

226-09-BZ

CEQR #09-BSA-129M

APPLICANT – Mitchell S. Ross, Esq., for Fraydun Enterprises, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application June 19, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*New York Health & Racquet Club*) on the cellar through second floors of a six-story mixed-use building. C6-1 zoning district.

PREMISES AFFECTED – 24 East 13th Street, south side of East 13th Street, 142’-2 & ¾” west of University Place, Block 570, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Mitchell S. Ross.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 20, 2009, acting on Department of Buildings Application No. 120023385, reads in pertinent part:

“ZR 73-36. Commercial physical culture or health establishment is allowed only by special permit issued by the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the legalization of a physical culture establishment (PCE) on the third floor of a six-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in the *City Record*, with a continued hearing on October 6, 2009, and then to decision on October 27, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the south side of East 13th Street between Fifth Avenue and University Place, in a C6-1 zoning district; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of 11,701 sq. ft. on the first floor, first floor mezzanine, second floor, and third floor of the building, with an additional 3,425 sq. ft. of space located in the cellar; and

WHEREAS, the applicant submitted evidence that the PCE use on the cellar level through second floor predated the adoption of ZR § 73-36, and that the Department of Buildings (“DOB”) accepted the pre-existing Use Group 9 uses on those floors; therefore a special permit is not required for the continued operation of the PCE at the cellar through second floor; and

WHEREAS, however, the applicant states that the PCE use was extended onto the third floor in 1996, and therefore a special permit pursuant to ZR § 73-36 is required for the continued operation of the PCE on the third floor; and

WHEREAS, the PCE has a floor area of 3,204 sq. ft. on the third floor; and

WHEREAS, the PCE is operated as New York Health and Racquet Club; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; 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 determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, 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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, at hearing, the Board questioned whether the large sign located on the east side of the subject building was in compliance with zoning requirements; and

WHEREAS, in response, the applicant submitted photographs reflecting that the sign has been removed and states that the remaining signage complies with the zoning requirements; and

WHEREAS, the Board notes that the PCE has been in operation since 1996, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be limited to

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two years from the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA129M, dated June 26, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the legalization of a physical culture establishment on the third floor of an existing six-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 19, 2009"-Six(6) sheets and "Received September 11, 2009"-One(1) sheet and *on further condition*:

THAT the term of this grant shall expire on October 27, 2011;

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 all massages shall be performed by New York State licensed massage therapists;

A true copy of resolution adopted by the Board of Standards and Appeals, October 27, 2009.

Printed in Bulletin No. 43, Vol. 94.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

THAT one-inch thick rubber flooring shall be installed throughout the third floor, in accordance with the BSA-approved plans;

THAT a suspended ceiling shall be installed on the third floor, in accordance with the BSA-approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained by April 27, 2010;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings 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, October 27, 2009.