

1016-86-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Opera Owner Inc., c/o Halstead Management Co., LLC, lessee.

SUBJECT – Application November 16, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (New York Sports Club) which expired on May 5, 2017; Amendment to permit a change in hours of operation and to reflect a new operator (Studio IX); Waiver of the Board’s Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening, waiver of the Board’s Rules of Practice and Procedure, an extension of the term of a special permit previously granted pursuant to ZR § 73-36, which expired on May 5, 2017, and amendments to the same to permit a change in operator and hours of operation; and

WHEREAS, a public hearing was held on these applications on March 5, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly shaped lot located on the east side of Broadway between West 76th Street and West 77th Street, in a C4-6A zoning district and the Special Enhanced Commercial District, in Manhattan; and

WHEREAS, the site has approximately 79 feet of frontage along Broadway, 25 feet of frontage along West 76th Street, 134 feet of depth, approximately 9,461 square feet of lot area, and is occupied by a 23-story plus cellar and sub-cellar mixed-use residential and commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the cellar (5,681 square feet of floor space) of the existing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 5, 1987, when, under the subject calendar number, the Board granted a special permit to legalize the operation of a PCE in the cellar of the subject site on condition that all work

substantially conform to drawings, as they apply to the objection, filed with the application; the special permit be limited to a term of ten (10) years, to expire May 5, 1997; the hours of operation be limited to Monday through Friday, 7:00 a.m. to 12:00 midnight, and Saturday and Sunday, 10:00 a.m. to 8:00 p.m.; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the department; and, substantial construction be completed in accordance with Section 73-70 of the Zoning Resolution; and

WHEREAS, on October 26, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the term for ten (10) years, to expire on May 5, 2007, and to permit enlargement of the PCE by 731 square feet on condition that all signs be maintained in accordance with BSA-approved plans and that the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 26, 2000; and

WHEREAS, on December 8, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the term for a period of ten (10) years, to expire on May 5, 2017, and to permit an extension of time to obtain a certificate of occupancy to December 8, 2011, on condition that any and all work substantially conform to drawings, as they apply to the objections, filed with the application; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the DOB endure compliance with all other 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 having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after

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the expiration of the term of the special permit; and

WHEREAS, the applicant also seeks an amendment to reflect a change to the owner and operator of the PCE, to "Studio IX", reconfiguration of the space for the new operation, and to reflect new hours of operation: 5:30 a.m. to 10:00 p.m. daily; and

WHEREAS, the Department of Investigation has performed a background check on the new corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed satisfactory; and

WHEREAS, the applicant represents that the former operator of the PCE, New York Sports Club, vacated the subject space at the end of 2018 and that Studio IX has not yet opened, though it anticipates initiating operations in mid-2019; and

WHEREAS, the applicant additionally states that Studio IX intends to offer massage services by licensed massage therapists, but notes that as the facility is not yet operational, no massage therapists have been hired at this time; and

WHEREAS, by letter dated February 21, 2019, the Fire Department confirmed that the premises are protected by a fire alarm, standpipe and sprinkler systems that have been inspected and tested satisfactorily to Department standards, and that the Fire Department has no objection to the Board rendering a decision on this application; and

WHEREAS, at hearing, the Board expressed concerns regarding the ADA-accessibility of the PCE space in the cellar; and

WHEREAS, in response, the applicant represented that the existing elevator is proposed to extend into the cellar for direct access to the PCE from grade; and

WHEREAS, pursuant to ZR § 73-03(f), 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, accordingly, the Board finds that a ten (10) year extension of term, and the subject amendment to permit a change in owner and operator, modification to the hours of operation, and modifications to the existing PCE space, are appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure, reopens and amends the resolution, dated May 5, 1987, as amended through December 8, 2009, so that, as amended, this portion of

the resolution reads: "to permit an extension of term for ten (10) years, to expire on May 5, 2027, on condition that the use and operation of the site shall conform to drawings filed with this application marked 'Received November 16, 2018'-Three (3) sheets; and on further condition:

THAT the term of this grant shall expire on May 5, 2027;

THAT the hours of operation shall be limited to the following: 5:30 a.m. to 10:00 p.m. daily;

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

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

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

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

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

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

THAT a new certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 1016-86-BZ") shall be obtained within one (1) year, by March 5, 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 specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall 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 5, 2019.

A true copy of resolution adopted by the Board of Standards and Appeals, March 5, 2019.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

