

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

EIGHTH ST. LLC,)
)
 Applicant,)
) Application No. 18238A
)
)
)

**APPLICANT EIGHTH ST. LLC’S NEW MODIFICATION REQUESTS AND
CORRECTIONS TO ITS OCTOBER 2020 STATEMENT IN SUPPORT OF ITS
APPLICATION FOR MODIFICATION OF SIGNIFICANCE AND
CORRECTIONS TO THE ACCOMPANYING AFFIDAVITS**

I. General Background and New Modification Requests

In October 2020, the Applicant, Eighth Street, LLC (“Applicant”), and the Tenant, Chipotle Mexican Grill, Inc. (“Tenant”), filed an application for a Modification of Significance seeking an extension of its 10-year special exception to operate a fast food establishment granted on July 19, 2011, (application No. 18238) to Streetsense and Chipotle Mexican Grill, Inc., pursuant to 11 DCMR §§ 3104.1 and 1570.1. The special exception is for the property at 413 8th Street, S.E. (Square 902, Lot 828), which is zoned MU-25 and located on Barracks Row in the Capitol Hill neighborhood in Southeast D.C.

The October 2020 modification application, which seeks a 10-year extension of the Applicant and Tenant’s fast food exception, does not cite the governing Zoning Regulations. The Applicant now seeks to modify its application to make clear that it is seeking the extension of the fast food exception for Lot 828 pursuant to Title 11, Subtitle Y § 704 and Title 11, Subtitle U § 513.1(d) (Special Exception Uses (MU-USE Group E)).

The October 2020 application was originally scheduled to be heard at a January 2021 BZA hearing, but the Applicant and Tenant twice sought continuances to allow them to work with the residential neighbors of Square 902 to determine how best to mitigate issues related to both the Applicant's and the Tenant's operations at 413 8th St., SE and the Applicant's operation of 415 8th St., SE over the past decade. (The Applicant owns 413 8th St., SE, as well as the adjoining property at 415 8th St., SE. The two properties share contiguous rear yard spaces that directly abut residential properties on Square 902. There is no alley on Square 902.)

Based in part on the discussions with the neighbors and, in part, on the desire of the Applicant and Tenant to seek a longer extension than sought in their October 2020 application, as well as an option for future renewal described in No. 3 below, the Applicant and Tenant now seek to modify their October 2020 application as follows:

First, based on an agreement reached with all of the residential property owners on Square 902, a number of commercial property owners on Square 902, and various other nearby residents, the Applicant and Tenant seek 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.

As explained below, those conditions are a result of the Applicant and Tenant's ongoing discussion with the residential neighbors, including abutting home owners, as to the best way to mitigate on-going trash management issues that perpetuate and exacerbate rodent issues at 413 and 415 8th St., SE and on the block, as well as mechanical sound issues affecting the residential neighbors use and enjoyment of their property.

Second, Applicant and Tenant request that their application be amended to allow them to seek an extension of their fast food exception for a twelve (12) year term, rather than the originally

requested ten (10) years. The Applicant seeks the additional two years in order for the Tenant to realize the full use of the initial BZA special exception for this location. Here, the Tenant moved into this location about a year and half after the special exception was granted in July 2011. The additional two years will allow the Tenant's lease to run with the end of the current special exception term and into the new term if approved.

Third, due to the Tenant's significant capital investment in the property through its commitment to installing a waste and recycling walk-in cooler made part of the building by a roof and an enclosed hallway, the Applicant and Tenant request that the BZA include a provision in the order providing them with the option of extending whatever original term may be ordered for an additional ten (10) years without having to file another request for a special exception. 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 being exercised only for the current tenant (Chipotle Mexican Grill); and (3) there be 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.

As a result of the agreement detailed in Exhibits One and Two, 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 agreed upon conditions detailed in Exhibits One and Two; (2) take no position on the additional two years the Applicant is now seeking as part of the extension (see point 2, above); and (3) take no position on the “option” described in point 3 above.

II. Corrections to the Previously Filed “Statement Describing the Modification of Significance” and Several Supporting Exhibits and Affidavits (see Docket Exhibit 2) and Additional Background

In support of its October 2020 application, Applicant and Tenant filed a Statement Describing the Modification of Significance, which was accompanied by a number of exhibits and affidavits. Based on subsequent meetings and correspondence with the neighbors, the Applicant and Tenant realized that both the Statement and the affidavits contained a number of misstatements based either on misunderstandings regarding the reality on the ground or on miscommunications with the neighbors. Specifically, the Statement incorrectly suggests that the neighbors were not interested in working with the Applicant and Tenant to correct certain operational issues. Further, the Statement and several of the affidavits incorrectly suggest that the Applicant and Tenant’s operations, particularly their trash management practices and property upkeep never created issues affecting the health, use and enjoyment, or property value of the neighbors’ homes and property. Applicant and Tenant seek to correct these inaccurate characterizations of the situation.

Over the past decade, the neighbors have been in regular communication with the Applicant and Tenant regarding ongoing and sporadic issues in the operation of both 413 and 415 8th St. SE. Regarding the current request for a fast food exception, representative neighbors met with the Applicant and Tenant in May 2020. During the meeting, the parties discussed the ongoing and well documented issues with trash management, rodent harborage, and mechanical sound issues. The Applicant and Tenant agreed to consider the feasibility of indoor trash storage

and various other conditions to address these concerns and get back to the neighbors by July 4, 2020. As a result of some sort of apparent misunderstanding or miscommunication between former counsel for the Tenant and the ANC representative, the Applicant and Tenant filed their application in October without providing the neighbors a conclusion as to the feasibility of indoor trash/recycling storage or otherwise alerting them to the fact that they had gone ahead with the application for an extension of their fast food exception. In early December 2020, ANC representatives who know of the long history of issues at 413 and 415 brought to the attention of the neighbors the fact that the application for extension of the fast food exception was on the ANC's December 2020 agenda. The neighbors appeared at the ANC meeting and voiced, at a high level, their concerns, and the Applicant and Tenant consequently sought a continuance of the then scheduled January 2021 BZA hearing to allow time to work directly with the neighbors.

Over the past three months, as a result of a number of meetings and many telephone conversations, the Applicant and the Tenant have developed a clear understanding of the serious ongoing trash management and related rodent issues, as well as lingering mechanical noise problems associated with the Tenant's operations at 413 8th St., SE and the Applicant's management of 415, 8th St., SE. Applicant and Tenant discussed with the neighbors the many emails and photos sent by the neighbors to Chipotle's Corporate offices (including to Anne McAbee, Lead Asset and Property Manager in Denver), as well as to Applicant's property manager (Tiffany Pugh of Finmarc), which documented the ongoing issues with trash management, rat burrowing, rodent harborage (including shoulder height weeds; dirty equipment; dirty grease containers; half full garbage totes left outside the trash shed to collect rain; garbage bags, dirty cooking pots and recycling tossed into the rear area loose rather than taken to the trash shed; etc). The parties also discussed the many phone conversations and several in-person meetings between

the parties over the course of the past decade. Reminded of these ongoing communications with the neighbors, the Tenant's corporate real estate leadership and design teams and the Applicant readily acknowledged the neighbors' legitimate concerns regarding the effect of these ongoing issues on the health of the neighbors' families, the use and enjoyment of their property, and their property values. The neighbors, in turn, listened closely to and took seriously the operational concerns of the Tenant.

The parties eventually agreed that the eight conditions listed in Exhibit One, including indoor trash/recycling storage, was 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.

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.

As a result of this sharing of information, the Tenant's architect produced an initial set of conceptual drawings. The neighbors shared those drawings with Dr. Robert Corrigan (a rodentologist based in New York 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 mix-used blocks near Barracks Row healthy and livable. They provided feedback, which the Tenant incorporated 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 another restaurant on Square 902.

The result of this cooperative effort is a set of well-thought-out and detailed conceptual drawings (which will, if a fast-food extension is granted, be converted into construction plans), as well as eight conditions all of which the Applicant and Tenant are asking the BZA to impose in any order extending its fast-food exception.

In exchange for the Applicant and Tenant's agreement to undertake the building of the indoor trash storage solution and sound mitigation system detailed in Exhibit Two, and abide by the conditions in Exhibit One, as well as seek an extension of a fast food extension conditioned on the incorporation of those conditions into any Board Order granting that extension, the neighbors: (1) fully support the Applicant's (and Tenant's) application for an extension its fast-food exception for the period of time originally requested—ten years; (2) take no position with respect to the additional two years now being sought; and (3) take no position on the sought after option to renew without having to file a request for a special exception.

III. Conclusion

For over eight and a half years, the Barracks Row Chipotle has enhanced the neighborhood's dining and entertainment options. Chipotle has steadfastly remained open throughout the COVID-19 pandemic in order to continue serving the public in a safe and responsible manner and providing employment opportunities to the community.

Assuming the Board grants an extension subject to the conditions detailed in Exhibits One and Two, the Applicant and Tenant are of the view, which we know the neighbors share, that Chipotle and Eighth St. LLC, in accordance with the zoning regulations, will no longer adversely

affect the use of neighboring residential and commercial properties. Indeed, the Applicant and Tenant will be making a significant contribution to the continuing effort of many of the residential and business stakeholders in the Barracks Row neighborhood to ensure that the urban density of mixed-use blocks is both healthy and livable for the residential and commercial neighbors, as well as visitors to Barrack Row.

For the reasons stated above, Applicant and Tenant respectfully request that, pursuant to Title 11, Subtitle Y § 704 and Subtitle U § 513.1(d) of the 2016 Zoning Regulations, the BZA grant a modification of significance, incorporating into the order the conditions detailed in attached Exhibits One and Two, and extending the terms of the special exception as described within.

Thank you for this opportunity to modify and correct the Applicant and Tenant's October 2020 submission.

Respectfully submitted,

/s/ Samuel H. Porter, III
Samuel H. Porter, III
Ice Miller LLP
250 West Street
Columbus, Ohio, 43215
P: (614) 462-2700
Fax: (614) 462-5135

BZA 18238A – Fast Food Exception Application of Eighth Street, LLC

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.¹

¹ 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 2 - BZA 18238A – Application of Eighth Street, LLC

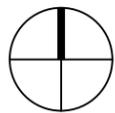
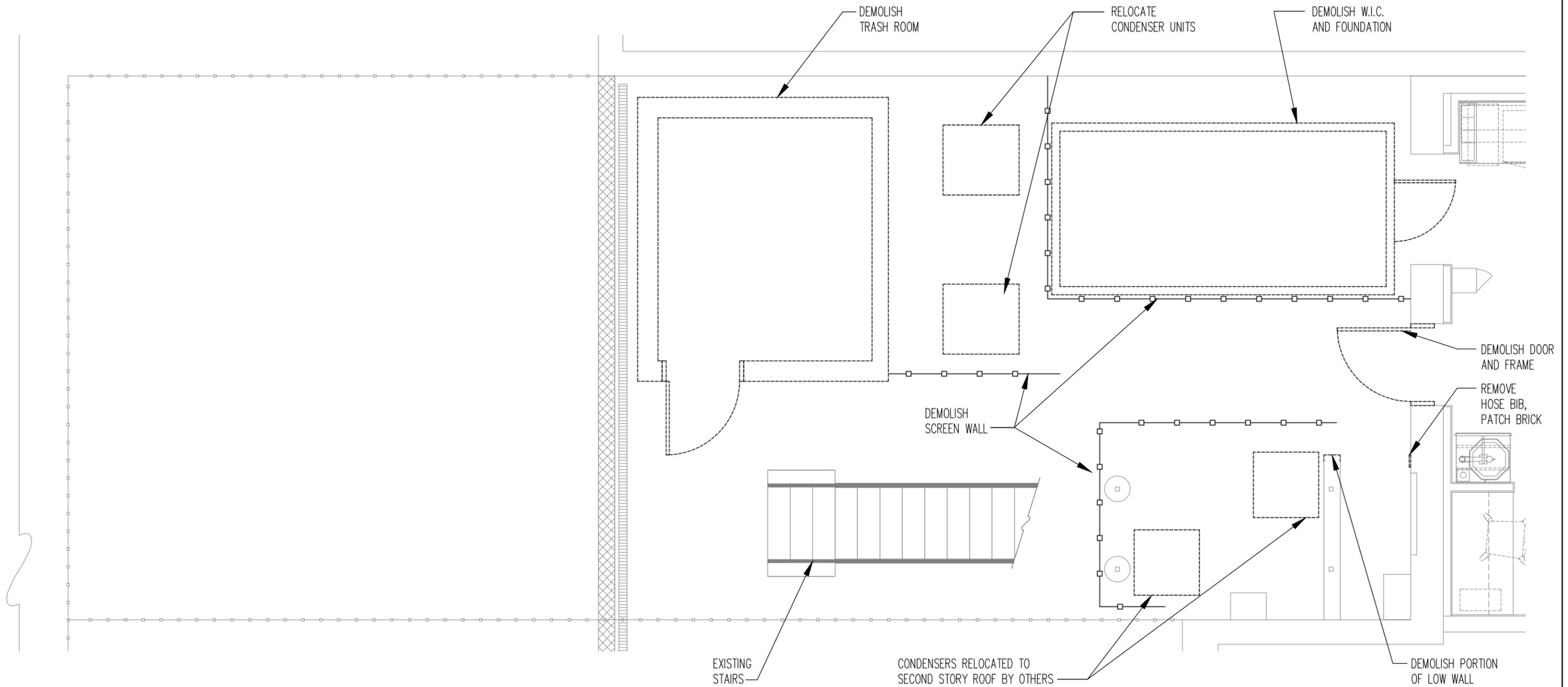


Exhibit 2 - BZA 18238A – Application of Eighth Street, LLC

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
- 24 GAUGE METAL TO BE UTILIZED INSIDE CONNECTOR WALLS FOR LONG TERM PROTECTION AGAINST RODENTS
- DOORS WILL HAVE TIGHT FITTING RODENT RESISTANT SWEEPS

METAL ANGLE/PLATE
COVERING OPEN, SEALED
TO WALL AND EQUIPMENT

SOUND BARRIER OR SOUND ATTENUATION
AGAINST ADJACENT BUILDING WALL

SOUND BARRIER ON
TOP OF TRASH ROOM

CONDENSER
PLATFORM

CONDENSER
UNITS/HEAT
PUMPS

SOUND
BARRIER

GUTTER AND
DOWNSPOUT
SLOPED FROM
WIC AND
CONNECTOR
ROOF TO
EXISTING
TRENCH DRAIN

ACCESS
DOOR

3'-0" X 7'-0"
DOOR

EXISTING
STAIRS

9'x9' W.I.C.
TRASH ROOM

9'x12' W.I.C.

ENCLOSED CONNECTOR
TO TRASH W.I.C.

RELOCATED HOSE BIB

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
- 24 GAUGE METAL TO BE UTILIZED INSIDE CONNECTOR WALLS FOR LONG TERM PROTECTION AGAINST RODENTS
- DOORS WILL HAVE TIGHT FITTING RODENT RESISTANT SWEEPS

