

# White Paper for North Carolina Planning Boards and Boards of Adjustment:

Holding Virtual Public Meetings



Centralina Council of Governments

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## **Disclaimer**

**This white paper is for information purposes only and not for the purpose of providing legal advice or recommendations.**

## Introduction and Purpose

In response to the COVID-19 crisis, local governments in North Carolina are canceling, postponing, modifying, and avoiding gatherings of people. This creates issues for local governments that are required by North Carolina statute to conduct public hearings and meetings to remain in compliance with state law and local ordinances. Many local government employees are working remotely, creating the need to connect with co-workers and the public using online technology.

The purpose of this paper is to provide information to local governments in North Carolina for how they might continue to conduct business when face-to-face meetings are not possible. This paper also includes guidance on technology resources, practical tips, and lessons learned through experience by using these technology resources. The information in this document is not meant to be a comprehensive accounting of all possible technologies but to provide a few options for communities to consider and weigh against their own needs.

The document is organized into the following sections:

1. Tools and Resources for Holding Virtual Public Meetings
2. Best Practices and Lessons Learned
3. Board of Adjustment Specific Information

## Tools and Resources for Holding Virtual Public Meetings

### Understanding the Context:

The first order of business is to understand the laws that govern in-person public meetings in North Carolina and how they translate to virtual meetings. The best resource for this analysis is the UNC School of Government (SOG). In a March 13, 2020 blog post, "Meetings and Public Hearings Under the Coronavirus State of Emergency,"<sup>i</sup> Frayda Bluestein, David M. Lawrence Distinguished Professor of Public Law and Government, provides an interpretation of the North Carolina General Statutes (NCGS) Open Meeting requirements and offers guidance for holding electronic meetings. Review this post to understand the context for conducting virtual public meetings.

The SOG is posting on the Coates' Canon: NC Local Government Law website at: <https://canons.sog.unc.edu/> with updated information and interpretation of COVID-19 issues. This link also provides access to joining the RSS feed and email subscription.

## Tools to Hold Virtual Public Meetings:

*Please note that this is not meant to be an exhaustive list, but rather a resource providing several options that should be further vetted based on an individual community's needs.*

**Centralina Council of Governments does not endorse private sector companies, therefore, absence from this list is not a reflection on the quality of a product.**

In a blog post on the Coates' Cannon, "Can We Really Ban In-Person Attendance at Board Meetings During the Coronavirus Emergency,"<sup>ii</sup> Trey Allen, Associate Professor of Public Law and Government at the UNC School of Government, identifies the relevant North Carolina statutes that relate to open meetings and access by the public to meetings of a public body. Review Mr. Allen's post if you are interested in the background and legal issues.

The following list of technology tools is provided to help your jurisdiction understand what technology is available to conduct meetings of a public body by electronic means. There are several variables that can determine how your jurisdiction chooses to implement virtual communication—ranging from equipment availability to local know-how. To add additional complexity, access, quality, and strength of internet connection varies across geography and residents may be limited by access, quality, and cost. Considerations should be made to make public body meetings as accessible for all as possible.

Depending on the specific technology, attendees could log-in via a computer, tablet, or smartphone at a location that is convenient for them. Then they can see and hear presenters and participate during public comment and public hearings.

## Audio and Visual Compatible Options:

Facebook Live <https://www.facebook.com/facebookmedia/solutions/facebook-live>

Google Hangouts <https://gsuite.google.com/products/meet/>

GoToWebinar <https://www.gotomeeting.com/webinar>

GoToMeeting <https://www.gotomeeting.com/>

Microsoft Teams <https://teams.microsoft.com/start>

Mural <https://mural.co/>

Skype <https://www.skype.com/en/>

WebEx <https://www.webex.com/>

Zoom <https://zoom.us/join?zcid=3172>

Please note that there are call length and number of participant limitations for some of the software options depending on plans and pricing. Some of the above are free or have free options, while others require a subscription. Audio only software will limit access for the hearing impaired.

## Best Practices and Lessons Learned

Some readers of this paper may be veterans of virtual meetings while for other readers this might be the first time using this type of meeting format. Here are a few helpful tips that we would like to offer for your consideration.

The most helpful advice we can provide is to practice! Practice with whichever online meeting / conference call platform your jurisdiction has settled on using. Become familiar with the features and settings so that when issues arise during a meeting they can be quickly addressed.

### Publication & Notice of Meetings:

In order to ensure fair and equitable access to virtual public meetings, each jurisdiction must take the necessary actions to facilitate two-way communication. Actions include, but are not limited to:

- providing adequate notice to the public of the meeting including posting the information on the jurisdiction's website
- permitting participants to record or broadcast the public meeting
- allowing participants to address the public body during a public comment period

Regarding publication and access to a public meeting, access to many virtual meeting software tools requires a link or login information. A link or login information should be readily available to the public prior to the meeting, either through individual emails, posted on a community's website, and included in the public meeting notice. North Carolina's Open Meetings law states that if a public body changes its schedule of regular meetings then the public should be made aware at least seven (7) calendar days before the day of the first meeting. Every public body should keep full and accurate minutes of all official meetings, which can be in the written form or as an audio and video recording.

### Entry into a Virtual Meeting:

Instruct participants to login with their first and last names and that anyone using inappropriate/slang usernames will not be allowed to join. Some software (e.g., Zoom) allows the meeting host to put participants into a "Waiting Room" prior to the meeting so that the host can finish preparations. It is best practice to automatically mute participants and turn off video for participants upon joining the meeting to limit noise and disruptions. It is at the discretion of the board whether board members will remain muted during proceedings, which should be stated ahead of time. Participants that call in rather than video chat should have their phone numbers masked so they are not seen by anyone else.

Some online meeting software comes with the ability to track the attendance of those who logged in during the session and will provide a report after the meeting is complete. This report should be saved for possible future reference and meeting records.

There are some things to be aware of when hosting a public meeting on virtual software. For example, some software (e.g., Zoom) has experienced unwanted “gate-crashing” when entrance links are made public. “Gate-crashing” is where guests share their screen to display inappropriate or disturbing images. Ways to limit the probability of this happening include using host controls to limit screen sharing, using a waiting room to put guests in until the host is ready, disabling the private chat function, locking the meeting after it has started, and familiarizing oneself with other settings and features offered.

### Public Comments:

Comments from the public are an integral part of any public meeting and should be included during virtual meetings. Establishing a designated Question and Answer time will reduce confusion and interruptions. Those members from the public who would like to speak should use the “Raise Hand” function to be recognized. Alternatively, the “Chat” function can be utilized so that a queue can form. The meeting host or moderator will unmute participants individually during the public comment portion of the meeting. Most online meeting software has features such as a Chat Box, Raise Hand, or Question options for participants to engage with the meeting. We recommend practicing with the platform prior to a “real” meeting to become familiar with the features and tools.

### Agenda Items:

When presenting agenda items, presenters have the option of sending out the presentation material ahead of time for the public and board members to view on their own screens. They can also utilize the “Share My Screen” function to present the material in real time. If they are sharing their screen, material should be readily available and web browsers/tabs should be kept to a minimum to avoid confusion and limit distraction.

As board members discuss agenda items, it would be beneficial if board members start each statement by saying their name, and then follow with their discussion item or statement.

### Motions & Voting:

For recording motions it is best practice to ask for board members to state their name for the record, or for the Chair to verbally state the names of the board member who made the motion and the board member who seconded the motion. For recording votes of board members, an appointed individual should call on individual board members by name and ask them to state their vote. The absence of a vote from a board member should not be assumed as an affirmative.

If there is voting among the public, software with online voting and polling options should be chosen.

## Board of Adjustment Specific Information

For background, Adam Lovelady, Associate Professor of Public Law and Government at the SOG, wrote a recent blog post “*Remote Participation in Quasi-Judicial Evidentiary Hearings*,”<sup>iii</sup> which is a great resource.

With quasi-judicial cases, members of the public do not have the right to comment or actively participate in a Board of Adjustment hearing. If remote participation is allowed, written consent for the record must be obtained from all parties that agree to the use of this process.

Software that is equipped with both audio and visual access is preferred since it is closer to live engagement. At the discretion of the board, the general public may be called to provide factual testimony. All witnesses must be sworn in or affirmed, which can be done outside the jurisdiction’s front door before the virtual hearing, and then allow time for those participants to travel to where they are participating virtually to resume the hearing. Those who wish to provide a testimony must notify the local government’s Clerk prior to the hearing in order to arrange to have them sworn in. It is important to have a detailed agenda for the order of testimony prepared ahead of time, and that no public business be conducted other than what was approved.

Any party with legal standing has due process rights in a Board of Adjustment case, which includes the right to cross examine a witness. It is important to have procedures outlined for addressing cross-examination and evidence ahead of time. North Carolina gives some flexibility for the submission of evidence in quasi-judicial hearings.

## Closing

We are in a new state of practice and as additional lessons are learned we will do our best to update this document so that it remains useful. If you’d like to speak with a staff person from Centralina for help or guidance please contact us at [planning@centralina.org](mailto:planning@centralina.org).

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<sup>i</sup> Bluestien, Fradya. *Meetings and Public Hearings Under the Coronavirus State of Emergency*. <https://canons.sog.unc.edu/meetings-and-public-hearings-under-the-coronavirus-state-of-emergency/>. March 13, 2020.

<sup>ii</sup> Allen, Trey. *Can We Really Ban In-Person Attendance at Board Meetings During the Coronavirus Emergency*. <https://canons.sog.unc.edu/can-we-really-ban-in-person-attendance-at-board-meetings-during-the-coronavirus-emergency/> March 25, 2020

<sup>iii</sup> Lovelady, Adam. *Participation in Quasi-Judicial Evidentiary Hearings*. <https://canons.sog.unc.edu/remote-participation-in-quasi-judicial-evidentiary-hearings/>. March 24, 2020.