

## **General Rules for the Monterey Zoning Board of Appeals**

### **1.0 Powers, Duties and Procedures**

The powers of the Board of Appeals shall include the following:

**1.1: Appeals** To hear and decide appeals and review any order, requirement, decision or determination made by the Select Board or other officer charged with the enforcement of this Bylaw. Such appeals may be taken to the Board of Appeals by any officer of a board of the Town, or by any person aggrieved by such order, requirements, decision or determination, following the procedure established under Chapter 40A of the General Laws as amended.

**1.2: Special Permits** To grant permits for exceptions as provided in this Bylaw and in Chapter 40A of the General Laws when it shall find, after a public hearing, that such exception shall be in harmony with the general purpose and intent of the Bylaw and that the use involved will not be injurious, noxious, offensive, or detrimental to the established or future character of the neighborhood and of the Town and subject to appropriate conditions or safeguards if deemed necessary. Upon receipt of a request for permit, the Board of Appeals shall notify the Planning Board, Conservation Commission, and the Board of Health of the request, and said boards shall respond to the Board of Appeals within thirty (30) days thereafter by written reports of their findings in respect of their specific fields of responsibilities. If deemed necessary, said boards shall make on-site plan reviews and inspections.

**1.3: Variances** To hear and decide requests for a variance from the terms of the Bylaw where the Board of Appeals specifically finds that, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. The Board may authorize a use or activity variance. Upon receipt of a request for a variance, the Board of Appeals shall notify the Conservation Commission, Planning Board, and the Board of Health of the request, and said boards shall respond to the Board of Appeals within thirty (30) days thereafter by written reports of their findings in respect of their specific fields of responsibilities. If deemed necessary, said boards shall make on-site plan reviews and inspections.

### **1.4: Comprehensive Permit (40B)**

See Comprehensive 40B Permit Rules for the Monterey Zoning Board of Appeals.

### **2.0 Procedure**

Anyone appealing the decision of a town board or officer to the ZBA must file application for appeal within thirty (30) calendar days of the date of the decision being appealed.

**2.1** Applications for special permit or variance may be brought before the ZBA at any time in relation to a building inspector's denial of building permit for reasons of zoning. Applicant must file seven hard copies with the Town Administrator, one digital copy to the Town Administrator and one complete hard copy application shall be filed with the Town Clerk during the Town Clerk's business hours to be date-stamped.

**2.2** Attached are the Application Instructions adopted by the Board, which may be changed from time to time by majority vote of the Board. Such instructions shall be complied with by all parties seeking relief from the Board. If a party seeking relief submits a Draft Application (as such is described in the Application Instructions) the draft shall be reviewed by the Chair of the Board and any comments shall be transmitted by the Town Administrator to the applicant. In the absence of the Chair, the Vice Chair shall complete said draft review.

**2.3 A hearing shall then be held within sixty-five (65) calendar days after the Town Clerk receives the packet (100 days if it is not a special permit application),** and an announcement shall be made in a newspaper of general circulation once in each of two successive weeks, the first not less than fourteen (14) calendar days before the hearing. Notice must also be posted at the town offices. (Continuations need not be posted.) All hearings shall be open to the public and no person shall be excluded unless he/she is considered by the Chairperson to be a "serious hindrance" to the workings of the Board.

**2.4** The town is responsible for notifying all abutters to the proposed project, and all within 300 feet of the property (600 if a cell tower application) must be notified (via certified, return-receipt-requested mail), as well as the Monterey Planning Board, and the planning boards of abutting towns. Proof of notification shall be provided to the ZBA. The Town is also responsible for advertising notice of the public hearing in a newspaper of general circulation in Monterey for two (2) consecutive weeks for a period of not less than fourteen (14) days prior to the day of the hearing. The notice shall contain the name of the applicant, a description of the area or premise, the date, time and place of the hearing, subject matter of the hearing and the nature of the action or relief being requested.

**2.5** The Town Administrator shall identify a few potential hearing dates and times, and notify all ZBA members and alternates by email. When five members agree to a date and time, the Administrator shall notify all ZBA members and alternates, as well as the BOH, Con Comm and Planning Board.

**2.6 A decision shall be made within ninety (90) calendar days of the date the hearing commenced** (more if the Board and applicant mutually agree). A Notice of Decision shall be filed with the Town Clerk within fourteen (14) calendar days of the decision, or within ninety (90) calendar days of the date the hearing commenced, whichever is shorter. Date and time when the Notice of Decision was received shall be certified by the Town Clerk. A copy of the Notice of Decision shall be mailed forthwith to the petitioner, applicant, or appellant, to the parties in interest (as defined in MGL Chapter 40A, §11), to

the Monterey Planning Board, Board of Health, Conservation Commission and to every other person present at the hearing who requested notice.

**2.7 A decision may be appealed in court within twenty (20) calendar days from the Notice of Decision.** If no appeal is made, the Town Clerk shall so certify, and return a copy of the Notice of Decision and Notice of Recording to the Town Administrator. The Town Clerk shall then mail the originals to the applicant, to be filed in the Registry of Deeds. Applicant must provide proof of filing with the Registry to the ZBA and Assessors.

**2.8** If no decision has been made by the ZBA within ninety (90) calendar days of a hearing, the petitioner may appeal to the Town Clerk for a constructive permit within fourteen (14) calendar days of the ninety days.

**2.9** An appeal of a constructive permit may be made within twenty (20) calendar days of the date the Town Clerk receives the request for a constructive permit. In the event of such an appeal, notice of court decision shall be filed with the Clerk, and a constructive permit either issued or denied accordingly.

**2.10** Special Permit construction, if allowed, must commence within two years.

**2.11** If a permit is denied by the Board the applicant cannot resubmit the application for two (2) years unless the project has significantly changed and new evidence supporting this will need to be presented.

**Notes:**

- No hearing may be held on a day when a state or municipal election occurs.
- Every project must include the address, description, or other identification of the subject of the petition, as well as the date, time, and place of the hearing, and the nature of the petitioner's request.
- Final approval and request for a building permit shall include a record of filing with the Registry of Deeds, and fees paid by the petitioner.
- No negative decision of the ZBA shall be acted upon favorably within two years, except by a vote of all but one of the board and a second hearing is held.

**3.0 Hearing Process**

3.1 Chairperson calls the meeting to order

- A. Introduction of Board
- B. Introduction of applicant and advisors
- C. Relief applicant is seeking is stated

3.2 Clerk reads:

- D. Legal notice
- E. Summaries of Board of Health, Conservation Commission and Planning Board
- F. Letters from interested groups/individuals

- 3.3 Applicant or designee makes presentation (note: minimal interruption)
- 3.4 Abutters to the property and any other interested parties, present at the hearing shall be heard and the applicant will have a chance to rebut matters raised by opponents.
- 3.5 Questions from Board members
- 3.6 Questions of audience
- 3.7 Further questions from Board

#### **4.0 Deliberative Session**

- A. Board only discussion
- B. Establish findings (note: tentative until wording decided through circulation i.e. via email)
- C. Vote
- D. If application is granted; set conditions
- E. Applicant notified

#### **5.0 Decisions**

##### **5.1 Withdrawals**

An application may be withdrawn by the applicant, without prejudice, by notice in writing to the Board, prior to the publication of the public hearing notice. After the notice of public hearing, an application may be withdrawn without prejudice by notice in writing to the Board, providing at least four (4) members are present to vote in favor of the withdrawal. If an application is withdrawn the filing fee is forfeited.

#### **6.0 Board Officers**

The Board, by majority vote, shall select a Chair, Vice Chair and Secretary. Each officer shall serve until the earlier of (i) the end of their term, or (ii) when replaced by the Board by a new vote. An election for such officers may be called by any Board Member at any time, but not within six (6) months of the last election of officers.