

## **LONDONDERRY ZONING BOARD OF ADJUSTMENT 2022**

The Zoning Board of Adjustment consists of five appointed and three alternate members. Each member/alternate serves for a three year term and is required to be a resident of the Town. The officers of the Board are a Chair, Vice Chair and Clerk, who are elected annually by the Board. The Board uses its Rules of Procedures to assist in conducting its business. Monthly meetings of the Zoning Board of Adjustment occur on the third Wednesday of each month in the Moose Hill Council Chambers, 268B Mammoth Road at 7:00 p.m.

A list of meeting dates and submission deadlines is available at the Planning & Economic Development Department and on the Town of Londonderry's website.

Appeals to the Board of Adjustment concerning any matter within the Board's power as set forth in RSA 674:33 may be taken by any person aggrieved with standing or by any officer, department, board, or bureau of the municipality affected by a decision of the administrative officer.

The Board has the authority to act in four separate and distinct categories as outlined below:

1. **Appeal of Administrative Decision:** An appeal involving an alleged error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16.
2. **Special Exception:** A request to use land or building(s) that is permitted, subject to meeting specific criteria and conditions that are set forth in the ordinance.
3. **Equitable Waiver of Dimensional Requirement RSA 674:33-a:** When a lot or other division of land, or structure, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance, an applicant may be granted an equitable waiver of dimensional requirement if the Board finds: (1) the violation was not noticed or discovered until after the structure in violation was substantially completed or until after a lot or other division of land in violation was subdivided by conveyance to a bona fide purchaser for value; (2) the violation was not an outcome of the ignorance of the law, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of the owner or owner's agent but was instead caused by either a good faith error in measurement or calculation or by an error in ordinance interpretation or applicability made by a municipal officer; (3) the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other properties in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and (4) that due to the degree of past construction or investment made in ignorance of the facts, the cost of correction far outweighs any public benefit to be gained.
4. **Variance:** A request for a relaxation or a waiver of any provision of the zoning ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance, and may be granted if the applicant can establish to the satisfaction of the Board, the following five criteria for the granting of a variance pursuant to RSA 674:33:

1. The variance will not be contrary to the public interest;

2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

A public hearing is required before the Board can take action on any application. The public hearing provides anyone with an interest in the application to hear the facts in the case and offer comments for the Board’s consideration. Notices are sent to abutters via certified mail according to state statute. At the hearing, the Board considers each application as presented. Every case is unique with different facts and circumstances and is viewed accordingly. The Board has the authority to attach conditions when issuing a decision. The concurring vote of three members shall be necessary to reverse any action of an administrative official or to decide in favor of the applicant on any matter on which it is required to act.

The 2022 year proved to be a busy year for the Zoning Board. Fifty-six (56) requests were processed. This number does not include the cases that were continued from the previous year. The Board’s activity for the 2022 calendar year was as follows:

MONTH	NO. OF REQUESTS	TYPE OF CASES	DECISIONS
January	1	Special exception	granted w/ conditions
February	1	Appeal of adm decision	ZBA determined it lacked jurisdiction to hear the appeal
March	4	one appeal of adm decision; three variances	two variances granted w/ conditions; one variance withdrawn; appeal of adm decision denied
April	3	two variances; one special exception farm products	one variance granted w/ conditions; one variance granted; special exception granted w/ conditions
May	6	six variances	five variances granted; one variance granted w/ conditions

June	3	two variances; one rehearing request	two variances granted w/ conditions; rehearing request withdrawn
July	0	0	0
August	3	three variances	three variances withdrawn
September	10	nine variances; one special exception	three variances granted; six variances granted w/ conditions; one special exception granted w/ conditions
October	2	one variance; one special exception	one variance granted w/ conditions; one special exception granted w/ conditions
November	2	two variances	two variances granted w/ conditions
December	22	21 variances; one special exception	11 variances granted; eight variances granted w/ conditions; one variance denied; one variance withdrawn; one special exception withdrawn

As always the Board would like to thank the citizens of Londonderry for their participation, local knowledge and input on cases under the Board's review. The ZBA relies heavily on members of the Town of Londonderry's "Planning and Economic Development" and "Building and Zoning Enforcement" Departments. A sincere thank you to Nick Codner, Chief Building Inspector, Laura Gandia, Associate Planner, and Beth Morrison, Land Use Assistant for all their expert knowledge and help that keeps the Board functioning. The Board would also like to welcome its newest alternate member, Chris Moore. Last but not least, we would like to thank the Cable Department and its volunteers who provide the television coverage for public viewing.

Respectfully submitted,

Jacqueline Benard, Chair  
Suzanne Brunelle, Vice Chair  
Brendan O'Brien, Clerk  
Bill Berardino, Member  
Mitch Feig, Member  
Irene Macarelli, Alternate Member  
David Armstrong, Alternate Member  
Chris Moore, Alternate Member