

Before the

D.C. DEPARTMENT OF ZONING

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:

Advisory Neighborhood Commission 6A from the
Administrative Decision of DCRA on
Certificate of Occupancy Permit No. CO-102037

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BZA Appeal No. 17439

Motion to Extend Time to File Documents Requested from DCRA

Appellant ANC 6A, through its authorized agent Richard Luna, hereby requests that the Board of Zoning Adjustment ("BZA") GRANT its Motion to Extend Time to File Documents provided by DCRA. In support thereof, the appellant states:

1. At the BZA hearing in this case on April 4, 2006, there was confusion about the set of plans on which the D.C. Department of Consumer and Regulatory Affairs ("DCRA") relied in granting the certificate of occupancy to Gibson Investments, Inc. ("Appellee").
2. On the one hand, Bernard Gibson, on behalf of the Appellee, stated under oath that the only plans Appellee provided to DCRA were those it entered into evidence.
3. On the other hand, Appellant ANC 6A entered into evidence building plans that differed from Appellee's. ANC 6A asserted that the plans it entered into evidence were copies of the relevant portion of the plans that Neil Stanley, former Acting Zoning Administrator at DCRA, provided to ANC 6A in response to ANC 6A's request for the plans on which it relied in granting Appellee's certificate of occupancy.

BOARD OF ZONING ADJUSTMENT
District of Columbia

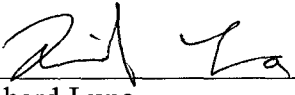
CASE NO. 17439EXHIBIT NO. 27

4. The confusion remained unresolved because DCRA was not prepared to present its case on April 4, 2006. BZA continued DCRA's presentation of its case until April 25, 2006.
5. To resolve the question, on April 6, 2006, Richard Luna, on behalf of ANC 6A, again asked DCRA, through its ANC liaison Eric Rogers, to provide copies of the documents on which DCRA relied in granting Appellee's certificate of occupancy.
6. Mr. Rogers acknowledged receipt of the request and agreed to provide the requested copies. *See* Exhibit A (attached).
7. To date, DCRA has not made available copies of the requested documents.
8. The determination of the plans on which DCRA relied is material to the determination of this case, because it affects the conclusion of whether DCRA properly granted the Appellee's certificate of occupancy.
9. ANC 6A's inability to obtain the correct documents from DCRA and otherwise make use of them will prejudice its ability to fairly present its case at the hearing before BZA scheduled on April 25, 2006.
10. In any event, the extension requested through this motion does not prejudice any party, because the issue to which the plans are relevant is no longer at issue. At the hearing on April 4, 2006, Appellee's witness admitted that its establishment satisfied the 10% floor space requirement in the definition of a "fast food restaurant" in 11 D.C.M.R. § 199.1 (2003).
11. Even using revised calculations, Appellants' calculations reflect that Appellee satisfies the 10% floor space requirement. *See* Exhibit B (attached).

Therefore, ANC 6A requests that BZA:

1. Grant this motion, and
2. Extend the time for ANC 6A to provide written testimony, including documents and calculations from building plans, in response to any documents that DCRA provides in response to ANC 6A's request, to 5 days after ANC 6A receives the documents it requested from DCRA.

Respectfully submitted,

 4/9/2006
Richard Luna

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

From: "Rogers, Eric (DCRA)" <Eric.Rogers@dc.gov>
Subject: **RE: [anc-6a] Re: New Definition of 'Restaurant'?**
Date: April 6, 2006 5:07:18 PM EDT
To: Rich and Kara <thelunas@speakeasy.net>

Sure thing...

-----Original Message-----

From: Rich and Kara [mailto:thelunas@speakeasy.net]
Sent: Thursday, April 06, 2006 5:06 PM
To: eric.rogers@dc.gov
Cc: Joe Fengler; Cody Rice
Subject: Re: [anc-6a] Re: New Definition of 'Restaurant'?

Eric,

In your role as gracious ANC liaison, would you be so kind as to provide ANC 6A with a copy of the documents in the file for certificate of occupancy no. 102037 (Gibson Investments, Inc., t/a Cluck-U-Chicken, address: 1123 H St., NE)?

The DCRA FOIA officer informs me that a FOIA request is not necessary to obtain documents in the application file for certificates of occupancy, because the file is a public record. The file should be available from suite 2100.

We would need the documents as soon as possible. If there is any question whether a document had a bearing on the issuance of the C of O, please include it.

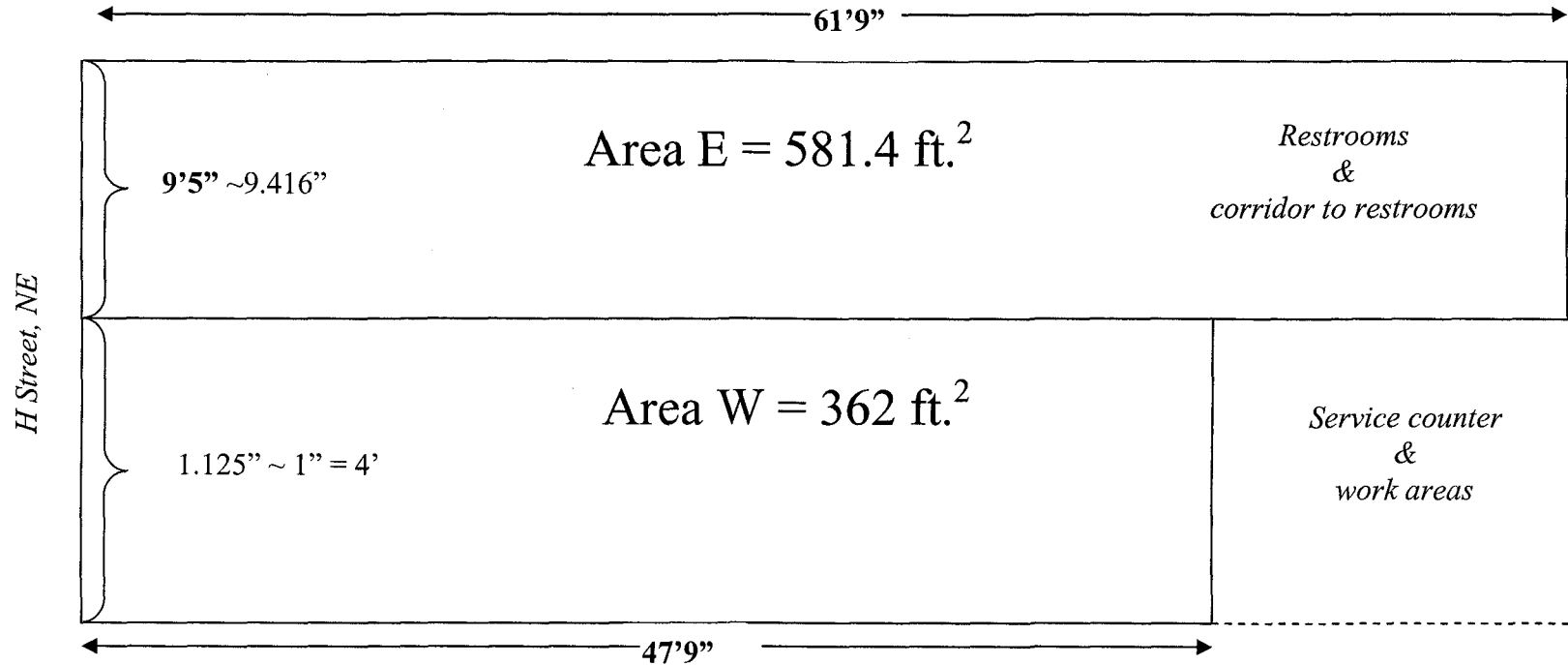
Also, please let Cody, Joe and myself know by e-mail or otherwise when they are available so we can arrange to pick up the documents.

Many thanks,

Rich Luna

APPELLANT'S
EXHIBIT A

Appellee's Exhibit B
Total Floor Space Accessible to the Public
Cluck-U-Chicken (1123 H St., NE)



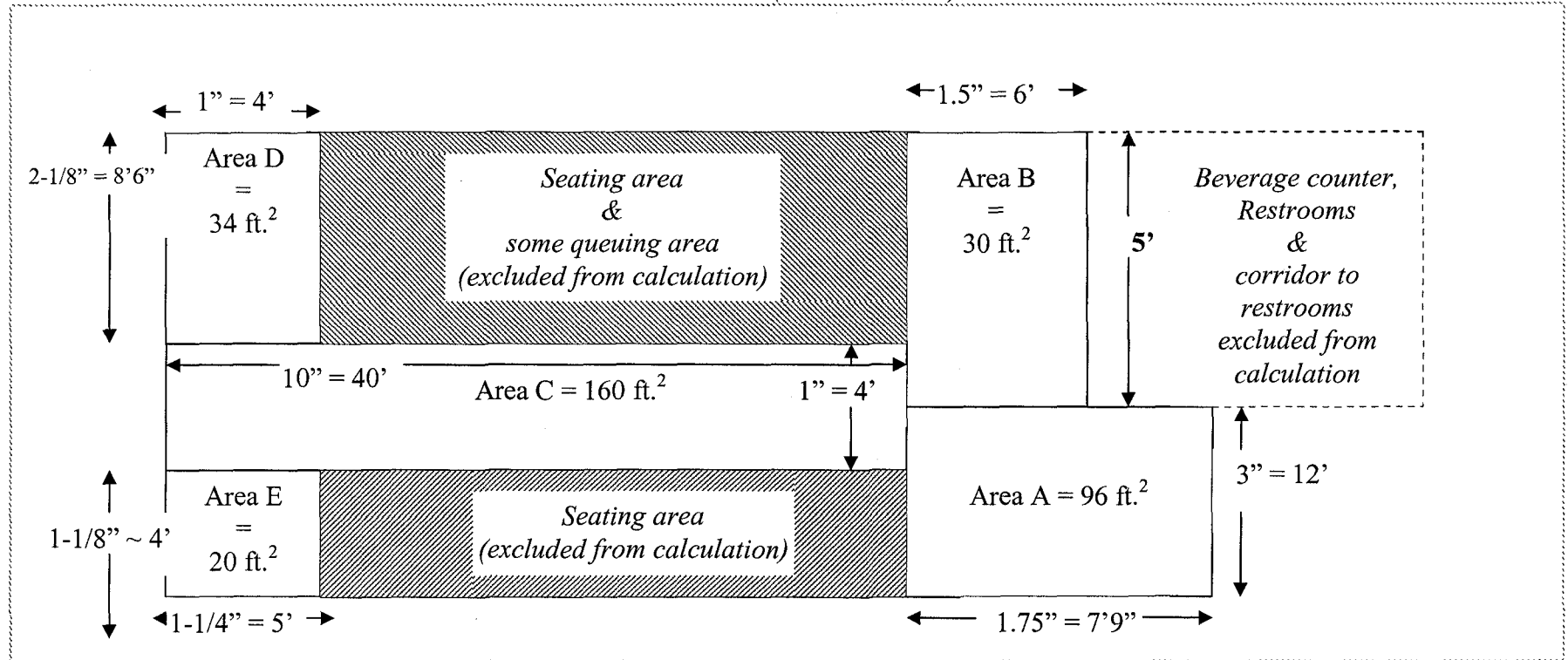
TOTAL FLOOR AREA ACCESSIBLE TO PUBLIC = 943.4 ft.²

<plain text> indicates dimensions measured from the scale on the building plans
<bold> are dimensions taken directly from the building plans

Appellee's Exhibit B, continued

Queuing Area

Cluck-U-Chicken (1123 H St., NE)



Area:	Width x Depth (inches)		Width x Depth (in feet)		Area:	Cumulative total queuing area area:	Cumulative total queuing area expressed as a percentage of total public space (943.4 ft. ²):
A	3"	7'9"	12'	7'9"	93 ft. ²	93 ft. ²	9.8%
B	-	1.5"	5'	6'	30 ft. ²	123 ft. ²	13.0%
C	1"	10"	4'	40'	160 ft. ²	283 ft. ²	29.9%
D	2-1/8"	1"	8'6"	4'	36 ft. ²	319 ft. ²	33.8%
E	1-1/8"	1-1/4"	~4'	5'	20 ft. ²	339 ft. ²	35.9%

All numbers rounded down.