

194-08-BZ

CEQR #09-BSA-010M

APPLICANT – The Law Office of Fredrick A. Becker, for Colonnade Management LLC, owner.

SUBJECT – Application July 16, 2008 – Special Permit (§73-19) to allow a Use Group 3 school on the first floor of an existing four-story mixed-use building. The proposal is contrary to ZR Section 42-10. M1-5B district.

PREMISES AFFECTED – 432 Lafayette Street, westerly side of Lafayette Street, 229’-11” south of Astor Place, Block 545, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 July 16, 2008, acting on Department of Buildings Application No. 110179949, reads in pertinent part:

“Provide BSA approvals. Proposed school use is contrary to section ZR 42-10”; and

WHEREAS, this is an application under ZR § 73-19 to permit, on a site within an M1-5B zoning district, the proposed operation of a school (Use Group 3) contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in the *City Record*, and then to decision on October 7, 2008; and

WHEREAS, the site 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 application is brought on behalf of and will be operated by the Blue Man Creativity Center; and

WHEREAS, the site is located on the west side of Lafayette Street between Astor Place and 4th Street; and

WHEREAS, the site is located within an M1-5B zoning district and has a lot area of 3,684 sq. ft.; and

WHEREAS, the site is occupied by a four-story mixed-use residential and commercial building; and

WHEREAS, the applicant proposes to renovate the first floor of the existing building for use as a school (Use Group 3) with a floor area of 1,622 sq. ft.; and

WHEREAS, the Board notes that the proposed

use meets the ZR § 12-10 definition of school, as it is will operate under a permit issued pursuant to § 47.03 of the New York City Health Code; and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with an adequate size, within districts where the school is permitted as of right, sufficient to meet the programmatic needs of the school; and

WHEREAS, the applicant represents that it sought a site adequate to accommodate six employees and approximately 16 students ranging in age from four to five years; and

WHEREAS, the applicant states that in order to insure the health, safety, and welfare of the students, the school requires: (i) a ground floor space that is separated from other uses or a space above the first floor with a private means of egress; (ii) child-sized bathrooms and fixtures or the ability to install them; and (iii) wide sidewalks in front of the premises and limited vehicular and pedestrian traffic; and

WHEREAS, the applicant represents that it worked with at least four major real estate brokers and spent several years searching for a suitable location for the school, and

WHEREAS, the applicant further represents that it evaluated the feasibility of various sites, including: 99-101 East 4th Street, 236 2nd Avenue, 666 Broadway, 137 2nd Avenue, and 146 Essex Street, but that none had a floor plate small enough to accommodate the school or was able to provide a private means of egress; and

WHEREAS, the applicant states that there were no available sites within the neighborhood with certificates of occupancy permitting school use, nor were any property owners willing to undertake the cost or effort to accommodate a school use; and

WHEREAS, the applicant represents that no available site was furnished with child-sized bathrooms and property owners were unwilling to install new plumbing lines to accommodate child-sized bathrooms; and

WHEREAS, the applicant states that none of the alternative sites investigated were therefore found to be able to accommodate the proposed school; and

WHEREAS, the applicant maintains that the results of the site search show that there is no practical possibility of obtaining a site of adequate size for the school in a nearby zoning district where it is permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant

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to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant submitted a land use map which reflects that the rear of the subject zoning lot is located within 100 feet of Broadway, the westerly side of which is zoned C6-2 and C6-4, where the proposed use would be permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that adequate separation from noise, traffic and other adverse effects of the surrounding M1-5B zoning district is provided through the use of sound-attenuating window construction; and

WHEREAS, the applicant further represents that, although the majority of the site is within an M1-5B zoning district, the area does not contain manufacturing uses but is primarily developed with commercial retail uses which are compatible with the proposed school; and

WHEREAS, the applicant further represents that the site is fronted by a particularly wide sidewalk and that the subject portion of Lafayette Street is lightly trafficked; and

WHEREAS, the Board finds that the conditions surrounding the site and the use of sound-attenuating window construction will adequately separate the school from noise, traffic and other adverse effects of any the uses within the surrounding M1-5B zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that the school's hours will be Monday through Friday from 8:30 a.m. to 4:30 p.m.; and

WHEREAS, the applicant further states that no public transportation will be provided by the school; and

WHEREAS, the applicant represents that students will come primarily from the surrounding area and will arrive and depart on foot accompanied by adults; and

WHEREAS, the applicant further represents that the students will be carefully supervised upon arrival and departure by adults who accompany them to and from the school, and by school staff stationed at the

entrance to the premises; and

WHEREAS, the Board referred the application to DOT's School Safety Engineering Office; and

WHEREAS, in response, DOT provided a letter indicating that it has no objection to the proposed school; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the school; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 090BSA010M, dated August 18, 2008; 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 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 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 §§ 73-19 and 73-03

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and grants a special permit, to allow the proposed operation of a school (Use Group 3), on a site within an M1-5B zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 16, 2008"-(3) sheets, and *on further condition*:

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the issuance of a permanent certificate of occupancy be conditioned on the securing of a charter allowing operation of the school pursuant to the requirements of the New York State Education Law;

THAT sound-attenuating windows shall be installed and maintained to limit the noise level of the surrounding M1-5B zoning district; and

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA 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) only;

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 other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2008.

**A true copy of resolution adopted by the Board of Standards and Appeals, October 7, 2008.
Printed in Bulletin No. 40, Vol. 93.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**