BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of District of Columbia
Public Schools/Georgetown Flea Market

BZA Application No. 16643
Public Hearing: January 30, 2001
ANC 2E

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BZA
Case No. 16643
Exhibit No. 29

STATEMENT OF THE APPLICANT

I.
Nature of Relief Sought

This is an application pursuant to §3103.2 for a use variance to continue to operate the "Sales of Antiques and Collectibles" on a public school parking lot – Sundays only in an R-3 District at premises 1819 35th Street, NW (Square 1297, Lot 850).

II.
Jurisdiction of the Board

This Board has jurisdiction to grant the relief requested pursuant to 11 DCMR §3103.2.

III.
Background

The property at issue in the present matter is owned by the District of Columbia through the Board of Education and is currently operated as the Hardy Middle School. Since the fall of 1988, the Board of Education has leased the exterior portion of the premises/parking lot on Sundays only to Michael Sussman, who there operates a business known as the Georgetown Flea Market.

The property is located at 1819 35th Street, NW, in the northern half of Square 1297. The portion of the property utilized as the market is in the parking lot area in the northern portion of the lot, bounded to the south by the school building, to the west by 35th Street, NW, to the north

Board of Zoning Adjustment
District of Columbia
CASE NO.16643
EXHIBIT NO.29

#29

by Whitehaven Parkway, NW, and to the east by Wisconsin Avenue and 34th Street, NW. (Exhibit A).

Square 1297 is currently zoned R-3, as are the squares located immediately to its south and west. Square 1298, located directly east of the subject square, is split-zoned R-3 and C-2-A, with the latter zone abutting that portion of the subject square that is used by the Hardy School for its parking lot and on Sundays as a market.

Diagonally opposite the northeast corner of the subject square, across Wisconsin Avenue, is Square 1299, an unusually-shaped square, split-zoned C-1 and NO/C-2-A, that contains a Safeway Grocery and other commercial operations.

The area located immediately to the north of the subject square, across Whitehaven Parkway, NW, is Federal Property and unclassified for zoning purposes.

When Georgetown Flea Market entered into a lease with the Board of Education in 1988 for the use of the property on Sundays, the property was exempt from the Zoning Regulations as a result of its public ownership. District-owned properties only became subject to the provisions of the Zoning Regulations on May 23, 1990, the effective date of the Comprehensive Plan Amendments Act. (Speyer v. Barry, 588 A.2d 1147 (D.C. 1991)). At the time it entered into the lease, Georgetown Flea Market relied upon the advice of Board of Education personnel that a certificate of occupancy for the proposed use on public property was not required. More recently, in late 1999, Georgetown Flea Market was advised by District Officials that it should obtain a certificate of occupancy. Georgetown Flea Market's application for a certificate of occupancy was denied by the Chief of the Zoning Review Branch on October 6, 1999 and Georgetown Flea Market was advised to seek a use variance from the Board.

IV
Exhibits in Support of Application

Exhibit A: Excerpts from the Baist and Sanborn Atlases showing the subject site.

Exhibit B: Excerpt from the Zoning Map showing the subject site.

Exhibit C: Letter of Support from the Burleith Citizens Association.

Exhibit D: Letter of Support from ANC 2E.

Exhibit E: Letter of Support from ANC 3B.

Exhibit F: Outline of Testimony of Michael Sussman, Representative, Georgetown Flea Market

Exhibit G: Outline of Testimony of Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP.

V.
The Applicant is Entitled to Variance Relief for the Continued Use of School Parking Lot on Sundays for Flea Market.

As set forth below, the Applicant satisfies its burden of proving conformance with the three-part test of §3103.2 for a use variance to continue to utilize the Hardy School parking lot on Sundays for the sale of antiques and collectibles.

1. The Property is Affected by an Exceptional Situation or Condition.

The exceptional situation or condition confronting the property is a direct product of its zoning history. Not only does the property consist of the grounds of a District of Columbia public school located within a residential zoning district (R-3) and abutting to the west and north the C-1, C-2-A and NO/C-2-A Zones, the property is further affected with the exceptional situation of not being subject to zoning before May 23, 1990 (the effective date of the Comprehensive Plan Amendments Act) and being utilized continuously as a flea market since 1988. As such, zoning only applied to the property after the Applicants began utilizing the

property as a flea market. Thus, while other residentially-zoned school properties may only be utilized for markets or other similar activities if they are found to be within the definition of "school – public," this property is exceptional in that its utilization pre-dates zoning for the property and therefore may be used for such a purpose even without such a finding. The zoning history of a site may constitute an exceptional condition in a variance application. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A2d 1091 (1979).

For the above reasons, the property is affected by an exceptional situation or condition.

2. The Strict Application of the Area Regulations Would Impose an Undue Hardship.

A strict application of the Zoning Regulations would result in an exceptional and undue hardship for the District of Columbia Public Schools and the operator of the Georgetown Flea Market.

The exceptional and undue hardship that would be faced by the Georgetown Flea Market as a result of a denial of the present variance request is closure of the Market itself. Over the course of more than a decade of operation on the property, the Georgetown Flea Market has become irreversibly associated with its location. It has developed a loyal merchant and customer base as a direct result of its investment of time and resources at the property. As a result, the Georgetown Flea Market has become recognized as a pre-eminent weekend destination for residents throughout the District and the metropolitan area, as well as for countless visitors to the area.

Unless the Board approves the Applicants' request for a variance in order to continue the Market use at the property, the Georgetown Flea Market will be faced with the exceptional and undue hardship of having to cease its operations at the Hardy School and attempt to relocate the

Market to another location, perhaps outside the District. Denial of the variance request would also serve to effectively erase the longstanding reputation that the Georgetown Flea Market has developed as a product of its investment in the Georgetown community. This reputation has largely sustained the Market's operations as word-of-mouth recommendations have been a primary source of advertising. If the Georgetown Flea Market is forced to leave its home of the past twelve years, it will have to start afresh in an entirely new location most likely with a new name. Such a move would have the inevitable impact of alienating numerous existing merchants and customers alike, especially owing to the pedestrian focus of the existing location.

Nor has the Georgetown Flea Market had success in its efforts to date to secure a suitable alternative location to transfer its operations. The market has pursued potential sites in the District as well as in Northern Virginia. The Georgetown Flea Market, through its representative, will be prepared to discuss such efforts in greater detail at the public hearing in this matter.

The District of Columbia Public Schools also will suffer undue hardship as a result of denial of the requested variance in this matter. The schools system and the District government stand to lose a significant and irreplaceable source of revenue for an otherwise fiscally unproductive site if the Market use is discontinued on the property.

Currently, the District of Columbia Public Schools receives more than $20,000 annually from Georgetown Flea Market vendors solely for the rental of the Hardy School parking lot on Sundays between roughly March and December from the hours of 7:00 a.m. to 6:00 p.m. While representing only a fraction of the District's annual budget for the Public Schools, this annual rent nonetheless is integral to insuring that the Public Schools system operates at a surplus rather than a deficit. More importantly, it must be remembered that this revenue for the Public Schools (in the neighborhood of $300,000 over the course of the Market's tenure at the property) has been

generated for more than a decade for a commodity that would otherwise provide virtually no value to the Public Schools or to the District at large; the weekend use of a public school's parking lot. Over the course of time that Georgetown Flea Market has rented the outdoor space at the Hardy School, some twelve years, the Public Schools system arguably has come to rely upon the annual rent generated from the lease as a stream of revenue. In addition, the overall annual benefit provided to the District government and the community at large by the lease of the property totals nearly $170,000, including sales and franchise taxes. A strict application of the Zoning Regulations in this matter will totally frustrate the Public Schools' ability to rent the otherwise valueless weekend use of the property to the Georgetown Flea Market and thus render an exceptional and undue hardship upon the Public Schools.

This undue hardship confronting the Public Schools is further complicated by the understanding the Public Schools encouraged and made available the property for the Market use on an ongoing basis for more than a decade. While the impact of a denial of variance relief in the present case will uniquely affect the subject property owing to its exceptional zoning history, nonetheless, the net effect of such a strict interpretation of the Zoning Regulations will undoubtedly make the Public Schools much more restrictively view their larger community role and purpose in providing space to similar desirable functions.

3. Relief Can Be Granted Without Substantial Detriment to the Public Good, and Without Substantially Impairing the Intent, Purpose or Integrity of the Zone Plan.

Variance relief in the present case will not cause substantial detriment to the public good in that it will only be sanctioning a use for the property that has already occupied the property for more than a decade with great public support and enthusiasm. The Market is not seeking to expand its operations in any way. In fact, in order to accommodate the new playground sited on a

portion of the grounds, the Georgetown Flea Market scaled down the size of its operation and at the same time is attempting to allot certain space on the property for vender and customer parking spaces to assuage any potential traffic or parking congestion resulting from the operation of the market. As stated above, the Applicants' variance request also has the support of ANC 2E and neighboring ANC 3B. In its letter to the Board dated January 20, 2000, ANC 3B stated unanimously that "the banishment of the Georgetown Flea Market from its long-time site of operation would be a detriment to our neighborhood and indeed to the city as a whole."(Exhibit E).

Board approval of the present variance request likewise will not substantially impair the intent, purpose or integrity of the Zone Plan. As stated herein, when the Applicants entered into the lease for the Sunday use of the property by the Georgetown Flea Market in 1988, the school property was not subject to the Zoning Regulations. Only on May 23, 1990, as a result of the Comprehensive Plan Amendments Act, did the property become subject to the R-3 zoning.

Furthermore, the property is located at the edge of the R-3 Zone, abutting numerous commercial uses along Wisconsin Avenue, a major commercial artery. The casual weekend Market use of the Hardy School grounds in no way jeopardizes the character of the nearby residential areas nor jeopardizes the Zone Plan.

For the reasons stated herein, variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the zone plan.

VI.
Witnesses

1. Michael Sussman, Representative, Georgetown Flea Market

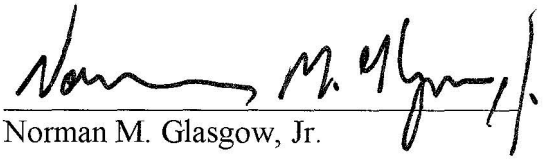
2. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

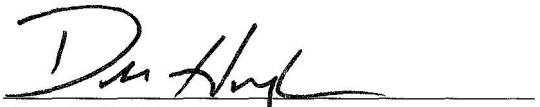
VII.
Conclusion

For the reasons set forth above, the Applicant respectfully requests approval of variance relief in this application.

Respectfully submitted,

WILKES ARTIS, CHARTERED

By: 
Norman M. Glasgow, Jr.


Dennis R. Hughes

#222540
cc: D.C. Zoning Administrator
Office of Planning

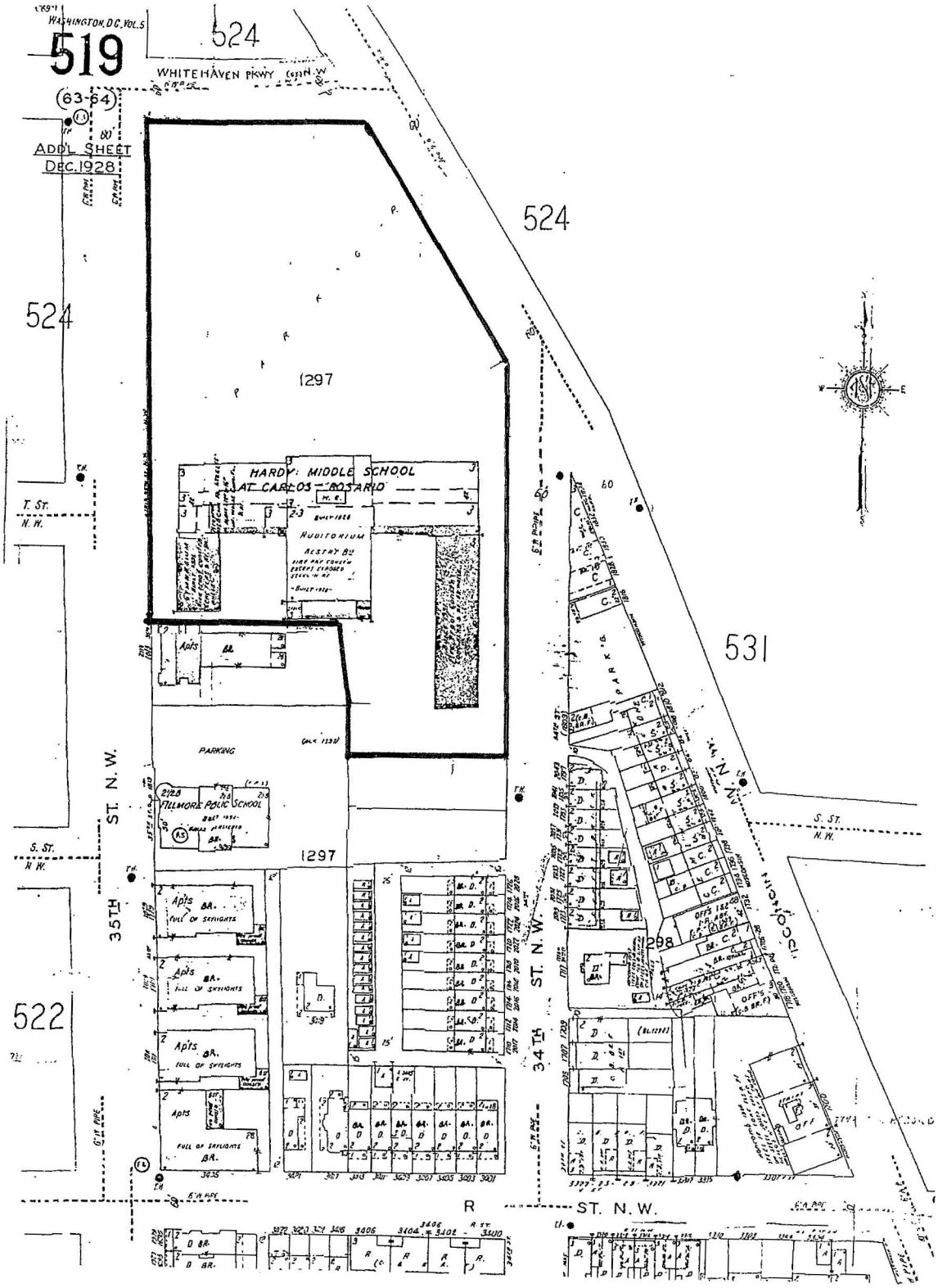


Exhibit A - Baist Atlas

A

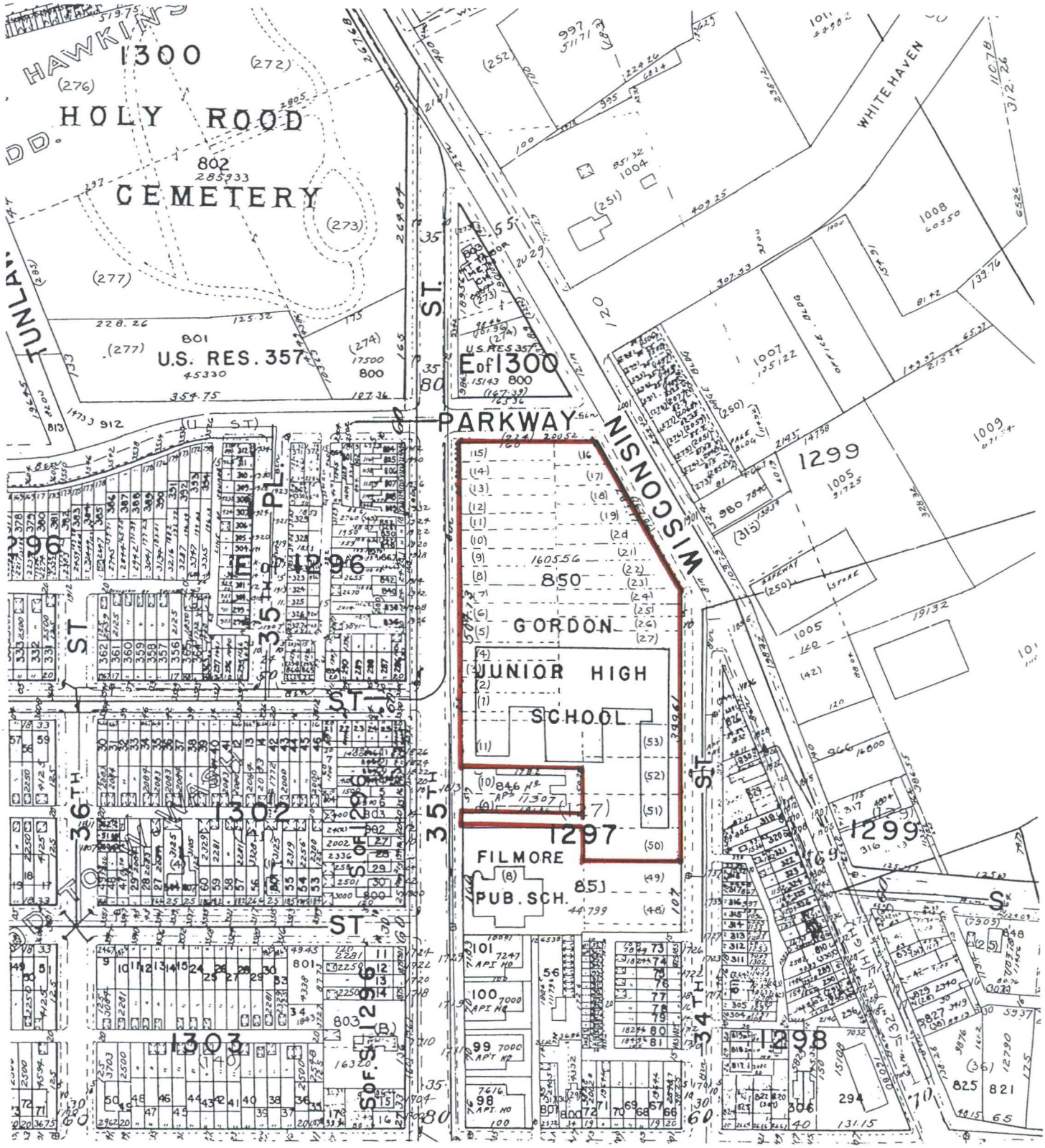


Exhibit A - Sanborn Atlas



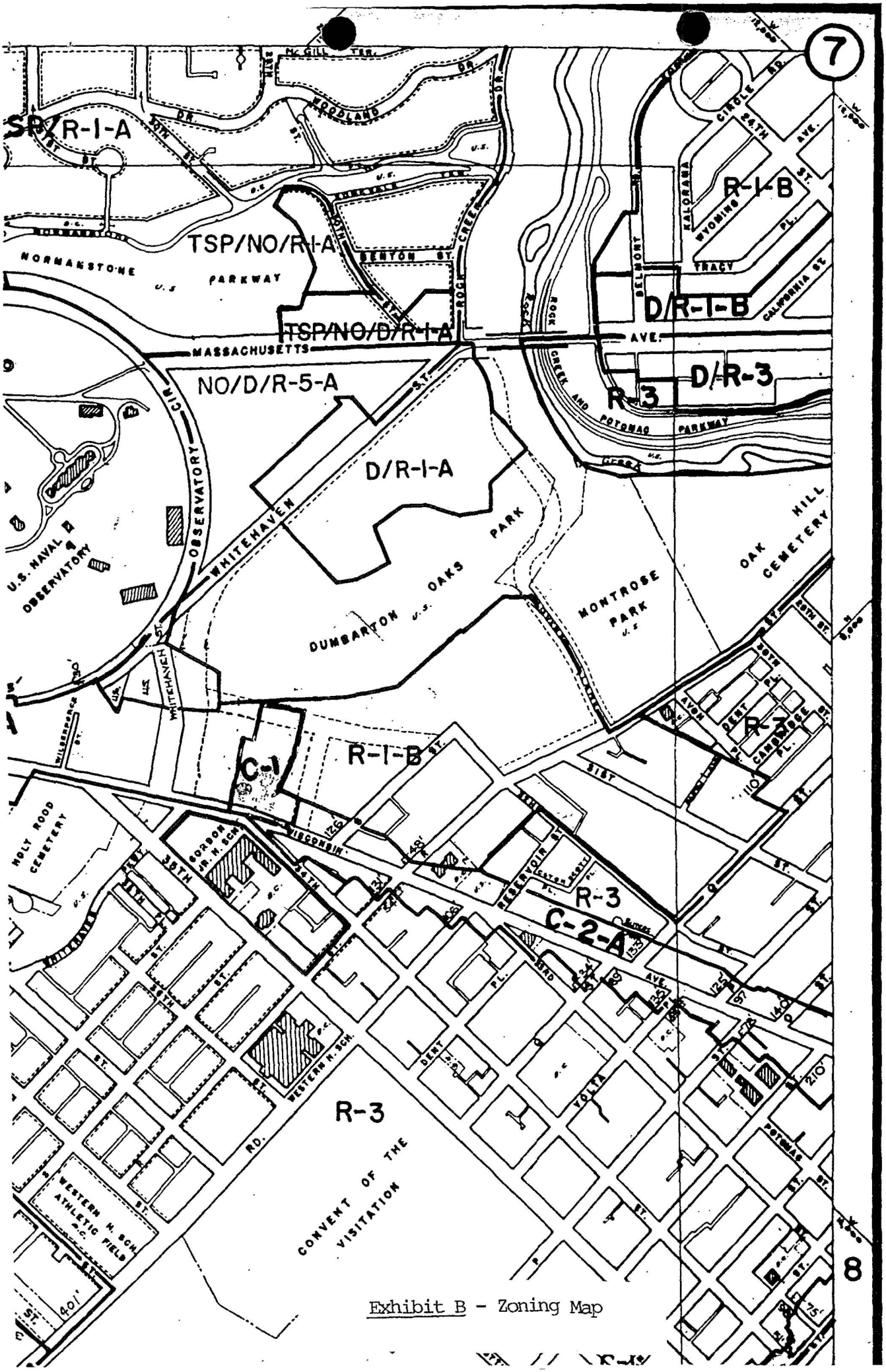


Exhibit B - Zoning Map



Burleith CITIZENS ASSOCIATION

3724 T Street, NW
Washington, DC 20007

Executive Board

Bonnie Hardy,
President

Guy Gwynne

Charles Mallett

Marilyn Reis

Diane Deland
Treasurer

Gwen Verhoff
Recording Secretary

Ann Gallagher
Corresponding Secretary

Peter Pulsifer
Past President & Newsletter Editor

Nan Bell

Janice Hopper

Vladka Landay

Margaret Meenahan

Irene Schaffner

Ed Solomon

TO WHOM IT MAY CONCERN

On May 19,1999 the Board of the Burleith Citizens Association voted in favor of the following Resolution:

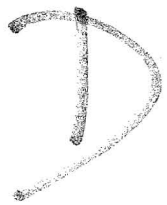
We support the desire of the Georgetown Flea Market to be located on the Hardy School property after the construction of the school's new play area is over. This Flea Market would operate only on Sundays (as it does now) and would be located on the designated parking lot as is shown on the attached plan. The rest of the school property should be reserved for the school and neighborhood children.
The Georgetown Flea Market is very popular in our neighborhood and we have enjoyed their presence over the years.

Copies sent to:
Michael Sussman,Georgetown Flea Market
Patrick Pope, Pricnipal of Hardy School
Westy Byrd, Ward 2 School Borad Member

Bonnie Hardy

Bonnie Hardy
President

Exhibit C



GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Foxhall-MacArthur, Georgetown and Hillandale

3265 S Street, NW • Washington, DC 20007

(202) 338-7427 • FAX (202) 338-0279 • anc2e@erols.com

January 10. 2001

Board of Zoning Adjustment
441 Fourth Street, NW
Suite 210
Washington, DC 20001

Re: APPLICATION NO. 16642 and APPLICATION NO. 16643
GEORGETOWN FLEA MARKET

Dear Members of the Board:

At its regularly scheduled, duly noticed public meeting held on January 2, 2001, with all commissioners present, ANC 2E considered the above-referenced applications and passed the following motion by a 6–0 vote (with 2 commissioners abstaining):

> Whereas, the Georgetown Flea Market has been operating at its current location since 1988; and
>
> Whereas, during that time, the Flea Market management has been responsive to community concerns, including management of traffic, litter, noise, and congestion, so that the near neighbors are broadly supportive of the market; and
>
> Whereas, during that time there was no apparent negative impact on school programs that were conducted at its location; and
>
> Whereas, in fact, the Flea Market provides a public benefit greatly appreciated by residents throughout DC and around the world; and
>
> Whereas, the Flea Market has a substantial positive economic impact on the District of Columbia;
>
> Therefore, ANC 2E requests that the BZA grant any variance needed to continue operation of the Flea Market in its present form, on Sundays only in the public school parking lot. ANC 2E understands that any variance granted will not alter the existing zoning of the property.

Sincerely,

Peter Pulsifer (BCN)

Peter Pulsifer
Chair

COMMISSIONERS:

Scott Polk, District 1 Len Levine, District 2 Peter Pulsifer, District 3 Justin Kopa, District 4
Justin Wagner, District 5 Bill Starrels, District 6 Tom Birch, District 7 Mark Ryan, District 8



DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 3B
GLOVER PARK AND CATHEDRAL HEIGHTS
P.O. BOX 32312
WASHINGTON, DC 20007
TELEPHONE: 202.338.2969
FACSIMILE: 202.333.8654
E-MAIL: ANC3B@ATT.NET

20 January 2000

Jerrily R. Kress, FAIA
Director, Board of Zoning Adjustment
Government of the District of Columbia
441 4th Street, NW, Suite 210
Washington, DC 20001

Dear Jerrily R. Kress:

Thank you for your memorandum of 24 November 1999 informing ANC3B of Norman M. Glasgow, Jr.'s appeal, filed on behalf of Michael Sussman, of the Building and Land Regulation Administration's decision to deny a certificate of occupancy to continue operation of the Georgetown Flea Market in the parking lot of the DC public school located at 1819 35th Street, NW.

As you noted, this site is not within ANC3B's boundaries, but it is in the Commission area immediately bordering ours, and many Glover Park and Cathedral Heights residents have an interest in the matter.

Accordingly, at our regular public meeting on 9 December 1999 we discussed Mr. Sussman's appeal and request for a zoning variance. All residents in attendance and all Commissioners agreed that the banishment of the Georgetown Flea Market from its long-time site of operation would be a detriment to our neighborhood and indeed to the city as a whole. The Flea Market is a major attraction, bringing a large number of shoppers from around the city and the surrounding areas, from many other states, and indeed, in some cases, from foreign countries to our neighborhood, where they patronize not only Mr. Sussman and his vendors, but also our neighborhood stores and restaurants. Just as important, the flea market is a favorite recreational and commercial destination of many Glover Park and Cathedral Heights residents. Furthermore, we have observed, in our own frequent travels to and by the site, no negative implications of the Flea Market's presence there.

In short, we fully support Mr. Sussman's request for a zoning variance that would allow him to secure a certificate of occupancy for the site. And we look forward to his continued operation of the Flea Market there, and consequently to the preservation of an asset important to the neighborhood and to the city. We appreciate your consideration of this opinion.

Sincerely,

A.L.B.

Ann Lloyd Breeden
Vice Chair

cc: The Hon. Jack Evans, Councilmember, Ward 2
Norman M. Glasgow, Esq.
Peter Pulsifer, Chair, ANC2E

3B01	3B02	3B03	3B04	3B05
N. GLOVER PARK	E. GLOVER PARK	W. GLOVER PARK	CATHEDRAL HEIGHTS	S. GLOVER PARK
RICHARD PROCIDA	MONICA MIZEREK	ANN LLOYD BREEDEN	TONI RITZENBERG	JAMES LIVELY
TREASURER	CHAIR	VICE CHAIR	SECRETARY	

Exhibit E



BOARD OF ZONING ADJUSTMENT
APPLICATION No. 16643

Outline of Testimony of Michael Sussman,
Representative, Georgetown Flea Market

I. INTRODUCTION

II. HISTORY OF GEORGETOWN FLEA MARKET

III. DISCUSSION OF LEASING ARRANGEMENT WITH SCHOOL SYSTEM FOR SUNDAY USE OF HARDY SCHOOL PROPERTY

IV. COMMUNITY SUPPORT

V. EFFORTS TO ADDRESS PAST COMMUNITY CONCERNS

VI. NEED FOR VARIANCE



BOARD OF ZONING ADJUSTMENT
APPLICATION No. 16643

Outline of Testimony of Steven E. Sher,
Director of Zoning and Land Use Services,
Holland & Knight LLP

I. INTRODUCTION

II. DESCRIPTION OF PROPERTY

III. DESCRIPTION OF SURROUNDING AREA

IV. ZONING HISTORY OF PROPERTY

V. COMPLIANCE WITH REQUIREMENTS OF ZONING REGULATIONS FOR A VARIANCE

A. Exceptional Condition or Situation
B. Strict Application of Regulations Would Result in Undue Hardship
C. Relief Without Substantial Detriment to Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

VI. CONCLUSION