

CORRECTION

This resolution adopted on March 11, 2014, under Calendar No. 274-13-BZ and printed in Volume 99, Bulletin No. 11, is hereby corrected to read as follows:

274-13-BZ

CEQR #14-BSA-045M

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., operator.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2013, acting on DOB Application No. 320782630, reads, in pertinent part:

Proposed physical culture establishment use is not permitted in a C1-3 zoning district, per ZR 32-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment (“PCE”) within the second story of a two-story commercial building, contrary to ZR § 32-10; 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, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of the application, provided that the hours of operation are limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the subject site is located on the west side of Third Avenue, between 79th Street and 80th Street, within a C1-3 (R6B) zoning district within the

Special Bay Ridge District; and

WHEREAS, the site has approximately 60 feet of frontage along Third Avenue and 6,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 11,400 sq. ft. of floor area (1.9 FAR); and

WHEREAS, the applicant notes that the first floor of the building is occupied by a grocery store and the second floor is vacant; and

WHEREAS, the applicant notes that the building was constructed in or around 1931 and that the site has been subject to the Board’s jurisdiction since July 24, 1959, when, under BSA Cal. No. 398-58-BZ, it granted a variance permitting a factory contrary to use regulations; in addition, later that year, on September 29, 1959, under BSA Cal. No. 399-58-A, the Board granted an appeal waiving the live load requirements for the second story; and

WHEREAS, the applicant states that the manufacturing use remained on the second story until around 1972, when the manufacturer vacated the space, and remained vacant until around 2000, when a martial arts studio leased the space and occupied it until March 2012; and

WHEREAS, the applicant acknowledges that a martial arts studio is a PCE and concedes that a variance was not obtained for the operation of the studio; however, the applicant represents that both the building owner and the martial arts studio were unaware that a martial arts studio is considered a PCE and that PCEs are not permitted within a C1-3 (R6B) district; and

WHEREAS, the applicant now seeks a variance to operate the subject PCE, which will be known as H.I.T. Factory, occupy 5,400 sq. ft. of floor area on the second story, and operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the second floor in conformance with applicable regulations: (1) the second floor’s configuration, depth, and size; and (2) its absence of street-level exposure; and

WHEREAS, the applicant states that the historic configuration, depth, and size of the second floor—the characteristics that made it suitable for historic manufacturing use—render it unsuitable for modern conforming uses; and

WHEREAS, specifically, the applicant states that the second floor has a large open floorplate, which would require utilities upgrades and partition construction in order to accommodate a modern business or professional office, at significant cost; and

WHEREAS, the applicant also asserts that the large size (approximately 6,000 sq. ft.) and depth (approximately 90 feet) of the second floor make residential use infeasible; and

274-13-BZ

CEQR #14-BSA-045M

WHEREAS, in particular, the applicant states that the second floor would be able to provide a rear yard depth of only ten feet, which is 20 feet less than the minimum required for habitable rooms; accordingly, all dwelling units must use the Third Avenue frontage of the building for required light and ventilation, which effectively prohibits the rear of the building from being converted to residences; and

WHEREAS, the applicant also states that the lack of light and ventilation owing to the building's depth would further decrease its attractiveness to modern business or professional offices, which prefer natural light; and

WHEREAS, similarly, the second floor's absence of street-level exposure makes it undesirable for local retail and service establishment uses, which rely primarily on pedestrian visibility and convenience of access in order to attract customers; as such, the rent for the second floor must be heavily discounted in order to offset the limitations of the space; and

WHEREAS, the applicant notes that the second floor's unattractiveness to tenants is evidenced by its 28-year vacancy, which, as noted above, began in 1972 and ended when a martial arts studio (a PCE) began occupying the space in 2000; and

WHEREAS, to support its claim of unique hardship, the applicant provided an area study of the 92 buildings within 600 feet of the site; and

WHEREAS, based on the study, only one other building has a second floor non-residential (community facility) use: 7817 Third Avenue, which has a Rite-Aid store on the first floor and "Tutor Time," an infant child care and preschool, on the second floor; and

WHEREAS, however, the applicant asserts that the Tutor Time building is distinguishable from the site, in that it has significantly more lot area (approximately 9,600 sq. ft.) and is located on a corner, where light and ventilation are available for residential or modern office uses; and

WHEREAS, the Board agrees with the applicant that the aforementioned unique physical conditions, when considered together, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in addition to the proposal, the applicant examined the economic feasibility of constructing a conforming office for a single user on the second floor; and

WHEREAS, the applicant concluded that the offices resulted in a negative rate of return after capitalization; in contrast, the applicant represents that

the proposal results in a positive rate of return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed PCE 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that a PCE occupied the building (albeit without the required variance, as noted above) from approximately 2000 until 2012, and that this application has received letters of support from various community organizations as well as the community board; and

WHEREAS, the applicant represents that the surrounding community is characterized by low- to medium-density mixed residential and commercial uses, with many small business that are geared to local residents, and that the proposed PCE is consistent with such uses and will provide a valuable service; and

WHEREAS, as to the PCE's impact, the applicant represents that although light music may be played during workouts, the building's double concrete walls and extra padding will provide ample sound attenuation for both the neighboring buildings, and the grocery store use at the first floor; and

WHEREAS, in addition, consistent with the community board's request, as noted above, the hours of operation for the PCE will be limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the 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, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the history of manufacturing use on the second floor and the building's depth; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

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

WHEREAS, the Board notes that because the use authorized herein is classified as a PCE, the variance will be granted for a term of ten years, to expire on March 11, 2024; and

WHEREAS, the Department of Investigation performed a background check on the corporate owner

274-13-BZ

CEQR #14-BSA-045M

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 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 (EAS) CEQR No. 14BSA045M, dated September 23, 2013; 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; and

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 C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment ("PCE") within the second story of a two-story commercial building, contrary to ZR § 32-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received 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

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.

operating control of the PCE without prior application to and approval from the Board;

THAT all signage at the site will be limited to C1 zoning district regulations;

THAT all massages must be performed only by New York State licensed massage professionals;

THAT the hours of operation for the PCE will be limited to seven days per week, from 7:00 a.m. to 10:00 p.m.;

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

THAT a new certificate of occupancy will be obtained within two years of the date of this grant, on March 11, 2016;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

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 other 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.

The resolution has been amended to replace the part which read *...two-story residential building...* now reads: "*...two-story commercial building...*". Corrected in Bulletin No. 34, Vol. 99, dated August 27, 2014.

Updated - 8/21/2014

