

2018-200-BZ

CEQR #19-BSA-068M

APPLICANT – Victor Han Architect P.C., for Robert C. Quinlan, owner; Renzo Gracie, lessee.

SUBJECT – Application December 26, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Renzo Gracie Upper West Side – Mixed Martial Arts Studio) located at the sub-cellar level of a 7-story mixed use building contrary to ZR §32-10. C4-6A Upper West Side/Central Park West Historic District.

PREMISES AFFECTED – 100 West 72nd Street, Block 1143, Lot 7503, 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 January 23, 2019, acting on Department of Buildings (“DOB”) Application No. 122445746, reads in pertinent part:

Proposed physical culture establishment located at sub-cellar level is not permitted as of right in a C4-6A Zoning District. This is contrary to section 32-10 ZR; 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, a physical culture establishment (“PCE”) on portions of the sub-cellar of an existing seven- (7) story plus cellar and sub-cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 30, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

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

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

WHEREAS, the subject site is located on the southwest corner of West 72nd Street and Columbus Avenue, within a C4-6A zoning district and in the Upper West Side/Central Park West Historic District, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along West 72nd Street, 102 feet of frontage along Columbus Avenue, 5,108 square feet of lot area and is occupied by an existing seven- (7) story plus cellar and sub-cellar mixed-use residential and

commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 2016, when, under BSA Cal. No. 188-15-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE, by Miccass Physical Therapy, PC and Momentum Fitness, LLC, with Miccass Physical Therapy, PC, sub-leasing a portion of the space to Momentum Fitness, LLC, on the cellar level of the subject building on condition that all work substantially conform to drawings filed with the application; the term of the PCE grant be for ten (10) years, expiring on May 3, 2026; the hours of the PCE be limited to Monday through Friday 8:00 a.m. to 8:00 p.m., Saturday 8:00 a.m. to 3:00 p.m. and Sunday 8:00 a.m. to 2:00 p.m.; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; minimum 3’-0” wide exit pathways be provided leading to the required exits and such pathways always be maintained unobstructed, including from any gymnasium equipment; an approved interior fire alarm—including manual pull stations at each required exit, local audible and visual alarms, area smoke detector and a connection to an FDNY-approved central station—be installed in the entire PCE space; all interior partitions and exists shall be as approved by DOB; Local Law 58/87 be complied with as approved by DOB; 7.5mm-thick rubber flooring be installed within the areas designated for circuit and cardiovascular training; 22.5 millimeter-thick rubber flooring be installed within the area designated for free weight uses; the conditions appear on the certificate of occupancy; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by May 3, 2021; the approval be limited to the relief granted by the Board in response to specifically cited objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and DOB 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; 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 *use1* is so located as not to impair the essential character or the

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

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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 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 4,600 square feet of floor space in the sub-cellar with a training mat area, men's and women's locker rooms with bathrooms and showers, and an office; and

WHEREAS, the PCE began operation in April 2019, as "Renzo Gracie Upper West Side, LLC," with the following hours of operation: Monday through Saturday, 7:00 a.m. to 10:00 p.m., and closed on Sunday; and

WHEREAS, the applicant states that the PCE is separated from residential uses within the subject building by two (2) floors, is located immediately below another PCE, does not include any exercise equipment, does not use any amplified music, and the operator does not anticipate the PCE use to cause any disturbance to neighboring residential uses; 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 in an existing mixed-use building, directly below another PCE tenant, keeping with the existing uses already within the subject site, and no storefront or any portion of the subject PCE is visible from street level; 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 martial arts; 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 it is consistent with surrounding

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uses and maintains an entrance for the PCE separate from the entrance to the residential portion of the subject mixed-use building; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system are installed and maintained within the PCE space; and

WHEREAS, by letter dated April 26, 2019, the Fire Department states that these premises are protected by a sprinkler, standpipe and fire alarm systems that have been inspected and tested satisfactorily to Fire Department rules and regulations, and that the Fire Department has no objection to the Board rendering a decision on this application; and

WHEREAS, by Certificate of No Effect (XCNE-19-28046), issued July 6, 2018, the Landmarks Preservation Commission approved work associated with the PCE use as having no effect on the significant protected features of the subject building; 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. 19-BSA-068M, dated December 27, 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 sub-cellar, 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 Upper West Side/Central Park West Historic District, the operation of a physical culture establishment on a portion of the sub-cellar of

an existing seven- (7) story plus cellar and sub-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 March 28, 2019"- Seven (7) sheets and "Received April 26, 2019"- One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2029;

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 an approved fire alarm system and sprinkler 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. 2018-200-BZ"), shall be obtained within one (1) year, by April 30, 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, April 30, 2019.

A true copy of resolution adopted by the Board of Standards and Appeals, April 30, 2019.

Printed in Bulletin No. 19, Vol. 104.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

