

Adverse Impact Statement

To: Commissioners, Board of Zoning Adjustment
From: Residential Neighbors of Square 902 Neighbors
Re: BZA 18238A – Fast Food Exception Application of Eighth Street, LLC
Date: April 15, 2021

In support of the Applicant and Chipotle’s request that the BZA extend its fast-food exception on the condition that the Board incorporate into any such order the conditions agreed to with the Square 902 neighbors, the neighbors submit this document consisting of sworn statements by representatives of each of the nine residential properties on Square 902, and one business owner who is working to turn his commercial property into residential apartments.¹

These statements are an effort on the part of the residential neighbors to provide the commissioners with a clear understanding of the *adverse impact* that the availability of food and rat harborage at food establishments, including Chiptole, has on our use and enjoyment of our homes and our property values.

Clearly, Chipotle and the Applicant are not the only source of food and harborage on near the Square. But every city official and rodent expert that has worked with the Square 902 neighbors has emphasized the necessity of eliminating food sources, one establishment at a time if need be. And, critically in this instance, Chipotle and the Applicant agree that they have substantially contributed to the rat problem over what is now nearly a decade of operation. *See BZA Ex. 25 Updating Memorandum from the Applicant and Tenant and Supporting Exhibits.*

Recognizing their contribution to the rodent issues on the Square, both the Applicant and Chipotle pledged before ANC6B to adhere to certain conditions in exchange for the support of the ANC and the neighbors in seeking a fast-food exception. Indeed, Chipotle and the Applicant agreed to ask the BZA to impose those conditions in any order granting a fast-food exception. *Id.*

In light of this agreement, ANC6B voted unanimously to support the Applicant and Chipotle’s request for an extension as documented during a revised vote on April 7 and 14. *See BZA Ex. 51, incorporating BZA Ex. 41-B.*

Grateful for Chipotle and the Applicant’s willingness to work with the residential neighbors to address the serious rodent issues on the Square, the neighbors submitted their own memo to the Board describing the conditions and the history of cooperative negotiations with Chipotle and the Applicant. *See BZA Ex. 36.*

It is the hope of the neighbors that this additional evidence of adverse impact will convince the Board to follow the precedent it set in the order granting a fast-food exception to &Pizza, also located in the 400 block of 8th St., SE, and, should it extend the Applicant and Chipotle’s fast-food exception, incorporate into the order the agreed upon conditions.

¹ Linda Elliott and John West (414 7th), as neighbors with party status, will present their statements for the record at the April 21 hearing.

1. Katherine Szafran, 704 E Street, SE

Having lived in Square 902 for over twenty years, I have witnessed how the rat population increases with the availability of food. The residents of the square have done all they can to control rats at considerable time and personal expense, such as as ensuring no food sources are available outside their home and removing low decks under which the rats often burrow. I had to remove some of the concrete in my driveway to eliminate burrows dug below it (which did not exist when I moved in) and I removed double fencing around my yard because it was serving as a “rat highway.” Twice a week I clean my front and back garden areas and inspect for the appearance of rat burrows.

We need all businesses in the square to do their part. I noticed a decrease in the rat population when &Pizza and Eat Bar established secure, indoor trash/recycling rooms, which reduced available food, and followed other “best practices,” including installation of pollution control units, which remove rat attracting odor, grease, and food particulate from kitchen exhaust.

Chipotle has been a major food source for the rats since they moved in. They have consequently contributed to the adverse impact that rats have had on the residential neighbors. It is critical that all businesses, including Chipotle, adopt best practices for rat control. Chipotle does not disagree.

An essential first step in Chipotle’s rat mitigation project is establishment of a functional indoor trash/recycling room and attendant sound mitigation (which Chipotle has agreed to do and asked the Board to include as a prerequisite condition in any order extending its fast food exception). Additional operational practices, which Chipotle has also asked the BZA to incorporate in any order extending its fast food exception, will assist in mitigating the rat issues by existing areas of rat harborage.

We applaud Chipotle for recognizing that these conditions will mitigate the adverse impact of their fast food operation on other Square 902 properties and very much appreciate their willingness to ask that the BZA make them a condition of the extension of their fast food license.

I declare under penalty of perjury that the foregoing is true and correct.

Katherine Szafran

Date: April 10, 2021

Owner of 704 E St SE

katalase@gmail.com

2. Ritu Upadhyay and Vinay Chawla, 422 and 444 7th, Street. SE

My husband and I reside in the Eastern Market area of Capitol Hill. Our homes are adjacent to one another at 422 and 424 7th St SE and our back gardens are within feet of 413/418 8th St, the properties belonging to the Applicant, one of which is rented to Chipotle.

We purchased the first house in 2013 and fell so in love with the neighborhood we bought the one right next door the moment we knew it was going on the market. We have poured our entire life savings into these two homes. We are committed to this vibrant mixed-use neighborhood and plan to raise our young children, ages 2 and 4, here.

Sadly we have had to learn to deal with some level of rat infestation in our neighborhood, constantly closing up rat holes with dry ice, placing mouse traps in and outside our homes and regularly clearing rats from our parking spot that die while harboring in our vehicle undercarriage.

Unfortunately, the infestations have now multiplied to a point that is making it difficult to think of raising our children in the neighborhood. It's unsafe for us to let our kids play in their own backyard due to the fear that they will come in contact with the disease infested rat feces that around no matter how much we try to clear it up. The rats have made us and our renters in the neighboring property unable to comfortably and safely use the porch and back gardens which we spend much time and effort maintaining. And on a purely financial level, it decreases the value of the properties.

The rapidly growing rodent population has posed a constant stream of problems for our tenants. We cringe when we hear from our renter's that their children yell "Mommy I saw a rat!" Last year, their car's engine wires were total chewed through by rats while parked in the designated backyard space, requiring expensive repairs. Because they understandably no longer wanted to park in the back, we had to reimburse them for rent charged for the coveted parking spot. That same renter eventually asked to end their lease early because they were trying to start a family and were concerned that cleaning up rat feces would be detrimental to the pregnancy.

All of this is to illustrate why we fully and wholeheartedly support the conditions of agreement negotiated with Chipotle. Along with other neighbors, we have invested a considerable amount of time tracing the root cause of the rat proliferation. We have worked with the current applicant and as part of the &Pizza effort to help curb what is clearly the cause: outdoor trash and recycling storage that inevitably creates a plentiful food source for rats.

Unfortunately, as is clear from the above, Chipotle admitted trash mismanagement has severely impacted our ability and our renters' ability to enjoy our properties. We have photos of chew holes and grease marks in the fence between 415 8th St SE (which Chipotle rents from the Applicant) and 413 8th St., SE (the Applicant's adjacent property) that clearly demonstrate the rats which burrow on the back of 415 eat at Chipotle. Openings to the burrows at the back of 415 8th St, SE (the Applicant's adjacent property) have popped up on the 7th Street side of the fence in the garden of our immediate neighbor 418/420 7th St (The Prout building). The burrows have gotten so bad that they spread to under our porch at 422 7th St SE and the garden behind

our adjacent property, 424 7th St SE. (This started well before the construction at 707 E St began this fall.) Along with our other neighbors Linda Elliott, Linda Young, and Katherine Szafran, we have spent many hours pouring the dry ice into these 415 8th St./Prout burrows to try to clear the problem.

In the 8 years since we bought our first property on the block, I have been part of the neighbors effort to work together with the restaurant owners on 8th street and our ANC to implement best practices to mitigate the adverse impact of restaurants on their neighbors. These are: 1) indoor trash and recycling storage 2) mechanical and sound mitigation 3) an pollution control units, which remove rat attracting odor and food and grease particulate from kitchen exhaust. A number of establishments on Barracks Row have begun to adopt some combination of these practices, sometimes all three. By way of background in the case of Chipotle, during our negotiations with the management we agreed it was ok for them not to implement a “pollution control unit,” since odors have not been a problem from Chipotle.

The Applicant and Chipotle have admitted their role in the rat proliferation and have asked the Board to impose conditions, including indoor trash and recycling storage that will mitigate their adverse impact on the neighbors. If the conditions are not imposed by the BZA, the extension of the fast food exception will continue to have an adverse impact on the enjoyment of our property and the property value.

I declare under penalty of perjury that the foregoing is true and correct.

Ritu Upadhyay, owner 422 7th St, SE and 424 7th St. SE
ritu_upadhyay1@yahoo.com
April 15, 2021

3. Evangelos Fotopoulos, 412 7th Street, SE

I am writing to ask that the BZA extend the fast-food exception of Chipotle Mexican Grill and its landlord, the owner of 413 and 415 8th St, SE, only on imposition of the eight conditions that Chipotle and the landlord came to agreement on with the neighbors.

I own 412 7th, Street SE through my LLC. I bought the property several years ago in no small part because of the beautiful garden. Unfortunately, I quickly learned that the readily available food at Chipotle (which is located less than 17 feet from our property) as well as Popeye's and 7/11 (also located on the 400 block of the Street) supports a robust rat population which has found its way to my garden and home.

During the first year I owned 412 7th Street, rats frequently crossed the property in broad daylight, even though all my residential neighbors and I were meticulous about not keeping any trash or food sources in our back gardens. By last spring, they were using the telephone wires to traverse from the area at the back of the Chipotle property across to my property. Last year, with the assistance of my immediate neighbors, and in order to make it less attractive to rodents, I spent well over \$2,000 to significantly trim the garden and rat proof the fence around it following instructions provided by the city. Nevertheless, I still had rodents strolling up my

patio -- one walked into the house through a sliding glass door that had been left ajar. I had to bring in a trapping service to have the rat removed.

Obviously, city life necessarily involves the presence of rodents. But authoritative sources -- both DC City agencies and those on the internet -- emphasize over and over that the step essential to keeping the rodent population under control is removing food sources. Those of us who own homes in the 400 block of 7th Street are grateful that Chipotle and its landlord recognize their role in the problems we have and have agreed to the eight conditions listed in their March 2021 amended application, including moving its trash and recycling from an outside storage shed to an indoor walk-in cooler. We are also grateful that Chipotle and the landlord are moving and sound-proofing the mechanicals that have created annoying noise issues making our gardens less pleasant and preventing us from comfortably opening our windows.

We ask your assistance in helping us, the residential property owners on the the block, as well as our existing neighbors, in making and keeping our community safe and healthy and (relatively) rodent free.

I declare under penalty of perjury that the above is true and correct.

Evangelos Fotopoulos, Owner
412 7th St SE, Washington DC 20003
P: 301.704.3654
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4. Matt Kennerknecht, 418/420 7th Street, SE

As the developer and a homeowner at The Prout Condominium (418/420 7th St SE), I have been contending with the persistent rat problem on this square for a number of years. From very early in the planning process for our building, conversations with our neighbors revealed this is a longstanding issue stemming from the heavy presence of food establishments on 8th St. The problem was so obvious from testimony and studies of the property that we invested in an indoor trash room for our small condominium building.

While keeping our trash secured inside has helped, we have dealt with a never-ending hotspot of rodent activity along our rear fence, which shares a property line with 413 (Chipotle) and 415 8th St SE (formerly EatBar, same ownership). There is an expansive network of burrows running in the rear yard of 415 8th, the former EatBar space, which has further expanded under the fence and into our rear garden.

We invested in creating and maintaining a lush garden and lifestyle area in our land-locked rear area for our homeowners to enjoy as an amenity; unfortunately, despite best efforts by pest control contractors, the invasive rodent issue along the 413-415 fence has significantly impacted the use of this space. Over the past 9-12 months, DC DOH has sent a rodent task force for bi-weekly treatment of this network of burrows along our shared property lines, and the Applicant (the owner of 413-415 8th St SE) has been very cooperative and agreeable to this treatment plan.

While DC DOH's involvement has been a positive effort in mitigating the growth of the issue, the problem cannot be solved until the root of it is eliminated and indoor trash and recycling storage is put in place to remove the source of food for the rodents.

I declare under penalty of perjury that the foregoing is true and correct.

Matt Kennerknecht, Home Owner and Developer
Date: April 12, 2021
Owner of 418/420 7th St SE

5. Rachel M. Christoper, 418 7th Street

I purchased my home at 718 7th, St SE in February 2020. One of the selling points of the property was the beautiful backyard. During the warmer months, I spend a lot of time out there and also enjoy hosting get-togethers with friends and family. On more than one of these occasions a rat has been spotted near the back fence, which backs up to Chipotle. As you can imagine, rats running around (or even the possibility that they will) at best dampens the mood and at worst means the space can't be used comfortably.

The building I live in, The Prout, utilizes an indoor trash/recycling storage system, which has worked very well. I understand that a residential property is different than a commercial one, but in the time that I've lived here, there haven't been any issues.

This is the first house I bought on my own; I love it and the surrounding neighborhood. In addition to the negative long-term impact of these rats on my property value, it's also upsetting that my neighbors and I are unable to fully enjoy our homes.

I declare under penalty of perjury that the foregoing is true and correct.

Rachel M. Christoper Date: April 10, 2021
Owner of 418 7th St SE
remolinaro@gmail.com

6. Kirk Beatley, 416 7th Street

I am writing in expectation that the District of Columbia Board of Zoning Adjustment (BZA) will take into serious consideration the concerns addressed here in regards to the fast food licensure renewal requested by Chipotle and the property owner of 413/415 8th Street, S.E., Washington, D.C. 20003.

My family owns and resides at 416 7th Street, S.E., which my wife and I purchased from an elderly relative in 2008 and then spent the next two years and several hundred thousand dollars to renovate and update.

This property has been “home” to my family members since 1903, thus members of my family have resided in this home for nearly 120 years, and we expect to retain this home in our family for at least the next generation, if not longer.

Our property is located directly behind, abuts and is directly adjacent to the Chipotle fast food establishment referenced above. In fact, we share a common wooden fence which I personally installed in 2009 so to enclose my family’s property and allow my children and their friends to play in a safe and secure environment.

You cannot imagine how delighted my children were when learning that a Chipotle fast food establishment would be opening right behind our house, but even more unimaginable is the horror we felt when we realized that the garbage generated by that same fast-food establishment created a new food source for huge, ugly, and very destructive rats that began roaming our yard, having burrowed under our wooden fencing, and digging burrows in the same yard space where my children played with their friends!!

In an effort to prevent these rodents from burrowing into our property from the Chipotle side, we installed a cement block wall on which we set the fence. The wall extends three feet into the ground to frost line. Although this stopped the rodents from burrowing under the fence, they began chewing through the small openings between the fence slats, making them large enough to allow ready passage into our yard and allowing for continued burrowing. My wife and I, coordinating with our residential neighbors, have spent significant time and money attempting to eradicate these burrows. Last year, we were forced to further alter our fencing, by adding additional slats in an effort to stop the invasive via “chew holes” that the rats create.

You may be familiar with the 1971 movie entitled “Willard,” which is the story of a social “misfit” who befriended rats and used them to retaliate against his “enemies”. I have video of a daylight event involving more than half a dozen rats crawling from the Chipotle property through the fencing surrounding my family’s rear garden. This event took place just before I nailed boards over the slats in our fence. While I’ve been told that the BZA cannot accept videos as part of its record, I would welcome and appreciate an opportunity to share this video with any of you who are interested in viewing it. I am happy to text or email it to you individually or to city officials on your staff or the staff of the Office of Zoning. This video is even more frightening than what a Hollywood studio produced in 1971.

We have taken extraordinary steps to re-secure and to protect our property from these dangerous rodents, but we are limited in what we can do as individual property owners. Consequently, we plead with you to follow the eight conditions, including indoor storage of trash/recycling, that the larger group of neighbors on are block negotiated with Chipotle and to which Chipotle and the owner of 413/415 8th Street have acceded as a necessary cost of doing business without contributing to and perpetuating rodent-related health and safety concerns and their clear adverse impact on the residential property owners use, enjoyment, and value of their properties.

Thank you for your time and consideration,

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Kirk Beatley,
416 7th Street, S.DE.
Washington, D.C. 20003
202.425.3485
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April 11, 2020

7. Kristen Fenty, 426 7th Street

My name is Kristen Fenty. I have been the owner of 426 7th Street, SE since August 2005. I am grateful for and have participated in the community's long-term effort to keep rat intrusion at bay on our block. Over the years, I have come to have serious concerns about the sanitation practices of many restaurants, fast food or otherwise. It has been my experience that requiring restaurants to provide and use indoor storage of trash and recycling is necessary to protect the residents and property values on our block.

In 2017, I lost tenants as a result of repeated rat intrusion. I spend \$340 per year on extermination services to prevent rodent intrusion of my garden, but it does not work in isolation. Rodents drawn to trash, recycling, and grease stored outside restaurants on our block work their way onto my property. Last year, I paid \$600 for carpentry services to seal entry points. Other years, I have paid over \$950 to seal entry points.

Following the loss of my tenants in 2017, I demolished a deck to reveal a network of burrows leading to holes in my foundation. Realtors provided valuations of my property which were less than what I paid 12 years earlier. That year, I spent nearly \$100,000 restoring my foundation; repairing damaged wiring and insulation; and converting my exterior space to a rodent deterrent hardscape. I have sadly ripped out plants which were planted by a landscaper and undertaken every effort to keep my property rodent free. Sadly, these efforts are in vain if performed in isolation.

Keeping our block safe requires the effort of all property owners and tenants. Residential neighbors cannot do it alone. Commercial property owners, particularly those who rent to food establishments, must do their part. Chipotle's experiment with an outdoor trash shed is good evidence that proper indoor storage of restaurant trash and recycling – such as the BZA ordered & Pizza to undertake – is absolutely necessary to protect local residents. Although disappointed with the rat sustenance and harborage, as well as mechanical noise issues that Chipotle and its landlord have imposed on the block, I am grateful that they are willing to admit that they are part of the problem and consequently join the neighbors in asking that the Board impose eight conditions, including indoor storage of trash and recycling and mechanical noise mitigation, as a prerequisite of extending their fast-food exception. Chipotle and its landlord are setting exactly the example that other landlords and restaurants need.

We have young children and toddlers on the block who deserve a safe, clean home and outdoor environment. To that end, I request the BZA incorporate the requested conditions in Chipotle's fast food exception.

I declare under penalty of perjury that the foregoing is true and correct.

Kristen M. Fenty Date: April 11, 2021

Owner, 426 7th Street, SE

E-Mail: kristen.fenty@gmail.com

Phone: 315-222-6255

Mailing Address: 1620 Tether Keep, Virginia Beach, VA 23454

8. Linda Young, 706 E Street

I purchased my home at 706 E St SE in June, 2015, having no experience with rats at that time (mice—yes, rats—no). My daughter was frightened to discover a rat staring at her from the pantry one evening. We found two had entered after chewing through foam that had been sprayed to keep them out.

Those experiences started a long process of securing the house against rats at a cost of well over \$7000. In addition, I spray the front and back gardens' brick areas with bleach every other week and have landscaped the house using plants that do not provide cover for the rats. Last week my mechanic told me that rats had been sitting on top of my transmission to eat, leading me to spend more money to install devices to keep them out of the car's hood area.

Even with these efforts I see rat feces in my back and have seen rats run under my fence toward the rear of 415 8th St SE (the Applicant's land adjoining the area leased by Chipotle). I have looked over the fence to 415 8th St to see rat burrows on both sides of the fence separating 418/420 7th St SE (the condominium named the Prout) and 415 8th St SE, the Applicant's property adjacent to 413, where Chipotle is located.

We have all appreciated the efforts by DC Rodent Control to treat our block for rats bi-weekly over the past year or so. They have worked hard to treat the rats in hard-to-get-to areas, such as in the back of 415 8th St, which has some areas that had large numbers of rat burrows that were challenging to access. I love my house, the easy access to restaurants and shops, and the neighborhood. However, the long-term impact of these rats on my property value is increasingly concerning.

Having lived here for almost 6 years now, it is evident that everyone in the square must collaborate to remove the rat's access to food if we are to win this battle. Well-constructed indoor trash/recycling storage and conditions requiring the Applicant and Tenant to avoid creating harborage in the back of 413 and 415, as they have been doing over the half dozen years I have lived on the Square, are essential to getting the rat population on the block under control.

I declare under penalty of perjury that the foregoing is true and correct.

Linda J. Young Date: April 8, 2021 Owner of 706 E St SE

LJYoung999@gmail.com

9. Jacquelyn V. Helm, 700 E Street

Living at 7th and E Streets, SE is a true delight. Restaurants and shopping abound; Eastern Market, Capitol Hill Arts Workshop, the Metro, and interesting and friendly neighbors round out this fantastic neighborhood. If this area is to continue to thrive, however, it will take the unified commitment of residents and businesses. We must support each other, be aware of our impacts on others, and come together to address problems as they arise.

It is in this spirit that I write in support of the indoor trash/recycling storage agreement between Chipotle and area residents and ask that the BZA adopt its provisions as mandatory. This agreement represents exactly the type of cooperation and consideration between businesses and residents that we need and need to encourage. It is the culmination of many meetings, discussions, revisions, and reviews. I believe it works in the best interests of all the parties and can stand as an example of how residents and businesses can work together to resolve issues that arise.

This agreement was propelled by residents' concerns about an active and growing rat population in our neighborhood. This agreement is vital to our rat control efforts. DC Rodent Control has been of great assistance in our rat control efforts over the last year, but more is needed. We all know that rats gather and populate around food sources. Outdoor trash and food garbage from restaurants along 8th Street, SE, are an attraction they can't and won't resist. The relaxing mood fostered by sitting outside on my patio in the evening, enjoying talking to people as they pass by, and sharing some time with friends is spoiled when several rats scurry over the bricks and run under our chairs. This is not a rare occurrence. While I have not noticed any rat burrows on my property, I have seen them on my neighbors' properties and am afraid that unless we are more proactive in addressing this problem it will only spread and the rat population will continue to grow.

Rats are not only unsightly and destructive; they carry disease. If the COVID-19 pandemic has taught us anything, it is that rodents not only carry disease, but can transmit disease to humans. I do not want our neighborhood to become the next epicenter of some rat transmitted disease. Nor do I want others to wonder why, if we knew about this problem, we just shrugged our shoulders and did nothing. The agreement before you does something. It is not a solution in and of itself, but is a great step forward that I believe will go a long way toward rat eradication. Please, join us in these efforts.

I declare under penalty of perjury that the foregoing is true and correct.

Jacquelyn V. Helm
Owner of 700 E Street, SE
jacquelyn.helm@gmail.com

Date: April 10, 2021

10. David Momenian, 712-714 E Street

As the owner and operator of Hill Auto Repair (712-714 E St SE) since 1986, I began doing business in this square prior to Chipotle's (the applicant's tenant) arrival. The rat population has increased with the number of restaurants and fast-food facilities. I have had rats in the manhole in front of my shop, in the sewers, and in the back of my shop.

Chipotle has been a major contributor to the rat issues at the back of my shop. The rats get food at Chipotle (413 8th St SE). Numerous times (most of the times that I have looked) the door to the Chipotle trash shed has been open, allowing easy access to the food in the often open trash cans.

The rats spread from Chipotle, and have created large burrows at the back of 415 8th St SE (the Applicant's second property separating my property from the property the Applicant rents to Chipotle at 413 8th St.) The rats have extended those burrows at 415 8th into the back of my shop, which adjoins 415 8th. (There are also burrows are also in the front of my shop.) Front and back, the burrows are very hard to get rid of. When the rats first burrowed in front of my shop, I poured cement, but they chewed through it. To combat them, I mixed metal with the cement used to repair the damage.

I have developed plans to convert the shop's building into apartments. These plans include an indoor trash room. When, on initial review before ANC 6B, the commissioners suggested it was not large enough to accommodate the trash from the projected apartments, I had the architect enlarge it. I am concerned that, if each of us do not do our part to control the rat population in this square, it will be hard, if even possible, for me to rent the apartments.

Everyone living and working in the square needs to work together to keep the rat population under control. Mostly, as everyone knows, we have to get rid of or at least decrease the easy food sources on the block or we will never be able to make full use of our properties.

I declare under penalty of perjury that the foregoing is true and correct.

David Momenian Date: April 8, 2021
Owner of Hill Auto Repair, 712-714 E St SE
HillAuto12@gmail.com