

**City of Gulfport Florida**  
**Board of Adjustment Meeting Minutes**  
**Wednesday, September 9, 2009**

City Hall

6:30 p.m.

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The Regular Meeting of the Board of Adjustment was held on Wednesday, September 9, 2009, in the City Hall, City Council Chambers, 2401 53<sup>rd</sup> Street South, Gulfport, Florida.

Mark Epstein, Chairperson, called the meeting to order at 6:30 p.m.

**Roll Call:**

Present were: Board Members Michael Arendall, Roger Turner and Courtland Yarborough; Vice Chairperson Richard Glueck; Alternate Board Member Stephen Rye and Chairperson Mark Epstein.

Staff: Thomas Minkoff, Interim City Attorney; Lesley DeMuth, City Clerk; Fred Metcalf, Community Development Director; Michael Taylor, Principal Planner; and Myra Schwarz, Planner.

**1. Approval of Minutes – August 12, 2009.**

On a motion by Board Member Arendall, the minutes of the August 12, 2009 meeting were approved unanimously by acclamation.

**2. Variances:**

Chairperson Epstein asked for a motion from the Board to separate the items in V09-16 and hear the play structure variance items together.

Motion by Board Member Yarborough, second by Vice Chairperson Glueck to combine the two items. After discussion on the need to restate the motion for clarification, Board Member Yarborough and Vice Chairperson Glueck withdrew their motion.

Motion by Board Member Arendall, second by Board Member Yarborough to sever Variance V09-16 such that the Board will hear sub item (a) initially as it own subsection and hear together subsections (b) and (c) related to Variance V09-17.

ROLL CALL:	BOARD MEMBER ARENDALL	YES
	BOARD MEMBER TURNER	YES
	BOARD MEMBER YARBOROUGH	YES
	VICE CHAIRPERSON GLUECK	YES
	CHAIRPERSON EPSTEIN	YES

MOTION CARRIED.

- a. **V09-16: Pedro Lopez, 5826 25<sup>th</sup> Avenue South, (Parcel #32/31/16/05490/004/0050) to: (a) reduce the side yard setback requirement by 6 inches, from 6 feet to 5 feet 6 inches, for an existing nonconforming single family residential structure and for a proposed addition to said structure, (b) to reduce the separation requirement from a primary structure to an existing nonconforming accessory structure by 6 feet, from 12 feet to 6 feet, and (c) to reduce the side yard setback requirement for an existing nonconforming accessory structure by 3 feet, from 3 feet to zero.**

Fred Metcalf, Community Development Director, explained to the Board why the structure which everyone is acknowledging is a playhouse is before them, stating the City is looking at this as an elevated accessory structure. If the structure would have been completely supported by the tree, Staff would have considered it a treehouse. The structure is supported by posts on the ground, it has a roof and walls, and crosses two property lines.

Myra Schwarz, Planner, advised the Board the applicant is requesting a variance to the side yard setback requirement by six inches, and will be expanding an existing non-conformity in order to construct a room addition.

Board Member Turner verified the existing house is already six inches to close and the applicant is asking to continue that setback line straight back.

In response to a question by Board Member Arendall on the Staff Report, Planner Schwarz explained the six inch request has to do with the side setback separation and the 20 feet is the expansion of the existing non-conformity.

Pedro Lopez, 5826 25<sup>th</sup> Avenue South, advised the Board he is planning to add a bedroom, and when he brought his plans to the City they found the tree house had no permit.

Board Member Arendall asked Mr. Lopez how far away the air conditioning unit will be from the playhouse if they should keep it, and Mr. Lopez stated it will be far away; by the entrance of the driveway.

Chairperson Epstein opened the Public Hearing.

Fred Murphy, 5814 25<sup>th</sup> Avenue South; Elizabeth Wood, 5831 25<sup>th</sup> Avenue South; and Fred Yaekle, 5813 25<sup>th</sup> Avenue South, spoke in favor of the variance.

Neither hearing nor seeing anyone else who wished to speak, Chairperson Epstein closed the Public Hearing.

Motion by Board Member Arendall, seconded by Board Member Yarborough to approve Variance V09-16 (a) with the condition that the applicant must apply for appropriate permits within one year of variance approval otherwise the variance shall expire.

ROLL CALL:           BOARD MEMBER ARENDALL           YES

BOARD MEMBER TURNER	YES
BOARD MEMBER YARBOROUGH	YES
VICE CHAIRPERSON GLUECK	YES
CHAIRPERSON EPSTEIN	YES

MOTION CARRIED.

Chairperson Epstein asked Staff to explain what makes something a structure vs. a playhouse.

Fred Metcalf explained the main thing is how it is supported. If the structure was totally supported by the tree, Staff would have considered it a treehouse. This structure does have a connection to the ground and the definition of a structure is: anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground or requiring construction or erection on the ground.

Board Member Yarborough asked if the treehouse was to have diagonal supports attached to the tree trunk rather than the ground would it be considered a treehouse, and Community Development Director Metcalf stated yes.

Chairperson Epstein advised the Board he drove around the City and looked at play structures and sheds and saw a number of Jungle Jim's that are not attached to a tree, but are held up by lumber. Chairperson Epstein asked if these are considered structures, and Community Development Director Metcalf stated not if the obvious use is playground equipment. He pointed out that in this case, it is not only supported on the ground, but it has walls, doors and a roof and while everyone acknowledges what this is being used for when the children grow up it could be used as a storage shed.

In response to a question by Board Member Turner, Community Development Director Metcalf stated the structure did not have a permit. However, if someone had called to ask if they needed a permit to build a treehouse they would have been told no.

Chairperson Epstein asked Interim City Attorney Minkoff if this is not a structure, but a piece of play equipment does the Board have any authority in ruling on a variance or can they say it is not within their purview.

Interim City Attorney Minkoff stated the Board needs to determine whether this application or this portion of the application is properly before them. The City has made it clear the use of the structure/play yard is that it is being used as a play yard. It is up to the Board to decide what it is; a structure that requires a variance or a play yard that does not require a variance. In accordance with the City Code, the Board can approve, deny or dismiss any application.

Chairperson Epstein asked what the ramifications of a dismissal are. Interim City Attorney Minkoff stated if the City is saying that play yards or playhouses are not anything that requires setback variances and the Board makes that determination and they feel the request is not properly before them for approval or denial, the Board can dismiss it.

In response to a question by Board Member Rye on granting the variance as an accessory structure, Community Development Director Metcalf stated if the Board decides to go forward with the variance request they could condition the request to use.

Chairperson Epstein stated he was not comfortable calling a treehouse a structure, and felt it should be dismissed.

Vice Chairperson Glueck advised the Board he did not consider this a structure.

Board Member Yarborough felt if the Board calls this a structure, all elevated forts, swing sets, etc., would be considered structures. He felt this was designed for and is being used as a tree fort, and it should be called what it is and dismissed.

Board Member Arendall stated he would argue alternatively that this is an attractive and well built structure, but if a resident were to bring in some sort of monstrosity three or four times as big, that would equally qualify as a play structure that would not need a variance. He reminded the Board this is sitting on the property line. He saw this as something the Code speaks to and felt it is something the City would want this Board to hear.

Board Member Turner stated he was in favor of letting them keep the playhouse and use it as a playhouse, but if the Board wanted to put some restrictions on it since it is non-conforming that it could not be expanded or replaced, that was fine.

Motion by Vice Chairperson Glueck to dismiss the variance request. There was no second to the motion.

Interim City Attorney Minkoff advised the Board if they do not dismiss the request, they needed to go forward with the Public Hearing. Interim City Attorney Minkoff stated it is clear from what the City has said this is not a treehouse because it has supports. The issue is whether this is play yard or playground equipment that is not subject to a variance, and he suggested the Public Hearing may help the Board make that determination.

Chairperson Epstein opened the Public Hearing.

Pedro Lopez, 5826 25<sup>th</sup> Avenue South, explained to the Board how he had built this tree house. The inside of the tree house is 10 feet by 13 feet and the ceiling is 5 feet 4 inches.

Mark Blair, 5804 25<sup>th</sup> Avenue South; Elizabeth Wood, 5831 25<sup>th</sup> Avenue South; and Fred Murphy, 5814 25<sup>th</sup> Avenue South, spoke in favor of allowing the tree house.

Neither hearing nor seeing anyone else who wished to speak, Chairperson Epstein closed the Public Hearing.

Chairperson Epstein reiterated his position that this is a piece of recreational equipment and is not in any way a viable structure. He suggested this be dismissed on the basis that the Board is not here

and does not have under the charge their right to regulate play structures/recreational structures.

Board Member Turner confirmed with Interim City Attorney Minkoff that if this is dismissed and determined to be a play yard, it can be within the setbacks.

Board Member Arendall questioned if there were other definitions that define accessory use other than storage building. Planner Schwarz read from Section 22-2.02 the definition of an accessory use or structure.

Board Member Rye stated he either saw this as a non-conforming condition that the Board would have to grant a variance for or it is not useable space and by that it is not a useable structure or accessory structure.

Motion by Board Member Yarborough, second by Vice Chairperson Glueck to dismiss V09-16 (b) and (c) as it is playground equipment.

ROLL CALL:	BOARD MEMBER ARENDALL	NO
	BOARD MEMBER TURNER	YES
	BOARD MEMBER YARBOROUGH	YES
	VICE CHAIRPERSON GLUECK	YES
	CHAIRPERSON EPSTEIN	YES

MOTION CARRIED: 4 TO 1.

- b. V09-17: Jeffrey and Helen Rook, 5820 25<sup>th</sup> Avenue South, (Parcel #32/31/16/05490/004/0040) to reduce the side yard setback requirement for an existing nonconforming accessory structure by 3 feet, from 3 feet to zero.

Motion by Board Member Yarborough, second by Board Member Turner to dismiss V09-17 based on the fact that it is playground equipment.

Chairperson Epstein opened the Public Hearing.

Pedro Lopez, 5826 25<sup>th</sup> Avenue South, presented a letter from Mr. Rook which had been provided to the Board in their meeting agenda packet.

Neither hearing nor seeing anyone else who wished to speak, Chairperson Epstein closed the Public Hearing.

ROLL CALL:	BOARD MEMBER ARENDALL	NO
	BOARD MEMBER TURNER	YES
	BOARD MEMBER YARBOROUGH	YES
	VICE CHAIRPERSON GLUECK	YES
	CHAIRPERSON EPSTEIN	YES

MOTION CARRIED: 4 TO 1.

**3. Any Other Business.** None.

**4. Adjournment.**

On a motion by Board Member Arendall, the meeting was adjourned unanimously by acclamation.

Date Approved: 10-14-09

  
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Mark Epstein, Chairperson

  
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Lesley DeMuth, City Clerk