

MEMORANDUM

JANUARY 18, 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
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SUBJECT: REPORT ON BPDA ZONING BOARD OF APPEAL RECOMMENDATIONS
BETWEEN 9/27/2023 AND 12/31/2023

SUMMARY: This Memorandum informs the BPDA Board of trends in the recommendations written by BPDA planners to the Zoning Board of Appeal between 9/27/23 and 12/31/2023.

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 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

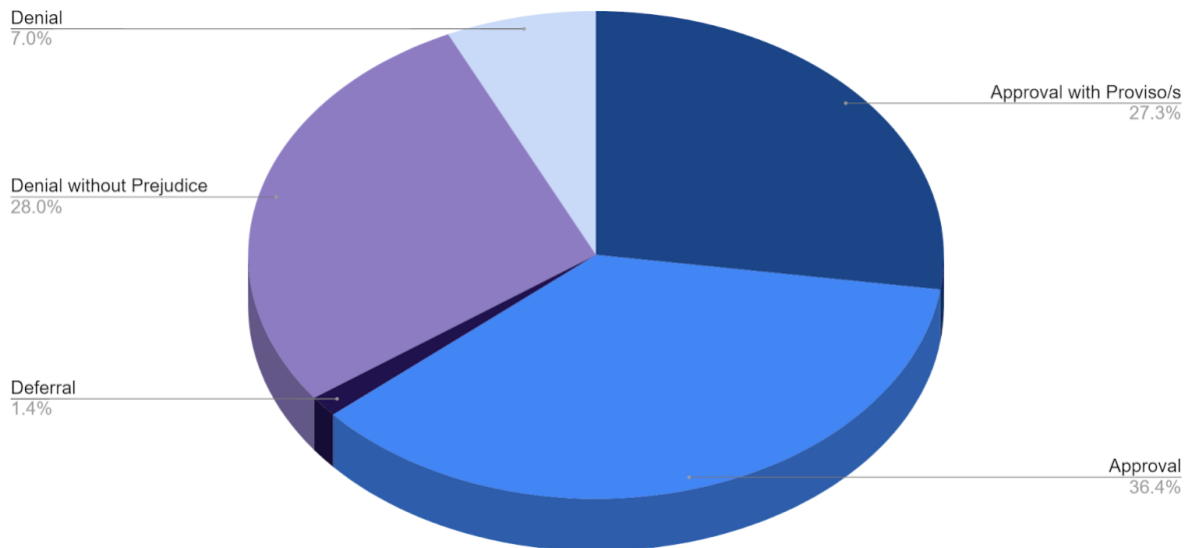
change, the BPDA Board requested that Planning staff present quarterly reports which summarize and highlight trends in the recommendations and ZBA cases. This second report includes data from the ZBA hearings in the time period between 9/27/23 and the end of the second fiscal quarter (12/31/2023). Since planners do not currently write recommendations for Article 80 cases as part of this process, they are excluded from this report.

QUARTERLY OVERVIEW

There is an ongoing effort to reduce variances by addressing existing non-conformities. In terms of better aligning the Code with built conditions, the Zoning Reform team has made significant progress this quarter. The draft zoning text amendment of the draft of PLAN: East Boston proposes the adoption of form-based codes for dimensional regulations, giving homeowners and developers added flexibility. The draft includes both a reduction in side yard requirements in one- and two-family residential subdistricts and a reduction in parking minimums for projects under 20,000 square feet of gross floor area. Loading requirements would be eliminated entirely. It should be noted that East Boston had 20.5% of the parking/loading violations issues for ZBA cases with BPDA recommendations in this quarter. Therefore, staff find that there is potential for even this one change to make a difference in the number of variance requests if this amendment is approved. Similarly, the recently approved PLAN: Mattapan will allow for increased building height, increased FAR, and an additional story to be built in multifamily residential subdistricts. In addition to offering property owners more flexibility, these zoning changes seek to affirm trends and existing conditions in the built environment. Taken together, these changes are expected to reduce the need for variances and added layers of review in these districts.

The first two sections below provide a broad overview of both the BPDA's recommendations for this quarter and ZBA hearing decisions made over the same period. This is followed by a summary of key trends identified in ZBA cases so far, their connection to the team's zoning reform work, and the BPDA's plans for the next report.

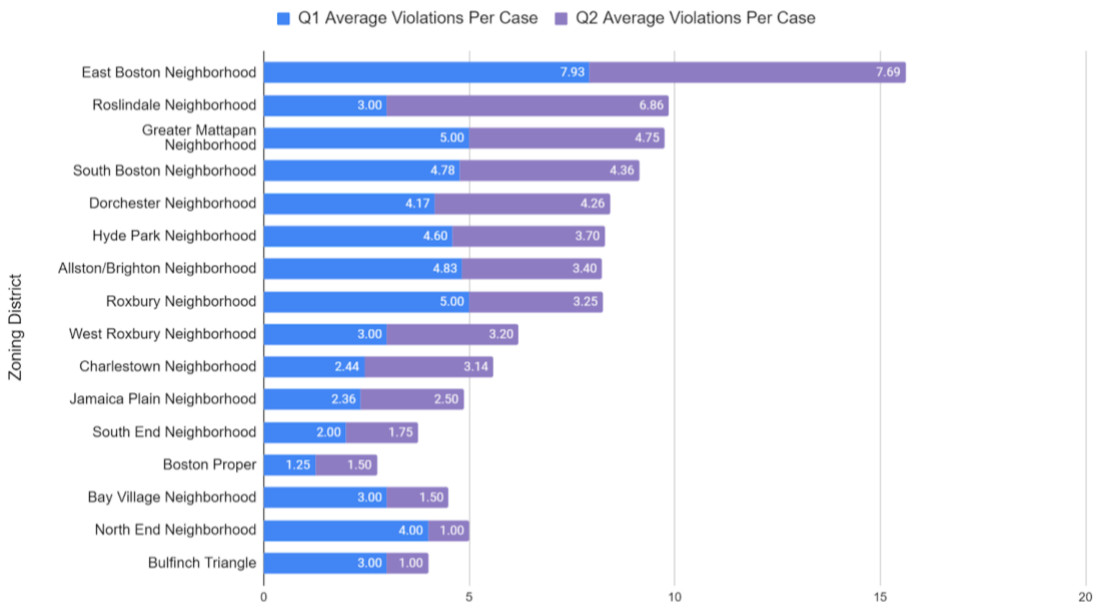
BPDA RECOMMENDATIONS



Overall, BPDA planners wrote 143 recommendations over this period, representing a 10% caseload increase over last quarter. In most cases, approval was recommended, followed by denial without prejudice. The most common proviso by far, as in last quarter, was BPDA design review, followed by Groundwater Conservation Overlay District (GCOD) concerns. The recommendation breakdown is similar to Q1, with the exception of approvals, which rose by about 10%.

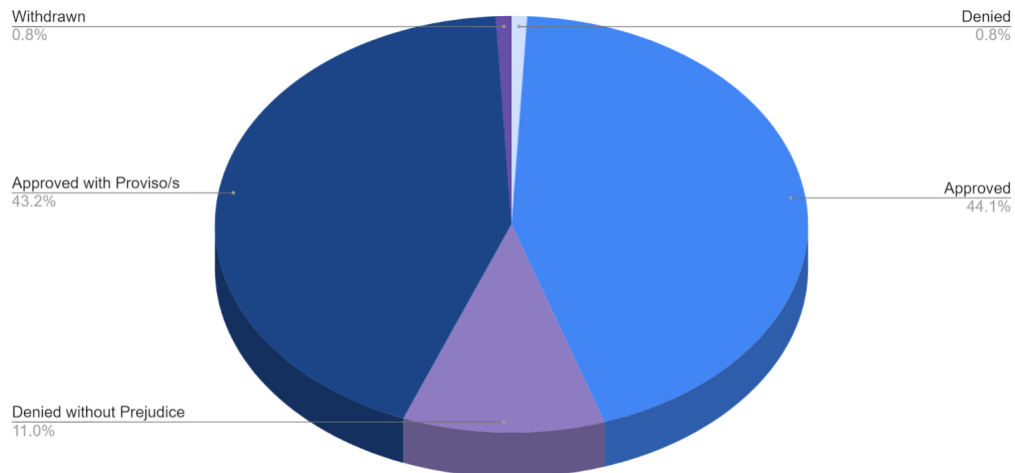
Of the cases for which planners wrote recommendations, the most common violations in Q2 were excessive FAR (80 violations), height (55 violations), and side yard (55 violations). Q1 was similar, with excessive FAR (51 violations), use regulations, and rear yard (42 violations) coming up most frequently. Average violations per case across all districts dropped in Q2 to 4.0 from 4.2 in Q1.

Average Violations Per Case by Zoning District, Q1 v. Q2



*Central Artery District had no cases with recommendations in Q2, so it was removed for comparison purposes. Charlestown and Charlestown Waterfront Districts cases were also combined.

ZBA HEARING DECISIONS



The chart above shows the breakdown of ZBA decisions this quarter. Since ZBA deferrals are not yet decisions, and will be analyzed when the cases do receive a decision, they are not reflected in this breakdown. In Q2, approval narrowly edged out approval with proviso/s as the most common ZBA hearing decision, comprising 44.1% of all decisions.

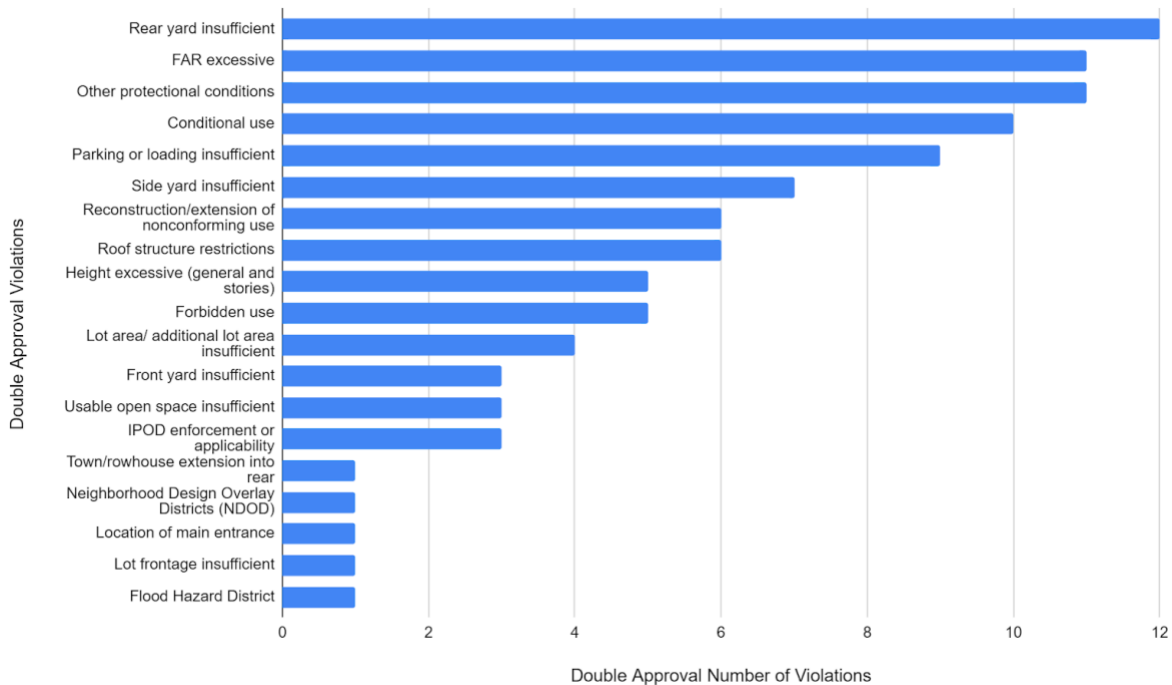
TRENDS IN ZBA CASES

As part of our analysis to determine where zoning reform is more appropriate and efficient than zoning relief, cases that received both a recommendation of approval from the BPDA and a ZBA approval decision were singled out. These cases are important for two reasons. First, since both the ZBA and the BPDA agree that the zoning relief sought in these cases is not objectionable, unless a clear hardship was identified, they represent an opportunity to change the code and, in doing so, make the process more predictable for similar future cases. Also, as stated in the last

report, better aligning the criteria for approval between the BPDA and the ZBA is a desirable outcome that could also help reduce uncertainty for applicants.

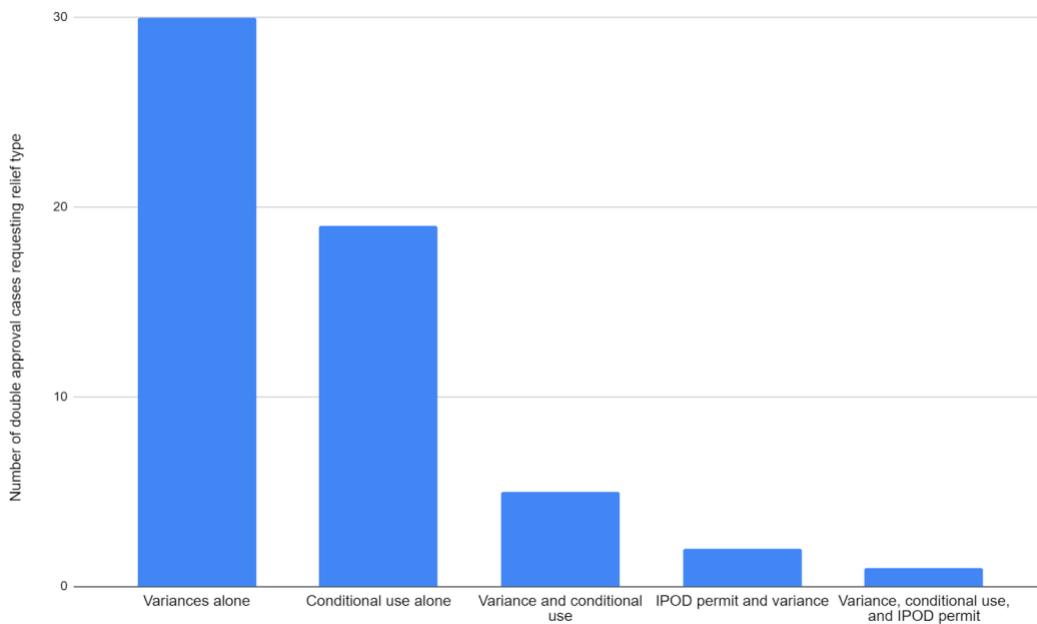
During Q1 and Q2, 57 cases received this kind of “double approval.” Most commonly, these cases centered around changes of use, an expansion of occupancy or an extension of living area without or with minimal exterior modifications to the structure, and proviso removals related to previous take-out restaurant uses. The most common violations for double approvals were insufficient rear yard and excessive FAR.

Most Common Double Approval Case Violations, Q1 and Q2



Examining the different kinds of zoning relief these cases pursue can also help clarify what the “typical” double approval looks like.

Zoning Relief Types Requested by Double Approval Cases, Q1 and Q2



In this case, double approval cases tend to pursue variances alone. This is especially interesting given that for cases with recommendations, overall requests for variances dropped by almost 10% between Q1 and Q2.

CONCLUSION

For the next report, BPDA staff plan to continue improving our use data, to begin recording planner-identified instances of mistaken violations, and to find new patterns and opportunities presented by double approval cases. In the longer-term- within the next two quarters- we plan to report on any preliminary trends related to recently passed zoning text amendments.

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