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BOARD OF STANDARDS AND APPEALS

MEETING OF: February 4, 2020
CALENDAR NO.: 2019-37-BZ
PREMISES: 600 West 58th Street, Manhattan
Block 1105, Lot 36

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 January 30, 2019, acting on New Building Application No. 121184609, reads in pertinent part:

“Z.R. 73-36: Proposed Physical Culture Establishment in C4-7 zoning district is contrary to Z.R. 32-10 and Z.R. 32-31 and must be referred to the NYC Board of Standards and Appeals for approval of a special permit under Z.R. 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located partially within a C4-7 zoning district and partially within a C6-2 zoning district, and in the Special Clinton District, the operation of a physical culture establishment on a portion of the first floor of an existing ten-story, with cellar, mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 4, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood. Community Board 4, Manhattan, recommends approval of this application.

The Premises is located on the southwest corner of West 58th Street and 11th Avenue, partially within a C4-7 zoning district and partially within a C6-2 zoning district, and in the Special Clinton District, in Manhattan. The Premises have approximately 250 feet of frontage along West 58th Avenue, 100 feet of frontage along 11th Avenue, 25,105 square feet of lot area, and are occupied by ten-story, with cellar, mixed-use residential and commercial building.

The Board notes that its determination is also 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 Premises are within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 1,036 square feet of floor area on the first floor with areas for reception, kickboxing, pro shop, common lockers, restrooms, sitting area, and storage. The PCE has been in operation as “ilovekickboxing.com” since January 23, 2019, with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m. The applicant represents that PCE use is so located as not to impair the essential character or the future use or development of the surrounding area because it is located in an existing building within a heavily trafficked and predominantly commercial area. In addition, the applicant submits that sound attenuation measures have been provided within the PCE space so as to not disturb other tenants in the building. These measures include the installation of two layers of gypsum wallboard on each side of metal studs with sound attenuation insulation consisting of batt insulation, with isolators and insulation infill throughout the studio floors, suspended gypsum board ceiling hung with isolation hangers on the ceiling. The Board finds that the PCE use is so located as not to impair the essential character or the future use or development of the surrounding area.

The applicant states that the PCE provides boxing-based workouts designed to facilitate fat burning, cardiovascular health, muscle toning and wellness. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 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 submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space. By letter dated February 3, 2020, the Fire Department states these Premises are protected by a combination fire suppression (standpipe and sprinkler) system and a fire alarm system as per the current NYC Construction Code; based on the foregoing the Department has no objection to the application; the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy,

quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending 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. 19BSA095M, dated November 21, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 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 *permit*, on a site located partially within a C4-7 zoning district and partially within a C6-2 zoning district, and in the Special Clinton District, the legalization of a physical culture establishment on a portion of the first floor of an existing ten-story, with 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 21, 2019”- ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 23, 2029;

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 gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall remain fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE, 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. 2019-37-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 November 11, 2021;

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, February 4, 2020.