C

Board of Zoning Adjust
District of Columbia

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

October 6, 1999

'99 NOV -5 P3:34
OFFICE OF
DISTRICT

Michael Sussman
2109 N Street, NW
Washington, DC 20037

Re: 1819 35th Street, NW
Square: 1297 Lot(s): 850
(Open Lot)
Zoned: R-4

Dear Mr. Sussman:

Your certificate of occupancy application #607586 filed to use the subject premises as "Sale of Antiques and Collectibles - Sunday only 7:00am to 6:00pm" is disapproved due to the need for Board of Zoning Adjustment approval. The property for purposes of zoning is classified as R-4 which does not allow your proposed use. You may, however, request a variance from the use provisions (DCMR Title 11, Section 330.5) of the R-4 Zone. The variance must be obtained through a public hearing before the Board of Zoning Adjustment.

The Board has authority to grant variances under provisions of DCMR Title 11, Section 3107.2 which reads as follows:

> "As set forth in D.C. Code, Section 5-424(g)(3), 'Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code, Sections 5-413 to 5-432 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.'"

#2
16535

This letter must be presented to the Office of the Board of Zoning Adjustment, Room 210, 441 4th Street, N.W., when requesting special approval. If your request is granted, a new certificate of occupancy application must be filed.

Sincerely,

Edgar T. Nunley, Chief
Zoning Review Branch



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

REVISED

PUBLIC MEETING AGENDA
MARCH 1, 2000
9:30 A.M.

1. MINUTES:

Public Meeting Minutes
Public Meeting Minutes of February 2, 2000

Bench Minutes
Public Hearing Minutes of February 2, 2000
Public Hearing Minutes of February 9, 2000
Public Hearing Minutes of February 16, 2000
Public Hearing Minutes of February 23, 2000

II. CASE TO BE DISCUSSED:

Application No. 16542 of The District of Columbia Public Schools/Georgetown Flea Market, pursuant to 11 DCMR 3103.2, for a variance under Subsection 330.5 to continue to operate the "Sales of Antiques and Collectibles" on school parking lot – Sundays only in an R-3 District at premises 1819 35th Street, N.W. (Square 1297, Lot 850).

At its February 9, 2000 public hearing, the Board of Zoning Adjustment (BZA) decided that it needed additional information and discussion to move forward on this application. The Board requested the following information and actions:

*History/Description of the Flea Market operation

*A copy of the discussed legislation related to this application

*The Secretary for the Board should get the Secretary for the Zoning Commission to bring the status of this legislation to the Zoning Commission

*Advise from Corporation Counsel on how to handle the application

*Testimony from a representative of the D.C. Public School s System regarding the regulations for use of school property

*Determine why the Advisory Neighborhood Commissioner for this area did not respond to the notice sent out by the Office of Zoning, regarding this application

III. SECRETARY'S REPORT:

Re: BZA Application No. 16144-Parkside Phase II

This case was heard on June 5, 1996 and approved at a public meeting on July 10,1996. The fees were never paid and the Order was never issued. In letters dated June 13, 1996; May 21, 1998; August 26, 1998 and November 22, 1998; the BZA requested that the Applicant inform the Board of the status of the Parkside 11 project and to provide information on when they anticipated paying the outstanding fees. In responding to each of these letters, the Applicant requested and received extensions on the time to pay the fees.

Given the period of time involved and the several extensions granted, Staff is recommending that the Board give the Applicant a date on which the Board will make a decision on the disposition of this case.



01/10/01 WED 09:60 [TX/RX NO 8861]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

October 8, 1999

Mr. Gerald Cooke
Public Facilities Director, District of Columbia Public Schools
825 No. Capitol, N.E.
Suite # 7122
Washington, D. C. 20037

Re: Hardy School (Georgetown Flea Market Site/ Mr. Michael Sussman)

HAND DELIEVERED

Dear Mr. Cooke:

As a follow-up to our October 6, 1999, meeting regarding the above referenced matter, I am writing to reiterate that the Georgetown Flea Market, under the direction of Mr. Michael Sussman, is operating on school property, without benefit of having been issued a Certificate of Occupancy (C of O) from the Division of Zoning. During the week of August 23rd, Mr. Sussman was advised of the necessity to comply with zoning and all applicable regulations, in addition to being informed that he was operating outside of the law. In consideration of the (14) fourteen years of service to the community and employment opportunities provided, Mr. Sussman, was directed to close the operation by the end of the season, which according to him, was the end of the October. Again on October 7th, I conveyed and reiterated the City's position to Mr. Sussman.

Again, thank you for meeting with me and I look forward to a long and productive relationship with you and the school district. Should you have any questions, please do not hesitate to call me at 442-4560.

Respectfully,

Michael D. Johnson,
Zoning Administrator

Cc Lloyd J. Jordan, Director, DCRA
Armando Lourenco, BLRA Administrator
Denzil Noble, BLRA Deputy Administrator

MDJ/mdj
Georgetown Flea Mkt Denial

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

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

November 29, 1999

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer And Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E.
Washington, D.C.

ATTENTION: Mr. Michael D. Johnson
Zoning Administrator

Dear Mr. Johnson:

As a follow-up to my letter to you dated October 26, 1999, Mr. Sussman had advised that your office indicated that the flea market could continue operations until the end of November 1999.

Please confirm the status of the Flea Market's appeal and whether your office has granted further extensions to allow the flea market to operate at the Hardy Middle School site. In the event that no further extensions are being granted by your office, and the appeal has not granted an exception allowing future use of the site by the flea market, DCPS will instruct the operators of the flea market to cease.

In the event that you have any questions, please do not hesitate to contact me.

Thank you for your cooperation.

Sincerely,

Gerald F. Cooke
Director

DC PUBLIC SCHOOL

REAL ESTATE OFFICE
825 NORTH CAPITOL ST T, NE 7th Floor
WASHINGTON, DC 20002
Office Number (202) 442-5199
Fax Number (202) 442-5180

Fax

flea mkt

To: Michael Johnson From: Real Estate

School/Company:

Fax: 442-4871 Pages: 2

Phone: Date: 11/24/99

Re: CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

FILE COPY

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS
Real Estate Office
825 North Capitol Street, N.E., Suite 7122
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www.k12.dc.us

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

September 8, 2000

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

Dear Mr. Sussman:

As directed by the Superintendent, Dr. Paul Vance, commencing Sunday, September 10, 2000 your use of the parking facilities at the Hardy Middle School, to hold a flea market will be granted on a month to month basis, while you are filing an appeal for a special variance from the Board of Zoning Adjustment. Please note, any D.C. Public Schools' (DCPS) activities take preference over use and DCPS shall have the unilateral right in its sole discretion, to terminate this Agreement upon a fourteen (14) days prior written notice.

The total monthly user fee will remain in the same amount of $1,763.67, as defined on the enclosed "Application To Use Facilities" page 2 of 2. The rental rate will be revised upon receipt of the new appraisal. The new rate will reflect the new appraised value and will be applied at a later date.

Please submit a certified check or money order made payable to the D.C. Public Schools, and forward to the District of Columbia Public Schools, Real Estate Office, 825 North Capital Street, N.E., Suite 7122, Washington, D.C. 20002. An executed copy of the Assumption of Risk and Indemnification Form and an insurance certificate must also be received in the Real Estate Office prior to use.

Sincerely,

Veronica L. Falwell
Deputy Director

VLF:yc

Enclosures

Cc: Patrick Pope, Principal
Security
Real Estate Office

APPLICATION TO USE FACILITIES

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

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

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

AUTHORIZED CONTACT: Michael Sussman

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

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

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

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

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

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

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

Type of User:

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

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

How is the program funded? DCPS ____ Grant ____ Other private
Is the Staff paid? n/a **or volunteer?** ____ **Is there a charge to the participants?** Yes ____ No not to the public

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

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

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

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

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

Name of Insurance Company: Travelers Property Casualty
Policy Number: 660-198C3186TCT-99 Coverage: $2,000,000.00
Name and Telephone no. of Insurance Agent: DREYFUSS-NEY 301-656-3994

All users must sign an Indemnification Form, after approval of the use application by the Real Estate Office as necessary. This for plus a copy of the users insurance certificate to the Real Estate Office at least forty-eight (48) hours prior to entering the building.

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

Assessed Rate: $110 per space per month

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

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

$407.00 x 52 Sundays = $21,164

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

CONTINUOUS USERS

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

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

FORM NO. 53RO390 REV 2/98

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

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

ASSUMPTION OF RISK AND INDEMNIFICATION FORM

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

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

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

Georgetown Flea Market

By: _____ 9/9/99

Name Date

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

The following terms govern this use:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Signature _____
Michael Sussman

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Office of the Superintendent
825 North Capitol Street, N. E., 9th Floor
Washington, D.C. 20002-4232
202-442-5885, fax: 202-442-5026
www.k12.dc.us

June 9, 2000

GEORGETOWN FLEA MARKET
2109 N Street, NW
Washington, D.C. 20008

ATTENTION: Mr. Michael S. Sussman

SUBJECT: Use Agreement dated August 24, 1999 between D.C. Public Schools and the Georgetown Flea Market

Dear Mr. Sussman:

The above referenced Use Agreement provides that Georgetown Flea Market may utilize the agreed upon parking spaces at Hardy School for its operations on Sundays through September 3, 2000. The purpose of this letter is to advise you, after careful review, D.C. Public Schools will not consider the renewal of this Use Agreement upon its expiration in September of this year.

In respect of the above, we would anticipate that the Georgetown Flea Market will refrain from using the Hardy School parking facilities after September 3, 2000. In the interim, please note that all terms and conditions of the Use Agreement continue in full force and effect.

We thank you for your willingness to enter into partnership with D.C. Public Schools over the years and we wish you success in your future endeavors.

Thank you for your cooperation.

Sincerely,

Elois Brooks
Deputy Superintendent

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

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

Hardy

September 9, 1999

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

Dear Mr. Sussman:

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

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

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

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

Sincerely,

Gerald F. Cooke
Director

GFC/tp

Enclosures

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

APPLICATION TO USE FACILITIES

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AUTHORIZED CONTACT: Michael Sussman

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

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

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

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

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

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

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

Type of User:

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

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

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

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

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

User Signature: [signature] **Date:** 8/24/99

****

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

FROM : MICHAEL SUSSMAN FAX NO. : 202 223 0289 Aug. 24 1998 10:13PM P1

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Name and Telephone no. of Insurance Agent: DREYFUSS-NEY 301-656-3994
All users must sign an Indemnification Form, after approval of the use application by the Real Estate Office as necessary. This for plus a copy of the users insurance certificate to the Real Estate Office at least forty-eight (48) hours prior to entering the building.

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

Assessed Rate: $110 per space per month

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

$407.00 x 52 Sundays = $21,164

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

CONTINUOUS USERS

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

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

FORM NO. 53RO390 REV 2/98

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

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Real Estate Office
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Washington, D.C. 20002-4232
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ASSUMPTION OF RISK AND INDEMNIFICATION FORM

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

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

Georgetown Flea Market

By: _____ 9/9/99

Name Date

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

The following terms govern this use:

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

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

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

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

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

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

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

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

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

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

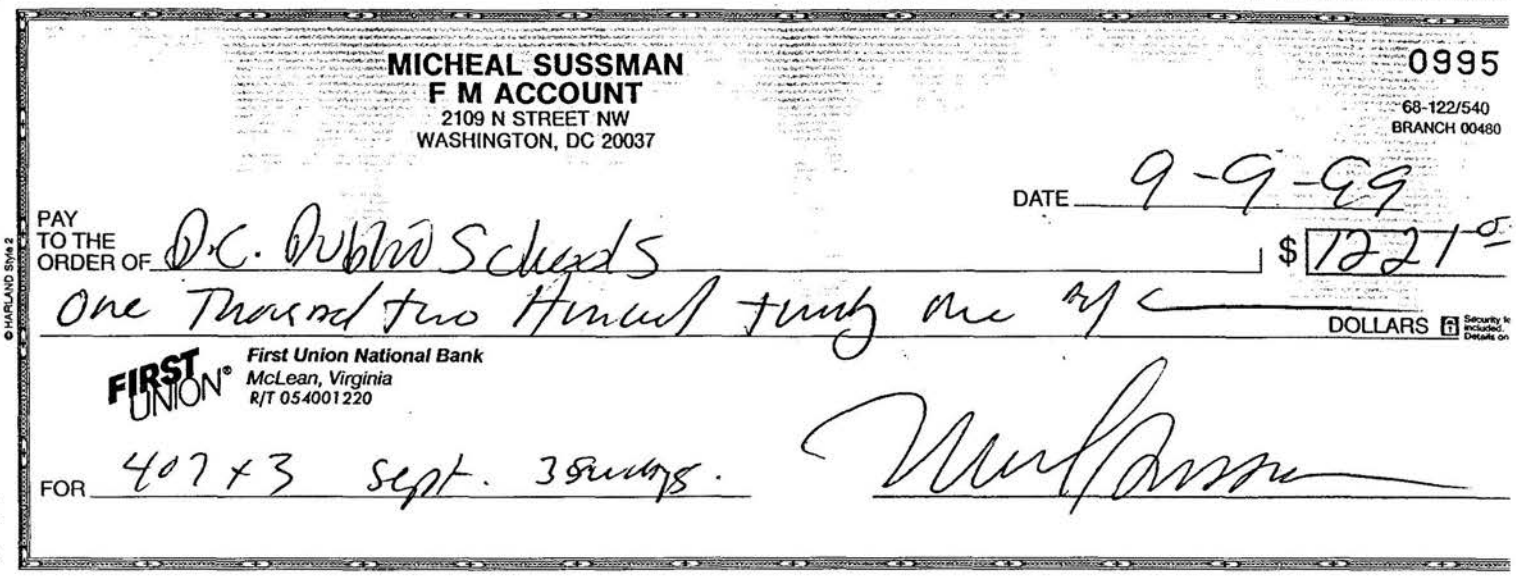
10. The delivery trucks shall enter by the East Gate on Wisconsin Avenue, N.W. The User shall be responsible for any damages to the curb, sidewalk, or parking lot paving caused by this activity.

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

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

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

Signature _____
Michael Sussman



MICHEAL SUSSMAN
F M ACCOUNT
2109 N STREET NW
WASHINGTON, DC 20037

0995
68-122/540
BRANCH 00480

DATE 9-9-99

PAY TO THE ORDER OF D.C. Public Schools $ 1221.00

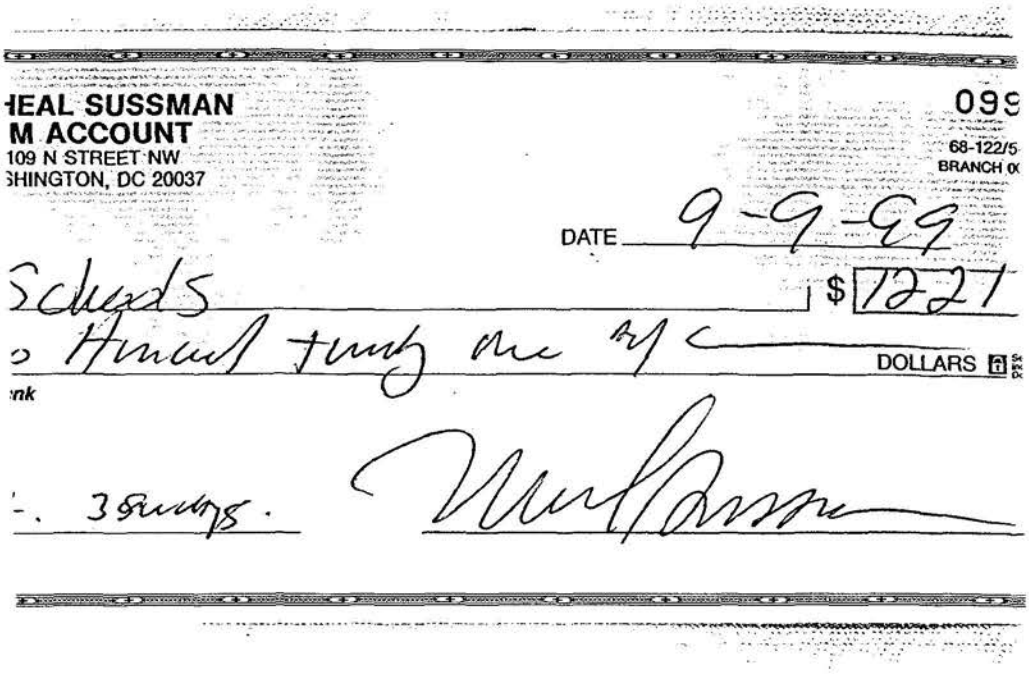
One Thousand two Hundred twenty one and 00/100 DOLLARS

FIRST UNION® First Union National Bank
McLean, Virginia
R/T 054001220

FOR 407 x 3 Sept. 3 Savings.

Michael Sussman

© HARLAND Style 2


HEAL SUSSMAN
M ACCOUNT
109 N STREET NW
SHINGTON, DC 20037
099
68-122/5
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DATE 9-9-99
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DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

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

Hardy

June 2, 2000

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer And Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E.
Washington, D.C. 20002

ATTENTION: Mr. Michael D. Johnson
Zoning Administrator

SUBJECT: Georgetown Flea Market
Hardy Middle School

Dear Mr. Johnson:

Please advise the status of the zoning appeal in respect of the operation of the Georgetown Flea Market at Hardy Middle School. I have heard from other sources that your office has voided the Certificate of Occupancy granted to Mr. Sussman earlier.

I look forward to an update as soon as possible.

In the event that you have any questions, please do not hesitate to contact me.

Thank you for your cooperation.

Sincerely,

Gerald F. Cooke
Director

F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment





Application No. 16643 of D.C. Public Schools/Michael Sussman/Georgetown Flea Market, pursuant to 11 DCMR § 3103.2, for a use variance to continue to operate the "Sales of Antiques and Collectibles" on a public school parking lot – Sundays only in an R-3 District at premises 1819 35th Street, N.W. (Square 1297, Lot 850).

HEARING DATE: January 30, 2001
DECISION DATE: March 6, 2001

DECISION AND ORDER

PRELIMINARY MATTERS:

Advisory Neighborhood Commissions (ANC) 2E and 3B were parties in this proceeding. The Board granted a request for party status by Safeway, Inc., which operates a large grocery store near the subject property, but denied the party status request of Ronald Mlotek. The testimony indicates that Mr. Mlotek's property is not contiguous to the site; that his property is not separated from the site by an alley or other access; and that his property is located approximately 100 feet from the site, whereas other residentially zoned properties are located closer and would be more directly affected. The Board determined that Mr. Mlotek had not demonstrated that his interests would be more significantly or uniquely affected than other neighbors.

FINDINGS OF FACT:

1. The application was filed September 5, 2000 by Michael Sussman, with authority of D.C. Public Schools (DCPS), owner of the subject property. The application seeks a variance to continue the operation of the sale of antiques and collectibles at the Georgetown Flea Market.

2. The Georgetown Flea Market is operated by Mr. Sussman, pursuant to a lease with DCPS, on the parking lot of Rose L. Hardy Middle School. The parking lot, located at 1819 35th Street, N.W., is bounded by 35th Street on the west, Wisconsin Avenue on the east, Whitehaven Parkway on the north, and the school building on the south. Access to the property is from Wisconsin Avenue.

3. The Georgetown Flea Market operates every Sunday, weather permitting, between 9:00 a.m. and 5:00 p.m. Vendors arrive as early as 7:00 a.m. and depart by 6:00 p.m. The market has been in operation for almost 30 years and at its current site since 1988, but has

not obtained a certificate of occupancy. (An appeal of the Zoning Administrator's denial of the certificate of occupancy application is pending. BZA Appeal No. 16642.)

4. The subject property is zoned R-3, as is the property to the south and west of the site. Most nearby property fronting onto Wisconsin Avenue is zoned C-2-A, excluding Square 1299, which is split-zoned C-1 and NO/C-2-A and contains the Safeway grocery store and other commercial operations.

5. The Applicant testified that the subject property is affected by an exceptional situation or condition arising from its zoning history as District-owned public school property not subject to zoning before 1990, residentially zoned in a commercial area, and used continuously as a flea market since 1988.

6. The Applicant also testified that the strict application of the area regulations would impose an undue hardship for DCPS and for the operator of the Georgetown Flea Market. According to the Applicant, if not granted a variance, the market would have to cease operations at its present location and attempt to relocate elsewhere, losing its longstanding reputation and alienating both current dealers and customers. The Applicant stated further that DCPS would suffer undue hardship by losing "a significant and irreplaceable source of revenue for an otherwise fiscally unproductive site if the Market use is discontinued on the property." The Georgetown Flea Market pays DCPS approximately $20,000 annually for use of the school parking lot. Exhibit No. 29 at 5.

7. The Applicant asserted that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, or integrity of the Zone Plan. According to the Applicant, the market has already occupied for more than a decade "with great public support and enthusiasm" and is not seeking to expand its operations but has scaled down the size of its operation on the site. In addition, the site abuts numerous commercial uses along Wisconsin Avenue, a major commercial artery. *Id.* at 6-7.

8. The Applicant testified that 25 parking spaces would be provided on-site in the rear parking lot, where vendors had previously been located, and that approximately free 39 parking spaces are available on Whitehaven Parkway. According to the Applicant, the 39 spaces are located within a three-minute walk from the flea market and are not otherwise used on Sundays. Transcript, January 30, 2001 at 23, 34.

9. The Office of Planning (OP) testified about the impact of the Georgetown Flea Market on school programs, parking concerns, and the benefit to the community. OP found no impact on school program, noting that the market has leased the same location for 14 years and has not been informed of another need for the parking lot. According to OP, the Georgetown Flea Market has caused some parking spillover onto nearby residential streets; however, the problem would be alleviated by the Applicant's plan to use the rear parking lot at the Hardy site for customer parking instead of additional vendors. OP also

testified that the Georgetown Flea Market provides an economic benefit both to the District of Columbia and to the school. Transcript, January 30, 2001 at 97-98.

10. By a vote of 6-0 (two abstaining), ANC 2E adopted a resolution in favor of the application at its public meeting held January 2, 2001 with all commissioners present. The ANC requested approval of the variance request because the Flea Market has a substantial positive impact on the District of Columbia and provides a greatly appreciated public benefit with no apparent negative impact on school programs, and because the Flea Market management has been responsive to community concerns pertaining to traffic, litter, noise, and congestion. Exhibit No. 28.

11. Safeway, Inc., owner of property adjacent to the Hardy Middle School, operates a large grocery store at 1855 Wisconsin Avenue, N.W. The Safeway property includes a 204-space parking lot in front of the store. The witnesses for Safeway testified that many people park their cars in the Safeway lot when they visit the Georgetown Flea Market, limiting the number of spaces available for grocery store customers and causing a "public relations nightmare" for Safeway, which has paid for a security firm to monitor its lot and for a towing company to remove cars whose owners are not shopping at Safeway. Transcript, January 30, 2001 at 124-125, 128.

12. By resolution dated January 17, 2001, the Burleith Citizens Association reaffirmed its support of the Flea Market at the Hardy School and requested that approval of a variance should be "solely for the operation of this Sunday Flea Market."

13. Numerous persons testified in support of the application, especially vendors and customers of the Georgetown Flea Market. They asserted generally that the market is a valued neighborhood institution that has a friendly atmosphere and provides opportunities for small businesses.

14. The Board also received several letters in support of the application. The letters generally described the flea market as a benefit to customers, vendors, and the neighborhood because of its vitality, friendly atmosphere, and opportunity for social interaction as well as the quality of merchandise sold there.

15. Three persons testified in opposition to the application. They objected to the presence of a commercial enterprise on school property in a residential zone and asserted that the market creates adverse impacts especially with respect to trash, parking, and traffic in the neighborhood.

CONCLUSIONS OF LAW AND OPINION:

The Board is authorized to grant a variance from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the

property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. . . ." D.C. Code § 5-424(g)(3), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. *Id.*

The "undue hardship" criterion applies to applications for use variances, which warrant a more stringent showing in light of the more drastic relief inherent in a use variance. *Palmer v. Board of Zoning Adjustment for the District of Columbia*, 287 A.2d 535, 541 (D.C. 1971). A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. *Id.*

The Applicant does not own the property but seeks to use the site for the weekly Georgetown Flea Market. The Applicant and persons in support of the application provided substantial testimony about the benefits of the current site, their inability to locate an alternative site, and the many good qualities of the Georgetown Flea Market. However, the impact of the Zoning Regulations on a lessee, or other persons who merely use the property, is irrelevant. *Palmer*, 287 A.2d at 542. "The statute expresses in clear and unambiguous language that the showing, whether of "practical difficulties" or "undue hardship," must be upon the owner." *Id.*

The Applicant testified that, unless the requested variance is granted, the owner of the property, DCPS, would suffer undue hardship in the form of lost revenues, approximately $20,000 annually generated by the lease with the Georgetown Flea Market. However, the record contains no evidence that DCPS would in fact suffer undue hardship from the loss of the lease revenues. The Board concludes that the record fails to support a finding of "hardship to the owner" because the Applicant did not demonstrate through testimony of DCPS that the property could not be put to any reasonable use consistent with the Zoning Regulations, or that any undue hardship would result to the owner of the property because of strict application of the Zoning Regulations.

The Board accorded the issues and concerns of the Office of Planning and ANC 2E the great weight to which they are entitled. Both OP and ANC 2E recommended that the Georgetown Flea Market should be allowed to continue operating at its current location. However, neither OP nor the ANC asserted that undue hardship would result to the owner of the subject property as a result of the strict application of the Zoning Regulations. Because the record does not support a finding of undue hardship to the owner of the property, the Board need not consider whether the requested use variance could be granted without substantial detriment to the public good or substantial impairment of the zone plan, the issues addressed by OP and the ANC. *See Bakers Local Union No. 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176 at 179 (Board must address only those concerns of the ANC that are "legally relevant").

The Board finds that the Applicant has failed to prove, by a preponderance of evidence, that the use variance can be granted consistent with applicable legal requirements. The Board hereby **ORDERS** that the application be **DENIED.**

VOTE: 3-1-1 (Robert N. Sockwell, Anne Mohnrern Renshaw, and Susan Morgan Hinton to deny; John G Parsons (by absentee vote) to grant; and Sheila Cross Reid abstaining.)

BY ORDER OF THE DC BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: MAR 2 9 2001

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE 10 DAYS AFTER IT BECOMES FINAL.

MN/3.27.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 16643

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 9 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Norman M. Glasgow, Jr.,
Wilkes Artis
1666 K Street, N.W.. Suite 300
Washington, DC 20006-2803

Ellen McCarthy
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, DC 20002

Jerry A. Moore, III
Arter & Hadden
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006-1301

Veronica L. Fallwell, Deputy Director
Real Estate Office
District of Columbia Public Schools
825 North Capitol Street, N.E.
Washington, D.C. 20002

Peter Pulsifer
Chairperson ANC 2E and
Single Member District Commissioner 2E03
St. John's Episcopal Church
3265 S Street, N.W.
Washington, DC 20007

Councilmember Jack Evans
Ward Two
441 4th Street, N.W., Suite 703
Washington, DC 20001

Michael Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

ATTESTED BY:
JERRILY R. KRESS, FAIA
Director

G

File: 16642 (GFM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of Michael Sussman/ Georgetown Flea Market	)	Appeal No. 16642
Appellant	)	

DISTRICT OF COLUMBIA'S MOTION FOR CONTINUANCE

Comes now the District of Columbia (hereinafter "the District") through undersigned counsel pursuant to 11 DCMR § 3106.1 (1996) and requests a continuance of the contested case hearing presently set for June 5, 2001 at 1:00 p.m., based upon the need for additional time to review the assertions made by the appellant in his Brief. The Office of the Corporation Counsel, Civil Division, received a request to represent the Zoning Administrator in this instant matter on May 25, 2001. The appellant had filed his brief in support of his position with the Board of Zoning Adjustment on May 22, 2001.

The appellant has requested a reversal of the Zoning Administrator's decision to deny him a certificate of occupancy and require him to obtain a variance to sell antiques and collectibles on Sundays only in the parking area of the Hardy School. The Brief contains a number of issues of first impression. During the pendency of this appeal the Zoning Administrator has agreed to take no further enforcement action and to allow the appellant to continue to operate his flea market while his appeal is pending.

Counsel for the appellant stated he would not object to a continuance of this matter. A short continuance will not prejudice the appellant in this case. Therefore, the District respectfully requests that this instant appeal be continued until the next available date.

Respectfully submitted,

ROBERT R. RIGSBY
Corporation Counsel

SHARON STYLES-ANDERSON #412158
Senior Deputy Corporation Counsel
Public Protection and Enforcement

CHARLOTTE W. PARKER #186205
Acting Deputy Corporation Counsel
Civil Division

ARTHUR PARKER #376054
Assistant Corporation Counsel
Civil Division
441 4th Street NW, Suite 450N
Washington, D.C. 20001
(202) 727 – 0874
Counsel for the District of Columbia

Certificate of Service

I hereby certify that the foregoing District of Columbia's Motion for Continuance and proposed Order was mailed by first class mail, postage prepaid on this 15th day of June, 2001 and sent by facsimile to Counsel for the Appellant, Norman M. Glasgow, Jr., Holland & Knight, LLP, 2099 Pennsylvania Avenue NW, Suite 100, Washington, D.C. 20006-6801.

Arthur Parker
Assistant Corporation Counsel

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of Michael Sussman/ Georgetown Flea Market	)	Appeal No. 16642
Appellant	)	

ORDER

Upon consideration of the District of Columbia's unopposed Motion for Continuance, and the record herein, it is by the Board of Zoning Adjustment this _____ day of June, 2001,

ORDERED: That the District of Columbia's Motion for Continuance be, and the same is hereby, GRANTED; and it is

FURTHER ORDERED: That the Hearing scheduled for Tuesday, June 5, 2001 at 1:00 p.m. be continued to _____.

_____
Board of Zoning Adjustment
Chairperson

cc:
Arthur Parker
Assistant Corporation Counsel
Civil Division
441 4th Street NW, Suite 450N .
Washington, D.C. 20001

Norman M. Glasgow, Jr., Esquire
Holland & Knight, LLP
2099 Pennsylvania Avenue NW, Suite 100
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June 12, 2000

Gerald F. Cook, Director
Real Estate Office
District of Columbia Public Schools
825 North Capitol Street, N.E.
Suite 7122
Washington, D.C. 20002-4232

Re: The Georgetown Flea Market

Dear Mr. Cook:

Our client, Safeway, Inc., owns and occupies Lot 1020 in Square 1299, 1855 Wisconsin Avenue, N.W. on which it operates a retail grocery store with a parking lot for the convenience of its customers. Safeway's property is located directly across Wisconsin Avenue to the east of the Hardy Middle School whose playground area is leased on Sundays by the D.C. Public Schools to the Georgetown Flea Market. The purpose of this letter is to make you aware of the substantial difficulties that Safeway has been experiencing because the Georgetown Flea Market does not provide off-street parking for its patrons.

Since the Flea Market began operations at this location, the managers of the Safeway have become aware of the increasing numbers of the Flea Market's patrons who have parked their vehicles on Safeway's parking lot and walked across Wisconsin Avenue to patronize the Flea Market. The use of Safeway's parking spaces by the patrons of the Georgetown Flea Market has created a direct, significant and adverse impact on Safeway's use and enjoyment of its property. As a result of this prohibited use, Safeway's customers have been either unable, or unreasonably inconvenienced to find off-street parking. Today's shoppers lead busy lives and find that they need to do their grocery shopping on Sundays. Sunday is now the second busiest day of the week for supermarket retailers. Customers become upset when parking is not available to them on Safeway's lot. Unable to find convenient parking, many customers shop elsewhere causing Safeway to lose their business. This, of course, is unacceptable to Safeway.

It is our understanding that when advised in November, 1999 by the D.C. Zoning Administrator that it needed a Certificate of Occupancy to conduct its operation, the operators of the Flea Market responded in three ways: First, it appealed the Zoning Administrator's decision to the Board of Zoning Adjustment (BZA Case No. 16535). Second, it filed an application seeking the use variance that the Zoning Administrator directed it to obtain as a condition of obtaining a certificate of occupancy (BZA Case No. 1642)[1]. Third, it persuaded the Council of the District of Columbia to enact the "Comprehensive Plan Land Use Georgetown Flea Market Exemption Emergency Amendment Act of 1999", the effect of which was to exempt the Georgetown Flea Market from the city's zoning laws. Fortunately, that Act has since expired and we know of no intention on the part of the Council to legislatively reestablish its terms.

Safeway takes no position with respect to the retail sales operation of the Market, but asks only that the operator be required to comply with the same parking requirements applicable to similar uses. With sixteen stores in the District of Columbia, Safeway is a substantial taxpayer and an employer of District of Columbia residents. Accordingly, we urge you to review the use of this public school property to determine whether the referenced activity is in compliance with the lease of the playground at the Hardy Middle School and, that you insist that any solution that is reached with respect to the Certificate of Occupancy question discussed above include a clear, practical and enforceable plan for the Georgetown Flea Market to provide off-street parking to its patrons at a place other than our client's parking lot. Safeway requests an opportunity to comment on that plan, should one be proffered.

Thank you for your time and attention to this matter. I can be reached at the address and phone number first listed above.

Sincerely,

Jerry A. Moore III

cc: Thomas Castleberry
Avis Black

---

[1] Public hearings were scheduled by the BZA for June 7, 2000 on the application and the appeal. However, both have been withdrawn at the request of the Georgetown Flea Market.

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June 20, 2000

Michael D. Johnson, Zoning Administrator
D.C. Department of Consumer
and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
Washington, D.C. 20002-4232

Re: The Georgetown Flea Market

Dear Mr. Johnson:

Our client, Safeway, Inc., owns and occupies Lot 1020 in Square 1299, 1855 Wisconsin Avenue, N.W. on which it operates a retail grocery store with a parking lot for the convenience of its customers. Safeway's property is located directly across Wisconsin Avenue to the east of the Hardy Middle School whose playground area is leased on Sundays by the D.C. Public Schools to the Georgetown Flea Market. The purpose of this letter is to make you aware of the substantial difficulties that Safeway has been experiencing because the Georgetown Flea Market does not provide suitable off-street parking for its patrons.

Since the Flea Market began operations at this location, the managers of the Safeway have become aware of the increasing numbers of the Flea Market's patrons who have parked their vehicles on Safeway's parking lot and walked across Wisconsin Avenue to patronize the Flea Market. The use of Safeway's parking spaces by the patrons of the Georgetown Flea Market has created a direct, significant and adverse impact on Safeway's use and enjoyment of its property. As a result of this prohibited use, Safeway's customers have been either unable, or unreasonably inconvenienced to find off-street parking. Today's shoppers lead busy lives and find that they need to do their grocery shopping on Sundays. Sunday is now the second busiest day of the week for supermarket retailers. Customers become upset when parking is not available to them on Safeway's lot. Unable to find convenient parking, many customers shop elsewhere causing Safeway to lose their business. This, of course, is unacceptable to Safeway.

It is our understanding that when advised in November, 1999 by your office that it needed a Certificate of Occupancy to conduct its operation, the operators of the Flea Market responded in three ways: First, it appealed your decision to the Board of Zoning Adjustment (BZA Case No. 16535). Second, it filed an application seeking the use variance that you directed it to obtain as a condition of obtaining a certificate of occupancy (BZA Case No. 1642)[1]. Third, it persuaded the Council of the District of Columbia to enact the "Comprehensive Plan Land Use Georgetown Flea Market Exemption Emergency Amendment Act of 1999", the effect of which was to exempt the Georgetown Flea Market from the city's zoning laws. Fortunately, that Act has since expired and we know of no intention on the part of the Council to legislatively reestablish its terms.

Safeway takes no position with respect to the retail sales operation of the Market, but asks only that the operator be required to comply with the same parking requirements applicable to similar uses. Accordingly, we urge you to review the use of this property to determine whether the referenced activity is in compliance with the D.C. Zoning Regulations with respect to use and off-street parking requirements and that you insist that any solution that is reached with respect to the Certificate of Occupancy question discussed above include a clear, practical and enforceable plan for the Georgetown Flea Market to provide off-street parking to its patrons at a place other than our client's parking lot. Safeway requests an opportunity to comment on that plan, should one be proffered.

Thank you for your time and attention to this matter. I can be reached at the address and phone number first listed above.

Sincerely,

Jerry A. Moore III

cc: Thomas Castleberry
Avis E. Black, Esq.

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[1] Public hearings were scheduled by the BZA for June 7, 2000 on the application and the appeal. However, both have been withdrawn at the request of the Georgetown Flea Market.

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September 21, 2000

BY HAND DELIVERY
Michael D. Johnson, Zoning Administrator
D.C. Department of Consumer
and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
Washington, D.C. 20002-4232

Re: The Georgetown Flea Market

Dear Mr. Johnson:

We wrote on June 20, 2000 to advise you of the adverse impact that the Georgetown Flea Market's use of the Hardy Middle School's property is having on the use and operation of the Safeway grocery store at 1855 Wisconsin Avenue, N.W. Specifically, my client continues to find that many patrons of the Georgetown Flea Market regularly use Safeway's parking lot for their parking purposes and convenience when the flea market is in operation on Sundays. Sunday is one of the busiest days of the week for Safeway and not having sufficient parking available for its customers has a direct impact on its business.

It has been nearly a year since your office determined that the Georgetown Flea Market requires a certificate of occupancy to conduct its activities on the Hardy School property. But, to this day, we are not aware that one has been issued. Further, the records of the Office of Zoning reflect that the appeal of the Georgetown Flea Market from your decision and its application for the use variance that you directed it to obtain have both been withdrawn and are no longer under consideration by the D.C. Board of Zoning Adjustment. In these circumstances, how is it that the Georgetown Flea Market can continue to operate without either sanction nor (effective) challenge from your office?

We are yet to receive a response from you to our letter of June 20th. It is very important to our client that it act promptly to relieve the adversity caused by the Georgetown Flea Market. Accordingly, a prompt response from your office will be most helpful. Thank you.

Sincerely,

Jerry A. Moore III

Enclosure

cc: Paul Vance, Superintendent, D.C. Public Schools

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October 18, 2000

BY HAND DELIVERY

Veleter M.B. Mazyck, Esq.
General Counsel
District of Columbia Public Schools
825 North Capitol Street, N.E., Ninth Floor
Washington, D.C. 20002-4232

Re: Lease of the Hardy Middle School Property

Dear Ms. Mazyck:

Enclosed are copies of documents that relate our client's – Safeway, Inc. – view and serious concerns regarding the lease of the Hardy Middle School's playground/parking lot area to the Georgetown Flea Market.

It was our understanding that this lease expired at the end of August 2000 and was not to be renewed unless and until the operator of the Georgetown Flea Market obtained a Certificate of Occupancy for that use. We are not aware that such a permit has been obtained, yet the Flea Market continues to use the property, to the detriment of our client. As we have expressed in our September 21, 2000 letter to the D.C. Zoning Administrator, we are mystified how a public school property can continue to be used in apparent violation of the laws of the District of Columbia. Our numerous efforts to bring this concern to the attention of the DCPS real estate office have, to date, been without result. I am hopeful that, after review, your office can promptly resolve this continuing problem so that the nearby Safeway may be relieved of its adverse impacts. Thank you.

Sincerely,

Jerry A. Moore III

cc: Michael D. Johnson, Zoning Administrator
Avis E. Black, Esq.

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November 6, 2000

BY HAND DELIVERY
Michael D. Johnson, Zoning Administrator
D.C. Department of Consumer
and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
Washington, D.C. 20002-4232

Re: The Georgetown Flea Market

Dear Mr. Johnson:

I wrote you on June 20, 2000 and again on September 21, 2000 seeking relief from the alarm and damages that our client, Safeway, Inc. has, and is incurring as a result of the illegal use of its parking lot by the customers of the Georgetown Flea Market. We have not had the favor of any response from you to either of our letters. Yet the use of the Hardy Middle School property by the Georgetown Flea Market and the resulting damages to our client continue to occur.

In these circumstances, we deem it not unreasonable to request a prompt reply from you advising of the immediate steps that your office will take to enforce the zoning and building codes of the District of Columbia. Thank you.

Sincerely,

Jerry A. Moore III

Enclosures

cc: John Koskinen, City Administrator



ZA Form 1
Revised 7/17/95)

Docket 16534 KW

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPEAL

NOTE: See reverse side of this form for filing instructions, filing fees and information required by the Board

DO NOT MAIL **DO NOT MAIL**

TO THE BOARD OF ZONING ADJUSTMENT

Pursuant to Sections ~~3105~~ 3100 and ~~3106~~ 3101 B&B of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of Edgar Nunley, Chief, Zoning Review Branch (Name of Administrative officer and title)

made on October 6, 1999 (Date of decision), to the effect that a use variance is required to continue to operate the "sale of antiques and collectibles".

Premises affected are located at 1819 35th Street, N.W. (Street Address),

Lot(s) 850, Square(s) 1297

in the District of Columbia, in Zoning District R-3.

Present use of Property: Sale of collectibles and antiques on school parking lot - Sunday only.

Proposed use of Property: Sale of collectibles and antiques on school parking lot - Sunday only.

Owner of Property: District of Columbia Board of Education.

Address of Owner: Division of Facilities Management 1709 3rd St NE, Washington DC 20002.

Name and address of appellant, if other than owner: Michael Sussman, 2109 N Street, NW, Washington DC 20037.

State manner in which appellant is aggrieved by administrative decision: Appellant is operator of the Georgetown Flea Market, which has been denied a certificate of occupancy to continue its operation at the subject premises

State briefly the allegations of error in administrative decision: Appellant began its operation at the time that no certificate of occupancy was required; appellant's use is permitted to continue under §2000.4 or as an accessory use to the principal school use.

Relevant Sections of Zoning Regulations: 2000.4, 106.5, 199.1, 202.10.

Date: Nov. 5th, 1999 Signature: Norman M. Glasgow, Jr. (Appellant)*

*If appeal is filed by agent of the appellant, Form 1 (notice of appeal) shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

'99 NOV -5 P3:32
OFFICE OF ZONING
DISTRICT OF COLUMBIA

TO BE NOTIFIED OF HEARING AND DECISION:

Name: Norman M. Glasgow, Jr.
Wilkes, Artis, Hedrick & Lane
Address: 1666 K Street, NW, Washington, DC

Zip Code 20006 Phone No. (202)457-7842

ANY APPEAL THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

#1

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

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

Patrick Pope, Principal — Norma Lewis, Assistant Principal

MEMORANDUM

To: Jerry Cook
Director, Realty Office

From: Patrick Pope
Principal

Date: September 14, 1999

Subject: Flea Market Contract

I am writing to ask your help in correcting several situations that have arisen from the resumption of the lease agreement between DCPS and the Georgetown Flea Market. On Monday, September 13, the custodian foreman and I noticed the following concerns.

- The vendors in the north parking lot appear to be parking on the newly poured sidewalks.
- On the south parking lot, behind the school, two shrubs were cut down to the ground and at least one vehicle parked on the grass area adjacent to the building.

These two issues may be resolved in consultation with the vendor.

More importantly, the lease, in its current form, raises a serious issue of security that must be addressed.

The lease has apparently been extended to include the rear or south parking area behind the school. The rear of the school, which includes this parking area, is very secluded and not visible from either 34th or 35th Street. A narrow alley provides the only access to this area. It would not be difficult to enter the school through any of the old windows that can easily be pushed or broken in. In fact the only recorded break-in at the school in the last fifteen months occurred in this area. Opening this area to the public for the flea market exposes the real vulnerability of the building. To invite vendors and the general public to this area on a day when there are neither school nor security personnel on site puts the school at considerable risk.

I am requesting that the lease between DCPS and the Georgetown Flea Market be renegotiated to exclude any use of the south parking lot.

When I spoke with you in June, I indicated that if DCPS were considering entering into a building use agreement with the Georgetown Flea Market, I would like to be involved in those important decisions. I learned of the renewed contract on September 9 when I received your fax.

I would trust that any further agreements that DCPS makes with any vendor for the use of the Hardy Middle School property would be discussed beforehand and at length with me prior to its implementation.

cc: Vera M. White
Patrick Fiel
Arlene Akerman

VOL. X, NO. 25

THE GEORGETOWN CURRENT

Flea market operator pledges new parking

By CHARLES BERMPOHL
Current Staff Writer

The Georgetown Safeway, claiming it loses a hefty part of its parking lot to patrons of the Georgetown Flea Market every Sunday, said it will forgo its challenge to the flea market's zoning application once it regains control of its lot.

Flea market operator Michael Sussman said he has already lined up 25 parking spaces at the Hardy Middle School for his customers and has located another 39 spaces on Whitehaven Parkway that he said can also be used.

Safeway officials, who presented their case to the Board of Zoning Adjustment during a zoning hearing on Tuesday, said they are willing to be convinced that Sussman can satisfy them, but until that happens, they are not withdrawing from the zoning battle.

Avis Black, area real estate man-

See Flea/Page 17

FLEA

From Page 1

ager for Safeway, said getting flea market customers to change their parking habits "would require considerable education" on Sussman's part. "Most people would want the convenience of parking nearby."

But she also seemed eager to deal with Sussman over the parking issue, citing what has become for Safeway a "public relations nightmare" that has led to towing the cars of flea market customers who also happen to be Safeway customers.

"We try to manage it as best we can," she said. "But up to now there's been no help from the flea market."

The supermarket, known in local jargon as the "social Safeway," is just across Wisconsin Avenue from the Sundays-only flea market, which has been operating out of the school parking lot for the past 13 years and has built up considerable public support.

When the Hardy school built a sports field on part of a much larger parking lot last year, it cut the flea market's space by half, reducing the amount of vendors from around 120 to 60, Sussman said.

An additional 20 vendors use another Hardy parking lot, just south of the school off 34th Street, that Sussman has agreed to use as a parking lot for customers.

Just how effective Safeway was in making its case against the flea market remains to be seen.

Zoning board member Anne Renshaw said Safeway had similar parking lot problems at its Chevy Chase, D.C., store, which it blamed on local restaurants and a movie theater. But she said Safeway's delivery trailers created problems for others.

Another board member, John Parsons, noted that while Sussman made sizable contributions to local charities, the level of Safeway's donations — which one company official tagged at $2 million for the city at large — indicated "a very minor presence" for such a large company.

And Sheila Cross Reid, until recently the board's chair, said it was "baffling" to her that the Georgetown food store could have had the same parking problems for 13 years and not moved to get them resolved before now.

The emergence of the supermarket chain as an opponent to the flea market is only the latest wrinkle in the case that suddenly erupted in 1999 when a city school board member challenged Sussman's use of the site and a new city zoning administrator said the market required a certificate of occupancy.

A number of flea market vendors praised Sussman and spoke in favor of his getting a use variance. Zoning board chair Robert Sockwell said the board had received many more letters of support.

At-large Council member Carol Schwartz, Ward 1 member Jim Graham and Ward 2 member Jack Evans wrote letters of support. The Georgetown and Glover Park advisory neighborhood commissions and the Burleith Citizens Association passed resolutions backing the flea market.

In addition to Safeway, three other opponents — two 34th Street residents and a Hyde Elementary School parent — showed up to argue against the flea market.

Sockwell said the board will make its decision March 6.

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

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

Patrick Pope, Principal — Norma Lewis, Assistant Principal

February 14, 2000

Honorable Mayor Williams,

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

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

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

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

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

Thank you in advance for your time and attention.

Sincerely,

Patrick Pope

Patrick Pope

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

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

Patrick Pope, Principal — Norma Lewis, Assistant Principal

MEMORANDUM

To: Veronica Falwell
Acting Director, Realty Office

From: Patrick Pope
Principal

Date: February 6, 2001

Subject: Parking for Georgetown Flea Market

I am writing to vigorously protest the proposal by the operators of the Georgetown Flea Market to use the rear of Hardy Middle School to accommodate parking during the operation of the Flea Market on Sundays.

As I wrote in September 1999, there is a serious security risk involved in inviting the public to the rear of the school. The parking area in the rear is not visible from either 34th or 35th Street. The only recorded break-in into the school occurred in this part of the school. Since September 1999 we have also had two incidences of broken windows and a fire set in the rear of the school. To continue to open this very vulnerable part of the school to the public appears to be putting the school at additional and unwarranted risk.

I restate that if I am to be held accountable for all operations, safety and security of the school, I need to be a part of any conversation or action that may adversely affect the school property.

Attachments: September 14, 1999 memorandum
Georgetown Current News Article

Cc: Vera M. White
Patrick Fiel
Paul Vance

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

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

Patrick Pope, Principal Norma Lewis, Assistant Principal

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

Thank you in advance for your time and attention.

Sincerely,

Patrick Pope

Patrick Pope

May 5, 2000

Mrs. Arlene Ackerman
Superintendent
DC Public Schools
825 North Capitol Street NE
Washington, DC

Re: Respectfully request you withdraw DCPS' application for a variance from R-3 zoning of the Hardy Middle School.

Dear Mrs. Ackerman,

I am concerned that District of Columbia Public Schools has applied for a variance from the residential zoning of the Hardy Middle School over the objections of the Principal, the teachers, the LSRT, and the parents. I am concerned because it does not show respect for the people who work in the school, it violates our policy on school based management, and it is questionable whether DCPS has a contract with the private law firm, Wilkes Artis, purportedly representing DCPS before the zoning board.

I don't know of any private school that would allow their property to be used for a commercial venture.

I respectfully request you withdraw the application for a variance.

As I reviewed DCPS' application I have the following comments:

1. An application for a variance from residential zoning of Lot 850, the Hardy Middle School is dated November 24, 1999 and signed by Norman Glasgow, Jr., Wilkes, Artis, Hedrick, and Lane. Directly under Mr. Glasgow's signature it states, "* The owner of the property for which application is made or his/her authorized agent files an application on behalf of the owner, the notice of application shall be accompanied by a letter signed by the owner authorizing the agent to act on his behalf in this appeal."

2. On November 18, 1999 Gerald F. Cooke, Director of the Real Estate Division of DCPS, signed a letter giving Wilkes, Artis, Hedrick, and Lane authorization to file an application for a variance on the "yard/field of the Hardy Middle School at 1819 35th Street NW, Square 1297. Lot 850."

It is clear Wilkes, Artis, Hedrick, and Lane is representing DCPS. One might try to make the argument that Wilkes Artis just filed the application for DCPS. But Wilkes Artis on the application states they are representing the owner " in this appeal." Additionally, in order to successfully make the argument that Wilkes Artis is not representing DCPS, one would have to find some evidence that someone other than Wilkes, Artis was representing DCPS' interests. There is no such evidence. I believe it is important for DCPS to address the following questions: What is the contractual arrangement between DCPS and Wilkes, Artis? What is the hourly rate? What is the scope of work? Will Wilkes Artis' represent DCPS in the appeal process if DCPS' application is denied? Since the application was filed over 6 months ago, is there an attorney fee cap?

Also, it is important to note some crucial contradictory statements in Mr. Cook's letter. The letter states the application for a variance is for the " parking lot". Also, it states the variance is for the "yard/field". And then it states the variance is for Lot 850. (You should know Lot 850 is the entire property known as the Hardy Middle School.) What part of the property is Mr. Cook giving Wilkes Artis permission to file an application?

3. The plat showing the boundaries of Lot 850 is dated November 22, 1999 and was requested by Wilkes Artis Hedrick and Lane on behalf of DCPS. The plat remains unsigned by DCPS to certify that the plat is correct as required by BZA procedures.

4. The application signed by Wilkes Artis on behalf of DCPS states the property is zoned R-3, yet Mr. Edgar Nunley, Chief, Zoning Review Branch, states in a memo the property is zoned R-4.

Either the application is incorrect or Mr. Nunley is not correct. If DCPS is incorrect a new application must be filed. If Mr. Nunley is incorrect, it must be ascertained whether the proper relief is being sought.

5. The application seeks a variance for Lot 850. The plat for Lot 850 is attached to the application. Lot 850 encompasses the entire property known as the Hardy Middle School. But the text of the zoning application describes Lot 850 as " Hardy Middle School parking lot used for Georgetown Flea Market on Sunday."

The representation as to the use of Lot 850 is not accurate.

6. The application filed on behalf of DCPS states that a commercial flea market " ...is a normal accessory use of public school property...."

It is difficult for me to believe that you believe a commercial flea market is an accessory use to a school as defined in the zoning code.

7. In order to be granted a variance, DCPS must prove that the property (Lot 850) because of " exceptional narrowness, shallowness or shape of a particular property...or by reason of exceptional topographical conditions.." can't be used for the purpose it was zoned.

It is absurd to argue that the property can be used in compliance with zoning 6 days a week, but the property is irregularly shaped on Sunday. The property is not too narrow or shallow for the use of children 6 days a week, and the school has stated it would like to be able to use the property for children on the 7th day.

8. DCPS owed an $800.00 filing fee in order to submit the application for a variance to the Board of Zoning Adjustment.

Exhibit #10 shows Michael Sussman paid the filing fee for DCPS. Is this payment a gift to DCPS? Is this payment deductible from Mr. Sussman's rent? What is the agreement between DCPS and Mr. Sussman? Mr. Sussman's lease ends this summer. Has DCPS told Mr. Sussman his lease will be renewed?

Sincerely,

Westy Byrd

Cc Principal of Hardy Middle School
Teachers of Hardy Middle School

FEB-02-01 03:12 AM 937892973 2023420030 P.15 02/01/01 THU 14:56 [TX/RX NO 5057]

ing below grade level?

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

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

Letters to the Editor

Dear Georgetowner:

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

Sincerely,
Amazed in
Dupont Circle

Dear Georgetowner:

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

Thank you.
3327 N Street, N.W.

Dear Editor:

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

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

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

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

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

A Hardy School Parent

(Letters Continued on Page 7)

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

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

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

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

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

02/01/01 THU 14:56 [TX/RX NO 5057]

LETTERS TO THE EDITOR

Don't close the flea market — move it

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

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

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

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

Helen Hagerty
Georgetown

Georgetown Current

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NOV 19 REC'D

NOV 18 REC'D

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

November 9, 1999

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

Dear Ms. Ackerman:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Marty Tillman, President

Cheryl Clark, Vice President

Robert Moore, Treasurer

Karen Frazier

Karen Frazier, Secretary

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

(1)

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

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

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

2

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

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

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

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NAME	SIGNATURE
Germaine Booker	Germaine Booker
Angel Clark	Angel Clark
Tina Latimer	
Lisa Branick	Lisa Branick
Bonny M. Henderson	Bonny M. Henderson
David N. Reed	David N. Reed
Lola McDermott	
Carolyn Bethea	Carolyn Bethea
Melvin Bethea	Melvin Bethea
Wesley Byrd	Wesley Byrd
Anne Masters	

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

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NAME	SIGNATURE
Dellie Reed	Dellie Reed
Donald Wyatt	Donald M. Wyatt
Terry Davis	
John Wilson	John B Wilson
JACK DELGADO	Jack Delgado
Deborah J. Turner	Deborah J. Turner
DeBorah S. Thomas	DeBorah S. Thomas
Donald Wyatt	Donald M. Wyatt