

Note.—This resolution is final but subject to formal revision before publication in the Bulletin. Please notify the General Counsel of any typographical or other formal errors so that corrections may be made before the Bulletin is published.

CORRECTION: This resolution adopted on May 4, 2020, under Calendar No. 2018-15-BZ, is hereby corrected to read as follows:

BOARD OF STANDARDS AND APPEALS

MEETING OF: May 4, 2020
CALENDAR NO.: 2018-15-BZ
PREMISES: 250 West 26th Street, Manhattan
Block 775, Lot 64

ACTION OF BOARD — Application granted.

THE VOTE —

**Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta, and
Commissioner Scibetta.....5**
Negative:.....0

THE RESOLUTION —

The decision of the Department of Buildings (“DOB”), dated January 5, 2018, acting on DOB Alteration Type I Application No. 123258232, reads in pertinent part:

“Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right in C6-2A Zoning District and is contrary to section ZR 32-10.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district, the operation of a physical culture establishment (“PCE”) on the third floor of an existing four-story plus cellar commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 25, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2020, and then to decision on May 4, 2020. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 4, Manhattan, recommends approval of this application. The Board also received two form letters in support of this application.

The Premises are located on the south side of West 26th Street between Eighth Avenue and Seventh Avenue, within a C6-2A zoning district, in Manhattan. With approximately 85 feet of frontage along West 26th Street, 99 feet of depth, 8,368 square feet of lot area, the Premises are occupied by an existing four-story plus cellar commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE occupies 7,410 square feet of floor area on the third floor with areas for fitness, reception, offices, locker rooms, and showers. The PCE began operation on January 2, 2013, as “Marcelo Garcia Brazilian Jiu-Jitsu,” with the following hours of operation: Monday through Friday, 7:00 a.m. to 10:00 p.m., Saturday, 10:00 a.m. to 2:00 p.m., and Sunday, 10:00 a.m. to 1:00 p.m.

The applicant states that, while the PCE will be located within a commercial building, sound attenuation measures are maintained within the PCE space to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces. These measures include multi-density open-cell foam mats on the entire floor space to absorb impact and reduce sound, that are specifically designed for professional fight schools, laid over an underlayment made of 1/2” cross-linked polyethylene closed-cell foam. 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 is located entirely within the existing building, within a mixed-use area with offices occupying the remainder of the Premises and does not increase traffic to the surrounding area. 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.

The applicant submits that the PCE contains facilities for classes, instruction and programs for the practice of martial arts. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. 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. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is located entirely within an existing building and is compatible with the uses in the surrounding area. The applicant states that a sprinkler system and an approved fire alarm system will be maintained within the PCE space. By letter dated February 22, 2020, the Fire Department objects to the application and states that the Premises are protected by fire suppression systems (standpipe and sprinkler) and a fire alarm system which have been tested satisfactory, as witnessed by members of the Bureau of Fire Prevention. The Bureau’s Licensed Public Place of Assembly Unit (“LPPA”) inspected these premises and issued two violation orders for failure to have exit doors open to the direction of

egress and failure to obtain a certificate of operation and plans from the Department of Buildings. By letter dated March 9, 2020, the Fire Department states that they reviewed the revised plans of the proposed new location of the fireproof self-closing exit door leading to Stair “A” and finds it to be acceptable. Final approval is required from DOB. LPPA will conduct inspections at a later date to determine that compliance with the two open violation orders have been complied with. Based on the foregoing, the Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA093M, dated August 6, 2019.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C6-2A zoning district, the operation of a physical culture establishment on the third floor of an existing four-story plus cellar commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received March 6, 2020”- eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring May 4, 2030;

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 three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system and sprinkler shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

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 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. 2018-15-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 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;

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, May 4, 2020.

CERTIFICATION

***This copy of the Resolution
dated May 4, 2020
is hereby filed by
the Board of Standards and Appeals
dated July 15, 2020***

A handwritten signature in black ink, appearing to read "Carlo Costanza", is written on a white rectangular piece of paper that is slightly tilted.

***Carlo Costanza
Executive Director***