

CEQR #17-BSA-011M

APPLICANT – Law Office of Fredrick A. Becker, for Thor 1231 Third Avenue LLC, owner; TSI 1231 Third Avenue dab NYSC, lessee.

SUBJECT – Application August 11, 2016 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*New York Sports Club*) on a portion of the first floor and cellar of the subject premises. C1-9 zoning district.

PREMISES AFFECTED – 1231 Third Avenue, Block 1426, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 20, 2016, acting on Department of Buildings (“DOB”) Application No. 122813223, 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 C1-9 zoning district, a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing four- (4) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, with continued hearings on February 12, 2019, and May 7, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the southeast corner of Third Avenue and East 71st Street, within a C1-9 zoning district, in Manhattan; and

WHEREAS, the site has approximately 102 feet of frontage along Third Avenue, 91 of frontage along East 71st Street, 9,254 square feet of lot area and is occupied by an existing four- (4) story plus cellar mixed-use residential and 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 § 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 applicant represents that the PCE occupies 1,668 square feet of floor area on the first floor with the PCE entrance and lobby, fitness area and office; and 7,775 square feet of floor space in the cellar with a fitness studio, cycling studio, lounge and reception area, a changing area with showers, men's and women's restrooms, and areas for staff, storage and mechanical equipment; and

WHEREAS, the PCE began operation in January 2017, as "New York Sports Club," with the following hours of operation: Monday through Friday, 6:30 a.m. to 9:00 p.m., and, Saturday and Sunday, 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant states that, while the majority of the PCE is located in the cellar and separated from residential uses within the subject building, sound and vibration attenuation measures have been installed in the PCE space to prevent potential noise or vibration issues to residential and commercial tenants; these measures include a multiple-layer acoustical wall assembly with batt insulation and acoustically treated columns in areas of the cellar, and acoustically treated hung ceilings with batt insulation in portions of the first floor; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing mixed-use building, mostly within the cellar; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE

will contain facilities for classes, instruction and programs for physical improvement; 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 will not impact the privacy, quiet, light and air of the neighborhood because it is consistent with surrounding uses and is located in an existing building; and

WHEREAS, the applicant states that an approved fire alarm system—including manual pull stations at each required exit, local audible and visual alarms, area smoke detectors and a connection of the interior fire alarm to an FDNY-approved central station—is installed and maintained within the PCE space; and

WHEREAS, by letter dated December 8, 2018, the Fire Department submitted a conditional letter of no objection to the application and states that on December 1, 2018, an inspection was performed by the Bureau's Licensed Public Place of Assembly ("LPPA") unit and a violation order (E562227) was issued for failure to obtain an operating permit from the DOB; to date, no place of assembly ("PA") application has been filed with DOB for the cellar and first floors; the Bureau's LPPA unit has been informed and will enforce the violation order; the premises are protected by a sprinkler system, which was inspected and found to be operational; a hydrostatic pressure test of the system is scheduled for June 2019; the premises and the PCE space currently has a fire alarm system that was inspected by the Bureau's Fire Alarm Inspection Unit and tested satisfactory; and that the Department has no objection to the Board's rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the adequacy of notice of this application to tenants of the subject building and whether the PCE was acoustically treated to sufficiently protect the adjacent residential and commercial building tenants from noise and/or vibration associated with its occupancy; and

WHEREAS, the applicant provided photographic evidence of a notice of hearing for the March 26, 2019, continued hearing in the residential portion of the building; a report from an acoustical consultant, dated March 7, 2017, including architectural details and recommendations for sound attenuation measures; and a letter from the same acoustical consultant, dated April 4, 2019, confirming that the measures identified in the March 2017 report were "addressed"; and

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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, 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 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. 17BSA011M, dated August 11, 2016; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board;

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the cellar and first floor, is appropriate, with certain conditions as set forth below.

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 within a C1-9 zoning district, the operation of a physical culture establishment on a portion of the cellar level and first floor of an existing four- (4) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “April 6, 2018”-Ten (10) sheets; and *on further condition:*

THAT the term of the PCE grant will expire on January 1, 2027;

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

THAT a place of assembly permit shall be obtained for the PCE space;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system—including manual pull stations at each required exit, local audible and visual alarms, area smoke detectors and a

connection of the interior fire alarm to an FDNY-approved central station—shall 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 pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2016-4240-BZ”), shall be obtained within one (1) year, by May 7, 2020;

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, May 7, 2019.

A true copy of resolution adopted by the Board of Standards and Appeals, May 7, 2019.
Printed in Bulletin No. 20, Vol. 104.

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

