

MEMORANDUM

April 28, 2023

TO: Planning, Housing, and Parks (PHP) Committee

FROM: Logan Anbinder, Postgraduate Fellow
Naeem Mia, Legislative Analyst

SUBJECT: **FY24 Recommended Operating Budget Worksession:
Board of Appeals (BOA)**

PURPOSE: Review and make recommendations for Council consideration – vote expected.

Expected Participants:

- Barbara Jay, Executive Director, BOA
- John Pentecost, Chair, BOA
- Katherine Bryant-Higgins, Fiscal & Policy Analyst, Office of Management & Budget (OMB)

Board of Appeals Members:

- John Pentecost, Chair
- Richard Melnick, Vice Chair
- Caryn Hines
- Laura Seminario-Thornton
- Alan Sternstein

A. Summary of Staff Recommendations

- 1) Approve the County Executive’s recommended FY24 Operating Budget request for BOA.

B. Fiscal Summary

| Board of Appeals | FY23 Approved | FY24 CE Recommended | Change from FY23 Approved |
|---------------------------------------|-------------------------------|-------------------------------|------------------------------|
| General Fund | \$604,809 | \$644,915 | 6.6% |
| Personnel Costs | \$563,519 3.50 FTEs | \$608,568 3.50 FTEs | 8.0% 0.00 FTEs |
| Operating Costs | \$41,290 | \$36,347 | -12.0% |
| Total Expenditures (all funds) | \$604,809 3.50 FTEs | \$644,915 3.50 FTEs | 6.6% 0% |

C. About BOA

1. BOA Overview

The mission of the Board of Appeals is to assist the public in understanding, and to hear and decide, in a quasi-judicial setting, inquiries and applications that arise mainly under Chapter 59 of the Montgomery County Code, but also under various other Code Sections, for variances, administrative appeals of certain decisions of County agencies, and for oral argument on conditional use decisions or modification of special exceptions. The office comprises 3.5 FTEs: one full-time Executive Director, two full-time support staff, and an attorney from the Office of the County Attorney who is assigned half-time to the Board. The five members of the Board serve staggered four-year terms and may not serve more than two full terms (although they may serve more than eight years if appointed for a partial term to fill a vacancy).

2. Racial Equity and Social Justice Review

After reviewing BOA's submission for the FY24 Operating Budget Equity Tool, the Office of Racial Equity and Social Justice (ORESJ) issued a rating of ★★ (two stars) on a scale of zero to three stars, indicating that the department-level budget **demonstrates a commitment** to advancing racial equity and social justice in Montgomery County. ORESJ provided the following justification for its rating:

“The department indicated a commitment in two areas of the GARE [Government Alliance on Race and Equity] framework. The department's mission statement demonstrates a commitment to advancing equitable outcomes as does their structure as a quasi-judicial department with oversight from the County Council. However, it's unclear based on available information how the department receives feedback on its work from the public or other government entities or how it ensures equitable treatment. For example, are there client surveys or other ways of getting information about customer experience? Are there case data that can be disaggregated by race, ethnicity, gender, income, or other relevant demographic characteristics? If these processes or data do not exist, it will be difficult for the department to assess whether all residents are experiencing the system in an equitable way.”

BOA has engaged with the issues raised in ORESJ's justification and continues to assess ways to receive representative feedback from its hearing participants. BOA has expressed concern that post-hearing surveys would be subject to self-selection bias on the part of respondents and would not be representative of the overall experience of individuals who come before the Board.

3. Hybrid Hearings

BOA currently conducts in-person hearings. The BOA hearing room is in the process of being outfitted for the capability to conduct hybrid hearings, and the Council intends to allocate \$23,738 in FY24 from the Legislative Branch Communications Outreach Non-Departmental Account (NDA) for a part-time, contract position to moderate hybrid meetings. This funding will be allocated jointly to BOA and the Office of Zoning and Administrative Hearings, which share a hearing room.

4. Staffing Updates

BOA currently has no staff vacancies and no Board member vacancies. Two Board members (Laura Seminario-Thornton and Alan Sternstein) will have their partial terms expire in September 2023, and their positions will need to be advertised.

D. Public Testimony

There were no speakers or testimony related to the Board of Appeals during the Council's April 2023 operating budget public hearings.

E. Major Budget and Key Discussion Items for FY24

1. Personnel and Technical Adjustments (County Executive recommendation: +\$45,049)

BOA's FY24 recommended budget includes personnel and technical adjustments to reflect updated personnel costs from the approved FY23 and proposed FY24 compensation agreements, retirement adjustments, and printing and mail costs.

No vote is needed on this item since these issues are being addressed separately by the Government Operations (GO) Committee and full Council.

2. Board of Appeals Fees

BOA collects revenue primarily via filing fees, which vary year-to-year as a function of the number and type of applications brought before the Board. The office collected \$182,620 in zoning fees in FY22 and \$179,251 in FY21. Approximately two-thirds of this revenue is passed through from the Department of Permitting Services (DPS) as a portion of the special exception administration fee. Since no new special exceptions have been granted since the October 2014 change to the Zoning Ordinance, BOA anticipates that these applications will at some point begin to trend downward, which would result in a partial reduction in revenue.

No vote is needed on this informational item.

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| Overall Council staff recommendation: Approve the County Executive's recommended operating budget request for BOA. |
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This packet contains:

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|---|------|
| FY24 Recommended Operating Budget: BOA..... | ©1-3 |
| Council staff report on BOA Operating Budget for FY23..... | ©4-5 |
| <u>Video of PHED Committee worksession on BOA FY24 operating budget (May 5, 2022)</u> | |



Board of Appeals

RECOMMENDED FY24 BUDGET

\$644,915

FULL TIME EQUIVALENTS

3.50

BARBARA JAY, EXECUTIVE DIRECTOR

MISSION STATEMENT

The mission of the Board of Appeals is to implement the flexibility provided by the Zoning Ordinance, as approved by the County Council, in a fair and equitable manner, and to assist County residents, irrespective of race, ethnicity, nativity, gender, disability, or other relevant demographic or socioeconomic characteristics, in understanding and participating in the variance, administrative appeal, special exception modification, and conditional use appeal processes.

BUDGET OVERVIEW

The total recommended FY24 Operating Budget for the Board of Appeals is \$644,915, an increase of \$40,106 or 6.63 percent from the FY23 Approved Budget of \$604,809. Personnel Costs comprise 94.36 percent of the budget for three full-time position(s) and no part-time position(s), and a total of 3.50 FTEs. Total FTEs may include seasonal or temporary positions and may also reflect workforce charged to or from other departments or funds. Operating Expenses account for the remaining 5.64 percent of the FY24 budget.

COUNTY PRIORITY OUTCOMES

While this program area supports all seven of the County Executive's Priority Outcomes, the following is emphasized:

Effective, Sustainable Government

PROGRAM CONTACTS

Contact Barbara Jay of the Board of Appeals at 240.777.6604 or Katherine Bryant-Higgins of the Office of Management and Budget at 240.777.2764 for more information regarding this department's operating budget.

PROGRAM PERFORMANCE MEASURES

Performance measures for this department are included below (where applicable). The FY23 estimates reflect funding based on the FY23 Approved Budget. The FY24 and FY25 figures are performance targets based on the FY24 Recommended Budget and funding for comparable service levels in FY25.

| Measure | Actual FY21 | Actual FY22 | Estimated FY23 | Target FY24 | Target FY25 |
|---------|-------------|-------------|----------------|-------------|-------------|
|---------|-------------|-------------|----------------|-------------|-------------|

| Measure | Actual FY21 | Actual FY22 | Estimated FY23 | Target FY24 | Target FY25 |
|---|----------------|----------------|-------------------|----------------|----------------|
| Program Measures | | | | | |
| Number of Administrative Appeals decided | 6 | 1 | 5 | 5 | 5 |
| Average days to issue written Administrative Appeals decisions (within 45 days of close of record unless extended) ¹ | 20 | 21 | 21 | 21 | 21 |
| Number of Variances decided ² | 43 | 42 | 42 | 42 | 42 |
| Average days to issue Variance decision (within 30 days of close of record unless extended) ³ | 10 | 11 | 11 | 11 | 11 |
| Number of Conditional Use cases decided ⁴ | 0 | 2 | 2 | 2 | 2 |
| Average days to issue Conditional Use decision (must issue within 30 days of voting on the matter unless extended) | n/a | 17 | 17 | 17 | 17 |
| Number of Circuit Court appeals processed | 2 | 2 | 2 | 2 | 2 |
| Number of Administrative Actions taken ⁵ | 91 | 90 | 90 | 90 | 90 |

¹ Board of Appeals Rule 9.1 requires issuance of administrative appeal opinions within 45 days of close of record.

² The Board continues to see a large number of variances relative to past years.

³ Board of Appeals Rule 9.1 requires issuance of variance opinions within 30 days of close of record.

⁴ Outyear projections are based on YTD FY23 filings.

⁵ Matters considered and/or decided at worksessions include, but are not limited to, preliminary motions in Administrative Appeals, requests for major modifications (following the issuance of a report and recommendation by the Office of Zoning and Administrative Hearings) and administrative modifications of existing special exceptions, requests for by-right hearings, requests for oral argument regarding appeals of conditional use decisions, requests for the revocation of special exceptions, requests for the reconsideration of earlier Board decisions, requests for show cause hearings, complaints regarding the operation of special exceptions, inspection reports from the Department of Permitting Services and the Department of Housing and Community Affairs regarding such complaints, and the submission of documents fulfilling various Board-imposed reporting requirements.

PROGRAM DESCRIPTIONS

Zoning Related Hearings and Administrative Appeals

The Board of Appeals hears requests for variances as provided in the Zoning Ordinance. Development standards for each zone are set by the Zoning Ordinance. Variances from these standards require approval by the Board. In addition, the Board hears appeals of conditional uses decided by the Hearing Examiner, as provided in the Zoning Ordinance. The Board of Appeals also holds hearings and rules on appeals from administrative actions of certain governmental departments and agencies, as provided in the County Code. Finally, the Board considers modifications to those special exceptions that were filed or approved before the October 30, 2014 changes to the Zoning Ordinance.

BUDGET SUMMARY

| | Actual FY22 | Budget FY23 | Estimate FY23 | Recommended FY24 | %Chg Bud/Rec |
|--|----------------|----------------|------------------|---------------------|-----------------|
| COUNTY GENERAL FUND | | | | | |
| EXPENDITURES | | | | | |
| Salaries and Wages | 443,036 | 454,250 | 445,967 | 491,301 | 8.2 % |
| Employee Benefits | 105,401 | 109,269 | 107,795 | 117,267 | 7.3 % |
| County General Fund Personnel Costs | 548,437 | 563,519 | 553,762 | 608,568 | 8.0 % |
| Operating Expenses | 24,735 | 41,290 | 36,297 | 36,347 | -12.0 % |

BUDGET SUMMARY

| | Actual FY22 | Budget FY23 | Estimate FY23 | Recommended FY24 | %Chg Bud/Rec |
|---|----------------|----------------|------------------|---------------------|-----------------|
| County General Fund Expenditures | 573,172 | 604,809 | 590,059 | 644,915 | 6.6 % |
| PERSONNEL | | | | | |
| Full-Time | 3 | 3 | 3 | 3 | — |
| Part-Time | 0 | 0 | 0 | 0 | — |
| FTEs | 3.50 | 3.50 | 3.50 | 3.50 | — |
| REVENUES | | | | | |
| Board of Appeals Fees | 182,620 | 158,064 | 158,064 | 158,064 | — |
| Other Charges/Fees | 10,340 | 0 | 0 | 0 | — |
| County General Fund Revenues | 192,960 | 158,064 | 158,064 | 158,064 | — |

FY24 RECOMMENDED CHANGES

| | Expenditures | FTEs |
|---|----------------|-------------|
| COUNTY GENERAL FUND | | |
| FY23 ORIGINAL APPROPRIATION | 604,809 | 3.50 |
| <u>Other Adjustments (with no service impacts)</u> | | |
| Increase Cost: FY24 Compensation Adjustment | 23,204 | 0.00 |
| Increase Cost: Annualization of FY23 Compensation Increases | 15,087 | 0.00 |
| Increase Cost: Annualization of FY23 Personnel Costs | 7,606 | 0.00 |
| Increase Cost: Printing and Mail | 57 | 0.00 |
| Decrease Cost: Retirement Adjustment | (848) | 0.00 |
| Decrease Cost: Elimination of One-Time Items Approved in FY23 | (5,000) | 0.00 |
| FY24 RECOMMENDED | 644,915 | 3.50 |

FUNDING PARAMETER ITEMS

CE RECOMMENDED (\$000S)

| Title | FY24 | FY25 | FY26 | FY27 | FY28 | FY29 |
|--|------------|------------|------------|------------|------------|------------|
| COUNTY GENERAL FUND | | | | | | |
| EXPENDITURES | | | | | | |
| FY24 Recommended | 645 | 645 | 645 | 645 | 645 | 645 |
| No inflation or compensation change is included in outyear projections. | | | | | | |
| Labor Contracts | 0 | 9 | 9 | 9 | 9 | 9 |
| These figures represent the estimated annualized cost of general wage adjustments, service increments, and other negotiated items. | | | | | | |
| Subtotal Expenditures | 645 | 654 | 654 | 654 | 654 | 654 |

MEMORANDUM

May 2, 2022

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Naeem M. Mia, Legislative Analyst

SUBJECT: **FY23 Recommended Operating Budget – Board of Appeals (BOA)**

PURPOSE: Vote on recommendations for the Council’s consideration

Expected Attendees:

- Barbara Jay, Executive Director, BOA
- Julie Knight, Fiscal and Policy Analyst, Office of Management and Budget (OMB)

A. Summary of Staff Recommendations

1) *Approve the Executive’s recommended FY23 Operating Budget request for BOA.*

B. Fiscal Summary

| Board of Appeals | FY22 Approved | FY23 CE Recommended | Change from FY22 Approved |
|---------------------------------------|-------------------------------|-------------------------------|------------------------------|
| General Fund | \$582,520 | \$599,809 | 3.0% |
| Personnel Costs | \$546,283 3.50 FTEs | \$563,519 3.50 FTEs | 3.2% 0.00 FTEs |
| Operating Costs | \$36,237 | \$36,290 | 0.2% |
| Total Expenditures (all funds) | \$582,250 3.50 FTEs | \$599,809 3.50 FTEs | 3.0% 0% |

C. Public Testimony

There were no speakers or testimony related to the Board of Appeals during the Council’s April 2022 operating budget public hearings.

D. Major Budget and Discussion Items for FY23

1. *Personnel and Technical Adjustments (+ \$ 17,289)*

BOA’s FY23 recommended budget includes several personnel and technical adjustments to reflect updated personnel costs from the approved FY22 and proposed FY23 compensation agreements, retirement adjustments, and print and mail chargebacks.

Council staff recommendation: Approve as requested by the County Executive.

2. *Items not requested by the County Executive*

The department has noted several “wish list” items that would enhance the newly-renovated hearing room (which is also used by OZAH and public meeting attendees), including:

- a. Improved chairs. The current chairs are worn with tattered arms; the department will first seek surplus furniture in the County warehouse but may ultimately need new chairs to be purchased.
- b. New notebook computers for Board members to use during meetings. The department notes that “having laptops for the Board members would allow them to access case materials electronically during the hearing, instead of having to provide paper copies of the materials for them.” The department also notes that Board members do have the option of bringing their own personal laptops. Currently, the Board does not have hybrid meetings at this time.

The cost estimate of a new notebook is approximately \$1,000 per unit; therefore, a total of \$5,000 would be needed to provide five (5) notebooks.

Council staff recommendation: Defer consideration of these items until mid-FY23.

3. *Staffing Updates*

The Board of Appeals’ staff currently has no vacant or lapsed positions. The five-member Board of Appeals itself is short one Board member right now, due to the unexpected passing of Mr. Goldensohn. The Council has advertised this vacancy, which closed on April 8. An appointment is expected sometime in May.

This packet contains:

1. FY23 Recommended Publication– BOA

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