MEMORANDUM OF LAW

Controlling Scope of *RH McLeod Family LLC v. Westerly Zoning Board of Review*, 338 A.3d 304 (R.I. 2025): What the Decision Holds—and What It Does Not Hold

I. Preliminary Statement & Executive Summary

Recently, a misconception has circulated in local land-use practice suggesting that the Rhode Island Supreme Court's decision in *RH McLeod Family LLC v. Westerly Zoning Bd. of Rev.*, 338 A.3d 304 (R.I. 2025), curtails the jurisdiction of municipal zoning boards of review to grant dimensional variances whenever a zoning ordinance employs mandatory ("shall" or "shall not") language. That reading has no basis in the text of the opinion or the Rhode Island Zoning Enabling Act, R.I. Gen. Laws §§ 45-24-27 to -72.

As demonstrated by the controlling statutory and decisional law set forth below:

1. **First, We Will Show That *McLeod* Establishes a Narrow Forfeiture Rule Restricted to Voluntary Demolitions of Preexisting Nonconforming Structures Under Westerly Zoning Ordinance § 260-32(C)(2):** The Supreme Court's holding is confined strictly to "property owners who voluntarily seek to demolish a nonconforming structure and replace it with another structure" under a municipal nonconformance-abandonment provision enacted pursuant to R.I. Gen. Laws § 45-24-40. *McLeod*, 338 A.3d at 311. When a landowner voluntarily razes a grandfathered structure to the ground to build anew, Westerly's specific ordinance extinguishes the prior nonconforming protection and mandates strict compliance with current dimensional tables.
2. **Second, We Will Show That *McLeod* Does Not Hold That Mandatory ("Shall") Language Bars Dimensional Variances:** Virtually every dimensional setback, height, frontage, and buffer rule in Rhode Island is drafted using the mandatory word "shall." The very definition of a dimensional variance is "[p]ermission to depart from the dimensional requirements of a zoning ordinance," *McLeod*, 338 A.3d at 310 (quoting R.I. Gen. Laws § 45-24-31(66)(ii)), and the Supreme Court has held for over sixty years that a zoning board's statutory jurisdiction to grant variances under R.I. Gen. Laws § 45-24-41 "can neither be enlarged nor restricted by enactments contained in a zoning ordinance." *Reynolds v. Zoning Bd. of Rev. of Lincoln*, 96 R.I. 340, 343, 191 A.2d 350, 353 (1963); *accord Lincourt v. Zoning Bd. of Rev. of Warwick*, 98 R.I. 305, 309, 201 A.2d 482, 485 (1964).
3. **Third, We Will Show That *McLeod* Does Not Alter Dimensional Variance Eligibility**

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or Standards for Permitted Uses, Renovations, or Non-Demolition Projects: As proven by the companion case decided by the Supreme Court on the exact same day—*Watch Hill Fire Dist. v. Westerly Zoning Bd. of Rev.*, No. 2022-327-M.P., slip op. at 1, 9 (R.I. July 18, 2025)—and by controlling precedent in *Lischio v. Zoning Bd. of Rev. of N. Kingstown*, 818 A.2d 685, 692–93 (R.I. 2003), and *Sciacca v. Caruso*, 769 A.2d 578, 582 n.5 (R.I. 2001), dimensional variances remain fully available to relieve literal setback, area, height, and buffer restrictions governing permitted uses.

Legal Issue / Factual Scenario	**What *McLeod* Actually Holds**	**What *McLeod* Does NOT Hold**	**Controlling Rhode Island Authority**
Voluntary Razing of a Preexisting Nonconforming Building	Under Westerly Code § 260-32(C)(2), an owner who voluntarily demolishes a nonconforming structure forfeits grandfathered status and cannot use a dimensional variance to build a new nonconforming replacement structure.	Does **not** bar dimensional variances for renovations, vertical expansions, new construction on vacant lots, or existing buildings that are not voluntarily razed.	*RH McLeod Family LLC v. Westerly Zoning Bd. of Rev.*, 338 A.3d 304, 310–11 (R.I. 2025); *Watch Hill Fire Dist. v. Westerly Zoning Bd. of Rev.*, No. 2022-327-M.P., slip op. at 9 (R.I. July 18, 2025).
Effect of Mandatory ("Shall" / "Shall Not") Ordinance Text	Enforces the specific nonconformance-forfeiture penalty in Westerly Code § 260-32(C)(2) ("shall not be rebuilt or	Does **not** hold that the word "shall" in standard setback, height, frontage, or distance-buffer regulations prevents	R.I. Gen. Laws § 45-24-41(a); *Lincourt v. Zoning Bd. of Rev. of Warwick*, 98 R.I. 305, 309, 201 A.2d

Legal Issue / Factual Scenario	What *McLeod* Actually Holds	What *McLeod* Does NOT Hold	Controlling Rhode Island Authority
	replaced except in conformity with the dimensional requirements").	a zoning board from granting a dimensional variance.	482, 485 (1964); *Reynolds v. Zoning Bd. of Rev. of Lincoln*, 96 R.I. 340, 343, 191 A.2d 350, 353 (1963).
Dimensional Variances for Permitted Uses (Setbacks & Buffers)	Reaffirms that the statutory definition of "dimensional variance" as "[p]ermission to depart from the dimensional requirements of a zoning ordinance" is "controlling on all local ordinances."	Does **not** convert dimensional setback or buffer distances governing a permitted use into un-variable "use" prohibitions.	R.I. Gen. Laws § 45-24-31; *Lischio v. Zoning Bd. of Rev. of N. Kingstown*, 818 A.2d 685, 692–93 (R.I. 2003); *Sciacca v. Caruso*, 769 A.2d 578, 582 n.5 (R.I. 2001).

II. Statement of Facts & Procedural Travel of *McLeod*

In *RH McLeod Family LLC v. Westerly Zoning Bd. of Rev.*, 338 A.3d 304 (R.I. 2025), the respondents, Todd and Karyn Nordstrom, owned a preexisting nonconforming lot of 11,750 square feet with sixty feet of frontage at 2 Spray Rock Road in Westerly's Medium-Density Residential 30 (MDR-30) zoning district—a zone requiring 30,000 square feet of lot area, 120 feet of frontage, and twenty-foot side-yard setbacks. *Id.* at 305–06. The parcel was improved with a preexisting nonconforming one-story single-family dwelling constructed in 1957 that encroached into the side-yard and rear-yard setbacks and exceeded maximum impervious surface coverage. *Id.*

On April 15, 2021, the Nordstroms applied to the Westerly Zoning Board of Review for

dimensional variances to voluntarily demolish the 1957 nonconforming house in its entirety and construct a brand-new three-story residence in the center of the lot, requiring five-foot dimensional variances from both twenty-foot side-yard setbacks. *Id.* at 305, 308. Over the objection of neighboring property owners (RH McLeod Family LLC, Margot Perot, and 4 Spray Rock, LLC), the Westerly Zoning Board granted the dimensional variances, reasoning that Westerly Zoning Ordinance § 260-32(C)(2) only barred rebuilding a demolished nonconforming structure "by right" and did not bar rebuilding with a dimensional variance. *Id.* at 307–08. The Superior Court affirmed the Zoning Board's decision on March 9, 2023, and the abutting property owners petitioned the Rhode Island Supreme Court for writs of certiorari. *Id.* at 305, 308–09.

III. What *McLeod* Actually Holds

The Rhode Island Supreme Court quashed the Superior Court's judgment on a single, narrow ground of ordinance construction: the plain text of Westerly Zoning Ordinance § 260-32(C)(2), which specifically regulates the destruction or voluntary demolition of preexisting nonconforming structures. *McLeod*, 338 A.3d at 309–11. That ordinance provides:

> "Destruction or demolition. A nonconforming structure which is destroyed or damaged by any means which is beyond the control of the owner shall be rebuilt or restored within one year, or thereafter conform to the dimensional provisions of this Zoning Ordinance. If a nonconforming building or structure is demolished or removed by or for its owner, it shall not be rebuilt or replaced except in conformity with the dimensional requirements of this Zoning Ordinance."

Id. at 309–10 (quoting Westerly, R.I., Code of Ordinances § 260-32(C)(2)). Applying settled canons of statutory interpretation, the Supreme Court established three specific holdings regarding § 260-32(C)(2):

1. Voluntary Demolition Extinguished the Structure's Grandfathered Status Under an Unambiguous Ordinance

Because the rules of statutory construction apply equally to municipal ordinances, *Freepoint Solar LLC v. Richmond Zoning Bd. of Rev.*, 274 A.3d 1, 6 (R.I. 2022) (quoting *Ryan v. City of Providence*, 11 A.3d 68, 70 (R.I. 2011)), "[w]hen the language of a statute or a zoning ordinance is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally." *McLeod*, 338 A.3d at 309 (quoting *Cohen v. Duncan*, 970 A.2d 550, 562 (R.I. 2009)

(quoting *Mongony v. Bevilacqua*, 432 A.2d 661, 663 (R.I. 1981))).

Examining the two sentences of § 260-32(C)(2) side by side, the Court held that the ordinance carves out only one exception allowing a destroyed nonconforming structure to be rebuilt outside current dimensional limits—accidental destruction "beyond the control of the owner" within one year:

> "The plain language of § 260-32(C)(2) is clear: A nonconforming building or structure cannot be demolished and rebuilt by or for its owner unless it is 'in conformity with the dimensional requirements of this Zoning Ordinance.' The same section of the ordinance carves out only one exception to this requirement: damage or destruction 'beyond the control of the owner,' and then only for a one-year period. Section 260-32(C)(2) (emphasis added). 'It is axiomatic that "where there is no ambiguity, this Court is not privileged to legislate, by inclusion, words which are not found in the statute [or ordinance]."' Olamuyiwa v. Zebra Atlantek, Inc., 45 A.3d 527, 536 (R.I. 2012) (brackets omitted) (quoting Wayne Distributing Co. v. Rhode Island Commission for Human Rights, 673 A.2d 457, 460 (R.I. 1996)). If the town desired to create an additional exception to § 260-32(C)(2), such as obtaining a dimensional variance, 'we do not doubt that it could have done so; but the blunt fact is that it did not do so.' Id."

McLeod, 338 A.3d at 310.

2. Zoning Policy Disfavors Nonconformances and Permits Municipalities to Eliminate Them Upon Voluntary Demolition

The Supreme Court grounded Westerly's voluntary-demolition forfeiture rule in the overarching policy of the Rhode Island Zoning Enabling Act toward preexisting nonconformances (R.I. Gen. Laws §§ 45-24-39 and 45-24-40):

> "Furthermore, the inclusion of the language 'in conformity with the dimensional requirements of this Zoning Ordinance[,]' § 260-32(C)(2) (emphasis added), signifies the unremarkable proposition that nonconformances—whether they be nonconforming uses or nonconforming structures—are disfavored as they are contrary to the overall purpose of a zoning scheme. Cf. Town of Richmond v. Wawaloam Reservation, Inc., 850 A.2d 924, 934-35 (R.I. 2004); § 45-24-40(B), as enacted by P.L. 1991, ch. 307, § 1 (entitled 'General provisions—Alteration of nonconforming development') ('The ordinance may require that such alteration shall more closely adhere to the intent and purposes of the zoning ordinance.')."

McLeod, 338 A.3d at 310; *see also RICO Corp. v. Town of Exeter*, 787 A.2d 1136, 1144–45 (R.I.

2001) (holding that nonconforming development is "detrimental to a zoning scheme, and the overriding public policy of zoning . . . is aimed at their reasonable restriction and eventual elimination" (quoting *Toys "R" Us v. Silva*, 676 N.E.2d 862, 865 (N.Y. 1996))); *Cigarrilha v. City of Providence*, 64 A.3d 1208, 1213 (R.I. 2013) ("The policy of zoning is to abolish nonconforming uses as speedily as justice will permit." (quoting *Duffy v. Milder*, 896 A.2d 27, 37 (R.I. 2006))).

3. "Conformity with the Dimensional Requirements" Does Not Mean "Departure Therefrom" via a Variance

Finally, the Court rejected the lower court's reasoning that obtaining a dimensional variance satisfied § 260-32(C)(2)'s command to rebuild "in conformity with the dimensional requirements," explaining that such a construction would violate the statutory definition of a variance and reduce the second sentence of § 260-32(C)(2) to mere surplusage:

> "We reject the notion that § 260-32(C)(2) should be read such that 'conformity with the dimensional requirements' would include the possibility of obtaining a dimensional variance. 'This argument ignores longstanding precedent that, when faced with an otherwise plain and unambiguous ordinance, this Court will not seek out ambiguity where none otherwise exists.' Freepoint Solar LLC, 274 A.3d at 7. We also note that the definition of the term 'dimensional variance,' which is controlling on all local ordinances, is '[p]ermission to depart from the dimensional requirements of a zoning ordinance * * *.' Section 45-24-31(66)(ii), as amended by P.L. 2019, ch. 267, § 1. Thus, the Westerly Ordinance contemplates conformance with its dimensional requirements, not a departure therefrom.
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> . . . .
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> The second sentence of § 260-32(C)(2) speaks to a very limited and specific audience: property owners who voluntarily seek to demolish a nonconforming structure and replace it with another structure. We think the language of the ordinance is very clear that, to do so, they must adhere to the dimensional requirements of the ordinance. To interpret the sentence as allowing such owners the ability to apply for dimensional variances would render said sentence as mere surplusage."

McLeod, 338 A.3d at 310–11; *see also In re Harrison*, 992 A.2d 990, 994 (R.I. 2010) ("[N]o construction of a statute should be adopted that would demote any significant phrase or clause to mere surplusage." (quoting *State v. Clark*, 974 A.2d 558, 572 (R.I. 2009))); *Cohen v. Duncan*, 970 A.2d 550, 562 (R.I. 2009) ("[W]e must presume that the drafters intended every word of the ordinance to have a useful purpose and to have some force and effect." (quoting *Ruggiero v. City*

of Providence, 893 A.2d 235, 238 (R.I. 2006))).

IV. What *McLeod* Does NOT Hold

Because the Supreme Court expressly restricted its holding in *McLeod* to "a very limited and specific audience: property owners who voluntarily seek to demolish a nonconforming structure and replace it with another structure" under Westerly Code § 260-32(C)(2), 338 A.3d at 311, any attempt to expand *McLeod* into a general bar against dimensional variances directly conflicts with Rhode Island statute and Supreme Court precedent.

1. *McLeod* Does NOT Hold That Mandatory ("Shall" or "Shall Not") Language in a Zoning Ordinance Bars Dimensional Variances

The word "shall" was not the operative trigger in *McLeod*—the phrase "in conformity with the dimensional requirements of this Zoning Ordinance" in a nonconformance-demolition forfeiture clause was. *McLeod*, 338 A.3d at 310. By definition, municipal zoning codes are mandatory rules, not advisory guidelines. *See, e.g.*, Cranston, R.I., Code of Ordinances § 17.04.020 ("The word 'shall' is mandatory; the word 'may' is permissive."); *Lloyd v. Zoning Bd. of Rev. for Newport*, 62 A.3d 1078, 1080 n.3 (R.I. 2013) (quoting Newport Code §§ 17.20.030–.050 providing that "the portion of a lot covered by buildings shall not exceed 20 percent").

Under the Rhode Island Zoning Enabling Act, "[a]n application for relief from the literal requirements of a zoning ordinance because of hardship may be made by any person, group, agency, or corporation . . . ." R.I. Gen. Laws § 45-24-41(a). An applicant only needs "[p]ermission to depart from the dimensional requirements of a zoning ordinance," R.I. Gen. Laws § 45-24-31(66)(ii), precisely because those dimensional requirements are mandatory ("shall") in the first instance. As the Supreme Court has long held, variances function as "a constitutional safety valve to prevent confiscation of one's property from burdensome zoning ordinance regulations." *Kenlin Props., LLC v. City of E. Providence*, 139 A.3d 491, 500 (R.I. 2016).

If mandatory "shall" phrasing in a setback, buffer, height, or lot-coverage regulation barred a zoning board from granting a dimensional variance, no dimensional variance could ever be granted in Rhode Island. Such an interpretation violates two bedrock rules of Rhode Island law:

- **Ordinances Cannot Divest a Zoning Board of Statutory Variance Jurisdiction:** The Rhode Island Supreme Court has unequivocally established that "[t]he authority of a board of review to grant a variance flows from the enabling act, and the jurisdiction thereby conferred can neither be expanded nor diminished by the terms of an ordinance." *Lincourt*

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v. Zoning Bd. of Rev. of Warwick, 98 R.I. 305, 309, 201 A.2d 482, 485 (1964); *accord Reynolds v. Zoning Bd. of Rev. of Lincoln*, 96 R.I. 340, 343, 191 A.2d 350, 353 (1963) (citing *Mello v. Bd. of Rev. of Newport*, 94 R.I. 43, 177 A.2d 533 (1962)); *O'Neill v. City of E. Providence*, 480 A.2d 1375, 1379 (R.I. 1984) ("The authority of a municipality to engage in self-government does not extend to enacting local laws that are inconsistent with those provisions of the general laws enacted in conformity with the Legislature's reserved powers.").

- **Canons Against Absurdity and Statutory Nullification:** Courts must construe a zoning ordinance "as a whole and not as if each section is independent of all other sections," *Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I. 2011), and give effect "to all of a statute's provisions, with no sentence, clause or word construed as unmeaning or surplusage," *R.I. Dep't of Mental Health, Retardation & Hosps. v. R.B.*, 549 A.2d 1028, 1030 (R.I. 1988). Reading "shall" to prohibit variances would nullify R.I. Gen. Laws § 45-24-41 in its entirety, violating the rule that "under no circumstances will [the] Court construe a statute to reach an absurd result." *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2012).

2. *McLeod* Does NOT Bar Dimensional Variances to Expand or Renovate Existing Structures—Even Under the Exact Same Westerly Ordinance

Any claim that *McLeod* broadly restricts dimensional variances—even for nonconforming structures—is refuted by the companion case decided by the Rhode Island Supreme Court on the exact same day (July 18, 2025): *Watch Hill Fire Dist. v. Westerly Zoning Bd. of Rev.*, No. 2022-327-M.P., slip op. at 1 (R.I. July 18, 2025) (referenced directly in *McLeod*, 338 A.3d at 308, 309 n.4).

In *Watch Hill Fire District*, the property owner (Zoey Watch Hill, LLC) owned a preexisting nonconforming 1938 house on a 3,049-square-foot lot in a Westerly zone requiring 43,560 square feet, and applied for a dimensional variance to lift the structure onto helical piles, expand the living space from 475 square feet to 1,128 square feet, and add a second story. *Id.* at 1–2. Objectors argued that the project violated Westerly Code § 260-32(C)(2). *Id.* at 7, 9. Both the Superior Court and the Rhode Island Supreme Court **affirmed** the grant of the dimensional variance because the project renovated and expanded the structure and "did not tear down or raze the entire structure." *Id.* at 1, 9. Thus, even within the Town of Westerly, *McLeod* has zero application where an owner is not voluntarily razing a preexisting nonconforming building to the ground.

3. *McLeod* Does NOT Restrict Dimensional Variances for Permitted Uses Subject to

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Setback, Area, Height, or Distance-Buffer Regulations

Nothing in *McLeod* alters the fundamental divide in Rhode Island zoning law between **use regulations** and **dimensional regulations**. As the Supreme Court established in *Westminster Corp. v. Zoning Bd. of Rev. of Providence*, 103 R.I. 381, 238 A.2d 353 (1968):

> "We have distinguished repeatedly between ordinance restrictions on the basic use of land and those that regulate the manner in which a permitted use may be made of the land. . . . '[T]here is a fundamental difference between zoning enactments that classify land uses and thereby designate the uses to which land may be put and the enactment of rules which are intended only to prescribe the manner in which such uses as are permitted may be exercised.'"

Id. at 385–87, 238 A.2d at 356–57 (quoting *Reynolds v. Zoning Bd. of Rev. of Lincoln*, 96 R.I. 340, 342, 191 A.2d 350, 352 (1963)); *see also Viti v. Zoning Bd. of Rev. of Providence*, 92 R.I. 59, 65, 166 A.2d 211, 213 (1960) ("Although the side and rear yard regulations are contained in the zoning ordinance, . . . [t]hey are regulations governing a permitted use as distinguished from the limitations on the use which one may make of his property.").

Under the Rhode Island Zoning Enabling Act, "[d]imensional regulations include all regulations of the zoning ordinance, other than those pertaining to the permitted uses," R.I. Gen. Laws § 45-24-31(52)(ii), including requirements for "[o]pen space, yards, courts, and buffers," R.I. Gen. Laws § 45-24-33(a)(4)(v). And as the Supreme Court held in *Sciacca v. Caruso*, 769 A.2d 578, 582 n.5 (R.I. 2001), "[a] dimensional or area variance—also known as a 'deviation'—provides relief from one or more of the dimensional restrictions that govern a permitted use of a lot of land, such as area, height, or setback restrictions" (citing *Sako v. Delsesto*, 688 A.2d 1296, 1298 (R.I. 1997); *Sawyer v. Cozzolino*, 595 A.2d 242, 244 n.4 (R.I. 1991)).

When an applicant seeks a dimensional variance for a lawfully permitted use—whether from a yard setback, a frontage requirement, or a 400-foot distance buffer measured from a residential zone to a building housing a permitted industrial use—the zoning board's review is governed by *Lischio v. Zoning Bd. of Rev. of N. Kingstown*, 818 A.2d 685 (R.I. 2003):

> "[W]hen seeking dimensional relief for lawfully permitted uses the review should not focus on the use of the parcel because a legislative determination has been made previously that the use is appropriate and does not adversely affect the general character of the area. A permitted use, under § 45-24-31(52), is 'a use by right which is specifically authorized in a particular zoning district.'"

Id. at 693. Moreover, outside the narrow voluntary-demolition forfeiture context of *McLeod*, "a

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zoning ordinance is in derogation of the common-law right of a property owner to use her land as she wishes, and any doubt as to the legislative intent behind the ordinance must be resolved to her benefit." *City of Providence v. O'Neill*, 445 A.2d 290, 293 (R.I. 1982); *accord Earle v. Zoning Bd. of Rev. of Warwick*, 96 R.I. 321, 324, 191 A.2d 161, 164 (1963).

4. *McLeod* Applied Pre-2024 Statutory Law and Does NOT Alter the Relaxed 2024 Statutory Standard for Dimensional Variances

Finally, in Footnote 1 of *McLeod*, Chief Justice Suttell explicitly noted that because the Nordstroms filed their application in April 2021, the Court did not apply the General Assembly's sweeping amendments to the Zoning Enabling Act that took effect on January 1, 2024:

> "Our review of the relevant amendments to the Zoning Enabling Act reveals that they were specifically made effective on January 1, 2024 (P.L. 2023, ch. 304, § 2); therefore, we apply 'the law in effect at the time when the applicant[ ] submitted its application for a permit to the zoning board.' East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington, 901 A.2d 1136, 1144 (R.I. 2006)."

McLeod, 338 A.3d at 305 n.1. For all applications filed on or after January 1, 2024, the General Assembly repealed the former "no other reasonable alternative" language referenced in *Sciacca v. Caruso*, 769 A.2d 578, 583 (R.I. 2001), and *New Castle Realty Co. v. Dreczko*, 248 A.3d 638, 647 (R.I. 2021), and codified the flexible standard of *Viti v. Zoning Bd. of Rev. of Providence*, 92 R.I. 59, 64–65, 166 A.2d 211, 213 (1960), and *Standish-Johnson Co. v. Zoning Bd. of Rev. of Pawtucket*, 103 R.I. 487, 492, 238 A.2d 754, 757 (1968), in R.I. Gen. Laws § 45-24-41(e)(2)—requiring an applicant to show only "that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted."

V. Conclusion

1. **The Voluntary-Demolition Forfeiture Rule Is Narrow:** *RH McLeod Family LLC v. Westerly Zoning Bd. of Rev.*, 338 A.3d 304, 310–11 (R.I. 2025), holds only that under Westerly Zoning Ordinance § 260-32(C)(2), a landowner who voluntarily demolishes a preexisting nonconforming structure forfeits its grandfathered protection and must build the replacement structure in strict compliance with dimensional regulations rather than by dimensional variance.

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2. **Mandatory ("Shall") Language Never Blocks Variance Jurisdiction:** *McLeod* does not hold that the word "shall" or "shall not" in a zoning code bars a dimensional variance. A zoning board's statutory authority to grant relief from the literal requirements of a zoning ordinance under R.I. Gen. Laws § 45-24-41 is paramount and "can neither be expanded nor diminished by the terms of an ordinance." *Lincourt v. Zoning Bd. of Rev. of Warwick*, 98 R.I. 305, 309, 201 A.2d 482, 485 (1964); *accord Reynolds v. Zoning Bd. of Rev. of Lincoln*, 96 R.I. 340, 343, 191 A.2d 350, 353 (1963).
3. **Dimensional Relief Remains Fully Available for Permitted Uses:** Where an applicant is not voluntarily razing a preexisting nonconforming structure under a forfeiture clause like Westerly's, *McLeod* has no application. Property owners seeking relief from literal setback, area, height, frontage, or distance-buffer rules governing a permitted use retain the full statutory right to apply for—and municipal zoning boards retain full statutory jurisdiction to grant—dimensional variances under R.I. Gen. Laws § 45-24-41, *Lischio v. Zoning Bd. of Rev. of N. Kingstown*, 818 A.2d 685, 692–93 (R.I. 2003), and *Sciacca v. Caruso*, 769 A.2d 578, 582 n.5 (R.I. 2001).

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