INTRODUCTION

This Annual Report presents a summary of the activities of the Board of Adjustment (Board) from January 1, 2022, through December 31, 2022.

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.

Currently, the Board of Adjustment is an independent agency of the City and County of Denver. Although the Board members are appointed by the Mayor and City Council, 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 12:00 p.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.

Historically, the Mayor has appointed all Board members with the aid of the Office of Boards and Commissions. On February 23, 2022, the Mayor signed CB22-0093, which re-established the Board of Adjustment. Current Board members would have the option to re-apply to serve on the Board, but no one would be automatically carried over. The Bill required that a new Board be appointed by June 1, 2022. With the newly re-established Board, there would be some changes. Moving forward, board members would be appointed by both the Mayor and by City Council, with 2 regular member appointments each, 1 alternate member appointment each, and with 1 regular member jointly appointed. The regular Board members have five-year terms, as provided by the Zoning Code. The alternate Board members have three-year terms, as provided by the Zoning Code.

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. In 2022, a special election occurred on June 7, 2022, to elect a Chair and Vice-Chair for the remainder of the 2022 year after the Board was re-established.

BOARD MEMBERS AND STAFF

2022 Board through May 2022


- **Nancy Burkhart, Vice Chair. Feb. 2022 – May 2022.**

- **Penny Elder, Member of the Board. (Vice Chair of the Board Feb. 2021 – Feb. 2022)**
  Appointment Term: February 2021 – February 2023

- **Frank Schultz, Member of the Board**
• Charlie Young, Member of the Board. Resigned in Feb. 2022.
  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

2022 Board Re-established beginning June 2022
  Appointment Term: June 2022 – May 2027
  Appointment Term: June 2022 – May 2027
• Adam Rice, Member of the Board.
  Appointment Term: June 2022 – May 2027
• Jeremy Haywood, Member of the Board.
  Appointment Term: June 2022 – May 2027
• Dee Dee DeVuyst, Member of the Board.
  Appointment Term: June 2022 – May 2027
• James Keavney, Alternate Member of the Board
  Appointment Term: June 2022 – May 2025
• Liia Koiv-Haus, Alternate Member of the Board
  Appointment Term: June 2022 – May 2025

2022 Staff
• Austin Keithler, Technical Director
• Phillip Williams, Senior Plans Review Tech/Deputy Director
• Stacy Lindsay-Esnault, Administrative Support Assistant IV

2022 ACCOMPLISHMENTS

Board Member Training Program: As part of CB22-0093, City Council established specific training requirements for new Board members. The bill established six training categories that new Board members would need to complete as part of their onboarding process. The training topics were: 1. The Denver Zoning Code, 2. Adopted land use, transportation, climate and housing plans of the City and County of Denver, 3. Open Meetings and decorum, 4. Proper use of evidence and conducting a quasi-judicial hearing, 5. Proper application of findings of fact as the basis for decisions, and 6. Diversity, equity and inclusion, as well as the Fair Housing, Civil Rights, and Americans with Disabilities Acts. The bill also states that Board members shall receive periodic supplemental training on the above topics and any additional topics as deemed necessary by the Chairperson of the Board. The Board’s staff collaborated with other city agencies including Community Planning and Development (CPD), the City Attorney’s Office (CAO), Human Rights & Community Partnerships (HRCP), and the Office of Social Equity & Innovation (OSEI) to put together a training program for all new Board members.

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. Each year we work to expand our collection of fully digitized case files. Currently all case files between 2004 and today are digitized and available, with older cases available upon request.

YEARLY CASE STATISTICS
Hearing Statistics

In 2022, the Board had 36 hearing dates, with a total of 132 hearings (109 regular hearings and 23 supplemental hearings). 2022 continues a downward trend of overall caseload in front of the Board. 2020 and 2021 saw a significant drop compared to prior years, and 2022 saw even fewer hearings throughout the year. In 2021, there were 33 hearing dates with a total of 166 hearings (131 regular hearings and 35 supplemental hearings). In 2020 there were 30 hearing dates, with 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

2022 also saw fewer cases taken in than prior years. In 2022, the Board had 96 cases filed, the fewest in the history of the agency. Previous years had 125 cases filed in 2021, 133 cases filed in 2020, 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.

Figure 2: TOTAL CASES PER YEAR

Case Intake by Month

There is no consistent trend on when cases are filed throughout the year. If there were an equal distribution of cases filed throughout each month, 8.33% of the years’ cases would be filed in any given month. Across the past 6 years,
every month has some years which are above the 8.33% and others which are below. Most months have a case intake of somewhere between 5% through 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 (Appeals). 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 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 Decision (Appeal) are appeals of any determination or decision of the Zoning Administrator. If an aggrieved party believes that a decision was made in error regarding 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 Appeals making up the remaining 5-10%. The past three years have had a much lower number of cases filed than 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, 88 cases in 2021, and 75 cases in 2022. 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 decline over the past few years, the sharpest drop has been with appeals of Orders in any given year. In 2019 this dropped down to 54 cases. Over the past three years, Orders have remained consistent but at a lower level. In 2020, 15 cases were filed on Orders. In 2021, 16 cases were filed on Orders. In 2022, 16 cases were filed on Orders. ZPSE and Appeal 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, 10 cases in 2021, and 5 cases in 2022. Appeals have accounted for 10 cases in 2017, 5 cases in 2018, 15 cases in 2019, 3 cases in 2020, 13 cases in 2021, and 4 cases in 2022.

Figure 4: CASE TYPE BY YEAR

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<th>Year</th>
<th>Denials</th>
<th>Orders</th>
<th>ZPSE</th>
<th>Appeal</th>
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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. Appeals of Administrative Decisions 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. Because most cases filed in 2022 were based on Denials, 75% of cases filed in 2022 were seeking a Variance as the only available relief.
In 2022, the Board approved 51 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 2022, the Board approved 18 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 2022, the Board granted additional time for 8 cases. When the Board does not find that an applicant has demonstrated a hardship for their request, the Board will deny an appeal. In 2022, the Board denied 23 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 2022, 6 of the Board’s cases were dismissed. As of this time, 1 case filed in 2022 has not yet received final decisions from the Board.

The prior chart shows an overall drop in cases approved as requested, but this is largely due to the lower overall case load filed in recent years. When looked at on a percentage basis, there is much more consistency year to year. 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 7.5% 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 23.5% 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 six-year period.
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. 2018 had the highest number of cases approved either as requested or in part, with lower approval levels in subsequent years. 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, 66.3% in 2021, and 68.08% in 2022.

**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. 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, 42.11% in 2021, and 55% in 2022.

Figure 9: ORDER OUTCOMES BY YEAR

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 understand CPD’s concerns and position before filing a case. Also, while it is not unheard of for CPD 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, 100% in 2021, and 83.34% in 2022.

Figure 10: ZPSE OUTCOMES BY YEAR

Appeals of Administrative Decisions

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, 13 filed in 2021, and 4 filed in 2022. 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, 15.38% of the time in 2021, and 0% of the time in 2022.

**Figure 11: APPEAL OF ADMINISTRATIVE DECISION OUTCOMES BY YEAR**

![Bar chart showing appeal outcomes by year](chart)

**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 and 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, 67% of cases in 2021, and 56.57% in 2022. 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, 23% of cases in 2021, and 27.27% in 2022. 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 2022.
Case Outcome by Hardship Criteria

The sample size year to year on most 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.

Arguments based on the Disability hardship were argued 4 times in 2019, 3 times in 2020, 1 time in 2021, and 6 times in 2022. Argument based on the Historic hardship were made 5 times in 2019, 4 times in 2020, 7 times in 2021, and 6 times in 2022. Arguments based on Nonconforming Use hardships were not made at all in 2019, 2020, 2021, or 2022. Arguments based on the FC59 hardship were made 1 time in 2019, 5 times in 2020, 2 times in 2021, and 8 times in 2022. 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.
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, 67 times in 2021, and 62 times in 2022. The Compatibility hardship was claimed 28 times in 2019, 31 times in 2020, 23 times in 2021, and 30 times in 2022. 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, 73.61% of the time in 2021, and 64.52% of the time in 2022. Requests based on the Compatibility hardship have been reasonably consistent but had a drop in approval in 2021. The Board has approved requests based on the Compatibility hardship either in whole or in part 60.72% of the time in 2019, 54.54% of the time in 2020, 41.67% of the time in 2021, and 60% of the time in 2022.

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

In 2022, District 1 has continued to have the highest percentage of cases filed in the city. The total number of cases has dropped overall, but District 1 remains the busiest district in the city for Board of Adjustment appeals. District 1 has had 21.98% of cases in 2019, 20.45% of cases in 2020, 22.31% of cases in 2021, and 22.34% of cases in 2022. Districts 7, 9, and 10 were the next busiest districts in 2022, which is similar to prior years. Also, as with prior years, Districts 2 and 11 have continued to have the fewest cases filed of any Council District.

Figure 16: Cases Filed by City Council District by Year

![Graph showing cases filed by City Council District by year]

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 2022. 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, which was the case in 2021 as well.

Figure 17: Case Outcome by City Council District for 2022

![Graph showing case outcomes by City Council District for 2022]
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 agency 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, 2020, and 2022 there was an almost half and half division between CPD’s positions, with 2021 showing a higher rate of opposition than normal. While 2022 returned to a more even split between favorable and
unfavorable positions, there was a much higher rate of Supportive positions. In 2022, CPD was In Support in 17.64% of requests, considerably higher than the prior high of 9.38% in 2020. 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 64.46% of requests and either In Support or Not Opposed to 35.54% of requests. In 2022, CPD was Opposed to 51.04% of requests and either In Support or Not Opposed to 48.96% 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, 36.15% of cases in 2021, and 44.66% in 2022. 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, 0% of cases in 2021, and 0.97% of cases in 2022.

Year to year, the Board has been consistent with how often they agree with CPD, aligning with their 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. In 2022, the Board’s position aligned with CPD’s position in 73.79% of cases.

Figure 20: CASE OUTCOMES COMPARED TO CPD POSITION BY YEAR

Case Outcome By Case Type
As with prior years, setback variances are the most common case subject for the Board to consider, and also the most commonly approved case type. Requests related to bulk plane and height / number of stories remain common variance requests as well. One of the largest changes in 2022 is the drastic reduction in cases related to over height fences.
These have historically been a very common case type for the Board to consider, but very few fence cases were filed in 2022.

Figure 21: CASE OUTCOMES BY SUBJECT, BY YEAR

![Graph showing case outcomes by subject and year for 2022, 2021, and 2020.](image-url)
**2022 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 to file their cases with District Court. In 2022, the Board responded to one case filed under Rule 106(a)(4).

**Case Number 2022 CV 272, Christopher Benson v. Board of Zoning Adjustment,** was filed appealing the Board’s action in Case No. 23-2022, on 20694 East 49th Avenue. The request was for a Variance to the height of a fence along a shared property line between the Appellants and Mr. Benson, their direct neighbor. The fence ranged in height between 6 and 7 feet, where only a 6 foot high fence was permitted. The Plaintiff attended the hearing in opposition to the request, arguing that the fence should not be allowed as it was out of scale compared to other fences in the neighborhood. The Board approved the Variance to allow the fence to remain as built, finding both that there were topographical differences along the two properties which made a standard 6 foot high fence insufficient, and that the added fence height would helpful given the contentious relationship between the neighbors. The Plaintiff disagreed, arguing that the fence should be brought down to the compliant 6 feet in height. He believes the Board’s decision was made in error and filed the appeal to District Court. At the time of this report, the appeal is still pending.

In 2021, 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 remains unresolved.

**TRENDS NOTED IN 2022**

**Reduced Number of Cases:** For the third year in a row, the Board has seen a record low number of cases filed. Beginning in late 2019, the Board began to see a slowdown in the number of cases filed. 2020 had the lowest number of cases filed in any year with 133 cases. This dropped to 125 cases filed in 2021. 2022 didn’t even break a 100, with only 96 cases filed. Permit Denial appeals remain the largest source of cases, though these have also dropped in recent years. Permit denials accounted for 129 cases in 2017, 122 cases in 2018, 129 cases in 2019, 112 cases in 2020, 88 cases in 2021, and 75 cases in 2022.

**Fewer, but consistent number of Order appeals:** Cases originating from NIS remain far lower than pre-pandemic levels. However, there appears to be a fairly consistent number of cases filed based on C&Ds each year. While the Board would see 70-90 cases originating form C&Ds pre-pandemic, since 2020 only around 15 cases are filed from C&Ds each year. 2020 had 15 cases filed on C&Ds, 2021 had 16 cases filed on C&Ds, and 2022 had 16 cases filed on C&Ds. Additionally, instances where there are multiple cases filed on a single order, seeking additional delays of enforcement have dropped away since 2019. Cases filed solely requesting additional time to comply were filed 9 times in 2017, 11 times in 2018, 7 times in 2019, 5 times in 2020, 1 time in 2021, and 1 time in 2022.

**Reduced number of over height fence requests:** Historically, requests related to over height fences have been one of the more common subjects for the Board to consider. Over the past few years this has gone from a common subject matter for the Board to a much less common subject matter for the Board. Requests related to over height fences were filed 54 times in 2017, 35 times in 2018, 32 times in 2019, 14 times in 2020, 14 times in 2021, and only 4 times in 2022. Requests related to over height fences would often come from NIS cases, so the overall drop in cases filed against C&Ds may account for some of the drop in over height fence requests. Additionally, CPD has expanded their ability to
consider over height fence requests administratively, rather than sending them to the Board. The lower number of C&D appeals and the expanded authorities of CPD to approve these requests administratively have resulted in a significant drop in over height fence cases in recent years.

**PREDICTIONS FOR 2023**

**Lower number of cases than pre-pandemic:** Since the pandemic began in 2020, the Board has seen a significant drop in overall cases filed. While the pandemic may have contributed to the lower numbers initially, after three years it is no longer a likely factor. The lower number of appeals coming from Cease and Desist Orders and the expanded flexibility for CPD to approve zoning exceptions administratively appear to be the primary drivers of the reduced case numbers filed with the Board. CPD has further plans in place to expand their Administrative Adjustment criteria, which will likely keep the number of cases filed with the Board at lower than pre-pandemic levels. 2022 had the lowest number of cases filed with 96 cases. 2023 will likely have similar levels, with around 100 cases filed.

**Higher Rates of Approval:** Variance approvals have been on a generally downward trend over the past few years, with a slight uptick in 2022. CPD is in the process of updating the variance process, including the introduction of a mandatory pre-application meeting with CPD staff, prior to filing an appeal with the Board. While it’s too early to say at this point how the updated process will impact the BOA’s overall case numbers, this will likely result in an increased rate of approval. Provided the pre-application process is adopted as expected, CPD will more directly work with Appellants before they file with the Board. Appellants may receive negative feedback upfront, and decide not to pursue an appeal, or receive better input on how to pursue their request for variance. If requests with a low probability of approval end up revising their plans to comply with the code, we may see fewer denied requests and a higher rate of approval.

**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 continue this tradition, helping other City agencies to ensure that Denver and its residents prosper as much this century as they did in the last.

Tim Cammillo, 2022 Chair

Austin Keithler, Technical Director