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September 9, 2003 **VIA FACSIMILE**

Jerrily R. Kress, FAIA
Director, Office of Zoning
441 4th Street;, N.W.
Suite 210-S
Washington, D.C. 20001

Re: BZA No 16974

Dear Ms. Kress:

Included are the requisite number of copies of:

"September 9, 2003 Response to Submissions of Applicant's Testimony Submitted on August 26, 2003"

and a copy of Mr. Stephen E. Wells'

"Statement in Opposition to the Applicant's Plans for 1670 31st Street, NW (sometimes Referred to as the 'Dower House')"

Very truly yours,

Ronald R. Snider
for 31st. St. Parties

RECEIVED
D.C. OFFICE OF ZONING
2003 SEP -9 AM 10:35

BZA
Case No. 16974
Exhibit No. 134

Board of Zoning Adjustment
District of Columbia
CASE NO. 16974
EXHIBIT NO. 134

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

2003 SEP -9 AM 10:36
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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**

SEPTEMBER 9, 2003 RESPONSE TO SUBMISSIONS OF APPLICANT'S TESTIMONY SUBMITTED ON AUGUST 26, 2003

The Buhler testimony of August 26, 2003[1] does not show how the foundations proposed order will avoid any adverse affect[2] as is required by Section 217.1.[3]

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[1]. The Foundation, through the written testimony of Leslie Buhler, submitted on the 26th of August, has requested to use Dower House in ways and for purposes that The Foundation failed to discuss in (1) its Original Application, (2) in the written and oral testimony that Leslie Buhler tendered just before and during the first day of the hearing in this matter, (3) the requests that Ms. Buhler made verbally on the third day of the hearing, and (4) its requests to reopen the record.

[2]. The Tudor Place Foundation (The Foundation) has recently submitted requests for Dower House that differ from those requested and testified to before and, consequently, should be denied. Also, The Foundation again has submitted requests without little or no explanation of what the Foundation will do to mitigate adverse impact in the neighborhood. In the case of parking, The Foundation offered virtually nothing although parking has been acknowledged as one of the main concerns of the neighbors.

[3]. The Foundation still seems content to justify its requests on the "this is America" rationale. The Foundation failed to show how it might carry-out its plans without having an adverse impact on the neighborhood. This, of course, is what the regulations require. Section 217 and the related court decisions require applicants to demonstrate that their special excepted uses will not adversely injure the neighborhood. The Foundation has not offered one word to this end.

THE PROPOSED ORDER

The following is a reproduction of the January 14, 2000 order for Dower House and the Proposed order for Dower House where additions are shown as underlined and deletions are shown as **[bold]**.

16**[17]**. In addition to matter-of-right uses, the Dower House may be used for purposes accessory to the non-profit museum use of Tudor Place. These uses shall be limited to: a location for meetings (including Board of Trustees' meetings, volunteer meetings, etc.): a location for small Tudor Place functions **[receptions]** of no more than 50 **[fifty]** people; a location for no more than 4 rental functions per calendar month that do not exceed 50 guests; and a location for offices of no more than 7 members of the Tudor Place staff who do not utilize on-street parking. Any evening functions at Dower House will conclude no later than 10:00 p.m. For purposes of the restrictions set forth in the other paragraphs above, any use Dower House shall constitute use of the Tudor Place site (meaning that, for example, an evening function at Dower House with 25 people taking place at the same time as a function at Tudor Place with 75 people would constitute a function at the site with 100 or more attendees for the purpose of Paragraph 9). **[a studio for the Tudor Place artist-in-residence and a location for small exhibits of art, history and culture].** (Exhibit 8)[4]

TUDOR PLACE FUNCTIONS

A substantial difference between the old order and the new

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[4]. The Foundation, with each new presentation to this BZA, changed what it wants for Dower House. Yet it has not changed the wording "Tudor Place Functions" in the proposed order. The Foundation's August 26, 2003, submission from Leslie Buhler yet again modified what was asked for, but it does not propose any order other than the original.

proposed order is the change of the word "receptions" to "Tudor Place Functions." The definition of functions (see attached Dictionary definition) will be followed by the zoning administrator in enforcing this proposed order. The real meaning is that any function at Tudor Place is to be permitted at Dower House. The definition of Tudor Place Function is arbitrary, vague and indefinite and up to Tudor Place Foundation.[5] This Board in its first deliberation correctly recognized that this should not be permitted.

The new order allows an unlimited number (day and evening) of activities Tudor Place describes as "functions."[6] In her

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[5]. Mrs. Buhler's latest testimony shows that the use of the term "function" in the new proposed order is all encompassing and would permit anything Ms Buhler deems to be a "function" with no limits. Accordingly, Tudor Place does not propose to confine itself to the scope of activity of the past two years, even including the clandestine lunch and dinner activities at 1670. This order will allow functions 365 days per year, day and evening.

[6]. The newest requests stand in start contrast to the Original Application and to the claims Ms. Buhler made during the first three days of the hearing. Back then she said she just wanted to operate Tudor Place as she had for the past two or so years. Of course, when she was asked why her Original Application requested virtually unlimited authority to hold events as she chose, Ms. Buhler acknowledged that she, in fact, really wanted authority to do however she pleased.

The exchange went as follows:

> MR. CROCKETT: If your intention is to carry forward with only the minimal events that have occurred in the last two years, why do you seek this [Tr. 75, lines 23-25] broad authority to have an event for 200 people anytime you want?
> MS. BUHLER: I guess we live in America. And I don't think that every thing is proscribed. I think that there needs to be some trust of an institution, and I think that we've proven that trust."

testimony Ms Buhler identifies tour group box lunches, catered events, education for any purpose what so ever, and fund raising. There is nothing in this proposed order that would prevent the applicant from installing a commercial kitchen and going into the restaurant business as feared by the opponents in this proceeding.

DOWER HOUSE USE WAS NEVER APPROVED BY ANY OPPOSING PARTY

Applicant cites Snider finding 24[7] for the proposition that "The opposition has acknowledged no problems during the past two years." That proposed finding, however, applied to Tudor Place ---not Dower House. During meetings in 2002 and 2001 at Dower House attended by Mr. Snider, Ms. Buhler and the Chairman of the Tudor Place Board (Mr. Peter), Mr. Snider was not told about the activities such as tour lunches and other uses now set forth in Ms. Buhler's new testimony.

The first time food service at Dower House was discovered at Dower House was during cross examination of Ms. Buhler during the BZA proceedings. Snider Finding 29 raised the question of expansion of food services to Dower House and makes clear that no one knew of tour groups having lunch there, which came as a

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TR. 76, Lines 3-6.

[7]. Mr. Wells who resides at 1677 31st. St. (across from Dower House) as stated in his letter dated September 8, 2003 that "Mr. Snider does not speak for all Tudor Place neighbors." This means that the most affected party does not agree that Dower House is without adverse affect.

complete surprise to residents.[8]

TUDOR PLACE CONCEALED USE

Tudor place concealed Dower House use (now described in detail in the Buhler August 26, 2003 testimony) until it was discovered (smoked out) at the BZA hearing. It now argues that its successful concealment can prove no adverse effect for anything it considers to be a "Tudor Place Function."

Tudor Place in its initial testimony and presentation did not address the extent of the use at Dower House. Instead, it tried to "slip one" in without comment by changing the words of the order to "Tudor Place Functions." When it "slipped out" at the hearing that there was intent to use for food services and other extensions from the previous order, they have been forced to argue that since they had "slipped it in" for the past 2 years and there was no objection to Tudor Place, citing a finding, that they have shown no adverse impact. They even concealed the new use during required meetings for the past two years (see previous page).

DOWER HOUSE IS SEPARATE FROM TUDOR PLACE

The 2000 Decision and Order (Exhibit 12) differentiates "Tudor Place" and "Dower House," See finding of fact 17. Finding 11 of that order stated:

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[8]. The Foundation never before made mention of using Dower House as a restaurant. And, the previous Order of this BZA did not approve any such use at Dower House. The previous Order stated that Dower House was to be used in a very limited fashion. That Order, said nothing about serving food at Dower House.

11. The Board finds that the use of Dower House will be limited to functions that serve the museum. It will be used for meetings (including Board of Trustees meetings, volunteer meetings, etc.), for small receptions of no more than fifty people, as a studio for the Tudor Place artist-in-residence and for small exhibits of art, history and culture. In addition, matter-of-right uses, such as the use of the building as the residence of the Executive Director, will be permitted.

This did not include serving lunch and dinner to tour groups and prospective donors Ms. Buhler now testifies occurred.

In Ms. Buhler now states that: "

> Other uses: We do not serve food to tour groups. Such groups periodically bring their own lunches, however, and when weather does not permit eating outside, we have allowed such groups to eat their box lunches inside Dower House"[9]

The use of 1670 as a tour group lunch room was clearly outside of the scope of the previous order (reproduced page 1 above).[10] Dower House (1670) is a house built after the civil war by a party who purchased the land from the Peter family. It has no more historical significance than 100's of other

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[9]. Clearly, the BZA never authorized serving or preparing meals or lunches in Dower House. Nevertheless, this is exactly what has happened, as Ms. Buhler candidly acknowledged.

[10]. This is not the only instance where the previous order was violated. The previous evidence shows that the Glickman wedding on May 6, 2000 included the prohibited amplified music. Despite the wording of the last BZA Order, The Foundation now acknowledges that it hosted at least two lunch and two dinners at dower House in 2002. And The Foundation acknowledges that it "used the Dower House as a location for a lunch following the private tour."

Georgetown properties,[11] which cannot be used as lunchrooms in the R-1 Zone.

NO BUSINESS PLAN

Applicant has asserted unproven financial need to support unstated and undefined activities of the non-profit corporation. It does not tell us whether it intends to generate $100,000; 500,000 or even $1,000,000 from 1670 or what these funds would be used for. Of course, an ever increasing volume of "functions," events, fund raisers, receptions, rentals, annual garden parties, spring, special parties for donors, lunch and dinner parties

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[11]. Throughout this proceeding, well at least until August 26th, The Foundation and Ms. Buhler spoke of Tudor Place and Dower House as two very separate entities, and so they should have. Tudor Place has unique historic importance. Designed by Dr. William Thornton, who also designed the U.S. Capitol as well as the Octagon House, Tudor Place was the home of Thomas and Martha Custis Peter. Martha Custis Peter was the granddaughter of George Washington, who left her the $8,000 in his will that was used to purchase the property in 1805. The previous owner from whom the Peter family purchased the property had begun improvements by building what are now the Tudor Place's wings. Thornton then provided the central structure and the joining elements to the wings, combining them with buff-colored stucco over brick. Over the years, both the home and gardens were enriched by 180 years of Peter family ownership.

On the other hand, Dower House is just another older home in historic Georgetown. After the Civil War, the Peter family subdivided its property and sold off a number of parcels to the north of mansion. A number of families built homes on these properties, among them was the single family home at 1670 31st Street. Said another way, Dower House was not built by the Peters, not used by the Peters for almost 100 years, and was never an integral part of Tudor Place. It would not be part of our deliberations today had not Mr. Peter purchased it as a place for his wife to live for a the few years she outlived Mr. Peters. It has no more historical significance than hundreds of other Georgetown properties. It certainly has not merit as a location for historical tours.

which hosted with admission fees, and, all which can take place not just at 1644 (Tudor Place) but also at 1670 which is now in dispute will cause adverse effect.[12] There is no testimony about the cumulative affect of unfettered incursion of "Tudor Place Functions" at 1670.

DUE PROCESS AND NOTICE

These new requests should not be entertained, much less granted. The Foundation failed to give anyone due process notice of these new uses. The due process established by the Board's rules has not been observed and the opposing parties have been prejudiced. Consequently, the BZA should only craft its order based on the terms of the Original Application and testimony.

The Board in reopening this hearing has not given or required notice to the general public through the required posting of the property. There is no affidavit of Posting for this hearing, see Gary Kopff v. District of Columbia Alcoholic beverage control board, et al., 381 A. 2d 1372 at 1383 (D>C>D>A> 1977). Still further, the testimony submitted in writing will not be posted (no public notice) on the Board's internet website.

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[12]. The Foundation has changed its requests too many times. When The Foundation moved to reopen the hearing, The Foundation explained that it needed Dower House as a year round venue for adult lectures, children's workshops and school group programs. (These uses listed in "The Supplemental Statement of Leslie Buhler Concerning Uses for Dower House, submitted July 14, 2003"). Ms. Buhler said too that Dower House has the "only accessible working kitchen on the property" and that Dower House was, therefore, the "only space where a seated indoor lunch or dinner can feasibly [sic] take place, which is an important feature of our private tours of the main house."

This lack of posting and public notice is completely outside of the Board's Rules of procedure.

SUMMARY

The BZA should deny the Foundation's requests for Dower House for the reasons stated in the opposing parties briefs and testimony.

I hereby declare upon penalty of perjury that all of the above statements are true and correct to the best of my knowledge.



Ronald R. Snider

Date: 9/9/2003

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**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the 31st. St. Parties "September 9, 2003 Response to Submissions of Applicant's Testimony Submitted on August 26, 2003" and a copy of Mr. Stephen E. Wells' "Statement in Opposition to the Applicant's Plans for 1670 31st Street, NW (sometimes Referred to as the 'Dower House')" were served on September 9, 2003 upon:

Gordon C. Wilson
Hogan and Hartson
555 Thirteenth Street, N.W.
By FaX 202-637-5910

Donald W. Crocket
3070 Q Street
By HAND

Norton Katz
1671 32nd Street, N.W.
By HAND

Ronald R. Snider
for 31st. St. Parties

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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D.C. OFFICE OF ZONING
2003 SEP -9 AM 10:47

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

STATEMENT IN OPPOSITION TO THE APPLICANT'S PLANS FOR 1670 31ST STREET, NW (SOMETIMES REFERRED TO AS THE "DOWER HOUSE")

On July 14, 2003, the Tudor Place Foundation asked the Board to reopen the record for the purpose of considering a "supplemental statement" by its Executive Director, Ms. Leslie Buhler, opposing proposed conditions to Tudor Place's intended operation of the Dower House. I am writing to express my opposition to Tudor Place's highly inappropriate plans for this residential property. I live almost directly across the street from the Dower House, having resided at 1677 31st Street, N.W. since 1994.

Something that the Board may not realize is that the Dower House is not merely another building on the Tudor Place property, but is a separate single family residence on our residential street. On page two of her statement filed on August 26, 2003, Ms. Buhler refers to the Dower House as "on the property" but it is not on the Tudor Place grounds. While the Tudor Place property itself has significant buffer from the neighborhood, with fencing and bushes surrounding the property, the Dower House does not. It would be wholly inappropriate to permit Tudor Place to use the Dower House for lectures, workshops, meals for visitors and donors, other fundraising events, board meetings, offices, etc. Those are business functions that would be destructive to a residential neighborhood. If Tudor Place needs a separate facility for such functions, it should buy or lease space in a properly zoned area. The Dower House is a single family residence in the midst of other similar residences in a residential neighborhood, and it should remain such.

After initially saying little about its plans for the Dower House, perhaps hoping or expecting that its application would be approved without controversy, Tudor Place now responds to the Board's proposal to impose some restrictions. Tudor Place is, above all, pleading financial need (a factor that, as I understand it, the Board cannot even consider), yet Tudor place has not made any showing whatsoever of additional financial need. The publicly available information suggests that Tudor Place has no financial need, and Tudor Place has declined to provide any additional financial information or to describe the activities that will require the additional funding.

In its original application, Tudor Place requested approval for an unlimited number of functions for up to 50 people for the Dower House site (apparently for meetings, lectures, meals, etc.) Then in her August 26 statement, Ms. Buhler asserted that Tudor Place's plans are "analogous to the activities conducted by private residents inviting guests to their residences." What Tudor Place seeks to do with respect to the Dower House in no way resembles what private residents do. Private residents do not entertain large groups every day of the year and do not charge their guests when they do entertain. Tudor Place is seeking approval to use the Dower House for extensive business and commercial purposes, and that simply is inappropriate for a residential community. Ms. Buhler asserts an absence of any adverse impacts to the neighborhood, but Tudor Place's plan for the Dower House is unreasonable and intrusive on its face. Moreover, for her statement of lack of adverse impact, Ms. Buhler cites only a finding she attributes to Mr. Snider, who does not speak for all Tudor Place neighbors regarding Dower House. Finally, even Mr. Snider's finding refers only to past operations, and Tudor Place's

application is extraordinarily broader than Tudor Place's past operations of the Dower House. And although Tudor Place has repeatedly been invited to scale back its application to what informally it claims to intend, no voluntary scaleback has been forthcoming. My conclusion is that Tudor Place does, indeed, have extensive plans for the Dower House.

In defense of its application, Tudor Place has made a number of statements that have seemed misleading or incorrect. The reference by Ms. Buhler to the Dower House as "on the property" is one example, but there are others. On various occasions, Ms. Buhler has asserted that Tudor Place was voluntarily limiting its largest functions (up to 500 people) to two per year, when in fact Tudor Place was limiting such functions to two for rental purposes only, and was continuing to request approval for up to ten functions of that size. For example, in her June 25, 2003 response to a critical editorial by Mr. Don Crockett, Ms. Buhler wrote: "While Mr. Crockett labels Tudor Place a 'proposed party and conference center' that will have 'hundreds of people show up on the front lawn...two or three times a week,' he is well aware that the proposed application limits such functions to two per year." I am completely puzzled by this statement since the application clearly requests approval for ten such events. Moreover, Tudor Place's application requests approval for an unlimited number of functions of up to 199 guests. Neighbors are not likely to be impressed by the distinction between 199 and "hundreds" and likely will resent being misled. Ms. Buhler further stated that: "Mr. Crockett also complains about outdoor music while knowing full well that there is an outright prohibition on amplified outdoor music in our application." But Mr. Crockett objected to "outdoor music," not to "amplified outdoor music." Instead of addressing Mr. Crockett's objection head-on and arguing that "unamplified" outdoor music should not be objectionable to a close neighbor, Ms. Buhler has given the erroneous impression that Mr. Crocket was objecting to something that he knew was not the case. I realize that Mr. Crockett has been an outspoken critic of Tudor Place, but I believe Tudor Place would be better served by sticking to the facts and by resisting the temptation to make personal attacks on its critics.

Respectfully submitted,

Stephen E. Wells

Stephen E. Wells

September 8, 2003