

**BY-LAWS GOVERNING
SELMA BOARD OF ADJUSTMENT**

Sec. 2-31. – Board of Adjustment.

There is hereby established a Selma Board of Adjustment under the authority of G.S. 160D-302.

Sec. 2-32. – Board of Adjustment composition and membership

- a) The Board of Adjustment shall consist of five (5) members and three (3) alternates.
 - 1) Four (4) members appointed by the Town Council shall reside within the town.
 - 2) One (1) member appointed by the Johnston County Board of Commissioners, shall reside in the town's extraterritorial jurisdiction. If, despite good faith efforts, enough residents of the extraterritorial jurisdiction cannot be found to fill the seat reserved for residents of that area, then the Johnston County Board of Commissioners may appoint another resident of the county (including a resident of the Town) to fill this seat. If the Johnston County Board of Commissioners fails to make this appointment within ninety (90) days of receiving a resolution from the Selma Town Council requesting that it be made, the Town Council may make this appointment.
 - 3) Two (2) alternate members appointed by the Town Council shall reside in the town.
 - 4) One (1) alternate member appointed by the Johnston County Board of Commissioners shall reside in the town's ETJ.

- b) An alternate member shall be called upon by the Town Clerk to participate in an individual case in the place of a member who has a conflict and is ineligible to participate in that case to ensure applications are processed expeditiously in accordance with Section 17-1405. Assignments shall be rotated between the alternate members except that the alternate appointed from the ETJ shall be called first when the regular member from the ETJ is unavailable.

- c) The Board of Adjustment shall, by majority vote of its membership, elect one of its members to serve as Chairperson and preside over the board's meetings and one member to serve as Vice-Chairperson, at its first meeting in August of each fiscal year.
 - 1) A person so designated shall serve in either capacity for a term of one (1) year unless their term of appointment to the board expires sooner. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the board membership.
 - 2) Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues.
 - 3) The Chairperson shall set, approve, and make changes to the agenda.

- d) All members appointed to the Board of Adjustment shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160D-309.

- e) Applications for the Board of Adjustment will be reviewed by the Board of Adjustment and then a recommendation may be provided to the Selma Town Council for the final appointment decision. Final Appointment decision for all applicants is left to the discretion of the Selma Town Council as required by G.S. 160D-310.
- f) Board members shall be appointed for a three (3)-year term, but a member may continue to serve until their successor has been appointed. Members may reapply for a seat on the Board of Adjustment at the expiration of a term.
- g) Board of Adjustment members serve at the pleasure of the Selma Town Council.
- h) The absence of any member from more than 25% of scheduled meetings in a calendar year without leave except when such absence is made necessary by sickness or other similar cause, ruled as emergency in nature will declare vacant the seat of such member, in which event the vacancy this created shall be filled by the Selma Town Council.

Sec. 2-33. – Meetings of the Board of Adjustment

Regular meetings of the Board of Adjustment shall be held at 6:00pm on the third Thursday of February, May, August, and November. Board of Adjustment meetings shall be held in the Jernigan Building. The Board of Adjustment shall meet frequently enough so that it can act in conformity with Section 17-1405, "Applications to be Processed Expeditiously." If a scheduled meeting falls on a Holiday where Town offices are closed, the meeting shall automatically be rescheduled to the following Thursday.

Sec. 2-34. – Powers and duties of the Board of Adjustment

- a) To hear and decide appeals where it is alleged by an applicant that there is error in any order, requirement, permit, administrative decision, determination, or refusal made by the administrative officer in the carrying out or enforcement of any provision of this chapter. The Board may reverse or affirm, wholly or partly, or may modify the order, requirements, administrative decision, or determination appealed from, and shall make any order, requirement, quasi-judicial decision, or determination that in its opinion ought to be made in the premises. To this end, the Board shall have all the powers of the officer from whom the appeal is taken. An appeal to the Board of Adjustment shall be conducted in accordance with the provisions of Article XIV, Part 1, Section 17-1400.
- b) To authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. Requests for variances shall be processed and considered in accordance with the provisions of Article XIV, Part 1, Section 17-1401, "Variances."
- c) A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial

decision maker. If an objection is raised to a member's participation and that member does not recuse him or herself, the remaining members shall by majority vote rule on the objection. Impermissible violations of due process include, but are not limited to:

- 1) When the member has a direct financial interest in the outcome of the matter at issue; or
 - 2) When the matter at issue involves the member's own official conduct; or
 - 3) When participation in the matter might violate the letter or spirit of a member's code of professional responsibility, or
 - 4) When a member such close familial, business or other ties to the applicant that the member cannot reasonably be expected to exercise sound judgement in the public interest, or
 - 5) When a member has a fixed opinion prior to hearing the matter that is not susceptible to change, or
 - 6) When a member has undisclosed ex parte communications. ("Ex parte communications" means a communication with only one party or side in a disputed case.)
- d) The Chairperson or any member temporarily acting as Chairperson is authorized in his or her official capacity to administer oaths to witnesses in any matter coming before the Board.
- e) The Chair may subpoena witnesses: The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoena made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. (See Section 17-1400 Appeals)
- f) Other parties may request a subpoena: To request issuance of a subpoena, persons with standing under Section 17-1400 "Appeals" (F) "Other Persons with Standing to Appeal", may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled.

Sec. 2-35. - Quorum and voting.

- a) A quorum for the Board of Adjustment shall consist of a majority of the board membership. A quorum is necessary for the board to take official action.
- b) All actions of the Board of Adjustment shall be taken by majority vote, a quorum being present.
- c) A roll call vote shall be taken upon the request of any member.
- d) Extraterritorial planning area members may vote on all matters considered by the board, regardless of whether the property affected lies within or without the Town.