

CITY OF CORAL GABLES, FLORIDA
OFFICE OF THE CITY CLERK

APPLICATION FOR APPEAL FROM BOARD OF ADJUSTMENT

NAME: W. TUCKER GIBBS FOR EMW, LLC
ADDRESS: P.O. BOX 1050, COCONUT GROVE, FL 33133
PHONE: 305-448-8484

The undersigned hereby appeals the decision of the Board of Adjustment of the City of Coral Gables, Florida, made at its meeting of DECEMBER 3, 2012, in which it (X) granted, () denied an application for a Variance to Ordinance No. 1525, as amended and known as the "Zoning Code," to permit the following:

APPLICATION NO. BA-11-08-5790 -7

Describe what is being appealed:

GRANT OF ZONING VARIANCE FOR PROPERTY 390 BIRD ROAD - TO ALLOW drive through teller facilities to be located closer to the street than the principal building per 5-101(-).

2012 DEC 13 PM 4: 18
CITY OF CORAL GABLES
RECEIVED BY THE
OFFICE OF THE CITY CLERK

W. Tucker Gibbs for EMW, LLC 12/13/12
Signature of Applicant Date

Subject property located at: 390 Bird Road

Subject property legally described as: Lots 1-4 and 39-42 Coral Gables
Industrial Section Block 1

Owner/Applicant Appeal Fee: \$913.50, Z.C. §24-8(a)5 and Z.C. §26-2
Aggrieved Party Fee: \$913.50

W. TUCKER GIBBS, P.A.

ATTORNEY AT LAW

2980 MCFARLANE ROAD, SUITE 205
P.O. Box 1050
COCONUT GROVE, FLORIDA 33133

TELEPHONE (305) 448-8486
FACSIMILE (305) 448-0773

December 13, 2012

VIA HAND DELIVERY

Walter J. Foeman, City Clerk
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

CITY OF CORAL GABLES
RECEIVED BY THE
OFFICE OF THE CITY CLERK
2012 DEC 13 PM 4:09

Re: Notice of Appeal of Zoning Variance at 390 Bird Road; BA-11-08-5790

Dear Mr. Foeman:

I represent EMW, LLC the owner of the property at 4019 LeJeune Road, Coral Gables, adjacent to the referenced property.

Pursuant to sections 3-605 and 3-606, my client through this letter, appeals as an aggrieved party to the City Commission the decision of the Board of Adjustment on December 3, 2012, to grant the following zoning variance for the Industrially-zoned property at 390 Bird Road:

1. To allow the proposed drive-through teller facilities to be located closer to the street than the principal building where accessory buildings and structures may not be located closer to the front or side street than the main or principal building as set forth in section 5-101(c) of the Coral Gables Zoning Code.

This variance was issued in error because:

The city's zoning code is clear: " Under no circumstances shall the Board of Adjustment ... grant a variance to permit ...[a] use not permitted in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district."

1. The Board of Adjustment has no jurisdiction to approve of a variance on property where the underlying use requiring the variance is not permitted.
2. The underlying Industrial zoning on a portion of this property does not permit a drive through facility. Yet the board issued a variance for a use that is not even permitted at the referenced location.
3. The city staff has no authority to process a zoning variance regarding a non-permitted use under the existing zoning code. No variance can be granted until the property is rezoned to allow the use to which the variance relates. To schedule and hold a public

hearing on an application that seeks a zoning variance relating to a use not permitted under the property's zoning without notice of this fact is disingenuous at best and intentionally misleading at worst.

4. The variance does not meet the zoning code standards for a variance:
 - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
There is no special condition relating to this parcel that is not self-created by the applicant.
 - b. That the special conditions and circumstances do not result from the actions of the applicant.
This vacant parcel was assembled by the applicant with the knowledge of its limitations under the existing zoning code (as well as its limitations under any future re-zoning it may seek).
 - c. That granting the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
The variance will allow the applicant to build a project that otherwise would not be permitted under the existing zoning district. Furthermore, it will allow the applicant to build a project that is too big for the property (as it needs the variance to "fit" a drive-through facility on the property. This larger-than-allowed use is not allowed on other properties within this zoning district and even if the property was to be rezoned to (C) Commercial District (North Industrial Mixed Use), a similarly zoned property would not be entitled to build a similarly configured development.
 - d. That literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations and would work unnecessary and undue hardship on the applicant.

There is no hardship here. Any claimed hardship is self-created. The applicant has the right to seek a rezoning that would allow it to build a drive-through facility. The applicant chose not to do this and instead sought variances to allow it to develop a use that is not permitted in the existing zoning district. Nor is the assemblage of the property into an "odd shape" evidence of a hardship where the applicant chose to assemble the property in that configuration.

- e. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

The reasonable use of land is what the zoning code allows on the property. Here the applicant can build within the bounds of the zoning code without the need for a variance. Therefore it has the reasonable use of its property without the variance.

- f. That granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district.

The applicant seeks the variance to "fit" a use not allowed on this property under the zoning code. No other property in this zoning district is permitted this use.

- g. That the granting of the variance will be in harmony with the general intent and purpose of these regulations, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The approval of this variance allows a diminution of setbacks relating to a not-permitted drive-through facility is in violation of the zoning code. The grant of these variances is injurious to the area and detrimental to the public welfare because it creates a process by which a zoning change to permit an underlying use for which the variance is requested is unnecessary as a prerequisite to the zoning variance application. This leads to confusion where the public notice implies that the variance relates to a permitted use when in reality it is to a use not yet permitted.

The Board of Adjustment granted the zoning variance even though the underlying use is not permitted under the existing zoning district and the public notice was silent as to this fact. Furthermore, the applicant failed to meet its burden to show that it met each of the criteria for a zoning variance as set forth in section 3-806. Therefore EMW, LLC as owner of the adjoining property and an aggrieved party hereby appeals the decision granting this variance to the Coral Gables City Commission.

Sincerely,


W. Tucker Gibbs

cc: EMW, LLC
Martha Salazar-Blanco, Zoning Official
Craig Leen, City Attorney

W. TUCKER GIBBS 11-93 034
ATTORNEY AT LAW
P.O. BOX 1050
COCONUT GROVE, FL 33133

6516

Pay to the order of City of Coral Gables

Date 12-13-12

63-460-660

Nine hundred and thirty two 59/100

\$ 913.52

Dollars

COCONUT GROVE BANK
COCONUT GROVE, FLORIDA 33133

For City Adjustment Appeal BA-11-08-5750 W. Tucker Gibbs
⑈006516⑈ ⑆066004600⑆ 0125761006⑈

RECEIPT

RECEIVED FROM W. Tucker Gibbs DATE 12/13/12 No. 906175

\$ 913.52

FOR RENT Five hundred and thirty two 59/100 DOLLARS
FOR Brand of Adjustment

ACCOUNT	
PAYMENT	
BAL DUE	

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM City of Coral Gables TO W. Tucker Gibbs
BY [Signature]



The City of Coral Gables

Development Services Department
CITY HALL 405 BILTMORE WAY
CORAL GABLES, FLORIDA 33134

December 3, 2012

Hugo P. Arza
Holland & Knight LLP
701 Brickell Avenue
Suite 3000
Miami, FL 33131

Re: PB 28-22 CORAL GABLES INDUSTRIAL SEC LOTS 1 THRU 4 INC &
LOTS 39 THRU 42 INC & 20FT ALLEY LYG BETWEEN LOTS 1 THRU 4 &
LOTS 39 THRU 42 BLK 1 CORAL GABLES INDUSTRIAL SEC PB 28-22 LOT 5
& LOT 6 LESS BEG 10FTN OF SE COR OF LOT 6 W90.06FT SW14.14FT E ALG
S/L 100.08FT N10FT TO POB BLK 1
(390 Bird Road)
Hearing No.: BA-11-08-5790

Dear Mr. Ariza:

The Board of Adjustment at its regular meeting held on December 3, 2012, passed and adopted Resolution No. 5065-ZB approving Item No. 2 of your application, all is outlined under the Applicant's Proposal as follows:

1. Grant a variance to allow the proposed principal building to maintain a ten feet (10'0") side street setback vs. A minimum of fifteen feet (15'0") side street setback is required by Section 4-302 (D) (3) (b) (ii) of the Coral Gables "Zoning Code." **WITHDRAWN BY STAFF**.
2. Grant a variance to allow the proposed drive through teller facilities to be located closer to the street than the principal building vs. In no case shall an accessory building or structure be located closer to the front or side street of a lot or building site than the main or principal building as required by Section 5-101 (C) of the Coral Gables "Zoning Code."

The variance granted is contingent upon securing City Commission review and approval of applications for development.

390 Bird Road
December 3, 2012
Page 2

Any variance authorized by Resolution by the Board of Adjustment shall become void and of no effect twelve (12) months from and after the date of the resolution granting the variance, unless within such period of twelve (12) months a building permit for the building or structure involved embodying the substantive matters for which the variance was granted shall have been issued and taken out; or if the use or adoption of such variance does not require the issuance of a building permit, unless the requested action permitted by the variance shall have taken place within the said twelve (12) month period. Whenever the twelve (12) month period has elapsed without action by the applicant, he shall be required to file a new application as set forth in Section 3-807 of the "Zoning Code."

However, upon application and payment of a fee of \$609.00, the Development Review Official may, after review and determination that substantive progress has been achieved by the applicant in terms of project planning, extend the expiration date of the variance for an additional period of time not to exceed twelve (12) months. An application requesting the extension of a variance shall be filed with the Office of the Zoning Official prior to the expiration of the initial twelve (12) month effective date of the variance.

Please refer to the attached sheet regarding decisions of the Board of Adjustment, appeal from a decision of the Board of Adjustment, and appeal from the decision of the City Commission.

No permit can be issued on the application which was approved by the aforementioned resolution, passed and adopted by the Board of Adjustment, during the first 10 days after the Board of Adjustment meeting.

If you desire further information, please do not hesitate to contact this office.

Sincerely,

THE CITY OF CORAL GABLES
BOARD OF ADJUSTMENT

Elizabeth L. Gonzalez
Elizabeth L. Gonzalez
Secretary

P.S. PLEASE BE REMINDED THAT A PERMIT MUST BE OBTAINED WITHIN TWELVE MONTHS OF THE DATE OF VARIANCE APPROVAL OR IT WILL BECOME VOID.