Board of Adjustment for Zoning Appeals
City and County of Denver

2018 Year End Report

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1
INTRODUCTION

This Annual Report presents a summary of the activities of the Board of Adjustment for Zoning Appeals from January 1, 2018 through December 31, 2018.

BACKGROUND

The Board of Adjustment for Zoning Appeals exists to review provisions of the Denver Zoning Ordinance and to give relief from the strict requirements of the ordinance if certain conditions are met.

When Denver passed its first Zoning Ordinance in 1925, the Board of Adjustment also acted as a zoning agency, combining its review functions with the granting of zoning permits. When the Zoning Ordinance was changed in 1956 to Chapter 59 of the Revised Municipal Code, the Board of Adjustment was defined solely as an appeals board and was completely separated from the Department of Zoning Administration. The status of the Board as a body independent of the permitting functions of the Zoning Code was maintained when Zoning Administration became part of Community Planning and Development in the early 1990’s. However, the 2010 Denver Zoning Code reinstated the Board’s authority to approve permits in limited instances.

At this time, the Board of Adjustment is an independent agency of the City and County of Denver. Although the Board members are appointed by the Mayor, its decisions are quasi-judicial and may be reviewed only by courts of record, not by another City agency or review board. The Board is supported by a staff that has varied in size from six people to its current total of three staff members.

2018 ACCOMPLISHMENTS

Office Modernization Project and Records Management Project: The Board’s staff continues to upgrade the Board’s office processes after the 2012 adoption of the Office Modernization Project and Records Management Project. At this time, the Board’s staff has digitized records between 2009 and 2018. The Board’s staff has developed a workflow to incorporate scanning new cases within 3 weeks of a final decision. In addition to the new case files, the Board’s staff continues to scan older case files on an as needed basis, with files dating back to the 1930’s available upon request.

Process Improvement Implementation: Database Implementation and Key Performance Indicator (KPI) Implementation: Following the 2016 Auditor’s Report, the agency has worked with tech services to update our database. The Board of Adjustment currently maintains the case database through Salesforce, and is working to incorporate new features to better track the efficiency of the department. In 2018, the Board’s staff worked with Technology Services to better incorporate the Key Performance Indicators identified in 2017, to ensure that we are recording useful data and incorporating this information into the office workflow. We have now established an Activity Tracking aspect to our process and recorded our first year of data to establish a baseline for future process improvement planning.

BOARD RESPONSIBILITIES AND COMPOSITION

The Board meets weekly on Tuesdays, typically starting at 9:00 A.M. and ending at 11:30 A.M. In addition to attendance at weekly hearings of cases, Board members’ duties may include site visits to properties, commenting on proposed Code sections, approval of minutes from previous hearings produced by the Board’s staff, and personnel review of employees. On occasion, the Board will hold special seminars or meetings.

There are seven Board members: five regular members and two alternates. Five members constitute a full board, with the alternates sitting in when a regular member is absent. A quorum of three members is adequate to hear a case but cannot grant relief: four affirmative votes are required under the Zoning Code. The Mayor appoints all Board members with the aid of the office of Boards and Commissions. The regular Board members have five-year staggered terms, as provided by the Zoning Code. The terms of the two alternates may vary from one to five years because the Zoning Code does not require a specific length of time for their appointment.
BOARD MEMBERS AND STAFF

2018 Board
- Penny Elder
  Chair of the Board, 2017-18 through 2018-19
- Jim Keavney
  Vice-Chair/Member of the Board, 2018-19
- Sandra Roberts-Taylor
  Vice-Chair/Member of the Board, 2017-18
- José Aguayo
  Member of the Board
- Frank Schultz
  Member of the Board
- Nancy Burkhart
  Alternate Member of the Board, Beginning in 2018
- Charlie Young
  Alternate Member of the Board, Beginning in 2018
- Don Sandoval
  Alternate Member of the Board, Ending in 2018
- Victor Padilla
  Alternate Member of the Board, Ending in 2018

2018 Staff
- Austin Keithler
  Technical Director BOA
- Phillip Williams
  Sr. Plans Review Tech/Deputy Director
- Justin Gumo
  Administrative Support Assistant IV

TYPES OF APPEALS BY CATEGORY

The appeals listed below represent the typical ones that come before the Board.

**Variance**

Variance requests are the most common form of relief requested and accounted for the majority of cases before the Board in 2018. As has been consistent for the past few years, the most common cases are Variance requests for additions to existing houses, such as **Bulk Plane, Setback, Lot Coverage**, or **Excess Height in the Front 65% or Rear 35%** of a zone lot; or for location related violations in **Fences, Sheds** or **Garages**. Variances can be granted for the expansion of a legally permitted compliant or nonconforming use, but cannot authorize a new use that is not permitted in a zone district.

**Time to Comply**

Can be offered as relief for existing structures or activities when a Variance is denied, or in cases where a Variance is unavailable.

Some common violations that do not qualify for a Variance include **Excess Units**, where there are more residential units on a zone lot than the district permits (for example, a duplex in a single unit district rather than a multiple-unit district) or **Unrelated Adults** living together that exceed the limit of unrelated people per dwelling unit in a zone district.

Certain violations are legally eligible for Variances, such as **Excess Vehicles, Recreational Vehicles, or Unsurfaced Parking** (for example, gravel used instead of the required concrete, asphalt or a similar material for parking areas at multiple unit dwellings). However, most Appellants with these violations find it difficult to meet the Variance standards: the usual hardship alleged is a financial one, which is not a legal hardship under the Zoning Code.

**The Six Month Delay** is offered as an alternative to all appellants under an Order to Cease and Desist. A **Five Year Stay** is offered only if the violation regards excess units. No time is offered to an appellant who is denied a permit, as it would have the effect of allowing the Board to initiate an illegal use in the district.

**Appeal of an Administrative Decision** normally has the lowest number of appeals of any form of relief. This type of appeal requires the Appellant to prove that the Zoning Administrator or City staff made an error in a decision regarding
the Zoning Code. Because the standard of review set out in the Code is heavily weighted in favor of the City, these cases have a low success rate for the applicant. Only 5 Appeals of an Administrative Decision filed in 2018, of which 2 were granted and 3 were dismissed.

Zoning Permits with Special Exception Review (ZPSE) are a category authorized under the Denver Zoning Code that allows the Board to grant a permit as the reviewing body, rather than hearing an appeal from a denial or an order. ZPSEs replaced the use Exceptions granted by the Board under former Zoning Code Chapter 59 for such things as eating places, outdoor patios, telecommunications towers, and businesses located in or adjacent to residential areas.

**YEARLY CASE STATISTICS**

**Hearing Statistics**

In 2018, the Board had 47 hearing dates, with a total of 316 hearings (234 regular hearings and 82 supplemental hearings). There was an average of 5 regular hearings and 2 supplemental hearings per week. The total session time for the 316 hearings was 100 hours and 2 minutes, which averages 2 hours and 26 minutes per hearing docket, and 28 minutes per individual case. The average docket length was approximately the same as previous years, as was the length of the individual cases. Cases are typically scheduled for 30 minutes each, although hearings on more technical issues, or on cases with general public interest, may be scheduled for longer periods. Because the Board has averaged 28 minutes per case this past year and cases are scheduled every 30 minutes, no change to the Board’s scheduling policy is proposed at this time.

**New Case Statistics**

In 2018 there were 220 new cases taken in, slightly lower than the 243 cases filed in 2016 and the 236 cases filed in 2017. 2016 had the highest number of cases filed in a year since the adoption of the new Denver Zoning Code in 2010, and 2018 had approximately 10% fewer cases filed. The reduction in cases filed may be a result of revisions to the Zoning Code, which allows Community Planning and Development more flexibility in approving authority. The Code revisions allow which fall short of zoning requirements by up to 5% in some cases, to be approved through administrative means rather than public hearings with the Board of Adjustment. While this may account for a down tick in cases filed, the case load is still within the normal and expected range.

**Figure 1:**

**Case Type Statistics**

The most common type of the appeal brought before the Board in 2018 has been the appeal of a denied permit, seeking a zoning Variance. The next most common type of case has been the appeal of an Order to Cease and Desist maintaining a structure or use which did not obtain permits. Our least common case types for the previous year have been for Zoning Permit with Special Exception Review (ZPSEs) and appeals for review of an Administrative Determination.
For any case filed with the Board as an appeal of a denial of a permit, the only available relief the Board can offer is a Variance. For cases filed as an appeal of a Cease and Desist Order from Neighborhood Inspection Services, the Board can typically offer either a Variance or in the alternative a Delay of Enforcement under Section 12.2.6.8 of the Denver Zoning Code. With some cases appealing Cease and Desist Orders, the Board does not have the authority to approve a Variance and is only able to authorize additional time to bring a property into compliance. This will most commonly be offered for situations with an excess number of unrelated adults living together in a house or a single-family dwelling which has been expanded to a multi-unit dwelling without the City's knowledge or approval. Cases filed as appeals for a Zoning Permit with Special Exception Review (ZPSE) are subject to a separate review process, as detailed in Section 12.4.9 of the Denver Zoning Code. Administrative Review appeals may be filed by any aggrieved party who believes the Zoning Administrator has erred in making a determination or action, as detailed in Section 12.4.8 of the Denver Zoning Code.
**Relief Granted**

Out of the 220 cases filed in 2018, just above 50% were approved as requested. The code allows the Board to place conditions on Variances, or to approve a request in part but not in total. In 2018, 17% of the Board’s cases were approved either in part or with conditions. For existing conditions which do not meet zoning standards, the Board is authorized to allow additional time to come into compliance with the code requirements. In 2018, 14% of the Board’s cases approved additional time to comply. If the Board finds that no hardship has been demonstrated and no relief is appropriate, the Board will deny an appeal. In 2018, 7% of the Board’s cases were denied. If an Appellant decides not to pursue an appeal for a final decision from the Board or if the City determines that a project can be properly permitted within the allowances of the code, a case may be dismissed without a final determination from the Board. In 2018, 9% of the Board’s cases were dismissed. Lastly, as of this time 2% of our cases filed in 2018 have not yet received final determinations from the Board.

**Figure 4:**

![CASE OUTCOMES](image)

**Case Outcome Per Case Type**

Looking at the final outcome separated into violation types, we can see that setback and fence violations are the most commonly appealed to the Board. Violations related to ADUs, garages / carports, bulk planes, and lot coverage tend to have high approval rates. The least common case types filed in 2018 were cases related to the keeping of animals, second requests for delays of enforcement, variances for signs, vehicles, and parking deficiencies. Although the Board only heard three cases related to projects with deficient parking in 2018, all three projects were approved as requested.
Case Outcome By Appeal Type

Looking at the final outcome separated by appeal types, we can see that cases filed as Denials of permits or Zoning Permit with Special Exception Review have the highest percentage of approval, while appeals pertaining to existing conditions under Orders are approved less frequently. Administrative Review cases are not as commonly approved, with 60% of the cases filed in 2018 being dismissed without hearing. While Denial of permit cases appear to have the highest rate or denial by the Board, many Order cases which received Time to Comply were denied a Variance but granted additional time.
2018 DISTRICT COURT APPEALS UNDER C.R.C.P. 106

Appellants who are dissatisfied with a decision of the Board have the option of appealing the decision to Denver District Court under Colorado Rule of Civil Procedure 106 (a)(4). The Appellants must demonstrate that the Board exceeded its authority or acted in an arbitrary or capricious manner for the appeal to succeed. From the date of the decision, Appellants have 28 days under the state statute or 30 days under Section 3.2.9(0)(l) of the City charter to file their cases with District Court.

In 2018, the Board had no cases filed under Rule 106.

TRENDS NOTED IN 2018

Consistent Number of Cases: The Board’s case filings for 2018 showed a slight down tick from 2016 and 2017 but remained at a similar level. The City has experienced record growth over the past few years and continues to see large amounts of development. Although 2018 had somewhat fewer cases filed than previous years, it remains within the expected levels.

Types of Cases Consistent with Previous Years, with Emerging Trends: There had been a belief that, over time, the 2010 Denver Zoning Code would eliminate the need for Variances for setbacks, fence heights and violations for additions to existing residential structures. However, these cases remain the most frequent cases before the Board with 92 cases related to setback violations and 38 cases related to fence violations. While it was not one of the most common case types, 2018 saw an increase in cases for new transformers installed in noncompliant locations, without permits. In 2018, the Board considered six of these types of cases, with two variances granted, one case dismissed, and three cases receiving time to come into compliance. Following a large number of cases filed in 2017 related to Telecommunications Tower Structures, the Board’s staff expected to see this trend continue in 2018. However, not a single case related to Telecommunications Towers was filed in 2018.

PREDICTIONS FOR 2019

Number of cases filed to remain similar to previous years: Community Planning and Development has remained busy over the past year and does not show any signs of slowing down. Likewise, the Board of Adjustment has remained steady over the past year, with a slight downtick in the number of cases filed. We expect 2019 to see similar case levels to 2018, with somewhere around 210 – 240 cases filed.

Continuing Trends in Case Types: As in previous years, the Board expects to see a large number of cases related to setback violations and fences. These types of issues have been the most common reviewed by the Board in previous years, and we expect this to remain consistent. With the increased demand for housing, we expect to see more cases related to increased density coming to the Board. For ADU cases, we have seen 19 cases in 2017 and 15 cases in 2018, with expectations between 15 and 20 for 2019.

CONCLUSION

Since 1925, the Board has played an invaluable role in the orderly growth and development of the city. Today the Board of Adjustment and its staff continues this tradition, helping other City agencies to ensure that Denver and its residents prosper as much this century as they did in the last.

Penny Elder, 2018 Chair

Austin Keithler, Technical Director