

Application for a Use Variance from the Zoning Code

Rhode Island General Law §45-24-41 states that “An application for relief from the literal requirements of a zoning ordinance because of hardship may be made by any person, group, agency, or corporation by filing with the zoning enforcement officer or agency an application describing the request and supported by any data and evidence as may be required by the zoning board of review or by the terms of the ordinance.”

There are four criteria that the Zoning Board of Review will take into consideration when reviewing an application for a Use Variance. Please note that all four criteria must be answered. Failure to do so may result in an application being deemed incomplete.

§45-24-41(d)(1): “That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16)”:

The hardship arises from the unique condition of the property being a preexisting nonconforming commercial garage use located in a residential (R-20) zone. The existing building was constructed in 1963, prior to the current zoning regulations. The existing layout and location of the structure on the lot limit the ability to expand within current setback requirements. The requested relief is due to these pre-existing conditions and not due to any personal or economic circumstances of the applicant.

§45-24-41(d)(2): “That the hardship is not the result of any prior action of the applicant”:

The hardship is not the result of any prior action by the applicant. The building and its current placement were established long before the applicant acquired the property in January 2003. The applicant’s intent is simply to expand the existing lawful nonconforming commercial garage use in a manner consistent with the existing building configuration.

§45-24-41(d)(3): “That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.”:

The proposed additions will match the existing garage structure in design, materials, and scale, and will not alter the general character of the area. The expansion will remain within the same commercial use that has existed on the site for decades. Granting the variance will not impair the intent or purpose of the zoning ordinance, as it maintains the established character of the property while ensuring compliance with building and safety codes.

§45-24-41(e)(1): “In granting a use variance, the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance;”

Because the existing structure is already nonconforming and located within an R-20 residential zone, strict compliance with current setbacks and use regulations would prevent the reasonable use of the property as a commercial garage. The proposed addition is essential to allow continued and efficient use of the existing business, and without the variance, the property could not yield a beneficial use consistent with its long-standing operation.