GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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Memorandum

TO: Board of Zoning Adjustments

FROM: Andrew Altman, Director
Office of Planning

DATE: January 23, 2001

BZA
Case No. 16642
Exhibit No. 24

SUBJECT: BZA Application #16643 (Georgetown Flea Market)
1819 35th Street, N.W. (parking lot of the Rose L. Hardy Middle School)

APPLICATION

The application by Michael Sussman for Georgetown Flea Market, requests, pursuant to 11 DCMR 3103.2, a variance from the provision of Section 330.5 to continue the sale of antiques and collectables (flea market) in the R-3 zone.

SITE AND AREA DESCRIPTION

The Georgetown Flea Market currently operates on the parking lot of the Rose L. Hardy Middle School and the Filmore Arts Center (Hardy School) at 1819 35th Street, N.W. (Square 1297, Lot 850). The school is bounded by Wisconsin Avenue and 34th Street to the east, 35th Street to the west, Whitehaven Parkway to the north, and a two-story apartment building to the south. The formal entrance to the school is along 35th Street, but access to the parking lot and the flea market is from Wisconsin Avenue. (See Attachment 1)

The Hardy School is located in the area generally know as Georgetown or Burleith and is surrounded by a variety of uses. To the east of the site along Wisconsin Avenue is a number of community serving commercial uses including a 3-story building that is currently undergoing renovations for a proposed restaurant at the intersection of Wisconsin Avenue and 34th Street. Other uses along Wisconsin Avenue include a Safeway supermarket, a bank, the 4-story National Research Council offices, and a 7-story Holiday Inn hotel. Going south along 34th Street are two-story townhouse units. To the south and west of the site, along 35th Street, is the former Filmore School that is now owned by the Corcoran School of Arts; with the remainder of the neighborhood developed with two-story townhouse and apartment units.

The Hardy School is within the Georgetown Historic District. However, there are no historic sites within the immediate area that could be impacted by the flea market.

Board of Zoning Adjustment
District of Columbia
CASE NO.16642
EXHIBIT NO.26

PROPOSAL

The Georgetown Flea Market currently operates on the parking lot of the Hardy School on Sundays only between the hours of 6:00 a.m. and 6:00 p.m. for vendors and is open to the public between 9:00 a.m. and 5:00 p.m. The flea market is not a permitted use in the R-3 zone and therefore the applicant is requesting a variance to continue operation at this location.

HISTORY

Since the late 1980s, the applicant has leased the parking lot of the Rose L. Hardy Middle School to operate the flea market on Sundays only. The applicant was advised by the schools leasing office that no Certificate of Occupancy (C of O) was necessary since the property is owned by the District of Columbia, whose properties are exempted from the Zoning Regulations. In 1999, the applicant was informed that, indeed, a C of O was required as the flea market is not exempt from the Zoning Regulations. In order to obtain a C of O, a variance to operate a commercial use in a residential zone was necessary. In late 1999, an appeal of the Zoning Administrators ruling (BZA Appeal 16535) and an application for the variance (BZA # 16542) were filed. On December 21, 1999, the Council of the District of Columbia approved an amendment to the Comprehensive Plan to allow the flea market to operate at the present location. The Comprehensive Plan Land Use Georgetown Flea Market Exemption Emergency Amendment Act of 1999 (Act # 12-253) stated that "The use of parking areas of the public school on Lot 850, Square 1297, which is located at 1819 35th Street, N.W., as a flea market on Sundays shall not be subject to zoning." This act was further approved by the Control Board on January 27, 2000 and was effective for 90-days. Based on this recommendation, the flea market obtained a C of O and the appeal and variance request were withdrawn by letters dated May 22, 2000.

The Zoning Administrator has maintained that a C of O is required, and a second appeal and variance application were subsequently filed (BZA Appeal 16642 and BZA #16643 respectively) which addressed the same issues in the prior appeal and variance request. Due to this uncertainty, the lease of the parking lot from the school system was not renewed when it expired in September 2000 and consideration for renewal will be dependent on the outcome of the appeal and variance request.

ANALYSIS

The Georgetown Flea Market has been in operation for over 27 years and has operated on the Rose L. Hardy Middle School parking lot for the past 14 years and has become a fixture in the community drawing patrons from far and wide. The question as to whether the use is subject to the Zoning Regulations is the subject of an appeal (BZA Appeal 16642). This report addresses the interpretation that they are subject to the Zoning Regulations.

There are a number of issues to be considered regarding the operation of the flea market at this location. First, does the operation of the flea market negatively impact the operation of the

school; second, what effect does the flea market have on traffic, parking and congestion; and third, what is the benefit of the flea market to the community.

Impact on School Program

The flea market has operated at this location for over 14 years. When the flea market opened its operations at the Hardy School, most of the area west of the school building was dedicated to a parking lot. In the summer of 1999, the parking lot was divided and a portion was improved with an open track and a basketball court. The remainder of the area remained as a parking lot and the flea market continued operation on the reduced space. A chain link fence separates the parking lot from the recreation area and the flea market is confined to the parking lot only.

The applicant has stated that the school has never notified him that the operation of the flea market has prevented any school function from taking place. In fact, most District schools do not have any school activities on Sundays. Most schools are closed on Sundays and if used, would likely be by a community organization. Furthermore, the school system grants the lease to operate the flea market and if the market was preventing vital school activities from taking place, they have the power to revoke or not renew the lease. Since the lease has been renewed for 14 years, it can be assumed that the flea market does not impact the school program.

Parking

Wisconsin Avenue is a major arterial through the city that carries traffic from other neighborhoods as well as from the Maryland suburbs. Parking within Georgetown is a problem and there is a special need to provide short-term parking for retail customers. Parking for many of the retail uses has spilled over onto residential streets where many residents do not have off-street parking and so they compete for the limited on-street parking. Although the flea market serves the immediate community, a large amount of its patrons come from outside the community. Due to the nature of items sold, e.g. furniture, customers have to drive to the flea market. Currently, customers of the flea market park on adjacent streets and in the Safeway parking lot (they are warned not to park at this location). In order to address the concern of residents that patrons of the flea market are parking on their residential street, the applicant had obtained permission for customers to park on a school parking lot located south of the school building. This parking lot has twenty-five spaces and should alleviate some of the parking pressures on residential streets. The applicant is also in the process of trying to negotiate with the Corcoran School, southwest of the site on R Street, for the use of their parking lot.

Benefit to the Community

As stated before, the Georgetown Flea Market has been a fixture in the Georgetown community for a long time. Over the years, its reputation has gone beyond the local Washington community and is known nationwide. Many articles promoting the virtues of the market have been written in both local and national newspapers and magazines and it has become a part of the history of Washington. The market provides economic benefits to the city as locals as well as tourist come

to shop at the market and other retail establishments that in turn that contribute to the local economy. In addition, the school system benefits from the leasing of the parking lot.

COMPLIANCE WITH THE ZONING REGULATIONS

The variance request is to allow the operation of the flea market, a commercial use, in a residential zone. The standard by which the BZA should approve a variance is set forth in Section 3103.2 of the Zoning Regulations. The following demonstrates how these standards are met:

> **The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;**

Most of the properties that front on Wisconsin Avenue are in the C-2-A district except for the Safeway property that is in the C-1 district. Properties behind the commercial properties west of Wisconsin Avenue are in the R-3 zone. The subject property is in the R-3 zone but the parking lot is accessed from, and oriented to, Wisconsin Avenue similar to other commercial uses. The flea market is unique neighborhood activity that has operated at this location for many years. Furthermore, the market is not the principal use on the property, has no permanent structures, and is limited to only one day per week. When the flea market is not in operation there are no visible signs that the market operates on the site on Sundays.

> **By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.**

The strict application of the Zoning Regulation would prohibit this commercial use in the residential zone and the result would be that the flea market would have to be closed or moved to a new location. Relocation to another site in Georgetown could be difficult as this type of use functions well on a parking lot. There are not many uses within Georgetown that have their parking lots available for use since there is a shortage of parking areas. The parking area would also need to be easily accessible and visible, since the market operates as a community activity and is not signed or heavily promoted. Relocation to another site could lead to a loss in economic benefit to neighboring businesses and to the District as well as a loss of the character of the city and of the flea market.

> **The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.**

The variance requested will not cause "substantial detriment to the public good" because, as stated, the flea market has operated at this location for approximately 14 years and has become a part of the fabric of the community. The market is clean and does not emit any noise to disrupt

the adjacent residential community. There has been a problem with parking associated with the flea market, but that is a general problem that affects all of Georgetown. The applicant is trying to alleviate this problem by securing a parking area for use by customers of the market.

The proposal upholds the general provisions of the R-3 one as outlined in Section 320.1 that state:

> ***The R-3 District is designed essentially for row dwellings, but there shall be included in an R-3 district areas within which row dwellings are mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three (3) or more row dwellings. To maintain a family-life environment, permitted related uses are the same in R-3 districts as in the R-1 districts.***

It is the aim of the Zoning Regulations and Map to develop this area with row dwellings, one-family detached, and semi-detached dwellings. This endeavor will not be jeopardized, as the flea market will not detract from the residential character of the adjacent residential area. Therefore, the intent, purpose, and integrity of the Zoning Regulations and Map will be maintained.

The flea market is a permitted use on property owned by the Board of Education as outlined in Title 5, DCMR, District of Columbia Board of Education, Section 3501, Permissible Use of Buildings and Grounds: which states that:

> *3501.1 (g)* ***Any other use deemed to be compatible with the normal use of the particular property and in the best interest of the local community, other that industrial uses, and which does not require major structural renovations at cost to the District of Columbia Government to implement a particular agreement or lease.***

The flea market is in compliance with this recommendation as it is compatible with the operation of the school as no school activities occur on Sundays when the flea market is in operation. The applicant has also stated that the parking lot is cleaned after the market closes on Sunday evenings and therefore there is no cost to the school to return it to an acceptable condition. The flea market contributes to the local economy as it attracts customers as well as tourists to the area, who spend money and pay taxes on the items they buy. Other retail uses within walking distance of the flea market benefit from the operation of the flea market, as many customers will walk around and patronize the other businesses. No alterations have to be done to accommodate the flea market and it does pay the school system to lease the space to operate the flea market.

COMMUNITY COMMENTS

The Georgetown Flea Market has overwhelming support in the Georgetown community as well as Districtwide support. The application has the support of Council member Jack Evans who has stated that this use is a positive as it contributes to both the social and economic well being of the City. On January 2, 2001, ANC-2E voted to recommend approval of the requested variance for

the flea market in its current form. The application is also supported by ANC-3B whose jurisdiction is just to the north of the property. A number of other citizens groups support the flea market at this location and has submitted letters of support into the record.

Concerns have also been voiced by a few of the neighbors. Their main issue is that customers of the flea market park on adjacent residential streets. The applicant has tried to address this issue by providing some parking spaces for his customers. The Office of Planning had made many attempts to contact the headmaster of the Hardy School but has been unsuccessful in getting any comments on the application.

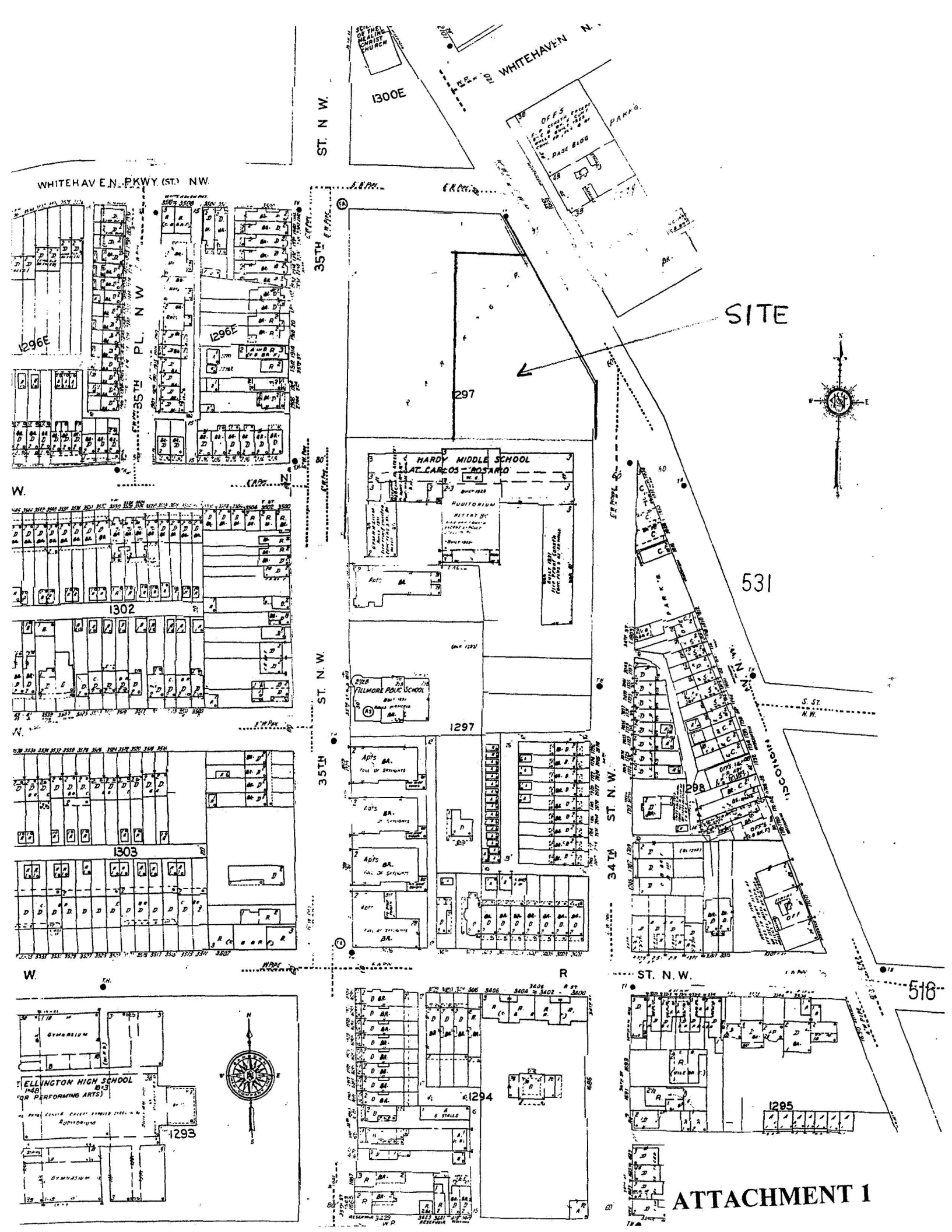
SUMMARY AND RECOMMENDATION

The Georgetown Flea market is an institution in Washington DC that had existed at the location for a very long time. The flea market contributes to the vitality of Georgetown area. Most important is the fact that it does not detract or harm in any way the functioning of the school. The impact of the flea market is minimal, as it is open only on Sundays when the school is closed and there are no other activities on the property except the flea market. The applicant is providing some parking spaces in order to help mitigate the lack of off-street parking areas in the vicinity of the school.

The flea market use has met the provisions of Section 3103.2 of the Zoning Ordinance for granting a variance and therefore the Office of Planning recommends that the Board of Zoning Adjustment **APPROVE** the variance requested with the condition that at least 25 parking spaces be provided.

ATT: Site Location

AA/mbr, AICP


WHITEHAVEN N.
1300E
ST. N W.
WHITEHAVEN PKWY. (ST.) NW.
35TH PL. N W
1296E
SITE
1297
HARDY MIDDLE SCHOOL
AT CARLOS ROSARIO
AUDITORIUM
531
1302
ST. N.W.
FILLMORE POLK SCHOOL
1297
35TH
34TH ST. N.W.
1298
1303
S. ST. N.W.
ELLINGTON HIGH SCHOOL
(FOR PERFORMING ARTS)
GYMNASIUM
AUDITORIUM
1293
1294
1295
516
ATTACHMENT 1