

131-15-BZ**CEQR #15-BSA-212M**

APPLICANT – Eric Palatnik, for 650 Broadway Realty Inc., owner; Joshua Griffiths, lessee.

SUBJECT – Application June 1, 2015 – Special Permit (73-36) to allow the legalization of physical culture establishment (*Clockwork Jiu Jitsu*) on the second floor of a five-story plus cellar building. M1-5B zoning district.

PREMISES AFFECTED – 650 Broadway, Block 529, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 8, 2016, acting on Department of Buildings Application No. 121191879, reads in pertinent part:

“Proposed physical culture establishment in M1-5B zoning district is not permitted pursuant to ZR 42-10, and is referred to BSA for special permit under ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in an M1-5B zoning district, in the NoHo Historic District, the operation of a physical culture establishment (PCE) on the second floor of a five story plus cellar building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 16, 2016, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the record was re-opened on November 1, 2016, to accept a revised objection from DOB, closed and voted again on the same date; and

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

WHEREAS, Vice-Chair Hinkson performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Broadway, between Bleecker Street and Bond Street, in an M1-5B zoning district, in the NoHo Historic District, in Manhattan; and

WHEREAS, the site has approximately 29 feet of frontage along Broadway, a depth of 130 feet, 3,770 sq. ft. of lot area, and is occupied by a five story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may

permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and

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guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and Certificate of Occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject PCE occupies 3,770 sq. ft. of floor area on the second floor of the existing building; and

WHEREAS, the PCE has been in operation as Clockwork Jiu Jitsu since March 1, 2012; and

WHEREAS, the PCE's hours of operation are: Monday through Thursday 7:00 a.m. to 9:00 p.m., Friday 7:00 a.m. to 8:30 p.m., and Saturday through Sunday 7:00 a.m. to 2:30 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the surrounding area, specifically, that the other occupants of the subject building are commercial tenants; and

WHEREAS, the applicant submits that a 1.5"-thick grappling mat has been installed across the entire floor space in the PCE for purposes of shock absorption, impact protection, and sound attenuation, and that because the PCE does not involve the use of weights or other exercise equipment, no other sound attenuation measures are necessary; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for martial arts training, specifically Brazilian Jiu Jitsu, which has the effects of increasing practitioner's stamina and facilitating weight loss; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE is fully sprinklered and that an approved fire alarm—

including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, by letter dated August 15, 2016, the Fire Department states that it has no objections to the approval of this application and confirms both that the sprinkler system installed in the PCE space has been approved and is functional and that an internal fire alarm system is being installed based on a permit issued on July 1, 2016; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") issued Certificate of No Effect No. 16-4073 dated October 22, 2014, expiring October 22, 2018, for interior alterations associated with the subject application; and

WHEREAS, the applicant has submitted the 2017 Illuminated Sign Permit (Annual Permit No. 15842) issued by DOB to the subject PCE for a sign with direct illumination measuring 30 sq. ft. and expiring June 30, 2017; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No.15-BSA-212M, dated June 1, 2015; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in an M1-5B zoning district, in the NoHo Historic District, the operation of a physical culture establishment on the second floor of a five story plus cellar building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 12, 2016" – Five (5) sheets; and

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THAT the term of the PCE grant will expire on March 1, 2022;

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

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a Certificate of Occupancy shall be obtained within one year, by November 1, 2017;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

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

THAT DOB 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, November 1, 2016.

**A true copy of resolution adopted by the Board of Standards and Appeals, November 1, 2016
Printed in Bulletin Nos. 43-45, Vol. 101.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

