APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN BOARD OF ZONNING ADJUSTMENT APPLICATION NO. 17163 – AMAZING LIFE GAMES PRE-SCHOOL, INC.

Application No. 17163 of Amazing Life Games Pre-School, Inc. pursuant to 11 DCMR § 3104.1 for a special exception under 11 DCMR § 205 to establish an early childhood development center with a capacity to accommodate 28 pre-school aged children and 4 staff, and one or two parent volunteers in the R-1-B zoning district at 1309 Farragut Street, N.W. (Square 2806, Lot 76).

HEARING DATES: June 8 and June 15, 2004
DECISION DATE: July 6, 2004

SELF-CERTIFICATION

The Applicant filed a self-certification for relief pursuant to § 3113.2.

PRELIMINARY MATTERS

Request for Party Status. ANC 4C automatically was a party in the proceeding. A group of citizens opposing the application belonging to the" Farragut Street Block Club", which is composed of citizens residing in homes located on the 1300 block of Farragut Street requested leave for party status. The Block Club designated one of its members, Charles W. Morrow, to represent the group at the hearing. Finding the Bock Club's application for request of party status in order, the Board conferred party status on the Block Club and recognized Mr. Morrow as the person who would shepherd the group's opposition to the application, including the cross examination of witnesses and formal opposition to the application. The Board also concluded that Mr. Morrow could present the Club's opposition to the application through formal testimony, but that any individuals who had properly completed witness cards could testify in their own right.

PUBLIC HEARINGS

A public hearing on the application was held on June 8 and June 15, 2004. Testimony and evidence were provided at the hearing by the Applicant, the Applicant's witnesses, the Office of Planning, the Department of Transportation, ANC 4C, and the Block Club.

SUMMARY OF TESTIMONY

1. Applicant's Case. The Applicant offered the testimony of three witnesses in support of its application for a special exception: Pickett Craddock, Earl Harris, and Meade Hannah. Ms. Craddock, who is the Director of Amazing Life Games Pre-School, Inc., (ALG) testified first on behalf of the application, followed by Mr. Harris, and Mrs. Hannah, who are parents with children currently enrolled at ALG. Despite the evidentiary burden to satisfy the requirement in § 205.3, regarding objectionable traffic

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conditions and safety, the applicant presented no expert witnesses, testimonial or otherwise to address this requirement. The applicant relied primarily on self-serving testimony and anecdotal evidence in support of the application, and did not offer any expert witnesses, or recognized studies to support any of the claims made in support of the application.

Pickett Craddock

Ms. Craddock's testimony largely focused on the history of ALG, the teaching philosophy, the make-up of the current staff, the mode of operating on a typical day, how ALG functioned at it present location at 1844 Mintwood Place, NW and how it proposed to operate at 1309 Farragut Street, if granted an exception. Specifically, Ms. Craddock explained that the school envisions a student body of 28 children at full capacity, but currently has approximately 20 children, with 4 staff members. Of these four staff members, Ms. Craddock indicated that two drive, one walks, and the remaining staff is transported by vehicle. Ms. Craddock testified that the children are served on a staggered basis, such that all children arrive between 8:30 a.m. and 9:30 a.m., but that children depart at intervals from 1:30 p.m. to 6:00 p.m. Ms. Craddock explained that ALG primarily would utilize on street parking to accommodate its parking needs, including having children dropped off and picked up directly in front of the facility. Ms. Craddock explained that during the day children typically would be transported to Hamilton Recreation Center located on Hamilton Street, N.W. between 13th Street and 14th Street, via the alleyway system.

Ms. Craddock explained that the decision to acquire this property was hastily made, to take advantage of the opportunity to access Hamilton Recreation center and because most of her children come from this zip code and the apparent need for such a facility. She stated that a neighbor was consulted and that an unsuccessful attempt was made to contact neighborhood officials, but no formal process informing the community occurred prior to the purchase. Ms. Craddock indicated that there were no objections raised by the neighbors, when she viewed the property for purchase.

Ms. Craddock also offered testimony regarding her observations of traffic flow on March 17, March 29, and April 19, 2004. Ms. Craddock maintained that in her opinion traffic safety and parking did not present a problem.

During cross examination, Ms. Craddock admitted that she was not an expert in traffic flow. Also, Ms. Craddock admitted that no feasibility study was undertaken by her regarding the need for an early childhood development center at this location.

Earl Harris

Mr. Harris, who lives on the next street over on Gallatin testified about whether there would be an adverse impact on the community. Mr. Harris maintained that there would be no adverse impact, but admitted under examination from the Board that he could not

testify definitively about adverse impact to traffic or safety because he does not live on Farragut Street and typically leaves for work earlier than the hours of operation of the school.

Meade Hannah

Mrs. Hannah offered testimonial evidence regarding her experience as a parent, and also testified regarding traffic flow. Mrs. Hannah testified about pictures she had taken and her observations of traffic flow, and parking. Mrs. Hannah also maintained that parking and traffic flow would not present a problem. Under cross examination, Ms. Hannah admitted that she did not live in the neighborhood

2. Government Reports.

A. Office of Planning. In a written report, dated June 8, 2004, the Office of Planning recommended that the Board deny the ALG application. The Board found that the applicant had not satisfactorily met all tests specified in §§ 3104.1 and 205. Specifically, Planning concluded that the proposed use will not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and that if the application is granted, such use would tend to adversely affect the use of neighboring property. Planning recommended denial because of concerns regarding the applicant's lack of sufficient parking, location of the property, number of parent requiring daily access and safety. The Office of Planning official supported the report at the hearing, and also raised concerns about transporting children through the alley.

B. Division of Transportation. In a written report, dated June 1, 2004, the District Division of Transportation (DDOT) found that the ALG facility "may create traffic and parking problems for the adjoining community. The DDOT based this conclusion on the fact that there is no off-street parking and because there is no guarantee that curb parking will be available, and the need to personally deliver the children because of their ages. The DDOT official supported the report prepared in response to the Applicant's request for a special exception.

C. ANC 4C Report. On February 10, 2004, at a public meeting where a quorum was present, ANC 4C after learning about the purchase of 1309 Farragut by ALG opposed operation of the school at this location because of the proliferation of schools and other day care facilities in that block including: Your Community Center, West Elementary School, Macedonia Church and the Kingsbury School. At the hearing, Jackie Mitchell opposed the application; she recommended denial on

the same basis, and also testified that she believed that traffic safety could not be adequately addressed by the facility.

4. Persons in Support of the Application. There were no residents that testified in support of the facility. The Applicant's witnesses testified regarding neighborhood support, and offered a petition of signatures, but none included the residents on the 1300 block of Farragut Street, save one. The Department of Health, Health Regulation Administration, Child and Residential Care Facilities Division in a report dated March 19, 2004, recommended granting the special exception, on the grounds that "additional" child development centers are needed to meet the City's growing demands. The Department of Health did not testify at the hearing.

5. Parties and Persons in Opposition to the Application. Charles Morrow as representative of the Block Club gave testimony, and led witnesses, in opposition to the application. Mr. Morrow highlighted the Board's responsibility to ensure that only a few additional and compatible uses shall be permitted in R-1 zoned districts. Mr. Morrow testified that for this reason the Board must consider the fact that there is an overabundance of nonprofit facilities not only on Farragut Street, where the ALG facility is proposed but in the surrounding area. Mr. Morrow then pointed out that the impediments to granting the application are that ALG has no off street parking, thus an unsafe condition is inherent in dropping and picking up children at the proposed facility. Mr. Morrow also reiterated a concern expressed by Planning that the Block encompasses an elderly and aging population, which might create special challenges. Mr. Morrow questioned the wisdom of transporting children in an alley where vehicles and people cannot travel through safely at the same time. Angela Moore located directly across from the facility echoed the same sentiment regarding, traffic, safety, and parking. Ms. Moore noted that the facility would be located near the bottom of an incline frequently traveled by buses, as well as vehicles gaining momentum. Mrs. Heather Sondel read a detailed statement regarding the proliferation of nonprofits and how this is not what she expected when she purchased the home, which is located next to 1309. She also questioned the need for such a facility. The Club presented evidence of similar education child development centers within a three-mile radius of 1309, which exceeded twenty. Mr. James Sondel also questioned the propriety of granting the exception. Ms. Katherine Gill testified that traffic safety is a concern, and explained that vehicles have repeatedly struck her retaining wall, which is located steps away from the facility at the entrance to the alley, and her gate abutting the alley. The witnesses all suggested that an additional facility with increased traffic, such as ALG, would worsen traffic and parking problems because of the parking restrictions and other nonprofits currently located on the street and in the adjoining area.

Carter Baron East Neighborhood Association testified in opposition to the application, through its Acting President, Doreen Thompson. Ms. Thompson then testified in her capacity as a resident of the neighbor, and explained that parking, traffic safety and proliferation of nonprofits is a problem in this area.

Findings of Fact:

1. The property is located near the bottom of an incline at1309 Farragut Street N.W. not near a crosswalk or stop sign.
2. The property currently is a residential property in R-1-B district.
3. There is no off-street parking save, two potential spaces in a 2-car garage at the rear of the facility.
4. The property is located on a street with restricted parking daily, and restricted parking for street cleaning on Tuesday and Wednesday.
5. The facility is located on a block that already includes 4 non-profit facilities, and includes several more in adjoining blocks.
6. Office of Planning and DDOT was concerned with traffic safety.
7. The only support provided by the applicant were from residents mostly not located in real close proximity to the property, interested parents, and an agency that assumed that ALG was creating an additional facility.
8. Applicant has not been forced from its current location.
9. Applicant relied exclusively on personal observations recorded during the course of the application process.
10. All residents, who are more familiar with the street and surroundings, disputed the applicant's conclusion about traffic flow and safety.

CONCLUSION OF LAW AND OPINION

Based upon the record, the Board concludes that the applicant has not satisfied the standard in § 205.3 that the center be located in and designed to create no objectionable traffic conditions and no unsafe condition for picking up and dropping off children. The Planning and the DDOT both opposed the application because of traffic safety concerns creating by the facility's need to utilize public parking as opposed to off-street parking to pick up and drop off children. No expert testimony, other than its own self-serving limited observations was offered to dispute the conclusion of recognized agency officials. In addition, the applicant has not shown that it can ever provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors as required by § 205. Applicant only established that it has two spaces for this purposes, yet it operates a facility where at least two staff members drive, and that it is contemplated that it will operate at full capacity with 28 students, which necessitates that some of these will be delivered by vehicle to the facility as well. Finally, the current proposal to grant an exception would nullify the mandate in § 200.2 that only a few additional and compatible uses shall be permitted, where the street where the property is located already has four nonconforming use facilities.