

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

Text Amendment to Subtitles : Case No.

Y and Z, Rule of Practice : 20-11

and Procedure - Public :

Virtual Hearing Regulations :

-----:

Thursday,

July 30, 2020

Video Teleconference

The Public Hearing of Case No. 20-11 by the

District of Columbia Zoning Commission convened at 4:00

p.m. EDT, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson

ROBERT MILLER, Vice Chairperson

MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from the Public Hearing held on July 30, 2020.

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P-R-O-C-E-E-D-I-N-G-S

4:00 p.m.

CHAIRMAN HOOD: Let's go ahead and get started.

MS. SCHELLIN: We were just waiting for
Commissioner Miller.

CHAIRMAN HOOD: Okay, let's give him a minute.
Or we'll start the report.

MS. SCHELLIN: He might be on by the time you do
the opening statement though. We do have a quorum.

CHAIRMAN HOOD: Okay, let's get started. Good
afternoon, ladies and gentlemen. We are broadcasting this
public hearing by video conferencing. My name is Anthony
Hood. Joining me is Vice Chair Miller, Commissioner Shapiro,
Commissioner May, I'm sorry, Commissioner Turnbull. We are
also joined by the Office of Zoning staff, Ms. Sharon
Schellin, our secretary, and Mr. Paul Young, who is handling
all of our virtual operations.

We ask that all others introduce themselves at the
appropriate time.

Today's date is July the 30th, and the case
tonight is, give me one moment, Zoning Commission Case Number
20-11, Office of Zoning text amendments to subtitles Y and
Z, virtual public hearing regulations. Give me one moment.
Excuse me.

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1 are available on the Office of Zoning's website. Please be
2 advised that this proceeding is being recorded by a court
3 reporter, and it's also webcast live, Webex and YouTube Live.
4 The video will be available on the Office of Zoning's website
5 after the hearing or soon after.

6 Accordingly, all those listening on Webex, or by
7 phone will be muted during the hearing, and those who have
8 signed up to participate or testify will be unmuted at the
9 appropriate time. And I would ask that those, when you're
10 not talking, if you would mute yourself and unmute again as
11 I've said previously. That seems to be the biggest issue,
12 and sometimes we forget to mute, and sometimes we forget to
13 unmute.

14 Please state your name and home address before
15 providing oral testimony on your presentation. When you are
16 finished speaking, please mute your audio so that your
17 microphone is no longer picking up sound or background noise.

18 If you experience difficulty accessing Webex or
19 with your telephone call in these hearings, please call our
20 Office of Zoning hotline number at 202-727-5471 to sign up
21 or to receive Webex login or call in instructions.

22 All persons planning to testify, either in favor
23 or in opposition, we encourage you to sign up in advance, and
24 your name will be called at the appropriate time. If you
25 wish to file written testimony or additional supporting

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1 documents during the hearing, then please be prepared to
2 discuss and describe it at the time of your testimony, as we
3 have not had time to review.

4 This hearing will be conducted in accordance with
5 provisions of 11 Z DCMR, Chapter 5, as follows, preliminary
6 matters, presentations, tonight it will be the Office of
7 Zoning, Ms. Sharon Schellin, she has up to 60 minutes, report
8 of the Office of Government Agencies, report of the ANC, and
9 then we have testimony of organizations and individuals.
10 Organizations will have five minutes, individuals will have
11 three minutes.

12 While the Commission reserves the right to change
13 the time limits for presentations if necessary, it intends
14 to adhere to the time limits as strictly as possible and no
15 time shall be ceded. Again, any issues, please call OZ
16 hotline number at 202-727-5471.

17 Ms. Schellin, do we have any preliminary matters?

18 MS. SCHELLIN: No, sir.

19 CHAIRMAN HOOD: Okay. Ms. Schellin, we'll turn
20 it over to you. You may begin.

21 MS. SCHELLIN: Thank you. I'll just keep it very
22 short. As the Commission knows, this was done on an
23 emergency basis. And when we had to go to virtual hearings,
24 we felt we needed some procedures put in place for both the
25 Zoning Commission and the Board of Zoning Adjustment.

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1 And now that we've been doing this for a couple
2 months now, the Board members and the Commission members have
3 seen how things work, what does work, what doesn't work. And
4 so we did some tweaking of the language in consultation with
5 the Office of the Attorney General which, I apologize, that
6 memo did not get uploaded until last night. And so it is the
7 record.

8 And there was one area, I believe, that I missed
9 that I would ask the Commission to allow us to correct that
10 in the final language. But where we put in for the Office,
11 I mean, for the Board of Zoning Adjustment regarding allowing
12 swearing in of witnesses, that we also carry that over to the
13 Subtitle Z.

14 So with that, I would leave it, other than I
15 believe Mr. Tondro, let me see if he is now on, yes, he is,
16 if he wants to speak about anything in particular that we
17 updated.

18 CHAIRMAN HOOD: Okay, let's bring Mr. Tondro up.
19 And if he wants to add anything at this time, or just be
20 around to fill in any of our questions or comments.

21 MR. TONDRO: Yes, Chairman Hood, members of the
22 Commission, I think I'll leave it with what the text is there
23 and what the Secretary's already stated. But I'm open for
24 questions in case any of the Commission members have further
25 thoughts.

1 CHAIRMAN HOOD: Okay, thank you. We're going to
2 go in our normal order. We're going to start with
3 Commissioner May. And I'm going to read his comments first.
4 I figured I would do that to maintain the same order unless
5 there are some objections.

6 Okay, this is what he said. And he told me to
7 read it verbatim the way it's written. "You should feel free
8 to read these into the record and/or share with the rest of
9 the ZC OAG as you see fit."

10 I have not done either one. But I can send it if
11 it is something you need to expound on. Now, I'm not sure
12 what version he looked at or what, if there were some changes
13 made. Mr. Tondro, you can correct me if changes have already
14 been made or not made. And the rest of it we can take from
15 notes.

16 He said, first, "I agree with the proposed text
17 overall. It is sensible in the way that it addressed the
18 current public," let me make this larger, "the current public
19 health emergency. And it appropriately addressed the
20 critical need to have transparency and robust public
21 participation in zoning processes."

22 Second bullet, "I strongly support the change for
23 the requirement that the Commission or Board not make
24 decisions at a hearing in order to ensure that decisions are
25 not made until those who wish to testify have the opportunity

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1 to do so, despite any technical difficulties they might
2 experience.

3 "I believe that the language was necessary when
4 we made the transition to virtual meetings, but our
5 experience indicates that technical difficulties are very
6 rare. But the delay in decision making can be a burden to
7 parties, albeit small, and the Commission or Board.

8 "The general language that mandates the decision
9 not be issued until 48 hours," or "the decision not be issued
10 until 48 hours after the hearing ends is a reasonable and
11 practical alternative. It allows for the Commission or the
12 Board to reconsider a decision if new testimony is entered
13 into the record."

14 Regarding recent changes coming from OAG, "I agree
15 with the recent changes to eliminate the live video option.
16 I do not believe we should allow live video as it denies the
17 Board, or Commission, and any parties the opportunity to
18 question witnesses.

19 "I also agree with the recent change to include
20 language addressing the possibility that a hearing may need
21 to be adjourned due a storm or other interruption to the
22 virtual hearing."

23 And I want to commend our Attorney General, Mr.
24 Tondro, and his staff, for catching that conversation. And
25 they captured it, and they sent us something right away, so

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1 great job.

2 He also says, "I have one other substantive
3 comment. I think Section 103.13(m)(2)(c) should be deleted."
4 So I don't know if you can look at that. It's
5 103.13(m)(2)(c) should be deleted. "I do not believe that
6 someone who has had technical issues that prevent their
7 testimony should have to demonstrate how the planned
8 testimony is different from prior testimony or why they did
9 not submit it in advance. We would not require that when
10 someone successfully testifies. The requirement is excessive
11 and is punitive."

12 Would you want to respond on that. I didn't focus
13 on that one. I saw it, but I didn't focus. Or we just need
14 to take it for note.

15 MR. TONDRO: I can respond do it. I think it's
16 a balancing act for the Commission to decide. I had included
17 that for dealing with an issue of technical difficulties.
18 There's two aspects to it.

19 The first was that if a situation where somebody
20 who has technical difficulties for them to explain, remember,
21 this is sort of an extraordinary remedy if they've tried to
22 testify, and for some reason, there's technical difficulty,
23 the first question is, is what they were proposing to testify
24 different from what they had already submitted to the record?

25 With the presumption that if it was different,

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1 then therefore, as a result, it would be more likely for the
2 Commission to want to hear it. If it's the same, then it may
3 not matter as much.

4 And then the other issue for them to answer is
5 whether or not they had tried to submit a written version,
6 in other words, to anticipate the fact that there might be
7 technical difficulties by submitting a written version of
8 their planned oral testimony.

9 Again, I put that in there for the Commission to
10 consider if that's something that you would like to hear.
11 But I understand what Commissioner May is saying as well.

12 CHAIRMAN HOOD: Okay. I am not necessarily
13 supportive of taking anything out. I think as we, at least
14 right now. Again, I think we can change, we can waive, we
15 can move on. Again, this is still, to me, a moving target.
16 And we're still learning this. I think we perfected it so
17 well that we still have room for improvement. I would say
18 that. But anyway, want to comment on that point,
19 Commissioner Shapiro?

20 COMMISSIONER SHAPIRO: I would agree with you, Mr.
21 Chair. I appreciate Commissioner May's point. I think we
22 should err on the side of leaving it in. It gives us the
23 most flexibility. And I don't think it prejudices potential
24 witnesses, it just gives us flexibility.

25 CHAIRMAN HOOD: Okay. Mr. Tundra, oh, I'm saying

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1 -- Tondro, I --

2 (Laughter.)

3 MR. TONDRO: Thank you. Good, Chairman. Yes,
4 just to clarify. All this does is ask for the request to
5 reopen the record to submit their evidence. But you just
6 have to explain those issues. It does not prevent the
7 Commission from allowing that to come into the record. It
8 just is additional information for the requestor to provide
9 to the Commission for their consideration.

10 CHAIRMAN HOOD: Okay. And let me preference that.
11 I did ask Commissioner May before he left to send the comments
12 so we had it. Because I wanted to make sure he was included.
13 I also asked the Board as well. And I know we have another
14 bite of the apple, but I wanted there to be as many brains
15 on this as possible so we can have a better tool to move
16 forward.

17 Okay, so the next one, and I know I have, I'm
18 going to finish here, and then I'll go to my colleagues.

19 MS. SCHELLIN: Actually, Chairman Hood, could I --

20 CHAIRMAN HOOD: Yes.

21 MS. SCHELLIN: -- just make one statement at this
22 point? The next step is actually final action. Because I
23 just, I'm sorry I interrupted you. But I just wanted to say
24 that, because you just made that statement about another bite
25 of the apple.

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1 If you'll recall, you guys took emergency action
2 and authorized the immediate publication of the rulemaking.
3 So the proposed rulemaking has already been published. So
4 the next step is actually final action. So I just wanted to
5 make that clear.

6 CHAIRMAN HOOD: Am I missing something? Okay, we
7 did emergency.

8 (Simultaneous speaking.)

9 CHAIRMAN HOOD: I thought this is proposed on the,
10 okay, Mr. Tondro, help me. I'm confused now. I really am.

11 MR. TONDRO: And I can understand. And the
12 Secretary is absolutely right. Secretary Schellin is right
13 that you already have taken emergency and proposed action.
14 However, in order for you to adopt those changes that are
15 shown in this memo, that are in red, those would require a
16 new proposed action.

17 So you have, as it were, two options, either to
18 just adopt the overall text, including those proposed
19 revisions, as a second notice of emergency of proposed
20 rulemaking. That would take effect immediately as emergency.
21 And then it would be proposed, and in 30 days, if there's no
22 comments, you could then go to final action. Or let's say,
23 after 30 days, you would then respond to the comments and
24 could take final action.

25 Alternatively, you could choose, Secretary

1 Schellin may know, I'm not sure if the timeline on the
2 existing proposed rulemaking is actually run for us to do
3 final action. I think we may still have, but I can't
4 remember, Secretary Schellin?

5 MS. SCHELLIN: Let me check on it real quick.
6 Let's see.

7 CHAIRMAN HOOD: So whatever, let me make sure I'm
8 following.

9 MS. SCHELLIN: Let me finish reading those, and
10 I'll check for us.

11 CHAIRMAN HOOD: Let me go back to the discussion
12 that we've just had. So if we approve this whenever, I
13 guess, I don't know if we can do this tonight, because now
14 I'm confused. If we approve this, when we approve this in
15 September, at our next meeting, because I'm sure we're going
16 to approve some version of it, then the public, my main thing
17 is to make sure whatever the final version that you talked
18 about, Mr. Tondro, that the public then has a chance to be
19 able to comment.

20 Because I want to make sure that the Committee of
21 100, because I really read their letter, and I appreciate
22 their comments, but I think some of this stuff that they put
23 in there we've already taken care of. A lot of it we've
24 already taken care of. But I like them. See, that's why I
25 was thinking they would have another chance at some point to

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1 see that we've already done it. But I'll get into that
2 later.

3 So is that the correct format? You're on mute,
4 you're on mute. And I need to hear this, because I'm --

5 MR. TONDRO: I'm sorry about that. Thank you,
6 Chairman. OAG would recommend that you take another vote to
7 adopt and a second emergency and proposed action tonight,
8 including these revisions.

9 As you pointed out, there are several that respond
10 directly to the Committee of 100's concerns. That would then
11 put it out for another 30 days for everyone to comment. And
12 it would be a unified text at that point so that everyone
13 could see what the -- how those changes integrate with the
14 current adopted text. That would be our suggestion.

15 CHAIRMAN HOOD: If that's the format, I'm fine
16 with it. I just want to get that to other people to comment.
17 Ms. Schellin, you had something else?

18 MS. SCHELLIN: I was just going to follow-up on
19 that and answer your question. The emergency would expire
20 September 8th. And even though we have not moved forward
21 with Case Number 1905 to formalize, not counting the month
22 of August, per what Max just said, if you go ahead and adopt
23 those changes this evening, you would want to take another
24 emergency action so that the 30-day comment period would,
25 they would be in effect on an emergency basis so that we

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1 could take this up probably in October, so we're not counting
2 August. So the ANCs could have an opportunity to respond.

3 CHAIRMAN HOOD: Okay. I think we're getting to
4 where we need to be. So let me finish reading, I think, I'm
5 here. I have a few other comments that are primarily
6 editorial in nature. Section 103.13(i) of the Board language
7 states the Board may provide parties additional time to
8 respond to exhibits or live video introduced.

9 Shouldn't the reference to live video, the
10 proposed language does not allow live video. So that's
11 something I think that's --

12 MS. SCHELLIN: I deleted it.

13 CHAIRMAN HOOD: Oh, okay. And here's the next
14 one. I know that the language that allows live video, okay,
15 so I'm going to still read it. I know that the language that
16 allows live video has not been struck from the Commission
17 text, only from the Board text. We need to make sure that
18 both sections of the language are consistent. And I think
19 Ms. Schellin already mentioned that's been taken care of.

20 MS. SCHELLIN: Yes, sir.

21 CHAIRMAN HOOD: I also note that the term live
22 video has not been defined, meaning that is a commonly
23 understood expression. But I would admit that I do not
24 intentionally understand what it meant. I think we should
25 define it and, in some way, since the text states that it

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1 will not be allowed. Then he says I hope this is helpful.
2 And it was. I appreciate Commissioner May doing this.

3 But how are we going to do this? I think he has
4 a point, live video. Commissioner Shapiro?

5 COMMISSIONER SHAPIRO: Yes. Well, I want to join
6 with that, because my interpretation of what live video was,
7 is actually it's pre-recorded video. And I may be wrong, but
8 that's what I thought it was, that we are being handed a tape
9 of something.

10 MS. SCHELLIN: That's allowed.

11 CHAIRMAN HOOD: Yes. So that's why we need a
12 definition.

13 MS. SCHELLIN: Yes.

14 CHAIRMAN HOOD: We need to do that.

15 MS. SCHELLIN: And that was the issue and, I
16 think, that working with OHE, we can take care of that. But
17 just to clarify for you guys, it's not really been an issue
18 for the Zoning Commission. But our understanding from the
19 BZA is it's been like me picking up my computer and saying
20 see this.

21 CHAIRMAN HOOD: That's what it is. That's live
22 video.

23 (Simultaneous speaking.)

24 MS. SCHELLIN: That's the live video that they
25 don't want to happen to show the area. Because, for one

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1 thing, the record, even though we have the video but, you
2 know, in Court of Appeal cases, for example, the record is
3 the written transcript. That's what we send over.

4 You know, we have these wonderful videos that we
5 have to watch, but the actual official record is, you know,
6 the transcript. And in the regs right now, we do ask that
7 they send in any videos they plan to show to provide a
8 certain number of copies ahead of time. That is in the regs.
9 And so doing those live videos, we're not getting the copies
10 ahead of time for the record or anything. So they're not
11 being recorded for the record.

12 CHAIRMAN HOOD: Okay. So I think, Commissioner
13 Shapiro, the answer to what you said, and pre-recorded, I
14 think, is fine. Because I know in one of the cases that we
15 had, and even one I sat on in BZA, it wasn't while we were
16 sitting, it wasn't being done while we were sitting there.
17 It was being done long before we got there. And it was very
18 helpful.

19 So I would leave that up to staff and to OAG to
20 come up with exactly what you said. I think pre-recorded is
21 fine, but I'll leave it up to the Director. Because I think
22 the know exactly what they meant because of what's happening
23 on BZA.

24 It's just like me standing up and doing something,
25 okay, and trying to put that in the record while we're having

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1 somebody coming to this hearing now and start giving us
2 something on their Facebook Live and wanting to put that into
3 the record. I think that's kind of, but I'll leave the
4 definition on how they craft all that up to OAG. Mr. Tondro?

5 MR. TONDRO: Yes. I'll just offer one option as
6 a definition just so everyone can be clear as to whether
7 that's what you concur with. It would be that I would call
8 it sort of streaming. It refers to online streaming media
9 that is simultaneously recorded and broadcast in real time.
10 I think that's how we would define live video.

11 So again, it's streaming media that is
12 simultaneously recorded and broadcast in real time. And I
13 would add also that it would exclude pre-recorded video
14 that's submitted then as an exhibit, either before, prior to
15 the hearing, or at the hearing if the Board or Commission
16 accepts it into the record.

17 CHAIRMAN HOOD: Okay. So --

18 (Simultaneous speaking.)

19 CHAIRMAN HOOD: Oh, go ahead, Commissioner
20 Shapiro, go ahead.

21 COMMISSIONER SHAPIRO: Thank you. You know, I
22 hate to be a contrarian, but the problem I have with that
23 definition is I believe that what we're doing right now,
24 literally right now, fits into that definition.

25 CHAIRMAN HOOD: Pre-recorded?

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1 MS. SCHELLIN: But you're not introducing it as
2 evidence. And that's what they're doing. They're
3 introducing it as evidence. And I think that's the
4 difference.

5 COMMISSIONER SHAPIRO: That's helpful. That's --

6 MS. SCHELLIN: This isn't evidence. This is the
7 hearing.

8 COMMISSIONER SHAPIRO: That distinction just needs
9 to be made.

10 MS. SCHELLIN: Yes.

11 CHAIRMAN HOOD: Okay. So pre-recorded --

12 MS. SCHELLIN: It can't be introduced as evidence.

13 CHAIRMAN HOOD: Pre-recorded is fine --

14 MS. SCHELLIN: Yes.

15 CHAIRMAN HOOD: -- Mr. Tondro.

16 MS. SCHELLIN: And I don't think that those videos
17 that, you know ---

18 (Simultaneous speaking.)

19 MS. SCHELLIN: -- those pre-recorded, or however
20 you want to say it, I think that's something that OAG and OZ
21 may need to check on. But I don't think that those are
22 presented at the hearing. I believe that they had to be done
23 prior to the hearing, even when we were in the hearing room.

24 CHAIRMAN HOOD: No, let me, what I'm thinking
25 about is what just recently happened.

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1 MS. SCHELLIN: Yes, right.

2 CHAIRMAN HOOD: While we were having this hearing,
3 I took my phone and said I wanted to Commission to see this.
4 And I'm flashing it all around. That's what I'm thinking
5 about live video.

6 MS. SCHELLIN: But he made them, Max just made the
7 statement unless it's introduced at the hearing and allowed
8 by the Commission or Board. But I believe even now the
9 current regs say that they have to provide the pre-recorded
10 videos, the copies, prior to the hearing.

11 So I don't want it to say that they can produce
12 the pre-recorded stuff at the hearing too, because they're
13 going to produce it at the hearing, but how are we getting
14 those extra copies, those CDs or we ask for them on discs.
15 I mean, not discs but things you plug in, but, yes, on flash
16 drives.

17 So I don't think it should be introduced at the
18 hearing. If they have a video to show, it should be provided
19 prior to the hearing as the regs say.

20 CHAIRMAN HOOD: So here's the problem with that.
21 When applicants come in, and they present their case, and I'm
22 just, we're talking this out, because I'm trying to make it,
23 and I hope the Committee of 100's watching, because we're
24 trying to perfect it. We're not being disagreeable, we're
25 just trying to figure out the pros and cons of everything.

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1 So let's have this discussion, let's take our time and try
2 to do it right the first time or either get it half-way
3 right.

4 So here's the thing. When applicants come down,
5 and they present, they're trying to show us a traffic
6 pattern, and it's a video. To me, that's a pretty --
7 sometimes we're going to see that video for the hearing. But
8 it's not live, it's pre-recorded. So where does that fit in
9 the whole scheme of things, Mr. Tondro, where does that fit?

10 MR. TONDRO: If I can back briefly, and I'll get
11 to your question, but Commissioner Shapiro is absolutely
12 right. We have to distinguish between testimony that is
13 live, that a witness can provide where it's fixed, and it's
14 not moving. But that would, so we have to clarify that that
15 is allowed. You just can't pick up the camera and move it
16 while you're giving the testimony. I think that's what we're
17 classifying.

18 CHAIRMAN HOOD: Right.

19 MR. TONDRO: To get to what you and Secretary
20 Schellin are talking about, the issue there is that, as it
21 currently stands, you have to, if you want to submit an
22 exhibit, you have to submit it at least 24 hours prior to the
23 start of the hearing. Otherwise, you can ask, at the
24 hearing, you can ask the Board or the Commission for
25 permission to enter it in.

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1 One of the things you have to show is good cause
2 and also that there's not prejudice to the parties. So it
3 does give the Board or the Commission that flexibility to say
4 you should have provided this earlier, or we do think this
5 is relevant and will prejudice the parties, and then at that
6 point, to work out those issues that secretary Schellin
7 raises which are absolutely valid, which is how do those
8 video exhibits that are pre-recorded get into the record?

9 But that would be, it would be something, I think,
10 the way it's currently framed that the default position is
11 to do that before the hearing. But the Board and Commission
12 has flexibility to allow it if a witness wants to present it
13 at that time.

14 CHAIRMAN HOOD: So I get that, I get the biggest
15 part is they need to make sure that it gets into the record.
16 I'm thinking about when applicants come down, and they show
17 us stuff. You know, we see videos all the time from
18 applicants. So you know what, let me hear from others. Vice
19 Chair Miller?

20 VICE CHAIR MILLER: Yes. You know, I made this,
21 when they were talking about this at the, I think it was just
22 the Board of Zoning Adjustment, I don't think it was, anyway,
23 I made that statement that you just made, Chairman Hood, that
24 we get videos, pre-recorded videos all the time.

25 Like, I can remember the McMillan site filtration,

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1 the whole walking around, seeing the whole perspective and
2 the relationship to everything else. And when I said that,
3 Chairman Hill said we don't get them all the time.

4 I said, well, remember, we're not talking about
5 live video where the testifier is actually walking around.
6 But we get, as part of the applicant's presentation, a
7 perspective view of the site and the relationship to the
8 other --- But I agree, you should be encouraged to come in
9 beforehand. But I often think it did not come in beforehand.
10 And we can deal with it at the time if we think it's worth
11 it.

12 MS. SCHELLIN: They usually either provide the
13 video, or they will provide, like, the stills within their
14 files.

15 (Simultaneous speaking.)

16 VICE CHAIR MILLER: Anyway, I'm comfortable with
17 the direction we're going in. As you said, Chairman Hood,
18 nothing is in stone, this is an evolving thing. And we will
19 make whatever future revisions consisting -- probably could
20 go on for a while.

21 CHAIRMAN HOOD: Commissioner Turnbull, you want
22 to talk about that subject?

23 COMMISSIONER TURNBULL: Yes. I'm trying to
24 remember. I think one of the BZA cases I was on the other
25 day, which is going to be continued until next week, I think

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1 the only time, maybe the week before, the applicant sort of
2 showed a video going down the street and looking at the
3 properties. And I don't think that was pre-recorded. But
4 I'm not sure.

5 But I think if an applicant is presenting a, or
6 a party is presenting a video that just shows up, that had
7 not been submitted in evidence, I think then you can't decide
8 on a case until copies have been given to the other parties
9 or the opponent for them to be able to review.

10 So I think whatever comes in live that day,
11 totally new, I think time then has to be given so that
12 somebody can respond to it. Just like any kind of a paper
13 submission. I think that should be noted somewhere that
14 somebody, the parties in opposition or just a party in
15 general, can respond to what they've just seen which wasn't
16 in the record before.

17 CHAIRMAN HOOD: So I think, Commissioner Turnbull,
18 what you just said would also help with, see here's the
19 thing, we all come from different directions. Ms. Schellin
20 has some she has to deal with that we don't necessarily deal
21 with. We know what we get and how we get it.

22 But I think what you just said, and I'm going to
23 kick this over to OAG and OZ to work on, I think. What you
24 just said is exactly what happens. And I think that would
25 help us. And I think what you just said is very valid to us

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1 being able to move forward with this. That's kind of where
2 I am. I can't work out all the intricacies of it, so I'll
3 leave that up to Ms. Schellin and OAG. Mr. Tondro?

4 MR. TONDRO: Yes. Just to address Commissioner
5 Turnbull's concerns, so if you have a chance to look at (g),
6 103.13(g), one of the things I did introduce was, I think,
7 addressing Commissioner Turnbull's concern that somebody who
8 wants to enter an exhibit, whether it's a pre-recorded video
9 or just an exhibit at a hearing as opposed to having done so
10 earlier, has to demonstrate good cause, and that it would not
11 unreasonably prejudice any party, and that it would be then
12 up to the Board or the Commission to decide if either of
13 those occurred.

14 And then if they wanted to provide for extra time
15 for a response, they could do so as well, but just to call
16 attention to where we've tried to deal with that.

17 CHAIRMAN HOOD: So here's the thing. Let me say
18 this to everybody, and we're going to move to Commissioner
19 Shapiro after this, unless somebody else wants -- Let's
20 really be careful, because some of the things that we're
21 talking about we do now. So we want to make sure that we
22 kind of, we're trying to mirror that. We don't want to make
23 it more cumbersome or make it worse. We want to improve it.
24 So we don't want to go backwards.

25 So let's just, if it's okay, let me leave it up

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1 to OZ and OAG. If you all can fine tune that, I think that
2 -- Because off the cuff, I done messed up a whole lot of
3 stuff off the cuff. So I think you all know the intention.
4 So let's see what we can do with the intention, and let's go
5 from there.

6 Okay, Commissioner Shapiro? You don't have any?
7 Mr. Turnbull?

8 COMMISSIONER TURNBULL: I think I'm good with
9 everything. I didn't fully understand Commissioner May's
10 opposition to M, but I'm agreeing, I would go along with
11 yourself and Commissioner Shapiro in that we let it stand as
12 it is. I think it takes care of -- and we'll see what
13 happens in the future. But I really don't see a real
14 problem with that. But other than that, I think I'm good to
15 go with what we have.

16 CHAIRMAN HOOD: Okay. All right. Vice Chair
17 Miller?

18 VICE CHAIR MILLER: I'm comfortable with the
19 direction we're going.

20 CHAIRMAN HOOD: Okay. I have just a few questions
21 that a lot of us, maybe I'm trying to make sure I understand
22 this. Let me ask, is there a procedural order, and I
23 probably could have looked it up, I'm sure there is, of how
24 the BZA should function in the hands, or can they change that
25 as they go along?

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1 Because, like, we do the, we hear from the
2 applicant first, I hope I got it. We have cross examination
3 with ANC or parties, then we go to the Office of Planning,
4 and VDOT, then we go to other government agencies, then we
5 go to opposition and support. Is there something in the
6 regulations like that for the Board of Zoning Adjustment?

7 The reason I'm asking, and I need to talk to the
8 Chairman as well, the reason I'm asking is because I notice
9 sometime, and I'm not complaining, I'm just saying I notice
10 sometime that we will, we'll hear from the applicant first.
11 And hey may go to the ANC.

12 And I know one person has mentioned in that
13 process, and this is before the Board we have now. They
14 mentioned well, wait a minute, we need to be able to question
15 the ANC. But at that time the ANC was gone, and they never
16 came back. I mean, they went off. And this is in live
17 video. So I just was wondering is there's a procedure, and
18 we need to make sure that we're following it. Yes, Mr.
19 Tondro?

20 MR. TONDRO: Yes. So there's both Chapter 4 of
21 Subtitle Y, which is for applications, and then Chapter 5 of
22 Subtitle Y governs appeals. And so that establishes
23 precisely that order in which when the applicant speaks, when
24 the ANC speaks, parties in opposition, if there's others.
25 And so there is a fairly clear, set procedure.

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1 CHAIRMAN HOOD: And should that always be followed
2 by the Board. Or, well, I think it pretty much states,
3 should that always be in that order?

4 MR. TONDRO: It should be unless the Board
5 decides, having considered and to waive it, I would imagine,
6 yes, it should always be that case.

7 CHAIRMAN HOOD: Can the Chairman just arbitrarily
8 change it on the cuff, is my question? And I'm not asking
9 this to condemn, I'm asking this to make sure that we keep
10 ourselves off from down on Third Street or C Street, or
11 whatever street it is.

12 MR. TONDRO: I would have to get back, the
13 presiding officer, whether the Board or the Commission, has
14 a fair degree of latitude. But I think in general, these
15 provisions would have to be followed.

16 CHAIRMAN HOOD: Okay.

17 MS. SCHELLIN: I hate to tell you guys, but I just
18 looked at that, and it really doesn't say the applicant goes
19 first, and then the agencies go, and the ANC or whatever.

20 It just more or less sets out very general in that
21 -- sorry, I guess you can still see me, but I wanted to pull
22 that up again -- It gives the order in that it says, it's
23 very generic in that it says you call the hearing, you
24 consider preliminary matters, you conduct the public hearing,
25 rule upon offers and proof, and receive relevant evidence,

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1 exclude unduly repetitious, immaterial, irrelevant testimony,
2 adjourn the public hearing, close the public hearing, take
3 action to maintain decorum and order, and take any other
4 action necessary.

5 Now, if there's somewhere else in Section 408, but
6 that's what it says as far as the presiding officer at a
7 public hearing on an application shall have the authority to,
8 and it lists it. So it doesn't necessarily have an order.

9 But I'll tell you, the Office of Zoning had a book
10 that was put out. I know it might have been before Max's
11 time, but Chairman Hood remembers that actually we used to
12 give that out all the time and actually listed the order for
13 hearings, and rulemakings, and everything. You know what I'm
14 talking about --

15 CHAIRMAN HOOD: I believe so. I do.

16 MS. SCHELLIN: -- when cross examination was done.
17 And that was done. You know, I think that was what we used.
18 And I don't know if that's on our website somewhere, but
19 that's what was done. And it was also done for BZA.

20 CHAIRMAN HOOD: So if it's not, so here's the
21 thing, Mr. Tondro, and others, if it's not in our rules then
22 that actually, it works in our favor. It works in the favor
23 of the BZA with that in the rules. I've just been trying to
24 see if it was.

25 And a statement was made at a BZA I was on, and

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1 I heard that. And I was sitting by the chairman, and I kind
2 of told -- to follow whatever that -- but if it's not there,
3 then it's not there. Mr. Tondro?

4 MR. TONDRO: Yes. I think the problem is it's
5 perhaps a little bit of confusion. I think it's the next
6 section. So what Secretary Schellin was referring to was
7 dead on in the sense that that referred to the presiding
8 officer.

9 But if you go to 409.1, that is the hearing
10 procedures for variances and special exceptions. But the
11 problem is that it breaks it out into a variance and special
12 exception, and then there's chancery, and the separately, and
13 Chapter 5 is the process for appeal.

14 CHAIRMAN HOOD: Okay.

15 MS. SCHELLIN: There you go.

16 (Simultaneous speaking.)

17 CHAIRMAN HOOD: So it's there.

18 MS. SCHELLIN: Yes.

19 MR. TONDRO: But there is an order, preliminary
20 matters, applicant's case, report from OP, report from other
21 government officials, the ANC, and so forth. So yes, it's
22 just a matter of --

23 (Simultaneous speaking.)

24 MR. TONDRO: -- where it is.

25 CHAIRMAN HOOD: We backed them up with your point.

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1 Can you send that to all of us? It's back to my original
2 point. I think that's important.

3 MR. TONDRO: Yes, I will do that.

4 MS. SCHELLIN: So it didn't go far enough other
5 than the general.

6 CHAIRMAN HOOD: Okay, so I wrote down a few
7 things. So bear with me? The other thing is 13, I'm sorry,
8 103.13(m), I'm going to read it. "To clarify the procedure
9 for inclusion in the record, the Commission Board grants a
10 request to reopen the record to allow a written version of
11 planned testimony that had been prevented by technical
12 issues."

13 I didn't understand all of it. And I think, so
14 I didn't understand all of it. So you're saying if
15 somebody's not able to testify, I think we had this case, I
16 mean, a situation. That was only a situation. And they were
17 not able to get in. And they would have to ask could they
18 submit that for us to reopen the record.

19 Now, the case we had the other day, staff knew
20 that the person couldn't, the BZA staff knew that the person
21 couldn't get in. So is that the same, falling along the same
22 line or not? I'm just curious.

23 MR. TONDRO: So in this case, what I try to do
24 with these revisions were to break it out into two parts.
25 so M, as in Max, that is what establishes what the request

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1 to reopen the record, the person who says I had technical
2 difficulties, this is what they have to demonstrate.

3 And then N, as in Nancy, says that, A, it assigns
4 the presiding officer, so it doesn't have to be the whole
5 Board or the Commission, but the presiding officer has the
6 ability to grant that request. So in the example you
7 indicated, where it's the Office of Zoning knows, yes,
8 there's no question there's a technical difficulty, then it
9 would be the secretary, or the Board, or the Commission would
10 come to the presiding officer, you or Chairman Hill, and you
11 would just grant it that way.

12 So it was really to make it clear that this is
13 something that is not automatic, because the concern is, and
14 I don't want to say that it's an issue where you always
15 worried only about, as it were, the people trying to bend the
16 rules, but we didn't want necessarily things being delayed.

17 Because people said, oh, I would have testified,
18 but I couldn't, therefore I need another delay. We have to
19 delay a week, or another week, and so forth. So this is
20 something where it gives the board or the Commission the
21 ability to weigh that and determine that issue.

22 CHAIRMAN HOOD: Okay. And that's kind of where
23 I was going, because I know we would get delays trying to
24 slow things up or do it the other way. It goes all kinds of
25 ways. So we want to make sure we fit. Ms. Schellin, do you

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1 have --

2 MS. SCHELLIN: I think that mirrors our
3 regulations and a request to reopen the record in general.
4 Where I send things to you know, they have to make the
5 request. And if you approve it, at least from the Commission
6 standpoint, and the BZA I'm sure follows the same rules, if
7 you approve the request to reopen the record, then I will put
8 the document in the record.

9 CHAIRMAN HOOD: Okay.

10 MS. SCHELLIN: So there are two separate, you got
11 the request and the document itself per the regs, as the
12 regs. So that just mirrors that.

13 CHAIRMAN HOOD: Okay. So I'll have --

14 MR. TONDRO: And that was my intent, was to mirror
15 that practice, as Secretary Schellin just described.

16 CHAIRMAN HOOD: Okay. 103.13(o), I think I've got
17 that. I think that reads very well.

18 Let's talk about the, did I read somewhere hybrid,
19 or maybe I read that in the Committee of 100's letter. You
20 know, I don't like hybrids, but I didn't understand what the
21 hybrid was. Was that something we did, or was that, that
22 might have been the Committee of 100's letter.

23 When we say a person has a chance to either have
24 virtual or opt into it in person, so instead of having in
25 person, the person can also opt into a virtual, correct? It

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1 can go both ways.

2 MS. SCHELLIN: No. We don't have it that way.

3 MR. TONDRO: The way it's currently written, which
4 is the beginning of 103.13, it establishes the authorization
5 for the Board or the Commission to have either partial or
6 complete online, which is I think what the Committee of 100
7 is talking about, hybrid. Again, this is sort of a general
8 authority.

9 So the Commission can, at this point, the
10 Commission or the Board is only doing all virtual or all in
11 person. But this gives the Commission or the Board that
12 option in the future should it so be inclined to have, let's
13 say, some people in an in-person and then other people who
14 are able to video stream from outside if, again, that gives
15 the authority to the Board or Commission to do so.

16 If it does, and so that's the authority for all
17 online on partially online. The ability for a party to
18 request is only to request to opt out of the online, because
19 we thought that was important to give them that opportunity.

20 What I've added, you'll see in the red, is just
21 to be clear that they have to demonstrate how that would, the
22 reasons for why it would prejudice them and that it wouldn't
23 prejudice other parties.

24 CHAIRMAN HOOD: So why can't it be, why can't we
25 have it the other way as well?

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1 MR. TONDRO: We can. At this point, we're focused
2 on doing the virtual. There's no reason why we can't do it
3 the other way around too.

4 CHAIRMAN HOOD: I'm waiting to hear from my
5 colleagues. But I'd also like to see us do it because, you
6 know, because we've been getting a lot of compliments about
7 how people were engaged. I personally have some friends
8 who've never been to a hearing but have told me they've been
9 watching us, and I hope they're not listening now, but
10 they've been watching us. And they are now learning zoning.
11 They're interested in this subject.

12 And we're getting more people here than we've ever
13 gotten down to the hearing room. And people are more
14 engaged. And I think the merits in the records, in our track
15 record would show that. Mr. Shapiro?

16 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
17 support that. I think there's a technical issue associated
18 with it that we just have to figure out. But the idea of
19 behind it, which is if somebody feels like it's easier for
20 them, or for whatever reason they need to testify remotely,
21 I like it. Now, how we make that work isn't as easy as what
22 we're used to right now.

23 CHAIRMAN HOOD: Right.

24 COMMISSIONER SHAPIRO: Because hybrid is
25 technically complicated. It's not anywhere close to

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1 unsolvable, it's just technically complicated.

2 CHAIRMAN HOOD: Right, and I ---

3 MS. SCHELLIN: I think that, to answer Chairman
4 Hood's question, it's either, you know, if an applicant files
5 a case, and you guys have set it down if it needs to be set
6 down, if it's a design review, then I would deal with them
7 directly.

8 But that they would make that request, I want my
9 hearing to be in person, once you guys go back to in person
10 hearings too, or I want my case to be heard virtually. I
11 think that's what he's asking. Why can't they, if they can
12 now choose to wait until you guys go back to in person
13 hearings, why then when we go to in person hearings can't
14 they then do the reverse, ask for a virtual hearing? Because
15 we know it works. So that's what he's saying, why can't we
16 do the reverse.

17 CHAIRMAN HOOD: Exactly.

18 MS. SCHELLIN: But as far as a hybrid, I know that
19 we talked about this before when we were doing the VR16. And
20 you're right, Commissioner Shapiro, we did talk about that,
21 and it was going to be, we didn't know how we, we did not
22 have a way to be able to record in our hearing room, the
23 hearing there, and having things go on from within the
24 hearing room, videoing that, and then people calling in from,
25 you know, through Zoom or whatever, and trying to merge them

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1 together. That we could not do, at least at that time.

2 And I don't think that there's any way at his
3 point without maybe having to invest in a lot more equipment
4 and/or programs which we know that's not happening, because
5 money is frozen. But at the time, it was discussed and there
6 was, you know, we didn't know how we could do that in our
7 hearing room.

8 CHAIRMAN HOOD: Mr. Shapiro?

9 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
10 mean, the way I look at this is none of this is something
11 that a petitioner can require of us. It's always a request.

12 MS. SCHELLIN: Right.

13 COMMISSIONER SHAPIRO: And then we can either
14 grant it or not. So I don't have a problem recording this.
15 And, you know, if for whatever reason the request is made and
16 we're not technologically capable of agreeing to it, then
17 we're not.

18 But the solutions are there, the technology
19 solutions are there. So, you know, it's just a money issue
20 at some level. So I'd say we, I don't have any problem with
21 it being in there, both ways. So this is a change to what
22 you have, Max, which is to add both ways. And that's what
23 I would support.

24 MS. SCHELLIN: Right, but not the hybrid?

25 COMMISSIONER SHAPIRO: No, no. I'm okay with the

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1 hybrid. My view, I'm okay with the hybrid. It's a question,
2 nobody automatically gets to do it. They just make the
3 request of us.

4 MS. SCHELLIN: Well, I think that it's wrong to
5 put it in our regulations when we're not able to do it. I
6 mean, right now the Office of Zoning is not capable of doing
7 hybrid hearings. And I just don't think we should put in.

8 CHAIRMAN HOOD: Let me just say, I think the way,
9 at least the way I'm reading it in the Committee of 100's
10 letter, Ms. Schellin, is that a hybrid to me is very
11 cumbersome. That's going to be a lot of, I don't even
12 understand how that's going to even work. So we've got half
13 the people at home, half the people -- suppose I want to stay
14 home, and the other Commissioners want to be down at the, how
15 is all that going to work?

16 MS. SCHELLIN: Right.

17 CHAIRMAN HOOD: I think I'll stay home. I just
18 don't understand that.

19 COMMISSIONER SHAPIRO: At the risk of getting
20 caught up too much in the technical, I can tell you by some
21 experience that it does work. It just has to be staffed.
22 It's not even that expensive, it just has to be staffed. I
23 mean, to be blunt, Paul or somebody sits there, they take in
24 the call. And then that call gets fed onto our screens.

25 MS. SCHELLIN: Right, we ---

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1 (Simultaneous speaking.)

2 CHAIRMAN HOOD: We're back to the Jordan rule.
3 And we weren't nearly, and I believe that our former Chairman
4 of the Board of Zoning Adjustment, Lori Jordan, mentioned
5 that. We tried that once. We weren't as perfected as we are
6 now.

7 COMMISSIONER SHAPIRO: We have a lot more
8 experience now.

9 CHAIRMAN HOOD: Yes. I don't know. I just ---
10 a hybrid makes me nervous.

11 MS. SCHELLIN: And I think that we talked about
12 having, you know, if there was a need to have something up
13 on the screen, and then you have people calling in, and they
14 need to be up on the screen. And so you're going to have to
15 have different feeds in the room and stuff. And so it isn't
16 --

17 COMMISSIONER SHAPIRO: It's complicated.

18 MS. SCHELLIN: Well, it is complicated. Because
19 you have to have, I know from the wiring we've had in there,
20 and I just know that it's not cheap for the work we've had
21 done --

22 CHAIRMAN HOOD: So right now, the hybrid is not
23 in there. Or I don't where I got that. Maybe I got it ---

24 (Simultaneous speaking.)

25 MR. TONDRO: It is in there. If you look at the

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1 beginning of 103.13, it says that the Board or the Commission
2 may hold its meetings and hearings in a partially or
3 completely online virtual mode. So that was in there, and
4 that's the current, what is current in an emergency. Because
5 it was in order to give the Board or Commission the option.
6 Again, it's may hold it. So I would think that, going back
7 to Commissioner Shapiro, that's just giving the Board and the
8 Commission the opportunity to do it --

9 CHAIRMAN HOOD: Flexibility.

10 MR. TONDRO: -- with authorization. But you don't
11 have to. You can choose to do all online or all in person.

12 CHAIRMAN HOOD: Okay, I got you.

13 MR. TONDRO: And to some extent, there is a
14 question of whether, I'm not sure when in person will start
15 again. It's probably not likely in the next foreseeable
16 future. The hybrids probably aren't going to be an issue at
17 least for right now. So it may be better just to focus on
18 the virtual world that we're in, unfortunately, for right
19 now.

20 CHAIRMAN HOOD: I would agree. But I would agree
21 with Commissioner Shapiro. I mean, it doesn't hurt us to
22 leave it at that. I don't think it hurts us. Even though
23 we know we're not doing it, or can't, at least right now,
24 mostly for financial reasons. But on down the line, a
25 Commission may be able to do it. So it doesn't hurt. And if

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1 they come along, they may want to take it out. Anyway,
2 Commissioner Shapiro?

3 COMMISSIONER SHAPIRO: Yes. I mean, the example
4 I have is that the Prince George's Planning Board holds what
5 are essentially hybrid hearings. Because the Chair actually
6 is in person with the staff. And then almost everybody else
7 occasionally is, Zoning attorney will come in, but almost
8 everybody else is virtual.

9 So it's the other way of hybrid, which is that
10 it's mostly virtual with a little bit of in-person. And so
11 my only thing is, you already said it, but let's give
12 ourselves maximum flexibility, and then the technology either
13 catches up with us or it doesn't. But we might as well just
14 do this once and get ourselves maximum flexibility.

15 CHAIRMAN HOOD: I agree with that. Commissioner
16 Turnbull?

17 COMMISSIONER TURNBULL: I would agree with the
18 flexibility. I mean, if we ever get back to normal, whatever
19 normal is going to be, or some version of normal, and if we
20 ever get back to the dais and we're having some kind of
21 hearings in our room, you know, in the past we've had so many
22 situations where we're setting up cases, and we're going to
23 say, well, the applicant wants to do it on a certain, certain
24 day.

25 And then we'll suddenly hear, well, Commissioner

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1 May is going to be out of town. And Commissioner Miller
2 might not be in there. So then we juggle all the dates. And
3 we say, well -- But if you had the option, if they could be
4 in, if a Commissioner, or two, or whatever could be still
5 available at their hotel wherever they're going to be,
6 they've got to go to a conference for their agency, for their
7 office, or whatever, they would have the, the Zoning
8 Commission or the Board or Zoning Adjustment would still have
9 the flexibility then to continue the hearing or the meeting,
10 whatever, with one member remote or two members remote.

11 I'm not talking about the public. I'm just
12 talking, I'm being selfish here and just talking about
13 Commission members and Board of Zoning members who are out of
14 town. But in order not to postpone a hearing or a meeting,
15 two of them or one of them, if there's only one, you could
16 be remote so that you could still continue.

17 I think that's the kind of flexibility that would,
18 well, I think we would have loved to have had a year ago or
19 two years ago maybe when we were doing some our work. So I
20 think it's a positive thing to try to keep in.

21 CHAIRMAN HOOD: You know, I agree with you,
22 because if Commissioner May would have called, we could have
23 saw how that worked today. So I agree with you.

24 COMMISSIONER TURNBULL: Yes, on the beach with his
25 martini or, you know, strawberry daiquiri.

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1 CHAIRMAN HOOD: Yes. So that's really all I have
2 on my questions. I think we put together a good tool. And
3 I'll tell you, the compliments that we've gotten, and I do
4 want to respond to the Committee of 100 today, and I'm going
5 to do that. But first, any other questions or comments?

6 And I appreciated Ms. Schellin and appreciated Mr.
7 Tondro, all the work that's been put into this.

8 Again, as we stated in the discussion I was having
9 with Mr. Tondro, some of the things that I looked at when
10 their letter was written, July the 2nd, 2020, and that's why
11 I always ask what is the track record. Our track record, if
12 you look at this letter that was written from the Committee
13 of 100 and our track record, a lot of these things we have
14 taken care of. And that's why I was wondering if there was
15 another time that they would be here to respond to what we
16 have now. Because we've taken care of a lot of that.

17 But most of all is, now, I know the Committee of
18 100 comes down in front of the Commission. But for me,
19 especially if it's virtual, the reason why I'm a proponent
20 of virtual is because we have more people now getting engaged
21 with the process and what we're doing, we're hearing from
22 people.

23 A case last night, I watched the BZA until 10
24 o'clock, and they started at 8:30. Now how tough would that
25 have been on them if they had to leave from downtown at

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1 whatever, 10 o'clock last night. They would have probably
2 been trying to probably postpone cases to later or move it
3 on.

4 I mean, they might had did exactly what they did.
5 But they were in the comfort of their own homes, they were
6 safe, they were able to accomplish all the business they
7 needed to take care of, and sometime, maybe we start at 6:30,
8 and sometimes our stuff usually goes to 11:00, 11:30. So I
9 think there's a lot of pro in this.

10 And I think, for me, the biggest piece of this is
11 getting people involved. And I also noted the Committee of
12 100 said walk-ins. They mentioned what Commissioner Shapiro
13 said. I think we've been very flexible. I've even changed
14 the opening statement. If people don't sign in in advance,
15 I always ask Ms. Schellin. Are you there? So we have opened
16 up this whole process to try to be as inclusive as possible.

17 I think the notice requirements are being taken
18 care of very well. If you don't have the technology, then
19 you have a telephone, or your cell phone. And Mr. Young is
20 taking care of this. So a lot of this in their letter, and
21 I hope they're listening, because I like for them to comment
22 on what we've done, I hope they've been watching it. And
23 it's been taken care of.

24 So I just wanted to say that about the Committee
25 of 100's letter. But again, when I read the letter, I said

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1 okay, well maybe they haven't been watching, they didn't see
2 what we were doing. But to me, it's not about necessarily
3 the Committee of 100. It's about the people who are not
4 involved, the people who don't come to hearings, and after
5 the fact they get mad if we made a decision.

6 But hey, look, we didn't know you were against
7 this. We had no evidence, there was no evidence in the
8 record that you were against this. But people who are in the
9 process at BZA yesterday got a number of comments. And I
10 can't impress us anymore that this virtual stuff has worked.
11 And it's working well. All right, that's all I have.
12 Anything, any other comments or questions? All right, any --

13 VICE CHAIR MILLER: I agree with you, Mr.
14 Chairman, and my colleagues, with everything, really, that's
15 been said. And I think compliments to the Office of Zoning
16 staff, Mr. Paul Young. I really think the hearings, both by
17 the Zoning Commission and the Board of Zoning Adjustment,
18 have evolved, actually seem much more focused and are working
19 better than some of the live in Judiciary Square hearings.

20 And I agree with Commissioner Shapiro's comments
21 about, you know, the requesting a live hearing. As long as
22 it's, they may request it. It's giving them authority to
23 request, but the discretion is mostly with the presiding
24 officer to make that decision, not necessarily, and it's
25 usually for good cause.

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1 But, you know, I think we had an ANC I won't
2 mention, who said they weren't going to meet with the
3 applicant until they can do it in person. Well, you know,
4 that's quite a delay. And that particular case had been
5 postponed by time, four times, five times as of last night.
6 And Chairman Hill said this is the last time. And they're
7 going to try to do something. Well, we'll see what happens.

8 But anyway, I do compliment Mr. Young and the
9 Office of Zoning staff, and thank Mr. Tondro and the OAG
10 staff, and Ms. Schellin and her staff for putting all of
11 these virtual hearing procedures in place which can be
12 tweaked as we go along, as we are right now.

13 CHAIRMAN HOOD: Right. I would agree. I think
14 all the work, and I'm not excluding the Commission or the
15 Board members, but I think all the work the staff, OAG, I
16 don't know what all OP did, I'm sure they probably had a hand
17 in this too, as well as Office of Zoning staff and especially
18 Ms. Schellin who was, you know, down on our end. I know BZA
19 had other members who helped them and then Mr. Tondro and his
20 team, all the work that's been done when we get here has made
21 it a lot easier.

22 I remember when Ms. Schellin first told me that
23 Mr. Young was going to be hounding, like, calling on people.
24 First I was, like, no, I'm supposed to do that. After I saw
25 how this went, that shows me. She thought about it. Because

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1 I can tell you. You think it was going smooth? It's going
2 smooth now. It would have been a mess if I had to do all
3 this and do what I do.

4 So I appreciate all the effort that everyone has
5 put into this. And I tout this around about how we're
6 affected. I mentioned this to the Chairman of the Council
7 about how good we're doing. So let's just keep up the good
8 work.

9 Now, I don't want us to back in September and a
10 storm come up and think we've got a problem. But let's just
11 keep, and we can fine tune it as we go along. That's what
12 I believe. All right, anybody else?

13 COMMISSIONER TURNBULL: We all love you, Mr.
14 Chair. We know you're doing a good job.

15 CHAIRMAN HOOD: Well, we're all doing a good job.
16 It's a team effort. Because if it had to do it by myself,
17 I'd be in trouble. Well, I'm in trouble all the time anyway.
18 So anybody have anything else?

19 Okay, Mr. Tondro, you have any well, it's kind of
20 like a hearing. You have any closing?

21 MS. SCHELLIN: Office of Planning, I don't think
22 they have anything.

23 CHAIRMAN HOOD: Let me see if Mr. Tondro has any
24 closing. Then, Ms. Schellin, I'll see if you have any
25 closing. But we'll see if anybody's out there to comment.

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1 Mr. Tondro?

2 MR. TONDRO: Yes. Just to clarify, in case there
3 is a desire by the Commission to move forward and to adopt a
4 second emergency and proposed action, what I have down as
5 what you, the direction that you want OAG and OZ to add to
6 what is the current text would be a definition of live video
7 that clarifies that prerecorded video is not to be
8 constituted as live video. That live video is not, testimony
9 by live video is allowed, but you cannot pick up your
10 recording device and walk around with it or show anything,
11 just the person testifying, that's all. That's number one.

12 Number two, just to clarify or confirm that the
13 Board of Zoning Commission has the authority to provide extra
14 time for parties to respond to an exhibit, I believe that's
15 in there. But just in case, I would add that in.

16 And then finally, to confirm that an applicant
17 can request to do either, not just to do an in-person but
18 also to request an online only hearing provided that the
19 Board or Commission agrees. Those, I think, are the three
20 changes that I see that I heard from you all that we need to
21 make to the text.

22 CHAIRMAN HOOD: Okay. Any other questions or
23 comments, Commissioners? All right, Ms. Schellin, do you
24 have any closing?

25 MS. SCHELLIN: I was just going to say that if the

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1 Commission would find it appropriate to do so, that they
2 would approve a second emergency and authorization of
3 proposed rulemaking for this case, based on the text
4 discussed this evening, and allow OAG and OZ to work together
5 to tweak the language based on the discussion this evening
6 and, if so, that you would take action to do that.

7 CHAIRMAN HOOD: Okay. Ms. Schellin, may I ask,
8 can we check, or you, Mr. Young, can we check the line to
9 make sure nobody is here to testify in opposition or support?
10 I'm going to call for that.

11 MS. SCHELLIN: When I checked just a few minutes
12 ago, there was no one on, and I know that nobody testified
13 in advance.

14 CHAIRMAN HOOD: Okay. All right, so with that,
15 let me close this hearing. And let me talk to my colleagues.
16 Are we ready to move forward with what we have in front of
17 us? Would somebody like to make a motion. I think I've
18 done enough talking?

19 VICE CHAIR MILLER: Sure, I'll now make a motion,
20 Mr. Chairman, that the Zoning Commission take second
21 emergency action and proposed rulemaking, in conformity with
22 that second emergency action, to revisions to the text
23 amendment proposed in Zoning Commission Case Number 20-11,
24 text amendments are Subtitles Y and Z, rules of practice and
25 procedure for virtual public hearing regulations by both the

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1 Board of Zoning Adjustment and the Zoning Commission, and ask
2 for a second.

3 COMMISSIONER SHAPIRO: Second.

4 VICE CHAIR MILLER: And do you need publication,
5 or that was implied? Okay, that was implied.

6 CHAIRMAN HOOD: Okay. It's been moved and
7 properly seconded. Any further discussion?

8 (No response.)

9 CHAIRMAN HOOD: Okay, Ms. Schellin, can we do a
10 roll call vote?

11 MS. SCHELLIN: Commissioner Miller?

12 COMMISSIONER MILLER: Yes.

13 MS. SCHELLIN: Commissioner Shapiro?

14 COMMISSIONER SHAPIRO: Yes.

15 MS. SCHELLIN: Commissioner Hood?

16 COMMISSIONER HOOD: Yes.

17 MS. SCHELLIN: Commissioner Turnbull?

18 COMMISSIONER TURNBULL: Yes.

19 MS. SCHELLIN: Commissioner May? Not present.

20 The vote is four to zero to one to take second
21 emergency action and proposed action, second proposed action,
22 on Zoning Commission Case Number 20-11, and also with the
23 flexibility for the Office of Attorney General and the Office
24 of Zoning to work together on the text to be published based
25 on the Commission's discussion this evening.

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1 CHAIRMAN HOOD: Okay. I'm just making sure that
2 Commissioner May did not send me a proxy. I don't see one,
3 but he's very supportive, I'm sure, of what we just said.

4 MS. SCHELLIN: Yes.

5 CHAIRMAN HOOD: And he said that in his comments.
6 All right, so does anybody have anything else?

7 COMMISSIONER TURNBULL: Do you see, Mr. Chair, in
8 the month of August, we're on recess. Do you see anything
9 where we might be doing something virtual, live, to talk
10 about anything, just zoning issues in general, not
11 necessarily cases?

12 CHAIRMAN HOOD: Not that I know of, but if
13 something comes up, I'm sure Ms. Schellin will let us know.
14 But I believe we have no, other than BZA, I think all of us
15 probably need some way of participating, because that's Mr.
16 Hart's last day.

17 I know I'm going to, if I can get access, Mr.
18 Young and Mr. Moore, I'm going to come in and say some final
19 parting remarks to Mr. Hart. But I know that I will stay in
20 touch with him, because he's a great guy. And I just wanted
21 to stop and say something nice about him. I'm going to try
22 to say something nice about him --

23 (Laughter.)

24 CHAIRMAN HOOD: -- on Wednesday. But the only
25 thing, I think that's the only thing I have. I don't think

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1 I have a case. But we'll have to look.

2 So to answer your question, Mr. Turnbull, I think
3 we'll all be around. If something comes up, I'm sure they'll
4 notify is.

5 COMMISSIONER TURNBULL: Got you.

6 CHAIRMAN HOOD: Anybody have anything else?

7 (No response.)

8 CHAIRMAN HOOD: So, with that, you all have a safe
9 August. I know most of us will be in tune some kind of way
10 on BZA on Wednesday, but you all have a safe August. Be safe
11 out there, and your family, hope everybody stays safe. I'm
12 looking forward to seeing everybody back in September. And
13 thanks again for all the work everybody's doing.

14 MS. SCHELLIN: Thank you.

15 CHAIRMAN HOOD: You all take care. This hearing
16 is adjourned.

17 (Whereupon, the above-entitled matter went off the
18 record at 5:03 p.m.)

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C E R T I F I C A T E

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In the matter of: Public Hearing

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Date: 07-30-20

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