

# **Summerfield Board of Adjustment By-Laws November 2011**

## **1. Authorization and Purpose**

Pursuant to Section 9-1.3 of the Summerfield Development Ordinance as authorized by NCGS 160A-388 these by-laws are enacted by the Board of Adjustment (“the Board”) in order to clarify statutory rights and procedures.

## **2. Membership**

In accordance with Section 9-1.3(C) of the Summerfield Development Ordinance, the Board shall be presided over by the Chairperson who shall be elected during the first meeting of the calendar year. The Board shall also elect a Vice-Chairperson that will preside over meetings in the event that the Chair is either unable to attend or has a conflict of interest. Both Officers shall be elected by a majority of the Board, excluding alternates.

The Town Council will strive to appoint members equally representing the various sectors or districts of the Town, types of residential properties and other criteria as may be expressed by the Town Council. The Town Council will not discriminate on the basis of gender, ethnic or socio-economic background. Voting members are required to reside (be residents) within the Town of Summerfield corporate limits

In order for the Board to carry out its duties and responsibilities, all members and alternates are expected to attend each meeting. In the event of an absence or of a conflict of interest, the Board member or alternate should notify the Clerk to the Board or staff as soon as possible.

Section 9-4 of the Town of Summerfield Development Ordinance outlines general membership rules, including the number of members of the Board, and the powers and duties of the Board.

## **3. Timing of Decisions**

Decisions by the Board shall be made not more than thirty (30) days from the time of the hearing.

## **4. Conflicts of Interest**

Each committee member is expected to act in a manner to maintain their integrity and independence, yet be responsive to the interests and needs of the Town, Town Council and staff.

No Board member shall take part in the hearing consideration or determination of any case in which they hold a personal or financial interest.

No Board member shall vote on any matter deciding an application or appeal unless they attended the public hearing on that application or appeal.

No Board member shall discuss any case prior to the public hearing on that case except with staff.

Board members have legitimate interests (economic, professional, and vocational) of a private nature. Board members shall not be denied, nor should they deny to other committee members or citizens the opportunity to acquire, retain, and pursue private interests, economic or otherwise, except when conflicts with their responsibility to the public cannot be avoided. Board members must exercise their best judgment to determine when this is the case.

Board members will understand that the actions of their committee may interfere with, or be counter to, the actions of another committee of the Town Council. When this occurs, it is incumbent upon the Board members to properly discuss the issues arising from such conflict and be willing to accept the decisions made by other committees, staff, and Town Council as acting in the best interest of the citizens of Summerfield.

Board members should conserve the resources of the Town in their charge. They should employ Town equipment, property, funds and personnel only in legally permissible pursuits and in a manner that exemplifies excellent stewardship.

Board members have a *Fiduciary Duty* to the Town, not their own or other private interests. Any possible fiduciary conflicts shall be disclosed to the committee and the Town Council.

A criminal background check may be performed on any Board applicant.

## **5. Meetings**

The Board shall meet once a month unless canceled by the Chair. The Board shall designate the fourth (4<sup>th</sup>) Thursday day of the month (unless this conflicts with a holiday) at 6:30 PM as its regular meeting period. Board of Adjustment Staff shall be present for each meeting. Staff shall consist of a member of the Summerfield Planning Department or other designated Zoning Officer.

Pursuant to NCGS 160A-388 and Section 9-4.3(A) of the Development Ordinance, a quorum of three (3) members of the Board is required to open a public meeting. A super majority, or 4/5 of the regular Board membership is required for any ruling.

When not seated on the Board, alternate members shall not comment during the public meeting on any matter before the Board.

### Procedures

- All meetings shall be open to the public.
- The order of business at meetings shall be at the discretion of the presiding Chairperson.
- Any person wishing to speak must be sworn in by the Chairperson or their designee.
- All meetings will be recorded and the recordings shall act as the official minutes of the meeting.

## **6. Special Meetings**

Special, emergency or recessed meetings of the Board may only be called by the Chair. At least forty-eight (48) hours notice of the time and place of these special meetings shall be given by the Chair to each member of the Board.

## **7. Organizational meeting**

At their first meeting of each calendar year, the Board shall elect a Chair and a Vice-Chair.

## **8. Agenda**

The Board's clerk shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda should be received at least one week before the meeting. Any Board member may, by a timely request, have an item placed on the proposed agenda. Background information should be made available, and each Board member shall receive a copy of the agenda and agenda package and it shall be available for public inspection when it is distributed to the Board members. The Board shall discuss and revise, as necessary, the proposed agenda at each meeting.

## **9. Order of Business**

The order of business for each regular meeting shall be as follows:

- Adoption of the agenda
- Consideration of the minutes
- Public hearings
- Old business
- New business
- Adjournment

## **10. Public Hearings**

The format of public hearings shall be as follows:

- The Chair will read the case from the agenda
- Staff will explain the facts of the matter to the Board and, where appropriate, present graphic displays for the purpose of acquainting the Board with the action being requested.
- The applicant(s) will present sworn or affirmed evidence
- The proponents will present sworn or affirmed evidence
- The opponents will present sworn or affirmed evidence
- The Chair shall permit rebuttal and cross-examination
- The Board may ask questions of the proponents and opponents
- The Board will render its decision

## **11. Presiding Officer**

The Chair of the Board shall preside at Board meetings if they are present. The Chair will vote as a regular member. The Vice-Chair will preside over the meeting in the absence of the Chair.

## **12. House Rules**

Anyone may make a motion. Any motion requires a second. Only one motion may be considered at a time

### **13. Duty to Vote**

A member who is physically present has a duty to vote. A member may ask to be excused in cases involving a conflict of interest as defined by law or as outlined in these By-Laws. Failure to vote will be recorded as an affirmative vote.

### **14. Quorum**

A majority of the Board constitutes a quorum; majority is defined as more than half of the members of the Board. There are five Board members; therefore a quorum is at least three members.

All decisions of the Board of Adjustment are required to have a 4/5 majority. For example, if there are 5 Board members present, 4 of the members must vote to approve an application. If only 4 members are at the meeting, all of the Board must vote to approve a request. If there are only 3 members of the Board available at the meeting, they will not be able to consider the case and vote to approve.

### **15. Minutes**

Full and accurate account of the Board proceedings shall be kept. Minutes shall be a general account so that a person not in attendance would have a reasonable understanding of what transpired; the official minutes are a CD recording of the minutes. Minutes shall be open to inspection by the public. Minutes shall include each motion and the results of each vote.

### **16. By-Laws may be amended**

These rules of Board procedure may be amended from time-to-time by the Board of Adjustment members and a majority vote.

### **17. Robert's Rules of Order**

The Board will generally refer to Robert's Rules of Order Newly Revised during meetings.

### **18. Compensation**

Board members will not be compensated for their time while serving on the Board. Reimbursement for expenses directly attributed to activities of the Board such as travel, attendance at out-of-town meetings, and reimbursements for purchases made as part of an ongoing project or event are allowed following the established reimbursement procedures for the Town of Summerfield.

### **19. Alternate Members**

Alternate members of the Board shall be called on to participate in those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of financial or other interest. Regular members, on receiving notice of a meeting they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly notify the clerk that they are unable to attend or participate. Alternate members shall have the same powers and duties as regular members. To the extent practicable, the alternates, when called upon to participate because of a regular member's absence, shall alternate their participation between each other.

When an alternate member attends a meeting and is called upon to participate because of a regular member's absence, that alternate member shall retain their "regular" status should the absent regular member enter the meeting after the public hearing has been opened. The regular member who appears after the opening of the hearing will take on "alternate" status for the duration of that portion of the meeting. If an alternate member is called on to participate in the Board's consideration of an item from which the regular Board member has been excused due to conflict or otherwise, then the alternate shall relinquish their seat upon conclusion of that matter.