

VARIANCES

“USE”

A **“use”** variance is granted only upon the finding of an **“unnecessary hardship”** which generally means that the property owner cannot make any economically viable use of the property under the current zoning restrictions. A **“use”** variance is an application for a deviation from the permitted uses in the subject zoning district. **“Use”** means exactly what it says, a **“use”** of the property as opposed to zoning restrictions on setbacks, building, height, etc. The standards for determining a **“use”** variance are generally called the **“Duncan Factors”**. They are as follows:

DUNCAN FACTORS

1. The variance request stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
2. The hardship condition is not created by actions of the applicant;
3. The granting of the variance will not adversely affect the rights of adjacent owners;
4. The granting of the variance will not adversely affect the public health, safety or general welfare;
5. The variance will be consistent with the general spirit and intent of the zoning code;
6. The variance sought is the minimum which will afford relief to the applicant; and
7. There is no other economically viable use which is permitted in the zoning district.

“AREA/SIZE”

Variations for area, size and setback requirements are judged by a less stringent legal standard than for “use” variations, i.e. “practical difficulty” in meeting code requirements is all that is required to be shown by a property owner, NOT an “unnecessary hardship”. (“unreasonable hardship” standard cannot be applied for an “area” variation).

The factors to be considered and weighed to determine whether a property owner has encountered practical difficulties are (but are not limited to) the following:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variation;
2. Whether the variation is substantial;
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variation;
4. Whether the variation would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);
5. Whether the property owner purchased the property with knowledge of the zoning restrictions;
6. Whether the property owner’s predicament feasibly can be obviated through some method other than a variation; and
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variation.

The **Duncan** opinion does not limit the analysis to only these seven 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)