

**180-07-BZ****CEQR #07-BSA-003M**

APPLICANT – Sheldon Lobel, P.C., for 47 Development LLC, owner; Rituals Spa LLC d/b/a Silk Day Spa, lessee.

SUBJECT – Application July 17, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on a portion of the first floor and cellar of a nine-story mixed-use building. The proposal is contrary to section 32-10. C6-2/C6-2M districts.

PREMISES AFFECTED – 47 West 13<sup>th</sup> Street, a/k/a 48 West 14<sup>th</sup> Street, north side of West 13<sup>th</sup> Street between Fifth and Sixth Avenues, Block 577, Lot 15, Borough of Manhattan.

**COMMUNITY BOARD #2M****APPEARANCES –**

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 10, 2007, acting on Department of Buildings Application No. 104825487, reads in pertinent part:

“Ground floor and cellar as a physical culture establishment is contrary to ZR Section 32-10 and must be referred to the BSA for approval”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-2M zoning district and partially within a C6-2 zoning district, the legalization of a physical culture establishment (PCE) on a portion of the first floor and in the cellar of a nine-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, and then to decision on November 20, 2007; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application on condition that the louvered air vent on West 13<sup>th</sup> Street be redesigned so as to eliminate the emission of hot air onto the sidewalk; and

WHEREAS, the subject site is located on the north side of West 13<sup>th</sup> Street, between Fifth Avenue and Sixth Avenue, partially within a C6-2M zoning district and partially within a C6-2 zoning district; and

WHEREAS, the PCE occupies a portion of the

first floor and the cellar level of a nine-story mixed-use building; the PCE occupies 5,846 sq. ft. of floor space in the cellar and 491 sq. ft. of floor area on the first floor; and

WHEREAS, the PCE is operated as Silk Day Spa; and

WHEREAS, the Board notes that the site has been in operation since November 2003; and

WHEREAS, the applicant represents that the services at the PCE include massages, facials and other skin treatments, and hot stone therapy; and

WHEREAS, the hours of operation are: Monday through Friday, 10:45 a.m. to 10:00 p.m.; Saturday, 9:30 a.m. to 10:00 p.m.; and Sunday, 10:45 a.m. to 10:00 p.m.; and

WHEREAS, at hearing, the Board directed the applicant to redesign the air vent at the West 13<sup>th</sup> Street entrance to eliminate the problem of emitting hot air onto the sidewalk; and

WHEREAS, in response, the applicant submitted a statement from a consulting engineer noting that the air vent does not currently comply with the Building Code and will be re-routed to be brought into compliance; and

WHEREAS, the Board is satisfied with the noted submission, but requests that DOB confirm that the vent complies with the Building Code; and

WHEREAS, 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 project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; 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. 08BSA003M, dated September 20, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on

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Land Use, Zoning, and Public Policy; Socioeconomic 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, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a 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 partially within a C6-2M zoning district and partially within a C6-2 zoning district, the legalization of a physical culture establishment on a portion of the first floor and in the cellar of a nine-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 21, 2007"- Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2013;

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 the above conditions shall appear on the Certificate of Occupancy;

THAT the louvered air vent above the front windows on West 13<sup>th</sup> Street be redirected so as to eliminate the emission of hot air onto the sidewalk;

THAT DOB shall confirm that the noted louvered air vent, as modified, complies with all Building Code requirements;

THAT a new Certificate of Occupancy shall be obtained within six months of this grant, by May 20, 2008;

**A true copy of resolution adopted by the Board of Standards and Appeals, November 20, 2007.  
Printed in Bulletin Nos. 44-45, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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

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

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, November 20, 2007.