

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.

The Board's determination emanates from its examination of pertinent factors. Firstly, it observed that numerous properties situated along the same street already possess access facilitated by curb-cuts. In this context, the addition of another curb-cut was ascertained not to yield adverse effects upon the Official Historic and Architectural District (OHAD) or the contiguous properties. Moreover, the Board ascertained that historically, the property had access conferred via two alleys. However, the accessibility afforded by these alleys was subsequently terminated at a certain juncture. This alteration in access occurred subsequent to the property's original construction, thus establishing its historical access antecedent to the closure of the alleys.

While it was recognized that reopening one of the alleys would grant the necessary ingress to the property, such a course of action was judged to detrimentally impact the adjacent property owner. The Board's discernment, congruent with the legislative ordinance, was that the ordinance mandates access through an alley or an interior court. In circumstances wherein no alley or interior court exists, recourse to street access for parking constitutes a judicious departure from the ordinance's strictures.

Further analysis by the Board underscored that the subject domicile languished in a state of vacancy for an extended period, spanning nearly a decade. During this interregnum, the property underwent a state of disrepair. The proprietors of the dwelling, however, evinced a pronounced commitment to the property's revitalization, substantiating this pledge through substantial investments. The substantiality of this commitment was adjudged to outweigh the proposed alteration to the curb.

The Board's deliberation further recognized the context of parking exigencies peculiar to the locality. Given the exigent nature of parking in this locale, the Board's determination to accede to the variance request was predicated on a prospective mitigation of parking challenges. This mitigation would manifest through the relocation of two vehicles from on-street parking.

It is noteworthy to observe that the solicited variance garnered conspicuous support from neighboring residents. The aggregate sentiment of local inhabitants overwhelmingly endorsed the concession of the variance sought by the proprietors.

Another significant factor that contributed to the Board's determination was the report provided by the staff, indicating the precedent of previously granted curb cuts within the OHAD. The staff's communication highlighted that several other properties had been allowed curb cuts, and the Board took note of the absence of clear differentiating factors between those cases and the present one. This observation considerably fortified the Board's final decision, as it underscored the principle of evenhandedly applying ordinances across the district.

The Board's recognition of these comparable cases without discerning significant discrepancies lent substantial weight to its ultimate conclusion. By acknowledging the lack of specific distinctions between prior curb cuts and the current proposal, the Board emphasized the importance of consistent application of regulations. This approach resonated with the Board's commitment to treating all properties within the OHAD on an equitable basis, ensuring that the district's architectural and historical essence remains intact while maintaining a fair and uniform enforcement of ordinances.

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 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. However, it is noteworthy that in the courts opinion facts of the case were cited incorrectly.

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.

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 Timothy 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. Timothy Foley, Dawn Bauman, Paul Liu, Quynn Nguyen, John Waclawski, 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	
Paul Liu, Secretary	A		A	X	X	X	A		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 Wacławski			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 fouryear 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