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Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 16643
1819 35th Street, N.W.

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

January 30, 2001

I. Site location and description

A. Location

1. Hardy Middle School

2. West side of Wisconsin Avenue, N.W., south of Whitehaven Parkway, with frontage on 35th Street at the rear and 34th Street on the southeast side

3. Site known as lot 850 in Square 1297

B. Size - total site area is approximately 160,000 square feet

C. Existing site condition

1. Southern half of the property is developed with a 3 story building used as a middle school

2. Northern half of the property is used for recreation facilities and a parking lot

BZA
Case No. 16643
Exhibit No. 54

Board of Zoning Adjustment
District of Columbia
CASE NO.16643
EXHIBIT NO.54

3. Parking lot is used as the Georgetown Flea Market on Sundays between 9:00 AM and 5:00 PM, with set-up and take-down occurring before and after those hours

II. Description of surrounding area

A. North Georgetown/Burleith area

B. Wisconsin Avenue corridor is essentially a commercial corridor, with a variety of height and building types

C. Area to the west and south is essentially a rowhouse residential area

III. Existing zoning: R-3

A. Uses (§320)

1. Single family detached, semi-detached and row dwellings

2. Public schools

3. Churches

B. Height - maximum of 3 stories and 40 feet (§400.1)

C. Minimum lot area (§401.3):

1. 2,000 square feet for row dwellings

2. 3,000 square feet for semi-detached dwellings

3. 4,000 square feet for other uses

D. Minimum lot width (§401.3):

1. 20 feet for row dwellings

2. 30 feet for semi-detached dwellings

3. 40 feet for other uses

E. Lot occupancy - 60 percent permitted (§403.1)

F. Rear yard –20 feet (§404.1)

G. Side yard - not required (§405.6)

IV. Proposed use

A. Georgetown Flea Market (same use as has been existing for approximately thirteen years)

B. No change to existing building or parking lot

C. Uses parking lot area north of existing school building, with access from Wisconsin Avenue

D. Operates on Sundays only, with public hours from 9:00 AM to 5:00 PM

E. Accommodates maximum of approximately sixty vendors

F. 25 parking spaces can be provided on an area south of existing school building with access from 34th Street

V. Relief required – use variance

VI. Standards for a variance (§3103.2)

A. Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,

B. the strict application of any regulation adopted under D.C. Code §§5-413 to 4-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship;

C. Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

VII. Compliance with the variance standards

A. Exceptional or extraordinary situation or condition

1. Zoning history

a. Use established in 1988 at a time when District buildings were not subject to zoning

b. No certificate of occupancy was required for the use at the time it was instituted

c. Council made District facilities subject to zoning in the Comprehensive Plan Amendments Act of 1989, effective May 23, 1990

d. Zoning Commission subsequently amended the Zoning Regulations to make zoning applicable to District buildings (Order No. 828, January 12, 1998)

e. At face value, use is nonconforming ("lawfully in existence at the time this title or any amendment to this title become effective") and no variance is required

f. If use is not nonconforming, its existence constitutes an exceptional condition, in that there are no other similar uses on District public school grounds anywhere in this area or in a similar circumstance

2. Zoning pattern

a. Subject property fronts on Wisconsin Avenue

b. Predominant zoning along Wisconsin Avenue from M Street to Calvert Street is C-2-A

c. Subject site is exceptional in terms of R-3 zoning

3. Nature of proposed use

a. Neighborhood institution

b. Not principal use of the property

c. No permanent structures

d. Operates only one day per week

B. Undue hardship

1. No other location in vicinity of site which could accommodate the use

2. No ability to continue to operate at another location

3. Loss of benefit to the city

C. No detriment to the public good

1. Substantial community support

2. Operation for 13 years has not had a significant impact

3. Current operation is significantly smaller than the original market, because of reduction in available open area

4. Operator has responded to the few complaints and immediately address impacts

5. Operator will provide approximately 25 parking spaces south of the school, at the same time reducing the number of vendors

VIII. Conclusions

A. Subject use is affected by exceptional conditions, because of the zoning history, the zoning pattern in the area and the nature of the use itself

B. Strict application of the Regulations would create an undue hardship by forcing the termination of the proposed use

C. The variance can be granted without substantial detriment to any surrounding properties

D. The application should be granted