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: Feb.18, 2003
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OPPOSING STATEMENT OF DON W. CROCKETT

I. Background.

For the past thirty years, I have lived across the street from Tudor Place at 3070 Q Street, N.W. When I purchased my home in 1973, the Peter family still resided at Tudor Place. Mr. Peter had previously granted a scenic easement to the United States which froze both the house and its grounds in time and precluded any and all future development.[1] In 1983, Mr. Peter executed a Will giving further particulars for the future use of Tudor Place:

> I request particularly that 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 ¶ 15, (emphasis in original). To effectuate his wishes, Mr. Peter established the Tudor Place Foundation and funded it with a generous endowment valued at more than $8.6 million in 1998. Mr. Peter also specified that:

> In opening Tudor Place to the public, an entrance fee should be charged for the garden with an additional fee for the house, if it is found necessary to open the house in this way. I am in hopes, however that it will be possible to employ the house on a more restricted basis with entry allowed on written request only. 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.

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[1]Similar scenic easements have been granted by hundreds of homeowners in Georgetown in order to insure that the historic fabric of this unique community will not be destroyed.

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Peter Will Article Nine ¶ 10. Due to Mr. Peter's generosity, residents now enjoy the beautiful views of Tudor Place residence and its gardens rather than having the land along Q Street filled-in with new townhouses.

After Mr. Peter's death in 1983, the Foundation made good faith attempts to honor Mr. Peter's directions during the first special exception which ran from 1988 to 1993. During that initial period, the Foundation created an excellent tour program **with staff of five**. It was able to do this with the $400,000 it receives from its endowment and the funds it receives from tourists and contributors.

During the second five-year exception (1994-1999), however, the Foundation veered off course. It decided to expand its operations and doubled its staff. It hired an "artist in residence," an events director, an archivist, and an education director.

To pay the salaries for these new activities, it started renting Tudor Place **on a commercial basis** for large private parties and wedding receptions. When those events took place, the neighborhood was suddenly inundated with hundreds of cars searching for scarce parking places and large bands (both rock and "big band" style) pumped unwanted music into dozens of surrounding homes. I could not watch a television movie, much less sleep, because the sounds from swing bands and the voices of the celebrants easily penetrated my living room. [Tudor Place now claims that it will not allow "amplified" music at its events. This is no help to me or other nearby neighbors because the horns, drums, and piano's of a swing band are not amplified.]

When the affected residents ultimately looked into the matter, we learned that the Foundation had gone into direct competition with the numerous hotels, resorts and restaurants in the Metropolitan Area for the wedding reception and corporate party business and advertised on its website:

> **RENTAL OF THE PROPERTY FOR EVENTS**
> **Tudor Place** is a spectacular setting for elegant parties and corporate events. The South Lawn is most suitable for larger events, while the intimate garden rooms in the North Garden are perfect for small functions. Docents are stationed though out the first floor

> of the House to welcome guests, protect the collection and answer any question. Guests are encouraged to explore both the House and Garden.

After Mr. Peter's wife died in 1995, the Foundation acquired the single family home at 1670 31st Street, converted it into an auxiliary site for smaller commercial events, and advertised as follows.:

> If your function involves less than 50 people, and you plan no music, our staff may suggest that you use 1670 31st Street, a most attractive private residence on the grounds of Tudor Place. This is the only indoor facility we have available for a private party.

As a result of these adverse impacts, when the Foundation sought its third Special Exception in 1999, many of us nearby neighbors appeared before the BZA to protest. The BZA, however, ignored our complaints and simply signed the Proposed Order prepared by the Wilkes-Artis law firm – verbatim. That order permitted unlimited commercial functions of up to 200 people and 10 functions of up to 500 people. It also permitted the Foundation to use 1670 31st Street as an auxiliary venue for smaller events and lectures.

A group of residents then took an appeal in 2000 to the D.C. Court of Appeals, contending that the BZA exceeded its authority in permitting the commercial events. During the year 2000, the Foundation continued the commercial events which had the predictable and unavoidable adverse impacts on the neighborhood. In 2001, however, due to the uncertainty of the litigation in the Court of Appeals, the Foundation ceased the commercial events. As a result, our neighborhood reverted to its quite residential atmosphere during all of 2001 and 2002. During that time, the Foundation had no trouble making ends meet. In 2001, its income tax return reveals approximately $960,000 in revenue from the endowment and contributions with expenses of approximately $910,000. Thus it is evident that the Foundation does not need the commercial events to properly maintain the property and make it available to the people of the United States for historical tours.

On July 8, 2002, the Court of Appeals issued its decision, concluding that the BZA had not exceeded its authority in allowing the commercial events at both Tudor Place and 1670 31st Street. The

opinion is published at 802 A.2d 359 (D.C. 2002). In light of that decision, the Foundation now asks the Board to reinstate the commercial activities at Tudor Place.

II. The Position Of The Nearby Residents.

Although the Court of Appeals upheld the last order of the BZA, which was prepared by the Foundations lawyers and adopted verbatim by that Board, we believe that the commercial exploitation of Tudor Place is contrary to the basic purpose of the zoning regulations and should be rejected by this Board. The evidence which will be presented by the nearby neighbors will demonstrate that the commercial events and fund-raisers, which are held on the front lawn, create severe adverse impacts on the surrounding neighborhood. This includes (a) the noise involved in constructing the monster tents necessary in the event of rain; (b) noise from catering trucks parked on the street, (c) noise from the clean-up; (d) noise from the bands that play for the events whether or not they are "amplified"; (e) traffic congestion when 100 or more people descend upon the single entrance to Tudor Place at the same time; (f) elimination of all available residential parking spaces in the neighborhood. (The availability of valet parking for groups of 100 or more cannot, and does not, stop party goers from parking on the street when they find an open space.)

Accordingly, more than 80 nearby neighbors have signed the following petition. [2] (Ex. 37):

> *We support the hard work of the Tudor Place Foundation in maintaining Tudor Place in its historical condition and making this Historic home available to the people of the United States for historical tours.
>
> *We ask the Tudor Place Foundation to respect the wishes of Armistead Peter III, as set forth in his Will, that "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 loved by generations of our family."

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[2]The residents signing this petition are all nearby neighbors who are adversely affected by the commercial events, i.e. within 200 to 300 feet of Tudor Place. The Foundation has submitted many letters in support of its commercial activities by people who are not nearby neighbors and, therefore, not adversely affected by the events.

*We oppose the use of Tudor Place and its grounds as a venue for holding private wedding receptions and corporate parties which, in the past, have negatively impacted our quiet residential neighborhood with: (1) noise from the set-up and tear-down of tents and platforms; (2) noise from the bands which play for these private parties until 10:30 PM; (3) traffic congestion necessitating control by the police during events; and (4) a lack of parking spaces for residents.

*Wedding receptions, corporate parties, and other commercial activities should be held only in commercial facilities such as hotels, restaurants, and resorts, which are located in zones designed to prevent such functions from disturbing nearby residents.

Over the past two years, the Foundation has been able to carry out its primary function of making Tudor Place and its beautiful grounds available to the public for tours – within its budget – **and without revenue from the commercial events.** As a result, neighbors have not been disturbed by the loud music that emanates from these parties and have been able to park when they are home in the evenings and on weekends, as one would expect in a residential neighborhood. The Foundation should emulate its neighbor at the top of the hill, Dumbarton Oaks, which provides a quite oasis for historical tours and is an asset rather than a liability to the surrounding residential neighborhood. Accordingly, we respectfully ask the BZA not to allow the Foundation to reinstitute the disruptive commercial activities.

III. Applicable Zoning Regulations.

Tudor Place is in the R-1 zone. The 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.

The provisions of this chapter are 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.**

Sections 200.1 and 200.2 of the Zoning Regulations. Those few compatible uses obviously do not include using single-family residences as venues for commercial parties and wedding receptions.

A. Tudor Place May Be Occupied By The Tudor Place Foundation Under § 217.

The Foundation seeks permission to occupy the Tudor Place residence pursuant to§ 217 which

read in its entirety as follows:

271.1 The use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization shall be permitted in an R-1 district in th following instances if approved by the Board of Zoning Adjustment in accordance with the conditions specified in § 3108 of chapter 31 of this title, subject to the provisions of this section:

(a) If the building is listed in the District's Inventory of Historic Sites contained in the comprehensive statewide historic preservation survey and plan prepared pursuant to § 101(a) of Public Law 89-665, Oct. 15, 1966 (16 USC §§470a-470m), or if the building is located within a district, site, area, or place listed on the District's Inventory of Historic Sites; and

(b) If the gross floor area of the building in question, not including other buildings on the lot, is ten thousand square feet (10,000 ft.2) or greater;

217.2 Use of existing residential buildings and land by a nonprofit organization **shall not adversely affect the use of the neighboring properties**.

217.3 The amount and arrangement of parking spaces shall be adequate and located in minimize traffic impact on the adjacent neighborhood.

217.4 No good, chattel, ware, or merchandise **shall be commercially created, exchanged, or sold in the residential buildings or on the land by a nonprofit organization**, except for the sale of publications, materials, or other items related to the purposes of the nonprofit organization.

Both the Foundation and the nearby neighbors are in full agreement that the foregoing regulation permits the BZA to authorize the Tudor Place Foundation to occupy this large single family home for the purposes that are spelled out in Mr. Peter's Will. By opening Tudor Place to the public for tours during day-time hours on a strictly controlled basis, the Foundation has in the past, and may continue in the future, to carry out its sole purpose without "adversely affecting the use of neighboring properties."

We neighbors ask this Board to specifically note § 217.2 which provides that the activities of a nonprofit corporation which occupies a historic house "shall not adversely affect the use of neighboring

properties." This is much stronger language that § 3108 in which the Board need only find that the activities "will not tend to adversely affect the use of neighboring property." Thus, the Board should not approve any use which will adversely affect the neighbors.

B. Tudor Place Is Not, And Cannot Be, A Museum In The R-1 Zone.

Regrettably, the Foundation is no longer content with its assigned role as caretaker and tour operator of the Tudor Place house and grounds. Instead, it want to branch out into other areas such as an becoming and art gallery, a conference center, or a lecture venue. To finance these ancillary activities, the Foundation, with the prior BZA's approval, has rented the property, including the smaller single-family home next door, as a commercial venue for corporate parties, wedding receptions, bar mitzvahs, and conferences.

The Foundation attempts to justify these disruptive activities as permitted under the Zoning Regulations by claiming that Tudor Place is a "museum" and that museums typically hold such commercial events. The Zoning Regulations, however, do not permit "museums" in the R-1 single-family zone. Moreover, the regulations do not vest the BZA with authority to allow museums by Special Exception. [Museums are not among the uses listed in § 3108]. Instead, museums may established only in the R-4 or less restrictive zones. 11 DCMR § 330.5(h).[3]

Nor did Tudor Place suddenly become a museum upon Mr. Peter's death in l983. To the contrary, Mr. Peter himself specified the exact opposite, i.e., that "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 loved by generations of our family."

The dictionary definition of a museum, of course, is so broad that the living room of any home

[3]Although the resident's raised this legal issue on their appeal, the Court of Appeals opinion simply ignored the fact that museums cannot be created in the R-1 zone.

could be called a museum since objects are displayed.[4] That does not make a living room a museum under the Zoning Regulations. In reality, Tudor Place is simply a beautiful historic home that is important because of its architecture, its grounds, and the history of the family who lived in it from 1816 though 1983.[5] As the caretaker of this historic residence, the Foundation, like any other nearby homeowner, has no right to compete with hotels, restaurants, resorts, and conference centers for the wedding reception and corporate party business.

D. Dower House Cannot Be An Accessory Use To Tudor Place.

The Foundation also wants to use the single-family home next door to Tudor Place as a venue for smaller commercial events. Because that home is too small to qualify under § 217, the Foundation claims that it can be an "accessory use" to the Tudor Place single family residence. This claim is contrary to the Zoning Regulations which expressly provide that an accessory building "may not exceed one (1) story or fifteen feet (15') in height." 11 DCMR § 2500.4. The D.C. Court of Appeals has also held that a "second house is not accessory use even though smaller than main residence, where it is a "dwelling with adequate facilities for occupancy apart from any other structure." *Davidson v. BZA,* 617 A.2d 977, 981 (D.C. 1992). Accordingly, Dower House should be used only as a single-family home. Indeed, the Foundation could rent this home, which has a large back yard and a garage, to a single family for at least $80,000 per year. That amount would replace all of the revenue the

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[4]Webster's dictionary defines a museum as an "institution devoted to the procurement, care, study, and display of objects of lasting interest or value" or a "place where objects are exhibited."

[5]The dichotomy between a historic home and a museum is perfectly illustrated by Dumbarton Oaks, which is just one block up 31st Street from Tudor Place. The historic house and grounds of Dumbarton Oaks are open for public tours just as they are a Tudor Place. A separate museum was constructed on the property which houses exhibits of Pre Columbian and Byzantine art. That museum, however, is a nonconforming use constructed before the imposition of zoning. Harvard University, which manages Dumbarton Oaks, is a very considerate neighbor and does not use either the house and grounds or the museum as a venue for private parties that adversely affect the neighborhood.

Foundation generated from its disruptive commercial events in 1999. That way, the Foundation would get the extra revenue it says it needs and residents would get our continued peace and quiet.

C. The Zoning Regulations Do Not Permit Non Profit Fund-Raisers In the R-1 Zone.

Fund-raisers by non profit corporations are also not permitted in zones R-1 through R-4. Under the Zoning Regulations, 11 DCMR § 351.1(b), such non profits fund raisers are permitted only in the R-5 and less restrictive zones:

> Temporary exhibits, fund rasing functions, and benefit sales for nonprofit organization not to exceed ten (days) in a hotel with more than one hundred (100) rooms or suites.

The BZA should not authorize the Foundation to conduct activities at Tudor Place which are not permitted by the Zoning Regulations.

III. Summary

Tudor Place is but one of many single family homes in our quiet historic Georgetown neighborhood. When Mr. Peter donated the scenic easement in 1966, it was not his intention to change the neighborhood **but to preserve it**. Mr. Peter's wishes should be respected and Tudor Place should not be converted into an impermissible "museum" in the R-1 zone. Nor should Tudor Place be turned into a bustling party, conference, and fund rasing center which are also activities not permitted in the R-1 zone. Instead, the BZA should only authorize the Tudor Place Foundation, pursuant to 11 DCMR § 217, to occupy Tudor Place and to make it available to the public for historic tours in accordance with the wishes of its Mr. Peter. That result can be accomplished simply by using the first six paragraphs of the existing BZA Order and deleting paragraphs 7 through 17.

Respectfully submitted,

Don W. Crockett

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3070 Q St. N.W.