



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

Memorandum

Date: December 22, 2015

To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment

From: Timothy J. Thompson, AICP, Community Development Director

Subject: **Gregory E. Michael of Bernstein, Shur, Sawyer & Nelson, P.A. (petitioner) and Vault Motor Storage (owner)** – Request for Re-Hearing regarding Case # 2015-39, in which the Board voted to deny a Variance under Section 17.10.3 of the Zoning Ordinance to permit an additional 160 sf. ground sign whereas a 63 sf. ground sign was permitted at 526 D.W. Highway in 2014. The parcel is located at 526 D.W. Highway in the C-2 (General Commercial) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 5D-2, Lot 001. Case #2015-46.

The following information is provided to aid in your consideration of the above referenced case. The written request for a rehearing by Attorney Michael is in your packet. Additionally, the memo for the Variance and the meeting minutes of the October 28, 2015 hearing are also included in your packet.

Background:

On October 28, 2015, the Board denied the petitioner's request for a variance under Section 17.10.3 of the Zoning Ordinance to permit an additional 160 sf. ground sign whereas a 63 sf. ground sign is permitted.

On November 25, 2015 the property owner, through his attorney, filed a request for a rehearing, pursuant to RSA 677:2, citing the following primary reasons for justifying the request:

- ◆ That given the nature of the lot, its size, and frontage on both DW and Everett Turnpike that the denial prevented substantial justice from occurring;
- ◆ That the property's size, shape, topography, vegetation, dual frontage, and "lack of a safety concern" are unique and denial would be an unnecessary hardship; and
- ◆ That the ZBA's reference to full occupancy of the existing facility is not a relevant factor the Board should have considered.

As per RSA 677:2, a request for a rehearing shall be made within 30 days from the date the Board voted to approve or disapprove the application. Under RSA 677:3, upon the filing of a motion for a rehearing, the Board shall consider whether to grant or deny the motion for a rehearing within 30 days, or the next available regular meeting of the Board. The decision of the Board on a request for

a rehearing is based solely upon the written request made by the Petitioner. **No public testimony (including from the petitioner) is to be accepted at the meeting**, however "the Board may consult with town staff, legal counsel or any other necessary party in reaching its decision as deemed appropriate by the Chair" (Sec. VI B, 3 of the By-Laws of the Merrimack Zoning Board of Adjustment, last revised 7/22/10). If the rehearing request is granted by the Board, the rehearing is to be held in conformance with the procedures and rules that would apply to a new appeal.

RSA 677:3 states that the applicant "shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." The ZBA should limit its discussion of whether to grant the rehearing only to the contents of the petitioner's written request for a rehearing (i.e. the contents of Attorney Michael's November 25, 2015 letter). Furthermore, should the Board grant the request for a rehearing, the Board may choose to limit the scope of the rehearing to issues raised by the moving party in the motion for a rehearing (a rehearing would take place at the next available ZBA meeting that the petitioner submits application materials in time for). Should the Board deny the request for a rehearing, the petitioner may then follow the procedures set forth in RSA 677:4 and file an appeal with the Superior Court within 30 days of the Board's decision.

Standard of Review:

To grant the request for the rehearing, the Board must determine that the decision complained of was unlawful or unreasonable (RSA 677:3).

cc: Correspondence & Zoning Board File

ec: 526DW LLC, Owner
Hank Balch/Green Bear Signs, Original Petitioner
Attorney Greg Michael, Bernstein-Shur
Fred Kelley & Carol Miner, Building Department