

2018-123-BZ

CEQR #19-BSA-017M

APPLICANT – Law Office of Jay Goldstein, PLLC, for 251 W87th Street Associates, owner; Broadway Bar Method LLC, lessee.

SUBJECT – Application July 26, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Bar Method) to be in a portion of the cellar and first floor of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District.

PREMISES AFFECTED – 2381 Broadway aka 2381-2387 Broadway, 251-257 W 87th Street, Block 1235, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated October 2, 2018, acting on Department of Buildings (“DOB”) Application No. 123424990, reads in pertinent part:

Proposed Physical Culture Establishment is not [] permitted as-of-right per ZR 32-10.

Secure BSA’s approval per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-6A zoning district and in the Special Enhanced Commercial District, a physical culture establishment (“PCE”) in portions of the cellar level and first floor of an existing seven- (7) 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 January 8, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject site is located on the northwest corner of Broadway and West 87th Street, in a C4-6A zoning district and in the Special Enhanced Commercial District, in Manhattan; and

WHEREAS, the site has approximately 101 feet of frontage on Broadway, 90 feet of frontage on West 87th Street, 9,064 square feet of lot area and is occupied by a seven- (7) 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*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:
 - (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

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

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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 subject PCE occupies 1,418 square feet of floor space on the cellar level with storage, utility and laundry areas, and accessory PCE space; and 3,069 square feet of floor area on the first floor with two (2) exercise studios, an office, bathrooms, lockers, showers, retail areas, a juice bar, an office, and reception area; and

WHEREAS, the PCE has been in operation since September 2018, as "The Bar Method," operating daily from 5:30 a.m. to 9:30 p.m.; and

WHEREAS, the applicant submits that, though the PCE offers low impact, ballet-style classes that do not utilize gym machinery, sound attenuation measures have been provided to ensure that the PCE use will have no adverse impacts on the adjacent uses; specifically, all flooring in the studios contain noise control underlayment; all partitions of the studios are isolated from the adjacent structures using sheetrock with sound-attenuated batt insulation; studio ceilings are protected with isolated hangers; and, all studio penetrations through the partitions and ceilings are insulated and STC acoustical separations are installed to provide the following STC levels: partitions at STC 60, flooring at STC 64, and the ceiling at STC 69; 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 entirely within an existing building and in a neighborhood comprised of commercial office buildings, community facilities, retail stores, and residential uses; 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 classes, instruction and programs for physical improvement with instructed group exercise; 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 most patrons walk or use mass transit to access the PCE, and the area is already heavily trafficked by retail customers and building tenants; and

WHEREAS, the applicant states that an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—is installed throughout the PCE space; and

WHEREAS, by letter dated December 17, 2018, the Fire Department objected to permitting any occupants in the cellar of the subject PCE because no means of egress is provided, and stated that exiting through the building's common area and through a storage room to exit the cellar is not permitted as per the New York City Construction Code and a special permit should be denied if the cellar space is used for occupancy; and

WHEREAS, in response, the applicant filed amended plans demonstrating that the PCE cellar space is not open to the public and its access is limited only to accessory employee uses; and

WHEREAS, by letter dated December 28, 2018, the Fire Department stated no objection to the application and confirmed that they reviewed the amended plans filed with the BSA; a voluntary fire alarm system has been reviewed, approved and installed in the PCE space, and such system shall be maintained according to 2014 Fire Code Section 907.20; 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. 19BSA017M, dated October 19, 2018;

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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, based upon its review of the record, the Board finds that the requested special permit, legalizing the proposed PCE space on the cellar level 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 C4-6A zoning district and in the Special Enhanced Commercial District, the operation of a physical culture establishment in portions of the cellar level and first floor of an existing seven- (7) 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 "Received December 28, 2018- Seven (7) sheets"; and *on further condition*:

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

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 shall be installed and 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 indicating this approval and calendar number ("BSA Cal. No. 2018-123-BZ"), shall be obtained within one (1) year, by January 8, 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

**A true copy of resolution adopted by the Board of Standards and Appeals, January 8, 2019.
Printed in Bulletin Nos. 1-3, Vol. 104.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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, January 8, 2019.

CERTIFIED RESOLUTION


Margery Perlmutter, R.A., Esq.
Chair/Commissioner of the Board