

# Parties in Opposition to BZA #20382

April 14, 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

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

**PER MOTION TO STRIKE, EXISTING RECORD IS INACCURATE AND INCOMPLETE AND NEEDS TO BE CORRECTED AND SUPPLEMENTED**

# Neighborhood Context

- Unique, nearly uniform, uninterrupted, unaltered for 100+ years
- Project is a first of its kind on the west 300 block street frontage
- No pop-ups, no 2-level ADU (325 10<sup>th</sup> and 313 11<sup>th</sup> are materially different)
- 38 neighbors oppose, no known support

# Neighborhood Context



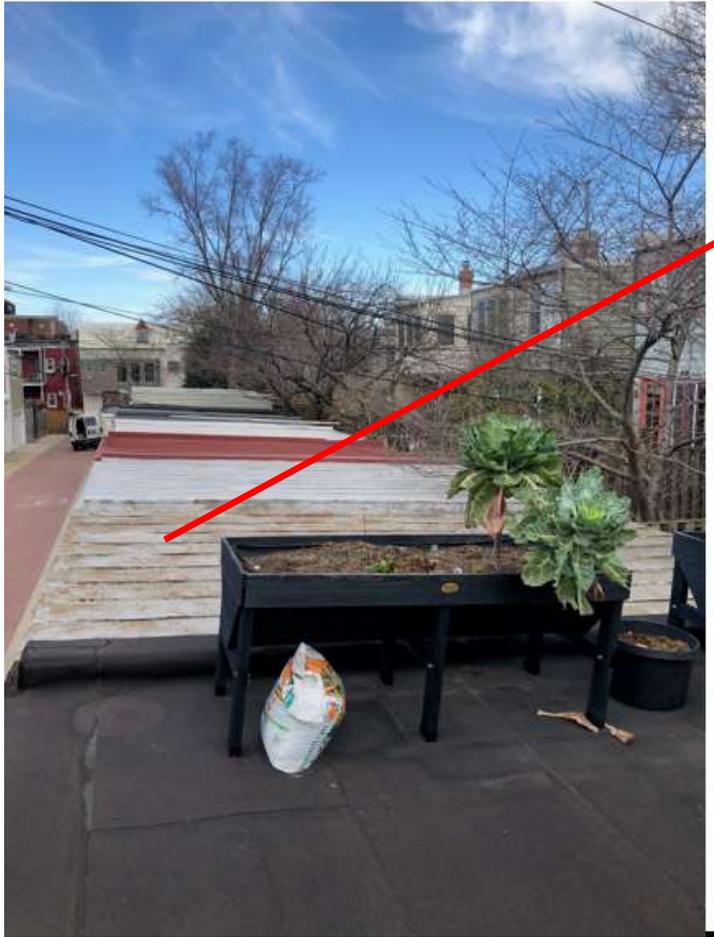
**Full length, west side, 300 block of 11<sup>th</sup> Street NE**



Applicant's  
Property



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



Applicant's Property



# Project Context

- Although request is for zoning approval for a 2-level garage, when the Project is complete, the only original elements remaining in the home and garage will be party walls, some joists, and front façade.
- Stop Work order issued July 1, 2020 for work beyond permit.
- Inaccurate drawings submitted to obtain Building Permit 2007159 whereby Applicant potentially avoided HPRB review, submitting structural plans, special underpinning requirements, Neighbor Notification process. *See Motion to Strike*

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

- **In Residential Zones and RF-1 Zones, intent is to Balance Development while Retaining the Enjoyment and Livability of Residential Neighborhoods (11-E 101.2).**
  - “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.”
  - “**recognize and reinforce the importance of neighborhood character . . . and health of the city.**”
- **This Balance Is Particularly Important for Small RF-1 Lots with Non-Conforming Aspects, Like Ours.**

# 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 landings).
- Low-profile (~7 ft.) 1-level garages.
- Narrow 10 ft. wide alley.

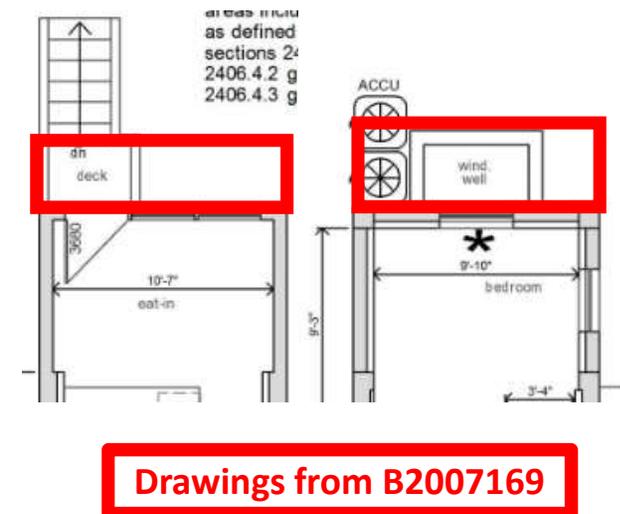
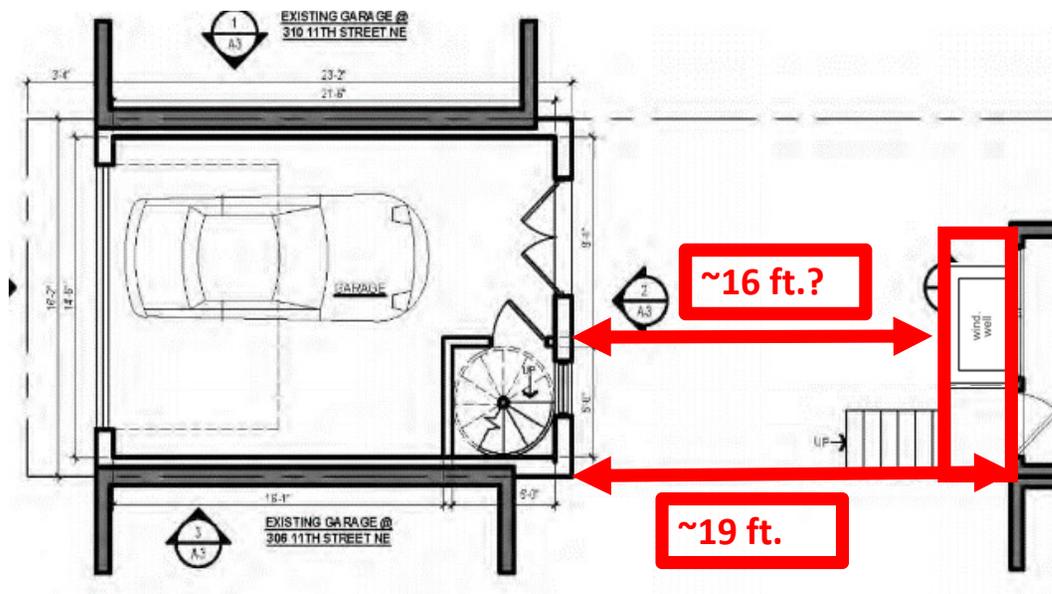
**“de minimis” changes can have significant devastating effects on the pre-existing use and enjoyment of the adjacent/nearby properties.**

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

- Rooftop pop-up may be an impermissible 4<sup>th</sup> story because the lowest level of the Property is a basement, not a cellar.
- Required rear yard will be less than 20 ft. long.
- Existing non-conforming garage will be demolished and replaced with a larger 2-level non-conforming garage.

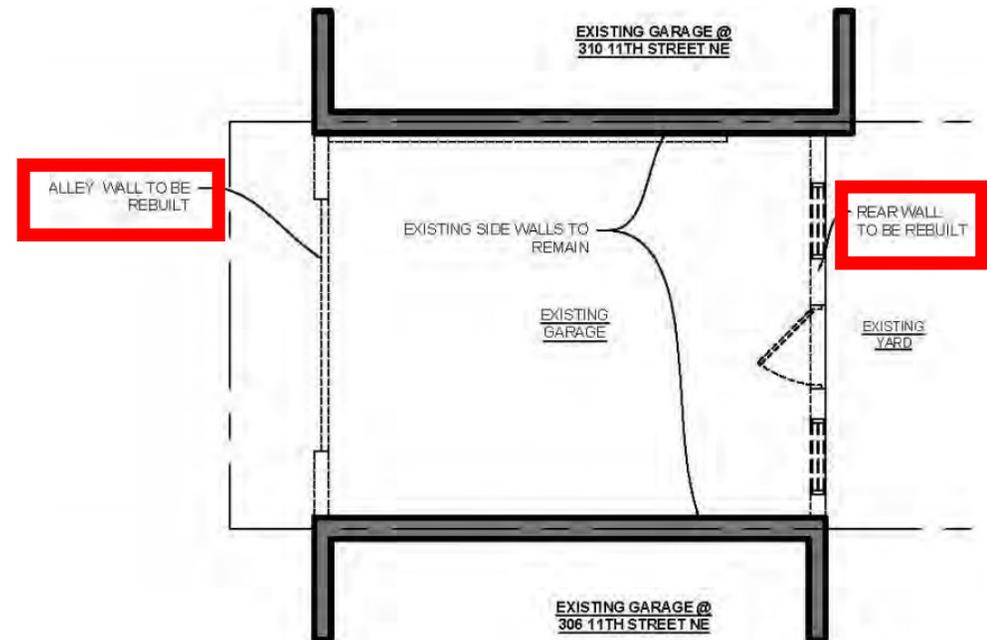
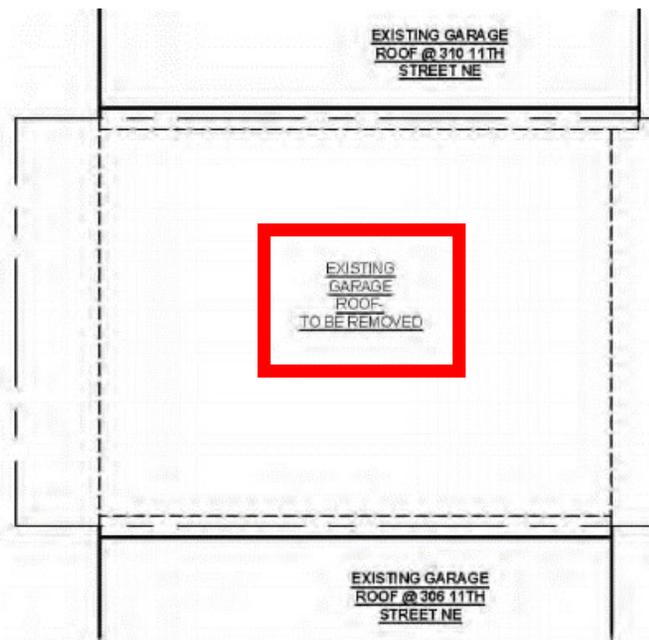
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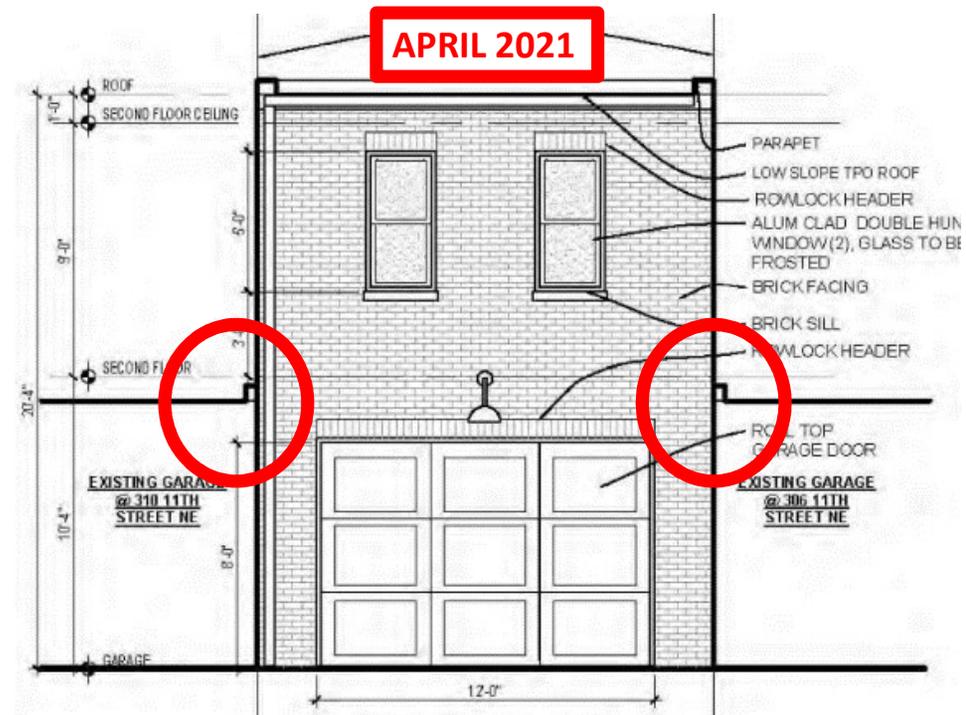
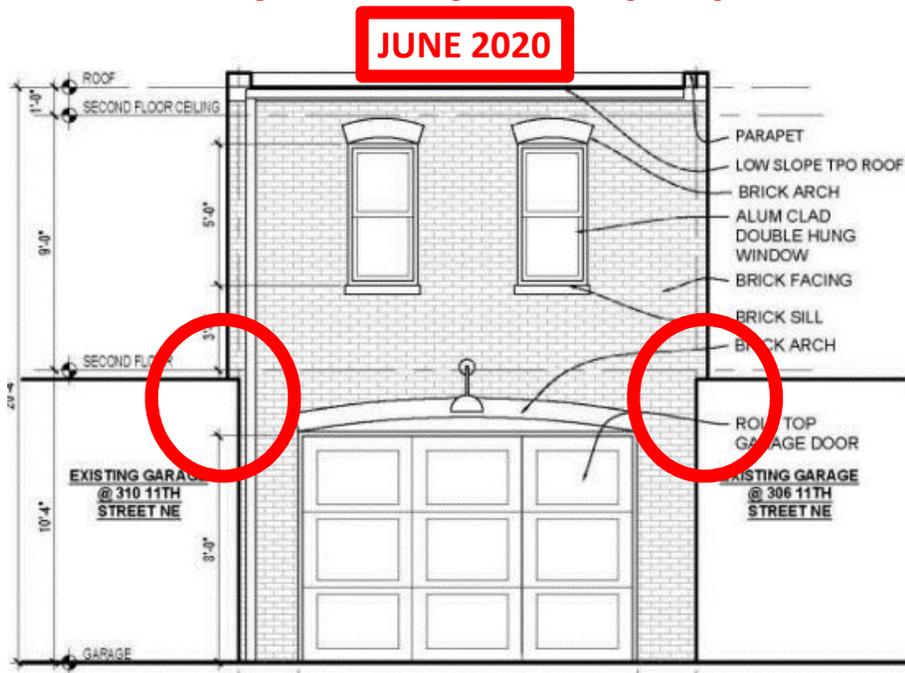


# The Applicant's Request Does not Satisfy the Board's Review Standards in 11-X DCMR 901

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- The Applicant has failed to fully prove “no undue adverse impact” (11-X DCMR 901.3, 11-E DCMR 5201)

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

- May foreclose any future use and access to entire top of all party walls by the adjacent properties.



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/prohibits removing, cutting down, or fatally damaging trees with circumference of at least 12 in. and includes additional protections for “Special Trees” (44 in.) and “Heritage Trees” (100 in.)
- Wilson Heirloom Cherry is “Special Tree” (~46 in.), significantly overhangs existing Property’s garage.
- Shared American Elm tree is “Heritage Tree” (>100 in.), significantly overhangs Property.

**Heirloom Cherry (~46" Circumference)**



**Heritage Elm (>100" Circumference)**



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

- Proposed 2-Level ADU
  - MORE than 3X's the volume of existing garage
  - NEARLY 3X's higher than adjacent garages from rear yard
  - UNFROSTED WINDOWS look directly into Howell and Wilson Residences
  - ONLY 19 ft. away from Howell Residence
- Significant UNDUE intrusions into privacy of Wilson and Howell Residences
- Significant UNDUE affects on light and air temperature to Wilson Residence
- Significant UNDUE affects on air temperature to Howell Residence
- Significant UNDUE light and noise nuisance to Wilson and Howell Residences

**For each individual family, the effects are Significantly Undue. Collectively, the Significantly Undue Impacts are Exponential.**

# Significant UNDUE Intrusions into Privacy of Howell and Wilson Residences

## **Howell Residence**

- 3 young children home all day
- All 3 children educated at home, rear main level and rear yard serve as classroom, highest use of entire home
- 3<sup>rd</sup> level is master bedroom
- Rear is ONLY part of home afforded privacy
- Special needs, rear yard is ONLY place child will be outside alone.
- Rear walls on both levels of home are floor-ceiling glass doors.

## **Wilson Residence**

- 2 young children home
- Rear yard in high use
- Rear of home is in high use as kitchen on main level. Bedroom on upper level.

# Significant UNDUE Intrusions into Privacy of Howell and Wilson Residences

- Long, unfrosted east windows face directly into Wilson Residence and into Howell classroom, master bedroom, rear yard ONLY 19 ft. away.
- Enlarged window on dogleg looks directly into the main bathroom of Wilson bathroom and children's bedroom.
- If use is as ADU, not just office, significantly heightens privacy concerns.
- **Applicant's recent modifications concede UNDO privacy, but benefit Applicant, not neighbors (Applicant frosted windows in bathroom and "nook"). Not consistent with BZA precedent.**
- **ELECTRONIC FROSTING PROVIDES PRIVACY TO APPLICANT, NOT NEIGHBORS**
- BZA precedent on same alley required higher sills, smaller windows, frosted, for a 2<sup>nd</sup> level that is used solely as home office (no bathroom/water), and for a neighbor over 100 ft. away.
- ADU includes two skylights directly above main living area.

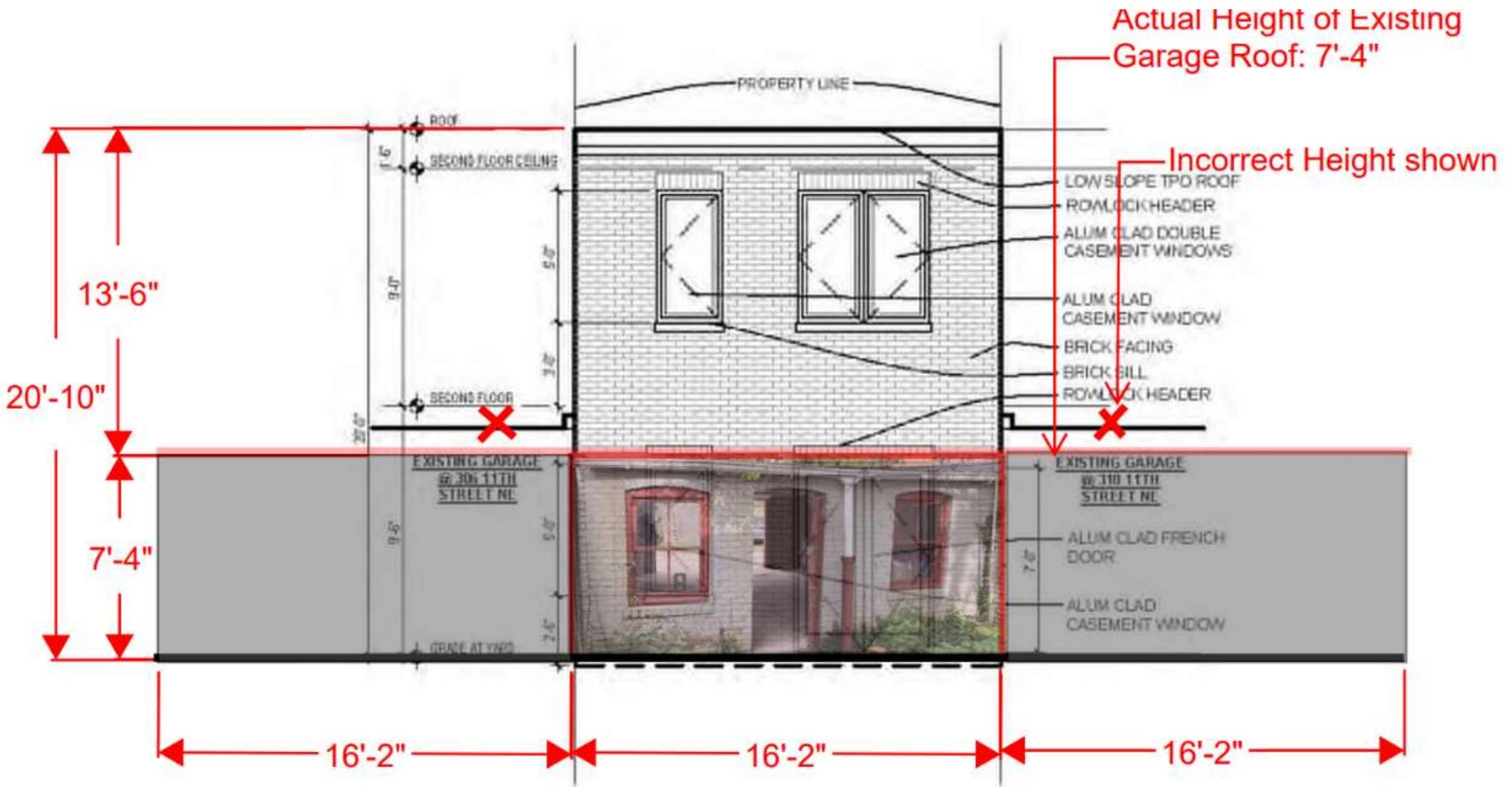
# Narrow 10' wide Alley

Applicant's Property



10 ft. wide NARROW alley. Homes already constrained with light, air, privacy.





2X4s indicated approximate height (from garden)



2X4s indicated approximate height (from alley)



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



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



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



**BEFORE**

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



Howell Residence master bedroom.



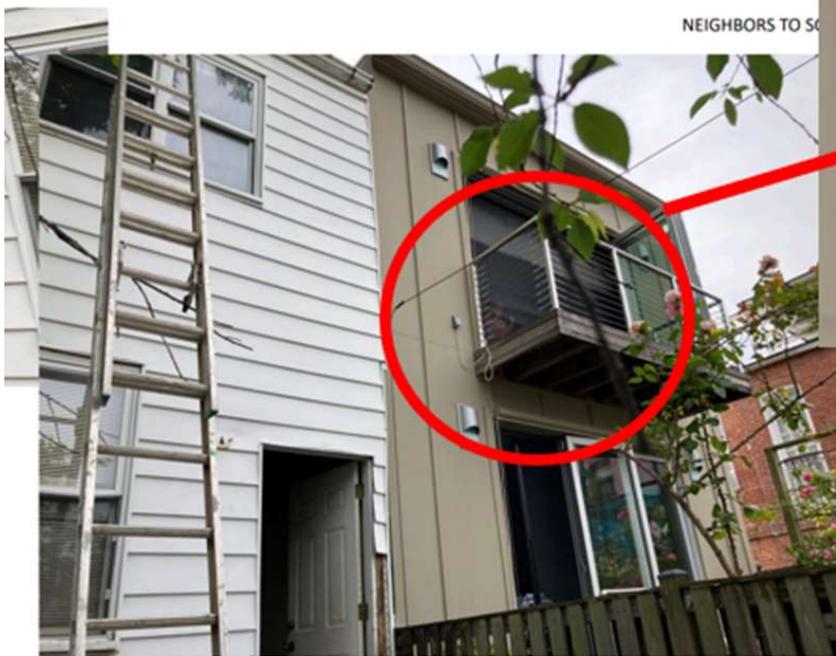
Howell Residence master bedroom.



Unduly intrudes on only portion of Howell Residence with privacy. Even more unduly intrusive at night and for the three young children.



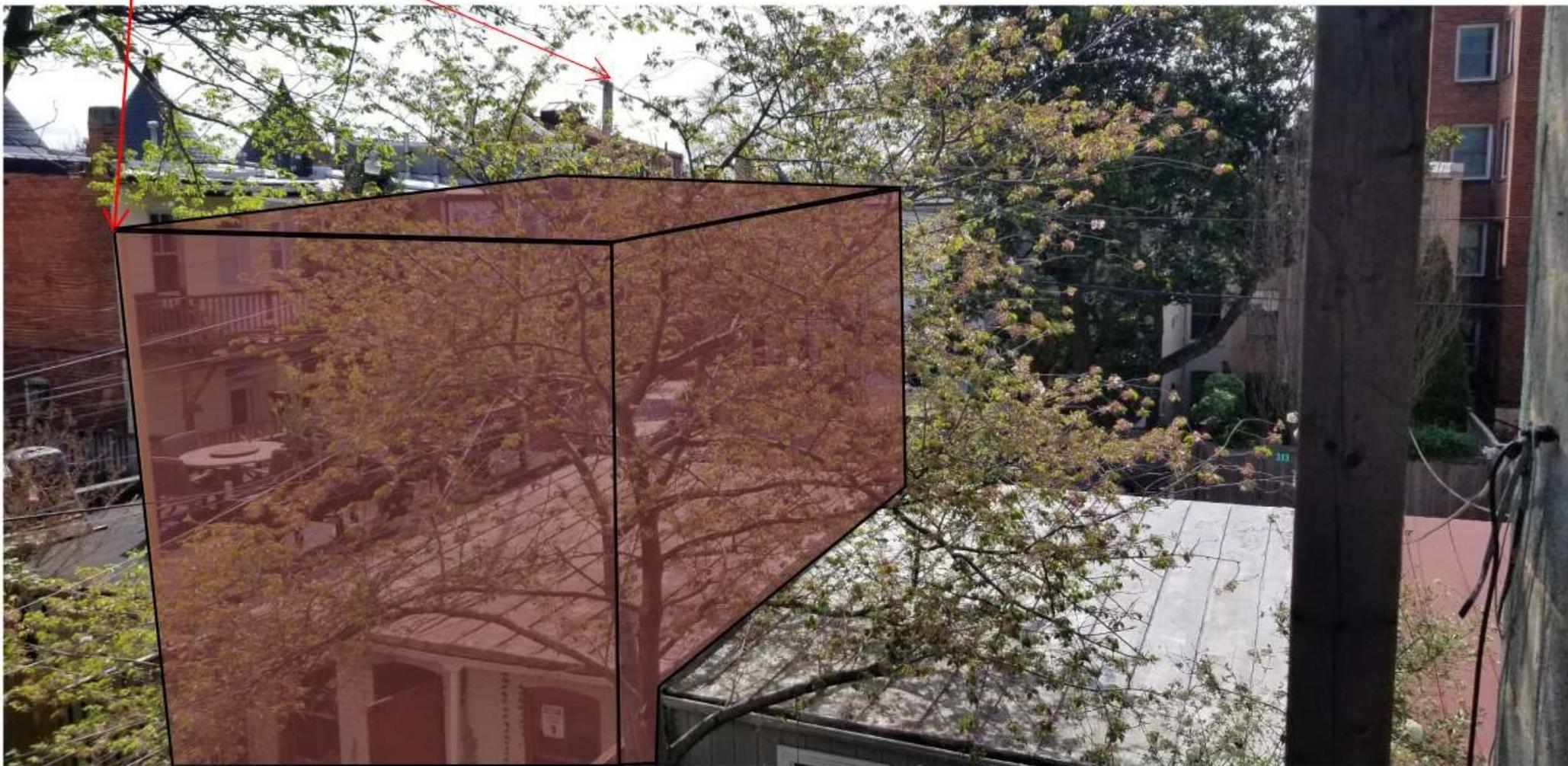
Photo taken by Applicant  
and included in  
Application



Fowler Architects



2x4s showing actual height.



# Significant **UNDUE** affects on **LIGHT** to Wilson Residence

## **Applicant's Shade Study Does Not Sufficiently Assess Impacts on Wilson Residence. Afternoon/evening is sunniest and highest-use time.**

- May be inaccurate if uses adjacent garage heights from Applicant's drawings.
- Excludes shading after 3pm through sundown, **the sunniest and highest use time, sunniest time**. Applicant should expand shade study to include afternoon/evening shade.
- 3pm images do not show actual shade impact on the Wilson rear yard. Applicant should expand the shade study to include this.
- Does not include cumulative effect with rooftop pop-up. Applicant should expand shade study to include rooftop pop-up.
- Unclear what dimensions Applicant uses as "by right 50%" versus "100%." Applicant should share dimensions used.

## Significant **UNDUE** affects on **AIR TEMPERATURES** to Howell Residence

- 13 ft. high x 23 ft. long wall facing directly adjacent south onto Howell Residence and into rear yard will **UNDULY** increase air temperatures into Howell rear yard.
- 20 ft. high x 16 ft. long wall facing directly adjacent east onto Howell Residence will **UNDULY** increase air temperatures into Howell rear yard.
- Unduly increased air temperatures will be compounded by two new AC units placed directly adjacent to Howell property line.

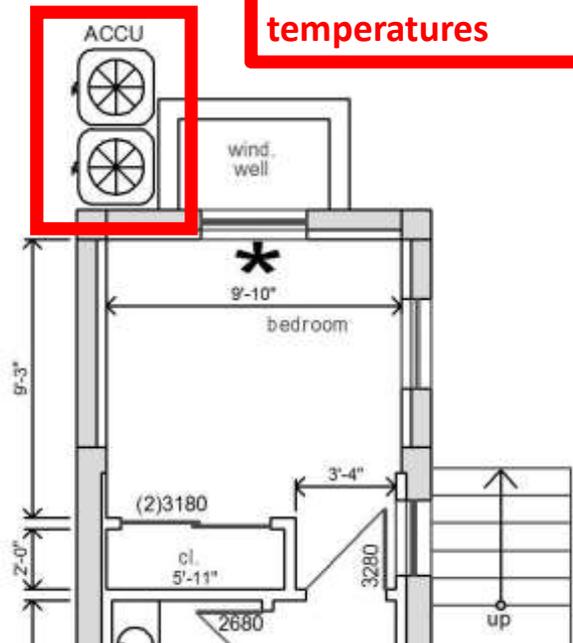
# Significant **UNDUE** affects on AIR TEMPERATURES to Howell Residence

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

2x4s showing actual height.

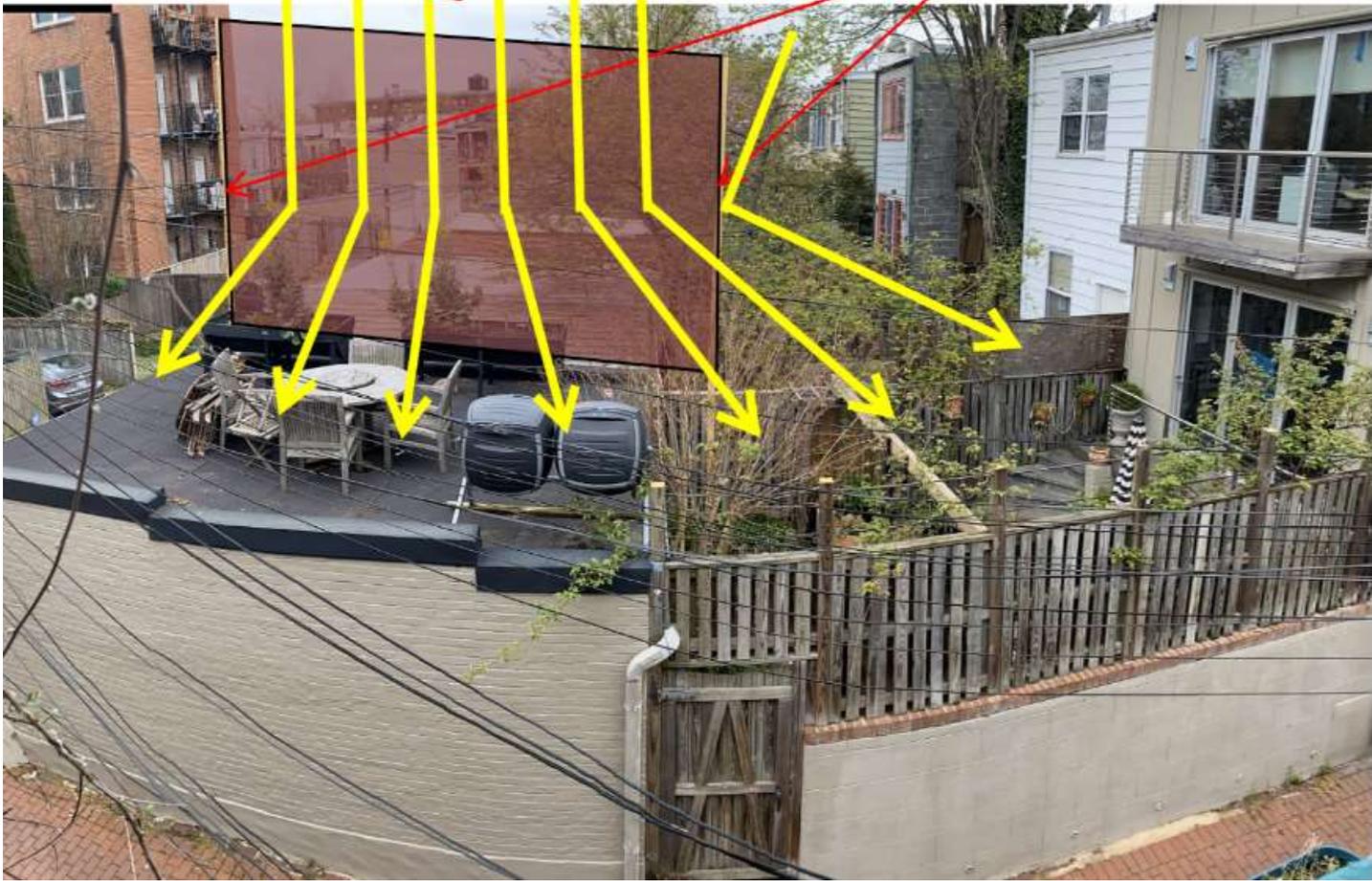


2 new AC units adjacent to Howell Residence will further increase air temperatures



10 to 15 degree increase in solar  
Heat Gain from Reflected sun.

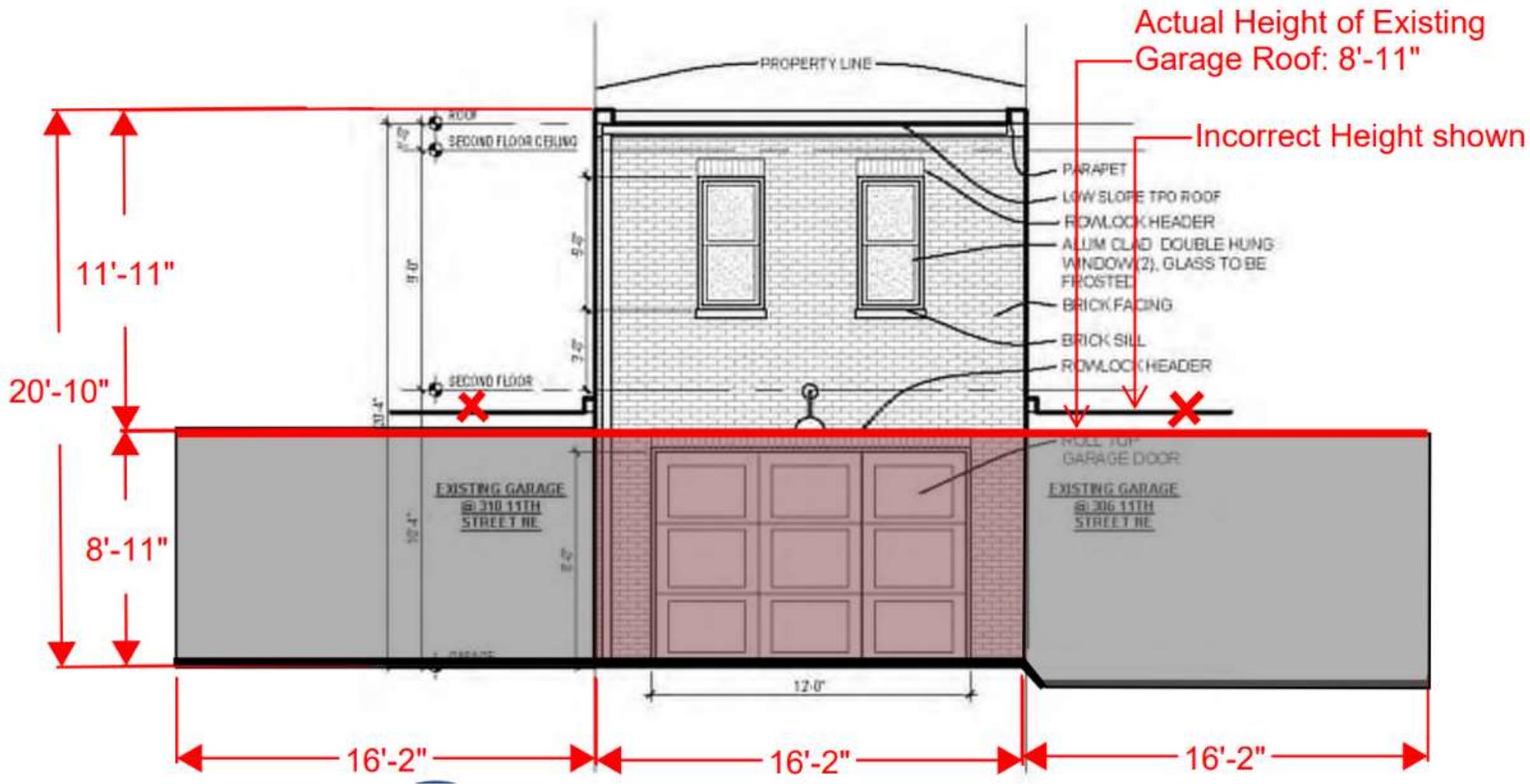
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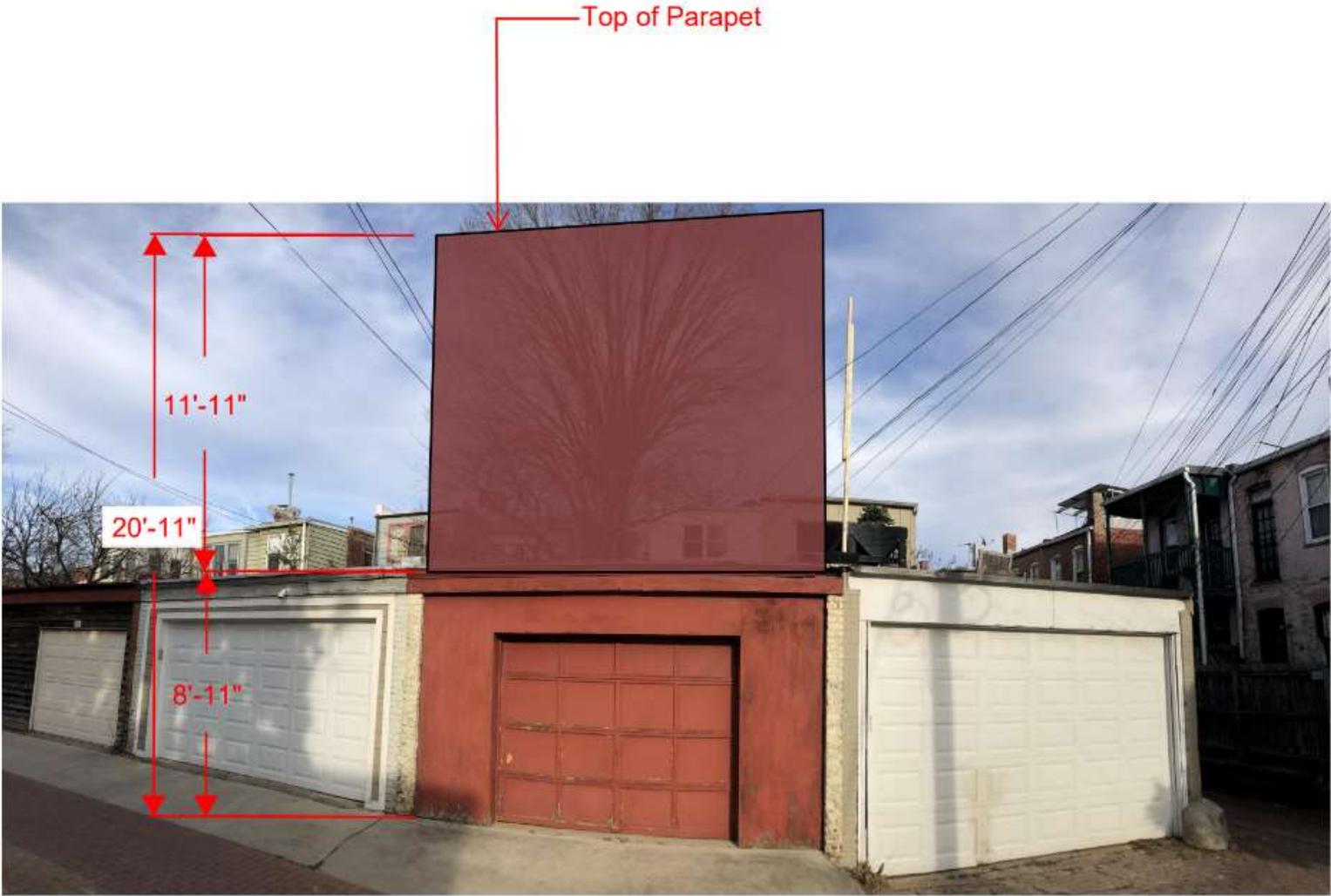
## Significant **UNDUE light and noise nuisance** to Wilson and Howell Residences

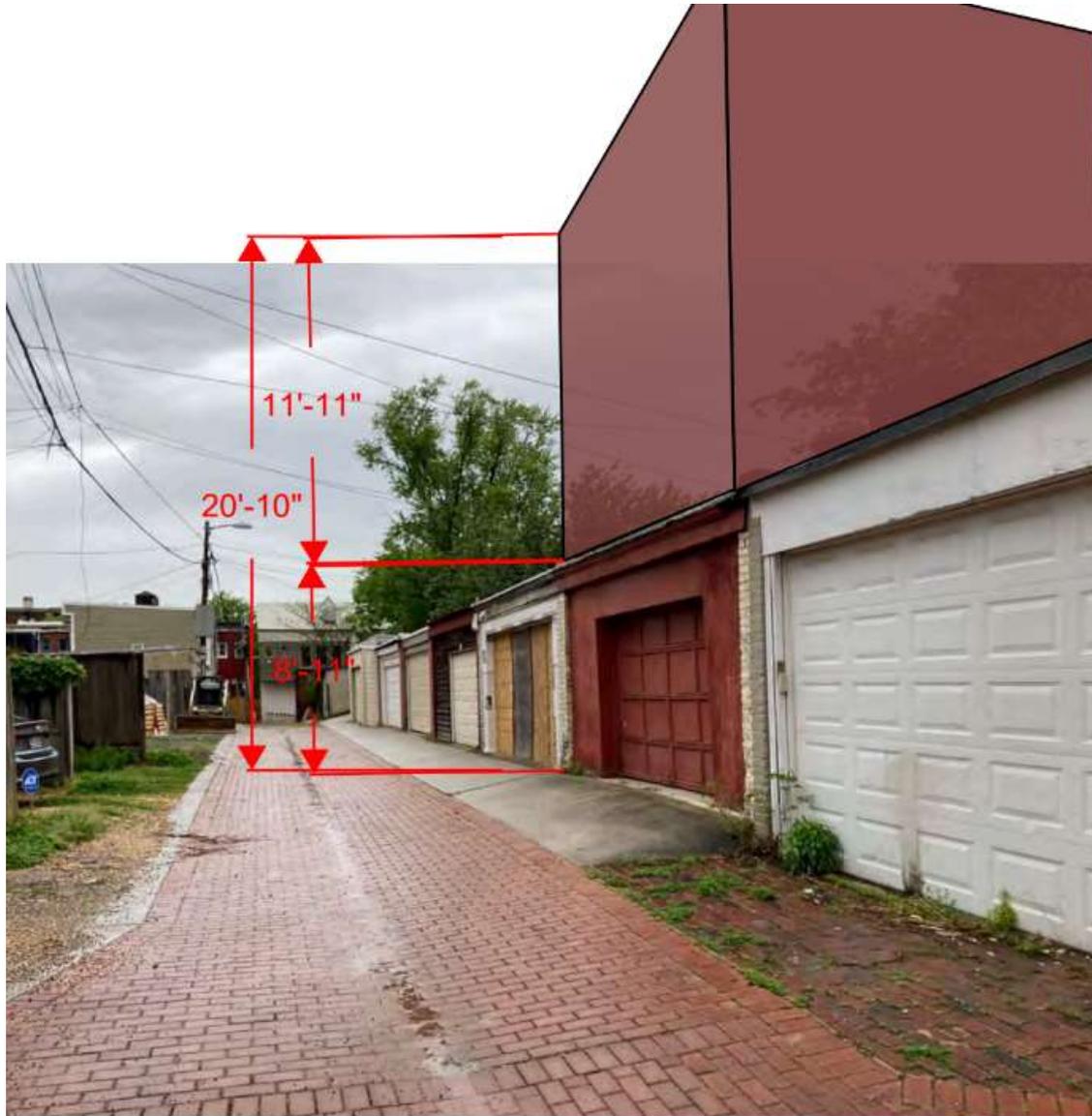
- Significant undue light pollution from unfrosted ADU windows in close proximity to Howell master bedroom.
- Significant undue noise nuisance from rooftop deck that is directly above adjacent to Wilson and Howell family bedrooms.

- **2-level ADU will significantly Visually Intrude Upon the Character, Scale, and Pattern As it Has Existed for More than 100 Years (11-E DCMR 5201.3)**
- 2-level ADU will be destroy the unique, nearly uniform span of low-level garages across the entire length of the east side of the alley.









ALLEY,  
LOOKING NORT

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

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

**Applicant's proposed rear yard does not meet zoning standards**

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

**Applicant must show it will not fatally damage Protected Trees**

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

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

Thank you!

# Strong Neighborhood Opposition—38 neighbors No Neighborhood Support

