

372-03-BZ

CEQR #04-BSA-098M

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for 655 Properties, LLC, owner; Cornelia Fifth Avenue LLC, lessee.

SUBJECT - Application December 2, 2003 - under Z.R. §73-36 to permit the legalization of the eighth floor, and the roof, of an existing eight story building, for use as a physical culture establishment, located in a C5-3(MiD) zoning district, is contrary to Z.R. §32-10.

PREMISES AFFECTED - 663 Fifth Avenue, southwest corner, block bounded by Fifth and Madison Avenues, and East 52nd and East 53rd Streets, Block 1288, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES -

For Applicant: Robert Flahive.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Chin and Commissioner Miele.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner dated November 21, 2003, acting on Department of Buildings Alt. I Application No. 103531830, reads;

“Proposed Physical Culture Establishment at 8th and 9th floors is not permitted in C5-3 District as per ZR 32-10”; and

WHEREAS, a public hearing was held on this application on April 13, 2004 after due notice by publication in *The City Record*, and then laid over to May 11, 2004 for decision; and

WHEREAS, this is an application for under Z.R. §§73-36 and 81-13, to permit the use of the eighth floor of, and a proposed ninth floor to, an existing commercial building in a C5-3 (Special Midtown District), for a proposed physical culture establishment (“PCE”), which is contrary to Z.R. §32-10; and

WHEREAS, a corresponding application has been filed under BSA Calendar Number 372-03-BZ for the subject PCE to also operate on the eighth floor and a portion of the roof level of the adjacent building at 663 Fifth Avenue (the “663 Building”); and

WHEREAS, Community Board No. 5, Manhattan has recommended approval of this application; and

WHEREAS, the subject eight story building (the “655 Building”) is located at the northeast corner of Fifth Avenue and East 52nd Street, with a frontage of 50 feet along Fifth Avenue, 115 feet along East 52nd Street and a total lot area of 5,750 square feet; and

WHEREAS, the record indicates that the first and second floors of the subject building are currently used for retail use, while floors three through seven are occupied by office uses; and

WHEREAS, the applicant represents that the PCE will occupy the eighth floor and a new ninth floor addition in the subject building; and

WHEREAS, the wall separating the eight floors of 655 and 663 Buildings will be demolished, and the PCE will comprise a single, contiguous space; and

WHEREAS, the total proposed commercial floor area is below the maximum allowable floor area and the new ninth floor addition will comply with the special height and setback regulations of the Special Midtown District; and

WHEREAS, the applicant states that the proposed PCE will offer premium massage, facial and beauty treatments, with patrons entering the facility through the lobby of the 663 Building and employees entering through the East 52nd Street entrance to the 655 Building; and

WHEREAS, there will be no signage for the proposed PCE on the exterior of either building; and

WHEREAS, the record indicates that the proposed use will not contain any potential hazards that impact on the privacy, quiet, light, and air to residential uses; and

WHEREAS, the Board finds that the proposed use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

WHEREAS, the PCE will have a lounge area that will be located on the roof of the 663 Building, immediately adjacent to the ninth floor portion of the 655 building, that complies with the roof level requirements of 73-36(b); and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals of the owner and operator of such facility and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§73-03 and 73-36; and

WHEREAS, the Board has also determined pursuant to Z.R. §81-13, that the proposed PCE will be consistent with the purposes and provisions of the Special Midtown District regulations; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that

372-03-BZ

CEQR #04-BSA-098M

would require the preparation of an Environmental Impact Statement.

Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental quality Review and makes the required findings under Z.R. §§73-36 and 81-13 to permit the use of the eighth floor and a newly proposed ninth floor of an existing commercial building in a C5-3 (Special Midtown District), for a proposed physical culture establishment ("PCE"), which is contrary to Z.R. §32-10, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked "Received December 2, 2003"-(4) sheets and "April 26, 2004"-(1) sheet; and *on further condition*;

THAT the term of this special permit shall be limited ten (10) years, to expire on May 11, 2014;

THAT a minimum 4 foot wide path of travel to all exits shall be maintained on the floors and kept free of any equipment or obstructions at all times;

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

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 fire protection measures, including measures to protect the openings between the two buildings, shall be provided and maintained in accordance with the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, May 11, 2004.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 11, 2004.
Printed in Bulletin Nos. 20-21, Vol. 89.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.