BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

BZA Appeal No. _____

STATEMENT IN SUPPORT OF APPEAL OF SAFEWAY, INC.

Action Requested

Our client, Safeway, Inc. respectfully appeals the decision of J. Gregory Love, Administrator, Building and Land Regulation Administration, District of Columbia Department of Consumer and Regulatory Affairs, to issue a Certificate of Occupancy to Michael Sussman for the purpose of operating a flea market, Sundays only, on the premises of the Hardy Middle School (the "premises). The Certificate of Occupancy, dated October 9, 2001 and numbered CO-20768, was issued in conjunction with a Settlement Agreement of even date between Mr. Sussman and the D.C. Department of Consumer and Regulatory Affairs.

This Certificate of Occupancy illegally authorizes a non-residential use in an R-3 residential district in contravention of Sections 101.5, 320.2, 320.3, 3100.2, 3200.2, 3203.1 and 3203.8 of the District of Columbia Zoning Regulations. As such, it creates a new class of land user in the District of Columbia in which the Georgetown Flea Market will be the only private member; one in which it will not have to comply with the existing zoning requirements regarding commercial uses in residential zones nor the minimum number of off-street parking spaces that must be provided. Mr. Love has no

BZA
Case No. 16821
Exhibit No. 2

Board of Zoning Adjustment
District of Columbia
CASE NO.16821
EXHIBIT NO.2A1

statutory or regulatory authority to issue a certificate of occupancy that is in contravention of the Zoning Regulations. As such, the decision of Mr. Love to do so must be vacated and the resulting Certificate of Occupancy (#CO-20768) voided.

BACKGROUND

The premises at issue is owned by the District of Columbia through the D.C. Board of Education ("Board") and is located directly across Wisconsin Avenue from the "Georgetown Safeway". In intermittent periods since 1988, the Board has leased a portion of the premises, on Sundays during daylight hours only, to Michael Sussman who operates a private, for profit business known as the Georgetown Flea Market. According to Mr. Sussman, he was initially advised by the Board that a Certificate of Occupancy for his use of public property was not required and, as a consequence, he did not apply for one until the Board, acting in response to an order of the Zoning Administrator, forced him to do so in 1999.

Although he claims to have leased the premises since 1988, in actuality, the premises has been the subject of a number of term leases for defined periods of time. A catalogue of those leases is at Exhibit A. Each of the leases were the result of individual applications filed annually by Mr. Sussman to use the school property, generally Sundays during daylight hours only for the period of February through October of the year. Each lease terminated in the

fall of the year, then, subsequently, Mr. Sussman elected to apply for a new lease in the winter of the following year. The Board was under no obligation to re-lease the premises to Mr. Sussman. The property was not leased to Mr. Sussman or to the Georgetown Flea Market during any of the gap periods between the leases. In fact, anyone was eligible to apply to use the premises after each of Sussman's leases expired.[1]

In1999, the Board formally advised Mr. Sussman that a certificate of occupancy was necessary for him to continue to occupy the premises under the lease that was then in effect. Thereafter, for the first time, Mr. Sussman made application to the D.C. Department of Consumer and Regulatory Affairs for a certificate of occupancy. By letter dated October 6, 1999, the D.C. Zoning Administrator denied his application for a certificate of occupancy, finding that the use he proposed was not permitted by the Zoning Regulations. Exhibit C. The letter directed Mr. Sussman, if he should choose, to file an application with the Board of Zoning Adjustment ("BZA") for a "use variance" from the Zoning Regulations. Instead, on November 5, 1999 Mr. Sussman filed an appeal of the Zoning Administrator's decision with the Board of Zoning Adjustment. That appeal was assigned case number 16535 and claimed that the flea market use was an accessory use to the principal public school use. Exhibit I.

---

[1] In 1994 the board did lease the same premises, on Saturdays only, to Richard Newton of Antiques Promotions of Arlington, Virginia. Mr. Sussman

Meanwhile, we believe that Mr. Sussman concurrently undertook efforts to create a legislative exemption from zoning for his flea market business. Nonetheless, on November 24, 1999, Mr. Sussman filed an application for a use variance. That application was assigned case number 16542. About a month later, the Council of the District of Columbia considered and passed the "Comprehensive Plan Land Use Georgetown Flea Market Exemption Emergency Amendment Act of 1999" ("DC Act 13-253"). In pertinent part, that emergency act exempted the flea market from D.C. zoning requirements.

On January 19, 2000, the Board of Zoning Adjustment granted Mr. Sussman's request that the hearing on his appeal of the Zoning Administrator's decision be postponed in view of the passage of D.C. Act 13-253. Eight days later, on January 27, 2000, the Control Board approved (Emergency) D.C. Act 13-253 making it effective on that date.

The Board of Zoning Adjustment scheduled a hearing on Mr. Sussman's use variance application for February 9, 2000. Mr. Sussman apparently did not post the property with notice or file a pre-hearing statement as the Zoning Regulations require, apparently believing, wrongly, that the D.C. Act 13-253 mooted the need for zoning relief. At the February 9, 2000 public hearing, the Board did consider his request for a variance, but decided that it needed

---

expressed his "disappointment" with that lease and then applied to use the premises for Saturdays and Sundays of the following year. See Exhibit B.

additional information to move forward on the application. Thereafter, the Board requested the following information and made the following actions:[2]

- a history/description of the flea market operations;
- a copy of D.C. Act 13-253;
- a written statement of the status of this legislation from the Board staff;
- advice from the D.C. Corporation Counsel on how to proceed;
- testimony from a representative of the D.C. Public School system regarding the regulations for use of school property;
- a determination of why the Advisory Neighborhood Commissioner for the effected area did not respond to the application.

Subsequently, the D.C. Public Schools informed Mr. Sussman that he must obtain a certificate of occupancy, or take substantive steps to do so prior to the expiration of the lease that he held for the spring, summer and fall of 2000. Exhibit E. Although it is technically the applicant on both of Mr. Sussman's zoning cases, the D.C. Public Schools has taken no official position on either of his zoning applications or on his zoning appeal.

The emergency legislation creating the zoning loophole for the Georgetown Flea Market expired on April 26, 2000. The Board of Zoning

---

2 See Exhibit D.

Adjustment then indicated its intention to rehear both of Mr. Sussman's cases, on a consolidated basis, on Wednesday, May 3, 2000. That hearing date was continued until June 7, 2000. However, for his reasons, Mr. Sussman chose to withdraw both the appeal and the variance application prior to the hearing notwithstanding the fact that the emergency legislation for which he was granted a certificate of occupancy had expired.

Subsequently, under pressure from the Board to obtain a valid certificate of occupancy for his use of the Board's property,[3] Mr. Sussman refiled his appeal and use variance applications. The BZA scheduled a public hearing on both the application (BZA No. 16643) and the appeal (BZA No. 16642) for Tuesday, January 30, 2001.

On January 8, 2001 Safeway, Inc. filed a timely request to appear as a party in both Mr. Sussman's new use variance application and in his new appeal cases. The Board granted Safeway's request at the public hearing. Subsequently, Sussman requested and Safeway consented to separate the hearings on the application and the appeal. The Board agreed and the hearing on the use variance went forward. The hearing on the appeal was rescheduled to June 5, 2001.

---

3 See Exhibit E.

On March 29, 2001 the Board issued a decision and order denying Mr. Sussman's application for a use variance. Exhibit F.

On June 1, 2001, four days before the scheduled hearing on Mr. Sussman's appeal of the Zoning Administrator's decision, the District of Columbia filed a motion for continuance ". . . based upon the need for additional time to review the assertions made by [Mr. Sussman] . . . in his Brief."[4] Exhibit G. Safeway had submitted documents into the case record and was present and prepared to participate in the hearing in support of the Zoning Administrator's decision. Nonetheless, the Board granted the District of Columbia's request for a continuance and reset the hearing date for October 16, 2001.

Throughout the proceedings described herein Safeway has made its concerns clearly known to Mr. Sussman, the BZA, the Zoning Administrator, the Office of Corporation Counsel, interested citizens and, repeatedly, to the Board. Exhibit H. Safeway was compelled to take an active role in both Mr. Sussman's variance application and in his zoning appeal because many of the customers and visitors to the Georgetown Flea Market park their vehicles on the lot that Safeway intends to be used exclusively for the convenience of its

---

[4] It is noteworthy that Mr. Sussman had been making the same assertions on the public record for at least the preceding eighteen months.

customers. Despite the posting of signs, the use of security personnel and the occasional towing of the Georgetown Flea Market customers' vehicles, the illegal use of Safeway's lot has continued, an unfortunate circumstance that adversely affects the use and enjoyment of Safeway's property.

There have been other nearby residential property owners who have complained that they too have been adversely affected by the traffic congestion and parking problems that consistently arise from the Georgetown Flea Market. They have also said they do not deem it appropriate to permit this private, commercial use, on public property, in a residentially zoned district. Moreover, and not surprisingly, over the years of the Georgetown Flea Market's use of the Hardy Middle School property, the school's parent/teacher association ("PTA") and school administrators have opposed the continued use of school property by the Georgetown Flea Market. Exhibit J. In addition to the traffic and parking concerns, the PTA and the school administrators have cited security concerns and the loss of the use of the parking lot property for school related activities as basis for their opposition.

Despite these concerns, for its part, the Georgetown Flea Market urged the Zoning Administrator to create a new class of land user in which it will be the only private member; one in which the Georgetown Flea Market will not have to comply with the existing zoning requirements regarding commercial uses in residential zones or with the minimum number of off-street parking

that must be provided by other land users. This position takes no consideration of the impact that this unprecedented exception will have on the use and enjoyment of neighboring properties or the existing traffic congestion in the neighborhood.

Over the summer of 2001, Mr. Sussman and Safeway voluntarily exchanged proposals aimed at resolving these issues. Unfortunately, these negotiations came to an abrupt end when Safeway was advised that Mr. Sussman had obtained a certificate of occupancy from the respondent based on a settlement agreement entered exclusively between him and the respondent. Safeway had no knowledge of, nor participation in, the settlement agreement despite its party status in the case. In accord with the terms of that agreement, Mr. Sussman withdrew BZA Appeal No. 16642 on October 10, 2001. This appeal of the decision to issue Certificate of Occupancy number CO-20768 followed.

THE SETTLEMENT AGREEMENT

The disputed Certificate of Occupancy is based on a settlement agreement between the District of Columbia and Michael Sussman "doing business as Georgetown Flea Market LLC." A copy of that agreement is attached hereto at Exhibit K. In pertinent part, the agreement recites Mr. Sussman's appeal arguments that: (1) no certificate of occupancy was needed for the flea market use since it pre-dated the requirement that district owned

properties are subject to the zoning regulations; (2) that the certificate of occupancy that was issued to him on February 29, 2000 is still valid; (3) that the Zoning Administrator should be barred from applying the Zoning Regulations to him under the doctrine of laches; and (4) that the Georgetown Flea Market is a permitted use of the property. For its part, the District contends that the flea market use is, in fact, subject to the District zoning laws and regulations and that under them, Mr. Sussman is required to obtain a valid certificate of occupancy. The agreement specifically acknowledges the differences in the parties' legal positions but, nonetheless, declares that it is in the interest "of the public in general" ". . . that the flea market . . . remain in operation consistent with the laws of the District of Columbia." The agreement then goes on to say that if Mr. Sussman files an application for a certificate of occupancy for his non-residential use in a residential district, that the District representatives will, by contract, grant that application, whereupon Mr. Sussman would be obliged to withdraw his appeal.

ARGUMENT

I. THE BUILDING AND LAND REGULATION ADMINISTRATION OF THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS HAS NO AUTHORITY TO MAKE EXCEPTIONS TO THE ZONING REGULATIONS.

The Department of Consumer and Regulatory Affairs has no authority to issue a certificate of occupancy in contravention of the D.C. Zoning Regulations. But it did. The D.C. zoning regulations make it clear that "no building, structure, or premises shall be used . . . except in conformity with . . .

[the zoning regulations]." 11 DCMR §101.5. Certificates of occupancy may only be issued if the use that is proposed complies with the zoning regulations. 11 DCMR §3203.1. During the zoning proceedings, no one disputed that the flea market use that is the subject of this proceeding is not a permitted use in the R-3 zone district. Such was the conclusion of the Zoning Administrator in his letters of October 6, 1999 and July 25, 2000. Exhibits C and L. Such also was the conclusion of the Board of Zoning Adjustment in its order denying Mr. Sussman the use variance which he sought in Case No. 16643. How then could the Building and Land Regulation Division of DCRA legally issue the Certificate of Occupancy No. CO-20768? The answer is that it cannot. By its own admission, the Building and Land Regulation Administration does not have the authority to issue a certificate of occupancy that is not a "use by right". Exhibit L.

The Zoning Administrator's letter of October 6, 1999 makes it clear that the proposed flea market use is not a use by right and is, therefore, not consistent with the Zoning Regulations. In the settlement agreement, the Zoning Administrator's superior, J. Gregory Love, did not overrule the Zoning Administrator's determination, but "rescinded" it making an administrative decision that the issuance of a certificate of occupancy was appropriate in this case because it was "in the public interest." Not only does the Building and Land Regulation Administration have no authority to issue a certificate of occupancy solely for reasons that it is "in the public interest", the settlement

agreement provides no guidance, as an administrative decision must, as to what the alleged public interest in this case might be.

In fact, the records in Mr. Sussman's zoning variance case (BZA No. 16643) and in his zoning appeal case (BZA No. 16642) substantiate the fact that the public interest with respect to the Georgetown Flea Market's use of the premises is very much in dispute. Safeway, Inc. has said that the flea market use directly and adversely affects its use and enjoyment of its neighboring property. In the variance case, three nearby residents gave sworn testimony that the flea market use has a direct and adverse impact on the use and enjoyment of their properties. Exhibit F. The parent/teacher association of the school has opposed the Georgetown Flea Market's use of the premises. Exhibit N. Two principals of the school have opposed the Georgetown Flea Market's use of the premises. Exhibits J and M. Not only does the Building and Land Regulation Administration have no authority to issue a certificate of occupancy in contravention of the Zoning Regulations, the reason it gives to support its illegal act is neither factual nor supported, to the extent that there is any explanation at all.

THE ZONING EXEMPTION FOR DISTRICT OF COLUMBIA OWNED PROPERTIES HAS NEVER EXTENDED TO DISTRICT OF COLUMBIA PROPERTIES USED FOR PRIVATE COMMERCIAL PURPOSES

Throughout this process, Mr. Sussman has maintained that his first leasehold of the premises was during a period before District owned properties

were made subject to zoning and that that fact somehow exempts his Georgetown Flea Market use from the requirements of the Zoning Regulations. This is nonsense. The pre-1990 exemption of Federal and District of Columbia government owned land extended only to governmental land that was used or intended to be used for governmental purposes.

Section 106.4 of the Zoning Regulations that were in effect in 1988 (Volume 11 DCMR, April 1987 Ed., as amended) states:

> "Properties owned by the government of the United States and used for or intended to be used for a federal public building or use and properties owned by the D.C. Government in the Central Area . . . and used for intended to be used for a District of Columbia public building or use shall not be included in any zone district. [Emphasis supplied]."

The very next provision, Section 106.5, clarifies the point that only governmental uses were not subject to zoning prior to 1990:

> "Properties intended to be used for public building or use shall become automatically unzoned upon acquisition by the government of the United States or the government of the District of Columbia. [Emphasis supplied]."

These exemptions from zoning were narrow and specific. Hence, section 320.2 of those same regulations specifically prohibits any building or premises from being used except for one of the uses enumerated in the R-1, R-2 and R-3 zones. It is undisputed that a flea market is not one of those uses.

If Mr. Sussman's argument that his pre-1990 existence exempts his use from zoning were correct, anyone could lease governmental land for any purpose without falling within the scope of the Zoning Regulations. This would mean that government land in R-1, R-2 or R-3 zones, for example, could be leased by private entities for fast food restaurant uses, gasoline service stations, or, even slaughter houses without interference from the Zoning Regulations.

That was absolutely not the case then; that is not the case now. Throughout this period even the Board's regulations have required those who wish to use D.C. school space to ". . . be responsible for compliance with all zoning regulations. Should an occupancy permit be required pursuant to District of Columbia law and regulations this shall be the responsibility of the lessee to obtain." See: Exhibit O.

Section 106.5 of the Zoning Regulations continues to provide an exemption from zoning for federal and district properties but only for those that are intended to be used for governmental purposes. Moreover, section 106 was amended in 1998 to make the point clear that only governmental land or building uses that existed prior to May 23, 1990 are exempt from zoning. 11 DCMR §106.5(a). In sum, there is absolutely no case to be made that the private, commercial, non-governmental, Georgetown Flea Market use, unlike all

other similarly situated properties in the District of Columbia, was somehow exempt from zoning prior to 1990.[5]

THE GEORGETOWN FLEA MARKET IS NOT A CONTINUING USE.

Contrary to Mr. Sussman's representation, the Georgetown Flea Market has not been a continuing use of the premises. Safeway has identified at least eight lease agreements dating from 1990 to the present between Mr. Sussman and the Board. See Exhibit A. All of those agreements are for a certain term, generally ending in December of the year of the lease. In each of the following years, Mr. Sussman filed a separate application seeking another lease of the premises for a period that generally extended from March to mid December of the year. Mr. Sussman had no lease and no right to lease the premises in either January or February of 1990, 1991, 1992, 1994, 1995, 1996 or 1999. By letter September 8, 2000, the Board granted Mr. Sussman a month to month lease of the premises while Mr. Sussman filed ". . . an appeal for a special variance from the Board of Zoning Adjustment". Exhibit E. None of the term leases carried any option or guarantee that Mr. Sussman could lease the premises in the following year. Hence, his use ended at the end of each lease term and was started anew months later after his application for a new lease had been made and approved.

---

[5] Each of Mr. Sussman's applications to lease the school property stated that the proposed lease was for the "non public school related use" of an individual.

Moreover, Mr. Sussman was not issued a certificate of occupancy for his use of the premises during any of these lease terms. As the continuing use doctrine applies to the uses set forth on a valid certificate of occupancy, and because it requires the use to be continuous and Mr. Sussman's use clearly was not, it cannot and does not apply in the circumstances presented.[6]

THE GEORGETOWN FLEA MARKET IS NOT A NON-CONFORMING USE.

The respondent cannot effectively argue that the GFM should be permitted to continue its operations as a non-conforming use. An existing non-conforming use will ordinarily be permitted to continue if it is lawfully in existence at the time of its inception.[7] *See* 11 DCMR § 2000.4. In the withdrawn zoning appeal, the GFM relied on *Speyer v. Barry*, 588 A.2d 1147 (D.C. 1991) for its position that District owned property that was not subject to zoning prior to the Comprehensive Plan Amendments Act of 1989 ("CPAA")

---

6 It is noteworthy that once a certificate of occupancy is issued for a specific use, any subsequent user may use the property for that same purpose. It is elementary zoning law that certificate of occupancies are issued to the user and run with the land. Thus, if Mr. Sussman was issued a valid certificate of occupancy and chose to stop using the premises for the Georgetown Flea Market, any other person who wanted to use the premises for that same use would be legally eligible to do so (provided he or she could obtain a lease from the Board). Because the current certificate of occupancy does not take into account any limitations or minimum requirements for off-street parking, that important element of this land use could remain unregulated and continue to be adverse to the neighboring property owners and the neighborhood for many years to come.

7 There is a clear policy bias to terminate the non-conforming use of property. *See Interdonato v. District of Columbia Board of Zoning Adjustment*, 429 A.2d 1000, 1002 (D.C. 1981) (discussing the Zoning Commission's broader zoning policy of discouraging and eventually eliminating non-conforming uses).

should not be subject to zoning now because it is a non-conforming use. *Statement in Support of Appellant*, at 4.

Mr. Sussman's appeal's reliance on *Speyer* is misplaced. In *Speyer*, neighborhood residents brought an action against the District of Columbia to prevent the conversion of the former "Hurt Home for the Blind" ("Hurt Home") to a facility housing emotionally disturbed youngsters. The District of Columbia bought the Hurt Home pursuant to legislation supporting the growth of mental health services and facilities. *Id.* at 1149. The facility was located in a residential district, and under existing zoning regulations, a "community-based residential facility" for more than eight persons was not permitted without the approval of the BZA. *Id.* at 1151. The *Speyer* court held that the government was subject to zoning as a result of the Comprehensive Plan Amendments Act of 1989.[8]

The GFM has alleged significance to the fact that the treatment facility was and is not operated by D.C. government personnel, but instead a private contractor. *Statement in Support of Appellant*, at 4. That does not help the GFM argument (if it chooses to make it again). Though a private contractor may be operating the Hurt House, the primary purpose of the establishment is to comply with the Saint Elizabeth's Hospital and District of Columbia Mental

---

[8] The CPAA states that as of May 23, 1990, "the [D.C.] government shall be subject to Zoning." *See* D.C. Code § 1-250.

Health Services Act ("MHSA") which required the Mayor to establish "a comprehensive District mental health system to provide mental health services and programs through community mental health facilities to individuals in the District of Columbia." *Id.* at 1149, *citing* D.C. Code § 32-623 (a)(2) (1988).[9] Thus, the central function of the Hurt House was to carry out a government function. That it was a private party providing that service is inconsequential to the fact that it was a government created and funded facility. Furthermore, the D.C. Court of Appeals held that the District was required to apply for and receive the statutorily required certificate of occupancy before it could operate the proposed center. *Id.* at 1153. The GFM must do the same.

The circumstances surrounding the Georgetown Flea Market are clearly distinguishable from the facts in *Speyer*. The GFM in no way carries out a government function any more than an Arts and Crafts store would. It has admitted that it is a "non-public school use". Exhibit A. The District did not seek out the Hardy Middle School and purposely lease the grounds to further a government goal or objective. The GFM lease is simply a business agreement between the District and the GFM, with no policy or legislative force behind either its creation or its operation.

---

[9] A secondary issue in this case was whether the MHSA had implicitly superseded the District of Columbia Certificate of Need Act (CONA) which governs the establishment of any new institutional health service by any person, including the District government, with which the District did not comply. *Id.* at 1148.

THE GEORGETOWN FLEA MARKET IS SUBJECT TO ZONING PURSUANT TO D.C. CODE § 1-250(A)(2)

The private business of running a flea market in the parking lot of a public school simply does not rise to being a "governmental land use." There is no legitimate government interest in renting out space to different vendors for a profit. The interests are solely those of the owners and vendors of the GFM. Furthermore, Appellant argues that significant community support would qualify the GFM as "governmental land use." If that is true then every popular commercial use in the city could operate on a residentially zoned public school property as a "governmental land use."

THE GEORGETOWN FLEA MARKET DOES NOT HAVE A CERTIFICATE OF OCCUPANCY THAT WILL ALLOW IT TO OPERATE THE MARKET INDEFINITELY

The GFM cannot successfully argue that the certificate of occupancy it obtained on February 29, 2000 is still valid. However, it is obvious that the only reason the GFM was granted a certificate of occupancy was because it had applied in the "window of opportunity" created by the emergency legislation. A certificate of occupancy that is created by emergency legislation must die with the expiration of that emergency legislation, especially when the "unique" circumstances of the issuance are clearly known to the holder. Emergency legislation is usually passed with the goal that permanent legislation will follow. It is clear that the (rescinded) decision of the Zoning Administrator,

stating that the certificate of occupancy was issued in error, illustrates that the Act, and any actions resulting from the Act, would not be permanent.[10]

THE DOCTRINE OF LACHES DOES NOT APPLY

Appellant cannot effectively argue that under the doctrine of laches, the District should be barred from denying that a valid certificate of occupancy exists. A claim of latches arises when a plaintiff delays in bringing a claim and the defendant is unfairly prejudiced by that delay. The doctrine of latches is based upon the principle that "equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." *See Beins v. District of Columbia Board of Zoning Adjustment*, 572 A.2d 122, 126 (D.C. 1990) *citing American Univ. Park Citizens Ass'n v. Burka*, 400 A.2d 737, 740 (D.C. 1979). In order to support a claim of laches, a defendant must show that (1) the delay was unreasonable and (2) the defendant has been prejudiced by that delay. *Id.* It is well-established in the District of Columbia that the defense of laches is "judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws." *Id.*; *Goto v. District of Columbia*, 423 A.2d 917, 925 (D.C. 1980).

---

10 The GFM has argued that the certificate remains valid since no written notification to revoke that certificate has been issued, as would be required by 12 DCMR § 118.4.3. Safeway believes that this section was cited to in error. While there is no 12 DCMR § 118.4.3, 12A DCMR § 118.4.3 states: "Any certificate of occupancy previously issued or issued pursuant to Section 118.0 shall be revoked by the Director, after notice, if due to any material circumstance, it is found to have been issued in error." Section 118.4.6 sets forth the requirement that notice of revocation should be given in writing.

Most successful laches claims involve the defendant's expenditure of money on substantial, permanent improvements. *See Goto*, 423 A.2d at 926. The defendant will argue that it invested money on a particular piece of property believing it had the right to do so, and it will be prejudiced by having those rights taken away as a result of a lawsuit, thereby losing its economic investment. There have been no permanent improvements or substantial invested money based unreliably on a representation of the government. In fact, by the terms of its lease the GFM must close every Sunday. Any structures are temporary, and are erected and removed on the day of the market. And, the Board's rules for lessees clearly make the lessee responsible for complying with all zoning laws (Exhibit O). Since the GFM provided no evidence of expenditures on permanent improvements to the property, the laches claim must fail.

GEORGETOWN FLEA MARKET IS NOT AN ACCESSORY USE TO THE HARDY MIDDLE SCHOOL

An "accessory use" is defined as a use (1) customarily incidental and subordinate to the principal use and (2) located on the same lot with the principal use. *See* 11 DCMR § 199 (1999). The Georgetown Flea Market is not incidental to the principal use of Hardy Middle School. The middle school is an educational facility and the flea market does not contribute to the education of any students who may attend the middle school. It is clearly a business enterprise with the primary goal of making a profit for the lessee of the lot, and

for the vendors who rent space from the lessee. Mr. Sussman says as much on each of his lease applications on which he states that the proposed use is "non public school related." Exhibit A.

CONCLUSION

The Building and Land Regulation Administration had neither the authority nor a valid justification to issue Certificate of Occupancy No. CO-20768. Only the Board of Zoning Adjustment is authorized to approve certificate of occupancies for uses that are not as of right. The zoning exemption that Mr. Sussman claims for District of Columbia owned properties does not apply to the private, non-governmental uses that he operates. His claim that the Board advised him that he did not need a certificate of occupancy is not sufficient to justify him not having one. Besides, the Board's regulations clearly make Mr. Sussman, and other lessees, responsible for obtaining all necessary permits and authorizations. The Georgetown Flea Market must comply with the same zoning requirements that apply to all private business establishments that occupy District of Columbia property for private purposes. The certificate of occupancy authorizing an exception to this rule and policy is illegal.

Thus, for the foregoing reasons, Safeway respectfully requests that the Board uphold this appeal and rule that Certificate of Occupancy No. CO-20768 was illegally issued and is thus void. In so doing, the Board will reaffirm the

basic principle that the Zoning Act requires that the Zoning Regulations be applied uniformly to all properties throughout a zone district and that all private land uses are indeed subject to the Zoning Regulations.

Respectfully submitted,

Jerry A. Moore III
Arter & Hadden,LLP
1801 K Street, N.W.
Third Floor, L Street Entrance
Washington, DC 20006-1301
202-775-7101

cc: Arthur J. Parker, Esq.
Norman M. Glasgow, Jr., Esq.
Avis E. Black, Esq.

A

11/20/90

Office of
Management Services

Division of
Buildings and Grounds

415 12th Street, N.W., Washington, D.C. 20004

1709 - 3rd Street, N. E., Washington, D. C. 20002

October 31, 1990

Memorandum to: Ms. Sonia Gutierrez, Principal
Gordon Adult Educational Center

Subject: Use Agreement Application for
Michael Sussman/Georgetown Flea Market
beginning November 4, 1990 to
December 30, 1990 **(Sundays Only)**

Attached for your information is a copy of the use agreement submitted by Michael Sussman/Georgetown Flea Market to use the parking lot at Gordon Adult Educational Center to hold a flea market which will be open to all people. This use is to begin on November 4, 1990 and end on December 30, 1990. The use is scheduled to take place each **Sunday** from 7:00 a.m. to 6:00 p.m. A user fee in the amount of $137.00 per Sunday is being charged for this use. Since no use will be made of the building, there will not be any overtime fees associated with this activity.

A copy of the agreement has been forwarded to the user's contact, Mr. Michael Sussman, as record of approval and notice that payment is due **prior** to use.

Veronica L. Falwell
Acting Realty Officer

Attachment

cc: Mr. Pham

Office of
Management Services

Division of
Buildings and Grounds

415 12th Street, N.W., Washington, D.C. 20004

1709 - 3rd Street, N. E., Washington, D. C. 20002

October 31, 1990

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

Dear Mr. Sussman:

Attached is the conditionally approved use agreement requesting permission to hold your Georgetown Flea Market on the parking lot at Gordon Adult Education Center. The beginning date is November 4, 1990 through December 30, 1990. The requested time frame is 7:00 a.m. to 6:00 p.m. each Sunday. Please note, no overtime will be incurred from this use, but there will be a user fee in the amount of $137.00 per Sunday. In accordance with the current policy of the Board of Education, payment of the user fee is a prerequisite for use.

The total user fee amounts to **$1,233.00.** If you wish, you may pay this fee in two payments of **$616.50** each. These payments are to be made payable to the **D.C. Public Schools**, via **certified check** or money order. An executed copy of the attached Assumption of Risk and Indemnification Form is also due in the Realty Office at 1709 - 3rd Street, N. E., Washington, D. C. 20002 **prior** to use. In addition, I am requesting that a signed copy of the attached conditions governing this use be returned to this office with number seven (7) completed and your signature on the form.

Please notify both the principal and this office (576-0895) if the use is cancelled or postponed.

Sincerely,

Veronica L. Falwell

Veronica L. Falwell
Acting Realty Officer

Attachment

cc: Ms. Gutierrez

Conditions Governing use of Gordon Parking Lot
by Michael Sussman/Georgetown Flea Market

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 lot only, at Gordon School on Sundays beginning November 4, 1990, to December 30, 1990, from 7:00 a.m. to 6:00 p.m..

3. The user shall be responsible for repairing any damage to the Gordon site or building due to this use. The parking lot 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 additional insured shall be on file in the Realty Office, Penn Center, 1709 Third Street, N. E., Washington, D. C. 20002 before initial use.

5. Agreement is subject to termination if user defaults on any term herein, but a week's written notice will be given if reasonably possible.

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

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

   For DCPS: Realty Officer
   Division of Facilities Management
   Penn Center - 3rd Floor
   1709 - 3rd Street, N. E.
   Washington, D. C. 20002

7. 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 market master shall be _____. Please notify the Realty Office at 576-0895 in advance if any substitution(s) are made.

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

9. Farmers trucks shall enter by the East Gate on Wisconsin Avenue. The user shall be responsible for damage to curb, sidewalk, or parking lot paving.

10. **Since the building shall be closed to the market staff and consumers, the user shall provide "port-a-johns" for the farmers and consumers.**

11. No shoppers shall be allowed to park on the Fillmore or Gordon sites.

_____
Signature: Michael Sussman

ASSUMPTION OF RISK
AND INDEMNIFICATION FORM

The **MICHAEL SUSSMAN/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 **MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET** at the Gordon Adult Education Center, at any time during the term of this contract, or any renewal or extension hereof, shall be in, upon or about said premises at the sole risk and hazard of the **MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET** or those claiming by, through, or under the **MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET.**

Moreover, the **MICHAEL SUSSMAN/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 **MICHAEL SUSSMAN/ GEORGETOWN FLEA MARKET's** use 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 **MICHAEL SUSSMAN/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.

MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET

by:

_____

_____
DATE

B & G FORM NO. 5

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
APPLICATION TO USE FACILITIES

NOTE: Please read instructions and review the Board of Education Rules in the Use Agreement Handbook prior to completing this application. For more information, call the DCPS Realty Office, 727-2552.

1. Date of Application 10/30/90

2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market

3. **FACILITY REQUESTED:** Garfield Middle School / Yard (Name) _____ (Region)

4. **AUTHORIZED CONTACT:** Michael Sussman
   ADDRESS 2104 N Street, NW.
   Washington DC 20037
   TELEPHONE 202-296-4989

5. **DESCRIPTION OF PROPOSED USE**—Nature of services to be offered; purpose and objectives; target population:
   Use of Playground-Yard For the purpose of an outdoor basis for Bunkerhill and Georgetown Community Flea Market / The sales & open to all persons

6. **SPECIFIC AREA REQUESTED:** (Please Check)
   Auditorium_____ Gymnasium_____ Stadium_____
   Armory_____ Kitchen_____ Cafeteria_____
   No. of Classrooms_____ Field X
   Other_____
   (Name and number of square feet)

7. **PERIOD OF REQUESTED USE:**

Hours (from ... to)	Days (Mon-Sun)	Dates (Day/Month/Year)
7:00 AM - 6:00 PM	Sundays	March - [illegible] 30/90

8. **TYPE OF USER.** (Check One):

Public School-Related

_____PTA or Home and School Association
_____Neighborhood School Council
_____Educational Organization or Local Affiliate of a National Educational Organization
_____DCPS Program or Activity
_____Other_____

10/30/90

Non-Public School-Related

_____Civic Organization Meeting in Public Interest
_____Religious Organization or Affiliate
_____Advisory Neighborhood Commission
_____D.C. Government Agency
_____Other Government Activity
_____Business
_____Non-Profit Group
__X__Individual
_____Other

(a) Please attach a brochure describing your organization.

(b) Read carefully Parts II, III, and IV of the Use Agreement Handbook on Limitations on Use, Special Conditions, and Insurance Requirements.

9. **SAFETY AND SECURITY**

Security measures may be needed if the proposed activity involves any of the following circumstances. Please check those which apply to your proposed use:

__X__More than 100 persons expected to attend
_____Dance
__X__Use of Field
_____Night or Week-end use
_____Handling of money

10. **REQUEST FOR KITCHEN OR CAFETERIA:**

Please read Directive 642.7, "Guidelines for Use of Food Service Facilities," (Attachment F in Handbook).

1. Has a Food Service employee been identified to work?_____
2. If using a Food Services employee volunteer, is a letter from the volunteer stating this intent attached to this form?_____
3. If the user employs their own person to use the facilities, has this person been certified by the Food Services Branch?_____

11. **SPECIAL NEEDS OR CONCERNS OF USER:** 30/90

_____

_____

B & G FORM NO. 5

APPLICATION FOR USE OF FACILITIES PROGRAM AND INSURANCE REVIEW FORM

1. Date of Application _____

2. **NAME OF USER/ORGANIZATION:** [illegible]

3. **FACILITY REQUESTED:** [illegible]

4. **PROGRAM TITLE:** _____

5. **DESCRIPTION. IN ADDITION TO THE INFORMATION PROVIDED ON PAGE 1, PLEASE INDICATE THE FOLLOWING INFORMATION:**

   A. How is this program funded? _____

   Is the staff paid _____ or volunteer _____?

   B. **IF THIS IS AN INSTRUCTIONAL PROGRAM,**

   1. List subject areas, _____
   2. Is any special equipment, beyond ordinary classroom supplies, to be used? _____
   3. Who will be the (licensed) teacher(s) on-site at all times during the program? _____
   4. What is the expected ratio of staff to students? _____

****

FOR DCPS USE ONLY: REVIEW BY CONTENT AREA CONSULTANT

Program is recommended to be accepted _____, rejected _____, resubmitted, with suggested revisions: _____

_____

Consultant's Name _____ Date _____ (Please sign on page 4.)
Print Name Here

****

INSURANCE INFORMATION

A. Please read Part IV of the Handbook for insurance requirements. The following information must be accurate. False information will be cause for immediate termination of the use agreement.

Insurance to be provided by (check one) _____ DCPS; _____ DC Government; _____ DC Congress of PTA's; ___x___ Other. If, "Other" please provide the following information, if already known.

1. Name of Insurance Company AETNA - DREYFUS/LIBERTY
2. Number and Date of Policy 4/14/90 - 4/14/91 053 MCM 2063628
3. Name and telephone of Insurance Agent ROGER NAY (301) 656-3994
4. Coverages: Commercial Liability $2,000,000
5. An Indemnification form must be signed by all users, after approval of the use application by the Realty Office. A copy of this form is contained in Part IV of this Handbook. It will be forwarded to the user by the Realty Office as necessary. This form plus a copy of the user's insurance certificate must be submitted to the Realty Office at least 48 hours prior to entering the building.

B. **All users** must sign below to signify their understanding of the insurance requirements.

_____ _____
User's Signature Date

APPLICATION FOR USE OF FACILITIES SIGNATURE AND AUTHORIZATION PAGE

I. **USER AGREES:** I have been supplied with a copy of the Rules of the Board of Education and D.C. Public School System Directives and acknowledge their incorporation as part of this application to use facilities of the D.C. Public School System. I hereby agree to be bound by the terms of the Application to Use Facilities Form and to abide by the pertinent rules of the Board of Education, Superintendent's Directives, and special conditions (if so indicated on page 6 of this form) adhered. Furthermore, I agree to make final arrangements and publicize this activity **ONLY** after written approval has been received.

User's Signature [signature]   Date

* *

II. **DCPS AUTHORIZATIONS**

Comments or Concerns

	Recommended	Approved	Disapproved	Date
Principal/Facility Administrator [signature]	✓			10-21-98
Regional Content Area Consultant (as needed)				
Regional Assistant Superintendent				
Director of Food Services (as needed)				
Director of Safety and Security (as needed)				
DCPS Realty Officer [signature]		✓		10-31-98
Director, Division of Buildings and Grounds				
Superintendent/Deputy Superintendent				

B & G FORM NO. 5

APPLICATION FOR USE OF FACILITIES
COST REIMBURSEMENT ELEMENTS

1. Date of Application _____

2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Univ Market

3. **FACILITY REQUESTED:** Yard - Field Gordon Adult Education Ctr

4. **SPACE DESIRED:** _____Auditorium _____Gymnasium _____Cafeteria _____Armory
_____Kitchen _____Stadium _____No. of Classrooms
_____Other Field
(Name and # of sq. ft.)

5. **Hours, Days and Dates Requested** (Be specific and exact or costs cannot be calculated): _____
Sundays 7 - AM - 6 - PM

****

FOR DCPS USE ONLY COST ELEMENTS

	Rate per Hour	No. Hours	Daily Cost	No. Days	Total Cost
A. ONE-TIME USERS					
1. Basic Fee			137.00	9	1,233.00
2. Overtime Costs					
3. Air Conditioning					
4. Heating					
5. Electricity					
6. Other (specify)					

B. **CONTINUOUS USERS**

Pro-Rata Rental Fee	Cost/Sq. Ft. Per Day	No. Sq. Ft.	No. Days	Total Cost
Schedule A Schedule B	$.024 .007			1,233.00

C. **TOTAL REIMBURSEMENT COSTS FOR THE PERIOD OF REQUESTED USE** _____

Calculated by DCPS Realty Office. Signature _____

****

The user must reimburse the total costs shown above, if any, by certified check or money order (except PTAs) payable in advance to "THE D.C. PUBLIC SCHOOLS." Such certified checks or money orders shall be submitted to the Realty Office, Room 805, Presidential Building, 415 12th Street, N.W., Washington, D.C. 20004. Payment is due by Prior to _____. For monthly payments, _____ is due by _____, and monthly payments of Use _____ will be due the first of each month beginning _____.

B & G FORM NO. 5

APPLICATION FOR USE OF FACILITIES
CONDITIONS OF USE

1. Date of Application

2. **NAME OF USER/ORGANIZATION:** Michael Sussman - Georgetown Flea

3. **FACILITY REQUESTED:** Market

4. **HOURS, DAYS, AND DATES REQUESTED (TO BE EXACT AND COMPLETE):** Sundays March - December 7 am 6 pm

****

FOR DCPS USE ONLY:

Recommendations by DCPS Security Office

Other Conditions and Guidelines Applicable to Use

****

USER AGREEMENT Your signature below signifies that you understand and agree to use the requested facility only according to the conditions listed above. You must sign and return this form **AFTER** receiving the list of conditions from the DCPS Realty Office.

Return this form to the Realty Office by ________.

Michael Sussman
User's Signature

Date

2/1/91

Office of Management Services

Division of Buildings and Grounds

1709 3rd Street, N. E. Washington, D. C. 20002

February 26, 1991

Memorandum to: Ms. Sonia Gutierrez, Prinicipal
Gordon Adult Educational Center

Subject: Use Agreement Application for
Michael Sussman/Georgetown Flea Market
beginning March 3, 1991 to December 29, 1991

Attached for your information is a copy of the use agreement submitted by Michael Sussman/Georgetown Flea Market to use the parking lot at Gordon Adult Educational Center to hold a flea market which will be open to all people. This use is to begin on Sunday, March 3, 1991 and end on Sunday, December 29, 1991. The use is scheduled to take place each Sunday from 7:00 a.m. to 6:00 p.m. A user fee in the amount of $137.00 per Sunday is being charged for this use. Since no use will be made of the building, there will not be any overtime fees associated with this activity.

A copy of the agreement has been forwarded to the user's contact, Mr. Michael Sussman, as record of approval and notice that payment is due prior to use.

Veronica L. Falwell
Acting Realty Officer

Attachment

cc: Mr. Pham

Office of
Management Services

Division of
Buildings and Grounds

1709 3rd Street, N. E. Washington, D. C. 20002

February 26, 1991

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

Dear Mr. Sussman:

Attached is the conditionally approved use agreement requesting permission to hold your Georgetown Flea Market on the parking lot at Gordon Adult Education Center. The beginning date is March 3, 1991 through December 29, 1991. The requested time frame is 7:00 a.m. to 6:00 p.m. each Sunday. Please note, no overtime will be incurred from this use, but there will be a user fee in the amount of $137.00 per Sunday. In accordance with the current policy of the Board of Education, payment of the user fee is a prerequisite for use.

The total user fee amounts to $6,028.00. If you wish, you may pay this fee in monthly payments of $602.80 each. These payments are to be made payable to the D.C. Public Schools, via certified check or money order. An executed copy of the attached Assumption of Risk and Indemnification Form is also due in the Realty Office at 1709-3rd Street, N. E., Washington, D. C. 20002 prior to use. In addition, I am requesting that a signed copy of the attached conditions governing this use be returned to this office with number seven (7) completed and your signature on the form.

Please notify both the principal and this office (576-0895) if the use is cancelled or postponed.

Sincerely,

Veronica L. Falwell

Veronica L. Falwell
Acting Realty Officer

Attachment

Conditions Governing use of Gordon Parking Lot
by Michael Sussman/Ceorgetown Flea Market

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 lot only, at Gordon School on Sundays beginning 3/3/91 to 12/29/91 from 7:00 a.m. to 6:00 p.m..

3. The user shall be responsible for repairing any damage to the Gordon site or building due to this use. The parking lot 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 additional insured shall be on file in the Realty Office, Penn Center, 1709 Third Street, N. E., Washington, D. C. 20002 before initial use.

5. Agreement is subject to termination if user defaults on any term herein, but a week's written notice will be given if reasonably possible.

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

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

   For DCPS: Realty Officer
   Division of Facilities Management
   Penn Center - 3rd Floor
   1709 - 3rd Street, N. E.
   Washington, D. C. 20002

7. 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 market master shall be _____. Please notify the Realty Office at 576-0895 in advance if any substitution(s) are made.

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

9. Farmers trucks shall enter by the East Gate on Wisconsin Avenue. The user shall be responsible for damage to curb, sidewalk, or parking lot paving.

10. **Since the building shall be closed to the market staff and consumers, the user shall provide "port-a-johns" for the farmers and consumers.**

11. No shoppers shall be allowed to park on the Fillmore or Gordon sites.

_____
Signature: Michael Sussman

ASSUMPTION OF RISK
AND INDEMNIFICATION FORM

The **MICHAEL SUSSMAN/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 **MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET** at the Gordon Adult Education Center, at any time during the term of this contract, or any renewal or extension hereof, shall be in, upon or about said premises at the sole risk and hazard of the **MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET** or those claiming by, through, or under the **MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET.**

Moreover, the **MICHAEL SUSSMAN/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 **MICHAEL SUSSMAN/ GEORGETOWN FLEA MARKET's** use 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 **MICHAEL SUSSMAN/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.

MICHAEL SUSSMAN/GEORGETOWN FLEA MARKET

by:

_____

_____
DATE

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
APPLICATION TO USE FACILITIES

NOTE: Please read instructions and review the Board of Education Rules in the Use Agreement Handbook prior to completing this application. For more information, call the DCPS Realty Office, 727-2552.

1. Date of Application 2/5/91

2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market

3. **FACILITY REQUESTED:** Gordon Adult Education Yard/Field
   Name Region

4. **AUTHORIZED CONTACT:** Michael Sussman
   ADDRESS 2109 N Street N.W.
   Washington DC 20037
   TELEPHONE 202-296-4989

5. **DESCRIPTION OF PROPOSED USE**—Nature of services to be offered; purpose and objectives; target population:
   Use of Playground / Yard for Antiques Flea Market on a Sunday basis for Business / Georgetown Area Flea Market and Tag sales - open to all persons to buy and sell.

6. **SPECIFIC AREA REQUESTED:** (Please Check)
   Auditorium ____ Gymnasium ____ Stadium ____
   Armory ____ Kitchen ____ Cafeteria ____
   No. of Classrooms ____ Field ____
   Other ____
   (Name and number of square feet)

7. **PERIOD OF REQUESTED USE:**

Hours (from . . . to)	Days (Mon-Sun)	Dates (Day/Month/Year)
7:00 AM - 6:00 PM	Sundays	March - December

91 FEB 15 PM 3:44

RECEIVED
REALTY/PLANNING OFFICE

8. **TYPE OF USER.** (Check One):

Public School-Related

_____PTA or Home and School Association
_____Neighborhood School Council
_____Educational Organization or Local Affiliate of a National Educational Organization
_____DCPS Program or Activity
_____Other_____

Non-Public School-Related

_____Civic Organization Meeting in Public Interest
_____Religious Organization or Affiliate
_____Advisory Neighborhood Commission
_____D.C. Government Agency
_____Other Government Activity
_____Business
_____Non-Profit Group
__✗__Individual
_____Other

(a) Please attach a brochure describing your organization.

(b) Read carefully Parts II, III, and IV of the Use Agreement Handbook on Limitations on Use, Special Conditions, and Insurance Requirements.

9. **SAFETY AND SECURITY**

Security measures may be needed if the proposed activity involves any of the following circumstances. Please check those which apply to your proposed use:

__✗__More than 100 persons expected to attend
_____Dance
__✗__Use of Field
_____Night or Week-end use
_____Handling of money

10. **REQUEST FOR KITCHEN OR CAFETERIA:**

Please read Directive 642.7, "Guidelines for Use of Food Service Facilities," (Attachment F in Handbook).

1. Has a Food Service employee been identified to work?_____
2. If using a Food Services employee volunteer, is a letter from the volunteer stating this intent attached to this form?_____
3. If the user employs their own person to use the facilities, has this person been certified by the Food Services Branch?_____

11. **SPECIAL NEEDS OR CONCERNS OF USER:**

_____

_____

APPLICATION FOR USE OF FACILITIES PROGRAM AND INSURANCE REVIEW FORM

1. Date of Application February 5, 1991
2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market
3. **FACILITY REQUESTED:** YARD - Field Gordon Adult Education Center
4. **PROGRAM TITLE:** _____
5. **DESCRIPTION. IN ADDITION TO THE INFORMATION PROVIDED ON PAGE 1, PLEASE INDICATE THE FOLLOWING INFORMATION:**

   A. How is this program funded? _____

   Is the staff paid _____ or volunteer _____?

   B. **IF THIS IS AN INSTRUCTIONAL PROGRAM,**

   1. List subject areas, _____
   2. Is any special equipment, beyond ordinary classroom supplies, to be used? _____
   3. Who will be the (licensed) teacher(s) on-site at all times during the program? _____
   4. What is the expected ratio of staff to students? _____

.....

FOR DCPS USE ONLY: REVIEW BY CONTENT AREA CONSULTANT

Program is recommended to be accepted _____, rejected _____, resubmitted, with suggested revisions: _____

_____

Consultant's Name _____ Date _____ (Please sign on page 4.)
Print Name Here

.....

INSURANCE INFORMATION

A. Please read Part IV of the Handbook for insurance requirements. The following information must be accurate. False information will be cause for immediate termination of the use agreement.

Insurance to be provided by (check one) _____ DCPS; _____ DC Government; _____ DC Congress of PTA's; _X_ Other. If, "Other" please provide the following information, if already known.

1. Name of Insurance Company AETNA - DREYFUSS / NEY (AGENT)
2. Number and Date of Policy 053 ACM 20636968 April 1, 1990 - 91 will be renewed
3. Name and telephone of Insurance Agent Roger Ney 301-656-3994
4. Coverages: Commercial Liability 2,000,000
5. An Indemnification form must be signed by all users, after approval of the use application by the Realty Office. A copy of this form is contained in Part IV of this Handbook. It will be forwarded to the user by the Realty Office as necessary. This form plus a copy of the user's insurance certificate must be submitted to the Realty Office at least 48 hours prior to entering the building.

B. **All users** must sign below to signify their understanding of the insurance requirements.

Michael Sussman
User's Signature

2/5/91
Date

APPLICATION FOR USE OF FACILITIES
SIGNATURE AND AUTHORIZATION PAGE

I. **USER AGREES:** I have been supplied with a copy of the Rules of the Board of Education and D.C. Public School System Directives and acknowledge their incorporation as part of this application to use facilities of the D.C. Public School System. I hereby agree to be bound by the terms of the Application to Use Facilities Form and to abide by the pertinent rules of the Board of Education, Superintendent's Directives, and special conditions (if so indicated on page 6 of this form) adhered. Furthermore, I agree to make final arrangements and publicize this activity **ONLY** after written approval has been received.

User's Signature _____ Date _____

II. **DCPS AUTHORIZATIONS**

Comments or Concerns

	Recommended	Approved	Disapproved	Date
Principal/Facility Administrator Sonia Gutierrez	✓			2-6-91
Regional Content Area Consultant (as needed)				
Regional Assistant Superintendent				
Director of Food Services (as needed)				
Director of Safety and Security (as needed)				
DCPS Realty Officer Veronica L. Falwell		✓		2-27-91
Director, Division of Buildings and Grounds				
Superintendent/Deputy Superintendent				

APPLICATION FOR USE OF FACILITIES
COST REIMBURSEMENT ELEMENTS

1. Date of Application February 5, 1991

2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market

3. **FACILITY REQUESTED:** Yard - Field Gordon Adult Education Center

4. **SPACE DESIRED:** _____Auditorium _____Gymnasium _____Cafeteria _____Armory
_____Kitchen _____Stadium _____No. of Classrooms
_____Other Field
(Name and # of sq. ft.)

5. **Hours, Days and Dates Requested** (Be specific and exact or costs cannot be calculated): Sundays 7:00 AM - 6:00 PM

FOR DCPS USE ONLY COST ELEMENTS

	Rate per Hour	No. Hours	Daily Cost	No. Days	Total Cost
A. ONE-TIME USERS					
1. Basic Fee			137.00	44 *	6028
2. Overtime Costs					
3. Air Conditioning					
4. Heating					
5. Electricity					
6. Other (specify)					

B. **CONTINUOUS USERS**

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

C. **TOTAL REIMBURSEMENT COSTS FOR THE PERIOD OF REQUESTED USE** $ 6,028.00 ÷ 10 =
Calculated by DCPS Realty Office. Signature 602.80 per mo

The user must reimburse the total costs shown above, if any, by certified check or money order (except PTAs) payable advance to "THE D.C. PUBLIC SCHOOLS." Such certified checks or money orders shall be submitted to the Realty Offic Room 805, Presidential Building, 415 12th Street, N.W., Washington, D.C. 20004. Payment is due by _____. For monthly payments, _____ is due by _____, and monthly payments of _____ will be due the first of each month beginning _____.

* December optional - I will let you know if it will be all or part of 5 Sundays in Dec.

APPLICATION FOR USE OF FACILITIES
CONDITIONS OF USE

1. Date of Application Feb 5, 1991

2. NAME OF USER/ORGANIZATION: Michael Sussman - Georgetown Plaza Mall

3. FACILITY REQUESTED:

4. HOURS, DAYS, AND DATES REQUESTED (TO BE EXACT AND COMPLETE):

Sundays March - December 7 am - 6 pm
3-3-91 to 12-29-91

FOR DCPS USE ONLY:

Recommendations by DCPS Security Office

Other Conditions and Guidelines Applicable to Use

USER AGREEMENT Your signature below signifies that you understand and agree to use the requested facility only according to the conditions listed above. You must sign and return this form **AFTER** receiving the list of conditions from the DCPS Realty Office.

Return this form to the Realty Office by _____.

Michael Sussman
User's Signature

Feb 5, 1991
Date

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

DIVISION OF FACILITIES MANAGEMENT
REALTY BRANCH
1709 3RD STREET, N.E. WASHINGTON, D.C. 20002

February 14, 1992

Memorandum to: Ms. Sonia Gutierrez, Principal
Rosario Adult Education Center

Subject: Building Use Agreement for
Michael Sussman/Georgetown Flea
Market beginning March 1, 1992
to December 20, 1992

Attached for your information is a copy of the use agreement submitted by Michael Sussman/Georgetown Flea Market to use the parking lot at Rasario Adult Educational Center to hold a flea market which will be open to all people. This use is to begin on Sunday, March 1, 1992, and end on Sunday, December 20, 1992. The use is scheduled to take place each Sunday, from 7:00 a.m. to 6:00 p.m. A user fee in the amount of $137.00 per Sunday is being charged for this use. Since no use will be made of the building, there will not be any overtime fees associated with this activity.

A copy of the agreement has been forwarded to the user's contact, Mr. Michael Sussman, as record of approval and notice that payment is due prior to use.

Veronica L. Falwell
Realty Officer

Attachment

cc: Mr. Pham

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

DIVISION OF FACILITIES MANAGEMENT
REALTY BRANCH
1709 3RD STREET, N.E. WASHINGTON, D.C. 20002

February 14, 1992

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

Dear Mr. Sussman:

Attached is the conditionally approved use agreement submitted by the Georgetown Flea Market requesting permission to use the parking lot at Rosario Adult Educational Center. The beginning date is March 1, 1992 through December 20, 1992. The requested time frame is 7:00 a.m. to 6:00 p.m. each Sunday. Please note, no overtime will be incurred from this use, but there will be a user fee in the amount of $137.00 per Sunday. In accordance with the current policy of the Board of Education, payment of the user fee is a prerequisite for use.

The total user fee amounts to **$6,028.00**. If you wish, you may pay this fee in monthly payments of **$602.80** each. These payments are to be made payable to the **D.C. Public Schools**, via certified check or money order. An executed copy of the attached Assumption of Risk and Indemnification Form is also due in the Realty Office at 1709 - 3rd Street, N. E., Washington, D.C. 20002 **prior** to use. In addition, I am requesting that a signed copy of the attached conditions governing this use be returned to this office with number seven (7) completed and your signature on the form.

Please notify both the principal and this office (576-0895) if the use is cancelled or postponed.

Sincerely,

Veronica L. Falwell

Veronica L. Falwell
Realty Officer

Attachments

cc: Ms. Gutierrez

ASSUMPTION OF RISK
AND INDEMNIFICATION FORM

The **Michael Sussman/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 **Michael Sussman/Georgetown Flea Market** at Rossario Adult Education Center, 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 risk and hazard of the or those claiming by, through, or under the **Michael Sussman/Georgetown Flea Market.**

Moreover, the **Michael Sussman/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 **Michael Sussman/Georgetown Flea Market's** 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 **Michael Sussman/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.

Michael Sussman/Georgetown Flea Market

by:

_____
SIGNATURE

_____
DATE

7. 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: _____. Please notify the Realty Office at 576-0895 in advance if any substitute(s) are made.

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

9. Farmers trucks shall enter by the East Gate on Wisconsin Avenue, N. W. The user shall be responsible for any damage to curb, sidewalk, or parking lot paving.

10. **Since the building shall be closed to the market staff and consumers, the user shall provide "port-a-johns" for the farmers and consumers.**

11. No shoppers shall be allowed to park on the Fillmore or Rosario sites.

Signature: _____
Michael Sussman

Conditions Governing use of Rosario Parking Lot
by Michael Sussman/Georgetown Flea Market

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 lot only, at Rosario School on Sundays beginning 03-01-92 to 12-20-92 from 7:00 a.m. to 6:00 p.m.

3. The user shall be responsible for repairing any damage to the Rosario Site or building due to this use. The parking lot 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 additional insured shall be on file in the Realty Office, Penn Center, 1709 Third Street, N.E., Washington, D.C. 20002, **prior** to use.

5. Agreement is subject to termination if user defaults on any term herein, but a week's written notice will be given if reasonably possible.

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

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

   For DCPS: Realty Officer
   Division of Facilities
   Penn Center - 3rd Floor
   1709 - 3rd Street, N.E.
   Washington, D.C. 20002

B & G FORM NO. 5

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
APPLICATION TO USE FACILITIES

NOTE: Please read instructions and review the Board of Education Rules in the Use Agreement Handbook prior to completing this application. For more information, call the DCPS Realty Office, 727-2552.

1. Date of Application 1/30/92

2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market

3. **FACILITY REQUESTED:** Rosario Adult Educatin Yard (Name) _____ (Region)

4. **AUTHORIZED CONTACT:** Michael Sussman
   ADDRESS 2109 N Street, NW
   Wash. D.C. 20037
   TELEPHONE 202-296 4989

5. **DESCRIPTION OF PROPOSED USE**—Nature of services to be offered; purpose and objectives; target population:
   Use of Playground / Yard for Antiques Flea Market on a Sunday basis for Burleith / Georgetown Area Flea Market / Farmers Market / Tag Sale. To be open to all persons to buy + sell.

6. **SPECIFIC AREA REQUESTED:** (Please Check)
   Auditorium_____ Gymnasium_____ Stadium_____
   Armory_____ Kitchen_____ Cafeteria_____
   No. of Classrooms_____ Field_____
   Other_____ (Name and number of square feet)

7. **PERIOD OF REQUESTED USE:**

Hours (from . . . to)	Days (Mon-Sun)	Dates (Day/Month/Year)
7AM - 6 PM	Sundays	March 1, 1992
		December 20, 199?

8. **TYPE OF USER.** (Check One):

Public School-Related

_____PTA or Home and School Association
_____Neighborhood School Council
_____Educational Organization or Local Affiliate of a National Educational Organization
_____DCPS Program or Activity
_____Other_____

Non-Public School-Related

_____Civic Organization Meeting in Public Interest
_____Religious Organization or Affiliate
_____Advisory Neighborhood Commission
_____D.C. Government Agency
_____Other Government Activity
_____Business
__X__Non-Profit Group
_____Individual
_____Other

(a) Please attach a brochure describing your organization.

(b) Read carefully Parts II, III, and IV of the Use Agreement Handbook on Limitations on Use, Special Conditions, and Insurance Requirements.

9. **SAFETY AND SECURITY**

Security measures may be needed if the proposed activity involves any of the following circumstances. Please check those which apply to your proposed use:

__X__More than 100 persons expected to attend
__X__Dance
_____Use of Field
_____Night or Week-end use
_____Handling of money

10. **REQUEST FOR KITCHEN OR CAFETERIA:**

Please read Directive 642.7, "Guidelines for Use of Food Service Facilities," (Attachment F in Handbook).

1. Has a Food Service employee been identified to work?_____
2. If using a Food Services employee volunteer, is a letter from the volunteer stating this intent attached to this form?_____
3. If the user employs their own person to use the facilities, has this person been certified by the Food Services Branch?_____

11. **SPECIAL NEEDS OR CONCERNS OF USER:**

_____

_____

B & G FORM NO. 5

APPLICATION FOR USE OF FACILITIES
PROGRAM AND INSURANCE REVIEW FORM

1. Date of Application 1/30/92
2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market
3. **FACILITY REQUESTED:** _____
4. **PROGRAM TITLE:** _____
5. **DESCRIPTION. IN ADDITION TO THE INFORMATION PROVIDED ON PAGE 1, PLEASE INDICATE THE FOLLOWING INFORMATION:**
   A. How is this program funded? _____
   Is the staff paid _____ or volunteer _____?
   B. **IF THIS IS AN INSTRUCTIONAL PROGRAM,**
      1. List subject areas, _____
      2. Is any special equipment, beyond ordinary classroom supplies, to be used? _____
      3. Who will be the (licensed) teacher(s) on-site at all times during the program? _____
      4. What is the expected ratio of staff to students? _____

****

FOR DCPS USE ONLY: REVIEW BY CONTENT AREA CONSULTANT

Program is recommended to be accepted _____, rejected _____, resubmitted, with suggested revisions: _____

_____

Consultant's Name _____ Date _____ (Please sign on page 4.)
Print Name Here

****

INSURANCE INFORMATION

A. Please read Part IV of the Handbook for insurance requirements. The following information must be accurate. False information will be cause for immediate termination of the use agreement.

Insurance to be provided by (check one) _____DCPS; _____DC Government; _____DC Congress of PTA's;

__X__Other. If, "Other" please provide the following information, if already known.

1. Name of Insurance Company AETNA - Dreyfuss-Ney AGENT
2. Number and Date of Policy 053GL2053696ECA 4-1-91-92 - will be renewed
3. Name and telephone of Insurance Agent ROGER NEY 301 656-3994
4. Coverages: Commercial Liability $2,000,000.
5. An Indemnification form must be signed by all users, after approval of the use application by the Realty Office. A copy of this form is contained in Part IV of this Handbook. It will be forwarded to the user by the Realty Office as necessary. This form plus a copy of the user's insurance certificate must be submitted to the Realty Office at least 48 hours prior to entering the building.

B. **All users** must sign below to signify their understanding of the insurance requirements.

Mark Sussman _____ 1/30/92
User's Signature Date

B & G FORM NO. 5

APPLICATION FOR USE OF FACILITIES
SIGNATURE AND AUTHORIZATION PAGE

I. **USER AGREES:** I have been supplied with a copy of the Rules of the Board of Education and D.C. Public School System Directives and acknowledge their incorporation as part of this application to use facilities of the D.C. Public School System. I hereby agree to be bound by the terms of the Application to Use Facilities Form and to abide by the pertinent rules of the Board of Education, Superintendent's Directives, and special conditions (if so indicated on page 6 of this form) adhered. Furthermore, I agree to make final arrangements and publicize this activity **ONLY** after written approval has been received.

[signature] — User's Signature

1/30/92 — Date

* *

II. DCPS AUTHORIZATIONS

Comments or Concerns

	Recommended	Approved	Disapproved	Date
Principal/Facility Administrator [signature]	✓			2-3-92
Regional Content Area Consultant (as needed)				
Regional Assistant Superintendent				
Director of Food Services (as needed)				
Director of Safety and Security (as needed)				
DCPS Realty Officer Veronica L. [signature]		✓		2-20-92
Director, Division of Buildings and Grounds				
Superintendent/Deputy Superintendent				

B & G FORM NO. 5

APPLICATION FOR USE OF FACILITIES
COST REIMBURSEMENT ELEMENTS

1. Date of Application 1/30/92

2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market

3. **FACILITY REQUESTED:** Yard / Field Rosario Adult Education Center

4. **SPACE DESIRED:** _____Auditorium _____Gymnasium _____Cafeteria _____Armory
_____Kitchen _____Stadium _____No. of Classrooms
_____Other Field / Yard
(Name and # of sq. ft.)

5. **Hours, Days and Dates Requested** (Be specific and exact or costs cannot be calculated):
Sundays 7AM - 6PM March 1 - Dec 27, 1992

****

FOR DCPS USE ONLY COST ELEMENTS

	Rate per Hour	No. Hours	Daily Cost	No. Days	Total Cost
A. **ONE-TIME USERS**					
1. Basic Fee			137.00	44	6,028.00
2. Overtime Costs					
3. Air Conditioning					
4. Heating					
5. Electricity					
6. Other (specify)					

B. **CONTINUOUS USERS**

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

C. **TOTAL REIMBURSEMENT COSTS FOR THE PERIOD OF REQUESTED USE** $6028.00

Calculated by DCPS Realty Office. Signature H Chrisline

6,028.00 ÷ 10 = $602.80 P/mo

****

The user must reimburse the total costs shown above, if any, by certified check or money order (except PTAs) payable i advance to "THE D.C. PUBLIC SCHOOLS." Such certified checks or money orders shall be submitted to the Realty Office Room 805, Presidential Building, 415 12th Street, N.W., Washington, D.C. 20004. Payment is due by _____. For monthly payments, 602.80 is due by 3-1-92, and monthly payments of 602.80 will be due the first of each month beginning 4-1-92.

B & G FORM NO. 5

APPLICATION FOR USE OF FACILITIES
CONDITIONS OF USE

1. Date of Application 1/30/92

2. **NAME OF USER/ORGANIZATION:** Michael Sussman - Georgetown Flea Market

3. **FACILITY REQUESTED:**

4. **HOURS, DAYS, AND DATES REQUESTED (TO BE EXACT AND COMPLETE):**

Sundays March 1 - Dec 27, 1992
7AM - 6PM

****

FOR DCPS USE ONLY:

Recommendations by DCPS Security Office

Other Conditions and Guidelines Applicable to Use

****

USER AGREEMENT Your signature below signifies that you understand and agree to use the requested facility only according to the conditions listed above. You must sign and return this form **AFTER** receiving the list of conditions from the DCPS Realty Office.

Return this form to the Realty Office by _____.

Michael Sussman
User's Signature

1/30/92
Date

ACORD INSURANCE BINDER

ISSUE DATE (MM/DD/YY)
02/21/91

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM

PRODUCER
DREYFUSS/NEY INSURANCE, INC.
4827 RUGBY AVENUE
SUITE 100
BETHESDA, MD 20814

COMPANY
AETNA C&S

BINDER NO.
1980CG

EFFECTIVE DATE: 04/01/91 TIME: 12:01 X AM PM

EXPIRATION DATE: 04/01/92 TIME: XX 12:01 AM NOON

X THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY NO: 20636968ACM

CODE: 1980

SUB-CODE:

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)

GORDON JR. HIGH SCHOOL, WASHINGTON, DC &

1649 FULLER ST., NW, WASHINGTON, DC

INSURED
MICHAEL S. SUSSMAN
2109 - N STREET, NW
WASHINGTON, DC 20037

COVERAGES

ALL LIABILITY LIMITS IN THOUSANDS

TYPE OF INSURANCE	COVERAGE/FORMS	AMOUNT	DEDUCTIBLE	COINSUR.
PROPERTY — CAUSES OF LOSS: BASIC / BROAD / SPEC.				
GENERAL LIABILITY				
X COMMERCIAL GENERAL LIABILITY		GENERAL AGGREGATE	$2,000,	
CLAIMS MADE / X OCCUR		PROD. — COMP/OPS AGGREGATE	$2,000,	
OWNER'S & CONTRACTOR'S PROT.		PERSONAL & ADVTSNG. INJURY	$1,000,	
		EACH OCCURRENCE	$1,000,	
		FIRE DAMAGE (Any one fire)	$ 50,	
RETRO DATE FOR CLAIMS MADE:		MED. EXPENSE (Any one person)	$ 5,	
AUTOMOBILE — ALL VEHICLES / SCHEDULED VEHICLES		CSL $		
LIABILITY		BI PERS/ACCID $		
NON/OWNED		PD $		
HIRED		MED. PAY $		
GARAGE		PIP $		
		UM $		
AUTO PHYSICAL DAMAGE — ALL VEHICLES / SCHEDULED VEHICLES		ACV		
COLLISION DED.		STATED AMOUNT $		
OTC DED:		OTHER		
EXCESS LIABILITY		EACH OCCURRENCE	AGGREGATE	SELF-INSURED RETENTION
UMBRELLA FORM				
OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:			
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		STATUTORY		
		$	(EACH ACCIDENT)	
		$	(DISEASE-POLICY LIMIT)	
		$	(DISEASE-EACH EMPLOYEE)	

SPECIAL CONDITIONS/RESTRICTIONS/OTHER COVERAGES

NAME & ADDRESS

DISTRICT OF COLUMBIA PUBLIC SCHOOLS &

DISTRICT OF COLUMBIA GOVERNMENT

MORTGAGEE

LOSS PAYEE

LOAN #

XX ADDITIONAL INSURED

AUTHORIZED REPRESENTATIVE

Melba R. Hyson Jr.

ACORD 75-S (2/88)

© ACORD CORPORATION 1988

TRANS. | AGENCY | COMM. | BILL TYPE | SHORT NAME | CYHOLDERS REPORT

Aetna

DATE 04-01-1991 | PR# 3

E&CASHALEY DREYFUSS-NEY INS. | CODE 1980 | DIARY 04-16-1991

ie policies listed below are subject to premium adjustment at this time. This can be accomplished
/ mail if you supply the information requested below for the period 04-01-1990 to 04-01-1991
se the nearest weekly or monthly amounts from your records.

MICHAEL S. SUSSMAN
2109 N. ST. NW
WASHINGTON DC 20037

POLICY NUMBERS
053GL20536968CCA

f there are any questions regarding completion of this form, contact MR. TOM MAUGER /703-818-6756
etain the copy and return the original in the enclosed self-addressed envelope by 04-16-1991.
omplete sections marked X.

CORPORATE OFFICERS, PARTNERS OR OWNERS

NE	TITLE	ACTIVE (Y/N)	DUTIES (CLERICAL, FOREMAN, ETC)	$GROSS PAYROLL	COMPANY USE
Michael Sussman	owner	y	All	-0-	

Gross payroll is before deductions for taxes, insurance, overtime, etc., and includes bonuses and commissions.

EMPLOYEES OTHER THAN ABOVE

WORK PERFORMED	CODE	$GROSS PAYROLL(INCLUDING O/T)	$$GROSS O/T ( )H-PAY ( )D-PAY	COMPANY USE

Gross payroll is before deductions for taxes, insurance, overtime, etc., and includes bonuses and commissions.
Gross overtime is the total of all overtime payroll by classification.

GENERAL LIABILITY EXPOSURES OTHER THAN PAYROLL

TYPE	CODE	AMOUNT (EXCLUDING SALES TAX)
SALES - from products sold AZAARS	10131	$ 20,000
RECEIPTS - from services rendered		
COST - of sublet work performed by others		

Includes cost of materials furnished to the subcontractor by you.

PREPARED BY: NAME	TITLE	PHONE	DATE
Michael Sussman M. Sussman	owner	202-296-4989	3/29/91

RETURN COMPLETED COPY IN ENCLOSED PREPAID ENVELOPE WITHIN 14 DAYS

OTHER COPY 3

Cat. No. 121762 Printed in U

58

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Carlos Manuel Rosario
Adult Education Center
35th and T Streets, N.W.
Washington, D.C. 20007

February 4, 1992

MEMORANDUM TO: Veronica Falwell
Realty Officer
Division of Facilities Management

FROM: Sonia Gutierrez
Sonia Gutierrez
Principal

SUBJECT: Use of Agreement Application for
Michael Sussman/Georgetown Flea Market

Attached is a Use of Agreement Application from the Michael Sussman/Georgetown Flea Market for the use of the Carlos Rosario Adult Education Center parking lot.

The vendor has previously used our facilities, and we have had a very amicable working relationship with him. I recommend that this application be approved.

Thank you for your cooperation.

Attachment:

SG:BWM

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

DIVISION OF FACILITIES MANAGEMENT
REALTY BRANCH
1709 3RD STREET, N.E. WASHINGTON, D.C. 20002

January 10, 1994

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

Dear Mr. Sussman:

Attached is the conditionally approved use agreement submitted by Georgetown Flea Market requesting the use of the parking lot at Rosario Adult Education Center to hold a weekly flea market which will be open to all people. The beginning date is March 6, 1994, and the ending date is December 18, 1994. The use is scheduled to take place between the hours of 7:00 a.m. to 6:00 p.m. each Sunday. In accordance with the current policy of the Board of Education, payment of the user fee is a prerequisite for use.

The total user fee is $12,600.00 for 42 Sundays. The monthly payments for the user fee will be **$1,260.00.** These payments are to be made payable to the **D. C. Public Schools** by either a **certified check** or money order, and forwarded to the Realty Office, Division of Facilities Management, 1709 Third Street, N. E., Penn Center - 3rd Floor, Washington, D. C. 20002. Your first payment, and an executed copy of the enclosed Assumption of Risk and Indemnification Form are due **prior** to use. Thereafter, your monthly payments are due by the first of each month. Your use will be authorized after we receive the requested items.

Please notify both the principal and this office (202/576-0895) if the use is canceled or postponed.

Sincerely,

Veronica L. Falwell

Veronica L. Falwell
Realty Officer

Attachment

cc: Ms. Gutierrez

Conditions Governing Use of Rosario Parking Lot
by Michael Sussman/Georgetown Flea Market
March 6, 1994 to December 18, 1994

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 lot only at Rosario School on Sundays beginning March 7, 1993 through December 19, 1993, from 7:00 a.m. to 6:00 p.m.

3. The user shall be responsible for repairing any damage to the Rosario Site or building due to this use. The parking lot 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 additional insured shall be on file in the Realty Office, Penn Center, 1709 Third Street, N. E., Washington, D. C. 20002, prior to use.

5. Agreement is subject to termination if user defaults on any term herein, but a week's written notice will be given if reasonably possible.

6. 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: Realty Officer
   Division of Facilities Management
   Penn Center, Third Floor
   1709 Third Street, N. E.
   Washington, D. C. 20002

7. 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 Realty Office at 202/576-0895 in advance if any substitute(s) are made.

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

9. Farmers trucks shall enter by the East Gate on Wisconsin Avenue, N.W. The user shall be responsible for any damage to curb, sidewalk, or parking lot paving.

10. **Since the building shall be closed to the market staff and consumers, the user shall provide "port-a-johns" for the farmers and consumers.**

11. No shoppers shall be allowed to park on the Fillmore or Rosario sites.

12. The user (Michael Sussman/Georgetown Flea Market) is responsible for all damages and/or claims that may arise from the use of the Rosario Parking Lot, during this use period.

Signature: Michael Sussman
Michael Sussman

ASSUMPTION OF RISK
AND INDEMNIFICATION FORM

The **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** at the Rosario Adult Education Center at any time during the term of this contract, or any renewal or extension hereof, shall be in, upon or about said premises at the sole risk and hazard of **Georgetown Flea Market** or those claiming by, through or under **Georgetown Flea Market.**

Moreover, **Georgetown Flea Market** hereby agrees to identify 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 **Georgetown Flea Markets** 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 Public Schools, D. C. Public Schools, and their agents and employees shall not be liable to the **Georgetown Flea Market** 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 hereof 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 Michael Passmore

2/3/94

Date

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
APPLICATION TO USE FACILITIES

NOTE: Please read instructions and review the Board of Education Rules in the Use Agreement Handbook prior to completing this application. For more information, call the DCPS Realty Office, 727-2552.

1 Date of Application 11/29/93

2. **NAME OF USER/ORGANIZATION:** Michael Sussman / Georgetown Flea Market

3. **FACILITY REQUESTED:** Rosario Adult Education Center Parking Facility
Name Region

4. **AUTHORIZED CONTACT:** Michael Sussman
ADDRESS 2109 N Street, N.W.
Washington, DC 20037
TELEPHONE (202) 296-4989

5. **DESCRIPTION OF PROPOSED USE**—Nature of services to be offered: purpose and objectives: target population
USE OF PARKING FACILITY FOR AN Antiques Flea Market ON A Sunday basis for the Georgetown / Burleith Area Flea Market / Farmers Market / Bake Sale. To be open to All persons to buy and Sell

6. **SPECIFIC AREA REQUESTED:** (Please Check)
Auditorium _____ Gymnasium _____ Stadium _____
Armory _____ Kitchen _____ Cafeteria _____
No. of Classrooms _____ Field _____
Other ✓ Parking Facility
(Name and number of square feet)

7. **PERIOD OF REQUESTED USE:**

Hours (from . . . to)	Days (Mon-Sun)	Dates (Day/Month/Year)
7Am - 6Pm	Sundays	Sunday March 7 Sunday Dec. 19 (42 Sundays) 1994

64

8. **TYPE OF USER.** (Check One):

Public School-Related

_____PTA or Home and School Association
_____Neighborhood School Council
_____Educational Organization or Local Affiliate of a National Educational Organization
_____DCPS Program or Activity
_____Other_____

Non-Public School-Related

_____Civic Organization Meeting in Public Interest
_____Religious Organization or Affiliate
_____Advisory Neighborhood Commission
_____D.C. Government Agency
_____Other Government Activity
_____Business
_____Non-Profit Group
__X__Individual
_____Other

(a) Please attach a brochure describing your organization.

(b) Read carefully Parts II, III, and IV of the Use Agreement Handbook on Limitations on Use, Special Conditions, and Insurance Requirements.

9. **SAFETY AND SECURITY**

Security measures may be needed if the proposed activity involves any of the following circumstances Pleas check those which apply to your proposed use:

__X__More than 100 persons expected to attend
_____Dance
_____Use of Field
_____Night or Week-end use
_____Handling of money

10. **REQUEST FOR KITCHEN OR CAFETERIA:**

Please read Directive 642.7, "Guidelines for Use of Food Service Facilities," (Attachment F in Handbook)

1. Has a Food Service employee been identified to work?_____
2. If using a Food Services employee volunteer, is a letter from the volunteer stating this intent attached to this form?_____
3. If the user employs their own person to use the facilities, has this person been certified by the Food Services Branch?_____

11. **SPECIAL NEEDS OR CONCERNS OF USER:**

_____

_____