

## Memorandum

**To:** Commissioners, Board of Zoning Adjustment  
**From:** Square 902 Neighbors  
**Re:** BZA 18238A – Fast Food Exception Application of Eighth Street, LLC  
**Date:** March 24, 2021

### Introduction and the Square 902 Neighbors' Position

The Applicant, Eighth Street, LLC (“Applicant”), and the Tenant, Chipotle Mexican Grill, Inc. (“Tenant”), are seeking renewal of the Applicant’s special exception for operation of a fast-food restaurant at 413 8th Street, S.E., Washington, DC 2003. The application is to be heard at the March 31, 2021 meeting of the Board of Zoning Adjustment (“BZA”).

As described below, on March 12, 2021, the Applicant and Tenant amended their application to ask that any extension of their ten-year fast-food exception be conditioned on imposition of certain conditions detailed in Exhibits One and Two attached to their March 12 filing and to this memorandum.

Those conditions are the result of three months of collaborative work involving (1) the Applicant, (2) the Tenant, and (3) representatives of *all* residential property owners on square 902, as well as a number of residents living near Square 902 (collectively the “neighbors”). In addition, the agreed upon conditions are enthusiastically supported by many of the commercial property owners on Square 902.<sup>1</sup>

As a result of the Applicant and Tenant’s cooperation and their agreement to these conditions, the neighbors: (1) fully support the originally sought ten-year extension of the Applicant’s fast-food exception provided any order granting that exception incorporates the conditions detailed in Exhibits One and Two; (2) take no position on the additional two years the Applicant and Tenant are now seeking as part of the extension (see point 2, below); and (3) take no position on the “option” described in point 3 below.

### The March 12, 2021 Application Modification

On March 12, 2021, the Applicant and Tenant filed a “*New Modification Request and Corrections to Its October 2020 Statement and Accompanying Affidavits*” (“*March 2021 Modification, Exhibit 25*”). In addition to correcting various misstatements in the October 2020 “*Statement in Support of Its Application*,” including certain misstatements in supporting affidavits, the *March 2021 Modification* seeks to amend the Applicant and Tenant’s application request by asking the BZA to:

1. grant “an extension of their fast-food exception on the condition that the BZA include in any Order granting such an extension the conditions detailed in Exhibits One and Two,” *March 2021 Modification, Exhibit 25* at 2;

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<sup>1</sup> Each of the Neighbors of Square 902 (residential and commercial) endorsing imposition of the agreed upon conditions are individually listed at page 5 of this memorandum.



2. impose a twelve (12) year term, rather than the originally requested ten (10) years, *id.* at 2-3; and
3. provide the Applicant with the option of extending any extension granted pursuant to the March 12, 2021 amended application for an additional ten (10) years without filing another request for a special exception, *id.* at 3.

“The Applicant seeks this option on the condition that: (1) any BZA order extending the fast food exception include the conditions documented in Exhibits One and Two; (2) the option [is] exercised only for the current tenant (Chipotle Mexican Grill); and (3) there [is] no evidence of (a) the Applicant or Tenant’s failure to comply with the conditions detailed in Exhibits One or Two for any significant period of time or (b) the Applicant or Tenant’s creation of and failure to resolve for any significant period of time nuisance issues (as defined by the District of Columbia Municipal Code) for the neighbors. Applicant and Tenant agree that a record of failure to comply for a significant period of time or nuisance issues that are unresolved for a significant period of time can be evidenced by email correspondence between the neighbors and Applicant or Tenant or violation warnings or notices issued by the city.” *Id.*

**The Circumstances Leading to the Neighbors’ Support  
for a 10-Year Extension of the Applicant’s Fast-Food Exception Provided  
the Agreed Upon Conditions Are Imposed as Part of Any Extension Order**

Over the past three months, the Tenant, the Applicant, and the neighbors have worked collaboratively to determine the best way “to mitigate on-going trash management issues” of the Tenant “that perpetuate and exacerbate rodent issues at 413 and 415 8th St, SE”—the latter of which abuts 413 and is also owned by the Applicant—“as well as mechanical sound issues,” all of which negatively impact “the residential neighbors use and enjoyment of their property.” *March 2021 Modification, Exhibit 25 at 2.*

Through multiple meetings, the Applicant and the Tenant’s corporate real estate leadership and design team listened closely to and took seriously what they acknowledge are the neighbors’ legitimate concerns regarding the Applicant’s and Tenant’s practices. The Tenant did not deny that food-related trash and recycling nearly daily ends up outside, rather than in the containers in the trash shed at 413 8th St and that even when in the shed, trash and recycling are accessible via the often-open trash-shed door and the nearly always open containers and thus provide plentiful food for the rats. They also acknowledged the trash “dribble” or spillage that is frequently found between the back door of property and the trash shed, provides additional rodent substance. The Applicant and Tenant additionally acknowledge that these issues have been exacerbated by their failure to monitor rodent harborage (and mechanical noise issues), resulting in the neighbors having to essentially act as members of the Applicant’s and Tenant’s staffs, documenting the issues and sending emails, photos, and videos to the Tenant’s corporate headquarters and the offices of the Applicant’s property managers to obtain action on on-going and recurring problems. The Applicant was also genuinely concerned upon learning that in June of 2020, the rat burrows at the back of 415 8th St, (the Applicant’s adjoining property) became so bad (and such a safety concern to the neighbors) that D.C. Department of Health, Rodent Control agreed to poison them every two weeks—a solution that requires a major effort not only



on the part of the city, but also on the part of the neighbors who make the arrangements on a twice-a-month basis to access the space. Moreover, both Tenant and Applicant listened carefully to abutting, as well as nearby neighbors' descriptions of how the burrowing at 415 has periodically spilled over to neighbors nearby yards. This type of persistent burrowing creates an unhealthy and unsafe situation, particularly for children and older adults; attracts flies; necessitates frequent washing of our outdoor spaces with bleach (which is bad for the watershed); and, at times, creates a horrible odor.

The parties eventually agreed that indoor trash/recycling storage is the best way to effectively mitigate the complicated trash management and related rodent issues that are inherent in a fast-food operation where turn-over is frequent, the pace is hectic, and proper handling of trash and recycling requires a level of care that is difficult to achieve when staff have to take the trash and recycling outside in order to properly container it and (in the case of recycling) break it down. Haste to avoid snow, rain, heat, cold, bugs, rats, and the general discomfort of working outside often in the dark and daily after 10:00 pm, are not conducive to the proper handling of trash no matter how carefully crafted the governing work practices.

The Applicant, Tenant, and neighbors consequently considered ways to reconfigure the space currently dedicated to an outdoor trash shed, a walk-in cooler for food, and the Tenant's mechanicals to allow for indoor trash/recycling storage. The neighbors, who have successfully worked with other food establishments to address similar problems, shared the knowledge gained from various experts, including engineers, sound mitigation specialists, and officials at the D.C. Department of Health, Rodent Control and the Office of Planning. In this instance, the neighbors specifically drew on building and operational practices successfully adopted by &Pizza at 405 8th St., SE and Le Diplomate on 14th St, NW.

As a result of this sharing of information, the Tenant's architect produced a set of conceptual drawings for indoor trash and recycling storage. The neighbors shared those drawings with Dr. Robert Corrigan (a rodentologist who has worked closely with the D.C. Department of Health and has previously provided pro bono assistance to the neighbors) and with the principal of a local engineering firm who has long donated his time to the neighbors' now fifteen-year project to make and keep mixed-use blocks near Barracks Row healthy and livable. The Tenant incorporated the feedback these experts provided into a second round of plans. The Tenant also asked the neighbors to provide specifications regarding the appropriate materials for the proposed sound mitigation barrier. The neighbors turned to ArtUSA, a company with which the Tenant has previously contracted and who provided the sound mitigation for &Pizza. Finally, drawing on lessons learned from their prior negotiations with Allison Prince, a zoning attorney at who Goulston & Storrs, who represented &Pizza before the Board, and the Board itself, the neighbors worked with the Applicant and Tenant to draw up a set of conditions appropriate for incorporation into a BZA Order.

As has been demonstrated by the success of the indoor trash/recycling storage required by the BZA order granting &Pizza (and its landlord at 405 8th St., SE) a fast-food exception, *see* BZA Orders 18770-A, B and C, a properly-constructed, rodent proof, indoor trash/recycling space that does not require restaurant staff to take trash and recycling outside, accompanied by appropriate operating conditions, will deny rodents a major source of food and greatly aid the efforts of the neighbors (residential and commercial) and the city in addressing the rodent issue



on Square 902. Similarly, well designed sound proofing, such as that ordered as part of the &Pizza fast food exception and extension and detailed in the Applicant and Tenant's plans in this case, will mitigate the mechanical noise that not infrequently makes it impossible for residential neighbors on Square 902 to comfortably open the windows in the back of our homes in the spring, summer and fall. (Notably, these solutions have worked so well at &Pizza, that the commercial property owner of 405 8th St., where &Pizza operates, enthusiastically endorsed the agreement here.)

If, in this case, the BZA grants the Applicant and Tenant an extension in an order that includes the agreed upon conditions—including indoor trash/recycling storage, sound mitigation, and agreements regarding continued upkeep of the property on a regularized schedule—such an extension will go a long way toward mitigating the above-described impacts on both the residential and commercial properties in Square 902.

### Conclusion

Despite the above-described issues pertaining to the Applicant and Tenant's operations and the initial hiccups in the discussions pertaining to the Applicant's and Tenant's current request for an extension, the neighbors are grateful for the cooperation, creativity, and good will the Applicant and, importantly, the Tenant's corporate leadership and design teams brought to this most recent effort. Once the principals on those teams learned of the well documented ongoing rodent issues and the city's and residential neighbors' long-term commitment to finding viable solutions to the rodent problems on mixed-use blocks, they were fully committed to creating a physical space that would not outsource any of the costs of operating their fast-food restaurant onto others. The Applicant and Tenant have also graciously made clear that they are equally appreciative of the patience and cooperative spirit that the neighbors have brought to their interactions with the Tenant and Applicant.

Suffice it to say, the Applicant, the Tenant, and the Neighbors agree that the past three months have been a model of cooperative and creative problem solving and believe that a BZA order extending the Applicant and Tenant's fast-food extension subject to the conditions described in Exhibits One and Two will result in a major contribution to the continuing effort of the city and many of the residential and business stakeholders in the Barracks Row neighborhood to ensuring that urban density in mixed-use blocks is healthy and livable.

**Square 902 Residential and Commercial Neighbors Endorsing  
a Ten-Year Extension Provided the Conditions Detailed in Exhibits One and Two  
Are Made Part of An Extending Order**

David Momenian  
Hill Auto Repair  
712 E St., SE

Jacquelyn Helm  
700 E St., SE

Ritu Upadhyay  
422 7th St., SE

John Casey  
710 E St., SE

John Scheuermann  
700 E St., SE

Vinay Chawla  
422 7th St., SE

Daniel Schmitt  
710 E St., SE

Kristin Fenty  
426 7th St., SE

Matthew Kennerknecht  
418&420 7th St., SE

Linda J. Young  
706 E St., SE

Morgan Kelly  
424 7th St., SE

Rachel Molinaro  
418&420 7th St., SE

Katherine Szafran  
704 E St., SE

Joe Horbey  
424 7th St., SE

Kirk Beatley  
416 7th St., SE

Julia Beatley  
416 7th St., SE

Virginia Albrecht  
423 7th St., SE

Capitol Hill Investors, LLC  
715 D St., SE (Lot 32)

Linda Elliott  
414 7th St., SE

Emily Dalpiaz  
425 7th St., SE

Capitol Hill Investors, LLC  
717 D St., SE (Lot 33)

John West  
414 7th St., SE

Philip Newman  
425 7th St., SE

Capitol Hill Investors, LLC  
401 8th St., SE (Lot 34)

Evan and Yvonne Fotopoulos  
412 7th St., SE

Maygene Daniels  
713-D, LLC  
713 D St., SE

Capitol Hill Investors, LLC  
405 8th St., SE (Lot 34)

Leah Daniels  
Hill's Kitchen  
713 D St., SE

Capitol Hill Investors, LLC  
407 8th St., SE (Lot 35)



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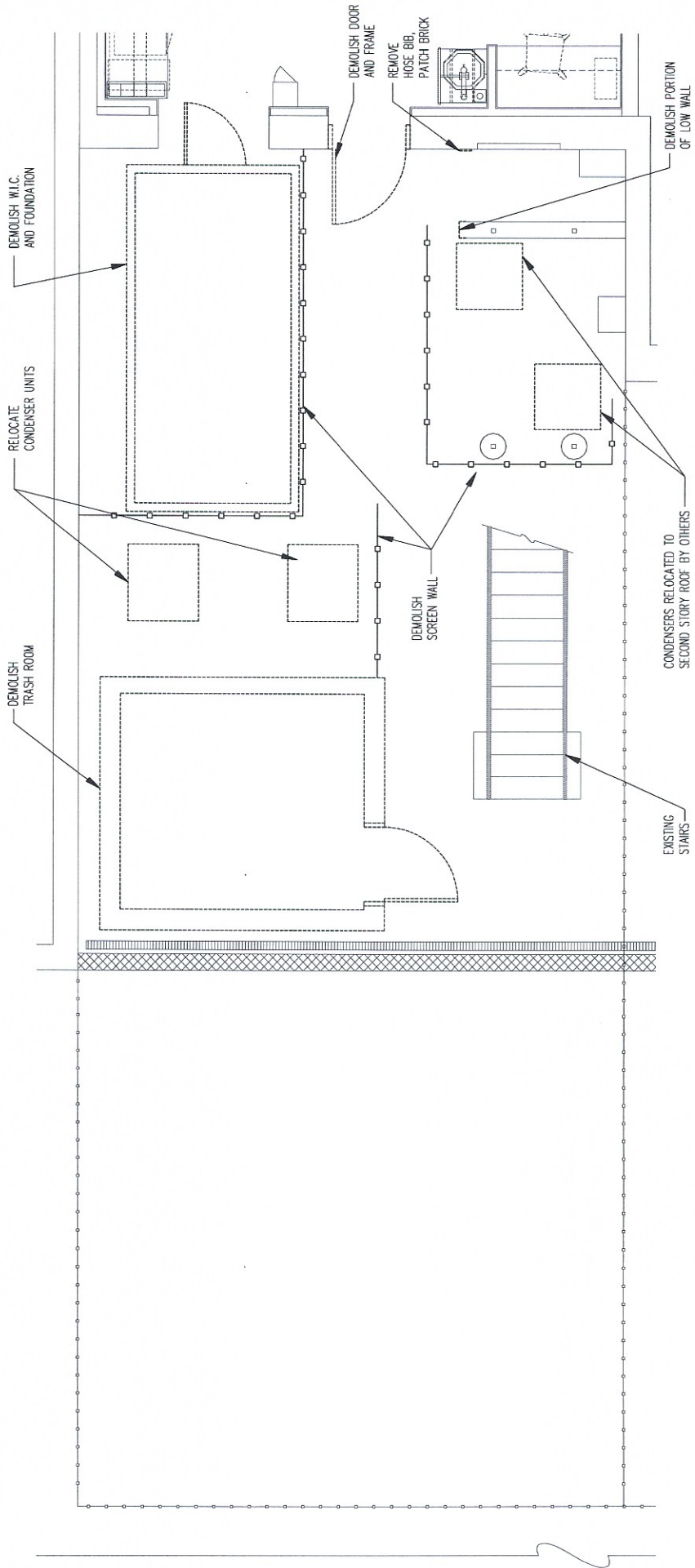
### Exhibit One

1. Deliveries to the site shall be restricted to Monday through Friday, between 10:00 a.m. to 4:00 p.m.
2. All trash pick-ups from the site shall be from the street curb.
3. Applicant (or the Applicant through its Tenant) shall replace the outdoor trash/recycling shed with a dedicated trash/recycling walk-in cooler and shall reconfigure the space currently dedicated to the outdoor trash/recycling shed, mechanicals, and the Tenant's walk-in food cooler to allow the new trash/recycling walk-in cooler to be connected to the building by a code-compliant, enclosed hallway as specified in the drawings and design notes (Exhibit Two) attached and incorporated herein.
4. Applicant (or the Applicant through its Tenant) will relocate the existing HVAC compressors for the Tenant's space and install new mechanicals necessary to the operation of the two walk-in coolers as indicated on attached Exhibit Two and will sound proof those mechanicals as indicated on Exhibit Two.
5. Applicant and Tenant will not store food, trash, recycling, furniture, or equipment of any type in the outdoor area in the rear of the building or within the constructed sound barrier, except as may be necessary, on a temporary basis, for periodic maintenance of the building or mechanical equipment.
6. Applicant shall remove from the rear yard of 413 8th Street, SE the existing HVAC units servicing the second floors of 413 8th Street, SE and 415 8th St., SE (415 is also owned by the Applicant) and install new HVAC units (one on the roof of 413 8th St., SE and one on the roof of 415 8th, St., SE) as close to 8th Street as practicable, but not to the west of where the HVAC units on the roof of 411 8th St., SE are installed.
7. Applicant (or the Applicant through its Tenants) shall maintain the outdoor spaces in the rear of 413 8th St., SE and 415 8th St., SE, including by ensuring that: (1) they are kept free of rodent burrows and all rodent harborage, including weeds and leaves; (2) the trees behind 413 8th Street, SE are watered, trimmed, and treated for mold or insects as needed; and (3) the leaves are cleared from the yards, trench drains, and gutters on a regular and established schedule.
8. Applicant will remove the boards from the 413 8th St., SE side of the existing fence on the west side of the rear yard of 413 8th St., SE, thus mitigating an enclosed "rat run" by which rodents move between the rear yard of 413 and the abutting residential properties on the 7<sup>th</sup> St. side of the square.<sup>1</sup>

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<sup>1</sup> Removal of the described boards on the 413 8th St., SE side of the fence will result in a single-sided fence that is less enticing to rodents.

Exhibit Two - BZA 18238A - Application of Eighth Street, LLC





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## GENERAL NOTES:

- CONSTRUCTION TO BE TIGHT. GAPS, NOOKS OR CREVASSES, WILL BE AVOIDED. IF UNAVOIDABLE THEN GAPS WILL BE COMPLETELY COVERED WITH RODENT-PROOF MATERIAL
- EXTERIOR WIRING/PIPING LEADING TO THE ROOF WILL BE RODENT-PROOF
- ANY FASCIA BOARDS SHOULD BE QUALITY WOOD, NOT PARTICLE BOARD, MASONITE, NOT INEXPENSIVE YELLOW PINE
- SEALANTS TO BE OF HIGH QUALITY LONG LASTING MATERIAL SIMILAR TO BASF'S MASTERSEAL AGAINST RODENTS
- 24 GAUGE METAL TO BE UTILIZED INSIDE CONNECTOR WALLS FOR LONG TERM PROTECTION AGAINST RODENTS
- DOORS WILL HAVE TIGHT FITTING RODENT RESISTANT SWEEPS

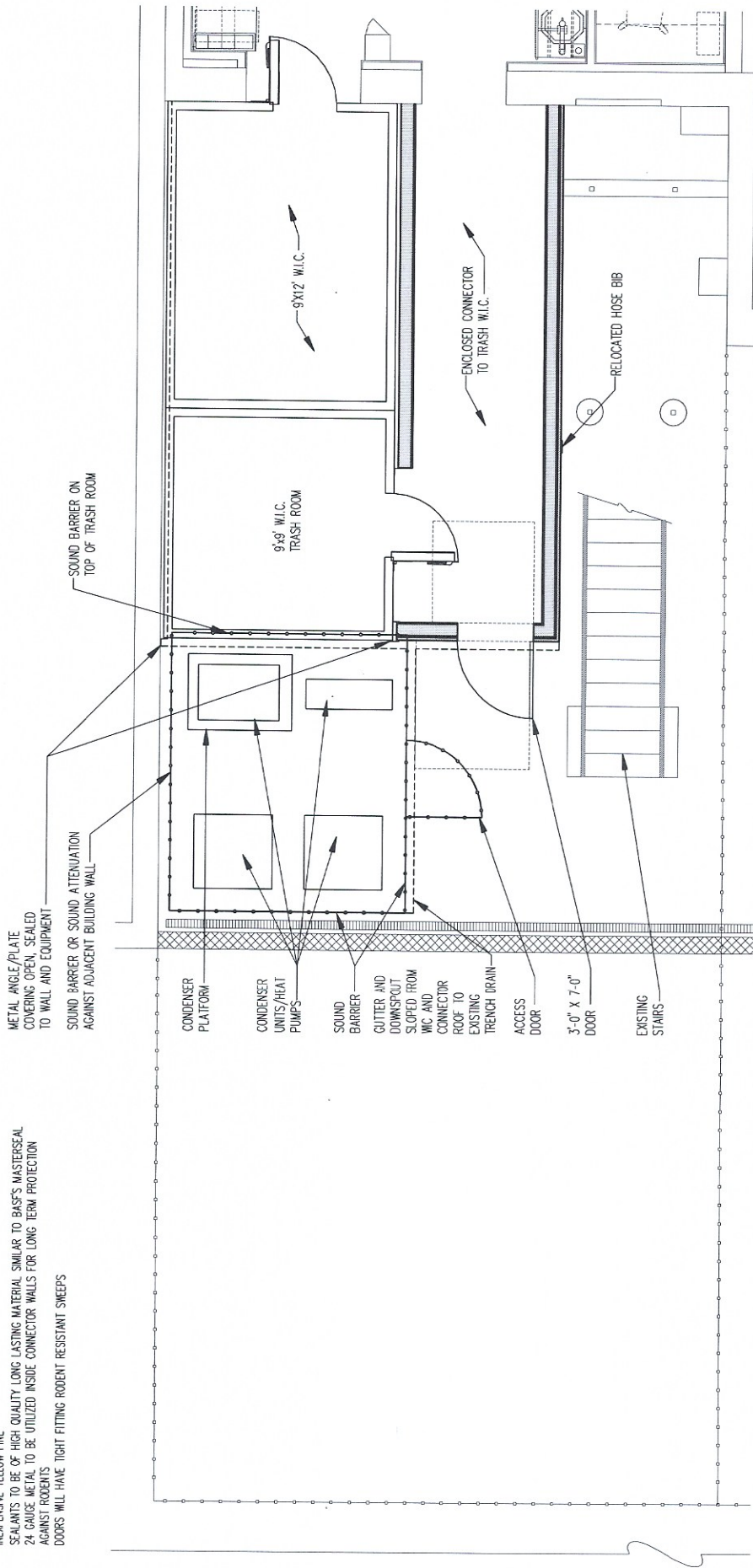




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