

**2017-50-BZ**

**CEQR #17-BSA-085M**

APPLICANT – Jay Goldstein, Esq., for 819 Realty Group LLC, owner; Beast Fitness Evolved, lessee.

SUBJECT – Application February 21, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Beast Fitness Evolved*) in a portion of the cellar first floor of an existing building contrary to ZR §32-10. C4-3A zoning district.

PREMISES AFFECTED – 458 5<sup>th</sup> Avenue, Block 1010, Lot 40, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 25, 2017, acting on Alteration Application No. 320916657, reads in pertinent part:

“The proposed additional Cultural Establishment in C4-3A Zoning District is not permitted pursuant to ZR 32-10 and is referred to Board of Standards and Appeals (BSA) for a special permit under ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C4-3A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the cellar and first floor of a four-story mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of 5th Avenue and 10th Street, in a C4-3A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along 5th Avenue, 96 feet of frontage along 10th Street, 4,788 square feet of lot area and is occupied by a four-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

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

**2017-50-BZ**

**CEQR #17-BSA-085M**

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 proposed PCE will occupy 3,442 square feet of floor space as follows: 1,676 square feet of floor space in the cellar, including an exercise room, bathrooms with a shower and a business area, and 1,766 square feet of floor area on the first floor, including reception, retail, a bathroom and a training area; and

WHEREAS, the PCE will be operated as Beast Fitness with proposed hours of operation of Monday through Friday, 5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 9:00 a.m. to 4:00 p.m.; and

WHEREAS, the applicant represents that the PCE is limited in size and wholly contained within the building, reducing its visibility from the street, and that the surrounding area contains a vibrant mixed of commercial, residential and community-facility uses; and

WHEREAS, with regards to sound attenuation, the applicant represents that all typical partitions at the studio will be isolated from adjacent structure, that all ceiling are gypsum board with glue will be supported by vibration isolation hangers, that penetrations at studio ceilings and partitions will be sealed with mineral fiber insulation and caulked, that partitions will have STC ratings of 63 and that ceilings will have an STC rating of 62; and

WHEREAS, at hearing, in response to questions from the Board, the applicant represented that the sound attenuation measures to be installed will ensure that sound levels in adjacent areas will not exceed 45 dBA, including sound emanating from any sound system installed; 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 represents that the PCE will provide facilities for classes, instruction and programs for physical improvement; 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 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, by letter dated June 26, 2017, the Fire Department states that an interior fire alarm system must be installed and inspected before the Fire Department can support this application; and

WHEREAS, in response, the applicant revised the drawings to reflect installation of an interior fire alarm system; and

WHEREAS, the applicant represents that the PCE will be fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—will be installed in the entire PCE space; 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 proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 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 Type II action noted in the CEQR Checklist No. 17-BSA-085M, dated February 8, 2017; and

WHEREAS, accordingly, 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.

*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 *permit*, in a C4-3A zoning district, the operation of a physical culture establishment on portions of the cellar and first floor of a three-story mixed-use commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 9, 2017” –One (1) sheet and “August 15, 2017”-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring September 30, 2026;

THAT acoustic isolation measures shall be enhanced if vibrations become a disturbance to neighbors or if noise levels exceed 45 dBA;

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

**2017-50-BZ**  
**CEQR #17-BSA-085M**

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;

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 installed and maintained in the entire PCE space and the PCE shall be 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 the Department of Buildings;

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

THAT a certificate of occupancy shall be obtained within four (4) years, by August 15, 2021;

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, August 15, 2017.

**A true copy of resolution adopted by the Board of Standards and Appeals, August 15, 2017.**  
**Printed in Bulletin No. 34, Vol. 102.**

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

