

# Town of Yarmouth

Per M.G.L.: All town and school boards, committees, commissions, and authorities shall post a notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays, and legal holidays. Notice shall contain a listing of topics/agenda that the chair reasonably anticipates will be discussed at the meeting.

## Notice of Meetings

Name of committee, board, etc:	<b>Planning Board</b>
Date of Meeting:	<b>September 21, 2021</b>
Time:	<b>6:00 p.m.</b>
Place:	<b>Town Hall Hearing Room 1146 Route 28, South Yarmouth, MA 02664</b>

### Agenda (Topics to be discussed):

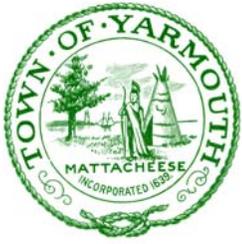
1. **Planning Board Annual Update with the Board of Selectmen (BOS)**: The Planning Board may meet in quorum to present and discuss the 2021 Planning Board Annual Report with the BOS.
2. **Zoning Articles for 2021 Special Town Meeting (STM) with Board of Selectmen (BOS)**: The Planning Board may meet in quorum to present and discuss the following proposed Zoning Articles with the BOS:
  - a. Zoning Article 1: National Flood Insurance Program (NFIP) Provisions
  - b. Zoning Article 2: Zoning District Boundaries
  - c. Zoning Article 3: Brewpubs
  - d. Zoning Article 4: Mobile Food Vendors
  - e. Zoning Article 5: Signs
  - f. Zoning Article 6: Rezone Parcel
  - g. Zoning Article 7: Body Art Establishments
3. Adjournment

Attachments: All exhibits are available for public review in the Planning Department, Yarmouth Town Offices, 1146 Route 28, South Yarmouth, MA, during normal business hours.

Posted By (Name):	Kathleen D. Williams
Signature:	<i>Kathy Williams</i>

YARMOUTH TOWN CLERK

'21SEP17PM1:18 REC



# TOWN OF YARMOUTH

1146 ROUTE 28, SOUTH YARMOUTH, MASSACHUSETTS 02664-24451  
Telephone (508) 398-2231, Ext. 1276, Fax (508) 398-2365

Planning  
Board

## MEMORANDUM

To: Board of Selectmen

From: Joanne Crowley, Planning Board Chair

Date: September 16, 2021

Subject: 2021 Annual Report for the Board of Selectmen

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On behalf of the Yarmouth Planning Board, I am pleased to submit the 2021 Annual Report to the Board of Selectmen. We welcome this opportunity to review the Planning Board's efforts over the past year and to discuss goals for the upcoming year.

**CHARGE:** The objectives and functions of the Planning Board are set forth in MGL Ch. 41, Sections 81A-81GG – *Municipal Planning and Subdivision Legislation*, and MGL Ch. 40A – *The Zoning Act*. Chapter 41 charges the Planning Board with regulating new subdivisions and Chapter 40A charges the Planning Board with the responsibility for the adoption and revision of Zoning Bylaws. The Planning Board is also responsible for long-term planning related to the Local Comprehensive Plan.

Other responsibilities of the Planning Board include serving as Special Permit Granting Authority (SPGA) for Single-Family Cluster Subdivisions and Planned Residential Developments, and for Motel Redevelopments (HMOD1 & HMOD2); review of all development plans under the Revitalization Overlay Architectural District (ROAD); Site Plan Review for the Village Centers Overlay District (VCOD); and Street Names, Scenic Roads, and Repetitive Petitions.

**MEMBERSHIP:** Yarmouth is fortunate to have dedicated Planning Board members, some of whom have served for many years, as well as our newer members who bring fresh perspectives. Planning Board members also serve on other Town Committees as outlined below:

Member	Position	Other Committees
Joanne Crowley	Chair	Community & Economic Development Committee (CEDC)
Liz Hartsgrove	Vice Chair	Community Preservation Committee (CPC)
Tom Baron	Clerk	Land Disposition Committee (LDC) & Water Resources Advisory Committee (WRAC)
Brad Goodwin	Member	Affordable Housing Trust (AHT) & Community Housing Committee (CHC)
Chris Vincent	Member	Design Review Committee (DRC)
Susan Brita	Member	Drive-In Site Utilization Committee (DISUC)
Will Rubenstein	Member	Capital Budget Committee (CBC)

Officer elections and Committee assignments are done annually in mid-September.

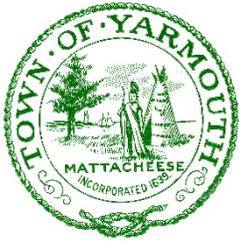
**PAST YEAR ACCOMPLISHMENTS:** The Planning Board was able to adapt well to the challenges presented by the pandemic, having conducted virtual meetings throughout and moving to in-person meetings in July 2021. In addition to regular business items, the Board has completed the following:

- **Community Visioning Project:** A significant amount of the Planning Board's time has gone into the Community Visioning Project, including holding virtual Workshops/business Roundtable, and an initial public survey culminating in 470 responses used to develop a draft Vision of Yarmouth as a great place to Live, Work, Play and Learn. These concepts were vetted through a 2<sup>nd</sup> Visioning Survey which received 920 responses. The Planning Board is currently digesting this information in preparation for creating a draft Vision Plan for further public review.
- **Growth Incentive Zone (GIZ) Extension:** The Planning Board worked with the BOS and the Cape Cod Commission (CCC) to extend the GIZ through October 2031. This extension retains the redevelopment opportunities for motel properties along the Route 28 corridor while we continue with our on-going efforts to complete the visioning process and update our Local Comprehensive Plan.
- **Development of Regional Impact (DRI) – Blue Sky Tower:** The Planning Board has also been involved in the review and comment on the proposed 120' communication tower proposed for 1044 Route 28, noting concerns with the location, height and aesthetics along our commercial corridor. The applicant is currently preparing supplemental information in preparation for another public hearing this fall.
- **Zoning Amendments:** The Board has prepared seven zoning amendments for consideration at the fall Special Town Meeting. Briefly, the proposed amendments are related to compliance with the National Flood Insurance Program (NFIP); clarifications on Zoning District Boundary; allowing Brewpubs in the B1/B2 business districts; allowing Mobile Food Vendors on town-owned land if approved by the Board of Selectmen; minor Sign changes; rezoning of a parcel; and allowing Body Art Establishments along Route 28. Please refer to the September 16<sup>th</sup> Memo from the Planning Board for detailed information.

**GOALS FOR THE COMING YEAR:** In addition to our regular duties, the Planning Board's main emphasis for the upcoming year is anticipated to include the following:

- **Vision Plan:** Completion of the Community Visioning Project and preparation of a Vision Plan for review by the public and Board of Selectmen this fall, with hopes of adopting the plan by the end of 2021.
- **Local Comprehensive Plan (LCP) Update:** With the visioning complete, the Planning Board will be moving onto updating the LCP. This will not be a light endeavor and the Planning Board has found it helpful and expeditious to have assistance from consultants to supplement staff efforts. In order to move forward quickly to reach this long-term goal of the BOS, the Planning Board is requesting the support and advocacy of the Board for a Free Cash Grant for the LCP at the 2022 Annual Town Meeting.
- **Zoning:** The Planning Board will move forward with proposed zoning amendments at the fall Special Town Meeting. With the LCP update, no significant zoning initiatives are anticipated in the near future, however the Board has heard repeated requests to address the issue of workforce and seasonal housing. The Planning Board would appreciate some early direction from the BOS on ways we can work towards addressing this issue without creating unintended or undesirable consequences.

The Planning Board looks forward to discussing their goals at our upcoming meeting with you.



# TOWN OF YARMOUTH

1146 ROUTE 28, SOUTH YARMOUTH, MASSACHUSETTS 02664-4492  
Telephone (508) 398-2231, Ext. 1276, Fax (508) 398-2365

Planning  
Board

## MEMORANDUM

To: Board of Selectmen  
From: Joanne Cowley, Planning Board Chair  
Date: September 16, 2021  
Subject: Zoning Articles for 2021 Special Town Meeting (STM)

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Thank you for the opportunity to meet with the Board of Selectmen to discuss proposed Zoning Bylaw amendments for the 2021 Special Town Meeting.

The Planning Board held their formal Public Hearing on September 15, 2021 with 7 members of the public in attendance and 24 written comments received. After the close of the Public Hearing, the Planning Board deliberated and voted to recommend, or recommend as amended, each Article as outlined in the attached September 16, 2021 memo to Robert Whritenour Jr., Town Administrator. The following provides a brief summary of each attached Article, along with the Public Hearing comments for each.

1. **Zoning Article 1 - National Flood Insurance Program (NFIP) Provisions:** This Article includes amendments related to development within Flood Zones and are necessary to maintain the Town's eligibility in the NFIP. This program enables homeowners, businesses and renters to purchase federally backed flood insurance. Flood insurance is required for anyone with a bank mortgage backed by the federal government, such as through Fannie Mae or Freddie Mac. With 1,100 active flood insurance policies in the Town of Yarmouth, maintaining eligibility in the NFIP is critical for our community.

Although these are not new NFIP requirements, they need to be formally adopted into local bylaws or ordinances. One requirement of note is the need to permit or have some type of formal review process for fences in a flood zone due to their potential to divert water flow and trap debris. The Building Department currently only permits fences 7' or higher, as required by the Building Code. These amendments will result in some additional permitting work for the Building Department for fences in flood zones.

*Public Hearing Comments:* One (1) individual had some questions regarding any new permitting requirements resulting from this amendment, beyond those already required in the Building Code. The Building Commissioner noted the need for permitting of fences less than 7' high in flood zones.

*There were no written comments on this Article.*

2. **Zoning Article 2 - Zoning District Boundaries:** This Article addresses inconsistencies between the zoning boundaries shown on the Zoning Map and the written word within the Zoning Bylaw for the rear boundary limits of the B1 and B2 zoning districts. Although the Zoning map has a presumption of validity, these edits make the language in the Zoning Bylaw match the limits depicted on the Zoning Map, and also outlines rules to follow should there be any questions related to boundary limits.

*Public Hearing Comments:* No public or written comments were received on this Article.

3. **Zoning Article 3 - Brewpubs**: This Article would expand business opportunities by allowing Brewpubs (establishments that produce and sell beer, malt, wine or hard cider beverages) to be located within our B1/B2 commercial areas, as long as the product is manufactured for consumption and retail sale on the property, and not part of a larger manufacturing endeavor for off-site distribution. Currently, manufacturing is only allowed within the B3 business district.

*Public Hearing Comments: One (1) individual had some questions regarding the locations of the B1 and B2 Business Districts, and the location of the Adult Entertainment District (AED).*

*There were two (2) written comments in support of the additional business opportunities provided by this Article.*

4. **Zoning Article 4 - Mobile Food Vendors**: This Article would expand business opportunities by allowing Mobile Food Vendors (i.e. food trucks) on town-owned land if approved by the Board of Selectmen through the Use of Town-Owned Property Application process. Current zoning views food trucks as restaurants and can be located in the B1/B2 zoning districts, but are prohibited in residential districts. As many of our beaches and parks are located in residential zones, this amendment would allow, from a zoning perspective, the ability to locate food trucks on town lands. However, the Board of Selectmen and/or the Health Department may wish to develop further policies and procedures for implementation of this amendment.

*Public Hearing Comments: There were no public comments received at the Hearing on this Article.*

*There were two (2) written comments in support of the additional business opportunities provided by this Article.*

5. **Zoning Article 5 - Signs**: This Article clarifies that all business center signs shall have a maximum height of 12'; and simplifies the language for issuing Special Permit relief by eliminating the reference to the sign being "visually and aesthetically beneficial to the neighborhood", which can be subjective and difficult for the ZBA to evenly interpret.

*Public Hearing Comments: There were no public comments received at the Hearing on this Article.*

*There was one (1) written comment in support of this Article.*

6. **Zoning Article 6 - Rezoning of Parcels**: This Article was originally proposed to rezone two properties to help facilitate development or redevelopment. The first parcel is a vacant residential lot located at 17 Berry Avenue, adjacent to a small vacant commercial lot at the corner of Route 28 and Berry Avenue, and across Berry Avenue from other commercial development (the 99 Restaurant). Rezoning of this parcel may promote commercial development on one or both of these vacant parcels. The second parcel is located behind 125 Route 6a and contains the parking area for the existing business along Route 6a (formerly Dennis Partners, currently vacant). The parcels serving this business have mixed zoning with B1 business along Route 6a and residential in the parking area in the rear. Rezoning would foster redevelopment by eliminating the complications associated with mixed zoning.

*Public Hearing Comments on 17 Berry Avenue: There were two (2) people who provided public comment at the Hearing in opposition to the rezoning of this parcel. Concerns expressed included traffic issues and access to the property, decreases in property values, impacts to the abutters and neighborhoods, and expansion of the already large business district.*

*There were five (5) detailed written comments in opposition to the rezoning. Many noted that the expansion of commercial activity would be an unwelcome incursion into a quiet/charming single family area, resulting in more noise and traffic, impacts to wildlife habitat, potential light pollution, stormwater runoff, loss of privacy, and decreased property values and impacts to seasonal rentals.*

*Many felt there was adequate commercial area available along Route 28, with many vacant or deteriorated properties that could be redeveloped rather than rezoning this parcel. Many felt the benefits purported for the rezoning did not outweigh the detriment to the area.*

*Public Hearing Comments on lot behind 125 Route 6a: There were no public comments received at the Hearing on rezoning of this parcel.*

*There were two (2) written comments received in opposition to rezoning this parcel. These included concerns about commercial buildings being located in the rear parcel and the impacts to the abutting private homes and Sandyside neighborhood, and potential impacts to property values.*

After hearing the public comments and reviewing the written comments, the Planning Board had a detailed and thoughtful deliberation on this Article. Some Board members felt the entire Article should move forward as written, some felt the entire Article should be withdrawn, and some felt 17 Berry Avenue should be removed from the Article. Ultimately the Board voted to remove the rezoning of 17 Berry Avenue from the Article and move forward with rezoning of the parcel behind 125 Route 6a, as shown in the attached Article.

7. **Zoning Article 7 - Body Art Establishments:** This Article would expand business opportunities by allowing Body Art Establishments that provide tattooing and cosmetic tattooing to be located within the commercial corridor along Route 28. This amendment would provide these businesses with the same opportunities provided to other personal care services such as hair salons and spas, rather than limiting them to the adult entertainment district.

*Public Hearing Comments: There were no public comments received at the Hearing on this Article.*

*There were three (3) letters of support for this Article that cited the benefit of additional locations for business opportunities, without negatively impacting the community, and the unfairness of locating body art establishments only in the adult entertainment district. Comments also noted that body art establishments have many more health/safety regulations than most businesses, and times have changed.*

*There were twelve (12) written comments received in opposition to allowing Body Art Establishments on Route 28 with the vast majority indicating that any zoning changes should be postponed until after the community visioning project is completed and a plan has been developed for Route 28.*

#### **ATTACHMENTS:**

- September 16, 2021 Memo – Planning Board Recommendation
- Zoning Articles 1-7



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1146 ROUTE 28, SOUTH YARMOUTH, MASSACHUSETTS 02664-24451  
Telephone (508) 398-2231 Ext. 1276, Fax (508) 398-2365

PLANNING  
DIVISION

## MEMORANDUM

To: Robert Whritenour Jr., Town Administrator  
From: Kathy Williams, Town Planner  
Date: September 16, 2021  
Subject: Zoning Articles for the 2021 Special Town Meeting

On September 15, 2021, the Planning Board held the required formal Public Hearing for Zoning Articles on the October 26, 2021 Special Town Meeting Warrant. After the Public Hearing, the Board Members deliberated and voted to recommend each Article as summarized below:

### PLANNING BOARD ACTION ON ZONING ARTICLES

<i>Zoning Article #</i>	<i>Recommendation, Moved &amp; 2<sup>nd</sup>, (Vote)</i>	<i>To Move/ Recommend /Explain</i>
<b>Article 1:</b> National Flood Insurance Program (NFIP) Provisions	Recommend, Liz Hartsgrove/Will Rubenstein (7-0)	Joanne Crowley
<b>Article 2:</b> Zoning District Boundaries	Recommend, Tom Baron/Chris Vincent (7-0)	Brad Goodwin
<b>Article 3:</b> Brewpubs	Recommend, Chris Vincent/Liz Hartsgrove (7-0)	Chris Vincent
<b>Article 4:</b> Mobile Food Vendors	Recommend, Brad Goodwin/Chris Vincent (7-0)	Liz Hartsgrove
<b>Article 5:</b> Signs	Recommend, Tom Baron/Chris Vincent (7-0)	Tom Baron
<b>Article 6:</b> Rezoning of Parcels (Amended to remove the rezoning of 17 Berry Avenue from the Article)	Recommend as amended, Chris Vincent/Brad Goodwin (4-3)	Brad Goodwin
<b>Article 7:</b> Body Art Establishments	Recommend, Chris Vincent/Liz Hartsgrove (6-1)	Liz Hartsgrove

## ZONING ARTICLE #1 - National Flood Insurance Program Provisions

**ARTICLE XX:** To see if the Town will vote to amend various sections of the Zoning Bylaw to modify certain provisions related to Flood Zones and Flood Area Provisions, with new language shown in bold italics, as follows, or take any other action relative thereto:

1. Amend Section 201.1 - Classes of Districts, by replacing the text “*Floodplain Zones: VE, AE, AO, X*” with new text “***Floodplain Zones: VE, AE, AO, AH, X***”.
2. Amend Section 201.4 – Floodplain Zones, by replacing the text “*100 year*” with “***1%-chance***” in the second to last sentence, and adding new text as shown:

201.4 – Floodplain Zones. The Floodplain Zones ***are herein established as an overlay District and*** include all special flood hazard areas within the Town of Yarmouth designated as Zone AE, AO, ***AH*** and VE on the Barnstable County Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Yarmouth are panel numbers 25001C0557J, 25001C0559J, 25001C0567J, 25001C0569J, 25009C0576J, 25009C0577J, 25009C0578J, 25009C0579J, 25009C0583J, 25001C0586J, 25001C0587J, 25001C0588J, 25001C0589J, 25001C0591J, 25001C0782J, and 25001C0801J, dated July 16, 2014. The exact boundaries of the District may be defined by the ***1%-chance*** base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Building Division, the Engineering Division, the Planning Division, and the Town Clerk.

3. Amend Section 403 - Flood Area Provisions, by adding a new Section 403.1 – Purpose, at the beginning of the Section as shown:

***403.1 Purpose:*** *The purpose of the Flood Area Provisions is to protect the public health, safety, and general welfare, and to minimize the harmful impacts of flooding upon the community by:*

1. ***Reducing threats to life and personal injury.***
  2. ***Minimizing new hazards for emergency response officials.***
  3. ***Reducing or preventing damage to public and private property, infrastructure, and utility services caused by flood waters.***
  4. ***Reducing or eliminating costs associated with cleanup and repairs caused by flooding.***
4. Amend Section 403.1 - Development, by replacing the text “*403.1*” with “***403.2***” in the title, and adding new text as shown:

***403.2 Development:*** All applicable development and uses in all Flood Zones A and V, as identified on Federal Emergency Management Agency (***FEMA***) Flood Insurance Rate

Map (FIRM) panels, whether permitted as a matter of right, by special permit, or by variance, shall meet the effective provisions of 780CMR (State Building Code). These maps are on file in the Building Division, the Engineering Division, the Planning Division, and the Town Clerk.

5. Amend Section 403 - Flood Area Provisions, by adding the following new text after Section 403.2 as shown:

**403.3 General Provisions:**

1. ***Abrogation and Greater Restriction:*** *The floodplain management regulations found in these Flood Area Provisions shall take precedence over any less restrictive conflicting local laws, ordinances or codes.*
2. ***Disclaimer of Liability:*** *The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.*
3. ***Severability:*** *If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the bylaw shall still be effective.*

**403.4 Designation of Community Floodplain Administrator:**

*The position of Building Commissioner is designated as the official Floodplain Administrator for the Town of Yarmouth.*

6. Amend Section 403.2 – Floodway Data, by replacing the text “403.2” with “403.5” in the title.
7. Amend Section 403 - Flood Area Provisions, by adding the following new text after Section 403.5 as shown:

**403.6 Unnumbered A Zones:**

*In A Zones, in the absence of FEMA Base Flood Elevation (BFE) data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.*

**403.7 Submission of New Technical Data:**

*If the Town of Yarmouth acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Conservation Administrator will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.)*

*Notification shall be submitted to:*

*FEMA Region I Risk Analysis Branch Chief  
99 High St., 6<sup>th</sup> floor  
Boston, MA 02110*

*And copy of notification to:*

*Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114*

8. Amend Section 403.3 – Notification of Watercourse Alteration, by replacing the text “403.3” with “**403.8**” in the title.
9. Amend Section 403.4 – Use Regulations, by replacing the text “403.4” with “**403.9**” in the title; by replacing text “Zone AO” with new text “**Zone AO and AH**” in Paragraph 1; and replacing the text “Zones VI-30, VE, and V” with new text “**Zones VE and V**” in Paragraphs 2 & 3.
10. Amend Section 403 - Flood Area Provisions, by adding the following new text after Section 403.9 as shown:

**403.10 Recreational Vehicles in a Flood District:** *In AH, AE Zones, VE, and V Zones, all recreational vehicles to be placed on a site must be:*

1. *fully licensed and highway ready; OR*
2. *be on the site for less than 180 consecutive days; OR*
3. *be elevated and anchored in accordance with the flood zone’s regulations for foundation and elevation requirements.*

**403.11 Permits Required in Floodplain Districts:**

1. *Under separate processes, the Town of Yarmouth requires Building and/or Conservation permit or permits for all proposed construction or other development in the floodplain overlay districts, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, filling and grading, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.*
2. *The Town of Yarmouth requires project proponents to acquire all local, state and federal permits necessary for development in the floodplain overlay district, and certify that all necessary permits have been, or will be acquired prior to start of construction.*

**403.12 Variances to Building Code Floodplain Standards:**

- 1. Variances to the flood-resistant standards as found in the MA State Building Code may only be issued by the MA State Building Code Appeals Board.**
- 2. For issued Variances, the Town of Yarmouth will request from the MA State Building Code Appeals Board written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.**
- 3. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official stating that:
  - (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and**
  - (ii) such construction below the base flood level increases risks to life and property.****
- 4. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.**

**404.13 Variances from Section 403:**

**A variance from these floodplain bylaws must meet the requirements set out by State law, meet the Variance criteria per Section 102.2.2, and may only be granted if:**

- 1. good and sufficient cause and exceptional non-financial hardship exists; and**
- 2. the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and**
- 3. the variance is the minimum action necessary to afford relief; and**
- 4. any required or applicable variances from the MA State Building Code Appeals Board have been obtained.**

**403.14 Flood District Definitions: The following Definitions apply specifically to these Flood Area Provisions and the Floodplain Zones.**

**DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]**

**FLOODWAY means the channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]**

**FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The**

*term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]*

**HIGHEST ADJACENT GRADE** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

**HISTORIC STRUCTURE** means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior or
  - (2) Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

**NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

**RECREATIONAL VEHICLE** means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

[US Code of Federal Regulations, Title 44, Part 59]

**REGULATORY FLOODWAY** - see FLOODWAY.

**SPECIAL FLOOD HAZARD AREA** means the land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, AI-30, A99, AR, AO, AH, V, VO, VE or VI-30. [Base Code, Chapter 2, Section 202]

**START OF CONSTRUCTION.** The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

**STRUCTURE** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

**SUBSTANTIAL REPAIR OF A FOUNDATION.** When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

**VARIANCE** means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

**VIOLATION** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

**Explanation:** This Article includes amendments related to development within Flood Zones and are necessary to maintain the Town’s eligibility in the National Flood Insurance Program (NFIP). This program is managed by the Federal Emergency Management Agency (FEMA) and enables homeowners, businesses and renters in participating communities to purchase federally backed flood insurance. Flood insurance is required for anyone with a bank mortgage backed by the federal government, such as through Fannie Mae or Freddie Mac. With 1,100 active flood insurance policies in the Town of Yarmouth, maintaining eligibility in the NFIP is critical for our community.

**Requires 2/3rds Vote**

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)

## ZONING ARTICLE #2 - Zoning District Boundaries

**ARTICLE XX:** To see if the Town will vote to amend the Zoning Bylaw by modifying certain provisions of Section 201 – Establishment of Districts, with new language shown in bold italics, as follows, or take any other action relative thereto:

1. Amend Section 201.2 – Zoning Map, by deleting the text “November 01, 2004, as most recently amended” and replacing with “***October 29, 2019, or as most recently amended***”.
2. Amend Section 201.5 B1, by deleting it in its entirety and replacing with new text as shown:

***201.5 B1 (Deleted STM 10/26/21)***

3. Amend Section 201.6 B2, by deleting it in its entirety and replacing with new text as shown:

***201.6 B2 (Deleted STM 10/26/21)***

4. Amend Section 201.7 – District Boundaries, by deleting it in its entirety and replacing with new text as shown:

***201.7 District Boundaries. Boundaries of Zoning Districts shall be as shown on the Official Zoning Map. Where any uncertainty exists with respect to the boundary of any zoning district, as shown on the Zoning Map, the following rules shall apply:***

- a. Boundaries of Zoning Districts shown on the Zoning Map which approximately follow or terminate at a town line, or current or former lot line, or street layout line, or edge of waterways/ waterbodies shall be construed to be actually at those lines.***
- b. Boundaries of Zoning Districts shown on the Zoning Map which approximately follow or terminate along a railroad shall be interpreted to be the southern boundary line of the railroad property.***
- c. Boundaries of Zoning Districts shown on the Zoning Map which approximately follow or terminate electric transmission lines south of Route 6, shall be interpreted to be at the centerline of the powerlines (approximately 33’ north of the utility easement line).***
- d. Rear boundary lines for B1, B2, and B3 along Willow Street and Route 28 that do not follow a property line shall not exceed one thousand two hundred (1,200) feet in depth, and shall be construed to be parallel to the road layout line.***
- e. When not locatable in any other way, boundaries shall be determined by scale from the map.***
- f. Whenever any dispute arises on zoning district boundaries as to the exact location of a district boundary line, the Building Commissioner or his/her duly authorized and qualified designee, shall determine the location of the line.***

**Explanation:** This Article addresses inconsistencies between the zoning boundaries shown on the Zoning Map and the written word within the Zoning Bylaw for the rear boundary limits of the B1 and B2 zoning districts. These edits make the language in the Zoning Bylaw match the limits depicted on the Zoning Map, and outlines rules to follow should there be any uncertainty related to boundary limits.

**Requires 2/3rds Vote**

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)

## ZONING ARTICLE #3 - Brewpubs

**ARTICLE XX:** To see if the Town will vote to amend various sections of the Zoning Bylaw to modify certain provisions related to Brewpubs, with new language shown in bold italics, as follows, or take any other action relative thereto:

1. Amend Section 202.5 – Use Regulation Table, by modifying the following Uses:

Modify Use E1 Food & kindred products, by replacing the text “no<sup>3</sup>” with new text “**no<sup>3,52</sup>**” in the B1 zoning district; and replacing the text “no” with new text “**no<sup>52</sup>**” in the B2 zoning district.

2. Amend Section 202.5 – Use Regulation Table - Footnotes, by adding the following new Footnote 52 as shown:

***52. Except “yes” for Brewpubs where the product is manufactured for consumption and retail sale on-site, and not for off-site distribution.***

3. Amend Section 500 – Definitions, by adding new text as shown:

***BREW PUB: An establishment that produces and sells beer, malt, wine, or hard cider beverages for consumption and retail sale on the premises, and not for off-site distribution. May include other uses such as a restaurant, including outdoor consumption and/or dining if otherwise permitted in the zoning district.***

**Explanation:** This Article would expand business opportunities by allowing Brewpubs to be located within our B1/B2 commercial areas, as long as the product is manufactured for consumption and retail sale on the property, and not part of a larger manufacturing endeavor for off-site distribution.

### Requires 2/3rds Vote

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)

## ZONING ARTICLE #4 – Mobile Food Vendors

**ARTICLE XX:** To see if the Town will vote to amend the Zoning Bylaw by modifying certain provisions, with new language shown in bold italics, as follows, or take any other action relative thereto:

1. Amend Section 202.5 – Use Regulation Table, by modifying the following Uses:

Modify Use H10 Eating & drinking establishments, by replacing the text “no” with new text “***no*** <sup>53</sup>” in all the Residential zoning districts (R-87, R-40, R-25 & RS-40).

2. Amend Section 202.5 – Use Regulation Table - Footnotes, by adding the following new Footnote 53 as shown:

***53. Except “Yes” for Mobile Food Vendors that are to be located on Town owned land and for which all other applicable Town permits, approvals and licenses have been obtained, and for which approval has been obtained through application to the Town Administrator’s office for Use of Town-Owned Property.***

***Mobile Food Vendors and all associated components including seating shall not be located within zoning setbacks. Signage shall be allowed per Section 303. Vendors shall be responsible for trash removal, ensuring safe pedestrian and vehicle access and circulation, fire access and safety, and adequate parking for all uses on the site. Vendors shall not generate excessive odors, smoke, noise or glare. No music or entertainment allowed unless an Entertainment License has been obtained from the Yarmouth Board of Selectmen. Hours of operation shall be as determined through the Use of Town-Owned Property application process.***

3. Amend Section 303.2 – Definitions, by adding new text as shown:

***Sandwich Board Sign - A self-supporting, double-paneled sign, whose panels are not parallel but which are connected along the top edge and separated along the opposite edge to create an A-frame.***

4. Amend Section 303.4.1 Temporary Signs, by adding new text at the end of this Section as shown:

***303.4.1.8 Mobile Food Vendors. Mobile Food Vendors may have one (1) sandwich board or A-frame sign not to exceed six (6) square feet in area. Such signs shall not cause safety issues or impeded visibility or access for vehicles or pedestrians; and may not be installed within the layout of public roads or on sidewalks, or within two (2) feet of the traveled surface of any road. The sign may only be displayed when the mobile food vendor is open for business. This temporary sign is in addition to other permanent signs allowed. Permit and fee is required.***

5. Amend Section 500 – Definitions, by adding new text as shown:

***MOBILE FOOD VENDOR – means a food establishment that is located upon a vehicle, or which is pulled by a vehicle, where food or beverage is cooked, prepared and served.***

**Explanation:** This Article would expand business opportunities by allowing Mobile Food Vendors the opportunity to be located on town-owned land if approved by the Board of Selectmen through the Use of Town-Owned Property Application process.

**Requires 2/3rds Vote**

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)

## ZONING ARTICLE #5 - Signs

**ARTICLE XX:** To see if the Town will vote to amend the Zoning Bylaw by modifying certain provisions of Section 303 – Signs, with new language shown in bold italics, as follows, or take any other action relative thereto:

1. Amend Section 303.5.4.2 - Business Centers, by adding new text as shown:

303.5.4.2 Business Centers. A business center may have only one (1) free standing sign, not exceeding twenty four (24) square feet in area, with the advertising area divided among the business enterprises or identifying the business center name or both, with a maximum face height or width of eight (8) feet will be allowed. ***No part of the sign shall be more than twelve (12) feet in height above the average natural grade at the street.*** All parts of this type of freestanding sign shall have a minimum 6' setback from any property line. For Business Centers housing three or more tenants and a minimum of 20,000 square feet of retail/office space, the center may have a 48 square foot sign with a minimum setback of 12 feet. If a Business Center eligible for the 48 feet free standing sign has more than 1000 feet of frontage it may choose to divide the sign into two separate 32 square foot signs provided they meet 50 foot sideline setbacks and are separated by a minimum of 300 feet.

2. Amend Section 303.13 – Relief, by deleting the text “*and that the result will be visually and aesthetically beneficial to the neighborhood*” at the end of the first sentence as shown:

303.13 Relief. Relief from the requirements of sections 303.3.10, 303.5.4.2, 303.5.4.3, 303.5.5.2 and 303.5.5.3 may be granted by the Board of Appeals by special permit, provided the Board finds, in addition to the requirements of section 103.2, that the relief requested meets the spirit and intent of this bylaw. All other relief shall be in the form of a variance, as provided in section 102.2.2.

**Explanation:** This Article clarifies that all business center signs shall have a maximum height of 12', and simplifies the language for issuing Special Permit relief to make it less subjective.

### Requires 2/3rds Vote

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)

## **ZONING ARTICLE #6 – Rezoning of Parcels**

**ARTICLE XX:** To see if the Town will vote to amend the Zoning Map for certain parcels as follows, or take any other action relative thereto:

1. Amend the Zoning Map, by rezoning the following parcel from R40 Residential, to B1 Business:

### **Map 121, Parcel 86**

**Explanation:** This Article rezones a parcel located behind 125 Route 6a that contains the parking area for the existing business along Route 6a (formerly Dennis Partners, currently vacant). The two parcels serving this business have mixed zoning with B1 Business along Route 6a and residential in the parking area in the rear. This Article may foster redevelopment by eliminating the complications and restrictions associated with mixed zoning by rezoning the rear parcel to B1 Business.

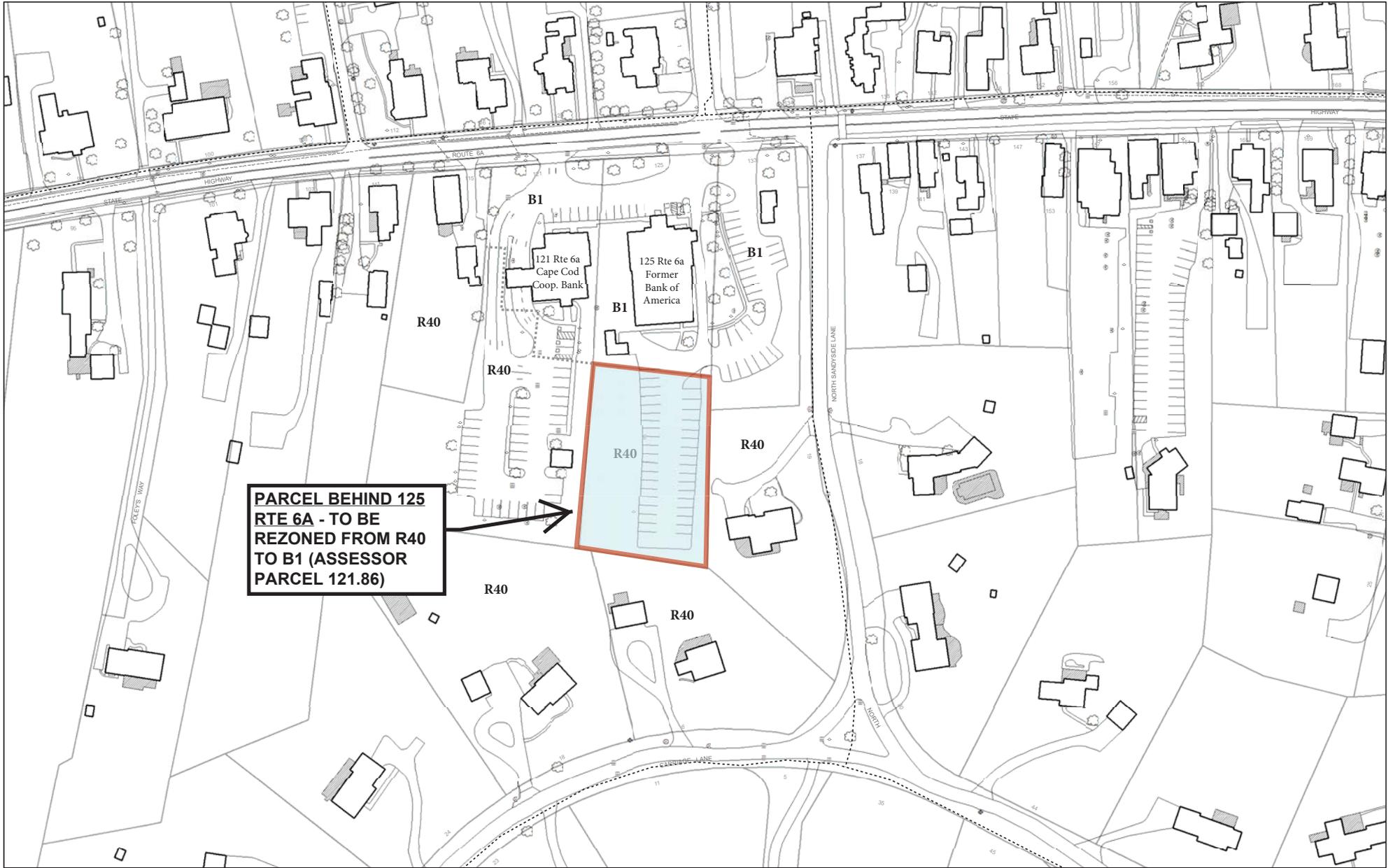
### **Requires 2/3rds Vote**

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)

125 Route 6A



**PARCEL BEHIND 125  
RTE 6A - TO BE  
REZONED FROM R40  
TO B1 (ASSESSOR  
PARCEL 121.86)**

## ZONING ARTICLE #7 - Body Art Establishments

**ARTICLE XX:** To see if the Town will vote to amend the Zoning Bylaw by modifying certain provisions related to Body Art Establishments, with new language shown in bold italics, as follows, or take any other action relative thereto:

1. Amend Section 202.5 – Use Regulation Table, by modifying the following Uses:

Modify Use J3 Beauty & barber shops, by replacing the text “yes<sup>4,18</sup>” with new text “yes<sup>4,18, 23</sup>” in the B1 zoning district.

Modify Use J3 Beauty & barber shops, by adding new text as shown:

J3 Beauty & barber shops **& other personal care services.**

Modify Use J6 Miscellaneous personal services, by eliminating the reference to note 23 in the B1, B2, B3, HMOD1, VC1, VC2, VC3 and VC4 zoning districts.

2. Amend Section 202.5 – Use Regulation Table - Footnote 23, by deleting the text “as defined in 105 CMR 124.000” and adding new text as shown:

23. Except no for Body Art Establishments, **as defined in Section 500 - Definitions.**

3. Amend Section 500 – Definitions, by adding new text as shown:

***BODY ART ESTABLISHMENT - means a specified place, location, premises, or business that has been granted a permit by the Board of Health, whether public or private, where the practices of Body Art are performed, whether or not for profit.***

***BODY ART - means the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: tattooing, and cosmetic tattooing. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine in the Commonwealth, such as implants under the skin, which shall not be performed in a body art establishment.***

**Explanation:** This Article would expand business opportunities by allowing Body Art Establishments that provide tattooing and cosmetic tattooing to be located within the commercial corridor along Route 28. This amendment would provide these businesses with the same opportunities provided to other personal care services such as hair salons and spas, rather than limiting them to the adult entertainment district.

### Requires 2/3rds Vote

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)