

March 15, 2021

VIA IZIS

Chairperson Frederick L. Hill
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

RE: BZA Case No. 20382, Parties in Opposition Joint Statement

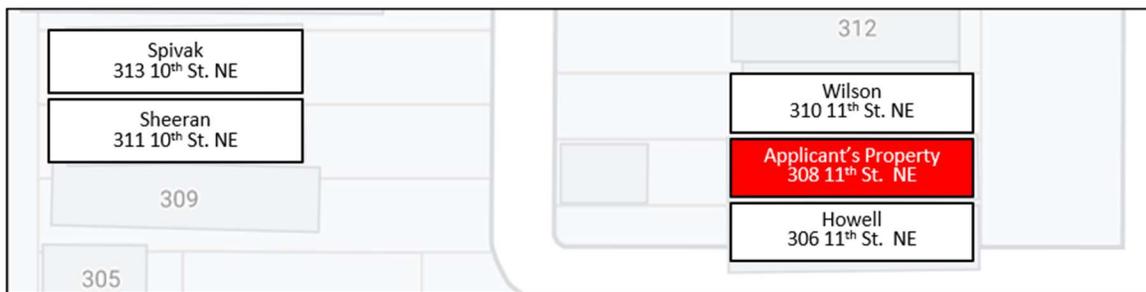
Chairperson Hill and Honorable Members of the Board:

I. Introduction

On February 24, 2021, the Board granted the following individuals party in opposition status, and they are the parties that submit this joint statement:

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

We are not land use attorneys, but have assessed the Application in context of the relevant regulations. Based on what we found, we raise several significant concerns below.



II. Background

A. The Neighborhood

- “There is nothing in the world so good as good neighbors.”¹ The neighbors who live on the block that encompasses both sides of the 300 block of 11th Street, the 1000 block of C Street, and the east side of 10th Street, in Northeast DC can attest that our block is filled with good neighbors.
- Many of us have been residents and friends for multiple decades. Through these decades, neighbors have needed and received support for a variety of improvements to their properties. We have consistently supported each other in these endeavors and have readily reached a reasonable compromise when needed.
- **March 2020.** When the neighborhood learned last spring that a family had purchased the Property, we were excited to welcome them. After meeting the Applicant, he expressed some tentative plans to improve the Property. We exchanged contact information and offered our help.
- **June 2020.** We did not learn about the full extent of the plans until June 15, 2020, 2 days before the June 17 ANC EDZ meeting on the historic considerations of the Project. We were alerted of the meeting by an ANC EDZ Committee member who happened to be looking at the Property and asked a neighbor if anyone would be attending the meeting. After learning of potential opposition, the Applicant rescheduled the Project to the July ANC meeting, where many neighbors expressed concerns.
- **July 2020.** After the Applicant pulled his Project from the June ANC EDZ meeting and prior to the July meeting, he requested a meeting with the Howell’s and Wilson’s. The parties met together on June 29, 2020 along with one of the Applicant’s two architects. The ANC EDZ Committee suggested that the Applicant engage with the neighbors to work towards a compromise.
- **February 2021.** Since then, we have not been contacted by the Applicant about the Project, other than a required Neighborhood Notification that the Applicant was required to submit after DRCA issued a Stop Work order on July 1, 2020. We learned of the BZA meeting when we received the BZA’s official announcement in the mail.

B. The Property

- The property the Applicant is developing is a small row house located at 308 11th Street, NE (the “Property”). The Applicant is a developer and has never lived in the Property or in the neighborhood.

¹ Ingalls, L., On the Banks of Plum Creek, at p. 275.

- The Property is one of seven, nearly identical, federal-front-porch-style row homes, starting from the alley at 306 11th St. NE and running north to 318 11th St. NE, all designed and built over 100 years ago by developer F.M. Johnson, as a series of similar row homes built across Capitol Hill, none of which have been developed in a way proposed by the Applicant.



- Each of these seven lots is approximately 16 ft. x 105 ft. and 1,700 ft. sq. and has a 3-level house and 1-level garage. The original lots are all now non-conforming under the current Zoning Regulations. All the remaining lots on the west side of the 300 block of 11th Street, NE have only a 3-level house and a low-profile 1-level garage (except one without a garage).

C. The Proposed Project and Special Exception Request

- The Applicant is requesting special exception relief to build a 2-level garage addition, a rooftop popup, and a rooftop deck (the “Project”). The Applicant is requesting the Board to grant all of the three types of relief allowed under 11-E DCMR § 5201.2 to: increase the lot occupancy to 69.8%, waive the alley center line setback to 3 ft. 4 in., and increase existing non-conforming aspects of the garage and house.
- The Applicant purchased the Property in the spring of 2020. The Project before the Board is only a portion of a much larger project. The Property is currently a shell, with everything inside removed and new subfloors installed. The Applicant, without a permit, has also extended the horizontal footprint of the basement, including digging under the footings of the Howell party wall to conduct underpinning, and intends to tear down and rebuild the existing rear sunporch. DCRA issued a Stop Work order on July 1, 2020.
- The Applicant’s Project has resulted in strong opposition from every nearby neighbor who has had the opportunity to weigh in. We are not aware of any neighborhood support. Attached is a **Neighborhood Statement Regarding Unreasonable Scope and Impact of 308 11th Street, NE Proposed Development.**

- **The Proposed Project is not “Small” for the neighborhood or under the Zoning Regulations.**
 - The Applicant characterizes the project as “small” because it will have “modest” increases in square footage. The characterization is misleading because the Project seeks to avail itself to every practical inch of useable space, absent a variance. For our block and for the adjacent and nearby neighbors that it will impact, the Project is unprecedented.
 - Additionally, it is unreasonable to characterize the Project as small under the RF-1 Zoning Regulations when (1) it seeks relief for the only three types of relief allowed under 11-E DCMR § 5201.2, (2) for a non-conforming lot in which the existing structures themselves are non-conforming due to the very small scale of the Property, (3) to increase the non-conformances on the Property, (4) that abuts lots that are themselves grandfathered non-conforming lots.
 - If granted, the Applicant’s special exceptions, including for a 69.8% lot occupancy (which is 3.2 sq. ft. shy of 70% (an area of less than five sheets of paper)), will result in:
 - **A 2-level garage addition:**
 - Which will raze a non-conforming garage,
 - In order to build a towering, even more non-conforming, 2-level garage,
 - Nearly 3x’s the height and more than 3x’s the volume of the existing garage,
 - On a 10 ft.-wide alley on which it will have only a 3 ft. 4 in. setback,
 - Which would be the first of its kind on the side of the alley on which it will be built,
 - And which will permanently and massively intrude on the nearly uniform, uninterrupted, and unaltered low-profile garage roofline along the entire length of the alley as it has stood for over 100 years,
 - All for a “modest” gain of 374.6 sq. ft.
 - **A potentially impermissible 4th level:**
 - That will be viewable for more than 70 feet along C Street, NE within the Capitol Hill Historic District,
 - That exceeds 35 ft. in height,
 - That would be the first of its kind on our block,
 - That will permanently and significantly intrude on the nearly uniform, uninterrupted, and unaltered roofline,
 - For a room with a wet bar that is merely 173 sq. ft., in which 40% (70.5 sq. ft.) of the space will be occupied by a stairwell and wet bar, leaving about 100 sq. ft. of useable space.

As explained in detail below, given the magnitude of the special exception request in context and its significantly detrimental impact on the neighbors and neighborhood in relation to the extremely modest 547.6 sq. ft. increase, we respectfully urge the Board not to approve the Application.

- **Please clarify why the special exception relief is needed for the principal Building.** In his request, the Applicant is seeking special exception relief for the principal Building, and states that he is “increasing non-conforming aspects of the Building and Accessory Building, including the lot occupancy and the center alley-line setback.” (Applicant’s statement at 2.) Because the Applicant is not proposing to increase the footprint of the principal Building, and because, presumably, the proposed increase in lot occupancy and alley-line setback are due to the proposed two-story accessory building, we seek clarification as to what the Applicant means when it states that it is “increasing non-confirming aspects of the Building.”²

III. The Intent and Purpose of the Zoning Regulations for Residential Zones and RF-1 Zones is to Balance Development while Retaining the Enjoyment and Livability of Residential Neighborhoods. This Balance Is Particularly Important for Small RF-1 Lots with Non-Conforming Aspects, Like Ours.

- The zoning regulations applicable to the RF-1 zone in subtitle E Chapters 2 and 3 appear intended to ensure a balance in our DC urban setting between developing/improving properties while simultaneously preserving and facilitating the livability and enjoyment within the zone. It is this delicate balance that makes Washington, DC, and particularly Capitol Hill, arguably the most uniquely livable city, for its size, in the United States. We greatly appreciate the efforts of the City in preserving this balance, because it is the reason why we live in our neighborhood.
- For example, 11-E DCMR § 100.2 explains the RF zoning regulations are intended to “recognize and reinforce the importance of neighborhood character . . . improvements to the overall environment . . . and health of the city” and to ensure residential zones are “suitable for residential life.”
- Subtitle E § 101.2 further explains that the development standards are intended to “control the bulk or volume of structure, including height, floor area ratio, and lot occupancy; control the location of building bulk in relation to adjacent lots and streets, by regulating rear setbacks, side setbacks, and the relationship of buildings to street lot lines.”

² We are cautious because of the potential that the Applicant’s other ongoing projects that may otherwise need review may be able to go unnoticed within the Board’s approval and therefore be umbrellaed into the approval of the Applicant’s request.

- The development standards in 11-E DCMR Chapters 2 and 3 illustrate the ideal volume and density for residential neighborhoods that balance property developments without significant adverse effects on the livability of residential neighborhoods:
 - A new row house lot must be at least 1800 sq. ft. and 18 ft. wide (§ 201.1);
 - The maximum number of dwelling units for a row house is limited to two;
 - The maximum permitted height is 35 ft. and 3 stories;
 - The maximum lot occupancy is 60%; and
 - The rear yard must be at least 20 ft. § 201.1; §§ 302 – 305, § 306.
 - Further, for an accessory building abutting an alley, it must be set back at least 12 ft. from the center line of the alley. §§ 5004.1, 5004.3.

- We recognize and respect that the same regulations referenced above that limit the size of RF-1 lots, homes, and accessory units, authorize the Board to vary or waive some of the limits, including through application of a special exception. But we included these general RF-1 limits to illustrate how small the already non-conforming lots are that will be affected by the proposed Project, in light of the Project’s proposed scope and the significant adverse effects it will have on the nearby properties and neighborhood.

- The lots of the seven adjacent and nearby identical homes are, as originally built, non-conforming under the current Zoning Regulations. **As originally non-conforming, these lots already suffer a lack of air, light, privacy, and space.** These lots are/have:
 - Approximately 1700 sq. ft. and 16 ft. wide.
 - Mostly single-family homes.
 - Less than 35 ft. high.
 - No more than three stories with no 4th-level pop-ups or roof decks.
 - Homes with rear yards approximately 22 ft. long. (not including landings).
 - Homes where the height of the garages in the rear yards is approximately 7 ft.
 - On an alley only 10 ft. wide.

- As we demonstrate herein, on grandfathered non-conforming lots as small as the impacted lots, even what might appear on paper to be a “de minimis” change can have a significant detrimental effect on the pre-existing use and enjoyment of the abutting and nearby properties.

IV. The Request Does Not Satisfy the Board’s Special Exception Review Standards in 11-X § 901.

- Under 11-X DCMR § 901.2, the Board is only authorized to grant special exceptions that:
 - (a) Will be in harmony with the general purpose and intent of the zoning regulations and zoning maps;

- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c) Will meet such special conditions as may be specified in this title.

- Based on our review of the Applicant's record below, we respectfully submit that there is insufficient evidence to authorize the Board to grant the special exception.

A. 11-X DCMR § 901.2 (a). In Multiple Ways, the Project is not in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

- Based on our review of the DCMR Zoning Regulations and from measuring our own properties, which are nearly identical to the Property in many of the relevant dimensions, our findings raise questions as to whether the Project is in harmony with the general purpose of the Zoning Regulations and Zoning Maps.
- The Applicant's drawings do not sufficiently or accurately show the scale and scope of the Project. We provide a mark-up of the Applicant's drawings in our Exhibits.
- **The rooftop pop-up may be an impermissible 4th story because the lowest level of the Property appears to be a basement, not a cellar.**
 - 11-B DCMR § 100 defines cellar and basement by measuring the height between the lower of the adjacent natural grade or finished grade and the finished floor of the main floor. To qualify as a cellar, this height must be less than 5 ft. If it is 5 ft. or more, it is a basement, not a cellar.
 - 11-B DCMR §§ 100 & 308.2 require the height to be measured at the building height measuring point (BHMP)—*i.e.*, from the midpoint of the building façade of the principal Building, at the lower of either the adjacent natural grade or the adjacent finished grade.
 - The Applicant's proposed rooftop pop-up may be an impermissible 4th story under the Zoning Regulations because the Property's lowest level appears to be at least 5 ft. above grade—either the natural adjacent grade or finished grade—disqualifying the lowest level as a cellar.
 - When viewing together the front facades of the Howell Residence and the Property, the Howell Residence has higher grade (both finished and natural) than the Property. Further, the Howell Residence does not have a basement apartment, so does not have a generous areaway under the front porch like the Property. The Property's basement areaway clearly seems to exceed the modest exceptions from grade in 11-B DCMR § 100.

- When measuring the grade at the Howell Residence from its BHMP, the height of the natural adjacent grade to the main floor is 5 ft. 6.75 in., and from the landing of the welcome garden (the closest finished grade from which we could measure) the height is 5 ft. 10.25 in. If the lowest level of the Howell Residence would not qualify as a cellar, with what appears visibly higher adjacent and natural grades, it is unclear how the lowest level of the Property qualifies as a cellar, particularly given its generous areaway for the apartment entry under the BHMP—an areaway that is more generous than allowed as an exception to finished and natural grade in 11-B DCMR §§ 100.
- The Applicant’s drawings do not accurately illustrate the front façade of the Property (they leave off a significant portion of the front steps and brick-in the basement areaway). The Application also does not include a directly front-on photograph of the Property’s façade, so we have included the images below, showing the BHMP on the Applicant’s drawing’s next to photos of the Property’s actual basement apartment entryway, which appears adjacent to the Property’s BHMP.



- Presuming the height of the front step risers of the Property is approximately the same as the 8 in. risers at the Howell and Wilson Residences, the eight steps up to the front porch from the landing of the welcome garden plus a 6 in. step onto the main floor of the Property would be 5 ft. 10 in. Even when leaving off the lowest riser after the landing, as shown in the Applicant’s drawings of the front façade and grade, the seven risers plus a 6 in. step onto the main floor would be 5 ft. 2 in.
- In light of the Applicant’s lack of transparency and absence engaging with the neighbors and the permanent and substantial adverse effect the Project will have if approved, we respectfully request an independent assessment of whether the Property’s lowest level is a cellar or basement and that we be allowed to be present during the assessment.

- **If the generous entrance to the basement apartment is the grade adjacent to the BHMP, then the height of the proposed pop-up exceeds 35 ft.**
 - The height of row houses in the RF-1 zone is limited to 35 ft. as measured from the BHMP. As is obscured by the Applicant's drawings and photos, the Property has a generous basement entrance areaway under the front porch that appears to exceed the exceptions to grade and that appears to be adjacent to the BHMP.
 - There should be an independent assessment of the grade that is adjacent to the BHMP for purposes of assessing building height and whether the lowest level qualifies as a cellar.

- **If the garage is extended into the rear yard, the rear yard will be less than 20 ft. long.**
 - 11-E DCMR § 306.1 requires RF-1 rear yards to be a minimum of 20 ft. long. The Project's proposed 2 ft. 10 in. extension of the garage wall into the rear yard will leave the rear yard about 19 ft. long (the dogleg is not part of the rear yard). The length of the Howell's identical adjacent rear yard measures barely over 22 ft. from the back wall of the garage to the back wall of the house. 22 ft. – 2 ft. 10 in. = 19 ft. 2 in.
 - The 20 ft. proposed height of the 2-level garage addition will be higher than the remaining main rear yard is long. The towering 2-level garage addition over the adjacent and nearby small rear yards will have devastating adverse effects on the air, light, privacy, use, and enjoyment on the adjacent and nearby properties that has existed for more than 100 years. **These properties, by the very fact they are non-conforming as built, already suffer a lack of air, light, privacy, and space.**

- **The garage, effectively, will be razed and replaced with a much larger 2-level, increasingly non-conforming, garage addition.**
 - The Applicant **intends to raze the entire existing garage** by tearing down everything but the party walls, which he cannot do because there are abutting garages attached to the other sides of the party walls. (See drawings at D-1.)
 - The garage is currently non-conforming because it is set back only 3 ft. 4 in. on a narrow 10 ft. wide alley, 3x's closer than required, and on a lot with a non-conforming 67.2% lot occupancy.
 - **It seems highly inconsistent with the general purpose and goals of Zoning Regulations to effectively authorize the complete razing of a non-conforming building in order to:**
 - **Build a much larger building that is even more non-conforming because it will be longer, nearly 3x's higher, and more than 3x's the volume,**
 - **On an already non-conforming lot,**

- **With a petite alley setback of only 3 ft. 4 in.**
 - **That will require an increase in already non-conforming lot occupancy only 3.2 sq. ft. away from a variance,**
 - **Adjacent to non-conforming lots that, as such, already suffer a lack of air, light, privacy, and space, and**
 - **That will result in all the undue sacrifices and significant adverse effects to the neighbors and neighborhood as described herein.**
 - **For 374.5 sq. ft.**
- **The lot occupancy may exceed 70%.**
 - In preparing this statement, we noticed that one of the survey pins in the alley from the recent Property survey is over the center line of an adjacent party wall by about an inch or two. We reviewed the original plat map for all the seven nearly identical lots that were subdivided over a hundred years ago from a single lot. We measured the rears of the lots to compare them against the plat map. We discovered there may be some discrepancies.
 - Because the Applicant is 3.2 sq. ft. away from 70% lot occupancy and because an extra 0.5 in. of width the length of the lot is about 4 sq. ft., we are in the process of engaging a surveyor to help us assess the lot lines and party walls.
- B. 11-X DCMR § 901.2 (b). In Multiple Ways, the Project Will Adversely Affect the Use of Neighboring Property in Accordance with the Zoning Regulations and Zoning Maps, in Addition to the Significant Adverse Impacts in Connection with the Special Conditions.**
- **The Project will be built directly on the tops of the full width and full length of the party walls of both abutting properties' garages and houses, foreclosing any future use and access to the tops of the party walls by the adjacent properties.** In so doing, the adjacent properties will be foreclosed from certain improvements (roof decks, solar panels, etc.), repairs, and maintenance that require access to the party wall. Technically, this is an encroachment.³
 - **The Project May Fatally Damage Two Protected Trees, Including A Heritage Tree.**
 - 11-C DCMR § 401 provides certain restrictions against removing, cutting down, or fatally damaging trees having a circumference of 12 in. or greater at a height of 4 ft. 6 in. above ground and prohibits trees with a circumference of 75 in. or greater from being removed, cut down, or fatally damaged.

³ This is similar to the approach the Applicant took when he initially proposed underpinning the party wall shared with Howell's after illegally extending the basement, where he initially proposed underpinning that extended well onto the Howell Residence in such a way as to foreclose any future improvements similar to those at Property.

- The Wilson Residence has an heirloom cherry tree with a circumference of 44 in. that overhangs the rear of the Property and the garage. To build the 2-level garage addition, the cherry tree will need to be removed or cut down or pruned to an extent that it may be fatally damaged.
- Growing in the dogleg directly between the Wilson Residence and the Property is an approximately 50 ft. tall American Elm tree with a circumference of at least 100 in, which qualifies as a Heritage Tree. The Elm tree’s canopy begins at the roof line of the principal Building and directly overhangs the roof where the pop-up will be built. In order to build the pop-up, the Elm tree will need to be significantly modified and may be fatally damaged.

C. 11-X DCMR § 901.2 (c). The Project Does Not Meet the Special Conditions Specified in 11-E DCMR § 5201 Because the Project Will Unduly Adversely Affect The Neighborhood and Adjacent Neighbors in Multiple Ways.

- For the reasons provided below, we respectfully submit that the Applicant has not demonstrated that the proposed Project will not unduly adversely affect the use or enjoyment of the abutting and nearby neighbors and the neighborhood. Therefore, the Board cannot conclude that the project meets the special conditions specified in 11-E DCMR § 5201 and must deny the Application in its current form.

V. The Applicant Has Not Demonstrated “No Undue Adverse Impact” and “No Substantially Adverse Effect” to the Abutting and Nearby Neighbors and the Neighborhood as Required By 11-X DCMR § 901.3 and 11-E DCMR § 5201.

- An applicant for a special exception has “the full burden to prove no undue adverse impact.” 11-X DCMR § 901.3. Further, under 11-E DCMR § 5201.3, the applicant “shall demonstrate that the addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
 - (a) The light and air available to the neighboring properties shall not be unduly affected.
 - (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
 - (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially intrude upon the character, scale, and pattern of houses along the subject street frontage.”
- **Of the two parts of the Project, the 2-level garage addition will have the most devastating effects on all aspects of the available air, light, privacy, space, use, and enjoyment of the adjacent and nearby properties given its height (nearly 3x’s higher), volume (more than**

3x's greater), and extreme close proximity (an additional 3 ft. on one side) to the abutting rear yards of the Howell's and Wilson's and the rear yards of the Sheeran's and Spivak's across the narrow 10 ft.-wide alley. This towering structure will be built adjacent to non-conforming lots (as originally built) that by their very non-conformance already suffer a lack of air, light, privacy, and space.

A. The Light and Air Available to the Neighboring Properties Will be Unduly Affected, Permanently. 11-E DCMR § 5201.3(a)

- The Applicant states (at pp. 5-6): “The Project will not unduly affect the light and air available to the neighboring properties” because the Project is:
 - A small third-story addition and roof deck to the principal Building;
 - The roof deck on the house will be set back from the front façade by 11 ft. 7 in.
 - The pop-up will be set back from the front façade by 29 ft. 4 in. and will be 8 ft. 4 in. tall. [We presume the height of 8 ft. 4 in. is an error because the drawings show the height to be 9 ft. 6 in.]
 - The overall height of the house with the pop-up will be no more than 35 ft.
 - The proposed accessory addition “is only one-story” with 374.6 sq. ft. [We presume “one-story” is an error because the garage addition is clearly 2 levels.]
- With this description, the Applicant significantly minimizes the size and scale of the Project relative to the scale of the existing lot, the principal Building, the garage, and the adjacent and nearby homes of almost an identical nature, and obscures that the Project is unprecedented as the first of its kind on the west side of the 300 block of 11th Street, NE.
- The Applicant’s drawings similarly minimize the size and scale in relation to the adjacent neighbors and the neighborhood (particularly A-3) by obscuring the height of the 2-level garage addition in relation to the adjacent garages, and by omitting any 3-dimensional drawings showing the actual volume of the structure next to the adjacent properties and rear yards.
- The most devastating to us is the 2-level garage addition, which, due to its close proximity and tremendous height (in relation to the scale and lot size of the neighboring properties) will tower over our narrow 16 ft.-wide rear yards (within 5 adult steps from the Howell Residence), creating an oppressive/claustrophobic outdoor environment, and thereby creating significant adverse effects on the already limited light, air, and openness of our properties.
- The light, air, privacy, and openness that is available to our properties has been unaltered for over 100 years and is one of the key reasons why each of us purchased our homes.

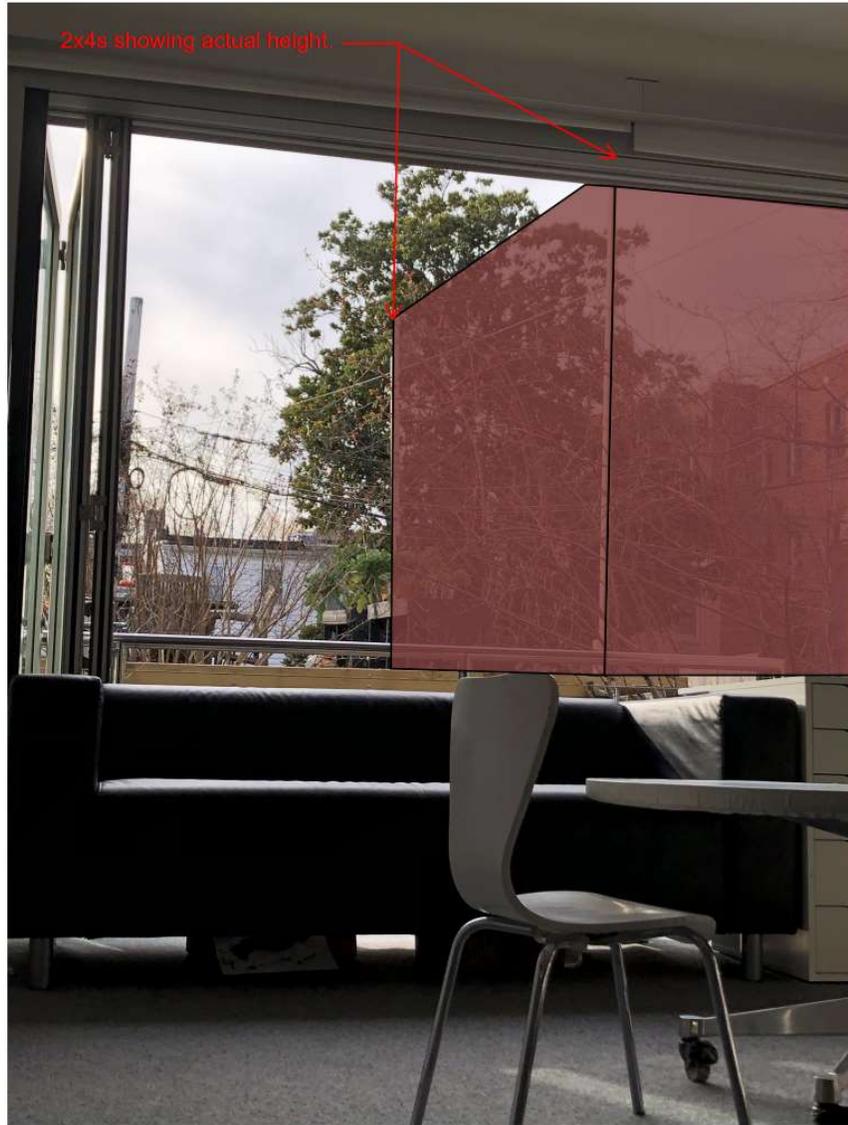
- **The light and air available to the Howell Residence will be substantially and unduly affected.**
 - **The light and air currently available to the Howell Residence will be substantially and unduly affected primarily by the towering, 2-level garage addition, which will be nearly 3 ft. closer to the Howell's 16 ft. x 19 ft. rear yard, nearly 3x's higher than all the 13 nearly uniform garages that span the entire length of the east alley side, and therefore essentially within arm's reach while in the yard. Consequently, it will have devastating undue effects as follows:**
 - The only unobstructed light, air, and space available to the Howell Residence is the rear yard. Unlike all the other properties on the block, the entire southern wall of the Howell Residence, because it spans the length of the alley, is adjacent to the rears of seven houses that tower over the home because the homes practically sit on the very narrow 10 ft. alley. The proposed towering 20 ft. 2-level garage addition in arm's reach of the Howell's rear yard, will place the Howell Residence in a tunnel, and will substantially and unduly obstruct the *only* side of the Howell Residence that is not towered over by row-houses and therefore the *only* side of our property with available light and air.
 - Since 2016, the Howell Residence has served as the school for the three Howell children. The very small (16' x 19') rear yard is the only outdoor play and work space on the property. The rear of the main level inside is the most frequently used space in the home and in our school. Through our rear wall-to-wall, floor-to-ceiling accordion glass doors, our school studies often include observations of what is happening outside and the natural world. In fair weather, our studies almost always occur in our small rear yard. Given its intended towering size and arm's reach proximity, the 2-level garage addition will unduly affect the space we use to educate our children by creating an unpleasant, closed-in, and claustrophobic work and play environment and by permanently obstructing our already significantly limited access to light, air, and the natural world.
 - For almost 20 years, the Howell family has used their garage roof for raised garden beds (due to space constraints and light availability in the rear yard) and recently, for fruit trees. In the past two years, their eldest daughter has requested and taken sole responsibility for the garden beds, and it is has been her most enjoyable experience, particularly during the pandemic. The top 13 ft. of the 2-level garage addition's 20 ft. wall that will tower above the raised garden beds will reflect, retain, and cause our garage roof to retain a substantial increase in heat directly onto the raised garden beds and fruit trees, foreclosing that space as a garden.
 - The portion of the 20 ft. wall of the 2-level garage addition that will extend directly above our garage may retain and reflect such a substantial amount of heat during the summer months, such that it will unduly affect the temperature in our garage during the

summer to the point where we may not be able to safely store certain items in our garage.

- The rooftop pop-up may reflect a significant amount of heat during the summer months, such that it will unduly affect the temperature in the upper level of our home and substantially increase our energy costs.
- The Applicant has provided no heat reflective studies to confirm that its Project will not unduly affect the temperature of the air in and around our property.

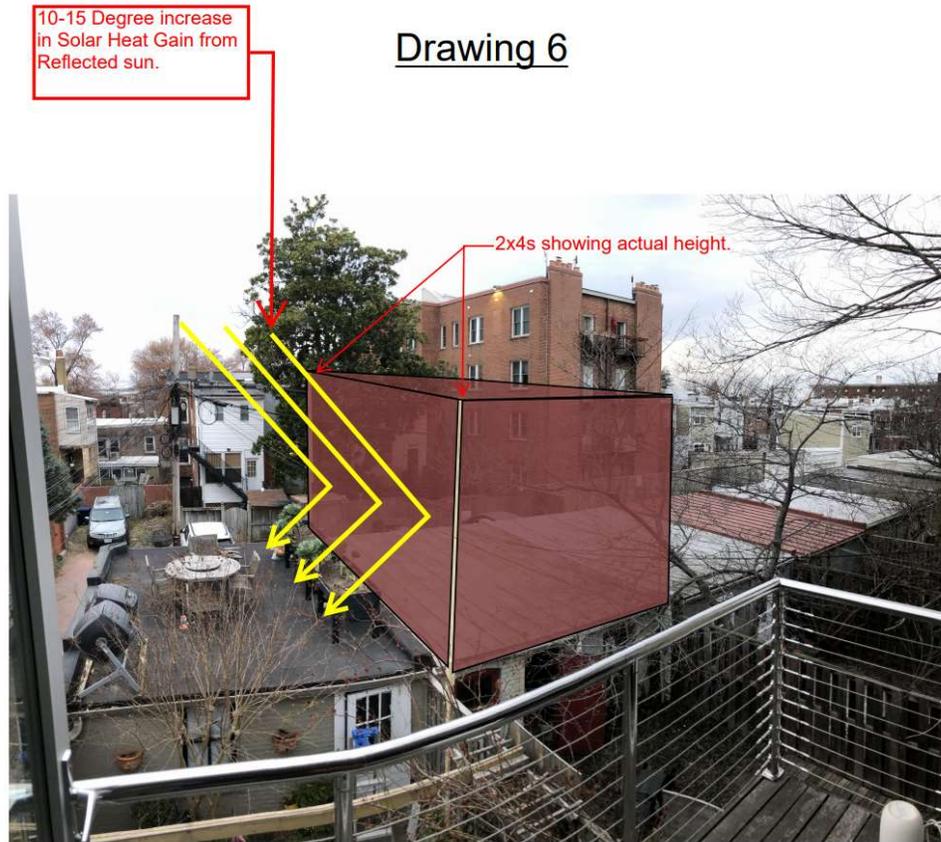


Drawing 4 - Graphical representation of proposed 2-level garage addition.
View from the neighbor's backyard.



Drawing 5 - Graphical representation of proposed 2-level garage addition. View from the neighbor's level 1 living room showing a substantial impact on the neighbor's access to light and air.

Drawing 6



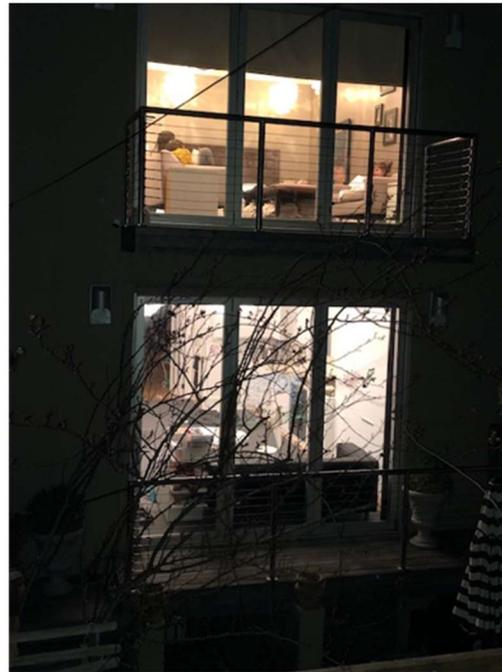
Drawing 6 - Graphical representation of proposed 2-level garage addition. View from the balcony window. The addition will have a substantial negative impact on neighbor's long established usage of their garage roof-top garden patio. There is an anticipated 10-15 degree increase on summer days on this patio due to reflected heat, and a significant decrease in the neighbor's access to light and air.

- **In addition to similar concerns listed above for the Howell Residence, the light and air available to the Wilson Residence will be substantially and unduly affected as follows:**
 - For the Wilson Residence that shares the length of the north party wall with the Property, both the proposed pop-up and garage addition will dramatically increase the shade in the rear of the Wilson Residence, particularly in winter. The Applicant has provided no evidence that the shading and temperature drops to the Wilson Residence will not unduly affect the Wilson Residence. The proposed additions will similarly compromise the availability of free-flowing air and the environment in the rear of the Wilson Residence, which is uniquely situated as the only house which has not extended the footprint of the residence with a two-story rear addition (measuring approximately 8 feet to the rear, extending west).
 - Similar to the Howell Residence, the Wilson Residence enjoys extensive, year-round use of the back yard, as a private space for recreation, education, and relaxation. The family uses the space to garden, to set up a mini inflatable pool in summer, to stargazing, to enjoying birdwatching from a bird feeder hung from the cherry tree, to picnicking and barbecuing, and even setting up a tent, for family camp outs.

B. 11-E DCMR § 5201.3(b). The Project Will Significantly and Irreparably Compromise the Privacy of Use and Enjoyment of Neighboring Properties.

- The extreme close proximity of the 2-level garage addition to the abutting Howell and Wilson Residences and to the Sheeran and Spivak Residences across the 10 ft. alley, in conjunction with the nearly tripled height, will significantly, permanently, and irreparably devastate the current privacy of use and enjoyment of those properties.
- The Applicant states that the Project will not unduly impact the neighbors' privacy because of the limited number of windows facing the neighbors. In such a small lot, and in such close proximity, the 2-level garage addition windows, and the window placement in the principal Building, will significantly intrude on the neighboring properties, particularly the abutting neighbors, the Howells and the Wilsons.
- Windows, however, are not the only way in which a towering structure in such close proximity to a home and rear yard can unduly compromise the privacy of using and enjoying a home. Equally unnerving to the parties in this case is the very presence of a towering structure nearly three times the size of the existing garage, which will protrude closer into the rear yards towards the adjacent neighbors and will create a closed-in, claustrophobic environment that will unduly compromise the current privacy of use and enjoyment of the rear yards of all the nearby properties.
- **The Undue Compromises to Privacy to the Adjacent Howell Residence**
 - The entire length of the southern wall of the Howell Residence runs along a narrow 10 ft. wide alley, onto which seven row houses facing C Street, NE back up. The rear of those seven homes practically sit on the alley, and consequently tower over and look directly into all the southern-facing windows of the Howell Residence. Because the front and alley windows of the Howell Residence have no privacy, the only privacy is in the rear.
 - Because of the Howell's love of outdoors, plants, and space, the family opened up the rear of their home and installed floor-to-ceiling, wall-to-wall accordion glass doors on both levels that can be fully opened up to allow the back of the house on both levels to be completely open to the outside. The closest neighbor across the alley that could look directly into the Howell Residence is 100 feet or more away.
 - The Applicant inconceivably concludes that the windows and Juliet balcony on the 2-level garage addition that *directly face the adjoining neighbors' balconies and floor-to-ceiling, wall-to-wall glass doors only approximately 19 feet away* will not unduly compromise the privacy of the adjoining neighbors because "the adjoining neighbors have existing balconies." (Applicant's statement at 7.)

- **The exact opposite is true. The windows and Juliet balcony of the proposed 2-level garage addition will be about 19 feet from the floor-to-ceiling, wall-to-wall, rear glass doors on both levels of the Howell Residence and will look directly into the Howell's main living area on the main level and the master bedroom on the upper level.** This will be particularly invasive with respect to the privacy for the Howell children and in the evening when the lights in the home are on.
- The exact opposite is true. The existence of the Howell's expansive glass doors on both levels and balconies and the Wilson's west facing windows, is the very reason why the east-facing windows and Juliet balcony on both levels of the garage addition a mere 20 or so feet away will *more* than unduly compromise their privacy.
- The night-time light pollution and intrusion coming from the windows and doors of the 2-level garage addition will also unduly affect the privacy of the Howell Residence, particularly in the rear master bedroom, given its extreme close proximity to the home.
- The upper level of Howell Residence has the family's three bedrooms. The Howell family can clearly hear rain and squirrels that land on the roof. Inevitably, their privacy and quiet enjoyment in their bedrooms, which are adjacently directly below, will be unduly affected by the noise from the rooftop pop-up and roof deck, which will include a wet bar, presumably to facilitate parties in the evening up on the roof. Based on multiple experiences over the past 20 years, the noise from the rooftop will be amplified and echoed by and through the nearby alley, exacerbating the undue effects on the privacy of the Howell Residence.



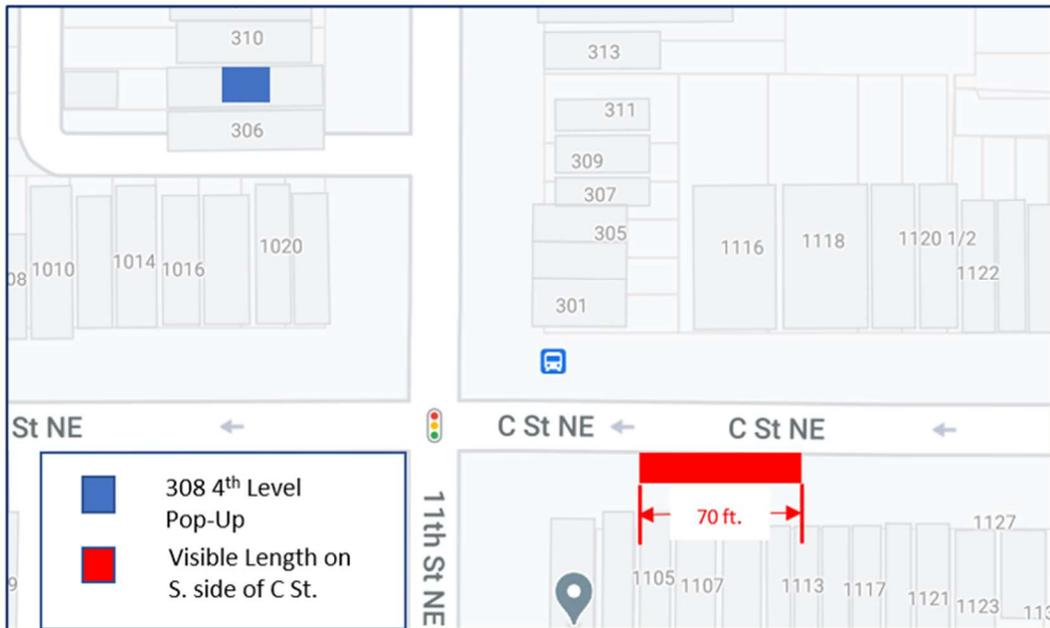
- **The Undue Compromises to Privacy to the Adjacent Wilson Residence**

- The 2-level garage addition will: 1) force a severe trimming of a cherry tree that provides health, environmental, and aesthetic benefits for the Wilson Residence and neighbors; 2) use our shared party wall along the south side of the garage of the Wilson Residence, compromising the ability to alter or repair the garage without substantial cost and complication; 3) create a significant encroachment on the enclosed privacy of our backyard—which is limited already by the layout of the properties; 4) create an extension of the footprint of the rear wall of the garage, further encroaching on the rear façade of the Wilson Residence; 5) raise the height of the second story addition to the garage (including the windows and balcony), allowing persons a birds-eye view into the Wilson Residence and backyard, tremendously compromising the privacy and enjoyment of the Wilson Residence.
- The rooftop pop-up and roofdeck will: 1) enlarge a window adjoining the proposed spiral staircase and on the roof top structure, looking directly into the main bathroom of the Wilson Residence and into a children’s bedroom; 2) adversely impair, because of its sheer height and design, the canopy of the large elm tree that qualifies as a Heritage Tree and straddles the property line of the Wilson’s and the Property, which shades the rooftop of our house in the summer and adds significant environmental and aesthetic value to all of the surrounding properties; 3) take over our shared party wall along the south, foreclosing any future use and hindering repairs and alterations; 4) use of the roofdeck, which is directly adjacent and over the master bedroom and children’s bedroom of the Wilson Residence will unduly compromise our privacy due to increased noise.
- The proposed additions will block what is now unobstructed airflow, openness, and light. The proposed additions will further hem in and crowd the available space in the rear yard of the Wilson Residence, impairing light, privacy, and enjoyment.

C. 11-E DCMR § 5201.3(c). The 2-Level Garage Addition and Rooftop Pop-up Are Unprecedented, as Both Will Be the First of Their Kind On Our Street Frontage, and Both Will Permanently and Significantly Visually Intrude upon the Character, Scale, and Pattern of Houses on Our Street As They Have Existed for More Than 100 Years.

- **The rooftop pop-up will be the first on all four sides of our block and will be viewable for more than 70 feet along the 1100 block of C Street, NE and will provide only about 100 sq. ft. of useable indoor space.**
 - On all four sides of our block—C Street, D Street, 10th Street, and 11th Street in NE—all the row houses are no more than three-levels and are generally consistent in height. There is not a single row house with a rooftop pop-up or even a rooftop deck. The Project’s rooftop pop-up and its deck will be the first of its kind.

- Along the tops of all the homes that span the entire west side of the 300 block of 11th street, the roofline is uniquely uniform, uninterrupted, and level. There are only a few minor interruptions—a few AC units and one home with solar panels. There is no way to refute that the rooftop pop-up, the rooftop deck, and the new rooftop brick wall will permanently destroy and visually intrude on this essentially unaltered roofline.
- Despite the ANC EDZ Committee’s request to the Applicant last August to submit a sight-line study using a mock-up of the pop-up on the rooftop of the Property, the Applicant has not yet conducted one. We built a frame using two pieces of lumber, 2 in. x 4. in. x 8 ft., between which we hung a blue tarp 12 ft. long. We held the frame on the Howell side of the rooftop party wall set back to where the Project’s rooftop pop-up will be placed. To err on the side of caution, we intentionally made the frame shorter and less long (more than a 1 ft. shorter and 5 ft. less long) than the rooftop pop-up. Even so, our mocked-up frame was viewable along the 1100 block of C Street, NE for more than 70 feet.



- **The 2-level garage addition will break up a nearly uniform, low-profile pattern of the garages and garage roofline across the entire east side of the alley and will consume more than three times the volume of space to provide a modest 374.6 sq. ft.**
 - All the 13 “accessory structures” on the east side of the alley are garages, except one. Although not identical (but close), all of them are a single level and all are low-profile. In fact, they are nearly uniform in their low height, character, and style (mid-way through, two adjacent garages are marginally raised in their height). We strongly disagree with the Applicant that there are a “variety” of accessory structures along the alley. Additionally, there are only three garages on the west side—most of the rowhomes on the west side do not have garages
 - The Applicant’s description that there is a “variety” of accessory structures misguides how very out of place the 2-level garage addition will be in the alley, at 3x’s the height of the existing garages as viewed from the rear yards.
 - The Applicant characterizes the 2-level garage addition as “modest” because it is only “374.6 sq. ft.” and is “limited to 20 ft. in height.” This description does not acknowledge the volume of space the 2-level garage addition requires to provide this modest 374.6 sq. ft., which, at almost three times the height of the rear of the other garages and ~ 3 ft. longer, will tower over the small adjacent lots and low-profile garages.
 - The existing volume of the garage is 2,283 cu. ft. The volume of the 2-level garage addition will be 7,493 cu. ft. Meaning, it will take *more* than three times the current volume of space to provide a 374.6 sq. ft. room, at a significant and permanent detriment to the quality of life of the neighbors.
 - The Zoning Regulations are intended to preserve the integrity of scale, character, and pattern of neighborhoods, including by ensuring the volume is reasonable in context. The volume of the 2-level garage addition at more than 3x’s the existing garage and all the seven nearly identical garages, for a modest 374.6 sq. ft., will permanently and significantly visually intrude on the uniquely uniform, uninterrupted character, scale, and pattern of all the row homes along the west side of the 300 block of 11th Street, NE.



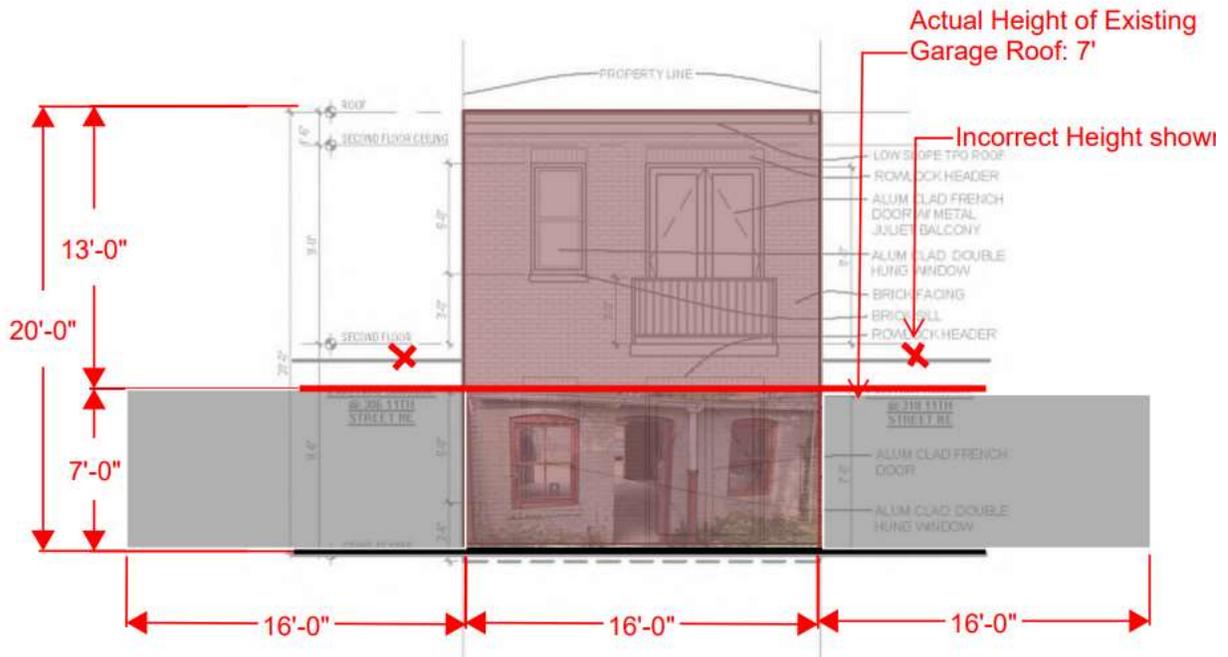
ALLEY,
LOOKING NORTH

Drawing 1 - Graphical representation of proposed 2-level garage addition in context of the adjacent garages.

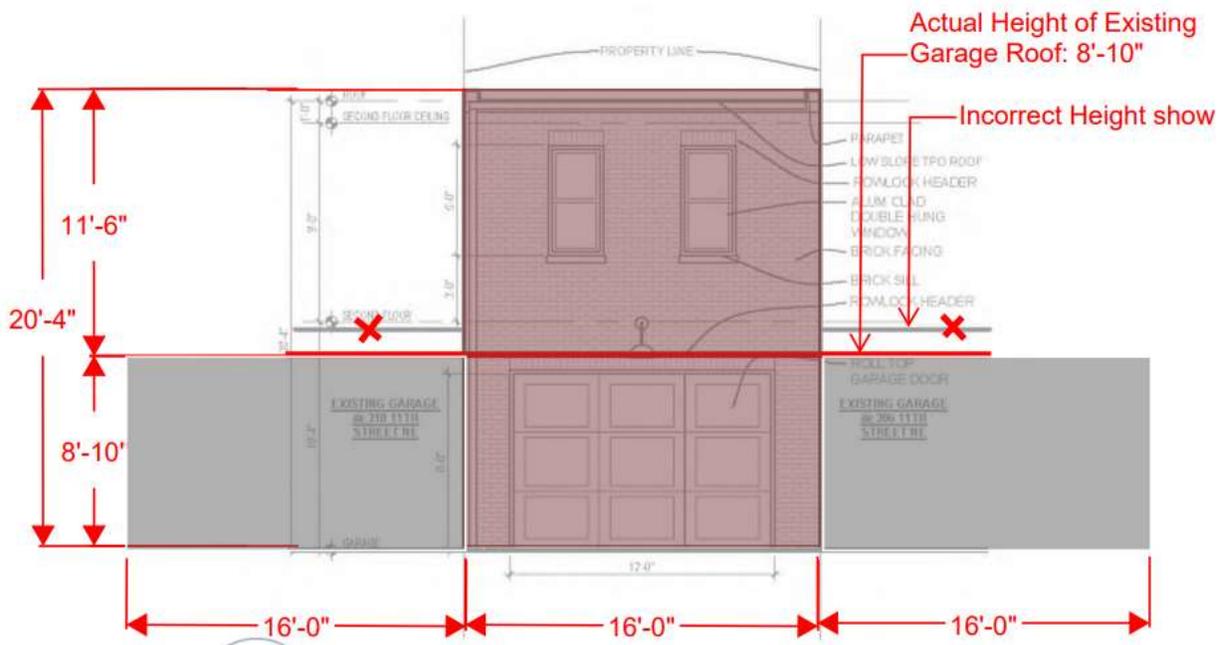


Drawing 2 - Graphical representation of proposed 2-level garage addition in context of the adjacent garages.

- D. 11-E DCMR § 5201.3(d). The Applicant's graphical representations and photographs do not fully or accurately demonstrate the scale and volume of the Project to sufficiently show the relationship of the Project to the adjacent properties and views from the alley and street.**
- **The Applicant has not provided any 3-dimensional drawings showing the volume and scale of its Project in relation to its own small lot or the neighboring properties and particularly how the 2-level garage addition in three dimension will appear along the alley.**
 - **The Applicant has not provided any results or photos of the physical mock-ups of its Project as requested by the ANC EDZ in order to confirm what will be seen from the street and alley.**
 - **The Applicant's 2-dimensional drawings of the 2-level garage addition do not accurately show the addition in relation to the abutting garages and nearby properties, and as such, could be characterized as misleading.**



2 CARRIAGE HOUSE YARD ELEVATION
A-3 SCALE: 1/8"=1'-0"



4 CARRIAGE HOUSE ALLEY ELEVATION
A-3 SCALE: 1/8"=1'-0"

- The Applicant's 2-dimensional drawings obscure the basement apartment entrance of the principal Building and could be characterized as misleading. Instead of showing the large

areaway under the front porch leading to the basement apartment (which is relevant to the Property's grade), they show the lower level as bricked in.⁴ Even more, the Applicant does not provide any front-on photos of the front façade, but instead uses photos from an oblique angle or from far away, partially obscuring the large areaway under the front porch.

- **The Applicant has not provided sun/shade studies** showing the impact of the towering 2-level garage in relation on the abutting lots and small backyards, particularly on the Wilson Residence, which is directly to north, on an east-west plane, and which may be subject to undo shading and cooling.
 - **The Applicant has not provided heat reflective studies showing that its Project will not unduly affect the air temperature of the Howell's garage and house.** The 2-level garage addition's wall will face south, run the full length, and extend 13 ft. above the Howell garage and rooftop garden. Consequently, this wall will reflect substantial amounts of heat and light onto the garage and the raised garden beds, foreclosing the use of the roof top garden as it has existed for almost 20 years. It will also substantially increase the temperature inside the garage. The same is true of the rooftop-pop up and its potential heat-increasing-effects on the Howell Residence.
 - To assist the Board, we have marked-up the Applicant's drawings and include photographs of some basic physical mock-ups that show the height of the 2-story garage in relation to the alley and adjacent properties and that show how and where the rooftop pop-up will be viewed from the street.
- E. 11-E DCMR § 5201.3(e). Given the magnitude and impact of the Applicant's special request in relation to the 547.6 sq. ft. it will gain, we respectfully request the Board not to approve the request for 69.8% lot occupancy (a mere 3.3 sq. ft. from 70%).**
- Because the lot size is so small, the Applicant's special request to increase lot occupancy to 69.8% is **only 3.2 sq. ft. away from 70% lot occupancy. This is less than five sheets of letter-sized paper.**
 - We respect that even if the Applicant asked for the additional 3.2 sq. ft., this provision gives the Board authority to approve it if an Applicant fulfills the evidentiary burden. This provision, however, does not *require* the Board to approve lot occupancy up to 70% in every case.

⁴ The bricked-in areaway is also concerning because the Applicant has alleged that he intends to retain the Property as a 2-family flat by retaining both flats in the principal Building (his permit drawings show two units with kitchens in the main house). Given that the 2-level garage has a full bath and a "nook" that could be intended as a kitchen, we have concern that removing and bricking-in the basement apartment entrance in his drawing may be a way to obscure, at some point in the future, that there is a unit in the basement in order to obtain a third unit above the garage.

- In this case, the Applicant asks for a lot occupancy, 3.2 sq. ft. shy of 70% to:
 - Effectively raze a non-conforming garage, on which it will build an even more non-conforming 2-level garage nearly 3x's the height and more than 3x's the volume of the existing garage, the first of its kind on the side of the alley on which it will permanently and massively intrude on the nearly uniform, uninterrupted, and unaltered low-profile garage roofline—for a modest 374.6 sq. ft.
 - Build a potentially impermissible 4th level that will be viewable for more than 70 feet along a public street, and like it's sister 2-level garage addition, will be the first of its kind on our block to permanently significantly intrude on the nearly uniform, uninterrupted, and unaltered roofline—for a room with a wet bar that is merely 173 sq. ft., in which 40% (70.5 sq. ft.) of the space will be occupied by a stairwell and wet bar, leaving about 100 sq. ft. of useable space.
- Moreover, these structure will be built adjacent and **nearby to lots that are also non-conforming and that by their very non-conformance already suffer a lack of air, light, privacy, and space.**
- We are all fully aware and empathetic that space is a premium in our neighborhood. Even so, given the magnitude of the special exception request and its devastating impact on the neighbors and neighborhood in relation to the extremely modest 547.6 sq. ft. increase, we respectfully urge the Board not to approve the increase of an already non-conforming lot occupancy.

VI. 11-E DCMR § 5201.5. If the Lowest Level of the Property is a Basement, Approval of the Application Will Introduce a Non-Conforming Height and an Impermissible 4th Story.

- As explained above, it is unclear how the Applicant determined the grade adjacent to its BHMP, given the expansive entrance to the basement apartment that appears directly adjacent to the BHMP. The lowest level of the Howell's abutting property—with visibly higher natural and finished grade abutting its BHMP and with no generous areaway under the front porch abutting its BHMP—would not qualify as a cellar.
- If the lowest level is a basement, Approval of the Application will introduce BOTH a non-conforming height and an impermissible 4th story. There should be an independent assessment of the grade that is adjacent to the BHMP.

VII. Statement from Tom Sheeran and Theresa Harrison, 311 10th St, NE

The neighbors lining either side of the alley have built a community that is extremely friendly, thoughtful and looks after each other. While new neighbors are welcome with smiles, what is most concerning about this special exception is that it is changing the structural dynamic of the neighborhood without conversations with neighbors, or consideration of impact on those who have built their lives in this corner of Capitol Hill. We learned about all of this development, and request for the special exception, upon receipt of a hearing letter from BZA – we did not learn about these changes from the property owners. Changes that are proposed by the Property will affect the environment and will have a negative psychological effect to the neighborhood and our immediate section of the alley.

Our backyard is open and airy, it brings us peace and tranquility and it is a refuge from busy lives we lead. We love our alley, as narrow as it, for many reasons, not least of which is because it does not feel claustrophobic and shut-off from the world due to the open space above the garages. We highly value this aspect of our home and we know that all of this will change if this special exception is granted.

The proposed development will build, what will feel like, a wall cutting off the openness of the neighborhood and closing in an already narrow space. This impact will affect our sunlight as we are directly behind the property. Between the diminished sunlight, and closed-off feeling, this inevitably will affect the refuge we rely on and will change our outlook of our own property.

From a privacy standpoint, because we live in row houses, the privacy of a backyard is a premium and is tactfully managed between neighbors. However, with a towering unit looking into our yard, what little privacy we have left will be diminished with people looking into our yard from all four sides. We know that this will directly diminish the enjoyment of our backyard. Our backyard, and the influence of the alley, were a few of the main reasons we purchased our home. We do not look forward to dreading the use of our yard knowing that it will feel like we are living under a micro-scope.

From a noise standpoint, the accessory dwelling unit and balcony, will inevitably bring unwanted noise, including the hum of an air-conditioner unit, which we generally do not hear. This noise will negatively affect the enjoyment of our property for a large portion of the year.

New neighbors are welcome. Development of an existing property is welcome and generally benefits everyone in the neighborhood. However, the special exception to over develop the Property, is not welcome due to what we expect will be diminished use of our own property due to loss of open airy space being traded for the claustrophobic closed-off feeling, diminished sunlight, invasion of what little privacy we have, and an increase in noise that no-one wants to hear. For these reasons we ask that the special exception not be granted.

VIII. Statement from Randi Spivak and Andy Kerr, 313 10th St., NE

Randi Spivak and Andy Kerr will be significantly, distinctively, and uniquely affected by the Applicant's requested relief from lot occupancy and alley centerline setback, and 2nd story garage addition, if granted, because the Spivak/Kerr Residence is behind 308 11th Street and would be harmed by diminished natural light, degraded privacy including noise and impaired enjoyment of our property. The proposed additions are out of character with the neighborhood.

The Spivak/Kerr Residence will be significantly and uniquely impacted because the Spivak/Kerr Residence is across the alleyway from 308 11th Street. Building the addition, especially adding a second story to the garage, would diminish eastern morning light to the rear of our house including light coming into our eat-in kitchen, where we spend the majority of our time. Further, the privacy and quiet we now enjoy in our backyard will be compromised by doubling the height of the garage. We purchased our property in the Capital Hill Historic District because we love the character, spatial context and layout of the neighborhood that affords some open space in an otherwise urban setting.

The requested exceptions by the developer would significantly change the character of alleyway. The alleyway is our main point of ingress and egress and we walk our dog on a daily basis through the alley and spend a good deal of time in our backyard. We did a photo mockup of what the 2nd story garage would look like from our backyard, kitchen window and kitchen glass French door and our rear bedroom window. The proposed addition would be a significant intrusion in terms of our sense of space, light, airflow and openness and a significant and unwelcome departure from the low, one story garages that line the alleyway.

It is important to note that the developers purchased 308 11th Street knowing full well the restrictions that come with a historic district and Capitol Hill zoning codes. That they knowingly bought the property with the intent to request waivers of these codes is very troubling. The fact is, granting this waiver will pave the way for the next waiver and the next. Before you know it, the zoning codes and historic character of the neighborhood will be lost. With each developer or new resident arguing that the character and zoning codes have already been waived, so why not for me? This is the slippery slope that much be avoided.

Because the Spivak/Kerr Residence is behind to the Applicant's Structure, Randi Spivak and Andy Kerr's interest will be more significantly, distinctly, and uniquely affected than others in the general public. In conclusion, Randi and Andy respectfully request that the Board deny the Applicant's request for special exceptions. Thank you for your attention to this matter.

Certificate of Service

I hereby certify that on March 15, 2021, I served a copy of this Party Status request in opposition via e-mail to the following:

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