

***CORRECTION**

This resolution adopted on March 21, 2017, under Calendar No. 2016-1221-BZ and printed in Volume 102, Bulletin Nos. 12-13, is hereby corrected to read as follows:

2016-1221-BZ

CEQR #16-BSA-075M

APPLICANT – Jay Goldstein, Esq., for Fifth Jam Development, LLC, owner; EVF Row House Inc., lessee.

SUBJECT – Application February 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Row House*) on the second floor of an existing commercial building. C2-7A zoning district.

PREMISES AFFECTED – 269 West 23rd Street, Block 773, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Chief Plan Examiner of the Manhattan Borough Office of the Department of Buildings (“DOB”), dated August 29, 2016, acting on DOB Application No. 122514323, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10 and is referred to the Board of Standards and Appeals for a 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 within a C2-7A zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and the second floor of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 27, 2016, after due notice by publication in *The City Record*, with a continued hearing on January 10, 2017, and then to decision on March 21, 2017; and

WHEREAS, Community Board 4, Manhattan, 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 north side of West 23rd Street, between Eighth Avenue and Seventh Avenue, in a C2-7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 38 feet of frontage along West 23rd Street, a depth of 99 feet, 3,703 square feet of lot area and is occupied by a two-story 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 guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR

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§ 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 130 square feet of floor area on the first floor, consisting of stairs to the second floor, and 2,465 square feet of floor area on the second floor of the existing building containing a reception area, locker rooms, storage and a rowing studio; and

WHEREAS, the PCE has been in operation as Row House since November 2015; and

WHEREAS, the PCE's hours of operation are Monday through Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 6:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will not impair the essential character or the future use or development of the surrounding area because it is entirely contained within an existing commercial building and surrounded by other commercial uses; and

WHEREAS, in addition, the applicant submits that sound attenuation measures have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, accordingly, the Board finds that the PCE 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 a low-impact full body workout combining rowing circuits with interval training; and

WHEREAS, the Board finds that the subject 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 equipped with an interior fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to the building's interior fire alarm connected to an FDNY-approved central station; and

WHEREAS, by letter dated March 8, 2017, the Fire Department recommended that no final decision be made on this application until on-site inspection of the premises was scheduled and received a confirmed date, but at hearing, the Fire Department revised its position, noting that an existing sprinkler and fire alarm system has been approved for the subject building and that it no longer has any objection to approval of this application; 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. 16-BSA-075M, dated February 11, 2016.

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 a C2-7A zoning district, the operation of a physical culture establishment on a portion of the first floor and second floor of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 11, 2016" – Four (4) sheets and "Received March 1, 2017" – One (1) sheet; and on further condition:

THAT the term of the PCE grant will expire on November 1, 2025;

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 the existing fire alarm system will be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such

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pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a revised Certificate of Occupancy shall be obtained within one year;

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, March 21, 2017.

***The resolution has been amended.**

Corrected in Bulletin No. 27, Vol. 102, dated July 6, 2017.

A true copy of resolution adopted by the Board of Standards and Appeals, March 21, 2017.

Printed in Bulletin Nos. 12-13, Vol. 102.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

