

50-09-BZ

CEQR #09-BSA-103M

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Warrior Fitness Boot Camp*) on the third floor in a twelve-story building. M1-6 zoning district.

PREMISES AFFECTED – 29 West 35th Street, West 35th Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 12, 2009, acting on Department of Buildings Application No. 110197199, reads in pertinent part:

“ZR 42-10. Proposed ‘physical culture establishment’ 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 an M1-6 zoning district, the legalization of a physical culture establishment (PCE) on the third floor of a 12-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 14, 2009, and then to decision on August 11, 2009; and

WHEREAS, Community Board 5, Manhattan, has no objection to this application; and

WHEREAS, the subject site is located on the north side of West 35th Street between Fifth Avenue and Avenue of the Americas, in an M1-6 zoning district; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE has a total floor area of 5,785 sq. ft. on the third floor of the building; and

WHEREAS, the PCE is operated as Warrior Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 9:30 p.m.; Saturday, from 9:00 a.m. to 3:00 p.m.; and will be closed on Sunday; 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, the Board notes that the PCE has been in operation since May 12, 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between May 12, 2008 and 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. 09BSA103M, dated June 1, 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

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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 an M1-6 zoning district, the legalization of a physical culture establishment on the third floor of an existing 12-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 3, 2009"- Three (3) sheets and *on further condition*:

THAT the term of this grant shall expire on May 12, 2018;

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;

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

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, August 11, 2009.

**A true copy of resolution adopted by the Board of Standards and Appeals, August 11, 2009.
Printed in Bulletin Nos. 31-32, Vol. 94.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.