

2017-227-BZ
CEQR #17-BSA-137M

APPLICANT – Sheldon Lobel, P.C., for 313 LLC, owner; Fuelsoul Group LLC dba Orangetheory Fitness, lessee.

SUBJECT – Application July 14, 2017 – Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (*Orangetheory Fitness*) on a portion of the first floor of an existing building contrary to ZR §32-10. C6-4M Special Garment Center District.

PREMISES AFFECTED – 313-321 West 37th Street, Block 761, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 20, 2017, acting on Alteration Application No. 122898926, reads in pertinent part:

“Proposed Physical Culture Establishment . . . is not permitted as of right . . . and is contrary to ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-4M zoning district and the Special Garment Center District, the legalization of a physical culture establishment (“PCE”) on the first floor, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 31, 2017, after due notice by publication in *The City Register*, and then to decision on January 9, 2018; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, stating that it believes the PCE constitutes a well-run operation with minimal or no disturbance to the neighborhood and to the residential portion of the building within which the PCE is located; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the north side of West 37th Street, between Eighth Avenue and Ninth Avenue, in a C6-4M zoning district and the Special Garment Center District, in Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage along West 37th Street, 99 feet of depth, 9,875 square feet of lot area and is occupied by a nine-story, with cellar, mixed-use commercial and residential 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

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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 subject PCE occupies 4,053 square feet of floor area on the first floor as follows: a lobby, reception area, office, changing rooms, toilets, showers, closets, and a fitness studio with treadmills and other exercise equipment; and

WHEREAS, the PCE has been in operation since October 13, 2017, as Orangetheory Fitness with the following hours of operation: 5:00 a.m. to 9:00 p.m., Monday through Thursday, 5:00 a.m. to 8:00 p.m., Friday, 7:00 a.m. to 1:00 p.m., Saturday, and 8:00 a.m. to 2:00 p.m., Sunday; 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 it located entirely within the commercial first-floor space of a mixed-use building and that the surrounding area is characterized by a vibrant mix of compatible uses, such as hotels, offices, eating and drinking establishments and retail stores; and

WHEREAS, with regard to sound attenuation, the applicant submits that the PCE will feature a suspended, spring-isolated gypsum acoustic ceiling, insulated acoustic demising walls and rubber flooring in the fitness studio with an additional layer of rubber flooring in the weights area; 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 contains facilities for the provision of physical fitness instruction, including group-based personal training; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of a 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 submitted evidence indicating that sprinklers and fire alarm systems—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—are installed throughout the PCE space; 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. 17-BSA-137M, dated June 7, 2017; and

WHEREAS, the Board finds that the evidence in record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant had substantiated a basis for the exercise of discretion to grant.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *issue* 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 *permit*, in a C6-4M zoning district and the Special Garment Center District, the legalization of a physical culture establishment on the first floor, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received July 14, 2017”-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring October 13, 2027;

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 minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

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THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall remain fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

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

THAT a certificate of occupancy shall be obtained within one (1) year, by January 9, 2019;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 9, 2018.

A true copy of resolution adopted by the Board of Standards and Appeals, January 9, 2018.
Printed in Bulletin Nos. 1-3, Vol. 103.

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

