GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No 16974 of Tudor Place Foundation, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to continue the operation of a museum by a non-profit organization (last approved by BZA Order No. 16477, dated January 14, 2000), under § 217, at premises 1644 31st Street, N.W. and 1670 31st Street, N.W.

HEARING DATES: April 15, 22 and 29, 2003, September 16, 2003
DECISION DATES: June 3, 2003, July 1, 2003, August 5, 2003, November 4, 2003

DECISION AND ORDER

On November 27, 2002, the applicant, Tudor Place Foundation, Inc. ("Applicant"), filed an application with the Board of Zoning Adjustment ("Board") requesting a special exception under § 217 of the zoning regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")), to continue its previously-approved museum use of the Tudor Place estate and grounds, including the house on the property known as Dower House (the subject property). This Board had approved the special exception museum use in three previous orders -- No. 14729 (1988), No.15744 (1994) and No. 16477 (2000). Order No. 16477, dated January 14, 2000, was challenged on appeal and upheld by the District of Columbia Court of Appeals in the case of *Georgetown Residents Alliance* v. *District of Columbia Board of Zoning Adjustment,* 802 A.2d 359 (D.C. 2002). Order No. 16477 conditioned the special exception with a term of 3 years, therefore on November 27, 2002, the Applicant filed this special exception application with the Board.

The Board held two hearings on the application, the second one limited to discussion of the Applicant's Vehicle Management Plan and the use of Dower House. After several preliminary decision meetings, the Board voted, at its final decision meeting on November 4, 2003, to approve the application, subject to a term of 5 years and 15 other conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated December 2, 2002, the Office of Zoning ("OZ") gave notice of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), the State Historic Preservation Officer, the Councilmember for Ward 2, Advisory Neighborhood Commission 2E ("ANC"), the ANC in which the subject property is located, and the ANC member for Single Member District ANC 2E07. Pursuant to 11 DCMR 3113.13, OZ published notice of the hearing on the application in the District of Columbia Register and on December 19, 2002, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, the Applicant's affidavit of posting indicates that on January 24, 2003, it placed three zoning placards on the property, on the 32nd Street, N.W. frontage, the Q Street, N.W. frontage, and the 31st Street, N.W. frontage, in plain view of the public.

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The public hearing, scheduled for February 18, 2003, was postponed to April 15, 2003, due to a major snow event which closed the District government. On February 19, 2003, OZ notified the Applicant and the ANC of the new hearing date. The date was also posted in the Office of Zoning and placed on the OZ website. The Applicant filed two further affidavits of posting. They show that 7 zoning placards were posted on the Tudor Place main house on March 31, 2003, and another 3 placards were posted on Dower House on April 2, 2003, all in plain view of the public.

Requests for Party Status. ANC 2E was automatically a party in this proceeding. The Board granted opposition party status to three groups of neighbors: the "31st Street Neighbors," represented by Mr. Ronald Snider, the "32nd Street Neighbors," represented by Mr. Norton Katz, and the "Q Street Neighbors," represented by Mr. Don Crockett.

Applicant's Case. The Applicant's Executive Director, Ms. Leslie Buhler, testified as to the operation of the Tudor Place main house and Dower House. She explained that Tudor Place functions as a house museum and holds fundraising events to further its mission. Ms. Buhler indicated that Tudor Place utilizes a valet parking services contractor for large events and has complied with the conditions in the Board's 2000 order. She also noted that when complaints from neighbors were received, Tudor Place responded quickly to redress any problems. The Applicant also submitted a Vehicle Management Plan[1] ("Plan") and O.R. George, who was qualified as an expert in traffic matters, testified in its behalf.

With its application, the Applicant submitted a list of 16 conditions to which it proposed to be bound. The proposed conditions were taken from the Board's Order No. 16477, and were modified slightly, after extensive review by the ANC and members of the community. During the course of these proceedings, the proposed conditions remained essentially the same, but were altered somewhat by the Applicant in response to concerns voiced by the opposition and to provide more specificity.

Government Reports. The Office of Planning filed a report with the Board on February 14, 2003, and found that the application met all the requirements of 11 DCMR §§ 217 and 3104.1. OP, therefore, in its report and in its oral testimony, recommended approval of the application, subject to the 16 conditions proposed by the Applicant.

The District Department of Transportation, in its report dated April 28, 2003, stated that it supported the position of OP, including the 16 conditions, with one exception. DDOT recommended that the hours for tours specified in proposed condition number 3 be modified as follows: daytime tours between 9:30 and 4:00 (rather than between 9:00 and 4:30) and evening tours between 6:30 and 8:30 (rather than between 5:30 and 8:30), in both cases to avoid conflict with rush hour. In its second report, dated July 31, 2003, DDOT voiced concerns as to the timing and scope of the data collection on which the Vehicle Management Plan was based, but generally supported the Plan and opined that it will minimize traffic impacts to the neighborhood.

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[1] Also referred to as the "Traffic and Parking Management Plan" or "TPMP" in the record.

The National Park Service (NPS) submitted a letter endorsing the Applicant's request for a special exception. The NPS stated that the Applicant maintains the Tudor Place main house in accordance with the U.S. Department of the Interior Standards for Historic Preservation. NPS pointed out that successful maintenance of the site requires the Applicant to employ a professional staff knowledgeable in these Historic Preservation Standards, and that funding the requisite staff is a challenge which the Applicant has endeavored to meet through house tours and the hosting of special events.

ANC Report. The ANC submitted two letters in this case. The first, dated February 11, 2003, indicated that ANC 2E, at a regularly scheduled and properly noticed meeting on February 4, 2003, voted unanimously to support the application, including the 16 conditions proposed by the Applicant. The second, dated July 16, 2003, reiterated the ANC's unanimous support.

At the hearing, the ANC representative stated that, in approving the application, the ANC supports the premise that the Applicant should have the flexibility to develop funding from a variety of sources. He also stated that the ANC was satisfied that the Applicant had consulted with neighbors in addressing issues of noise, traffic, and parking and that, accordingly, the ANC did not make any further recommendations with respect to these issues.

FINDINGS OF FACT

The Subject Property and the Application

1. The Tudor Place Foundation, Inc., Applicant herein, owns both Tudor Place (1644 31st Street, N.W.) and Dower House (1670 31st Street, N.W.). The lot on which these buildings sit is located in an R-1-B zone district and is bounded by 31st, 32nd, Q, and R Streets, N.W. The property, including the Tudor Place main house, its grounds, and Dower House, ("subject property") comprises approximately 5 and 1/2 acres (215,048 square feet), the majority of Square 1281.

2. Dower House, built in 1867, is located directly north of the Tudor Place main house. The Dower House site originally became part of the Tudor Place grounds in 1805. It was later sold and eventually repurchased by Armistead Peter, III, then-owner of Tudor Place, in the 1960's.

3. In 1966, Armistead Peter, III, granted a scenic easement to the U.S. Department of the Interior permitting the use of the main house as a residence or museum and preventing the land from being subdivided, inappropriately developed, or otherwise used in an unsuitable way.

4. Tudor Place and Dower House are linked visually and through a common history of use and ownership. They are located on a single tax lot, No. 835, which was created in 2000 by combining two previously-existing adjoining tax lots.

5. As the Applicant's previous special exception for non-profit museum use was to expire in early 2003, on November 27, 2002, it filed with the Board the instant application and the

accompanying self-certification form certifying its need for the special exception relief requested.

Special Exception Requirements
Subsections 217.1 and 217.4[2]

6. Subsection 217.1 permits, as a special exception, the use by a nonprofit organization of existing residential buildings for the purposes of the nonprofit organization if the building is listed in the District of Columbia's Inventory of Historic Sites or is located within a district which is so listed and if the gross floor area of the building is greater than 10,000 square feet.

7. Since 1988, the Applicant, a nonprofit organization, has been operating the Tudor Place main house as a nonprofit house museum pursuant to 11 DCMR § 217. *See,* Board Orders No's. 14729, 15744 and 16477. The main house is used for the purposes of the nonprofit organization, which include education of the public about American history and culture, cultural resource management, and research.

8. Order No. 16477 permitted continuation of the use and extended it to include the hosting of special events and the use of Dower House. Dower House is used for the purposes of the nonprofit organization, including education of the public about American history and culture.

9. Neither the Applicant nor its use of the subject property has changed in any significant way since the Board's 2000 Order, No. 16477, except that, sometime subsequent to June, 2000, the Applicant voluntarily placed a moratorium on the holding of large weddings and rental functions.

10. The Board finds that, pursuant to § 217.1, the Applicant is a nonprofit organization that is using Tudor Place and Dower House for the purposes of the nonprofit organization.

11. The subject property, not including Dower House, is listed both on the National Register and the District of Columbia Inventory of Historic Sites. The subject property, including Dower House, is located in the Georgetown Historic District, which is listed in the District of Columbia Inventory of Historic Sites.

12. The Board finds that both the Tudor Place main house and Dower House satisfy the historic listing requirement set forth in § 217.1(a).

13. The Board found in Orders No's. 14729 and 15744, and confirmed in Order No. 16477, that the main house contains more than 10,000 square feet of floor area. Based on the evidence in the current proceedings, the Board again finds that the 10,000 square foot requirement set forth in § 217.1(b) is satisfied.

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[2]Subsections 217.2 and 217.3, the most contentious herein, will be discussed *infra.*

14. Subsection 217.4 prohibits the commercial creation, exchange or sale of merchandise in the residential buildings except for items related to the purposes of the nonprofit organization.

15. Tudor Place operates under constraints placed upon it by its status as a National Historic Landmark and the 1966 deed of easement with the U.S. Department of the Interior. Maintaining Tudor Place in accordance with the Department of the Interior's Standards for Historic Preservation requires the use and funding of a staff knowledgeable in implementing these Standards. Exhibit No. 62.

16. The endowment of Tudor Place, as of 2002, supplied only 51% of the revenues needed to fund its operations. Exhibit No. 8, at 5. The Applicant derives its remaining needed revenue by offering tours of the main house, hosting educational lectures and workshops, developing individual and organizational donors, and hosting special events, such as its annual Garden Party fundraiser. None of these activities result in the commercial creation, exchange, or sale of goods, chattel, wares, or merchandise.

17. In the main house, the Applicant operates a small museum shop which sells items related to the purposes of the nonprofit organization as permitted by § 217.4.

18. The Board finds that the Applicant does not create, exchange or sell any goods, chattel, wares or merchandise on the subject property, except as permitted under § 217.4.

Section 3104 and subsections 217.2 and 217.3 -- impacts on neighboring properties

19. Section 3104.1 states that the Board may grant a special exception where the use will not "affect adversely the use of neighboring properties."

20. Subsection 217.2 states that the use of the subject property "shall not adversely affect the use of the neighboring properties."

21. Subsection 217.3 states that the "amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood."

Usual day-to-day use of the subject property

22. The grounds and gardens of the subject property provide a park-like setting for the neighborhood. The extensive and historically-protected open space on the subject property is an amenity to the community.

23. Visually, the subject property is buffered from the surrounding residential neighborhood by fencing and large mature old growth trees and gardens.

24. Tudor Place is a low-density use and there are approximately 28 on-street parking spaces along its street frontages. The subject property itself can accommodate 40 "stacked" vehicles, and 25 vehicles without resorting to "stacked" parking. *See,* Exhibit No. 117.

25. Tudor Place employs 7 staffpeople. *See,* April 15, 2003 hearing transcript at 102. Therefore, all of the parking needs of the Tudor Place staff can be met on the subject property itself.

26. General tours of the Tudor Place main house are scheduled for one-hour periods at 10:00 a.m., 11:30 a.m., 1:00 p.m., and 2:30 p.m. on Tuesday through Friday, on the hour between 10:00 a.m. and 3:00 p.m. on Saturday, and between noon and 3:00 p.m. on Sunday. Attendance is limited to a maximum of 20 people, but typically totals under 10 people. Each tour usually generates a maximum of five vehicles. *See,* Exhibit No. 117.

27. Reserved tours typically occur during the same time periods as general tours, however attendees usually arrive by bus or van, generating little traffic or demand for parking.

28. Tour buses do not arrive at Tudor Place on a regular basis. One or two buses a week arrive during the busiest months of April, May, September, and October. *See,* April 15, 2003 transcript at 60. When tour buses do arrive, the drivers are not permitted to park on the subject property, but are given specific instructions as to where to park. *Id.* at 64.

29. Food is not served to tour groups, but such groups occasionally bring their own lunches and are permitted to eat on the grounds of the subject property or, in the case of inclement weather, inside Dower House.

30. The Applicant also hosts smaller educational, public service, and fundraising events, including lectures, walking tours, workshops, and children's programs. Attendance at these events is usually between 5 and 50 persons and they are generally scheduled on weekdays in the early evening hours, at 7:00 or 7:30 p.m., and on Saturdays, from 10:00 a.m. to 3:00 p.m. Many of these events are held in Dower House and parking for those attendees who arrive by car is provided on the subject property.

31. During 2002, the Applicant held approximately 35 educational and fundraising functions at Dower House, all of which involved fewer than 50 people.

32. The majority of functions held at Dower House were held during the day on weekdays and on weekends, with a few such functions being held on weekday evenings.

33. Dower House is also used for meetings, including weekly volunteer meetings and quarterly meetings of the Applicant's Board of Trustees and Board of Trustees' committees.

34. The Applicant proposes to use Dower House to house administrative offices of no more than 7 staff members who do not utilize on-street parking.

35. Donor cultivation activities, including occasional serving of lunch or dinner to a small group of from 2 to 24 people, also occur in Dower House. In 2002, the Applicant hosted 2 lunches and 2 dinners. Dower House has the only appropriate air-conditioned space and the only working kitchen on the subject property. The kitchen is not used for regular

or extensive cooking, but rather is used to heat and prepare pre-cooked meals and snacks, to brew tea and coffee, and for the necessary attendant clean-up.

36. The Board credits the Applicant's statement that the Tudor Place main house does not have a working kitchen or a multipurpose heated and air-conditioned room and finds that constraints such as these on the Applicant's use of the main house make the current uses of Dower House important to furthering the purposes of the nonprofit organization.

37. The Board credits the testimony of the Applicant's Director, Ms. Leslie Buhler, that the current and proposed uses of Dower House are necessary in order to minimize the use of the main house for any purpose other than appreciation as a museum.

38. The Board finds that the current and proposed uses of Dower House are customarily incidental and subordinate to those of the main house.

Special events

39. The most significant issues associated with this application -- traffic, parking, and to a lesser extent, noise -- arise only with respect to the special events held on the subject property, particularly those held in the evening.

40. In order to mitigate any possible adverse impacts from Tudor Place activities, particularly special events, the Applicant worked with the community and the affected ANC and came up with a list of 16 conditions restricting its use of the subject property. The conditions address, among other things, noise, traffic, and parking impacts on the neighborhood caused by the Applicant's use of the subject property. The conditions were based on the conditions in Order No. 16477, with certain modifications, and were supported by ANC 2E and OP. *See,* Exhibit No. 48, OP Report, at 9-11.

41. Throughout the course of these proceedings, the 16 conditions were refined and strengthened to further restrict the Applicant's use of the subject property and to include a Vehicle Management Plan.

42. The Board credits DDOT's statement in its second, more detailed report, that the Plan "will minimize impacts to the neighborhood" of Tudor Place. Exhibit No. 124, at 3.

43. A typical 100-guest special event at the subject property will bring approximately 30 to 35 vehicles to the property and a typical special event for 200 to 350 guests will result in approximately 80 to 110 vehicles. A larger special event, for about 500 guests, will result in the arrival of approximately 160 vehicles. *See,* Exhibit No. 109, Attachment.

44. The Board credits the written statement of the Applicant's traffic expert which states that parking and traffic issues will arise only with respect to evening special events with 75 or more attendees and notes that the Vehicle Management Plan requires the use of a valet parking services contractor for all such events. *See,* Exhibit No. 109.

45. The Applicant has, for more than 10 years, engaged the services of a valet parking services contractor to park special events vehicles. There are four parking areas whose owners currently permit valet parking of special events vehicles: the Tudor Place property (driveways and garage), accommodating 40 vehicles, and the parking lot(s) of the Chevy Chase Bank branch at Wisconsin Avenue and Q Streets, N.W., with parking for 16 vehicles, the Jeleff Branch of the Girls and Boys Clubs of Greater Washington at Wisconsin Avenue and S Street, N.W., with parking for 60 vehicles, and the Hardy Middle School at Wisconsin Avenue and 35th Street, N.W., with parking for 50 vehicles. Exhibits No's. 85 & 109.

46. The current valet parking services contractor also has the ability to park special events vehicles in a 175-space parking lot and garage located at 2233 Wisconsin Avenue, N.W., but has not needed to do so in the past. Exhibits No's. 85 & 109.

47. The Applicant has secured written commitments from both the Jeleff Branch of the Boys and Girls Clubs and the Chevy Chase Bank to permit the parking of special events vehicles. The commitment from the Jeleff Branch of the Boys and Girls Clubs does not have a time limit and the commitment from Chevy Chase Bank appears to run from April, 2003 to April, 2004,[3] with automatic one-year extensions unless terminated in writing. Exhibits No's. 85 & 109.

CONCLUSIONS OF LAW

Procedural Issues

Notice with respect to Dower House

The hearing on this application was originally scheduled for February 18, 2003 and three zoning placards, notifying the public of the hearing date, were posted on the main house on January 24, 2003. Exhibit No. 38. Due to a snow emergency, the hearing was not held on the scheduled date, but was re-scheduled to April 15, 2003. Seven zoning placards were posted on the main house on March 31, 2003, notifying the public of the new hearing date, at least two of which referred to both the address of the main house and that of Dower House. Exhibit No. 58. The March 31st posting was more than 15 days in advance of the hearing, as required by § 3113.14. Dower House, however, was not separately posted until April 2, 2003, less than 15 days in advance of the hearing. Exhibit No. 59. Dower House, therefore, was arguably not posted as required by § 3113.14 and one opposition party moved to dismiss the application on this ground. Exhibit No. 72.

The Board concludes that even if Dower House were not posted at least 15 days before the hearing, that requirement may be waived. Section 3100.5 of the zoning regulations permits the Board, for good cause shown, to waive all but a few of its procedural regulations if the waiver

[3]The license agreement with Chevy Chase Bank states that the agreement runs from "April 22, 2003" until "April 30, 2003," only 8 days, but then goes on to state that the term "shall be automatically extended for successive one-year periods." The unreasonably short 8-day duration of the license and the latter language lead the Board to conclude that the date "April 30, 2003" is in error, and should read "April 30, 2004."

does not prejudice any party and is not contrary to law. Section 3113.14 can be waived and should be with respect to Dower House.

Although the Applicant did not at first separately post Dower House, at least two of the zoning placards placed on the main house on March 31, 2003, stated the address of Dower House as well as the address of the main house. The fact that both addresses were referenced on the placards may have served to afford notice as to both. More importantly, however, Dower House was separately posted for 13 of the required 15 days, and the Applicant, at the direction of the Board, left the zoning placards in place on Dower House until April 22, 2003, to make up for the possible 2-day defect in notice. There were several hearing dates on this application, all on or after April 22, 2003, and it would have been easily possible for an interested person to fully participate in these proceedings after that date. With the 20 days' worth of notice actually given and the other notice safeguards in place, including the mailing of notice to all property owners within 200 feet of the subject property, publication of the hearing notice in the *D.C. Register*, notification of the ANC, and finally, the posting of the hearing notice at the Office of Zoning and on its website, the Board concludes that waiving the 15-day notice requirement with respect to Dower House will not prejudice the rights of any party nor be contrary to law.

Out-of-date lot numbers

Until 2000, the Tudor Place main house and Dower House were on two different tax lots, numbers 827 and 830. In 2000, these two tax lots were combined into a single tax lot, number 835. The application and its advertisements erroneously named the two previously existing lot numbers, 827 and 830. A party opponent filed a Motion to Dismiss based on this error, but the Board denied the Motion, concluding that the error did not cause any misunderstanding or prejudice and did not alter the material facts of the case.

The Merits of the Special Exception

The Board is authorized to grant a special exception where, in its judgment, the special exception 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." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104.1 and § 217 of the zoning regulations. Although the opposition argues that §§ 200 and 201 of the zoning regulations also apply here, this idea was conclusively rejected by the Court of Appeals in *Georgetown Residents Alliance,* which agreed with the Board that these sections "are merely precatory and do not contain the standards by which the ... application should be judged." *Id.* at 364, n. 6. As this issue has been decided by the Court, the Board will not, indeed is precluded from, re-examining it. *See, Rhema Christian Center v. District of Columbia Board of Zoning Adjustment,* 515 A.2d 189, 193 (D.C. 1986). (Issue preclusion "prevents the same parties[4] from relitigating an issue actually decided in a previous final adjudication whether on the same or a different claim.")

[4]In this regard, the Board notes that Mr. Snider, Mr. Crockett, and Mr. Katz, leaders of the Opposition Parties in this proceeding, all testified on behalf of the opposition party in the last Board proceeding, the Georgetown Residents

Subsection 217.1 -- use of historic property by a nonprofit organization

Section 217 sets forth the specific requirements that the Applicant must meet. Subsection 217.1 permits the use of existing residential buildings by a nonprofit organization for the purposes of the organization if the buildings are either listed on the District of Columbia's Inventory of Historic Sites or are located within a district which is so listed (§ 217.1(a)) and if the gross floor area of the building in question is 10,000 square feet or more (§ 217.1(b)). The Applicant is a nonprofit organization using the Tudor Place main house and Dower House for the purposes of the organization. The subject property, including both the main house and Dower House, is located within a district listed on the District of Columbia's Inventory of Historic Sites. The first prong of § 217.1 is met.

With regard to the second prong, the Tudor Place main house has a square footage of over 10,000 square feet, but Dower House does not. The opposition contends that Dower House must also have an area of at least 10,000 square feet to satisfy § 217.1(b). *See, e.g.,* Exhibit No. 96, at 4-5. The Board disagrees. The regulation clearly contemplates that a site may contain more than one building and states that "the building in question, not including other buildings on the lot" must have an area of at least 10,000 square feet. The Board concludes that under § 217.1(b), only the main house, not every building on the subject property or every building associated with the principal use, must meet the 10,000 square foot threshold. The main house contains the principal museum use and is the "building in question" for purposes of § 217.1(b).. Dower House contains only uses accessory to the principal museum use and is "another building on the lot" for purposes of § 217.1(b). The area requirement does not apply to it pursuant to the plain wording of the regulation. The Board advanced this same interpretation of § 217.1(b) in Order No. 16477 (at 9), and the Court referred to it without comment in *Georgetown Residents Alliance (at 366).*

Subsections 217.2 and 217.3 -- impacts on the surrounding neighborhood

Subsections 217.2 and 217.3 both deal with potential objectionable impacts on the area surrounding the subject property. Subsection 217.2 mandates that the Applicant's use of the property shall not adversely affect the use of neighboring properties. Similarly, § 217.3 mandates that the amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood. The usual day-to-day use of the subject property has limited parking needs and neighborhood impacts. Special events held at the property have significantly greater parking needs and neighborhood impacts. Therefore, the two categories of use will be discussed separately.

1. Usual day-to-day use

The Applicant's usual day-to-day use of the subject property does not run afoul of either § 217.2 or § 217.3. Tudor Place employs 7 staff people, for whom daily parking is provided on the

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Alliance. Further, Messrs. Crockett and Snider represented the Georgetown Residents Alliance in its appeal of Order No. 16477 to the Court of Appeals.

subject property. General daytime tours are limited to 20 people and usually generate a maximum of 5 vehicles. Reserved tours usually arrive by bus, but only one or two buses arrive even during the busiest months, and tour bus drivers are directed to park elsewhere. Small fundraisers, workshops, lectures, and children's programs are also held on the subject property, and parking for attendees who arrive by car is provided on the property. None of these activities cause any adverse impacts with regard to traffic, parking, noise, lighting, or the like.

Subsection 217.3 requires that the amount and arrangement of parking spaces be adequate and located to minimize traffic impact on the adjacent neighborhood. The subject property provides 25 un-stacked parking spaces. With 7 taken by staff, 18 are left for visitors. As general tours of Tudor Place are limited to 20 persons, these 18 spaces are adequate parking for everyday use, and, because they are on the subject property, traffic impact on the adjacent neighborhood is minimized. After discharging passengers, reserved tour buses are directed elsewhere to park, neither taking up neighborhood parking nor causing any particular traffic impact on the neighborhood. Further, due to the extensive street frontage of the subject property and its low density use, parking spaces along its 3 perimeter streets are also available for the use of neighbors.

The opposition does not dispute that the Applicant's usual day-to-day use of the subject property does not adversely affect neighboring properties. Indeed, the "Final Submission of the Q Street Parties" states:

> 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 (sic) that must be strictly controlled as provided in the prior orders, these daytime tours have not generally disturbed the peace and quite (sic) 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....

Exhibit No. 143, at 3. This sentiment is echoed in a letter to the editor of the *Georgetown Current* written by Mr. Ronald Snider, the leader of the "31st Street Neighbors" opposition party. *See,* Exhibit No. 127, Attachment No. 2. The Board concludes that the usual day-to-day use of the subject property satisfies both the no adverse effects requirement of § 217.2 and the adequate parking requirement of § 217.3.

2. Special events

Special events held by the Applicant on the subject property, particularly those held in the evening, fall outside the ambit of usual day-to-day use, and unrestricted, have the potential to cause adverse impacts on the neighboring properties and traffic impacts on the adjacent neighborhood. The special events held by the Applicant are not, however, unrestricted. They have been controlled by specific and detailed conditions since the inception of the special exception in 1988, which will be continued by this Order. *See,* Orders Nos. 14729, 15744, and 16477.

a. Adverse impacts

These conditions have been refined and strengthened over the years and are specifically targeted at special events to reduce any possible adverse effects on the neighborhood. The conditions limit the hours of operation of the subject property and the operation itself, for both daily use and special event use. They restrict the occurrence and timing of special events for various numbers of attendees. They address concerns of noise from special events and related clean up. They also address the issues of communication with, and notice to, the community, particularly with respect to special events. The conditions include a comprehensive Vehicle Management Plan proffered by the Applicant specifically addressing parking and traffic issues which may arise due to special events. With these conditions in place and adhered to by the Applicant, the Board concludes, pursuant to § 217.2, that the use of the subject property for special events will not adversely impact the use of neighboring properties.

b. Adequacy of parking

With respect to § 217.3 and special event parking, the Applicant, for more than 10 years, has engaged a valet parking services contractor to valet park special events vehicles on-site and at three off-site locations which it has permission to use. The valet parking staff can stack 40 vehicles on the subject property and the three off-site locations can accommodate, cumulatively, approximately 126 vehicles. The current contractor also has the ability to park special events vehicles in a 175-space lot and garage in the area. This amount of parking is adequate given that a 500-person special event, the maximum permitted, will generate approximately 160 vehicles. Such a valet system minimizes traffic impact on the adjacent neighborhood by eliminating, or greatly reducing the number of, vehicles hunting for parking spaces within the neighborhood.

Further, the Applicant's traffic expert noted that parking and traffic issues would first arise with respect to functions for at least 75 persons, and mainly in the evening. The Vehicle Management Plan therefore requires the use of valet parking for all special events of at least 75 attendees. For special events of at least 200 people, the Applicant will direct attendees to park at satellite lots and will provide a shuttle bus from these lots to the subject property. The shuttle bus system further minimizes traffic impacts on the neighborhood by eliminating the need for valet attendants to move vehicles from the subject property to the satellite lots. The valet parking provisions, in conjunction with the other provisions of the Vehicle Management Plan, and the conditions restricting Applicant's use of the subject property, ensure adequate parking for special events and minimize traffic impacts to the neighborhood. The Board therefore concludes that the use of the subject property for special events satisfies § 217.3.

Subsection 217.4 -- restricted commercial activity

Pursuant to § 217.4, the Board concludes that there will be no goods, chattel, wares or merchandise commercially created, exchanged or sold at Tudor Place except for the sale of publications, materials, or other items related to the purpose of the nonprofit organization, which are sold in the small museum shop in the Tudor Place main house. Special events do not result in any commercial creation, exchange, or sale of merchandise. The Board concludes that the special events held by the Applicant are not commercial in nature and do not result in a

prohibited commercial use of the subject property. They are accessory to the museum use and important to its financial viability. As stated in Order No. 16477, the use of house museums as venues for special events is a common practice in the District of Columbia and accordingly, is customarily incidental and subordinate to the principal use. This interpretation of § 217.4 was upheld in *Georgetown Residents Alliance* and the Board will not re-visit it here. *See, Rhema Christian Center, supra.*

The last subsection of § 217, § 217.5, applies only if an applicant plans an addition or a major modification to the exterior of its historic building, and so is not applicable here.

Section 3104 -- harmony with zoning regulations and zoning maps

As a special exception, the Applicant's use of the subject property is deemed compatible with its R-1-B zone district. Even so, there was opposition to the use. The Board has considered the opposition and has balanced the benefits to the community of the Applicant's use with the impacts of the special events, as ameliorated by the agreed-upon conditions. The Board concludes that "a reasonable accommodation has been made between the Applicant and the neighbors, which does not interfere with the 'legitimate interests' of the latter." *Georgetown Residents Alliance,* at 363, (quoting *Glenbrook Road Ass'n. v. District of Columbia Board of Zoning Adjustment,* 605 A.2d 22, 32 (D.C. 1992). Therefore, the Board concludes that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as required by § 3104.1

Issues Particular to Dower House

Dower House need not be on the same record lot as the main house to serve as an accessory use.

The opposition claims that Dower House cannot be used for uses accessory to the main house because, notwithstanding its location on the same tax lot as the main house, it is arguably not on the same "real property lot" as the main house. Exhibit No. 97, at 7. The definition of "accessory use" states that such a use must be located on the same "lot" as the principal use. The definition does not state that the accessory use must be located on the same "record lot" as the principal use. A "lot" and a "record lot" are not the same thing. A "lot" "may or may not be" a "record lot." *See,* definition of "lot" in 11 DCMR § 199.1. When the Zoning Regulations mean "record lot," they so specify. *See, e.g.,* 11 DCMR § 3202.3. .

The opposition's argument was previously rejected by the Board in Order No. 16477, which quotes the definition of "lot" in the Zoning Regulations and states that the term "lot" includes assessment and taxation lots. Order No. 16477, at 9. In *Georgetown Residents Alliance,* the Court agreed with the Board's interpretation and stated: "while Dower House, an adjacent property, must be located on the same 'lot' as the principal property, it need not be located on the same 'lot of record.' The BZA did not exceed its authority by extending the special exception to the adjacent Dower House." 802 A.2d at 366.

Because the Court stated that the Board's interpretation was within its authority, but not required, at least one opposition party urges the Board to change its interpretation of "lot" so as not to

include "tax lot," thereby precluding the accessory use of Dower House. *See,* Exhibit No. 143, at n. 1. The Board declines to do so and concludes that Dower House is on the same lot as the Tudor Place main house as that term is meant in the definition of accessory use.

The current and proposed uses of Dower House are appropriate accessory uses.

The opposition argues that the Applicant's current and proposed uses of Dower House are not appropriate accessory uses to those of the main house. The Board disagrees. Dower House is used for donor cultivation activities, volunteer and Board of Trustees' meetings, and small educational and fundraising functions, such as lectures and workshops. One way nonprofit organizations raise funds is through cultivating donors. The volunteers and Board of Trustees of a nonprofit organization need an appropriate place to meet. Both of these uses are customarily incidental and subordinate to the Applicant's nonprofit use of the main house as a museum. One of the purposes of the Tudor Place house museum, indeed of any museum, is to educate the public. The offering of lectures and workshops furthers this purpose and is customarily incidental and subordinate to the nonprofit museum use.

The Applicant is also proposing a new use for Dower House -- the location of administrative offices for no more than 7 staff members who do not use on-street parking. A nonprofit organization or museum needs offices for its support staff. From these offices, support personnel conduct the "business end" of such a museum use. Mr. Peter's will envisioned Dower House as the "eventual administrative headquarters of Tudor Place." *See,* Exhibit No. 92B, at 11. Clearly, administrative office use is customarily incidental and subordinate to the principal museum use.

Whether Dower House is am Accessory Building is Irrelevant to the Board's Consideration of this Special Exception Application.

The opposition contends that Dower House cannot be an accessory building because it is more than 15 feet high, is not located in the rear yard, and has, in the past, been used as a single-family dwelling.. *See,* 11 DCMR §§ 2500 and 2500.2. It is not clear why this question is of any importance. Even if Dower House were a principal building it could still serve as a location for accessory uses, provided all other prerequisites were met.

Assuming that the opposition is correct, and that Dower House is in noncompliance with the Zoning Regulations, the most that can be said is that the applicant will need variance relief. That fact alone does not require the Board to deny a special exception. This application was self certified. The applicant did not, at any time, seek any variance relief. Thus, the grant of special exception relief by this Board only resolves issues of use. DCRA must still ascertain Dower House's compliance with all other applicable Zoning requirements before it may issue a new certificate of occupancy. The Board shares no similar responsibility[5]. Our inquiry is limited to the narrow question of whether the Applicant met its burden under the general and specific special exception criteria that apply to the requested use. Having concluded that it has done so,

[5] In rare circumstances, not present here, the Board, in its discretion, may require an applicant to seek needed variance relief along with special exception.

the Board must grant the application. *See, Georgetown Residents Alliance,* at 363, n.4, and cases cited therein.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 2E supported the application for a period of five years, but proposed no other conditions. The Board agrees with the ANC's recommendation of a five-year period for the special exception. OP also recommended approval of the application, subject to the 16 conditions proposed by the Applicant. The Board agrees with OP's recommendation and agrees, in substance, with the conditions proposed.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to continue the operation of a museum by a nonprofit organization, pursuant to 11 DCMR §§ 3104 and 217, which was last approved by the Board in Order No. 16477, dated January 14, 2000. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS.**[6]

For the purposes of these conditions, the definition of "special event" is any single function or program on the subject property at which 50 or more attendees are expected. The definition of "special event" does not include any regularly scheduled tours of the subject property occurring during the hours of 9:00 a.m. and 4:30 p.m., Monday through Saturday, and between 12:00 noon and 4:30 Sunday, including group tours for 50 or more attendees.

Also for the purposes of these conditions, the number of attendees of any use of Dower House (excluding the number of the Applicant's staff whose offices are located in Dower House) shall be added to the number of attendees of any use of the main house taking place at the same time, in order to determine whether the total number of attendees reaches the threshold number at which valet parking and/or shuttle bus service must be provided, as set forth in Conditions No's. 9(b) and 9(c). If such threshold number is reached, Conditions 9(b) and 9(c) must be implemented, regardless of whether or not a "special event" is involved.

1. Approval shall be for five years from the effective date of this order.

2. 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

[6]The Board has eliminated the distinction between rental and non-rental events in the Applicant's proffered conditions. It appears that this distinction was made because of a greater financial incentive for the Applicant to host rental events, but from a zoning standpoint, adverse impacts on the neighborhood, if any, would not differ based on whether an event was a rental or non-rental event.

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. Not less than 30 days in advance of Liaison Committee meetings, notice of such meetings shall be (i) posted on the subject property, (ii) mailed or delivered to all households within 200 feet of the subject property, and (iii) published on the Applicant's website.

3. The number of regularly scheduled tours shall not exceed ten per day. Non-group tours shall be limited to a maximum of twenty persons. Admission for group tours shall be by appointment only.

4. The hours of operation for tours shall be limited to between 9:00 a.m. and 4:30 p.m., Monday through Saturday, and 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.

5. The Applicant shall instruct the drivers of all buses and vans, which pick up and/or drop off passengers at the subject property, not to idle the engines of their vehicles longer than is necessary to allow passengers to embark or disembark. Buses bringing passengers to the subject property shall park in legal bus parking areas within the District of Columbia. There shall be no bus parking on the subject property.

6. Special events at the subject property shall be limited to a maximum of 500 attendees at any one event.

7. The number of special events involving 200 to 500 attendees at the subject property shall be limited to 6 per year, with no more than one such event taking place at the property in any one calendar month. The number of special events involving 100 to 199 attendees shall be limited to 10 per year, and those involving 50 to 99 attendees shall be limited to 15 per year. In no event, shall functions or special events for the purpose of weddings and/or wedding receptions be permitted for more than 75 attendees.

8. All functions, including special events, taking place at the main house, shall end no later than 10:30 p.m. All functions taking place at Dower House shall end no later than 10:00 p.m.

9. The Applicant shall minimize traffic and noise impacts by employing the following measures:

   (a) (i) Provide advance information to attendees of regularly scheduled tours regarding parking on the subject property, (ii) Provide advance information to attendees of special events regarding applicable parking policies as set forth in these Conditions, (iii) Provide advance information

to bus companies and bus drivers of scheduled group tours, regarding parking/idling policies as set forth in these Conditions, (iv) Provide monitoring and oversight of visitor arrival modes and parking patterns, (v) Hold semi-annual discussions with DDOT Policy and Planning Staff, ANC 2-E and Liaison Committee to review parking and traffic issues and concerns, and take appropriate corrective measures, as necessary; (vi) Provide notification to, and coordinate with, other area institutions to avoid scheduling of simultaneous special events; and (vii) Maximize the use of the rear entrance to the subject property on 32nd Street for service and related functions.

(b) For Special Events Involving 75 to 200 Persons: (i) Provide valet parking service using satellite lots for parking and using the Chevy Chase Bank lot (at Wisconsin Avenue and Q Street) for stacking of vehicles as necessary during peak arrival times (with the Tudor Place driveway serving as a backup location if necessary); (ii) Provide reasonable prior notice to DDOT Policy and Planning Administration Staff, ANC 2-E and the District of Columbia Emergency Management Agency regarding event for monitoring and feedback; and (iii) Request from Emergency Management Agency or other appropriate authorities emergency parking restriction within a 4 to 6 vehicle space area adjacent to the 31st Street entrance to the main house.

(c) For Special Events Involving More than 200 Persons: Same measures as in Paragraph b, except that (i) Instead of items (i) and (iii) described in Paragraph b, provide attendees with advance instructions to bring vehicles directly to a satellite parking location from which the Applicant will arrange for shuttle bus service to the subject property and (ii) The Applicant will work with DDOT and/or other appropriate authorities to arrange for one or two uniformed personnel to help direct traffic and parking during the event.

10. The Applicant shall notify affected area residents not less than 60 days in advance of any scheduled special events of 75 or more attendees by mailing or delivering a calendar of such events to all households within 200 feet of the subject property.

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 usual day-to-day operation of the subject property.

12. For each special event, the Applicant shall designate a "Tudor Place Duty Officer" to be in charge of that special event. The Tudor Place Duty Officer will be responsible for addressing any issues and concerns raised by neighbors with respect to that special event and for handling any problems that may arise during the course of that special event. The staff member appointed as a community liaison person pursuant to Condition No. 11 may also serve as the Tudor Place Duty Officer for a particular special event.

13. No amplified music or amplified voices shall be permitted on the grounds of the subject property, including during any outdoor function or special event. During an indoor function or special event, amplified music or voices are permitted indoors with all doors and windows closed. The Applicant shall adhere to the District of Columbia noise regulations.

14. Following a function or special event at the main house that ends at 10:30 p.m., or a function at Dower House that ends at 10:00 p.m., there shall be no noisy clean-up that night. All noisy clean-up shall be done the next morning, but not commencing earlier than 7:30 a.m.

15. In addition to matter-of-right uses, Dower House may be used for purposes accessory to the nonprofit museum use of Tudor Place. These uses shall be limited to:

    (1) a location for the following functions and programs involving not more than 49 people: (a) administrative functions (including Board of Trustees' meetings, volunteer meetings, etc.), (b) educational programs (lectures, workshops, etc.), (c) small fundraising functions, including donor cultivation activities involving the heating and serving of food, but not involving heavy cooking; and

    (2) a location for offices for not more than 7 members of the Tudor Place staff who do not utilize on-street parking.

16. Substantial action shall be taken by the Applicant to improve the management and efficiency of the delivery and pick up of goods and services at the 32nd Street entrance to the subject property prior to returning to the Board for any further review of the special exception.

VOTE: **4-0-1** (Geoffrey H. Griffis, David A. Zaidain, Curtis L. Etherly, and Zoning Commission Member Carol J. Mitten, to grant, the fifth member not sitting, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each voting Board member has approved the issuance of this Order granting the application.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 2 9 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §

3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16974

As Director of the Office of Zoning, I hereby certify and attest that on JUL 2 9 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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32nd Street Neighbors
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Washington, D.C. 20007

Q Street Neighbors
c/o Don Crockett
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rsn

ATTESTED BY:

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