

2017-324-BZ

CEQR #18-BSA-078M

APPLICANT – Schoeman Updike Kaufman & Gerger LLP, for Ames Associates, owner; Performix House, LLC, lessee.

SUBJECT – Application December 22, 2017– Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Performix House*) to be located on the second floor of an existing building contrary to ZR §32-10. C6-4M and C6-2 zoning district.

PREMISES AFFECTED – 80 Fifth Avenue, Block 577, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta.....2

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Borough Commissioner, dated December 5, 2017, acting on Department of Buildings (“DOB”) Application No. 123337656, reads in pertinent part:

Proposed Physical Culture Establishment [as defined in Section ZR 12-10] is not permitted as of right in C6-4M and C6-2M zoning districts and is contrary to Section ZR 32-10; Use as the physical culture health establishment in C6-4M and C6-2M zoning districts shall comply with regulation of Section ZR 32-31 (uses permitted by special permit of the Board of Standards and Appeals); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-4M zoning district and partially within a C6-2M zoning district, a physical culture establishment (“PCE”) on a portion of the second floor of an existing 16-story with cellar and penthouse commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Fifth Avenue and West 14th Street, located partially within a C6-4M zoning district and partially within a C6-2M zoning district in Manhattan; and

WHEREAS, the site has approximately 73 feet of frontage along Fifth Avenue, 107 feet of frontage along West 14th Street, 7,820 square feet of lot area and is occupied by an existing 16-story with cellar and

penthouse commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 13, 1996, when, under BSA Cal. No. 145-95-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize, on a site located in a then-C6-4 zoning district, a PCE on the second floor of the subject building, operated as Lucille Roberts, on condition that all work substantially conform to plans as they apply to the objections, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the special permit be limited to a term of six (6) years, to expire November 13, 2002; the hours of operation be limited to 6:00 a.m. to 11:00 p.m., Monday through Friday, and 7:00 a.m. to 9:00 p.m., Saturday and Sunday; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-36, by November 13, 2000; and

WHEREAS, on February 3, 2004, under BSA Cal. No. 145-95-BZ, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term for ten (10) years, to expire on November 13, 2012, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB 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; 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*¹ 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:

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

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- (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 § 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 7,550 square feet of floor area on the second floor with areas for reception, training, weights, sled work, dance studio, locker rooms with restrooms and showers, offices, mechanical equipment, security and storage; and

WHEREAS, the PCE began operation in February 2018, as "Performix House," with the following hours of operation: Monday through Friday, 5:30 a.m. to 10:00 p.m.; and weekends, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant states that, while the PCE is located within a commercial building, sound attenuation measures have been installed within the PCE to minimize potential sound and vibration impacts to other tenants; these measures include varying types of soundproof flooring on layers of foam on top of a soundproofing concrete base; 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 contained entirely within an existing building located on a major retail corridor, and there has been PCE use within the subject building for over 20 years; 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, body building, weight reduction and aerobics; 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 and represents that the PCE will provide a benefit to the surrounding area by adding to the retail traffic and diversity to the mix of nearby retail; and

WHEREAS, the applicant states that a wet sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at

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each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—are maintained within the PCE space; and

WHEREAS, by letter dated August 10, 2019, the Fire Department states that the Bureau's Licensed Public Place of Assembly ("LPPA") unit inspected the premises and issued a violation order for failure to obtain an operating permit; the fire alarm, standpipe and sprinkler systems were inspected and tested satisfactorily to the Department standards; and, 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, 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. CEQR #18-BSA-078M, dated November 7, 2018; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the second 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 partially within a C6-4M zoning district and partially within a C6-2M zoning district, the operation of a physical culture establishment on a portion of the second floor of an existing 16-story with cellar and penthouse commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with

**A true copy of resolution adopted by the Board of Standards and Appeals, August 13, 2019.
Printed in Bulletin No. 34, Vol. 104.**

Copies Sent

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

this application marked "Received July 10, 2019"- Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 1, 2028;

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

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 shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system 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. 2017-324-BZ"), shall be obtained within one (1) year, by August 13, 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, August 13, 2019.

