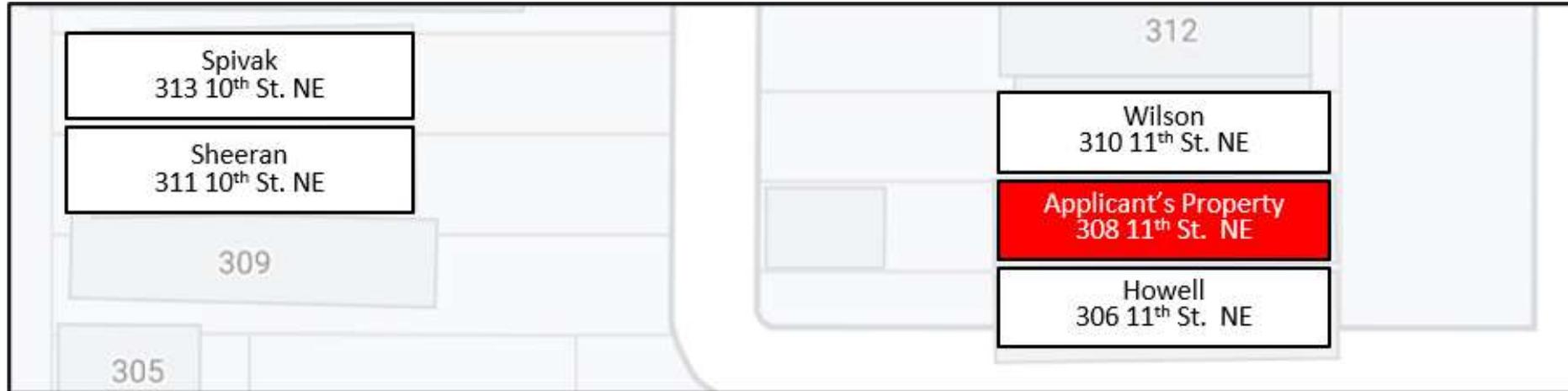


# BZA #20382

# Parties in Opposition

June 23, 2021

# Parties in Opposition



- Thomas Sheeran and Theresa Harrison, 311 10<sup>th</sup> Street, NE (neighbors directly behind, west, across the alley) (“Sheeran Residence”), residents since July 2018.
- Randi Spivak and Andy Kerr, 313 10<sup>th</sup> Street, NE (neighbors directly behind, west, across the alley) (“Spivak Residence”), residents since December 2004.
- Winfield Wilson and Veena Srinivasa, 310 11<sup>th</sup> Street, NE (neighbors directly adjacent to the north) (“Wilson Residence”), residents since June 2017
- Darrin Howell and MaryJoy Ballantyne, 306 11<sup>th</sup> Street, NE (neighbors directly adjacent to the south) (“Howell Residence”), residents since May 2000.

# The Applicant's Request Does not Satisfy the Board's Review Standards in 11-X DCMR 901

1. The Project is not in harmony with the general purpose and intent of the Zoning Regulations (11-X 901.2)
2. The Project as currently proposed will unduly adversely affect the use of the neighboring properties (11-X DCMR 901.2)
3. The Applicant has failed to fully prove **“no undue adverse impact”** (11-X DCMR 901.3, 11-E DCMR 5201)

**EXISTING RECORD STILL INCLUDES ERRORS THAT SHOULD BE CORRECTED OR REMOVED.**

# 1. The Project is not in harmony with the general purpose and intent of the Zoning Regulations (11-X 901.2)

## Development Standards

### Balance density w/ livability

- New row house lot, at least 1800 sq. ft. and 18 ft. wide (§ 201.1);
- Maximum number of dwelling units for a row house limited to 2;
- Maximum permitted height is 35 ft. and 3 stories;
- Maximum lot occupancy is 60%; and
- Rear yard at least 20 ft. § 201.1; §§ 302 – 305, § 306.
- ADU's abutting an alley, must have 7.5 ft. setback. §§ 5004.1, 5004.3.

## Property and Adjacent Properties

### Already limited light, air, privacy

- ~ 1700 sq. ft. and 16 ft. wide.
- Single-family homes.
- Less than 35 ft. high.
- No more than three stories with no 4<sup>th</sup>-level pop-ups or roof decks.
- Small rear yards, ~ 22 ft. long. (not including projections).
- Low-profile (~7 ft.) 1-level garages.
- Narrow 10 ft. wide alley.

**Seemingly “de minimis” changes on a 2-dimensional drawing can have significant undue effects on the pre-existing use and enjoyment of the adjacent/nearby properties.**

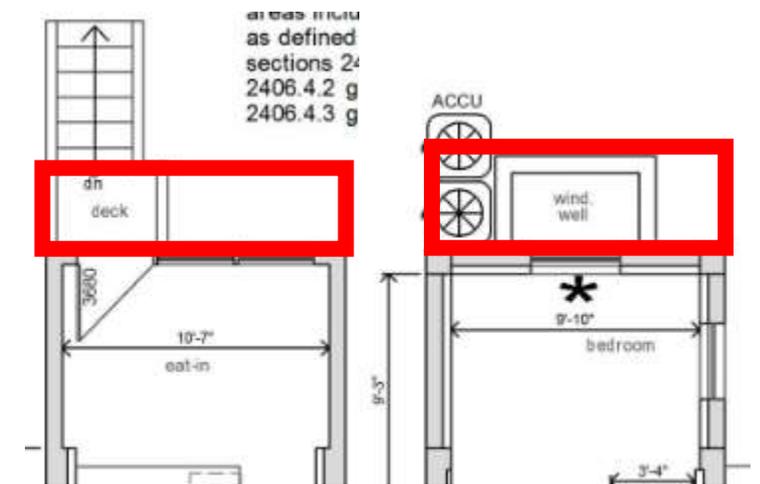
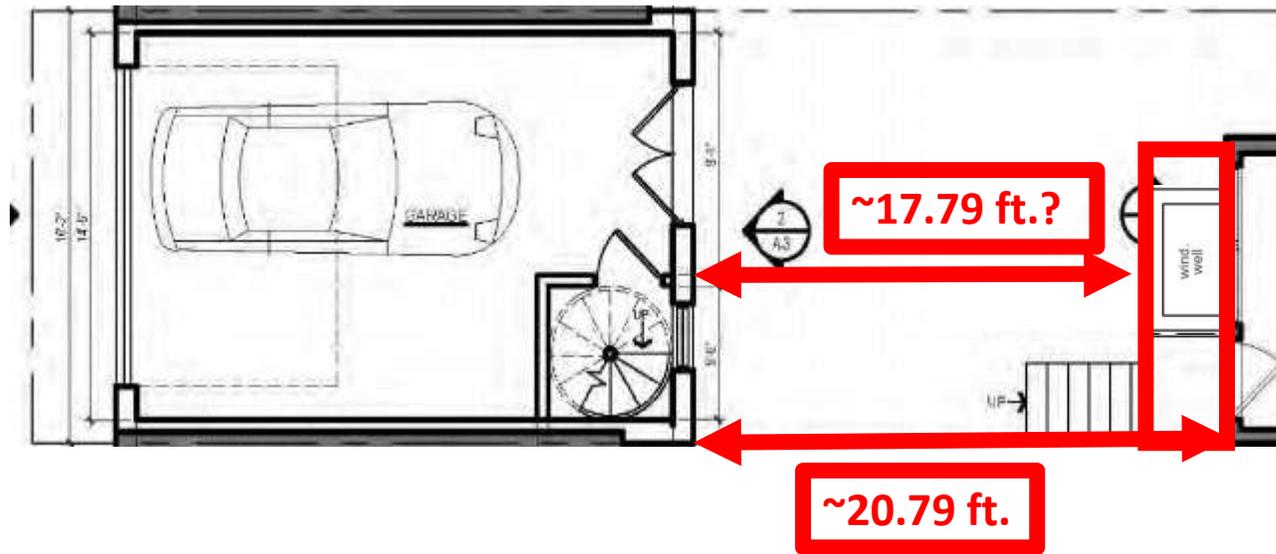
# Neighborhood



**Full length, west side, 300 block of 11<sup>th</sup> Street NE**

1. The Project is not in harmony with the general purpose and intent of the Zoning Regulations (11-X 901.2)

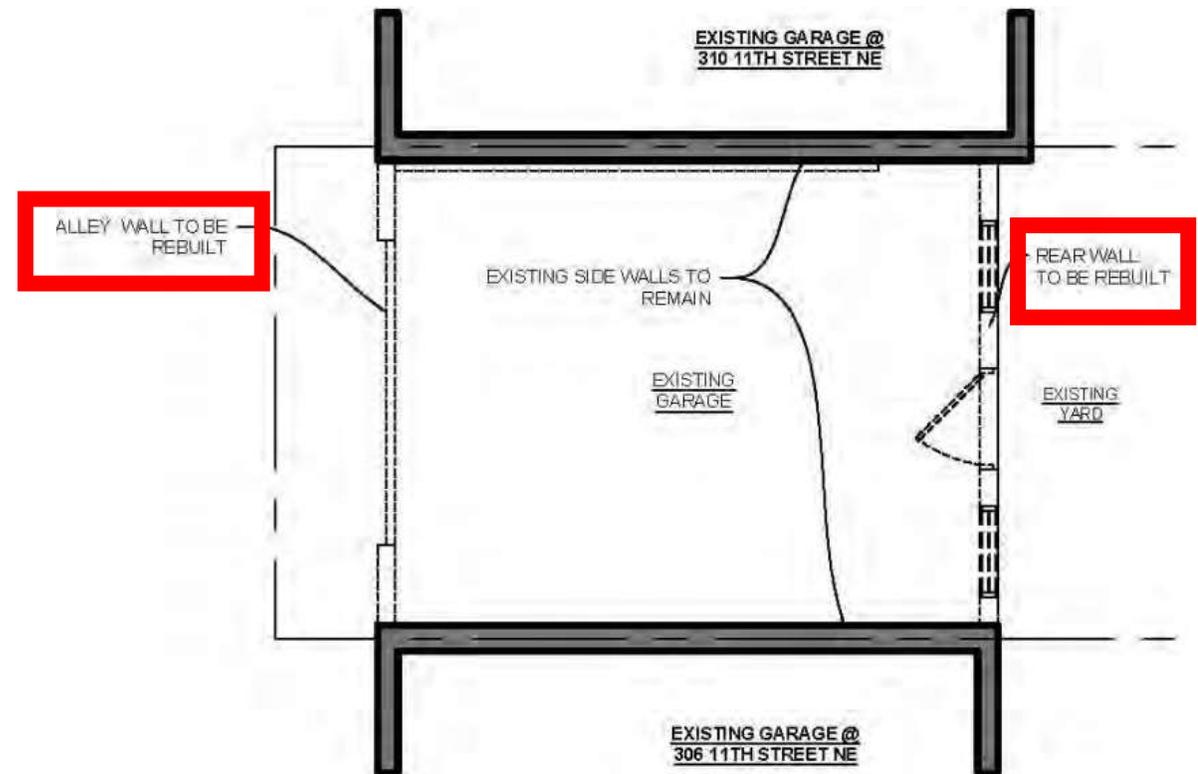
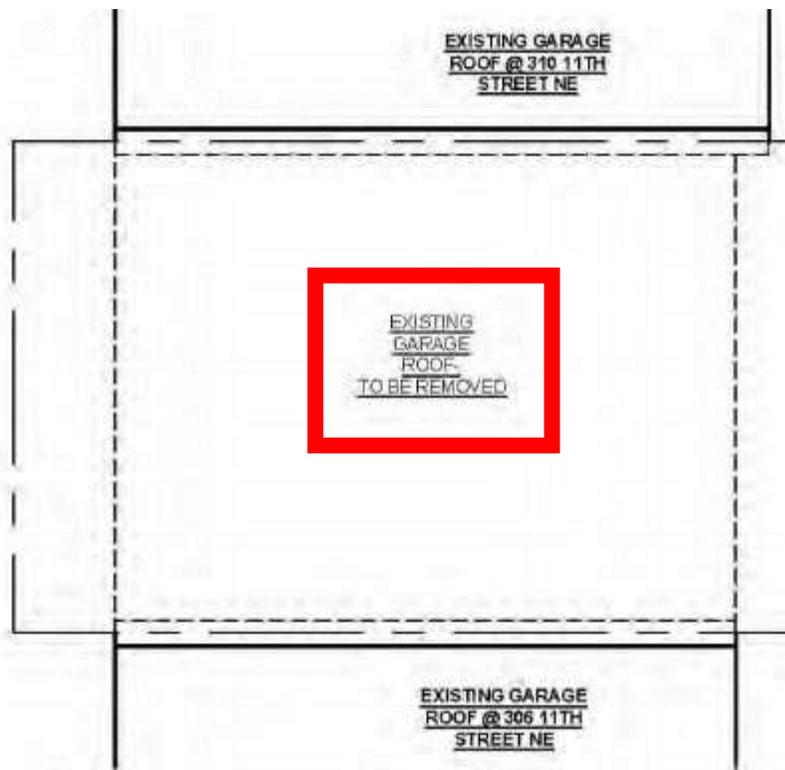
**Required rear yard will be less than 20 ft. long w/ projections (not in harmony with 11-E DCMR 306.1, 5004.2 and B 100.2)**



**Drawings from B2007169**

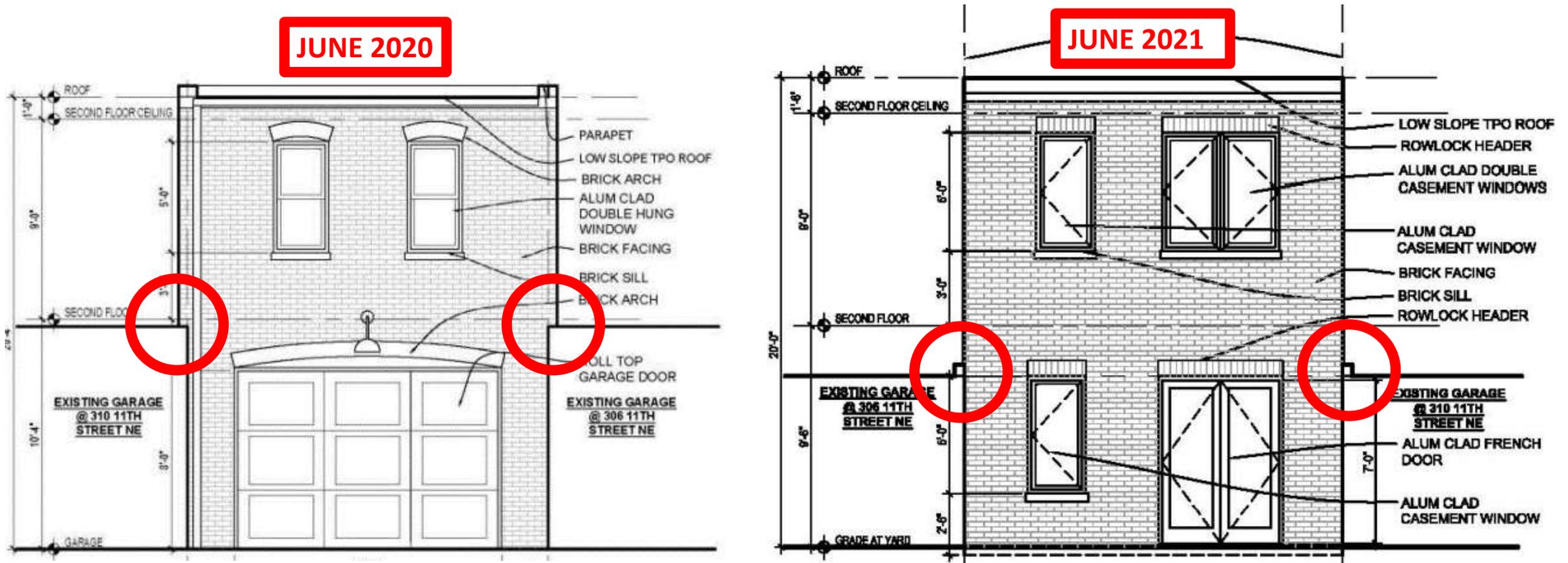
1. The Project is not in harmony with the general purpose and intent of the Zoning Regulations (11-X 901.2) (cont.)

**Existing non-conforming garage will be demolished and replaced with a larger 2-level non-conforming garage. Doesn't Applicant need to include a request to address Subtitle C 202.2?**



## 2. The Project will adversely affect the use of the neighboring properties (11-X DCMR 901.2)

May foreclose any future use and access by adjacent properties to entire top of all party walls (garage and principal bldg.).



## 2. The Project will adversely affect the use of the neighboring properties (11-X DCMR 901.2)

**The Project May Fatally Damage Two Protected Trees, Including A Heritage Tree** (11-C DCMR § 401 restricts damaging “Special Trees” (44 in.) and “Heritage Trees” (100 in.))



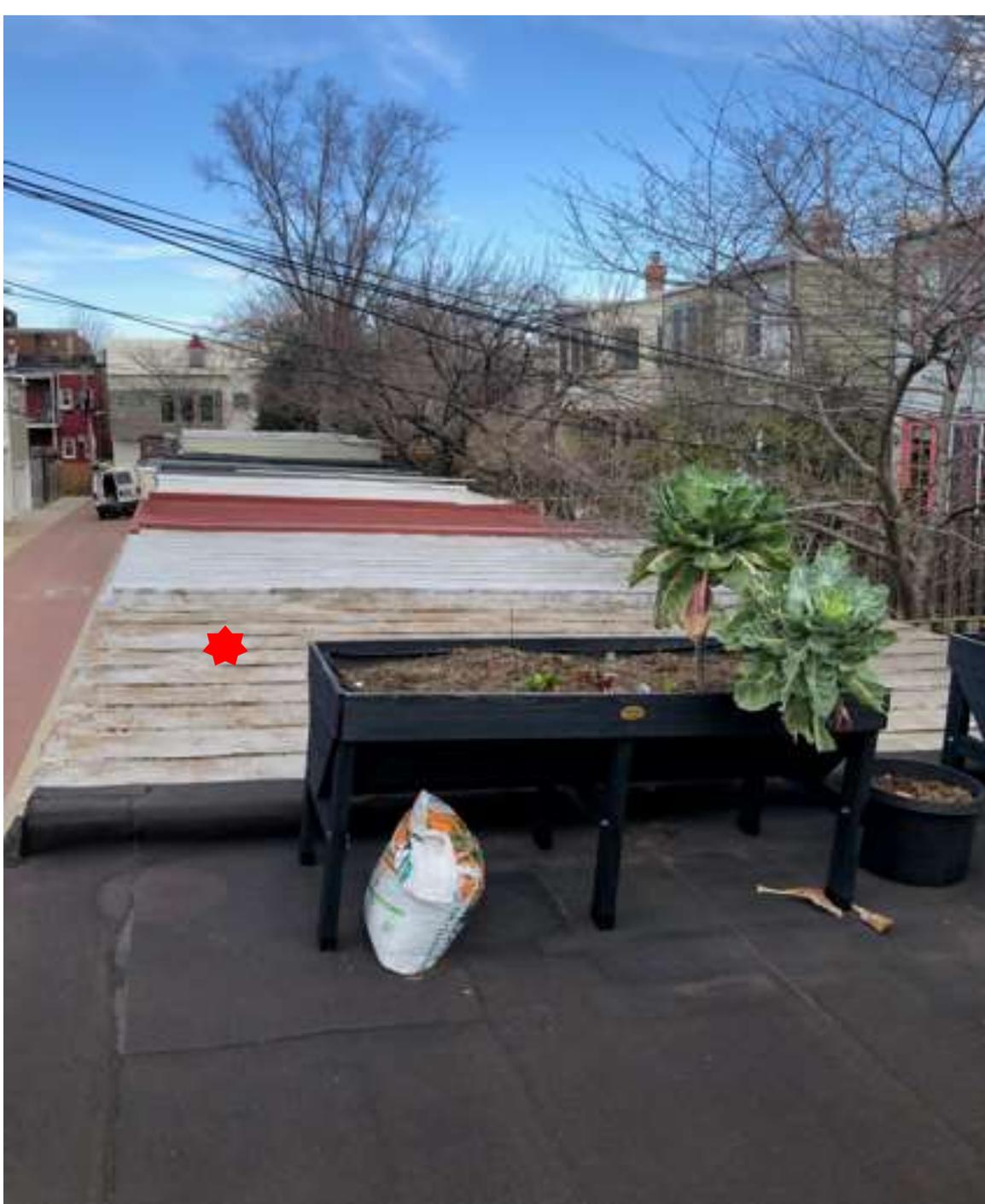
### 3. Significant **UNDUE** Adverse Impacts

#### **SUBSTANTIALLY VISUALLY INTRUDES**

2-level garage will **SUBSTANTIALLY Visually Intrude** upon and destroy the unique, nearly uniform Character, Scale, and Pattern of the alley (11-E DCMR 5201.3)



Rooftops of west 300 11<sup>th</sup> St., NE looking north.



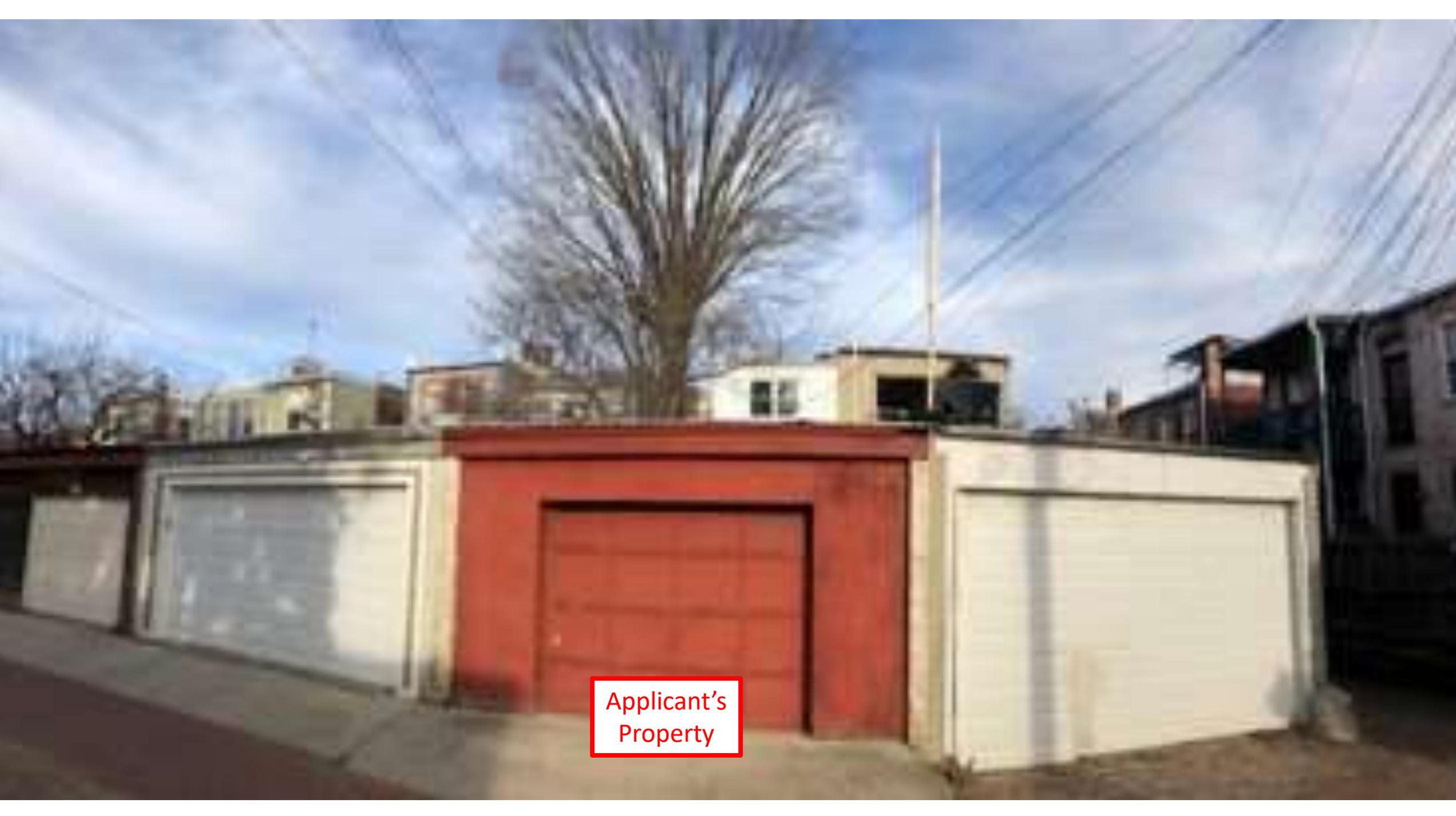
\*Applicant's Property

2X4s indicated approximate height (from garden)



2X4s indicated approximate height (from alley)





Applicant's  
Property

# **SUBSTANTIALLY VISUALLY INTRUDES**

11'-11"

20'-11"

8'-11"





Applicant's  
Property

# SUBSTANTIALLY VISUALLY INTRUDES



ALLEY,  
LOOKING NORTH

### 3. Applicant has failed to prove no UNDUE adverse impacts (11-X DCMR 901.3, 11-E DCMR 5201)

#### WHAT IS AN ADVERSE v. “UNDUE” ADVERSE IMPACT ON USE AND ENJOYMENT?

- **Adverse Impact: temporary or minor effect that does not change way of life.**
  - **Air:** Fumes/dust from construction.
  - **Light:** Temporary scaffolding that shades a property.
  - **Privacy:** Roofers working on a garage roof with views directly into a property.
- **UNDUE Adverse Impact: permanent change or major effect that permanently forecloses or changes for the worse, a way of life.**
  - **Air:** Permanent increases in air temperature, particularly spring through fall, exacerbated by significantly decreased airflow, that create a microclimate that forecloses a roof-top garden in existence for nearly 20 years.
  - **Light:** Permanent blockage of almost all sunlight on a property as it has existed for over 100 years, particularly during the most enjoyable times of the year, spring and fall.
  - **Privacy:** Permanent towering structure only feet away from and with views directly into adjacent rear yard used as an extension of a home classroom for 3 young children and with direct views into master bedroom.

# UNDUE adverse impact on Howell's Privacy

Photo taken by Applicant  
(Exhibit 70)



# UNDUE adverse impact on Howell's Privacy





**BEFORE**

**Howell Residence: rear yard  
(playground, extended  
classroom).**

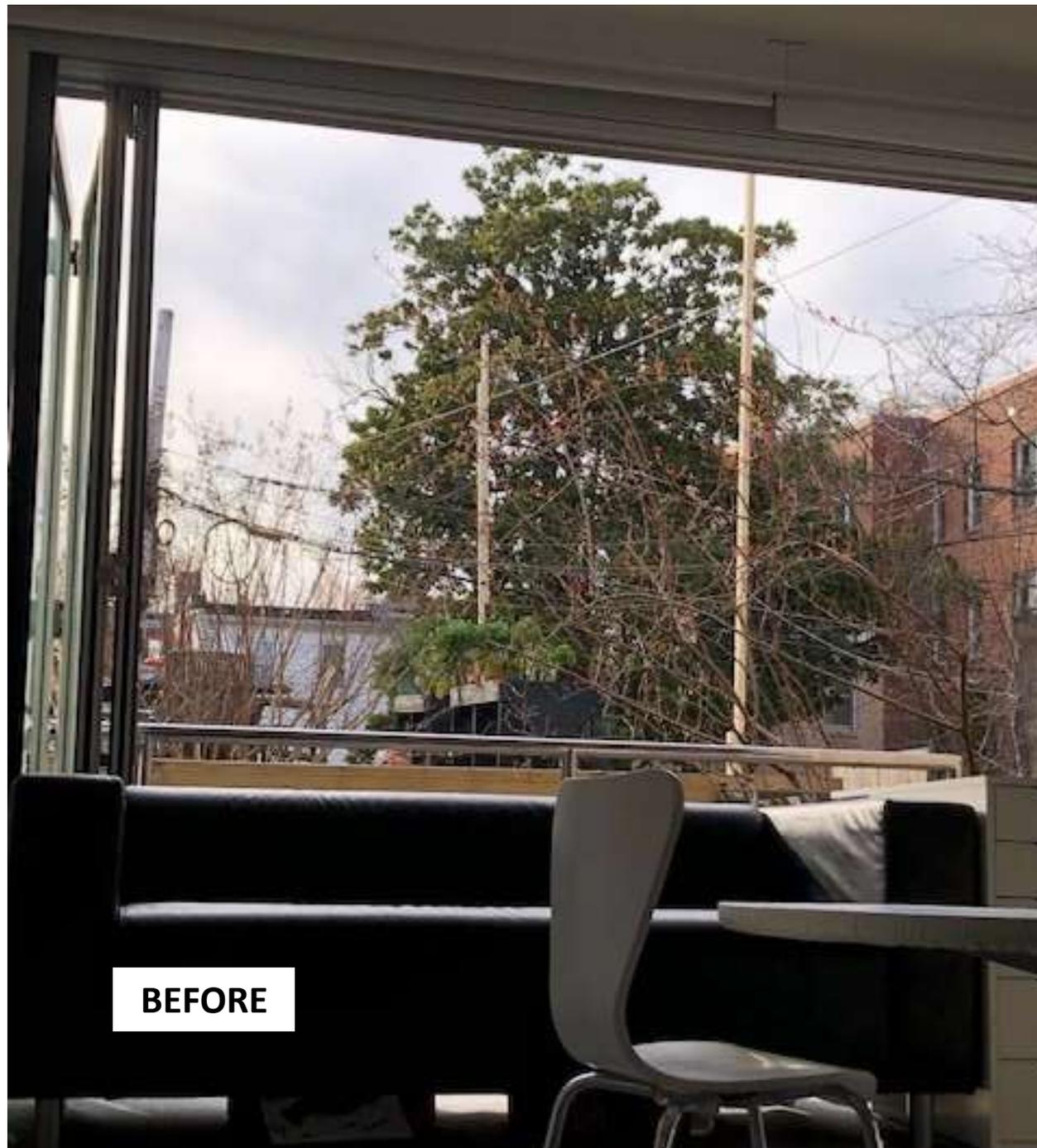
# UNDUE ADVERSE impacts on privacy

Howell Residence: rear yard (playground, extended classroom). Substantial undo impact on light, air temp., privacy.



**AFTER**

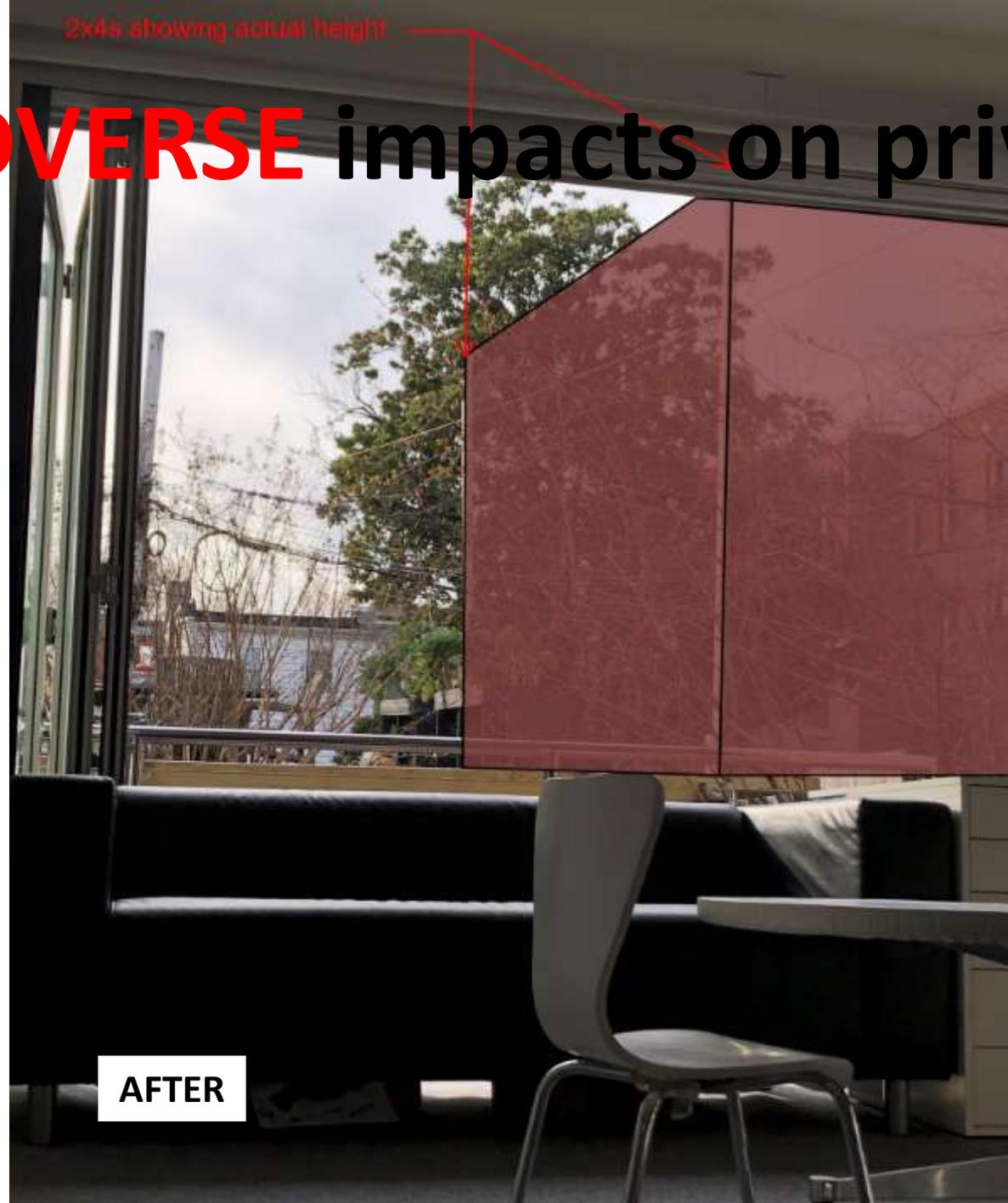
Howell Residence: main living area (kitchen, classroom, playroom). Substantial undo impact on light, air, privacy.



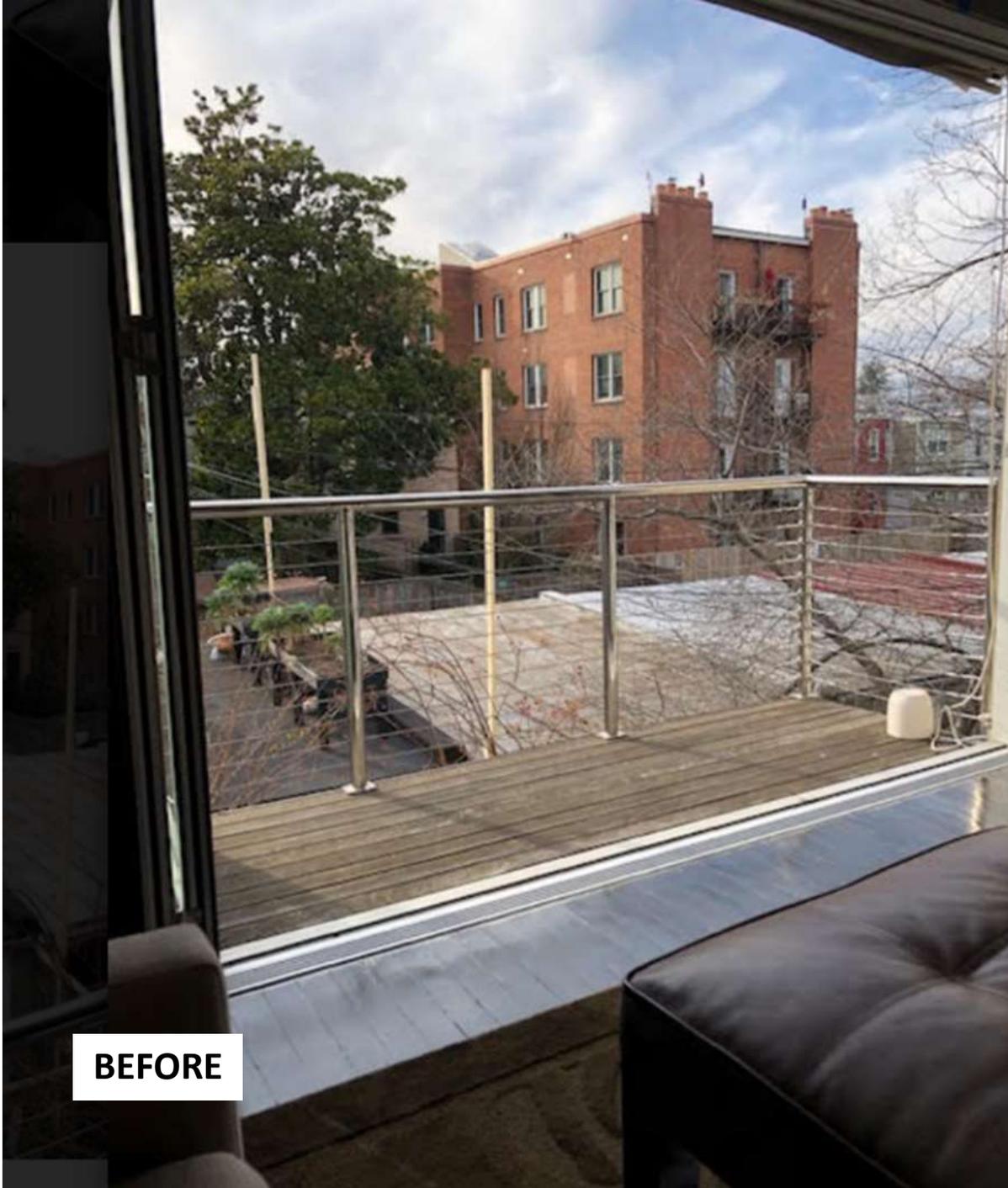
**BEFORE**

# UNDUE ADVERSE impacts on privacy

Howell Residence: main living area (kitchen, classroom, playroom). Substantial undo impact on light, air, privacy.



Howell master bedroom.



**BEFORE**

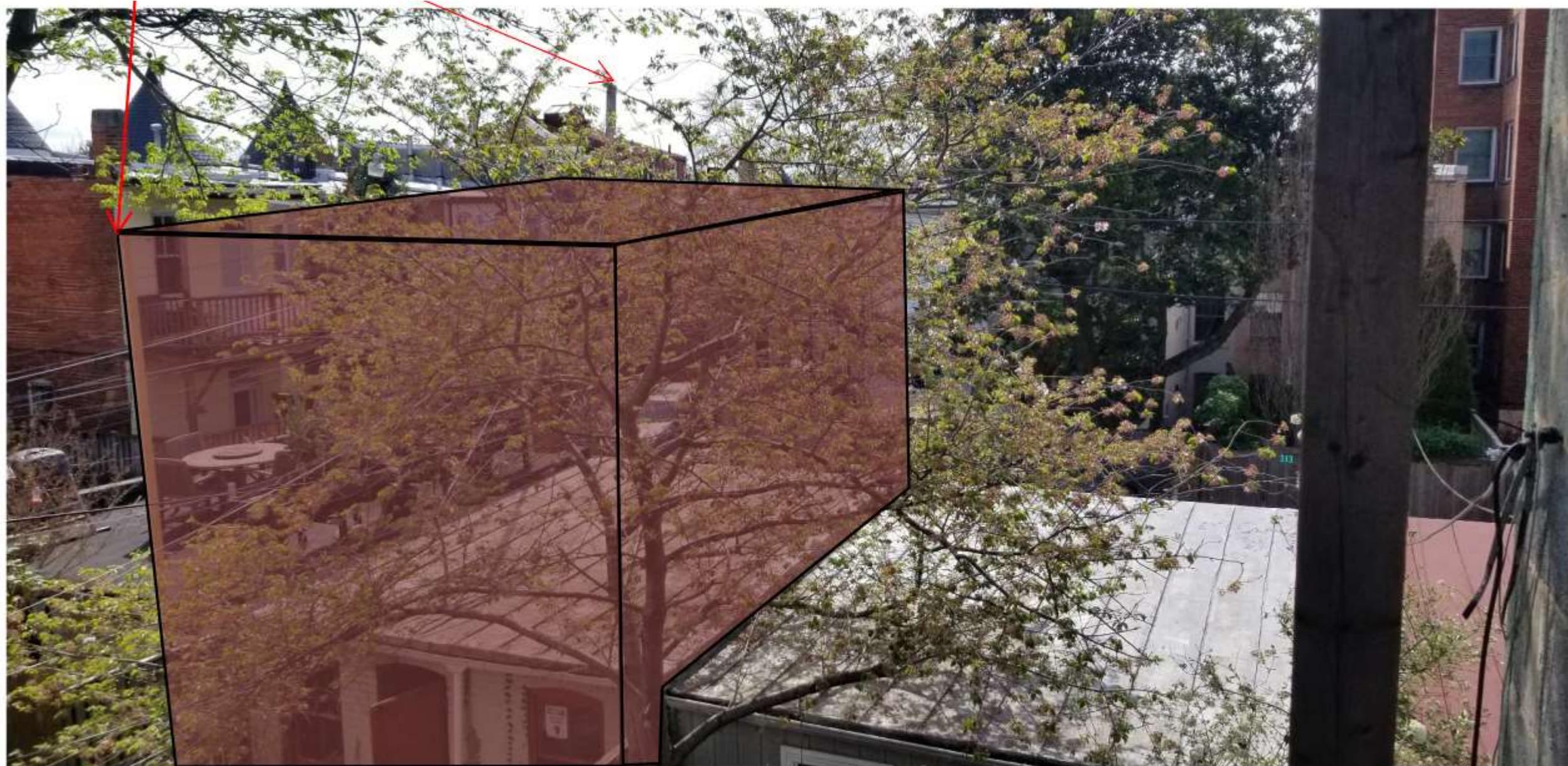
# UNDUE ADVERSE impacts on privacy

Howell master bedroom.



AFTER

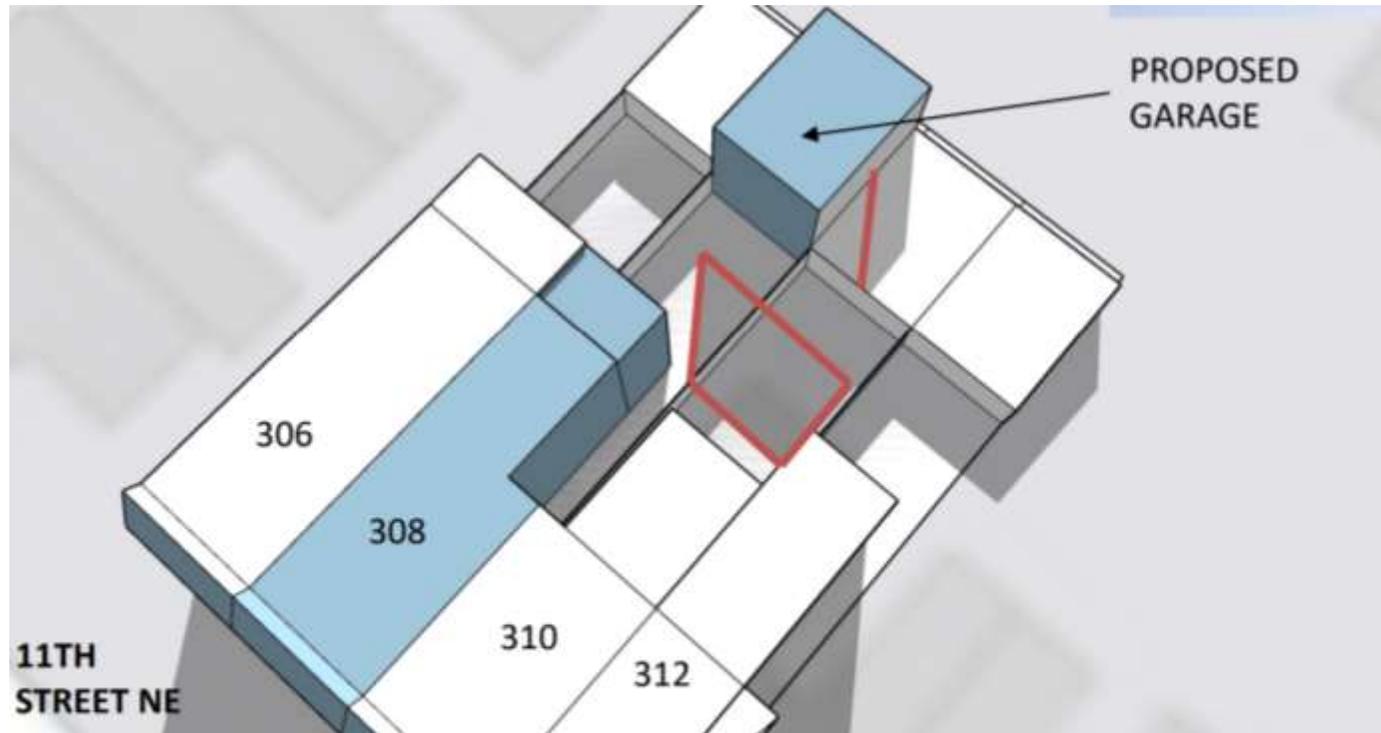
# UNDUE adverse impact on Wilson's Privacy



# UNDUE adverse impact on LIGHT to Wilson

## Residence

Applicant's Shade Study shows almost complete blockage of sunlight to Wilson Residence during most enjoyable/highest-use times of the year.

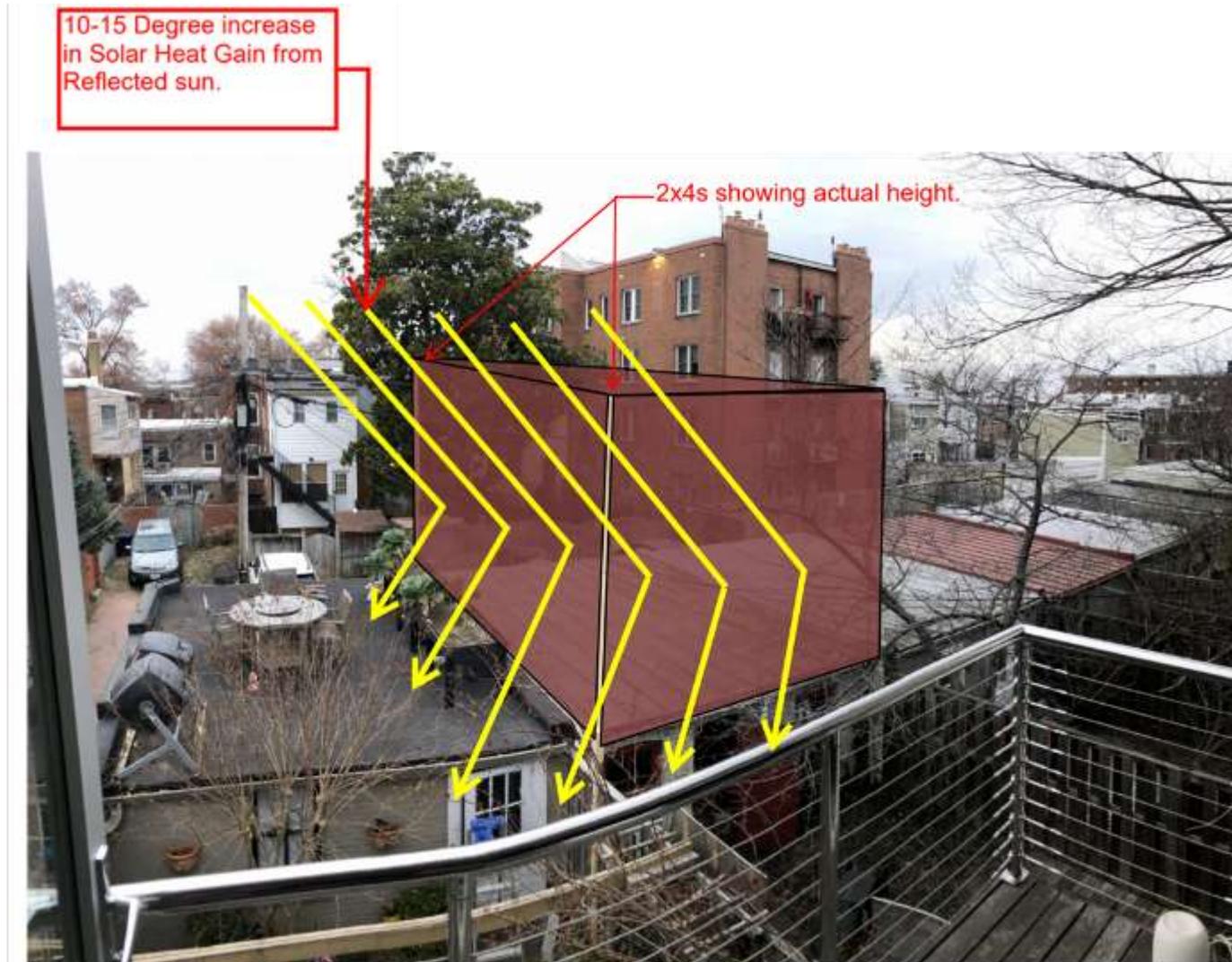


March/September 21<sup>st</sup> 3:00 PM PROPOSED

NORTH



# UNDUE adverse impact on AIR TEMPERATURES and AIR FLOW to Howell Residence

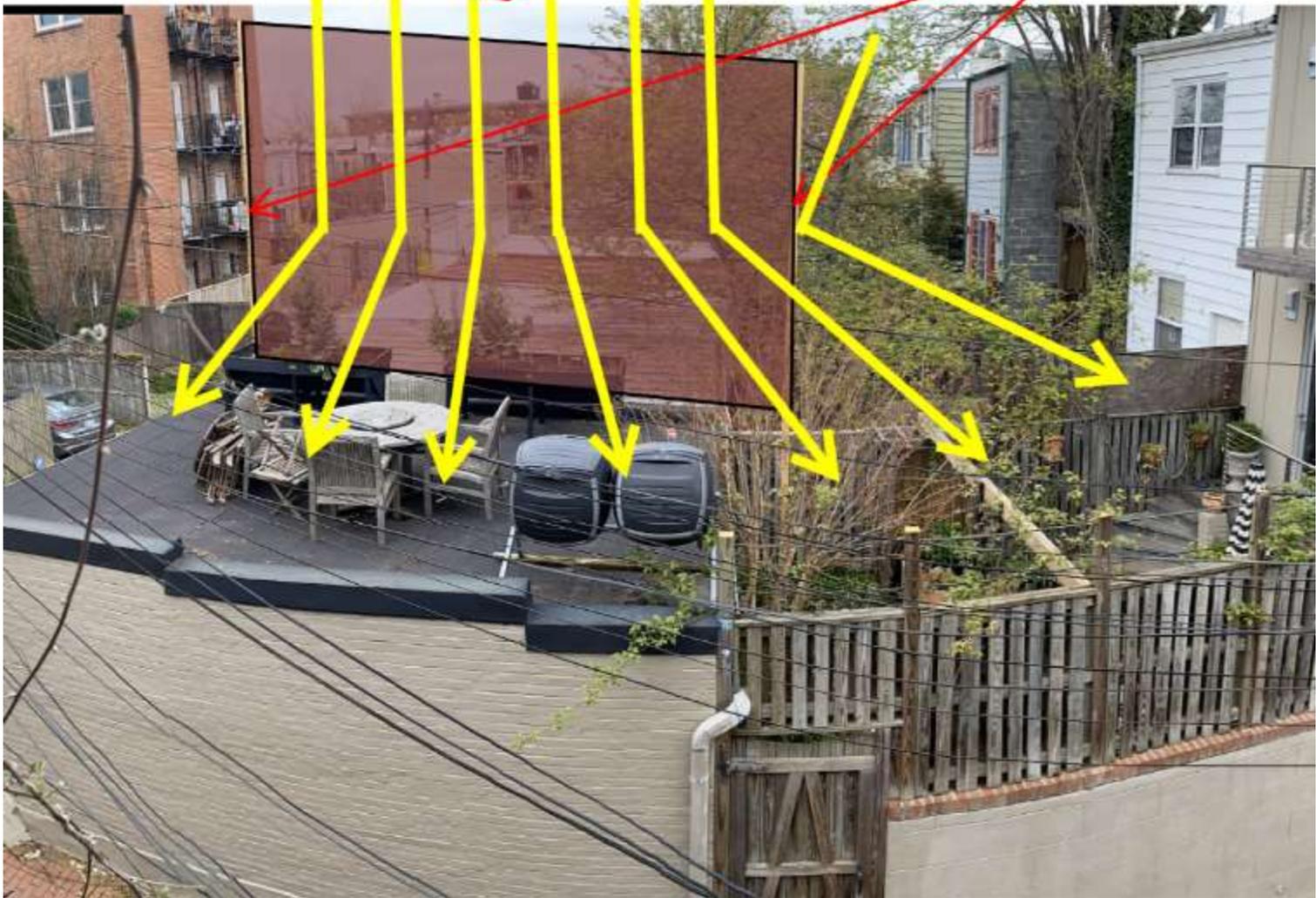


## Brick Facing:

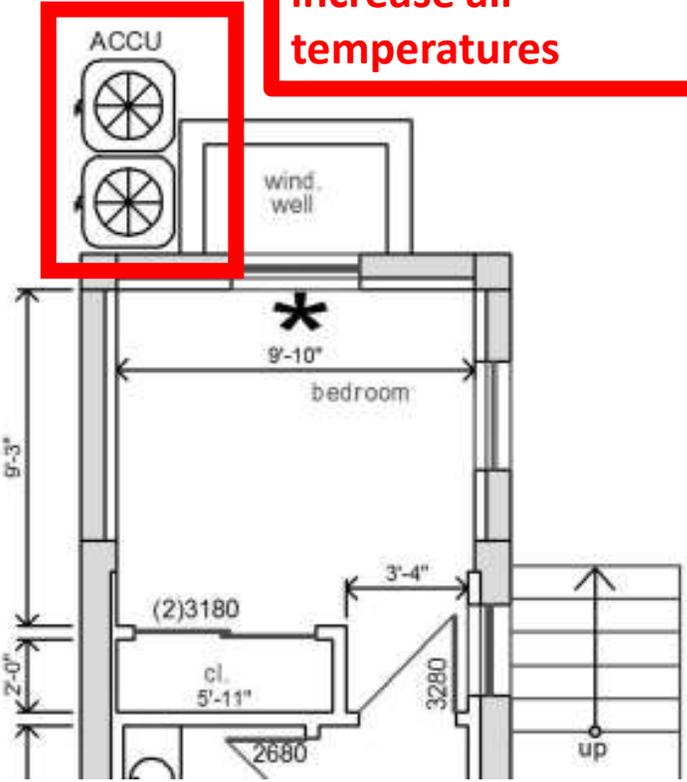
- High Thermal Mass means heat absorbent
- Significant heat gain during day (faces directly east and south)
- Blocked air current prevents cooling to mitigate heat gain and release through day and night

10-15 Degree increase in Solar Heat Gain from Reflected sun.

2x4s showing actual height.



2 new AC units adjacent to Howell Residence will further increase air temperatures



Existing Permit B2007169

# UNDUE adverse impact on light and noise nuisance to Wilson and Howell Residences

- Significant undue light pollution from unfrosted accessory bldg. windows in close proximity to Howell master bedroom and Wilson bedroom.
- Significant undue noise nuisance from rooftop deck that is directly above adjacent to Wilson and Howell family bedrooms.

# Applicant's Record **Fails** to Meet Board's Review Standards in 11-X DCMR 901

Applicant must correct record (*see* PIO Revised Motion to Strike)

Applicant's proposed rear yard may not meet 20' zoning standards (w/projections)

Applicant's use of party walls must not foreclose use by adjacent owners

Applicant must demonstrate it will not fatally damage Protected Trees

Substantially visually intrudes on scale, character, and style of the neighborhood

- MORE than 3X's the volume of existing garage
- NEARLY 3X's higher than adjacent garages from rear yard
- UNFROSTED WINDOWS ONLY ~20 ft. away with views directly into Howell and Wilson Residences

Applicant must mitigate the **UNDUE** adverse impacts (11-X DCMR 901.3, 11-E DCMR 5201) :

- UNDUE intrusions into privacy of Wilson and Howell Residences
- UNDUE impacts on light to Wilson Residence
- UNDUE impacts on air temperatures to Howell Residence
- UNDUE light and noise nuisance to Wilson and Howell Residences

**For each neighbor, even one of these impacts is UNDUE. The collective impact—for all neighbors and with all the undue effects—is exponential.**

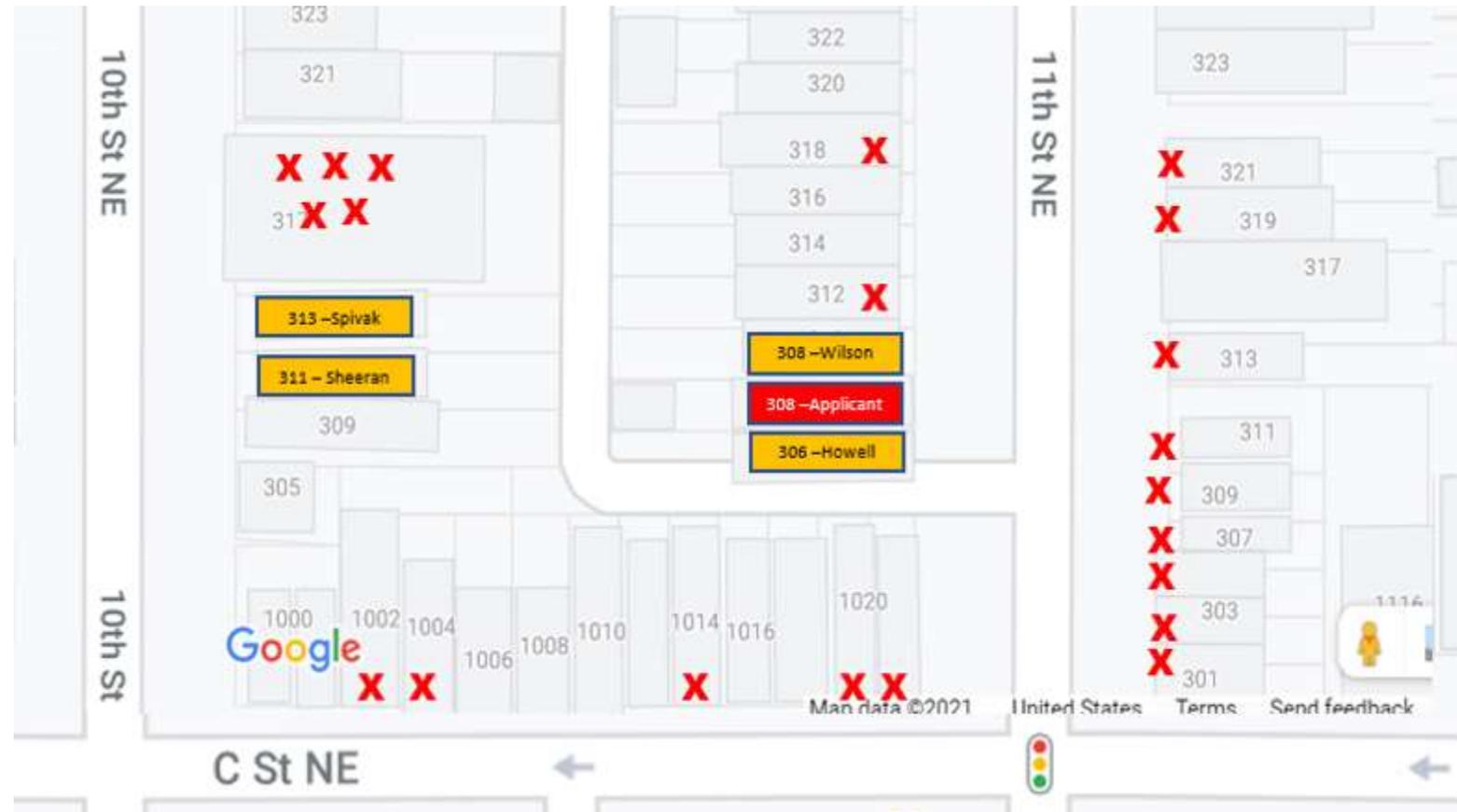
# **Conditions To Be Included in Board's Order to Protect Neighboring Properties**

- **Permanently designate property as a single-family dwelling (per Applicant's June 9 statement and certification).**
- **Foreclose Applicant from obtaining certificate of occupancy as 2-family flat.**
- **Applicant to submit the revised building permit for B2007169 substantiating single-family dwelling status.**
- **REGISTERED survey of bldg. height.**
- **Prohibit Applicant from building over the mid-line of the party walls.**
- **Ensure Applicant uses neighbor notification process prior to building footings and underpinning party walls.**
- **Require Applicant to submit plan to protect Special heirloom cherry tree and Heritage elm tree.**
- **Frost the 2<sup>nd</sup> floor windows that directly face adjacent neighbors.**
- **Relocate AC units away from Howell property (to mitigate undue impact on air temperature).**

# Questions

- **Why do the drawings (ex. ) still request relief from Subtitle C 202.2?**
- **Must the plans include the roof deck and pop-up if they are not before the BZA?**
- **What about measurements for rooftop pop-up? Applicant's measurements show they are 1-inch shy of no by-right. Applicant submitted incorrect measurements in multiple submissions, even when a registered survey showed the numbers were off by more than a foot. Given the number and consequences of the Applicant's mismeasurements, and this 1", can the Board condition its approval on a registered survey of the building height? (Applicant had a survey completed, but did not appear to be completed by a registered surveyor.)**

# Strong Neighborhood Opposition (~39 neighbors) No Neighborhood Support



Thank you!