

**42-14-BZ**

**CEQR #14-BSA-124M**

APPLICANT – Eric Palatnik, P.C., for 783/5 Lex Associates LLC., owner; Lush Cosmetics NY LLC., lessee.

SUBJECT – Application March 12, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Lush Cosmetics*) located on the cellar, first and second floor of a five story building. C1-8 zoning district.

PREMISES AFFECTED – 783 Lexington Avenue, between 61st and 62nd Streets, Block 1395, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 20, 2014, acting on DOB Application No. 121662664, reads, in pertinent part:

ZR 32-15 – Proposed Physical Culture Establishment at zoning C1-8X is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-8X zoning district, the legalization of a physical culture establishment (“PCE”) on the cellar, first and second floor of a five story mixed residential and commercial use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in the *City Record*, with a continued hearing on October 28, 2014, and then to decision on November 25, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown and Vice Chair Hinkson; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Lexington Avenue and East 61<sup>st</sup> Street; it is located within a C1-8X zoning district; and

WHEREAS, the site has 80 feet of frontage along East 61<sup>st</sup> Street and 40.42 feet of frontage along Lexington Avenue, consisting of 3,234 sq. ft. of lot area; and

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

WHEREAS, the PCE occupies 3,060 sq. ft. of floor area at the cellar, first floor, and second floor of the

building and operates as Lush Cosmetics; and

WHEREAS, the PCE’s hours of operation are Monday through Saturday, from 10:00 a.m. to 9:00 p.m., and on Sunday, from 11:00 a.m. to 8:00 p.m.; 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 Fire Department states that it has no objection to the proposal; and

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

WHEREAS, accordingly, 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, at hearing, the Board noted that the application, initially brought as an application to operate a PCE, was for the legalization of an existing PCE, and expressed concern that the signage displayed by the PCE was not in compliance with applicable regulations; and

WHEREAS, in response, the applicant recast the application as a legalization and represented that any signage would be in compliance with applicable regulations;

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit; 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, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA124M, dated March 11, 2014; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination 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 C1-8X zoning district, the operation of a PCE on the cellar, first story, and second story of a 5-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked “November 13, 2014”- Five (5)

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sheets; *on further condition:*

THAT the term of the PCE grant will expire on January 1, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all signage displayed at the site by the applicant shall conform to applicable regulations;

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

THAT accessibility compliance will be as reviewed and approved by DOB;

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by November 25, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

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

THAT DOB 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, November 25, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, November 25, 2014.**

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**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

