

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Application of Daniel Merlis & Deany Laliotis - 3825 Morrison St., N.W.

Application No. 18296

HEARING DATE: January 17, 2012, 9:30 AM

2012 JAN -3 PM 3:43
BOARD OF ZONING ADJUSTMENT

Stuart C. and Robin L. Miles-McLean ("Miles-McLean Neighbors") are and have been for 16 years the owners of and residents at 5525 39th Street, N.W., Washington, D.C. which shares a property line directly to the north on 39th Street from the Merlis Property. The Miles-McLean Neighbors oppose the granting of the Special Exception requested by the Merlis' unless such granting is made contingent upon the Merlis' making modifications to the driveway and garage/deck area of their property reflecting the design scheme shown on the drawings of landscape architect Barbara Bauman, dated September 6. The position of the Miles-McLean Neighbors is substantially similar to that of ANC 3G, which issued its recommendation to the Board.

The basis of the Miles-McLean Neighbors' opposition to the requested special exception is that the construction (a substantial building with a roof-top deck that already exists in violation of permits granted by the DCRA) extends to within mere inches of the property line violating the set-back requirements. The Merlis' new concrete block building rises more than four feet above the pre-construction grade and as a consequence its roof-top deck has the effect of looming over the Miles-McLean Neighbor's property and negatively affects the privacy and enjoyment of their yard. The Merlis' also installed exterior audio speakers and flood lights on the second story of their home directed at the Miles-McLean Neighbor's property, which further impinge on the Miles-McLean Neighbor's use and enjoyment of their property. The audio speakers were removed when the zoning issues arose, but the wires are still visible protruding from the wall.

The Merlis' plans also call for a solid seven foot high fence on top of their new deck – effectively creating an eleven to twelve foot wall the Miles-McLean Neighbors would be forced to look at out of their dining, living room, and kitchen windows, replacing the pre-construction ground level six foot fence. If the Merlis' are allowed to complete their plans, it will negatively affect the Miles-McLean Neighbor's light and air, as well as sight lines, by cutting off the natural movement of air, sunlight, and views of the neighborhood beyond the Merlis' residence.

Finally, the Merlis' construction also added a significant area of overly bright (i.e., completely different in color than is typical for the neighborhood) impervious concrete to their

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property which is visually glaring and increases storm water runoff; contrast that to the pre-construction state when there was a permeable low wooden patio with trees and greenery between the properties.

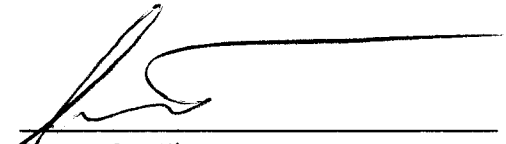
In the interest of neighborhood comity, rather than simply calling for the removal of the illegal building, the Miles-McLean Neighbors suggest modifications -- to be made a contingency to granting of the Special Exception -- aimed at mitigating the effect of the Merlis construction while accomplishing visual screening using a combination of physical structure and evergreen vegetative elements to minimize the new building's physical and visual intrusiveness while still allowing for light, air, privacy and enjoyment of the Miles-McLean Neighbor's property.

Attachment 1 includes nine photographs of the rear of the Merlis' property, before, during, and after construction. These pictures show the dramatic changes from the pre-construction low wooden patio and small kitchen bump-out, to a mammoth two car garage building with a roof-top deck and significantly expanded (in all dimensions) kitchen addition. The photographs also show the proximity and looming effect of the structure on the Miles-McLean Neighbors property.

Attachment 2 is an April, 2010, email from the District of Columbia's Deputy Chief Building Official, David A. Naples, to the Miles-McLean Neighbors and others, regarding the Merlis' garage building project. Please note, on page 4 of the attachment, three findings. Of these, two require remediation actions by the Merlis' which have not been undertaken. In particular, a Stop Work Order was issued for "working outside the scope of the permit" with respect to the driveway and sidewalk and a second Stop Work Order was issued for "constructing/maintaining a BUILDING ... within required open space."

Attachment 3 is a July, 2010, email from the District of Columbia's Reymonte Washington, DDOT, to the Miles-McLean Neighbors and others stating that the Merlis' are supposed to restore the public space to its original state.

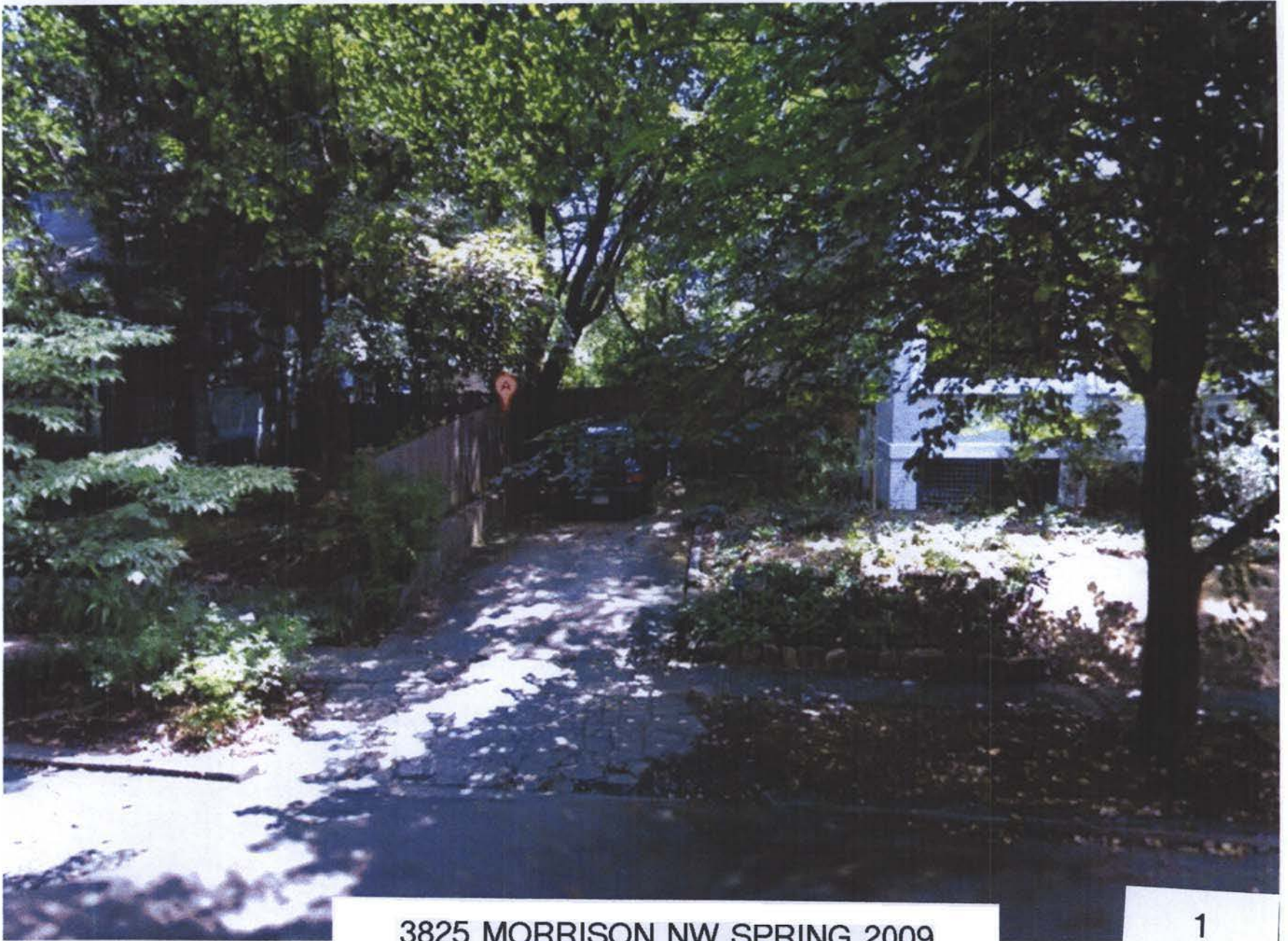
Dated: 01/03/2012


Stuart C. Miles-McLean
stuart.milesmclean@gmail.com


Robin L. Miles-McLean
robinstu83@gmail.com

Attachment 1

Nine photographs of the rear of the Merlis' property, before, during, and after construction. These pictures show the dramatic changes from the pre-construction low wooden patio and small kitchen bump-out, to a mammoth two car garage building with a roof-top deck and significantly expanded (in all dimensions) kitchen addition. The photographs also show the proximity and looming effect of the structure on the Miles-McLean Neighbors property.

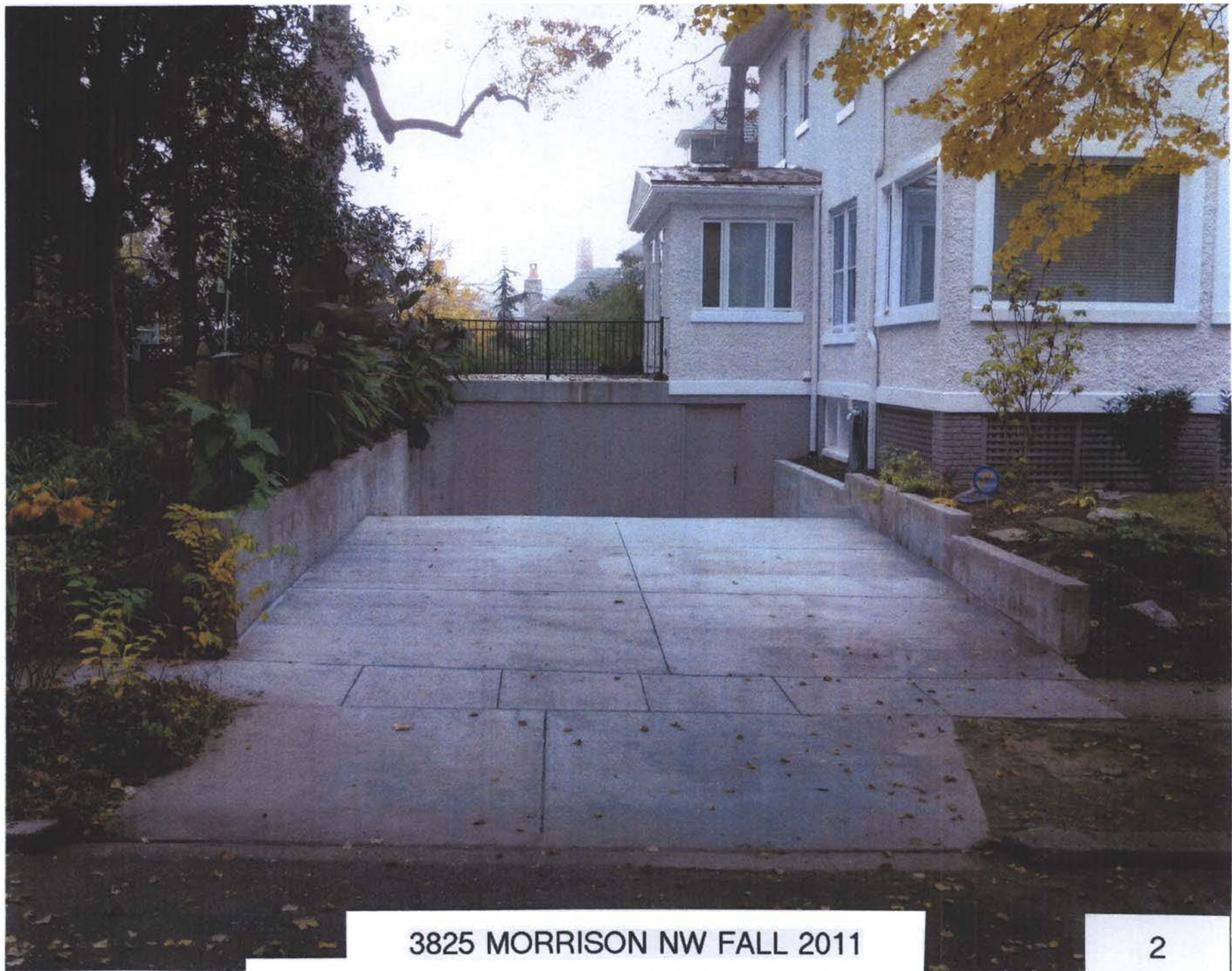


3825 MORRISON NW SPRING 2009

1

WEST SIDE

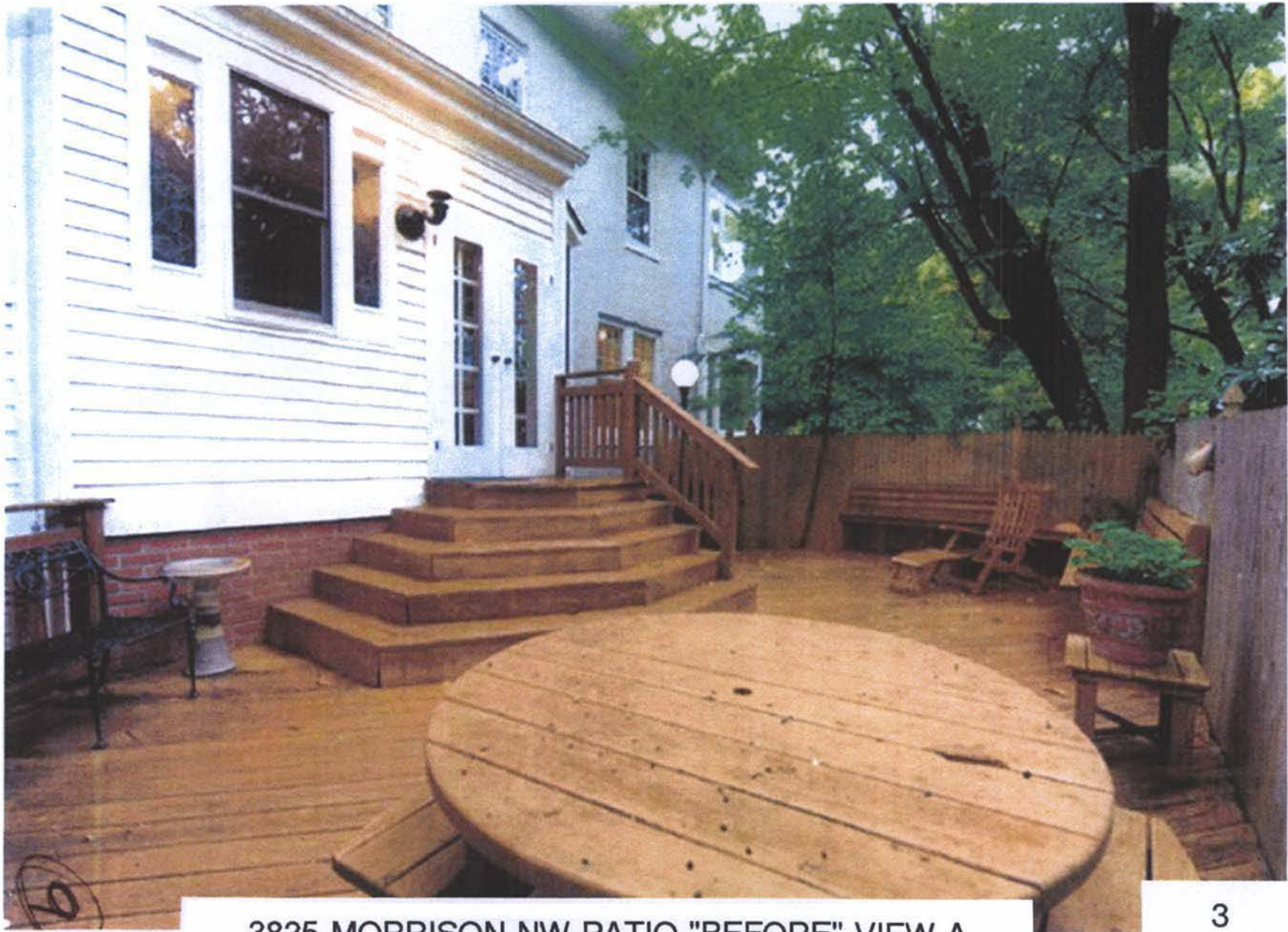
VIEW FROM 39 St



3825 MORRISON NW FALL 2011

WEST SIDE

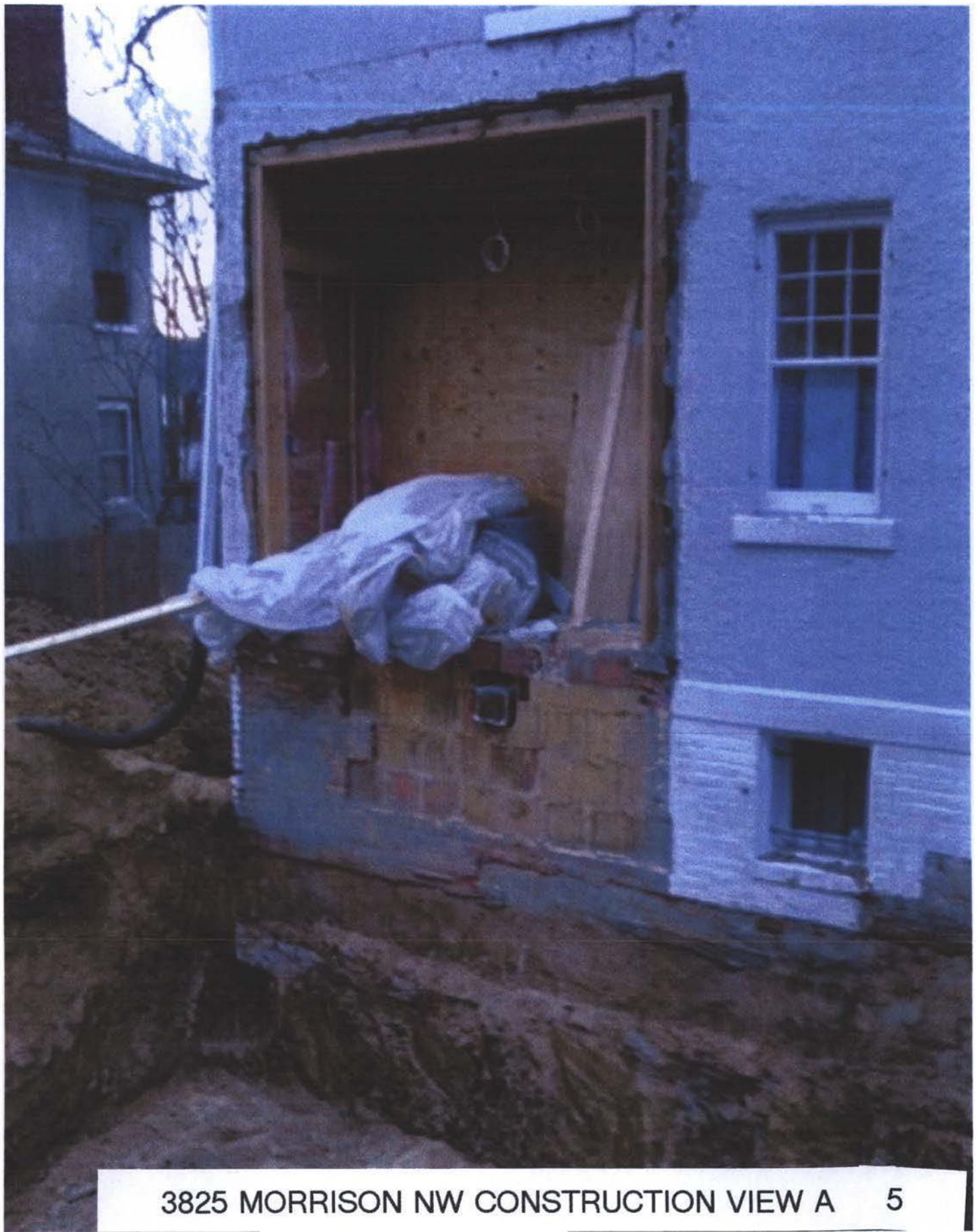
VIEW FROM 39 St



3825 MORRISON NW PATIO "BEFORE" VIEW A
LOOKING WEST (toward 39th)



3825 MORRISON NW PATIO "BEFORE" VIEW B
LOOKING EAST



3825 MORRISON NW CONSTRUCTION VIEW A

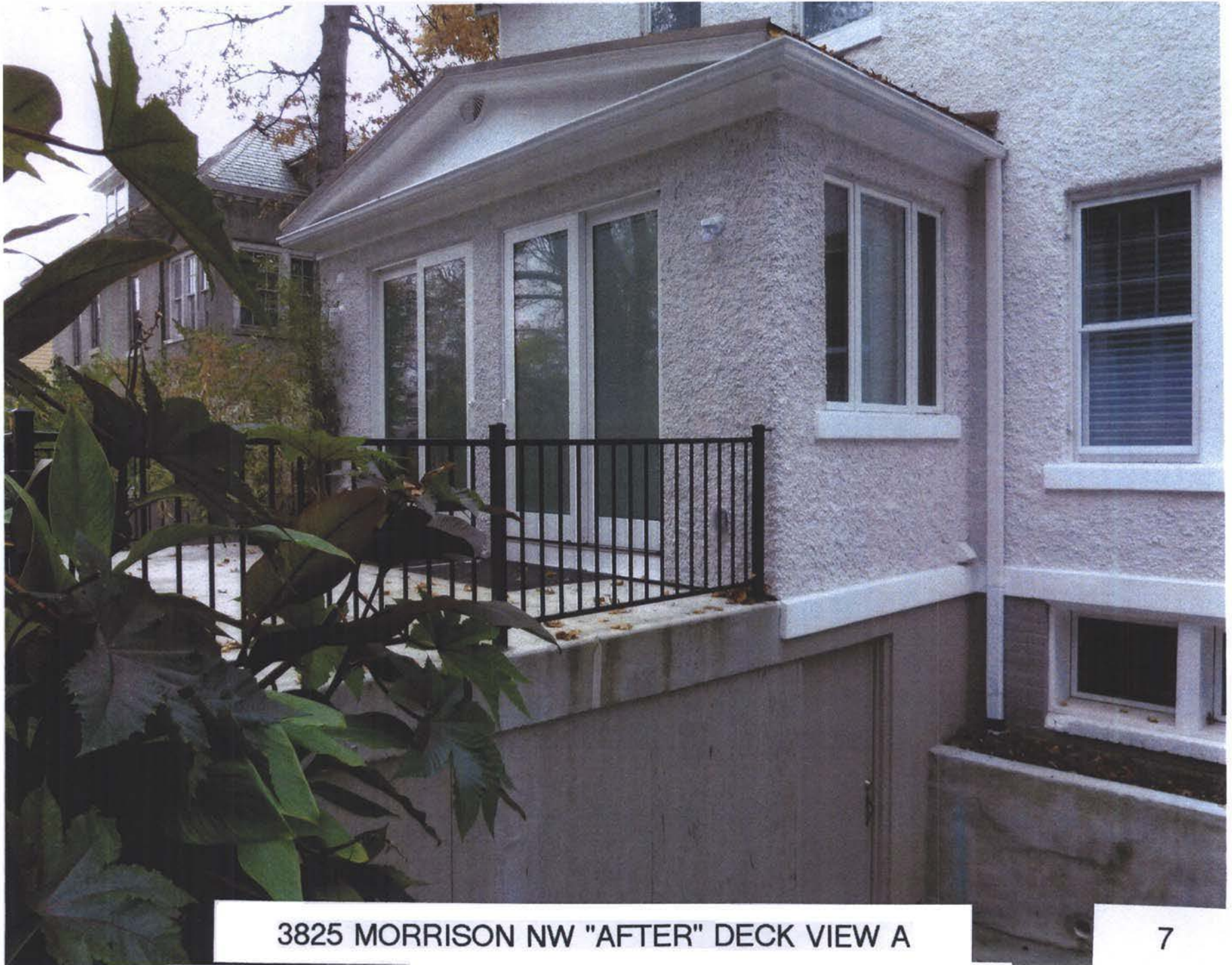
5

NORTH SIDE



NORTH SIDE

3825 MORRISON NW CONSTRUCTION VIEW B
(note load bearing wall for expanded kitchen)

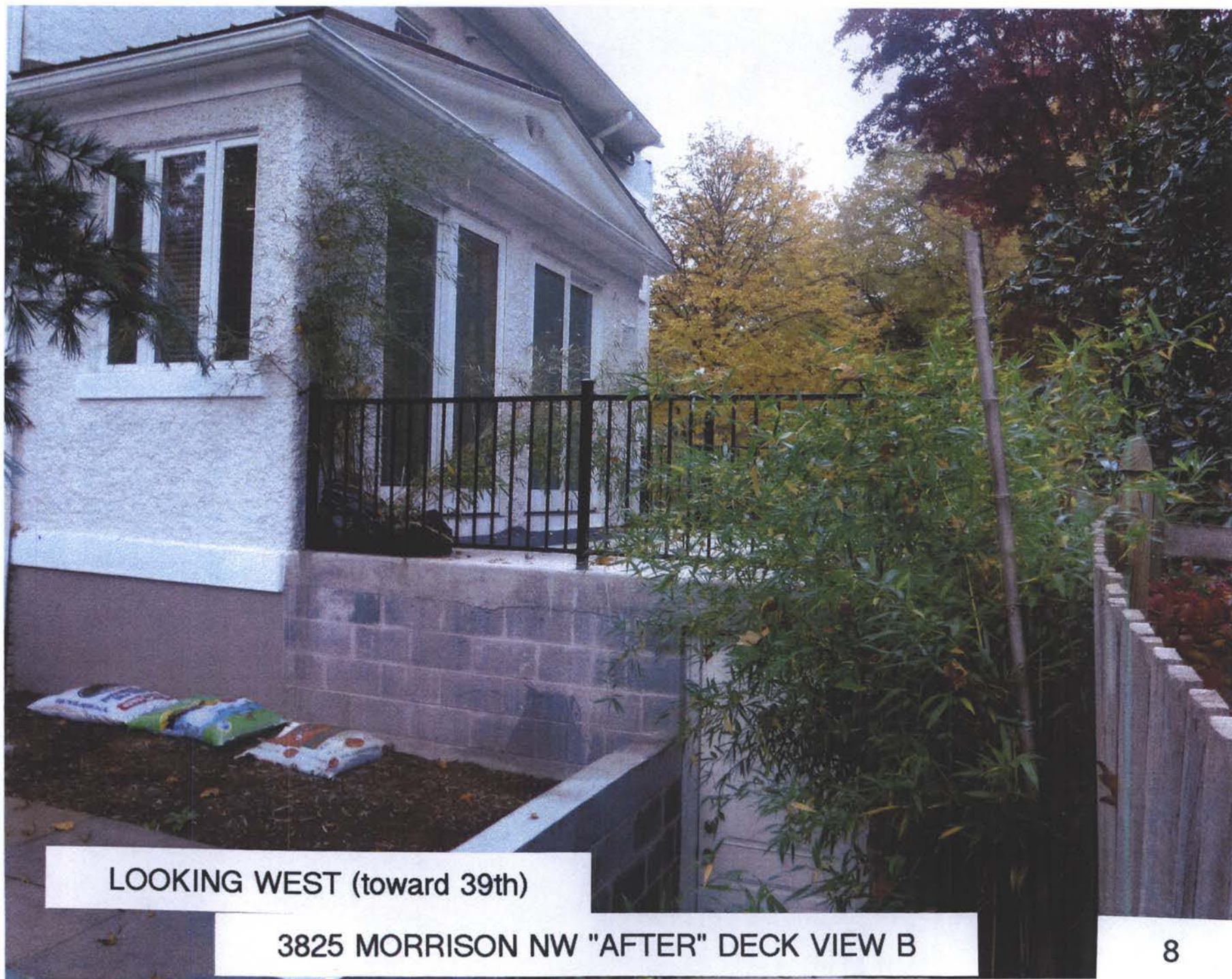


3825 MORRISON NW "AFTER" DECK VIEW A

7

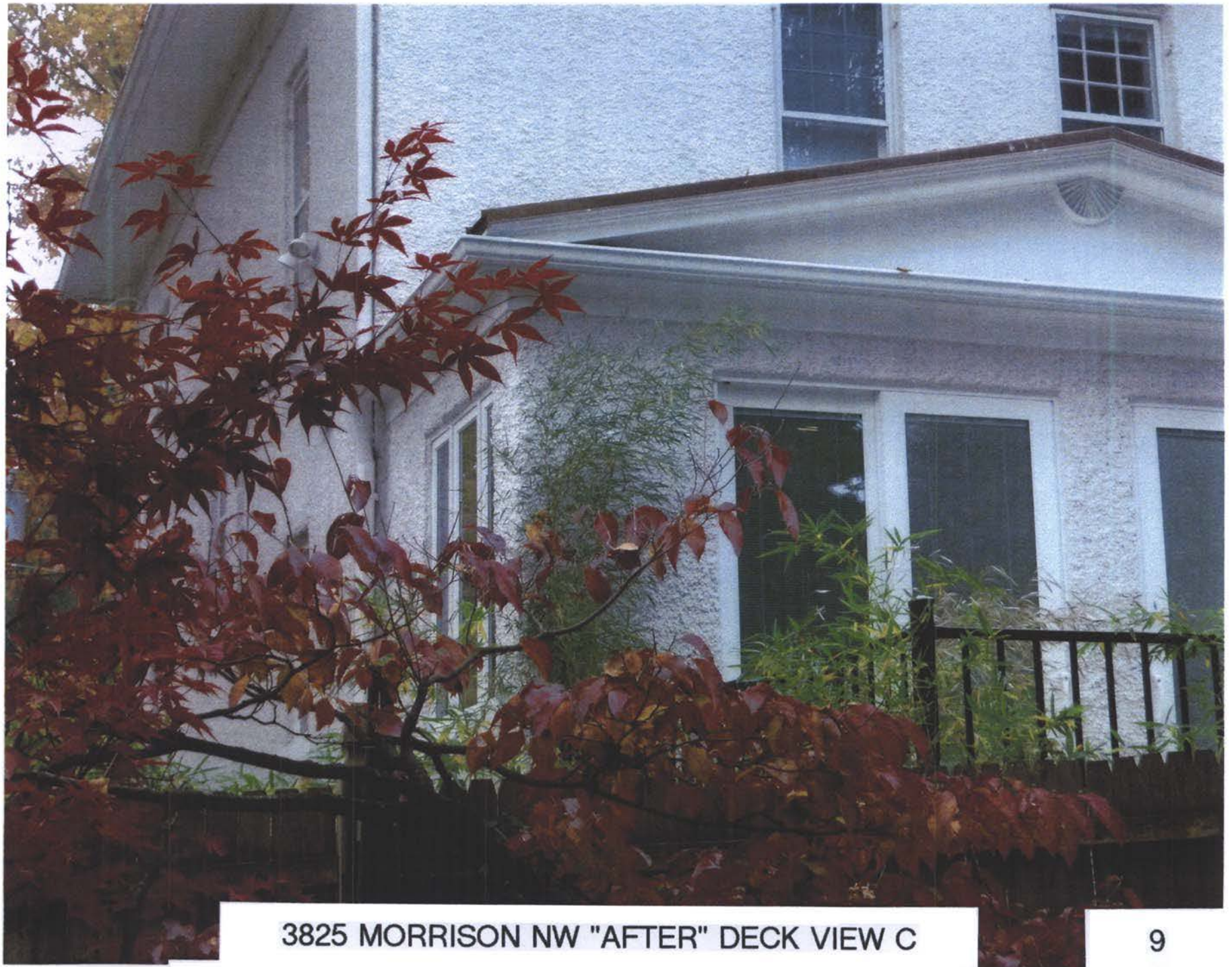
LOOKING EAST

(view from 39th st)



LOOKING WEST (toward 39th)

3825 MORRISON NW "AFTER" DECK VIEW B



3825 MORRISON NW "AFTER" DECK VIEW C

NORTH SIDE

Attachment 2

April, 2010, email from the District of Columbia's Deputy Chief Building Official, David A. Naples, to the Miles-McLean Neighbors and others, regarding the Merlis' garage building project. Please note, on page 4, three findings. Of these, two require remediation actions by the Merlis' which have not been undertaken. In particular, a Stop Work Order was issued for "working outside the scope of the permit" with respect to the driveway and sidewalk and a second Stop Work Order was issued for "constructing/maintaining a BUILDING ... within required open space."



Stuart Miles-McLean <stuart.milesmclean@gmail.com>

Fwd 23 -- 04/06/2010: Heightened Concerns re Building at 3825 Morrison Street NW

Naples, David (DCRA) <david.naples@dc.gov>

Fri, Apr 23, 2010 at 3:12 PM

To: Stuart Miles-McLean <stuart.milesmclean@gmail.com>

Cc: "Naples, David (DCRA)" <david.naples@dc.gov>, "Masoero, Don (DCRA)" <don.masoero@dc.gov>, "Rupert, Michael (DCRA)" <michael.rupert@dc.gov>, "Argo, Linda (DCRA)" <linda.argo@dc.gov>

Mr. Miles-McLean,

Attached, please find the documentation of my findings so far. As the process moves forward, I should have more information.

Please feel free to share this information with the other concerned neighbors. Unfortunately, I misplaced Mr. Kolker's email address so if you wouldn't mind sharing this with him as well, I would appreciate it.

Please let me know if you have more questions. I will keep you informed as we process these issues.

David A. Naples, MCP

Deputy Chief Building Official, DCRA/ICA

1100 4th Street, S.W. - Fourth Floor

Washington, D.C. 20003

(202)481-3386 Fax (202)478-5751

David.Naples@dc.gov

From: Stuart Miles-McLean [mailto:stuart.milesmclean@gmail.com]

Sent: Wednesday, April 21, 2010 10:50 PM

To: Naples, David (DCRA)

Subject: Re: Fwd 23 -- 04/06/2010: Heightened Concerns re Building at 3825 Morrison Street NW

[Quoted text hidden]



Report of findings to date and responses to your questions.doc

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Report of findings to date and responses to your questions.

1. How does DC reconcile discrepancies between permits and plans? *Construction plans are only one component of a permit application. The permit consists of the entire package of required information/documents. Other types of information generally required in a permit package are the application for permit form(s), manufacturer's information (if applicable), variance approvals (if obtained), etc. The permit "placard", which contains the pertinent information about the entire package, is the actual document that is required to be posted on the job site. This placard contains a general description of the work in the best estimation of the issuing employee. With regard to this particular project, the description on permit B1001551, "replace existing rear addition, replace existing rear deck with concrete terrace with max height of 3'7 5/8", repoint/repair existing driveway and repair/repoint existing private sidewalk" is general, but attempts to capture the scope of the construction plans. If it is determined that work is being performed outside the scope of the permit, with regard to the specific work detailed on the construction documents, then the path to resolution is either modify the construction to match the plans or seek a plan modification to match the construction. Each path is subject to subsequent reviews.*

2.

**What protocol/methodology does DC employ to determine height-above-grade?
Awaiting further clarification from the Office of Zoning Administrator**

BUILDING, HEIGHT OF- The vertical distance measure from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet. The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet.

In those districts in which the height of building is limited to 40', the height of the building may be measure from the finished grade level at the middle of the front of the building to the ceiling of the top story.

3. What criteria does DC use to distinguish a structure from a building? *According to 11DCMR (Zoning Code) the definitions for each are:*

BUILDING- (11DCMR) – *A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.*

STRUCTURE – *Anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things,*

radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. The term structure shall not include mechanical equipment, but shall include the supports for mechanical equipment.

With regard to this specific project, the terrace portion of the construction meets the definition of a BUILDING and is therefore subject to other provisions of the Zoning Code which is discussed later on in this email under ACTION TAKEN.

4. **How does DC determine lot coverage?** *Lot coverage as it applies to this project (11 DCMR 403.2) is max. 40%. By calculation as the project was proposed on the plans, the lot coverage does not exceed 40%. The lot area is 6300 ft². Maximum area of allowable lot coverage is 6300 ft² x 0.40 = 2520 ft². This project measures out to appx. 1816 ft².*

PERCENTAGE OF LOT OCCUPANCY – *a figure that expresses that portion of a lot lying within lot lines and building lines that is occupied or that may be occupied under the provisions of this title as building area; except as provided in the Waterfront Districts wherein lot occupancy shall be calculated in accordance with §932, and Mixed Use Districts wherein the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.*

BUILDING AREA – *the maximum horizontal projected area of a building and its accessory buildings. The term “building area” shall include all side yards and open courts less than five feet (5ft) in width, and all closed courts less than six feet (6ft.) in width. Except for outside balconies, this term shall not include any projections into open spaces authorized elsewhere in this title, nor shall it include portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property.*

5. **What do the approved plans show for the final result of the building next door?** *The plans show the final product as the rehabilitation of the interior of the existing Single Family Dwelling (SFD), reconstruction of the attached rear addition, construction of a raised terrace with enclosed space underneath, a concrete driveway and sidewalk.*
6. **What rules does DC have regarding expansion of impermeable surfaces?** **Awaiting further clarification from the Office of Zoning Administrator**

To the extent found in Title 11 (11 DCMR 1511), only the Tree and Slope Protection Overlay District (TSP) contains limitations on the amount of impervious surface coverage. This particular address is not in a TSP Overlay area.

7. **>> When was the detailed plan actually filed and approved?**
Permit B1001551 submitted on 11/30/09 and issued on 12/15/09
Permit B1000570 submitted on 10/21/09 and issued on 10/22/09

8. >> Was it filed as part of the original permit application approved in mid-December? *I can find no record of plan modification.*

ACTION TAKEN/PROPOSED:

1. Issue Stop Work Order (SWO) for “failure to obtain required construction inspections (concrete slabs).” Posted on site 4/ 15 /2010
Resolution: obtain approval for required inspections.
2. Issue SWO for “working outside the scope of the permit.” *Construction of a new driveway and new sidewalk with approval for repair of existing only”* Posted on site 4/ 15 /2010
Resolution: Install driveway and sidewalk in accordance with permit and code.
3. Issuing SWO for “constructing/maintaining a BUILDING (as defined in 11 DCMR 199.1) within required open space.”
Resolution: Obtain Zoning Variance for terrace as constructed or install terrace in compliance with applicable zoning regulations.

The Zoning classification for this property is R-2. According to 11 DCMR 404.1, the minimum REAR YARD depth is 20'. This is depicted on the construction documents. Furthermore, according to 11 DCMR 2503.1, “Except for the structures and exceptions specified in this section, every part of a yard required under this title shall be open and unobstructed to the sky from the ground up.” Section 2503.2 states, “A structure, not including a building no part of which is more than four feet (4') above the grade at any point, may occupy any yard required under the provisions of this title.” As the terrace area meets the definition of a BUILDING as outlined above, it CANNOT exist within the required rear yard as delineated by the 20' setback depth.

The application of this information (11 DCMR 2503.2) stipulates that the “structure” cannot exceed 4' in height above grade AT ANY POINT. This should answer the question raised in #2 above in the questions section.

The complete resolution of the issues surrounding this project is pending. DCRA has photographs of the SWO as they were posted on the property. As the enforcement process moves forward, DCRA will continue take the appropriate actions and will communicate those actions back to the concerned parties to the best of our abilities.

Should these findings raise any additional questions, I will be glad to provide answers.

David A. Naples, MCP

Deputy Chief Building Official, DCRA/ICA
1100 4th Street, S.W. - Fourth Floor
Washington, D.C. 20003
(202)481-3386 Fax (202)478-5751
David.Naples@dc.gov

Attachment 3

July, 2010, email from the District of Columbia's Reymonte Washington, DDOT, to the Miles-McLean Neighbors and others, stating that the Merlis' are supposed to restore the public space to its original state.



Stuart Miles-McLean <stuart.milesmclean@gmail.com>

Paving of Public Space at 3825 Morrison St NW -- DDOT Permit #PA53763

Washington, Reymonte T. (DDOT) <reymonte.washington@dc.gov>

Fri, Jul 30, 2010 at 2:53 PM

To: Stuart Miles-McLean <stuart.milesmclean@gmail.com>

Cc: "Washington, Donna (DDOT)" <Donna.Washington2@dc.gov>, "Hill, Greer (DDOT)" <greer.hill@dc.gov>, "Collins, Stacey (DDOT)" <stacey.collins@dc.gov>

Thank You the confusion was the inspection took place the day before I spoke with you. However, you are absolutely correct. DDOT inspector has placed a hold on his deposit and is going to contact him to inform him that he needs to restore the public space to its original state. I will keep you posted upon receiving the directive that will be given to him.

Reymonte Washington

Customer Service Communications Specialist

SIOD/DDOT

202-645-7050

From: Stuart Miles-McLean [<mailto:stuart.milesmclean@gmail.com>]

Sent: Wednesday, July 28, 2010 3:56 PM

To: Washington, Reymonte T. (DDOT)

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