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

REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION, AND ORDER PROPOSED BY DON W. CROCKETT

DECISION AND ORDER

SUMMARY OF EVIDENCE

A. The Application for Special Exception and Proceedings before the Board.

1. The Tudor Place Foundation (foundation), a non profit corporation, has applied for a Special Exception pursuant to § 217 of the Zoning Regulations to use the property known as Tudor Place, located at 1644 31st Street, N.W., for the purposes of the foundation which are to maintain the Tudor Place residence as a historic home and make it available for tours by the public on a strictly controlled basis. See, the instructions from donor of the property, Armistead Peter, III, to the foundation which are set forth in Articles 8 and 11 of Mr. Peter's Will. Ex. 92(b).

2. A previous three-year special exception was issued by the Board for Tudor Place on January 14, 2000 and expired by its own terms on January 14, 2003. Ex. 22. Since that time, the foundation has been operating Tudor Place without benefit of a special exception.

3. Tudor Place is bounded on the East by 31st Street, on the South by Q Street, on the West by 32nd Street and, on the North by 1670 31st Street. Ex 9.

4. The Office of Planning reports that the gross floor area of the residence is more than 10,000 square feet and, consequently, that the property qualifies for a special exception under § 217. Ex 48. The opposing parties have not challenged this finding.

5. The foundation has also applied for a special exception pursuant to § 217 to occupy a separate single-family known as "Dower House," which is located at 1670 31st Street, N.W. (Square 1281) as an "accessory use" for the Tudor Place residence. Ex. 2.

6. The gross floor area of the Dower House residence is less than 10,000 square feet and, consequently, that property does not qualify for the Special Exception under § 217. Ex. 10.

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7. The foundation, nevertheless, has asked the Board to include Dower House in the special exception, arguing that it may be an "accessory museum use" to the "primary museum use" at Tudor Place. Although the scenic easement for Tudor Place prohibits any enlargement of the Tudor Place property, the foundation argues that Dower House may be an accessory building to Tudor Place because in 2000, the Tax Assessor included both properties in a single "tax lot" (835) in 2000. Ex. 72.

ANC2E submitted a letter dated February 11, 2003, stating that "ANC2E hereby supports the Board of Zoning Adjustment application for a period of five years and recommends approval of the application without delay." Ex. 53.

9. The initial hearing on the application was held in three separate segments on April 15, 22, and 29, 2003. At the hearing the applicant presented its proposed Order, letters of support from various individuals, and the testimony of Leslie Buhler, the foundation's Executive Director.

10. Nine individuals, who are all nearby neighbors of Tudor Place, were granted permission to appear as parties in opposition. They are Stephen Wells, Lee Morris, Ronald R. Snider, Frances Snider, Don W. Crockett, Richard P. Theis, Roberta Theis, Norton N. Katz, and Pedro Kanof. The Board determined that the Q Street parties would be represented by Don Crockett, the 31st Street parties by Ronald Snider, and the 32nd Street parties by Norton Katz.

11. The opposing parties submitted evidence in opposition to several aspects of the application, namely, the proposed special events, the proposed extension of tour hours into the evening, and the proposed annexation of Dower House as an accessory building for Tudor Place.

12. At the conclusion of the hearing, the Board asked the parties in opposition to submit legal briefs setting out their arguments and legal authorities for their position that the BZA has no authority to annex Dower House as an accessory building under the Special Exception for Tudor Place. The applicant was given 7 days to file an opposing brief and the parties in opposition were permitted to file reply briefs by May 27, 2000.

13. The Board held a decision meeting on June 3, 2003, and ordered the applicant to prepare a vehicle management plan for its proposed operations at Tudor Place to be reviewed by the Department of Transportation.

14. The vehicle management plan was submitted on July 14, 2003. On the same day, the applicant moved to reopen the record for submission of an additional statement by the applicant concerning the use of Dower House. The Board granted that motion, reopened the record, and offered all parties the opportunity to submit further written testimony concerning the use of Dower House and the vehicle management plan. A further hearing was held on September16, 2003 to permit cross examination of the parties submitting written testimony.

B. The Scope of the Foundation's Activities Authorized by the Scenic Easement and the Peter Will.

15. On November 15, 1966, Armistead Peter III, executed a deed to the United States of America, granting in perpetuity, a scenic easement for Tudor Place as it then existed. Ex. 74. The scenic easement limited any further construction of buildings, additions, devices, or other structures except for a greenhouse, driveway, garage, small administrations building, and walkways for persons visiting the house.

16. In his Will, Mr. Peter gave various express instructions for the future use of Tudor Place under the management of the foundation:

> "Tudor Place be kept as I shall leave it, and that it be considered not as a period museum but as a house lived in and love by generations of our family and in which they found great happiness. . . I wish the garden to be maintained as I shall leave it, irrespective of the suggestions of landscape architects or well-meaning friends."

Peter Will, Article 11 (emphasis in original). He also directed that the foundation "**shall not** give, sell, **rent** or mortgage Tudor Place." Peter Will, Article 8. Ex. 92 (b).

17. To effectuate his goal, Mr. Peter provided the foundation with a generous endowment currently valued at $7,132,696. Ex. 34. Mr. Peter specified in his will that: "Strict rules should be made which will protect Tudor Place, Tudor Place Personalty and Tudor Place Addition and docents should be provided at any time the house is opened to the public. I have found that for purposes of control and satisfactory exposition of the house's history, no more than fifteen persons should be allowed into the house at one time." Article 11, Ex. 92(b).

C. The Initial Hearing on the Application for Special Exception.

18. At the hearing, the foundation presented just one witness, its Executive Director, Leslie Buhler. Ms. Buhler gave general testimony concerning the current staffing and activities at Tudor Place. She testified that "[w]hen I first got there, we had adverse, there was adverse impact from the, from some of the large rental events, the weddings primarily." TR 4/15 pp. 62-63. Accordingly, she put a moratorium on all weddings and rentals, *Id.*, and the foundation has not rented for weddings since that time. *Id. at 68.*

19. Ms. Buhler testified that when the foundation decided to reinstitute the special events and weddings, she sent a letter to the neighbors notifying them of the foundation's need to submit an application for special exception and asking the neighbors to express any concerns they may have. *Id.* at 54. She received four positive responses concerning the foundation's

current operation and in November, 2002, distributed a draft of the prior BZA order which contained the conditions the foundation proposed with respect to reinstituting the special events. *Id.* Nine people came to a meeting she held to discuss her proposals. Only four of the attendees were nearby neighbors that favored the resumption of the special events.[1] Ms. Buhler testified that she simply incorporated the suggestions of those four individuals, who favored the resumption of events, into the proposed order that the foundation initially submitted to the BZA. TR 4/15 pp. 107-109. She admitted on cross examination that neither Mr. Crockett nor Mr. Snider had approved of the proposal to reinstitute the special events or the changes she proposed to the expired special exception order.

20. Ms. Buhler testified that it was the foundation's "intention to continue to build neighborhood trust so that at some point we can apply for a permanent exception. The proposed conditions were developed though transparent process with the neighbors." TR 4/15 p 53. Ms. Buhler also referred the Board to various letters of support that had been made part of the record. *Id.* at 57. With that testimony, the foundation rested its case.

21. John Moore appeared on behalf of the Office of Planning. He testified that the property was located in a historic district and that the main house had more than 10,000 square feet. TR 4/15 p. 129. On cross examination, Mr. Moore admitted that the Office of Planning had not undertaken any independent study of the traffic impact but relied upon the Department of Transportation, *Id.* at 131, and that it hadn't done any analysis of the proposed special events. *Id.* at 133. He also admitted that the Office of Planning had done no independent study of the potential effect that extending the tour hours into the evening may have on parking but that he had simply relied upon the fact that the ANC had supported the application. *Id.* at 135.

22. Tom Birch, the Chairman of ANC 2E testified on behalf of the ANC and made three points. First, he stated his general belief that Tudor Place should have flexibility to develop funding from a variety of sources including renting the property for special events. TR 4/22 p. 105. Second, he said that Tudor Place had consulted with its neighbors and "demonstrated a desire to us to be a good neighbor." *Id.* at 106. Third, he said the commission was persuaded by "the expression of intent offered by the director of Tudor Place to concentrate activities on the preservation and presentation of this historic property and not to be consumed with developing an extensive schedule of special events." *Id.*

23. On cross examination, Mr. Birch said that the ANC had approved the proposed application because a large number of neighbors support the application. *Id.* at 110. At the same time,

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[1]Three of the attendees, Ronald Snider, Don Crockett, and Ross Watson were opposed to any resumption of the weddings and special events. Two of the attendees, Peter Pulsifer and Jason Hurdle were members of ANC 2E but not neighbors of Tudor Place. The other four attendees, Mindy Kotler Smith, Gretchen Handwerger, Marion Golden, and Jerry Rosen, were nearby neighbors who submitted letters of support for the new application. Ex. 34.

he admitted that the ANC had refused to accept a petition signed by 56 neighbors opposing the special events. *Id.* at 110 and 114. Mr. Birch acknowledged that the ANC had refused to reconsider the matter and said that the "ANC believes that the BZA hearing is the appropriate venue for further consideration of this issue." Mr. Birch acknowledged that the ANC had not based its decision on the basis of the proposed order but "in the way that it has been presented to us through conversations with the director." *Id.* at 114.

24. Twenty two members of the public appeared to testify. All of them supported granting a special exception to facilitate the foundation's purpose of maintaining Tudor Place and making it available to the people of the United States for historic and educational tours. Fifteen persons testified in support of the application to host special events at Tudor Place.

25. Ray Kulkulski and Barbara Zartman, testified as representatives of the Citizens Association of Georgetown which had submitted a letter to the Board. Ms. Zartman testified that CAG's letter "if anything was a criticism of the order that was last written by the BZA. The order established that what would otherwise apparently be called commercial events as appropriate for museum operation which included a reference to limiting the number of special events. The conditions in the order did not provide limits." She asked that the new order "include real protections that in fact do provide limits of the number of special events." TR 4/22 pp.129-132.

26. Arnold Sagalan, who lives near 30th and N Street (six blocks from Tudor Place), testified that the application merits the Board's approval and criticized the letter sent by the Citizens Association of Georgetown. TR. 4/22 pp.121-124.

27. Niente Smith, who lives at 3116 P Street, is a member of the Board of Directors of the Tudor Place Foundation. She testified that some time ago, "Tudor Place found the case for rental events very compelling not only for the income the rentals brought but there were other benefits." However, she concluded that "it did not take long for the negatives from the rentals to far overwhelm the benefits." She said that with "the director's change and a change in the direction of the Board, the primary purpose of Tudor Place was regained, the stewardship of the historic house and museum education." TR 4/22 pp. 144-148.

28. John Hedden, who lives at 2914 P Street, is the treasurer of the Tudor Place Foundation..He testified that "since Leslie Buhler has arrived as our executive director we have adhered much more with a sensitivity for the neighbors and are trying very hard to make sure that we don't offend anyone but at the same time against we need additional funds. TR 4/22 pp.149-150.

29. Myra Moffett, who lived at 1644 Avon Place, testified concerning the positive aspects of Tudor Place. She said she had been present at events when there has been musical entertainment and "from time to time we would hear music emanating from Tudor Place grounds but never was it loud or offensive." TR 4/22 pp. 132-134.

30. Graham Down testified that he has lived on 32nd Street for more than 25 years and that he had never been disturbed by events at Tudor Place. TR 4/22 pp.117-118.

31. Georgiana Owen, another 32nd Street resident testified regarding the attributes of Tudor Place and gave her opinion that the "inconvenience of event night parking and congestion seems well in balance when compared to the year around availability of 32 public parking spaces along the east side of the property." TR 4/22 pp.120-121.

32. Ruth Saxe, who lives at 1524 31st Street, testified that she had not had any problems with Tudor Place. TR 4/22 pp. 124-125.

33. Frank Milwe, who runs an antique and silver business in Georgetown, testified concerning the importance of the antique silver pieces at Tudor Place. TR 4/22 pp. 125-127.

34. Margaret Costan, who lives at 2900 N Street, testified concerning the annual Spring garden party which she will chair this year. She said the party would involve a jazz trio and that "the music will be such a low volume that probably no neighbors will hear it." TR 4/22 pp. 134-135.

35. Gretchen Handwerger who lives at 1677 31st Street, testified that she had never had any problems with Tudor Place and that she had participated in the meeting to formulate a new application for special exception. TR 4/22 pp.135-137.

36. Outerbridge Horsey, who lives a 1632 32nd Street, read and paraphrased a letter he had written to the Board, criticizing the position taken by the Citizens Association of Georgetown. TR 4/22 pp.138-144.

37. Marion Schlefer, who lives at 1537 30th Street, praised Tudor Place as a competently run establishment that "makes an enormous contribution not only to Georgetown but to the City of Washington." TR 4/22 pp. 151-152.

38. Alan Bubes, who lives at 1601 31st Street, said he didn't understand the vociferousness of the opponents. He said that in his opinion, there were many other city-wide problems those opponents could direct their attention to. TR 4/22 pp. 152-153.

39. Seven person testified in opposition to several aspects of the application.

40. Steven Wells, who lives at 1677 31st Street, testified with respect to the breadth of the requested authorization for holding special events at Tudor Place and asked that the Board require Tudor Place to submit a business plan justifying those events. TR 4/22 pp. 157-160.

41. Roberta Theis, who lives at 3104 Q Street, testified that 82 nearby neighbors had submitted letters in opposition to the special events. She testified that she had been unable to find

parking within a four or five block radius of her home during events. She also testified with respect to the gridlock which occurs because of valet parking and the fact that the services of the Metropolitan Police were needed to mediate and/or monitor the gridlock situation. She pointed to a conflict between the need for preserving the Tudor Place residence and the need for preserving the historic residential neighborhood itself. She also said that other properties in Georgetown were creating similar adverse impacts and was scared that approval of the application will result in dangerous escalation of event activity in Georgetown. TR 4/22 pp. 161-164.

42. Richard Theis, who lives at 3104 Q Street, testified about an event in May of 2000 involving 260 guests that was written up in "Washington Life." Ex.76 He said that even through valet parking was provided the situation was so bad that the police were called and that 31st Street was shut down. When he arrived home at about 8:30 p.m., he was unable to find parking and ultimately had to park on the other side of Wisconsin Avenue at 34th Street. TR. 4/22 pp. 169-171.

43. Ronald Snider, who lives at 1607 31st Street, testified about the Glickman wedding and a subsequent event on May 20, 2000. He submitted a letter he wrote to Tudor Place concerning those disruptive events. Ex. 74. Mr. Snider testified that the tent erected for those parties was in violation of the express terms of the scenic easement and presented photographs showing how the tent blocked the views of Tudor Place from Q Street. Ex. 74. He also explained that because Dower House is more than 30 feet high it cannot be an accessory building pursuant to §§ 2500.4 and 2500.5. TR.4/22 pp. 173-177.

44. Laine Katz, who lives at 1671 32nd Street, testified that she knew Mrs. Peter and had talked to her about the Peter bequest from time to time. TR 4/29 pp. 87-80. She said Mr. and Mrs. Peter "expected that the house and grounds that they so loved would be maintained as the family had done over a period of time" and that the furnishings "would remain in place to allow any visitors a sense of how that family lived with the memorabilia of several generations." Mrs. Katz further testified that Mrs. Peter never made the slightest suggestion that the house would become a museum. She criticized the management of Tudor Place for removing the family's things and substituting art painted by an "artist in residence" and said that the Peter's never intended the house "to become a party planners paradise."

45. Pedro Kanof, who lives at 1669 32nd Street, testified about arriving home from a business trip and not being able to get down 32nd Street in his taxi. When he arrived home on that Saturday night, there was loud music which didn't stop until 1:00 a.m. TR 4/29 pp. 90-93.

46. The representatives of the opposing parties were allowed 15 minutes to present their case against the special events, the use of Dower House and the proposed evening tours.

47. Norton Katz, who lives at 1671 32nd Street, testified that parties hosted by the foundation had an undue impact on the neighborhood. TR 4/29 p. 95. He pointed out that the events cause

huge amounts of traffic on 32nd street and that vehicles make hundreds of trips being picked up and then and then dropped off by valets. He also described the noise and congestion cause by the catering trucks, the tent trucks, and others that keep their generators going. TR 4/29 pp. 94-97.

48. Ronald Snider, who lives at 1607 31st Street, stated that he had attended all of the liaison meetings with Tudor Place and had no problems in general with the way Tudor Place had comported itself since the moratorium on special events. With respect to the foundation's claim that there were sufficient parking spaces to facilitate extending tour hours into the evening, Mr. Snider testified that on April 8, 2003, when Tudor Place had a small evening event, he found no parking at all on 31st Street when he arrived home at 7:30 p.m. TR 4/29 p.97-98. He said he believed the two individuals who had written letters saying they had no problems and others attending that event had taken up all available spaces usually available for residents. He further pointed out that while Gretchen Handwerger had supported the reinstitution of special events, everyone around her had submitted letters protesting those events. *Id.*

49. Don Crockett, who lives at 3070 Q Street, introduced several exhibits including the Peter Will, the financial statements of the foundation for 1999 and 2001, and relevant portions of the Georgetown Parking Study. Ex. 92 (a)- (f). He pointed out that using Tudor Place as a venue for meetings and parties was not what Mr. Peter had in mind when he established the foundation and is contrary to the explicit directions in his Will. TR 4/29 p. 100. Mr. Crockett noted that the foundation proposed to reinstitute the special events solely to generate additional income. He pointed out, however, that in 2001, during the moratorium, the foundation did very well, because its revenues were $60,000 greater than its expenses. *Id.* at 101. He also stated his belief that the foundation could rent 1670 31st Street to a single family for $100,000 per year which is the amount of money the foundation generated from the special events in 1998, prior to the moratorium. Ex. 92(d).

50. With respect to parking, Mr. Crockett said that the Georgetown Parking Study showed that "on evenings and weekends, generally, there is just no parking in Georgetown" and that there are more cars parked than there are legal spaces. TR 4/29 p. 101. He pointed out that in the French case, the BZA required the non profit corporation to park its cars off site and prohibited meetings and evening events at the single family home involved.

51. With respect to noise, Mr. Crockett testified to the disruption caused when a 21 piece orchestra plays on the front lawn of Tudor Place for a party. He pointed out that with horns, drums and pianos, which are not amplified, the prohibition of amplified music doesn't make any difference. *Id.* at 103.

D. <u>The Supplementary Hearing On The Dower House and The Vehicle Management Plan.</u>

52. Pursuant to the Board's Orders requiring a vehicle management plan and reopening the record

with respect to the permitted uses of Dower House, supplemental written testimony was submitted by Leslie Buhler, Executive Director of Tudor Place, Osborne George, the author of the vehicle management plan, and opposing parties, Don W. Crockett, Ronald Snider, Francis Snider, and Richard B. Theiss.

53. Leslie Buhler testified that the foundation had used Dower House "for accessory museum uses related to administrative, educational, and fund raising purposes" for less than 50 people. She said that in 2002 the foundation held 35 educational and fund raising events at Dower House and that 150 people had attended 7 educational events which are not financially motivated. She said she had received no complaints concerning these events.

54. With respect to fund raising events and rentals, Ms. Buhler said that "Dower House is the only space on the property where a seated indoor lunch or dinner can feasibly take place and that the donor cultivation activities "typically involve serving a lunch or dinner to a small group(4 to 24 people) of prospective donors." She said that Dower House has the only working kitchen and that tour groups have been allowed to eat their box lunches at Dower House in bad weather. The foundation rented Dower House 6 times in 2002 generating slightly less than $2,500.

Osborne George corrected several discrepancies in his parking survey. He also stated that he did not propose stacking vehicles on the Tudor Place service driveway but only at the 16 self-park spaces at the Chevy Chase Bank lot at Wisconsin and Q Street. He alluded to a possibility that the service drive could be connected to the main entrance, currently used only for pedestrians, to permit vehicles to be stacked on the service driveway thereby eliminating circuitous traffic patterns. The foundation, however, made no such proposal in this proceeding. The Board notes that such construction and alteration may violate the terms of the scenic easement.

56. A further hearing was held on September 16, 2003, for the purpose of permitting cross examination concerning the additional testimony. Both Leslie Buhler and Osborne George were cross examined by the opposing parties.

57. Final submissions with respect to the vehicle management plan and the use of Dower House were filed on October 14, 2003, by the Q Street parties and the 31st Street parties.

FINDINGS OF FACT

On the basis of the evidence presented by the parties, the Board makes the following findings of fact:

1. The Board finds that the foundation's operation of Tudor Place and its gardens for the purpose of historical and educational tours between the hours of 9:00 A.M. and 4:30 P.M., under the previously ordered conditions, has not adversely affected the neighboring properties and will not do so in the future, provided that the conditions are strictly adhered to.

2. The Board finds that the foundation has operated successfully during these day-time hours since the first Special Exception was granted and has shown no reason why such tours should be extended into the evenings when on-street parking for residents becomes very scarce.

3. The Board finds that the special rental events, parties, and weddings held in the evenings and on weekends, prior to the moratorium on such events in July, 2000, did adversely affect the neighboring properties by eliminating scarce on-street parking normally used by residents, by creating traffic congestion, and by disturbing the nearby neighbors with loud music.

4. The Board finds that the vehicle management plan proposed by the applicant will not eliminate the adverse effects of such special rental events, parties, and weddings. In the evenings and on weekends there is insufficient on-street parking to accommodate many residents and such events inevitably fill all available parking spaces, both legal and illegal, thus forcing residents to park blocks from their homes. The larger events with valet parking create even greater adverse parking and traffic impacts. First, there are more drivers seeking every available parking space on the street near Tudor Place. Second, the valet service itself creates traffic congestion on 31st Street because of vehicles arriving and leaving at the same time.

5. The Board finds that this is a residential neighborhood, consisting mostly of single family homes, which, by definition, was not intended to handle the traffic and parking generated by such non residential uses.

6. The Board finds that the foundation has successfully operated Tudor Place for the past three years during its moratorium for these disruptive events and has shown no valid reason why it cannot continue to operate in the same manner in the future.

7. The Board finds the foundation's annual Spring and Fall fund raising functions do not adversely affect the nearby neighbors because they are infrequent, are managed by the foundation itself, attended largely by Georgetown residents who walk rather than drive to the front gate of Tudor Place, and approved of by all of the opposing residents.

CONCLUSIONS OF LAW AND OPINION

1. In this proceeding, the foundation has applied for a five-year special exception that would allow it to operate Tudor Place as a museum and to host "special events" such as weddings, bar mitzvah's, and corporate parties. The foundation also asks the Board to annex the neighboring single-family home at 1670 31st Street into the special exception as an "accessory building" to the "principal museum use." The foundation seeks permission to host smaller "special events" at 1670 31st Street such as parties for up to 50 people, lectures, and children's programs. Finally, the foundation seeks permission to extend the hours of operation for tours from 5:30 p.m. to 8:30 p.m., one night per week.

2. Nine persons who live within the 200 foot perimeter of Tudor Place applied for and were granted status as parties. All of the opposing parties fully support a special exception that would permit the foundation to open Tudor Place for public and private tours during the long-established regular tour hours. They challenge only three aspects of the application, namely, using the property for special events, annexing the neighboring home, and extending the hours for regular tours into the evening. More than 80 nearby neighbors submitted letters objecting to the parties and special events that have been held at Tudor Place in the past. Ex. 37, 44, 55.

3. As shown by the foregoing findings of fact, all parties agree that the foundation is entitled to a special exception to occupy and maintain Tudor Place as Mr. Peter left it and to conduct public and private tours of the property during the hours and subject to the conditions agreed to in previous exception applications. All parties also agree that the foundation should be permitted to host its annual Spring Event, its Fall garden day, and to allow the Georgetown Garden Club of other similar neighborhood organizations to meet on the premises during regular tour hours.

4. The challenges by the opposing parties to the special events, the annexation of Dower House as an accessory building, and the extension of tour hours into the evening are discussed and decided below as follows:

A. <u>The Proposed Use of Tudor Place as a venue for weddings, parties, and special events.</u>

5. The opposing parties argue in their briefs that Tudor Place was described as a "museum" in the three prior special exception orders solely for the purpose of justifying the generation of income for renting the house and grounds for weddings, parties, and special events. The opposing parties argue that this was contrary to the express wishes of Mr. Peter set forth in his Will. Mr. Peter specifically directed that "Tudor Place be kept <u>as I shall leave it</u>, and that it be considered **<u>not</u> as a period museum but as a house lived in and loved by generations of our family**." Peter Will Article 11, ¶ 15. Moreover, Mr. Peter directed that the foundation "**shall not** give, sell, **rent** or mortgage Tudor Place." Peter Will, Article 8. Therefore, the opposing parties argue that the foundation's only legitimate purposes under the Will are to maintain Tudor Place as Mr. Peter left it and make it available to the American people for historic and educational tours.

6. The Board concludes that the foundation has failed to carry its burden of proving: (1) that such activities are in harmony with the intent and purpose of the R-1 zone; (2) that such parties and special events are "customarily incidental" to a museum use; and (3) that such events will not cause adverse impacts on nearby property.

7. First, pursuant to § 3104, the Board may grant a special exception only if it finds that the proposed use "will be in harmony with the general purpose and intent of the Zoning Regulations." The fact that museums are first permitted in the Mixed Use District evidences

a legislative determination by the Zoning Commission that museums are not in harmony with the purposes of the more restrictive residential districts. The Zoning Regulations provide that the R-1 district

> "is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas. . . [and] 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." 11 DCMR §§ 200.1 and 200.2.

8. Therefore, the Board concludes that a museum use on this R-1 property, particularly one that proposes to use the gardens and grounds as a venue for weddings, parties, and special events, is not in harmony with the general purpose and intent of the Zoning Regulations.

9. Second, the foundation has failed to meet its burden of proof which the Court of Appeals has described as follows:

> "The Board's discretion to grant special exceptions is limited to a determination whether the exception sought meets the requirements of the regulation. The burden of showing that the proposal meets the prerequisite enumerated in the particular regulation pursuant to which the exception is sought rests with the applicant. In sum, the applicant must make the requisite showing, and once he has, the Board ordinarily must grant his application. *Robey v. Schwab,* 307 F.2d 198, 201 (D.C. Cir. 1962); *Hyman v. Coe,* 146 F. Supp. 24, 27, 32 (D.D.C. 1956)." *Stewart v. BZA,* 305 A.2d 516 (D.C. 1973).

10. The foundation has failed to introduce any evidence whatsoever to support its contention that the gardens and grounds of museums are "customarily and incidentally" used as out-door venues for weddings, parties and special events. As the Superior Court of New Jersey has explained:

> "Courts have often held that use of the word "customarily" places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice have been established as reasonably associated with the primary use." *Charlie Brown of Chatham, Inc. v. Board of Adjustment for the Township of Chatham,* 495 A.2d 119, 125 (N.J. Super 1985).

Because the foundation has failed to introduce any evidence showing that such out-door parties and events are "commonly, habitually and by long practice have been established as reasonably associated with a museum use," the Board cannot find that such uses are accessory to a primary museum use.

11. Finally, the foundation has failed to carry its burden of proving – by substantial evidence in the record – that the proposed weddings, parties, and special events "**shall not** adversely affect the use of the neighboring properties." 11 DCMR § 217.2. Indeed, the foundation introduced no evidence whatsoever showing that the proposed activities and special events at Tudor Place would not adversely affect the neighbors. To the contrary, the foundation's Executive Director testified as follows:

MS. BUHLER: "When I first got there, we had adverse, there was adverse impact from the, from some of the large rental events, the weddings primarily.

MS. MITTEN: And did you make adjustments to your operation to address those?

MS. BUHLER: I put a moratorium on all weddings and rentals for two reasons. Number one, because it clearly was an issue within the neighborhood.[2] And number two, it's an issue of historic preservation.[3] TR 4/15 pp.62-63.

12. When asked whether she had any evidence that there would be no adverse impact for a rental event for 200 to 500 people, Ms. Buhler responded that she didn't. TR 4/15 p.80.On cross examination, Mr. Crockett asked whether she proposed to "continue the same number of events in the past two years which have been minimal?" [The events in the past two years involved no rental events and no music. TR 4/15 p. 85.] She responded, "that is my intent." TR 4/15 p.75. Chairman Griffis, then noted that "in the past two years you've had a certain behavior pattern with the events" and Ms. Buhler responded that "And that's what we will maintain." TR 4/15 p. 76. Ms. Buhler also testified that "the one garden party that we have that is up to 500 people is during the week, and that the neighbors . . . agreed to the open evening and thought that it was actually a good idea for accessibility to Tudor Place." TR 4/15 p. 89-90.

13. Later in the hearing, however, the Executive Director contradicted her previous testimony concerning her "intent." When asked whether the foundation intended to reinstitute the rental events to earn money, Ms. Buhler responded that "we expect to be able to have some rentals of our property." TR 4/15 pp. 101-102. She also said that the foundation would also like to start serving lunch for tour groups at Dower House. TR 4/15 p. 109. When asked whether she would agree to holding only wedding ceremonies and not wedding receptions, she said yes. TR 4/15 p. 114. But when asked if someone had their wedding ceremony elsewhere and wanted to rent Tudor Place for the reception, she said she would host the

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[2]Niente Smith, a member of the Board of Directors of the Tudor Place Foundation, also testified that "it did not take long for the negatives from the rentals to far overwhelm the benefits." TR. 4/22 p. 148.

[3]As Ms. Buhler later made clear, the foundation has not rented Tudor Place for weddings since she imposed the moratorium in July, 2000. TR 4/15 p. 68.

reception. TR 4/15 p. 114.

14. Ms. Buhler provided supplemental testimony in the final segment of the hearing. This time, she was very specific as to what the foundation was asking the Board to approve. She said the foundation sought permission to have 6 functions of up to 500 people, and no more than one per month. TR 4/29 p.110. It wanted to host 10 evening rental functions for between 100 and 200 people and 15 evening rental functions for less than 100 people. Id. at 111. [Ms. Buhler suggested no restrictions on the number of events that could be held during the day.] She also asked the Board to authorize once a week rental events at Dower House (4 per month). TR 4/29 p. 113. This testimony was dramatically different from her initial testimony that it was her intention to continue the same minimal number of events as in the past two years. This testimony is also troubling because the ANC based its approval on "the expression of intent offered by the director of Tudor Place to concentrate activities on the preservation and presentation of this historic property and not to be consumed with developing an extensive schedule of special events." TR 4/22 p. 106.

15. As the foundation's treasurer made clear, the foundation is seeking permission to reinstitute the special events at Tudor Place because "we need additional funds." TR 4/22 p. 134. The foundation's need to generate additional funds, however, is not a consideration that the BZA may take into account in approving a special exception under § 217.[4] To the contrary, the Board must decide the case solely of the basis of the facts presented by the applicant which prove that the proposed use "shall not adversely affect the use of the neighboring properties." § 217.2[5].

16. As set forth in the findings of fact, numerous nearby residents presented evidence showing that the special events held at Tudor Place prior the moratorium in July of 2000, created disruptive noise, traffic congestion, and lack of parking for the residents. That evidence strongly suggests that problems with such activities at this particular location, in the middle of a residential neighborhood, are endemic and cannot be eliminated by measures such as traffic control, valet parking, and prohibiting amplified music.

17. The Georgetown Parking Plan, prepared by the Department of Public Works and the Department of Planning in 1986, Ex. 92(e), included surveys which showed that parking on the residential streets in the Northeast quadrant of Georgetown (Area B), where Tudor Place is located, is ordinarily very tight in the evening and on weekends. Indeed, at 9:00 p.m. on Thursdays, there were more cars parked than there were legal parking spaces. On Saturdays, there were more cars parked than there were legal parking spaces throughout the day. A

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[4]In any event, the only evidence in the record shows that the foundation's revenues exceeded its expenses by $60,000 in 2001. Ex. 92(c).

[5]This provision is stronger than the general provision in § 3104 which requires the Board find that the use "will not tend to affect adversely, the use of neighboring property."

similar study conducted by Osborne George in 1999, Ex. 70, showed that although there were numerous open parking spaces near Tudor Place during the weekday hours, the situation is entirely different on Saturday when most events occurred. For example, between 10:00 a.m. and 3:00 p.m., only 5 spaces out 85 were vacant on 31st Street between Q and R Streets in front of Tudor Place. Only 1 space out of 32 was vacant on 31st Street from Q to P. Out of the 25 Spaces between 31st and 30th Streets on P Street, none was vacant. Accordingly, the evidence shows that in the evenings and on weekends, there is insufficient parking to accommodate even modest "events" of 50 people, much less events of up to 500 people and 250 cars.

18. With respect to the proposed vehicle management plan, Mr. George produced a new parking survey which purported to show more parking availability on Saturday than his previous survey. This appears to be due to the fact that the survey was taken in July when students and many residents are on vacation, that the survey area was moved one block to the West for no apparently reason, and that there were many errors in the second George Survey. Mr. Crockett responded with his own survey which showed extremely tight parking availability in the evenings and on weekends when the events occur.

19. The foundation does not propose any vehicle management for functions up to100 persons. This means that for such events 50 or more vehicles would be searching for and occupying the scarce spaces on the nearby streets forcing residents to park far from their homes.

20. While the foundation proposes valet parking for functions with more than 100 people and remote parking with shuttle bus service for larger functions, this would merely make it possible for more people to attend the functions. It would not alleviate the on-street parking and traffic problems. This is because attendees will still invariably take all available parking spaces on the nearby streets before handing their vehicles over to a valet service or driving to a remote lot. Tudor Place cannot prevent people attending events from parking on the street and usurping all of the spaces normally used by the residents.

21. The foundation has no enforceable agreements with two parking lots (TR 4/15 p. 96): Chevy Chase Bank with 20 spaces, and Jelleff's Boys and Girls Club, which is four blocks from Tudor Place and has a maximum capacity of sixty spaces. Ex. 85.

22. Finally, several witnesses testified that the valet parking services themselves caused major traffic congestion problems on both 31st and 32nd Streets and that in May, 2000, the police actually had to close 31st Street to traffic in order to accommodate the valet parking service. TR 4/22 p.170, TR 4/29 pp.95-97. The vehicle management plan itself demonstrates that these adverse impacts will occur because it proposes reserving numerous on-street parking places for the valets and the use of policemen to direct traffic. Thus, the foundation has failed to prove that these larger events "shall not adversely affect the use of the neighboring properties," as § 217.2 requires.

23. The opposing parties also presented significant evidence that noise emanating from the parties and special events had serious adverse impacts on the neighborhood. Although the foundation had prohibited amplified music prior to its July 2000 moratorium, the events held that Spring under the previous special exemption were still heard throughout the neighborhood. A 20- piece swing band with horns, woodwinds, piano's and drums does not need amplification to be heard throughout the neighborhood as shown by Ex 98, TR 5/29 p.103.

24. In sum, the foundation failed to introduce any evidence showing that the weddings, parties, and special events, whether for 50 , 75 or up to 500 people, will not cause adverse impacts on neighboring properties. The opposing parties, on the other hand, submitted substantial evidence demonstrating that these events inevitably cause serious adverse impacts on the nearby neighbors. In light of this uncontradicted evidence, Board is required by the express terms of §§ 217.2 and 217.3 to deny the foundation's request to reinstitute special events at Tudor Place.

B. <u>The Proposed Annexation 1670 31st Street As An Accessory Building Into the Exception For Tudor Place</u>

25. The foundation has asked the Board to permit it to use the neighboring single-family home at 1670 31st Street as an "accessory use" to the principle "museum use" at Tudor Place. This request was opposed by the nearby neighbors and the Board asked the parties to submit legal briefs on that issue. On the basis of the authorities set forth in the briefs and the Board's careful review of the applicable zoning regulations, the Board concludes that the 1670 31st Street cannot be an accessory use to the neighboring home at 1644 31st Street.

26. There are several legal impediments to the foundation's request that one single-family home may become an accessory use for the neighboring single-family home. First, the foundation has presented no evidence upon which the Board could find that museums "commonly, habitually, and by long practice" use neighboring single-family homes as alternative venues for small parties, meetings, and conferences. Second, the issue of accessory use has not been presented to the Zoning Administrator. Accordingly, the Board has neither a factual record nor the benefit of the Zoning Administrator's expertise. Third, while the two structures are now on the same tax lot (835), we are not convinced that a tax lot designation meets the requirements of the definition of "accessory use" that the use be on the same "lot."

27. While the prior exception order, issued on January 14, 1999, concluded that a structure could be an accessory building if it was located on the same "tax lot," the Board made that determination without benefit of the Zoning Administrator's expertise. Such broad interpretations of the Zoning Regulations should be decided in the first instance only by the Zoning Administrator. Then, if there is a dispute, the matter may be properly brought before the BZA on an appeal of that decision.

28. More importantly, in the prior proceeding, the foundation did not advise the Board that the three story home at 1670 31st Street does not meet the requirements of 11 DCMR § 2500.4 which limit accessory buildings to one story and 15 feet in height. The foundation's argument that § 2500.4 is directed only to the construction of new accessory buildings is without merit. There is nothing in the statutory language of § 2500 that could justify such an interpretation. To the contrary, § 2500.1 clearly encompasses "accessory uses" as well as "accessory buildings" and applies to existing buildings as well as new construction. The plain language of § 2500.4, makes clear that the home at 1670 31st Street cannot qualify as an "accessory building" to Tudor Place because it has three-stories and is more than 15 feet high.

29. Accordingly, we are compelled to conclude that the Board's previous legal conclusion, that single-family home at 1670 31st Street could serve as either an accessory use or an accessory building for Tudor Place was in error.

30. It has therefore been suggested that 1670 31st Street could be considered as part of the "principal Tudor Place use." This "principal use" theory, however, would be in direct conflict with the purpose of 11 DCMR § 3202.3. That purpose is to require all principal residential structures to be located on separate "lots of record." 1670 31st Street is clearly a principal residential structure. Its proposed conversion into office space, or a place where meals could be prepared and served to the public, would require substantial alteration in order to comply with Building Code requirements for such non residential uses.

31. Should the foundation apply for such a building permit, it would first be required by § 3202.3, to obtain a "lot of record" for the property. That property would then be distinctly separate from Tudor Place as the regulation clearly intends. The contention that 1670 31st Street could still be part of the "principle use" of Tudor Place simply because the Tax Assessor has created a single Tax Lot, is illogical. The Zoning Regulations should be interpreted so there are no conflicts between the provisions. They should not be interpreted so that "lot" means "tax lot" for purposes of § 217 and means a "metes and bounds" lot or a "record lot" for other provisions of the Zoning Regulations

32. The foundation has also suggested that the BZA may incorporate Dower House into the Special Exception for Tudor Place because there is an alleged "historical relationship" between the two properties. While it is true that the owners of Tudor Place originally owned the land on which Dower House was later built in 1869, this is also true of all the other homes on the entire block. The fact that the last owner of Tudor Place purchased 1670 31st Street in 1961, 93 years after the land had been sold to others, creates no "historical relationship" different from the other homes on the block which were all built after the land North of Tudor Place was sold.

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34. Under the Zoning Regulations, this Board must decide this case solely on the basis of whether the foundation has presented evidence sufficient to prove that it has satisfied each of the criteria in § 217. That is the foundation's statutory burden. Accordingly, the foundation has failed to show any legal basis under the Zoning Regulations for annexing the smaller neighboring single family home into the Special Exception for Tudor Place. Therefore, Dower House must retain the only use permitted in the R-1 zone, i.e., that of a single-family residence.

C. <u>The Proposal To Open Tudor Place For Tours In The Evening</u>.

35. The foundation asks the Board to permit tours one night per week from 5:30 p.m. to 8;30 P.M.

36. The foundation has not conducted evening tours in the past and has showed no reason why this is either desirable or necessary in the future.

37. The opposing parties have objected to this proposal on the ground that adequate parking on the street for persons attending tours is not available after residents return home from work. The opposing parties also submitted the Georgetown Parking Plan which shows that there are generally more vehicles parked on the street in the evenings than there are legal parking spaces. Ex. 92(e).

38. The foundation introduced two letters from two people who had attended a small event at Tudor Place on April 8, 2000. Those two individuals said they found no problem finding a parking space that evening. Ex.85. With respect to that event, however, Mr. Snider testified that when he arrived home at 7;30 p.m., no spaces on 31st street were available. TR 4/29 p. 98. He said that the few spaces usually available at that time in the evening had apparently all been taken by the attendees of the Tudor Place event and, consequently, he had to park blocks away. *Id.*

39. In light of the foregoing, the Board concludes that the foundation has failed to carry its burden of introducing evidence proving that extending the tour hours into the evening will not adversely affect the nearby property owners. The Board has previously restricted the use of single family homes by non profit corporations to day-time hours. *See French v. BZA*, 658 A.2d 427 (D.C. 1995) (all meetings and conferences to be held elsewhere and no parking in the evening). Ex. 92(f). The Board will follow that precedent in this case.

D. <u>The Basic Application To Make Tudor Place Available To The Public For Historical and Educational Tours</u>.

40. The Tudor Place Foundation has demonstrated that it meets all of the requirements of 11 DCMR § 217 for a special exception to occupy and use 1644 31st Street, N.W. for public and private tours of this historic family home pursuant to the bequest and directions set forth in the Last Will and Testament of Armistead Peter, III.

41. The parties all agree that Tudor Place is a historic landmark and that the main building consists of more than 10,000 square feet of gross floor area. The foundation has pledged that there will be no goods, chattel, ware or merchandise created, exchanged or sold at Tudor Place, except for the sale of publications, materials and souvenirs related to Tudor Place and made available in its small gift shop.

42. As to the absence of adverse impacts, the applicant and the opposing parties agree, and the evidence presented shows, that public and private tours of the property, under the restrictions and long-established day time hours specified in the previous special exceptions, generally do not create adverse impacts on the surrounding neighborhood. The foundation has committed to preventing tour busses from either parking or standing on the residential streets of Georgetown while waiting for tour groups.

43. With respect to parking, the parties again all agree, and the evidence presented shows, that parking for members of the public attending tours at Tudor Place under the prior restrictions and long-established regular tour hours is generally adequate.

44. Accordingly, the Board concludes that the operation of Tudor Place as a historic family home, open to the public for historical and educational tours, will not adversely affect the use of neighboring properties, provided that the following restrictions, necessary to maintain and promote a suitable environment for family life in the surrounding residential zones are strictly abided:

(a) Admission for group tours shall be by appointment only.

(b) The hours of operation for tours shall be between 9:00 a.m. and 4:30 p.m. Monday through Saturday, and between 12 noon and 4:30 p.m. on Sunday.

(c) The number of tours shall not exceed ten per day.

(d) Non group tours of the house shall be limited to 20 persons.

(e) Busses bringing group tours to the site shall neither stand nor park on the residential streets in Georgetown except when actually boarding or discharging passengers at the entrance to Tudor Place. While waiting for tours to conclude, busses must leave the

residential streets and park in legal bus parking areas.

(f) The foundation may host its annual Spring Event and Fall garden day for its members and the public. Any music provided for these two events must comply with 11 DCMR § 201.1(g) of the Zoning Regulations which incorporates 19 DCMR Chapter 1300.

(g) The foundation may also allow the Georgetown Garden Club or other similar neighborhood organizations to meet on the premises during regular tour hours.

ORDER

In light of the foregoing, the Board concludes that the application be granted in part and denied in part.

The application to resume the special events and rentals of the Tudor Place residents and its grounds and gardens for private functions and parties is denied.

The application for a special exception to permit the foundation to use the single family home at 1670 31st Street, N.W. also known as "Dower House," as an accessory use to Tudor Place is denied.

The application to conduct tours from 5:30 p.m. to 8:30 p.m. one night per week is denied.

The application for a special exception to permit the foundation to operate the single family home at 1644 31st Street, N.W., also known as "Tudor Place," pursuant to the bequest and instructions set forth in the Last Will and Testament of Armistead Peter, III, is hereby granted, subject to the following conditions:

1. Approval shall be for a period of three years from the date of this order.

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

3. The hours of operation for tours shall be between 9:00 a.m. and 4:30 p.m. Monday through Saturday, and between 12 noon and 4:30 p.m. on Sunday.

4. The number of tours shall not exceed ten per day.

5. Non group tours of the house shall be limited to 20 persons.

6. Busses bringing group tours to the site shall neither stand nor park on the residential streets in Georgetown except when actually boarding or discharging passengers at the entrance to Tudor Place. While waiting for tours to conclude, busses must leave the residential streets and park in legal bus parking areas.

7. The foundation may host its annual Spring Event and Fall garden day for members and the public. Any music provided for these two events must comply with 11 DCMR § 201.1(g) of the Zoning Regulations which incorporates 19 DCMR Chapter 1300.

8. The foundation may also allow the Georgetown Garden Club or other similar neighborhood organizations to meet on the premises during regular tour hours.