.

The event is outdoors and relatively safe with basic social distancing.

Scott  
Falmouth Health

---

**From:** Megan English Braga <[megan.english-braga@falmouthma.gov](mailto:megan.english-braga@falmouthma.gov)>  
**Sent:** Wednesday, June 24, 2020 12:46 PM  
**To:** Julian Suso <[julian.suso@falmouthma.gov](mailto:julian.suso@falmouthma.gov)>  
**Cc:** Diane Davidson <[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)>; Scott McGann <[scott.mcgann@falmouthma.gov](mailto:scott.mcgann@falmouthma.gov)>  
**Subject:** Re: Application for Special Events

Hello all,

Is this not allowed bc it falls under movies?

It would seem this is more inline with how we have addressed the beaches and outdoor space for activities That seem to be allowed with social distancing.

<https://www.mass.gov/doc/june-6-2020-regulating-gatherings-throughout-the-commonwealth/download>

## Diane Davidson

---

**From:** Irie Mullin  
**Sent:** Friday, June 26, 2020 10:04 AM  
**To:** Diane Davidson  
**Cc:** Frank Duffy; Julian Suso; Kim Fish  
**Subject:** RE: Drive In Movies  
**Attachments:** BCAS 2019 Special Permit.pdf; BCAS 2020 Special Permit.pdf

Diane,

First, I must clarify the differing nature of what is being proposed for these two events. From the emails below, it appears that the Fairgrounds is proposing a drive-in movie event where participants stay in their closed cars the entire time (and/or limited foot traffic to bathrooms that must be maintained with Phase II cleaning standards). Drive-in movie theaters are currently permitted to operate under specific safety standards during Phase II. In contrast, the library lawn proposal, as far as I understand it, is a "walk-in" event where people will be outside sitting on blanket/chairs on the lawn, not staying inside their closed cars. This is not permitted under Phase II standards for drive-in movie theater operations, and must therefore be treated differently.

### Fairgrounds

The conditions of the 2020 ZBA permit state that "2. The events shall not be held until the Federal, State and Town's Covid-19 directive restrictions are removed or repealed, and allow public events to resume" and "4. [BCAS] shall continue to work with the Police and Fire Departments, Board of Health, and Board of Selectmen regarding any approvals or inspections required for any events as planned."

In the governor's Order 38 regulating gatherings, under "outdoor activities in unenclosed spaces," it states "Street festivals, agricultural festivals, walk-a-thons, road races and bike races, and other outdoor organized athletic or recreational events that gather large numbers of participants or spectators are prohibited until further Order." Thus, depending on the type of event BCAS is proposing to host, it may well be prohibited by state order, and would be in violation of Condition 2, until that order is changed. The BOH/Scott is the enforcing entity for the governor's Covid orders.

Given the reference in Condition 4 to both the Select Board and Board of Health, as well as the discussion of the ongoing pandemic elsewhere in the special permit decision, I conclude that BCAS must obtain approval for any proposed events from the SB, or its agent for special event permits, along with approval from the BOH, or its appointed agent (Scott). Both entities should ensure that BCAS can meet the safety standards applicable to drive-in movie theaters. In particular, they should address how audio for the movie will be delivered (by outdoor speakers? By radio transmission like a formal drive-in movie theater?), because my memory of drive-in standards is that cars must stay closed (no open windows to receive sound from outside). In any event, those standards should be located and checked for compliance before approval is issued.

### Movies on the Library Lawn

As discussed above, the library proposal is not a "drive-in" movie, but a "walk-in" movie. Covid Order 38 explicitly states that "other outdoor organized . . . recreational events that gather large numbers of participants or spectators are prohibited until further Order." This language immediately follows the language the applicant is relying on, which states "This Order does not prohibit gatherings of more than 10 people in an unenclosed, outdoor space such as a park . . . provided that (a) every person in attendance is able to regularly maintain at least 6 feet of distance from others in attendance; and (b) the type of gathering at issue has not been prohibited or the outdoor space in which the gathering will take place has not been closed to the public by previous Executive Order designating it as a Phase III or Phase IV enterprise or venue."

I advised Scott that the explicit prohibition of “organized recreational events” gathering large groups of people, even when outdoors, narrows the language in subpart (a) stating that groups of 10+ people may gather outdoors so long as socially distant. The key distinction is whether the gathering is an organized event—i.e. 50 people could independently occupy a beach or park in an unorganized fashion, so long as they maintain social distance, but an organized recreational event designed to attract 50 people simultaneously to a park or beach would not be permitted even if social distance was maintained. The reasoning for this distinction is not clear, but it likely reflects the difference in risks posed by a bunch of people all arriving/departing an outdoor area simultaneously, and the social impulse to gather closer during an organized event as compared to if strangers were merely using a beach independently of each other.

I also advised Scott that the language in subpart (a) allowing groups of 10+ outdoors so long as socially distant is also narrowed by subpart (b), which prohibits such gatherings in venues that have been closed and designated Phase III or IV enterprises. I advised Scott could be reasonable to interpret an outdoor movie as akin to a Phase III outdoor theater or performance venue. Certainly, if there was an existing outdoor amphitheater in town, it would not be permitted to show movies until Phase III, regardless of social distancing. Thus, it would be inconsistent to permit that same activity (but with even less opportunity to control crowds, parking, and bathroom cleaning) at a “pop-up” venue. Otherwise, an existing outdoor theater enterprise could merely move to a park or a field and claim they were in compliance, which would seem to frustrate the purpose of the Phase III designation.

In short, I conclude that movies on the lawn is prohibited under the Order 38 “outdoor activities in unenclosed spaces” standard, because although the plans meet subpart (a) (6 feet social distancing), the activity violates subpart (b) as either an “organized recreational event gathering a large group of people” or a “Phase III enterprise or venue” closed by prior order of the Governor.

When Phase III starts, there will likely be an update to the Order Regulating Gatherings (Order 38 and its several predecessors). At that time, Scott and I can assess where outdoor movie events fall within that updated language to determine if they are permitted in Phase III.

Thanks,  
Irie

**From:** Diane Davidson <[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)>  
**Sent:** Thursday, June 25, 2020 5:15 PM  
**To:** Irie Mullin <[irie.mullin@falmouthma.gov](mailto:irie.mullin@falmouthma.gov)>  
**Cc:** Frank Duffy <[frank.duffy@falmouthma.gov](mailto:frank.duffy@falmouthma.gov)>; Julian Suso <[julian.suso@falmouthma.gov](mailto:julian.suso@falmouthma.gov)>  
**Subject:** FW: Drive In Movies

Hi Irie,

May I ask your assistance with two special events questions:

Barnstable County Fairgrounds Events

As you know, the Select Board voted to cancel all approved special events in town until August 31, 2020 due to COVID-19; and further voted that any event organizer could request a variance by submitting a revised application which presents an alternate plan to hold the event and the social distancing and safety precautions to be put in place.

Traditionally, the Select Board has not approved special events to be held at the Barnstable County Fairgrounds, only liquor licenses for any of those events. The Barnstable County Agricultural Society (BCAS) has a special permit, and each year the Zoning Board of Appeals holds a hearing to review and approve all non-agricultural events to be held during that year. Any events for that year that are applied for after this hearing are reviewed and approved administratively by the Zoning office.

Should the applicants for events at the Fairgrounds for 2020 also submit an application for a variance to the Select Board and present their safety plans?

Attached:

- 2019 special permit for the BCAS (Conditions, Item 2. states applicants shall work with the Board of Selectmen for any liquor licensing).
- 2020 special permit for the BCAS (Conditions, Item 4. states BCAS shall continue to work with the Board of Selectmen regarding any approvals or inspections required for any events planned).

Movies on the Library Lawn Event

We received a revised application from the Falmouth Village Association to hold its Movies Under the Stars family friendly movies on the Library Lawn (approved use by the Library Board of Trustees) for Wednesday evenings in July and August. I forwarded this application to the Special Events Working Group for review and comment before placing on the next Select Board agenda for approval. Scott McGann responded with his comment that this event could not take place until Phase 3, as follows:

Events such as this one is not allowed until phase 3.

I have attached the relevant site here: <https://www.mass.gov/info-details/reopening-when-can-my-business-reopen#detailed-industry-reopening-plan>

Category	When you can reopen	Additional comments
Outdoor theatres and performance venues	Phase 3 – moderate capacity venues	

I informed the applicant, and they came back referencing COVID-19 Order No. 38, Outdoor Activities in Unenclosed Spaces. The applicant has provided in the narrative that the event will be managed and attended by members of the Board of Directors of the FVA and volunteers to make sure that social distance guidelines are followed. Does this event fall under “outdoor theatres and performance venues” or does it fit in under “outdoor activities in unenclosed spaces”?

Thank you very much for your help.

Diane

*Diane S. Davidson*  
*Office Manager/Licensing*  
*Office of the Town Manager and Select Board*  
*Town of Falmouth*  
*59 Town Hall Square*  
*Falmouth, MA 02540*  
[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)  
 (508) 495-7321

**From:** [wendy@barnstablecountyfair.org](mailto:wendy@barnstablecountyfair.org) [<mailto:wendy@barnstablecountyfair.org>]  
**Sent:** Thursday, June 25, 2020 2:54 PM  
**To:** Falmouth Town Manager <[townmanager@falmouthma.gov](mailto:townmanager@falmouthma.gov)>; Falmouth Selectboard <[selectboard@falmouthma.gov](mailto:selectboard@falmouthma.gov)>; Scott McGann <[scott.mcgann@falmouthma.gov](mailto:scott.mcgann@falmouthma.gov)>; Edward Dunne <[edward.dunne@falmouthpolicema.gov](mailto:edward.dunne@falmouthpolicema.gov)>; Mike Small <[michael.small@falmouthfirema.gov](mailto:michael.small@falmouthfirema.gov)>; Jennifer Mullen

<jennifer.mullen@falmouthma.gov>; Don Lincoln <don.lincoln@falmouthma.gov>; Noreen Stockman <noreen.stockman@falmouthma.gov>

Cc: 'Kevin Pacheco' <kevin@vivid-ep.com>

Subject: RE: Drive In Movies

Hi last night the E-Board has given the green light on accepting a proposal to do drive-in movies in our Lot 4 parking lot. I have spoken to Scott already and has blessed it as long as it aligns with all required safety measures. I am helping our vendor to get this off the grounds ASAP so we can have some kind of revenue coming in. Do we need to get a permit from the Board of Selectmen? I know our events go through Zoning but I think we are all set there correct Noreen?

I have copied our Drive-In vendor so he knows what he needs to do get this rolling.

Thanks and hope everyone is doing well.

Wendy Brown  
General Manager



## Diane Davidson

---

**From:** wendy@barnstablecountyfair.org  
**Sent:** Wednesday, July 1, 2020 9:28 AM  
**To:** Diane Davidson  
**Subject:** RE: Barnstable County Fairgrounds - Drive-In Movies

Hi Diane,

It will be myself and the promoter on the call. Kevin Pacheco [kevin@vivid-ep.com](mailto:kevin@vivid-ep.com)  
If you could send him the link also. I was on a zoom call with the zoning board so I am assuming it is the same?  
Thanks,

Wendy

**From:** Diane Davidson <diane.davidson@falmouthma.gov>  
**Sent:** Tuesday, June 30, 2020 4:09 PM  
**To:** wendy@barnstablecountyfair.org  
**Subject:** Barnstable County Fairgrounds - Drive-In Movies

Hi Wendy,

Attached please find a copy of the agenda for Falmouth Select Board meeting scheduled for this Thursday, July 2 at 7:00 p.m. Instructions for participation via Zoom are included at the top of the agenda.

If you have not yet participated in a town committee/board meeting via Zoom, please contact our I.T. Department by email at: [ithelp@falmouth.freshdesk.com](mailto:ithelp@falmouth.freshdesk.com). One of our I.T. staff members will contact you to arrange a time to provide you with instructions on logging in and navigating in advance of the meeting so you are prepared and comfortable.

I will also be providing the I.T. staff with the agenda and names of participants/presenters, so they will be expecting to hear from you.

Please let me know if you have any questions.

Thank you,

Diane

*Diane S. Davidson  
Office Manager/Licensing  
Office of the Town Manager and Select Board  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540  
[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)  
(508) 495-7321*



**SECTOR SPECIFIC WORKPLACE STANDARDS  
FOR DRIVE-IN MOVIE THEATERS  
TO ADDRESS COVID-19  
As of May 18, 2020**

---

**Purpose**

These sector specific COVID-19 safety standards for Drive-In Movie Theaters are issued to provide Drive-Ins with instructions to help protect against the spread of COVID-19 as in-person services resume.

These standards are minimum requirements only and are not exclusive or exhaustive. The public health data and matrix for disease prevention upon which these guidelines are based can and does change frequently, and the operator of a Drive-In is responsible for adhering to all local, state and federal requirements.

**Vehicles**

- Capacity must be reduced to allow for adequate distancing between cars.
- Customers must remain in their vehicles at all times, except when purchasing concessions or using the restroom facilities.

**Concessions and Payments**

- Concessions cannot be delivered to vehicles.
- Concessions must be for takeout only for customers to take back to their cars (i.e. no dining areas).
- Concession stand lines must have markers to ensure social distancing.
- Remote payment should be used when possible.

**Restrooms**

- Lines must have markers to ensure distancing.
- Facilities should be cleaned frequently to minimize the spread of COVID-19.

**Uses**

- Drive-In Theaters are allowed to operate only for the purpose of showing movies.