

# The Committee of 100

on the Federal City



July 2, 2020

DC Zoning Commission  
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**Re: Public Hearing on Zoning Commission Case No. 20-11 (Text Amendment to ZC & BZA Rules of Practice and Procedures to Allow Virtual Meetings and Hearings)**

The Committee of 100 on the Federal City ("C100") advocates for responsible planning and land use in Washington, DC. Our work is guided by the values inherited from the L'Enfant Plan and McMillan Commission, which give Washington its historic distinction and natural beauty, while responding to the special challenges of 21st century development. We have advocated on behalf of intelligent and smart planning and land use in Washington, DC since our founding in 1923. The Board of Zoning Adjustment ("BZA") and the Zoning Commission ("ZC") regularly address issues that are central to the mission of C100.

The Zoning Commission has scheduled a hearing for July 30, 2020 on the petition filed by the Office of Zoning to amend the rules of practice and procedure for virtual public hearings and meetings at the BZA and ZC due to the suspension of in-person hearings and meetings caused by the ongoing COVID-19 pandemic and resulting modifications of District government operations. The proposed rules for the BZA and ZC are identical. Our comments apply to both.

**Virtual Meetings and Hearings Are Part of the New Normal**

C100 understands the need to hold virtual meetings and hearings. Due to the pandemic and the need for social distancing, the world has changed. Many District residents are uncomfortable attending group meetings, taking Metro to travel to attend such a meeting, or even touching surfaces in public spaces. Some may be subject to quarantine and be prohibited from attending a public event. C100 recommends that the guiding principles in adopting and implementing the rules should be the facilitation of maximum public participation while preserving the opportunity of parties to cross examine testimony.

**The Rules Need to Permit Participation by All, including those without Access to Required Technology**

First and foremost, the BZA and ZC need to identify and publicly announce in advance how both parties and members of the public may participate virtually, including the virtual mode to be used. While a video meeting or hearing should be

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preferred (such as via Web-Ex or Zoom), the procedures should recognize that many people do not have cameras on their computers, or even computers. Some may not have sufficient bandwidth to watch a hearing online on account of buffering interference. Every effort should be made to permit those with limited electronic resources to participate. Meeting and hearing notices should indicate that the case file is available through terminals at public libraries and that the public can participate in the meeting or hearing by using the terminals. **We suggest that the ZC and BZA may want to take into account the hours of services of nearby libraries when scheduling hearings on particular projects.** Further, the procedures at a minimum should permit members of the public to testify by telephone if they certify that they do not have access to the technology needed to participate by video. Cross examination in this case could also be conducted telephonically. Consideration could be given to requiring parties, as contrasted with public witnesses, to participate through video means.

#### Public Testimony Should Not be Restricted

Sufficient advance notice of a virtual meeting or hearing must be provided to all parties and members of the public. The notice should clearly explain how to participate in the virtual hearing. C100 urges the ZC to consider requiring an applicant in a BZA or ZC hearing to provide special notice to all "200 footers" about how they can participate in a virtual hearing. The notice posters should also include this information.

The rules state that individuals and organizations desiring to participate (i.e. testify) may sign up with the OZ prior to the conclusion of public testimony. This is consistent with current ZC practice for in-person hearings and should be continued in the virtual mode. Commissioner Shapiro on May 11 stated that the ZC should err on the side of "walk-ins." We agree.

The rules also state that an individual or organization unable to testify at a public hearing due to technical issues may file for leave to file written version of the planned testimony within 24 hours following the conclusion of public testimony. Because we expect that such technical issues will be somewhat common, approval of any such request should be automatic. To expedite the process, the request should be accompanied by the written testimony.

#### Parties Need Time to Respond to Exhibits

The rules seem to require as a general rule that exhibits be submitted to IZIS or BZASubmissions prior to the start of the hearing. We question whether this gives parties time to digest the material, particularly material submitted by parties, so they can address the material during the hearing. We recommend that parties be provided additional time to respond to exhibits introduced online less than a specified period before the hearing (or during the hearing). While the rules give the Board or Commission the option of granting additional time to respond in these circumstances, we recommend that, as a matter of due process, the additional time be granted automatically.

#### Hybrid Hearings

The proposed rules state that a meeting or hearing can be conducted "partially" online. In what circumstances would this occur? If this option is explored, the BZA and ZC need to publish procedures on the conduct of such hearings.

#### Temporary Nature of the Rules

At the May 11 public meeting Chairman Hood suggested that the circumstances where the proposed procedures and practices might be utilized might be expanded for use beyond the pandemic. There is no explanation in the record of how the BZA or ZC might conduct "hybrid hearings." If the ZC desires to adopt some virtual options as

part of the normal process beyond the pandemic, that proposal should be addressed as a separate matter, and only after the BZA and ZC have more experience with virtual hearings. In that case, the ZC should provide the rationale for its decision to extend or make permanent the rules for virtual meetings and hearings.

### Conclusion

In summary, we recognize the need for the BZA and ZC to conduct meetings and hearings virtually during the current pandemic. While the proposed rules of practice and procedure provide a foundation for such meetings and hearings, C100 believes the rules can be strengthened to ensure accomplishment of the overarching principles of maximizing public participation while ensuring fairness to the parties involved. Further, we expect that the rules will be revised as needed to reflect actual experience with virtual hearings.

Thank you



Kirby Vining, Chair

Committee of 100 on the Federal City