

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-22
APPLICATION OF LARRY KEENER :
AND WENDY KEENER :

DECISION

I. FINDINGS OF FACT

1. Applicants are Larry Keener and Wendy Keener, 142 North Ronks Road, Ronks, Pennsylvania 17572 ("Applicants").

2. The property which is the subject of the instant application is 142 North Ronks Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicants are the owners of the Property.

4. The Property is located in the R-2 Residential District as shown on the Official Zoning Map of East Lampeter Township.

5. Notice of the hearing on the within application was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and The Revised Zoning Ordinance of East Lampeter Township - 1990 (the "Zoning Ordinance").

6. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on August 14, 2014.

7. Testimony at the hearing was stenographically recorded.

8. Applicants appeared personally at the hearing.

9. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 99-06.

10. In Case No. 99-06, the Board granted Applicants' request to operate a truck transport business as a home occupation, subject to certain conditions.

11. Applicants have now requested a modification of one of the conditions placed upon the approval granted in Case No. 99-06. More specifically, Applicants have requested a modification of Condition No. 5, which states as follows:

Applicants shall park the tractor trailer on the Property only on the following days of the week: Wednesday, Friday night, Saturday night and Sunday.

12. In Case No. 99-06, Applicants testified that they would only park the tractor trailer on the Property on those days and during such time periods (see Decision in Case No. 99-06, Finding of Fact No. 16).

13. Applicants now desire to park the tractor trailer on the Property without any limitation as to the days of the week or the hours of the day.

14. There have been no changes in circumstances with regard to the Property which would make the condition inappropriate. In addition, such an increase in usage would cause the home occupation to be more than incidental or secondary to the use of the Property as a dwelling.

II. CONCLUSIONS OF LAW

1. Although Applicants' application requests a variance from Section 902.7 and Section 1916.8 of the Zoning Ordinance, what Applicants are requesting is a modification of a condition placed upon a prior approval.

2. An applicant requesting the modification of a condition imposed by a zoning hearing board in a prior decision from which no appeal was taken has the same burden as that imposed upon the applicant for a variance. *Gazebo, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh*, 112 Pa. Commonwealth Ct. 37, 535 A.2d 214 (1987).

3. "[I]f a landowner establishes (1) a change in circumstances that make the condition inappropriate, and (2) that the grant of relief will not injure the public, the board should grant the landowner relief from the condition." *Ford v. Zoning Hearing Board of Caernarvon Township*, 151 Pa. Commonwealth Ct. 323, 616 A.2d 1089, 1092 (1992).

4. A statement on the record that an applicant will operate the use in a certain manner is sufficient grounds for the zoning hearing board to impose a condition requiring operation of the use as testified. *Clinton County Solid Waste Authority v. Wayne Township*, 164 Pa. Commonwealth Ct. 632, 643 A.2d 1162, 1169 (1994).

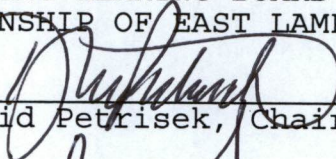
5. Applicants have failed to present evidence to establish a change in circumstances that make Condition No. 5 inappropriate and

have failed to prove that the grant of the requested relief would not be injurious to the public.

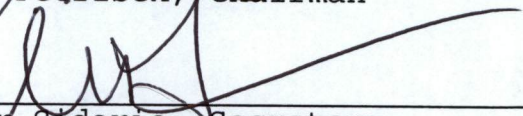
III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application of Larry Keener and Wendy Keener for any and all relief requested. Applicants shall park the tractor trailer on the Property only on the following days of the week: Wednesday, Friday night, Saturday night and Sunday.

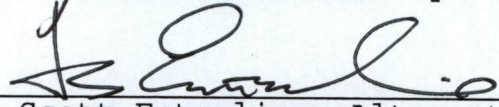
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



Walter Siderio, Secretary



J. Scott Enterline, Alternate

Dated and filed August 28, 2014, after hearing held on August 14, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 29, 2014.

