

GOVERNMENT OF THE DISTRICT OF COLUMBIA



OFFICE OF ZONING

February 26, 2018

Via E-Mail and Delivery

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

In response to the Committee of the Whole's Performance Oversight preliminary questions dated February 15, 2018, related to the Office of Zoning (OZ), I respectfully submit the following information:

1. *Please list each policy initiative of your agency (including the Zoning Commission and the Board of Zoning Adjustment) during FY 2017 and FY 2018 to date. For each initiative, please provide:*
 - (a) *A detailed description of the initiative;*
 - (b) *The total number of personnel (FTEs and contract) assigned to the initiative; and*
 - (c) *The amount of funding budgeted to the initiative.*

OZ serves as the administrative arm of the Zoning Commission (ZC) and Board of Zoning Adjustment. OZ does not itself create policy. The ZC in its work adjudicating cases (whether initiated themselves or brought by outside parties, including the Office of Planning), sets policy through their various decisions. OZ makes available to the public the policies of the ZC through its maintenance of the Zoning Regulations and Map and issuance of orders.

2. *If applicable, please explain the impact on your agency of any legislation passed at the District or federal level during FY 2017 and FY 2018 to date.*

N/A

3. *Please describe any initiatives your agency implemented during FY 2017 and FY 2018 to date to improve the internal operation of the agency or the interaction of the agency with outside parties (including other agencies). Please describe the results, or expected results, of each initiative.*

OZ continuously works to improve internal operations. At every staff meeting, ideas are generated, refined, and implemented to improve services to the public. When this involves other agencies, OZ readily works with them to discuss ideas, options, and implements improvements. For instance, in FY17 OZ worked with OAG on ways to lessen the likelihood of more adverse appeals. As a result, OZ and OAG implemented training, added staff to more effectively advise the ZC from the beginning to the end of a case and continued to ensure that orders are carefully and accurately drafted.

OZ performs regular ANC outreach and training. OZ goes out into the community when requested, and in addition, it conducts training and outreach seminars. For example, in FY 2017 OZ conducted multiple sessions to help ANCs be more effective before the BZA and ZC. Those that have attended these sessions have given them very favorable reviews and as a result, there has been greater ANC participation in zoning cases.

4. *Please provide summary statistics on cases reviewed by the Zoning Commission and Board of Zoning Adjustment in Fiscal Years 2016, 2017, and 2018 to date.*

Unfortunately, OZ has not yet completed its ZC/BZA FY 2017 Annual Reports. OZ will complete the reports within the next two weeks and will submit them to the City Council prior to the 2018 Budget Hearings. Below please find summary statistics from FY 2016 - 2018:

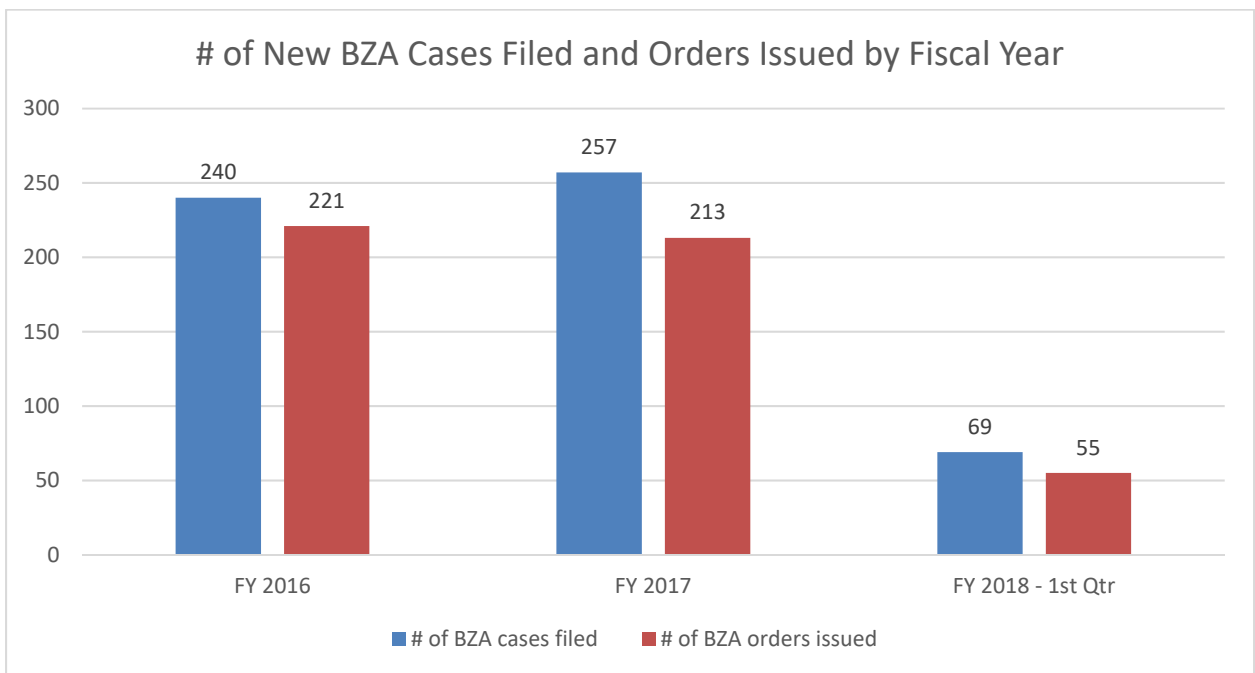
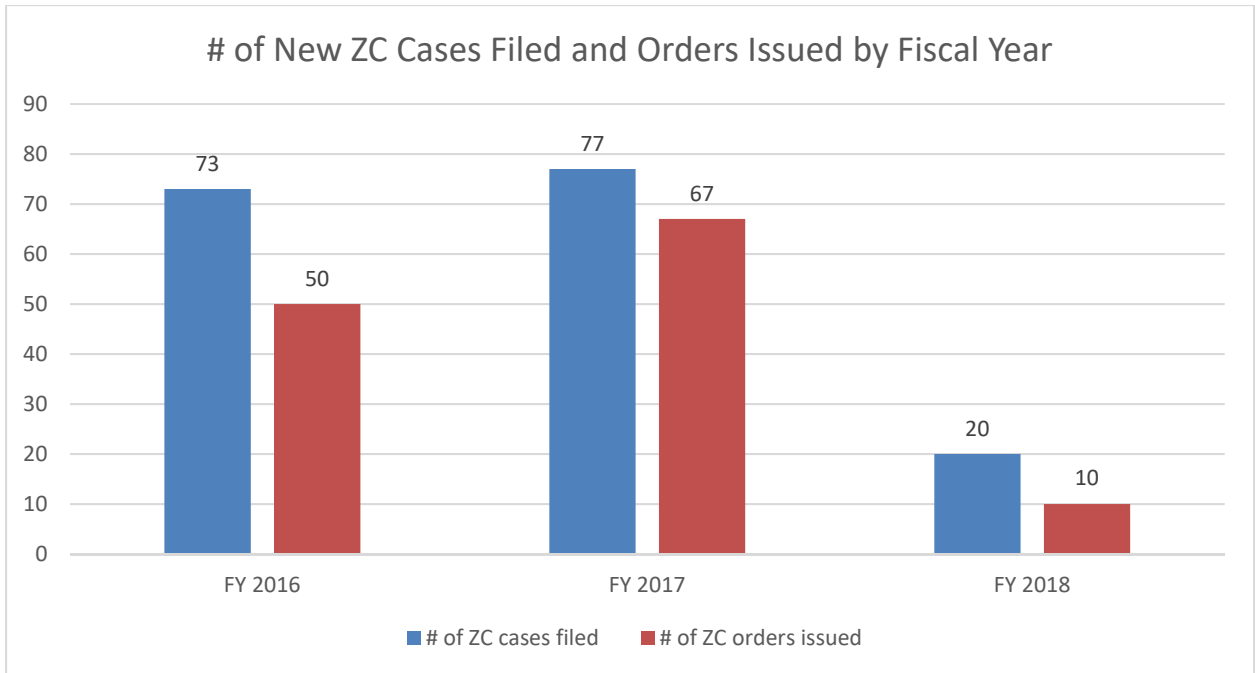
ZONING COMMISSION CASES FILED, HEARD, AND/OR DECIDED IN FY 2016- 2018

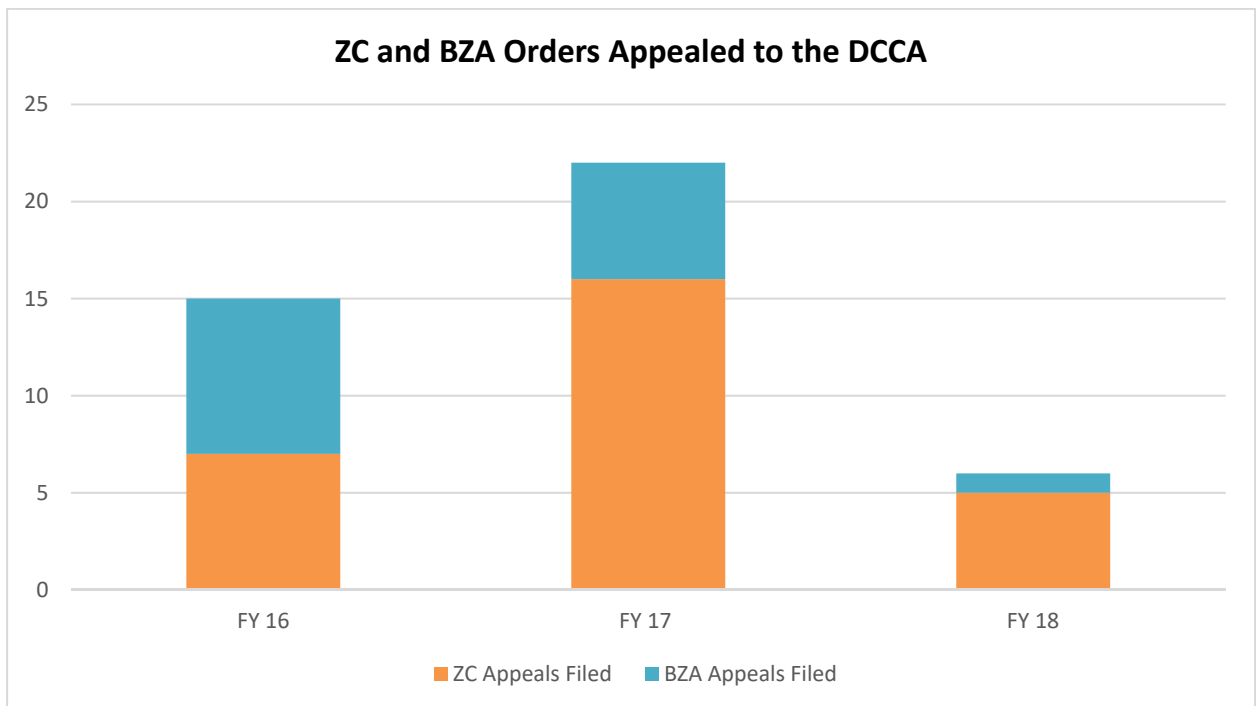
FY	MA	TA	MA/TA	PUD	PUD/MA	PUD/MS	MS (M/PUD)
FY18	9	6	1	2	9	2	2
FY17	7	14	1	5	21	9	4
FY16	0	16	15	7	22	0	7

FY	MC	M	MM	CP	DR	TC	TE
FY18	6	0	3	2	2	2	4
FY17	11	1	4	6	4	6	13
FY16	0	0	0	3	7	0	12

BOARD OF ZONING ADJUSTMENT CASES FILED, HEARD, AND/OR DECIDED IN FY 2016- 2018

I	AP	SP	VA	SP/VA	FM	M	MS	MC	MM	TE
FY18	4	49	13	14	0	-	0	1	0	1
FY17	22	219	54	39	1	-	5	8	4	5
FY16	16	127	68	44	5	3	1	0	9	5





5. Please provide specific data, by year, pertaining to variances and special exceptions before the Board of Zoning Adjustment for each Fiscal Year 2015 to 2018, itemized by type of case (variance, special exception, mix): number approved, number denied, number withdrawn, number appealed to the Court of Appeals.

	Case Type	# Approved	# Denied	# Approved in part/ Denied in part	# Pending	# Withdrawn	# Dismissed	# Appealed
FY18	SP	19	0	0	30	0	0	0
	VA	4	0	0	9	0	0	0
	SP/VA	1	0	0	13	0	0	0
FY17	SP	196	2	0	5	16	0	2
	VA	39	2	0	3	9	1	0
	SP/VA	24	1	0	1	13	0	1
FY16	SP	104	2	1	0	20	0	0
	VA	55	0	0	0	13	0	1
	SP/VA	43	0	1	0	0	0	0
FY15	SP	102	0	0	0	21	0	1
	VA	45	3	0	0	0	1	1
	SP/VA	30	0	0	0	0	0	2

Note: This chart does not capture cases where applications were changed in response to issues or concerns. For instance, a case may have come in as a SP/VA, but the applicant withdraws the variance request because it appears they are not meeting

the burden of proof. In this case, only the special exception relief is approved. The proposed relief change occurs as often as one case per week.

6. *For FY 2017 and FY 2018, please provide a list of each training held for members of the Zoning Commission and the Board of Zoning Adjustment, including the dates and topics covered. Also, please provide a list of scheduled trainings for the remainder of FY 2018.*

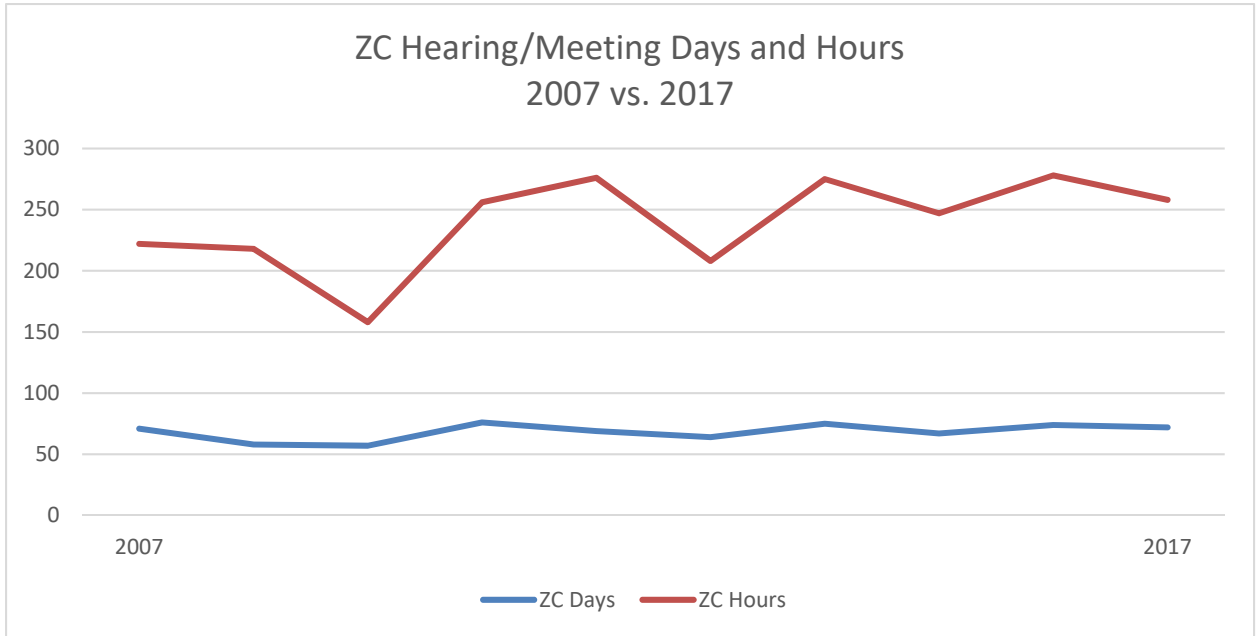
March 28, 2017
<ul style="list-style-type: none">• Office of Planning – <i>Comprehensive Plan Update/Reorganization of OP Report</i>• Office of the Attorney General – <i>Lessons Learned from the Remands</i><ul style="list-style-type: none">• Variance Standards• PUD Standards• Office of Zoning – <i>Internal BZA Improvements</i>
March 14, 2018
<ul style="list-style-type: none">• Office of Open Government – <i>Closed Meetings Training</i>• Office of the Attorney General – <i>BZA Procedure Training</i>• Office of the Attorney General – <i>Variance/Special Exception Standards</i>• Office of Planning – <i>Pop-Backs</i>• Office of Zoning – <i>Reasonable Accommodations under the FHA and the Hatch Act</i>

7. *How are new Board of Zoning Adjustment members be trained on the legal standards for granting a variance? When will new member trainings occur? Are incumbent members on the Board of Zoning Adjustment provided with continuous training on this topic?*

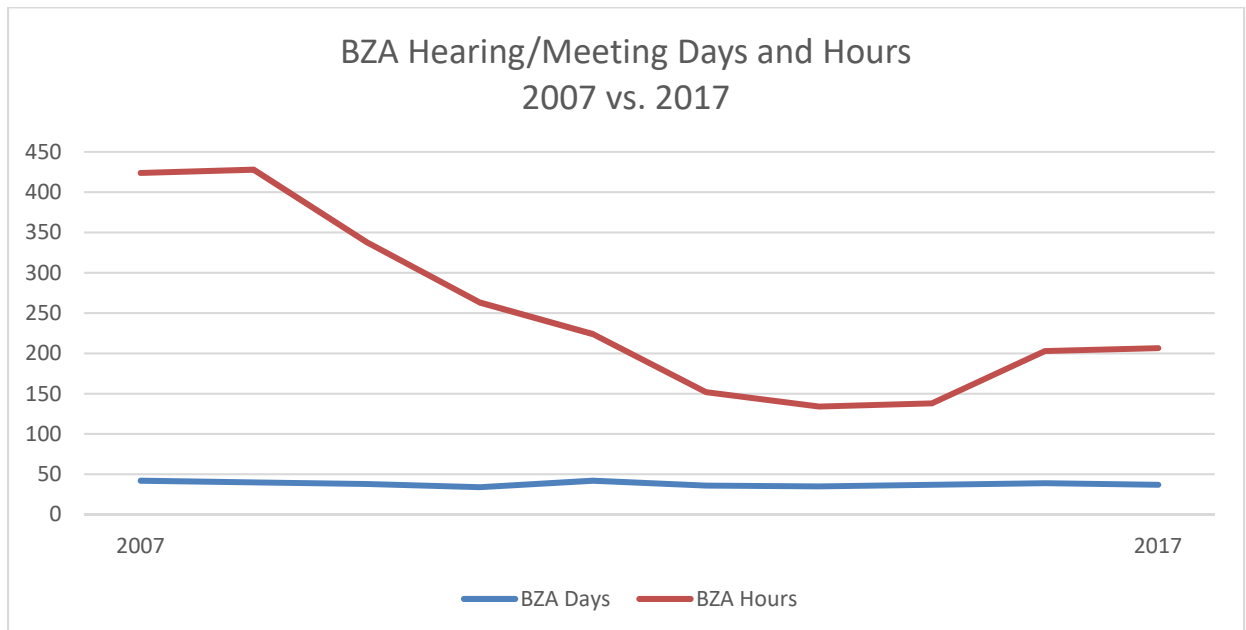
OZ provides all BZA and ZC members with information and training, both when a new member first comes on the BZA and then as part of regular training held every year. All BZA and ZC members receive a wealth of information on the legal standards for granting variances and special exceptions after they have been confirmed. OZ regularly includes training on both special exceptions and variances as a part of the training sessions for ZC and BZA members. The next training, scheduled for March 14, 2018, will also discuss the variance test. In addition, the BZA receives weekly reports from OZ that provides a summary of the case record that points out any procedural deficiencies prior to each hearing date. In addition, the BZA receives weekly information from OAG that provides legal analysis on the case records and points out any legal deficiency in a case prior to every hearing date. OAG attorneys are also available on the dais to respond to any questions during the hearing as these arise.

8. *How often does the Zoning Commission meet? The BZA? Explain your answer (e.g., the average in calendar year 2017, or a typical month, etc.). Compare this to 10 years ago.*

The Zoning Commission typically meets on Monday and Thursday evenings and occasionally on Tuesday or Wednesday evenings. In FY 2017, there were 72 hearing/meeting days totaling 258 hours. In FY 2007, there were 71 hearing/meeting days totaling 222 hours.



The BZA meets on Wednesdays during office hours. In FY 2017, there were 37 hearing/meeting days totaling 206.5 hours. In FY 2007, there were 42 hearing/meeting days totaling 424 hours.



9. *The Mayor's fiscal year 2018 budget provided funding for an additional attorney through an MOU with the Office of the Attorney General. This attorney would be specifically assigned to provide the Zoning Commission with legal support and guidance while facing an increased caseload. Has this attorney been assigned? If yes, when? Please describe how it has benefitted the Zoning Commission thus far.*

The new attorney began work in August 2016 prior to ZC returning from its recess. Prior to her arrival, there was a single attorney assigned to all the ZC's work. As a practical matter, this meant the attorney could only focus on a case after a hearing had concluded. The additional attorney permits OAG to assign cases from the beginning and require each attorney to either attend the hearing or watch it the day after. Attendance is required when requested by the ZC, which has occurred in major cases such as the final development on the Southwest Waterfront. In sum, this has resulted in the ZC receiving more timely and in depth advice on cases than was previously possible.

10. *Now that the zoning rewrite has finished, what problems or issues have arisen that need to be addressed?*

Remarkably, few problems have arisen and most were expeditiously resolved through technical corrections offered by the Office of Planning or OZ. In fact, changes to the ZC and BZA procedures have led to greater efficiencies. For example, the ZC and the BZA can now determine party status in advance and grant, without hearings, modification that are more than minor, but do not involve the need for testimony. In addition, the greater flexibility built in to the new regulations actually resulted in one of the two BZA remands becoming moot, while the other was dismissed, after the applicant failed to respond to the procedural order on remand.

11. *There have been several Court of Appeals decisions that remanded or reversed Zoning Commission PUD cases. What is the Zoning Commission doing differently to lessen the likelihood of more adverse appeals?*

First, OZ requested that the Office of the Attorney General provide training that discussed the remands in depth and highlighted actions that the ZC and the BZA should take to improve their decision-making. Secondly, OZ worked with the executive to securing funding for an attorney that is dedicated to the ZC. This attorney is assigned cases from the beginning and is required to either attend the hearing or watch it the day after. In sum, this has resulted in the ZC receiving more timely and in depth advice on cases than was previously possible.

12. *Please describe any challenges experienced by the agency during FY 2017 and 2018 to date not already discussed.*

N/A

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Sara A. Bardini
Director