

***CORRECTION**

This resolution adopted on July 10, 2012, under Calendar No. 20-12-BZ and printed in Volume 97, Bulletin Nos. 27-29, is hereby corrected to read as follows:

20-12-BZ

CEQR #12-BSA-071K

APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Retro Fitness*) in an under construction mixed residential/commercial building. M1-2/R6B zoning district.

PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3rd Street, northeast corner of Berry and N. 3rd Streets, Block 2351, Lot 1087, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lee Gold.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated January 18, 2012, acting on Department of Buildings Application No. 320411256, reads in pertinent part:

The subject property to be used as a physical culture establishment is contrary to section 42-10 ZR and requires a special permit from the NYC BSA pursuant to Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-2/R6B zoning district within Special Mixed Use District 8 (MX-8), the legalization of a physical culture establishment (PCE) at the sub-cellar and first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on July 10, 2012; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application on the condition that it cease operations until the applicant receives the BSA special permit; and

WHEREAS, the subject site is located on the northeast corner of Berry Street and North 3rd Street, within an M1-2/R6B (MX-8) zoning district; and

WHEREAS, the site is located on a corner lot with approximately 122 feet of frontage on Berry Street, 400 feet frontage on North 3rd Street, and a total lot area of 41,419 sq. ft. and

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

WHEREAS, the proposed PCE will occupy 2,635 sq. ft. of floor area on the first floor, with an additional 21,337 sq. ft. of floor space located at the sub-cellar level; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 5:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, the Board raised concerns regarding the adequacy of sound attenuation provided to minimize any potential noise impacts on the residential units within the building; and

WHEREAS, in response, the applicant notes that less than ten percent of the PCE’s exercise area is located adjacent to residential units; and

WHEREAS, further the applicant notes that the existing PCE has eight inch thick concrete walls and floor slabs which provide sound insulation that complies with the sound insulation requirements of the New York City Building Code; and

WHEREAS, the Board also questioned whether a Public Assembly permit is required for the PCE; and

WHEREAS, in response, the applicant represents that they are in the process of preparing their Public Assembly permit application for submission to the Department of Buildings; 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, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement; 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

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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, the Board notes that the PCE has been in operation since March 17, 2012, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between March 17, 2012 and the date of this grant; 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. 12BSA071K, dated January 23, 2012; 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

A true copy of resolution adopted by the Board of Standards and Appeals, July 10, 2012.

Printed in Bulletin Nos. 27-29, Vol. 97.

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

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 located within in an M1-2/R6B (MX-8) zoning district, the legalization of a PCE at the sub-cellar and first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 29, 2012" – Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on March 17, 2022;

THAT the applicant will obtain a Public Assembly permit from the Department of Buildings by January 10, 2013; and

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

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

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

THAT all massages must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

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, July 10, 2012.

***The resolution has been amended on June 20, 2013. Corrected in Bulletin No. 25, Vol. 98, dated June 26, 2013.**

