GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17163 of Amazing Life Games Pre-School, pursuant to 11 DCMR § 3104.1, for a special exception to establish a child development center, 28 children, 4 staff, and 1- 2 parent volunteers under section 205 in the R-1-B District at premises 1309 Farragut Street, N.W., Square 2806, Lot 76.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17163
EXHIBIT NO. 56

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

DECISION AND ORDER

This application was submitted on March 5, 2004 by the Amazing Life Games Pre-School ("Applicant"), the owner of the property that is the subject of the application. The Applicant sought special exception relief from the Board of Zoning Adjustment ("Board" or "BZA") to establish a child development center in an R-1-B District. The Board held public hearings on this application on June 8, 2004 and June 15, 2004. At a public meeting on July 6, 2004, the Board voted 4-0-1 to deny the application.

PRELIMINARY MATTERS:

Notice of Application and Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated March 8, 2004, notified the Councilmember for Ward 4, Advisory Neighborhood Commission (ANC) 4C, Single Member District /ANC 4C02, the District of Columbia Office of Planning (OP), the District Department of Transportation, and the Department of Health of the filing of the application. On March 19, 2004, OZ mailed notices of the public hearing to the ANC, the Applicant and all of the owners of property within 200 feet of the subject property, advising them of the date of hearing. The Applicant filed an affidavit of posting indicating that it posted 1 zoning poster at 1309 Farragut Street, N.W., in plain view of the public for 15 days.

Request for Party Status The Board received applications for party status from the Farragut Street Block Club, representing the 1300 block of Farragut Street, and Mabel Roberts, a resident of the subject block. The Board granted party status to the block club, but denied party status to Mabel Roberts, who agreed that her interest could be represented by the block club.

Applicant's Case The Applicant, which was represented by an attorney, presented testimony and evidence from its Director, Pickett Craddock, and Meade Hanna, who is a member of the Applicant's Board and a parent of one of the children attending the Applicant's pre-school. The Applicant's witnesses testified concerning the Applicant's history as a daycare center and its mode of operation, its reasons for selecting the subject property, the subject property's close proximity to a playground, and observations made by the Director and the parents concerning the

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availability of parking on the block where the subject property is located. Earl Harris, a parent who lives on Gallatin Street, the street immediately to the north of Farragut, testified that there would be no adverse impact on the community, but admitted that he could not know about the traffic and safety on Farragut because he does not live on that street, and he leaves for work earlier than the proposed hours of operation for the Applicant's facility. Additionally, two neighbors located at the Applicant's present location in the Adams Morgan neighborhood wrote letters in support of the application.

Government Reports In a report dated June 8, 2004, OP recommended that the Board deny the Applicant's request for a special exception because of the potentially negative impact upon traffic and parking and a concern for the safety of the children walking to and from the playground. OP further opined that the increased number of vehicles would result in parking problems for the residents of the street, a number of whom are elderly. OP also concluded that a special exception for this Applicant would not be in harmony with the general purpose and intent of the Zoning Regulations and zoning map because it would bring another non-residential facility into a residential community that already had an elementary school, two youth oriented centers and two churches in its midst.

The Department of Transportation opined that there may be traffic, parking, and safety problems if the application is granted. The Department of Health recommended that the application be granted because of the need for day care in the city.

ANC Report In a resolution adopted February 10, 2004, ANC 4C indicated that at a regularly noticed meeting, with a quorum present, ANC 4C Commissioners voted 6-1-2 to oppose the application for a special exception. The ANC based its opposition upon the high number of schools and day care facilities in the subject block and suggested that the Applicant work with the ANC to find a more appropriate location in the community. ANC 4C attached to its resolution a petition, signed by twenty-five residents of ANC 4C02, in opposition to Applicant's application. That petition stated that the 1300 block of Farragut is overburdened with nonresidential facilities and that there are presently daily issues concerning parking and heavy traffic.

Parties and Persons in Opposition Joining ANC 4C in opposing Applicant's application, the Farragut Block Club, which was granted party status, testified against the application and filed a letter, along with a petition opposing the application primarily because of concerns about parking, traffic, the safety of the children attending the center, and the proliferation of not-for-profits in their community. Ten residents of the 1300 block of Farragut filed a petition in opposition. The Carter Barron East Neighborhood Association testified and filed a letter in opposition to the application. Three persons testified in opposition as individuals. Six residents of the 1300 block of Farragut filed individual letters in opposition. Councilmember Adrian Fenty submitted a letter in support of the ANC's and residents' opposition to the application.

Hearing The public hearing on the application was held on June 8 and June 15, 2004.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The subject property is located in the Brightwood Neighborhood of Ward 4, at 1309 Farragut Street, N.W. Square 2806, Lot 76, on the north side of the street, between 14th Street, N.W. and 13th Street, N.W.

2. The Applicant's property is in the R-1-B Zone District.

3. The predominant land use in the neighborhood is single-family dwellings, and all of the dwellings on the subject block are single-family detached dwellings.

4. Many of the current residents on the block are elderly and disabled.

5. The subject property is improved with a two-story detached single-family dwelling that has a basement.

6. The subject dwelling, constructed in 1920, was used as a residence prior to being purchased by the Applicant, with the intention of converting it into a child care center.

7. There is a detached two-car garage located in the rear yard of the subject property with an entry way from the 20-foot alley that runs behind the subject property.

8. A 3-foot chain link fence encloses the rear yard. The Applicant expressed a willingness to install a 6-foot high fence in its place.

9. Several institutional and non-profit corporations are located within 1,000 feet of the subject property, including the Kingsbury Center on the west side of 14th Street, immediately across from the west end of the subject block, West Elementary School, Macedonia Church of God in Christ, and Youth Organizations United to Rise ("Y.O.U.R.") Community Center, all located in the 1300 block of Farragut Street, and Marantha Gospel Hall at the corner of 13th and Farragut Streets.

10. West Elementary School and its property occupy more than half of the northwest side of the 1300 block of Farragut Street.

11. There is a pre-kindergarten and other elementary school grades at West Elementary School.

12. Y.O.U.R. Community Center, which operates before-school and after-school programs for children, is located within 1,000 feet of the subject property.

13. Macedonia Church of God in Christ and Marantha Gospel Hall conduct funerals and provide other services and daytime activities during the weekdays.

The Proposed Child Development Center Use

14. At the time of the hearing, Applicant was operating a child development center for 24 children in the Adams Morgan Neighborhood, at 1844 Mintwood Place, N.W., adjacent to a park where the children played.

15. The children, accompanied by staff, also walked to Walter Pierce Park, which is four blocks away from the center.

16. Applicant's proposed center will serve 28 children with the assistance of four employees one or two parent volunteers.

17. The subject property is two and one half blocks from Hamilton Park, which is located in the middle of the 1300 block of Hamilton Street, N.W., on the south side of the street.

18. Applicant plans to use Hamilton Park, a fenced-in area, and its playground as a play area for the children.

19. Applicant plans for its staff to lead the children out of the rear of the subject property and walk them through the alleys to Hamilton Park, crossing one street along the way.

20. Alternatively, the children may be taken on a longer route, using the sidewalks to walk to the park. In that case they would exit through the front door of the center, cross at least one street and, depending on whether they use 13th Street or 14th Street, cross one or two alleys.

Traffic and Parking Issues

21. Twenty-eight children would be brought to Applicant's center between 8:45 a.m. and 9:30 a.m.

22. If most parents opt to drive rather than carpool, walk or bike, there could be a need for 22 on-street parking spaces to accommodate the vehicles during drop-off and 13 spaces during pick-up.

23. There is no opportunity for on-site circulation, and Applicant does not a have off-site drop-off or pick-up.

24. Parents may need to circle the block searching for parking spaces or double park to drop-off and pick-up their children.

25. Due to street cleaning parking restrictions, vehicles cannot park on the north side of the 1300 block of Farragut on Tuesdays from 9:30 a.m. to 11:30 a.m. and on the south side on Wednesdays during that same time period.

26. Everyday, from 8:00 a.m. until sometime after the end of the school day, school zone parking restrictions are in effect adjacent to West Elementary School.

27. Although there is parking on the West Elementary School parking lot, some of the teachers park on the street.

28. Parents and buses dropping-off and picking-up children at West Elementary School increase the traffic and parking problems on Farragut Street.

29. At times, the not-for-profits that are located on and near the 1300 block of Farragut Street compete with the residents of that block for parking spaces during the day time.

30. Vehicles are frequently driven at high speeds on Farragut Street and through the alleys in the vicinity, including those alleys that would be used when walking the children from Applicant's center to Hamilton Park.

31. Vehicles are occasionally parked in the alley.

32. Farragut Street is used as a thoroughfare by commuters and other drivers, who are trying to access major arteries such as 13th Street, 14th Street and Georgia Avenue or dropping off or picking up children at the private school, the Kingsbury Center, which enrolls approximately 1,000 students.

CONCLUSIONS OF LAW

The Applicant is seeking a special exception, pursuant to 11 DCMR §§ 3104 and 205, to operate a child development center an R-1-B Zone District. The Board of Zoning Adjustment is authorized to grant special exceptions where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07(g) (2) (2001); 11 DCMR § 3104.

Section 205 lists factors to be considered by the Board before deciding to permit a child development center as a special exception in an R-1 District. The proposed use satisfies three of these factors.

Subsection 205.2 - Code and Licensing Requirements

Subsection 205.2 states that the child development center shall be capable of meeting all code and licensing requirements. As noted, the Department of Health recommends approval of the special exception application.

Subsection 205.4 – Sufficient Parking

A child care center is required to provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors. 11 DCMR § 205.4. The parking space requirement is set forth in section 2101.1 ("Schedule of Requirements for Parking Spaces"), which states that child development centers in all zone districts shall provide one off-street parking space "for each 4 teachers and other employees." Applicant has two parking spaces in its garage to accommodate its four employees. Accordingly, Applicant has more spaces than required to accommodate its employees. Applicant also demonstrated by testimony and photographs that there should be adequate street parking for the small number of individuals expected to visit the school.

Subsection 205.8 – Cumulative Effects of Child Development Centers

Subsection 205.8 precludes the Board from approving a child development center application if the cumulative effects of the new child care center and another child development center located in the same square or within 1,000 feet of each other will "have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors." A child development center is defined to be a building or part of one used for licensed care, education, counseling, or training of six or more persons fifteen years old or under. It includes not only day care centers, nurseries, and pre-schools, but also before-and-after school programs and similar programs and facilities. 11 DCMR § 199.1.

A before-and-after school program is offered at Y.O.U.R. Community Center, located less than 1,000 feet from the subject property. In light of that program, Y.O.U.R. Community Center is by definition a child development center; however there is no evidence that the existence of the two child development centers would have an adverse impact on the neighborhood.

While the Applicant's proposal meets the above three factors set forth in § 205, it fails to meet the factors identified in §§ 205.3, 205.5 and 205.7 as well as the general test for special exception relief set forth in §3104.1.

Subsection 205.3 – Objectionable Traffic Conditions

Pursuant to § 205.3, the center cannot be located so as to create objectionable traffic conditions or unsafe conditions for dropping off or picking up children. The Department of Transportation and the Office of Planning raised significant concerns regarding the impact of the additional traffic that would be generated by the school on parking and traffic on Farragut Street and the safety of the children during drop-off and pick-up. Because the Applicant is not proposing any off-site area for drop-off and pick-up, there is the potential for cars to circle the neighborhood in search of curb parking, or worse, to double park for drop-off and pick-up, a practice that would create an unsafe condition for the children. The Office of Planning, as well as the ANC and parties and persons in opposition to the application, noted that although the school would be small, there already is too much traffic on the residential block generated by other institutions. The Board finds that the residential block is in close proximity to an unusually large number of institutions and that the additional traffic generated by the proposed school would compound

traffic problems already existing in the neighborhood. Accordingly, the school would have an objectionable impact on traffic conditions in the neighborhood.

Subsection 205.5 - Objectionable Impacts on Neighboring Properties

Subsection 205.5 states that the center must be located and designed so as not to create any objectionable impacts on neighboring properties due to noise, activity, visual or other objectionable conditions. The Board concludes that the Applicant's child development center will not have a negative impact on the neighboring properties with respect to noise or visual impact. The rear yard will be used by the children primarily for gardening and on a limited basis as a play area. It is anticipated that approximately half of the 28 children will go home prior to the afternoon when the remaining children will play in the rear yard. Applicant is willing to replace the current three-foot chain-link fence with a six-foot fence of a different style. This will be sufficient to assure safety in the rear yard and to buffer any visual impacts to neighboring properties.

However, the Board finds that there would be an objectionable impact on the neighbors in the block with respect to traffic and parking. As noted above, there is already too much traffic on this residential block generated by existing institutions. Further, it is likely that parents or caregivers will seek to park their cars when dropping off or picking up children, resulting in diminished curbside parking spaces for residents. While there may be sufficient parking for the proposed school, parking for the elderly and disabled, who now can and need to park near their homes on the block, would become more difficult. This will be especially true on the days when there is restricted parking for street cleaning starting at 9:30 a.m. and residents will be moving their vehicles to the other side of the street prior to 9:30.

Section 205.7 – Endangerment to the Children Attending the Center

Pursuant to § 205.7, "[a]ny off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself. "The children will need to walk approximately two-and-a-half blocks away to the off-site play area at Hamilton Park, which is a lengthy distance for young children to walk Although the Applicant's staff is experienced in walking small children to a park, the route to the park poses particular hazards for the children. Applicant plans to walk the children through an alley that has no sidewalks and is used by cars and trucks. Further, there have been instances of speeding and drug activity both in the alley and in the park. Both the Office of Planning and neighbors are of the view that the route and the park pose potential hazards for the children. The Board agrees.

Section 3104.1 – Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Map and No Adverse Impact on Neighboring Properties

The Board of Zoning Adjustment is authorized to grant special exception relief where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07(g) (2) (2001); 11 DCMR § 3104.

Applicant seeks a special exception to locate a child development center in the middle of a residential block in the R-1 District. "The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings..." *See* 11 DCMR § 200.1. Moreover, the regulations relating to uses in the R-1 District are "intended to stabilize the residential areas and to promote a suitable environment for family life." To that end, "only a few additional and compatible uses shall be permitted," in an R-1 District. *See* 11 DCMR § 200.2 (Emphasis added.) With the four non-residential uses currently on the 1300 block of Farragut Street, and the Kingsbury School that is on west side of 14th Street, directly across from that block, there are more than a few non-residential uses currently on and around the single block. As set forth above, this residential block is already suffering adverse impacts from the existing non-residential uses in the area. Further, special exception relief in this case would not only allow for the addition of a non-residential use, but would actually take a residential use out of the housing stock in the middle of a residential block. Accordingly, the Board finds that adding another not-for-profit to this block would be contrary to protecting the residential character of the area and therefore, would be inconsistent with the purpose of the R-1 District, and would not be in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that due to the parking and traffic problems that may result, granting this application would tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07(g) (2) (2001); 11 DCMR § 3104.

Great Weight

The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001) and § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(a)), to give great weight to the recommendation of OP and the issues and concerns of the affected ANC. As indicated above, the Board has given great weight to both OP's recommendations and the ANC's concerns regarding the application, and the Board is persuaded that the Application should be denied.

Based upon the record before the Board and for the reasons stated above, the Board concludes that the Applicants have failed to satisfy the burden of proof with respect to its application for a special exception. Accordingly, it is therefore **ORDERED** that the application be **DENIED.** [1]

VOTE: **4-0-1** Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II (by absentee vote), and John Parsons (by absentee vote) to deny; Geoffrey H. Griffis not participating.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board Member approved the issuance of this order.

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[1] By Summary Order #17368, dated October, 20, 2005, the Board granted Applicant a special exception to operate its child development center in a different location.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT 26 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."