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BOARD OF STANDARDS AND APPEALS

MEETING OF: **November 30, 2020**
CALENDAR NO.: **2018-66-BZ**
PREMISES: **118 West 72nd Street, Manhattan**
Block 1143, Lot 39

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 April 14, 2020, acting on DOB Application No. 123572179, reads in pertinent part:

“Proposed “Physical Culture Establishment” in a C4-6A zoning district is not “as of right” and requires a special permit from The New York City Board of Standards and Appeals (BSA) per ZR 32-31 and ZR 73-36.”

This is an application under Z.R. §§ 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 (“PCE”) on a portion of the first floor and cellar level of an existing 13-story plus cellar mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 19, 2020, and then to decision on November 30, 2020. Community Board 7, Manhattan, recommends approval of this application. The Board received one letter in objection to the application and citing concerns over unwanted noise impacts from the PCE use.

The Premises are located on the south side of West 72nd Street between Amsterdam Avenue and Columbus Avenue, within a C4-6A zoning district, in Manhattan. With approximately 25 feet of frontage along West 72nd Street, 102 feet of depth, and 2,554 square feet of lot area, the Premises are occupied by an existing 13-story plus cellar mixed-use residential and 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 655 square feet of floor space on a portion of the cellar level with a stretching gym, restrooms, and showers; and 1,328 square feet of floor area on a portion of the first floor with fitness areas, exercise equipment, restrooms and shower. The PCE began operation in June 2012, as "Dakota Personal Training and Pilates," with the following hours of operation: 6:00 a.m. to 10:00 p.m., Monday through Friday; 7:00 a.m. to 8:00 p.m., Saturday; and 8:00 a.m. to 8:00 p.m., Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located on a heavily travelled commercial street with many mixed use buildings, many of which have ground floor commercial use and residential use above, local restaurants, bars and retail stores that are all compatible with PCE use. 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 physical improvement, body building, weight reduction, and aerobics. 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. 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 submits that sound attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include padding and soundproofing materials installed on the main floor; the maximum number of patrons during peak periods are only seven; both sound silencer panels and acoustical echo eliminator panels are installed on several of the flat surfaces of the first floor ceiling and walls to avoid transmission to the upper floors; the panels are acoustically rated and measure either 2' x 4' or 2' x 2' x 1"-thick and are impact resistant and Class-A fire retardant; and, the weight lifting platform is treated with thick with rubber matting.

The applicant states that, while spaces within the Premises are protected by a sprinkler and fire alarm system, neither are required within the PCE space. By correspondence dated October 16, 2019, the Fire Department states that the Premises are protected by a fire suppression system (standpipe and sprinkler) that has been tested and

satisfactorily to Fire Department rules and regulations. The Fire 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.

By Certificate of No Effect (CNE-19-28724), dated August 9, 2018, the Landmarks Preservation Commission permitted the documentation of existing interior conditions at the cellar level and first floor pursuant to a Department of Buildings application for a certificate of occupancy.

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. 18-BSA-134M, dated November 30, 2020.

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 C4-6A zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar level of an existing 13-story plus cellar mixed-use residential and 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 November 25, 2020"—Eleven (11) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 30, 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 equipment;

THAT an approved fire alarm and sprinkler system 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. 2018-66-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 June 3, 2022;

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, November 30, 2020.

CERTIFICATION

*This copy of the Resolution
dated November 30, 2020
is hereby filed by
the Board of Standards and Appeals
dated December 3, 2020*



***Carlo Costanza
Executive Director***
