DEcision

MUNICIPALITY: Foster (413)  FILE NO.: 180089

LOCATION OF PROPERTY: 37 Mill Road, Foster, RI

APPLICANT: William Ricci c/o Mill Road Realty Associates, LLC
41 Dexter Rock Road
Lincoln, RI 02865

USE OR OCCUPANCY:  Multiple / Mixed

As indicated in the file, a hearing involving the above-captioned property was conducted on Tuesday, August 28, 2018 before the Fire Safety Code Board of Appeal and Review [hereinafter the Board], pursuant to Rhode Island General Laws [RIGL] section 23-28.3-5.

In attendance at the hearing were the following:

COMMISSIONERS: Chairman Newbrook and Commissioners Pearson, Jackson, Sylvester, Booth, Thornton, Davison and O’Donnell.

AUTHORITY HAVING JURISDICTION: Deputy State Fire Marshal Michael O’Brien of the State Fire Marshal’s Office.

APPLICANT: William Ricci.

EXECUTIVE DIRECTOR: W. Keith Burlingame, Esq.
TRAVEL OF THE CASE

1. This is an Application for Variance filed under RIGL chapter 23-28.3, entitled Fire Safety Code Board of Appeal and Review, and the Administrative Regulations promulgated thereunder.
2. The Application was filed by William Ricci (owner) of Mill Road Realty Associates, LLC, 41 Dexter Rock Road, Lincoln, RI dated July 2, 2018.
3. The Application was received by the Board and File # 180089 was opened on July 6, 2018.
4. A hearing on the Application was conducted on August 28, 2018 at 1:00 PM before the Fire Safety Code Board of Appeal and Review.
5. After all evidence was presented at the hearing, a motion was made by Commissioner Thornton and seconded by Commissioner O’Donnell to grant the Applicant the relief as outlined herein. The motion passed on an 8 to 0 vote.

RECORD OF THE CASE

The following documents are part of the administrative record for Appeal # 180089 and are pertinent to the decision rendered:


EXHIBITS

The following documents were presented at the August 28, 2018 hearing as exhibits:

1. None.

FINDINGS OF FACT

Based on the testimony and evidence introduced at the hearing and a review of the administrative file, the Board makes the following Finding of Fact:

1. The numbers of the Decision below correspond with those of the April 13, 2018 inspection report compiled by the State Fire Marshal’s Office. The above report was utilized by the Board, the Applicant and the State Fire Marshal’s Office during the August 28, 2018 hearing on this matter. Accordingly, the Board hereby incorporates the April 13, 2018 inspection report as its initial findings of fact. Any modification of the Board’s findings, such as correction of a deficiency by the Applicant, shall be noted herein.
2. The facility is an auto wrecking yard covering approximately six hundred ninety-one thousand six hundred (691,600) square feet.
3. The facility is licensed by the Town of Foster to hold five hundred (500) vehicles and presently has approximately one thousand nine hundred (1,900) vehicles on site.
4. There is no objection by the State Fire Marshal’s Office to the granting of the relief outlined herein.

**CONCLUSIONS OF LAW AND DETERMINATIONS ON VARIANCE REQUESTS**

1. **HOUSEKEEPING:** The Board grants the Applicant a time variance of six (6) months from the date of the decision to comply with the provisions of RIFC section 22.5 by removing all vegetation, debris and other materials not necessary to the proper operation of the facility, at the direction and to the satisfaction of the State Fire Marshal’s Office.
2. This deficiency has been corrected.
3. **FIRE DEPARTMENT ACCESS ROADS:** The Board hereby grants the Applicant the time variance outlined in item 1 above to comply with the provisions of RIFC sections 22.3, 18.2.3.4.1.1 and 18.2.3.4.2 by providing this facility approved fire department access roads, at the direction and to the satisfaction of the State Fire Marshal’s Office.
4. This deficiency will be corrected with the completion of item # 3, above.

Any deficiency understood by the Board to have been corrected, which is not so corrected, shall be immediately corrected by the Applicant. The term approved, as used herein, is understood to mean in accordance with the specific provisions related to the particular subject as are contained in this Code, or as approved in particular by the Authority Having Jurisdiction (State Fire Marshal, his or her designated Deputy State Fire Marshals and/or Assistant Deputy State Fire Marshals).

Finally, the Board hereby authorizes the State Fire Marshal’s Office to extend the above timeline(s) for good faith compliance efforts being demonstrated by the Applicant in accordance with the provisions of Blanket Variance # 15-01A.

**STATUS OF DECISION AND APPEAL RIGHTS**

1. This Decision constitutes a final order of the Fire Safety Code Board of Appeal and Review as set forth in RIGL section 42-35-12 and represents a comprehensive, integrated plan of fire safety for the above-captioned facility under the above-cited use or occupancy. Accordingly, every variance granted is conditioned upon the Applicants timely and continued compliance with all of the directives of the Board. Every variance granted is further conditioned upon the continued use or
occupancy of this facility under the above-cited classification reviewed by the Board. [See: Fire Safety Code [FSC] section 450-RICR-00-00-1.7.2(V)].

2. Failure of the Applicant to initially comply with the full Decision of the Board, within the stated time frame, shall void all variances granted herein. [See: FSC section 450-RICR-00-00-1.7.2(W)]. In the event of complete, timely and continued compliance with the full Decision of the Board, the above cited variances shall be deemed to have vested in the above-captioned facility. As long as this facility is in continued compliance with the full Decision of the Board, the above-cited variances shall remain with this facility in the absence of any change in use or occupancy mandating review under a separate classification of the FSC or a revision of the above-cited classification. [See: FSC section 450-RICR-00-00-1.7.2(X)].

3. Such changes in use or occupancy of this facility, or failure to continually comply with the Board’s Decision shall void all variances granted under the above-cited use or occupancy. If such change creates a new use or occupancy as outlined in RIGL section 23-28.1-6, all variances granted under the original use or occupancy are void and this facility shall be reviewed under the newly created use or occupancy. [See: FSC section 450-RICR-00-00-1.7.2(Y)].

4. In accordance with RIGL section 23-28.3-5(e), any person who violates a final order of the Board may be subject to prosecution in the District Court with possible imprisonment for a term not exceeding one (1) year, or fined not more than one thousand dollars ($1000) for each offense.

5. In accordance with RIGL section 42-35-12, the Applicant may appeal the Board’s Decision, within thirty (30) days of the mailing date of this Decision, by commencing an action against the State Fire Marshal in the Sixth Division of the District Court. [See: FSC section 450-RICR-00-00-1.7.2(R)]. Commencement of such an action does not operate as an automatic stay of this Decision [See: RIGL section 42-35-15(c)].

FIRE SAFETY CODE
BOARD OF APPEAL AND REVIEW

Dana M. Newbrook
Chairman
I hereby certify that on this 13th day of September, 2018 that a copy of the Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to the Applicant.

[Signature]

Cc: Applicant
    Foster Center Fire Department
    State Fire Marshal's Office