BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

BZA No. 16974
Hearing Date: September 16, 2003
ANC 2E

FINAL SUBMISSION OF THE Q STREET PARTIES

I. The Zoning Regulations Do Not Permit The Foundation To Use The Adjacent Single-Family Home At 1670 31st Street, NW (Dower House) Either As An Accessory Use For Tudor Place Or As Part Of The Of The Tudor Place Principal Use.

During the Board's June 3, 2003 decision meeting, Board Member Mitten observed that:

> The Court of appeals decision does reflect that this [the inclusion of Dower House in the Special Exception] was addressed pretty much head on by the Court. It would be a significant reversal were we not to include Dower House.

TR 6/3/2003 at 21. Such a reversal, however, is clearly warranted in this case.[1] As we have noted, the previous Board's legal conclusion – that Dower House could be an "accessory use" for Tudor Place if incorporated into a single "tax lot" – was contrived by the foundation's lawyers and adopted by the Board, verbatim, without any discussion or review of potential conflicts with other provisions of the Zoning Regulations.

This Board has now apparently agreed with the opposing residents that the prior Board's conclusion – that Dower House was an "accessory use" to the Tudor Place museum – was in error

[1]In the *Residents Alliance* case, the Court of Appeals held only that the BZA's interpretation of the term "lot", to include "tax lots," was within the Board's authority, not that it was required. Therefore, if this Board determines that the prior interpretation was in error because it is inconsistent with other provisions of the Zoning Regulations, it is free to change that interpretation. Indeed, when "an agency determines that a regulatory interpretation is ill-advised, the agency may (and should) change course." *State of New York Dept. of Social Services v. Shalala,* 21 F.3d 485, 493 (2nd Cir. 1994).

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because Dower House exceeds the 15 foot height limitation for accessory buildings.[2] Accordingly, this Board now proposes to justify the inclusion of Dower House in the Special Exception on an entirely different legal theory, namely, that Dower House is part of the "principal use."

This new "principal use" theory, however, is also foreclosed by other provisions of the Zoning Regulations. First, Dower House can't qualify under § 217 as a "principal use" because it does not have the requisite 10,000 square feet of floor space. Second, the foundation's argument that Dower House can be included because it has some "historical relationship," is not factually supported and is not a permissible criterion under § 217.[3] Finally, the "principal use" theory would put Dower House in direct conflict with the purpose of 11 DCMR § 3202.3, which is to insure that all principal residential structures are located on separate "lots of record." Dower House is unquestionably a "principal residential structure." Therefore, under § 3202.3, the foundation could not obtain a building permit necessary to convert Dower House for its proposed use as office space, lunch room, restaurant, public lecture venue, or private club for intimate dinners with prospective donors, without first obtaining a "lot of record" for that property.[4]

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[2] During the initial hearing, we demonstrated that the foundation's theory of using Dower House as an accessory building for Tudor Place was not permitted by the Zoning Regulations because it exceeds the one story or 15 foot height limit of 11 DCMR §2500.4. That regulatory conflict was neither raised nor considered by the previous Board or the Court of Appeals.

[3] Section 217 contains no provision which would permit the BZA to annex smaller neighboring homes on the ground that they have some "historical relationship" with the larger home. Indeed, all of the homes in this neighborhood have the same "historical relationship" with Tudor Place because at one time the lots were all part of the original parcel on which Tudor Place now stands. The fact that the Peter's recently purchased one of those homes in 1961, does not differentiate it from all of the others.

[4]Dower House is currently located on a separate real property lot (metes and bounds). Tudor Place is located on a property that consists of one large metes and bounds lot and nine undeveloped record lots. In 2000, after the prior Special Exception was issued, the Tax Assessor created a new tax lot that included both the Dower House and Tudor Place lots.

Accordingly, this Board should forthrightly recognize that the previous Board erred by incorporating Dower House in the Special Exception and deny the foundation's request to include Dower House in its new Special Exception.[5]

II. The Proposed Traffic Management Plan Would Not And Could Not Eliminate The Adverse Parking And Traffic Impacts On The Neighboring Properties.

The opposing residents all agree that the basic Tudor Place Special Exception for daytime tours has not adversely affected the neighboring properties. With the exception of idling tour busses that must be strictly controlled as provided in the prior orders, these daytime tours have not generally disturbed the peace and quite of the neighborhood nor created parking and traffic problems.

Since 1993, the residents have objected only to the "special events," attended largely by non residents on weekends and evenings, that have severely disturbed the peace and quite of the neighborhood and created intolerable traffic and parking congestion.[6] Accordingly, more than eighty adversely affected neighbors have asked this Board to deny the foundation's request to hold such "special events" or "functions" in the evenings and on weekends when on-street parking is extremely tight. These eighty requests, in and of themselves, constitute substantial evidence of the adverse effects.

In this proceeding, the residents have presented additional substantial evidence demonstrating the inevitable adverse parking and traffic impacts of the evening and weekend "functions." In light of that evidence, the Board required the foundation to propose a Vehicle Management Plan for those

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[5]The prior Special Exception expired by its own terms on January 14 , 2003. Tudor Place has been operating without a Special Exception since that time.

[6] The residents agree that the two annual parties held by the foundation, which are usually quiet, well managed, and attended largely by residents are acceptable because they are infrequent and do not unduly disturb the neighborhood.

evening and weekend "functions" that would, as § 217 requires, eliminate the adverse impacts. The foundation's plan, however, totally fails to carry its burden of showing that these activities "**shall not** adversely affect neighboring properties." § 217.2. This regulatory requirement means what it says – **NO** adverse effects on neighboring properties.

The plan itself, however, admits the adverse effects of the events and purports only to lessen them by requiring valet parking for parties with over 100 people and remote parking for parties with over 200 people. Moreover, the proposal to involve the District's Emergency Planning Agency, to post "emergency no parking signs," and to have police on hand to control traffic, concedes the adverse effects. Theses are the identical measures used in the past, which, as the evidence shows, did not eliminate the adverse impacts.

Moreover, Leslie Buhler admitted that "when I first got there, we had adverse, there was adverse impact from the, from some of the large rental events, weddings primarily." TR4/15/2003 pp.62-63. Niente Smith, a member of the foundation's Board of Directors also admitted that "it did not take long for the negatives from the rentals to far overwhelm the benefits." TR 4/22/2003 p.148. In light of these admissions, residents are perplexed by the foundation's continued attempt to perpetuate these disruptive activities at Tudor Place and Dower House.[7]

The foundation proposes no plan whatsoever for events for up to 100 people. The 50 or so vehicles attending those events would occupy the scarce weekend and evening residential parking spaces, forcing residents to either park blocks away from their homes or circle the streets waiting for a space to open up.

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[7]At Ms. Buhler's direction, the foundation has hosted no such large events at Tudor Place, other than its own annual parties, since July, 2000. It has presented no valid reason why this welcome state of affairs cannot and should not continue in the future.

The plan for larger events is no better. As we have previously pointed out and, as the Chairman has recognized, there is no means for prohibiting the drivers who attend these events from parking on the residential streets. As most of us intuitively know from our own experience, people will always attempt to find available on-street parking before giving their vehicles up to a valet. Therefore, valet service merely accommodates those attendees who otherwise could not find on-street parking. This may help the host of the party but it doesn't lessen the adverse impacts on the neighborhood, as the foundation incorrectly contends. To the contrary, it increases those adverse effects by blocking the street in front of Tudor Place with double-parked cars.

In light of the above, and all of the other evidence of adverse impacts in the record, the foundation has clearly failed to carry its evidentiary burden of proving, under § 217.2, that these weekend and evening events "**shall not adversely affect the neighboring properties.**" In this regard, we again respectfully refer the Board to *French v. BZA,* 658 A2d 427 (D.C. 1995) (BZA Exhibit 92(f), in which the Board required the non profit organization to hold all meetings and conferences elsewhere and prohibited on-street parking in the evening. This is the precedent the Board should follow in this case and not the erroneous prior order in this case which was written by the foundation's counsel and adopted verbatim by the prior Board without serious review.

Respectfully submitted,

Don W. Crockett

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3070 Q Street, NW
Party In Opposition

Certificate of Service

I certify that the foregoing opposition was served upon the parties herein by E-mail, this 14th day of October, 2003.

Don W. Crockett