

210-13-BZ

CEQR #14-BSA-006Q

APPLICANT – Sheldon Lobel, P.C., for MDL+S LLC, owner; Richard Bundy, lessee.

SUBJECT – Application July 8, 2013 – Variance (§72-21) to legalize the operation of a physical culture establishment (*The Physique*). C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard. Block 138, Lot 25, Borough Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 6, 2013, acting on Department of Buildings Application No. 420465455, reads in pertinent part:

“Proposed physical culture establishment is not permitted in a C1-4/R7A zoning district as-of-right or by special permit;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-4(R7A) zoning district, the legalization of a physical culture establishment (PCE) in a former manufacturing building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in the *City Record*, with a continued hearing on June 17, 2014, and then to decision on July 22, 2014; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the application; and

WHEREAS, the Queens Borough President recommends approval of the application; and

WHEREAS, the site is located on the west side of 50th Street, between Roosevelt Avenue and 43rd Avenue and Queens Boulevard, with 102 feet of frontage on 50th Street, a depth of 100 feet and a total lot area of 10,463 sq. ft.; and

WHEREAS, the site is occupied by a one-story and basement building designed as a factory building, with 19,715 sq. ft. of floor area; and

WHEREAS, the PCE occupies 9-857 sq. ft. of floor area on the basement level and is operated as Physique; and

WHEREAS, the PCE has been in operation at the site since approximately 2003; and

WHEREAS, the applicant represents that the manufacturing building for dolls and doll clothing with accessory offices was built in approximately 1950, and

was occupied by manufacturing use until the 1980s; and

WHEREAS, the applicant notes that in 1989, the first floor of the building was converted to a billiard hall (Use Group 8) while the basement continued to be used for manufacturing and storage (Use Group 17), as reflected on the 1989 Certificate of Occupancy; and

WHEREAS, the applicant states that some time prior to 2003, the basement level was converted to PCE use; and

WHEREAS, when the PCE use began at the site it was within a C2-2(R7-1) zoning district, where PCE’s area allowed pursuant to Board special permit under ZR § 73-36; and

WHEREAS, the applicant acknowledges that although a PCE would have been permitted under the prior zoning district regulations, the prior owner never sought a special permit from the Board; and

WHEREAS, on July 28, 2011, the site was rezoned from C2-2(R7-1) to C1-4(R7A), pursuant to the Sunnyside-Woodside rezoning; and

WHEREAS, neither PCEs nor billiard halls are permitted under the current zoning; and

WHEREAS, the applicant represents that there has not been a discontinuance of the non-conforming billiard use on the second floor and, thus it is a legal pre-existing non-conforming use; and

WHEREAS, accordingly, only the proposed legalization of the PCE use on the basement level is the subject of the application; and

WHEREAS, the applicant now seeks a variance to legalize the operation of the PCE because the special permit for a PCE is not available in the subject zoning district; and

WHEREAS, the building will not be enlarged or otherwise altered as a part of this proposal; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the existing building is obsolete; and (2) the layout and lack of street exposure; and

WHEREAS, as to the obsolescence of the building, the applicant states that the building was constructed in 1950 and designed to accommodate manufacturing uses on both floors and is thus incompatible with not only conforming uses such as Use Group 6 use, but even modern manufacturing use; and

WHEREAS, the applicant asserts that the layout and lack of street exposure prohibit the basement space from being used for conforming uses such as Use Group 6 retail; and

WHEREAS, specifically, the applicant states that due to the location of portions of the basement level being below grade, it has limited street level exposure or access to light and air; and

WHEREAS, the applicant notes that the site slopes gently down toward 43rd Avenue to the north creating an area with slightly more street exposure; however, this corner of the building is occupied by its stairwell and elevator core and would be cost prohibitive to reconfigure the building to create a space for a

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conforming use tenant by relocating the building's core; and

WHEREAS, the applicant notes that local retail and service establishment uses are dependent on street visibility and direct access to attract customers and that need cannot be met with below grade space; and

WHEREAS, further, the applicant notes that the windows are located well below eye level of pedestrians and do not provide sufficient visibility for businesses located at the basement level; and

WHEREAS, the applicant asserts that the space is also not desirable for conforming use such as offices since there is very little access to light and air; and

WHEREAS, the applicant also notes that the size of the basement level is not conducive to confirming tenants because local retail and service establishments in the subject area of Queens generally occupy spaces that are less than 4,000 sq. ft.; and

WHEREAS, accordingly, since the basement level is more than twice that size, it would need to be subdivided into two or three smaller spaces to be marketable to a broader range of uses; and

WHEREAS, the applicant states that the building's layout with little street exposure and a circulation core that is located in the northeast corner of the building make the subdivision of the space impractical, if not impossible; and

WHEREAS, the applicant asserts that the requirements of a PCE use differ from those of conforming commercial uses in that the PCE does not require the same amount of street exposure, is better suited to a large open floor place, and does not require any significant capital expenditures to the manufacturing building to accommodate a fitness center; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the development of the property in conformance with the applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant initially submitted a feasibility study analyzing (1) retail use on the basement level and upper floor; and (2) the proposed PCE on the basement level and retail use on the upper floor; and

WHEREAS, at the Board's direction, the applicant also analyzed a community facility option; and

WHEREAS, the applicant concluded that neither conforming scenario resulted in a reasonable rate of return due to the inability to market the space for either of these uses and the inability to compensate for the costs of converting the building to conforming use; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject building's unique physical conditions, there is no reasonable possibility that development in strict

conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant states that there will not be any change to the exterior of the building, which has existed at the site since 1950; and

WHEREAS, the applicant asserts that the surrounding area is characterized by a mix of retail and residential uses; and

WHEREAS, specifically, the site is located just north of two main commercial thoroughfares (Roosevelt Avenue and Queens Boulevard) and is among a wide range of commercial uses including drug stores, automotive repair shops and gas stations; and

WHEREAS, the applicant notes that the only other use in the building is the non-conforming billiard hall; and

WHEREAS, the applicant asserts that the PCE has occupied the site for more than ten years and is compatible with the billiard hall and with adjacent uses; and

WHEREAS, the applicant notes that at the inception of the PCE use at the site, it was within a zoning district in which the special permit was available, but due to the 2011 rezoning is no longer available; and

WHEREAS, specifically, the applicant asserts that adjacent residential uses to the north and west do not experience sound or vibrations from the PCE activities; and

WHEREAS, the applicant notes that there are open areas with widths of at least 20 feet that buffer the PCE from the buildings to the north and west; and

WHEREAS, additionally, the wall of the gym facing north does not have windows and the portion of the facility includes stairwells, reception desk, and locker rooms, which do not create noise or vibrations; and

WHEREAS, the applicant states that treadmills and cardio machines are located on the east portion of the facility facing the street and the PCE does not offer any classes such as spinning or aerobics, which are generally accompanied by loud music; and

WHEREAS, the applicant notes that the west-facing wall does have windows similar to the east ones facing the street, but smaller in size; and

WHEREAS, at the Board's request, the applicant will tint the west-facing windows to prevent interior light from shining outside; and

WHEREAS, the applicant notes that the site is within a commercial zoning district with a heavy traffic volume; and

WHEREAS, at the Board's request, the applicant removed the awning over the entrance; and

WHEREAS, the applicant provided a revised sign analysis and photographs that reflect that the signage complies; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the

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surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Department of Investigation performed a background check on the corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; 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 (EAS) CEQR No. 14BSA006Q, and dated January 20, 2014; and

WHEREAS, the EAS documents that the project as proposed 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; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; 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, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, 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 §

72-21 and grants a variance to permit, within a C1-4(R7A) zoning district, the legalization of a physical culture establishment (PCE) in a former manufacturing building, contrary to ZR § 32-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 12, 2014"- Four (4) sheets; and *on further condition*:

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

THAT the term of this grant will be limited to ten years from the date of this grant, and will expire on July 22, 2024, subject to further renewal;

THAT, the hours of the physical culture establishment will be limited to Monday through Friday from 5:30 a.m. to 12:00 a.m.; Saturday from 7:00 a.m. to 9:00 p.m.; and Sunday from 7:00 a.m. to 6:00 p.m.;

THAT all signage at the site will comply with C1 zoning district regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT a new certificate of occupancy be obtained within six months from the date of this grant, on January 22, 1015;

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 this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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, July 22, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, July 22, 2014.

Printed in Bulletin No. 30, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

