INTRODUCTION
This Annual Report presents a summary of the activities of the Board of Adjustment (Board) from January 1, 2021 through December 31, 2021.

BACKGROUND

The Board of Adjustment exists to review provisions of the Denver Zoning Ordinance and to make exceptions to the terms 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 to its current total of three.

BOARD RESPONSIBILITIES AND COMPOSITION

The Board meets weekly on Tuesdays, typically between 9 a.m. and 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 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 required to hear a case, but four affirmative votes are required to grant relief 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.

The regular Board members hold officer elections for a Chair and Vice-Chair each year. The elections occur in February every year and the positions run for a one-year period.

BOARD MEMBERS AND STAFF

2021 Board

  Appointment Term: February 2021 – February 2023
- Frank Schultz, Member of the Board
- Nancy Burkhart, Member of the Board
- Charlie Young, Member of the Board
  Appointment Term: Feb. 2020 – Feb. 2023
- José Aguayo, Alternate Member of the Board
- LeAnn Anderson, Alternate Member of the Board
  Appointment Term: Mar. 2019 – Feb. 2024

2021 Staff

- Austin Keithler, Technical Director BOA
- Phillip Williams, Senior Plans Review Tech/Deputy Director
- Justin Gumo, Administrative Support Assistant IV (Resigned as of July 2021)
• Stacy Lindsay-Esnault, Administrative Support Assistant IV (July 2021 to present)

2021 ACCOMPLISHMENTS

Ongoing Board Member Training: The Board’s staff has worked with CPD to provide ongoing training for Board members. The training is intended to keep Board members informed of the changes to the Denver Zoning Code and to CPD policy. CPD staff are planning to provide information about long term growth and development goals in the City, to help Board members have a broader knowledge and perspective to draw from when making decisions. The Board has had several training sessions in 2021 and plans to continue this ongoing training in 2022.

Digitization and Records Management Project: The Board’s staff has continued to expand our collection of digital records. All current cases are saved in hard copy format as well as digital format, and the Board’s staff is working to create digital copies of older case files. Currently all case files between 2006 and today are digitized and available, with older cases available upon request.

YEARLY CASE STATISTICS

Hearing Statistics

In 2021, the Board had 33 hearings dates, with a total of 166 hearings (131 regular hearings and 35 supplemental hearings). 2020 had been noticeably slower than prior years, with only 30 hearing dates consisting of a total of 166 hearings (133 regular hearings and 33 supplemental hearings). In 2019 there were 45 hearing dates, with 306 hearings (218 regular hearings and 88 supplemental hearings). In 2018 there were 47 hearing dates, with 316 hearings (234 regular hearings and 82 supplemental hearings). In 2017 there were 47 hearing dates, with 325 hearings (233 regular hearings and 92 supplemental hearings).

Figure 1: TOTAL HEARINGS PER YEAR

New Case Statistics

In 2021 there were 125 new cases taken in, the lowest yearly total for new cases in the Board of Adjustment’s history. The prior year, in 2020 was the previous lowest yearly total for new cases, with 133 new cases filed. Previous years had 198 cases filed in 2019, 220 cases filed in 2018, 236 cases filed in 2017, 243 cases filed in 2016, and 184 cases filed in 2015. The ongoing Covid-19 pandemic may be a significant contributing factor to the decline in cases over the past few years, but it does not appear to be the only factor.

Figure 2: TOTAL CASES PER YEAR
Case Intake by Month

Over the past 5 years there does not appear to be a consistent trend on when cases are filed during the year. If we assume an equal distribution of cases across all 12 months there would be 8.33% of the years’ cases filed in any given month. Over the past 5 years, every month shows some entries busier than average and some months slower than average. May of 2021 is a noticeable outlier, with 20.8% of the cases filed for the year having been filed this month. Aside from May 2021, most months see a case intake between 5% - 13% of the yearly case load.

Figure 3: CASES FILED BY MONTH

TYPES OF CASES

There are four types of cases which can be filed with the Board of Adjustment: Denied Permits from CPD staff (Denials), Orders to Cease and Desist from Neighborhood Inspection Services (Orders), requests for Zoning Permit with Special Exception Review (ZPSE), and Appeals from Administrative Decisions (Administrative Reviews or AR). The type of case is determined by the action which is appealed. Different appeals have different review criteria for the Board to consider and have different remedies available for the Board to grant.

Denials are the most common appeal type filed with the Board. Denials are for proposed projects which are under review with CPD. If there are zoning violations which cannot be overcome, CPD will deny a zoning permit for a project by issuing an Informal Denial. Property owners can appeal the Informal Denial to the Board to initiate a case. For Denials, the Board may, if certain criteria are satisfied, approve a Variance from the Code to allow a property owner to complete their project.

Orders are the next most common appeal type filed with the Board. Orders are for existing conditions which have been identified by CPD which have existing zoning violations. These could be for improvements which have been made without permits, construction errors for previously approved projects, or for other existing conditions which do not comply with the Code. The Board may grant Variances for many conditions which come in under Orders. If the Board does not determine that the Variance is appropriate to allow a nonconforming condition to remain in place, the Board can approve a Delay of Enforcement of up to 6 Months to allow property owners to bring their property into compliance. The Board also has the authority to approve a Stay of an Order for up to 5 years only for an Order related to the operation of dwelling units in excess of the number authorized by the Code.
Zoning Permit with Special Exception Review (ZPSE) are for uses which are generally allowed in an area but which have the potential to impact the surrounding area. ZPSE cases often are filed related to eating and drinking establishments within residential areas, restaurant patios adjacent to residential zone districts, telecommunications towers, or utility uses. These types of case require an application to CPD, as well as a pre-application meeting with the Zoning Administrator. Once the application has been refined, the Zoning Administrator will issue a referral letter to allow a case to be filed with the Board. The Board reviews the request at a public hearing and may deny, approve, or place conditions and restrictions upon the approval of the ZPSE.

Appeals of an Administrative Determination or Administrative Reviews (AR) are appeals of any determination of the Zoning Administrator. If an aggrieved party believes that a decision was made in error with regard to the zoning code, they can appeal that decision to the Board for review. This is a technical review of the Code and CPD’s decision making process. The Board must consider what the plain language of the Code says, how CPD interpreted and implemented the Code, and decide whether CPD has acted correctly or if they are in error. The standard in the Code is that CPD is presumed to be correct unless clear and convincing evidence is introduced to support a contrary determination or finding.

Case Types by Year
Historically, Denials and Orders have made up 90-95% of the Board’s cases in any given year, with ZPSEs and ARs making up the remaining 5-10%. In 2020 and 2021, case intake has been noticeably lower than in prior years. Denials have remained the most consistent type of appeal brought before the Board, even as the overall number of cases has declined. Denials have made up 129 cases in 2017, 122 cases in 2018, 129 cases in 2019, 112 cases in 2020, and 88 cases in 2021. While case intake has generally declined over the past few years, the sharpest drop has been with appeals of Orders. Before 2018, the BOA would commonly take in between 75 to 100 appeals of Orders in any given year. In 2019 this dropped down to 54 cases. In 2020 Orders accounted for only 15 cases and in 2021 Orders accounted for only 16 cases. ZPSE and AR cases remain the lowest types of appeals overall. ZPSEs have accounted for 10 cases in 2017, 11 cases in 2018, 6 cases in 2019, 9 cases in 2020, and 10 cases in 2021. ARs have accounted for 10 cases in 2017, 5 cases in 2018, 15 cases in 2019, 3 cases in 2020, and 13 cases in 2021.

Relief Requested
For cases filed based on Denials, the only available relief are Variances. For cases filed based on Orders, the Board may consider Variances or a Delay of Enforcement under Section 12.2.6.8 of the Denver Zoning Code. With some Orders, the Board does not have the authority to grant a Variance and can only authorize additional time to bring a property into compliance with the Code. Zoning Permit with Special Exception Review (ZPSE) cases are for uses which are generally allowed in an area but have the potential for limited impacts to adjacent properties and 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. With the limited number of appeals based on Orders filed in 2021, around 70% of all cases filed in 2021 were seeking a Variance as the only available relief.
Relief Granted

In 2021, the Board approved 52 appeals as requested. The Code allows the Board to place conditions on Variances, or to approve a request in part but not in total. In 2021, the Board approved 28 cases in part or with conditions. For existing conditions which do not meet zoning standards, the Board is authorized to grant additional time to come into compliance with Code requirements. In 2021, the Board granted additional time for 11 cases. When the Board does not find that an applicant has demonstrated a hardship for their request, the Board will deny an appeal. In 2021, the Board denied 30 requests. 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 2021, 8 of the Board’s cases were dismissed. As of this time, 3 cases filed in 2021 have not yet received final decisions from the Board.

Figure 6: RELIEF GRANTED BY YEAR – TOTAL CASES

Although the previous chart shows a declining approval rate between 2017 and 2021, this is largely due to the reduced number of cases filed over the five year period. When considered on a percentage basis, the relief granted by the Board is more consistent. Appeals granted as requested have ranged from a low of 40% in 2021 to a high of 51.7% in 2018. Appeals granted in part have ranged from a low of 14% in 2020 to a high of 21% in 2021. Time to Comply has ranged from a low of 8% in 2020 to a high of 13.7% in 2018. The largest fluctuation is seen with appeals being denied outright, with a low of 6.8% in 2018 up to a high of 22.7% in 2021. Dismissed cases have ranged from a low of 6% in 2021 up to 10% in 2018. Approval both as requested and in part / with conditions has ranged from 60 – 70% every year within this five year period.

Figure 7: RELIEF GRANTED BY YEAR – PERCENTAGE
CASE OUTCOME BY APPEAL TYPE

While it can be interesting to consider the full spectrum of cases filed with the Board in a given year, examining the different types of appeals in isolation can provide better insight into common trends depending on the type of case filed. The different types of cases have different potential relief associated with them, and significantly different expectations on the outcome of the appeal.

Denial

Aside from ZPSE requests, the most consistency with case outcome year to year is with appeals filed on Denials. By and large people will not pursue a variance unless they feel they have a decent chance of a positive outcome. Seeking a variance as opposed to pursuing a compliant design will add time and expense to a project. People who feel they have a strong case may still pursue a variance, but those with a weaker case may choose to comply with the Code instead. Since 2018, there has been a downward trend of case approvals, with the Board denying cases more frequently. In 2018, the Board approved 81.74% of cases either in whole or in part. This dropped to 71.32% in 2019, 67.26% in 2020, and 66.3% in 2021.

Order

Appeals based on Orders have a much less consistent outcome compared to Denials, and a much lower rate of approval. Part of the reason for this is there is not the same type of self-regulation common to Denial cases. When people pursue Denial cases, they do so intentionally. When people pursue Order cases, they typically do so accidentally. Orders are issued when people have done work without permits or when there are construction errors resulting in code violations. Because there is not a purposeful consideration of variance criteria ahead of time, Orders tend to be denied at a higher rate than permit Denials. As with Denial cases, Orders have also seen a downward trend of case approvals. In 2017, Order cases were approved either in whole or in part 59.62% of the time. This dropped to 51.61% in 2018, 52.73% in 2019, 41.18% in 2020, and 42.11% in 2021.
ZPSE

Zoning Permit with Special Exception Reviews (ZPSEs) are the most consistently approved type of case brought before the Board. They are among the lowest volume of case types brought before the Board, but the most consistently approved. In 2019 there were only 6 ZPSE cases filed, but all 6 were approved either in whole or in part. Part of the reason that ZPSEs are more consistently approved than other case types is that CPD staff work extensively with an applicant before they file a case with BOA. Because applicants must work with CPD so extensively, they generally have an understanding of CPD’s concerns and position before filing a case. Also, while it is not unheard of for the City to be opposed to a ZPSE request, it is much less common than with variance requests. ZPSEs have been approved either in whole or in part 90% of the time in 2017, 81.82% in 2018, 100% in 2019, 89.89% in 2020, and 100% in 2021.

Figure 10: ZPSE OUTCOMES BY YEAR

Administrative Review

Appeals of administrative decisions tend to be the least likely type of case to be granted. Appeals of administrative decisions can be filed on any decision of CPD regarding the zoning code, so they have a very broad range of specific case subjects. The one consistent element in these types of appeals is that CPD will almost always be opposed to the appeal being granted. These appeals call a decision of CPD into question, and CPD will always, with very limited exceptions, argue that they are correct. The Code defined standard of review also favors CPD, with the Appellant needing to provide a preponderance of evidence that CPD erred for the Board to overturn their decision. Generally, these types of appeals have a low number of cases filed in any given year and have a low rate of approval. There were 10 appeals filed in 2017, 5 filed in 2018, 15 filed in 2019, 3 filed in 2020, and 13 filed in 2021. They have received approval 10% of the time in 2017, 40% of the time in 2018, 21.43% of the time in 2019, 0% of the time in 2020, and 15.38% of the time in 2021.

Figure 11: ADMINISTRATIVE REVIEW OUTCOMES BY YEAR
VARIANCE REQUEST BREAKDOWN

In Denver, Variances are granted based on hardship, as defined in the Denver Zoning Code (DZC) and the Former Chapter 59 zoning code (FC59). Under the FC59 zoning code, hardship was simply defined as extraordinary or exceptional circumstances where literal enforcement of the code would result in hardship. In the current DZC hardship is more specifically defined an must fit within 5 categories: Disability, Unusual Conditions, Designated Historic Property or District, Compatibility with Existing Neighborhood, or Nonconforming or Compliant Uses in Existing Structures. For an Appellant to be eligible for a Variance they must base their argument to the Board on at least one of the hardship criteria.

Hardships Claimed

The most common hardship argued in front of the Board is that of Unusual Conditions. Namely, there is some unusual physical circumstance or condition present on the property which makes compliant development difficult or impossible. In 2019, claims based on Unusual Conditions on the property accounted for 77.65% of Variance requests to the Board. Unusual Conditions accounted for 67.91% of cases in 2020, and 67% of cases in 2021. The next most common hardship claim argued in front of the Board is Compatibility with the Existing Neighborhood. This hardship argues that while it may be possible to comply with the Code, a Variance would result in a design which is more consistently found in the established neighborhood pattern. Compatibility claims accounted for 16.47% of cases in 2019, 23.13% of cases in 2020, and 23% of cases in 2021. The remaining categories all account for very low percentages in any of the three reference years. An argument based on Nonconforming or Compliant Uses in Existing Structures has not been presented to the Board in at any time between 2019 and 2021.

Figure 12: HARDSHIPS CLAIMED BY YEAR

Case Outcome by Hardship Criteria
The sample size year to year on the majority of the hardship claims presented to the Board is very small, making it difficult to extrapolate meaningful data. As an example, claims of hardship under the FC59 Code were approved 50% of the time and denied 50% of the time in 2021. However, since this examines a dataset of two instances, where one case was approved and another was denied, the results don’t yield any significant insight. Cases are reviewed individually, so a larger data set is necessary to look for any meaningful trends or patterns. For any hardship argument of less than 10 cases per year, the statistics can change drastically based on the outcome of any individual case. As an example, the Board approved either in whole or in part 100% of cases based on a Historic hardship in 2019, but only 25% in 2020. The Board didn’t change from having a very favorable outlook on Historic hardships in 2019 to having a negative view of Historic hardship arguments in 2020. There was a sample size of five cases in 2019, which the Board found met the criteria, and there was a sample size of four cases where the Board did not find favorably in three of them. The sample sizes are simply too small to discern meaningful trends.

Figure 13: CASE OUTCOME BY HARDSHIP, DISABILITY, HISTORIC, FC59

Arguments based on the Disability hardship were argued 4 times in 2019, 3 times in 2020, and 1 time in 2021. Argument based on the Historic hardship were made 5 times in 2019, 4 times in 2020, and 7 times in 2021. Arguments based on Nonconforming Use hardships were not made at all in 2019, 2020, or 2021. Arguments based on the FC59 hardship were made 1 time in 2019, 5 times in 2020, and 2 times in 2021. Each of these categories accounts for too small of a number of cases to find patterns. The result of any individual case is better reviewed on its own merit.

Figure 14: CASE OUTCOME BY HARDSHIP, ALL TYPES

The two hardship criteria most often claimed are for Unusual Conditions and for Compatibility with the Existing Neighborhood. The Unusual Conditions hardship was claimed 132 times in 2019, 91 times in 2020, and 67 times in 2021. The Compatibility hardship was claimed 28 times in 2019, 31 times in 2020, and 23 times in 2021. In addition to being the most frequently argued hardship in front of the Board, claims of Unusual Conditions have the highest overall success rate with the Board. The Board has approved requests based on the Unusual Conditions hardship either whole or in part 70.37% of the time in 2019, 68.09% of the time in 2020, and 73.61% of the time in 2021. Requests based on the Compatibility hardship have been reasonably consistent but seem to be on a downward trend of approval. The Board has approved requests based on the Compatibility hardship either whole or in part 70.37% of the time in 2019, 54.54% of the time in 2020, and 41.67% of the time in 2021.
CASE LOCATIONS IN THE CITY

The City and County of Denver is divided up into 11 City Council districts, which have a roughly equal number of residents. When a case is filed with the Board of Adjustment, we will send notice to the City Councilor for the district to inform of the appeal and to give them an opportunity to weigh in on the case if they so choose.

Case Locations by City Council District

The Board has seen a trend in common locations of cases filed over the past three years. Despite some fluctuation year to year, District 1, District 7, and District 9 have consistently had the highest number of cases filed during 2019, 2020, and 2021. District 1 has had the highest yearly total all three years, with 21.98% of cases in 2019, 20.45% of cases in 2020, and 22.31% of cases in 2021. District 2 and District 11 have consistently had the lowest number of cases filed over the past three years. In 2020 and 2021, District 2 had a single case filed each year, accounting for less than a percent of the total BOA case load.
Case Outcome by City Council District

Looking at the different case outcomes by City Council district does not demonstrate any clear or significant trends. Every Council district had at least one case filed and reviewed by the Board in 2021. Every Council district had more requests approved in whole or in part than requests denied. District 1 had the highest number of cases approved as well as the highest number of cases denied, which correlates with it having the highest number of cases filed.

Figure 17: CASE OUTCOME BY CITY COUNCIL DISTRICT FOR 2021

Figure 18: MAP OF CASE OUTCOME BY CITY COUNCIL DISTRICT
COMMUNITY PLANNING AND DEVELOPMENT (CPD) AND THE BOARD OF ADJUSTMENT

Every case filed with the Board is an appeal of a zoning related decision made by CPD. The Board is an independent agenda from CPD, but due to the nature of the agency, the Board is very closely related to CPD. At public hearings with the Board, three are three main parties to the appeals. The Appellants, who have filed the appeal and are making their request, the staff of CPD, who provide CPD’s representation at the hearing, and the Board, who will consider the request and decide the outcome.

CPD’s Position

For every case that comes in front of the Board, CPD will provide its position on the relief requested. CPD typically will provide one of three positions: In Support, Not Opposed, or Opposed. In Support of a request means CPD has reviewed the criteria and found that a hardship has been met, or that a ZPSE is appropriate to approve. Not Opposed to a request typically means that CPD does not take a strong stance on the appropriateness of a request and leaves it to the Board to determine whether or not a hardship has been demonstrated. Opposed to a request means that CPD has considered the criteria and either feels that a hardship has not been demonstrated or that the request should not be approved.

For the purpose of this analysis, In Support and Not Opposed are considered as a single ‘favorable’ position, while Opposed is an ‘unfavorable’ position. In general, there is a fairly even split between favorable and unfavorable positions from CPD. In 2019 and 2020, there was an almost half and half division between CPD’s positions. In 2019 CPD was opposed to 52.5% of requests and either In Support or Not Opposed to 47.5% of requests. In 2020 CPD was opposed to 50.78% of requests and either In Support or Not Opposed to 49.22% of requests. In 2021, CPD was Opposed to a higher percentage of requests than in prior years. In 2021, CPD was Opposed to 64.46% of requests and either In Support or Not Opposed to on 35.54% of requests.

Figure 19: CPD’s POSITION BY YEAR
Case Outcome Compared to CPD’s Position

The Board is not required to agree with CPD in their review of an appeal. If CPD is Opposed to a request but the Board finds it appropriate, the Board can approve the request over CPD’s Opposition. The Board can approve a request either with the City’s Support or despite the City’s Opposition. The Board can deny a request either in line with CPD’s Opposition or despite CPD’s Support. Most commonly, the Board will approve a request where the CPD has a favorable position. The Board approved requests with favorable positions in 46.28% of cases in 2019, 48.12% of cases in 2020, and 36.15% of cases in 2021. The least common outcome for a case is for the Board to deny a request where CPD has a favorable position of either In Support or Not Opposed. This occurred in 1.06% of cases in 2019, 2.26% of cases in 2020, and 0% of cases in 2021.

Year to year, the Board has been fairly consistent with how often they agree with CPD, aligning with its position in approximately 2/3 of cases. In 2019, the Board’s position aligned with the CPD’s position in 69% of cases. In 2020, the Board’s position aligned with CPD’s position in 70% of cases. In 2021, the Board’s position aligned with CPD’s position in 66% of cases. The higher rate of Opposition presented by CPD in 2021 lead to a smaller percentage of cases approved with a favorable position as well as a higher rate of cases denied in line with CPD’s Opposition, but the overall rate of aligning with CPD’s position remained near 2/3s.

Figure 20: CASE OUTCOMES COMPARED TO CPD POSITION BY YEAR

Case Outcome By Case Type

Looking at the final outcome separated into violation types, setback, garage/carports, and fence violations are the most commonly appealed to the Board, and also the most successful. Regardless of case type, there is a greater likelihood to be approved than denied, with the exception of Administrative Review cases. The least common case types filed in 2020 or 2021 were related to the keeping of animals and oversized vehicles, with no cases filed in either category. Both of these appeals most commonly come from Orders to Cease and Desist, likely explaining the lack of cases over the past couple years. As in previous years, the Board heard a small number of ZPSE cases, which were largely approved or approved with conditions, and a small number of Administrative Review cases, which were largely denied.

Figure 21: CASE OUTCOMES BY SUBJECT, BY YEAR
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 to file their cases with District Court. In 2021, the Board responded to three cases filed under Rule 106(a)(4).

**Case Number 2021 CV 31821,** Gary Cook v. Board of Adjustment Zoning Appeals, was filed appealing the Board’s action in Case No. 30-2021 on 980 South Franklin Street. The request was for a Variance for a new single family residence exceeding the maximum height, projecting through the north and south bulk planes, and encroaching into the upper story setback along the primary street. The Plaintiff attended the hearing in opposition to the request on the grounds that he believed any Variance would negatively impact the use and enjoyment of his adjacent property to the north. The Board approved the request only for the maximum height but denied the remainder of the request. The Plaintiff did not believe any relief should have been granted and appealed to District Court under this case. At the time of this report, the appeal is still pending.

**Case Number 2021 CV 32346,** City and County of Denver v. The Board of Adjustment of the City and County of Denver, was filed appealing the Board’s action in Case No. 43-2021 on 3356 Pecos Street. Case No. 43-2021 was an appeal of an administrative determination that the approved use of the subject property was a single family residence and the current non-residential use of the property without a zoning permit was in violation of the Code. The subject property was an 1891, single story structure. It had been purchased by the current owner in 2009. There were two commercial units in place, one was used as a recording studio, the other was currently rented out to a parking services company. CPD had located an approved zoning permit from 2005 to convert the commercial structure to a residential use. CPD’s position was that the property had been legally established as a residential use since that time. The Board overturned CPD’s determination and found that the structure continued to house a commercial use. CPD believes that the Board’s decision was made in error and appealed to District Court. The Court denied CPD’s appeal and upheld the Board’s decision.

**Case Number 2021 CV 32583,** Denver Deserves Better v. Board of Zoning Adjustment, was filed appealing the Board’s action in seven cases. Case No. 44-2021, 47-2021, 53-2021, and 60-2021 were appeals of an administrative determination to allow Temporary Managed Campsites (TMCs) in all zone districts, under a Temporary Unlisted Use Code Determination. The Colorado Village Collaborative (CVC), a nonprofit organization with a mission of addressing homelessness through creative solutions, requested a Code Interpretation and Determination of Unlisted Use to see whether it would be permissible to provide safe occupancy spaces for homeless persons, either in temporary structures or parked motor vehicles, within the City and County of Denver. The Zoning Administrator considered the request and found that this was not a Use listed within the zoning code, but that the Temporary Unlisted Use of a TMC could be allowed in any Denver Zoning Code (DZC) or Former Chapter 59 (FC59) zone district in the City, with limitations. The Appellants believed this was an overreach of the ZA’s authority and that it was an error in judgement on its face as it did not provide any protection for neighbors from having homeless shelters established within residential zone districts and adjacent to schools and daycares. The Board found that the ZA had provided sufficient evidence to demonstrated that the Temporary Use could be located in any zone district, with limitations, and that adequate measures could be taken to address adverse impacts to adjacent properties. The Board denied the request for appeal and upheld the Zoning Administrator’s determination.

Case No. 48-2021, 49-2021, and 59-2021 were appeals of an administrative determination to approve a Zoning Permit for a TMC located at the Park Hill United Methodist Church (PHUMC). These three appeals had many of the same Appellants as Case No. 44-2021, 47-2021, 53-2021, and 60-2021. While the original four cases argued that the framework which allowed the TMC Use to be permitted was a faulty concept which should be rescinded, these three cases argued that the approval of the specific TMC at PHUMC did not adequately address neighbor concerns and that the Zoning Permit should be revoked. The Board was split on their positions, with two votes to uphold the ZA and three votes to overturn the ZA. Since four votes are required to overturn a decision of the ZA, the Zoning Permit was upheld.

The Appellants believe that the Boards decisions on both the Temporary Unlisted Use Determination and the Zoning Permit from the PHUMC were made in error and they have appealed all seven cases to District Court under a single court appeal. At the time of this report, the appeal is still pending.

The Board also responded to a grievance filed under the Federal Fair Housing Act (FFHA), with the U.S. Department of Housing and Urban Development (HUD). **HUD Case No.: 08-21-3770-8,** Johnson and Johnson v. City and...
County of Denver, et al. is a Housing Compliant filed against the Board’s decision in Case No. 119-20 on 2580 West 46th Avenue. Case No. 119-20 was filed to allow the construction of a new Accessory Dwelling Unit (ADU) for the Appellant’s disabled mother/mother-in-law to occupy. The case was initially continued to allow the Appellants to reduce the violations and/or to pursue a design which was closer to complying with the Code. The case was heard again, at which point it was denied. The Board did not dispute that the Appellant’s mother/mother-in-law had a disability. However, the Board did not find a correlation between the mother’s needs and the relief requested, and thus denied the request. The Appellants filed a complaint with HUD alleging discrimination on the basis of disability, sex, and race. At the time of this report, the appeal is still pending.

TRENDS NOTED IN 2021

Reduced Number of Cases: The Board’s case filings for 2021 were lower than in previous years, with the lowest total number of cases filed in any year of the agency’s history. As in 2020, this is likely a combination of impacts from the Covid-19 pandemic as well as changes to Neighborhood Inspection Services (NIS) resulting in significantly lower numbers of cases filed from Cease and Desist Orders. Only 16 cases were filed appealing Cease and Desist Orders in 2021. This is on par with the 15 cases filed in 2020, but drastically lower than the 54 cases filed in 2019, the 83 cases filed in 2018, or the 93 cases filed in 2017. 2021 saw a significant drop in appeals filed for Permit Denials as well, with 88 cases filed compared to 112 in 2020, 129 filed in 2019, 122 filed in 2018, and 129 cases filed in 2017.

Fewer Order appeals: In 2021, we have seen a much lower number of appeals of Cease and Desist Orders than in typical prior years. This drop in cases filed appealing Cease and Desist Orders has corresponded to a noticeable drop in certain case subjects, which commonly came to the Board under Orders. The Board typically saw a few cases each year related to Animal Keeping issues and oversized vehicles, but no cases have been filed on either of these subjects in the past two years. Additionally, the Board would commonly consider several cases each year where additional time to comply was the only relief available, either for Uses which could not be allowed on a permanent basis or for second requests for time. In 2021, only a single case was filed where additional time was the only relief the Board could offer.

Consistent Case Subjects with Previous Years: Cases filed based on Denials remain the most common case type filed with the Board. While Denial cases have historically made up around 50-60% of the Board’s yearly case load, this has risen in recent years, with Denials making up more than 80% of our cases in 2020 and nearly 70% of our cases in 2021. As with prior years, requests for variances related to setback encroachments remains the most common subject matter for the Board.

PREDICTIONS FOR 2022

Number of cases filed to remain lower than prior years: The past two years have seen a considerable drop in overall case loads, largely related to a lower number of appeals of Cease and Desist Orders. While the reason for this drop is not evident, it has been consistent for the past two years and may be the new standard. If appeals of Cease and Desist Orders remain low in 2022, it is likely that the yearly case load will remain well below average, similar to 2020 and 2021 levels. In 2022, it is predicted that we will take in between 115-140 cases over the year.

Continuing Trends in Case Types: With the past several years in mind, the Board expects to see the largest number of appeals filed based on Denials, with Orders on par with 2020 and 2021 levels. This would lead to 65-75% of the yearly case load coming in under Denials, with Orders, ZPSEs, and ARs splitting the remaining 25-35%. Setback violations will likely be the most common type of case filed with the Board, as has been the case in nearly all prior years.

Declining Rate of Approval: Over the past few years, cases appealing Denials and Orders have both seen lower rates of approval than in prior years. Approval of Orders has dropped from a high of 58.66% in 2017 down to a low of 42.11% in 2021. Approval of Denials has dropped from a high of 80.95% in 2018 down to a low of 66.3% in 2021. CPD has been arguing against cases more strongly over the past few years and it seems to have affected the Board’s judgment in their review of requests. It is likely that this trend will continue, with lower rates of approval in 2022 than in prior years.

CONCLUSION
Since 1925, the Board has played an invaluable role in the orderly growth and development of the City. Today the Board 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.

Jim Keavney, 2021 Chair

Austin Keithler, Technical Director