

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
February 4, 2025, AT 3:00 P.M.**

MEMBERS PRESENT

John Hamrick
Larry Brown
Rudl Mergelman
John Carper
Travis Payne
Dale McCollough
Gardner Fey

STAFF PRESENT

Dan Victoria, Planning Director
Joanne Kohl, Office Manager
Mike Fowler, Planning Coordinator

1. CALL TO ORDER

Chairman Hamrick Called the meeting to order at 3:00 pm.

2. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was recited.

3. APPROVAL OF THE FEBRUARY 4, 2025, PLANNING COMMISSION AGENDA

Chairman Hamrick asked if there were any changes, additions or corrections to the February 4, 2025, Fremont County Planning Commission Agenda.

MOTION

Mr. Fey motioned to accept the February 4, 2025, Fremont County Planning Commission Meeting agenda.

SECOND

Mr. Brown second the motion.

Chairman Hamrick called for a roll call vote, and the motion passed unanimously. (7 of 7)

4. APPROVAL OF THE DECEMBER 3, 2024, PLANNING COMMISSION MEETING MINUTES

Chairman Hamrick asked if there were any changes, additions or corrections to the December 3, 2024, Fremont County Planning Commission Meeting Minutes.

MOTION

Mr. Mergelman motioned for approval of the December 3, 2024, minutes.

SECOND

Mr. Carper second the motion.

Chairman Hamrick called for a roll call vote, and the motion passed unanimously. (7 of 7)

5. UNFINISHED BUSINESS

None

6. NEW BUSINESS

CDP 24-001 Penrose RV & Boat Storage

Chairman Hamrick asks Director Victoria for the staff report.

Director Victoria states that the applicant is requesting approval of a **Commercial Development Plan, Department file #CDP 24-001 PENROSE RV & BOAT STORAGE** for the property of John Edgar, which is located at 17225 State Hwy 115 in Penrose on the north-west side of State Highway 115, and is directly adjacent to undeveloped platted H Street on the west side, in Penrose. The property use has been vacant for many years with a 900 sq. ft. permitted garage. The proposed use will be storage units for RV's and Boats. The storage units will be pre-engineered metal units, the facility will be strictly self-storage, open to customers approximately 365 days each year, 24/7. Access will be gained through assigned personal gate codes.

Current zone: Business
Northerly: Business
Easterly: Residential Two
Westerly: Residential Two
Southerly: Residential Two

Total Acreage: 1.36 Deed: X FCZR citing: 4.14.2.30 Allowed use YES

Utilities:

Water: Penrose Water District Sanitary Sewer: None Proposed

Electric: BLACK HILLS Gas: ATMOS

Phone: Cellular Cable: NA

Irrigation ditches: Beaver Park Water Trash: None Proposed

FEMA Flood Hazard Areas: NO

Roadway Access: State Highway 115.

FCDOT review: YES CDOT Controlled: YES Traffic Count: 36

Number of Access Points: 1 CDOT permitted

Mineral Interest: NOT SEVERED

Parking plan: YES 2 Standard Spaces. 1 ADA Space. ADA space not fully illuminated per sheet SP-1.

Lighting plan: YES

Buffering and Landscaping: Landscaping

Fire District: _____ PENROSE / FLORENCE FIRE DISTRICT _____

Stormwater Drainage Plan: YES County Engineer review: _____ YES _____

Application Timeline:

Application applied for on February 27th, 2024.

First Deficiencies and Comments sent on March 21st, 2024.

First response to D&C April 2nd, 2024.

Email received from applicant stating they were redirecting the course of the project on April 12th, 2024.

Revised application received on May 21st, 2024.

Second Deficiencies and Comments sent on June 18th, 2024.

Second Response received June 23rd, 2024.

B.O.Z.A. application received on June 23rd, 2024.

First B.O.Z.A. meeting on August 20th, 2024.

Second B.O.Z.A. meeting on September 17th, 2024.

Third Deficiencies and Comments sent September 19th, 2024.

Third Response received October 28th, 2024.

Received the Hard Copy Site Plans November 18th, 2024.

This application was scheduled for Planning Commission on January 7th.

The Applicant requested an extension to address concerns and reschedule for February 4th, 2024.

Revised plans and statements received 1/21/2025.

BOZA Explanation:

After the meeting on August 20, 2024, the department of Planning & Zoning determined there was misleading, inaccurate, and false information given to the Board of Zoning Adjustment, and our department. This determination led to rescheduling and the application being heard on September 17th, 2024 for a second review. The applicant felt the above wording seemed harsh and requested staff revise it. The above language matches the B.O.Z.A staff report, and staff does not feel a correction is necessary.

Agency Concerns:

None

Submittal Requirements:

All requirements have been submitted unless otherwise noted as a Contingency item.

Waiver Requests:

1. Sanitation
2. Refuse Plan

Variance Request Granted:

1. Planning & Zoning administrative approval – Map scale of 1” = 30’.
2. B.O.Z.A. – Front yard setback adjacent to a State Highway 4.14.5.5.1 minimum setback requirement 40’, approved for a minimum setback of 10’.

Department Recommendations:

The department has reviewed the application and found it to be complete and a true representation of the request as stated herein. The department finds that all requirements per the Fremont County Zoning and Development regulations were not satisfied by this application. The Department recommends **DENIAL** due to the following reasons:

1. Per the FCZR section 7.4 BOZA Powers:

7.4.3 The B.O.Z.A. shall have the power to grant variances from the provisions of this resolution, but only where **all of the following conditions are found to exist.**

- 7.4.3.1 The variance would not authorize any use other than those enumerated as a use by-right in the zone district and that the essential character of the zone district would not be altered.
The application met this requirement.
- 7.4.3.2 An unnecessary hardship to the owner could be shown to occur if the provisions of this Resolution were strictly interpreted.
The department feels the owner has created an unnecessary hardship in order to yield the highest return for his development. This development could meet all requirements with a revised development plan. At the first B.O.Z.A meeting the consultant provided an option #2 that showed all required setbacks can be met if redesigned.
- 7.4.3.3 The circumstances found to constitute a hardship either were not created by the owner or were in existence at the time of the passage of this Resolution and cannot reasonably be corrected.
The owner has created the hardship by the design being presented. This is a conforming lot and could meet all minimum requirements of section 4.14.5 Development Requirements.
- 7.4.3.4 The variance would not be inconsistent with the intent and purpose of this Resolution or would not prejudicially affect the health, safety, and general welfare of the inhabitants of the County.
The application met this requirement.

2. All procedural requirements have not been met per FCZR section 8.14.4.1.

- a) The proposed site will not impair public health, welfare, prosperity, and safety by **undesirable sanitary conditions**, overburdening of utilities, or **adverse environmental influences.**
 - Sanitation waiver requested.
 - Hazardous spill plan addresses signage and security cameras, not a clean up procedure.

- b) The site is sufficient size to accommodate the proposed use together with **all yards (setbacks)**, open spaces, walls and fences, parking and loading facilities, landscaping and such other provisions required by this Resolution.
 - o B.O.Z.A variance.

The Department would recommend a new application to meet all of Fremont County Regulations, and revocation of the B.O.Z.A. variance.

If the Commission chooses to recommend Approval, the Department would recommend the following:

- a. Meet all contingency items.
- b. Denial of the sanitation waiver.

Contingency items:

- 1. Provide a hazardous spill procedure plan that addresses any onsite contamination.
- 2. Copy of the CDOT Notice to Proceed for Access Permit #224022.
- 3. Approved Noxious Weed Control Plan
- 4. Install Fire Hydrant

Chairman Hamrick asks the applicant to address the Board.

Anna Fluckey states that what is important for them in this submission is that they have been working on this for a year towards this resolution. They have come up with a lot of plans and opportunities to bring this to life. In this case having security and having the ability to invert the buildings inside, so all of the doors open to the interior of the space, was really important to them and for the patron utilizing it.

Mr. Mergelman asks for some clarification on created a hardship and to define that. Was it a safety issue or design flaw.

Director Victoria states that the design that is creating a hardship on this project would be that since it is a bare and vacant lot and it is useable and a design can go in, this could work. In order to make it work, (to use their own words) visually more appealing, safety to the inside and make it financially viable by adding more units there would benefit the owner. The land is not undevelopable, it just is not to the scale they are hoping for, that is why they requested that variance. Everything has been satisfied with the project, staff feels the design itself is too intense and does not meet regulations. Staff just finished with a code review and no part of that review was revising setbacks for that zone district.

Anna Fluckey states that the only clarification she wants to make is, at the BOZA meeting, they never used the statement financially viable. It was not in the notes.

Director Victoria states that it was said and it is in the BOZA meeting recorded video. They have a 10 ft. setback instead of 40 ft. as that zone district requires. If they had to abide by the 40 ft. setback, they would not have that interior pattern they are hoping to have and they wouldn't have the doors facing to the interior to make it more visually appealing.

Chairman Hamrick asks if they have a vehicle tire cleaning mat kind of in the middle of the facility.

Jim Brzostowicz, civil resources engineer, states yes, there is a vehicle tracking pad that is a temporary thing for during construction only.

Chairman Hamrick asks if there is also a structure for vehicle wheel wash.

Jim Brzostowicz states he doesn't think they had a wheel wash, all of those are just temporary things. Once the facility is open, that will all be gone. There will be no water available to the tenants. There will be a service there that the owner can use if a tenant is changing hands and they need to hose down something, but that is going to be locked and not available to the tenants.

Mr. Fey asks if a fire hydrant has always been on the plan.

Jim Brzostowicz states that there is a fire hydrant on the plan, and they have no problem with that contingency item.

Chairman Hamrick asks if there will be a full or part time person on site.

Jim Brzostowicz states there will be nobody on site. There is no office, just storage. There will not be any water for tenants to rinse, clean or service their RV's. There is no sewer on or near this location for any type of sewer dumping.

Anna Fluckey states that all the preliminary realities within this is that they must be washed and cleaned. These would be done offsite.

Director Victoria states that the concern for sanitation was more for the individuals going to pick up or something, not necessarily a dump station, with the proximity to the ditch in the back, something as simple as a chemical toilet would be reasonable.

Mr. Fey states that the main stumbling block is the front setback.

Director Victoria states that staff feels BOZA may have granted a variance in error regarding the setbacks. It clearly states that all 4 of the above-mentioned criteria's that he has detailed in the staff report must be met. He feels that 2 of them just do not. He feels that jeopardizes this whole project.

Nicole Suttle states that she would like to respectfully call the Boards attention to the Fremont County Zoning Regulations, 7.4.1 regarding interpretation that the BOZA shall have the power to interpret this resolution including any uncertainty as to boundary location or meaning of wording so long as this interpretation is not contrary to the purposes and intent of this resolution. The BOZA has interpreted the resolution ad found this CDP to be justified in the approved 10 ft. setback variance off HWY 115. This variance approved complies with Fremont County Zoning Resolution 1.7, interpretation conflicts validity. Interpretation of the provisions of this resolution shall be interpreted and applied to be the minimum required for the proper protection, public health and morals and the promotion of safety and general welfare. As stated in Fremont County Resolution section 1.3 Purpose, these regulations are designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Fremont County. Including lessening the congestion in streets or roads or reducing the waste of excessive amounts of roads including promoting energy conservation, securing safety from fire, flood water and other dangers, providing adequate light and air, classifying land uses and land development and utilization, protecting the tax base, securing

economy in governmental expenditures, fostering the states agriculture and other industries and feeling on this, she believes that the BOZA have within their powers, have applied that applicably to this particular case that there is no harm to be done to the area or the residents. She states that there were aspects to this site that the owner, unfortunately, was not aware of when he purchased the property. The front 40 ft. setback was not shown on his plat prior to purchasing this property.

Director Victoria states that it could meet our regulations with a different design, he states that it is too intense for this lot. It is a small lot, but should be known that if you purchase something and have the intent to do something with it, you should be doing your homework ahead of time and not say that you had a hardship because you didn't do your due diligence ahead of time and you can't do what you want now, so you want to be exempt from the rules now that everyone else has to follow.

Mr. Fey asks if they were to approve this with those designs, will the county Commissioners kick it back because of the zoning issues.

Director Victoria states that the County Commissioners are the only ones who have the right to overturn a BOZA variance. Even if the recommendation was to deny, it would still go in front of the Board of County Commissioners unless the applicant wanted to re-design.

Mr. McCullough asks that with the setback allowed by BOZA, would that lot be considered conforming if they approve it.

Director Victoria states yes, that everything would be conforming at that time.

Mr. Payne states that the lot is only conforming because they are allowed a different setback.

Chairman Hamrick states that he doesn't believe the Planning Commission as a Board, have the authority to go back and re-hear a BOZA request. He asks the applicant if they are ok with all the contingency items set forth by staff.

Anna Fluckey states that they are fine with doing all of that.

Mr. Carper asks if legal council is present for some clarification.

Director Victoria states no.

Mr. Carper states that he disagrees with Chairman Hamrick that what he is saying may not be true as far as the Board does not have the ability to disregard what the BOZA does, and the Board of County Commissioners will make the final decision.

Chairman Hamrick does not think that they have they authority to review BOZA decisions.

Chairman Hamrick states he is open to a motion.

MOTION

Mr. McCollough Motioned to Approve CDP 24-001 Penrose RV & Boat Storage with all the recommendations set forth by staff.

SECOND

Mr. Fey second the motion.

Chairman Hamrick called for a roll call vote, and the motion passed unanimously. (7 of 7)

7. ADJOURNMENT

Chairman Hamrick adjourned the meeting at 3:54 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE