1230 Linden Place, NE
Washington, DC 20002-4455
(202) 388-4627

March 17, 2006

BD. OF ZONING
2006 MAR 17 PM 3:13

Delivered by hand
Board of Zoning Adjustment
441 4th St., NW
Suite 210-S
Washington, DC 20001

Re: BZA Appeal No. 17439

To Whom It May Concern:

Please accept for filing the attached 20 copies of one (1) page of materials that the appellant may wish to introduce into evidence, a Supplemental Statement of the Appellant, and a Declaration in Support for the above-referenced BZA appeal.

Thank you,

Richard Luna

enclosures

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17439
EXHIBIT NO. 18

Board of Zoning Adjustment
District of Columbia
CASE NO. 17439
EXHIBIT NO. 18

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:	)	
	)	
Advisory Neighborhood Commission 6A from the	)	
Administrative Decision of DCRA on	)	BZA Appeal No. 17439
Certificate of Occupancy Permit No. CO-102037	)	

Supplemental Statement of the Appellant

Advisory Neighborhood Commission 6A ("ANC 6A") hereby supplements its Statement in Support of its Appeal as follows:

I. Cluck-U-Chicken is not a restaurant.

A restaurant is "a place of business where food, drinks, or refreshments are prepared and sold to customers *primarily for consumption on the premises.*" 11 D.C.M.R. § 199.1 (emphasis added). A restaurant may provide carryout only if it is "clearly subordinate to the principal use providing prepared foods for consumption on the premises." Id. Therefore, an establishment in which off-premises consumption exceeds on-premises consumption is not a restaurant. See Appeal of Ping Lu, Inc., BZA Order No. 16154 (Oct. 17, 1997). For example, an establishment that intends to provide carryout and food delivery service "with minimal consumption on the premises" is not a restaurant. Id.

Cluck-U-Chicken is not a restaurant for two reasons. First, its off-premises consumption exceeds on-premises consumption. See Statement of Richard Luna In

Support of BZA Appeal No. 17439. Second, in addition to its already brisk carryout business, Cluck-U-Chicken intends to increase the amount of off-premises consumption because it appears to intend to provide food delivery service. See Appellant's Exhibit 17 (photograph of "driver wanted" sign). Like the establishment in Ping Lu, Cluck-U-Chicken currently prepares and sells food and drinks to customers primarily for off-premises consumption because most of its customers are carryout customers. Also like the establishment in Ping Lu, Cluck-U-Chicken intends to increase off-premises consumption through its intended food delivery service. Providing food for off-premises consumption by two separate means "turns that concept" of prividing limited carryout as an accessory use at a restaurant "on its head." Id.

For the reasons stated herein, Cluck-U-Chicken is not a restaurant.

Respectfully submitted,

Richard Luna
1230 Linden Place, NE
Washington, DC 20002-4455

as authorized agent for
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:	)	
	)	
Advisory Neighborhood Commission 6A from the	)	
Administrative Decision of DCRA on	)	BZA Appeal No. 17439
Certificate of Occupancy Permit No. CO-102037	)	

Declaration of Richard Luna
In Support of BZA Appeal No. 17439

I, RICHARD LUNA, hereby depoe and say as follows:

1. I observed Cluck-U-Chicken at 1123 H Street, N.E., in Washington, D.C., for approximately ten (10) minutes at a time at random intervals on 9/14/05, 9/16/05, 9/17/05, 9/20/05, 9/22/05, 9/24/05, 10/5/05, 10/6/05, 10/15/05, 11/4/05, 11/12/05, 12/ 14/05, 1/19/06, 2/21/06, 3/10/06 and 3/14/06.

2. I observed Cluck-U-Chicken for shorter intervals on other dates.

3. On most dates, the majority of the customers eating inside the establishment were eating out of disposable containers with disposable utensils.

4. On each of only four different days, I observed no more than one person in the establishment eating with non-disposable containers. On one of those days, the person was eating with a combination of a non-disposable plate and disposable cup. During each of the same four days, I also observed at least two other people at separate tables eating with disposable containers and disposable utensils.

5. On a different day, I observed two sets of non-disposable containers at a table and three people leaving with carry-out. No other customers were in the restaurant.

6. On 3/14/2006, after taking my order, the Cluck-U-Chicken cashier asked only, "Will that be to go?"

7. It appeared to me that, in general, the majority of customers eating at Cluck-U-Chicken were eating out of disposable containers and with disposable tableware.

8. Also, it appeared that, in general, the number of carryout customers exceeded the number of customers eating in Cluck-U-Chicken.

9. From about 3/6/2006 to about 3/14/2006, Cluck-U-Chicken displayed a hand-written sign that stated "Driver Wanted" at its front entrance. A photograph of this sign is Appellant's Exhibit 17.

I affirm that the above statements are true and correct to the best of my knowledge.

Dated: March 14TH, 2006

Richard V. S. Luna
1230 Linden Place, NE
Washington, DC 20002-4455

Take Out# 84

ORIGINAL-CW (FRIE 4.69

REGULAR SODA 1.39

Sales Tax @ 10% 0.61

TOTAL AMOUNT $6.69

TIME $ DATE : 07:10PM 03/14/06
COUNTER OT : Jessic CK # 33584

CUSTOMER SATISFACTION IS OUR #1 GOAL
PLEASE SHARE YOUR COMMENTS WITH OUR
GENERAL MANAGER, BERNARD GIBSON
our store # is 202-399-3222
VISIT US AT WWW.CLUCKUCHICKEN.COM
CLUCK-U CHICKEN - IT'S AN ADDICTION

Take Out# 1[illegible]

12 PC (WHITE) 17.89
(6- BREAST, 6- WINGS)
6- BISCUITS
Side of Honey

Philly ChzSteak p 4.69
W/ONIONS

Coupon Amount: <8.95>
Sales Tax @ 10% .....

TOTAL AMOUNT $15.00

TIME $ DATE [illegible] /01/06
COUNTER.O [illegible]

CUSTOMER SATISFA[illegible]
PLEASE SHARE YOUR [illegible]
GENERAL MANAGER
our store # is 20[illegible]
VISIT US AT WWW.CLUCKUCH[illegible]M
CLUCK-U CHICKEN - [illegible] ODDICTION

H