

63-13-BZ

CEQR #13-BSA-095Q

APPLICANT – Sheldon Lobel, P.C., for Cel-Net Holdings, Corp., owner; The Cliffs at Long Island City, LLC, lessee.

SUBJECT – Application February 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Cliffs*). M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 30, 2013, acting on Department of Buildings Application No. 420605768, reads in pertinent part:

1. ZR 42-10, 117-21: Proposed physical culture establishment is not permitted as-of-right
2. 136-01-BZ: Proposed conditions are contrary to approved BSA plans under Cal. No. 136-01-BZ; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-4/R7A zoning district within the Special Long Island City Mixed Use District and the Hunters Point Subdistrict, a physical culture establishment (“PCE”) on the first floor and mezzanine of an existing two-story commercial building, contrary to ZR §§ 42-10 and 117-21; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 4, 2013, and then to decision on June 18, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends approval of this application; and

WHEREAS, the site is located on the north side of 44th Drive between 11th Street and 21st Street within an M1-1/R7A zoning district within the Special Long Island City Mixed Use District and the Hunters Point Subdistrict; and

WHEREAS, the site has 200 feet of frontage on 44th Drive, a depth of 100 feet, and 20,000 sq. ft. of lot

area; and

WHEREAS, the site is occupied by a two-story commercial building with a floor area of 39,999 sq. ft., which is currently occupied by warehouse use on the first floor and offices on the mezzanine and second floor; and

WHEREAS, the site has been under the Board’s jurisdiction since June 11, 2002 when the Board granted a variance, pursuant to BSA Cal. No. 136-01-BZ, to permit the enlargement of the existing building and to legalize an encroachment into the rear yard; in 2010, the Board amended the variance to allow for the reduction of the floor area from 55,762 sq. ft., as originally approved, to 31,784 sq. ft.; and

WHEREAS, the Board granted extensions of time to complete construction and obtain a certificate of occupancy and an amendment to increase the floor area to 39,999 sq. ft.; and

WHEREAS, by letter, dated June 12, 2013, the Board approved the conversion of the building’s entire first floor to commercial use, which involves the removal of the building’s parking and loading berth, resulting in an increase of 1,444 sq. ft. of floor area; the addition of a second mezzanine in the northwest corner of the building, totaling 1,654 sq. ft.; and the removal of 3,172 sq. ft. of floor area from the building’s second floor to create a double-height space; and

WHEREAS, the applicant states that the proposed changes are related to the PCE design and that the proposed modifications will actually result in a small decrease in the building’s total floor area, from 39,999 sq. ft. to 39,970 sq. ft.; and

WHEREAS, the applicant represents that there is no parking requirement for non-residential uses in this section of Queens pursuant to ZR § 13-41, and that a loading berth is not required for the proposed uses; and

WHEREAS, the PCE will be operated as the Cliffs, a rock-climbing facility; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the PCE are Monday through Thursday, from 10:00 a.m. to 10:00 p.m., Friday and Saturday from 9:00 a.m. to 12:00 a.m., and Sunday from 9:00 a.m. to 8:00 p.m.; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation (DOI) has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report to the Board; and

WHEREAS, during the hearing process, the

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applicant responded to DOI's report of an arrest and investigation related to one of the principals; the applicant provided evidence to support the legitimacy of the business, which has a successful facility in Westchester, and asserted that the arrest and investigation were unrelated to the special permit findings and are being addressed in another forum; and

WHEREAS, the Board has reviewed DOI's report and the applicant's response submission and has determined it to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA095Q, dated February 8, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State

A true copy of resolution adopted by the Board of Standards and Appeals, June 18, 2013.

Printed in Bulletin No. 25, Vol. 98.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-4/R7A zoning district within the Special Long Island City Mixed Use District and the Hunters Point Subdistrict, a physical culture establishment ("PCE") on the first floor and mezzanine of an existing two-story commercial building, contrary to ZR §§ 42-10 and 117-21; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2013" – Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on June 18, 2023;

THAT there will be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT any massages must be performed by New York State licensed massage therapists;

THAT that the hours of operation will be Monday through Thursday, from 10:00 a.m. to 10:00 p.m., Friday and Saturday from 9:00 a.m. to 12:00 a.m., and Sunday from 9:00 a.m. to 8:00 p.m.;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 18, 2013.

