

TOWN OF EAST BLOOMFIELD

November 23, 2022

Zoning Board of Appeals Members Present, Sonja Torpey, Art Babcock, Mark Thorn, Tim Crocker

Absent: Rosemary Garlapow

Others Present: Kimberly Rayburn (Building & Zoning), Christel Daggett (Secretary), Kimberly & Ryan Duvall (Applicants), Anthony Iacovangelo (Town of East Bloomfield Attorney), Mike Woodruff, George and Andrew Duvall

Torpey opened the meeting at 7:15 pm. The Public Hearing remained open from the 10.26.2022 ZBA meeting.

I. Area Variance, #TV9-22 Owner Kimberly Duvall 6555 St Rt.5&20 #81.00-1-60.120 AG
Mercantile barn review of front set back.

Torpey asked about the neighbor notification letters. Rayburn stated that she and Daggett hand delivered the notices and also received many e mails back from the neighbors supporting the variance. The Board reviewed the letters, Torpey stated they have received 6 letters in favor of the Duvall's pumpkin palace.

Rayburn stated she received the as built as the Board requested. It was forwarded to the Board with the copies of the e-mails prior to the meeting. The Board reviewed the exact distance of the building and overhangs from the right of way. The overhangs are 23.6 feet, and the building is 33.4 feet. Babcock asked if the setback variance was going to be from the overhang or the structure. Woodruff stated that eaves and overhangs are not considered as the main structure. Babcock asked if there is a floor under the overhang, Kim Duvall, and Woodruff both stated there is a concrete slab under the overhang. Torpey stated it sounds to her that we would consider this as a 23.6-foot setback where 75 is required. Babcock stated the setback as determined by Rayburn (Code Enforcement Officer) is 75 feet for the Ag/Mercantile structure. Crocker asked if the setback is 75 not the required 100 feet for a Commercial use in the commercial district. Babcock stated that other buildings in the Community Commercial district are required to be 100 feet back when they are commercial use. Torpey asked for any other comments from the Board, or from the public before they close the public hearing. George Duvall stated he has a question regarding what the actual building will be used for. He stated the building was put up as an ag building. George stated there was no sign before the building went up so he didn't know what it was for. He then went on to make sure he knew what it was, Rayburn informed him by stating it was erected as an Ag/Mercantile. George wanted to reiterate the fact that only 50 % of the items being sold can be from other means other than being grown on the property. Rayburn stated that is what the current code states and Kim Duvall stated that they are in compliance.

Kim Duvall wanted to apologize to the Board as George Duvall is her father-in-law and he has been harassing them for many years and they have had multiple orders of protection against him. At the advice of her attorney, she is stating on record that he was here tonight. She stated she will not comment on anything further he says and feels that this is just further harassment of what's been going on for years and has nothing to do with this building. George Duvall stated he was simply asking about the current use of the building and stated the future use will be for farming sales. Crocker asked if there was an agreed upon definition of what the building is.

Rayburn stated again that the building is an Ag/Mercantile use and that is allowed in any district of the Town. This building happens to be in a Commercial District; therefore, the future use of building is still up for debate. Kim Duvall stated that George is trying to say that they are selling more than 50 % of product they do not grow. Which they are not. Rayburn stated that is a different issue. George stated he just wanted to be sure what the building is being used for because if this gets passed then he would like to see all the other farms in Bloomfield get the same courtesy of being that close to the road. Rayburn stated that that was probably not going to happen as that's not why they are here. They are in front of this Board due to an accident that happened that the Town has some fault in as well and to correct the mistake. They are not here to ask to have this use close to the right of way before the building is erected, were here to correct the mistake. George asked if a commercial building would have different setbacks all together, Rayburn stated it would, and it would have to be a 100-foot setback from the right of way in that district.

The Town Attorney Anthony Iacovangelo asked if the building was erected in the correct location, given the design and size of the structure would there still be restrictions put on it. Torpey asked what he meant by restrictions. Iacovangelo stated if the concern is using the structure other than an Ag/Mercantile building (which would bring you into some other further setback requirements) if the use was a commercial use what use would you be concerned about? He went on to say let's pretend the building is in the correct location, given the design and size of the building (1,200 sq ft) then he stated to the Duvall's your intent was to always use the building for ag is that correct? Torpey stated it was approved as an Ag/Mercantile building. Torpey stated they would need a use variance so that's not exactly a restriction its just code. Rayburn stated she's not sure it would require a use variance as its located in a Commercial District. Babcock stated that the setbacks are different for that use. Torpey stated the subdivision was approved as a farm use with a farm stand. Rayburn stated a subdivision is just a subdivision of the land. Iacovangelo stated it was always intended to be used as ag, Rayburn and Kim Duvall stated it was. Rayburn then stated the commercial use of the property does not go away as its in a commercial district. Town Code states your allowed to do farming/Ag in any district. Therefore, the future use of this property could have a commercial use on it. The Board responded with just not in this location or for this building. Rayburn questioned that. Babcock stated that due to the decision of the 75-foot setback per the subdivision map that had the proposed farm stand on it is how this conclusion is made. It was not like the subdivision map had proposed McDonalds or another commercial use. He stated the only reason the Code Officer felt she could give them the 75-foot setback vs the 100 ft is because the subdivision said proposed farm stand. If they had said it was a proposed McDonalds the lights would have gone off and it would have been stated that it needed to be 100 feet off the right of way for a commercial building just like the Ski Company, the Brewery, and all the other new construction along the State Road in the area. Rayburn stated that maybe they should be asking for a 100-foot setback. Babcock stated he did not say that, that's another conversation and we can get into that if we need to. He stated the other thing is we do have rules based on a farmstand in our code. Babcock stated he thought the setback was listed for the district it's located in and it's not dependent on the use. Rayburn stated the temporary and permanent roadside stand is located in the AR-2 district and she read the rules.

[Chapter 135. Zoning , Article IX. District Regulations , § 135-42. AR-2 Agricultural Rural Residential District.](#)

[C.](#)

Permitted accessory uses and structures.

[\(4\)](#) *Permanent structures for the display of agricultural and nursery products grown principally by the operator subject to the following restrictions:*

[\(a\)](#)

Such structures shall not exceed 2,000 square feet of floor area.

(b)

Not more than 1/2 of the total floor area shall be for the display and sale of products grown off the premises.

(c)

Such structures shall conform to the minimum setback requirements for accessory buildings in this district as specified in the schedule.

(d)

Sufficient land area shall be provided to accommodate off-street parking for not less than three vehicles on site. In no event shall a structure be allowed to continue when parking along a public highway becomes a traffic safety concern.

A discussion was held on the setback for an accessory structure in both the AR-2 and Commercial Districts. They are both 75 feet. For a non-commercial use in the CC. Babcock stated that if you look in the R-130 district the setback is 40 feet so ag in the r-1-30 district would be 40/40 40 foot for the main structure and 40 for the accessory. Babcock also stated that he's not an attorney, but in Ag law farm stands are typically accessory / ancillary to the use, and here the use is agriculture. Which is growing pumpkins, sweet corn and whatever products they are selling. The whole reason for a farm stand is for the farmer to be able to sell his produce that is being produced behind that farm stand. Kim Duvall stated that they are growing products they have a farm there. Babcock then stated that if the building was to be used for something other than an ag use, and there was no longer farming on the property than the structure would no longer be an ancillary use. It would now be the principal use and it would have nothing to do with agriculture anymore. If this had been presented as anything other than agriculture the red flags would have gone off and the Town would have stated the structure needs to be back 100 feet, just like the other properties that conform in this area that held that setback on a State Rd. and here there are 2 State Rds. State Rtes. 5&20 and Sate Rt 64. Babcock stated the Code Officer determined the setback is 75 feet, and he's asking if the Board wants to dispute that, but either way the structure is not at 75 feet. Rayburn stated the State has no concerns. Woodruff asked if they approved the driveways and there were no issues about the right of way. Babcock stated that he talked with Greg Trost from the NYS DOT and the first thing he asked him was did Trost tell the DuVall's that they could have a farm stand 105 feet off the center line of the road. Trost told him no. he never said that and he denies ever saying that. He stated that 1 thing he did tell them is that approximately where they are there right of way is about 70 feet off the centerline of the pavement. A discussion was held on the setback, Rayburn stated that it's not a state rule and she discussed this with Trost as well, he does not care about the placement of the building because its out of the State right of way. Babcock then went on to say Trost told him there was a temporary driveway entrance given and he also told Babcock that their needs to be a permanent driveway entrance permit granted. And as of 2 weeks ago he has not been received any application for the permanent permit. Kim Duvall stated they have gotten their approvals and the application but they had to wait until the end of their season as they didn't have time to submit it. Ryan Duvall stated they have a year to get it done. Babcock stated that he agrees and that Trost informed him that the temporary permit is good for 1 year. He will need to receive plans from the engineer with the fee and DOT engineers will have to review them. He did not say whether it's a given. Rayburn stated that's not why we are here. Babcock then stated another thing Trost said was there is no license granted for the parking lot to be in the right of way. Typically, you have to apply for a permit to grant that and no one has asked for that. Trost also stated there is a blue pick-up truck that sits in the right of way and it needs to be moved as its not allowed to be in the right of way. As shown on the as-built the stone driveway is n the right of way. Kim Duvall stated that is news to her and she can push it back. She also stated that the driveway will be paved, when they get to that point they will go to the DOT. Ryan Duvall stated that it doesn't matter about the triangle portion of the right of way as they are purchasing that back from the State. Thorn stated that they can not base their decisions on future happenings only what's in front of them. Babcock also stated Trost told him the sign is not permitted where it is located now. Babcock stated that there was no Town Engineer review of this and the Planning Board did not consider any of those things when they did the subdivision, there was no site plan. Babcock asked if Hudson was the applicant for the subdivision, Rayburn stated she believed that Hudson gave the Duvall's permission to act as his agent. Torpey asked Babcock if he knew where the sign is located. He stated that all he knows is that it's in the right of way. Babcock stated he also asked Trost about the ownership of the highway. He wasn't familiar with how far back it went but he did convey that yes, the previous position of pavement was further South of where it is now. He also stated that there may be an opportunity down the road someday for the real estate division of the DOT to offer a portion or some to purchase. It's not an automatic thing and it could take years. He then stated that was the phone conversation with Trost.

Kim Duvall stated that the reason the 105 feet is listed on the map is because they thought they were over compensating. They wanted to make sure they were setback enough. She apologized that we are all in this situation. Babcock asked Duvall if she was acting as the owner's agent, how did the surveyor know to put the proposed farm stand on the subdivision map at 105 feet from the centerline. Kim Duvall asked the surveyor to stay at least 105 feet so there would not be any discrepancies and it would be at least 100 feet. Then she stated she is now finding out that was not from the proper setback. Babcock stated that when he asked the surveyor why he put it on there, he could not recall and he did not get back to him. Babcock stated that it was not just something that the surveyor came up with. Duvall stated no it was not. Rayburn stated she does not think that matters, it was on the map, it was wrong, it was missed by the Planning Board, it was missed by herself. Woodruff stated that he thinks the whole thing is that everyone was being told you have to stay 100 foot back from the right of way, but it was a misinterpretation that it was 105 feet and it went by everybody that it was 105 feet from the centerline not from the right of way. Rayburn stated that's correct, the structure is there and asked now what do we do? Babcock stated that Rayburn was right, but he wanted to make sure it's stated in the minutes that we looked at it. He stated the its not on the Planning Board 's checklist for a subdivision to make sure a proposed structure meets setback requirements. Woodruff stated as a Planning Board member they were not looking at it for that, Rayburn stated it was a little square at the top of the map and they were not looking at it for that. Iacovangelo stated they were not approving a site plan. Babcock stated that when the Planning Board chairman signed the subdivision it was because it simply met subdivision requirements. Torpey wanted to follow up on the parking lot situation. She stated she does not see a setback specific to a parking lot, but it does seem like a concern if the parking lot is in the right of way. Thorn stated that is a DOT concern its not in our code. Kim Duvall stated they will get with Trost on that to find out where he wants the parking started. She stated they will just change it back; it was just grass. She stated they are going to put a fence up eventually to corral people into the parking area. Babcock stated that he's somewhat familiar with having done a few projects along State Highways in the Town of East Bloomfield that any time a parking lot was installed it had to be 30 feet back from the right of way. Babcock believes that it is listed in Town Code. He stated that maybe because this is a farm stand it may not necessarily have to meet that setback? Rayburn stated that it is, however it is located in the Schedule I CC Community District at the bottom as shown below.

NOTES:

1 Where a CC Community Commercial use fronts on a state highway, the minimum front setback of the building shall be 100 feet from the highway right-of-way. In no event shall parking be permitted within 30 feet of the highway right-of-way. This frontal area shall be landscaped and maintained as a grassed area.

Torpey stated she didn't feel that section pertained to a farm stand. She asked for any further question or comments before they close the public hearing. Torpey motioned Crocker seconded to close the public hearing, Babcock suggested that we hear from the Town Attorney before closing the public hearing. Iacovangelo stated that he and Rayburn met to discuss the issue, but in looking closer into it today the original proposal was only in front of the Planning Board for subdivision as opposed to a site plan. The mistake originated on the subdivision map and it's a little bit vague. He stated based on certain facts and circumstances as Rayburn stated we are here now because the building is there. The question is as we move forward are we now discussing an actual site plan or are we still just discussing the subdivision. He asked where are we going as a lot of the information that Babcock brought up in his conversation with Trost to be honest including the parking lot, and the sign he did not realize were going to be issues in respect to the right of way. It may not be just as simple as the building now. Kim Duvall stated that those things she believes they can handle through the NYS DOT. Rayburn agreed with Duvall that they would work with Trost on the placement of the sign and driveway and the blue truck. Torpey pointed out that these things inform their interpretation and their level of comfort for lack of a better way to say it when reviewing a variance in this case. Iacovangelo stated if the Board was just looking at the error on the building, Rayburn interrupted and stated that is just what the ZBA is supposed to be looking at. The Planning Board would be looking at anything else. Thorn stated that at this point they are asking us to correct a wrong, and there are a lot of wrongs that could stand to be corrected. He then stated its whether the ZBA tries to take that on or is there another route where it needs to go back to the Planning Board. Rayburn stated that the 3 issues could be easily corrected with the Duvall's and the DOT (Trost).

Torpey stated the code has setbacks for a reason and on a State Road a lot of it has to do with safety issues and that has to be considered in their decision. She stated it is an interpretation of the intent of the code. Rayburn stated that a stipulation can be made that the three items in the State right of way need to

be moved and she restated we need to keep in mind the building is already there. Iacovangelo stated we were initially only talking about the location of the building with respect to the setback. Now the Board is staring to look at other considerations on the site plan. He then went on to say if we just want to get this underway and some of these other things are not permanent because they have their investment and they want to get in and start and were still working through these minor details, then that is ok. We will continue moving forward to make this project the best we can given the circumstances. If were only talking about the building then ok, but if we start to take on other issues in respect to the DOT requirements and other requirements of the code that may or may not apply, then that's the question does it go back to the Planning Board for site plan approval. Woodruff asked if the ZBA could make the stipulations in respect to that. Iacovangelo stated they can. Thorn stated that is typically not their function. Rayburn asked how the Planning Board could give site plan approval on a structure that requires a variance. Iacovangelo stated that if we were just here to address the variance, we could have some discussions about it and make a decision. Ryan Duvall stated that is why they are here to get a variance for the building. Iacovangelo stated the question is can they grant the variance for the building without a site plan approval because there was never a site plan. Rayburn stated it did not require one. Thorn asked if it still doesn't require one, Rayburn stated no it does not, and these items can be easily taken care of. Iacovangelo stated you could grant the variance with stipulations if you do not have to worry about the site plan. He then stated they would still need to go through site plan approval if they were going to build something else. Woodruff stated not if it was agricultural related as Ag buildings do not require a site plan. They only are required to meet the setbacks and the zoning requirements.

Torpey reintroduced the motion to close the public hearing, Crocker seconded the motion. All Board members in attendance said aye. SEQR was declared a Type II with no further action required.

The Board reviewed the state mandated areas of consideration. five (5) criteria tests.

1. **Undesirable change to the neighborhood:** Torpey stated that in her opinion its not and undesirable change noting the fact that the surrounding neighbors are all in favor of the farm stand /mercantile and many properties in the area are similarly situated close to 5&20. She asked for further comment from the Board. Babcock wanted to point out that it is a farm stand and that a farm stand is a desirable thing in our community. It looked to him that this hinges on this not just necessarily being a farm stand that's ancillary to the ag use of the property, but it's almost like an agricultural recreational tourism destination business where people are attracted to it not just to come and purchase goods that are for sale such as sweet corn, pumpkins and whatever is grown there. They get an opportunity to interact with agriculture that they don't normally have access to. Babcock stated he thinks it's a great thing for our community. As long as it's a farm building. There's almost a fine line where intense use of the property at its location maybe there could have been better planning done to avoid headaches. He also mentioned the number of people that may be on the property at once will be more than you would normally see at a roadside farm stand. He also stated with their safety and wellbeing in mind and their ability to egress an ingress this property with the fact that now farm stand is as close as it is to that highway where the speed limit is 55 mph or over it is imperative that they make sure they protect those people while they are on the property and while they are accessing the property. As they expressed the size of their business and what they would like to do in this meeting and the previous meeting he would like to make sure the property is looked at for safety.
2. **Alternative method (can the benefit sought by the applicant be achieved by some other reasonable method other than a variance):** Thorn stated that in a better world this would have come to us in another order. Which would have given another method and made it simplistic. Babcock stated the alternative method would be to pick the building up and move it back. Torpey stated that the benefit sought by the applicant noting the building is there, asking them to do that is not a reasonable method.

3. **Substantiality (the magnitude of the variance is to be carefully considered in the decision to grant; the variance must be the smallest possible to relieve hardship).** Torpey stated they have established through the survey map that the variance is for a 23.6-foot setback where 75 feet is required. Torpey stated that is very substantial. Rayburn stated with unique circumstances on how it got there in the first place. Torpey stated the criteria is substantiality.
4. **Impact on the environment:** Torpey stated there is not anymore than what would have occurred if the building was in the correct location.
5. **Self-creation:** Torpey stated it's a community committed difficulty Rayburn stated that it is not a 100 percent self-created difficulty. Babcock stated that there might have been a collision of different worlds that might have contributed to this even though he does not want to assign blame to anyone but he does see where a self-created difficulty is a major factor in this case.

Torpey asked Thorn if he would be comfortable making a motion, and added she may have some comments to add to the motion. Thorn stated he would. Babcock wanted to have more discussion and stated that personally if he weighs all the criteria if the building was not there He does not know if he would have ever been comfortable giving a variance for a setback like this without some major assurances and he would not even consider this other than its already there. Rayburn stated that the only reason they are here is because the building is already there. Thorn stated that we still do not have those assurances. Babcock stated if the Planning Board had sent this to the ZBA because it required a variance and it was 105 feet from the centerline, he does not feel it would have been approved. Rayburn stated that she would not have sent them to the ZBA for that. Torpey stated that the assurances are the stipulations that they need to outline. Thorn stated the problem is the ZBA is being asked to demand the assurances when they should have been asked elsewhere. That part of the change bothers him as it's not there forte and its not what the ZBA does. To say that this is going to be specifically for this use and because it got placed with a multitude of errors, now they get to stipulate several other things that are not typically asked of them to enforce. Babcock then stated that when Iacovangelo discussed a site plan there are a multitude of things that could have been considered. He then stated that the Board is made up of volunteers and some may have more of a technical understanding of what's going on than others and just because they are on a Board does not mean they know zoning code by the back of their hand. If there was some technical review by an outside pair of eyes or Town Engineer or some other expert to help guide them maybe it would make it a little easier. Torpey stated that this is why she feels they have the authority to include the stipulations because this was considered just a subdivision approval for a farm stand, and therefore because it was a farm stand it did not have to undergo a site plan review and that's where a lot of the technical correction would have come in with an engineer's review. It was determined by Town Code and the Applicant that it did not require a site plan review because its just a farm stand. Babcock would also like to add that if the Town Board would ever like to consider recommending Ag review guidelines that are part of the Ag & Markets law section 305 it may make it a little easier for the next one.

Torpey asked Thorn what stipulations he is considering so the Board can hash it out before the motion. Thorn stated that they had mentioned that they were going to be doing some sort of buffering or fencing and that should have been done before they opened it up to the public for public safety where people could run across 5&20. The other concern he has if they are looking at stipulating this building, this variance would only apply to this building and nothing else on the property because we do not want anything else to be built up to that line. We are not granting the entire property that line as a variance. Another concern is what happens if the property is sold can that building now be used a commercial building/use even though everything we discussed here placed it as a Ag/Mercantile. He realizes it's not their problem right now, but one of the things this Board has tried to do is look down the road and stop those issues from being something that comes back and kicks us in the teeth. Thorn wanted to discuss further with the Board and ask for their opinion if you're now saying that you're going to let McDonalds purchase the property, we would be saying they can't use this building as a commercial building because it was only granted a variance to be Ag/Mercantile farm stand. Also, all the parking and signage should have gone where it was supposed to per the DOT. The temporary permits they have still require a permanent permit in order for this to take full effect. Because if that doesn't happen then there is no reason for the variance.

Crocker asked if there is a seasonal component to the building. Torpey & Rayburn stated that it can be 365 days of the year as long as they are growing. Then a discussion was held on where the product is grown. And that they are only allowed to have 50 % of goods for sale that do not grow on the property. Woodruff added items such as honey and jam.

Torpey then wanted to respond to the parking, signage and buffering and fencing. She stated she that she did not think fencing would be in the ZBA's prevue as its not required for the farm stand. Thorn stated he understands that the Board can still make stipulations on things not required by them to mitigate safety issues or anything that the Board deems necessary for the variance to be granted. Part of it is they are now doing an after the fact site plan with the addition of circumstances to try and make the property safer. Crocker asked if they can rely on the DOT requirements to do that and that they are not trying to reinvent the wheel. Woodruff stated that the 30 feet for the parking area is in Town Code so that's up to us as the Code Office to review. Babcock added that is why typically on a State Rd they have a larger setback for commercial property is because you do not want any interference or any safety concerns because of the speed on the highway and the number of vehicles on a State Rd. He also stated the parking lots are using back to preserve the rural character and aesthetics because they don't want any business to distract drivers from the road. Babcock stated the applicant was going to put in a fence. He also stated that if we are proposing to have a building 23 feet back and you have a display area around it you have people around the outside of the building looking at things, he does not think its beyond a reasonable person to maybe try to mitigate that by making sure people stay on one side of the fence or the other. We don't want people trying to cross the road where there are no crosswalks. Thorn stated we are now talking a fence 23 feet from the building. Thorn stated had it come to them first they would have requested that for any property. They would have made sure it was cited in the correct spot and then put the stipulation on it. Thorn does not feel comfortable saying, its ok to leave it wide open. There should be some protection there when we are looking at 5 & 20. Rt 64 does not have the same issues. Thorn asked if any other Board members had any other stipulations they felt needed to be added. Babcock just wanted to reiterate that everything that has brought them to this point has been based on a Farm Stand as that's what it was built to be. And the Board is not granting a variance for a commercial building. Babcock then added the structure is at the maximum size for a farm stand and there can be no further additions to this building. Torpey asked if another use would have to come in for site plan, Rayburn stated that any Commercial building or use has to go through site plan its not unique to them. Babcock stated a commercial use building would have to be at a 100-foot setback. Rayburn agreed that a commercial use building would but a second Ag building would be required to be at a 75-foot setback. Thorn added the 75-foot setback would force the structure to be ag use only for its lifetime. Kim Duvall stated that they have been advised by their Attorney not to accept that as things could change in 25 years. Ryan Duvall stated that they made it clear at the last meeting that they were not going to accept any stipulations. Babcock stated the public hearing is closed. Rayburn stated that it's not a commercial building and it was never presented as such, Iacovangelo stated it was never the intent. Rayburn stated to the DuVall's she is not sure why that would be an issue for them. Torpey stated that we are not open for discussion at this time. Iacovangelo stated when Babcock was discussing the farm stand being ancillary to the Ag, he stated he hadn't thought of it that way. He reiterated the original request of a subdivision, proposed farm stand with an Ag use of the property and now the stand is too close to the road. We are trying to clear up the mistake by simply granting the variance with respect to the farm stand and maybe a few other stipulations as discussed and then enter in, well we don't want the variance just for that we want it for a commercial use. Iacovangelo stated that everything was presented a certain way and now we have the problem that the horse can't get back in the barn. So, we are willing to modify that or like we are permitted to under the code. The overreach if you will, is now they want something additional to that. Commercial was not ever contemplated or presented as such. Torpey stated that you can not go back and grandfather that in because we are granting a variance for this mistake. Iacovangelo stated that the mistake originated on the map, we know the history from there. His point is that it was always a farm stand ancillary to the ag business that operates on the property. In essence as a retail space to sell that product with at least 50 percent or more, that is the intent behind the whole thing. Torpey asked for any other comments. Babcock discussed the parking lot that could hold approximately 60 cars and he does not know the maximum number of people that can than use the property at one time. Typically, you don't have to think about that when it's a traditional roadside stand. You don't think about the long acre farms and having 500 people there on the weekend. He discussed the potential for people entering or leaving the property in the dark with no site lighting and walking across the parking lot. He's concerned about future liability from that. A site plan could

have addressed this. He stated that even if they do not address it here, he would love to have someone address it if they are going to be open after sunset and you don't have sight lighting then we will need to somehow make this safe for the public use. He is not sure it needs to be a whereas, Thorn stated he's not sure how you can forecast that. Babcock then went on to add he's just trying to anticipate everything in the future. He then stated we are laymen not site plan reviewers. Torpey stated she would not add that. Thorn agreed and also before stipulating anything he could state a few givens. Typically, they do not do this, but he wants it on the record that given this variance has come to the Board in an appropriate manner he does not believe that it would have been granted based on substantiality, alternative method and self-creation. They are being asked to look at a proliferation of errors and correct it as best as they can for both the Town, the parties involved and the applicants by making their best determination as such. Given the fact that the ZBA is trying to keep the community as safe as possible and err on the side of caution. He would also say stipulated based on the determination that this is ag/mercantile and specifically for a farm stand. That is how their determinations are being made.

Thorn motioned Babcock seconded to grant the area variance of 45 feet as requested in the original application for TV9-22 Owner Kimberly Duvall located at 6555 St Rt.5&20 tax map #81.00-1-60.120 for the AG Mercantile barn.

Whereas:

1. The Board has received and reviewed the as-built survey and deemed the measurements to be what they are basing the variance off of.
2. There will indeed be buffering, fencing, barrier to protect the public between the parking lot and the state right of way on both sides, 5 & 20 and State Rt 64 making it more difficult for any injuries to occur to any pedestrians.
3. The Variance will only apply to this specific farm stand building, any future farm stand building would require additional variances.
4. This is specifically a farm stand variance, and nothing commercial related can be used in this specific building because that's why the determination was made.
5. The parking lot and signage will all be to DOT specs before any opening of business
6. There will be a 30-foot buffer between the parking lot and the driveway
7. The permanent DOT permits will be obtained in order to make this all valid.

Torpey made a correction stating that the variance is not a 45 foot but a 51.4-foot variance, otherwise it was well said.

Rayburn wanted to clarify the buffering between the parking lot and State Rt 5&20, and also St Rt 64 for pedestrians. Thorn stated fencing or barrier for the property. Woodruff stated to prevent pedestrians from going into the road. Thorn stated to not allow free access to cross the road on both 5&20 and Rt 64. Rayburn asked how far as there is not a parking lot on the side of Rt 64, so why do they need a fence. Iacovangelo stated your sort of directing people on the property but that again would be site plan approval. Rayburn stated they have farming down there where they need to get in with their tractors. She also stated they cannot have fencing around the whole property, that is asking a bit much. Babcock stated he would say a minimum around the building that we would potentially be granting the variance for. Torpey stated she thinks that makes sense. Thorn asked if Rayburn was asking him to put an actual footage on it? Rayburn stated that she doesn't know if she is asking for footage, but she is asking for them to be realistic as the remaining portion of the land in the back is farm land. Babcock stated he would say adjacent to any public display of any products where pedestrians would have access to the right of way. The use of the parking should be separated from the right of way. When pedestrians get out of their cars, so they don't go back into the right of way. He stated if you have pumpkins littering your front yard, while most of those I don't think can be on display in the right of way and should not be offered for sale in the right of way as that puts the public out in the right-of-way.

Thorn stated he left it as buffer, fence or barrier so if were talking closer to the corner and it was left as a huge hay field, we need something to signal that this is not a walkable path where people should be. Along 5&20 Thorn would like to see a fence to separate that. Babcock stated it should be immediate adjacent to the public use of the property, near the building and near the parking lot, that would be sufficient. Thorn agreed. Torpey asked if the motion could be read back. Rayburn stated that not at this time, they will make the minutes from the recording. Torpey asked if the

Board is comfortable with their understanding of the motion and Thorn added in the spirit of which it was intended. Torpey asked Rayburn if she feels her and Daggett have captured the detail. Rayburn answered yes.

Record of Vote:

Babcock **Aye** Thorn **Aye** Torpey **Aye** Crocker **Aye**

All Board members present voted Aye, Vote was carried unanimously.

Duvall asked just so she is clear, does she have to build a fence or just a barrier or does she have a time frame because she used all her money building the building. Rayburn started to read some of the motion with fencing in front of the parking area. Iacovangelo stepped and told Duvall that once we get the final draft of the minutes and have time to sort through it and understand it, we can forward them to her. We will try to make the request as reasonable as possible given the circumstances. Duvall stated that she will need to talk with Trost as when he came out to talk with her, she was under the impression that the parking lot was fine we are talking about three feet difference we are at 27 feet. She asked if she put something temporary up for the time being such as the hay bales because she can't put a fence in there now it will have to be in the spring. Duvall stated that he sat in the meeting long enough and they have a hell of a lawsuit coming.

Babcock asked if the Secretary had the past meeting minutes for the Board to approve and review.

II. Meeting Minutes:

Minutes of November 17, 2021.

Babcock motioned and Crocker seconded to approve the minutes from 11.17.2021.

All Board members present voted Aye with the exception of Torpey who abstained. Vote was carried.

Minutes of April 6, 2022.

Thorn motioned and Babcock seconded to approve the minutes from 4.6.2022.

All Board members present voted Aye. with the exception of Crocker who abstained. Vote was carried.

Minutes of April 27, 2022.

Thorn motioned and Torpey seconded to approve the amended minutes with Crocker in attendance from 4.27.2022.

All Board members present voted Aye. Vote was carried unanimously.

Minutes of May 25, 2022.

Thorn motioned and Crocker seconded to approve the minutes from 9.22.2021.

All Board members present voted Aye. Vote was carried unanimously.

Minutes of June 22 ,2022.

Thorn motioned and Crocker seconded to approve the minutes from 6.22.2022.

All Board members present voted Aye. Vote was carried unanimously.

Minutes of September 28, 2022.

Thorn motioned and Crocker seconded to approve the minutes from 9.28.2022.

All Board members present voted Aye, Vote was carried unanimously.

III. Meeting Adjourned

Torpey motioned and Thorn seconded to adjourn. All Board Members present vote Aye. Vote was carried.

Respectfully submitted,

Christel Daggett/Kimberly Rayburn

Planning & Zoning Secretary & CEO