

226-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Fraydun enterprises LLC, owner; NYHRC, lessee.

SUBJECT – Application June 24, 2015 – Extension of Term of a special permit (73-11) for a physical culture establishment on the third floor of an existing mixed-use building and for extension of time to obtain a Certificate of Occupancy and Waiver. C6-1 zoning district.

PREMISES AFFECTED – 24 East 13th Street, Block 0570, Lot 017, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of term of a special permit previously granted to permit a physical cultural establishment (“PCE”) on the third floor of an existing mixed-use building, which expired October 27, 2011, and for an extension of time to obtain a Certificate of Occupancy, which expired on April 27, 2010; and

WHEREAS, a public hearing was held on this application on January 12, 2016, after due notice by publication in *The City Record*, with a continued hearing on February 9, 2016 and then to decision on March 22, 2016; and

WHEREAS, Vice Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda 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 south side of East 13th Street, between 5th Avenue and University Place, in a C6-1 zoning district, in Manhattan; and

WHEREAS, the site has approximately 49 feet of frontage along East 13th Street, 4,315 sq. ft. of lot area, and is improved with a six-story mixed-use building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 27, 2009 when, under the subject calendar number, the Board granted an application to permit the legalization of a PCE for a term of 2 years, expiring October 27, 2011, and under certain conditions, *inter alia*, a requirement that the Certificate of Occupancy be obtained by April 27, 2010; and

WHEREAS, at the time of the grant, the PCE had a total floor area of 11,701 sq. ft. on the first floor, first floor mezzanine, second floor, and third floor of the building and an additional 3,425 sq. ft. in the cellar; and

WHEREAS, in support of the special permit application, the applicant submitted evidence that the PCE

use on the cellar level through second floor pre-dated the adoption of ZR § 73-36, and that the Department of Buildings (“DOB”) accepted the pre-existing Use Group 9 uses on that floor and, thus, a special permit was not required for the continued operation of the PCE at the cellar through second floor and was sought only to the extent of the PCE use on the third floor, a total of 3,204 sq. ft. of floor area; and

WHEREAS, accordingly, the subject application is solely with regards to the PCE use on the third floor; and

WHEREAS, both the term of the special permit and the time to obtain a Certificate of Occupancy have both expired and the applicant seeks to extend both the term of the special permit and the time to obtain a Certificate of Occupancy; and

WHEREAS, with regards to the extension of time to obtain a Certificate of Occupancy, the subject application was filed more than 30 days after the expiration and, thus, the applicant requests a waiver under Board Rule of Practice and Procedure § 1-07.3(d)(2); and

WHEREAS, with regards to the extension of term, the subject application was filed more than two years after but less than ten years after the expiration of the term and, thus, the applicant requests a waiver under Board Rule of Practice and Procedure § 1-07.3(b)(3)(ii); and

WHEREAS, the applicant represents that the lateness of the filing of the subject application is due to a change in administration of the subject PCE; and

WHEREAS, the applicant does not propose to change the operator of the PCE, any of the PCE’s operations, or any aspect of the existing building; and

WHEREAS, the PCE is operated as a New York Health and Racquet Club, the same operator at the time of the 2009 special permit grant; and

WHEREAS, the PCE’s hours of operation are also the same as they were at the time of the 2009 special permit grant: Monday through Friday, 6:00 a.m. to 11:00 p.m. and Saturday through Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, in response to concerns by the Board, the applicant submitted a statement from its architect representing that though a proposed acoustic suspended ceiling system was not installed, such a system was unnecessary because the building’s solid wood beams, 1” thick wood planking subfloor topping those beams, and installed batt insulation were sufficient noise attenuation measures; in addition, the applicant submitted a statement from the current property manager stating that no residents of the apartments located above the PCE have made complaints related to noise or vibration and a letter from the tenant on the fourth floor immediately above the subject PCE indicating that no noise or vibration issues caused by the PCE have occurred during her occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time to obtain a Certificate of Occupancy is appropriate with certain conditions as set forth below.

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Therefore it is Resolved, that the Board of Standards and Appeals waives its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated October 27, 2009, so that as amended this portion of the resolution reads: “to grant an extension of the the term of the special permit for ten (10) years an extension of time to obtain a Certificate of Occupancy to March 22, 2017; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 24, 2015”-Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 22, 2026;

THAT a Certificate of Occupancy for the premises shall be obtained by March 22, 2017;

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 conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT DOB 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 plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, March 22, 2016.

A true copy of resolution adopted by the Board of Standards and Appeals, March 22, 2016.

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

