

305-13-BZ

CEQR #14-BSA-070Q

APPLICANT – Akerman LLP, for Whitestone Plaza, LLC, owner; Whitestone Fitness D/B/A Dolphin Fitness, lessee.

SUBJECT – Application November 20, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Dolphin Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 30-50 Whitestone Expressway, Bounded by Ulmer Street to the north, Whitestone Expressway to the East and 31st Avenue to the south. Block 4363, Lot 100. Borough of Queens.

COMMUNITY BOARD #7Q

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 Queens Borough Commissioner of the Department of Buildings (“DOB”), dated October 31, 2013, acting on DOB Application No. 401034180, reads, in pertinent part:

Physical culture establishment requires BSA special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within an M1-1 zoning district and partially within an M1-2 zoning district, within the Special College Point District, the legalization of an existing physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 42-10; 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 May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

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

WHEREAS, the subject site is located on the northwest corner of the intersection of the Whitestone Expressway service road and Ulmer Street, partially within an M1-1 zoning district and partially within an M1-2 zoning district, within the Special College Point District; and

WHEREAS, the site has approximately 209 feet of frontage along the Whitestone Expressway service road, approximately 494 feet of frontage along Ulmer Street, and 157,472 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story commercial building with approximately 104,577 sq. ft. of floor area (0.66 FAR); and

WHEREAS, the PCE occupies 6,465 sq. ft. of floor area on the first story and 9,712 sq. ft. of floor area on the second story, for a total PCE floor area of 16,177 sq. ft.; and

WHEREAS, the PCE is currently operated as Dolphin Fitness and, according to the applicant, has been operating since 2003; 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 are Monday through Thursday, from 6:00 a.m. to 12:00 a.m., Friday, from 6:00 a.m. to 11:00 p.m., Saturday, from 7:00 a.m. to 7:00 p.m., and Sunday, from 8:00 a.m. to 6:00 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 expressed concerns regarding: (1) the accessibility of the PCE; and (2) open DOB violations at the property; and

WHEREAS, in response, the applicant provided: (1) amended plans clarifying the accessibility of the PCE, including an illustration of the path of egress; and (2) a letter from the owner’s architect, which stated that the open violations would be resolved after the issuance of the special permit; 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, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; 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. 14BSA070Q dated November 4, 2013; and

WHEREAS, the EAS documents that the operation

305-13-BZ

CEQR #14-BSA-070Q

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 73-03 to permit, on a site partially within an M1-1 zoning district and partially within an M1-2 zoning district, within the Special College Point District, the legalization of an existing physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 11, 2014” – Two (2) sheets and “Received April 16, 2014” – One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on May 6, 2019;

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

A true copy of resolution adopted by the Board of Standards and Appeals, May 6, 2014.

Printed in Bulletin No. 19, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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, May 6, 2014.

