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	x))))) x	Application **No. 16974** Parties from 31st Street Oppose Dower House Uses

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BRIEF OPPOSING APPLICANT'S REQUEST
TO USE 1670 31ST STREET, NW,
FOR MEETINGS, SPECIAL EVENTS
AND OTHER NON-RESIDENTIAL PURPOSES

The Board of Zoning Adjustment (BZA), at the hearing session of April 22, 2003, requested briefs on whether law and regulation precludes Tudor Place from using Dower House--the single family residence on 1670 31st Street, NW--for an unlimited number of meetings and special events for up to 50 persons, 4 rental functions per month, and other non-residential purposes. The Parties from 31st Street, NW, file this brief which shows that such uses are not permitted.

Statement of Facts

The instant Application concerns a single lot, namely lot 835. The District of Columbia Tax Assessor created lot 835 on March 3, 2000, by combining former tax lots 827 (Dower House) and 830 (Tudor Place). The Assessor's documents that established lot 835 appear as Attachments 1 and 2 to "Opponents Motion to Dismiss for Failure to Apply for Lot Number 835," which Motion is Exhibit 71 in this file. (All references to "Exhibits" concern the official file in this matter). In denying that Motion to Dismiss, this BZA ruled that 835, in fact, was the proper lot designation, and that the material facts of the case would not be altered because the Tudor Place Foundation (The Foundation) included in its Application a reference to lot numbers 827 and 830, the old numbers. Ruling of the BZA appears in Exhibit 86. Clearly, the Applicant should have known that the lots had been combined and the correct lot designation. Among the documents its counsel submitted, the Foundation included the

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property's "Notice of Proposed Real Property Assessment for Tax Year 2004" which identifies the property as Lot "0835" (Exhibit 85).

The evidence introduced shows that Dower House is smaller than the Tudor Place mansion, and that it exceeds in height what the law permits for accessory buildings on a single lot. The official land survey of Dower House and the accompanying photograph of Dower House show that the building far exceeds 15 feet tall, and is taller than one story. Those documents are included among Exhibit 74, "Opponent's Documents Showing Size of Dower House" dated April 21, 2003. The "plat" of survey states that Dower House is a "2-Story & Basement Brick" structure. The photographs of Dower House show its front and rear views; Dower House has two floors and a third level with dormer windows. Without question, Dower House exceeds 15 feet in height. Dower House, therefore, exceeds the size that law and regulation allows for buildings used for purposes accessory to the Tudor Place mansion.

Applicant failed to introduce proof that its proposed uses for Dower House fall within what the law allows for customary, incidental uses as an accessory building, or that Dower House qualifies for an exception under the law and regulation permitting non-profits or museums to operate within an R-1 zoning district.

Argument

Zoning Law Controls What Constitutes Accessory Buildings
And Precludes Using Dower House As An Accessory Structure To Tudor Place

The BZA is empowered to grant requests for special exceptions but only within certain specified limitations. To wit:

> The Board is authorized under § 8 of the Zoning Act, D.C. Code, 2001 Ed. § 6-641.07(g)(2) (formerly codified at D.C. Code § 5-424(g)(2) (1994 Repl.), to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map subject in each case to the special conditions specified in this title... [Emphasis added].

Among the zoning regulations controlling here are Sections 200.1 and 200.2, which define residential uses generally and the breadth given to the BZA to grant exceptions. The relevant portions of Title 11 DCMR §§ 200.1 and 200.2 provide:

> The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas...
>
> [and the law is]
>
> intended to stabilize the residential areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses shall be permitted. [Emphasis added].

With respect to the exceptions and *the height* of Dower House the regulations are unambiguous. Title 11 DCMR § 2500.4 provides:

> An accessory building in any zone district shall not exceed (1) story or fifteen feet (15 ft.) in height, except as provided in § 2500.5.

The exception created by Section 2500.5 reads:

> In an R-1-A or R-1-B District only, an accessory private garage may have a second story use for sleeping or living quarters of domestic employees of the family occupying the main building.

The one exception to the one story or 15 foot rule, that provided for in Section 2500.5, does not apply. Dower House is not a garage.

The foregoing law precludes granting The Foundation's request to use Dower House as accessory building. Dower House's height far exceeds the limitation of § 2500.4, and every other requirement relating to accessory structures in any zone district.

Even if Tudor Place–the mansion at 1644 31st Street–were located in a zoning district less restrictive than a R-1, Dower House could not be used as an accessory building. Use of Dower House as an accessory to 1644 31st Street is clearly contrary to the law of the District of Columbia.

The relevant law and regulation pertaining to *the placement on the lot* of an accessory building follows. Title 11 DCMR § 2500.2 provides:

> An assessor building shall be located only in a rear yard, except as follows [Emphasis supplied]:

The exceptions to the regulation relate to private garages and pump island canopies and kiosks, neither of which are relevant here. Thus, § 2500.2 precludes a designation of 1670 as an accessory building; Dower House is not located in the rear of 1644 31st Street. *See, Davidson v. BZA*, 617 A.2d 977, 981 (D.C. 1992)(discussing the strict limitations on accessory buildings allowed in residential districts).

Zoning Law Precludes Excepting Dower House
Under Section 217 Although The Foundation Is A Non-Profit

Even if the BZA were to consider Dower House as siting on a lot separate and distinct from that on which Tudor Place stands, The Foundation would be precluded from using Dower House for the purposes the Application requests. The Foundation filed its Application under 11 DCMR § 217 which allows non-profits to use existing, large residential buildings and land under certain limited circumstances. With respect to those circumstances, Section 217 provides:

> 217.1 The use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization shall be permitted as a special exception in an R-1 District in the following instances if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section:
>
> (a) If the building is listed in the District of Columbia's Inventory of Historic Sites contained in the comprehensive statewide historic preservation survey and plan prepared pursuant to § 101(a) of the National Historic Preservation Act, approved October 15, 1966 (80 Stat. 915, as amended; 16 U.S.C. § 470a), or, if the building is located within a district site, or place listed on the District of Columbia's Inventory of Historic Sites; and
>
> (b) If the gross floor area of the building in question, not including other buildings on the lot, is ten thousand square feet (10,000 ft.^{2}) or greater;
>
> 217.2 Use of existing residential buildings and land by nonprofit organization shall not adversely affect the use of the neighboring properties.

Although The Foundation declined to specify how the regulations, especially Section 217, applied to the Application, it seems from context that the Application's reference to Section 217 applied to the Tudor Place mansion, the residence at 1644 31st Street. Opponents agree that Tudor Place falls within the special exception language of Section 217, which applies to historical residences with at least 10,000 square feet of gross floor area. The Office of Planning reported that the mansion

contains more than 10,000 square feet (*see*, paragraph (b), page 5, Memorandum of Andrew Altman, dated February 18, 2003, to the BZA, which appears in this record as Exhibit 48).

Even though Tudor Place falls within the regulation, Dower House does not. Said another way, The Foundation cannot use Section 217 to obtain the permissive uses it wishes for Dower House. First, The Foundation failed to introduce evidence as to the square footage attributable to Dower House. "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). Second, the size of Dower House is less than what would qualify under Section 217. The dimensions of Dower House shown on the official plat (contained in Exhibit 74, and already referenced, above) indicate that Dower House probably contains no more than 7,000 square feet.

The Certificate of Occupancy issued to the Foundation and which appears in Exhibit 10 confirms the accuracy of the conclusion about Dower House size which was based on calculations made using the size dimensions drawn on the plat. The Certificate shows that the combined properties (Tudor Place and Dower House) as having a gross building size of 17,522. Because Exhibit 48, the Office of Planning's Memorandum, shows Tudor Place at 10,501 square feet, the difference, or about 7,011 square feet, must be attributable to Dower House. Therefore, Dower House does not fall within Section 217.

The Foundation Failed To Carry Its Burden For An Exception for Dower House

The Foundation failed to present the BZA with the evidence such as customary and incidental use needed to justify granting the Foundation's request for permission to use the single-family, three-story residence at 1670 31st Street, NW for meetings, rentals, and any purposes not strictly residential. Said another way, the Foundation failed to introduce facts upon which the BZA could rule in favor of

the Foundation's request. As such, there is no legal authority for the BZA to allow the Foundation to use Dower House as a site for special events and rental functions for up to 50 guests.

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). The Foundation failed to introduce evidence that would show that its Application regarding Dower House complied with the relevant regulations.

The Foundation requested permission to, in addition to matter-of-right uses (which would be residentail), use:

> Dower House 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 of no more than 50 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.

Although it made this request, The Foundation failed to prove through evidence that the above quoted portion of the Application complies with the relevant regulations. In fact, The Foundation offered not one scintilla of evidence in support of its requests pertaining to 1670 31st Street, the Dower House.

The Foundation had ample time to prepare its case and ample opportunities to present such evidence. The Applicant, according to Ms. Buhler, started preparing it Application months ago. The BZA afford The Foundation ample opportunity to makes its case. The hearing took place on 3 days, over a period of 3 weeks. The Foundation had time and the opportunity to remedy any inadvertent lapses in its strategy or tactics. When the Foundation wanted, it supplemented the record. In fact,

counsel for Tudor Place supplemented its case with more information on both the second and third day of the hearing. Moreover, The Foundation had the ability to put on the best case possible. Tudor Place hired attorneys from one of Washington's preeminent law firms, Hogan and Hartsen, to prepare and present its Application.

Those were the attorneys who decided to present a very brief case-in-chief. The Hogan and Hartson attorneys put into the record the testimony of just one witness–Leslie Buhler. The breadth of her self styled "statement" was as limited as was the length of her statement, which lasted about 13 minutes. Ms. Buhler described the Foundation's mission, gave a short description of what she intended in terms of special events, and she described the steps she took to write the Foundation's Application. She offered nothing about how Dower House fell within the regulations. In addition to her statement, Ms. Buhler referenced other pieces of "evidence;" she spoke about letters submitted by some of Tudor Place neighbors and by other who live across the Washington metro area and who wrote letters supporting the Application. Those letters contained recitations about the historical and esthetic value of Tudor Place. Those letters, submitted by the Foundation's counsel for inclusion in the record, did not provide any information about how Dower House might fall within the relevant zoning regulations.

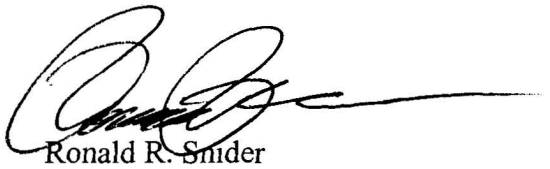
On the second day of the Hearing, April 22, 2003, the Foundation's counsel a few other documents. First, counsel introduced 3 documents that pertain to parking: a contract with a parking valet company, a letter from an organization that agreed to make its parking lot available to Tudor Place, and an unsigned 2 page document, ostensibly a "contract," that might have give Tudor Place the right to park vehicles in the parking lot of a local bank. That document, dated April 21, 2003, was signed only by Ms. Buhler. It bore no other signature. Counsel also, at the request of the BZA Chairman, introduced a site plan showing the32nd 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 again entered a statement into the record. In that statement she described further limitations on rental events that Tudor Place would agree upon.

Although it had skilled counsel and ample opportunities to present evidence into the record, the Applicant introduced no evidence supporting its requests for Dower House. Consequently, those requests must be denied.

Under the circumstances, the Foundation cannot use 1670 31st Street for anything other than residential purposes. The Applicant's matter-of-right use is that of a single family residence, and nothing more.

Respectfully submitted,



Ronald R. Snider

Richard Theis joined Mr. Snider on the Brief

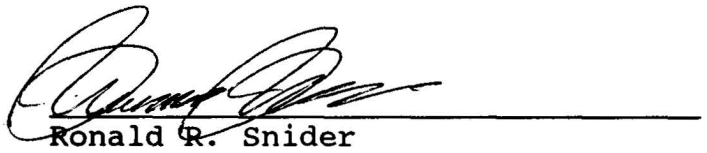
CERTIFICATE OF SERVICE

A copy of the Declaration of Ronald R. Snider, a copy of the May 6, 2000 tape, and a copy of the Brief by 31st Street parties on the question of accessory use of 1670 31st Street, N.W. was served by hand on the following parties:

(1) Counsel of Tudor Place: Gordon C. Wilson, Hogan and Hartson, Columbia Square, 555 13th Street N.W.;

(2) Counsel for Q Street parties, Donald Crockett;

(3) Counsel for 32nd Street parties, Norton Katz.



Ronald R. Snider

5/6/03

Date