



**City of Coral Gables  
CITY COMMISSION MEETING  
January 22, 2013**

**ITEM TITLE:**

Board of Adjustment Appeal – Application No. BA 11-08-5790 (390 Bird Road)

EMW, LLC, applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Adjustment at its regular meeting of Monday, December 3, 2012, wherein it approved a variance request as outlined under the applicant’s proposal.

**SUMMARY OF APPEAL:**

Mr. Tucker Gibbs, representing EMW, LLC (the appellant), has filed an appeal to the Coral Gables City Commission from a decision of the Board of Adjustment at its regular meeting of December 3, 2012, whereby it approved Application No. BA 11-08-5790 filed by Century Laguna, LLC (the applicant) for the property located at 390 Bird Road. The Board granted a variance from Section 5-101(C) of the City of Coral Gables Zoning Code to allow an accessory structure (a drive through teller structure for a proposed one story Chase Bank retail branch) to be located closer to the front or side street than the principal building.

The variance application was presented to the Board of Adjustment on December 3, 2012. A transcript of the meeting is provided as Exhibit D. The applicant for the project presented the item, staff recommended approval contingent on the approval of other necessary development applications, and the Board voted unanimously to approve the variance as recommended. No members of the public sought to be heard on this application.

On December 13, 2012, Mr. Gibbs, representing the appellant EMW, LLC, filed an appeal of the decision of the Board of Adjustment to the City Commission, as provided by the City of Coral Gables Zoning Code [Article 3, Division 6, Sections 3-605 and 3-606 (B)]. The appeal states that the appellant is the owner of property at 4019 LeJeune Road adjacent to 390 Bird Road, and is an aggrieved party. The appeal claims that the zoning variance was issued in error, as outlined in the letter from Mr. Gibbs.

Staff continues to find that the criteria for granting a variance was met by the application, and recommends that the appeal be denied and the Board’s decision to grant the variance be upheld.

Pursuant to Section 3-606(D), the City Commission shall conduct a review of the decision of the Board of Adjustment. The appeal “shall be based on the record of the hearing before the [Board of Adjustment], shall not be a de novo hearing, and no new, additional testimony shall be taken.” The City Commission is authorized to affirm, affirm with conditions, override or remand the decision of the Board of Adjustment.

**BACKGROUND:**

The Board of Adjustment considered the application for the proposed variance at its December 3, 2012 meeting. Staff found that the criteria for granting a variance was met by the application and recommended approval of the variance, contingent on securing City Commission review and approval of the applications to be filed for development of the Chase Bank facility.

The application was presented to the Board by Ines Marrero of Holland & Knight, representing the applicant. The transcript reflects that the Board asked one question, about the location of the property in relation to surrounding uses, which Ms. Marrero answered. No other persons sought to be heard with regard to the request. Neither appellant nor its representative, Mr. Gibbs, was present at the hearing.

The Board voted unanimously (6-0) to approve the requested variance in accordance with the staff recommendation, contingent on the applicant securing City Commission review and approval of the other applications for development that have to be filed in relation to this project.

On December 13, 2012, the appellant filed an Application for Appeal from the Board of Adjustment’s decision at the Office of the City Clerk citing Sections 3-605 and 3-606 of the Zoning Code. As the owner of adjacent property, the appellant states that it is an aggrieved party and that the variance should not have been granted. In summary, the appeal states as follows:

“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.”

Staff has reviewed the appeal, continues to find that the criteria for granting a variance was met by the application and that the public notice of the Board of Adjustment meeting was proper and met all legal requirements. Staff recommends that the appeal be denied and the Board’s contingent decision to grant the variance be upheld.

Exhibit A is the Notice of Public Hearing and Exhibit B is the Notice of the Appeal. Exhibit C is the Application for Appeal. Exhibit D is the transcript of the hearing, and Exhibit E is the minutes of the hearing. Exhibit F is the December 3, 2012 letter informing the applicant of the Board’s approval of the variance, and Exhibit G Packet submitted to Board of Adjustment (including Staff Report, Resolution No. 2012-69 with Land Exchange Agreement, Site Pictures/Traffic and Plans).




**BOARD OF ADJUSTMENT ACTION(S):**

Date	Comments (if any)
12/3/2012	Staff recommended contingent approval. Applicant’s representative presented item and answered a question from the Board. No public comment. Board approved staff recommendation 6-0.

**PUBLIC NOTIFICATION(S):**

Date	Form of Notification
11/23/2012	Miami Daily Business Review Notice of Hearing on Variance
11/23/2012	Mailed Courtesy Notice of Hearing on Variance
01/11/2013	Legal Ad - Notice of Appeal

**APPROVED BY:**

Department Director	City Attorney	City Manager
 RT		

**EXHIBIT(S):**

- A. Notice of Public Hearing on Variance.
- B. Legal Ad - Notice of Appeal.
- C. Application for Appeal from Board of Adjustment decision filed at Office of the City Clerk.
- D. Transcript of the December 3, 2012 hearing of the Board of Adjustment.
- E. Minutes/ Recap of the December 3, 2012 hearing of the Board of Adjustment.
- F. December 3, 2012 letter informing applicant of the Board's decision on the variance.
- G. Packet submitted to Board of Adjustment (including Staff Report, Resolution No. 2012-69 with Land Exchange Agreement, Site Pictures/Traffic and Plans).