

MEMORANDUM

August 15, 2024

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
WILL COHEN, SENIOR PLANNER II

SUBJECT: REPORT ON PLANNING DEPARTMENT ZONING BOARD OF APPEAL
RECOMMENDATIONS BETWEEN 4/2024 AND 6/2024

SUMMARY: This Memorandum informs the Board of the Boston Redevelopment Authority (“BRA”) of trends in the recommendations written by Planning Department planners to the Zoning Board of Appeal between 4/2024 and 6/2024.

BACKGROUND

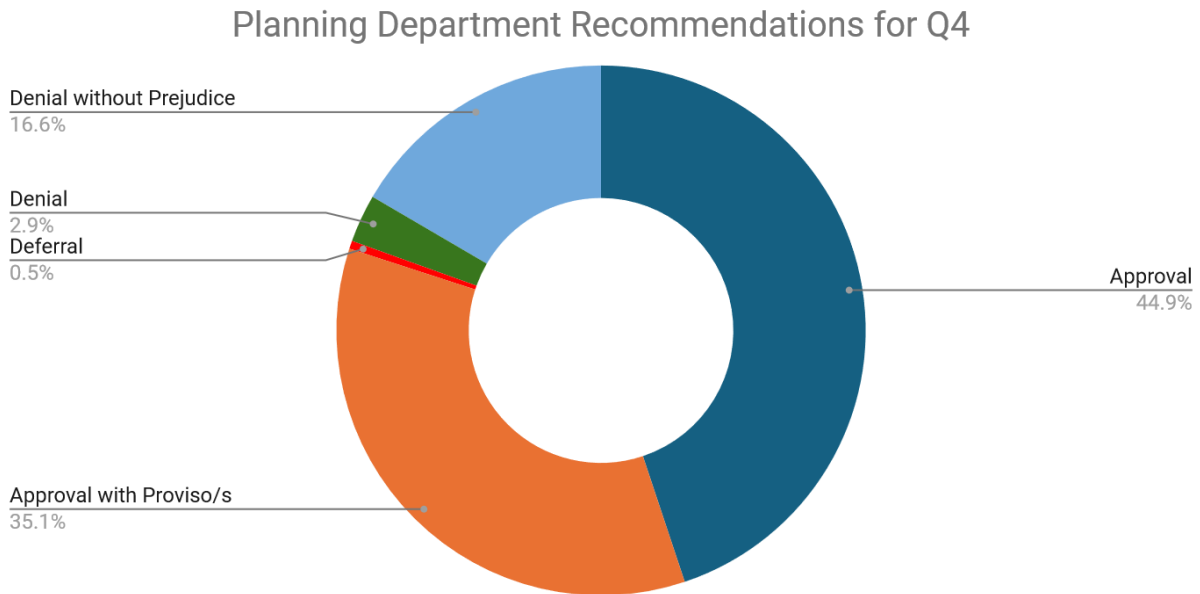
The Zoning Board of Appeal (“ZBA”) is a quasi-judicial body of seven members who are appointed by the Mayor. The ZBA hears requests for conditional use permits, variances, and similar zoning relief. While the ZBA is housed in the Inspectional Services Department (“ISD”) of the City of Boston, the Planning Department 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 Board. As part of this change, the Board requested that Planning staff present quarterly reports which summarize and highlight trends in the recommendations and ZBA cases. This

fourth report includes data from the ZBA hearings starting in April 2024 (4/9/2024) through the last ZBA hearing in June of 2024 (6/24/2024).

PLANNING DEPARTMENT RECOMMENDATIONS

As a high-level observation, the percentage of recommendations from staff for approval went up from 36% to 45% since the last quarter, and the percentage of approval with provisos remained approximately steady at 34% to 35%. From Q3 to Q4, the number of cases overall increased from 204 to 231, so this also means that the absolute number of recommendations for approval or approval with provisos went up.

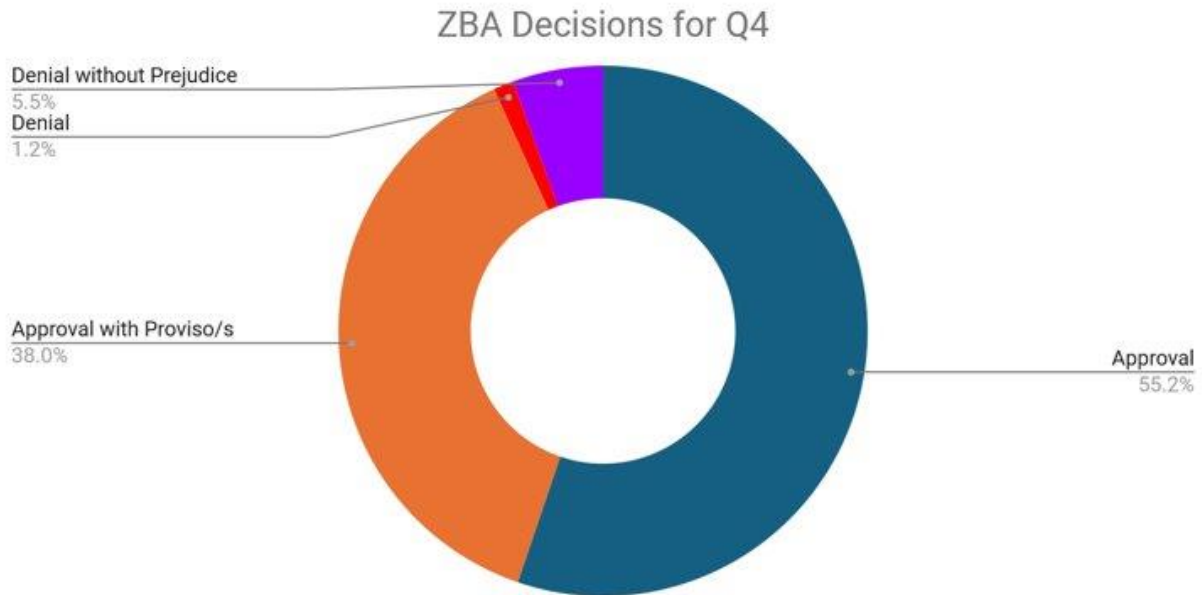


Planning Department planners wrote 217 recommendations for 6 ZBA hearings from 4/9/2024 through 6/25/2024. During these 6 hearings, the ZBA heard requests for variances for 12 Article 80 cases. Planners do not currently write separate recommendations for Article 80 cases, and instead, forward the approved Board memo to the ZBA as the Planning Department recommendation.

Of the 205 (non-Article 80) staff recommendations, the most common recommendation was for approval (approximately 45% of recommendations). The next most common staff recommendation was for approval with proviso, representing about 35% of recommendations. 50% of those included a proviso for

Planning Department design review (with other recommended provisos being Groundwater Conservation Overlay District Review, Landmark Review, No Building Code Relief, Greenbelt Protection, or Parks Design Review).

ZBA HEARING RESULTS



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. Within this fiscal year, there does not appear to be a clear pattern about the number of deferrals, suggesting that the decision to defer may be more dependent on the specifics of the projects submitted that quarter. To date, the ZBA has made final decisions on 164 of the 205 cases for which planning staff wrote recommendations over this time period (41 have been deferred or withdrawn). The ZBA concurred with the Planning Department recommendation for 109 cases (66%, an increase from last quarter's 58%). This percentage of concurrence has generally hovered between 50-60% through the fiscal year. The most common discrepancies were the ZBA decisions to approve while the Planning Department recommended approval with proviso(s) (18 cases, or 17% of cases with recommendations). For those 18 cases for which the ZBA did not include recommended provisos, 8 included recommendations for Planning Department design review. The others only included provisos for either Parks Design Review or Groundwater Conservation Overlay District review. The ZBA most likely did not

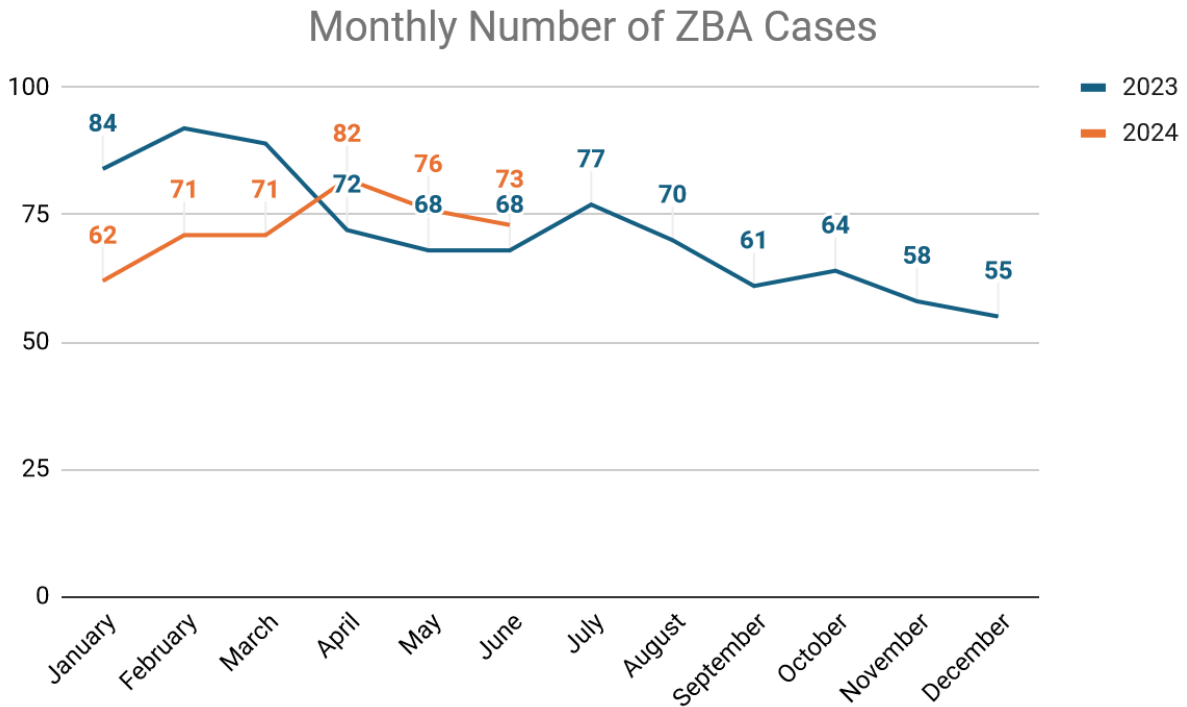
include these provisos because they received these reviews before the hearings and the provisos were therefore not needed.

There were also 3 cases where the ZBA decision was to deny without prejudice while the Planning Department recommended to approve with proviso(s) (2% of cases with recommendations, a decrease from last quarter's 8% of cases with recommendations). Of the 36 cases that were deferred at the ZBA (with an additional 4 withdrawn), most had received staff recommendations for either approval (44% of deferred cases) or approval with proviso(s) (31% of deferred cases).

A breakdown of the 55 ZBA decisions which differed from the Planning Department recommendation can be found below. In general, there is more general concordance this quarter (either approval and approval with provisos, or denial and denial without prejudice) compared to last quarter.

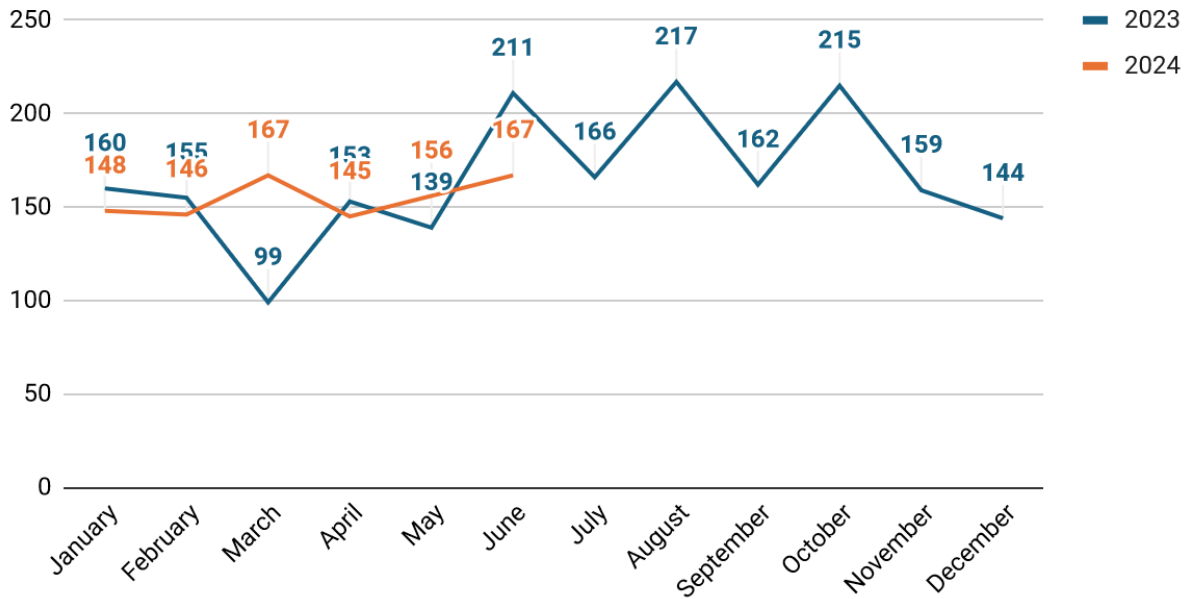
Planning Department recommendation	ZBA Decision	Count
Approval	Approved with Proviso(s)	6
Approval	Denied	1
Approval	Denied without Prejudice	1
Approval with Proviso(s)	Approved	18
Approval with Proviso(s)	Denied without Prejudice	3
Denial	Approved	1
Denial	Approved with Proviso(s)	1
Denial without Prejudice	Approved	6
Denial without Prejudice	Approved with Proviso(s)	17

OTHER TRENDS IN ZBA CASES



The number of monthly ZBA cases heard increased slightly in Q4 relative to Q3, though it remains lower than the number of cases heard at the start of 2023 and when interest rates were lower. We should expect to see more fluctuation in this as interest rates and overall macroeconomic trends remain in flux. That said, this continues to point to an overall need to keep longer-term market needs in mind as we consider how and when to reform zoning and development regulations.

Mean Days Between Filing and Hearing Date, by Hearing Date Month



Similarly, while the current mean between filing and hearing dates is still lower than some of the peaks from last year, the overall time range continues to hold steady at 4-6 months. As applications subject to new zoning are finally beginning to be filed in the present day, we still expect to need another few quarters before a drop in ZBA backlogs would show up in the data.

CONCLUSION

As noted in earlier reports, we continue to strive to see fewer cases 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 are still seeing an overall reduction in cases, though this is likely more due to broader market conditions than any kind of regulatory change. 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. In future reports, we hope to see applications from areas that have been rezoned and which fall under the purview of updated zoning, and so we hope to begin to see some initial fruits of the ongoing zoning reform work. With that in mind, the Planning Department will continue to look at how we can start to see time-based trends on how zoning violations evolve under updated zoning.