

2018-96-BZ

CEQR #18-BSA-141M

APPLICANT – Sheldon Lobel, P.C., for 145 Ludlow LLC, owner; LCAT Ventures, LLC, lessee.

SUBJECT – Application May 23, 2018 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (F45 Training) in the cellar and ground floor of a mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 145 Ludlow Street, Block 411, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #3M

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 April 23, 2018, acting on Department of Buildings (“DOB”) Application No. 123357811, reads in pertinent part:

Proposed use as a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district, a physical culture establishment (“PCE”) on portions of the cellar and first floor of an existing six- (6) story plus cellar and penthouse mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 26, 2019, after due notice by publication in *The City Record*, with continued hearings on May 21, 2019, June 11, 2019, and July 23, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the Board was in receipt of five (5) form letters in support of this application and received testimony from two (2) tenants of the subject building in which the PCE is located in opposition to the application and raising concerns over excessive noise and vibration caused by the PCE operation; and

WHEREAS, the subject site is located on the west side of Ludlow Street, between Stanton Street and Rivington Street, in a C4-4A zoning district, in Manhattan; and

WHEREAS, the site has approximately 37 feet of frontage along Ludlow Street, 88 feet of depth, 3,283

square feet of lot area and is occupied by an existing six- (6) story plus cellar and penthouse 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

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

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 1,306 square feet of floor space in the cellar with men's and women's restrooms with showers, office and storage; and, 2,158 square feet of floor area on the first floor with cardiovascular equipment, including rowing machines, stationary bikes, and a circuit training area, a free weight area, and sled track, the PCE entrance and restrooms; and

WHEREAS, the PCE began operation in May 2018, as "F45" with the following hours of operation: 5:30 a.m. to 8:30 p.m., Monday through Friday; 8:30 a.m. to 1:00 p.m. on Saturday; and, 9:30 a.m. to 12:30 p.m. on Sunday; and

WHEREAS, the applicant states that, in light of complaints by tenants in the building and Board recommendation, the PCE consulted with a sound engineer who evaluated the space and recommended the following measures to limit the impact of noise and vibration disturbances from the PCE operation; these measures include replacing the wall-mounted speaker with four (4) small home speakers, additional soundproofing measures on the PCE studio door, and a rubber mat system in areas of the PCE where weight drops may occur, acoustical ceiling tiles and a suspended ceiling; 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 building, in a densely populated mixed-use area, located on a street consisting of many commercial uses and the PCE will contribute to the commercial character of the neighborhood; 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 physical improvement, body building, weight reduction, aerobics or 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 and represents that the PCE will provide a benefit to the surrounding area; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—are maintained within the PCE space; and

WHEREAS, by letter dated February 15, 2019, the Fire Department states that these premises have approved fire alarm and sprinkler systems that were inspected and tested satisfactorily to Fire Department standards; modifications to the fire alarm and sprinkler system have been filed with DOB and are waiting for sign-offs; and, the Fire Department has no objection to the Board rendering a decision on the application as the Bureau of Fire Prevention will inspect these premises and enforce any violations issued; and

WHEREAS, over the course of hearings, the Board was in receipt of testimony and, upon Board recommendation, complaint logs from residential tenants of the subject site and raised concerns regarding said complaints of noise and vibration disturbance from the PCE operation to residential tenants above the PCE space; and

WHEREAS, in response, the PCE engaged a sound engineer to evaluate the impact to the residential units during music and weight drop testing in the PCE space who recommended that music be played only by non-wall mounted speakers and thick dimpled rubber mats be installed and maintained under the existing flat

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rubber mats; and

WHEREAS, the PCE subsequently provided photos of the installed mats and sound limiter on non-wall mounted speakers and the Board was in receipt of no additional complaint logs nor testimony in opposition to the subject application; 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. 18-BSA-141M, dated June 1, 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 cellar 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 C4-4A zoning district, the operation of a physical culture establishment on a portion of the cellar level and first floor of an existing six- (6) story plus cellar and penthouse 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 “May 2, 2019”-Six (6) sheets; and *on further condition*:

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

THAT volume shall be maintained by a limiter and shall not be altered;

THAT speakers shall be located so as to avoid noise disturbances to neighbors;

THAT mats shall be installed and maintained as

per recommendation by the acoustical engineer, as shown on BSA-approved plans, replaced as needed;

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 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 a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—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. 2018-96-BZ”), shall be obtained within one (1) year, by July 23, 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, July 23, 2019.

A true copy of resolution adopted by the Board of Standards and Appeals, July 23, 2019.
Printed in Bulletin No. 31, Vol. 104.

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

