Village of Millbrook
Zoning Board of Appeals
Meeting Minutes
November 5, 2013

Call to Order: Meeting was called to order at 7:00PM by Chairman Joel Diemond.

In Attendance: Chairman Joel Diemond, Earl Meyers, John Hay and Andrew Doro.
Village Attorney – Audrey Friedrichsen (Van DeWater &Van DeWater, LLP).
Excused: Robert Knapp.

Review of Minutes: Minutes from the July 22, 2013 Zoning Board of Appeals meeting were reviewed. Motion was made by Mr. Hay and seconded by Mr. Meyers to accept the minutes as written. All were in favor.

Old Business: **N/A**

New Business: Public Hearing for Joshua Mackey – Manchester Road Company, LLC – 3208 Franklin Avenue.

Prospective buyer for 3208 Franklin Avenue. Request for a review of a denial from the Zone Enforcement Officer (ZEO) concerning his claim of a continuation of use. If the ZBA review supports the ZEO, he is applying for a use variance. Mr. Mackey is requesting a decision that his proposed use is a continuation of a prior legal nonconforming use; that there is a variance currently and that his proposal is a legal change of use. Or – if there is not a variance already that he falls under - then a request for a use variance for the property for his law office**.**

Chairman Diemond explained the mission of the Zoning Board of Appeals (ZBA) for those in attendance. He also mentioned that he has personally made purchases from Mr. Mackey's father's business - Arlington Wine & Liquor in Poughkeepsie, NY. This did not appear to cause a problem for anyone in attendance.

Chairman Diemond opened the Public Hearing portion of the meeting at 7:10PM and asked Mr. Mackey to state his reason for coming before the ZBA. Mr. Mackey explained in detail that he is a contract-vendee to the property located at 3208 Franklin Avenue, where he intends to have his law office. He is respectfully requesting that the ZBA overturn the October 17, 2013 decision of the Village of Millbrook Zone Enforcement Officer (ZEO)/Building Inspector (Kenneth McLaughlin) or, in the alternative grant a Use Variance pursuant to the Village Code – Section 230-68 B.2.(a). A copy of Mr. Mackey's November 5, 2013 letter and packet of information to the ZBA – outlining the factual history along with his detailed request for the overturn of the ZEO's decision; his alternative request for a Use Variance and his conclusion – is amended to these minutes (with attachments) to provide a complete and accurate detail of Mr. Mackey's request with all the supporting documentation (his ZBA

application, the October 17, 2013 letter of denial from the ZEO, the June 25, 1986 ZBA minutes regarding this property, the 1987 deed for this property, supporting photographs of the property interior as it exists today, a supporting letter from Karen Trama – current owner of this property, correspondence from Mr. Mackey to the ZEO along with two supporting "neutral" professional opinions regarding the condition and proposed use of this property).

Chairman Diemond asked the ZBA members if there were any questions. There were none.

Chairman Diemond asked the Public Hearing attendees if there were any questions. There were none.

Chairman Diemond noted that the only permitted use in the "RT" Zone (where the property is located) is residential. He also noted that Special Permits are not permitted in the "RT" Zone. He said that for this reason, the ZEO had no choice but to deny Mr. Mackey's request. Chairman Diemond went on to say that many of the old Village records – including the old Village Code and most of the old ZBA records have been lost or damaged by basement flooding over the years. Mr. Mackey asked the Dutchess County Dept of Planning and Development if they have a copy of the old Village Code. They do not.

The Village Code – Section 230-42.B(3) – states that "A nonconforming use of a building may be changed only to a use of similar or less nonconformity, as determined by the ZBA". Attorney Friedrichsen and Chairman Diemond discussed how this section of the Code applies to Mr. Mackey's request. They also briefly reviewed the Site Plan submitted by Mr. Mackey with emphasis on the number of parking spots noted on the Plan. It was recommended that the 12 (non-stripped) spots be reduced to a maximum of 8 or 9 spaces to conform to the Code wording for "a use of similar or less nonconformity". The previous property uses were for a chiropractic office and massage therapist office. Chairman Diemond asked Mr. Mackey what the maximum use of the office might mean. He said that at most it might mean secretary and/or paralegal and occasional use by a second attorney. On the rare occasion of a closing or deposition, it might mean four participants in addition to staff. It was agreed that Mr. Mackey's sole-practitioner law office would have much less traffic than either of the two prior uses.

Attorney Friedrichsen supplied the ZBA with a Confidential Memorandum (11/5/13) regarding this Appeal. She read from her memo (pg 3 – paragraph 3) in support of Section 230-42.B(3) of the Code….."A continuation of use exists where the use is substantially the same and that which previously existed; where the essential character of the use has not been changed." She said that Mr. Mackey's request appears to be "office use to office use".

She recommends that the ZBA refer Mr. Mackey's request back to the Planning Board (see Village Code Section 230-68.D - Referral to the Planning Board) for review and recommendation. The Planning Board is

scheduled to meet on November 19, 2013 and will address this issue. The Planning Board will be asked to submit their recommendation(s) back to the ZBA as follows:

- A review and recommendation (s) of the new Site Plan submitted by Mr. Mackey.
- Submit factual input that would affect their finding(s) or decision.

A discussion ensued between Chairman Diemond and Mr. Mackey regarding his proposed use. Chairman Diemond stated that Mr. Mackey's law office is a still a different use. Mr. Mackey asked if the ZBA would give approval pending PB approval. Chairman Diemond said that the ZBA will state their intention (to approve his request) to the Planning Board – and will act after receipt of the Planning Board's recommendation(s).

A follow-up ZBA meeting will be scheduled for November 22, 2013 to act on this Appeal (See Village Code Section 230.69). Attorney Friedrichsen asked for authorization to prepare a Resolution for the 11/22/13 ZBA meeting. Mr. Hay moved and Mr. Myers seconded a motion to authorize Attorney Friedrichsen to prepare and submit this Resolution. All were in favor. Attorney Friedrichsen also suggested that the ZBA vote to keep the Public Hearing open until the meeting on November 22, 2013.

Mr. Hay moved and Mr. Meyers seconded a motion to adjourn the Public Hearing until November 22, 2013 at 7PM. All were in favor. The motion was approved at 7:40PM.

Motion to Adjourn: Motion was made by Mr. Doro and seconded by Mr. Meyers to adjourn. All were in favor. The meeting was adjourned at 7:50PM.

Respectfully Submitted:

Suzanne Gould
Secretary
Zoning Board of Appeals