

**302-13-BZ**

**CEQR #14-BSA-008M**

APPLICANT – Francis R. Angelino, Esq., for Claret Commons Condominium, owner; Peloton, lessee.

SUBJECT – Application November 15, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Peloton Fitness*). C6-3X zoning district. PREMISES AFFECTED – 140 West 23rd Street, S/S West 23rd Street between 6th and 7th Avenues. Block 798, Lot 7503. 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 Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Executive Director of the Development HUB of the Department of Buildings (“DOB”), dated November 8, 2013, acting on DOB Application No. 121236996, reads, in pertinent part:

Proposed use as a physical culture establishment is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3X zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a six-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in the *City Record*, and then to decision on April 29, 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 the application; and

WHEREAS, a resident of the subject building testified in opposition to the application, citing concerns about noise emanating from air conditioning units that service the commercial space; and

WHEREAS, the subject site is located on the east side of south side of West 23rd Street, between Avenue of the Americas and Seventh Avenue, within a C6-3X zoning district; and

WHEREAS, the site has approximately 63 feet of frontage along West 23rd Street and 6,169 sq. ft. of lot area; and

WHEREAS, the site is occupied by a six-story mixed residential and commercial building with 20 dwelling units; and

WHEREAS, the proposed PCE will occupy 3,142 sq. ft. of floor space in the cellar and approximately 4,899

sq. ft. of floor area on the first story, for a total PCE size of approximately 8,041 sq. ft.; and

WHEREAS, the PCE will be operated as Peloton 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; no massage services will be provided at the PCE; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 10:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 9:00 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 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, at hearing, the Board directed the applicant to include additional details on its plans regarding its proposed sound-attenuation measures for the external HVAC units and for the PCE (the “box within a box” construction); and

WHEREAS, in response, the applicant submitted amended plans that detail the proposed sound-attenuation measures; 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. 14BSA008M dated November 8, 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

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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 73-03 to permit, on a site within a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a three-story mixed commercial and community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 25, 2014” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 29, 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 the hours of operation for the PCE will be limited to Monday through Friday, from 5:30 a.m. to 10:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.;

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, April 29, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 29, 2014.**  
**Printed in Bulletin Nos. 16-18, Vol. 99.**

**Copies Sent**  
**To Applicant**  
**Fire Com'r.**  
**Borough Com'r.**

