

***CORRECTION**

This resolution adopted on January 24, 2017, under Calendar No. 160-15-BZ and printed in Volume 102, Bulletin Nos. 4-5, is hereby corrected to read as follows:

160-15-BZ

CEQR #16-BSA-006K

APPLICANT – Sheldon Lobel, P.C., for 186 Montague Street, LLC, owner.

SUBJECT – Application July 16, 2015 – Special Permit (73-36) to permit the operation of a Physical Culture Establishment (*Orangetheory Fitness*). C5-2A zoning district.

PREMISES AFFECTED – 186 Montague Street, Block 250, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Montanez and Commissioner Chanda.4

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 15, 2016, acting on DOB Application No. 320625463, reads in pertinent part:

“Proposed use, ‘physical culture or health establishment’, is not permitted as-of-right in C5-2A, DB district and a BSA special permit is required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of a four-story, with cellar, commercial building, contrary to ZR § 32-10;

WHEREAS, a public hearing was held on this application on December 13, 2016, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

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

WHEREAS, the subject site is located on the south side of Montague Street, between Clinton Street and Court Street, in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along Montague Street, 100 feet of depth, 5,000 square feet of lot area, and is occupied by a four-

story, with 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

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the foregoing, its determination is also subject to and 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 3,950 square feet of floor area on the second floor; and

WHEREAS, the PCE has operated as Orangetheory Fitness since March 5, 2016; and

WHEREAS, the applicant represents that the PCE uses the main entrance, lobby and elevator on the first floor and that the second floor contains areas for treadmills, elliptical machines, stationary bicycles, rowers and weights as well as a reception area, locker rooms with restrooms and showers, an office and retail; and

WHEREAS, the PCE's hours of operation are Monday through Thursday, 5 a.m. to 9 p.m., Fridays, 5 a.m. to 8 p.m., Saturdays, 7 a.m. to 1 p.m., Sundays, 8 a.m. to 2 p.m.; and

WHEREAS, the applicant states that Montague Street is a frequently traveled commercial corridor with numerous commercial and mixed-use buildings; that nearby restaurants and retail stores are compatible with the PCE; and that, therefore, the PCE will not alter the essential character, future use or development of the surrounding area; and

WHEREAS, with regards to sound attenuation in the PCE, the applicant states that the PCE has installed a gypsum ceiling, a wood floating-floor system beneath the treadmills and Pliteq GenieMat FIT 70 rubber flooring material in the weights area; 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, with regards to the use of the premises, the applicant states that the PCE contains facilities for physical-improvement, body-building, weight-reduction and aerobics programs; 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 has submitted plans to the Board indicating that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space; and

WHEREAS, by letter dated December 9, 2016, the Fire Department states that, based on its review of the drawings and supporting documentation for the subject PCE, as well as the fact that on-site operational testing of the interior fire alarm has already been scheduled, it has no objections to this application; and

WHEREAS, the Landmarks Preservation Commission (“LPC”) issued Certificate of No Effect No. 17-433 dated July 20, 2015, and expiring July 22, 2019, for interior alterations on the second floor associated with the subject PCE application, finding that the work will have no effect on significant protected features of the building; 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 states that the PCE will not interfere with any pending or approved public improvement project; 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. 16-BSA-006K, dated July 16, 2015; and

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) 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 legalize, on a site located in a C5-2A zoning district, within the Special Downtown Brooklyn District

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and the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (PCE) on the second floor of a four-story, with cellar, commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received January 4, 2017"-Five (5) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring March 5, 2026;

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

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

THAT an approved interior fire alarm system shall be maintained in the entire PCE space and that such system shall include: area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection of the interior fire alarm to an FDNY-approved central station;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT noise abatement measures shall be provided and maintained within the PCE space—including a gypsum ceiling, a wood floating-floor system beneath the treadmills and rubber flooring in the weights area—as indicated on the BSA-approved plans;

THAT all exterior signage shall comply with applicable zoning district regulations and shall be subject to approval by the Landmarks Preservation Commission;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by January 24, 2018;

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

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, January 24, 2017.

***The resolution has been amended.**

Corrected in Bulletin Nos. 7-8, Vol. 102, dated February 17, 2017.

the applicable provisions of the Zoning Resolution, the

A true copy of resolution adopted by the Board of Standards and Appeals, January 24, 2017.

Printed in Bulletin Nos. 4-5, Vol. 102.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

