

**FREMONT COUNTY BOARD OF ZONING ADJUSTMENT
MEETING MINUTES
SEPTEMBER 19, 2017**

Board Members Present

Ed Norden – Associate Member
James J. Javernick
Dave Boden – Vice Chairman
Michael Pullen – Chairman
Larry Baker

Planning Staff Present

Matt Koch, Planning Director
Tanya Fleming, Planning Assistant

AGENDA

1. **APPROVAL OF MINUTES:**
 2. **APPROVAL OF AGENDA**
 3. **BOZA 17-002 Rupp**
 4. **OTHER ITEMS FOR DISCUSSION**
 5. **ADJOURNMENT**
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Chairman Michael Pullen called the Tuesday, September 19, 2017 meeting of The Fremont County Board of Zoning Adjustment (BOZA) to order at 3:00 P.M.

Roll call was completed with the aforementioned members present.

ITEM 1

Chairman Pullen asked if there were any changes, additions or corrections to the September 19, 2017 BOZA Meeting Agenda.

MOTION

Mr. Dave Boden moved to approve the minutes of the September 19, 2017 BOZA meeting, as written.

SECOND

Mr. James Javernick seconded the motion.

Upon a roll call vote, the motion passed unanimously. (5 of 5)

ITEM 2

Chairman Pullen brought to the floor this agenda item which is to hear recommendations regarding the approval of the minutes of the BOZA meeting held on April 18, 2017.

MOTION

Mr. Boden moved accept the April 18, 2017 Board of Zoning Adjustment Meeting agenda as presented.

SECOND

Mr. Javernick seconded the motion.

Upon a roll call vote, the motion passed unanimously. (5 of 5)

ITEM 3 – BOZA 17-002 Rupp

Chairman Pullen stated Request for variance from the Fremont County Zoning Resolution (FCZR) by Brian Rupp for property located at 1275 Kendallwood Dr. in the North Canon area. The property is located in the Low Density Residential Zone District.

Variance Request is to allow a 15 foot rear-yard setback to the existing residential structure (*westerly*)

Zoning Requirement is FCZR 4.7.5.5.3 requires a minimum rear-yard setback of 20 feet for primary structures.

Chairman Pullen asked the applicant please explain the reason for this variance?

Mr. Rupp stated that he began the process by looking up the zoning setback regulations and requirements. He stated that he has owned the home for 21 years and due to the fact that the house faces south the he had thought the westerly line was his side property line. To verify that he looked to section 1.5 of the zoning regulations to refresh the definitions of the lot lines which states the front yard shall be the side of the property by which the property or lot gains access. At this time he pointed to the map of the layout of the property. He stated he gains his access from the Southeast. He also pointed out he has an East and South lot line and stated that he had to do some interpretation there. Stated that this did not concern him since the addition would be on the West side. He then moved on to year yard which is defined as the rear line of the lot shall be that which most nearly parallels with the said lot as it faces on that street. At this time he again referred to the map of the property in which he pointed out the East line and the South line face the street and he had to interpret this as well. Mr. Rupp stated that he read further into the regulations about the rear yard and found that it stated for dwellings located on corner lots that if the front entry, and his front entry is on the south, does not face the same street where he would take access then the rear yard may be interpreted as the opposite of the front entry way. At this point he stated he needed to verify definition of rear yard in the Fremont County Zoning Resolutions. He stated that he searched the document for the term corner lot and had no returns on that search. He then went to the subdivision regulations and could not find the definition there either and stated that he needed to interpret this as well. Mr. Rupp stated that this satisfied his search and he would move ahead with the project with the assumption that a 15 foot side yard setback would suffice. As part of the building permit application process he state he was required to turn in truss engineering. He then placed a deposit with the truss manufacturer so that he would have that information to give to the building department. Mr. Rupp stated that he had informed the truss manufacturer that he was not requiring them to move forward quickly as he was still waiting on permits and approvals. However within 24 hours he received notice from the truss manufacturer that his 30” trusses were complete and ready for delivery. At this time he had no issues with this as he had not yet heard from the Planning and Zoning department. Mr. Rupp stated he received a phone call from the Planning and Zoning department one week later. Mr. Rupp stated that changing or altering the sizing of the building would require the purchase of another set of trusses. Mr. Rupp stated that the attempted to move the building to the East 5 feet to meet the setbacks for the property. However this created an intrusion into his front entryway and onto the septic tank which

would cause a lot of expenses. Mr. Rupp then stated that he is confident that in the future when the vacant property to the West of his property is developed that Cone Ave., which borders his property on the West, will not be developed or improved and that the 60 foot right of way will be vacated and he would gain 30 feet.

Mr. Boden asked if it is hypothetical that the current owners of the vacant property would ask for Cone Ave. to be vacated.

Mr. Rupp replied yes at this point in time, nothing at this point in time has been acted on and that would be the most likely scenario.

Mr. Boden asks who currently drives that path that is Cone Ave.

Mr. Rupp stated only him, as it dead ends at his house.

Mr. Rupp continued on with the statement that because of the irregular lot configuration and the requirement for some interpretation of the regulations on his part that he is requesting that the Board of Zoning Adjustment apply side yard setbacks to his West property line.

Mr. Javernick asked if Mr. Matt Koch decided that the back yard was on the West side of the lot since the house was built facing south.

Mr. Matt Koch responded with the regulations stipulate where you take access to the property as the front. The access to the property comes off of the East side of the lot so the front would be taken off the stem lot to the East. Just because the house is situated to face the any other direction does not make that the front of the property. When Planning and Zoning looked at this building request they looked at the East being the front and the rear being towards Cone Ave. He also stated that they pulled the original building permit file and the original building permit file had established the same that the East line is the front and the West line is the rear. That being said the garage that has been built on this lot meets the side yard setback. If it were to be interpreted any other way it would be non-conforming and would not meet our regulations so it had to have been interpreted as the side yard to the South making the West line the rear. Mr. Koch stated that the request Mr. Rupp was making was to attempt to get a variance from the 20 foot setback to the 15 foot setback.

Mr. Rupp questioned if there were any place in the regulations that states the front must be opposite the rear.

Mr. Koch replied that it does not state that specifically.

Mr. Rupp stated that he did not find that information in the regulations.

Mr. Koch stated that the access point is the front of the lot though.

Mr. Rupp replied that that information does determine the front but not the rear.

Mr. Koch responded that however on a square lot it does not allow for interpretation.

Mr. Rupp stated that his lot is not a square lot because of the stem portion of the lot.

Mr. Koch replied that in the regulations the stem portion of the lot does not count as a part of the lot.

Mr. Ed Norden asked if there were any utilities easements in the 60 foot right of way, which is Cone Ave.

Mr. Rupp replied no.

Mr. Norden stated that we need to make the consideration for the variance based on its merits alone not the possibility of what could potentially take place with the right of way in the future.

Mr. Koch stated that there is no way to possibly know what could happen with Cone Ave. in the future. If a developer with enough funding wanted to it could possibly be developed into something.

Mr. Javernick stated that it appears the only one who would be inconvenienced should cone be developed or extended would be Mr. Rupp.

Mr. Boden stated that if it were a 40 foot right of way that would possibly pose and issue since that would be a very narrow street but with it being a 60 foot right of way there would still be some extra distance.

Mr. Rupp stated that abandoning that right of way seemed the more likely situation.

Mr. Boden stated that typically abandoning a right of way is not done for almost any purpose.

Chairman Pullen asked if Mr. Koch had anything further to add.

Mr. Koch replied no.

MOTION

Mr. Ed Norden moved to approve the variance as requested.

SECOND

Mr. Boden seconded the motion.

Chairman Pullen call for the vote, the motion passed unanimously. (5 of 5)

ITEM 4 - ADJOURNMENT

With no further items for discussion, Chairman Pullen declared the meeting adjourned at 3:17 P.M.



Chairman, Fremont County Board of Zoning Adjustment

3/20/18
Date