



Department of Planning and Development  
2348 S Brentwood Blvd.  
Brentwood, Missouri 63144  
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www.brentwoodmo.org

## STAFF REPORT

**REQUESTED ACTION:** Variance from Section 400.1330.D.3.a of the Brentwood Code of Ordinances

**LOCATION OF SITE:** 9101 Moritz Avenue

**LOCATOR NUMBER:** 20K120380

**SIZE OF TRACT:** 5,400 square feet

**ZONING DISTRICT:** "B" Single Family Residential District

**PETITIONER NAME:** Tom Magee, Bragees LLC  
8734 Bridgeport Avenue  
Brentwood, MO 63144

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### EXHIBITS

- A. Code of Ordinances for the City of Brentwood and the City's Comprehensive Plan
- B. Appeal to the Board of Adjustment, including application
- C. Application materials submitted by Petitioner
- D. Photographs of the subject property taken by staff on 1/14/2021
- E. Staff Report from the Director of Planning and Development dated for meeting 1/28/2021

### BACKGROUND

The petitioner is seeking a variance from Section 400.1330.D.3.a of the Brentwood Code of Ordinances for the property located at 9101 Moritz Avenue which is zoned "B" Single Family Residential. The subject property is a corner lot; 40' wide along Moritz Avenue and 135' deep along High School Drive, and the lot is 5,400 square feet in size. The subject property includes an existing two-story brick and frame residence constructed in 1985 and a detached frame garage built in 1991 according to St. Louis County property records. The existing structures on this parcel; the residence, the detached garage, and the wood platform deck do not meet current setback requirements.

The required setbacks for a corner lot in a "B" Single Family Residential District are a 25' front (ROW) yard setback from Moritz Avenue and a 25' front (ROW) setback from High

School Drive, a 5' side yard setback from the west property line and a 20' rear yard setback from the north property line. A corner lot must also abide by Section 400.1860.C requiring at all street intersections, no obstruction to vision other than an existing building, post, column, tree or shrubbery shall be erected in area defined by the following formula: The triangular area formed by connecting two (2) points, each forty (40) feet from the street intersection and located on the front lot line. Staff could not find records of any previous variances granted for these structures, and therefore the structures are non-conforming structures.

The City's Zoning Ordinance was significantly rewritten (revised) in 1985. It is possible the residence was constructed with different setback requirements in place. The garage and platform deck were likely constructed under the same setback requirements currently in place. Likely, the subject property was platted with a 40 feet lot width along Moritz Avenue with a 30' building line in the front, and a 5' building line on the side along High School Drive. In accordance with the City code, Section 400.040, Interpretation (of the Zoning Code), the most restrictive requirements should prevail. In this case, if the 30' front yard setback along Moritz was established by the subdivision plat, then the 30' building line should prevail, and the 25' front (ROW) setback from High School Drive established by the City's zoning requirements should prevail.

### **REQUEST**

The petitioner desires to cover the non-conforming platform deck located in the rear yard. As proposed, the location of the attached roof covering the deck would not meet the required 25' front (ROW) setback from High School Drive. The petitioner is requesting a 14' variance to establish an 11' setback from the front (ROW) yard setback from High School Drive. Section 400.1870.B, Yard Requirements, requires any corner lot shall have a side yard equal in width to the minimum front yard setback of any adjoining fronting on the side street. In any event, the minimum side yard setback of a corner lot shall be no less than ten (10) feet.

### **NOTIFICATION**

Property owners within 300' of the subject property were notified by a letter sent via U.S. Mail. Notice of the public hearing was published in *The Countian*. As of January 21, 2021, no correspondence regarding this variance request has been received.

### **STANDARDS FOR VARIANCE – SECTION 400.810**

Section 400.810 of the Brentwood Code of Ordinances provides that the Board of Adjustment shall not grant a variation as authorized in this Article unless it shall, in each case, make specific written findings of fact directly based upon the particular evidence presented to that support all of the following conclusions:

1. The variation requested arises from a condition which is unique to the property in question and which is not ordinarily found in the same zoning district and is not created by an action or actions of the property owner or the applicant.

2. The granting of the variation shall not adversely affect the rights of adjacent property owners or residents.
3. The strict application of the provisions of this Chapter from which a variation is requested will cause severe practical difficulty or extreme hardship from the property owners represented in the application.
4. The variation desired will not adversely affect the public health, safety, order, convenience or general welfare of the community.
5. Granting the variation desired will not violate the general spirit and intent of this Chapter.

### **REVIEW CONSIDERATIONS FOR VARIANCE – SECTION 400.820**

In determining whether the evidence presented by the petitioner supports all of the conclusions required by Section 400.810, the Board of Adjustment shall consider the extent to which the evidence demonstrates that:

1. The particular physical surroundings, shape or topographical conditions of the property involved would result in a severe practical difficulty or extreme hardship upon or for the owner, lessee, or occupant, if the provisions of this Chapter were literally enforced.
2. The request for a variation is not based exclusively upon the desire of the owner; lessee, occupant or applicant to secure a greater financial return from the property.
3. The granting of the variation will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the property is located.
4. The proposed variation will not impair an adequate supply of light to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood.

### **REVIEW CONSIDERATIONS AND CONCLUSIONS**

In determining whether the evidence presented by the petitioner supports all of the conclusions required by Missouri Courts and Sections 400.810-400.820, the Board of Adjustment shall consider the extent to which the evidence demonstrates that: *(Staff's responses to the review consideration is italicized.)*

1. The particular physical surroundings, shape or topographical conditions of the property involved would result in a severe practical difficulty or extreme hardship upon or for the owner, lessee, or occupant, if the provisions of this Chapter were literally enforced.

*There are several lots in the community located at street intersections and zoned "B" Single Family Residential which have the same setback restrictions. Owners of the subject property have been allowed to construct improvements based on past, less restrictive platting and/or zoning code requirements. These improvements include a*

*house, garage and deck. Constructing coverage for the deck is desired but does not result in severe practical difficulty or extreme hardship upon the owner if not constructed as proposed.*

2. The request for a variation is not based exclusively upon the desire of the owner; lessee, occupant or applicant to secure a greater financial return from the property.

*Based upon the evidence provided by the petitioner, the Board is to determine if the owner would be deprived of all beneficial use of the property if they cannot make the improvement as proposed, nor that they cannot yield a reasonable return from the property. Constructing this roof structure appears to be based exclusively upon the desire of the owner. Granting the variance to construct the roof structure as proposed would allow the expansion and/or enlargement of the existing non-conforming structures on the property.*

3. The granting of the variation will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the property is located.

*The Board is to determine if the petitioner's request of a 14' variance creating a 11' setback from High School Drive to accommodate a roof to cover an existing deck is materially detrimental or injurious to other property or improvements in the neighborhood in which the property is located. As noted above, granting the variance to construct the roof structure as proposed would allow the expansion and/or enlargement of the existing non-conforming structures on the property.*

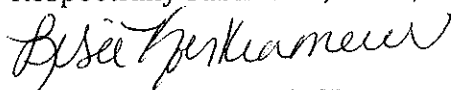
4. The proposed variation will not impair an adequate supply of light to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood.

*Section 400.1840, Setback and Building Lines, states the purpose of setback lines provided for in this Chapter are to establish safe and clear right-of-way and to provide adequate light, air and open space in conformity with buildings now in existence. This requirement should be adhered to for new construction to ensure public safety.*

#### **STAFF RECOMMENDATION**

Staff recommends denying the front (ROW) yard setback variance of 14' as requested by the petitioner based upon the findings of fact noted above.

Respectfully submitted,



Lisa Koerkenmeier, AICP  
Director of Planning and Development

**Photographs of Subject Property – 9101 Moritz Avenue**



