GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16974-A 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

DATE OF DECISION ON RECONSIDERATION: October 5, 2004

ORDER ON RECONSIDERATION

On August 13, 2004, Applicant Tudor Place Foundation, Inc. ("Applicant") moved for reconsideration of the Board of Zoning Adjustment's ("Board") July 29, 2004 Order ("Order") granting the Applicant's request for special exception relief. *See,* § 3126 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The Applicant did not request reconsideration of the granting of the relief, but requested changes to the language of three of the conditions imposed on it by the Order. Because the Applicant's Motion for Reconsideration ("Motion") was one day late, the Applicant filed a request for waiver of the 10-day filing requirement of 11 DCMR § 3126.2 on September 13, 2004.[1]

On August 20, 2004, one of the opposition parties, the "Q Street Parties," filed an opposition to the Applicant's Motion for Reconsideration. *See,* 11 DCMR § 3126.5. On August 27, 2004, in response to the opposition filed by the Q Street Parties, the Applicant filed a statement by the Applicant's Executive Director ("Statement"), which allegedly "corrected" and "clarified" certain statements by the opposition. On October 5, 2004, the Board granted the Applicant's waiver request and deliberated on the merits of the reconsideration.

In its Motion for Reconsideration, the Applicant requested that the Board reconsider the wording of three paragraphs of Condition No. 9 in the Order. The Applicant first

[1] Also filed with the Board were a declaration filed on behalf of another opposition party, the 31st Street Parties, purporting to submit new evidence concerning the Applicant's May 19, 2004 Annual Garden Party. To rebut this declaration, the Applicant filed a letter from the valet parking services company it used for the Garden Party. As neither of these documents were part of the pleadings on reconsideration and both were received after the closing of the record in this case, the Board did not consider them.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 16974-A
EXHIBIT NO. 154

Board of Zoning Adjustment
District of Columbia
CASE NO. 16974
EXHIBIT NO. 154

requested that the Board modify paragraphs 9(b) and 9(c) of the conditions to make clear that valet parking and/or shuttle bus requirements apply only to "evening" special events. The Applicant next requested that the Board modify subparagraph 9(c)(i) of the conditions to exclude the Annual Garden Party from the shuttle bus requirement imposed on special events involving more than 200 people. Thirdly, the Applicant requested that the Board delete the phrase "on the subject property" from subparagraph 9(a)(i), which requires the Applicant to provide advance parking information to tour attendees. After discussing each request for modification, the Board, on October 5, 2004, denied the Applicant's first two requests and granted the third. Each of the Applicant's requested wording modifications is discussed below.

Request for modification of paragraphs 9(b) and 9(c) of Condition No. 9[2] to make valet parking and/or shuttle bus requirements applicable only to "evening" special events.

Paragraph 9(b) requires the Applicant to do several things when it holds a special event involving 75 to 200 persons, but the one of greatest relevance here is the requirement that valet parking be provided for such special events. Paragraph 9(b), as now written, makes no distinction between special events held during the day and those held in the "evening." The Applicant, however, asks the Board to make paragraph 9(b) applicable only to evening special events.

Paragraph 9(c) similarly imposes certain requirements on the Applicant when it holds special events involving more than 200 persons. The one of greatest relevance here is the requirement that the Applicant instruct attendees to bring their vehicles directly to a satellite parking location from which the Applicant will arrange for shuttle bus service to the subject property. Again, the Applicant asks the Board to make paragraph 9(c) applicable only to evening special events.

The Board, in granting the Applicant's special exception, had to determine whether the special exception use would be likely to cause adverse impacts on neighboring properties.

---

[2]Paragraphs 9(b) and 9(c) are here set forth in their entirety:

9(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 vehicles as necessary during peak arrival times (with 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.

9(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.

11 DCMR §§ 217.2 and 3104.1. Of special concern under § 217 is the adequacy and location of the parking spaces provided in order to "minimize traffic impact on the adjacent neighborhood." 11 DCMR § 217.3. If adverse impacts are likely, the Board can condition the special exception use to mitigate those impacts.

Both paragraphs 9(b) and 9(c) are drafted as they are to mitigate the adverse impacts on the neighborhood, particularly traffic impacts, potentially caused by the Applicant's hosting of large special events. The magnitude of the impact hinges more on the number of attendees and the number of vehicles involved than on the timing of the event. It is not clear from the record that large daytime special events, particularly on weekends, would have a dramatically reduced adverse impact than large evening special events.[3] Therefore, the Board sees no reason to limit the valet parking and/or shuttle bus requirements to only evening special events. Although the Applicant's proffered Vehicle Management Plan and the conditions in its Proposed Findings of Fact and Conclusions of Law specify "evening" special events, the Board is not persuaded that the use of valet parking and shuttle bus services should be so limited.

Further, there is no evidence in the record defining "evening." In the absence of a specific time delineation, the Board is loath to have one set of requirements for daytime events and a different set for evening events. With no clear demarcation between daytime and evening, it would be impossible to determine which set of requirements would apply to an event that, for example, began at 3:00 p.m. and ended at 7:00 p.m.

The Applicant states that the imposition of the valet parking and/or shuttle bus requirement on both daytime and evening special events will impose an unanticipated financial burden on it. The Applicant's use, however, is not a matter-of-right use. It may only be allowed if the Board finds that it will not cause adverse impacts or that such impacts can be mitigated. Without the mitigation provided by the use of valet parking and/or shuttle bus services, the adverse impacts caused by the hosting of large special events, whether in the daytime or in the evening, would be too much of a burden on the neighborhood. The Board is sympathetic to the Applicant's situation, but by choosing to host large special events, the Applicant, to some extent, imposes this financial burden on itself. The Board's duty under the Zoning Regulations is to mitigate adverse impacts on the community. This mitigation is achieved by requiring valet parking and/or shuttle bus service whenever the number of persons involved in a special event reaches a certain level, whether that event occurs in the daytime or in the evening.

Request for modification of subparagraph 9(c)(i) of Condition No. 9 to exempt Annual Garden Party from shuttle bus requirement.

---

[3] *See, e.g.*, Exhibits Nos. 45, 113, 129, 130, 131, and 143; and the April 15, 2003 hearing transcript at 88, lines 5-9, the April 29, 2003 hearing transcript at 113-115, lines 20-25, 1-25, & 1-10, and the September 16, 2003 hearing transcript at 144-145, lines 23-25 & 1-21.

Paragraph 9(c), subparagraph (i), requires the Applicant to provide attendees of a special event involving more than 200 persons with advance instructions to bring their vehicles to a satellite parking location from which the Applicant will arrange for shuttle bus service to the subject property. The reason for this condition is self-evident – even if only half of the minimum 201 attendees brought their cars to the subject property, the property and the neighborhood would need to accommodate parking for 100 vehicles, likely for several hours. In order to mitigate the adverse impacts on the neighborhood caused by such a scenario, subparagraph 9(c)(i) imposes the shuttle bus requirement on all special events involving more than 200 persons. The Applicant, however, argues that this requirement should not be imposed on its Annual Garden Party, an event which, according to the Applicant, usually attracts a crowd of between 400 and 500 people. *See, e.g.,* Motion at 2, Statement at 2, and April 15, 2003 hearing transcript at 74-75, lines 24-25 & 1.

To support this argument, the Applicant makes much of the fact that approximately 50% of the attendees of the Garden Party are "from the Georgetown area." The implication is that because these attendees are from "the Georgetown area," they walk to the Garden Party. *See, e.g.,* Motion at 2 and colloquy in April 15, 2003 hearing transcript at 93-94, lines 25 & 1-7. The Applicant does not, however, define what "the Georgetown area" is, nor does it indicate what percentage of those from this "area" actually walk, rather than drive, to the Garden Party. Even if it did indicate this percentage, however, whether shuttle bus service is required by Condition No. 9 depends not on the estimated number of attendees who are walking (or driving), but on the total number of attendees. The Applicant's Executive Director, in her August 27, 2004 Statement, points out that 235 of the attendees of the 2004 Spring Garden Party are "residents of the 20007 zip code." This, of course, means that 265 of the attendees are not residents of this zip code. Even if 235 people walk to the event, 265 may well not, and the number of people in the non-walking part of the population of attendees alone is sufficient to trigger the shuttle bus requirement, which kicks in at more than 200 persons.

The Applicant, in its Motion, states that there is evidence in the record concerning the lack of impacts associated with the Annual Garden Party, but fails to cite this evidence. The Garden Party is a large special event which, like any other such event, may have adverse impacts on the surrounding neighborhood. The Board is not persuaded that the impacts of the Garden Party on the neighborhood are reduced because its nature attracts visits at widely varying visitation times. Merely because people come and go throughout the duration of an event does not ensure that there will be sufficient parking available without causing adverse impacts on the neighboring streets. In fact, such coming and going may create more overlap in the number of vehicles arriving and parked at any one time than might occur otherwise.

The Annual Garden Party is a special event for more than 200 people that necessitates shuttle bus service. The Applicant's proffered Vehicle Management Plan may exempt

the Garden Party from this requirement, but the conditions listed in its Proposed Findings of Fact and Conclusions of Law do not. *See,* Exhibit No. 145, at 19-22. The Board concludes that the shuttle bus requirement must remain intact with respect to the Garden Party in order to mitigate potential adverse impacts on the neighborhood, as required by §§ 217.2, 217.3, and 3104.1.

Request for modification of subparagraph 9(a)(i) of Condition No. 9 to delete "on the subject property" when providing parking information to tour attendees.

Subparagraph (a)(i) of Condition No. 9 states that "[t]he 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." The Board concludes that deleting the phrase "on the subject property" from the quoted language will not impair the efficacy of Condition No. 9, nor cause any increase in potential adverse impacts on the neighborhood. If the phrase is removed, paragraph 9(a)(i) will still require the Applicant to provide advance information to tour attendees regarding all available parking.

While the Board agrees with the Applicant that the phrase in question is potentially misleading, the Board points out that the evidence presented was equally misleading. The Applicant's traffic expert, at least three times in the record, makes statements that the subject property could "readily' or "easily" accommodate 25 vehicles without resorting to stacked parking, and that the property could accommodate up to 40 stacked vehicles. *See,* Exhibit No. 109 at 7, and Exhibit No. 117 at 1 & 2. It was not clear in the record that any area available to "accommodate" parking was only available in certain limited circumstances, as Applicant now claims in its Motion. *See,* Motion, bottom of page 2. Nor was it clear in the record that, although the subject property could "accommodate" parking, no parking was actually "provided." *See, e.g.,* April 15, 2003 hearing transcript at 61, lines 3-5, and at 91, lines 9-24; September 16, 2003 hearing transcript at 142-143, lines 18-25 & 1-19. *Also see,* Exhibit No. 124, DDOT memorandum, at 2, which states: "For events between 50 and 100 persons, the applicant has stated that cars will be parked on the Tudor Place property as well as along public streets."

For all of the above reasons, it is hereby **ORDERED** that Tudor Place Foundation, Inc's. Motion for Reconsideration is **DENIED** with respect to its request for modification of paragraphs (b) and (c) of Condition No. 9 to apply only to evening special events, and with respect to its request to modify subparagraph 9(c)(i) of Condition No. 9 to exempt the Annual Garden Party from the shuttle bus requirement, and is **GRANTED** with respect to its request to modify subparagraph 9(a)(i) of Condition No. 9 to delete the phrase "on the subject property."

VOTE: **3-0-2** (Curtis L. Etherly, David A. Zaidain, and Geoffrey H.Griffis, to deny in part and

grant in part. One Board member not participating and the Zoning Commission member not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

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

FINAL DATE OF ORDER: DEC 30 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

BZA APPLICATION NO. 16974-A Motion on Reconsideration

As Director of the Office of Zoning, I hereby certify and attest that on DEC 3 0 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:

Gordon C. Wilson, Esq.
Eric Von Salzen, Esq.
Hogan & Hartson LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109

31st Street Neighbors
c/o Ronald R. Snider
1607 31st Street, N.W.
Washington, D.C. 20007

32nd Street Neighbors
c/o Norton Katz
1671 32nd Street, N.W.
Washington, D.C. 20007

Q Street Neighbors
c/o Don Crockett
3070 Q Street, N.W.
Washington, D.C. 20007

Chairperson
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

Commissioner 2E07
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106
Washington, D.C. 20004

Toye Bello, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY: Jerrily Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning