Village of Millbrook
Zoning Board of Appeals
Meeting Minutes
November 22, 2013

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

In Attendance: Chairman Joel Diemond, Andrew Doro, Earl Meyers, John Hay and attorney Audrey Scott. Excused: Robert Knapp

Review of Minutes: Minutes from the November 5, 2013 Zoning Board of Appeals meeting were reviewed. Motion was made by Mr. Diemond and seconded by Mr. Meyers to accept the minutes as written. All were in favor.

Old Business: Motion was made by Mr. Meyers and seconded by Mr. Hay to reopen the public hearing from the meeting held on November 5, 2013 in reference to Joshua Mackey- Manchester Road Company, LLC- 3208 Franklin Avenue. All were in favor.

a. **Continuation of the 11/5/13 Public Hearing for Joshua Mackey- Manchester Company, LLC – 3208 Franklin Avenue. Referral from the 11/19/13 Planning Board meeting. Prospective buyer for 3208 Franklin Avenue. Request for a review of a denial from the 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 non-conforming 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 sue variance for the property for his law office.**

Copies of the new Short Environmental Assessment Form 617.20 Appendix B without the apartment information were distributed to the Planning Board members and the applicant. Mr. Mackey was informed that he needed to be consistent with name of the documents presented to both the ZBA and the Planning Board (Manchester Road Company, LLC & Joshua E. Mackey). Audrey Scott reviewed the EAF form as follows:

Part 1. Brief Description of Proposed Action: Remodeling of existing office building. The plan includes the reducing number of front entrances from two to one; landscaping; roof; siding and window replacement; general repairs to the building mechanicals; reducing the number of interior offices from six to five; replacing floors and patching and painting of walls. There is no intention to increase the size or footprint of the building's structure. An existing apartment in the building will be converted to an office kitchen area.

1. **Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?** NO

2. Does the proposed action require a permit, approval or funding from any other governmental Agency? NO

5. Is the proposed action,

a. A permitted use under the zoning regulations? NO

b. Consistent with the adopted comprehensive plan? YES

6. Is the proposed action consistent with the predominant character of the existing built or natural landscape? YES

7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? NO

8. a. Will the proposed action result in a substantial increase in traffic above present levels? NO

b. Are public transportation service(s) available at or near the site of the propose3d action? NO

c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action? NO

9. Does the proposed action meet or exceed the state energy code requirements? YES

10. Will the proposed action connect to an existing public/private water supply? YES

11. Will the proposed action connect to existing wastewater utilities? YES

12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? NO

b. Is the proposed action located in an archeological sensitive area? NO

13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? NO

b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? NO

15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? NO

16. Is the project site located in the 100 year flood plain? NO

17. Will the proposed action create storm water discharge, either from point or non-point sources? NO

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids? NO

19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? NO

20. Has the site of the proposed action or an adjoining property been the subject of remediation for hazardous waste? NO

Part 2. Impact Assessment the answers were NO, **or small impact may occur to all questions numbered 1 through 11.**

Part 3. Determination of significance. The determination was of non-significance.

Mr. Mackey submitted the map showing the elevation of the property. He added that one front door will be eliminated on the right and he will be keeping the front door to the left. A metal grey roof will be installed and dormers will be added. Two small offices will be combined into one office. Closets will be added. There will be no change to the footprint of the building. Four parking spaces will be removed. The sign will be 6 square feet to keep it in compliance with the Village Code.

Resolution: Decision of the ZBA in the matter of the appeal of Joshua E. Mackey 3208 Franklin Avenue; tax map no. 6764-01-355962. The following resolution was read into record by attorney, Audrey Scott.

DECISION OF THE ZONING BOARD OF APPEALS
IN THE MATTER OF THE APPEAL OF JOSHUA E. MACKEY
3208 FRANKLIN AVENUE; TAX MAP NO. 676401-355962

_____offered the following resolution which was seconded by

_____who moved its adoption;

WHEREAS, the Village of Millbrook Zoning Board of Appeals ("ZBA") received an appeal application (the "Application" or the "Appeal") by Joshua E. Mackey, with the consent of property owner Karen Joy Trama (the "Applicant"), from an, October 17, 2013 denial by the Building Inspector of a building permit to use the property located at 3208 Franklin Avenue as a law office; and

WHEREAS, the building permit was denied by the Building Inspector for the following reasons: (1) a law office is not a single doctor medical office as identified in the Special Permit granted by the ZBA in the R2 zone on June 12, 1986 [sic]; and (2) the current zoning code does not permit offices or medical offices by special permit of other in the RT zone pursuant to the Schedule of Permitted Uses Chapter 230 titled Zoning; and

WHEREAS, the Applicant appealed the determination of the Building Inspector, contending that the proposed law office use is a continuation of the permitted non-conforming use under the 1986 special permit and, in the alternative, the Applicant seeks a use variance to allow for the operation of the law office; and

WHEREAS, Village of Millbrook Zoning Code ("Zoning Code") § 240-42 Zoning Code § 230-42 provides that "the lawfully permitted use of land or buildings existing at the time of the adoption of this chapter may be continued, although such use does not conform to the standards specified by this chapter for the zone in which such land or building is located. Such uses shall be deemed nonconforming uses;" and

WHEREAS, Zoning Code § 230-42.B(3) further provides: "A nonconforming use of a building may be changed only to a use of similar or less nonconformity, as determined by the Zoning Board of
Appeals;" and

WHEREAS, Zoning Code 230-42.B(4) also provides: "A nonconforming use which has ceased due to a vacancy must be renewed by application to the Planning Board before 2 years has lapsed;" and

WHEREAS, a duly noticed public hearing on the Application was opened on November 5, 2013, and adjourned to November 22, 2013 at which time it was closed, and there were two positive public comments; and

WHEREAS, the Appeal was referred to the Village of Millbrook Planning Board by the ZBA for review and recommendation pursuant to Zoning Code § 240-68.D, and was considered by the Planning Board at its regularly scheduled meeting on November 19, 2013, at which time the Planning Board did not issue a recommendation; and

WHEREAS, the proposed action is classified as an Unlisted Action under the State Environmental Quality Review Act ("SEQRA"), and therefore may be subject to an uncoordinated review; and

WHEREAS, the Applicant submitted and the ZBA reviewed and completed a SEQRA Short Environmental Assessment Form for the proposal; and

WHEREAS, the ZBA considered the Short EAF, the facts of the case and the matters and evidence produced by the Applicant, Building Department, and any interested parties, having been duly heard, received and considered, and due deliberation having been had in consideration of the SEQRA record and the record of findings.

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Appeals hereby determines that the proposed action will not result in any significant adverse environmental impacts and hereby issues a determination of non-significance, i.e. a negative declaration, and therefore, an environmental impact statement is not required to be prepared under SEQRA; and

BE IT FURTHER RESOLVED, that the attached Record of Findings be issued and the Zoning Board of Appeals hereby finds and determines that the proposed law office use is permitted as a change of nonconforming use to a use of similar or less nonconformity pursuant to Zoning Code § 240-42.B(3); and

BE IT FURTHER RESOLVED, that the determination of the ZBA is subject to the following conditions:

1. The 12 non-striped parking spots shall be reduced to a maximum of 8 or 9 spaces; and
2. Issuance of approval by the Planning Board for the renewal of the use of the property pursuant to Zoning Code § 240-42.B.4.

The foregoing resolution was duly put to a vote, which resulted as follows:

	AYE	NAY	ABSTAIN	ABSENT
Joel Diemond	____	____	____	____
Andrew Doro	____	____	____	____
Robert Knapp	____	____	____	____
John Hay	____	____	____	____
Earl Meyer	____	____	____	____

Date of Decision:_____

Secretary:_____

Village Deputy Clerk:_____

Seal

FILED THIS DATE_____IN THE OFFICE OF THE VILLAGE CLERK

Chairman Diemond asked the Board members if there were any questions or concerns regarding this request before them. There were none. Chairman Diemond asked the public if there any questions or concerns regarding this request discusses. Mary Shaughnessy stated that the improvements will be a nice addition to the Village entrance. No other comments from the public were submitted. Mr. Hay made a motion to close the public hearing and Mr. Meyers seconded. All were in favor. Audrey Scott stated the Planning Board did not provide any recommendations to the ZBA. The code is unclear on the decision. She added that no jurisdictional problem exists and if the Planning Board provides a substantive recommendation then the ZBA may reconvene. Mr. Meyers offered the resolution which was seconded by Mr. Hay who moved its adoption. All were in favor.

Audrey Scott read the Record of Findings in the matter of the appeal of Joshua E. Mackey, 3208 Franklin Ave; tax map no. 6764-01-355962 as follows with corrections as per the ZBA's instructions:

VILLAGE OF MILLBROOK ZONING BOARD OF APPEALS
RECORD OF FINDINGS
IN THE MATTER OF THE APPEAL OF JOSHUA E. MACKEY
3208 FRANKLIN AVENUE; TAX MAP NO. 6764-01-355962

The matter having come to be heard before a duly convened meeting of the Zoning Board of Appeals ("ZBA"), and the facts, matters and evidence produced by the applicant, the Building Department, and any interested parties having been duly heard, received and considered and due deliberation having been had, the following is the Record of Findings:

- The appeal was presented by Joshua E. Mackey, with the consent of Karen Joy Trama (the "Applicant")
- The property that is the subject of the appeal is located at 3208 Franklin Avenue and is identified by tax map number 676401-355962 (the "Property")
- Mr. Mackey is the contract vendee for the Property

- The ZBA granted a medical office special permit for the property in order to permit use by a single physician on June 25, 1986
- The Village of Millbrook Planning Board ("Planning Board") granted site plan approval for a single doctor office on the property on March 18, 1987
- The Applicant proposes to use the property as a single-practitioner law office
- On October 17, 2013, the Building Inspector denied a building permit for such use on the following grounds: (1) a law office is not a single doctor medical office as identified in the Special Permit granted by the ZBA in the R2 zone on June 12, 1986 [sic]; and (2) the current zoning code does not permit offices or medical offices by special permit of other in the RT zone pursuant to the Schedule of Permitted Uses Chapter 230 titled Zoning
- The Applicant appealed the determination of the Building Inspector, contending that the proposed law office use is a continuation of the permitted non-conforming use under the 1986 special permit and, in the alternative, the Applicant seeks a use variance to allow for the operation of the law office; and
- The Property is currently zoned Residential Transition (RT), effective in 1996
- Office is not a permitted use in the RT Zoning District; the only permitted use is residential
- The building on the Property is designed and built specifically for use as an office pursuant to the 1986 special permit; the Applicant submitted photographs of the interior office layout and construction of the building
- The previous uses of the property were as a chiropractic office and a massage therapist office
- The building has been vacant for at least one year
- The proposed single-practitioner law office use would be used by Mr. Mackey essentially as a single practitioner, with a secretary and/or paralegal and occasional use by a second attorney, and clients would visit the office individually with the rare occasion of a real estate closing or deposition resulting in up to four participants in addition to regular office staff
- The Applicant has stated that the currently existing Village office he uses is not staffed and there is no immediate plans to do so, and on a typical say at the existing Village office there might be two or three clients in total
- The proposed sole-practitioner law office would create less traffic than the prior two uses of the property; the Applicant submitted a statement indicating that law office appointments are less frequent that a medical, chiropractic or massage therapy office
- According to the SEQRA EAF submitted for the Application, the Applicant proposes to reduce the number of front entrances from two to one, install landscaping, conduct roof, siding and window replacement and general repairs to building mechanics, reduce the number of interior offices, replace floors and

repair interior walls; there is no intention to increase the size or footprint of the building; an existing apartment will be converted to an office kitchen; there would be no significant change to the general outside appearance of the building, which is residential in nature

- Two letters submitted into the record by the Applicant prepared by real estate experts state that more investment would be required to convert the building for residential use than property values would dictate as viable, and that to renovate the building for single or multi-family use would create a severe financial hardship
- Village of Millbrook Zoning Code ("Zoning Code") § 240-42 Zoning Code § 230-42 provides that "the lawfully permitted use of land or buildings existing at the time of the adoption of this chapter may be continued, although such use does not conform to the standards specified by this chapter for the zone in which such land or building is located. Such uses shall be deemed nonconforming uses;" and
- Zoning Code § 230-42.B(3) further provides: "A nonconforming use of a building may be changed only to a use of similar or less nonconformity, as determined by the Zoning Board of
- Zoning Code 230-42.B(4) also provides: "A nonconforming use which has ceased due to a vacancy must be renewed by application to the Planning Board before 2 years has lapsed

Based on the foregoing, the Zoning Board of Appeals finds that the proposed Law office use would be a use of similar or less nonconformity as compared to the prior single-practitioner medical office, chiropractic or massage therapist office uses.

The Zoning Board of Appeals further finds that the non-conforming use ceased due to a vacancy and must be renewed by application to the Planning Board.

New Business: **N/A**

Other Business: **N/A**

Motion to Adjourn: Motion was made by Mr. Hay and seconded by Mr. Doro to adjourn. All were in favor. The meeting was adjourned at 7:34PM.

Respectfully Submitted:

Linda T. Wiltse
Clerk/Treasurer
Interim Secretary
Zoning Board of Appeals