

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)