

2019-163-BZ

CEQR #19-BSA-141M

APPLICANT – Law Office of Jay Goldstein, for EM Real Estate LLC, owner; Bar Nala NYC LLC, lessee.
SUBJECT – Application June 3, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bar Method) on the second floor of an existing building contrary to ZR 42-10. M1-5B NoHo Historic District.

PREMISES AFFECTED – 678 Broadway, Block 530, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 2, 2019, acting on Alteration Application No. 123575078, reads in pertinent part:

“The proposed ‘physical culture or health establishment’ in a M1-5B zoning district is contrary to ZR 42-10. A special permit from the New York City Board of Standards and Appeals (BSA) is required per ZR 73-36;”
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-5B zoning district and in the NoHo Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of an existing five-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on November 26, 2019 and then to decision on that date; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Broadway, between West 3rd Street and Bond Street, within an M1-5B zoning district, in Manhattan; and

WHEREAS, the site has approximately 29 feet of frontage along Broadway, 130 feet of depth, 3,705 square feet of lot area and is occupied by an existing five-story 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* 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 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

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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 2,867 square feet of floor area on the second floor with areas for fitness, lockers, restrooms, reception and office space; and

WHEREAS, the PCE began operation in June 2019, as “Bar Method,” and is open daily from 5:30 a.m. to 9:30 p.m.; and

WHEREAS, the applicant states that, while the PCE will be located within a commercial building, the PCE space maintains measures to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces; these measures include studio partitions isolated from adjacent structures with two layers of sheetrock in studio and two layers outside with sound attenuated batt insulation; rolled neoprene noise control underlayment in the studio flooring; studio ceiling penetrations and partitions sealed with insulation and caulked and are protected by isolated hangers; and STC ratings at acoustical separation are as provided follows: partitions are STC 60, flooring are STC 64, ceilings are 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 is located within an entirely within an existing commercial building, in an area characterized by commercial office buildings, community facilities, retail stores, restaurants, and residential uses, and the PCE does not attract significant additional traffic to the area; 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; 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 the area is already heavily trafficked by retail customers, most of the PCE patrons walk or use mass transit to access the PCE and the PCE does not increase traffic to the surrounding area; and

WHEREAS, the applicant represents that a sprinkler system nor approved fire alarm system are required within the PCE space; and

WHEREAS, by letter dated October 28, 2019, the Fire Department submitted a letter of no objection to this application; and

WHEREAS, by Certificate of No Effect (“CNE”) CNE-19-39347, issued May 7, 2019, the New York City Landmarks Preservation Commission permitted interior alterations at the second floor associated with this application, including the demolition and construction of nonbearing partitions and finishes, as well as plumbing work; and

WHEREAS, 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; and

WHEREAS, in addition, the Board finds that the operation of the PCE will not interfere with any public improvement project; 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-141M, dated May 23, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 an M1-

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5B zoning district, the operation of a proposed physical culture establishment on a portion of the second floor of an existing five-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 29, 2019"- (5) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on June 1, 2029;

THAT there shall 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 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. 2019-163-BZ"), shall be obtained within one year, by November 26, 2019;

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, November 26, 2019.

A true copy of resolution adopted by the Board of Standards and Appeals, November 26, 2019.
Printed in Bulletin No. 48, Vol. 104.

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

