

MEMORANDUM

May 16, 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 BPDA ZONING BOARD OF APPEAL RECOMMENDATIONS
BETWEEN 1/2024 AND 3/2024

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 1/2024 and 3/2024.

BACKGROUND

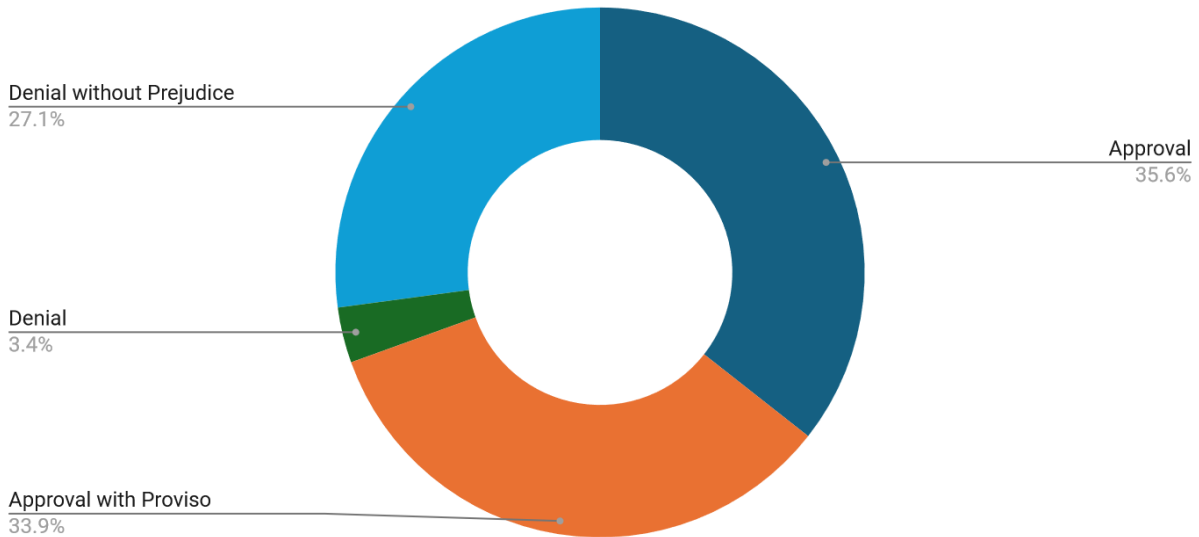
The Zoning Board of Appeal (“ZBA”) is a quasi-judicial body of seven members who are appointed by the Mayor. The ZBA hears requests for conditional use permits, variances, and similar zoning relief. While the ZBA is housed in the Inspectional Services Department (“ISD”) of the City of Boston, the Boston 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

third report includes data from the ZBA hearings starting in January 2024 (1/9/2024) through the last ZBA hearing in March of 2023 (3/26/2024).

BPDA RECOMMENDATIONS

BPDA Recommendations for Q3

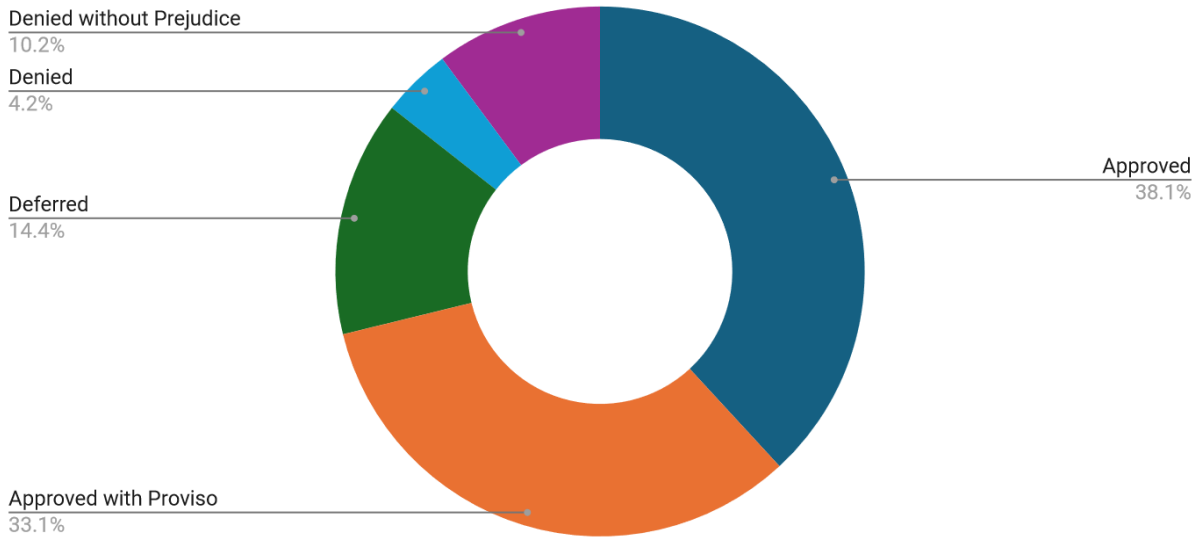


BPDA planners wrote 126 recommendations for 6 ZBA hearings from 1/9/2024 through 3/26/2024. During these 6 hearings, the ZBA also heard appeals for 8 Article 80 cases. Planners do not currently write separate recommendations for Article 80 cases, and instead, forward the approved BPDA Board memo to the ZBA as the BPDA recommendation.

Of the 118 (non-Article 80) staff recommendations, the most common recommendation was for approval (approximately 37% of recommendations). The next most common staff recommendation was for approval with proviso, representing about 36% of recommendations. About 78% of those included a proviso for BPDA design review (with other recommended provisos being Groundwater Conservation Overlay District Review, Landmark Review, No Building Code Relief, and Parks Design Review).

ZBA HEARING RESULTS

ZBA Decisions for Q3



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 101 of the 118 cases for which planning staff wrote recommendations over this time period (17 have been deferred). The ZBA concurred with the BPDA recommendation for 58 cases (58%). The most common discrepancies were the ZBA deciding to approve while the BPDA recommended approval with proviso(s) (11 cases, or 9% of cases with recommendations). For the 11 cases for which the ZBA did not include recommended provisos, 8 included recommendations for BPDA 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 10 cases where the ZBA decided to deny without prejudice while the BPDA recommended to approve with proviso(s) (8% of cases with recommendations). Of the 21 cases that were deferred at the ZBA, most had received staff recommendations for either denial without prejudice (38% of deferred cases) or approval with proviso(s) (24% of deferred cases).

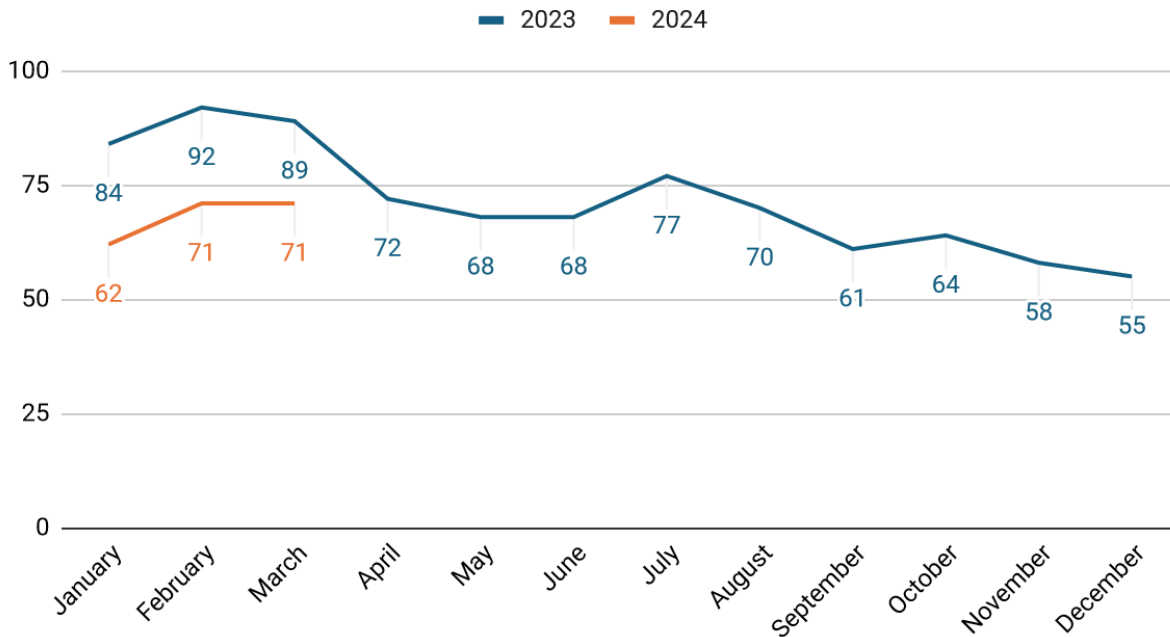
A breakdown of the 43 ZBA decisions which differed from the BPDA recommendation can be found below.

BOARD APPROVED**13**

BPDA recommendation	ZBA Decision	Count
Approval	Approved with Proviso(s)	7
Approval	Denied	2
Approval	Denied without Prejudice	2
Approval with Proviso(s)	Approved	11
Approval with Proviso(s)	Denied	1
Approval with Proviso(s)	Denied without Prejudice	2
Denial	Approved	1
Denial	Approved with Proviso(s)	1
Denial without Prejudice	Approved	6
Denial without Prejudice	Approved with Proviso(s)	10

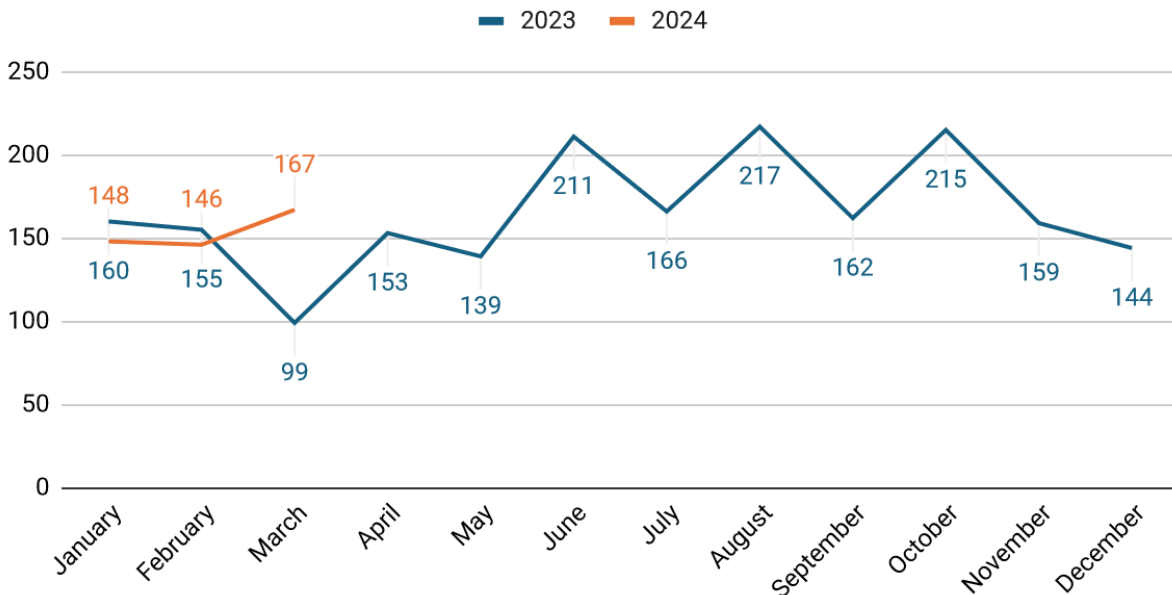
OTHER TRENDS IN ZBA CASES

Monthly Number of ZBA Cases



Because this more systematic tracking of ZBAs began over a year ago, the BPDA now has some initial year-over-year data, and it is possible to begin to see how trends are changing over time. The most striking observation is not one related to specific recommendations for cases by the BPDA or decisions by the ZBA, but is more a function of overall market trends. The number of cases seen each month in Q3 of this year are a consistent 20% lower than the Q3 prior, and more or less resemble the amount of activity seen during Q2. It is important to note that these dates reflect when cases are actually heard by the ZBA, meaning that there is a substantial lag between the months seen here and the market conditions affecting proponents seeking zoning relief. While this need not make any determining factors relative to any specific ZBA case, it very much speaks to the broader development trend in Boston, which is highly relevant to the exigent issue of the difficulties in the permitting and building regulatory process. In this lens, the broader moves toward zoning reform, some already complete or well underway, are very timely. In a more challenging development environment amidst an ongoing housing crisis, streamlined zoning is a key move for ensuring that housing production continues to be viable.

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



Similarly, we can also begin to look at any trends related to the time between when a proponent first submits an application to the ZBA and when their hearing date is. In this case, the amount of time seems to hold steady throughout last calendar year and into this calendar year at about six months from filing date to hearing date. That is to say, because this lag time is so substantial, the ZBA is not hearing any cases which would have benefitted from any of the zoning reform measures passed in recent months, and will likely not see many in the short-term either.

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 currently seeing a reduction in cases, though this is 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 begin to see some initial fruits of the ongoing zoning reform work, and will continue to look at how we can start to see time-based trends on how the zoning violations are changing.

