

## Town of Dover Zoning Board of Appeals

Town of Dover  
126 East Duncan Hill Road  
Dover Plains, NY 12522



(845) 832-6111  
(845) 832-3188 fax

### MEETING Wednesday August 1, 2012- 7:00 PM

- Chair Marilyn Van Millon
- Member George Wittman
- Member Anthony Fusco
- Member Debra Kaufman
- Member Henry Williams

Also in attendance were Kirk Horton & Paul Quartararo for Quartararo Garage Variance. Zoning Board Attorney Michael Liguori was present via conference call.

#### CALL TO ORDER

The regular monthly meeting of the Town of Dover Zoning Board of Appeals was called to order at 7:02 by Chair Van Millon and began with the Pledge of Allegiance

#### Applications for Review

##### Continued Public Hearing

**Quartararo Garage Variance 2012-004 Grid 6962-00-161869**

Applicant Kirk Horton L.S. for Property Owner Paul Quartararo

Property located at 632 Chestnut Ridge Road, Millbrook, NY

Application for 2- Area Variances Side & Front Yard

Building Inspector Denied permit to build a 20 X 20 Garage on 05/18/2011

Mr. Quartararo- distributed drawings of the garage design for the Board to review.

Member- Is there a room upstairs?

A: I don't know there may be storage, but no living space, but he designed it to look more like the existing house. It will have cedar shakes and he did not want a flat roof.

Chair- There was a site walk held on 7/26/12. There has been some correspondence, first from a neighbor, Mr. Friedman and the second from a Title Search Company.

*Dear Paul,*

*Thank you for sharing the site plans and other information regarding your proposed garage. They look terrific and in keeping with the surrounding buildings.*

*Please know that my wife and I, as abutting landowners, not only have no objection to the structure or its proposed site but are fully supportive of it.*

*If you wish, feel free to share this with the Zoning Board.*

*Sincerely,  
Robert E. Friedman*

Chair read:

Email from Michael Liguori: *'...so that we have no title issues in the future, the Town Board can be asked to quitclaim any right title or interest in and to the roadbed or we can follow 205(1) of the Highway Law, where we ask the Highway Super to file an abandonment with the Town Clerk, which is acknowledged by resolution of the town board...'*

*And this letter has been submitted form Mr. Quartararo and is part of the record:*

## ***NORTH RIVER ABSTRACT CORP.***

*agent for*

*First American Title Insurance Company of New York*

9 Cannon Street Poughkeepsie, NY 12601

Phone No. (845) 485-5188

Fax No. (845) 485-3206

July 31, 2012

Quartararo & Lois, PLLC  
1399 Route 52  
Fishkill, NY 12524  
Attn: Paul Quartararo, Esq.

Re: Town/Dover Abandoned Roadway

Paul:

A search was conducted in the Dutchess County Clerk's Office for the chain of title of the prior owners for the Abandoned Roadway shown on a Survey made by Kirk K. Horton, NYS LLS. In 1935, this Abandoned Road was a part of Camby Road (County Road 90). The owners to the north of the Road were the Swifts and the owners to the south of this road were the Bakers at Liber 907, cp 549. There are two deeds from Baker to Town of Dover at Liber 551, cp 256 and Liber 551, cp 267. There is a deed from the Bakers to County of Dutchess at Liber 554, cp 324. There are two deeds from the Swift's to County of Dutchess at Liber 557, cp 152 and Liber 557, cp 155. In 1937, this portion of the County Roadway was abandoned when a new road was constructed known as Chesnut Ridge Road. The abandoned roadway would automatically revert to the Town of Dover. Therefore, the title to this Abandoned Roadway is held in the Town of Dover.

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,  
NORTH RIVER ABSTRACT CORPORATION

**Motion to open the Quartararo Public Hearing made by Member Kaufman; Second Member Williams**

**Vote:**

Chair Van Millon - <u>Aye</u>	Member Fusco - <u>Absent</u>
Member Wittman - <u>Aye</u>	Member Williams - <u>Aye</u>
Member Kaufman - <u>Aye</u>	

*Motion approved*

Mr. Horton & Mr. Quartararo were reminded that they were sworn in by Chair Van Millon

Chair- It is understood there is an application before the Planning Board, was it ever discussed to make the line straight across and then you would not need any variances.

A: That tree line is the preferred line, it's a natural boundary. The neighboring parcel is in a conservation easement

Q: It is understood the fence is being closed off, have you considered putting the garage there, then you would not need one of the variances

A: there are trees and a garden there and they wanted the garage away from the house, it made sense to hide it back in the woods.

Chair: Part of the ZBA's job is to allow the least amount of variance if any at all.

Member: is it correct that the real variance from the road is 9.4 feet and the side is 11.2?

A: I'm unsure

Member- The Building Inspector said this will not meet the 30' side yard setback and 60' front yard setback. If the garage could move east 9.5 'it would get rid of one variance.

A: there are trees there he would rather not remove, he enjoys the esthetics of the property and the chosen location was the best option after much thought for the property. He felt this was the optimum location for the garage

There was much discussion about moving the garage to the east was well as possibly more north in order to reduce the variances or completely remove the need for at least one  
Many options on moving the garage were discussed

The Board was advised by Attorney Michael Liguori to analyze the factors to see if the benefit to the landowner outweighed the detriment of the Health Safety and Welfare to the Public. The Board should review the criteria, and understands the point of view to grant the most minimum variance, but self created hardship is not relevant to this area variance, it's important but more for a use variance.

A: the adjoining property owners are not impacted by this and they are supporting it.

Member- The variance stays with the property.

A: yes ownership can change but the property is the property.

The 0.233 acres is the Town's.

Attorney- The road has been abandoned, looking at 205 of highway law it has been abandoned.

Q: If that .233 acre parcel was not part of this, where would you put the garage if you were not able to get that land?

A: He stated he really would have no other place to put it, he has thought through it and feels he would then have a serious problem. Unfortunately the optimum place requires him to come to the Board for a variance, due to the proximity to his neighbor, and the slopes in other

areas of the property, he doesn't have much of an option other than a variance. Since the neighbors had no issue he was unsure what benefit it was to the Town to not grant the variance or to make him find another location.

Consideration:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting variance? *A: No*
2. Whether benefit sought by applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance? *A: Possibly minimizing the variance- it was discussed there would be a variance regardless, one member did feel the garage could be moved to an area that would not require any setbacks, remove trees and move closer to the house then others agreed.*
3. Whether the requested area variance is substantial? *A: yes*
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? *A: No*
5. Whether the alleged difficulty was self-created which shall be relevant to the decision of the Board but which shall not necessarily preclude granting of the area variance. *A: Yes*

The Chair then considered leaving the Public hearing open to give the applicant time to reconsider the location of the garage, and reduce the variances in any amount

The Charge of the ZBA was restated and felt there could be some give on the applicant's part to reduce the variance and there are other options.

The Applicant did feel yes he could move it 5 or 10 feet, but what was he accomplishing? Then he would have difficulty maneuvering on the site and would have to remove trees.

Moving the garage was discussed again, the reduction of the variances was also discussed as well as the setback regulations. Mr. Quartararo mentioned at one time he was on the Zoning Board of Appeals for the Town of Dover and understood the regulations and the charge of the Board.

The applicant considered moving the property line further south by 11.2' in order to eliminate one variance and then the front yard setback would be the only item of consideration.

Attorney Liguori cautioned the Board that the Zoning Board would not set precedent - every application is looked at on its own merit, and the old test was hardship, the test is whether the benefit to the landowner outweighed the detriment of the Health Safety and Welfare to the Public.

Mr. Quartararo to Attorney Liguori- From what he plans to do, based on what is proposed, what is in the record, the okness by the neighbors- is there exposure to the Town by what is proposed to the Town.

A: it's not likely, but you have to meet the criteria of the test. It is understood, that if there is no liability, then what is the problem? But the Board has a point that they are obligated to grant the most minimum variance and that they don't have to go along with what is convenient or aesthetically pleasing for the applicant. If there were neighbors there upset about the proposal then maybe, but that's not what the Board is hung up on.

Applicant- So really if he moves the line and does not need a variance, all that does is eliminate the fact that the board does not have to grant a variance. That's all it does. So the neighbor has no problem we can move the line wherever you want, and does it affect your test that much that you have to say you have to move the line 10' down.

Chair- There would be no test because there would be no variance.

Attorney- the point is if the only thing that is being accomplished is that we are not granting a variance, then it might be pushing the boundary of rational for denial. If the issue is granting the minimum variance necessary, that would be one thing, but the requirement isn't to eliminate all variances. It's a fine line, the 2 things there are hang ups on are - is it substantial? Not only the mathematical question, is it self created, and is there any where else on the site this could be moved. This is at a point, it's clear from the applicant he does not want to move it, if there is a possibility to move the line it's legitimate to ask what it doing other than not is granting a variance. The Board needs to go back to the test and choose to either grant or deny

Applicant- Would rather not move the line further south because the best boundary lines are those that are clear and well defines such as the line of trees that already exist.

There was a census of the Board taken as to whether or not continue the Public Hearing or move forward

Moving the front yard setback further back to minimize the variance was then discussed

7:56 Attorney Liguori- If the Board closes the Public Hearing tonight, you then have 62 days to make a decision, if it is left open then the clock only starts after it is closed- remember if the Board chooses to grant it, there should be the condition that it would be subject to the Town Board conveying the road, he then signed off the conference call

The Board discussed the option of keeping the hearing open, the applicant was ready for a decision either way the Board chooses to move

Each variance was voted on separately

The applicant had agreed to move the garage 4' to the east in order to reduce the size of the variance from 9'4 to 5'4, the 4' porch portion of the proposed garage will be removed from the plans in order to move the garage east. No revisions were made to the side yard setback of 11'2

Wittman- Initially you were talking about moving the southern line down 10' or what ever it takes to eliminate that variance, the 0.233 acre parcel is off the table because if a variance is granted - it's conditioned on the Town Board granting that to you along with the lot line change.

Quartararo- 'The only problem I am having is that the conservation easement says that the large parcel can only be subdivided into 2 lots, and that's what they are doing

now. So I don't know what Dutchess Land Conservancy is going to say when I chop that piece off.' (There was a large conservation easement on his parents property )

Wittman -Maybe we should hold off until you are sure, what you have offered is in fact, doable.

**Motion to close the Quartararo Public Hearing made by Member Kaufman; Second Member Wittman**

**Vote:**

Chair Van Millon - <u>Aye</u>	Member Fusco - <u>Absent</u>
Member Wittman - <u>Aye</u>	Member Williams - <u>Aye</u>
Member Kaufman - <u>Aye</u>	

*Motion approved*

If the Town does a quit claim and the property known as 'Abandoned Camby Road' the variance to the south will be 11'2.

The Chair did not feel this was too large of a variance.

George Wittman:

Requested that they move forward with the variances and then have Attorney Liguori review to insure they are worded correctly.

Motion which is conditional on the granting of a quit claim deed from the Town of Dover to the Applicant for the parcel, the 0.233 acre parcel on the southerly boundary of his property, into which this garage would be constructed partially. The variance should be from Chestnut Ridge Road, the setback required to be 60' the applicant is asking for a 5.4' variance to the closest corner of the garage, which he is proposing to grant a 5'4 variance

On the southerly boundary the south easternly corner of the proposed 20X 20 garage is 18.8' from the property line which would require a variance of 11.2' to comply and he is proposing they grant that

As far as he is concerned this is wordy,

Chair- Both variances are conditional variances

The first one 5.4' from Chestnut Ridge deny or grant

**Vote:**

Chair Van Millon - <u>grant</u>	Member Fusco - <u>Absent</u>
Member Wittman - <u>grant</u>	Member Williams - <u>deny</u>
Member Kaufman - <u>grant</u>	

*Motion approved*

The second variance on the southerly end of 11.2'

**Vote:**

Chair Van Millon - <u>grant</u>	Member Fusco - <u>Absent</u>
Member Wittman - <u>grant</u>	Member Williams - <u>grant</u>
Member Kaufman - <u>grant</u>	

*Motion approved*

Both are conditionally granted

Applicant- did you want to add the condition that the driveway be closed?

A: George Wittman: Thank you for offering; I think it is safe for everybody. I don't think we can really make that a condition as it is not really part of the variance. You would be wise in doing so

Mr. Horton- and this is conditioned on the lot line change too-

A: Wittman- Yes the lot line change had to be included in that too.

Chair- everything is based on the lot line change

Member Kaufman- the 0.233 lot line change, correct?

A: Chair yes

Wittman- The quit claim deed will be to which party?

A: I don't know

Horton- The way it is the .233 acres, the road bed is owned by Paul's mother, the public interest was always as a ROW, the public never owned the actual land the road was on, that's what they call a user road, so it wasn't owned in fee title by the county or the town, it was always just a ROW a Public ROW. So what they will be quit claiming it the ROW not any land.

Wittman- conditionally, and I leave the wording up to mike, we can't grant any variances or any changes on a property that you don't own, so it is conditionally on you getting the ownership of the property and credentials, whatever it is, to show that that proposed parcel is yours.

Mr. Quartararo- When I talked to mike, and George Heck, I could not get a hold of Joanne, I think looking at the highway law, and it's a certificate of abandonment filed by the Highway Superintendent followed by a resolution to adopt it by the Town Board. When I spoke to Mike, I said what I would do is when I get the deed to the land; I would attach those resolutions to the deed so there is always the Public record of the abandonment. He said that would be the easier way to do it than a quit claim deed.

Wittman- Whatever it is that you're comfortable with-

That's what he said, I really don't care

Wittman -The only condition is that you own the property, legally in your name

Chair read:

Email from Michael Liguori:

*'...so that we have no title issues in the future, the Town Board can be asked to quitclaim any right title or interest in and to the roadbed or we can follow 205(1) of the Highway Law, where we ask the Highway Super to file an abandonment with the Town Clerk, which is acknowledged by resolution of the town board...'*

Wittman- so when this is quit claimed by the Town, who does it go to- you say it might go to your mother. She would then have to transfer it to you. Once you get that then you will have the ability to use the variances granted

It was then requested that the applicant submit 1 set of new maps and well as a revised application to show the revisions in variance for the master ZBA file

Applicant- we will have to do this for the Planning Board anyway - is that ok?

A: yes

1. MINUTES OF JULY 18, 2012

Motion to accept the minutes of July 18, 2012 as submitted by Member Williams; Second Member Kaufman

Vote:

Chair Van Millon - <u>Aye</u>	Member Fusco - <u>absent</u>
Member Wittman - <u>Aye</u>	Member Williams - <u>Aye</u>
Member Kaufman - <u>Aye</u>	

*Motion approved*

2. ADJOURNMENT

Motion to adjourn by Member Wittman; Second Member Williams

Vote:

Chair Van Millon - <u>Aye</u>	Member Fusco - <u>absent</u>
Member Wittman - <u>Aye</u>	Member Williams - <u>Aye</u>
Member Kaufman - <u>Aye</u>	

*Motion approved*

Respectfully submitted,

*Betty-Ann Sherer*

Betty-Ann Sherer, Secretary to the Board

[PlanningARB@TownofDoverNY.US](mailto:PlanningARB@TownofDoverNY.US)

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All reasonable accommodations will be made for persons with disabilities. In such a case, please notify Betty-Ann Sherer in advance by phone at 845-832-6111 ext 100 so that arrangements can be made

Please call the Planning Board Office with any questions 845-832-6111 ext 100