

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
April 1, 2013**

Members Present:

Michael Gallagher  
Andrew Ozuna  
Frank Quijano  
Helen Dutmer  
George Britton  
Brian Smith  
Jesse Zuniga  
Mary Rogers  
Gene Camargo  
Maria Cruz  
Henry Rodriguez

Staff:

Margaret Pahl, Senior Planner  
Tony Felts, Planner  
Paul Wendland, City Attorney

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**Call to Order**

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

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**CASE NO. A-13-029**

Applicant – Scott Ruch  
Lot 3, Block 48, NCB 17642  
5200 Rogers Road  
Zoned: “C-2” Commercial District

The applicant is requesting 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.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 30 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Mountain View Acres Neighborhood Coalition.

Scott Ruch, applicant, stated this is a data center that houses sensitive information. He also stated the fence is for security procedures of data on the property.

**The following citizens appeared to speak:**

Jan Wells, citizen, spoke in opposition.

**MOTION**

A motion was made by **Ms. Dutmer to postpone this case until the next regularly scheduled meeting on April 15, 2013.** The motion was seconded by **Mr. Rodriguez.**

**AYES: Gallagher, Ozuna, Quijano, Rodriguez, Dutmer, Britton, Smith, Zuniga, Rogers, Camargo, Cruz**

**NAYS: None**

**THE MOTION PASSES.**

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**CASE NO. A-13-030**

Applicant – San Antonio Children’s Museum

Lots 7 & 9, NCB 1055 and Lots 3, 17, 18, 20 & 21, Block 15, NCB 3869, Lots 25-28, Block 12, NCB 1066 and Los 6-11, Block 13, NCB 3867

Approximately 2800 Broadway

Zoned: “UC C-3NA RIO-1 AHOD” Urban Corridor Commercial Non-Alcoholic Beverage Sales River Improvement Overlay Airport Hazard Overlay District

The applicant is requesting 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.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 17 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Mahncke Park and Westfort Alliance Neighborhood Associations.

Trey Rabke, representative, stated the variance would allow a gate of transparency. He also stated the museum wants to move some of the exhibits outside. He further stated the fence would provide safety and security of the museums visitors.

**No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-13-030 closed.

**MOTION**

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-13-030**, variance application for the **San Antonio Children's Museum**, subject property **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**, properties are all located at **approximately 2800 Broadway**, the variance request is 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**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-030**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **Broadway carries approximately 25,000 vehicles each day in the front of the location making it adequate fencing essential**. The applicant provided testimony about the activities that are going to be taking place in that front area which includes children's activities which could reach the fence and also protecting passengers from Broadway and cars on Broadway possibly throwing things into the museum area so it necessitates the higher fence which would serve the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the literal enforcement of the ordinance would require the applicant to relocate the fences and use a smaller shorter fence which would not serve the public interest**. The 4-foot fence would not provide an adequate barrier between the activities conducted at the museum and the pedestrian and traffic on Broadway and also the fencing would not provide adequate protection from the adjoining multi-family which has a grader separation which needs a buffer. The spirit of the ordinance is observed and substantial justice is done in that **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. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **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**. 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 in that **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. 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 in that 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 request variance for front fencing is due to this unique, elongated shape of the parcel. The motion was seconded by Mr. Quijano

**AYES:** Ozuna, Quijano,, Camargo, Rodriguez, Cruz, Britton, Zuniga, Dutmer, Rogers, Smith, Gallagher

**NAYS:** None

**THE VARIANCE WAS GRANTED.**

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### **Approval of the Minutes**

The March 18, 2013 minutes were approved with all members voting in the affirmative.

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There being no further discussion, meeting adjourned at 1:51 pm.

APPROVED BY: Michael Gallagher OR \_\_\_\_\_  
Michael Gallagher, Chairman Andrew Ozuna, Vice-Chair

DATE: 4-15-13

ATTESTED BY: [Signature] DATE: 4-15-13  
Executive Secretary