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July 31, 2003

Board of Zoning Adjustment
441 Fourth Street, NW, Suite 210
Washington, DC 20002

2003 JUL 31 A 9:22
GOVT OF D.C.

RE: Tudor Place Foundation, Inc.
Application No. 16974

Dear Sir or Madam:

Please find for filing the original and the requisite copies of the 31st Street Parties' Opposition to Applicant's Request to Use Reopen the Record for Evidence About 1670 31st Street, NW (Dower House) and Challenge to Applicant's Traffic/Parking Report.

Submitted,

Ronald R. Snider

Enclosures

BZA
Case No. 16974
Exhibit No. 121

Board of Zoning Adjustment
District of Columbia
CASE NO. 16974
EXHIBIT NO. 121

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Tudor Place Foundation, Inc. Application for Special Exception for Tudor Place at 1644 31st Street, and Dower House at 1670 31st Street, NW Square 1281, Lot 835	)	Application **No. 16974** 31st Street Parties

OPPOSITION TO APPLICANT'S REQUEST
TO USE REOPEN THE RECORD
FOR EVIDENCE ABOUT 1670 31ST STREET, NW (DOWER HOUSE)

I. Reopening the Record About Dower House

The Board of Zoning Adjustment (BZA) should deny Applicant's request to reopen the record for the purpose of allowing Applicant to (1) restate and expand its case-in-chief about the uses it wishes to make of Dower House, and possibly Tudor Place, (2) make a case of financial hardship in support of its Dower House requests, and (3) argue positions that Applicant intentionally omitted from its Application, from its proposal to the ANC, and omitted from its case-in-chief. These results are what Tudor Place seeks with its pending Request.

Tudor Place Foundation (Applicant or Foundation) has failed to show what extraordinary circumstances justify this BZA reopening this record. In fact there are none. Rather, the Applicant's papers show that it wants the BZA to open the record so that Applicant can introduce evidence and make arguments for special uses that Applicant failed to raise before, even though Applicant had more than eight months to prepare its case, and

professional help to formulate its positions, and present its case. The BZA should not grant Applicant's request.

II. Applicant Able But Elected Not to Timely Present Evidence

The Applicant had every possible opportunity to raise its arguments and positions long before now. The record shows that the Applicant started formulating its request for a zoning exception at least 8 months ago, and perfected its request many times since. Ms. Buhler meet with neighbors and discussed the Foundation's plans on Thursday, November, 21, 2002. (Exhibit 74). Less than a week later, on November 27, 2002, and after she amended the document, the Foundation filed the pending Application with the BZA Over the next two months Ms. Buhler discussed the Application with others and on February 4, 2003, she presented her proposals to the ANC. (See, Testimony of Tom Birch, April 22, 2003, p. 104).

The Foundation, working with well respected legal counsel, chose to limit its case to the written and oral statements of Ms. Buhler and a few other records, none of which addressed uses for Dower House. Said another way, the Foundation intentionally declined to introduce facts upon which the BZA could rule in favor of the Application's requests for Dower House.

There is no doubt that the Foundation and its counsel knew what was required. On the first day of the Hearing, and minutes before the Foundation began to present its case, the Chairman stated:

> "The decision of this Board and all contested cases must be based exclusively on the public record." Tr. April 15, 2003, p. 7, lines 9-10.

Moments later, Chairman Griffis gave the Foundation the opportunity to present its case. What transpired over the next few minutes leaves no doubt that Ms. Buhler and the Foundation had the opportunity to present whatever information it wanted but deliberately chose to limit its evidence, as the following shows:

> CHAIRMAN GRIFFIS: "With that, I think we can turn it over to the Applicant for the presentation of their case." (Tr. April 15, 2003, lines 4-6, P. 51).

Following that directive introduction, Mr. Von Salzen, counsel representing the Foundation, introduced himself and called Ms. Buhler as "'a witness' on behalf of the application." (Tr. April 15, 2003, lines 13-13,p. 51.) Ms. Buhler opened her oral evidence with a declaration that her statement was intended as a "supplement to the written one which was submitted with the application." (TR 1, April 15, lines 19-21, p. 51). She characterized her written statement and her, soon to be given oral testimony, as follows:

> MS. BUHLER: "I believe our presentation more than satisfies the burden of proof under Section 3104 and 217 of the Zoning regulations." (Tr April 15, 2003, lines 15-17, p. 57).

She spoke for about four minutes and then announced that she had finished her testimony. (Tr. April 15, 2003, line 4, p. 58.)

With the exception of submitting documents the Board requested from the Foundation and Ms. Buhler's answers to questions on direct examination from members of the Board, the Foundation clearly intended to close it case with Ms. Buhler's testimony. The following quotes demonstrate this.

> CHAIRMAN GRIFFIS: "What I would like to do is get the full presentation of the Applicant, all witness[es]. We'll take Board questions at that time of any witnesses that are presenting testimony and then we'll go to cross examination. (Tr. April 15, 2003, lines 13-17, p. 58)..

MR. VON SALZEN: "The applicant has no further witnesses." (Tr. April 15, 2003, lines 18-19, p. 58).

Maybe the Board misunderstood Mr. Salzen, or so its seemed. The question came:

CHAIRMAN GRIFFIS: Can you turn on your mic.

MR. VON SALZEN: Oh, I'm sorry. The Applicant has no further witnesses. (Tr. April 15, lines 20-23, p. 58).

Again, the BZA responded as if it were unsure that the Foundation wanted to rest and that it had finished presenting its case-in-chief. And, again the Foundation affirmed that it had no other proof to offer. The exchange went as follows:

CHAIRMAN GRIFFIS: Okay. That's the entirety of your presentation and case, is that correct?

MR. VON SALZEN: That is correct, that is correct. (Tr. April 15, 2003, lines 24 and 25, p. 58; and lines 2 and 3, p. 59).

A few moments later, Mr. Zaidain echoed Chairman Griffis questions about the short length of Foundation's case.

MR. ZAIDAIN: This is just kind of a general question. I mean, and this is not to say whether, not to judge whether it's effective or ineffective at this point, but your presentation has been rather short in terms of putting on an initial case. (Tr. April 15, 2003, lines 9-14, p. 66.)

Clearly, the Foundation intentionally limited its case. More to the point, Foundation chose to introduce no evidence, other than the Application itself, about uses of Dower House.

The Foundation had ample opportunity to makes its case, even after the BZA took note of the brevity of the case-in-chief. The hearing continued over two hours on April 15, 2003, and there were two more sessions -- one on April 22nd, and the final day of testimony which occurred on April 29th, a half month later.

Furthermore, the Foundation had time and the opportunity to remedy any inadvertent lapses in its strategy or tactics. In fact, when it felt it was necessary to do so, the Foundation supplemented the record on both the second and third day of the hearing. On the second day of the Hearing, April 22, 2003, the Foundation's counsel introduced more documents. Counsel introduced 3 documents that pertain to parking. Counsel also, at the request of the BZA Chairman, introduced a site plan showing the 32nd Street entrance to Tudor Place. None of the handful of other documents related or pertained to Applicant's requested uses of Dower House. On the final day of the hearing, Ms. Buhler read another statement into the record.

There is no justifiable reason for opening the record again and considering, when ruling on the Application, yet another statement from Ms. Buhler. Because the Foundation's counsel attached Ms. Buhler's new statement and everyone will have read it, we point out that Ms. Buhler fails to say that she has new information to offer that was not available to her or the Foundation earlier. Rather, she admits that she wants the BZA to consider her statement because, when the BZA publicly debated this Application, she came away with the belief that the Foundation might not get what it wanted for Dower House.

Ms. Buhler's anxiety as to whether the Foundation will prevail does not justify opening the record. The District of Columbia acted to prevent just this situation. It provided that once the record shall close at the end of a public zoning exception hearing unless the BZA Chairman directs to keep it open for the purpose of receiving a specific exhibits, information, or legal briefs (Title 11, DCMR Section 3121.5). In this matter, the

Chairman kept the record open to receive information about parking and traffic in the vicinity of Tudor Place.

The regulations dictate the course of action the BZA and its Director should take under the circumstances where, as here, an applicant or any party tries to introduce material information about an application.

> Any material received by the Board after the close of the record that bears upon the substance of the appeal or application shall be returned by the Director and not received into the files of the Board. (Title 11 DCMR Section 3121.9.)

This BZA should head its regulations and not help Tudor Place make a case that it and its counsel felt was unnecessary until such time as they felt that their case would fail. The regulations provide that "In all appeals and applications, the burden of proof shall rest with the appellant or applicant." (Title 11 DCMR Section 3121.2.) Even if, "...no evidence is presented in opposition to the case, the appellant or applicant shall not be relieved of this responsibility." *Ibid.*

The District of Columbia expects applicants to make their case at hearings and not later and because the BZA might allow belated proffers of proof. The courts agree with this interpretation of the regulations. A zoning exception can be granted only where facts are introduced that meet the factual requirements and conditions called for in the zoning ordinance under which the exception is sought. *Hyman v. Coe*, 146 F.Supp. 24 (D.D.C. 1956). The Foundation, the party seeking the special exception, was responsible for introducing such factual support. "The applicant has the burden of showing that the proposal complies with the regulation..." *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. Of Zoning Adjustment*, 753 A.2nd 984, 986 n.1 (D.C. 2000) (*quoting*, *French*

v. District of Columbia Bd. Of Zoning Adjustment, 658 A.2nd 1023, 1032-33 (D.C. 1995).

III. The Additional "Supplemental Statement of Leslie Buhler Concerning Uses of Dower House" is Another Improper Attempt to Communicate with the Board Members

The additional attachment to counsel's Motion is a not permitted under this Boards admonitions that applicant's are not to communicate with board members outside of the record. It should never have been submitted, should not be read by the board members, and should be returned to counsel and not considered a part of this now closed record.

IV. The 31st. St. Parties have not requested modification of proposed Findings of Fact

The Findings of Fact filed by the 31st. St. parties filed on May 27, 2003 were quoted in 31st St. Parties' the previous opposition. The proposed "Conclusions of Law and Opinion" were quoted in the previous opposition under the heading "Brief." These are now **attached**. THERE IS NO REQUEST TO MODIFY AS COUNSEL ERRONEOUSLY ASSERTED AT PAGE 3, LINES 8-10

V. TR 4/15. 121 and 141

Applicant has cited these two pages of transcript to argue that there have been catering trucks which serve food at events. This Motion is not for 1644 which is served by the entrance at 32nd street, but it is for 1670 31st. St. which has another street entrance and as the maps show is not located where it can be serviced from the 32nd Street entrance **(see attached portion of Exhibit 85 and survey portion of 1670 in Exhibit 74)**. The catering

on 32nd St. for 1644 31st. St. events is not relevant to any proof of food services (catered or cooked) at 1670 31st. St. (See TR 4/15, 121). The "evidence" relied upon is a question by Mr. Katz to which Ms. Buhler responded "I have never been aware of that occurring..." The evidence at TR 4/15, 141 also relates to 32nd St and is questioning of Mr. Moore of the Office of Planning who did not respond to any questions about food services. The issue was "commercial entrance and commercial vehicles into Tudor Place."

Tudor Place had only one witness who testified as follows:

> CHAIRMAN GRIFFIS: Your trash truck comes out. What's the biggest commercial vehicle you have servicing Tudor Place?
> MS. BUHLER: A trash truck.
> CHAIRMAN GRIFFIS: You've never had a catering truck bigger, moving trucks, any sort of event trucks, tents?
> MS. BUHLER: Not since I've been there. (TR. 4/15, 145)

Now Applicants in Ms. Buhler's supplemental statement notarized on July 22, 2003 states: "Dower House is also the only space on the property where a seated indoor lunch or dinner can feasibly take place, which is an important feature of our tours..." Counsel argues catered is precedent and proof for 1670 31st Street, but has no citation to anything in the record other than events over on 32nd. Street. This is why this is a surprise new issue as pointed out in the 31st. St. Parties' initial findings.

VI. Restaurant Use of Dower House

The BZA should exclude any information about restaurant uses for Dower House, or Tudor Place, because the Foundation filed an Application that made no mention of anything like this. This requested use should be the subject of a proper request, notice to the neighborhood, consideration by the ANC, a hearing, and cross examination by those who oppose Tudor Place adding restaurant services to its operations.

The Buhler supplemental Statement dated July 22, 2000 states that "Dower House has...(2) the only accessible working kitchen on the property..." This statement may imply that it is Applicant's intent to use the kitchen. This, in combination with the testimony before the Board, shows intent to serve lunches and reasonably suggests intent to use the kitchen. Since applicant claims that no one has objected to the operations of Tudor Place tours and events during the past two years citing Snider findings 24, then it appears that applicant argues that a precedent for 1670 has been set. However, Snider finding 24 and none of the other testimony says a word about use of a kitchen at 1670. If this Board should conclude that there has been use of such a kitchen, it should report this matter to the proper authorities in the District of Columbia who inspect kitchens and restaurants. The Board may wish to call the Department of Health Food Inspection Services 535-2180.

VII. Conclusion

This Reply with an additional new declaration along with the original motion must be denied and returned to counsel.

Respectfully submitted,



Ronald R. Snider
Representing Parties on 31st Street, NW

Date: July 31, 2003

Richard Theis joined Mr. Snider on this Opposition

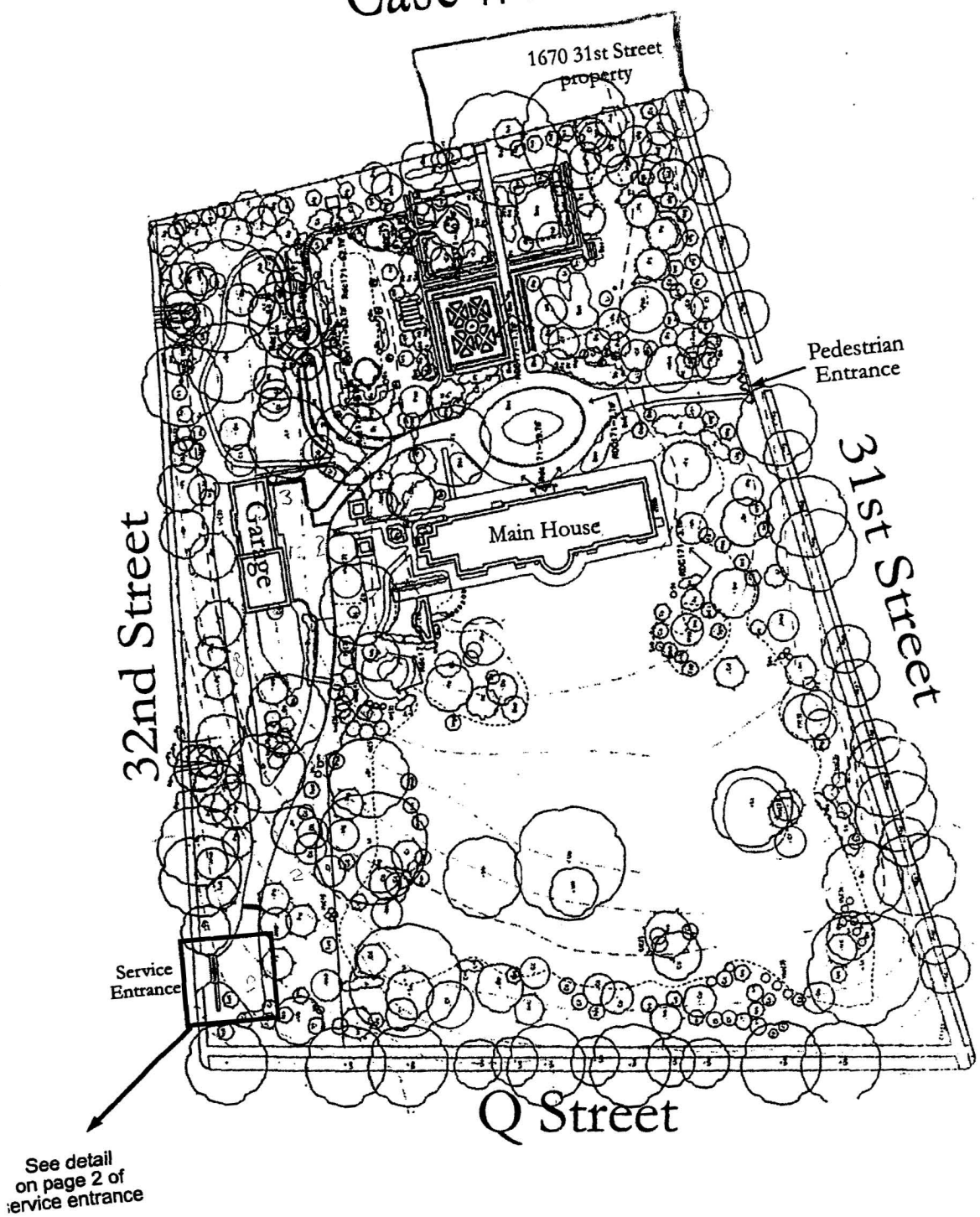
CERTIFICATE OF SERVICE

A copy of the foregoing *Opposition to Applicant's Request to Use Reopen The Record For Evidence About 1670 31st Street, NW (Dower House) and Challenge to Applicant's Traffic/Parking Report* was served, by facsimile, this 31st day of July, 2003, on the Tudor Place representatives. Those representatives are: Gordon Wilson and Hogan & Hartson. Service upon Don Crockett for the Q Street Parties; and Norton Katz for the 32nd Street Parties was made by hand.

By: _____
Ronald R. Snider

Tudor Place
Case #16974

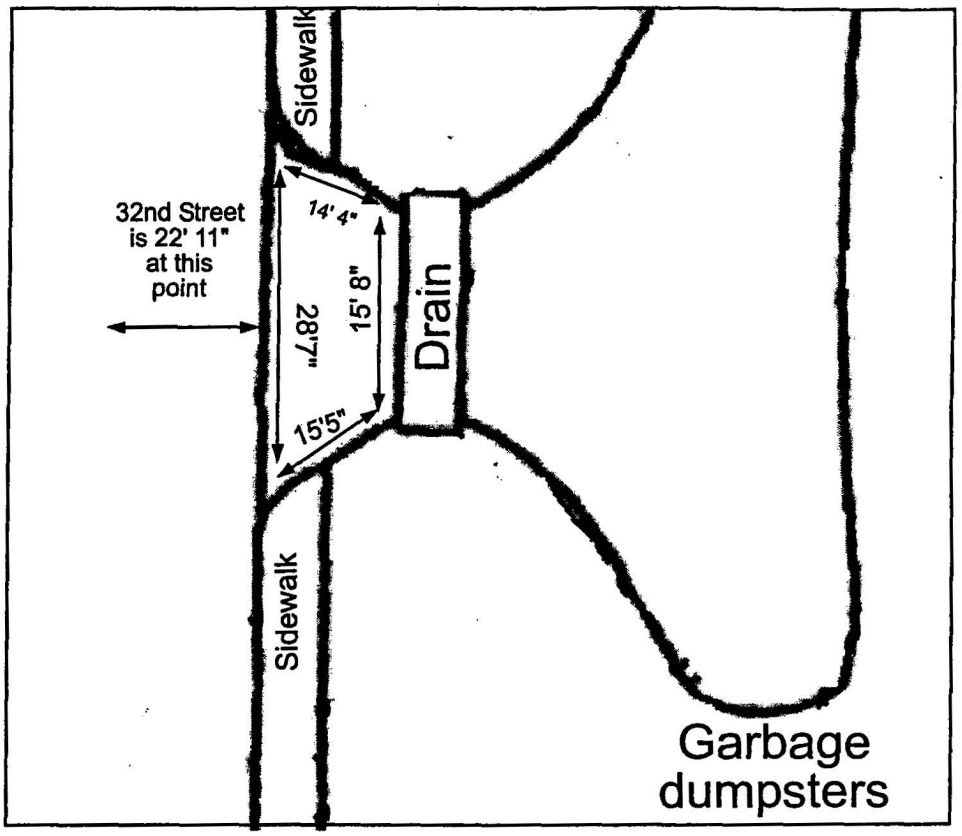
PART OF EXHIBIT 8 5



Tudor P
Case

PART 3 Exhibit 85

Detail of 32nd Street Service Entrance

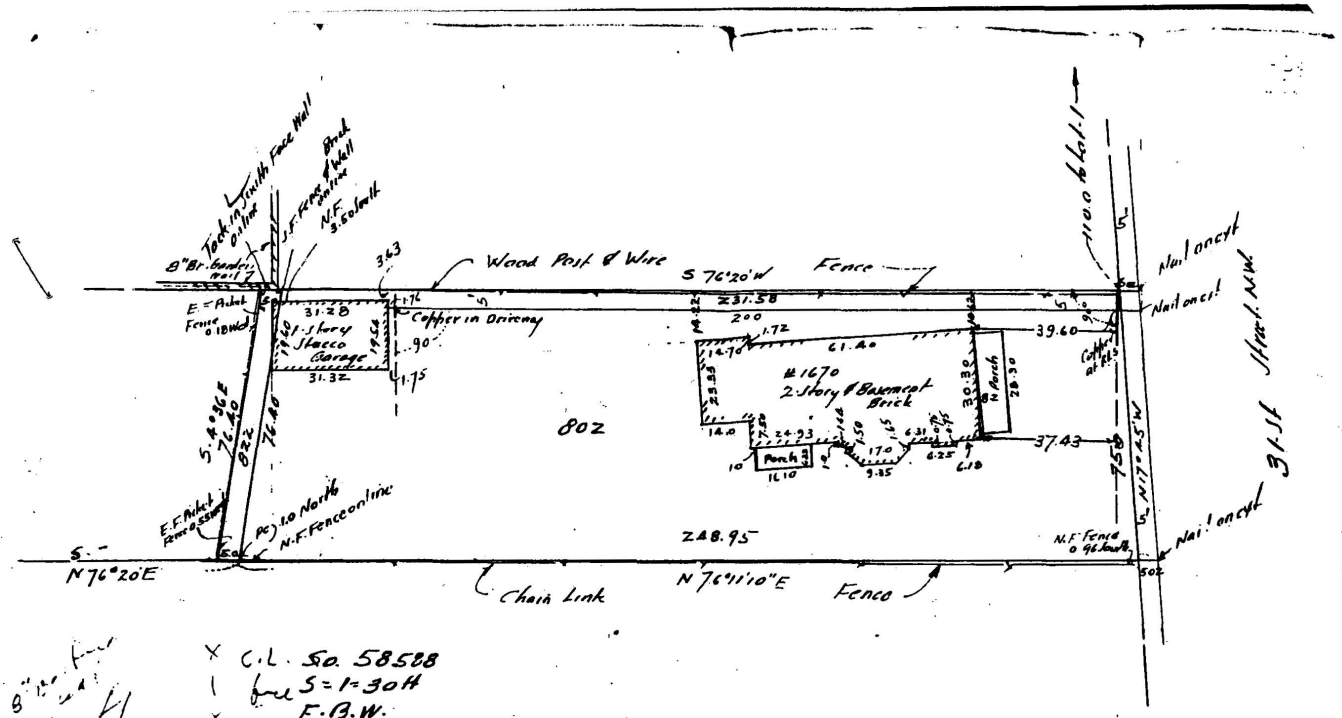


32nd Street is one-way heading south.

There is parking along the west side of the street.

There is a four-way stop at the intersection of 32nd Street and Q Street as well as at the intersection of 31st Street and Q Street.

Tudor P
Case



C.L. So. 58588
1 foot S = 1-30 H
F.B.W.
10-27-61

Oct 31st. 1961
Plat of Survey of a tract of land "Taxed as part of Square 128".

F.B. 121/133

Square 74

FILED 5/21/03

N. QUARTERLY NEIGHBORHOOD LIAISON MEETINGS

28. Ms. Buhler stated that she had no problem with doing it (having neighborhood meetings) quarterly (TR 4/15 p. 108 lines 19-20).

FINDINGS OF FACT

O. RESTAURANT USE AT 1670

29. Tudor Place now admits that it wishes to expand its operations to having lunch for tour groups. This is a surprise to neighbors in opposition, and the order is silent. Since the order has not asked for food service, it should be excluded. The order should be explicit in excluding this use in a residential neighborhood.

> MS. BUHLER: And we would like to be able to use it on a, to able to, we've had, we have tour groups that come in that want to have lunch and if it's raining we have another place for people to have lunch other than at Dower House. (TR 4/15 p. 109 lines 17-21).

Q. ANC 2E ERRONEOUSLY RELIED UPON MS. BUHLER'S INTENT ORDER

30. The Commissioners of ANC 2E made their decision because they were persuaded by the intent offered by the Director of Tudor Place to concentrate on preservation and presentation of historic property, not to be consumed with developing a schedule of special events beyond current level of activities (see exhibit 42). The ANC was persuaded by the expression of intent offered by the director to concentrate activities on preservation and

element of adverse impact.

FILED 5/27/03

M. NO EVIDENCE OF NO ADVERSE IMPACT FOR GROUPS GREATER THAN 200 (finding 27)

This board concludes that there is no evidence of lack of adverse impact for groups greater than 200. However, evidence submitted by opponents on parking and noise shows the opposite.[1]

N. QUARTERLY NEIGHBORHOOD LIAISON MEETINGS (finding 28)

The order shall state that neighborhood meetings shall be held quarterly.

CONCLUSIONS OF LAW AND OPINION

O. RESTAURANT USE AT 1670

The proposed order has made no mention of serving meals to tour groups. The testimony has indicated that this is an intention of MS.Buhler. There is no proof that this at 1670 will not have even more adverse affects, and the order shall specifically exclude food services for tours.

O. ANC 2E ERRONEOUSLY RELIED UPON MS. BUHLER'S INTENT (findings 30-33)

This Board may satisfy the requirement of giving great weight to the ANC by discussing in its opinion the fact that the

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[1]. Ms. Buhler testified that the problems with weddings was their size, not just that they are weddings. (Tr 4/15 P 68-70) However, whether the function is a wedding or the International Monetary Fund, a Bar Mitzvah or corporate rental, when the size becomes large, it becomes no different than a wedding with respect to an adverse impact of a 200 plus group.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Tudor Place Foundation, Inc. Application for Special Exception for Tudor Place at 1644 31st Street, and Dower House at 1670 31st Street, NW Square 1281, Lot 835	)	Application **No. 16974** 31st Street Parties

CHALLENGE TO APPLICANT'S TRAFFIC/PARKING REPORT

Mr. George failed to take into account that Tudor Place cannot legally use its driveways for parking on a regular basis. The District of Columbia has regulations governing parking spaces. If Dower House, a single family residence is converted to a meeting and function building, and the Foundation wishes to regularly park visitor's cars in the driveway and backyard, the Foundation will need to comply with Title 11 DCMR Section 2100 *et seq.* The regulations govern the Size of Parking Spaces (Section 2115), the location of the spaces (Section 2116), and the appearance of the spaces (Section 2117.3). Tudor Place, therefore, cannot use the space as Mr. George anticipates because the Foundation has to conform with the zoning rules about parking spaces.

Mr. George responds to Item 2 of the Crockett submission by citation of 11 DCMR 2407.1. The quoted passage states that

> "Whenever by reason of the scheduled assembly of a large number of persons....free flow of traffic upon the street...leading to of from the...place of assembly, is or will be impeded by reason of parking of vehicles, parking shall be prohibited (or restricted) on the street(s) during the hours that the free flow of traffic is or will be

impeded..."

This is proof by Mr. George (applicant's hired consultant) that such adverse impacts will occur at Tudor Place because they are described in the regulation he relies upon in order to justify restriction on parking by order of DDOT.

This solution to parking and traffic issues by Mr. George seems to recommend turning the matter over to DDOT and causing disruptions on 31st. Street by removing parking.

Respectfully Submitted,

Ronald R. Snider
for 31st. St. Parties

Mr. Richard Theis joined Mr. Snider in this paper.