

**FREMONT COUNTY BOARD OF ZONING ADJUSTMENT
MEETING MINUTES
November 15, 2016**

Board Members Present

Dave Boden, Vice-Chairman
James J. Javernick
Rich Thatcher
Michael Pullen
Larry Baker
Ed Norden

Planning Staff Present

Matt Koch, Planning Director
Donna Monroe, Planning Assistant

Board Members Absent

None

AGENDA

1. **ELECTION OF 2016 OFFICERS**
 2. **APPROVAL OF MINUTES:** November 10, 2015 Board of Zoning Adjustment Meeting.
 3. **BOZA 16-002 Crosse Variance**
 4. **BOZA 16-001 Rasmussen**
 5. **ADU 16-001 Henry**
 6. **OTHER ITEMS FOR DISCUSSION**
 7. **ADJOURNMENT**
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Vice-Chairman Dave Boden called the Tuesday, November 15, 2016 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 – ELECTION OF OFFICERS

Vice-Chairman Boden opened the floor for the election of Officers.

MOTION

Mr. Larry Baker nominated Mr. Michael Pullen as Chairman.

SECOND

Mr. Boden seconded the motion.

Upon a roll call vote, the motion passed unanimously. (6 or 6)

MOTION

Mr. Pullen nominated Mr. Boden as Vice-Chairman.

SECOND

Mr. Jim Javernick seconded the motion.

Upon a roll call vote, the motion passed unanimously. (6 or 6)

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 November 10, 2015.

MOTION

Mr. Baker moved to approve the minutes of the November 10, 2015 BOZA meeting, as written.

SECOND

Mr. Boden seconded the motion.

Upon a roll call vote, the motion passed unanimously. (6 or 6)

ITEM 3 – BOZA 16-001 Crosse

Chairman Pullen stated that the variance request is regarding a front-yard setback of twenty-five (25) feet northerly. The County regulations are (FCZR 4.1.5.5.1) minimum allowed front-yard setback of seventy-five (75) feet. So Ms. Crosse is asking for a variance of a setback of twenty-five (25) in lieu of the seventy-five (75) feet.

Ms. Crosse stated that she bought the property about one and a half (1½) ago hoping to build a residence. She had no idea that the Fremont County setbacks overruled the Home Owners Association (HOA) covenants so they ran into a problem where we were she is going to build. (The last portion of what she said was indecipherable).

Ms. Crosse stated that there is already a sixty (60) foot road easement so after the road easement, she's ask for twenty-five (25) feet.

Mr. Koch stated that the lot is long and narrow and based on the regulations, what is require is that they have to hold the setback from the right-of-way or the easement. In this case there's a sixty (60) foot wide easement for the roadway. The setback would start from that sixty (60) feet which actually sets back onto her property and that's what she's actually asking for the relief from; being tied to the setback from that easement. On the site plan they are showing approximately ninety-one (91) feet from the other side of the road. Figuring that it is about a thirty (30) foot road, it would be about sixty (60) feet from the edge of the road to the garage. Figuring that the road is centered in it, you'd be about another twenty (20) feet for the edge of the easement where it comes into the edge of the setback and that's what she's asking for.

Mr. Norden stated that if the setbacks were enforced, the garage would have to be pushed toward the house.

Mr. Koch stated that the planned site sits on top of a little hill and then it really drops off. There is some topography that is an issue for trying to get a level spot; a good spot to build in.

Mr. Norden inquired if there was material hauled into the site or was the site just leveled?

Ms. Crosse stated that it was just leveled.

Mr. Norden inquired if they weret creating new slopes.

Ms. Crosse stated that no they weren't.

Mr. Norden inquired if there is any reason to suspect that if the setback requirements were waived that there would be any sluff-off danger for the edge of the garage.

Mr. Koch stated that there shouldn't be; everything should be engineered so the foundation should be built down to bedrock or at least some design that would be suitable for that soil.

Mr. Koch stated that the Board members should have received a copy of a letter from Mr. Bryant. His main concern was the setback. He was concerned that the HOA are thirty-two (32) feet. Planning & Zoning does not enforce HOA's or covenants so whatever the Board grants as a waiver would be our regulations. The applicant would then have to get a variance or an approval from the HOA to vary from the HOA requirements.

Chairman Pullen stated that just to get clarification; the HOA doesn't take precedence here.

Mr. Koch stated that is correct.

Mr. Javernick stated that even if the Board says yes, the HOA might say no.

Mr. Koch stated that is correct and it will be up to the HOA to enforce it.

Chairman Pullen stated that if the Board approves the variance it could give Ms. Crosse some weight toward the HOA approving it also.

Mr. Koch agreed that it could help with Ms. Crosse approaching the HOA to get a variance if needed.

Chairman Pullen asked if there was any further discussion.

Mr. Javernick stated that from looking at the site plan, the area that has been chosen is the most logical place to put the garage.

Mr. Boden stated that it's kind of an odd shaped lot and that looks like the only choice they have. The setbacks are a long way at seventy-five feet.

Mr. Baker inquired what the Planning and Zoning staff thinks about this. Is this the proper way to do it; grant them permission as it is presented?

Mr. Koch stated that enforcement by our department wouldn't be an issue. With the variance, we would review that and then base all of our approvals for building permits and such on the Board's approval of this variance. In this case, it is so rural and the lots are so large in that area, he doesn't think it would really even be noticed as long as the garage isn't right on top of the road. But, that is where the neighbors would have a say in it. As for the Department, he doesn't think there would be an issue with it.

Chairman Pullen asked if there was any further discussion. Hearing none he called for a motion.

MOTION

Mr. Boden moved that the Board approve the variance on the setback.

SECOND

Mr. Rich Thatcher seconded the motion.

Chairman Pullen call for the vote, the motion passed unanimously. (6 of 6)

ITEM 4 - BOZA 16-001 Rasmussen

Chairman Pullen introduced Item 4, a request for a variance from the FCZR by Paul Alan Rasmussen for property located at 314 Marion Lane, in the Glen Vista area. The property is located in the Agricultural Rural zone district. The variance request is to allow the placement of a 14 x 66 foot manufactured home single-wide defined as 1.5.58.7 FCZR. The zoning requirement is FCZR 4.4.2.4 Dwelling, manufactured home (does not include manufactured home single-wide, refer to Section 1.5.58.6 & 1.5.58.7 of this Resolution for definitions.

Chairman Pullen called for the applicant.

(Because of noise interference with the microphone portions of the following dialog was taken from a narrative that Mr. Rasmussen provided with his application submittal)

Mr. Paul Rasmussen stated that he provided his application with a fairly complex scenario that got to this point. This wasn't his original plan. The original plan was to develop the property with a one thousand three hundred (1,300) square foot double-wide manufactured home in a clear area on the west side. Once some measurements of the setback requirements of the County and HOA were taken and staked out it was apparent that the area would not allow a structure of that size. He then struggled to find an alternative plan to allow a home on the property.

In his rushed, and now realized improper research on the property he went back to a document from Realtor.com that improperly referenced the zoning of the area as Agricultural Estates (AE). He then checked it on the Fremont County GIS website and verified there was no problem altering his plan to a single-wide manufactured home. He then contacted Clayton Homes in Pueblo and ordered a home that would fit the topographical limitations of the property in an area that would allow a longer and narrower home and still retain the landscape features.

Mr. Norden inquired of the applicant at what stage in the process did he realize that he didn't meet the zoning requirements.

Mr. Rasmussen stated it was when he got a call from the Building Department on the building permit that he filed. He didn't get the call until the day the house was supposed to be delivered.

Chairman Pullen opened the floor up to Mr. Koch.

Mr. Norden asked Mr. Koch if he could explain exactly what the violation is.

Mr. Koch stated that in this case the zoning is Agricultural Rural (AR). That zone specifically does not allow single-wide manufactured homes. In speaking with Brenda Jackson, the County Attorney, she spoke with the previous Director of Planning & Zoning to figure out why single-wides were eliminated from that specific zone district. Back in the day, they were trying to keep the older single-wides out of those zone districts because of the nature of them. In this case, there are still manufacturers who are making them to code. They are available new so they can be placed on properties. During the discussion with Ms. Jackson, it was also brought out that a lot of the negativity came from the Penrose area. A lot of that area is zoned the same, Agricultural Rural, so they wanted to eliminate some of the single-wide instances on those lots too. That was some of the history of why they eliminated them from that zone specifically. They are required to be built to the same code as are double-wides. The County doesn't look at them any differently code wise. They need to be placed with a building permit as Mr. Rasmussen has done.

Mr. Norden stated that it is his understanding that when the Planning Commission adopted these zone districts; that would have been back in the 1990's when you talk about the influences in the Penrose area.

Mr. Koch stated that there has been some time and there have been changes in building codes.

Mr. Koch went on to say that from viewing the videos (provided during the meeting), that Mr. Rasmussen has done quite a bit of work, as he should have. He followed getting permits for the septic, and he did file for his building permit to get everything established for the setting of the single-wide.

Mr. Norden inquired about where the home is now.

Mr. Rasmussen stated that it is sitting at Clayton Homes in their parking lot in Pueblo.

Mr. Norden noted that Mr. Rasmussen would probably like to get in before winter.

Mr. Rasmussen replied that he would love to. It's getting dang cold.

Mr. Boden inquired if the home is going to be on a permanent foundation or if it is just going to be skirted.

Mr. Rasmussen stated that it is going to be skirted for now. As many projects you run into financial constraints. Eventually he does want to put a permanent foundation around it.

Mr. Boden inquired if it will be tied down.

Mr. Rasmussen confirmed that it will be tied down; the anchors and everything else is sitting there ready to go.

Mr. Koch stated that he should note just for the record that the neighbors were all notified and there was a publication in the paper for each of the items that are on today's agenda.

Mr. Norden stated that just like the previous item that they heard, we don't really care what the HOA rules are but with this HOA, are they silent on single-wides.

Mr. Koch stated that in the discussion with the new President of the HOA, they do not have a restriction on them at this time.

Mr. Rasmussen stated that the HOA does not allow the older models or the park models. He also added that several of the people in the area have come by and are thrilled that he's not doing a scrape and make on the property. He really went to great measures to make it nice and flow with the property.

Mr. Norden stated that just for some background for the members of this Board, Mr. Rasmussen's problem originally came to the attention of the Board Of County Commissioners. The Board discussed in the same conversation with the County Attorney, how it came to be single-wides were prohibited from this particular zoning district. He thinks that even the Board Of County Commissioners were curious as to the history of that exclusion. After the County Attorney provided the background, it was the feeling of the Board that even if the Planning Commission would re-visit the regulations, whether newer single-wides might be allowed in these zoning districts. It certainly wouldn't be timely enough for Mr. Rasmussen's problem. That is something that could be taken up at the Planning Commission level and the Planning Department as to whether that is a pertinent issue to be addressed in the future if other property owners want to place single-wides. The Board Of County Commissioners had advised Mr. Rasmussen to come to the BOZA.

Chairman Pullen inquired if there was any further discussion. Hearing none he called for a motion.

MOTION

Mr. Javernick moved to approve the variance application.

SECOND

Mr. Baker seconded the motion.

Chairman Pullen call for the vote, the motion passed unanimously. (6 of 6)

ITEM 5 –ADU 16-001 Henry

Chairman Pullen introduced Item 5 as a request for a variance from the FCZR by Patricia A. Henry for property located at 1008 Canyon Ridge Trail in the Fourmile Area. The property is located in the Agricultural Forestry zone district. The variance request is to allow conversion of an existing structure to an Accessory Dwelling Unit (ADU) to contain one thousand six hundred (1,680) square feet. The

structure to be converted to an ADU is located in front of the primary single-family dwelling. The zoning requirement FCZR 9.3.4 states that an ADU shall be a minimum of two hundred fifty (250) square feet and a maximum of one thousand (1,000) square feet with one (1) bathroom and no more than two (2) bedrooms. FCZR 9.3.16 the ADU (separate structure only) shall be placed no less than ten (10) feet from the rear of the primary dwelling, and no more than two-hundred (200) feet from any side of the primary dwelling.

Mr. John Greene, representative for Patricia Henry, stated that the request comes about because of a need for some medical assistance for his wife, himself, and his ex-wife. He is no longer able to do chores and things around the house. He has had three bad back operations so they are looking to have his son and daughter-in-law in the primary residence to help them with emergency things that they have experienced in the past. Mr. John Greene stated that the Fire Marshal talked to them and said that in inclement weather they might not be able to respond because of the roads. The roads are not maintained by the County or the POA that the property is located in. They did have a problem with the ambulance a couple of years ago when he had his heart attack. They are concerned about being able to get help and getting into town, hopefully to a hospital. The main issue here is to have the extra bedrooms and the other bathroom which is going to have to be handicap accessible. At present they are in the process of trying to get this approved so they don't have to worry about it anymore. Mainly it's medical issues for them so they don't have any problems in the future.

Mr. Koch explained that the proposed ADU structure is a stick built structure that was originally a garage/office. There is a new building next to it that is a new garage that they are getting permitted and are building now. There is a septic system that was installed for the garage/office structure.

From the video that Mr. Koch filmed prior to the meeting he showed where the road is that provides access to all of the properties in the area.

Mr. Norden stated that looking at the black and white map, he doesn't understand exactly where the road access is. He inquired if it accesses to Canyon Ridge Road.

Mr. Koch stated that it does.

Mr. Norden inquired as to how far the applicant is from a County Road.

Mr. Koch show on the video what the road system is in the area.

Mr. Norden inquired if the road cuts through other properties to get to Ms. Henry's property.

Mr. Koch explained that as a part of the Canyon Ridge Subdivision it is a private roadway that crosses through the other parcels to get to their property. There is no County maintenance on it.

Mr. Koch stated that as part of the review and this being the Board Of Zoning Adjustment's (BOZA) first Accessory Dwelling Unit, the members are seeing this because the ADU didn't meet the two requirements; the ADU needed to be set behind the primary structure in which case this is an existing structure so there was no contemplation of this being use for the proposed purpose when it was built. Then there is the square footage. The existing structure one thousand six hundred (1,680) square feet whereas the regulation state that the maximum is supposed to be one thousand (1,000) square feet. The regulations also state that the applicant can come before the BOZA for a variance or waiver of those requirements. That is why the Board members are seeing this today.

Mr. Koch explained that the County does have a Medical Hardship Waiver that has rarely been used but it is for temporary structures. A mobile home could be placed on the property but it would have to be

removed after the use was finished. In this case, the ADU is permanent, it can stay with the property and be used for family or they can rent it out.

Mr. Norden stated that the BOZA would not be hearing this variance request under the new ADU regulation except for what?

Mr. Koch stated, except for the two (2) waiver requests; the square footage is required to be one thousand (1,000) square feet and they are proposing one thousand six hundred (1,600) square feet and the location of it. That is why the Board is seeing this variance request.

Mr. Norden reiterated that it is because of the total footprint of the building and the vicinity to the primary structure.

Mr. Javernick inquired if there is still only going to be two (2) bedrooms and one (1) bath.

Mr. John Greene stated that they are requesting three (3) bedrooms and two (2) bathrooms. One of the bathrooms will be handicap accessible with the bars and all.

Chairman Pullen inquired if the existing structure is in accordance with what they thought was the ADU.

Mr. Koch stated no, that the existing structure was already there prior to any need of an ADU. It is being modified to an ADU.

Mr. Javernick inquired if it was all built meeting the code regulations.

Mr. Koch state that as far as the Department knows, it was.

Mr. Koch stated that there are some neighbors who are at the meeting and would like to speak.

Chairman Pullen asked the guest to please state his name.

Richard Green stated that he has property on two (2) of the four (4) sides of Patricia Henry's lot. Part of it is the old family ranch which is on one side. Mr. Richard Green has the side closest to the sewer system, which by the way is within twenty (20) feet of his property line. The distance from Home Depot to his driveway... and it's maybe forty (40) yards between his driveway and John's driveway further up the road so it's relatively close. The traffic, and there are easements through everybody's property, it's not a roadway or a right-of-way, it's an easement. It is privately maintained. The gentleman that worked with the Fire Department until recently that handled that part, basically the Fire Department said it's the Code of the West. If you live where you cannot have access, they can't get equipment in, that's your problem. The road is not that bad. It does get terribly slimy with adobe when there is any moisture. The road base is not super good, it needs big rocks, about the size of his fist all along there. And those do sink into adobe.

Mr. Richard Green stated that his main complaint is the six hundred and eighty (680) feet over, it sits in front... so in that subdivision he's the only one that doesn't have to drive by it. The property owner that is on the third side is out of state and BLM is on the fourth side.

Mr. Richard Green then shared with the Board a map that he had showing the easement, pointing out where the septic system is in comparison to his property line. He stated that he was going to ask for a survey and fencing but he had just found out that morning that they cannot... that would create a gate for all the other lots. He leases the whole subdivision for his cattle. They can go around but he also leases Lot 2 for grazing.

Mr. Javernick inquired if Mr. Richard Green is objecting to the variance.

Mr. Richard Green stated that yes he is.

Mr. Norden reiterated that the easement for the road goes across other private properties. Who actually controls that easement?

Mr. John Greene's son stated that it is actually a road and the name of it is Canyon Ridge Trail.

Mr. Norden inquired if it is a platted road as part of the subdivision.

Mr. John Greene's son stated that it is.

Mr. Koch stated that it is a thirty-five (35) acre subdivision and that is one of the roads.

Mr. Norden stated that he wants to make sure that there isn't a private property owner that could say that they don't like what's going on there and restrict access.

Mr. Koch confirmed that couldn't happen.

Mr. Norden inquired if this project of changing out the existing building to the dwelling space was initiated and is in violation. What was the timing of all of this? Was there a violation that stopped work or did they come in and apply?

Mr. Koch stated that he's not exactly sure; there was no violation on the Planning and Zoning part. He's not sure if the Building Department went out on an inspection on the new garage that was permitted and noticed what they were proposing to do. He's not sure on what all happened but there is no violation that was initiated.

Mr. Norden asked Mr. John Greene if he wanted to address that issue. He asked Mr. John Greene if he became aware of the regulations in the middle of the process of remodeling that space.

Mr. John Greene stated that they have a building permit for the new garage.

Mr. John Greene's son stated that the septic was put in a little over a year ago and originally it was just going to be for a bathroom for the office and they got a bigger septic system in case they ever changed their mind. Within the past year they decided that they wanted to convert the garage over into a living quarters and found out that they had to go to Planning and Zoning to get a variance for the building.

Mr. Norden stated, let's ask the other question here that's not on the table. The way you described this to the Board, as Mr. Koch indicated there are methods to allow temporary living quarters for medical situations but in fact you are constructing and renovating an existing garage for living space. So when the time comes when there's not a question of medical support from other family members what's the intended use of this renovated space.

Mr. John Greene stated that he can't answer the question because he doesn't know.

Mr. Norden stated to Mr. Greene's son that when they (his parents) pass, the property is going to have a primary residence and an Accessory Dwelling Unit and he thinks that any of the County Officials would be sympathetic to the situation but given the fact that there is opposition, what would be the long-term plan and intention for this property.

Mr. Greene stated that upon his passing and his wife, everything would all be put in his son's name and everybody would just close it down.

Mr. Greene's son stated that they never even thought about that. He stated that it wouldn't be rented or sold.

Mr. Pullen inquired what they mean by they would close it down. Do they mean it would be reverted back to a garage?

Mr. Greene state that they would disconnect the electricity; it wouldn't be a livable dwelling.

Mr. Norden inquired if this Board has any authority to grant a variance for the limited use of the current owners.

Mr. Koch stated that he doesn't believe so, that would be impeding their right.

Mr. Norden stated that once they approve it as an Accessory Dwelling Unit beyond the size, then it's approved.

Mr. Koch stated that is correct.

Mr. Javernick inquired of Mr. Richard Green why he is objecting.

Mr. Richard Green stated that with the road going through and they get their family together they're going to have three (3) additional drivers besides the two (2) that are already there. That's five (5) drivers. The variance is going to affect everybody in that subdivision. With two (2) houses on there, who's going to be next? The other part is with that ranch right below there, and it's not fenced, the cattle walk back and forth, people walk back and forth. Ten (10) years from now, we've already had out of the seven (7) lots in that subdivision we've already had two (2) owners on one, three (3) of the seven (7) properties in ten (10) years. Like they said, they can't guarantee what will happen. They're going to have two (2) full-sized houses on that road if you accept the variance. And that's his concern, his property value, the traffic, and he empathizes with the need but there is an alternative. Like you said for medical they could get an RV or something that is moveable.

Mr. Javernick stated that if they decided to put a unit behind the house that is less than one thousand (1,000) square feet with two (2) bedrooms and one (1) bathroom, which would be perfectly legal, you would have no input on that.

Mr. Richard Green stated that yes he understands that.

Mr. Javernick stated that he fails to see where the impact is going to be any less if they do that than if they do it up front.

Mr. Richard Green stated that the mobile unit could be moved.

Mr. Javernick stated that John Greene has the right to build a structure behind their existing house, one thousand (1,000) square feet with two (2) bedrooms and one (1) bathroom and it's permanent. It's there forever.

Mr. Richard Green stated that he wouldn't have to see it if it's behind.

Mr. Javernick stated then you wouldn't have to look at it.

Mr. Norden inquired if all of the lots are built on.

Mr. Richard Green stated no, there is one lot that has a barn on it but there is not a dwelling on that one lot. Lots 6 and 7 are owned by the same people. Lot 6 has a large house on it and Lot 7 has a barn or a garage. There's a metal building.

Mr. Norden stated to Mr. Richard Green that he's curious. He chose this particular application because he is opposed to the size and location of the ADU. Mr. Norden inquired if Mr. Richard Green had any

particular problem when the Board of County Commissioner's adopted the ADU regulations that would allow Accessory Dwelling Units under X number of circumstances. Did you have a general opposition to Accessory Dwelling Units?

Mr. Richard Green stated that personally he did. If you live out there you don't have neighbors. If you want neighbors, you buy something in town.

Mr. Norden stated that he's just trying to get a feel for where the BOCC have been on these discussions on these ADU regulations in the past and he knows that in these rural areas, particularly on ranches we allow for bunkhouse facilities for ranch managers. It was his interpretation that the ADU regulations would parallel a lot with bunkhouse structures on ranches.

Mr. Richard Green stated that in his personal case the structures were part of the barn because of the great-grandfather, grandfather, and his parents. A barn is a barn and you couldn't even see the lights. (He stated something else but it was inaudible)

Mr. John Greene stated that this issue with Rich Green is a domestic disturbance and it has deteriorated over the years. He is sorry to say that it has become an issue also. Although they have tried to be good neighbors it hasn't quite worked out that way. Rich has been opposed to anything that they try to do on their own property. He regrets that that is the situation but ever since he (Mr. John Greene) retired from the sawmill and had the back operations, it just hasn't gotten any better.

Mr. Koch clarified for Mr. Baker which structure is the one being remodeled for the ADU. He also showed which house is Mr. Richard Green's house and the relative closeness of the driveways.

Mr. Boden inquired what the distance is between the two (2) houses.

Mr. Koch stated that it is about six hundred feet from Mr. Richard Green's house to the garage (proposed ADU) corner.

Mr. Javernick stated that he understands that Mr. Richard Green's main objection is traffic.

Mr. Richard Green confirmed that and stated then again the size, it's just too big.

Mr. Boden asked Mr. Richard Green how the ADU would negatively affect his property.

Mr. Richard Green stated that there are two (2) subdivisions and all of the properties are set up as single unit dwellings and you start adding and people are people. They see a house here and they say "well maybe I need that" or "I've got a temporary need" or "I've got a daughter that wants to live by me, I could build a small place". It's a precedent that's being set.

Mr. Javernick state that the ADU's are going to be allowed anyway, just behind the primary structure and slightly smaller. He would think that the impact of another building behind the house, assuming that they are going to go ahead anyway and we turn them down here, they'll just build another one behind the house that's smaller. You're going to end up with more land impact doing that than allowing them to go ahead with this.

Mr. Richard Green agreed and stated that that is true.

Mr. Javernick stated that is what you're saying, that you don't want see a lot of land impact.

Mr. Richard Green state that is correct and you guys see it, the effect of the draught. Right now our land is fragile. It truly is fragile. You've got to do what you can to protect it and in that particular area that fragile land is in half shale. You can't hardly grow anything but little rocks.

Mr. Javernick stated that he comes at it from a different point of view. He's in the oil industry; we're continually going out and doing projects. We are required to gravel our roads if there's a dust issue. We're to stop that impact where you guys apparently haven't been required to do anything.

Mr. Richard Green stated that they aren't because it is a private road. He has worked with road developers to bring it up to where the County would accept it as a road but it would be way beyond anybody's means.

Mr. Javernick stated that the oil people are responsible for their dust and are required to mitigate dust issues. We can one, water the road or two, gravel it. But that isn't the burden of one person. All of the homeowners would have to get together and agree to put some minimal amount of gravel on there. You'd be surprised at how little it takes to stop the dust and the sliminess that you were talking about.

Mr. Richard Green stated that it has been tried. Out of the seven property owners, and John was one of them, he paid. He didn't shirk his duties there.

Mr. Norden inquired of Mr. John Greene's son about what it was he had tried to say earlier regarding that there would be five (5) vehicles. Mr. Norden ask him to go ahead and complete that remark.

John's son stated that there would actually be less traffic because he won't be driving out to his Dad's house every day. His Mom had a stroke and she is no longer allowed to drive. The only person who would be leaving in the morning would be his wife going to work and then at night coming back home. His kids don't drive, they are both young. Right now he has to drive up there every day and go get their groceries. If he was actually living up there every day it would actually cut down on one (1) more vehicle.

Mr. Richard Green stated that it's the wife and kids as well so it's not going to be less.

Chairman Pullen asked if there was any more discussion from the Board.

Mr. Norden state that when the Board of Commissioners adopted the Accessory Dwelling Unit regulations they assumed that the problems would emerge in areas like Penrose and Lincoln Park where neighbors are stacked upon each other. He never envisioned that this would be one of the first areas that we would have opposition to an ADU on thirty-five (35) acre parcels

Mr. Javernick stated that he would like to make a comment. He's sixty-eight (68) years old and he wishes his kids would be wanting to move closer and live in an ADU. He thinks these are thing that we are going to want to encourage. He understands the objection to the additional traffic but eventually all that up there in that area will be developed, like it or not. There will be houses on every lot up there and the traffic is going to be there. He thinks that maybe the road issue needs to be addressed but he doesn't think that by denying Mr. John Greene's right to utilize the existing building that they have and save the money, would benefit Mr. Richard Green.

Mr. Norden stated that he is certainly sympathetic to the family with the medical needs, but does think that it could set a dangerous precedent giving the size of the limitations that were put into the ADU regulations, if the Department repeatedly has ADU applications for variances going to the Board Of Zoning Adjustment to keep increasing the square footage higher than the restrictions. The BOCC placed those restrictions for a purpose, for limited reasons. That is what this Board is for, to consider variances but he would hate to see ADU's repeatedly request larger structures.

Mr. Javernick stated that he agrees. But this is an existing building and the impact of putting another one up there behind the house is going to be more of a negative effect on the area than utilizing the existing building. Maybe it's not the ideal place or the ideal size but it's utilizing what they have.

Chairman Pullen inquired if there was any further discussion. Hearing none he stated that he has one (1) question just to follow up on what Mr. Javernick and Mr. Norden have said. Does this really fall under the ADU? The intent is for it to fall under the ADU. As such, it really doesn't fall under the ADU because it doesn't meet the requirements.

Mr. Koch stated that's why the County Commissioners built in the requirement to come to BOZA with the existing structures. They did foresee some potential issues with existing structures so they did have that caveat within the regulations to come before this Board for that request.

Chairman Pullen stated that what he was looking for is to separate the ADU from the existing structure.

Mr. Norden stated if the BOCC had not adopted the ADU regulations and the Greene's wanted to do the same thing to modify this, they would still have to come to the Board Of Zoning Adjustment because this wouldn't be temporary quarters. Or would it just be absolutely prohibited.

Mr. Koch stated that it would be prohibited. It would not be allowed at all.

Chairman Pullen stated that then that ties it to the ADU.

Mr. Javernick stated that in the past when this would come up the Board would grant a single-wide that they could put on the lot and it stayed until the need went away and then they were required to move it.

Chairman Pullen stated that's hard to do with a permanent structure.

Mr. Javernick stated that the structure is already there. He doesn't know what the situation would be if they decided to move in a double-wide or a single-wide, how would that be approached?

Chairman Pullen stated that the only way you could tie that to it instead of an ADU is to make it a Special Review Use permit.

Mr. Koch stated that it is actually through the Medical Hardship Waiver. It is a separate application and basically it is exactly like that. They can request a temporary situation, meeting certain requirements of the structure, there are no limitations on the square footage. But then it does have to be removed after the use is finished.

MOTION

Mr. Javernick moved to approve the variance as it is written.

Chairman Pullen stated that there is a motion on the floor and called for a Second.

Hearing none, he called for a new motion.

MOTION

Mr. Baker moved to deny the variance.

Chairman Pullen stated that there is a motion on the floor and called for a Second.

Hearing none, he called for a new motion.

Mr. Norden stated that he's not seconding the motions because even though he's an Associate member he helped on the input and drafting of the ADU regulations so he feels a little uncomfortable taking a

lead on this particular Board at this time. He will happily vote but he just feels uncomfortable making or seconding a motion.

Mr. Bakers stated that he thinks that the normal rules are that if neither motion passes then it will not happen because the approval did not come in and he made a motion and it didn't come in.

Mr. Javernick stated that he would like to remake his motions.

Chairman Pullen told him to go ahead.

MOTION

Mr. Javernick moved to approve ADU 16-001 Henry as it is written.

SECOND

Mr. Norden seconded the motion.

Chairman Pullen called for the vote.

Mr. Pullen	Nay	<input type="checkbox"/>	Abstain
Mr. Boden	Nay	<input type="checkbox"/>	Abstain
Mr. Javernick	Nay	<input type="checkbox"/>	Abstain
Mr. Baker	<input type="checkbox"/>	<input type="checkbox"/>	Abstain
Mr. Thatcher	Nay	<input type="checkbox"/>	Abstain
Mr. Norden	Nay	<input type="checkbox"/>	Abstain

ITEM 4 - ADJOURNMENT

Chairman Pullen declared the meeting adjourned at 4:25 P.M.



Chairman, Fremont County Board of Zoning Adjustment

12/13/16
Date