

**Montgomery County Zoning Ordinance
(Chapter 59, Montgomery County Code 1994, as amended)**

Section 59-G-3.1 Authority – BOARD OF APPEALS

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-A-4.11(b) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;
- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;
- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property; and
- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties. These provisions, however, shall not permit the Board to grant any variance to any setback or yard requirements for property zoned for commercial or industrial purposes when such property abuts or immediately adjoins any property zoned for residential purposes unless such residential property is proposed for commercial or industrial use on an adopted master plan. These provisions shall not be construed to permit the Board, under the guise of a variance, to authorize a use of land not otherwise permitted.

NOTE: In view of decisions of the Maryland Courts and the Board, appellants should be prepared to show that the hardship is a serious one, that there is an urgent necessity for a variance, that the Ordinance requirement in question results in what amounts to a denial of reasonable use of the land if the requested variance is not granted.