



City of Stone Mountain  
875 Main Street  
Stone Mountain, GA 30083

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## STAFF ANALYSIS AND REPORT

**OWNER/APPLICANT:** Jairo de Jesus Silva Torres

**LOCATION:** 844 Sheppard Way  
(Parcel ID: 18 073 01 135)

**CURRENT ZONING/USE:** R-2: Traditional Residential

**PROPOSED ZONING/USE:** R-2: Traditional Residential

**REQUEST:** Variance from Section 28-545 to allow for an encroachment into the 50-foot undisturbed, natural stream buffer and the 75-foot impervious surface stream buffer to construct a 6-foot wooden fence.

**ZONING/ADJACENT LAND USE:**

North	R-2: Traditional Residential – Single-Family
South	R-2: Traditional Residential – Single-Family
West	R-1: Single-family Residential – Townhomes
East	R-2: Traditional Residential – Single-Family

**MEETING INFORMATION:**

Planning & Zoning Commission:	09/16/2024 – 6:30 P.M.
Mayor & City Council 1 <sup>st</sup> Read:	10/15/2024 – 6:30 P.M.
<b>Mayor &amp; City Council Public Hearing/Vote:</b>	<b>11/06/2024 – 6:30 P.M.</b>

**RECOMMENDATION:**  
Staff recommends approval with conditions.

**BACKGROUND:**

**November 6, 2024**

**To: City of Stone Mountain Planning Commission**

**From: Richard Edwards, AICP**

**Subject: The applicant is requesting a variance from Section 28-545 to allow for an encroachment into the 50-foot undisturbed, natural and 75-foot impervious surface stream buffers to construct a 6-foot wooden fence.**

**Background:**

The existing single-family home was constructed in 1982, which was prior to the City of Stone Mountain Stream Buffer Protection Ordinance being adopted in April of 2005. The applicant purchased the property in June of 2024 and wishes to install a wooden panel fence to allow their dogs to have space outside.

There is an ephemeral stream that cuts through most of the southern portion of the property that restricts development on over 80% of the lot. The 50-foot impervious surface buffer comes all the way up to the end of the steps on the side of the house and the 75-foot impervious surface buffer comes up to the front door of the house. The red line below depicts the approximate location of the 75-foot impervious buffer line and the blue/green line shows the approximate location of the 50-foot undisturbed, natural stream buffer line. Staff measured from the top of the stream bank.

The applicant stated that there was an existing wire fence along the side and rear yards.



The applicant is requesting this variance to address concerns for security and privacy of personal goods, as the owner keeps equipment in their vehicle for work purposes, and they are aware of recent break-ins in the neighborhood. Along with the protection of property, the applicant also has a dog that they would like to have space to run out in the yard.



**Analysis:** Pursuant to Article III of the City of Stone Mountain Stream Buffer Protection Ordinance, Staff has reviewed the variance requests in accordance with the required review criteria.

**A. There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape or topography.**

The home was constructed before the stream buffer regulations were adopted by the city. Approximately 50% of the existing structure is located within the 75-foot impervious surface stream buffer and all the existing driveway is located within the 50-foot undisturbed, natural stream buffer. However, this variance request does not directly relate to the size, shape, nor topography of the lot.

**B. The application of the zoning ordinance to the particular piece of property would create an unnecessary hardship.**

The strict application of the zoning ordinance could be considered an unnecessary hardship. The property owner would not be allowed to fence in any portion of side yard and most of the front and rear yards.

**C. Such conditions are peculiar to the particular property involved.**

These conditions are peculiar to this particular property, as there are very few existing developed properties where the stream buffer encompasses over 80% of the developable land.

**D. Such conditions are not the result of any actions of the property owner.**

This is a direct result of the property owner's desire to have a fence with their home that was placed in a stream buffer. However, this lot was developed prior to the adoption of the Stream Buffer Protection Ordinance and a fence would be considered minimal development with the proposed staff conditions.

**E. Relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of this zoning ordinance.**

It is not anticipated that the proposed fence would cause detriment to the public good. However, this request does not fall within the intent of the Stream Buffer Protection Ordinance.

**Recommendation:**

Pursuant to Article III of the City of Stone Mountain Stream Buffer Ordinance, Staff has reviewed the request in accordance with the required review criteria and recommends **APPROVAL** of the variance from Section 28-545 to construct a wooden fence within the 50-foot undisturbed, natural stream buffer and the 75-foot impervious surface stream buffer with the following condition:

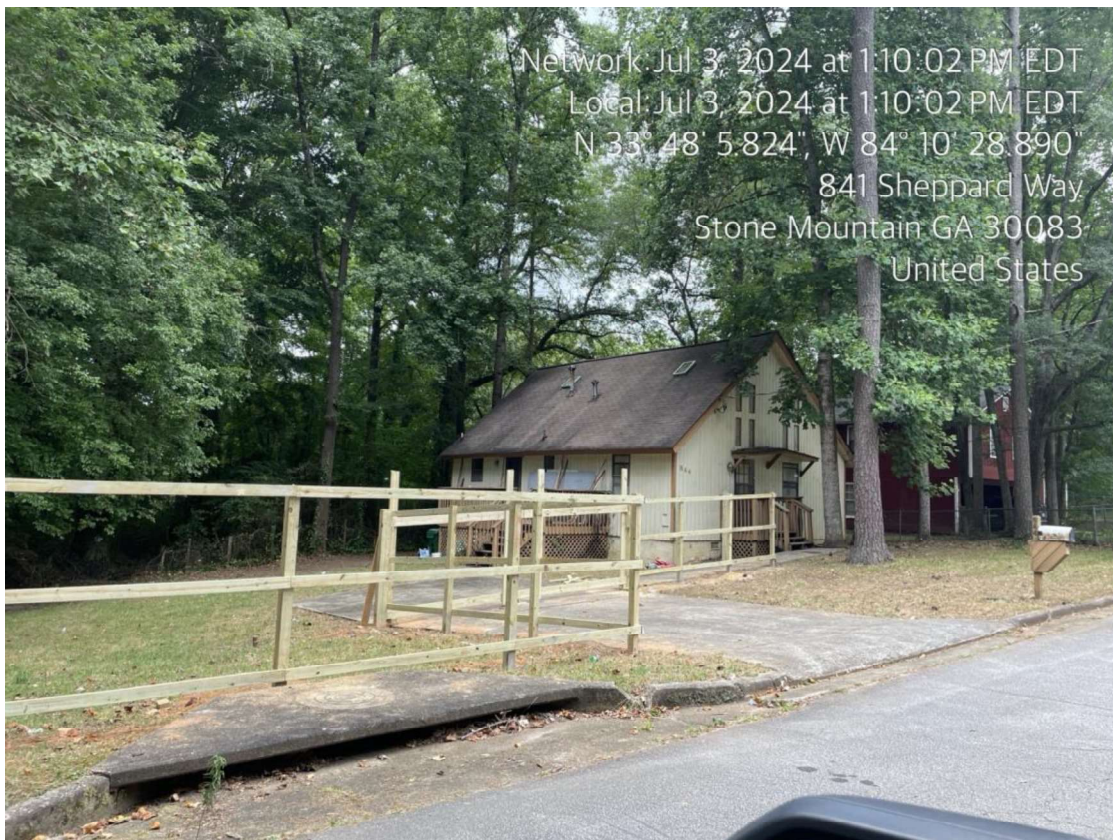
1. The fence shall be a picket style fence with at least 50% open, vertically, to allow for water flow.

2. The fence shall be setback outside of the right-of-way, which is 25 feet from the centerline of Sheppard Way.
3. The fence shall be located outside of the 10-foot drainage easement along Sheppard Way.
4. Applicant acknowledges that they have been notified of the presence of a 10-foot-wide sewer line and easement on-site to which Dekalb County has access rights. Applicant accepts full responsibility for any cost associated with the reconstruction or repair of the fence should Dekalb County require removal of the fence (in whole or in part) for sewer line access."

The Planning Commission recommended **APPROVAL with staff conditions** at their September 16, 2024 regularly scheduled meeting.













## APPLICATION FOR VARIANCE

City of Stone Mountain  
875 Main Street  
Stone Mountain, GA 30083

Date Received: \_\_\_\_\_

PERMIT#: \_\_\_\_\_  
(Office Use Only)

### APPLICANT INFORMATION

Applicant Name: Jairo de Jesus Silva Torres  
Address: 689 Garden Walk Dr  
Phone: 4044213374 Cell: 4044760119 Fax: \_\_\_\_\_  
Email Address: almagiron7@gmail.com

### OWNER INFORMATION (If different from Applicant)

Owner Name: T.I.S. FLOORING, INC.  
Address: 689 Garden Walk Dr  
Phone: 4044213374 Cell: 4044760119 Fax: \_\_\_\_\_  
Email Address: jairo\_.silva@hotmail.com

### PROPERTY INFORMATION

Address: 844 Sheppard Way  
Parcel ID#: 1807301135 Land Lot: \_\_\_\_\_ District: \_\_\_\_\_

Office use only:  
CASE # \_\_\_\_\_

Applicant signature: 

Date: 08/05/2024



## VARIANCE REQUEST CONSIDERATIONS

Applicant: Jairo De Jesus silva Torres

*Analyze the impact of the variance request with the following questions:*

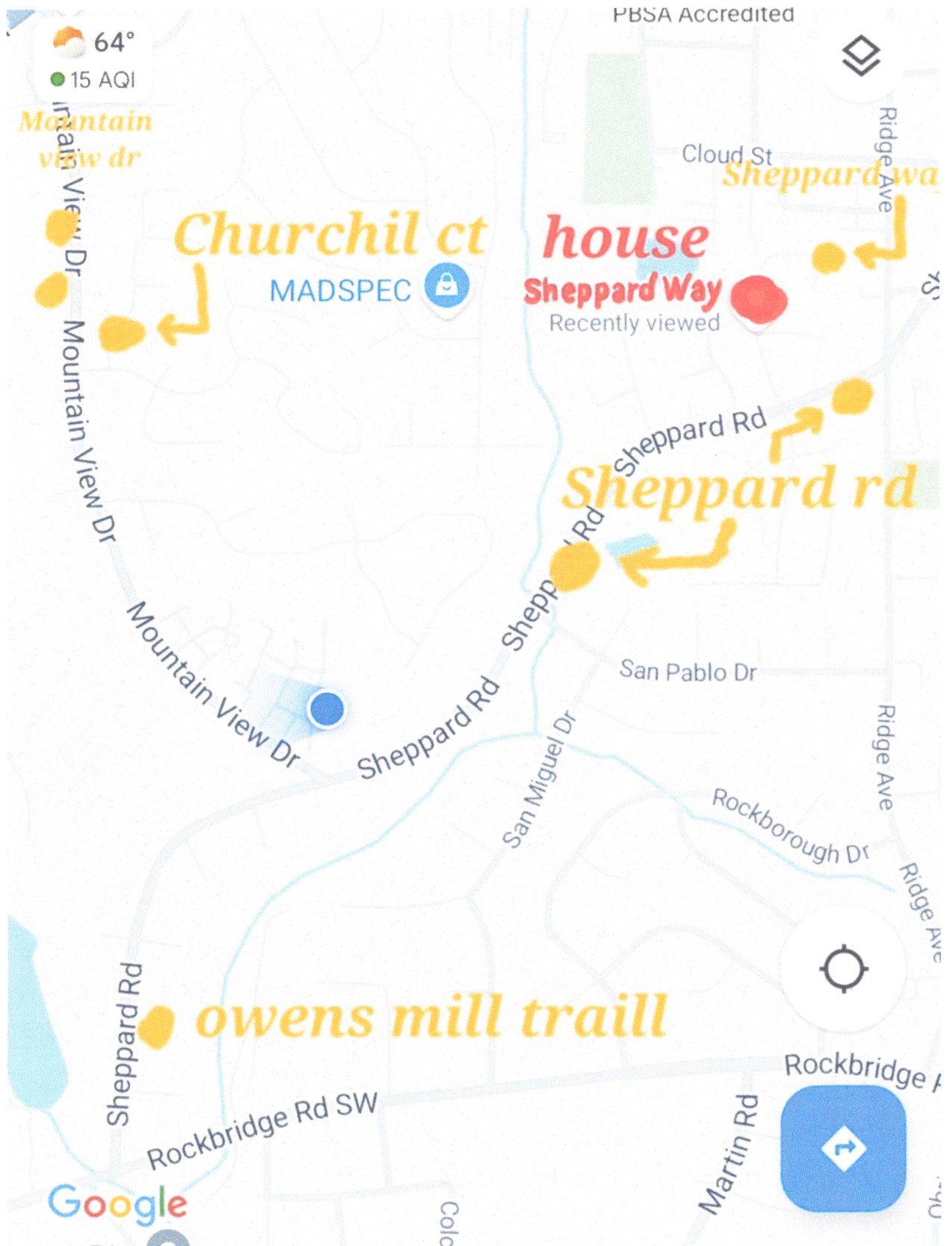
1. There are extraordinary and exceptional conditions pertaining to the particular property in questions because of size, shape, and/or topography. there is a river bank crossing the middle of the land and the house is located at the left back side of the land. we dont have any back yard, we are proposing this front side fence to be able to have some private yard space
2. The application of the zoning ordinance would create an unnecessary hardship. no. since we are trying to respect the right of way at the street line pulling back the front side fence 3 more feet were it is now, for a total of 10 feet from street line to the the fence
3. Such conditions are peculiar to the particular piece of property involved. no. since there is more properties in this area similar to the fence we are proposing
4. Such conditions are not the result of any actions of the property owner. no
5. Relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of this zoning ordinance? no. we are trying to respect the right of way at the street line and the river bank that is crossing our land

## **Letter of intent**

to keep our 6 ft. fence on the right front side yard. Our house on the land is located on the bottom left side of the land which gives us only the front right side yard to have as a private yard. There is also a river bank running through the middle of the land and cuts our land in half. We would like to keep our 6ft fence even if we have to push it back 10 ft. from the street line and out of the right of way. Please see attachment for further explanation Thank you.



\* houses with same front fence as our proposal



1 mile radius

Confirm  
2nd Steady



# Sheppard Way





Sheppard RD





Owens Mill Tr





Churchil et





mountain View Dr

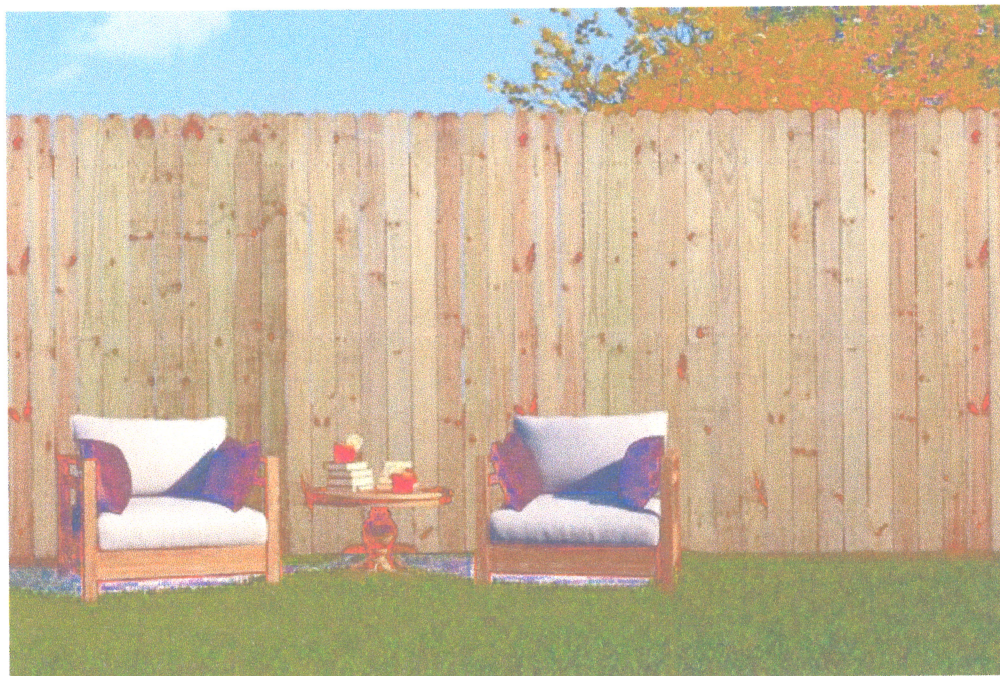




Mountain View Dr







almagiron~~7~~<sup>ron</sup>@gmail.com  
Jairo — Silva@~~hotmail~~.com





WATER FLOW







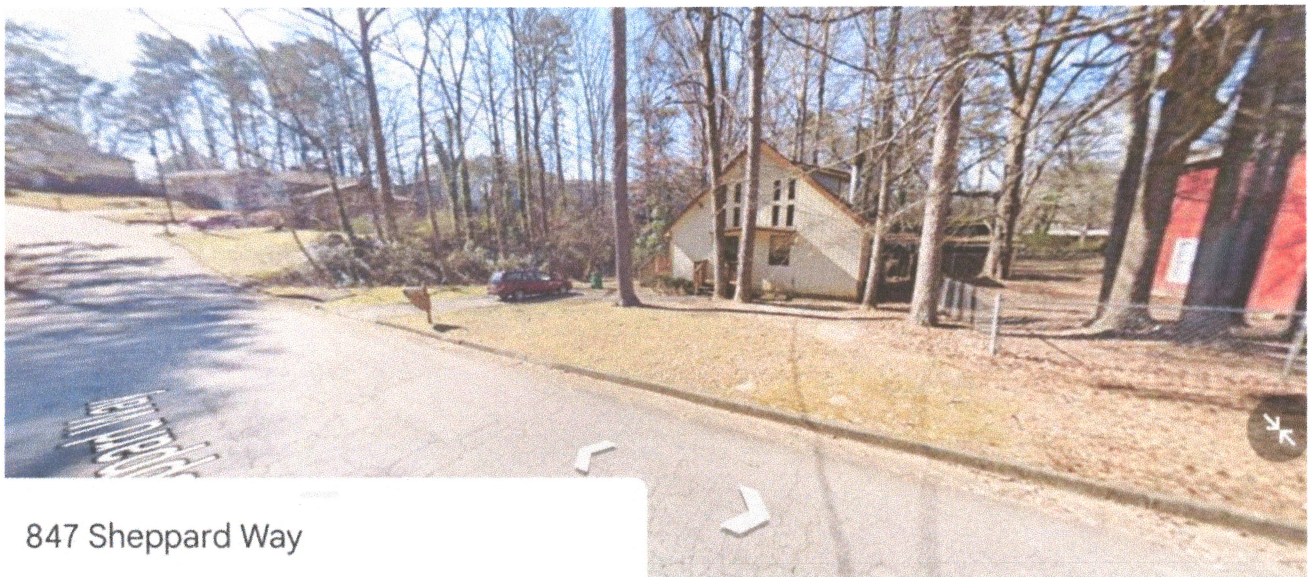




841 Sheppard Way



841 Sheppard Way



847 Sheppard Way



tail  
ings Dr

84°  
52 AQI

*fence proposal*  
*river bank*  
*house*  
*Land Lot*



836 Sheppard way

844 Sheppard Way  
Recently viewed

850 Sheppard way

Sheppard Way ↑

*driveway*

Sheppard Way

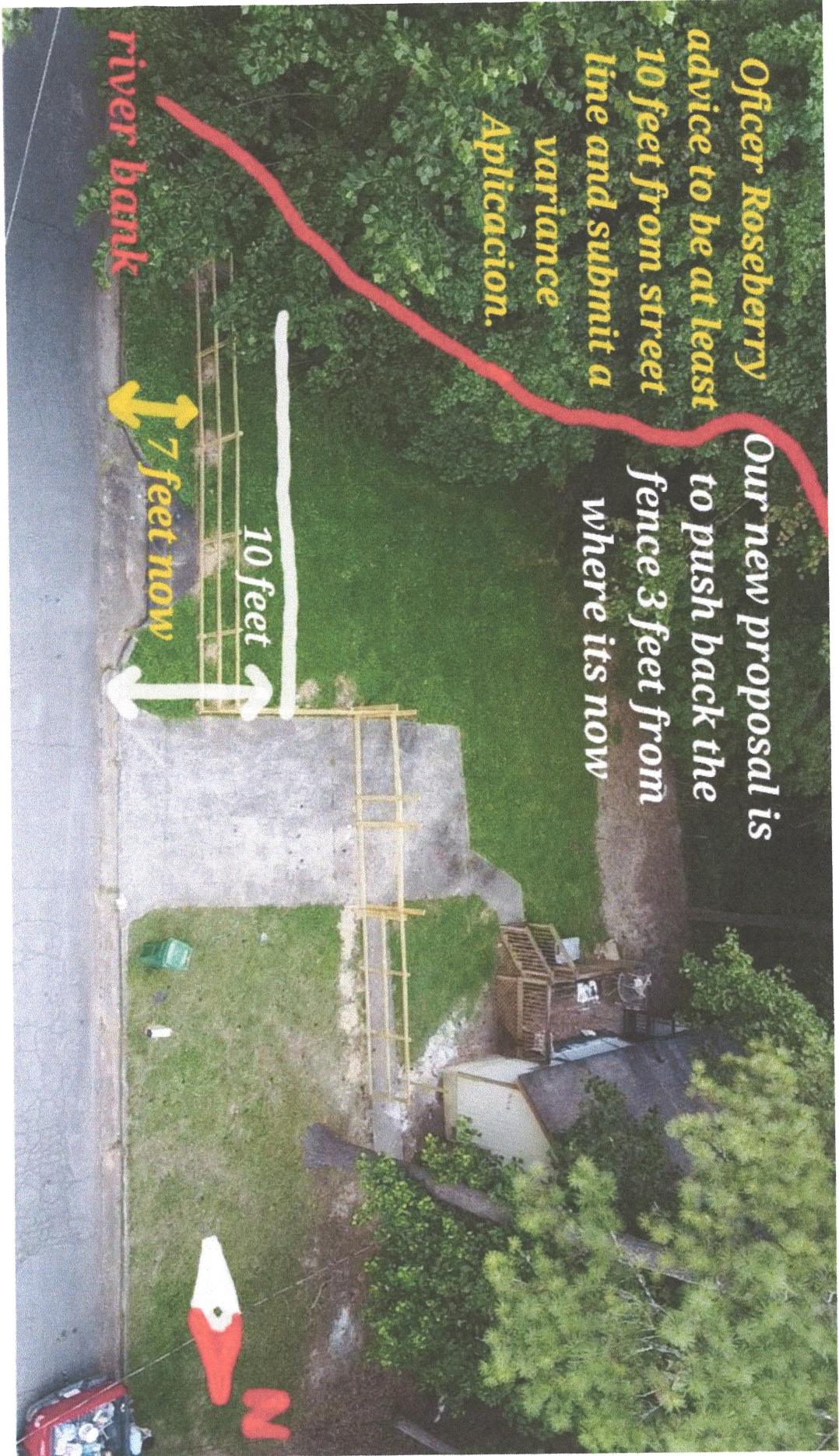




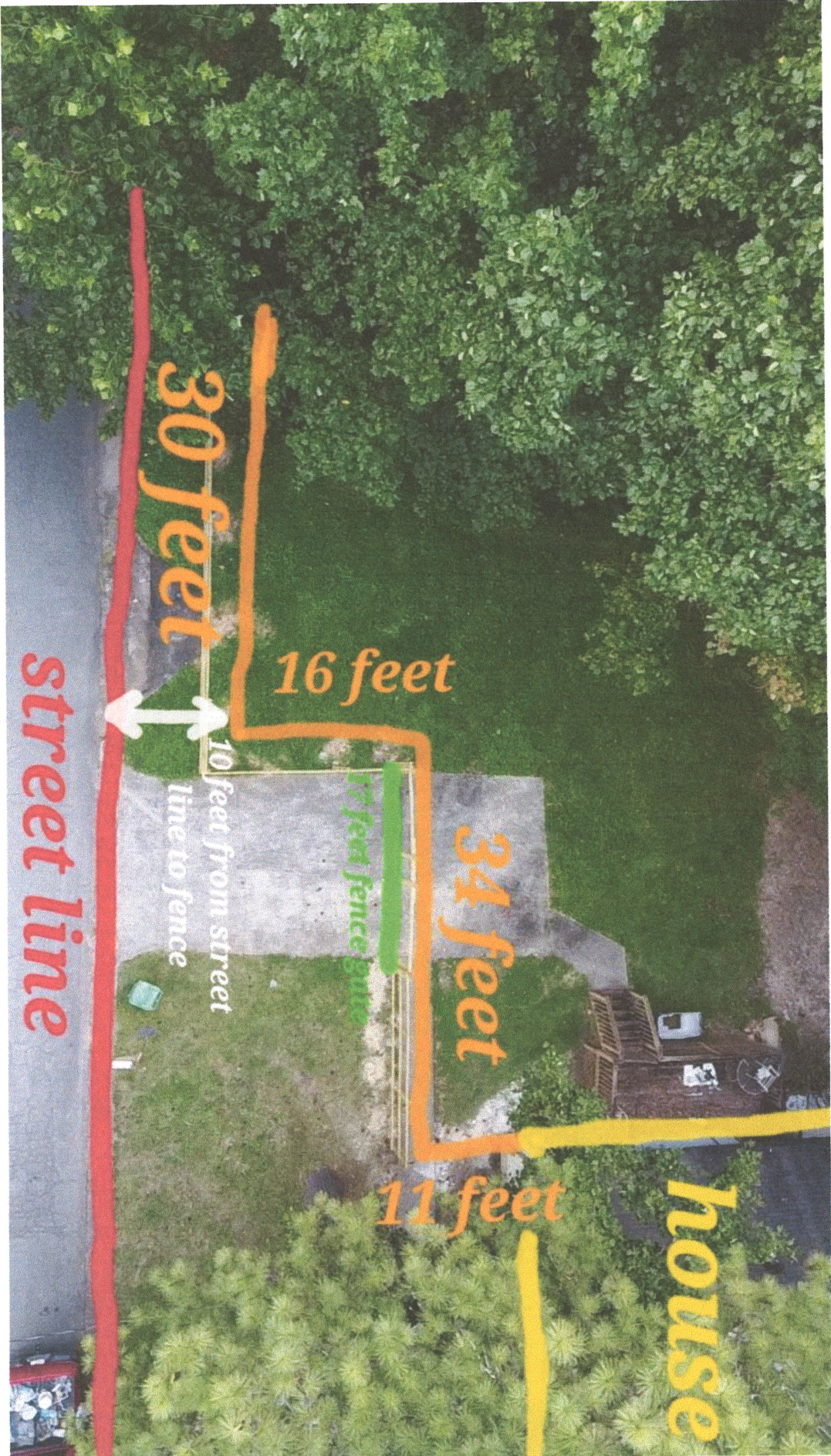
**Officer Roseberry  
advice to be at least  
10 feet from street  
line and submit a  
variance  
Application.**

**Our new proposal is  
to push back the  
fence 3 feet from  
where its now**

**river bank**







30 feet

16 feet

34 feet

11 feet

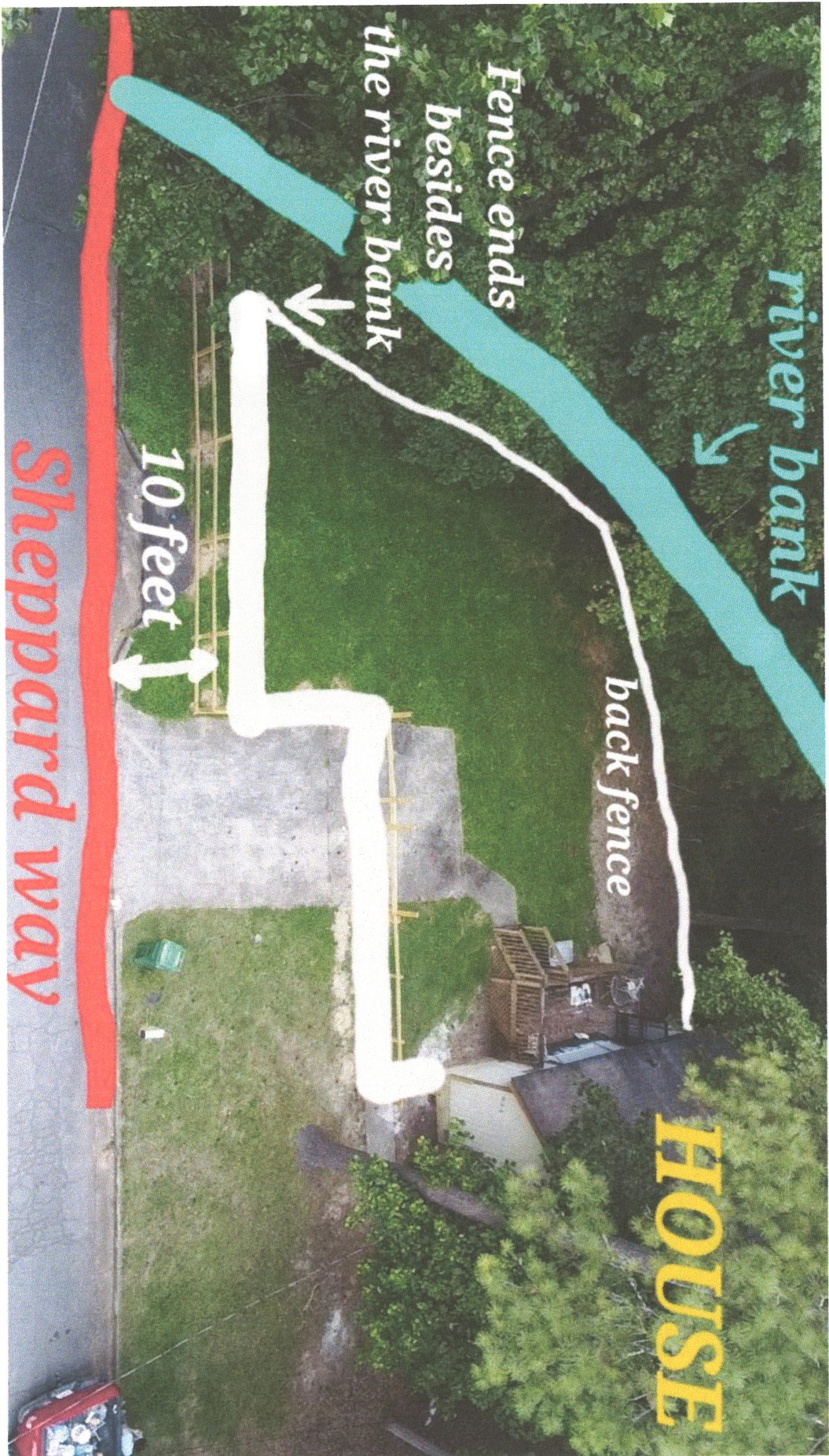
street line

house

10 feet from street line to fence

17 feet fence guide





river bank

Fence ends besides the river bank

back fence

10 feet

Sheppard way

HOUSE