

1-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 39-01 QB LLC, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application July 24, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) which expired December 1, 2018; Amendment to permit a change in hours of operation; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. M1-4 zoning district.

PREMISES AFFECTED – 39-01 Queens Boulevard, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-36, which expired on December 1, 2018, an extension of time to obtain a certificate of occupancy, which expired on May 19, 2010, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the northeast corner of Queens Boulevard and 39th Street, in an M1-4 zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along Queens Boulevard, 375 feet of frontage along 39th Street, 37,500 square feet of lot area and is occupied by a three-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 2009, when, under the subject calendar number, the Board granted a special permit, pursuant to § 73-36, to legalize the operation of a physical culture establishment (“PCE”), operated as New York Sports Club, on a portion of the ground floor (13,640 square feet of floor area) for a term expiring December 1, 2018, on condition that all work substantially conform to drawings filed with the application; there be no change in ownership or

operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; all signage comply with M1 zoning regulations; the above conditions appear on the certificate of occupancy; accessibility be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings 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; and

WHEREAS, the term of the special permit and the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than 30 days after the expiration of term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of §§ 1-07.3(b)(2) and 1-07.3(d), of the Board’s Rules to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(2) requires a demonstration by the applicant that the use has been continuous from the expiration of the term through the filing of the application, and that, absent a waiver of the Board’s Rules, substantial prejudice would result; and

WHEREAS, the applicant submitted copies of insurance payments and utility bills for the PCE to continuously cover the period of December 2018 through March 2019, and states that, absent the waiver of the Board’s Rules, the PCE would face substantial prejudice and extreme hardship; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, New York Sports Club, as previously approved by the Board, but notes the PCE closes one hour later on the weekends and now has the following hours of operation: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 10:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 7:00 p.m.; and

WHEREAS, by letter dated November 19, 2019, the Fire Department states that these premises are protected by a sprinkler system and a fire alarm that have been tested and inspected by the Bureau of Fire Prevention units and found to be operation; the

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Bureau's Licensed Public Place of Assembly (LPPA) Unit has inspected the premises and issued a violation order (No. E528099) for failure to obtain an operating permit from the Department of Buildings; and the Fire Alarm Inspection (FAIU) Unit has inspected the premises and issued a violation order (No. E373419) for failure to submit as-built riser diagrams; based on the foregoing, the department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedure *amends* the resolution, dated May 19, 2009, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten years, expiring December 1, 2028, and to permit a change in the hours of operation; *on condition:*

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

THAT all massages shall be performed by New York State licensed massage therapists;

THAT all signage shall comply with M1 zoning regulations;

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

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 1-09-BZ"), shall be obtained within one year, by November 19, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

A true copy of resolution adopted by the Board of Standards and Appeals, November 19, 2019.

Printed in Bulletin Nos. 45-47, Vol. 104.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 19, 2019.

