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	)	

Statement of the Appellant

Advisory Neighborhood Commission 6A ("ANC 6A") hereby requests that the Board of Zoning Adjustment ("Board") GRANT its Appeal from the Administrative Decision of DCRA on Certificate of Occupancy Permit No. CO-102037, and in support of its appeal states as follows:[1]

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SUMMARY OF APPEAL

The Department of Consumer and Regulator Affairs ("DCRA") erred in its decision to grant Certificate of Occupancy Permit No. CO-102037 to Gibson Investments, Inc., trading as Cluck-U-Chicken, ("Cluck-U-Chicken") for three reasons. First, the Certificate of Occupancy allows use of the premises as a "restaurant," but Cluck-U-Chicken is in fact a "fast food restaurant" as defined by 11 D.C.M.R. § 199.1 (2003). Second, DCRA granted a Certificate of Occupancy to Cluck-U-Chicken, a fast food restaurant in a C-2-A District, without a special exception as required by 11

[1] The Board of Zoning Adjustment has jurisdiction to hear and decide this appeal pursuant to 11 D.C.M.R. § 3100.2 and D.C. Code § 6-641.07(g)(4).

BZA
Case No. 17439
Exhibit No. 3

Board of Zoning Adjustment
District of Columbia
CASE NO. 17439
EXHIBIT NO. 3

D.C.M.R. § 733. Third, DCRA granted Cluck-U-Chicken a Certificate of Occupancy for a lot that does not correspond to the lot in which Cluck-U-Chicken is actually located.

DISCUSSION

On July 27, 2005, DCRA, through Acting Zoning Administrator Neil Stanley, issued Certificate of Occupancy Permit No. CO-102037 to Cluck-U-Chicken, a Maryland corporation and franchisee of Cluck-U, Corp. The Certificate of Occupancy allows Cluck-U-Chicken to operate a 49-seat "restaurant." Cluck-U-Chicken is located at 1123 H Street, Northeast. Cluck-U-Chicken is in a C-2-A District and directly abuts residential property in an R-4 District.

I. DCRA erred in deciding that Cluck-U-Chicken is a "restaurant" and not a "fast food restaurant."

DCRA granted a Certificate of Occupancy for Cluck-U-Chicken to operate a "restaurant" as defined by 11 D.C.M.R. § 199.1. However, residents have observed that Cluck-U-Chicken in fact satisfies the definition of a "fast food restaurant" under 11 D.C.M.R. § 199.1 and Board Order No. 17214 (July 15, 2005). D.C. Municipal Regulations state that:

> A restaurant will be considered a fast food restaurant if the floor space allocated and used for customer queuing for self-service for carry-out and on-premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor that is accessible to the public, and it exhibits one of the two following characteristics:
>
> (a) at least sixty percent (60%) of the food items are already prepared or packaged before the customer places and order; and/or

(b) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

11 D.C.M.R. § 199.1. Moreover, a "fast food restaurant" is not a "restaurant." See 11 DCMR § 199.1; Board, Order No. 17214 at 3. Therefore, a food establishment is necessarily a "fast food restaurant" and not a "restaurant" if it satisfies the floor space requirement and either the prepared/prepackaged food requirement or the disposable-container-and-tableware requirement.

Cluck-U-Chicken satisfies the floor space requirement. The Board has interpreted the floor space requirement to mean that "if the total floor space for either customer queuing or on-premise consumption, or both, is more than ten percent of the total floor space that is available to the public on a particular floor, . . . then the establishment in question is a fast food restaurant." Board, Order No. 17214 at 5 (vote in favor of order was unanimous). At Cluck-U-Chicken, the floor space for customer queuing alone is substantially more than 10% of the publicly accessible floor space. Moreover, at Cluck-U-Chicken, the sum of the floor space for customer queuing and the floor space for on-premises consumption exceeds the 10% threshold by a substantial amount. Any other calculation fails to comply with D.C.M.R. § 199.1. Cf. Board, Order No. 17214 at 5. Therefore, DCRA's decision to grant the Certificate of Occupancy was erroneous. The Appellant will establish these facts with plans provided by DCRA, photographs, and statements from residents who have visited and/or observed Cluck-U-Chicken.

Moreover, Cluck-U-Chicken satisfies the disposable-container-and-tableware requirement. Cluck-U-Chicken serves its food and beverages to customers primarily in disposable containers with disposable tableware. The Appellant will establish this fact

through statements and photographs from residents who have visited and/or observed Cluck-U-Chicken.

Also, Cluck-U-Chicken satisfies the prepared/prepackaged food requirement. Cluck-U-Chicken serves a substantial portion of food items that are prepared or packaged before customers place their orders. The Appellant will establish this fact through statements from both residents who have visited and/or observed Cluck-U-Chicken and Cluck-U-Chicken's franchisor.

II. DCRA erred in granting a certificate of occupancy to a fast food restaurant without a special exception.

Cluck-U-Chicken is a fast food restaurant in a C-2-A District. Fast food restaurants are permitted in C-2-A Districts only by special exception. 11 D.C.M.R. § 733. However, DCRA granted Cluck-U-Chicken a certificate of occupancy without a special exception. Therefore, DCRA erred in granting Cluck-U-Chicken a Certificate of Occupancy.

III. DCRA granted Cluck-U-Chicken a Certificate of Occupancy for a lot that does not correspond to the lot in which Cluck-U-Chicken is actually located.

Cluck-U-Chicken's Certificate of Occupancy is erroneous on its face. Certificate of Occupancy Permit No. CO-102037 permits a "restaurant" at square 982, lot 803, which corresponds to 1120 G Street, Northeast. However, Cluck-U-Chicken is at square 982, lot 823, which corresponds to 1123 H Street, Northeast. Therefore, the Certificate of Occupancy allows a "restaurant" where Cluck-U-Chicken is not actually located.

REQUEST FOR RELIEF

The Appellant requests that the Board ORDER the Department of Consumer and Regulatory Affairs to:

1. revoke Certificate of Occupancy Permit No. CO-102037;
2. treat Cluck-U-Chicken's Application for a Certificate of Occupancy for a "restaurant" as one for a "fast food restaurant";
3. amend Cluck-U-Chicken's Application for a Certificate of Occupancy to reflect the square and lot that Cluck-U-Chicken actually occupies; and
4. Initiate the special exception process pursuant to 11 D.C.M.R. § 733 within thirty (30) days of the date of the final order issuing from this appeal.

Respectfully submitted,

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