

MEMORANDUM

October 12, 2023

TO: **BOSTON REDEVELOPMENT AUTHORITY**
D/B/A BOSTON PLANNING & DEVELOPMENT AGENCY (BPDA)
AND JAMES ARTHUR JEMISON II, DIRECTOR

FROM: AIMEE CHAMBERS, DIRECTOR OF PLANNING
KATHLEEN ONUFER, DEPUTY DIRECTOR OF ZONING
JEFFREY HAMPTON, SENIOR ZONING PLANNER
MAYA KATTLER-GOLD, PLANNER I

SUBJECT: REPORT ON BPDA ZONING BOARD OF APPEAL RECOMMENDATIONS
BETWEEN 7/202023 AND 9/26/2023

SUMMARY: This Memorandum informs the Board of the Boston Redevelopment Authority (“BRA”) of trends in the recommendations written by BPDA planners to the Zoning Board of Appeal between 7/202023 and 9/26/2023.

BACKGROUND

The Zoning Board of Appeal (“ZBA”) is a quasi-judicial body of seven members who are appointed by the Mayor. The ZBA hears requests for conditional use permits, variances, and similar zoning relief. While the ZBA is housed in the Inspectional Services Department (“ISD”) of the City of Boston, the Boston Planning & Development Agency provides non-binding recommendations to the ZBA for their consideration. Each recommendation is provided in a letter which includes basic information about the project, the planning context surrounding the project, and an analysis of the zoning implications (such as the applicability and/or obsolescence of the provisions of the Boston Zoning Code (the “Code”). These letters can now be found online by scheduled ZBA hearing date at bostonplans.org/zoning/zoning-board-of-appeals.

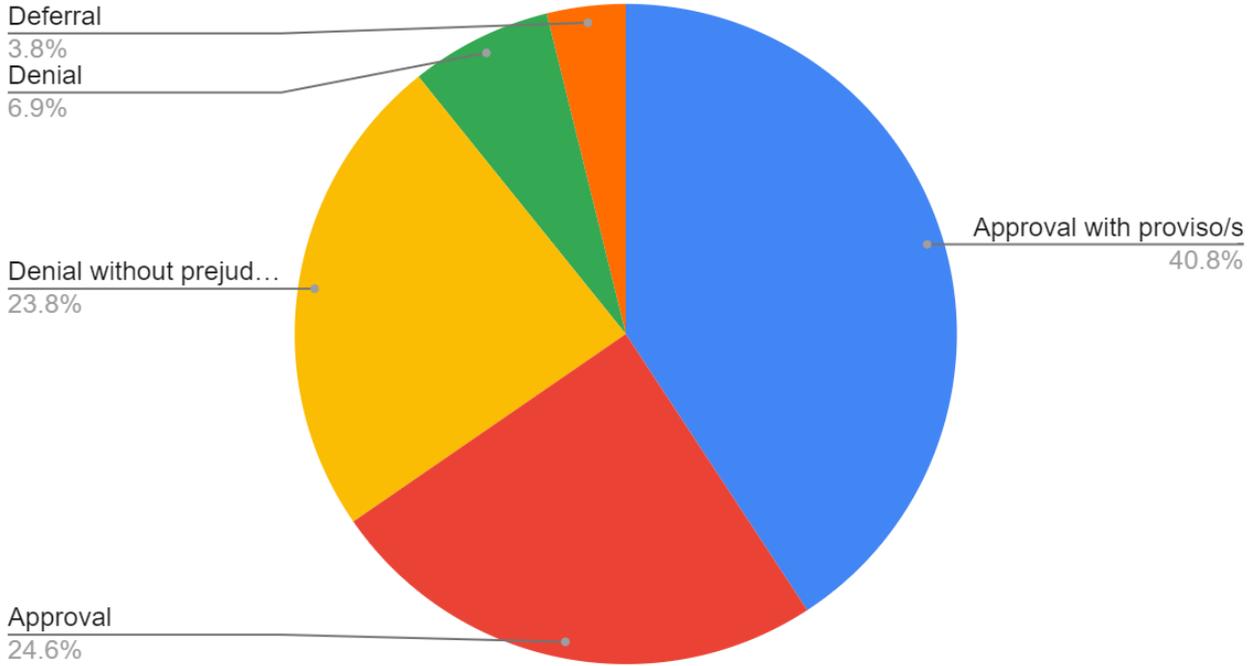
On June 15th, 2023, the BPDA Board voted to grant authorization to permit the Director to make these recommendations on behalf of the BPDA. As part of this change, the BPDA Board requested that Planning staff present quarterly reports which summarize and highlight trends in the recommendations and ZBA cases. This first report includes data from the ZBA hearings starting on the first hearing that included recommendations that the BPDA Board did not vote to approve (7/20/2023) through the last ZBA hearing in September of 2023 (9/26/2023).

BPDA RECOMMENDATIONS

BPDA planners wrote 130 recommendations for 8 ZBA hearings from 7/20/2023 through 9/26/2023. During these 8 hearings, the ZBA also heard appeals for 15 Article 80 cases. Planners do not currently write separate recommendations for Article 80 cases, and instead, forward the approved BPDA Board memo to the ZBA as the BPDA recommendation.

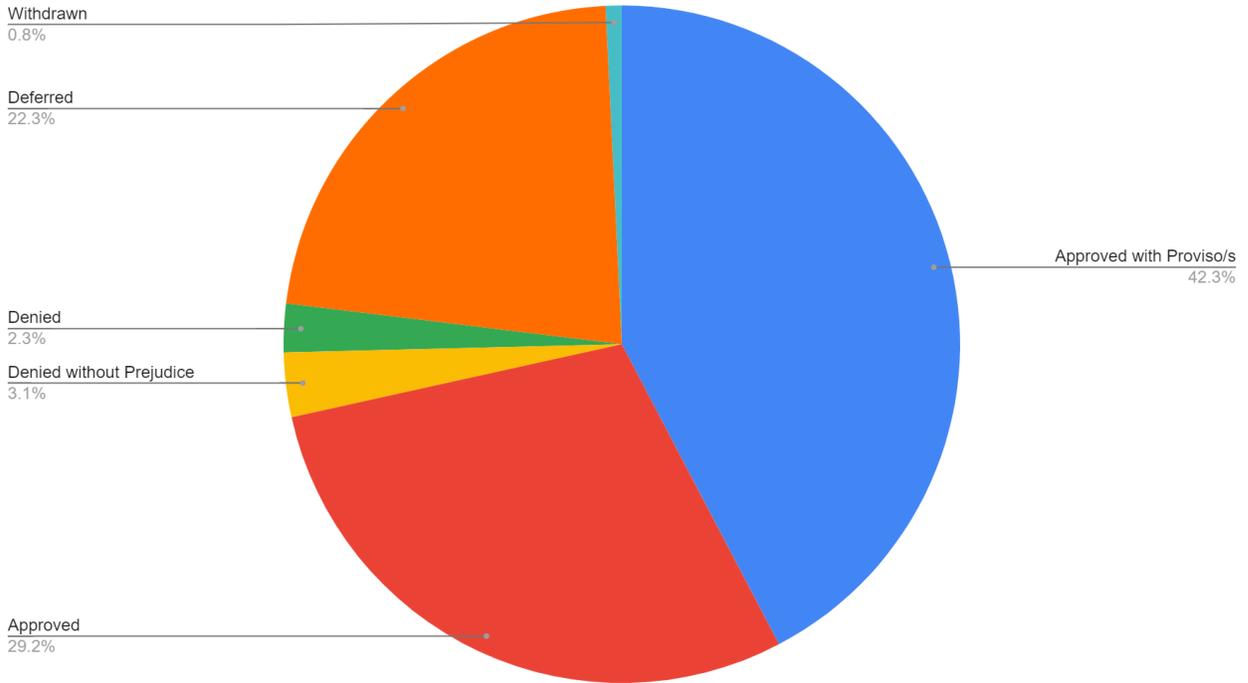
Of the 130 (non-Article 80) staff recommendations, the most common recommendation was for approval with proviso(s) (approximately 41% of recommendations). About 80% of those included a proviso for BPDA design review (with other recommended provisos being Groundwater Conservation Overlay District Review, Housing Agreement with the BPDA, Landmark Review, No Building Code Relief, Parks Design Review). The next most common staff recommendation was for approval, representing about 25% of recommendations.

BPDA Recommendations



ZBA HEARING RESULTS

ZBA Hearing Results



Similarly, the most common ZBA hearing result was approval with proviso(s) (42%), followed by approval (29%). The largest difference between the BPDA recommendations and ZBA hearing results appears in the deferral and denial categories. This is unsurprising, as the BPDA rarely recommends deferral, and will only do so if planners do not have the information needed to make an adequate recommendation. However, applicants might choose to have their case deferred for a variety of reasons, including to have additional time to meet with the appropriate community/neighborhood group, to submit new plans to address planning concerns, or correct administrative issues. Of the 29 cases that were deferred at the ZBA, most had received staff recommendations for either approval with proviso(s) (41% of deferred cases) or denial without prejudice (38% of deferred cases).

Because the cases that were deferred have not yet received a final decision, it is helpful to remove these cases and look more closely at only the cases that have received final decisions. To date, the ZBA has made final decisions on 100 of the 130 cases for which planning staff wrote recommendations over this time period (29 have been deferred and one was withdrawn). The ZBA concurred with the BPDA recommendation for 60 cases (60%). The most common discrepancies were the

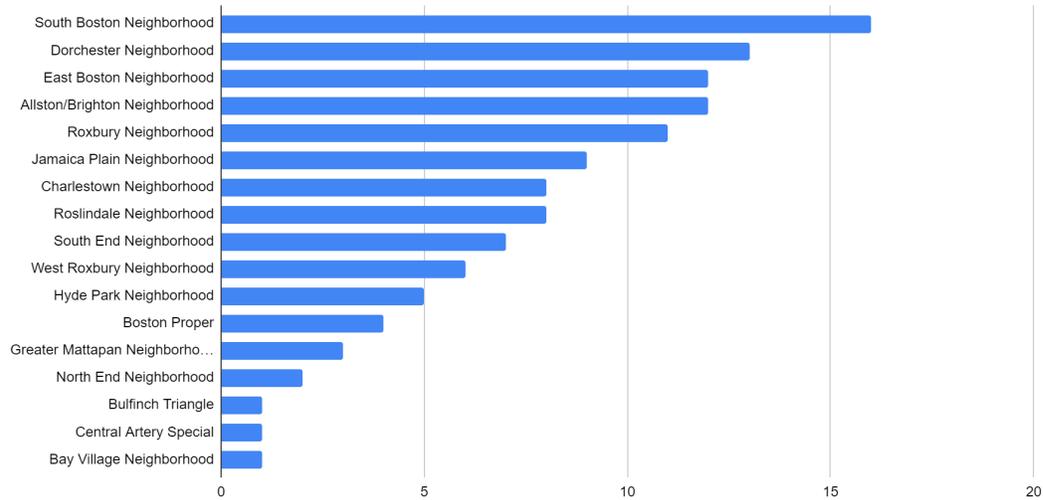
ZBA deciding to approve with proviso(s) while the BPDA recommended denial without prejudice (16% of total ZBA decisions). There were also 9 cases for which the ZBA decided to approve while the BPDA recommended approval with provisos. (9% of total ZBA decisions). However, most of this discrepancy can be attributed to the timeline of the review and voting process. The provisos that the ZBA includes in their decisions require that the applicant comply with said provisos after receiving ZBA approval (such as going through BPDA design review). BPDA planners also include provisos in the recommendations for reviews by other departments which may be completed before the ZBA hearing (Boston Water and Sewer Commission, Parks Department, or Landmarks Commission) or for no building code relief. The purpose of including these provisos in the recommendations is to clarify that the BPDA only recommends approval if said proviso is met. In the case of a “no building code relief” proviso, this proviso may be included if a project does not comply with the building code in order to clarify that the BPDA is not making a recommendation on building code relief. For the 9 cases for which the ZBA did not include recommended provisos, only 3 included recommendations for BPDA design review. The other 6 only included provisos for reviews by other departments or no building code relief. The ZBA most likely did not include these provisos because they received these reviews before the hearings and the provisos were therefore not needed. A breakdown of the 40 ZBA decisions which differed from the BPDA recommendation can be found below.

BPDA recommendation	ZBA Decision	Count
Approval with Proviso(s)	Approved	9
Approval	Approved with Proviso(s)	3
Denial without Prejudice	Approved with Proviso(s)	16
Denial without Prejudice	Approved	3
Denial	Approved with Proviso(s)	2
Denial	Denied without Prejudice	1
Approval with Proviso(s)	Denied without Prejudice	2
Deferral	Approved with Proviso(s)	4

OTHER TRENDS IN ZBA CASES

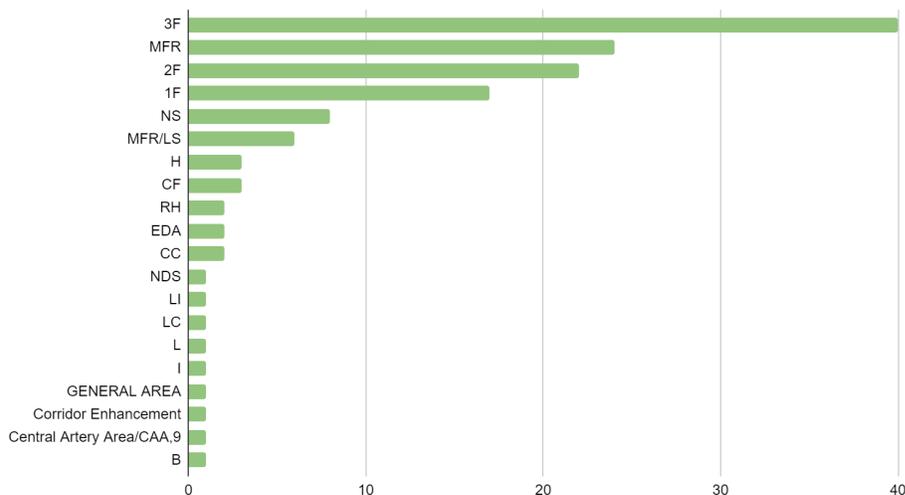
BPDA planner’s reviewed ZBA cases in 17 different zoning districts. The district that saw the most cases was the South Boston Neighborhood (13%), followed by the Dorchester Neighborhood (11%), and then the East Boston Neighborhood and the Allston/Brighton Neighborhood (each 10%).

Zoning Districts



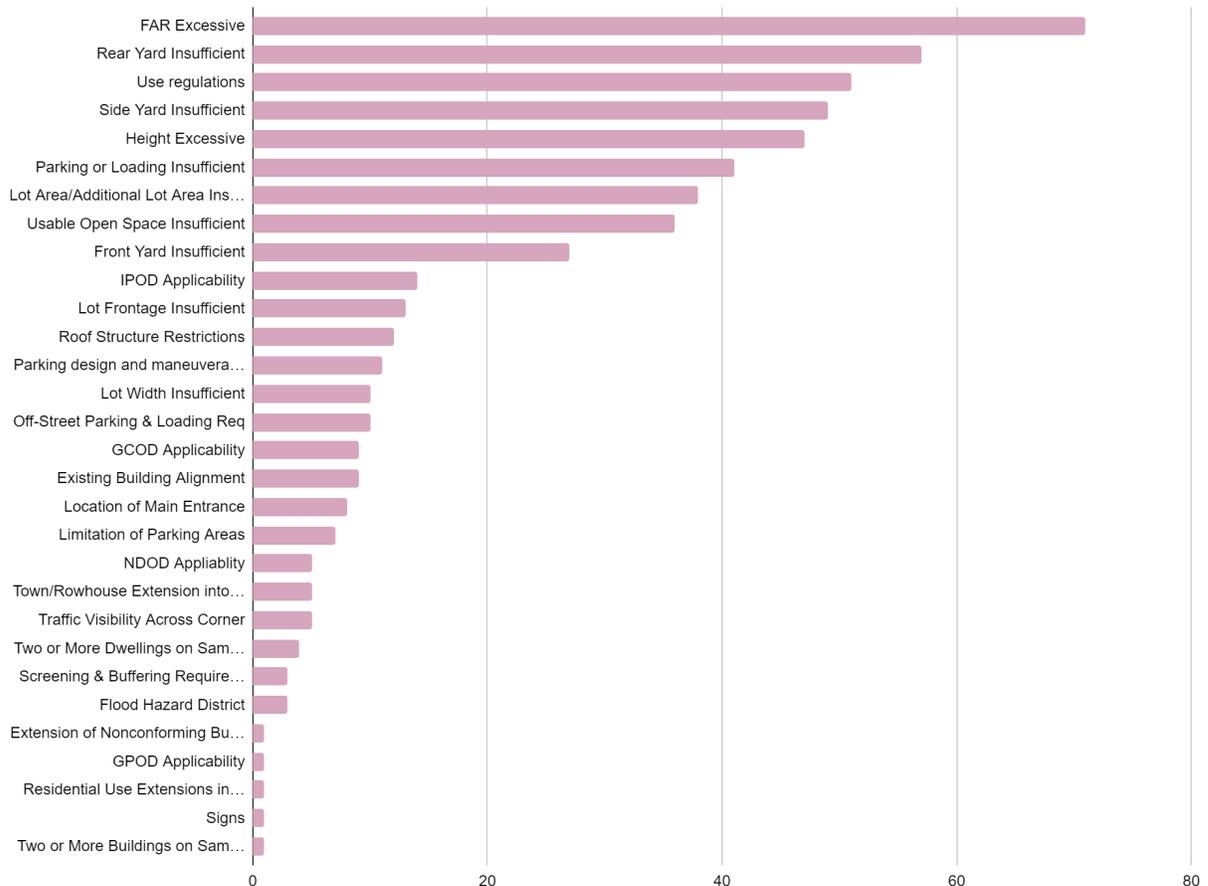
The majority (83%) of projects for which planners provided recommendations to the ZBA occurred in residential subdistricts, with 3F, MFR, 2F, and 1F representing the top 4 most common subdistricts.

Zoning Subdistricts



The 130 ZBA cases that planners reviewed received a total of 550 zoning violations citations. The top five most common violations were FAR, rear yard, use regulations (including both conditional and forbidden uses), side yard, and height, which together represented 50% of the total citations.

Violations



For some cases, planners recommended that the ZBA grant variances for these violations, but noted that future changes to the Code would be more appropriate. Common instances of this include: dimensional violations like FAR, yards, or heights; dimensional violations that match the surrounding built context; and reduced parking aligned with existing BPDA and Boston Transportation Department policies and planning goals. Tracking these trends in violations and districts will help us focus our efforts for on-going zoning reform.

CONCLUSION

In future iterations of this report, we hope to see a reduced number of projects coming before the ZBA as we reform the Code to better reflect current built conditions in Boston and allow more projects to be built as-of-right. We also aim to increase concurrence between our recommendations and the ZBA's decisions by continuing to work with the ZBA in order to align our goals and methodology for reviewing cases. We have also identified opportunities for improving our data collection, and in future reports will be able to provide more detailed analysis of violations (such as dividing conditional and forbidden uses) and an analysis of cases for which zoning reform would be more appropriate than variances.