

Board of Zoning Appeals: Caseload and Types of Appeals

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The introduction of the “new” zoning code in 2002 was the final part of a larger, City-wide approach to improve and streamline customer services for zoning approvals and the issuance of building permits. One goal of the new code was to reduce the number of cases sent to BOZA.

Prior to the recodification, the Board of Zoning Appeals was reorganized in an effort to reduce the amount of time it took to consider Special Use and Dimensional Variance applications. Customers often waited months for written decisions, BOZA hearings were scheduled sporadically, and many decisions were made behind closed doors. Monthly meetings were short, without a consent agenda, and there was a significant backlog of cases.

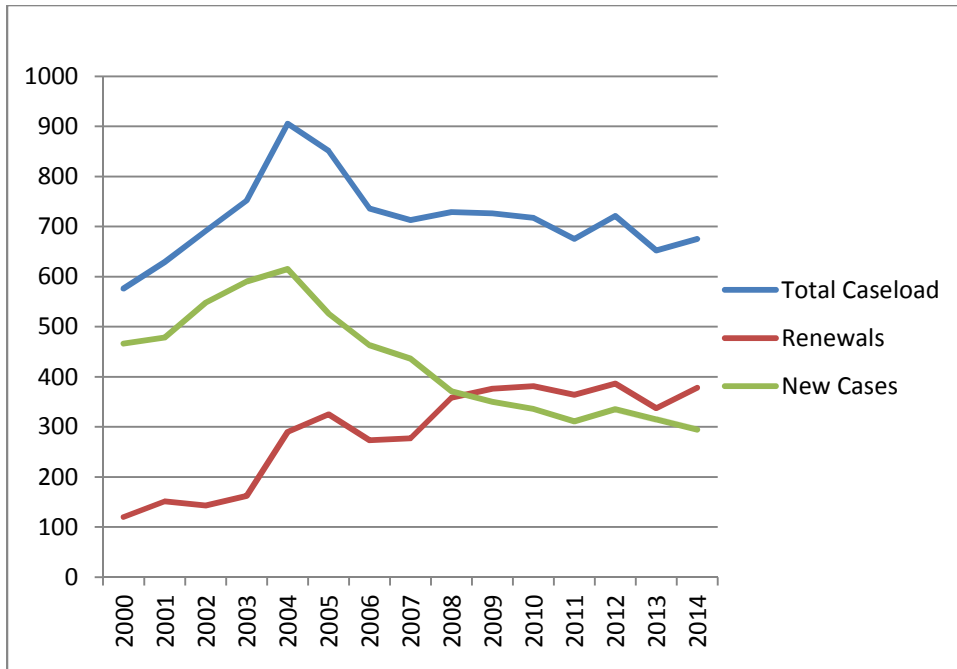
The BOZA caseload was identified in both the reorganization and recodification process as an area in need of improvement. A number of policies and procedures were introduced in order to provide faster, more consistent service for those referred to the Board. These include the formation of the Zoning Administration Group to review zoning applications for completeness and make recommendations to the Board, the authority to review and administratively grant Change of Operator applications, and the introduction of the consent agenda to reduce the length of the BOZA hearings and the time it took to receive approval. During the development of the code, Limited Use standards were introduced as a way to reduce the number of cases classified as prohibited or Special Use.

	BOZA Caseload 1995-2001						
	1995	1996	1997	1998	1999	2000	2001
Case Total	534	548	638	582	567	576	629

These numbers alone do not provide a complete picture of the BOZA caseload between 1995 and 2001. The first BOZA database was created in 1995 and subsequently upgraded in 2004. The data migration was simple and, because of this, it is not possible provide accurate figures on the number of cases by type of appeal.

A review of applications filed with BOZA from 2001-2014 shows a slight decrease in the overall number of cases annually. The growth in cases in the years following the recodification, peaking in 2004, is a result of clearing the backlog of cases that remained following the BOZA reorganization.

Closer examination of the annual caseload reveals significantly fewer new case referrals and a threefold increase in the number of “renewal” cases.



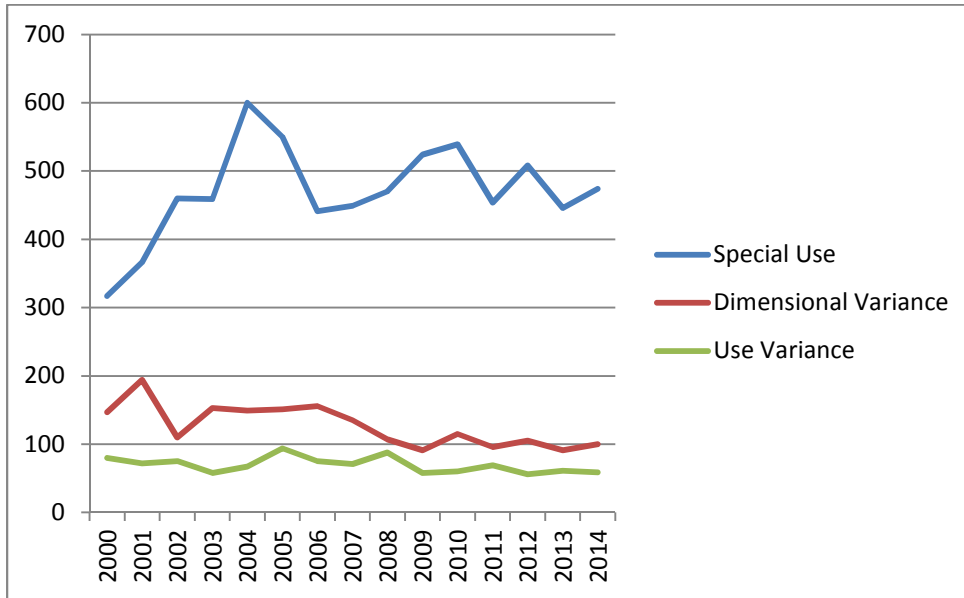
The reduction in the number of new referrals can be attributed to a number of factors, including the easing of restrictions of certain uses in the “new code”, the creation of Limited Use standards, and land use and economic trends.

The growth in the number of “renewal” cases is not unexpected. Renewal cases are appeals, typically Special Uses, which were approved by the Board with an expiration date. At the end of the approval period, the operator refiles an application for BOZA review. Like all other cases, these applications are subject to review by City staff and the Board, and the public is also given an opportunity to comment. Provided that the use continues to meet the criteria necessary for the approval of a Special Use or Variance, the case is granted with a new approval period.

The Board has been working to reduce the annual caseload by granting longer term approval periods for routine “renewal” appeals. Over the last three years, staff has made recommendations for longer approval periods for cases that have been before the Board on numerous occasions and have operated without controversy. With the creation of the BOZA Periodic Inspection Program (BPIP) it is likely that more cases will receive long term approvals with the understanding that DNS will monitor and enforce conditions of approval for each case.

Special Use appeals constitute the majority of cases heard by the Board. Fluctuations in the number of Special Use applications can likely be attributed to renewal periods, land use and economic trends. Additionally, since the adoption of the “new code” several uses have been added and/or amended to require Special Use approval.

The “new code” also introduced site and design standards which had an effect on the number of Dimensional Variances heard by the Board. These standards eased restrictions for many residential projects and as a result decreased the number of BOZA appeals.



Limited Uses

Limited Uses were designed in part to meet the goals of the 2002 recodification by reducing the number of projects and uses requiring BOZA review. Limited Uses are defined as uses that are generally compatible with the permitted uses in a given district, but have operating or physical characteristics that require certain conditions to be placed on the use. The Limited Use standards are the conditions in which certain uses are allowable. It is helpful to think of Limited Uses not as a land use type, but rather as a filter that, by applying the standards, can determine whether a use is a permitted use, a Special Use, or a prohibited use.

During recodification, many Limited Use standards were created for previously prohibited uses. This allowed for more cases to be permitted or, if standards are not met, Special Use. For example, prior to 2002 light manufacturing facilities were prohibited in commercial districts. Under the current code, light manufacturing facilities of a certain size are permitted and facilities that exceed that size are sent to the Board for Special Use approval.

In order to determine the effectiveness of the Limited Use standards in the current code, it would be helpful to compare the number of cases referred to BOZA for a particular use to the overall number of permits issued for that same use. This comparison would help us identify whether the “filter” is working to reduce the number of cases sent to BOZA.

Using the BOZA database, I was able to collect data on the number of cases referred for failure to meet the Limited Use standards in all Residential, Commercial, and Industrial districts, from 2010-2014. Additional time is needed to work with DNS staff on collecting the permit data for this timeframe.

Upon collecting the necessary permit data, BOZA will work with DCD and other City staff to conduct a review of each Limited Use standard. The goal of this review will be to identify whether the standards are operating properly as a filter or are unreasonably restrictive. Additionally, BOZA staff will continue to work with DCD, DNS, and other City staff to identify land uses that are approved without controversy and may be considered for future code updates.

The BOZA component of the Land Management System will provide greater reporting capabilities than the current database. This will allow staff to more easily produce reports that track the outcome of cases, conditions of approval, and other important elements of the BOZA approval. BOZA will continue to work with ITMD and other City departments to identify key information to ensure that it is part of future reports.