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D.C. OFFICE OF ZONING
RECEIVED
2001 FEB 27 PM 12: 25

February 26, 2001

Robert N. Sockwell, Chair
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 220
Washington, DC 20001

Re: Application of District of Columbia Public School/Georgetown Flea Market: BZA Application No. 16643

Dear Mr. Sockwell and Members of the Board:

Our client left the January 30, 2001 public hearing hopeful that the Applicant and the Applicant's lessee would meet with Safeway in an honest effort to resolve the adverse effects that the Georgetown Flea Market use is having on the use and enjoyment of Safeway's neighboring property. Certainly there is no question in the record that the Georgetown Flea Market is using the Hardy Middle School property without providing a sufficient level of off-street parking spaces located so as to furnish reasonable and convenient parking facilities for its guests. See 11 D.C.M.R. §2116.8. Such a provision is what every other property owner in the City of Washington, including Safeway and the Government of the District of Columbia, is required to do. See 11 D.C.M.R. §2100.3. But since the hearing, there has been no substantive effort on the part of the D.C. Public Schools or its lessee, the Georgetown Flea Market, to

BZA
Case No. 16643
Exhibit No. 72

Board of Zoning Adjustment
District of Columbia
CASE NO.16643
EXHIBIT NO.72

resolve the adverse impact that the absence of off-street parking has had on Safeway's property. Apart from providing our client a plat of the parking area at the rear of the Hardy Middle School building (at our request), neither the Applicant nor the Georgetown Flea Market has had any substantive discussions with Safeway. Thus, the adverse impacts that have befallen Safeway as the result of the existing/proposed use are still certain to persist.

Our letter of January 26, 2001 discusses the legal reasons that require the Board to deny the extraordinary relief that has been requested. Neither the arguments nor the circumstances upon which those reasons were based have appreciably changed as a result of the subsequent public hearing or the opportunity the Board accorded the Applicant to supplement the record. There was virtually no evidence to support the requirements for a use variance. The fact remains that no matter what the political popularity of the Applicant's lessee, the Board of Zoning Adjustment simply cannot grant a variance for this commercial use in this residential district within the context of the Zoning Regulations.

If the Board denies the variance, it does not mean that the Applicant's lessee will be out of business. It can and does operate elsewhere. Nor does it mean that the owner of the property is "deprived of all use of its property" as required at 11 D.C.M.R. §3103.2. There is no testimony that the owner could

not put this property to use on Sundays. To the contrary, the principal of the school has written that "the school needs to have the option of using the field and parking lot for sports activities on the weekends." See Exhibit A.

I. A Use Variance Cannot Legally Be Granted

It is black letter law that the Board is only authorized to grant a use variance upon a showing of undue hardship upon the owner of the property. 11 D.C.M.R. §3103.2; Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939, 941 (D.C. 1987). Gilmartin v. District of Columbia Board of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990). Here, the owner of the property, the District of Columbia Public Schools, has submitted no evidence whatsoever that it will suffer undue hardship if this variance is not granted. Nor has it shown that the requested variance would relieve the hardship if it is granted.

The Georgetown Flea Market is the owner's month-to-month lessee and, as such, cannot be the recipient of a use variance. The D.C. Court of Appeals has made it quite clear that use variances run with the land and not the user. See National Black Child Development Institute, Inc. v. D.C. Board of Zoning Adjustment, 483 A.2d 687 (D.C. 1984). Thus, even if the Board were to grant a variance here, it could only be to the owner of the property who could then lawfully use the variance to allow itself or any lessee to use its property for the

"sale of antiques and collectibles on a Sunday basis."[1] In effect, the grant of a use variance here would alter the residential zoning on the site to permit all uses similar to that proposed by the Georgetown Flea Market without regard to either the management/ownership of that use or to the off-street parking calamities that would ensue.

We note that the letters of support from Advisory Neighborhood Commission 2E and 3B are both conditioned on the operation of the Georgetown Flea Market under its current management at the site. However, the Board is without authority to approve personal variances. Any variance must run with the land. "Personal conditions impermissibly regulate the business conduct of the owner, rather than the use of his property, and are unlawful per se." Id. at 691.

Finally on this point, the Applicant's lessee cannot credibly argue that the "sale of collectibles" is a legitimate activity of the D.C. Public Schools. The owner makes no such representation. To the contrary, in its letter granting the "use agreement submitted by the Georgetown Flea Market" the D.C. Public

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[1] See, for example, a recent Connecticut case, R and R Pool and Patio, Inc. v. Zoning Board of Appeals 758 A.2d 462 (App. Ct. of CN), September 26, 2000 in which the appellate court decided that a variance granting a previous tenant the ability to sell fine furniture does not prohibit the sale of fine lawn furniture by a new tenant. The appeals court reasoned that the variance did not limit the kind of furniture sold on the property.

Schools representative writes ". . . that any D.C. Public Schools' activities (sic) take preference over [the flea market] use." (Emphasis added)[2]

II. The Proposed Parking Solution is Inconsistent with the Zoning Regulations

The Applicant proposes to create parking for 25 vehicles in a courtyard located at the rear of the Hardy Middle School building.[3] Off-street parking is regulated at Chapter 21 of the D.C. Zoning Regulations. This section requires all off-street parking spaces to be clearly stripped and lined and paved with an all-weather impervious surface. 11 D.C.M.R. §2117. Neither the Applicant nor its lessee has made any showing that the use of the parking area behind the existing school for off-street parking will meet these requirements.

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[2] See Exhibit B.

[3] The Applicant's lessee would also have the Board recognize and credit the current presence of 39 metered parking spaces on Whitehaven Street as within the lessee's provision of off-street parking. The Board should absolutely ignore this suggestion because: 1) off-street parking must be located on the same lot as the principal use. 11 D.C.M.R. §§2116.1, 2116.7; 2) neither the Applicant nor its lessee has any control over the use or availability of those spaces; 3) the Board has rightfully never credited on-street parking toward an off-street parking requirement; and 4) the existence of these on-street spaces has had little ameliorative effect on the negative impacts that the proposed use has caused on neighboring properties, particularly Safeway's.

In this void, Safeway engaged a professional engineer, licensed to practice in the District of Columbia,[4] to survey the proposed parking area and to determine what construction work, if any, will be necessary to bring it to the applicable code level. That engineer concludes that the Applicant will be required to pave approximately 2100 square feet of grass area, stripe 25, 9' by 19" standard parking spaces, re-stripe the loading area required for the school's operation, relocate an existing chain-link gate and to create and maintain a storm water management system in order for these spaces to comply with the applicable regulations.

There is also no showing by the Applicant that these parking spaces are "... located so as to furnish reasonable and convenient parking facilities for the ... guests ... which they are designed to serve." 11 D.C.M.R. §2116.8. Given the Georgetown Flea Market's admission that "more than 100 persons are expected to attend" each flea market,[5] it seems at the very least that its guests should be directed by personnel and signage to these "reasonable and convenient parking facilities" that are now unquestionably hidden from public view in a courtyard at the rear of the school building. The Applicant makes no such showing.

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[4] Ben Dyer Associates, Inc. See its affidavit at Exhibit C.

[5] See Exhibit D. (Rental application)

Finally, the Georgetown Flea Market operates from 7:00 a.m. to 6:00 p.m. on Sundays on a year-round basis. However, its "Application to Use Facilities", upon which its lease is based, clearly states that the "rear lot will not be used Dec., Jan. and Feb. (sic)."[6] Thus, if the rear lot is not leased, it cannot be legally be used for off-street parking purposes during December, January and February.

III. The Use Variance is Not in the Public Good.

Safeway again states categorically that the use of the Hardy Middle School property by the Georgetown Flea Market has a direct adverse impact on the use and enjoyment of Safeway's neighboring property. The "commitment" that the Georgetown Flea Market makes in its post hearing submission does not alleviate that impact nor is it consistent with the Zoning Regulations.

Secondly, the proposed use is clearly a commercial venture in a residential district. Because variances are not personal but instead run with the land, granting a variance to the D.C. Public Schools will allow this and any other similar activity to operate on the school property with zoning authority, a

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6 See Exhibit D. (Rental application)

result that essentially changes the zoning of the property. Such a result cannot be consistent with the intent, purpose and integrity of the zone plan.

Third, zoning cannot and should not be based on a few general expressions of support from vendors and public officials.[7] If those expressions were determinative, the Board wouldn't need a zone plan, it could simply rely upon letters from public officials for zoning decisions. Also, in these circumstances, how does one weigh the views of public officials against the wishes of the principal and of the Parent Teacher's Association (PTA) at the Hardy Middle School and those "parents and friends" of the Hardy Middle School PTA who have expressed their opposition, on this record, to the use of the property for other than school purposes?[8]

Fourth, the Applicant's lessee makes much of the fact that the Hardy Middle School property was unzoned when the Flea Market was first established. Well, it's difficult to credit this user with sympathy sufficient to overcome the clear dissonance of its use with the Zoning Regulations. Presumably, the Georgetown Flea Market knew that the Hardy Middle School

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[7] Its noteworthy that the D.C. Office of Planning analysis expressed concern about the adverse impacts of the Applicant's lessee's failure to provide off-street parking and reported that the Department of Public Works shared that concern.

[8] See Exhibit E.

property was located in a residential zone in 1988 and then, simply took advantage of a (then existing, since closed) loophole in the Zoning Regulations that permitted public school uses in all zones. In these circumstances, why should the Applicant's lessee now be permitted to take advantage of that which was never intended for it in the first place?

In the end, the only proper resolution is to rely on the Zoning Regulations which have always prohibited this commercial use in this residential zone.

IV. Conclusion

This is not a difficult case to decide. The owner of the property has simply not proved that it will endure undue hardship unless a use variance is granted. Neighboring property owners have testified that the proposed commercial use adversely affects the use and enjoyment of their property. Safeway has also presented substantial evidence detailing the adverse impacts that it has suffered and continues to suffer at the hands of this controversial and mislocated use. The principal, together with the PTA and parents and friends of the PTA of the Hardy Middle School have opposed the continuation of the use proposed by the Applicant's lessee. Respectfully, not only is the Board without authority in these circumstances to grant a use variance, but to do so would effectively lower the bar in use variance cases that come before the

Board in the future. There are substantial and unrebutted legal and policy reasons that justify the denial of this application.

As a matter of equity, the failure of the Georgetown Flea Market to obtain a Certificate of Occupancy at the Hardy Middle School will not leave area flea market vendors and shoppers without a provider. In fact, the Georgetown Flea Market already operates another flea market at 1345 U Street, N.W. ("The Georgetown Flea Market on U Street") and has announced plans to open another flea market in Clarendon, Virginia. See Exhibit F. (News Channel 8 transcript)

If this use variance fails, as it should, Safeway requests the Board to take note that the Georgetown Flea Market operates every Sunday and, we presume, will continue to do so until its appeal of the Zoning Administrator's decision requiring it to obtain a Certificate of Occupancy is heard on June 6th and subsequently decided by the Board. Such an occurrence extends the adverse impacts at least until the summer and substantially longer if the Applicant's lessee persuades the Applicant to take a judicial appeal. Such a result would be grossly unfair to the neighboring property owners who have suffered at the hands of parking calamities caused by the Georgetown Flea Market and would send an inappropriate message to those others who would employ "stall" tactics to profit at others' expense.

It is for this reason that Safeway respectfully requests the Board to direct the Zoning Administrator to close this offending and injurious use forthwith unless or until it obtains legal authority to operate on the Hardy Middle School property.

Respectfully submitted,

Jerry A. Moore III

cc: Office of Planning
Peggy Cooper Cafritz
Veronica Falwell
Ron Mlotek
Helen Haggerty
Patrick Pope
ANC2E
ANC3B

Certificate of Service

I hereby certify that on February 26, 2001, a copy of the foregoing letter, together with its exhibits, was served upon the following by First Class Mail.

Norman M. Glasgow, Jr.
Wilkes, Artis, Hedrick & Lane
1666 K Street, NW, Suite 1100
Washington, D.C. 20006-7800

Jerry A. Moore III



District of Columbia Public Schools
Rose L. Hardy Middle School
1819 35th Street, NW
Washington, DC 20007

202-282-0057
202-282-2383 (fax)

Patrick Pope, Principal Norma Lewis, Assistant Principal

February 14, 2000

Honorable Mayor Williams,

I am writing to request your assistance in an important matter regarding the use of district property, specifically school grounds and buildings, for commercial ventures.

For approximately fourteen years the Georgetown Flea Market has operated on the Gordon/Hardy Middle School property on Sundays. The Flea Market has operated under a yearly contract administered by the District Schools Realty Office.

Currently the lease of this school property is under review by the District Zoning Commission. It is my understanding that the City Council is considering legislation that would give the Flea Market operator permanent residence on this property.

Speaking for the school community, I can assure that no one is interested in interfering with the operation of this venture. The community does want the Flea Market to relocate. Construction of a playing field and track on part of the former parking lot has recently been completed. The school needs to have the option of using the field and parking lot for sports activities on the weekends.

Please help me assure my community that the full use of school property for school and community activities and events will remain the permanent priority. I also need to assure the community that the superintendent and the school board will remain the final authority in these matters.

Thank you in advance for your time and attention.

Sincerely,

Patrick Pope

Patrick Pope



DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Real Estate Office
825 North Capitol Street, N.E., Suite 7122
Washington, D.C. 20002-4232
202-442-5199, fax: 202-442-5180
www.k12.dc.us

Hardy

RECEIVED
2001 JAN 29 PM 3:56
D.C. PUBLIC SCHOOLS
LEGAL SERVICES BRANCH

September 9, 1999

Mr. Michael Sussman
Georgetown Flea Market
2109 N Street, N.W.
Washington, D.C. 20037

Dear Mr. Sussman:

Enclosed for your records is a copy of the Use Agreement submitted by the Georgetown Flea Market, requesting permission to use the parking facilities at the Hardy Middle School to have a flea market. This use is scheduled to begin on September 12, 1999 through September 3, 2000. Please note that any D.C. Public Schools' activities take preference over this use. Notwithstanding anything to the contrary contained herein, D.C. Public Schools shall have the unilateral right, in its sole discretion, to terminate this Agreement upon thirty (30) days prior written notice.

The total monthly user fee is at $1,763.67, as defined on the enclosed "Application to Use Facilities", page 2 of 2. This rental rate will be revised upon receipt of the new appraisal and the new rate will reflect the new appraised value and will be applied from September 1999.

Please submit a certified check or money order, made payable to **D.C. Public Schools**, and forward to the D.C. Public Schools Real Estate Office, 825 North Capitol Street, N.E., Suite 7122, Washington, D.C. 20002. Also, return an executed copy of the enclosed Assumption of Risk and Indemnification Form, Conditions of Use, and an insurance certificate prior to use. The User's fee and insurance is a prerequisite for use.

If this use is cancelled or postponed, please notify both the principal and this office (202) 442-5199.

Sincerely,

Gerald F. Cooke
Director

GFC/tp

Enclosures

cc: Patrick Pope, Principal
Security
Custodial Services
Real Estate Office



Before the D.C. Board of Zoning Adjustment

Re: Application for District of Columbia Public Schools/
Georgetown Flea Market: BZA Application No. 16643

Affidavit

Upon first being duly sworn the affiant says:

1. My name is Paul Woodburn and I am employed as a professional engineer at the firm of Ben Dyer and Associates, Inc. I am licensed as an engineer in the District of Columbia (License No. 10479).

2. February 7, 2001, I personally conducted a site survey of the so-called parking area that is located in a courtyard behind the Hardy Middle School which is located at 35th and T Streets, N.W. My assignment was to survey the area, determine if it can be used for off-street parking and, if so, to determine the tasks, if any, that are required to be accomplished to enable this area to be used for off-street parking in a manner consistent with District of Columbia regulatory code requirements.

3. It is my professional opinion that the area can be used for off-street parking but that certain improvements are required to wit:

(a) the approximately 2100 square feet of grass area needs to be paved with an adequate parking lot pavement surface;
(b) twenty five 9'x19' standard parking spaces need to be striped;
(c) the loading area for the school use needs to be restriped;
(d) the existing storage area chain link gate needs to be relocated;
(e) a stormwater management and sediment control plan must be created and approved by the District;
(f) applicable permits need to be obtained from the District.

4. A copy of my survey construction plat is attached hereto.

Further the affiant saith not.

Paul B. Woodburn

Paul B. Woodburn, P.E.

STATE OF Maryland)
COUNTY OF Prince George's)

On 22nd Feb 2001 before me, Linda J. Bakalar, Notary Public, personally appeared Paul B. Woodburn, personally known to me (or proven to me on the basis of satisfactory evidence), acknowledged to me that he executed the same, freely and voluntarily, in his authorized capacity.

WITNESS my hand and official seal.

Linda J. Bakalar
Notary Public
My Commission Expires 2-1-04

[Notarial Seal]

NOTES:

1 - Pave 2,100 SF± of grass area

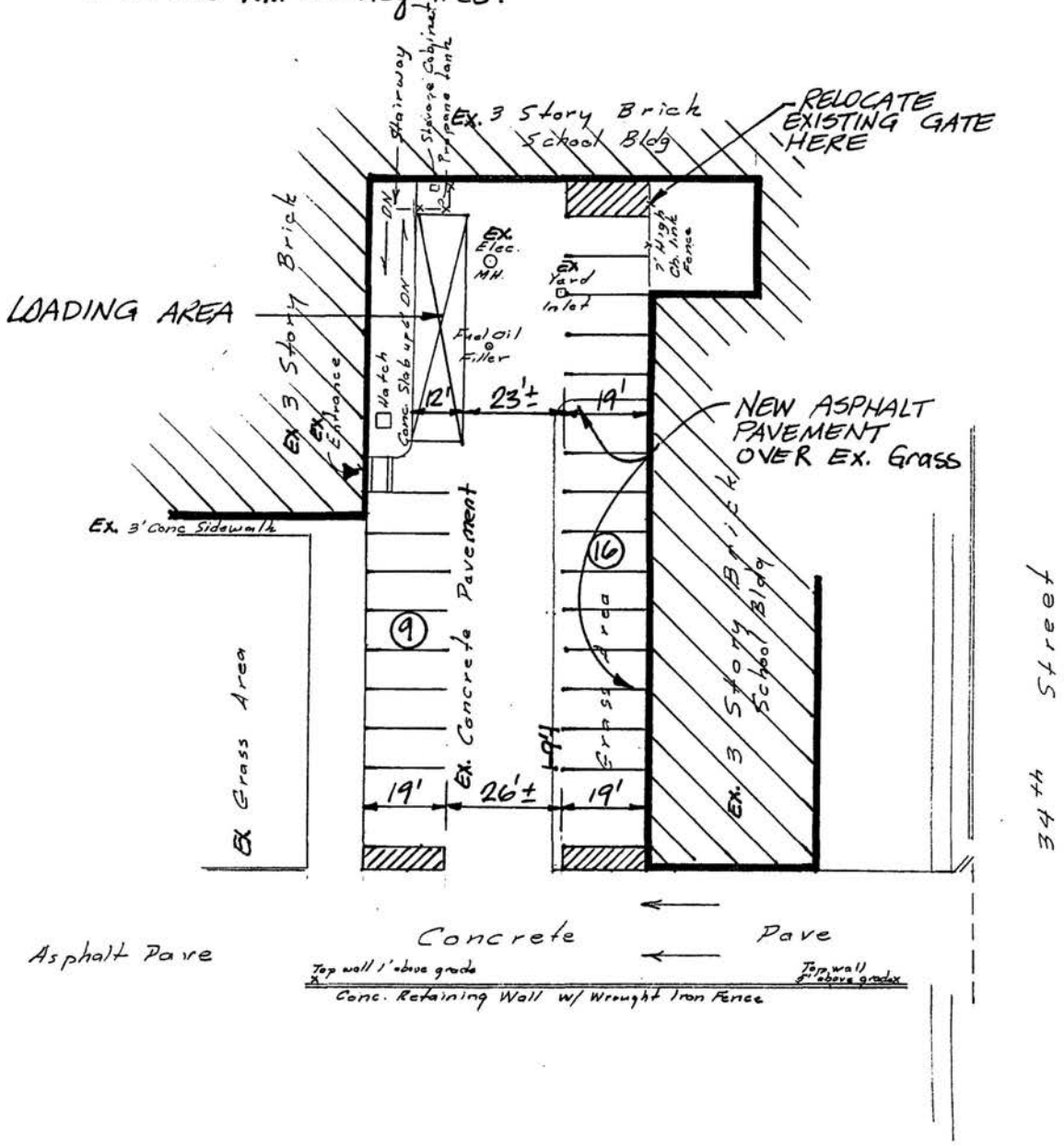
2 - Restripe 25 9'x 19' standard Parking spaces

3- Restripe Loading Area as required

4- Relocate existing chain link gate

5. Storm Water Management will Be Required. Sediment Control Will be Required.

6. Permits will Be Required.



Georgetown Flea Market

J.B 0103337794

W.O. 56983

Scale: 1"=30'



APPLICATION TO USE FACILITIES

This form must be received in the Real Estate Office at least twenty (20) working days prior to the proposed use. For more information call the Real Estate Office on (202) 442-5199. The Principal's approval is needed prior to submitting this application to the Realty Office.

DATE OF APPLICATION: August 24,1999 **FACILITY REQUESTED:** Parking Facility, Hardy M.S.

NAME OF USER/ORGANIZATION: Georgetown Flea Market Front and rear lots.

AUTHORIZED CONTACT: Michael Sussman

ADDRESS: 2109 N Street, N.W. Washington, D.C. 20037 **TELEPHONE:** 202-296-4989

DESCRIPTION OF PROPOSED USE: (Attach a brochure, flyer, etc. describing your activity.)

Sale of antiques and collectibles on a Sunday basis for the Georgetown/Burleith area. Open to all persons to buy and sell. Rear lot will not be used Dec., Jan. and Feb.

Check if applicable to proposed use.: More than 100 persons expected to attend: XX Handling of money: XX

Specific Area Requested: Auditorium ____ Gymnasium ____ Stadium ____ Armory ____

Cafeteria ____ Kitchen ____ No. of Classrooms ____ Other PARKING FACILITIES

Period of Requested Use:	**Hours** From...To	**Days** Mon-Sun	**Dates** Month/Day/Year
	7AM-6PM	SUNDAYS	SEPT 1999-SEPT 2000

Type of User:

Public School Related:
__PTA or HSA
__DCPS Program or Activity
__Other

Non-Public School Related:
__Religious Organization
__Non-Profit Group
X Other individual

How is the program funded? DCPS ____ Grant ____ Other private

Is the Staff paid? n/a **or volunteer?** ____ **Is there a charge to the participants?** Yes ____ No ____ not to the public

I hereby agree to be bound by the terms of the Application to Use Facilities and to abide by the pertinent rules of the Board of Education, Section 3500 thru 3508 and Superintendent Directives. Furthermore, I agree to make final arrangements and publicize this activity ONLY after written approval has been received.

User Signature: Michael Sussman **Date:** 8/24/99

****

NOTE: All Users must immediately vacate the premises, as a result of a court order, construction, or inclement weather. This agreement may be cancelled with a thirty (30) day notice for the convenience of the School System.

FROM : MICHAEL SUSSMAN FAX NO. : 202 223 0289 Aug. 24 1999 10:13PM P1

INSURANCE INFORMATION:
The following information must be accurate. (False information will be cause for immediate termination of the agreement.)

Name of Insurance Company: Travelers Property Casualty
Policy Number: 660-198C3186TCT-99 Coverage: $2,000,000.00
Name and Telephone no. of Insurance Agent: DREYFUSS-NEY 301-656-3994
All users must sign an Indemnification Form, after approval of the use application by the Real Estate Office as necessary. This for plus a copy of the users insurance certificate to the Real Estate Office at least forty-eight (48) hours prior to entering the building.

For DCPS Real Estate Office Use Only **Calculated by:**

Assessed Rate: $110 per space per month

$110 / 20 (average monthly work days) = $5.50 daily rate

$5.50 x 74 (parking spaces) = $407.00 (per day)

$407.00 x 52 Sundays = $21,164

$21,164 x 12 = $1,763.67 (per month)

CONTINUOUS USERS

Pro-Rated Rental Fee	Cost/Sq. Ft. Per Day	No. Sq. Ft.	No. Days	Total Cost
Schedule A Schedule B	$.024 .007			

DCPS SIGNATURES	RECOMMEND	APPROVE	DISAPPROVE	DATE
PRINCIPAL/FACILITY ADMINISTRATOR				
REALTY OFFICER		[signature]		9/9/99
SUPERINTENDENT/DEPUTY/ASSISTANT				

FORM NO. 53RO390 REV 2/98

FROM : MICHAEL SUSSMAN FAX NO. : 202 223 0289 Aug. 24 1998 10:13PM P2

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS
Real Estate Office
825 North Capitol Street, N.E., Suite 7122
Washington, D.C. 20002-4232
202-442-5199, fax: 202-442-5180
www.k12.dc.us

ASSUMPTION OF RISK AND INDEMNIFICATION FORM

Georgetown Flea Market, hereby agrees that all property and activities of any kind or nature whatsoever that may be in, upon, or about the designated space utilized by the **Georgetown Flea Market** on the Hardy Middle School's parking facilities, at any time during the term of this use agreement, or any renewal or extension hereof, shall be in, upon or about said premises at the sole **Georgetown Flea Market** or those claiming by, through, or under the **Georgetown Flea Market**.

Moreover, the **Georgetown Flea Market**, hereby agrees to indemnify and save harmless the District of Columbia Government, the D.C. Public Schools, and their agents and employees, from all penalties, claims and demands resulting from the **Georgetown Flea Market** use and occupancy of the designated premises, and in the conduct of its operation on said premises.

It is expressly understood that the District of Columbia Government, D.C. Public Schools, and their agents and employees shall not be liable to the **Georgetown Flea Market**, or to any person, for any accident, injury, loss, or damage to any person, or property while in, upon, or about, or entering or leaving said premises at any time during the term of the use agreement or any renewal or extension hereof, resulting from any cause whatsoever, and all claims therefore are hereby released to the District of Columbia Government and D.C. Public Schools, who may plead this release in bar thereof, in any and every suit, demand and claim for same.

Georgetown Flea Market

By: _____ 9/9/99

Name Date

Conditions Governing Use of Hardy Middle School's Parking Facilities by the Georgetown Flea Market September 12, 1999 to September 3, 2000

The following terms govern this use:

1. Rules of the Board of Education, Section 3500, et. seq. which are incorporated by reference.

2. This agreement grants use of the parking facilities at Hardy Middle School on Sundays beginning September 12, 1999 to September 3, 2000, from 7:00 a.m. to 6:00 p.m.

3. The User shall be responsible for repairing any damage to the Hardy Middle School site or building due to this use. The parking lost is made available "as is".

4. Proof of public liability insurance in the amount stated in the Board Rules, with the D.C. Board of Education, and the D.C. Government as an additional insurer shall be on file in the D.C. Public Schools, Real Estate Office, 825 North Capitol Street, N.E., Washington, D.C. 20002, prior to use.

5. If the User defaults on any term herein, the agreement is subject is subject to termination.

6. If the User desires to terminate the agreement prior to the end of the term agreement, a notice of five (5) days must be submitted to the D.C. Public Schools' Real Estate Office.

7. All notices related to this agreement shall be sent to:

   For User: Mr. Michael Sussman
   Georgetown Flea Market
   2109 "N" Street, N.W.
   Washington, D.C. 20037

   For DCPS: Veronica L. Falwell, Deputy Officer
   Real Estate Office
   825 North Captitol Street, N.E., Suite 7122
   Washington, D.C. 20002

8. The User is responsible for security during the term of this use and shall have a full-time Market Master on the site during each use.
   The name of the Market Master is: Michael Sussman. Please notify the Real Estate Office at 202/442-5199 in advance if any substitute(s) are made.

9. The User shall be responsible for clean-up (including removing all trash from the site) after each use.

10. The delivery trucks shall enter by the East Gate on Wisconsin Avenue, N.W. The User shall be responsible for any damages to the curb, sidewalk, or parking lot paving caused by this activity.

11. Since the building will be closed to the market staff and consumers, the User shall provide "port-a-johns" for the farmers and consumers.

12. No one is allowed to set-up in front of the building's entrance, or outside of the fence around the parking lot.

13. The User (Georgetown Flea Market) is responsible for all damages and/or claims that may arise from the use of the Hardy Middle School's parking lot, and the area adjacent during this use.

Signature _____
Michael Sussman



"DESK COPY

NOV 19 REC'D

Rose L. Hardy Middle School PTA
1819 35th St., NW
Washington, DC

NOV 18 REC'D

November 9, 1999

Ms. Arlene Ackerman
Superintendent
DC Public Schools
825 N. Capitol St., NW
Washington, DC

Dear Ms. Ackerman:

We, the undersigned members of the Executive Board of the Rose L. Hardy Middle School PTA and Parents of Hardy School, wish to present the following statements and views on the leasing of the Hardy School grounds to the operator of a flea market:

1. DCPS ERRED IN INTERPRETING THE REGULATIONS REGARDING ALLOWABLE AND APPROPRIATE ACTIVITY ON SCHOOL PROPERTY.

   The Municipal Regulations state that all non-DCPS activities on school property shall be consistent with the educational mission of the building and grounds being considered. The Municipal Regulations list a number of allowable activities on school property. **Commercial activity is last on that list.**

   The flea market operator leases the entire grounds of Hardy and then subleases space to sellers of foodstuffs, antiques, pictures, rugs, and other new and used items for resale. None of proceeds of the lease, sub-leases, or sales inures to the benefit of Hardy School. There is no component of the flea market operation that can, in any way, be related to the educational mission of Hardy or any other school.

2. DCPS ERRED IN THE PROCEDURES FOR NEGOTIATING AND APPROVING THE LEASE IN THAT THE PRINCIPAL OF HARDY DID NOT PARTICIPATE IN THE NEGOTIATION OF THE LEASE AND DID NOT SIGN THE USE AGREEMENT.

   The DCMR and DCPS's internal regulations stipulate that the Principal shall , at a minimum, agree to the conditions of the use agreement and shall sign the use agreement. The Principal at Hardy was neither a party to

the negotiations of the lease nor did he sign the use agreement.

The purpose of this requirement is to provide the Principal with an opportunity to determine that the conditions of the use agreement are consistent with the mission of the building and that such use does not interfere with education. It also affords the Principal an opportunity to consider the views of the parents and local community in setting the terms.

3. THE CONTINUED USE OF THE GROUNDS FOR A FLEA MARKET JEOPARDIZES THE INVESTMENT IN THE NEW SPORTS FIELD AND BASKETBALL COURT.

DCPS has made a considerable investment in building a track, playing field, and basketball courts for use by the students of Hardy. Additionally, other aesthetic improvements have been made in the front of the school such as the construction of plant boxes and the planting of trees and shrubs.

The flea market has always occupied the entire property for its use. The new fields now use about 40% of the grounds. There has been, however, no reduction in the amount of activity of the flea market. To the contrary, the sellers now pack themselves into the smaller space. A recent count indicated that there were 85 vehicles on the grounds using every available square foot of space. We have observed vehicles backing up on the sidewalks, pushing newly planted trees and shrubs in the process. It is only a matter of time before the sellers begin to place their vehicles and wares on the playing fields and cause costly damage.

4. THE CONTINUED USE OF THE GROUNDS FOR A FLEA MARKET IS INCOMPATIBLE WITH THE COMMUNITY'S USE OF THE SPORTS FIELD AND BASKETBALL COURT.

Sports fields and basketball courts area natural drawing card for local residents, both children and adults, to participate in athletic activities. These are appropriate and ordinary uses of school grounds. The presence of trucks, cars, and large crowds is not compatible with that use.

5. DCPS DOES NOT ENFORCE THE CONDITIONS OF THE AGREEMENT.

DCMR includes several standard clauses for use of school property. For instance, lessors shall not place signs or other items on school buildings or

fences. We have observed several signs which are routinely hung on fences and the building. Sellers hang paintings of window screens. Portable toilets and trash cans are left on the property during the week. If DCPS were to inspect the grounds while in use, these and other violations would be apparent.

6. THE LEASE MAY BE IN VIOLATION OF OTHER DC LAWS AND REGULATIONS

Recently, the DC Zoning Administrator issued a ruling that the flea market was operating in violation of the zoning laws. It is a commercial activity which is not approved for that block. No Certificate of Occupancy has issued. The operator could not then have the appropriate business licenses and registrations. The lease is, therefor, in violation of several DC laws and regulations. DCPS should not be a party to a lease which does not ensure compliance with all DC laws.

All the reasons above indicate that DCPS should revoke the current lease. If, however, DCPS decides that it can lease the property we, through the Principal and the PTA, would like to actively participate in the negotiation of the revised lease agreement.

We have attached sheets with the signatures of parents at Hardy who agree with this position.

The purpose for which Hardy was built - education - must always be the prime consideration in determining its use.

Sincerely,

Marty Tillman, President

Cheryl Clark, Vice President

Robert Moore, Treasurer

Karen Frazier

Karen Frazier, Secretary

cc: Mr Jack Evans, DC Council
Ms. Kathy Patterson, DC Council
Ms. Westy Byrd, DC Board of Education

(1)

ROSE L. HARDY MIDDLE SCHOOL PTA
"FLEA MARKET" PETITION
NOVEMBER 9, 1999

We, the undersigned Parents and Friends of Hardy School, support the Hardy PTA Executive Council in its opposition to the continued leasing of Hardy school property to the operator of the "Flea Market".

NAME		SIGNATURE
Verna	Anderson	Verna Anderson
MARY Anne	Wright	Mary Anne Wright
Angela	Watson	Angela Watson
Susan	BACHRACH	Susan O Bachrach 3740 Penn
Nancy	Brown	
TIMOTHY	D'EMILIO	T. D'E.
LEONELLE	CANESTANY	Leonelle Canestany
SHEILA	HOLEMAN	Sheila Holeman
Gail V.	Harris	Gail V. Harris
Evan	Hendricks	E. D Hendricks
Mary Louise	Garrison	
Robin	Snead	Robin Snead
Dorothy	Dudley	
Linda	Holifield	Linda M Holifield
Gloria	Lopez	Gloria Lopez
Linwood	Martin	

2

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NAME	SIGNATURE
Cynthia Martin	Cynthia Martin
Sheila Hutton	Sheila Hutton
C.J. Lopez II	C.J. Lopez II
Margaret Lopez	Margaret Lopez
Beverly Jackson	Beverly Jackson
Indy Williams	Indy Williams
FRAN WARKING	Fran Waring
~~Joyce Ford~~	~~Joyce Ford~~
Nadine Bell	Nadine Bell

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NAME	SIGNATURE
Germenna Booker	Germenna Booker
Cheryl Clark	Cheryl Clark
Tina Lathum	
Lisa Branick	Lisa Branick
Bonny M. Henderson	Bonny M. Henderson
David H. Reed	David H. Reed
Carolyn Bethea	Carolyn Bethea
Melvin Bethea	Melvin Bethea
Anne Masters	

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NAME	SIGNATURE
Dellie Reed	Dellie Reed
Donald Wyatt	Donald M. Wyatt
Percy Davis	
John Wilson	John Wilson
JACK DELGADO	Jdelgado
Deborah J. Turner	Deborah J. Turner
DeBorah S. Thomas	DeBorah S. Thomas
Donald Wyatt	Donald M. Wyatt

FEB-02-01 03:12 AM 9378929?3 2023420030 P.15
02/01/01 THU 14:56 [TX/RX NO 5057]

ing below grade level?

Some teachers would like to turn grassy areas around Ellington into free surface parking lots to remedy the situation. Others have suggested that teachers should be issued Zone 2 Residential Parking Permits so that they can park on neighborhood streets all day without

There's a Metrobus that stops in front of Ellington and runs to the Dupont Circle Metrorail station, and just two blocks away on Wisconsin Avenue there's a cross-city bus line. Instead of dashing from their classrooms to move their cars, Ellington teachers should be dashing to catch the bus.

Letters to the Editor

Dear Georgetowner:

As a person who has always loved walking by Montrose Park and smelling the wonderfully fragrant circular lavender garden, I have some distressing news. The other day I saw a woman "harvesting" the dried lavender buds and placing them in a bag. I thought little of it at the time, since there was so much I reasoned that a few handfuls wouldn't be missed. A few days later, however, I was walking by the garden and failed to pick up the characteristic fragrance. Upon further inspection, THE ENTIRE GARDEN had been stripped of every lavender bud. It is pathetic that someone would be so selfish as to rob the entire community of a fantastic source of "aroma therapy," presumably because they are too cheap or lazy to pay the ten dollars or so it would cost to buy a lavender sachet. This may be small in the scheme of things, but it is a depressing statement about the human species. To make matters worse, I was in Fresh Fields recently and noticed another reasonably well-groomed woman using her hand to rake through cereal in one of the bins (scoops are provided) and use the same hand to munch on some of the bits she had sifted out. WHO ARE THESE PEOPLE -- YIKES!! I am hoping you will print this so that some of the "ladies and gentlemen" who behave so regrettably will be shamed or englightened into getting a grip on their behavior.

Sincerely,
Amazed in
Dupont Circle

Dear Georgetowner:

You failed to list me in your comprehensive list of homes built before 1825 (see *Georgetowner*, Oct. 14, 1999). I am part of Cox's Row on N Street, one of the most historic groupings of Federal row houses. Please make a correction.

Thank you,
3327 N Street, N.W.

Dear Editor:

I am the parent of a new seventh grade student at Hardy Middle School in Georgetown. I have been impressed with the principal's management of the school and its programs and the quality of the faculty. I have been equally impressed with the efforts of the principal to maintain and improve the building and its grounds through careful planning and use of the limited resources provided by DCPS. One of those efforts is using a part of the school's parking lot to provide a field and track for the students. Surface grading is nearly complete and sodding is scheduled in the next few weeks. The physical education department and the coaches of the school's teams are excited because they will, at last, have a field for regular physical education classes and team practice sessions.

The entire school grounds are, however, currently leased by DCPS to the operator of a "flea market," an entirely commercial affair. This outdoor market, operating every Sunday, draws large crowds of sellers and buyers presenting a high potential for damage to or misuse of the school's property. For instance, the market operator leaves portable rest rooms and dumpsters on the school property throughout the week providing a harbor for vermin with attendant health and safety risks for students and nearby residents. Additionally, there is limited space for parking. I understand that shrubbery has been cut down by sellers so they could get their vehicles on the property.

The site, in general, seems to exhibit more wear and tear than one might expect from ordinary use by school children. I am concerned that the costly investment in the athletic field will be rendered valueless if such misuse continues.

The use of facilities dedicated to one of government's most important public functions -- education -- should be strictly limited to that purpose. The policy of leasing public school property for commercial purposes can only lead to increased problems such as those described along with associated repair costs or, worse yet, lawsuits.

DCPS should cancel the flea market lease, stop this misuse of school property, and concentrate all of its efforts and resources on educating our children.

A Hardy School Parent

(Letters Continued on Page 7)

States and Iraq. In fact, the Bush administration was sending messages to Saddam Hussein that were contrary to him to invade Kuwait. For example, the American Ambassador to Iraq had a meeting with Saddam Hussein about six days before the invasion. This is what she told Saddam: "The United States is not interested in Arab-Arab conflict. We are not interested in your border problem with Kuwait."

It was after the war that I went to Baghdad to meet the foreign minister of Iraq, Tariq Aziz. I had never met with Saddam, so I told Tariq that I had a paper that I wanted him to give Saddam. The letter read "If President George Bush had telephoned Saddam Hussein and said, 'Mr. President, you should not invade Kuwait. This will be a disastrous thing for Iraq. The United States would intervene in a war with you and you would be the loser.' I understand that you

Kennedy was assassinated, he was in touch with Castro, he told him that the United States wanted to normalize relations with Cuba and drop the embargo. If Kennedy lived, he would have dialogued with Castro.

The end result today: Quadaffi and Castro are still firmly in power. A dialogue would have changed that, I am sure.

In my recent article on the New Millennium, I pointed out that war would continue, probably for 50 years. The Senate's decision not to pass the Comprehensive Test Ban Treaty has cut off dialogue with many nations. As we move into the New Millennium, we have to change our views. We have to initiate meaningful dialogue with rogue nations. If we do that, it will reverse a lot of dangerous problems which exist around the world. It will also change leadership in these countries.

LETTERS TO THE EDITOR

Don't close the flea market — move it

I would like to comment on the letters that have been written in support of the Georgetown Flea Market at Hardy Middle School. I don't believe anyone is trying to "shut it down." I believe it should move to another location. Let me explain why.

Last month I attended a Six-School Complex picnic behind the Hardy school. Right in the middle of the activities sat two portable toilets and a Dumpster strewn with trash. Is it really so silly to expect trash-free public school facilities? Furthermore, the wear and tear of an operation like the flea market does add to the deterioration of the property. Just ask the principal.

The Hardy school is no longer just a building and a parking lot sitting empty. It is a middle school for grades six through eight serving 250 children from all over this city. Half of the parking area is being renovated into a much-needed playground, track, field and basketball courts. This city is desperate for playing fields for its children, especially on weekends. Children and their families would be much better served by having unhampered access to this facility once it is complete for soccer, lacrosse, baseball and track. Even the Jelleff Boys and Girls Club is having a difficult time accommodating all of the teams vying for field space on weekends.

The flea market is overwhelmingly popular, and no one is trying to shut it down. We would like to see it relocated. Why not explore other locations in Georgetown? Has anyone inquired about the parking lots at Georgetown University or Guy Mason Recreation Center? There is not one private school in this city that would allow a flea market to operate on its property for a mere $1,700 per month because they respect their schools and children and maintain their facilities. Shouldn't we expect the same for children who attend public schools in the District?

Helen Hagerty
Georgetown

Georgetown Current



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A BURRELLE'S Affiliate

Transcript

DATE February 11, 2001
TIME 11:00-11:30 PM
STATION Newschannel 8-TV (Ind)
LOCATION Washington
PROGRAM Weekend Late Night Report

Hugh Thomas, anchor:

The fate of the Georgetown Flea Market may be decided soon. Because of a zoning problem, the market may be evicted from Hardy Middle School. Newschannel 8's Theresa Dickie says, if it loses its battle to survive there, it may move out to Arlington.

Michael Sussman (Georgetown Flea Market Director): We have vendors that have been here for twenty-five years and customers that even moved into this neighborhood so they could be close to the market. It's very well-supported and has a national and international reputation, and it's--and it's a community-based event and it's a quality-of-life issue and--and we'd like to see it continue. (Visual of Georgetown Flea Market)

Theresa Dickie reporting:

But the welcome mat for Michael Sussman's Georgetown Flea Market could be yanked. On March 6, the Board of Zoning Adjustment will decide. The market has a strong opponent.

Jim Graham (Democrat, District of Columbia Council): You know, Safeway is very concerned about its parking. Even though, you know, they have security guards, you know, if you come to this lot in the afternoon, you're virtually given a ticket to get into this lot. So--I mean, they're various ways we can protect the businesses without eliminating this business. (Visual of sign at Safeway, indicating no parking for Georgetown Flea Market)

Dickie: Meanwhile, across the river in Arlington, the County Board gave the green light to flea markets. Sussman hopes to manage one in the Clarendon neighborhood.

Tom Fairchild (Clarendon Alliance Executive Director): ...a destination for people within the community to come to on a Saturday, to enjoy and celebrate what Clarendon is, and we think it also celebrates the small business roots of

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Clarendon and will have spin-off benefits to our small businesses: the coffee shops, the small restaurants, et cetera.

Dickie: But there was some opposition.

Jay Fisette (Democrat, Arlington County Board Chair): Well, anytime you allow for a market or additional, you know, vendors in the neighborhood, you potentially have more parking, you have the issue of trash pickup, and those are all the things that, very rightly, neighborhoods have raised and we need to deal with at the appropriate time, and we will.

Dickie: Applicants must show how they'll handle parking and trash. Visitors to Clarendon can't wait for the flea market.

Robert Troy (Arlington Resident): I think it's a good idea because it will draw a lot of people here and will promote business in general.

David Beach (McLean Resident): People get out here a lot and there's a lot of Metro service to this area and they can walk around, and as long as it's in the warm weather, it'll be really nice.

Amal Morcos (Arlington Resident): I like flea markets and it's convenient for me to probably come down and take a look.

Dickie: Michael Sussman's expertise is welcomed in Arlington. He says, if he loses his battle in Georgetown, he won't move that operation to Arlington, but will try to relocate somewhere else in the district.

Theresa Dickie, Newschannel 8.

Thomas: If the Georgetown Flea Market strikes out on March 6, Sussman says he does have a second chance to appeal that decision in June.

# # #