VARIANCES

“USE”

Where the appeal or application request a use variance, that is, a variance for the approval of a use which is not permitted in the district, then the following standards shall be considered and weighed in determining whether the grant of a variance is warranted to afford relief of an unnecessary hardship:

DUNCAN FACTORS

A. Whether uses permitted in the district may be reasonable established on the property and whether they are economically viable on the property in question without the variance.

B. Whether the variance is the minimum variance which will afford relief to the property owner.

C. Whether the essential character of the neighborhood will be substantially altered or adjoining properties will suffer interference with their proper future development and rights as a result of the variance.

D. Whether the property in question has unique or exceptional circumstances or conditions that do not generally apply to other properties in the vicinity and within the same district.

E. Whether the hardship condition was created by actions of the applicant.

F. Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance.

G. Whether the use requested is similar in character to the permitted uses in the subject district.

H. Whether the subject property is adequate to meet the needs and requirements of the proposed use.
“AREA/SIZE”

Where the appeal or application request an area variance, that is, a variance involving provisions relating to yard dimensions, setback, height, or similar spatial or dimensional requirements, then the following standards shall be considered and weight in determining whether the grant of a variance is warranted to afford relief of practical difficulties:

A. Whether the property in question will yield a reasonable return and whether there can be any beneficial use of the property without the variance.

B. Whether the variance is substantial.

C. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties will suffer interference with their proper future development and rights as a result of the variance.

D. Whether the variance will adversely affect the delivery of governmental services.

E. Whether the property owner purchased the property with knowledge of the zoning restriction.

F. Whether the property owner’s predicament can be obviated through some method other than a variance.

G. Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance.

H. Whether the property in question has unique or exceptional circumstances or conditions that do not apply to other properties in the vicinity and within the same district.

Sec. 1005-3 Issuance

A variance shall not be granted unless the Board of Zoning Appeals makes a positive determination that the criteria contained herein are satisfactorily addressed by the evidence presented by the applicant
The **Duncan** opinion does not limit the analysis to only these eight factors. For example, municipalities have added such factors as: whether the property has unique physical characteristics, i.e. exceptional narrowness of the lot or irregular terrain; or whether the practical difficulty exists solely through the actions of the property owner. An appellate court in Ohio has, however, used the seven **Duncan** factors to uphold a zoning board’s decision in spite of other standards in the municipal code that were different. The **Duncan** factors may likely be applicable to township zoning board rulings on variances, in general, as set forth in ORC 519.14 (see Zoning Inspector for referenced cases)