

**\*CORRECTION**

**The resolution adopted on June 24, 2014, under Calendar No. 279-13-BZ and printed in Volume 99, Bulletin No. 26, is hereby corrected to read as follows:**

**279-13-BZ**

**CEQR #14-BSA-049M**

APPLICANT – Warshaw Burnstein, LLP, for 34th Street Penn Association LLC, owner; 215 West 34th Street Fitness Group, LLC., lessee.

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the first through fourth floors of a new building to be constructed. C6-4M and M1-6 zoning districts.

PREMISES AFFECTED – 218-222 West 35th Street, south side of West 35th Street, approximately 150’ West of Seventh Avenue, Block 784, Lot 54, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4  
Negative:.....0  
Absent: Vice Chair Collins.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 14, 2014, acting on DOB Application No. 121092744, reads, in pertinent part:

Proposed physical culture establishment located on zoning lot in C6-4 and M1-6 zoning districts is not permitted as-of-right pursuant to ZR Sections 32-10 and 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment (“PCE”) in portions of the first through four stories of a proposed 37-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 24, 2014; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is a through lot with

frontage on West 34<sup>th</sup> Street and West 35<sup>th</sup> Street, between Seventh Avenue and Eighth Avenue, partially within a C6-4M zoning district and partially within an M1-6 zoning district within the Special Garment Center District; and

WHEREAS, the applicant confirmed that there are not any restrictions against the use within the subject M1-6 zoning district within the Special Garment Center District; and

WHEREAS, a 37-story commercial building is being constructed on the site and will have a total of 231,577 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy portions of the first through fourth floors; the remainder of these floors will be occupied by Use Group 10 retail; and

WHEREAS, the PCE will occupy 15,210 sq. ft. of floor area and will have its main entrance on West 35<sup>th</sup> Street within the M1-6 zoning district portion of the site; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; 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 will 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, 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 an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA049M dated October 2, 2013; and

WHEREAS, the EAS documents that the operation

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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.

*Therefore it is Resolved*, that the Board of Standards and Appeals issued 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- to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, and first through third stories of a proposed 38-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 30, 2014” – Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 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 Local Law 58/87 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 the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed

**A true copy of resolution adopted by the Board of Standards and Appeals, June 24, 2014.**

**Printed in Bulletin No. 26, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

in accordance with ZR § 73-70;

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 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, June 24, 2014.

**The resolution has been amended. Corrected in Bulletin No. 30, Vo. 99, dated July 30, 2014.**

