



Notice of Zoning Violation

HAND DELIVERED

November 12, 2009

William D. Bowden
305 SW Maynard Road
Cary, NC 27511-4405

RE: Residential Signage at 305 SW Maynard Road, Cary, NC
(Case #09-ZV-196) (Real ID #0082927)

Dear Mr. Bowden:

We need you to remove or reduce the size and change the color of the sign on your house, or choose another form of signage that meets Town standards.

As you will recall, Town staff visited with you on July 31, 2009 to let you know that the large sign you had painted on the front of your home was contrary to our community's appearance standards and created traffic safety concerns. As part of this visit, you received a notice of zoning violation stating that the size of the sign exceeded the height and width permitted by the Town of Cary Land Development Ordinance (LDO). We asked you to remove the sign to correct the violation. Since receiving the July notice and after several additional contacts by the Town, you've informed Mike Bajorek, Assistant Town Manager, of your desire to keep the sign in place as is. On November 10, 2009, another inspection confirmed that the sign still remains.

Without a doubt, the citizens of Cary value the right to free speech, and they count on their government to preserve and protect that right. Cary citizens also value an attractive, safe community, and they count on their government to preserve and protect these values as well.

To this end, your fellow Cary citizens and elected representatives have created, and over the years refined, the Town of Cary LDO. The LDO helps maintain and protect our community's appearance standards, including regulating and enforcing the size, height, and location of signs throughout the Town's zoning jurisdiction. It also addresses concerns such as traffic safety.

With regards to protecting your right to speak your mind through signage, the LDO allows several alternatives to your current sign, which we encourage you to pursue. These options include:

- up to two residential ground signs not to exceed five square feet and 42 inches in height; and
- a wall sign not to exceed two square feet; and
- other sign types acceptable under the LDO.

Please feel free to contact me at any time to work with us to express yourself appropriately in Cary

TOWN OF CARY

according to community standards. Your Town of Cary Planning Department staff welcomes meeting with you to develop sign options that will comply with our town-wide regulations.

Additionally, you may communicate in person, by phone, by e-mail, or by letter with Town Council members, officials, and staff. You may also speak at the Public Speaks Out portion of a regular Town Council meeting.

Until then, and within seven calendar days of your receipt of this notice, we need for you to support your community's sign rules and take the required corrective action to remove the sign currently painted on your house. As stated earlier, you may replace your sign with sign(s) that meet LDO requirements. Please note that this notice supersedes and replaces the July 31st Notice of Violation.

As already stated, your current sign is in violation of residential wall sign requirements included in Section 9.3.2 (X) (2) (a) 1 (Wall Signs, Residential/Institutional). The sign also violates Section 9.8.3 (B) (Sign Colors) since the use of high intensive or fluorescent colors is not allowed. Your failure to remove the sign is a violation of Section 11.3.7 (Failure to Remove Signs).

Please understand that your failure to follow these LDO requirements will leave the Town with no other choice than to pursue additional enforcement measures including, but not limited to, issuing civil citations – something we're sure no one would like to see happen. Please contact me at (919) 462-3882 once the sign is removed to close this violation.

Of course you may also choose to file an administrative appeal of this violation notice. If you do choose to appeal, you have 30 calendar days from the receipt of this letter to submit an appeal application, along with a \$300 fee, to the Inspections and Permits Department (see enclosed).

We remain confident that the LDO offers a variety of effective and appropriate alternatives for Cary citizens to exercise their right to speak their minds, and we look forward to working with you to make this happen.

Sincerely,

A handwritten signature in black ink that reads "Ryan Blackburn". The signature is written in a cursive style with a large, prominent "R" and "B".

Ryan Blackburn
Zoning Compliance Officer

Enclosures: Relevant LDO Sections
Fine Structure for non-compliance
Appeal Application
Photo of the Violation

Enclosures

The above referenced property is in violation of the Town of Cary LDO Section 9.3.2 (X 2), Wall Signs, Section 9.8.3 Colors, and Section 11.3.7 Failure to Remove Signs

Section 9.3.2 (X) Wall Sign

(2) Residential/Institutional

Wall signs shall be allowed on residential/institutional properties provided that:

(a) Single-family residential units (either attached or detached) in zoning districts or planned developments designated for such use shall be permitted one wall sign, provided that:

1. **Such sign shall not exceed two square feet in area;**
2. Such sign shall not be separately illuminated; and
3. Such sign shall not contain any commercial message.

9.8.3 Colors

- A. Individual signs shall not use more than three (3) colors, plus a background color.
- B. All signage shall utilize the same building colors as shown on an approved site plan, and may have one additional color not found on the site plan. The use of high intensity colors or fluorescent pigments is prohibited.**
- C. Signage will be allowed to utilize four (4) predominant building colors, or any combination of one accent color and three (3) predominant colors as used on the primary structure(s).
- D. Signage may utilize white and/or black as predominant colors even in a case when such colors are not utilized on the primary structure(s).
- E. Signage may not utilize more than one (1) color for the primary message copy, unless a second color is used to create a shadowing or outlining effect.

11.3.7 Failure to Remove Signs

It shall be a violation for any failure to remove any sign installed, created, erected, or maintained in violation of this Ordinance, or for which the sign permit has lapsed.

Civil Citations Amounts:

The Town of Cary Land Development Ordinance fine structure for illegal signs is as follows:

- One hundred dollars (\$100.00) per sign, per day for the first day of violation,
- Two hundred fifty dollars (\$250.00) per sign, per day for the second day of violation,
- Five hundred dollars (\$500.00) per sign, per day for the third day of violation, and for each day thereafter that the sign ordinance is being violated.

Photo of Violation



For office use only:

Method of Payment: CASH ____ CHECK ____ CREDIT CARD ____ Amount: \$ _____ P&Z HTE# _____
--

- | | |
|--|--|
| <input type="checkbox"/> Variance \$300.00 | <input type="checkbox"/> Administrative Appeal \$300.00 |
| <input type="checkbox"/> Sign Variance \$300.00 | <input type="checkbox"/> Civil Penalty Appeal \$300.00 |

VARIANCE / APPEAL APPLICATION

- If you are requesting a Variance, you **must complete** Section A 1-7
- If you are requesting a Sign Variance, you **must complete** Section B 1-7
- If you are appealing any "decision" of Town staff, or Town Manager, you **must complete** Section C 1-5 and attach the written "decision" which you are appealing
- If you are appealing a civil penalty, you **must complete** Section D 1-4
(You may use continuation sheets if necessary)

Case Number (assigned by PL Dept.): _____ **Hearing Date:** _____

Request: _____

Applicant Name: _____

(If this application is for a Variance, the Applicant must be all Land Owners, or an authorized agent, lessee, or contract purchaser.)

Address: _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

Owner Name (If different from Applicant): _____

Address: _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

All applicants must sign and have their signatures notarized on the last page

Are any Continuation Sheets attached? Yes No If yes, how many?: _____

SECTION A. VARIANCE REQUEST

1. Provide the following information for the property affected.

Site Address: _____

PIN #: _____ Lot #: _____ Block: _____

Subdivision: _____ Unit or Section: _____

Total lot/tract size: _____ Existing Zoning District: _____

2. Describe the variance requested by checking one (or more) of the boxes below.

lot width;

setback;

height;

building coverage;

structure spacing.

Is this property located in a PDD? Yes No

If yes, and a setback variance is sought, you must attach a copy of the homeowners' association approval of the request.

buffer width standards set forth in LDO Section 7.2.3. The Minor Modification procedures were unable to address the hardship (see LDO Sec, 3.20.2(B)).

off-street parking or loading standards set forth in LDO Section 7.8. The minor Modification procedures were unable to address the hardship (see LDO Sec. 3.20.2 (C)).

height of fence or wall as provided in LDO Section 7.2.7(B).

3. The Board cannot grant a variance to written conditions adopted by Council that are part of a Special Use permit, a PDD approval, Conditional Use rezoning, or subdivision plat or site plan approval that will be varied by this request. Are you aware of any such written conditions that pertain to the property? Yes No

4. Describe with specificity the type, dimensions and location of the variance requested. For example, "side yard setback variance of 3 feet to allow a 7-foot setback rather

than the required setback of 10 feet.” Attach a sketch of the proposed placement of structures drawn on a current survey of the property. (Show applicable pertinent information such as provision for access, parking, etc.)

Describe: _____

Sketch attached? Yes No

5. Is this application the result of a violation notice? Yes No

Is there any other local hearing pending or planned for this property? Yes No

If Yes to either of the above, explain: _____

6. Explain how this request meets the “Approval Criteria” for a variance by answering the questions below. (Note that testimony or evidence about personal inconveniences or financial burdens will not be considered. You must provide information about some peculiar or unique physical attribute of the property or other factor unique to the property.)

A. Do special circumstances or conditions exist on the property (e.g., narrowness, exceptional topographic conditions, or shape, etc.) that are not common to other areas or buildings that are similarly situated? Yes No

(Note: personal or family hardships do not qualify as special circumstances or conditions.)

Explain: _____

B. Will practical difficulty result from strict compliance with the LDO? Yes No

(Note: it is not sufficient to state that the property is less valuable without a variance.)

Explain: _____

C. Can there be beneficial use of the property without the variance being granted?

Yes No

Explain: _____

D. Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer substantial detriment if the variance is granted?

Yes No

Explain: _____

E. Will the delivery of public services be adversely affected if the variance were to be granted? Yes No

Explain: _____

F. Did you purchase the property with knowledge of the condition you are seeking to obtain a variance for? Yes No

Explain: _____

G. Can the predicament you describe be mitigated through some other method?

Yes No

Explain: _____

7. Will the requested variance have the effect of nullifying or impairing the intent and purposes of the specific standards, the Ordinance or the Comprehensive Plan?

Yes No

Explain: _____

8. Are the conditions or circumstances found to affect the applicant's property of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation to address the conditions or circumstances?

Yes No

Explain: _____

9. Does the variance represent the least deviation from the regulations that will afford relief?

Yes No

Explain: _____

10. Do you propose to attach any conditions to this variance request? If so, specify the conditions(s). (Examples that might be appropriate include conditions that reduce or minimize any injurious effect the variance might have, such as in the case of a buffer width variance, a condition that you install and maintain increased vegetative plantings in the remaining buffer area.)

Proposed Conditions:

- a _____ [describe type and size] fence will be constructed at _____
- a type _____ buffer will be installed at _____
- other: _____

SECTION B. SIGN VARIANCE REQUEST

1. Provide the following information for the property affected.

Site Address: _____

PIN #: _____ Lot #: _____ Block: _____

Subdivision: _____ Unit or Section: _____

Total lot/tract size: _____ Existing Zoning District: _____

2. Describe the variance requested by checking one (or more) of the boxes below.

setback standards for real estate signs set forth in LDO Section 9.3.2 (Q)

square footage standards of wall signs set forth in LDO Section 9.3.2 (X)

requirements for signage in the Town Center Area set forth in LDO Section 9.6.

Has review and approval by the Town Center Review Commission been obtained as required in LDO Section 3.20.2 (F)? Yes No

3. The Board may not grant a sign variance that varies any written conditions adopted by Council as part of a Special Use permit, a PDD approval, Conditional Use rezoning, or subdivision plat or site plan approval. Are you aware of any such written conditions that might conflict with this request? Yes No

4. Describe with specificity the type, dimensions and location of the variance requested. (For example, "vary the square footage standards for wall sign on a building to permit an additional 5 square feet of wall sign. The sign shall be located on the front elevation".)

Describe: _____

Attach a sketch of the proposed sign placement. Sketch attached? Yes No

5. Is this application the result of a violation notice? Yes No

Is there any other local hearing pending or planned for this property? Yes No

If Yes to either of the above, explain: _____

6. Provide reasons and evidence demonstrating how your proposal meets the following "Approval Criteria":

- A. Do special circumstances or conditions exist on the property that is not common to other areas or buildings that are similarly situated? Yes No

Explain: _____

- B. Will practical difficulty result from strict compliance with the sign ordinance?

Yes No

Explain: _____

- C. Can there be beneficial use of the property without the variance being granted?

Yes No

Explain: _____

- D. Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer substantial detriment if the variance is granted?

Yes No

Explain: _____

- E. Will the delivery of public services be adversely affected if the variance were to be granted? Yes No

Explain: _____

F. Did you purchase the property with knowledge of the condition you are seeking to obtain a variance for? Yes No

Explain: _____

G. Can the predicament you describe be mitigated through some other method?

Yes No

Explain: _____

7. Do you propose to attach any conditions to this variance request? If so, specify the conditions(s).

Proposed Conditions: _____

SECTION C. ADMINISTRATIVE APPEAL

Note: Appeals of enforcement decisions must first be appealed to the Town Manager, or designee, as provided in 11.2.2.

1. Provide the following information for the property affected:

Site Address: _____

PIN #: _____ Lot #: _____ Block: _____

Subdivision: _____ Unit or Section: _____

Total lot/tract size: _____ Existing Zoning District: _____

2. Attach a copy of the order, requirement, permit, decision, determination refusal or interpretation made by an administrative officer of Planning or Engineering (“decision”) you are appealing. If this is an appeal of an enforcement decision, attach the decision of the Town Manager as required by LDO Section 11.2.2.

Decision attached? Yes No

3. Describe with specificity which provisions or portions of the decision you are appealing.

Describe: _____

4. Fully explain why you think the LDO has been misinterpreted or inaccurately applied and how the administrative officer erred in the application or interpretation of the terms of the LDO or related policies of the Town.

Explain: _____

5. If you are not the land owner, or if the decision was not issued to you, describe how you are aggrieved by the decision.

Explain: _____

SECTION D. APPEAL OF CIVIL PENALTY

Note: appeals of civil penalties must be first made to the Town Manager, as provided in LDO Section 11.2.2(B).

1. Provide the following information for the property affected.

Site Address: _____
PIN #: _____ Lot #: _____ Block: _____
Subdivision: _____ Unit or Section: _____
Total lot/tract size: _____ Existing Zoning District: _____

2. Attach a copy of the determination made by the Town Manager (“decision”) you are appealing. Decision attached? Yes No

3. Fully explain why you think the Town Manager misinterpreted or inaccurately applied the LDO and how the Manager erred in the application or interpretation of the terms of the LDO or related policies of the Town. You may address:

- the gravity of the violation
- action you took to correct the violation
- the cost of any action you took to correct the violation
- previous violations by you on this site or others

4. If you are not the land owner, or if the penalty was not issued to you, describe how you are aggrieved by the decision.

Explain: _____

APPLICANTS’ CERTIFICATION

I, _____, the undersigned, being first duly sworn, depose and say that I am the

_____owner, _____attorney, _____attorney-in-fact, _____agent, _____lessee, or _____representative of the owner(s) of the property described and which is the subject matter of this application; that all answers to the questions in this application, and all sketches, data and other supplementary information attached to this application are honest and true to the best of my knowledge and belief. If I am not the owner of the property, I have attached a notarized authorization from the owner(s) to submit with this application.

Date

Signature

_____ COUNTY, STATE OF NORTH CAROLINA

Signed and sworn to or affirmed before me this day by _____.

Date

Notary Public

(Official Seal)

My commission expires: _____

NOTARIZED AUTHORIZATION OF ALL OWNERS

I/We certify that I/we am/are all of the Owner(s) of the property which is the subject of this application, that I/we have authorized the applicant to make this application and that I/we agree to be bound by the application, the representations made and the decision in the same manner as if I/we were the applicant.

[If the owner is: - a corporation, this must be signed by an, authorized corporate officer;
 - a partnership, this must be signed by a general partner;
 - a limited liability company, this must be signed by the Manager for a manager managed LLC, or all the members for a member managed LLC.]

Date

Signature of Owner(s)

Date

Signature of Owner(s)

_____ COUNTY, STATE OF NORTH CAROLINA

Signed and sworn to or affirmed before me this day by _____.

Date

Notary Public

(Official Seal)

My commission expires: _____

General Information about variances and appeals to the Zoning Board of Adjustment

This sheet is intended to provide general information about appeals and variances. Staff has made every effort to insure that this information is and remains accurate. However, if there is a conflict between this information and state law, the Town Code, the Town Land Development Ordinance (LDO), or Town policies (collectively 'law') the law controls.

What is a Variance and when can one be Granted?

As defined in the LDO, a variance is:

Permission to depart from certain provisions of the zoning requirements for a specific parcel, except for the use of land, without changing the zoning ordinance or the zoning district applicable to the property. A variance is needed when the provisions of the minor modification section are not sufficient to address a particular hardship. A variance is only granted upon demonstration of hardship based on special or peculiar circumstances applicable to the property that [the LDO] deprives such property of privileges enjoyed by other properties in the same vicinity and zoning district.

Variances are **NOT** granted to remove inconveniences or financial burdens. A variance is intended to provide relief where the requirements of the LDO render land difficult or impossible to use because of some unique physical attribute of the property. The Zoning Board of Adjustment (BOA) is authorized to grant variances to certain standards of the LDO. The standards eligible for a variance are described in LDO Section 3.20.2, and include variances to the height of certain fences and walls as provided in LDO Section 7.2.7(B). If a variance is being sought to setback requirements and your property is located in a Planned Development, then before BOA can consider your application, your homeowners association must have given approval for the proposed setback reduction (see LDO Section 6.3.2.(F)(3)). BOA may not grant a variance to the setback standards for decks, covered porches and uncovered porches (see Table 6.3-1).

What Appeals can be Made?

Under the LDO, questions arising in connection with the interpretation and enforcement of the LDO must first be presented to the appropriate administrative officer of the Engineering or Planning Department. Decisions of an administrative officer concerning enforcement and civil penalties must then be appealed to the Town Manager. Decisions of the administrative officer, or Town Manager, as the case may be, may be appealed to BOA, as provided in LDO Sections 3.21.2. and 11.2.2. An application for an appeal must be filed no later than 30 days after the date of the contested action.

Filing Deadlines

All applications are filed with the Planning Department. If a complete application for an appeal or a variance is filed by the filing deadline set each month (consult the Board calendar for exact dates) the application will appear on the following month's Board Agenda.

Completing Your Application

Submit one (1) original and 12 copies of the application and all attachments. You must answer every question that pertains to your specific request and provide the required information. If there are any blanks or omitted information, your application will be delayed until all the information is complete. You must submit a copy of the property survey with a

sketch showing the dimensions and location of any variance sought. Similar information must be provided for any appeal that involves the location of a structure. This sketch must be in a reproducible size of 11" X 17" or smaller and must show the following: lot lines with measured distances; location and outline of existing and proposed structures (with measured dimensions); and any other information regarding the site that the Board will need to review the application. You may submit any other documentation or exhibits (i.e., a subdivision plat, survey map, etc.) that you feel the Board may need to render an adequate and fair decision. All applications must be signed and sworn to before a notary public.

Fees

Variances:	\$300.00
Appeals:	\$300.00

Public Quasi-Judicial Hearing

The Zoning Board of Adjustment meets the second Monday of each month at 7 p.m. in the Town Council Chambers. At the hearing, Planning staff will present an overview of your application after which you will present your case to the Board. All interested parties will be given the opportunity to testify and may ask you questions about the application. Any person who testifies at the hearing must be sworn in.

Board Decisions

State law requires an affirmative vote of 4/5 of the Board members to grant any variance or reverse an administrative decision. If the Board moves to deny an application, a simple majority vote is sufficient. If you, or any aggrieved party desire to appeal the BOA decision, the appeal must be filed with a court of competent jurisdiction within 30 days from the date which the BOA decision is filed in the Planning Department or a written copy is delivered to every party who filed a written request for a copy.