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BOARD OF STANDARDS AND APPEALS

MEETING OF: March 8, 2021
CALENDAR NO.: 2019-301-BZ
PREMISES: 148 26th Street, Brooklyn
Block 656, Lot 12

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 November 4, 2019, acting on DOB Application No. 321721188, reads in pertinent part:

“Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right in M1-2D Zoning Districts and is contrary to ZR 73-10.

Uses as the Physical Culture Health Establishment in M1-2D zoning districts shall comply with regulation of ZR 73-36a (uses permitted by special permit by the Board of Standards and Appeal[s]).”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-2D zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing two-story commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on January 26, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 7, Brooklyn, recommends approval of this application. The Board received two form letters in support of this application, and one form letter in objection raising concerns regarding the impact of PCE use in the area.

The Premises are located on the southeast corner of 26th Street and Third Avenue, within an M1-2D zoning district, in Brooklyn. With approximately 60 feet of frontage along 26th Street, 101 feet of frontage along Third Avenue, and 6,066 square feet of lot area, the Premises are occupied by an existing two-story 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 3,843 square feet of floor area on the first floor with an open exercise studio with exercise equipment, restroom, and changing room. The PCE began operation in May 2014, as “CrossFit 718,” with the following hours of operation: Monday to Thursday, 6:00 a.m. to 9:00 p.m.; Friday, 6:00 a.m. to 7:00 p.m.; Saturday, 8:00 a.m. to 1:00 p.m.; and, Sunday, 9:00 a.m. to 12:00 p.m.

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 in a bustling commercial and manufacturing area across from the Gowanus Expressway and is consistent with the character of the uses in the surrounding area. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. 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 noise and vibration issues are not anticipated, and sound attenuation measures will be maintained to ensure that sound and vibration from PCE use does not negatively impact nearby occupied spaces. These measures include rubber flooring covering the entire exercise studio space and foam padding installed over rubber mats in additional areas of the studio. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood because the PCE offers small classes with a maximum of 14 participants and provides an asset to the surrounding area.

The Fire Department states, by letter dated January 19, 2021, that the Premises do not have a fire suppression system or a fire alarm system and are not required to have such. As per the NYC Construction Code, an application for a Place of Assembly shall be filed, approved, and permitted upon granting of a special permit by the Board. Inspections of the PCE by the Bureau’s Licensed Public Place of Assembly Unit will be conducted in the near future and enforcement of the Fire Department’s rules and regulations for Public Assembly spaces will be done. Based on the foregoing, the Fire Department has no objection to the application, as 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. 20-BSA-049K, dated March 8, 2021.

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 an M1-2D zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing two-story commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 18, 2021”—Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 8, 2031;

THAT an application for a Place of Assembly shall be obtained forthright;

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 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. 2019-301-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 September 16, 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;

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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, March 8, 2021.

CERTIFICATION

***This copy of the Resolution
dated March 8, 2021
is hereby filed by
the Board of Standards and Appeals
dated March 16, 2021***

A handwritten signature in black ink, appearing to read 'Carlo Costanza', is written on a white rectangular background.

***Carlo Costanza
Executive Director***