BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of The Tudor Place
Foundation for a Special Exception
under Section 217 to operate a museum
in an R–B-1 District at 1644 31st Street, N.W.

BZA No. 16974
Hearing Date: April, 29, 2003
ANC 2E

OPPOSITION OF THE Q STREET PARTIES TO THE APPLICANT'S UNAUTHORIZED REBUTTAL CONCERNING ITS TRAFFIC MANAGEMENT PLAN

The Board asked the foundation to submit a Traffic and Parking Management Plan (TPMP), and gave the opposing parties the opportunity to respond. The foundation, however, without permission of the Board, has now filed a "Rebuttal" with two new evidentiary submissions, i.e., sworn statements by Leslie Buhler and Osborne George. Because neither the "Rebuttal" nor the new evidence was authorized by the Board, the Executive Director should return them to the foundation, unread, pursuant to BZA Procedural Rule § 3121.9.

In the event the foundation's submissions are not returned, the Q Street parties submit the following points for consideration by the Board.

A. The Osborne R. George Affidavit is objectionable for the following reasons.

1. In the third paragraph of his affidavit, Mr. George challenges the residents' previously undisputed evidence of adverse parking impacts for events of 100 people or less and states that: "Based on our review of the record, we have seen no evidence of such adverse impacts." Even assuming that Mr. George has read the entire voluminous record in this case, it is not his function to review and weigh the evidence in this case. That is the exclusive function of the Board. Moreover, in rendering his unsolicited opinion, Mr. George has obviously ignored BZA Exhibit 92(e) [Georgetown Parking Study]; the testimony of Ronald Snider TR 4/29 p.98; the testimony of Don Crockett 4/29 pp.101-102; and BZA Exhibit70, [Mr. George's own prior parking study conducted in 1999].

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2. Mr. George also relies upon an undated and unsworn letter from Atlantic Valet for the proposition that "approximately 30-35 personal vehicles are typically generated by events involving 100 persons." The Atlantic Valet letter is, of course, nothing more than rank hearsay which cannot be considered as evidence because the author has not been subjected to cross-examination. *See, e.g., General Railway Signal Co. v. District Unemployment Compensation Bd.*, 354 A.2d 529 (D.C. 1976). Moreover, because Mr. George is a traffic and parking expert, he undoubtedly has access to reliable statistical data for estimating the number of vehicles that will normally arrive at an event depending upon the number of guests. Therefore, his use of unsubstantiated hearsay is unjustified.

3. Mr. George asserts that the regulations governing "Emergency Parking Restrictions," 11 DCMR 2407.1, permit DDOT to post emergency no parking signs for a "Scheduled assembly of a large number of persons at any public or semi-public building" when it is determined that "the free flow of traffic upon the street" will be impaired. In our view, a private function at a privately owned house is not a "scheduled assembly" within the meaning of that provision. In any event, Mr. George's reliance upon that provision constitutes an admission that the larger Tudor Place events do, in fact, "impair" the "free flow of traffic" on 31st Street. That "impairment," which is documented by uncontradicted evidence in the record, constitutes an "adverse impact" on the nearby neighborhood with in the meaning of § 217.

4. Mr. George challenges the residents' assertion that the proposed "stacking" of vehicles on the 32nd Street service driveway is impractical because of the circuitous trips that would be required to reach that entrance on a one-way street. Mr. George, however, suggests no alternative to those circuitous trips. Instead, he simply relies upon the Atlantic Valet letter which also does not explain how such stacking could be accomplished. In fact, by the time a valet reaches Wisconsin and Reservoir Road, he might as well park the car at the Jelleff Boys Club lot at Wisconsin and S

because, at that point, it is just as close as the Tudor Place service entrance at 32nd and Q.

5. Mr. George also challenges our assertion that such "stacking" is impractical because the service driveway is used by equipment and catering trucks. According to Mr. George:

> On the contrary, information provided by Ms. Leslie Buhler, the Tudor Place Director, indicates that service vehicles (such as those used for catering and for tents, when applicable) do not remain on site during events.

There are several problems with this proposition. First Mr. George relies on "evidence" which is not in the record of this case. Second, the vague hearsay "information" from Ms. Buhler is not even defined. Third, because Tudor Place has no kitchen, it seems clear that the catering trucks must remain on site.

6. Mr. George does not explain the discrepancy between the actual parking spaces listed on his Exhibit 2, which total 319, and his "estimate" of 400, which is not reflected on Exhibit 2. Instead, he simply re-affirms his "estimate" and, in circular fashion, again refers the Board to Exhibit 2 – which contradicts his new "estimate."

7. In response to our observation that Mr. George had inexplicably changed the boundaries of his 1999 study area, Mr. George states that:

> It is hereby submitted that the area considered was specified by DDOT (at approximately 2,000 Ft from the Tudor Place Entrance). This approximated a 10-minute walk from the Museum entrance.

This response entirely begs the question. Both the 1999 and 2003 study areas are within a 2,000 ft. perimeter of the Tudor Place entrance. Indeed, that 2000 ft. perimeter encompasses essentially all of Georgetown North of M Street – an area with several thousand parking spaces. The much smaller "study area" selected by Mr. George is reflected on Exhibit 2 of both his 1999 and 2003 reports. They are essentially the same with one exception: The East-West boundaries of the 2003 study area have been shifted about half a half a block West. This adds half a block of Reservoir Road on the

West and deletes half a block between 30th and 31st on the East. The only conceivable reason for such a boundary shift is to produce a result more favorable to Tudor Place and has nothing to do with the 2,000 ft. perimeter shown on Exhibit 3.

B. The Third Supplemental Buhler Affidavit Is Misleading.

In the concluding paragraph of our Response to the proposed TPMP, we stated that:

> [T]the foundation has failed to carry its burden of proving that its proposed resumption of evening and weekend events – which have been suspended for the past three years (with the exception of the two Annual Garden Parties) – will not adversely affect the near-by neighbors.

We, of course, were referring to the weddings and other events for more than 75 people that have, in fact, not taken place (with the exception of the annual Spring and Fall garden parities) since the moratorium was imposed three years ago.

Ms. Buhler uses this statement as an excuse to reargue the foundation's claim that the foundation's financial condition would be impaired without the smaller "events" for less than 75 people. According to Ms. Buhler, there were 29 such "events" with less than 75 people in the evenings or on weekends over the 16 month period from January, 2002 to April 2003. In other words, about 2 per month.

The statement is inadequate and misleading because Ms. Buhler fails to reveal the actual net income generated by each of these 29 evening and weekend activities. Moreover, Ms. Buhler classifies "educational programs," "special tours," and "community service programs" as "events." For all we know, the majority of these activities were meetings of the Georgetown Garden Club and lectures attended by only a few people that did not generate any significant income for the foundation or burden on the neighborhood. We do know that the evening event held on April 8, 2003, did adversely impact the neighborhood by eliminating all available parking on 31st Street. TR4/29, p. 98.

In short, the supplemental statement is not admissible evidence and, in any event, should not be considered by the Board without first permitting cross examination with respect to the matters outlined above.

Respectfully submitted,



Don W. Crockett
3070 Q Street, NW
Party In Opposition

July 31, 2003

Certificate of Service

I certify that the foregoing opposition was served upon the parties herein by E-mail, this 31st day of July, 2003.

