

## Legislation Text

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File #: 21-58, Version: 1

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Presenter/Contact  
*Applicant: Jim Melsha*  
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**SUBJECT:**

Z-20-022 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(i) to allow the height of a single-family dwelling to exceed the maximum 35-foot height by approximately 21 feet in the "R-2" Single and Two-Family District, addressed at 204 Rio Drive.

**BACKGROUND / RATIONALE:**

**Case #:** Z-20-022

**Applicant:** James Melsha  
204 Rio Drive  
New Braunfels, TX 78130  
(210) 391-3189 - [<jimmelsha@icloud.com>](mailto:jimmelsha@icloud.com)

**Staff Contact:** Maddison O'Kelley  
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The subject property is located at the terminus of Rio Drive and consists of 9,870 square feet of land that is zoned "R-2" Single and Two-Family District. The property is approximately 22 feet wide at Rio Drive and 180 feet deep and abuts Lake Dunlap at the rear of the property.

The entire property is located within the floodway and the 1% annual chance floodplain. Therefore, any new construction must comply with Chapter 58 Floods, which is reviewed at the time of building permit. New construction in the floodplain must be elevated two feet above the base flood elevation. The base flood elevation for this property is approximately 25 feet above grade.

The subject structure is a single-family residence currently under construction. The applicant requested a variance in 2018 to allow the structure to exceed the maximum allowable 35-foot height for a single-family home in "R-2" by 19 feet and 7 inches. A variance was granted to allow the home to exceed the 35-foot height requirement by a maximum of 12 feet, therefore the overall maximum height of the home permitted was 47 feet above grade.

The applicant is requesting a variance to allow the overall height of the structure to exceed the maximum 35-foot height by 21 feet, which is 9 feet taller than the variance granted in 2012. The applicant states the variance is necessary to accommodate an exterior elevator to access a proposed rooftop deck. If approved, the overall height of the home would be 56 feet above grade.

Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning

regulations only upon finding all of the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the structure must be elevated an additional 26 feet due to the property's location within the floodway. Staff acknowledges the required 25-foot base flood elevation impacts the construction of a single-family dwelling which, therefore, can be compressed with the generally applicable height limits.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the interior elevator needs to be extended to access the roof top deck, which will eliminate the secondary elevator and replace it with an emergency escape ladder. The applicant further states the plans originally approved with the first variance showed a secondary elevator, which would have required a support structure of the same height as the new elevator chase. Staff notes the additional height required to construct and access the proposed rooftop deck is not a substantial property right.) **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance should not be detrimental to public health, safety or welfare. It is not anticipated the proposed structure will be detrimental to public health and safety if built to the appropriate standards.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant believes the variance should not prevent orderly use of other land within the area and states the additional height of the elevator enclosure does not obstruct the view of the river from any existing properties. There does not appear to be a negative effect preventing orderly use of other land within the area, however, all neighboring properties will still be required to comply with the height limits and other zoning ordinance standards for any new construction on their properties, including property located within the floodplain.) **and**
- 5) **That an undue hardship exists;** (The applicant states the standards to build two feet above the base flood elevation is an undue hardship. Staff acknowledges new construction of habitable space below the base flood elevation is prohibited and the construction of a new dwelling will be limited to having the elevation of the first habitable floor at a minimum elevation of 27 feet above the average adjacent grades. Staff notes that the variance granted in 2018 allowed an overall height of 20 feet for habitable area above the base flood elevation.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the zoning ordinance as it will allow for a safety structure in the form of an emergency escape ladder to be added, protecting the occupants from being trapped in the event of a power failure.)

Per Section 2.2-3 of the Zoning Ordinance, a variance shall not be granted to relieve a self-created or personal hardship, nor based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

**GENERAL INFORMATION:**

**Size:**

9,870 square feet

180 feet depth

22 feet in width

**Variance Request Due to Notice of Violation:**

No

**Surrounding Zoning and Land Use:**

North - C-3 / Vacant

South - R-2 / Single family dwellings

East - Across Rio Drive, R-2 / Vacant

West - Across Guadalupe River/ Single family dwellings

**Notification**

Public hearing notices were sent to 8 owners of property within 200 feet. Staff has received no responses

**Attachments:**

1. Aerial Map
2. Floodway Map
3. Application
4. Proposed Elevation Plans
5. Photograph
6. Notification List and Map
7. Sec. 3.3-2 "R-2" Single Family and Two Family District