



# 2021 Annual Report

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BOARD OF ZONING ADJUSTMENT

**Prepared by Jared Clements**

REVIEWED & EDITED BY AHNNA NANOSKI & NAJMA MUHAMMAD

## ABOUT THE BZA

The [Board of Zoning Adjustment \(BZA\)](#) is an eight member, quasi-judicial board made up of citizens appointed by the mayor. The BZA grants variances and special exceptions, hears appeals of staff decisions and determinations, and is the final decision-making body for Special Use Permits.

The Board meets on the second Tuesday of every month at 9:00 AM. In previous years the BZA met in the Council Chambers located in City Hall (414 E. 12th St. - 26th Floor), in 2021 met exclusively via video-conferencing.

## MEET THE BOARD MEMBERS

### Chair

**Theresa Otto** – Ms. Otto is an attorney with the law firm of Baty Holm, Numrich and Otto, P.C. in Kansas City, Missouri. She received a Bachelor of Arts in Political Science, Magna Cum Laude from Rockhurst College and a Juris Doctorate from the University of Notre Dame Law School. Ms. Otto has served as chair to the BZA since her appointment in 1997. She was also selected to co-chair a steering committee of citizens and civic leaders who provided guidance to city staff when KCMO revised the Zoning and Development Code in 2004.

### Vice Chair

**Mike Keleher** – A graduate of the University of Iowa with a business degree in 1971, Mr. Keleher received his Juris Doctor Degree, with distinction, from the University of Missouri at Kansas City in 1974 and became a partner in the firm of Duggan & Keleher on January 1, 1975. Mr. Keleher is a member of the Missouri Bar Association, the Kansas City Metropolitan Bar Association, The Kansas City Metropolitan Bar Association Real Estate Law Committee and is admitted to practice in the United State District Court for the Western District of Missouri.

## Members

**Mark Ebbitts** – Mark is a graduate of Rockhurst High School and earned a Master of Science in Electrical Engineering from the University of Missouri Columbia. Mark is a graduate of the Chambers Centurion Leadership Group. He is a member of IEEE engineering society and a registered professional engineer. Mark was employed by Procter and Gamble Company in Georgia and was also employed by Dow Chemical and the Atomic Energy Commission at Rocky Flats Colorado.

**Tom Gorenc** – Tom studied real estate and business administration while attending Penn Valley and UMKC. Tom is an entrepreneur and successful former business operator of real estate properties and presently concentrates on the retail side of business. Tom has been appointed and served in the past on the City of Kansas City's Neighborhood Advisory Council. He currently serves on the Neighborhood Tourist Development Fund, the Chronic Nuisance Board, the Alcoholic Beverage Advisory Group, and Northland Neighborhoods Inc. Governmental Relations.

**Thomas stiller** – Is an architect and president of SquareOne Collaborative, Inc. a local architectural firm, located in the Crossroads Arts District. He initiated his architectural practice in 1989. He is now a partner in two Real Estate development companies and a small construction company. Tom is also a licensed real estate agent in Kansas and Missouri. He returned to Kansas City after living in three states and fourteen cities and studying architecture at the University of Copenhagen. He earned a Bachelor of Architecture degree from Kansas State University in 1982.

## Alternate Members

**Randi Mixdorf** – Ms. Mixdorf is a licensed Architect and LEED Accredited Professional at SFS Architecture, a local design firm in downtown Kansas City. She graduated with honors from Iowa State University with a double major in Architecture and Environmental Studies and received a Bachelor of Architecture Professional Degree. She is currently the Co-Chair for the AIA Kansas City Advocacy Committee, a graduate of the Pillars Leadership Program, and named AIA Kansas City Community Volunteer of the Year in 2019 in recognition of her steadfast commitment to numerous organizations throughout the city.

**Tony Bonuchi** – Mr. Bonuchi is a practicing attorney at law with the firm of Polsinelli Shughart, P.C. in Kansas City. Bonuchi's academic career began at Central Missouri State University, where he received a Bachelor of Science degree in Political Science. His post-graduation education continued at the University of Missouri School of Law in Columbia, where he earned a Juris Doctor degree with high honors. In addition to his position at Polsinelli Shughart, he maintains four separate Bar Admissions and serves on several boards and commissions in the Kansas City area.

## VOCABULARY & EXPLANATIONS

### BZA Case Types

- **Variance:** In any specific case where the strict enforcement of a zoning regulation would cause practical difficulty or unnecessary hardship, the BZA can vary or modify that regulation by granting a variance. Common sections to be varied include building setbacks and accessory structure size limitations.
- **Special Exceptions:** The BZA may grant a special exception to fence and wall height if there is good and sufficient cause and the proposed design will not adversely affect the appearance of the neighborhood or adjacent properties.
- **Appeal of Determination:** Administrative decisions may be appealed by any person aggrieved by the administrative official's decision or action. Appeals of administrative decisions will be heard by the BZA to determine if an error has been made.
- **Appeal of Legal Nonconformance:** Certificates of Legal Nonconformance are issued by the City Planning and Development director. Appeals of the decision may be requested by the applicant or any aggrieved party within 15 days of the date the decision is issued.
- **Request for Rehearing:** A rehearing may be granted on any BZA decision if the rehearing request includes new evidence to be presented that was not available at the time of the original hearing or when the BZA determines that good cause for a rehearing has been shown. A request for a Rehearing must be made within 30 days of the date the decision is issued.

### SUP Case Types

- **Special Use Permits:** Special uses, because of their widely varying land use and operational characteristics, require case-by-case review to determine whether they will be compatible with surrounding uses and development patterns. Special Use Permits are reviewed by the City Planning and Development director, the City Plan Commission, and finally reviewed and approved or denied by the BZA.
- **STR Special Use Permits:** A sub-category of SUPs, Short-Term Rental (STR) Special Use Permits are necessary when an applicant cannot complete the requirements necessary for regular STR permit (which are usually approved at the administrative level). These cases follow the same process as a regular Special Use Permit.

## Application Statuses

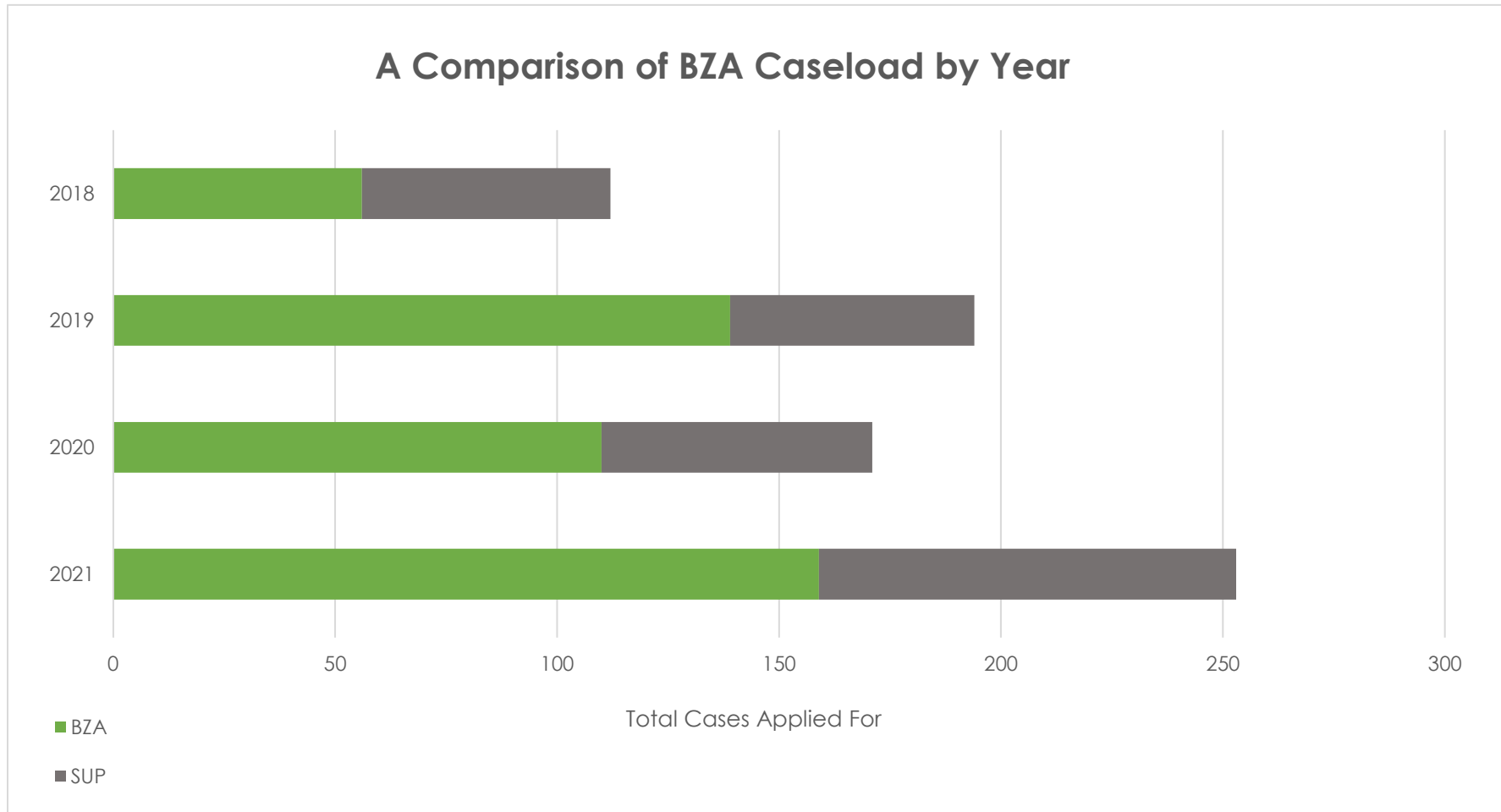
BZA staff assigns statuses to cases based on conditions or outcomes of a case. Those statuses and the corresponding case condition/outcomes are listed below:

<b>Status</b>	<b>Condition/Outcome</b>
Pending	Staff has yet to review this application
Under Review	Staff is working on this case, which is likely docketed for hearing
Approved	This application has been heard by the BZA and approved
Approved w/ Conditions	The BZA approval was conditional
Denied	The BZA denied the request
Dismissed	This case was formally docketed, but was terminated
Review on Hold	This application is incomplete until more information is made available
Cancelled - Customer	The applicant decided not to pursue this application
Voided	This application was incomplete or made in error

## 2021 – YEAR IN-REVIEW

### Caseload by Year

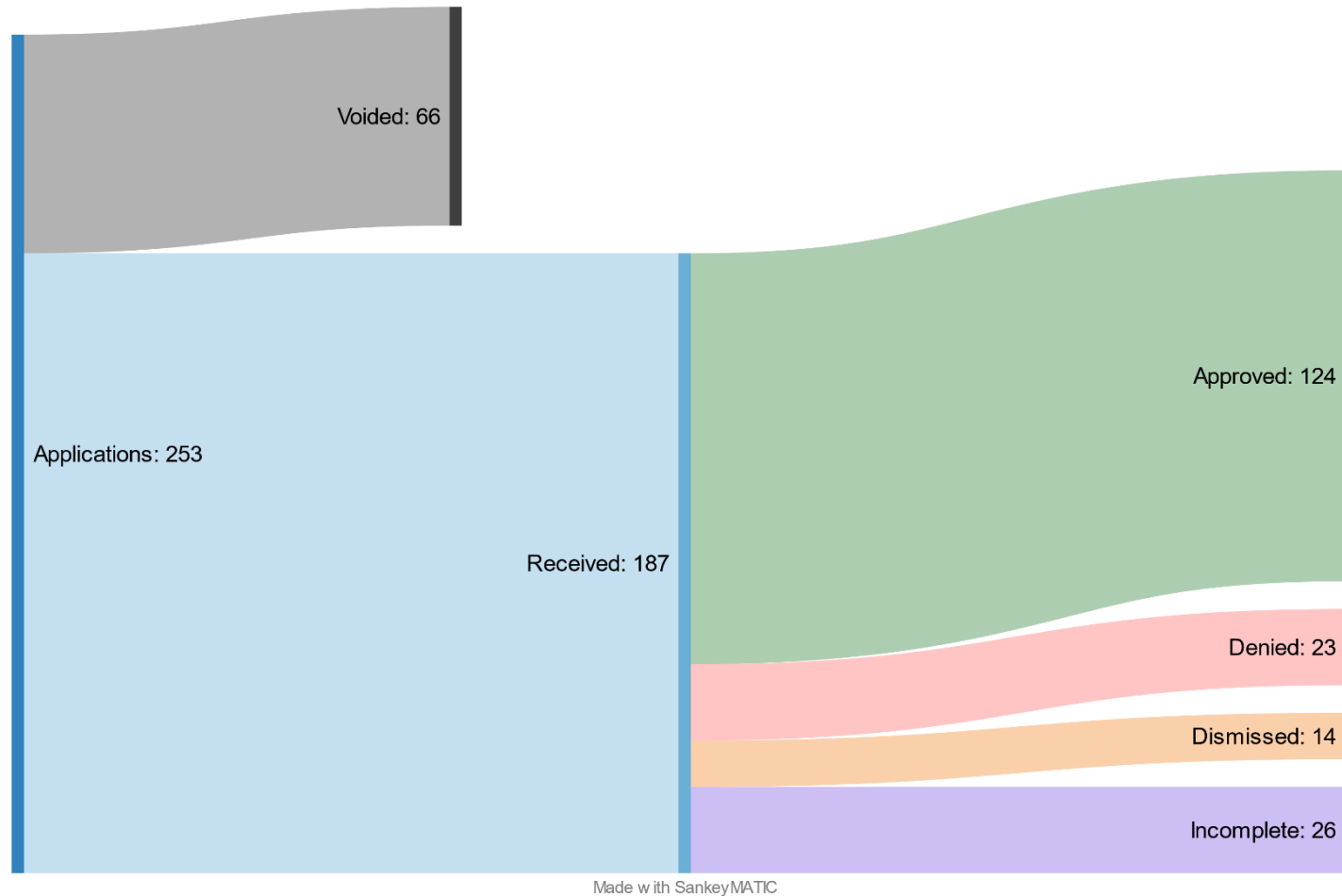
The BZA had a busy year in 2021, experiencing an influx of cases that exceeded the three years prior. As can be seen in Figure 1 below, there were a greater number of BZA cases as well as SUPs (“BZA cases” referring to cases who only go before the BZA, such as variances, special exceptions, appeals, and rehearings, as opposed to SUPs which also go before the CPC). The exact reasons for this increase are unknown, though it may be tied to the trending increase in the amount of building permits, which were 15% higher in 2021 than the previous four-year average.



**Figure 1** – A graph comparing the total amount of applications whose case types receive final determination from the BZA by year. The gray portion of each bar represents SUPs, and the green portion represents all other application types (variances, special exceptions, appeals, & rehearings). This data set includes voided and ongoing cases.

## Application Results

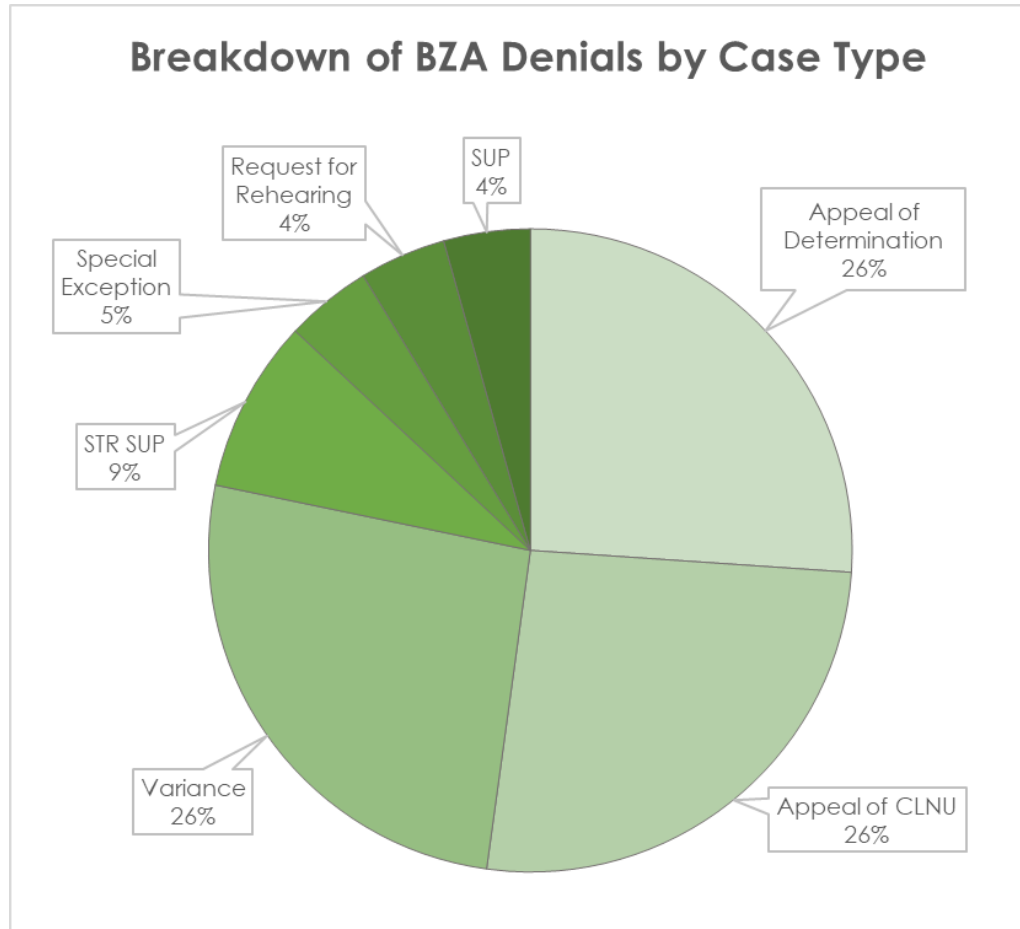
In 2021 there were a total of 253 applications made, the results of which can be seen in Figure 2 below. Of the cases applied for, 66 were either voided by staff or cancelled by the customer. This means that 187 cases from 2021 were valid applications to be heard by the Board of Zoning Adjustment. 124 received approval, 23 were denied, 14 were dismissed, and 26 were not completed at the time of this report being written. Staff supposes that the high proportion of approvals reflects the lengthy screening process that potential variance cases go through before application is ever made.



**Figure 2** – A Sankey Diagram illustrating the total number of applications made to the BZA and showing their eventual case status upon completion. The term “Voided” in this diagram includes cases that were cancelled by the customer. The term “Approved” includes “Approved with Conditions”. The term “Incomplete” includes “Under Review”, “Pending”, and “Review on Hold”.

### A Note on Denials

One detail that is apparent from the above figure is that the BZA only denies a small proportion of applications. This trend can be explained by the fact that when the BZA is presented with a case that it does not find approvable, they will often continue the case and ask the applicant to come back with a new design or fewer variances, etc. This explanation is supported by figure below, which shows that of the cases that were denied in 2021, over 56% of cases were those that could not be altered in-nature (Appeals of determination, Appeals of CLNU, and Requests for Rehearings). Variances, SUPs, and Special Exceptions made up the remainder of denials in 2021.

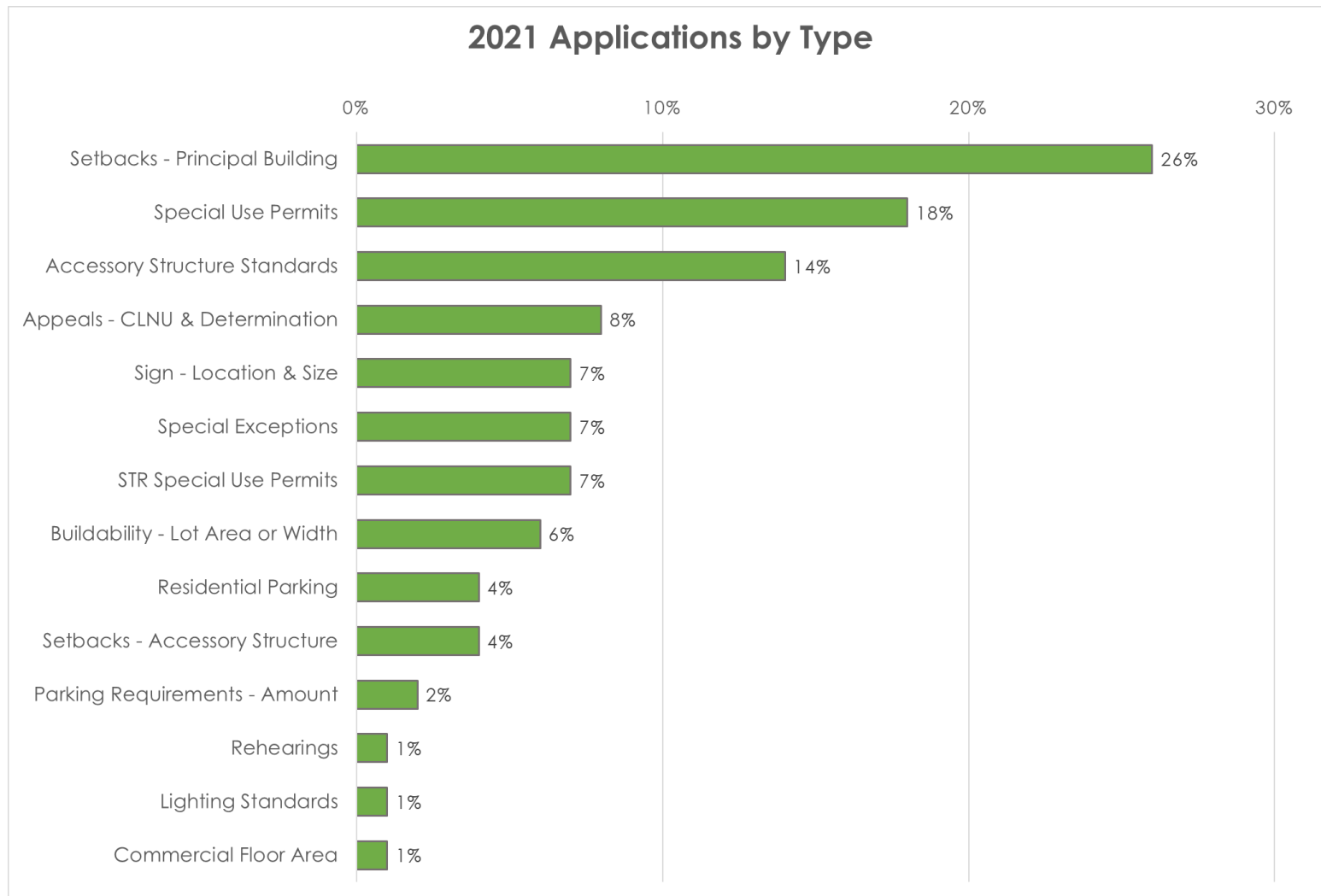


**Figure 3** – A pie chart comparing the percentage of denials in 2021 by case type. While technically the same case type, staff thought there was value in differentiating between Special Use Permits and Short-Term Rental Special Use Permits.



## Application Breakdown by Type

The largest proportion of cases that went before the Board in 2021 were principal building setback variances. This means that more than a quarter of all applications included a request for a principal building setback variance. Special Use Permits had the second highest amount of variance requests at 18%.

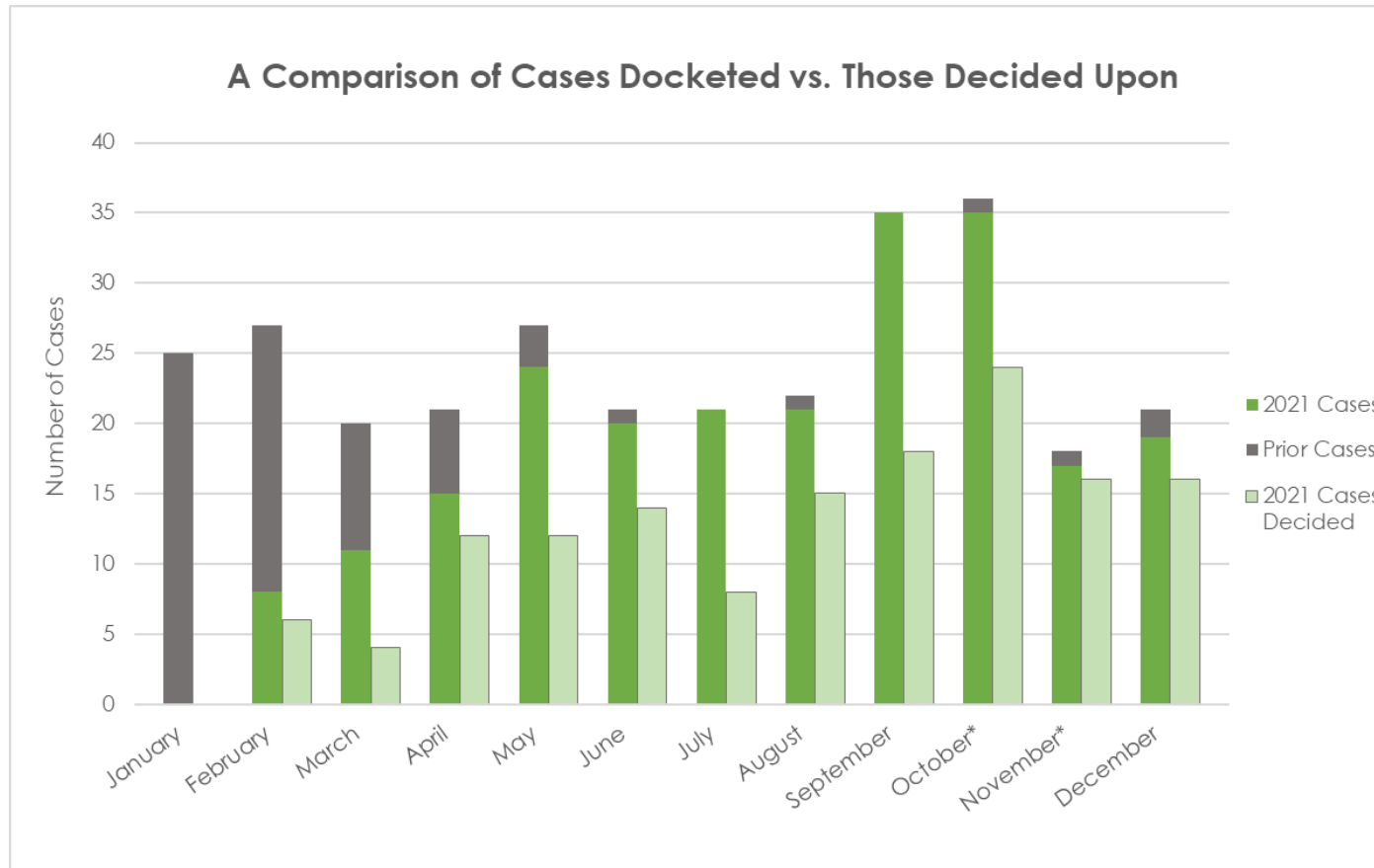


**Figure 4** – A bar chart showing each case type's percentage of the total applications received in 2021. This total does not include cases that were voided or cancelled by the customer. Appeals of CLNUs and Determinations were combined for this figure. Explanations for each category can be found in Appendix 1.

# OPERATIONS

## Cases Docketed compared to Cases Decided (per hearing)

The chart below shows how efficiently the Board of Zoning Adjustment operated in 2021. The decrease in the amount of cases from prior years shows that the BZA and staff effectively managed the previous year's cases going in to 2021. Also visible in the chart below is the surge in cases the BZA received in fall of 2021. The sudden influx of cases necessitated operational changes including the holding supplemental hearings in October and November, and permanently changing the start time of BZA hearings to 9AM (rather than 1PM as it had been for years prior).

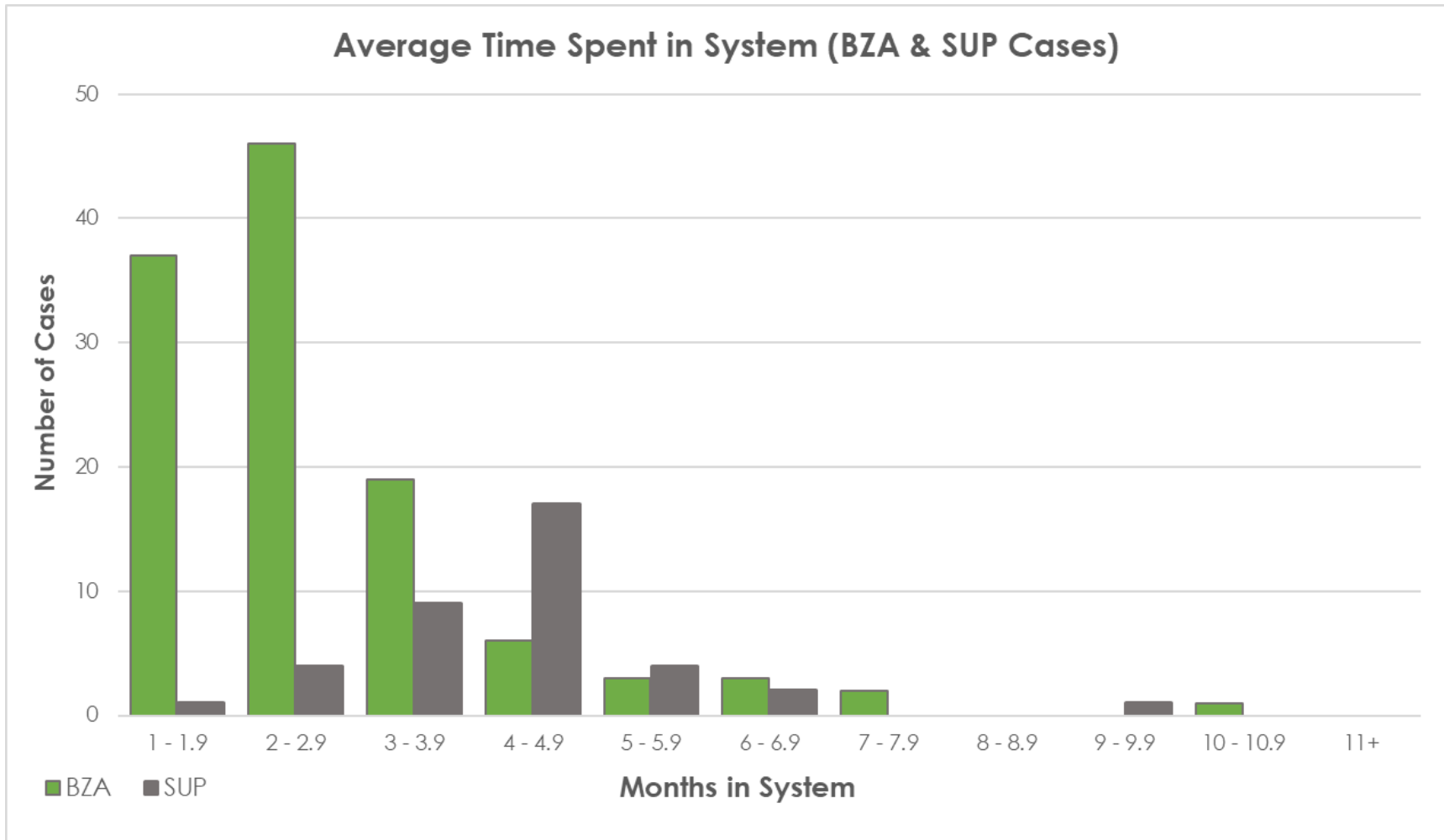


**Figure 5** – A comparison of the number of cases docketed for a monthly BZA hearing versus the number of those cases that were decided upon at that hearing. Prior Cases were those that were applied for in 2020. The darker green represents cases docketed, while the lighter green represents cases that were decided upon. “Prior cases” (gray) is used to represent cases from any year other than 2021.

\*Note: These months each held a supplemental BZA hearing to accommodate the surge in cases experienced in autumn.

### Average Time Spent in BZA System

Most applications to the BZA take between one and two months to be heard by the board. This is because it takes at least one month from the date of application for any case to go before the board, as there is a legal obligation to make notification to any property within 300 feet of a case's subject site. Special Use Permits take an average of 4-5 months to receive final decision from the BZA, as they first must go before the City Planning Commission, which is at minimum a 6-week process.

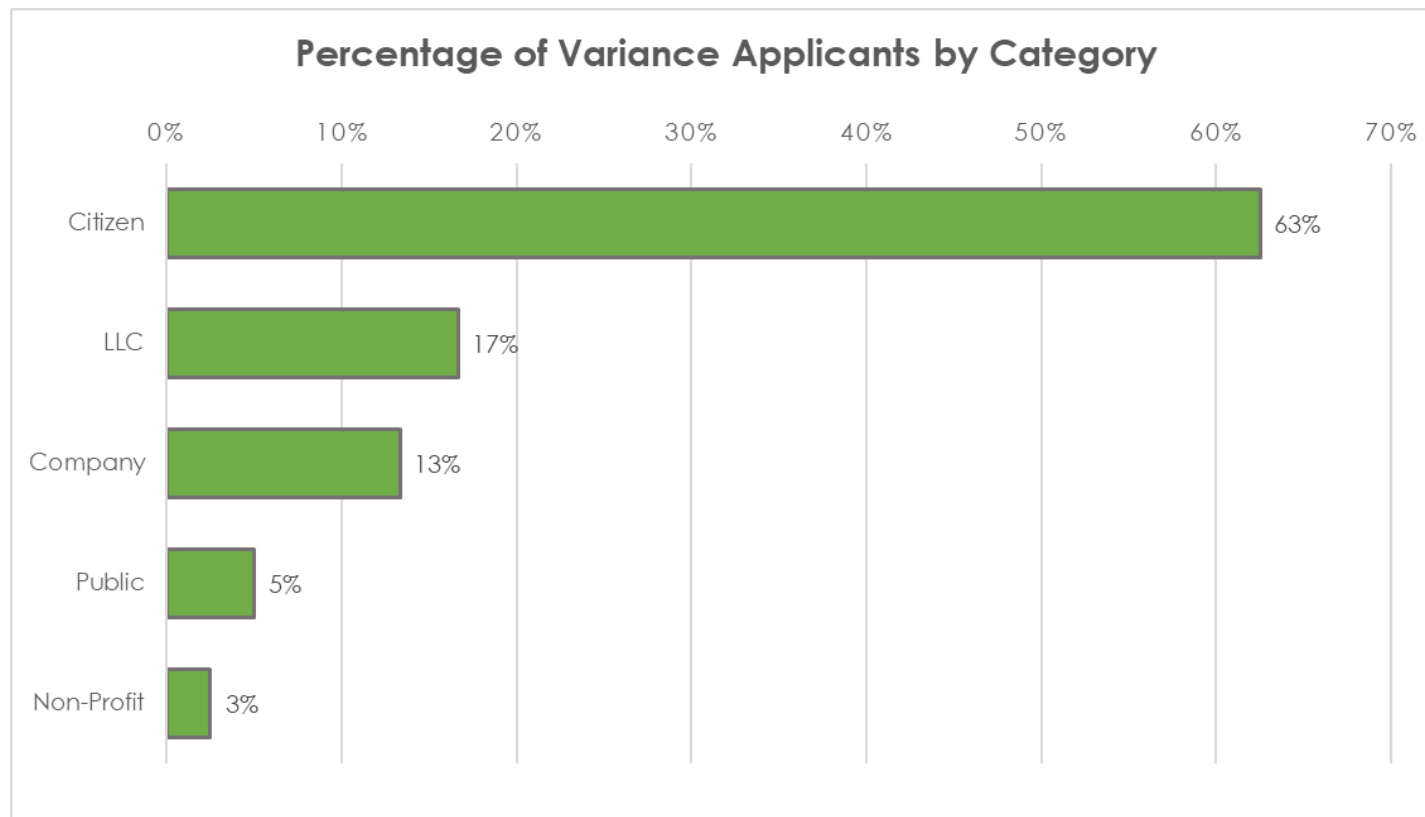


**Figure 6** – A chart showing the average timelines of both BZA and SUP level cases. The majority of BZA level cases (in green) spend two months in our system on average. SUP level cases (in Grey) take an average of four months to be heard.

## Variance Analytics

### Who Applies for Variances?

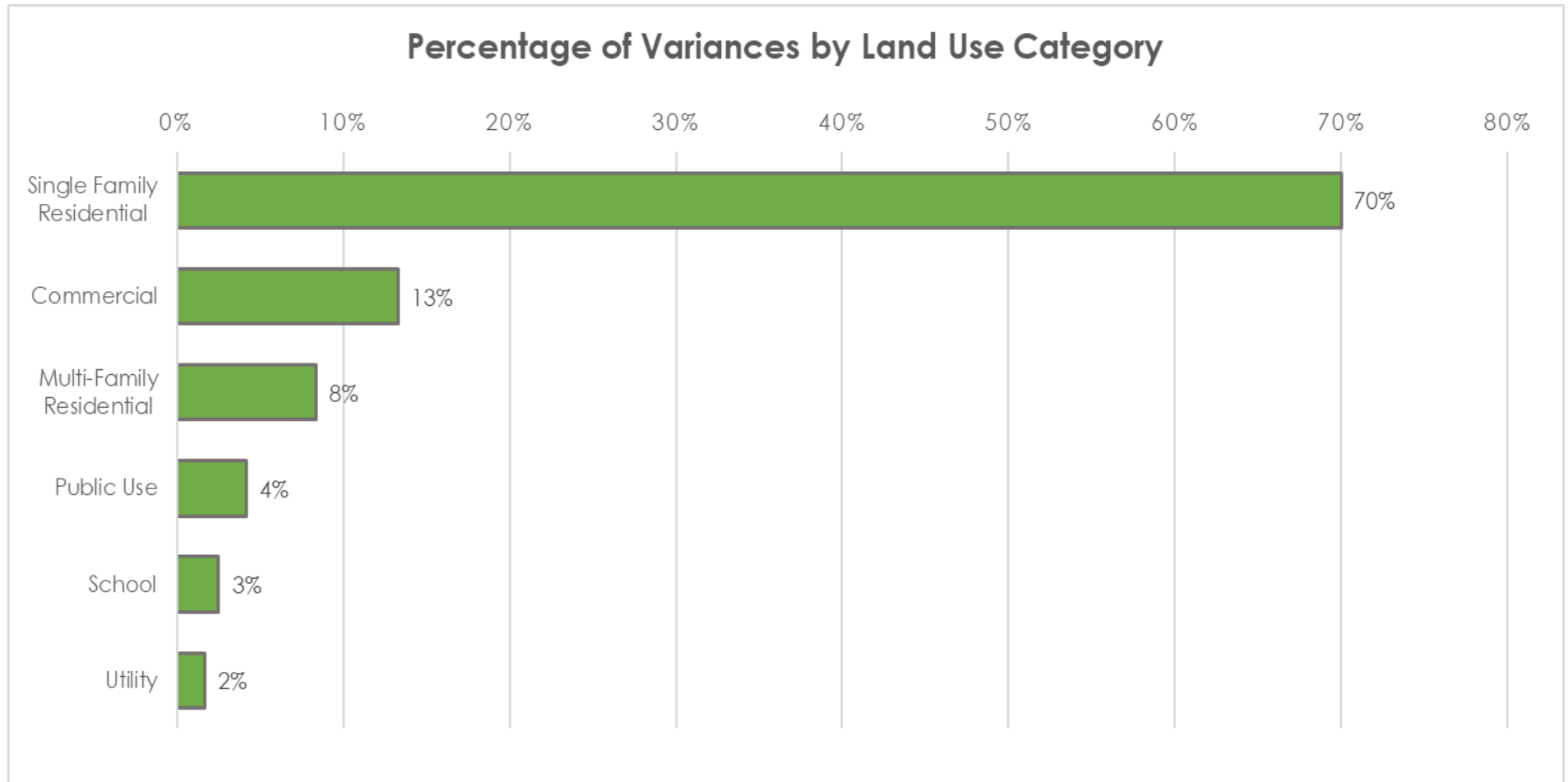
The variance process is meant to be a tool for property owners to address unnecessary hardships or practical difficulties related to the standards of the development code. For the majority of citizens who make variance applications, it is the very first time they have interacted with the BZA. As such, part of the role of those who staff the BZA is leading citizens through what can be an involved and unfamiliar process. The data displayed in Figure 7 below demonstrates that variances are overwhelmingly applied for by private citizens, making up 63% of all applicants. LLCs make up the next largest variance applicant pool, followed by companies, then the public (yes, even utilities, the city itself, and schools have to apply for variances), and finally non-profits.



**Figure 7** – A chart showing a comparison of each nominal category of applicants for variance cases. “Citizen” is used in this chart to describe when the applicant on a case is also listed as the owner of the property. “LLC” & “Company” encompasses any applicant that is a Limited Liability Company or an Incorporated group, respectively. “Public” describes any utility, public school, or municipal entity.

### Where are Variances Applied For?

The land use category on which a variance was most often requested in 2021 was single family residential. Along with what was mentioned in the above paragraph regarding the variance process being a tool primarily used by private citizens, staff posits that this trend can be explained by the residential zoning district regulations being some of the strictest in the city. Following single family residential was commercial developments. Multi-family residential had the next highest percentage of variances, followed by public uses, then schools, and finally utility companies.



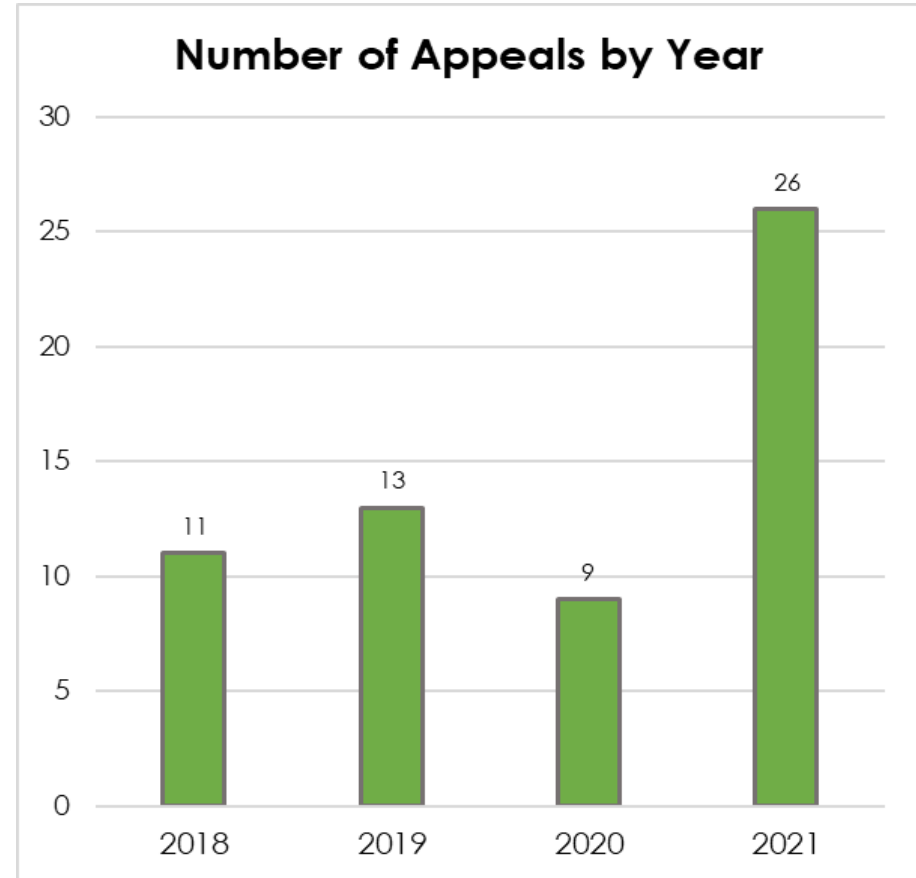
**Figure 8** – A comparison of land-use categories for all variance cases in 2021. In this chart, as opposed to that above, schools and utilities were broken out of the “Public Use” category.

### Action Items for 2022

With an increased caseload, supplemental hearing dates, and new permanent planning positions staffing the Board, 2021 was a demanding year for the Kansas City Board of Zoning Adjustment. Given the increase in activity exemplified in the above charts, and in the interest of continuous improvement, our staff has resolved to commit to two action items for 2022.

The first is meant to address a trend that can be observed in the figure to the right: last year saw a dramatic increase in the number of appeals filed with the Board of Zoning adjustment. Of the appeals applied for since 2018, 44% were applied for in 2021. To accommodate this upward trend in appeal applications, our staff has committed to operational changes with the goal of better serving appeal customers. These changes include offering post-application meetings as a courtesy to appeal customers, as we currently do not require any meetings be held prior to the BZA hearing for these applications. We believe that early communication with these customers will lead to better resolution for all parties involved.

The second action item was decided upon by the Board itself, which was for staff to communicate to pre-applicants that the Board would appreciate videos or other imagery of the subject site at the hearing.



**Figure 9** – The total number of appeals (including both appeals of administrative decisions & appeals of CLNUs) compared by year, since 2018.

**APPENDIX - 1**

<b>Application Category</b>	<b>Varied Code Sections</b>
<i>Setbacks - Principal Building</i>	Setback standards within 88-110-06
<i>Accessory Structure Standards</i>	88-305-01, 88-305-02, & 88-305-03 (excluding setbacks)
<i>Appeals - CLNU &amp; Determination*</i>	88-575 & 88-610-01
<i>Sign - Location &amp; Size</i>	88-445
<i>Special Exceptions</i>	Section 27-10
<i>Buildability - Lot Area or Width</i>	Lot size standards within 88-110-06
<i>Residential Parking</i>	88-420-12
<i>Setbacks - Accessory Structure</i>	Setback standards within 88-305-02
<i>Parking Requirements - Amount</i>	88-420-06
<i>Rehearings*</i>	88-525-11, 88-575-11, & 88-565-10
<i>Lighting Standards</i>	88-430
<i>Commercial Floor Area</i>	88-120-05

*\*Some application types do not seek to vary from a section of the code. Any such applications have their enabling code sections listed instead.*