

April 24, 2020

PUBLIC HEARINGS IN A COVID-19 WORLD

We have several clients in various stages of rezonings or other land use processes, each of which requires filing an application, staff review, Public Hearing, and a Board or Council decision. These clients are asking questions such as, “How will my process move forward?” and, “When will my Public Hearing occur?” In case you are contemplating a rezoning or variance, or are in the middle of a rezoning or other land use process, our Rezoning and Land Use team wants to share our insights.

We have spoken with governmental staff in a variety of jurisdictions and they continue to work on applications from home or office, reviewing site plans, and providing comments. Pre-submittal meetings are often handled via Zoom or other electronic platform. Here at JAH, we continue to prepare and submit various land use applications for our clients. Since some local governments place limits on how many applications they accept each month, submitting now keeps our client’s projects on track, avoiding a mad dash and related delays once things get back to normal.

There are two types of hearings: a Public Hearing and a Quasi-Judicial Hearing. Examples of actions requiring a Public Hearing include rezonings, annexations, street or road closings, and text amendments. Actions that require a Quasi-Judicial Public Hearing include variances, conditional/special use permits, and appeals of notices of violations and zoning interpretations. Although both types of hearings are “public,” a Quasi-Judicial Hearing require parties to present evidence and involves due process rights that must be protected.

The UNC-Chapel Hill School of Government regularly advises local and state government on best practices. At this time, the School of Government recommends delaying any Quasi-Judicial Hearings and non-urgent Public Hearings until they can be conducted in person. However, local governments recognize the pressures that property developers face, including the costs associated with delays. As a result, some local governments are beginning to conduct Public Hearings for rezonings electronically.

For those governments that decide to conduct Public Hearings electronically, the School of Government recommends the following:

1. Complying with extra notice requirements that advise the public of the location and means whereby it can hear and/or watch the meeting.
2. Requiring Board members who are appearing remotely to verify their identities and state their names for the record.

3. Establishing a clear rule on how quorums will be affected should a Board member lose or terminate his/her connection.
4. Establishing a clear rule on how votes will be counted should a Board member lose or terminate his/her connection.
5. Restating each motion and the name of the Board member who made it.
6. Requiring a full roll call for each vote.
7. Ensuring public access by streaming meetings live on an online platform that allows the public to see and hear the meeting; providing a phone number so that persons without internet access can call and listen to the meetings; and posting recordings of the meetings online.
8. Establishing a method for public comment such as via email or a call-in number.

If you have any questions about Public Hearings or are interested in rezoning your property, please do not hesitate to contact our **Rezoning and Land Use** practice by phone (704.998.2306) or email (stodd@jahlaw.com).