

236-13-BZ

CEQR #14-BSA-021M

APPLICANT – Warshaw Burstein, LLP by Joshua J. Rinesmith, for 423 West 55th Street, LLC, owner; 423 West 55th Street Fitness Group, LLP, lessee.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on the first and mezzanine floors of the existing building, and Special Permit (§73-52) to allow the fitness center use to extend 25'-0" into the R8 portion of the zoning lot. C6-2 & R8 zoning district.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, 275' east of the intersection formed by 10th Avenue and West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

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 Commissioner, dated January 21, 2014, acting on Department of Buildings ("DOB") Application No. 104325776, reads in pertinent part:

Proposed use as a physical culture establishment . . . is contrary to ZR 32-10;
Proposed extension of physical culture establishment use into R8 portion of zoning lot is contrary to ZR 22-10 and 77-11; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District, the operation of a physical culture establishment ("PCE") in portions of the first floor and mezzanine level of an existing 12-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R8 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-

shaped zoning lot located on the north side of West 55th Street between Ninth Avenue and Tenth Avenue, partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District; and

WHEREAS, the site has approximately 225 feet of frontage along West 55th Street and 24,603 sq. ft. of lot area; and

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

WHEREAS, the proposed PCE will occupy portions of the first floor (20,412 sq. ft. of floor area), and mezzanine level (1,777 sq. ft. of floor area), for a total PCE floor area of 22,189 sq. ft.; and

WHEREAS, the applicant notes that the Board has exercised jurisdiction over the site since July 25, 2006, when, under BSA Cal. No. 46-06-BZ, it granted a special permit pursuant to ZR § 73-36 to permit the operation of a PCE unaffiliated with the applicant for a term of ten years, to expire on July 25, 2016; and

WHEREAS, the applicant represents that although the prior grant did not authorize extension of the PCE into the R8 portion of the lot, it is believed that such extension occurred; in any event, the prior PCE has since vacated the space; and

WHEREAS, the applicant states that the proposed PCE will operate as a Planet Fitness; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C6-2 portion of the site 24 feet into the R8 portion of the site; and (2) pursuant to ZR § 73-36, obtain a special permit for the operation of the PCE in portions of the first floor and mezzanine of the existing commercial building at the site; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold issue of single ownership, the applicant submitted documents reflecting the history of ownership of the subject site and adjoining sites showing that the zoning lot was in single ownership prior to December 15, 1961; and

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 22,594.5 sq. ft. of the site's 24,603 sq. ft. of lot area (92 percent) is located within a C6-2 zoning district; and

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WHEREAS, accordingly, the Board finds that the site meets the threshold requirements for ZR § 73-52; and

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R8 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is occupied with a portion of the existing building that is too small to accommodate an independent, viable residential or community facility tenant; and

WHEREAS, in addition, the applicant states that the portion of the site and the building within the R8 district is at the rear of the site and does not have access to a public street; therefore, developing the R8 portion of the site with a community facility or residential use is infeasible; and

WHEREAS, the applicant notes that, under Article V, commercial use is permitted as a non-conforming use within the R8 portion of the site; however, the construction of a non-PCE commercial use is constrained for the same reasons that as-of-right uses are constrained: the R8 portion of the site is landlocked and, accordingly, undesirable to most commercial uses; as such, providing the costly improvements to operate as an independent commercial space—partitions, mechanicals, and a wheelchair lift for accessibility—would not be economically feasible since the space would have to be offered at significantly discounted rents; and

WHEREAS, accordingly, absent the requested extension of the PCE into the residential space, a substantial portion of the first floor of the building would be unusable and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R8, for a permitted use; and

WHEREAS, as to the extension's effect on the surrounding area, the applicant states that the proposed extension is consistent with existing land use conditions and anticipated projects in the immediate area, in that the area surrounding the site is predominated by high-density commercial and residential uses; further, the proposed PCE will be entirely within the existing building; and

WHEREAS, the applicant also notes that the PCE does not have any windows on entrances facing the residential district, and that commercial and industrial uses have existed at the site for approximately 100 years; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C6-2 zoning district portion of the lot into the R8 portion will not cause impairment of the essential character or the future use or development of

the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-52; and

WHEREAS, turning to the findings for ZR § 73-36, the applicant represents that the services at the PCE include facilities for group training, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be 24 hours per day and seven days per week; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the future 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 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, finally, the PCE will not interfere with any pending public improvement project; and

WHEREAS, at hearing, the Board questioned whether the mezzanine was required to be made accessible for persons with certain physical disabilities; and

WHEREAS, in response, the applicant represented that the mezzanine level was not required to be made accessible because the amenities offered on that level are available on one or more accessible levels of the PCE; and

WHEREAS, the Board, therefore, 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA021M, dated August 6, 2013; 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

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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 issues 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, 73-03, and 73-52 to permit, on a site located partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District, the operation of a PCE in portions of the first floor and mezzanine level of an existing 12-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R8 portion of the zoning lot, contrary to ZR § 77-11; *on condition* that all work will substantially conform to drawings filed with this application marked "December 23, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 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 any massages will be performed only by New York State licensed massage professionals;

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 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, March 11, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, March 11, 2014.

Printed in Bulletin No. 11, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

