

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, November 1, 2021
7:00 PM**

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

MEMBERS ABSENT: Chair William Koppenheffer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:00 PM by Vice Chair Mercer.

Mr. McDonough was given voting privileges for this meeting.

2. APPROVAL OF MINUTES

A. October 4, 2021

Mr. Nash MOVED to approve the October 4, 2021, Minutes as presented in the November 1, 2021, with a punctuation correction.

Seconded by Mr. Katz.

Amendments. None

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

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 October 4, 2021**

Juan Garceran appeared on behalf of the application. He presented a site plan showing what he intends to do. They are asking for a capacity increase, 45 students to 65 students, to extend hours to 5:30 PM, and to add 2 small sheds to house small animals. The site plan showed the buildings on the property and how the space is used. There is one other business on the property and the landlord's office. They are taking over some of that space which would permit them to add the extra students. He showed the fenced outdoor space that they currently use. They would like to fence in additional areas for the safety of the students. If they are allowed to do what he proposes, one other business would remain on the property and the landlord would move his office off the property. With students and teachers, they would have a capacity of 75 people.

He reviewed the current traffic use that was prepared by the police. Previously approved traffic allowed 234 vehicles and the police documented less than that traffic volume. They are using staggered schedules for student drop off and pick up. They propose to install a radar sign and they already have traffic signs. They have sent letters to all the families of students about the Quail Hollow residents use of the roadways and asked the drivers to follow the speed limit. They are also asking police to do some monitoring on the street. He proposes that if their radar is identifying particular drivers speeding, they would issue warnings and eventually dismiss any families who do not follow the speed limit. There are a total of 28 parking spaces, and they believe they would need a maximum of 23 spaces.

The applicant feels they have been successful with addressing the traffic and speed with the families. The police department data shows the behavior pattern of traffic when the school is operating and when the school is closed. It is possible that it is not the families of the students that are causing the traffic and speeding issues. During days they were operating there were 160 trips a day. The maximum would be 234. During weekends it was about 125 cars a day, so the traffic was not from the school.

The engineer provided the calculations of parking spaces, but a site plan showing the measured spaces to scale has not been provided. The applicant said there have not been any parking issues in the past. City Staff said the calculations appear to be in compliance with the number of required minimum spaces but noted that a site plan showing each parking space had been requested. The applicant gave copies of his report and analysis to each member in order to submit it into the record.

The Board discussed that a scale site plan was requested. The site plan that was provided shows that the parking spaces meet the requirements, but there are no measurements that show all those parking spaces can fit in the designated spaces. The applicants would get an additional license to allow the extra students once all the permits have been approved. They would add one staff person and the existing building they would take over would house one classroom. They intend to have 4 chickens and 2 small pigs that would use the new sheds and small pens. They are making efforts to ensure that the animals are safe from predators. They intend to have hens and no roosters. The mini pigs would be used to teach children about composting. They are willing to follow the guidelines from the State Extension Office regarding how to maintain the animals.

Vice Chair Mercer asked for comments from the Public.

Westin Greene spoke. He said he is in support of the application and is pending enrolling his children in the school.

Roger Borggaard, a resident of Lebanon who lives close to the property, appeared. He referenced the radar on a tree saying it was put on the road before the big curve and the straight away close to the school. He wondered if they moved it closer to the school, in the straightaway, if they may find drivers are moving faster. The 282 trips up and down a dead-end street can be a problem. If drivers can be required to drive at 20 MPH, then people would be able to back out of their driveways. He asked what the community options are if the proposed conditions are not enough. If there are conditions in an approval, Mr. Borggaard could come back to City Staff. Because there is so much use now, the road is getting full of potholes.

Mr. Garceran came back to speak. He said their approaches have not been implemented yet, so he is hoping for improvement once they are. Also, much of the traffic is not from the school. He is willing to have the approaches to the traffic management become conditions of approval. He believes they can address circumstances with individual drivers that are causing problems.

Hearing no one else, the Public Hearing was closed.

Mr. Nash MOVED On **September 7, 2021, October 4, 2021, and November 1, 2021**, at duly noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Juan Garceran on behalf of **IMMERSION MONTESSORI SCHOOL, LLC (applicant)** and **79 EAST WILDER RD REALTY TRUST (property owner)** regarding **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**

I. FINDINGS OF FACT

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

1. The subject property is a +/-2.82 acre property in the R-3 District improved with a parking lot and two (2) commercial buildings, according to the City Assessor's records.
2. On November 2, 2020, the Zoning Board approved the applicant's request for a Special Exception pursuant to Section 310.2 of the Zoning Ordinance to operate a group day care facility on the subject property, with up to 45 students and 10 teachers (ZB2020-34-SE).
3. The applicant now proposes to expand the group day care facility use as follows:
 - a. Allow up to 20 additional students for a total of 65 and to expand the operating hours to 7:30 am – 5:30 pm, Monday through Friday; and
 - b. Keep up to 6 small animals on the property for educational purposes and to install two (2) 36 sq. ft. sheds to shelter the animals. (4 chickens, no roosters and 2 mini pigs)
4. A "group day care facility" is allowed by Special Exception within the R-3 District, and is defined in Appendix A of the Zoning Ordinance as, in relevant part:

"GROUP DAY CARE FACILITY: A group day care facility is either a child day care facility or an adult day care facility.

CHILD DAY CARE FACILITY: A day care center, a day nursery, a private nursery school or kindergarten, a child development center, a play group, a head start center, progressive school or any other facility which cares for seven (7) or more children under the age of 16 for a part but not all of a 24 hour day.

Such facilities may be privately operated or sponsored by a church, social agency, cooperative group or a community or by a public agency other than public schools."

5. The expansion of the applicant's group day care facility requires a new Special Exception; and, pursuant to Section 302.2 of the Zoning Ordinance, the applicant's proposed accessory uses also require a Special Exception.

6. In order to grant a Special Exception for a group day care facility and the proposed accessory uses, the applicant must demonstrate compliance with the criteria set forth in Section 604 (“Group Day Care Facilities”) of the Zoning Ordinance, and the general Special Exception criteria, set forth in Section 801.3.
7. Residents of East Wilder Road including Roger Borggaard, Deborah Kenny, Kathleen Clark, Peter Dodge, and Hank Clark, expressed concern about the existing volume and speed of traffic related to the day care use and that the proposed increase in the number of students would exacerbate the existing traffic problems and safety issues.
8. Robert MacNeil, the owner of the subject property, appeared before the Board to express his view that the residents’ traffic concerns should be addressed through enforcement of the speed limit on East Wilder Road.
9. Following the September 7th hearing a site plan prepared at the request of the Board. The applicant submitted additional materials – including the site plan – for inclusion with the agenda packet prepared for the November 1st Board meeting.
10. At the Zoning Board’s request, the Lebanon Police Department conducted a multi-day speed study on East Wilder Road. The speed study results – which were delivered to the Board by e-mail on November 1st – show that the majority of cars counted are traveling under 30 mph. Also, the categories of speeds did not differ with school closed or open.
11. Westin Greene testified in favor of the proposal.
12. Applicant testified being committed to controlling speed through radar camera and contact clauses.

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 Special Exception criteria set forth in Section 801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Sections 310.2 and 302.2 of the Zoning Ordinance. (§801.3.A)
2. The following conditions/requirements of Section 604 **are** met: (§801.3.B)
 - a. 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. (§604.1.A)
 - b. (The play area) 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. (§604.1.B)
 - c. By special exception, the Board of Adjustment may waive the requirement for a fence or the requirement that the play area not be in the front yard. (§604.1.C) *This provision is not applicable.*

- d. 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. (§604.2.A)
- e. Group day care facilities shall comply with all applicable state and federal regulations. (§604.2.B)
- f. One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site. (§604.2.C)

Applicant provided calculations showing 23 parking spaces required and testified 28 spaces are provided.

- 3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
- 4. The character of the area **will not** be adversely affected. (§801.3.D)
- 5. **No** hazard or nuisance will be created. (§801.3.E)
- 6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
- 7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
- 8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
- 9. The general welfare of the City **will** be protected. (§801.3.

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **1st day of November, 2021**, hereby **GRANTS** a Special Exception pursuant to Sections 310.2 and 302.2 to expand the existing group day care facility, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

- 1. The applicant shall obtain a building permit and a certificate of occupancy, and shall comply with all applicable local, state, and federal regulations in the use of the property.
- 2. The project shall comply with the conceptual layout presented with the 1Nov21 agenda.
- 3. Applicant shall provide a sample copy of the “speed” agreement to the City.
- 4. Animals shall be kept in accordance with UNH Extension Office guidelines for enclosures and shelters.

Seconded by Mr. Katz.

The Board discussed the motion. The road is a residential area with a small winding road. There are two public spaces in that area and the public is invited down that road. Currently the building is a non-conforming use that is moving closer to a conforming use. It is better for the neighborhood to have a regulated use. Perhaps the police can lower the speed limit on that street and DPW could address the potholes. They discussed adding conditions 2, 3 and 4 to the original motion and it reads as stated above. Mr. Nash and Mr. Katz approved the modifications to the motion.

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

B. City of Lebanon, Airpark Road (Tax Map 159, Lot 4; Tax Map 131, Lot 8; and Tax Map 131, Lot 1, Plot 100), zoned IND-L: Applicant requests a Special Exception pursuant to Article IV, Section 401.5 (“Wetlands Conservation District”) of the Zoning Ordinance to allow wetland impacts associated with the extension of Airpark Road. **ZB2021-22-SE**

David Brooks, Planning and Development Director, appeared on behalf of the application. They realized the City missed a step in the TIF District Infrastructure Project. The Airport Business Park has been many years in the making. The property along the runway has been identified as a long-time goal to create a business park. Three areas have been identified in that district. They redefined a wetland delineation and engaged an expert to identify the new wetland areas, as the previous notation were many years old. The slope of the grade does not lend itself to development. In 2020 the City engaged a group to design a roadway and drainage for the area. They intend to extend city water, sewer, electricity and the roadway in this area for future businesses. It is unavoidable to impact the wetlands, but they have chosen a way that has minimum impact. The single crossing has the least impact. Layout of the roadway would result in minimal impact therefore mitigation is not required. They have received approvals from all the required sources, and they missed the step of getting approval from the Zoning Board. Mr. Brooks reviewed the Wetlands Special Exceptions that address this situation. He believes they meet the criteria.

Vice Chair Mercer opened the Public Hearing and hearing no one, the Public Hearing was closed.

Mr. Nash MOVED On November 1, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared David Brooks, Director of Planning and Development, on behalf of the City of Lebanon, Airpark Road (Tax Map 159, Lot 4; Tax Map 131, Lot 8; and Tax Map 131, Lot 1-100), zoned IND-L: Applicant requests a Special Exception pursuant to Article IV, Section 401.5 (“Wetlands Conservation District”) of the Zoning Ordinance to allow wetland impacts associated with the extension of Airpark Road. ZB2021-22-SE

I. FINDINGS OF FACT

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

1. The City of Lebanon is constructing an extension of Airpark Road over the City-owned lot at 0 Airpark Road (Tax Map 10, Lot 24-200).
2. The construction of the Airpark Road extension will impact a total of 9,133 sq. ft. of wetlands including 8,642 sq. ft. located on the City’s property at 0 Airpark Road, and an additional 491 sq. ft. within the City’s adjacent right-of-way.
3. The City has applied for and obtained a wetlands permit from the NH Department of Environmental Services. The wetlands permit was reviewed by the Conservation Commission at its November 12,

2020, and February 11, 2021 meetings. The City now seeks a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to allow the proposed wetland impacts.

4. Construction within wetlands not identified by the City of Lebanon as of High or Very High Value, is permitted by Special Exception pursuant to Section 401.5 of the Zoning Ordinance.
5. 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 Special Exception criteria set forth in Section 401.5 of the Zoning Ordinance:

1. The use for which the exception is sought **cannot** feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District. (§401.5.A)
2. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot **cannot** reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section. (§401.5.B)
3. The design and construction of the proposed use **is** consistent with the purpose and intent of §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures **will** be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands (§401.5.C)
4. The criteria set forth in Section 401.5.D relates to pipelines, powerlines, and other transmission of lines and, therefore, is not applicable.
5. The proposed use **will not** create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason. (§401.5.E)
6. The project is capable of complying with all State and Federal wetlands and wetlands permitting requirements. (§401.5.F)
7. The project **is** capable of conforming to all existing best management practices, as referenced in Appendix A of the Zoning Ordinance, and **will** be implemented in a way which conforms to those practices (§401.5.G)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **1st day of November, 2021**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted.

Seconded by Mr. Newlove.

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

4. OTHER BUSINESS

A. Zoning Amendments

Mr. Corwin said the zoning amendments are amended from time to time. Staff present amendments to the City Council each Fall, when changes become necessary over time. It includes items that may need approval by the voting public. After full review, the final draft is presented to the City Council for approval in January. The role of the Zoning Board is to determine if the amendments make sense and are enforceable. The amendments have been presented to the members prior to this meeting. They commented on the amendments, asked for clarification and recommended changes to the language to ensure proper interpretation.

B. Review 2022 Meeting Calendar

Mr. Corwin presented the new calendar and said there is no requirement to approve the calendar. It is provided for information to the members.

5. STAFF COMMENTS-None

6. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 8:28 PM.

Seconded by Mr. Katz.

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

Respectfully submitted,
Linda Billings
Recording Secretary