

# City of San Antonio Board of Adjustment

## Regular Public Hearing Agenda

Monday, April 1, 2013

1:00 P.M.

Cliff Morton Development and Business Services Center, Board Room

Anytime during the public hearing, the Board of Adjustment may meet in Executive Session to consult on attorney-client matters (real estate, litigation, personnel and security matters), as well as to discuss any of the agenda items. This notice was posted on the Development Services Department website ([www.sanantonio.gov/dsd](http://www.sanantonio.gov/dsd)), and the City Hall kiosk, at least seventy-two (72) hours prior to this public hearing, in compliance with the Texas Open Meetings Act.

---

1. **1:00 PM** - Public Hearing – Call to Order
2. Roll Call
3. Pledges of Allegiance
4. **A-13-029:** The request of Scott Ruch for 1) a 6-foot variance to allow an ornamental iron fence 10 feet in height in the front yard; 2) a 4-foot variance to allow an ornamental iron fence 10 feet in height in each side yard; and 3) a 4-foot variance to allow an ornamental iron fence 10 feet in height in the rear yard, located at 5200 Rogers Road. (Council District 6)
5. **A-13-030:** The request of the San Antonio Children’s Museum for 1) a 2-foot variance from the 4-foot maximum front yard fence height to allow a 6-foot predominately open fence in the front yard; and 2) a 4-foot variance from the 6-foot maximum rear yard fence height to allow a 10-foot screening wall in the rear yard located at approximately 2800 Broadway Street. (Council District 2)
6. Approval of the minutes – March 18, 2013
7. Adjournment

**ACCESSIBILITY STATEMENT** - *This meeting site is accessible to persons with disabilities. Parking is available. Auxiliary aids and services, including Deaf interpreters, must be requested forty-eight [48] hours prior to the meeting. For assistance, call (210) 207-7245 or 711 (Texas Relay Service for the Deaf).*

**DECLARACIÓN DE ACCESIBILIDAD** – *Este lugar de la reunión es accesible a personas incapacitadas. Se hará disponible el estacionamiento. Ayudas auxiliares y servicios y interpretes para los sordos se deben pedir con cuarenta y ocho [48] horas de anticipación al lareunión. Para asistencia llamar a (210) 207-7245 o al 711 (servicio de transmitir para sordos).*

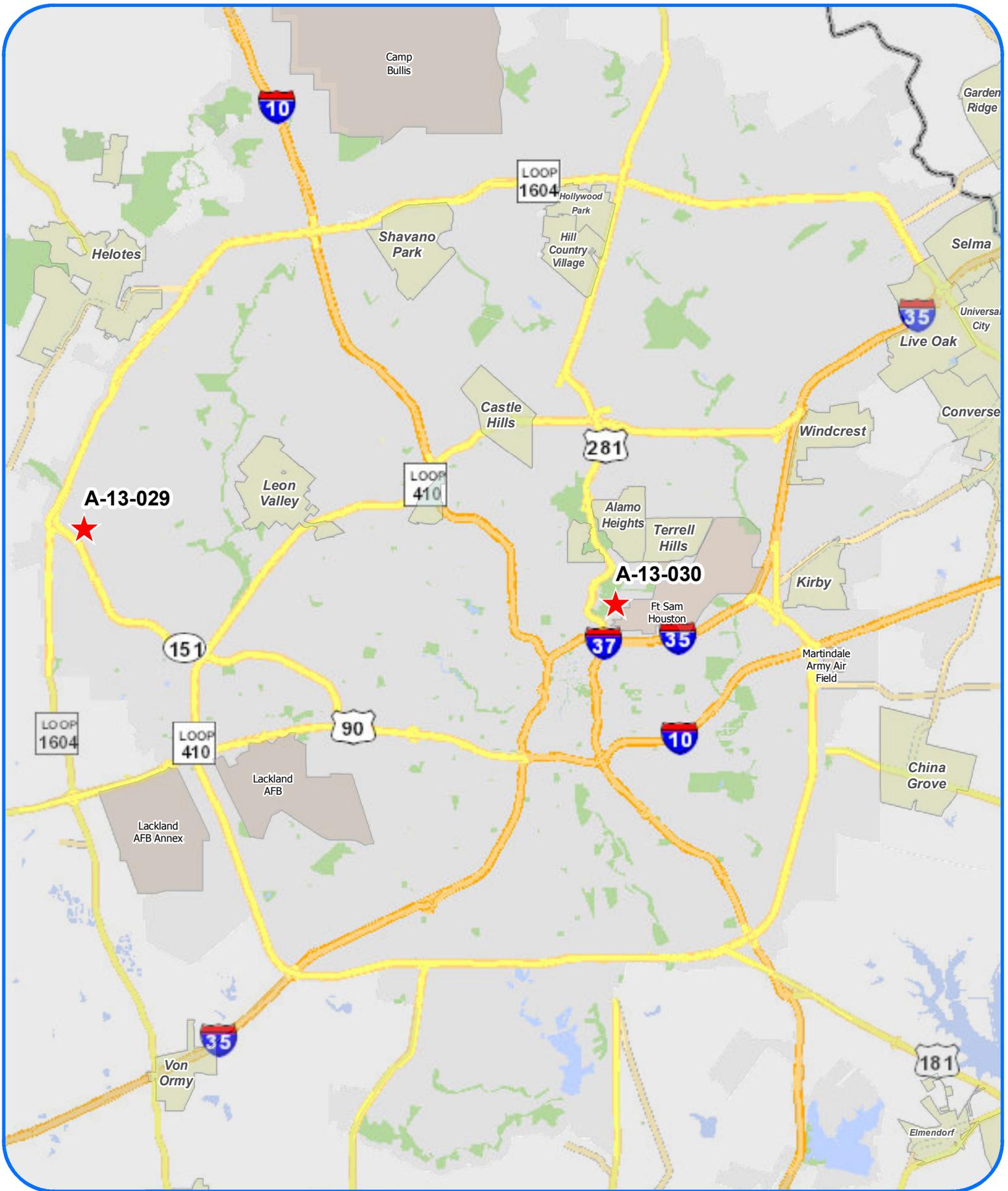
---

### Board of Adjustment Membership

*Michael Gallagher, Distict 10, Chair    Andrew Ozuna, District 8, Vice Chair  
Frank Quijano, District 1 • Edward Hardemon, District 2 • Helen Dutmer, District 3 • George Britton, District 4  
Brian Smith, District 5 • Jesse Zuniga, District 6 • Mary Rogers, District 7 • Vacant, District 9 • Gene Camargo, Mayor*

### Alternate Members

*Harold O. Atkinson • Maria D. Cruz • Paul E. Klein • Henry Rodriguez • Steve G. Walkup*



# **Board of Adjustment**

**Subject Property Locations  
Cases for 1st April 2013**



Development Services Dept.  
City of San Antonio  
1st April 2013



## City of San Antonio Development Services Department Staff Report

To: Board of Adjustment  
Case No.: A-13-029  
Date: April 1, 2013  
Applicant: Scott Ruch  
Owner: Chevron USA, Inc.  
Location: 5200 Rogers Road  
Legal Description: Lot 3, Block 48, NCB 17642  
Zoning: "C-2" Commercial District  
Prepared By: Tony Felts, Planner

---

### **Request**

A request for 1) a 6-foot variance to allow an ornamental iron fence 10 feet in height in the front yard; 2) a 4-foot variance to allow an ornamental iron fence 10 feet in height in each side yard; and 3) a 4-foot variance to allow an ornamental iron fence 10 feet in height in the rear yard.

### **Procedural Requirements**

The request was publicly noticed in accordance with Section 35-403 of the Unified Development Code ("UDC"). Notices were sent to property owners and registered neighborhood associations within two hundred (200) feet of the subject property on March 14, 2013. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on March 15, 2013. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on March 29, 2013, in accordance with Section 551.043(a) of the Texas Government Code.

### **Executive Summary**

The subject property is located on the east side of Rogers Road, approximately 1,050 feet north of Wiseman Boulevard. The property is an approximately 33.8 acre site currently developed as a shell building. Currently, the building is being fitting to house a data center.

Currently, an 8-foot high ornamental iron fence is constructed around the perimeter of the site. A variance for this fence was approved by the Board of Adjustment on December 1, 2008. Another variance regarding buffering was approved by the Board on March 6, 2009.

The justification for the fence height variance in 2008 was the need for greater security. The applicant's justification now is also greater security; however, no documentation has been

provided describing the need for a 10-foot high fence. It should be noted that an adjacent data center, owned by Microsoft, operates with an 8-foot high fence.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
C-2 (Commercial)	Data Center

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	R-6 (Residential)	Single-Family Dwellings and Vacant Land
South	C-3 (Commercial)	Vacant
East	C-2 (Commercial)	CPS Substation and Data Center
West	C-3 (Commercial)	Vacant

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the West/Southwest Sector Plan. The subject property is not located within the boundaries of a registered neighborhood association; however, the site is adjacent to the Mountain View Acres Neighborhood Coalition.

**Criteria for Review**

According to Section 35-482(e) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

1. *The variance is not contrary to the public interest:*

Fence height regulations are designed, in part, to promote orderly development and reduce visual distraction. The applicant states that additional fence height, to ten feet, is needed for security purposes; yet no documentation has been provided to justify this claim. An adjacent data center operates with an 8-foot high fence. Additionally, the site will have on site security as well as security cameras, reducing the purported need for the ten-foot high fence.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

There are no special conditions readily apparent to warrant the granting of the variance.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance will not be observed by granting this variance as there is no hardship readily apparent.

4. *Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the C-2 (Commercial) zoning district.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

The requested variance, if approved, may injure adjacent conforming properties due to the visual distraction of such a high fence. Additionally, granting the variance may set a precedent in the community, as an adjacent data center operates with only an 8-foot high fence.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

There are no special or unique circumstances apparent on the property to warrant the granting of the requested variance.

### **Alternatives to Applicant's Request**

The alternative to the applicant's request is to operate within the approvals set forth by previous variances allowing the site an 8-foot high fence around the perimeter.

### **Staff Recommendation**

Staff recommends **denial of A-13-029** because of the following reasons:

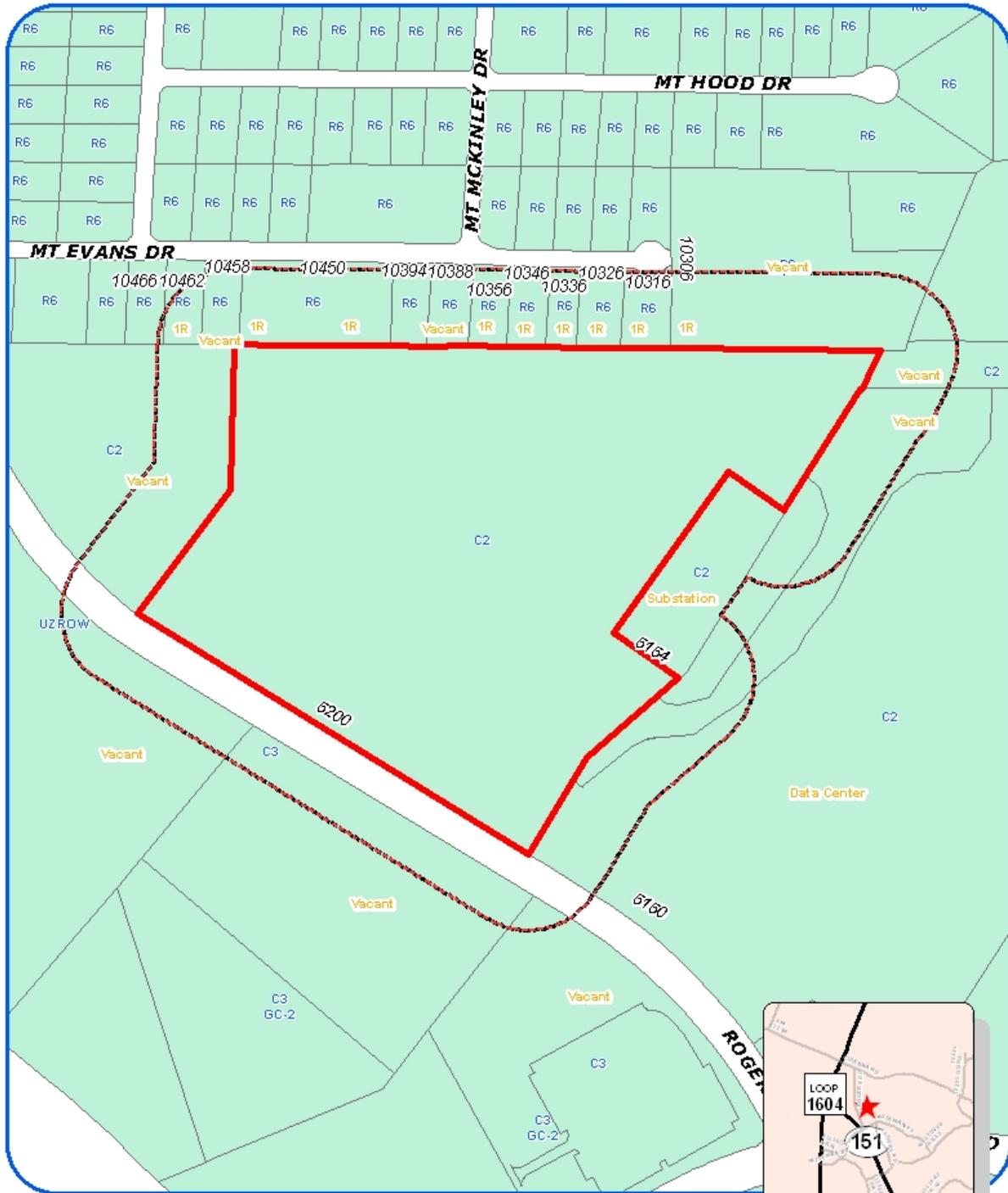
- There are no special conditions or circumstances on the property that warrant the granting of the requested variance.
- The approval of the requested variance may set a precedent for approval for the adjacent data center.

### **Attachments**

Attachment 1 – Notification Plan (Location Map)

Attachment 2 – Plot Plan

# Attachment 1 Notification Plan



<p><b>Board of Adjustment Notification Plan for Case No A-13-029</b></p>		<p>San Antonio City Limits </p> <p>Subject Property </p> <p>200' Notification Boundary </p> <p>City of District 6 </p>	
<p>Development Services Department City of San Antonio 6/4/12/13</p>			

**Attachment 1 (Continued)  
Notification Plan**



<p><b>Board of Adjustment Notification Plan for Case No A-13-029</b></p>		<p>San Antonio City Limits </p>
		<p>Subject Property </p>
		<p>200' Notification Boundary </p>
		<p>City of District 6 </p>
		<p>Development Services Department City of San Antonio 6/4/12/2013</p>

Attachment 2  
Plot Plan



**Variance Request:**

- 1) a 6-foot variance to allow an ornamental iron fence 10 feet in height in the front yard;
- 2) a 4-foot variance to allow an ornamental iron fence 10 feet in height in each side yard;
- 3) a 4-foot variance to allow an ornamental iron fence 10 feet in height in the rear yard.

**Board of Adjustment**  
Plot Plan for  
Case No A-13-029



Fence



Council District 6

**5200 Rogers Road**

Development Services Department  
City of San Antonio  
6/4/12/2013

Attachment 2 (Continued)  
Plot Plan



**Board of Adjustment**  
Plot Plan for  
Case No A-13-029



Fence 



Council District 6

5200 Rogers Road

Development Services Department  
City of San Antonio  
04/01/2013

**Attachment 3  
Existing Fence Photographs**





## **City of San Antonio Development Services Department Staff Report**

To: Board of Adjustment  
Case No.: A-13-030  
Date: April 1, 2013  
Applicant: San Antonio Children's Museum  
Owner: San Antonio Children's Museum  
Location: Approximately 2800 Broadway  
Legal Description: Lots 7 & 9, NCB 1055 and Lots 3, 17, 18, 20 & 21, Block 15, NCB 3869  
Lots 25-28, Block 12, NCB 1066 and Lots 6-11, Block 13, NCB 3867  
Zoning: "UC C-3NA RIO-1 AHOD" Urban Corridor Commercial Non-Alcoholic Beverage Sales River Improvement Overlay Airport Hazard Overlay District  
Prepared By: Margaret Pahl, AICP Senior Planner

---

### **Request**

The applicant requests 1) a 2-foot variance from the 4-foot maximum front yard fence height to allow a 6-foot predominately open fence in the front yard and 2) a 4-foot variance from the 6-foot maximum rear yard fence height to allow a 10-foot screening wall in the rear yard.

### **Procedural Requirements**

A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 of the Unified Development Code ("UDC"). Notices were sent to property owners within two hundred (200) feet of the subject property on March 14, 2013. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on March 15, 2013. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on March 28, 2013, in accordance with Section 551.043(a) of the Texas Government Code.

### **Executive Summary**

The subject property has been assembled into a 5.4 acre parcel just north of downtown near the San Antonio Zoo and Brackenridge Park to become the new home for The San Antonio Children's Museum. The \$45M project will not only provide the museum with double their existing square footage, but also two outdoor exhibit areas and convenient parking. One of the outdoor exhibit areas is located on the western street frontage of the site. A serpentine metal fence in primary colors is proposed for this elevation. The applicant is requesting a variance to allow this fencing to be 6-feet in height. The applicant asserts that it is needed to separate the

casual pedestrian from the museum patrons and protect the children from traffic on Broadway. The other outdoor exhibit yard is located on the eastern side of the building, where a neighboring multi-family housing project is elevated a few feet above the finish grade of the proposed site. The applicant is proposing a masonry wall along this property boundary, between 8 and 10 feet in height. A 4-foot variance is requested to allow the additional height, based on the site conditions along the shared property boundary. They propose this height as necessary to “maintain the safety of the children within the museum area and separate the non-museum visitor from gaining access”. This wall will also buffer the outdoor play area from the parking lot.

Because the site is located within the River Improvement Overlay district, all site development is subject to design oversight by the Historic & Design Review Commission. The project, including the proposed two fences, was reviewed and approved by the Commission and given a certificate of appropriateness at their regularly scheduled meeting on March 6, 2013.

Existing Zoning	Existing Use
“UC C-3NA RIO-1 AHOD” Urban Corridor Commercial Non-Alcohol River Improvement Airport Hazard Overlay Districts	Vacant

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“UC C-2 RIO-1” Urban Corridor Commercial River Improvement Airport Hazard Overlay Districts	Restaurant/Strip Commercial
South	“UC I-1 NCD-9 RIO-1” Urban Corridor Industrial Neighborhood Conservation River Improvement Airport Hazard Overlay Districts	Office Building
East	“C-2 NCD-6 AHOD” Commercial Neighborhood Conservation Airport Hazard Overlay Districts	Multi-family Housing
West	“R-6 HS RIO-1AHOD” Residential Historically Significant River Improvement Airport Hazard Overlay Districts	City Park

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Mahncke Park Neighborhood Plan, adopted by the City Council in September of 2001. The area is designated for a mix of uses. Many of the goals described in this plan will be realized by the addition of the Children’s Museum to the area. As such, there is broad community support for its relocation to this site. Both the Mahncke Park and Westfort Alliance Neighborhood Associations are active in the area. Each were notified of the request and asked to comment.

## **Criteria for Review**

According to Section 35-482(e) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

1. *The variance is not contrary to the public interest.*

The public interest is defined as the general health, safety and welfare of the public at large. The public interest in this case is both the patrons of the museum and those traveling on the busy thoroughfare. Broadway carries approximately 25,000 vehicles each day in front of this location making adequate fencing essential. The fence is setback at varying distances from the sidewalk and public right-of-way with native grasses, Texas Olive, Kidney wood and Live Oak trees planted along the fencing. A more formal street tree plan is also proposed. With this landscaping plan implemented, the visual impact of the fencing is reduced and the variance would be in the public's interest.

The requested 4-foot rear yard fencing variance is partially required because of the change in elevation between the anticipated finish floor elevation of the museum project and the elevation of the neighboring parking area for the multi-family housing. The lower portion of the proposed wall will function as a retaining wall, reducing the visual impact of the wall from the neighboring side. The wall will also serve as a deterrent to entry into the museum area without authorization. Therefore, the variance for the extra wall height is in the public interest.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

A literal enforcement of the ordinance would force the applicant to relocate the front outdoor "exhibit" area to the rear so that it could be protected by 6-foot fencing. The allowed 4-foot fence height is inadequate as a barrier between paid patrons and pedestrians. Instead the applicant is requesting a variance from the maximum front yard fence height to allow a 6-foot colorful iron fence which will snake along the frontage. The proposed fencing is setback between 15 and 30 feet from the sidewalk with generous landscaping and shade trees.

Another variance is requested to increase the height of the fencing along the rear property boundary; the 6-foot fence height would be inadequate as a barrier between the paid patrons and the public in this location as well. Fence height is measured from the lowest grade. Because the neighboring property is elevated, a fence measuring 6-feet on the museum side may only be 3-feet tall from the abutting surface. Therefore, literal enforcement results in an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Various zoning court cases have provided guidance as to the "spirit" of the ordinance as contrasted with the "strict letter" of the law. In observing the spirit, the Board is directed to weigh the competing interests of the property owner and the community. The general purpose of restricting fence height in the front yard is to improve the transparency between the public realm and the private realm. In this case, the fencing will be transparent and the yard will likely be teeming with activity. Therefore, the spirit of the ordinance will be observed in the front yard.

The rear yard is anticipated to be private and thus privacy fencing is allowed up to a height of 6 feet. The applicant asserts that the 8 to 10-foot wall is needed to secure the outdoor exhibit

area on this side of the building because the abutting apartment complex is elevated. In fact, the lower 3 to 5-feet of the proposed wall will function as retaining. Therefore, if the variance is granted, the apartment side of the wall will appear to be approximately 5-feet in height, consistent with the spirit of the ordinance.

- 4. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “UC C-3NA RIO-1 AHOD” zoning district.

- 5. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

Additional wall height typically has a negative impact on the neighboring property. In this case though, along the interface between abutting properties, half of the overall wall height is retaining, reducing the wall height on the neighboring side. The unique site condition mitigates the impact of the requested variance on the abutting property. The remaining wall is built between the patron parking lot and the outdoor exhibit area, with vines planted to cover it. With these factors considered, the rear wall variance will not injure the use of adjacent properties or alter their character.

The site is located across from the Brackenridge Park, very close to the amusement park. The 6-foot fencing requested along the frontage will be setback from the property line, separated from the right of way by trees and shrubs. It has been designed in primary colors to become a playful part of the outdoor exhibit. With these mitigating measures, the requested variance for front yard fencing will not alter the essential character of the district.

- 6. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The 5-acre site is located in an area with rolling grade changes. The neighboring site has been graded to provide a fairly level parking lot which is elevated above the museum site. The museum site was also graded to be level, which could have exaggerated the natural grade difference between the two sites. An historic acequia, Acequia Madre, is located toward this shared property boundary and the learning opportunity it presented could not be ignored. The rear outdoor exhibit area is designed around this feature and access into the area must be restricted and supervised. This is clearly a unique circumstance which warrants special consideration.

The site’s Broadway frontage spans a length of over 700 linear feet with less than 300-feet in width. This rectangular shape provided a challenge to the design team. The architect has designed a building segmented into three distinct sections to reduce the overall mass. The approved design and the angular orientation of the building segments created interesting areas for play. The space itself however is too large to abandon. The design team had to find a way to utilize the space for the benefit of the patrons. Secure fencing is the first step in this planning process. The request variance for front fencing is due to this unique, elongated shape of the parcel.

### **Alternatives to Applicant's Request**

The alternative to the applicant's request is to reduce the front setback, pushing the building closer to the arterial street and concentrating the play area behind the building where taller fencing is allowed.

### **Staff Recommendation**

Staff recommends **approval of A-13-030** based on the following findings:

1. The requested variances are required to allow the museum to extend their educational exhibits into the outdoors while controlling access.
2. The applicant has designed mitigation measures which reduce the anticipated impact of the requested variances, which include a large landscaped setback on the Broadway frontage and vines growing on the free-standing exposed portion of the rear screening wall.
3. The long narrow shape of the parcel warranted modifications to the standards.

### **Attachments**

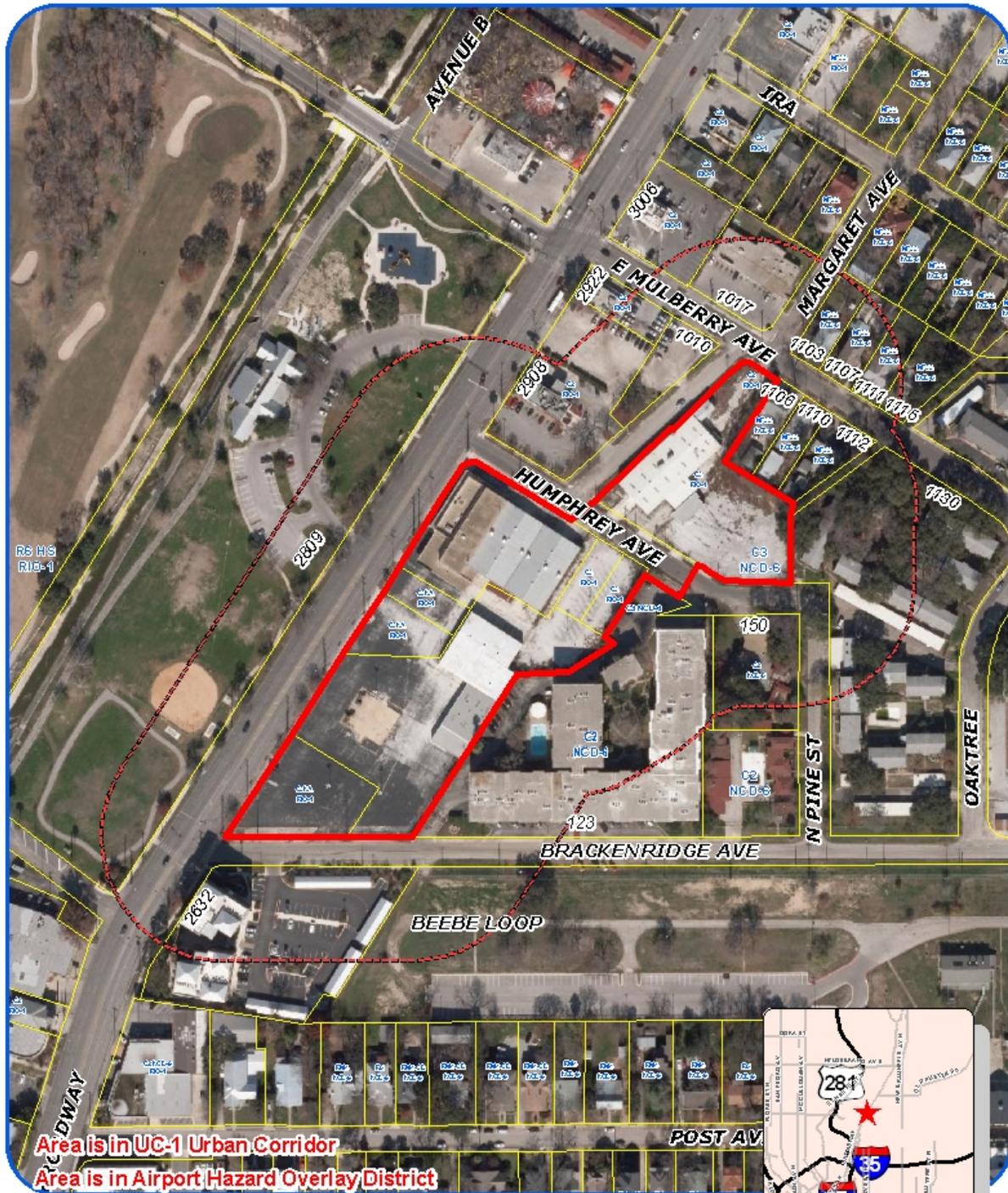
Attachment 1 – Notification Plan (Location Map)

Attachment 2 – Plot Plan

Attachment 3 – Applicant's Site Plan

Attachment 4 – Site Photos

# Attachment 1 Notification Plan



**Board of Adjustment  
Notification Plan for  
Case No A-13-030**



- San Antonio City Limits
- Subject Property
- Notification Boundary
- City of District 2



Development Services Department  
City of San Antonio  
(441)2013

**Attachment 2  
Plot Plan**



**Variance Request:**  
 1) a 2-foot variance from the 4-foot maximum front yard fence height to allow a 6-foot predominately open fence in the front yard and  
 2) a 4-foot variance from the 6-foot maximum rear yard fence height to allow a 10-foot screening wall in the rear yard.

**Board of Adjustment**  
 Plot Plan for  
**Case No A-13-030**



Fence   
  
 Council District 2

**2800 Broadway**  
 Development Services Department  
 City of San Antonio  
 (4012013)



**Attachment 4  
Site Photos**

