

Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA
MARCH 3, 2011**

Tom Baker Meeting Room	4:00 p.m.	City-County Office Building
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MINUTES

1. **Minutes.** Consider approval of the minutes of the November 4, 2010 meeting.

REQUESTS

2. **225 South 26th Street (Northern Metal Recycling)** Request for a variance to reduce the front yard setback from 15-feet to 7-feet for the purpose of constructing a fence at the above-mentioned property.

ADJOURNMENT

3. **Adjourn.** The next regular meeting date is scheduled for April 7, 2011.

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
NOVEMBER 4, 2010**

The Bismarck Board of Adjustment met on November 4, 2010 at 4:00 p.m. in the 2nd Floor Conference Room in the City-County Office Building, 221 North 5th Street. Board members present were Chair Michael Marback, Blair Ihmels, Jennifer Clark, Ken Heier, and Jeff Ubl.

Members absent were Dean Conrad.

Staff members present were Gregg Greenquist (Planner).

Others present were Charlie Whitman, City of Bismarck Attorney.

MINUTES

Chair Marback asked for consideration of the October 7, 2010 minutes.

MOTION: A motion was made by Mr. Ubl and seconded by Mr. Heier to approve the minutes of the October 7, 2010 meeting as presented. With all members voting in favor, the minutes were approved.

GUEST SPEAKER-CHARLIE WHITMAN

Chair Marback stated there were no applications that had been received, and therefore, no further action items on the agenda to address. He then introduced Charlie Whitman, Attorney to the City of Bismarck, who would be speaking to the members of the Board of Adjustment.

Mr. Whitman began by saying many of the legal aspects involving the Board of Adjustment, such as property owner notification and public notification of meetings to comply with the open meetings requirements, are taken care of by the Planning Department. However, one issue that directly affects the Board members is that of taking a roll call vote. When voting on any substantive issue before the Board, such as granting or denying a variance, a roll call vote is required. Names of individual Board members must be called in random order and their votes recorded. However, when doing a procedural motion, for instance, motions regarding meeting minutes or one member modifying another member's previous motion, voting can be done by assent, rather than a roll call vote. An easy way to discern whether a roll call vote is necessary, is to know that a roll call vote is required any time a third party is affected.

Mr. Whitman then identified certain meeting procedures to ensure sound information can be provided to the Bismarck Board of City Commissioners in case any decision by the Board of Adjustment is appealed. He explained it has become very important for administrative boards under governmental bodies to support their decisions with formalized findings. Without the support of findings, an appealed decision is easily dismissed by the court on the grounds of being arbitrary and capricious. Even if a motion is made amid much discussion, and the discussion is included in the minutes, if the findings are not sited, or the motion actually goes against the findings and no new findings are provided, the decision becomes virtually impossible to support from a legal standpoint later on if appealed. He referenced the written findings provided on

every staff report, stating that the findings can be modified at the time of a motion to support the motion made. He noted that there has been a statute change in the last couple years that mandates written findings must be used by planning commissions or their decisions will be reversed. Mr. Whitman added that many appeals do not go beyond the City Commission and the Commissioners are not as deeply involved (as the members of the Board of Adjustment) in each appeal considered, instead, relying mostly on the information provided them through the minutes and staff reports. Therefore, it is important to provide the Commissioners with clear yet substantial supporting factors for the Board's action so that the Commissioners have the proper information on which to base their decision.

Mr. Whitman emphasized the ordinance (regarding variances) is very strict, leaving very little opportunity to grant variances. However, it does allow some adjustment from the strict application of the ordinance, as stated within the ordinance. Because of this, if there is a rational basis for decisions made, those decisions are relatively easy to uphold, but that is why it is important to articulate that rationale in how the statute is applied.

Mr. Ihmels asked if the public has an option in appealing a decision made by the Board. Mr. Whitman stated a decision can be appealed only by an interested party, a building official or a city official. He clarified by reading (14-06-03.3) from the ordinance, "...may be appealed to the board of city commissioners by either the aggrieved applicant or by any officer, department, board, or bureau of the city..."

The issue of setting precedent was discussed at length. Mr. Whitman ultimately cautioned the Board in this area, restating the fact that the (variance) ordinance is very specific in what a variance applies to, and application for a variance does not automatically grant relief to the applicant from city code. He stated that if city code seems too restrictive, an ordinance can be changed, the process takes about a month; but variances cannot be granted loosely.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on December 2, 2010.

Respectfully Submitted,

Kim Riepl
Recording Secretary

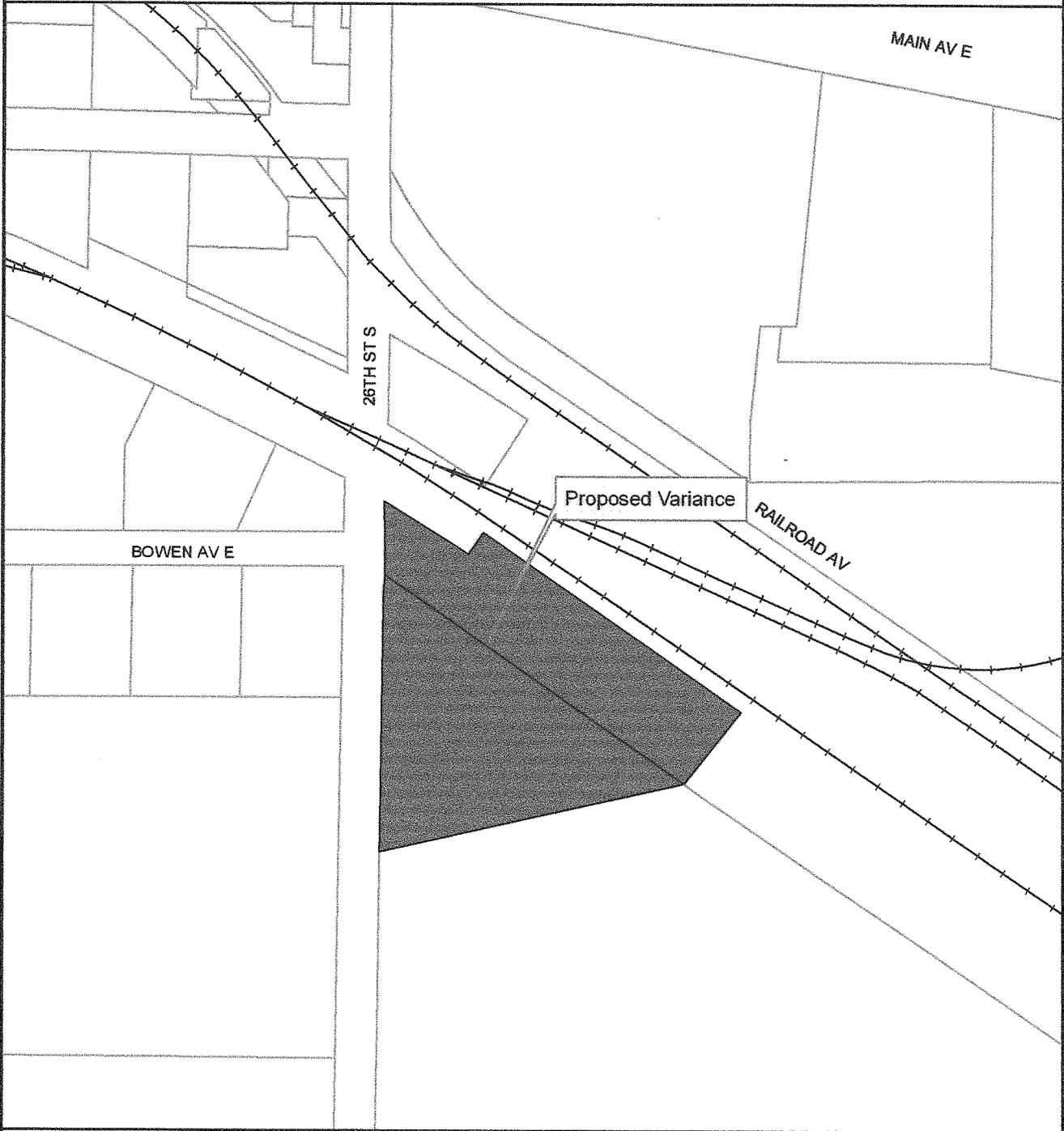
APPROVED:

Michael Marback, Chair

**BISMARCK-BURLEIGH COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

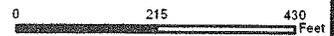
BACKGROUND:	
Title: 225 South 26 th Street – front yard setback for a fence (reduce from 15-feet to 7-feet) (Tract 335 of the SW ¼ of Section 2, T139N, R80W, and Lots 1 & 2 of Block 1, Sloven Second Addition)	
Status: Board of Adjustment	Date: March 3, 2011
Owner(s): Shirley Billington (owner), Northern Metal Recycling (applicant)	
Reason for Request: This variance request is related to a conditional approval by the Bismarck Planning Commission for a Special Use Permit to operate a junkyard.	
Location: In southwest Bismarck. Located on the east side of South 26 th Street, between the railroad tracks and the Public Works Building.	
Applicable Provision(s) of Zoning Ordinance: 14-04-14(6). Front yard. A fifteen (15) foot front yard shall be required of any building in an MA industrial district except that all structures located on principal arterials shall have a fifty (50) foot front yard . . . <i>(note: South 26th Street is not classified as a principal arterial)</i>	
FINDINGS:	
<ol style="list-style-type: none"> 1. The need for a variance is based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the MA zoning classification. 2. The hardship is not caused by the provisions of the Zoning Ordinance. 3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property. 4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant. 5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare. 	
RECOMMENDATION:	
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board. If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.	

Proposed Variance
Lots 1 & 2, Block 1, Sloven Second Subdivision,
Tract 335, SW 1/4, Section 2, Township 138N, Range 80W



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: February 15, 2011, (klr)

Source: City of Bismarck





Community Development Department

MEMORANDUM

DATE: February 24, 2011
TO: Board of Adjustment Members
FROM: Gregg Greenquist
RE: additional information on the setback variance for a new fence at Northern Metal

The purpose of this memo is to provide you with a frame of context and some additional background information on the requested setback variance.

The ordinance defines what a junkyard is and requires Special Use Permits (SUPs) for junkyards. Because the subject junkyard operation had expanded beyond the boundaries of the area that was approved under their original SUP, Northern Metal Recycling was required to reapply for a new SUP.

The ordinance establishes criteria for junkyards (see attached). Among the criteria is a requirement for a perimeter fence to screen the site. Normally fences are not subject to setbacks and people don't need a building permit for a fence. But this is only for fences that are 6-feet or less in height. Junkyard fences are required to be 8-feet high. Because of the required height, the subject fence is considered a structure and requires a building permit. All structures requiring building permits are subject to building setback distances. The front-yard building setback in the MA-Industrial District is 15-feet.

At their meeting on November 17th, 2010, the Bismarck Planning Commission granted conditional approval of a Special Use Permit for Northern Metal Recycling (see attached minutes of that meeting). Three of the Planning Commission's conditions apply to the fence. They voted to approve the SUP with the conditions that:

1. the base of the fence is to be at least as high as the curb along 26th Street;
2. the fence is to be located not less than 7-feet back from the property line;
3. the fence color and material is to be approved by staff and a Planning Commissioner.

Of these three conditions, #3 has been satisfied. The proposed colors and materials for the fence have been approved. Condition #1 will require the new fence to be placed on higher ground to improve the screening. Condition #2 requires the involvement of the Board of Adjustment.

Please see the attached materials for further information.

Bismarck-Burleigh County Community Development Department

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Special Use Permit criteria (14-03-08(4))

i. Junkyards. A junkyard may be permitted in a MA or MB industrial district as a special use, provided:

1. That the total area of the premises shall be a minimum of two (2) acres and a maximum of five (5) acres in size.

2. That no burning of salvaged material or junk be permitted on the premises.

3. That the buildings comply with the setback requirements of the city zoning regulations.

4. That the entire junkyard be enclosed with an opaque wall or fence at least eight (8) feet in height or as approved by the city planning and zoning commission.

5. That the wall or fence be set back at least fifteen (15) feet from those property lines which border public rights-of-way.

6. That all junk be stored within the fenced area.

7. That the operation not be located immediately adjacent to any arterial street or highway.

8. That the operation be conducted and the area be maintained in such a manner as to prevent unsightliness to the adjacent area.

9. That a completely and permanently landscaped setback strip of at least fifteen (15) feet be installed around those portions of the junkyard perimeter which border public rights-of-way. All area between the property line and the required wall or fence shall be landscaped. The primary landscaping materials used in the setback strip shall be trees, shrubbery, ground cover, hedges, lawn and other live planting materials. The land owners shall be responsible for providing, protecting and maintaining all landscaping materials in healthy growing condition.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOTS 1 AND 2 OF BLOCK 1, SLOVEN SECOND SUBDIVISION, TRACT 335 OF THE SW¼ OF SECTION 2, LINCOLN TOWNSHIP, AND AN UNPLATTED ADJACENT TRACT IN THE SW¼ OF SECTION 2, LINCOLN TOWNSHIP (225 SOUTH 26TH STREET)

Chairman Yeager called for the public hearing for a special use permit to allow a junkyard on Lots 1 and 2 of Block 1, Sloven Second Subdivision, Tract 335 of the SW¼ of Section 2, Lincoln Township, and an unplatted adjacent tract in the SW¼ of Section 2, Lincoln Township (225 South 26th Street). The property is located south of East Main Avenue along the east side of 26th Street South, located south of the railroad tracks and north of the Bismarck Public Works Building.

Mr. Greenquist provided an overview of the request and listed the following findings for the special use permit:

1. The proposed use with the recommended conditions is in harmony with the purpose and intent of Title 14 (Zoning) and with the master plan of the City of Bismarck.
2. The proposed use with the recommended conditions will not adversely affect the health and safety of the public and the workers and residents in the area, and will not be detrimental to the use or development of adjacent properties or of the general neighborhood.
3. The proposed use with the recommended conditions will comply with all special regulations established by Section 14-03-08(i) of the Bismarck Zoning Ordinance, and all special conditions necessary for the safety and welfare of the public.

Mr. Greenquist then provided the following additional information:

1. A Special Use Permit was approved for this site in 1990 for a junkyard not to exceed 5-acres. Because the junkyard gradually expanded to 8.7-acres, a new Special Use Permit was needed to bring the facility into compliance. A second Special Use Permit was approved for this site on October 22, 2008. The 2008 approval was for 8.7-acres and included additional conditions.
2. According to Section 14-03-08(h) of the Bismarck Ordinance, a special use must be put into use within twenty-four (24) months of the granting of the special use or it shall lapse and the landowner must re-apply. The required conditions of the 2008 approval have not been implemented and the 24-month period expired on October 22, 2010.
3. A temporary permit for a 12' x 60' construction office was issued on June 17, 2008 for a period of one year (until May 1, 2009). That permit was extended to December 31, 2009 when it expired.

4. On October 11, 2010, the applicant re-applied for a new Special Use Permit. The applicant proposes the following changes from the conditions of the 2008 approval:
 - a) The building was to be located at the southwest corner of the property. The applicant wishes to change the location and put the new building at a more centralized location within the junkyard.
 - b) As required by ordinance, the fence was to be located 15-feet back from the property line. The applicant wishes to move the fence 8-feet closer to the street, 7-feet back from the property line.
 - c) In accordance with City standards, the new sidewalk was to be located 10-feet back from the curb. The applicant wishes to locate the sidewalk 2-feet away from the curb.
 - d) As a special condition of the 2008 approval, the landscaping trees to be located along 26th Street and at the northwest corner of the property were to be a minimum of 8-feet tall at time of planting. The applicant wishes to install trees of 4-feet in height.
5. Previous conditions of the 2008 approval that the applicant did not propose changing are:
 - a) The finished grade at the bottom of the new fence will be equal to or higher than the top of the curb.
 - b) Subject to building permit approval, a fence of 8-feet in height will be installed with color and material to be reviewed by the planning staff and Planning Commissioner Waldoch.
 - c) Tree species are subject to approval by the City Forester.
 - d) Fire hydrant location and interior access route are subject to approval by the Bismarck Fire Chief. Fire hydrant installation was to occur within 5-years of approval of the Special Use Permit.
 - e) Development of the site shall conform to the site plan as approved by the Planning Commission.
6. The provisions for approval of a Special Use Permit for a junkyard as specified in 14-03-08(i) are as follows:
 - a) A junkyard may be permitted in a MA or MB Industrial District as a Special Use.
 - b) The total area of the premises shall be a minimum of two (2) acres and a maximum of five (5) acres in size.
 - c) No burning of salvaged material or junk will occur on the premises.

- d) The buildings comply with the setback requirements of the City zoning regulations.
- e) The entire junkyard will be enclosed with a fence eight (8) feet in height.
- f) All junk will be stored within the fenced area.
- g) The operation is not located immediately adjacent to any arterial street or highway. In 2008 26th Street was classified as a collector street; it is currently in the process of being reclassified as a minor arterial street.
- h) The operation will be conducted and the area be maintained in such a manner as to prevent unsightliness to the adjacent areas.
- i) A completely and permanently landscaped setback strip will be installed at the west and northwest edges of the junkyard. After fill material is added to elevate the area, trees will be planted between the new sidewalk and the new fence and at the northwest corner of the site. The land owner and applicant shall be responsible for providing, protecting and maintaining all landscaping materials in healthy growing condition.
- j) Building permit approvals are subject to the standard site plan review process and approval of a storm water management plan.

Mr. Greenquist said that based on the above findings and additional information, staff recommends a waiver of the 5 acre maximum and approval of the special use permit to allow a junkyard on operation located on 8.67 acres, with the following eight conditions:

1. Fill material will be added to elevate the low areas along the west edge and at the northwest corner of the site to allow the new fence and trees to be installed on elevated ground to better screen the site from 26th Street. Finished grade elevations at the bottom of the fence shall be equal to or higher than the top of the curb along the east side of 26th Street South. A grading plan is subject to approval by City Engineering;
2. To allow adequate room for snow storage and to allow for adequate safety separation between traffic and pedestrians, the new sidewalk shall be located not less than 10-feet from the curb (see attached email comments from the Director of Public Works and the City Traffic Engineer);
3. To allow adequate room for tree growth between the sidewalk and the fence, to accommodate the sidewalk location as indicated in #2 above, and to be consistent with the ordinance requirement, the fence shall be located 15-feet back from the property line;
4. Consistent with the 2008 approval, fencing color and material is subject to review and approval by staff and Planning Commissioner Waldoch prior to issuance of a building permit;

5. Consistent with the 2008 approval, trees shall not be less than 8-feet tall at time of planting. Tree species will be subject to approval by the City Forester;
6. Fire hydrant location and interior access route are subject to approval by the Bismarck Fire Chief prior to issuance of the building permit. Fire hydrant installation will occur within 3-years of approval of the Special Use Permit. (note the 2008 approval allowed a 5-year grace period);
7. A new sidewalk along the east side of 26th Street will be installed to city specifications, and;
8. The applicant shall comply with all of the above conditions and install all improvements within one year of the date of approval of the Special Use Permit.

There was discussion and sharing of ideas regarding setbacks, fill material, the sidewalk, the fence and landscaping between the Bismarck Planning & Zoning Commissioners.

Chairman Yeager opened the public hearing for the special use permit to allow a junkyard on Lots 1 and 2 of Block 1, Sloven Second Subdivision, Tract 335 of the SW $\frac{1}{4}$ of Section 2, Lincoln Township, and an unplatted adjacent tract in the SW $\frac{1}{4}$ of Section 2, Lincoln Township (225 South 26th Street).

Charlie Whitman, City Attorney, explained that Northern Metal Recycling has been around for a long time and essentially they are operating as a non-conforming use. He said that Northern Metal Recycling does not need anything from the City unless they want to change how they are operating, build a structure or obtain a building permit. Mr. Whitman stated that Northern Metal Recycling applied for a special use permit because they are interested in making changes and if the changes are not made in a certain amount of time, the special use permit lapses. He concluded by saying there is not an enforcement issue because the City cannot make Northern Metal Recycling use the special use permit. It is granted as a privilege.

Dave Patience, Swenson, Hagen & Co., addressed his concerns with the proposed sidewalk, the fence, landscaping, fill material and amount and the expense of all the proposed conditions. Mr. Patience also presented some other options to the proposed conditions.

Scott Helberg, Northern Metal Recycling, stated that he understands some of the conditions of the special use permit, but would like some consideration to changing other conditions to help keep the costs down. He would like to work with the City in coming up with a compromise that both parties can agree upon and be satisfied with, so the improvements can be made.

Chairman Yeager closed the public hearing.

After some more discussion regarding setbacks, fill material, the fence and landscaping, the Bismarck Planning & Zoning Commissioners reached a general consensus.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve waiver of the 5 acre maximum and the special use permit to allow a junkyard on operation located on 8.67 acres, with the following eight conditions:

1. Fill material will be added to elevate the low areas along the west edge and at the northwest corner of the site to allow the new fence and trees to be installed on elevated ground to better screen the site from 26th Street. Finished grade elevations at the bottom of the fence shall be equal to or higher than the top of the curb along the east side of 26th Street South. A grading plan is subject to approval by City Engineering;
2. The improvements along the west edge of the property are subject to dimensional requirements: a) The distance from the face of the curb to the sidewalk will be 10 feet, leaving 9½ feet of grass boulevard between the back of curb and the sidewalk, b) The sidewalk will be 6 feet wide with the east edge of the sidewalk aligned on the property line. The property line is 16 feet back from the face of the curb, c) The fence will be located no less than 7 feet beyond the sidewalk and property line. This places the fence at 23 feet back from the face of the curb;
3. Prior to obtaining a building permit for the fence, the Bismarck Board of Adjustment must approve a variance to reduce the front yard setback distance;
4. For pedestrian safety and for better truck-driver visibility, the fence on either side of the entrance road shall be tapered back (to allow for sight triangles as defined in Section 14-02-03 of the Bismarck Zoning Ordinance);
5. Fencing color and material is subject to review and approval by staff and Planning Commissioner Waldoch prior to issuance of a building permit;
6. A final landscape plan for the site, including the location, species and size of plant material to be installed, will be developed by a joint effort between the applicant's consultant and City staff;
7. Fire hydrant location and interior access route are subject to approval by the Bismarck Fire Chief prior to issuance of the building permit. Fire hydrant installation will occur within 3-years of approval of the Special Use Permit;
8. A new sidewalk along the east side of 26th Street will be installed to city specifications; and

9. The applicant shall comply with all of the above conditions and install all improvements within one year of the date of approval of the Special Use Permit (by November 17, 2011).

Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Hegedus, Juhala, Selzler, Yeager, Waldoch and Warford voting in favor of the motion.

From the applicant —

Northern Metal Recycling Facility – Variance Application

The Northern Metal Recycling Facility located on 26th Street in Bismarck has applied for and been granted a special use permit for the construction of a new building. As part of the permit, the Bismarck Planning and Zoning Commission has required that a new fence be constructed to better screen the yard from public right of way. Because of the topography of the site, a fence would not be effective unless fill material was used to bring the elevation of the site up. That being said, the Commission also required that fill material be used to elevate the ground elevation so that it is approximately the same elevation as the street.

Based on the recommendations from The Bismarck Planning and Zoning Commission, Northern Metal Recycling is requesting a variance on the front yard setback for the fence. They are requesting that the setback for the fence be reduced from 15' to 7'. This is to reduce the amount of fill material necessary on this site and maintain the existing storm-water drainage way.

Please see the attached approval letter from the Bismarck Planning & Zoning Commission.



Community Development Department

November 29, 2010

Shirley Billington
423 East Denver Avenue
Bismarck, ND 58504

Dear Ms. Billington:

Please be advised that the Bismarck Planning & Zoning Commission, at its meeting of Wednesday, November 17, 2010, approved your request for a special use permit for a junkyard at 225 South 26th Street, including Lots 1-2 of Block 1, Sloven Second Subdivision, Tract 335 of the southwest quarter of Section 2 and an unplatted adjacent tract in the southwest quarter of Section 2, Township 138 North, Range 80 West. The approval included a waiver of the 5-acre maximum allowing the junkyard to operate on the 8.67-acres described above. The Planning & Zoning Commission approval also included the following conditions:

1. Fill material will be added to elevate the low areas along the west edge and at the northwest corner of the site to allow the new fence and trees to be installed on elevated ground to better screen the site from 26th Street. Finished grade elevations at the bottom of the fence shall be equal to or higher than the top of the curb along the east side of 26th Street South. A grading plan is subject to approval by City Engineering.
2. The improvements along the west edge of your property are subject to dimensional requirements:
 - a. The distance from the face of the curb to the sidewalk will be 10 feet, leaving 9½ feet between the back of curb and the sidewalk.
 - b. The sidewalk will be 6 feet wide with the east edge of the sidewalk aligned on the property line. The property line is 16 feet back from the face of the curb.
 - c. The fence will be located no less than 7 feet beyond the sidewalk and property line. This places the fence at 23 feet back from the face of the curb.
3. Prior to obtaining a building permit for the fence, the Bismarck Board of Adjustment must approve a variance to reduce the front yard setback distance. The front yard setback for your property is 15 feet. Your front yard is along 26th

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Street where the fence will be built. You will need to apply for a variance to reduce the front yard building setback distance from 15 feet to 7 feet.

4. To promote better pedestrian/driver visibility, the fence on either side of the entrance road shall be constructed to allow for sight triangles as required by Section 14-03-05(3) of the Bismarck Zoning Ordinance.
5. Fencing color and material are subject to review and approval by staff and Planning Commissioner Waldoch prior to issuance of a building permit.
6. A final landscape plan for the site, including the location, species and size of plant material to be installed, will be developed by a joint effort between the applicant's consultant and City staff.
7. Fire hydrant location and interior access route are subject to approval by the Bismarck Fire Chief prior to issuance of the building permit. Fire hydrant installation will occur within 3-years of approval of the Special Use Permit. (by November 17, 2013)
8. A new sidewalk along the east side of 26th Street will be installed to city specifications.
9. The applicant shall comply with all of the above conditions and install all improvements within one year of the date of approval of the Special Use Permit (by November 17, 2011).

Please be reminded that the following items are also required prior to construction:

1. You must obtain a variance from the City to reduce the front yard setback of the fence along 26th Street from 15 feet to 7 feet.
2. The final site plan must be submitted and approved through the City's site plan review process. The site plan application requirements include submittal of a landscape plan and storm water management plan in conjunction with the site plan. The required grading plan and information on the fencing material may also be submitted at this time.
3. You must obtain a building permit from the Building Inspections Division.

For information on submitting your site plan, please contact Jason Tomanek at 355-1849 or at jtomanek@nd.gov. For information on submitting your grading plan, please contact Dale Heinert at 355-1514 or at dheinert@nd.gov. For information on submitting your storm water management plan, please contact Linda Oster at 355-1517 or at loster@nd.gov. For information on obtaining a building permit, please contact Ray Ziegler at 355-1475 or at rjziegle@nd.gov.

To apply for a variance, to schedule the meeting on tree installation standards and for any other questions, please contact Gregg Greenquist at 355-1845 or at ggreenquist@nd.gov.

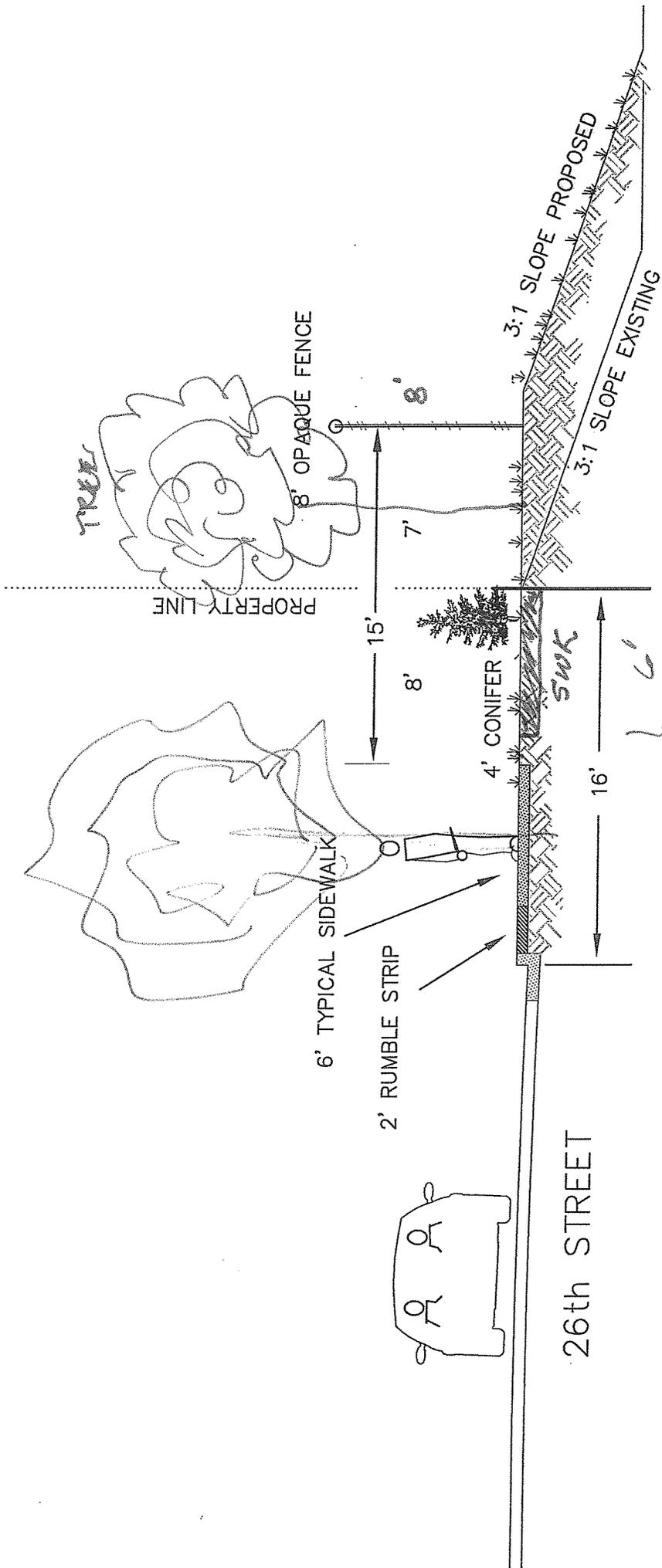
Sincerely,

A handwritten signature in black ink, appearing to read 'C.D. Hokenstad', with a long horizontal flourish extending to the right.

Carl D. Hokenstad, AICP

CDH/kdg

cc: Thomas Swafford
Scott Lunneberg
Dave Patience
Commissioner Waldoch
Mel Bullinger
Dale Heinert
Linda Oster
Ray Ziegler
Jason Tomanek



**CITY OF BISMARCK/ETA & BURLEIGH COUNTY
APPLICATION FOR APPROVAL OF A VARIANCE
WRITTEN STATEMENT**

1. Property Address or Legal Description: 225 S. 26th Street - Bismarck, North Dakota

2. Location of Property: City of Bismarck ETA Burleigh County

3. Type of Variance Requested: Front Yard Setback

4. Applicable Zoning Ordinance Chapter/Section: 14-04-14.6

5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

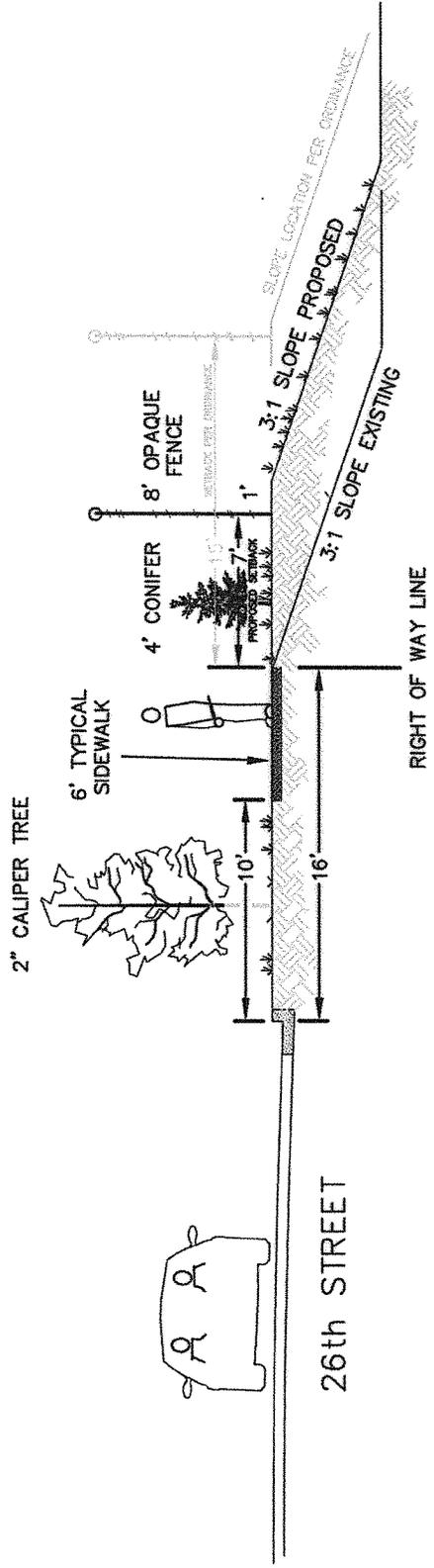
This site is +4' below the elevation of the adjacent 26th Street. An 8' screening fence is required to block views of the recycling facility from the street. City staff required that the site be elevated +4' so that the fence better screens the facility. At this time we are requesting that the front yard setback be reduced from 15' to 7' to reduce the amount of fill required on the site and to maintain the existing stormwater drainage coordidor.

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

Without the front yard variance setback, the stormwater conveyance channel would have to be redirected further east into the yard thereby reducing the amount of usable property. Without the front yard setback variance, an unnecessary financial burden would be placed on the owner to place and grade an excessive amount of fill material to meet the grading requirements of the City staff.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

The requested variance is the minimum necessary to allow proper drainage of the site while also providing adequate room for trees to grow where required adjacent to 26th street. It should be noted that this configuration was reviewed by the City Planning Department and approved by the City Planning & Zoning Commission.



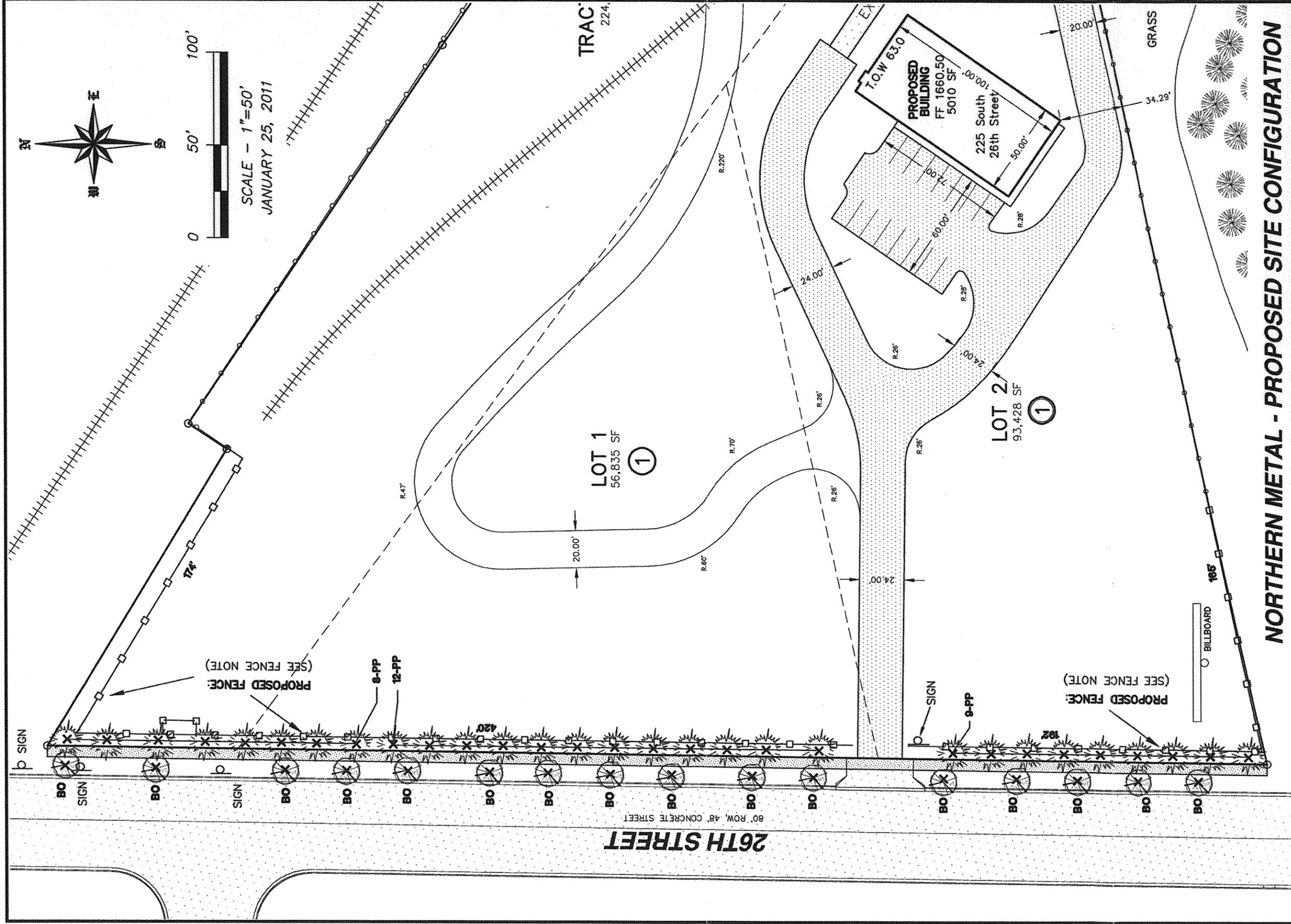
NORTHERN METAL - TYPICAL 26TH STREET CROSS SECTION

DRAWN BY: JLA
 CHECK BY: DP
 DATE: _____
 CADD FILE: _____

SWENSON, HAGEN & COMPANY P.C.
 949 Basin Avenue P.O. Box 1185
 Bismarck, North Dakota, 58501
 sheng@swensonhagen.com
 Phone (701) 223-2900
 Fax (701) 223-2936

Surveying
 Hydrology
 Land Planning
 Civil Engineering
 Landscape & Site Design
 Construction Management

EXHIBIT
C-2



NORTHERN METAL - PROPOSED SITE CONFIGURATION

DRAWN BY: JLA
 CHECK BY: DP
 DATE: _____
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SH & Co.
 Surveying
 Hydrology
 Land Planning
 Civil Engineering
 Landscape & Site Design
 Construction Management

EXHIBIT
C-1

6"x6" COLUMNS 24' ON CENTER

6"x6" COLUMNS 24' ON CENTER

PONDEROSA PINE 20' ON CENTER

PONDEROSA PINE 20' ON CENTER

BUR OAK 33' ON CENTER

BUR OAK 33' ON CENTER

