

City of Alexandria, Virginia

MEMORANDUM

DATE: AUGUST 31, 2023

TO: GLORIA SITTON, CITY CLERK
OFFICE OF THE CITY CLERK AND CLERK OF COUNCIL

THRU: KARL W. MORITZ, DIRECTOR
DEPARTMENT OF PLANNING & ZONING

FROM: TIM FOLEY, CHAIR
BOARD OF ZONING APPEALS

SUBJECT: FISCAL YEAR 2023 ANNUAL REPORT OF THE BOARD OF
ZONING APPEALS (BZA)

I. BACKGROUND

I am pleased to present this Annual Report for the Board of Zoning Appeals (BZA) for Fiscal Year 2023, as required by City Code section 2-4-7(i)(1). An attendance form is also attached.

The BZA is appointed by City Council and performs duties as specified under Section 15 of the State Code and Chapter 9 of the City Charter and Article 11 of the City's Zoning Ordinance. The BZA is charged with hearing and deciding Variances, Special Exceptions, and Appeals of Determinations by the Director of the Department of Planning & Zoning.

II. SUMMARY OF BOARD ACTIVITIES FOR FISCAL YEAR 2023 (JULY 1, 2022 – JUNE 30, 2023)

FISCAL YEAR 2023		FISCAL YEAR 2022	
Variance Cases	3	Variance Cases	6
Special Exception Cases	9	Special Exception Cases	8
Appeal Cases	1	Appeal Cases	0
Total Cases	13	Total Cases	14

III. FISCAL YEAR 2023 AND FISCAL YEAR 2022 CASE COMPARISON

In Fiscal Year 2023, the BZA decided a total of 13 applications: 3 Variances, 9 Special Exceptions, and 1 Appeal. The Variance cases decreased from the previous year from 6 to 3. The Special Exception cases increased from 8 to 9. The Appeals increased from 0 to 1. Overall, there was a 7 percent decrease in cases.

IV. FISCAL YEAR 2023 CASE STUDIES

The following case studies from Fiscal Year 2023 illustrate various complex issues that the BZA addressed:

Case Study #1: BZA2022-00006, 322-32 South Lee Street (RM/ Residential Townhouse)

In September 2022, the Board overturned staff recommendation of denial and approved a variance to access parking from the street rather than an alley or interior court. The property is located in the Old and Historic District (OHAD), where access to parking from the street is prohibited.

Staff found that the requested variance did not meet the definition or standards for a variance. There is no required parking for this property, as it was developed prior to off-street parking requirements and has been used as a single-family dwelling without parking, since it was constructed in the late 1880s. Therefore, the variance request for access to parking from the street is not a reasonable deviation from the ordinance nor does it unreasonably restrict the use of the property. The need for a variance to provide access to parking from the street would be shared by all properties in the OHAD that do not have access from an alley or interior court.

Historic Preservation staff indicated that the creation of the proposed access to parking and the parking of an automobile in historic open space will both disrupt the streetscape of South Lee Street and adversely affect the visual open space of the lot. Additionally, the City Arborist recommended the curb cut should not be considered as it will negatively impact a street tree by causing root loss sufficient to not only kill the tree, but potentially destabilize it through the loss of anchorage.

A majority of the Board disagreed with the recommendation and staff analysis and approved the variance with several conditions. The majority found that the request met the definition of a variance, found the lack of parking to be a hardship and did not believe the request would a substantial detriment to adjacent properties. The majority also found the situation to be unique in OHAD. The dissenting members did not find that the request met all the standards for a variance.

The approval of the variance was appealed to the Circuit Court by neighbors and the City of Alexandria. On May 2, 2023, the Circuit Court reversed the Board's decision, thus denying the variance. The Court found that the Board's decision was contrary to law, that the Board erred in its decision and the decision was plainly wrong in that the Board acted contrary to the authority granted by City of Alexandria Zoning Ordinance.

On May 12, 2023, the subject property owners appealed the Circuit Court's decision to the Court of Appeals of Virginia. The case has not yet been docketed.

Case Study #2: BZA2022-00017, 3 Washington Street (R-8/Residential single-family)

In December, the Board upheld staff's recommendation of denial for the applicant's variance request from the R-8 zone's front yard requirement. In the City's single-family

zones, the front yard requirement is established by the front setbacks of the surrounding dwellings. The properties with the shallowest and deepest front yards establish the minimum and maximum front yard depth, respectively. The purpose of this requirement is to ensure that a dwelling provides an open front yard that is similarly sized to the front yards of the dwellings that surround it. For the subject property, the minimum front yard along Washington Circle was 21.90 feet. The subject property's existing dwelling provided a front yard of 27.90 feet. The applicant proposed to construct a screened front porch with a front yard of 17.00 feet.

Staff found that the variance request would not have met the required standards for approval. For one, strict application of the Zoning Ordinance does not restrict the use of the property as a single-family dwelling. In addition, a smaller screened porch or an open porch could be constructed without the need for a variance. Therefore, the Zoning Ordinance did not unreasonably interfere with the use of the subject property as a dwelling. Further, the front yard setback range established by the contextual block is intended to ensure consistent development patterns with respect to the front yard setbacks among nearby properties. Granting the variance would alter the front yard setback established by the contextual block face for the surrounding properties and, in effect, change the front yard setback for this block, which is contrary to the purpose of the ordinance.

V. FISCAL YEAR 2023 MEMBERSHIP, PUBLIC HEARINGS FORMAT AND ATTENDANCE

Membership:

The Membership and Officers changed throughout the year due to term limits and elections. Chair Lee Perna's last Public Hearing was March 13, 2023. Elections were held at the March 13, 2023 Public Hearing, where the BZA elected Tim Foley as Chair by a vote of 6 to 0, Dawn Bauman as Vice Chair by a vote of 4 to 1, and Paul Liu as Secretary by a vote of 6 to 0. In April 2023, Kimberlee Eveland was appointed to the BZA. Tim Foley, Dawn Bauman, Paul Liu, Quynn Nguyen, John Wacławski, and Raj Patel continued to serve on the Board in Fiscal Year 2023.

Number and Format of Public Hearings:

The BZA met in nine (9) of the twelve (12) months during Fiscal Year 2023, extending from July 1, 2022, through June 30, 2023. August is the normal month in which the BZA is recessed, therefore no Public Hearing was held. The other two (2) months in which a Public Hearing was not held was due to a lack of cases submitted.

In terms of the format of the Fiscal Year 2023 Public Hearings, all nine (9) Public Hearings were held in person. Eight (8) of the in-person Public Hearings were held in Council Chambers, City Hall. The Public Hearing held on March 13, 2023 was held in the Sister Cities Conference Room, City Hall.

Attendance:

See Attachment I for Attendance

ATTACHMENT 1

CITY OF ALEXANDRIA BOARDS AND COMMISSIONS MEETING ATTENDANCE REPORT JULY 1, 2022 THROUGH JUNE 30, 2023

COMMISSION: Board of Zoning Appeals (BZA)

CHAIRPERSON: Tim Foley, Chair

Board Member (With listed Officers as of 3.13.2023)	Jul 11	Aug	Sep 12	Oct 17	Nov 14	Dec 12	Jan 9	Feb 13	Mar 13	Apr 14	May 8	Jun 12
Tim Foley, Chair	X	Recessed	X	A	X	X	X	Canceled	V	Canceled	X	X
Dawn Bauman, Vice Chair	X		V	X	A	X	V		X		X	X
Paul Liu, Secretary	A		A	X	X	X	A		X		X	X
Lee Perna	X		X	X	X	X	X		X		N/A	N/A
Quynn Nguyen	A		X	X	A	X	X		X		X	A
Jon Waclawski			X	X	A	X	X		X		A	X
Raj Patel	X		X	X	X	A	V		X		X	V
Kimberlee Eveland	N/A		N/A	N/A	N/A	N/A	N/A		N/A		X	X

INDICATE:

X – PRESENT; **A** – ABSENT; **N/A** – Not Yet Appointed or Former Member;

V – Attended virtually with permission from Chair as outlined in the Electronic Participation Policy.

Notes:

1. The BZA was in recess during August 2022.
2. Two (2) Public Hearings were canceled due to a lack of cases submitted.
3. Mr. Perna, who served as Chair, announced at the March 13, 2023 Public Hearing that it would be his last Public Hearing.
4. Elections occurred at the March 2023 Public Hearing and Mr. Foley was elected Chair; Ms. Bauman was elected Vice Chair, and Mr. Liu was elected Secretary.
5. Council appointed Kimberlee Eveland (April 11, 2023) to the Board of Zoning Appeals for a four-year term.

LIST OF THOSE WHO ATTENDED VIRTUALLY TO 25% OF MEETINGS: **0**

LIST OF THOSE WHO DID NOT ATTEND 75% OF MEETINGS: **0**

APPROVED:

Tim Foley, Chair