VILLAGE OF RED HOOK
PLANNING BOARD MEETING
September 8, 2011

Present: Co-Chairman Rodney Morrison, Member Paul Fredricks, Member Stephen Zacharzuk, Member Mark Mirando & Building Department Secretary, Lara Hart

Absent: Chairman Everett Pearsall

Co-Chairman Rodney Morrison made a motion to open the Village of Red Hook Planning Board meeting at 7:00pm.

Member Stephen Zacharzuk made a motion to accept the minutes from the August 11, 2011 planning board meeting, with one amendment that was noted by secretary Hart. Seconded by Member Mirando. All in favor. Minutes approved and accepted.

#1. Laura Pensiero – GiGi Hudson Valley 7392 South Broadway Site Plan
Tax Grid #:6272-10-324546

Laura Pensiero was present. Mitchell Bodian, owner of the property, was present.

Co-Chairman Morrison made a motion to open the public hearing at 7:05pm. Co-Chairman asked if any person was present to speak on this matter.

Laura Pensiero spoke to again advise the board of her intent to have a mobile food truck at 7392 South Broadway. Co-Chairman Morrison reminded that at last month's meeting the board gave approval for Laura to operate her mobile food cart during the RHCAN event. Laura did advise the Board that she would like to have the mobile food truck through October and start up again in April of the following year. Co-Chairman Morrison spoke on the last meeting and apologized to Laura for the Board not having up-dated and current zoning law at the last meeting.

Mitchell Bodian was present and asked the Board exactly what are we getting approval for – he asked if approval was for <u>this</u> food truck to operate, or for <u>any</u> food truck to operate? Mitchell Bodian asked that why, after going through the zoning book, was there to be a public hearing. Co-Chairman Morrison advised that at last month's meeting there was some confusion as to what was allowed in this location. There were a couple of levels of miscommunication, one being CEO Harkins using State Building Code and the Board not being knowledgeable about what was allowed in the Zoning, of which the trustees amended some time ago, which this Board was not current on.

Co-Chairman Morrison gave his opinion, in reading the zone, that in this NMU zone – that this use is permitted in this zone – he feels this falls under the general classification of a delicatessen. The description of a delicatessen talks about it being accessory use subordinate to other uses – so he reads it as uses allowed and therefore a public hearing was not necessary. If the Board had been prepared to hear that, there probably would not have been a public hearing scheduled. A public hearing was scheduled due to the Board being under the guide that this was a special permit/or potential change in use. Laura asked what type of zone could she operate in? Co-Chairman Morrison does not believe that what Laura is proposing is identified specifically anywhere in the code. Village attorney Victoria Polidoro was present and did advise that there is nothing in the zoning that refers specifically to a food truck. Laura stated that this is something that the Board should consider because a food truck is very economical and a food trend that is used today. Co-Chairman said regarding Mr. Bodian's question - does this approval, that the Board is considering, approval for GiGi's of the Hudson Valley to operate or is it general approval for anyone? Co-Chairman Morrison replied in essence if Laura leaves, the approval will still exist for this property. Attorney Pollidoro advised that the Board will be approving a use of a temporary food truck on this site. Attorney Pollidoro referenced if Laura's food truck was 10x10 and then somewhere down the line another truck came in that was 50x50, you might say that was a different use because of the layout change – therefore the size of her food truck will be consistent with Board's approval. Member Fredricks asked if Mr. Bodian has to get his own approval – in the case if Laura does not return next year. Attorney advised that technically Mr. Bodian is the applicant as well because he has authorized this application – it is his site plan that is being amending. Member Fredricks said then it is the site itself that is being approved. Attorney replied yes.

Co-Chairman felt it was a decent fit to the property, and being able to use the inside bathrooms, and in terms of approving, this was important. Member Fredricks also indicated that this site is large enough. Mr. Bodian indicated that there is also plenty of parking.

Co-Chairman advised that legally because we noticed the hearing, we would need to go forward with the public hearing. Attorney advised that even where the public is not a part of it, there is always going to be a discretion. Co-Chairman Morrison again apologized for the Board not being well coordinated at prior meeting.

Co-Chairman asked if any other comments. No comments.

Member Fredricks asked attorney if she was happy with definition of delicatessen. Attorney withheld comment because she was not privy to discussion and did not see the application. Co-Chairman indicated that if you look at definitions in the zone for what is allowed – it is his opinion that this was an allowed use in the zone. Member Fredrick did ask of definition not because he had a problem with it, but only because if someone else read it they could say it was fast food. The reason for code is to stop the McDonalds/Burger Kings, etc. and unfortunately other people, Like Laura, get affected. Attorney said if the Board is comfortable with approving, they may want to approach to say in this we feel it fits a delicatessen but that the Village Board should amend the zoning to include a new classification for this definition. Member Fredricks feels that we need a firm commitment that is a delicatessen and that it complies with everyone, and that the Village Board, everyone, concur with what the Planning Board is saying. Co-Chairman Morrison feels that we do not specifically address that – he feels that this is the closest definition, and that after reviewing the NMU zone, and the potential uses in the zone, that this need fits the intent of the zone. Co-Chairman Morrison has no problem with recommending that that the trustees of the Village board create another code. Trustee Kovalchik was present and said it was s simply easy procedure to amend the NMU/GBD/highway business to accommodate a mobile food truck. Attorney Pollidoro advised that tonight the Board should approve the site plan under a category that is already permitted.

Co-Chairman made a motion to close the public hearing. Seconded by member Fredricks. All in favor.

Secretary Hart advised Co-Chairman Morrison that the short form was already done and negative declaration was declared at the previous planning board meeting of August 11, 2011.

Co-Chairman made a motion to approve the application in the NMU zone because it is unique, and is not defined in the NMU zone but generally complies with categories of food service categories in the NMU zone – most similar to Section B-3-H (neighborhood groceries, deli's, and green groceries) and potentially Section M (restaurants), and otherwise fitting with the intent of the NMU zone support other neighborhood uses. Site plan was referred to as a sketch titled location from copy of a filed map dated 118-2004, survey prepared by Marie Welch, and further supported by photographs of the mobile food service operation. Seconded by Member Fredricks. All in favor.

Brent Kovalchik advised the board that they prepared zoning (delicatessen) that way to allow for flexibility in the code. Member Fredricks thinks that there needs to be some clarification, so it says flexibility. Mr, Bodian suggested that it be to permit food service and food preparation – but prohibit fast food – therefore needing to expand on the definition of chain/franchise fast food. Member Fredricks said that the problem with that would be that some chains are serving food on plates to get around fast food – because now they have to wash dishes on premises and not

considered fast food – this has been done in a number of States. Attorney Polidoro said in the definition you cannot discriminate. Member Fredricks said in the Town code you can have them but that they have to be 1000 feet apart. Co-Chairman Morrison asked if anyone knew about Rhinebeck – Laura asked about the burrito stand – Co-Chairman said that was in the Town. Member Fredricks said if you were a veteran in NYS – they can get the carts and put them anywhere in NYS. Attorney Polidoro said she would recommend the Board amending the definition of fast food restaurants to include mobile food carts. Co-Chairman Morrison said he will make a motion to draft the letter to the trustees. Co-Chairman Morrison again said he will draft the letter and will circulate to everyone.

#2.
Kittner & Fredricks Corp. 7481-7483 South Broadway, Red Hook Site Plan
Tax Grid # 6272-10-416707

Member Paul Fredricks recused himself from the Planning Board Meeting due to being an applicant with this application.

Paul Fredricks advised they are trying to rectify what the previous tenants could not do. They got approval for the concrete patio on the side of the building. Mr. Fredricks submitted a site plan. Site plan shows the floor plan, but what was forgotten was to include the seating. This was to show that people could smoke at the side of the building, rather than the front of the building. Site was measured and they are asking for approval of 6 tables of two and the side patio.

Co-Chairman Morrison asked if there was previous talk about this being an allowed use. Member Fredricks said yes. Member Fredricks said it was for smoking. Member Zacharzuk asked if patrons would be banned from smoking in front of building? Member Fredricks said that would be hard, but are hoping that people will move to the side to smoke. Patio was installed for smoking on the side. Co-Chairman asked about code for out-door seating. Member Fredricks said he does not recall anything in code about out-door seating. Co-Chairman Morrison was concerned with the requirements concerning State liquor law, and would need to talk with CEO Harkins. Member Zacharzuk asked if bollards are going from behind the tables from the driveway. Member Fredricks said yes and pointed out bollard location on site plan.

Co-Chairman Morrison began the Short Form SEQR.

Question A. - No
Question B. - No
Question C (C1-C7) – All answered No
Question D. - No
Question E. - No
This proposed action will not result in any significant adverse environmental impacts.

Co-Chairman Morrison made a motion to declare Negative Declaration. Seconded by Member Zacharzuk. All in favor. SEQR signed on this date by Co-Chairman Morrison.

Member Zacharzuk made a motion to waive the public hearing. Seconded by Co-Chairman Morrison. All in favor.

Member Zacharzuk made a motion to approve the site plan approval for Kittner & Fredricks Corp., at 7481-7483 South Broadway, Red Hook - Tax Grid # 6272-10-416707 consisting of the sketch provided, showing bollards and 6 tables. Seconded by Co-Chairman Morrison. All in favor.

OTHER BUSINESS:

Co-Chairman Morrison read aloud a letter that was received from Marie Welch, dated September 8, 2011, regarding applicant, Bruce Troy, for site plan for 7461 South Broadway - Tax Grid #6272-10-392686. Letter has indicated applicant's decision to withdraw his application currently in front of the planning board. Copy of letter on file in building department.

Member Fredricks indicated that that is another thing that he feels the Village should amend in zoning. He feels there should be no issue with having more than one accessory apartment. He feels this is in the general business and should not make a difference.

#2. Kearney Property, Inc. Fisk Street Subdivision
Tax Grid #: 6272-11-594590 & (Anderson Commons)
6272-11-619615

Ken Kearney, Sean Kearney, Peter Setaro and Attorney Victoria Polidoro were all present.

Attorney Polidoro gave out a memo for tonight's meeting and a copy of the previous memo that was prepared in March outlining this project. Attorney Polidoro explained that this is an application that was before us in 2006 for a subdivision and site plan approval, which was approved at that time with several conditions. The subdivision has expired because it was not completed within one year, and site plan is still valid – with conditions. This application is basically for re-approval of the subdivision plat. SEQR was approved on this in 2005 – so the Village Planning Board, as lead agency, has an obligation to look and see if any existing circumstances have changed, which would change that SEQR outcome. To assist in that determination the applicant has updated some of the plans. A biologist went to the site to make sure there no endangered species on site; assessed whether the wetlands have moved and they will be updating the traffic impact statement. All of these will need to be considered in re-affirming SEQR. Once SEQR is reaffirmed the Board can then move forward with setting the public hearing. Attorney recommends that as lead agency we the board has a continuing obligation to keep all the other involved agencies up-to-speed on the application, therefore, recommends that a courtesy letter be sent stating that subdivision, which has expired, is back in front of our Board for an approval and that we will be going through that process. Attorney did prepare a resolution that the Board can sign tonight. Attorney suggested that the application provide an up-date on the site plan approval, including the proposed commercial element.

Peter Setaro spoke and advised that their concern is that when they had a meeting back in March with the attorney, the Village Mayor, Co-Chairman Morrison, the applicant and that one of big reason that the Kearney's went ahead and purchased the property was the SEQR process and that it would be reaffirmed and hopefully not re-opened. A discussion was held about the various things that have not changed. The applicant has confidence in the project and wants to see it done. Co-Chairman Morrison took the attorney's recommendation with the informal notice as the Board re-affirming SEQR, as a mechanism to prevent someone later from coming forward and saying that we did not follow a process. Co-Chairman Morrison feels that we are not re-opening SEQR. Attorney feels that because they will have to deal with the other agencies involved in the next months, that we should be notifying them prior of this application and that SEQR was already done.

Ken Kearney spoke at this time to say that he has done affordable housing and the SEQR process is important and feels that this SEQR be re-affirmed. Mr. Kearney feels comfortable with the informal notice letter and resolution that was prepared by the Attorney. Mr. Kearney wants to comply with SEQR and respects the Board responsibility concerning SEQR, but most impacts have been addressed and studies have been updated, therefore, feels that the letter should be sent out as a courtesy, but feels we should then move forward. Co-Chairman Morrison said it is the period of time that lapsed, so that is the main concern. Co-Chairman Morrison advised that the Board members are new, they were not members during the first approvals. Co-Chairman Morrison indicated that this Board feels comfortable with re-affirming SEQR. Member Fredricks said he feels that this project has a lot of support from the people.

Attorney Polidoro indicated that the resolution was to circulate the courtesy notice of application to all interested and involved agencies. Co-Chairman read the resolution aloud. Attorney also advised that a copy of the site plan should be submitted with notice. Peter Setaro said he would provide Lara with copies of site plan for mailings (8 copies). Peter Setaro indicated that for better reading he would prepare full size and have them folded up for mailings.

Co-Chairman made a motion to accept the Resolution prepared by Attorney Victoria Polidoro, with addition of a signature line for the new board member's name (Mark Mirando) to be added at the bottom. Seconded by Member Fredricks. All in favor.

Peter Setaro stated that with regard to traffic impact study that he feels that nothing has changed. Peter will look and see what was done and confirm to the Board that nothing has changed.

Co-Chairman Morrison spoke on Attorney Polidoro's recommendation that the applicant provide evidence that there is adequate water supply for the project and determine whether upgrades to the water treatment and distribution system will be necessary. Co-Chairman Morrison feels that this could be updated with a letter from the Department of Health. Attorney Polidoro advised that a letter from the department of health was submitted with the application - Peter advised that they said they were going to re-approve the project – Victoria said they needed the neg. dec. Attorney Polidoro feels that this water supply issue needs confirmation from Village officials. Peter Setaro referenced CT Male report and said that there are some issues that the Village has to do as far as well fields, but that back when they were doing water for the Village (2002-2003) they recommended to the Village that they pull and clean the wells (basically recondition the wells). Attorney said other item needed would be a new planning board letter. Peter Setaro will look at CT Male report and speak with the Village Board. Co-Chairman advised that by showing that the Village can supply water this would make it technically complete.

Ken Kearney indicated that when the project was originally approved it was ascertained that there was adequate supply. Since that time the Village has located several large leaks, repaired leaks and to use his knowledge the usage has decrease. Co-Chairman said he feels this is correct.

Member Zacharzuk said, as a public citizen he attended the Village Board meeting, and water was granted to other developments, and they took that out of allotment that was taken from you with the assumption that this was never going to come up again. Peter Setaro said that was little issue only because when the Village water supply was amended in 04/05 their office had done the work for the Village and at that point in time the The DEC water supply permit was amended to include the Anderson Commons property, Hardscrabble, Knollwood and possibly one more small project; Peter was not sure if that capacity runs with the property or the project.

Ken Kearney spoke on Knollwood Commons not moving forward and if in fact they look at Anderson and said that expired, who is to say that we can't pull from there. Attorney Polidoro said the difference might be that Ken's project expired on paper. Ken advised that he asked these questions prior to purchasing this property and asked who has been granted water – and was hoping that based on leaks that were repaired that water would be re-affirmed based on the fact that leaks were found and repaired.

Member Zacharzuk said he agreed with Ken, but that he would like to see a letter from the County reaffirming water. Attorney Polidoro said it would be a good idea to have a letter from the County Health Department making it clear, on the record, that they always counted the Anderson project as approved water. Ken Kearney said he researched this and reached out to the Board of Health on their position with Anderson Commons – he feels he got the level of comfort from them to move forward.

Member Mirando asked if the CT Male Report or the letter form the Health Department came first? Attorney Polidoro said it was the moratorium from the health department.

Co-Chairman spoke on Attorney Polidoro's recommendation that the Board have an update on conditional site plan approval, including proposed commercial element. Peter said he will write a letter on conditional, but not sure on commercial. Attorney indicated we were looking for an up-date because of a possible landscaping change. Peter said he will go over that - he thought at that time they did not know what the commercial component would be. Peter said that the commercial building out front will be one of the last things that are done – Peter asked that perhaps you could consider something that prior to, not as a condition, but maybe a resolution in that prior to applying for a building permit for that – Attorney said we are not re-approving the site plan – Peter said correct – that was the site plan – but we still need to get the site plan signed – this will be discussed.

Co-Chairman asked Attorney if we are still lead agency. Attorney replied yes. Attorney advised that the Board not set a public hearing until SEQR is re-affirmed.
Attorney Polidoro asked Mr. Setero about an area of that would be dedicated to the Village. Peter said there is an area of land (Peter pointed out on map) - and at the time the Town was hoping that this could be in the hands of land trust. Peter said he remembers that Mr. Lore reached out to those agencies and they were not interested. Peter feels that this one item will need to be worked out. Peter indicated that there would be a stewardship fee involved in this, which his costly.

Co-Chairman Morrison asked about storm water. Peter said that would be updated. Co-Chairman Morrison asked if a SWIF was done. Peter said yes, they met with the DEC and they signed off on it. Peter will look into this, but believes the only item that will need updating is the SWIF.

Co-Chairman Morrison made a motion to table this application to the October 13, 2011 planning board meeting. Seconded by Member Zacharzuk. All in favor.

Co-Chairman asked the board if they had any other comments. No comments.

Co-Chairman Morrison made a motion to adjourn planning board meeting at 8:40pm. Seconded by Member Paul Fredricks. All in favor.

Submitted,

Lara Hart Secretary