

**1-12-BZ**

**CEQR #12-BSA-057M**

APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.

SUBJECT – Application January 3, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building. C4-5 zoning district.

PREMISES AFFECTED – 434 6<sup>th</sup> Avenue, southeast corner of 6<sup>th</sup> Avenue and West 10<sup>th</sup> Street, Block 573, Lot 6, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**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 Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 9, 2011, acting on Department of Buildings Application No. 121181130, reads in pertinent part:

The proposed “Physical Culture or Health Establishment” (PCE) on the second floor of the subject building, is contrary to ZR 32-31, is contrary to ZR 32-31 and requires a BSA special permit pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-5 (Special Limited Commercial District (LC)) zoning district and the Greenwich Village Historic District, the operation of a physical culture establishment (PCE) on the second floor of a six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 12, 2013, and then to decision on March 12, 2013; and

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

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

WHEREAS, the subject site is located on the southeast corner of Avenue of the Americas and West 10<sup>th</sup> Street, within a C4-5 (LC) zoning district and the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a six-story commercial building; and

WHEREAS, the site has 65.12 feet of frontage on Avenue of the Americas, 78.08 feet of frontage on West 10<sup>th</sup> Street, and a total lot area of 5,102 sq. ft.; and

WHEREAS, the PCE occupies 4,725 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE is operated as Moksha Yoga; 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 Friday, from 7:00 a.m. to 10:00 p.m. and Saturday and Sunday, from 10:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant submitted a Certificate of No Effect (CNE No. 12- 2522) from the Landmarks Preservation Commission (LPC) dated July 13, 2011, approving the interior alterations in the subject PCE space; and

WHEREAS, the applicant submitted a Certificate of No Effect (CNE No. 12-7056) from LPC dated November 30, 2011, approving the exterior alterations in the subject building; 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 has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined 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 Board notes that the PCE has been in operation since approximately January 15, 2012, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant will be reduced for the period of time between January 15, 2012 and the date of this grant; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; 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.12BSA057M, dated December 16, 2011; 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

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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 Type I Negative Declaration prepared in accordance with Article 8 of the New York State 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 a C4-5 (LC) zoning district and the Greenwich Village Historic District, the operation of a physical culture establishment on the second floor of a six-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 6, 2013" - Two (2) sheets and *on further condition*:

THAT the term of this grant will expire on January 15, 2022;

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

THAT the hours of operation will be limited to Monday through Friday, from 7:00 a.m. to 10:00 p.m. and Saturday and Sunday, from 10:00 a.m. to 8:00 p.m.;

THAT all modifications to the interior and the exterior will be in accordance with the Landmarks Preservation Commission's Certificates of No Effect;

THAT any modifications will be subject to Landmarks Preservation Commission approval;

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, March 12, 2013.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 12, 2013.**

**Printed in Bulletin No. 11, Vol. 98.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**