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May 27, 2003

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

Re: Tudor Place Foundation, Inc.
BZA Special Exception Application No. 16974

Ladies and Gentlemen:

Enclosed please find the original and 20 copies of Tudor Place Foundation, Inc.'s submission of the Summary of Evidence, Findings of Fact, and Conclusions of Law and Decision as requested by the Board of Zoning Adjustment at the April 29, 2003 hearing.

Should you have any questions regarding this submission, please do not hesitate to call Gordon Wilson at phone number (202) 637-5711.

Respectfully submitted,

Gordon C. Wilson

Eric Von Salzen (#13482)
Gordon C. Wilson (#457877)
HOGAN & HARTSON L.L.P.

Counsel for the Applicant,
TUDOR PLACE FOUNDATION, INC.

Enclosures

BZA
Case No. 16974
Exhibit No. 103

Board of Zoning Adjustment
District of Columbia
CASE NO. 16974
EXHIBIT NO. 103

Tudor Place Foundation, Inc.'s Submission of
Summary of Evidence, Findings of Fact, and Conclusions of Law
In BZA Application No. 16974

Note: For the Board's convenience, citations to hearing transcripts and to the Applicant's application are included parenthetically. "T15" designates the Transcript from the April 15, 2003 Public Hearing; "T22" designates the Transcript from the April 22, 2003 Public Hearing; and "T29" designates the Transcript from the April 29, 2003 Public Hearing.

Application No. 16974 of Tudor Place Foundation, Inc., pursuant to 11 DCMR 3104.1, for a special exception to continue to operate as a non-profit house museum in an R-1-B District at premises 1644 31st Street, N.W. and 1670 31st Street, N.W. (also known as 1605 32nd Street, N.W.) (Square 1281, Lot 835). 1/

HEARING DATES: **April 15, 22 and 29, 2003**
DECISION DATE:

DECISION AND ORDER

PRELIMINARY MATTERS:

1. The subject application was filed on November 27, 2002.

2. The Board granted party status to Ronald R. Snider ("Snider"), representing certain of the Applicant's neighbors residing on 31st Street, NW; Don W. Crockett ("Crockett"), representing certain of the Applicant's neighbors residing on Q Street, NW; and to Norton Katz ("Katz"), representing certain of the Applicant's neighbors residing on 32nd Street, NW.

3. Advisory Neighborhood Commission (ANC) 2E submitted a report dated February 11, 2003, setting forth its unanimous vote in support of the subject application. (Exhibits 42 and 53.)

4. The District of Columbia Office of Planning submitted a report dated February 14, 2003, recommending the approval of the subject application. (Exhibit 48.)

1/ The subject application refers to the property as lot numbers 827 and 830; however, the Applicant's most recent tax assessment submitted at the April 22, 2003 public hearing evidences that the lots in question have been combined and are now designated tax lot number 835, within square number 1281. (T22, at 101, 102; and Exhibit 85.)

5. The District of Columbia District Department of Transportation submitted a report dated April 28, 2003, indicating that it supports the subject application, recommending that the hours of operation for tours be between 9:00 a.m. and 4:00 p.m. during the day, and between 6:30 p.m. and 8:30 p.m. for evening tours. (Exhibit 91.)

6. The United States Department of Interior – National Park Service submitted a report supporting the approval of subject application. (Exhibit 62.)

7. The originally scheduled hearing date of February 18, 2003, was postponed to April 15, 2003, due to a snowstorm. The hearing took place on April 15, 2003, April 22, 2003, and April 29, 2003.

8. Two preliminary matters were raised at the April 15, 2003 public hearing. First, party opponent Snider filed a Motion to Dismiss for Failure to Apply for Lot Number 835. (T15, at 28-32; and Exhibit 71.) *See* fn. 1. The Board found that the creation of a new lot number did not alter the material facts of the case and that in the absence of any showing of misunderstanding or prejudice, the motion to dismiss should be denied. (T15, at 31.) The Board unanimously denied the motion. (T15, at 33-34; and Exhibit 86.)

9. The second preliminary matter concerned whether the pre-hearing procedure for posting the property was followed. At the April 15, 2003 hearing, party opponent Snider filed a Motion to Dismiss for Failure to Post Notice. (T15, at 34-43; and Exhibit 72.) The Board found that the street frontages of the property were posted in a timely manner and the community residents were aware of the subject application. After detailed deliberation, the Board voted to deny the motion. (T15, at 50; and Exhibit 86.)

SUMMARY OF EVIDENCE:

1. Tudor Place Foundation, Inc. (the "Applicant") owns Tudor Place (1644 31st Street, N.W.) and the Dower House (1670 31st Street, N.W.) (collectively, the "Property"). The Property is bounded on three sides by public streets, 31st, 32nd, and Q Streets, N.W. Tudor Place consists of approximately 5 ½ acres (215,048 square feet), and the Dower House consists of approximately 12,398 square feet of land area. The main residence of Tudor Place contains more than 10,000 square feet of gross floor area. The Property is located in the R-1-B District and comprises the majority of Square 1281.

2. The Property is located in the Georgetown Historic District, which is listed in the District's Inventory of Historic Sites.

3. The building and grounds of Tudor Place were designated a National Historic Landmark in 1960. Tudor Place is listed on both the National Register and the District of Columbia Inventory of Historic Sites. (Exhibit 12, Order No. 16477 issued by the Board on January 14, 2000 ("Order No. 16477"), at 1, paragraph 2.)

4. In 1966, Armistead Peter, III, the owner of the Property, granted a scenic easement to the U.S. Department of Interior to allow for the permanent preservation of Tudor Place by preventing the land from being subdivided, inappropriately developed or otherwise used in an unsuitable way. (Exhibit 12, Order No. 16477, at 1, paragraph 3.)

5. Since 1988, Tudor Place has been used as a house museum pursuant to 11 DCMR 217. This Board approved such use in Orders No. 14729, 15744 and 16477.

6. The Dower House, built in 1867, is located directly north of Tudor Place. The Dower House site originally became a part of the Property in 1805 and was later sold and eventually repurchased by Armistead Peter in the 1960s. His widow lived in the Dower House until her death in 1995. After Mrs. Peter's death, the Applicant applied for the extension of its special exception to include the Dower House, and has, since its approval pursuant to Order No. 6477, used the Dower House for certain purposes accessory to the non-profit house museum use of Tudor Place.

7. Order No. 16477 was challenged in court by the Georgetown Residents Alliance and was upheld by the District of Columbia Court of Appeals. *See* Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment, 802 A.2d 359 (D.C. 2002).

8. Tudor Place is among the foremost Federal era mansions in the nation. This neoclassical mansion was built in 1816 as designed by Dr. William Thornton, the architect of The Octagon at 18th Street and New York Avenue and the original United States Capitol. Since the construction of the mansion, six generations of the Peter family have lived at the Property. The buildings, gardens, collections and archives in the Property reflect a family continuity of over 160 years unique in the nation's capital. (Exhibit 48, Office of Planning Report, at 2.) Together, these items represent an exceedingly valuable cross section of family life and social development of our country. Few properties of this stature have such a complete collection original to the family that built the house and inhabited it for over 160 years. The Property is without question the most significant nineteenth century house in Washington, D.C. and holds the largest collection of George Washington objects in public hands outside of Mount Vernon.(T22, at 119.)

9. The Property has exceptional views of portions of the District of Columbia, from southeast to southwest, and is heavily buffered from the surrounding residential neighborhood by fencing, large mature old growth trees and woodlands. The Property reflects a park-like setting with immaculate gardens, which are havens for some local

wildlife. (Exhibit 48, Office of Planning Report, at 2.) The Property was donated as a symbol of life and love for the community, and represents Georgetown and America in a unique way. (Exhibits 42 and 53, ANC Report, at 1.)

10. Since the establishment of the house museum, the Property has been held open for tours of the mansion and grounds, typically by small groups. The Property has also been a venue for special events hosted by the Applicant (non-rental events), as well as rental special events. These special events were discussed in Order Nos. 15744 and 16477, and restrictive conditions were included in those orders governing such events.

11. The subject application seeks to continue the previously established non-profit house museum use of the Property for an additional five-year term. (Exhibits 1 to 15.) Consistent with the normal procedures for initiating a Board of Zoning Adjustment application, the Applicant certified to the Board that the Applicant required a special exception under 11 DCMR 217 in order to continue to operate a non-profit house museum in a residential R-1-B district. (Exhibit 6, Zoning Self-Certification Form, Form 135.)

12. The subject application proposed a series of restrictions on the operation of the Property. These restrictions were generally similar to those imposed by Order No. 16477, but reflected modifications resulting from extensive meetings with community and neighborhood representatives including representatives of ANC 2E. The restrictions proposed in the application were:

    1. Approval shall be for a period of FIVE YEARS from the effective date of the requested special exception.

    2. Admission for group tours shall be by appointment only.

    3. The hours of operation for tours shall be limited to between 9:00 a.m. and 4:30 p.m., Monday through Saturday, between 12:00 noon and 4:30 p.m. on Sunday. In addition, tours shall be permitted between 5:30 p.m. and 8:30 p.m. on Mondays, Tuesdays or Wednesdays, but not more than one day per week. To the extent such evening tours are offered, they shall take place on the same day of each week, which day shall initially be determined by the Applicant, with any changes to be made in consultation with the Liaison Committee.

    4. The number of regularly scheduled tours shall not exceed ten per day. Non-group tours shall be limited to a maximum of 20 persons.

    5. The Applicant shall instruct the drivers of all buses and vans not to idle the engines of their vehicles longer than is necessary to allow passengers to embark

or disembark Buses bringing group tours to the site shall park in legal bus parking areas within the District of Columbia. There shall be no bus parking on the subject site.

6. Large evening functions (functions involving 200 or more guests) at the subject site shall be limited to a maximum of 500 guests at any one event.

7. The number of large evening functions involving 200 to 500 guests at the site shall be limited to 10 per year, with (i) no more than two of such functions being rental functions and (ii) no more than three of such functions taking place at the site in any one calendar month. In no event shall rental functions for the purpose of weddings be permitted for 75 or more guests.

8. All functions shall end no later than 10:30 p.m.

9. For all evening functions with (i) in the case of rental events, 75 or more attendees at the site and (ii) in the case of any other events, 100 or more attendees at the site, the Applicant shall minimize traffic and noise impacts by employing the following measures:

   (a) making valet parking services that utilize off-site parking lots available to visitors and taking other measures as appropriate to minimize congestion and control traffic flow; and

   (b) maximizing the use of the rear entrance to the site on 32nd Street for service and related functions.

10. The Applicant shall notify affected area residents not less than 60 days in advance of any scheduled evening functions of 75 or more attendees by delivering a calendar of such events to affected residents.

11. The Applicant shall appoint a staff member as a community liaison person who will be responsible for addressing any issues and concerns raised by neighbors with respect to the operation of the facility.

12. The Applicant shall designate a "Tudor Place Duty Officer" to be in charge of each event including handling any problems that may arise during the course of an event.

13. The Applicant shall convene a Liaison Committee, to include two representatives of the Tudor Place Foundation, two representatives of ANC 2E, and two representatives of the community at large. The Applicant shall convene the Liaison Committee semi-annually. The Liaison Committee shall address any

issues that arise relating to the operations of Tudor Place. Notice of such meetings will be (i) posted on the Applicant's property, (ii) sent or delivered to immediate neighbors of the Applicant and (iii) published on the Applicant's web site.

14. There shall be no amplified music or amplified singing voices played on Applicant's Property during any outdoor function. If indoor, amplified music may be played with all doors and windows closed. In any event, the Applicant shall adhere to the District of Columbia noise regulations.

15. Following a function which ends at the 10:30 p.m. curfew, there shall be no heavy clean-up that night. All heavy clean-up shall be done the morning after the function not earlier than 7:30 a.m.

16. 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 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. Any evening functions at the 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 of 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).

(Exhibit 8.)

13. As compared to the conditions imposed by Order No. 16477, the Applicant proposed to modify the use of measures to address parking for evening functions by making those measures applicable to non-rental events with 100 or more attendees, rather than 75. This change reflected the Applicant's experience with non-rental events, which has demonstrated that a significant portion of visitors either come by public transportation or live in the Georgetown area and walk to the site, as testified by the Applicant's Executive Director. (T15, at 93-94.) The Applicant also proposed not to require the hiring of a person to direct traffic for evening events. This change results from the Applicant's experience that this practice caused more disruption rather than less. (T29, at 119-130, Applicant's Closing Remarks.) No opposition was raised at the hearing to these changes.

14. Due to its low-density use and extensive street frontage, the Property, far from adversely impacting residential parking needs, more often generates parking space for the community along its perimeter streets. The Applicant's staff of regular employees and the on site tour guides park their cars on the Property. (Exhibit 48, Office of Planning Report, at 6.) On those limited occasions where the Applicant hosts special events, parking concerns are addressed by the measures provided for in the applicable restrictive conditions. (Exhibit 11, Decision of District of Columbia Court of Appeals on Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment, 802 A.2d 359 (D.C. 2002).) The Property makes it easier for neighbors to park than not. (T22, at 126, 136.)

15. As compared to the conditions imposed by Order No. 16477, the changes to the use of the Dower House generally represent clarifying changes to the existing operating conditions relating to the Dower House (which previously allowed an unlimited number of small receptions), and were proposed by the Applicant to ensure transparency in its proposed conditions. The Applicant proposes to clarify the accessory use of the Dower House to include to include small functions (for no more than 50 people), and a limited number of small rental functions (no more than four in any month, for no more than 50 people), as well as office space for no more than seven staff members who do not use on-street parking. The restrictions applicable to the main house have been clarified to include the Dower House. (T29 at 119-130, Applicant's Closing Remarks.)

16. In addition to the above list of conditions, and in direct response to the concerns expressed at the hearing, the Applicant agreed at the April 29, 2003 hearing to reduce the number of large special events (those involving over 200 guests) allowed to be held at the Property from 10 per year to 6 per year, with no more than two of such functions being rental functions and no more than one such function taking place in any one calendar month. The Applicant also agreed to limit the number of evening rental functions at the site (i) involving 100 to 200 guests to 10 per year, and (ii) involving 50 to 100 guests to 15 per year. The Applicant made this change in recognition of the fact that almost all of the community concerns relate to the special events, and that the subject application contained no restrictions on the number of rental events involving less than 200 guests. (T29, at 109-111, Testimony of Leslie Buhler.)

17. ANC 2E submitted a report dated February 11, 2003, setting forth its unanimous vote in favor of the approval of the subject application in all its terms and conditions. The ANC's support was based on the series of operating conditions described by the Applicant at the ANC hearing (as described in Paragraph 16 above, the Applicant has now proposed additional operating restrictions.) The ANC recognized the Applicant's willingness to address issues of concern to the community by significantly increasing the restrictions on the operation of the Applicant. The Board recognizes the ANC's involvement and support. (Exhibits 42 and 53.)

18. The District of Columbia Office of Planning submitted a report dated February 14, 2003, finding that the requested special exception will not adversely affect the use of neighboring properties, that the amount and arrangement of parking spaces was adequate and located to minimize the traffic impact on the adjacent neighborhood, and that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The Office of Planning recommended the approval of the subject application, subject to the restrictive operating conditions proposed by the Applicant. (Exhibit 48.)

19. The District of Columbia District Department of Transportation (DDOT) submitted a report dated April 28, 2003, indicating that it supports the application, and added a recommendation that the hours of operation for tours shall be between 9:00 a.m. and 4:00 p.m. (instead of 4:30 p.m.) during the day, which is outside of commuter rush hours, and between 6:30 p.m. (instead of 5:30 p.m.) and 8:30 p.m. for evening tours, so as to minimize conflicts with the peak traffic hour in the area. (Exhibit 91.) The Office of Planning endorsed approving the subject application without implementing the DDOT recommendation.

20. The United States Department of Interior – National Park Service submitted a report supporting the approval of the subject application in harmony with the surrounding community. The National Park Service's report stated that in order for the Applicant to have continued success in maintaining and interpreting the historic resource that the Property is, the Applicant must retain a professional staff knowledgeable in the Department of Interior's Historic Preservation Standards, and as a non-profit organization, funding the requisite staff will continue to pose a challenge to the Applicant. The National Park Service also indicated that the Applicant has endeavored to meets its financial obligations through continued museum tours and limited special events. (Exhibit 62.)

21. The Board received over 35 letters of support of the application from persons living in the community. (Exhibits 27, 28, 34, 35, 36, 41, 54, 64, 77, 78 and 85.)

22. Another letter in support of the application was filed by Jack Evans, member of the Council of the District of Columbia, stating that the requested special exception, as limited by the proposed operating conditions, would have no adverse impact on the surrounding residential neighborhood. (Exhibit 52.)

23. At the April 15, 2003 hearing, the Applicant offered the testimony of its executive director, Leslie Buhler. (T15, at 51-58; and Exhibit 67.)

24. Mr. John Moore represented the Office of Planning at the hearing, and testified in support of the subject application on April 15, 2003. Mr. Moore stated that the Office of Planning is of the opinion that the Applicant has satisfactorily met the conditions of 11 DCMR 3104 and 11 DCMR 217, and recommended that the Board approve the subject application. (T15, at 126-128.)

25. Mr. Tom Birch represented the ANC 2E at the hearing, and testified in support of the subject application on April 22, 2003. Mr. Birch stated that, in approving the application, the ANC supports the premise that the Applicant, like other non-profit museums and historic houses around the country, should have the flexibility to develop funding from a variety of resources including the rental of space for special events. He also stated that the ANC was satisfied that the Applicant's current management had consulted with neighbors in addressing issues of noise, traffic and parking when preparing the subject application. Finally, the ANC representative stated that the ANC was persuaded by the Applicant's efforts to concentrate activities on the preservation and presentation of the property and not be consumed with developing special events, which are merely ancillary to the Applicant's purpose, with in turn is the interpretation of the historic property. (T22, at 104-108.) Mr. Birch was also cross-examined by the parties. (T22, at 109-114)

26. In addition, at the April 22, 2003 hearing, 14 persons testified in support the subject application. Among these individuals were long time residents of properties nearby the subject Property, and many testified that they consider themselves privileged to enjoy the cultural enhancement and enrichment that the Applicant provides for the community. These individuals also indicated that Georgetown's mix of commerce, entertainment, tourism, educational institutions, and residences have made noise, traffic and parking problems inescapable. However, any parking inconveniences caused by the occasional evening functions at the Property were outweighed by the year-round availability of over 30 parking spaces along the Property, and the bucolic silence that the Property provides morning, day and night to surrounding neighbors. (T22, at 117-153.)

27. The president of the Citizens Association of Georgetown ("CAG") testified in favor of the application, but proposed the imposition of additional restrictive conditions to the operation of the Property. (T22, at 130-132.) These proposals focused on the collective impact on the neighborhood of all Great Houses and non-profit organizations, and not on the Applicant's operation in particular. (Exhibit 63.) The additional conditions proposed by CAG were:

    1. The reduction of the number of functions unrelated to the Applicant's program involving up to 500 persons, to four per year, with no more than one per month.

    2. The limitation of the number of functions unrelated to the Applicant's program involving up to 200 persons, to four per year, with no more than one per month.

3. The limitation of the number of evening functions unrelated to the Applicant's program involving 30 to 75 persons, to two per month.

4. A request for an action by the Board to address the absence of designated tour-bus parking areas.

28. Fifteen CAG members signed and submitted a letter to the Board repudiating CAG's proposals and questioning the authorization of the president of CAG to speak on this matter on behalf of CAG. (Exhibit 78.) Outerbridge Horsey, Georgetown resident, architect, and one of the signatories of the letter contesting the position of the president of CAG, testified as a person in support of the subject application as submitted. (T22, at 137-144.)

29. The parties in opposition to the subject application offered the testimony of 8 persons, including the three individuals that are parties of record. Each of these local residents testified on April 22 and/or 29 to problems they had observed from special events at the subject property such as noise, traffic and parking difficulties. Almost all the problems that these witnesses described related to a single event, the Glickman wedding approximately three years ago, and the witnesses agreed that no problems had been observed in the past few years.

30. The Board received over 70 letters in opposition to the subject application. Of these, at least 56 were form letters that had been solicited by the parties in opposition to the application under the letterhead of "Friends and Neighbors of Tudor Place." The Applicant presented evidence that these form letters were misleading, and had the effect of generating signatures from neighbors who did not oppose the subject application. (T15, at 55-57.) In support of this position, the Applicant submitted to the Board additional letters from a signatory of the opponents' form letter, and provided to the Board the names of other signatories of the opponents' form letter who expressly supported the subject application. (Exhibits 64 and 66; and T15, at 57.)

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The Board finds that the Applicant is a non-profit organization within the meaning of 11 DCMR 217. (Exhibit 8, at 3 and 4.)

2. The Board found in Orders No. 14729 and 15744, and confirmed in Order No. 16477, that the main house of the Property contains more than 10,000 square feet of floor area.

Based on the evidence in the current proceeding, the Board again finds that the 10,000 square feet requirement set forth in Section 217.1(b) is satisfied. (Exhibit 8, at 4.)

3. The Board finds that the Applicant contributes to the surrounding community in many ways by providing tours of the main house and gardens, hosting events for charitable groups at no charge, and providing free tours and educational programs for school groups. The extensive and historically protected open space on the Property is an important amenity to the community. Visually, the Property creates a park-like setting for nearby residences. From a parking standpoint, the large site generates little demand for parking on the surrounding street system the majority of the time.

4. The Board finds that many neighbors of the Property support the Applicant and its events.

5. The Board finds that as a result of extensive communications with members of the surrounding community, the Applicant and several neighbors discussed and agreed to certain changes to the already restrictive conditions under which the Applicant was operating pursuant to Order No. 16477. These changes concern the term of the special exception, the Applicant's operating hours, immaterial changes to the accessory non-profit use of the Dower House, a reduction in the number of large evening functions, minor changes to certain conditions relating to parking arrangements, notice of Liaison Committee meetings, amplified music, and clean-up following evening functions.

6. The Board finds that one of the most significant issues associated with the continuation of the museum use is the parking and operational situation during large special events, and that the Applicant's proposed operating conditions provide for the appropriate efforts to mitigate the possible adverse impact that large special events may cause to the neighbors of the Property. The Applicant has agreed to provide valet parking for all evening events involving more than 75 guests in the case of evening rentals, and 100 guests or more in the case of any other evening events. For any such evening events, the Applicant has also agreed to maximize the use of the rear entrance to the Property on 32nd Street for service and related functions.

7. The Board finds that the Applicant has reaffirmed its longstanding practice of using Atlantic Valet for its valet parking needs by entering into a written contract directly with Atlantic Valet. The Applicant has secured written commitments from off-site locations that are commercially zoned or are otherwise permitted to accommodate the cars associated with special events. (Exhibit 85, Applicant's Submission at Hearing on April 22, 2003.)

8. The Board finds that there is ample on-street parking in the vicinity of the Property. The Property generates little demand for parking on the surrounding streets the majority of the

time, and is large enough to accommodate service vehicles associated with special events. (Exhibit 12, Order No. 16477, at 10.)

9. The Board finds that the modifications proposed by the Applicant to the measures addressing parking for evening events will not cause adverse effects to the neighboring properties.

10. The Board finds that the Applicant does not create, exchange, or sell any goods, chattel, wares or merchandise on the premises, except for the sale of publications, materials, and other items related to the Applicant. The small museum shop located on the Property is engaged in the sale of items related to the purposes of the Applicant as permitted under Section 217.4. (Exhibit 8, at 6.)

11. The Board finds that the accessory use of the Dower House is within the authority of the Board under 11 DCMR 3104.1 and 11 DCMR 217. The use of Dower House will be limited to functions accessory to the operation of a house museum.

CONCLUSIONS OF LAW AND OPINION:

The Applicant is seeking a special exception to continue a previously approved operation of a house museum by a nonprofit organization.

The granting of such a special exception requires a showing of substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the proposed use will not tend to affect adversely the use of neighboring property. The Applicant must also meet the requirements of 11 DCMR 217.

The Board concludes that the applicable sections of 11 DCMR are Sections 217 and 3104.1. The party opponents argue that Section 200 requires that the Application be denied, but that Section 200 is merely precatory and does not contain the standards by which the subject application is to be judged. This very issue was raised by the opponents in their appeal of Order No. 16477, and was 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, *fn* 6 (D.C. 2002).

Based upon the testimony and evidence of record, the Board concludes that the Applicant has met its burden of proof.

The Board concludes that Tudor Place, including its grounds, is a National Historic Landmark and is listed in the District's Inventory of Historic Sites, and that the main building consists of more than 10,000 square feet of gross floor area. The Board concludes that under

Section 217, only the main building, not every building on the property (all of which is located is the Georgetown Historic District) must meet the 10,000 square foot threshold. The party opponents argue that, when considered alone, the Dower House does not meet the requirements for a special exception under 11 DCMR 217. (Exhibits 96 and 97.) However, the 10,000 square foot requirement pertains only to the Tudor Place main house. The regulations cannot reasonably be interpreted to preclude the use of other buildings of less than 10,000 square feet on the site for purposes related to the museum. The regulations clearly contemplate that a site *may* contain more than one building. Section 217.1(b) specifically states that the "building in question not including other buildings on the lot" must be 10,000 square feet or greater. The Tudor Place main house, an individually designated landmark, is the "building in question."

In at least two previous applications that were granted under the predecessor section to Section 217, the Board approved non-profit use for an entire site when only the main building on the site satisfied the 10,000 square foot threshold. In Application No. 12420, involving the Youth For Understanding site, the Board approved non-profit use of three buildings based on the satisfaction of the 10,000 square feet requirement by only the main building. (*See also* Application No. 13419 involving the Watterston House and its two-story carriage house.)

The Board concludes that the museum use approval can be extended to the Dower House as part of the main building use because it is on the same lot (835) as Tudor Place and that the Applicant's inability to subdivide a record lot is not an impediment to such use. The party opponents argue that the Dower House may not be 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 us defined in 11 DCMR 199. (Exhibit 97.) However, the definition of "lot" in the Zoning Regulations specifically states that "a lot may or may not be" a record lot, therefore, the term "lot" includes assessment and taxation lots. Under the Zoning Regulations, the Dower House simply needs to be located on the same lot as the main house in order to be part of the special exception approval. The regulations do not specify that a record lot is required. (Exhibit 12, Order No. 16477.)

The Board concludes that the Dower House may be used for uses accessory to the non-profit museum use of Tudor Place. The Board's interpretation of the Zoning Regulations is consistent with existing precedent. The District of Columbia Court of Appeals has specifically recognized the distinction between the terms "lot" and "lot of record," and explained that 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. The Court of Appeals further held that while the 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,"* and that, therefore, the BZA did not exceed its authority by extending the special exception to the adjacent Dower House. (Exhibit 11, Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment, supra, 802 A.2d at 366, citing Sagalyn v. Foundation for the Pres. of Historic Georgetown, 691 A.2d 107, 112, n.7 (D.C. 1997).)

The Board finds that the use of the Dower House as an accessory to the non-profit operation of the Tudor Place main house does not violate §2500.4 of the Zoning Regulations, which imposes a fifteen-foot height limit on accessory buildings. The party opponents argue that the 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. This section addresses the construction of an "accessory buildings" and not the "accessory use" of an existing building, which is what the subject application seeks. The case on which the party 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 a single family dwelling, unlike the present case, in which no approval is being sought for the construction of a new accessory building. (Exhibits 96 and 97.) Therefore, the Board concludes that the height limitations in 11 DCMR §2500.4 are inapplicable to the proposed accessory use of Dower House.

The Board concludes that 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. *See* National Cathedral Neighborhood Association v. District of Columbia Board of Zoning Adjustment, 753 A.2d 984 (D.C. 2000) (holding that nothing in 11 DCMR 199 (defining "accessory use") implies that a facility loses its adjunct character when it reaches a certain size.)

The Board concludes that the extension of the museum use to the Dower House does not trigger Section 217.5, because there is no addition to Tudor Place or major modification of the site or buildings thereon.

The Board concludes that the proposed non-profit use of Dower House, subject to the conditions of this Decision and Order, which were agreed to by the Applicant, will have only minimal impact on the neighborhood and, on balance, will have no greater impact than a single-family home. The party opponents' suggestion that Dower House should be rented for private use is not relevant to a special exception application. The only issue is the effect of what is proposed, not the desirability of alternative uses.

The Board concludes that the Applicant is a non-profit organization within the meaning of 11 DCMR 217.

The Board is satisfied that there will be no goods, chattel, ware or merchandise commercially created, exchanged or sold at the Property, except for the sale of publication, materials, or other items related to the purpose of the non-profit organization.

The Board concludes that the Applicant operates without adverse impacts on the neighborhood but that the large special events have resulted in noise and parking impacts. The Board concludes, contrary to the assertions of the party opponents, that these special events are not a new development but, rather, have been conducted at Tudor Place since the museum use

was established in 1988 and prior to that time under the ownership of Armistead Peter III. The Board further concludes that the restrictions imposed by the Board in Order No 16477 have been successful in minimizing the effects of such events, and that the additional restrictions imposed in this present Order will help ensure the continued success of the previous Order.

Based upon the evidence presented, including the intensive discussions between the Applicant and its neighbors, the support of ANC 2E, and the recommendation of the Office of Planning, the Board concludes that the proposed use, as conditioned, will not adversely affect the use of the neighboring properties.

The Board concludes that the limited number of special events at the Property are not commercial in nature and do not result in the commercial use of the site. They are accessory to the museum use. The use of house museums as venues for special events is a common practice in the District of Columbia and, accordingly, is customarily incidental to the principal museum use.

The Board concludes that generally there is ample on-street parking in the vicinity of the Property, which results, in part, from the low-density use of the Property. The Board notes that the site is large enough to accommodate all service vehicles associated with its events. In light of the Applicant's contract for valet parking that will be used for evening rentals involving 75 or more guests and for any other evening events involving 100 or more guests, the arrangement for off-street parking, the effects of the limited number of special events will be addressed and there will be no adverse traffic impact on the adjacent neighborhood. The Board has reached this conclusion after balancing the numerous benefits afforded by this nationally recognized house museum with the periodic inconvenience caused by the use.

The Board concludes that the additional limitations proposed by the Applicant during the hearing including the reduction of the maximum number of large special events per year at the Property from 10 to 6 and the limitation on the number of evening rental functions to 10 per year in the case of functions involving 100 to 200 guests at the site and 15 per year to functions involving 50 to 100 guests at the site, combined with the other proposed conditions, will minimize further any adverse impacts associated with the Property.

The Board acknowledges the complaints of certain of the Applicant's neighbors about noise, traffic and parking, and concludes that neither the party opponents nor any opposing witness provided any evidence that there is any aspect of the subject application that needs to be changed to protect the neighborhood. The Board concludes that the Applicant reasonably accommodated the concerns of its neighbors in a manner that does not interfere with the neighbors' legitimate interests. Upon careful deliberation, the Board concludes that the complaints expressed by the party opponents, CAG and certain neighbors of the Applicant during this proceeding are not persuasive and are outweighed by evidence presented in support of the subject application.

In reaching this conclusion, the Board has accorded the recommendation of ANC 2E the "great weight" to which it is entitled. The ANC supports the subject application as submitted. In addition, the ANC was instrumental in developing many of the conditions relating to the operation of the Property, and the Board has incorporated these conditions in its Decision and Order.

The Board has also accorded "great weight" to the Office of Planning. The Office of Planning considers that the subject application satisfactorily addressed the requirements of 11 DCMR 217 and met the burden of proof under 11 DCMR 3104, and thus recommends that the subject application be approved as submitted. (Exhibit 48, Office of Planning Report, at 9.) The DDOT supported the subject application and recommended amended hours of operation for tours during the day and in the evening (Exhibit 91), but the Office of Planning endorsed approving the subject application without implementing the DDOT recommendation. As stated above, great weight was accorded to the Office of Planning's recommendation.

The Board concludes that granting the application 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 light of the foregoing, the Board concludes that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FIVE YEARS from the effective date of the requested special exception.

2. Admission for group tours shall be by appointment only.

3. The hours of operation for tours shall be limited to between 9:00 a.m. and 4:30 p.m., Monday through Saturday, between 12:00 noon and 4:30 p.m. on Sunday. In addition, tours shall be permitted between 5:30 p.m. and 8:30 p.m. on Mondays, Tuesdays or Wednesdays, but not more than one day per week. To the extent such evening tours are offered, they shall take place on the same day of each week, which day shall initially be determined by the Applicant, with any changes to be made in consultation with the Liaison Committee.

4. The number of regularly scheduled tours shall not exceed ten per day. Non-group tours shall be limited to a maximum of 20 persons.

5. The Applicant shall instruct the drivers of all buses and vans not to idle the engines of their vehicles longer than is necessary to allow passengers to embark or disembark Buses bringing group tours to the site shall park in legal bus

parking areas within the District of Columbia. There shall be no bus parking on the subject site.

6. Large evening functions (functions involving 200 or more guests) at the subject site shall be limited to a maximum of 500 guests at any one event.

7. The number of large evening functions involving 200 to 500 guests at the site shall be limited to 6 per year, with (i) no more than two of such functions being rental functions, and (ii) no more than one of such functions taking place at the site in any one calendar month. The number of evening rental functions (i) involving 100 to 200 guests at the site shall be limited to 10 per year, and (ii) involving 50 to 100 guests at the site shall be limited to 15 per year. In no event shall rental functions for the purpose of weddings be permitted for 75 or more guests.

8. All functions shall end no later than 10:30 p.m.

9. For all evening functions with (i) in the case of rental events, 75 or more attendees at the site and (ii) in the case of any other events, 100 or more attendees at the site, the Applicant shall minimize traffic and noise impacts by employing the following measures:

   (a) making valet parking services that utilize off-site parking lots available to visitors and taking other measures as appropriate to minimize congestion and control traffic flow; and

   (b) maximizing the use of the rear entrance to the site on 32nd Street for service and related functions.

10. The Applicant shall notify affected area residents not less than 60 days in advance of any scheduled evening functions of 75 or more attendees by delivering a calendar of such events to affected residents.

11. The Applicant shall appoint a staff member as a community liaison person who will be responsible for addressing any issues and concerns raised by neighbors with respect to the operation of the facility.

12. The Applicant shall designate a "Tudor Place Duty Officer" to be in charge of each event including handling any problems that may arise during the course of an event.

13. The Applicant shall convene a Liaison Committee, to include two representatives of the Tudor Place Foundation, two representatives of ANC 2E, and two

representatives of the community at large. The Applicant shall convene the Liaison Committee semi-annually. The Liaison Committee shall address any issues that arise relating to the operations of Tudor Place. Notice of such meetings will be (i) posted on the Applicant's property, (ii) sent or delivered to immediate neighbors of the Applicant and (iii) published on the Applicant's web site.

14. There shall be no amplified music or amplified singing voices played on Applicant's Property during any outdoor function. If indoor, amplified music may be played with all doors and windows closed. In any event, the Applicant shall adhere to the District of Columbia noise regulations.

15. Following a function which ends at the 10:30 p.m. curfew, there shall be no heavy clean-up that night. All heavy clean-up shall be done the morning after the function not earlier than 7:30 a.m.

16. 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 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. Any evening functions at the 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 of 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).

The Board concludes that the applicant has met the provisions of Section 217 and that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.

In the light of the foregoing, the Board hereby **ORDERS** that the application be **GRANTED.**

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE I, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY WITH ANY PROVISION OF CHAPTER 25 SHALL BE A PROPER BASIS FOR REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3125.6 "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Summary of Evidence, Findings of Fact, and Conclusions of Law and Decision to be served by hand delivery, this 27th day of May, 2003, on:

Don W. Crockett
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Ronald R. Snider
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Gordon C. Wilson