BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Tudor Place Foundation, Inc.	)	BZA Case No. 16974
Application for Special Exception	)	Hearing Date: April 15, 22 and
under Section 217 to continue the	)	29, 2003
previously approved operation of a	)	
museum by a non-profit	)	
organization	)	

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APPLICANT'S RESPONSE TO PARTY OPPONENTS' BRIEFS

The party opponents 1/ seek to revisit issues that have already been addressed and resolved both by this Board and the District of Columbia Court of Appeals in earlier proceedings involving a substantially identical special exception for Tudor Place. 2/ As discussed below, the opponents have presented no valid reason why this Board should or can overrule its previous decision on these issues.

1/ Party opponents Ronald R. Snider (representing residents of 31st Street) and Don W. Crockett (representing residents of Q Street) have each filed a brief; party opponent Norton Katz (representing residents of 32nd Street) has not.

2/ Throughout this proceeding, including in their most recently submitted briefs, the opponents have cited the record of the proceeding related to the special exception granted to the Applicant in 1999 by Board Order No. 16477. The Applicant agrees that the Board should, in making its decision in the present case, take into consideration the record and rulings in the previous proceeding.

BZA
Case No. 16974
Exhibit No. 99

Board of Zoning Adjustment
District of Columbia
CASE NO. 16974
EXHIBIT NO. 99

I. The Authority of the Board to Grant a Special Exception

A. Sections 200.1 and 200.2 of the Zoning Regulations Do Not Contain the Standard by which the Applicant's Application Should Be Judged

The opponents argue 3/ that the Board lacks the necessary authority under the Zoning Regulations to grant the requested special exception, citing 11 DCMR §§200.1 and 200.2. 4/ This argument was raised by the same parties in their appeal of the 1999 special exception and was specifically rejected by the District of Columbia Court of Appeals. *See* Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment, 802 A.2d 359, 365 n. 6 (D.C. 2002) (§§200 and 201 "are merely precatory and do not contain the standards by which the [Applicant's] application should be judged."). The relevant standards for the special exception being sought by the Applicant are contained in 11 DCMR §217.

B. The Board Has Authority to Approve the Operation of a House Museum by the Applicant

The opponents also argue 5/ that 11 DCMR §3104 does not authorize the Board to allow the establishment of a museum in an R-1 district by special

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3/ *See* Snider, Ronald R., "Brief Opposing Applicant's Request to Use 1670 31st Street, NW, for Meetings, Special Events and Other Non-Residential Purposes," (hereinafter "Snider"), p. 3; and Crockett, Don W., "Memorandum of Law on the Question of Whether the Single Family Home at 1670 31st Street NW Can Serve as an 'Accessory Use' for the Neighboring Single Family Home at 1644 31st Street NW," (hereinafter "Crockett"), p. 3.

4/ The opponents also argue that the use of the property as a house museum violates the Peter Will. *See* Crockett, pp. 4 and 9. Such assertions are without merit. More importantly, though, issues concerning interpretation of the provisions of the will are not relevant for purposes of the Zoning Regulations.

5/ *See* Crockett, Id., p. 4.

exception, that museums are "first permitted only in the Mixed Use District pursuant to § 601.1(q)."

On the contrary, §217 expressly permits the "use of existing residential buildings and the land on which they are located by a non-profit organization for the purposes of the non-profit organization", provided the building "is listed in the District's Inventory of Historic Sites" and has a gross floor are no less than 10,000 ft.^{2}, if approved by the Board under § 3108. The opponents cite no authority – because there is none – that the "purposes of the non-profit organization" do not include, in this case, the operation of Tudor Place as a house museum.

II. Extension of the Special Exception to the Dower House

In contending that the Board does not have the authority to include the Dower House in the special exception under §217, 6/ the opponents ignore the rulings of the Board and the Court of Appeals on the Applicant's previous special exception application. Specifically, the Court of Appeals held that the Board did not exceed its authority by extending the special exception granted under Order No. 16477 to the adjacent Dower House. *See* Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment, 802 A.2d 359, 366 (D.C. 2002).

A. Location on the Same Lot as the Main House

As was the case in the prior appeal brought by the opponents of Order No. 16477, the same opponents are again arguing that the Dower House may not be

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6/ *See* Snider, pp. 4-5; and Crockett, pp. 5-6.

used for an accessory use because, notwithstanding its location on the same tax lot as the main building, it is not on the same "lot" as the main house as such term is used in 11 DCMR §199. 7/ This argument was directly addressed by the Court of Appeals and specifically rejected:

> This court has recognized the distinction between the terms "lot" and "lot of record": while a "lot is a general term of used to describe any plot of land, [a] lot of record is a lot platted and recorded by the District of Columbia Surveyor." *Sagalyn v. Foundation for the Pres. of Historic Georgetown*, 691 A.2d 107, 112, n.7 (D.C. 1997). Thus, while Dower House, an adjacent property, must be located on the same "lot" as the principal property, it *need not be located on the same "lot of record"*. The BZA did not exceed its authority by extending the special exception to the adjacent Dower House."

Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment, supra, 802 A.2d at 366.

B. The Accessory Use of Dower House Does Not Require a Special Exception Separate from that Requested For the Main House

The opponents argue that, when considered alone, the Dower House does not meet the requirements for a special exception under §217. 8/ This argument was considered and rejected by the Board and the Court of Appeals in the prior case. *See* Georgetown Residents Alliance v. District of Columbia Board of

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7/ *See* Crockett, p. 6. The opponents also argue that the Board's interpretation of the Zoning Regulations consistent with existing precedent would result in a violation of the restrictive easement granted in favor of the National Park Service. Crockett, p.6. Not only is this argument without merit, it raises a concern that would be within the jurisdiction of the National Park Service.

8/ *See* Snider, pp. 5-6; and Crockett, p. 5.

Zoning Adjustment, supra, 802 A.2d at 366 (Section 217 "expressly contemplates that a site may contain more than one building. * * * The BZA did not exceed its authority by extending the special exception to the adjacent Dower House.")

C. The Zoning Regulations Applicable to the Construction of an Accessory Building Are Not Applicable to the Accessory Use of the Dower House

The opponents argue that use of the Dower House as an accessory to the non-profit operation of the Tudor Place main house would violate §2500.4 of the Zoning Regulations, which imposes a fifteen-foot height limit on accessory buildings.9/ This argument ignores the critical distinction between the construction of an accessory building (which is what §2500.4 addresses) and the accessory use of an existing building (which is what the Application in this case seeks).

The case on which the opponents rely, Davidson v. District of Columbia Board of Zoning Adjustment, 617 A.2d 977 (D.C. 1992), involved a building permit sought for the construction of a poolhouse in the back yard of a single family dwelling. Unlike the Davidson case, no approval is being sought by the Applicant for the construction of a new accessory building. Therefore, the height limitations in 11 DCMR §2500.4 are inapplicable to the proposed accessory use of Dower House.

Nothing in the Zoning Regulations imposes any limit on the size of an existing building that may be used as an accessory to a permitted use. As the District of Columbia Court of Appeals held in National Cathedral Neighborhood

9/ *See* Snider, p. 3; and Crockett, p. 8.

Association v. District of Columbia Board of Zoning Adjustment, 753 A.2d 984 (D.C. 2000):

> Petitioners argue that because of the size and mass of the proposed structure it cannot reasonably be termed "incidental to and subordinate to the [principal] use," 11 DCMR §199 (defining "accessory use.") We disagree. . . . [Nothing] in the regulation impl[ies] that a facility looses that [adjunct] character when it reaches a certain size.

Id., at 986.

III. Conclusion

The opponents rely on legal arguments that this Board and the Court of Appeals have already considered and rejected; they have failed to cite any authoritative legal precedent that the special exception that the Board originally granted pursuant to Order No. 16477 should not be continued.

Respectfully submitted,

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May 13, 2003

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Applicant's Response To Party Opponents' Briefs to be served by hand delivery, this 13th day of May, 2003, on:

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