



**LEBANON ZONING BOARD OF ADJUSTMENT
OCTOBER 4, 2021 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. September 7, 2021
 - 3. Public Hearing Items**
 - A. **Immersion Montessori School, LLC (applicant) and 79 East Wilder Rd Realty Trust (property owner), 79 East Wilder Road (Tax Map 7, Lot 2), zoned R-3:** The applicant obtained a Special Exception on November 2, 2020, to operate a group day care facility with up to 45 students and 10 teachers. The applicant proposes to expand the group day care facility and requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance a) to allow up to 20 additional students for a total of 65, b) to expand the operating hours to 7:30 am – 5:30 pm, Monday through Friday, c) to keep up to 10 small animals on the property for educational purposes, and d) to install two (2) 36 sq. ft. sheds to shelter the animals. **ZB2021-21-SE - Continued from September 7, 2021**
 - 4. Staff Comments**
 - 5. Adjournment**

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to [LebanonNH.gov/Live](https://lebanonnh.gov/Live) where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

If you have any questions or would like to view the files for the application identified above, please contact the Planning & Development Department by sending an e-mail to planning@lebanonnh.gov, or by calling 603-448-1457, or by visiting the Planning and Development Office located in City Hall during regular work hours, Monday through Thursday, 7AM to 5PM. The application materials will also be posted to the City's website at [LebanonNH.gov/Agendas](https://lebanonnh.gov/Agendas).

**Agenda
Zoning Board of Adjustment
October 4, 2021**

**Agenda Item #2A
Approval of Minutes**

September 7, 2021

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
TUESDAY, September 7, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Jeremy Katz, Dan Nash, Paul McDonough (Alt), Dave Newlove (Alt), Jennifer Barkley (Alt)

MEMBERS ABSENT: Vice Chair Jennifer Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:01 PM by Chair Koppenheffer.

2. APPROVAL OF MINUTES

A. August 2, 2021

Mr. McDonough and Mr. Newlove were given voting privileges for this motion.

*Mr. Nash MOVED to approve the August 2, 2021, Minutes as presented in the September 7, 2021, agenda packet with amendments.
Seconded by Mr. Katz.*

Amendments. Page 5, Line 31; Remove ‘unanimously’. Page 4, Line 39 Add ‘The distance from 12A to the property.’

**The Vote on the Motion was approved (5-0).*

Jennifer Barkley was welcomed as the new Alternate to the Board.

3. PUBLIC HEARING ITEMS

- A. Cicotte Holdings, LLC, 51 Evans Dr. (Tax Map 78, Lot 40, Plot 200), zoned RO-1:** Applicant requests a Variance from Section 608.4.A.1.a of the Zoning Ordinance to install additional building signage. The total proposed sign area for the property exceeds the maximum sign area allowed under Section 608.4.A.1. **ZB2021-19-VAR**

Mr. Nash recused himself from this hearing.

Ron Levesuue representing Lebanon Nissan appeared on behalf of the application. Due to a change in ownership, two signs were removed, one from the front of the building and a sign by the side entrance door. That dropped the square footage to about 75 square feet and adding the new sign required an additional 4 additional letters. When it was totaled it was 14.7 additional square feet. The sign is the same as the size and style of the previous sign. It has a minimal contrast due to the coloring. It is comparable to the signage of other businesses in the area. He believes the distance from the road and the speed of traffic on that road, and the low contrast of the letters on the sign

1 makes it difficult to be seen. There are branding guidelines that require the business to follow and it
2 has to include the name of the leadership. The chosen name is Lebanon, which has more letters.

3
4 It was clarified that the sign was conforming before the new owner bought this property. The Board
5 questioned if there was something unique about the property that made it eligible for a variance and
6 asked the applicant to identify the special characteristics that make the property eligible.

7
8 The applicant was asked about the uniformity of the letters in the sign. The previous owner could
9 have larger letters because there were fewer letters. However, the speed limit is only 35 MPH on the
10 roadway, even though people do speed along that road. This should give drivers time to read the sign.
11 There are numerous properties along that road and among all those businesses, the Nissan sign is
12 thought to be one of the easiest to read. They discussed the locations and signs of the other
13 businesses along that roadway. Other properties are further off the road, but they are not out of
14 compliance. This Nissan building is not uniquely situated and not further off the road than other
15 businesses in that area. The temporary sign is easily read, and it is much smaller than the size letters
16 the applicants are requesting. Mr. Levesuue said changing the size of the letters would cause
17 expensive remodeling of the building.

18
19 **Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was**
20 **closed.**

21
22 The Board discussed the application. With the testimony being that the hardship is based upon the
23 owner and not the property, there is no avenue for approval.

24
25 **Ms. Barkley was appointed as a voting member for this hearing, and she declined to be**
26 **appointed.**

27
28 Mr. Corwin summarized the variance criteria for granting a variance. The unnecessary hardship
29 criteria are usually the most difficult for the applicant to demonstrate. Based on this information,
30 there is no evidence distinguishing it from the other commercial properties along that stretch of road.
31 It does not seem there is a uniqueness for this property.

32
33 ***Mr. Katz MOVED On September 7, 2021, at a duly noticed meeting of the Lebanon Zoning Board of***
34 ***Adjustment, there appeared Levesuue, regarding 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), zoned***
35 ***RO-1. Applicant requests a Variance from Section 608.4.A.1.a of the Zoning Ordinance to install***
36 ***additional building signage. The total proposed sign area for the property exceeds the maximum sign***
37 ***area allowed under Section 608.4.A.1. ZB2021-19-VAR***

38
39 **I. FINDINGS OF FACT**

40
41 Based on testimony given, application materials presented, and supporting documents submitted, the
42 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 43
44 1. The subject property is a +/- 3.32 acre parcel located in the Residential-Office-One (R-O-1)
45 District, and is currently occupied by a Nissan car dealership. As a “vehicular sales” use, the
46 Nissan dealership is a legal non-conforming use. Three (3) signs are currently affixed to the
47 building: a “Nissan” sign; a “Key” sign; and a “Nissan” emblem sign.

2. The applicant has submitted a building permit application (BP2021-326) proposing to replace the “Key” sign, which is 14.51 sq. ft. in size, with a “Lebanon” sign, which is 22.47 sq. ft. in size. A second Lebanon wall sign of 0.20 sq. ft. is also proposed.
3. As noted in the June 28, 2021 e-mail from the Zoning Administrator to the applicant (a copy of which was included by the applicant with the Special Exception application materials): “Based on the worksheet included with the [building permit] application, the total proposed sign area for the building will be 95.71 sq. ft. which exceeds the permitted total sign area of 81 sq. ft. If these numbers are correct, you would either need to reduce the size of the proposed sign to no larger than the size of the “Key” sign to be replaced, or you would need to apply to the Lebanon Zoning Board of Adjustment for a Variance from Section 608.4.A.1.a of the Zoning Ordinance to allow the total building area to exceed the maximum permitted by 14.17 sq. ft.”
4. Per Section 608.4.A.1.a of the Zoning Ordinance, the total permitted sign area for the building, according to the applicant, is +/-81 sq. ft. To allow building sign area of +/-95.19 sq. ft. (which includes both the 22.47 and 0.20 sq. ft. Lebanon wall signs), a Variance from Section 608.4.A.1.a is required.
5. To obtain a Variance from Section 608.4.A.1, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department.
6. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Variance criteria set forth in Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would not** result in an unnecessary hardship. Specifically,
 - i. Mr. Levesuue testified that the hardship lies with the owner and not with the property.
 - ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of September, 2021, hereby **DENIES** the requested Variance from Section 608.4.A.1 of the Zoning Ordinance to allow building sign area of +/-95.19 where only +/-81 sq. ft. is permitted.

Seconded by Mr. Newlove.

Mr. Newlove, Mr. Katz and Mr. Koppenheffer all voted yea.

Mr. McDonough voted nay.

**The Vote on the Motion was approved (3-1).*

B. City of Lebanon (Applicant) and Dartmouth College Trustees (Property Owner), 00 Mount Support Rd. (Tax Map 10, Lot 24, Plot 200), zoned MC: Applicant requests a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to permit wetland impacts associated with the City's construction of a proposed 950 LF, 10'-wide multi-use path along the north side of Lahaye Drive. **ZB2021-20-SE**

Mr. McDonough and Mr. Newlove recused themselves from this hearing.

David Brooks, Director of Planning and Development for the City of Lebanon, and Charlotte Brodie, consultant, appeared on behalf of the application.

Ms. Barkley was given voting privileges for this hearing.

There are fewer than five voting Board members for this hearing and the applicant was given the opportunity to postpone the hearing and it was declined.

The City is trying to design, permit and construct a pedestrian and bicycle path for transportation along LaHaye Drive between Mount Support Road and Route 120. The 2012 Master Plan envisioned multi modal transportation to connect areas. A multi-use mobile path was constructed in 2012 up to the area where they want to construct the path. There are no public sidewalks right there due to a wetland restriction. Except for this connection, there is a network of pathways. There have been hundreds of new housing units in nearby business parks added in that area and high pedestrian traffic is anticipated. Funding is anticipated for 80% of the cost, from the Department of Transportation, and they want to be ready when the funds are available.

Ms. Brodie introduced herself and discussed her work with wetlands. She addressed the wetland special exception application and presented a map showing the area where they would like to construct the path. The area is not distinguished as a high value wetland. The hydrology of the area should not change because of the project. They have approval from the Natural Heritage Commission, that requested that the work be done when the ground is frozen, and the disturbance of the soil minimized by the equipment. The Conservation Commission also requested that the work be done on frozen ground if possible. Essentially .4 acres would be impacted, and mitigation would be addressed through a mitigation fee. They minimized the impacts to the wetlands in several ways, but they are unable to avoid wetlands because the wetlands are on both sides of the road. There is no way to build it without impacting the wetlands. Storm water would be addressed. The path makes it safer for pedestrians. They are hoping for construction in November 2022. If the City is ready to get bids for this project, they have a better chance of receiving funds to help move this project forward.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.

1
2 **Mr. Nash MOVED On September 7, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of**
3 **Adjustment, there appeared David Brooks, Director of the City of Lebanon Planning and Development**
4 **Department, on behalf of the City of Lebanon (applicant), Charlotte Brodie, consultant for the City,**
5 **and the Dartmouth College Trustees (property owner) regarding 00 Mount Support Road (Tax Map 10,**
6 **Lot 24, Plot 200), zoned MC. Applicant requests a Special Exception pursuant to Section 401.5 of the**
7 **Zoning Ordinance to permit wetland impacts associated with the City's construction of a proposed 950**
8 **LF, 10'-wide multi-use path along the north side of Lahaye Drive. ZB2021-20-SE**
9

10 **I. FINDINGS OF FACT**
11

12 Based on testimony given, application materials presented, and supporting documents submitted, the
13 Lebanon Zoning Board of Adjustment makes the following findings of fact:
14

- 15 1. The City of Lebanon proposes to construct a multi-use path along the north side of Lahaye Drive,
16 between Mount Support Road and NH Route 120.
17
- 18 2. The construction of the path – which also includes reconstruction of curb ramps, drainage
19 improvements, and minor improvements to the Lahaye Drive and NH Route 120 intersection –
20 will permanently impact a total of 18,337 sq. ft. of wetlands located on the adjacent +/-5.93 acre
21 parcel owned by Dartmouth College.
22
- 23 3. The City has applied for a wetlands permit from the NH Department of Environmental Services.
24 The wetlands permit was reviewed and approved by the Conservation Commission at its August
25 12, 2021 meeting. The City now seeks a Special Exception pursuant to Section 401.5 of the
26 Zoning Ordinance to allow the proposed impacts.
27
- 28 4. Construction within wetlands not identified by the City of Lebanon as of High or Very High
29 Value, is permitted by Special Exception pursuant to Section 401.5 of the Zoning Ordinance.
30
- 31 5. No one from the public spoke for or against the application.
32

33 **II. CONCLUSIONS OF LAW**
34

35 As a result of the above findings of fact and based on testimony given, application materials presented,
36 and supporting documents submitted, the Board concludes the following with respect to the Special
37 Exception criteria set forth in §401.5 of the Zoning Ordinance:
38

- 39 1. The use for which the exception is sought **cannot** feasibly, after consideration of all alternatives,
40 be carried out on a portion or portions of the lot which are outside the Wetlands Conservation
41 District. (§401.5.A)
42
- 43 2. Due to the provisions of the Wetlands Conservation District, as applied to the particular
44 characteristics, setting and environment of the property, the lot **cannot** reasonably be used for any
45 of the uses permitted or allowed by special exception, without some form of special exception
46 under this section. (§401.5.B)
47
- 48 3. The design and construction of the proposed use **is** consistent with the purpose and intent of
49 §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures **will** be

1 taken to mitigate the detrimental effects of the proposed use on the natural function of the
2 wetlands (§401.5.C)

3
4 4. The criteria set forth in §401.5.D relates to pipelines, powerlines, and other transmission of lines
5 and, therefore, is not applicable.

6
7 5. The proposed use **will not** create a hazard to individual or public health, safety and welfare due to
8 the loss of wetland, the contamination of ground water, or any other reason. (§401.5.E)

9
10 6. The project **is** capable of complying with all State and Federal wetlands and wetlands permitting
11 requirements. (§401.5.F)

12
13 7. The project **is** capable of conforming to all existing best management practices, as referenced in
14 Appendix A of the Zoning Ordinance, and **will** be implemented in a way which conforms to those
15 practices (§401.5.G)

16 17 **III. DECISION**

18
19 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **7th day of September,**
20 **2021**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and
21 materials submitted, and per the following conditions:

- 22
23 1. The applicant shall comply with all applicable local, state, and federal regulations in the
24 construction and use of the property, and shall obtain all required permits related to the proposed
25 construction including but not limited to wetland impact permits from the Army Corps of
26 Engineers and the New Hampshire Department of Environmental Services.

27
28 ***Seconded by Mr. Katz.***

29
30 ****The Vote on the Motion was unanimously approved (4-0).***

31
32 **Mr. McDonough and Mr. Newlove were given voting privileges for the next hearing.**

33
34 **C. Immersion Montessori School, LLC (applicant) and 79 East Wilder Rd Realty Trust**
35 **(property owner), 79 East Wilder Road (Tax Map 7, Lot 2), zoned R-3:** The applicant
36 obtained a Special Exception on November 2, 2020, to operate a group day care facility with
37 up to 45 students and 10 teachers. The applicant proposes to expand the group day care
38 facility and requests a Special Exception per Section 310.2 and Section 604 of the Zoning
39 Ordinance a) to allow up to 20 additional students for a total of 65, b) to expand the operating
40 hours to 7:30 am – 5:30 pm, Monday through Friday, c) to keep up to 10 small animals on the
41 property for educational purposes, and d) to install two (2) 36 sq. ft. sheds to shelter the
42 animals. **ZB2021-21-SE**

43
44 Juan Garceran appeared on behalf of the application. They are proposing a new space and increasing
45 the capacity of the school because they have additional space available to them. They have evaluated
46 the number of parking spaces they would need with the additional students. They have a staggered
47 drop off and pick up times and believe there would be an additional 2 cars there at most times. They
48 would add additional fencing and would like to construct the buildings to house chickens. They do
49 not anticipate that noise would be a problem.

1 A plot plan has not been submitted with this application. It could be a condition of the approval, but
2 it would be helpful for Board approval. A scale plan of the parking would be useful together with
3 minimal parking recommendations. It appears they have calculated the minimal spaces as 18 and it
4 needs to round up to 19, leaving three spaces for the other businesses. Usually there are calculations
5 of the total square footage and usage of the buildings, to make sure it would continue to meet the
6 minimal parking requirements.

7
8 The Board believes the applicant needs to provide a site plan with the square footage of the buildings
9 that are already there and the businesses that occupy the buildings. Different businesses have
10 different parking requirements. Also, a site plan with parking drawn to scale is essential so the Board
11 can determine if parking would meet the minimal requirements.

12
13 The proposed fencing and its purpose were discussed. It would enclose the area to protect the
14 children. The animals have a separate area. One previously occupied space that was previously
15 occupied by another business, is now being proposed to be occupied by the school. Previously the
16 Board determined that this is a permitted use. This is a low use residential area and the applicant
17 discussed what the impact might be on the neighborhood. The area is used as a walking area for local
18 residents. The applicant believes the only impact they would have is potential noise. The abutters
19 have been informed of the applicants' intentions.

20
21 The site plan is necessary because it would show the shoreline protection zones and would help
22 determine if the 50-foot buffer would be protected. Fences are permitted within the buffer. If the
23 Board moves to approve the application, a condition of approval may be the approval of NHDES.
24 The City riverbank protection allows fences, in Section 410.J, provided they are not installed with
25 mechanical equipment. There is also concern that the fence would protect children from the dangers
26 of the water.

27
28 **Chair Koppenheffer opened the Public Hearing.**

29
30 Roger Borggaard appeared and discussed what is happening in that area since the school began. In
31 the past, before the school opened, maybe 8 cars came to the area in a day. At this point there are 55
32 cars coming and going, and the applicants want to add another 20. This is manageable if the traffic is
33 slowed down. There are several elderly pedestrians that come down to that area to walk. He believes
34 it is important to slow the traffic down.

35
36 Chair Koppenheffer asked how the other neighbors feel about his concerns. The Chair believes this
37 Board cannot stripe the road and cannot change the speed limit. But he believes the City Council will
38 be willing to address these concerns, including speed bumps, striping etc., even if there is not an
39 expansion. The Board could seek information from the City and then request that those
40 improvements are a condition of approval.

41
42 Deborah Kenny, the closest neighbor, appeared. She approves of the children, the bunnies, and the
43 appearance of the property and the school in general. She is concerned about area residents who are
44 walking in the area, including those with canes, little animals and in a wheelchair. The blind spot on
45 the corner is a problem for visibility. The road is full of potholes; they do slow down the traffic. At
46 the top of the road, coming North, there is an uphill, so people are not seeing traffic that is slowing
47 down along the road and those that are turning. The turning vehicles traveling from both directions

1 are not easily seen by the traffic that is traveling at 40 MPH. Before the school there were only about
2 8 cars using the road.

3
4 Kathleen Clark appeared. She is a close neighbor and wanted to applaud the presence of the school,
5 but it has already made a major change of traffic on the street. Since the start of the school, it has
6 impacted the walking culture that is part of the neighborhood. It is her feeling that more traffic and
7 starting earlier in the day would be detrimental to the nature of the community.

8
9 Peter Dodge is a resident of East Wilder Road, about a half mile from the facility. He questioned how
10 this facility is permitted in this zone. The prior nonresidential presence was grandfathered. He finds
11 that at the end of a short residential street and two parks, there is a commercial enterprise that has a
12 lot of traffic. He could understand a small day car with about 10 children. He feels even the current
13 number of students and staff have drastically altered the neighborhood. He questioned if animals
14 would be permitted at his residence. The natural landscape along the water is drastically different
15 from the rest of the area and may not be allowed to be cut down so aggressively. He believes the
16 character of the area has been substantially altered. Increasing and expanding would be a problem.
17 Past requests for improving the roads have not been addressed and he believes there supposedly are
18 issues with the water supply in the area. He said there would be increased noise, and hazard with the
19 increased traffic.

20
21 Hank Clark appeared. He agrees with what the neighbors have said. Some of the neighbors are
22 supportive of the school, and the school has responded that they are aware of the road conditions, but
23 so far, the school has not been able to control the traffic issues. He would be supportive of the
24 expansion if they could get the traffic problems fixed.

25
26 Robert Mr. MacNeil, the owner of the property, appeared. He bought the building in 1992 and there
27 was a factory in the building. Since then, they have provided space for businesses that are non-
28 conforming but are less of a nuisance than the factory. He has been mindful of the number of cars
29 coming into the property. He believes the net change in the number of vehicles that have been on the
30 property over the years is perhaps 10 additional vehicles a day. He would like the police to keep the
31 traffic speeds down. He does not believe the number of parking spaces are going to be a problem
32 either, because there is only one other tenant.

33
34 The Board summarized that there is a request for a site plan from the Board, and some possible help
35 from the City Engineer and possibly the State.

36
37 Mr. Garceran was asked if he believes the neighbors have misspoken. He believes they have assessed
38 the situation accurately. In terms of Quail Hollow, the residents have been informed of the additional
39 traffic that is in that area. It is hard for the school to monitor what is happening on the street, but
40 they have talked to some families. He would like to work with the area residents to meet their
41 expectations and to try to keep the nature of the community similar to how it was in the past, as much
42 as possible.

43
44 ***Mr. Nash moved to continue this hearing until the October 4 meeting. The applicants shall***
45 ***provide a scaled plan indicating: buildings, building areas, tenants, parking calculations for***
46 ***all, parking spaces provided, fenced areas, animal shelters, and information on type of fence.***
47 ***The City shall seek opinion of the city engineer regarding: does the additional traffic***

1 *proposed rise to the level of being a hazard or nuisance regarding pedestrians and vehicle*
2 *speed?; Does the additional traffic warrant “traffic calming” measures?*

3
4 *The City shall seek the opinion of NHDOT whether the additional proposed traffic warrants*
5 *improvements to the Route 10/East Wilder Road intersection.*

6
7 *Seconded by Mr. Newlove.*

8
9 Chair Koppenheffer asked to revise the motion to add a request for the City to obtain information
10 about traffic calming measures and the suggestion was approved by Mr. Nash and Mr. Newlove.

11
12 This approach may be backwards. If people are fundamentally agreeing that this situation cannot
13 accommodate additional use, then conditioning on improvements is the wrong way to approach this
14 application. If this does not meet the criteria the way things are now, they could reach a decision or
15 allow the applicants to withdraw the application without prejudice. The situation is going to change,
16 and the problems would be exacerbated by additional traffic.

17
18 **The Vote on the Motion was unanimously approved (5-0).*

19
20 **4. REQUEST FOR REHEARING**

21
22 **A. Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67), zoned R-3:**
23 Request to rehear a Variance from Section 202 and Section 309.3 of the Zoning Ordinance to
24 allow the subdivision of the property into two parcels, one of which will have a lot area of less
25 than the minimum required 10,000 sq. ft. The Variance application was denied on July 6, 2021.
26 **ZB2021-09A-VAR**

27
28 A request for a rehearing is to determine if the issues raised in the request merit any new
29 considerations by the Board. It is based on the information in the request for the rehearing. There is
30 no additional testimony during this time.

31
32 Chair Koppenheffer restated some of the details of the original application. The Board believes they
33 do not have additional information to evaluate.

34
35 *Mr. Katz Moved to deny the request for a new hearing.*

36 *Seconded by Mr. Nash.*

37
38 **The Vote on the Motion was unanimously adopted (5-0).*

39
40 The request for a rehearing was denied.

41
42 **5. STAFF COMMENTS-None**

43
44 **6. ADJOURNMENT**

45
46 *Mr. Nash MOVED to adjourn the meeting at 9:30 PM.*

47 *Seconded by Mr. Newlove.*

1 ****The Vote on the Motion was unanimously approved (5-0).***

2

3 Respectfully submitted,

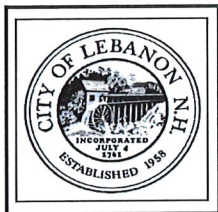
4 Linda Billings

5 Recording Secretary

**Agenda
Zoning Board of Adjustment
October 4, 2021**

**Agenda Item #3A
Public Hearing Items**

**Immersion Montessori School,
LLC (applicant) and
79 East Wilder Rd Realty Trust
(property owner),
79 East Wilder Road
(Tax Map 7, Lot 2), zoned R-3
ZB2021-21-SE**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

October 4, 2021 Meeting

Staff Memorandum – ZB2021-21-SE – *con't from 9/7/21*

APPLICATION INFORMATION

Agenda Item: 3.A

Application Type:

Special Exception to expand an existing group day care facility and to add accessory uses

Location: 79 East Wilder Rd (7-2)

Applicant:

Immersion Montessori School, LLC

Property Owner:

79 East Wilder Rd Realty Trust

Zoning District: R-3

Property Size: +/-2.82 acres (per the City Assessor's records)

Existing Improvements:

+/-5,925 sq. ft. (finished) commercial building constructed in 1993 and a +/-651 sq. ft. (finished) commercial building constructed in 1940 (per the City Assessor's records)

Overlay Districts:

Riverbank Protection District

Previous ZBA Action (since 1995):

Special Exception granted on 11/2/20 to allow a group day care facility (ZB2020-34-SE)

Other Approvals Required (including but may not be limited to):

- Building Permit

Attachments:

- 11/2/20 Notice of Decision (ZB2020-34-SE)
- Application (10 pages total)

HEARING NOTICE

Immersion Montessori School, LLC (applicant) and 79 East Wilder Rd Realty Trust (property owner), 79 East Wilder Road (Tax Map 7, Lot 2), zoned R-3: The applicant obtained a Special Exception on November 2, 2020, to operate a group day care facility with up to 45 students and 10 teachers. The applicant proposes to expand the group day care facility and requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance a) to allow up to 20 additional students for a total of 65, b) to expand the operating hours to 7:30 am – 5:30 pm, Monday through Friday, c) to keep up to 10 small animals on the property for educational purposes, and d) to install two (2) 36 sq. ft. sheds to shelter the animals. ZB2021-21-SE

ADDITIONAL APPLICATION MATERIALS

Attached are the following materials submitted by the applicant to the Planning and Development Department on September 27, 2021:

- E-mail from Juan Garceran, Head of School (1 page)
- NH Department of Health and Human Services (NHDHHS) Health Officer Inspection Report for Child Care Programs, dated March 26, 2021 (2 pages)
- NHDHHS Child Care Program License for Immersion Montessori, LLC (1 page)
- Additional information relating to the current and proposed uses, compliance with Section 604 criteria, a traffic management plan, and other considerations (11 pages).

Also, at the Board's request, staff requested NH Department of Transportation comment on the applicant's proposal. Attached is staff's correspondence with Chris Turgeon, P.E., District 2, in which Mr. Turgeon states that:

[T]he Montessori school itself would not trigger a major drive review by itself. The combination of the increase in trips and existing traffic may be enough though to result in a decrease of the level of service at the intersection with NH 10. If the City feels that the condition has been reached, we would recommend a traffic study be completed to determine vehicle volume and turn movements. If this study reveals that mitigation is warranted, then the City can propose a plan to us and they can determine whom and how funding is secured.

STAFF MEMORANDUM

ZB20201-21-SE
79 East Wilder Rd (Tax Map 7, Lot 2)
October 4, 2021 ZBA Meeting
Agenda Item 3.A
Page 2 of 2

STAFF COMMENTS

- In light of NHDOT's comments, the Board should be aware of Section 801.2.E of the Zoning Ordinance which provides as follows:

The Board shall have the right to require that the Applicant pay necessary and reasonable fees to cover expenses for the costs of investigative studies, review of documents, and other matters that may be required by particular applications.

Before imposing such additional fees upon an Applicant, the Board shall determine what special investigative studies, review of documents, or other matters are required for the application. The Board, by motion, shall determine the necessity of additional review and shall provide the applicant with an estimated cost of such additional review. The Board shall require the Applicant to pay the amount of estimated fees to the City in advance.¹

Pursuant to Section 801.2.E, the Zoning Board of Adjustment may engage a traffic engineer to conduct a traffic impact study, the cost of which would be the responsibility of the applicant.

- Staff continues to recommend that the Board require a scaled plot plan showing existing conditions, which most importantly should identify the existing individual parking spaces.
- In order to obtain a building permit, the applicant will need to provide data and calculations demonstrating that the total number of on-site parking spaces is sufficient to meet the needs of the other existing or anticipated uses of the property. In other words, that the total number of parking spaces on-site is equal to or greater than the number of required parking spaces per Section 607 of the Zoning Ordinance and the Table of Minimum Off-Street Parking Requirements (the minimum number of parking spaces for each use of the property should be calculated separately and then totaled to arrive at the minimum number of required parking spaces for the property). Staff continues to recommend that this information is provided as part of the applicant's Special Exception application.

Attachments

cc: Immersion Montessori School, LLC (via e-mail)
79 E Wilder Rd Realty Trust (via e-mail)
File

¹ Section 801.2.E further provides that, "Failure to pay the additional review fee may result in disapproval of the application for lack of adequate information. If the estimate of the additional fees is less than the actual cost, then the Board shall send the Applicant a description and the reasons for the additional cost. The Applicant shall then pay the total actual costs. If the estimate of the additional fees is greater than the actual cost, the difference shall be refunded to the Applicant."

Tim Corwin

From: Turgeon, Christopher <Christopher.L.Turgeon@dot.nh.gov>
Sent: Friday, September 24, 2021 8:11 AM
To: Tim Corwin
Cc: Brian Vincent; King, Douglas
Subject: [EXTERNAL] RE: NH Rt 10 and East Wilder Rd

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Morning Tim,

Thank you for reaching out to us concerning traffic at this intersection with NH 10. Similar to the latest proposed housing development on Oak Ridge Road, the Montessori school itself would not trigger a major drive review by itself. The combination of the increase in trips and existing traffic may be enough though to result in a decrease of the level of service at the intersection with NH 10. If the City feels that the condition has been reached, we would recommend a traffic study be completed to determine vehicle volume and turn movements. If this study reveals that mitigation is warranted, then the City can propose a plan to us and they can determine whom and how funding is secured. Do not hesitate to contact us if you have any additional questions.

Thank you,

Chris

Assistant District 2 Engineer
Ph: (603) 448-2654
Cell: (603) 252-6415

From: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Sent: Thursday, September 23, 2021 6:58 PM
To: Turgeon, Christopher <christopher.turgeon@dot.nh.gov>
Cc: Brian Vincent <brian.vincent@lebanonnh.gov>
Subject: NH Rt 10 and East Wilder Rd

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Chris,

The Lebanon Zoning Board of Adjustment is currently considering an application by Immersion Montessori School LLC to expand their existing day care facility at [79 East Wilder Road](#). The day care use was originally by the Zoning Board in October, 2020. As part of the October, 2020 approval, the day care is allowed to have up to 45 students and 10 staff members. The school is now requesting approval from the Zoning Board to allow up to 65 students (so 65 students, 10 staff).

At the hearing before the Board, held earlier this month, a large number of abutters and residents of East Wilder Road showed up to voice concern, if not opposition. I believe their main concern was with the speed of traffic – i.e. the speed at which parents are driving along East Wilder Road to drop off and pick up their children is apparently causing

significant safety issues. It was less clear to me whether the neighborhood was concerned with the volume of traffic. Nevertheless, the Zoning Board directed me to contact NHDOT to inquire as to whether the increase in the volume of traffic at the intersection of NH Route 10 and East Wilder Road that will result from the proposed increase in the number of students at the school warrants any sort of traffic study or improvements to the intersection NH Rt 10/E Wilder intersection.

Is this something that you could weigh in on? The hearing will resume at the Zoning Board's October 4th meeting. If there's any way you could get back to us by then, it would be greatly appreciated, but we certainly understand that you are busy.

If there's any additional information that I can provide or if you have any questions, please let me know. For reference, I've attached a page from the applicant's Zoning Board application which details the volume of anticipated additional traffic and the times at which the additional traffic is expected.

Thank you Chris. -Tim

TIM CORWIN, AICP

SENIOR PLANNER
CITY OF LEBANON
51 NO. PARK STREET
LEBANON, NH 03766
(PH.) 603.448.1457, EXT.6127
(FAX) 603.442.6141
TIM.CORWIN@LEBANONNH.GOV
WWW.LEBANONNH.GOV



NEW CITY HALL HOURS:
MON-THU: 7:00AM - 5:00PM
FRI: CLOSED

NOTICE: THIS E-MAIL AND ANY REPLY TO THIS E-MAIL MAY BE CONSIDERED A "GOVERNMENTAL RECORD" PER NH RSA 91-A:1-A. THE CITY OF LEBANON IS REQUIRED TO MAKE GOVERNMENTAL RECORDS AVAILABLE TO THE PUBLIC UPON REQUEST, IN ACCORDANCE WITH NH RSA 91-A:4. THE CITY IS ALSO REQUIRED TO RETAIN GOVERNMENTAL RECORDS FOR MINIMUM PERIODS OF TIME AS SET FORTH IN NH RSA 33-A:3-A.

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

Tim Corwin

From: Juan Garceran <admin@uvims.com>
Sent: Monday, September 27, 2021 3:16 PM
To: Tim Corwin
Subject: [EXTERNAL] Immersion Montessori School Documents for October 4th Hearing
Attachments: IMS License & Health Report.pdf; 79 E Wilder Rd, Site Plan Information.pdf

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Tim,

Thanks for your call today.

Attached you can find the following items:

- Site Plan Information. As requested, this document includes information about buildings, building areas, parking calculations for all tenants, parking spaces provided, fenced areas, animal shelters, and information on the type of wooden fence to be provided.
- NH License & Health Inspector Report. These two documents were issued after inspecting our facilities, and once the fence was installed.

I am also preparing a presentation that I will bring to the hearing. I assume I don't need to send this presentation to you before tomorrow at 12pm as it will contain the information already explained in the attached documents.

Let me know if you need anything else from me.

Thanks again!

Best,

Juan

--

Juan F. Garcerán, M.A.
Head of School

(201) 321-8764
admin@uvims.com



NH DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Legal and Regulatory Services, Child Care Licensing Unit
Telephone: 1-800-852-3345, ext. 9025 or 603-271-9025

Health Officer Inspection Report for Child Care Programs

THE APPLICANT COMPLETES THIS SECTION.

Child Care Program Name Immersion Montessori School Phone 201-937-7641
Program Address 79 E. Wilder Road West Lebanon NH 03766
Applicant Name Juan Garcesan / Laura Golnabi Phone 201-937-7641
Requesting approval to care for a maximum of 45 children, ages 13 months to 12 years
(Maximum capacity subject to health officer approval, life safety/fire codes, and child care program licensing rules.)

THE HEALTH OFFICER MUST COMPLETE THE REMAINDER OF THIS FORM (2 pages)

He-C 4002	Areas of Inspection (unless specified please inspect indoor and outdoor space):		COMMENTS
.14(a) & (b)	Does the indoor environment contain or pose any health conditions that may be hazardous to children, other than those listed below?	Y ☒ N	
.14(b)(12)	Are there adequate protections against insects (screens on windows/doors)?	☒ Y N	
.14(b)(17)	Is the environment free of unclean conditions or disrepair?	☒ Y N	
.14(b)(18)	Is the indoor environment free of damp conditions, visible mold/mildew, or musty odor?	☒ Y N	
.14(e)	Was the building built prior to 1978?	Y ☒ N	
.14(b)(15)	If yes: Is there chipping/flaking/peeling paint?	Y ☒ N	NA
.14(h)	Is there information or evidence indicating the building may contain asbestos hazards?	Y ☒ N	
.14(j) & (k)	Are all toxic materials stored separately from food items?	☒ Y N	
.27(an)			
.14(o)	Any pets? (If yes, list type in comments)	☒ Y N	Labrador
.14(o)(1)	If there is a cat/dog, is current rabies documentation on file?	Y ☒ N	
		N/A	
.14(o)(2) & (3)	Are pets, pets' living quarters, or litter boxes on food preparation or service surfaces?	Y ☒ N	
		N/A	
.14(o)(3) & (4)	Are children exposed to pets' feces or urine, including litter boxes located where children play?	Y ☒ N	
		N/A	
.14(p) & (w)	Is the child care space well ventilated, heated (at least 65°F) and lighted (including bathrooms)?	☒ Y N	
.15(i)(3)			
.14(x)(8)	Is there information or evidence indicating the soil on the property may be contaminated with toxic chemical or substances?	Y ☒ N	
.14(ae)	Is the swimming or wading pool maintained in a clean and sanitary manner?	Y ☒ N	NA
.14(aj) & (ak)	Are trash containers where food or waste is disposed of covered and emptied regularly?	☒ Y N	
.15(a)(1) & (2)	Is there running water under pressure available, and is the hot water between 60 - 120 degrees Fahrenheit?	☒ Y N	
.15(a)(3)	Is the program on a city or town public water system? If No: Does the program have its own water supply with a U.S. EPA ID number issued by NH DES (Dept. of Environmental Services) on file?	☒ Y N	NA
.15(a)(4) & (5)	For programs with independent water supplies and not required to be registered with NH DES, has the water been tested and are the lab results on file for review?	Y ☒ N	NA

.15(b)	Is there functional sewage disposal facilities?	☒ Y	N
.15(c) & (d) .15(i)	Are flush toilets and sinks (one per every 20 children) in working order, clean and sanitary?	☒ Y	N
.15(j) & (k)	Are potty chairs and diaper changing areas away from food preparation/service areas and located adjacent to a hand washing sink?	☒ Y	N
.19(s) & (t)	Are first aid supplies available, non-expired, & stored in a portable container?	☒ Y	N
.19(ab) & (ad)	Is information for managing injuries/emergencies posted in a prominent location?	☒ Y	N
.27(ap) & (aq)	Is refrigerator temperature at 41°F or lower, and freezer at 0°F or lower?	☒ Y	N

APPROVAL STATUS (If either the maximum number of children or age range is blank, the CCLU will determine based on licensing rules and the fire inspector and/or zoning official limits.)

☒ APPROVED for number of children requested above

___ APPROVED for a maximum of ___ children (if other than requested)

___ NOT APPROVED – please specify reasons for denial below

☒ APPROVED with conditions (please specify what action(s) must be taken by the program and a date by which they must be completed)

COMMENTS:

Request site inspection after the fence is completed. End of April

Calvin Hurrewell C. Hurrewell 3/26/21
Name of Health Officer Signature Date of Inspection

Leporan 603-448-1524 _____
Town/City Telephone Alt. Telephone (optional)

State of New Hampshire
Department of Health and Human Services
Office of Legal and Regulatory Services, Child Care Licensing Unit

129 Pleasant Street, Brown Building, Concord, NH 03301
603-271-9025 1-800-852-3345 ext. 9025 TDD Access: 1-800-735-2964

CHILD CARE PROGRAM LICENSE

In accordance with the provisions of Chapter 170-E RSA and the New Hampshire Child Care Program Licensing Rules, a license to operate a Child Care Program is

issued to: IMMERSION MONTESSORI, LLC

known as: IMMERSION MONTESSORI SCHOOL

located at: 79 EAST WILDER ROAD, WEST LEBANON NH 03784

This license authorizes you to provide the following types of child care in accordance with the applicable sections of the New Hampshire Child Care Program Licensing Rules.

GROUP CHILD CARE CENTER
INFANT/TODDLER PROGRAM
PRE-SCHOOL PROGRAM
SCHOOL AGE PROGRAM

AGES 12 MONTHS TO 12 YEARS

Total maximum capacity: 45

EFFECTIVE: 03/09/2021 TO 02/29/2024



Chief Legal Officer, Department of Health and Human Services

LICENSE NO. CCCB-06980

LICENSE SHALL BE PROMINENTLY POSTED AT ALL TIMES – LICENSE NON-TRANSFERABLE

Site Plan Information

Immersion Montessori School LLC Special Exception Application

Hearing Date: 10/4/21

Current Use vs. Proposed Use

Current Use

- Building A-1: Immersion Montessori School (45 students + 8 staff members)
- Building A-2: Owner offices (4 people)
- Building A-3: Jacob's Well Mastering (1 car + occasional visitors)
- Building B: Miriam J. Voran, Psychologist (1 car + up to 8 patients per day)
- Space C-1: Current outdoor space. Red line indicates the existing fence.



Proposed Use (See underlined information for new uses)

- Building A-1: Immersion Montessori School (55 students + 8 staff members)
- Building A-2: Immersion Montessori School Offices and Storage
- Building A-3: Jacob's Well Mastering (1 car + occasional visitors)
- Building B: Immersion Montessori School (10 students + 1 staff member)
- Space C-1: Current outdoor space. Red line indicates the existing fence.
- Purple line indicates the new proposed fence.
- Space C-2: Fully fenced-in outdoor space. Two 6x6 sheds (see pictures below) that will house 4 chickens and 2 mini-pigs for educational, not agricultural purposes.
- Space D: New proposed outdoor space.





**Compliance with criteria set forth in Section 604 of the Zoning Ordinance for
Group Day Care Facility.**

The following criteria for a Group Day Care Facility is outlined in SECTION 604 GROUP DAY CARE FACILITIES of the Zoning Ordinance:

604.1 Play Area.

Criteria: There shall be a fenced outside play area which shall be free from hazards such as hidden corners; unprotected pools, wells, and steps; poisonous plants such as poison ivy, foxglove, and rhubarb; farm or lawn machinery or implements.

Compliance: The C-1 play area is located on the north side of the building in a wooded area that has been cleared from any hazards. Note: The NH state licensor for Child Care and the Lebanon Health Inspector have already approved the play area and the fence for any safety hazards.

Criteria: It shall contain at least 50 square feet of usable play space per child using it, and the average width shall not be less than eight feet. Play areas shall not be permitted in front yards.

Compliance: The C-1 fenced-in play area is not in the front yard, and is approximately 18,267 square feet in area. For 65 children, this is approximately **281 square feet** per child.

604.2 Other Requirements.

Criteria: A suitable loading and unloading area shall be provided for those children for whom the facility provides transportation. This area shall be in addition to required parking areas.

Compliance: N/A

Criteria: Group day care facilities shall comply with all applicable state and federal regulations.

Compliance: We are now a licensed facility with the NH Child Care Licensing Unit.

Criteria: Parking: One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site.

Current Use Parking Spaces

- Building A-1: Immersion Montessori School (45 students + 8 staff members)
- Building A-2: Owner offices (4 people)
- Building A-3: Jacob's Well Mastering (1 car + occasional visitors)
- Building B: Miriam J. Voran, Psychologist (1 car + up to 8 patients per day)
- Space C-1: Current outdoor space. Red line indicates the existing fence.

Total number of parking spaces needed: 14 workers + 53 clients = 21 parking spaces.

Proposed Use Parking Spaces

- Building A-1: Immersion Montessori School (55 students + 8 staff members)
- Building A-2: Immersion Montessori School Offices and Storage
- Building A-3: Jacob's Well Mastering (1 car + occasional visitors)
- Building B: Immersion Montessori School (10 students + 1 staff member)
- Space C-1: Current outdoor space. Red line indicates the existing fence.
- Purple line indicates the new proposed fence.
- Space C-2: Fully fenced-in outdoor space.
- Space D: New proposed outdoor space.

Total number of parking spaces: 10 workers + 65 clients= 18 parking spaces.

Compliance: According to this regulation, we would need 10 (one per employee) + 8.1 (one per 8 clients) = 18 parking spaces. The capacity is 24 parking spaces.

- o The width of the parking lot is 68 ft.
- o Currently, there are 260 linear feet of parking space, which allows for 26 cars to park at any given time.

Traffic Management Plan

Traffic Impact Analysis

Current Use

- Immersion Montessori School:
 - 45 students: 180 trips/day
 - 8 staff members: 16 trips/day
- Jacob's Well Mastering: 4 trips/day
- Miriam J. Voran:
 - 1 staff member: 2 trips/day
 - 8 clients: 16 trips/day
- Owners:
 - 4 staff members: 16 trips/day

Total trips per day: 234

Proposed Use

- Immersion Montessori School:
 - 65 students: 260 trips/day
 - 9 staff members: 18/day
- Jacob's Well Mastering: 4 trips/day

Total trips per day: 282

The proposed use would increase the traffic volume by approximately 20%.

Measures to Alleviate the Impact of an Increased Traffic Volume

Staggered Schedules

In order to alleviate the impact of traffic volume, drop-offs and pick-ups are carried out on a staggered schedule. There is a window of 2 hours for drop-off and 2 hours and a half for pick-up. That means an estimated traffic volume of approximately 11 trips every 10 minutes between 7:30am-9:30am and 2:45pm-5:15pm.

According to the DOT, the 2019 annual average daily traffic for S Main St in the area of the property was **6,570** with higher volume Monday through Friday. The additional 48 trips for our new proposed use would not add a significant amount of volume to S Main St.

No records on traffic volume were available on the DOT database for E Wilder Rd. However, based on the information obtained by Tim Corwin, NH DOT considers that the proposed use would not trigger a substantial increase in traffic.

Regular Monitoring

Immersion Montessori School is working on the installation of a compact radar sign for regular monitoring of speed in E Wilder Rd. This mobile device would be located within the limits of the school's property and would have the following characteristics:

- Real-Time Traffic Reports.
- Real-Time Parameters Changes.
- Real-Time Speed Alerts.

Traffic Signs / Yard Signs

Immersion Montessori School would propose to the corresponding agency the installation of speed limit signs along E Wilder Rd. As an alternative, Immersion Montessori School has already acquired and offered yard signs to the residents of the street.

Regular Communication with Families and Neighbors

Immersion Montessori School is sending weekly reminders to its families. Despite the 25MPH speed limit, the school is requesting everyone to circulate at 20MPH. In addition, the school is always willing to work with its neighbors to address any concerns. Contact information for the Site Director has already been provided to all neighbors.

Law Enforcement

Immersion Montessori School is working with the Lebanon Police Department to increase enforcement of the speed limit along E Wilder Rd.

Contract Clause

Immersion Montessori School is working on including in its Family Handbook a clause that states the following:

"All families are required to adhere to a 20MPH speed limit along E Wilder Rd. Failure to follow this policy for more than 3 times may result in termination of the enrollment contract."

Additional Items to Consider

Conservation Area Use

The Alana Cole Conservation Area would only be used by small groups of children with adequate adult supervision to ensure no disruption of any natural resources.

Wastewater system capacity

Full septic system documentation was previously provided showing that the system has a capacity of **1,100 gallons per day (GPD)**. NH Department of Environmental Services code shows the following needs for the Day Care Center use (Source:

<https://www.des.nh.gov/organization/commissioner/legal/rules/documents/env-wq1000.pdf>) :

- Day Care Centers : 10 GPD/person = **750 GPD** required

Existing and Proposed Fencing

The map shows the existing (red) and proposed (purple) fencing on the property. The fence is 4-ft tall and made of a wood material. The fence is installed by hand tools only. This fence has already been approved by the licensor and the town's health inspector.

