

Case No. 1045

**Dave Knutty, applicant
DB Development LLC, owner
1170 Cobblestone Dr**

- Variance requested from Subsection TCO 1154.08 (a) minimum rear yard setback is [15’ as platted].
- **Request variance of 8’ to allow a 7’ rear setback**
- For review and determination

Mr. Knutty was having technical difficulties.

Mrs. Raber: If the applicant was provided a copy of all the correspondence, you can use this opportunity to read the correspondence into the record while we’re waiting for him to be able to log on.

Mrs. Kuzior: Was the applicant given a copy of the correspondence?

Mayor Kline: Yes.

Mrs. Kuzior: Kelli, do you mind reading those into the record?

Ms. Funk: Of course. We have quite a few of them. First, we have a letter from the future homeowners.

As the future homeowners at 1170 Cobblestone Drive, Anne and I wanted to reach out to you to better explain our request for variance. Due to the topography and 'pie' shape of the lot, it was incredibly challenging to design a home with an acceptable floor plan and maintain a consistency of design with other homes built in the allotment. Due to these unalterable hardships, it was necessary to set the home on rear lot line. We are asking for a variance to build an 8' wide elevated deck from the main level that will protrude beyond the building envelope but stay inside of the property boundaries. Below are the main reasons we are asking for this request:

- 1. With the grade of the lot falling well below the main level at the rear of the home, the variance will provide us the opportunity to build a deck with steps that will allow an exit point from the main level to ground level. This is extremely important to us from a safety standpoint.*
- 2. The deck will fall well within the property boundaries and will only protrude beyond the building envelope near the development's common area. The deck will not be outside of the building envelope closer to any residents' dwellings.*

We appreciate your consideration with this matter and look forward to our meeting on Tuesday, October 13th.

Thank you!

Dave and Anne Knutty

Then we have a letter from Bill Mosholder, the developer.

To the Board of Zoning Appeals,

This lot being sold to Dave and Anne Knutty is the last lot remaining to be built on in Stonegate Reserve. The Buyers of this lot (as well as myself) acknowledge that it is the last lot to be sold for a reason. It is on a cul de sac, extremely "pie shaped", limited home footprint area and a very challenging lot topo (big fall off front to rear).

Working around (and with) these hardships, the Knutty's came up with a fabulous floor plan, gorgeous curb appeal and still fit the complete home within the "building envelope". They are requesting a variance due to above mentioned lot hardships. In order to design a great floor plan (and have it fit in the building envelope) it pushed the home to the very end of "building envelope". This created the variance request for the deck to protrude 8 feet beyond the building envelope (still

within the lot lines of the subject lot). In order to get from his first floor living area to ground level, he needs the 8' variance to build this deck/ steps (due to the extreme lot fall off- front to rear).

Thank you much,

Bill

Dear Board of Zoning Appeals:

This office represents Paul and Barbara Wagner (the "Wagners"), as well as Joan and Lionel Meister (the "Meisters"), who live on both sides of the property located at 1170 Cobblestone Dr. (the "property"), which property is the subject of tonight's variance request. Both the Wagners and Meisters strenuously object to the application of Dave Knutty ("Knutty") to obtain a variance of 8' to allow a 7' rear setback.

Pursuant to Section 1137.01(a) of the Zoning Code, "[i]n every instance of granting a variance by the Board of Zoning Appeals, there must be a showing by the Board that:

- (1) The strict application of the provisions of this Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of this Zoning Code.*
- (2) There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district or neighborhood.*
- (3) The granting of such variance will not be of substantial detriment to the public interest or to property or Improvements in such district in which the variance is sought, and will not materially impair the purpose of this Zoning Code."*

Desiring to build a home larger than a lot permits does not constitute a hardship. As Knutty points out in his application, this is the last lot available in Stonegate Reserve. Just because it has been the least desirable lot in Stonegate Reserve does not mean it needs to have a spec home (with the garage facing the street) crammed onto the lot. Knutty also does not need to build a deck. He could exit the rear or sides of any house simply with steps. If Knutty really wants a deck, he could redesign the home to fit the lot, while adhering to setback requirements. He could also bring in fill dirt to change the topography of the lot. All of his so-called "hardships" are self-created because Knutty wishes to purchase and build upon a lot that likely should not be built upon at all. (It's also unclear whether Knutty would even be living at the property or whether he is simply acting as a straw man, since Dave Knutty is the "D" in DB Development, LLC, which still owns the property).

Further, there certainly are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply to the rest of the neighborhood. The lot being on a cul-de-sac is not an exceptional or extraordinary condition. Many of the homes in the Stonegate Reserve development are on cul-de-sacs, including the Wagners' and Meisters'. The Wagners have a similarly shaped lot next door and were able to build a home within the setback requirements. There is simply nothing unique about this lot.

Most importantly, the granting of any variance will definitely be of substantial detriment to the interest of the other homeowners in the Stonegate Reserve community. Immediately behind the subject property is a large and beautiful pavilion that is owned by the Stonegate Reserve Homeowner's Association, and used by the members of the HOA. The only practical access to the pavilion is through the subject property. If a home is crammed onto this property, HOA members desiring to utilize the pavilion will be forced to walk through the Wagner's side yard, or the Meister's back yard, in order to get to the pavilion. Then, while at the pavilion, the Knutty's proposed deck would be right on top of those trying to enjoy the pavilion. Of course, that's only if anyone would ever still want to use the pavilion. If the house is built and the deck extends 8' feet beyond the setback requirement, the pavilion will likely be a lost treasure for the community. Instead, it would essentially become the Knutty's personal pavilion, as hardly anyone else will want to utilize a pavilion so close to the rear of the Knutty's proposed home and deck

On July 25, 2020, Dave Gauer, President of the Stonegate Reserve HOA, informed the HOA Association that he "Made an offer to sell [the pavilion] and the land surrounding it to future buyer of lot #11 [i.e. the property]. .. Would relieve the HOA of responsibility and maintenance ... Limited

access when home built on Lot #11 ... Would require 75% approval of property owners" (see attached Stonegate Reserve HOA Meeting Agenda and Minutes). Thus, the HOA President acknowledged that HOA members would have limited access to the pavilion once a house was built on the property. The limited access to the pavilion would only be exacerbated if the Knuttys were permitted to build a deck right next to the pavilion.

At the July 25, 2020 HOA meeting, the Wagners and other HOA members spoke against the proposal of selling the pavilion to the future owner of the property, and the issue was deferred to a later date. The majority of the HOA members do not want to sell the pavilion but it likely will be a fait accompli if this Board grants the requested variance. Granting this variance could essentially render the pavilion useless to the Stonegate Reserve community, regardless of whether or not it is sold to the future owner of the property.

Based on the foregoing, the variance request should be denied. There are simply no hardships or exceptional or extraordinary circumstances or conditions which would necessitate the granting of this variance request. Further, if the variance is granted, the detriment to Stonegate Reserve community--and especially to the Wagners and Meisters--will be substantial.

Scott Flynn

Ms. Funk: Next is from Joshua Dennison

We live at 1134 Cobblestone Dr., Tallmadge, Ohio 44278, in Stonegate Reserve Homeowners Association. We are opposed to the zoning variance from the Tallmadge Codified Ordinance 1154.08, (a) minimum rear setback is 15 feet as platted that is requesting 8 feet to allow 7 feet to build a deck. This request is from DB Development LLC for the location of 1170 Cobblestone Dr. in Stonegate Reserve.

We are opposed to this variance because immediately behind this property is a covered pavilion with picnic tables which is in the common area of the Stonegate Reserve Homeowners Association for the use of all residents. this variance would allow for a deck to extend very close to the pavilion making it much less comfortable for the residents to make use of this pavilion for private gatherings.

To Whom It May Concern:

I am not in favor of the request by this property owner to receive the 8 feet to build a deck on this property. Having the deck placed that far out will make access to the pavilion on the Stonegate Reserve HOA property difficult to access and enjoy by the other residents. It is not fair to the other residents. This should have been considered by the owner before purchasing this property.

JoAnn Mueller

1175 Cobblestone Drive

I am excited to welcome my new neighbors to the property at 1170 Cobblestone Rd, however, I am voicing my concern about the variance which would jeopardize our communities use of the pavilion which has been on the property since the beginning of the development. I ask that the property owners re-consider the size or location of the patio they are proposing to ensure that they are not encroaching on the existing structure.

The property owners at the following addresses sent emails stating their opposition to the variance without any further explanation.

1088 Stonegate Tr

1106 Cobblestone Dr

1128 Cobblestone

1166 Cobblestone Dr

1 unknown address that did not give a name or an address.

We did have one phone call today from the owner of 80 June Dr, which is behind 1170 Cobblestone and she has no objections to the variance.

Board of Zoning Appeals,

I have seen the home blueprints as well as the home "footprint". I have reviewed the variance request for the "open air" deck to protrude 8' past the building line. The home / foundation is 100% within the building envelope. The topo of the lot creates a hardship (lot has an extreme drop off) that you must have a deck with steps to get to the ground level from the 1st floor living area.

Cody Cook

Owner: 1146 Cobblestone in Stonegate

My name is Nancy Rinella and my husband, Joe, and I live at 1112 Cobblestone Drive, Tallmadge, OH. On October 5, I e-mailed your department indicating that we did not approve of the variance for the property at 1170 Cobblestone Drive. Since that date, my husband and I have met with the prospective builder, David Knutty, and we now have a better understanding about the nature of, and need for, the variance. We would like to change our vote. We approve of the variance for the property at 1170 Cobblestone Drive.

Nancy Rinella

I live at 1076 Stonegate Trail and I support the variance for the deck at 1170 Cobblestone. I feel the deck will not adversely affect any of the neighbors in the allotment. It is unlikely that neighbors on either side will even be able to see the deck due to the location of the rear of the new house in relation to the neighboring homes.

I know there is concern due to the location of a pavilion at the rear of the property. I think the location of the pavilion is the result of poor planning by the developer. However, I would assume that it was part of the original plat submitted and approved by the city.

The deck itself will be high enough that I don't think it will be a problem for families having events in the pavilion. Other properties have a better line of site of the whole pavilion floor. The inconvenience for families using the pavilion would be more likely from the patio on the lower level of the new home which could go all the way to the property line without violating any zoning or HOA rules. Any patio would be near the same grade as the pavilion floor.

I feel any inconvenience from activities in the pavilion would fall more on Mr. Knutty than any other home in the allotment. Very few homes in our allotment have the potential of having a large group of people having a party 30 feet from their back door. I'm sure he is aware of that and accepts that as a downside of building a home on that lot.

Dave Gauer

1076 Stonegate Trail

Good afternoon,

I wanted to write and give my approval for the variance request for the open-air deck to be placed on the new construction of 1170 Cobblestone in Tallmadge. I have personally seen the blueprints and the "footprint" of the proposed deck addition. After seeing the deck "staked out" on the property I believe it will not impede on the HOA members property and as I understand the home and foundation are 100% in the building envelope of the lot. I also think it is a good idea to have a deck with steps to allow the homeowners to get to the ground floor from the main floor.

Thank you!

Brett Myers

HOA Treasurer - Stonegate Reserve

1071 Stonegate Trl

Mrs. Kuzior: Thank you, Kelli. There were a few more that were in opposition, are those in your packet?

Ms. Funk: I listed the addresses of the ones that didn't give any explanation.

Mrs. Kuzior: Ok, those are the same. Thank you.

Mrs. Hussing: Mrs. Kuzior, Melanie has joined the meeting, so I just wanted to call that to your attention.

Mrs. Kuzior: Ok. Is David Knutty on now?

David Knutty was sworn in.

Mr. Knutty: We are seeking the variance because, after doing the design of our home, we were struggling with fitting a home on the lot because of its difficulties... it's a very narrow lot in the pie shape on the cul-de-sac and it falls off to the back. So, we will not have any access to outside the back of the home to ground level. So, we're asking for a variance to be able to put a deck on that will give us a rear exit to the home and allow us to get to ground level from the back of the home. We felt that that was a big issue from the safety perspective. We designed and worked for months trying to get the right fit on the home at the square footage that we're trying to build, trying to stay within the design load of what is being built already in the Stonegate Reserve area so that we look very similar to the homes there. So, [inaudible] stay within the square footage and do what we were trying to do and stay within that build envelope with the deck as well inside of that. That's basically it. Really from a safety perspective, it's our biggest concern. We're going to have 2 exits off the back from the master bedroom and from the kitchen area that go to the deck because neither of those areas in the home... if a fire would happen in the front of the home, we would not be able to get out through the front door. So, if we would be in our master bedroom and there would be a fire at the front of the house. We would be trapped in that back side of the house, so we really felt we needed an access point out the back at the ground level.

Mrs. Kuzior: Ok, is there anyone else that would like to speak on this?

Bill Mosholder was sworn in.

Mr. Mosholder: Real briefly, I would like to address Attorney Scott Flynn's letter, just a couple quick points on that. Early on in the letter he said we're designing and building a house that is way too large for the lot. The lot [house] that Dave settled on is just barely over 1,600 square foot so it's not a large house that was shoved on the lot. And also, he did achieve 100% of the actual house footprint does sit on the building envelope. When you hit the cul-de-sac, every envelope is different, depending on what point of the radius you are on the cul-de-sac, and this one just proposed a lot of challenges because of the very tightness in the beginning and the way it fans out. Dave working with our builder was able to work through that. A couple other quick things, and I'm not real sure where Mr. Flynn got a lot of his information, but just a couple points so everybody is aware. It eludes on there that we are just building a spec house with the garage facing the street. It's not a spec house. It's a custom design, primary residence for Dave and his wife. As far as the garage facing the street, there's 31 other houses in there and there's only 1 that has side loading and that's a corner lot. Everything is identical to what Dave is designing. Those small building envelopes dictate that. The other thing that he touches on is to bring fill dirt in to address his drastic topo fall off front to back. It's not a practicality. If we did that, his actual client to the left of the house, the Wagner residence.... If we built that up, there would be a huge drop off just dumping water right on to his lot and then an abrupt drop off going toward the open space. So, with the limited number of running feet we have to work with, that was not an option. It would have been nice to have been able to do that because then he could have just had a normal patio, he wouldn't have the very expensive steps going down to gain an ingress/egress from the ground level to the back of the dwelling. Another thing in the attorney's letter is that he's unclear if Knutty is even going to live in the property or is he just strictly acting as a straw man. That's just outrageous. I don't use straw men and Dave is not a straw man. He worked very hard to design his house and it's a gorgeous house. He also states that Dave is the D in DB Development, he already owns the lot. Again, I don't know where he's getting his information but it's inaccurate. So, I won't continue on and on but it's just very frustrating to have inaccuracies like that. And the other point is in regard to the pavilion. Up until of January of this year, I was in charge of the Association and the protocol was if you wanted to use the pavilion, just reserve it so

we don't have conflicting parties. From the date... 10 plus years... to January 1st, I had 4 different times that people reserved the pavilion and 2 of those times was by the Association. I did hear a rumor that somebody had some kind of shower or something back there. So, to my knowledge, this house going on the lot is not going to increase or decrease the utilization of the pavilion. It's been used next to 0 since we built the development. The other item as far as access, that by building on this lot, they're taking away the access to the pavilion. This lot was never an access point for ingress/egress to the pavilion. The subject property is lot 11. Lot 12, which is next door and the next house over, lot 13, that is the defined platted ingress/egress to the pavilion and that has not changed at all. Throughout Tallmadge, and I've been building in Tallmadge since the early 80s, you have cul-de-sac properties that are challenging. You might have 5 lots on a cul-de-sac and 1 or 2 of them have extreme pie shapes or topo challenges and throughout the City, it's very normal that we address these and review them and variances are granted for these hardship situations. I think this one, I would not be asking for it and definitely the Knutty's would not be asking for it if it wasn't a unique hardship. Just a few points of interest.

Mrs. Kuzior: Thank you. Anne Knutty, do you have anything to add?

Anne Knutty was sworn in.

Mrs. Knutty: I would just like to say that I'm super excited to be building a new home. We just sold our house of 24 years and we're looking to downsize. I would be very disappointed if we weren't able to build the home that my husband worked so hard on designing with Mosholder Builders. And I make a great neighbor. I love people and I make good cookies. That's all I have to say.

Mrs. Kuzior: Ok, Mr. Knutty, you have something else to say?

Mr. Knutty: Yes, I just want to follow up with, the DB side, Dave Knutty is not the D in DB Development, we never have been. I don't have a vested interest in this property other than purchasing it to build on it. I wanted to state that we have sold our house, so the intent is for us to live in the community and build this home and make it our own. It is not something, like it said, a straw man, this was a real intent. We've been working on this for almost a year now. The timing just happened to be for us to sell our home, it took us a little longer than we thought and so there was some, what I feel was some hard feelings in this situation, and so there's been some negative things said about what we've been trying to do but in real of this, we're trying to build a home that we love. We've had some difficulties and we've worked really hard to design it and this is the outcome so that's why we're asking for the variance, because we think it's not only the best for us but it's also going to be for the development.

Public Hearing closed at 7:32pm.

Mrs. Hussing: Before you commence, I just want to, for the record, state the no one registered to speak from the public.

Mrs. Kuzior: Ok, thank you.

Mr. Schunk: Mr. Mosholder said that the lot was 1,600 sq ft, I think he misspoke. Did you mean the house was 1,600 or the lot?

Mr. Mosholder: The house is just over 1,600 sq ft.

Mr. Schunk: And how many square feet is the lot?

Mr. Mosholder: I don't know the exact square footage. If you look at the footprint, you can see that the building envelope.... There're a few slivers on each side of the front of the house and the back sides of

the house are not utilized so, the home is designed to utilize the building envelope. Even by doing that, because of the limitations, it's just over 1,600 sq ft. The majority of the houses back there are larger than that. So, he did have to adjust. He didn't cram a huge house onto it. He worked around the envelope and created a very nice floor plan.

Mr. Schunk: Ok. Where is this pavilion in relationship to the drawing? According the HOA, what is the means of ingress/egress to the pavilion?

Mr. Mosholder: Right there where that arrow is going. That's a platted point of ingress/egress to get to the pavilion.

Mayor Kline: This is the plat. Lot number 11 is the lot in question. 12 and 13, you see an 8-foot pedestrian easement, travels from the parking lot to there. Here's the parking lot, here's the walkway to the pavilion.

Mr. Schunk: It goes through those trees?

Mayor Kline: Yep.

Mr. Schunk: Where would the proposed deck be in relationship to that building?

Mayor Kline: So, here's lot number 11. The buildable footprint is the dotted line, the proposed home is totally in that. So, 7 foot from the back-property line...

Mr. Victor: I measured it on the GPS and it looks like about 20.4 feet from the edge of the pavilion to the property line then if you add the other 7 feet, it would be like 27 feet to the deck.

Mr. Schunk: Looking at the photograph there, it's hard to tell where the drop off is. Can you show where the drop off is?

Mayor Kline: If you look at this house, you can see it... a 2 story with a walk out basement basically. So, you can tell the topo there. There's the building line if it's easier to see... About right in there is the back of the deck and the house would be sitting up in there.

Mr. Schunk: Ok. How far is it from the back of the proposed deck to the pavilion?

Mayor Kline: I think Mr. Victor just said... about 27.4 feet.

Mr. Schunk: And the proposed deck would be above the pavilion, is that right?

Mayor Kline: Based on the view of the house... yes, it would be on the main floor, street level but it will be above the basement area.

Mr. Schunk: What is the pavilion used for, in terms of activities of the homeowners?

Mr. Mosholder: Since we started the Association to January 1st of this year, there were 4 reservations over that 12-year period. Now they did have, I believe, 1 and, and again, I'm not on the Board anymore.... So this year 2020, I think they had 1 Board meeting at the pavilion but I'm not positive, but I'm pretty sure they did. So, as far getting this... it's very rare and that's why literally, the last year that I was on the Board and more detailed things were done this winter to evaluate whether or not they were going to tear the pavilion down because of liability and/or to avoid future maintenance cost. They talked about selling

it to one of the property owners that are contiguous to the back of the land there, but they were only preliminary discussions, but they very well identified the lack of use.

Mr. Schunk: Do people use it on an as needed basis? Like an afternoon?

Mr. Mosholder: Very very rarely. From what I heard... 1152, which is lot 13, I own that one and the tenant that we custom built it for is still there and he said it's very rare that he's ever seen anyone back there. Some of the neighbor kids sit in there for a little bit but yea, very few organized gatherings.

Mr. Schunk: Ok, that's all I have for now. Thank you.

Mrs. Kuzior: I have a question for Mr. Mosholder. I was wondering, the way that the land drops off, that's almost like a 2nd floor deck, is it not?

Mr. Mosholder: Yea, it would be, from the point of entry to the front of the house... it's still considered a ranch because of the main level, when you enter from the street is all on one level up there. But it's essential when you fall down, when you have a walk out basement, a lot of topo's like that, it's essential a second level.

Mrs. Kuzior: It's like a 2nd floor, that's what I thought. That's why I was wondering why it would be a hardship for a neighbor walking... say one of those 2 neighbors would want to walk to that pavilion, and I'm just trying to imagine what all this would look like, because of course it's not there, but you'd be walking sort of under it, wouldn't you?

Mr. Mosholder: No, that's still on his property. The open space...

Mrs. Kuzior: Oh, I know it's on Dave's property but if someone were to walk there, and just walk on their property, it would be so high, it wouldn't even be in their way to see around.

Mr. Mosholder: Yes, it would be above their heads.

Mrs. Kuzior: Yea, that's what I thought. Thank you.

Mr. Victor: I appreciate your explanation because, having gone out there this afternoon and looking and reading the complaints from many of the other neighbors, concern was access to it. I appreciate you pointing out that the original plat and 8-foot easement, which still exists. But that lot was not the original access, if it ever was used for that. So, I appreciate that good explanation. I don't see a big problem. The concern from the other neighbors that I see is mostly access to the pavilion and you're saying here, as a former HOA President, people don't really use it that much anyway, is that correct?

Mr. Mosholder: Very very rare.

Mr. Victor: Thank you.

Mr. Schunk: One other question. Is the pavilion accessible from June Drive?

Mr. Mosholder: You would have to walk through common land, but yea you could walk there.

Mr. Schunk: Is it part of the property to walk over?

Mr. Mosholder: The open space that's owned by Stonegate does go all the way down to June Dr. And where he's pointing now, is our retention area.

Mr. Schunk: Is that the area that's surrounded by pine trees?

Mr. Mosholder: Yes. It's screened.

Mr. Schunk: But there's no easement or path from June Dr to the pavilion?

Mr. Mosholder: Well in open space, people can navigate on that as they please. The reason we had to do an 8-foot ingress/egress platted access between lots 11 and 12 is that that's privately owned land on either side of it.

Mrs. Kuzior: The egress and ingress easement through there, is there any kind of a walkway? I went out to look at the property and saw the pavilion and everything, but I didn't walk over to that area.

Mr. Mosholder: It was a point of subject matter, I would say at least 50% of our annual meetings and nobody wanted to spend the money because nobody was using the pavilion. So, the actual physical walkway has never been put in there. One time, early on, they did have the landscaper do like a mulch walkway. But then over the years, that just sort of disappeared because nobody was using it.

Mrs. Kuzior: Ok, thanks. Does anyone on the Board have any more questions?

Mr. Victor: I have a question for Mr. Knutty. Your deck, as I measured, is going to be about 30 feet away from the pavilion. So, from what I see, the hardship would actually be yours. If people are using the pavilion, your deck wouldn't encroach on them or bother those people. More likely, you might be disturbed by people at the pavilion. Any comment on that?

Mr. Knutty: We understand that and we're willing to take that risk. It sounds as though it's a minimal situation that the pavilion is used so, again, it is a beautiful parcel, and we have a great view out the back. If someone is going to be there every once in a while, it is what it is. We don't go out on our back porch that much. The odds of us running into each other are pretty minimal so, it is what it is. It's one of those things that we know the pros and cons and we're willing to accept it.

Mr. Victor: Thank you. Just trying to address the concerns of the other neighbors.

Mr. Schunk: It's just an observation, rarely do we get this many citizen complaints about something, both written and verbal, and it kind of perplexing to me that so many people would have so much concern over a building that isn't used. Is there another agenda going on here?

Mr. Mosholder: So, Paul Wagner, who had the attorney write the letter, he wanted to buy the lot in the worst way. And we told him... now he told everybody that's in the Association that he had a firm contract commitment with me and that I am not sticking by it and that I'm selling it out from under him. Well, I don't do business that way. He never had a contract. He did have a meeting of the mind that if by September 1st 2020, I did not have a written building deal on the subject property, that at that point, I would draw up a contract to purchase the lot, he could review it and if he agreed to it and authorized it, then at that point we would discuss going into contract so he could buy the lot. As soon as we knew that Dave was probably going to pursue living there, we let him know "the odds are, before September 1st, we're going to be in contract with a building deal so, we're never going to get to contract stage, I just want to give you a heads up." Well, that's when the rumors started that Dave was part of the Development Company and that it's going to be a spec house... because he wanted the deal to go south. He talked to a lot of people there and, Dave can share with you, Sunday he went door to door and talked to several people and a couple of them wrote letters changing their position once they had the correct information. Like that letter from the attorney, there's just so many untruths... and the attorney probably felt that those were accurate, that somebody told him that. Dave can share with you... that's why there

was so much... they made it very aggressive and they made up a very interesting story of how they were going to buy the lot and make this great entry to pavilion and people were going to start using it now and it's going to be great and it was all just untrue.

Mr. Schunk: There was no written option to purchase or anything like that?

Mr. Mosholder: He had a written first right of refusal if we were not in contract on a construction deal by September 1, 2020. I further stated in that document that, at that time, he would be afforded the opportunity to review a written contract to purchase the lot and if we both agree, he could purchase the lot. So, he had nothing close... obviously if he had a contract, I would honor it. We would have sold it to him but it's just... he was mad because we got a building deal before the deadline, that's all.

Mr. Schunk: Thank you.

Mrs. Kuzior: Ok, Mr. Mosholder, I have another questions in relationship to what Mr. Schunk was asking. So, when was the contract signed by Dave and Ann?

Mr. Mosholder: He worked at it for about a year. It was probably 90 days before September 1st that we apprised Mr. Wagner and it was probably a month before the deadline that we actually signed the actual contract. We had all the pricing in for all the specifications that the Knuttys selected. It wasn't at the wire.

Mrs. Kuzior: So it was plenty of time. Ok, thanks.

Mr. Schunk: One questions to Dave... is there a, the City obviously has plats for this development. Is there anything that indicates the square footage of the property?

Mayor Kline: Let me go back to the plat. I do not see the square footage, but I can only say that it was platted with the 7.5' on each side for property lines and the building envelope and they are meeting all the requirements of construction. I think if I may add, the letters, if you read those, most of the complaints were about ingress egress to the pavilion through lot 11. Well, with or without the variance, they don't have an ingress egress through lot 11. It's between 13 and 12. You can see in between lots 13 and 12, that's the ingress egress. That's the platted pedestrian.... So if Mr. Knutty builds that, people do not have access from lot 11 to that pavilion. And analyzing the complaints, I think it's a lot of that. Even when you look at the ariel, you can see the foot traffic that went through, from either walking down or mowing down, to get down to the pavilion from that lot. The square footage of that lot is .132 acres, as platted. Helene just brought that over to me. I don't know if that answers your questions, but it fits the envelope per the drawings. As you can see, Mr. Knutty laid his footprint and the dotted lines, again, are the building footprint, so, they could fill that entire area inside the dotted lines with buildable home. But the deck exceeds that and that's what the variance is for. You look at all the other allotments that we have with those, off of Eastwood and that, the walkouts... they have boards blocking up their doors because they can't access the back of the house to get ingress egress and that would be for that purpose, as Mr. Knutty stated.

Mrs. Kuzior: Just as a general statement, I'm looking at this plat map with the proposed house on there and it look as though the house on either side filled up their lots as well. I don't understand that letter stating that they shoehorned a house on this lot when that's exactly the way the other houses are on the lot. Is that correct Mr. Mosholder?

Mr. Mosholder: Yes, throughout the allotment, that's a very normal reflection of utilizing the building envelope. You just have very limited space so yea, a high percentage of it is utilized.

Mr. Schunk: It appears that the average lot size is about 1/3 of an acre, is that right?

Mr. Mosholder: I would really have to look again. I haven't looked at that plot plan in quite a while.

Mayor Kline: But that's probably close Mr. Schunk.

Mr. Schunk: And since that's a private development, they don't have to follow the Residential 1,2,3 & 4?

Mayor Kline: No, this was a Planned Unit Development, setup up specifically for that purpose. The square footage of lot 11 is 5,764 sq ft. It's also showing the pedestrian right-of-way and lot 12 is 5,496 and lot 10 6,417. So he's right in there.

Mr. Schunk: So, it's a little over an acre?

Discussion about the acreage of the properties in the allotment.

Mr. Victor: Isn't that kind of out of our scope of what we're doing? Because he's allowed to build the house, that's not the question. So, we're going down a rabbit trail on acreage and square footage but all we need to do is, can we grant a variance?

Mr. Schunk: Well that's the problem we've been having with these private developments. They make these undersized lots and then it's up to us to figure out how to get the deck built behind them on a sloping lot. We've dealt with that on Eastwood Ave.

Mrs. Bushey: I have a question with this deck that he's building. If you look at page 5, there are windows and a door. Are these actual accesses to the deck? They kind of look like blocks and I'm just wondering, are any of these real windows or a door or a sliding glass door that is going to the deck?

Mr. Knutty: Yes, there's a sliding glass door off of the master bedroom and then there will be an access door from the kitchen that goes out to the deck.

Mrs. Bushey: So this can be a second floor... a way to get out of your house, correct?

Mr. Knutty: Correct, that's the main purpose for the request for a variance is because of the fact that we will not have a means of egress to ground level without this.

Mrs. Bushey: Also, on your application you were talking about September 1st, the neighbor wanted... you submitted this to the City of Tallmadge on September 2nd, correct?

Mr. Mosholder: Whatever it was dated, yes.

Mrs. Bushey: Which means, this was done way before September 1st.

Mr. Mosholder: Yea, our contract for my construction company to build for Dave was done, all the pricing and designing and stuff was done way before that.

Mrs. Bushey: Ok.

Mr. Gregg: I don't have a question; I think a lot of the testimony given here has brought up a lot of good points showing the detriments and problems presented in this lot. I do feel that it's a good plan. I think it will fit the lot. I don't believe that it will be a detriment to the HOA's access to the use of the building, if they still want to use it... [Mr. Gregg was cut off due to technical difficulties]

Mr. Victor: Are we still in the Public Hearing or has the Public Hearing been closed?

Mrs. Kuzior: Public Hearing is closed but we're still asking questions.

Mr. Victor: Are we close to a motion?

Mrs. Kuzior: Yes, I think.

Mr. Victor: Ok I can do that. **I move to approve the variance request for Applicant Dave Knutty for the property located at 1170 Cobblestone Dr for a variance requested from Subsection 1154.08 (a) minimum rear yard setback is 15' as platted seeking 7' upon the showing based on the plans and application submitted dated September 2, 2020 and evidence presented that:**

- (1) The strict application of the provisions of this Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of this Zoning Code.**
- (2) There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district or neighborhood.**
- (3) The granting of such variance will not be of substantial detriment to the public interest or to property or improvements in such district in which the variance is sought and will not materially impair the purpose of this Zoning Code.**

Mrs. Bushey: **Second.**

Mrs. Kuzior: Do we have any questions or comments from the Board? Mr. Gregg, were you able to finish your thought? That's what I was waiting on. You were frozen.

Mr. Gregg: I think I got it all in.

Mr. Victor: I would just like to add that I think we addressed the concerns of the neighbors. Access is still there for the pavilion and everything else looks good. I think Mr. Knutty is showing that he has cooperated and tried to address the problem and any concerns for a hardship is more on him than other people so, I'm confident in my motion.

Mrs. Kuzior: I too think that he has gone above and beyond. Going door to door to all the neighbors to address their concerns is admirable and I think that the fact that the deck is not even going to be on the ground level, in the back part of the house, it won't even be in anybody's sight line really so I don't think there's any problem. He did not shoehorn the house on a lot. The lot allows for this sized house and he fit the house in that size. This is just kind of hanging out in the air, not even in anybody's sight line. So, I'm confident that I'm going to vote yes on this variance.

Mrs. Bushey: I can see, as much as I can get on this issue, I think it was about the deck and I kind of, when you look at the pavilion, this wasn't about the pavilion, this was about him putting a deck. If you look at the back access too, getting out of the house, to me that is very important, because of the past decks that we've had to put on people's houses because they didn't have access to get out of their houses. So, he basically has my support concerning this issue and I think the HOA said that if we support him that they would support him, so I think that is a very positive action for them also.

Mrs. Kuzior: Do we have any further comments from the Board?

Mr. Schunk: I would just like to say that, under any other circumstances I would probably vote against this request but because the neighbors aren't being significantly infringed on, I would vote in favor of it. Again, I would criticize the designer of the allotment for designing such small lots that requires the homeowner to go to the Board of Zoning Appeals to get a simple deck. This is something that should have been considered by a reputable builder, sorry Bill, but I will vote in favor of this but not with much enthusiasm.

Mrs. Kuzior: Anyone else? I think we've addressed all the questions on the attorneys' letter.

All members present voted in favor. (5-0)

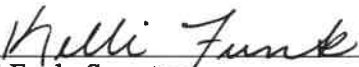
Mrs. Kuzior: Your variance has been approved.

Mrs. Kuzior: **All in favor that we adjourn?**

All members in favor. (5-0)

Meeting adjourned at 8:09pm.

Respectfully submitted,


Kelli Funk, Secretary


Richean Kuzior, Chairwoman