

Article #25

To see if the Town will vote to amend the Walpole Zoning By-Laws by inserting a new Section 13 entitled Walpole Biotech Overlay District (WBOD), the text of which is on file and can be viewed in the offices of the Town Clerk, Board of Selectmen, and Planning Board, and to further amend the Zoning By-Laws by renumbering Section 13 Site Plan Review as Section 14 and Section 14 Definitions as Section 15, and to make all other housekeeping changes, including repagination and appropriate amendments to the Table of Contents, necessary for the insertion of this Section 13, or act or do anything in relation thereto. (Petition of the Board of Selectmen).

SECTION 13 - WALPOLE BIOTECH OVERLAY DISTRICT (WBOD)

1. PURPOSE.

This Section establishes a Walpole Biotech Overlay District (WBOD) and a list of the range of uses that are appropriate to the overlay site but are not desirable in all sites similarly zoned, in order to safely promote the development of the biotech industry and related uses on a site that is designated as a Priority Development Site by the Town of Walpole. Other objectives of this Section are to:

- * Promote and protect the public health, safety and welfare by encouraging sensitive and compatible development in appropriate places and in appropriate manners;
- * Promote a mechanism by which development can contribute directly to increasing the Town of Walpole's commercial tax base;
- * Establish requirements, standards and guidelines to ensure predictable and cost-effective development, review and permitting;
- * Establish development standards to allow context-sensitive design and creative site planning; and
- * To promote creative and appropriate solutions to the development of the site which has significant constraints.

2. OVERLAY DISTRICT.

- A. The Walpole Biotech Overlay District (hereinafter referred to as the "WBOD"), is hereby established as an overlay district which shall consist of the land shown on the plan entitled "Walpole Biotech Overlay District, Town of Walpole, Commonwealth of Massachusetts" dated February, 2010 which map is hereby made a part of the Zoning Bylaws and is on file in the office of the Town Clerk. The WBOD is more specifically described by the legal description noted on said plan and contains approximately eighty-one and 49/100 (81.49) acres of land. The WBOD is superimposed over the underlying zoning districts as shown on

said plan.

- B. Underlying Zoning. The WBOD is an overlay district superimposed on the underlying Limited Manufacturing (LM) and the contiguous Residence A (RA) zoning districts as shown on the plan referenced in the preceding paragraph (A.) above. All use, dimensional and other requirements of the provisions of the Zoning Bylaw governing the underlying zoning districts shall remain in full force and effect, except for a Project undergoing development pursuant to this Section 13. Within the boundaries of the WBOD, an owner of the land encompassed herein may elect to develop a Project either in accordance with the requirements of this Section 13 or to develop a Project in accordance with the requirements of the Zoning Bylaw provisions that govern the underlying zoning district(s). For projects developed in accordance with this Section 13, where the provisions of the WBOD are silent on a zoning regulation, the requirements of the LM zoning district shall apply unless contrary to the intent of the WBOD.

- C. Applicability of WBOD. An applicant for a Project located within the WBOD may seek a Special Permit and/or Site Plan Approval, as applicable, in accordance with the requirements of this Section 13. No biotechnology facility with biosafety level 3 materials or activities or other use that requires a WBOD special permit shall be allowed in the WBOD except upon issuance of a WBOD special permit under this section. In such case, notwithstanding anything to the contrary in the Zoning Bylaw, Section 13 shall control an application for such a Special Permit and/or Plan Approval and shall not be subject to any contrary provisions of the Zoning Bylaw. When a building permit is issued for any Project approved in accordance with this Section 13, the provisions of the underlying LM and/or RA zoning districts shall no longer be applicable to the land shown on the Site Plan which was submitted unless included therein or have been included in the Special Permit Decision and/or Site Plan Approval.

3. USE REGULATIONS.

- A. All uses allowed in the underlying LM zoning district shall be allowed for the entire parcel in the WBOD.

- B. Additional uses (and their definitions) allowed by Special Permit in the WBOD are as follows:
 - (1) Medical or Dental Laboratories: A building or group of buildings used for the offices and facilities accessory to the practice of licensed medical practitioners, (including physicians, dentists, optometrists, ophthalmologists, and persons engaged in all fields related generally to medicine, but not including veterinarians) and including such common facilities as an outpatient clinic or emergency treatment rooms, but not including inpatient facilities.

 - (2) Biotechnology Facility: A research, experimental, testing, or product

development laboratory or manufacturing facility utilized for the scientific study of biological and life processes for medical application and/or commercial purposes.

- (3) Medical Equipment and Supplies Manufacturing: Uses engaged in developing and/or making medical equipment and supplies including but not limited to: surgical and medical instruments, surgical appliances and supplies, medical and veterinary diagnostic imaging and testing equipment along with associated reagents and supplies, dental equipment and supplies, orthodontic goods, ophthalmic goods, dentures, and orthodontic appliances. The medical supplies manufactured in these establishments are typically sold to wholesalers and/or retailers for distribution to consumers or to doctors, hospitals or medical institutions.
- (4) Pharmaceutical and Medicine Manufacturing: Uses engaged in developing and/or making pharmaceutical and medicinal products. This use may include activities such as: processing (e.g. grading grinding, and milling) botanical drugs and herbs, isolating active medicinal principals from botanical drugs and herbs, manufacturing pharmaceutical products intended for internal and external consumption in such forms as ampules, tablets, capsules, vials, ointments, powders, solutions, and suspensions. The pharmaceutical products manufactured in these establishments are typically sold to wholesalers and/or retailers for distribution to consumers or to doctors, hospitals or medical institutions.
- (5) Accessory uses incidental to the uses allowed with the WBOD.

NOTE: For the purposes of the WBOD, activities that require BSL 1, 2, or 3 Materials are allowed within the WBOD. However, activities that require BSL 4 Materials are specifically prohibited.

4. DEFINITIONS.

- A. Biosafety Level 1 (BSL 1) Materials. Biological materials with defined and characterized strains of viable microorganisms not known to consistently cause disease in healthy adult humans.
- B. Biosafety Level 2 (BSL 2) Materials. Biological materials with a broad spectrum of indigenous moderate-risk agents that are present in the community and associated with human disease of varying severity.
- C. Biosafety Level 3 (BSL 3) Materials. Biological materials with indigenous or exotic agents with a potential for respiratory transmission and which may cause serious and potential lethal infection upon exposure.
- D. Biosafety Level 3 (BSL 3) Containment Area. The portion of a facility employing containment measures for work with BSL 3 Materials.
- E. Biosafety Level 4 (BSL-4) Materials. Biological materials with dangerous and exotic agents that pose a high individual risk of life-threatening disease, which

may be transmitted via the aerosol route and for which there is no available vaccine or therapy.

- F. BMBL. Biosafety in Microbiological and Biomedical Laboratories, 5th edition.
- G. NIH Guidelines. National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules," as published in the Federal Register of September 22, 2009.
- H. rDNA Materials. Materials consisting of (i) "Recombinant DNA molecules" (rDNA) as defined in the NIH Guidelines, and (ii) organisms and viruses containing such Recombinant DNA molecules, except for any such material that is the subject of an exemption under the NIH Guidelines.

5. WBOD GRANTING AUTHORITY.

- A. The Planning Board shall be the Special Permit Granting Authority (SPGA) for the issuance of all Special Permits in the WBOD (excluding actions involving BSL 3 Materials) pursuant to SECTION 2: ADMINISTRATION, subsection.2 Special Permits whether or not the Special Permit is in conjunction with a Site Plan Application.
- B. The Planning Board shall be the Special Permit Granting Authority (SPGA) for the issuance of Special Permits in the WBOD requiring BSL 3 containment whether or not the Special Permit is in conjunction with a Site Plan application pursuant to the provisions set forth herein.

6. BIOSAFETY LEVELS 1 & 2.

Activities that require BSL 1 or 2 Materials are allowed as a matter of right, provided, that, in the case of BSL 1 or 2 Materials that are rDNA Materials, the owner of the land encompassed herein and/or actual entity performing the activity obtains and maintains any required permits for the use of such rDNA Materials as required by the Board of Health of the Town of Walpole.

7. BIOSAFETY LEVEL 3.

Activities/uses that require BSL 3 Materials are allowed by Special Permit subject to the following:

- A. BSL 3 Filing. If a Special Permit is sought for a use that requires BSL 3 Materials, the application filing and hearing process shall be undertaken pursuant to SECTION 2: ADMINISTRATION, subsection.2 Special Permits. However, in addition to the materials required under Section 2:2 the Applicant shall also provide:
 - (1) A labeled floor plan of the facility including BSL 3 Containment Areas and access routes and an estimate of floor area of such BSL 3 Containment Areas in square feet as prepared by a registered architect

and/or professional engineer.

- (2) Documentation establishing the retention of a third-party laboratory commissioning agent with the appropriate experience and expertise in the evaluation of facilities employing BSL 3 containment. The third-party commissioning agent shall be identified to the Walpole Board of Health prior to the filing for a Special Permit for any use requiring a BSL 3 Containment Area. The Board of Health may request the applicant to select another commissioning agent at its discretion if the third-party agent does not appear to possess sufficient experience and expertise in commissioning BSL 3 Containment Areas.
- (3) Certification by the third-party commissioning agent that the design of the BSL 3 Containment Areas satisfies all applicable requirements of the NIH Guidelines and BMBL for containment of BSL 3 Materials.
- (4) In the case of a BSL 3 Containment Area constructed prior to the effective date of this Section 13, certification by the third-party commissioning agent that the BSL 3 Containment Area has been constructed in accordance with the design certified by such commissioning agent. If the applicant proposes to construct a BSL 3 Containment Area after the grant of the Special Permit, then it shall be a condition of the Special Permit that such certification be obtained and filed with the SPGA prior to commencing use of BSL 3 Materials in such BSL 3 Containment Area.

NOTE: an Applicant seeking a Special Permit, or modification thereof, under this Section may redact specific information required by this Section 13 subsection 7.A which the Applicant believes should be confidential and unavailable for inspection by members of the public. Any trade secrets or proprietary information shall be afforded the highest confidentiality allowed by law. If the SPGA is unable to evaluate the application for or modification to a Special Permit without the redacted information, the SPGA may deny the Special Permit and determine whether the criteria for Special Permit be satisfied without the redacted information.

- B. Submission Compliance. The content of the submission is to be governed by SECTION 2: ADMINISTRATION subsection 2A and this Section 13 subsection 7.A.
- C. Waiver of Requirements. Strict compliance with these requirements may be waived when, in the judgment of the Board, such action is in the public interest and not inconsistent with the intent of the WBOD.
- D. Approval Process. The approval procedure relative to an approved plan shall be in accordance with SECTION 2: ADMINISTRATION subsection 2.B.

8. CONSULTANT REVIEW.

- A. Applicability. The Planning Board and/or SPGA may determine that a proposed

project's size, scale, complexity, potential impact or use warrants the use of outside consultants. Such consultants shall assist the Planning Board, or any town board or commission to which a matter is referred for review and comment prior to action by the Planning Board and/or SPGA, in plan review, impact analysis, inspection or other technical assistance necessary to make its findings. The actual and reasonable costs for the services of such consultants shall be paid for by the applicant and sufficient funds shall be placed into escrow to allow for payment of such a consultant before the consultant is engaged or performs any work. Refusal to comply with this requirement shall be a basis for denial of the Special Permit.

- B. Selection. Notwithstanding the provisions of G.L. c.44, §53G, the Planning Board and/or SPGA shall provide the applicant with a list of three proposed consultants together with a scope of work and a good faith cost estimate. The applicant shall have seven days to accept one of the proposed consultants or to object to the selection and appeal the selection to the Board of Selectmen on grounds that the proposed consultant has a conflict of interest or does not possess the minimum required qualifications of an educational degree or three or more years of practice in, or closely related to, the field at issue. Such an appeal may be initiated by the applicant filing notice with the Planning Board within seven days of notice of the selection.

- C. Special Account. The applicant shall deposit with the Town Treasurer-Collector the amount of money determined as necessary for the consultant to complete the assignment pursuant to a 'not to exceed contract'. Such funds shall be deposited into a special account to be established by the Town Treasurer-Collector. Expenditures from this special account may be made at the direction of the Board without further appropriation under G.L. c.44, §53G, but only in connection with the review of the specific project for which a consultant review fee has been collected. Additional funds shall be deposited on the execution of an amendment to the existing 'not to exceed contract', if necessary because the amount previously deposited is insufficient to complete the assignment. No work shall proceed unless the funds are in escrow to pay for the work. Any delay in provision of consulting funds shall extend any applicable deadline for a time period equal to any such delay. Any unexpended balance, including all accrued interest from the date of deposit, shall be repaid to the applicant or its successor in interest at the completion of the consultant's services.

9. DECISION FOR BSL 3 ACTIVITY.

- A. Special Permit Grant. The Special Permit for the activity using BSL 3 Materials shall be granted by a supermajority vote under G.L.c .40A, §9 where the SPGA finds that:
 - (1) The applicant has submitted the required fees and information as set forth herein; and

- (2) The project and use meets the requirements and standards set forth in SECTION 2: ADMINISTRATION subsection 2.B and, if applicable, this Section 13-9; and
 - (3) Adverse potential impacts of the Project on adjacent properties have been adequately mitigated by means of appropriate conditions.
- B. Special Permit Disapproval. The Special Permit for the activity using BSL 3 Materials may be disapproved **only** where the SPGA finds that:
- (1) The applicant has not submitted the required fees and information as set forth herein; or
 - (2) The project and use do not meet the requirements and standards set forth in SECTION 2: ADMINISTRATION subsection 2.B or, if applicable, this Section 13-9; or
 - (3) It is not possible to adequately mitigate significant adverse project impacts on adjacent properties by means of appropriate conditions.
- C. Conditions of Approval for uses requiring BSL 3 Materials. The following shall be standard conditions for any Special Permit issued in the WBOD only for uses requiring BSL 3 Materials:
- A. The Applicant shall follow all requirements set forth in Section 13 of the Walpole Zoning By-Laws.
 - B. The Applicant shall maintain a listing of all materials BSL 3 Materials on-site. The list shall be made available for inspection by the Zoning Enforcement Officer and Health Director during reasonable business hours.
 - C. The Applicant shall obtain and maintain any required permits for the use of such BSL 3 Materials as required by the Board of Health of the Town of Walpole prior to use of any such BSL 3 Materials.
- D. Form of Decision. All decisions of the SPGA shall be by a supermajority vote of the members present and voting. The SPGA shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the SPGA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. A copy of the decision shall be provided to the Building Commissioner. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the applicant.

- E. Validity of Decision. A Special Permit grant shall remain valid and shall run with the land indefinitely, provided that the permit is recorded by the applicant and substantial use commences within two (2) years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended for good cause which shall include a circumstance in which the Project proponent is actively pursuing other required permits for the Project or other good cause for the failure to commence substantial use and as may be provided by a Special Permit Grant (whether or not coupled with a Site Plan Approval) for a Multi-Phase Project, otherwise the Special Permit shall lapse.

10. SITE PLAN PROCESS/PROCEDURES.

- A. Site Plan Approval Authority (SPAA). For purposes of reviewing applications and issuing decisions on Projects within the WBOD, the Site Plan Approval Authority (SPAA) shall be the Planning Board. The SPAA is authorized to approve a Site Plan to implement the Project and in conjunction therewith any Special Permits required.
- B. Filing. The application filing and hearing process shall be undertaken pursuant to SECTION 14: SITE PLAN REVIEW subsections 7A and 7B.
- C. Consultant Review. Consultant review may be requested by the Planning Board as set forth in Subsection 13-8. CONSULTANT REVIEW above.
- D. Submission Compliance. The content of the submission is to be governed by SECTION 14: SITE PLAN REVIEW subsection 8A; the review criteria subsection 9A; the general site development standards and guidelines by subsection 10A; and the drainage standards by subsections 11 A, B, C, D & E.
- E. Approval Process. The approval procedure relative to an approved plan shall be in accordance with SECTION 14: SITE PLAN REVIEW subsection 7C.

11. DECISION.

- A. Waivers. Except where expressly prohibited herein, upon the request of the Applicant the SPAA may waive dimensional and other requirements of this Section 13, provided that the waiver requests are part of the application when submitted.
- B. Plan Approval. Site Plan Approval shall be granted by a simple majority where the SPAA finds that:
 - (1) The applicant has submitted the required fees and information as set forth herein; and

- (2) The Project and site plan meet the requirements and standards set forth in this Section 13, or a waiver has been granted therefrom; and
 - (3) Adverse potential impacts of the Project on adjacent properties have been adequately mitigated by means of suitable conditions.
- C. Plan Disapproval. A site plan may be disapproved only where the PAA finds that:
- (1) The applicant has not submitted the required fees and information as set forth herein; or
 - (2) The Project and site plan do not meet the requirements and standards set forth in this Section 13, or a waiver has not been granted therefrom; or
 - (3) It is not possible to adequately mitigate significant adverse project impacts on adjacent properties by means of suitable conditions.
- D. Form of Decision. All decisions of the SPAA shall be by a majority vote of the members present and voting. The SPAA shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the SPAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. A copy of the decision shall be provided to the Building Commissioner. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the applicant.
- E. Validity of Decision. A plan approval shall remain valid and shall run with the land indefinitely, provided that construction commences within three (3) years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the Project proponent is actively pursuing other required permits for the Project or there is good cause for the failure to commence construction and as may be provided by a Plan Approval for a Multi-Phase Project.
- F. Minor Change. After Plan Approval, an applicant may apply to make minor changes involving minor site utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope(s) of the site. Such minor changes must be submitted to the SPAA on appropriately revised prints of the approved plan (without endorsement) reflecting the proposed change, and on application forms provided by the SPAA. The SPAA may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The SPAA shall set forth any decision

to approve or deny such minor change by motion and written decision, and provide a copy to the applicant for filing with the Town Clerk. A copy of the decision shall be provided to the Building Commissioner.

- G. Major Change. Those changes deemed by the SPAA in its exclusive discretion to constitute a major change because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the SPAA as a new application for Plan Approval pursuant to this Section 13.

12. DIMENSIONAL REGULATIONS.

The dimensional requirements as set forth in SECTION 6: DIMENSIONAL REGULATIONS for Limited Manufacturing shall apply for the entire parcel in the WBOD.

13. BUFFER ZONE.

The requirements of SECTION 5-G: BUFFER ZONES of the Zoning Bylaw shall control. For the purposes of determining the buffer zone requirement between non-residential uses and residential uses, the perimeter of the WBOD as defined in Section 13-2 Overlay District above shall be the controlling District Zoning Boundary Line (DZBL) for all projects undertaken pursuant to this Section 13.

14. SIGN REGULATIONS.

Any signage shall comply with SECTION 7: SIGN REGULATIONS of the Zoning Bylaw as applicable under subsection 6: Signs Permitted in All Districts and subsection 8: Signs Permitted in Non-Residential Districts.

15. PARKING.

The requirements of SECTION 8: PARKING REGULATIONS shall apply within the entire area encompassed by the WBOD.

16. FLOOD PLAIN.

The requirements of SECTION 11: FLOOD PLAIN PROTECTION OVERLAY DISTRICT, if applicable, shall be complied with, except Section 11-3-B. (1) - (5) to substitute the Planning Board in connection with the WBOD application vs. the Zoning Board as the permit granting authority.

17. WATER RESOURCE PROTECTION OVERLAY DISTRICT.

NOT APPLICABLE

18. ENFORCEMENT; APPEAL.

The provisions of the WBOD shall be administered by the Building Commissioner, except as otherwise provided herein. Any appeal arising out of action by the SPAA regarding an application for Plan Approval for a Project shall be governed by the applicable provisions of G. L. c. 40A.

19. SEVERABILITY.

If any provision of this Section 13 is found to be invalid by a court of competent jurisdiction, the remainder of this Section 13 shall remain in full force. The invalidity of any provision of this Section 13 shall not affect the validity of the remainder of the Town's Zoning Bylaws.

2/23/2010