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2 STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH ZONING BOARD

3 -----X

4 In the Matter of

5 LIGHTHOUSE HOLDINGS

6 131 Idelwild Road
Marlboro, New York 12542
7 23-1 Agricultural Building Change of Use
#108.3-1-21.114

8 -----X

9

DATE: May 11, 2023

10

TIME: 6:00 P.M.

11

PLACE: Town of Marlborough
Town Hall
#21 Milton Turnpike
Milton, New York 12547

12

14 BOARD MEMBERS:

15 LENNY CONN, CHAIRMAN
JEFF MEKEEL
16 GEORGE SALINOVICH
ANDREW NIKOLA
17 LARRY BARTOLOTTI

18 ALSO PRESENT:

19 KENNETH M. STENGER, ESQ.

20 Jen Flynn, Zoning Board
Secretary

21

22

23 -----X

24 LISA MARIE ROSSO
140 Mahoney Road
Milton, New York 12547
25 (845) 674-3937

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1 LIGHTHOUSE HOLDINGS

2 CHAIRMAN CONN: Let's stand for

3 the pledge of allegiance.

4 (Pledge of Allegiance)

5 CHAIRMAN CONN: Did everybody read

6 our minutes from the last meeting?

7 MR. SALINOVICH: Yes.

8 MR. NIKOLA: Yes.
9 MR. MEKEEL: Yes.
10 MR. BARTOLOTTI: Yes.
11 MR. MEKEEL: I will make a motion
12 to approve the meeting minutes from
13 4/13/23.
14 MR. NIKOLA: I will second the
15 motion.
16 CHAIRMAN CONN: All in favor?
17 MR. SALINOVICH: Aye.
18 MR. BARTOLOTTI: Aye.
19 MR. NIKOLA: Aye.
20 MR. MEKEEL: Aye.
21 CHAIRMAN CONN: Aye. This is the
22 May 11, 2023 Zoning Board of Appeals
23 Town of Marlboro meeting for Lighthouse
24 Holdings for an agricultural building
25 use variance.

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1 LIGHTHOUSE HOLDINGS
2 MR. STENGER: So, my name is
3 Kenneth Stenger. I represent
4 Lighthouse. And I have been lost for
5 the last 15 minutes. I didn't stop way
6 down there, but I kept driving around.
7 I didn't know you were here.
8 In any event, I did send a letter
9 to the Board, together with my client's
10 application, and it kind of outlines
11 the unique circumstances of what we're
12 dealing with here.
13 So, the town has a statute, and it
14 is section 155-21, and under that
15 statute, you can re-purpose and reuse a
16 building that was previously used for
17 agricultural purposes. And I don't
18 have the statute in front of me to read

19 to you, but I don't think it's
20 necessary. I'm sure you already know
21 it better than I. But there are
22 restrictions in size, how much of the
23 building can occupy the land, and what
24 the square foot is of that statute.
25 And my client checked to see if this

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2 was an agricultural building. He
3 determined that it was. Purchased it
4 with the intention of reusing it,
5 recycling its use, because -- I have
6 not been out there, but I looked at the
7 parcel access. There is really no
8 agricultural use around it to use. I
9 used to come here when I was a kid, so
10 I know about the apple orchards and the
11 apple business that used to be so
12 predominant here. So, what happens is,
13 my client then makes an application for
14 site plan approval so that he can now
15 use this building that he acquired for
16 the purpose of recycling. Recycling in
17 its use from now an agricultural use to
18 a warehouse use. And during the course
19 of that -- that exercise, my client
20 discovers that there is a definitional
21 part of the zoning code, as the
22 planning board pointed out to them.
23 And the definitional code of a building
24 that can be recycled or re purposed is
25 a building that has been in an

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2 agricultural use for more than ten
3 years. And this building has not been
4 there for more than ten years. It's
5 been there for seven years. And we
6 know that, because the building
7 inspector has confirmed that.
8 And I don't think in this picture
9 that I am describing anyone is wrong.
10 The problem is just a set of
11 circumstances. There is an interesting
12 legal argument where you have one part
13 of your code that says you can do this
14 if the building looks like this, and
15 fits like this, and does like this, you
16 could do this. And then you have, in
17 another part of your code, the
18 definitional section that says, well,
19 you can't do it unless you're there for
20 at least -- unless it's been ten years
21 without -- in an agricultural use. And
22 it happens with zoning codes.
23 Zoning codes are probably the most
24 confusing thing that I've ever read.
25 You got provisions over here that makes

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2 sense, and they tie it to provisions
3 over here. And I really think that
4 everybody using their best efforts is
5 exactly in that place, because I don't
6 think anyone -- I know that my client
7 buys this thing believing that its got
8 the ability to be used for the purpose
9 that he buys it. So, he didn't create
10 the problem. I know that there is a
11 legal basis for assuming that.
12 The question that has been banding

13 about is if the Board were to help
14 resolve this matter, how would you do
15 it? And I have heard folks say to me,
16 well -- I talked to Patty Brooks -- and
17 it's an odd setting because the word
18 goes, maybe we can do a -- an area
19 variance. But truly, it's not an area
20 variance; right? There is not enough
21 land there.

22 And so, if you want to look at
23 relief, I thought there were two ways
24 that you could do it. You could -- and
25 I offered that to you if you wish to

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2 look at it. And I read Mr. Corcoran's
3 report. And I think Mr. Corcoran's
4 report, the one that I submitted with
5 the application, dated January 3, 2023,
6 sums up the facts of it. I mean, it's
7 exactly what it is. And I think when I
8 read the transcript -- I didn't include
9 the transcript of the planning board,
10 they were -- it appeared to me that
11 they were willing to do the site plan
12 approval process. And somebody said,
13 but has anyone thought about this
14 definition? And so, certainly, if that
15 had come at the beginning of it, if
16 someone were raising it -- I mean, the
17 reason that I point that out is that
18 there is a human side of this, of
19 people trying to do the right thing by
20 each other, and the zoning code
21 tripping them up.

22 So, the way that I -- there are
23 two ways that I see that you could

24 resolve this, if you wish to. You
25 could say under these facts and

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2 circumstances, we're going to interpret
3 the two. They're not conflicting, but
4 they're certainly -- the question is,
5 does the definition control the
6 right -- you have a section over here,
7 (indicating), that says you can do it
8 under these conditions. And then you
9 have a definition over here that adds
10 another condition. I think that the
11 Board has the ability to interpret its
12 code and say whether or not the ten-
13 year section controls the definition
14 over here, and tells you when you can
15 do it. And I think there is always a
16 danger when we do these things -- I
17 don't want to say danger -- but a
18 concern when we do things this way.
19 Then we set a precedent. Maybe we may
20 not want to do it that way, and the
21 next set of facts will come in. So,
22 you can narrow it by making any
23 decision the Board makes tying it into
24 specifically these facts. So nobody
25 will be able to come in and say, well,

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2 I just bought that, it was only there
3 for two years, I don't want to wait
4 eight years. So, you can -- whatever
5 your decision is, you can tie it into
6 these facts. The other way is kind of

7 creative, I think, on my part. Really
8 what we're asking for, I think
9 substantively if we don't change the --
10 if we don't make a decision about how
11 these sections of the code interrelate,
12 we're asking for a use variance; aren't
13 we? And we're saying, can you give us
14 a use variance, but we don't want it
15 forever. We only want it for three
16 years to get us through this three-year
17 gap. And I think that, you know,
18 without a great deal of hard work,
19 we're in pretty good shape here, I
20 mean, in terms of meeting the test. We
21 acquired the property under the
22 assumption that -- nobody is
23 responsible for a mistake, and nobody
24 is trying to hold anyone responsible
25 for a mistake, but we were under the

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2 assumption that we were good to go.
3 So, I think that goes to our good
4 faith. We didn't create this
5 circumstance. What created the
6 circumstance was one part of the code
7 being here, and the part that we were
8 reading together with the building
9 department was over here, and nobody
10 saw this over here, (indicating),
11 nobody saw it. It's not like we were
12 hiding it. It's just the way that it
13 fell apart. And we can't use this
14 building for anything.
15 Now, if we don't get some relief
16 from you -- because there is no -- we
17 didn't buy it for agricultural use,

18 even if we wish to, there is no
19 agricultural use to support it.
20 And, so, I think it's fair to say
21 that, absence some relief for the next
22 three years, that building is going to
23 have no use at all. It's just there is
24 no economic benefit owning that at all,
25 except maybe to carry it around as a

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2 lesson to yourself, we hold the code
3 for you before you invest your money.
4 And I can, you know, that's pretty -- I
5 mean, you can do that. And you can,
6 it's something different. I think that
7 the Zoning Board would necessarily
8 always hesitate to grant a use
9 variance, because it's a big deal to
10 say, look, you're in the wrong zone,
11 but we will let you be there anyway.
12 That is why you have a pretty strict
13 test where you have to show that you
14 didn't create it, that you have to show
15 there is no economic return, and here
16 we can show that, but it's not such a
17 big deal because you're not giving it
18 to us for a lifetime. In three years,
19 we're in full compliance with both
20 sections of your code. If there was
21 some restriction that we couldn't sell
22 it to somebody during that three-year
23 period, that might be a condition that
24 might work in terms of the use because,
25 clearly, we're trying to create a

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2 solution to an unintentional hardship.
3 At least that is my approach here.
4 That is my intention. Maybe there is a
5 condition that says, okay, we will give
6 you the use variance. It's good for
7 three years, but we don't want you
8 selling it to somebody else, because
9 after all, they're not in the same
10 unique position that you're in; right?
11 They didn't come in and buy this and
12 invest all of this money. We will give
13 you the relief, but you got to work for
14 the relief, and after the end of three
15 years, do it.
16 Maybe that is a way to not create
17 a precedence, but to create a condition
18 that goes along with whatever help you
19 might be willing to extend to my client
20 so that he can use his building,
21 instead of staring at it wondering what
22 can he do for the next three years.
23 So, that's my lawyerly like pitch here
24 today.
25 CHAIRMAN CONN: How big is the

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2 building that is on there now?
3 MR. STENGER: Let me look at the
4 application.
5 MR. SALINOVICH: Did your client
6 have a lawyer when he bought it?
7 MR. STENGER: I am sorry?
8 MR. SALINOVICH: Did your client
9 have a lawyer when he bought it?
10 MR. STENGER: Yes, he did. You
11 know the buyer beware thing?

12 MR. SALINOVICH: What happened
13 there?
14 MR. STENGER: I think what
15 happened there is that -- well, I don't
16 like to necessarily -- I'm just trying
17 to find the answer to that. I don't
18 necessarily like to speak to what
19 happened there because people do that
20 to me all the time, second guessing.
21 But I would think what happened is that
22 there was communication between my
23 client and the town, and that would
24 normally be the way that it would work,
25 and it was assumed that it was going to

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2 be okay.
3 MR. BARTOLOTTI: 100 x 60.
4 MR. SALINOVICH: Who would tell
5 you that?
6 MR. MEKEEL: 100 by 60.
7 MR. STENGER: I can't speak to who
8 did what. I hope my client makes it,
9 maybe he is driving around -- but from
10 my understanding, not my personal
11 knowledge, my understanding is that my
12 client was in communication with the
13 town hall, and there was a
14 conversation. And the seven-year
15 number was discussed, and we went
16 forward. I wasn't party to it. I
17 wouldn't presume that anyone didn't act
18 in a hundred percent good faith across
19 the board on this thing.
20 CHAIRMAN CONN: Mr. Stenger, the
21 client -- if you can't hear me, let me
22 know. The person, entity that your

23 client bought this from, do you know if
24 that building was built by that person
25 or, and if so, what was the building's

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2 use, an intended purpose on that
3 building permit?

4 MR. STENGER: Let me do this. The
5 building -- the person who owned that
6 building was Nicholas Cracolici.

7 CHAIRMAN CONN: Cracolici.

8 MR. STENGER: Now, I don't know if
9 that helps you with any kind of
10 local --

11 MR. MEKEEL: I'm sorry, Jen, do we
12 have the original building permit?

13 MS. FLYNN: Yes, that was done on
14 March 31st, 2017.

15 CHAIRMAN CONN: Does it say what
16 the intended use was for?

17 MS. FLYNN: I just had it. Oh,
18 here it is, (handing).

19 MR. STENGER: Yeah, I have it
20 right here. The completion date on
21 this was 9/26/2019, and it appears that
22 the builder was NJNL Properties, LLC.
23 I have the title for you. Let me see
24 what I can find out.

25 MR. MEKEEL: We have it. Thank

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2 you, Jen, found it.

3 MR. STENGER: All right. Well,
4 NJNL Properties, LLC appears to have
5 been the seller, and we paid \$390,000.

6 In fact, I want to correct that.
7 Before I said the seller was Nicholas
8 Cracolici, that's wrong.
9 CHAIRMAN CONN: The building
10 permit states it's a 100 by 60
11 Agricultural Pole Barn, zone use,
12 commercial. The Certificate of
13 Compliance says 100 x 60 Agricultural
14 Pole Barn.
15 MR. STENGER: That's correct. The
16 Certificate of Compliance is issued to
17 NJNL Properties, LLC, which is the
18 entity that sold property to my client.
19 We paid \$390,000 for it.
20 MR. BARTOLOTTI: Was he a farmer?
21 MR. STENGER: I don't know.
22 MR. MEKEEL: It says that the use
23 is commercial, so we should probably
24 state that.
25 MR. STENGER: The -- I think in

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2 this instance, what would be
3 dispositive for the record before this
4 Board is the statement of Mr. Corcoran.
5 And Mr. Corcoran, I believe, I don't
6 want to misstate it, I'm trying to find
7 the application.
8 MS. FLYNN: Are you looking for
9 this, (indicating)?
10 MR. STENGER: His statement of
11 January 3, 2023 states clearly this is
12 an agricultural building that the new
13 owner has purchased, and the use as an
14 agricultural building is about seven
15 years of use.
16 CHAIRMAN CONN: What exactly does

17 your client use the building facility
18 for?
19 MR. STENGER: He is -- well, uses
20 it to store the things that he sells,
21 which is lighting. He will not be
22 serving -- in any event, in any way I
23 could conceive of --
24 CHAIRMAN CONN: General ballpark
25 idea, how much traffic is in and out?

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2 MR. STENGER: Oh, I would have to
3 go back to the site plan to find out.
4 Now, if you were to grant us permission
5 to use this building for a -- for its
6 purpose now, that is not the end of it.
7 We have to go back to the planning
8 board, and those issues of traffic and
9 noise and mitigation, that all would be
10 before them, and they would determine
11 what those answers are. I wasn't
12 prepared to --
13 CHAIRMAN CONN: Is he there in and
14 out five times a day or five times a
15 week?
16 MR. STENGER: If I told you, Mr.
17 Conn, Chairman Conn, I would be
18 guessing. I think that would be the
19 wrong thing to do here.
20 CHAIRMAN CONN: Okay.
21 MR. BARTOLOTTI: That is my same
22 question, if he is going to establish a
23 business in there, what he plans on
24 doing? Is he going to use it for
25 storage, or is he actually going to

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2 base a business out of it?

3 MR. STENGER: What I do have, and

4 I didn't think to send it, my package,

5 which, if we set this down for a public

6 hearing, I am happy to give it to you.

7 I have a transcript of the proceeding

8 before the planning board, and I could

9 get you what the planning board issues

10 were looked at. I can get you the

11 application. I can get you the SEQR

12 findings. I can get you whatever was

13 submitted there, and I can give you a

14 copy of this, (indicating), because

15 this is what happened there. And I

16 wasn't there, so I don't want to say

17 something that is not in here.

18 MR. MEKEEL: That is fine.

19 MR. STENGER: Because then I could

20 be a slippery lawyer; right?

21 CHAIRMAN CONN: Okay. Anybody

22 have any questions for Mr. Stenger?

23 MR. MEKEEL: I'm going to make a

24 motion that we move this to the public

25 hearing for a special use permit under

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2 Section 155-12C4G, which would be a

3 special use for a recycled agricultural

4 building.

5 MR. NIKOLA: I will second the

6 motion.

7 CHAIRMAN CONN: All in favor?

8 MR. BARTOLOTTI: Aye.

9 MR. SALINOVICH: Aye.

10 MR. MEKEEL: Aye.

11 MR. NIKOLA: Aye.
12 CHAIRMAN CONN: Aye. So approved.
13 The next meeting will be June 8th, Jen?
14 MS. FLYNN: Yes.
15 CHAIRMAN CONN: Does anybody have
16 any questions for Mr. Stenger?
17 MR. STENGER: Do you want me to
18 provide you with a copy of the planning
19 board file if that is helpful?
20 MR. MEKEEL: No. If we need
21 anything, Jen can get it for us.
22 MR. STENGER: So I'm not going to
23 do that. Whatever you need, you will
24 go look at?
25 CHAIRMAN CONN: Yes.

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2 MR. STENGER: I wasn't part of
3 that process so I can't answer those
4 questions.
5 MS. FLYNN: All of the information
6 that was handed into the planning board
7 is also on our website.
8 MR. STENGER: Okay. I will look
9 at it. Just for tonight's purposes, I
10 didn't look at it. Thank you.
11 CHAIRMAN CONN: Thank you, sir.
12 MR. NIKOLA: I will make a motion
13 to adjourn the Town of Marlboro Zoning
14 Board of Appeals.
15 MR. MEKEEL: I will second it.
16 CHAIRMAN CONN: All in favor?
17 MR. SALINOVICH: Aye.
18 MR. BARTOLOTTI: Aye.
19 MR. NIKOLA: Aye.
20 MR. MEKEEL: Aye.
21 CHAIRMAN CONN: Aye. So moved.

22 (Whereupon, at 6:26 P.M., the
23 Hearing was adjourned.)

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2 C E R T I F I C A T E

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4 STATE OF NEW YORK)
: SS.:

5 COUNTY OF ULSTER)

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7 I, LISA M. ROSSO, a Notary Public for
8 and within the State of New York, do hereby
9 certify:

10 That the witness whose examination is
11 hereinbefore set forth was duly sworn and
12 that such examination is a true record of
13 the testimony given by that witness.

14 I further certify that I am not related
15 to any of the parties to this action by
16 blood or by marriage and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 23rd day of May 2023.

20

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22 _____
LISA M. ROSSO

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