

Town of Dover Zoning Board of Appeals

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



(845) 832-6111
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SPECIAL MEETING

Wednesday

July 18, 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 (later Paul Quartararo) for Quartararo Garage Variance & Zoning Board Attorney Michael Liguori

1. CALL TO ORDER

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

Applications for Review

2. 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

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 was sworn in by Chair Van Millon

Chair- This is an area variance for side and front yard setbacks for a 20X20 garage. The first question is the 0.233 acres?

A: that is included in Jack & Lisbeth Quartararo deed. Jack has passed away, so it is just Lisbeth. It is the old road bed of Camby road, which was realigned in the 1930's. It moved the intersection from the back, the easternly line of Paul's (0.98 acre) parcel. That was Old Chestnut Ridge Road, it was abandoned too. This was done in the 30's.

Q: was that done by the County?

A: the County did the work; the section of Ridge Road, the new section was acquired by the Town of Dover, so he is unsure if Chestnut Ridge Road was a County road or a Town road at the time. Camby road- he is unsure of the status of it, he was not able to find anything, any quit claim deeds where it was abandoned, or anything like that. If it is a Town Road, it can be abandoned by 'dis-use'. If the Town stops maintaining it and the Public stops using it for more than 6 years, it becomes abandoned. That section of Camby Road is included in the Quartararo deed for Paul's parents.

Q: Do you have that deed?

A: not with him, it is in another application for a subdivision, the Town does have it.

Q: is it with the Planning Board

A: Yes

(The Secretary pulled the Planning Board file and showed the Deed to the ZBA Attorney)

The Board then discussed the merits of the application while the ZBA Attorney reviewed the deed.

Chair- According to the application, there is no other location on the property where this new garage can be located?

A: there is no other practical location, it's the most screened area and there is a stockade fence and trees screening it from the road. It's the flattest grade.

Q: so putting it on the other side wouldn't work?

A: He was not sure what he (the Applicant) would do if he was denied, he probably wouldn't build the garage.

Q: It's understood the area chosen would have more screening, but screening can be established if needed. We are looking at options that would minimize the variance.

Chair- It would be best if we saw the property and where the garage was actually proposed to see if it could be moved to minimize the amount of a variance.

A: the front yard is more landscaped and has trees, so visually it would not look as good.

For the site walk - if there could be stakes in the ground to show the location

Mr. Horton- The owner said the board could go anytime.

Chair- Could someone meet us on site?

A: Yes

Q: Is it vacant or does someone reside there?

A: Unsure it may be vacant; a date can be set now

Site walk set for Thursday 7/26 @ 5:30, the next meeting is August 1

Q: Attorney Liguori- was there a question as the whether Paul & Theresa had an interest in the abandoned part of Camby?

A: It was quit claimed by Paul & Theresa to Jack & Lisbeth.

Q: Do you know why, it seems odd, because that's the piece they would be getting back

A: not sure, for some reason it was taking to one side, where normally it would be split as a default.

Attorney- In the deed, Jack & Lisbeth conveyed to Jack & Lisbeth they convey from tenants by the entirety as a right of survivorship so husband and wife- if one were to die the property would be vested to the other. But they conveyed as tenants by the entirety to tenants in common, no doubt for the estate tax purposes. A tenant in common is where you each own individual 50% interest in the property.

If there were a divorce and 1 party wanted to sell their portion, they could put it on the open market to sell it to anyone, and have a half interest in the property that is done for estate tax purposes. So you take your half interest and convey it to your spouse, as opposed to your spouse automatically acquiring 100% title, but when you do your estate tax return you have to include the joint property. There is a rationale for doing this, tax purposes.

What is interesting about this deed is that Jack & Lisbeth to Jack & Lisbeth, but on the signature line, Paul & Theresa quit claim and grant title and interest that they may have or ever had in the Abandoned Camby Road located between the properties between Jack & Lisbeth to Jack & Lisbeth. This is the subject matter of the correction deed dated March 28 1999, record in the County Clerks office. They quit claimed any interest they had or may have and now they are seeking to get it back. When they conveyed what they may have or had, you are only saying 'what I might have, not representing by a bargain and sale deed or a warranty deed that you warrant and defend the title. This is a quit claim, I'll give you whatever interest I have, and I'm not saying I have any.

The Attorney will review the Highway Law, regarding the default on abandonment but if the applicant can, and this will be critical, if you have to have a title search done, then it is suggested you get one done. If you can get, not just the abandonment maps, those should be filed.

A: the County doesn't have them, there is no deed from the county abandoning it. If in the 1930's these were Town roads, they nothing would have to be done. Then they would just have stop using them.

Attorney- So if the County did not have them, they did the Town record the abandonment maps in the County Clerks office?

A: they recorded the acquisition maps.

Do you have the acquisition maps?

A: Not with me, they just show the road bed, with no measurements on them.

Sometimes they note the acquisition maps-

No, there's nothing on them

Attorney- So the default provisions on abandonment is what's going to control, but if there is title work from Lisbeth and Jack, whatever they have would be good, or even from Paul & Theresa.

When they bought title insurance to buy their property, no doubt, there was a description of that land. It would be interesting to see what insurance they have; did the title insurance company say they were insuring the metes and bounds or the property as described in Schedule A?

A: If they have title insurance, this has all been done in the family for years.

Attorney: If I can not come to a conclusion on this from the default, then the last resort is asking the Town to quit claim whatever interest it may have on the road bed to Paul and Theresa and that will conclusively resolve the matter for all time.

A: Unless it was a county road, It's interesting that the acquisition map when the road was re-aligned went to the Town and yet it's a county road now, how that all worked, he does not know, when this was straightened out, this ay have all been Town roads at that time.

Q: Mr. Horton: What happens if there is no paperwork?

A: it depends on who you ask.

It doesn't help that this was 80 years ago.

Q: Attorney- When the rest of the road, in the back was abandoned, where was that abandoned to, who was that abandoned to?

A: Same question, there's no abandonment, no quit claim deeds

Attorney- They don't need the deed, just the filed map, a map recorded in the Dutchess County Clerk's office. They don't deed after they do the abandonment map, just like a taking, there's no deed, and it's a taking.

A: there's a deed and acquisition deed, supposed to be a deed, either it's condemned. Purchased, there's a deed.

Attorney- If an abandonment map is filed, the map says right on it, between the years 1933 - 47, they didn't do deeds, they just recorded the maps. NYS records abandonment maps, premises abandoned to -----, that's it. Which may be why you never found a deed?

A: But this is the County not the State, and he never saw them not do a deed.

Attorney- We will need to check with the Highway department, they may have something. We are pass the point, I know you can not have an adverse possession claim, against the municipality

A: these are user roads to begin with

Attorney- A quit claim from the Town Board for abandoned Camby would go a mile to resolve it. If anyone wanted to raise a question with the County I wouldn't be so concerned

Member- What happens with these roads, when they are abandoned, who can take possession of them?

A: What usually happens is the map is abandoned to some entity, Like the State to the Town or the County, there is usually some consistency. They always want to leave the local Highway department with the most amount of ROW, which is usually 3 rods- 49 almost 50'. But if they had to take land from a landowner and there was a portion not needed, instead of abandoning it to the Town they could exchange it and file a joint map. To avoid 2 deeds, just file a map with the clerk. So usually there is some default. In this case we do not know who abandoned it, was Camby road a county or town road?

It would be suggested for this applicant to go to the Town Board and request they Quit claim and interest they have.

Q- Attorney To Secretary - Who shows up on the tax records?

A: the County shows no documentation of transference or ownership by any party. That's why he feels it should be the Town to do the quit claim, not just this road, but for also the old road that goes through the parents parcel.

Secretary- But that's Chestnut Ridge road, that goes through Jack and Lisbeth's property, not Camby.

Ok, well the surveyor as part of his job has to go through and check all of this stuff. The part that is Jack and Lisbeth that we are looking at right now should go through the town to Lisbeth.

(Looking at the map) where does the rest of the road go?

A: The portion that once went through Sugar Maple Farm has become part of that parcel. So another question is does Sugar Maple Farm have any claim to the abandoned part of Camby? The applicant will have to check that out.

Motion to continue the Quartararo Public Hearing made by Member Wittman; 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

At this time Mr. Quartararo appeared and was sworn in-

The Zoning Board scheduled a site walk for Thursday 7/26 @5:30, there is a question on the piece that is to be conveyed to you, who is the record title owner. The assessment rolls indicate there is no record of it being conveyed to any particular party (the abandoned road). This will need to be resolved for the Zoning Board as well as the Planning Board. Mr. Horton was here and there was a discussion on what information he has in his files as to the right title and ownership of the abandoned road.

A: What do you need me to do?

Attorney- Kirk was asked to research to find the evidence of the abandonment of the road, if you can't find anything, we will have to ask the town board to quitclaim the title of interest, this may resolve the issue. Does Sugar maple have any interest in the old abandoned road?

A: No, this was Extons property and when his parents purchased the property, the road was abandoned in the 1930's and he does not know who owned it and thought after 6 years it was split done the middle. So is the Public Hearing closed?

Attorney- No, it's continued.

A: so if he can get this information in by the next meeting, can he then be done with the ZBA?

Attorney- Yes it is possible.

3. MINUTES OF JANUARY 04, 2012

Motion to accept the minutes of November 2, 2011 as submitted by Member Kaufman ; Second Member Williams

Vote:

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

Motion approved

4. ADJOURNMENT

Motion to adjourn by Member Williams; Second Member Wittman

Vote:

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

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